

State of South Carolina
In the Court of Appeals

Volume One P. 1

Appeal from York County
Court of General Sessions

John C. Hayes, III, Presiding Judge

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APR 29 2015

Indictment numbers 98-GS-46-2847; 2851 SC Court of Appeals

Appellate Case NO: 2013-000975

State of South Carolina,

Respondent,

v.

Antonio Gordon,

Appellant.

Appendix

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State of South Carolina
In The Court of Appeals

Appeal From York County
General Sessions Court
John C. Hayes, III, Circuit Court Judge

Appellate Case No. : 2013-000975

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DEC 30 2014

SC Court of Appeals

The state,

Respondent,

V.

Antonio Gordon,

Appellant.

Appellant's Record on Appeal

Motion for New Trial based on after - Discovered Evidence
Order Denying Motion for New Trial.
Testimony of Monte Gordon
Testimony of Terrance McCreary
Testimony of Antonio Gordon

This 22nd day of December, 2014

Antonio Gordon
P.O. BOX 1151
Fairfax, SC 29827

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DEC 30 2014

STATE OF SOUTH CAROLINA

COUNTY OF YORK

State of South Carolina

v.

Antonio Gordon,

Defendant

IN THE COURT OF GENERAL
SESSIONS

SIXTEENTH JUDICIAL CIRCUIT

2008-GS46-2847, 2849, 2850,
2851, and 2852

Court of Appeals

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DAVID HANLON
CLERK OF COURT
YORK COUNTY, SC

**ORDER DENYING MOTION
FOR A NEW TRIAL**

This matter comes before the Court by way of the Defendant's Motion for a New Trial Based on After-Discovered Evidence pursuant to Rule 29(b), SCRCrimP, filed November 21, 2012. An evidentiary hearing into the matter was convened on March 4, 2013, and March 8, 2013, at the Moss Justice Center in York County. The Defendant was present and represented by Jeremy Thompson, Esquire. The State was represented by Deputy Solicitor Willy Thompson.

At the hearing, counsel for both parties presented argument to the Court. The Court also had the opportunity to review the following records: The transcript of the pretrial hearings, the guilty pleas, and the sentencing of Antonio Gordon, Monta Gordon, and Terrance McCreary which occurred over a period of several days in July of 1999; all of the written sworn statements given by Antonio Gordon, Monta Gordon, Terrance McCreary, and Gary Moffatt to various members of the Rock Hill Police Department on July 23, 1998; the PCR transcript of the sworn testimony of Antonio Gordon from a hearing held on July 29, 2003; the PCR transcript of the sworn testimony of Monta Gordon from a hearing held on September 4, 2003; the written plea agreement entered into by Monta Gordon on July 16, 1999; the sworn written statement of Monta Gordon dated August 6, 2012, and provided by Antonio Gordon; the PCR transcript of the sworn testimony of Terrance McCreary from a hearing held on December 16, 2002; the

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sworn written statement of Terrance McCreary dated July 13, 2012, and provided by Antonio Gordon; the PCR transcript of the sworn testimony of Daniel D'Agostino from a PCR hearing held on December 1, 2009; the Maxton Order dismissing Antonio Gordon's most recent PCR application signed by the Honorable Lee S. Alford and dated January 4, 2010; and other documents that will not be addressed in this order.

PROCEDURAL HISTORY

The Defendant is currently incarcerated in the South Carolina Department of Corrections. He was indicted in October of 1998 by the York County Grand Jury for Murder (1998-GS46-02847), three counts of Possession of a Firearm During the Commission of a Violent Crime (1998-GS46-02847a; 1998-GS46-01949a; 1998GS46-1950a), two counts of Attempted Armed Robbery (1998-GS46-02849; 1998-GS46-02850), Criminal Conspiracy (1998-GS46-02851), and Possession of a Pistol by a Person Under Twenty-One (1998-GS46-02852). Daniel D'Agostino, Esquire, represented the Applicant.

A hearing on the Defendant's motion to suppress was held on July 12, 14, and 16, 1999. On July 16, 1999, following the suppression hearing, the Defendant pled guilty as indicted. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Defendant to confinement for thirty (30) years for Murder; five (5) years for Possession of a Firearm During the Commission of a Violent Crime; five (5) years for Criminal Conspiracy; five (5) years for Possession of a Pistol by a Person under Twenty-One, all to run concurrently; and ten (10) years for each count of Attempted Armed Robbery, one running concurrent and one running consecutive to the thirty (30) year sentence for Murder. This was a negotiated guilty plea to a cumulative forty (40) years confinement.

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The Defendant filed a timely notice of Appeal and an Anders brief was submitted on his behalf pursuant to Anders v. California, 386 U.S. 738 (1967). Of note, the Defendant filed a *pro se* brief in which he raised the issue of probable cause to arrest based on an "informant's" statement to law enforcement allegedly given without being advised of her rights. The "Informant" to whom the Defendant was referring was Chyneca Dixon, his girlfriend at the time he committed the murder. The Defendant also contended that both he and the informant were under age and should not have been questioned by law enforcement outside the presence of a parent or attorney. As a result, he argued, the informant's statement was inadmissible because it was obtained illegally and could not have established probable cause for his arrest. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. Filed December 6, 2000). The remittitur was issued on January 9, 2001.

The Defendant subsequently filed a PCR application originally dated June 20, 2001, and amended on May 8, 2003 (2000-CP46-1414). An evidentiary hearing was held on July 29, 2003. Tara D. Shurling, Esquire, represented the Defendant, who was present at the hearing. Jeanette C. Vanginhoven of the South Carolina Attorney General's Office represented the State. The Defendant alleged his guilty plea was involuntary and that defense counsel was ineffective for failing to discuss with him evidence of a palm print found on the victim's car door. The Defendant specifically contended that defense counsel failed to investigate or discuss with him "the fact that the palm print on the victim's car door was unidentified until the time of pre-trial," and that the South Carolina Law Enforcement Division (SLED) never tested the palm print. On August 20, 2003, the Honorable J. Ernest Kinard issued an Order denying and dismissing the application. The Defendant subsequently made a "Motion for Rehearing /Motion for

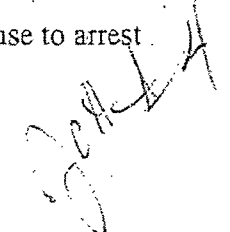
J. Ernest Kinard

Reconsideration of the Facts" on December 9, 2003. The Honorable J. Ernest Kinard dismissed the Defendant's motion by written Order filed December 15, 2003.

The Defendant filed a petition for writ of certiorari appealing the Order dismissing his first PCR action. On July 21, 2005, the South Carolina Supreme Court issued an Order denying the petition. The remittitur was issued on August 9, 2005.

On July 6, 2004, while his appeal from the denial of his first PCR action was still pending, the Defendant filed a second PCR application (2004-GS46-1700). The Defendant raised issues previously raised in his first PCR action, including allegations that his guilty plea was involuntary and that defense counsel was ineffective. On December 30, 2004, the Honorable Lee S. Alford issued a conditional Order of Dismissal in which he expressed the intent to summarily dismiss the application because the Defendant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. §17-27-45(A) and §17-27-90, and because the application was in improper successive action, but granted the Defendant twenty (20) days to show why the order should not become final. The Defendant did not respond to the conditional order of dismissal. Thereafter, by Order dated May 20, 2005, the Honorable Lee S. Alford denied and dismissed the Defendant's second PCR action.

The Defendant then filed a federal petition for writ of habeas corpus on December 22, 2005 (2:05-3327-MBS-RSC) and an amendment to his federal habeas corpus action on April 14, 2006. On October 16, 2006, Federal Magistrate Judge Robert S. Carr entered his Report and Recommendation that habeas relief should be denied. On October 30, 2006, the Defendant filed an "Objection to Report and Recommendation of Magistrate Judge." The Defendant raised the probable cause issue regarding his arrest. Specifically, the Defendant contended that his warrantless arrest was unlawful because law enforcement only found probable cause to arrest.



him based on statements given to them "by a minor whose [sic] parents were not present during questioning." In essence, he asserted that law enforcement's reliance on Chyneca Dixon's statement to establish probable cause led to an unlawful arrest that violated his Fourth Amendment rights. He also claimed that defense counsel was ineffective for failing to advise him that by pleading guilty he waived his right to challenge the lawfulness of his arrest or the statements he made to law enforcement after he was arrested. On February 16, 2007, the Honorable Margaret B. Seymour entered an Order dismissing the Defendant's petition without prejudice to permit him to exhaust all State remedies.

Subsequently, the Defendant filed a state petition for writ of habeas corpus on January 3, 2006 (2006-CP46-0010). He then filed an amendment to the state habeas corpus action on January 23, 2007, to which he attached Chyneca Dixon's two statements given to law enforcement on July 23, 1998. The Defendant alleged that law enforcement did not have probable cause to arrest him because the police relied on Chyneca Dixon's statement to law enforcement that she gave as a result of being threatened outside the presence of her parents. The Defendant asserted that the police should not have questioned Chyneca Dixon ("the minor") outside the presence of her attorney or parents, and that because she was the "probable cause provider," both of their statements to law enforcement, as well as the Defendant's arrest, were all unlawful. The Honorable John C. Hayes, III, denied and dismissed the Defendant's state habeas corpus petition with prejudice by written order dated April 30, 2007, and filed on June 1, 2007.

The Defendant then filed a Rule 60(b) motion in which he alleged a conflict of interest with the Honorable John C. Hayes, III, who was original sentencing judge at the Defendant's guilty plea. The Defendant also claimed that the order dismissing his state habeas corpus action did not advise him of right to appeal the order. On January 31, 2008, the Honorable Roger L.

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Couch granted the Defendant's Rule 60(b) motion to reconsider, amend, and clarify, and issued a written order finding that the Defendant was without prejudice to bring a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court.

On January 9, 2009, the Defendant filed his third PCR application. He amended the application on May 19, 2009. The Defendant attached two written statements given by Chyneca Dixon (hereinafter "Chyneca") and her mother, Geraldine Dixon (hereinafter "Ms. Dixon"), on January 20, 2008. The statements were given to an investigator who interviewed them on behalf of the Defendant. The Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence;
2. Ineffective Assistance of Trial Counsel;
3. Prosecutorial Misconduct;
4. Brady Violation;
5. Involuntary Guilty Plea;
6. Defense counsel failed to challenge Defendant's statements on the ground that there was no probable cause for the arrest and that Defendant's "statement's was [sic] the fruit of the poisonous tree" with regard to the illegal arrest; and
7. Personal Jurisdiction

The State made its return and motion to dismiss on July 27, 2009, asserting that the application must be summarily dismissed as an improper successive action and as having been filed after the expiration of the applicable statute of limitations. The Honorable John C. Hayes, III, issued a conditional order of dismissal on August 24, 2009, in which Judge Hayes expressed the intent to summarily dismiss the application because the Defendant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. § 17-27-

45(A) and § 17-27-90, and because the application was an improper successive action, but granted the Defendant twenty (20) days to show why the order should not become final. The State also filed a motion to restrict future filings on November 19, 2009, pursuant to In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996). The Defendant did not file a response to the conditional order of dismissal. A hearing into the State's motion for summary dismissal was convened on December 1, 2009. At the hearing, the State proceeded on a motion to dismiss all of the Defendant's claims as procedurally barred by the statute of limitations and successiveness. The State also argued that the two written statements included with the application were not newly discovered evidence, and that any alleged newly discovered evidence was nonetheless barred by the statute of limitations. The State also made a verbal motion to restrict the Defendant from filing another PCR application in the future under In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

At the hearing, the Defendant, through counsel, acknowledged that he filed a lengthy application in this case, and that he was only proceeding at the hearing with the newly discovered evidence claim and with an issue regarding the palm print found on the victim's car. Specifically, the Defendant asserted that he discovered new evidence that law enforcement coerced and threatened Chyneca into giving her initial statements, outside the presence of her mother, and that those statements implicated him in the crimes. He contended that because Chyneca's statements were threatened and coerced, they could not have established probable cause to arrest him. Therefore, the Defendant asserted, his arrest was unlawful and any incriminating statements he gave to law enforcement subsequent to his arrest were the "fruit of the poisonous tree."

The Defendant also raised an issue regarding the palm print obtained from the victim's car. He claimed that he has attempted to obtain certain documents from SLED regarding the palm print that allegedly show he was "not necessarily" the shooter, but that he has been unable to obtain those documents partly as a result of ineffective assistance of PCR counsel during his first PCR action. The Defendant also maintained that defense counsel was ineffective because he never had the palm print tested by his own expert. The Defendant also claimed that he attempted to raise this issue during his first PCR hearing, but he was "coerced into waiting the issue" at his first PCR hearing by PCR counsel.

After the December 1, 2009, hearing, the Honorable Lee S. Alford made the following findings:

1. Geraldine Dixon's testimony was not credible.
2. The evidence presented by Antonio Gordon was not newly discovered.
3. Chyneca Dixon's testimony was false and she was available to testify at trial.
4. Antonio Gordon's allegations regarding the palm print are not material or relevant.
5. The testimony of Antonio Gordon's defense counsel, Daniel D'Agostino, was credible, and any coercion or intimidation that may have accompanied Chyneca Dixon's statements to law enforcement was not a significant factor in Antonio Gordon's decision to plead guilty.

On January 4, 2010, the Honorable Lee S. Alford issued an order dismissing Antonio Gordon's application for post-conviction relief with prejudice. The Court further ordered that Antonio Gordon "is prohibited from filing any future application for post-conviction that raises the same grounds raised in this action, any grounds raised in a prior action, or any allegations the Applicant could have raised."

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has also had the opportunity to hear the testimony of Antonio Gordon, Monta Gordon, and Terrance McCreary, as well as, the arguments of counsel presented at the hearings on March 4, 2013, and March 8, 2013.

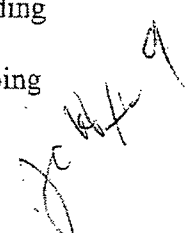
First, Antonio Gordon proffered the testimony of Monta Gordon. Monta Gordon is the brother of Antonio Gordon. Monta Gordon testified that on August 6, 2012, someone visited him in the South Carolina Department of Corrections and took a sworn statement from him.

Monta Gordon's statement reads as follows:

I, Monta Gordon, having been duly sworn, depose and say that my brother Antonio "Tonio" Gordon and two others was together in July of 1998. I am the person who fired the shot that killed the man who died. I was the only person with a gun. My brother Tonio did not have a gun nor did he fire any gun that night. I alone am the only one who killed the victim. I told the police Tonio fired the shot because he was a juvenile and I was an adult. I was on probation. As a juvenile I figured Tonio would get a lesser sentence. I never discussed robbing or killing anybody with Tonio. I was the only person with a gun that night and I fired the only shot that night.

During his testimony Monta Gordon admitted that this August 6, 2012, statement was the first statement that he gave admitting to being the "shooter". He went on to testify that he would have given this statement back in 1999 if someone had asked him. However, Monta Gordon's prior sworn statements and testimony tell a completely different story.

Monta Gordon was arrested a few hours after the Murder of Erik Krenn and gave a sworn statement to the Rock Hill Police that same morning. In his statement dated July 23, 1998, Monta Gordon admitted he rode around in Antonio Gordon's car with Antonio Gordon, Terrence McCreary, and Gary Moffatt during the time leading up to the murder. Terrence McCreary was driving and they were all with McCreary when McCreary stopped to pick up his pistol. They then went to McCreary's grandmother's house to pick up more bullets for the pistol. According to Monta Gordon, McCreary thought the victims were in a stolen car and McCreary "was going



to steal the car from them." Monta Gordon's statement goes on to say that just after the victims pulled their car into a driveway, McCreary pulled up past the victims then backed up blocking the victim's car. Monta Gordon specifically told the police that McCreary gave the pistol to Antonio Gordon and told Antonio "that they were going to rob them." Monta's statement then states that McCreary and Antonio got out of their car, went over to the victim's car and tried to get the victim out of his car. Then Monta's statement details that when the victim tried to drive off, "my brother Antonio shot the driver one time."

During Monta Gordon's guilty plea to Murder, Attempted Armed Robbery (2 counts), and Conspiracy on July 16, 1999, Monta Gordon agreed with the facts as stated on the record by the solicitor which specifically included the fact that Antonio Gordon shot and killed Erik Krenn (Plea Transcript beginning at page 189, L 18, and ending on page 192, L 8). It should also be noted that these facts are the same facts to which Monta Gordon agreed to testify had any of his codefendants gone to trial (Written Plea Agreement dated July 16, 1999, and Plea Transcript page 179, LL 12-19).

At sentencing on July 19, 1999, when the Court gave Monta Gordon the opportunity to address the Court, Monta Gordon said,

I'm sorry for the Krenn family for this accident that happened. We knowed that it was a big mistake in our life because as teenagers we had a lot to live for, but now since the indictment we have nothing to live for but to serve the time for the crime that we did. I want to say I'm sorry for my family for letting them go through the situation I'm in and all that. Hopefully Mr. Krenn will forgive us one day for the sin we did. (Plea Transcript page 202, LL 7-18)

Monta Gordon's apology in his own words at sentencing certainly re-enforces his original statement and the original statements of his codefendant that they acted together in committing this horrible crime.

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On September 4, 2003, Monta Gordon gave sworn testimony at his PCR hearing. When testifying about the statement he gave the police on the day of the murder, Monta Gordon confirmed that McCreary told Antonio Gordon to "just get" the victim's car and that Antonio Gordon got the pistol from McCreary and "jumped out" of Antonio's car. Monta also confirmed again that Antonio Gordon was the shooter (PCR Transcript page 39, L 6 to page 40, L 23). Monta Gordon's testimony at his PCR only differed when he claimed, "By the time I jumped out of the car to go stop him. [Antonio], like I say, I was already, you know, on twenty years suspended on three years probation, so I wasn't looking for any trouble. When I jumped out, I jumped out to stop my brother, but it was too late." (PCR Transcript page 39, LL 6-18). (It should be noted that during the March hearing for Antonio Gordon, Monta Gordon admitted that he was only facing three year on a probation violation not twenty years as he had testified.) Monta Gordon bemoans to the PCR Court that, "I'm locked up for something I know I didn't do." (PCR Transcript page 50, LL 19-20). Monta Gordon goes on to testify that Antonio has said "from day one that I [Monta] didn't have nothing to do with it, that I [Monta] was trying to stop him [Antonio]." (PCR Transcript page 51, LL 4-8).

Monta Gordon now claims that the reason he blamed Antonio was because Antonio was a juvenile and he thought Antonio would get a lesser sentence. I find this new claim to be completely without merit. Monta Gordon has an extensive juvenile record as noted in his plea transcript (Plea Transcript page 197, LL 10-24) and is intimately familiar with the juvenile court system. It was immediately obvious that none of the defendants in this case were treated as juveniles. Certainly, when the State sought to try all of the defendants together in 1999, there could be no mistake that no one was treated as a juvenile. Yet, Monta Gordon continued point to Antonio Gordon as the shooter at his plea, in his plea agreement and in his September 4, 2003,

Actual

PCR testimony after Antonio Gordon had been sentenced to 40 years. It is the opinion of this Court that Monta Gordon's new "exonerating" testimony is a complete fabrication.

Second, Antonio Gordon proffered the testimony of Terrance McCreary. Terrance McCreary is a cousin of Antonio Gordon. Terrance McCreary testified that on July 13, 2012, someone visited him in the South Carolina Department of Corrections and took a sworn statement from him. In this statement Terrance McCreary claims,

I am not represented by counsel at this time. I am doing time in SCDC for a Murder that occurred in July 1998 in York County. At the time of the Murder I was driving Antonio Gordon's car. When we first encountered the victims, Monte + Antonio got out of the car. Monte had a gun, Antonio did not. The incident occurred behind me so I did not see what happened. I heard one or two shots. Monte + Antonio returned to the car. Monte still had the pistol. They got in the car. While in the York County Jail Monte + I discussed blaming Antonio for the shooting since he was a juvenile. At no time that night did I see Antonio with a gun. Antonio has never told me he did the shooting.

This July 13, 2012, statement is the first time Terrance McCreary insinuated Antonio Gordon might not be the shooter and the first time that he claimed Monta Gordon possessed the pistol during the robbery and murder. It should be noted that Terrance McCreary states the shooting occurred behind him and he did not see what happened. Terrance McCreary's prior sworn statements and testimony completely contradict this 2012 statement.

Like all of his co-defendants, Terrence McCreary gave a written sworn statement to a Rock Hill Police Detective on the day of the murder (July 23, 1998). In this sworn statement immediately after the crime, Terrance McCreary states, "I then said man if I had the gun I would rob them guys." He says Antonio Gordon and Gary Moffatt got out of the car and Antonio went over to the driver's side of the victim's car. According to McCreary, Antonio asked the victims if they had marijuana and money and whether their car was stolen. McCreary then says, "Monta and I was telling them [Antonio and Gary] to come on and lets go, then we heard the gun fire. Antonio and Gary then ran and got back in the car. We began asking Antonio why did he do

Jeff H 12

that, and he was pointing the gun at all of us." McCreary also talks about how he picked up the gun shortly before the crime--a fact that is confirmed in the original statements given to the Rock Hill Police Department by each of the four defendants in this case. However, when McCreary testified in Antonio Gordon's March 2013, hearing, McCreary denied ever touching the gun.

Terrance McCreary plead guilty on July 16, 1999, to Accessory before the fact to Murder and Accessory after the fact to Murder. In addition to waiving all of his rights and pleading guilty under oath, McCreary agreed to the facts of the case as stated by the solicitor. McCreary agreed that he obtained the gun and ammunition, that he gave the gun to Antonio Gordon, that he suggested they rob the victims, and that Antonio Gordon shot Erik Krenn (Plea Transcript page 171, L 13 to page 173, L 1). In addition, the record reflects that Terrance McCreary, as part of a plea agreement, agreed to testify against his co-defendants to facts as stated at the time of his guilty plea (Plea Transcript page 163, LL 5-19 and page 168, LL 10-19).

On December 16, 2002, Terrance McCreary gave sworn testimony at his own PCR hearing. During his PCR hearing Terrance McCreary testified under oath that he did not understand what was happening at his guilty plea and he actually never plead guilty (PCR Transcript page 11, L 5 to page 15, L 17, and page 19, LL 10-15, and page 26, L 9 to page 27, L 6). Nowhere in the PCR transcript did McCreary mention anything about Monta Gordon being the shooter in this case. The Plea transcript and Court paperwork make it clear that Terrance McCreary freely, voluntarily, knowingly, and intelligently entered guilty pleas in this case and agreed to the facts stated on the record. It is an obvious fabrication for Terrance McCreary to deny entering a guilty plea and attempt to change the facts of this case.

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Like Monta Gordon, Terrance McCreary also makes a new claim that he blamed Antonio for the shooting because Antonio was a juvenile. During his testimony in Antonio Gordon's March 8, 2013, hearing, Terrence McCreary claimed that about six months after his arrest, he spoke with Monta Gordon in the York County Detention Center and they decided to blame Antonio for the shooting because Antonio was a juvenile. However, both Monta Gordon and Terrace McCreary gave sworn statements long before this on the day of the murder implicating Antonio as the shooter. In addition, Terrance McCreary has an extensive juvenile record as noted in his plea transcript (Plea Transcript page 197, L 25 to Page 198, L 9). Like Monta Gordon, McCreary is intimately familiar with the juvenile court system. It was immediately obvious that none of the defendants were treated as a juvenile. Certainly, six months after arrest when this "blame it on the juvenile" discussion allegedly took place, neither McCreary nor Monta Gordon could have been of the opinion that Antonio would be prosecuted as a juvenile. Then, almost a year after the crime, when the State was trying the defendants together at same time in General Sessions Court, there is no way anyone could have thought that Antonio would be tried as a juvenile. Instead of telling this "new" story at that time, McCreary plead guilty confirming his original statement to the police and agreeing to testify against Antonio Gordon. This Court finds that Terrance McCreary's attempt to bolster his "new" testimony with this "juvenile" claim is also a complete fabrication.

Finally, Antonio Gordon proffered his own testimony during the March 8, 2013, motion for a new trial based on after discovered evidence. Antonio Gordon claimed for the first time that he was not the shooter. Instead he claimed his brother, Monta Gordon, was the shooter. In fact, Antonio Gordon claimed he tried to stop his brother from robbing and shooting the victims and that he had no idea Monta was going to try and rob or shoot anyone. Just like the "new"

John H. 12/14

testimony of Monta Gordon and Terrance McCreary, Antonio's "new" testimony is completely contradicted by his prior sworn statements and testimony.

Antonio Gordon gave two written sworn statements to the Rock Hill Police on the day of the Murder (July 23, 1998). The first statement was given that morning and the second was given that afternoon at the same time Terrance McCreary was giving his statement to a different Rock Hill Detective. In his first statement, Antonio claimed that during the robbery he went over to the victim's car with Monta and Terrance and that Terrance shot the victim. Later that same day Detective John Thickens of the Rock Hill Police Department spoke with Antonio Gordon and took Antonio's second statement. Detective Thickens told Antonio that there were some discrepancies in Antonio's first statement compared to the information the police had collected. Then, without telling Antonio what those discrepancies were, Detective Thickens asked Antonio if he wanted someone else to go to jail for what Antonio had done (Plea/pretrial hearing Transcript page 50, L 22 to page 51, L 3, John Thickens Direct Testimony). Antonio responded by telling Detective Thickens that he did not want anyone else to be penalized for something he did and Antonio agreed to give a second statement (Plea/pretrial hearing Transcript page 51, LL 5-11).

In his second written sworn statement, Antonio Gordon admitted that he was the shooter. He said that McCreary gave him the gun and told him "to get the BMW [victim's car]." He also described that Terrance McCreary was driving and pulled Antonio's car up into a position that blocked the victim's car in the driveway. Then Antonio says, "I went up to the drivers window and I told them I wanted their money. They say they din't [sic] have no money. I was holding the gun pointed at them sideways like. I told them to get out the car because my boy want [sic] the car. Monte was standing next to me and Gary got out and went around the other side of the

John Thickens

car. They wouldn't get out the car and started backing up. I had the gun pointed at them and then it went off." These pertinent facts match very closely with the facts Terrance McCreary gave in his original statement to a different detective at the same time that Antonio gave his statement.

On July 16, 1999, Antonio Gordon entered a guilty plea to Murder, Attempted Armed Robbery (2 counts), Conspiracy, Possession of a Pistol by a person under 21 years of age and Possession of a Firearm during the commission of a violent crime (3 counts) and received a negotiated sentence of 40 years. Antonio Gordon listened to the Court go over each indictment one by one and plead guilty to each indictment. Antonio Gordon then listened as the State relayed the facts to the Court, and Antonio Gordon agreed to the facts presented. Antonio Gordon agreed that he had discussed robbing the victim and stealing the victim's car with Terrance McCreary, that he used the pistol during the robbery attempt, that he and Monta went to the victim's car window and attempted to steal the car, that Antonio's palm print was lifted off the driver's door of the victim's car, that he fired the deadly shot, and that he admitted to his girlfriend, Chyenca Dixon, that he was the shooter (Plea Transcript page 187, L15 to page 189, L 5). Antonio Gordon also has a lengthy criminal record including a number of impeachable offenses (Plea Transcript page 192, LL 7-21). Like his co-defendants, Antonio Gordon was very familiar with the juvenile court system. Antonio Gordon undoubtedly knew immediately that he was not being treated as a juvenile.

At sentencing on July 19, 1999, when the Court gave Antonio Gordon the opportunity to address the Court, Antonio Gordon said, "I'm sorry for my actions that I took place and the crime. I'm sorry for his family. And all the people that I done hurt during this situation." (Plea Transcript page 202, LL 1-6). At no time during the pretrial hearings or the plea hearing did

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Antonio Gordon say anything denying he was the shooter or claiming that Monta Gordon was the shooter. However, Antonio Gordon's trial counsel, Daniel D'Agostino, testified on December 1, 2009, in one of Antonio Gordon's many PCR hearings saying, "Antonio, I couldn't put him on the stand. He confessed to me what happened. His whole—you know, he told me he did it. There was no way to put him on the stand." (PCR Transcript page 75, LL 9-11). As he continued to testify about Antonio, Mr. D'Agostino went on to say, "His testimony, if he would have testified, was he was high on marijuana and he shot the boy. Now, I don't know what I could have done at trial with that." (PCR Transcript page 76, L 25 to page 77, L 4). Not only did Antonio Gordon confess to the police that he was the shooter and admit at his guilty plea that he was the shooter, he confided in his attorney that he was the shooter.

The lengthy procedural history of this case details seemingly endless attempts by Antonio Gordon to overturn his guilty plea over the course of more than 13 years. This Court is obligated to point out that despite the many hearings and motions various courts have entertained on Antonio Gordon's behalf, this is the first time that Antonio Gordon has claimed he was not the shooter and that Monta Gordon was the shooter. In fact the same can be said regarding the "new" testimony of Monta Gordon and Terrance McCreary. Neither Monta nor Terrance made these claims before in any of their own PCR or appeal proceedings. It is a clear fact that Antonio Gordon knew whether he was the shooter the moment this crime occurred. It is inconceivable that Antonio Gordon would wait until now, over 14 years since the crime, to make this claim if he was truly not the shooter. This Court finds Antonio Gordon's new claims to be completely fabricated and unsupported by any reliable evidence.

Gary Moffatt is the fourth co-defendant in this case. He is the only co-defendant who is not a relative of Antonio Gordon. Gary Moffatt also gave a sworn written statement to the Rock

per 11/17

Hill Police on the day of the murder. In his sworn statement Gary Moffatt said that Terrance McCreary got the pistol, that McCreary and Antonio talked about robbing the victims, that McCreary gave the pistol to Antonio Gordon just before Antonio got out of the car to rob the victims, that Monta followed Antonio out of the car, that Antonio demanded money from the victims, and that Antonio shot the driver. Gary Moffatt entered into a plea agreement with the State and agreed to testify against the other defendants. During Antonio Gordon's March 2013 hearing, Antonio Gordon testified that Gary Moffatt would not change his statement and testify for Antonio. Each of the four defendants involved in this case have remained constant since 1998 in pointing out Antonio Gordon as the shooter until this current Motion by Antonio Gordon for a New Trial Based on After-Discovered Evidence.

Antonio Gordon, Monta Gordon, and Terrance McCreary have each pursued their respective appeals and PCR applications. Only now, when all other avenues have failed, do these three co-defendants and relatives make this fantastic new claim which contradicts all of their previous claims. It is obvious to this Court that these new claims are complete fabrications capping off a string of attempts to escape responsibility for the horrible actions of each of these defendants on July 23, 1998.

A Motion for a New Trial cannot be used to challenge the validity of a plea of guilty. 58 Am. Jur. 2d. New Trial § 18; U.S. v. Lambert, 603 F.2d 808 (10th Cir. 1979); U.S. v. Forrest, 356 F. Sup. 343 (W.D. Mich. 1973); Roseborough v. State, 311 Ga. App. 530, 716 S.E.2d. 530 (2011); State v. Turco, 108 S.W. 3d 244 (Tenn. 2003) at Footnote 2.

The South Carolina Supreme Court did not reach the issue of plea vs. trial in State v. DeAngelis, 256 S.C. 364, 182 S.E.2d 732 (S.Ct. 1971). In DeAngelis, the lower court was

John #1

affirmed based on its denial of DeAngelis' Motion for a New Trial on the insufficiency of DeAngelis' affidavits in support of his Motion for a New Trial.¹

In Jamison v. State, Opinion 2012-UP-437 (Ct. App. 2012), the Court of Appeals strings out five cases in support of the Post-Conviction Relief trial judge's granting of post-conviction relief based on after-discovered evidence from a guilty plea. The Court's ruling does not confront and thus does not directly rule on the right of a defendant to seek a new trial from a guilty plea. In Jamison, the only issue raised on appeal was the State's argument that Jamison's post-conviction relief petition was successive. I find Jamison does not stand for the proposition that a defendant can seek a new trial of a guilty plea.

In Jamison, at the end of the string of cases, the Court cites this language from DeAngelis, "there are cases that motions of this character should be entertained and granted in order that wrongs done may be remedied." This statement follows this statement, "the courts do not look with favor upon applications for new trials on the ground of after-discovered evidence." The "character," the former quote addresses, is not a motion for a new trial from a guilty plea as in Antonio Gordon's case; rather, it is a motion for a new trial based on after-discovered evidence, where the defendant made a timely general sessions motion to withdraw his plea prior to his sentencing. This is not the case for Mr. Gordon, and he should not be awarded a new trial.

Even if a Motion for a New Trial based on after-discovered evidence was available to Antonio Gordon, he would still not be entitled to relief based on the merits of the motion.

Of note from DeAngelis is this language:

It is the fixed rule that the credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered. In him; not this court, resides the power to weigh such evidence; and, his

¹ The Supreme Court notes the trial judge granted his denial on the voluntariness of the plea at the top of 256 S.C. 369. However, a reading of the case reveals the Court focused solely on the denial based on the lack of affidavits.

[Handwritten signature/initials]

judgment thereabout will not be disturbed except for error of law or abuse of discretion. (*citing State v. Parker*, 249 S.C. 139, 153 S.E.2d 183 (S.Ct. 1967), a trial case).

I find the issue of credibility lies with this Court and I find that neither Antonio Gordon, Monta Gordon, nor Terrance McCreary are worthy of belief.

I find Monta Gordon's testimony that he, not Antonio Gordon, was the shooter in the case at issue to be totally lacking in credibility. This is true not only because he is, in my opinion, innately not credible, but based on the evidence previously presented by all of the participants in this case through statements to law enforcement, testimony under oath, and colloquy with trial judges.

As to Terrance McCreary, even if he were worthy of belief, which he is not, his testimony would only be that Monta get out of and after he, Mr. McCreary, heard a shot, got back into the car holding a gun at both times.

Likewise, I find Antonio Gordon's testimony at the hearing on his motion to totally lack credibility. This is based on the observations below. Additionally, as the moving party, his testimony is self-serving and completely inconsistent with his own previous statements, testimony, and plea, as well as the previous statements, testimony, and pleas of Monta Gordon and Terrance McCreary.

Also, weighing against the believability of Antonio, Monta, and Terrance's testimony is the under oath testimony by Antonio Gordon's trial counsel, Dan D'Agostino, that Antonio Gordon confessed that "he did it." (PCR Trial Transcript page 75, LL 5-11). This not only reflects negatively on Monta and Terrance's credibility, along with reflecting negatively on Antonio Gordon's, it bolsters Antonio Gordon's plea of guilty and his confessions to law enforcement and the trial judge.

7/24/20

The Court must address language from State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (S.Ct. 2009), which the undersigned finds confusing and hard to work into its analysis. In Mercer, the court examined whether or not the trial judge had abused his discretion on ruling on a motion for a new trial based on after-discovered evidence. After affirming that the credibility determination lies with the trial judge, the Court states "... we are sensitive to the notion that a mere finding of a witness's lack of credibility does not complete the analysis, because a witness may lack persuasive credibility and still create reasonable doubt."² Credibility is "the quality that makes something (as a witness or some evidence) worthy of belief." Black's Law Dictionary, 7th Ed., p. 374. "Persuade" means "to induce to undertake a course of action or embrace a point of view by means of argument, reasoning on entreaty." The American Heritage College dictionary, 4th Ed., p. 1039.

The statement above seems to imply that there are degrees of credibility and that the Court must look at not only whether or not a witness is worthy of belief, but whether a witness is artful enough to lie effectively to the point of creating reasonable doubt. As shown below, that is not the case.

A Westlaw search finds nine cases using the term "persuasive credibility" in addition to Mercer. Turnbull v. Commissioner of Social Security, 2009 WL 688911, reported, W.D. Pa. 2009; Kershner v. Massanari, 16 Fed. App. 606 (Cal 2001); Santini v. Town of Ellington, unreported, 2000 WL 1918015; West v. State, 725 So. 2d 872 (Mass. 1958); Berry v. Stevinson Chevrolet, 74 F3d 980; People v. Manning, 156 A.D.2d 220 (N.Y.A.D. 1 Dept. 1989); U.S. v. Johnson, 713 F.2d 755 (C.A. Ga. 1983); U.S. v. Stein, 437 F.2d 755 (C.A. Ind. 1971). None of these cases defined the term, but rather, as noted below, seem to use the term for comparison.

² Franklin v. Lynaugh, 487 U.S. 164, 108 S. Ct. 2320, 101 L.Ed 2d 155 (1988) cited in the paragraph with the "persuasive credibility" statement deals with a jury instruction on "residual doubt" and not on the issue of credibility.

21#21

The above cases seem to establish that "persuasive credibility" is a weighing of credibility between witnesses, i.e. not whether or not one witness or others are credible but which of the credible witnesses is more credible. The weighing of credibility is an essential component of jury deliberation. However, here it is for the Court, sitting without a jury, to determine whether a witness is credible or lacks credibility. In the instant case the Court, at least as to the issues material to consideration of Antonio Gordon's motion, must first determine whether a witness has any credibility on the material issues. Here, the Court finds none of the three witnesses who testified before the Court in the hearing of Antonio Gordon's Motion for a New Trial based on after-discovered evidence have any credibility as to their testimony that Monta Gordon, not Antonio Gordon, fired the fatal shot in this case.

Antonio Gordon's claim is that, even though he has, since the day of the shooting, known he was not the shooter, the newly-surfaced exonerating testimony of Monta Gordon and Terrance McCreary is "newly discovered" evidence. That the two accomplices now have changed their versions of the events of the night of the killing is new. Though new, it is not new evidence. The new versions are dramatically opposed to all of the previous evidence presented by Antonio Gordon, Monta Gordon and Terrance McCreary. The Court has already established that it does not find Monta Gordon and Terrance McCreary credible and so affirmatively finds their recantations and current testimony to be fabrications. The exonerating testimonies of Monta Gordon and Terrance McCreary were not evidence available to Antonio Gordon at the time he entered his plea. However, Antonio Gordon knew the truth at the time of his plea, affirmed the truth to his attorney, affirmed the truth to law enforcement and affirmed the truth to the plea judge. That, for whatever reasons, Monta Gordon and Terrance McCreary are changing their

Page 22

prior, numerous admissions, the change does not create evidence which did not exist at the time Antonio Gordon entered his plea of guilt.

Here, there is no after-discovered "evidence" of any nature. What is now on the table is two accomplices fabricating testimony in an effort to allow Antonio Gordon to attempt to flip 180 degrees from his own version of the events of the night of the shooting in hopes that he can be tried not as the shooter, but solely as an accomplice³ or as an innocent bystander.

CONCLUSION

Based on the foregoing, this Court finds and concludes that Antonio Gordon's Motion for a New Trial Based on After-Discovered Evidence is hereby denied and dismissed because a Motion for a New Trial cannot be used to challenge the validity of a guilty plea. Furthermore, had a Motion for a New Trial been available to Antonio Gordon, this Court still finds and concludes the motion is without merit and must be denied and dismissed. This Court finds the new testimony of Antonio Gordon, Monta Gordon and Terrance McCreary to be fabricated and further finds each of these individuals to be wholly without credibility. In addition, the Court finds that the testimony and evidence presented by the defendant in support of his motion are not after-discovered evidence.

IT IS THEREFORE ORDERED:

1. That the Defendant's motion for a New Trial Based on After-Discovered Evidence must be denied and dismissed; and
2. That the Defendant must be remanded to the custody of the State to serve his sentence.

AND IT IS SO ORDERED this 22nd day of April, 2013.

³ The Court need not, based on its ruling herein, further comment on accomplice liability and its possible application to the facts which are undisputed.

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THE HONORABLE JOHN C. HAYES, III
Chief Administrative Judge
Sixteenth Judicial Circuit

24

York, South Carolina

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State of South Carolina)

)

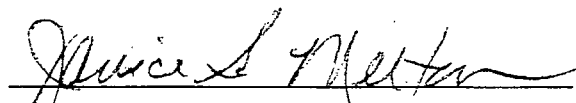
Statement of Monta Gordon

Lee County)

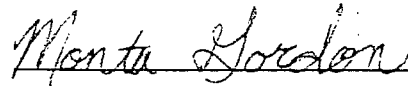
I, Monta Gordon, having been duly sworn, depose and say that my brother Antonio "Tonio" Gordon and two other was together in July of 1998. I am the person who fired the shot that killed the man who died. I was the only person with a gun. My brother Tonio did not have a gun nor did he fire any gun that night. I alone am the only one who killed the victim. I told police Tonio fired the shot because he was a juvenile and I was an adult. I was on probation. As a juvenile I figured Tonio would get a lesser sentence. I never discussed robbing or killing anybody with Tonio. I was the only person with a gun that night and I fired the only shot that night.

This statement is honest and truthful. I have received a copy of this one (1) page statement.

Sworn to before me this 6th day of August ~~July~~ 2012.



Notary Public for South Carolina

My Commission expires: 4-26-2014

Monta Gordon

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

p. 28

STATEMENT OF

Terrence E. McCrearyI, Terrence McCreary, HAVING BEEN DULY SWORN DEPOSEAND SAY THAT I AM A RESIDENT OF SCDC - Kershaw Co. COUNTY.

I am not Represented by Counsel At This Time.
I am doing Time in SCDC For A Murder That
Occurred in July 1998 in York County.

At The Time of The Murder I Was Driving
Antonio Gordon's Car. When We First Encountered
The Victims, Monte + Antonio Got Out of The Car.
Monte Had A Gun, Antonio did not. The
Incident Occurred Behind Me So I did not
See What Happened. I heard One or Two Shots.
Monte + Antonio Returned To The Car, Monte
Still had The Pistol. They got in The Car.
While in The York County Jail Monte + I
discussed Blaming Antonio For The Shooting Since
He Was A Juvenile.

At No Time That Night did I See Antonio
With A Gun. Antonio has NEVER Told Me He did the

THIS STATEMENT IS HONEST AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE. IT ^{Shooting}
 IS MADE FREELY AND VOLUNTARILY WITHOUT COERSION OR COMPENSATION.

I HAVE RECEIVED A COPY OF THIS 1 PAGE STATEMENT.

SWORN TO BEFORE ME THIS

13th DAY OF July 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 12/15/18

TERRENCE MCCREARY
 AFFIANT

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
v.)
ANTONIO GORDON,)
Defendant.)

CRIMINAL NO.: 98-GS-46-2847; 2849;
2851

CERTIFICATE OF SERVICE

RECEIVED

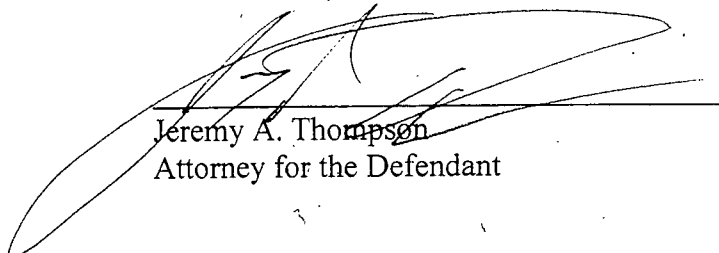
DEC 30 2012

SC Court of Appeals

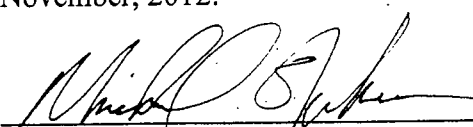
The undersigned hereby certifies that a true copy of the Motion for a New Trial Based on After-Discovered Evidence Pursuant to Rule 29(b), SCRCrimP in the above matter has been served on opposing counsel this 19th day of November, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

Walter William Thompson, Assistant Solicitor
Sixteenth Circuit Solicitor's Office
1675-1A York Highway
York, SC 29745

The original having been sent to the York County Clerk of Court for filing.


Jeremy A. Thompson
Attorney for the Defendant

SWORN TO BEFORE ME this 19th day of
November, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 7/10/2022

State of South Carolina
In The Court of Appeals

P. 30

RECEIVED
DEC 30 2014
SC Court of Appeals

Appeal from York County
General Sessions Court
John C. Hayes, III, Circuit Court Judge

Appellate Case No. : 2013-000975

The state,

Respondent,

v.

Antonio Gordon,

Appellant.

Certificate of Service

I, Antonio Gordon, hereby certifies that I have served Appellant's Record on Appeal.

On Respondent at:

Donald J. Zelenka
S.C. Attorney General Office
P.O. Box 11549
Columbia, SC 29211

by depositing copies in the mail with sufficient postage this ~~was~~ 22nd day of December 2014.

Antonio Gordon
Antonio Gordon

15
(01502) J. Gordon

P. 31

COPY

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF YORK	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	CRIMINAL NO.: 98-GS-46-2847; 2849;
	)	2851
	)	
v.	)	MOTION FOR A NEW TRIAL BASED
	)	ON AFTER-DISCOVERED EVIDENCE
ANTONIO GORDON,	)	PURSUANT TO RULE 29(b), SCRCrimP
	)	
Defendant.	)	
	)	

NOW COMES the Defendant in the above-captioned matter, acting by and through undersigned counsel, respectfully moving this Honorable Court to grant a Motion for a New Trial Based on After-Discovered Evidence Pursuant to Rule 29(b), SCRCrimP. In support of this motion, the Defendant would show unto this Court the following.

PROCEDURAL HISTORY

The Defendant was charged with murder, two counts of attempted armed robbery, criminal conspiracy, possession of a pistol by a person under the age of twenty-one, and three counts of possession of a firearm during the commission of a violent crime in connection with the shooting death of Eric Peter Krenn on July 23, 1998. On July 16, 1999, the Defendant pleaded guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, presiding circuit court judge, sentenced the Defendant to thirty years' imprisonment for murder, five years' imprisonment for the firearms charges, five years' imprisonment for the conspiracy charge, and ten years' imprisonment for each attempted armed robbery charges. The sentences were to each run concurrently, with the exception of one ten-year attempted armed robbery sentence, which was to run consecutively to the remaining sentences.

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ARGUMENT

“A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence.” Rule 29(b), SCRCrimP. To prevail on a motion for a new trial based on after discovered evidence, a defendant must show: (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material to the issue of guilt or innocence; and (5) the evidence is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 157-158, 508 S.E.2d 857, 869 (1998).

The State’s theory of the case was that on the night of the incident, the Defendant and his co-defendants, Monta Gordon, Terrance McCreary, and Gary Moffatt, were in a vehicle together when they saw the victim’s BMW, which was occupied by the victim and his friend Christopher Diaz. The Defendant and Monta Gordon then went up to the vehicle under the guise of asking for marijuana but with the purpose of robbing the victim and stealing the vehicle. The Defendant then shot the victim, which was a wound that caused his death.

Following the incident, all of the co-defendants, including the Defendant, gave statements identifying the Defendant as the shooter. The Defendant challenged his statement prior to his guilty plea on the ground that it was not knowingly or intelligently made inasmuch as he was easily manipulated into making the statement and that he could not have understood his Miranda rights due to his mental deficiencies. This challenge was denied by this Court. Additionally, Diaz gave a statement identifying Monta Gordon as the shooter. Prior to pleading guilty, all of

the co-defendants pleaded guilty and intended to testify against the Defendant if he proceeded to trial.

The Defendant has attached to this motion two affidavits from two of his co-defendants: Monta Gordon and Terrance McCreary. Monta Gordon's affidavit states that he, not the Defendant, fired the shot that killed the victim. Attachment A. Furthermore, Monta Gordon's affidavit states that the Defendant did not have a gun the night of the incident, and that he did not discuss robbing or killing anyone with the Defendant. Attachment A. Finally, Monta Gordon's affidavit states that he told the police that the Defendant fired the shot because he believed that the Defendant would be treated less harshly because he was a juvenile at the time of the crime. Attachment A. McCreary's affidavit states that Monta Gordon, not the Defendant, had the gun the night of the crime. Attachment B. McCreary further states that Monta Gordon got out of their vehicle with the gun, shots were fired, and that Monta Gordon got back in the car with the gun. Attachment B. Finally, McCreary states that he discussed implicating the Defendant for the shooting with Monta Gordon while they were both housed at the York County Detention Center due to the Defendant's age and the likelihood that he would not be treated harshly because he was a juvenile. Attachment B.

The Defendant contends that the evidence presented in these affidavits satisfies all of the requirements for granting a new trial based on after-discovered evidence. The primary evidence against the Defendant was going to be his co-defendants' testimony. The Defendant's trial attorney has testified on numerous occasions that the Defendant pleaded guilty because his co-defendants were going to testify against him. Consequently, this new evidence would have changed the result of the plea. More importantly, this new evidence would have very likely resulted in a not guilty verdict at trial. The Defendant's primary defense would have been that he

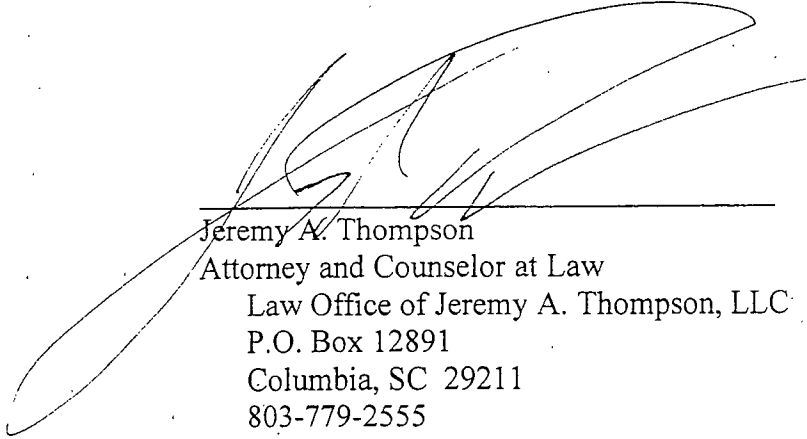
did not shoot the victim; Monta Gordon did. Monta Gordon's affidavit admits to shooting the victim, and McCreary's affidavit supports that conclusion. Diaz's statement given shortly after the incident also identifies Monta Gordon as the shooter. The impact of the Defendant's confession would have been minimalized with the evidence that both Monta Gordon and McCreary decided to blame the Defendant with the crime due to his young age. Finally, the Defendant could have presented the evidence that he was easily suggestible, was easily led into saying things that weren't true, and that he could not have understood his Miranda rights. Given this new evidence, it is extremely likely that the result at trial would have been a not guilty verdict.

Additionally, the new evidence has been discovered since the trial; the affidavits are dated July 13, 2012 (McCreary), and August 6, 2012 (Monta Gordon). The new evidence could not have been discovered prior to trial because both co-defendants planned on lying at the Defendant's trial to receive a lesser sentence and the Defendant could not have called either co-defendant to testify in a manner favorable to him. The new evidence is also extremely material to the issue of guilt or innocence, as the identification of the shooter would have been paramount to the jury's determination of guilt. Finally, the new evidence is not cumulative or merely impeaching, as the new evidence is a full recanting of potentially damaging testimony that both co-defendants would have given, and this testimony was the most damaging evidence against the Defendant. Given all of the above, the Defendant respectfully submits that he has met all five of the Needs factors and that this Court should grant him a new trial.

CONCLUSION

WHEREFORE, having set forth his grounds, the Defendant respectfully requests that this Court grant the Defendant a new trial pursuant to Rule 29(b), SCRCrimP.

Respectfully submitted,



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Attorney and Counselor at Law
Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com
Attorney for the Defendant.

This 15th day of November, 2012.

State of South Carolina
In The Court of Appeals

RECEIVED

P.36 MAR 16 2015

SC Court of Appeals

Appeal from York County
Court of General Sessions
John C. Hayes, III, Presiding Judge

Appellate Case No. 2013-000975

State of South Carolina,

Respondent,

v.

Antonio Borden,

Appellant.

Amended Supplemental Record on Appeal

Antonio Borden #
4848 Goldmine Hwy
Kershaw, SC 29067

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2. Transcript of Pretrial hearings, Guilty Plea and sentencing transcripts of Antonio Gordon, Monta Gordon And Terrance McCreary, July 1999 - And Antonio Gordon v. State, PCR Appeal Appendix (Judge Kinard - 2001-CP-46-1866) - two volumes - 567 Pages
3. Monta Gordon v. State, PCR Appeal Appendix, 2001-CP-46-2217, P. 419 - 469 PCR Transcript, P. 452 - 469
4. Written Statements of July 23, 1998 to Rock Hill Police Department by Antonio Gordon, Monta Gordon, Terrance McCreary and Gary Moffitt
5. Antonio Gordon v. State, 2008-CP-46-4951, PCR Hearing (Alford - December 1, 2009) - Transcript Pages 72-84 (testimony of Daniel D'Agostino)
6. State v. Monta Gordon, Written Plea Agreement, July 16, 1999.
7. Written statement of Monta Gordon, August 6, 2012
8. McCreary v. State, PCR Testimony, Terrance McCreary December 16, 2002 PCR Proceeding
9. Written statement of Terrance McCreary, July 13, 2012
10. Antonio Gordon v. State, Order of Dismissal and Maxton Order, (Judge Alford, January 4, 2010).
11. Motion for new trial dated November 12, 2012 with Attachments - 3rd copy
12. Order Denying Motion for new trial Filed April 22, 2013, 3rd copy

State of South Carolina
In The Court of Appeals

Appeal from York County

Court of General Sessions

John C. Hayes, III, Presiding Judge

Appellate Case No. 2013-0009175

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MAR 16 2015

P.38 SC Court of Appeals

State of South Carolina,

Respondent,

V.

Antonio Gordon,

Appellant.

Certificate of Service

I, Antonio Gordon, hereby certify that I have served Amended Supplemental record on Appeal on:

Donald J. Zelenka

Attorney General office

Post Office Box 11549

Columbia SC 29211

by depositing copies in the mail with sufficient postage this 11th day of March, 2015.

Antonio Gordon

State of South Carolina.,)
)
)
County of York.)

In the General Sessions
Court of York

Case No. 1998-GS-46-02847
1998-GS-46-02848
1998-GS-46-02849
1998-GS-46-02851

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State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
)
Antonio Gordon.,)
)
Defendant.,)

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FEB 05 2015

SC Court of Appeals

Transcript of Record

March 4, 8, 2013
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge.

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

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Deputy Solicitor
Sixteenth Judicial Circuit Solicitor's Office
Union and York Counties
1675-1A, York Highway
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803-628-3025
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For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

I-N-D-E-X

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E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

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Antonio Gordon

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

No Exhibits were received into the record.			

Court Reporter Certificate Page	P.245

1 (COURT IN SESSION AND BACK ON THE RECORD AT 02:25
2 P.M..)

3 SOLICITOR THOMPSON: Antonio Gordon.

4 (DEFENDANT, ANTONIO GORDON, BLACK MALE ENTERS
5 COURTROOM.)

6 THE COURT: We will go on the record on Antonio Gordon
7 versus - State of South Carolina I guess versus Antonio
8 Gordon would be the right caption since this is a motion
9 for a new trial based on after discovered evidence. I
10 don't have a copy of the motion in front of me.

11 While that is being retrieved we had an in-camera
12 brief conference regarding this matter earlier. The State
13 has provided me with an Order of Dismissal from a PCR, the
14 dismissal is dated January 4th, 2010. Counsel for the
15 defense gave me a two volume set of testimony from a PCR
16 hearing from 19 - I'm sorry, this is the transcript from
17 the trial? It wasn't a trial.

18 What is this a transcript of? Let's see.

19 MR. THOMPSON: That's from the beginning at the outset
20 of the trial, all pretrial motions as well as the pleas of
21 all three of the co-defendant's and then it goes into the
22 Post-Conviction - the first post-conviction relief hearing
23 and the transcript from that.

24 THE COURT: I gotcha. It's an appendix to an
25 Appellate appeal and so that's what's kind of throwing me

1 off. It's captioned one way - anyway, it's given to me.

2 All right. Do I have a copy of the motion?

3 MR. THOMPSON: I can hand up a copy, Your Honor.

4 THE COURT: All right.

5 (DOCUMENTS RECEIVED UP BY THE COURT.)

6 THE COURT: Is the State ready to proceed?

7 SOLICITOR THOMPSON: The State's ready, Your Honor.

8 THE COURT: Counsel, you ready to proceed on behalf of
9 MR. Gordon?

10 MR. THOMPSON: Yes, Your Honor.

11 The Court: All right. We discussed the fact maybe
12 reality is a better word that there are some legal issues
13 which or maybe some legal issues which should be addressed
14 preliminarily absent any testimony under the motion so I
15 think that's where we'll start and then I'll let counsel -
16 Well why don't you go ahead and tell us why we're here
17 and then I'll give a response from the Solicitor.

18 MR. THOMPSON: Yes. May it please the Court, Your
19 Honor. For the record my name is Jeremy Thompson and I
20 know Mr. Willy Thompson is representing the State. We are
21 two Thompson's and I don't believe we're related although.

22 I filed this Rule 29(b) Motion for a new trial based
23 on after discovered evidence on behalf of my client Antonio
24 Gordon. That is what we're here today on. Just by I guess
25 "brief legal and factual background," Your Honor. The motion

1 is filed pursuant to Rule 29(b) of the South Carolina Rules
2 of Criminal Procedure which provides for - to file a motion
3 for a new trial based on after discovered evidence within
4 one year of the date of the actual discovery of the
5 evidence. We filed this motion I believe it was November
6 21st of 2012 so getting close to about four months ago.

*

7 Essentially because both two co-defendants I'll go
8 into the factual background in just a second but two co-
9 defendant's Monta Gordon or Monta Gordon depending on how
10 it's pronounced and Terrance McCreary who were two of Mr.
11 Antonio Gordon's co-defendants have now come forward and
12 basically Monta Gordon admits that he was the shooter in
13 this case and Terrance McCreary places Monta with the gun
14 as opposed to my client.

15 This all stemmed from - These charges all stem from an
16 incident on July 23rd, 1998 where my client and his three
17 co-defendants Monta Gordon, Terrance McCreary and Gary
18 Moffatt were riding in a car together when they saw the
19 victim's car. The victim, the deceased victim is Eric
20 Krenn. There was another individual in the vehicle who I
21 don't believe he was injured by the name of Christopher
22 Diaz, and essentially the allegation is that my client got
23 out of the vehicle with a gun, approached Mr. Krenn and Mr.
24 Diaz, approached Mr. Krenn and Mr. Diaz's vehicle, talked
25 about robbing, robbing them and taking their car and as

1 they drove off my client fired a shot that struck Mr. Krenn
2 and eventually killed him. And all but the co-defendant's
3 I believe maybe with the exception of Mr. Moffatt I believe
4 were charged with murder. Mr. Moffatt was also charged.

5 Regardless all of the co-defendant's with the exception of
6 Mr. Moffatt were scheduled to go to trial, that is what is
7 recounted in the transcript that I handed up to Your Honor.
8 Your Honor heard this case beginning on July 12, 1999 so
9 about thirteen and a half years ago I guess if my math is
10 correct. And at that proceeding Mr. - both of the Gordon's
11 and Mr. McCreary were going to go to trial together.
12 There were lengthy pretrial motions and hearings regarding
13 the admissibility of statements.

14 My client gave a statement where admittedly he did
15 confess to being the shooter. Terrance McCreary also gave
16 a statement I believe that was challenged. Monta Gordon I
17 believe also gave a statement but I don't know that he
18 challenged his and eventually one by one Monta Gordon pled
19 first then Terrance McCreary plead second and finally my
20 client plead third and it was my client's understanding
21 that both Mr. McCreary and Monta Gordon were going to
22 testify against him and testify that he was in fact the
23 shooter.

24 Fast forward to July of last year I believe we
25 received affidavits from both Monta Gordon and Terrance

1 McCreary which I believe are attached to the motion as
2 Exhibits One. Monta Gordon has stated that he is the
3 shooter. He admits to shooting Mr. Krenn in this case.
4 Terrance McCreary again instead of saying that my client
5 was the one that got out with the gun and intended to and
6 fired the shot that killed Eric Krenn; that Monta Gordon
7 got out of the vehicle with the gun shot - a shot was fired
8 Monta Gordon got back into the car with the gun.

9 We believe this is after discovered evidence because
10 in order to meet the five and this is kind of my - do my
11 closing argument a little bit beforehand but the five
12 factors for granting a motion for a new trial are that the
13 evidence would likely change the result of the new trial.
14 The evidence was discovered - was discovered after the
15 trial, that my client exercised due diligence in
16 discovering the evidence, that the evidence is material to
17 the charges and the evidence is not merely cumulative or
18 impeaching. We believe all five elements are met in this
19 case.

20 We submit we know there is evidence I know the State
21 is going to argue that obviously but we know there is
22 obviously evidence on the other side that my client
23 committed the homicide. He admitted he signed the
24 statement. We contend there were multiple reasons Your
25 Honor was going to let the statement in but under the

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1 Miranda and Jackson v. Denno process the jury has to find
2 that the statement was right beyond a reasonable doubt
3 freely and voluntarily given before they could consider it.
4 There were substantial arguments presented against that
5 during the pretrial hearings in this case so we don't know
6 that it's a given if the jury was absolutely one hundred
7 percent believing his statement especially - I'm talking
8 too fast.

9 Especially if Monta Gordon was going to come in and
10 testify he was the shooter. You know I don't know that
11 anything can - I guess could cause a jury to believe that
12 my client was not the shooter then somebody else coming in
13 and saying I shot him, it was me it was not him it was me.
14 The evidence doesn't get more beneficial than that in a
15 case like this.

16 When in terms of discovering the evidence within the
17 last year, and we can present their testimony on this, Mr.
18 Monta Gordon and Mr. Terrance McCreary I believe will both
19 testify that they were not willing to say this openly say
20 this on the record say this, I'm willing to testify to it
21 until they signed these affidavits so if there is no way
22 for my client to have discovered that they were going to
23 provide this evidence until you know within the last year
24 or so.

25 Again in terms of due diligence these were co-

1 defendants who were going to testify against him. My
2 client can't make them come forward and say what they are
3 going to say. It's only until they are willing to do so
4 that he can do anything to bring them to court and have
5 them testify. Again going to the material cumulative or
6 impeaching nature of evidence, this is obviously material
7 evidence.

8 This is somebody saying that I was the shooter and not
9 my brother. I was the shooter. And it's obviously not
10 accumulative or impeaching because you know this is - I
11 would say by definition its material to do that but it's
12 not cumulative to much other evidence that's in the case
13 other than I do believe Christopher Diaz in his initial
14 statement said that Monta Gordon was the shooter I suppose
15 it's cumulative to that but a day later he retraced that
16 and said that Antonio was the shooter and its my
17 understanding he pretty much proceeded on that and was
18 going to testify to that trial that Antonio was the
19 shooter.

20 So I guess with all that in mind, Your Honor, you know
21 we believe that a motion for a new trial is appropriate in
22 this case. It is an after discovered evidence it goes to
23 guilt or innocence. My client would not have pled guilty
24 had he known that not only were they not going to testify
25 against him but that they would potentially exonerate him.

1 By today I mean his co-defendants Monta Gordon and Terrance
2 McCreary. And that is essentially our argument in this
3 case, Your Honor.

4 THE COURT: All right. Do you have any case law
5 indicating that you get a new trial based on after
6 discovered evidence when it's not a trial and when it's a
7 plea of guilt?

8 MR. THOMPSON: And, Your Honor, I have not. Mr. Willy
9 Thompson did mention that when we were speaking in chambers
10 earlier. I honestly I have not - I never considered such
11 an argument. I'd always just - I'd assume motions for a
12 new trial would work either way whether you had a plea or a
13 trial. I to be honest I was doing research this morning.
14 I can't tell you the cases, I can't tell you the cite.

15 I know I saw a case I believe it was from 1970 or 1971
16 dealing with a motion for a new trial based on after
17 discovered evidence that was a plea. I don't necessarily
18 know of a challenge like this was made to it so I don't
19 know as you can infer what the Supreme Court would say if
20 you can't file such a motion based on that ruling. I'm not
21 aware of any case one way or the other saying you can't or
22 - you can or you can't. I was looking at Rule 29(b) and
23 Rule 29 in general earlier. Rule 29 refers to post-trial
24 motions as a general rule at post-trial motions and motions
25 after conviction but that includes - and the term post-

1 trial I believe is obviously implicit that it includes
2 guilty pleas because otherwise you couldn't file a Motion
3 For Reconsideration of Sentence from a guilty plea because
4 it's not a trial, because it's a plea as opposed to a
5 trial. You can't file a Motion to Withdraw a Guilty Plea
6 because that would also be a post-trial motion. All
7 motions in criminal cases come after the trial I think are
8 governed under Rule 29 (a) or (b) and I don't think the
9 rule distinguishes between it being a trial or it being a
10 plea. I think what you have to do is instead of - Excuse
11 me, I've been fighting off a cold for multi days and I'm
12 trying not to cough through this, this argument. Excuse
13 me.

14 The cases don't really distinguish between pleas or
15 trials. They say to the best of my understanding which is
16 whether or not the evidence would probably cause a new
17 result if any trial was had.

18 THE COURT: But isn't it a little bit difference in a
19 trial and a plea? In a trial someone's maintained their
20 innocence, in a plea they belly up and admit they've done
21 something and usually there is a factual recitation or else
22 the judge won't accept it. So you're right about there
23 having to be motions to reconsider; those sort of things
24 are quote post-trial. They are post-sentencing more than
25 they are post-trial but isn't that a significant

1 difference? In a trial one has claimed they're innocent,
2 in a plea of guilt they confess their guilt.

3 MR. THOMPSON: I certainly don't disagree. I know
4 there are - and it's kind of - I think you look at pleas
5 one of two ways and the Supreme Court does it one of both
6 ways. They use both lines of thinking. You can think of a
7 plea as one a solid admission of guilt that this person is
8 admitting in open court that they are guilty. Or you can
9 look at a plea as a choice between alternative courses of
10 action as a plea is a conscious choice to either plead
11 guilty or go to trial.

12 I know that this plea was not done under *North*
13 *Carolina versus Alford* so there was not an explicit
14 withholding of guilt and then saying that the State has
15 more evidence against me than I can over come. But - And I
16 don't have the cite off hand, I know its *Jonathan James*
17 *versus the State*, where there was a plea where a defendant
18 never actually said the word I am guilty but the Supreme
19 Court held that you don't have to say you're guilty in
20 order to plead guilty because it's a choice. You know it's
21 a conscious decision to plead.

22 THE COURT: This is a little - -

23 MR. THOMPSON: This is different. He did plead guilty
24 but I think I would obviously our side of it is that he -
25 he went through with that proceeding because he knew his

1 co-defendants were going to testify against him. It's
2 similar in a post-conviction relief proceeding. You can
3 allege that had you known about exculpatory evidence you
4 would not have pled guilty, you would have gone to trial.

5 It's a similar allegation here. I don't disagree perhaps
6 that the burden is higher if you prove that a plea should
7 be over turned in a trial because you do have to go away
8 from the statements that were made at the plea to do that.

9 THE COURT: Well in a PCR example the exculpatory
10 evidence existed prior to the plea. In this the
11 exculpatory evidence didn't exist until last summer.

12 MR. THOMPSON: That's true although you can't have
13 motions for a new trial based on after discovered evidence
14 in a PCR as well. I don't think there's anything
15 prohibiting that through the PCR route. I certainly
16 understand where Your Honor's concern is coming from. I
17 don't - Again, I don't have off the top of my head but I'll
18 be happy to do research on it to have a case where a motion
19 for a new trial based on after discovered evidence was
20 decided with reference to a plea.

21 Again drawing parallels and other cases dealing with
22 Brady materials that are withheld. Somebody pleads guilty
23 and then finds out there is exculpatory material that were
24 withheld from them and it's a Brady violation. A Supreme
25 Court will freely entertain those kinds of cases.

1 THE COURT: But they didn't - I'm not trying to argue
2 with you but I don't even find that to be analogous. There
3 the State withheld something. Here the State, unless
4 there's something I don't know about, the State apparently

5 --

6 MR. THOMPSON: And we are not alleging the State
7 withheld anything but in those cases the defendant pled
8 guilty. The Defendant pled guilty and said I'm guilty in
9 open court and then later on discovered that the evidence
10 was not what he thought it was. That's where I'm drawing
11 the parallel to. That's what happened here. Mr. Gordon
12 pled guilty, Antonio Gordon, pled guilty and then years
13 later discovered that the evidence that he thought had -
14 would be presented at the trial is not what it would be
15 presented today. That's where I'm drawing the parallel to
16 is that this is not a due process violation since the State
17 withheld any information but that the posture of the
18 Defendant in both cases are the same. In both cases they
19 didn't know about certain evidence that was beneficial to
20 them had they known about it they wouldn't have pled guilty
21 they would have gone to trial.

22 THE COURT: Mr. Other Thompson.

23 SOLICITOR THOMPSON: May it please the Court, Your
24 Honor.

25 I think I'll jump straight to Rule 29 and point out

1 that it is a rule for a post-trial motion. Here we have
2 had no trial, we have had a guilty plea and specifically in
3 a guilty plea the Court has to transfer ---- the Defendant
4 waives his right, he gives up his right to call witnesses;
5 to cross examine witnesses that are called against him and
6 to present any case whatsoever and he gives up his rights
7 to all these things as he did that day when he pled guilty.
8 So at this point he loose's any right to now claim someone
9 who could testify differently or in another way. We don't
10 even get to that because we had no trial.

11 And I will point out, if you look in the actual book
12 in my new rules book from this year, and I look into the
13 case law just that it list behind it. And in those cases
14 one of the first cases it cites when just under the General
15 Category State versus Johnson that it cites specifically in
16 the Criminal Court the only post fact based remedy
17 available is a Motion for A New Trial and that's what
18 stands before us today. And I will pass up a copy of *State*
19 *versus Johnson*.

20 (DOCUMENTS RECEIVED UP BY THE COURT.)

21 SOLICITOR THOMPSON: It's really just that point in
22 *State versus Johnson* that I want to point out to the Court.
23 Its under - The copy that I handed up to the Court Head
24 note 1 and if you go to I think it's the legal basis for
25 the case which the only copy I handed the Court is actually

1 listed on page number - Page number 4 where it says Law
2 Analysis at the top of the page. It's a very short
3 paragraph at the top and then right after that it says in
4 the beginning of the second paragraph exactly what it says
5 here within the rules book "in a criminal court the only
6 post-verdict fact based remedy available is a motion for a
7 new trial." This is obviously a fact based motion. There
8 was no verdict because a verdict requires a trial so this
9 is not available to someone who makes this motion on a
10 guilty plea. And I would point out as you go through all
11 of the other citations that are made as you go through the
12 back of Rule 29 whether it's *State versus Harris* or *State*
13 *versus Spann* or as you continue to go down *State versus*
14 *Needs*, all of those cases were trials. Every case that you
15 get case off of one of these things in a criminal matter is
16 a trial.

17 I saw nothing in my research that indicated that there
18 was ever a time in a guilty plea the motion for a new trial
19 based on after discovered evidence was proper or was done.
20 And the Defense brought up the fact that sometimes in PCR's
21 these are heard but honestly, Your Honor, I think that's a
22 mistake that the Attorney General's makes in PCR's and
23 allowing that to occur because they don't object to it when
24 that's made. As a matter of fact early at this PCR when
25 the PCR motions that the defendant here made with the -

1 through the PCR process against the AG's office was that
2 there was newly discovered evidence of a girlfriend who now
3 was claiming that she was coerced by the police to give a
4 statement and that as a result of that coercion she gave a
5 false statement and that led to his arrest and that was
6 fruit of the poisonous tree that his statement should not
7 have come in and that he should be granted a new trial.

8 And I would point out to the Court as Judge Alford
9 listed in his order here she was obviously lying in her
10 testimony and was caught in that lie to the testimony that
11 was given that day.

12 But I would point out to the Court this is kind of
13 like saying Oh, well now they get a motion for a directed
14 verdict after they've pled guilty. Well you don't get that
15 because there has been no verdict or there has been no
16 trial to ask for a motion for a directed verdict on. You
17 haven't had the beginning phase of the trial where you've
18 gone through the State's case and then rested. Or the
19 second phase of the trial where the Defense gets their
20 chance and whether they put up a trial or not and they can
21 make the motion again. You don't have that.

22 We simply had some pretrial hearings; at the end of
23 those hearings each defendant pled guilty. And I would
24 point out as well the - just by saying the defendant was
25 not the shooter, that completely ignored the whole fact of

1 hand of one is hand of all because the defendant Antonio
2 Gordon being the shooter shows you that three of the other
3 defendants were not shooters. Are they then not guilty
4 because Antonio Gordon was the shooter? No. Each one of
5 them was guilty under the hand of one is the hand of all
6 and they all pled guilty because of that as it went along.

7 So even if he were to say today I'm not the shooter
8 that doesn't make him not guilty. That doesn't mean a
9 different verdict from the jury. And as I said we had no
10 jury in this case.

11 Then I would point out that in the State's opinion
12 this is a way to try and circumvent this PCR order. He's
13 obviously for many years now, what, thirteen and a half
14 years later, still dragging this case on when there should
15 have been an end to it long ago. And I believe that's
16 exactly what he's trying to do with this motion here.

17 I also point out that the defense has a very unique
18 problem in this case as well that because of his PCR Mr.
19 Dan D'Agostino represented the defendant in this case and
20 I'll hand the Court a copy of his testimony and the defense
21 a copy of his testimony from the PCR where he testified.
22 It was on December 1st of 2009 Mr. D'Agostino told me
23 personally that he would come and testify if he was needed
24 to in this hearing but the reason that this becomes
25 important to the Court at this point in time is if you look

1 on Page 75 as it's listed on the transcript pages that I
2 gave you if you go to Line 9, Mr. D'Agostino is testifying
3 and he says "Antonio I couldn't put him on the stand. He
4 confessed to me what happened. His whole - you know he
5 told me he did it. There was no way to put him on the
6 stand."

7 And I would go to Page 76 the next page at the very
8 bottom of the page there. On Line 25 as he's giving a
9 description there where he ended that line he starts with
10 "his" and then goes on to the next page, Page 77, Line 1.
11 So his testimony if he would have testified was that he was
12 high on marijuana and he shot the boy. "Now I don't know
13 what I could have done at trial with that. I have
14 testified once before about this and that's all I got."

15 So I point out to the Court that the defendant also
16 admitted to his own attorney that he was the shooter in the
17 case and to that, to present testimony otherwise, puts this
18 attorney in an odd situation because now he knows his
19 defendant is lying in something that he's told his own
20 attorney so I don't know how he presents a case if he
21 himself cannot testify other than through the statements
22 he's given. And I'll pass up copies of - matter of fact
23 like to pass up copies of all the defendant's statements.

24 I believe you have those; is that correct?

25 MR. THOMPSON: Can I get a copy just in case?

1 SOLICITOR THOMPSON: Sure. P.59

2 (DOCUMENTS RECEIVED UP BY THE COURT.)

3 SOLICITOR THOMPSON: But there are two statements by
4 Antonio Gordon. This occurred on July 23rd of 1998. All
5 of these were taken in the early morning hours about 1:28,
6 1:30 that morning, 1:20, somewhere in there. All of these
7 were taken on July 23rd of 1998. There's the statement
8 from Gary Moffatt who agreed to testify with the State.
9 The statement of Monta Gordon who is now saying that he
10 would testify differently and also Terrance McCreary. And
11 then the two statements of Antonio Gordon one given in the
12 morning, in the late morning, and one given in the early
13 afternoon both of those. Antonio Gordon in the first
14 admits that it was Terrance McCreary that was the shooter.
15 And then in the second he admits that it was him that was
16 the shooter and the Court can look at the transcript and
17 see how that developed from the testimony.

18 THE COURT: Mr. Thompson, any objection to me
19 considering --

20 MR. THOMPSON: No.

21 SOLICITOR THOMPSON: And Detective Thicken's testimony
22 I believe is where that comes in with Antonio Thompson
23 [sic].

24 (COMMENTS FROM THE COURTROOM GALLEY.)

25 SOLICITOR THOMPSON: As I stated to the Court, Your

Honor, the - I think the rule is -- P. 100

THE COURT: Any outburst, let's have them leave the courtroom.

(PERSON ESCORTED FROM THE COURTROOM.)

SOLICITOR THOMPSON: The Court is quite - or the rule is quite clear and that this is a post trial motion. I think the absolute pre-requisite to have this motion is to actually have a trial because at this point the defense has mentioned something about possibly whether the plea was freely and voluntarily given. That's already been covered in the PCR, they've already ruled on that it was freely and voluntarily given so any questions about his mental health status or anything like that those have been ruled on in the PCR. He doesn't have any more option to go back to those at this point in time.

As well anything regarding his mental health status once again ruled upon in the PCR's. Those things are not available to him at this time. So I think if we look solely on what the rule is, we never get past the fact that this was a guilty plea and he waived his rights to this plea.

There are additional facts, Your Honor, that Mr. Jerry Thompson was mentioning the facts in favor of his client; however, I will incline that I must point out the facts in favor to the State regarding the trial itself or regarding

1 what would have been the trial. Antonio Gordon his palm
2 print is lifted off of the door, the driver's door of the
3 vehicle right in front of the window, right about the spot
4 where it would have been his left palm print, right where
5 someone would reach through the window, the window was
6 down, and point the gun in with his right hand. According
7 to Mr. Diaz, the surviving victim, the person who reached
8 in and shot was the person who actually reached in at some
9 point trying to grab the steering wheel and stop it from
10 pulling away but he was the only person who touched the car
11 too. And he identified both Antonio Gordon and Monta
12 Gordon as to the doors.

13 Initially he said that he thought it was Monta Gordon
14 that did the shot but that was once again available at the
15 trial itself. And I can show the Court a copy of that Mr.
16 Diaz testified he had not seen a photo lineup. What he saw
17 was an article in the paper on July 24th that showed the
18 defendants and he said it was Antonio Gordon and Monta
19 Gordon who were before him. And we have these prepared for
20 trial to show that in the newspaper what each of these
21 defendant's looked like at the time.

22 I'll pass that up to the Court.

23 (DOCUMENTS RECEIVED UP BY THE COURT.)

24 SOLICITOR THOMPSON: Their perfectly identical, of
25 course they're brothers, but at that point in time, their

1 pictures in the paper were similar of the two of them at
2 the top of those four photographs. He said those were the
3 two at the door with him so that's nothing new. That's
4 nothing exciting or different than what we had before. But
5 his testimony would have been that the person who shot the
6 gun also touched the car. And we have - the only prints we
7 have from any defendant off the victims car is the palm
8 print from the left hand of Antonio Gordon.

9 In addition as we mentioned, each statement points out
10 Antonio Gordon as the shooter. Those statements giving the
11 day of the arrest, the date of the incident, never having
12 those defendants in the detention center I believe in their
13 statements that they gave through the defendant Antonio
14 Gordon their supposed new statements they allege that they
15 talk about having - blaming it all on Antonio because he
16 was a juvenile and that he would be treated as a juvenile.
17 Well obviously at the time of the plea they all knew no one
18 was being treated as a juvenile when the case was being
19 called to trial.

20 In addition they had no time to confer with each other
21 prior to this happening; prior to those statements being
22 given on the day that this occurred so they were not with
23 each other they were kept separate in the Rock Hill
24 Detention Center. They were not up in the York County
25 Detention Center where they say they discussed it, so to

1 say that is just on it's face disingenuous. These
2 statements were given by the defendant's themselves while
3 they were separated the day of the crime in the city of
4 Rock Hill.

5 I would also point out that as part of the evidence
6 again the hand of one is the hand of all. The defendant's
7 had a - let's see, some of the other defendant's had their
8 fingerprints within the defendant's car itself. Mr.
9 Antonio Gordon also had his right little finger that was
10 recovered from the front passenger window of the
11 defendant's car, that was processed. In addition the left
12 palm print of Gary Moffatt was recovered from the rear
13 passenger area of the vehicle. If you look at Mr.
14 McCreary's statement and in most of the other statements
15 also agree with this, he - when they got together and
16 started riding around he drove somewhere to his
17 grandmother's house I believe to pick up the pistol or not
18 to his grandmother's but another relative or friend where
19 he picked up the pistol itself. He did not have ammunition
20 at that time. He then stopped at another place I believe
21 he said his grandmother's. I may be mistaken about that.

22 But the second place he stopped that's where he picks
23 up the ammunition. It's a rather peculiar gun in that it
24 has like four barrels and they wrote the barrels themselves
25 rotate - each defendant talks about at some point about how

1 they stopped and got the gun and how they then got the
2 bullets and then how it progressed to them going to get
3 this car. They each admit as you can see in their
4 statements that they began talking about robbing the car.

5 That Antonio began talking about it, that Terrance began
6 talking about it, and those are the two main people that
7 began talking about it or continued to talk about it or
8 actually did actions that helped. And it was Terrance
9 McCreary who actually had the gun at first. He's the one
10 who got it, he gave that gun to Antonio Gordon in his own
11 statement according to Antonio's statement he received that
12 gun from him. And according to Mr. Moffatt and the other
13 Gordon brother that's how that gun got to Antonio at that
14 point in time.

15 I would point out as well the ballistics were done on
16 that and matched the bullet that the victim was killed with
17 so we know that was the gun that was used and it was
18 ultimately the gun that was recovered once again not from
19 this defendant; from Mr. McCreary had taken the gun
20 afterwards.

21 And then I would point out one other final thing.
22 There was an officer who as they walked the defendant out
23 to the lobby it was Officer Panaudi Tripp who made the note
24 from the statement that Mr. Antonio Gordon made on July 4th
25 or July 24th, 1998 at 4:30 p.m, where there was some

1 members of Antonio Gordon's family out in the lobby and he
2 basically summarizes what he heard them say, saying
3 something in the effect of asking Antonio why he shot this
4 boy. And Antonio said at first that he did not have the
5 gun and that somebody had given it to him. And then he
6 said that he did it because he thought that if he didn't
7 one of the guys that was with him would shoot him.

8 And I'll pass a copy of Mr. Tripp's summary that he
9 signed regarding that as well to the Court.

10 (DOCUMENTS RECEIVED UP BY THE COURT.)

11 SOLICITOR THOMPSON: So even with any possible change
12 in what the Defendant pleaded to the co-defendant said -
13 Mr. McCreary and Mr. Monta Gordon might try to say now its
14 obviously completely different in what they said before.
15 And there is still ample evidence for a conviction for the
16 Defendant. But once again the rule is would it have
17 changed the verdict, would it have made the outcome of the
18 trial different? There was no trial so we don't even get
19 to consider all of this. We again simply add the fact that
20 this rule does not apply to a guilty plea.

21 THE COURT: Mr. Thompson.

22 MR. THOMPSON: Just briefly, Your Honor.

23 I would be remiss if my client and I'll be honest
24 about the - not honest but just tell the Court about the -
25 a little bit about the history. My client has been

1 fighting from - for a long time about the fact a palm print
2 that was found on the vehicle is neither here nor there but
3 he strenuously disagrees. He believes that the palm print
4 was found not on the victim's vehicle but on his vehicle,
5 the vehicle that he was in that night.

6 I recognize that's not what the State alleges where
7 the palm print was found. But he - that was an issue that
8 was brought up at the first PCR I think, dropped at the
9 first PCR. He says that's not with his consent but that
10 was dropped at the first PCR and that was part of what we
11 brought up at the 2008 post-conviction relief proceeding in
12 front of Judge Alford.

13 Turning to the 2008 proceeding, the State made mention
14 of the attached order at the bottom of this at the - I
15 guess Page 24 of that order which prevents Mr. Gordon from
16 filing another application for post-conviction relief based
17 on - it says "any future applications for post-conviction
18 relief that raises the same grounds raised in this action,
19 any grounds raised in the final action, any allegations
20 they have could have raised." Two things with regard to
21 that. One, I don't believe this action, this motion, would
22 be barred by that language. That language applies to post-
23 conviction relief actions. It does not apply to criminal
24 matters that Judge Alford would have a pretty difficult
25 time barring something being filed in criminal court from a

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1 civil posture. Secondly we're alleging this is after
2 discovered evidence so it wouldn't fall under that anyway.
3 This isn't evidence that Mr. Antonio Gordon had at his
4 disposal at the time of that 2008 PCR hearing. We think
5 within even the confines of that ruling we could file
6 another PCR based on after discovered evidence. We chose to
7 file this motion instead. But I don't think that order
8 would prohibit us from filing another PCR.

9 And you know certainly we understand the evidence, we
10 understand there were statements you know that were given
11 by all the parties. We - You know there is certainly
12 evidence as we said from the very beginning that Antonio
13 Gordon was the shooter in this case but that - That doesn't
14 change what we've got now. What we've got now is somebody
15 else coming in and saying I was the shooter and another
16 individual saying that Monta Gordon had the gun. Monta
17 again we submit his testimony would bear out that there was
18 - and the same thing with Mr. McCreary that there was no
19 discussion about committing a robbery before Monta got out
20 of the car with the gun. So I don't necessarily know that
21 they - he would one hundred percent be guilty - He would
22 one hundred percent would be guilty under the hand of one
23 is the hand of all and of accomplice liability we submit
24 that's a - that's a jury question. That if you again have
25 Monta Gordon in there saying I had the gun, I fired the

1 shot it killed him, it was me. Antonio Gordon didn't have
2 anything to do with it. And Terrance McCreary coming in
3 and saying we didn't discuss anything. Mr. McCreary I
4 believe this is not in the affidavit but I believe he will
5 testify that Gary Moffatt was in fact intoxicated and
6 passed out in the back seat so he couldn't have seen
7 anything that occurred.

8 So you know a lot of the evidence that is against
9 Antonio came from the mouths of the co-defendants and we
10 have two of them here, who are willing and ready to say
11 Antonio didn't have anything to do with this and so that's
12 why we believe that this is material after discovered
13 evidence that could not have been discovered before now and
14 then a new trial should be granted on that basis.

15 Again going back to whether this is a plea or whether
16 this is post trial. Again the - the rule only says post
17 trial. It does not say post plea or post trial. It
18 doesn't differentiate. It just says all post trial motions
19 shall be filed. Again what I was saying earlier about
20 there being you know I can't tell you that the Supreme
21 Court would definitely say that you can have - that you
22 absolutely can file such a motion based on the fact that
23 they heard it without commenting on it before. Similarly
24 the State versus Johnson Head note 1 it says in a criminal
25 court the only post verdict fact based remedy available is

1 a motion for a new trial. That doesn't - That's a trial
2 case not a plea case. It also doesn't decide the issue. I
3 don't think Mr. Willy Thompson can bring forth any legal
4 support supporting his position that post trial motions - a
5 Rule 29(b) motion is can only be filed - cannot be filed -
6 it cannot be filed at all in a plea situation. And again
7 that would be all of the, you know, again to draw
8 comparisons post conviction relief statutes that the Brady
9 situation I think you know that as we were sitting here
10 South Carolina Code 17-28-10 I believe it is, 28 or 29 it's
11 the DNA post conviction relief procedure act establishes
12 separate proceedings for individuals who discover DNA
13 exculpatory evidence both from trials and from pleas and
14 sets forth different dates between the two so they know how
15 the legislature and the courts distinguish between the two
16 if they want too and they haven't in this case. They just
17 said post trial and began -

18 THE COURT: Maybe they have distinguished between the
19 two. You could argue that one both ways too. They
20 distinguished between the two they said which - they only
21 designated one.

22 MR. THOMPSON: But the language from -

23 THE COURT: I'm not saying they have.

24 MR. THOMPSON: Right. Right.

25 THE COURT: But follow with that argument that they

1 can include both so they know the difference but the fact
2 that they only had one that's what begs the question that
3 says well they - Of course the legislature and the court
4 are different.

5 MR. THOMPSON: That's true.

6 THE COURT: But the Court knew there were two remedies
7 and they just chose one. Or knew there were two methods to
8 get somebody to being found culpable and at the imposition
9 of the sentence convictions at pleas and knowing that they
10 opted for one. I don't know that they did but I mean that
11 argument could go both ways.

12 MR. THOMPSON: I understand, Your Honor, and again
13 I'll stop beating this dead horse. I'll say that if the
14 State's reading of that rule is correct then no post-trial
15 motions can ever be filed. No Rule 29 Motions can ever be
16 filed from a plea because it refers to post-trial and yet
17 Courts routinely hear motions for reconsideration of
18 sentence and things of that nature stemming from pleas.

19 So I don't believe that the rule on it's face - I
20 think the rule perhaps on its face is ambiguous but you can
21 see from the practice that it's intended to cover both
22 pleas and trials.

23 THE COURT: All right. Well as I told counsel I did
24 not realize until yesterday that I have to stop at 3:30
25 today. What I would like to do is take some time and look

1 at these legal issues, keep the two - Mr. Gordon and the
2 other Mr. Gordon and Mr. - the other gentleman here, and
3 later in the week, have a taking of testimony.

4 MR. THOMPSON: We can certainly do that, Your Honor.

5 SOLICITOR THOMPSON: Your Honor, one other response to
6 the defendants ---

7 THE COURT: Okay.

8 SOLICITOR THOMPSON: --- comments just then and then
9 I think the case law is clearly the granting of a new trial
10 based on after discovered evidence is not favored by the
11 Court. I think for the defense to say that this rule
12 applies they haven't proven it applies. The State is
13 actually - A unique position for the State not having to be
14 here to prove any of this. The Defense has to prove that
15 this rule applies.

16 And I think the argument that it simply applies to
17 just because it does to all post-trial motions is
18 completely incorrect. Certainly a motion for
19 reconsideration of a sentence occurs after sentence has
20 occurred so whether you plead or go to trial you have a
21 sentence that has occurred you can make that motion. But
22 this one specifically says a motion for a new trial. It's
23 not a motion for - If someone pleads guilty and then make a
24 motion to reconsider the sentence not a motion for a new
25 trial a motion for a reconsideration of the sentence for a

1 new trial it is the motion for reconsideration of a new
2 sentence. You're not over turning the sentence itself or
3 the plea itself, you're over turning the sentence.

4 THE COURT: Well his argument to some degree is that
5 the caption of that rule is quote "post trial motions" end
6 quote.

7 SOLICITOR THOMPSON: Correct. But then it goes to
8 Subsection B that these specifically away from all the
9 others and that's what I think when you look at the case
10 that I handed up to the court State versus Johnson that it
11 makes clear it's the only post verdict fact based remedy
12 available. This is a fact based request that the defense
13 is making. Other things are in fact based necessarily. A
14 motion for a reconsider of a sentence is not really based
15 on ----- sentence to proffer. They're just asking you to
16 reconsider pleas. It's not saying you did something that
17 was improper or terrible in the sentencing of that person,
18 just please we're asking to reconsider you know we'd like
19 to still argue a little bit on that point and it's up to
20 the Court to decide whether that happens.

21 In this case you have to have a trial in order for
22 there to be a verdict in order for you to have Section B
23 under this which is the whole new trial. Because the
24 standard for once again if you look at the five prongs of
25 the Needs case one of them is that there would be a

1 different jury verdict. Well how can you determine that if
2 you've never had all the evidence go before a jury in the
3 first place? I don't know so I don't think that's what the
4 legislature intended and I don't think that that's what the
5 statute says.

6 We have to give its plain meaning just like any other
7 statute and it's plain meaning here is you've got to have a
8 trial in order to have a new trial, you've got to have it
9 the first time in order to have it the second time. And I
10 can't over state enough the fact that in the guilty plea
11 he's given up his right to call all these people and all
12 the other witnesses' and any other evidence in his defense
13 where he crosses them and anyone the State has or force the
14 State to put anybody up. So it ended when his plea
15 occurred. He's gone through the PCR process and the
16 appeals process to claim that his plea was improper that
17 there were errors or whatever we done on those and he was
18 shot down and he shouldn't get another shot - another bite
19 of the apple either. Thank you.

20 THE COURT: Well we'll reconvene later in the week.

21 For those of you in attendance you're certainly
22 welcome to be here but if you can't contain yourselves
23 don't come in. The gentleman that had an outburst earlier
24 we escorted from the room and if you have any outburst in
25 these matters the next time instead of going out that door,

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1 you're going into that door ---

2 (COURT INDICATED TO HOLDING CELL DOOR TO THE COURT'S
3 RIGHT.)

4 THE COURT: --- which has bars behind it. So if you
5 don't think you can control your emotions you best not show
6 up or otherwise we'd love to have you. We're open to the
7 public, if you have an interest in this matter please feel
8 free to come but feel free - but do not feel free to
9 interject yourself in the proceedings.

10 All right, well, we'll be at ease on this matter.
11 Thank you.

12 MR. THOMPSON: Thank you, Your Honor.

13 (COURT RECESS AT 03:20 P.M..)

14 (COURT BACK IN SESSION FRIDAY, MARCH 8TH, 2013 AT
15 12:35 P.M..)

16 THE COURT: Take your seats.

17 (DEFENDANT ANTONIO GORDON, BLACK MALE, REENTERS
18 COURTROOM.)

19 THE COURT: All right, Mr. - the two Mr. Thompson's,
20 we have the matter dealing with a retrial from Antonio
21 Gordon. I've got some legal issues and I don't know if
22 either of you want to go over those any further. We gonna
23 have to do some research and that is whether or not the
24 rule encompasses a new trial effort or a new trial motion
25 or even the granting of a new trial where there has been a

1 guilty plea and I'm certainly gonna do some research on
2 that. I appreciate any further input on that. But I think
3 the main thing we want to do today while we have the two
4 individuals who have I guess for lack of a better word
5 recanted some of the things they've done in the past or
6 said in the past. I don't think they've recanted anything
7 they've done in the past but said in the past.

8 I'd like to get their testimony while they're here
9 from SCDC. I call on Mr. Willy Thompson first.

10 Anything?

11 SOLICITOR THOMPSON: Your Honor, simply that I would
12 stick with the motion that this is at this point would be
13 improper hearing since the case was pled to. I would point
14 out that he waived his right to any - presenting any case
15 or any defense and I think this encompasses that exactly.

16 The actual rule on Rule 29 talks about trials when you
17 look at I think all the case law that I've seen in
18 researching this I've come up with numerous cases that deal
19 with this motion and all of them have been trials. In the
20 criminal sector all of those cases have been trials. I've
21 seen none that was done off of a guilty plea and so I would
22 point out to the Court that in looking at that, in looking
23 at the case that I handed up in State versus Johnson which
24 is 363 S.C. 184, where it mentions that in criminal court
25 the only post verdict based remedy available is a motion

1 for a new trial. And I think that clearly puts out that
2 you need a verdict in order to have a new trial which means
3 you needed to have had a trial.

4 All of the other things I think the Defense had
5 mentioned - I think a motion to reconsider a sentence the
6 prerequisite is that there was a sentence so that's pretty
7 easy. In this the prerequisite I think obviously by the
8 title itself is that there was a trial so that would be
9 simply what I would say today, Your Honor, regarding that.

10 THE COURT: Well and I understand the State's position
11 but I haven't made a ruling on that but while we have the
12 two individuals here I think its prudent for judicial
13 economy to go ahead and find out what they will say under
14 oath and then determine if in fact I find that the motion
15 is entertain-able if there is such a word. But if the
16 motion is something that we can go forward on I'll have
17 that in the can so to speak. All right.

18 Mr. Thompson, anything you want to say before you call
19 these witnesses?

20 MR. THOMPSON: Your Honor, I do have a couple of cases
21 if we'd like to belabor this point a little bit further on
22 this issue.

23 THE COURT: I'm not worried about belaboring. I'm
24 making sure I got everything I can to make it right.

25 Let the record show he's given copies to Mr. Willy

Thompson.

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(DOCUMENTS RECEIVED UP BY THE COURT AND BY SOLICITOR
WILLY THOMPSON FROM THE DEFENSE.)

MR. THOMPSON: Thank you, Your Honor.

First is *State versus De Angelis*, it's 256 S.C. 364,
it's 182 S.E. 2nd 732. I believe when I was talking about
this issue on Monday I told you that I - I told Your Honor
that I had found a case that was a direct appeal from a
denial of a motion for a new trial based on after
discovered evidence from a plea. This is that decision and
the Supreme Court on the fourth page of this document I
guess it's page 369 and 734 of the South Carolina and S.E.
2nd Recorders. It starts I guess right next to the - it
communicates the portion of what looked upon favor when
applications for a new trial has been granted after
discovered evidence as must be the end of litigation
indicates however there are cases that motions of this
character should be entertained and granted in order that
wrongs done may be remedied. And then it proceeds to
address the merits of the motion for a new trial based on
after discovered evidence dealing with a case that began as
a guilty plea.

The second case that I handed up was actually an
unpublished decision of the South Carolina Court of Appeals
and that was *Jamieson versus State of Ohio*. It's a 2012

1 unpublished 437 filed July 18th, 2012. And that is a PCR.
2 decision but its dealing with after discovered evidence in
3 a PCR agreement for a motion for a new - basically for a
4 request for a new trial based on after discovered evidence.

5 And the final cite is to *De Angelis* and it says, it states
6 that for the proposition that considering whether the
7 defendant could withdraw his guilty plea based on after
8 discovered evidence and stating that there are cases that
9 motions of this character should be entertained and
10 granted.

11 So we would contend that the Supreme Court has
12 endorsed in *De Angelis* the prospect that a motion for a new
13 trial based on after discovered evidence from a guilty plea
14 can be entertained pursuant to Rule 29(b) I don't think
15 even 29(b) even existed at the time of *De Angelis* but its
16 predecessor certainly was the type of motion that we're
17 trying to proceed on here today and that the Court of
18 Appeals recognizes *De Angelis* for a standard as such in an
19 unpublished decision.

20 THE COURT: All right. Now you want to call your
21 first witness?

22 MR. THOMPSON: I do, Your Honor.

23 We would call Monta Gordon.

24 (WITNESS Monta GORDON, BLACK MALE, ENTERS COURTROOM.)

25 MADAME CLERK: Raise your right hand, place your left

1 hand on the Bible.

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2 (WHEREUPON: MONTA GORDON,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE COURT: ~~Before Mr. Thompson ask you any questions,~~
5 Mr. Gordon, I am John Hayes and I am the resident judge
6 here. Are you represented by counsel?

7 MR. GORDON: No, sir.

8 THE COURT: Well you are here to testify in a matter
9 that arose in July of 1998. I have a statement in the
10 nature of an affidavit of yours dated August 6th of last
11 year where it deals with your brother, you say he's your
12 brother, Antonio, Antonio Gordon. And in there you
13 indicate that you had a gun and that you shot and killed
14 somebody. You are under oath now and of course you've
15 already made the statement, this is under oath and this is
16 part of the record, but you understand that whatever
17 statement that you make today are all gonna be taken down
18 by a court reporter and could be used for whatever purpose.
19 I don't know that there is any since you're already serving
20 time and somebody else is serving time for murder in this
21 case. But you understand whatever you say today could be
22 used against you sometime later if you were tried in regard
23 to any matter involving this?

24 MR. MONTA GORDON: Yes, sir.

25 THE COURT: You understand that?

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1 MR. MONTA GORDON: Yes, sir.

2 THE COURT: All right. You want to go forward without
3 an attorney?

4 MR. MONTA GORDON: Yes, sir.

5 THE COURT: Do you want to go forward knowing that
6 this could be used against you later at a certain time in
7 some kind of hearing?

8 MR. MONTA GORDON: Yes, sir.

9 THE COURT: You need to speak up.

10 He said yes, sir.

11 You need to speak up so I can hear you.

12 Go ahead.

13 MR. THOMPSON: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 MONTA GORDON BY MR. THOMPSON:

16 Q. Mr. Gordon, I believe I pronounced your name Monta
17 earlier. Is it Monte?

18 A. Monta.

19 Q. Monta. How are you related to Antonio Gordon?

20 A. Brother.

21 Q. And you were charged along with him in connection with
22 this case?

23 A. Yes, sir.

24 Q. And I just - in your own words I'd like for you to
25 testify. What had happened on the day of the incident

1 leading up to the incident and what - what happened that
2 led you to file this affidavit?

3 A. I just got tired of being - having him suffer for what
4 I did.

5 Q. And what did you do?

6 A. I shot and killed someone.

7 Q. That's what I want you to describe. Tell me what
8 happened that day? Kind of - How did you arrive at that
9 point?

10 A. We had been hanging around all day about eleven that
11 morning to that night. And we just riding around getting
12 high having a good time doing things teenagers do and one
13 thing led to another.

14 Q. What does one thing led to another mean? Describe
15 that. Describe what happened.

16 A. The night we approached the BMW it ain't had no lights
17 on it so I ain't know - I ain't know what to expect from it
18 but I jumped out of the car and tried to rob the guy.

19 Q. And what happened when you tried to rob him?

20 A. Well I actually didn't fire the shot when they tried
21 to pull off.

22 Q. Did your brother fire a shot?

23 A. No, sir.

24 Q. And what did you subsequently tell authorities had
25 happened?

1 A. That my brother shot and killed someone.

2 Q. And was that the truth?

③ A. Yes, sir.

4 Q. It was the truth that he had tried to kill somebody?

5 A. No, sir.

6 Q. What was the truth?

7 A. That I had shot and killed someone.

8 Q. Why did you tell them that you - Why did you tell them
9 that your brother had shot and killed somebody?

10 A. Well cause he's a juvenile and I already had a adult
11 record.

12 Q. What difference does that make?

13 A. Uh by him being a juvenile I thought he would get a
14 lighter sentence.

15 Q. When you found out that he did not in fact get a
16 lighter sentence why did you not come forward then?

①7 A. I still wanted him to come down with me.

18 Q. So what changed your mind?

19 A. I got older and family gettin older, dying off and
20 need somebody out there for my kids.

21 Q. And had you told - When was the first time you told
22 somebody the truth?

②3 A. Last year July 6 when I wrote my brother.

24 Q. And you told him the truth?

25 (WITNESS RESPONDED IN THE AFFIRMATIVE.)

1 Q. And did you then file an affidavit?

2 A. That's when I filed the affidavit.

3 Q. And is what you're testifying to here today the truth?

4 A. Yes, sir.

5 Q. Is that what happened?

6 A. Yes, sir.

7 MR. THOMPSON: I beg the Court's indulgence.

8 (PAUSE.)

9 MR. THOMPSON: No further questions for this witness,
10 Your Honor.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 MONTA GORDON BY SOLICITOR THOMPSON:

14 Q. Mr. Gordon, you said the first time you told the truth
15 in this is July 6th of last year, 2012?

16 A. Yes, sir.

17 Q. And you said you told that to your brother?

18 A. Yes, sir.

19 Q. Where were you when you told that to your brother?

20 A. I was in Bishopville.

21 Q. Was he there with you?

22 A. No, sir.

23 Q. So how did you tell it to your brother then?

24 A. Correspondence.

25 Q. With a letter?

1 A. Yes, sir.

2 Q. So there should be a letter with you saying ---

3 A. Yes, sir.

4 Q. --- that it's all your fault?

5 A. Yes, sir.

6 Q. And you wrote that letter to your brother?

7 A. Yes, sir.

8 Q. And I'll show you a copy of what the defense has
9 given me. I believe the Court and the Defense already has
10 a copy of it. It says "Statement of Monta Gordon" and it's
11 listed as Attachment A.

12 Is that an accurate copy of the statement that or as
13 the defense put it the affidavit that you filed?

14 A. Yes, sir.

15 Q. Now tell me how is it that this affidavit came to be?
16 Who wrote it?

17 A. I wrote it.

18 Q. But it's typed. Did you type it?

19 A. Yes, sir.

20 Q. And you have access to type things in the Department
21 of Corrections?

22 A. Yes, sir.

23 Q. Now who notarized it?

24 A. The notary public at the institution.

25 Q. Okay. Did anyone from the defense come and talk to

1 you? Any other attorneys or investigators or anything from
2 anybody or anywhere?

3 A. No, sir.

4 Q. This is something you did on your own?

5 A. Yes, sir.

6 Q. And you typed it up. And actually I believe it says
7 August, 2012; is that correct?

8 A. Yes, sir.

9 Q. So was it August that you wrote the letter - that you
10 typed this, in July that you wrote the letter or did you do
11 them both at the same time?

12 A. No I wrote the letter in July and typed it on August.

13 Q. All right. And now when he said you filed this. What
14 did you actually do with it? Where did this go? You
15 didn't file it with the Clerk of Court here.

16 A. No, sir, I didn't.

17 Q. Okay. How does this get to your brother?

18 A. I sent it to him.

19 Q. In the mail?

20 A. Yes, sir.

21 Q. All right. And you have no contact with your family.
22 Correct?

(23) A. No, sir.

24 Q. You don't have contact with any of your family?

25 A. No, sir.

1 Q. You have no contact with your brother through letters?

2 A. Correspondence through the institution.

3 Q. All right. Can you do other things other than
4 letters? Emails, calls, anything of that nature? —

5 A. No, sir.

6 Q. So this is at least a series of letters between you
7 and your brother?

8 A. Yes, sir.

9 Q. All right. Now let's go back, because I want to make
10 sure this is correct. You say in this that you were the
11 only person with the gun that night?

12 A. Yes, sir.

13 Q. All right. So none of the other three guys in the car
14 Gary Moffatt, Terrance McCreary or Antonio ever had that
15 gun?

16 A. No, sir.

17 Q. And you say that you're the only person who fired a
18 shot that night; is that correct?

19 A. Yes, sir.

20 Q. All right. Now did you ever talk to anybody about
21 saying you were gonna pin this on Antonio because he's a
22 juvenile?

23 A. No, sir.

24 Q. You never talked to anybody about that?

25 A. No, sir.

1 Q. All right. So you just decided on your own you'd
2 pin it on him because he was a juvenile?

3 A. Yes, sir.

4 Q. Now let's look, Mr. Gordon, at the statement that you
5 gave the police some fourteen and a half years ago.

6 The Defense has a copy and I handed up a copy to the
7 Court on Monday.

8 If you will look at that. Is that an accurate copy of
9 the statement that you gave to the police?

10 A. Yes, sir.

11 Q. And if you look at the third page on it I believe this
12 is given July 23rd, 1998 beginning at 11:30 a.m., and
13 ending at 12:30 p.m.?

14 A. Yes, sir.

15 Q. All right. And this was the same day that the actual
16 crime occurred isn't it?

17 A. Yes, sir.

18 Q. It's just later that morning because the crime
19 occurred what, around 1:30 or 1:20 in the morning,
20 something like that?

21 A. Something like that.

22 Q. All right. And so this is the first time that you
23 decided that you were gonna blame it on Antonio because he
24 was a juvenile; is that correct?

25 A. Yes, sir.

Q. Now let's go over the statement a little bit cause I want to know if the other parts of the statement are true.

You start off talking about last night July 22nd, 1998 about 8:30 or 9:00 p.m. June Bug McCreary. Is that

Terrance McCreary?

A. Yes, sir.

Q. So if we hear the name June Bug we're referring to Terrance McCreary?

A. Yes, sir.

Q. Okay. Gary Moffatt and my brother Antonio Gordon came over to my grandfather's house. Is that still correct?

A. Yes, sir.

Q. Me and Antonio both lived with him and three guys started - all three guys started working on my brother's car a blue Chevy four door. That's correct?

A. Yes, sir.

Q. After they got finished working on the car they all went to leave and go riding around. And that's right too?

A. Yes, sir.

Q. Okay. "Me and Antonio and June Bug and Gary Moffatt left and went riding around. June Bug was driving and we all stopped by the house in Southland Park." That's correct?

A. Yes, sir.

Q. We passed by the Glens and went to the third or fourth

1 house on the right and he said he was gonna pick up his
2 gun; is that correct?

③ A. Yes, sir.

4 Q. ~~And he is Terrance McCreary. Right?~~

5 A. Yes, sir.

6 Q. All right. He went inside the house and got the gun
7 and came right back out. He had the gun in his right
8 back pocket. Okay. And that's still correct?

9 A. As far as I can remember.

10 Q. All right. And that's Terrance McCreary that has
11 the gun in his pocket right now. Correct?

12 A. Yes, sir.

13 Q. Okay. We rode on down the street and pulled the gun
14 out. It was a four barrel chrome pistol and brown handles.
15 And that's correct, right?

16 A. Yes, sir.

17 Q. He put the gun back in his pocket and he went to his
18 grandmother's house and got the bullets. She lives on
19 South Stonewall Street. That's correct, right?

20 A. Yes, sir.

21 Q. He went inside and came right back out again. The gun
22 was already loaded but he said he needed some more bullets.
23 That's correct too, right?

24 A. Yes, sir.

25 Q. June Bug was driving the whole time. That's correct?

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1 A. Yes, sir.

2 Q. We rode around some more and wound up on South Jones.
3 We all saw a BMW that was silver or gray and the people in
4 the car didn't have their lights on. And that's correct,
5 right?

6 A. Yes, sir.

7 Q. June Bug said that car must be stolen and he was gonna
8 steal the car from them. And June Bug did that didn't he?

9 A. Yes, sir.

10 Q. And he told all of you that. Correct?

11 A. Yes, sir.

12 Q. He blinked the lights to let the people know their
13 lights weren't on. June Bug was driving and Antonio was in
14 the front passenger seat. And that's correct?

15 A. Yes, sir.

16 Q. I was in the back seat behind the driver and Gary
17 was in the back seat behind my brother. And that's correct
18 too isn't it?

19 A. Uh-huh.

20 Q. After June Bug blinked his lights the car pulled into
21 the driveway and June Bug pulled up past the car and then
22 backed up so the car couldn't back out - or couldn't back
23 up. That's correct too isn't it?

24 A. Yes, sir.

25 Q. He blocked the car in, in that driveway didn't he?

1 Didn't he? P. 91

2 A. Say that again.

3 Q. He blocked the car in that driveway didn't he?

4 A. Naw. He didn't block the car.

5 Q. Well you just said he backed the car up so the car
6 couldn't back up. Right? And that's correct?

7 A. Yeah.

8 Q. Okay. Antonio and June Bug ask them if they smoked
9 weed. That's right too isn't it?

10 A. Uh-huh.

11 Q. Antonio was actually - -

12 THE COURT: You have to say yes or no. You have to
13 say yes or no. When you answer say yes or no not uh-huh.

14 BY SOLICITOR THOMPSON:

15 Q. So if you'll answer that again. Antonio and June Bug
16 ask them if they smoked weed and that's correct too, right?

17 A. Yeah.

18 Q. Antonio was speaking to them too wasn't he?

19 A. Yes, sir.

20 Q. They said not right now. And that's correct, right?

21 A. Yes, sir.

22 Q. Okay. And I'm gonna go to the second page that says
23 June Bug gave Antonio the pistol and he told him that they
24 were gonna rob them. And that's correct isn't it?

25 A. No, sir.

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1 Q. So that's the first place you lied on this statement?

2 A. Yes, sir.

3 Q. Did June Bug give you the pistol at that point in
4 time?

5 A. I had the pistol already.

6 Q. You had it already. When did you get the pistol?

7 A. Once we left Stonewall Street.

8 Q. He gave the pistol to you? Terrance McCreary gave the
9 pistol to you?

10 A. Yes, sir.

11 Q. And he gave the bullets to you then?

12 A. Yes, sir.

13 Q. All right. Did you load the gun?

14 A. No, sir. The gun was already loaded.

15 Q. The people in the car looked like they were young
16 white guys. That's true, right?

17 A. Yes, sir.

18 Q. Both June Bug and Antonio got out of the car and they
19 both went up to the driver's side of the BMW. That's
20 correct?

21 A. No, sir.

22 Q. Okay. So that's the second part. Did June Bug get
23 out?

24 A. No, sir.

25 Q. Did Antonio get out?

1

A. No, sir.

2

Q. Who got out?

3

A. I got out, sir.

4

Q. Says they both went up to the driver's side door of the BMW. So you're saying they didn't do that, you did that.

6

7

A. Yes, sir.

8

Q. And you did it alone?

9

A. I did it alone.

10

Q. Okay. So you're the only one that got out of the car that night?

11

12

A. Yes, sir.

13

Q. You're the only one that went up to the window of that car; is that correct?

14

15

A. Yes, sir.

16

Q. All right. Couldn't hear much of what was being said but they were telling the guys to get out of the car and the dude in the car said no and he tried to pull off. Is any of that correct?

17

18

19

20

A. No we parted and he tried to pull off.

21

Q. Okay. Could you - You were the one up there, did you hear much of what was going on?

22

23

A. I'm the only one that heard it. I'm the only one that heard it.

24

25

Q. Weren't the windows down in the car that you just

1 got out of?

p. 94

2 A. No, sir.

3 Q. The windows weren't down in the car you just got out
4 of?

5 A. No, sir.

6 Q. So they had no idea what you were saying or what they
7 were saying back?

8 A. No, sir.

9 Q. But didn't you all just try to tell them that their
10 lights were out?

11 A. By blinking lights in our car on and off.

12 Q. So your saying no one physically said anything to them
13 about the lights being out?

14 A. No, sir.

15 Q. But you did mention that they ask about marijuana and
16 you said that was correct. Right? So someone's already
17 been able to talk to them.

18 A. That was me the whole time.

19 Q. But you just testified that Antonio and June Bug ask
20 them if they smoked weed and then said that's correct. Now
21 you're saying it was you that did that and not Antonio and
22 June Bug?

23 A. Yes, sir.

24 Q. So how often is this story going to change as we go
25 over it?

p. 95

1 Is it gonna change every other sentence?

2 A. Naw.

3 Q. Well it just changed just now. You said I couldn't
4 hear much - We've gone over that, we'll skip that a minute.

5 "At that time my brother Antonio shot the driver one
6 time." So you're telling me that's not correct?

7 A. No, sir, it's me.

8 Q. Why did you shoot him?

9 A. It was an accident.

10 Q. How is it an accident?

11 A. That he was pulling off and my hand hit the window
12 sill.

13 Q. Your hand hit the window sill?

14 A. Yeah.

15 Q. So his window was down?

16 A. Yeah his window was down and - -

17 Q. And you had your hand inside the car pointing the gun?

18 A. Yes, sir.

19 Q. So you had it, pointing the gun at him and some how
20 it's an accident that it goes off?

21 A. Yes, sir.

22 Q. So I can forget the part about both Antonio and June
23 Bug getting back in the car and taking off. That's not
24 correct?

25 A. No, sir.

1 Q. What about the part where you say me and Gary was
2 asking what the hell was going on and June Bug said "set
3 back and ride"?

4 A. That was June Bug and my brother actually.

5 Q. That was June Bug and Antonio asking what the hell
6 was going on?

7 A. Uh-huh. Yes, sir.

8 Q. All right. But then June Bug said "set back and
9 ride"?

10 A. Yes, sir.

11 Q. Now what about the part here where you said June Bug
12 said "that they had to shoot the son-of-a bitch because he
13 wasn't acting right by not giving up the BMW"?

14 A. That was me.

15 Q. You said that?

16 A. Yes, sir.

17 Q. June Bug did not say that?

18 A. No, sir.

19 Q. You said "June Bug drove wide open all the way back
20 to my house." That's correct?

21 A. Yes, sir.

22 Q. "When we got back home Antonio and June Bug was
23 bragging about what they had done." That's correct too
24 isn't it?

25 A. No, sir.

P. 97

1 Q. Well who was bragging?

2 A. Me.

3 Q. Just you?

4 A. Yes, sir.

5 Q. June Bug wasn't bragging?

6 A. No, sir.

7 Q. Antonio wasn't bragging?

8 A. No, sir.

9 Q. "The only two people that was hearing what we were
10 talking about was my girlfriend Montala Feely and Antonio's
11 girlfriend Shanika Dixon." Is that correct?

12 A. Yes, sir.

13 Q. So they were the only two people that are hearing
14 whose saying what?

15 A. Yes, sir.

16 Q. Okay. Then you mentioned that Dixon is nothing but
17 a straight up liar.

18 A. That's it.

19 Q. Still your opinion? June Bug and Gary done left out
20 and Gary was driving the car. Is that right?

21 A. No, sir.

22 Q. Who was driving the car when they left?

(23) A. I was.

24 Q. And you've already pled guilty to that haven't you?

25 A. Yes, sir.

1 Q. You was supposed to be taking June Bug to a
2 girl's house in Boyd Hill. Was that correct? Is that what
3 you were doing?

4 A. Yes, sir.

5 Q. "The next thing I know the police was chasing the
6 car back to my house but I don't know who was driving at
7 that time." Obviously the police were chasing you but you
8 were the one driving is what you're telling us?

9 A. Yes, sir.

10 Q. Okay. Now let's look at Page 3 of this right at the
11 top of the page where it says "Person appears before me
12 Monta Lamark Gordon." That's you, right?

13 A. Yes, sir.

14 Q. "Who deposes and says I make this statement of my
15 own free will and accord without reward or hope of reward.
16 I have not been mistreated or threatened in any way. All
17 of the above is the truth, the whole truth, and nothing but
18 the truth so help me God." You signed that and agreed that
19 that's correct is that not true?

20 A. Yes, sir.

21 Q. And you still believe that's correct today?

22 A. Yes, sir.

23 Q. And this was the statement that you gave on July 23rd,
24 1998 beginning at 11:30 a.m., that's correct?

25 A. Yes, sir.

1 Q. All right. Mr. Gordon, let's look at the next thing
2 here.

3 Your Honor, I believe the Court has - this is a copy
4 of Mr. Gordon's - Monta Gordon's plea.

5 Let me open it so you can read it. Mr. Gordon, I
6 believe this is the transcript of the plea from July 16th,
7 1999. Does that appear to be the copy of that transcript?

8 A. Yes, sir.

9 Q. And in this transcript if you look at Page 179, I
10 believe starting on Line 7 where I am the person addressing
11 the Court I tell the Court "in exchange for his plea he is
12 on a recommendation from current sentencing and thirty
13 years being the sentence he receives on the lead indictment
14 of murder." The Court questions me then it goes on on Line
15 12 and I say "Yes, Your Honor. He's also agreed to testify
16 truthfully and honestly in any appropriate judicial
17 proceedings in this case. We're asking the Court to defer
18 the sentencing until the time the other defendant's have
19 been adjudicated. I will pass up a copy of that Plea
20 Agreement to the Court to be made a part of the record."

21 That was the agreement you had wasn't it, for thirty
22 years?

23 A. Yes, sir.

24 Q. And then you testify truthfully?

25 A. Yes, sir.

1 Q. And you even signed a Written Plea Agreement to that
2 effect as well did you not?

3 A. Yes, sir.

4 Q. And you did it that day just before you went out to
5 plea; is that correct?

6 A. Yes, sir.

7 SOLICITOR THOMPSON: I'll give the Defendant a copy
8 of that plea agreement dated July 16th, 1999.

9 THE COURT: I don't see where I have the - I got a
10 good pile of stuff. I don't know that I have the
11 transcript of his plea.

12 SOLICITOR THOMPSON: All right. I believe the
13 transcript of his plea is in that packet.

14 MR. THOMPSON: It's in there, Your Honor.

15 THE COURT: Okay.

16 SOLICITOR THOMPSON: It may be numbered differently
17 because the --

18 THE COURT: It would be.

19 MR. THOMPSON: I think the transcript page numbers are
20 in the upper right hand corners of the transcript are the
21 same.

22 THE COURT: Okay. Thank you.

23 SOLICITOR THOMPSON: But if I recall they jump a
24 little bit because some - if its testimony regarding one of
25 the officers when an officer testified in pretrial

1 hearings, or a doctor, they begin in numbers at one spot
2 and then ended at the end of their testimony and again the
3 numbers begin when something different has happened.

4 THE COURT: All right.

5 SOLICITOR THOMPSON: All the pleas come towards the
6 very end of the transcript.

7 THE COURT: Okay. Go ahead.

8 BY SOLICITOR THOMPSON:

9 Q. All right, so you agree that this is the Plea
10 Agreement. This is what you agreed to at the time of your
11 plea that day; is that correct?

12 A. Yes, sir.

13 Q. And you recall as well that day that you sat down
14 with your attorney, with me, and you told me basically your
15 testimony was gonna be the same as it was in the statement
16 that you had given to law enforcement?

17 A. Yes, sir.

18 Q. And that you told me that Antonio was the one who shot
19 and killed the young Crandall boy?

20 A. Yes, sir.

21 Q. And that's what you agreed to testify to; that was
22 gonna be your testimony under this Plea Agreement. Do you
23 recall that?

24 A. Yes, sir.

25 Q. And so now today you're saying that was a lie?

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1

A. Yes, sir.

2

Q. Now if you go to Page 189 of that same transcript in your hands. Starting at Line 11. Are you there?

3

4

A. Uh-huh. Yes, sir.

5

Q. On Line 11 the Court says "I'm going to ask you to listen while I'm given the facts. I've heard of course the statements of Mr. McCreary. I've also been provided during an earlier motions with statements given by you so I'm familiar with the facts but I'm going to ask for them to be put on the record." And then I address the Court; is that correct?

6

7

8

9

10

11

12

A. Yes, sir.

13

14

Q. And I start into the facts and during those facts - I guess if you'll look at the facts starting at Line 18.

15

16

17

18

19

Page 189, Line 18 through Page 190. From Page 191 and ending on Page 192 at Line 6. I know you've had a PCR and had an opportunity before to look at this. Is what's in the transcript what was related to the Court that day by me?

20

A. Yes, sir.

21

22

23

Q. All right. And the Court ask you on Line 7 on Page 192 you agree with those facts and your answer was on Line 8. "Yes, sir." Is that correct?

24

A. Yes, sir.

25

Q. And throughout this the judge ask you how you pled and

1 you stated you pled guilty to each thing; is that correct?

2 A. Yes, sir.

3 Q. And then in the facts that I gave the Court I

4 indicated that Antonio was the shooter; is that correct?

5 A. Yes, sir.

6 Q. And you agree with those facts at that time?

7 A. Yes, sir.

8 Q. And you were under oath when you gave these statements
9 as well were you not?

10 A. Yes, sir.

11 Q. So now this is the second time that you've said
12 Antonio was the shooter. Now you're telling us this is
13 wrong as well?

14 A. Yes, sir.

15 Q. So are you telling us that you pled guilty back at
16 this time simply to benefit you to get a bargain for thirty
17 years and you didn't care what happened to your brother?

18 A. Yes, sir.

19 Q. Now at the time you entered this plea in July of 1999
20 that's a full year almost after this has all occurred isn't
21 it?

22 A. Yes, sir.

23 Q. And by that time you knew your brother was not being
24 treated as a juvenile didn't you?

25 A. I don't know, sir.

1 Q. You don't know? He was in the courtroom during those
2 hearings with you wasn't he?

3 A. No, sir.

4 Q. ~~He was in the holding cell while you were in the same~~
5 holding cell up here wasn't he?

6 A. In separate holding cells.

7 Q. The holding cells between the courtrooms here. You
8 all were brought up together when we did these hearings,
9 weren't you?

10 A. We's in separate holding cells.

11 Q. Excuse me.

12 A. We was in separate holding cells.

13 Q. But in the same group of holding cells back here each
14 in a different cell.

15 A. Yes, sir.

16 Q. But in this center group of holding cells that your
17 only here for you're only in those holding cells when
18 you're due to come out in court; isn't that correct?

19 A. Yes, sir.

20 Q. And you were actually out here at times that he was
21 out here weren't you?

22 A. Yes, sir.

23 Q. And so you saw at the hearings, you know that he was
24 being treated as an adult don't you?

25 A. At the time yes, sir.

1 Q. And in fact you had a long juvenile record yourself
2 didn't you?

3 A. Yes, sir.

4 Q. And it's in this transcript here because I read it out
5 isn't it?

6 A. Yes, sir.

7 Q. So you're quite familiar with how the juveniles are
8 handled, aren't you, back at that time?

9 A. Yes, sir.

10 Q. And you know that juveniles wouldn't be in this
11 courtroom don't you?

12 A. Uh --

13 Q. They'd be in Family Court wouldn't they, just like
14 you were when you were prosecuted as a juvenile?

15 A. Yes, sir.

16 Q. As a matter of fact they don't get housed in the same
17 place that adults get housed do they?

18 A. Naw, they housed in a separate spot.

19 Q. But Antonio was housed up here in the Detention Center
20 wasn't he?

21 A. Yes they had a juvenile spot over here.

22 Q. So - But you knew. He was your brother, you had
23 contact with your family didn't you back then?

24 A. Yes, sir.

25 Q. You had contact with an attorney didn't you?

P. 106

1 A. Yes, sir.

2 Q. And one of the concerns that you had is what they're
3 gonna do with my brother isn't it?

4 A. I never ask.

5 Q. You never ask?

6 A. No, sir.

7 Q. Never ask? Never indicated to you?

8 A. No, sir.

9 Q. But you knew somewhere along the line that he was
10 not being treated as a juvenile. Correct? And it was
11 before you entered this plea wasn't it?

12 A. No, sir.

13 Q. So you're saying it was after this plea you realized
14 he was being treated as an adult?

15 A. Yes, sir.

16 Q. Later that same day when he entered his guilty plea?

17 A. Yes, sir.

18 Q. So you had no idea that he'd be treated as an adult?

19 A. No, sir.

20 Q. I ask that you look at Page 2-0-2 of the transcript
21 starting at Line 7. The judge ask you "Monta Gordon, do
22 you have anything you want to say?"

23 And on Line 9 you say, "I'm sorry for the Krenn family
24 for this accident that happened." You said that. Right?

25 A. Yes, sir.

1 Q. And you said "We know'd that it was a big mistake in
2 our life because of the teenagers - because as teenagers we
3 had a lot to live for. But now since the indictment we
4 have nothing to live for but to serve the time for the
5 crime we did." Is that correct?

6 A. Yes, sir.

7 Q. "I want to say I'm sorry for my family for letting
8 them go through this situation I'm in and all that.
9 Hopefully Mr. Krenn will forgive us one day for the sin we
10 did." You said that didn't you?

11 A. Yes, sir.

12 Q. You refer to us because you're refer to all four
13 of the defendants, you, Gary Moffatt, Terrance McCreary,
14 and Antonio Gordon.

15 A. Yes, sir.

16 Q. And you were saying you were sorry for what all of
17 you all had done?

18 A. Yes, sir.

19 Q. Because you pled to a conspiracy indictment
20 as well didn't you?

21 A. Yes, sir.

22 Q. And in that conspiracy indictment you swore that
23 these four, these other three guys including Antonio were
24 involved in this weren't they?

25 A. Yes, sir.

P. 108

1 Q. Actively involved weren't they?

2 A. That's what I agreed to.

3 Q. And that's the truth isn't it? They were actively
4 involved with you weren't they?

(5) A. No, sir.

6 Q.: You can place that - Let's go to the next thing.

7 This is the PCR hearing from September 4th, 2003 and
8 I will give a copy to the Court.

9 (DOCUMENTS RECEIVED UP BY THE COURT.)

10 Q. You can sit that paperwork down. I'm not gonna go
11 back through it.

12 Do you recall going through your own PCR, your Post-
13 Conviction Relief hearing back in September 4th, 2003?

14 A. Yes, sir.

15 Q. And you know they record everything that's taken
16 down in those hearings. Correct?

17 A. Yes, sir.

18 Q. I'm gonna direct you to Page 38.

19 And you're ask by your attorney at the PCR hearing
20 on Line 11, "Before I get into the next meeting, did you
21 give a statement to the police?" Do you see where I am?

22 A. Yes, sir.

23 Q. And you said "Yes, sir, I did." Is that correct?

24 A. Yes, sir.

25 Q. And he ask "What did you tell the police in your

P. 110

1 Antonio isn't that right?

2 A. Yes, sir.

3 Q. And that's the truth isn't it?

4 A. No, sir.

5 Q. Just like in your statement before this is the same
6 thing that was in your statement you gave the police is it
7 not?

8 A. Yes, sir.

9 Q. And now you're telling us that was a lie when you
10 were under oath in 2003 testifying?

11 A. Yes, sir.

12 Q. And then you said "So then we started to pull off a
13 little bit but McCreary ask my brother to ask the two
14 little white dudes do they smoke reefer." McCreary did
15 that didn't he?

16 A. No, sir.

17 Q. He didn't do that at all?

18 A. No, sir.

19 Q. "The white dude said yeah and he ain't got none
20 right now." You heard him answer that though didn't you?

21 A. No, sir.

22 Q. "So I left it at that but McCreary didn't. He'd tell
23 my brother well just get in his car you know so by that
24 time my brother already had gotten the pistol from McCreary
25 and jumped out the car." You said that didn't you? You

P. III

1 testified to that?

2 A. That's what I said.

3 Q. And that's what happened isn't it?

4 A. No, sir.

5 Q. "By the time I jumped out of the car to go to stop
6 him like I say I was already you know on twenty years
7 suspended to three years probation so I wasn't looking for
8 any trouble." You testified to that too didn't you?

9 A. Yes, sir.

10 Q. And in fact you were on probation back at that time
11 weren't you?

12 A. Yes, sir.

13 Q. But you were on probation for possession of crack
14 cocaine. That doesn't carry twenty years does it?

15 A. At the sentencing it did.

16 Q. You were sentenced to three years suspended on
17 probation weren't you?

18 A. Yes, sir.

19 Q. You weren't sentenced on any twenty years suspended on
20 three years probation were you?

21 A. No, sir.

22 Q. So you lied back then as to what sentence you were
23 facing. Its in your transcript through the plea because
24 they did the probation violation at the same time. The
25 Court has it in this case. You faced only three years on

1 your possession of crack charge; isn't that correct?

2 A. Yes, sir.

3 Q. "When I jumped out I jumped out to stop my brother but
4 it was too late." That's not what happened at all is it?

5 In fact you were out there with your brother helping
6 him rob them weren't you?

7 A. No.

8 Q. The two of you like you admitted in the facts of the
9 case to the Court, were standing side by side at the window
10 - the man in the car - demanding money were you not?

11 A. No, sir.

12 Q. And then you go on in Line 21 "I don't really want to
13 talk about no plea because the whole time when we was
14 meeting I was telling him I didn't have no involvement in
15 it so I was not gonna plead to no thirty years." So you
16 deny completely having any involvement in the case here
17 don't you?

18 A. Yes, sir.

19 Q. And obviously that's not true or you wouldn't a pled
20 guilty.

21 A. Yes, sir.

22 Q. And if you go to Page 40 of that transcript starting
23 at Line 18 the question to you is "Did you know that anyone
24 had been shot?" And you said "No, sir, I didn't."

25 Then he ask "Did you ask your brother?" And you said

p. 113

1 "Yes, sir."

2 "What did he say?" And you said "He said he shot
3 the car." You testified to that didn't you?

4 A. Yes, sir.

5 Q. That's because Antonio did shoot into that car.

6 A. No, sir.

7 Q. So you're saying you're lying here too?

8 A. Yes, sir.

9 Q. Now I'm curious, Mr. Gordon. Let's go to Page 50.

10 At Line 17 you say "No it's not about the time. I'm not
11 worried about the time, the time ain't what's gettin to me.

12 What's gettin to me is knowing that I'm locked up for
13 something I know I didn't do." You testified to that now
14 during that day too didn't you?

15 A. Yes, sir.

16 Q. And that was a lie as well?

17 A. No, sir.

18 Q. Excuse me.

19 A. No, sir.

20 Q. That's not a lie? Its not something you didn't do?

21 A. No, sir.

22 Q. So you did it?

23 A. Yes, sir.

24 Q. Now you mentioned that Mr. McCreary did get the
25 pistol. Correct?

P. 114

1 A. Yes, sir.

2 Q. So in this affidavit that you typed up yourself its
3 not true when you say you're the only person who had a gun
4 that night is it?

5 A. No, sir.

6 Q. But you typed this up yourself. Right?

7 A. Yes, sir.

8 Q. Because you knew what happened and you were gonna
9 tell the truth this time. Right?

10 A. Yes, sir.

11 Q. But yet the truth really is that Mr. McCreary got the
12 gun and got the bullets and gave the gun to you. Right?

13 A. Yes, sir.

14 Q. And now Mr. McCreary did talk about robbing these
15 young men and stealing that car?

16 A. No, sir.

17 Q. Oh, so now he didn't talk about that?

18 A. No, sir.

19 Q. But now if we go back to the statement that you
20 originally gave the police that we just went over line for
21 line, you said "June Bug said" and of course you told us
22 June Bug is Terrance McCreary and said "that the car must
23 be stolen and he was gonna steal the car from them." So
24 obviously because the first thing you told us that was
25 wrong came at the beginning of the second page of the

1 statement and you said the whole first page was correct.
2 So obviously he did talk about robbing them beforehand
3 didn't he?

4 A. No, sir.

5 Q. Are you telling us now that line is incorrect?

6 A. Yes, sir.

7 Q. The truth is, Mr. Gordon, you will say whatever you
8 want to say to try and fit the time isn't it?

9 A. No, sir.

10 Q. Because you know at this point your appeals are over
11 aren't they?

12 A. Yes, sir.

13 Q. Your PCR's are over aren't they?

14 A. Yes, sir.

15 Q. You've been unsuccessful; is that correct?

16 A. Yes, sir.

17 Q. And you've got to serve your thirty years now.

18 A. Yes, sir.

19 Q. But that thirty years was still a deal. It was better
20 than going to trial and getting life wasn't it?

21 A. Yes, sir.

22 Q. And so now that you know that we can't go back to do
23 anything against you to give you more time than that thirty
24 years based on the murder itself now you're willing to say
25 well I want to try and get a new trial for my brother?

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1 A. No, sir.

2 Q. That's exactly what you're doing isn't it?

3 A. No, sir.

4 Q. ~~Did you ever have any correspondences with Terrance~~
5 McCreary regarding this?

6 A. No, sir.

7 Q. Did Terrance McCreary ever write you and correspond
8 with you and say anything was wrong or different?

9 A. No, sir.

10 Q. How about Gary Moffett? Have you had any
11 correspondences with Gary Moffatt since he's been in the
12 Department of Corrections with you?

13 A. No, sir.

14 Q. Has he ever indicated to you that he was changing
15 any of his statement or changing anything at all?

16 A. No, sir.

17 SOLICITOR THOMPSON: Your Honor, I have no further
18 questions.

19 THE COURT: Anything else, Mr. Thompson?

20 REDIRECT EXAMINATION

21 MONTA GORDON BY MR. THOMPSON:

22 Q. Mr. Gordon, Mr. Willy Thompson was just asking you
23 about your appeals and that sort of thing. How many PCR's
24 have you filed?

25 A. Two.

1 Q. When was the last one dismissed?

2 A. 2009.

3 Q. And you filed a Federal Habeas Petition too?

4 A. Yes, sir.

5 Q. When was that dismissed?

6 A. 2009.

7 Q. So its been a few years since your cases have been
8 over?

9 A. Yes, sir.

10 Q. And do you remember when in 2009 the cases ended?

11 A. No, sir.

12 Q. It's been at least what, three years since those
13 cases have ended?

14 A. Something like that.

15 Q. And you hadn't come forward until last July?

16 A. Yes, sir.

17 Q. And I just want to make sure I got this straight.

18 You admit you lied to the police, you lied to
19 Assistant Solicitor Thompson, you lied to Judge Hayes at
20 your plea, and you admit you lied to Judge Alford at your
21 PCR hearing?

22 A. Yes, sir.

23 Q. And what is the truth?

24 A. That I shot and killed that man.

25 THE COURT: I'm sorry, I didn't hear that. What? Say

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1 it again. What's the truth?

2 A. That I shot and killed Eric Krenn.

3 THE COURT: All right.

4 ~~MR. THOMPSON: Beg the Court's indulgence.~~

5 (PAUSE.)

6 MR. THOMPSON: No further questions.

7 SOLICITOR THOMPSON: Just a couple.

8 REXCROSS-EXAMINATION

9 MONTA GORDON BY SOLICITOR THOMPSON:

10 Q. Now you talked about having PCR's up until 2009?

11 A. Yes, sir.

12 Q. As well as Motions for Habeas Corpus?

13 A. Yes, sir.

14 Q. And of course you also filed an appeal to the case;
15 is that correct?

16 A. Yes, sir.

17 Q. And in all of those motions and PCR's and appeals,
18 you claim you didn't do it didn't you?

19 A. Yes, sir.

20 Q. In fact you claimed Antonio was the shooter didn't
21 you?

22 A. Yes, sir.

23 Q. In all of those. So there's more transcripts than
24 what I have here today that would indicate that you're
25 saying Antonio is the shooter isn't there?

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1 A. Yes, sir.

2 Q. And I'm curious. Since you're saying today you are
3 the only one who did the shooting, and you're the only one
4 who got out of the car, that means every other - one of the
5 other three guys that was in the car knows you're the only
6 shooter; isn't that right?

7 A. Yes, sir.

8 Q. And according to what you're telling us today not only
9 do they know that you're the shooter, but they didn't have
10 any - they didn't help you in any way or didn't make any
11 suggestions to you to go in and rob this guy or try to
12 steal his car did they?

13 A. No, sir.

14 Q. You did it all on your own?

15 A. Yes, sir.

16 Q. Despite the fact that you all backed in and blocked
17 the car in the driveway you did it all on your own?

18 A. Yes, sir.

19 Q. Despite the fact that your brother Antonio's palm
20 print is on the side of that victim's car you didn't get
21 out, you did it all on your own didn't you?

22 A. Yes, sir.

23 Q. Despite the fact that Gary Moffett gave a statement
24 saying Antonio was the shooter you did it all alone didn't
25 you?

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1 A. Yes, sir.

2 Q. Despite the fact that Antonio himself said he was
3 the shooter you did it all alone didn't you?

4 A. Yes, sir.

5 Q. Despite the fact that Terrance McCreary said Antonio
6 was the shooter you did it all alone?

7 A. Yes, sir.

8 SOLICITOR THOMPSON: No further questions, Your Honor.

9 THE COURT: You can step down and go back to the
10 holding cell.

11 (WITNESS LEAVING WITNESS STAND/ESCORTED FROM
12 COURTROOM.)

13 THE COURT: How long do you think the next witness
14 will
15 take? The staff hadn't eat lunch yet so.

16 MR. THOMPSON: It depends on how long the cross
17 examination is.

18 SOLICITOR THOMPSON: I imagine it will be similar to
19 this, Your Honor.

20 THE COURT: All right. Let us take about half an hour
21 so we can eat. I hate to keep them but it's 1:30. I have
22 to let these hungry looking people eat so we'll take about
23 a half hour break.

24 MR. THOMPSON: Thank you, Your Honor.

25 (COURT IN LUNCH RECESS AT 01:32 P.M..)

1 (COURT BACK IN SESSION AT 02:08 P.M..)

2 THE COURT: Thank you. You may take your seats.

3 We'll get Mr. Antonio Gordon in and then . . .

4 (DEFENDANT, ANTONIO GORDON, BLACK MALE, REENTERS
5 COURTROOM.)

6 THE COURT: You ready for your next witness?

7 MR. THOMPSON: We would call Terrance McCreary, Your
8 Honor.

9 (WITNESS, BLACK MALE, ENTERS COURTROOM.)

10 MADAME CLERK: Raise your right hand, place your left
11 hand on the Bible.

12 (WHEREUPON, TERRANCE MCCREARY,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

14 MADAME CLERK: Thank you. Please have a seat.

15 THE COURT: Your name is?

16 A. Terrance McCreary.

17 THE COURT: And are you represented by an attorney?

18 MR. MCCREARY: No, sir.

19 THE COURT: You are here regarding a matter with
20 Antonio Gordon and it has to do with the murder of Mr.
21 Krenn back in the '90s and you were incarcerated as a
22 result of that. Do you understand that everything that you
23 say today will be taken down by the Court Reporter, that
24 you're under oath?

25 MR. MCCREARY: Yes, sir.

1 THE COURT: And that anything you say today could be
2 used against you at a later time in the future perhaps?

3 MR. MCCREARY: Yes, sir.

4 THE COURT: Do you understand all that?

5 MR. MCCREARY: Yes, sir.

6 THE COURT: Do you have an attorney or do you want to
7 go forward?

8 MR. MCCREARY: We can forward.

9 THE COURT: Okay.

10 MR. THOMPSON: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 TERRANCE MCCREARY BY MR. THOMPSON:

13 Q. Mr. McCreary, how are you doing this afternoon?

14 A. All right.

15 Q. How are you related to Antonio Gordon?

16 A. That's my cousin.

17 Q. Do you know what like first cousins, second cousin?

18 A. He's a second cousin.

19 Q. Second cousin?

20 A. Yeah.

21 Q. And where you charged along with Antonio and Gary
22 Moffett and Monta Gordon in this case?

23 A. Yes, sir.

24 Q. Now, on the day of the incident now it's been close
25 to fifteen years ago, I just want you to think back to what

1 happened. Who were you with that night?

2 A. Me, Antonio Gordon, Monta Gordon and Gary Moffatt.

3 Q. And what were you all - What were you all doing? What
4 were you all doing that night?

5 A. We was just ridin and we all went to a little
6 neighborhood. We was gonna stop at a apartment but we just
7 - We didn't want to stay there so we just kept on going.

8 Q. You said you were riding around. Who? What were you
9 riding around in?

10 A. In a car.

11 Q. What? Whose car was it?

12 A. Antonio.

13 Q. Who was driving?

14 A. Me.

15 Q. Were you driving the whole night?

16 A. Yes, sir.

17 Q. Now at any point in time during that night did anybody
18 get a gun?

19 A. Yeah we had a gun.

20 Q. Who got the gun?

(21) A. Monta had the gun.

22 Q. Monta had a gun?

23 A. Yeah.

24 Q. Did you get a gun?

25 A. No.

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1 Q. Did you ever touch it?

2 A. No.

3 Q. So Monta started out with the gun that day and had it
4 that whole day?

5 A. Uh-huh.

6 Q. Do you remember seeing the vehicle that was occupied
7 by Eric Krenn and Christopher Diaz?

8 A. I forgot who it kind of was but I remember yeah.

9 Q. Do you remember seeing it?

10 A. Yeah.

11 Q. How did you - How did you come to encounter that
12 vehicle?

13 A. We was at - I don't know if it was a four way stop but
14 we was at a stop sign and I was pulling out and the car
15 came out of nowhere and we like both had to make a sudden
16 stop.

17 Q. And where was the - You were at a four way stop.
18 Where was the car coming from?

19 A. It came from my left you know what I'm saying. And I
20 was making the turn.

21 Q. And did the car have it's lights on?

22 A. Naw.

23 Q. Is that why you almost got hit?

24 A. Yeah.

25 Q. And what did you do after that? Where did you - Where

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1 did you and the other car end up?

2 A. Well I kept - I pushed on around cause we told - I
3 told the driver of the car to cut his lights on and I kept
4 on pursuing but as we were pulling out they was pulling out
5 so we ended up - We was going opposite direction.

6 Q. You told the driver to cut his lights on. How did you
7 tell him to do that?

8 A. I yelled out the window.

9 Q. You yelled out the window?

10 A. Yes, sir.

11 Q. Did you flash your lights at him at all or anything
12 like that?

13 A. Yeah I did that too.

14 Q. Okay. Did you say anything else to them?

15 A. Naw.

16 Q. Now did there come a time where both of the cars were
17 stopped?

18 A. Yeah.

19 Q. And where were you? Where was your vehicle in
20 relation to that vehicle?

21 A. Well the only way I can see that vehicle by looking in
22 the rearview mirror so I couldn't tell you.

23 Q. Was it behind you?

24 A. Yeah. It was behind me yeah.

25 Q. And again you said Gary and - Gary Moffatt, Antonio

1 Gordon and Monta Gordon all in the car. Where was each of
2 them sitting in the vehicle?

3 A. Uh me and Monta - I think me and Monta was in the
4 front and Antonio and -- was on the passenger side back seat
5 and Gary was behind me and the driver side back seat.

6 Q. Now when you stopped the vehicle did anybody get out
7 of your car?

8 A. Yeah. Two people got out of the car.

9 Q. Who were those two people?

10 A. Antonio and Monta.

11 Q. And where did they go?

12 A. They went behind the car so like I say what took place
13 behind the car I don't know.

14 Q. Were you watching? Were you watching the rear view
15 mirror? Did you follow them at all?

16 A. No, sir.

17 Q. And did - Who had the gun when they got out of the
18 car?

19 A. Monta had the gun out there.

20 Q. That he had the gun the whole night?

21 A. Yeah.

22 Q. And --

23 A. And when he got back - When he got back in the car
24 he had the gun.

25 Q. Okay. Did you hear any shots fired?

1 A. Yeah I heard one shot. P. 127

2 Q. You heard one shot?

3 A. Yeah.

4 Q. And when they came back in the car did Monta still
5 have the gun?

6 A. Yeah.

7 Q. What was Moffatt doing?

8 A. He was still sittin in the back seat to my knowledge.

9 Q. Was he awake, asleep? Did you know what he was doing?

10 A. I thought he was asleep cause he was intoxicated.

11 Q. So you thought - Did he make any sounds? Did he make
12 any motions back there?

13 A. No.

14 Q. Even after the shots were fired did he wake up?

15 A. I ain't - - -

16 Q. I said shots. Shots fired.

17 A. I ain't paid that no attention we just drove off.

18 Q. Did you ask the others what had happened?

19 A. Yeah.

20 Q. And what did - What did they tell you?

21 A. It was like nothin, it was let's go.

22 Q. Now when were you arrested?

23 A. At Boyd Hill Apartments on Fargo Street.

24 Q. When? How long after the shooting were you arrested?

25 A. The next morning like 11:40 that next morning. 11:20

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1 or something.

2 Q. So it was less than twelve hours after the shooting?

3 A. Yeah it was less than that yeah.

4 Q. And did you -- Where did you go from there? --

5 A. From where?

6 Q. Where did - When you were arrested where did they take
7 you?

8 A. To the City jail.

9 Q. To the City jail?

10 A. Yes, sir.

11 Q. Were you in there with anybody else?

12 A. Far as in my cell?

13 Q. Yes.

14 A. Naw.

15 Q. Anybody associated with this case?

16 A. No.

17 Q. And then did you then talk to the police? You talked
18 to the police investigator from there?

19 A. Yes, sir.

20 Q. Who did you tell them committed the shooting?

21 (PAUSE.)

22 A. I think it was Monta but...

23 Q. Do you recall telling the police that Antonio and
24 Gary Moffatt got out of the vehicle?

25 A. No.

1 Q. And went up to the car?

2 A. No I can't - - -

3 Q. If you - - -

4 A. ~~- - - remember if it was Gary gettin out the car~~

5 that's what I said.

6 Q. If that's part of your statement was that the truth?

7 A. Naw cause I been scared about that statement from
8 the beginning of since I left the City jail.

9 Q. Had you actually in front of Judge Hayes when this
10 case was going to go to trial you did try to have this
11 statement suppressed didn't you?

12 A. Yeah.

13 Q. So is the statement you gave to the Rock Hill Police
14 Department the truth?

15 A. Naw.

16 Q. When - Subsequently to giving that statement did you
17 ultimately plead guilty to at least some of the charges
18 against you?

19 A. Yeah.

20 Q. And did you agree to testify against Antonio Gordon
21 if called upon to do so?

22 A. Yeah.

23 Q. What were you going to testify to?

24 A. That he was the killer.

25 Q. That he was the shooter?

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1 A. The shooter yeah.

2 Q. How were you gonna do that?

3 A. Cause we thought he was a juvenile and he'd get off
4 with a lesser you know what I'm saying time.

5 Q. You say we. Who is we?

6 A. Me and Monta.

7 Q. You discussed this with Monta?

8 A. Yeah.

9 Q. Did you discuss blaming it on Antonio with Monta?

10 A. Yeah.

11 Q. And were you --

12 A. Blame it on Antonio.

13 Q. You discussed blaming it on Antonio with Monta?

14 A. Yeah.

15 Q. And is that why you signed the Plea Agreement? Were
16 you hoping he would get a lesser sentence even if he went
17 to trial and got convicted cause he was a juvenile?

18 A. Yeah.

19 Q. When did you tell or notify anybody - Let me ask you
20 this. Let me fix that. When was the first time you told
21 somebody that Antonio wasn't actually the shooter that
22 Monta had the gun?

23 A. I ain't never told nobody.

24 Q. You haven't told nobody? Well you did sign an
25 affidavit to that effect.

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1 A. Uh?

2 Q. You signed an affidavit stating that Monta had the
3 gun.

4 A. Oh yeah.

5 Q. When was the first time you gave that information
6 to somebody else?

7 A. I was trying to get information to when I was trying
8 to get my statement right but nobody - I never had a chance
9 to redo my statement.

10 Q. And then you decided to testify against Antonio?

11 A. Yeah.

12 Q. Subsequent to that when did you decide to make it
13 right and change - -

14 A. Oh, York County jail when I was in the county jail.

15 Q. Did you tell Antonio you were going to change your
16 statement?

17 A. No.

18 Q. Did you tell anybody else you were gonna change your
19 statement?

20 A. I told Monta I was gonna change it.

21 Q. You told Monta?

22 A. Monta was talking about it on the block.

23 Q. Okay. I think we're gettin our wires crossed a little
24 bit here. You're talking about you and Monta discussed
25 blaming it on Antonio?

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1 A. Yeah.

2 Q. Knowing the truth, knowing that Monta was the shooter?

3 A. Yeah.

4 Q. Now after you agreed to do that and you signed the
5 Plea Agreement to that effect, so you discussed this with
6 Monta and you signed the Plea Agreement and you were going
7 to testify against Antonio at trial. Right? When was the
8 first time you notified anybody after all that, after your
9 plea, after meeting with Monta that you were going to come
10 clean and tell the truth?

11 A. That was - I think that was when my attorney was
12 talking about Antonio might get - might get a little time.

13 Q. Who did you - Did you ever tell anybody that would be
14 able to talk to Antonio? When was the first time you told
15 Antonio?

16 A. I ain't talked to Antonio during this since we been
17 locked up.

18 Q. You hadn't talked to Antonio since you got locked up?

19 A. No. We had one encounter but we never discussed
20 anything like that.

21 Q. So how did you notify somebody about the affidavit?
22 How did you go about preparing the affidavit?

23 A. In a PCR.

24 Q. In the PCR?

25 A. Yeah.

1 Q. Which PCR?

2 A. I had a PCR I signed - it was like in 2000.

3 MR. THOMPSON: Beg the Court's indulgence one moment.

4 (PAUSE.)

5 Q. May I ask you to identify that please?

6 A. Oh this is at Kershaw.

7 Q. But what is this document?

8 A. That's was the statement I gave at the investigator at
9 Kershaw Correctional.

10 Q. And this is the affidavit in this case stating that
11 Monta was the one that had the gun. Right?

12 A. Yeah.

13 Q. When was the first time you provided this information
14 to anybody who had access to Antonio?

15 A. I ain't provided to nobody.

16 Q. To nobody?

17 A. Naw.

18 Q. How did the investigator --

19 A. I gave that to the investigator.

20 Q. You gave that to the

21 A. Me and him did that you know what I'm saying. I
22 don't know what happened after that.

23 Q. Did he just come talk to you out of the blue?

24 A. Yeah.

25 Q. Want you to sign it?

1 A. Yeah. He came to talk to me about the issue.

2 Q. So before you signed this affidavit - -

3 MR. THOMPSON: And, Your Honor, I referring to the

4 ~~second attachment the affidavit to the Motion for a New~~
5 Trial in this case.

6 Q. Prior to signing this affidavit had you told this
7 information to anybody? Antonio, your family, his family,
8 anything like that?

9 A. No.

10 Q. No. And is the information contained in this
11 affidavit the truth ---

12 A. Yeah.

13 Q. --- that Monta was the one that had the gun?

14 A. Yes, sir.

15 Q. Is that the truth?

16 A. Yeah.

17 Q. Was there any discussion in the vehicle about robbing
18 the - Mr. Krenn and Mr. Diaz?

19 A. No, sir.

20 Q. Did you - You didn't say anything about robbing
21 anybody?

22 A. No, sir.

23 Q. Did Monta?

24 A. No, sir.

25 Q. Antonio?

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1 A. No, sir.

2 Q. Mr. Moffatt?

3 A. No, sir.

4 Q. Did you know why Antonio and Monta had gotten out of
5 the car?

6 A. No.

7 Q. And you said you lost sight of them once they walked
8 past and you could only see in the rearview mirror?

9 A. Yeah.

10 Q. Did you try and block in Mr. - the vehicle that Mr.
11 Krenn and Mr. Diaz were in?

12 A. Naw. I just --

13 Q. Did you try to prevent them from leaving?

14 A. I just stopped in the middle of the street.

15 MR. THOMPSON: Beg the Court's indulgence.

16 (PAUSE.)

17 Q. So the statement you gave the Rock Hill Police
18 Department, you disagree with what's in the statement?

19 A. Yeah.

20 Q. You don't believe you told - You believe you told
21 this to the police officers?

22 A. Not all of it naw.

23 Q. Not all of it?

24 A. No.

25 Q. What didn't you tell them?

1 A. For one I know I ain't told them I ain't rob nobody
2 and the only part I see that was true in it what happened
3 after we got in the high speed chase.

4 Q. ~~But everything else before that is inaccurate?~~

5 A. Yeah. And I was trying to make that clear when I -
6 ever since I left the City jail until my first PCR.

7 Q. But you were prepared to testify against Antonio and
8 testify Antonio was the shooter?

9 A. Yeah.

10 Q. And that would have been a lie?

11 A. Yeah.

12 Q. And are you telling the truth here today? You're
13 telling the truth in the affidavit?

14 A. Yeah.

15 MR. THOMPSON: No further questions.

16 SOLICITOR THOMPSON: May it please the Court, Your
17 Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 TERRANCE MCCREARY BY SOLICITOR THOMPSON:

21 Q. Mr. McCreary, you also back then went by the nickname
22 June Bug; is that right?

23 A. Yeah.

24 Q. Do you still go by that nickname?

25 A. No.

1 Q. No? No one calls you that anymore? Was that
2 something that just your family members called you like
3 Antonio and Monta?

4 A. ~~Naw everybody used to call me that.~~

5 Q. I'm sorry, what?

6 A. Everybody used to call me that.

7 Q. Oh, everybody used to call you June Bug?

8 A. Yeah.

9 Q. Okay. So back at the time that this happened if
10 someone is referring to June Bug they were referring to
11 you?

12 A. Yeah.

13 Q. Okay. Now I just want to get a few things straight.

14 You happen to have a copy of the statement that you
15 said you gave down in - Was it Kirkland? Or Kershaw. I'm
16 sorry Kershaw.

17 A. Naw I don't have it.

18 Q. Okay. I'll give you a copy of it.

19 (WITNESS RECEIVES DOCUMENT.)

20 Q. Now is that your handwriting on that statement?

21 A. No.

22 Q. Okay. That's the investigator that came to see you?

23 A. Yeah.

24 Q. Explain to me how that happened. How is that an
25 investigator came to see you?

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1 A. I don't know.

2 Q. Did you know the investigator?

3 A. No.

4 Q. ~~Do you remember his name now?~~

5 A. No I don't got his name.

6 Q. All right.

7 A. He left me a card though.

8 Q. What's that?

9 A. I got - He left me his card.

10 Q. He left you his card?

11 A. I don't know his name. I don't know his name.

12 Q. All right. You had never seen him before then?

13 A. No.

14 Q. You hadn't contacted him and ask him to come talk to
15 you. Right?

16 A. No.

17 Q. So he just came and talked to you on his own?

18 A. Yeah.

19 Q. Did you ever see him after that?

20 A. No.

21 Q. Did he tell you he was an investigator for Antonio?

22 A. No he was saying he was dealing with some dealing
23 with the case though I think. I think something dealing
24 with that.

25 Q. Did he talk about trying to help you?

1 A. No.

2 Q. Did he talk about trying to help you at all?

3 A. No.

4 Q. Did he talk about trying to help Antonio?

5 A. Naw he was asking me about uh - what took place that
6 night and all the things like that.

7 Q. All right.

8 A. And that's basically what I was given to 'em on this
9 statement right here.

10 Q. I mean you don't just talk to anybody that shows up
11 do you?

12 A. I - I mean if you come and talk to me yeah I talk to
13 you.

14 Q. Well I'm asking what is the reason you would have
15 talked to him about that that night?

16 A. He was questioning me about it and I just talked to
17 him about it.

18 Q. And you weren't curious at all about why he wanted
19 to know what he was there for?

20 A. Yeah I was curious.

21 Q. Well then what did he tell you about it? Certainly
22 you ask him didn't you?

23 A. Naw.

24 Q. You didn't ask him?

25 A. He just explained to me we was talking dealing with

1 what took place that night and he ask me what was going on,
2 what happened that night, and I gave a statement and he ask
3 me why wouldn't I give a statement and I said yeah cause I
4 ~~was trying to correct my statement for the longest.~~ And
5 that's what I did, I gave a statement.

6 Q. And this is the statement you gave?

7 A. Yes, sir.

8 Q. Were you able to read it after he wrote it down for
9 you?

10 A. Yes, sir.

11 Q. And you believe this statement to be the truth?
12 You're telling us now today?

13 A. Yes, sir.

14 Q. All right. And you swore to this statement at the
15 time you did it; is that right?

16 A. Yes, sir.

17 Q. Is that at the bottom of that kind of scribble, I
18 can't really read it, but is that the signature of the
19 investigator that you signed in front of?

20 A. Down at the bottom of it?

21 Q. Yeah at the bottom of the letter.

22 A. Yeah. No. I think so. I don't know.

23 Q. All right. And this was back on July 13th of 2012?

24 A. Yeah.

25 Q. Did they give you a copy of the statement to you at

1 that time?

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2 A. Yeah I got a copy.

3 Q. All right. Let me just go over this and make sure
4 ~~it's right. You're saying you met with him at Kershaw and~~
5 that you were not represented by counsel at that time.

6 That's correct, right?

7 A. Yeah.

8 Q. "I'm doing time in SCDC for a murder that occurred in
9 July 1998 in York County." That's correct, right?

10 A. Yeah.

11 Q. Matter of fact the charges you pled guilty to were
12 accessory before the fact to murder and accessory after the
13 fact; is that correct?

14 A. Yes, sir.

15 Q. Okay. And you had a plea agreement that gave you
16 thirty years for. You got the minimum in other words that
17 you'd get for accessory before the fact to murder.

18 Correct?

19 A. Yeah.

20 Q. Okay. And that's what you're serving your time on
21 for now?

22 A. Right.

23 Q. And as Mr. Jeremy Thompson had ask you you would
24 agree to testify against anybody that was left after you
25 pled. Right?

P. 140

1 A. Yeah.

2 Q. And I think the only person left after you was
3 Antonio wasn't it?

4 A. Yeah.

5 Q. And you were going to testify that Antonio was the
6 shooter. Correct?

7 A. Yeah.

8 Q. Because that was the truth wasn't it?

9 A. No.

10 Q. So you were gonna lie in your testimony?

11 A. No but I was gonna tell the truth as far as I had I
12 was going through me statement. That's what I was telling
13 em.

14 Q. Well you just testified that you had made a deal that
15 you would testify against Antonio and say that Antonio was
16 the shooter. So you were saying that you were willing to
17 go in and lie and say that he was the shooter to testify to
18 get your deal?

19 (PAUSE.)

20 Q. Are you saying now that if you had gone into that case
21 you would have testified that Monta was the shooter that
22 day if we went to court that following Monday and started
23 that trial?

24 A. Uh.

25 Q. The truth shouldn't be too confusing, Mr. McCreary.

P. 141

1 A. I know the truth ain't confusing.

2 Q. Well I'm simply asking you to tell me the truth. Are
3 you saying that if we call you to testify that Monday in
4 July of 1999 that you would have said that Monta was the
5 shooter and not Antonio?

6 A. Before the discussion with Monta yeah I would a said
7 Antonio - Monta was the shooter.

8 Q. You would a said Monta was the shooter back then?

9 A. Yeah.

10 Q. Now you say - As we go on into this statement you say
11 at the time of the murder I was driving Antonio Gordon's
12 car." That's right, you were driving the car. Right?

13 A. Yeah.

14 Q. "When we first encountered the victims Monde and
15 Antonio got out of the car." So those two got out. You
16 didn't get out?

17 A. Naw.

18 Q. Gary Moffatt didn't get out?

19 A. Naw.

20 Q. But without a doubt Antonio and Monta both got out
21 didn't they?

22 A. Yeah.

23 Q. And they talked about robbing someone didn't they?

24 A. No.

25 Q. No one talked about robbing someone?

P. 142

1 A. No.

2 Q. Did you talk about robbing someone?

3 A. No.

4 Q. ~~Did you talk about taking their car?~~

5 A. No.

6 Q. All right. Now you say in the statement "The victims"
7 I'm sorry, I just read that. Go farther down.

8 "Monta had his gun and Antonio did not." And you're
9 saying that when they got out of the car you think Monta
10 had the gun and not Antonio?

11 A. I know Monta had a gun.

12 Q. All right. How do you know Monta had the gun cause
13 you said you thought Monta had the gun just a minute ago?

14 A. Monta had - Monta had the gun earlier all day.

15 Q. Okay. So you didn't pick up the gun yourself earlier?

16 A. When? You talking about inside the car?

17 Q. That day wasn't that your gun?

18 A. Yeah.

19 Q. And so you had the gun at some point earlier that
20 day didn't you?

21 A. Naw. Monta got the - When we got - The gun was in
22 possession of us. Monta had the gun.

23 Q. The whole time you never had possession of it?

24 A. Naw.

25 Q. Did you ever take it to the girls and let one of them

P. 143

1 try and shoot it?

2 A. Naw.

3 Q. You didn't show anybody else? It was just the four
4 of you?

5 A. Yeah the girls saw the gun but that was earlier that
6 day. That was some other part of the day.

7 Q. Well that's what I'm talking about the time you all
8 got together.

9 A. Well I never gave the gun to the females no way.

10 Q. All right. But you had the gun in your possession
11 thought didn't you?

12 A. No.

13 Q. You got the gun first didn't you?

14 A. No.

15 Q. You're saying there is no time you had that gun in
16 your possession?

17 A. No.

18 Q. And you didn't get bullets for that gun either?

19 A. Yeah I got bullets for it.

20 Q. Okay. So you got bullets for the gun that night?

21 A. Yeah.

22 Q. You gave those to Monta?

23 A. Yeah.

24 Q. Was the gun already loaded when he had it or did he
25 need extra bullets?

1 A. I think it - It wasn't fully loaded naw.

2 Q. Okay. So you wanted to have it fully loaded?

3 A. I ain't want to have nothing. I was just doing - Id
4 ~~was ask was to get some bullets for the gun.~~

5 Q. You gave him the bullets. How is you don't want to
6 have nothing if you're giving him the bullets and you're
7 hanging out with him? Obviously you want something don't
8 you?

9 A. I mean for protection.

10 Q. For protection?

11 A. Yeah.

12 Q. From two sixteen year olds in a BMW that pull into
13 a driveway?

14 A. Naw. That ain't - That ain't - I'm talking about
15 protection from being in the streets period.

16 Q. Okay. Why? You doing something in the streets that
17 you need protected from?

18 A. Yeah. I mean everybody need protection.

19 Q. But you weren't even allowed to possess a gun at that
20 time were you?

21 A. A lot of people wasn't allowed to basically hold
22 things that they did.

23 Q. So you all had your pistol but you never had it, it
24 was just Monta had it?

25 A. Yeah.

1 Q. Now you say "the incident occurred behind me so I
2 did not see what happened." So you're saying you didn't
3 see anything that happened other than the fact that those
4 ~~two got out of the car?~~

5 A. Yeah.

6 Q. But now you had your windows in the car didn't you?

7 A. Yeah. My window was down yeah.

8 Q. All right. So you could hear if they were saying
9 stuff. Right?

10 A. Naw I mean it was - I think they was a little distance
11 behind us, man, it wasn't just like we was right there.

12 Naw I ain't heard nothing cause I had the music on. I
13 was messing with the radio.

14 Q. So you're saying you didn't have them blocked in the
15 drive way at any point?

16 A. Naw not to my knowledge no. From my knowledge they
17 was in the street. Both cars was lying in the street.

18 Q. But you're the driver of the car. Right?

19 A. Yeah.

20 Q. And you're the one who stopped the car?

21 A. No. We stopped the car cause it was almost - it was
22 almost a collision. That's how the car stopped.

23 Q. Right there in the driveway there was almost a
24 collision?

25 A. Naw they wasn't in no drive way. We was at an

1 intersection.

2 Q. So you're saying all this occurred at an intersection,
3 not in some - - -

4 A. It was right there by the intersection. We was coming
5 off the stop sign.

6 Q. And they pulled into a driveway didn't they?

7 A. I don't know what they did.

8 Q. And you pulled in and backed and got right behind
9 them so they couldn't pull out didn't you?

10 A. Naw.

11 Q. But you stopped the car?

12 A. No we stopped the car. The car stopped because we
13 almost hit each other. That's when the car stopped.

14 Q. Right. But it doesn't magically stop itself, you
15 stopped it didn't you?

16 A. That's what you said.

17 Q. You were driving. You just told me that. Right?

18 A. I stopped the car, I was driving.

19 Q. Right. And then when you stopped the car you stopped
20 it long enough for people to hop out. You didn't just stop
21 and keep going again did you?

22 A. Yeah I stopped and let them go and I started to pull
23 off again but right before I was pulling off they got out
24 of the car and I stopped again.

25 Q. You had no idea that something was gonna happen at

1 that point?

2 A. Naw.

3 Q. "I heard one or two shots. Monta and Antonio returned
4 to the car and Monta still had the pistol." You're saying
5 that's correct now. Right?

6 A. Yeah.

7 Q. "They got in the car." You're saying that's correct.
8 Right?

9 A. Yeah.

10 Q. You say "while in the York County jail Monta and I
11 discussed blaming Antonio for the shooting since he was a
12 juvenile." You're saying that's right. Correct?

13 A. Yeah.

14 Q. Now you're saying over here when you're in the
15 Detention Center at some point you discuss that with Monta.

16 A. Yeah.

17 Q. And so you weren't always housed with him when you
18 were over here were you?

19 A. We was housed for a while yeah. But Antonio wasn't
20 housed with us cause I think he was in a juvenile block.

21 Q. Okay. So you - But you were housed then at some
22 point with Monta. Is that when you talk to Monta?

23 A. Yeah.

24 Q. And you both talked about setting it up for Antonio
25 to be the shooter.

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1 A. It was three of us in there. Gary Moffatt was housed
2 in there too.

3 Q. All right. Did you talk to Gary Moffatt about setting
4 up Antonio to be the shooter too?

5 A. Naw.

6 Q. You all didn't talk to Antonio or to Gary about that?

7 A. Naw.

8 Q. You just talked to Monta about that?

9 A. Uh-huh.

10 Q. So you thought it was a good idea to set up your
11 cousin and Monta's brother as the shooter when he wasn't?

12 A. Yeah.

13 Q. And you're saying that's because you thought he was a
14 juvenile. What difference would that make?

15 A. I mean I was young I ain't know what to think. I
16 thought he would get off. You know what I'm saying you
17 know.

18 Q. Now you had juvenile convictions didn't you?

19 A. Yeah.

20 Q. Did you just get off with those juvenile convictions?

21 A. Naw.

22 Q. So it would a been sometime well after the incident
23 occurred, well after July of 1998 that you actually would
24 have talked to Monta about that; is that correct?

25 A. Say what?

1 Q. It would have been after the shooting, well after,
2 that you talked to Monta cause you spent the first several
3 days down in Rock Hill. Right?

4 A. ~~We stayed in the City jail like two days I think. Or~~
5 like two days I think..

6 Q. Two days?

7 A. Yeah.

8 Q. So you didn't have the talk with him down there.
9 You had the talk with him up here.

10 A. Yeah.

11 Q. So it was well after the actual incident that you had
12 the talk with him up here.

13 A. Yeah.

14 Q. It could have been what, six months after you were up
15 here?

16 A. No it wasn't six months. Yeah it probably could a
17 been that long yeah.

18 Q. About six months after you were up here?

19 A. Yeah.

20 Q. Okay. And you say "at no time that night did I see
21 Antonio with the gun." That's what you're telling us now,
22 you never saw him with the gun that night?

23 A. Naw.

24 Q. "Antonio has never told me that he did the shooting."
25 And that's what you're saying in this statement; is

1 A. No that ain't true either cause I drove the car all
2 night that night.

3 Q. All right.

4 A. Until we got to Fernsdale and Monta started driving
5 and that's when we got in the high speed chase with the
6 police.

7 Q. All right. So Monta was driving when you got in the
8 high speed chase with the police?

9 A. Yeah.

10 Q. That's the only time when someone else drove the car?

11 A. Yeah.

12 Q. Well how about the fact that you said that Antonio -
13 you all ask Antonio why he did that. You still ask Antonio
14 why he did that. Right?

15 A. Who?

16 Q. You.

17 A. Naw I ain't ask nobody why he did that.

18 Q. Someone in the car ask him why he did it didn't they?
19 That's why you put it down.

20 A. Naw.

21 Q. No?

22 A. I ain't ask nobody that.

23 Q. Did someone else ask him? Did Gary ask him?

24 A. I don't know.

25 Q. Did Monta ask him?

1 A. Monta got out the car with him. I mean...

2 Q. Why did - Did he ask him why he did that?

3 A. I ain't ask him nothing.

4 Q. ~~Okay. But did Monta ask him that?~~

5 A. I don't know.

6 Q. As far you know did anyone ask anybody that? What
7 they were doing getting out of the car either Antonio or
8 Monta?

9 A. No. No.

10 Q. Now did he point the gun at ya'll?

11 A. Naw.

12 Q. Did Monta point the gun at ya'll?

13 A. No.

14 Q. So no one pointed the gun at anybody when he got back
15 in the car?

16 A. No.

17 Q. "I drove down the street and then" okay we went
18 through that. You did that later on. "We went down on
19 Crawford Road near where the new houses had been built."
20 Is that correct?

21 A. Uh-huh.

22 Q. "Gary and Antonio got out and went up the street and
23 later came back with an amplifier. I don't know where it
24 came from and I did not ask." That's correct?

25 A. No.

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1 Q. No?

2 A. That's what Gary said.

3 Q. That's what Gary said. But this is your statement.

4 A. Yeah I ain't said that.

5 Q. All right. So you all go get the amplifier. "We
6 went back to my grandfather's house on Fernsdale Road and
7 worked on the radio until around 4:30 am. Is that right?

8 A. Yeah.

9 Q. Okay. "And then everyone said that they was ready to
10 go home." And that's right?

11 A. Yeah.

12 Q. "I ask Monta to take me to my mother's house up near
13 York, South Carolina." Is that right?

14 A. Yeah.

15 Q. "As we were driving nearby ----- a unmarked police
16 car got behind us and continued to follow us so Monta took
17 off real fast in the car when the blue light in the
18 unmarked car came on." And that's right?

19 A. Yeah.

20 Q. "Gary and I jumped out on Constitution Boulevard near
21 the park. Monta kept going."

22 A. Uh-huh.

23 Q. That's right. "Later Gary and I went to LaKisha's
24 house at 290 Fargo Street that's where we was arrested at."
25 And that's right?

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1. A. Yeah.

2. Q. "LaKisha then - LaKisha and Towanna was also
3. arrested." Towanna is actually Ms. Dixon; is that correct?
4. She goes by Shanika Dixon or Towanna Burris.

5. A. I don't know that.

6. Q. You don't know? Okay. "The police found the pistol
7. in the kitchen at LaKisha's house." Is that right?

8. A. Uh-huh.

9. Q. So at this point you had gotten the pistol back.

10. A. No I ain't never had the pistol out there.

11. Q. So then Gary got the pistol back?

12. A. Yeah.

13. Q. So Gary got the pistol after all this happened and
14. hides it in the house somewhere?

15. A. Uh-huh.

16. Q. In LaKisha's kitchen?

17. A. Uh-huh.

18. Q. You say "Gary must a put it - put the gun there
19. where the police found it." Okay. But now you signed
20. this statement did you not?

21. A. Yeah but I didn't proof read it.

22. Q. You didn't proof read it? Well it says on Page 3 that
23. I have read or had read to me the above statement. And you
24. signed under that too. Right?

25. A. Yeah I guess.

1 Q. So it was either read to you or you read it yourself.
2 Isn't that true?

3 A. Yeah.

4 Q. Okay. So you signed it knowing what was in it?

5 A. I signed it when he told me to sign.

6 Q. Okay. And you knew what was in it cause you either
7 read it or had it read to you.

8 A. Yeah.

9 Q. All right. And just up above that it says,
10 "Personally appears before me, Terrance Eugene
11 McCreary, who deposes and says I make this statement of my
12 own free will and accord without reward or hope of reward.
13 I have not been mistreated or threatened in any way. All
14 of the above is the truth, the whole truth, and nothing but
15 the truth so help me God." That's correct?

16 A. Yeah.

17 Q. And you signed it after that?

18 A. Yeah.

19 Q. And you swore at the time that this statement was the
20 truth. Correct?

21 A. Yeah.

22 Q. And you can see where the time of the statement was
23 taken down there when Detective Burris put in July 23rd,
24 1998 and it began at 03:35 p.m. and ended at 5:10 p.m.

25 A. Yeah.

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1 Q. And that's right too isn't it?

2 A. Yeah.

3 Q. So that's the actual date this all happened, it just
4 later that afternoon.

5 A. Yeah.

6 Q. So the point you gave this statement you hadn't talked
7 to anybody about Antonio or blaming Antonio cause he was a
8 juvenile hadn't you?

9 A. No.

10 Q. Cause that happened some six months later up here.

11 A. Uh-huh.

12 Q. But yet in this statement you say Antonio was the
13 shooter.

14 A. I ain't said Antonio was the shooter.

15 Q. What's that?

16 A. I ain't said Antonio was the shooter in this
17 statement. I ain't never said nobody was the shooter in
18 this statement.

19 Q. You said Antonio got out with a gun.

20 A. That ain't saying Antonio shot nobody either. That
21 statement don't say nobody shot nobody.

22 Q. When you say "Antonio came back in and was pointing
23 the gun at everybody in the car." So - -

24 A. That ain't said Antonio - That ain't said Antonio
25 shot nobody.

1 Q. Okay. But you said you heard the shots fired.

2 A. Yeah I heard a shot.

3 Q. And you're saying ---

4 A. But I ain't said ---

5 Q. --- when they get back in Antonio is waving the
6 gun around in the car.

7 A. That's what the statement said but I ain't said that.

8 Q. And that's what you signed and said was the truth
9 back then isn't it?

10 A. Yeah.

11 Q. Excuse me?

12 A. I said yeah.

13 Q. Okay. Now, Mr. McCreary, lets look at your plea now.
14 Get the transcript of your plea. Put that down.

15 SOLICITOR THOMPSON: Do you have that, Your Honor?

16 THE COURT: I don't know. I got so much up here I
17 don't know if I do or not.

18 SOLICITOR THOMPSON: I can get you a copy.

19 THE COURT: That would be good.

20 (DOCUMENTS RECEIVED UP BY THE COURT.)

21 BY SOLICITOR THOMPSON:

22 Q. And you actually pled on July 16th of 1999; is that
23 correct?

24 A. Yes, sir.

25 Q. And up to that point we had had a number of pretrial

1 motions including the hearing of your statement and the
2 Court determining whether that statement would be
3 admissible in the trial; is that correct?

4 A. Yeah.

5 Q. And at the point that you entered your plea of course
6 Mr. Moffatt had already entered a plea sometime well before
7 this and agreed to testify already. You remember that.

8 Right?

9 A. Yes, sir.

10 Q. And just earlier that same day Monta Gordon had
11 entered his plea and agreed to testify as well. Correct?

12 A. Yes, sir.

13 Q. And so now at this point you entered your plea and
14 said that you would testify at this point as well.

15 Correct?

16 A. Yes, sir.

17 Q. And we discussed a little bit earlier you would
18 testify that Antonio as far as you knew that he was the
19 shooter?

20 A. Yes, sir.

21 Q. And all the times that the judge ask you to each of
22 your charges whether you were guilty of those charges you
23 admitted that you were and said that you were guilty; is
24 that correct?

25 A. Yes, sir.

1 Q. And the fact pattern that was read into the record
2 during this by me which indicated that Antonio Gordon was
3 the shooter you said was the truth and you agreed with
4 those facts; isn't that correct?

5 A. That I said Antonio was the shooter?

6 Q. Yes.

7 (PAUSE.)

8 Q. Look at Page 171 and go to Line 13. Tell me when
9 you're there. Where the judge says I've heard the facts
10 repeatedly this week. I've reviewed the statements and I
11 think though just for the purposes of getting the agreement
12 by the Defendant as to the facts I think you need to just
13 go over them very briefly cause I need to have confirmation
14 from him." Do you see that where the Court said that at
15 that point?

16 A. Yeah. Yeah.

17 Q. And then I go into telling the police - the summary of
18 the facts at that point. And I go on to say that "it
19 occurred on July 23rd, 1998 here in York County on South
20 Jones Street. The Defendant was the driver of the car the
21 four defendants were in. At that point in time he was the
22 one who obtained the pistol that was used. He obtained the
23 bullets that followed and loaded the gun. He was the one
24 who then at some point transferred the gun to where it
25 ultimately ended up in Antonio Gordon's hands. His

1 statement as well as the statements of his co-defendants
2 point to the fact that he ran upon Mr. Krenn and he was the
3 one that suggested that at least at some point that they
4 rob him. Even in his own statements suggested that they

5 rob him if he had had the gun he would rob them of
6 marijuana. The others suggested he prodded them to go
7 ahead and rob them. Of course at that point the robbery did
8 occur and the killing occurred when Antonio Gordon shot the
9 victim in the case." And we can keep going through it but
10 if you go to then Page 173, at the end of this Page 172,
11 Line 24 the Court ask you "Do you agree with this facts,
12 Mr. McCreary?" And on Line 1 of Page 173 you say "Yes,
13 sir." So you agreed that Antonio Gordon was the shooter
14 did you not when you entered your guilty plea?

15 A. Yeah.

16 Q. Cause that was the truth wasn't it?

17 A. No.

18 Q. Let's go if you would to Page 197. Right at the very
19 bottom of that page on Line 25 I'm speaking and I say, "And
20 as for Terrance McCreary, Your Honor, his record is
21 juvenile and adult record. Juvenile beginning in 1992 with
22 burglary second degree and grand larceny and malicious
23 injury to property." You were convicted of those back then
24 weren't you as a juvenile?

25 A. Yeah.

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1 that correct?

2 A. Yeah.

3 Q. And you're telling us today that this is a sworn
4 accurate statement by you?

5 A. Yeah.

6 Q. Mr. McCreary, let's go to the statement you gave law
7 enforcement the day this actually happened.

8 SOLICITOR THOMPSON: I believe the Court has a copy,
9 Your Honor.

10 Q. I believe that's a copy of the statement that you
11 gave Deputy Willie Burris back on July 23rd, 1998; is that
12 correct?

13 A. Yeah.

14 Q. And in this statement that you gave Detective Burris
15 lets just go through it cause I want to see if there's any
16 truth to anything in this statement.

17 THE COURT: Where would mine be?

18 SOLICITOR THOMPSON: I believe I handed it to the
19 Court in the last hearing but I might have another copy of
20 it in here.

21 Detective Burris' testimony he reads his statement,
22 Your Honor. You have that.

23 THE COURT: Yeah I got that. Go ahead.

24 BY SOLICITOR THOMPSON:

25 Q. Let's start at the beginning. "Wednesday afternoon

1 around 3:00 p.m., or it was 4:00 p.m, I'm not really sure
2 of the time but Antonio Gordon, his brother Monta Gordon,
3 Gary Moffatt came over to my grandmother's house at 1041
4 ~~South Stonewall Street and picked me up.~~ Is that all
5 correct so far?

6 A. Yeah.

7 Q. Okay. "Antonio had paged me earlier and told me that
8 he was coming by for me." Is that correct so far?

9 A. Yeah.

10 Q. Okay. "Antonio was driving his Chevrolet Cavalier
11 color blue. We carried my two cousins to Southland Park to
12 their mother's house. Their mother is Jackie Baxter." And
13 so far that's all true. Right?

14 A. Yeah.

15 Q. Excuse me?

16 A. Yes, sir.

17 Q. Okay. "We then left there and went to Tony Brice's
18 house. He also lives in Southland Park. I went to his
19 house to get a few dollars for gas for Antonio's car but
20 Tony said that he did not have any money." So far
21 everything is still correct?

22 A. Yeah.

23 Q. All right we'll go to the next sentence. "We then
24 left the house and drove to our grandfather's house on
25 Fernsdale Road. My grandfather is Willie Ed Gordon."

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1 That's correct too. Right?

2 A. Yeah.

3 Q. "We rode around for a good part of the day and we saw
4 Anthony Lowrey and we all ask him where his brother Albert

5 keep his gun because Albert always carried a gun around
6 before he was arrested about a week ago for drug
7 violation." That's all correct too. Right?

8 A. Yeah.

9 Q. "Anthony told us it was in Jay Neely's back yard in
10 the bushes near a light post." That correct so far?

11 A. Yeah.

12 Q. Okay. "But said that Jay did not know it was there.
13 Jay also lives in Southland Park." That's all correct?

14 A. Yeah.

15 Q. "Gary and myself went and got the gun. It was a .357
16 Magnum and had a .38 special combine that had four
17 barrels." That's all correct?

18 A. Yeah.

19 Q. Okay. So you did go and get the gun with Gary
20 Moffatt.

21 A. Yeah.

22 Q. So Monta wasn't the only one who had the gun that
23 day. Right?

24 A. Yeah.

25 Q. Okay. "We got back to the car and we gave the gun

1 to Monta Gordon." So that's the first time Monta gets it
2 is when you get back to the car.

3 A. Yeah.

4 Q. ~~So you actually went and got the gun cause it was~~
5 pretty much your gun. Right?

6 A. Yeah.

7 Q. Okay. And you brought it to the car and gave it to
8 Monta?

9 A. Yeah.

10 Q. "We went back to our grandfather's house on Fernsdale
11 Road and worked on his car radio." That's right?

12 A. Yeah.

13 Q. And the car radio you're talking about is Antonio's
14 car. Right? The blue Chevy you all fixed the radio and
15 doing something with the radio in that car?

16 A. Yeah.

17 Q. And we go to the second page and it says "Monta and
18 Antonio's girlfriends wanted to shoot the gun so we allowed
19 'em to shoot it one time." Right?

20 A. I mean they talked about that so yeah.

21 Q. But I mean this is your statement.

22 A. Yeah.

23 Q. You said this and this is true. Right?

24 A. Yeah.

25 Q. Okay. "We left there and rode around Willowbrook

1 for a while." Right so far? P. 164

2 A. Yeah.

3 Q. "We also rode to the apartment complex behind the Tech
4 ~~looking for my uncle but we did not locate him. We left~~

5 and was riding through Workman Street and we drove up
6 Walnut Street to Jones Avenue." That's all correct too.
7 Right?

8 A. Yeah.

9 Q. "We saw a car driving past us with the headlights off.
10 This was after midnight." That's correct too. Right?

11 A. Yeah.

12 Q. In fact it was probably a little after one o'clock in
13 the morning then wasn't it?

14 A. I think it was a little earlier than that.

15 Q. All right. "This was a gray and silver BMW. I was
16 driving at the time so I blinked my lights to tell the
17 driver his lights were off - his lights was off." That's
18 all correct?

19 A. Yeah.

20 Q. "There were two white males in the car." That's
21 correct?

22 A. Yeah.

23 Q. "I then said, man, if I had gun I would rob them
24 guys."

25 A. That ain't right.

P. 165

1 Q. You never said that?

2 A. No.

3 Q. So that's the first time that we have something in
4 ~~the statement that's not right?~~

5 A. Yeah.

6 Q. And that's when you said if I had a gun I would rob
7 those guys. Did someone else say that while you were in
8 there or was it someone else who said that?

9 A. No.

10 Q. Antonio say that?

11 A. No.

12 Q. Gary say that? So the police just made this up when
13 they put it in your statement?

14 A. I ain't said it.

15 Q. All right. "The men in the BMW pulled into a driveway
16 on Jones Avenue. I pulled near and told them again that
17 their lights were off." That right so far?

18 A. No.

19 Q. No? They didn't pull into a driveway?

20 A. I don't remember pullin in no driveway.

21 Q. So you're saying now this all happened in the open
22 intersection?

23 A. Yeah. Right there a little bit past the intersection.

24 Yeah.

25 Q. Okay. So they were just free to drive off whenever

1 they wanted to, ---

P. 166

2 A. Yeah.

3 Q. --- there was nothing blocking them? How about the
4 ~~part where it says "I pulled near -- I pulled near and told~~
5 them again their lights was off." Did you tell them their
6 lights was off again?

7 A. I ain't telling them but one time. That was when we
8 was at the intersection.

9 Q. Okay. So you didn't say that a second time. "I was
10 gonna drive off Antonio began asking them if they wanted to
11 smoke some weed."

12 A. Naw.

13 Q. That right?

14 A. No.

15 Q. Antonio didn't ask them anything?

16 A. Naw.

17 Q. But this is your statement. Right?

18 A. And I'm telling you that ain't right.

19 Q. "First he ask them if they had some weed to sell
20 meaning marijuana." You didn't ask them that?

21 A. No.

22 Q. There was no discussion about weed or marijuana at
23 all?

24 A. No.

25 Q. Did anyone ask them anything?

P. 167

1 A. No.

2 Q. Did anyone say anything other than the time you said

3 --

4 A. ~~I'm the only one that said something to 'em when I~~
5 was saying something to them about their lights.

6 Q. All right. And you only did that once?

7 A. Yeah.

8 Q. And it says "If they had any weed we was gonna rob
9 them of it."

10 A. No.

11 Q. So Detective Burris just made that part up for you?

12 A. I don't know what he did. I ain't said it.

13 Q. "I was pulling off from the car when the guys in the
14 BMW backed out into the street then Antonio jumped out of
15 the car and ran up to the driver side of the BMW and ask
16 them if the car was stolen." Any of that right?

17 A. No.

18 Q. They didn't back up their car or try to back up that
19 car?

20 A. No.

21 Q. Antonio didn't - Now Antonio jumped out of the car.
22 You said before Antonio jumped out of the car.

23 A. Yeah Antonio jumped out of the car but I ain't said
24 Antonio jumped out no car and ask 'em about no weed. How
25 did I say that I couldn't hear nothing going on behind me?

1 Q. But your window was down. P. 168

2 A Yeah but I had the radio on.

3 Q. But you were able to speak over the radio to tell them
4 about the lights?

5 A. Man, listen. When ever we was at the intersection
6 I told them to cut their lights on. Yeah I turned the
7 radio down to do that. And we was pulling off and that's
8 when all this stuff took place.

9 Q. And you go on to say that "When Antonio was out he ran
10 up to the driver's side of the BMW and ask them if the car
11 was stolen. Ask them if they had any money and the two
12 guys said no." Any of that right?

13 A. No.

14 Q. None of that's right other than Antonio jumped out.

15 Now did Monta jump out at the same time or just
16 Antonio jumped out?

17 A. Monta got out of the car too.

18 Q. Did they get out at the same time?

19 A. No. Monta got out the front seat first and Antonio
20 got out second in the back seat.

21 Q. Okay. So Monta was first out?

22 A. Yeah.

23 Q. Now you say "Gary was with Antonio." And you're
24 telling me now that Gary never got out of the car?

25 A. No.

1 Q. So -

2 A. Gary never got out the car no. P 169

3 Q. Gary never said anything?

4 A. No.

5 Q. Now who was it earlier that you were saying was -
6 looked like they were asleep in the car?

7 A. Gary.

8 Q. Gary? And where was he sitting again?

9 A. In the back driver's side seat.

10 Q. All right. "Monta and I was telling them - Gary was
11 with Antonio and Monta and I was telling them to come on
12 and let's go then we heard the gun fire." So you're saying
13 you and Gary - or I'm sorry - You and Monta were in the
14 car, that's what you're saying in this statement. Right?

15 A. Naw.

16 Q. So you're saying that's not true?

17 A. That's not true.

18 Q. "Antonio and Gary then ran and got back in the car."
19 And you're saying that was Antonio and Monta that got
20 back in the car?

21 A. Yeah.

22 Q. Gary never got out. "We began asking Antonio what he
23 had - why did he do that and he was pointing the gun at all
24 of us. I drove down the street and then I let Antonio
25 drive his car."

P. 170

1 Q. "Then in 1993 grand larceny, shoplifting and driving
2 without a license." You were convicted of those as a
3 juvenile. Right?

4 A. Yeah.

5 Q. "Then as an adult in 1994 petty larceny and B&E auto
6 and shoplifting. And still in 1994 use of a vehicle
7 without owners consent." You were convicted of all those
8 as an adult. Right?

9 A. Yeah.

10 Q. "In 1995 possession of crack cocaine and in 1996
11 strong armed robbery." And you were convicted of those
12 charges as well were you not?

13 A. Yeah.

14 Q. So you know the difference of being arrested as a
15 juvenile and being arrested as an adult don't you?

16 A. Yeah.

17 Q. And you know that when you're arrested as a juvenile
18 you don't come to General Sessions Court. You don't end up
19 in this courtroom, you end up in Family Court. Right?

20 A. Right.

21 Q. And that's where you went when you had juvenile
22 convictions. Right?

23 A. Yeah.

24 Q. So you knew that Antonio was not going through
25 juvenile court didn't you?

P. 171

1 A. I mean he was housed in the juvenile facility.

2 Q. Because of his age he was held in that wing.

3 A. Yeah.

4 Q. But you knew he was in the courtroom with you when all

5 this was going on wasn't he? When you were doing the
6 hearings and ultimately your plea he was there wasn't he?

7 A. It was me and Monta at the time.

8 Q. He was in the holding cell while you were back in
9 the holding cell too. Not in the same cell but he was back
10 there wasn't he?

11 A. Yeah.

12 Q. So he was in General Sessions up here, he was not down
13 in Family Court was he?

14 A. No.

15 Q. So it's not true to say that you thought he would be
16 treated as a juvenile is it?

17 A. At the time yeah. The man was sixteen.

18 Q. You're saying at the time of your guilty plea you
19 thought he - the day that he pled guilty you thought he
20 would be treated as a juvenile?

21 A. No not then no.

22 Q. But yet you kept up with that story?

23 A. Yeah.

24 Q. You kept up with the story that it was Antonio and
25 not someone else?

P. 172

1 A. Yeah.

2 Q. So then it's not true to say that you did it because
3 you thought he'd get a lighter sentence is it?

4 A. Yeah I did thought he'd get a lighter sentence cause
5 it happened when he was a juvenile.

6 Q. You thought him as the shooter being treated as an
7 adult would give him a lighter sentence?

8 A. Yeah.

9 Q. Let me ask you this, Mr. McCreary. You're not saying
10 to the Court today that you're not guilty of these charges
11 are you?

12 A. Who me?

13 Q. Yes you. You're not telling the Court today that
14 you're not guilty of accessory before the fact of murder
15 are you?

16 A. I think I am yeah.

17 Q. So you think you're not guilty of the crimes that you
18 pled guilty to?

19 A. I mean I might be guilty of accessory after the fact
20 but I don't think I'm guilty of accessory before the fact.

21 Q. Despite the fact you got the gun and you gave it to
22 your friend?

23 A. We ain't get the gun to go shoot nobody or go kill
24 nobody.

25 Q. But you had to get bullets for it too. Right?

P. 1173

1 A. I mean yeah.

2 Q. And you had it for protection. Right?

3 A. Right.

4 Q. So you intended to use it at some point.

5 A. Naw. I mean protection.

6 Q. And you filed a number of PCR's and other motions
7 with an attorney and trying to get out of your charge
8 didn't you?

9 A. Yeah but not that particular charge.

10 Q. No. I'm talking about since then. Since the actual
11 conviction you've had PCR's, you've had hearings.

12 A. Yeah.

13 Q. You've even had to testify in a PCR hearing.

14 A. Yeah.

15 Q. And you claim that - As a matter of fact let me give
16 you a copy of the Post-Conviction Relief hearing where you
17 testified.

18 SOLICITOR THOMPSON: I have a copy for the Court.

19 (DOCUMENTS RECEIVED UP BY THE COURT.)

20 Q. I have one for you. And I believe this was December
21 16th of 2002. Is that correct, Mr. McCreary?

22 A. Yeah.

23 Q. If you'll go to Page 14 starting on Line 12 the
24 question from your attorney.

25 "What do you think the situation was after that Friday

1 after you had been before the judge?"

2 And your answer was "I thought they would go over
3 yonder I mean and pick the jury. I mean well send my
4 indictment on to the grand jury and set a date for a jury
5 trial."

6 And the question was "So as far as you knew you had
7 not entered any plea of guilty on that day; is that right?"

8 And you said, "Yes." So you testified in your PCR
9 hearing that you didn't even think that you entered a
10 guilty plea on the day you entered your guilty plea?

11 A. No.

12 Q. You have to explain what that no means.

13 A. Huh?

14 Q. Did you think you had entered a guilty plea after
15 you entered your guilty plea?

16 A. I said no.

17 Q. You didn't think you had?

18 A. No.

19 Q. And so you testified in your PCR you never entered a
20 guilty plea.

21 A. Yeah cause I at the time I thought I didn't. You say
22 I would get a lesser charge. I mean they was gonna give me
23 a lesser offense of something.

24 Q. Well we just had the transcript of your guilty plea
25 and you on numerous occasions in that as the judge ask you

1 are you guilty and such and such you said yes I'm guilty.

2 A. Yeah cause I was told to say yes.

3 Q. And when you ask - Then he ask you how do you plead
4 and you said guilty.

5 A. And I was told to say guilty. When I come into court

6 --

7 Q. So you knew you were pleading guilty. When you say
8 I'm guilty you're pleading guilty aren't you?

9 A. Yeah.

10 Q. So you knew it.

11 A. Yeah.

12 Q. So you got up in your PCR and just told a lie.

13 A. Huh? I just sat here and told you I was told to say
14 that.

15 Q. Now were you told to get up here and lie in your
16 PCR then?

17 A. No.

18 Q. You did that on your own; is that right?

19 A. No.

20 Q. Well who made you say that back then?

21 (PAUSE.)

22 Q. So I believe if you go to Page 15 starting on Line 5
23 the question is "And you came back into the courtroom
24 before Judge Hayes to be sentenced or in fact were
25 sentenced when he said "you know the sentence of this court

1 is thirty years on accessory before the fact of murder and
2 fifteen years for accessory after the fact of murder. What
3 about at that point did you understand what had happened?"

4 And you said "At that time I couldn't speak."

5 Then it says "Well I mean did you understand at that
6 point that you were not looking or that you were not
7 looking at the possibility of a jury trial?"

8 And your answer was "At some point yes but I couldn't
9 say anything. You know I didn't even know what was going
10 on." So even on the sentencing on the Monday you're saying
11 you didn't realize what was going on?

12 A. Yeah.

13 Q. But you did know what was going on. You knew you were
14 getting your time on that Monday didn't you?

15 A. Yeah.

16 Q. So you lied to the Court again in your PCR hearing.

17 A. I ain't lied to the Court.

18 Q. You just told us you knew what was going on at that
19 hearing. Here in the PCR you said you had no idea that you
20 were gonna be sentenced then. That's a lie isn't it?

21 A. Yeah.

22 Q. All right. And if you go to Page 19 of the
23 transcript. On Page 19 and Line 10 the question is,

24 "Okay, then you went before the judge. All the
25 co-defendant's went before the judge and you all pled

P. 117

1 guilty. Right?"

2 A. Yeah.

3 Q. And your answer was "They pled guilty." And the
4 question was,

5 "You never pled guilty?"

6 And you said, "No". That's a lie as well isn't it?

7 A. Yeah.

8 Q. Mr. McCreary, the truth is that you're hoping that
9 by doing this today that you might get a shot at another
10 new trial yourself aren't you?

11 A. No.

12 Q. You're hoping somehow something will change on your
13 sentence don't you?

14 A. No.

15 Q. There's one thing I'm not clear about, Mr. McCreary,
16 is why is it now after all these years, what is it, 2013?
17 It's almost fifteen years since the day this happened and
18 you gave a statement on the day it happened so its about
19 fourteen and a half years after that. Why is it now that
20 you come out with a different story?

21 A. I'm just trying to come out with this story from the
22 beginning.

23 Q. Did you try to come out with it during your plea?

24 A. No in a PCR.

25 Q. Did you try to come out with it during your PCR?

P. 178

1 A. No.

2 Q. By denying you ever pled guilty?

3 A. No I ain't talking about when I pled guilty. I'm
4 talking about when I was talking about dealing with the

5 armed robbery and all that stuff that was in there.

6 Q. You show us where in your transcript for your PCR
7 you said that Monta was the shooter and the only one who
8 had the gun. Go ahead because it's not in there is it?

9 A. No.

10 Q. So you didn't try back then did you? You haven't been
11 trying all along have you? Have you?

12 A. No.

13 SOLICITOR THOMPSON: Thank you. No further questions.

14 THE COURT: Redirect?

15 MR. THOMPSON: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 TERRANCE MCCREARY BY MR. THOMPSON:

18 Q. I just want to try to clear up a couple of things.

19 Mr. Willy Thompson was asking you about just now
20 about coming forward with your statement. You didn't go to
21 your PCR hearing to - I realize I might be getting a little
22 feel of but with at this hearing - but you didn't go to
23 your PCR hearing to try and help out Antonio did you?

24 A. No.

25 Q. You went to your PCR hearing to try and help yourself.

P. 179

1 A. Right.

2 Q. And from the beginning you haven't - you don't believe
3 that your statement that you gave to the police is
4 accurate?

5 A. No.

6 Q. And that's what you were trying to bring to the
7 forefront of your PCR?

8 A. Right.

9 Q. Was that your statement wasn't accurate. But you
10 didn't at your PCR hearing testify that Antonio was not the
11 shooter, that Monta had the gun. Right?

12 A. No.

13 Q. You didn't testify to that did you?

14 A. No.

15 Q. Did you ever tell Antonio that - or did you tell
16 anybody that before the investigator came to meet with you?

17 A. No.

18 Q. At Kershaw. Now Mr. - Solicitor Thompson ask you if
19 you knew anything was going to help you by coming to court
20 and testify here today. I just want to make sure we're
21 clear. Do you understand this is not a hearing for your
22 benefit. Right?

23 A. Right.

24 Q. You understand we're here to try and - We're here
25 for a new trial on behalf of Mr. Antonio Gordon.

p. 180

1 A. Yeah.

2 Q. And in fact the Judge advised you earlier that you
3 could be committing perjury by testifying here today.

4 A. Yeah.

5 Q. And that could potentially hurt you. Right?

6 A. Yeah.

7 Q. So you're not in here trying to get something better.

8 A. No.

9 Q. You're just trying to tell the truth?

10 A. Yeah.

11 Q. You testified that you intended to use the gun for
12 protection and then Assistant Solicitor started asking you
13 a number of questions about planning on shooting somebody.
14 Were you - I just want to clarify and make sure the record
15 is clear. Were you intending on shooting anybody that day?

16 A. No.

17 Q. Did you know that anybody else was intending on
18 shooting anybody that day?

19 A. No.

20 Q. When you get a gun for protection, is that because
21 you're expecting to commit a crime and shoot at somebody or
22 are you getting it to protect yourself?

23 A. I get it to protect myself.

24 Q. And are you hoping you don't have to use it?

25 A. Yeah.

1 Q. The solicitor was asking you - I think - technical
2 questions regarding Antonio being a juvenile and being in
3 Family Court and General Sessions Court. Do you really
4 understand the distinction between Family Court and General
5 Sessions Court and what the sentences are? Do you
6 understand that?

7 A. Yeah.

8 Q. Did you understand that back then?

9 A. Yeah.

10 Q. Did you think that Antonio because - Did you realize
11 that Antonio was in General Sessions Court or did you know
12 he was in Family Court? Which one did you think?

13 A. General Sessions.

14 Q. You knew he was in General Sessions?

15 A. Yeah but I'm saying at the first when he was a
16 juvenile I was looking at it then as he was a juvenile,
17 he'd be charged as a juvenile.

18 Q. But he eventually came up to General Sessions did you
19 still think he might be treated less harshly because he was
20 a juvenile?

21 A. No.

22 Q. No. Okay. So then were you at that point coming to
23 the plea were you going to cooperate and testify against
24 Antonio because you were just trying to help yourself out?

25 A. Uh-huh.

1 Q. Did you think Antonio at that point was gonna be
2 treated any lighter because he was a juvenile?

3 A. Uh.

4 Q. So it was just at the beginning that you thought that?

5 THE COURT: You need to -

6 He's not answering the questions. He's just kind of
7 mumbling. I don't know what his answers are. If you're
8 satisfied with that, that's fine, but that's not helping me
9 at all.

10 MR. THOMPSON: I apologize, Your Honor.

11 Please say yes or no to my questions. Okay. And if
12 you need to explain, explain. Speak up. Okay.

13 A. Yes, sir.

14 Q. Thank you. When you were planning on testifying
15 against Antonio, did you at that point think that he was
16 going to be treated any lighter because he was a juvenile
17 at the time of the offense?

18 A. When he was a juvenile yes, sir.

19 Q. When the case started out ---

20 A. Yeah.

21 Q. --- you thought that?

22 A. Yeah.

23 Q. When you stood in this courtroom, did you plead
24 guilty, did you still think that?

25 A. No, sir.

1 Q. Cause he was in General Sessions Court with you?

2 A. Yes, sir.

3 Q. So at that point were you still going to cooperate
4 and testify against Antonio to help you out, help yourself
5 out?

6 A. Yes, sir.

7 Q. Now I'm a little bit unclear as to what happened in
8 regard to your statement. Did - And I think you've given
9 perhaps conflicting answers. I just want to try and get it
10 and make it clear. Did you read this statement after it
11 was typed up?

12 A. No, sir.

13 Q. Did you have it read to you after it was typed up?

14 A. He probably - Yeah he read it to me.

15 Q. You think he read it to you. And then did you sign
16 then saying that it was true?

17 A. Yes, sir.

18 Q. Did you realize it was - When did you realize it was
19 inaccurate?

20 A. When I got it myself and I read over it myself.

21 Q. So did you understand - When he was reading it to you
22 did he read it word for word the way it was typed? Do you
23 remember?

24 A. No, sir.

25 Q. And you testified that I think it was before the

1 discussion with Monta you would have testified that Monta
2 was the shooter but after you talked to Monta you decided
3 against that; is that correct?

4 A. Yes, sir.

5 Q. And then at some point in time it shifted from
6 blaming it on Antonio because he was a juvenile to I'm just
7 gonna protect myself?

8 A. Yes, sir.

9 MR. THOMPSON: Excuse me, Your Honor, I apologize.
10 (PAUSE.)

11 Q. And what is the truth? Did Monta have the gun?

12 A. Yes, sir.

13 Q. Monta. To the best of your knowledge did Antonio
14 Gordon ever have that gun that night of the incident?

15 A. Not to my knowledge no, sir.

16 Q. And did anybody discuss robbing anybody or anything
17 like that in the car?

18 A. No, sir.

19 MR. THOMPSON: Beg the Court's indulgence.

20 (PAUSE.)

21 MR. THOMPSON: No further questions, Your Honor.

22 THE COURT: Recross?

23 SOLICITOR THOMPSON: Just briefly, Your Honor.

24 RE CROSS-EXAMINATION

25 TERRANCE MCCREARY BY SOLICITOR THOMPSON:

1 Q. I want to ask you if when you gave that statement
2 down in Kershaw, that fellow just showed up and took the
3 statement. Right?

4 A. Yes, sir.

5 Q. Freely talked to him then. Right? So I think what
6 you're saying is and correct me if I'm wrong, if someone
7 had come to you say in 2000 and said Terrance, tell me what
8 happened. Who had the gun? You would have told them Monta
9 had the gun?

10 A. Yes, sir.

11 Q. And you would have said Monta had it all by himself.
12 None of us had anything to do with this but Monta?

13 A. Yes, sir.

14 Q. And that's way back in 2000 you would have told them
15 that. Right?

16 A. Yes, sir.

17 Q. So really even right after your plea if someone had
18 ask you that you would have said that then in 1999. Right?

19 A. Yes, sir.

20 Q. And it wouldn't a mattered who came and ask you, you
21 would have told them that.

22 A. Probably not yeah.

23 Q. If someone on behalf of Antonio came and ask you, you
24 would tell them wouldn't you? If someone came from Antonio
25 or an investigator for Antonio came to you and ask you back

1 in 2000 Terrance, what happened? You would tell them - - -

2 A. I done gave a statement. Yeah I gave a statement.

3 Q. Right. And you just said Monta was the shooter.

4 A. Yes, sir.

5 Q. Thank you.

6 SOLICITOR THOMPSON: No further questions.

7 THE COURT: You can step down and return to the
8 holding

9 cell.

10 (WITNESS LEAVING WITNESS STAND, ESCORTED FROM
11 COURTROOM.)

12 THE COURT: You've not heard from the jury?

13 That's fine. If we haven't heard from them we haven't
14 heard from them.

15 Anything else?

16 MR. THOMPSON: We will call Antonio Gordon, Your
17 Honor.

18 THE COURT: All right, come around and be sworn.

19 (WHEREUPON, ANTONIO GORDON,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAME CLERK: Thank you. Please have a seat.

22 THE COURT: Mr. Gordon, I chatted with the other two
23 gentlemen because they were here without counsel but you
24 have counsel you certainly don't need me to be telling you
25 anything. You've got an attorney and its up to you and

1 your attorney as to how you want to present things. I'm
2 sure he's advised you that this is being recorded and you
3 are no stranger to these hearings. I just want to make
4 sure you understand what you're doing.

5 MR. GORDON: All right.

6 DIRECT EXAMINATION

7 ANTONIO GORDON BY MR. THOMPSON:

8 Q. Antonio, I'm gonna ask you to speak up and speak
9 clearly. Is that all right?

10 A. Yes, sir.

11 Q. And answer yes, sir; no, sir. And if you need to
12 explain, explain. Okay?

13 A. Yes, sir.

14 Q. When did you discover that Monta Gordon - Let me
15 rephrase that. At the time of your plea what was your
16 understanding as to what Monta Gordon and Terrance McCreary
17 were going to testify to if you went to trial?

18 A. That I was the trigger man.

19 Q. That you shot the gun in this case?

20 A. Yes, sir.

21 Q. And when was the first time you discovered that either
22 of those accounts was going to - had changed?

23 A. It was when my brother Charlie Gordon had wrote me
24 from Tyger River.

25 (WITNESS CRYING.)

1 A. And he kept telling me Man, lied about it too, Monta
2 shot and killed the dude, man. And you always be talking
3 to him, man. That's fucked up, man. You always be talking
4 to him, man. He's got you locked up, man.

5 THE COURT: I missed something.

6 He said his brother who?

7 MR. THOMPSON: Charles Gordon.

8 THE COURT: I got it. I didn't think it was Moffatt.
9 Charles Gordon. Sorry. That's where we started.

10 A. Yeah.

11 THE COURT: Okay.

12 A. And when Willy Thompson - -

13 SOLICITOR THOMPSON: Your Honor, I'm gonna object.
14 He's testifying to hearsay at this point.

15 THE COURT: Well we don't have a jury and I'm gonna
16 let
17 him testify.

18 MR. THOMPSON: Thank you, Your Honor.

19 A. And Willy Thompson kept asking, you know, what action
20 my brother Monta about when did he notify somebody my
21 brother Charles he sent my brother Charles a letter and he
22 confessed to my brother Charles he actually shot the man.
23 So Charles sent me the letter and that's when I talked to
24 an investigator Dave. And I told Dave I said I need for
25 you to go back and speak to all my co-defendants. And the

1 only one that refused to come back or make a statement was
2 Gary Moffatt. They told Dave that his momma told him to
3 leave it alone don't mess with it.

4 Q. And when you say Dave, who are you referring to?

5 A. Dave McDougall.

6 Q. Is he a private investigator?

7 A. Yes, sir.

8 Q. So that was the first time that you found out that
9 anybody was willing to change their earlier accounts?

10 A. Yes, sir.

11 Q. Was when you had the letter forwarded to you by your
12 brother Charles Gordon?

13 A. Yes, sir.

14 Q. From Monta?

15 A. Yes, sir.

16 Q. And did Investigator McDougall then secure affidavits
17 from both McCreary and Monta?

18 A. Yes, sir.

19 Q. Prior to that point what did you believe they would
20 have said if they had been approached by anybody?

21 A. They probably would a kept saying that I was the
22 trigger man.

23 Q. Because that's what they were going to testify to at
24 your trial?

25 A. Yeah.

1 Q. Now were you planning on proceeding to trial in your
2 case?

3 A. Yes, sir.

4 Q. ~~And which of your co-defendant's~~ were going to go to
5 trial with you?

6 A. Terrance and Monta was.

7 Q. Was it going to be a joint trial with all three of
8 you?

9 A. Yes, sir.

10 Q. That's your understanding?

11 A. Uh-huh.

12 Q. And did you later find out that both of them were
13 going to testify against you?

14 A. Repeat that again.

15 Q. Did you find out during that process that they were
16 going to testify against you?

17 A. Yeah.

18 Q. So what - What was the motivating factor for your
19 plea?

20 A. That my co-defendant and them was going to testify
21 against me.

22 Q. If you had known how Monta - Let me rephrase that.
23 You were in the courtroom for Monta's testimony
24 earlier. Right?

25 A. Yeah.

1 Q. And also for Terrance McCreary's testimony.

2 A. Yes, sir.

3 Q. And they testified consistently with what they

4 testified to here today. If they had done that at your
5 trial would you have pleaded guilty?

6 A. No, sir.

7 Q. Why not?

8 A. Because I wouldn't a pled guilty because I wasn't the
9 trigger man. And I wouldn't a pled guilty because I knew
10 that they was telling the truth that I wasn't the trigger
11 man.

12 Q. Now you did tell the police that you - Let me
13 rephrase that. Did you tell the police that you were the
14 shooter?

15 A. Yeah I did tell the police that I shot and killed a
16 man but they promised me something and came in and lied
17 about it. Came in and lied about it. They told me that if
18 I would tell the truth that I would never ever see the
19 streets again. And that if I wanted to see my son and that
20 I would be able to go home and see my son if I told that I
21 shot and killed a man. At that time he brought Terrance
22 McCreary, Gary Moffatt, and Monta's statement and throwed
23 it on the desk at me and told me he said - and that's when
24 he told me, he said, If you don't tell the truth I got
25 statements right here from all of 'em saying that you the

1 trigger man. You shot and killed a man. You gonna get the
2 death penalty. He started telling me all kind of stuff. I
3 ain't never been in that kind of trouble before. I ain't
4 know what to expect.

5 (WITNESS CRYING.)

6 Q. And you initially didn't even tell them that you were
7 the shooter did you?

8 A. No. I initially didn't. I initially told them that
9 Terrance was the trigger man cause my brother he always
10 beat me up when I was little so I was scared to tell them
11 that Monta --

12 THE COURT: We can't understand that.

13 MR. THOMPSON: I understand your emotional. You have
14 to speak up. Okay?

15 A. I was initially scared to tell 'em that Monta was
16 actually the trigger man cause he always beat me up when I
17 was little. So I told 'em that Terrance did it cause I
18 always been scared of him.

19 (WITNESS CRYING.)

20 Q. And quite obviously you were just seeing Monta shoot
21 somebody too hadn't you?

22 A. Yeah.

23 Q. Did you know what Monta was planning - Monta was
24 planning on doing that day?

25 A. No, sir.

1 Q. Was there any discussion about a robbery?

2 A. No, sir.

3 Q. Did you get out of the car?

4 A. ~~Yeah I got out the car. I got out the car I told him~~
5 I said man put the gun down, man, get back in the car.

6 What you doing? And at the time the victim's car was
7 pulling off and that's when the shot was fired and I got
8 back in the car.

9 Q. So if you had had Monta's testimony and Terrance's
10 testimony at your disposal at the time of your trial would
11 you have pleaded guilty?

12 A. Which testimony?

13 Q. The testimony here today.

14 A. No I wouldn't a pled guilty.

15 Q. Now you eventually did plead guilty and you received
16 a negotiated aggragant forty year sentence; is that right?

17 A. Yes, sir.

18 Q. And you realized that if the judge grant you the
19 relieve that we're asking for to grant here today, you
20 don't get a reduced sentence. The charges start over and
21 you're facing at least life imprisonment on the murder
22 charge. Do you understand that?

23 A. Yes, sir.

24 Q. And understanding that you want to go forward with
25 this hearing?

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1 A. Yes, sir.

2 Q. Do you want the judge to give you a chance to present
3 that testimony?

4 A. Yes, sir.

5 Q. And what I mean that testimony, I mean the testimony
6 of Monta Gordon and Terrance McCreary that was here earlier
7 today.

8 A. Yes, sir.

9 Q. And you're asking the judge to over turn your plea?

10 A. Yes, sir.

11 MR. THOMPSON: I beg the Court's indulgence.

12 (PAUSE.)

13 Q. Had you gotten anything from McCreary stating that
14 he was willing to recant?

15 A. No.

16 Q. You just ask the investigator to go talk to him once
17 you had gotten the recanted or the letter from your brother
18 Charles from Monta?

19 A. Yeah.

20 Q. And did you have any reason before then to believe
21 that he would have changed his statement?

22 A. No because we never - we never been in contact with
23 each other.

24 MR. THOMPSON: No further questions of this witness,
25 Your Honor.

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1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 ANTONIO GORDON BY SOLICITOR THOMPSON:

4 Q. ~~Now, Mr. Gordon, you mentioned that your brother~~
5 Charles told you something first?

6 A. No I said Charles sent me a letter that Monta sent
7 him but at first he initially wrote me asking me why Monta
8 keep writing him telling him that he shot and killed the
9 man.

10 Q. All right.

11 A. And everybody -

12 Q. And you have a copy of that letter with you?

13 A. No. When they actually came and told me that I was
14 coming to court today they rushed me and packed my property
15 and so the law work that I had inside my legal box they
16 don't allow us to keep family letters from home inside our
17 legal boxes so I initially kept the letter inside my
18 personal correspondence.

19 Q. Well you would have written statements back to your
20 brother at some point, right? Didn't he write you letters
21 himself?

22 A. That I do what now?

23 Q. Didn't your brother Antonio - I'm sorry - Monta write
24 you letters himself?

25 A. Yeah he write me a letter.

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1 Q. And in some of his letters he said he's changing what
2 he's saying?

3 A. No. He never actually told me that.

4 Q. --Okay. So you never had any letters back and forth
5 with him actually confirming that?

6 A. No but we do correspond though.

7 Q. All right. And how long ago was it that your brother
8 Charles, you were talking about received a letter, or
9 stated to talk to you about this. How long ago was that?

10 A. Charles got locked up in 2010 cause when we was on
11 the street we didn't correspond.

12 Q. Okay.

13 A. And we finally got correspondence privileges in 2011
14 so it was literally after 2011 but it wasn't originally
15 when we first started corresponding that he told me that
16 Monta was telling him that he shot and killed a man.

17 Q. Okay. So then sometime after that?

18 A. Yeah. It was going into like the middle of March or
19 April 2012.

20 Q. But he was having correspondence with Monta before
21 that though. Right?

22 A. Who me?

23 Q. No your brother Charles.

24 A. Yeah.

25 Q. So they had --

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1 A. Well I actually sent the investigator to go talk to
2 my brother Charles too.

3 Q. Okay. And you sent him to talk to your brother
4 Charles was that in like 2010 or?

5 A. No in 2012.

6 Q. And your brother Charles wasn't really involved in any
7 of this was he?

8 A. No.

9 Q. And said your investigator was Dave McDougall. Right?

10 A. Yes, sir.

11 Q. How long has he been your investigator? Since when
12 did he first start telling him about -

13 A. I had Pete Skidmore, Junior going doing some work
14 for me and then I initially when I hired Mr. Thompson to do
15 my Federal Hab I ask him about an investigator and he
16 referred me to Dave McDougall.

17 Q. All right. So how long ago was that?

18 A. It was probably in 2012.

19 Q. And you said before that you had Pete Skidmore, Junior
20 as an investigator?

21 A. Yes, sir.

22 Q. So did he go out and talk to people on your behalf for
23 you at that time?

24 A. Yes. Yes he did.

25 Q. All right. How long have you had Pete Skidmore,

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1 Junior as an investigator?

2 A. Well he not active investigator for me. He - I like
3 - Like getting files. I been trying to get the Rock Hill
4 Police Department files and I been trying to get my file
5 from my attorney and that's how he charged me fees to go do
6 stuff like that or to go out and talk to witnesses. He the
7 one initially took Shanika Dixon affidavit.

8 Q. All right. And that was back in 2008 that he did
9 Shanika Dixon's?

10 A. I - I don't remember.

11 Q. That was at least in the time when you had your PCR
12 filings and I believe there was a hearing in 2009 regarding
13 Shanika Dixon. Correct?

14 A. Yeah.

15 SOLICITOR THOMPSON: Your Honor, the Court has a copy
16 of the order on the PCR that addresses Shanika Dixon and it
17 has the proper time on it.

18 Q. So you were sending someone out on your behalf as far
19 back as then to talk to people who were involved in the
20 case. Correct?

21 A. Not consistently but yes.

22 Q. Okay. And you have contact through your family to
23 at least know what's going on with your brother Antonio.
24 Right?

25 A. I am Antonio.

1 Q. I'm sorry. Monta, your brother Monta. You had some
2 contact with your other family cause he's your brother so
3 you find out what's happening - -

4 A. Me and Monta correspond in mail. We correspond in
5 mail.

6 Q. Okay. And you've been able to correspond with him for
7 what, since you been incarcerated, right?

8 A. Yeah.

9 Q. So since 1999 sometime.

10 A. Yeah.

11 Q. All right. And as well you have contact with Terrance
12 McCreary or could you as well have contact with him by
13 letter?

14 A. No.

15 Q. You can't write Terrance McCreary a letter?

16 A. No.

17 Q. Why is that?

18 A. I don't know. For some reason the warden and them
19 won't approve it. You have to get written approval and
20 it's got to be immediate family. They don't recognize
21 second, third, forth cousins being the family.

22 Q. All right. Let me show you a couple of statements,
23 Antonio. Let's start out with the first statement that you
24 gave to law enforcement. Detective Jerry Waldrup on July
25 23rd, 1998 stating at 10:55 am. There's three pages and

1 that's an accurate copy of the statement you gave to
2 Detective Burris isn't it?

3 A. Repeat that.

4 Q. ~~That's an accurate copy of the statement you gave~~
5 Detective Burris isn't it?

6 A. I think it was actually Detective Waldrup.

7 Q. I'm sorry, one with Detective Waldrup. You're
8 correct. Detective Waldrup. And in this statement you
9 start off by saying - We're just gonna go over it line by
10 line just like you seen me do with the other fellows. I'll
11 have you tell me what's true and what's not true. "Last
12 night the 22nd about 7:00 or 8:00 p.m, I called June Bug
13 who is Terrance McCreary." That's correct so far. Right?

14 A. About the time I'm not sure.

15 Q. Okay. But you made a call to June Bug that night?

16 A. Yes.

17 Q. "I paged him and ask him to come to my house, I needed
18 an amp and speakers and stereo hooked up in my car."

19 That's right?

20 A. Yeah.

21 Q. All right. "My aunt Gloria Watson, Shenika Dixon,
22 (COURTROOM DOOR SLAMMED.)

23 Q. ----- and Willie Gordon and two other guys I did not
24 know came with June Bug." So far that's correct. Right?

25 A. No, sir.

1 Q. None of those folks came with June Bug?

2 A. No.

3 Q. Who came with June Bug?

4 A. ~~Actually the majority of this whole affidavit here~~ -
5 this statement or whatever you want to call it - is not
6 accurate at all.

7 Q. All right. But June Bug did come over at some
8 point?

9 A. Eventually I think some - some kind of way we end
10 up and got 'em but I don't recall how.

11 Q. Okay. But when you say that you all started - you
12 said they stayed about thirty minutes and then June Bug
13 stayed and started to hook up the stereo and ran out of
14 speaker wire. That's correct. Right?

15 A. I don't - I don't recall.

16 Q. All right. "Me and my brother Monta Gordon, Gary
17 Moffatt and June Bug who is Terrance McCreary and me all
18 got into my car and we went to town." So far that's
19 correct. The four of you in the car. Right?

20 A. I know four of us were together that day.

21 Q. And the four of you were in the car. Right?

22 A. Yeah.

23 Q. "We went to Southland first and I ask June Bug when
24 we were going to get the wire. He told me that his aunt
25 was not at home, we rode around in the Marshall Street area

1 as June Bug saw a BMW with no lights on." That's all
2 correct so far. Right?

3 A. Yeah.

4 Q. ~~"He said something about the car. I did not see it~~
5 at first. I was sitting in the back seat the driver side.
6 June Bug was driving." That's correct so far. Right?

7 A. No, sir. Not - The inaccurate part about that I
8 actually went in the back the drivers seat. I was in the
9 back passenger seat.

10 Q. Okay. So you were in the passenger side but in the
11 back?

12 A. Yes, sir.

13 Q. Okay. Tell me where the other guys were, we won't
14 go over the line where Monta and Gary were. You tell me
15 where was Gary Moffatt and where was Monta sitting?

16 A. Monta was in the front passenger and Gary been in the
17 back.

18 Q. Okay.

19 A. In the back.

20 Q. All right. And then you said June Bug said something
21 like "God dame it. Did you see the beamer there? That
22 beamer there?" Is that correct? You recall yelling that
23 out?

24 A. No. I don't - I don't recall that.

25 Q. Okay. "I did not see it but Gary said he did. The

1 beamer pulled into a driveway." You recall that. Right?

2 A. Yeah.

3 Q. So it did pull into a driveway. And that's correct?

4 A. Yeah.

5 Q. All right. "June Bug pulled up and blocked the car in
6 and got out." Is that correct?

7 A. No, sir.

8 Q. Terrance didn't - Now did he block the car in?

9 A. Well as he was trying to explain earlier we was in a
10 four way section. I want to say if I recall this Keels -
11 Keels Avenue or something like that and Spruce Street and
12 we was sittin at a stop sign heading up Keels going toward
13 Saluda. And the BMW was coming down I want to say Spruce
14 Street. The BMW was coming down Spruce Street and the car
15 actually pulled up into a little slot or something. I
16 don't think it was a driveway or something but the car
17 actually went in - When it first pulled up in there
18 Terrance stopped in the middle of the section what he was
19 trying to explain. And the car was trying to back up
20 that's when Terrance pulled up farther to let the car back
21 out in the street.

22 Q. All right. So but initially he was blocking it some
23 way? Cause you were saying Terrance had to pull out to let
24 the car go.

25 A. Yeah.

1 Q. So he was blocking it somewhat initially?

2 A. Not so much as he was blocking it cause they still
3 could have pulled out. He was mainly trying to get out the
4 way so that the car wouldn't hit him.

5 Q. All right. So he was somewhat in the way enough where
6 he might be hit by a car?

7 A. Yeah.

8 Q. Okay. And you - So June Bug did not get out?

9 A. No.

10 Q. But then you say "I got out and my brother got out."
11 Is that right?

12 A. No. My brother got out first.

13 Q. Okay.

14 A. And I got out like thirty seconds after him and then
15 when I was telling him man put that damn gun down.

16 Q. All right. So your brother had the gun when he got
17 out?

18 A. Yeah.

19 Q. You did not have the gun then?

20 A. No.

21 Q. "I walked over and looked into the BMW to see who was
22 in it." Is that right?

23 A. Well when I initially got out the car I did look into
24 the car.

25 Q. Okay. Now you all --

1 A. And at the time Monta didn't have the gun out at the
2 time. And when I was like backing up from him he pulled
3 the gun out and I was man put the damn gun down what the
4 hell you doing. ~~And that's when he reached into the car~~
5 and the car tried to pull off and that's when the shot was
6 fired and we got in the car and left.

7 Q. All right. But you looked in the BMW to see who
8 was in it?

9 A. Yeah. I could tell there was two guys in the car.

10 Q. And you said "June Bug was asking them if they had any
11 money. All I heard was no man I don't have any money." So
12 you're saying June Bug wasn't out asking them anything?

13 A. No.

14 Q. So was it you or was it Monta asking them if they
15 had money?

16 A. Monta ask. I never ask anything.

17 Q. Okay. So Monta ask them if they had money?

18 A. Yeah.

19 Q. And they said no they didn't have any money?

20 A. Yeah.

21 Q. "So I started round the back of the BMW and they
22 started backing up." Is that right?

23 A. No.

24 Q. Okay. What did you do?

25 A. I got back in the car.

1 Q. The car you came in with Terrance?

2 A. Yeah.

3 Q. Okay. "June Bug was standing there with the gun in
4 ~~his hand and they started backing up~~ June Bug kept saying
5 get out of the car and he said this a bunch of times." And
6 you're saying June Bug never had that gun and never did
7 this?

8 A. No.

9 Q. Okay. Now you say you got back in the car. There
10 was never a shot fired when you got back in the car.

11 A. Well at the time when ever I first got out the car
12 Monta had already been out the car like thirty seconds to a
13 minute probably. I'm must estimating.

14 Q. Right.

15 A. And when I first went up to the car I looked inside
16 the car and I could tell there was two guys and at that
17 time Monta pulled out the gun and stated saying give me
18 your money, give me your money. And he had his hands
19 inside the car like that right there and that's when the
20 car had took off like real real fast and the shot was
21 fired. And - And I went to get back in the car. Well
22 actually both of us went and got back in the car.

23 Q. Okay. So you're saying now you didn't get in the car
24 until after the shot was fired.

25 A. Yeah that's what I said the last time. Yeah.

1 Q. Just a minute ago you were talking and we were going
2 over the statement and you said you got back in the car.
3 And the point we were talking about it still no one has
4 ~~fired a gun at this point in the statement.~~ And you were
5 saying you - -

6 A. Well I was explaining the whole thing as it happened
7 and you probably missed - miss confused me in something.
8 But I was explaining the whole thing as it went. I already
9 told you this whole affidavit here really I don't even
10 really remember exactly what I had said in the affidavit
11 cause I already knew this affidavit was - was false.

12 Q. But it is what you said to the officer, Officer
13 Waldrup that day isn't it that morning?

14 A. Yeah.

15 Q. You're not denying you said this to him?

16 A. Yeah. I said - I said this to him.

17 Q. So everything in this statement you agree you told
18 Detective Waldrup that day?

19 A. Yeah but everything in this statement is not accurate.

20 Q. All right. So you were willing at first to blame
21 June Bug for the shooting weren't you?

22 A. Yes.

23 Q. And that's not true is it?

24 A. It was not true that June Bug was the shooter?

25 Q. Correct.

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1 A. No.

2 Q. Cause you even go on to elaborate even further after
3 they drove on off in the car and June Bug was still driving
4 "we left and went to my house. Ask June Bug if he shot

5 that guy and he said no I shot into the air." That's
6 getting a little elaborate in your description there isn't
7 it?

8 A. What you mean a little elaborate?

9 Q. I mean for a lie you're trying to make it really
10 sound like it's the truth.

11 A. I mean if that's what you want to call it.

12 Q. Okay. Let's go down to the bottom of this statement
13 and tell me if this is true. "When June Bug came to my
14 house he was there about an hour before June Bug showed me
15 a gun that he had. It was a chrome .357 caliber." Is that
16 right? Is that true? Is that what happened that night?

17 A. No. Actually somewhere along the line I don't
18 specifically remember cause we had been together all day
19 that day. We had stopped somewhere and he had got that gun
20 but I don't remember where. I don't know whether he had
21 already had it on his person or whether whenever we stopped
22 at a couple of people's houses that I did not know whether
23 he had got it then. In his statement he says something
24 about Anthony somebody I don't even know them people.
25 Never seen 'em in a day of my life. That's the first time

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1 I ever heard their name.

2 Q. Now on the last page of this statement you put in

3 there where it says "I personally appeared before me

4 ~~Antonio Gordon who deposes and said I make this statement~~

5 of my own free will and accord without reward or hope of

6 reward. I have not been mistreated or threatened in any

7 way. All the above is the truth, the whole truth, and

8 nothing but the truth so help me God. And I have read or

9 had read to me the above statement consisting of two pages

10 and have received copies saying that." And you signed that

11 Antonio Gordon; is that correct?

12 A. Yes, sir.

13 Q. And you agree with us today that you sworn this was

14 the truth at the time you signed it?

15 A. At the time I signed it.

16 Q. Right. And no one threatened you or coerced you that
17 day?

18 A. No, sir.

19 Q. Right. Officer Waldrup didn't beat you up or anything
20 like that. You gave this statement of your own free will.

21 Right?

22 A. Yes, sir.

23 Q. And that statement was not completely accurate was it?

24 A. No, sir, it was not.

25 Q. Now later that day I believe Detective Dickens came

1 by to see you. And this is still the same day and this now
2 is around 3:30 in the afternoon where he came to see you.

3 Correct?

4 A. Uh

5 Q. I'll show you a copy of it.

6 A. I don't remember exactly what time it was.

7 Q. But that's what the statement indicates. Correct?

8 A. Yes, sir.

9 Q. And I believe if I recall when Detective Thickens
10 testified regarding the case he ask you something like
11 you gonna let someone else pay for what you had done and
12 then you started giving him this statement didn't you?

13 A. No, sir. That ain't what happened. What happened was
14 he started pounding on tables showing me Monta's statement
15 and Gary Moffatt's statement and Terrance statement. And
16 he told me that I would not be able to go see my baby if I
17 ain't tellin him the truth; that I was gonna get the death
18 penalty but if I told him the truth that I was gonna be
19 able to go home to my baby that same day.

20 Q. Now, Mr. Gordon, you've had a number of post-
21 conviction relief hearings haven't you?

22 A. Uh I probably had like two or three.

23 Q. And you've had - You filed both a State Writ of Habeas
24 Corpus and a Federal Writ of Habeas Corpus. Correct?

25 A. Yes, sir.

1 Q. And you filed a Motion for Appeal. You had an appeal
2 in the case?

3 A. Yes, sir.

4 Q. And every time the testimony was taken in some of
5 these hearings. Right?

6 A. Yes, sir.

7 Q. And you've made these contentions before haven't
8 you regarding your statement?

9 A. I believe I have.

10 Q. And the Court's already ruled on that hasn't it? You
11 don't get another bite at the apple in this do you?

12 A. Well actually my testimony was never taken pertaining
13 to my affidavit, my statement, my confession.

14 Q. So this is something new then today?

15 A. Yes.

16 Q. Now let's look at this statement. Let's go over it
17 and see what's true and what's not.

18 THE COURT: Which one is this?

19 SOLICITOR THOMPSON: It's the second statement given
20 by the Defendant Antonio Gordon given at 3:30 in the
21 afternoon with Detective Thickens.

22 Q. "A couple of weeks ago I bought a blue Chevy Celebrity
23 from a girl named Towanna Burris." Is that correct?

24 A. Yes, sir.

25 Q. And that's the same woman who is Shenika Dixon.

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1 Correct?

2 A. No, sir.

3 Q. That's not the same person?

4 A. No, sir.

5 Q. Shenika Dixon just claimed to be Towanna Burris at
6 one point?

7 A. Yes, sir.

8 Q. Okay. "I paid a Hundred and Fifty Dollars." That's
9 right?

10 A. I don't recall if that much I paid for it.

11 Q. But that was the car you all worked on that night.

12 Correct?

13 A. Yes.

14 Q. "And yesterday me, Terrance McCreary, and my brother
15 Monta and Gary Moffatt was riding around all day." Pretty
16 much right isn't it?

17 A. Yes, sir.

18 Q. "We went swimming in the afternoon then we were all
19 down at my place on Fernsdale." And that's correct.
20 Right?

21 A. Yes, sir.

22 Q. "Monta took the car with Terrance and Gary to ride
23 around." That's right?

24 A. Yes, sir.

25 Q. "I stayed at the trailer on Fernsdale until they came

1 around - until they came back around 10:30 p.m." You still
2 say that's correct?

3 A. Yes, sir.

4 Q. ~~"When they get back I got in the car with the other~~
5 three and we went riding." So you all went riding at this
6 point. Right?

7 A. Yes, sir.

8 Q. "We went to Newport at Terrance peoples place and took
9 a tag off a Honda and put it on the Celebrity." That
10 right?

11 A. That sound about right.

12 Q. Okay. Because you didn't have a proper tag on your
13 car you just bought. Right?

14 A. Yes, sir.

15 Q. So you hadn't gone to like a DMV and done the proper
16 paperwork for you to have a tag for the car. Correct?

17 A. Correct.

18 Q. And you didn't want the police to pull you over
19 because you didn't have an improper tag?

20 A. Correct.

21 Q. So you took the tag off another car and put it on
22 that one?

23 A. Correct.

24 Q. "I also wanted some speakers for my car that Terrance
25 had so we got those." And that's right. Correct?

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1 A. Sound correct.

2 Q. "While we was riding around we just happened to see
3 that car. It was a silver BMW." And that's right? You
4 were just driving around and happened to see it. Right?

5 A. Correct.

6 Q. Okay. "Terrance said it was two girls in the car and
7 they was riding up the street with no lights on." Do you
8 remember Terrance being mistaken about that at first?

9 A. I don't recall that at this point in time.

10 Q. Okay. But it could be correct you're just not sure
11 at this point in time?

12 A. It could be correct but I'm not.

13 Q. All right. "Then we figured out it was two boys.
14 We heard some music like and June". I'm sorry. "We heard
15 some music like and June Bug heard the music and said he
16 had to have the car." So June Bug told you at that point
17 he had to have that car; is that right?

18 A. No, sir, that's not correct.

19 Q. He never told you that?

20 A. No, sir.

21 Q. Is it Monta that told you that?

22 A. No, sir.

23 Q. Is it Gary that told you that?

24 A. No, sir. I don't even know why I put that in this
25 statement.

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1 Q. Did you say that?

2 A. I - I'm not sure that I did but you know.

3 Q. So you may have said that yourself?

4 A. No.

5 Q. Okay. "June Bug gave me the gun and told me to get
6 the BMW." Right?

7 A. No, sir.

8 Q. But that's what you put in this statement isn't it?

9 A. Yes that's what I put in the statement but it's not
10 true.

11 Q. "So I took the gun." You put that in the statement
12 too and you're telling us today that's not true?

13 A. That's not true.

14 Q. "The BMW was in a driveway and June Bug who is
15 Terrance blocked them in." You telling us that's not true
16 today?

17 A. Like I was trying to explain it earlier that - - -

18 Q. Kind of semi blocked them in? Thought he had to move
19 so he wouldn't get hit if they backed out?

20 A. It was like we was at this four way section and when
21 June Bug, Terrance, made the left the car had already done
22 came past us and had pulled up into the driveway but June
23 Bug was far over to the right side of the road so at that
24 point in time he had done pulled past where the car was and
25 the car was trying to back up. June Bug seen that the car

1 was trying to back up out the driveway that's when he
2 pulled on forward. He didn't initially just block them in.

3 Q. All right. So that's not totally correct then what
4 you said here?

5 A. Right.

6 Q. "I went up to the driver's window and I told them I
7 wanted their money." You didn't do that?

8 A. No, sir.

9 Q. But you put it in this statement didn't you?

10 A. Yes, sir.

11 Q. Did Monta do that?

12 A. Like I say Monta was at the window asking them for
13 money.

14 Q. All right. Are you saying that Terrance and Gary
15 never did anything like that?

16 A. No, sir.

17 Q. Did you all have any idea what Monta was gonna do
18 when he went up there?

19 A. We didn't know. We didn't have the slightest idea.

20 Q. But you knew Monta had the gun?

21 A. Well actually I didn't know Monta had the gun until
22 he pulled it out.

23 Q. They say they don't have no money. So you can hear
24 they say that. Right?

25 A. No. I was out the car with Monta when the guy said

1 that. Like I was explaining to you earlier, that when I
2 was at the car when I was looking in Monta pulled out the
3 gun started asking them for their money and the guy said he
4 ~~didn't have no money and tried to pull off.~~

5 Q. And so you say you ask them for their money?

6 A. No I said Monta.

7 Q. Then you say "I was holing the gun pointed at them
8 sideways like." That wasn't you holding the gun pointing
9 it at 'em sideways?

10 A. No, sir.

11 Q. Is that what Monta was doing?

12 A. He look like he had it pointed side ways. I couldn't
13 really tell. He had the gun with his hand off like inside
14 the car.

15 Q. So you were with Monta when he was at the window
16 telling them to give him the money?

17 A. I arrived - Before Monta even pulled out the gun I
18 got out the car. The gun wasn't drawn out yet.

19 Q. Right.

20 A. When I got out the car and went and looked inside the
21 car, that's when Monta pulled out the gun and that's when I
22 told him I said, "Man, what you doing, get back in the
23 car." And that's when he ask the driver for some money and
24 the driver tries to pull off and that's when the gun went
25 off and we got back in the car.

1 Q. So why did you ever get out of the car in the first
2 place?

3 A. I don't know. I - I'm not gonna sit up here and tell
4 a lie. I don't know why I got out the car.

5 Q. "I told them get out the car because my boy wanted
6 the car." So you're saying you didn't say that?

7 A. No, sir.

8 Q. Did Monta say that?

9 A. No, sir. I don't remember him saying anything about
10 a car.

11 Q. So you're saying that no one in the car at any
12 point said anything about robbing these guys or checking if
13 they had marijuana or anything like that?

14 A. I don't recall that.

15 Q. "Monta was standing next to me and Gary got out and
16 went around the other side of the car." Is that right?

17 A. I believe Gary actually did get out the car. But
18 Monta, I was standing beside Monta. Actually I was
19 standing like behind him.

20 Q. Okay. So Gary got out of the car too.

21 A. Yeah.

22 Q. I thought you said earlier it was only you and Monta
23 that were out of the car?

24 A. No. No, no, no. At that time - at that time me and
25 Monta was the only one that got out the car. I'm not sure

1 that Gary got out the car. I know at one point in time
2 that I seen Gary get back into the car but I don't know
3 whether he actually went to the BMW or not so that's the
4 reason why I can't say that Gary went to the car or not.

5 Q. But you say here Gary got out and went around the
6 other side of the car.

7 A. Yeah I said that.

8 Q. Right. Cause that's correct isn't it?

9 A. I don't know.

10 Q. But it's correct that Gary got out?

11 A. I actually seen him like you know how somebody get
12 inside - out a car and then get back in the car and you see
13 their head duckin down in the car and then close the door.

14 Q. All right.

15 A. That's when is seen Gary.

16 Q. So you seen Gary get back in. So now at any time
17 during any of this does Terrance McCreary ever get out of
18 the car?

19 A. No.

20 Q. Okay. So it was just you and Antonio and at some
21 point - I'm sorry, you and Monta and at some point Gary
22 steps out and at least enough to step back into the car?

23 A. Yeah.

24 Q. "They wouldn't get out of the car and started backing
25 up." And that's correct. Right? They wouldn't get out of

1 the car. All right. And they did start backing up.

2 A. At that point the car was already backed up.

3 Q. But you're saying - You just testified earlier that

4 he was holding the gun in - that Monta was holding the gun

5 in and then when the car started moving it hit the gun and

6 the gun went off.

7 A. Yeah he was going forward. I say he - he tried to
8 take off. That's what I said. I said the driver of that

9 car tried to take off.

10 Q. Okay. So you're saying he did the backing up part
11 a little earlier than what's listed in the statement?

12 A. Yeah.

13 Q. Okay. "I had the gun pointed at them and it went
14 off." So you're saying it's not you that had the gun
15 pointed at them, it was Monta?

16 A. Correct.

17 Q. So this is wrong. Monta had it and it went off.

18 And you saw it go off?

19 A. I heard it go off.

20 Q. You didn't see it go off?

21 A. No I heard it.

22 Q. Okay. "I had only one" - I'm sorry - "I had only
23 shot the gun once before and I don't really know how it
24 works." Is any of that true?

25 A. I don't even recall shooting that gun cause I don't

1 play with guns. P. 222

2 Q. "I wish I could have gotten the bullets out but it
3 went off." And that's not true either?

4 A. No.

5 Q. "I thought the guy got hit in the leg." Did you
6 think the guy got hit in the leg after this happened?

7 A. I don't know where he got hit at.

8 Q. Cause you didn't see the shot actually happen?

9 A. No.

10 Q. "The BMW was driving straight. At first I didn't
11 know where the bullet went because the car kept going." Is
12 that right?

13 A. At that time I didn't know whether Monta had done
14 shot and hit him or not cause the car kept going.

15 Q. And because you didn't see whether - the point that
16 he shot didn't you?

17 A. No I didn't see what angle he shot.

18 Q. Okay. So you don't even know if it happened because
19 the car was pulling away and hit his hand cause you didn't
20 see it happen.

21 A. Well actually I'm assuming.

22 Q. Okay. You can't assume. I'm asking what you saw.

23 A. Well I saw Monta had the gun inside the car and ---

24 Q. Okay.

25 A. --- and at the same time that the car was moving

1 forward like fast like voooooooooom. P. 223

2 Q. But you never saw the shot?

3 A. No.

4 Q. ~~Okay. So you don't know whether his hand was struck~~
5 by that car or not.

6 A. I don't know no.

7 Q. Okay.

8 A. I can't say that.

9 Q. You said "Then we all got back in the car." And of
10 course at this time you're talking about you and Monta.

11 Correct?

12 A. Yes, sir.

13 Q. "Terrance was sitting in the car the whole time and
14 he was trying to talk junk to them from the car." Is that
15 right? Terrance was saying stuff.

16 A. I don't recall but he probably did.

17 Q. Okay. So it's a good chance Terrance was saying stuff
18 out of the car.

19 A. I don't recall.

20 Q. Okay. "Then we went to the country to my house on
21 Fernsdale." That's right. Right?

22 A. Actually no we didn't go straight back to the country.

23 We actually rode around and actually came right back
24 through the crime scene and didn't know initially what had
25 happened.

1 Q. Okay. But you didn't ride around long.

2 A. Well it was probably about a hour or two.

3 Q. Okay. "Then Monta took the car to the other boy's
4 home." Is that correct?

5 A. Yes, sir.

6 Q. "The next thing I know is the police chasing my
7 brother because the car got chased back to my house." And
8 that's right?

9 A. Yeah.

10 Q. And then you had one last paragraph. "I want to add
11 that I want to make this statement and I have been offered
12 the opportunity to have my grandmother or mother with me
13 but I just want to tell the truth now and get this over
14 with so I don't need no one with me." And you said that.
15 Correct?

16 A. No, sir.

17 Q. You didn't say that?

18 A. No, sir. I was coerced in saying that.

19 Q. So you're signature letter in this paragraph is not
20 correct?

21 A. I was coerced into saying that.

22 Q. You were coerced into saying that?

23 A. Yes, sir.

24 Q. And you had the opportunity to bring that up in your
25 PCR didn't you?

1 A. I don't think Tara Shirling actually brought it up. I
2 tried to get her to bring it up. She waived a number of my
3 issues without my consent.

4 ~~Q. All right.~~

5 A. And wouldn't raise certain issues.

6 Q. All right. But that could have been brought up in
7 your PCR?

8 A. It could have. I ask her to bring it up. She said
9 because I pled guilty that that issue could not have been
10 brought up.

11 Q. All right. Captain Cabanas ask you "if I wanted
12 someone from my family or a lawyer with me but I'm being
13 truthful about what happened and I'm sorry for it." And
14 you told that too didn't you?

15 A. I was coerced. That whole paragraph I was coerced.
16 That whole statement before they even started I was
17 coerced.

18 Q. Was he physically beating you?

19 A. No he wasn't physically beating me.

20 Q. Then you wrote "I would really like to just get this
21 over with so I can see my seven month old baby." Is that
22 right?

23 A. No, sir.

24 Q. And once again on Page 3 of this its just like the
25 other one. You said "Personally appears before me Antonio

1 Gordon who deposes and says I make this statement of my own
2 free will and accord without reward or hope of reward. I
3 have not been mistreated or threatened in any way. All of
4 ~~the above is the truth, the whole truth, and nothing but~~
5 the truth so help me God." Correct?

6 A. Yeah I signed that.

7 Q. And that's what happened. You gave a sworn statement
8 and you swore this to be the truth the whole truth and
9 nothing but the truth so help you God didn't you?

10 A. I did yes, sir.

11 Q. And you're saying as to this last paragraph you were
12 coerced however you weren't coerced to tell them that you
13 were actually the shooter were you?

14 A. Yes I was because I initially told you earlier that
15 before I even confessed to this crime that he came in there
16 and throwed Monta's statement, Terrance McCreary's
17 statement and Gary Moffatt's statement and told me that I
18 was gonna get the death penalty and that if I didn't tell
19 the truth I'd never see the streets again. And if I did go
20 ahead and tell him that I was the trigger man that I was
21 gonna be able to go home and see my child that same day.
22 That's what he told me.

23 Q. And you would have told your lawyer that back when it
24 happened. Right?

25 A. I told Dan D'Agostino that.

1 Q. And he had a big hearing about that statement didn't
2 he?

3 A. Yes he did.

4 Q. ~~And you had the opportunity to present anything you~~
5 wanted at that hearing didn't you?

6 A. For whatever reason he felt like he didn't want to
7 put me on the stand.

8 Q. Because you didn't - This didn't actually happen like
9 you said did it? You weren't threatened and that's why you
10 didn't go up on the stand isn't it?

11 A. Yeah I was threatened.

12 Q. And as well you told Mr. D'Agostino yourself that you
13 were the shooter didn't you?

14 A. No I did not.

15 Q. You said ---

16 A. Dan D'Agostino -

17 Q. --- you were high on marijuana and you shot the boy.
18 You told him that didn't you?

19 A. No, sir, I did not. Dan D'Agostino came to see me
20 and he ask me why did I confess and I told him exactly what
21 I just told you.

22 Q. Now you remember your PCR, Mr. Gordon?

23 A. Which one?

24 Q. Many of them you've had I know is what's confusing
25 I'm sure.

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1 (PAUSE.)

2 Q. The highlighted portion of the PCR transcript here on
3 Page 31. Would you read the highlighted portion for us
4 please?

5 A. Yeah. "And do you remember agreeing with the
6 solicitor the facts?"

7 And I said, "Yes, ma'am."

8 And she came back and she said "So you don't deny that
9 you committed these crimes?"

10 And I said "I didn't. I didn't deny that I committed
11 the crime." And in that we was talking about and she
12 started me up cause I have a speech impairment and I
13 stutter sometimes and I talk before I can finish saying
14 what I was saying she came back with another question. At
15 the time I thought she was actually talking about - you
16 just went over it - with Terrance and Monta about what they
17 said at sentencing. And that's what I thought she was
18 talking about.

19 Q. But it's - - -

20 A. And if you look at that part of the transcript during
21 the guilty plea the transcript that I did not confess to
22 it. I did not deny anything. I did not say anything. I
23 said that I was sorry and I apologized to the victim's
24 family and that's the part of the guilty plea that I
25 thought she was talking about. And but before I could

1 continue on saying what I was saying because is stutter she
2 thought that I had completed my sentence and was done
3 saying what I was saying and asking me a lot of more
4 questions.

5 Q. Let's get to that. You talk about the fact that you
6 had apologized to the family.

7 A. Yeah.

8 Q. What would be the use of apologizing to the family if
9 you didn't do anything?

10 A. Well I would apologize - I done apologize numerous
11 families whenever tragedies happen. I just had a little
12 cousin whose friend died. I apologized to their family. I
13 said I was sorry to hear about what happened to their
14 family.

15 Q. But this is in a much different context. You're not
16 charged with murder every day are you, Mr. Gordon?

17 A. No, sir.

18 Q. Matter of fact let's go to the transcript of your
19 plea.

20 A. You have a big X here.

21 Q. That's just that first page. This part starts on the
22 next page. You remember the transcript is taken from the
23 entire hearing. And if you'll go to Page 187, Line 15.

24 The Court at that time ask you "All right, now I've
25 heard the facts, I've read your statements but I'm going to

1 ask just for the purposes of the hearing that the Solicitor
2 go over again briefly the facts." And then there's under
3 Line 20 summarizing the facts.

4 ~~"If it please the Court, this occurred on July 23rd,~~
5 1998 here in York County in Rock Hill at South Jones
6 Street. The Defendant in this case was involved and of
7 course sitting in the courtroom are - sitting in the court
8 are the other defendants. I have discussed with Terrance
9 McCreary before the trial" I'm sorry - "with Terrance
10 McCreary before getting out of the car that they would rob
11 Mr. Krenn and try to get the car. As well when he got out
12 he took the pistol with him." And I'm referring to you.

13 "He witnessed Mr. Diaz putting him and Monta Gordon at
14 the window" I'm sorry, that should be the witness - I'm
15 sorry, "He witnessed Mr. Diaz putting him and Monta Gordon
16 at the window of the victim's car trying to steal it. As a
17 matter of fact Mr. Diaz would testify that this defendant
18 had or that the defendant at the window had put his hand on
19 the car door trying to open it while pointing the gun at
20 Mr. Krenn. The window of the car came down at that time.
21 This defendant's palm print" which is you "was lifted off a
22 door exactly where the witness stated he would have been
23 touching it trying to open it. It was matched and we would
24 have had testimony to that effect.

25 The shot was fired by this defendant, he took the gun

1 back in the car and ran off at that point in time. He's
2 under twenty-one years of age and even his girlfriend
3 Shanika Dixon did admit to me when I interviewed her to
4 ~~prepare for this trial Mr. Gordon had admitted to her that~~
5 night he had - he was the one who fired the shot. And she
6 said if she was called to - if she was called would have
7 testified to that.

8 The State will produce those things at trial but if he
9 went to trial the jury would have to determine" - I'm
10 sorry, I skipped to the wrong page. "The State would have
11 produced those things at trial and that is the basis for
12 his guilty plea at this time, Your Honor."

13 The Court says, "All right. Do you agree to those
14 facts, Mr. Gordon?"

15 And you say, "Yes, sir."

16 So you agreed to those facts when you entered your
17 guilty plea didn't you?

18 A. At that time I did yes, sir.

19 Q. Because those facts were true.

20 A. No, sir.

21 Q. If you were not the shooter of this case you would
22 have said at that time I was not the shooter wouldn't you?

23 A. No because Dan D'Agostino told me to answer exactly
24 like Mr. McCreary did.

25 Q. You've already had this in your PCR and your Habeas

1 Corpus and it's already been denied you. You can't go back
2 and argue these things saying over and over again, ---

3 A. I'm not going back arguing the same thing over and
4 over.

5 Q. --- Mr. Gordon. And in this same transcript over
6 and over the judge ask you how you plead to murder and you
7 say guilty. And you're pleading guilty because you are
8 guilty; isn't that right?

9 A. No, sir.

10 Q. So all these charges you pled to you didn't plead to
11 them because you were guilty?

12 A. No I pled because Dan D'Agostino told me that was
13 my best interest was to plead. I never received a motion
14 of discovery from Dan D'Agostino.

15 Q. But yet we have a whole transcript of Dan D'Agostino
16 presenting all sorts of evidence to the Court to try and
17 help you don't he?

18 A. I don't see it.

19 Q. You've seen it in your PCR. You had it in your own
20 hands then didn't you?

21 A. No. This is like when he testified at the PCR hearing
22 that he knowed it was something wrong with the palm print
23 but and he confessed that he never told me that it was
24 problems wrong with the palm print.

25 Q. That's because it was nothing wrong with the palm

1 prints wasn't there?

2 A. Yeah the palm print actually came off the Chevy.

3 Q. Came off what?

4 A. ~~The Chevy.~~

5 Q. Uh-huh. And you know that because you made it up
6 today. Right?

7 A. No.

8 Q. Cause that's never been heard in any hearing and
9 that's just not the truth is it?

10 A. Because Tara Shirling raised my issue without my
11 consent.

12 Q. Your attorney today ask you if you would a pled guilty
13 knowing now what Monta and Antonio say now - -

14 THE COURT: He's Antonio.

15 Q. I'm sorry, Monta and Terrance are saying now you said
16 you wouldn't entered a guilty plea. Right?

17 A. Yes, sir.

18 Q. But you're forgetting about that palm print aren't
19 you? You're just negating that as if that doesn't even
20 exist aren't you if you say that?

21 A. If that's what you say.

22 Q. It shows you were at the car doesn't it?

23 A. Huh?

24 Q. Cause it shows you were at the car doesn't it?

25 A. No.

1 Q. And you're negating Mr. Diaz's testimony that both
2 people who were at the car said - demanded money and ask
3 them to rob those people as to why --

4 A. ~~That's not what Diaz affidavit saying. That's not~~
5 what his affidavit said. He said the person.

6 Q. You didn't actually speak to Mr. Diaz did you?

7 A. Where did you - That's the same way you can make an
8 accusation.

9 Q. I spoke to Mr. Diaz.

10 THE COURT: We're getting a little far. We don't need
11 your testimony.

12 Q. You also negated the fact that Shanika Dixon you also
13 confessed to her didn't you?

14 A. No, sir, I did not.

15 Q. And you also negate the fact that Gary Moffatt has
16 never changed his story has he?

17 A. For whatever reason he have I don't know why but I
18 did send someone to talk to him.

19 Q. And isn't it amazing that all of your co-defendants
20 gave initial statements the day this happened and said you
21 were the shooter including yourself. You did that didn't
22 you?

23 A. No, sir.

24 Q. You didn't say you were the shooter?

25 A. Yeah I actually did at first.

1 Q. And you gave a sworn statement to it?

2 A. Yes.

3 Q. And you testified at the hearing you said those
4 ~~facts were correct that you were the shooter.~~

5 A. I was told to say that.

6 Q. So now somehow today are you being told what to say
7 today?

8 A. No, sir.

9 Q. But somehow you come up with something amazing today
10 once again fourteen and a half years after the incident
11 happened. Tell me isn't it true that you would have known
12 if you were the shooter the moment this thing happened?

13 A. I known then that I wasn't the shooter.

14 Q. And you never raised that in any hearing prior to this
15 hearing. Right?

16 A. Because I didn't have no evidence to support my
17 claim.

18 Q. Because you were the shooter wasn't you?

19 A. No, sir.

20 Q. Because you were the shooter wasn't you?

21 A. No, sir.

22 Q. And you didn't have any evidence to support your
23 claim because you're the shooter. Isn't it true, Mr.
24 Gordon, that after failing in all of your attempts for PCR,
25 an appeal, and Writs of Habeas Corpus, that now you try

1 something totally different, something totally new to get
2 your brother and your cousin - amazing in that they are
3 related to you - to come in and now lie to the Court in
4 ~~hopes of you getting a new trial?~~

5 A. I ask no one to come in and lie to no one.

6 Q. But you're trying to come into this court today and
7 say the only person who was guilty of anything in this case
8 is Monta Gordon. Right?

9 A. Yes, sir, because he's the only one - - -

10 Q. So you're saying Gary Moffatt wasn't guilty of
11 anything was he?

12 A. He guilty just like I'm guilty I guess for being
13 there.

14 Q. And you're saying you weren't guilty of anything
15 cause you didn't do anything except try to stop your
16 brother.

17 A. Exactly.

18 Q. And you're saying that Terrance McCreary isn't guilty
19 of anything cause he didn't do anything either.

20 A. Exactly.

21 Q. And that's not what any of their statements said is
22 it?

23 A. Their statement - their first statement no. They
24 second statement everybody confessed to what they done.

25 Q. Gary Moffatt confessed to what he had done?

1 A. For whatever reason he had not to come back, forward,
2 or whatever, to tell the truth I don't know.

3 Q. And I just want to get one other thing straight.

4 ~~When you're in that room you say the Detective~~
5 threw the statements down of all three of your co-
6 defendants in front of you.

7 A. Yes.

8 Q. And that's coercion to you?

9 A. Yeah. Hittin' on the table.

10 Q. The fact that he showed you some evidence in the case?

11 THE COURT: When you ask a question let him answer it.

12 The Court Reporter is probably having fits.

13 Q. And that's coercion to you?

14 A. Yes. At the time I was a juvenile. I never been in
15 this type trouble before. I never had to make a statement
16 before. I didn't know what to expect.

17 Q. Page 2-0-2 of the transcript of your plea.

18 A. What page?

19 Q. 2-0-2. I said your plea, not your PCR. Page 2-0-2 is
20 where you say you're sorry to the family isn't it?

21 The Court ask, "Antonio Gordon, anything you want to
22 say?" On Line 1. And on Line 3 you say "I'm sorry for my
23 actions that I took place in the crime."

24 So you're admitting that even in your apology that
25 you had actions that took place in this crime that caused

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1 this don't you?

2 A. Well at the time I was thinking by me being there.

3 And actually Monta Gordon I think who had said that.

4 Q. ~~No I believe right under that is Monta Gordon's isn't~~

5 it? Look down to Line 2-0-2 the Court says, "Monta Gordon,
6 do you have anything you want to say?" Cause they start
7 out beginning, "All right, Antonio Gordon, anything you
8 want to say" on line one?

9 A. Oh yeah. Okay. Yeah. Yeah you right. I was
10 actually looking at the wrong part.

11 Q. Now, Antonio, you were also convicted of crimes
12 weren't you prior to this? I believe if you look at the
13 transcript in Line 192 of your plea - or Page 192 of your
14 plea starting with Line 5 the Court ask, "All right, let's
15 do Mr. Antonio Gordon, tell me his record." And I tell
16 your record at that point. "Mr. Antonio Gordon is all a
17 juvenile record. In 1993 he was convicted of an attempt
18 charge. We tried to find out exactly what it was - what
19 that is but the records weren't quite certain. In 1995
20 three convictions of burglary second degree and malicious
21 injury to property and three counts of petty larceny. And
22 he went to R&e on those charges.

23 A. Well actually it was only one but -

24 THE COURT: Wait. Wait. Right now he's just reading
25 what was stated to the Court.

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1 A. Oh.

2 Q. And then in 1997 assault and battery and petty larceny
3 to which he went to R&E as well. And it is my
4 understanding he was released from R&E in January of 1998.

5 And about three or four months later was released from
6 parole and probation on that particular charge at that
7 time.

8 So now you say it was one burglary. But let's just
9 say you were used to - you knew what happened when crimes
10 were charged. Right? The police had talked to you before
11 hadn't they?

12 A. No, sir.

13 Q. The police never talked to you on any of these other
14 cases where you were charged?

15 A. No, sir.

16 Q. You never had to go to court to face what these things
17 did?

18 A. All I did was go to a Family Court judge.

19 Q. But you knew they had serious ramifications didn't
20 you?

21 A. Did I know what had certain ramifications?

22 Q. Those charges as a juvenile.

23 A. Uh yes.

24 Q. And as a matter of fact you pled guilty to those
25 charges in Family Court didn't you?

1 A. Uh well actually the judge never ask me was I guilty.

2 Q. So you didn't plead at all in Family Court or get
3 tried. They just magically convicted you?

4 A. Well honestly I can't remember.

5 Q. You don't remember if you had a trial in any of these
6 charges?

7 A. No. I never had a trial.

8 Q. Okay. So then you must have entered a guilty plea to
9 be convicted of them didn't you?

10 A. I'm not sure because at the time when I went in there
11 I went in there with my grandfather and the judge the only
12 thing I remember the judge said I send you away for forty-
13 five days.

14 Q. And he didn't ask you your rights?

15 A. No.

16 Q. Tell you what your rights were and ask you to waive
17 them just like the judge did here?

18 A. No.

19 Q. So those would be magic convictions. Just happened?

20 A. I don't know.

21 Q. So, Mr. Gordon, despite the fact that you've eaten
22 the apple, you want another one to take another bit don't
23 you?

24 A. No, sir.

25 SOLICITOR THOMPSON: No further questions, Your Honor.

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1 THE COURT: Redirect?

2 MR. THOMPSON: Just briefly, Your Honor.

3 I apologize, I didn't want to blow my nose during

4 his cross examination.

5 THE COURT: I've got a little bit of that myself so.

6 MR. THOMPSON: Excuse me.

7 REDIRECT EXAMINATION

8 ANTONIO GORDON BY MR. THOMPSON:

9 Q. Antonio, I think we might have gotten a little far
10 a field here. I just want to try and bring this back a
11 little bit. To the best of your understanding at your
12 trial, if you had gone to trial, the State would have
13 admitted evidence of your statement and your co-defendant's
14 statement. Correct?

15 A. Yes, sir. Yes, sir.

16 Q. And -

17 SOLICITOR THOMPSON: Your Honor, I'm going to object
18 to leading.

19 THE COURT: Well this is just a motion. There is no
20 jury. I'll - I'd like to kind of move this along so I'll
21 let him lead in the interest of time.

22 MR. THOMPSON: Thank you, Your Honor.

23 Q. And Christopher Diaz who initially identified Monta
24 Gordon was the one who commented and identified you as the
25 shooter. Right? Is that your understanding?

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1 A. That's my understanding.

2 Q. And they were gonna testify that a palm print was
3 taken off the vehicle that Mr. Diaz was in that matched
4 your hand. Right? -

5 A. Yes, sir.

6 Q. And was that to the best of your knowledge substantive
7 evidence of your guilt?

8 A. Now repeat that.

9 Q. Was that to the best of your knowledge what you
10 thought the State was going to present to show that you
11 were guilty?

12 A. Yes, sir.

13 Q. If at that point in time when you decided to plead
14 guilty - Let me rephrase it. Let me back up. Did you know
15 at the time that you were going to plead guilty that both
16 Monta Gordon and Terrance McCreary were going to testify
17 against you?

18 A. Yes, sir.

19 Q. And testify that you were the shooter?

20 A. Yes, sir.

21 Q. And did you know that Gary Moffatt was going to
22 testify to the same thing?

23 A. Yes, sir.

24 Q. Had you had known - if you had had the ability at
25 that point to present the testimony of Monta Gordon and

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1 that he was in fact the shooter and you had nothing to do
2 with the shooting would you have gone to trial?

3 A. Yes, sir.

4 Q. If you had had the opportunity at that point in time,
5 if Terrance McCreary was going to come into court and
6 testify that Monta Gordon got out of the car with the gun
7 and he got back into the car with the gun, and that nobody
8 had discussed a robbery, would you have pleaded guilty or
9 would you have gone to trial?

10 A. I'd gone to trial.

11 Q. If you had had both of those, if you had both that
12 testimony of Monta Gordon and the testimony of Terrance
13 McCreary would you have gone to trial?

14 A. Yes, sir.

15 Q. And the Assistant Solicitor was asking you a number
16 of questions about your bite at the apple and that sort of
17 thing. Have you ever presented the testimony, the issues
18 that we're presenting here today, regarding Monta Gordon's
19 testimony and Terrance McCreary's testimony you've ever
20 presented those to any other Court before?

21 A. No, sir.

22 Q. You had known about this, had you had known that Monta
23 Gordon was going to testify what he testified to today,
24 would you have presented it before?

25 A. Yes, sir.

1 Q. If you had known that Terrance McCreary was willing to
2 back track and testify to the truth as opposed to
3 testifying against you, would you have presented that
4 testimony before?

5 A. Yes, sir.

6 Q. And this is the first available opportunity you've had
7 to do that?

8 A. Yes, sir.

9 Q. Is that what you want the judge to do here today is
10 to give you the opportunity to let the jury decide whether
11 or not your guilty? Given all the evidence, given the
12 evidence that the Solicitor went over with you, let the
13 jury hear Monta Gordon and let the jury hear Terrance
14 McCreary and decide whether or not you're guilty?

15 A. Yes, sir.

16 MR. THOMPSON: No further questions.

17 THE COURT: Any recross?

18 SOLICITOR THOMPSON: No further questions, Your Honor.

19 THE COURT: All right. You can step down and have a
20 seat with your attorney.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Does that complete the hearing?

23 MR. THOMPSON: We have no further witnesses. A brief
24 argument, Your Honor.

25 THE COURT: Is the State gonna have any witnesses?

1 SOLICITOR THOMPSON: No, Your Honor.

2 THE COURT: Okay. I think I know the issues and I
3 know
4 you've handed me up the Angelis Case and I know what the
5 factors are. I'll be glad to hear argument but we been
6 tilling this sort of pretty heavy but if you want to till
7 it some more let me know.

8 MR. THOMPSON: The only thing I would just - I'd just
9 hand up one case, Your Honor, and I'll limit it to that.

10 (DOCUMENTS RECEIVED UP BY THE COURT.)

11 MR. THOMPSON: I handed up State versus Mercer 381
12 S.C. 149, 672 S.E. 2d 556. And at the - This case has a
13 number of issues but in terms of - in terms of it's
14 relevancy to this case, Your Honor, it's on Page 15 of this
15 document and it's I guess -

16 THE COURT: In there?

17 MR. THOMPSON: Uh yeah. 381 S.C. 170 and then about
18 Page 567 of S.E. 2d, it's right at the very bottom, it's
19 the last paragraph before Sub Heading 7th. It says "the
20 question before us is whether the trial court denied a post
21 trial motion which is a motion for a new trial based on
22 after discovered evidence amounts to an abuse in
23 discretion. We hold it is not.

24 In so ruling they are sensitive to the notion that a
25 mere finding of a witnesses' lack of credibility does not

1 complete the analysis because a witness may lack persuasive
2 credibility and still create reasonable doubt."

3 That is just what I want to draw your attention to,
4 Your Honor. I am quite confident that the State is going
5 to argue that Monta Gordon is not credible, he is given
6 multiple statements that are inconsistent to one another,
7 that Terrance McCreary is not credible, he is also given
8 multiple statements that are not consistent with one
9 another. That even my client does not ----- to the issues
10 in this case that he's not credible either. But the issue
11 is not honesty whether or not they are credible but whether
12 not a jury whether or not there is a - well that is
13 probable that a jury would find that given their testimony
14 in the context of their case would still find beyond a
15 reasonable doubt that Antonio Gordon was guilty of murder
16 in this case.

17 We submit that it does not. We have Monta Gordon who
18 says he is the shooter. And Terrance McCreary says that
19 Monta Gordon had the gun and got back in the car with the
20 gun. And I think that under the factors that have been set
21 forth in - to grant a new trial based on after discovered
22 evidence we have met all those because of the critical
23 nature of those witnesses' testimony regarding who actually
24 was the shooter in this case.

25 THE COURT: Briefly. Anything?

1 SOLICITOR THOMPSON: Just briefly, Your Honor.

2 I think it's obvious that all three people who
3 testified today purgered themselves today, lied completely
4 about what the testimony was today, nothing about it that
5 could be true. I think exactly what the defense's argument
6 you shouldn't consider credibility is exactly what the
7 Court tells you as the presiding judge to determine the
8 credibility of these witnesses' and that they won't go back
9 on your decision on what the credibility is.

10 And I think it's obvious that at the beginning of this
11 case each one of these defendants gave statements including
12 the Defendant Antonio Gordon himself that Antonio Gordon
13 was the shooter and they gave those the same day that this
14 happened.

15 And he tries to claim that the coercion that he had is
16 the Detective coming in and throwing down statements from
17 co-defendants in front of him which I submit to the Court
18 could not have happened because if we look at the dates
19 that each one of the co-defendants the date and time that
20 each one of the co-defendants statements were taken, the
21 statement for Terrance McCreary was taken from 3:35 to
22 5:10. The statement and Antonio with his second statement
23 is taken from 3:30 to 4:10. Terrance's statement wasn't
24 done by 4:10 when Antonio was finishing his statement. So
25 they couldn't have put Terrance's statement in front of the

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1 defendant at that time.

2 Now Gary Moffatt gave one from about 3:00. I think it
3 was 3:30 to 4:05 somewhere in that area or I'm sorry, 3:00
4 to 3:30 cause it was the same detective that did that.
5 It's Detective Thickens that took his statement. And Monta
6 gave his earlier in the day but there's no way Terrance
7 could have been there so there is no way it can be true
8 that he's saying they put down the statements of all three
9 co-defendants in front of him because they didn't have all
10 three co-defendant's statements at that point.

11 That's just one of a mired of things that his
12 obviously lying about in this case. I would point out the
13 defendants testimony himself, Antonio's testimony was that
14 he had contact with his brother by letter and could have
15 had that back in 2000. You heard his brother testify and
16 that he could have talked to his brother when those letters
17 and at any time ask him to come forward and tell the truth
18 cause of somehow that he wasn't the shooter. Antonio would
19 have known that and you can't really separate the fact that
20 Antonio would have known from the time of the shooting that
21 he wasn't the shooter to now he has people who would
22 testify for him.

23 Because if that's the case we can just keep waiting
24 and waiting and waiting in every case you can bring back
25 co-defendant's at some point who are hopeless and say oh

1 you know what I'm gonna help my brother out and I'm gonna
2 say this and I'm gonna say that now. That's one of the
3 reasons credibility is such a big thing here because
4 without it you can't do this. And it brings to light the
5 problem that we have with the case that never actually went
6 to trial. Because I shouldn't - The State's not in a
7 position that they should have to present witnesses. I
8 shouldn't have to go back and find witnesses from fifteen
9 years ago to kind of put up the case now in this hearing.
10 If you had gone to trial we would have had transcripts and
11 we can just look at the transcripts and we wouldn't have to
12 worry about anything else.

13 It puts the State at a huge disadvantage cause
14 basically what that would be doing is granting him a new
15 trial if I had to present witnesses right now regarding
16 everything in this case. But all I can do as an officer of
17 the Court you can see what was done in pretrial but as an
18 officer of the Court I can point out there is no question
19 as to where that palm print came from from him. It was off
20 of the victim's - it was off from the victim's car right
21 there at the door that had the diagram of it and
22 everything.

23 I talked to Lieutenant Terry Taylor who did that
24 analysis and who lifted the print and did the analysis. I
25 had him prepared to testify at the time. I can say that I

1 talked myself with Shenika Dixon and she told me that the
2 defendant confessed to her that he was the shooter and that
3 she would testify to that. And we subpoenaed her at trial
4 but as you can see from the PCR they went and sent an
5 investigator to her who then came out saying oh wait a
6 minute she was coerced too. So her statement wasn't right
7 either.

8 And then she came in and testified completely falsely
9 as it's written in the PCR thing that said Oh the
10 solicitor's office never contacted me. I never said any of
11 this stuff, I never interviewed with anyone, I wasn't
12 subpoenaed. But the defense had subpoenaed her, we had
13 subpoenaed her, and I had spoken to her personally with an
14 investigator prior to the trial and she lied as to what she
15 said and then came in and said something different. That
16 was something that was in one
17 of the PCR - many PCR hearings.

18 But I have to point out from the beginning all four
19 defendant's before they could have ever thought oh Antonio
20 everything will be light on him saying Antonio was the
21 shooter including Antonio. This is very different than
22 many other cases. There are some cases in the case law
23 where co-defendant's come back and change the story but in
24 those there were trials and some of those there was a
25 defendant who had denied from the beginning that he was

1 ever the shooter. And that could be an issue. But that's
2 not an issue here. And it's not even close to an issue
3 here.

4 As I stated and as I presented earlier in the week,
5 his attorney Dan D'Agostino admitted under oath in the PCR
6 that the defendant admitted to him that he was the shooter.
7 So he's lying to his attorney back then and of course he
8 denies that today. But once again he's gone and had every
9 bite at the apple that you could possibly have fourteen and
10 a half years after a case is happened there is no way it
11 should be coming back from a plea as something like this
12 today that's egregious that we're having to go through this
13 that Mr. Krenn has to come in and sit through this again.

14 I would point out by the elements that we have just
15 for the Motion for the New Trial. Rule 29(b) says itself
16 that a motion based on after discovered evidence has to
17 come within a year of discovery of the evidence or a date
18 the evidence could have been discovered or ascertained in
19 the reasonable diligence. But we heard the testimony of
20 Terrance McCreary saying he'd told everybody long ago.
21 This defendant had constant contact with his brother, he
22 could have ask him long ago. We don't have any evidence he
23 ever ask his brother to come and testify for me or help me,
24 out or do anything like that.

25 He doesn't have any of these letters that were

1 supposedly written that they try to say happened. He
2 doesn't have as I said Terrance McCreary said you would
3 have told anyone back in 2000 or even 1999 right after this
4 thing happened if they had sent someone to talk to him. He
5 obviously had people he was sending out. He even had Pete
6 Skidmore, Junior going out and investigating things well
7 more than a year ago or a year before this was filed.

8 So yes with due diligence he could have found these
9 things out before because in his own mind if he were not
10 the shooter he knew he wasn't and he would have actively
11 been seeking someone to tell that he was not the shooter or
12 some other evidence.

13 But that's not what he did and that's not what the
14 other defendant's did. The other defendant's they all
15 played their own game defendant's play trying to get
16 themselves off and they all went through that line
17 including Mr. Antonio Gordon. They just tried to get
18 themselves off until they get to the point that
19 everything's denied and he's told he can't file any more
20 frivolous PCR's and they come up with this with his brother
21 and his cousin. Cause the one who's not related to them,
22 Gary Moffatt, he never changed his story. He remained the
23 same. His statement is the same that Antonio is the
24 shooter that they talk about robbing these guys.

25 These guys wouldn't even admit that they brought a car

1 in and that's standard in the entire thing. In speaking
2 with Mr. Diaz in preparation for trial he told me the two
3 guys at the door were Antonio Gordon and Monta Gordon and
4 that the guy who did the shooting touched the car and he
5 was the only one who touched the car. And we have the palm
6 print that shows Antonio Gordon is the one who touched the
7 car.

8 He also told me that both of the guys were saying give
9 us your money repeatedly. In my notes I have it repeatedly
10 saying they were saying give us the money, give us the car,
11 get out of the car. They were saying things like that at
12 them repeatedly both of them. So I have to point out to
13 the Court that despite the fact that now they want to say
14 oh it's only one person that did anything. That's
15 obviously not true either. And the hand of one is the hand
16 of all and that would have been applied as well. He could
17 have been convicted just as easily as an accomplice even if
18 a jury couldn't determine who the shooter was.

19 And he testified that if I had known these things I
20 wouldn't have pled guilty but that's not the standard here
21 today. And even if it was that was considered in his
22 PCR's. That's already been considered with other evidence
23 if he pled if and only if. He's been saying that for
24 years. And obviously to no avail so he tried something new
25 now. He tried something else new.

1 So I have to look this evidence wouldn't have changed
2 the result at trial. The hand of one the hand of all, all
3 the defendant's statements, the ballistics that match back,
4 the victim's testimony and what it would have been Mr.
5 Diaz, all lead back to the right things including Shenika
6 Dixon's testimony would have been that he admitted to it.
7 If he would have had to testify as Mr. D'Agostino said he
8 would have had to say I was high on marijuana I shot the
9 boy.

10 The second prong that the evidence has been discovered
11 since the trial: He knew whether he was the shooter the
12 day it happened. And you can't separate that from the fact
13 as to whether someone else might testify to that. It's not
14 - No defendant on the initial trial is really gonna have
15 access to his co-defendant's to force them to testify. No
16 defendant.

17 So if then we just turn around and say well every time
18 a defendant later on when all the things go wrong for me
19 after fourteen and a half years if they are allowed then to
20 bring all this stuff up they were just asking to have
21 people make stuff up left and right and bring folks in
22 hearings like this and drag victims through things on
23 guilty pleas. Pleas where he's waived his right. He's
24 waived his right to call witnesses' on his behalf. To have
25 the State present testimony. To have the State call any

1 witnesses' or then to cross examine those witnesses. He
2 gives them all this legal issues in that colloquy and he
3 did it here.

4 The evidence could not have been discovered prior to
5 trial by the exercise of due diligence. Once again if he
6 had sent someone to talk to Mr. McCreary or Mr. - or his
7 brother Monta I think he would have gotten that. He had
8 people go and talk to other people like Shanika Dixon. I
9 submit to you he probably had contact with them. It's his
10 brother and his cousin. His family has contact with him
11 all the time it's only logical. But the idea to come
12 around and say their lying now didn't come until recently.
13 So that's why this comes now. He could have easily
14 discovered it if it were true by going after it back then.

15 Whether the evidence is material. Quite frankly it
16 may not be. The hand of one is the hand of all. The
17 testimony of the other people involved, the statements of
18 the other co-defendant's, even with cross examination with
19 Gary Moffatt alone would be enough to convict the defendant
20 along with all the forensic evidence.

21 And then I think the fifth thing is evidence is not
22 merely accumulative or impeaching but I would have to say
23 the evidence that he's presented today is nothing but a
24 little bit of impeaching evidence for those defendant's who
25 testified today because the vast majority, everything

1 they've said up to today has been the opposite of what they
2 said today. Cause they all pointed to Antonio and that's
3 the way its been for the last fourteen years until what
4 July and August of 2012 when suddenly these statements
5 arise.

6 And, Your Honor, I truly believe that this is a sham
7 by Antonio Gordon and he's playing the system. I believe
8 he's not entitled to have this motion on something that was
9 not a trial. I think the case that the defense handed up
10 just before we started with the testimony I don't see where
11 it even addresses the fact that that issue was covered.
12 Yes it appears to be a plea that ultimately they did a
13 hearing for after discovered evidence. But they don't
14 address whether that's appropriate. I don't see how that -
15 I just don't see how it is, I don't see how it can be. But
16 even if it is, there is no belief in the defendants.

17 They changed their statements while they sat on the
18 stand. Things went back and forth. They would agree to
19 certain parts of their statements originally and then just
20 a few minutes later they'd go back and say oh no that's not
21 true or no that's not true, no that's not true.

22 I think it's obvious even a casual observer that this
23 was a farce by each one of these guys who testified today.
24 And I ask the Court to look at it as such to find that
25 there is no credibility in these testimonies of these

1 witnesses. And even if there was any credibility there's
2 still more than enough evidence to convict Antonio Gordon
3 at trial as being involved in this case. There is
4 independent evidence of far beyond those witnesses but what
5 would still come in are the statements of Antonio Gordon
6 that he gave early on saying that I'm the shooter. What
7 would still come in are the statements of Terrance McCreary
8 saying he was the shooter. And I would say let's rob them
9 - And what would still come in is the statement of Monta
10 Gordon saying Antonio did it. My brother Antonio did it.
11 We were talking about robbing but Antonio did it.

12 All those statements would still come in even at a new
13 trial. And a jury would look at that and there is no way
14 that he would be found not guilty at a trial. And I would
15 have to say too that it would be completely unfair to the
16 State that at this point have to find all the witnesses
17 involved in this case to come back and testify for
18 something like this. Thank you.

19 MR. THOMPSON: If I can just add a couple of things,
20 Your Honor. First I meant to correct myself earlier and I
21 made a note to do it. On Monday I think I told the Court
22 that Mr. Diaz had identified Antonio Gordon the following
23 day. I think on the 24th he identified Monta Gordon as the
24 shooter. Then the following day he identified Antonio as
25 the shooter. I was incorrect. He just put Antonio outside

1 the car. He did not actually identify Antonio as the
2 shooter right then. Apparently we're still going with
3 Monta as the shooter then. You know just to address a
4 couple of things the Solicitor said. I'm not going to go
5 back over all of that, Your Honor. Your Honor knows the
6 issues.

7 Just with regard, Monta Gordon testified quite fairly
8 that he was not willing to come forward and testify to
9 anything before now. These individuals - That the State
10 tries to make this out to be some grand conspiracy that all
11 these individuals have now lost all of their cases and they
12 are now coming in. This is not - not an immediate turn
13 around. It's been years for most of them. I know Antonio
14 is not the case but Terrance I believe this Court can take
15 judicial notice of the various filings that each of the
16 defendants have made.

17 You know it's certainly not - Its certainly not
18 something that I think Monta testified at these hearings.
19 It's not that Monta or Terrance - I apologize I forget
20 which ones. But that their hearings - in their PCR
21 hearings were denied in 2009 at the latest. Its been
22 years. This isn't something that's just occurred randomly.
23 It's because this is the truth. And the evidence that was
24 presented here today is that Monta Gordon was the shooter.
25 This is not run of the mill you know somebody who is

1 recanting their statement or somebody is coming in and
2 saying oh you know I don't' remember what I said. This is
3 somebody coming into court and saying I shot the man. I
4 shot him. It was me. And that is far in a way different
5 from almost every other case you can find dealing with
6 after discovered evidence cause that doesn't happen.

7 You know the Solicitor wants to make this out to be
8 something that you know we open the flood gate you know we
9 grant Mr. Antonio Gordon a new trial in this case we're
10 gonna open the flood gates. No we're not. We don't get
11 cases just like this. There aren't many cases where a
12 trigger - you know someone comes into court after denying
13 for fifteen years that they were the shooter and then comes
14 into court and says you know what I am the shooter.

15 And I submit that its fair to Antonio Gordon to give
16 him a chance to present that testimony to the jury. If
17 Antonio - If Monta Gordon is to be believed and if Terrance
18 McCreary is to be believed, and I'm basing this on after
19 discovered evidence, I'm not even mentioning one Antonio
20 testified to here today, if they are to believe Antonio
21 Gordon is not guilty of murder he's not guilty of criminal
22 conspiracy, he's not guilty of anything. The hand of one
23 is the hand of all does not apply when there is a sole
24 actor involved that there is no conspiracy, there is no
25 active enjoined concert. If they are to believe Antonio

1 Gordon is not guilty of anything at all. And I don't
2 submit - I don't agree that the evidence to the contrary is
3 over whelming and even if - even if there is strong
4 evidence that's what that Mercer case goes back to is that
5 even if Monta Gordon is not credible or even if Terrance
6 McCreary is not credible their story is not so incredible
7 that a jury would one hundred percent not believe them I
8 believe that it is probable that if a jury heard Monta
9 Gordon come into court and say I was the shooter, I acted
10 alone that Antonio Gordon would be found not guilty under
11 the need standards and outlined in the other cases we
12 believe that relief should be granted in this case. Thank
13 you.

14 THE COURT: All right. Well I'm gonna take it under
15 advisement. And we got a verdict in the other case. We're
16 gonna take about a five minute break.

17 SOLICITOR THOMPSON: Your Honor, just one brief thing
18 regarding the case.

19 THE COURT: Wait just a second.

20 Go ahead.

21 SOLICITOR THOMPSON: Regarding the case *State versus*
22 *Mercer* I believe the Defense handed up. In the same *Mercer*
23 case I read it's somewhat similar to this in that the
24 defendant denied being the shooter at the trial. And his
25 co-defendant later claimed he was the shooter so it does

1 have some claims that the shooter happened in the case the
2 defense handed up.

3 THE COURT: We'll take about a five minute break.

4 (COURT IN RECESS AT 05:00 P.M..)

5 (END OF TRANSCRIPT OF RECORD.)

6 (COURT BACK IN SESSION AT 05:05 IN THE MATTER OF STATE
7 VERSUS STACY SINDELL WITH ASSISTANT SOLICITOR JOHN SHIFLET
8 AND ATTORNEY JACK SWERLING.)
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CERTIFICATE OF REPORTER

State of South Carolina)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 General Sessions for York County, South Carolina, on the 12th day of October, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: March 26 / 2014

VOLUME ONE OF TWO VOLUMES

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

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ANTONIO GORDON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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EXHIBITS

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I.D. E.V.

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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.

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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

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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

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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

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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.

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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,

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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 BELLEMEY, 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,

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

P. 290

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

P.291

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

P. 292

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

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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?

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25 Q WHAT SHIFT WERE YOU WORKING?

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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

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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?

P. 297

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

P. 298

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?

P. 299

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

P. 300

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.

~~P.300~~ P.301

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

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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

P. 303

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?

P. 304

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.

* No Probable cause *

P.305

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

P. 306

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?

P. 307

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

P.308

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?

P. 309

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?

P. 310

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.

P. 311

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.

P. 312

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

P. 312

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.

P. 314

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

P. 315

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?

P. 316

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

P. 317

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

P. 318

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

P. 319

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?

P. 320

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?

P.321

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

P. 322

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

P. 323

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

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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.

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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.

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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

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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?

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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.

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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.

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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.

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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

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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.

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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

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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

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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?

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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

P. 336

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.

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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.

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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

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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

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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?

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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.

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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.

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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

P. 344

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

P. 345

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?

P. 346

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

p. 347

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

P. 348

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

P. 349

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.

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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

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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

P, 352

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.

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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

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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

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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.

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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?

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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 VERSUS 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

p. 358

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

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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

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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?

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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,

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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

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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

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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

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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

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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.

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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 --

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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

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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.

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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

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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.

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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.

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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

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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?

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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

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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

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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?

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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

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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?

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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

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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

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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

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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

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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?

p. 401

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

P. 402

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

p. 403

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

p. 404

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.

P. 405

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?

p. 406

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.

p. 407

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

p. 408

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.

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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.

P. 410

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

p. 411

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

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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.

p. 413

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?

P. 414

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

p. 415

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

P. 416

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.

P. 417

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

P. 418

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

P. 419

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

P. 420

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

P. 421

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

P. 422

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?

P. 423

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

D.424

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?

P. 425

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

P. 426

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?

P. 427

- 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.

P. 428

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?

P. 429

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.

p. 430

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

p. 431

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.

D. 432

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.

P.433

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.

P. 434

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

p. 435

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

0.436

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.

P. 437

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

P. 438

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

P. 439

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?

P. 440

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?

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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

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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

P. 444

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 SIGNALLED 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

p. 446

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

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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

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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.

P. 449

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

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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

P.451

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

P. 452

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

P. 453

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

p. 454

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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STATE OF SOUTH CAROLINA
COUNTY OF YORK

COURT OF GENERAL SESSIONS

STATE OF)
SOUTH CAROLINA)

-V-

TRANSCRIPT OF RECORD

ANTONIO GORDON,)
MONTA GORDON, AND)
TERRANCE MCCREARY,)
DEFENDANTS)

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

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

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I N D E X

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IN CAMERA TESTIMONY:CHRISTOPHER WELLBORN

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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

P. 460

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

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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

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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

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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

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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

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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

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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.

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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.

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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

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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

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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

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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.

0.472

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.

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

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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?

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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.

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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?

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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.

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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

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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.

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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

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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

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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.

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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

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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

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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,

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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.

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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?

p. 489

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.

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CROSS EXAMINATION BY MR. D'AGOSTINO:

Q OFFICER WALDROP, WHO ASSIGNED YOU TO INTERVIEW MR. GORDON, ANTONIO GORDON?

A IF I REMEMBER CORRECTLY I THINK IT WAS CAPTAIN CABINESS.

Q WERE YOU EVER AT THE CRIME SCENE?

A NO, SIR.

Q WERE YOU EVER AT THE GORDON HOUSEHOLD?

A NO, SIR.

Q WAS HE UNDER ARREST WHEN YOU GOT TO HIM AND STARTED TAKING THE STATEMENT?

A TO MY KNOWLEDGE I ASSUMED HE WAS.

Q ALL RIGHT. HE WAS IN HOLDING, COULDN'T LEAVE THE POLICE STATION, COULD HE?

A THAT'S CORRECT.

Q THERE WAS SOMEBODY SITTING OUTSIDE THAT DOOR SO HE COULDN'T LEAVE IF HE WANTED TO?

A THAT'S CORRECT.

Q DID YOU EVER TELL HIM HE COULD LEAVE?

A NO, SIR.

Q THAT ROOM THAT YOU INTERVIEWED HIM IN IT'S ABOUT, HOW BIG IS IT, DO YOU KNOW?

A 12 BY 20.

Q OKAY. AND THERE WAS A BIG TABLE IN THE MIDDLE OF IT, WASN'T THERE?

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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?

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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?

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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,

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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

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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

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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

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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

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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

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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?

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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

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April 24, 2015

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SC Court of Appeals

RE: 2013-000975

Dean Md. Kitchings:

Please find enclosed the correction to the amended supplemental record on Appeal. If you'll look Clerk on the front of each Legal envelope I have the volumes listed as Volume one, Continuance of Volume one and Volume Two. The opposing Counsel have been served

Antonio Gordon

LEGAL

LEGAL
Gordon

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SC Court of Appeals

* Volume One *

South Carolina Court of Appeals

Jenny Abbott Kitchings, Clerk

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