

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Barnwell County

Doyet A. Early, III, Circuit Court Judge

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S.C. Supreme Court

TUNZY A. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001970

APPENDIX

JOHN H. STROM
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT 98-GS-06-180
 99-GS-06-78
 99-GS-06-79

STATE OF SOUTH CAROLINA,)
 PLAINTIFF)

-VS-)

TRANSCRIPT OF RECORD
 VOLUME I

TUNZY ANTWAIN SANDERS)
DEFENDANT)

FEBRUARY 5-8, 2001
 BARNWELL, SOUTH CAROLINA

BEFORE:

THE HONORABLE JAMES R. BARBER, III, JUDGE AND A JURY.

APPEARANCES:

GRANT GIBBONS, ASSISTANT SOLICITOR
 BILL WEEKS, DEPUTY SOLICITOR
 2ND JUDICIAL CIRCUIT

DANIEL W. WILLIAMS, ESQUIRE
 BRENDA K. SANDERS, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT

BRENDA W. SIGWALD, CIRCUIT COURT REPORTER
 P.O. BOX 711, NEW ELLENTON, SOUTH CAROLINA 29809

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PRETRIAL MOTIONS

MR. GIBBONS: YOUR HONOR, THERE ARE SOME MOTIONS TO BE
HEARD IN THE CASE OF STATE VS. SANDERS.

THE COURT: ALL RIGHT. MR. WILLIAMS?

MR. WILLIAMS: YOUR HONOR, PLEASE THE COURT, I'M DAN
WILLIAMS AND I ALONG WITH BRENDA SANDERS OF THE MICHIGAN BAR
REPRESENT TUNZY SANDERS. I BELIEVE THIS CASE IS SCHEDULED TO BE
CALLED FOR TRIAL TOMORROW AND WE HAVE SEVERAL MOTIONS THAT ARE
PENDING. MANY OF THESE MOTIONS WERE FILED PRIOR TO THE OCTOBER 2000
TERM OF COURT.

AND THE FIRST THAT WE HAVE ON MY LIST IS A MOTION FOR A
CHANGE OF VENUE AND THIS RELATES TO SEVERAL STORIES IN THE LOCAL
BARNWELL PAPER CONCERNING THE PREVIOUS TRIAL AND WHAT WENT ON,
CONCERNING THE APPEAL OF THIS CASE, CONCERNING A MURDER THAT
HAPPENED APPROXIMATELY 10 DAYS BEFORE THE LAST TRIAL WAS SCHEDULED
AND COMPARING THAT MURDER TO THE TRIAL. I HAVE ATTACHED AN
AFFIDAVIT AND SEVERAL ARTICLES FROM THE LOCAL NEWSPAPER, INDICATES,
WE BELIEVE, A BIAS THAT WILL PREJUDICE ALL POTENTIAL JURY VENIRE
AGAINST MR. SANDERS AND FOR THAT REASON, WE WOULD MOVE FOR A
CHANGE OF VENUE.

IN PARTICULAR, ATTACHED TO MY AFFIDAVIT, FILED WITH THE
COURT IS AN ARTICLE RELATED TO THE SHOOTING AT THE SONIC RESTAURANT
ON OCTOBER 18, 2000 AND AN EDITORIAL, WHICH I THINK WHEN READ IN THE
LIGHT FAVORABLE TO MR. SANDERS MAY CALL FOR SOME KIND OF, MAYBE
VIEWED AS AN ATTEMPT TO GET A POTENTIAL JURY TO CONVICT MR. SANDERS

1 BEFORE HE'S HAD HIS DAY IN COURT AND THOSE ARE FILED WITH THE COURT
2 AND I HAVE A COPY HERE FOR YOU.

3 THE COURT: I THINK YOU'VE GOT THEM ATTACHED TO YOUR
4 MOTIONS. I'VE READ EVERYTHING YA'LL HAVE SUBMITTED. ALL RIGHT.
5 ANYTHING FURTHER?

6 MR. WILLIAMS: WELL, THAT WOULD BE WITH REGARD TO THAT
7 MOTION, YOUR HONOR.

8 THE COURT: ALL RIGHT. WELL, LET'S TAKE THEM ONE AT A TIME.
9 WHO'S GOING TO ARGUE THE MOTION TO CHANGE VENUE? WHO WANTS TO
10 ARGUE FOR THE STATE?

11 MR. GIBBONS: YOUR HONOR, I'LL DO THAT. YOUR HONOR, I
12 BELIEVE UNDER THE 6TH AMENDMENT, WE WOULD HAVE TO ACTUALLY HAVE
13 THE JURY IN HERE AND QUESTION EACH ONE OF THEM AS TO WHAT THEY'VE
14 HEARD AND IF THEY CAN LAY THAT ASIDE IS THE FRAMEWORK I BELIEVE THAT
15 WE WOULD HAVE TO FOLLOW. I DON'T KNOW IF WE CAN TELL IF WE HAVE A
16 JURY THAT'S BEEN TAINTED BEYOND REPAIR UNTIL WE ASK EACH JUROR WHAT
17 THEY'VE HEARD ABOUT THE CASE.

18 THE COURT: THAT IT?

19 MR. GIBBONS: THAT'S IT.

20 THE COURT: ANYTHING IN RESPONSE?

21 MR. WILLIAMS: NOTHING, YOUR HONOR.

22 THE COURT: ALL RIGHT. WELL, I DON'T THINK THAT'S
23 COMPLETELY RIGHT, MR. GIBBONS. I THINK, CLEARLY, YOU CAN -- A CASE
24 COULD BE SET, STATED THAT ON ITS FACE SOMEONE MIGHT NOT GET A FAIR
25 TRIAL WITHOUT HAVING TO BRING IN THE JURY AND CONCLUDE A VOIR DIRE

1 PROCESS. BUT I DON'T THINK THAT'S SHOWING HAS BEEN MADE IN THIS
2 INSTANCE. I'M GOING TO -- I READ THE NEWSPAPER ARTICLES THAT WERE
3 SUBMITTED, INCLUDING BOTH OF THEM THAT YOU'VE JUST SITED. YA'LL HAD
4 SUBMITTED SOME OTHER ARTICLES TOO RELATING TO OTHER MATTERS AND,
5 YOU KNOW, I DON'T THINK ON THE FACE OF WHAT YOU'VE TOLD ME BASED
6 UPON THE FACT THAT THERE WAS A SUBSEQUENT MURDER IN WHICH SOME
7 PEOPLE WERE KILLED THAT THIS DEFENDANT IS NOT INVOLVED IN, OR AT LEAST
8 HAS NOT BEEN CHARGED UP TO THIS POINT THAT I'M AWARE OF, BUT THAT IN
9 AND OF ITSELF WOULD MEAN THAT THE JURY -- WE COULDN'T GET A JURY OF
10 WHICH COULD NOT GIVE THE DEFENDANT A FAIR TRIAL. WE CERTAINLY WILL
11 ATTEMPT TO ADDRESS SOME CONCERNS YOU MIGHT HAVE WHEN WE GO
12 THROUGH THE VOIR DIRE PROCESS AND IF THINGS CHANGE AT THAT TIME, WE
13 MAY LOOK AT IT. BUT I DON'T THINK, BASED ON THE SHOWING THAT HAS BEEN
14 PRESENTED TO THE COURT, THAT A JURY PANEL FROM BARNWELL COUNTY
15 COULD NOT BE FAIR AND IMPARTIAL IF THEY'VE BEEN AFFECTED BY EITHER
16 MEDIA OR SOME OTHER MEANS.

17 OKAY. WHAT ELSE WE GOT?

18 MR. WILLIAMS: YOUR HONOR, THE NEXT MOTION THAT I HAVE ON
19 MY LIST IS A MOTION TO EXCLUDE TESTIMONY OF STATEMENTS OF JAILHOUSE
20 INFORMANTS AND THIS IS PURSUANT TO MESSIAH VS. THE UNITED STATES. IN
21 ESSENCE THERE WERE TWO PEOPLE AT THE BARNWELL JAIL WHO SAID THAT
22 TUNZY SANDERS MADE STATEMENTS PERTAINING OR REGARDING THE
23 OFFENSES FOR WHICH HE IS CHARGED AND I WOULD ASK A MESSIAH HEARING
24 BE HELD WITH BOTH OF THOSE WITNESSES AVAILABLE TO QUESTION AND MAKE
25 SURE THAT THEY, IN FACT, WERE NOT COERCED BY THE POLICE DEPARTMENT.

1 THE COURT: OR MAY NOT BE AN AGENT OF THE STATE WHICH
2 VIOLATES THEIR RIGHT TO COUNSEL.

3 MR. WILLIAMS: THAT'S CORRECT.

4 THE COURT: WELL, CERTAINLY IF -- THERE'S JAILHOUSE
5 SNITCHES INVOLVED IN THIS?

6 MR. GIBBONS: YES, SIR.

7 THE COURT: WELL, WE WILL HOLD A HEARING, PRETRIAL
8 HEARING, RELATING TO THEIR METHOD OR MEANS THAT THEY -- THAT MAY
9 HAVE BEEN USED IN SECURING WHATEVER INFORMATION.

10 MR. GIBBONS: YES, SIR. WE'RE PREPARED TO DO THAT. THERE
11 ARE TWO JAILHOUSE INFORMANTS INVOLVE DIN THIS CASE.

12 THE COURT: HOW LONG AGO WERE THESE JAILHOUSE -- YOU'VE
13 KNOWN FOR A NUMBER OF MONTHS ABOUT THESE JAILHOUSE ---

14 MR. GIBBONS: THEY WERE EXISTING BEFORE THE PRIOR TRIAL,
15 YOUR HONOR.

16 THE COURT: OKAY. SO THEY TESTIFIED AT THE LAST TRIAL?

17 MR. GIBBONS: YES, SIR.

18 MR. WILLIAMS: BUT, YOUR HONOR, FACTS HAVE ARISEN SINCE
19 THE LAST TRIAL WHICH WE THINK WE HAVE A RIGHT TO CROSS-EXAMINE THEM
20 ON.

21 THE COURT: I'M NOT DENYING THAT. I HAVE A RULE THAT IF
22 SOMEONE -- IT'S MY OWN PERSONAL RULE -- THAT IF SOMEONE USES A
23 JAILHOUSE SNITCH, THEY'VE GOT TO GIVE 10 DAYS NOTICE. NOW, APPARENTLY
24 YA'LL HAVE -- THAT'S NOT AN ISSUE. I DON'T LIKE IT 5 MINUTES BEFORE THE
25 TRIAL STARTS THE STATE SAYS, OH BY THE WAY. BUT THAT DOESN'T APPEAR

1 TO BE THE ISSUE HERE.

2 MR. GIBBONS: WE DO HAVE AN ISSUE HERE AS TO ONE OF THEM,
3 YOUR HONOR. THERE ARE TWO OF THEM, DAVID STALEY IS ONE OF THEM AND
4 HE IS CURRENTLY IN THE DETENTION CENTER AND HE WILL BE AVAILABLE TO
5 APPEAR. THE OTHER INDIVIDUAL IS AN INDIVIDUAL BY THE NAME OF AURELIN
6 VIGIER, HE'S A FRENCH NATIONAL. AND PRIOR TO THE OCTOBER TERM, I WAS
7 ABLE TO GET SERVICE ON HIM THROUGH HIS PROBATION OFFICER, HE'S BEEN
8 ON PROBATION. HE FAILED TO SHOW UP ON THAT SUBPOENA IN OCTOBER AND I
9 UNDERSTAND FROM THE PROBATION OFFICE HE HAS SKIPPED PROBATION AND
10 WE'VE BEEN TRYING TO SERVE HIM FOR 3 MONTHS. I HAVE AFFADAVIT FROM
11 THE SHERIFF'S OFFICE IN AIKEN WHERE THEY HAVE BEEN UNABLE TO LOCATE
12 HIM. THEY HAVE TRACED HIM TO FLORIDA THROUGH HIS PARENTS AND WE
13 WOULD BE SUBMITTING HIS TESTIMONY THROUGH HIS PRIOR TESTIMONY
14 UNDER AN UNAVAILABLE WITNESS PROVISION IN THE RULES OF EVIDENCE. I
15 HAVE THE TRANSCRIPT WITH HIS FORMER TESTIMONY FOR YOUR HONOR, IF
16 YOU'D LIKE TO REVIEW THAT. THE MESSIAH HEARING AND HIS TESTIMONY.

17 MS. SANDERS: YOUR HONOR, ACTUALLY, WE'RE GOING TO BE
18 OBJECTING TO THE ADMISSION OF THE TRANSCRIPT IN THE STEAD OF MR.
19 VIGIER. YOUR HONOR, ON THE LAST TRIAL, I WAS SITTING AT THIS TRIAL
20 OBSERVING, HOWEVER, NOT BEING ALLOWED TO PARTICIPATE. I DID NOT HAVE
21 THE OPPORTUNITY TO THOROUGHLY CROSS-EXAMINE MR. VIGIER IN ANY FORM.
22 IN FACT, I DID NOT CROSS-EXAMINE HIM AT ALL. I BELIEVE THAT HAD I HAD THE
23 OPPORTUNITY TO CROSS-EXAMINE HIM, MY QUESTIONS WOULD HAVE BEEN
24 MUCH DIFFERENT THAN THOSE THAT WERE POSED TO HIM AT THE TIME.

25 FOR THAT REASON, YOUR HONOR, WE'RE GOING TO OBJECT TO

1 ANY TRANSCRIPT BEING ADMITTED, THE REASON BEING THAT I, AS COUNSEL
2 NOW FOR MR. SANDERS, WOULD NOT HAVE HAD THE SIMILAR OPPORTUNITY TO
3 CROSS-EXAMINE MR. VIGIER AS I WOULD HAVE HAD AT THE FIRST TRIAL. SO
4 WE'RE GOING TO OBJECT TO THAT TESTIMONY, YOUR HONOR, BEING ADMITTED.

5 THE COURT: WELL, YOU CERTAINLY HAVE THE RIGHT TO.

6 MR. GIBBONS: YOUR HONOR, WE'LL BE RELYING ON RULE 804 B
7 SUBSECTION 1, UNDER FORMER TESTIMONY. HE WAS AVAILABLE AT THE PRIOR
8 TRIAL, HE WAS UNDER OATH, HE WAS EXAMINED BY A PARTY OF INTEREST AS
9 WELL AS THIS DEFENDANT AND CLEARLY UNDER THE RULE, THAT WOULD BE
10 ADMISSIBLE TESTIMONY THROUGH TRANSCRIPT AND I'LL BE GLAD TO FURNISH
11 YOUR HONOR WITH A COPY.

12 THE COURT: MY UNDERSTANDING WAS THIS CASE WAS TRIED,
13 THE STATE SECURED A CONVICTION, THE CASE WAS APPEALED AND IT WAS
14 REMANDED BECAUSE THE DEFENDANT'S SISTER WAS NOT ALLOWED TO
15 PARTICIPATE IN THE TRIAL. IS THAT CORRECT?

16 MR. GIBBONS: THAT'S CORRECT, YOUR HONOR, YES, SIR.

17 THE COURT: WELL, NOW, THE SISTER PARTICIPATING AS ONE OF
18 THE ATTORNEYS FOR THE DEFENDANT, I ASSUME YA'LL'S POSITION IS THAT --
19 WELL, WE'LL FIND THAT OUT IN THE HEARING TOMORROW. I UNDERSTAND
20 WHAT YOU'RE SAYING.

21 MR. GIBBONS: WOULD YOU LIKE TO HAVE THAT COPY?

22 THE COURT: THAT WOULD BE GREAT.

23 MR. GIBBONS: THERE'S THE MESSIAH HEARING, THE MESSIAH
24 TESTIMONY AND YOUR HONOR, HERE'S A -- WE MIGHT WANT TO MAKE THIS A
25 COURT'S EXHIBIT, HERE'S --

1 THE COURT: YA'LL WANT TO TRY TO HAVE A HEARING THIS
2 AFTERNOON?

3 MR. GIBBONS: WELL, I DON'T KNOW IF WE HAVE TO HAVE A
4 HEARING ON THIS ONE BECAUSE WE DON'T HAVE A LOT OF TESTIMONY, THIS IS
5 ALL ON PAPER, I BELIEVE.

6 MR. WILLIAMS: YOUR HONOR, I THINK WE DO NEED TO HAVE A
7 HEARING BECAUSE NOT ONLY ---

8 THE COURT: WAIT A MINUTE, YOU THINK WE NEED TO HAVE A
9 HEARING ON WHAT?

10 MR. WILLIAMS: WELL, THERE'S FACTS THAT HAVE DEVELOPED
11 SINCE MR. VIGIER WAS HERE AND TESTIFIED LAST TIME. FOR EXAMPLE, A DEAL
12 WAS CUT WITH THE SOLICITOR'S OFFICE. WE'RE NOT GOING TO BE ABLE TO
13 CROSS-EXAMINE HIM ON THAT. THAT'S WHY THE TESTIMONY SHOULD BE
14 EXCLUDED, I BELIEVE. SO WE'RE PROBABLY GOING TO NEED A FULL HEARING
15 ON THAT.

16 MR. GIBBONS: WE MIGHT NOT NEED A FULL HEARING, YOUR
17 HONOR. WE'RE NOT SURE WHO WE'RE GOING TO PUT UP IN THE TRIAL, THAT'S
18 THE PROBLEM.

19 MR. WILLIAMS: THAT'S MY PROBLEM, YOUR HONOR.

20 THE COURT: WELL, APPARENTLY THAT'S EVERYBODY'S PROBLEM
21 BUT MINE. WELL, WE WILL HOLD A HEARING. ARE YA'LL SAYING WE NEED IT
22 RIGHT NOW, OR YOU WANT TO DEAL WITH IT WHEN WE BRING THE OTHER --
23 WHOEVER HE IS, THE OTHER WITNESS OVER HERE.

24 MR. GIBBONS: YES, SIR. I WAS JUST GOING TO LEAVE THESE
25 COURT DOCUMENTS SO I COULD LEAVE THEM WITH THE COURT AND YOU'D BE

1 ABLE TO LOOK OVER WHAT WE'VE SUBMITTED.

2 THE COURT: I DON'T KNOW IF YOU NEED TO DO THAT BECAUSE
3 I'M GOING TO TAKE THEM AND READ THEM ON THE WAY BACK TO COLUMBIA
4 AND READ THEM ON MY WAY HERE IN THE MORNING. I'D JUST AS SOON NOT BE
5 TAKING COURT EXHIBITS WITH ME.

6 MR. GIBBONS: YES, SIR.

7 THE COURT: DO YOU HAVE COPIES?

8 MR. GIBBONS: I CAN MAKE SOME.

9 THE COURT: THAT WAY YOU CAN KEEP THESE - - I ASSUME YA'LL
10 HAVE SEEN THESE?

11 MS. SANDERS: I'M NOT SURE WHAT HE'S GIVEN TO YOU, JUDGE.

12 MR. WILLIAMS: IF THAT'S THE TRANSCRIPT, WE'VE GOT COPIES OF
13 THAT.

14 THE COURT: WELL, HE'S SHOWING ME THE AFFIDAVIT OF NON-
15 SERVICE ON MR. VIGIER AND HE'S SHOWING ME A COPY OF THE TRANSCRIPT OF
16 MR. VIGIER'S TESTIMONY AT THE HEARING - - AT THE TRIAL, LAST TRIAL.

17 MR. WILLIAMS: WE'RE FINE WITH THAT, YOUR HONOR.

18 THE COURT: ALL RIGHT. NOW, YA'LL HAVE A MOTION YOU WANT,
19 A MOTION TO SET BOND?

20 MR. WILLIAMS: THERE'S NO NEED, I THINK TO HEAR THAT ONE.

21 MS. SANDERS: WELL, IF THE COURT IS INCLINED TO, CERTAINLY
22 HEAR THE MOTION, I'LL POSE THE MOTION TO THE COURT, YOUR HONOR.

23 THE COURT: IF THE COURT'S INCLINED TO WHAT? I'M INCLINED
24 TO LET YOU HAVE A MOTION, WHATEVER YOU WANT TO MOVE IN FRONT OF
25 THIS COURT, I'M INCLINED TO LET YOU DO THAT.

1 MS. SANDERS: WELL, CURRENTLY MR. SANDERS IS UNDER NO
2 CONVICTIONS AT THIS TIME. HE HAS NO PRIOR RECORD, HE'S A LIFETIME
3 RESIDENT OF BARNWELL WHERE HE RESIDED WITH HIS FAMILY. UP UNTIL THE
4 TIME OF THIS CHARGE, LIKE I SAID, NO PRIOR RECORD. PREVIOUSLY A BOND
5 WAS SET AT \$30,000 CASH, YOUR HONOR. AND THAT WAS WHEN HE WAS
6 EXACTLY SITTING UNDER THESE CIRCUMSTANCES, NO CONVICTION AT THAT
7 TIME, NO PREVIOUS RECORD. NONE OF THOSE - - -

8 THE COURT: LET ME ASK YOU SOMETHING. WE'RE GOING TO
9 START THIS TRIAL TOMORROW?

10 MS. SANDERS: YES, SIR.

11 THE COURT: TOMORROW MORNING WHEN THIS CASE IS CALLED - -
12 IF I SET HIS BOND, HE WOULD BE TAKEN BACK UNDER MY CUSTODY. IF I SET A
13 BOND, ARE YA'LL IN THE NEXT HOUR AND 10 MINUTES PREPARED TO EITHER
14 SECURE A BOND, PAY A BONDSMAN?

15 MS. SANDERS: YES, WE ARE, YOUR HONOR.

16 THE COURT: YOU'RE PREPARED TO DO THAT?

17 MS. SANDERS: YES, SIR.

18 THE COURT: WELL, GO AHEAD AND TELL ME WHAT YOU WANT TO
19 TELL ME THEN.

20 MS. SANDERS: WELL, I JUST ASK THE COURT TO SET A BOND - - I
21 DON'T KNOW IF HE'S - - HE'S NOT CURRENTLY UNDER BOND, BUT TO SET A BOND
22 AND WE BELIEVE THAT A \$30,000 BOND IS REASONABLE AND IT WILL BE A BOND
23 THAT WILL SECURE HIS PRESENCE AT ANY FUTURE COURT HEARINGS, YOUR
24 HONOR. AND THAT IS THE PURPOSE OF A BOND, IS TO ASSURE ONE'S PRESENCE
25 AT FUTURE COURT HEARINGS AND THEN IF THEY FAIL TO APPEAR, OF COURSE,

1 THEN WHATEVER WAS POSTED FOR THE BOND WOULD BE FORFEITED. AND
2 THOSE CIRCUMSTANCES HAVE NOT CHANGED AT THIS POINT. HE HAS NOWHERE
3 TO GO. HE'S HERE IN BARNWELL. HE'S RAISED HERE, BORN HERE, YOUR
4 HONOR. AND THOSE ARE THE FACTORS THAT THE COURT HAS TO CONSIDER IN
5 SETTING A BOND.

6 THE FACT THAT HE WAS PREVIOUSLY CONVICTED OF THIS OFFENSE
7 AND IT WAS OVERTURNED REALLY SHOULD NOT BE A CONSIDERATION. THE
8 FACTORS ARE ONE'S PROPENSITY TO MAYBE ABSCOND AND WE HAVE NO
9 INDICATION OF THAT WHATSOEVER.

10 THE COURT: WELL TWO FACTORS IS, IS HE A FLIGHT RISK OR A
11 DANGER TO THE COMMUNITY?

12 MS. SANDERS: NO, I WOULD ALSO OFFER THIS TO THE COURT.
13 INITIALLY WHEN HE WAS ---

14 THE COURT: THOSE ARE THE TWO FACTORS I'M GOING TO
15 CONSIDER.

16 MS. SANDERS: OKAY. WELL I'M GOING TO ADDRESS THAT.

17 THE COURT: YOU MAY CONSIDER SOMETHING ELSE.

18 MS. SANDERS: WELL, YOUR HONOR, I BELIEVE THIS GOES TO
19 FLIGHT. INITIALLY WHEN HE WAS QUESTIONED BY THE POLICE, HE HAD THE
20 OPPORTUNITY TO ABSCOND AT THAT POINT AND HE DID NOT. WHEN THEY
21 ARRESTED MR. SANDERS, HE WAS AT HIS HOME IN THE BED. HE KNEW THAT THE
22 POLICE WERE LOOKING FOR HIM. HE KNEW THAT HE COULD ABSCOND AT THAT
23 TIME. HE CERTAINLY HAD THE ASSISTANCE OF HIS SISTER AS COUNSEL IF HE
24 WANTED TO LEAVE THE JURISDICTION. HOWEVER, HE CHOSE, ALONG WITH ME
25 TO STAY IN THIS JURISDICTION AND FACE THESE CHARGES BECAUSE HE SIMPLY

1 FELT HE'S NOT GUILTY OF THESE CHARGES. SO HE STAYED IN THIS
2 JURISDICTION, EVEN THOUGH HE HAD THE RESOURCES TO ABSCOND AT THAT
3 TIME, YOUR HONOR.

4 AND I THINK THAT GOES TO HIS INCLINATION TO FLEE. HE HAD
5 THE OPPORTUNITY INITIALLY, AT THE OUTSET AND HE DID NOT. SO I'D ASK THE
6 COURT TO SET A \$30,000 CASH BOND, YOUR HONOR.

7 MS. GIBBONS: YOUR HONOR, MR. SANDERS HAS BEEN IN CUSTODY
8 SINCE THE DAY HE WAS ARRESTED. THE STATE WILL PROPOUND THAT HE'S
9 FACING A LIFE SENTENCE, HE WOULD BE A FLIGHT RISK. IN FACT, HE'S A
10 DANGER TO THE COMMUNITY ---

11 THE COURT: A BOND -- A \$30,000 BOND WAS SET AND HE DID NOT
12 MAKE THAT BOND? IS THAT RIGHT?

13 MS. SANDERS: AT THAT TIME, YOUR HONOR, WE DID NOT POST
14 THAT BOND, BUT WE ARE PREPARED TO POST IT NOW.

15 THE COURT: YOU'RE PREPARED TO POST A BOND?

16 MS. SANDERS: YES, SIR.

17 MR. GIBBONS: YOUR HONOR, I DON'T KNOW THAT THERE HAS
18 BEEN A CHANGE IN CIRCUMSTANCE OTHER THAN THE REMAND OF THE
19 SUPREME COURT TO JUSTIFY CHANGING HIS BOND IN ANY WAY. WE WOULD
20 ASK THAT HE BE HELD THROUGH TOMORROW MORNING. IT WOULD PROBABLY
21 TAKE HIM UNTIL TOMORROW MORNING TO GET CHECKED OUT OF THE
22 ALLENDALE CORRECTIONS ANYWAY. HE'LL HAVE TO GO BACK AND GO
23 THROUGH THEIR PROCEDURES AND I'M SURE THEY COULDN'T GET IT DONE IN
24 THE NEXT HOUR.

25 THE COURT: ALL RIGHT. I'M GOING TO -- I WILL SET \$150,000

1 BOND, CASH.

2 MS. SANDERS: THANK YOU, YOUR HONOR.

3 THE COURT: ANYTHING FURTHER?

4 MS. SANDERS: WE HAVE OTHER MOTIONS.

5 THE COURT: WHAT OTHER MOTIONS DO WE HAVE?

6 MS. SANDERS: WE HAVE SEVERAL MOTIONS, YOUR HONOR.

7 THE COURT: TELL ME WHAT THEY ARE.

8 MS. SANDERS: YOUR HONOR, WE HAVE A MOTION TO EXCLUDE --
9 A MOTION IN LIMINE ACTUALLY -- TO EXCLUDE THE TESTIMONY OF THE
10 PROSECUTION'S CHIEF WITNESS, WHICH IS ---

11 THE COURT: DID YA'LL INTEND TO HEAR THESE MOTIONS TODAY?

12 MR. GIBBONS: WE'RE PREPARED, YOUR HONOR.

13 THE COURT: WELL, THE PROBLEM IS, WE'VE GOT THESE FOLKS
14 THAT WE WANT TO -- ISN'T THIS THE ONE DAY THAT WE'RE GOING TO DO PLEAS
15 THIS WEEK?

16 MR. GIBBONS: YES, SIR, UNTIL THIS TRIAL IS DONE.

17 THE COURT: ALL RIGHT. WELL, LET'S -- WE'LL HAVE TO TAKE
18 THESE MOTIONS UP BEFORE WE START THE TRIAL.

19 MS. SANDERS: ALL RIGHT.

20 THE COURT: THANK YOU.

21 MS. SANDERS: THANK YOU, YOUR HONOR.

22 JURY VOIR DIRE

23 THE COURT: ALL RIGHT. YA'LL READY TO CALL THE FIRST CASE?

24 MR. GIBBONS: YES, SIR.

25 THE COURT: ALL RIGHT. THE CASE IS WHAT?

1 MR. GIBBONS: THE STATE CALLS THE STATE VS. TUNZY SANDERS.
2 HE'S GOT 3 INDICTMENTS, 99-GS-06-78 AND 06-79 AND 98-GS-06-180, WHEREIN HE'S
3 CHARGED WITH MURDER, ATTEMPTED ARMED ROBBERY AND CRIMINAL
4 CONSPIRACY.

5 THE COURT: LADIES AND GENTLEMEN, AGAIN, I APOLOGIZE AND I
6 KNOW MR. FICKLING DOES, ABOUT THIS MIKE SYSTEM AND I KNOW THEY'RE
7 TRYING TO MAKE SOME ARRANGEMENTS TO GET IT CORRECTED AS SOON AS
8 THEY CAN, SO AGAIN, PLEASE BEAR WITH US.

9 LADIES AND GENTLEMEN, AS YOU HEARD THE SOLICITOR, MR.
10 GIBBONS SAY, WE'RE ABOUT TO COMMENCE THE TRIAL OF A CASE ENTITLED,
11 THE STATE OF SOUTH CAROLINA VS. TUNZY SANDERS, AND MR. SANDERS HAS
12 BEEN CHARGED WITH THREE OFFENCES. INDICTMENT 1998-GS-08-180, STATE
13 SAYS THAT MR. SANDERS DID, IN BARNWELL COUNTY, ON OR ABOUT DECEMBER
14 11, 1997, WITH MALICE AFORETHOUGHT, KILL ONE MIN MUNE, I'M NOT SURE OF
15 THAT PRONUNCIATION, CHAPMAN, BY MEANS OF SHOOTING THE VICTIM WITH A
16 PISTOL AND SAID VICTIM DIED AS A RESULT THEREOF, ALL IN VIOLATION OF THE
17 STATUTES OF SOUTH CAROLINA.

18 AS TO INDICTMENT 99-GS-06-078, ATTEMPTED ARMED ROBBERY,
19 STATE SAYS THAT MR. TUNZY SANDERS DID, IN BARNWELL COUNTY, ON OR
20 ABOUT DECEMBER 11, 1997, WHILE ARMED WITH A DEADLY WEAPON ATTEMPT
21 TO FELONIOUSLY TAKE FROM THE PERSON OR PRESENCE OF MIN CHAPMAN, BY
22 MEANS OF FORCE OR INTIMIDATION, GOODS OR MONIES OF THE CHINA EXPRESS
23 RESTAURANT, ALL IN VIOLATION OF THE STATUTES OF THIS STATE.

24 AS TO INDICTMENT 99-GS-06-079, THE STATE SAYS THAT MR. TUNZY
25 SANDERS DID, IN BARNWELL COUNTY, SOUTH CAROLINA, ALONG WITH MICHAEL

1 BUCKMAN AND MAURICE BENNING, ON OR ABOUT DECEMBER 11, 1997,
2 UNLAWFULLY UNITE, COMBINE, CONSPIRE, CONFEDERATE, AGREE AND HAVE
3 TACIT UNDERSTANDING WITH EACH OTHER AND OR OTHERS FOR THE PURPOSE
4 OF COMMITTING THE CRIME OF ARMED ROBBERY IN VIOLATION OF THE
5 STATUTES OF SOUTH CAROLINA.

6 MR. SANDERS HAS BEEN CHARGED WITH THE BILL OF
7 INDICTMENTS WITH THE OFFENSES THAT I JUST READ TO YOU. NOW,
8 INDICTMENTS, LADIES AND GENTLEMEN, ARE DOCUMENTS THAT PUT A
9 DEFENDANT ON NOTICE OF PARTICULAR CHARGES. THAT'S ALL THEY DO. THEY
10 ARE A NO RISK DOCUMENT SO THAT THIS INDIVIDUAL IN THIS CASE AND EVERY
11 INDIVIDUAL IN EVERY CASE HAS NOTICE OF WHAT THE STATE ALLEGES THAT AN
12 INDIVIDUAL HAS DONE IN VIOLATION OF THE CRIMINAL LAWS. TO THESE
13 INDICTMENTS, THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY AND AS A
14 RESULT WE ARE HERE TO GO FORWARD WITH THE TRIAL OF THIS CASE.

15 LADIES AND GENTLEMEN, I WISH TO INTRODUCE YOU TO SOME
16 INDIVIDUALS WHO WILL BE INVOLVED IN THIS CASE AT THIS TIME. FIRST LET ME
17 INTRODUCE YOU TO MR. TUNZY A. SANDERS, WHO IS THE DEFENDANT.

18 MR. SANDERS, I WOULD APPRECIATE IT IF YOU WOULD STAND AND
19 FACE THE JURY.

20 LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF THIS JURY
21 PANEL, OR ANY MEMBER OF THE JURY PANEL'S IMMEDIATE FAMILY WHO IS
22 RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR HAS A CLOSE PERSONAL
23 RELATIONSHIP WITH MR. SANDERS OR EITHER NOW OR IN THE PAST HAS HAD A
24 BUSINESS OR AN EMPLOYMENT RELATIONSHIP WITH MR. SANDERS. IF SO,
25 PLEASE STAND.

1 ALL RIGHT. LADIES AND GENTLEMEN, LET ME NOW READ TO YOU
2 THE NAMES OF SOME POTENTIAL WITNESSES WHO MAY TESTIFY IN THIS TRIAL.
3 AND IF ANY OF THEM ARE IN THE COURTROOM, I WOULD ASK THAT THEY
4 PLEASE STAND WHEN I READ THEIR NAME. LUTHER GADSON, DENISE GISBON,
5 DR. JOEL SEXTON, FRANCO GOMEZ, TODD GANTT WITH THE BARNWELL POLICE
6 DEPARTMENT, AARON ODOM OF THE BARNWELL POLICE DEPARTMENT, VINCE
7 PADGETT, EUGENE DARNELL OF THE BARNWELL POLICE DEPARTMENT, SHIRLEY
8 COLLINS, DOROTHY BENNING HIGHSMITH - - YA'LL NEED TO FACE THE JURY
9 WHEN YOU STAND SO THAT THEY CAN SEE WHO YOU ARE. THEY MAY NOT
10 RECOGNIZE THE NAME, BUT THEY RECOGNIZE THE FACE.

11 JOHN BLACK OF THE STATE LAW ENFORCEMENT DIVISION, VELLO
12 PAAVEL OF THE STATE LAW ENFORCEMENT DIVISION, TEMETRIUS WILLIAMS,
13 MAURICE ODOMS, ODOM, EXCUSE ME, JERMAINE WALKER, AURELIN VIGIER, V-I-
14 G-I-E-R, DAVID STALEY, MAURICE BENNING, STEPHEN GUILFOYLE, G-U-I-L-F-PO-
15 Y-L-E, MICHELLE MIXON, SANDRA LOFTIS, CLEVELAND JONES, AND, OF COURSE,
16 I'VE INTRODUCED YOU TO MR. TUNZY SANDERS.

17 LADIES AND GENTLEMEN, I WOULD INQUIRE AT THIS TIME, IS
18 THERE ANY MEMBER OF THIS JURY PANEL, OR ANY MEMBER OF THE JURY
19 PANEL'S IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR CONNECTED BY
20 MARRIAGE OR HAS A CLOSE PERSONAL RELATIONSHIP OR EITHER NOW OR IN
21 THE PAST HAS HAD AN EMPLOYMENT RELATIONSHIP OR A BUSINESS
22 RELATIONSHIP WITH ANY OF THE NAMED DEFENDANTS WHO I JUST READ TO
23 YOU - - I MEAN NAMED WITNESSES WHO I JUST READ TO YOU. IF SO, PLEASE
24 STAND.

25 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

1 ALL RIGHT. LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF
2 THIS JURY PANEL OR ANY MEMBER OF THE JURY PANEL'S IMMEDIATE FAMILY A
3 MEMBER OF LAW ENFORCEMENT OR EMPLOYED WITH - - IN ANY LAW
4 ENFORCEMENT AGENCY OR EMPLOYED IN ANY PROSECUTOR'S OFFICE WITHIN
5 THE STATE OF SOUTH CAROLINA? IF SO, PLEASE STAND.

6 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

7 IS ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE
8 JURY PANEL'S IMMEDIATE FAMILY - - AND BY THAT, LADIES AND GENTLEMEN, I
9 DON'T MEAN THE 5TH COUSIN ONCE REMOVED, I MEAN IF YOU HAVE SOMEONE, A
10 SPOUSE OR A CHILD OR SOMEONE WHO HAS LIVED IN THE HOME, SOME
11 IMMEDIATE FAMILY MEMBER, EVER BEEN A VICTIM OF A CRIME? IF SO, PLEASE
12 STAND.

13 ALL RIGHT. CONTINUE TO STAND IF YOU WOULD. TELL ME YOUR
14 NAME, IF YOU WOULD, PLEASE SIR.

15 MR. SMITH: MY NAME IS PHILLIP SMITH.

16 THE COURT: ALL RIGHT AS A VICTIM OF A CRIME, WAS THAT A
17 VICTIM OF A VIOLENT OR NON-VIOLENT CRIME?

18 MR. SMITH: VIOLENT.

19 THE COURT: ALL RIGHT. CAN YOU TELL ME WHEN THIS
20 OCCURRED?

21 MR. SMITH: ABOUT 2 YEARS AGO.

22 THE COURT: ALL RIGHT. AND CAN YOU TELL ME WHAT THE
23 SITUATION WAS?

24 MR. SMITH: SOMEBODY GOT KILLED.

25 THE COURT: THE FACT THAT YOU WERE INVOLVED IN THIS

1 MATTER IN WHICH THERE WAS A DEATH THAT RESULTED WOULD THAT
2 PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS CASE AND BASED
3 UPON SUCH EVIDENCE RENDER A FAIR AND IMPARTIAL VERDICT?

4 MR SMITH: NO, SIR.

5 THE COURT: ALL RIGHT. THANK YOU.

6 YES, MA'AM, YOUR NAME?

7 MS. HIERS: MY NAME IS CYNTHIA HIERS.

8 THE COURT: ALL RIGHT. WAS THAT A VIOLENT OR NON-VIOLENT
9 CRIME.

10 MS. HIERS: VIOLENT.

11 THE COURT: AND HOW LONG AGO DID THIS OCCUR?

12 MS. HIERS: APPROXIMATELY A YEAR AND A HALF AGO.

13 THE COURT: ALL RIGHT. THE FACT THAT YOU WERE A VICTIM OF
14 A NON-VIOLENT TYPE CRIME, WOULD THAT -- I MEAN A VIOLENT TYPE CRIME,
15 APPROXIMATELY A YEAR AND A HALF AGO, WOULD THAT PREVENT YOU FROM
16 LISTENING TO THE EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE
17 RENDER A FAIR AND IMPARTIAL VERDICT?

18 MS. HIERS: NO, SIR.

19 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

20 ALL RIGHT. LADIES AND GENTLEMEN, HAS ANY MEMBER OF THIS
21 JURY PANEL FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR THE
22 INNOCENSE OF THE DEFENDANT IN THIS MATTER? IF SO, PLEASE STAND.

23 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

24 THE COURT: ALL RIGHT. HAS ANY MEMBER OF THIS JURY PANEL
25 DISCUSSED OR HAD DISCUSSED WITH THEM ANYTHING RELATING TO ANY OF

1 THE FACTS INVOLVED IN THIS CASE? IF SO, PLEASE STAND.

2 THE COURT: LADIES AND GENTLEMEN, HAS ANY MEMBER OF THIS
3 JURY PANEL READ ANY ARTICLE -- I'M SORRY, YES, MA'AM, YOUR NAME?

4 MS. RIMES: AUBREY H. RIMES.

5 THE COURT: ALL RIGHT. NOW, YOU'RE GOING BACK TO THE
6 PREVIOUS QUESTION?

7 MS. RIMES: YES, SIR.

8 THE COURT: ALL RIGHT. LET ME GET YOU TO WALK DOWN HERE
9 IF YOU WOULD

10 MR. GIBBONS: YOUR HONOR, THIS IS THE ONE WE DISCUSSED IN
11 CHAMBERS, EMPLOYEE.

12 THE COURT: ALL RIGHT. YOU'RE THE LADY THAT'S EMPLOYED
13 WITH MR. WILLIAMS?

14 MS. RIMES: YES, SIR.

15 THE COURT: WELL, WE'RE GOING TO LET YOU GO. YOU DON'T
16 EVEN HAVE TO COME DOWN AND TALK TO ME ABOUT IT. I'M GOING TO SET HER
17 ASIDE FOR THIS CASE.

18 MA'AM, I'M JUST RELEAVING YOU ON THIS CASE BECAUSE OF ONE
19 OF THE LAWYERS INVOLVED IN THE CASE ALSO WORKS WHERE YOU WORK.
20 THAT DOESN'T MEAN THAT YOU ARE FREE TO -- IF WE GET TO ANOTHER CASE
21 AFTER THIS, THEN YOU WILL BE SUBJECT TO APPEARING AGAIN, OKAY?

22 MS. RIMES: OKAY.

23 THE COURT: AND I GUESS WE'LL JUST RELY ON MR. WILLIAMS TO
24 TELL YOU WHEN TO COME BACK. YOU CAN LEAVE AT THIS POINT IF YOU WANT
25 TO LEAVE.

1 ALL RIGHT. LADIES AND GENTLEMEN, HAS ANY MEMBER OF THIS
2 JURY PANEL READ ANY ARTICLE IN THE BARNWELL PEOPLE SENTINEL OR ANY
3 OTHER NEWSPAPER REGARDING THE DEATH OF MIN CHAPMAN AT THE CHINA
4 EXPRESS RESTAURANT OR HEARD ANY TELEVISION REPORTS OR RADIO
5 BROADCASTS OR HAD ANY OTHER - - HAS ANY OTHER INFORMATION FROM ANY
6 OTHER MEDIA SOURCE REGARDING THE DEATH OF MIN CHAPMAN AT THE CHINA
7 EXPRESS RESTAURANT? IF SO, PLEASE STAND.

8 (WHEREUPON NUMEROUS JURORS STOOD.)

9 THE COURT: ALL RIGHT. RATHER THAN GO THROUGH THIS
10 INDIVIDUALLY, LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF THIS JURY
11 PANEL WHO CANNOT PUT ASIDE ANY NEWSPAPER ARTICLE, MEDIA REPORT,
12 TELEVISION REPORT, RADIO REPORT RELATING TO THE DEATH OF MIN CHAPMAN
13 AT THE CHINA EXPRESS THAT YOU MAY HAVE HEARD AT SOME TIME IN THE
14 PAST AND LISTEN TO THE EVIDENCE IN THIS CASE AND BASE WHATEVER
15 VERDICT YOU SHOULD REACH ON THE EVIDENCE AND THE LAW IN THE CASE? IF
16 YOU CANNOT DO THAT PLEASE CONTINUE TO STAND.

17 (WHEREUPON ALL STANDING JURORS SAT DOWN.)

18 THE COURT: ALL RIGHT. IS THERE ANY MEMBER OF THIS JURY
19 PANEL WHO IS CONSCIOUS OF ANY INTEREST OR ANY BIAS OR ANY PREJUDICE
20 FOR OR AGAINST THE DEFENDANT IN THIS MATTER? IF YOU ARE, PLEASE STAND
21 AT THIS TIME.

22 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

23 THE COURT: LADIES AND GENTLEMEN, CAN EACH MEMBER OF
24 THIS JURY PANEL GIVE THE STATE AND THE DEFENDANT, MR. SANDERS A FAIR
25 AND IMPARTIAL TRIAL? IF YOU CANNOT, PLEASE STAND.

1 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

2 THE COURT: LADIES AND GENTLEMEN, AS IN MOST CASES, THE
3 PARTIES ARE REPRESENTED BY ATTORNEYS. AS I MENTIONED THIS MORNING, IN
4 A CRIMINAL CASE THE STATE IS REPRESENTED BY THE SOLICITOR'S OFFICE IN
5 THE SECOND JUDICIAL CIRCUIT SOLICITOR'S OFFICE. IN THIS INSTANCE THE
6 SOLICITOR WHO WILL BE PROSECUTING THE CASE IS MR. GRANT GIBBONS.

7 ANYBODY ELSE INVOLVED IN THIS TRIAL WITH YOU, MR. GIBBONS?

8 MR. GIBBONS: MR. WEEKS WILL BE.

9 THE COURT: ALL RIGHT. YOU SAW MR. WEEKS, THERE'S MR.
10 WEEKS, YOU SAW HIM EARLIER. I WOULD INQUIRE AT THIS TIME, IS THERE ANY
11 MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE JURY PANEL'S
12 IMMEDIATE FAMILY WHO'S RELATED BY BLOOD OR CONNECTED BY MARRIAGE
13 OR HAS A CLOSE PERSONAL RELATIONSHIP WITH EITHER OF THESE ATTORNEYS
14 OR WITH ANY ATTORNEYS IN THE SOLICITOR'S OFFICE OF THE SECOND JUDICIAL
15 CIRCUIT, OR EITHER NOW OR IN THE PAST HAS BEEN EMPLOYED OR HAS HAD A
16 BUSINESS RELATIONSHIP WITH EITHER OF THESE ATTORNEYS OR THE
17 SOLICITOR'S OFFICE OF THE SECOND JUDICIAL CIRCUIT. IF SO, PLEASE STAND.

18 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
20 REPRESENTING THE DEFENDANT IN THIS MATTER IS MS. BRENDA K. SANDERS.
21 MS. SANDERS IS A MEMBER OF THE BAR OF THE STATE OF MICHIGAN, PRACTICES
22 PRIMARILY IN - - HER OFFICES ARE IN DETROIT.

23 MS. SANDERS, IF YOU WOULD PLEASE STAND AND FACE THE JURY.

24 ALONG WITH MS. SANDERS, MR. DAN WILLIAMS OF THE - - DANIEL
25 W. WILLIAMS OF THE FIRM OF BEDINGFIELD AND WILLIAMS HERE IN BARNWELL.

1 MR. WILLIAMS IS A MEMBER OF THE SOUTH CAROLINA BAR, AND PRACTICES
2 AND HAS HIS OFFICE HERE IN BARNWELL. I WOULD INQUIRE AT THIS TIME, IS
3 THERE ANY MEMBER OF THIS JURY PANEL OR ANY MEMBER OF THE JURY
4 PANEL'S IMMEDIATE FAMILY WHO IS RELATED BY BLOOD OR CONNECTED BY
5 MARRIAGE TO EITHER MS. SANDERS OR MR. WILLIAMS OR HAS A CLOSE
6 PERSONAL RELATIONSHIP WITH EITHER OF THESE INDIVIDUALS OR WITH ANY
7 MEMBER OF THEIR RESPECTIVE FIRMS OR EITHER NOW OR IN THE PAST HAS
8 BEEN EMPLOYED BY EITHER OF THESE ATTORNEYS OR LAW FIRMS OR HAS HAD
9 A BUSINESS RELATIONSHIP WITH EITHER OF THESE ATTORNEYS OR THEIR LAW
10 FIRMS OR EITHER NOW OR IN THE PAST HAS BEEN OR IS REPRESENTED BY
11 EITHER OF THESE ATTORNEYS? IF SO, PLEASE STAND.

12 ALL RIGHT. TELL ME YOUR NAME, PLEASE.

13 MS. LINDELL: FAYE LINDELL.

14 THE COURT: I'M SORRY?

15 MS. LINDELL: FAYE LINDELL.

16 THE COURT: ALL RIGHT. MS. LINDELL, WHAT IS YOUR SITUATION?

17 MS. LINDELL: IN THE PAST MR. BEDINGFIELD WAS A MEMBER OF
18 THE LAW FIRM THAT I WORKED AT.

19 THE COURT: ALL RIGHT. AND YOUR WITH NESS, MOTLEY?

20 MS. LINDELL: YES, SIR.

21 THE COURT: AND AT ONE TIME HE WAS A MEMBER OF THAT LAW
22 FIRM?

23 MS. LINDELL: RIGHT.

24 THE COURT: HOW LONG HAS IT BEEN SINCE HE'S --- MORE THAN
25 A COUPLE OF YEARS?

1 MR. WILLIAMS: ABOUT 16 YEARS.

2 ALL RIGHT. THE FACT THAT MR. BEDINGFIELD FORMERLY
3 WORKED FOR THE LAW FIRM THAT YOU'RE PRESENTLY EMPLOYED WITH,
4 WOULD THAT PREVENT YOU FROM LISTENING TO THE EVIDENCE IN THIS CASE
5 AND BASED UPON SUCH EVIDENCE RENDER A FAIR AND IMPARTIAL VERDICT?

6 MS. LINDELL: NO, SIR.

7 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

8 YES, MA'AM, YOUR NAME, PLEASE?

9 MS. WILSON: MY HUSBAND IS AN ATTORNEY AT THE NESS,
10 MOTLEY LAW FIRM AND MR. BEDINGFIELD ONCE WORKED THERE BEFORE MY
11 HUSBAND STARTED THERE.

12 THE COURT: ALL RIGHT. SO HE PROBABLY DOESN'T KNOW ALL
13 THE BAD HABITS OF MR. BEDINGFIELD THEN?

14 MS. WILSON: I DON'T KNOW ABOUT THAT.

15 THE COURT: YOU HAVE TO LIVE HERE, I GET TO GO HOME.
16 WHAT'S YOUR NAME?

17 MS. WILSON: DONNA WILSON.

18 THE COURT: ALL RIGHT. MS. WILSON, THE FACT THAT YOUR
19 HUSBAND IS EMPLOYED WITH THE LAW FIRM THAT MR. BEDINGFIELD AT ONE
20 TIME WORKED WITH, EVEN THOUGH YOUR HUSBAND DID NOT WORK THERE --
21 LOOKING AT YOU, I KNOW HE DID NOT WORK THERE WHEN MR. BEDINGFIELD
22 LEFT 16 YEARS AGO -- WOULD THAT PREVENT YOU FROM LISTENING TO THE
23 EVIDENCE IN THIS CASE AND BASED UPON SUCH EVIDENCE RENDER A FAIR AND
24 IMPARTIAL VERDICT?

25 MS. WILSON: NO.

1 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

2 ALL RIGHT. LADIES AND GENTLEMEN, I THINK I MENTIONED IN MY
3 REMARKS EARLIER TODAY THAT THE JURY IS THE FACT FINDERS IN THE CASE
4 AND THE COURT IS THE JUDGE OF THE LAW. I WILL INSTRUCT YOU OF THE LAW
5 IN SOUTH CAROLINA AT THE CONCLUSION OF THE CASE SO THAT YOU,
6 DETERMINING THE FACTS IN THE CASE CAN APPLY THE LAW TO THOSE FACTS
7 AND ULTIMATELY RENDER YOUR VERDICT. DOES ANY MEMBER OF THIS JURY
8 PANEL KNOW OF ANY REASON THAT YOU WOULD NOT BE ABLE TO FOLLOW THE
9 INSTRUCTIONS THAT I GIVE YOU RELATING TO THE LAW IN SOUTH CAROLINA
10 AND APPLY THAT LAW AS I GIVE IT TO YOU TO THE FACTS AS YOU DETERMINE
11 THEM TO BE? IF YOU CANNOT FOLLOW THE INSTRUCTIONS ON THE LAW THAT I
12 GIVE YOU, PLEASE STAND AT THIS TIME.

13 (WHEREUPON THERE WAS NO RESPONSE FROM THE JURY VENIRE.)

14 THE COURT: ALL RIGHT. THANK YOU.

15 ANY FURTHER INQUIRY FROM THE STATE?

16 MR. GIBBONS: NONE FROM THE STATE, YOUR HONOR.

17 THE COURT: FROM THE DEFENDANT?

18 MR. WILLIAMS: NOTHING, YOUR HONOR.

19 THE COURT: ALL RIGHT. THEN WE WILL GO FORWARD WITH THE
20 SELECTION OF THE JURY, PLEASE.

21 HOW MANY ALTERNATES DO YA'LL THINK YOU NEED IN THIS?

22 MR. GIBBONS: WE USUALLY PULL TWO, YOUR HONOR.

23 THE COURT: TWO?

24 MR. WILLIAMS: TWO, YOUR HONOR.

25 THE COURT: ALL RIGHT. FIVE AND TEN, ONE AND TWO. OKAY.

JURY SELECTION

1
2 THE CLERK: LADIES AND GENTLEMEN, AS I CALL YOUR NAME,
3 PLEASE COME FORWARD AND TURN IN FRONT OF ME AND FACE WHERE YOU
4 ARE NOW SITTING.

5 JUROR NO. 115, JIMMY H. WINDHAM.

6 WHAT SAY THE STATE?

7 MR. GIBBONS: PLEASE PRESENT MR. WINDHAM.

8 THE CLERK: WHAT SAY THE DEFENSE?

9 MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.

10 THE CLERK: RETURN TO YOUR SEAT, PLEASE, SIR.

11 JUROR NO. 72, RANDALL C. MARTIN.

12 WHAT SAY THE STATE?

13 MR. GIBBONS: PLEASE PRESENT MR. MARTIN.

14 THE CLERK: WHAT SAY THE DEFENSE?

15 MR. WILLIAMS: PLEASE SWEAR THE JUROR.

16 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

17 JUROR NO. 121, ANOTONIO M. DAVIS.

18 WHAT SAY THE STATE?

19 MR. GIBBONS: PLEASE EXCUSE MR. DAVIS FROM THIS CASE.

20 THE CLERK: RETURN TO YOUR SEAT, PLEASE.

21 JUROR NO. 69, FAYE D. LINDELL.

22 WHAT SAY THE STATE?

23 MR. GIBBONS: PLEASE PRESENT MS. LINDELL.

24 THE CLERK: WHAT SAY THE DEFENSE?

25 MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.

1 THE CLERK: RETURN TO YOUR SEAT, PLEASE, MA'AM.
2 JUROR NO. 124, BRUCE L. WADDELL.
3 WHAT SAY THE STATE?
4 MR. GIBBONS: PLEASE EXCUSE MR. WADDELL FROM THIS CASE.
5 THE CLERK: RETURN TO YOU SEAT, PLEASE, SIR.
6 JUROR NO. 100, TERESA K. SANDERS.
7 WHAT SAY THE STATE?
8 MR. GIBBONS: PLEASE PRESENT MS. SANDERS.
9 THE CLERK: WHAT SAY THE DEFENSE?
10 MR. WILLIAMS: PLEASE EXCUSE MS. SANDERS FROM THIS CASE.
11 THE CLERK: RETURN TO YOUR SEAT, PLEASE.
12 JUROR NO. 47, PATRICIA C. HAIR.
13 WHAT SAY THE STATE?
14 MR. GIBBONS: PLEASE PRESENT MS. HAIR.
15 THE CLERK: WHAT SAY THE DEFENSE?
16 MR. WILLIAMS: PLEASE SWEAR THE JUROR.
17 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.
18 JUROR NO. 74, MICHAEL T. MCCANTS.
19 WHAT SAY THE STATE?
20 MR. GIBBONS: PLEASE PRESENT MR. MCCANTS.
21 THE CLERK: WHAT SAY THE DEFENSE?
22 MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.
23 THE CLERK: RETURN TO YOUR SEAT, PLEASE.
24 JUROR NO. 22, BRANDON S. CREECH.
25 WHAT SAY THE STATE?

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MR. GIBBONS: PLEASE PRESENT MR. CREECH.

THE CLERK: WHAT SAY THE DEFENSE?

MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.

THE CLERK: RETURN TO YOUR SEAT, PLEASE.

JUROR NO. 122, MICHAEL W. MERWIN.

WHAT SAY THE STATE?

MR. GIBBONS: PLEASE EXCUSE MR. MERWIN THIS CASE.

THE CLERK: RETURN TO YOUR SEAT, PLEASE.

JUROR NO. 75, DOUGLAS MILLEGE.

WHAT SAY THE STATE?

MR. GIBBONS: PLEASE PRESENT MR. MILLEGE.

THE CLERK: WHAT SAY THE DEFENSE?

MR. WILLIAMS: PLEASE SWEAR THIS JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

JUROR NO. 21, WILMER O. COLLINS, JR.

WHAT SAY THE STATE?

MR. GIBBONS: PLEASE PRESENT MR. COLLINS.

THE CLERK: WHAT SAY THE DEFENSE?

MR. WILLIAMS: PLEASE PRESENT THIS JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

JUROR NO. 53, MARK R. HIERS.

WHAT SAY THE STATE?

MR. GIBBONS: PLEASE PRESENT MR. HIERS.

THE CLERK: WHAT SAY THE DEFENSE?

MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.

1 THE CLERK: RETURN TO YOUR SEAT, PLEASE.
2 JUROR NO. 109 BOBBY WHITE.
3 WHAT SAY THE STATE?
4 MR. GIBBONS: PLEASE EXCUSE MR. WHITE FROM THIS CASE.
5 THE CLERK: RETURN TO YOUR SEAT, PLEASE, SIR.
6 JUROR NO. 34 PAMELA B. FIELDS.
7 WHAT SAY THE STATE?
8 MR. GIBBONS: PLEASE PRESENT MS. FIELDS.
9 THE CLERK: WHAT SAY THE DEFENSE?
10 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.
11 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.
12 JUROR NO. 96, SHIRLEY A. ROSS.
13 WHAT SAY THE STATE?
14 MR. GIBBONS: PLEASE PRESENT MS. ROSS.
15 THE CLERK: WHAT SAY THE DEFENSE?
16 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.
17 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.
18 JUROR NO. 114, DONNA C. WILSON
19 WHAT SAY THE STATE?
20 MR. GIBBONS: PLEASE PRESENT MS. WILSON.
21 THE CLERK: WHAT SAY DEFENSE?
22 MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.
23 THE CLERK: RETURN TO YOUR SEAT, PLEASE.
24 JUROR NO. 81, ROBERT M. NALL.
25 WHAT SAY THE STATE?

1 MR. GIBBONS: PLEASE PRESENT MR. NALL.
2 THE CLERK: WHAT SAY THE DEFENSE?
3 MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.
4 THE CLERK: RETURN TO YOUR SEAT, PLEASE.
5 JUROR NO. 49, MARIE H. HARLY.
6 WHAT SAY THE STATE?
7 MR. GIBBONS: PLEASE PRESENT MS. HARLY.
8 THE CLERK: WHAT SAY THE DEFENSE?
9 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.
10 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.
11 JUROR NO. 17, SHANNON L. CARTER.
12 WHAT SAY THE STATE?
13 MR. GIBBONS: PLEASE PRESENT MS. CARTER.
14 THE CLERK: WHAT SAY THE DEFENSE?
15 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.
16 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.
17 JUROR NO. 18, ELAINE W. CHASTON.
18 WHAT SAY THE STATE?
19 MR. GIBBONS: PLEASE PRESENT MS. CHASTON.
20 THE CLERK: WHAT SAY THE DEFENSE?
21 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.
22 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.
23 JUROR NO. 36, LAURIE F. FREDERICK III.
24 WHAT SAY THE STATE?
25 MR. GIBBONS: PLEASE PRESENT MR. FREDERICK.

1 THE CLERK: WHAT SAY THE DEFENSE?

2 MR. WILLIAMS: PLEASE EXCUSE THIS JUROR.

3 THE CLERK: RETURN TO YOUR SEAT, PLEASE.

4 JUROR NO. 77, MARY B. MOORE.

5 WHAT SAY THE STATE?

6 MR. GIBBONS: PLEASE PRESENT MS. MOORE.

7 THE CLERK: WHAT SAY THE DEFENSE?

8 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.

9 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

10 JUROR NO. 48, RONALD B. HALLINGQUEST.

11 WHAT SAY THE STATE?

12 MR. GIBBONS: PLEASE EXCUSE MR. HALLINQUEST FROM THIS

13 CASE.

14 THE CLERK: RETURN TO YOUR SEAT, PLEASE.

15 JUROR NO. 101, PHILLIP W. SMITH.

16 WHAT SAY THE STATE?

17 MR. GIBBONS: PLEASE PRESENT MR. SMITH.

18 THE CLERK: WHAT SAY THE DEFENSE?

19 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.

20 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

21 JUROR NO. 104, PEGGY F. STILL.

22 WHAT SAY THE STATE?

23 MR. GIBBONS: PLEASE PRESENT MS. STILL.

24 THE CLERK: WHAT SAY THE DEFENSE?

25 MR. WILLIAMS: PLEASE SWEAR THIS JUROR.

1 MS. SANDERS: WELL, YOU CHALLENGE THE MAKE-UP OF THE
2 JURY.

3 MR. WILLIAMS: YOUR HONOR, IT'S MY UNDERSTANDING THAT MR.
4 GIBBONS, OUT OF HIS 5 STRIKES, STRUCK THREE BLACK MALES, WHICH I
5 BELIEVE IS A PRIMA FACIA SHOWING THAT HE'S VIOLATED BATSON AND,
6 THEREFORE, HE MUST GIVE A REASON FOR THOSE THREE STRIKES.

7 THE COURT: WELL, I'LL LISTEN. I DON'T KNOW IF THREE OUT OF
8 FIVE IS -- ON ITS FACE INDICATES-- BUT YA'LL WANT TO TELL ME ABOUT IT?

9 MR. GIBBONS: SURE, YOUR HONOR.

10 THE COURT: YOU TOOK NINE OUT OF NINE.

11 MR. GIBBONS: YEAH, AND I WOULD ASK THAT THEY REVEAL
12 THEIRS TOO.

13 THE COURT: WELL, YA'LL NEED TO MAKE A MOTION.

14 MR. GIBBONS: ALL RIGHT. WE STRUCK JUROR NO. 121 ---

15 THE COURT: WELL, APPARENTLY, THEY'RE JUST CONCERNED
16 ABOUT THE -- ALL RIGHT. YEAH, ANTONIO DAVIS.

17 MR. GIBBONS: YEAH A BLACK MALE. I HAD THAT HE HAD BEEN
18 LOCKED UP FOR NOT PAYING CHILD SUPPORT AND I FELT LIKE THAT FACT
19 ALONE WAS ENOUGH THAT HE WOULDN'T BE A GOOD CANDIDATE FOR US.

20 THE COURT: ALL RIGHT. WHAT ABOUT 109?

21 MR. GIBBONS: I'M SORRY? 109? 124?

22 THE COURT: WELL, I'VE GOT YOU DOWN AS ---

23 MR. GIBBONS: ARE YOU SKIPPING THE CAUCASIANS I STRUCK?

24 THE COURT: ARE YA'LL CONCERNED ABOUT THE WHITES THAT HE
25 STRUCK?

1 MS. SANDERS: NO.

2 MR. WILLIAMS: TO THE EXTENT THE HE STRUCK ALL MALES.

3 MS. SANDER: YEAH.

4 THE COURT: SO YOU'RE CONCERNED ABOUT ALL OF THEM. ALL
5 RIGHT.

6 MR. GIBBONS: OKAY. I'LL GO THROUGH ALL MY STRIKES.

7 THE COURT: WELL, YOU'VE DONE NUMBER ONE.

8 MR. GIBBONS: RIGHT. 124 WAS THE SECOND STRIKE.

9 THE COURT: BRUCE WADDELL.

10 MR. GIBBONS: I'VE HAD HIM BEFORE IN COURT AND PROSECUTED
11 HIM AND I DIDN'T THINK I'D WANT HIM ON MY JURY AFTER I'D DONE THAT.

12 THE COURT: ALL RIGHT. 122, MICHAEL MERWIN, WHITE MALE?

13 MR. GIBBONS: OKAY. HE HAD THREE PRIOR CONVICTIONS,
14 MALICIOUS INJURY TO PROPERTY, ABC VIOLATION AND A DWI. I THOUGHT THE
15 ALCOHOL MIXED WITH HIS PRIORS WOULD NOT MAKE HIS SUITABLE.

16 THE COURT: ALL RIGHT. 109?

17 MR. GIBBONS: YOUR HONOR, BOBBY WHITE WORKS FOR A
18 FUNERAL HOME IN WILLISTON. THERE'S ALSO AN INDIVIDUAL BY THE NAME OF
19 HERMAN WHITE THAT WORKS AT THE SAME FUNERAL HOME THAT'S BEEN IN
20 TROUBLE FOUR OR FIVE TIMES IN THE PAST. WE TRIED HIM ON A MURDER
21 CHARGE PROBABLY 10 YEARS AGO, AND THAT CLOSE FAMILY RELATIONSHIP
22 WITH A PRIOR DEFENDANT, I FELT LIKE I COULD STRIKE HIM.

23 THE COURT: ALL RIGHT. HOW ABOUT NO. 48, RONALD
24 HALLINGQUEST?

25 MR. GIBBONS: YOUR HONOR, RONALD HALLINGQUEST IS A

1 RESIDENT ON CLINTON STREET HERE IN BARNWELL, SOUTH CAROLINA. WE'VE
2 GOT A DEFENDANT IN THE SONIC SHOOTING WHO'S INVOLVED. HIS LAST NAME
3 IS HALLINGQUEST, HE'S FROM THAT SAME PART OF TOWN. I WAS CONCERNED
4 THAT HE MIGHT BE A FAMILY MEMBER AND BE RELATED TO SOMEONE THAT'S
5 CHARGED WITH MURDER.

6 THE COURT: ALL RIGHT. ANYTHING YA'LL WANT TO SAY?

7 MS. SANDERS: AS TO RONALD HALLINGQUEST, YOU DON'T HAVE
8 ANY CONCRETE INFORMATION THAT HE'S RELATED?

9 MR. GIBBONS: NO, MA'AM. I KNOW THAT THERE'S A
10 HALLINGQUEST THAT LIVES OVER NEAR CLINTON STREET THAT'S INVOLVED IN
11 THE MURDER AT SONIC AND I FELT THAT THERE WAS SOME FAMILY
12 RELATIONSHIP, SO I STRUCK HIM.

13 THE COURT: ALL RIGHT.

14 MS. SANDERS: THE PERSON, ANTONIO DAVIS, JUROR NO. 121, WAS
15 THAT SOMEONE THAT YOU -- WELL THAT WAS A CIVIL MATTER THAT YOU'RE
16 CONCERNED OF THAT HE HAD BEEN INCARCERATED FOR? CHILD SUPPORT?

17 MR. GIBBONS: FAMILY COURT MATTER, YES, MA'AM. HE WASN'T
18 FULFILLING HIS CIVIC DUTY BY NOT PAYING CHILD SUPPORT.

19 THE COURT: ALL RIGHT. HAVE YA'LL GOT ANYTHING IN
20 RESPONSE TO HIS STRIKES?

21 MR. WILLIAMS: YOUR HONOR, I DON'T HAVE ANYTHING.

22 MS. SANDERS: I WOULD JUST INDICATE THAT I BELIEVE THE
23 STRIKE OF MR. HALLINGQUEST IS UNFOUNDED, THAT IT BASICALLY IS BASED ON
24 SPECULATION BY MR. GIBBONS AS TO HIS RELATIONSHIP TO SOME OTHER
25 DEFENDANT IN SOME OTHER CASE. THERE'S NO BASIS FOR HIS BELIEF THAT

1 THIS JUROR WAS CONNECTED IN THIS OTHER CASE AND SOMEHOW MIGHT BE
2 BIASED.

3 THE COURT: ALL RIGHT. WELL, I'M GOING TO FIND THEIR
4 REASONS TO STRIKE ARE GENDER NEUTRAL. APPARENTLY THAT'S THE BASIS
5 THAT THEY STRUCK A CLASS ---

6 MR. WILLIAMS: RACE AND GENDER IS OUR MOTION, YOUR HONOR.

7 THE COURT: WELL, IT'S THREE AND TWO ON THE RACE. I MEAN,
8 BUT I'M GOING TO FIND IT GENDER, RACE -- I MEAN, THE BASES, YOU CAN HAVE
9 ABSURD REASONS, AS LONG AS THEY'RE REASONS THAT ARE NEUTRAL OF SOME
10 STRIKE BASED ON A CLASS OF INDIVIDUALS AND I'M GOING TO FIND IT TO BE
11 NEUTRAL AND GO FORWARD WITH THIS JURY.

12 MR. GIBBONS: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. I'LL LET THE JURY GO -- THE PANEL. I'LL
14 TELL THEM TO COME BACK AT 2:30. YA'LL WANT TO TAKE UP ANY MOTIONS AT
15 THIS TIME AND GO UNTIL ABOUT 1:00 AND BREAK AND COME BACK AT 2:00 AND
16 TAKE UP WHATEVER ELSE WE'VE GOT BETWEEN 2:00 AND 2:30 OR CAN WE
17 ACCOMPLISH IT ALL IN TWO HOURS? I MEAN IN AN HOUR? YOU KNOW, WE'RE
18 NOT DOING THE MESSIAH MOTION AT THIS TIME.

19 MR. WILLIAMS: YOUR HONOR, I THINK WE CAN. WITH ALL THE
20 NUMBER OF PEOPLE THAT STOOD UP IN THE COURTROOM WHEN YOU ASKED
21 THE QUESTION ABOUT HOW MANY HAVE READ ABOUT THIS, WE'D LIKE TO
22 RENEW OUR MOTION FOR CHANGE OF VENUE BECAUSE APPARENTLY THAT WAS
23 A VERY WELL READ NEWS ARTICLE IN THE PAPER HERE. THERE HAS BEEN A LOT
24 OF PUBLICITY.

25 THE COURT: I ASKED THEM ONE QUESTION, HAD THEY READ

1 ANYTHING, HEARD ANYTHING -- I MEAN, SEEN, HEARD ANYTHING ON THE
2 RADIO, SEEN ANYTHING ON THE TELEVISION OR READ ANYTHING IN THE
3 NEWSPAPER OR FROM ANY OTHER MEDIA REPORTS AND COULD THEY SET IT
4 ASIDE AND -- ALL RIGHT.

5 (WHEREUPON COURT RECONVENED IN THE COURTROOM IN THE
6 PRESENCE OF THE JURY VENIRE.)

7 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL THAT
8 DID NOT GET SELECTED IN THIS JURY, I'M GOING TO LET YOU GO AND WHAT I'M
9 GOING TO ASK YOU TO DO IS TO CALL BACK IN THIS EVENING AFTER 6 O'CLOCK
10 AND YOU WILL BE GIVEN FURTHER INSTRUCTIONS AS TO WHAT YOU DO FROM
11 THAT POINT FORWARD.

12 THANK YOU, VERY MUCH FOR COMING IN. YA'LL HAVE A NICE
13 AFTERNOON AND WE'LL LET YOU HEAR FROM US AFTER 6 O'CLOCK TODAY.

14 ALL RIGHT. LADIES AND GENTLEMEN, A COUPLE OF THINGS, I'M
15 GOING TO LET YOU GO IN JUST A MINUTE AND ASK THAT YOU COME BACK HERE
16 AT 2:30. WE NEED TO TAKE UP SOME MATTERS OUTSIDE THE PRESENCE OF THE
17 JURY AND WE'RE GOING TO DO THAT. I'M REALLY NOT GOING TO GET INTO ANY
18 INSTRUCTIONS AT THIS TIME AS TO WHAT YOU CAN EXPECT IN A TRIAL, BUT I DO
19 WANT TO TELL YOU VERY BRIEFLY A COUPLE OF THINGS. ONE, FROM THIS
20 POINT FORWARD, UNTIL YOU HAVE BEEN INSTRUCTED BY ME THAT YOU CAN
21 BEGIN DELIBERATIONS IN THIS CASE, I DO NOT WANT ANYBODY TO DISCUSS
22 THIS CASE AT ALL. SO THAT MEANS DON'T DISCUSS IT WITH YOURSELVES. THIS
23 CASE, WE ANTICIPATE WILL GO SEVERAL DAYS, SO WHEN YOU GO HOME AT
24 NIGHT, DON'T DISCUSS IT WITH YOUR SPOUSES OR YOUR CHILDREN OR YOUR
25 FRIENDS OR ANYBODY YOU GO TO CHURCH WITH OR ANYBODY YOU COME IN

1 CONTACT WITH.

2 BOTH PARTIES DESERVED YOUR FULL ATTENTION IN THIS CASE,
3 THEY DESERVE YOU TO LISTEN TO ALL THE EVIDENCE BEFORE YOU MAKE ANY
4 DECISION IN THE CASE. IT'S BEEN MY EXPERIENCE WHEN PEOPLE START TO
5 TALK ABOUT THINGS, SOMETIMES THEY START TO FORMULATE OPINIONS AND
6 YOU SHOULD NOT FORMULATE ANY SORT OF OPINION IN THIS CASE UNTIL YOU
7 HAVE HEARD ALL OF THE EVIDENCE THAT IS TO BE PRESENTED IN THE CASE. SO
8 I WILL MAKE INQUIRY WHEN YOU RETURN AND EACH TIME AS TO WHETHER
9 YOU'VE DISCUSSED THE CASE OR ANYONE ELSE HAS ATTEMPTED TO DISCUSS
10 THE CASE WITH YOU.

11 DO NOT UNDER ANY CIRCUMSTANCE READ ANY MEDIA ACCOUNTS
12 OF THE CASE IF THERE IS ANYTHING IN THE MEDIA. DON'T LISTEN TO ANYTHING
13 ABOUT IT. IF, IN FACT, YOU'RE IN A ROOM AND THE TV IS ON AND SOMETHING
14 COMES ON, LEAVE THE ROOM OR TURN THE TV OFF. IF IT'S IN THE PAPER, DO
15 NOT READ THE NEWSPAPER. YOU WILL HAVE AMPLE OPPORTUNITY TO TALK
16 ABOUT THIS CASE WITH YOURSELF AFTER ALL THE EVIDENCE IS PRESENTED
17 AND AFTER THE CASE IS CONCLUDED IF YOU WISH TO TALK ABOUT IT TO
18 ANYBODY YOU WANT TO TALK ABOUT IT WITH. BUT UNTIL THAT TIME, DO NOT
19 DISCUSS THIS CASE WITH EACH OTHER OR ANYONE ELSE AT ALL.

20 LADIES AND GENTLEMEN, I WANT YOU TO UNDERSTAND A COUPLE
21 OF BASIC TENETS THAT WE HAVE AS TO OUR SYSTEM OF JUSTICE IN THIS
22 COUNTRY. IN EACH AND EVERY CASE IN THIS COUNTRY WHEN IT COMES INTO A
23 CRIMINAL COURTROOM, A DEFENDANT IS PRESUMED TO BE INNOCENT AND
24 THAT PRESUMPTION OF INNOCENCE REMAINS WITH THE DEFENDANT
25 THROUGHOUT THE COURSE OF THE TRIAL AND ONLY CHANGES IF YOU OR ANY

1 OTHER JURY DETERMINES THAT THE DEFENDANT IS GUILTY OF THE CRIME OR
2 CRIMES FOR WHICH HE OR SHE MAY BE CHARGED. YOU ALSO MUST REMEMBER
3 THAT IN OUR SYSTEM OF JUSTICE, IT IS THE STATE'S BURDEN TO PROVE A
4 PERSON GUILTY AND PROVE THAT PERSON GUILTY BEYOND A REASONABLE
5 DOUBT. THE DEFENDANT HAS NO OBLIGATION TO PROVE ANYTHING. THE
6 DEFENDANT DOESN'T HAVE TO DO ANYTHING. THE DEFENDANT DOESN'T HAVE
7 TO PUT UP ANY EVIDENCE. IT IS THE STATE'S RESPONSIBILITY TO PROVE THAT
8 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

9 SO YOU MUST KEEP THOSE TWO BASIC TENETS IN YOUR MIND
10 THROUGHOUT THE COURSE OF THIS TRIAL. WHEN WE COME BACK, WE WILL GO
11 FORWARD WITH THE TRIAL OF THE CASE. I WILL GIVE YOU FURTHER DETAILS
12 ABOUT HOW THIS CASE WILL BE OPERATED ON AND THEN WE WILL START WITH
13 THE PRESENTATION OF OPENING STATEMENTS BY THE LAWYERS AND THEN THE
14 PRESENTATION OF THE EVIDENCE IN THE CASE.

15 SO YOU'RE FREE TO LEAVE. THE BAILIFFS WILL SHOW YOU HOW
16 TO GET OUT AND HOW TO GET BACK IN. BE HERE A FEW MINUTES BEFORE 2:30
17 SO THAT WE CAN BEGIN AT 2:30 AND YA'LL HAVE A NICE LUNCH.

18 (WHEREUPON THE JURY LEFT THE COURTROOM AT 12:40 P.M.)

19 PRETRIAL MOTIONS

20 THE COURT: ALL RIGHT. WHAT DO WE WANT TO DO HERE FIRST?

21 MS. SANDERS: YOUR HONOR, WE DO HAVE A MOTION TO - - A
22 MOTION IN LIMINE TO EXCLUDE TESTIMONY AND STATEMENTS BY MAURICE
23 BENNING. AND WE WOULD LIKE TO PROCEED WITH THAT MOTION AT THIS TIME.

24 THE COURT: ALL RIGHT.

25 MS. SANDERS: YOUR HONOR, WE'RE ASKING THE COURT TO

1 EXCLUDE MR. BENNING'S TESTIMONY FOR THE REASON THAT WE BELIEVE THAT
2 HE IS UNTRUTHFUL AND THAT HE WILL NOT BE A TRUTHFUL WITNESS ON THE
3 STAND. AND POSSIBLY, IF THE STATE PERSISTS IN PUTTING MR. BENNING ON THE
4 STAND IT MIGHT RESULT IN PERJURED TESTIMONY. MR. BENNING SUBMITTED
5 TO A POLYGRAPH EXAMINATION SOMETIME I BELIEVE IN JULY OF 1998 WHEREIN
6 HE WAS ASKED SPECIFIC QUESTIONS REGARDING THE STATEMENTS THAT HE
7 GAVE TO LAW ENFORCEMENT AGENCIES IN THIS MATTER. IT ASKED -- THEY
8 INQUIRED ABOUT THE TRUTHFULNESS OF HIS STATEMENTS THAT HE GAVE TO
9 THOSE LAW ENFORCEMENT PERSONS AND SPECIFICALLY, DID YOU LIE IN YOUR
10 STATEMENT TO THE POLICE CONCERNING CHAPMAN'S DEATH. THEY ALSO
11 ASKED DID YOU LIE ABOUT GIVING TUNZY THE GUN THAT WAS USED TO SHOOT
12 CHAPMAN. AND, IS THE STATEMENT THAT YOU GAVE THE POLICE THE ENTIRE
13 TRUTH.

14 NOW, YOUR HONOR, AFTER SUBMITTING TO THE POLYGRAPH
15 EXAMINATIONS, THE RESULT WAS THAT MR. BENNING WAS FOUND TO BE
16 DECEPTIVE REGARDING HIS ANSWERS TO THOSE QUESTIONS. THOSE VERY
17 STATEMENTS THAT WERE ALLUDED TO IN THE POLYGRAPH EXAMINATION ARE
18 THE BASIS FOR WHICH MR. BENNING IS GOING TO TESTIFY IN THIS TRIAL IF THE
19 PROSECUTOR PRESENTS HIM. WE ALREADY KNOW -- THE PROSECUTOR RELIED
20 ON THE POLYGRAPH EXAMINATION TO GUAGE MR. BENNING'S TRUTHFULNESS.
21 APPARENTLY THEY SUBMITTED MR. BENNING TO THE POLYGRAPH
22 EXAMINATION BECAUSE THEY HAD SOME SENSE THAT HE WAS BEING
23 UNTRUTHFUL AND THAT PROVED TO BE TRUE, OF COURSE, THROUGH THE
24 POLYGRAPH RESULTS.

25 SECONDLY, MR. BENNING WAS A CO-DEFENDANT IN THIS MATTER

1 PREVIOUSLY AND THE MERE FACT THAT HE WOULD IMPLICATE OTHERS IN THIS
2 MATTER WHEN HE, IN FACT, MAY HAVE BEEN INVOLVED OR THIS GUN WAS
3 FOUND AT HIS HOUSE THAT IS GOING TO BE INTRODUCED INTO EVIDENCE HERE,
4 THAT MAKES HIS STATEMENTS ALSO SUSPECT AND UNTRUSTWORTHY. HE IS
5 ALSO A CONVICTED FELON, UNLIKE THE DEFENDANT THAT'S HERE ON TRIAL
6 NOW FOR OTHER CRIMES OF DISHONESTY, YOUR HONOR.

7 NOW, I WOULD LIKE TO SITE THE CASE OF THE UNITED STATES VS.
8 BAGLEY TO THE COURT. WE BELIEVE THAT IT IS INCUMBENT UPON THE PEOPLE
9 NOT JUST TO PROSECUTE A CASE, BUT TO SEEK OUT THE TRUTH IN A MATTER
10 AND TO SEEK JUSTICE. AND WE BELIEVE THAT THE COURT'S RULING IN UNITED
11 STATES VS. BAGLEY, 473, UNITED STATES, 667, 1985, UNDERGIRDS OUR POSITION
12 IN THAT REGARD. AND JUST READING FROM PAGE 12, YOUR HONOR, IN FACT,
13 THE RULE HAS ITS ROOTS IN A SERIES OF CASES DEALING WITH CONVICTIONS
14 BASED ON THE PROSECUTIONS KNOWING USE OF PERJURED TESTIMONY. THE
15 COURT REASONED THAT A DELIBERATE DECEPTION OF COURT AND JURY BY THE
16 PRESENTATION OF TESTIMONY KNOWN TO BE PERJURED IS INCONSISTENT WITH
17 THE RUDIMENTARY DEMANDS OF JUSTICE. THE COURT ALSO FOUND THAT THE
18 KNOWING USE OF PERJURED TESTIMONY WAS SUFFICIENT TO CHARGE A DUE
19 PROCESS VIOLATION.

20 FURTHER THE COURT SITED THE PRINCIPLE IN NEPU VS. ILLINOIS,
21 360, US, 264, AND THIS IS SITED IN BAGLEY, WHEREIN THE COURT HELD THAT THE
22 KNOWING USED OF FALSE TESTIMONY TO OBTAIN A CONVICTION VIOLATES DUE
23 PROCESS, REGARDLESS OF WHETHER THE PROSECUTOR SOLICITED THE FALSE
24 TESTIMONY OR MERELY ALLOWED IT TO GO UNCORRECTED WHEN IT APPEARED.
25 THE COURT FURTHER EXPLAINED THAT THE PRINCIPLE THAT A STATE MAY NOT

1 USE -- MAY NOT KNOWINGLY USE FALSE TESTIMONY TO OBTAIN A CONVICTION,
2 IS IMPLICIT IN ANY CONCEPT OF ORDERED LIBERTY. THE COURT HELD THAT IT
3 WAS NOT BOUND BY THE STATE'S COURTS DETERMINATION THAT THE FALSE
4 TESTIMONY COULD NOT IN ANY REASONABLE LIKELIHOOD HAVE AFFECTED THE
5 JUDGEMENT OF THE JURY. THE COURT CONDUCTED ITS OWN INDEPENDENT
6 EXAMINATION OF THE RECORD AND CONCLUDED THAT THE FALSE TESTIMONY
7 MAY HAVE HAD AN EFFECT ON THE OUTCOME OF THE TRIAL. ACCORDINGLY,
8 THE COURT REVERSED THE JUDGEMENT OF CONVICTION.

9 THE RULE THAT A CONVICTION OBTAINED BY THE KNOWING USE
10 OF PERJURED TESTIMONY MUST BE SET ASIDE ---

11 THE COURT: MS. SANDERS, WHAT IS YOUR BASIS OF KNOWING USE
12 OF PERJURED TESTIMONY?

13 MS. SANDERS: WELL, YOUR HONOR, FIRST OF ALL, THE FACT THAT
14 THEY ADMINISTERED A POLYGRAPH EXAM IN THE FIRST PLACE, THEY RELIED
15 ON IT. THEY TYPICALLY AND ROUTINELY USE THE POLYGRAPH EXAMINATION
16 TO DECIDE WHETHER THEY'RE GOING TO PROCEED WITH THE PROSECUTION
17 AND THEY HAVE THE ULTIMATE DISCRETION BASED ON THAT ---

18 THE COURT: WELL ANYTIME TESTIMONY IS USED ON A
19 POLYGRAPH THEY ARE THEN BOUND TO ACCEPT THE RESULTS OF THAT
20 TESTIMONY?

21 MS. SANDERS: YES, I THINK IF THEY RELIED ON IT, YES, AND THEY
22 ROUTINELY USE IT. YES, JUDGE, I WOULD SAY ---

23 THE COURT: WELL, THE POLYGRAPH IS NOT EVEN RELIABLE
24 ENOUGH TO BE PUT IN FRONT OF A JURY.

25 MS. SANDERS: WELL, THEY RELY ON IT AS BEING RELIABLE OR

1 THEY WOULD NOT ADMINISTER THE POLYGRAPH TEST. WHY WOULD THEY
2 THEN ADMINISTER THE TEST IF IT'S NOT THAT RELIABLE. I'M SAYING THAT THE
3 STATE RELIES ON THAT TEST, YOUR HONOR, ROUTINELY TO DETERMINE
4 WHETHER SOMEBODY IS -- AND THEY SHOULD BE BOUND BY THAT.

5 THE COURT: IT'S CLEARLY AN INVESTIGATIVE TOOL USED BY
6 PROSECUTORS. IT'S CLEARLY AN INVESTIGATIVE TOOL USED BY DEFENSE
7 LAWYERS.

8 MS. SANDERS: WELL, IN ADDITION, YOUR HONOR, THE
9 DEFENDANT, FORMER CO-DEFENDANT GAVE TWO INCONSISTENT STATEMENTS.

10 THE COURT: ALL RIGHT. DOESN'T THAT COME TO A MATTER OF
11 CREDIBILITY THAT THE JURY DECIDES? DOESN'T THE JURY DECIDE HIS
12 CREDIBILITY?

13 MS. SANDERS: WELL, I THINK IT FURTHER ERODES ANY
14 CONCEPTION ON THE PART OF THE PEOPLE THAT HE'S CREDIBLE.

15 THE COURT: YOU CLEARLY HAVE THE RIGHT TO ARGUE THAT IN
16 FRONT OF THE JURY.

17 OKAY. WHAT DO YA'LL WANT TO SAY?

18 MR. GIBBONS: YOUR HONOR, I BELIEVE THOSE ARE ALL JURY
19 ISSUES AND AS TO THE POLYGRAPH, I WOULD MOVE THAT NO MENTION OF
20 POLYGRAPH BE MADE DURING THIS CASE IN ACCORDANCE WITH SOUTH
21 CAROLINA LAW.

22 THE COURT: ALL RIGHT. WELL, MS. SANDERS IS SAYING THAT THE
23 RESULT OF YOUR HAVING ADMINISTERED OR THE STATE'S ADMINISTERING A
24 POLYGRAPH, WHICH -- I DON'T KNOW IF THEY DID OR THEY DIDN'T, WHICH
25 INDICATED RESULTS THAT WERE NOT FAVORABLE THAT THAT IN AND OF ITSELF

1 IS ENOUGH TO PRECLUDE THE STATE FROM USING THAT WITNESS, THAT YOU
2 NOW HAVE KNOWLEDGE THAT THIS IS PERJURED TESTIMONY. WHAT IS IT YOU
3 SAY ABOUT THAT?

4 MR. GIBBONS: YOUR HONOR, HE WAS ANSWERED -- I DIDN'T
5 ATTEND THE POLYGRAPH AND I ONLY GET BACK WHAT THEY GIVE ME. I KNOW
6 THAT HE WAS ASKED MORE THAN THREE QUESTIONS AND HE ONLY INDICATED
7 DECEPTION ON THOSE THREE. AND AS WE -- AS JUDGES TELL JURORS ALL THE
8 TIME, THEY CAN ACCEPT PART, ACCEPT ALL, THROW IT ALL OUT, KEEP IT ALL
9 AND WE WOULD SAY THAT WHILE IT MAY NOT BE COMPLETELY TRUTHFUL,
10 THAT IT WAS ALSO COMPLETELY FABRICATED AND WE NO LONGER HAVE TO
11 VOUCH FOR OUR WITNESSES UNDER THE FEDERAL RULE.

12 MS. SANDERS: WELL, YOUR HONOR, THAT IS A MIS-STATEMENT OF
13 THE RULE. WHERE THEY ---

14 THE COURT: WHAT'S A MIS-STATEMENT OF THE RULE?

15 MS. SANDERS: WHAT HE JUST SAID THAT THEY DON'T HAVE TO
16 VOUCH FOR THE VORACITY OF A WITNESS. ACCORDING TO BAGLEY, WHERE
17 THEY KNOW OR HAVE SOME INDICATION THAT DECEPTION OR PERJURED
18 TESTIMONY IS GOING TO COME FORTH, THEN THEY DID HAVE AN OBLIGATION
19 TO NOT ---

20 THE COURT: ALL RIGHT.

21 MS. SANDERS: --- PRESENT THAT TESTIMONY, YOUR HONOR.

22 THE COURT: I AGREE WITH YOU. IF THEY HAVE KNOWLEDGE
23 THAT THERE'S PERJURED TESTIMONY IS BEING OFFERED, THEY'VE GOT AN
24 OBLIGATION NOT TO OFFER THAT TESTIMONY. IF THEY DO, THEY ARE NOT ONLY
25 VIOLATING THE RIGHTS OF THE DEFENDANT, BUT THEY ARE, IN FACT,

1 PARTICIPATING IN SUBORDINATION OF PERJURY AND SUBJECTING THEMSELVES
2 TO WHATEVER SANCTIONS MAY BE APPROPRIATE. BUT I HAVE NO
3 INFORMATION THAT THIS -- THE POLYGRAPH TEST IS NOT A DEFINITIVE ITEM
4 AND IS NOT GOING TO BE USED IN THIS CASE. I'M ORDERING RIGHT NOW THAT
5 NOBODY MAKE MENTION OF A POLYGRAPH DURING THE COURSE OF THIS TRIAL.
6 THE BASIS IS THAT SOME QUESTIONS APPEAR TO BE DECEPTIVE OR NOT
7 TRUTHFUL. I DON'T KNOW THAT TO BE TRUE OR NOT TRUE, BUT I DON'T THINK
8 THAT'S A ---

9 MS. SANDERS: WELL, YOUR HONOR, WE HAVE THE REPORT.

10 THE COURT: I DON'T THINK THAT'S A BASIS FOR DETERMINING
11 THAT -- IF, IN FACT, THEY GOT CONFLICTING STATEMENTS, THAT SURE IS
12 BETTER FOR YA'LL THAT THEY HAVE CONFLICTING STATEMENTS THAN THEY
13 HAVE CONSISTENT STATEMENTS IF IT'S AGAINST YOU AND THAT CLEARLY IS
14 SOMETHING YOU CAN ARGUE TO THE JURY AND YOU CAN ATTEMPT TO
15 IMPEACH THAT WITNESS IF THAT WITNESS TESTIFIES. YOUR MOTION TO DENY --
16 I MEAN IN LIMINE IS DENIED WITH RESPECT TO THAT WITNESS.

17 ALL RIGHT. WHAT'S NEXT?

18 MR. WILLIAMS: YOUR HONOR, WE FILED A MOTION ALSO IN
19 LIMINE TO QUASH THE INDICTMENTS FOR ROBBERY, CONSPIRACY TO COMMIT
20 ROBBERY. GROUNDS FOR THE MOTIONS ARE THAT THERE IS NO CORPUS DELICTI
21 OF THE CRIME, THAT THE STATE HAS NOT PROVED ANYTHING INTENDED TO BE
22 ROBBED OR, IN FACT, ROBBED. WE BASE THAT UPON EVIDENCE PRESENTED.

23 THE COURT: OTHER THAN A STATEMENT FROM SOME CO-
24 DEFENDANT OR SOMETHING LIKE THAT? WASN'T THERE A STATEMENT FROM
25 THE CO-DEFENDANT THAT THEY WENT TO ROB AND THAT ---

1 MR. WILLIAMS: THERE WERE SOME STATEMENTS THAT ---

2 THE COURT: --- AND THAT HE WASN'T LOOKING OR SOMETHING?

3 HE WAS BEHIND A BUILDING OR SOMETHING AND DIDN'T ACTUALLY SEE

4 WHETHER -- WHAT THEY DID, BUT THEY DID GO TO COMMIT THE ROBBERY?

5 WASN'T THERE A STATEMENT FROM ONE OF THE DEFENDANTS TO THAT

6 EXTENT?

7 MR. WILLIAMS: THERE IS A STATEMENT THAT THEY MAY HAVE

8 GONE OR HAD SOME KIND OF PLAN TO DO -- PLAN TO ROB IT. THERE'S

9 ACTUALLY NO STATEMENTS TO INDICATE THAT THEY STOLE ANYTHING OR

10 TOOK ANYTHING OR ANYTHING WAS MISSING.

11 THE COURT: ALL RIGHT. WELL THE CHARGES ARE ATTEMPTED

12 ROBBERY-- ATTEMPTED ARMED ROBBERY AND CONSPIRACY TO COMMIT

13 ARMED ROBBERY AND MURDER RIGHT? THOSE ARE THE THREE CHARGES?

14 MR. WILLIAMS: YES, SIR.

15 THE COURT: YOU'RE ALLEGING THAT THIS IS APPLICABLE TO THE

16 ATTEMPTED ARMED ROBBERY?

17 MR. WILLIAMS: THAT'S CORRECT.

18 THE COURT: ALL RIGHT.

19 MR. WILLIAMS: THAT THERE HAS TO BE SOMETHING PROVEN,

20 SOME CORPUS DELICTI, IN OTHER WORDS, SOMETHING THAT THEY WERE

21 INTENDING TO STEAL AND THERE'S NO EVIDENCE OF THAT, YOUR HONOR.

22 THE COURT: ALL RIGHT. WHAT YA'LL WANT TO SAY ABOUT

23 THAT?

24 MR. GIBBONS: YOUR HONOR, THE STATE DOES EXPECT TO BRING

25 WITNESSES THAT EARLIER THAT NIGHT THERE WERE CONVERSATIONS ABOUT

1 THEY WERE GOING TO GET SOME MONEY, THEY WERE GOING TO GO ROB
2 SOMEBODY. IN ADDITION, MR. BENNING'S STATEMENTS WAS THAT THEY HAD
3 MENTIONED ROBBING THE CHINA EXPRESS RESTAURANT AND HE KNEW THEY
4 HAD A GUN, THEY WENT OFF TOWARD THAT PLACE AND HE SAW THEM COMING
5 BACK AFTER -- SHORTLY AFTER HEARING A SOUND. I THINK THAT'S
6 CIRCUMSTANTIAL AS TO, YOU KNOW, EXACTLY WHAT WENT ON IN FRONT OF
7 THE RESTAURANT, BUT I THINK THEY MADE A PLAN, THEY MADE STEPS TO
8 CARRY IT OUT.

9 THE COURT: THAT MAY GET YOU BY THE CONSPIRACY, HOW
10 ABOUT THE ATTEMPTED?

11 MR. GIBBONS: YOUR HONOR, IT'S MY UNDERSTANDING IN ORDER
12 TO BE CONVICTED OF ATTEMPT, ALL YOU HAVE TO DO IS MAKE STEPS TOWARD
13 THAT GOAL. AND BECOMING ARMED AND PLANNING TO GO ROB THE PLACE
14 AND ACTUALLY TO GO INTO THE PLACE AND ACTUALLY GOING TO THE PLACE,
15 BUT FOR AN INTERVENING CAR DRIVING UP IS WHAT THE TESTIMONY, I EXPECT
16 TO HEAR, THEY WOULD HAVE CARRIED OUT THEIR PLAN.

17 THE COURT: ALL RIGHT. ANYTHING YA'LL WANT TO ADD?

18 MR. WILLIAMS: YOUR HONOR, IN THAT REGARD, THE CONSPIRACY
19 CHARGE AND THE ATTEMPT WOULD BE THE SAME CHARGE. AND THEREFORE, I
20 DON'T BELIEVE ---

21 THE COURT: I DON'T MEAN TO INTERRUPT YOU, BUT THIS MAY BE
22 SOMETHING THAT YA'LL ARE GOING TO HAVE TO MOVE ON A DIRECTED
23 VERDICT AFTER THEY PUT UP THEIR CASE ON THAT, THAT THEY FAILED TO
24 SHOW THAT THERE WAS ANY ATTEMPT TO -- YOU KNOW, I DON'T KNOW WHAT
25 THEIR EVIDENCE IS. THEY INDICATE THAT THEY HAVE EVIDENCE THAT THEY'RE

1 GOING TO BE ABLE TO OFFER TO SHOW THAT THERE WAS SOMETHING MORE
2 THAN JUST A CONSPIRACY WHERE THEY ACTUALLY TOOK A STEP FORWARD TO
3 FURTHER THAT CONSPIRACY. I DON'T KNOW, BUT YOU MAY BE ENTITLED TO
4 SOME SORT OF DIRECTED VERDICT IF THEY FAIL TO OFFER. I UNDERSTAND
5 YOUR CORPUS DELICTI ARGUMENT, BUT WE MAY NOT BE -- WHAT HE TELLS ME
6 IS HE'S GOING TO OFFER SOME EVIDENCE THAT THERE WAS AN ATTEMPT AND
7 WE'LL HAVE TO SEE ON THAT.

8 MR. WILLIAMS: THANK YOU, YOUR HONOR. THERE IS A ---

9 THE COURT: I'M GOING TO DENY THE DISMISSAL AT THIS POINT,
10 BUT WE'LL SEE WHAT HAPPENS.

11 MR. WILLIAMS: WE ALSO HAVE A MOTION THAT I THINK WE'VE
12 AGREED ON. MR. SANDERS HAS A TATTOO ON HIS ARM AND ---

13 THE COURT: WELL THE ONLY THING THEY CAN USE THAT FOR IS
14 FOR IDENTIFICATION PURPOSES.

15 MR. GIBBONS: WE'RE NOT USING IT, JUDGE.

16 MS. SANDERS: YOUR HONOR, WE HAVE ANOTHER MOTION IN
17 LIMINE TO EXCLUDE CERTAIN TESTIMONY AND STATEMENTS OF TEMETRIUS
18 WILLIAMS AND JERMAINE WALKER. YOUR HONOR, WE'RE MOVING TO EXCLUDE
19 THE TESTIMONY OF TEMETRIUS WILLIAMS AS RELATES TO TESTIMONY THAT WE
20 ANTICIPATE MAY COME IN THAT SHE HEARD THE DEFENDANT SAY THAT HE WAS
21 GOING TO GET SOME CHEESE TONIGHT. YOUR HONOR, THAT STATEMENT
22 CONSTITUTES HEARSAY AND IT DOES NOT FIT WITHIN ANY EXCEPTION. IF YOU
23 TAKE IT ON ITS FACE, THERE'S NOTHING IN THAT STATEMENT THAT WOULD
24 SUGGEST THAT IT WAS ANYTHING CRIMINAL GOING ON OR THAT IT WAS A
25 STATEMENT AGAINST HIS INTERESTS IN AND OF ITSELF. SHE SPECULATED -- SHE

1 MAY SPECULATE ABOUT WHAT IT MEANT, BUT ON ITS FACE, IT DOES NOT COME
2 INTO ANY EXCEPTION UNDER THE HEARSAY RULE. FOR THAT REASON, WE
3 WOULD ASK THAT IT BE EXCLUDED.

4 ALSO AS TO JERMAINE WALKER, WE ANTICIPATE THAT THERE WILL
5 BE TESTIMONY FROM MR. WALKER THAT HE HEARD THE DEFENDANT SAY THAT
6 THEY WERE GOING TO GET A LICK. WELL, WE DON'T KNOW WHICH DEFENDANT
7 SAID IT, BUT HE MAY SAY SOMETHING ABOUT A LICK, SOMEONE WAS GOING TO
8 GET A LICK.

9 YOUR HONOR, THAT STATEMENT, TAKEN ON ITS FACE, IT'S NOT AN
10 ADMISSION AGAINST INTEREST. TAKEN ON ITS FACE, WE DON'T KNOW WHAT
11 THAT MEANS, WE DON'T HAVE ANY INDICATIONS, IF THAT STATEMENT WAS
12 MADE, WHAT IT MEANT AT THAT TIME. IT DOES NOT COME WITHIN ANY
13 EXCEPTION TO THE HEARSAY RULE AND SO WE WOULD MOVE FOR ITS
14 EXCLUSION AS WELL.

15 THE COURT: ALL RIGHT. WHAT YOU GOT TO SAY ABOUT THAT,
16 MR. D. GRANT?

17 MR. GIBBONS: YOUR HONOR, PURSUANT TO RULE 801 OF THE
18 RULES OF EVIDENCE, SPECIFICALLY D 2, ITEMS WHICH ARE NOT HEARSAY ARE
19 STATEMENTS OFFERED AGAINST A PARTY AND IS THE PARTY'S OWN
20 STATEMENT. I DON'T THINK THAT EVEN COMES UNDER HEARSAY, GIVEN THE
21 NATURE OF THE STATEMENT.

22 MS. SANDERS: YOUR HONOR, WE DON'T KNOW THAT IT
23 CONSTITUTES OR HAS A NEGATIVE CONNOTATION. A LICK, WE DON'T KNOW
24 WHAT THAT MEANS AND THERE'S NOTHING ---

25 THE COURT: WELL HE'S SAYING THAT IT DOESN'T HAVE TO HAVE

1 A NEGATIVE, NUMBER ONE. HE'S SAYING THAT IF IT'S JUST A STATEMENT OF THE
2 PARTY - - -

3 MS. SANDERS: WELL, IT'S NOT A STATEMENT - - -

4 THE COURT: - - -BUT I DON'T KNOW WHAT THIS LADY IS GOING TO
5 SAY. CLEARLY, IF THERE'S SOME COLLOQUIALISMS OR SOME SLANG OR
6 SOMETHING AND HER UNDERSTANDING IS, SHE CAN TELL HER UNDERSTANDING.
7 IF IT'S HER UNDERSTANDING, TAKING EVERYTHING IN THE CONTEXT OF - - I
8 MEAN, YOU HEAR ALL THE TIME SOMEBODY SAYS, MAN SHE'S BAD OR SHE'S
9 HOT. WELL, CLEARLY PEOPLE KNOW WHAT THAT MEANS, EVEN THOUGH THAT
10 DOESN'T MEAN THAT SHE'S GOT A 100 DEGREE TEMPERATURE. YOU KNOW, IF
11 IT'S A STATEMENT THAT THIS WITNESS IS CAPABLE OF GIVING AS TO THEIR
12 UNDERSTANDING OF THE CONVERSATION AND THE MEANING, BASED ON
13 HAVING BEEN THERE, I'M GOING TO ALLOW IT IN.

14 IF THEY HAVE NO BASIS FOR WHAT THEY SAY, DON'T HAVE ANY
15 IDEA WHAT IT MEANS OR ANYTHING LIKE THAT, THEN YOU MIGHT BE ABLE TO
16 MOVE AT THAT TIME TO EXCLUDE THE TESTIMONY.

17 MS. SANDERS: THAT'S AFTER THE JURY HAS HEARD IT THOUGH,
18 JUDGE.

19 THE COURT: WELL, WE'LL INSTRUCT THEM. YOU KNOW, IF IT
20 DOESN'T MEAN ANYTHING, IF THEY SAY, I DON'T KNOW WHAT IT MEANS, I
21 DON'T KNOW WHAT HE MEANT, YOU KNOW, THEN MAYBE THE JURY IS GOING
22 TO HAVE TO MAKE A DECISION, TAKING EVERYTHING IN CONTEXT AND AS A
23 WHOLE, BUT I'M GOING TO DENY YOUR MOTION ON BOTH OF THOSE
24 STATEMENTS.

25 NOW, IF SOMEBODY'S GETTING UP AND MAKING STATEMENTS

1 ABOUT ANOTHER DEFENDANT HAVING SAID SOMETHING, YOU MIGHT HAVE A
2 HEARSAY PROBLEM, IS THAT WHAT'S ---

3 MS. SANDERS: JUDGE, THAT'S ALSO THE PROBLEM, THAT IT WAS
4 STATED -- WE ANTICIPATE THAT HE WILL STATE THAT ANOTHER DEFENDANT
5 MADE THIS ---

6 THE COURT: WELL, YOU KNOW, THEY MAY HAVE A PROBLEM
7 THEN, I DON'T KNOW. WE'LL HAVE TO -- CLEARLY THEY'LL HAVE TO LAY A
8 FOUNDATION FOR WHOEVER IS SAYING WHAT.

9 MR. GIBBONS: YOUR HONOR, THAT SAME SECTION, UNDER E SAYS,
10 A STATEMENT BY A CO-CONSPIRATOR. I THINK ONCE WE ESTABLISH
11 CONSPIRACY, THE STATEMENT OF ONE IS THE STATEMENT OF ALL.

12 THE COURT: ALL RIGHT. ANYTHING ELSE?

13 MS. SANDERS: YES, YOUR HONOR, WE HAVE A MOTION TO
14 SUPPRESS THE SEARCH WARRANT AS WELL AS THE ARREST WARRANT IN THIS
15 MATTER. AND I BELIEVE THAT WE WOULD HAVE TO TAKE TESTIMONY ON THIS
16 MOTION, YOUR HONOR. THE BASIS OF THE MOTION IS THAT THE SEARCH
17 WARRANT, AS WELL AS THE ARREST WARRANTS WERE ISSUED IN THIS MATTER
18 AND THE CASE LAW CLEARLY REQUIRES THAT THERE BE SUFFICIENT EVIDENCE
19 OF THE ---

20 THE COURT: IS THIS ONCE AGAIN BASED ON THE POLYGRAPH?

21 MS. SANDERS: YES, IT'S AN INCONSISTENT -- ALSO CASE LAW
22 POINTS OUT THAT YOU HAVE TO, IN THE AFFIDAVITS THAT SUPPORT THE
23 SEARCH WARRANTS AND THE ARREST WARRANTS, YOU HAVE TO GIVE SOME
24 INDICATION OR SPEAK TO THE ISSUE OF THE RELIABILITY OF THE PERSON
25 SUPPLYING THAT INFORMATION THAT LED TO THE ISSUANCE OF THE AFFIDAVIT.

1 AND THE SEARCH WARRANT AND THE ARREST WARRANT DO NOT ADDRESS
2 THAT ISSUE AT ALL, AS TO THE RELIABILITY OF THE INFORMANT, OF THE
3 RELIABILITY OF THE PERSON WHO SUPPLIED THE INFORMATION, YOUR HONOR.
4 AND THAT IS REQUIRED BY THE - - -

5 THE COURT: IS THERE SOME EVIDENCE THAT WAS SECURED BY
6 THE SEARCH WARRANT THAT YA'LL INTEND TO INTRODUCE THAT WE NOW
7 HAVE TO GO BEHIND THE WARRANT TO SEE?

8 MR. GIBBONS: YOUR HONOR, WE - - IN THE LAST TRIAL, IT CAME
9 OUT THAT THEY HAD INTERVIEWED SOME SPANISH SPEAKING WITNESSES EARLY
10 ON IN THE INVESTIGATION AND THEY USED ONE OF THE NIGHT MAGISTRATES TO
11 BE AN INTERPRETER AND DEFENSE DIDN'T REALIZE IT UNTIL WE GOT IN TRIAL
12 AND NEITHER DID I. AT THAT POINT, WE DECIDED TO HAVE A HEARING ABOUT
13 IT. PRIOR TO THE SEARCH WARRANT BEING EXECUTED, TESTIMONY WAS
14 GOTTEN FROM THE CHIEF THAT HE OBTAINED A CONSENT SO THE STATE
15 WITHDREW THE SEARCH WARRANT ALL TOGETHER CONCEDING THAT THERE
16 WERE SOME PROBLEMS WITH IT, BEING A NEUTRAL AND DETACHED
17 MAGISTRATE AND PROCEEDED ON THE VALID CONSENT AND THAT'S WHAT THE
18 STATE INTENDS TO RELY ON IN THIS TRIAL.

19 THE COURT: ALL RIGHT. SO WE DON'T HAVE A SEARCH WARRANT
20 ISSUE?

21 MR. GIBBONS: NO, SIR.

22 THE COURT: ALL RIGHT.

23 MS. SANDERS: WELL, YOUR HONOR, BUMPERS VS. NORTH
24 CAROLINA SAYS THAT A SUBSEQUENT CONSENT IS STILL NOT VALID IF, IN FACT,
25 THE BASIS FOR THE WARRANT IS NOT SUPPORTED. SO WE STILL HAVE AN ISSUE

1 WITH THE WARRANT. THE CONSENT DID NOT LIMIT IN ANY WAY OUR
2 CHALLENGE TO THE ---

3 THE COURT: WELL, I DON'T UNDERSTAND WHAT THE FACTS BASIS
4 IS THAT YOU'RE SAYING. SOMEBODY GOT A SEARCH WARRANT THAT YOU
5 BELIEVE IS INVALID ON IT'S FACE ---

6 MS. SANDERS: YES.

7 THE COURT: --- AND THEN THEY WENT TO EXECUTE THAT
8 SEARCH WARRANT AND WHEN THEY GOT THERE, THEY'RE SAYING THAT THEY
9 NEVER USED THE SEARCH WARRANT, THAT THEY, IN FACT, ASKED IF THEY
10 COULD HAVE PERMISSION TO ENTER WHATEVER IT IS THEY ENTERED OR DO
11 WHATEVER IT IS THEY DID AND THAT PERMISSION WAS GRANTED.

12 MS. SANDERS: YOUR HONOR, THEY USED IT SIMULTANEOUS TO
13 OBTAINING -- SIMULTANEOUSLY TO OBTAINING THE CONSENT FROM THE
14 MOTHER OF MAURICE BENNING, WHO'S HOME WAS THERE. THEY USED IT AT
15 THE SAME TIME, SO THAT WOULD INVALIDATE THE CONSENT AS WELL.

16 MR. GIBBONS: YOUR HONOR, I DON'T BELIEVE THAT'S CORRECT
17 ACCORDING THE EVIDENCE THAT WAS PRODUCED LAST TIME AND IS IN THE
18 TRANSCRIPT. 7:53 -- I THINK 7:53, CHIEF DARNELL OBTAINED A CONSENT. PRIOR
19 TO SEARCHING ON THAT CONSENT, THEY NOTIFIED OUR OFFICE. WE SAID, WELL
20 DO BOTH JUST IN CASE. SO 7:54 THEY READ THE SEARCH WARRANT TO THE
21 RESIDENT OF THE HOME AND THEN THEY CONDUCTED THEIR SEARCH. SO THE
22 CONSENT PRECEDED THE SEARCH WARRANT AND TESTIMONY AND THE RECORD
23 WILL REFLECT THERE WAS NO MENTION PRIOR TO THE CONSENT BEING
24 GRANTED OF THE SEARCH WARRANT.

25 IN ADDITION, YOUR HONOR, MR. TUNZY SANDERS WAS NOT A

1 RESIDENT OF THIS HOUSE. HE HAS NO EXPECTATION OF PRIVACY IN A THIRD
2 PARTY RESIDENCE AND ESPECIALLY UNDER CONSENT, UNDER CONSTITUTIONAL
3 GROUNDS HE HAS NO STANDING TO CHALLENGE THE SEARCH OF A THIRD PARTY
4 RESIDENCE AND I BELIEVE I HANDED UP THE CASES ON THAT.

5 THE COURT: ALL RIGHT. WELL, I HAVEN'T HAD A CHANCE TOO
6 LOOK AT THAT. I'LL LOOK AT THAT.

7 MS. SANDERS: YOUR HONOR, AT THAT HEARING, THEY DID NOT
8 PRESENT THE TESTIMONY OF MRS. HIGHSMITH, WHO COULD HAVE -- THERE
9 WERE ONLY TWO WITNESSES WHO TESTIFIED IN THAT MATTER, I BELIEVE
10 POLICE CHIEF DARNELL AND VINCE PADGETT OF SLED. THEY DID NOT ELICIT
11 THE TESTIMONY OF MRS. HIGHSMITH, HERSELF, WHO WOULD HAVE STATED ON
12 THE STAND WHETHER OR NOT THEY MENTIONED THE SEARCH WARRANT PRIOR
13 TO HER CONSENT. THAT TESTIMONY WAS NOT ELICITED. I THINK THAT SHE IS
14 THE ONLY PERSON -- WELL, SHE IS ONE OF THREE PEOPLE THAT CAN INDICATE
15 TO THIS COURT ---

16 THE COURT: ARE YA'LL PREPARED TO OFFER THIS WITNESS TO
17 SAY THAT ---

18 MS. SANDERS: YEAH, WE CAN OFFER HER.

19 THE COURT: --- TO SAY THAT SHE DID NOT GIVE ANY
20 PERMISSION?

21 MS. SANDERS: BEFORE THE SEARCH WARRANT? WE'RE -- SHE
22 SIGNED A CONSENT, JUDGE. SHE SIGNED A CONSENT. OUR BASIC PREMISE IS
23 THAT SHE MAY HAVE SIGNED THIS CONSENT AFTER THE SEARCH WARRANT
24 ISSUE WAS MENTIONED. THAT IS ---

25 THE COURT: ALL RIGHT. I UNDERSTAND THE ISSUE. I'LL LOOK AT

1 THE -- YOU GOT A CASE YOU WANT ME TO LOOK AT?

2 MS. SANDERS: WELL, BUMPERS VS. NORTH CAROLINA IS A CASE,
3 YOUR HONOR.

4 THE COURT: YOU GOT A CASE YOU WANT ME TO LOOK AT?

5 MS. SANDERS: YES, BUMPERS VS. NORTH CAROLINA.

6 THE COURT: LET ME HAVE A COPY OF IT.

7 MS. SANDERS: OKAY.

8 THE COURT: AND I'LL LET YOU KNOW. WHAT ELSE WE GOT?

9 MR. WILLIAMS: YOUR HONOR, FOR THE RECORD, ONCE AGAIN,
10 WE'D LIKE TO RENEW OUR MOTION FOR CHANGE OF VENUE, BASED UPON THE
11 NUMBER OF THE JURY PANEL THAT STOOD UP WHEN ASKED THE QUESTIONS
12 ABOUT NEWS ARTICLES AND THINGS IN THE COMMUNITY THAT THEY HAD
13 HEARD ABOUT THIS PARTICULAR INCIDENT. BUT WHEN YOU ASKED THAT
14 QUESTION, IT APPEARED TO ME THAT AT LEAST THREE-FOURTHS OF THE PANEL
15 DID STAND UP. AND WHILE ALL OF THEM SAT DOWN WHEN YOU SAID, CAN YOU
16 BE FAIR AND IMPARTIAL, I HAVE GRAVE CONCERNS ABOUT WHETHER THAT IS
17 ACTUALLY TRUE GIVEN THE AMOUNT OF PUBLICITY THERE HAS BEEN ABOUT
18 THIS TRIAL, THE TALK THERE HAS BEEN ABOUT THIS TRIAL. AND, THEREFORE,
19 BASED UPON THAT GROUND, WE WOULD RENEW OUR MOTION FOR A CHANGE
20 OF VENUE.

21 THE COURT: ALL RIGHT.

22 MR. GIBBONS: YOUR HONOR, I'D JUST LIKE TO GET SOME
23 DIRECTION FROM THE COURT, I HAVE INSTRUCTED MY WITNESSES AND I WILL
24 CONTINUE TO ---

25 THE COURT: ANYTHING YOU WANT TO SAY IN RESPONSE TO HIM?

1 MR. GIBBONS: NO, SIR, I'M SORRY.

2 THE COURT: ALL RIGHT. I'M GOING TO DENY THE MOTION. I
3 THINK CLEARLY THAT THIS IS A SMALL COUNTY, SMALL TOWN. WHEN YOU
4 HAVE A MURDER OR AN ALLEGED MURDER THAT GETS REPORTED, PEOPLE WILL
5 TAKE NOTE OF THAT AND READ ABOUT IT. BASED ON THE INFORMATION THAT I
6 HAVE, THE JURORS THAT STOOD UP, EACH AND EVERYONE OF THEM INDICATED
7 THAT THEY COULD SET ALL THAT ASIDE, THEY COULD BE FAIR AND IMPARTIAL,
8 BASED UPON -- AND RENDER A VERDICT, BASED UPON THE EVIDENCE THAT'S
9 PRESENTED AND THE LAW THAT'S GIVEN TO THEM. I HAVEN'T SEEN ANYTHING
10 OTHER THAN AN AFFIDAVIT FROM MR. WILLIAMS THAT WOULD INDICATE THAT
11 JURORS HAVE BEEN SO TAINTED THAT THEY WOULD NOT BE ABLE TO LISTEN TO
12 THE EVIDENCE AND RULE UPON THIS CASE, BASED UPON THAT EVIDENCE.

13 ALL RIGHT. WE GOT ANYTHING ELSE? OTHER THAN YOU WANT ME
14 TO LOOK AT THAT CASE ON YOUR SEARCH?

15 MS. SANDERS: I THINK THAT'S IT, YOUR HONOR.

16 THE COURT: ALL RIGHT. WHAT IS IT YOU WANT TO ---

17 MR. GIBBONS: JUDGE, IN DEALING WITH THIS PRIOR TRIAL, I'M
18 GOING TO INSTRUCT MY WITNESSES TO SAY AT A PRIOR PROCEEDING IF THAT
19 COMES UP. WOULD THAT BE ACCEPTABLE TO THE COURT?

20 THE COURT: YA'LL HAVE ANY OBJECTION TO THAT?

21 MR. GIBBONS: FOR ULTIMATE PURPOSES ---

22 THE COURT: I DON'T WANT ANYBODY TO MENTION A PRIOR
23 TRIAL.

24 MR. GIBBONS: AT A PRIOR PROCEEDING IN THIS MATTER ---

25 MS. SANDERS: NO PROBLEM WITH THAT.

1 MR. GIBBONS: --- IS THAT NEUTRAL ENOUGH?

2 THE COURT: YA'LL DO THE SAME IN TERMS OF ANY CROSS-
3 EXAMINATION OR ANY DIRECT EXAMINATION THAT YOU DO WITH RESPECT TO
4 ANY WITNESSES AND ALL OF YOU DO -- I DON'T KNOW IF YOU'RE GOING TO
5 MAKE ANY ARGUMENT AT ANY TIME IN THE CASE ABOUT SOMETHING
6 SOMEBODY MIGHT HAVE SAID AT A PRIOR PROCEEDING, BUT IF YOU DO, REFER
7 TO IT AS A PRIOR PROCEEDING, DON'T REFER TO IT -- OR YOU CAN REFER TO IT
8 AS PREVIOUSLY OR SOMETHING LIKE THAT. DON'T REFER TO ANY PRIOR TRIAL
9 AT ALL.

10 WHAT ELSE WE GOT?

11 MR. GIBBONS: YOU WANT TO WAIT UNTIL AFTER YOU READ
12 THOSE CASES AND WE'LL SEE IF WE'RE GOING TO DO A SUPPRESSION HEARING,
13 OR ---

14 THE COURT: YEAH, WELL WE WILL COME BACK HERE AT -- WHAT
15 TIME DID I TELL THAT JURY?

16 MR. GIBBONS: 2:30, YOUR HONOR.

17 THE COURT: IF YA'LL CAN -- HOW LONG WOULD THAT HEARING
18 TAKE? WHO WE GOT UP? WE'D HAVE THE, YOU SAID THE CHIEF OF POLICE?

19 MR. GIBBONS: THE CHIEF OF POLICE IN THE CONSENT MATTER
20 ITSELF, YOUR HONOR.

21 MS. SANDERS: AND THEN WE WOULD PROBABLY CALL MRS.
22 BENNING HIGHSMITH, SO IT SHOULDN'T TAKE THAT LONG, YOUR HONOR.

23 THE COURT: WELL, HOW LONG YA'LL WANT FOR LUNCH?

24 MS. SANDERS: AN HOUR.

25 THE COURT: ALL RIGHT. WE'LL BE BACK HERE AT 5 AFTER 2:00.

1 I'VE GOT 7 AFTER, THAT CLOCK IS A LITTLE FAST, FASTER THAN MY CLOCK.
2 WE'LL GO BY MY CLOCK. SO YA'LL BE BACK HERE IN 58 MINUTES AND GIVE ME
3 THOSE CASES AND WE'LL DO WHAT WE NEED TO DO AT THAT TIME.

4 ALL RIGHT. WE'LL STAND IN RECESS.

5 (WHEREUPON A RECESS FOR LUNCH WAS OBSERVED.)

6 THE COURT: ALL RIGHT. ARE WE READY TO GO FORWARD ON
7 THIS SUPPRESSION HEARING?

8 MS. SANDERS: YES, YOUR HONOR, WE ARE.

9 MR. GIBBONS: THE STATE'S READY, YOUR HONOR.

10 THE COURT: ALL RIGHT. YA'LL WANT TO CALL YOUR WITNESS.

11 MR. GIBBONS: YOUR HONOR, THE STATE CALLS CHIEF BUDDY
12 DARNELL.

13 MS. SANDERS: YOUR HONOR, I DON'T SEE MRS. BENNING.

14 THE COURT: WHO IS THAT?

15 MS. SANDERS: THAT'S THE OTHER WITNESS, YOUR HONOR.

16 MR. GIBBONS: MRS. HIGHSMITH, I BELIEVE.

17 MS. SANDERS: MRS. BENNING HIGHSMITH. THAT WAS THE
18 WITNESS WE WANTED TO CALL.

19 THE COURT: I CAN'T ANSWER ABOUT THAT. LET'S CALL YOUR
20 WITNESS, PLEASE.

21 MR. GIBBONS: STATE CALLS CHIEF DARNELL.

22 THEREUPON,

23 EUGENE DARNELL,

24 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR NAME FOR

1 THE RECORD.

2 MR. DARNELL: EUGENE E. DARNELL.

3 DIRECT EXAMINATION - IN CAMERA

4 BY MR. GIBBONS:

5 Q MR. DARNELL, WE'RE HERE IN REFERENCE TO A SUPPRESSION HEARING
6 REGARDING A SEARCH OF THE HIGHSMITH RESIDENCE HERE IN
7 BARNWELL. WERE YOU INVOLVED IN THAT SEARCH?

8 A YES, I WAS. .

9 Q CAN YOU TELL US YOUR INVOLVEMENT, PLEASE?

10 A WE HAD RECEIVED INFORMATION THAT A WEAPON THAT WAS INVOLVED
11 IN THE DEATH OF MS. CHAPMAN COULD PROBABLY BE IN MS.
12 HIGHSMITH'S RESIDENCE, LOCATED AT ■ BERRY STREET IN THE CITY OF
13 BARNWELL.

14 Q WHAT DID YOU DO IN LIGHT OF THAT INFORMATION?

15 A WE WENT TO THIS RESIDENCE, ALONG WITH SEVERAL OTHER OFFICERS,
16 LIEUTENANT VINCE PADGETT, MYSELF, CAPTAIN LUTHER GADSON AND
17 SEVERAL OTHER OFFICERS. WE WENT TO THE RESIDENCE AND KNOCKED
18 ON THE DOOR AND THERE WAS NO ONE HOME AT THE TIME AND WHEN
19 WE STARTED TO WALK OFF A CAR PULLED UP IN THE FRONT YARD; AND
20 IN THE CAR WAS MR. AND MS. HIGHSMITH.

21 Q ALL RIGHT. AT THAT TIME, DID YOU ALL HAVE A SEARCH WARRANT FOR
22 THAT RESIDENCE?

23 A YES, SIR.

24 Q AND WHO HAD POSSESSION OF THAT SEARCH WARRANT?

25 A LIEUTENANT VINCE PADGETT HAD POSSESSION OF THE SEARCH

1 WARRANT ITSELF.

2 Q ALL RIGHT. AND YOU WERE AT THE RESIDENCE, MS. HIGHSMITH DROVE
3 UP, WHAT HAPPENED NEXT, CHIEF?

4 A I EXPLAINED - - WE EXPLAINED TO MS. HIGHSMITH OUR REASONS FOR
5 BEING THERE AND WHEN WE TOLD HER WE WERE THERE POSSIBLY
6 LOOKING FOR A WEAPON THAT PROBABLY COULD BE INVOLVED, SHE
7 MADE A STATEMENT AT THAT TIME THAT SHE HAD HEARD THIS ON THE
8 RADIO AND IT WAS PROBABLY A 25 AUTOMATIC PISTOL AND THAT SHE
9 WAS CONCERNED ABOUT HER WEAPON SO SHE WENT AND CHECKED TO
10 SEE IF HER WEAPON WAS STILL THERE.

11 Q AND WHAT DID YOU DO WHEN SHE TOLD YOU THAT?

12 A WE ASKED HER IF SHE WOULD GIVE US A CONSENT TO SEARCH THE
13 RESIDENCE.

14 Q ALL RIGHT.

15 MR. GIBBONS: YOUR HONOR, I HAVE THE CONSENT TO SEARCH. I
16 WOULD LIKE TO MOVE THIS IN AS A COURT'S EXHIBIT AT THIS TIME.

17 MR. WILLIAMS: NO OBJECTION.

18 THE COURT: ALL RIGHT. SO ADMITTED. YOU HAVE A COPY OF
19 THIS?

20 MR. GIBBONS: I DO IN MY BOOK, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 BY MR. GIBBONS:

23 Q CHIEF DARNELL, I'LL OFFER YOU WHAT'S BEEN MARKED AS COURT'S
24 EXHIBIT NO. 1 AND ASK YOU IF YOU RECOGNIZE THAT DOCUMENT/

25 A YES, I DO.

1 Q WHAT IS THAT DOCUMENT?

2 A THIS IS A CONSENT SEARCH SIGNED BY MS. DOROTHY BENNING
3 HIGHSMITH, GIVING US CONSENT TO SEARCH HER RESIDENCE.

4 Q AND IS THAT A COPY OF THE DOCUMENT THAT WAS USED THAT DAY?

5 A YES, IT IS.

6 Q AND WHOSE HANDWRITING IS ON THAT DOCUMENT.

7 A THIS IS MY HANDWRITING AT THE TOP, FILLED OUT AND SIGNED BY
8 DOROTHY BENNING HIGHSMITH.

9 Q AND, CHIEF, DID YOU READ THAT DOCUMENT TO MS. HIGHSMITH ON THAT
10 DAY?

11 A YES, WE DID.

12 Q AND WHAT IS THE DATE ON THAT DOCUMENT?

13 A THE DATE ON THE DOCUMENT IS DECEMBER 26, 1997.

14 Q AND IS THERE A TIME ON THAT DOCUMENT?

15 A YES, THERE IS.

16 Q AND WHAT DOES THAT TIME RELATE TO?

17 A 7:53 P.M. IS THE DATE THAT -- IS THE TIME WE FINISHED FILLING IT OUT.
18 THERE'S A SECOND TIME ON HERE, 7:54.

19 Q CHIEF, AS TO THIS SEARCH WARRANT THAT WAS WITH YA'LL OUT THERE,
20 AS TO THE SEARCH WARRANT THAT WAS WITH YOUR PARTY THERE THAT
21 DAY, PRIOR TO THAT CONSENT FORM BEING FILLED OUT, WAS ANY
22 MENTION MADE TO MS. HIGHSMITH REGARDING A SEARCH WARRANT?

23 A THERE WAS NO MENTION WHATSOEVER AT THAT TIME MADE ABOUT THE
24 SEARCH WARRANT.

25 Q HAD IT COME UP AT ALL?

1 A HAD NOT COME UP AT ALL.Q

2 Q AND DID IT INVOLVE MS. HIGHSMITH IN ANY WAY AS FAR AS HER NAME
3 BEING - - -

4 A NO, NO.

5 Q AND WHAT DID YOU DO AFTER YOU OBTAINED THIS SIGNED CONSENT
6 FORM?

7 A AFTER THE CONSENT WAS SIGNED THEN WE WERE ADVISED TO GO
8 AHEAD WITH THE SEARCH WARRANT THAT WE HAD AT THAT TIME.

9 Q AND WHO DID THAT?

10 A WE WENT OVER TO MS. HIGHSMITH, MYSELF AND I THINK LIEUTENANT
11 PADGETT. I EXPLAINED THE SEARCH WARRANT TO HER AT THAT TIME
12 AND WE SIGNED THE SEARCH WARRANT.

13 MR. GIBBONS: YOUR HONOR, I'D LIKE TO OFFER A COPY OF THE
14 SEARCH WARRANT, WHICH I'VE SHOWN DEFENSE COUNSEL, AS COURT'S
15 EXHIBIT NO. 2.

16 BY MR. GIBBONS:

17 Q CHIEF DARNELL, I'M SHOWING YOU WHAT'S BEEN MARKED AS COURT'S
18 EXHIBIT NO. 2. CAN YOU IDENTIFY THAT, PLEASE?

19 A YES, I CAN. THIS IS THE SEARCH WARRANT THAT WE GAVE MS.
20 HIGHSMITH AFTER THE CONSENT TO SEARCH HAD BEEN SIGNED.

21 Q AND IS THERE ANY TIME REFLECTED ON THAT DOCUMENT?

22 A 7:54.

23 Q AND WHAT DOES THAT TIME REFLECT?

24 A IT WAS THE TIME THAT THE SEARCH STARTED.

25 Q AND IT'S YOUR TESTIMONY TODAY THAT NO SEARCH WARRANT WAS

1 MENTIONED PRIOR TO THE CONSENT FORM BEING FILLED OUT?

2 A NONE WHATSOEVER.

3 Q AT ANY TIME DID MS. HIGHSMITH WITHDRAW CONSENT TO SEARCH?

4 A NONE WHATSOEVER. SHE WAS VERY COOPERATIVE AT ALL TIMES.

5 Q AND WHO ACTUALLY KNEW WHERE THE GUN WAS THAT DAY?

6 A MS. HIGHSMITH KNEW WHERE THE GUN WAS AT.

7 Q AND DID SHE VOLUNTARILY LEAD THE OFFICERS TO THE GUN?

8 A SHE VOLUNTARILY CARRIED THEM IN THE BEDROOM WHERE THE GUN
9 WAS LOCATED.

10 Q AND AT NO POINT WAS SHE OFFERED ANY COMPENSATION IN ANY WAY?

11 A NO, NO, SIR.

12 Q WAS SHE THREATENED IN ANY WAY WITH ARREST?

13 A NO.

14 Q AND TO YOUR KNOWLEDGE, DID SHE HAVE THE RIGHT TO REFUSE AT ANY
15 TIME?

16 A YES, SIR, SHE DID.

17 Q CHIEF, ARE YOU AWARE OF WHO LIVED AT THAT RESIDENCE AT THAT
18 TIME?

19 A TO MY KNOWLEDGE, IT WAS JUST MR. AND MS. HIGHSMITH.

20 Q DID MR. TUNZY SANDERS LIVE THERE TO YOUR KNOWLEDGE?

21 A NOT TO MY KNOWLEDGE.

22 Q DO YOU HAVE ANY IDEA WHERE HE WAS RESIDING AT THAT TIME?

23 A NO, I SURE DON'T.

24 MR. GIBBONS: YOUR HONOR, THAT WOULD BE THE STATE'S PROOF
25 ON THAT MATTER.

1 THE COURT: QUESTIONS?

2 MS. SANDERS: YES, YOUR HONOR.

3 CROSS-EXAMINATION - IN CAMERA

4 BY MS. SANDERS:

5 Q CHIEF DARNELL, WHAT TIME DID YOU ARRIVE AT THE RESIDENCE? DO
6 YOU HAVE ANYTHING STATING WHAT TIME YOU ARRIVED THERE?

7 A THE FIRST TIME ON THE CONSENT SEARCH I THINK WAS 7:53. WE WERE
8 PROBABLY THERE FOR A FEW MINUTES. WE GOT OUT OF THE CAR AND
9 WALKED UP TO THE DOOR - - -

10 Q YOU AND WHO ELSE, SIR?

11 A MYSELF, LIEUTENANT VINCE PADGETT, CAPTAIN LUTHER GADSON WHO
12 WAS WITH THE POLICE DEPARTMENT AT THE TIME, TODD GANTT, WHICH
13 IS INVESTIGATOR WITH THE SOLICITOR'S OFFICE, GRANT GIBBONS, THE
14 SOLICITOR, WAS WITH US AT THAT TIME. AND THERE WERE SEVERAL
15 OTHER, I THINK SEVERAL OTHER OFFICERS, I JUST CAN'T REMEMBER THE
16 NAMES OF EVERYONE TODAY.

17 Q THAT WERE THERE ON THE PREMESIS?

18 A YES, MA'AM.

19 Q AND THE ONLY OTHER PEOPLE THAT WERE NOT LAW ENFORCEMENT
20 WERE MR. AND MS. HIGHSMITH?

21 A THOSE WERE THE ONLY TWO THAT CAME UP, YES.

22 Q AND IS IT YOUR TESTIMONY THAT THERE WAS ABOUT, MAYBE WHAT, AS
23 MANY AS 10 OFFICERS THERE THAT NIGHT, SIR?

24 A IT COULD BE FIVE OR SIX OR SEVEN. I'M NOT EXACTLY SURE ON THAT.

25 Q HAD ALL OF THEM ENTERED THE PREMISES PRIOR TO YOUR ASKING FOR

1 THIS CONSENT OF MS. HIGHSMITH, SIR, IS THAT CORRECT?

2 A ALL OF THE OFFICERS WERE NOT IN THE RESIDENCE WHENEVER WE
3 WENT IN AND ASKED FOR THE CONSENT.

4 Q WHERE WERE THE OTHER OFFICERS?

5 A OUT FRONT.

6 Q WERE THEY WHERE MS. BENNING COULD EASILY SEE THAT THEY WERE
7 ON THE PREMISES?

8 A SURE, YES, MA'AM.

9 Q OKAY. AND IT IS YOUR TESTIMONY THAT YOU DIDN'T -- YOU HAD A
10 SEARCH WARRANT IN YOUR POSSESSION?

11 A THAT'S CORRECT.

12 Q NOW, YOU INDICATED EARLIER THAT THERE WAS SOME INFORMATION
13 THAT YOU HAD RECEIVED THAT THERE MIGHT BE A GUN ON THAT
14 LOCATION THAT MIGHT HAVE -- AT THAT LOCATION THAT MIGHT HAVE
15 BEEN USED IN A CRIME, IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q WHO SUPPLIED THAT INFORMATION TO YOU, SIR?

18 A CLEVELAND JONES.

19 Q DID YOU EVER LEARN WHAT THE BASIS OF THAT INFORMATION WAS
20 THAT HE GAVE YOU? WHERE HE GOT THAT INFORMATION FROM?

21 A HE GOT IT FROM MAURICE BENNING.

22 Q DID YOU HAVE ANY PART AT ALL IN THE ROLE OF PREPARING THE
23 AFFIDAVIT THAT AFFORDED THAT SEARCH WARRANT, SIR?

24 A NO, MA'AM, I DID NOT.

25 Q AND WHO WAS THE PERSON THAT PREPARED THAT?

1 A LIEUTENANT VINCE PADGETT AND JUDGE WILLIAM MARK DIXON.

2 Q NOW, YOU SAY THAT YOU HAD A SEARCH WARRANT THAT YOU CAME TO
3 THE RESIDENCE?

4 A YES, MA'AM.

5 Q ALREADY ISSUED?

6 A WE HAD A SEARCH WARRANT, BUT IT WAS NEVER MENTIONED.

7 Q AND SO YOU, EVEN THOUGH YOU HAD IT, YOU NEVER MENTIONED IT TO
8 MS. BENNING?

9 A NOT UNTIL AFTER THE CONSENT WAS SIGNED AND THEN WE FELT THAT IT
10 WAS BEST TO GO WITH THE SEARCH WARRANT.

11 Q WOULD YOU BE SURPRISED TO LEARN THAT SHE SAID THAT YOU
12 MENTIONED IT BEFORE YOU MENTIONED - - -

13 MR. GIBBONS: YOUR HONOR, I OBJECT.

14 THE COURT: SUSTAINED.

15 MS. SANDERS: OKAY.

16 BY MS. SANDERS:

17 Q NOW, YOU INDICATED THAT YOU HAD GOT HER TO SIGN THE CONSENT,
18 CORRECT?

19 A THAT'S CORRECT.

20 Q AND THAT WAS YOUR HANDWRITING?

21 A THAT WAS MY HANDWRITING AT THE TOP, YES, MA'AM.

22 Q NOW, HOW LONG DID IT TAKE YOU TO FILL OUT THIS DOCUMENT? THE
23 CONSENT DOCUMENT THAT YOU WROTE?

24 A IT DIDN'T TAKE VERY LONG AT ALL, IT'S A SHORT FORM.

25 Q DID YOU EVER ADVISE MS. HIGHSMITH THAT SHE HAD A RIGHT TO REFUSE

1 A A CONSENT TO SEARCH THE PREMISES?

2 A THE CONSENT WAS ALSO READ TO HER, YES, MA'AM.

3 Q I'M ASKING YOU, DID YOU VERBALLY ADVISE HER THAT SHE HAD THE
4 RIGHT TO REFUSE THIS CONSENT TO SEARCH?

5 A I DON'T RECALL, BUT LET ME SAY THAT SHE WAS VERY COOPERATIVE,
6 ESPECIALLY BECAUSE OF THE STATEMENT SHE MADE THAT SHE WAS
7 CONCERNED ABOUT THE WEAPON, THAT WHEN SHE HEARD ABOUT THAT
8 WEAPON BEING -- A 25 BEING USED, THAT SHE WENT AND CHECKED HER
9 BEDROOM TO SEE IF HER WEAPON WAS THERE AND SHE WAS VERY
10 COOPERATIVE.

11 Q OKAY. BUT -- I'M NOT TRYING TO -- I JUST WANT YOU TO ANSWER THAT
12 ONE QUESTION. DID YOU EVER VERBALLY INDICATE TO HER, MA'AM,
13 YOU HAVE A RIGHT TO REFUSE US THE SEARCH OF YOUR PREMISES
14 BASED ON YOUR CONSENT? DID YOU EVER ADVISE HER OF THAT?

15 A I READ HER WHAT WAS ON THAT CONSENT.

16 MS. SANDERS: JUDGE, COULD I PLEASE SEE THE CONSENT?

17 THE COURT: THE CONSENT SAYS THAT YOU HAVE A RIGHT TO
18 REFUSE.

19 MS. SANDERS: OKAY.

20 BY MS. SANDERS:

21 Q AND THIS IS ALL YOUR HANDWRITING, WITH JUST HER SIGNATURE?

22 A YES, MA'AM.

23 Q NOW, AT SOME POINT YOU HAD HAD SOME OTHER DOCUMENTS TYPED UP
24 WHERE YOU INDICATED THAT YOU HAD CONDUCTED A SEARCH OF THIS
25 PREMISES AT 7:45 P.M., CORRECT? ON THAT NIGHT?

1 A NO, MA'AM.

2 Q THERE WAS NOT A DOCUMENT INDICATING THAT THE PREMISES WAS
3 SEARCHED AT 7:45, SIR?

4 A NOT TO MY KNOWLEDGE.

5 Q YOU INDICATED THAT AFTER SHE SIGNED THIS CONSENT, IT'S YOUR
6 TESTIMONY THAT YOU WERE ADVISED TO GO AHEAD WITH THE SEARCH
7 WARRANT?

8 A THAT'S CORRECT.

9 Q AND WHO WAS THE PERSON THAT ADVISED YOU TO DO THAT?

10 A GRANT GIBBONS AND LIEUTENANT VINCE PADGETT.

11 Q AND YOU'RE SAYING YOU WERE ADVISED TO GO AHEAD WITH THE
12 SEARCH WARRANT APPROXIMATELY ONE MINUTE AFTER SHE SIGNED THE
13 CONSENT?

14 A JUST TO BE ON THE SAFE -- YES, MA'AM.

15 Q THERE'S NO POSSIBILITY THAT IN THAT MINUTE OF TIME IT COULD HAVE
16 POSSIBLY BEEN SIMULTANEOUS TO THE CONSENT?

17 A NO, MA'AM. WE HAD THE CONSENT SIGNED FIRST.

18 Q AND THAT ONE MINUTE, 60 SECONDS, TRANSPIRED BETWEEN THE TIME OF
19 THE CONSENT AND THE TIME OF THE SEARCH WARRANT?

20 A THAT'S THE TIME THAT I HAVE ON THE CONSENT, MA'AM.

21 THE COURT: ANYTHING FURTHER?

22 MS. SANDERS: NOTHING FURTHER.

23 THE COURT: ANYTHING FURTHER FROM THE CHIEF, MR. GIBBONS?

24 MR. GIBBONS: NO, YOUR HONOR.

25 THE COURT: THANKS, CHIEF, YOU CAN STEP DOWN.

1 ANYTHING FURTHER FROM THE STATE?

2 MR. GIBBONS: NO, YOUR HONOR.

3 MS. SANDERS: WE'D LIKE TO CALL MS. BENNING.

4 THE COURT: ALL RIGHT.

5 THEREUPON,

6 DOROTHY BENNING HIGHSMITH,

7 AFTER BEING DULY SWORN TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION - IN CAMERA

9 BY MS. SANDERS:

10 Q WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

11 A DOROTHY B. HIGHSMITH.

12 Q AND WHERE DO YOU RESIDE?

13 A WAS ■ BERRY STREET, BARNWELL, SOUTH CAROLINA.

14 Q ON THE EVENING OF DECEMBER 26, OF 1997, WERE YOU AT YOUR HOME
15 APPROXIMATELY 7:30?

16 A YES. WELL, NO AND YES.

17 Q AT SOME POINT DID YOU ARRIVE AT YOUR HOME?

18 A YES.

19 Q AND WHEN YOU ARRIVED AT YOUR HOME, WHAT DID YOU FIND THERE?

20 A THERE WAS SLED OFFICERS, WHATEVER, SURROUNDING MY HOUSE.

21 Q AND HOW MANY DO YOU -- DO YOU KNOW HOW MANY?

22 A NO. IT WAS QUITE A BIT.

23 Q WAS MORE THAN 10, LESS THAN 10?

24 A I'M GOING TO SAY SOME WERE IN BACK, SOME WERE IN FRONT. IT'S KIND
25 OF HARD TO SAY, I DON'T REMEMBER HOW MANY IT WAS.

1 Q WHAT WERE THEY DOING WHEN YOU ARRIVED?

2 A I CAN'T SAY WHAT THEY WERE DOING IN THE BACK, BUT WHEN WE
3 PULLED UP THE SIDE OF THE CAR AND TOLD US TO GET OUT AND ASKED
4 ME DID I HAVE A SON NAMED MAURICE BENNING. I SAID, YES.

5 Q AND UPON ADVISING THAT YOU HAD A SON NAMED MAURICE BENNING,
6 WHAT HAPPENED AFTER THAT?

7 A WELL, WE WENT INSIDE THE HOUSE BECAUSE THEY ASKED IF WE MIND IF
8 THE COME IN AND I SAID, NO, THEY COULD COME IN.

9 Q OKAY. I'M SORRY, I COULDN'T HEAR THAT.

10 A THEY ASKED IF THEY COULD COME IN.

11 Q THEY ASKED IF THEY COULD COME IN?

12 A UH HUH.

13 Q DID THEY HAVE GUNS DRAWN OR ANYTHING AT THAT POINT?

14 A NO.

15 Q THEY ASKED YOU IF THEY COULD COME IN AND WHAT DID YOU SAY?

16 A I SAID YES. I MEAN, YOU KNOW, I DIDN'T HAVE ANYTHING TO HIDE.

17 Q NOW, DID THEY MENTION ANYTHING - - WELL, WHAT DID THEY SAY TO
18 YOU AFTER THEY GOT INSIDE?

19 A THEY ASKED ME ABOUT A WEAPON, A 25 AUTOMATIC AND I SAID, YES I
20 HAD ONE. AND I ASKED THEM DID THEY WANT IT AND THEY STOPPED
21 AND THEY SAID, NO, WE'LL NEED YOU TO GIVE US A CONSENT TO SEARCH
22 THE HOUSE.

23 Q DID THEY MENTION ANYTHING ABOUT A SEARCH WARRANT PRIOR TO
24 THE CONSENT? DID THEY SAY WE HAVE A SEARCH WARRANT PRIOR TO
25 YOUR GIVING CONSENT?

1 A THEY PROBABLY DID, LIKE I SAY, IT'S BEEN A WHILE AND AT THAT TIME I
2 WAS UPSET, I DON'T REMEMBER.

3 Q YOU DON'T REMEMBER THEM SAYING WHETHER OR NOT THEY HAD A
4 SEARCH WARRANT PRIOR TO YOUR CONSENTING TO THE SEARCH?

5 A NO, I CAN'T PUT THAT -- LIKE I SAY, I DON'T REMEMBER BECAUSE I CAN'T
6 PUT WHAT YOU'RE ASKING ME, AS FAR AS -- BECAUSE I KNOW AT THE
7 TIME THAT THEY DID LET ME READ THE SEARCH WARRANT AND I DID
8 SIGN IT.

9 Q OKAY. WELL DID YOU READ A CONSENT FORM? DO YOU RECALL --
10 YOU'VE BEEN HANDED EXHIBIT NO. 1. NOW, IS THAT THE CONSENT THAT
11 YOU SIGNED THAT NIGHT?

12 A YES.

13 Q IS THAT YOUR SIGNATURE?

14 A YES, IT IS.

15 Q NOW, WHEN IS IT THAT YOU -- DID THEY EVER MENTION ANYTHING TO
16 YOU ABOUT A SEARCH WARRANT?

17 A LIKE I SAY, I'M UNDERSTANDING THAT THIS I SIGNED AND THEN THE
18 SEARCH WARRANT COINCIDES. I'M NOT ---

19 Q IT COINCIDED WITH THAT? WERE THEY SEARCHING FOR -- LET ME ASK
20 YOU THIS, WERE THEY SEARCHING YOUR HOME AS YOU WERE SIGNING
21 THAT DOCUMENT?

22 A NO.

23 Q WHEN DID THE SEARCH OF YOUR HOME BEGIN?

24 A AFTER I SIGNED THE SIGNED THE CONSENT. IF THIS IS WHAT -- AFTER I
25 SIGNED THIS.

1 Q SO YOU'RE SURE THAT THE SEARCH OF THE HOME BEGAN AFTER YOU
2 SIGNED THE CONSENT?

3 A YES.

4 Q BUT YOU'RE NOT SURE ABOUT WHEN THE ANNOUNCEMENT THAT THEY
5 HAD A SEARCH WARRANT WAS?

6 A NO.

7 Q AND WHEN YOU SAID COULD HAVE COINCIDED, THAT MEANS THEY
8 COULD HAVE SAID IT AT THE SAME TIME YOU WERE SIGNING THE
9 CONSENT FORM, IS THAT YOUR TESTIMONY?

10 A YES, BECAUSE LIKE I'M SAYING IT WAS -- I WAS UPSET. I -- YOU KNOW,
11 LIKE I SAID, I DIDN'T HAVE ANYTHING TO HIDE SO ---

12 MS. SANDERS: NOTHING FURTHER?

13 THE COURT: ANYTHING? HOLD ON, JUST A MINUTE. WE GET TO
14 TALK TO YOU TWICE.

15 MS. HIGHSMITH: OKAY.

16 CROSS-EXAMINATION - IN CAMERA

17 BY MR. GIBBONS:

18 Q MS. HIGHSMITH, DID YOU AT ANY TIME TELL THEM TO STOP LOOKING?

19 A NO.

20 Q DID YOU AT ANY TIME ASK THEM TO QUIT THE SEARCH?

21 A NO.

22 Q WHO LIVED AT THE HOUSE AT THAT TIME?

23 A MY DAUGHTER WAS SOMETIME THERE WHEN SHE WASN'T AT COLLEGE,
24 MY HUSBAND AND MAURICE.

25 Q AND ARE YOU FAMILIAR WITH THE DEFENDANT IN THIS CASE, MR. TUNZY

1 SANDERS?

2 A YES.

3 Q DO YOU HAVE ANY CONNECTION WITH HIM AT ALL?

4 A I GUESS YOU WOULD SAY THAT'S MY STEP SON, THAT'S MY HUSBAND'S
5 SON.

6 Q HE'S YOUR HUSBAND'S SON?

7 A UH HUH.

8 Q AND WAS HE LIVING IN YOUR HOUSE AT THAT TIME?

9 A NO.

10 Q DID HE PAY RENT TO YOU OR ANYTHING LIKE THAT, STAY THERE A LOT?

11 A NO.

12 MR. GIBBONS: NOTHING FURTHER.

13 THE COURT: ALL RIGHT. MS. HIGHSMITH, ARE YOU SAYING
14 TODAY THAT YOU OBJECT TO THE FACT THAT THEY SEARCHED YOUR HOME
15 WITH YOUR PERMISSION.

16 MS. HIGHSMITH: NO.

17 THE COURT: YOU GAVE THEM PERMISSION AND YOU STILL
18 BELIEVE THAT THEY HAD PERMISSION TO SEARCH YOUR HOME?

19 MS. HIGHSMITH: YES. I DON'T HAVE ANY REASON TO ---

20 THE COURT: ALL RIGHT. YOU CAN STEP DOWN, THANK YOU,
21 MA'AM.

22 ALL RIGHT. ANYTHING FURTHER.

23 MS. SANDERS: NOTHING FURTHER.

24 THE COURT: ALL RIGHT. YA'LL WANT TO SAY ANYTHING?

25 MS. SANDERS: JUST THE BASIC ARGUMENT, YOUR HONOR,

1 AGAIN ---

2 THE COURT: WELL DON'T MAKE A BASIC ARGUMENT. I MEAN IF
3 YOU'VE GOT AN ARGUMENT RELATING TO THE FACTS IN THIS CASE, VISA VE THE
4 LAW, TELL ME WHAT IT IS.

5 MS. SANDERS: WE DO. IT'S BUMPERS VS. NORTH CAROLINA, 391
6 US, 543. BUMPER PROVIDES THAT ---

7 THE COURT: I'M FAMILIAR WITH THE CASE.

8 MS. SANDERS: YOUR HONOR, SHE DOES SAY THAT SHE BELIEVES
9 THAT THE MENTION OF THE SEARCH WARRANT COINCIDED WITH HER CONSENT
10 AND PURSUANT TO BUMPER THAT WOULD NOT BE A CONSENT. IF IT, IN FACT,
11 COINCIDED WITH THE CONSENT. AND SHE SAYS THAT SHE REMEMBERS THE
12 PREMISES BEING SEARCHED AFTER SHE SIGNED THE CONSENT. THAT'S
13 DIFFERENT THAT THE MENTION THAT THEY HAVE A SEARCH WARRANT -- BEING
14 MENTIONED COINCIDING WITH HER SIGNING OF THE CONSENT.

15 PURSUANT TO BUMPERS, YOUR HONOR, IT WOULD NOT BE A VALID
16 CONSENT AND WE WOULD THEN ASK THAT THE GUN BE SUPPRESSED.

17 THE COURT: TELL ME WHAT YOUR BASIS THAT YOUR CLIENT
18 BELIEVES HE HAS A RIGHT TO PRIVACY IN THAT HOME.

19 MS. SANDERS: WELL, YOUR HONOR, HE VISITED THERE. OF
20 COURSE, HIS FATHER RESIDES THERE. AT SOME POINT, WE DON'T KNOW IF HE
21 VISITED THAT DAY OR IF HE VISITED SOMETIME 2 WEEKS BEFORE HAND, BUT HE
22 HAD BEEN IN THAT HOME AT SOME POINT BECAUSE HIS FATHER HAD RESIDED
23 THERE.

24 THE COURT: ANYTIME ANYONE GOES ANYPLACE, THEY'VE GOT A
25 RIGHT TO EXPECT PRIVACY BECAUSE THEY'VE BEEN THERE?

1 MS. SANDERS: I'M NOT SAYING THAT, YOUR HONOR. BUT AT
2 SOME POINT HE WOULD HAVE BEEN THERE.

3 THE COURT: ALL RIGHT. MR. GIBBONS, ANYTHING YOU WANT TO
4 SAY?

5 MR. GIBBONS: YOUR HONOR, I'D JUST ASSERT THAT BECAUSE
6 WE'RE NOT GOING UNDER THE SEARCH WARRANT STATUTE, THAT MR. TUNZY
7 SANDERS LACKS STANDING TO CHALLENGE THE CONSENT AT ALL AT THIS
8 POINT, PURSUANT TO STATE VS. MCKNIGHT, STATE VS. CRANE AND STATE VS.
9 AUSTIN.

10 THE COURT: ALL RIGHT. I'M GOING TO DENY THE MOTION TO
11 SUPPRESS. I DON'T KNOW ABOUT THE SEARCH WARRANT. EVEN TODAY, MS.
12 HIGHSMITH SAYS THAT SHE CONSENTED TO IT AND SHE STILL CONSENTS TO IT.
13 IT'S HER HOME, SHE HAS THE RIGHT TO CONSENT TO IT. CLEARLY IN MY
14 READING THE CASE LAW THAT I READ, YOUR CLIENT DOES NOT HAVE A RIGHT
15 TO -- EVEN IF THE SEARCH WAS NOT A VALID SEARCH PURSUANT TO
16 PERMISSION, WHICH I BELIEVE IT WAS BECAUSE SHE CONSENTED AND STILL
17 CONSENTS. SHE DOESN'T RECALL WHERE THE SEARCH WARRANT WAS AND
18 WHEN SHE WAS TOLD ABOUT IT, SHE SPECIFICALLY TESTIFIED THE SEARCH
19 WARRANT WASN'T MENTIONED UNTIL AFTER PERMISSION WAS ELICITED.

20 I READ BUMPERS AND IT INDICATES TO ME THAT, IN FACT, THE -- IT
21 WASN'T A VOLUNTARY CONSENT. THE LADY SAYS, THEY TOLD ME THEY HAD IT
22 AND I JUST FIGURED THEY WERE GOING TO GET IN SO I DIDN'T HAVE ANY
23 CHOICE BUT TO CONSENT. SO SHE IS CLAIMING IT WASN'T A VOLUNTARY
24 CONSENT. IN THIS INSTANCE, MS. HIGHSMITH CLAIMS IT WAS VOLUNTARY AND
25 IT CONTINUES TO BE A VOLUNTARY CONSENT.

1 AND I DON'T BELIEVE YOUR CLIENT HAD A RIGHT TO PRIVACY IN
2 THIS HOUSE. HE DIDN'T LIVE THERE, HE VISITED THERE OCCASIONALLY, BUT
3 CLEARLY IT WASN'T HIS ROOM, WASN'T HIS HOUSE, WASN'T ANYTHING, NO
4 EVIDENCE AS TO HOW OFTEN HE WAS THERE OTHER THAN HE CAME
5 OCCASIONALLY.

6 ALL RIGHT. WHAT'S NEXT?

7 MS. SANDERS: YOUR HONOR, WE DID HAVE THE MOTION, ALSO
8 COUPLED WITH THAT TO SUPPRESS THE ARREST WARRANT.

9 THE COURT: WHAT'S THE BASIS FOR THAT?

10 MS. SANDERS: THE BASIS FOR THAT, THE CASE LAW THAT I
11 SUPPLIED TO YOU, JUDGE, STATE VS. ADOLPHI.

12 THE COURT: TELL ME ABOUT IT QUICKLY. WE'VE GOT A JURY.

13 MS. SANDERS: YOUR HONOR, AGAIN, WHEN AN AFFIDAVIT IS
14 ISSUED IN SUPPORT OF A - - WELL, STATE VS. ADOLPHI DEALS SPECIFICALLY
15 WITH A SEARCH WARRANT, BUT WE WOULD ASK THAT ALSO THE PRINCIPLE
16 THERE OUTLINED, BE APPLIED TO THE ARREST WARRANT AS WELL. IN THIS
17 CASE, AN ARREST WARRANT WAS ISSUED, CALLING FOR THE ARREST OF TUNZY
18 SANDERS. IT DID NOT IN ANY WAY ADDRESS THE BASIS FOR THE INFORMATION
19 THAT THEY RECEIVED, WHO IT HAD BEEN RECEIVED FROM, AND THERE'S NO
20 WHERE INDICATED IN THE AFFIDAVIT THAT THE INFORMANT WHO GAVE THIS
21 INFORMATION TO THE POLICE WAS RELIABLE - - -

22 THE COURT: WHAT CASE LAW IS IT THAT YOU HAVE THAT SAYS
23 THAT AN ARREST WARRANT?

24 MS. SANDERS: WELL, STATE VS. ADOLPHI.

25 THE COURT: THAT'S A SEARCH WARRANT, ISN'T IT?

1 MS. SANDERS: IT'S A SEARCH WARRANT, BUT WE WOULD ASK
2 THAT IT BE APPLIED TO - - -

3 THE COURT: ALL RIGHT. TELL ME WHAT CASE YOU HAVE THAT
4 SAYS AN ARREST WARRANT.

5 MS. SANDERS: I HAVE NO CASE SAYING AN ARREST WARRANT,
6 YOUR HONOR, BUT WE WOULD SUBMIT THAT THE PRINCIPLE IS THE SAME AND
7 THE STANDARD IS THE SAME. I DON'T THINK THAT THERE'S ANY CASE THAT
8 DISTINGUISHES BETWEEN AN ARREST WARRANT AND A SEARCH WARRANT,
9 YOUR HONOR.

10 THE COURT: BUT YOU DO ADMIT THAT THERE IS A DIFFERENCE
11 BETWEEN AN ARREST WARRANT AND A SEARCH WARRANT?

12 MS. SANDERS: WELL, YES, OF COURSE. I BELIEVE THAT THE
13 PRINCIPLE IS STILL APPLICABLE, YOUR HONOR. THAT IS THAT THE VORACITY OF
14 THE PERSON SUPPLYING THE INFORMATION HAS TO BE INDICATED IN THE
15 AFFIDAVIT. AND IN THIS CASE, IT WAS NOT. IT WAS MERELY A STATING OF THE
16 CHARGE THAT THE PERSON WAS CHARGED WITH, WITH NO INDICATION
17 WHATSOEVER WHERE THE INFORMATION CAME FROM OR WHETHER THAT
18 PERSON, THE INFORMANT, WAS RELIABLE. AND I DID SITE STATE VS. ADOLPH
19 YOUR HONOR. WE WOULD ASK THE COURT TO APPLY THAT PRINCIPLE. STATE
20 VS. CLIFTON, ALSO IS THE SAME PRINCIPLE OUTLINED, REGARDING THE
21 RELIABILITY OF THE INFORMANT.

22 AND HERE, AGAIN, WE'RE ALLEGING THAT THIS INFORMATION
23 CAME FROM MAURICE BENNING, WHO FAILED HIS LIE DETECTOR TEST AND ALSO
24 GAVE INCONSISTENT STATEMENTS.

25 THE COURT: ALL RIGHT. WHAT YOU GOT TO SAY MR. GIBBONS?

1 MR. GIBBONS: YOUR HONOR, IT'S THE STATE'S POSITION THAT
2 THERE'S A DIFFERENT STANDARD WITH SEARCH WARRANT AS OPPOSED TO AN
3 ARREST WARRANT. BUT EVEN IGNORING THAT, YOUR HONOR, I BELIEVE THAT
4 ONCE THE TRUE BILL IS PASSED ON BY THE GRAND JURY, PROBABLE CAUSE IS
5 DETERMINED AT THAT POINT AND THE ARREST WARRANT IS REALLY A NON-
6 ISSUE AT THAT POINT.

7 THE COURT: ALL RIGHT. ANYTHING FURTHER?

8 MR. GIBBONS: NO, YOUR HONOR.

9 MS. SANDERS: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. I'M GOING TO DENY YOUR MOTION. I
11 DON'T BELIEVE THAT THEY - - THE CASE HAS GONE BEFORE THE GRAND JURY,
12 THE GRAND JURY DETERMINED THAT PROBABLY CAUSE EXISTS THAT THE
13 DEFENDANT HAS COMMITTED THIS OFFENSE AND THEY CAN GO FORWARD.
14 THEY DIDN'T NEED AN ARREST WARRANT TO GO TO THE GRAND JURY AND - -
15 ALL RIGHT. ANYTHING FURTHER? YA'LL READY TO GO FORWARD WITH YOUR
16 OPENING STATEMENTS?

17 MS. SANDERS: WE'RE READY TO WAIVE THE JURY, YOUR HONOR.
18 AND WE WISH TO PROCEED WITH A BENCH TRIAL.

19 THE COURT: WELL, WHAT'S THE STATE'S POSITION?

20 MR. GIBBONS: YOUR HONOR, WE'LL GO ALONG WITH THEIR
21 WISHES IF THAT'S WHAT THEY WANT.

22 THE COURT: ALL RIGHT. SO YA'LL CONSENT TO A BENCH TRIAL?

23 MR. GIBBONS: YES, SIR.

24 THE COURT: AND THE DEFENDANT IS MAKING A MOTION AT THIS
25 TIME TO HAVE A BENCH TRIAL, IS THAT CORRECT?

1 MS. SANDERS: YES, SIR.

2 THE COURT: WELL, I HAVEN'T HAD THE EXPERIENCE OF HAVING
3 THIS HAPPEN TO ME BEFORE.

4 MR. GIBBONS: CAN WE APPROACH FOR A MINUTE BEFORE WE GET
5 TOO FAR INTO THIS?

6 THE COURT: WELL, I WAS GOING TO QUESTION THE DEFENDANT
7 ABOUT IT TO SEE WHAT HIS POSITION IS.

8 MR. GIBBONS: WELL, IF WE COULD APPROACH THE BENCH FOR A
9 MOMENT, YOUR HONOR.

10 (WHEREUPON A BENCH CONFERENCE WAS HELD OUT OF THE
11 HEARING OF THE COURT REPORTER.)

12 THE COURT: ALL RIGHT. CAN WE BRING THE JURY IN.

13 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:46 P.M.)

14 THE COURT: OKAY. LADIES AND GENTLEMEN, AS YOU I'M SURE
15 UNDERSTAND FROM MY HAVING READ TO YOU THE INDICTMENTS THIS
16 MORNING, THIS IS A VERY SERIOUS CASE AND IT IS VERY IMPORTANT TO BOTH
17 THE STATE AND TO THE DEFENDANT. AS A RESULT, WE HAVE HAD A GOOD BIT
18 OF MATTERS OF LAW AS I LIKE TO SAY. THEY ARE MATTERS I HAVE TO DEAL
19 WITH RELATING TO LEGAL SITUATIONS IN THIS CASE AND THEY HAVE TAKEN A
20 LITTLE BIT LONGER THAN WE ANTICIPATED. I DIDN'T WANT YOU MAD AT ME
21 THE FIRST DAY, THE FIRST 15 MINUTES, SO -- I'VE STILL GOT SOME MORE THINGS
22 I'VE GOT TO HANDLE OUTSIDE THE PRESENCE OF THE JURY.

23 I KNOW WE SAID WE WOULD START AT 2:30 AND WE'RE RUNNING A
24 LITTLE LATE. IF YA'LL WILL HAVE A LITTLE BIT OF PATIENCE WITH ME, IT'S
25 PROBABLY GOING TO BE ANOTHER 15 OR 20 MINUTES BEFORE I CAN BRING YOU

1 BACK IN AND WE CAN MOVE FORWARD IN THIS, BUT I DIDN'T WANT YOU TO
2 THINK THAT I FORGOT ABOUT YOU AND I TOLD YOU PROMPTNESS WAS
3 IMPORTANT AND YOUR TIME IS IMPORTANT. I JUST WANTED TO LET YOU KNOW
4 THAT WE HAVE BEEN WORKING SINCE ABOUT 2:15 AND WORKED UNTIL ABOUT
5 10 AFTER 1:00, SO IF YA'LL WILL STEP BACK THERE, RELAX A LITTLE BIT.

6 WE GOT SOMETHING WE CAN GIVE THEM IN TERMS OF
7 REFRESHMENTS, MAKE THEM COMFORTABLE, MR. FICKLING?

8 THE CLERK: WE'RE LIMITED ON THE REFRESHMENTS AT THE
9 MOMENT. WE HAVE SOME FRUIT BUT ---

10 THE COURT: WELL, I'M TALKING ABOUT SOMETHING FOR THEM
11 TO DRINK OR ---

12 THE CLERK: WELL, WE'VE GOT THAT, YES, SIR.

13 THE COURT: ALL RIGHT. BUT JUST PLEASE BE PATIENT AND WE'LL
14 MOVE AS QUICKLY AS WE CAN. SO YA'LL DON'T DISCUSS THE CASE, STEP BACK
15 THERE AND I'LL BRING YOU BACK AS SOON AS I FINISH.

16 (WHEREUPON THE JURY LEFT THE COURTROOM AT 2:49 P.M.)

17 THE COURT: ALL RIGHT. YA'LL NEED TO STAND IN RECESS AND
18 DO WHAT YOU NEED TO DO ON IT?

19 (WHEREUPON THIS TRIAL WAS IN RECESS FOR A SHORT PERIOD.)

20 THE COURT: ALL RIGHT. MR. SANDERS, I NEED YOU TO PLEASE
21 STAND, IF YOU WOULD.

22 THEREUPON,

23 TUNZY A. SANDERS,

24 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 ///

EXAMINATION

1
2 BY THE COURT:

3 Q ALL RIGHT. I'M NOT GOING TO ASK YOU ANYTHING ABOUT THIS OFFENSE,
4 BUT IT'S BEEN REPORTED BY YOUR ATTORNEY AND CONSENTED TO BY
5 THE STATE -- YOUR ATTORNEY, MS. SANDERS, WISHES TO -- SHE'S ASKED
6 THAT THIS CASE BE TRIED AS A BENCH TRIAL AS OPPOSED TO A JURY
7 TRIAL. YOU UNDERSTAND THAT?

8 A YES.

9 Q NOW, MS. SANDERS IS YOUR LAWYER, RIGHT?

10 A YES, SIR.

11 Q AND IT'S BEEN REPRESENTED TO ME THIS MORNING THAT SHE WOULD, IN
12 FACT, BE LEAD COUNSEL IN THIS CASE, DO YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q DO YOU UNDERSTAND WHAT I MEAN BY LEAD COUNSEL?

15 A YES, SIR.

16 Q MR. WILLIAMS CLEARLY WILL CONTINUE TO BE INVOLVED IN THE TRIAL
17 AND TO ASSIST YOUR SISTER IN ANY WAY, BUT SHE WILL BE THE
18 PRIMARY ATTORNEY, YOU UNDERSTAND THAT?

19 A YES, SIR.

20 Q YOU UNDERSTAND THAT YOUR SISTER IS A MEMBER OF THE BAR IN THE
21 STATE OF MICHIGAN. I ASSUME SHE MAY BE A MEMBER OF A BAR
22 SOMEWHERE OTHER THAN MICHIGAN, BUT SHE'S NOT A MEMBER OF THE
23 BAR IN SOUTH CAROLINA. YOU UNDERSTAND THAT?

24 A YES, SIR.

25 Q AND AS A RESULT, SHE MAY BE AT SOMEWHAT A LITTLE DISADVANTAGE

1 OF EXACTLY WHAT THE LAW IS IN SOUTH CAROLINA BECAUSE SHE
2 DOESN'T PRACTICE DOWN HERE ON A DAY TO DAY BASIS, YOU
3 UNDERSTAND THAT?

4 A YES, SIR.

5 Q ALTHOUGH SHE DOES, MR. WILLIAMS IS CERTAINLY A COMPETENT,
6 EXPERIENCED TRIAL LAWYER AND PRACTICES IN CIVIL COURTS AND
7 CIVIL COURTS IN SOUTH CAROLINA. YOU UNDERSTAND THAT? AND HE
8 CAN ASSIST HER.

9 A YES, SIR.

10 Q NOW, DO YOU, IN FACT, WANT TO GO FORWARD WITH A BENCH TRIAL?

11 A YES, SIR.

12 Q YOU UNDERSTAND THAT UNDER OUR CONSTITUTION, YOU HAVE A RIGHT
13 TO A JURY TRIAL?

14 A YES, SIR.

15 Q YOU OBSERVED - - I KNOW YOU'VE BEEN THROUGH ONE JURY TRIAL AND
16 THAT'S WHY WE'RE BACK HERE AND YOU'VE OBSERVED THE PROCESS
17 WHERE WE'VE GONE THROUGH AT LEAST THE SELECTION OF A JURY
18 HERE TODAY. SO EVEN THOUGH THEY HAVE NOT BEEN SWORN, SO THAT
19 IF YOU WANT TO EXERCISE YOUR RIGHT, YOU HAVE A RIGHT TO DO SO.
20 YOU UNDERSTAND THAT?

21 A YES, SIR.

22 Q BUT YOU WISH TO GO FORWARD WITH A BENCH TRIAL?

23 A YES, SIR.

24 Q AND YOU UNDERSTAND THAT IN THAT REGARD, I WILL BE THE JUDGE OF
25 THE FACTS, AS WELL AS THE JUDGE OF THE LAW?

1 A YES, SIR.

2 Q AND NORMALLY IN CASES, THE JURY IS THE JUDGE OF THE FACTS. THEY
3 LISTEN TO ALL OF THE EVIDENCE AND ULTIMATELY DETERMINE THE
4 FACTS IN THE CASE. YOU UNDERSTAND THAT?

5 A YES, SIR.

6 Q ALL RIGHT. NOW, I'M GOING TO TALK TO YOU BRIEFLY ABOUT - - I DON'T
7 KNOW WHAT YOU INTEND TO DO WITH RESPECT TO TESTIFYING OR
8 PUTTING UP ANY DEFENSE. YOU DON'T HAVE TO. BUT YOU CLEARLY
9 HAVE A RIGHT TO TESTIFY IF YOU WANT. WE'RE NOT AT A STAGE WHERE
10 YOU HAVE TO MAKE THAT DECISION, BUT I WANT YOU TO UNDERSTAND
11 YOU HAVE THE RIGHT TO TESTIFY, THE RIGHT NOT TO TESTIFY, YOU
12 UNDERSTAND THAT?

13 A YES, SIR.

14 Q AND IF YOU DON'T TESTIFY, I ALONG - - I MEAN I WOULD NOT CONSIDER
15 THAT IN ANY DELIBERATIONS THAT I MAKE WITH RESPECT TO A DECISION
16 ABOUT THIS CASE, YOU UNDERSTAND THAT?

17 A YES, SIR.

18 Q BUT YOUR ONE CHANCE TO TELL THE STORY IS IF YOU TESTIFY, AT LEAST
19 FOR YOU TO TELL THE STORY. YOU MAY HAVE OTHER WITNESSES WHO
20 WILL TESTIFY AS WELL, YOU UNDERSTAND THAT?

21 A YES, SIR.

22 THE COURT: ALL RIGHT. MS. SANDERS, MR. WILLIAMS, ANYTHING
23 YOU WANT ME TO MAKE FURTHER INQUIRY ABOUT MR. SANDERS GOING
24 FORWARD WITH A BENCH TRIAL?

25 MR. WILLIAMS: NOT FROM ME, YOUR HONOR.

1 MS. SANDERS: I BELIEVE WE'RE SATISFIED, YOUR HONOR.

2 THE COURT: ALL RIGHT. ANYTHING ELSE YA'LL WANT TO ASK
3 HIM? OR ANYTHING YOU WANT TO SAY WITH RESPECT TO THAT?

4 MS. SANDERS: I BELIEVE WE'RE SATISFIED.

5 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

6 MR. GIBBONS: NOTHING FROM THE STATE, YOUR HONOR.

7 MS. SANDERS: YOUR HONOR, I DO HAVE ONE THING I WANTED TO
8 PUT ON THE RECORD, WHICH I DID NOTE TO THE COURT IN CHAMBERS ABOUT
9 MY NOTIFICATION REGARDING THIS CASE.

10 THE COURT: WELL, ALL RIGHT. ARE YA'LL MOVING FOR A
11 CONTINUANCE?

12 MS. SANDERS: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MS. SANDERS: I JUST WANT TO MAKE A RECORD AS TO - - -

15 THE COURT: MR. SANDERS YOU CAN BE SEATED, THANK YOU, SIR.

16 MS. SANDERS: I JUST WANT TO MAKE A RECORD AS TO WHEN AND
17 HOW I WAS ADVISED THAT THIS MATTER WAS GOING TO TRIAL. I HAD INQUIRED
18 WITH THIS COURT AS TO WHETHER OR NOT THERE WAS A GENERAL SESSIONS
19 TERM OF COURT PROCEEDING ON FEBRUARY 5TH. YOUR HONOR, I CALLED MR.
20 WILLIAMS TO INQUIRE ABOUT THAT. HE INDICATED TO ME THAT THIS MATTER
21 WAS NOT ON THE DOCKET FOR THIS TERM. THAT WAS ON JANUARY 27TH. HE
22 SUBSEQUENTLY FAXED ME, ON JANUARY 31ST, INDICATING TO ME THAT THIS
23 MATTER WAS GOING TO TRIAL AND THAT MY ATTENDANCE WAS REQUIRED.
24 THAT WAS APPROXIMATELY, WELL, NOT EVEN A WEEK AGO, YOUR HONOR,
25 WHEN I HAD TO CHANGE MY SCHEDULE ABRUPTLY AND FLY HERE TO PREPARE

1 FOR THIS CASE.

2 I JUST WANT TO MAKE AN OBJECTION ON THE RECORD AS TO THE
3 NOTICE THAT WAS GIVEN AND THE MANNER IN WHICH IT WAS GIVEN. I HAD NO,
4 OF COURSE, NOTICE GIVEN TO ME BY THE PEOPLE. MR. WILLIAMS DID PROVIDE
5 THE ONLY NOTICE THAT I HAD. WE ARE PROCEEDING FORTH INTO TRIAL, BUT I
6 DID WANT TO MAKE THAT A RECORD, YOUR HONOR, ON THE RECORD.

7 THE COURT: ALL RIGHT. ANYTHING FROM YOU, MR. WILLIAMS?

8 MR. WILLIAMS: YEAH. YOUR HONOR, MY RECOLLECTION IS
9 EITHER THURSDAY OR FRIDAY -- WELL 10 DAYS AGO, ROUGHLY, MS. SANDERS
10 DID CALL ME. SHE INDICATED THAT SHE WAS GOING TO FILE A MOTION FOR A
11 SPEEDY TRIAL AND I HAD INDICATED TO HER, I BELIEVE, AT THAT TIME THAT IN
12 PREVIOUS CONVERSATION WITH MR. GIBBONS, THAT HE WOULD BE INVOLVED
13 IN A DEATH PENALTY AND INDICATED TO ME THAT HE DID NOT THINK IT WAS
14 GOING FORWARD. I TALKED WITH MR. GIBBONS ON TUESDAY, THE 30TH. HE
15 INDICATED THAT HE WAS PLANNING ON TRYING THE CASE. I CALLED HER
16 OFFICE THAT DAY, SHE WAS NOT IN AND DID NOT RETURN MY CALL. THE NEXT
17 DAY I FAXED HER A LETTER AND TOLD HER ABOUT THE TRIAL. AND THAT'S
18 WHAT HAPPENED.

19 THE COURT: ANYTHING FROM THE STATE?

20 MR. GIBBONS: YOUR HONOR, JUST TO FILL IN THE RECORD. AT
21 THE LAST TERM OF COURT IN OCTOBER, DEFENSE MADE A MOTION FOR A
22 SPEEDY TRIAL, ASSERTING TO THE COURT THEY WERE READY, WILLING AND
23 ABLE TO GO FORWARD. AT THAT TIME, JUDGE NICHOLSON CONTINUED THE
24 CASE. HE ASKED ME WHEN I COULD TRY IT, I TOLD HIM THAT I WAS INVOLVED
25 IN A DEATH PENALTY THE LAST PART OF JANUARY AND I WASN'T SURE IF IT WAS

1 GOING TO GO INTO THE THIRD WEEK, BUT I KNEW I COULD TRY IT BY MARCH.
2 HE TOLD ME TO HAVE IT TRIED BY MARCH. I HAVE A WITNESS THAT WAS
3 PICKED UP BEFORE CHRISTMAS AND PUT IN JAIL JUST BECAUSE THEY DIDN'T
4 SHOW UP FOR COURT LAST TIME AND I FELT LIKE I HAD SOMEONE IN JAIL JUST
5 WAITING FOR THIS TRIAL AND I AUGHT TO TRY AND GET IT TRIED AND WHEN IT
6 TURNED OUT THAT OUR DEATH PENALTY WAS GOING TO END ON TIME, I
7 NOTIFIED MR. WILLIAMS.

8 I THOUGHT IT WAS SOONER THAN LAST TUESDAY, BUT IN ANY
9 EVENT, LET THEM KNOW IT WAS GOING TO HAPPEN AND I DON'T KNOW, I
10 ASSERTED WHEN WE TRIED THIS LAST TIME THAT I WOULD PROVIDE NOTICE TO
11 MR. WILLIAMS AND I DID SO. YOUR HONOR, THE DOCKET WAS PUBLISHED BY
12 THE CLERK A WEEK AGO FROM YESTERDAY AND MR. SANDERS' CASES ARE THE
13 FIRST, THE THIRD AND THE FOURTH CASES ON THE DOCKET.

14 THE COURT: ALL RIGHT. NOW, YA'LL ARE CONSENTING TO A
15 BENCH TRIAL?

16 MR. GIBBONS: YES, SIR.

17 THE COURT: ALL RIGHT. YA'LL WANT ME TO TURN THE JURY
18 LOOSE RIGHT NOW?

19 MS. SANDERS: YES, YOUR HONOR.

20 MR. GIBBONS: WE CONSENT, YOUR HONOR.

21 THE COURT: ALL RIGHT. BRING THE JURY IN.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:16 P.M.)

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, STRANGE
24 THINGS HAPPENING WHEN YOU'RE WAITING FOR A TRIAL. THE STATE AND THE
25 DEFENSE HAVE AGREED THAT THIS CASE WOULD BE TRIED AS WHAT WE CALL A

1 BENCH TRIAL. THAT MEANS THAT THE JURY WILL NOT PARTICIPATE IN THE
2 TRIAL, BUT THE COURT WILL BE BOTH THE JUDGE OF THE FACTS, AS WELL AS
3 THE JUDGE OF THE LAW. AND AS A RESULT, WE ARE GOING TO BE ABLE TO
4 EXCUSE YOU FROM HAVING TO SERVE IN THIS TRIAL.

5 NOT KNOWING WHAT THE LENGTH OF THE TRIAL IS GOING TO BE, I
6 DON'T KNOW WHEN TO TELL YOU TO RETURN. BUT WHAT I WILL TELL YOU IS IF
7 YOU WILL CALL BACK AFTER 6:00 TONIGHT, YOU WILL GET FURTHER
8 INSTRUCTIONS AS TO WHAT YOU ARE SUPPOSED TO DO IN THIS MATTER. SO I
9 APPRECIATE YOUR PATIENCE, I APPRECIATE YOUR WAITING ON US. IT DOES NOT
10 COMPLETE YOUR JURY SERVICE BECAUSE I DON'T ANTICIPATE THE CASE WILL
11 TAKE ALL WEEK TO TRY AND THERE MAY BE SOMETHING ELSE THAT COMES UP
12 AT SOME POINT IN TIME. SO YA'LL ARE FREE TO LEAVE. I GUESS MR. FICKLING
13 WILL GET YOUR BADGES. IF YA'LL WILL GO AHEAD AND LEAVE, CALL TONIGHT
14 AFTER 6 O'CLOCK AND YOU'LL GET NOTICE AS TO WHEN TO DO WHAT YOU GOT
15 TO DO NEXT, EITHER CALL BACK OR COME IN. ALL RIGHT. THANK YOU.

16 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:18 P.M.)

17 THE COURT: OKAY. YA'LL READY TO GO?

18 MR. GIBBONS: I BELIEVE SO, YOUR HONOR.

19 THE COURT: OKAY. YA'LL WANT TO MAKE AN OPENING
20 STATEMENT?

21 MR. GIBBONS: WE'RE PREPARED TO WAIVE IT IF THE DEFENSE
22 WILL WAIVE THEIR'S.

23 MS. SANDERS: NO OBJECTION, YOUR HONOR.

24 THE COURT: HOW ABOUT, CAN YOU TAKE ABOUT 2 MINUTES
25 EACH AND KIND OF GIVE ME A LITTLE BIT OF UNDERSTANDING WHAT IT IS

1 YA'LL'S RESPECTIVE POSITION IS IN THIS CASE?

2 MR. GIBBONS: SURE.

3 THE COURT: YOU DON'T HAVE TO MAKE IT LENGTHY, BUT TELL
4 ME A LITTLE BIT ABOUT -- MY KNOWLEDGE IS VERY LIMITED.

5 MR. GIBBONS: ALL RIGHT. I'LL TRY TO KEEP IT BRIEF, YOUR
6 HONOR. THIS HAPPENED BACK IN 1997, DECEMBER 11TH. THE POLICE WERE
7 CALLED TO THE CHINA EXPRESS RESTAURANT. THEY GOT THERE, AT THAT TIME
8 AND THEY FOUND MS. CHAPMAN SLUMPED OVER IN HER CAR. THEY CALLED
9 THE RESCUE SQUAD. THE RESCUE SQUAD CAME. THEY THOUGHT THEY HAD A
10 HEART ATTACK. NOT UNTIL THEY GOT MS. CHAPMAN TO THE HOSPITAL AND
11 THEY WERE TRYING TO RESCUSITATE HER DID THEY FIND A GUNSHOT WOUND
12 TO HER CHEST.

13 AT THAT POINT, THEY KNEW THEY HAD A CRIME SCENE. THEY
14 CALLED SLED FORENSIC CRIME SCENE. IT WAS RAINING HARD THAT NIGHT. THE
15 CRIME SCENE UNIT SAID, WE WON'T FIND ANYTHING, IT'S ALL WET. THEY TOLD
16 THEM TO TAKE THE CAR AND PUT IT IN A PLACE WHERE IT CAN DRY OUT.
17 INVESTIGATOR GANTT WITH OUR OFFICE -- WAS THEN WITH OUR OFFICE, WENT
18 OUT AND TOOK PICTURES. A SHELL CASING WAS FOUND A SHORT DISTANCE
19 FROM THE CAR'S DOOR. IT WAS COLLECTED AND GIVEN TO SLED.

20 AND THAT WAS REALLY ALL WE HAD FOR A WHILE. THERE WERE
21 REPORTS AROUND THAT GAVE LITTLE PIECES OF INFORMATION, BUT NOTHING
22 THEY COULD REALLY RELY ON. SOMETIME LATER, MR. BENNING GOT
23 INVOLVED IN THIS CASE AND HE MADE SOME STATEMENTS TO A CI THAT
24 RESULTED IN THE SEARCH WARRANT YOUR HONOR HEARD ABOUT AND THE
25 CONSENT AND THE GUN WAS RECOVERED. IT WAS TESTED BY SLED AND FOUND

1 TO MATCH POSITIVELY WITH THE SHELL CASING. THE SLED AGENT WILL
2 TESTIFY THAT HE CANNOT, DUE TO THE TYPE OF AMMUNITION AND THE TYPE OF
3 GUN, POSITIVELY MATCH THE BULLET OUT OF MS. CHAPMAN, BUT HE CAN
4 POSITIVELY MATCH THE SHELL CASING TO THE GUN -- THE SHELL CASING THAT
5 WAS FOUND AT THE SCENE.

6 THEY ALL THREE WERE ARRESTED, YOUR HONOR. MR. BENNING
7 GAVE A STATEMENT ON HIS ARREST. HE GAVE A CONFLICTING STATEMENT A
8 SHORT TIME LATER WITH HIS ATTORNEY PRESENT AND IN ADDITION TO THAT,
9 ANOTHER WITNESS WAS FOUND, TWO MORE WITNESSES WERE LOCATED. ONE IS
10 A GIRL NAMED TEMETRIUS WILLIAMS. SHE WAS WITH THE THREE, BENNING,
11 BUCKMAN AND SANDERS.

12 BEFORE THE INCIDENT HAPPENED THEY WERE DRIVING AROUND
13 AND HER TESTIMONY WILL BE THEY WENT TO SEVERAL PLACES UP HERE NEAR
14 THE COURTHOUSE. THEY HAD MENTIONED THAT THEY WERE GOING TO GET
15 SOME CHEESE AND DID INDICATE THAT THAT MEANT MONEY. THEY WENT TO
16 ANOTHER PLACE AND GOT OUT. THEY WERE DRESSED IN DARK CLOTHES, HAD
17 RADIOS TALKING TO EACH OTHER. SHE FINALLY DECIDED SHE WAS GOING TO
18 PUT THEM OUT. SHE TOOK THEM TO A FRIEND'S HOUSE AND PUT THEM OUT.
19 THAT FRIEND WILL COME AND TESTIFY, JERMAINE WALKER.

20 HE'LL TESTIFY THEY WERE AT HIS HOUSE THE EVENING HOURS ON
21 THE NIGHT OF THE INCIDENT, THAT THEY HAD ON DARK CLOTHES, THAT THEY
22 LEFT WALKING IN THE DIRECTION OF BOTH THEIR HOMES AND THE
23 RESTAURANT AND THEY MENTIONED THAT THEY WERE GOING TO GO GET A
24 LICK. MR. WALKER MAINTAINS THAT MEANT ROB SOMEBODY.

25 MR. BENNING'S STATEMENT BASICALLY SAYS THAT THEY WENT

1 BACK TO MICHAEL PAUL BUCKMAN'S HOUSE. THERE WAS DISCUSSIONS ABOUT
2 THEY NEEDED SOME MONEY. HIS TESTIMONY WILL BE THAT HE GAVE THE GUN
3 OVER TO MR. SANDERS SOMETIME THAT DAY AND THAT HE SAW THEM TALKING
4 ABOUT THE RESTAURANT AND HE SAW MR. BUCKMAN WITH THE GUN AT THE
5 CORNER OF THE RESTAURANT WITH MR. SANDERS, THAT HE HEARD A NOISE
6 LIKE A SHOT AND THAT THEY CAME BACK AND HANDED THE GUN BACK OVER
7 TO MR. BENNING WHO PUT IT BACK IN HIS MOM'S HOUSE.

8 I BELIEVE THAT'S BASICALLY WHAT THE STATE INTENDS TO PROVE
9 TODAY, YOUR HONOR. THERE MAY BE SOME THINGS I LEFT OUT, BUT THAT'S
10 THE GIST OF THE CASE.

11 THE COURT: ALL RIGHT.

12 MR. WILLIAMS: THANK YOU, YOUR HONOR. IT'S OUR POSITION
13 THAT LISTENING TO WHAT THE STATE SAYS ABOUT MR. SANDERS IS BASED
14 UPON INCONCLUSIVE PHYSICAL EVIDENCE. IN OTHER WORDS LOOKING AT
15 WHAT THEY'VE GOT, THE TESTIMONY OF TWO JAILHOUSE INFORMANTS THAT
16 HAD SOMETHING TO GAIN BY TESTIFYING AGAINST MR. SANDERS AND I BELIEVE
17 WE CAN SHOW TO YOUR HONOR WERE GIVING DEALS IN RETURN FOR THEIR
18 TESTIMONIES.

19 THE TESTIMONY OF MAURICE BENNING, HE CLEARLY HAD
20 SOMETHING TO GAIN SINCE HE HAD THIS GUN IN HIS HOUSE AND HAD ACCESS
21 TO IT AND EVEN ADMITS THAT HE TOOK THIS GUN OUT OF THE HOUSE, FROM HIS
22 MOTHER'S RESIDENCE AND WHO ALSO HAS A CRIMINAL RECORD, CHARGE OF
23 BURGLARY AND THINGS OF THAT NATURE. AND WITH TWO WITNESSES WHO DID
24 SEE, WHO SAYS THEY SAW THE THREE PEOPLE TOGETHER EARLIER THAT
25 EVENING, THAT'S BASICALLY IT. AND PRETTY BASICALLY EARLIER THAT

1 EVENING, HE TOOK UP WITH TWO JAILHOUSE DEFENDANTS WHO HAVE
2 SOMETHING TO GAIN AND MAURICE BENNING WHO HAS CLEARLY SOMETHING
3 TO GAIN BY PUTTING THE BLAME ON SOMEONE ELSE RATHER THAN ON
4 HIMSELF. THAT ENTITLES THIS MAN TO A VERDICT OR JUDGEMENT OF NOT
5 GUILTY AND THAT THE STATE'S CASE IS CIRCUMSTANTIAL AND SUSPECT AT
6 BEST.

7 THANK YOU.

8 THE COURT: ALL RIGHT. CALL YOUR FIRST WITNESS.

9 MR. WEEKS: THE STATE WOULD CALL LUTHER GADSON.

10 MS. SANDERS: YOUR HONOR, I'D LIKE TO MOVE FOR
11 SEQUESTRATION OF THE WITNESSES THAT ARE GOING TO TESTIFY IN THIS CASE.

12 THE COURT: YA'LL HAVE ANY OBJECTION?

13 MR. GIBBONS: MY REAL CONCERN IS THAT THEY'VE NOW HEARD
14 BASICALLY WHAT WE SAID THEY'RE GOING TO SAY, BUT IF BOTH SIDES ARE
15 GOING TO BE SEQUESTERED ---

16 MS. SANDERS: BOTH SIDES.

17 THE COURT: WHAT WITNESSES DO WE HAVE IN HERE?

18 MR. GIBBONS: YOUR HONOR, THIS IS A RETRIAL AND THERE WAS
19 NO SEQUESTRATION LAST TIME.

20 MS. SANDERS: I WOULD MOVE FOR SEQUESTRATION.

21 THE COURT: FINE. I UNDERSTAND THAT. WHO ARE THEY? TWO
22 OFFICERS?

23 MR. GIBBONS: MS. COLLINS IS A WITNESS TOO, YOUR HONOR.

24 THE COURT: WHO?

25 MR. GIBBONS: SHIRLEY COLLINS, SHE'S IN THE COURTROOM,

1 YOUR HONOR.

2 MR. WEEKS: TEMETRIUS.

3 THE COURT: ALL RIGHT. I'LL ORDER THEM TO BE SEQUESTERED.

4 MS. SANDERS: YOUR HONOR, WE HAVE TWO DEFENSE WITNESSES
5 IN THE COURTROOM AND I GUESS IT APPLIES TO US AS WELL.

6 THE COURT: ALL RIGHT. THERE IS NO DOUBT ABOUT THAT.

7 MS. SANDERS: WE JUST HAVE A QUESTION AS TO WHERE THEY
8 ARE TO GO.

9 MR. GIBBONS: WE HAVE SOME ROOMS OUTSIDE OF OUR OFFICE
10 THAT ARE SET APART FOR WITNESS ROOMS, JUDGE. THEY'LL HAVE TO HAVE
11 SOMEONE WITH THEM, I ASSUME.

12 THE COURT: WHY IS THAT?

13 MR. GIBBONS: THAT'S JUST HOW IT'S ALWAYS DONE, SO THEY
14 DON'T TALK TO EACH OTHER ABOUT THEIR TESTIMONY.

15 THE COURT: ANYBODY THAT'S A WITNESS IN THIS CASE, I'M
16 GOING TO ASK THEM TO STEP OUTSIDE AND YA'LL JUST MAKE YOURSELVES
17 AVAILABLE.

18 MS. SANDERS: AND, YOUR HONOR, FOR THE RECORD - - -

19 THE COURT: AT LEAST ANY WITNESSES THAT ARE UNDER
20 SUBPOENA, YOU'RE STILL UNDER SUBPOENA AND SUBJECT TO BEING CALLED.

21 MS. SANDERS: YOUR HONOR, COULD WE ALSO ASK THE COURT TO
22 TELL THE WITNESSES NOT TO DISCUSS ANYTHING ABOUT TESTIMONY WHILE
23 THEY'RE OUT THERE?

24 THE COURT: THEY COULD CLEARLY DISCUSS ANYTHING THEY
25 WANTED TO BEFORE THEY GOT HERE.

1 MS. SANDERS: NO, WELL, AFTER THEY'RE SEQUESTERED.

2 THE COURT: I'M NOT GOING TO LET THEM DISCUSS ANYTHING
3 ONCE THEY GET ON THE STAND UNTIL THEY'RE FINISHED.

4 MR. GIBBONS: MAY WE KEEP THE LEAD INVESTIGATOR IN THE
5 COURTROOM?

6 THE COURT: YOU CAN KEEP THE INVESTIGATOR, YOU CAN KEEP
7 CERTAINLY THE VICTIMS. WHO IS THE LEAD INVESTIGATOR? CHIEF?

8 MR. GIBBONS: TODD GANTT WILL BE THE LEAD INVESTIGATOR,
9 YOUR HONOR.

10 THE COURT: LOOK, WE STARTED THIS THING AT 9:30 THIS
11 MORNING AND WE'RE AT 3:30 AND WE HAVEN'T DONE ANYTHING YET.

12 MR. GIBBONS: YES, SIR.

13 THE COURT: CALL YOUR FIRST WITNESS, PLEASE.

14 MR. WEEKS: WE CALL LUTHER GADSON.

15 THEREUPON,

16 LUTHER GADSON,
17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: HAVE A SEAT IN THE WITNESS CHAIR, PLEASE. STATE
19 YOUR NAME FOR THE RECORD.

20 MR. GADSON: LUTHER GADSON.

21 DIRECT EXAMINATION.

22 BY MR. WEEKS:

23 Q MR. GADSON, WHERE ARE YOU EMPLOYED?

24 A PRESENTLY?

25 Q YES, SIR.

1 A SOUTH CAROLINA HOUSING AUTHORITY.

2 Q AND PRIOR TO THAT WERE YOU AT THE BARNWELL COUNTY --
3 BARNWELL POLICE DEPARTMENT?

4 A YES, SIR.

5 Q FOR HOW MANY YEARS?

6 A 29.

7 Q IN THAT CAPACITY, WERE YOU WORKING WITH THEM ON DECEMBER 11,
8 1997?

9 A I WAS.

10 Q AND WERE YOU AND ANOTHER OFFICER WORKING AROUND 10 O'CLOCK
11 THAT NIGHT?

12 A WE WERE.

13 Q ALL RIGHT. AS A RESULT OF YA'LL'S NORMAL POLICY DURING THAT
14 PARTICULAR TIME ARE YA'LL PROVIDING ANY SERVICES TO THE
15 COMMUNITY?

16 A YES, SIR, WE WERE.

17 Q WHAT WERE YOU DOING?

18 A AT THAT TIME OF THE NIGHT, WE START GIVING ESCORTS WHEN
19 MERCHANTS ARE CLOSING THE STORES OR WHATEVER, BUSINESSES. WE
20 GO AND STANDBY A LOT OF TIMES. A LOT OF THEM WE FOLLOW TO THE
21 BANK, BUT THIS IS WHAT WE WERE DOING.

22 Q THEY WOULD WALK OUT OF THEIR BUSINESS WITH MONEY OR POUCHES,
23 YA'LL ARE RIGHT THERE?

24 A RIGHT. WITH POUCHES RIGHT.

25 Q ON THE NIGHT OF DECEMBER 11, OF 1997, DID YOU AND OFFICER ODOM OF

1 YOUR DEPARTMENT GO TO ANY LOCATION HERE IN BARNWELL CITY AND
2 DO THAT?

3 A YES, SIR. WE WERE OUT AT DOMINO'S PIZZA OUT AT WAL-MART PLAZA,
4 IN BARNWELL.

5 Q AND IF I WAS TO LEAVE THE COURTHOUSE HERE AND GO WEST ON WHAT
6 YA'LL REFER TO AS THE 4-LANE ---

7 A 4-LANE.

8 Q --- HOW FAR OUT OF TOWN, OR HOW FAR OUT WOULD I GO?

9 A MAYBE A MILE.

10 Q AND IT WOULD BE ON THE RIGHTHAND SIDE OF THE ROAD? OR THE LEFT?

11 A LEFT.

12 Q OKAY.

13 A LEFT-HAND SIDE OF THE ROAD.

14 Q DID YOU AND OFFICER ODOM GO OUT THERE?

15 A YES, SIR, WE DID.

16 Q ON THE NIGHT OF DECEMBER 11?

17 A YES, SIR, WE DID.

18 Q AND APPROXIMATELY WHAT TIME WAS IT?

19 A AS WELL AS I CAN REMEMBER, IT WAS IN THE 10 O'CLOCK HOUR. IN THE
20 10 O'CLOCK HOUR.

21 Q WHEN YOU WERE OUT THERE, DID YOU RECEIVE A CALL FROM YOUR
22 DISPATCH?

23 A YES, SIR.

24 Q AND WHAT DID THE DISPATCHER ADVISE YOU TO DO?

25 A GO TO CHINA EXPRESS IN THE CITY. LET ME KIND OF CLARIFY THAT

1 BECAUSE I'M KIND OF GETTING - - THERE ARE TWO OF THEM ON 64,
2 BUT - - -

3 Q TWO OF WHAT?

4 A CHINA RESTAURANTS.

5 Q TWO CHINESE RESTAURANTS?

6 A RIGHT.

7 Q OKAY.

8 A BUT SHE KIND OF SPECIFIED AND GIVE ME A LOCATION BY SAYING THE
9 ONE NEXT TO WILDLIFE.

10 Q ALL RIGHT. DID YOU AND OFFICER ODOM GO DOWN TO THAT
11 PARTICULAR RESTAURANT, SIR?

12 A THAT'S WHERE WE WENT, SIR.

13 Q WAS ANYBODY INJURED OR HURT THERE?

14 A NO, SIR.

15 Q OKAY. DID YOU TURN AROUND AND GO BACK UP TO THE OTHER ONE?

16 A YES, SIR.

17 Q AND IN DOING SO, YOU HAD ACTUALLY PASSED THE OTHER ONE COMING
18 BACK INTO TOWN, HADN'T YOU?

19 A YES, SIR.

20 Q DID YOU NOTICE ANYTHING AT THE RESTAURANT WHEN YOU GOT
21 THERE?

22 A NO. WHEN I ARRIVED THE SECOND TIME?

23 Q YES, SIR.

24 A YES, SIR. I NOTICED A LADY. SHE WAS SEATED IN HER CAR THAT WAS
25 PARKED ON THE HIGHWAY 64 4-LANE SIDE OF THE BUSINESS.

1 Q WHAT WAS THE WEATHER LIKE THAT NIGHT?

2 A IT WAS MISTING RAIN AT THAT PARTICULAR TIME.

3 Q HAD IT RAINED HARD INTERMITTENTLY DURING THE NIGHT?

4 A YES, SIR, LATER ON, JUST SHORTLY AFTER IT, RAINED REAL HARD.

5 Q WHEN YOU SAW THIS LADY, WAS ANYBODY ELSE IN THE PARKING LOT?

6 A YES, SIR, THERE WERE THREE OTHER MEN.

7 Q AND DID THEY - - WERE THEY ABLE TO SPEAK ENGLISH?

8 A NO, SIR.

9 Q THEY WEREN'T ABLE TO SPEAK YOUR ENGLISH ANYWAY, WERE THEY?

10 A NO, SIR.

11 Q DID YOU TRY TO HAVE A CONVERSATION WITH THEM ABOUT WHAT WAS
12 WRONG WITH THE LADY?

13 A YES, SIR. I TRIED, BUT WE WERE UNABLE TO COMMUNICATE WITH THE
14 OTHER - - -

15 Q SUBSEQUENTLY DID YOU FIND OUT THAT THEY WERE EMPLOYEES AT THE
16 RESTAURANT?

17 A YES, SIR.

18 Q ALL RIGHT. AND THEY WERE SPEAKING MEXICAN OR SPANISH, IS THAT
19 CORRECT?

20 A YES, SIR, CORRECT.

21 Q WERE YOU TRYING TO TELL THEM THAT THE EMS WAS ON THE WAY?

22 A YES, SIR.

23 Q DID YOU, IN FACT, CALL THE EMERGENCY?

24 A YES, I CALLED THE DISPATCHER AND THEY SENT THEM ON THE WAY.

25 Q DID YOU NOTICE ANYTHING WRONG WITH THE LADY?

1 A NO, SIR. I DID NOT SEE ANYTHING PHYSICAL AT THAT POINT. IT JUST
2 LOOKED LIKE SHE WAS SITTING IN THE FRONT SEAT, SLUMPED OVER TO
3 HER RIGHT.

4 Q DID SHE APPEAR DEAD TO YOU, LUTHER?

5 A YES, SIR.

6 Q DID YOU TRY TO RESUSCITATE HER IN ANY WAY YOURSELF?

7 A NO, SIR. I DIDN'T. MY PARTNER, SARGENT ODOM, HE WENT, HE FELT THE
8 PULSE. HE WORKS WITH A FUNERAL HOME AND I FELT LIKE HE
9 PROBABLY WAS BETTER FOR IT THAN I WAS, BUT HE DIDN'T FIND ANY
10 PULSE.

11 Q WAS THERE ANY OTHER OBJECTS IN HER CAR THAT YOU TOOK
12 POSSESSION OF AT SOME POINT?

13 A HER POCKETBOOK, HANDBAG.

14 Q OKAY. WHAT DID YA'LL DO WITH THAT?

15 A WE TOOK CONTROL OF IT AND JUST KEPT IT WITH US UNTIL WE GOT BACK
16 TO THE POLICE STATION AND PROPERLY ---

17 Q WHEN THE EMERGENCY SERVICE PERSONNEL GOT THERE, WAS SHE
18 TRANSPORTED TO THE BARNEWELL COUNTY HOSPITAL?

19 A YES, SIR, SHE WAS.

20 Q DID YOU GO THERE?

21 A YES, SIR.

22 Q DID YOU KNOW AT THAT TIME THIS WAS A HOMICIDE?

23 A NO, SIR, I DIDN'T.

24 Q WHEN DID YOU FIND OUT THIS LADY HAD BEEN SHOT?

25 A AT THE BARNWELL COUNTY HOSPITAL.

1 Q AT THE SCENE, DID THERE NOT APPEAR ANYTHING THAT LED YOU TO
2 BELIEVE THAT IT WAS A HOMICIDE?

3 A NO, SIR, NOTHING.

4 Q WHEN YOU GOT TO THE HOSPITAL WHO ACTUALLY - - WAS IT ONE OF THE
5 EMERGENCY PERONNEL THAT ACTUALLY BROUGHT THAT TO YOUR
6 ATTENTION THAT SHE'D BEEN SHOT?

7 A IT WAS DENISE - - I DON'T RECALL HER LAST NAME, BUT SHE WAS THE
8 ONE.

9 Q OKAY. AND WHEN YOU WERE ADVISED THAT, WHAT DID YOU DO?

10 A WELL, WHEN SHE FIRST TOLD ME, IT SHOCKED ME, YOU KNOW. AND
11 AFTER THAT, SOMEONE ELSE CAME OUT OF THE HOSPITAL, I DON'T
12 REMEMBER WHO AND SAID SHE'D BEEN SHOT. AND I USED THE
13 TELEPHONE AND GAVE CHIEF DARNELL A CALL AND THEN HE, IN TURN
14 MAY HAVE CALLED TO - - AT THAT TIME INVESTIGATOR GANTT WITH THE
15 SOLICITOR'S OFFICE. AND HE CAME OUT AND PADGETT CAME OUT.

16 Q DID YOU GO BACK TO THE ACTUAL SCENE?

17 A INVESTIGATOR GANTT AND MYSELF, WE WENT BACK AND SECURED IT.

18 Q AND AT THAT POINT IN TIME, WAS THE CAR THERE?

19 A YES, SIR, THE CAR WAS STILL THERE.

20 Q HAD ANYTHING ELSE BEEN DONE TO THE SCENE TO YOUR KNOWLEDGE?

21 A NO, SIR, NOT TO MY KNOWLEDGE.

22 Q NOW, AT SOME POINT LATER ON IN THIS INVESTIGATION, DID YOU HAVE
23 AN OPPORTUNITY TO GO TO MS. DOROTHY BENNING HIGHSMITH'S
24 HOUSE?

25 A YES, SIR.

- 1 Q AND WHAT WAS YOUR PURPOSE IN GOING THERE?
- 2 A WE WERE SEEKING A WEAPON.
- 3 Q OKAY. YOU RECEIVED INFORMATION THAT PERHAPS THERE WAS A ~~✓~~
- 4 WEAPON THERE?
- 5 A YES, SIR.
- 6 Q AND DID YOU PARTICIPATE IN THE SEARCH OF THE RESIDENCE?
- 7 A YES, SIR.
- 8 Q ALL RIGHT. I HAND YOU WHAT'S BEEN MARKED FOR IDENTIFICATION AS
- 9 STATE'S NO. 5 AND NO. 6 AND ASK YOU YES OR NO, CAN YOU IDENTIFY
- 10 THOSE TWO PHOTOGRAPHS? JUST YES OR NO.
- 11 A YES, SIR.
- 12 Q ALL RIGHT. DO THEY ACCURATELY DEPICT WHAT THEY PURPORT TO
- 13 SHOW?
- 14 A YES, SIR.
- 15 Q ALL RIGHT. I ASK YOU IF YOU CAN TELL ME, IN THE RESIDENCE OF MS.
- 16 HIGHSMITH'S DID YOU OBTAIN A WEAPON?
- 17 A YES, SIR.
- 18 Q AND DID YOU OBTAIN A CLIP FOR THE WEAPON?
- 19 A YES, SIR.
- 20 Q AND THE ITEMS THAT YOU OBTAINED FROM THE RESIDENCE, WHAT DID
- 21 YOU DO WITH THOSE ITEMS?
- 22 A I KEPT THEM IN MY POSSESSION UNTIL LATER, I GOT WITH SLED AGENT ✓
- 23 PADGETT, WHO PACKAGED IT AND TRANSPORTED IT TO SLED IN
- 24 COLUMBIA.
- 25 Q OKAY. YOU PERSONALLY, YOURSELF, TAKE IT TO OFFICER BLACK WITH ~~✗~~

1 SLED?

2 A YES, SIR.

3 Q ALL RIGHT. ITEMS MARKED 13B AND 13D, STATE'S EXHIBIT NOS., CAN
4 YOU IDENTIFY THOSE ITEMS?

5 A YES, SIR.

6 Q ARE THOSE THE TWO ITEMS YOU TRANSPORTED TO SLED?

7 A THEY APPEAR TO BE THE ITEMS I TRANSPORTED TO SLED, YES, SIR.

8 Q AND ARE THEY THE ITEMS THAT YOU FOUND AT THE RESIDENCE OF MS.
9 HIGHSMITH?

10 A YES, SIR.

11 Q DID YOU TAMPER OR DO ANYTHING WITH THOSE ITEMS?

12 A NO, SIR.

13 Q LUTHER, WHEN YOU ACTUALLY WENT TO THE RESTAURANT WHERE THIS
14 LADY'S BODY WAS, WAS THAT WITHIN THE CITY LIMITS OF BARNWELL?

15 A YES, SIR, IT IS.

16 Q AND IT WAS WITHIN THE COUNTY OF BARNWELL?

17 A YES, SIR.

18 Q ANSWER ANY QUESTIONS THEY HAVE FOR YOU.

19 THE COURT: HAVE YOU INTRODUCED THOSE THINGS?

20 MR. WEEKS: NOT YET, YOUR HONOR, JUST FOR ID.

21 THE COURT: ALL RIGHT. MR. WILLIAMS?

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q MR. GADSON, I BELIEVE THAT YOU ARRIVED AT THE SCENE ABOUT 10:20
25 THAT NIGHT. IS THAT CORRECT?

- 1 A YES, SIR. THAT WOULD BE ACCURATE, IT WAS IN THE 10 O'CLOCK HOUR,
2 YES, SIR.
- 3 Q OKAY. AND WHEN YOU GOT THERE, YOU FOUND THE VICTIM SLUMPED
4 OVER TO THE RIGHT?
- 5 A YES, SIR.
- 6 Q AND YOU SAW NO EVIDENCE OF ANY KIND OF STRUGGLE?
- 7 A NO, SIR.
- 8 Q ALL RIGHT. AND YOU SAW IN PLAIN VIEW, A POCKETBOOK, IS THAT NOT
9 CORRECT?
- 10 A THAT'S CORRECT.
- 11 Q AND THAT POCKETBOOK WAS RIGHT BY HER LEG?
- 12 A YES, SIR.
- 13 Q SO YOU COULD SEE IT AND ANYONE ELSE COULD SEE IT?
- 14 A YES, SIR.
- 15 Q ALL RIGHT. AND THE POCKETBOOK WAS CLOSED?
- 16 A YES, SIR.
- 17 Q IT APPEARED TO BE UNDISTURBED, IS THAT NOT CORRECT?
- 18 A THAT'S CORRECT.
- 19 Q AND, OF COURSE, RIGHT THEN YOU SAW TO IT THAT AN AMBULANCE WAS
20 CALLED AND THAT SHE WAS TAKEN TO THE BARNWELL HOSPITAL?
- 21 A YES, SIR.
- 22 Q OKAY. AND WHEN YOU GOT TO THE HOSPITAL, THAT'S WHEN YOU
23 FOUND OUT SHE'D BEEN SHOT?
- 24 A YES, SIR.
- 25 Q OKAY. AND YOU CALLED, OR SOMEONE CALLED TODD GANTT, IS THAT

- 1 NOT CORRECT?
- 2 A RIGHT.
- 3 Q OKAY.
- 4 A YES, SIR.
- 5 Q AND WHAT TIME DID YOU LEAVE THE RESTAURANT, DO YOU REMEMBER?
- 6 A IT WAS NOT LONG AFTER MY ARRIVAL TIME. I JUST DON'T REMEMBER.
- 7 Q NOT LONG AFTER YOU ARRIVED, YOU LEFT AND WENT TO THE HOSPITAL?
- 8 A RIGHT, YES, SIR.
- 9 Q AND AT THE HOSPITAL, YOU CALLED TODD GANTT?
- 10 A RIGHT.
- 11 Q YOU WAITED FOR TODD GANTT AT THE HOSPITAL?
- 12 A YES, SIR.
- 13 Q AND HE CAME AND GOT YOU ---
- 14 A YES, SIR.
- 15 Q --- AND YA'LL WENT BACK TO THE SCENE?
- 16 A WE WENT BACK TO THE SCENE, YES, SIR.
- 17 Q AND YOU WERE AT THE HOSPITAL AWAY FROM THE SCENE FOR AT LEAST
- 18 30 MINUTES, IS THAT NOT CORRECT?
- 19 A I WOULD SAY THAT'S CORRECT.
- 20 Q AND SO THAT CRIME SCENE WAS LEFT OPEN FOR AT LEAST 30 MINUTES?
- 21 A YES, SIR.
- 22 Q NO ONE WAS THERE TO PROTECT IT AND MAKE SURE NOTHING WAS
- 23 GOING ON IS THAT CORRECT
- 24 A RIGHT. THAT'S TRUE.
- 25 Q ALL RIGHT. YA'LL WORKED THAT SCENE JOINTLY THAT NIGHT, IS THAT

1 NOT CORRECT?

2 A YES, SIR. CORRECT.

3 Q OKAY. NOW, WHEN YOU WENT TO THE HOUSE -- THE HOME OF DOROTHY
4 HIGHSMITH, DID YOU GO IN THE HOME?

5 A YES, SIR, I DID.

6 Q WERE YOU THERE WHEN THEY SERVED THE WARRANT?

7 A YES, SIR.

8 Q ALL RIGHT.

9 A A WARRANT OR TRESPASS?

10 Q A SEARCH WARRANT. WERE YOU THERE WHEN THEY SERVED THE
11 SEARCH WARRANT?

12 A I KNOW OF A TRESPASS.

13 Q YOU DON'T KNOW IF A SEARCH WARRANT WAS SERVED THAT NIGHT?
14 WHEN YOU WENT TO GET THE GUN ---

15 A RIGHT.

16 Q --- TO SEARCH FOR THE GUN, WERE YOU THERE IN THE ---

17 A I WAS THERE THEN.

18 Q ALL RIGHT. DO YOU REMEMBER A SEARCH WARRANT BEING SERVED?

19 A I KNOW OF A CONSENT TO SEARCH AND EVIDENTLY A WARRANT WAS.
20 IT'S BEEN A WHILE AND I DON'T HAVE MY NOTES.

21 Q WHEN YOU WENT BACK IN -- YOU DON'T HAVE YOUR NOTES WITH YOU?

22 A NO, SIR. I DON'T HAVE MY NOTES.

23 Q WHEN'S THE LAST TIME YOU LOOKED AT YOUR NOTES?

24 A FIRST TRIAL. _____

25 Q 2 YEARS AGO?

- 1 A YES, SIR.
- 2 Q YOU WENT BACK IN THE BEDROOM WHERE MS. HIGHSMITH SHOWED YOU
- 3 A GUN, IS THAT NOT CORRECT?
- 4 A RIGHT. THAT'S CORRECT.
- 5 Q ALL RIGHT. AND WHO PICKED THE GUN UP?
- 6 A I DID.
- 7 Q DID YOU PICK IT UP ---
- 8 A YES, SIR.
- 9 Q --- OR DID VINCE PADGETT PICK IT UP?
- 10 A VINCE PICKED IT UP AND HE GAVE IT TO ME.
- 11 Q OKAY. HOW DID YOU HOLD THE GUN?
- 12 A I TOOK A PENCIL, MY PEN AND RAN IT THROUGH THE TRIGGER GUARD
- 13 AND THAT'S HOW I KEPT IT.
- 14 Q AND ONCE YOU HAD THE GUN, WHAT DID YOU DO WITH IT?
- 15 A I PLACED IT IN AN EVIDENCE BAG. NOT THE PLASTIC ONE, THE PAPER
- 16 TYPE.
- 17 Q ALL RIGHT. WAS THERE A TIME THAT YOU EVER GAVE IT TO VINCE
- 18 PADGETT?
- 19 A AT HIS OFFICE.
- 20 Q ALL RIGHT. WERE YOU THERE THE WHOLE TIME?
- 21 A I WAS RIGHT THERE THE WHOLE TIME.
- 22 Q DID YOU TAKE THE GUN TO SLED OR DID VINCE PADGETT TAKE THE GUN
- 23 TO SLED?
- 24 A I TOOK IT TO SLED.
- 25 Q AND WHO DID YOU GIVE IT TO AT SLED?

1 A I BELIEVE IT WAS A BLACK. I BELIEVE HIS LAST NAME WAS BLACK.

2 Q HIS LAST NAME WAS BLACK?

3 A I BELIEVE IT WAS.

4 Q ALL RIGHT.

5 A IT'S BEEN A WHILE.

6 Q NO EVIDENCE OF STRUGGLE AT THE SCENE?

7 A NO, SIR.

8 Q AND YOU CLEARLY SAW THAT POCKETBOOK, CLOSED AS IT SHOULD BE
9 BESIDE THE VICTIM?

10 A YES, SIR, IT WAS.

11 Q IN PLAIN VIEW?

12 A PLAIN VIEW.

13 MR. WILLIAMS: THAT'S ALL I HAVE.

14 MR. WEEKS: NO FURTHER QUESTIONS OF OFFICE GADSON, YOUR
15 HONOR.

16 THE COURT: YOU MAY STEP DOWN.

17 MR. WEEKS: STATE WOULD CALL DENISE GIBSON.

18 MR. GIBBONS: YOUR HONOR, MAY OFFICER GADSON BE EXCUSED?

19 THE COURT: YA'LL HAVE ANY OBJECTION TO HIS LEAVING, MR.
20 WILLIAMS?

21 MR. WILLIAMS: I HAVE NO OBJECTION.

22 THE COURT: ALL RIGHT. YOU MAY LEAVE, THANK YOU.

23 MR. GADSON: THANK YOU, SIR.

24 ///

25 ///

1 THEREUPON,

2 DENISE GIBSON CATOE,

3 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: HAVE A SEAT IN THE WITNESS BOX AND STATE YOUR
5 NAME FOR THE RECORD.

6 MS. GIBSON: DENISE CATOE.

7 DIRECT EXAMINATION

8 BY MR. WEEKS:

9 Q DENISE, WHERE ARE YOU EMPLOYED?

10 A BARNWELL COUNTY SHERIFF'S OFFICE.

11 Q AND BACK IN DECEMBER, SPECIFICALLY DECEMBER 11, 1997, WHERE
12 WERE YOU EMPLOYED?

13 A I WAS A VOLUNTEER FOR BARNWELL RESCUE SQUAD.

14 Q AND DID YOU RECEIVED A CALL ON DECEMBER 11, SOMETIME THAT
15 NIGHT TO RESPOND TO AN EMERGENCY?

16 A YES.

17 Q AND WHERE DID YOU GO?

18 A CHINA EXPRESS ON DUNBARTON BOULEVARD.

19 Q AND THAT WOULD BE ON WHAT WE CALL HIGHWAY 64, HEADING OUT OF
20 TOWN, WEST?

21 A CORRECT.

22 Q ALL RIGHT. DID YOU RESPOND THERE? DID YOU SEE OFFICER GADSON
23 THERE BY ANY CHANCE?

24 A NO, WHEN WE ARRIVED THERE WAS OFFICER ODOM.

25 Q WERE THERE ANY OTHER POLICE THERE WHEN YA'LL ARRIVED THAT

1 YOU SAW?

2 A NO.

3 Q AND AT THAT TIME DID YOU FIND AN EMERGENCY?

4 A YES. WHEN WE ARRIVED WE FOUND A FEMALE IN THE DRIVER'S SEAT
5 UNRESPONSIVE.

6 Q WHEN YOU SAY UNRESPONSIVE, WHAT DOES THAT MEAN?

7 A AS WE APPROACHED THE VEHICLE AND TRIED TO TALK TO HER, THERE
8 WAS NO RESPONSE. WE CHECKED TO SEE IF SHE HAD A PULSE, IF SHE
9 WAS BREATHING AND THERE WAS NO PULSE, NO BREATHING.

10 Q WHAT WAS THE SKIN TEMPERATURE LIKE, DO YOU KNOW?

11 A SHE WAS WARM TO TOUCH.

12 Q WHAT WAS THE WEATHER LIKE AT THE TIME?

13 A IT WAS COLD AND WET.

14 Q TELL ME WHAT THE PHYSICAL LOCATION OF THE BODY WAS AT THAT
15 TIME.

16 A AS I REMEMBER, SHE WAS SITTING IN THE DRIVER'S SEAT AND SHE WAS
17 KIND OF SLUMPED OVER TO THE RIGHT TOWARD THE MIDDLE OF THE
18 CAR.

19 Q AND DO YOU RECALL ANYTHING ELSE IN THE CAR?

20 A FROM THE QUICK GLANCE I GOT, NO BECAUSE I WAS MORE
21 CONCENTRATING ON HER.

22 Q AND AFTER ATTEMPTING TO RESUCITATE HER THERE, DID YOU ATTEMPT
23 TO RESUCITATE HER THERE?

24 A WE DID. THERE WAS TWO OF US ON THE SCENE. WE BOTH CHECKED FOR
25 PULSE AND WE BOTH CHECKED FOR BREATHING. I WENT BACK TO THE

1 TRUCK TO LET THEM KNOW THAT WE HAD CPR IN PROGRESS WHILE THE
2 OTHER EMT IMMEDIATELY TRIED TO OPEN HER AIRWAY AND WE TRIED
3 TO MAKE ARRANGEMENTS TO GET HER OUT.

4 Q WHEN YOU DID THAT, WHERE DID YOU TRANSPORT HER?

5 A WE WENT TO BARNWELL HOSPITAL.

6 Q AND AT THE HOSPITAL, TELL ME WHAT YOU DID THERE.

7 A WHEN WE FIRST GOT TO THE HOSPITAL, WE ASSISTED THE EMERGENCY
8 ROOM CREW WITH CONTINUING CPR AND THE DOCTOR CAME IN. AFTER A
9 FEW MINUTES, THE DOCTOR WAS STILL DOING HIS PROTOCOL WHEN A
10 NURSE ASKED IF THEY COULD DEFIBRILLATE.

11 Q WHAT'S THAT MEAN?

12 A SHOCK. THEY SHOCK THE HEART TO TRY TO GET IT TO START BEATING.
13 THEY CUT THE CLOTHING AWAY, THE REST OF IT. ALL WE DID WAS PULL
14 IT UP JUST ENOUGH THAT WE COULD SEE THE BREAST BONE. THEY CUT
15 IT FROM TOP AND BOTTOM. WHEN THEY PULLED IT APART, WE NOTICED
16 A LITTLE BIT OF BLOOD INSIDE HER BRA. THE DOCTOR CAME OVER AND
17 WE STARTED EVALUATING MORE AND A NURSE SAID SHE HAD BEEN
18 SHOT.

19 Q DID YOU GO RELATE THAT INFORMATION TO LUKE GADSON WITH THE
20 BARNWELL POLICE DEPARTMENT?

21 A YES, SIR.

22 Q AND ALL OF THIS TRANSPIRED AT APPROXIMATELY WHAT TIME THAT
23 NIGHT?

24 A I DON'T RECALL. IT WAS LATE.

25 Q THE TRIP TO THE HOSPITAL, DID YOU DO ANYTHING WITH THIS AFTER THE

1 TRIP TO THE HOSPITAL? WERE YOU INVOLVED IN ANY WAY?

2 A NO. THE DOCTOR ASKED ME TO GET CAPTAIN GADSON INTO THE
3 EMERGENCY ROOM AND WE DID OUR PAPERWORK AND WE LEFT.

4 Q THE BULLET WOUND OR WHATEVER, DID YOU SEE IT?

5 A UH HUH.

6 Q WAS IT BIG, LARGE? WHAT WAS IT?

7 A THE BEST I CAN REMEMBER, IT WAS JUST A LITTLE BIT BIGGER THAN THE
8 ERASER OF A PENCIL.

9 Q WAS IT VERY UNNOTICEABLE? UNTIL HER SHIRT WAS OFF, OBVIOUSLY.

10 A RIGHT. WE DIDN'T SEE ANYTHING ON HER CLOTHING UNTIL WE CUT HER
11 CLOTHES AWAY.

12 Q ALL RIGHT. THE TYPE OF BLOUSE OR SHIRT THAT SHE HAD ON, DID IT
13 HAVE HOLES IN IT TO BEGIN WITH?

14 A SHE HAD A LIGHT COLORED SHIRT AND THEN ON TOP OF THAT, IF I
15 REMEMBER, IT WAS A TEAL OR BLUE-GREEN, LIKE A CROCHETED TYPE
16 SWEATER OR VEST.

17 Q WHEN YOU SAY CROCHETED, SHE HAD SPACES IN IT?

18 A WITH HOLES, UH HUH.

19 Q AND YOU DIDN'T NOTICE AN OBVIOUS BULLET WOUND ON THE EXTERIOR
20 OF THE CLOTHING?

21 A NO.

22 Q OTHER THAN TRYING TO RESUCITATE THE BODY AND TAKING THE BODY
23 TO THE HOSPITAL, DID YA'LL TAMPER OR DO ANYTHING ELSE AT THE
24 SCENE THERE?

25 A NO.

1 Q MOVE THE CAR OR DO ANYTHING ELSE WITH THE DOOR?

2 A NOW, WE DID TRY TO GET IN THROUGH THE PASSENGER SIDE. IT WAS
3 LOCKED. THIS WAS RIGHT BEFORE WE WERE - - WE WERE TRYING TO
4 ACTUALLY GET HER OUT OF THE CAR.

5 Q OKAY.

6 A BUT OTHER THAN THAT, NO.

7 Q THAT'S ALL THE QUESTIONS I HAVE. ANSWER ANY QUESTIONS THEY
8 HAVE, PLEASE.

9 CROSS-EXAMINATION

10 BY MS. SANDERS:

11 Q MS. CATOE, I'D JUST LIKE TO ADDRESS YOUR ATTENTION TO THE LAST
12 QUESTION THAT WAS ASKED. ARE YOU SAYING THAT YOU HAD TO GO
13 THROUGH THE PASSENGER DOOR OF THIS VEHICLE TO GET TO THIS
14 PERSON?

15 A NO, WE WENT - - WHEN WE ACTUALLY GOT TO HER, WE WENT THROUGH
16 THE DRIVER'S DOOR, BUT TO GET HER OUT, THE WAY SHE WAS LEANING, I
17 WENT AROUND TO THE PASSENGER SIDE TO TRY TO OPEN IT SO WHEN WE
18 WENT TO MOVE HER OUT, WE COULD KIND OF MOVE HER TOWARD THE
19 PASSENGER SIDE AND THEN PULL HER OUT ON TO THE STRETCHER. IT
20 WOULD MAKE IT ONE SIMPLE STEP.

21 Q WHEN YOU ARRIVED THERE, WAS THE DOOR OPEN OR CLOSED TO THE
22 VEHICLE?

23 A I DO NOT REMEMBER.

24 Q DO YOU REMEMBER WHETHER THERE WERE WINDOWS UP OR DOWN?

25 A AS I RECALL, THE WINDOWS WERE UP.

1 MS. SANDERS: NO FURTHER QUESTIONS.

2 MR. WEEKS: NOTHING FURTHER WITH MS. CATOE, YOUR HONOR.
3 WE'D ASK THAT SHE BE EXCUSED ALSO, IF IT'S ALL RIGHT.

4 THE COURT: ALL RIGHT.

5 MR. GIBBONS: TODD GANTT.

6 THEREUPON,

7 TODD GANTT,

8 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE BE SEATED AND STATE YOUR NAME FOR THE
10 RECORD.

11 MR. GANTT: MY NAME IS MICHAEL TODD GANTT. THE LAST NAME
12 SPELLING, G-A-N-T-T.

13 DIRECT EXAMINATION

14 BY MR. GIBBONS:

15 Q OFFICER GANTT, WHERE WERE YOU EMPLOYED BACK IN DECEMBER OF
16 1997?

17 A WITH THE 2ND JUDICIAL CIRCUIT SOLICITOR'S OFFICE.

18 Q AND ON THE 11TH DAY OF DECEMBER, WERE YOU CALLED OUT TO A
19 SCENE?

20 A YES, I WAS.

21 Q TELL US WHAT YOU WERE CALLED OUT TO THAT NIGHT.

22 A CHIEF DARNELL, THE CHIEF OF THE BARNWELL CITY POLICE
23 DEPARTMENT CALLED ME AND STATED THAT HE HAD A POSSIBLE
24 HOMICIDE INVOLVING A GUNSHOT WOUND AT THE BARNWELL COUNTY
25 HOSPITAL.

1 Q WHAT DID YOU DO AFTER YOU GOT THE CALL?

2 A I WENT TO THE BARNWELL COUNTY HOSPITAL, WHERE I MET CHIEF
3 DARNELL AND LIEUTENANT VINCE PADGETT WITH SLED.

4 Q AND DID YOU EVENTUALLY GO OUT TO THE SCENE?

5 A YES, I DID.

6 Q WHAT DID YOU DO WHEN YOU GOT TO THE SCENE?

7 A WHEN I GOT TO THE SCENE, IT HAD BEEN RAINING VERY HARD AND IT
8 WAS CONTINUING TO RAIN. I TOOK PICTURES OF THE AREA WHERE THE
9 CAR WHERE MS. CHAPMAN WAS FOUND. ALSO, LIEUTENANT PADGETT
10 FOUND A CARTRIDGE CASING, A SPENT CARTRIDGE CASING ON THE
11 GROUND APPROXIMATELY 3 FEET FROM THE VEHICLE. I PHOTOGRAPHED
12 THAT AND EVENTUALLY DID COLLECT THAT ALSO AS EVIDENCE.

13 Q SO YOU ACTUALLY PICKED UP THE CASING?

14 A THAT'S CORRECT.

15 Q TELL US HOW YOU PICKED IT UP.

16 A I USED A -- LIKE A BALL POINT PEN, A FOUNTAIN PEN. IN THE OPENING
17 OF THE CASING, AFTER IT'S BEEN FIRED, IT HAS A CAVITY IN IT AND I
18 LIGHTLY INSERTED THE PEN IN THE CAVITY AND PLACED IT IN A PLASTIC
19 BAG.

20 Q AND WHAT WAS THE CONDITION OF THE CASING AT THAT TIME?

21 A AT THAT TIME IT WAS WET.

22 Q FROM?

23 A FROM THE RAIN. IT WAS RAINING VERY HARD.

24 Q AND WHAT DID YOU DO AFTER YOU PUT IT IN THE EVIDENCE BAG?

25 A I PUT IT IN THE EVIDENCE BAG. IT WAS SEALED AND THEN IT WAS

1 PLACED IN THE GLOVE COMPARTMENT OF MY VEHICLE AND LOCKED.

2 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT NO. 9. CAN YOU TELL ME
3 WHAT THAT IS?

4 A YES, SIR. THAT'S SOME MEASUREMENTS THAT WAS TAKEN AT THE CRIME
5 SCENE.

6 Q AND WHO PREPARED THIS DIAGRAM OR MEASUREMENT?

7 A I DID.

8 Q AND COULD YOU TELL US WHAT ITEM 2 IS?

9 A YES, SIR. ITEM 2 IS THE SPENT OR THE FIRED CARTRIDGE CASING THAT
10 WAS FOUND AT THE CRIME SCENE.

11 Q AND THAT'S A SKETCH OF THE OUTSIDE?

12 A THAT IS A SKETCH, YES.

13 Q I'M GOING TO ASK YOU TO POINT TO ITEM 2 WHERE YOU FOUND THE
14 CASING.

15 A NO. 2 IS THE POINT WHERE THE CASING WAS FOUND.

16 Q OFFICER GANTT, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT 10 AND ASK IF YOU CAN IDENTIFY THAT, PLEASE?

18 A YES, SIR, I CAN.

19 Q WHAT IS THAT?

20 A IT IS THE CARTRIDGE CASING THAT WAS FOUND BY LIEUTENANT
21 PADGETT THAT I RECOVERED AT THE SCENE.

22 Q DOES THAT APPEAR TO BE THE SAME SHELL THAT YOU RECOVERED THAT
23 NIGHT?

24 A YES, IT DOES.

25 Q AND, AGAIN, WHAT DID YOU DO WITH THAT AFTER YOU RECOVERED IT?

- 1 A IT WAS PLACED IN A SECURED EVIDENCE BAG AND SECURED IN MY
2 VEHICLE.
- 3 Q AND WHAT DID YOU EVENTUALLY END UP DOING WITH THAT?
- 4 A I TURNED IT OVER TO SLED CRIME SCENE AGENTS THE NEXT MORNING.
- 5 Q THE MORNING AFTER THE INCIDENT?
- 6 A RIGHT. IT WAS PROBABLY JUST 6 HOURS LATER, 7 HOURS LATER.
- 7 Q AND WHILE IT WAS IN YOUR CUSTODY, DID IT CHANGE IN ANY WAY OR
8 FORM?
- 9 A NO, IT DID NOT.
- 10 Q OFFICER GANTT, YOU'RE NOW WITH THE CITY POLICE DEPARTMENT?
- 11 A YES, I AM.
- 12 Q ARE YOU FAMILIAR WITH THE VARIOUS RESIDENTS INVOLVED IN THIS
13 CASE?
- 14 A SOME OF THEM I AM.
- 15 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED, STATE'S EXHIBIT 17.
16 THIS ARROW POINTING OUT INTO THE 4-LANE, CAN YOU IDENTIFY THE
17 CHINA EXPRESS RESTAURANT ON THIS EXHIBIT?
- 18 A RIGHT HERE WHERE NO. 8 IS CIRCLED.
- 19 Q AND ARE YOU FAMILIAR WITH WHERE THE PISTOL WAS RECOVERED?
- 20 A IT WAS -- I KNOW IT WAS IN THIS AREA HERE. I BELIEVE IT WAS WHERE
21 NO. 8 WAS, THE BENNING HIGHSMITH RESIDENCE.
- 22 Q AND ARE YOU FAMILIAR WITH WHERE MICHAEL PAUL BUCKMAN LIVES?
- 23 A HE LIVES IN THIS AREA HERE, NO. 19.
- 24 Q SAME STREET?
- 25 A YES, SIR.

1 Q OPPOSITE SIDE?

2 A OPPOSITE SIDE.

3 Q AND WHAT ABOUT MR. JERMAINE WALKER?

4 A HE LIVES OFF OF CLINTON STREET, I GUESS IT WOULD BE THIS NO. 22.

5 Q ALL RIGHT.

6 MR. GIBBONS: YOUR HONOR, WE WOULD MOVE THAT STATE'S
7 EXHIBIT NO. 17 BE ADMITTED IN AS DEMONSTRATIVE.

8 MR. WILLIAMS: LET ME JUST CHECK THE NUMBERS OUT.
9 WITHOUT OBJECTION, YOUR HONOR.

10 THE COURT: SO ADMITTED. WHAT'S THE STATE'S EXHIBIT NO.?

11 MR. GIBBONS: NO. 17. I WOULD ALSO MOVE IN STATE'S EXHIBIT 9,
12 THE DIAGRAM.

13 MR. WILLIAMS: NO OBJECTION.

14 THE COURT: SO ADMITTED WITHOUT OBJECTION.

15 BY MR. GIBBONS:

16 Q OFFICER GANTT, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
17 STATE'S EXHIBIT 1 THROUGH 4, STATE'S EXHIBIT 7, 8 AND STATE'S
18 EXHIBIT 12 AND ASK YOU IF YOU CAN IDENTIFY WHAT THOSE ARE,
19 PLEASE.

20 A YES, SIR, I CAN.

21 Q ARE YOU FAMILIAR WITH THE VARIOUS SCENES DEPICTED IN THOSE
22 PHOTOGRAPHS?

23 A YES, SIR, I AM.

24 Q NOW, AS TO ITEMS 7, 8, 12 AND 3, WHO TOOK THOSE PHOTOGRAPHS?

25 A I TOOK THOSE PHOTOGRAPHS.

1 Q AND DO YOU KNOW WHEN YOU TOOK THOSE?

2 A THESE WERE TAKEN THE NIGHT OF THE CRIME SCENE.

3 Q AND DO THEY FAIRLY AND ACCURATELY DEPICT THE CRIME SCENE YOU
4 FOUND THAT NIGHT?

5 A YES, THEY DO.

6 MR. GIBBONS: YOUR HONOR, AT THIS POINT THE STATE WOULD
7 MOVE THOSE EXHIBITS INTO EVIDENCE, STATE'S 7, STATE'S 8, STATE'S 12 AND
8 STATE'S 3.

9 MR. WILLIAMS: CAN WE HAVE A BRIEF VOIR DIRE ON THAT, YOUR
10 HONOR?

11 VOIR DIRE EXAMINATION

12 BY MR. WILLIAMS:

13 Q DO YOU KNOW WHAT TIME YOU TOOK THOSE PICTURES?

14 A NOT THE EXACT TIME, NO, SIR.

15 Q CAN YOU GIVE ME AN ESTIMATE?

16 A APPROXIMATELY AN HOUR AFTER I WAS CALLED AT 11:15, SOMEWHERE
17 BETWEEN 12:15 AND 1 O'CLOCK I WOULD SAY.

18 Q AND IT'S YOUR UNDERSTANDING THE BODY WOULD HAVE BEEN MOVED?

19 A THE BODY WAS MOVED, YES, SIR. THE BODY WAS GONE.

20 Q THAT WOULD HAVE BEEN GONE ABOUT 10:30, ROUGHLY?

21 A MY UNDERSTANDING WAS THAT THE BODY WAS ALREADY GONE BEFORE
22 I WAS CALLED.

23 Q OKAY.

24 MR. WILLIAMS: NO OBJECTION, YOUR HONOR.

25 THE COURT: ALL RIGHT. SO ADMITTED WITHOUT OBJECTION. I'M

1 NOT SURE WHAT THE NUMBERS ARE.

2 BY MR. GIBBONS:

3 Q STATE'S EXHIBIT 3, WHAT IS THAT A SHOT OF?

4 A THIS IS A SHOT OF THE CHINA EXPRESS WITH THE VEHICLE THAT MS.
5 CHAPMAN WAS FOUND IN. IT ALSO DEPICTS THE RAIN THAT WAS FALLING
6 AND THE GROUND WAS WET.

7 Q AND TO YOUR INFORMATION THE CAR WAS NOT MOVED PRIOR TO THIS
8 PICTURE.

9 A MY UNDERSTANDING WAS THE CAR WAS NOT MOVED AT ALL.Q

10 Q I SHOW YOU STATE'S EXHIBIT 7, CAN YOU EXPLAIN WHAT THAT IS?

11 A THIS IS THE CARTRIDGE CASING THAT WAS FOUND ON THE GROUND AT
12 THE CRIME SCENE.

13 Q AND STATE'S EXHIBIT 12?

14 A THIS IS JUST A DIFFERENT VIEW OF THE -- YOU CAN SEE THE CARTRIDGE
15 CASING HERE AND THAT'S THE VEHICLE MS. CHAPMAN WAS FOUND IN.

16 Q STATE'S EXHIBIT 8?

17 A THIS IS JUST A DIFFERENT SHOT THAT SHOWS THE -- THIS IS CAPTAIN
18 GADSON, HE'S POINTING DOWN WITH THE YARD STICK WHERE THE
19 CARTRIDGE CASING WAS. THIS IS THE CAR WHERE MS. CHAPMAN WAS
20 FOUND AND THAT'S LIEUTENANT PADGETT.

21 Q THAT THE SLED AGENT INVOLVED IN THE CASE?

22 A RIGHT, YES, SIR.

23 Q AS TO STATE'S EXHIBIT 1, 2 AND 4, CAN YOU TELL ME HAVE YOU SEEN
24 THOSE BEFORE?

25 A YES, I HAVE.

1 Q AND WHAT DO THEY DEPICT?

2 A IT'S A DAYTIME SHOT THAT JUST GIVES A GENERAL AREA OF WHERE THE
3 CRIME HAPPENED. THIS WAS TAKEN SOMETIME LATER.

4 Q SO THAT DOES NOT REFLECT THE EXACT CARS IN THE LOT, TIME OF DAY?

5 A NO, SIR, THIS WAS TAKEN A CONSIDERABLE TIME LATER OF THE CRIME
6 SCENE.

7 Q AND DO THOSE PHOTOGRAPHS ACCURATELY DEPICT THE RELATIVE
8 NEIGHBORHOOD OF WHERE THE RESTAURANT IS AND THE PARKING LOT
9 LAYOUT?

10 A YES, SIR, IT DOES.

11 MR. GIBBONS: YOUR HONOR, I WOULD MOVE THESE INTO
12 EVIDENCE TO SHOW THE LAYOUT OF THE NEIGHBORHOOD.

13 MR. WILLIAMS: NO OBJECTION.

14 THE COURT: SO ADMITTED. STATE'S EXHIBITS 1, 2 AND 4.

15 BY MR. GIBBONS:

16 Q OFFICER GANTT, DID YOU HAVE ANY DIRECT INVOLVEMENT FURTHER ON
17 IN THIS CASE? WITH ANY EVIDENCE?

18 A WITH ANY EVIDENCE? NO, SIR.

19 MR. GIBBONS: THAT'S ALL THE QUESTIONS I HAVE FOR MR.
20 GANTT, YOUR HONOR.

21 CROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q INVESTIGATOR GANTT, IT'S MY UNDERSTANDING THAT YOU WERE
24 NOTIFIED AT THE HOSPITAL BY CHIEF DARNELL?

25 A WELL, I WAS AT MY RESIDENCE WHEN CHIEF DARNELL CALLED ME AND

- 1 ASKED ME TO COME TO THE HOSPITAL.
- 2 Q AND THAT WAS ABOUT 11:15 P.M.?
- 3 A YES, SIR.
- 4 Q ALL RIGHT. AND HOW FAR DO YOU LIVE FROM THE HOSPITAL?
- 5 A APPROXIMATELY A MILE, MILE AND A HALF, TWO MILES.
- 6 Q OKAY. AND YOU WENT THERE AND STAYED THERE FOR A FEW MINUTES?
- 7 A YES, SIR.
- 8 Q AND THEN YOU AND LUKE GADSON WENT BACK TO THE CRIME SCENE?
- 9 A CAPTAIN GADSON WAS ALREADY AT THE CRIME SCENE WHEN I WAS
- 10 THERE. HE WAS SECURING THE SCENE.
- 11 Q WHAT TIME DO YOU THINK YOU GOT THERE?
- 12 A I BELIEVE IT WAS SOMETIME BEFORE 12:00. I THINK IT WAS PROBABLY
- 13 ABOUT 10 UNTIL 12. I'M NOT EXACTLY SURE ON THE TIME I ARRIVED AT
- 14 THE SCENE.
- 15 Q WHO WOULD HAVE BEEN ASSISTING CAPTAIN GADSON SECURING THE
- 16 SCENE, IF ANYONE?
- 17 A I DON'T KNOW THAT, SIR.
- 18 Q WHAT DOES THIS POINT REPRESENT ON YOUR -- THIS POINT REPRESENTS
- 19 WHERE YOU FOUND THE BULLET, IS THAT CORRECT?
- 20 A RIGHT, YES, SIR.
- 21 Q WHAT DOES THESE TWO POINTS REPRESENT?
- 22 A THOSE -- THE DOUBLE LINE IS PARKING LINES WHERE THE -- AIDS
- 23 INDIVIDUALS IN PARKING AT THE RESTAURANT.
- 24 Q OKAY. WHAT -- HOW FAR FROM THE CAR WOULD THE SHELL CASING BE?
- 25 A APPROXIMATELY 3 FEET.

- 1 Q ALL RIGHT. HOW FAR FROM THE BUILDING?
- 2 A APPROXIMATELY 12 FEET.
- 3 Q THAT NIGHT, DID YOU ATTEMPT TO TAKE ANY KIND OF FINGERPRINTS?
- 4 A NO, SIR, I DID NOT.
- 5 Q DID YOU SECURE THE POCKET BOOK THAT WAS IN THE CAR?
- 6 A NO, SIR, I DID NOT. THE POCKETBOOK FROM MY UNDERSTANDING WAS
- 7 AT THE HOSPITAL.
- 8 Q OKAY. WHO TOOK IT TO THE HOSPITAL?
- 9 A THAT I DO NOT KNOW, SIR.
- 10 Q OKAY. DO YOU KNOW IF ANYONE SECURED THE POCKETBOOK TO TRY TO
- 11 TAKE ANY KIND OF FINGERPRINTS OR EVIDENCE FROM THE
- 12 POCKETBOOK?
- 13 A NO, SIR, I DO NOT.
- 14 Q OKAY. DID YOU ATTEMPT TO TAKE ANY OTHER FINGERPRINTS OR OTHER
- 15 EVIDENCE ON THE SCENE THAT NIGHT BESIDES JUST LOCATING THIS
- 16 SHELL CASING?
- 17 A NO, SIR, I DID NOT.
- 18 Q AND THAT INCLUDES OUTSIDE OR INSIDE THE VEHICLE, IS THAT
- 19 CORRECT?
- 20 A THAT'S CORRECT.
- 21 MR. WILLIAMS: NOTHING FURTHER.
- 22 MR. GIBBONS: A FEW QUESTIONS, YOUR HONOR.
- 23 REDIRECT EXAMINATION
- 24 BY MR. GIBBONS:
- 25 Q OFFICER GANTT, DO YOU KNOW WHY, OR WHAT WAS HAPPENING WITH

1 THE CAR THAT NIGHT? WHY THERE WERE NO PRINTS TAKEN?

2 A IT WAS RAINING EXTREMELY HARD. EVERYTHING WAS WET. THERE WAS
3 NOTHING THAT I KNOW OF OR AM CAPABLE OF USING TO TAKE
4 FINGERPRINTS WHEN AN AREA IS THAT WET. THE COMMON PROCEDURES
5 WOULD BE TO MOVE IT TO A LOCATION, LET IT DRY AND THEN
6 FINGERPRINT IT. THE INTERIOR OF THE CAR WOULD BE SECURED,
7 INTEGRITY WOULD BE MAINTAINED AS IT WAS MOVED TO ANOTHER
8 LOCATION. A NEW SLED CRIME TEAM, WHICH ARE THE EXPERTS IN
9 TAKING LATENT FINGERPRINTS WOULD COME DOWN, THEY WOULD COME
10 DOWN THE NEXT MORNING AT DAYLIGHT AND THEY DID.

11 Q THANK YOU.

12 MR. GIBBONS: THAT'S ALL I HAVE.

13 RECROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q THERE WASNT' ANY BULLET HOLES OR ANYTHING LIKE THAT IN THE CAR
16 WERE THERE?

17 A NONE, NO, SIR.

18 MR. WILLIAMS: NOTHING FURTHER.

19 THE COURT: THANK YOU, SIR, YOU MAY STEP DOWN.

20 MR. GIBBONS: JOHN BLACK.

21 THEREUPON,

22 JOHN BLACK,

23 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: PLEASE BE SEATED AND STATE YOUR NAME FOR THE
25 RECORD.

1 MR. BLACK: JOHN BLACK.

2 DIRECT EXAMINATION

3 BY MR. GIBBONS:

4 Q AGENT BLACK, WHAT IS YOUR TITLE OR POSITION, PLEASE?

5 A I'M A SENIOR AGENT.

6 Q AND HAVE YOU RECEIVED ANY SPECIALIZED TRAINING IN THE AREAS OF
7 CRIME SCENE INVESTIGATION?

8 A YES, I HAVE. I DO WORK AT THE SOUTH CAROLINA LAW ENFORCEMENT
9 DIVISION IN THE LATENT PRINT AND CRIME SCENE DEPARTMENT.

10 Q AND HAVE YOU BEEN QUALIFIED IN COURTS OF THIS STATE TO TESTIFY
11 AS TO LATENT FINGERPRINT EXAMINATION?

12 A YES, SIR.

13 Q APPROXIMATELY HOW MANY TIMES, SIR.

14 A ON 22 PRIOR OCCASIONS WITH RESPECT TO FINGERPRINTS.

15 Q AND YOU HAVE RECEIVED ADVANCED TRAINING IN THAT FIELD?

16 A YES, SIR.

17 MR. GIBBONS: YOUR HONOR, WE WOULD MOVE THAT AGENT
18 BLACK BE TREATED AS AN EXPERT IN THE FIELD OF FINGERPRINT
19 EXAMINATION.

20 MS. SANDERS: NO OBJECTION, YOUR HONOR.

21 THE COURT: ALL RIGHT. I'LL FIND HIM QUALIFIED AS AN EXPERT.

22 MR. GIBBONS: THANK YOU, YOUR HONOR.

23 THE COURT: IN THE FIELD OF FINGERPRINT EXAMINATION.

24 BY MR. GIBBONS:

25 Q AGENT BLACK, WERE YOU CALLED TO BARNWELL IN REFERENCE TO A

1 SHOOTING THAT OCCURRED IN DECEMBER OF 1997?

2 A YES, SIR.

3 Q WHAT WAS YOUR INVOLVEMENT?

4 A I WAS THE PRIMARY AGENT ON CRIME SCENE CALL THAT NIGHT AND WAS
5 ASKED TO RESPOND TO THE CITY OF BARNWELL IN REFERENCE TO THIS
6 INCIDENT.

7 Q AND DID YOU GO THAT NIGHT?

8 A I RECEIVED THE CALL SHORTLY AFTER MIDNIGHT AND I BELIEVE ON
9 DECEMBER THE 12TH OF '97, THE DECISION WAS MADE BY LIEUTENANT
10 VINCE PADGETT, WHO WAS ON THE SCENE FOR US TO RESPOND ABOUT
11 9:30 THAT MORNING.

12 Q WHAT WAS GOING TO BE DONE IN THE MEANTIME, ARE YOU AWARE?

13 A HE TOLD ME THAT THERE WAS -- A WOMAN HAD BEEN FOUND INSIDE HER
14 VEHICLE OUTSIDE THE CHINA EXPRESS RESTAURANT. THE WOMAN HAD
15 BEEN REMOVED TO THE HOSPITAL. IT WAS DETERMINED SHE HAD BEEN
16 SHOT. THE VEHICLE WAS OUTSIDE IN THE RAIN. HE SAID THAT HE
17 WOULD HANDLE PHOTOGRAPHING THE VEHICLE IN ITS CURRENT
18 LOCATION AND THEN GET IT INSIDE A GARAGE AREA WHERE IT COULD
19 START DRYING OUT FOR US TO PROCESS FOR FINGERPRINTS.

20 Q AND WAS THAT THE NECESSARY THING TO DO IN THIS CASE?

21 A YES, IT WAS.

22 Q AND DID YOU EVENTUALLY GO DOWN TO BARNWELL?

23 A YES, SIR.

24 Q AND WHAT DID YOU DO WHEN YOU GOT TO BARNWELL?

25 A MAY I REFER TO MY CASE FILE?

1 Q SURE.

2 A THANK YOU. THE FIRST PLACE THAT MYSELF AND MY PARTNER, WHO
3 WAS AGENT JEFF CROOKS RESPONDED TO WAS THE BARNWELL COUNTY
4 HOSPITAL.

5 Q AND WHAT DID YOU DO NEXT?

6 A AT THE HOSPITAL?

7 Q DID YOU DO ANYTHING AT THE HOSPITAL?

8 A YES, SIR.

9 Q WHAT DID YOU DO?

10 A WE WERE LEAD TO THE AREA WHERE MS. CHAPMAN'S BODY WAS AND I
11 TOOK PHOTOGRAPHS OF MS. CHAPMAN AND ALSO COLLECTED A
12 GUNSHOT RESIDUE KIT FROM HER AND ALSO TOOK HER POST-MORTEM,
13 MEANING AFTER DEATH, INKED FINGER AND PALM PRINTS.

14 Q AND WHY DID YOU TAKE PALM PRINTS AND FINGERPRINTS?

15 A STANDARD PRACTICE IN MY PROFESSION, KNOWING THAT WE HAD TO
16 PROCESS THE CAR FOR FINGERPRINTS, IT'S ALWAYS POSSIBLE TO
17 DEVELOP PALM PRINTS IN ADDITION TO FINGERPRINTS SO WE GO AHEAD
18 AND COLLECT BOTH STANDARDS WHILE WE'RE DOING IT.

19 Q TO TEST AGAINST HER BEING IN THE CAR?

20 A YES.

21 Q AND DID YOU PRINT THE CAR OR ATTEMPT TO TAKE FINGERPRINTS FROM
22 THE CAR?

23 A YES, AT A LATER TIME THAT DAY, WE DID RESPOND TO SMOAK'S GARAGE
24 ON HIGHWAY 3 TO PROCESS THE VEHICLE.

25 Q AND DID YOU FIND ANYTHING IN THE VEHICLE?

- 1 A WE DID -- I DID RETRIEVE SEVERAL IDENTIFIABLE FINGERPRINTS.
- 2 Q DO YOU REMEMBER FROM WHAT PART OF THE CAR?
- 3 A YES, SIR. FROM THE INTERIOR WINDOW GLASS ON THE PASSENGER SIDE
- 4 REAR DOOR.
- 5 Q ARE YOU TALKING ABOUT THE INSIDE OR THE OUTSIDE OF THE CAR?
- 6 A INTERIOR.
- 7 Q OKAY.
- 8 A AND ALSO INTERIOR WINDOW GLASS OF THE PASSENGER SIDE FRONT
- 9 DOOR.
- 10 Q WERE YOU ABLE TO MATCH THAT UP OR EXCLUDE ANYBODY IN
- 11 RELATION TO THIS CASE?
- 12 A NO, I DID NOT POSITIVELY IDENTIFY ANYBODY IN THIS CASE.
- 13 Q WERE YOU ABLE TO EXCLUDE MS. CHAPMAN AND ANY OF THE
- 14 DEFENDANTS THAT WERE SUBMITTED TO YOU?
- 15 A YEAH. I DID COMPARE THE PRINTS I RECOVERED TO MS. CHAPMAN AND
- 16 THE THREE OTHER INDIVIDUALS AND THOSE WERE ALL NEGATIVE WITH
- 17 THOSE FOUR INDIVIDUALS.
- 18 Q SO THERE'S NO FINGERPRINT EVIDENCE TO LINK ANYBODY IN THIS CASE
- 19 FROM THE CAR, CORRECT?
- 20 A THAT'S CORRECT.
- 21 Q WERE YOU GIVEN CERTAIN ITEMS WHEN YOU CAME DOWN TO
- 22 BARNWELL TO TAKE BACK TO SLED?
- 23 A I WAS GIVEN ONE ITEM IN PARTICULAR.
- 24 Q ALL RIGHT. I'M GOING TO SHOW YOU STATE'S EXHIBIT NO. 10 AND ASK
- 25 YOU IF YOU CAN IDENTIFY THAT, PLEASE.

1 A YES, SIR.

2 Q IS THAT ITEM ASSOCIATED WITH ANY CASE IN PARTICULAR?

3 A WITH THIS CASE.

4 Q AND WHAT IS THAT ITEM?

5 A THIS IS A FIRED CARTRIDGE CASING THAT I RECEIVED FROM
6 INVESTIGATOR TODD GANTT, WHO AT THE TIME WAS WITH THE 2ND
7 CIRCUIT SOLICITOR'S OFFICE.

8 Q AND WHY WERE YOU TAKING THAT SHELL CASING?

9 A IT HAD BEEN COLLECTED PRIOR TO MY ARRIVAL, IT WAS FOUND AT THE
10 SCENE. AND BECAUSE I DO PROCESS EVIDENCE FOR FINGERPRINTS, IT
11 WAS REQUESTED THAT THIS BE PROCESSED FOR FINGERPRINTS AND THEN
12 ALSO BE SUBMITTED LATER FOR FIRINGS TESTING. SO THAT'S WHY I WAS
13 GIVEN THIS.

14 Q AND IS THAT WHAT YOU DID? YOU TESTED THAT FOR FINGERPRINTS,
15 CORRECT?

16 A YES, SIR.

17 Q AND WERE THERE ANY?

18 A I DID NOT DEVELOP ANY RIDGE DETAIL OR ANY FINGERPRINTS ON THAT
19 CARTRIDGE CASING.

20 Q AND WHAT DID YOU DO WHEN YOU WERE DONE WITH IT?

21 A I TRANSFERRED IT TO THE FIRELOCK AREA OF OUR FIREARMS
22 DEPARTMENT, WHICH IS A SECURED FACILITY WITHIN THE DEPARTMENT.

23 Q I'LL ALSO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 13 B
24 AND 13 D AND ASK YOU IF YOU CAN IDENTIFY THOSE TWO ITEMS, PLEASE.

25 A YES, SIR.

1 Q THANK YOU. WHAT CASE ARE THOSE ITEMS ASSOCIATED WITH?

2 A ALSO WITH THIS CASE.

3 Q AND WHERE DID YOU GET THEM AND WHAT DID YOU DO WITH THEM?

4 A I INITIALLY GOT THESE TWO ITEMS, STATE'S 13B AND 13 D ON DECEMBER
5 30TH OF 1997 FROM LUTHER GADSON. I ALSO PROCESSED THESE ITEMS FOR
6 FINGERPRINTS AND THEN ALSO TRANSFERRED THESE TO THE FIREARMS
7 DEPARTMENT.

8 Q WERE YOU ABLE TO FIND ANY FINGERPRINTS ON THOSE ITEMS?

9 A I DEVELOPED SOME PARTIAL RIDGE DETAIL ON BOTH ITEMS, BUT IT WAS
10 INSUFFICIENT FOR IDENTIFICATION.

11 Q COULDN'T LINK IT UP WITH ANYBODY?

12 A THAT'S CORRECT.

13 Q COULDN'T EXCLUDE ANY OF THE PEOPLE THAT YOU TESTED AGAINST?

14 A THAT'S CORRECT. THERE'S SIMPLY NOT ENOUGH OF THE FINGERPRINT
15 THERE TO ALLOW ME TO IDENTIFY OR ELIMINATE ANYBODY.

16 Q SO NO DETERMINATION EITHER WAY, CORRECT?

17 A THAT'S CORRECT.

18 Q AND WHAT DID YOU DO WHEN YOU FINISHED WITH YOUR TEST ON THOSE
19 ITEMS?

20 A I ALSO TRANSFERRED THESE TO THE SAME SECURE FACILITY WITHIN THE
21 FIREARMS DEPARTMENT FOR THEIR TESTING.

22 Q AND WHILE THEY WERE IN YOUR CARE, DID THEY CHANGE SUBSTANCE
23 OR FORM, EITHER STATE'S 13 D AND B OR STATE'S 10?

24 A NO, SIR.

25 MR. GIBBONS: ONE MOMENT, YOUR HONOR.

1 BY MR. GIBBONS:

2 Q AGENT BLACK, WHEN YOU RECEIVED STATE'S EXHIBIT 13 B AND 13 D
3 WERE THEY LOADED OR UNLOADED?

4 A THE PISTOL, WHICH I BELIEVE IS 13D WAS UNLOADED. THE MAGAZINE, I
5 DID HAVE SOME UNFIRED CARTRIDGES CONTAINED IN IT.

6 Q AND DID YOU DO ANYTHING WITH THOSE WHILE THEY WERE IN YOUR
7 CARE?

8 A I REMOVED THOSE FROM THE MAGAZINES AND PROCESSED THOSE FOR
9 FINGERPRINTS AS WELL, AS PART OF THAT ITEM.

10 Q AND THEN WHAT DID YOU DO WITH THOSE ITEMS?

11 A THOSE ALSO WERE TRANSFERRED TO THE FIREARMS DEPARTMENT.

12 Q AND AGAIN, THAT CAME OUT OF THE CLIP?

13 A YES, SIR.

14 Q I SHOW YOU 13 C, CAN YOU IDENTIFY THOSE?

15 A I DO RECOGNIZE TWO OF THE CASINGS THAT BEAR MY LABORATORY
16 NUMBER AND INITIALS IN THE BOX HERE.

17 Q ARE THEY IN A DIFFERENT FORM THAT WHEN YOU HAD THEM?

18 A YES, THEY ARE.

19 Q AND AGAIN, WHAT DID YOU SUBMIT TO THE FIREARMS DEPARTMENT?

20 A THREE UNFIRED CARTRIDGES WHICH I TOOK OUT OF THE MAGAZINE.

21 Q AND THEY APPEARED TO BE RELATED TO THE THREE YOU'RE LOOKING
22 AT THERE?

23 A I ONLY SEE TWO CASINGS HERE AT THE MOMENT, IN THE BOX.

24 Q DO THOSE TWO APPEAR TO BE ---

25 A THEY ARE THE CASINGS, BUT AGAIN, THEY'RE NO LONGER IN AN UNFIRED

1 CONDITION.

2 Q THEY'VE BEEN FIRED SINCE YOU SAW THEM LAST?

3 A YES, SIR.

4 Q ALL RIGHT. THANK YOU. THAT'S STATE'S EXHIBIT 13 C?

5 A YES, SIR.

6 MR. GIBBONS: ANSWER ANY QUESTIONS THE DEFENSE WOULD
7 HAVE -- BEG YOUR PARDON, YOUR HONOR.

8 THE COURT: ONE SECOND.

9 MR. GIBBONS: SIR?

10 THE COURT: YOU SAID, HOLD ON A MINUTE.

11 MR. GIBBONS: NO, THOSE ARE ALL STILL I.D., THAT'S ALL I HAVE,
12 THANK YOU.

13 CROSS-EXAMINATION

14 BY MS. SANDERS:

15 Q MR. BLACK, I WANT TO GET ONE THING STRAIGHT WITH YOU. YOU'RE
16 INDICATING THESE CARTRIDGES THAT YOU'VE JUST LOOKED AT HAVE
17 BEEN FIRED SINCE THE LAST TIME YOU'VE LOOKED AT THEM?

18 A YES, MA'AM.

19 Q AND DO YOU KNOW WHO FIRED THESE ITEMS?

20 A MY -- THE FIREARMS DEPARTMENT WOULD HAVE HAD TO HAVE DONE
21 THAT.

22 Q DO YOU KNOW FOR WHAT PURPOSE THESE ITEMS WOULD HAVE BEEN
23 CHANGED SINCE THE LAST TIME YOU SAW THESE ITEMS?

24 A YES, MA'AM.

25 Q AND WHAT IS THAT?

1 A IN ADDITION TO THE FINGERPRINT REQUEST ON THOSE ITEMS, THERE WAS
2 ALSO A BALLISTICS REQUEST FOR THE FIREARMS DEPARTMENT.

3 Q WHEN WAS THE LAST TIME YOU SAW THESE ITEMS?

4 A IN THE CONDITION IN WHICH I RECEIVED THEM?

5 Q YES, INITIALLY.

6 A THEY LEFT MY CUSTODY ON DECEMBER 30TH OF 1997.

7 Q AND AT THAT TIME THEY WERE NOT FIRED?

8 A THAT'S CORRECT.

9 Q AND THEY WERE LODGED WHERE, SIR?

10 A COULD YOU RESTATE YOUR QUESTION, PLEASE?

11 Q WHERE WERE THE CARTRIDGES LOGDGED, IN THE EVIDENCE ROOM,
12 IN ---

13 A ONCE THEY LEFT MY CUSTODY?

14 Q YES.

15 A AS I'VE STATED, I PUT THEM IN A SECURE AREA CALLED FIRELOCK,
16 WITHIN THE FIREARMS DEPARTMENT.

17 Q AND YOU SAID THAT THERE WERE THREE CARTRIDGES LEFT IN THE
18 MAGAZINE AT THAT TIME?

19 A WHEN I RECEIVED THE MAGAZINE THERE WERE THREE UNFIRED
20 CARTRIDGES, YES, MA'AM.

21 Q DO YOU KNOW WHAT HAPPENED TO THE OTHER CARTRIDGE?

22 A NO, I DO NOT HAVE ANY WAY OF KNOWING THAT.

23 Q CAN YOU ACCOUNT FOR WHY THAT CARTRIDGE IS MISSING?

24 A I CAN'T ANSWER THAT. LIKE I SAID, THEY WERE ALL THERE WHEN I
25 TRANSFERRED THEM TO FIREARMS.

1 Q WHO ELSE HAD ACCESS TO THESE?

2 A ANY EXAMINER WITHIN THE FIREARMS DEPARTMENT, ONCE THEY LEFT
3 MY CUSTODY.

4 Q YOU WEREN'T THE ONLY INDIVIDUAL THAT HAD ACCESS TO THESE
5 ITEMS?

6 A ONCE THEY WOULD HAVE LEFT MY CUSTODY, YES. I PUT THEM IN A
7 SECURED FACILITY WITHIN THE FIREARMS DEPARTMENT AND ANY
8 EXAMINER HAS ACCESS TO THAT FACILITY.

9 Q WELL, LET ME ASK YOU THIS, WHAT DOES ONE HAVE TO DO IN ORDER TO
10 GET TO THOSE ITEMS IF THEY WANT TO RETRIEVE THEM FOR
11 EXAMINATION OR ANY OTHER TESTING?

12 A WELL, AGAIN, YOU'RE ASKING ME ABOUT A DEPARTMENT WHICH I
13 HAVEN'T - - I'M NOT FAMILIAR WITH THEIR POLICIES. BUT THEY HAVE TO
14 HAVE A KEY TO GET INTO THAT SECURE ROOM.

15 Q THE LAST TIME YOU SAW THESE ITEMS, THERE WERE THREE CARTRIDGES
16 AND NOW YOU ONLY SEE TWO, IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q AND MY QUESTION IS, YOU CAN'T ACCOUNT FOR WHERE THAT THIRD
19 CARTRIDGE WENT? YOU DON'T HAVE ANY IDEA ABOUT THAT?

20 A AS I STATED PREVIOUSLY, THEY WERE ALL PRESENT WHEN I
21 TRANSFERRED THEM TO THE FIREARMS DEPARTMENT.

22 Q NOW, YOU WERE CALLED TO THE SCENE AT 9:30 THE NEXT MORNING, IS
23 THAT TRUE?

24 A I RECEIVED THE INITIAL CALL SHORTLY AFTER MIDNIGHT ON DECEMBER
25 12TH. LIEUTENANT PADGETT, WHO WAS WITH OUR AGENCY AT THE TIME,

1 REQUESTED THAT WE RESPOND TO BARNWELL ABOUT 9:30 IN THE
2 MORNING.

3 Q AND THAT IS, IN FACT, THE TIME THAT YOU INDICATED EARLIER THAT
4 YOU ARRIVED?

5 A THAT'S WHEN WE GOT TO THE HOSPITAL, YES, MA'AM.

6 Q QUITE A FEW HOURS AFTER ALLEGEDLY THIS INCIDENT HAD TAKEN
7 PLACE, CORRECT?

8 A YES, MA'AM.

9 Q IN FACT, YOU'VE LEARNED THAT IT HAD TAKEN PLACE MAYBE AROUND
10 10:00, 10:30 THE NIGHT PRECEEDING THE MORNING YOU GOT THERE,
11 CORRECT?

12 A YES, MA'AM.

13 Q AND SO MAYBE ABOUT 11, 10 AND A HALF, 11 HOURS HAD TRANSPIRED
14 BETWEEN THE TIME THIS INCIDENT ALLEGEDLY TOOK PLACE AND WHEN
15 YOU ARRIVED TO PROCESS THE SCENE, CORRECT?

16 A THAT'S CORRECT.

17 Q AND WHEN YOU ARRIVED AT THIS LOCATION, THERE WAS NOTHING
18 SECURING THE SCENE, CORRECT?

19 A NOW, YOU'RE TALKING ABOUT THE RESTAURANT NOW?

20 Q THE RESTAURANT.

21 A OKAY. WELL, I NEED TO GO BACK TO MY NOTES FOR THAT PORTION OF
22 THE CALL BECAUSE WE HAVEN'T, I HAVEN'T TALKED ABOUT THAT YET.
23 AS I STATED EARLIER, I DID RESPOND TO THE HOSPITAL FIRST AND AFTER
24 I FINISHED AT THE HOSPITAL I WAS THEN ASKED TO PROCEED TO THE
25 CHINA EXPRESS RESTAURANT AND JUST BASICALLY HAVE A LOOK INSIDE

1 THE RESTAURANT. BUT NOTHING -- TO ANSWER YOUR QUESTION,
2 NOTHING WAS THERE OUTSIDE TO MY RECOLLECTION SECURING THE
3 AREA, NO.

4 Q WELL THEN, IF YOU WENT TO THE HOSPITAL FIRST, THEN IT'S
5 CONCEIVEABLE YOU GOT TO THE SCENE WHERE THIS INCIDENT
6 ALLEGEDLY TOOK PLACE EVEN LATER THAN 9:30, CORRECT?

7 A I LEFT THE HOSPITAL AT 11 O'CLOCK THAT MORNING AND IT WAS JUST A
8 FEW MINUTES DRIVE TO THE RESTAURANT.

9 Q WOULD IT BE FAIR TO SAY MAYBE 11:15 IS WHEN YOU ARRIVED AT THE
10 SCENE?

11 A YES.

12 Q MAYBE? NOW, WE'RE TALKING ABOUT 12 OR 13 HOURS AFTER THIS
13 INCIDENT ALLEGEDLY HAD TAKEN PLACE, CORRECT?

14 A YES, MA'AM.

15 Q WHEN YOU ARRIVED?

16 A YES.

17 Q AND WHEN YOU ARRIVED, YOU DID NOT SEE ANY, SAY FOR INSTANCE,
18 YELLOW TAPE CORDING OFF THE SCENE AT ALL, SIR?

19 A I DON'T RECALL SEEING IT.

20 Q DID YOU SEE ANY INDIVIDUALS, ANY PEOPLE STANDING AROUND THE
21 SCENE AT ALL WHEN YOU ARRIVED?

22 A I WAS LED THERE BY LIEUTENANT PADGETT. INVESTIGATOR TODD
23 GANTT MET ME THERE AT THE SCENE, MAYBE A COUPLE OF OTHER
24 OFFICERS, BUT I DON'T RECALL JUST PEOPLE STANDING AROUND.

25 Q SO TO THE BEST OF YOUR KNOWLEDGE, THE SCENE HAD BEEN LEFT LIKE

1 THAT SINCE THIS INCIDENT TOOK PLACE, CORRECT?

2 A I REALLY CAN'T SPEAK FOR HOW IT WAS LEFT.

3 Q WELL YOU DON'T HAVE ANY INFORMATION THAT THIS SCENE WAS, SAY
4 SECURED OR QUARTERED OFF SO THAT INDIVIDUALS WHO MAY BE
5 CURIOUS WOULD NOT WONDER ON TO THE SCENE AND POSSIBLY
6 CONTAMINATE IT? YOU DON'T HAVE ANY INFORMATION IN YOUR NOTES
7 CONCERNING THAT, DO YOU, SIR?

8 A NO, MA'AM.

9 Q NOW, YOU INDICATED THAT YOU TOOK PRINTS OF THIS VEHICLE,
10 CORRECT?

11 A YES, MA'AM.

12 Q YOU TOOK INTERIOR PRINTS?

13 A THAT'S THE ONLY PLACE THAT I RECOVERED IDENTIFIABLE
14 FINGERPRINTS.

15 Q SO, IN OTHER WORDS, YOU DID ATTEMPT TO RECOVER SOME PRINTS
16 FROM THE OUTSIDE OF THE VEHICLE?

17 A I PROCESSED THE ENTIRE CAR.

18 Q OKAY. AND YOU RETRIEVED NO PRINTS FROM THE OUTSIDE OF THE
19 VEHICLE?

20 A NOTHING IDENTIFIABLE.

21 Q OKAY. AND YOU WENT INSIDE THE VEHICLE. NOW WHAT AREAS INSIDE
22 OF THE VEHICLE DID YOU PRINT, SIR?

23 A I PROCESSED THE ENTIRE INTERIOR OF THAT CAR.

24 Q THE ENTIRE INTERIOR. YOU PROCESSED THE DOOR OF THE VEHICLE?

25 A ABSOLUTELY, ALL FOUR OF THEM.

1 Q THE WINDOWS OF THE VEHICLE?

2 A YES, MA'AM, THE ENTIRE INTERIOR OF THE CAR.

3 Q AND I UNDERSTAND THAT YOUR -- YOUR TESTIMONY IS THAT YOU
4 FOUND NO IDENTIFIABLE PRINTS IN THAT VEHICLE, CORRECT?

5 A THAT'S NOT WHAT I SAID.

6 Q COULD YOU IDENTIFY ANYONE CONNECTED WITH THIS CASE WITH THOSE
7 PRINTS THAT YOU FOUND IN THE VEHICLE?

8 A OF THE IDENTIFIABLE PRINTS THAT I DID RECOVER, I COULD NOT
9 IDENTIFY ANY OF THE FOUR PEOPLE THAT I COMPARED THEM AGAINST.
10 THEY WERE NEGATIVE WITH THOSE FOUR INDIVIDUALS.

11 Q NOW, DID YOU PROCESS ANY ITEMS THAT WERE CONTAINED WITHIN
12 THAT VEHICLE, MR. BLACK?

13 A THERE WERE SOME ITEMS WITHIN THE VEHICLE WHEN WE GOT THERE
14 AND I DID PROCESS ITEMS WITHIN THE VEHICLE AS I FOUND THEM.

15 Q WHAT ITEMS WERE THOSE?

16 A I'D HAVE TO LOOK AT THE CRIME SCENE PHOTOGRAPHS TO REFRESH MY
17 MEMORY AS TO WHAT ITEMS WERE IN THERE.

18 Q WELL, IF YOU NEED TO REFRESH YOUR MEMORY, GO AHEAD.

19 A I DON'T HAVE THE PHOTOGRAPHS.

20 THE COURT: THESE ARE THE EXHIBITS. I DON'T KNOW IF THAT'S
21 WHAT YOU NEED.

22 MS. SANDERS: THANK YOU, JUDGE.

23 BY MS. SANDERS:

24 Q DO YOU RECALL PROCESSING A PURSE THAT WAS INSIDE THE VEHICLE?

25 A I WAS NOT ASKED TO PROCESS THE POCKETBOOK.

- 1 Q SO YOU DID NOT PROCESS THAT ITEM FOR THIS CASE? NO?
- 2 A RIGHT. I WAS NOT ASKED TO PROCESS THE POCKETBOOK.
- 3 Q NOW THAT PURSE WAS A LEATHER PURSE, DO YOU RECALL THAT? IT WAS
- 4 A LEATHER PURSE?
- 5 A I BELIEVE SO.
- 6 Q OKAY. AND IT WOULD HAVE BEEN VERY EASY TO PROCESS FOR PRINTS,
- 7 CORRECT?
- 8 A IT COULD HAVE BEEN PROCESSED, YES. LEATHER IS NOT THE BEST
- 9 SURFACE TO OBTAIN PRINTS FROM, BUT YES, IT COULD HAVE BEEN
- 10 PROCESSED.
- 11 Q PERHAPS IF IT WERE A SMOOTH LEATHER SURFACE, HOWEVER, IT WOULD
- 12 HAVE BEEN EASY TO PROCESS, CORRECT? IS THAT CORRECT?
- 13 A GENERALLY SPEAKING, THE SMOOTHER THE SURFACE IS, THE MORE
- 14 POSSIBLE IT IS TO GET FINGERPRINTS FROM IT.
- 15 Q AND, IN FACT, THIS PURSE HAS SMOOTH, LEATHER SURFACE, CORRECT?
- 16 A I'M GOING TO HAVE TO SEE A PHOTOGRAPH OF THE PURSE.
- 17 Q WAS THERE SOME CLOTHING THAT YOU PROCESSED FOR PRINTS?
- 18 A I DON'T RECALL PROCESSING ANY CLOTHING FOR PRINTS.
- 19 Q OF THE ITEMS THAT YOU DID PROCESS IN THE CAR, AND YOU DO RECALL
- 20 PROCESSING SOME OTHER ITEMS, CORRECT?
- 21 A YES, MA'AM.
- 22 Q YOU FOUND NO IDENTIFIABLE PRINTS, IDENTIFYING ANYBODY WITH THIS
- 23 CASE ON THOSE ITEMS, CORRECT?
- 24 A AS I STATED EARLIER, THE ONLY IDENTIFIABLE PRINTS THAT I
- 25 RECOVERED FROM THE ENTIRE VEHICLE WERE THOSE ON THE INSIDE OF

1 THE REAR PASSENGER DOOR GLASS AND THE FRONT PASSENGER DOOR
2 GLASS.

3 Q WHO DID THOSE FINGERPRINTS BELONG TO, OFFICER?

4 A I CAN TELL YOU THE FOUR PEOPLE THEY DO NOT BELONG TO I CAN'T
5 TELL YOU WHO THEY BELONG TO. I ONLY COMPARED THEM AGAINST
6 FOUR PEOPLE. THAT'S THE ONLY PEOPLE I WAS ASKED TO COMPARE
7 THEM TO.

8 Q ALL RIGHT. NOW, YOU INDICATED THAT YOU DID NOT PROCESS THESE
9 ITEMS FOR FINGERPRINTS UNTIL DECEMBER 30TH, 1997, RIGHT?

10 A WHICH ITEMS ARE YOU REFERRING TO

11 Q THE ITEMS THAT WERE IN THE VEHICLE.

12 A I DID NOT INDICATE THAT AT ALL. I PROCESSED THE ITEMS THAT WERE IN
13 THE VEHICLE THE DAY THAT I RESPONDED TO SMOAK'S GARAGE TO
14 PROCESS THE CAR.

15 Q AND NOTHING ON THE CARTRIDGES THAT YOU FOUND OR THAT THEY
16 GAVE YOU TO PROCESS? NO FINGERPRINTS THERE AS WELL?

17 A ON THE ONE THAT I RECEIVED FROM INVESTIGATOR GANTT, THERE WAS
18 NO RIDGE DETAIL AND AS I SAID, THERE WAS PARTIAL RIDGE DETAIL ON
19 THE OTHER ONES THAT I RECEIVED FROM OFFICER GADSON, BUT
20 NOTHING IDENTIFIABLE.

21 MS. SANDERS: NOTHING FURTHER.

22 REDIRECT EXAMINATION

23 BY MR. GIBBONS:

24 Q AGENT BLACK, THERE HAS BEEN MENTION OF THREE SHELLS THAT YOU
25 TURNED OVER TO FIREARMS?

1 A YES, SIR.

2 Q LET ME SHOW YOU WHAT HAS BEEN MARKED EXHIBIT NO. 13 A FOR ID
3 ONLY -- I'M SHOWING YOU FOR ID ONLY, STATE'S EXHIBIT 13 A. CAN YOU
4 IDENTIFY THAT ITEM, PLEASE?

5 A YES, SIR.

6 Q AND HOW DO YOU KNOW THAT ITEM?

7 A I RECOGNIZE MY LABORATORY NUMBER, ITEM NUMBER AND INITIALS.

8 Q ON THE ITEM ITSELF?

9 A YES, SIR.

10 Q AND WHAT IS THAT ITEM?

11 A THIS IS ONE OF THE THREE UNFIRED CASINGS -- ONE OF THE THREE
12 UNFIRED CARTRIDGES THAT WAS PRESENT WITHIN THE MAGAZINE?

13 Q AND THIS IS IN THE SAME CONDITION AS WHEN YOU TURNED IT OVER TO
14 FIREARMS?

15 A YES, SIR, THIS ONE IS INDEED INTACT AND HAS NOT BEEN FIRED.

16 Q AND AGAIN THAT'S ITEMS THAT YOU RECEIVED ALONG WITH THE GUN
17 FROM MR. GADSON?

18 A YES, SIR.

19 Q AND YOU TURNED IT OVER TO FIREARMS?

20 A YES, SIR.

21 MR. GIBBONS: STATE'S 13 FOR ID, YOUR HONOR, AT THIS TIME.

22 NOTHING FURTHER FROM THIS WITNESS, WE ASK THAT HE BE EXCUSED.

23 MS. SANDERS: NO OBJECTION.

24 THE COURT: ALL RIGHT. THANK YOU, MR. BLACK, YOU MAY STEP
25 DOWN.

1 MR. BLACK: THANK YOU, YOUR HONOR.

2 MR. GIBBONS: YOUR HONOR, WE'RE INFORMED THAT DR. SEXTON
3 IS JUST A SHORT DISTANCE AWAY NOW. ONE OF THE COOKS IN THIS CASE,
4 FRANCO GOMEZ TESTIFIED AT THE LAST TRIAL. SINCE THEN HE HAS MOVED
5 BACK TO MEXICO. I HAVE A TRANSCRIPT OF HIS TESTIMONY ALONG WITH
6 AFFIDAVITS OF NON-SERVICE FROM BOTH HIS EMPLOYER AND THE LAW
7 ENFORCEMENT DOWN IN HAMPTON. I'D SUBMIT IT TO THE COURT AT THIS TIME
8 AS A TRANSCRIPT OF UNAVAILABLE WITNESS PRIOR TESTIMONY.

9 THE COURT: YA'LL HAVE ANY OBJECTION TO THAT?

10 MS. SANDERS: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. WELL, LET'S TAKE ABOUT 5 MINUTES
12 AND -- IS IT IN SPANISH OR ---

13 MR. GIBBONS: IT WAS WITH AN INTERPRETER.

14 THE COURT: ALL RIGHT. ARE YA'LL READY TO CALL YOUR NEXT
15 WITNESS?

16 MR. GIBBONS: YOUR HONOR, AS TO THE ITEMS THAT WE'VE
17 PASSED UP, I'VE ASKED THE COURT REPORTER TO MARK THE AFFIDAVITS AS A
18 COURT'S EXHIBIT AND THE OTHER ITEM AS A STATE'S EXHIBIT 18. WE'D MOVE
19 THEM IN AT THIS TIME.

20 MR. WEEKS: YOUR HONOR, THE STATE WOULD CALL DR. JOEL
21 SEXTON.

22 THEREUPON,

23 DR. JOEL SEXTON,

24 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: PLEASE HAVE A SEAT IN THE WITNESS BOX AND

1 STATE YOUR NAME FOR THE RECORD.

2 DR. SEXTON: DR. JOEL STEVEN SEXTON.

3 DIRECT EXAMINATION

4 BY MR. WEEKS:

5 Q DR. SEXTON, WHERE ARE YOU EMPLOYED?

6 A IN NEWBERRY, SOUTH CAROLINA.

7 Q IN WHAT CAPACITY ARE YOU EMPLOYED?

8 A I'M THE PATHOLOGIST FOR THE NEWBERRY COUNTY MEMORIAL
9 HOSPITAL AND I ALSO SERVE AS A CONSULTING FORENSIC PATHOLOGIST
10 ALONG WITH THE REST OF MY STAFF FOR APPROXIMATELY 30 OF THE 46
11 COUNTY CORONERS.

12 Q BACK IN DECEMBER, SPECIFICALLY ON OR AFTER DECEMBER 11, 1997,
13 WERE YOU ESSENTIALLY IN THE SAME CAPACITY?

14 A YES, THAT'S TRUE.

15 Q AND DID YOU PERFORM AN AUTOPSY IN THIS CASE?

16 A I DID.

17 Q ALL RIGHT. TELL US A LITTLE BIT ABOUT YOUR BACKGROUND DR.
18 SEXTON, EDUCATIONAL AND WORK EXPERIENCE.

19 A I GRADUATED FROM THE UNIVERSITY OF VIRGINIA, THEN WENT INTO THE
20 NAVY BECAUSE I WAS ON A NAVAL SCHOLARSHIP. I SERVED ON THE USS
21 GALVESTON, ENTERED GRADUATE SCHOOL AT THE MEDICAL UNIVERSITY
22 OF SOUTH CAROLINA IN 1961, LATER ENTERED THE MED SCHOOL THERE
23 AND GRADUATED IN 1968. I BECAME LICENSED IN SOUTH CAROLINA AND
24 THEN TOOK A RESIDENCY PROGRAM AT THE MEDICAL UNIVERSITY
25 BECOMING NATIONALLY CERTIFIED IN ANATOMICAL, CLINICAL AND

1 FORENSIC PATHOLOGY IN 1972. I THEN TAUGHT AT THE MEDICAL
2 UNIVERSITY AND SERVED IN THE CAPACITY OF THE HEAD OF THE
3 FORENSIC SECTION FROM 1972 UNTIL 1983 WHEN I MOVED TO NEWBERRY
4 TO GO INTO PRIVATE PRACTICE. I WAS ALSO THE COUNTY MEDICAL
5 EXAMINER FOR CHARLESTON COUNTY, WHICH WAS A MEDICAL
6 EQUIVALENT OF THE CORONER, APPOINTED BY A COMMITTEE AND IN
7 CHARGE OF INVESTIGATING ALL DEATHS THAT OCCURRED IN
8 CHARLESTON COUNTY AND EITHER PERFORMING AUTOPSIES WHERE
9 INDICATED AND SIGNING THE DEATH CERTIFICATE HAVING EXAMINED
10 THEM WHERE WE DIDN'T NEED TO DO AN AUTOPSY.

11 Q OVER THE COURSE OF YOUR WORK HISTORY, HAVE YOU BEEN QUALIFIED
12 TO TESTIFY AS AN EXPERT IN THE CIRCUIT COURTS OF THIS STATE?

13 A I HAVE, OVER 700 TIMES.

14 Q AND HAVE YOU - - GIVE ME SOME IDEA OF THE NUMBER OF AUTOPSIES
15 YOU'VE PERFORMED OVER THE LAST 30 YEARS.

16 A OVER 9,000.

17 Q AND IN THIS PARTICULAR CASE, DID YOU ACTUALLY PERSONALLY
18 PERFORM THE AUTOPSY?

19 A YES, I DID.

20 MR. WEEKS: YOUR HONOR, I'D MOVE THAT DR. SEXTON BE
21 QUALIFIED AS AN EXPERT IN FORENSIC PATHOLOGY.

22 MR. WILLIAMS: WITHOUT OBJECTION.

23 THE COURT: ALL RIGHT. I FIND DR. SEXTON TO BE QUALIFIED AS
24 AN EXPERT IN THE AREA OF FORENSIC PATHOLOGY, WITHOUT OBJECTION.

25 MR. WEEKS: THANK YOU, YOUR HONOR.

1 BY MR. WEEKS:

2 Q DR. SEXTON, I CALL YOUR ATTENTION BACK TO THE CASE IN QUESTION
3 HERE. DID YOU CONDUCT AN AUTOPSY ON THE BODY OF MIN CHAPMAN?

4 A I DID. THAT WAS ON THE 12TH OF DECEMBER 1997.

5 Q AND WHERE DID YOU RECEIVE THAT BODY AT?

6 A IN NEWBERRY AT THE MORGUE THERE.

7 Q OKAY. AND WHO BROUGHT THAT BODY TO YOU?

8 A OFTEN TIMES, AND IN '97 I THINK IT WOULD HAVE BEEN BROUGHT BY THE
9 CORONER'S OFFICE. ON OCCASIONS THEY'LL USE A REMOVAL SERVICE,
10 BUT USUALLY MR. WARD EITHER PERSONALLY OR ONE OF HIS DEPUTIES
11 BRING THE BODY.

12 Q AND IN CONDUCTING THAT AUTOPSY, WOULD YOU TELL THE COURT
13 WHAT YOU DID IN THIS CASE?

14 A IN EACH CASE, WE TRY TO EXAMINE THE BODY EXTERNALLY TO SEE IF
15 THERE IS ANYTHING WE NEED TO DOCUMENT. WE PHOTOGRAPH THE
16 BODY EXTERNALLY, DOCUMENT WHAT'S ON THE BODY, EXAMINE THE
17 BODY AFTER REMOVING THE CLOTHING AND PRESERVING IT FOR
18 TRANSFER TO SOME OFFICIAL AND THEN CLEANSE THE BODY AND AGAIN
19 PHOTOGRAPH IT. WE ALSO USE DIAGRAMS TO DOCUMENT WHAT WE FIND
20 AND WE USE WRITTEN DICTATION.

21 THEN WE DO A COMPLETE INTERNAL EXAMINATION, COLLECTING
22 FLUIDS AND TISSUES FOR MICROSCOPIC EXAMINATION AND THEN WE
23 REMOVE ANY EVIDENCE, IN THIS CASE THE BULLET, AND TRANSFER IT TO
24 THE INVESTIGATOR THAT HAPPENS TO BE THERE AT THE TIME.

25 Q AND YOUR ROLE IN DOING THIS IS TO DETERMINE THE CAUSE OF DEATH

1 FOR THIS PARTICULAR INDIVIDUAL?

2 A IT'S A COMBINATION OF THE CAUSE OF DEATH, WHICH IS OFTEN PRETTY
3 OBVIOUS, BUT MORE PARTICULARLY HOW THE DEATH OCCURRED. IN
4 OTHER WORDS, WHAT WERE THE CIRCUMSTANCES EVIDENT FROM THE
5 PATH OF THE BULLET, THE DISTANCE THE GUN WAS FROM THE DECEDENT
6 AT THE TIME THE SHOT WAS FIRED, ET CETERA.

7 Q AND WHAT WERE YOUR PHYSICAL FINDINGS IN THIS CASE?

8 A THERE WAS ONLY ONE PHYSICAL FINDING. THERE WAS ONLY A SMALL
9 AREA OF BLOOD ABOUT THE SIZE OF A FIFTY CENT PIECE ON THE
10 OUTER - - ON THE CLOTHING AND A SINGLE GUNSHOT WOUND THAT
11 ENTERED, PASSED DOWNWARD TO THE RIGHT, TO THE REAR AND ENDED
12 UP DOWN ABOUT 45 DEGREES AND TO THE RIGHT ABOUT 45 DEGREES
13 OVER THE TOP OF THE SPINE, HAVING PASSED THROUGH THE HEART,
14 THROUGH THE DIAPHRAGM, THE LIVER AND THE STOMACH.

15 THE BULLET PASSED THROUGH THE CONDUCTING SYSTEM OF THE
16 HEART, WHICH IS A PORTION OF THE MIDDLE OF THE HEART IN THE
17 SEPTUM AND THAT'S PROBABLY WHY THERE WAS NOT AS MUCH
18 BLEEDING AS WE GENERALLY SEE WITH A GUNSHOT WOUND OF THIS
19 SORT. BUT THERE WAS 1100 CC'S OF BLOOD, WHICH IS ABOUT 2 PINTS OF
20 BLOOD, THAT HAD BEEN LOST INTERNALLY, WHICH IS SUFFICIENT TO BE
21 A CAUSE OF DEATH FROM BLOOD LOSS, BUT ALSO THE HEART MAY HAVE
22 BEEN STOPPED BY THE BULLET PASSING THROUGH THE SEPTUM,
23 THEREFORE, LIKE I SAY, LESS BLOOD THAN WE SOMETIMES SEE.

24 THERE WAS NO EVIDENCE THAT THE BULLET HAD ENTERED THE
25 SKIN AT CLOSE RANGE. WHEN A GUN IS FIRED, THERE'S THE FLAMES

1 THAT COME OUT, THE COMPLETELY BURNED POWDER OR SOOT. THE
2 FLAMES GO AN INCH OR SO. SOOT GOES MAYBE UP TO 8 INCHES,
3 DEPENDING ON THE GUN AND THE AMMUNITION. THE POWDER
4 PARTICLES CAN GO UP TO A FOOT AND A HALF TO 2 FEET AND PENETRATE
5 THE SKIN AND CAUSE TATTOOS OR STIPPLING WHERE IT'S NOT BURNING,
6 SO IT HITS THE SKIN, FALLS OUT AND CHEMICALLY BONDING WITH THE
7 SKIN AND NONE OF THIS WAS PRESENT. THERE WERE THREE LAYERS OF
8 CLOTHING, SO THE OUTER CLOTHING OR ONE OF THOSE LAYERS MAY
9 HAVE SHIELDED THE BODY.

10 THE AREA WHERE THE BULLET PASSED THROUGH THE CLOTHING
11 WAS BLACK, SOME BLACK TRIM ON THE OUTER SWEATER AND I SAW NO
12 GROSS EVIDENCE OF POWDER, BUT CHEMICALLY THERE COULD BE
13 POWDER THERE, SO BASICALLY IT WAS CONSISTENT WITH A DISTANT
14 GUNSHOT WOUND BECAUSE THERE WAS NO EVIDENCE OF IT BEING
15 CLOSE-RANGE.

16 Q LET ME INTERRUPT YOU JUST A SECOND. DISTANT SPECIFICALLY,
17 DISTANT GUNSHOT WOUND IN YOUR TERMINOLOGY MEANS WHAT?

18 A IT GENERALLY MEANS OVER A FOOT AND A HALF TO 2 FEET BECAUSE
19 MOST FIREARMS, PISTOLS WILL THROW POWDER ABOUT THAT FAR AND
20 PENETRATE THE SKIN. BUT IN THIS CASE AS I MENTIONED, THERE WERE
21 LAYERS OF CLOTHING THAT COULD HAVE PREVENTED THAT.

22 Q WERE YOU ABLE TO RECOVER AN OBJECT FROM THE BODY OF MS.
23 CHAPMAN?

24 A I DID.

25 Q AND WHAT WAS THAT?

1 A THAT WAS A BULLET THAT WAS FOUND, AS I MENTIONED EARLIER, JUST
2 ON TOP OF THE SPINE AND IT WAS ALL TRANSFERRED TO EUGENE
3 DARNELL OF THE BARNWELL POLICE DEPARTMENT.

4 Q TELL ME AGAIN THE ANGLE OF THE PATH OF THE BULLET IN MS.
5 CHAPMAN'S BODY.

6 A IT'S COMING DOWNWARD AT ABOUT 45 DEGREES, ENTERING THE UPPER
7 LEFT CHEST, PASSING DOWNWARD TO THE UPPER PART OF THE
8 ABDOMEN, IN THIS FASHION, LOWER CHEST, UPPER ABDOMEN AND WAS
9 FOUND ABOVE THE STOMACH, JUST WHERE THE ESOPHAGUS JOINS THE
10 STOMACH. SO IT'S DOWNWARD, TO THE RIGHT AND TO THE REAR.

11 Q WERE YOU ABLE TO DETERMINE FROM THE HOLES IN THE CLOTHING
12 WHERE THE BULLET ENTERED HER CLOTHING?

13 A YES, THERE WERE HOLES IN THE CLOTHING THAT OVERLAY THE
14 GUNSHOT WOUND TO THE CHEST.

15 Q THE WOUND ITSELF, WAS IT IMMEDIATELY NOTICEABLE? I MEAN, CAN
16 YOU DESCRIBE WOUNDS AND WHAT THEY INTEND TO DO?

17 A WOUNDS OF THE CHEST ARE - - IF YOU CAN IMAGINE THIS, IT'S SORT OF
18 LIKE PUTTING A HOLE, A CLEAN HOLE IN A CUP, I APOLOGIZE FOR MY
19 VOICE, I'M TRYING TO GET OVER A COLD. IF YOU PUT A HOLE IN THE TOP
20 OF A CUP AND YOU TILT THAT CUP, YOU HAVE TO TILT IT A GOOD WAYS
21 IF IT'S NOT FULL BEFORE WATER COMES OUT OF THAT HOLE OR
22 WHATEVER YOU HAVE IN IT. IN THIS CASE THE HOLE IS IN THE CHEST.
23 THE CHEST IS A SEALED CAVITY. THE MUSCLES AND THE SKIN OF THE
24 CHEST TEND TO SEAL THAT HOLE AND THE BLOOD HAS TO FILL UP IN THE
25 CHEST AND HAVE ENOUGH PRESSURE AND THEN COME OUT THROUGH

1 THAT HOLE, WHICH MIGHT BE UPPERMOST. OUR HISTORY WAS SHE WAS
2 FOUND SEATED IN A VEHICLE. IF SHE WAS SEATED NORMALLY THEN IT
3 WOULD TAKE A LOT LONGER FOR THAT BLOOD TO WELL UP AND GET
4 ENOUGH PRESSURE TO THEN COME OUT THROUGH THAT HOLE IN THE
5 CHEST. SO WHEN WE SAW THE BODY LYING DOWN, THERE WAS ONLY,
6 LIKE I SAY, A SMALL AMOUNT OF BLOOD, WHAT YOU MIGHT SEE IN AN
7 EYE DROPPER, THAT WAS STAINING THE CLOTHING.

8 Q AND THERE WAS NO EXIT WOUND?

9 A CORRECT. THERE WAS NO EXIT WOUND.

10 Q DR. SEXTON, I HAND YOU WHAT'S MARKED STATE'S EXHIBIT NO. 11 AND
11 ASK YOU IF YOU CAN IDENTIFY WHAT'S CONTAINED IN THAT BAG?

12 A THIS BULLET IS THE BULLET THAT I REMOVED. IT IS IN A CONTAINER
13 THAT BEARS MY INITIALS AND BEARS THE AUTOPSY NUMBER. THE
14 BULLET MATCHES PERFECTLY THE THREE PHOTOGRAPHS I TOOK FROM
15 THREE SIDES OF IT AND IT ALSO BEARS MY MARK ON ITS FACE.

16 Q AND WHAT DID YOU DO WITH THAT BULLET WHEN YOU REMOVED IT
17 FROM THE BODY OF MS. CHAPMAN?

18 A IT WAS ALSO TRANSFERRED TO MR. DARNELL.

19 Q DR. SEXTON, WERE YOU ABLE TO DETERMINE TO A REASONABLE DEGREE
20 OF MEDICAL CERTAINTY THE CAUSE OF DEATH OF MS. CHAPMAN?

21 A YES, I WAS.

22 Q AND WHAT WAS THAT?

23 A THAT WAS BLOOD LOSS AND DAMAGE TO THE HEART FROM THE
24 GUNSHOT WOUND TO THE CHEST.

25 Q AND WOULD YOU CLASSIFY THAT AS A HOMICIDE?

1 A YES, INDICATING THAT IT WAS NOT AT THE HAND OF THE DECEDENT. IN
2 OTHER WORDS, THE GUN COULD NOT BE, IN MY OPINION, HELD CLOSE
3 ENOUGH FOR HER TO SHOOT HERSELF. THERE'S NO INDICATION THERE
4 WAS CONTACT. AND THE PATH AND THE LOCATION ARE VERY UNUSUAL
5 FOR A SUICIDE. SO IN MY OPINION, IT WAS AT THE HANDS OF ANOTHER
6 OR A HOMICIDE.

7 Q AND WAS THE ANGLE OF THIS BULLET TRACKED THROUGH HER BODY
8 CONSISTENT WITH HER BEING SEATED WHEN SHE WAS SHOT?

9 A THAT'S ONE EXPLANATION. IF SHE WAS, IN FACT, OUT OF THE
10 AUTOMOBILE, WHICH SHE COULD HAVE BEEN, AND THEN MOVED AND
11 SAT DOWN IN THE AUTOMOBILE BEFORE PASSING OUT, SHE COULD HAVE
12 BEEN BENT FORWARD AND THE ASSAILANT BEEN TO HER LEFT SO AS TO
13 BEND TO THE POINT WHERE THE ANGLE DOWNWARD WOULD MATCH A
14 HORIZONTAL ANGLE IF SHE WAS BENT FAR ENOUGH. IF SHE WERE
15 SEATED IN A CAR AND SOMEBODY WAS STANDING OUTSIDE, THAT
16 WOULD ALSO BE CONSISTENT WITH THE PATH.

17 Q IN YOUR VIEW FROM YOUR EXPERIENCE OF DOING THAT, HAVE YOU HAD
18 TRAINING IN IDENTIFYING THE WEAPON USED IN A KILLING?

19 A YES, I HAVE.

20 Q AND AS FAR AS BULLETS AND CARTRIDGES AND THAT SORT OF STUFF,
21 HAVE YOU RECEIVED TRAINING IN THAT?

22 A WHEN I FIRST STARTED BACK IN 1972, AT THE END OF MY RESIDENCY I
23 SPENT SOME TIME AT SLED EXAMINING WHAT THEY DO IN THE
24 LABORATORY AND HAVE SOME EXPOSURE TO WHAT BULLETS LOOK LIKE
25 OF DIFFERENT CALIBERS, BUT I'M NOT A BALLISTICS EXPERT.

1 Q YOU'VE DESCRIBED THAT PARTICULAR BULLET OR THAT CARTRIDGE,
2 BULLET WOULD BE THE PROPER TERM, IN YOUR REPORT AS A 22 CALIBER
3 BULLET. DID YOU DO ANY SPECIFIC TESTING ON THAT TO DETERMINE
4 WHETHER OR NOT THAT WAS, IN FACT, TRUE?

5 A NO, I SIMPLY LOOKED AT IT. IT LOOKED CONSISTENT WITH WHAT WE HAD
6 SEEN THAT WERE 22'S. I FOUND OUT LATER THAT THE BALLISTICS, THE
7 EXPERT SAID THAT IT WAS A 25.

8 Q ALL RIGHT. DO YOU KNOW THE DIFFERENCE BETWEEN THE TWO?

9 A I KNOW WHAT THEY USUALLY LOOK LIKE. A 25 IS USUALLY A DIFFERENT
10 APPEARING BULLET, BUT RECOGNIZE IT'S ONLY THREE HUNDREDTHS OF
11 A DIFFERENCE BETWEEN THE 22 AND THE 25. THIS TO ME IS AN ATYPICAL
12 LOOKING 25. I'D NEVER SEEN A 25 THAT LOOKED LIKE THAT. BUT AGAIN,
13 I'M NOT A BALLISTICS EXPERT. I SIMPLY PUT DOWN WHAT IT LOOKED
14 LIKE TO US.

15 Q AND THE HOLE, THE ENTRY HOLE IN THE WOUND IN MS. CHAPMAN
16 COULD HAVE BEEN CONSISTENT WITH A 22 OR A 25?

17 A RIGHT. THE SKIN IS VERY ELASTIC SO WHAT WE DO IS WE MEASURE THE
18 HOLE IN THE SKIN, BUT WE DON'T USE THAT AS A BASIS FOR
19 DETERMINING THE CALIBER OF THE BULLET. LIKE I SAY, THE CALIBER OF
20 THE BULLET IS DETERMINED BY THE BALLISTICS EXPERTS. WE SIMPLY
21 GIVE AN ESTIMATE IF WE FEEL COMFORTABLE GIVING THAT ESTIMATE
22 AND HAVING SEEN A LOT OF 22'S, TO ME IT LOOKED LIKE A 22.

23 MR. WEEKS: BEAR WITH ME JUST ONE SECOND, YOUR HONOR.

24 DR. SEXTON, ANSWER ANY QUESTIONS THEY HAVE FOR YOU.

25 ///

CROSS-EXAMINATION

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BY MR. WILLIAMS:

Q DR. SEXTON, YOU DID, IN FACT, MEASURE THE WIDTH OF THE HOLE IN MS. CHAPMAN, IS THAT CORRECT?

A YES, WE USE A RULER AND GIVE AN ESTIMATED MEASUREMENT. IT CAN'T BE THAT PRECISE ON SKIN AS I MENTIONED BECAUSE OF THE ELASTICITY, BUT A HOLE LIKE THAT WOULD VERY UNLIKELY BE CAUSED BY A 38. THAT'S THE REASON WE MEASURE IT, SO WE CAN SEE IF IT'S TOTALLY DIFFERENT FROM WHAT THEY SUSPECT. BUT IN THIS CASE, IT MEASURED APPROXIMATELY .22.

Q .22 INCHES, IS THAT CORRECT?

A THAT'S CORRECT.

Q ALL RIGHT. AND I BELIEVE YOU TESTIFIED THAT THE BULLET WENT THROUGH THE CENTER OF THE HEART, OF THE CONDUCTIVE SYSTEM OF THE HEART, I BELIEVE WAS YOUR WORDS?

A YES, THAT'S CORRECT.

Q THE HEART, WHEN THE BULLET HIT IT, IN ALL LIKELIHOOD IMMEDIATELY STOPPED?

A I CAN'T SAY IT WOULD MOST - - I CAN SAY IT'S MORE LIKELY THAN NOT THAT IT WOULD HAVE STOPPED IMMEDIATELY. I CAN'T SAY THAT IT DEFINITELY DID BECAUSE THERE WAS HEMMORHAGE. IN OTHER WORDS, THERE WAS BLOOD THROUGH AREAS OF THE BODY THAT THE BULLET HAD PASSED THROUGH, INDICATING IT HAD TO BEAT SOME FOR THAT BLOOD TO GET THERE.

Q WITH A REASONABLE DEGREE OF MEDICAL CERTAINTY, IT'S MORE

1 PROBABLE THAN NOT THAT THE HEART WOULD HAVE STOPPED WHEN
2 THE BULLET HIT, IS THAT CORRECT?

3 A THAT'S CORRECT. LET ME MENTION, SINCE IT SOUNDS LIKE YOUR
4 DISCUSSING HOW QUICKLY THE PERSON WOULD HAVE PASSED OUT, A
5 PERSON WHO HAS NO BLOOD GOING TO THEIR BRAIN GENERALLY HAS 10
6 TO 15 SECONDS OF CONSCIOUSNESS BEFORE THEY PASS OUT.

7 Q SO AFTER THE BULLET HIT HER, SHE MAY HAVE HAD 10 TO 15 SECONDS OF
8 CONSCIOUSNESS, IS THAT RIGHT?

9 A AT LEAST THAT MUCH.

10 Q ALL RIGHT.

11 A AND PROBABLY LONGER BECAUSE THERE WAS SOME BLOOD
12 THROUGHOUT THE BODY THAT HAD TO GET THERE WITH AT LEAST A FEW
13 PUMPS OF THE HEART IN ORDER TO PUT BLOOD IN THE -- TWO PINTS OF
14 BLOOD OUTSIDE OF THE VASCULATOR.

15 Q THAT AT LEAST INDICATES THAT SHE WOULD HAVE NOT HAD MUCH TIME
16 FOR STRUGGLE, IS THAT CORRECT?

17 A IF, IN FACT, THE HEART HAD STOPPED IMMEDIATELY, THAT WOULD BE
18 CORRECT.

19 Q OKAY. YOU'RE A MASTER PISTOL SHOT AND HAVE BEEN FOR OVER 45
20 YEARS, IS THAT NOT CORRECT?

21 A NOT 45, BUT OVER 40, THAT'S CORRECT.

22 Q OVER 40 YEARS, EXCUSE ME. AND YOU KNOW A GOOD BIT ABOUT
23 FIREARMS, IS THAT NOT CORRECT?

24 A YES, THAT'S CORRECT.

25 Q AND YOU'RE ABLE TO AT LEAST HOLD A BULLET IN YOUR HAND AND

1 LOOK AT IT AND YOU CAN IDENTIFY IT READILY AND QUICKLY, IS THAT
2 NOT CORRECT?

3 A USUALLY THAT'S CORRECT, THAT'S TRUE.

4 Q AND YOU IDENTIFIED THIS BULLET AS A 22 BULLET INITIALLY, IS THAT
5 NOT CORRECT?

6 A THAT'S CORRECT.

7 Q AND THAT MATCHED UP WITH THE .22 INCH HOLE THAT YOU FOUND IN
8 MS. CHAPMAN, IS THAT CORRECT?

9 A WELL, IT WOULD BE CONSISTENT WITH THAT HOLE. AS I MENTIONED
10 EARLIER TO YOU, DUE TO ELASTICITY, YOU CAN'T JUDGE -- HER'S JUST
11 HAPPENED TO BE .22. I'VE SEEN 22 BULLET HOLES THAT WERE SMALLER
12 AND LARGER. THE FACT THAT IT HAPPENED TO BE .22 WAS NOT AN
13 INDICATION TO ME THAT IT WAS A 22. WHEN I LOOKED AT IT, IT LOOKE
14 MORE CONSISTENT WITH A 22 THAN OTHER TYPE BULLETS. CERTAINLY IT
15 DIDN'T LOOK CONSISTENT WITH A 25 TO ME, BUT IT'S AN UNUSUAL TYPE
16 OF 25. AT LEAST THAT'S WHAT I WAS TOLD BY THE BALLISTICS EXPERT.

17 Q AND YOU'VE DONE OVER 9,000 AUTOPSIES, IS THAT NOT CORRECT?

18 A YES, THAT'S CORRECT.

19 Q AND, I BELIEVE, THE LAST TIME YOU TESTIFIED, THIS IS THE FIRST TIME
20 YOU'VE EVER MADE A MISTAKE, IS THAT NOT CORRECT?

21 A I DON'T THINK THAT WAS WHAT I SAID.

22 Q WITH REGARDS TO IDENTIFYING THE SIZE OF A BULLET?

23 A IT'S THE FIRST TIME THAT I'VE MISDIAGNOSED THE SIZE OF A BULLET TO
24 MY KNOWLEDGE. THERE MAY HAVE BEEN OTHER OCCASIONS WHERE
25 NOBODY BOTHERED TO MENTION IT.

1 Q OKAY.

2 MR. WILLIAMS: NO FURTHER QUESTIONS.

3 MR. WEEKS: NOTHING FURTHER FROM DR. SEXTON.

4 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

5 MR. WEEKS: YOUR HONOR, WE ASK THAT HE BE EXCUSED.

6 MR. WILLIAMS: NO OBJECTION.

7 THE COURT: YOU MAY LEAVE.

8 DR. SEXTON: THANK YOU, YOUR HONOR.

9 MR. GIBBONS: WE HAVE ANOTHER SHORT WITNESS.

10 THE COURT: I'D LIKE FOR YOU TO DO AS MUCH AS YOU CAN DO.

11 MR. GIBBONS: SHIRLEY COLLINS, PLEASE.

12 THE COURT: MA'AM, IF YOU'LL COME OVER HERE AND LET THIS
13 LADY WITH THE BIBLE GET AHOLD OF YOUR LEFT HAND.

14 THEREUPON,

15 SHIRLEY COLLINS,

16 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE BE SEATED AND STATE YOUR NAME FOR THE
18 RECORD.

19 MS. COLLINS: SHIRLEY COLLINS.

20 DIRECT EXAMINATION

21 BY MR. GIBBONS:

22 Q MS. COLLINS, WHERE DO YOU LIVE?

23 A I LIVE IN BARNWELL.

24 Q AND YOU WORK IN BARNWELL AS WELL?

25 A I WORK IN AIKEN AT AIKEN COUNTY DEPARTMENT OF SOCIAL SERVICES.

1 Q AND IN DECEMBER OF 1997, WERE YOU WORKING IN AIKEN THEN?

2 A YES.

3 Q AND TELL US WHAT WAS GOING ON IN THE EVENING HOURS THAT DAY.

4 A AS I CAME HOME FROM AIKEN THROUGH WILLISTON, I STOPPED AT
5 HARDEES AND THE LINE THROUGH THE DRIVE THROUGH THERE WAS
6 REAL CROWDED, SO I LOOKED AT MY WATCH AND IT WAS 9:20 P.M. AND I
7 DECIDED I'D COME ON TO BARNWELL AND GO TO SONICS. AND AS - - -

8 Q WHERE IS SONICS IN BARNWELL?

9 A OUT ON DUNBARTON BOULEVARD.

10 Q IS THAT OUT ON THE FOUR LANE?

11 A OUT THE FOUR LANE.

12 Q RIGHT AT WAL-MART?

13 A UH HUH.

14 Q AND DID YOU GO TO SONIC?

15 A YES, I WENT TO SONICS.

16 Q DID ANYTHING HAPPEN AFTER YOU WENT TO SONIC?

17 A AS I LEFT SONIC, I STARTED HOME, TOOK A RIGHT THERE, CAME
18 TOWARDS BARNWELL TRAVELING EAST - - -

19 Q WHAT TIME WAS THIS.

20 A - - - IN THE RIGHT LANE.

21 Q WHAT TIME OF DAY WAS THIS?

22 A PROBABLY - - WELL I LEFT HARDEES IN WILLISTON AT 9:20. IT WAS
23 RAINING. IT USUALLY TAKES ME 15 TO 20 MINUTES TO GET HOME, BUT I
24 DROVE SLOWER THAT NIGHT, SO FIGURE ABOUT 9:45, 9:50 WHEN I GOT
25 THERE. THERE WAS ONE CAR AHEAD OF ME. I GOT MY ORDER AND I

1 DECIDED TO COME ON HOME, SO PROBABLY 9:55, SOMEWHERE ALONG
2 THERE.

3 Q AND ARE YOU SURE EXACTLY OF THESE TIMES OR IS IT JUST ESTIMATES?

4 A IT'S A PRETTY GOOD ESTIMATE.

5 Q ALL RIGHT. SO YOU'RE AT SONIC, YOU'RE HEADING BACK INTO
6 BARNWELL, WHAT HAPPENED THEN?

7 A AS I WAS COMING BY THE SECTION THERE BY DAYS INN, I WAS
8 TRAVELING IN THE RIGHT LANE. OF COURSE, THE LIGHTING WASN'T
9 VERY GOOD. AND MY HEADLIGHTS CAUGHT A TALL FIGURE THAT HAD
10 JUST JUMPED TO THE CENTER LANE AND I WAS LOOKING AT HIM OR IT
11 AND JUST AS I LOOKED THE HEAD TURNED AND I CAUGHT A SECOND
12 FIGURE IN THE LEFT LANE. AND THEN AS I LOOKED BACK TO THE HOOD
13 OF MY CAR, THERE WAS A SHORTER FIGURE THERE AND THAT'S WHEN I
14 PUT ON BRAKES. AND, OF COURSE, I LOST MY COKE AND FRIES AND
15 HAMBURGER AND EVERYTHING AT THAT TIME. SO - - -

16 Q AND YOU SAY THE LIGHTING WASN'T VERY GOOD?

17 A NO. THE STREET LIGHTING, WELL IT WAS RAINING, THEY HAD ON DARK
18 CLOTHES. IT WAS A TALL FIGURE, A MEDIUM SIZE FIGURE AND A
19 SHORTER FIGURE. AND THEY HAD ON SIMILAR CLOTHING.

20 Q AND DID YOU GET A GOOD LOOK AT THEIR FACES THAT NIGHT?

21 A DIDN'T SEE THE FACES AT ALL.

22 Q DID YOU THINK ANYTHING OF THIS EVENT?

23 A YEAH. I MEAN IT UPSET ME TO THE FACT THAT IT WAS RAINING, IT WAS
24 COLD, IT WAS LATE AND I HADN'T HAD SUPPER AND THEY APPEARED
25 FROM NOWHERE AND SEEMED TO BE IN A HURRY AND I WAS TRYING TO

1 GET HOME BECAUSE IT CAUSED ME TO LOOSE WHAT I HAD JUST BOUGHT
2 AND, YOU KNOW, I DIDN'T UNDERSTAND WHY THEY WOULD RUN OUT IN
3 FRONT OF ME LIKE THAT.

4 Q AND WHAT BUSINESSES ARE IN THAT PART OF TOWN WHERE THIS
5 HAPPENED?

6 A WELL THAT WAS RIGHT BY THE DAYS INN AND I LOOKED - - -

7 Q AS YOU'RE COMING IN FROM THE WAL-MART AREA, WHAT SIDE OF THE
8 ROAD WOULD THAT BE?

9 A WELL, I'M COMING BACK TO BARNWELL, LEAVING - - I'M TRAVELING
10 EAST COMING BACK INTO BARNWELL AND I'M ON THE - - IN THE RIGHT
11 LANE, THE SAME SIDE THAT THE WAFFLE HOUSE IS ON AND THE DAYS INN
12 IS ON.

13 Q WHAT'S ON THE OTHER SIDE OF THE STREET?

14 A THERE'S A CHURCH, CHURCH OF CHRIST, A MCCAIN NAIR INSURANCE
15 AGENCY I THINK IS THERE, A CHINESE RESTAURANT, AND A PARTS PLACE
16 AND SOME HOUSES.

17 Q AND HOW MANY PEOPLE DID YOU SEE THAT NIGHT?

18 A THREE.

19 Q AND COULD YOU TELL ANY OF THEIR FEATURES, HOW TALL OR SHORT?

20 A ONE WAS EXTREMELY TALL, THE FIRST ONE THAT HAD REACHED THE
21 CENTER LINE WHEN MY HEADLIGHTS FIRST CAUGHT THE FIGURE AND
22 THEN THERE WAS A MEDIUM SIZE, A SLIM MEDIUM SIZE AND THEN THE
23 SHORT ONE, THE SHORT AND STOCKY.

24 Q AND DID YOU GET A LOOK AT THEIR FACES?

25 A NO FACES. THEY KEPT THEIR BACKS TO ME AT ALL TIMES.

1 Q THE WHOLE TIME THEY WERE - - -

2 A RIGHT. EVEN THE TALL ONE WHEN THAT PERSON JUMPED IN THE CENTER
3 LANE AND LOOKED AROUND, IT WAS FROM THE BACK. YEAH, BECAUSE I
4 WAS TRYING TO SEE AND IT SEEMED LIKE ALL THREE OF THEM WAS
5 DRESSED THE SAME.

6 Q AND HOW WERE THEY DRESSED THAT NIGHT?

7 A IN DARK CLOTHING.

8 Q HOW CLOSE DID YOU GET TO THEM BEFORE YOU STOPPED OR THEY GOT
9 OUT OF THE WAY?

10 A WELL, WHEN I FIRST SAW THE - - THE FIRST ONE THAT I SAW, OF COURSE, I
11 WAS IN THE RIGHT LANE AND THAT PERSON HAD JUST JUMPED FROM THE
12 LEFT LANE, KIND OF SKIPPED TO THE CENTER AND TURNED AROUND TO
13 LOOK AND WHEN THEY TURNED AROUND TO LOOK, THEN THE SECOND
14 PERSON WAS IN THE LEFT LANE, YOU KNOW RIGHT NEAR THAT FIRST
15 PERSON AND THEN THE SHORT ONE, OF COURSE, I LOOKED BACK AND - - I
16 MEAN I LOOKED STRAIGHT AHEAD WHEN THE PERSON LOOKED AROUND
17 AND THE SHORT ONE WAS RIGHT, RIGHT IN FRONT OF MY CAR. AND, OF
18 COURSE, I HAD TO SLAM ON MY BRAKES. I HAD ALREADY PUT ON
19 BRAKES, BUT THEN I REALLY MASHED MY BRAKES AND THAT'S WHEN I
20 SPILLED EVERYTHING.

21 Q AND HOW FAR AWAY DID YOU GET FROM THEM? CLOSER THAN YOU AND
22 I? FURTHER AWAY THAN YOU AND I?

23 A I DON'T KNOW. IT HAPPENED SO FAST. IT WAS PRETTY CLOSE, BUT NOT - -
24 IT WAS RAINY, IT WAS LIKE HAZY OUT THERE, IT WAS COLD. I WAS JUST
25 NOT EXPECTING TO SEE ANYBODY. IN FACT, THERE WAS NOBODY ELSE

1 ON THE ROAD BUT ME, NO OTHER CARS. AND IT WAS JUST LIKE THEY
2 CAME OUT FROM NOWHERE, YOU KNOW. IT WAS DARK ON THAT SIDE OF
3 THE ROAD AND ALL OF A SUDDEN THEY WERE IN FRONT OF ME, SO IT WAS
4 KIND OF LIKE REAL UNEXPECTED, YOU KNOW, FOR ME.

5 Q THANK YOU.

6 MR. GIBBONS: THAT'S ALL I HAVE.

7 CROSS-EXAMINATION

8 BY MS. SANDERS:

9 Q GOOD AFTERNOON.

10 A HI.

11 Q IT'S YOUR TESTIMONY THAT YOU DID NOT AND COULD NOT IDENTIFY THE
12 GENDER NOR THE RACE OF THESE FIGURES THAT YOU SAW?

13 A NO, IT WAS JUST THREE PEOPLE.

14 Q SO TODAY, SITTING THERE, YOU DON'T KNOW IF IT WAS MALE OR
15 FEMALE, BLACK OR WHITE?

16 A NO, NO. THREE FIGURES IN DARK CLOTHING.

17 Q NOW, AS YOU WERE OBSERVING THESE INDIVIDUALS YOU CONTINUED TO
18 PRESS YOUR CAR FORWARD, AM I CORRECT? YOU DIDN'T ACTUALLY
19 JUST STOP AND SIT THERE?

20 A WELL, I HIT MY BRAKES. I HIT MY BRAKES, YES.

21 Q BUT YOUR CAR CONTINUED TO MOVE FORWARD, CORRECT?

22 A DID I COME TO A SUDDEN STOP OR TOTAL STOP?

23 Q YES.

24 A MAYBE NOT IMMEDIATELY, BUT I HIT MY BRAKES A SECOND TIME. I
25 DON'T GUESS I CAME TO A TOTAL STOP, BUT SLOW ENOUGH TO KEEP

1 FROM HITTING THE PERSON.

2 Q SO YOU SLOWED DOWN TO A DEGREE WHEN YOU HIT YOUR BRAKES AND
3 THEN YOU CONTINUED ON, CORRECT?

4 A I CONTINUED ON WHEN THEY MOVED.

5 Q WHEN THEY MOVED. OKAY.

6 A OKAY.

7 Q AND YOU INDICATED THAT THIS NIGHT, IT WAS DARK OUT THERE,
8 CORRECT?

9 A YEAH, IT'S 10 O'CLOCK OR SOMETHING LIKE THAT.

10 Q AND NO ARTIFICIAL LIGHTING THAT WOULD HAVE ASSISTED YOU IN
11 SEEING THESE INDIVIDUALS BETTER, CORRECT?

12 A NO, NO ARTIFICIAL -- JUST MY HEADLIGHTS.

13 Q AND YOU JUST MADE A STATEMENT A MOMENT AGO SAYING THAT THERE
14 WERE NO OTHER CARS ON THE ROAD THAT YOU COULD SEE.

15 A NO, THERE WAS NO CARS.

16 Q NOW, YOU SAID THT YOU WERE GOING WHAT DIRECTION?

17 A I WAS TRAVELING -- I WOULD SUPPOSE THAT'S EAST.

18 Q OKAY. YOU WERE TRAVELING EAST. OKAY. AND THAT'S GOING
19 TOWARD LIKE -- I GUESS HERE YOU CALL IT UPTOWN? UPTOWN
20 BARNWELL OR DOWNTOWN BARNWELL?

21 A IT'S INTO TOWN.

22 Q OKAY. YOU'RE GOING INTO TOWN.

23 A UH HUH.

24 Q OKAY. AND THAT WOULD HAVE BEEN ON THE -- WELL IF YOU'RE GOING
25 EAST, YOU WOULD HAVE BEEN ON THE RIGHT SIDE OF THE HIGHWAY,

1 CORRECT?

2 A CORRECT, UH HUH.

3 Q NOW, LOOKING TO THE LEFT SIDE OF THE HIGHWAY, YOU DIDN'T SEE ANY
4 CARS ON THAT SIDE OF THE HIGHWAY?

5 A THERE WAS NOTHING ANYWHERE.

6 Q NOTHING ANYWHERE. AND HOW LONG DO YOU THINK THAT YOU WERE
7 IN THAT VICINITY WHEN YOU WERE TRAVELING THROUGH THAT AREA?

8 A WELL I WAS PROBABLY GOING 30 MILES AN HOUR OR SOMETHING LIKE
9 THAT. I, YOU KNOW, VERY SLOW BECAUSE IT'S IN THE SPEED LIMIT. I
10 KNOW I HAD MY HEADLIGHTS ON DIM BECAUSE I DRIVE WITHIN THE CITY
11 LIMITS WITH DIM LIGHTS ON.

12 Q AND DURING THAT PERIOD OF TIME YOU DID NOT SEE ANOTHER CAR IN
13 THAT AREA?

14 A I'M SORRY?

15 Q DURING THAT PERIOD OF TIME YOU DID NOT SEE ANOTHER VEHICLE IN
16 THAT AREA, CORRECT?

17 A NOT THAT I -- NO.

18 Q NOW, MA'AM, OVER IN THIS AREA THERE WERE TO YOUR LEFT -- WELL,
19 JUST LET ME ESTABLISH THIS AND LAY A FOUNDATION. YOU LIVE IN
20 BARNWELL?

21 A SURE.

22 Q OKAY. AND YOU'RE FAMILIAR WITH THAT AREA?

23 A UH HUH.

24 Q NOW, GOING TO THE LEFT, TO YOUR LEFT AS YOU WERE TRAVELING
25 THROUGH THIS AREA, IT'S TRUE, MA'AM, THAT THERE'S A RESIDENTIAL

1 AREA THERE - - -

2 A WHEN YOU'RE SAYING I WAS TRAVELING THROUGH, ARE YOU ASKING ME
3 WHEN I WENT TO SONICS OR AS I'M COMING BACK FROM SONICS?

4 Q WELL, AS YOU'RE GOING TOWARD DOWNTOWN BARNWELL.

5 A OKAY. AS I'M COMING BACK INTO TOWN, OKAY.

6 Q THERE WERE - - THERE ARE SOME HOUSES, SOME RESIDENCES OVER TO
7 YOUR LEFT, CORRECT?

8 A SURE.

9 Q OKAY. AND THERE - - IN FACT, THERE ARE QUITE A FEW HOUSES ALONG
10 THAT STRETCH, CORRECT?

11 A I THINK SO. IT'S A PROJECT.

12 Q OKAY. AND, IN FACT, THERE IS SOME BUSINESSES IN THAT AREA AS
13 WELL, CORRECT?

14 A YEAH.

15 Q OKAY. AND SO THES INDIVIDUALS WHEN THEY WERE CROSSING THIS
16 AREA, YOU DID NOT SEE WHERE THEY WENT, CORRECT?

17 A YEAH. WHEN I LOOKED BACK IN MY MIRROR, THEY HAD REACHED THE
18 OTHER SIDE OF THE STREET AND WAS CONTINUING ON DOWN THE
19 SIDEWALK, AS BEST AS I COULD TELL.

20 Q YOU DID NO SEE WHERE THEY WERE GOING?

21 A I DIDN'T STOP MY CAR AND LOOK BACK, NO. I JUST KEPT GOING AFTER I
22 LOOKED BACK IN THE MIRROR AND I'D SEEN, YOU KNOW, THEY HAD
23 REACHED THE OTHER SIDE AND I WAS ANGRY TO THE FACT THAT I HAD
24 LOST MY SUPPER AND THE RAIN WAS STILL COMING DOWN AND I WAS
25 COLD AND I WAS TIRED AND I WAS READY TO GET HOME.

REDIRECT EXAMINATION - SHIRLEY COLLINS BY MR. GIBBONS
RECROSS EXAMINATION - SHIRLEY COLLINS BY MS. SANDERS

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1 Q YOU WOULD AGREE, THEN, MA'AM, THAT THEY WERE GOING IN THE
2 DIRECTION OF THOSE RESIDENCES?

3 A I DON'T KNOW WHERE THEY WERE GOING. THEY WERE ON THE OTHER
4 SIDE OF THE ROAD.

5 Q YOU DON'T? OKAY.

6 A NOTHING ELSE.

7 Q OKAY.

8 REDIRECT EXAMINATION

9 BY MR. GIBBONS:

10 Q MS. COLLINS, JUST ONE -- I WANT TO CLEAR UP ONE POINT. WHEN YOU
11 WERE COMING BACK INTO TOWN AND THEY CROSSED THE ROAD IN
12 FRONT OF YOU, WERE THEY CROSSING FROM THE DAYS INN SIDE TO THE
13 CHINA EXPRESS SIDE?

14 A YES.

15 Q THEY WERE GOING FROM DAYS INN SIDE ACROSS THE ROAD?

16 A CORRECT.

17 Q TOWARDS THE CHINA EXPRESS?

18 A THAT'S RIGHT.

19 MS. SANDERS: ONE OTHER QUESTION, JUDGE, JUST ONE.

20 RECROSS-EXAMINATION

21 BY MS. SANDERS:

22 Q THE RESIDENCES ALONG SIDE THE CHINA EXPRESS SIDE, CORRECT.

23 A YES.

24 MS. SANDERS: NOTHING FURTHER.

25 MR. GIBBONS: CAN SHE BE EXCUSED?

1 THE COURT: IF SHE WANTS TO BE. YOU WANT TO BE?

2 MS. COLLINS: I'VE GOT A JOB I CAN GO TO IF I'M THROUGH.

3 THE COURT: YOU'RE THROUGH. GO TO WORK. TAKE CARE OF
4 ALL THOSE KIDS OR WHATEVER.

5 MR. GIBBONS: JUDGE, I BELIEVE OUR NEXT WITNESS WILL BE
6 HERE IN THE MORNING. THIS IS A GOOD PLACE TO STOP IF YOU'D LIKE TO STOP.

7 THE COURT: OKAY, MR. GIBBONS. ARE WE GOING TO HAVE A
8 MESSIAH HEARING TOMORROW?

9 MR. GIBBONS: SIR?

10 THE COURT: WE'RE HAVING A MESSIAH HEARING?

11 MR. GIBBONS: YES, SIR. HAVE YOU MADE A DECISION ON THE
12 OTHER INMATE TESTIMONY THAT WE SUBMITTED? MR. VIGIER THAT WE
13 COULDN'T LOCATE?

14 THE COURT: WHAT IS THE DECISION I'M SUPPOSED TO MAKE?
15 WHETHER WE'RE GOING TO ACCEPT THE TESTIMONY OR NOT ACCEPT THE
16 TESTIMONY?

17 MR. GIBBONS: CORRECT.

18 THE COURT: WELL, WE HAVEN'T HAD ANY ARGUMENT ON IT. DID
19 YA'LL WANT TO ARGUE ABOUT IT NOW?

20 MR. GIBBONS: WE CAN DO THAT IN THE MORNING. THAT'S FINE
21 WITH THE STATE. EITHER WAY.

22 MR. WILLIAMS: OR NOW, YOUR HONOR.

23 THE COURT: HOW LONG IS THE ARGUMENT GOING TO TAKE NOW?

24 MR. GIBBONS: 5 MINUTES FOR MY SIDE.

25 THE COURT: LET ME HEAR ABOUT IT NOW.

1 MR. GIBBONS: YOUR HONOR, I PASSED UP THE AFFIDAVITS, I
2 BELIEVE, FROM THE AIKEN COUNTY SHERIFF'S OFFICE WHERE THEY TRIED TO
3 SERVE MR. VIGIER AND THEY'RE - - -

4 THE COURT: WELL, THERE'S AN ISSUE IN THIS CASE THAT HE IS
5 AVAILABLE? DO YA'LL BELIEVE HE'S AVAILABLE?

6 MR. WILLIAMS: YOUR HONOR, I DON'T KNOW WHERE HE'S AT.

7 THE COURT: YA'LL DON'T DISPUTE THAT THEY'VE ATTEMPTED TO
8 LOCATE HIM AND WERE UNABLE TO DO THAT?

9 MR. WILLIAMS: I HAVE NO WAY OF DISPUTING THAT.

10 THE COURT: SO WE WON'T REALLY NEED TO GET INTO THAT.
11 WHAT IS IT YA'LL DISPUTE HERE, MR. WILLIAMS?

12 MR. WILLIAMS: WELL, YOUR HONOR, THE PROBLEM IS THAT
13 FACTS CAME OUT AFTER MR. VIGIER TESTIFIED, WHICH HE NEEDS TO BE CROSS-
14 EXAMINED ON, REGARDING WHETHER OR NOT ANY DEALS OR ANYTHING OF
15 THAT NATURE WAS CUT. AURELIN VIGIER WAS INVOLVED IN A SHOOTING OF A
16 LOCAL BARNWELL COUNTY MAN IN JUNE OF 1999. HE GAVE A STATEMENT
17 IMPLICATING, OF COURSE, HIMSELF AND THREE OTHER PEOPLE. HE BECAME, AT
18 THAT POINT IN TIME, A WITNESS FOR THE STATE IN THAT CASE. HE TESTIFIED IN
19 THIS CASE ALSO AFTER INFORMATION WAS GIVEN TO HIM AND LATER ON
20 AGAINST OTHER CO-DEFENDANTS IN THAT CASE, AFTER WHICH, ALL OF HIS
21 CHARGES EXCEPT ON WAS NOLLE PROSSED.

22 THE COURT: ALL RIGHT. HE WAS INVOLVED IN A SHOOTING.

23 MR. WILLIAMS: CORRECT.

24 THE COURT: NAMED AS A CO-DEFENDANT IN THAT SHOOTING.

25 MR. WILLIAMS: THAT'S CORRECT.

1 THE COURT: HE SUBSEQUENTLY TESTIFIED IN THIS CASE BY
2 VIRTUE OF CLAIMING THAT HE LEARNED CERTAIN INFORMATION BY BEING AN
3 INMATE IN CUSTODY WITH THE DEFENDANT IN THIS MATTER AND THAT THIS
4 DEFENDANT MADE CERTAIN ADMISSIONS, IS THAT CORRECT?

5 MR. WILLIAMS: THAT'S CORRECT.

6 THE COURT: AND THEN HE TESTIFIED AGAIN IN THE CASE HE WAS
7 ORIGINALLY CHARGED IN?

8 MR. WILLIAMS: AGAINST THE CO-DEFENDANTS.

9 THE COURT: AGAINST THE CO-DEFENDANTS. ALL RIGHT.

10 MR. WILLIAMS: AFTER WHICH TIME, TWO OF THE CO-
11 DEFENDANTS, WELL ONE OF THE CO-DEFENDANTS PLED GUILTY TO THE
12 CHARGES AND WAS GIVEN SUBSTANTIAL TIME. ONE OF THE OTHER CO-
13 DEFENDANTS WAS FOUND GUILTY AND GIVEN SUBSTANTIAL TIME AND ONE
14 WAS TRIED AND FOUND NOT GUILTY AND MR. VIGIER WAS PUT ON PROBATION
15 AND THREE OF THE CHARGES WERE NOLL PROSSED. NOW THAT INFORMATION
16 WAS NOT AVAILABLE TO US AT THE LAST MESSIAH HEARING. WE DID NOT HAVE
17 THE OPPORTUNITY TO CROSS-EXAMINE HIM ON THAT INFORMATION IN THE LAST
18 MESSIAH HEARING.

19 AND IF THE TESTIMONY IS ADMITTED TODAY, WE STILL DON'T
20 HAVE THE CHANCE TO CROSS-EXAMINE HIM ON THAT BECAUSE HE'S NOT
21 AVAILABLE. AND THAT DEPRIVES US BY RIGHT TO CONFRONT THE WITNESSES.

22 MR. GIBBONS: YOUR HONOR, I BELIEVE THE CORRECT CHAIN OF
23 EVENTS WAS HE TESTIFIED IN THIS CASE AND LATER HE TESTIFIED IN THE OTHER
24 CASE AND ONE INDIVIDUAL WAS CONVICTED AND GOT SUBSTANTIAL TIME. THE
25 SECOND CO-DEFENDANT IN THAT CASE, THE JURY FOUND THEM GUILTY ON THE

1 CONSPIRACY CHARGE AND THAT INDIVIDUAL RECEIVED A 5 YEAR SENTENCE,
2 THAT WOULD BE MR. JONES, I BELIEVE. AND MR. MADSON TRIED THAT CASE
3 AND MR. VIGIER WAS ALLOWED TO PLEAD GUILTY TO A CONSPIRACY CHARGE IN
4 LIGHT OF THOSE CIRCUMSTANCES. BUT AT THE TIME HE TESTIFIED IN THIS
5 CASE, NONE OF THAT HAD TRANSPIRED YET. AND I WOULD CONCEDE THAT
6 THAT RECORD COME IN AS AN IMPEACHMENT TYPE EVIDENCE, BUT I DON'T
7 THINK AN EVENT THAT HAPPENED AFTER HE TESTIFIED UNDER THE RULE HAS
8 ANY EFFECT ON HIS MESSIAH ISSUES. IT MIGHT GO TO A CREDIBILITY ISSUE.

9 THE COURT: WELL CLEARLY IT'S NOT A MESSIAH QUESTION. I
10 GUESS THEY'RE ARGUING THAT UNDER THE RULE, THAT HE SHOULDN'T BE
11 ALLOWED TO TESTIFY BECAUSE -- I MEAN, THAT'S NOT A MESSIAH MATTER.
12 MESSIAH IS WHETHER SOMEBODY VIOLATED HIS RIGHT TO COUNSEL BY
13 SENDING AN AGENT OF THE STATE IN TO SECURE THE STATEMENT IN VIOLATION
14 OF HIS RIGHT TO COUNSEL WHEN HE ELECTED AT SOME POINT IN TIME, I
15 ASSUME, THAT HE DID NOT WISH TO TALK TO LAW ENFORCEMENT. NOW,
16 THAT'S MESSIAH.

17 MR. GIBBONS: WHETHER HE WAS UNDER THE DIRECTION OF THE
18 LAW ENFORCEMENT AT THE TIME HE RECEIVED THE INFORMATION, YES, SIR.

19 THE COURT: YA'LL ARE NOT -- THAT'S NOT WHAT THIS IS. I MEAN,
20 I DON'T KNOW WHAT YA'LL ARE ---

21 MR. WILLIAMS: YOUR HONOR, IF HE IS NOT HERE WITH THESE
22 ADDITIONAL FACTS WE'RE DEPRIVED OF OUR RIGHT TO CONFRONT THE WITNESS
23 AND TO CROSS-EXAMINE HIM ON THESE NEW THINGS THAT WE COULD NOT
24 HAVE KNOWN ABOUT LAST TIME BECAUSE THEY HADN'T HAPPENED YET. AND
25 HE TESTIFIED LAST TIME, I'VE GOT NO DEAL WITH THE STATE YET. AFTER HE

1 TESTIFIES AGAINST EVERYBODY, THE CHARGES ARE NOLLE PROSSED AGAINST
2 HIM AND THAT'S HIGHLY SUSPECT, YOUR HONOR. AND, THEREFORE, TO SAY
3 HE'S UNAVAILABLE NOW, JUST LET THE OLD TESTIMONY WHEN HE'S NOT HERE
4 SO THAT WE CAN CROSS-EXAMINE HIM AND ATTACK HIS CREDIBILITY ON THOSE
5 ISSUES IS - - JUST DEPRIVES US OF OUR RIGHT TO CONFRONT THE WITNESS
6 BECAUSE IT'S NEW MATTERS THAT WE SHOULD BE ABLE TO CROSS-EXAMINE
7 HIM ON.

8 MR. GIBBONS: YOUR HONOR, OUR POSITION IS THAT THAT
9 SWALLOWS UP THE RULE. IT COULD HAPPEN IN EVERY CASE AS RULES APPLY.

10 THE COURT: SAY THAT AGAIN.

11 MR. GIBBONS: THAT SCENARIO COULD HAPPEN IN ANY CASE
12 WHERE THIS RULE IS APPLIED. THERE ARE NO EXCEPTIONS UNDER THE RULE.
13 WE WILL STIPULATE TO WHAT HAPPENED TO HIS CASE AFTER THIS EVENT TOOK
14 PLACE, BUT THAT GOES TO CREDIBILITY, NOT TO ADMISSIBILITY.

15 THE COURT: YA'LL GOT A PROBLEM WITH THAT?

16 MR. WILLIAMS: YOUR HONOR, WE WOULD LIKE FOR YOU TO SEE
17 THAT, BUT WE WOULD ALSO LIKE TO STAND ON OUR MOTION THAT HE SHOULD
18 BE HERE.

19 THE COURT: AND IF HE WERE HERE, WHAT WOULD YOU WANT
20 HIM TO SAY?

21 MR. WILLIAMS: I WOULD WANT TO BE ABLE TO CROSS-EXAMINE
22 HIM - - -

23 THE COURT: WHAT WOULD YOU WANT HIM TO SAY?

24 MR. WILLIAMS: I WOULD WANT HIM TO ADMIT - - -

25 THE COURT: THAT AFTER I DID ALL THIS TESTIFYING, THE STATE

1 THEN CAME IN AND GAVE ME A PROBATIONARY -- AND RECOMMENDED A
2 PROBATIONARY -- I DON'T KNOW WHAT THEY DID THAT DAY. THE COURT
3 SENTENCED HIM -- BUT RECOMMENDED A PROBATIONARY SENTENCE AND
4 ALLOWED ME TO PLEAD GUILTY TO A CONSPIRACY TO DO, I DON'T KNOW WHAT
5 THE ---

6 MR. GIBBONS: ARMED-ROBBERY, GENERAL CONSPIRACY.

7 THE COURT: CONSPIRACY TO COMMIT ARMED ROBBERY.

8 MR. WILLIAMS: AND DISMISS THE REST OF THE CHARGES.

9 THE COURT: IS THAT THE BEST YOU COULD GET OUT OF HIM IF HE
10 WERE HERE?

11 MR. WILLIAMS: I MAY BE ABLE TO GET OUT OF HIM THAT HE
12 ACTUALLY HAD A DEAL WITH THE SOLICITOR PRIOR TO THAT. I DON'T KNOW
13 THAT.

14 THE COURT: DIDN'T YA'LL ALREADY HAVE A MESSIAH HEARING
15 ON THAT?

16 MR. WILLIAMS: WE DID, BUT I DIDN'T HAVE THIS EVIDENCE AT
17 THAT POINT IN TIME TO FACE HIM WITH, TO CONFRONT HIM WITH.

18 MR. GIBBONS: WELL, IT DIDN'T EXIST THEN.

19 MR. WILLIAMS: THAT'S WHY I'M MAKING THE MOTION NOW. AND
20 I REALIZE THAT -- I REALIZE IT'S ---

21 THE COURT: WELL, I WOULD ASSUME THAT IN THE MESSIAH
22 HEARING YOU HAD BEFORE YOU ASKED HIM WHETHER ANYTHING HAD BEEN
23 PROMISED TO HIM, RIGHT?

24 MR. WILLIAMS: AND HE SAID, NO.

25 THE COURT: ALL RIGHT.

1 MR. WILLIAMS: BUT HE MAY CHANGE HIS MIND IF HE WAS ASKED
2 AGAIN WITH THESE NEW DOCUMENTS AND FACED WITH THE FACT THAT THE
3 OTHER CHARGES HAVE BEEN NOLLE PROSSED. AND I THINK HIS RELATIONSHIP
4 WITH THE STATE MAY HAVE SOURED SOME SINCE HE IS NOW ON THE LAMB.

5 THE COURT: WELL, SO YOU'RE SAYING -- WHAT DOES THAT
6 MEAN, THAT NOW HE MIGHT COME IN ---

7 MR. WILLIAMS: HE MAY CHANGE HIS TESTIMONY.

8 THE COURT: ALL RIGHT. WELL, I'LL LET YOU KNOW WHAT ---

9 MR. GIBBONS: THANK YOU.

10 THE COURT: I'LL THINK ABOUT IT IN THE MORNING, AND -- BUT
11 UNDER ANY CIRCUMSTANCE, WE'LL ALLOW -- WE'LL LET THE STATE STIPULATE
12 THAT, IN FACT, AFTER -- I DON'T KNOW WHAT THE STATE'S POSITION IS IN THIS
13 THING, THAT THEY REFUSED TO MAKE ANY PROMISE OTHER THAN THEY WOULD
14 SEE HOW THINGS WENT?

15 MR. GIBBONS: WE DIDN'T EVEN TELL HIM THAT, YOUR HONOR.
16 WE WERE ACTUALLY APPROACHED BY HIS ATTORNEY, RICHARD BREIBART AND
17 HE ASKED US IF WE WOULD GIVE HIM CONSIDERATION. AND WE TOLD HIS
18 ATTORNEY, YOU KNOW, WE COULDN'T GIVE HIM ANY DEAL RIGHT NOW, BUT WE
19 WOULD CERTAINLY TAKE IT INTO ACCOUNT WHEN IT CAME TIME TO SENTENCE,
20 I MEAN, WHEN IT CAME TIME FOR HIM TO GO TO COURT.

21 THE COURT: ALL RIGHT. WELL, WE'LL LET THE STATE STIPULATE,
22 WELL, JUST WHAT HE SAID, THAT THEY MADE NO PROMISES TO HIM, BUT TOLD
23 HIM THAT THEY WOULD CERTAINLY -- OTHER THAN THAT THEY WOULD
24 CONSIDER THIS AND CONSIDER HIS COOPERATION, BOTH IN THIS CASE AND THE
25 NEXT CASE I ASSUME. AND WHEN IT CAME TIME TO HIS HAVING TO GO

1 FORWARD ON HIS -- WHAT WAS HE CHARGED WITH? ATTEMPTED ARMED-
2 ROBBERY AND MURDER?

3 MR. GIBBONS: NO, IT WAS ABWIK, YOUR HONOR, AND ATTEMPTED
4 ARMED ROBBERY.

5 THE COURT: ARMED ROBBERY AND ASSAULT AND BATTERY WITH
6 INTENT TO KILL AND, IN FACT, WHEN THEY -- WHEN IT CAME TIME FOR HIM TO
7 PLEAD THAT THEY RECOMMENDED PROBATION AND WHAT ELSE?

8 MR. GIBBONS: THAT'S PRETTY MUCH IT, JUDGE,

9 THE COURT: DISMISSED EVERY OTHER CHARGE AGAINST HIM.

10 MR. GIBBONS: CORRECT.

11 MR. WILLIAMS: IN LIGHT OF THE FACT THAT THEY HAD A WRITTEN
12 STATEMENT BY HIM AND HIS TESTIMONY ON THE STAND TWICE THAT HE WAS
13 ACTUALLY INVOLVED IN THE SHOOTING OF THIS MAN. I UNDERSTAND YOUR
14 RULING. YOUR HONOR, FOR THE RECORD, COULD I ALSO PUT ON ---

15 THE COURT: I HAVEN'T RULED, BUT WHAT I DID SAY IS AT THE
16 VERY LEAST, I WILL ALLOW THAT TO COME IN AND I WILL CONSIDER THAT
17 WHEN I RULE UPON HIS CREDIBILITY AS TO HIS TESTIMONY.

18 MR. WILLIAMS: THANK YOU, YOUR HONOR.

19 THE COURT: WELL, YOU KNOW, I MAY DECIDE THAT HE CAN'T PUT
20 IT IN. BUT IF I DON'T -- IF I LET IT COME IN THEN -- SO THOSE ARE THE ONLY
21 CONCERNS YOU HAVE WITH RESPECT TO HIS TESTIFYING? WELL, YOU DON'T
22 HAVE A MESSIAH PROBLEM, IS THAT RIGHT?

23 MR. WILLIAMS: I HAVE A CONCERN ---

24 THE COURT: OTHER THAN YOU THINK HE MAY HAVE BEEN LYING
25 WHEN HE SAID A DEAL WAS NOT OFFERED TO HIM?

1 MR. WILLIAMS: THAT'S CORRECT. I THINK I SHOULD BE ALLOWED
2 TO QUESTION HIM AGAIN IN LIGHT OF THE NEW EVIDENCE.

3 THE COURT: ALL RIGHT. AND THAT'S THE ONLY CONCERN YOU
4 HAVE ABOUT MESSIAH AND THEN THE OTHER ASPECT OF IT IS THAT YOU WANT
5 TO BE ABLE TO CONFRONT HIM NOW THAT THIS DEAL HAS BEEN PUT TOGETHER
6 RELATING TO THE CHARGES AGAINST YOUR CLIENT AND RELATING TO THE
7 CHARGES AGAINST THE CO-CONSPIRATORS AND THE CO-DEFENDANTS IN THE
8 MATTER THAT HE WAS CHARGED WITH?

9 MR. WILLIAMS: THAT'S CORRECT.

10 THE COURT: ALL RIGHT.

11 MR. WEEKS: YOUR HONOR, ONE THING, AND IT BEARS CHECKING
12 OUT, BUT IT SEEMS TO ME I WAS TOLD MR. WILLIAMS WAS THE LAWYER FOR
13 ONE OF THOSE DEFENDANTS IN THE CONSPIRACY AND HAD THE OPPORTUNITY
14 TO CROSS-EXAMINE MR. VIGIER. IF I'M WRONG, I'M WRONG, BUT THAT'S WHAT
15 MEMORY SERVES ME CORRECT AND I THINK THAT NEEDS TO BE A PART OF THE
16 RECORD TOO, THAT HE'S ALREADY HAD A SHOT AT MR. VIGIER, THAT MR.
17 WILLIAMS WAS REPRESENTING ONE OF THOSE CO-DEFENDANTS IN THAT STUFF
18 HE'S TALKING ABOUT.

19 MR. WILLIAMS: YOUR HONOR, THAT'S CORRECT, BUT THESE
20 CHARGES AGAINST HIM HAD NOT BEEN NOL PROSSED AS TO THE TIME THAT I
21 EXAMINED HIM IN THAT HEARING AND IN THAT HEARING HE GOT THERE AND
22 STILL SAID THERE WASN'T ANY DEAL.

23 MR. WEEKS: WELL, THAT'S TWICE NOW, HE SAID THERE WASN'T
24 ANY DEAL AND HE KEEPS SAYING, WELL IF HE'S HERE, HE'S GOING TO CHANGE
25 HIS TESTIMONY. BUT I THOUGHT THAT NEEDED TO BE MADE A PART OF THIS

1 RECORD, THAT HE'S HAD THE OPPORTUNITY AT MR. VIGIER TWICE.

2 THE COURT: WELL, WHAT I'M TRYING TO FIGURE OUT HERE IS IF
3 MR. VIGIER CAME IN HERE AND ADMITTED EVERYTHING THEY WANTED HIM TO
4 ADMIT, WHERE WOULD WE BE? IT SOUNDS TO ME WE WOULD BE NO BETTER OFF
5 THAN TO WHAT YOU'RE PREPARED TO STIPULATE TO, OTHER THAN, HE'S NOW
6 HOPING THAT HE'LL COME IN AND SAY, YES, I PERJURED MYSELF TWO TIMES IN
7 TWO TRIALS AND I'M PREPARED TO GO AHEAD AND FACE THE CONSEQUENCES
8 FOR THOSE TWO PERJURIES BECAUSE I'M NOW ON THE RUN.

9 MR. WILLIAMS: YOUR HONOR, I THINK THAT THE DIFFERENCE
10 WOULD BE THAT THE TESTIMONY WOULD NOT BE THERE AT ALL IN
11 CONSIDERING A CREDIBILITY ISSUE BECAUSE IF HE'S AN AGENT OF THE STATE
12 WHEN HE WENT IN AND TALKED TO HIM, THEN THAT'S IMPROPER QUESTIONING.

13 THE COURT: NO, BUT YOU'RE HOPING THAT HE'LL COME IN HERE
14 AND SAY THAT I AM AN AGENT OF THE STATE. I LIED TWICE UNDER OATH IN
15 THIS COURTROOM.

16 MR. WILLIAMS: YOUR HONOR, I DON'T KNOW WHAT HE WOULD
17 SAY.

18 THE COURT: I UNDERSTAND. THAT'S WHAT YOU'RE HOPING HE
19 WOULD SAY.

20 MR. WILLIAMS: BUT I WOULD LIKE THE OPPORTUNITY TO
21 CONFRONT HIM.

22 THE COURT: WELL, DOES ANYONE WANT TO MOVE FOR A
23 MISTRIAL BASED ON THE FACT THAT THE FACT FINDER HAS INFORMATION THAT
24 THE JURY PROBABLY WOULDN'T HAVE ABOUT THIS?

25 MR. WEEKS: THAT'S THE RISK OF THE BENCH TRIAL WITH THE

1 COURT, YOUR HONOR.

2 THE COURT: ALL RIGHT. WELL, WE'LL TAKE A BREAK AND COME
3 BACK IN THE MORNING AND WE'LL START AT 9:30.

4 (WHEREUPON COURT WAS IN RECESS FOR THE EVENING.)

5 MESSIAH HEARING

6 THE COURT: ARE YA'LL READY TO GO?

7 MR. GIBBONS: YES, SIR.

8 MR. WILLIAMS: YES, SIR.

9 MR. GIBBONS: YOUR HONOR, I HAVE THOSE TRANSCRIPTS, YOU
10 WANT ME TO HOLD ON TO THEM FOR A FEW MINUTES?

11 THE COURT: YEAH. ALL RIGHT. APPARENTLY WE NEED TO HAVE
12 A HEARING ON THE ---

13 MR. GIBBONS: THE MESSIAH ISSUE, YOUR HONOR.

14 THE COURT: --- TWO WITNESSES WHO -- ALL RIGHT. YOU WANT
15 TO TELL ME WHAT YOU'VE GOT HERE?

16 MR. GIBBONS: YOUR HONOR, I HAVE THE TRANSCRIPT OF MR.
17 VIGIER. IT'S TWO PART, ONE IS FROM THE MESSIAH HEARING AND DEALS WITH
18 THE MESSIAH ISSUES AND THEN HIS TESTIMONY FROM THE TRIAL.

19 THE COURT: I GUESS WHAT WE NEED TO DO IS THE FIRST THING
20 WE NEED TO DO IS ADDRESS THE ISSUE OF WHETHER HE'S GOING TO BE ABLE TO
21 OFFER HIS TESTIMONY THROUGH -- BECAUSE HE'S UNAVAILABLE, OFFER IT
22 THROUGH THE RULES. WHAT DO YOU INTEND TO DO ABOUT THAT? DO YOU
23 HAVE AN OFFICER OR SOMEONE WHO IS GOING TO TESTIFY ABOUT THEIR
24 EFFORTS TO TRY AND LOCATE THIS FELLOW OR ANYTHING LIKE THAT?

25 MR. GIBBONS: YOUR HONOR, I HANDED UP THE OTHER DAY A

1 SWORN AFFIDAVIT FROM AIKEN COUNTY SHERIFF'S OFFICE, INDICATING THE
2 STEPS THEY TOOK IN TRYING TO LOCATE MR. VIGIER.

3 THE COURT: IS THAT THE EXTENT OF WHAT YOU'RE OFFERING AS
4 TO ---

5 MR. GIBBONS: THAT'S WHAT I WOULD OFFER, YES, SIR.

6 THE COURT: --- AVAILABILITY?

7 MR. GIBBONS: YES, SIR.

8 THE COURT: HAVE YA'LL SEEN THAT? I THINK WE AGREED
9 YESTERDAY THOUGH THAT HE'S NOT AVAILABLE.

10 MR. WILLIAMS: YOUR HONOR, I HAVE NO WAY OF KNOWING
11 WHERE HE'S AT AND NO REASON TO DISPUTE WHAT THE SOLICITOR IS SAYING
12 ABOUT HIS AVAILABILITY.

13 THE COURT: ALL RIGHT.

14 MR. GIBBONS: YOUR HONOR, HE WAS SUBPOENAED THE LAST
15 TIME WE SET THIS CASE FOR TRIAL AND DID NOT SHOW UP FOR COURT AT THAT
16 POINT. AND I'VE BEEN UNABLE TO EFFECT SERVICE ON HIM SINCE THEN. HE
17 HAS SKIPPED PROBATION AS WELL. THE PROBATION OFFICE HAS WARRANTS
18 OUT FOR HIS ARREST. HIS FAMILY INDICATES HE'S IN FLORIDA AND THEY HAVE
19 NO WAY OF CONTACTING HIM.

20 THE COURT: WHO HAS ATTEMPTED TO -- IS HE ON PROBATION IN
21 BARNWELL COUNTY?

22 MR. GIBBONS: AIKEN COUNTY, YOUR HONOR, YES, SIR.

23 THE COURT: ALL RIGHT. WHAT YA'LL WANT TO SAY ABOUT HIS
24 BEING ABLE TO TESTIFY?

25 MR. WILLIAMS: YOUR HONOR, THERE ARE FACTS THAT HAVE

1 ARISEN SINCE THE LAST HEARING IN WHICH WE WERE INVOLVED REGARDING
2 MR. VIGIER, NAMELY, MR. VIGIER WAS CHARGED WITH ASSAULT AND BATTERY
3 WITH INTENT TO KILL, WITH ARMED ROBBERY, CONSPIRACY AND USE OF A
4 HANDGUN IN A VIOLENT CRIME. ALL THREE CHARGES - - THREE CHARGES WERE
5 NOL PROSSED, THE MOST SERIOUS CHARGES, AND HE PLED GUILTY TO THE
6 CONSPIRACY CHARGE AND WAS PLACED ON PROBATION.

7 NOW, WHEN HE TESTIFIED EARLIER, HE INDICATED TO THE COURT
8 AND - - THAT HE HAD NO DEAL WITH THE SOLICITOR. WE THINK THAT THIS
9 ADDITIONAL EVIDENCE IS IMPORTANT TO CROSS-EXAMINE HIM ON AND IF HE'S
10 NOT HERE THEN MR. SANDERS HAS BEEN DEPRIVED OF HIS RIGHT TO CONFRONT
11 WITNESSES UNDER THE CONSTITUTION. AND, THEREFORE, WE FEEL IN
12 NECESSARY THAT HE BE HERE AND THE OLD TESTIMONY IS NOT RELIABLE IN
13 THAT REGARD. IT'S SIMPLY INCOMPLETE.

14 THE COURT: ALL RIGHT.

15 MR. GIBBONS: YOUR HONOR, THE STATE IS WILLING TO STIPULATE
16 THAT HE DID RECEIVED A RECOMMENDED PROBATION SENTENCE SOMETIME
17 AFTER THIS - - TESTIFYING IN THIS TRIAL, AS WELL AS THE TRIAL OF HIS CO-
18 DEFENDANTS. AND IT'S THE STATE'S TESTIMONY THAT HE WAS NOT GIVEN ANY
19 DEAL, THAT WE TOLD HIM HIS COOPERATION WOULD BE CONSIDERED WHEN IT
20 CAME TIME FOR HIS CASE TO GO TO COURT.

21 THE COURT: ALL RIGHT.

22 MR. WILLIAMS: YOUR HONOR, THAT'S WHAT WE SHOULD HAVE
23 THE CHANCE TO CROSS-EXAMINE HIM ABOUT AND I UNDERSTAND THEIR
24 STIPULATION AND IF THEY WOULD STIPULATE THAT THERE WAS A DEAL, OF
25 COURSE, WE COULD RELY ON THE STIPULATION, BUT THEY'RE NOT GOING TO

1 DO THAT.

2 THE COURT: STIPULATE AS TO THERE WAS A DEAL?

3 MR. WILLIAMS: CORRECT. WE SHOULD AT LEAST BE ALLOWED,
4 BASED UPON THE NEW EVIDENCE, TO ASK HIM THOSE QUESTIONS AGAIN, AS TO
5 WHETHER OR NOT THERE WAS A DEAL.

6 THE COURT: ALL RIGHT. LET ME SEE IF I CAN CAPSULIZE THIS.
7 THERE WAS AN INMATE WHO ALLEGEDLY HAD OVERHEARD SOME
8 INFORMATION THAT THE DEFENDANT IN THIS ACTION, SOME ADMISSIONS THAT
9 THE DEFENDANT MADE. HE WAS IN JAIL WITH THE DEFENDANT. BOTH OF THEM
10 WERE AWAITING TRIAL ON PARTICULAR CHARGES THEY HAD, THE DEFENDANT
11 AND MR. SANDERS IN THIS CASE, WAITING FOR TRIAL ON HIS MURDER AND
12 ATTEMPTED ARMED ROBBERY AND CONSPIRACY CHARGES, AND THE OTHER
13 INDIVIDUAL, VIGIER, WAS AWAITING TRIAL ON SOME CHARGES OF - - WHAT
14 WERE THOSE CHARGES, MR. GIBBONS?

15 MR. GIBBONS: MR. VIGIER WAS AWAITING TRIAL ON ASSAULT AND
16 BATTERY WITH INTENT TO KILL, ARMED ROBBERY, USE OF A WEAPON DURING A
17 VIOLENT CRIME AND CONSPIRACY.

18 THE COURT: AND BASED ON HIS HAVING THIS INFORMATION HE
19 TESTIFIED TO, A MESSIAH HEARING WAS HELD TO DETERMINE WHETHER HE, IN
20 FACT, WAS AN AGENT OF THE STATE OR THEY VIOLATED THE DEFENDANT'S 6TH
21 AMENDMENT RIGHT TO COUNSEL BECAUSE AT SOME POINT IN TIME, HE'D
22 INVOKED HIS RIGHT TO COUNSEL AND THE STATE HAD BACKED OFF, IS THAT
23 CORRECT?

24 MR. GIBBONS: YES, SIR.

25 THE COURT: THE DEFENDANT IS NOW - - I MEAN THE WITNESS IS

1 UNAVAILABLE. EVERYBODY CONCEDES THAT. THE SOLICITOR INDICATES THAT
2 THE -- AND YOU HAVE AN AFFIDAVIT --

3 MR. GIBBONS: I BELIEVE BOTH OF THE ITEMS, WE HAD THEM
4 MARKED ONE AS A COURT'S EXHIBIT AND ONE AS AN ACTUAL EXHIBIT.

5 THE COURT: YOU HAVE THEM?

6 THE COURT REPORTER: I BELIEVE YOU HAD THEM, YOUR HONOR.

7 THE COURT: THEY MAY BE BACK IN THE OFFICE. YA'LL EXCUSE
8 ME ONE MINUTE.

9 ALL RIGHT. AGAIN, MY UNDERSTANDING IS THAT NOBODY IS
10 CONTESTING THE AVAILABILITY OF THIS FELLOW, YOU'RE JUST CONTESTING
11 WHETHER HIS TESTIMONY SHOULD BE ADMITTED PURSUANT TO -- WHAT'S THE
12 RULE THAT YA'LL ARE RELYING ON? 8 --

13 MR. GIBBONS: 803, IT'S RIGHT HERE, JUDGE.

14 THE COURT: UNDER 803 OF THE RULES OF EVIDENCE.

15 MR. GIBBONS: 804, I'M SORRY, YOUR HONOR. 804(B)1, FORMER
16 TESTIMONY, AND IT'S UNAVAILABLE EXCEPTIONS TO HEARSAY.

17 THE COURT: THE DEFENDANT'S POSITION IS THERE ARE NEW
18 MATTERS THAT HAVE ARISEN SINCE THAT TIME, NEW INFORMATION OF WHICH
19 YOU BELIEVE YOU WOULD NEED TO BE ABLE TO CROSS-EXAMINE HIM, NEED
20 THE RIGHT TO CONFRONT THIS WITNESS.

21 MR. WILLIAMS: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: THAT IT'S YOUR CLIENT'S CONSTITUTIONAL RIGHT
23 TO CONFRONT ANY WITNESS.

24 MR. WILLIAMS: THAT'S CORRECT, YOUR HONOR. AND ALSO, MS.
25 SANDERS WANTED ME TO CONVEY THAT SHE WAS DEPRIVED OF THE RIGHT TO

1 BE AT TRIAL LAST TIME AND NEVER HAD A CHANCE TO QUESTION HIM AND SO
2 THINKS THAT SHE WAS ENTITLED TO BE THE ATTORNEY TO CROSS-EXAMINE
3 HIM.

4 THE COURT: I UNDERSTAND THAT SHE WASN'T DEPRIVED OF THE
5 RIGHT TO BE AT TRIAL, SHE WAS DEPRIVED OF THE RIGHT TO PARTICIPATE AS
6 AN ATTORNEY.

7 MR. WILLIAMS: THAT'S CORRECT.

8 THE COURT: WASN'T SHE HERE?

9 MR. WILLIAMS: SHE WAS HERE.

10 THE COURT: DIDN'T SHE PARTICIPATE - - I MEAN SIT AT THE
11 COUNSEL TABLE?

12 MR. WILLIAMS: SHE DID.

13 THE COURT: ALL RIGHT. I'M GOING TO - - I'M GOING TO ALLOW
14 THE TESTIMONY OF THIS WITNESS IF WE GET BY THE MESSIAH. I'M GOING TO
15 FIND THAT IT DOESN'T VIOLATE YOUR CLIENT'S RIGHT OF CONFRONTATION,
16 THAT THE WITNESS IS NOT AVAILABLE, THAT THE STATE HAS NOT DONE
17 ANYTHING TO KEEP THE WITNESS AWAY, THAT THE - - DUE DILIGENCE HAS BEEN
18 MADE TO ATTEMPT TO LOCATE THIS WITNESS. I'M GOING TO FIND THAT THE
19 TESTIMONY WOULD BE RELATING TO THE SAME MATTERS AT THIS TRIAL THEY
20 WERE RELATED TO AT THE LAST TRIAL WITH THE FOLLOWING CAVIAT: THAT
21 SINCE THAT TRIAL, THE ADDITIONAL INFORMATION IS NOW AVAILABLE
22 RELATING TO THE PROMISES, I GUESS, WERE MADE TO, AFTER ALL OF THE
23 TESTIMONY OFFERED BY MR. VIGIER, PROMISES WERE MADE BY THE
24 SOLICITOR'S OFFICE REGARDING A RECOMMENDATION OF A SENTENCE FOR THE
25 CHARGES THAT WERE PENDING AGAINST MR. VIGIER AT THE TIME HE TESTIFIED

1 HERE AND THAT IS THAT HE PLED GUILTY TO ONE CHARGE OF CONSPIRACY - - -

2 MR. GIBBONS: THAT'S CORRECT, YOUR HONOR.

3 THE COURT: AND ARMED ROBBERY.

4 MR. GIBBONS: YES, SIR.

5 THE COURT: AND A RECOMMENDATION WAS THAT HE BE GIVEN A
6 PROBATIONARY SENTENCE, THAT IN FACT HE WAS GIVEN A PROBATIONARY
7 SENTENCE AND THIS RECOMMENDATION WAS MADE AS A RESULT OF HIS
8 COOPERATION AND HIS PROVIDING THE TESTIMONY AT TWO DIFFERENT TRIALS,
9 ONE OF WHICH WAS THE SANDERS TRIAL, THE OTHER WHICH WAS THE TRIAL
10 INVOLVING CO-DEFENDANTS RELATING TO THE CHARGES PENDING AGAINST
11 MR. VIGIER; THAT HE COULD NOT TELL ANYTHING MORE THAN THAT WITH
12 RESPECT TO WHAT WAS PROMISED HIM IF HE WERE HERE. THE STATE HAS
13 STIPULATED TO THAT.

14 AND I ASSUME THAT YA'LL ARE SPECULATING THAT HE MIGHT
15 COME IN AND SAY, OH, I LIED. NOW THAT THIS IS ALL OVER, I LIED WHEN I
16 TESTIFIED TWICE ABOUT VARIOUS MATTERS FOR WHICH THIS COMMITMENT
17 WAS MADE TO ME. AND YOU WANT TO HAVE THE RIGHT TO SEE WHETHER YOU
18 CAN GET HIM TO ADMIT THAT, IS THAT RIGHT, MR. WILLIAMS?

19 MR. WILLIAMS: YOUR HONOR, WE WOULD AT LEAST LIKE THE
20 OPPORTUNITY TO PUT HIM ON THE STAND AND SEE WHAT HE WOULD SAY IN
21 LIGHT OF THIS ADDITIONAL EVIDENCE AND THINGS THAT HAVE HAPPENED. WE
22 DON'T KNOW WHAT HE WOULD SAY.

23 THE COURT: WELL, I KNOW, BUT THE BEST YOU COULD HOPE FOR
24 IS HE COME IN AND SAY, I LIED?

25 MR. WILLIAMS: THAT WOULD BE THE BEST RESULT, I WOULD

1 AGREE.

2 THE COURT: WELL, I'M GOING TO FIND THAT THAT REALLY DOES
3 NOT CHANGE THE TESTIMONY THAT HE OFFERED. THE LIKELIHOOD OF HIM
4 COMING IN AND ADMITTING, EVEN NOW THAT THE DEALS ARE OVER AND HE'S
5 GOTTEN HIS PROBATIONARY SENTENCE, APPARENTLY HE'S ON THE RUN FROM
6 HIS PROBATION AND NUMBER TWO, I WOULD BE HIGHLY SURPRISED THAT HE
7 WOULD COME IN AND ADMIT THAT HE COMMITTED PERJURY TWICE AND
8 ASSUME THAT THOSE OTHER CHARGES ARE STILL, WHILE THEY WERE NOT
9 PROSECUTED, THEY COULD, AT LEAST THEORETICALLY, BE CALLED BACK AGAINST
10 HIM, SO HE COULD HAVE A SUBSTANTIAL RISK IF HE CAME IN AND ADMITTED
11 THAT. AND IF HE DID IT WOULD BE HIGHLY PREJUDICIAL WITH RESPECT TO
12 WHAT HIS, THAT TESTIMONY WAS.

13 SO I'M GOING TO ALLOW THE -- FIND THAT IT DOES MEET THE
14 REQUIREMENTS UNDER RULE 804 AND ALLOW THAT TESTIMONY.

15 AND NOW WE NEED TO GO TO THE MATTER OF WHETHER IT
16 VIOLATES MESSIAH. WHY DON'T YOU CALL YOUR WITNESS, THE FIRST WITNESS
17 THAT YOU HAVE ---

18 MR. GIBBONS: LIVE WITNESS?

19 THE COURT: LIVE WITNESS, SINCE I'VE NOT HAD A CHANCE TO
20 READ WHAT MR. VIGIER TESTIFIED AT THE MESSIAH HEARING LAST TIME.

21 MR. GIBBONS: DAVID STALEY.

22 THE COURT: WHO IS MR. HARVEY?

23 MR. GIBBONS: MARTY HARVEY WAS REPRESENTING MR.
24 BUCKMAN IN THE PRIOR TRIAL, MARTY HARVEY.

25 MR. WEEKS: LOCAL LAWYER, JUDGE.

1 THEREUPON,
2 DAVID STALEY,
3 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:
4 THE CLERK: HAVE A SEAT HERE IN THE WITNESS STAND. STATE
5 YOUR NAME FOR THE RECORD, PLEASE.
6 MR. STALEY: DAVID STALEY.
7 BY MR. GIBBONS:
8 Q MR. STALEY, ARE YOU CURRENTLY HOUSED IN THE BARNWELL COUNTY
9 DETENTION CENTER?
10 A YES, SIR.
11 Q AND WHY ARE YOU THERE RIGHT NOW?
12 A A BENCH WARRANT.
13 Q ON SOME OLD CHARGES?
14 A YES, SIR.
15 Q WHAT ARE THOSE OLD CHARGES?
16 A POSSESSION OF CRACK COCAINE, DISTRIBUTION OF CRACK.
17 Q IS THERE A PROXIMITY CHARGE TOO?
18 A POSSIBLY.
19 Q AND ARE THOSE THE SAME CHARGES THAT HAVE BEEN PENDING ON YOU
20 SINCE 1997?
21 A '90 ---
22 Q '96?
23 A '98, I THINK '98.
24 Q AT THE TIME OF THIS TRIAL, AT THE TIME THAT YOU TESTIFIED BEFORE IN
25 A PRIOR PROCEEDING, WERE THOSE THE SAME CHARGES ---

1 A SAME CHARGES, YEAH, SAME CHARGES.

2 Q ANYTHING NEW?

3 A YEAH. I'VE GOT SOME NEW CHARGES NOW.

4 Q WHAT ARE THE NEW CHARGES?

5 A RESISTING ARREST, THE BENCH WARRANT AND WHAT'S THE OTHER ONE,
6 THEY SAY I AIN'T SUPPOSED TO HAVE A PISTOL BECAUSE I WAS A
7 FUGITIVE, SOMETHING LIKE THAT.

8 Q AND ALL THIS HAPPENED SINCE THE LAST PROCEEDING WE HAD?

9 A YEAH.

10 Q ALL RIGHT. YOUR PRIOR RECORD, YOU TELL ME IF THS REFLECTS YOU,
11 RESISTING ARREST IN 1991, YOA SENTENCE, NO MORE THAN 5?

12 A YEAH.

13 Q SUSPENDED WITH 3 MONTHS PROBATION?

14 A YEAH.

15 Q 1991, FAILED TO STOP FOR BLUE LIGHT, THAT WAS PART OF THE SAME
16 SENTENCE, YOA, SUSPENDED TO 3 MONTHS PROBATION, IS THAT YOU?

17 A THAT'S ME. IN BAMBERG.

18 Q IS THAT YOUR ENTIRE PRIOR RECORD? YOU EVER BEEN INVOLVED IN A
19 BURGLARY, ROBBERY, ANYTHING LIKE THAT? NO CONVICTIONS?

20 A NO.

21 Q MR. STALEY, I WANT TO TALK TO YOU A FEW MINUTES ABOUT WHEN YOU
22 WERE INCARCERATED BEFORE THE PRIOR PROCEEDING WE HAD IN THIS
23 CASE. YOU WERE IN ON THE SAME CHARGES YOU HAVE NOW, CORRECT?

24 A (WITNESS NODDED HEAD.)

25 THE COURT: YOU NEED TO ANSWER.

1 BY MR. GIBBONS:

2 A YES, SIR.

3 Q SAY YES OR NO.

4 A YES, SIR.

5 Q AND ARE YOU FAMILIAR WITH THE DEFENDANT IN THIS CASE?

6 A YEAH, MR. SANDERS.

7 Q MR. SANDERS?

8 A YES.

9 Q HOW LONG HAVE YOU KNOWN MR. SANDERS?

10 A SINCE THEN, SINCE '98.

11 Q DID YOU KNOW HIM BEFORE YOU WENT TO JAIL BACK THEN?

12 A I SAW HIM ONCE IN JAIL PRIOR TO THAT, BUT I HADN'T HAD NO DEALING
13 WITH HIM OUT, IF THAT'S WHAT YOU MEAN.

14 Q YOU'RE NOT CLOSE FRIENDS AT ALL?

15 A NO.

16 Q DID YOU KNOW HIS NAME WHEN YOU GOT THERE?

17 A YEAH BECAUSE I HAD ALREADY SEEN HIM BEFORE.

18 Q AND DID YOU HAVE OCCASION TO TALK TO HIM DURING THE TIME YA'LL
19 WERE INCARCERATED TOGETHER?

20 A SOMETIMES 3 OR 4 TIMES A WEEK, YES, SIR.

21 Q AND AT THAT TIME, WERE YOU SPEAKING WITH LAW ENFORCEMENT
22 OFFICERS ABOUT ANYTHING?

23 A NO, SIR.

24 Q HAD LAW ENFORCEMENT COME TO YOU AND ASKED YOU TO DO
25 ANYTHING?

- 1 A NO, SIR.
- 2 Q HAD YOU BEEN OFFERED A DEAL BY ANYBODY?
- 3 A NO, SIR.
- 4 Q HAD YOU BEEN PROMISED ANYTHING?
- 5 A NOTHING.
- 6 Q HAD ANYBODY SPOKE TO YOU IN ANY WAY ABOUT THE DEATH OF MS.
- 7 CHAPMAN?
- 8 A NOBODY BUT HIM.
- 9 Q DID YOU -- YOU HEARD SOME STATEMENTS BY THE DEFENDANT IN THIS
- 10 CASE, CORRECT?
- 11 A YES, SIR.
- 12 Q AND DID YOU AT ANY POINT CONTACT LAW ENFORCEMENT ABOUT WHAT
- 13 YOU HEARD?
- 14 A YES.
- 15 Q TELL US WHAT HAPPENED. TELL US WHAT YOU DID.
- 16 A WELL, I HAD I THINK A JAILER MAYBE TO CALL UP MR. MARTIN I THINK.
- 17 Q MR. MARTIN AT THE SHERIFF'S OFFICE?
- 18 A YES. AND I TALKED TO HIM.
- 19 Q ALL RIGHT. THE THINGS THAT YOU HEARD SAID BY MR. SANDERS, DID
- 20 THEY ALL HAPPEN BEFORE YOU CALLED MR. MARTIN OR AFTER?
- 21 A BEFORE.
- 22 Q AND YOU WERE UNDER NO DIRECTION OF ANYBODY AT THAT TIME?
- 23 A NOBODY.
- 24 Q ALL RIGHT. WHY DID YOU CALL MR. MARTIN?
- 25 A BECAUSE, I MEAN, I THOUGHT IT WAS LIKE REAL BOLD LIKE. SO I LIKE,

1 BY MR. GIBBONS:

2 A YES, SIR.

3 Q SAY YES OR NO.

4 A YES, SIR.

5 Q AND ARE YOU FAMILIAR WITH THE DEFENDANT IN THIS CASE?

6 A YEAH, MR. SANDERS.

7 Q MR. SANDERS?

8 A YES.

9 Q HOW LONG HAVE YOU KNOWN MR. SANDERS?

10 A SINCE THEN, SINCE '98.

11 Q DID YOU KNOW HIM BEFORE YOU WENT TO JAIL BACK THEN?

12 A I SAW HIM ONCE IN JAIL PRIOR TO THAT, BUT I HADN'T HAD NO DEALING
13 WITH HIM OUT, IF THAT'S WHAT YOU MEAN.

14 Q YOU'RE NOT CLOSE FRIENDS AT ALL?

15 A NO.

16 Q DID YOU KNOW HIS NAME WHEN YOU GOT THERE?

17 A YEAH BECAUSE I HAD ALREADY SEEN HIM BEFORE.

18 Q AND DID YOU HAVE OCCASION TO TALK TO HIM DURING THE TIME YA'LL
19 WERE INCARCERATED TOGETHER?

20 A SOMETIMES 3 OR 4 TIMES A WEEK, YES, SIR.

21 Q AND AT THAT TIME, WERE YOU SPEAKING WITH LAW ENFORCEMENT
22 OFFICERS ABOUT ANYTHING?

23 A NO, SIR.

24 Q HAD LAW ENFORCEMENT COME TO YOU AND ASKED YOU TO DO
25 ANYTHING?

1 SEE WHAT WAS GOING ON, SO I CALL SOMEBODY.

2 Q WERE YOU HOPING TO HELP YOURSELF OUT THOUGH?

3 A NO, SIR.

4 Q AND DID YOU TELL MR. MARTIN THE THINGS YOU HAD HEARD?

5 A YES, SIR.

6 Q AND AFTER THAT POINT WERE YOU INSTRUCTED TO DO ANYTHING ELSE?

7 A NO, SIR.

8 Q AND SITTING HERE TODAY HAVE YOU BEEN GIVEN ANY PROMISES
9 REGARDING YOUR CHARGES?

10 A NO, I HAVEN'T.

11 Q AFTER THE PRIOR PROCEEDING IN THIS CASE, YOU DIDN'T STAY IN JAIL
12 VERY LONG?

13 A PARDON ME, THE LAST TIME?

14 Q YES, SIR.

15 A I GOT A BOND REDUCTION AND I BONDED OUT.

16 Q AND THAT WAS A COUPLE DAYS AFTER THE TRIAL?

17 A I DON'T KNOW THE EXACT DATE, BUT IT WAS AFTER THE TRIAL.

18 Q AND DID YOU REQUEST A BOND REDUCTION?

19 A YES. THAT'S WHAT I STAYED IN JAIL FOR. I WAS COMING TO GET A BOND
20 REDUCTION TO GET OUT.

21 Q WHY DID YOU WANT A BOND REDUCTION AT THAT TIME?

22 A I WAS HAVING A LITTLE TROUBLE AT THE JAIL THEN. I WAS GOING TO
23 GET ONE BEFORE ALL OF THAT, BUT I HAD NEEDED A BOND REDUCTION
24 THEN BECAUSE I WAS HAVING A LITTLE TROUBLE AT THE JAIL, SO I
25 ASKED MY LAWYER TO GET ME A BOND REDUCTION.

1 Q YOU WERE HAVING TROUBLE AFTER THE TRIAL?

2 A YEAH.

3 Q WHAT KIND OF TROUBLE?

4 A TYPICAL JAILHOUSE TALK, YOU KNOW, GUYS -- LIKE ARGUMENTS AND
5 STUFF LIKE THAT.

6 Q DID THEY KNOW YOU TESTIFIED?

7 A OH, YEAH.

8 Q IS THAT WHAT THE TROUBLE WAS ABOUT?

9 A YEAH.

10 Q AND AT ANY TIME HAD YOUR CHARGES BEEN DROPPED?

11 A NO.

12 Q AT ANY TIME HAD YOU BEEN TOLD YOUR CHARGES WOULD BE DROPPED?

13 A NO.

14 Q THEY'RE STILL PENDING TODAY, AREN'T THEY?

15 A YEP.

16 MR. GIBBONS: YOUR HONOR, THAT WOULD BE IT AS FAR AS
17 MESSIAH PORTION.

18 THE COURT: MR. WILLIAMS?

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q MR. STALEY, WHEN DID YOU GO MISSING SO THAT THAT BENCH
22 WARRANT HAD TO BE ISSUED?

23 A WELL, I LEFT -- LET ME GET THE RIGHT DATE FOR YOU. SOMETIME IN ---

24 Q WAS IT IN THE YEAR 2000?

25 A YEAH, IT WAS IN 2000, SOMETIME IN 2000.

- 1 Q WAS IT SEPTEMBER 2000, MAYBE?
- 2 A YEAH, IT WASN'T WINTER YET.
- 3 Q SO IT WAS CLEARLY ABOUT A YEAR AND THREE FOURTHS OF A YEAR
- 4 SINCE THE TIME YOU WERE ORIGINALLY CHARGED ---
- 5 A SOMETHING LIKE THAT.
- 6 Q --- YOU WENT MISSING?
- 7 A SOMETHING LIKE THAT.
- 8 Q AND YOUR CHARGES AGAINST YOU HADN'T MADE IT TO COURT YET, HAD
- 9 THEY?
- 10 A NO, SIR. I WAS HERE FOR ROLL CALLS AND STUFF, BUT HAVEN'T MADE IT
- 11 TO COURT YET.
- 12 Q AND THE SOLICITOR HAD NEVER CALLED YOUR CASE, DID THEY?
- 13 A NO, SIR, THEY JUST CALLED ROLL CALL.
- 14 Q ALL RIGHT. AND YOU GOT OTHER CHARGES AGAINST YOU FOR
- 15 DISTRIBUTION OF CRACK, IS THAT NOT CORRECT?
- 16 A YES, SIR.
- 17 Q SINCE THEN?
- 18 A YES, SIR.
- 19 Q THAT CASE WASN'T CALLED EITHER, WAS IT?
- 20 A I DON'T KNOW WHAT YOU MEAN.
- 21 Q THE SOLICITOR HASN'T CALLED THAT CASE EITHER, HAS HE?
- 22 A WHAT CASE?
- 23 Q THE OTHER CHARGES THAT YOU GOT IN '99 FOR DISTRIBUTION OF
- 24 CRACK?
- 25 A THAT'S THE CHARGE THEY JUST GAVE ME WHEN I GOT BACK, SO I DIDN'T

1 KNOW NOTHING ABOUT THOSE CHARGES EITHER.

2 Q OKAY. NOW, LAS TIME WHEN YOU WERE IN COURT, YOU TESTIFIED
3 ABOUT MR. SANDERS, IS THAT RIGHT?

4 A YES, SIR.

5 Q AND THERE WAS AN \$80,000 BOND AGAINST YOU?

6 A YES, SIR.

7 Q OKAY. DID YOU EVER -- AND THAT BOND WAS REDUCED TO \$10,000 THE
8 DAY AFTER TRIAL, IS THAT NOT CORRECT?

9 A IT WAS AFTER THE TRIAL.

10 Q WAS IT THE DAY AFTER TRIAL?

11 A IT WAS AFTER THE TRIAL, I DON'T RECALL WHAT DATE.

12 Q OKAY. AND ---

13 THE COURT: WHAT IS IT YOU JUST INTRODUCED, YOU CAN TELL
14 ME ABOUT IT, IF YOU WOULD.

15 MR. WILLIAMS: THIS IS THE BOND REDUCTION, SIGNED BY JUDGE
16 CLARY ON FRIDAY, THE DAY AFTER WE FINISHED THE LAST TRIAL, REDUCING
17 HIS BOND FROM \$80,000 TO \$10,000.

18 THE COURT: YA'LL STIPULATE THAT THIS WAS THE DAY AFTER
19 TRIAL?

20 MR. GIBBONS: I HAVE NO QUALMS WITH THAT, THAT WAS THE
21 DAY AFTER TRIAL.

22 BY MR. WILLIAMS:

23 Q NOW, MR. STALEY, WHEN DID YOU -- HAVE YOU EVER GIVEN TESTIMONY
24 AGAINST ANYONE ELSE FOR A BETTER SENTENCE, FOR A DEAL?

25 A HAVE I EVER BEEN ON THE WITNESS STAND AND GAVE A ---

- 1 Q WELL, ---
- 2 A NO, SIR.
- 3 Q OR GIVEN INFORMATION TO THE POLICE FOR A DEAL?
- 4 A NO DEALS.
- 5 Q HOW ABOUT MARVIN NICKENS?
- 6 A MARVIN NICKENS?
- 7 Q CORRECT?
- 8 A I DON'T KNOW ANYTHING ABOUT MARVIN NICKENS.
- 9 Q HOW ABOUT ON HERMAN REDWHITE FROM WILLISTON? DID YOU EVER
- 10 GIVE ANY STATEMENTS OR TESTIMONY?
- 11 A YEAH, WE HAD A STATEMENT ON MR. RED BECAUSE HE IMPLICATED ME
- 12 IN SOMETHING AND I WASN'T THERE. I WASN'T IN THAT AND I KNEW
- 13 WHAT HAPPENED.
- 14 Q SO YOU TESTIFIED AGAINST HERMAN ---
- 15 A NO, I DIDN'T TESTIFY, YOU ASKED ME IF I GAVE A STATEMENT.
- 16 Q YOU GAVE INFORMATION AGAINST HIM?
- 17 A YES, SIR.
- 18 Q AND AS A RESULT OF THAT, CHARGES AGAINST YOU HAVE BEEN
- 19 DISMISSED IN THE PAST, IS THAT NOT CORRECT?
- 20 A HUH?
- 21 Q WERE THERE - - THERE WERE SOME BURGLARY CHARGES PRESSED
- 22 AGAINST YOU AND YOU IMPLICATED REDWHITE, IS THAT NOT CORRECT?
- 23 A I SIGNED A STATEMENT ON REDWHITE, BUT THAT,
- 24 Q ALL RIGHT. YOU SIGNED A STATEMENT ON REDWHITE AFTER YOU HAD
- 25 BEEN CHARGED WITH THE BURGLARY, IS THAT NOT CORRECT? AND

1 IMPLICATED HIM INSTEAD?

2 A I REMEMBER SIGNING A STATEMENT ON REDWHITE.

3 Q YOU DID THAT ABOUT '96 OR '97, IS THAT NOT CORRECT?

4 A SOMETIME, IT WAS WAY BACK.

5 Q SO YOU KNOW HOW THE SYSTEM WORKS, IS THAT NOT CORRECT?

6 YOU'RE LOOKING FOR SOMETHING TO TESTIFY AGAINST SOMEBODY ELSE

7 ABOUT SO YOU COULD CUT A DEAL, IS THAT NOT CORRECT?

8 A NO, SIR. I STATED BEFORE I NEVER HAD A DEAL.

9 Q DID YOU EVER ASK FOR A TRANSFER FROM THE BARNWELL COUNTY JAIL

10 BECAUSE OF THE PRISON TALK THAT YOU'RE TALKING ABOUT?

11 A THE PRISON TALK?

12 Q YEAH.

13 A DID I HAVE ---

14 Q DID YOU EVER TELL A JAILER THAT YOU WERE IN FEAR OF YOUR LIFE OR

15 ANYTHING?

16 A OH, THEY HAD ME ON PROTECTIVE CUSTODY, IS THAT WHAT YOU'RE

17 TALKING ABOUT?

18 Q YES, SIR.

19 A I DIDN'T ASK TO LEAVE THE JAIL BECAUSE AIN'T NOBODY FEAR ME SO ---

20 Q AND YOU HAD NO REASON TO ASK TO LEAVE THE JAIL, DID YOU?

21 A I DIDN'T LEAVE THE JAIL.

22 Q YOU WASN'T SCARED WERE YOU?

23 A SCARED?

24 Q YEAH.

25 A NO, THEY HANDLE THE JAIL PRETTY GOOD OVER THERE.

1 Q OKAY. SO THERE WASN'T ANY REASON TO REDUCE YOUR BOND
2 BECAUSE YOU WERE SCARED OF BEING IN JAIL, ISN'T THAT CORRECT?

3 A WELL, LIKE I SAID, I WAS GOING FOR A BOND REDUCTION ANYHOW.

4 Q YOU WERE GOING ANYWAY FOR A BOND REDUCTION, AND THEY JUST
5 HAPPENED TO DO IT AFTER YOU TESTIFIED IN THE LAST TRIAL, ISN'T THAT
6 CORRECT?

7 A NO, SIR. I ASKED FOR A BOND REDUCTION.

8 Q OKAY. AND YOU JUST HAPPENED TO GET IT AFTER YOU TESTIFIED, ONE
9 DAY AFTER YOU TESTIFIED, ISN'T THAT CORRECT?

10 A WELL, I GOT THE BOND REDUCTION THE DAY AFTER.

11 MR. WILLIAMS: THAT'S ALL WE HAVE.

12 THE COURT: ANYTHING FURTHER?

13 MR. GIBBONS: NOTHING FROM THE STATE ON THIS ISSUE.

14 EXAMINATION

15 BY THE COURT:

16 Q MR. STALEY, IS THAT YOUR NAME?

17 A YES, SIR.

18 Q MR. STALEY, YOU WERE IN THE BARNWELL COUNTY JAIL?

19 A YES, SIR.

20 Q YOU NEED TO ANSWER OUT LOUD SO THE COURT REPORTER CAN PICK IT
21 UP.

22 A YES, SIR.

23 Q ALL RIGHT. AND WHILE YOU WERE THERE, THE DEFENDANT IN THIS
24 INSTANCE WAS IN THE BARNWELL COUNTY JAIL?

25 A YES, SIR.

- 1 Q AND YOU WOULD HAVE CONTACT WITH HIM?
- 2 A YES, SIR.
- 3 Q AND HAVE A CHANCE TO TALK TO HIM?
- 4 A YES, SIR.
- 5 Q DID ANYONE ASK YOU TO TALK TO HIM?
- 6 A NO, SIR.
- 7 Q ANYBODY AT THE JAIL?
- 8 A NO, SIR.
- 9 Q ANY OF THE CORRECTIONAL OFFICERS OR ANYBODY ASK YOU TO TALK
- 10 TO HIM?
- 11 A NO, SIR.
- 12 Q YOU JUST DID IT ON YOUR OWN?
- 13 A YEAH. WE WAS JUST GETTING TO KNOW EACH OTHER IN JAIL.
- 14 Q YOU WERE JUST HAVING GENERAL CONVERSATION?
- 15 A GENERAL CONVERSATION.
- 16 Q AND OVER A PERIOD OF TIME, HE STARTED MAKING SOME STATEMENTS
- 17 ABOUT THE CRIMES FOR WHICH HE WAS CHARGED?
- 18 A YES, SIR.
- 19 Q ALL RIGHT. DID ANYBODY ASK YOU TO TALK TO HIM ABOUT THOSE
- 20 CRIMES?
- 21 A NO, SIR. I DIDN'T ASK HIM FOR IT.
- 22 Q I UNDERSTAND. I HAVEN'T GOTTEN TO THAT PART YET. BUT I'M TRYING
- 23 TO UNDERSTAND EXACTLY WHAT HAPPENED.
- 24 A YES, SIR.
- 25 Q AND THEN SO YOU WOULD HAVE SOME CONVERSATION ABOUT GENERAL

1 THINGS, YOU NEVER ASKED HIM ABOUT ANYTHING ABOUT THE JAIL,
2 ABOUT HIS CRIME?

3 A NO, SIR.

4 Q NOBODY EVER ASKED YOU TO APPROACH HIM?

5 A NO, SIR.

6 Q ANYBODY EVER ASK YOU TO GO LISTEN TO ANYTHING HE SAID?

7 A NO, SIR.

8 Q NOBODY FROM THE SOLICITOR'S OFFICE?

9 A NO, SIR.

10 Q NOBODY FROM THE SHERIFF'S DEPARTMENT?

11 A NOBODY.

12 Q NOBODY FROM SLED?

13 A NOBODY.

14 Q NOBODY FROM THE JAIL ITSELF?

15 A NOBODY.

16 Q ALL RIGHT. AND THEN AT SOME POINT IN TIME, YOU LEARNED WHAT
17 YOU BELIEVED, SOME INFORMATION RELATING TO HIS CHARGES, RIGHT?

18 A YES, SIR.

19 Q AND YOU TOOK IT UPON YOURSELF TO DO WHAT?

20 A CALL LAW ENFORCEMENT.

21 Q SOMEBODY NAMED MARTIN AT THE BARNWELL COUNTY SHERIFF'S
22 DEPARTMENT?

23 A YES, SIR.

24 Q WHY DID YOU DECIDE TO DO THAT?

25 A BECAUSE HE WAS TALKING ABOUT IT AND HE WAS THINKING HE WAS

1 GOING TO GET AWAY WITH IT, SO I WAS LIKE, THAT WAS KIND OF -- BE A
2 LADY OF A BUSINESS LIKE THAT, I THOUGHT IT WAS WRONG, YOU KNOW,
3 HIM SITTING UP THERE TALKING LIKE THAT.

4 Q ALL RIGHT. SO YOU CALLED THE SHERIFF'S DEPARTMENT AND TOLD MR.
5 MARTIN THIS INFORMATION?

6 A YES, SIR.

7 Q DID THEY ASK YOU TO DO ANYTHING ABOUT IT?

8 A NO, SIR.

9 Q DID THEY ASK YOU TO GO BACK AND LISTEN ANYMORE?

10 A NO, SIR.

11 Q ASK YOU TO GO TALK TO HIM OR ANYTHING?

12 A NO, SIR.

13 Q ASK YOU TO GO ASK HIM ANY QUESTIONS?

14 A NOPE.

15 Q DID THEY MAKE ANY SORT OF PROMISES TO YOU?

16 A NO, SIR.

17 Q DID YOU ASK THEM FOR ANYTHING WHEN YOU CALLED THEM?

18 A NOTHING.

19 Q WHAT CAN YOU DO TO HELP ME IF I GIVE YOU THIS INFORMATION?

20 A NO, SIR.

21 Q NEVER TOLD THEM ANYTHING?

22 A NO.

23 Q ALL RIGHT. AND SO THEN WHO DID YOU MEET WITH AFTER THAT? DID
24 YOU MEET WITH SOMEBODY FROM THE SHERIFF'S DEPARTMENT?

25 A YES, SIR.

- 1 Q MR. MARTIN?
- 2 A YES, SIR. I CALLED AND ASKED HIM TO COME TO THE JAIL.
- 3 Q SO HE CAME AND TALKED TO YOU. HE DIDN'T ASK YOU ANYTHING? DID
- 4 HE TAKE A STATEMENT FROM YOU?
- 5 A NO, NO, SIR, NOT THEN. NO. .
- 6 Q ALL RIGHT. THEN WHAT WAS YOUR NEXT CONTACT?
- 7 A WHO DID I CONTACT NEXT, YOU MEAN?
- 8 Q WELL, DID THEY CONTACT YOU OR DID YOU GO BACK AND TALK TO MR.
- 9 SANDERS AGAIN AND GET MORE INFORMATION? WHAT HAPPENED?
- 10 A NO, SIR. I DIDN'T -- THAT WAS BASICALLY IT AFTER THAT.
- 11 Q ALL RIGHT. SO THEN WHEN DID THEY CONTACT YOU ABOUT TESTIFYING
- 12 IN THE TRIAL?
- 13 A THEY SUBPOENAED ME. I DON'T KNOW THE EXACT DATE.
- 14 Q DID THEY TELL YOU WHEN YOU HAD CONTACT WITH MR. MARTIN THAT
- 15 YOU WERE GOING TO BE SUBPOENAED TO COME TESTIFY?
- 16 A PROBABLY WOULD HAVE. WITH THAT TYPE OF INFORMATION, HE SAID I
- 17 PROBABLY WOULD BE.
- 18 Q DID YOU EVER TALK TO ANYBODY IN THE SOLICITOR'S OFFICE BEFORE
- 19 YOU TESTIFIED AT THE TRIAL?
- 20 A NO, SIR.
- 21 Q OKAY. YOU NEVER TALKED TO ANYBODY BEFORE THE TRIAL?
- 22 A YOU MEAN LIKE TO GIVE STATEMENTS OF SOMETHING?
- 23 Q DID THEY COME IN AND ASK YOU, TALK TO YOU ABOUT WHAT YOU
- 24 MIGHT TESTIFY TO AT THE TRIAL?
- 25 A OH, YES, SIR.

1 Q SO YOU HAD -- WHEN WAS THAT?

2 A THAT'S PRIOR TO THE TRIAL OR RIGHT BEFORE THE TRIAL, I THINK.

3 Q DID THEY OFFER YOU ANYTHING AT THAT TIME?

4 A NO, SIR.

5 Q DID YOU ASK THEM FOR ANYTHING AT THAT TIME? DID YOU ASK THEM
6 WHAT YOU CAN DO FOR THEM FOR YOU GIVING THEM THIS
7 INFORMATION?

8 A NO, SIR.

9 Q DID YOU HAVE ANY DISCUSSIONS ABOUT GETTING A BOND REDUCTION?

10 A NO, SIR.

11 Q DID YOU HAVE ANY DISCUSSIONS ABOUT HAVING YOUR CHARGES
12 REDUCED OR DISMISSED OR ANYTHING LIKE THAT?

13 A NO, SIR.

14 Q DID YOU HAVE A LAWYER?

15 A YES, SIR.

16 Q WHO WAS YOUR LAWYER?

17 A MR. MOORE.

18 Q DID MR. MOORE HAVE CONVERSATIONS WITH THE SOLICITOR'S OFFICE
19 ABOUT YOUR TESTIFYING AT THIS TRIAL THAT YOU KNOW OF?

20 A NO, SIR, NOT THAT I KNOW OF, NO, SIR.

21 Q DID HE SEEK TO GET ANY SORT OF DEAL OR ANY SORT OF COMMITMENT
22 FROM THE STATE?

23 A NO, SIR.

24 Q ALL RIGHT. THEN YOU CAME AND TESTIFIED AT THE TRIAL?

25 A YES, SIR.

1 Q AND YOU TOLD WHAT YOU BELIEVED WAS INFORMATION MR. SANDERS
2 HAD GIVEN YOU, IS THAT CORRECT?

3 A YES, SIR.

4 Q AND THE TRIAL CONCLUDED, APPARENTLY CONCLUDED ---

5 THE COURT: YA'LL SAID THIS THING TOOK PLACE ON A FRIDAY
6 AND TRIAL CONCLUDED ON A THURSDAY?

7 MR. GIBBONS: THAT'S CORRECT, SIR.

8 BY THE COURT:

9 Q AND THE DAY AFTER THE TRIAL, MR. MOORE CAME UP HERE ON A BOND
10 REDUCTION HEARING, IS THAT RIGHT?

11 A YES, SIR.

12 Q AND DID THE SOLICITOR COME TO THE HEARING?

13 A YES, I THINK SO.

14 Q DID THEY CONCUR WITH THE BOND REDUCTION OR WAS THAT JUST
15 SOMETHING BETWEEN YOUR LAWYER, YOU AND THE JUDGE? DID THEY
16 RECOMMEND THAT YOUR BOND BE REDUCED?

17 A MY LAWYER WAS DOING THE TALKING, SO I DON'T -- I KNOW I GOT A
18 BOND REDUCTION, SO ---

19 THE COURT: ANYTHING FROM THE STATE WITH RESPECT TO
20 ANYTHING I'VE ASKED MR. STALEY?

21 MR. GIBBONS: YOUR HONOR, CAN I LOOK AT THE BOND SHEET
22 REAL QUICK? IT IS A CONSENT BOND, OR WE DID CONSENT BEFORE JUDGE,
23 CLARY, YOUR HONOR.

24 THE COURT: ANYTHING, MR. WILLIAMS, THAT YOU WANT TO ASK
25 WITH RESPECT TO WHAT I'VE ASKED?

1 MR. WILLIAMS: NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: OKAY. THANK YOU, MR. STALEY, YOU MAY STEP
3 DOWN.

4 MR. GIBBONS: YOU WANT TO ARGUE BEFORE WE PUT HIM UP?

5 THE COURT: WHAT?

6 MR. GIBBONS: YOU WANT TO ARGUE BEFORE YOU MAKE YOUR
7 DECISION WHETHER HE'S GOING TO TESTIFY OR NOT?

8 THE COURT: ARGUE ABOUT WHAT?

9 MR. GIBBONS: WHETHER OR NOT HE CAN TESTIFY TO WHAT HE
10 HEARD.

11 THE COURT: YOU WANT HIM SITTING HERE WHILE WE DO THAT?

12 MR. GIBBONS: WELL, NO, I WAS JUST WONDERING HOW YOU
13 WANTED TO DO THAT.

14 THE COURT: WE'LL DO IT ANYWAY THAT MAKES YOU AND MR.
15 WEEKS AND MR. WILLIAMS AND MS. SANDERS HAPPY.

16 MR. GIBBONS: WE CAN PUT HIM RIGHT OUTSIDE THE DOOR.

17 THE COURT: THIS WAS YOUR INTENDED NEXT WITNESS?

18 MR. GIBBONS: YES, SIR.

19 THE COURT: ALL RIGHT. HOLD ON JUST ONE MINUTE.

20 ALL RIGHT. GO AHEAD.

21 MR. WEEKS: WE HAVE SOME MORE WITNESSES WE COULD JUMP
22 TO IF YOU WANTED TO -- IF YOU NEEDED SOME TIME ON THAT, JUDGE.

23 THE COURT: I WANT TO CHECK ON ONE CASE

24 MR. GIBBONS: WE COULD DO THE SLED AGENT NOW, JUDGE, HE'S
25 HERE AND READY TO GO.

1 THE COURT: ALL RIGHT. YA'LL WANT TO ARGUE THIS REAL
2 QUICK? OR YOU WANT TO WAIT UNTIL I'VE HAD A CHANCE TO READ VIGIER TO.
3 SEE WHAT -- IS HIS TESTIMONY BASICALLY THE SAME? YA'LL REMEMBER?

4 MR. GIBBONS: AS FAR AS THE MESSIAH ISSUE? YEAH, YES, SIR.

5 MR. WILLIAMS: IT'S STATEMENTS THAT HE MADE ---

6 THE COURT: I KNOW BUT I MEAN WHEN HE CAME ---

7 MR. GIBBONS: AS FAR AS MESSIAH, IT'S BASICALLY THE ---

8 THE COURT: JUST THE MESSIAH THING, THAT HE TESTIFIED THAT
9 ON HIS OWN HE HAD CONVERSATIONS AND -- AT THE MESSIAH HEARING, HE
10 HAD CONVERSATIONS WITH MR. SANDERS, MR. SANDERS MADE SOME
11 ADMISSIONS AGAINST HIMSELF, THAT NOBODY ASKED HIM TO GO TALK TO HIM.

12 MR. GIBBONS: THAT'S BASICALLY THE TRANSCRIPT, YOUR
13 HONOR.

14 THE COURT: YOU REMEMBER THAT MR. WILLIAMS OR MS.
15 SANDERS?

16 MR. WILLIAMS: THAT'S PRETTY MUCH WHAT IT WAS, JUDE. YOUR
17 HONOR, IF YOU'RE GOING TO CONSIDER THAT, I'D LIKE TO HAND UP TO YOU THE
18 NOL PROSSES. I KNOW THEY'VE ALREADY BEEN STIPULATED, BUT I'D LIKE TO
19 MAKE THAT A PART OF THE RECORD ALSO.

20 THE COURT: WE'LL JUST MAKE THAT THE NEXT COURT'S
21 EXHIBITS.

22 MR. GIBBONS: MR. MADSEN NOL PROSSED THOSE, JUDGE.

23 THE COURT: MR. -- THEY'VE STIPULATED THAT THE STATE NOL
24 PROSSED THE ASSAULT AND BATTERY WITH INTENT TO KILL AND THE
25 ATTEMPTED ARMED ROBBERY OR THE ARMED ROBBERY, I CANT REMEMBER

1 WHICH ONE IT WAS.

2 MR. GIBBONS: I THINK IT WAS AN ACTUAL -- I THINK IT WAS
3 ACTUAL ARMED ROBBERY, YOUR HONOR.

4 THE COURT: THOSE ARE THE TWO CHARGES YOU DISMISSED?

5 MR. GIBBONS: I THINK THERE WAS A POSSESSION OF A WEAPON
6 DURING A VIOLENT CRIME THAT WAS DIRECTLY INDICTED THAT WE DISMISSED
7 AS WELL.

8 THE COURT: HE TESTIFIED AT THAT MESSIAH HEARING NOTHING
9 HAD BEEN PROMISED HIM AS WELL?

10 MR. GIBBONS: AT THE SECOND TRIAL, YES, SIR.

11 THE COURT: TELL ME WHAT WAS TOLD TO HIM BY THE
12 SOLICITOR'S OFFICE?

13 MR. GIBBONS: MY STANDARD PRACTICE IS, I CAN'T PROMISE YOU
14 ANYTHING, I CAN'T AGREE TO ANYTHING. WE WILL TAKE INTO CONSIDERATION
15 YOUR COOPERATION AFTER EVERYTHING IS ALL SAID AND DONE.

16 THE COURT: SO THE TESTIMONY FROM THE STATE IS, OR YOUR
17 REPRESENTATION AS AN OFFICER OF THE COURT IS YOU TOLD THESE TWO
18 INDIVIDUALS THAT YOU WOULD NOT MAKE ANY COMMITMENT TO THEM ABOUT
19 ANYTHING AT THIS TIME ---

20 MR. GIBBONS: YES, SIR.

21 THE COURT: BUT AFTER WHATEVER TESTIMONY THEY OFFERED,
22 AND I GUESS IN MR. STALEY'S CASE IN RESPECT TO MR. SANDERS AND MR.
23 VIGIER'S CASE WITH RESPECT TO MR. SANDERS AND HIS OWN CASE, THAT YOU
24 WOULD CONSIDER THAT AND MIGHT ULTIMATELY MAKE SOME SORT OF
25 RECOMMENDATION OR MIGHT DO SOMETHING, MIGHT NOT.

1 MR. GIBBONS: THAT'S CORRECT YOUR HONOR. AND AS TO MR.
2 STALEY, THERE WERE SOME PROBLEMS WITH HIM AT THE JAIL, HIM HAVING
3 TESTIFIED AGAINST THREE PEOPLE AND THEN GOING BACK THERE, WE DID
4 CONSENT TO HIM BEING RELEASED ON BOND, BUT WE MADE NO AGREEMENT AS
5 TO HIS CHARGES. THEY'RE STILL PENDING TODAY. WE WERE STILL WAITING ON
6 SLED RESULTS AT THAT TIME.

7 THE COURT: DO YA'LL HAVE ANY INFORMATION TO THE
8 CONTRARY? I MEAN WE KNOW AT SOME POINT IN TIME COMMITMENTS WERE
9 MADE AND AFTER THE TRIAL THAT HE, MR. STALEY GOT A BOND REDUCTION ---

10 MR. WILLIAMS: YOUR HONOR?

11 THE COURT: WE KNOW THAT AFTER THE CHARGES AGAINST MR.
12 VIGIER WERE DEALT WITH AND HIS CO-DEFENDANTS, HE GOT THREE CHARGES
13 NOL PROSSED AND A PROBATIONARY SENTENCE WITH A RECOMMENDATION
14 FROM THE STATE. DID YOU HAVE SOME INFORMATION IN ADDITION?

15 MR. WILLIAMS: NO, YOUR HONOR. I THINK REGARDLESS AS TO
16 WHAT WAS -- I DON'T HAVE ANY INFORMATION.

17 THE COURT: I UNDERSTAND THAT YOU STILL WANT TO BE ABLE
18 TO HAVE THE RIGHT TO CROSS-EXAMINE HIM AND CONFRONT HIM, BUT I'M JUST
19 ASKING YOU IS THERE ANY INFORMATION THAT YOU HAVE IN ADDITION TO
20 WHAT THEY HAVE TOLD ME?

21 MR. WILLIAMS: I DON'T HAVE ANYTHING TO PUT UP, NO, SIR.

22 THE COURT: ALL RIGHT. YA'LL WANT TO CALL YOUR NEXT
23 WITNESS AND I'LL HAVE TO LOOK AT THE CASE AND READ MR. VIGIER'S
24 STATEMENT AND ---

25 MR. GIBBONS: CALL MR. VELLO PAAVEL

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THEREUPON,

VELLO PAAVEL,

AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: HAVE A SEAT IN THE WITNESS CHAIR. STATE YOUR
NAME FOR THE RECORD.

MR. PAAVEL: MY NAME IS VELLO PAAVEL, SPELLED V-E-L-L-O
P-A-A-V-E-L.

DIRECT EXAMINATION

BY MR. WEEKS:

Q WHERE ARE YOU EMPLOYED, MR. PAAVEL?

A SIR, I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION,
WHICH IS COMMONLY KNOWN AS SLED. IN PARTICULAR, I WORK IN THE
FORENSIC SERVICES LABORATORY IN THE FIREARMS DEPARTMENT
WHERE I'M A FIREARMS EXAMINER.

Q HOW LONG HAVE YOU BEEN THERE?

A I'VE BEEN AT SLED ALMOST 14 YEARS NOW.

Q PRIOR TO THAT DID YOU HAVE ANY LAW ENFORCEMENT EXPERIENCE?

A YES, SIR, I HAVE A TOTAL OF 6 AND A HALF YEARS PRIOR TO SLED, ABOUT
3 YEARS AT A COLUMBIA POLICE DEPARTMENT AND 3 AND A HALF YEARS
AT THE RICHLAND COUNTY SHERIFF'S OFFICE.

Q PRIOR TO COMING TO SLED, DID YOU HAVE ANY SPECIALIZED TRAINING
IN FIREARMS?

A MY TRAINING IN FIREARMS, I DID HAVE RECEIVE TRAINING PRIOR TO MY
LAW ENFORCEMENT. I ACTUALLY WORKED IN A GUNSHOT AND
MANAGED A GUNSHOT FOR SEVERAL YEARS AND ONE OF THE

1 RESPONSIBILITIES I HAD WAS REPAIR OF FIREARMS AND FUNCTION WITH
2 FIREARMS.

3 Q THAT'S SOME 20 YEARS AGO?

4 A YES, SIR.

5 Q OKAY. SO FOR THE PAST 20 YEARS, YOU'VE BEEN ACTIVE IN LAW
6 ENFORCEMENT IN THAT CAPACITY ALSO?

7 A WHILE I WAS AT THE COUNTY AND THE CITY, I WAS NOT PRIMARILY
8 INVOLVED IN FIREARMS OR FIREARMS IDENTIFICATION AS NORMAL
9 PATROL DUTIES. SINCE I'VE WORKED AT SLED, I'VE BEEN IN THE
10 FIREARMS DEPARTMENT WHICH ORIGINALLY INVOLVED LATENT PRINT
11 CRIME SCENE, FOOTWEAR, PHOTOGRAPHY, FIREARMS INVESTIGATION OR
12 FIREARMS IDENTIFICATION AND SINCE 1989, SINCE OUR BUILDING - - NEW
13 BUILDING WAS BUILT, I'VE BEEN PRIMARILY IN FIREARMS AND FIREARMS
14 IDENTIFICATION. PLUS, IT'S A HOBBY OF MINE, SO I STAY IN IT, DABBLE IN
15 FIREARMS.

16 Q VELLO, LET ME ASK YOU ABOUT YOUR PRIOR EDUCATIONAL
17 BACKGROUND.

18 A ONE OF THE REQUIREMENTS TO WORK IN THE FORENSIC SERVICES
19 LABORATORY IS SOME TYPE OF DEGREE. I ATTENDED THE UNIVERSITY
20 OF SOUTH CAROLINA, I HAVE A BACHELOR OF SCIENCE DEGREE. I
21 MAJORED IN CHEMISTRY. I'VE ATTENDED THE SOUTH CAROLINA
22 CRIMINAL JUSTICE ACADEMY AND COMPLETED THAT, THE BASIC
23 OFFICER'S CERTIFICATION. I'VE HAD COURSES IN PHOTOGRAPHY AND
24 FINGERPRINT IDENTIFICATION AT THE ACADEMY.

25 I'VE HAD SEVERAL OTHER COURSES IN HOMICIDE INVESTIGATION,

1 FIREARMS IDENTIFICATION, AND HAVE ATTENDED SEVERAL ARMORY
2 SCHOOLS AT THE VARIOUS MANUFACTURERS TO LEARN HOW THE
3 FIREARMS WORK AND HOW THEY FUNCTION. I'VE ALSO ATTENDED
4 SEMINARS DURING -- AT THE CONFERENCES AND AT THE ASSOCIATION
5 OF FIREARMS AND TOOLMARK EXAMINERS, AND I'M A MEMBER OF THAT.

6 I'VE ALSO HAD TO PARTICIPATE IN A TRAINING PROGRAM AT SLED
7 AND THAT'S WHERE THE BULK OF MY EDUCATION COMES IN THE FIELD
8 OF FIREARMS IDENTIFICATION OR ACTUALLY EXAMINING FIREARMS AND
9 FIREARMS COMPONENTS AND AMMUNITION COMPONENTS AND TRYING
10 TO DETERMINE WHETHER OR NOT A BULLET OR CARTRIDGE CASE WAS
11 FIRED BY A PARTICULAR GUN. THAT WAS DONE AT SLED. I HAD TO
12 WORK UNDER THE SUPERVISION OF CORE QUALIFIED EXAMINERS. I DID
13 READING, I WAS TRAINED IN VARIOUS ASPECTS OF FIREARMS
14 IDENTIFICATION, I WAS TESTED ON THIS MATERIAL AND AFTER I
15 SUCCESSFULLY COMPLETED THE TRAINING PROGRAM, I WAS ALLOWED
16 TO WORK CASES ON MY OWN AND TO TESTIFY IN COURT.

17 Q HOW LONG HAVE YOU BEEN DOING THAT?

18 A LITERALLY SINCE I WENT TO WORK AT SLED, SHORTLY AFTER I STARTED
19 AT SLED, I STARTED MY TESTIMONY AND FIREARMS, WHICH AGAIN,
20 COVERED LATENT PRINTS AND EVERYTHING ELSE. BUT SINCE
21 APPROXIMATELY 1989, I HAVE TESTIFIED OVER 230 TIMES AS AN EXPERT
22 IN THE AREA OF FIREARMS IDENTIFICATION.

23 Q AND YOU HAVE BEEN QUALIFIED AS AN EXPERT AND GIVEN TESTIMONY
24 IN THIS FIELD.

25 A THAT'S CORRECT.

1 Q AND AS YOU STATED THE FIREARMS POSITION THAT YOU HAVE INCLUDES
2 DOING WHAT?

3 A CURRENTLY WHAT I DO IN FIREARMS NOW IS -- WHAT IS GENERALLY
4 DONE IN THE FIREARMS DEPARTMENT IS FIREARMS IDENTIFICATION, AND
5 AGAIN, THAT INVOLVES EXAMINING FIREARMS AND EXAMINING BULLETS
6 AND CARTRIDGE CASINGS AND OTHER PARTS OF AMMUNITION AND
7 TRYING TO DETERMINE WHETHER OR NOT THOSE FIRED COMPONENTS
8 WERE FIRED BY A PARTICULAR GUN. I ALSO EXAMINE FIREARMS TO
9 DETERMINE IF THEY'RE WORKING PROPERLY, DOCUMENTING THIS
10 MATERIAL, PREPARING THE REPORT AND TESTIFYING IN COURT.

11 MR. WEEKS: YOUR HONOR, WE WOULD MOVE MR. PAAVEL IS AN
12 EXPERT IN FIREARMS IDENTIFICATION AS DEFINED BY HIS JOB POSITION THERE
13 AT SLED. AND WE WOULD MOVE THAT HE BE QUALIFIED AS AN EXPERT AND BE
14 ALLOWED TO RENDER AN OPINION AS TO THE FACTS SUBMITTED IN THIS CASE.

15 MS. SANDERS: NO OBJECTION, YOUR HONOR.

16 THE COURT: ALL RIGHT. I'M GOING TO FIND MR. PAAVEL TO BE
17 AN EXPERT IN THE FIELD OF FIREARMS IDENTIFICATION AND BALLISTICS AND
18 ALLOW HIM TO TESTIFY AS AN EXPERT IN HIS AREA OF EXPERTISE.

19 BY MR. WEEKS:

20 Q MR. PAAVEL, IN REGARDS TO THIS CASE, WERE ANY ITEMS SUBMITTED TO
21 YOU FOR ANALYSIS?

22 A YES, SIR, THERE WERE SEVERAL ITEMS SUBMITTED TO ME.

23 Q COULD YOU TELL US WHAT WS SUBMITTED TO YOU?

24 A YES, SIR. I RECEIVED A FIRED BULLET THAT WAS FROM THE AUTOPSY, I
25 RECEIVED A FIRED 25 AUTO CALIBER CARTRIDGE CASE, I RECEIVED A

1 LORSON MODEL L25 PISTOL, WHICH IS 25 AUTO CALIBER. I RECEIVED A
2 PISTOL MAGAZINE AND THREE UNFIRED 25 AUTO CALIBER CARTRIDGES.

3 Q AND WHO DID YOU RECEIVE THOSE ITEMS FROM?

4 A THESE WERE ---

5 Q OR WHAT DID YOU RECEIVE THEM IN?

6 A I ACTUALLY TOOK POSSESSION OF THESE ITEMS FROM A EVIDENCE
7 LOCKER THAT WE HAVE AT SLED. NORMALLY EVIDENCE IS SUBMITTED
8 TO SLED TO EVIDENCE CONTROL PERSONS AND THOSE PEOPLE
9 DISTRIBUTE EVIDENCE TO VARIOUS PARTS OF THE FORENSIC SERVICES
10 BUILDING. I ACTUALLY TOOK POSSESSION OF THIS EVIDENCE FROM A
11 EVIDENCE LOCKER, WHICH IS KNOWN AS FIRELOCK OR FIREARMS
12 LOCKER, WHICH IS ---

13 Q IS THAT A SECURE ---

14 A YES, SIR. THAT'S A SECURE LOCKER THAT'S INSIDE THE FIREARMS
15 DEPARTMENT, WHICH IS INSIDE THE FORENSIC SERVICE DEPARTMENT.

16 Q WHEN YOU COMPLETED YOUR ANALYSIS OF THESE ITEMS, WHERE DID
17 YOU RETURN THESE ITEMS TO?

18 A I WOULD PUT THEM BACK INTO FIRELOCK AND THEN THEY WOULD HAVE
19 BEEN PICKED UP AGAIN BY EVIDENCE CONTROL PEOPLE AND
20 DISTRIBUTED TO THE SUBMITTER OF THE EVIDENCE.

21 Q NOW, THE ITEMS THAT WERE SUBMITTED TO YOU, DID YOU CONDUCT
22 SOME ANALYSIS OF THOSE ITEMS?

23 A YES, SIR. I DID.

24 Q LET ME ASK YOU IF YOU CAN IDENTIFY -- I'M GOING TO HAND YOU
25 SEVERAL ITEMS IN A ROW. STATE'S EXHIBIT 13 B?

- 1 A YES, SIR, THIS IS THE PISTOL MAGAZINE THAT I RECEIVED.
- 2 Q STATE'S EXHIBIT 10?
- 3 A YES, SIR, THIS IS THE FIRED 25 CALIBER CARTRIDGE CASE THAT I
- 4 RECEIVED.
- 5 Q STATE'S EXHIBIT 13, I BELIEVE.
- 6 A YES, SIR, 13.
- 7 Q 13 D, I BELIEVE IT IS.
- 8 A YES, SIR. THIS IS THE LORSON BRAND PISTOL THAT I RECEIVED.
- 9 Q STATE'S EXHIBIT 13 C?
- 10 A THESE ARE TWO OF THE CARTRIDGES THAT I RECEIVED IN REFERENCE TO
- 11 THIS CASE. WHEN I RECEIVED THEM, THEY WERE UNFIRED. I FIRED THEM
- 12 IN THIS PARTICULAR PISTOL FOR TEST PURPOSES, SO NOW YOU HAVE
- 13 TWO BULLETS AND TWO CARTRIDGE CASINGS INSTEAD OF TWO UNFIRED
- 14 CARTRIDGES.
- 15 Q STATE'S EXHIBIT 11?
- 16 A YES, SIR, I RECOGNIZE THIS. THIS IS THE FIRED BULLET OR PROJECTILE
- 17 THAT WAS REMOVED FROM THE VICTIM DURING AUTOPSY.
- 18 Q AND THAT WAS PART OF THE ITEMS SUBMITTED TO YOU?
- 19 A YES. AND THIS IS ---
- 20 Q STATE'S EXHIBIT ---
- 21 A 13 A. THIS IS THE REMAINING CARTRIDGE THAT WAS SUBMITTED TO ME.
- 22 AGAIN, AS I SAID, THERE WERE THREE CARTRIDGES ORIGINALLY
- 23 SUBMITTED TO ME AND I FIRED TWO OF THEM FOR TEST PURPOSES. THIS
- 24 IS THE ONE THAT'S LEFT OVER.
- 25 Q OKAY. VELLO, TELL ME WHAT YOU DID IN ANALYZING THOSE ITEMS.

1 A IN ESSENCE, WHEN EVIDENCE COMES IN, I DOCUMENT WHAT I HAVE.
2 THAT'S THE FIRST THING TO DO AS TO - - LIKE FOR INSTANCE, WITH THE
3 HANDGUN, I WILL LOOK AT THE MAKE, MODEL, SERIAL NUMBER,
4 CALIBER, WRITE ALL THIS INFORMATION DOWN. I WILL TEST FIRE IT. I
5 WILL CHECK TO SEE WHETHER OR NOT THE GUN IS WORKING PROPERLY,
6 WHETHER THE SAFETY'S WORK PROPERLY. DURING TEST FIRING, I WILL
7 RECOVER TEST COMPONENTS FOR FUTURE COMPARISON BECAUSE IN
8 THIS PARTICULAR CASE, I HAD A FIRED BULLET AND A FIRED CARTRIDGE
9 CASE THAT I WAS GOING TO COMPARE MICROSCOPICALLY TO THE TEST.

10 IN REFERENCE TO THE BULLET AND THE CARTRIDGE CASE, THE
11 FIRED COMPONENTS, I ALSO WILL TAKE THOSE AND DOCUMENT WHAT
12 THEY ARE, WHAT CONDITION THEY'RE IN. I WILL ALSO MARK THE
13 EVIDENCE SO I CAN RECOGNIZE IT LATER FOR CORE PURPOSES AND I
14 MARK IT IN A FASHION THAT DOES NOT DESTROY ANY PROBATIVE VALUE
15 OR DESTROY ANY MARKINGS ON THE PARTICULAR PIECE OF EVIDENCE.

16 THEN ONCE I HAVE MY EVIDENCE DOCUMENTED, I WILL TAKE THE
17 EVIDENCE ITEMS AND I WILL COMPARE THEM TO THE TEST FIRED
18 COMPONENTS THAT I HAVE AND THE WAY I DO THAT - - SAY, FOR
19 INSTANCE, THE FIRED BULLET, I USE A DEVICE WHICH IS KNOWN AS A
20 COMPARISON MICROSCOPE WHICH ALLOWS ME TO LOOK AT TWO
21 BULLETS AT THE SAME TIME. I CAN SEE THEM IN A BINOCULAR EYE PIECE
22 AND I CAN MOVE THEM BACK AND FORTH, UP AND DOWN AND GET THEM
23 IN ALIGNMENT. AND I LOOK FOR MARKINGS THAT WERE PLACED ON
24 THOSE BULLETS AS A RESULT OF THEM BEING FIRED THROUGH A GUN
25 BARREL.

1 THE INSIDE OF A RIFLE GUN BARREL -- AND MOST MODERN
2 HANDGUNS AND RIFLES HAVE RIFLING INSIDE THE BARREL.

3 Q WHAT DO YOU MEAN BY RIFLING?

4 A A RIFLING IS SERIES OF HELICAL LANDS AND GROOVES THAT ARE PLACED
5 INSIDE THE BARREL BY THE MANUFACTURER. THE PURPOSE OF THE
6 RIFLING IS TO ENGAGE OR GRAB THE BULLET AND CAUSE THE BULLET TO
7 SPIN. THAT'S WHY THE MANUFACTURER PUTS IT IN THERE. MOST OF YOU
8 HAVE SEEN A FOOTBALL THROWN. IF YOU THROW A FOOTBALL AND IT
9 HAS A GOOD TYPE SPIRAL, IT WILL TRAVEL MORE ACCURATELY THAN
10 ONE THAT TUMBLES END OVER END.

11 BUT THAT'S WHAT RIFLING DOES IN ESSENCE. IT IMPARTS SPIN TO
12 THE BULLET SO IT CAN TRAVEL MORE ACCURATELY. NOW THE BENEFIT
13 OF THE RIFLING TO ME AND THE SO CALLED RIFLING IMPRESSIONS IS
14 THAT I CAN EXAMINE THE RIFLING IMPRESSIONS THAT WERE LEFT ON THE
15 BULLET. I CAN COMPARE THEM MICROSCOPICALLY TO TEST BULLETS
16 AND IF I SEE AGREEMENT IN THOSE MARKINGS AND I HAVE
17 CONSISTENTLY MARKED TESTS, I CAN GENERALLY TELL WHETHER OR
18 NOT A BULLET WAS FIRED BY A PARTICULAR FIREARM.

19 YOU HAVE TO REMEMBER THAT RIFLING THAT'S IN THE GUN
20 BARREL IS UNIQUE TO THAT BARREL SO THAT THE MARKINGS THAT IT
21 TRANSFERS OR IMPRESSES OR SCRATCHES INTO THE OUTSIDE OF THE
22 BULLET WILL ALSO BE UNIQUE TO THAT GUN BARREL. AND AGAIN,
23 THAT'S ANOTHER REASON WHY I CAN IDENTIFY A PARTICULAR BULLET
24 TO A PARTICULAR GUN, AGAIN, ASSUMING THE BULLET'S IN GOOD
25 CONDITION AND THE BARREL MARKS THE BULLETS CONSISTENTLY.

1 IN THE -- IN REFERENCE TO THE CARTRIDGE CASE, I LOOK AT
2 DIFFERENT MARKINGS THAT ARE LEFT ON A CARTRIDGE CASE. WHEN A
3 CARTRIDGE CASE IS PLACED INTO A FIREARM AND IS FIRED, YOU CAN GET
4 MARKINGS FROM THE FIRING PIN, THE EXTRACTOR, THE EJECTOR, THE
5 CHAMBER, FROM THE MAGAZINE POSSIBLY OR ANY PART THAT THAT
6 CARTRIDGE CONTACTS WHEN IT'S TRAVELING THROUGH THE FIREARM,
7 ESPECIALLY IN THE CASE OF A SEMI-AUTOMATIC PISTOL SUCH AS THIS.

8 AND THOSE MARKINGS, AGAIN, ARE UNIQUE TO THAT PARTICULAR
9 GUN BECAUSE OF THE MANUFACTURING PROCESSES. AND, AGAIN, IF THE
10 MARKINGS ARE CLEAR AND DISTINCT ON THE EVIDENCE AND THE GUN
11 MARKS THE TEST SPECIMENS PROPERLY AND CONSISTENTLY,
12 GENERALLY I CAN RENDER A CONCLUSION AS TO WHETHER OR NOT IT
13 WAS FIRED BY THAT GUN.

14 Q AND THE GUN ITSELF, WHAT ARE YOU LOOKING FOR IN THE GUN?

15 A AGAIN, OTHER THAN JUST DOCUMENTING MAKE, MODEL, SERIAL
16 NUMBER, CALIBER AND THE LIKE, I LOOK AT THE FIREARM TO
17 DETERMINE WHETHER IT'S FIRING PROPERLY, WHETHER IT WORKS
18 PROPERLY, HAS IT BEEN ALTERED OBVIOUSLY, DOES THE SAFETY WORK,
19 ANYTHING LIKE THAT WHICH MAY BE USEFUL INFORMATION TO ME IN
20 THE COURSE OF AN INVESTIGATION.

21 Q ALL RIGHT. IN THIS CASE, LET'S TAKE THE FIRED CARTRIDGES YOU
22 WERE -- THE FIRED BULLET THAT YOU WERE GIVEN FROM THE AUTOPSY.
23 WHAT WAS YOUR EXAMINATION OF THAT?

24 A WELL, THERE AGAIN, I TOOK THE FIRED BULLET AND COMPARED THE
25 FIRED BULLET THAT I ACTUALLY FIRED FROM THIS PARTICULAR

1 HANDGUN AND I WAS UNABLE TO DETERMINE POSITIVELY WHETHER OR
2 NOT THIS BULLET WAS FIRED BY THIS PARTICULAR GUN. THE REASON
3 FOR THAT IS THAT THE TEST BULLETS WERE NOT MARKED
4 CONSISTENTLY. ALSO THE MARKINGS THAT WERE ON THE FIRED
5 PROJECTILE WERE NOT VERY GOOD. THEY WERE NOT IN A CONDITION
6 THAT MADE IT EASY FOR IDENTIFICATION AND THAT'S MAINLY DUE TO
7 THE TYPE OF PROJECTILE THAT'S BEING USED.

8 Q WHAT'S THE SIGNIFICANCE OF THE TYPE OF PROJECTILE IN THIS
9 PARTICULAR INSTANCE?

10 A THIS PARTICULAR PROJECTILE IS A COPPER PLATED BULLET AS OPPOSED
11 TO BEING A JACKETED BULLET. NORMALLY IN THE 25 AUTOMATICS, YOU
12 FIND A JACKETED TYPE OF BULLET. A JACKETED BULLET HAS A MUCH
13 HEAVIER COATING ON THE OUTSIDE OF THE BULLET MADE OUT OF
14 COPPER OR A COPPER ALLOY AS OPPOSED TO A PLATED BULLET WHICH
15 HAS A VERY VERY THIN LAYER OF ELECTROPLATED COPPER ON THE
16 OUTSIDE OF THE BULLET. AND THE PROBLEM WITH BULLETS OF THAT
17 TYPE IN CONJUNCTION WITH THE TYPE OF RIFLING THAT'S USED IN THIS
18 PARTICULAR TYPE OF HANDGUN MEANS THAT THE BULLETS GENERALLY
19 ARE NOT VERY WELL MARKED. I COULD TELL THAT THIS BULLET COULD
20 HAVE BEEN FIRED BY THIS GUN, BUT IT ALSO COULD HAVE BEEN FIRED
21 BY ANOTHER LORSON PISTOL OR ANOTHER BRAND OF PISTOL THAT HAD
22 SIMILAR TYPE OF RIFLING.

23 Q SO YOU ARE UNABLE TO SAY ABSOLUTELY THAT THIS PARTICULAR
24 PROJECTILE CAME THROUGH THIS GUN?

25 A THAT'S CORRECT. THE RESULT IS CALLED INCONCLUSIVE, WHICH MEANS

1 I DON'T HAVE A CONCLUSION OR A POSITIVE OR NEGATIVE CONCLUSION
2 AND I CAN'T TELL DEFINITELY WHETHER IT WAS FIRED BY THAT GUN.

3 Q OKAY. YOU CAN SAY THAT IT CAME THROUGH A LORSON HANDGUN?

4 A I CAN SAY IT COULD HAVE BEEN FIRED FROM A LORSON. IT COULD HAVE
5 BEEN FIRED BY THIS PARTICULAR LORSON, BUT I CAN'T SAY THAT
6 POSITIVELY.

7 Q EXAMINING THE TEST BULLETS AGAINST THE FIRED BULLET FROM THE
8 AUTOPSY, WERE THERE SIMILAR LANDS AND GROOVES IN THAT - - -

9 A YES, SIR, THERE'S THE SAME NUMBER OF LANDS AND GROOVES. THE
10 SPACING IS CORRECT, THE SO-CALLED GENERAL CHARACTERISTICS WERE
11 CORRECT. AND I BELIEVE I HAVE IN MY NOTES, IF YOU'LL BEAR WITH ME
12 ON MOMENT, THERE MAY HAVE BEEN SOME INDIVIDUAL
13 CHARACTERISTICS. LET'S SEE - - YES, I HAVE IN THERE THAT THE
14 GENERAL CHARACTERISTICS WERE THE SAME, THE BEHAVIOR OR THE
15 WAY THAT THE BULLET LOOKS AFTER BEING FIRED IS THE SAME AND
16 THERE WERE SOME INDIVIDUAL CHARACTERISTICS THAT WERE SIMILAR
17 AND I CONCLUDED AGAIN THAT THIS BULLET COULD HAVE BEEN FIRED
18 BY THIS GUN, BUT I CANNOT POSITIVELY SAY THAT.

19 Q AND TO KIND OF PARAPHRASE, VELLO, WHAT HAPPENED TO THIS
20 PARTICULAR BULLET AND THE BULLETS TEST FIRED THROUGH THIS, THIS
21 SHEETING OR THIS - - -

22 A PLATING.

23 Q - - - KIND OF PEELS OFF?

24 A YES, SIR. SOMETIMES IT WILL PEEL OFF. A LOT OF TIMES WHAT HAPPENS
25 IS THE RIFLING WHEN IT ENGAGES OR GRABS THE JACKET, IT'LL TEAR IT

1 SAME CONSTRUCTION, SAME CALIBER, SAME TYPE AND SAME BRAND AS
2 THE FIRED BULLET THAT WAS REMOVED FROM THE VICTIM.

3 Q AND IN TERMS OF COMPARISON, THE FIRED BULLET REMOVED FROM THE
4 VICTIM AND THE OTHER AMMUNITION, DOES IT RESEMBLE ANY OTHER
5 TYPE OF AMMUNITION?

6 A IF YOU'RE REFERRING TO ---

7 Q ANY OTHER CALIBER OF AMMUNITION?

8 A YOU COULD CONCEIVABLY CONFUSE IT WITH A 22. THERE ARE SOME 22'S
9 THAT HAVE A SIMILAR SHAPE. HOWEVER, THE 25 CALIBER BULLET IS
10 LARGER IN DIAMETER. IT IS HEAVIER AND IF YOU HAVE A KNOWN OR A
11 STANDARD TO LOOK AT IT, YOU CAN QUICKLY SEE THAT IT IS A 25.

12 MR. WEEKS: BEAR WITH ME JUST A SECOND, YOUR HONOR. YOUR
13 HONOR, STATE WOULD MOVE INTO EVIDENCE, STATE'S EXHIBIT 13 D, 13.B ---

14 THE COURT: WAIT A MINUTE. IT IS THE PISTOL YOU HAVE AN
15 OBJECTION?

16 MS. SANDERS: NO, YOUR HONOR, NOT THE PISTOL.

17 THE COURT: SO ADMITTED WITHOUT OBJECTION.

18 MR. WEEKS: 13 B, WHICH IS THE CLIP.

19 THE COURT: ANY OBJECTION?

20 MS. SANDERS: THE CARTRIDGE?

21 THE COURT: THE CLIP.

22 MS. SANDERS: WE WOULDN'T OBJECT TO THAT.

23 MR. WEEKS: STATE'S EXHIBIT 10, WHICH IS THE FIRED CARTRIDGE.

24 THE COURT: FOUND AT THE SCENE?

25 MR. WEEKS: YES, SIR, CORRECT.

1 COMPARED TO OTHER KNOWN PROJECTILES OF CERTAIN CALIBERS.

2 Q AND BASED UPON THAT IS IT YOUR OPINION WITH A REASONABLE
3 DEGREE OF SCIENTIFIC CERTAINTY THAT THIS WAS A 25 CALIBER
4 PROJECTILE TAKEN FROM THE BODY?

5 A YES, SIR, I HAVE NO DOUBT THAT THIS IS A 25 CALIBER PROJECTILE. IN
6 PARTICULAR, IT IS A 25 AUTO CALIBER OR A BULLET THAT WOULD BE
7 FOUND IN 25 CALIBER AUTO CALIBER AMMUNITION AND DUE TO ITS
8 UNIQUE SHAPE AND CONSTRUCTION, I'M CONFIDENT THAT IT IS A
9 PROJECTILE THAT IS MANUFACTURED BY CCI OR SPEAR, WHICH IS THE
10 CALIBER AND BRAND OF THE UNFIRED CARTRIDGES THAT WERE
11 SUBMITTED TO ME.

12 Q WAS THERE ANYTHING UNUSUAL ABOUT THE CARTRIDGES OR THE TYPE
13 OF CARTRIDGES SUBMITTED TO YOU?

14 A THE THREE UNFIRED 25 AUTO CALIBER CARTRIDGES THAT WERE
15 SUBMITTED TO ME, AGAIN ARE THE CCI OR SPEAR BRAND. THEY HAVE
16 AN UNUSUAL SHAPED BULLET LOADED INTO THEM. IT IS LOADED BY THE
17 FACTORY. IT'S NOT A RELOAD OR SOMEBODY DIDN'T GO AND HAND
18 LOAD THESE OR MAKE THESE UP LIKE SOME PEOPLE CAN DO. THESE ARE
19 FACTORY CARTRIDGES. THEY WERE SOLD FOR SEVERAL YEARS. AND
20 THEY ARE UNUSUAL IN THE SENSE THAT THEY ARE A PLATED, HOLLOW
21 POINT BULLET, WHICH NORMALLY ISN'T FOUND IN A 25 AUTOMATIC.
22 NORMALLY YOU FIND WHAT IS KNOWN AS A ROUND NOSE BULLET AND IT
23 COULD BE PLATED OR IT COULD BE JACKETED.

24 BUT AGAIN, THE CARTRIDGES THAT I RECEIVED, THE 25 AUTOS
25 HAD A PLATED, HOLLOW POINT BULLET LOADED INTO THEM AND IT'S THE

1 MS. SANDERS: NO OBJECTION, YOUR HONOR.

2 THE COURT: SO ADMITTED.

3 MR. WEEKS: STATE'S EXHIBIT 13 C, WHICH WERE THE TWO TEST
4 CARTRIDGE AND TWO TEST BULLETS.

5 MS. SANDERS: NO OBJECTION, YOUR HONOR.

6 THE COURT: SO ADMITTED WITHOUT OBJECTION.

7 MR. WEEKS: 13 A, THE REMAINING TEST CARTRIDGE.

8 THE COURT: THE UNFIRED CARTRIDGE?

9 MS. SANDERS: NO OBJECTION, YOUR HONOR.

10 THE COURT: SO ADMITTED WITHOUT OBJECTION.

11 MR. WEEKS: AND STATE'S EXHIBIT 11, WHICH IS THE PROJECTILE
12 FROM THE AUTOPSY.

13 MS. SANDERS: IN AS MUCH AS MR. PAAVEL WAS UNABLE TO
14 CONFIRM WITH ABSOLUTE CERTAINTY THAT THIS WAS A BULLET THAT CAME
15 FROM THE 25 PISTOL THAT HE EXAMINED, WE OBJECT TO THAT EXHIBIT, YOUR
16 HONOR.

17 THE COURT: ALL RIGHT. OVERRULED. SO ADMITTED.

18 MR. WEEKS: ANSWER ANY QUESTIONS THAT DEFENSE HAS MR.
19 PAAVEL.

20 MR. PAAVEL: YES, SIR.

21 CROSS-EXAMINATION

22 BY MS. SANDERS:

23 Q MR. PAAVEL, I WANT TO ASK YOU A FEW MORE QUESTIONS ABOUT YOUR
24 EXAMINATION OF THE ITEMS THAT YOU JUST ALLUDED TO. YOU'VE
25 INDICATED THAT YOU'VE TESTIFIED A NUMBER OF TIMES AS AN EXPERT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT 98-GS-06-180
99-GS-06-78
99-GS-06-79

STATE OF SOUTH CAROLINA,)
PLAINTIFF)
)
-VS-)
)
TUNZY ANTWAIN SANDERS)
DEFENDANT)

TRANSCRIPT OF RECORD
VOLUME II

FEBRUARY 5-8, 2001
BARNWELL, SOUTH CAROLINA

BEFORE:

THE HONORABLE JAMES R. BARBER, III, JUDGE AND A JURY.

APPEARANCES:

GRANT GIBBONS, ASSISTANT SOLICITOR
BILL WEEKS, DEPUTY SOLICITOR
2ND JUDICIAL CIRCUIT

DANIEL W. WILLIAMS, ESQUIRE
BRENDA K. SANDERS, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

BRENDA W. SIGWALD, CIRCUIT COURT REPORTER
P.O. BOX 711, NEW ELLENTON, SOUTH CAROLINA 29809

1 IN THE AREA OF FIREARMS, CORRECT?

2 A THAT'S CORRECT.

3 Q AND THERE WERE TIMES, IN FACT, PROBABLY MANY TIMES WHEN WERE
4 ABLE TO CONCLUSIVELY MAINTAIN THAT A CERTAIN BULLET CAME
5 FROM A CERTAIN GUN, CORRECT?

6 A YES, MA'AM.

7 Q AND THIS IS ONE OF THOSE INSTANCES WHERE YOU ARE NOT ABLE TO
8 CONCLUSIVELY SAY TO THIS JUDGE THAT THAT WAS THE CASE?

9 A THAT'S CORRECT.

10 Q NOW, YOU WERE GIVEN SOME AMMUNITION TO EXAMINE ALONG WITH
11 THE HANDGUN, CORRECT?

12 A YES, THERE WERE THREE CARTRIDGES.

13 Q AND WERE YOU TOLD WHAT WAS THE SOURCE OF THE AMMUNITION?

14 A I DON'T THINK I WAS TOLD, IF YOU'LL LET ME ---

15 Q YOU WERE TOLD THAT THAT WAS THE AMMUNITION THAT WAS
16 RETRIEVED WHEN THE GUN WAS RETRIEVED, SIR?

17 A LET ME SEE IF I HAVE IT IN MY NOTES IF THERE WAS ANYTHING -- THE
18 AMMUNITION WHEN IT WAS SUBMITTED WAS WITH THE MAGAZINE. I
19 HAVE NOTHING IN MY NOTES THAT INDICATES WHERE IT CAME FROM.

20 Q DID YOU ASSUME THAT IT WAS AMMUNITION THAT WAS WITH THE GUN
21 WHEN IT WAS RETRIEVED? DID YOU MAKE THAT ASSUMPTION?

22 A I DON'T KNOW THAT I MADE THAT ASSUMPTION. THE FACT THAT IT'S
23 WITH THE MAGAZINE AND THE MAGAZINE WAS SUBMITTED WITH THE
24 PISTOL, YOU COULD MAKE THAT ASSUMPTION, BUT I DON'T KNOW.

25 Q NOW, THE AMMUNITION THAT YOU EXAMINED, IT WAS A JACKETED,

1 THOSE WERE JACKETED, ROUND NOSE BULLETS, SIR?

2 A NO, THEY WERE PLATED, HOLLOW POINTS. THE THREE CARTRIDGES THAT
3 I RECEIVED HAD PLATED, HOLLOW POINT BULLETS.

4 Q HOLLOW POINT BULLETS, OKAY.

5 A CORRECT.

6 Q AND WERE THEY SIMILAR IN CHARACTER AND NATURE TO THE BULLET
7 THAT WAS EXTRACTED FROM THE VICTIM IN THIS CASE?

8 A YES, MA'AM, THEY WERE. THEY WERE THE SAME CALIBER, THEY'RE THE
9 SAME CONSTRUCTION, THEY ARE PLATED, HOLLOW POINT BULLETS AND I
10 BELIEVE THEY ARE THE SAME BRAND. I'M ONLY FAMILIAR WITH THE CCI
11 MAKING A PROJECTILE LIKE THIS FOR THE 25 AUTOMATIC.

12 Q NOW, MR. PAAVEL, YOU HAD AN OPPORTUNITY TO TEST FIRE THIS GUN,
13 CORRECT?

14 A YES, MA'AM.

15 Q DID YOU FIND ANYTHING WHERE THIS GUN MAY HAVE NOT BEEN
16 WORKING PROPERLY?

17 A BEAR WITH ME. I HAVE NOTHING IN MY NOTES THAT INDICATES THAT
18 THE GUN DID NOT WORK PROPERLY.

19 Q AND IN FACT, WHEN YOU DID TEST IT, IT WORKED FINE?

20 A CORRECT.

21 Q AND HAD YOU HAD ANY EVIDENCE THAT THIS GUN HAD JAMMED IN ANY
22 WAY OR MISFIRED IN ANY WAY?

23 A DID I HAVE ANY EVIDENCE OF THAT?

24 Q YES.

25 A BY TEST FIRING OR EXAMINATION?

1 Q YES.

2 A NO. NO, I DID NOT.

3 Q IS THERE ANY WAY YOU CAN TELL WHEN THE GUN WAS LAST FIRED?

4 A NO, MA'AM, I CAN'T TELL THAT.

5 Q DID YOU EVER TESTIFY IN THIS CASE PREVIOUSLY, SIR?

6 A YES, I HAVE.

7 Q DO YOU RECALL TESTIFYING THAT THE AMMUNITION THAT YOU
8 RECEIVED WAS A JACKETED TYPE ROUND NOSE BULLET.

9 A I DON'T RECALL THAT. I RECALL, AND IN MY NOTES I HAVE THAT IT WAS
10 A HOLLOW POINT.

11 MS. SANDERS: OKAY. I'M GOING TO, MR. GIBBONS, I'M ON PAGE
12 17.

13 MR. GIBBONS: 17 OR 317?

14 MS. SANDERS: 317.

15 BY MS. SANDERS:

16 Q YOU HAD AN OPPORTUNITY TO TESTIFY IN THE PRIOR PROCEEDINGS IN
17 THIS CASE, CORRECT?

18 A YES.

19 Q YOU TESTIFIED UNDER OATH?

20 A YES.

21 Q DO YOU RECALL BEING -- ACTUALLY THERE WAS NO QUESTION, YOU
22 WERE TESTIFYING. DO YOU RECALL TESTIFYING IN THIS FASHION ---

23 MS. SANDERS: I'M STARTING WITH LINE 4, MR. GIBBONS.

24 BY MS. SANDERS:

25 Q SO THERE'S NO CONFUSION, I'M GOING TO LEAVE THE ACTUAL EVIDENCE

1 CARTRIDGE IN THIS BAG AND I WILL HOLD THE ONE THAT I BROUGHT IN
2 MY HAND BY MYSELF. QUESTION, AGENT, COULD WE SHOW THE
3 ATTORNEYS BEFORE. ANSWER, OH, YES, SIR, WHAT MAKES IT A LITTLE
4 UNUSUAL, NORMALLY THIS FIREARM USES AMMUNITION THAT HAS A
5 ROUND NOSE FULL METAL JACKET OR AS IT SOMETIMES CALLED
6 AMMUNITION AND I'M GOING TO TRY TO GET YA'LL TO SEE THIS. I'M
7 GOING TO REACH AND KIND OF -- YOU CAN SEE HOW IT HAS A ROUND
8 NOSE. IF I WERE TO TAKE THAT BULLET OUT OF THERE, IT'S A JACKETED
9 OR A TOTAL METAL JACKETED BULLET AND YOU CAN SEE IT HAS NO
10 HOLE IN IT AND IT'S KIND OF HEMISPHERICAL ON THE END.

11 DO YOU REMEMBER GIVING THAT TESTIMONY, SIR?

12 A YES, MA'AM.

13 Q OKAY. AND SO WHAT YOU'RE TESTIFYING TO TODAY IS DIFFERENT THAN
14 WHAT YOU SAID AT THE FIRST HEARING.

15 A NO, MA'AM. IF YOU'LL LOOK CAREFULLY, I'M TESTIFYING ABOUT A
16 DISPLAY THAT I HAD BROUGHT WITH ME. I ACTUALLY BROUGHT
17 UNFIRED BULLETS OR CARTRIDGES TO SHOW THE DIFFERENCE IN THE
18 DIFFERENT ONES. IN FACT, I HAVE SOME TODAY IF YOU'D LIKE TO SEE.
19 THAT'S WHAT I'M TESTIFYING ABOUT. IT'S VERY CLEAR IN MY NOTES
20 AND FROM THE EVIDENCE THAT THE PROJECTILE FROM THE VICTIM IS A
21 HOLLOW POINT AND THE AMMUNITION HAD HOLLOW POINTS IN IT.

22 Q YOU REMEMBER TESTIFYING NOW, LET ME POSE THIS QUESTION TO YOU.
23 WHEN YOU WERE TESTIFYING, WHEN YOU ALLUDED TO, NORMALLY THIS
24 FIREARM, YOU WERE REFERRING TO THE LORSON, CORRECT?

25 A WELL, 25 AUTOMATICS IN GENERAL USE JACKETED OR TOTAL METAL

- 1 JACKETED ROUND NOSED BULLETS. THERE IS A SMALL NUMBER CCI,
2 HORNADY, WINCHESTER, MAKE DIFFERENT TYPES OF BULLETS THAT ARE
3 NOT ROUND NOSE JACKETED BULLETS OR ARE NOT TOTAL METAL
4 JACKETED ROUND NOSED BULLETS. SO THIS IS A MORE UNUSUAL TYPE
5 OF BULLET THAT WAS BEING FIRED HERE.
- 6 Q MY QUESTION TO YOU WAS YOU WOULDN'T HAVE BEEN TESTIFYING
7 ABOUT ANOTHER GUN IN THIS CASE, YOU WOULD HAVE BEEN TESTIFYING
8 ABOUT THE LORSON THAT WAS BEFORE THE COURT, CORRECT?
- 9 A YES, MA'AM, BUT I DON'T SEE - - WHAT EXACTLY ARE YOU ASKING ME?
- 10 Q I'M SAYING THAT YOU ORIGINALLY, MR. PAAVEL, INDICATED THAT THIS
11 WAS A ROUND NOSE JACKETED - - -
- 12 A THE DISPLAY WAS. THE DISPLAY AMMUNITION THAT I BROUGHT TO
13 COURT WAS, NOT IN WITH THE EVIDENCE.
- 14 Q OKAY. AND IT'S YOUR TESTIMONY, MR. PAAVEL, THAT THIS FIRED
15 BULLET COULD HAVE, IN FACT, COME FROM ANOTHER GUN, CORRECT?
- 16 A YES, MA'AM, IT COULD.
- 17 Q AND YOU'RE CONSISTENT ON YOUR OPINION ON THAT, CORRECT?
- 18 A IT COULD - - MY CONCLUSION IS INCONCLUSIVE WHICH MEANS THAT I
19 CANNOT TELL WHETHER OR NOT THE BULLET WAS FIRED BY THIS
20 PARTICULAR LORSON, STATE'S EXHIBIT 13 D OR WHETHER IS WAS FIRED
21 BY ANOTHER LORSON, OR WHETHER IT WAS FIRED BY ANOTHER PISTOL
22 WITH THE SAME TYPE OF RIFLING CHARACTERISTICS.
- 23 Q AND SO IT'S FAIR TO SAY THAT YOU CAN'T RENDER AN OPINION WITH A
24 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY THAT THAT WAS THE
25 GUN?

1 A I CANNOT SAY THAT THIS PARTICULAR BULLET WAS POSITIVELY FIRED
2 BY THIS GUN.

3 Q AND YOU'RE SAYING THAT YOU'RE POSITIVE THAT THIS IS A 25 CALIBER
4 BULLET?

5 A YES, MA'AM, IT IS.

6 MS. SANDERS: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: ANYTHING ON REDIRECT?

8 REDIRECT EXAMINATION

9 BY MR. WEEKS:

10 Q AGENT PAAVEL, THE QUESTION SHE WAS ASKING YOU ABOUT, THE
11 ROUND NOSE BULLET, WAS THAT A SAMPLE THAT YOU HAD BROUGHT TO
12 COURT ON THAT PARTICULAR DAY?

13 A YES, SIR, AT THE REQUEST OF THE SOLICITOR, I BROUGHT SAMPLES OF
14 AMMUNITION TO SHOW TO THE JURY THE DIFFERENCE IN A FULL METAL
15 JACKET BULLET, ROUND NOSE BULLET AND THE CCI PLATED HOLLOW
16 POINT BULLET WHICH WAS BEING USED IN THIS PARTICULAR INSTANCE.

17 Q AND AT THE REQUEST OF THE SOLICITOR, WITH YOUR OWN ABILITIES,
18 YOU BROUGHT THE SAME KIND OF SAMPLES HERE TODAY?

19 A YES, SIR, I DID.

20 Q WILL YOU SHOW THOSE TO THE JUDGE, PLEASE.

21 A AGAIN, I JUST BROUGHT A SAMPLE.

22 Q AGENT PAAVEL, SIMPLY THE QUESTION SHE DEALT WITH A SAMPLE THAT
23 YOU BROUGHT TO COURT ON THAT PARTICULAR DAY?

24 A YES, SIR, THAT PART OF THE TESTIMONY REFERRED TO WHAT I REFER TO
25 AS DISPLAYS THAT I BROUGHT FOR THE JURY TO SEE.

1 Q THANK YOU.

2 A YES, SIR.

3 THE COURT: ANYTHING ON REDIRECT?

4 MS. SANDERS: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU, SIR, YOU MAY STEP DOWN.

6 ANY OBJECTION TO MR. PAAVEL BEING ABLE TO LEAVE?

7 MR. WEEKS: NONE BY THE STATE, YOUR HONOR.

8 MS. SANDERS: NO OBJECTION.

9 MR. GIBBONS: YOUR HONOR, WE'RE READY TO PROCEED WITH

10 MR. STALEY'S TESTIMONY.

11 THE COURT: ALL RIGHT. WE NEED TO TAKE ABOUT 10 MINUTES

12 THEN SO I CAN TAKE A ---

13 ONE OF THE OTHER THINGS I WANTED TO TELL, STATE, WITH
14 RESPECT TO YA'LL'S CONCERN OR YOUR OBJECTION AS TO MY ALLOWING THE
15 TESTIMONY UNDER RUL 804 AND PRIOR CASE LAW BASIS BEING THAT MS.
16 SANDERS WAS NOT PERMITTED TO PARTICIPATE IN THE LAST TRIAL AND,
17 THEREFORE, SHE DIDN'T HAVE A RIGHT TO CROSS-EXAMINE MR. STALEY OR MR.
18 VIGIER, I'M CLEARLY AWARE OF THAT AND HAVE SOME CONCERNS BECAUSE
19 THE CASE WAS SENT BACK, SPECIFICALLY BECAUSE SHE WAS NOT ALLOWED TO
20 PARTICIPATE.

21 BUT, I'M GOING TO ALLOW IT ON THE BASIS THAT SHE WAS IN THE
22 COURTROOM, SHE SAT NEXT TO MR. WILLIAMS, SHE HAD THE OPPORTUNITY
23 TO -- WHILE SHE COULD NOT CROSS-EXAMINE THE WITNESS HERSELF, SHE HAD
24 THE OPPORTUNITY TO TALK TO MR. WILLIAMS AND ASK HIM TO POSE
25 WHATEVER QUESTION SHE THOUGHT MIGHT APPROPRIATE IN THE

1 EXAMINATION OF THAT WITNESS, THAT SHE COULD NOT ASK THAT QUESTION
2 HERSELF, HER CO-COUNSEL WHO WAS, IN FACT, PARTICIPATED IN THIS MATTER
3 THROUGHOUT THIS CASE AND APPARENTLY WAS SOLE COUNSEL IN THE LAST
4 CASE -- WAS THERE ANYBODY ELSE THAT PARTICIPATED WITH YOU?

5 MR. WILLIAMS: NOT REPRESENTING MR. SANDERS.

6 THE COURT: SO THAT SHE DID HAVE THAT OPPORTUNITY TO ASK
7 HIM TO MAKE INQUIRY.

8 ALL RIGHT. WE'LL TAKE A FEW MINUTES AND LET ME LOOK AT
9 THIS MESSIAH MATTER. WE'LL STAND IN RECESS FOR ABOUT 10 TO 15 MINUTES.

10 (WHEREUPON A SHORT RECESS WAS OBSERVED BY THE COURT.)

11 THE COURT: OKAY. I HAVE -- DURING THE BREAK, I READ THE
12 TRANSCRIPT FROM THE HEARING THAT WAS HELD OUTSIDE THE PRESENCE OF
13 THE JURY IN THE FIRST TRIAL INVOLVING MR. VIGIER, RELATING TO WHAT, IF
14 ANYTHING, HE WAS PROMISED OR NOT PROMISED AND WHAT, IF ANYTHING, HE
15 WAS INSTRUCTED TO DO OR NOT INSTRUCTED TO DO, WHETHER HE WAS A -- I
16 GUESS THAT WAS YOUR MESSIAH HEARING ON THAT IN FRONT OF JUDGE CLARY.
17 I HAVE ALSO HEARD THE TESTIMONY THAT WE HAD HERE THIS MORNING
18 RELATING TO MR. STALEY.

19 AFTER HEARING THAT TESTIMONY, I'M GOING TO FIND THAT MR.
20 STALEY AND MR. VIGIER WERE NOT AGENTS OF THE GOVERNMENT, THAT THEY
21 DID NOT VIOLATE THE DEFENDANT'S CONSTITUTIONAL RIGHT, 6TH AMENDMENT
22 RIGHT TO COUNSEL, THAT THESE WERE UNSOLICITED -- AND I DON'T KNOW
23 WHAT THEY ARE, BUT WHATEVER INFORMATION -- AND IT MAY NOT DEVELOP.
24 AT SOME POINT IN TIME, WHATEVER IT IS, IT MAY NOT COME IN FOR THOSE
25 PURPOSES, BUT IF, IN FACT, AS HAS BEEN TESTIFIED THAT THEY ARE GOING TO

1 TESTIFY TO MAKING STATEMENTS THAT THEY GOT FROM THE DEFENDANT,
2 THAT THOSE STATEMENTS IF THERE ARE SOME ADMISSIONS OR SOME
3 STATEMENT AGAINST INTEREST THAT THEY WOULD NOT VIOLATE MR. SANDER'S
4 6TH AMENDMENT RIGHT TO COUNSEL, THAT, IN FACT, THE GOVERNMENT DID
5 NOT DIRECT HIM IN ANY WAY BASED UPON THE INFORMATION THAT IS IN THE
6 RECORD.

7 MR. STALEY SAYS HE, JUST IN THE COURSE OF NORMAL
8 CONVERSATIONS, HE LEARNED INFORMATION FROM MR. SANDERS THAT AT
9 SOME POINT IN TIME ON HIS OWN THAT HE CONTACTED THE LAW
10 ENFORCEMENT, A MEMBER OF THE BARNWELL COUNTY SHERIFF'S DEPARTMENT
11 AND PASSED THAT INFORMATION ON. THE BASIS FOR HIS DOING SO WAS
12 BECAUSE HE BELIEVED THAT, I GUESS, HE WAS BEING A GOOD CITIZEN.

13 NOW, MR. VIGIER TESTIFIED THAT HE ALSO HAD CONTACT WITH
14 THE DEFENDANT AND THAT ADMISSIONS WERE MADE AND HE CONTACTED HIS
15 LAWYER WHO CONTACTED THE STATE AND PASSED THIS INFORMATION ON. AT
16 NO TIME IS THERE ANY EVIDENCE OR ANY TESTIMONY THAT ANYBODY EVER
17 REQUESTED THAT THESE INDIVIDUALS APPROACH MR. SANDERS, THAT THEY
18 WERE EVER INSTRUCTED TO ASK QUESTIONS OF MR. SANDERS, THAT THEY
19 WERE EVER INSTRUCTED TO DO ANYTHING BECAUSE THEY HAD NO CONTACT.
20 THEY DID IT ON THEIR OWN OR MADE -- INITIATED THE PASSING THIS
21 INFORMATION ON TO THE GOVERNMENT.

22 NOW, CLEARLY, AFTER THEY DID SO, IN MY OPINION, THERE WAS
23 AT LEAST SOME TACIT UNDERSTANDING THAT THEY MIGHT GET SOME BENEFIT
24 AT SOME POINT IN TIME BY VIRTUE OF THEIR COOPERATION. AND, IN FACT,
25 THAT CAME TO PASS WITH MR. STALEY HE WAS, AFTER THE TRIAL HIS BOND

1 WAS REDUCED. WITH RESPECT TO MR. VIGIER, HE RECEIVED SOME BENEFIT BY
2 VIRTUE OF HIS COOPERATION IN THIS CASE AND IN ANOTHER CASE AND A
3 FAVORABLE RECOMMENDATION WAS MADE BY THE STATE FOR HIS PLEA.

4 BUT IN READING THE CASES THAT I HAVE READ, I DON'T BELIEVE
5 THAT THERE WAS ANYTHING IMPROPER IN THE CASE OF -- LET ME MAKE SURE
6 WHAT THE NAME OF THIS CASE IS. MY LAW CLERK -- WHERE IS JAMES? IT'S
7 CITED AT 55 US LW 2247 AND 21 FED RULES OF EVIDENCE, SERVICE AT 1045,
8 WHERE THE COURT HAS DETERMINED THAT SOMEONE IS NOT A GOVERNMENT
9 AGENT, THE SUPREME COURT HAS DETERMINED THAT SOMEONE IS NOT A
10 GOVERNMENT AGENT WHEN THERE WAS NO AGREEMENT MADE BETWEEN THE
11 GOVERNMENT AND NO BENEFITS ACCRUED FOR THE COOPERATION, ANY
12 BENEFITS THAT THE INDIVIDUALS WHO TESTIFIED HOPED TO OBTAIN WERE
13 MERE EXPECTATIONS. I THINK THE STATE HAS INDICATED -- I DON'T HAVE THE
14 NAME OF THIS CASE.

15 THE LAW CLERK: US VS. TAYLOR.

16 THE COURT: US VS. TAYLOR? ALL RIGHT. THAT THEY ARE MERE
17 EXPECTATIONS AND THAT THE COURT CANNOT INFER AN AGREEMENT. AND, IN
18 FACT, IN THAT CASE, THERE WAS SOME QUESTION AS TO WHETHER ANYONE
19 WAS PLACED IN THERE BY THE GOVERNMENT AND THAT'S NOT THE INSTANCE.
20 IN THE ABSENCE OF ANY EXPRESSED QUID PRO QUO UNDERLYING
21 RELATIONSHIP BETWEEN THEM AND THE GOVERNMENT OR IN THE ABSENCE --
22 AND IN THE ABSENCE OF ANY INSTRUCTIONS OR DIRECTIONS.

23 SO THE COURT HAS HELD THAT NOT ONLY DOES THERE HAVE TO
24 BE QUID PRO QUO EITHER IMPLIED OR EXPRESSED BUT THERE HAS TO
25 ACTUALLY BE SOME INSTRUCTIONS OR DIRECTIONS BY THE GOVERNMENT. SO

1 I'M GOING TO FIND THAT THAT DID NOT OCCUR IN THIS CASE BASED UPON THE
2 EVIDENCE BEFORE ME, THAT THESE WITNESSES AT BEST HAD MERE
3 EXPECTATIONS. CLEARLY I THINK THERE WAS SOME TACIT UNDERSTANDING
4 THAT THEY MIGHT GET SOME BENEFIT AT SOME POINT IN TIME. SO I'M GOING TO
5 LET THEIR TESTIMONY IN.

6 ANYTHING FROM ANYBODY?

7 MR. GIBBONS: YOUR HONOR, BEFORE WE GO ANY FURTHER DO
8 YOU WANT TO HEAR ARGUMENT ON THAT? I MEAN, YOU'VE RULED, RIGHT?

9 THE COURT: I'VE RULED. I MEAN, IF YA'LL WANT TO TELL ME
10 SOMETHING THAT YOU THINK WILL CHANGE MY MIND, I HAVE LOOKED AT A
11 NUMBER OF CASES ABOUT THIS. I THINK -- I'VE READ VIGIER'S, I'M GOING TO
12 ALLOW VIGIER'S STATEMENTS TO COME IN ON THE BASIS THAT I RULED
13 EARLIER, HIS TESTIMONY, ALONG WITH THE STIPULATION THAT THE STATE HAS
14 MADE AS TO WHAT BENEFITS HE ULTIMATELY RECEIVED. AND, OF COURSE, MR.
15 WILLIAMS HAS PUT INTO THE RECORD THE INDICTMENTS THAT WERE NOL
16 PROSSED OR COPIES OF THE INDICTMENTS THAT WERE NOL PROSSED ON THE
17 THREE CHARGES WHICH THE STATE ADMITS.

18 ALL RIGHT. YA'LL READY?

19 MR. GIBBONS: WE HAD A STIPULATION THAT WE NEEDED TO PUT
20 ON THE RECORD OVER THE BREAK.

21 THE COURT: ALL RIGHT.

22 MR. GIBBONS: YOUR HONOR, CHIEF DARNELL TESTIFIED DURING
23 THE CONSENT, SUPPRESSION HEARING PRIOR TO, I BELIEVE PRIOR TO THE JURY
24 BEING DISMISSED AND ALONG WITH MS. HIGHSMITH PROVIDED THE TESTIMONY
25 RELATIVE TO THE CONSENT. I SPOKE WITH MS. SANDERS AND MR. WILLIAMS

1 OVER THE BREAK AND THEY HAVE NO PROBLEM WITH STIPULATING TO THE
2 FACTS AS FOUND IN THAT HEARING RATHER THAN PUTTING THE CHIEF UP AND
3 HAVE HIM GO THROUGH THE SAME TESTIMONY AGAIN.

4 THE COURT: THE STIPULATION IS THAT ---

5 MR. GIBBONS: THE TESTIMONY ---

6 THE COURT: --- WOULD BE THAT HE, ALONG WITH A NUMBER OF
7 LAW ENFORCEMENT OFFICIALS, INCLUDING SOLICITOR'S EMPLOYEES AND SLED
8 AGENTS AND SHERIFF'S -- I MEAN, CITY OF BARNWELL LAW ENFORCEMENT
9 OFFICIALS WENT TO THE HOME OF MS. HIGHSMITH, SHE WAS NOT THERE.
10 WITHIN A RELATIVELY SHORT PERIOD OF TIME, SHE AND HER HUSBAND DROVE
11 UP TO THE HOME, THE CHIEF APPROACHED HER, INDICATED THAT HE WOULD
12 LIKE TO TALK TO HER, INDICATED THAT HE WOULD LIKE PERMISSION FROM HER
13 TO SEARCH THE HOME. SHE CONSENTED TO THAT SEARCH AND, OF COURSE,
14 THE RECORD WILL MORE FULLY STATE BECAUSE WE'LL MAKE THAT A PART OF
15 IT, SHE CONSENTED. HE GOT HER TO SIGN A CONSENT FORM. THAT WAS AT
16 SOMETHING 53, 7:53 OR SOMETHING LIKE THAT. A MINUTE LATER, HE TESTIFIED
17 THAT HE HAD DISCUSSIONS WITH HER ABOUT THAT HE HAD SECURED A SEARCH
18 WARRANT. THIS WAS AFTER SHE HAD SIGNED THE CONSENT FORM AND THAT
19 SHE, THEY THEN WENT ABOUT THE SEARCH. SHE ACTUALLY RETRIEVED THE
20 PISTOL AND GAVE IT TO HIM. IS THAT BASICALLY WHAT YA'LL ARE
21 CONSENTING, STIPULATING TO?

22 MR. GIBBONS: YOUR HONOR, WE WERE ALSO GOING TO
23 STIPULATE ---

24 MS. SANDERS: COULD WE STIPULATE THAT THEY ALSO GAVE
25 AMMUNITION.

1 THE COURT: YEAH, WELL HE GAVE THE CLIP.

2 MR. GIBBONS: RIGHT.

3 THE COURT: ANYTHING ELSE? I MEAN, WE'LL MAKE THAT
4 HEARING AS TO THE SEARCH WARRANT PART OF THE RECORD OF THIS TRIAL.

5 MR. GIBBONS: THERE'S ALSO FURTHER STIPULATION, YOUR
6 HONOR, THE PURSE THAT WAS FOUND IN THE CAR WAS TAKEN INTO CUSTODY
7 BY LAW ENFORCEMENT. WE WILL STIPULATE THAT IT DID NOT APPEAR TO HAVE
8 BEEN DISTURBED, OPENED OR GONE THROUGH, THAT THERE WAS SOME 16 TO
9 \$1800 IN THE PURSE, THAT REMAINED IN THE PURSE THROUGHOUT THIS
10 INCIDENT.

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MR. GIBBONS: STATE CALLS DAVID STALEY.

13 YOUR HONOR, DO WE NEED TO HAVE SOMEONE READ THIS VIGIER
14 STATEMENT INTO THE RECORD OR DO WE JUST MAKE IT A PART OF THE
15 RECORD?

16 THE COURT: WHATEVER YA'LL WANT TO DO. I HAVEN'T READ IT,
17 SO ---

18 MR. GIBBONS: YOU WANT ME TO SIT SOMEBODY IN THE SEAT TO
19 READ VIGIER'S OR WE JUST MAKE IT PART OF THE RECORD?

20 MR. WILLIAMS: I DON'T THINK THAT'S NECESSARY UNLESS YOU
21 DO, YOUR HONOR. I'D JUST AS SOON AS YOU READ IT OR WHATEVER.

22 THE COURT: WELL, I'D BE HAPPY TO DO WHATEVER YA'LL WANT
23 ME TO DO.

24 MS. SANDERS: WHAT'S THE ALTERNATIVE?

25 MR. GIBBONS: JUST MAKE IT A PART OF THE RECORD AND THE

1 JUDGE CAN REVIEW IT BEFORE HE MAKES HIS DECISION.

2 MS. SANDERS: OKAY. THAT'S FINE. HE CAN JUST REVIEW.

3 THE COURT: ALL RIGHT. THAT CASE I CITED EARLIER WAS US VS.
4 TAYLOR AT 800 FED 2ND 1012, IN CASE YA'LL WANTED TO LOOK AT IT OR IN CASE
5 ANY COURT SUBSEQUENT TO THIS WANTS IT.

6 MR. GIBBONS: YOUR HONOR, THE STATE WITHOUT OBJECTION IS
7 MOVING STATE'S EXHIBIT NO. 19 IN. THAT IS THE TRANSCRIPT OF THE PRIOR
8 TESTIMONY OF AURELIN VIGIER.

9 THE COURT: ALL RIGHT. IN LIEU OF SOMEONE READING IT, THE
10 PARTIES HAVE AGREED THAT I WILL READ IT AND THAT WILL BE PART OF THE
11 RECORD.

12 MR. GIBBONS: THAT'S CORRECT.

13 MS. SANDERS: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. THANK YOU.

15 THEREUPON,

16 DAVID STALEY,
17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: WOULD YOU PLEASE BE SEATED AND STATE YOUR
19 NAME FOR THE RECORD.

20 MR. STALEY: DAVID STALEY.

21 THE COURT: JUST BEFORE WE GET INTO THAT, WE ALSO WILL
22 MAKE THIS MESSIAH HEARING TESTIMONY FROM MR. VIGIER A PART OF THE
23 RECORD AS WELL.

24 MR. WILLIAMS: THAT WILL BE CORRECT, YOUR HONOR.

25 THE COURT: IT'S COURT'S EXHIBIT.

1 THE COURT REPORTER: THAT WILL BE STATE'S 6, YOUR HONOR. I
2 MEAN, COURT'S 6, I'M SORRY.

3 THE COURT: THANK YOU.

4 MR. GIBBONS: YOUR HONOR, I SPOKE TO COUNSEL AGAIN AND
5 RATHER THAN GO THROUGH THE MESSIAH ISSUE AGAIN ON THE STAND, THERE'S
6 A STIPULATION THAT THIS IS A - - -

7 THE COURT: WELL, WE DON'T NEED TO GO THROUGH THE
8 MESSIAH ISSUE. I MEAN, I'VE ALREADY HEARD THE TESTIMONY AND RULED
9 BASED ON THE TESTIMONY THAT WAS GIVEN AT THE HEARING JUST A LITTLE
10 WHILE AGO ON MESSIAH.

11 MR. GIBBONS: I'LL JUST SKIP THE HEART OF THE MATTER, THEN,
12 YOUR HONOR.

13 THE COURT: WHATEVER MAKES YOU HAPPY.

14 DIRECT EXAMINATION

15 BY MR. GIBBONS:

16 Q MR. STALEY, BACK IN DECEMBER OF 1998, WERE YOU IN THE BARNWELL
17 COUNTY DETENTION CENTER?

18 A YES, SIR.

19 Q AND DID YOU COME IN CONTACT WITH TUNZY SANDERS AT THAT TIME?

20 A YES, SIR.

21 Q AND AT THAT TIME WERE YOU AWARE OF EVENTS THAT HAD OCCURRED
22 AT THE CHINA EXPRESS RESTAURANT HERE IN BARNWELL?

23 A NO, SIR.

24 Q YOU DIDN'T KNOW ANYTHING ABOUT THE CRIME ITSELF?

25 A NO

- 1 Q PLEASE TALK INTO THE MICROPHONE. TELL ME HOW YOU CAME IN
2 CONTACT WITH MR. SANDERS.
- 3 A WE USED TO GO TO CLASS TOGETHER. THEY WOULD JUST HAVE A LITTLE,
4 LIKE CLASS - - -
- 5 Q INSIDE THE - - -
- 6 A INSIDE THE JAIL, YEAH.
- 7 Q AND WAS THAT EVERY DAY?
- 8 A NO, I THINK ONCE OR TWICE A WEEK.
- 9 Q AND THAT'S WHERE YOU MET HIM?
- 10 A NO.
- 11 Q YOU HAD MET HIM PRIOR TO THAT?
- 12 A PRIOR TO THAT, YEAH. WE USED TO GET OUR HEADS SHAVED TOGETHER.
- 13 Q SAME PLACE.
- 14 A YEAH.
- 15 Q AND DID YOU HAVE CONVERSATIONS WITH MR. SANDERS WHILE YOU
16 WERE INCARCERATED?
- 17 A YES.
- 18 Q AND HOW OFTEN DID YOU AND HE TALK?
- 19 A SHOWER NIGHTS, MEANT TUESDAYS, THURSDAYS AND SUNDAYS.
- 20 Q WERE YA'LL IN THE SAME CELL?
- 21 A NO.
- 22 Q JUST WHEN YOU WERE OUT YOU SAW HIM NOW AND AGAIN?
- 23 A YEAH.
- 24 Q AND DID HE EVER TALK TO YOU ABOUT WHY HE WAS IN JAIL?
- 25 A YEAH. YEAH, HE TOLD ME.

1 Q WHAT DID HE SAY TO YOU ABOUT BEING IN JAIL?

2 A HE SAID THAT HE WAS THERE ON A LITTLE CASE ABOUT THE LADY THAT
3 GOT SHOT DOWN AT THE CHINESE RESTAURANT.

4 Q DID HE SAY ANYTHING ELSE?

5 A YEAH. HE WAS TELLING ME ABOUT, YOU KNOW, WHAT THEY HAD
6 PLANNED TO DO AND HOW IT WENT DOWN.

7 Q ALL RIGHT. AND WHAT EXACTLY DID HE SAY TO YOU THOUGH? DID HE
8 SAY WHO WAS INVOLVED?

9 A YEAH, HE TOLD ME.

10 Q WOULD YOU TELL US WHAT HE SAID.

11 A HE SAID THAT THE GUY THAT WAS IN JAIL WITH HIM WAS MAURICE.

12 Q MAURICE BENNING?

13 A YEAH, MR. BENNING. HE SAID THAT HE WAS THERE AND THAT HE WROTE
14 STATEMENTS ON HIM AND THAT ANOTHER GUY THEY HAD TOOK TO
15 BAMBERG JAIL, HE WAS IN IT WITH HIM, MICHAEL, MICHAEL PAULS.

16 Q AND HE TOLD YOU THAT PART?

17 A YEAH.

18 Q DID HE TELL YOU ANYTHING ELSE ABOUT THE CASE?

19 A WELL, HE WAS TELLING ME ABOUT WHAT HAD HAPPENED, BASICALLY,
20 ABOUT WHAT HAPPENED.

21 Q COULD YOU TELL US WHAT HE SAID TO YOU?

22 A HE STATED THAT MIKE PLANNED IT, YOU KNOW, PLANNED TO ROB HER
23 AND THAT THEY WENT UP THERE AND SOMETHING WENT WRONG AND
24 THE LADY GOT SHOT.

25 Q DID HE SAY ANYTHING ABOUT THE GUN?

1 A YEAH, HE SAID THAT MAURICE HAD GIVE HIM THE GUN AND IT WAS A 25
2 AND I THINK HE SAID THAT MICHAEL PROBABLY HAD ANOTHER GUN. HE
3 HAD ANOTHER GUN, SO -- I DON'T REALLY RECALL WHAT KIND OF GUN
4 HE SAID THAT WAS.

5 Q DID HE SAY ANYTHING ABOUT ANYTHING HE DID WITH THE GUN?

6 A YEAH. HE WAS TELLING ME ABOUT HE LEFT SOME SHELLS AT THE SCENE
7 OR SOMETHING AT THE SCENE, SOME 25 SHELLS OR CARTRIDGES,
8 SOMETHING LIKE THAT.

9 Q DID HE TELL YOU ANYTHING ELSE ABOUT LEAVING CARTRIDGES THERE?

10 A I CAN'T REMEMBER IT, YOU KNOW.

11 Q I'M GOING TO REFER YOU TO PRIOR PROCEEDING, PAGE 462, STARTING ON
12 LINE 14.

13 MR. GIBBONS: YOUR HONOR, I'D LIKE TO GIVE HIM THIS.
14 DOCUMENT.

15 BY MR. GIBBONS:

16 A STOP AT 25?

17 Q DOES THAT REFRESH YOUR MEMORY, MR. STALEY?

18 A YES, SIR.

19 Q COULD YOU TELL US, PLEASE, WHAT MR. SANDERS SAID ABOUT THE GUN?

20 A YEAH, HE WAS TELLING ME ABOUT HE HAD WENT OUT TO EAT WITH HIS
21 SISTER, I REMEMBER NOW. AND HE WAS TELLING ME THAT HE HID THE
22 GUN, WHICH I DIDN'T BELIEVE HIM ON THAT , BUT THAT'S WHAT HE
23 STATED.

24 Q AND DID HE SAY ANYTHING ELSE ABOUT THE LADY THAT WAS KILLED?

25 A AS IN? WHAT ARE YOU TRYING - - -

1 Q AND DID HE SHOW YOU ANY PAPERWORK OR ANYTHING LIKE THAT?

2 A YEAH, HE SHOWED ME.

3 Q TELL US ABOUT THAT, PLEASE.

4 A HE SHOWED ME THE PAPERWORK ABOUT, I THINK IT WAS, IT COULD
5 HAVE BEEN A BULLET BALLISTICS, HOW IT ENTERED HER BODY AND HOW
6 IT GOT LODGED AND STUFF LIKE THAT.

7 Q AND DID HE SAY ANYTHING ABOUT THE BULLET?

8 A NO, HE DIDN'T SAY ANYTHING PARTICULAR. I DON'T KNOW WHAT YOU
9 MEAN BY DID HE SAY ANYTHING ABOUT THE BULLET, WHAT YOU'RE
10 TRYING TO ---

11 MR. GIBBONS: LET ME FIND IT, JUST A MOMENT, YOUR HONOR.

12 BY MR. GIBBONS:

13 Q I'M GOING TO REFER TO 457 THROUGH 459. I'M GOING TO ASK YOU IF YOU
14 CAN REFRESH YOUR MEMORY FROM THE PRIOR PROCEEDINGS. DOES
15 THAT REFRESH YOUR MEMORY?

16 A YES, SIR.

17 Q WHAT DID MR. SANDERS TELL YOU ABOUT THE SHOOTING OF THE LADY
18 AT THE RESTAURANT?

19 A THAT HE WAS, YOU KNOW, THAT HE WAS THERE, THAT HE WAS A PART OF
20 IT AND THAT THEY WAS GOING TO GET AWAY WITH IT, AND THAT HE
21 COULD VERY EASILY DO IT AGAIN.

22 Q WHAT DID HE SAY WAS VERY EASY AND HE COULD DO IT AGAIN?

23 A KILLING SOMEBODY.

24 Q DID HE SAY WHO SHOT THE LADY?

25 A NO, HE DIDN'T REALLY STATE WHO SHOT HER.

1 Q I WANT TO SHOW YOU PAGE 459 OF THE PRIOR PROCEEDING AND I WANT
2 YOU TO READ LINE 5 THROUGH 18.

3 A I JUST READ THAT.

4 Q WHAT DID MR. SANDERS SAY TO YOU ABOUT THE SHOOTING OF MS.
5 CHAPMAN?

6 A OKAY. I SEE WHAT YOU'RE SAYING.

7 Q IS YOUR MEMORY REFRESHED?

8 A YEAH, I SEE.

9 Q WHAT DID HE SAY ABOUT THE SHOOTING OF MS. CHAPMAN?

10 A HE SAY HE DID IT.

11 Q DID HE SAY ANYTHING ELSE?

12 A ONLY THAT IT WOULD BE EASY TO DO IT AGAIN.

13 Q DID HE TELL YOU ANYTHING ELSE ABOUT THIS CASE?

14 A AS FAR AS HIS SISTER WAS GOING TO BE HIS LAWYER AND STUFF.

15 Q WHAT DID HE SAY ABOUT HIS SISTER BEING HIS LAWYER?

16 A THAT SHE WAS - - HAD COME DOWN AND SHE WAS TALKING TO SOME OF
17 THE WITNESSES AND SHE WAS GOING TO GIVE THEM A CHANCE AND GET
18 STATEMENTS.

19 Q HE TOLD YOU THAT?

20 MR. WILLIAMS: I HAVE AN OBJECTION. THAT'S NOT - - HEARSAY.
21 IT'S NOT AN ISSUE AGAINST INTEREST OR - - -

22 THE COURT: OVERRULED.

23 MR. GIBBONS: ANSWER ANY QUESTIONS MR. WILLIAMS HAS FOR
24 YOU, MR. STALEY.

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CROSS-EXAMINATION

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BY MR. WILLIAMS:

Q MR. STALEY, YOU TESTIFIED IN THIS CASE 2 YEARS AGO, IS THAT NOT
CORRECT?

A THAT'S CORRECT.

Q AND, OF COURSE, YOU HAD TO READ PART OF YOUR TESTIMONY TO
REMEMBER WHAT YOU SAID LAST TIME, ISN'T THAT CORRECT?

A YES, SIR.

Q BECAUSE WHAT YOU SAID HERE TODAY ON THIS STAND WAS
INCONSISTENT WITH WHAT YOU SAID 2 YEARS AGO, ISN'T THAT
CORRECT?

A JUST A LACK OF MEMORY.

Q LACK OF MEMORY?

A YEP.

Q THE TRUTH OF THE MATTER IS, IT'S MORE OF A MATTER WHERE YOU
MADE SOMETHING UP AND YOU CAN'T REMEMBER WHAT YOU SAID
SOMETIME, ISN'T THAT TRUE?

A I DON'T HAVE TO MAKE ANYTHING UP.

Q ALL RIGHT. DO YOU REMEMBER MAKING ANY STATEMENTS LAST TIME
ABOUT TWO GUNS?

A TWO GUNS?

Q TWO GUNS BEING USED?

A I SAID JUST A WHILE AGO THAT HE TOLD ME THAT MR. MAURICE GAVE
HIM ONE AND THAT MR. PAUL HAD ANOTHER ONE.

Q ALL RIGHT. AND WHO HAD ALL THESE GUNS AT THE END? DO YOU

1 REMEMBER SAYING ANYTHING ABOUT THAT?

2 A WELL, HE TOLD ME THAT HE HID A GUN, BUT I DON'T KNOW.

3 Q HE TOLD YOU THAT HE HID THE 25 GUN, IS THAT RIGHT?

4 A YEAH, THAT'S RIGHT.

5 Q OKAY. AND WHERE DID HE TELL YOU HE HID THE 25 GUN?

6 A HE SAID THAT HE HAD WENT OUT TO EAT AND THAT - - HIM AND HIS
7 SISTER WENT OUT TO EAT AND HE HID THE GUN SOMEWHERE OUT OF
8 STATE.

9 Q WAS THAT THE 25 GUN OR THE 22 GUN?

10 A HE SAID THE 25 GUN.

11 Q OKAY. NOW, WHAT DID HE DO WITH THE 22 GUN?

12 A HE DIDN'T MENTION THE 22, WHAT HE HAD TO DO WITH IT.

13 Q DID HE TELL YOU HE HAD THE 22 OR DID HE TELL YOU MICHAEL PAUL
14 HAD THE 22?

15 A HE DIDN'T SAY MICHAEL PAUL HAD A 22, HE TOLD ME HE HAD A 25, SO HE
16 NEVER DID, YOU KNOW - - HE SAID THE MICHAEL PAUL HAD ANOTHER
17 GUN. HE DIDN'T STATE WHETHER IT WAS A 22 OR NOT.

18 Q ARE YOU SURE OF THAT?

19 A I'M PRETTY SURE. I CAN REMEMBER THAT MUCH, YEAH.

20 Q IF YOU WOULD READ PAGE 63, LINE 10 THROUGH LINE 14.

21 MR. GIBBONS: IS THAT 463?

22 MR. WILLIAMS: I'M SORRY, 463.

23 MR. STALEY: 463.

24 BY MR. WILLIAMS:

25 Q IS IT FAIR TO SAY THAT BACK THEN YOU TESTIFIED THAT HE HAD THE 22

1 GUN, ISN'T THAT CORRECT?

2 A YES, SIR. THAT'S WHAT I -- THAT'S ---

3 Q ALL RIGHT. AND YOU CHANGE YOUR TESTIMONY TODAY ON THAT?

4 A JUST DIDN'T REMEMBER. THERE WAS SO MUCH GOING ON BACK THEN.

5 Q AND, IN FACT, TODAY, AND THIS IS REAL IMPORTANT, YOU COULDN'T

6 REMEMBER WHO SAID THEY SHOT WHO, WHO SHOT WHO, ISN'T THAT

7 RIGHT?

8 A I WASN'T -- I DIDN'T TALK TO ANYBODY BUT HIM, I'M SORRY.

9 Q YOU DIDN'T TALK TO MAURICE BENNING WHILE YOU WERE IN JAIL.

10 A NO, I DIDN'T.

11 Q YOU DIDN'T KNOW MAURICE BENNING?

12 A I KNOW HIM NOW.

13 Q YOU KNOW HIM NOW?

14 A YEAH. I MEAN, I KNEW HIM WHILE HE WAS IN THERE, BUT WE DIDN'T
15 CONVERSATE, ME AND HIM IF THAT'S WHAT YOU'RE SAYING THOUGH.

16 Q YOU CLEARLY HAD THE OPPORTUNITY TO TALK TO MAURICE BENNING
17 WHEN YA'LL WERE IN JAIL TOGETHER BACK THEN?

18 A YES, HE WAS IN JAIL, BUT WE HAD NO OPPORTUNITY TO TALK.

19 Q DO YOU REMEMBER TELLING, TESTIFYING LAST TIME THAT TUNZY
20 DIDN'T TELL YOU HOW THE DEAL WENT DOWN?

21 A SHOW ME, I DON'T ---

22 Q YOU DON'T REMEMBER?

23 A HOW THE DEAL WENT DOWN?

24 Q CORRECT.

25 A YOU MEAN, THE ---

1 Q WHATEVER THEY WERE GOING TO DO THAT NIGHT?

2 A I CAN'T RECALL EXACTLY EVERYTHING, NO.

3 Q DO YOU REMEMBER TESTIFYING LAST TIME THAT TUNZY SANDERS HAD
4 TOLD YOU THAT HE PLANTED 25 CARTRIDGES AT THE SCENE TO KEEP
5 FROM BEING FOUND?

6 A I COULD HAVE - - MAYBE, I JUST SAID JUST A WHILE AGO I THOUGHT HE
7 SAID THAT HE HAD LEFT SOME 25'S AT THE SCENE.

8 Q DO YOU REMEMBER, YOU REMEMBER - - -

9 A I THINK I JUST SAID THAT A WHILE AGO.

10 Q OKAY. DID HE TELL YOU WHAT HE DID WITH THE 25 PISTOL, MR. STALEY?

11 A THAT'S WHAT I HAD JUST GOT CONFUSED WITH THE 25 AND 22, WHEN I
12 JUST SAID THAT I THOUGHT THERE WAS A 25 THAT HE TOLD ME THAT HE
13 HAD HID.

14 Q AND WHEN YOU FIRST TESTIFIED TODAY, YOU COULDN'T REMEMBER IF
15 TUNZY HAD SAID HE DID IT OR NOT, ISN'T THAT RIGHT?

16 A YEAH, I DID FORGET.

17 Q AND THAT'S AN IMPORTANT FACT. THAT'S PROBABLY THE MOST
18 CRUCIAL FACT THAT ONE WOULD REMEMBER, ISN'T THAT CORRECT?

19 A YES, SIR.

20 Q BUT YOU COULDN'T REMEMBER IT, COULD YOU?

21 A I REMEMBERED, I HAD THE QUESTION REWORDED SO, I DIDN'T KNOW.

22 Q YOU WERE CHARGED WITH BURGLARY SOMETIME AGO, IS THAT NOT
23 CORRECT?

24 A YES, SIR.

25 Q AND YOU GAVE STATEMENTS AGAINST SOMEONE ELSE TO GET RID OF

- 1 THOSE CHARGES, ISN'T THAT CORRECT?
- 2 A I GAVE STATEMENTS, I DON'T KNOW ABOUT GETTING RID OF THE
- 3 CHARGES.
- 4 Q OKAY. YOU GAVE STATEMENTS TODAY TO GET RID OF THE CHARGES
- 5 YOU HAVE AGAINST YOU FOR POSSESSION OF CRACK, ISN'T THAT
- 6 CORRECT?
- 7 A NO, SIR.
- 8 Q YOU WERE BONDED OUT OF JAIL ONE DAY AFTER THE LAST HEARING,
- 9 ISN'T THAT CORRECT?
- 10 A I BONDED OUT OF JAIL ONE DAY AFTER THE TRIAL.
- 11 Q YOUR BOND WAS REDUCED?
- 12 A OKAY.
- 13 Q FROM 80,000 TO 10,000, ISN'T THAT CORRECT?
- 14 A THAT'S RIGHT.
- 15 Q TODAY, YOU TESTIFIED EARLIER THAT TUNZY TOLD YOU THAT MICHAEL
- 16 PAUL BUCKMAN HAD PLANNED ALL THIS, ISN'T THAT CORRECT?
- 17 A YEAH.
- 18 Q ALL RIGHT. BUT LAST TIME, YOU TESTIFIED THAT TUNZY DIDN'T TELL
- 19 YOU HOW IT WAS SUPPOSED TO GO DOWN, ISN'T THAT RIGHT?
- 20 A I MIGHT OF WAS TALKING ABOUT WAS THEY GOING TO KILL THE LADY OR
- 21 NOT, I PROBABLY WAS TALKING ABOUT THAT PART, BUT I WAS STATING
- 22 ABOUT THE ROBBERY, YES, HE TOLD ME ABOUT THE ROBBERY.
- 23 Q READ PAGE 456, LINE 16 TO LINE 21 OF THE PREVIOUS TRIAL, PLEASE.
- 24 A THAT'S WHAT I JUST SAID. HE DIDN'T REALLY TELL EXACTLY HOW - - -
- 25 Q SO LAST TIME YOU TESTIFIED THAT HE DIDN'T TALK ANYTHING ABOUT

1 HOW ---

2 A I SAID ---

3 Q THEY WERE GOING ---

4 A I SAID ---

5 THE COURT: DON'T TALK OVER EACH OTHER.

6 BY MR. WILLIAMS:

7 A I SAID EXACT, NOW.

8 Q READ WHAT YOU SAID LAST TIME, LINE -- PAGE 456, LINE 17 THROUGH 21,
9 PLEASE. READ IT OUT LOUD.

10 A HE DIDN'T REALLY TALK ABOUT IT EXACT NOW, YOU KNOW.

11 Q KEEP ON READING. OUT LOUD.

12 A HOW IT WENT DOWN, SORT OF LIKE, I GUESS THAT HE WAS GOING TO ROB
13 THAT LADY AND SOMETHING CAME UP AND HE HAD TO SHOOT THE LADY
14 AND THAT HE LEFT CARTRIDGES, 25 CARTRIDGES AT THE SCENE SO THE
15 POLICE COULD FIND THEM. HE SAID HE LEFT THEM SO THAT -- OH,
16 THAT'S YOUR QUESTION.

17 Q OKAY.

18 MR. WILLIAMS: NO FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: ANYTHING FURTHER, MR. GIBBONS?

20 MR. GIBBONS: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. THANK YOU, YOU MAY STEP DOWN.

22 MR. GIBBONS: YOUR HONOR, THE NEXT ONE WILL PROBABLY BE A
23 LITTLE LENGTHY. DO YOU WANT TO DO IT NOW, OR YOU WANT TO DO IT AFTER
24 THE BREAK?

25 THE COURT: SORT OF THE OPPOSITE ISN'T IT, LITTLE AND

1 LENGTHY?

2 MR. GIBBONS: RATHER LENGTHY.

3 THE COURT: HOW LONG DO YOU ANTICIPATE?

4 MR. GIBBONS: ABOUT 30 MINUTES.

5 THE COURT: WHO WILL THAT BE?

6 MR. GIBBONS: I BELIEVE IT'S GOING TO BE MS. WILLIAMS.

7 THE COURT: ALL RIGHT. WELL, WE'LL TAKE A BREAK AND WE'LL
8 COME BACK HERE AT 2 O'CLOCK. HOW MANY MORE WITNESSES YA'LL HAVE?

9 MR. GIBBONS: I THINK I HAVE THREE MORE, JUDGE, COUNTING
10 HER, SO THREE TOTAL, LEFT.

11 THE COURT: WHO ARE THOSE?

12 MR. GIBBONS: MS. WILLIAMS, JERMAINE WALKER AND MR.
13 BENNING.

14 THE COURT: ALL RIGHT. WE'LL SEE YA'LL AT 2 O'CLOCK.

15 (WHEREUPON COURT WAS IN RECESS FOR LUNCH.)

16 THE COURT: ALL RIGHT. ARE WE READY TO GO?

17 MR. GIBBONS: WE'RE WAITING ON ONE OF OUR WITNESSES, YOUR
18 HONOR.

19 YOUR HONOR, THE STATE WOULD CALL TEMETRIUS WILLIAMS TO
20 THE STAND.

21 THEREUPON,

22 TEMETRIUS WILLIAMS,

23 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: HAVE A SEAT AND STATE YOUR NAME FOR THE
25 RECORD.

DIRECT EXAMINATION - TEMETRIUS WILLIAMS BY MR. GIBBONS

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1 MS. WILLIAMS: TEMETRIUS WILLIAMS.

2 DIRECT EXAMINATION

3 BY MR. GIBBONS:

4 Q MS. WILLIAMS, WHERE DO YOU LIVE?

5 A BLACKVILLE.

6 Q AND HOW LONG HAVE YOU LIVED IN BLACKVILLE?

7 A ALL MY LIFE.

8 Q IS THAT WHERE YOU WERE LIVING BACK IN DECEMBER OF 1997?

9 A YES.

10 Q OKAY. MS. WILLIAMS, DO YOU KNOW THE DEFENDANT IN THIS CASE, MR.
11 SANDERS?

12 A UH HUH.

13 Q AND HOW LONG HAVE YOU KNOW MR. SANDERS?

14 A I KNEW OF HIM, BUT I DIDN'T KNOW HIM KNOW HIM. I KNOW HIM BY
15 TUNZY.

16 Q AND DID YOU SEE HIM DECEMBER 11, 1997?

17 A YES.

18 Q AND WHO WAS WITH HIM THAT NIGHT?

19 A MICHAEL AND MAURICE.

20 Q AND COULD YOU TELL THE COURT, PLEASE, HOW YOU CAME TO SEE
21 THOSE THREE THAT NIGHT?

22 A MIKE CALLED ME EARLY AFTERNOON AND ASKED ME - - HE TOLD ME HE
23 HAD NEEDED TO TALK TO ME AND I ASKED HIM FOR WHAT AND HE SAID
24 IT WAS SOMETHING VERY VERY IMPORTANT. SO HE ASKED ME TO COME
25 TO BARNWELL. I TOLD HIM I WAS GOING TO BINGO SO HE ASKED ME

1 COULD I COME BEFORE I WENT TO BINGO AND I HAD TOLD HIM NO, BUT
2 THEN I SAID, WELL I'LL COME BUT BINGO STARTED AT 8 O'CLOCK, SO
3 WHEN I LEFT BLACKVILLE, IT WAS AROUND LIKE 6:50, GOING ON 7
4 O'CLOCK. SO I CAME TO BARNWELL.

5 Q ALL RIGHT. LET ME STOP YOU THERE. WAS IT DARK OUTSIDE WHEN YOU
6 GOT TO BARNWELL?

7 A YES.

8 Q AND BINGO, WHERE WERE YOU GOING TO PLAY BINGO?

9 A IN BLACKVILLE ON THE HILL.

10 Q YOU WERE GOING TO GO BACK TO BLACKVILLE?

11 A UH HUH.

12 Q AND DID YOU HAVE A RELATIONSHIP WITH MICHAEL BUCKMAN AT THAT
13 TIME?

14 A NO, IT WASN'T A RELATIONSHIP IT WAS JUST FRIENDS.

15 Q AND WERE YOU FRIENDS WITH THE OTHER PEOPLE THAT WERE THERE
16 THAT NIGHT, OR MAINLY JUST MIKE?

17 A WELL MAINLY JUST MICHAEL. I KNEW TUNZY, BUT I DIDN'T KNOW
18 MAURICE.

19 Q ALL RIGHT. AND MICHAEL CALLED YOU AND ASKED YOU TO COME TO
20 BARNWELL?

21 A UH HUH.

22 Q AND DIDN'T TELL YOU WHY?

23 A NO.

24 Q ALL RIGHT. WHAT HAPPENED WHEN YOU GOT TO BARNWELL?

25 A WHEN I GOT TO BARNWELL, I WENT TO HIS HOUSE AND HE CAME OUT THE

1 DOOR.

2 Q MICHAEL'S HOUSE.

3 A YEAH, MICHAEL'S HOUSE. AND HE CAME OUT THE DOOR AND HE ASKED
4 ME TO BORROW MY CAR AND I TOLD HIM, NO. I SAID WHY AND HE SAID
5 JUST LET ME HAVE YOUR CAR. HE SAID, JUST STAY HERE AND I'LL BRING
6 YOU SOME MONEY BACK IF YOU JUST STAY HERE AND I SAID - - HE SAID,
7 STAY HERE WITH MY MAMA. AND I SAID, NO. AND SO I SAID, WHEREVER
8 YOU NEED A RIDE TO, I'LL GIVE YOU A RIDE. SO HE SAID TO GIVE HIM A
9 RIDE UPTOWN AND SO THAT'S WHEN TUNZY AND MAURICE CAME OUT
10 THE DOOR.

11 Q OUT OF WHICH DOOR?

12 A OUT OF HIS FRONT DOOR AT HIS HOUSE.

13 Q MICHAEL'S HOUSE?

14 A UH HUH.

15 Q WHAT HAPPENED AFTER THEY CAME OUT OF THE DOOR AT MICHAEL'S
16 HOUSE?

17 A THEY CAME OUT, THEN THEY INTRODUCED ME TO MAURICE, TOLD ME
18 THAT WAS TUNZY'S BROTHER AND THEN I ASKED THEM WHERE THEY
19 WAS GOING AND THEY SAID GIVE THEM A RIDE UPTOWN. AND SO THEY
20 GOT IN THE CAR.

21 Q WHO WAS DRIVING?

22 A I WAS.

23 Q AND TELL ME WHAT HAPPENED AFTER THAT.

24 A THEY GOT IN THE CAR AND MIKE ASKED ME TO GO THE BACK ROADS. I
25 CAN'T REMEMBER IF I DID OR NOT, BUT IF I'M NOT MISTAKEN I DIDN'T GO

1 THE BACK ROADS. WE CAME.

2 Q DID HE SAY ANYTHING ABOUT WHY?

3 A NO, HE JUST SAID GIVE THEM A RIDE UPTOWN. SO WE CAME UPTOWN
4 AND HE ASKED ME TO GO TO THE HOUSE OF PIZZA.

5 Q ALL RIGHT. IS THAT RIGHT HERE NEAR THE COURTHOUSE, A BLOCK
6 FROM THE COURTHOUSE?

7 A THAT'S RIGHT HERE. HE TOLD ME TO MAKE A RIGHT RIGHT HERE BY
8 RENTWAY OR SOMETHING LIKE THAT. AT THE LITTLE STREET RIGHT
9 THERE.

10 Q ALL RIGHT. HE TOLD YOU TO GO TO THE HOUSE OF PIZZA AND WHAT
11 HAPPENED THEN?

12 A HE TOLD ME TO GO TURN AT THAT ROAD RIGHT THERE AND MAKE A
13 LEFT, IT'S A LITTLE NARROW STREET BETWEEN HOUSE OF PIZZA AND
14 SOME LITTLE HOUSES BACK THERE AND HE TOLD ME TO MAKE A LEFT
15 RIGHT THERE.

16 Q ALL RIGHT. IS THAT THE PARKING LOT THAT YOU USED TO GO TO THE
17 HOUSE OF PIZZA?

18 A I THINK SO. I THINK THE PARKING LOT IS RIGHT THERE ON THE FRONT
19 SIDE.

20 Q AND HE TOLD YOU TO GO A DIFFERENT SIDE?

21 A YES, HE JUST TOLE ME TO GO PARK HE SAID BEHIND IT. AND I SAID, WHY
22 BEHIND IT AND HE SAID JUST PARK RIGHT HERE AND I SAID WHY. HE SAID
23 HE NEEDED TO GO HOLLER AT ONE OF HIS HOME BOYS.

24 Q HE NEEDED TO GO WHAT?

25 A HOLLER AT ONE OF HIS HOME BOYS.

1 Q OKAY. SO WHAT HAPPENED THEN?

2 A SO HIM AND TUNZY GOT OUT OF THE CAR.

3 Q WHAT ABOUT MAURICE?

4 A MAURICE STAYED IN THE BACK SEAT BECAUSE MAURICE - - MAURICE
5 AND TUNZY WAS IN THE BACK SEAT AND MICHAEL WAS IN THE FRONT
6 AND - - -

7 Q HOW WERE THEY DRESSED THAT NIGHT?

8 A I DON'T EXACTLY REMEMBER WHAT COLOR IT WAS. I KNOW IT WASN'T A
9 LIGHT COLOR. I MEAN, IT MIGHT HAVE BEEN BLACK, IT MIGHT HAVE
10 BEEN - - I DON'T REMEMBER EXACTLY WHAT COLOR IT WAS.

11 Q AND WAS THERE ANYTHING UNUSUAL ABOUT WHAT THEY HAD WITH
12 THEM, WHAT THEY HAD ON?

13 A I WAS JUST - - I MEAN THEY HAD LITTLE RADIOS, LITTLE - - BECAUSE I
14 REMEMBER WHEN MICHAEL WAS - - -

15 Q WALKMAN RADIO OR LIKE A WALKIE TALKIE? WHAT KIND OF RADIOS?

16 A I JUST SEEN HIM, I DIDN'T ACTUALLY SEE IT, HE WAS ON THE FRONT ROAD
17 RIGHT THERE AND I SEEN HIM HOLDING SOMETHING UP TO HIS MOUTH
18 AND I HEARD - - WHEN HE CAME BACK TO THE CAR HE SAID SOMETHING
19 HAPPENED TO HIS RADIO.

20 Q WHO IS HE?

21 A MIKE.

22 Q ALL RIGHT. SO THEY GOT OUT. WHAT DID THEY DO AFTER THEY GOT
23 OUT?

24 A THEY WALKED OVER TO - - THEY WALKED DOWN THE SIDEWALK AND
25 THEN THEY CAME BACK AND HIM AND TUNZY WAS TALKING, I DIDN'T

1 ACTUALLY HEAR WHAT THEY WAS SAYING BECAUSE I WAS INSIDE THE
2 CAR. BUT THEN SOMETHING WENT WRONG AND THEY SAID THEY
3 WANTED TO LEAVE. AND SO MIKE ASKED TO DROP HIM OFF IN FRONT OF
4 THE -- RIGHT HERE AROUND THE CIRCLE IN FRONT OF THIS BANK RIGHT
5 HERE.

6 Q RIGHT ACROSS FROM THE COURTHOUSE?

7 A YEAH.

8 Q WAS ALL THIS FRONT OF THE COURTHOUSE THE SAME BACK THEN OR
9 WAS IT DIFFERENT?

10 A I MEAN, I ACTUALLY DON'T REMEMBER. I MEAN, IT MIGHT HAVE BEEN
11 SOME CHANGE, I HAVEN'T NOTICED.

12 Q WHERE DID YOU PARK?

13 A I PARKED RIGHT HERE IN THE PARKING LOT, RIGHT HERE.

14 Q IN THE COURTHOUSE PARKING LOT?

15 A RIGHT HERE IN FRONT OF -- RIGHT HERE, THE PARKING LOT IN FRONT OF,
16 ACROSS FROM THE BANK AND THE CAFÉ AND THEN SOME LITTLE STORES.

17 Q THAT LITTLE ISLAND PIECE, YOU PARKED RIGHT THERE. A LITTLE PIECE
18 OF GRASS WITH THE TOWER IN THE MIDDLE OF IT?

19 A UH HUH.

20 Q ALL RIGHT. WHAT HAPPENED WHEN YOU PULLED UP THERE?

21 A WELL, I PULLED UP AND ASKED THEM WAS THEY GOING TO STAY AND SO
22 MIKE GOT OUT OF THE CAR FIRST AND HE WS GOING TOWARD THE BANK
23 AND I THINK TUNZY, HE WAS GETTING OUT OF THE CAR. HE WAS
24 STANDING ON THE SIDE OF THE CAR AND SO WHEN THEY GOT READY TO
25 WALK TOWARD ME, I CRANKED UP LIKE I WAS GETTING READY TO GO.

1 Q WHY WERE YOU DOING THAT?

2 A BECAUSE I ASKED THEM WAS THEY GOING TO STAY, BUT THEY LEFT
3 MAURICE IN THE CAR. AND SO THEY CAME RUNNING BACK TO THE CAR
4 AND SO ---

5 Q WHEN YOU CRANKED UP OR ---

6 A YEAH, WHEN I CRANKED IT UP, THEY CAME ON BACK TO THE CAR. AND
7 HE SAID SOMETHING ABOUT SOME MONEY IN A ---

8 MS. SANDERS: I'M GOING TO OBJECT. THIS IS HEARSAY AND IT'S
9 NOT AN ADMISSION AGAINST INTEREST AND I'M GOING TO OBJECT FOR THAT
10 REASON. IN FACT, ANY FURTHER TESTIMONY ABOUT WHAT THEY SAID.

11 MR. GIBBONS: YOU HONOR, THE STATE'S POSITION IS THIS IS
12 DURING THE COURSE OF A CONSPIRACY ---

13 MS. SANDERS: YOUR HONOR ---

14 MR. GIBBONS: WITH CO-CONSPIRATORS.

15 MS. SANDERS: THAT HASN'T BEEN ESTABLISHED THAT THERE WAS
16 ANY CONSPIRACY AT ALL OUT OF HER TESTIMONY, SO I WOULD OBJECT. ALL
17 SHE HAS SAID SO FAR, YOUR HONOR, YOU'VE HEARD THE TESTIMONY, IS THAT
18 THEY GOT IN A CAR, RODE UP TO A CERTAIN PLACE, GOT OUT OF THE CAR AND
19 THEN GOT BACK IN THE CAR. THERE IS NOTHING AT ALL EVEN CLOSE TO
20 ANYTHING CONSPIRING TO DO ANYTHING.

21 THE COURT: OVERRULED.

22 BY MR. GIBBONS:

23 Q DID YOU HAVE ANY IDEA WHAT THEY WERE DOING AT THE HOUSE OF
24 PIZZA AND THE BANK.

25 A HUH HUH. THEY SAID SOMETHING ABOUT SOME MONEY IN A CHAIR AND I

1 SAID, WHY WOULD SOMEONE PUT MONEY IN A CHAIR AND IT'S CLOSE TO
2 CHRISTMAS TIME, IT WAS NOVEMBER, AND I SAID, YA'LL NEED TO STOP
3 ACTING SILLY BECAUSE THERE IS NO REASON WHY SOMEONE WOULD
4 PUT MONEY IN A CHAIR. AND SO THEY GOT BACK IN THE CAR AND SOME
5 WOMAN CAME OUT OF THE BANK AND MIKE TOLD ME TO FOLLOW HER.
6 AND IT HAD STARTED RAINING REAL HARD AND SO HE ASKED ME TO LET
7 HIM DRIVE. SO I LET HIM DROVE AND SO - - -

8 MS. SANDERS: YOUR HONOR, I'M NOT GOING TO OBJECT AGAIN, I
9 JUST WANT TO MAKE A CONTINUING OBJECTION ABOUT WHAT SHE SAYS
10 SOMEONE ELSE SAID, IT'S HEARSAY.

11 THE COURT: THANK YOU, OVERRULED.

12 BY MR. GIBBONS:

13 Q PLEASE CONTINUE. WHAT DID - - LET ME STOP YOU THERE, THIS
14 CONVERSATION ABOUT MONEY IN A CHAIR, WHERE WERE YA'LL AT
15 WHEN THAT WAS GOING ON?

16 A WE WAS IN FRONT OF THE BANK.

17 Q AND WHAT CHAIR WERE THEY TALKING ABOUT?

18 A INSIDE OF THE BANK.

19 Q WAS THE BANK OPEN STILL?

20 A NO.

21 Q WAS THERE ANYBODY IN THE BANK?

22 A YEAH.

23 Q SO IT WAS CLOSING TIME?

24 A IT MIGHT OF WAS.

25 Q THE BANK WAS CLOSED?

1 A YEAH, IT WAS CLOSED.

2 Q AND YOU'RE SAYING SOMEBODY WAS STILL IN THERE?

3 A UH HUH.

4 Q AND THEY CAME OUT?

5 A WHO?

6 Q THE PEOPLE IN THE BANK CAME OUT?

7 A I HEARD - - I DIDN'T NEVER LOOK BACK. I JUST HEARD ONE OF THEM SAY,
8 SOMETHING ABOUT A WOMAN CAME OUT OF THE BANK AND THEN HE
9 TOLD ME TO FOLLOW HER.

10 Q WHO'S HE?

11 A MIKE.

12 Q AND WHAT DID YOU DO?

13 A I SAID I DIDN'T SEE NO WOMAN THERE. HE SAID, THERE SHE GO RIGHT
14 THERE, THERE SHE GO RIGHT THERE. STOP RIGHT HERE AND YOU'LL SEE.
15 I SAID, I DON'T SEE NOBODY AND SO HE SAID LET HIM DRIVE. SO
16 SOMEHOW HE DIDN'T SEE HER OR HE LOST TRACK OF HER BECAUSE IT
17 WAS RAINING REAL HARD AND, YOU KNOW, HE WAS OUT HERE. SO I KEPT
18 HOLLERING ABOUT I NEED SOME GAS, I NEED SOME GAS AND SO TUNZY
19 SAID, LET HER GO GET SOME GAS, LET HER GO GET SOME GAS. SO WE
20 WENT TO THE GAS STATION.

21 WHEN WE WENT TO THE GAS STATION, MIKE TURNED HIS HEAD
22 AND SAID, ONE OF THEM TO PAY FOR MY GAS AND I SNATCHED MY KEYS
23 AND I ASKED HIM, NOW WHERE ARE YA'LL GOING. SO THEY TOLD ME TO
24 A BOY NAMED SNOOPS HOUSE. SO THAT'S WHEN ONE OF THEM WENT
25 AND PAID FOR THE GAS, CAME BACK. AND I TOOK THEM TO SNOOPS

1 HOUSE OVER THERE ACROSS FROM REID'S AND THEN I LEFT AND WENT
2 BACK TO BLACKVILLE.

3 Q DID ANYBODY MAKE A STATEMENT IN YOUR PRESENCE THAT NIGHT
4 ABOUT WHAT THEY WERE GOING TO DO OR WHAT THEY WERE TRYING TO
5 DO?

6 A NO.

7 Q OKAY. I'M GOING TO SHOW YOU THE STATEMENT THAT YOU GAVE TO
8 INVESTIGATOR MARTIN ON OCTOBER 6, 1998 AND WOULD POINT YOU TO
9 PAGE 2 NEAR THE BOTTOM. I'D ASK YOU TO READ THAT TO YOURSELF.
10 DOES THAT REFRESH YOUR MEMORY?

11 A WELL, I MEAN IF I WROTE IT, I WOULD SAY I MIGHT HAVE REMEMBERED IT
12 THEN, BUT I CAN'T REMEMBER ACTUALLY EVERY WORD THAT WAS SAID
13 THAT NIGHT, SO HE COULD HAVE SAID IT. IF I SAID IT, HE PROBABLY DID
14 SAID IT.

15 Q SO AS OF RIGHT NOW, YOU DON'T REMEMBER HIM SAYING ANYTHING
16 LIKE THAT?

17 A AS OF RIGHT NOW, I CAN'T EXACTLY REMEMBER EVERY WORD THAT WAS
18 SAID.

19 Q NO ONE MADE ANY STATEMENTS THAT NIGHT ABOUT WHAT THEY WERE
20 DOING AND WHAT THEY WERE TRYING TO DO?

21 MS. SANDERS: OBJECTION, YOUR HONOR. IT'S BEEN ASKED AND
22 ANSWERED.

23 THE COURT: OVERRULED.

24 CAN YOU ANSWER THE QUESTION?

25 MS. WILLIAMS: DID ANYBODY MAKE ANY - - -

1 BY MR. GIBBONS:

2 Q STATEMENTS?

3 A WELL THE ONLY STATEMENT I HAD, TUNZY SAID THAT HE WAS GOING TO
4 GET SOME CHEESE TONIGHT. I MEAN, HE MIGHT HAVE - - HE LOVED TO
5 JOKE ABOUT - - HE MIGHT HAVE SAID IT. IF I SAID HE SAID IT, HE
6 PROBABLY MORE THAN LIKELY SAID IT, BUT, YOU KNOW, YOU ASK ME
7 WHAT IT COULD PROBABLY HAVE MEANT, I SAY IT COULD MEAN
8 ANYTHING.

9 Q ALL RIGHT. DO YOU ADMIT OR DENY TELLING MR. MARTIN BACK ON
10 OCTOBER 6 OF 1998, WHEN HE ASKED YOU, WHAT DID TUNZY SAY WHEN
11 HE WAS GETTING BACK IN THE CAR AT THE BANK, AND YOU ASKED HIM
12 WE'RE GOING TO GET SOME CHEESE TONIGHT, SO I SUSPECTED THAT
13 MEANT MONEY.

14 A DO I ADMIT IT?

15 Q DO YOU ADMIT OR DENY THAT STATEMENT?

16 A I ADMIT IT.

17 Q YOU ADMITTING TO THAT STATEMENT?

18 A UH HUH.

19 Q NOW, MS. WILLIAMS, AT A PRIOR PRECEDING IN THIS CASE, YOU
20 PROVIDED TESTIMONY, DID YOU NOT?

21 A UH HUH.

22 Q AND IS IT EXACTLY THE SAME AS WHAT YOU SAID HERE TODAY?

23 A YES.

24 Q DO YOU REMEMBER TESTIFYING ABOUT A STATEMENT THAT YOU GAVE
25 OFFICER MARTIN, A WRITTEN STATEMENT THAT YOU DID FOR OFFICER

- 1 MARTIN?
- 2 A WHO IS OFFICER MARTIN?
- 3 Q THE STATEMENT I JUST SHOWED YOU, THE WRITTEN STATEMENT?
- 4 A OH, OKAY. DO I REMEMBER WRITING IT?
- 5 Q YES, MA'AM.
- 6 A YES.
- 7 Q DO YOU REMEMBER TESTIFYING ABOUT IT AT THE LAST HEARING THAT
- 8 WE HAD?
- 9 A I REMEMBER, YEAH.
- 10 Q AND IS THERE ANYTHING DIFFERENT ABOUT YOUR TESTIMONY TODAY
- 11 THAN THERE WAS ABOUT ---
- 12 A YES.
- 13 Q WHAT'S DIFFERENT THIS TIME?
- 14 A I DIDN'T -- I SAID THE PLACES THAT WE WENT, BUT I DIDN'T ACTUALLY
- 15 TELL ALL THE THINGS THAT I SAID ON MY STATEMENT.
- 16 Q AND WHEN YOU TESTIFIED ABOUT THIS STATEMENT AT THE LAST
- 17 HEARING ON THIS CASE, DID YOU ADMIT THAT THIS WAS A TRUE
- 18 STATEMENT?
- 19 A NO, I DID NOT.
- 20 Q WHAT DID YOU SAY AT THAT TIME?
- 21 A I SAID THAT IT WASN'T TRUE, THAT IT DIDN'T HAPPEN THAT WAY.
- 22 Q AND WHAT IS YOUR TESTIMONY HERE TODAY?
- 23 A THE STATEMENT THAT I WROTE THE FIRST TIME.
- 24 Q YES, MA'AM.
- 25 A THAT'S THE TRUTH.

DIRECT EXAMINATION - TEMETRIUS WILLIAMS BY MR. GIBBONS

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1 Q THIS ONE YOU WERE SHOWN A FEW MINUTES AGO IS THE TRUTH?

2 A UH HUH.

3 Q AND THAT IS NOT WHAT YOU SAID AT THE LAST HEARING, CORRECT?

4 A NO.

5 Q AND WERE YOU INDEED LYING AT THE LAST HEARING ON THAT ISSUE
6 ALONE?

7 A I WASN'T LYING, I JUST WASN'T TELLING THE WHOLE TRUTH.

8 Q AND YOUR TESTIMONY TODAY IS THAT WHAT YOU TOLD MR. MARTIN IS
9 WHAT HAPPENED?

10 A YES.

11 Q IS THERE ANY REASON WHY YOUR TESTIMONY HAS CHANGED SINCE THE
12 LAST HEARING?

13 A WELL, THE LAST HEARING, I WAS UNDER A LOT OF PRESSURE. THERE
14 WAS, YOU KNOW - - MY JOB, A LOT OF PEOPLE COMING UP TO ME SAYING
15 THAT I DID THIS, I DID THAT, SO, YOU KNOW, I WAS TRYING TO FIND A
16 EASY WAY OUT OF IT. SO I FIGURED IF I GOT UP HERE AND I DIDN'T TELL
17 THE WHOLE TRUTH THAT IT WOULD, YOU KNOW, GO AWAY.

18 Q AND WHAT ABOUT MR. BUCKMAN? DID YOU STILL HAVE SOME KIND OF
19 RELATIONSHIP WITH HIM AT THAT TIME?

20 A NO. I MEAN, WE - - HE COMES TO SEE, BUT IT'S NOTHING MORE THAN
21 THAT?

22 Q AND DID YOU EVER GO SEE HIM IN JAIL?

23 A YES.

24 Q BEFORE WE WENT TO TRIAL?

25 A YES.

DIRECT EXAMINATION - TEMETRIUS WILLIAMS BY MR. GIBBONS

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- 1 Q MORE THAN ONE TIME?
- 2 A YES.
- 3 Q AND DID YOU TALK ABOUT THE TESTIMONY, ABOUT THE FACTS OF THIS
- 4 CASE WITH HIM?
- 5 A NO. WE NEVER -- HE NEVER BRUNG UP ANYTHING TOO MUCH ABOUT
- 6 THE STATEMENT.
- 7 Q DID ANYBODY TALK ABOUT YOUR TESTIMONY IN THIS CASE?
- 8 A I HAVE ---
- 9 Q BEFORE THE LAST TRIAL?
- 10 A TALKING ABOUT THE LAST TRIAL?
- 11 Q BEFORE WE HAD THE LAST TRIAL, DID ANYBODY TALK TO YOU ABOUT
- 12 WHAT YOUR TESTIMONY WOULD BE?
- 13 A I HAVE TALKED TO HER. I HAVE WENT OUT TO HER HOUSE AND TALKED
- 14 TO HER.
- 15 Q WHO'S HER?
- 16 A MS. -- I DON'T KNOW HER NAME. I THINK IT'S BRENDA.
- 17 Q MS. SANDERS?
- 18 A YES, MS. SANDERS.
- 19 Q MS. SANDERS?
- 20 A UH HUH.
- 21 Q YOU WENT TO HER HOUSE AND TALKED TO HER?
- 22 A UH HUH.
- 23 Q ABOUT YOUR TESTIMONY?
- 24 A WELL, THAT WAS BEFORE I GOT UP AND TESTIFIED. I JUST WAS
- 25 CAUTIONING HER, YOU KNOW, ABOUT WHEN I COME TO COURT;

1 WHETHER OR NOT I HAD TO GET ON THE STAND. AND, YOU KNOW, I WAS
2 ASKING HER WHAT TO DO.

3 Q AND WERE YOU TOLD TO SAY ANYTHING IN PARTICULAR PRIOR TO YOU
4 TESTIFYING LAST TIME?

5 A SHE JUST TOLD ME TO PLEAD THE 5TH.

6 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: ANYTHING FROM THE DEFENDANT?

8 MR. WILLIAMS: YES, SIR, YOUR HONOR.

9 CROSS-EXAMINATION

10 BY MS. SANDERS:

11 Q GOOD AFTERNOON.

12 A AFTERNOON.

13 Q HOW YOU DOING?

14 A FINE.

15 Q MS. WILLIAMS, I'M GOING TO ASK YOU SOME QUESTIONS.

16 A UH HUH.

17 Q AND I WANT YOU TO ANSWER THEM.

18 A OKAY.

19 Q NOW, YOU JUST MADE A STATEMENT THAT YOU CAME TO MY HOUSE?

20 A UH HUH.

21 Q DID YOU SEE ME THERE AT THAT HOUSE AT THE TIME YOU CAME TO MY
22 HOUSE?

23 A NO, I TALKED TO YOU ON THE TELEPHONE. I THINK I SAW YOUR SISTER.

24 Q YOU SAW MY SISTER? I WAS NOT THERE, WAS I?

25 A I CAN'T EXACTLY REMEMBER. I CAN'T REMEMBER. I MEAN -- I KNOW I

1 HAVE TALKED TO YOU.

2 Q YOU REMEMBER TALKING TO ME OVER THE TELEPHONE?

3 A YES. IF I'M NOT MISTAKEN, I TALKED TO YOU WHEN I CAME OUT TO
4 YOUR HOUSE.

5 Q ARE YOU AWARE THAT I DON'T LIVE HERE?

6 A YES.

7 Q DO YOU KNOW WHEN IT WAS THAT YOU CAME?

8 A NO.

9 Q SO IT'S A POSSIBILITY THAT YOU MAY HAVE TALKED WITH MY SISTER?

10 A I GUESS.

11 Q YOU REMEMBER INDICATING TO ME THAT YOU HAVE - - THE POLICE
12 WERE THREATENING TO CHARGE YOU WITH A CRIME IN CONNECTION
13 WITH THIS MATTER?

14 A UH HUH.

15 Q AND DO YOU RECALL MY ADVISING YOU THAT YOU SHOULD GET A
16 LAWYER?

17 A YES.

18 Q AND THAT YOUR LAWYER COULD TELL YOU WHAT YOU COULD DO
19 ABOUT THIS MATTER?

20 A YES.

21 Q AND DID YOU, IN FACT, RETAIN A LAWYER TO HELP YOU?

22 A NO. I WENT, BUT I NEVER, YOU KNOW, GOT A LAWYER.

23 Q AND DO YOU ALSO RECALL TELLING ME THAT THEY WERE HARASSING
24 YOU AND YOU FELT LIKE YOU WERE BEING FORCED TO SAY SOME OF THE
25 THINGS THAT YOU SAID HERE TODAY? DO YOU REMEMBER SAYING THAT

CROSS-EXAMINATION - TEMETRIUS WILLIAMS BY MS. SANDERS

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1 NOW?

2 A YES.

3 Q AND, IN FACT, YOU REMEMBER TELLING ME THAT THEY HAD COME ON
4 YOUR JOB AND THAT YOU FELT THAT YOU WERE GOING TO LOSE YOUR
5 JOB IF YOU DIDN'T MAKE THE STATEMENT THAT MR. GRANT GIBBONS
6 JUST ASKED YOU ABOUT, IS THAT CORRECT?

7 A YES.

8 Q JUST LET ME ASK YOU, WHEN YOU MADE THIS STATEMENT THAT MR.
9 GRANT GIBBONS, THE SOLICITOR REFERRED TO JUST NOW, WHERE WERE
10 YOU?

11 A I WAS AT WORK.

12 Q YOU WERE AT YOUR JOB?

13 A UH HUH.

14 Q AND WHO CAME TO YOUR JOB? YOU SAID SOME POLICE OFFICERS CAME
15 TO YOUR JOB, CORRECT?

16 A UH HUH.

17 Q MR. GIBBONS INCLUDED, CORRECT?

18 A I DON'T THINK -- I THINK IT WAS TWO OTHER GUYS.

19 Q AND HOW MANY PEOPLE CAME TO YOUR JOB THAT DAY?

20 A THERE WAS TWO, PLUS OFFICER BAMBERG.

21 Q SO HOW MANY OFFICERS IN TOTAL?

22 A THREE.

23 Q OKAY. THREE OFFICERS CAME TO YOUR JOB. AND WHAT DID THEY DO
24 WHEN THEY GOT THERE? THEY TOOK YOU TO A ROOM, CORRECT? AT
25 YOUR JOB?

1 A UH HUH.

2 Q ISN'T THAT WHAT YOU SAID?

3 A UH HUH.

4 Q AND YOU SAID THAT THEY FORCED YOU TO WRITE THIS STATEMENT,
5 CORRECT?

6 A YES. THEY FORCED ME TO TELL THE TRUTH.

7 Q AND THEY FORCED YOU -- IN FACT, WHEN YOU TESTIFIED PREVIOUSLY IN
8 THIS MATTER, YOU INDICATED THAT THIS STATEMENT WAS FORCED,
9 CORRECT?

10 A TALKING ABOUT THE FIRST ONE?

11 Q YES.

12 A YES.

13 Q OKAY. AND YOU STATED THAT -- IN YOUR TESTIMONY, THAT THE ONLY
14 REASON WHY YOU WROTE THIS STATEMENT IS BECAUSE THEY -- YOU
15 THOUGHT THEY WOULD LEAVE YOU ALONE ON YOUR JOB, CORRECT?

16 A YES.

17 Q OKAY. NOW, THIS IS NOT THE ONLY STATEMENT THAT YOU GAVE TO LAW
18 ENFORCEMENT, CORRECT?

19 A THAT'S THE ONLY STATEMENT I WROTE.

20 Q YOU TALKED TO VINCE PADGETT ONE TIME, CORRECT? ON AUGUST 20TH,
21 1998, AT 12:25?

22 A WHO IS VINCE PADGETT?

23 Q HE'S A SLED AGENT. REMEMBER TALKING TO HIM ON AUGUST 20TH, 1998?

24 A YEAH, I MIGHT HAVE.

25 Q YOU REMEMBER TELLING HIM THE SAME THING THAT YOU WERE IN

CROSS-EXAMINATION - TEMETRIUS WILLIAMS BY MS. SANDERS

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1 BARNWELL ABOUT 6:30 ---

2 MR. WEEKS: YOUR HONOR, I'M GOING TO OBJECT TO HER
3 TESTIFYING FOR HER. SHE CAN ASK A QUESTION, BUT ---

4 THE COURT: WELL, I'M GOING TO OVERRULE. SHE'S ON CROSS,
5 SHE HAS SOME LATITUDE IN THAT REGARD.

6 BY MS. SANDERS:

7 Q DO YOU REMEMBER TELLING VINCE PADGETT ON DECEMBER 11TH, 1997,
8 THAT YOU WERE IN THE BARNWELL AREA AROUND 6:30? YOU
9 REMEMBER TELLING HIM THAT?

10 A UH HUH.

11 THE COURT: WE NEED YOU TO ANSWER YES OR NO.

12 BY MS. SANDERS:

13 A YES.

14 Q AND YOU ALSO REMEMBER OR RECALL TELLING VINCE PADGETT, NOW
15 THIS IS BEFORE YOU WROTE THIS STATEMENT ON AUGUST 6TH, 1998 ---

16 MR. WEEKS: YOUR HONOR, I'M GOING TO OBJECT AGAIN. SHE'S
17 TESTIFYING ---

18 THE COURT: OVERRULED.

19 MR. WEEKS: SHE'S NOT ---

20 BY MS. SANDERS:

21 Q IT'S CLEARLY AUGUST 20TH, 1998, DO YOU REMEMBER TELLING HIM THAT
22 YOU RODE BY THE RESIDENCE OF MICHAEL PAUL BUCKNER AT SOME
23 POINT ON THAT DAY AND THAT YOU BLEW YOUR HORN, CAR HORN? YOU
24 REMEMBER SAYING THAT TO VINCE PADGETT?

25 A WHO IS VINCE PADGETT, FIRST OF ALL?

1 Q THE -- DO YOU RECALL TALKING TO A SLED AGENT, VINCE PADGETT, IN
2 HIS OFFICE?

3 A TALKING ABOUT OVER HERE ON THE CIRCLE?

4 Q WHEREVER HIS OFFICE IS. I'M NOT FAMILIAR WITH WHERE HE IS. DO YOU
5 REMEMBER TELLING MR. VINE PADGETT, OF SLED?

6 A YES.

7 Q AND WELL, LET ME JUST ASK YOU THIS, YOU REMEMBER TALKING TO THE
8 POLICE MORE THAN ONCE, CORRECT? THAT WASN'T THE ONLY TIME YOU
9 TALKED TO HIM ON THE JOB, CORRECT, MS. WILLIAMS?

10 A NO.

11 Q OKAY. SO YOU DID TALK TO THEM ANOTHER TIME, PRIOR TO THAT,
12 CORRECT?

13 A YES.

14 Q AND WHERE DID YOU GO WHEN YOU TALKED TO THEM THE FIRST TIME?

15 A THE FIRST TIME I WAS -- OH, THE FIRST TIME, I WAS OVER -- THEY CAME
16 TO MY HOUSE.

17 Q OH, THEY CAME TO YOUR HOUSE?

18 A YES. AND THEY ASKED ME TO COME TO BARNWELL.

19 Q OKAY. AND DID YOU GO TO BARNWELL.

20 A YES.

21 Q AND THAT'S WHEN YOU TALKED TO VINCE PADGETT?

22 A YES.

23 Q OKAY. DO YOU REMEMBER TELLING HIM ON THAT DAY THAT YOU RODE
24 BY THE RESIDENCE OF MICHAEL PAUL BUCKMAN AND BLEW YOUR HORN,
25 CAR HORN, ON THAT DAY?

CROSS-EXAMINATION - TEMETRIUS WILLIAMS BY MS. SANDERS

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1 A I DON'T REMEMBER WHAT I SAID.

2 Q DO YOU RECALL TELLING HIM THAT MICHAEL BUCKMAN CAME OUTSIDE
3 AND ASKED YOU TO RIDE UPTOWN WITH HIM? DO YOU RECALL SAYING
4 THAT YOU ASKED MICHAEL PAUL TO RIDGE UPTOWN WITH YOU TO GET
5 SOME GAS?

6 A I DON'T REMEMBER.

7 Q DO YOU REMEMBER SAYING THAT YOU WENT TO JIMBO'S AND
8 PURCHASED GAS AND THEN DROPPED HIM OFF AT A FRIENDS HOUSE
9 NAMED SNOOPS?

10 A YES.

11 Q YOU REMEMBER SAYING THAT?

12 A UH HUH.

13 Q DO YOU REMEMBER TELLING VINCE PADGETT THIS WAS APPROXIMATELY
14 THEN 7:40 AND THEN YOU WENT TO THE BINGO PARLOR? YOU
15 REMEMBER SAYING THAT TO VINCE PADGETT ON AUGUST 20, 1998?

16 A I DON'T REMEMBER.

17 Q AND YOU TOLD VINCE PADGETT ON THAT DAY THAT IT TOOK YOU -- YOU
18 WANTED TO THE BINGO AT 8 O'CLOCK. YOU REMEMBER SAYING THAT?

19 A YES, I REMEMBER SAYING I WANTED TO GET TO BINGO AT 8 O'CLOCK.

20 Q AND THEN YOU SAID THAT LATER THAT NIGHT -- DO YOU REMEMBER
21 TELLING VINCE PADGETT THAT LATER THAT NIGHT MICHAEL PAUL
22 BUCKMAN CALLED YOU AND WOKE YOU UP?

23 A YES.

24 Q CORRECT?

25 A YEAH.

1 Q AND THEN YOU TOLD HIM -- THEN YOU TOLD VINCE PADGETT, I DON'T
2 REALLY REMEMBER WHAT TIME IT WAS?

3 A YES.

4 Q AND THEN, DO YOU RECALL TELLING VINCE PADGETT, MS. WILLIAMS
5 SAID THAT MICHAEL PAUL BUCKMAN ONLY ASKED HER IN THAT
6 CONVERSATION WHAT YOU WERE DOING, CORRECT?

7 A YES.

8 Q AND THAT YOU REPLIED TO MICHAEL BUCKMAN, I WAS ASLEEP AND
9 THAT WAS THE EXTENT OF MY CONVERSATION. YOU REMEMBER
10 TELLING VINCE PADGETT THAT?

11 A UH HUH, YES.

12 Q AND THIS IS THE FIRST THING YOU SAID TO THE POLICE, CORRECT?

13 A YES.

14 Q AUGUST 20, 1998, CORRECT?

15 A UH HUH.

16 Q NOW, YOU DIDN'T SAY ANYTHING ABOUT ANYBODY -- AND, IN FACT,
17 THIS IS WHAT YOU SAID WHEN YOU TESTIFIED LAST TIME IN THIS COURT,
18 CORRECT? THIS IS WHAT YOU SAID, WHAT YOU TOLD VINCE PADGETT,
19 CORRECT?

20 A YES.

21 Q AND YOU SAID THE STATEMENT THAT YOU WROTE WHEN ALL OF THOSE
22 OFFICERS WERE AT YOUR JOB, YOU SAID THAT YOU JUST DID IT, YOU JUST
23 MADE IT UP, DIDN'T YOU SAY THAT, MA'AM?

24 A YES, I DID.

25 Q AND, IN FACT, YOU ALSO INDICATED ON THAT STAND, UNDER OATH, THAT

1 YOU WERE BEING HARASSED BY THESE OFFICERS, CORRECT?

2 A YES.

3 Q OKAY. AND THAT YOU WANTED TO GET THEM OFF OF YOUR BACK,
4 CORRECT?

5 A YES.

6 Q OKAY. YOU ALSO SAID THAT THEY WERE GOING TO CHARGE YOU WITH A
7 CRIME AND THAT'S WHY YOU FELT INTIMIDATED OR HARASSED OR
8 COERCED TO MAKE THE STATEMENT, CORRECT?

9 A YES.

10 Q THE LAST TIME YOU TESTIFIED UNDER OATH, YOU DIDN'T SAY ANYTHING
11 ABOUT TUNZY OR MICHAEL PAUL GOING TO SEE ABOUT SOME MONEY IN
12 A CHAIR, DID YOU?

13 A NO, I DID NOT.

14 Q OKAY. AND YOU DIDN'T SAY THAT WHEN YOU TALKED TO VINCE
15 PADGETT ON AUGUST 20, 1998, CORRECT?

16 A NO, I DID NOT.

17 Q AND YOU DIDN'T EVEN SAY IT IN YOUR STATEMENT WHEN YOU WROTE
18 FOR THE OFFICERS ON AUGUST 6, 1998, CORRECT?

19 A NO, I DID NOT.

20 Q NOW, WHEN YOU TESTIFIED THE FIRST TIME IN THIS CASE, UNDER OATH,
21 YOU SAID, ALL YOU SAID WAS THAT MICHAEL PAUL BUCKMAN WAS
22 GOING UPTOWN TO GO TO THE HOUSE OF PIZZA, CORRECT?

23 A YES, HE DID. HE DID GO TO THE HOUSE OF PIZZA.

24 Q OKAY. BUT YOU DIDN'T MENTION ANYTHING ABOUT A BANK OR
25 ANYTHING LIKE THAT LAST TIME, MS. WILLIAMS, TRUE?

CROSS-EXAMINATION - TEMETRIUS WILLIAMS BY MS. SANDERS

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1 A I MENTIONED ABOUT WE WERE IN FRONT OF THE BANK.

2 Q YEAH, BUT YOU DIDN'T MENTION ANYTHING ABOUT THEM WATCHING
3 SOMEONE COMING OUT OF THE BANK AND MONEY IN A CHAIR OR
4 ANYTHING LIKE THAT, DID YOU, MA'AM?

5 A NO, I DID NOT.

6 Q AND, IN FACT, THIS IS THE FIRST TIME YOU HAVE MENTIONED ANYTHING
7 ABOUT MONEY, CORRECT? 3 YEARS LATER?

8 A NO, IT'S NOT THE FIRST TIME I MENTIONED IT. IT MIGHT BE THE FIRST
9 TIME I MENTIONED IT IN COURT.

10 Q AND WHEN YOU WERE BEING QUESTIONED BY MR. GIBBONS WHILE YOU
11 WERE UNDER OATH BEFORE, YOU DENIED EVERY FACET OF THIS
12 OCTOBER 6TH STATEMENT, DIDN'T YOU?

13 A YES, I DID.

14 Q AND, IN FACT, HE WENT DOWN EACH PART OF IT AND HE ASKED IF YOU
15 ADMIT OR DENY IT, CORRECT?

16 A YES.

17 Q AND YOUR TESTIMONY ---

18 THE COURT: YOU NEED TO TALK INTO THE MIKE, IF YOU WOULD.

19 BY MS. SANDERS:

20 A YES.

21 Q AND YOUR TESTIMONY WAS, I DENY IT, CORRECT?

22 A YES.

23 Q YOU EVEN SAID, WHEN ASKED ABOUT -- WHEN YOU SAID SOMEBODY --
24 YOU SAID THAT THEY WERE TELLING YOU WHAT TO PUT IN THE
25 STATEMENT ON OCTOBER 6, 1998, CORRECT?

1 A I DON'T REMEMBER THAT.

2 Q OKAY. WELL, LET ME REFRESH YOUR MEMORY. I'M GOING TO DIRECT
3 YOU, IF I COULD, TO PAGE 347 OF THE TRANSCRIPT TO REFRESH YOUR
4 MEMORY, MS. WILLIAMS. PAGE 347, STARTING RIGHT AT LINE 10. READ IT
5 TO YOURSELF AND THEN I'LL -- DO YOU REMEMBER BEING ASKED THIS
6 QUESTION AND GIVING THIS ANSWER IN THE PRIOR PROCEEDING, MS.
7 WILLIAMS?

8 A YES.

9 Q YOU SAY THEY WERE TELLING YOU WHAT TO WRITE, YES.

10 A YES.

11 Q OKAY. AND YOU WERE TALKING ABOUT THIS STATEMENT, CORRECT?

12 A YES.

13 Q YOU REMEMBER SAYING, AND I JUST WANT TO GET WHAT YOU SAID
14 UNDER OATH THE LAST TIME, THE STATEMENT WAS NOT THE TRUTH ---

15 A I SAID ---

16 Q YOU REMEMBER TELLING ME THAT?

17 A I SAID THAT, BUT THIS STATEMENT IS THE TRUTH. I WAS UNDER A LOT OF
18 PRESSURE AND ---

19 Q I'M GOING TO YOUR TESTIMONY THAT YOU GAVE ---

20 MR. GIBBONS: YOUR HONOR, I'D ASK THAT SHE BE ALLOWED TO
21 FINISH HER ANSWER.

22 THE COURT: SHE'S ADMITTED THAT SHE SAID THAT. THAT SHE
23 SAID THAT IT WAS NOT THE TRUTH.

24 MS. SANDERS: OKAY.

25 THE COURT: AND THEN SHE WAS EXPLAINING THAT SHE WAS

1 UNDER A LOT OF PRESSURE.

2 MS. SANDERS: I'LL MOVE ON, YOUR HONOR.

3 BY MS. SANDERS:

4 Q DO YOU REMEMBER SAYING LAST TIME THAT YOU WERE UNDER OATH
5 THAT THE WORD CHEESE TO YOU COULD MEAN ANYTHING AND THAT
6 YOU DID NOT KNOW WHAT IT MEANT?

7 A YES.

8 Q AND DID YOU ALSO REMEMBER TESTIFYING UNDER OATH THE LAST TIME
9 THAT YOU TESTIFIED THAT YOU DID NOT REMEMBER WHAT COLORS
10 THEY WERE WEARING THAT NIGHT?

11 A YES.

12 Q I'M CHECKING TO SEE IF THERE IS ANYTHING ELSE. AND WHEN YOU
13 TESTIFIED LAST, YOU DIDN'T TESTIFY ABOUT ANYBODY HAVING ANY
14 RADIOS OR WALKIE TALKIES OR ANYTHING, MS. WILLIAMS, CORRECT?

15 A YES.

16 Q NOW, HAVE YOU BEEN TALKING TO THE SOLICITOR'S OFFICE SINCE THE
17 LAST TIME?

18 A I TALKED TO HIM FRIDAY MORNING.

19 Q AND WHO WAS IT THAT YOU TALKED TO?

20 A THE GUY RIGHT THERE.

21 Q SO YOU'RE POINTING - - -

22 A THE ONE IN THE MIDDLE?

23 Q MR. WEST?

24 A UH HUH.

25 THE COURT: WEEKS.

1 MS. SANDERS: WEEKS, I'M SORRY.

2 BY MS. SANDERS:

3 Q AND IT IS NOW THAT YOU COME TO COURT SAYING THAT YOUR
4 STATEMENT IS TRUE, CORRECT?

5 A YES.

6 MS. SANDERS: I HAVE NOTHING FURTHER.

7 THE COURT: ALL RIGHT. ANYTHING FURTHER?

8 MR. GIBBONS: YES, SIR.

9 REDIRECT EXAMINATION

10 BY MR. GIBBONS:

11 Q MS. WILLIAMS, WE'VE BEEN TALKING ABOUT THIS STATEMENT TAKEN
12 OCTOBER 6TH OF 1998. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
13 STATE'S EXHIBIT 15 AND ASK YOU IF YOU CAN IDENTIFY WHAT THAT
14 PAPER IS.

15 A YES.

16 Q WHAT IS IT?

17 A A WRITTEN STATEMENT THAT I WROTE ON, I DON'T SEE WHAT DATE --
18 OH, OCTOBER 6TH, OF '98.

19 Q AND DID YOU SIGN THAT STATEMENT AT THE BOTTOM?

20 A YES.

21 Q AND WHOSE WRITING IS ON THAT STATEMENT?

22 A THAT'S MY WRITING.

23 Q BOTH PAGES?

24 A YES.

25 Q IS THERE SOME WRITING ON THERE THAT'S NOT YOURS?

1 A NO.

2 MR. GIBBONS: YOUR HONOR, AT THIS TIME, I WOULD MOVE
3 STATE'S EXHIBIT 15 INTO EVIDENCE DUE TO A PRIOR CONSISTENT AND PRIOR
4 INCONSISTENT STATEMENT.

5 MS. SANDERS: I'M GOING TO OBJECT FOR THE REASON SHE'S
6 ALREADY SAID IT'S FALSE, YOUR HONOR.

7 MR. GIBBONS: SHE'S ALSO SAID IT'S TRUE.

8 THE COURT: TELL ME WHAT YOU'RE DOING.

9 MR. GIBBONS: YOUR HONOR, THIS IS A STATEMENT THAT AT THE
10 LAST TRIAL SHE SAID WAS A LIE AND NOW, TODAY, SHE'S SAYING IT'S TRUE.
11 RULE 801(D)1.

12 MS. SANDERS: AND ACTUALLY, YOUR HONOR, IT'S HEARSAY AND
13 IT'S NOT ADMISSIBLE UNLESS IT CAN COME IN UNDER AN EXCEPTION. SHE'S
14 ALREADY SAID IT WAS FALSE SO IT CAN'T BE AN ADMISSION AGAINST INTEREST.
15 THERE'S REALLY ---

16 THE COURT: WELL, THEY'RE SAYING THAT UNDER THE
17 DEFINITION, THIS IS NOT HEARSAY IF THE DECLARANT TESTIFIES AT TRIAL OR
18 HEARING AND IS SUBJECT TO CROSS-EXAMINATION CONCERNING THE
19 STATEMENT AND THE STATEMENT IS INCONSISTENT WITH THE DECLARANT'S
20 TESTIMONY OR IS CONSISTENT WITH THE DECLARANT'S TESTIMONY AND IS
21 OFFERED TO REBUT AN EXPRESSED OR IMPLIED CHARGE AGAINST THE
22 DECLARANT OF RECENT FABRICATION OR IMPROPER INFLUENCE OR MOTIVE.

23 MR. GIBBONS: YOUR HONOR, IT'S THE STATE'S POSITION IS THAT
24 THE DEFENSE BROUGHT OUT IMPROPER INFLUENCE.

25 THE COURT: WHAT IS THAT?

1 MR. GIBBONS: THE LAW ENFORCEMENT PEOPLE FORCED HER TO
2 MAKE IT AND COERCED, THREAT - - THEREFORE, IT WOULD COME IN UNDER AN
3 INCONSISTENT STATEMENT. I BELIEVE THIS WITNESS TESTIFIED TODAY THAT
4 THIS IS, IN FACT, IS A TRUE STATEMENT TO PROVE CONSISTENCY.

5 THE COURT: DOES THAT STATEMENT SAY WHAT SHE TESTIFIED
6 TO?

7 MR. GIBBONS: MORE OR LESS, YES, SIR.

8 MS. SANDERS: NO, IT DOES NOT, YOUR HONOR. IT DOES NOT. SHE
9 DID NOT TESTIFY TO THAT HERE.

10 MR. GIBBONS: THEN IT'S INCONSISTENT.

11 MS. SANDERS: OR TODAY SHE DIDN'T TESTIFY TO ALL OF IT, NO.
12 SHE TESTIFIED TOTALLY DIFFERENT TODAY EXCEPT FOR ABOUT ONE PORTION
13 OF IT.

14 THE COURT: WELL, MY UNDERSTANDING IS THAT YA'LL SAY THE
15 DEFENDANT IS TRYING TO POINT OUT THAT THIS STATEMENT - - AT A PREVIOUS
16 PROCEEDING THAT THE WITNESS GOT UP AND SAID, I GAVE THIS STATEMENT AT
17 SOME TIME, BUT THAT STATEMENT WAS FALSE.

18 MS. SANDERS: YES.

19 MR. GIBBONS: AND IT WAS A PRODUCT OF COERCION, YES, SIR.

20 THE COURT: AND THAT THE STATE IS SAYING THAT SHE TESTIFIED
21 TODAY AS TO WHAT THIS STATEMENT SAYS AND TESTIFIED THAT WHEN SHE
22 GAVE THAT STATEMENT, I MEAN, WHEN SHE TESTIFIED PREVIOUSLY THAT IT
23 WAS FALSE, THAT IT, IN FACT, WAS NOT FALSE.

24 MR. GIBBONS: CORRECT.

25 THE COURT: ALL RIGHT. I'LL ADMIT IT UNDER 801(D)1.

1 BY MR. GIBBONS:

2 Q MS. WILLIAMS, WE'VE GONE BACK AND FORTH ON THIS. WHAT IS THE
3 TRUTH ABOUT WHAT HAPPENED ON THE NIGHT OF DECEMBER 11TH, OF '97,
4 AS FAR AS THE STATEMENTS YOU'VE GIVEN.

5 A WHAT I JUST SAID.

6 Q WHAT YOU JUST SAID. AND WHAT ABOUT THIS DOCUMENT?

7 A IT'S THE TRUTH.

8 Q OKAY.

9 MR. GIBBONS: NOTHING FURTHER.

10 THE COURT: ANYTHING?

11 MS. SANDERS: NOTHING FURTHER, YOUR HONOR.

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

13 MA'AM.

14 MR. GIBBONS: MAY SHE BE RELEASED, YOUR HONOR? FROM

15 SUBPOENA?

16 THE COURT: YA'LL HAVE ANY OBJECTION?

17 MS. SANDERS: NO, NO, SIR.

18 THE COURT: YOU MAY LEAVE.

19 MR. GIBBONS: STATE WOULD CALL MAURICE BENNING.

20 THEREUPON,

21 MAURICE BENNING,

22 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: HAVE A SEAT IN THE WITNESS CHAIR, STATE YOUR
24 NAME FOR THE RECORD.

25 MR. BENNING: MAURICE BENNING.

DIRECT EXAMINATION - MAURICE BENNING BY MR. WEEKS

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1 DIRECT EXAMINATION

2 BY MR. WEEKS:

3 Q MAURICE, HOW OLD ARE YOU?

4 A 27.

5 Q WHERE ARE YOU CURRENTLY BEING HOUSED?

6 A BARNWELL COUNTY JAIL.

7 Q WHERE ARE YOU FROM?

8 A COLUMBUS, GEORGIA.

9 Q HOW LONG DID YOU LIVE THERE BEFORE YOU GOT ARRESTED?

10 A ABOUT 15 YEARS.

11 Q BACK IN DECEMBER OF 1997, WERE YOU LIVING IN BARNWELL?

12 A YES, SIR.

13 Q AND WHAT WERE YOU DOING LIVING HERE?

14 A WITH MY MOTHER AND MY BABY SISTER.

15 Q WERE YOU WORKING HERE?

16 A YES.

17 Q WHERE WERE YOU WORKING?

18 A SARA LEE SOCKS.

19 Q WHAT KIND OF PLANT OR PLACE IS THAT?

20 A SOCK PLANT.

21 Q SOCK?

22 A YES, SIR.

23 Q LIKE SHOES AND SOCKS?

24 A YES, SIR.

25 Q ALL RIGHT. WHERE WERE YOU LIVING? WHAT WAS YOUR ADDRESS

- 1 THEN?
- 2 A [REDACTED] BERRY STREET.
- 3 Q AND IS THAT IN BARNWELL?
- 4 A YES, SIR.
- 5 Q WHO ALL WAS LIVING THERE WITH YOU AT THAT TIME?
- 6 A ME, MY MOTHER - - -
- 7 Q WHO IS YOUR MOTHER?
- 8 A DOROTHY BENNING. ANY MY SISTER TIWANA BENNING AND TUNZY
- 9 HIGHSMITH.
- 10 Q WHO IS THAT?
- 11 A MY MOTHER'S HUSBAND.
- 12 Q WHAT WAS HIS FIRST NAME?
- 13 A TUNZY.
- 14 Q TUNZY. OKAY. DID YOU KNOW AN INDIVIDUAL NAMED MICHAEL PAUL
- 15 BUCKMAN?
- 16 A NOT REALLY.
- 17 Q OKAY. DID YOU COME TO MEET HIM ON DECEMBER THE 11TH, 1997?
- 18 A YES, SIR.
- 19 Q AND COULD YOU TELL THE COURT HOW THAT HAPPENED?
- 20 A WELL, TUNZY CAME BY MY - - TUNZY SANDERS CAME BY MY HOUSE IN
- 21 THE AFTERNOON.
- 22 Q WHO'S TUNZY SANDERS?
- 23 A MY LITTLE STEP BROTHER. AND MIKE WAS WITH HIM.
- 24 Q ALL RIGHT. WHO'S HIS FATHER?
- 25 A TUNZY HIGHSMITH.

1 Q ALL RIGHT. CAN YOU POINT OUT, IS TUNZY SANDERS IN THE COURTROOM
2 TODAY?

3 A YES, SIR.

4 Q WHERE IS HE AT?

5 A RIGHT THERE WITH THE BLUE ON.

6 Q SITTING AT THE DEFENSE TABLE?

7 A YES, SIR.

8 MR. WEEKS: LET THE RECORD REFLECT THAT HE'S IDENTIFIED
9 THE DEFENDANT.

10 THE COURT: SO RECORDED.

11 BY MR. WEEKS:

12 Q TELL ME WHAT HAPPENED ON DECEMBER 11TH, '97.

13 A WE LEFT MY HOUSE AND WENT DOWN HIS COUSIN'S HOUSE.

14 Q WHO'S HIS COUSIN?

15 A SNOOP. AND WE WHEN WE GOT THERE, I MET THIS GIRL THAT WAS
16 THERE, TOLD HER I WANTED TO TOSS HER UP.

17 Q WHAT DID YOU MEAN BY TOSS HER UP?

18 A HAVE SEX WITH HER.

19 Q ALL RIGHT. WHO ALL WAS AT THE HOUSE WHEN YOU GOT THERE?

20 A HIS LITTLE COUSIN AND THE GIRL AND - -

21 Q WHOSE LITTLE COUSIN? TUNZY'S?

22 A TUNZY'S LITTLE COUSIN.

23 Q ALL RIGHT. THE GIRL?

24 A YEAH.

25 Q YOU REMEMBER HER NAME?

- 1 A I DON'T REMEMBER HER NAME.
- 2 Q WHO ELSE WAS THERE?
- 3 A JUST SOME GUYS THAT WOULD BE HANGING. I DON'T KNOW THEIR
- 4 NAMES. THEY WAS JUST BE HANGING THERE.
- 5 Q ALL RIGHT. ABOUT WHAT TIME OF DAY WAS THIS?
- 6 A ABOUT 12:00, 1:00, AFTERNOON.
- 7 Q OKAY. AND HOW FAR WAS THIS FROM WHERE YOU WERE STAYING?
- 8 A UP THE ROAD, ABOUT A MILE PROBABLY.
- 9 Q DID YOU WALK OVER THERE?
- 10 A YES, SIR.
- 11 Q AND THIS SNOOP, THIS WAS AT A FELLOW NAMED SNOOPS HOUSE?
- 12 A YES, SIR.
- 13 Q ALL RIGHT. WHAT ALL DID YA'LL DO THERE?
- 14 A WELL, I KNOW, I HOLLERED AT THE GIRL THAT WAS THERE, YOU KNOW.
- 15 AND THEN WHEN I CAME OUTSIDE, TUNZY SAID, WE ABOUT TO WALK
- 16 OVER MIKE'S HOUSE AND WE WALKED OVER MIKE'S HOUSE AND WHILE
- 17 WE WAS AT MIKE HOUSE - - -
- 18 Q WHO SAID THAT?
- 19 A TUNZY SAID THAT.
- 20 Q TUNZY SANDERS?
- 21 A YES, SIR.
- 22 Q ABOUT WHAT TIME WAS THIS NOW?
- 23 A MAYBE ABOUT 2:00, 2:30, A LITTLE LATER THAN THAT.
- 24 Q ALL RIGHT.
- 25 A AROUND THAT TIME. I DON'T KNOW THE EXACT TIME.

1 Q SO WHAT DID YOU DO?

2 A WHEN WE GOT TO MIKE'S HOUSE, - - -

3 Q WHO'S MIKE?

4 A MIKE PAUL. AND THEN HE TOLD - - MIKE WAS TELLING ME ABOUT HE
5 NEEDED TO BORROW SOME MONEY. HE NEEDED MONEY TO PAY A BILL.
6 AND I SAID, WELL, YOU KNOW WHAT I'M SAYING, MY MAMA'S HOLDING
7 SOME MONEY FOR ME, I'LL LET YOU BORROW THAT. HE WAS LIKE, NO.
8 SCREW THAT. THEN THEY BEGAN TALKING ABOUT THE RESTAURANT,
9 ABOUT ROBBING IT AND EVERYTHING. I SAID, MAN, YA'LL DON'T NEED
10 DO THAT, YOU KNOW WHAT I MEAN.

11 Q WHO WAS TALKING ABOUT ROBBING THE RESTAURANT?

12 A WELL, MIKE WAS. I SAID, MAN, YA'LL DON'T NEED DO THAT THERE. I'LL
13 LET YOU BORROW THE MONEY.

14 Q WHO WAS WITH YOU WHEN MIKE WAS TALKING ABOUT IT?

15 A MR. SANDERS.

16 Q IS THAT THE DEFENDANT IN THIS CASE?

17 A YES, SIR.

18 Q OKAY. WHERE WERE YA'LL AT WHEN THIS CONVERSATION WAS TAKING
19 PLACE?

20 A AT MIKE'S HOUSE.

21 Q WHERE DID MIKE LIVE AT THE TIME?

22 A ON BERRY STREET.

23 Q WAS IT JUST DOWN THE STREET FROM WHERE YOU WERE LIVING?

24 A YES, SIR.

25 Q TELL ME WHAT HAPPENED NEXT.

1 A SO THEN WE LEFT MIKE'S HOUSE. I GO TO MY HOUSE TO CHECK MY
2 MOTHER'S JEWELRY BOX FOR SOME MONEY SHE WAS HOLDING FOR ME,
3 BUT WHEN I GOT TO THE HOUSE, THE MONEY WASN'T THERE. SO I WAS
4 GOING TO GO BACK OUTSIDE AND TELL THEM, LOOK I'LL LET YOU
5 BORROW THE MONEY THIS FRIDAY WHEN I GET MY PAYCHECK. WHEN I
6 CAME OUTSIDE, THEY WERE ON THEIR WAY UP THE ROAD. YOU KNOW
7 WHAT I'M SAYING.

8 Q WHO WAS THAT?

9 A MIKE AND TUNZY.

10 Q ALL RIGHT. SO WHAT DID YOU DO THEN?

11 A I TRIED TO CATCH UP WITH THEM AND LET THEM KNOW I'D LET THEM
12 BORROW THE MONEY. BEFORE I GOT TO THEM, THOUGH, I HEARD THE
13 GUNSHOT. AND I WENT THE OTHER WAY. SO I NEVER, I MEAN NOT
14 BEFORE I GOT TO THEM, I GOT LIKE AROUND THE CORNER AND I SAW
15 MIKE HOLDING THE GUN AND SAID HE FELT POWERFUL. AND I STARTED
16 IN THE OTHER DIRECTION THEN.

17 Q WHAT TIME OF NIGHT WAS THIS?

18 A IT WAS GETTING -- IT WAS DARK. I DON'T KNOW THE EXACT TIME, BUT IT
19 WAS DARK.

20 Q EARLIER THAT DAY, HAD YOU BEEN ANYWHERE ELSE WITH THESE
21 FELLOWS?

22 A NO.

23 Q DID YOU EVER MEET A GIRL TEMETRIUS?

24 A YEAH. YEAH, THERE WAS A GIRL. SHE DROVE US DOWN -- WELL, I
25 REMEMBER THE GIRL. I DON'T KNOW EXACTLY WHEN I ACTUALLY MET

1 HER, BUT I KNOW WHO YOU TALKING ABOUT.

2 Q WELL, DID YOU EVER GO ANYWHERE WITH HER?

3 A SHE DROVE US AROUND TOWN EARLIER THAT DAY.

4 Q WHY WAS THAT?

5 A I DON'T KNOW EXACTLY WHY SHE WAS DRIVING US. I DIDN'T KNOW THE
6 GIRL, YOU KNOW. I WAS JUST RIDING ALONG, YOU KNOW.

7 Q WHAT WAS THE PURPOSE OF YA'LL RIDING AROUND TOWN EARLIER THAT
8 DAY?

9 A I WAS WITH THEM. I DON'T KNOW THE EXACT PURPOSE OF THAT. I WAS
10 HANGING OUT WITH TUNZY THEN.

11 Q AT ANY TIME DURING THE DAY EARLIER, OR ANYTIME THAT NIGHT, DID
12 YOU EVER SEE A GUN?

13 A I NEVER SAW A GUN.

14 Q ALL RIGHT. WELL, DO YOU KNOW ---

15 A UNTIL LATER THAT NIGHT WHEN I CAME AROUND THE CORNER I SAW
16 MIKE WITH A GUN AND HE WAS ON THE CORNER OF THE BUILDING AND
17 SAID HE FELT POWERFUL, THAT'S THE FIRST TIME I SAW A GUN.

18 Q WHEN HE WAS AT THE CORNER OF WHAT BUILDING?

19 A THE CHINESE RESTAURANT. KIND OF DIAGONAL FROM THE ROAD. I
20 COULD SEE HIM OUT -- HEARD HIM SAY THAT HE FELT POWERFUL. AND I
21 DIDN'T KNOW WHAT THAT MEANT, SO I HEADED IN THE OTHER
22 DIRECTION.

23 Q WHAT DO YOU MEAN YOU HEADED IN THE OTHER DIRECTION?

24 A I LEFT. I STARTED GOING BACK TOWARD MY HOUSE.

25 Q WELL, LET ME ASK YOU THIS, EARLIER THAT DAY HAD YOU -- DID YOU

1 EVER HAVE A GUN THAT DAY?

2 A NO. NOT THAT DAY. THE ONLY GUN I EVER HAD WAS THE GUN, MY
3 MOTHER'S GUN THAT I LET TUNZY BORROW EARLIER THAT DAY. WHAT
4 HE SAID HE NEEDED IT FOR SOME PROTECTION SOMEBODY WAS TRYING
5 TO HURT HIM.

6 Q WHERE DID YOU GET YOUR MOTHER'S GUN FROM?

7 A FROM OUT OF THE DRESSER DRAWER.

8 Q AND WHERE WAS THAT DRESSER DRAWER? AT THE HOUSE YA'LL WERE
9 LIVING AT?

10 A YEAH, AT THE HOUSE I WAS STAYING AT.

11 Q IS THAT ON BERRY STREET?

12 A YES, SIR.

13 Q CAN YOU IDENTIFY WHAT HAS BEEN MARKED AS STATE'S EXHIBIT NO. 13
14 D?

15 A CAN I IDENTIFY IT?

16 Q YES.

17 A I DON'T KNOW WHERE - - I NEVER SEEN THAT GUN BEFORE.

18 Q ALL RIGHT. AND ON DECEMBER THE 11TH, OF 1997, WHERE DID YOU KEEP
19 YOUR MONEY? THE JEWELRY BOX YOU WERE TALKING ABOUT?

20 A IT'S IN MY MOTHER'S BEDROOM. IT WASN'T MY MONEY. I MEAN, IT WAS
21 MY MONEY, BUT IT WAS HER JEWELRY BOX. SHE WAS HOLDING IT FOR
22 ME.

23 Q OKAY. HER JEWELRY BOX WAS, I ASSUME, IN HER ROOM?

24 A YES, SIR.

25 Q IS THAT THE MONEY YOU TALKED ABOUT LOANING TO THEM?

1 A YES, SIR.

2 Q INSTEAD OF ROBBERY?

3 A YES, SIR. I WAS TRYING TO CONVINCE THEM THAT THAT WAS THE
4 WRONG THING TO DO, YOU KNOW. LOOK, YOU DON'T HAVE TO DO THAT,
5 I'LL LET YOU BORROW THE MONEY, YOU KNOW. WHEN I WENT TO GET
6 THE MONEY, THE MONEY WASN'T THERE. SHE -- SHE MOVES IT
7 SOMETIMES BECAUSE SHE KNOWS I'LL BE BACK AND FORTH GETTING IT
8 GOING TO BUY BEER AND SHE DON'T LIKE ME DRINKING BEER, SO SHE -- I
9 THOUGHT SHE MIGHT HAVE HAD IT WITH HER. I SAID LOOK, I'LL GIVE
10 YOU THE MONEY TOMORROW WHEN OR FRIDAY WHEN I GET PAID.

11 Q EARLIER IN THE DAY WHEN YOU WERE AT SNOOPS HOUSE, WHEN YOU
12 LEFT SNOOPS HOUSE AND WENT TO YOUR HOUSE, WOULD YOU HAVE HAD
13 TO CROSS THE 4-LANE HIGHWAY OUT THERE?

14 MS. SANDERS: YOUR HONOR, I'M GOING TO OBJECT TO THE
15 LEADING NATURE OF THE QUESTION. IT REQUIRES A YES OR NO ANSWER.

16 THE COURT: WELL THAT DOESN'T NECESSARILY MAKE IT
17 LEADING. REPHRASE IT.

18 BY MR. WEEKS:

19 Q IN RELATIONSHIP WITH WHERE YOU WERE LIVING, WHERE WAS SNOOPS
20 HOUSE?

21 A ACROSS THE 4-LANE.

22 Q ACROSS THE 4-LANE ---

23 A YEAH, BACK TOWARD REID DRUGS.

24 Q ALL RIGHT. WERE YOU LIVING -- IF YOU LEFT THIS COURTHOUSE AND
25 WENT TO WHERE YOU WERE LIVING, WHERE WOULD YOU GO?

1 A I WOULD GO THIS WAY.

2 Q THAT WOULD BE ON THE 4-LANE?

3 A YES, IT WOULD.

4 Q ALL RIGHT. WAS YOUR HOUSE ON THE SAME SIDE OF THE STREET AS THE
5 CHINESE RESTAURANT?

6 A NO.

7 Q ALL RIGHT. WHERE WAS YOUR HOUSE IN RELATION TO THE CHINESE
8 RESTAURANT?

9 A AROUND THE CORNER BACK UP THE ROAD.

10 Q IS IT ON THE SAME SIDE OF THE 4-LANE?

11 A YES, IT WAS, YES, SIR.

12 Q ALL RIGHT. AND THE PARTICULAR NIGHT IN QUESTION, WHEN YOU SAW
13 MIKE HOLDING THE GUN, WHAT WAS THE WEATHER LIKE THAT NIGHT?

14 A IT WAS RAINING.

15 Q AND HARD, LIGHT - - -

16 A NO, IT WAS RAINING THOUGH.

17 Q AFTER YOU SAW MIKE HOLDING THE GUN, WHAT DID YOU DO THEN?

18 A I HEADED IN THE OTHER DIRECTION. I WENT BACK TOWARD MY HOUSE.

19 Q WHAT HAPPENED NEXT?

20 A I HEARD A SOUND, LIKE IT WAS LIKE SOMEBODY HITTING, BANGING
21 SOMETHING AGAINST SOMETHING AND I STARTED RUNNING THEN.

22 Q WHY?

23 A I WAS SCARED, YOU KNOW WHAT I - - I DIDN'T KNOW WHAT WAS GOING
24 ON, YOU KNOW.

25 Q WHAT DID YOU THINK IT WAS?

1 MS. SANDERS: YOUR HONOR, I WOULD OBJECT TO THAT. THAT
2 CALLS FOR SPECULATION.

3 THE COURT: ALL RIGHT. SUSTAINED.
4 BY MR. WEEKS:

5 Q WELL, WHEN YOU WENT RUNNING UP TO CATCH THEM, WHAT DID YOU
6 TALK ABOUT WITH THE GUNS?

7 A WELL, BEFORE I KNEW WHAT HAPPENED, THE CONVERSATION WENT ON
8 AT MIKE'S HOUSE AND I WAS TRYING TO CONVINCE THEM THAT THAT
9 WASN'T THE RIGHT THING TO DO. I GOES HOME ---

10 Q WHAT WAS THE CONVERSATION? THAT'S WHAT I'M ASKING, WHAT WAS
11 THE CONVERSATION?

12 A HE SAID HE NEEDS SOME MONEY TO PAY HIS MOTHER'S BILL, A BILL OR
13 SOMETHING.

14 Q HOW'S HE GOING TO GET IT?

15 A I GUESS, I MEAN, THEY MENTIONED THE RESTAURANT. I SAID, MAN,
16 YA'LL DON'T NEED TO DO THAT. YOU KNOW WHAT I'M SAYING, I'LL LET
17 YOU BORROW THE MONEY.

18 Q DIDN'T NEED TO DO WHAT?

19 A TRY TO ROB THAT PLACE.

20 Q AND WHO WAS GOING TO PARTICIPATE IN THIS ROBBERY?

21 A MR. BUCKMAN WAS.

22 Q ALL RIGHT. ANYBODY ELSE?

23 A WELL, I GUESS TUNZY, BUT HE NEVER SAID ANYTHING, HE WAS DOWN
24 WITH ANYTHING LIKE THAT. YOU SEE, MIKE DID MOST OF THE TALKING.
25 AND I SAID, YOU DON'T NEED TO DO THAT THERE, YOU KNOW. BUT I

1 REALLY WAS TALKING TO BOTH OF THEM REALLY, BUT BASICALLY MIKE,
2 LOOK YOU DON'T NEED TO DO THAT RIGHT THERE, YOU KNOW.

3 Q DID YOU EVER GIVE ANYBODY A GUN THAT DAY?

4 A I GAVE MR. SANDERS A GUN EARLIER THAT DAY BECAUSE HE HAD
5 CALLED ME EARLIER THAT DAY AND SAID SOMEBODY WAS TRYING TO
6 KILL HIM, OR HE HAD GOTTEN INTO IT WITH SOME PEOPLE AND I WAS
7 GOING TO TRY AND LOOK OUT FOR HIM. I DIDN'T WANT NOBODY TO
8 HURT HIM, SO I LET HIM BORROW THE GUN, YOU KNOW.

9 Q WHEN DID YOU GET THAT GUN BACK FROM HIM?

10 A WHEN THEY CAME AROUND THE CORNER, I SAID, WHAT HAPPENED.
11 THAT'S WHEN I GOT THE GUN BACK FROM MR. SANDERS AND THAT'S
12 WHEN MIKE SAID, I SHOT HER. AND I SAID, WHY THE FUCK DID YOU
13 SHOOT HER. AND HE LIKE, FUCK THAT. EXCUSE MY LANGUAGE.

14 Q WHO WAS WITH HIM?

15 A MR. SANDERS WERE.

16 Q AND WHO'D YOU GET THE GUN BACK FROM?

17 A MR. SANDERS.

18 Q ALL RIGHT. THE GUN THAT YOU GOT BACK, WAS IT YOUR MOTHER'S
19 GUN?

20 A YES, SIR.

21 Q WAS IT THE 25 AUTOMATIC YOUR MOTHER OWNED?

22 A YES, SIR.

23 Q WHAT'D YOU DO WITH THE GUN AT THAT POINT?

24 A I TOOK IT TO THE HOUSE AND PUT IT IN MY BABY SISTER'S CLOSET AND
25 THEN THE NEXT DAY I RETURNED IT BACK TO WHERE IT WAS SUPPOSED

DIRECT EXAMINATION - MAURICE BENNING BY MR. WEEKS

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1 TO BE.

2 Q WHERE WAS IT SUPPOSED TO BE?

3 A IN MY MOTHER'S DRAWER.

4 Q AND IN YOUR MOTHER'S HOUSE, I'M ASSUMING?

5 A YES.

6 Q DID YOU DO ANYTHING ELSE TO THE GUN?

7 A NOPE.

8 Q MAURICE, DID YOU HAVE ANY RADIOS OR ANYTHING LIKE THAT, WALKIE
9 TALKIES?

10 A I HAD A WALKMAN I USED. YES, I HAD MY WALKMAN ON.

11 Q ALL RIGHT. DID YOU HAVE ANY OTHER KIND OF RADIO EQUIPMENT?

12 A NO. YOU MEAN THAT NIGHT OR JUST DO I HAVE ANY KIND OF RADIO?

13 Q THAT NIGHT. ON DECEMBER 11TH OR THE DAY OF DECEMBER 11TH ---

14 A NO.

15 Q --- 1997.

16 A NO, NO RADIOS.

17 Q WHEN YOU INDICATED YOU RAN BACK DOWN THE ROAD TRYING TO
18 CATCH UP WITH WHO?

19 A I NEVER RAN, I JUST WALKED, YOU KNOW.

20 Q ALL RIGHT. WHO WERE YOU TRYING TO CATCH UP WITH?

21 A MR. SANDERS AND MR. BUCKMAN.

22 Q ALL RIGHT. WHEN YOU SAW MR. BUCKMAN AT THE CORNER OF THE
23 CHINESE RESTAURANT ---

24 A WHEN I GOT AROUND THE CORNER, THAT'S WHEN I SAW HIM WITH THE
25 GUN. HE SAID HE FELT POWERFUL. I DIDN'T KNOW WHAT THAT MEANT,

1 YOU KNOW.

2 Q WHERE WAS MR. SANDERS?

3 A I DIDN'T SEE HIM AT THE TIME.

4 Q ALL RIGHT.

5 A I ONLY SAW HIM WHEN HE STARTED TO THE SIDE OF THE BUILDING.

6 THAT'S WHEN I SAW HIM.

7 Q WHEN HE STARTED UP THE SIDE OF WHAT BUILDING?

8 A THE RESTAURANT.

9 Q AFTER YOU TURNED AROUND AND - - -

10 A I WAS HEADING IN THE OTHER DIRECTION THEN.

11 Q WHEN YOU LEFT, AT THAT POINT, HOW MUCH LONGER OR AFTER THAT
12 WAS THIS GUN GIVEN BACK TO YOU?

13 A IT WAS LATER WHEN I CAME BACK UP THE ROAD TO TRY ONE LAST TIME
14 TO STOP THEM FROM WHAT THEY WERE ABOUT TO DO. THAT'S WHEN
15 THEY CAME AROUND THE CORNER. I SAID, WHAT HAPPENED AND MR.
16 BUCKMAN SAID, I SHOT HER. I ASKED HIM WHY DID HE SHOOT HER AND
17 HE SAID, FUCK THAT.

18 Q AND DID HE SAY HE SHOT HER WITH THAT GUN OR WITH A GUN?

19 A HE JUST SAID HE SHOT HER. HE DIDN'T SAY NOTHING ABOUT A GUN.

20 Q AND WHO GAVE YOU A GUN BACK AT THAT TIME?

21 A MR. SANDERS.

22 MR. WEEKS: EXCUSE ME ONE SECOND, YOUR HONOR.

23 BY MR. WEEKS:

24 Q MR. BENNING, CAN YOU IDENTIFY THE SCENE DEPICTED IN WHAT'S
25 MARKED AS STATE'S EXHIBIT NO. 5, JUST YES OR NO? THE AREA

1 DEPICTED IN THAT PHOTOGRAPH. DO YOU RECOGNIZE THE AREA
2 DEPICTED IN THAT PHOTOGRAPH? THE AREA THAT'S DEPICTED IN
3 STATE'S EXHIBIT NO. 5, CAN YOU IDENTIFY THAT AREA?

4 A YES.

5 Q WHERE IS IT?

6 A THAT'S MY MOTHER'S BEDROOM.

7 Q IN THE HOUSE ON BERRY STREET?

8 A YES, SIR.

9 Q IS THAT WHERE YOU LIVED ON DECEMBER THE 11TH, 1997?

10 A YES, SIR.

11 Q ALL RIGHT. IS THAT HOW IT LOOKED DURING THAT PARTICULAR -- I
12 MEAN AS FAR AS THE LAYOUT AND THE FURNITURE AND ALL OF THAT?

13 A YES, SIR.

14 Q OKAY. AND I HAND YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NO. 6
15 AND ASK YOU IF YOU CAN IDENTIFY THAT AREA DEPICTED IN THAT
16 PHOTOGRAPH?

17 A NO.

18 Q ALL RIGHT.

19 MR. WEEKS: YOUR HONOR, THE STATE WOULD MOVE TO
20 INTRODUCE STATE'S EXHIBIT NO. 5, THAT WAS PREVIOUSLY IDENTIFIED, IF YOUR
21 HONOR WILL REMEMBER BY THE FIRST WITNESS CALLED IN THE TRIAL, MR.
22 LUTHER GADSON BEING A PHOTOGRAPH OF THE BEDROOM OF MS. HIGHSMITH.

23 MS. SANDERS: YOUR HONOR, NO OBJECTION.

24 THE COURT: SO ADMITTED WITHOUT OBJECTION.

25 MR. WEEKS: ANSWER ANY QUESTIONS THEY HAVE, MAURICE.

CROSS-EXAMINATION

1

2

BY MS. SANDERS:

3

Q MR. BENNING?

4

A YES, MA'AM.

5

Q THIS ISN'T THE FIRST TIME YOU'VE TESTIFIED AGAINST OTHER

6

DEFENDANT'S IN A CRIMINAL PROCEEDING, CORRECT?

7

A THIS IS THE FIRST TIME.

8

Q YOU TESTIFIED WHEN YOU WERE CHARGED PREVIOUSLY AGAINST SOME

9

OTHER DEFENDANTS, CORRECT, SIR?

10

A NO.

11

Q WHEN YOU WERE IN THE OTHER STATE, ANOTHER STATE, ISN'T IT TRUE

12

THAT YOU WERE INVOLVED IN A BURGLARY, SIR?

13

A YES, BUT NOBODY EVER TESTIFIED IN IT.

14

Q AND, AS A MATTER OF FACT, YOU WERE CONVICTED OF THAT BURGLARY,

15

CORRECT?

16

A YES, MA'AM.

17

Q AND YOU SERVED 3 YEARS ON THAT BURGLARY, RIGHT?

18

A NO.

19

Q 3 YEARS IN PRISON?

20

A 1 YEAR.

21

Q YOU GOT THAT 1 YEAR CONSIDERATION BECAUSE YOU TESTIFIED

22

AGAINST SOME OTHER CO-DEFENDANTS IN THAT ACTION, CORRECT?

23

A THAT'S NOT CORRECT.

24

Q THERE WERE OTHER CO-DEFENDANTS INVOLVED, CORRECT?

25

A ONE.

CROSS-EXAMINATION - MAURICE BENNING BY MS. SANDERS

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- 1 Q AND YOU TESTIFIED AGAINST HIM, DIDN'T YOU, SIR?
- 2 A NO, MA'AM.
- 3 Q AND, IN FACT, WHEN YOU WERE ARRESTED ON THE MATTER THAT'S HERE
- 4 BEFORE THE COURT TODAY, YOU WERE A FUGITIVE ON ANOTHER
- 5 BURGLARY CHARGE, CORRECT?
- 6 A NO, MA'AM.
- 7 Q OKAY. IN THE STATE OF GEORGIA? YOU WERE NOT A FUGITIVE AT THAT
- 8 TIME, FROM GEORGIA?
- 9 A YES, YES, YES, BUT I DIDN'T BURGLARIZE ANYTHING.
- 10 Q BUT IT WAS FOR THE CHARGE OF BURGLARY, CORRECT?
- 11 A YES, MA'AM.
- 12 Q AND IN EXCHANGE FOR YOUR COMING IN HERE TO TESTIFY TODAY, THE
- 13 LAW ENFORCEMENT AUTHORITIES HERE GOT YOUR CHARGES IN GEORGIA
- 14 DISMISSED, CORRECT?
- 15 A I DON'T KNOW. I GUESS SO BECAUSE WHEN I GOT DOWN THERE, THEY
- 16 WAIVED ON IT OR SOMETHING.
- 17 Q AND IT IS YOUR BELIEF THAT THEY DID THAT BECAUSE OF THE LAW
- 18 ENFORCEMENTS HERE TOLD THEM THAT YOU WERE GOING TO TESTIFY IN
- 19 THIS CASE, CORRECT?
- 20 A I WAS TOLD THAT I -- THAT'S WHAT I WAS HERE FOR, TO TESTIFY.
- 21 Q AND SO THEY DID NOT PROCEED ON THOSE BURGLARY CHARGES THAT
- 22 YOU HAD IN GEORGIA, CORRECT?
- 23 A YES, MA'AM.
- 24 Q NOW, WHEN YOU -- YOU WERE PREVIOUSLY SUBPOENAED TO COME IN
- 25 AND TESTIFY IN THIS CASE BEFORE, CORRECT?

CROSS-EXAMINATION - MAURICE BENNING BY MS. SANDERS

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1 A YES, MA'AM.

2 Q AND YOU DIDN'T COME IN, CORRECT?

3 A YES, BECAUSE I WASN'T ALLOWED TO LIVE UP HERE. I HAD TO GO BACK
4 TO GEORGIA.

5 Q BUT YOU DIDN'T WANT TO TESTIFY AT THAT TIME, ISN'T THAT RIGHT?

6 A I MEAN, IF I COULD HAVE STAYED IN SOUTH CAROLINA, I WOULD HAVE
7 CAME, BUT I GOT KICKED OUT, YOU KNOW. I COULDN'T STAY AT THE
8 BERRY STREET NO MORE.

9 Q NOW, YOU LIVED IN THIS HOUSE WITH YOUR MOTHER AND YOU
10 INDICATED THAT YOU KNEW SHE HAD A GUN, CORRECT?

11 A YES.

12 Q AND IN TERMS OF THE GUN, NOW, MR. WEST ---

13 MR. WEEKS: WEEKS.

14 MS. SANDERS: I'M SORRY.

15 BY MS. SANDERS:

16 Q MR. WEEKS SHOWED YOU PEOPLE'S EXHIBIT, STATE'S EXHIBIT 13 D,
17 CORRECT?

18 A YES, MA'AM.

19 Q YOU SAID THIS IS - - YOU'D NEVER SEEN THIS GUN BEFORE, CORRECT?

20 A YES, MA'AM.

21 Q AND THIS IS NOT YOUR MOTHER'S GUN, MR. BENNING?

22 A NO, MA'AM.

23 Q OKAY. NOW, YOU HAVE SAID THAT ON THAT DAY YOU HAD BEEN WITH
24 MR. BENNING AND MR. SANDERS, CORRECT? EARLIER THAT DAY,
25 CORRECT?

1 A I WAS WITH MR. SANDERS AND MR. BUCKMAN.

2 Q OH, MR. BUCKMAN, I'M SORRY. YES. AND YOU INDICATED THAT YOU
3 HEARD MR. BUCKMAN TALKING ABOUT ROBBING SOMEWHERE,
4 CORRECT?

5 A YES, MA'AM.

6 Q BUT YOU DIDN'T HEAR TUNZY SAY ANYTHING ABOUT AGREEING TO
7 THAT, CORRECT?

8 A YES, MA'AM.

9 Q AND AS FAR AS YOU KNOW, MR. SANDERS HAD LITTLE OR NO DISCUSSION
10 OR NO DISCUSSION WITH MR. BUCKMAN IN YOUR PRESENCE ABOUT
11 ROBBING ANYTHING, CORRECT?

12 A YES, MA'AM.

13 Q YOU STATED THAT YOU WERE AT JERMAINE'S HOUSE, CORRECT?

14 A YES, MA'AM.

15 Q AND YOU HAD SEX WITH A GIRL THERE?

16 A YEAH.

17 Q WAS IT SOMEBODY YOU KNEW?

18 A I HAD JUST MET HER.

19 Q OKAY. JUST MET HER AND YOU HAD SEX WITH HER AT JERMAINE'S
20 HOUSE?

21 A YEAH.

22 Q AND WAS JERMAINE THERE? YOU KNEW JERMAINE PRETTY WELL,
23 CORRECT?

24 A NOT REALLY THAT WELL. I MET HIM THROUGH TUNZY.

25 Q OKAY. BUT YOU KNEW HIM WELL ENOUGH TO HAVE SEX WITH A GIRL AT

1 HIS HOUSE, CORRECT? AND HE NOT OBJECT, CORRECT?

2 A YES.

3 Q AND SO WOULD IT BE FAIR TO SAY YOU ALL WERE PRETTY TIGHT THEN,
4 CORRECT?

5 A I KNEW HIM. WE WASN'T TIGHT, BUT I KNEW HIM, YOU KNOW.

6 Q YOU INDICATED THAT -- DID YOU EVER GO BACK TO SNOOPS HOUSE ON
7 THE EVENING OF DECEMBER 11TH, 1998?

8 A NO.

9 Q YOU'RE SAYING THAT YOU NEVER WENT THERE WITH TUNZY OR MIKE AT
10 ANY TIME.

11 A EARLIER THAT DAY I DID.

12 Q AND THAT WAS AROUND 12:30 OR 1:00?

13 A WE WENT BACK TO MIKE'S HOUSE.

14 Q AND YOU'RE SAYING NOW THAT YOU DID NOT GO BACK TO JERMAINE
15 WALKER'S HOUSE THAT NIGHT WITH TUNZY AND MIKE?

16 A NO.

17 Q NOW, YOU SAID THAT YOU WERE GOING TO LOAN MICHAEL PAUL
18 BUCKMAN SOME MONEY BECAUSE HE NEEDED TO PAY HIS MOTHER'S
19 BILL, CORRECT?

20 A YES.

21 Q AND IN ORDER TO DO THIS, THEN YOU WENT AND TRAVELED TO YOUR
22 HOME WHERE YOU LIVED?

23 A I WALKED ACROSS THE STREET, A COUPLE OR YARDS.

24 Q OKAY. AND YOU -- IT WAS YOUR INTENTION THEN TO LOAN HIM SOME
25 MONEY?

- 1 A YES, MA'AM.
- 2 Q OKAY. AND WHEN DID THIS TAKE PLACE, MR. BUCKMAN - - MR. BENNING?
- 3 A THE NIGHT OF THE INCIDENT.
- 4 Q OKAY. AND YOU FOUND OUT THAT YOU DIDN'T HAVE THE MONEY YOU
- 5 THOUGHT YOU HAD, CORRECT?
- 6 A WELL, IT WASN'T THERE.
- 7 Q AND OS YOU HAD AN EXPECTATION THAT YOU WERE GOING TO HAVE
- 8 SOME MONEY AS WELL AT THAT POINT, CORRECT?
- 9 A WELL, AT MY MOTHER'S HOUSE, YES.
- 10 Q AND YOU THEN DISCOVERED THAT YOU DIDN'T HAVE THE MONEY THAT
- 11 YOU THOUGHT WAS THERE, CORRECT?
- 12 A WELL, MY MOTHER HAD IT WITH HER.
- 13 Q AND AT THAT TIME THE GUN WAS IN YOUR MOTHER'S DRAWER,
- 14 CORRECT? WAS IT?
- 15 A NO, IT WASN'T.
- 16 Q OKAY. WHEN WAS IT THAT YOU DISCOVERED YOUR MOTHER'S GUN?
- 17 A WELL, I KNEW IT WAS THERE WHEN WE WAS IN GEORGIA. I KNEW SHE
- 18 HAD THAT GUN THEN.
- 19 Q OKAY. BUT ON DECEMBER 11TH?
- 20 A AT WHAT TIME.
- 21 Q WHEN DID YOU SEE THAT GUN, SIR?
- 22 A EARLIER THAT DAY.
- 23 Q AND YOU DIDN'T SEE IT ANYMORE? THAT'S YOUR TESTIMONY?
- 24 A UNTIL LATER THAT NIGHT. I MEAN, MR. SANDERS GAVE IT BACK TO ME.
- 25 Q SIR, ISN'T IT TRUE YOU WERE THE ONE THAT NEEDED THE MONEY THAT

1 NIGHT, SIR?

2 A NO.

3 Q AND YOU WERE THE ONE THAT WANTED TO ROB THE CHINESE
4 RESTAURANT, SIR?

5 A NO.

6 Q ISN'T THAT TRUE?

7 A NO, IT ISN'T.

8 Q AND YOU HAD ACCESS TO THAT GUN BECAUSE YOU HAD IT IN YOUR
9 MOTHER'S DRAWER. YOU KNEW WHERE IT WAS AND THAT'S WHERE YOU
10 WENT TO GET IT, CORRECT?

11 A NO.

12 Q THAT'S WHY SOMEONE WITH YOUR CRIMINAL BACKGROUND WOULD
13 TAKE A GUN AND HAVE IT IN YOUR HOUSE AFTER YOU COMMITTED A
14 ROBBERY. THAT JUST MAKES SENSE, DOESN'T IT, SIR?

15 A NO, IT DOESN'T.

16 Q IT DOESN'T MAKE SENSE THEN THAT YOU GAVE A GUN TO SOMEBODY TO
17 COMMIT A ROBBERY WITH?

18 A I NEVER GAVE HIM A GUN FOR THAT.

19 Q AND THEN TAKE IT AND PUT IT BACK IN YOUR HOUSE, CORRECT? THAT
20 DOESN'T MAKE MUCH SENSE, DOES IT?

21 A I NEVER KNEW THAT WAS EVER INVOLVED THAT NIGHT. I DIDN'T HEAR
22 ABOUT THE ROBBERY UNTIL LATER THAT NIGHT.

23 Q YOU SAYING THAT YOU NEVER GAVE THEM A GUN?

24 A I GAVE MR. SANDERS A GUN EARLIER THAT DAY.

25 Q BUT THIS IS NOT THE GUN THAT YOU GAVE MR. SANDERS, HERE?

1 A NO.

2 Q YOU EVER TALK WITH JERMAINE WALKER ABOUT COMMITTING THIS
3 ROBBERY, SIR?

4 A NO.

5 Q ISN'T IT TRUE THAT JERMAINE WALKER CAME TO YOUR HOUSE WITH YOU
6 THAT NIGHT WHEN YOU WERE LOOKING FOR THIS MONEY IN YOUR
7 MOTHER'S JEWELRY BOX, SIR?

8 A NO.

9 Q WERE YOU AWARE OF WHAT MR. JERMAINE WALKER'S OCCUPATION WAS,
10 SIR?

11 A I DIDN'T KNOW HIM THAT WELL.

12 Q DID HE SELL DRUGS OUT OF HIS HOUSE?

13 A I DON'T KNOW.

14 Q DID YOU SEE ANYBODY WITH DRUGS THERE, SIR?

15 A NO, MA'AM.

16 Q IT'S YOUR TESTIMONY THAT YOU WERE STANDING AROUND THE CORNER
17 FROM THIS RESTAURANT, CORRECT?

18 A WELL, I MADE IT - - A FEW YARDS AROUND THE CORNER.

19 Q AND YOU COULDN'T SEE WHAT WAS GOING ON?

20 A WELL, I WAS CLOSE ENOUGH TO SEE MR. BUCKMAN AT THE CORNER OF
21 THE BUILDING WITH A GUN IN HIS HAND.

22 Q AND YOUR STATEMENT IS THAT IT WAS RAINING REALLY HARD THAT
23 NIGHT?

24 A IT WAS RAINING. IT WASN'T REALLY THAT HARD, BUT IT WAS RAINING.

25 Q AND DARK?

- 1 A WELL, IT WAS STREET LIGHTS. IT WASN'T REALLY DARK DARK, BUT IT
2 WAS DARK. IT WAS LATE, YOU KNOW.
- 3 Q AND YOUR TESTIMONY IS THAT HE SAID THAT HE SAID HE SHOT
4 SOMEBODY AND HE FELT POWERFUL?
- 5 A THAT NIGHT I HEARD HIM SAY HE FELT POWERFUL. HE DIDN'T SAY HE
6 SHOT ANYBODY UNTIL LATER WHEN THEY CAME AROUND THE CORNER
7 AND I ASKED HIM WHAT HAPPENED. AND MR. BUCKMAN SAID, I SHOT
8 HER.
- 9 Q AND ACCORDING TO YOU, TUNZY SANDERS NEVER TOLD YOU HE SHOT
10 ANYBODY, DID HE?
- 11 A NOT THAT NIGHT.
- 12 Q AT ANY TIME, MR. BENNING? DID HE EVER TELL YOU THAT?
- 13 A HE CAME TO THE HOUSE THE NEXT DAY SAYING HE SHOT HER.
- 14 Q HE SHOT HER? DID YOU EVER TELL CLEVELAND JONES -- DO YOU KNOW
15 A PERSON BY THE NAME OF CLEVELAND JONES?
- 16 A I KNOW HIM.
- 17 Q DID YOU EVER TELL CLEVELAND JONES THAT YOU HAD USED THIS GUN
18 BEFORE AND THEY'RE WERE A LOT OF BODIES ON THIS GUN? YOU
19 REMEMBER TELLING HIM THAT?
- 20 A NO, I NEVER TOLD HIM ANYTHING LIKE THAT.
- 21 Q DID YOU EVER THREATEN MR. -- IN THE PRESENCE OF MR. JONES, TO
22 SHOOT SOME OTHER INDIVIDUALS WITH THIS GUN, SIR?
- 23 A I NEVER DONE THAT.
- 24 Q HAD YOU EVER USED THIS GUN BEFORE, SIR?
- 25 A NO, MA'AM.

1 Q AND YOU'VE BEEN IN JAIL ON YOUR BENCH WARRANT FOR FAILURE TO
2 TESTIFY SINCE NOVEMBER THE 8TH, CORRECT?

3 A YES, MA'AM.

4 Q AND YOU'RE ONLY TESTIFYING TO THIS TODAY BECAUSE YOU WANT TO
5 GET OUT OF JAIL, CORRECT?

6 A WELL, I MEAN, I HAVE NO CHOICE.

7 Q ISN'T IT TRUE THAT YOU FEEL, COERCED TO GIVE THIS STATEMENT
8 BECAUSE YOU'VE BEEN IN JAIL SINCE NOVEMBER 8TH, SIR? AND YOU
9 HAVE NO CHARGES PENDING AGAINST YOU?

10 A I'M HERE BECAUSE I WAS SUBPOENAED.

11 Q MR. BENNING, I JUST HAVE ONE MORE QUESTION FOR YOU. HAVE YOU
12 EVER TESTIFIED AGAINST ANY DEFENDANTS IN ANY CRIMINAL ACTION IN
13 ANY OTHER STATE AT ANY TIME, SIR?

14 A NO, MA'AM.

15 THE COURT: ALL RIGHT.

16 MS. SANDERS: NOTHING FURTHER, YOUR HONOR.

17 MR. WEEKS: NOTHING FURTHER FROM THIS WITNESS, YOUR
18 HONOR.

19 THE COURT: THANK YOU, SIR, YOU MAY STEP DOWN.

20 MR. WEEKS: THESE NEXT TWO WITNESSES I EXPECT TO BE VERY
21 SHORT.

22 (WHEREUPON A BRIEF RECESS WAS OBSERVED.)

23 THE COURT: ALL RIGHT. ARE WE READY TO CRANK BACK UP
24 AGAIN?

25 MR. WEEKS: YES, YOUR HONOR.

DIRECT EXAMINATION - DOROTHY HIGHSMITH BY MR. WEEKS

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1 THE COURT: YOU GOT ANOTHER WITNESS?

2 MR. WEEKS: YES, SIR. THE STATE WOULD CALL DOROTHY
3 HIGHSMITH.

4 THEREUPON,

5 DOROTHY HIGHSMITH,

6 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: HAVE A SEAT IN THE WITNESS CHAIR. STATE YOUR
8 NAME FOR THE RECORD.

9 MS. HIGHSMITH: DOROTHY BENNING HIGHSMITH.

10 DIRECT EXAMINATION

11 BY MR. WEEKS:

12 Q MS. HIGHSMITH, DO YOU HAVE ANY CHILDREN?

13 A YES, I DO.

14 Q WHAT ARE THEIR NAMES?

15 A MAURICE BENNING, MARK BENNING AND TIWANA SHENAULT.

16 Q AND WHERE IS MAURICE BENNING?

17 A HE'S BACK THERE IN THE BACK.

18 Q IS HE IN THE BARNWELL COUNTY JAIL?

19 A YES.

20 Q BACK ON DECEMBER 11TH OF 1997, WAS HE LIVING AT YOUR HOUSE?

21 A YES, HE WAS.

22 Q WHERE WERE YOU LIVING?

23 A ■ BERRY STREET, BARNWELL.

24 Q IS THAT IN THE CITY LIMITS OF BARNWELL?

25 A YES, IT IS.

DIRECT EXAMINATION - DOROTHY HIGHSMITH BY MR. WEEKS

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1 Q DID YOU OWN A GUN AT THAT TIME, MS. HIGHSMITH?

2 A YES.

3 Q WHAT KIND OF GUN DID YOU OWN?

4 A IT'S A 25 AUTOMATIC.

5 Q DID YOU OWN ANY OTHER GUNS AT THAT TIME BESIDES THAT ONE 25
6 AUTOMATIC?

7 A NO.

8 Q AT SOME TIME SUBSEQUENT TO DECEMBER 11, 1997, DID THE BARNWELL
9 COUNTY OR BARNWELL POLICE DEPARTMENT COME AND QUESTION YOU
10 CONCERNING THAT GUN?

11 A YES, THEY DID.

12 Q DID THEY TAKE POSSESSION OF THE GUN.

13 A YES, THEY DID.

14 Q I HAND YOU WHAT'S MARKED STATE'S EXHIBIT 13 D FOR IDENTIFICATION
15 AND ASK YOU IF YOU CAN IDENTIFY THAT GUN.

16 A YES, THAT'S MY GUN.

17 Q AND WHERE WAS IT WHEN THE POLICE CAME TO QUESTION YOU ABOUT
18 IT?

19 A IT WAS INSIDE A DRESSER DRAWER INSIDE ANOTHER LITTLE DRAWER.

20 Q AND WHERE LOCATED IN THE HOUSE?

21 A IN MY BEDROOM.

22 Q AND THAT IS THE ONLY GUN YOU OWNED ---

23 A YES.

24 Q --- ON DECEMBER 11TH?

25 A YES.

1 Q I HAND YOU WHAT'S MARKED STATE'S EXHIBIT NO. 6 AND ASK YOU IF
2 YOU CAN IDENTIFY WHAT'S DEPICTED IN THAT PHOTOGRAPH? YES OR
3 NO.

4 A YES.

5 Q AND DOES THAT PHOTOGRAPH TRULY AND ACCURATELY REPRESENT
6 WHAT IT PURPORTS TO SHOW?

7 A YES.

8 MR. WEEKS: YOUR HONOR, I'D MOVE TO INTRODUCE STATE'S
9 EXHIBIT NO. 6, WHICH HAS PREVIOUSLY BEEN MARKED FOR IDENTIFICATION.
10 IT'S WITHOUT OBJECTION, I BELIEVE.

11 MR. WILLIAMS: WITHOUT OBJECTION.

12 BY MR. WEEKS:

13 Q MS. HIGHSMITH, WHAT DOES STATE'S EXHIBIT NO. 6 DEPICT? WHAT DOES
14 IT SHOW IN THAT PHOTOGRAPH?

15 A IT SHOWS MY DRESSER DRAWER OPEN, THE SMALLER DRAWER OPEN
16 WITH THE GUN AND THE CASING INSIDE OF IT.

17 Q IS THAT HOW IT LOOKED ON DECEMBER THE 11TH ---

18 A YEAH, IT'S JUST LIKE I KEPT IT.

19 Q --- 1997?

20 A YES.

21 Q WHEN THE POLICE CAME TO YOUR HOUSE TO GET THE GUN, IS THAT HOW
22 IT LOOKED?

23 A YES.

24 Q ALL RIGHT. DID YOU KEEP BULLETS IN YOUR GUN?

25 A I KEPT A CASE AND THE GUN, JUST LIKE IT'S PICTURED IN THE PICTURE.

1 Q JUST LIKE THAT. WERE THERE BULLETS IN THE CLIP?

2 A YES, THERE WAS, LIKE I TESTIFIED BEFORE, I'M NOT QUITE SURE HOW
3 MANY BECAUSE IT HAD BEEN FIRED MAYBE ONCE OR TWICE, BUT YES,
4 THERE WAS SOME.

5 Q MORE THAN ONE BULLET IN THE CLIP?

6 A YES, SIR, YES.

7 Q THANK YOU. ANSWER ANY QUESTIONS THEY HAVE FOR YOU MS.
8 HIGHSMITH.

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q MS. HIGHSMITH, DO YOU REMEMBER WHEN CHIEF DARNELL AND THE
12 POLICE CAME TO YOUR HOUSE?

13 A YES.

14 Q OKAY. AND DO YOU REMEMBER TELLING THE CHIEF WHEN HE ASKED
15 YOU ABOUT WHETHER OR NOT YOU HAD A GUN, BEING CONCERNED
16 ABOUT WHETHER YOUR GUN HAD BEEN INVOLVED IN WHAT HAPPENED
17 AT CHINA EXPRESS RESTAURANT?

18 A I DON'T REMEMBER SAYING THAT. I SAID I WAS CONCERNED THAT
19 MAYBE MY GUN WAS MISSING, BUT THEN WHEN I CHECKED FOR IT, IT
20 WAS STILL JUST LIKE I KEPT IT IN THE DRAWER.

21 Q AND YOU REMEMBER WRITING A STATEMENT? LET ME SHOW YOU THIS.

22 A YES.

23 Q IS THIS A STATEMENT THAT YOU GAVE THE POLICE CONCERNING YOUR
24 GUN?

25 A YES.

1 Q AND DO YOU REMEMBER IN THE STATEMENT SAYING, WHEN I HEARD
2 ABOUT THE LADY AT THE CHINA EXPRESS BEING KILLED BY A 25 CALIBER
3 PISTOL, I WONDERED IF MY PISTOL MIGHT HAVE BEEN STOLEN?

4 A YES.

5 Q SO YOU HAD SOME CONCERNS AND YOU EXPRESSED THAT TO THE POLICE
6 ABOUT YOUR GUN?

7 A RIGHT. YES.

8 Q AND MS. BENNING, YOUR SON MAURICE HAS BEEN IN A GOOD BIT OF
9 TROUBLE, HASN'T HE?

10 A YES.

11 MR. WILLIAMS: NO FURTHER QUESTIONS.

12 REDIRECT EXAMINATION

13 BY MR. WEEKS:

14 Q MS. HIGHSMITH, YOUR STATEMENT ABOUT YOU WERE CONCERNED THAT
15 YOUR GUN HAD BEEN STOLEN, WHEN WERE YOU CONCERNED ABOUT
16 YOUR GUN BEING STOLEN?

17 A LIKE I WAS SAYING, IN THE NEWSPAPER ARTICLE I THOUGHT IT STRANGE
18 THAT A 25 WAS USED AND JUST OUT OF CURIOSITY, I JUST MADE SURE MY
19 GUN WAS STILL WHERE IT WAS AND NOT MISSING.

20 Q OKAY. AND YOU ACTUALLY WENT AND CHECKED IT ON DECEMBER THE
21 17TH ---

22 A RIGHT.

23 Q --- 1997, DIDN'T YOU?

24 A YES.

25 Q AND IT WAS IN PLACE THEN?

DIRECT EXAMINATION - JERMAINE WALKER BY MR. GIBBONS

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1 A YES.

2 Q AND IT WAS IN PLACE WHEN THE POLICE CAME LATER?

3 A YES.

4 Q THANK YOU.

5 MR. WEEKS: I HAVE NOTHING FURTHER.

6 MR. WILLIAMS: NOTHING FURTHER.

7 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

8 MR. GIBBONS: MAY SHE BE EXCUSED?

9 MR. WILLIAMS: NO OBJECTION.

10 THE COURT: SHE'S FREE TO LEAVE.

11 MR. GIBBONS: YOUR HONOR, THE STATE CALLS JERMAINE
12 WALKER.

13 THEREUPON,

14 JERMAINE WALKER,

15 AFTER HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: HAVE A SEAT IN THE WITNESS CHAIR. STATE YOUR
17 NAME FOR THE RECORD.

18 MR. WALKER: JERMAINE WALKER.

19 DIRECT EXAMINATION

20 BY MR. GIBBONS:

21 Q MR. WALKER, COULD YOU SPELL YOUR LAST NAME, PLEASE?

22 A W-A-L-K-E-R.

23 Q AND DO YOU HAVE ANOTHER NAME BESIDE JERMAINE?

24 A SNOOP.

25 Q IS THAT A NICKNAME?

- 1 A NICKNAME.
- 2 Q NOW, WHERE DO YOU LIVE, MR. WALKER?
- 3 A ON [REDACTED] CLINTON STREET.
- 4 Q HOW LONG HAVE YOU LIVED THERE?
- 5 A ABOUT 13, 14 YEARS.
- 6 Q AND YOU'VE SPENT ALL YOUR LIFE HERE IN BARNWELL?
- 7 A YES, SIR.
- 8 Q DO YOU WORK RIGHT NOW?
- 9 A YES, SIR.
- 10 Q WHERE DO YOU WORK?
- 11 A SARA LEE.
- 12 Q SOCK COMPANY?
- 13 A YES, SIR.
- 14 Q OKAY. MR. WALKER, I'M GOING TO ASK YOU SOME QUESTIONS ABOUT
- 15 DECEMBER THE 11TH, 1997.
- 16 A YES, SIR.
- 17 Q DO YOU REMEMBER WHAT WENT ON THAT DAY?
- 18 A YES, SIR.
- 19 Q AND DO YOU KNOW MICHAEL PAUL BUCKMAN?
- 20 A YES, SIR.
- 21 Q DO YOU KNOW MAURICE BENNING?
- 22 A YES, SIR.
- 23 Q HOW LONG HAVE YOU KNOWN EACH OF THEM?
- 24 A I JUST MET MAURICE WHEN HE MOVED TO SOUTH CAROLINA.
- 25 Q SO NOT LONG?

- 1 A NOT LONG.
- 2 Q WHAT ABOUT MICHAEL PAUL BUCKMAN?
- 3 A I KNEW HIM EVER SINCE I WAS GROWING UP.
- 4 Q WHAT ABOUT TUNZY SANDERS?
- 5 A I KNEW HIM TOO.
- 6 Q SAME - -
- 7 A SAME DISTANCE, YES, SIR.
- 8 Q ARE YOU THE SAME AGE?
- 9 A ABOUT A COUPLE OF YEARS OLDER THAN ME.
- 10 Q BUT YOU'VE KNOWN HIM A LONG TIME?
- 11 A YES, SIR.
- 12 Q AND DID THEY COME TO YOUR HOUSE?
- 13 A YES, SIR.
- 14 Q WOULD YOU GO TO THEIR HOUSE ON OCCASIONS?
- 15 A NOT REALLY. I WENT TO MICHAEL PAUL'S HOUSE A COUPLE OF TIMES.
- 16 BUT I AIN'T NEVER BEEN TO TUNZY OR MAURICE'S HOUSE.
- 17 Q DO YOU KNOW WHERE THEY LIVE?
- 18 A YES, SIR.
- 19 Q WHERE DID TUNZY LIVE DURING THAT TIME?
- 20 A HE LIVED - - HE WAS LIVING OUT THERE TOWARDS KLINE WAY ON THE
- 21 ALLENDALE HIGHWAY.
- 22 Q DOWN SOUTH TOWARD ALLENDALE?
- 23 A YES, SIR.
- 24 Q AND WHAT ABOUT MAURICE? DID YOU KNOW WHERE HE LIVED?
- 25 A NOT EXACTLY BUT I KNOW HE LIVED SOMEWHERE ON BERRY OR CHERRY

- 1 STREET.
- 2 Q IS THAT NEAR MICHAEL PAUL?
- 3 A YES, SIR.
- 4 Q ON DECEMBER 11TH, DID YOU SEE ANY OF THOSE THREE PEOPLE?
- 5 A DECEMBER 11TH? YES, SIR.
- 6 Q BACK IN 1997?
- 7 A (WITNESS NODDED HEAD.)
- 8 Q YES OR NO, YOU HAVE TO ANSWER OUT LOUD.
- 9 A YES, SIR.
- 10 Q AND WHERE WERE YOU WHEN YOU SAW THEM?
- 11 A WE WAS AT MY HOUSE.
- 12 Q AND HOW DID YOU COME TO COME IN CONTACT WITH THEM THAT DAY?
- 13 A I THINK TEMETRIUS OR METRIUS OR WHATEVER HER NAME WAS
- 14 DROPPED THEM OFF.
- 15 Q DID YOU KNOW HER?
- 16 A NOT REALLY. I JUST KNOW SHE WAS A GIRL FROM BLACKVILLE. THAT'S
- 17 IT.
- 18 Q SHE DROPPED THEM OFF WHERE?
- 19 A AT MY HOUSE.
- 20 Q AND WHAT TIME OF DAY WAS THIS?
- 21 A THAT WAS LIKE DURING THE AFTERNOON TIME, AROUND ABOUT 5:00 OR
- 22 SOMETHING LIKE THAT TIME.
- 23 Q AND WHAT HAPPENED AFTER SHE DROPPED THEM OFF AT YOUR HOUSE?
- 24 A WE JUST CHILL OUT FOR A LITTLE WHILE THEN SOMEBODY JUST CAME UP
- 25 TALKING ABOUT A LICK, BUT I DON'T KNOW WHICH ONE FOR SURE, BUT I

1 JUST KNOW THE CONVERSATION HAD CAME UP.

2 Q WHO ALL WAS THERE THAT NIGHT?

3 A IT WAS A LOT OF MY FRIENDS BECAUSE A LOT OF PEOPLE HANG OUT AT
4 MY HOUSE.

5 Q ALL RIGHT. WHEN YOU SAY THEY STARTED TALKING ABOUT A LICK,
6 WHO ARE YOU TALKING ABOUT?

7 A IT REALLY -- I REALLY CAN'T REMEMBER WHICH ONE, BUT IT WAS AS A
8 GROUP.

9 Q THE WHOLE BIG GROUP OR ---

10 A YEAH, THE WHOLE GROUP LIKE.

11 Q ALL RIGHT. SO WHO ALL WAS OUT THERE WHEN SOMEONE SAID
12 SOMETHING ABOUT A LICK?

13 A ME, MIKE PAUL, TUNZY, MR. BEAN AND SIDNEY AND ROSE AND MYRON
14 WILLIAMS AND A COUPLE OTHER FELLOWS FROM DOWN THE BLOCK, BUT
15 I REALLY CAN'T REMEMBER EVERYBODY THAT WAS OUT THERE THAT
16 DAY.

17 Q AND YOU'RE SAYING YOU DON'T KNOW WHO EXACTLY SAID ANYTHING
18 ABOUT A LICK?

19 A I DON'T KNOW WHICH ONE EXACTLY SAID IT, BUT I KNOW IT CAME UP.

20 Q AND WHAT DOES GET A LICK MEAN?

21 A ROBBERY OR STEAL.

22 Q DOES IT MEAN BORROWING SOMETHING?

23 A NO, SIR.

24 Q DOES IT MEAN BEGGING FOR MONEY OR WORKING FOR MONEY?

25 A NO, SIR.

- 1 Q WHAT DOES IT MEAN IN YOUR NEIGHBORHOOD?
- 2 A ROBBERY OR GET MONEY.
- 3 Q WHAT HAPPENED AFTER SOMEBODY SAID SOMETHING ABOUT GETTING A
- 4 LICK?
- 5 A THAT WAS IT. WE JUST CHILLED OUT LIKE USUAL, THEN THE NEXT THING
- 6 I KNOW THEY WAS LIKE THEY WERE GOING TO BARNWELL ARMS
- 7 APARTMENTS AND THAT WAS IT.
- 8 Q WHO WAS THEY?
- 9 A MIKE PAUL, TUNZY AND MAURICE.
- 10 Q WERE THEY ALL TOGETHER THAT NIGHT, THOSE THREE?
- 11 A YES, SIR.
- 12 Q AND DID THAT TERM COME UP ONCE, TWICE?
- 13 A ONCE, JUST ONLY ONCE.
- 14 Q AND WHEN WAS THAT IN RELATION TO WHEN THOSE PEOPLE LEFT YOUR
- 15 HOUSE?
- 16 A THAT WAS BEFORE THEY LEFT MY HOUSE.
- 17 Q RIGHT BEFORE OR A COUPLE OF HOURS BEFORE?
- 18 A A COUPLE OF HOURS BEFORE.
- 19 Q A COUPLE OF HOURS BEFORE?
- 20 A YES, SIR.
- 21 Q AND WHEN THEY LEFT, DID THEY TELL YOU WHERE THEY WERE GOING?
- 22 A BARNWELL ARMS APARTMENTS.
- 23 Q AND WHY WERE THEY GOING THERE, DID THEY SAY?
- 24 A THEY SAID THEY WAS GOING OUT THERE TO CHILL WITH A FRIEND.
- 25 THE COURT: COULD YOU ASK HIM TO REPEAT -- SAY WHOSE

DIRECT EXAMINATION - JERMAINE WALKER BY MR. GIBBONS

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1 APARTMENT IT WAS AGAIN?

2 MR. WALKER: BARNWELL ARMS APARTMENTS.

3 MR. GIBBONS: BARNWELL ARMS APARTMENTS.

4 THE COURT: BARNWELL ARMS.

5 BY MR. GIBBONS:

6 Q ALL RIGHT, SIR. DO YOU REMEMBER TESTIFYING AT A PRIOR HEARING IN
7 THIS CASE?

8 A YES, SIR.

9 Q LET ME SHOW YOU A COPY OF THE TRANSCRIPT, PAGE 404.

10 A YES, SIR.

11 Q JUST START AT THE TOP AND ---

12 A RIGHT HERE?

13 Q IT STARTS OUT -- READ TO YOURSELF THAT PAGE, PLEASE.

14 A READ OUT LOUD?

15 Q READ TO YOURSELF.

16 A ALL RIGHT. YES, SIR.

17 Q IN TERMS OF THIS -- YOU SAID SOMEBODY SAYING, GETTING A LICK.

18 A YES, SIR.

19 Q DOES THIS REFRESH YOUR MEMORY ANY AS TO WHO MIGHT HAVE SAID
20 THAT?

21 A I DON'T KNOW WHICH ONE SAID IT, BUT I KNOW IT WAS -- LIKE I SAID, WE
22 WAS IN A GROUP AND IT CAME UP.

23 Q AND IT'S YOUR TESTIMONY IT COULD HAVE BEEN ONE OF THREE?

24 A YES, SIR.

25 MS. SANDERS: WELL, YOUR HONOR, I'M GOING TO OBJECT. HE

1 ALREADY SAID HE DIDN'T KNOW.

2 THE COURT: ALL RIGHT. HE SAID IT AGAIN.

3 MS. SANDERS: ALL RIGHT.

4 BY MR. GIBBONS:

5 Q AND THOSE THREE LEFT TOGETHER, DID ANYBODY ELSE LEAVE WITH
6 THEM?

7 A NO, THEY JUST LEFT BY THEIRSELF.

8 Q AND DID YOU LEAVE WITH THEM THEN?

9 A NO, SIR.

10 Q DID YOU SEE THEM AGAIN THAT NIGHT?

11 A NO, SIR.

12 Q WHAT WERE THEY DOING THE LAST MOMENT YOU SAW THEM ON THE
13 NIGHT OF DECEMBER 11TH?

14 A THE LAST NIGHT I SAW THEM, ALL OF US WAS STANDING ON THE FRONT
15 PORCH. IT WAS RAINING AT THE SAME TIME THEN THEY LEFT AND
16 WALKED DOWN THE ROAD TOWARDS THE OLD HUDDLE HOUSE AND THE
17 CHINESE RESTAURANT.

18 Q THEY WERE WALKING TOWARD THAT AREA?

19 A YEAH.

20 Q THE CHINESE RESTAURANT AREA? AND WHAT TIME DID THEY LEAVE
21 YOUR HOUSE THAT NIGHT?

22 A AROUND 9:30, 9 O'CLOCK. BETWEEN IT.

23 Q SO THEY STAYED THERE A GOOD WHILE?

24 A YES, SIR.

25 Q AND I BELIEVE YOU SAID IT WAS RAINING?

- 1 A YES, SIR.
- 2 Q JUST A MOMENT. DO YOU REMEMBER WHAT THEY WERE WEARING THAT
- 3 NIGHT, MR. WALKER?
- 4 A BLUE JEANS AND LIKE -- TUNZY, HE HAD ON A STOCKING CAP AND THE
- 5 REST OF THEM DIDN'T HAVE NO HAT ON AND JACKET, BLACK JACKET.
- 6 TUNZY HAD A BLACK AND BROWN JACKET THAT HE ALWAYS WEAR.
- 7 Q OKAY. WHAT DID YOU SAY MR. SANDERS HAD ON?
- 8 A LIKE A LUMBERJACK JACKET, LIKE A BLACK AND WHITE PLAID JACKET,
- 9 LIKE A LUMBERJACK JACKET.
- 10 Q DID HE HAVE A HAT ON TOO THAT NIGHT?
- 11 A NO, JUST MR. SANDERS HAD A HAT ON.
- 12 Q MR. SANDERS?
- 13 A YES, SIR.
- 14 Q AND DID YOU SEE HIM HAVE ANYTHING WITH HIM THAT NIGHT?
- 15 A NO, SIR.
- 16 Q THEY WEREN'T CARRYING ANYTHING?
- 17 A THEY WEREN'T CARRYING NOTHING.
- 18 Q THEY DIDN'T SHOW YOU ANYTHING IN THEIR POCKETS?
- 19 A NO, SIR.
- 20 Q ANSWER ANY QUESTIONS THE DEFENSE HAS.
- 21 THE COURT: ALL RIGHT. MS. SANDERS?
- 22 CROSS-EXAMINATION
- 23 BY MS. SANDERS:
- 24 Q GOOD AFTERNOON, MR. WALKER.
- 25 A HOW YOU DOING?

1 Q MR. WALKER, YOU GAVE A STATEMENT, VOLUNTARY STATEMENT TO THE
2 POLICE?

3 A YES, SIR -- YES, MA'AM.

4 Q OKAY. AND WHERE DID YOU REMEMBER GIVING THAT STATEMENT?

5 A I WAS AT WORK. I WORK AT WILLISTON AT B.F. GOODRICH.

6 Q OKAY. AND THAT WAS ON OCTOBER 7TH WHEN THEY CAME TO YOUR JOB?

7 A YES, MA'AM.

8 Q OKAY. WHO CAME TO YOUR JOB, SIR?

9 A MR. WAYNE MARTIN AND TOM GRANT.

10 Q TOM GRANT, WOULD THAT BE TODD GANTT?

11 A YES, MA'AM.

12 Q OKAY. ANYBODY ELSE COME THERE?

13 A NO. THAT WAS IT.

14 Q OKAY. AND THEY CAME ON TO YOUR JOB AND THEY ASKED YOU TO DO
15 WHAT?

16 A THEY ASKED ME QUESTIONS ABOUT THE CRIME.

17 Q AND DO YOU KNOW HOW IT WAS THAT THEY CAME TO TALK TO YOU, SIR?
18 DID THEY TELL YOU THAT?

19 A NO, SIR, I MEAN NO, MA'AM.

20 Q AND YOU WROTE OUT A STATEMENT FOR THEM ON THAT DAY, CORRECT?

21 A YES, MA'AM.

22 Q WAS THAT STATEMENT IN YOUR HANDWRITING?

23 A NO, MA'AM.

24 Q YOU OWN HANDWRITING?

25 A YEAH, IN MY OWN HANDWRITING, YES, MA'AM.

CROSS-EXAMINATION - JERMAINE WALKER BY MS. SANDERS

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1 Q WHEN WAS THE LAST TIME YOU LOOKED AT THAT STATEMENT?

2 A A GOOD WHILE BACK.

3 Q DO YOU REMEMBER WHAT WAS IN THE STATEMENT WHEN YOU WROTE
4 IT?

5 A I TOLD THEM ABOUT WHAT HAPPENED THAT NIGHT WHEN MAURICE AND
6 TUNZY AND MIKE PAUL CAME TO MY HOUSE AND WHEN THEY LEFT AND
7 ABOUT THE LICK AND THEY WERE GOING OUT TO BARNWELL ARMS.

8 Q DID YOU EVER REMEMBER TELLING THEM THAT YOU SAW TUNZY AND
9 MAURICE AND MICHAEL PAUL AT YOUR HOUSE THE NIGHT BEFORE THIS
10 INCIDENT HAPPENED? DO YOU REMEMBER WRITING THAT IN YOUR
11 STATEMENT?

12 A YES, MA'AM.

13 Q AND THAT'S WHAT YOU SAID ON OCTOBER 7, 1998, BACK THEN, CORRECT?

14 A YES, MA'AM.

15 Q AND NOW YOU'RE SAYING THAT YOU SAW MAURICE, TUNZY AND
16 MICHAEL PAUL AT YOUR HOUSE THE NIGHT OF THE INCIDENT, RIGHT?

17 A SEE, I -- SEE, EITHER THE 7TH OR THE 11TH.

18 Q I'M SORRY, SIR?

19 A THE NIGHT IT HAPPENED, WHAT NIGHT IT WAS, THE 11TH OR THE WHAT?

20 Q DO YOU KNOW WHAT NIGHT IT HAPPENED, MR. WALKER?

21 A THAT WAS BACK IN 1997.

22 Q IN YOUR STATEMENT, ISN'T IT TRUE THAT YOU, ON -- THAT YOU GAVE TO
23 THE POLICE ON OCTOBER 7, 1998, YOU INDICATED THAT IT WAS THE
24 NIGHT THAT MAURICE, TUNZY AND MICHAEL PAUL BUCKMAN WERE NOT
25 AT YOUR HOUSE THE NIGHT OF THIS INCIDENT, THEY WERE AT YOUR

1 HOUSE THE NIGHT BEFORE, CORRECT?

2 A I DON'T KNOW. I NEED TO SEE THE STATEMENT. I AIN'T SAW IT SINCE I
3 WROTE IT.

4 Q YOU CAN SEE IT.

5 A ALL RIGHT.

6 MS. SANDERS: FOR THE RECORD, I'M SHOWING THE WITNESS HIS
7 STATEMENT.

8 BY MS. SANDERS:

9 Q THIS IS YOUR HANDWRITING IN THIS STATEMENT, CORRECT?

10 A YES, MA'AM.

11 Q OKAY. READ THAT TOP LINE THERE. DID YOU WRITE ON THAT
12 STATEMENT, THE NIGHT BEFORE THE LADY ---

13 A RIGHT HERE I GOT IT MARKED OUT.

14 Q DID YOU WRITE BEFORE, THE NIGHT BEFORE, SIR?

15 A YES, MA'AM, RIGHT HERE.

16 Q YOU WROTE THE NIGHT BEFORE THIS INCIDENT, CORRECT? YES OR NO,
17 MR. WALKER?

18 A YES, MA'AM.

19 Q OKAY. YOU SAID THE NIGHT BEFORE THE LADY GOT KILLED, MAURICE,
20 MICHAEL PAUL AND TUNZY WERE AT YOUR HOUSE, CORRECT?

21 A YES, MA'AM.

22 Q YOU DIDN'T SAY ANYTHING ABOUT THE NIGHT OF THIS INCIDENT,
23 CORRECT?

24 A WELL, SEE ON THE STATEMENT WHEN THEY CAME UP TO THE JOB ---

25 Q YES OR NO, SIR?

CROSS-EXAMINATION - JERMAINE WALKER BY MS. SANDERS

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1 A MA'AM?

2 Q YOU DIDN'T SAY ANYTHING ---

3 MR. GIBBONS: YOUR HONOR, I'D ASK THAT HE BE ALLOWED TO
4 ANSWER THE QUESTION.

5 THE COURT: HE CAN EXPLAIN IT.

6 BY MS. SANDERS:

7 A THE NIGHT -- I MEAN THE DAY WHEN THEY CAME TO THE JOB, AND THEY
8 ASKED ME ABOUT IT, I WAS CONFUSED AND I WAS SHOOK A LITTLE BIT
9 TOO BECAUSE I DIDN'T KNOW WHAT WAS GOING ON.

10 Q YOU WERE SHOOK AND YOU DIDN'T KNOW WHAT WAS GOING ON
11 BECAUSE YOU THOUGHT THEY CAME THERE TO ASK YOU ABOUT YOUR
12 DRUG DEALINGS, CORRECT?

13 A WHO?

14 Q THE POLICE.

15 A DRUG DEALING?

16 Q YES.

17 A HOW DO YOU KNOW I SELL DRUGS? WHO'S TOLD YOU I SELL DRUGS?
18 YOU GOT ANY PROOF I SELL DRUGS?

19 Q SIR, YOU THOUGHT THEY WERE COMING THERE TO SELL -- TO ASK YOU
20 ABOUT THE CRACK COCAINE SALES AND THE MARIJUANA SALES,
21 CORRECT?

22 A NO, MA'AM.

23 Q ISN'T THAT WHAT YOU THOUGHT?

24 A NO, MA'AM.

25 Q AND, IN FACT, YOU WERE ENGAGED IN CRACK COCAINE SALES AND

- 1 MARIJUANA SALES AT YOUR HOUSE, CORRECT?
- 2 A NO, MA'AM.
- 3 Q AND THAT'S WHY ALL THESE PEOPLE WERE LOITERING AROUND YOUR
- 4 HOUSE ALL THE TIME, CORRECT?
- 5 A NO, MA'AM.
- 6 Q AND SO TO GET OUT OF WHAT YOU THOUGHT WAS A STICKY SITUATION
- 7 OR THAT YOU MIGHT BE CHARGED WITH SOMETHING, YOU MADE THIS
- 8 STATEMENT, CORRECT?
- 9 A WELL, SEE WHEN THEY CAME TO THE JOB - - -
- 10 Q YES OR NO?
- 11 A I WROTE THAT STATEMENT. MY INITIALS AND EVERYTHING ARE ON IT.
- 12 Q AND YOU TESTIFIED UNDER OATH AT ANOTHER PROCEEDING IN THIS
- 13 CASE, CORRECT?
- 14 A MA'AM?
- 15 Q YOU TESTIFIED UNDER OATH AT ANOTHER PROCEEDING, EARLIER. YOU
- 16 TESTIFIED ON THAT STAND, THAT VERY STAND BEFORE, CORRECT?
- 17 A BUT WHEN I TESTIFIED - - YES, MA'AM. BUT WHEN I TESTIFIED, WHEN I
- 18 WROTE THE STATEMENT, THEY CAME UP TO THE JOB - - -
- 19 Q I'M TALKING ABOUT WHEN YOU TESTIFIED. MY QUESTION IS, MR.
- 20 WALKER, WHEN YOU TESTIFIED BEFORE IN COURT, DO YOU REMEMBER
- 21 COMING IN HERE AND TESTIFYING IN COURT?
- 22 A YES, MA'AM. I REMEMBER.
- 23 Q YOU SAID, UNDER OATH, THAT THAT WORD LICK COULD MEAN
- 24 ANYTHING, CORRECT?
- 25 A BUT WHAT - - A LICK, LIKE I TOLD YOU IN MY STATEMENT, LICK MEANT

CROSS-EXAMINATION - JERMAINE WALKER BY MS. SANDERS

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- 1 EITHER ROBBERY OR STEAL OR GET MONEY, LIKE I HAD SAID.
- 2 Q OKAY. BUT YOU ALSO SAID WHEN YOU WERE ASKED, IF THAT COULD
- 3 MEAN ANYTHING AND YOU SAID, TRUE, CORRECT?
- 4 A YES, MA'AM.
- 5 Q OKAY. SO NOW, WE HAVE YOU COME HERE TODAY ---
- 6 A BUT ---
- 7 Q LET ME ---
- 8 A ALL RIGHT. YOU CAN FINISH.
- 9 Q NOW, WE HAVE YOU COME HERE TODAY -- OH AND BY THE WAY, WHO
- 10 DID YOU TALK TO BEFORE YOU TESTIFIED HERE TODAY, SIR?
- 11 A WHO I TALK TO?
- 12 Q YEAH. WHO DID YOU TALK TO?
- 13 A WHAT DO YOU MEAN WHO I TALK TO?
- 14 Q WHO DID YOU TALK TO ABOUT YOUR TESTIMONY TODAY?
- 15 A ONLY PERSON I TALKED TO WAS THE SOLICITORS.
- 16 Q AND WHO WAS THAT?
- 17 A MR. GIBSON.
- 18 Q AND WHEN DID YOU DO THAT, SIR?
- 19 A THEY JUST GIVE ME A COPY OF THE TESTIMONY I HAD.
- 20 Q AND NOW YOU COME HERE TODAY AND YOU SAY, OH A LICK MEANS
- 21 ROBBERY OR GETTING SOME MONEY, CORRECT?
- 22 A THAT'S WHAT I HAD IN MY -- IN THE FIRST TESTIMONY. IT GOT ROBBERY,
- 23 GET MONEY.
- 24 Q NOW YOU DISCUSSED THIS -- YOU SAID THAT YOU WERE IN A GROUP OF
- 25 PEOPLE, CORRECT?

1 A YES, MA'AM.

2 Q ABOUT 8 OR 9 PEOPLE STANDING AROUND?

3 A YES, MA'AM.

4 Q AND SOMEBODY MENTIONED SOMETHING ABOUT A LICK, CORRECT?

5 A YES, MA'AM.

6 Q THAT'S YOUR TESTIMONY? BUT YOU DON'T KNOW WHO IT WAS,
7 CORRECT?

8 A BUT DURING THAT SITUATION, DURING THAT TIME AND THE SITUATION,
9 IT WAS ONLY THEM THREE AND LIKE I SAID, ME AND TWO OTHER BOYS
10 AND A COUPLE MORE OF THE BOYS.

11 MS. SANDERS: YOUR HONOR, I WOULD MOVE TO STRIKE THE
12 ANSWER. I'D ASK YOU TO ANSWER MY QUESTIONS. I ASKED HIM A QUESTION
13 THAT HE JUST SAID HE DON'T KNOW WHO SAID ANYTHING ABOUT A LICK.
14 THAT'S MY QUESTION I POSED TO HIM AND HE CAN ANSWER YES OR NO.

15 THE COURT: WELL, HE CAN ANSWER YES OR NO AND THEN HE'LL
16 HAVE AN OPPORTUNITY TO EXPLAIN IT.

17 BY MS. SANDERS:

18 Q YOU JUST TESTIFIED - - -

19 A YES, MA'AM.

20 Q YOU DON'T KNOW WHO SAID ANYTHING ABOUT A LICK, CORRECT?

21 A YES, MA'AM.

22 Q AND YOU WERE STANDING THERE AS WELL, CORRECT? WHEN YOU CLAIM
23 THAT THIS LICK WAS - - -

24 A BUT I WAS SAYING - - THIS IS WHAT I WAS TRYING TO TELL YOU. DURING
25 THE SITUATION WITH THE LICK PART, I DON'T KNOW - - I AIN'T SAID

1 TUNZY SAID IT, BUT I AIN'T SAYING THEY DIDN'T SAY IT NEITHER. THAT
2 WHAT I'M TRYING TO TELL YOU. WE WAS IN A GROUP AND IT WAS THEM
3 THREE TOGETHER. I TRIED TO TELL YOU, BUT I'M NOT POINTING MY
4 FINGER, SAYING THAT TUNZY SAID IT. THAT'S ALL I'M TRYING TO TELL
5 YOU.

6 Q OKAY. AND YOU DIDN'T HEAR ANYBODY ELSE RESPOND TO THIS
7 COMMENT ABOUT A LICK, CORRECT?

8 A WHEN THE LICK PART CAME UP, LIKE I WAS TRYING TO TELL YOU JUST A
9 LITTLE WHILE AGO, IT WAS ALL OF US OUT THERE.

10 Q OKAY. SO ALL OF YOU WERE OUT THERE. DID YOU SAY ANYTHING IN
11 RESPONSE TO THAT COMMENT?

12 A NO.

13 Q DID YOU HEAR ANYBODY ELSE SAY ANYTHING IN RESPONSE TO THAT?

14 A NO, THEY JUST GIGGLING AND LAUGHING.

15 Q NOW, ACCORDING TO YOUR TESTIMONY, YOU SAID THAT SOMEONE WAS
16 GOING TO DANNY GREEN'S HOUSE IN BARNWELL ARMS, CORRECT?

17 A YES, MA'AM.

18 Q THEY DIDN'T SAY ANYTHING TO YOU ABOUT GOING TO ROB A
19 RESTAURANT, DID THEY?

20 A NO.

21 Q OKAY. AND THEY DIDN'T EVEN SAY THEY WERE GOING TO A
22 RESTAURANT, CORRECT?

23 A BUT DID I TELL YOU THEY SAID THEY WERE GOING TO A RESTAURANT?
24 NO, I DIDN'T.

25 Q OKAY. ALL RIGHT. I UNDERSTAND THAT, SIR. BUT I'M JUST ASKING YOU

- 1 TO CLARIFY THIS.
- 2 A ALL RIGHT.
- 3 Q OKAY.
- 4 A YES, MA'AM.
- 5 Q AND WHEN THEY LEFT - - ACCORDING TO YOUR TESTIMONY, WHEN THEY
- 6 LEFT YOUR HOUSE, YOU LIVE QUITE A WAYS UP THAT STREET, CORRECT?
- 7 WHAT STREET YOU LIVE ON? CLINTON?
- 8 A CLINTON STREET. YOU KNOW WHERE I LIVE AT.
- 9 Q YOU LIVE NEAR CHERRON, CORRECT?
- 10 A I DON'T LIVE NEAR CHERRON.
- 11 Q THAT'S ABOUT TWO OR THREE BLOCKS FROM DOWN ON DUNBARTON,
- 12 CORRECT?
- 13 A DOWN ON DUNBARTON? NO. MY HOUSE IS NUMBER [REDACTED]. IF YOU
- 14 STAND ON MY FRONT PORCH, MY NEIGHBOR HAD A TREE THERE, BUT HE
- 15 CUT THE TREE DOWN AND IF YOU WALK DOWN THE SIDEWALK AND
- 16 TURNED ON CAMELIA STREET, I CAN SEE THE TOP OF YOUR HEAD
- 17 BECAUSE OF THE STREET LIGHT RIGHT THERE.
- 18 Q BUT AT THAT TIME, THAT TREE WAS STILL THERE IN FULL BLOOM?
- 19 A NO, NO. IT WASN'T THERE YET.
- 20 Q IT WASN'T CUT DOWN THEN, RIGHT?
- 21 A YEAH, IT WERE CUT DOWN. THAT'S MY NEIGHBOR, I'D KNOW.
- 22 Q AND SIR, YOU CANNOT STAND ON YOUR PORCH AND LOOK DOWN TO
- 23 DUNBARTON TO SEE WHERE SOMEBODY IS GOING?
- 24 A DUNBARTON, THAT'S ALL THE WAY DOWN TO THE 4-LANE. I AIN'T SAID
- 25 THE 4-LANE. I SAID BETWEEN THE CAMELIA STREET AND CLINTON

1 STREET. I LIVE ON CLINTON STREET. THE ROAD BESIDE OF ME IS
2 CAMELIA STREET. RIGHT DOWN CAMELIA STREET IS PHILLIP'S VIDEO,
3 HUDDLE HOUSE AND RIGHT ACROSS THE STREET FROM THE HUDDLE
4 HOUSE IS THE CHINESE RESTAURANT. THAT'S THE STREET I WAS TELLING
5 YOU.

6 Q ALL RIGHT. SO YOU DIDN'T SEE ANYBODY GOING TOWARD THE CHINESE
7 RESTAURANT?

8 A THEY CUT THAT ROAD RIGHT THERE ON CAMELIA STREET.

9 Q OKAY. SO YOU DIDN'T SEE ANYBODY GOING - - MY QUESTION, IT'S JUST
10 REAL SHORT, YOU DIDN'T SEE ANYBODY GOING TOWARD THE CHINESE
11 RESTAURANT, CORRECT?

12 A ALL RIGHT. WHEN YOU LEAVE OUT MY DRIVEWAY, IF YOU GO THIS WAY,
13 YOU'RE WALKING TOWARD THE HIGH SCHOOL, IF YOU'RE WALKING
14 TOWARD THIS WAY, YOU'RE WALKING TOWARD ALL THE STORES.

15 Q OKAY. MY QUESTION, AGAIN, DID YOU SEE ANYBODY - - DID YOU SEE
16 ANYBODY WALK TOWARD THE CHINESE RESTAURANT, MR. WALKER.

17 A IF YOU WALK, CHECK THIS OUT NOW, IF YOU WALK DOWN CAMELIA
18 STREET AND IF YOU CUT UP BETWEEN HUDDLE HOUSE, WHERE YOU
19 GOING THERE? YOU COME OUT RIGHT THERE AT THE CHINESE
20 RESTAURANT.

21 Q BUT THERE ARE OTHER RESIDENCES THERE AND HOUSES, ISN'T THAT
22 CORRECT, SIR?

23 A YES, MA'AM, I MEAN, YES, SIR.

24 Q MR. BENNING LIVES IN THAT AREA, CORRECT?

25 A YES.

1 Q AND MICHAEL PAUL BUCKMAN LIVED IN THAT AREA, CORRECT?

2 A YES.

3 Q AND A COUPLE OTHER PEOPLE THAT WERE THERE LIVED IN THAT AREA,
4 CORRECT?

5 A YES.

6 Q SO IT DOESN'T NECESSARILY FLOW THAT JUST BECAUSE THEY WERE
7 GOING THERE THEY WERE GOING TO A RESTAURANT, CORRECT?

8 A BUT I AIN' NEVER SAID THEY WENT TO A RESTAURANT. I SAID THEY
9 WALKED TOWARDS THE RESTAURANT. I AIN'T SAID THEY WENT TO THE
10 RESTAURANT.

11 Q BUT THEY COULD HAVE VERY WELL BEEN GOING TO BARNWELL ARMS,
12 CORRECT?

13 THE COURT: LOOK ---

14 MR. WALKER: I PUT THAT IN MY STATEMENT THOUGH. I SAID
15 THEY WENT TO BARNWELL ---

16 THE COURT: HOLD ON A MINUTE. WE'RE GOING OVER THIS, NOT
17 TEN TIMES. YOU ASKED HIM DID THEY GO TOWARDS THE RESTAURANT. HE
18 ANSWERED ---

19 MS. SANDERS: I'LL MOVE ON, YOUR HONOR.

20 THE COURT: --- THEY WENT TOWARDS THE RESTAURANT.

21 MS. SANDERS: I'LL MOVE ON.

22 THE COURT: THANK YOU.

23 BY MS. SANDERS:

24 Q SIR, THEY SAID THEY WERE GOING TO BARNWELL ARMS, CORRECT?

25 A YES, MA'AM.

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1 Q AND THEN THEY WENT IN THAT DIRECTION AS WELL, CORRECT?

2 A YES, MA'AM.

3 Q BARNWELL ARMS IS IN THAT DIRECTION, CORRECT?

4 A IN THAT DIRECTION.

5 Q AND, IN FACT, YOU TESTIFIED EARLIER, UNDER OATH, THAT YOU DID NOT
6 KNOW WHERE THEY WENT AFTER THAT, CORRECT?

7 A NO. IN MY STATEMENT I SAID THEY WENT TO BARNWELL ARMS. IN THE
8 STATEMENT I WROTE, I SAID, WHEN THE LEFT MY HOUSE THEY LEFT
9 WALKING TOWARD THE CHINESE RESTAURANT AND THEY SAID THEY
10 WERE GOING OUT TO BARNWELL ARMS.

11 Q JUST ONE SECOND, MR. WALKER. OKAY, SIR. I WANT TO SHOW YOU THE
12 TRANSCRIPT OF YOUR PRIOR TESTIMONY YOU GAVE IN THIS MATTER. SIR,
13 I'M GOING TO ASK THAT YOU START READING FROM 10 THROUGH 24.

14 A BUT THE STATEMENT I GOT, IT AIN'T GOT ALL THIS. IT AIN'T GOT NONE OF
15 THIS.

16 Q OKAY. SIR, I'M JUST ASKING, WAS THAT A TRANSCRIPT OF YOUR
17 TESTIMONY THAT YOU GAVE ON -- IN JANUARY OF '99? LET ME ASK YOU
18 THIS QUESTION, SIR, DID YOU HAVE YOUR OPPORTUNITY TO LOOK AT IT?

19 A MA'AM?

20 Q DID YOU HAVE AN OPPORTUNITY TO LOOK AT IT?

21 A I JUST LOOKED AT THE ONE THEY GAVE ME. I DIDN'T LOOK AT ALL --
22 THEY DIDN'T GIVE ME ALL THIS RIGHT HERE.

23 Q DO YOU RECALL THAT THAT IS A TRANSCRIPT OF YOUR TESTIMONY THAT
24 YOU GAVE PRIOR, IN THE PRIOR PROCEEDING, SIR?

25 A I AIN'T GOT IT, SO I REALLY CAN'T SAY IT IS OR NOT BECAUSE I DON'T

1 HAVE IT. WHAT I'VE GOT IS WHAT, YOU KNOW WHAT I'M SAYING, THE
2 QUESTIONS THAT THEY ASKED ME. I AIN'T GOT ALL THESE QUESTIONS
3 RIGHT HERE.

4 Q OKAY, SIR. BUT DO YOU -- LET ME JUST ASK YOU ---

5 THE COURT: WHAT IS THE QUESTION? WHAT IS IT YOUR TRYING
6 TO GET TO, PLEASE?

7 BY MS. SANDERS:

8 Q DO YOU REMEMBER BEING ASKED THIS QUESTION AND GIVING THIS
9 ANSWER IN A PRIOR PROCEEDING?

10 A THAT WAS IN '97, I CAN'T REMEMBER ---

11 THE COURT: WHAT IS THE QUESTION?

12 MS. SANDERS: I'M GETTING READY TO POSE IT TO HIM, YOUR
13 HONOR.

14 THE COURT: HAS HE BEEN SAYING SOMETHING DIFFERENT AT
15 THIS PROCEEDING?

16 MS. SANDERS: YES.

17 MR. WALKER: WHAT'S ANY DIFFERENT? I WANT TO KNOW.

18 THE COURT: ASK THE QUESTION.

19 BY MS. SANDERS:

20 Q STARTING ON LINE 16, WHAT HAPPENED AFTER THEY SAID SOMETHING
21 ABOUT GETTING A LICK. THAT WAS IT. THEN THEY WERE JUST CHILLING,
22 THEN THEY SAID THAT THEY WERE GOING TO BARNWELL ARMS TO
23 DANNY GREEN'S HOUSE. THAT'S IT. ALL RIGHT. DID THEY LEAVE. THEY
24 LEFT BUT WHEN THEY LEFT THEY WALKED DOWN THE SIDEWALK. I
25 DON'T KNOW WHERE THEY WENT AFTER THAT THOUGH. THAT WAS

1 YOUR TESTIMONY ---

2 THE COURT: ALL RIGHT. TELL ME WHAT IS DIFFERENT THERE
3 THAN WHAT HE'S BEEN SAYING.

4 MR. WALKER: I TOLD YOU THAT ---

5 THE COURT: WAIT A MINUTE.

6 MR. WALKER: ALL RIGHT.

7 MS. SANDERS: I'LL MOVE ON, YOUR HONOR. I'LL MOVE ON.

8 BY MS. SANDERS:

9 Q ISN'T IT TRUE, SIR, THAT YOU AND MAURICE BENNING LEFT THIS AREA
10 AND WENT TO HIS HOUSE ON THE NIGHT OF THIS ---

11 A NO.

12 Q --- INCIDENT, SIR?

13 A NO. I GOT -- YOU CAN ASK MY MOTHER, ANYBODY. I WAS AT HOME IN
14 THE BED ASLEEP THE NIGHT THAT THE ACCIDENT HAPPENED.

15 Q AND THAT YOU WERE THE PERSON THAT WENT TO MR. BENNING'S
16 HOUSE ---

17 A TO HIS HOUSE? I DON'T KNOW WHERE HE LIVE AT. I DONE TOLD YOU
18 THAT ONE TIME. I DON'T KNOW WHERE HE LIVE. I JUST KNEW HE LIVE
19 ON BERRY OR CHERRY STREET. I DO NOT KNOW EXACTLY WHICH HOUSE.
20 ONLY PERSON I KNEW LIVED WAS MICHAEL PAUL BUCKMAN BECAUSE
21 LIKE I SAID, WE GREW UP TOGETHER. AND I KNEW WHERE TUNZY LIVED
22 AT BECAUSE THEY LIVE ACROSS THE STREET FROM MY AUNT. NOT YOU
23 BUT MY SISTER DO.

24 Q MY QUESTION, SIR, IS ISN'T IT TRUE THAT YOU WERE THE ONE THAT
25 WENT WITH MAURICE BENNING OVER TO HIS HOME THAT NIGHT?

1 A NO.

2 MS. SANDERS: NOTHING FURTHER.

3 THE COURT: ANYTHING?

4 MR. GIBBONS: NOTHING, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU, MR. WALKER, YOU CAN
6 STEP DOWN.

7 MR. GIBBONS: CAN HE BE EXCUSED, YOUR HONOR?

8 THE COURT: YES, HE MAY. YOU HAVE A PROBLEM WITH HIS
9 LEAVING?

10 MR. WILLIAMS: NO, SIR.

11 MS. SANDERS: NO, YOUR HONOR.

12 THE COURT: YOU CAN GO TO WORK.

13 MR. WALKER: ALL RIGHT.

14 MR. GIBBONS: YOUR HONOR, THAT WOULD BE THE STATE'S CASE.

15 THE COURT: ALL RIGHT. YA'LL READY?

16 MIDTRIAL MOTIONS

17 MR. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD MOVE
18 FOR A DIRECTED VERDICT ON ALL THREE COUNTS. THAT OF MURDER, IN THAT
19 THERE IS NOTHING IN THE RECORD TO INDICATE FROM THE EVIDENCE WHEN
20 VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE THAT MR. SANDERS WAS
21 INVOLVED IN ANY ACT OF MURDER OR COMMISSION OF MURDER ON THE NIGHT
22 OF DECEMBER 11TH, 1997; FOR THE ATTEMPTED ARMED ROBBERY, IN THAT
23 THERE IS NO TESTIMONY WHATSOEVER TO INDICATE THAT TUNZY SANDERS
24 WAS INVOLVED IN ANY ATTEMPT TO ROB ANYONE ON DECEMBER 11, 1997; AND
25 FOR A DIRECTED VERDICT ON THE CHARGE OF CONSPIRACY. THERE'S NO

1 EVIDENCE, OR WHEN THE EVIDENCE IS VIEWED IN THE LIGHT MOST FAVORABLE
2 TO THE STATE TO INDICATE THAT HE WAS INVOLVED IN ANY KIND OF
3 CONSPIRACY TO COMMIT ANY CRIME THAT NIGHT. AND WE WOULD ASK THE
4 COURT TO DIRECT A VERDICT IN HIS FAVOR.

5 MR. GIBBONS: YOUR HONOR, THE STATE'S POSITION IN THIS CASE
6 IS IT FALLS UNDER THE DOCTRINE OF A FELONY MURDER. THERE'S TESTIMONY
7 IN THE RECORD THAT A ROBBERY WAS BEING TALKED ABOUT. MR. SANDERS
8 WAS IN THE PRESENCE OF MR. BUCKMAN WHEN THAT WAS BEING TALKED
9 ABOUT. THE GUN THE AGENTS HAVE TESTIFIED MATCHES THE CASING FOUND
10 NEAR THE BODY AND IS CONSISTENT WITH THE AMMUNITION IN THE GUN AND
11 THE BULLET FOUND IN THE BODY. IT CAME FROM MR. BENNING'S RESIDENCE.

12 HIS TESTIMONY WAS THAT HE WAS GIVEN A GUN FROM MS.
13 HIGHSMITH'S HOUSE TO MR. SANDERS AND THAT SHORTLY AFTER HE LEFT HIM
14 THAT NIGHT HE HEARD A SHOT FROM THE AREA AROUND THE RESTAURANT.
15 THEY CAME BACK AND A GUN WAS GIVEN BACK TO HIM, WHICH HE TESTIFIED
16 HE PUT BACK IN HIS MOTHER'S DRESSER.

17 WE CONCEDE THAT THERE IS A LOT OF CIRCUMSTANTIAL
18 EVIDENCE IN THIS CASE, BUT WE FEEL LIKE IT DOES RISE TO THE ISSUE THAT
19 SHOULD BE PRESENTED TO THE TRIER OF FACT AND WE HAD MADE OUT A CASE
20 FOR MURDER.

21 THE COURT: ALL RIGHT. LET'S TALK ABOUT ATTEMPTED ARMED
22 ROBBERY.

23 MR. GIBBONS: I DIDN'T KNOW HE INCLUDED THAT. DID YOU
24 INCLUDE THEM ALL?

25 MR. WILLIAMS: ALL OF THEM.

1 THE COURT: HE HAD THEM ALL.

2 MR. GIBBONS: YOUR HONOR, THERE WERE STATEMENTS MADE TO
3 MR. BENNING THAT MR. BUCKMAN WANTED -- NEEDED SOME MONEY AND THAT
4 HE, IN THE PRESENCE OF MR. SANDERS LEFT AND EVENTS TOOK PLACE. AS FAR
5 AS THE GUN, AS I MENTIONED BEFORE WITH THE MURDER, THEY WERE IN NEED
6 OF MONEY, THEY LEFT TOGETHER, THEY CAME BACK WITH THE MURDER
7 WEAPON TOGETHER. IF YOU TAKE IT IN THE LIGHT MOST FAVORABLE TO THE
8 STATE -- NO MONEY WAS TAKEN OUT OF THE CAR. THE STATE'S CONTENTION IS
9 THAT IT WAS A FOILED ROBBERY. SOMETHING HAPPENED RIGHT THERE NEXT
10 TO THE ROAD THAT PREVENTED THE ROBBERY FROM ACTUALLY ---

11 THE COURT: TELL ME WHAT THE EVIDENCE IS. ANY EVIDENCE.
12 ANY EVIDENCE THAT THERE WAS AN ATTEMPTED ROBBERY.

13 MR. GIBBONS: WELL, THE FACT THAT ---

14 THE COURT: WHAT YOU -- YOU MIGHT BE ABLE TO CONSTRUE
15 ABOUT WHAT YOU TOLD ME ABOUT THAT THERE WAS DISCUSSIONS ABOUT ONE
16 NEEDED SOME MONEY, WANTED SOME MONEY, THE OTHER ONE WAS -- MADE
17 COMMENTS ABOUT -- OR WAS AROUND WHEN IT WAS SAID, WE'RE GOING TO
18 GET A LICK TONIGHT, GOING TO GET SOME CHEESE TONIGHT.

19 MR. GIBBONS: YES, SIR.

20 THE COURT: NOW, THAT MAY GO TO THE CONSPIRACY.

21 MR. GIBBONS: YES, SIR.

22 THE COURT: TELL ME ABOUT WHAT EVIDENCE, ANY EVIDENCE
23 THAT WOULD REFLECT THAT THERE WAS AN ATTEMPTED ROBBERY.

24 MR. GIBBONS: YOUR HONOR, THE STATEMENTS MADE ---

25 THE COURT: I MEAN, YOU'RE JUST TAKING THE FACT THAT

1 SOMEONE WAS SHOT ---

2 MR. GIBBONS: NO, SIR.

3 THE COURT: THAT THAT MEANS THAT THEY SAID SOMETHING TO
4 PERFECT THIS ROBBERY?

5 MR. GIBBONS: NO, SIR. I BELIEVE MR. BENNING STATED THAT MR.
6 SANDERS -- MR. BUCKMAN WAS TALKING ABOUT GETTING MONEY FROM THE
7 CHINESE RESTAURANT THAT NIGHT.

8 THE COURT: ALL RIGHT.

9 MR. GIBBONS: SHORTLY BEFORE THE SHOOTING TOOK PLACE.

10 THE COURT: I UNDERSTAND THAT. TELL ME HOW THAT SHOWS
11 THAT THERE WAS AND ATTEMPTED ROBBERY. YOU AND I SIT HERE RIGHT NOW,
12 AND I SAY I'M GOING OVER THERE AND I'M GOING TO SHOOT MS. SMITH IN
13 THE -- I'M GOING TO GO ROB MS. SMITH IN THE ABC CONVENIENT STORE ---

14 MR. GIBBONS: YOUR HONOR, I BELIEVE ---

15 THE COURT: --- AND YOU GOING TO HELP ME AND YOU SAY, YEA,
16 I'M GOING TO HELP YOU OR I'M WITH YOU. AND THAT DOESN'T SHOW THAT I
17 ATTEMPTED THAT ROBBERY. I MAY HAVE CONSPIRED.

18 MR. GIBBONS: YES, SIR.

19 THE COURT: BUT TELL ME WHAT THE EVIDENCE IS.

20 MR. GIBBONS: YOUR HONOR, I BELIEVE THE EVIDENCE THAT THEY
21 MET ---

22 THE COURT: THEY MIGHT HAVE GONE BACK THERE, ALLEGING I
23 MEAN, ASSUMING WHAT YOU SAY IS TRUE, AND SAID SHE TURNS AROUND AND
24 THEY SHOOT HER.

25 MR. GIBBONS: YES, SIR. YOUR HONOR, I BELIEVE THE STATE'S

1 EVIDENCE OF THE ATTEMPT, FIRST OF ALL WHEN THEY WERE AT MR.
2 BUCKMAN'S HOUSE AND THEY WERE TALKING ABOUT ROBBING THE CHINA
3 EXPRESS RESTAURANT. MR. BENNING SAID, NO, MAN, I'LL GET YOU SOME
4 MONEY, DON'T DO IT. THEN THEY ACTUALLY BECAME ARMED AT SOME POINT.

5 THE COURT: WELL, THEY MAY HAVE FULLY HAVE INTENDED TO
6 DO IT.

7 MR. GIBBONS: YES, SIR.

8 THE COURT: INTENT IS NOT ATTEMPT.

9 MR. GIBBONS: INTENT IS CONSPIRACY.

10 THE COURT: WELL MAYBE. IF IT'S TWO OR MORE PEOPLE FOR AN
11 UNLAWFUL PURPOSE.

12 MR. GIBBONS: YES, SIR. I BELIEVE THE MOMENT THEY WALKED
13 OUT THE DOOR, WENT TO THE LOCATION AND WENT UP BEHIND THE BUILDING,
14 ACCORDING TO MR. BUCKMAN'S - - MR. BENNING'S' STATEMENT ABOUT MR.
15 BUCKMAN, THEY GOT ARMED, THEY WENT TO A LOCATION, I BELIEVE AT THAT
16 POINT THEY'VE TAKEN A STEP TOWARD COMPLETING THE CRIME AND I BELIEVE
17 THAT - - -

18 THE COURT: SO IF I PUT A GUN IN MY CAR AND I SAY I'M GOING TO
19 ROB FIRST NATIONAL BANK AND I DRIVE UP THERE AND I GET UP THERE AND I
20 SAY, OH, MY GOODNESS, THERE'S OFFICER SMITH, I'M TURNING AROUND - - -

21 MR. GIBBONS: THAT'S A WITHDRAWAL, YES, SIR.

22 THE COURT: IS THAT AN ATTEMPT?

23 MR. GIBBONS: IT WAS AN ATTEMPT AND THEN A WITHDRAWAL.

24 THE COURT: SO IF I DRIVE UP THERE AND SIT IN THE CAR WAITING
25 UNTIL SOMEBODY LEAVES THE BUILDING, HAVE I ATTEMPTED THAT ARMED

1 ROBBERY?

2 MR. GIBBONS: YOUR HONOR, I BELIEVE THE LAW IS THAT AN
3 ATTEMPT IS COMING UP WITH THE IDEA AND TAKING ANY STEP TOWARDS
4 ACCOMPLISHING THAT.

5 THE COURT: DO YOU HAVE A CASE ON THAT?

6 MR. GIBBONS: YES, SIR. THE FELONY MURDER CASE IS RIGHT
7 HERE. I'VE GOT SOME ATTEMPT CASES RIGHT HERE.

8 THE COURT: WELL, I'M NOT TALKING TO YOU ABOUT THE
9 MURDER.

10 MR. GIBBONS: YOU'RE TALKING TO ME ABOUT ATTEMPT.

11 THE COURT: FELONY MURDER MAY BE THE CONSPIRACY IN THE
12 MURDER.

13 MR. GIBBONS: YES, SIR.

14 THE COURT: JUST GOING AND SHOOTING HER WITH MALICE
15 AFORETHOUGHT MAY BE THE MURDER.

16 MR. GIBBONS: YES, SIR.

17 THE COURT: I'M TRYING TO UNDERSTAND THE ATTEMPTED
18 ARMED ROBBERY. AND, YOU KNOW, YOU DO THIS FOR A LIVING, I DO IT PART
19 TIME AND CIVIL PART TIME.

20 MR. GIBBONS: YOUR HONOR, I BELIEVE AND ATTEMPT IS WHEN I
21 COME UP WITH THE IDEA AND TAKE ANY STEP TOWARD COMPLETING THAT
22 IDEA. IT DOESN'T MEAN THAT I GO TO THE STORE AND HOLD THE CASHIER UP
23 AND THERE'S NO MONEY SO I RUN OUT. THAT'S CLEARLY AN ATTEMPT, BUT ---

24 THE COURT: SO IF I PUT THAT GUN IN MY CAR TO GO ROB THE
25 BANK AND I RUN A RED LIGHT AND SOMEBODY STOPS ME BECAUSE I RAN A RED

1 LIGHT, THEY CAN ALSO CHARGE ME WITH ATTEMPTED ARMED ROBBERY?

2 MR. GIBBONS: IF THEY CAN PROVE YOU'RE INTENT AND THAT
3 YOU TOOK A STEP.

4 THE COURT: YOU GOT A CASE?

5 MR. GIBBONS: I WILL GET ONE IN ONE MINUTE.

6 THE COURT: ALL RIGHT. ANYTHING ELSE? DID YOU WANT TO SAY
7 ANYTHING ELSE?

8 MR. GIBBONS: NOT TO THAT, UNLESS ---

9 THE COURT: YOU WANT TO RESPOND IN ANY WAY?

10 MR. WILLIAMS: YOUR HONOR, WITH REGARD TO CONSPIRACY
11 AND THE MURDER AND THE ATTEMPTED ARMED ROBBERY, THERE IS NO
12 TESTIMONY IN THE RECORD TO INDICATE THAT TUNZY SANDERS SAID
13 ANYTHING REGARDING A CONSPIRACY. THE ONLY TESTIMONY THERE IS THERE
14 IS THAT MICHAEL PAUL BUCKMAN MAY HAVE SAID SOME THINGS. WITH
15 REGARD TO COMMENTS ABOUT A LICK, IF THAT MEANS ANYTHING?

16 THE COURT: ALL RIGHT. I'M GOING TO DENY YOUR MOTIONS ON
17 THE MURDER AND ON THE CONSPIRACY. I'M GOING TO TAKE UNDER
18 ADVISEMENT, BECAUSE THIS IS NON -- A BENCH TRIAL, I DON'T HAVE TO
19 PARTICULARLY HAVE TO RULE AT THIS TIME ON THE ATTEMPTED. IF YOU READ
20 THE STATEMENTS AND I KNOW YOU DON'T LIKE THEM, OF MR. STALEY AND MR.
21 VIGIER, THEY TALK ABOUT HOW ADMISSIONS WERE MADE THAT THESE
22 INDIVIDUALS WERE GOING TO COMMIT THE ROBBERY, THAT YOUR CLIENT
23 INDICATED THAT HE WAS GOING TO COMMIT THE ROBBERY AND YOUR CLIENT
24 INDICATED THAT, IN FACT, HE SHOT THIS WOMAN.

25 SO TAKING EVERYTHING IN THE LIGHT MOST FAVORABLE TO THE

1 NON-MOVING PARTY, I THINK THERE IS SOME EVIDENCE AT THIS POINT IN TIME
2 TO GET THAT. I'LL LET THEM SHOW ME WHAT THEY HAVE ON THE ATTEMPTED
3 ARMED ROBBERY. IF YOU'VE GOT SOMETHING ON ATTEMPTED ARMED
4 ROBBERY, A CASE LAW OR SOME CASES YOU WANT ME TO LOOK AT, I'LL BE
5 HAPPY TO DO THAT. I WOULD TELL YOU AT THIS TIME, YOU KNOW, IF YOU
6 WANT - - YOU PROBABLY OUGHT TO PERCEIVE THAT THAT'S GOING TO STAY IN
7 THE CASE BECAUSE IT'S - - I'M THE TRIER OF THE FACTS AND, YOU KNOW,
8 YOU'LL JUST HAVE TO PROCEED ACCORDINGLY.

9 ALL RIGHT. ANYTHING FURTHER?

10 MR. WILLIAMS: NO, SIR, NOTHING, YOUR HONOR.

11 THE COURT: YA'LL READY TO GO FORWARD?

12 MS. SANDERS: YES, YOUR HONOR. MAY I CONFER WITH MR.
13 WILLIAMS FOR ONE SECOND, YOUR HONOR? ONE MINUTE.

14 THE COURT: LET ME ASK YA'LL A QUESTION. I'M JUST TRYING TO
15 SEE WHAT YA'LL UNDERSTAND THE PENALTIES TO BE ON ALL THESE. ON THE
16 MURDER, THE PENALTY IS 30 YEAR MINIMUM, UP TO LIFE WITHOUT PAROLE. ON
17 THE CONSPIRACY, WHAT IS IT? 5 YEARS IS CONSPIRACY, YOU BELIEVE AND A
18 \$5,000 FINE?

19 MR. GIBBONS: YES, SIR.

20 THE COURT: AND THEN ON THE ATTEMPTED ARMED ROBBERY,
21 IT'S WHAT? 20 YEARS?

22 MR. GIBBONS: AND THAT ONE'S VIOLENT.

23 THE COURT: ALL RIGHT. OKAY.

24 MS. SANDERS: WE WOULD CALL MICHELLE MIXON.

25 MR. GIBBONS: YOUR HONOR, I MAY HAVE AN ISSUE OF LAW ON

1 THIS WITNESS.

2 THE COURT: ALL RIGHT. WELL, DO YOU WANT HER IN OR OUT? I
3 DON'T KNOW WHETHER YOU WANT THE WITNESS IN OR OUT. SHE'S SUPPOSED
4 TO BE SEQUESTERED.

5 MR. GIBBONS: I DON'T MIND IF SHE'S IN HERE IF THEY DON'T. IT
6 DOESN'T BOTHER ME.

7 YOUR HONOR, I BELIEVE - - WHAT'S HER NAME?

8 THE COURT: MICHELLE MIXON.

9 MR. GIBBONS: YOUR HONOR, I BELIEVE MICHELLE MIXON IS
10 GOING TO TESTIFY ABOUT SOME UNIDENTIFIED INDIVIDUALS THAT LOOKED
11 SUSPICIOUS THE NIGHT THIS HAPPENED AND I DON'T BELIEVE THAT THERE'S
12 ANYTHING ELSE THAT I'M AWARE OF THAT SHE COULD OR WOULD TESTIFY
13 ABOUT AND THE STATE WOULD OBJECT TO HER TESTIMONY COMING IN AS
14 EVIDENCE OF A THIRD PARTY COMMITTING THE CRIME AND I'M REFERRING TO A
15 RECENT SUPREME COURT CASE, STATE VS. MANSFIELD.

16 MS. SANDERS: YOUR HONOR, WE'RE GOING TO OFFER HER AS
17 OFFERING EXCULPATORY INFORMATION ABOUT THAT THERE WERE OTHER
18 INDIVIDUALS IN THIS AREA THAT NIGHT WHO WERE ACTING SUSPICIOUS AND
19 ACTING AS THOUGH THEY COULD HAVE COMMITTED THIS ROBBERY
20 ACCORDING TO MS. MIXON.

21 NOW, THE POLICE WENT TO HER AND QUESTIONED HER AND SHE
22 GAVE A STATEMENT TO THEM ABOUT THIS INCIDENT. HOWEVER, THEY DID NOT
23 ATTEMPT TO CALL HER. WE THINK THAT SHE CAN OFFER INFORMATION ABOUT
24 THAT AS WELL AS SHE HAD SOME CONTACT WITH TUNZY SANDERS - - -

25 THE COURT: ALL RIGHT. WELL THE PURPOSE OF CALLING HER IS

1 TO RAISE IN INFERENCE, AT LEAST, OF A THIRD PARTY OR PARTY'S
2 INVOLVEMENT IN THE ALLEGED CRIME?

3 MS. SANDERS: SHE'S NOT GOING TO - - SHE'S GOING TO PLACE
4 THEM IN AN AREA AND SAY WHAT THEY WERE DOING, YOUR HONOR. SHE'S NOT
5 GOING TO SAY THAT SHE THOUGHT THEY DID IT, BUT SHE'S GOING TO SAY THAT
6 SHE THINKS THERE'S A GREAT LIKELIHOOD THAT THEY COULD HAVE DONE THIS
7 CRIME, AS OPPOSED TO - - -

8 THE COURT: AGAIN, DOESN'T THAT GET TO THE THIRD PARTY,
9 TRYING TO SHOW THAT IT'S NOT YOUR CLIENT, BUT A THIRD PARTY THAT MAY
10 HAVE BEEN INVOLVED IN THIS. IS THAT THE PURPOSE OF HER TESTIMONY?

11 MS. SANDERS: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. WELL, THAT'S WHERE HE'S SAYING
13 UNDER A SUPREME COURT CASE, STATE VS. MANSFIELD THAT IT'S EXCLUDED.
14 NOW, I'M GETTING READY TO READ STATE VS. MANSFIELD AND YOU MIGHT
15 WANT TO READ IT YOURSELF. YOU MIGHT AGREE. YOU FAMILIAR WITH STATE
16 VS. MANSFIELD, MR. WILLIAMS?

17 MR. WILLIAMS: HE SHOWED ME A COPY THIS MORNING AND I
18 GLANCED AT IT, YOUR HONOR.

19 MS. SANDERS: NOBODY SHOWED ME.

20 THE COURT: WHO IS IT YOU WANT TO SHOW YOU THESE THINGS?

21 MS. SANDERS: IT DOESN'T MATTER, YOUR HONOR. I'LL DEFER TO
22 THE COURT TO READ IT.

23 THE COURT: WELL, IF YOU WANT TO ARGUE ABOUT IT - - -

24 MS. SANDERS: OKAY. YOUR HONOR - - -

25 THE COURT: I DON'T BELIEVE THE STATE IS OBLIGATED TO

1 EDUCATE THE DEFENDANT AND THE DEFENSE ATTORNEYS.

2 MS. SANDERS: THAT'S TRUE. YOU'RE RIGHT, YOUR HONOR,
3 YOU'RE RIGHT.

4 THE COURT: I DIDN'T ASK HIM WHETHER HE SHOWED IT TO HIM. I
5 ASKED HIM IF HE WAS FAMILIAR WITH IT.

6 MS. SANDERS: WELL, THEN I WOULD OFFER - - -

7 THE COURT: DO YA'LL HAVE ANOTHER COPY THAT YOU CAN GIVE
8 MS. SANDERS?

9 MR. GIBBONS: I KNOW IT, YOUR HONOR. I'M SORRY. I USUALLY
10 MAKE A COUPLE, BUT I DON'T. I APOLOGIZE.

11 THE COURT: ALL RIGHT. YOU WANT TO READ THIS?

12 YA'LL GOT ANOTHER WITNESS YOU CAN CALL AT THIS TIME?

13 MS. SANDERS: THE NEXT WITNESS IS GOING TO BE MR. SANDERS
14 AND HE MAY BE QUITE LENGTHY.

15 THE COURT: WELL, WHAT DOES THAT MEAN? WHAT IS QUITE
16 LENGTHY?

17 MS. SANDERS: 45 MINUTES OR SO.

18 THE COURT: WELL, YOU WANT TO CALL HIM NOW, AND
19 DEPENDING ON, WE MAY BREAK AT THE END OF YOUR DIRECT EXAMINATION
20 UNTIL TOMORROW AND LET THE CROSS BEGIN IN THE MORNING OR IF YOU
21 FINISH SOON ENOUGH OR IF YOU GO LONGER THAN THE NEXT 50 MINUTES OR
22 HOUR, THEN WE MAY HAVE TO CONTINUE IN THE MORNING. I DON'T WANT TO
23 UPSET THE ORDER OF YOUR TRIAL, BUT THIS WILL GIVE YOU AN OPPORTUNITY
24 TO READ THIS CASE.

25 MS. SANDERS: I WAS TRYING TO GET HER TO WHERE SHE DIDN'T

1 HAVE TO COME BACK TOMORROW. TODAY IS HER DAY OFF. BUT -- SO, YOUR
2 HONOR, MAY I HAVE A MOMENT TO CONFER WITH HER?

3 THE COURT: YA'LL REALLY HAVE A PROBLEM WITH THIS WITNESS
4 TESTIFYING? I MEAN, AGAIN, WE'VE GOT -- WE DON'T HAVE A JURY.

5 MR. GIBBONS: I WAS JUST BEING THOROUGH, YOUR HONOR. I
6 DON'T HAVE ANY PROBLEM WITH IT. I DON'T THINK IT'S RELEVANT. I KNOW WE
7 DON'T HAVE A JURY HERE. IF THEY WANT TO PROFFER IT AT THIS POINT FOR
8 YOU TO MAKE A RULING.

9 MR. WEEKS: IT WOULD TAKE LESS TIME TO PROFFER IT THAN IT
10 WILL BE TO ARGUE.

11 THE COURT: WHY DO YOU WANT TO PROFFER IT. THEN THAT
12 MEANS I'LL EITHER ACCEPT OR REJECT IT?

13 MR. WEEKS: RIGHT.

14 MS. SANDERS: YES, SIR.

15 THE COURT: ALL RIGHT. WE'LL DO THAT.

16 MS. SANDERS: IF WE WERE TO CALL MS. MIXON, SHE WOULD
17 TESTIFY THAT ON THE NIGHT OF DECEMBER 11TH ---

18 THE COURT: I'M GOING TO LET YOU PUT HER UP AND WE'LL LET
19 HER TESTIFY AND IF I DETERMINE THAT -- MA'AM YOU CAN COME UP HERE.

20 THEREUPON,

21 MICHELLE MIXON,

22 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: HAVE A SEAT UP HERE. STATE YOUR NAME FOR THE
24 RECORD.

25 MS. MIXON: MY NAME IS BOBBY MICHELLE MIXON.

25 A YES, MA'AM. THAT DAY THAT THEY HAD CAME. THE DAY AFTER.

1 Q AND WHAT WAS IT THAT YOU -- WAS THERE SOMETHING THAT YOU SAW?

2 A YES, MA'AM.

3 Q THAT YOU COMMUNICATED TO THEM?

4 A YES, MA'AM.

5 Q AND WHAT WAS THAT?

6 A IT WAS TWO GUYS THAT HAD GOT OUT OF AN OLD TOYOTA CELICA AND
7 THEY PARKED RIGHT BEHIND THE WINDOW, WHICH IS RIGHT BEHIND THE
8 CASH REGISTER, STOOD THERE FOR A MINUTE OR TWO AND ONE CAME
9 FROM ONE SIDE OF THE STORE IN THAT DOOR AND THE OTHER ONE CAME
10 FROM THE OTHER SIDE IN THE OTHER DOOR. ONE OF THEM ---

11 Q WHAT HAPPENED AFTER THAT?

12 A THE BLACK MALE, HE APPROACHED ME ACROSS THE COUNTER, WAS
13 LEANING OVER THE COUNTER, LOOKING AROUND. I ASKED HIM COULD I
14 HELP HIM AND HE SAT RIGHT BACK UP AND SHOWED ME A PIECE OF
15 PAPER AND SAID HE HAD A COLOGNE HE WAS SELLING, PERFUMES,
16 COLOGNES SELLING. THE WHITE GUY HAD WENT AROUND THE CORNER,
17 WHICH IS CONNECTED TO THE WHOLE -- THE WHOLE BAR IS CONNECTED.
18 AND HE WENT AND THE CLEAN-UP GUY, MET HIM COMING AROUND AND I
19 DON'T KNOW WHAT THEY WAS TALKING ABOUT BUT HE WAS ALL THE
20 WAY TO THE BACK OF THE BAR AND I WAS UP TO THE FRONT.

21 Q NOW, YOU SAID HE WAS LEANING OVER YOUR ---

22 A YEAH, LEANING OVER ME.

23 Q WHAT WAS HE LOOKING FOR?

24 A THERE'S A SAFE UNDERNEATH THE CASH REGISTER.

25 Q DID YOU BELIEVE HE WAS LOOKING AT THAT?

1 A YES. I KEPT ASKING HIM WHAT WAS HE LOOKING AT AND HE JUST TELL
2 ME NOTHING AND I TOLD HIM THAT I DON'T BUY COLOGNE OR PERFUME
3 OFF THE STREETS, I GO IN THE STORE AND IT WAS REAL BUSY THAT
4 NIGHT.

5 Q AND CAN YOU DESCRIBE THESE TWO PEOPLE?

6 A THE BLACK MALE, AS FAR AS I REMEMBER, THE BLACK MALE HAD LIKE A,
7 IT WAS A BEARD THAT - - HE HAD SOME BUMPS IN HIS FACE, HE WAS
8 ABOUT MY HEIGHT, MEDIUM BUILD, HE HAD A BLACK JACKET ON, DARK
9 JEANS LIKE I HAVE ON TODAY, A BLACK CAP ON AND THE WHITE GUY
10 WAS DRESSED JUST THE SAME WITH A BLACK BALL HAT AND A DARK
11 COAT AND DARK JEANS.

12 Q AND HAD YOU SEEN THESE INDIVIDUALS BEFORE?

13 A NO, MA'AM.

14 Q AND THESE WERE THE TWO INDIVIDUALS THAT YOU TOLD THE POLICE
15 ABOUT ON THAT NIGHT?

16 A YES, MA'AM.

17 Q NOW, AT SOME POINT, THEY LEFT YOUR LOCATION, CORRECT?

18 A YES, THEY HAD ASKED IF WE KNEW WHERE A WAFFLE HOUSE OR A
19 HUDDLE HOUSE WAS AT AND I HAD TOLD THEM IT WAS DOWN THE ROAD
20 AND I POINTED DOWN THE ROAD WHERE IT WAS AT. AND WHEN THEY
21 HAD LEFT, THEY DID THE SAME THING AND WAS LOOKING AROUND
22 OUTSIDE, LOOKING IN THE WINDOWS BECAUSE THERE'S BIG WINDOWS AT
23 BP. THEY WAS LOOKING AROUND AND THEN THEY GOT IN THE CAR AND
24 WE WATCHED, ME AND THE CLEANUP GUY WATCHED THEM AND THEY
25 LEFT GOING TOWARD THE WAFFLE HOUSE.

1 Q WHAT WAS IT THAT CALLED YOUR ATTENTION TO THESE TWO
2 INDIVIDUALS?

3 A JUST THE WAY THEY WERE WALKING AROUND THE STORE, YOU KNOW.
4 THEY WAS LEANING OVER THE COUNTER AND IT JUST LOOKED LIKE THEY
5 WAS JUST UP TO SOMETHING, THEY WERE CASING THE PLACE. IT SCARED
6 US.

7 Q NOW, MR. SANDERS, DO YOU KNOW HIM?

8 A I'VE SEEN HIM AROUND. HE KNOWS MY HUSBAND MORE THAN HE DOES
9 ME. WE'VE MET IN THE STORE.

10 Q YOU'VE SEEN MR. TUNZY SANDERS IN YOUR STORE?

11 A YES, ON ONE OCCASION, WELL A COUPLE OF OCCASIONS. AFTER HOURS,
12 LIKE, IF I'M CLOSING THE STORE DOWN, I WAS SO USED TO SEEING THEM
13 COME IN AND OUT. I SAY THEM, IT WAS TUNZY, MICHAEL PAUL AND A
14 COUPLE OTHER FELLOWS, BUCKMAN FELLOWS. BUT I HAD KNOWN THEM
15 FROM BEING IN THE STORE. I DON'T KNOW THEM PERSONAL, BUT I KNOW
16 THEM AND AFTER HOURS THEY HAD CAME TO THE STORE AFTER HOURS
17 AND KNOCKED ON THE WINDOW AND ASKED IF THEY COULD COME IN AT
18 THE LAST MINUTE AND I WOULD LET THEM IN.

19 Q AND DID YOU FEEL COMFORTABLE WITH DOING THAT?

20 A YEAH. YEAH.

21 Q AND WHY WAS THAT?

22 MR. WEEKS: YOUR HONOR, I OBJECT.

23 THE COURT: HOLD ON. I SUSTAIN THAT OBJECTION.

24 MS. MIXON: SORRY

25 BY MS. SANDERS:

1 Q DID TUNZY EVER ASK YOU ABOUT MONEY OR TAKE ANY MONEY FROM
2 YOU?

3 A NO, IN FACT, I'VE COUNTED MONEY IN FRONT OF HIM AFTER HOURS AND
4 WHEN I HAD LET THEM IN.

5 Q ANY INDICATION THAT HE WOULD ---

6 MR. GIBBONS: OBJECTION.

7 MS. MIXON: NO.

8 THE COURT: SUSTAINED.

9 MS. SANDERS: NOTHING FURTHER.

10 THE COURT: ANYTHING YOU WANT TO ASK THIS LADY?

11 MR. GIBBONS: I HAVE A COUPLE OF QUESTIONS.

12 CROSS-EXAMINATION

13 BY MR. GIBBONS:

14 Q MS. MIXON?

15 A YES, SIR.

16 Q WHAT TIME DOES THE STORE CLOSE WHERE YOU WORK?

17 A IF I'M NOT MISTAKEN, EITHER IT WAS -- IF IT WAS ON A THURSDAY, THEN
18 IT WOULD HAVE BEEN 11:00, BUT I MEAN, I'M ALMOST CERTAIN IT WAS ON
19 A WEDNESDAY AND THAT WOULD HAVE BEEN 10:00.

20 Q AND DID YOU KNOW -- HAVE YOU EVER BEEN TO THE CHINA EXPRESS
21 RESTAURANT?

22 A YES.

23 Q DO YOU KNOW WHAT TIME THEY CLOSE?

24 A I THINK AT 10:00.

25 Q AND THESE MEN WERE IN THE STORE 8:15 OR 8:30?

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1 A BETWEEN 8:30 -- I'M SAYING BETWEEN 8:00 AND 9:00, ABOUT THAT TIME,
2 8:30.

3 Q YOU ADMIT OR DENY TELLING THE OFFICERS 8:15 OR 8:30?

4 A NO, NO.

5 Q AND YOU DON'T KNOW WHO THEY WERE?

6 A NO, SIR, NEVER SEEN THEM BEFORE.

7 Q YOU DON'T KNOW WHAT THEY WERE DOING, DO YOU MA'AM?

8 A NO, SIR. THEY JUST LOOKED VERY SUSPICIOUS TO ME.

9 Q YOU DON'T KNOW WHERE THEY WERE GOING THAT NIGHT, DO YOU,
10 MA'AM?

11 A WELL, THEY WENT TOWARD WAFFLE HOUSE, OTHER THAN THAT, I DON'T
12 KNOW WHERE THEY WERE GOING.

13 Q SO YOU DON'T KNOW WHERE THEY CAME FROM, DO YOU?

14 A NO.

15 Q AND AFTER THEY WERE IN THE STORE, AND YOU SAY THEY WERE ACTING
16 SO SUSPICIOUS, YOU DIDN'T IMMEDIATELY CALL THE POLICE, DID YOU?

17 A NO.

18 Q YOU ONLY CAME FORWARD AFTER YOU HEARD WHAT HAPPENED, IS
19 THAT CORRECT?

20 A YES.

21 MS. SANDERS: THAT'S A MIS-STATEMENT OF THE FACTS. SHE'S ---

22 THE COURT: WAIT A MINUTE. SHE CAN ANSWER THAT. ARE YOU
23 THE WITNESS.

24 MS. SANDERS: I'LL JUST FILE AN OBJECTION, YOUR HONOR.

25 THE COURT: WHAT IS YOUR OBJECTION?

1 MS. SANDERS: THAT IT'S A MIS-STATEMENT OF WHAT ---

2 THE COURT: YOU'RE NOT THE WITNESS. SHE CAN ANSWER THAT
3 QUESTION. AND IF IT'S A MIS-STATEMENT, SHE'LL TELL US IT'S A MIS-
4 STATEMENT.

5 BY MR. GIBBONS:

6 Q MA'AM, YOU DID NOT IMMEDIATELY CALL THE POLICE THAT NIGHT, DID
7 YOU?

8 A NO, I HAD TOLD SOME FRIENDS THAT THEY HAD COME IN.

9 Q AND IT WASN'T UNTIL AFTER YOU HEARD WHAT HAD HAPPENED DOWN
10 THE ROAD THAT IT CAUGHT YOUR ATTENTION?

11 A IT CAUGHT MY ATTENTION, YES.

12 Q OKAY.

13 MR. GIBBONS: NOTHING FURTHER.

14 THE COURT: ANYTHING ON REDIRECT?

15 MS. SANDERS: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY STEP
17 DOWN.

18 APPARENTLY -- YA'LL HAVE A PROBLEM WITH HER LEAVING?

19 MR. GIBBONS: I DON'T.

20 THE COURT: THANK YOU, MA'AM.

21 MS. SANDERS: MAY WE APPROACH, YOUR HONOR?

22 (WHEREUPON THERE WAS A BENCH CONFERENCE OUT OF THE
23 HEARING OF THE COURT REPORTER.)

24 THE COURT: WE'LL TAKE ABOUT 5 MINUTES.

25 (WHEREUPON COURT WAS IN RECESS.)

1 THE COURT: ARE YOU GOING TO HAVE ANY OTHER WITNESSES
2 BESIDES YOUR CLIENT?

3 MS. SANDERS: NO, SIR.

4 THE COURT: ALL RIGHT. WE'RE GOING TO GO AHEAD AND RECESS
5 FOR THE NIGHT. I ANTICIPATED YOU WOULD PROBABLY BE TWO HOURS
6 BETWEEN YOUR DIRECT AND REDIRECT AND CROSS AND RECROSS IF THERE IS
7 ANY. IT WOULD PROBABLY BE A TOTAL OF TWO HOURS SO FROM THAT POINT
8 FORWARD -- AND I'M GOING TO LIMIT YOUR CLOSING ARGUMENTS TO NO MORE
9 THAN AN HOUR A PIECE.

10 MS. SANDERS: THAT WILL DO.

11 THE COURT: WE'LL GO AHEAD AND RECESS TONIGHT AND LET
12 EVERYBODY GO HOME AND THINK ABOUT NEXT WEDNESDAY.

13 (WHEREUPON COURT WAS IN RECESS FOR THE EVENING.)

14 THE COURT: OKAY. YOU READY TO GO? ALL RIGHT. YOUR NEXT
15 WITNESS IS YOUR CLIENT?

16 MS. SANDER: YES.

17 THE COURT: ALL RIGHT. LET ME GET YOUR CLIENT TO STAND
18 AGAIN, IF I COULD.

19 EXAMINATION

20 BY THE COURT:

21 Q MR. SANDERS, I PUT YOU UNDER OATH THE OTHER DAY TO TALK TO YOU
22 ABOUT CERTAIN MATTERS THAT WERE PROCEDURAL MATTERS THAT
23 WERE INVOLVED IN THE COURT. AND I REMIND YOU YOU'RE STILL
24 UNDER OATH WITH RESPECT TO THOSE MATTERS. ONE OF THE THINGS I
25 TALKED TO YOU ABOUT WAS YOUR RIGHT TO TESTIFY AND NOT TESTIFY,

1 THINGS OF THAT NATURE. YOU UNDERSTAND THAT?

2 A YES, SIR.

3 Q NOW, OF COURSE, THIS IS A LITTLE DIFFERENT, IN THAT WE DON'T HAVE A
4 JURY HERE. I'M THE FACT FINDER, BUT YOU DON'T HAVE TO TESTIFY.
5 YOU UNDERSTAND THAT?

6 A YES, SIR.

7 Q YOU HAVE DISCUSSED THAT WITH YOUR ATTORNEY?

8 A YES, SIR.

9 Q I'M NOT -- I DON'T KNOW WHAT YOUR SITUATION IS, BUT IF YOU HAVE A
10 RECORD, CRIMINAL RECORD, THEN, OF COURSE, THAT WOULD BE ABLE
11 TO BE BROUGHT OUT IN TERMS OF -- BY THE CROSS-EXAMINATION AND
12 WOULD GO TOWARD YOUR CREDIBILITY. YOU UNDERSTAND THAT?

13 A YES, SIR.

14 Q OF COURSE, YOU HAVE A RIGHT TO TESTIFY, TELL YOUR STORY, PUT
15 WHAT EVIDENCE YOU WANT TO PUT UP. I JUST WANT TO MAKE SURE
16 THAT YOU HAVE DISCUSSED THIS WITH YOUR ATTORNEY. YOU
17 UNDERSTAND YOUR RIGHTS, YOU UNDERSTAND THAT YOU ARE SUBJECT
18 TO BEING CROSS-EXAMINED BY THE STATE WHEN YOU TESTIFY. YOU
19 UNDERSTAND ALL THAT?

20 A YES, SIR.

21 Q ALL RIGHT. IS THERE ANYTHING FURTHER YOU WANT TO TALK TO MS.
22 SANDERS OR MR. WILLIAMS ABOUT BEFORE YOU TESTIFY?

23 A NO, SIR.

24 Q YOU FEEL COMFORTABLE GOING FORWARD?

25 A YES, SIR.

1 THE COURT: ALL RIGHT. MS. SANDERS, ANYTHING FURTHER YOU
2 WANT ME TO MAKE INQUIRY WITH YOUR CLIENT ABOUT HIS RIGHT TO TESTIFY
3 AND NOT TESTIFY?

4 MS. SANDERS: NO, YOUR HONOR. I WOULD LIKE TO SAY FOR THE
5 RECORD THAT BOTH ATTORNEY WILLIAMS AND MYSELF HAVE DISCUSSED THIS
6 WITH MR. SANDERS AND WE FEEL COMFORTABLE.

7 THE COURT: OKAY. ALL RIGHT. THAT'S ALL I NEEDED TO KNOW.

8 MS. SANDERS: THANK YOU, JUDGE.

9 THE COURT: ALL RIGHT. YA'LL NEED TO SWEAR HIM.

10 MR. GIBBONS: YOUR HONOR, BEFORE WE START, I HAVE AN ISSUE
11 I-NEED TO PUT ON THE RECORD TOO. ON DECEMBER 16TH, I BELIEVE OF 1997 --
12 1998, WE FILED A REVERSE RULE 5, SEEKING NOTICE OF ANY ALIBI. WE HAVEN'T
13 HEARD OF ANYTHING OF THAT NATURE. ACCORDING TO THE RULES, THAT'S
14 SUPPOSED TO BE DISCLOSED TO THE STATE AND I JUST WANT AT THIS TIME TO
15 ASK THE COURT TO DIRECT THE DEFENSE TO LET US KNOW OF ANYTHING IN
16 THAT NATURE.

17 MS. SANDERS: HE WILL BE TESTIFYING AS TO WHERE HE WAS
18 THAT NIGHT. WE'RE NOT PRESENTING ANY ALIBI WITNESSES AT THIS TIME.

19 THE COURT: ALL RIGHT.

20 MS. SANDERS: AND I'D ALSO LIKE TO PUT ON THE RECORD THAT
21 GIVEN THE FACT OF, WE HAD -- WE HAVE THE RIGHT TO ISSUE NOTICE OF ALIBI
22 AT ANY TIME, I BELIEVE, PURSUANT TO YOUR RULES OF COURT, WITHIN 10 DAYS
23 OF TRIAL. I WAS NOTIFIED 3 DAYS BEFORE TRIAL IN THIS CASE. AND I PUT THAT
24 ON RECORD BEFOREHAND AND SO, I BELIEVE THE PEOPLE CANNOT STAND THEN
25 AND OBJECT IF WE WERE GOING TO PRESENT AN ALIBI DEFENSE.

1 THE COURT: WELL, LOOK, IF YOU'RE NOT, WHY DO WE NEED TO
2 TALK ABOUT IT.

3 MS. SANDERS: OKAY. YOUR HONOR, I JUST WANT TO MAKE THE
4 RECORD. WE WILL GO FORWARD.

5 MR. GIBBONS: YOUR HONOR, I BELIEVE THE RULE STATES 10 DAYS
6 AFTER WE SERVE THE NOTICE, NOT 10 DAYS BEFORE TRIAL, JUST FOR THE
7 RECORD.

8 THE COURT: WELL ---

9 MR. GIBBONS: IT'S NOT AN ISSUE.

10 THE COURT: I'M NOT SURE 10 DAYS AFTERWARD THAT THEY'RE
11 SERVED NOTICE, IF THEY DON'T TELL YOU WITHIN THAT TIME THAT THAT
12 PRECLUDES THEM IF THEY LATER DISCOVER THERE'S AN ALIBI THAT THEY
13 HAVE THE RIGHT TO SERVE NOTICE AT THAT TIME.

14 MR. GIBBONS: YES, SIR, IT'S A CONTINUING DUTY AND I ---

15 THE COURT: AND I UNDERSTAND THAT.

16 MR. GIBBONS: I JUST WANT TO KNOW IF THERE WERE ---

17 THE COURT: IT'S NOT AN ISSUE HERE, OKAY? IF IT BECOMES AN
18 ISSUE, YA'LL CAN RAISE IT AT THAT TIME AND I'LL DEAL WITH IT.

19 MR. GIBBONS: YES, SIR.

20 THE COURT: ALL RIGHT. COME ON AROUND AND GET SWORN, IF
21 YOU WOULD, PLEASE, MR. SANDERS.

22 THEREUPON,

23 TUNZY SANDERS,

24 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: HAVE A SEAT IN THE WITNESS CHAIR, PLEASE.

1 THE COURT: JUST BEFORE WE GET -- MR. WILLIAMS, YOU HEARD
2 ME MAKE INQUIRY ABOUT YOUR CLIENT'S RIGHT TO TESTIFY AND NOT TO
3 TESTIFY, CORRECT?

4 MR. WILLIAMS: YES, YOUR HONOR.

5 THE COURT: YOU HEARD MS. SANDERS SAY THAT YOU AND SHE
6 HAD DISCUSSED THAT WITH MR. SANDERS?

7 MR. WILLIAMS: THAT'S RIGHT. WE'VE DISCUSSED IT WITH HIM ON
8 SEVERAL OCCASIONS, AND HE HAS DECIDED TO TAKE THE STAND.

9 THE COURT: ALL RIGHT. I JUST WANTED TO GET IT ON THE
10 RECORD THAT BOTH OF YOU CONFIRMED THAT. THANK YOU.

11 THE CLERK: STATE YOUR NAME FOR THE RECORD, PLEASE.

12 MR. SANDERS: TUNZY SANDERS.

13 DIRECT EXAMINATION

14 BY MS. SANDERS:

15 Q MR. SANDERS, PRIOR TO BEING CHARGED WITH THE MATTERS IN THIS
16 CASE, WHERE DID YOU RESIDE?

17 A BARNWELL ALL MY LIFE.

18 Q AND WHO DO YOU RESIDE WITH IN BARNWELL?

19 A MY SISTER, MY NEPHEW AND MY MAMA.

20 Q NOW, I'M JUST GOING TO JUMP RIGHT TO IT, OKAY? I WANT TO GO TO THE
21 DAY OF DECEMBER 11TH, 1997. OKAY. DO YOU REMEMBER THAT DAY, MR.
22 SANDERS?

23 A I DO.

24 Q NOW, I JUST WANT TO GO THROUGH THE EARLY AFTERNOON OF THAT
25 DAY. I'LL SAY -- WAS THERE -- MAYBE AROUND 12:30, 1 O'CLOCK, DO

- 1 YOU REMEMBER WHAT YOU WERE DOING THAT DAY?
- 2 A I WAS AT JERMAINE WALKER'S HOUSE.
- 3 Q AND HOW LONG DID YOU STAY THERE, SIR?
- 4 A ABOUT AN HOUR OR TWO.
- 5 Q OKAY. AND DO YOU REMEMBER WHO WAS THERE WITH YOU?
- 6 A HIS PEOPLE THAT STAYED THERE.
- 7 Q HIS PEOPLE THAT STAYED THERE? WHO WERE THOSE PEOPLE?
- 8 A HIS MAMA, HIS LITTLE BROTHER.
- 9 Q AND HOW -- YOU SAID YOU STAYED THERE A COUPLE OF HOURS, AND AT
- 10 SOME POINT DID YOU LEAVE OR DID YOU CONTINUE TO STAY THERE?
- 11 A I LEFT.
- 12 Q OKAY. AND DID YOU LEAVE WITH SOMEONE OR DID YOU LEAVE ALONE?
- 13 A ALONE.
- 14 Q OKAY. WHERE DID YOU GO, SIR.
- 15 A MR. BUCKMAN'S HOUSE.
- 16 Q OKAY. AND WHERE IS THAT?
- 17 A ON BERRY STREET.
- 18 Q AND WHAT TIME WAS THIS THAT YOU WENT TO MR. BUCKMAN'S HOUSE?
- 19 A MIGHT HAVE BEEN ABOUT 2:30, CLOSE TO 3:00.
- 20 Q OKAY. WHO WAS AT MR. BUCKMAN'S HOUSE, MR. SANDERS?
- 21 A IT WAS JUST HIM THERE, HIS MOM.
- 22 Q HE AND HIS MOM?
- 23 A YES.
- 24 Q WAS MR. BENNING THERE?
- 25 A NO.

DIRECT EXAMINATION - TUNZY SANDERS BY MS. SANDERS

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- 1 Q OKAY. AND HOW LONG WERE YOU AND MR. BUCKMAN THERE?
- 2 A WELL WE WAS THERE UNTIL ABOUT, MIGHT HAVE BEEN ABOUT 6:30, 7
- 3 O'CLOCK
- 4 Q AND WHAT WERE YOU DOING THERE?
- 5 A JUST IN HIS ROOM LISTENING TO MUSIC.
- 6 Q OKAY. DID YOU AT ANY TIME DISCUSS ANYTHING WITH HIM IN
- 7 PARTICULAR?
- 8 A CLOTHES, THE NEW FASHION.
- 9 Q AND ANYTHING ELSE DURING THE TIME YOU WERE THERE?
- 10 A NO, MA'AM.
- 11 Q DID YOU DISCUSS ANYTHING ABOUT A ROBBERY WHILE YOU WERE
- 12 THERE?
- 13 A NO.
- 14 Q DID MR. BUCKMAN MENTION ANYTHING TO YOU ABOUT A ROBBERY
- 15 WHILE YOU WERE THERE?
- 16 A NO, MA'AM.
- 17 Q NOW, YOU SAID YOU STAYED THERE UNTIL AROUND 6:30 OR SO. WHAT
- 18 HAPPENED AT THAT TIME?
- 19 A A CAR PULLED UP, HE WENT OUTSIDE, HE CAME BACK IN AND HE SAID,
- 20 LET'S TAKE A RIDGE.
- 21 Q OKAY. AND WHO WAS THE CAR, DO YOU KNOW? WHO WAS IN THE CAR?
- 22 A MS. WILLIAMS.
- 23 Q MS. WILLIAMS. AND YOU SAW HER THAT DAY?
- 24 A YES.
- 25 Q OKAY. AND SO WHAT HAPPENED AFTER HE SAID, LET'S TAKE A RIDE?

- 1 A WE GOT IN THE CAR AND WE LEFT OUT OF HIS DRIVEWAY.
- 2 Q WAS ANYBODY ELSE WITH YOU THEN OR NO?
- 3 A INSIDE THE CAR?
- 4 Q YES.
- 5 A IT WAS ONLY US THREE AT THE TIME.
- 6 Q OKAY. AND YOU GOT IN THE CAR, LEFT OUT OF THE DRIVEWAY, THEN
- 7 WHAT HAPPENED?
- 8 A WE WAS RIDING DOWN THE ROAD AND WE SEEN MR. BENNING.
- 9 Q AND MR. BENNING WAS WHERE?
- 10 A DOWN THE ROAD WALKING TOWARDS THE STOP SIGN.
- 11 Q AND WHAT TOOK PLACE -- DID ANYTHING HAPPEN AFTER YOU SAW MR.
- 12 BENNING?
- 13 A I TOLD HER TO STOP AND LET'S SEE WHERE HE WAS GOING.
- 14 Q OKAY. AND DID SHE DO THAT?
- 15 A YES.
- 16 Q AND THEN WHAT HAPPENED?
- 17 A HE GOT IN.
- 18 Q OKAY. AND THEN WHAT HAPPENED AFTER THAT?
- 19 A WE WENT TO THE JIMBO'S GAS STATION.
- 20 Q YOU WENT TO JIMBO'S, AND HOW LONG DID YOU STAY THERE?
- 21 A IT WASN'T NOTHING BUT A COUPLE OF MINUTES. SHE JUST PUMPED SOME
- 22 GAS.
- 23 Q SHE DID? WHO PAID FOR THE GAS, OR DO YOU KNOW?
- 24 A I DON'T REMEMBER WHO WAS IN THE STORE, IT WASN'T ME. I WAS IN THE
- 25 BACKSEAT.

- 1 Q OKAY. AND AFTER YOU WENT THERE TO GET GAS, WHAT DID YOU DO
2 THEN? WHAT WAS DONE?
- 3 A SHE LEFT AND TOOK US OVER TO MR. WALKER'S HOUSE.
- 4 Q MR. WALKER'S HOUSE?
- 5 A (WITNESS NODDED HEAD.)
- 6 Q DID YOU GO ANYWHERE ELSE DURING THAT TIME?
- 7 A NO, MA'AM.
- 8 Q YOU WENT TO MR. WALKER'S HOUSE. HOW FAR IS THAT FROM JIMBO'S?
- 9 A MIGHT BE A MILE, CLOSE TO IT.
- 10 Q WHO - - DO YOU KNOW WHO'S IDEA IT WAS TO GO TO JERMAINE
11 WALKER'S HOUSE?
- 12 A NO.
- 13 Q NOW, YOU GOT TO MR. WALKER'S HOUSE - - BY THE WAY, WHAT WERE
14 THE WEATHER CONDITIONS THAT NIGHT? THAT DAY?
- 15 A IT WAS DARK, BUT IT WASN'T RAINING AT THE TIME.
- 16 Q IT WAS DARK?
- 17 A (WITNESS NODDED HEAD.)
- 18 Q AND DO YOU RECALL WHAT YOU WERE WEARING THAT DAY?
- 19 A I HAD ON SOME PANTS SIMILAR TO THESE, A PURPLE SHIRT AND A BLACK
20 JACKET, SUEDE JACKET.
- 21 Q DID YOU HAVE ANYTHING ON YOUR HEAD?
- 22 A NO, MA'AM.
- 23 Q OKAY. DO YOU RECALL AT ALL WHAT ANYBODY ELSE MAY HAVE HAD
24 ON THAT DAY?
- 25 A MR. BUCKMAN HAD ON BLUE JEAN PANTS AND A BLUE JEAN SHIRT TO

1 MATCH IT AND SOME WHITE AND BLUE REEBOKS.

2 Q AND ANY COAT? DID THEY HAVE ON A COAT OR ANYTHING?

3 A MR. BUCKMAN HAD ON A BLACK COAT.

4 Q NOW, YOU GOT TO MR. WALKER'S HOUSE AND WHAT HAPPENED AFTER
5 YOU GOT THERE?

6 A WE WAS -- THERE WAS A LOT OF GUYS THERE, WE WERE JUST OUTSIDE,
7 YOU KNOW, TRIPPING, TALKING. YOU KNOW, SOME OF THEM WAS
8 SMOKING WEED, SOME OF THEM WAS DRINKING.

9 Q ABOUT HOW MANY GUYS WERE THERE?

10 A ABOUT 10 OR 12.

11 Q WERE THERE ANY WOMEN THERE?

12 A I BELIEVE HIS MOM WAS INSIDE.

13 Q AND HOW LONG DID THESE 12 PEOPLE CONGREGATE AROUND MR.
14 WALKER'S HOUSE?

15 A EXCUSE ME?

16 Q HOW LONG WERE THEY THERE AT HIS HOUSE SMOKING WEED OR
17 DRINKING?

18 A YOU MEAN, HOW MANY HOURS THAT NIGHT OR HOW MANY DAYS A
19 WEEK?

20 Q WELL, NO -- WELL, LET'S START WITH HOW MANY DAYS A WEEK, YEAH.

21 A MIGHT BE ABOUT 4 TO 5 DAYS OUT OF THE WEEK.

22 Q ALL RIGHT. WAS IT THE SAME PEOPLE OR DIFFERENT PEOPLE?

23 A I MEAN, ABOUT 6 OR 7 OF THEM MIGHT BE THE SAME. EVERY NOW AND
24 THEN, EVERY OTHER DAY, THERE MIGHT BE A COUPLE DIFFERENT FACES
25 BE THERE.

1 Q NOW, YOU STAYED THERE WITH THESE GUYS, CORRECT?

2 A YES.

3 Q WHO ELSE WAS THERE WITH YOU?

4 A JERMAINE WAS THERE, I WAS THERE, MR. BUCKMAN WAS THERE, MR.
5 BENNING WAS THERE, MR. WALKER'S LITTLE BROTHER WAS THERE,
6 THERE WAS A COUPLE OTHER GUYS THERE, YOU KNOW, I JUST CAN'T
7 REMEMBER WHO THEY WAS.

8 Q AND AT SOME TIME, DID YOU -- DID ANYBODY DISCUSS ANYTHING AT
9 ALL ABOUT A ROBBERY OR A LICK OR ANYTHING LIKE THAT?

10 A NOT THAT I RECALL OF.

11 Q WERE ALL OF YOU ALL TALKING TOGETHER AT THAT TIME OR WERE
12 THERE INDIVIDUAL CONVERSATIONS GOING ON IN THIS GROUP OF 12
13 PEOPLE?

14 A I MEAN, MOSTLY IT WAS JUST CRACKING JOKES.

15 Q OKAY. AND WERE THERE MORE THAN ONE SET OF CONVERSATIONS
16 GOING ON OR JUST ONE PERSON SPEAKING AND THE OTHER PEOPLE
17 LISTENING?

18 A NO, IT WAS -- EVERYBODY WAS TALKING ABOUT DIFFERENT SUBJECTS.

19 Q AND WHO WERE YOU TALKING TO? DO YOU REMEMBER?

20 A I WAS JUST LAUGHING.

21 Q NOW YOU STAYED THERE FOR A WHILE. AT SOME POINT THEN YOU -- AT
22 SOME POINT, DID YOU LEAVE THE LOCATION?

23 A YES, IT WAS.

24 Q OKAY. AND WHEN WAS THAT?

25 A IT WAS AROUND 10 O'CLOCK.

1 Q YOU DID LEAVE AROUND 10 O'CLOCK?

2 A (WITNESS NODDED HEAD.)

3 Q AND WHERE DID YOU GO?

4 A I WAS WALKING BACK TO THE EAST SIDE OF TOWN TOWARDS THE GRILL.

5 Q AND WHERE WERE THE REST OF THE INDIVIDUALS THAT YOU HAD SEEN
6 AT JERMAINE WALKER'S HOUSE?

7 A THEY WERE STILL INSIDE OF THE HOUSE.

8 Q DID YOU AT ANY TIME SEE THEM LEAVE?

9 A NO.

10 Q OKAY. NOW, YOU SAID THAT YOU LEFT AND WENT SOMEWHERE ELSE.
11 YOU WENT TO THE GRILL?

12 A YES.

13 Q WHERE IS THIS GRILL?

14 A IT'S BACK OVER HERE BY THE -- I'VE BEEN GONE 3 YEARS, I DON'T KNOW
15 THE LIGHT PLACE STILL THERE OR NOT, BUT IT WAS EDISTO SOMETHING,
16 DOWN THE STREET FROM THAT.

17 Q EDISTO ELECTRIC COMPANY?

18 A YES.

19 Q NOW, YOU WENT THERE, WHAT'S THE GRILL?

20 A IT'S A PRETTY ROUGH SPOT. YOU KNOW, THEY PLAY POOL THERE, DRINK,
21 SOME PEOPLE SELL DRUGS, YOU KNOW.

22 Q YOU SAID IT'S A ROUGH SPOT?

23 A YES.

24 Q AND YOU WENT THERE?

25 A YES.

DIRECT EXAMINATION - TUNZY SANDERS BY MS. SANDERS

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- 1 Q NOW, WHAT DID YOU DO WHEN YOU GOT THERE?
- 2 A I JUST CHILLED OUT WITH SOME PEOPLE THAT I KNEW.
- 3 Q WHAT TIME WAS THIS?
- 4 A MUST HAVE BEEN ABOUT 10:45, ALMOST 11:00.
- 5 Q HOW LONG DID IT TAKE YOU TO GET OVER THERE?
- 6 A IT TOOK ME ABOUT 35, 40 MINUTES.
- 7 Q AND WHAT WAY DID YOU GO TO GET THERE?
- 8 A EXCUSE ME?
- 9 Q WHY - - HOW DID YOU GET THERE?
- 10 A HOW DID I GET THERE?
- 11 Q YES.
- 12 A WHEN I LEFT JERMAINE'S HOUSE?
- 13 Q YES.
- 14 A I WENT THROUGH - - I WALKED ACROSS THE STREET DOWN THE ROAD
- 15 FROM HIS HOUSE AND THE ROAD BROUGHT ME OUT BY THE CHINESE
- 16 RESTAURANT. THAT'S WHERE I SAW MR. GADSON AND MR. ODOM PULL
- 17 UP.
- 18 Q OKAY. NOW, YOU'RE TALKING ABOUT ON THE NIGHT OF THIS INCIDENT?
- 19 A YES, MA'AM.
- 20 Q THIS WAS THAT NIGHT WHEN YOU WERE WALKING TO THE GRILL?
- 21 A YES.
- 22 Q AND YOU SAW TWO POLICE OFFICERS PULL UP?
- 23 A YES.
- 24 Q WHAT HAPPENED WHEN THEY PULLED UP?
- 25 A ONE OF THEM GOT OUT.

1 Q AND SAID WHAT?

2 A HE DIDN'T SAY ANYTHING. I WAS A LITTLE BIT AHEAD OF THE
3 RESTAURANT.

4 Q DID YOU SEE MR. BENNING OR MR. BUCKMAN AT THIS RESTAURANT?

5 A NO.

6 Q OKAY. WHERE WERE YOU WALKING IN RELATIONSHIP TO THIS
7 RESTAURANT?

8 A BACK THIS WAY TOWARDS THIS SIDE OF TOWN.

9 Q OKAY. NOW, YOU SAID THEY PULLED UP. DID THEY SAY ANYTHING TO
10 YOU?

11 A NO.

12 Q OKAY.

13 A THIS IS THE ONE ACROSS THE STREET FROM HARDEES.

14 Q OKAY. THE OTHER CHINESE RESTAURANT?

15 A YES.

16 Q YOU'RE NOT TALKING ABOUT THE ONE THAT THE SCENE OF A HOMICIDE
17 THAT WE'RE HERE IN COURT TODAY ABOUT?

18 A NO.

19 Q OKAY. YOU'RE TALKING ABOUT ---

20 A I WALKED BACK THROUGH THE BANAFORK AREA.

21 Q OKAY. THE BANAFORK AREA. NOW, TELL THE JUDGE, WHAT IS THE
22 BANAFORK AREA BECAUSE I CAN'T -- TELL THE JUDGE WHAT IS THAT
23 AREA, HOW YOU GOT THERE.

24 A ONCE YOU LEAVE OUT OF JERMAINE WALKER'S HOUSE, THERE'S A
25 STREET DIRECTLY IN FRONT OF IT THAT'S COMING BACK THIS WAY

1 TOWARDS TOWN. YOU KNOW, IT'S A LITTLE COMMUNITY I GUESS YOU
2 WOULD SAY. GOT A TWISTED ROAD AND YOU'D COME OUT ALMOST
3 DOWN HERE BY THE RED LIGHT.

4 Q AND HOW FAR AWAY IS IT ---

5 THE COURT: LET ME ASK YOU SOMETHING. YA'LL HAD -- THERE
6 HAD BEEN INTRODUCED FOR DEMONSTRATIVE PURPOSES, A MAP. YOU KNOW, I
7 DON'T KNOW ANYTHING ABOUT BARNWELL. YA'LL ARE TALKING ABOUT GOING
8 THIS WAY IN THAT AREA AND YA'LL TALKED ABOUT IT YESTERDAY AND, YOU
9 KNOW, IT ABSOLUTELY MEANS NOTHING TO ME. NOW, IF YOU HAD 12 FOLKS
10 THAT LIVE AROUND HERE, THEY MIGHT UNDERSTAND IT, BUT ---

11 BY MS. SANDERS:

12 Q WELL, OKAY. THIS IS CLINTON STREET -- THIS IS STATE'S EXHIBIT 17.

13 THE COURT: DON'T PUT THAT ON THE MAP AGAIN. THAT AFFECTS
14 IT.

15 BY MS. SANDERS:

16 Q NOW, MR. SANDERS, DOWN HERE IS A CIRCLE THAT SAYS JERMAINE
17 WALKER, THAT'S CLINTON STREET THERE, OKAY?

18 A YES.

19 Q IS THAT WHERE YOU BEGAN?

20 A YES.

21 Q WHEN YOU LEFT? NOW, SHOW THE JUDGE, AND YOU MAY HAVE TO GET
22 UP, WHERE IT WAS THAT YOU TRAVELED TO TO GET TO THE OTHER
23 CHINESE RESTAURANT.

24 A THERE'S A ROAD ALMOST DIRECTLY IN FRONT OF HIS HOUSE, ABOUT
25 RIGHT UP IN HERE, UP IN THERE.

1 Q ALL RIGHT. SHOW IT ON THIS MAP.

2 A IT COMES DOWN AND IT CIRCLES BACK OUT THERE AND COMES ON DOWN
3 HERE.

4 THE COURT: LET ME -- FOR THE RECORD, HE LEFT THIS LOT, NO. 22
5 ON THIS MAP IS MR. WALKER'S HOUSE?

6 MS. SANDERS: YES, SIR.

7 THE COURT: SHE'S SAYING THAT HE CROSSED CLINTON STREET.

8 MS. SANDERS: YES.

9 THE COURT: AND WALKED, I DON'T KNOW, DO YA'LL HAVE ANY
10 ORIENTATION AS TO WHERE NORTH, SOUTH EAST AND WEST IS?

11 MR. GIBBONS: THAT WOULD BE EAST, I BELIEVE.

12 THE COURT: WALKED EAST TOWARDS FOURTH STREET. IS THAT
13 WHAT YOU'RE TESTIFYING TO?

14 MR. SANDERS: I DON'T KNOW IF THAT'S THE EXACT STREET,
15 BUT ---

16 THE COURT: WELL, I DIDN'T SAY ON THAT STREET. I SAID
17 TOWARDS IT.

18 MR. SANDERS: YES, SIR.

19 THE COURT: ALL RIGHT. AND FOLLOWED FOURTH STREET DOWN
20 TO WHERE? OR THAT DIRECTION?

21 MR. SANDERS: IN THIS DIRECTION THERE'S A STOP SIGN AND I
22 MADE A LEFT AND CROSSED THE ROAD AND CAME OUT RIGHT HERE NEAR THE
23 CHINESE RESTAURANT.

24 THE COURT: WOULD THAT BE ON FIRST STREET?

25 MS. SANDERS: WHERE IS THE OTHER CHINESE RESTAURANT, SIR,

1 ON HERE? THIS BEING DUNBARTON BOULEVARD AND THIS BEING THE FIRST --
2 WELL, I'M POINTING TO THE CHINA EXPRESS RESTAURANT. WHERE IS THE
3 SECOND CHINESE RESTAURANT THAT YOU'RE RELATING TO?

4 THE COURT: IS THIS TOWARDS TOWN OR IS THIS AWAY?

5 MR. GIBBONS: THAT'S GOING OUT OF TOWN, JUDGE.

6 MS. SANDERS: OKAY.

7 THE COURT: SO TOWN WOULD BE EAST?

8 MS. SANDERS: THAT'S CORRECT.

9 BY MS. SANDERS:

10 Q WHERE IS THE SECOND CHINESE RESTAURANT WHERE YOU SAID YOU
11 WERE WALKING TOWARDS, SIR?

12 A IT WOULD BE DOWN HERE SOMEWHERE.

13 Q OKAY. DOWN HERE. OKAY. NOW, YOU CAME OUT TO A STOP SIGN ON
14 THE STREET AND PROCEEDED DIRECTLY UP TOWARD DUNBARTON
15 BOULEVARD, THAT'S YOUR TESTIMONY?

16 A YES.

17 Q OKAY. YOU SAW OFFICERS ODOM AND GADSON?

18 A YES, THEY TURNED IN AS I WAS PASSING THE RESTAURANT. THEY
19 TURNED IN BEHIND ME.

20 Q OKAY, SIR. DID THEY SAY ANYTHING TO YOU?

21 A NO.

22 Q OKAY. NOW, FOR PURPOSES OF YOUR TESTIMONY, THEN YOU GOT TO
23 THE AREA OF THE CHINESE -- THE SECOND CHINESE RESTAURANT AND
24 THAT'S ON DUNBARTON BOULEVARD AS WELL, SIR?

25 A YES.

1 Q OKAY. AND AFTER YOU GOT THERE, WHERE DID YOU GO? CAN YOU
2 SHOW THE JUDGE? YOU CONTINUED ON WHAT WOULD BE DOWN THIS
3 DIRECTION? I'M POINTING EAST OR WOULD IT BE -- WELL, I'LL ASK YOU
4 THIS QUESTION BECAUSE IT'S NOT CLEAR FROM THE MAP. DID YOU
5 CONTINUE AWAY FROM THE CHINA EXPRESS RESTAURANT?

6 A YES, I DID.

7 Q OKAY. AND DID YOU CONTINUE TO WALK AWAY -- WELL, LET ME
8 REPHRASE THAT. DID YOU WALK TOWARDS TOWN?

9 A YES.

10 Q OKAY. AND THAT'S AWAY FROM THE CHINA EXPRESS RESTAURANT?

11 A YES.

12 Q AND THAT'S AWAY FROM THE OTHER CHINESE RESTAURANT?

13 A YES.

14 Q OKAY. AND AT SOME POINT, YOU REACHED YOUR DESTINATION?

15 A YES, MA'AM.

16 Q WHICH WAS THE GRILL?

17 A YES, MA'AM.

18 Q HOW LONG DID YOU STAY THERE?

19 A IT WAS IN THE EARLY MORNING WHEN I LEFT, ABOUT 1:30, 2 O'CLOCK.

20 Q AND WHERE DID YOU GO?

21 A HOME.

22 Q DO YOU REMEMBER HOW YOU GOT HOME?

23 A I PAID THIS DUDE TO TAKE ME OUT THERE THAT WAS GOING THAT WAY.

24 Q NOW, HOW FAR DO YOU STAY AWAY FROM THE GRILL?

25 A MAYBE 5, 6 MILES.

- 1 Q AND YOU PAID SOMEONE TO TAKE YOU HOME? YOU GOT HOME?
- 2 A YES, MA'AM.
- 3 Q WHEN WAS THE FIRST TIME THAT YOU LEARNED THAT THIS CHINA
- 4 EXPRESS RESTAURANT HAD BEEN ROBBED, MR. SANDERS?
- 5 A THE NEXT DAY.
- 6 Q AND HOW DID YOU COME TO LEARN THAT?
- 7 A WHILE I WAS AT JERMAINE WALKER'S HOUSE, HIS AUNT CAME IN THE
- 8 HOUSE AND SHE SAID THAT A LADY HAD BEEN KILLED AT THE
- 9 RESTAURANT.
- 10 Q NOW, AT SOME POINT, YOU TALKED TO THE POLICE ABOUT THIS MATTER,
- 11 CORRECT?
- 12 A YES.
- 13 Q OKAY. AND WHEN WAS THAT?
- 14 A ABOUT 3 OR 4 DAYS AFTER IT HAPPENED.
- 15 Q ALL RIGHT. AND WHERE DID YOU TALK TO THE POLICE AND WHOM DID
- 16 YOU TALK TO?
- 17 A I BELIEVE IT'S THE SHERIFF'S DEPARTMENT DOWN THERE. I TALKED TO
- 18 MR. DARNELL AND MR. VINCE PADGETT.
- 19 Q OKAY. AND WHERE DID YOU TALK THEM?
- 20 A I BELIEVE IT WAS AT THE SHERIFF'S DEPARTMENT. I GUESS THAT'S WHAT
- 21 IT'S CALLED.
- 22 Q AND DID YOU GO IN VOLUNTARILY AT THAT TIME TO TALK TO THEM?
- 23 A YES, I DID.
- 24 Q AND WHAT WAS IT THAT THEY WANTED YOU TO COME IN FOR, SIR?
- 25 A THEY ASKED ME IF I HEARD ANYTHING ABOUT IT.

1 Q ABOUT THE ROBBERY?

2 A YES.

3 Q OKAY. AND ANYTHING ELSE DID THEY SAY TO YOU? DID THEY SAY
4 ANYTHING ELSE TO YOU?

5 A THEY ASKED ME WOULD I HELP THEM. IF I HEARD ANYTHING WOULD I
6 LET THEM KNOW.

7 Q OKAY. IN PARTICULAR, HEARD ANYTHING FROM WHERE?

8 A ON THE STREETS.

9 Q OKAY. DID THEY AT THAT TIME TELL YOU THAT THEY THOUGHT YOU
10 WERE A SUSPECT IN THIS MATTER?

11 A NO.

12 Q AND DID THEY ASK YOU TO GIVE A STATEMENT AT THAT TIME?

13 A YES.

14 Q OKAY. AND WHAT DID YOU TELL THEM?

15 A I COULDN'T GIVE A STATEMENT ABOUT NOTHING I DIDN'T KNOW ABOUT.

16 Q AND HOW LONG DID YOU STAY THERE WITH THEM?

17 A I DON'T KNOW HOW LONG I STAYED THERE. IT WASN'T THAT LONG.

18 Q AND THEN YOU LEFT?

19 A YES.

20 Q DID YOU HEAR ANYBODY ELSE SAY ANYTHING ABOUT THIS ROBBERY OR
21 MURDER?

22 A YOU MEAN THAT DAY OR LATER?

23 Q LATER ON.

24 A I MEAN, ONE NIGHT I WAS AT A PARTY AND I HEARD - - SOMEBODY CAME
25 IN AND - - -

1 MR. GIBBONS: OBJECTION TO HEARSAY.

2 THE COURT: SUSTAINED.

3 BY MS. SANDERS:

4 Q AT ANY TIME DID YOU TALK TO MR. BENNING OR MR. BUCKMAN OR TO
5 MR. WALKER ABOUT A ROBBERY OR A MURDER AT ALL?

6 A NO.

7 Q NOW, YOU TALKED WITH THE POLICE, THEY RELEASED YOU, YOU WENT
8 UP THERE VOLUNTARILY AND HOW MANY DAYS TRANSPIRED BETWEEN
9 THE TIME YOU TALKED TO THEM ABOUT THIS AND WHEN YOU WERE
10 ULTIMATELY ARRESTED?

11 A IT MIGHT HAVE BEEN ABOUT 2 AND A HALF WEEKS, 3.

12 Q 3 WEEKS? OKAY. AND YOU WERE -- YOU TALKED TO THEM MAYBE
13 ABOUT THE 13TH OF DECEMBER, IS THAT A CORRECT ---

14 A I DON'T KNOW THE EXACT DATE. IT WAS AROUND THAT. IT WAS THAT
15 MONDAY OR TUESDAY I BELIEVE THAT THAT HAPPENED.

16 Q OKAY. AND THEN YOU WERE ARRESTED ON DECEMBER 27TH?

17 A YES.

18 Q WHERE WERE YOU ARRESTED?

19 A HOME.

20 Q HAD YOU HAD AN OPPORTUNITY TO TALK TO AN ATTORNEY DURING
21 THAT TIME? BETWEEN THAT TIME OF DECEMBER 11TH AND DECEMBER
22 27TH?

23 A YES.

24 Q OKAY. AND SO YOU HAD RECEIVED SOME LEGAL COUNSEL DURING THAT
25 TIME?

- 1 A YES, MA'AM.
- 2 Q AND THEY ARRESTED YOU AT HOME?
- 3 A YES.
- 4 Q YOU DIDN'T TRY TO LEAVE TOWN OR GET OUT OF TOWN OR ANYTHING
- 5 LIKE THAT, CORRECT?
- 6 A I HAD NO REASON TO.
- 7 Q NOW, YOU'VE HEARD THE TESTIMONY OF MR. BENNING THAT YOU -- HE
- 8 GAVE YOU A GUN A 25 -- SOME KIND OF 25 CALIBER PISTOL AND THAT
- 9 YOU WANTED TO PROTECT YOURSELF, CORRECT?
- 10 A YES.
- 11 Q YOU HEARD THAT TESTIMONY? TELL THE JUDGE IF THAT EVER -- DID
- 12 THAT EVER TAKE PLACE?
- 13 A NO, SIR.
- 14 Q IT NEVER TOOK -- IT NEVER TOOK PLACE?
- 15 A NO.
- 16 Q OKAY. AND DID YOU HAVE ANY INFORMATION WHATSOEVER ABOUT A 25
- 17 CALIBER PISTOL?
- 18 A NO, I HAVEN'T.
- 19 Q DID YOU KNOW THAT MR. BENNING HAD A 25 CALIBER PISTOL IN THEIR
- 20 HOME?
- 21 A NO.
- 22 Q OKAY. IT'S FAIR TO SAY YOU HAD BEEN THERE BEFORE, CORRECT?
- 23 A YES.
- 24 Q DID ANYONE OR MR. BENNING EVER SHOW YOU A GUN OR DID YOU
- 25 HAPPENSTANCE SEE A GUN IN THAT HOME?

1 A NO.

2 Q WHEN WAS THE LAST TIME YOU HAD BEEN THERE PRIOR TO THIS
3 INCIDENT HAPPENING THAT YOU CAN REMEMBER?

4 A PRIOR TO DECEMBER 11TH?

5 Q YES.

6 A I MEAN, I MIGHT GO AROUND THERE ABOUT ONCE A WEEK, TWICE A
7 WEEK.

8 Q YOU WERE ARRESTED ON DECEMBER THE 27TH, IS THAT CORRECT?

9 A YES, MA'AM.

10 Q AND THEN YOU WERE PUT IN CUSTODY?

11 A YES.

12 Q DID LAW ENFORCEMENT OFFICIALS TRY TO QUESTION YOU AGAIN ABOUT
13 THE EVENTS? ABOUT THE ROBBERY OR THE MURDER?

14 A AFTER I WAS ARRESTED?

15 Q YES.

16 A AND INCARCERATED?

17 Q YES.

18 A NO.

19 Q NO ONE TRIED TO QUESTION YOU OR TALK TO YOU ABOUT IT AGAIN?

20 A NO.

21 Q NOW YOU WERE INCARCERATED FOR QUITE A FEW MONTHS PRIOR TO
22 YOUR ACTUAL TRIAL, CORRECT?

23 A 13.

24 Q 13 MONTHS. AND DURING YOUR COURSE OF TIME AT THE JAIL, YOU MADE
25 CONTACT WITH OTHER INMATES, CORRECT?

1 A YES.

2

3 Q LET ME FOCUS YOUR ATTENTION FOR A MOMENT ON TWO PARTICULAR
4 INDIVIDUALS, MR. STALEY. DID YOU EVER TALK TO MR. STALEY ABOUT
5 THIS ROBBERY OR A MURDER OR ABOUT THIS CASE PERIOD?

6 A NO.

7 Q DID YOU TALK TO HIM AT ALL?

8 A I TALKED TO HIM OCCASIONALLY.

9 Q AND YOU UNDERSTAND THAT MR. STALEY HAD INDICATED THAT YOU
10 MADE CERTAIN ADMISSIONS TO HIM, THAT YOU SHOT SOMEONE, SHOT
11 THE VICTIM IN THIS CASE, CORRECT?

12 A HE SAID THAT.

13 Q OKAY. WERE YOU THE PERSON THAT TOLD HIM THIS INFORMATION?

14 A NO.

15 Q NOW, CAN YOU OFFER HERE TODAY WHY IT WAS THAT YOU WOULD NOT,
16 WHY IT WAS THAT YOU DIDN'T TELL HIM ANYTHING?

17 A HE WAS A KNOWN INFORMANT.

18 Q AND WHAT DO YOU MEAN BY KNOWN INFORMANT?

19 A HE WITNESSED AGAINST ONE OF MY RELATIVES ONE TIME WHICH
20 INCARCERATED AT THE SAME TIME THAT WE WAS IN THERE.

21 Q AND DID YOU KNOW THAT INFORMATION?

22 A YES.

23 Q WHAT WAS MR. STALEY'S REPUTATION IN THE JAIL?

24 A A SNITCH.

25 Q AND YOU KNEW THAT?

DIRECT EXAMINATION - TUNZY SANDERS BY MS. SANDERS

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1 A YES.

2 Q YOU KNOW -- HOW WAS IT THAT YOU CAME TO KNOW THAT HE WAS A
3 SNITCH?

4 A HERMAN WHITE.

5 Q WHAT DID HERMAN WHITE TELL YOU ABOUT HIM?

6 MR. GIBBONS: YOUR HONOR, HEARSAY.

7 THE COURT: SUSTAINED.

8 MS. SANDERS: DID YOU OVERRULE HIS OBJECTION?

9 THE COURT: I SUSTAINED HIS OBJECTION.

10 MS. SANDERS: OKAY.

11 BY MS. SANDERS:

12 Q DO YOU -- CAN YOU RECALL OR CAN YOU GIVE ANY INSIGHT AS TO HOW
13 OR WHY MR. STALEY WOULD COME FORTH WITH INFORMATION
14 INDICATING THAT YOU SHOT SOMEONE IN THIS MATTER?

15 MR. GIBBONS: YOUR HONOR, THAT CALLS FOR SPECULATION. HE
16 DOESN'T KNOW WHY MR. STALEY DID ANYTHING.

17 MS. SANDERS: WELL HE DOES HAVE SOME ---

18 THE COURT: WELL IF HE HAS FIRSTHAND KNOWLEDGE, I'LL
19 ALLOW HIM TO TESTIFY AS TO WHAT HIS KNOWLEDGE IS.

20 BY MS. SANDERS:

21 Q DO YOU HAVE FIRSTHAND KNOWLEDGE ABOUT HOW MR. STALEY MAY
22 HAVE GOT INFORMATION ABOUT THIS CASE OR WHY HE MAY HAVE SAID
23 THAT YOU DID IT?

24 MR. GIBBONS: YOUR HONOR, THAT'S AN IMPROPER QUESTION,
25 WHY HE DID WHAT HE SAID.

1 MS. SANDERS: I'LL REPHRASE IT, YOUR HONOR.

2 ///

3 BY MS. SANDERS:

4 Q YOU HEARD THE TESTIMONY OF MR. STALEY AND THAT HE SAID YOU
5 HAD A 22 AND THAT YOU HAD SHOT SOMEBODY OR THE VICTIM IN THIS
6 CASE, YOU HEARD THAT TESTIMONY, MR. SANDERS, HAVEN'T YOU? YOU
7 HEARD THAT, RIGHT?

8 MR. GIBBONS: YOUR HONOR, I OBJECT, SHE'S LEADING AND I
9 BELIEVE SHE'S ON THE VERGE OF PITTING.

10 THE COURT: OVERRULED.

11 MR. GIBBONS: THANK YOU.

12 BY MS. SANDERS:

13 Q YOU HEARD THE TESTIMONY?

14 A YES.

15 Q DO YOU HAVE FIRSTHAND KNOWLEDGE ABOUT HOW HE MAY HAVE
16 COME ABOUT EVEN MAKING THESE CLAIMS?

17 A HE SAW THE MOTION OF DISCOVERY FOR MY CO-DEFENDANT.

18 Q WHAT CO-DEFENDANT?

19 A MR. BENNING.

20 Q AND HOW DO YOU KNOW THAT?

21 A BECAUSE HE WAS ALWAYS SHOWING PEOPLE AND HE WAS ALWAYS
22 TALKING ABOUT IT.

23 Q WHO WAS?

24 A MR. BENNING.

25 Q DID YOU EVER SHOW MR. STALEY ANYTHING ABOUT YOUR CASE OR

- 1 TALK TO HIM ABOUT YOUR CASE AT ALL?
- 2 A NO, MA'AM.
- 3 Q AND YOU NEVER TALKED TO ANY LAW ENFORCEMENT OFFICIALS ABOUT
- 4 THIS AT ALL?
- 5 A WHILE I WAS INCARCERATED AT THE COUNTY JAIL? NO.
- 6 Q NOW, ACCORDING TO MR. VIGIER, YOU PREVIOUSLY HEARD IN COURT HIS
- 7 TESTIMONY, CORRECT?
- 8 A YES.
- 9 Q AND YOU KNOW THAT THE JUDGE IS GOING TO CONSIDER HIS TESTIMONY
- 10 AGAIN TODAY WITH RESPECT TO ADMISSIONS THAT HE SAID YOU MADE
- 11 TO HIM, CORRECT?
- 12 A YES.
- 13 Q DID YOU EVER TALK TO MR. VIGIER ABOUT THIS CASE?
- 14 A NO, MA'AM, I DIDN'T.
- 15 Q DO YOU HAVE INFORMATION AS TO WHY YOU WOULD NOT HAVE TALKED
- 16 TO HIM ABOUT THIS CASE?
- 17 A BECAUSE HE WROTE STATEMENTS BEFORE.
- 18 Q DID YOU KNOW HE HAD WRITTEN STATEMENTS BEFORE, MR. SANDERS?
- 19 A YES, I DID.
- 20 Q AND HOW WAS IT THAT YOU KNEW THIS?
- 21 A I HAD THE STATEMENT IN MY ROOM.
- 22 Q YOU HAD HIS STATEMENT IN YOUR ROOM?
- 23 A YES.
- 24 Q AND HOW DID YOU COME ABOUT GETTING THAT STATEMENT?
- 25 A HIS CO-DEFENDANT WAS MY ROOMMATE.

DIRECT EXAMINATION - TUNZY SANDERS BY MS. SANDERS

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1 Q MR. VIGIER'S CO-DEFENDANT WAS YOUR ROOMMATE?

2 A YES, MA'AM.

3 Q AND YOU OBTAINED INFORMATION FROM HIM THAT MR. VIGIER HAD
4 WRITTEN - - -

5 MR. GIBBONS: YOUR HONOR, I OBJECT. LEADING.

6 THE COURT: OVERRULED. GO AHEAD.

7 BY MS. SANDERS:

8 Q WHAT INFORMATION DID YOU OBTAIN FROM HIS ROOMMATE - - HIS CO-
9 DEFENDANT?

10 A THAT HE WAS A SNITCH, THAT HE WRITES STATEMENTS.

11 Q AND WHO WAS HIS CO-DEFENDANT?

12 A MICHAEL FLEMING.

13 Q OKAY. DO YOU HAVE FIRSTHAND KNOWLEDGE ABOUT HOW MR. VIGIER
14 WOULD HAVE COME TO SAY THAT YOU WERE THE PERSON WHO
15 VICTIMIZED MS. CHAPMAN ON THE DAY OF THIS OFFENSE?

16 A HE SEEN THE PAPERWORK FROM MY CO-DEFENDANT TOO.

17 Q FROM YOUR CO-DEFENDANT?

18 A YES.

19 Q AND, MR. SANDERS, THIS IS YOUR OPPORTUNITY TO TELL THE COURT
20 EXACTLY IF YOU ARE GUILTY OF THESE CRIMES, SIR. ARE YOU GUILTY OF
21 ANY OF THE CRIMES THAT HAVE BEEN ATTESTED TO HERE IN THIS COURT
22 THIS WEEK, SIR?

23 A NO, I'M NOT.

24 Q DID YOU HAVE ANY INVOLVEMENT IN THESE THINGS THEY HAVE
25 ATTESTED TO THIS WEEK AT ALL?

CROSS-EXAMINATION - TUNZY SANDERS BY MR. GIBBONS

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1 A NO, I DID NOT.

2 MS. SANDERS: NOTHING FURTHER.

3 THE COURT: ALL RIGHT. MR. GIBBONS?

4 MR. GIBBONS: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MR. GIBBONS:

7 Q MR. SANDERS, WERE YOU WORKING WHEN THIS EVENT HAPPENED?

8 A I WAS IN SCHOOL.

9 Q STILL IN SCHOOL, SO YOU DIDN'T HAVE A JOB?

10 A NO, SIR.

11 Q AND YOU DIDN'T HAVE A LOT OF MONEY TO CARRY AROUND?

12 A A LOT OF MONEY TO CARRY AROUND?

13 Q YOU DIDN'T HAVE A LOT OF MONEY TO CARRY AROUND FROM A JOB OR

14 ANYTHING LIKE THAT, THAT'S CORRECT, ISN'T IT?

15 A NO, I RECEIVED ANYTHING THAT I WANTED.

16 Q DID YOU HAVE A LOT OF MONEY TO CARRY AROUND?

17 A NO, MY PEOPLE PROVIDED FOR ME.

18 Q BUT NOT FROM A JOB, CORRECT?

19 A NO, FROM MY FAMILY.

20 Q AND YOU TESTIFIED, I BELIEVE, YOU KNOW JERMAINE WALKER?

21 A YES, SIR.

22 Q AND YOU SPENT TIME AT HIS HOUSE NOW AND AGAIN?

23 A YES, SIR.

24 Q YOU KNEW THE PEOPLE THAT STAYED AT HIS HOUSE, YOU SAID 4 OR 5

25 TIMES A WEEK THEY STAYED THERE, ISN'T THAT RIGHT?

- 1 A YES, SIR.
- 2 Q AND YOU WENT THERE PRETTY OFTEN. MAYBE NOT 4 OR 5 TIMES A
- 3 WEEK, BUT YOU WENT THERE NOW AND AGAIN, CORRECT?
- 4 A YES, SIR.
- 5 Q AND YOU PRETTY MUCH GREW UP WITH SNOOP, SAME AGE, ISN'T THAT
- 6 RIGHT? WHETHER OR NOT YOU HUNG, YOU WERE ABOUT THE SAME AGE,
- 7 MAYBE A COUPLE OF YEARS OLDER?
- 8 A YES, SIR.
- 9 Q AND YOU'VE KNOWN SNOOP A LONG TIME, CORRECT?
- 10 A YES, SIR.
- 11 Q AND YOU KNOW THE PEOPLE HE HANGS WITH OVER THERE, CORRECT?
- 12 A NOT ALL OF THEM.
- 13 Q YOU DON'T KNOW ALL OF THEM?
- 14 A NOT ALL OF THEM.
- 15 Q I BELIEVE - - DIDN'T YOU TESTIFY THAT THE SAME PEOPLE ARE THERE 4
- 16 OR 5 TIMES A WEEK?
- 17 A AND THEN IT'S A FEW OTHER ONES THAT COME EVERY OTHER DAY THAT
- 18 I DIDN'T KNOW.
- 19 Q BUT THE ONES THAT HANG OUT THERE MOST OF THE TIME, YOU KNOW
- 20 MOST OF THEM, CORRECT?
- 21 A YES, SIR.
- 22 Q AND YOU TESTIFIED THEY HANG OUT THERE, SMOKE POT, CORRECT?
- 23 A YES, SIR.
- 24 Q DRINK, RIGHT?
- 25 A YES, SIR.

1 Q AND HAS THAT BEEN GOING ON AS LONG AS PEOPLE HAVE BEEN GOING
2 OVER THERE?

3 A I WOULD SAY, YES.

4 Q AND YOU KNEW THAT WAS GOING ON, DIDN'T YOU, MR. SANDERS?

5 A THE DRINKING AND THE SMOKING?

6 Q YES, SIR.

7 A YES.

8 Q AND YOU STILL WENT OVER THERE EVEN THOUGH YOU KNEW THAT WAS
9 GOING ON, DIDN'T YOU?

10 A YES.

11 Q AND YOU WERE OVER THERE THE NIGHT THIS THING HAPPENED AT THE
12 CHINESE RESTAURANT, WEREN'T YOU?

13 A OVER WHERE?

14 Q AT SNOOP'S HOUSE? FOR SOME PERIOD OF TIME, CORRECT?

15 A YES.

16 Q AND MAURICE WAS OVER THERE? BENNING?

17 A YES.

18 Q AND MICHAEL BUCKMAN WAS OVER THERE?

19 A YES.

20 Q IN FACT, YOU GOT THERE, THEY WERE ALREADY THERE, OR YOU GOT
21 THERE WITH THEM?

22 A GOT THERE WITH THEM.

23 Q AND STAYED THERE WITH THEM FOR A WHILE, CORRECT?

24 A YES, SIR.

25 Q AND JERMAINE WALKER WAS THERE?

1 A YES.

2 Q YOU SAW HIM THAT NIGHT. AND I BELIEVE YOU TESTIFIED IT WASN'T
3 RAINING THAT NIGHT, IS THAT CORRECT?

4 A I SAID AT THE TIME WE WAS AT THE GAS STATION IT WASN'T RAINING.

5 Q BUT IT DID RAIN MOST OF THAT EVENING, CORRECT?

6 A IT STARTED RAINING AROUND, CLOSE TO 10:00.

7 Q IT DIDN'T RAIN AT ALL BEFORE 10:00?

8 A NOT THAT I REMEMBER.

9 Q AND YOU DIDN'T HAVE A HAT ON THAT NIGHT, CORRECT?

10 A NO, MY JACKET HAS A HOOD.

11 Q AND THAT NIGHT, YOU SAID THERE WERE ABOUT 12 PEOPLE AT SNOOP'S
12 HOUSE?

13 A 10 TO 12.

14 Q AND YET THE ONLY PEOPLE YOU KNOW NAMES OF WERE MAURICE,
15 MICHAEL AND SNOOP, IS THAT CORRECT?

16 A AND HIS LITTLE BROTHER.

17 Q YOU DIDN'T KNOW ANYBODY ELSE THERE?

18 A I MEAN, I KNOW THEM, BUT I CAN'T RECALL WHO IT WAS.

19 Q YOU DON'T REMEMBER THEIR NAMES?

20 A I CAN'T EVEN REMEMBER THEIR FACES.

21 Q YOU CAN'T TELL ME ONE NAME OF ANYBODY ELSE THAT WAS THERE
22 THAT NIGHT?

23 A NO, SIR.

24 Q IT WAS A COMPLETELY DIFFERENT GROUP THAN IS USUALLY THERE, IS
25 THAT CORRECT?

- 1 A IT WAS A COUPLE OF PEOPLE THERE THAT WASN'T USUALLY THERE.
- 2 Q BUT EVEN THE ONES THAT ARE USUALLY THERE, YOU DON'T REMEMBER
- 3 ANY NAMES, DO YOU, MR. SANDERS?
- 4 A NO.
- 5 Q AND YOU LEFT THAT PLACE, I BELIEVE YOU TESTIFIED, AROUND 9:30?
- 6 A CLOSE TO 10 O'CLOCK.
- 7 Q AND YOUR TESTIMONY IS - - WAS IT RAINING WHEN YOU LEFT HIS HOUSE?
- 8 A IT HAD JUST BEGUN.
- 9 Q IT WAS RAINING? AND YOU SET OUT TO GO TO THE GRILL WHICH IS A
- 10 COUPLE OR MILES FROM SNOOP'S HOUSE, MORE OR LESS?
- 11 A YES.
- 12 Q IN THE RAIN?
- 13 A YES.
- 14 Q DID YOU HAVE YOUR HOOD ON?
- 15 A YES.
- 16 Q AND YOU LEFT BY YOURSELF?
- 17 A YES.
- 18 Q DID YOU TELL ANYBODY YOU WERE LEAVING?
- 19 A I TOLD EVERYBODY, I HOLLERED AT THEM.
- 20 Q YOU TOLD JERMAINE?
- 21 A I TOLD EVERYBODY THAT WAS OUT THERE.
- 22 Q EVEN THE PEOPLE YOU DIDN'T KNOW.
- 23 A I HOLLERED AT THEM.
- 24 Q YOU JUST SAID, I'M GOING?
- 25 A YES, SIR.

CROSS-EXAMINATION - TUNZY SANDERS BY MR. GIBBONS

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- 1 Q TOLD THEM YOU WERE GOING TO THE GRILL?
- 2 A NO, I TOLD THEM, I'M GONE.
- 3 Q AND NOBODY WANTED TO GO WITH YOU?
- 4 A NO.
- 5 Q AND INSTEAD OF -- I REFER TO STATE'S EXHIBIT 17 AGAIN. INSTEAD OF
- 6 GETTING ON CLINTON STREET AND GOING ALL THE WAY OUT TO THE 4-
- 7 LANE AND GOING DOWN THE ROAD, YOU WENT DOWN STRAIGHT ACROSS
- 8 THE STREET DOWN FOURTH STREET AND CAME OUT BY THE CHINESE
- 9 RESTAURANT. THAT'S YOUR TESTIMONY, CORRECT?
- 10 A YES, SIR.
- 11 Q AND THAT'S KIND OF A BACK ROADWAY TO GO DOWN TO THAT
- 12 RESTAURANT, ISN'T IT?
- 13 A YES.
- 14 Q AND IT WAS RAINING THAT NIGHT?
- 15 A YES.
- 16 Q AND YOU WERE GOING TO THE GRILL?
- 17 A YES.
- 18 Q WERE YOU MEETING SOMEBODY AT THE GRILL?
- 19 A WELL, A LOT OF PEOPLE HANG THERE.
- 20 Q WELL WERE YOU SPECIFICALLY GOING TO MEET SOMEBODY?
- 21 A NO.
- 22 Q THAT'S JUST SOME PLACE YOU GO?
- 23 A YES.
- 24 Q AND HOW OLD WERE YOU AT THIS TIME?
- 25 A 18.

- 1 Q 18 YEARS OLD, CORRECT?
- 2 A YES.
- 3 Q AND YOU CAN'T DRINK WHEN YOU'RE 18 IN THIS STATE CAN YOU, SIR?
- 4 A NO.
- 5 Q AND IT'S ILLEGAL TO USE DRUGS, ISN'T IT?
- 6 A YES.
- 7 Q AND IS IT ILLEGAL FOR YOU TO GO IN THE GRILL AT 18 YEARS OF AGE?
- 8 A NO.
- 9 Q BUT YOU WERE HEADING THAT WAY?
- 10 A YES.
- 11 Q AND YOU DIDN'T -- YOU WEREN'T MEETING ANYBODY THERE IS WHAT
- 12 YOU SAID, CORRECT?
- 13 A YES.
- 14 Q YOU WERE JUST GOING TO THIS PLACE WHERE THERE'S SMOKING,
- 15 DRINKING AND DRUGS, JUST GOING THERE?
- 16 A YES.
- 17 Q AND HOW LONG DO YOU THINK IT TOOK YOU TO GET FROM SNOOP'S
- 18 HOUSE DOWN TO WHERE YOU SAID YOU SAW THE OFFICERS?
- 19 A ABOUT 15 MINUTES.
- 20 Q 15 MINUTES. YOU SAID YOU LEFT AROUND 10:00?
- 21 A AROUND 10:00.
- 22 Q SO AT 10:15 YOU WERE ALREADY PASSED THE RESTAURANT OR YOU
- 23 WERE COMING UP TO IT WHEN YOU SAW THE OFFICERS?
- 24 A NO, I WAS A LITTLE BIT, JUST BARELY KIND OF LIKE A LITTLE PAST THE
- 25 AUTO MECHANIC SHOP RIGHT ACROSS THE STREET FROM IT.

1 Q THAT TIRE PLACE ACROSS THE STREET?

2 A YES, SIR.

3 Q SO YOU HAD ALREADY CROSSED OVER DUNBARTON?

4 A CROSSED OVER?

5 Q WELL, I'M GOING TO REFER YOU AGAIN TO STATE'S EXHIBIT 17. THIS IS
6 WHERE THE ROAD COMES OUT DOWN AT THE BOTTOM RIGHT HAND
7 CORNER. I BELIEVE THAT'S THE PARKING LOT FOR CHINA EXPRESS.

8 A OKAY.

9 Q AND THE TIRE PLACE IS OVER ACROSS THE STREET?

10 A YES.

11 Q YOU WERE OVER ACROSS THE STREET BY THE TIRE PLACE?

12 A NO, SIR.

13 Q WHERE WERE YOU WHEN YOU CAME OUT ON DUNBARTON AND YOU SAW
14 THE OFFICERS?

15 A IF YOU SAY THIS IS THE ROAD, I CAME ACROSS THE PARKING LOT HERE.
16 WHEN I CAME ABOUT A LITTLE PAST THE RESTAURANT, THAT'S WHEN I
17 SEEN A LIGHT FLASH BEHIND ME AND I TURNED AROUND AND IT WAS A
18 POLICE CAR.

19 Q SO YOU WEREN'T OVER BY THE TIRE PLACE?

20 A NO.

21 Q YOU WERE MISTAKEN WHEN YOU SAID THAT A MINUTE AGO?

22 A NO, I TOLD YOU THAT I WAS A LITTLE BUT FURTHER PASSED THE TIRE
23 PLACE. I WAS TRYING TO DESCRIBE WHERE I WAS AT TO YOU.

24 Q OKAY. SO YOU WERE REALLY ON THE CHINESE RESTAURANT SIDE,
25 PASSED THE RESTAURANT?

CROSS-EXAMINATION - TUNZY SANDERS BY MR. GIBBONS

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- 1 A YES.
- 2 Q AT ABOUT 10:15, YOU SAY, SOMETHING LIKE THAT?
- 3 A GIVE OR TAKE A COUPLE OF MINUTES.
- 4 Q AND WHEN YOU LEFT AT 10 O'CLOCK, I BELIEVE YOU TESTIFIED MICHAEL
- 5 AND BENNING WERE STILL THERE. YOU TOLD THEM GOODBYE.
- 6 A I TOLD EVERYBODY THAT I WAS GONE. I HOLLERED AT THEM.
- 7 Q AND THEY WERE STILL THERE, WEREN'T THEY?
- 8 A YES.
- 9 Q AND THEN, YOU GOT TO THE CLUB A FEW MINUTES LATER?
- 10 A I GOT - - -
- 11 Q HALF AN HOUR, 45 MINUTES IS WHAT YOU TESTIFIED, CORRECT?
- 12 A I GOT TO THAT AREA.
- 13 Q THE CLUB AREA?
- 14 A YES.
- 15 Q AND DID YOU GO TO THE CLUB?
- 16 A NO, I DID NOT.
- 17 Q WHERE DID YOU GO OVER THERE BY THE AREA?
- 18 A I WAS STANDING OUT UNDER A TREE ACROSS THE STREET FROM THE
- 19 CLUB.
- 20 Q AND ISN'T THAT A PLACE WHERE PEOPLE HANG OUT AND TALK, CALLED
- 21 THE TREE?
- 22 A YES, THERE'S ALSO A PATH RIGHT THERE THAT LEADS BACK TO MY
- 23 UNCLE'S HOUSE.
- 24 Q YES, SIR, BUT ISN'T THAT A PLACE WHERE A LOT OF PEOPLE HANG OUT?
- 25 A YES.

- 1 Q AND DID YOU GO TO YOUR UNCLE'S HOUSE THAT NIGHT?
- 2 A I WAS IN THE PATH, BUT I DIDN'T GO ALL THE WAY BACK TO THE
- 3 TRAILER.
- 4 Q AND WERE YOU ALONE BACK THERE ON THE PATH?
- 5 A NO, THERE WAS A LOT OF PEOPLE OUT THERE.
- 6 Q WHO WERE SOME OF THE PEOPLE OUT THERE?
- 7 A I CAN'T RECALL. IT WAS A LOT OF OLDER PEOPLE. A LOT OF PEOPLE WHO
- 8 WAS DRINKING, A LOT OF PEOPLE WAS BUYING CRACK.
- 9 Q AND WHAT WERE YOU DOING THERE?
- 10 A I WAS JUST OUT THERE CHILLING.
- 11 Q SO YOU WALKED ALL THE WAY ACROSS TOWN, IN THE RAIN, JUST TO
- 12 CHILL ON THE PATH BY THE CLUB? IS THAT YOUR TESTIMONY, SIR?
- 13 A YEAH.
- 14 Q AND YOU JUST CHILLED THERE FOR A LITTLE WHILE AND THEN YOU
- 15 CAUGHT A RIDE HOME, CORRECT?
- 16 A YES, SIR.
- 17 Q NOW, YOUR FAMILY LIVES AROUND BARNWELL, DO THEY NOT?
- 18 A MY FAMILY?
- 19 Q YES, SIR.
- 20 A IMMEDIATE OR?
- 21 Q YOUR MOM, THE PEOPLE YOU LIVE WITH.
- 22 A WE LIVE OUT OF CITY LIMITS, TOWN LIMITS.
- 23 Q BUT WHEN YOU HAVE TO GO SOMEWHERE, THEY'LL CARRY YOU TO
- 24 TOWN, WON'T THEY?
- 25 A YES, SIR.

CROSS-EXAMINATION - TUNZY SANDERS BY MR. GIBBONS

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- 1 Q AND IF YOU'RE STRANDED SOMEWHERE, THEY'LL COME AND GET YOU,
2 WON'T THEY?
- 3 A YES.
- 4 Q AND THEY WOULD HAVE COME AND GOT YOU THAT NIGHT, WOULDN'T
5 HAVE LEFT YOU COLD?
- 6 A NINE TIMES OUT OF TEN.
- 7 Q AND SO YOU COULD HAVE DONE THAT, COULDN'T YOU, MR. SANDERS?
- 8 A COULD HAVE.
- 9 Q SIR?
- 10 A I COULD HAVE.
- 11 Q BUT YOU PHONED SOMEONE TO CARRY YOU HOME?
- 12 A NO.
- 13 Q I MEAN, YOU GOT SOMEONE TO CARRY YOU HOME?
- 14 A YES.
- 15 Q YOU PAID THEM SOME MONEY?
- 16 A YES.
- 17 Q HOW MUCH DID YOU PAY THEM?
- 18 A ABOUT \$5.
- 19 Q YOU PAID THEM \$5 TO GO HOME?
- 20 A FOR GAS MONEY.
- 21 Q WELL, ISN'T IT TRUE THAT YOUR FAMILY WOULD HAVE COME AND GOT
22 YOU OVER AT SNOOP'S HOUSE IF YOU HAD CALLED THEM?
- 23 A AROUND 10 O'CLOCK? NINE TIMES OUT OF TEN THEY WOULD HAVE.
- 24 Q BUT IT'S YOUR TESTIMONY THAT INSTEAD OF DOING THAT, YOU WALKED
25 CLEAR ACROSS TOWN IN THE RAIN TO HANG OUT ON A PATH AND NOT

1 MEET ANYBODY AND THEN PAY SOMEBODY \$5 TO CARRY YOU HOME,
2 CORRECT?

3 A I'M SAYING THERE'S A LOT OF PEOPLE IN THE AREA THAT I KNOW THAT
4 HANGS OVER THERE, BUT I WASN'T GOING JUST TO MEET NO PARTICULAR
5 PERSON IN GENERAL.

6 Q WELL, WHO DID YOU MEET OVER THERE?

7 A I DON'T REMEMBER WHO WAS OUT THERE THAT NIGHT.

8 Q YOU DON'T REMEMBER ANY NAMES? AND THEN LATER ON YOU TALKED
9 TO THE POLICE, CORRECT?

10 A ABOUT THREE OR FOUR DAYS LATER.

11 Q AND YOU COOPERATED WITH THEM 100 PERCENT, DIDN'T YOU?

12 A YES.

13 Q YOU TOLD THEM YOU WERE AT THE GRILL?

14 A NO.

15 Q YOU TOLD THEM SOMEBODY GAVE YOU A RIDE HOME?

16 A NO.

17 Q YOU TOLD THEM YOU WERE AT SNOOP'S?

18 A NO.

19 Q DID YOU TELL THEM THE NAME OF THE GUY YOU PAID TO CARRY YOU
20 HOME?

21 A NO.

22 Q DID YOU KNOW HIS NAME?

23 A NO.

24 Q CAN YOU TELL US TODAY?

25 A NO.

- 1 Q AND THEY DIDN'T ARREST YOU THAT DAY, DID THEY?
- 2 A NO.
- 3 Q AND EVENTUALLY YOU WERE ARRESTED, WEREN'T YOU?
- 4 A YES.
- 5 Q AND YOU WENT TO THE JAIL, CORRECT?
- 6 A YES. AFTER I LEFT THE SHERIFF'S DEPARTMENT. THEY TOOK ME THERE
- 7 FIRST.
- 8 Q WHILE YOU WERE AT THE JAIL, YOU HAD COPIES OF YOUR CASE IN YOUR
- 9 CELL, CORRECT?
- 10 A AFTER A PERIOD OF TIME.
- 11 Q YOU HAD AN AUTOPSY REPORT?
- 12 A AFTER A PERIOD OF TIME.
- 13 Q YOU HAD THE STATEMENTS THAT WERE MADE AGAINST YOU?
- 14 A AFTER A PERIOD OF TIME.
- 15 Q YOU HAD MR. BENNING'S STATEMENT?
- 16 A AFTER A PERIOD OF TIME.
- 17 Q AND YOUR CELL MATE WAS, I BELIEVE YOU SAID, MICHAEL FLEMING?
- 18 A I HAD DIFFERENT CELL MATES, BUT HE WAS ONE OF THEM.
- 19 Q AND YOU GOT INFORMATION ABOUT HIS CASE FROM HIM, DIDN'T YOU?
- 20 A HE TALKED ABOUT IT. SO DID THE OTHER CO-DEFENDANT TALK ABOUT
- 21 IT.
- 22 Q BUT YOUR TESTIMONY IS THAT YOU NEVER TALKED ABOUT YOUR CASE,
- 23 CORRECT?
- 24 A NO.
- 25 Q YOU JUST TALKED ABOUT OTHER PEOPLE'S CASES?

- 1 A I DIDN'T TALK ABOUT IT.
- 2 Q YOU JUST LISTENED?
- 3 A THAT'S ALL I COULD DO.
- 4 Q AND YOU TALKED - - YOU DON'T DENY TALKING TO MR. STALEY WHILE
- 5 YOU WERE IN JAIL, CORRECT?
- 6 A WE HAD PLENTY OF CONVERSATIONS, BUT NEVER ABOUT MY CASE.
- 7 Q AND DID YOU SEE ANYBODY HAND MR. STALEY DOCUMENTS FROM YOUR
- 8 CASE?
- 9 A I NEVER SEEN IT, BUT I KNEW HE HAD A STATEMENT OF IT.
- 10 Q BUT YOU NEVER SAW IT?
- 11 A I NEVER SAW IT, BUT I - - -
- 12 Q YOU NEVER SAW THE PAPER IN HIS HAND?
- 13 A BUT HE READ FROM IT.
- 14 Q YOU SAW HIM READ FROM IT?
- 15 A NO, HE READ IT OUT IN THE HALLWAY, SO IT WASN'T MINE, SO IT HAD TO
- 16 BE MY CO-DEFENDANT'S.
- 17 Q BUT YOU NEVER SAW ONE IN HIS HAND?
- 18 A I NEVER SEEN ONE IN HIS HAND.
- 19 Q AND AS FAR AS MR. VIGIER, YOU NEVER SAW ANYBODY GIVE HIM A COPY
- 20 OF YOUR CASE, DID YOU?
- 21 A I NEVER SEEN NOBODY GIVE HIM A COPY.
- 22 Q AND SO YOU DON'T KNOW IF THEY HAD ONE OR NOT, DO YOU? 100
- 23 PERCENT SURE OF YOUR OWN KNOWLEDGE?
- 24 A FROM THE THINGS THEY SAID, THEY HAD TO SEE IT.
- 25 Q ANSWER THE QUESTION. FROM YOUR OWN EYES, DID YOU EVER SEE

- 1 THEM HAVE ANYTHING FROM YOUR CASE?
- 2 A NO, NOT FROM MY OWN EYES.
- 3 Q OKAY. AND EVEN THOUGH YOU KNEW STALEY WAS AN INFORMANT, YOU
- 4 TALKED TO HIM ABOUT OTHER STUFF, DIDN'T YOU?
- 5 A YEAH, WE PLAYED CARDS IN THE DAY ROOM.
- 6 Q KIND OF FRIENDS WHILE YOU WERE DOING THAT?
- 7 A I WOULDN'T CALL HIM A FRIEND.
- 8 Q BUT YOU PLAYED CARDS WITH HIM?
- 9 A YES.
- 10 Q WELL, WEREN'T YOU KIND OF AFRAID THAT IF YOU'RE PLAYING CARDS
- 11 WITH A SNITCH OTHER PEOPLE MIGHT THINK YOU'RE A SNITCH TOO?
- 12 A IT DOESN'T WORK LIKE THAT.
- 13 Q IT DOESN'T? YOU CAN'T SAY FROM YOUR OWN KNOWLEDGE FOR SURE
- 14 THAT EITHER MR. STALEY OR MR. VIGIER HAD A COPY OF YOUR CASE?
- 15 A NO, I CAN'T SAY FOR SURE.
- 16 Q AND MICHAEL FLEMING, YOU SAY YOU FOUND OUT FROM HIM THAT HE
- 17 MAY HAVE PASSED ON SOME INFORMATION, IS THAT YOUR TESTIMONY?
- 18 A EXCUSE ME?
- 19 Q YOU SAID YOU THOUGH MR. VIGIER FOUND OUT FROM MICHAEL FLEMING
- 20 ABOUT YOUR CASE?
- 21 A NO, I DID NOT.
- 22 Q WHAT DID YOU SAY ABOUT MR. FLEMING, THAT HE TOLD YOU ABOUT
- 23 VIGIER TALKING ABOUT HIM?
- 24 A YES.
- 25 Q YOU NEVER HAD ANY TALKS WITH AURELIN VIGIER?

REDIRECT EXAMINATION - TUNZY SANDERS BY MS. SANDERS

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1 A OH, WE TALKED OCCASIONALLY TOO. WE'D GO IN THE DAY ROOM AND
2 WE'D PLAY CARDS TOGETHER, BUT FOR ---

3 Q BUT YOU KNEW HE WAS A SNITCH, CORRECT?

4 A YES.

5 Q AND YOU CONTINUED TO TALK TO HIM ABOUT OTHER STUFF, CORRECT?

6 A OTHER THINGS.

7 MR. GIBBONS: ONE MOMENT, YOUR HONOR.

8 BY MR. GIBBONS:

9 Q MR. SANDERS, I WANT TO SHOW YOU STATE'S EXHIBIT 17 ONE MORE TIME.
10 AND THIS IS JERMAINE WALKER'S HOUSE RIGHT HERE ON CLINTON
11 STREET. YOU KNOW WHERE THAT IS, CORRECT?

12 A YES.

13 Q AND ISN'T IT TRUE, ACCORDING TO YOUR TESTIMONY, YOU LEFT THERE
14 ABOUT 10 O'CLOCK?

15 A YES.

16 Q ALONE?

17 A YES.

18 Q AND ISN'T IT ALSO TRUE THAT THE CHINA EXPRESS RESTAURANT IS
19 RIGHT AROUND THE CORNER FROM MR. WALKER?

20 A IT'S RIGHT THERE.

21 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

22 THE COURT: ANYTHING ON REDIRECT?

23 MS. SANDERS: BRIEFLY.

24 REDIRECT EXAMINATION

25 BY MS. SANDERS:

1 Q MR. SANDERS, GOING BACK TO A QUESTION MR. GIBBONS POSED TO YOU,
2 ABOUT HOW FAR - - IF YOU GO OUT ON THE FRONT PORCH OR MR.
3 WALKER'S HOUSE, ABOUT HOW FAR IS DUNBARTON FROM THERE?
4 ABOUT HOW FAR IS DUNBARTON FROM MR. WALKER'S HOUSE? THIS
5 BEING MR. WALKER'S HOUSE, THIS BEING THE CHINA EXPRESS, HOW FAR
6 IS THAT IN YOUR ESTIMATION?

7 A FROM HIS HOUSE TO THE CHINA EXPRESS?

8 Q WELL, I'LL JUST TAKE IT PIECE BY PIECE. FROM MR. JERMAINE WALKER'S
9 HOUSE TO THE DUNBARTON BOULEVARD, ABOUT HOW FAR?

10 A PROBABLY ABOUT THE LENGTH OF A FOOTBALL FIELD AND A HALF,
11 MAYBE TWO.

12 Q OKAY. NOW THAT'S JUST FROM MR. JERMAINE WALKER'S HOUSE TO
13 DUNBARTON BOULEVARD?

14 A YES, MA'AM.

15 Q NOW, CAN YOU TELL THE COURT WHETHER THIS IS A PLATEAU TYPE
16 ROAD OR IS IT A HILLY ROAD?

17 A IT'S A HILLY ROAD.

18 Q NOW, IF YOU WERE TO LOOK AT - - STAND ON THE PORCH OF MR.
19 JERMAINE WALKER'S HOUSE, CAN YOU SEE DUNBARTON BOULEVARD
20 FROM HIS HOUSE?

21 A COULD YOU SEE THE ACTUAL STREET?

22 Q YES.

23 A NO. YOU CAN SEE, THE ONLY THING YOU CAN SEE IS THE BUILDING
24 THAT'S SITTING ON THE STREET. YOU CAN'T SEE ACTUAL PAVEMENT.

25 Q WHY IS THAT?

REDIRECT EXAMINATION - TUNZY SANDERS BY MS. SANDERS

1 A BECAUSE IT GOES UP AND THEN GOES DOWN.

2 Q NOW, GOING FROM DUNBARTON BOULEVARD -- I'M NOT GOOD AT
3 DIRECTIONS -- IF YOU WERE PROCEEDING DOWN ---

4 MR. GIBBONS: DOWN IS EAST.

5 MS. SANDERS: DOWN IS EAST THIS WAY?

6 MR. GIBBONS: DOWN IS EAST. DOWN TO THE BOTTOM OF THE
7 PICTURE IS EAST. SO TO THE RIGHT WOULD BE NORTH.

8 BY MS. SANDERS:

9 Q SO IF YOU WERE GOING THIS WAY, YOU WOULD BE GOING NORTH
10 TOWARD DUNBARTON BOULEVARD, WHICH WAY WOULD YOU HAVE TO
11 TURN TO GO TO THIS CHINA EXPRESS?

12 A THE ONE AT THE TOP?

13 Q YES, SIR.

14 A YOU'D HAVE TO TURN LEFT.

15 Q OKAY. NOW ABOUT WHAT DISTANCE IS THERE FROM CHINA EXPRESS TO
16 DUNBARTON?

17 A EXCUSE ME?

18 Q SAY IF YOU GOT TO THIS INTERSECTION HERE, CLINTON STREET AND
19 DUNBARTON, WHAT'S THE DISTANCE FROM THE CHINA EXPRESS
20 RESTAURANT TO ---

21 A THE INTERSECTION?

22 Q YES.

23 A IT MIGHT BE ABOUT THE LENGTH OF A FOOTBALL FIELD.

24 Q SO IT'S FAIR TO SAY THAT YOU WERE QUITE A WAYS FROM THE CHINA
25 EXPRESS RESTAURANT WHEN YOU LEFT MR. WALKER'S HOUSE?

1 A YES.

2 Q NOW, THIS WAY THAT YOU TOOK, THIS BACK WAY, IS THAT A SHORTCUT?
3 GOING DOWN TO WHERE YOU DESCRIBED, DOWN THIS WAY, OR IS
4 THAT -- IS THAT THE QUICKEST WAY YOU CAN GET THERE OR IS THAT THE
5 LONGEST WAY?

6 A I'M NOT SURE IF IT'S THE QUICKEST OR THE LONGEST. IT WAS JUST MORE
7 CONVENIENT BECAUSE I WAS RIGHT AT THAT STREET.

8 Q INSTEAD OF WALKING THEN DOWN CLINTON STREET TO DUNBARTON
9 AND THEN MAKING A TURN, THEN YOU JUST WERE RIGHT AT THE STREET
10 AND YOU PROCEEDED DOWN THIS WAY?

11 A YES.

12 Q IS THAT YOUR TESTIMONY?

13 A YES, MA'AM.

14 Q NOW, MR. SANDERS, DO YOU TYPICALLY CALL -- WHO WERE YOU LIVING
15 WITH? WHO WAS THERE ACTUALLY IN THE HOUSE, IN YOUR HOME
16 DURING THE TIME THAT THIS INCIDENT ALLEGEDLY TOOK PLACE? WHO
17 WAS RESIDING THERE AT THAT TIME?

18 A MY SISTER AND MY MOM AND MY NEPHEW.

19 Q AND WERE YOU IN THE HABIT OF CALLING YOUR MOTHER AND YOUR
20 SISTER AT 10 O'CLOCK AT NIGHT TO COME GET YOU?

21 A NO.

22 Q WHAT WAS THE TYPICAL WAY, IF YOU FOUND YOURSELF OUT THAT LATE
23 AT NIGHT, THAT YOU GOT HOME?

24 A PAY SOMEBODY TO TAKE ME HOME.

25 Q WAS THERE EVER SOME TIME WHEN YOU DID CALL YOUR FAMILY

1 MEMBERS TO GET YOU HOME?

2 A ONLY IF I COULDN'T, IF I COULDN'T FIND NOBODY TO TAKE ME HOME
3 AND I COULDN'T GET NOWHERE ELSE.

4 Q HOW OLD IS YOUR MOTHER?

5 A 81.

6 Q WOULD YOU CALL HER LATE AT NIGHT TO COME GET YOU? WELL AT
7 THIS TIME, I'LL CONCEDE SHE MAY HAVE BEEN ABOUT 78. WOULD YOU
8 CALL HER TO COME GET YOU?

9 A WOULD I CALL HER?

10 Q YES.

11 A NO, I WOULDN'T.

12 Q AND HOW ABOUT YOUR SISTER? YOUR SISTER, LINDA?

13 A WELL, SHE, AT THAT POINT IN TIME, SHE WAS USUALLY GOING TO BED
14 ABOUT 9:00, 9:30, SO IT WOULDN'T REALLY BE NO GOOD TO CALL UNLESS
15 IT WAS REALLY JUST AN EMERGENCY?

16 Q WAS SHE EMPLOYED?

17 A YES.

18 Q IS THERE ANYBODY ELSE THAT DRIVES IN THAT HOUSEHOLD THAT YOU
19 KNEW OF?

20 A NO.

21 Q DID YOU HAVE A DRIVER'S LICENSE AT THAT TIME?

22 A NO.

23 Q YOU HAVE A CRIMINAL RECORD? HAVE YOU EVER BEEN CHARGED WITH
24 ANY CRIME OR CONVICTED OF ANY CRIME?

25 A DRIVING UNDER SUSPENSION COUNT?

RECROSS-EXAMINATION - TUNZY SANDERS BY MR. GIBBONS

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1 Q DRIVING, YES.

2 A YES.

3 Q YOU'VE BEEN CONVICTED OF DRIVING UNDER A SUSPENDED LICENSE OR
4 DRIVING UNDER SUSPENSION?

5 A DRIVING UNDER SUSPENSION.

6 Q IS THERE ANYTHING ELSE THAT YOU'VE BEEN CONVICTED OF?

7 A NO.

8 Q HAVE YOU EVER BEEN ARRESTED FOR ANYTHING ELSE AND BEEN
9 CHARGED WITH ANYTHING ELSE THAT MAY HAVE BEEN DISMISSED,
10 CRIMINALLY?

11 A I NEVER BEEN ARRESTED UNTIL THIS INCIDENT.

12 MS. SANDERS: NOTHING FURTHER, YOUR HONOR.

13 MR. GIBBONS: I'VE JUST GOT ONE ITEM, YOUR HONOR.

14 RECROSS-EXAMINATION

15 BY MR. GIBBONS:

16 Q MR. SANDERS, I'M GOING TO SHOW YOU STATE'S EXHIBIT 17 ONE MORE
17 TIME. WE KNOW WHERE EVERYTHING IS. ARE YOU FAMILIAR WITH CANA
18 STREET AND AZALEA STREET?

19 A YES.

20 Q ISN'T IT TRUE THAT YOU CAN WALK DOWN CLINTON AND TAKE A LEFT
21 ON THIS STREET HERE?

22 A OBVIOUSLY.

23 Q AND ISN'T IT A VIDEO STORE UP IN THIS NEIGHBORHOOD?

24 A YES.

25 Q AND A HUDDLE HOUSE?

RECROSS-EXAMINATION - TUNZY SANDERS BY MR. GIBBONS

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1 A YES.

2 Q AND ISN'T THERE A MOTEL UP IN THIS NEIGHBORHOOD AS WELL?

3 A YES.

4 Q AND DOESN'T THIS DRIVE CUT ALL THE WAY THROUGH TO THIS PARKING
5 LOT AND COME OUT ON DUNBARTON?

6 A YES, IT DOES.

7 Q AND SO YOU COULD, SOMEONE COULD WALK DOWN HERE, TAKE A LEFT
8 AND CUT THROUGH THE BLOCK STRAIGHT TO THE CHINA EXPRESS
9 RESTAURANT?

10 A COULD ANYBODY DO THAT?

11 Q YES, SIR.

12 A YES, THEY COULD.

13 Q AND THAT WOULD BE A SHORTCUT, WOULDN'T IT, MR. SANDERS?

14 A YEAH, THAT COULD BE A SHORTCUT.

15 Q AND THAT WOULD PUT YOU CROSSING THE ROAD RIGHT BY THE
16 RESTAURANT AND THE HOTEL IF SOMEONE WENT THAT WAY, ISN'T THAT
17 CORRECT?

18 A YEAH, IF SOMEBODY WENT THAT WAY.

19 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

21 MS. SANDERS: WE REST, YOUR HONOR.

22 THE COURT: ANYTHING IN REPLY?

23 MR. WEEKS: NO, SIR.

24 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A FEW MINUTE
25 BREAK BEFORE I GET YOU ALL TO - - -

1 MR. WILLIAMS: FOR THE RECORD, WE'D LIKE TO RENEW OUR
2 PREVIOUS MOTIONS, YOUR HONOR, ON ALL THREE COUNTS, THAT THEY BE
3 DISMISSED BECAUSE OF THE LACK -- WHEN THE EVIDENCE TAKEN IN THE LIGHT
4 MOST FAVORABLE TO THE STATE ---

5 THE COURT: BEFORE WE GET TO THAT, I WAS GOING TO BRING UP
6 ONE OF THE MATTERS THAT WE DISCUSSED YESTERDAY THAT YA'LL HAD BEEN
7 GIVEN AN OPPORTUNITY TO GO BACK AND DO A LITTLE RESEARCH IF YOU
8 WANTED TO.

9 MR. WILLIAMS: YES, SIR.

10 THE COURT: ON THE ATTEMPTED ARMED ROBBERY. WHAT HAVE
11 YA'LL BEEN ABLE TO FIND?

12 MR. WILLIAMS: YOUR HONOR, THERE ARE TWO CASES THAT ---

13 THE COURT: ANYTHING YA'LL WANT TO TELL ME ABOUT OR ANY
14 ARGUMENT OR ---

15 MR. WILLIAMS: YOUR HONOR, THERE ARE TWO CASES I BELIEVE
16 OUT THERE, STATE VS. QUICK AND STATE VS. HIATT, AND BOTH OF THEM, I
17 BELIEVE INDICATE THAT THERE IS A DISTINCTION BETWEEN A PREPARATION OR
18 PLANNING OR A ROBBERY ---

19 THE COURT: I'VE READ HIATT.

20 MR. WILLIAMS: --- AND THE CARRYING OUT OF THE ROBBERY.

21 THE COURT: I DEFENDED HIATT.

22 MR. WILLIAMS: SIR?

23 THE COURT: THAT WAS MY CASE.

24 MR. WILLIAMS: OH WAS IT.

25 THE COURT: I DIDN'T REALIZE IT WAS THE CASE YA'LL WERE

1 TALKING ABOUT UNTIL I READ IT OR WHATEVER. RUBY HIATT WAS MY CLIENT.
2 SHE WAS A FINE WOMAN.

3 ALL RIGHT. WHAT -- TELL ME -- I HAVE NOT READ QUICK.

4 MR. WILLIAMS: THEY BASICALLY STAND FOR THE SAME
5 PROPOSITION THAT THERE IS A DISTINCTION BETWEEN THE PLANNING OR
6 PREPARATION FOR A CRIME AND THE ACTUAL ATTEMPT TO CARRY IT OUT
7 AND -- CARRY THE CRIME OUT. ALSO, YOUR HONOR, THERE'S STILL A FAILURE
8 ON THE PART OF THE STATE TO PROVE ANY CORPUS DELICTI OF ANY ROBBERY.
9 THE EVIDENCE, WHEN YOU LOOK AT IT IN THE LIGHT MOST FAVORABLE TO
10 THEM IS THAT THERE'S A POCKETBOOK SITTING ON THE SEAT, IN PLAIN VIEW ---

11 THE COURT: BUT ON AN ATTEMPT. THIS IS NOT A ROBBERY
12 ITSELF. IF, IN FACT, THE POCKETBOOK WERE MOVED, THEN YOU WOULDN'T
13 HAVE AN ATTEMPT, WOULD YOU?

14 MR. WILLIAMS: NO, SIR. I'M SORRY.

15 THE COURT: I'M NOT SURE WHAT YOUR BASIS OF YOUR CORPUS
16 DELICTI ---

17 MR. WILLIAMS: WELL THERE WAS ABSOLUTELY NOTHING THAT
18 WOULD HAVE STOPPED THEM OR INTERFERED WITH THEM JUST REACHING IN
19 THE CAR AND TAKING IT. THERE'S NO EVIDENCE OF A STRUGGLE, THERE'S NO
20 EVIDENCE OF ANYBODY COMING OUTSIDE AND INTERRUPTING THEM, SO
21 THERE'S NO EVIDENCE THEY TRIED TO CARRY THE ROBBERY OUT.

22 THE COURT: WELL, THAT MAY OR MAY NOT BE SO, DEPENDING ON
23 WHAT THESE CASES SAY. I MEAN DEPENDING ON WHAT THESE CASES SAY. I
24 MEAN DEPENDING ON WHERE THE PREPARATION ENDS AND THE ATTEMPT
25 BEGINS, BUT CLEARLY IF YOU HAVE A SUCCESSFUL ROBBERY, ARMED, STRONG

1 ARMED OR OTHERWISE, IT'S - - YOU'RE NOT GOING TO HAVE A CHARGE OF AN
2 ATTEMPTED ROBBERY, SO YOU NEED TO TELL ME WHAT THE ASPECT OF CORPUS
3 DELICTI IS WITH RESPECT TO THE ATTEMPTED ROBBERY, NOT THE ROBBERY
4 ITSELF.

5 MR. WILLIAMS: WELL, THE CORPUS DELICTI OF THE ATTEMPT IS
6 THEM GOING THERE FOR THE PURPOSE OF CARRYING THE THING OUT AND
7 NOT - - AND BEING ABLE TO CARRY IT OUT AND THEN NOT DOING IT. AND
8 THERE'S ABSOLUTELY NO TESTIMONY IN THE RECORD THAT IF THEY HAD WENT
9 THERE TO INTEND TO MAKE THIS ROBBERY THAT THEY COULD NOT HAVE
10 CARRIED IT OUT. SO NOTHING COULD HAVE PREVENTED THEM FROM CARRYING
11 OUT A ROBBERY HAD THEY HAD THAT INTENT IN MIND. CLEARLY WHEN YOU
12 VIEW THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE'S
13 NO ATTEMPTED ROBBERY HERE.

14 THE COURT: WELL, THAT'S WHAT I'M TRYING TO UNDERSTAND.
15 WHAT YA'LL WANT TO SAY?

16 MR. GIBBONS: YOUR HONOR, I'D LIKE TO REFER TO MR. VIGIER'S
17 TRANSCRIPT, PAGE 444, ABOUT HALF WAY DOWN. AND, YOUR HONOR, IT'S KIND
18 OF HARD TO FOLLOW IN A VACUUM. WE HAD TRIED TO REDACT EVERYBODY'S
19 REFERENCES TO THE PERSON THEY WERE HEARING SAY IT AND SO WHENEVER A
20 WITNESS WOULD SAY THEY, THERE WAS AN OBJECTION AND THE JUDGE WOULD
21 TELL THEM JUST TO TALK ABOUT THE PERSON YOU WERE TALKING TO AT THAT
22 TIME.

23 HE'S SPEAKING TO MR. SANDERS AT THIS - - ABOUT WHAT MR.
24 SANDERS TOLD HIM IN JAIL AT THIS POINT. HE SAID, HE TOLD ME HE SHOT HER.
25 HE TOLD ME HE SHOT HER WITH A 22. HE DID NOT TAKE THE MONEY. HE TOLD

1 ME. AND THEN I ASKED HIM, DID HE TELL YOU WHY. AND HE SAID, AS THEY
2 WERE GOING TO DO THE ROBBERY, AND THEN THERE WAS AN OBJECTION, I
3 BELIEVE ABOUT HIM SAYING THEY, AND THEN IT PICKS BACK UP ON THE NEXT
4 PAGE. ANSWER SLOWLY, JUST REFER TO WHAT THE JUDGE TOLD YOU TO REFER
5 TO. DID HE TELL YOU ANYTHING OF WHAT HAPPENED WHEN THE SHOOTING
6 OCCURRED THAT NIGHT.

7 HE TOLD ME THAT -- THIS IS MR. SANDER'S ANSWER. HE TOLD ME
8 THAT A CAR SEEMED TO HAVE TURNED AROUND. HE TOLD ME HE THOUGHT
9 THE CAR MIGHT HAVE HEARD THE SHOT AND HIS BANDANA WAS NOT ON HIS
10 NOSE. HE HAD TOLD ME HE HAD A BANDANA OVER HALF HIS FACE AND HE WAS
11 SCARED OF BEING IDENTIFIED AND HE RAN.

12 YOUR HONOR, I BELIEVE, AS THIS IS TAKEN IN THE LIGHT MOST
13 FAVORABLE TO THE STATE, MR. VIGIER TESTIFIED THAT MR. SANDERS TOLD HIM
14 THEY PLANNED TO DO A ROBBERY, THEY GOT THERE, THE SHOT WAS TAKEN
15 AND BEFORE THEY COULD GET THE MONEY, OR FOR WHATEVER REASON, A CAR
16 TURNED AROUND, FLASHED ITS LIGHTS AND THEY RAN. THEY THOUGHT THEY
17 MIGHT BE IDENTIFIED.

18 YOUR HONOR, WE HAVE IN HIS STATEMENT, ATTRIBUTABLE TO MR.
19 SANDERS, EVIDENCE THAT THEY WERE PLANNING TO DO A ROBBERY. THAT
20 ALONG WITH THE FACT THAT MR. BENNING SAID THAT THEY WERE TALKING
21 ABOUT THE RESTAURANT AND THE MONEY FOR A MOM'S BILL BEFOREHAND
22 AND THAT THEY ACTUALLY WENT TO THE PLACE TO CARRY IT OUT. AND BUT
23 FOR AN INTERVENING CIRCUMSTANCE, THE CAR TURNING AROUND, THAT'S
24 WHAT MR. SANDERS, ACCORDING TO MR VIGIER, FOILED THEIR ATTEMPT.

25 YOUR HONOR, I READ THE SAME QUICK AND HIATT. I ALSO

1 CHECKED BLACK'S LAW DICTIONARY, JUDGE OBERMAN'S CHARGE BOOK ON
2 ATTEMPT, AND I ALSO CHECKED THE MACINICH'S BOOK ON SOUTH CAROLINA
3 LAW. I WAS WORRIED ABOUT GETTING OUTSIDE OF SOUTH CAROLINA WITH MY
4 AUTHORITY, BUT I SEE IN QUICK, THEY'RE CITING CALIFORNIA, SO I DON'T
5 KNOW IF THERE IS ANY CLOSER MATCH FOR AN ATTEMPT DEFINITION THAN
6 THAT AND IN MACINICH'S BOOK, THEY REFER TO A UNITED STATES VS.
7 STALWORTH CASE, IT'S A FED 2ND CASE IN THE 2ND CIRCUIT. AND IN THAT CASE,
8 THERE WAS A BANK ROBBERY THAT A GANG HAD PLANNED. THEY MADE ALL
9 THEIR PLANS AS FAR AS WHAT THEY WERE GOING TO DO, WHERE THEY WERE
10 GOING TO GO, WHO WAS GOING TO DO WHAT, WHERE THEY WERE GOING TO
11 MEET UP AFTERWARDS AND THERE WAS AN INFORMANT IN THE GANG AND THE
12 POLICE STOPPED THEM AS THEY PULLED INTO THE BANK AND ARRESTED THEM.
13 AND THE COURT UPHELD THAT THEY HAD TAKEN SUBSTANTIAL STEPS. THEY
14 HAD GONE FROM PLANNING TO IMPLEMENTING IN A SUBSTANTIAL WAY AND,
15 THEREFORE, THAT WAS ENOUGH FOR ATTEMPT IN THAT CASE.

16 I THINK THAT THE LANGUAGE IN QUICK ON PAGE 3 OF THE
17 OPINION, KEYNOTES 6 AND 7 ---

18 THE COURT: ALL RIGHT. WELL, I'M GOING TO HAVE TO READ
19 QUICK.

20 MR. GIBBONS: YES, SIR. IT TALKS ABOUT AN OVERT ACT, MORE
21 THAN MERE PREPARATION. AND THE STATE'S POSITION WOULD BE ONCE THEY
22 WENT FROM PLANNING IT TO GOING TO THE ACTUAL PLACE, BECOMING ARMED,
23 GOING UP TO THE CORNER OF THE BUILDING WHERE MR. BENNING SAID HE SAW
24 MR. BUCKMAN AFTER HE'D SEEN THEM GOING DOWN THE ROAD TOGETHER, WE
25 BELIEVE THAT WE HAVE MET THE BURDEN ON ATTEMPT AND THAT THERE WAS

1 AN ABANDONMENT PRIOR TO GETTING THE MONEY DUE TO AN INTERVENING
2 CIRCUMSTANCE.

3 THE COURT: ALL RIGHT. ANYTHING IN RESPONSE?

4 MR. WILLIAMS: ONCE AGAIN, IF YOU BELIEVE ALL THT THE STATE
5 IS TRYING TO PROVE AND THAT THEY WERE ACTUALLY THERE, THE ONE THING
6 THAT HAD TO BE DONE TO CARRY THIS ROBBERY OUT WAS TO MERELY REACH
7 INTO THE CAR, STAND UP AND GO. THAT DIDN'T TAKE PLACE AND I WOULD SAY
8 THAT THE STORY OF MR. VIGIER'S IS SO BOUNCEABLE THAT EVEN IN THE LIGHT
9 MOST FAVORABLE TO THE STATE IT CAN'T BE DISREGARDED THAT IF THERE
10 WAS AN INTENT FOR THE ROBBERY TO HAPPEN, IT COULD HAVE HAPPENED AND
11 IT COULD HAVE BEEN COMPLETED AND THERE WAS NO ROBBERY.

12 THE COURT: THAT DON'T MEAN NOTHING. IF THE ROBBERY HAD
13 OCCURRED, THEY WOULDN'T BE CHARGING WITH ATTEMPT.

14 ALL RIGHT. LET ME TAKE A FEW MINUTE BREAK AND READ THIS
15 AND LET ME TALK TO YA'LL JUST A MINUTE BACK IN THE ROOM, IF YOU WOULD.

16 (WHEREUPON A RECESS WAS OBSERVED BY THE COURT.)

17 THE COURT: ALL RIGHT. LET ME ASK YOU SOMETHING. DID YOU
18 FIND ANYTHING ABOUT WHAT YOU WANT ME TO CONSIDER AS TO THE LAW IN
19 THIS CASE ABOUT FELONY MURDER, WHETHER CONSPIRACY ALONE
20 CONSTITUTES FELONY MURDER?

21 MR. GIBBONS: YOUR HONOR, CONSPIRACY IS A FELONY.

22 THE COURT: ALL RIGHT. LET ME, WE ARE NOW GOING TO GO
23 FORWARD WITH YOUR CLOSING ARGUMENTS AND THE STATE IS GOING TO
24 WAIVE.

25 MR. WILLIAMS: I'M SORRY, I JUST WANTED TO MAKE SURE I'VE

1 GOT ON THE RECORD THAT I'VE MADE MY MOTIONS FOR DIRECTED VERDICTS.

2 THE COURT: LET ME GO AHEAD AND WITH RESPECT TO THE
3 DIRECTED VERDICTS, I'M GOING TO DENY AGAIN -- I TOOK THE ONE FOR
4 ATTEMPTED MURDER, I MEAN ATTEMPTED ARMED ROBBERY UNDER
5 ADVISEMENT YESTERDAY AND YOU'VE RENEWED IT EVEN THOUGH I'VE NOT
6 RULED ON IT. I'M JUST GOING TO DENY AGAIN THE MOTIONS ON THE MURDER
7 AND ON THE CONSPIRACY FOR THE SAME REASONS THAT DENIED THEM
8 YESTERDAY. ON THE ATTEMPTED ARMED ROBBERY, I'M GOING TO DENY YOUR
9 MOTION ON THE BASIS THAT TAKING EVERYTHING IN THE LIGHT MOST
10 FAVORABLE TO THE STATE, THERE IS EVIDENCE, CIRCUMSTANTIAL EVIDENCE
11 THAT THIS DEFENDANT MAY HAVE COMMITTED THIS OFFENSE. I'M GOING TO
12 ALLOW THAT TO GO FORWARD, AT LEAST FOR CONSIDERATION BY THE COURT.

13 ALL RIGHT. ARE YA'LL READY TO GO FORWARD?

14 MY UNDERSTANDING IS THAT THE STATE WAIVES ITS OPENING
15 AND WILL JUST HAVE ONE ARGUMENT IN CLOSING, IS THAT RIGHT?

16 MR. GIBBONS: YES.

17 THE COURT: WHO'S GOING TO ARGUE FOR THE DEFENDANT?

18 MR. GIBBONS: YOUR HONOR, IT'S MY UNDERSTANDING THERE
19 WILL BE ONE ARGUMENT FOR EACH SIDE.

20 THE COURT: THAT'S CORRECT.

21 MR. GIBBONS: NOT TWO FROM THE DEFENSE.

22 THE COURT: I UNDERSTAND. THERE'S GOING TO BE ONE
23 ARGUMENT BY ONE LAWYER FROM EACH SIDE.

24 YOU READY? YA'LL NEED A FEW MORE MINUTES?

25 MS. SANDERS: WE COULD USE A FEW MINUTES IF IT WOULD BE

1 ALL RIGHT WITH THE COURT.

2 THE COURT: LET ME -- I HAVE, JUST FOR YA'LL'S INFORMATION,
3 I'VE READ THE MURDER. NEITHER ONE OF YOU IS ASKING FOR A
4 MANSLAUGHTER CHARGE, IS THAT CORRECT?

5 MR. WILLIAMS: YOUR HONOR, BASED UPON THE EVIDENCE
6 PRESENTED, WE DON'T BELIEVE IT FITS.

7 THE COURT: THEN WE HAVE MERE PRESENCE. I'VE READ THE
8 LAW ON MERE PRESENCE. I'VE READ THE LAW ON FELONY MURDER. I'VE READ
9 THE LAW ON HAND OF ONE, HAND OF ALL. I'VE GOT CONSPIRACY AND YOU GOT
10 ATTEMPTED ARMED ROBBERY. IS THERE ANYTHING ELSE YA'LL WANT ME TO
11 LOOK AT? ANY CHARGES YOU WANT ME TO LOOK AT IN THE NEXT COUPLE OF
12 MINUTES?

13 MR. WILLIAMS: YOUR HONOR, WITH REGARD TO THE HAND OF
14 ONE, HAND OF ALL, I WOULD PASS UP THE CASE OF STATE VS. BELL, THE
15 CHARGE IN THAT CASE. IT'S PROPER ---

16 THE COURT: I'VE READ STATE VS EDWARDS AND STATE VS.
17 FRANKLIN ABOUT THE HAND OF ONE , HAND OF ALL.

18 MR. WILLIAMS: AND THEY MAY BE THE SAME THING.

19 THE COURT: HOW LONG DO YA'LL ANTICIPATE? 15 MINUTES
20 EACH?

21 MR. WILLIAMS: THAT'S ABOUT RIGHT.

22 THE COURT: YA'LL KEEP THAT IN MIND. IT'S 11:30, YA'LL CAN
23 COME GET ME.

24 (WHEREUPON A RECESS WAS OBSERVED BY THE COURT.)

25 THE COURT: ALL RIGHT. WE'RE READY. YOU READY TO GO?

1 MR. WILLIAMS: YES, YOUR HONOR, PLEASE THE COURT.

2 THE COURT: ALL RIGHT. LET ME GET -- ALL RIGHT. IF YOU
3 WOULD, PLEASE, MR. WILLIAMS.

4 CLOSING ARGUMENTS

5 MR. WILLIAMS: YOUR HONOR, WE APPRECIATE YOUR LISTENING
6 TO OUR CASE THIS WEEK AND THANK YOU FOR YOUR ATTENTION. TO BRIEFLY
7 GO THROUGH THE EVIDENCE AS WE SAW IT FROM THE WITNESSES PLACE ON
8 THE STAND BY THE STATE AND BY DEFENSE, THE LAW ENFORCEMENT, LUKE
9 GADSON TESTIFIED, TODD GANTT, CHIEF DARNELL, VELLO PAAVEL, JOEL
10 SEXTON AND JOHN BLACK. WE KNOW FROM THEIR TESTIMONY THE FOLLOWING
11 THINGS: THAT MS. CHAPMAN WAS SHOT THAT NIGHT; THAT SHE SUFFERED
12 FROM A BULLET WOUND THAT WENT THROUGH HER HEART; THAT HER HEART,
13 BASED UPON A REASONABLE DEGREE OF MEDICAL CERTAINTY WAS STOPPED
14 ALMOST IMMEDIATELY; THAT THERE'S NO EVIDENCE OF ANY KIND OF
15 STRUGGLE.

16 WE KNOW THAT THERE WAS A POCKETBOOK SEATED BESIDE HER
17 AND THIS IS UNCONTROVERTED, THAT THE POCKETBOOK WAS UNDISTURBED.
18 WE KNOW THAT THERE'S NO ATTEMPT TO TAKE ANY KIND OF FINGERPRINTS OF
19 EVIDENCE FROM THE POCKETBOOK WHICH MIGHT CONNECT THAT
20 POCKETBOOK TO MR. SANDERS OR TO ANYONE ELSE. WE KNOW FROM MR.
21 PAAVEL AND FROM MR. SEXTON THAT IT WAS A 25 GUN, A 25 CALIBER
22 ACCORDING TO THE STATE THAT SHOT MS. CHAPMAN. WE ALSO KNOW FROM
23 MR. PAAVEL THAT WHILE IT'S INCONCLUSIVE AS TO THE ACTUAL SLUG IN HER,
24 WHETHER THAT CAME FROM THE GUN THAT BELONGED TO MS. HIGHSMITH,
25 THAT THE CARTRIDGE, ACCORDING TO HIM ON THE GROUND BESIDE THE CAR

1 DID.

2 WE THINK THAT THIS POINTS TO THE FACT THAT THERE'S NO
3 ATTEMPTED ROBBERY IN THIS CASE. AND WE THINK THAT'S ALMOST TO THE
4 LEVEL OF DIRECTED VERDICT AND IT CERTAINLY DOES NOT MEET PROOF
5 BEYOND A REASONABLE DOUBT. WE BELIEVE THAT THERE'S A REASON WHY
6 THE TRIER OF THE FACTS SHOULD HESITATE TO FIND ATTEMPTED ROBBERY
7 BASED UPON THE STATE'S EVIDENCE.

8 THE OTHER PERSONS THAT WE HEARD TESTIFY WERE TEMETRIUS
9 WILLIAMS AND JERMAINE WALKER. AND IF YOU LOOK AT THE EVIDENCE,
10 BASED UPON WHAT MR. SANDERS TESTIFIED, YEAH, HE ADMITS THAT HE WAS
11 WITH HER THAT NIGHT. HE ADMITS THAT THE OTHER TWO WERE IN THE CAR. I
12 DON'T KNOW WHAT THAT REALLY MEANS EXCEPT THEY WERE ALL TOGETHER
13 EARLIER THAT NIGHT. NOW, TEMETRIUS GAVE DIFFERING STATEMENTS ABOUT
14 WHAT WENT ON THAT NIGHT. QUITE FRANKLY, I DON'T KNOW WHICH YOU
15 BELIEVE OR WHICH YOU SHOULD BELIEVE. I KNOW THAT 9 MONTHS AFTER THIS
16 PURPORTEDLY HAPPENED, SHE GAVE A STATEMENT AND MENTIONED SOME
17 KIND OF STATEMENT ABOUT CHEESE, OR GOING TO GET SOME CHEESE, BUT I
18 BELIEVE SHE TESTIFIED ON THE STAND THAT SHE COULDN'T SAY WHETHER
19 TUNZY SANDERS SAID THAT OR WHETHER BENNING SAID THAT OR WHO SAID
20 THAT. SHE JUST HEARD THAT STATEMENT. AND I THINK THAT AT ONE POINT IN
21 TIME SHE STATED THAT SHE DIDN'T KNOW EXACTLY WHAT THAT STATEMENT
22 REALLY MEANT.

23 JERMAINE WALKER SAYS THAT THEY'RE ALL AT HIS HOUSE. HE
24 SAYS THAT THERE WERE SEVERAL OTHER PEOPLE OUT AT HIS HOUSE AND HE
25 SAYS THAT SOMEONE IN THE CROWD SAID SOMETHING ABOUT GOING TO GET A

1 LICK, BUT HE COULD NOT EVEN TIE THAT TO MR. SANDERS OR TO MR. BENNING
2 OR TO MR. BUCKMAN. HE SAYS SOMEBODY SAID THAT, SOMEBODY AT HIS
3 HOUSE. HE THEN SAYS THAT THEY TOLD HIM THAT THEY WERE GOING TO
4 BARNWELL ARMS APARTMENTS, WHICH IS DOWN THE ROAD FROM THE CHINA
5 EXPRESS AND NEVER MENTIONED GOING TO THE CHINA EXPRESS.

6 WE DON'T KNOW WHAT, IF ANYTHING, THEIR TESTIMONY GOES TO
7 PROVE ANY ELEMENTS OF THE CRIMES FRO WHICH MR. SANDERS IS CHARGED.
8 IN FACT, MR. SANDERS DOES ADMIT BEING AT THEIR HOUSE THAT DAY OR BEING
9 WITH THEM THAT DAY.

10 THE NEXT TESTIMONY THAT YOU HAVE THAT IS REALLY VERY
11 SELF SERVING BY THE PERSONS GIVING IT IS THE TESTIMONY OF THE JAILHOUSE
12 WITNESSES, DAVID STALEY, WHO'S HERE IN THIS COURT, WHO TESTIFIED
13 INCONSISTENTLY WITH WHAT HE TESTIFIED WITH LAST TIME AND WHO HAD
14 SOMETHING TO GAIN FROM HIS TESTIMONY. CLEARLY HE WAS IN JAIL ON THE
15 CHARGES OF DISTRIBUTION OF CRACK. CLEARLY FROM HIS OWN TESTIMONY,
16 HE KNEW HOW THE SYSTEM WORKED, HE KNEW THAT IF HE COULD FIND SOME
17 KIND OF LITTLE BIT OF EVIDENCE ON SOMEBODY OR INCRIMINATING
18 STATEMENT ON SOMEBODY OR MAKE SOMETHING UP THAT HE MIGHT GET A
19 BETTER DEAL OR SOME CONSIDERATION. CLEARLY HE DID GET SOME
20 CONSIDERATION IN THAT HIS BAIL WAS REDUCED FROM \$80,000 TO \$10,000 THE
21 DAY AFTER HE TESTIFIED AT THE COMPLETION OF THE TRIAL. AND HE HAD A
22 MOTIVE TO GET UP THERE AND SAY SOMETHING THAT WASN'T TRUE TO COVER
23 HIS OWN BUTT. HE IS A FELON. HE'S IN JAIL AGAIN TODAY FOR THOSE CRACK
24 CHARGES, AS WELL AS NEW CRACK CHARGES AGAINST HIM AND WE DON'T
25 BELIEVE THAT HE IS RELIABLE AT ALL.

1 AND IF YOU LOOK AT HIS TESTIMONY AND WHAT HE SAID, HE SAID
2 THAT MR. SANDERS SAID THAT HE GOT A 22 PISTOL AND THAT HE SHOT MS.
3 CHAPMAN WITH A 22 PISTOL. WE KNOW THAT'S NOT RIGHT BECAUSE IT DOESN'T
4 MATCH THE PHYSICAL EVIDENCE. HE SAID THAT MR. SANDERS WENT BACK TO
5 THE SCENE OF THE CRIME AND PLANTED A 25 CALIBER CARTRIDGE AT THE
6 SCENE, ASSUMING TO THROW THE POLICE OFF, WHICH MAKES ABSOLUTELY NO
7 SENSE AT ALL. AND HIS TESTIMONY IS JUST TOTALLY UNRELIABLE AND
8 UNSUBSTANTIATED.

9 NOW, AURELIN VIGIER DIDN'T MAKE IT TO COURT. HE'S A
10 FUGITIVE FROM THE LAW. HE'S AVOIDING THE SOLICITOR, HE'S AVOIDING LAW
11 ENFORCEMENT AND HE KNOWS HOW THE SYSTEM WORKS ALSO. MR. VIGIER
12 WAS CHARGED ORIGINALLY WITH ATTEMPTED ARMED ROBBERY, ASSAULT AND
13 BATTERY WITH INTENT TO KILL, WITH CONSPIRACY AND WITH THE USE OF A
14 HANDGUN IN A VIOLENT OFFENSE. HE CUT A DEAL. HE PLED TO ONE
15 CONSPIRACY CHARGE, HE GOT PROBATION. HE GOT ALL THE OTHER CHARGES
16 THAT HE HAD NOT PROSECUTED IN EXCHANGE, WE BELIEVE, FOR THE PROMISE THAT
17 IF HE TESTIFIED OR FOUND INFORMATION AGAINST PEOPLE WHO MAY HAVE
18 BEEN IN THE JAIL, LIKE MR. SANDERS AND HIS CO-DEFENDANTS, THAT HE
19 WOULD GET SOME CONSIDERATION AND HE DID, IN FACT, GET THAT
20 CONSIDERATION AND HE'S OUT TODAY AND HE'S A FUGITIVE FROM THE LAW
21 TODAY.

22 IF YOU LOOK AT MR. VIGIER'S TESTIMONY FROM THE LAST TRIAL,
23 YOU HAVE TO WONDER ABOUT IT. HE INDICATES THAT MR. SANDERS SHOT MS.
24 CHAPMAN OUTSIDE OF THE CAR, THAT THERE WAS SOME SORT OF STRUGGLE.
25 WE KNOW THAT NOT TO BE -- PROBABLY NOT TO BE TRUE BECAUSE MS.

1 SANDER'S HEART -- MS. CHAPMAN'S HEART WOULD HAVE STOPPED
2 IMMEDIATELY UPON THE GUNSHOT AND PROBABLY COULDN'T HAVE MOVED
3 EXCEPT FOR 10 OR 15 SECONDS. AND WE KNOW THAT HE TOLD A STORY ABOUT
4 THE GUN BEING THROWN ON SOME RESTAURANT IN GEORGIA, THAT IT WAS A 22
5 GUN, 22 CALIBER PISTOL, NOT A 25 LIKE WHAT WE HAVE. WHICH BRINGS YOU TO
6 THE POINT THAT IF HE WAS TELLING THESE STATEMENTS AND IF MR. SANDERS
7 WAS IN JAIL AND TELLING THESE STATEMENTS, WOULDN'T HE TELL THE TRUTH
8 IF THEY WERE ADMISSIONS AGAINST HIM AND WOULDN'T HE GET THE CALIBER
9 OF THE GUN RIGHT AND WOULDN'T HE KNOW WHAT EXACTLY TRANSPIRED.
10 AND VIGIER AND STALEY, THE STORIES THAT THEY TELL DO NOT MATCH UP
11 WITH THE FINDINGS AT THE SCENE THAT LAW ENFORCEMENT FOUND, MAINLY,
12 NO STRUGGLE, 25 CALIBER GUN, PISTOL USED.

13 NEXT YOU'VE GOT THE TESTIMONY OF MAURICE BENNING AND HIS
14 TESTIMONY IS INTERESTING BECAUSE APPARENTLY MAURICE BENNING DOES
15 KNOW SOMETHING ABOUT THIS CRIME. THE GUN CAME FROM MAURICE
16 BENNING'S HOUSE, IT BELONGED TO HIS MOTHER. AND WHILE, FOR SOME
17 REASON OR ANOTHER HE COULDN'T IDENTIFY THAT GUN THAT HE SAYS HE GOT
18 THAT NIGHT, AT LEAST HIS MOTHER COULD. AND MAYBE WHEN CONFRONTED
19 WITH THE TRUTH OF THE FACT THAT HE MAY HAVE BEEN THE ONE TO HAVE
20 USED THAT GUN THAT NIGHT, MAYBE HE JUST DOESN'T WANT TO ADMIT THAT
21 TO HIMSELF OR ANYONE ELSE.

22 MAURICE DOES NOT REMEMBER GOING TO JERMAINE WALKER'S
23 HOUSE THE SECOND TIME THAT NIGHT. HE SAYS THAT THEY ALL WENT BACK
24 TO MICHAEL'S HOUSE. HE SAYS THAT MICHAEL CAME UP WITH SOME IDEA THAT
25 HE HAD TO HAVE SOME MONEY TO PAY ONE OF HIS MOTHER'S BILLS. HE SAYS

1 THEN THAT HE WENT TO HIS HOUSE TO TRY TO LOOK FOR THAT MONEY. HE
2 SAYS THAT LATER ON HE FOUND TUNZY OR MICHAEL AND TUNZY AT THE
3 CHINESE RESTAURANT, THAT MICHAEL -- THAT HE HEARD A SHOT, THAT HE
4 HEARD MICHAEL SAY THE WORDS THAT HE FELT POWERFUL, INFERRING THAT
5 MICHAEL HAD SHOT MS. CHAPMAN. AT NO TIME IN HIS TESTIMONY DOES HE SAY
6 THAT TUNZY SANDERS DID OR SAID ANYTHING WHICH WOULD TIE HIM TO THE
7 MURDER OR THE ROBBERY. ALL OF THIS HE PUTS ON THE BACK OF MICHAEL
8 BUCKMAN, IF YOU BELIEVE HIS TESTIMONY. AND FOR THAT REASON, WE THINK
9 THAT THE MERE PRESENCE, IF YOU BELIEVE MAURICE, THAT MICHAEL MAY
10 HAVE -- THAT TUNZY MAY HAVE BEEN THERE IS NOT SUFFICIENT TO CONVICT
11 HIM OF ANY CRIMES BECAUSE THERE'S NO EVIDENCE FROM MAURICE THAT HE
12 HAD ANY INVOLVEMENT IN ANY ATTEMPTED ROBBERY, ANY CONSPIRACY OR
13 ANY MURDER OR ANY DESIGN TO HARM ANYONE.

14 YOU KNOW, AND MS. HIGHSMITH, SHE APPEARED TO BE A VERY
15 NICE LADY. AND I THINK WE NEED TO ASK WHY SHE WAS WORRIED WHEN THE
16 POLICE CAME TO HER HOUSE AND I THINK IF YOU LOOK AT THE EVIDENCE AND
17 YOU LOOK AT THE FACT THAT SHE HAD THIS SON THAT HAD BEEN CONVICTED
18 OF BURGLARY IN THE PAST AND THAT SHE KNEW HE WASN'T THE BEST APPLE
19 ON THE TREE, IF YOU WILL, BUT SHE HAD CONCERNS THAT HE HAD SOME
20 SERIOUS INVOLVEMENT IN THIS CRIME.

21 AND, QUITE FRANKLY, YOUR HONOR, I THINK WHEN YOU LOOK AT
22 ALL THE EVIDENCE, IT ALL POINTS TO ONE PERSON AND THAT'S MAURICE
23 BENNING AND FROM MAURICE BENNING IT POINTS TO MICHAEL BUCKMAN. BUT
24 IT DOESN'T POINT TO TUNZY SANDERS WHEN YOU CONSIDER THE RELIABILITY
25 OF THE STATEMENTS GIVEN BY STALEY AND VIGIER, THE STORIES AND THE

1 THINGS THEY SAY ARE SO INCREDIBLE AND THE REASON THEY HAVE FOR
2 SAYING THESE STORIES IS SO - - OR MAKING STUFF UP IS SO COMPELLING, YOUR
3 HONOR, THAT WE THINK THAT THEIR TESTIMONY JUST HAS TO BE DISCOUNTED
4 TREMENDOUSLY. TEMETRIUS AND JERMAINE DON'T REALLY ADD ANYTHING
5 AND DON'T POINT TO ANY CRIME ATTEMPTED TO BE COMMITTED BY MR.

6 SANDERS.

7 NOW, TUNZY SANDERS GOT ON THE STAND AND YOUR HONOR HAD
8 A CHANCE TO OBSERVE HIS DEMEANOR. HE WAS VIGOROUSLY CROSS-
9 EXAMINED BY MR. GIBBONS. MR. GIBBONS WENT OVER HIS STORY IN DETAIL
10 FOR 20 OR 30 MINUTES, QUESTIONING HIM AND REQUESTIONING HIM ABOUT
11 WHAT HAPPENED. AND, YOUR HONOR, IF HE'S TELLING YOU SOMETHING THAT
12 WASN'T TRUE, I THINK THAT MR. SANDERS WOULD HAVE CRACKED. HE DIDN'T.
13 HE STUCK BY WHAT HE SAID. AND WHAT HE TOLD YOUR HONOR, I THINK WAS
14 VERY CREDIBLE IN WHAT HAPPENED THAT NIGHT.

15 NOW, MR. GIBBONS TRIED TO MAKE SOME POINTS WITH THE FACT
16 THAT HE DIDN'T CALL HIS 78 YEAR OLD MOTHER TO TAKE HIM HOME FROM A
17 BAR WHERE HE SHOULDN'T HAVE BEEN IN THE MIDDLE OF THE NIGHT AND
18 YOUR HONOR, I WOULDN'T HAVE DONE THAT MYSELF. I'D HAVE FOUND
19 ANOTHER WAY HOME EVEN IF I HAD TO WALK IN THE RAIN.

20 AND, YOU KNOW, I'M NOT HERE TODAY TO SAY THAT TUNZY
21 SANDERS IS A PERFECT INDIVIDUAL. CLEARLY HE SHOULDN'T HAVE BEEN
22 AROUND PEOPLE DRINKING. HE SHOULDN'T HAVE BEEN AROUND PEOPLE
23 SMOKING DOPE. HE WAS AND HE ADMITS THAT TO YOU, BUT THAT DOES NOT
24 MEAN HE SHOULD BE FOUND GUILTY OF THESE HEINOUS CRIMES FOR WHICH
25 HE'S ACCUSED.

1 WITH REGARD TO MS. COLLINS' TESTIMONY, THE ONE PERSON I
2 HAVEN'T MENTIONED, SHE SAID SHE SAW THREE PEOPLE CROSSING THE ROAD
3 THAT NIGHT SOMETIME AROUND THE TIME THAT THIS THING SUPPOSEDLY
4 HAPPENED. SHE CAN'T IDENTIFY RACE. SHE CAN'T IDENTIFY GENDER. SHE HAS
5 A BRIEF DESCRIPTION OF SIZE. THE CLOTHING THAT SHE SAW DOESN'T MATCH
6 WHAT MR. SANDERS SAID HE HAD THAT NIGHT.

7 WHEN YOU LOOK AT ALL THE EVIDENCE, WE THINK THAT THE
8 STATE'S CASE PROBABLY DOES NOT EVEN ARISE TO A PREPONDERANCE OF THE
9 EVIDENCE THAT MR. SANDERS WAS LIKELY INVOLVED IN THIS. CLEARLY,
10 THERE'S REASON TO HESITATE TO ACT. THERE'S REASONS TO HAVE A
11 REASONABLE DOUBT IN YOUR MIND, YOUR HONOR, AS TO HIS GUILT. AND WITH
12 REGARD TO THE LAW ON THE HAND OF ONE VS THE HAND OF ALL, YOUR
13 HONOR, WE BELIEVE THAT IF YOU FIND THAT HE'S NOT GUILTY OF THE
14 ATTEMPTED ROBBERY OR ANY UNLAWFUL ACTS, ANY ATTEMPTED LAWFUL ACT
15 THERE, THEN HE NATURALLY IS NOT GUILTY OF A NATURAL AND PROBABLE
16 ACTS OF AN ATTEMPTED ARMED ROBBERY, WHICH WOULD BE THE MURDER.

17 SO THANK YOU AGAIN, YOUR HONOR FOR LOOKING AT THE
18 EVIDENCE. THANK YOU FOR BEING PATIENT WITH US ATTORNEYS AND WE
19 APPRECIATE YOUR CONSIDERATION.

20 THE COURT: ALL RIGHT.

21 MR. GIBBONS: MAY IT PLEASE THE COURT?

22 THE COURT: CERTAINLY.

23 MR. GIBBONS: MA'AM, SIR. YOUR HONOR, WE TOO WOULD LIKE
24 TO THANK YOU FOR LISTENING TO WHAT'S BEEN GOING ON THE LAST FEW
25 DAYS. I KNOW IT WAS A BURDEN PLACED ON THE COURT AND WE APPRECIATE

1 YOU BEARING THAT BURDEN.

2 YOUR HONOR, FIRST OF ALL, THIS HAPPENED IN A SMALL TOWN
3 AMONG A SMALL GROUP IN A SMALL NEIGHBORHOOD RIGHT HERE IN
4 BARNWELL AND THIS IS THE TYPE OF CRIME THAT AS YOUR WELL AWARE
5 HAPPENS IN THE DARK, MOST OF THE TIME HAPPENS WHEN NOBODY IS
6 WATCHING. AND MANY TIMES THESE CASES INVOLVE A LOT OF
7 CIRCUMSTANTIAL EVIDENCE AND I BELIEVE THIS CASE, ITSELF, ALSO HAS THAT
8 ELEMENT INVOLVED. I DON'T THINK -- THERE ARE A FEW THINGS THAT ARE IN
9 MY VIEW OF THE EVIDENCE, UNQUESTIONABLE. CERTAINLY PROVED BEYOND A
10 REASONABLE DOUBT AND I THINK ONE OF THE MORE SIGNIFICANT ITEMS IS
11 THAT GUN SITTING OVER THERE ON THAT TABLE. ALTHOUGH THE AGENT SAID
12 HE COULDN'T POSITIVELY, COMPLETELY IDENTIFY THE SLUG IN MS. CHAPMAN
13 TO THAT GUN, A SPENT CASING WAS FOUND NOT FAR FROM HER BODY, THE
14 SLUG IN HER MATCHED THE RARE, SOMEWHAT RARE AMMUNITION THAT WAS
15 LEFT IN THE GUN WHEN IT WAS RETRIEVED, STRANGE SHAPE. DR. SEXTON HAD
16 NEVER SEEN ONE LIKE THAT. HE'S ADMITTED ON THE STAND HE'S HEAVILY
17 INVOLVED IN THE PISTOL SHOOTING ARENA AND SO I THINK THAT WE CAN BE
18 PRETTY CERTAIN THAT THAT GUN CAUSED THE DEATH OF MS. MIN CHAPMAN ON
19 DECEMBER 11TH, THAT NIGHT.

20 YOUR HONOR, THERE ARE SOME OTHER CIRCUMSTANCES
21 INVOLVED AND IT JUST HAPPENS TO BE THE TIME OF NIGHT, ACCORDING TO MR.
22 GOMEZ WHEN THE RESTAURANT CLOSES DOWN RIGHT AT 10 O'CLOCK, MS.
23 CHAPMAN HAPPENS TO BE THE ONE, ACCORDING TO MR. GOMEZ, THAT TAKES
24 THE MONEY OUT. THAT'S HER REGULAR ROUTINE. AND THAT'S WHAT WAS
25 GOING ON THAT NIGHT.

1 AS SHE WAS GOING TO THE CAR, SHE HAD SOME \$1600, \$1800 IN HER
2 PURSE, WHICH ENDED UP BEING, I BELIEVE IT WAS THE TESTIMONY, IF I
3 REMEMBER CORRECTLY, ON THE CONSOLE BETWEEN HER AND THE PASSENGER
4 SEAT WHEN THEY TOOK HER BODY OUT OF THE CAR. YOUR HONOR, MUCH HAS
5 BEEN SAID ABOUT FINGERPRINTS ON THAT POCKETBOOK. I WOULD SUBMIT
6 THAT IF THEY HAD GOT CLOSE ENOUGH TO PUT THEIR FINGERPRINTS ON THE
7 POCKETBOOK, WE WOULDN'T BE HERE WITH AN ATTEMPTED ROBBERY, IT
8 WOULD HAVE BEEN GONE. SO I DON'T THINK THERE'S MUCH REASON TO DWELL
9 ON THE FACT THAT THEY DIDN'T FIND FINGERPRINTS ON IT, IF THEY'D TOUCHED
10 IT, THEY WOULD HAVE TAKEN IT.

11 AS TO THE WITNESSES THAT TESTIFIED, YOUR HONOR, THERE HAVE
12 BEEN A LOT OF PEOPLE IN THIS CASE. THEY'VE TALKED TO LAW ENFORCEMENT,
13 THEY'VE TALKED TO THE SOLICITOR'S OFFICE, THEY'VE TALKED TO THE
14 DEFENSE TEAM, THEY'VE TESTIFIED AT PRIOR HEARINGS IN THIS CASE AND IT'S
15 BEEN OVER 3 YEARS SINCE THIS EVENT HAPPENED. IT'S NO SURPRISE THAT
16 PEOPLE'S MEMORIES ARE NOT THE SAME THEY WERE THE DAY THIS HAPPENED.
17 THEIR TESTIMONY IS NOT IDENTICAL TO WHAT THEY'VE SAID BEFORE AND I
18 THINK IT'S HELPFUL TO GO, SOMEWHAT HELPFUL TO GO BACK TO THE CLOSER
19 POINT IN TIME TO WHEN THIS CRIME HAPPENED. AND THERE ARE A FEW PEOPLE
20 IN THIS CASE THAT REALLY HAVE NO AXE TO GRIND.

21 MS. COLLINS IS ONE OF THEM. SHE HAS NO CHARGES, SHE HAS NO
22 REASON TO MAKE UP A STORY, SHE REALLY COULDN'T TELL US A GREAT DEAL,
23 BUT SHE DID TELL US IT WAS SHORTLY BEFORE 10:00 AND THAT IT WAS RAINING
24 PRETTY HARD. SHE COULDN'T SEE VERY WELL AND SHE HAD TO SLAM ON
25 BRAKES. AND I THINK SHE WAS PRETTY ARTICULATE AS FAR AS TIME WENT.

1 SHE COULD TELL YOU HOW LONG IT TOOK HER TO GET FROM HARDEES IN
2 WILLISTON TO THE SONIC RESTAURANT AND HOW LONG SHE THOUGHT SHE'D
3 BEEN IN LINE AND HOW LONG IT TOOK HER TO GET BACK OVER RIGHT NEAR
4 WHERE THIS HAPPENED AT ABOUT THE RIGHT TIME TO PUT THE THREE
5 INDIVIDUALS SHE SAW CROSSING THE STREET, WHOEVER THEY WERE, IN A
6 POSITION TO HAVE COMMITTED THIS CRIME.

7 JERMAINE WALKER, AS WELL, HAS NO PRIOR RECORD, HAS NO AXE
8 TO GRIND IN THIS CASE. IN FACT, HE'S, IF I REMEMBER CORRECTLY, HE'S
9 BETTER FRIENDS WITH MR. SANDERS AND MR. BUCKMAN, THAN HE WAS WITH
10 MR. BENNING. BUT THESE ARE PEOPLE THAT SPEND A LOT OF TIME AT HIS
11 HOUSE. HE SAW THEM ON A FAIRLY REGULAR BASIS AND I DON'T BELIEVE HE
12 HAS ANY MOTIVE TO PUT THEM ANYWHERE OTHER THAN WHERE HE
13 REMEMBERED THEY WERE. AND IF YOU REMEMBER, THE LAST TIME HE SAW
14 THEM, THEY WERE WALKING AS A GROUP, THE THREE TOGETHER, BY NAME,
15 MAURICE, MICHAEL PAUL AND TUNZY, WALKING IN THE DIRECTION OF THE
16 CHINESE RESTAURANT SHORTLY BEFORE 10 O'CLOCK, WHICH PUTS THEM IN A
17 PLACE TO HAVE BEEN SEEN BY MS. COLLINS.

18 YOUR HONOR, TEMETRIUS WILLIAMS, SHE'S GIVEN SEVERAL
19 DIFFERENT STATEMENTS AND I THINK IT'S INTERESTING TO NOTE THAT WHEN
20 SHE WAS ON THE STAND HERE TODAY, SHE SAID SHE DENIED THE WRITTEN
21 STATEMENT THAT'S IN EVIDENCE THAT SHE WROTE FOR OFFICERS MARTIN AND,
22 I BELIEVE, MR. GANTT. AND WHEN ASKED WHY, SHE SAID SHE HAD BEEN TOLD
23 BY WHO SHE THOUGHT WAS AN ATTORNEY TO TAKE THE 5TH AND THAT'S WHY
24 SHE TESTIFIED AS SHE DID LAST TIME, DENYING THE TRUTH OF THE STATEMENT.
25 BUT IF YOU GO BACK TO WHEN SHE WAS TESTIFYING, SHE ACTUALLY SAID ON

1 THE STAND, I BELIEVE TWICE, THAT THE TRUTH OF THE MATTER WAS WHAT SHE
2 HAD PUT IN HER WRITTEN STATEMENT TO THE OFFICER'S THAT DAY. AND THAT
3 PUTS THE THREE INDIVIDUALS TOGETHER AND THEY WERE DRIVING BACK
4 ROADS AT THEIR REQUEST. THEY HAD HER DRIVE AROUND BEHIND A BUSINESS.

5 AND IF YOU'LL LOOK AT THE FIRST PAGE OF THAT STATEMENT,
6 SHE SAYS MAURICE WAS IN THE BACK AND HE SAID, YA'LL CAN USE IT, BUT
7 PLEASE RETURN IT TO ME BECAUSE IT AIN'T MINE. SHE DIDN'T KNOW WHAT HE
8 WAS TALKING ABOUT, BUT IT WOULD FIT IN WITH MR. BENNING'S STORY ABOUT
9 GIVING THEM A GUN AND WHAT IT IS. AND SHE ALSO INDICATED THAT THEY
10 WERE THE ONES THAT GOT OUT, WHICH WOULD BE THE SAME BEHAVIOR THEY
11 EXHIBITED WHEN THE TWO OF THEM WENT TO THE RESTAURANT WITHOUT MR.
12 BENNING.

13 YOUR HONOR, IN ORDER TO FIND MR. SANDERS NOT GUILTY ON
14 THE CHARGES AS HE IS FACING TODAY, WE WOULD HAVE TO THROW OUT MR.
15 JERMAINE'S STATEMENT, MR. JERMAINE WALKER'S STATEMENT. NO CHARGES,
16 NO REASON TO LIE, NO REASON TO HELP THE STATE, MORE REASON TO HELP HIS
17 FRIENDS THAT LEFT HIS HOUSE SHORTLY BEFORE 10 O'CLOCK TOGETHER.
18 THERE'S NO WAY TO SQUARE THAT WITH MR. SANDER'S STATEMENT THAT HE
19 LEFT ALONE, TOLD THEM GOODBYE AND WALKED OFF A BACK ROAD, BACK
20 AROUND THE BACK WAY TO A CLUB WHERE HE DIDN'T GO IN, HE DIDN'T MEET
21 ANYBODY, DIDN'T TALK TO ANYBODY, DIDN'T REMEMBER ANY NAMES AND
22 STAYED FOR SEVERAL HOURS ON A TRAIL BY A TREE. I DON'T THINK YOU CAN
23 SQUARE HIS STATEMENT IN ANY WAY WITH WHAT MR. JERMAINE WALKER
24 TESTIFIED TO.

25 AS TO MR. BENNING, YOUR HONOR, HE'S IN KIND OF A PRECARIOUS

1 SITUATION. HERE HE WAS, THE MURDER WEAPON IS FOUND IN THE HOUSE
2 WHERE HE'S RESIDING, HIS MOM HAS TESTIFIED THAT THAT IS HER GUN. THAT'S
3 THE ONLY GUN IN THE HOUSE. HE SAT IN THAT CHAIR, GIVING TESTIMONY
4 AGAINST HIS STEP-BROTHER, BEING CROSS-EXAMINED BY HIS STEP-SISTER. I
5 DON'T BELIEVE THERE'S ANY DOUBT THAT THAT WOULD CAUSE A PERSON TO
6 HAVE PROBLEMS JUST IN AND OF ITSELF, WHEN YOU ADD THAT TO THE FACT
7 THAT HE HAS FACED CHARGES HIMSELF, THAT HE WAS SOMEWHAT INVOLVED
8 IN THIS INSTANCE. I THINK WE HAVE TO -- CERTAINLY YOU CAN'T BELIEVE
9 EVERYTHING HE SAID, BUT HE DID MAKE SOME STATEMENTS THAT WERE NOT
10 SELF SERVING IN ANY WAY AT THIS POINT. HE HAS NO EXPOSURE AT THIS
11 POINT, AS FAR AS THESE CHARGES ARE CONCERNED OR THIS INCIDENT IS
12 CONCERNED. HE'S ALREADY FACED TRIAL IN THIS MATTER.

13 AND, YOUR HONOR, WHAT HE SAID HAPPENED THAT NIGHT, HE
14 DOES PUT HIMSELF IN IT SOMEWHAT. HE WAS AT MICHAEL PAUL BUCKMAN'S
15 HOUSE AFTER LEAVING MR. WALKER'S HOUSE TOGETHER, WHICH MESHES IN
16 WITH MR. WALKER'S STATEMENT; THAT THEY WENT TO MR. BUCKMAN'S HOUSE
17 AND MR. BUCKMAN SAID HE NEEDED SOME MONEY TO PAY A BILL FOR HIS MOM
18 AND THEY STARTED TALKING ABOUT ROBBING THE CHINESE RESTAURANT.

19 AT THAT POINT, MR. BENNING INDICATED HE WENT BACK HOME TO
20 GET SOME MONEY TO GIVE THEM TO STOP IT. AND I BELIEVE THAT HIS
21 TESTIMONY WAS WHEN HE CAME BACK OUT TO GO BACK OVER THERE, HE SAW
22 THEM GOING DOWN THE STREET AHEAD OF HIM AND HE FOLLOWED THEM FOR A
23 WAYS AND THE NEXT THING HE TESTIFIED TO, I BELIEVE HE SAW MR. BUCKMAN
24 WITH A GUN, STANDING BESIDE THE BACK WALL OF THE CHINESE RESTAURANT.
25 AND AT THAT POINT HE TURNED AROUND AND KNEW SOMETHING WAS GOING

1 ON AND A FEW SECONDS LATER HE HEARD A SHOT.

2 AND THE NEXT THING HE SAID WAS THAT THEY CAME RUNNING
3 UP, BACK TO HIS HOUSE AND INDICATED THAT -- MICHAEL PAUL INDICATED HE
4 HAD SHOT THE LADY AND HE CLEARLY STATED THAT HE GAVE -- THAT TUNZY
5 SANDERS HANDED THE GUN BACK TO HIM, WHICH HE SAID HE TOOK IN THE
6 HOUSE AND PUT BACK IN HIS MOTHER'S DRESSER. SHE, AS I REMIND THE
7 COURT, TESTIFIED THAT SHE ONLY HAD ONE GUN IN THAT HOUSE. AND WHEN
8 HE WAS QUESTIONED WHETHER OR NOT MR. SANDERS HAD TOLD HIM THAT
9 NIGHT THAT HE SHOT THE LADY, HE COULD HAVE SAID NO. HE SAID NOT THAT
10 NIGHT AND THE DEFENSE ASKED THE NEXT QUESTION, DID HE EVER TELL YOU
11 HE DID. HE SAID THE NEXT DAY HE TOLD ME THAT HE HAD SHOT HER,
12 SPEAKING OF MR. SANDERS. BUT NO, THAT DOESN'T SERVE HIM IN ANY WAY.
13 THAT DOESN'T HELP HIM OUT IN ANY WAY, YOUR HONOR.

14 AS WE SPOKE BEFORE, THE CONSPIRACY ITSELF STARTED AT
15 MICHAEL PAUL BUCKMAN'S HOUSE. THEY HAD A TARGET IN MIND, THEY HAD A
16 GOAL TO ATTAIN AND IT WAS AN ILLEGAL ACT AND THEY CONSPIRED TO
17 COMMIT A FELONY. THAT STARTED AT MICHAEL'S HOUSE. AT THAT POINT,
18 TUNZY SANDERS DIDN'T SAY ANYTHING, BUT UNDER THE LAW, THERE'S NO
19 REQUIREMENT THAT HE MAKE AN OVERT AGREEMENT TO BE A MEMBER OF A
20 CONSPIRACY. HIS ACTIONS CAN SHOW WHAT HIS AGREEMENT WAS. AND WHAT
21 DID HE DO? ACCORDING TO THE STATEMENT OF MR. BENNING, HE LEFT WITH
22 MR. BUCKMAN GOING DOWN THE STREET TOWARDS THE RESTAURANT.
23 FURTHER PROOF OF HIS ENTERING INTO THE CONSPIRACY IS RETURNING BACK
24 WITH THE GUN. HE CLEARLY HADN'T ABANDONED IT. HE BROUGHT THE
25 MURDER WEAPON BACK TO MR. BENNING'S HOUSE.

1 YOUR HONOR, AS TO MR. SANDERS' STATEMENT, IN ORDER TO
2 AGREE WITH WHAT HE SAID, OR BELIEVE WHAT HE SAID HAPPENED THAT NIGHT,
3 WE HAVE TO THROW OUT JERMAINE WALKER, HIS STATEMENT. WE HAVE TO
4 THROW OUT MAURICE BENNING'S STATEMENTS AND WE HAVE TO BELIEVE
5 THAT HE, SHORTLY BEFORE THIS CRIME HAPPENED, LEFT ON HIS OWN, IN THE
6 RAIN TO WALK 45 MINUTES CROSS TOWN, GOING ON THE BACK ROADS. HE SAID
7 HE WAS GOING TO A CLUB, BUT ONE QUESTION FURTHER HE SAID HE WENT TO A
8 TREE NEAR THE CLUB, TO A TRAIL THAT WENT TO HIS UNCLE'S HOUSE, HE
9 NEVER WENT TO HIS UNCLE'S HOUSE. HE IS NOT ACCOUNTED FOR FROM
10 SHORTLY BEFORE THIS EVENT HAPPENED, UNTIL 1 O'CLOCK IN THE MORNING
11 BY ANY WITNESS.

12 HE SAID HE'S DONE THIS BEFORE, HE'S HUNG OUT AT MR.
13 WALKER'S HOUSE A LOT. YOU KNOW, HE'S BEEN THERE ON MANY OCCASIONS,
14 THAT HE COULDN'T REMEMBER ONE NAME. AND WHEN I ASKED HIM, HE
15 COULDN'T REMEMBER ANY, HE SAID THERE WERE A COUPLE OF PEOPLE THERE
16 THAT WEREN'T USUALLY THERE, BUT HE STILL COULD NOT COME UP WITH ONE
17 NAME OF A PERSON TO SAY THEY SAW HIM TELL EVERYBODY GOODBYE AND
18 WALK OFF DOWN THAT BACK ROAD.

19 AND AGAIN, HE WENT TO THIS CLUB AND HE KNEW WHAT THE
20 CLUB WAS ALL ABOUT, HE KNEW WHAT WENT ON THERE, HE SPENT SEVERAL
21 HOURS THERE AND YET HE CAN'T GIVE THE NAME OF ANY PERSON THAT WAS
22 AT THE CLUB THAT NIGHT, EVEN TODAY.

23 YOUR HONOR, AS I SAID BEFORE THIS IS A CASE THAT HAPPENED IN
24 THE DARK WHERE THERE AREN'T A LOT OF WITNESSES. WE DON'T KNOW
25 EXACTLY WHAT WENT ON THAT NIGHT, BUT THE LAW DOESN'T REQUIRE THAT.

1 MR. VIGIER, HE HAD A REASON TO MAKE UP A STORY. BUT THERE ARE DETAILS
2 IN THAT STORY THAT I DON'T BELIEVE HE COULD HAVE GOTTEN ANYWHERE
3 ELSE AND FIT THEM IN WITH WHAT REALLY HAPPENED. MR. SANDERS,
4 ACCORDING TO MR. VIGIER, PROVIDED A REASON WHY THAT ROBBERY DIDN'T
5 TAKE PLACE THAT NIGHT AND I THINK IT'S CORROBORATED BY THE OFFICER'S
6 CALL TO GO TO THE ESCORT THAT MR. GADSON TALKED ABOUT AND DRIVE
7 RIGHT BY THIS RESTAURANT.

8 MR. VIGIER SAID MR. SANDERS TOLD HIM THEY WERE GOING TO
9 ROB THE LADY, WHICH IS INLINE WITH WHAT BENNING SAID, WHICH IS IN LINE
10 WITH WHAT THEY WERE OUT TRYING TO DO THAT NIGHT ACCORDING TO MS.
11 TEMETRIUS' WRITTEN STATEMENT WHEN SHE TALKED ABOUT THEY WENT TO A
12 BANK AND THEY WERE GOING TO WAIT FOR SOME LADY TO COME OUT OF THE
13 BANK. THEY WERE ALL TOGETHER, THEY WERE OUT LOOKING FOR SOME
14 MONEY.

15 NOW, THAT RESTAURANT IS RIGHT OFF THE 4-LANE. YOU CAN SEE
16 BY THE MAP, THAT'S THE ROAD THAT GOES IN AND OUT OF BARNWELL TO
17 WAL-MART, SONIC, BUSINESSES OF THAT NATURE AND THE PARKING LOT, FROM
18 THE PICTURES, YOU CAN SEE IT FACES RIGHT THERE, IT'S JUST A FEW YARDS OFF
19 THAT BUSY HIGHWAY. AND THERE'S NO INDICATION THERE WAS ANY
20 STRUGGLE, THERE'S NO INDICATION THERE WAS A MOTIVE OR A FIGHT. ALL WE
21 KNOW IS THAT LADY WAS SHOT WITHIN A FEW YARDS OF A VERY BUSY
22 HIGHWAY AND WE KNOW FROM OTHER TESTIMONY THE POLICE CAR WAS
23 GOING DOWN THAT ROAD RIGHT ABOUT THE SAME TIME, GOING OUT TO MAKE
24 AN ESCORT OUT AT WAL-MART.

25 AND MR. VIGIER TESTIFIED MR. SANDERS TOLD HIM THEY SHOT --

1 THEY WENT TO ROB THE LADY, THEY SHOT HER AND THEN SOME CAR LIGHTS
2 WENT BY AND THEY THOUGHT THEY MIGHT HAVE BEEN SEE AND SO THEY LEFT.
3 THAT EXPLAINS WHY THE PURSE DIDN'T GO ANYWHERE. MR. GOMEZ SAYS
4 THEY NEVER HEARD A SHOT, THEY NEVER WENT OUT. IT WAS RAINING, IT WAS
5 CLOSING TIME, THERE'S NO OTHER EXPLANATION WHY THE PERSON WHO DID
6 THIS CRIME DIDN'T COMPLETE THE ACT OTHER THAN THAT THEY WERE SCARED
7 OFF IN THE MIDDLE OF IT.

8 YOUR HONOR, MR. BUCKMAN'S NOT HERE TODAY, MR. BENNING'S
9 NOT HERE FACING ANY CHARGES TODAY. THE ONLY PERSON WITH SOMETHING
10 TO GAIN OR LOSE TODAY, MR. SANDERS. AND, YOUR HONOR, WE SUBMIT THAT
11 HIS STORY SIMPLY IS NOT CREDIBLE. HE HAS NO BURDEN IN THIS CASE. WE,
12 THE STATE, CARRIED THE ENTIRE BURDEN. BUT GIVEN THE FEW BITS OF PIECES
13 OF EVIDENCE THAT WE'VE LEARNED FROM THE JAILHOUSE PEOPLE, DETAILS
14 THAT THEY COULD HAVE GOTTEN FROM AN AUTOPSY REPORT, DETAILS THEY
15 COULD HAVE GOTTEN ANYWHERE BUT MATCH UP JUST TOO CLOSELY WITH
16 WHAT MUST HAVE HAPPENED THAT NIGHT.

17 IT'S CLEAR FROM MR. SANDERS' OWN STATEMENT, HE WAS THERE
18 FOR 13 MONTHS. HE KNEW ABOUT EVERYONE ELSE'S CRIMES. HE SAYS HE
19 KNEW THESE PEOPLE WERE SNITCHES AND YET HE STILL HUNG OUT WITH THEM,
20 STILL TALKED WITH THEM. HE HAD INFORMATION ON THEIR CASES. IS IT
21 REASONABLE TO BELIEVE THAT THEY DIDN'T HAVE INFORMATION ON HIS FROM
22 HIS MOUTH?

23 YOUR HONOR, I'D SUBMIT THAT WHEN THE CONSPIRACY STARTED,
24 IT BEING A FELONY AND MS. CHAPMAN, WHETHER MR. SANDERS WAS RIGHT
25 THERE HOLDING THE GUN OR AROUND THE CORNER ACTING AS A LOOKOUT,

1 WHEN THEY SET FORTH THAT CONSPIRACY AND TOOK A STEP IN THE DIRECTION
2 OF ACCOMPLISHING THE ARMED ROBBERY, THAT WHETHER OR NOT HE PULLED
3 THE TRIGGER, CLEARLY SETS FORTH HIS GUILT UNDER EITHER THE HAND OF
4 ONE, HAND OF ALL THEORY OR FELONY MURDER THEORY AND THERE'S NO
5 EVIDENCE THAT HE ABANDONED IT IN THE MIDDLE BECAUSE HE ENDED UP
6 WITH THE MURDER WEAPON.

7 YOUR HONOR, WE FEEL THAT THE STATE HAS MET THE BURDEN
8 BEYOND A REASONABLE DOUBT WHEN YOU COUPLE WHAT'S BEEN SAID, SIFT
9 OUT THE THINGS THAT HAVE NOT BEEN PROVED BEYOND A REASONABLE
10 DOUBT AND APPLY THE DOCTRINE OF CIRCUMSTANTIAL EVIDENCE, WE FEEL
11 THAT THE STATE HAD MET THE BURDEN AND THAT MR. SANDERS SHOULD BE
12 FOUND GUILTY AS CHARGED.

13 THE COURT: THANK YOU. OKAY. ALL RIGHT. I HAVEN'T BEEN
14 PUT IN THIS POSITION BEFORE. I THINK WHAT I'M GOING TO DO IS LOOK AT
15 SOME OF THE STUFF THAT I HAVE THAT ARE EXHIBITS IN THE CASE AND I'LL
16 JUST TAKE THIS UNDER ADVISEMENT AND I'LL MAKE A DECISION JUST AS SOON
17 AS I CAN.

18 MR. WILLIAMS: THANK YOU, YOUR HONOR.

19 MS. SANDERS: I DO HAVE ONE ADDITIONAL CASE I'D LIKE THE
20 COURT TO REVIEW. IT'S STATE VS. JOHNSON, A SOUTH CAROLINA CASE. IT'S 352,
21 SE 2ND, 480.

22 THE COURT: WHAT DOES THAT RELATE TO?

23 MS. SANDERS: WELL, IT GOES TO MERE PRESENCE, ONE
24 ACQUIESCENCE, I MEAN THAT IS IF YOU BELIEVE THESE WITNESSES AND WE
25 WOULD URGE YOU NOT TO, BUT EVEN IF YOU WANT, WE WOULD JUST ASK YOU

1 TO ALSO LOOK AT THAT CASE AS WELL, YOUR HONOR.

2 THE COURT: ALL RIGHT. I WILL DO THAT.

3 MS. SANDERS: YOUR HONOR, THAT GOES TO MR. GIBBONS
4 ARGUMENT.

5 THE COURT: WELL, I NEED TO LOOK AT A CASE THAT GOES TO THE
6 EVIDENCE AND NOT TO HIS ARGUMENT.

7 MS. SANDERS: WELL, HIS ARGUMENT ABOUT THE EVIDENCE IN
8 THE CASE.

9 MR. GIBBONS: YOUR HONOR, WE WOULD OBJECT TO COUNTERING
10 ARGUMENTS WITH CASE LAW AFTER THE CLOSING.

11 MS. SANDERS: WELL - - -

12 THE COURT: WELL, I MEAN, IF I WERE CHARGING THE JURY, I'D
13 GIVE CHARGES AT THIS TIME, WHICH WOULD BE THE LAW AND I WILL - - SHE'S
14 ASKING ME TO GIVE MYSELF A LAW.

15 MR. GIBBONS: YES, SIR.

16 THE COURT: SO I'LL HAVE IT WHEN I APPLY IT TO THE FACTS AS I
17 DETERMINE THEM TO BE.

18 ALL RIGHT. OKAY. I'M GOING TO DO SOME OTHER THINGS REAL
19 QUICK.

20 (WHEREUPON THE COURT WAS IN RECESS AND OTHER COURT
21 BUSINESS WAS ATTENDED TO.)

22 VERDICT

23 THE COURT: OKAY. AS YOU WILL REMEMBER, WHEN WE
24 CONCLUDED THE CLOSING ARGUMENTS BY THE PARTIES IN THE MATTER OF THE
25 STATE OF SOUTH CAROLINA VS. TUNZY SANDERS, I TOOK THIS MATTER UNDER

1 ADVISEMENT SO I COULD READ BOTH SOME ADDITIONAL CASE LAW THAT THE
2 DEFENDANT WANTED ME TO READ, MS. SANDERS DID, AS WELL AS READ SOME
3 OF THE - - LOOK AT SOME OF THE EXHIBITS. I HAVE NOW COME TO A DECISION. I
4 WANT TO SAY THIS. THIS IS NOT A PLEASANT EXPERIENCE FOR THE COURT. THE
5 COURT GENERALLY CHARGES THE LAW AND LETS THE COMMUNITY MAKE
6 DECISIONS REGARDING FACT, LETS THE COMMUNITY BE THE FACT FINDERS IN
7 THE CASE, WHICH IS THE WAY OUR SYSTEM IS DESIGNED IN MOST INSTANCES.
8 THIS IS SERIOUS, AFFECTING THE LIBERTY OF THE DEFENDANT, POTENTIALLY
9 FOR THE REST OF HIS LIFE. BUT THE PARTIES REQUESTED THAT I WAIVE THE
10 JURY TRIAL. BOTH OF THEM AGREED AND I WAS NOT AWARE OF ANY OPTION
11 THAT I HAD IN THAT MATTER.

12 SO WITH RESPECT TO INDICTMENT 98-GS-06-180 FOR MURDER,
13 WHEREIN THE STATE ALLEGES THAT TUNZY SANDERS DID, IN BARNWELL
14 COUNTY, ON OR ABOUT DECEMBER 11, 1997, WITH MALICE AFORETHOUGHT, KILL
15 ONE, MS. CHAPMAN, BY MEANS OF SHOOTING WITH A PISTOL. SAID VICTIM DIED
16 AS A RESULT THEREIN. THE VERDICT OF THIS COURT IS THAT THE DEFENDANT IS
17 GUILTY.

18 AS TO THE CHARGE OF ATTEMPTED ARMED ROBBERY, INDICTMENT
19 99-GS-06-078, WHEREIN THE STATE SAYS THAT MR. TUNZY SANDERS DID, IN
20 BARNWELL COUNTY, ON OR ABOUT DECEMBER 11, 1997, WHILE ARMED WITH A
21 DEADLY ATTEMPT TO FELONIOUSLY TAKE FROM THE PERSON OR PRESENCE OF
22 MS. CHAPMAN BY MEANS OF FORCE OR INTIMIDATION GOODS OR MONIES AT
23 THE CHINA EXPRESS RESTAURANT, THE VERDICT OF THIS COURT IS THAT THE
24 DEFENDANT IS GUILTY.

25 AS TO INDICTMENT 99-GS-06-079, CRIMINAL CONSPIRACY, WHEREIN

1 THE STATE SAYS THAT TUNZY SANDERS, ALONG WITH MICHAEL BUCKMAN AND
2 MAURICE BENNING DID, IN BARNWELL COUNTY ON OR ABOUT DECEMBER 11,
3 1997, UNLAWFULLY UNITE, COMBINE, CONSPIRE, CONFEDERATE, AGREE AND
4 HAVE TACIT UNDERSTANDING WITH EACH OTHER OR OTHERS FOR THE PURPOSE
5 OF COMMITTING THE CRIME OF ARMED ROBBERY, THE VERDICT OF THIS COURT
6 IS GUILTY.

7 ANYTHING FROM THE STATE?

8 MR. GIBBONS: NO, SIR.

9 THE COURT: ANYTHING FROM THE DEFENDANT?

10 MR. WILLIAMS: NO, SIR.

11 THE COURT: ALL RIGHT. LET'S BRING THE DEFENDANT FORWARD.
12 I'LL SIGN THE VERDICT, THE INDICTMENTS.

13 SENTENCE

14 THE COURT: YOU NEED A MINUTE?

15 MR. GIBBONS: HE'S GOING TO HAVE TO SIGN THE SENTENCE
16 SHEETS.

17 THE COURT: IS HE NOT SIGNING THE SENTENCE SHEET, MR.
18 WILLIAMS?

19 MS. SANDERS: HE'LL SIGN IT.

20 THE COURT: ALL RIGHT. LET ME HAVE THE SENTENCE SHEETS.

21 OKAY. ANYTHING FROM THE STATE BEFORE I GO FORWARD?

22 MR. GIBBONS: YOUR HONOR, THE VICTIMS WOULD LIKE TO
23 ADDRESS YOU AT THE APPROPRIATE TIME.

24 THE COURT: PARDON ME?

25 MR. GIBBONS: THE VICTIM'S FAMILY WOULD LIKE TO ADDRESS

1 YOU.

2 THE COURT: ALL RIGHT. LET'S DO IT NOW.

3 MS. TRAINER: MY FIRST NAME IS NHUHA, SPELLED N-H-U-H-A,
4 LAST NAME IS TRAINER. I'M THE YOUNGEST DAUGHTER OF MIN CHAPMAN.

5 YOUR HONOR, I JUST WOULD LIKE TO THANK THE COURT FOR ITS
6 WISDOM AND ITS JUDGEMENT TODAY. MY MOTHER LEFT BEHIND 6 CHILDREN
7 AND 3 GRANDCHILDREN TO WHOM SHE'S BEEN DENIED THE RIGHT TO EVEN
8 MEET AND I WOULD JUST RESPECTFULLY REQUEST THAT THE COURT TAKE THAT
9 INTO CONSIDERATION AND SENTENCE MR. SANDERS TO WHATEVER YOU DEEM
10 IS APPROPRIATE, BUT ALSO TO LET HIM KNOW THAT WHAT HE'S DONE HAS
11 CAUSED US TREMENDOUS GRIEF.

12 WE HAVE YET TO BE ABLE TO GRIEVE AND TO PLEASE NOT LET
13 ANYONE ELSE HAVE TO GO THROUGH THIS.

14 THE COURT: THANK YOU.

15 ANYTHING FURTHER FROM THE STATE?

16 MR. GIBBONS: NO, SIR.

17 THE COURT: ANYTHING FROM THE DEFENDANT?

18 MS. SANDERS: YES, YOUR HONOR. I HEAR THE COURT'S
19 JUDGEMENTS AND, OF COURSE, I'M GOING TO ACCEPT THEM. MY BROTHER IS A
20 YOUNG MAN AND I KNOW THE COURT THINKS HE'S GUILTY OF THIS AND I'M NOT
21 GOING TO ARGUE WITH THAT. I'D ASK THE COURT, DESPITE WHAT HAS
22 HAPPENED, HE HAS SUFFERED, WE HAVE SUFFERED AND I KNOW THE FAMILY
23 HAS SUFFERED. EVERYONE HAS. THIS IS A VERY IMPORTANT EVENT.

24 WE'D AS YOU IN YOUR DISCRETION TO SENTENCE HIM TO A
25 MINIMAL 30 YEAR SENTENCE, ALLOW HIM SOME TIME TO DO SOMETHING WITH

1 HIS LIFE. HE - - YOU HEARD THE FACTS. I CAN'T SPEAK ANYTHING ELSE FOR
2 HIM, BUT TO ALLOW HIM SOME TIME TO DO SOMETHING WITH HIS LIFE, YOUR
3 HONOR. THERE ARE OTHERS WHO HAVE GOTTEN OUT OF JAIL AND WHO HAVE
4 REDEEMED THEMSELVES AND GONE ON WITH THEIR LIVES AND I WOULD ASK
5 YOU, I WOULD IMPLORE YOU TO ALLOW MY BROTHER SOME KIND OF LIFE, SOME
6 KIND OF SECOND CHANCE, SOME KIND OF SOMETHING FOR HIS LIFE, YOUR
7 HONOR. SOME CHANCE TO HAVE SOMTHING, YOUR HONOR.

8 WE UNDERSTAND MS. CHAPMAN IS THE VICTIM IN THE EYES OF
9 THE FAMILY AND BELIEVE IT OR NOT IT'S JUST AS PAINFUL FOR THIS FAMILY TO
10 GO THROUGH THIS AS IT IS FOR THEM. IT'S AGONIZING. I THINK THAT
11 PROBABLY FOR ME AND MAYBE TUNZY AND THE REST OF OUR FAMILY, IT HAS
12 BEEN THE MOST AGONIZING THING WE'VE EVER GONE THROUGH. OUR 81 YEAR
13 OLD MOTHER WILL NOT EVEN COME TO COURT BECAUSE WE JUST DON'T WANT
14 TO TRAUMATIZE HER ANY FURTHER. BUT WE'D ASK THE COURT TO ALLOW
15 TUNZY SOME LIFE AND ALLOW HIM SOME TIME. HE'S GOING TO HAVE TIME TO
16 REFLECT. WE KNOW WHAT HE'S FACING A MINIMUM OF 30 YEARS.

17 WE'D ASK THE COURT TO ALLOW HIM THE MINIMAL SENTENCE,
18 YOUR HONOR. HE'S ALREADY SERVED 3 YEARS ON THIS CHARGE.

19 THE COURT: ANYTHING FROM YOU, MR. WILLIAMS?

20 MR. WILLIAMS: YOUR HONOR, I WOULD JUST STAND BEHIND
21 WHAT MS. SANDERS HAS SAID.

22 THE COURT: MR. SANDERS, ANYTHING YOU WANT TO SAY?

23 MR. SANDERS: WHEN I TOOK THIS TRIAL, IT WAS ALL OR NOTHING,
24 SO I GUESS I'LL GET THE SAME TIME THAT I DID THE FIRST TIME.

25 MS. SANDERS: YOUR HONOR, HE'S JUST SPEAKING OUT, UPSET.

1 WE KNOW THAT THE COURT HAS BEEN FAIR AND WE WOULD ASK THE COURT TO
2 CONTINUE TO BE FAIR AND ALLOW HIM SOME TIME. HE NEVER HAD A CHARGE
3 BEFORE, JUDGE, THIS WAS HIS FIRST TIME EVEN BEING ARRESTED. FIRST TIME
4 DEALING WITH LAW ENFORCEMENT AUTHORITIES, FIRST TIME EVER COMING
5 INTO THIS SITUATION. AND YET, HE IS HERE. HE HAS HAD NO TIME TO REDEEM
6 HIMSELF IN TERMS OF ON THE OUTSIDE. THIS IS HIS FIRST OFFENSE, UNLIKE
7 MANY OF THE PEOPLE YOU HEARD IN THIS TRIAL WHO HAVE BEEN IN TROUBLE
8 OVER AND OVER AND OVER AGAIN, COMING BACK TO COURT, COMING BACK TO
9 COURT, COMING BACK TO COURT.

10 I WOULD ASK YOUR HONOR TO ALLOW HIM THE MINIMUM 30
11 YEARS. HE'S 18, HE'S HAD NO OTHER DEALINGS WITH THE CRIMINAL JUSTICE
12 SYSTEM AND NO OTHER ARRESTS, YOUR HONOR - - TO ALLOW HIM SOME
13 MINIMAL TIME.

14 THE COURT: OTHER THAN WHAT YOU JUST TOLD ME, MR.
15 SANDERS, YOU DON'T WANT TO SAY ANYTHING ELSE, IS THAT CORRECT?

16 YOU KNOW, MR. SANDERS, I'VE GOT A 17 YEAR OLD DAUGHTER
17 AND SHE GETS MAD, SHE GETS UPSET AND SHE DOES SOME OF THE DUMBEST
18 THINGS IN THE WORLD WHEN SHE GETS MAD AND UPSET AND GENERALLY DOES
19 IT TO THE PEOPLE THAT CAN HELP HER THE MOST. NOW, WHATEVER I DO TO
20 YOU HERE TODAY, YOU'RE GOING TO LIVE IN AN ENVIRONMENT WHERE YOUR
21 LIFE IS GOING TO BE CONTROLLED TO A GREAT EXTENT AND IF YOU GO
22 THROUGH IT WHERE YOU'RE TOUGHER THAN THEM, MEANER THAN THEM,
23 MORE ANGRY THAN THEM, YOU'RE GOING TO HAVE A TOUGH TIME.

24 YOU GO THROUGH IT AND MAINTAIN SOME CONTROL OVER YOUR
25 LIFE, THEN YOU MIGHT SURVIVE TO BECOME A PRODUCTIVE HUMAN BEING AT

1 SOME POINT IN TIME. BUT YOU KNOW, I'M THE ONE PERSON THAT CONTROLS
2 YOUR DESTINY RIGHT NOW AND I UNDERSTAND YOU'RE UPSET. I UNDERSTAND
3 YOU ROLLED THE DICE.

4 MR. SANDERS: I AIN'T UPSET.

5 THE COURT: YOU'RE NOT, THIS IS HOW YOU NORMALLY ACT?

6 MR. SANDERS: NO.

7 THE COURT: IF THIS IS YOUR ROUTINE BEHAVIOR, THEN IT
8 CERTAINLY WOULD BE HELPFUL FOR ME TO KNOW THAT BEFORE I SENTENCE
9 YOU.

10 MR. SANDERS: YOUR HONOR, HE'S NORMALLY A VERY HAPPY-GO-
11 LUCKY TYPE PERSON. I BELIEVE HE'S JUST UPSET AND ANYONE WOULD BE IN
12 THIS SITUATION.

13 THE COURT: ALL RIGHT. MR. SANDERS, TAKING INTO THE FACT,
14 AS YOUR ATTORNEY AND YOUR SISTER HAVE POINTED OUT TO ME THAT YOU
15 HAVE NO PRIOR CRIMINAL RECORD, THAT YOU WERE BASICALLY A GOOD SON,
16 BROTHER, CITIZEN, WHATEVER UP TO THIS POINT, AND TAKING INTO THE FACT
17 THAT I BELIEVE, TRULY BELIEVE THAT YOU WERE INVOLVED IN THIS CRIME,
18 BUT PROBABLY WAS NOT THE PERSON THAT DID THE SHOOTING, THAT YOU, BY
19 VITRUE OF WHO YOU WERE HANGING WITH AND THEIR INFLUENCE DID
20 SOMETHING THAT WAS STUPID AND YOU, WHILE YOU WON'T ADMIT IT, REGRET
21 IT. YOU'VE GOT YOURSELF CAUGHT UP IN SOMETHING THAT SOUNDED GREAT
22 AND GOT BIGGER THAN YOU WISHED AND IT CERTAINLY IS BIGGER NOW THAN
23 YOU EVER HOPED IT WOULD BE.

24 AND BECAUSE OF THAT, I'M NOT GOING TO SENTENCE YOU TO LIFE
25 IMPRISONMENT WITHOUT THE CHANCE OF PAROLE. I BELIEVE THAT WHATEVER

1 I DO TO YOU IS NOT GOING TO BE ABLE TO MAKE THESE PEOPLE GET OVER THE
2 SITUATION WITH THEIR MOTHER, THAT I CAN'T BRING THEIR MOTHER BACK.
3 YOU CAN'T BRING THEIR MOTHER BACK. HOPEFULLY IT WILL END IT. IT WILL
4 BRING SOME CLOSURE SO THEY DO HAVE THE OPPORTUNITY TO GET ON WITH
5 THEIR LIVES AND GRIEVE AND PUT THIS MATTER BEHIND THEM AS MUCH AS
6 ONE CAN DO WHEN THEY LOSE A LOVED ONE. AND HOPEFULLY YOU WILL DO
7 YOUR TIME AND DO IT AS UNPAINFULLY, PAINLESSLY AS YOU POSSIBLY CAN
8 AND WILL GET ON WITH YOUR LIFE.

9 UNFORTUNATELY, THE STATUTE IN THE STATE OF SOUTH
10 CAROLINA PRESCRIBES A MINIMUM OF WHICH YOU MUST DO DAY FOR DAY.
11 UNFORTUNATELY IN YOUR CASE, IN YOUR POSITION. BUT THAT -- THE STATE OF
12 SOUTH CAROLINA, THROUGH THE GENERAL ASSEMBLY BELIEVES IN SOME
13 INSTANCES SOME PEOPLE SHOULD HAVE THE OPPORTUNITY THAT IS LESS THAN
14 LIFE WITHOUT PAROLE AND EXERCISING THE JUDGEMENT THAT I HAVE, I'M
15 GOING TO DO THAT IN THIS INSTANCE.

16 ON THE CHARGE OF MURDER THE DEFENDANT IS COMMITTED TO
17 THE DEPARTMENT OF CORRECTIONS FOR A DETERMINATE TERM OF 35 YEARS.
18 AS TO THE CHARGE OF ARMED ROBBERY THE SENTENCE OF THIS COURT IS YOU
19 BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 25
20 YEARS. AS TO THE CHARGE OF CRIMINAL CONSPIRACY, SENTENCE OF THIS
21 COURT, YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A
22 TERM OF 5 YEARS. THESE SENTENCES ARE TO RUN CONCURRENT. YOU ARE TO
23 BE GIVEN CREDIT FOR TIME SERVED OF HOW LONG?

24 MR. WILLIAMS: SEVERAL MONTHS.

25 THE COURT: UNFORTUNATELY, THEY REQUIRE ME TO GIVE AN

1 EXACT AMOUNT. DO YOU REMEMBER THE DAY YOU WERE ARRESTED, MR.
2 SANDERS?

3 MS. SANDERS: DECEMBER 27, YOUR HONOR. OF '97.

4 THE COURT: PARDON ME?

5 MS. SANDERS: OF '97.

6 MR. GIBBONS: YOUR HONOR, BEFORE YOU FILL ALL THAT OUT,
7 THE ATTEMPTED ROBBERY ---

8 THE COURT: I MEANT ATTEMPTED ARMED ROBBERY, I'M SORRY.

9 MR. GIBBONS: TIME IS, I THINK 20 ---

10 THE COURT: 20 YEARS, THAT'S GOOD. I WAS THINKING ARMED
11 ROBBERY. ALL RIGHT. SO THAT'S 12, 24, 36, 37, 37 MONTHS AND 12 DAYS. YA'LL
12 DISAGREE WITH THAT?

13 MR. WILLIAMS: NO, SIR.

14 THE COURT: GOOD LUCK TO YOU.

15 MS. SANDERS: THANK YOU, YOUR HONOR.

16 MR. WILLIAMS: THANK YOU.

17
18
19 ----- END OF TRANSCRIPT -----
20
21
22
23
24
25

Voir Dire

Case No.: 98-GS-06-180Judge: James R. Barber IIIDate: February 6, 2001County: BarnwellPlaintiff/State: State of South CarolinaAttorney: Grant GibbonsDefendant: Tunzy Antwain SandersDefense Attorney: Daniel Williams
Brenda K. Sanders

Brenda W. Sigwald, Circuit Court Reporter

Juror #	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defendant	
115	Jimmy H. Windham	M	W			1	
72	Randall C. Martin	M	W				1
121	Antonio M. Davis	M	B		1		
69	Faye D. Lindell	F	W			2	
124	Bruce L. Waddell	M	W		2		
100	Teresa K. Sanders	F	W			3	
47	Patricia C. Hair	F	W				2
74	Michael T. McCants	M	W			4	
22	Brandon S. Creech	M	W			5	
122	Michael W. Merwin	M	W		3		
75	Douglas Millege	M	B				3
21	Wilmer O. Collins Jr.	M	W				4
53	Mark R. Hiers	M	W			6	
109	Bobby White	M	B		4		
34	Pamela Fields	F	W				5
96	Shirley A. Ross	F	B				6
114	Donna C. Wilson	M	W			7	
81	Robert M. Nall	M	W			8	
49	Marie H. Harly	F	W				7

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, BRENDA W. SIGWALD, OFFICIAL COURT REPORTER FOR THE SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I REPORTED THE PROCEEDINGS IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS IN AND FOR THE STATE OF SOUTH CAROLINA, ON THE 7TH DAY OF FEBRUARY, 2001.

I FURTHER CERTIFY THAT THE FOREGOING PAGES, NUMBERED 3 THROUGH 434, CONSTITUTE A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF SAID HEARING.

I FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AT AIKEN COUNTY, THIS 31ST DAY OF JANUARY 2002.

Brenda W. Sigwald

BRENDA W. SIGWALD,
COURT REPORTER AND NOTARY PUBLIC
FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES FEBRUARY 25, 2010

AURELIEN VIGIER(INCAMERA) DIRECT BY GIBBONS

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1 THE COURT: ALL RIGHT. NOW I KNOW THAT WE'RE
2 GOING TO HAVE AN ISSUE COMING UP WITH THE NEXT WITNESS.
3 AT LEAST MR. BREIBART TELLS ME THAT THERE PROBABLY IS
4 GOING TO BE ONE.

5 MR. GIBBONS: IS THAT RIGHT? OKAY.

6 THE COURT: AND SO THAT I DON'T KEEP BOUNCING
7 THE JURY IN AND OUT OF THE COURTROOM, LET'S SEE IF WE CAN
8 DEAL WITH THAT RIGHT NOW.

9 MR. GIBBONS: SURE.

10 THE COURT: LET'S GET MR. BREIBART IN HERE AND
11 HIS CLIENT. IF YOU WOULD, SIR, JUST TAKE YOUR SEAT AND
12 WE'LL GET BACK TO YOU IN A MINUTE.

13 AURELIEN VIGIER, BEING CALLED AND
14 DULY SWORN, TESTIFIES AS FOLLOWS:

15 A MY NAME IS AURELIEN VIGIER. I GO BY TONY.
16 IT'S A-U-R-E-L-I-E-N, THE LAST NAME IS V-I-G-I-E-R.

17 THE COURT: YES, SIR. I THINK THAT MR.
18 BREIBART MAYBE HAS SOME MATTER THAT HE WOULD LIKE TO
19 RAISE WITH THE COURT.

20 MR. BREIBART: YOUR HONOR, JUST FOR THE RECORD,
21 IF I COULD, MY NAME IS RICHARD BREIBART, B-R-E-I-B-A-R-T.
22 I REPRESENT MR. VIGIER BY RETAINER IN BARNWELL COUNTY.
23 HE'S PRESENTLY CHARGED WITH ASSAULT AND BATTERY WITH
24 INTENT TO KILL, ARMED ROBBERY, OR ATTEMPTED ARMED
25 ROBBERY, AND USE OF A DEADLY WEAPON WHILE IN THE

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P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER (INCAMERA) DIRECT BY GIBBONS

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1 COMMISSION OF A CRIME. UNDER STATE V. SMITH AND STATE V.
2 MITCHELL, I BELIEVE, IT'S DISCRETIONARY FOR YOUR JUDGE,
3 FOR YOUR HONOR, TO DECLINE TO PERMIT ANY TESTIMONY OTHER
4 THAN THE FACT THAT THESE CHARGES ARE PENDING. OBVIOUSLY
5 THAT HE'S FACING SOME CRIMINAL PUNISHMENT AS A
6 POSSIBILITY. AND OF COURSE ON BEHALF OF MR. VIGIER THEY
7 HAVE A RIGHT TO ASK HIM WHETHER THERE'S BEEN ANY PROMISES
8 MADE OR ANY ARRANGEMENTS OFFERED FOR HIS TESTIMONY. BUT
9 JUST FOR THE RECORD I BELIEVE THOSE CASES SAY YOUR HONOR
10 HAS A DISCRETION, PARTICULARLY THAT'S PREJUDICIAL TO HIM.
11 I WILL TELL THE COURT THAT HE'S NOT BEEN TO TRIAL ON
12 THESE CHARGES AND ONE OF MY CONCERNS THAT I WANT TO STATE
13 FOR THE RECORD, YOUR HONOR, IS THAT HE HAS GIVEN A
14 STATEMENT REGARDING HIS INVOLVEMENT, WHICH I UNDERSTAND
15 FROM DEFENSE COUNSEL HAS BEEN FURNISHED TO THEM. AND I
16 WOULD ASK THE COURT TO LIMIT, PURSUANT TO YOUR HONOR'S
17 ABILITY TO DO SO, TESTIMONY REGARDING THAT PARTICULAR
18 CRIME. THERE IS NO STATE V. THRIFT ARRANGEMENT THAT'S
19 BEEN MADE OR ANYTHING LIKE THAT, IF YOU FOLLOW ME, YOUR
20 HONOR...

21 THE COURT: YES, SIR.

22 MR. BREIBART: AND I'VE TRIED TO ALSO BRING TO
23 THE COURT'S ATTENTION, YOUR HONOR, MR. VIGIER IS A FRENCH
24 NATIONAL AND AT TIMES HIS UNDERSTANDING IS LESS THAN
25 PERFECT. SO IF HE MUMBLES OR DOESN'T UNDERSTAND IT, IT'S

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Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER (INCAMERA) DIRECT BY GIBBONS

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1 NOT FOR A REASON OTHER THAN THAT. BUT ON BEHALF OF MR.
2 VIGIER I WANT TO BRING THAT TO THE COURT'S ATTENTION AND
3 ASK FOR THE COURT'S ASSISTANCE IN THAT MATTER.

4 THE COURT: LET ME...SOLICITOR, I DON'T ASSUME
5 THAT YOU INTEND TO GET INTO ANYTHING...

6 MR. GIBBONS: YOUR HONOR, MY VIEW IS THAT HE'S
7 NOT CONVICTED OF IT YET AND I'M STAYING AWAY FROM IT. I
8 DO CONCEDE THAT HE IS IN JAIL AWAITING A CHARGE.

9 THE COURT: ALL RIGHT. GENTLEMEN, INSOFAR AS
10 YOUR CROSS EXAMINATION, DO YOU INTEND TO GO BEYOND THE
11 SCOPE OF THE FACT THAT HE IS IN JAIL CHARGED WITH CERTAIN
12 CRIMES AND WHETHER OR NOT HE'S GOT ANY DEALS?

13 MR. WILLIAMS: YOUR HONOR, I WOULD LIKE TO KNOW
14 THAT, WHETHER THERE'S ANY DEALS. I'D LIKE TO KNOW
15 WHETHER HE'S MADE ANY STATEMENTS ABOUT ANYONE BESIDES MY
16 CLIENT ON ANY OTHER CRIMINAL MATTERS THAT MAY BE PENDING.
17 I THINK THAT THE JURY...IT WOULD BE NICE TO KNOW WHAT
18 THIS MAN IS FACING AND WHY HE MAY BE WANTING TO MAKE A
19 DEAL AND COOPERATE WITH THE STATE. I THINK I SHOULD BE
20 ABLE TO GO INTO THAT.

21 MR. HARVEY: I JOIN IN THAT, JUDGE.

22 THE COURT: AND THAT WOULD BE THE EXTENT OF IT?

23 MR. WILLIAMS: WELL...

24 THE COURT: BECAUSE YOU KNOW ONCE AGAIN, I KNOW
25 THEY HAVE TWO CASES, STATE VERSUS ELIJAH SMITH 446 S.E.

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Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

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1 2nd 411, 315 SC 547, A 1994 CASE, AND THEN ALSO THE CASE
2 OF STATE VERSUS MITCHELL, 498 S.E. 2nd 642, 330 SC 189, A
3 1998 CASE WHICH SETS THE PARAMETERS UNDER WHICH A JUDGE
4 CAN BASICALLY LIMIT THE TYPE OF QUESTIONING. I THINK
5 THAT YOU HAVE THE RIGHT TO QUESTION A POTENTIALLY BIASED
6 WITNESS ON MORE THAN JUST WHETHER THEY HAVE PENDING
7 CHARGES AGAINST THEM, BUT I DON'T KNOW THAT YOU CAN...AND
8 I THINK THAT YOU CAN TALK TO THEM ABOUT WHATEVER...YOU
9 KNOW, IF THEY'VE GOT ANY DEALS, THAT TYPE OF THING, BUT
10 INSOFAR AS GETTING INTO THE SPECIFICS OF HIS CASE, HIS
11 CRIME THAT'S ALLEGEDLY BEEN COMMITTED BY HIM THEN THERE'S
12 GOING TO BE A LIMITATION ON THAT, I CAN ASSURE YOU.

13 MR. WILLIAMS: I CAN STAY AWAY FROM THAT
14 EASILY, YOUR HONOR.

15 THE COURT: DO YOU HAVE ANY OBJECTION TO WHAT
16 I'VE INSTRUCTED THEM, MR. BREIBART?

17 MR. BREIBART: NOT AT ALL, YOUR HONOR.

18 MR. HARVEY: I WOULD JUST THINK THAT SIMPLY THE
19 NATURE OF THE CHARGES WOULD BE ALL WE WOULD WANT TO BRING
20 UP.

21 MR. WILLIAMS: I THINK I SHOULD BE ABLE TO
22 POINT OUT TO THE JURY THAT HE'S HERE FOR ARMED ROBBERY OR
23 ATTEMPTED...ASSAULT AND BATTERY WITH INTENT TO KILL, I
24 BELIEVE...

25 MR. HARVEY: AND ARMED ROBBERY.

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P.O. Box 2896
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AURELIEN VIGIER (INCAMERA) DIRECT BY GIBBONS

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1 MR. WILLIAMS: ...WHATEVER THE CHARGES ARE,
2 INSTEAD OF JUST YOU'RE BEING CHARGED...AND POSSESSION OF
3 A FIREARM.

4 MR. HARVEY: THAT'S ALL I'D WANT TO POINT OUT.
5 I HAVE NO INTEREST IN WHY HE WAS THERE...YOU KNOW, THE
6 BACKGROUND OF HIS CASE.

7 THE COURT: IF YOU GET BEYOND THAT THEN
8 CERTAINLY THE COURT MAY INTERPOSE SUI SPONTE, A
9 LIMITATION IN REGARDS TO WHAT YOU CAN ASK THIS MAN
10 BECAUSE I UNDERSTAND THAT PROBABLY HE IS HERE AS A RESULT
11 OF SOMETHING THAT HE HAS FOUND OUT WHILE HE'S BEEN
12 INCARCERATED THROUGH CONTACT WITH ONE OF THESE GENTLEMEN.
13 SO THERE WILL BE THAT LIMITATION.

14 MR. HARVEY: AGAIN JUDGE, WHILE WE'RE OUTSIDE
15 THE PRESENCE OF THE JURY, THIS IS ANOTHER ONE OF THOSE
16 WITNESSES WHO ARE SUBJECT TO THE BRUTON REDACTIONS.

17 THE COURT: YES, SIR. AND I ASSUME THAT YOU
18 HAVE GONE OVER WITH MR. BREIBART AND HIS CLIENT THE
19 TALKING POINTS THAT...CERTAINLY THEY CAN....

20 MR. GIBBONS: THE POINTS OF LIGHT. YOUR HONOR,
21 I WOULD LIKE TO...I DON'T KNOW IF HE'D BEEN TOLD BEFORE,
22 BUT THIS IS THE WITNESS WE HAD THAT MENTIONED SOMETHING
23 ABOUT THE TATTOO AND I WOULD JUST INSTRUCT HIM ON THE
24 RECORD NOT TO MENTION ANYTHING ABOUT A TATTOO.

25 THE COURT: DO YOU UNDERSTAND THAT, MR. VIGIER?

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Certified Court Reporter
P.O. Box 2896
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AURELIEN VIGIER (INCAMERA) DIRECT BY GIBBONS

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1 A YES, SIR.

2 THE COURT: ALL RIGHT. WHAT WE'LL DO THEN IS
3 WE'LL LET HIM STEP ASIDE AND WE'LL BRING HIM OUT...

4 MR. GIBBONS: DO WE NEED TO HAVE HIS MESSIAH
5 HEARING?

6 THE COURT: YES.

7 MR. GIBBONS: SHOULD WE DO THAT RIGHT NOW?

8 THE COURT: YES, SIR, WE CAN DO THAT RIGHT NOW.
9 ABSOLUTELY.

10 MR. GIBBONS: I'LL PROCEED, YOUR HONOR.

11 DIRECT EXAMINATION:

12 BY MR. GIBBONS:

13 Q YOU'VE STATED YOUR NAME FOR THE RECORD. MR.
14 VIGIER, HOW LONG HAVE YOU BEEN INCARCERATED?

15 A ALMOST SEVEN MONTHS.

16 Q AND DURING THAT PERIOD OF TIME DID YOU COME IN
17 CONTACT WITH THE DEFENDANTS IN THIS CASE?

18 A YES, SIR.

19 Q AND WAS THAT DONE BY LAW ENFORCEMENT?

20 A NO, SIR.

21 Q YOU WEREN'T PUT TOGETHER WITH THEM BY ANYBODY
22 IN LAW ENFORCEMENT OUTSIDE THE JAIL?

23 A NO, SIR.

24 Q AND YOU CONTACTED LAW ENFORCEMENT AT SOME
25 POINT?

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Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER (INCAMERA) DIRECT BY GIBBONS

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- 1 A NO, SIR.
- 2 Q WHO DID YOU CONTACT?
- 3 A I TOLD MY LAWYER.
- 4 Q YOU TOLD HIM YOU HAD SOME INFORMATION ABOUT A
- 5 CASE?
- 6 A YES, SIR.
- 7 Q AND HE MADE THE CONTACTS FOR YOU?
- 8 A YES, SIR.
- 9 Q PRIOR TO YOU TELLING HIM AND HIM CONTACTING LAW
- 10 ENFORCEMENT, HAD LAW ENFORCEMENT APPROACHED YOU ABOUT
- 11 THIS CASE IN ANY WAY?
- 12 A NO, SIR.
- 13 Q AND SINCE THAT TIME HAS LAW ENFORCEMENT MADE
- 14 YOU ANY OFFER OR MADE YOU ANY DEAL IN EXCHANGE FOR YOUR
- 15 TESTIMONY?
- 16 A NO, SIR.
- 17 Q AT ANY TIME HAVE THEY THREATENED YOU TO GET YOU
- 18 TO GIVE TESTIMONY?
- 19 A NO, SIR.
- 20 Q WERE YOU IN ANY WAY WORKING UNDER THE HAND OF
- 21 THE STATE WHEN YOU HEARD THESE STATEMENTS MADE BY THE
- 22 DEFENDANTS IN THIS CASE?
- 23 A NO, SIR.
- 24 Q AND WAS YOUR LAWYER PRESENT WHILE YOU MADE
- 25 THESE STATEMENTS?

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Certified Court Reporter
P.O. Box 2896
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1 A YES, SIR.

2 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: CROSS-EXAMINATION, GENTLEMEN, ON THE
4 MESSIAH ISSUE?

5 CROSS-EXAMINATION:

6 BY MR. WILLIAMS:

7 Q WHEN DID YOU FIRST CONTACT YOUR LAWYER SAYING
8 YOU HAD INFORMATION ABOUT THIS CASE?

9 A I WOULDN'T SAY EXACTLY WHEN. I'M NOT EXACTLY
10 SURE AS TO WHAT DAY. I THINK IT WAS ABOUT A MONTH AND A
11 HALF AGO.

12 Q SO SOMETIME IN THE MIDDLE OF NOVEMBER, WOULD
13 YOU SAY?

14 A YES, SIR.

15 Q ALL RIGHT. AND AFTER YOU CONTACTED YOUR
16 LAWYER, DID YOU KEEP ON EAVESDROPPING ON MR. SANDERS AT
17 THAT POINT IN TIME?

18 A WHAT DO YOU MEAN BY EAVESDROPPING? WHAT DOES
19 THAT MEAN?

20 Q WELL, HAVING CONVERSATIONS WITH HIM, TRYING TO
21 GET HIM TO TALK TO YOU?

22 A NO, SIR.

23 Q ALL RIGHT. AND IN FACT WHAT YOU WERE DOING
24 WHILE YOU WERE IN THERE YOU WERE TRYING TO GET HIM TO
25 TALK TO YOU, WASN'T YOU? TO TELL ON HIMSELF?

Brenda A. Wingard-Douglas, CIR
Certified Court Reporter
P.O. Box 2896
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AURELIEN VIGIER (INCAMERA) CROSS BY WILLIAMS

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1 A YES, SIR.

2 Q YOU WERE, WEREN'T YOU?

3 A YES, SIR.

4 Q ALL RIGHT. AND IS IT YOUR UNDERSTANDING THAT
5 THAT MIGHT HAVE HELPED YOU GET A BETTER DEAL IN YOUR CASE
6 IF YOU DID THAT?

7 A HOPEFULLY, YEAH.

8 Q ALL RIGHT. AND YOU WENT THROUGH YOUR LAWYER TO
9 MAKE SURE EVERYTHING...ALL THE I'S WERE DOTTED AND THE
10 T'S WERE CROSSED WITH YOUR DEAL, IS THAT RIGHT? THAT'S
11 WHAT YOU WANTED TO GET?

12 A YES, SIR.

13 Q IS THAT RIGHT?

14 A NO. NO.

15 Q AND HAVE YOU GIVEN STATEMENTS TO LAW
16 ENFORCEMENT CONCERNING ANYONE ELSE BESIDES MR. SANDERS?

17 A NO, SIR.

18 Q HAVE YOU GIVEN STATEMENTS TO LAW ENFORCEMENT
19 CONCERNING PEOPLE WHO WERE INVOLVED IN THE SAME THING
20 THAT YOU ARE ACCUSED OF? DID YOU IMPLICATE THEM?

21 MR. GIBBONS: YOUR HONOR, I BELIEVE YOUR
22 STATEMENT, YOUR DECISION WAS THAT THEY WEREN'T GOING TO
23 GO INTO THE FACTS OF HIS CRIME. HE'S ASKING ABOUT GIVING
24 STATEMENTS AGAINST HIS CO-DEFENDANTS NOW?

25 MR. WILLIAMS: I DON'T WANT TO KNOW WHAT HE

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P.O. Box 2896
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1 SAID, BUT JUST WHETHER HE DID IT OR NOT. I THINK THAT
2 GOES TO...

3 THE COURT: ANY OBJECTION?

4 MR. BREIBART: YOUR HONOR, THE ONLY OBJECTION IS
5 THIS: MR. WILLIAMS MAY NOT BE AWARE OF THIS. HE GAVE A
6 STATEMENT, AS DID ALL OF THE CO-DEFENDANTS,
7 CONTEMPORANEOUS TO HIS BEING ARRESTED WAY BEFORE HE WAS
8 REPRESENTED BY COUNSEL. THE ONLY STATEMENT THAT I WILL
9 TELL THE COURT THAT I'M AWARE OF THAT HE GAVE REGARDING
10 HIS CO-DEFENDANTS WAS SHORTLY AFTER HIS ARREST BEFORE HE
11 GOT COUNSEL, WHICH WAS SIX OR SEVEN MONTHS AGO. NOW
12 THAT'S... HIS CO-DEFENDANTS, THEY ALL CONFESSED ON EACH
13 OTHER. SO I DON'T WANT TO MISLEAD THE COURT, BUT THAT'S
14 KIND OF THE PROBLEM. I DON'T WANT TO CREATE A PROBLEM
15 FOR MR. WILLIAMS.

16 THE COURT: BUT WHAT WE GET INTO HERE, MR.
17 WILLIAMS, AND DEPENDING ON HOW FAR YOU TRY TO GET INTO
18 THE STATEMENTS, I THINK YOU GET INTO A DINO ISSUE THEN
19 THAT I DON'T KNOW THAT I'M PREPARED TO ADDRESS AT THIS
20 TIME AND BECAUSE HE HAS A PENDING CHARGE WE'RE NOT GOING
21 TO GET INTO THAT STATEMENT PER SAY BECAUSE I THINK THAT
22 THERE ARE SOME RAMIFICATIONS THAT COULD AFFECT HIM ON
23 DOWN THE LINE AND I'M NOT GOING TO DO ANYTHING THAT'S
24 GOING TO INTERFERE WITH HIS CASE FOR CERTAIN.

25 MR. WILLIAMS: THANK YOU, YOUR HONOR.

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Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER (INCAMERA) CROSS BY WILLIAMS

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- 1 Q WHEN YOU WERE BEING INTERVIEWED BY LAW
2 ENFORCEMENT, WHO WAS THERE?
- 3 A ARE YOU REFERRING TO WHEN I TALKED ABOUT WHAT I
4 HEARD?
- 5 Q THAT'S CORRECT.
- 6 A I BELIEVE IT WAS VINCE PADGETT AND TWO OTHER
7 PEOPLE. I DON'T KNOW THEIR NAMES.
- 8 Q WAS IT ON DECEMBER THE 11TH OF 1998? DO YOU
9 REMEMBER THE DAY?
- 10 A I BELIEVE SO.
- 11 Q OKAY. WAS THERE ANOTHER TIME BESIDES THAT THAT
12 YOU TALKED WITH LAW ENFORCEMENT?
- 13 A NO, SIR.
- 14 Q YOU'VE ONLY TALKED WITH LAW ENFORCEMENT ONE
15 TIME, IS THAT CORRECT?
- 16 A YES, SIR.
- 17 Q AND DO YOU REMEMBER MAKING THE STATEMENT TO LAW
18 ENFORCEMENT THAT DAY: "NO, HE REALLY DOESN'T KNOW WHO I
19 AM. HE JUST KNOWS I'M IN THERE FOR ARMED ROBBERY, AND
20 YOU KNOW, THE OTHER CHARGES THEY GOT ME ON?" DO YOU
21 REMEMBER SAYING THAT?
- 22 A WHO AS I SAYING THAT TO?
- 23 Q LAW ENFORCEMENT.
- 24 A I DON'T KNOW EXACTLY WHAT YOU'RE TRYING TO
25 REFER TO.

Brenda A. Wingard-Douglas. CVR
Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER(INCAMERA)CROSS BY KOGER

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1 Q YOU DON'T REMEMBER TELLING LAW ENFORCEMENT THAT
2 YOU WERE ATTEMPTING TO SPY ON HIM AT THAT POINT IN TIME?

3 A THAT I WAS ATTEMPTING TO SPY?

4 Q CORRECT.

5 A I DON'T UNDERSTAND WHAT YOU'RE...

6 Q YOU DON'T REMEMBER TELLING LAW ENFORCEMENT THAT
7 YOU WERE ATTEMPTING TO GAIN INFORMATION ON HIS PARTICULAR
8 CASE?

9 A YOU MEAN WAS I?

10 Q YES.

11 A YES, SIR.

12 Q NO FURTHER QUESTIONS.

13 THE COURT: MR. KOGER?

14 CROSS-EXAMINATION:

15 BY MR. KOGER:

16 Q AFTER YOU RETAINED YOUR LAWYER, HOW MANY TIMES
17 DID YOU SPEAK WITH MR. BENNING?

18 A AFTER I TALKED TO MY LAWYER?

19 Q YES.

20 A I THINK I TALKED TO MAURICE BEFORE I TALKED TO
21 MY LAWYER.

22 Q YOU TALKED TO MAURICE BEFORE YOU TALKED TO YOUR
23 LAWYER?

24 A YES, SIR.

25 Q OKAY. AND AFTER YOU SPOKE WITH YOUR LAWYER DID

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P.O. Box 2896
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AURELIEN VIGIER (INCAMERA) CROSS BY KOGER

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1 YOU ATTEMPT TO TRY TO GET ANY OTHER INFORMATION FROM MR.
2 BENNING?

3 A NO, SIR. OTHER THAN WHAT HE JUST TOLD ME.

4 Q OKAY. DID YOU CONTACT LAW...OKAY, YOU SAID YOU
5 SPOKE WITH MR. BENNING BEFORE YOU MET WITH YOUR LAWYER.

6 A YES, SIR.

7 Q DID YOU CONTACT LAW ENFORCEMENT ABOUT MR.
8 BENNING, ABOUT ANY STATEMENTS THAT MR. BENNING MAY HAVE
9 MADE BEFORE YOU MET WITH YOUR LAWYER?

10 A NO, SIR.

11 Q I HAVE NO FURTHER QUESTIONS.

12 MR. HARVEY: I HAVE NO QUESTIONS.

13 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR
15 FROM YOU ON THE MESSIAH ISSUE IF YOU HAVE ANYTHING?

16 MR. WILLIAMS: YOUR HONOR, THE ONLY THING I'D
17 SAY, IT CLEARLY APPEARS HE WAS TRYING TO GATHER
18 INFORMATION AFTER HE HAD CONTACTED HIS LAWYER AND THE
19 SOLICITOR'S OFFICE. HE STATED ON THE RECORD THAT HE
20 WASN'T WORKING FOR THEM AT THAT POINT IN TIME SO I GUESS
21 WE'VE GOT TO GO WITH THAT.

22 THE COURT: YES, SIR. I AGREE WITH YOU. ALL
23 RIGHT, MR. VIGIER, YOU MAY STEP DOWN. THEY'LL PUT YOU
24 WHERE YOU NEED TO BE UNTIL WE CALL YOU AS A WITNESS.

25 MR. WILLIAMS: YOU INSTRUCTED THE JURY YESTERDAY

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Certified Court Reporter
P.O. Box 2896
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AURELIEN VIGIER-DIRECT BY GIBBONS

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1 MR. KOGER: NOTHING, YOUR HONOR.
2 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.
3 MR. GIBBONS: MAY HE BE EXCUSED, YOUR HONOR?
4 THE COURT: WITHOUT OBJECTION?
5 MR. WILLIAMS: NO OBJECTION.
6 MR. KOGER: NO OBJECTION.
7 MR. HARVEY: NO OBJECTION, YOUR HONOR.
8 THE COURT: HE IS EXCUSED. NEXT WITNESS.
9 MR. GIBBONS: YOUR HONOR, THE STATE WOULD CALL
10 MR. AURELIEN VIGIER.
11 AURELIEN VIGIER, BEING CALLED AND
12 DULY SWORN, TESTIFIES AS FOLLOWS:
13 A AURELIEN VIGIER. A-U-R-E-L-I-E-N V-I-G-I-E-R.
14 DIRECT EXAMINATION:
15 BY MR. GIBBONS:
16 Q AND WHAT DO YOU GO BY, MR. VIGIER?
17 A TONY.
18 Q TONY?
19 A YES, SIR.
20 Q AND WHERE ARE YOU FROM?
21 A FRANCE.
22 Q HOW LONG HAVE YOU BEEN IN THIS COUNTRY?
23 A SINCE I WAS ABOUT ELEVEN YEARS OLD.
24 Q RIGHT NOW WHERE ARE YOU RESIDING?
25 A WELL, I WAS STAYING IN COLUMBIA, BUT MY PARENTS

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Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER-DIRECT BY GIBBONS

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- 1 STAY IN AIKEN.
- 2 Q ALL RIGHT. AND WHAT ABOUT YOU RIGHT NOW?
- 3 WHERE ARE YOU STAYING RIGHT NOW?
- 4 A WHAT DO YOU MEAN?
- 5 Q WHERE ARE YOU LIVING RIGHT NOW?
- 6 A JAIL.
- 7 Q OKAY. AND WHY ARE YOU IN JAIL?
- 8 A FOR ARMED ROBBERY AND ASSAULT AND BATTERY WITH
- 9 INTENT TO KILL, POSSESSION OF A FIREARM.
- 10 Q AND HAVE YOU BEEN IN JAIL FOR AWHILE?
- 11 A I HAVE...BEEN ALMOST SEVEN MONTHS.
- 12 Q AND DO YOU KNOW AN INDIVIDUAL BY THE NAME OF
- 13 MAURICE BENNING?
- 14 A YES, SIR.
- 15 Q DO YOU KNOW AN INDIVIDUAL BY THE NAME OF TUNZY
- 16 SANDERS?
- 17 A YES, SIR.
- 18 Q HOW DO YOU KNOW THEM?
- 19 A THROUGH JAIL IN BARNWELL.
- 20 Q AND YOU HAD CONTACTS WITH THEM?
- 21 A CONVERSATIONS.
- 22 Q AND AT SOME POINT DID YOU NOTIFY ANYONE ABOUT
- 23 THOSE CONVERSATIONS?
- 24 A MY LAWYER.
- 25 Q AND AT SOME POINT DID YOU TALK TO LAW

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Certified Court Reporter
P.O. Box 2896
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AURELIEN VIGIER-DIRECT BY GIBBONS

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- 1 ENFORCEMENT ABOUT WHAT CONVERSATIONS YOU HAD?
- 2 A YES, SIR.
- 3 Q AND THOSE CONVERSATIONS, DID YOU TALK TO ONE OF
- 4 THEM, BOTH OF THEM?
- 5 A I TALKED ABOUT TUNZY SANDERS.
- 6 Q YOU TALKED WITH TUNZY SANDERS?
- 7 A UH-HUH. (YES)
- 8 Q WHAT ABOUT MR. BENNING?
- 9 A IT WAS A ONE ON ONE CONVERSATION.
- 10 Q WITH BOTH OF THEM?
- 11 A YEAH.
- 12 Q DID YOU EVER TALK WITH THEM WHILE THEY WERE
- 13 TOGETHER, ABOUT THIS CASE?
- 14 A NO, SIR.
- 15 Q ALL RIGHT. LET'S FIRST TALK ABOUT MR. TUNZY
- 16 SANDERS. DID HE GIVE YOU INFORMATION OR MAKE STATEMENTS
- 17 ABOUT A CASE INVOLVING A SHOOTING AT A CHINESE
- 18 RESTAURANT?
- 19 A YES, SIR.
- 20 Q WHAT DID HE INDICATE TO YOU THAT HE SAID ABOUT
- 21 THAT CASE?
- 22 A GO IN DETAILS ABOUT...?
- 23 Q I WOULD LIKE TO KNOW WHAT HE TOLD YOU THAT HE
- 24 DID OR HE SAID INVOLVING THIS CASE?
- 25 A HE TOLD ME HE KILLED A CHINESE WOMAN.

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Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER-DIRECT BY GIBBONS

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- 1 Q DID HE SAY HOW?
- 2 A YES, SIR.
- 3 Q COULD YOU PLEASE TELL US WHAT HE TOLD YOU?
- 4 A HE SHOT HER.
- 5 Q DID HE TELL YOU ANYTHING ABOUT WHERE?
- 6 A IT WAS RIGHT OUTSIDE THE RESTAURANT.
- 7 Q DID HE TELL YOU ANYTHING ABOUT A WEAPON?
- 8 A THERE WAS A .25 AND A .22.
- 9 Q AND DID HE SAY WHICH ONE OR...
- 10 A I BELIEVE IT WAS THE .22.
- 11 Q HE SAID HE USED A .22? DID HE SAY ANYTHING
- 12 ABOUT CLOTHING HE HAD ON THAT NIGHT?
- 13 A I DON'T THINK SO.
- 14 Q DID HE TELL YOU WHAT HAPPENED AT THE RESTAURANT
- 15 AT THAT NIGHT INVOLVING HIM?
- 16 A HE SAID THAT HE HAD PLANNED TO DO THE ROBBERY
- 17 AND THAT WHEN THEY WENT TOWARDS THE CAR...
- 18 MR. WILLIAMS: OBJECTION.
- 19 THE COURT: NO, SIR. YOU'RE ONLY SUPPOSED TO
- 20 TALK ABOUT WHAT HE HAS SAID, SIR. I'M GOING TO...AND NO
- 21 ONE ELSE IS TO BE MENTIONED. LADIES AND GENTLEMEN OF THE
- 22 JURY, I INSTRUCT YOU THAT YOU ARE TO DISREGARD THE LAST
- 23 STATEMENT AND THIS CONVERSATION IS ONLY BETWEEN MR.
- 24 VIGIER AND MR. SANDERS THAT HE IS RELATING TO
- 25 YOU...ALLEGED CONVERSATION.

Brenda A. Wingard-Douglas, CWR
Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER-DIRECT BY GIBBONS

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1 Q MR. VIGIER, AS THE JUDGE SAID, PLEASE TELL US
2 WHAT HE SAID HE DID THAT NIGHT?

3 A HE SAID HE KILLED HER.

4 Q AND DID HE GO INTO DETAILS OF THE THINGS HE DID
5 THAT NIGHT?

6 A YES, SIR.

7 Q AND I BELIEVE YOU SAID HE SAID HE PLANNED IT
8 AHEAD OF TIME? WHAT NEXT DID HE SAY? WHAT ELSE DID HE
9 SAY THAT HE DID?

10 A DO YOU WANT EVERYTHING IN DETAILS? I MEAN I'M
11 NOT....

12 Q I WANT TO KNOW WHAT HE TOLD YOU...DETAILS HE
13 TOLD YOU ABOUT WHAT HE DID.

14 A HE TOLD ME THAT HE SHOT HER. HE TOLD ME THAT
15 HE SHOT HER WITH A .22. HE TOLD ME HE DID NOT TAKE THE
16 MONEY. HE TOLD ME...

17 Q DID HE TELL YOU WHY?

18 A AS THEY WERE GOING TO DO THE ROBBERY...

19 MR. WILLIAMS: OBJECTION, YOUR HONOR.

20 THE COURT: NO, SIR. NO, SIR. JUST WHAT HE

21 DID. NOT ANYTHING LIKE THAT. LADIES AND GENTLEMEN, ONCE

22 AGAIN YOU ARE TO DISREGARD ANYTHING THAT WAS SAID OTHER

23 THAN WHAT THE CONVERSATION WAS BETWEEN MR. VIGIER AND THE

24 DEFENDANT. THE ALLEGED CONVERSATION BETWEEN MR. VIGIER

25 AND THE DEFENDANT, MR. SANDERS. THAT IS TO BE STRICKEN

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P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER-DIRECT BY GIBBONS

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1 FROM THE RECORD AND IS TO BE DISREGARDED BY YOU.

2 A SORRY ABOUT THAT.

3 Q OKAY. ANSWER SLOWLY AND JUST REFER TO WHAT THE
4 JUDGE HAS TOLD YOU TO REFER TO. DID HE TELL YOU ANYTHING
5 OF WHAT HAPPENED WHEN THE SHOOTING OCCURRED THAT NIGHT?

6 A HE TOLD ME THAT A CAR SEEMED TO HAVE TURNED
7 AROUND. AND HE TOLD ME THAT HE THOUGHT THE CAR MIGHT
8 HAVE HEARD THE SHOT AND HIS BANDANA WAS NOT ON HIS NOSE.
9 HE HAD TOLD ME THAT HE HAD A BANDANA OVER HALF HIS FACE
10 AND HE WAS SCARED OF BEING IDENTIFIED AND HE RAN.

11 Q DID HE TELL YOU ANYTHING ABOUT WHAT HAPPENED TO
12 THE GUN?

13 A HE TOLD ME THAT HE CLEANED THE GUN WITH
14 SURGICAL GLOVES, TOOK AWAY ALL THE FINGERPRINTS, AND THAT
15 HE THREW IT ON TOP OF A RESTAURANT IN GEORGIA WITHOUT ANY
16 OF THE CO-DEFENDANTS PRESENT.

17 MR. HARVEY: OBJECTION, JUDGE.

18 MR. WILLIAMS: OBJECTION, YOUR HONOR.

19 THE COURT: SUSTAIN THE OBJECTION. LADIES AND
20 GENTLEMEN, YOU ARE TO DISREGARD ANYTHING THAT IS SAID
21 CONCERNING ANYONE ELSE OTHER THAN THIS PARTICULAR
22 DEFENDANT WITH WHOM HE'S HAVING THE CONVERSATION.

23 MR. HARVEY: THANK YOU, YOUR HONOR.

24 Q DID HE MENTION ANYTHING ABOUT ANOTHER GUN?
25 WHAT MIGHT HAVE HAPPENED TO IT?

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P.O. Box 2896
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AURELIEN VIGIER-DIRECT BY GIBBONS

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- 1 A YES, SIR.
- 2 Q WHAT DID HE SAY ABOUT THAT GUN? WHAT DID HE
- 3 SAY HE DID ABOUT THAT GUN?
- 4 A WHAT DO YOU MEAN?
- 5 Q DID HE TALK ABOUT HAVING ANOTHER GUN THAT
- 6 NIGHT?
- 7 A YEAH, A .25.
- 8 Q AND DID HE MENTION ANYTHING ABOUT WHAT WENT ON
- 9 WITH THE .25?
- 10 A I HEARD THAT IT JAMMED.
- 11 Q MR. VIGIER, DID YOU HAVE CONVERSATIONS WITH MR.
- 12 BENNING?
- 13 A YES, SIR.
- 14 Q WOULD YOU TELL ME WHAT IF ANYTHING HE TOLD YOU
- 15 HE DID THAT NIGHT?
- 16 A I DON'T THINK HE DISCUSSED THAT WITH ME.
- 17 Q DID HE DISCUSS THIS CASE IN ANY WAY WITH YOU?
- 18 A YES, SIR.
- 19 Q WHAT DID HE SAY ABOUT HIS CASE?
- 20 A HE WAS REFERRING TO THE STATEMENTS HE HAD
- 21 WRITTEN, SAYING THAT HE WAS INTOXICATED AT THE TIME AND
- 22 THAT HE WAS GOING TO TELL THE JUDGE THAT HE HAD BEEN
- 23 PRESSURED BY THE POLICE INTO WRITING THEM.
- 24 Q MR. VIGIER, DID MR. SANDERS TALK TO YOU ABOUT
- 25 ANY OF THE EVIDENCE AT THE SCENE THAT NIGHT?

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Certified Court Reporter
P.O. Box 2896
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AURELIEN VIGIER-DIRECT BY GIBBONS

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- 1 A NO, SIR.
- 2 Q DID HE TALK TO YOU ABOUT ANYTHING ABOUT THE
- 3 PREPARATION OF THIS CASE?
- 4 A HE HAD TOLD ME THAT HIS SISTER, WHICH IS
- 5 REPRESENTING HIM...
- 6 Q WHAT DO YOU MEAN "REPRESENTING HIM?"
- 7 A I BELIEVE SHE IS HIS LAWYER. I'M NOT SURE.
- 8 Q WHAT DID HE SAY ABOUT HIS SISTER?
- 9 A HE TOLD ME THAT SHE WAS GOING TO TALK TO TWO
- 10 OTHER PEOPLE THAT HAD WRITTEN STATEMENTS AND GET THEM TO
- 11 CHANGE THEIR STATEMENTS.
- 12 Q AND DO YOU KNOW WHAT TWO PEOPLE HE SAID SHE WAS
- 13 GOING TO TALK TO ABOUT CHANGING THEIR STATEMENTS?
- 14 A I KNOW ONE OF THEM IS JERMAINE WALKER AND I
- 15 BELIEVE THE OTHER ONE WAS A WOMAN, BUT I'M NOT SURE. I'M
- 16 NOT SURE TO WHAT'S HER NAME.
- 17 Q DID HE MENTION ANYTHING ABOUT A SHELL CASING?
- 18 A HE MENTIONED TO ME THAT THERE WAS A SHELL
- 19 CASING THAT WAS FOUND AT THE CRIME SCENE.
- 20 Q AND WHAT DID HE SAY ABOUT IT?
- 21 A HE JUST SAID THEY HAD FOUND IT AND THAT THEY
- 22 HAD THE WRONG GUN.
- 23 Q DID HE SAY ANYTHING ABOUT WHAT HAPPENED WITH
- 24 THE VICTIM THAT NIGHT?
- 25 A YOU MEAN WHAT HE DID TO THE VICTIM?

Brenda A. Wingard-Douglas, CCR
Certified Court Reporter
P.O. Box 2896
Aiken, South Carolina 29802

AURELIEN VIGIER-DIRECT BY GIBBONS

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- 1 Q YES, SIR.
- 2 A HE TOLD ME HE HAD SHOT HER AND THAT...
- 3 Q DID HE TELL YOU ANY OF THE DETAILS ABOUT HOW
- 4 THAT HAPPENED?
- 5 A NO, SIR.
- 6 Q AND WHO IS DOING ALL THIS TALKING?
- 7 A TUNZY SANDERS.
- 8 Q MR. TUNZY SANDERS? AND IS HE IN THE COURTROOM?
- 9 A YES, SIR.
- 10 Q COULD YOU POINT HIM OUT, PLEASE?
- 11 A RIGHT THERE.
- 12 Q WHAT COLOR SHIRT?
- 13 A BLUE SHIRT. LIGHT BLUE SHIRT.
- 14 MR. GIBBONS: LET THE RECORD REFLECT HE'S
- 15 POINTING TO THE DEFENDANT.
- 16 Q DID YOU SEE ANY...DID HE EVER SHOW YOU ANY
- 17 PAPERWORK ASSOCIATED WITH THIS CASE?
- 18 A NO, SIR.
- 19 Q DID HE EVER MAKE ANY COMMENTS ABOUT THE VICTIM?
- 20 A NO, SIR.
- 21 Q DID HE MENTION ANYTHING...ANY DESCRIPTION OF
- 22 WHAT SHE WAS DOING THAT NIGHT?
- 23 A I BELIEVE HE TOLD ME SHE WAS JUST WALKING TO
- 24 THE CAR.
- 25 Q AND DID HE MENTION ANY PRIOR KNOWLEDGE THAT HE

Brenda A. Wingard-Douglas. CVR
Certified Court Reporter
P.O. Box 2896
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AURELIEN VIGIER-DIRECT BY GIBBONS

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1 HAD ABOUT THE RESTAURANT TO YOU?

2 A HE HAD TOLD ME HE HAD PLANNED THE ROBBERY
3 BEFORE THAT. THAT THEY KNEW THAT THE WOMAN TAKES THE
4 MONEY TO THE BANK...

5 THE COURT: NO, SIR. NO, SIR. IT'S ONLY WHAT
6 HE KNEW, NOT WHAT ANYONE ELSE MIGHT KNOW. SO LADIES AND
7 GENTLEMEN, ONCE AGAIN I INSTRUCT YOU THAT YOU'RE ONLY TO
8 CONSIDER THE TESTIMONY IN REGARDS TO THE INDIVIDUAL WITH
9 WHOM HE SAYS HE'S HAVING THE CONVERSATION AND THAT IS TO
10 BE STRICKEN FROM THE RECORD AND BE DISREGARDED BY YOU.

11 Q WHAT DID HE TELL YOU ABOUT THE PLANNING OF
12 THIS, MR. TUNZY SANDERS, THAT HE KNEW ABOUT?

13 A HE TOLD ME THAT HE KNEW THE WOMAN WOULD HAVE
14 ABOUT \$2,000.

15 Q AND WHAT WOMAN DID HE TELL YOU HE WAS TALKING
16 ABOUT?

17 A IF YOU'RE REFERRING TO HER NAME, I DON'T KNOW
18 HER NAME, BUT HE WAS REFERRING TO THE CHINESE LADY.

19 Q AND MR. VIGIER, YOU MENTIONED YOU'VE GOT
20 CHARGES?

21 A YES, SIR.

22 Q HAS THE STATE OFFERED YOU A DEAL ON YOUR
23 CHARGES?

24 A NO, SIR.

25 Q HAVE ANY PROMISES BEEN MADE IN EXCHANGE FOR

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P.O. Box 2896
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AURELIEN VIGIER-CROSS BY WILLIAMS

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1 THIS TESTIMONY?

2 A NO, SIR.

3 Q AND WAS YOUR LAWYER PRESENT WHILE YOU WERE
4 GIVING THIS INFORMATION TO LAW ENFORCEMENT?

5 A YES, SIR, HE WAS.

6 Q ANSWER ANY QUESTIONS THE DEFENSE WOULD HAVE.
7 THE COURT: CROSS-EXAMINATION, PLEASE.

8 CROSS-EXAMINATION:

9 BY MR. WILLIAMS:

10 Q MR. VIGIER, YOU'RE STILL HOPING THEY'RE GOING
11 TO GIVE YOU A DEAL, AREN'T THEY...AREN'T YOU?

12 A I HOPE SO.

13 Q OKAY. YOU HOPE SO. ALL RIGHT. NOW, IN THE
14 STATEMENT YOU GAVE LAW ENFORCEMENT BACK IN DECEMBER OF
15 THIS PAST YEAR, YOU TOLD THEM THAT TUNZY SANDERS SHOT HER
16 OUTSIDE THE CAR, IS THAT NOT RIGHT?

17 A YES, SIR.

18 Q ALL RIGHT. AND YOU SAID THAT HE HAD A .22 WHEN
19 HE SHOT HER, IS THAT NOT CORRECT?

20 A YES, SIR.

21 Q AND YOU CONVENIENTLY SAID THAT HE TOOK THE GUN,

22 A .22...

23 MR. GIBBONS: YOUR HONOR, I OBJECT.

24 "CONVENIENTLY SAID?" THAT'S NOT THE FORM OF THE
25 QUESTION.

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P.O. Box 2896
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AURELIEN VIGIER-CROSS BY WILLIAMS

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1 THE COURT: YES, SIR. IF YOU WOULD JUST ASK THE
2 QUESTION INSTEAD OF CHARACTERIZING IT, PLEASE, SIR?

3 Q YOU SAID HE TOOK THE GUN AND HE WIPED IT OFF
4 AND HE THREW IT ON A RESTAURANT IN AUGUSTA, IS THAT NOT
5 CORRECT?

6 A YES, SIR.

7 Q ALL RIGHT. AND ARE YOU SURE YOU DIDN'T HAVE A
8 CHANCE TO LOOK AT HIS PAPERS IN THE JAIL?

9 A YES, SIR.

10 Q YOU'RE NOT SURE OR YOU ARE SURE?

11 A I'M SURE.

12 Q WHAT DID HE TELL YOU HE DID WITH THE CHINESE
13 LADY AFTER HE SHOT HER?

14 A HE DIDN'T TELL ME HE DID ANYTHING TO HER. HE
15 TOLD ME THAT HE TOOK OFF AND RAN.

16 Q ALL RIGHT. DID HE TELL YOU HE HAD A STRUGGLE
17 WITH HER?

18 A NO, SIR.

19 Q DID HE TELL YOU WHERE THE MONEY WAS THAT SHE
20 WAS SUPPOSED TO HAVE HAD?

21 A HE TOLD ME IT WAS ON THE SEAT.

22 Q ON THE SEAT?

23 A YES, SIR.

24 Q OKAY. AND HE SHOT HER OUTSIDE THE CAR, IS THAT
25 RIGHT? ACCORDING TO YOU?

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P.O. Box 2896
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AURELIEN VIGIER-CROSS BY WILLIAMS

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- 1 A YES, SIR.
- 2 Q AND HE HAD A BANDANA ON, IS THAT RIGHT?
- 3 A YES, SIR.
- 4 Q LIKE A COWBOY?
- 5 A UH-HUH. (YES)
- 6 Q ALL RIGHT. ACCORDING TO YOUR STATEMENT THAT
- 7 YOU GAVE?
- 8 A YES, SIR.
- 9 Q AND ACCORDING TO WHAT YOU TOLD THE POLICE, THE
- 10 .25 CALIBER GUN JAMMED, IS THAT RIGHT?
- 11 A YES, SIR.
- 12 Q SO THE WOMAN WASN'T SHOT WITH THE .25 ACCORDING
- 13 TO WHAT TUNZY TOLD YOU? SHE WAS SHOT WITH THE .22, IS
- 14 THAT RIGHT?
- 15 A YES, SIR.
- 16 Q THAT'S WHAT YOU'RE TELLING THIS JURY UNDER OATH
- 17 TODAY THAT MR. SANDERS SAID TO YOU?
- 18 A YES, SIR.
- 19 Q ALL THESE THINGS?
- 20 A YES, SIR.
- 21 Q HAVE YOU GIVEN ANY STATEMENTS AGAINST ANYONE
- 22 ELSE IN EXCHANGE FOR ANY DEALS, MR. VIGIER?
- 23 A NO, SIR.
- 24 Q THAT'S ALL I HAVE.
- 25 THE COURT: MR. KOGER?

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AURELIEN VIGIER-CROSS BY KOGER

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1 CROSS-EXAMINATION:

2 BY MR. KOGER:

3 Q SO IT'S YOUR TESTIMONY THAT MR. BENNING SPOKE
4 WITH YOU ABOUT HIS STATEMENT, CORRECT?

5 A YES, SIR.

6 Q ONLY HIS STATEMENT?

7 A YES, SIR.

8 Q NO FURTHER QUESTIONS.

9 THE COURT: MR. HARVEY?

10 MR. HARVEY: NO QUESTIONS.

11 THE COURT: REDIRECT?

12 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

13 THE COURT: ALL RIGHT. MADAM CLERK, IF YOU

14 WOULD PLEASE MOVE THE MICROPHONE SO HE MAY STEP DOWN?

15 THANK YOU, SIR. YOU MAY STEP DOWN. ANY OBJECTION TO HIM
16 BEING EXCUSED?

17 MR. GIBBONS: NONE FROM THE STATE.

18 MR. WILLIAMS: NONE, YOUR HONOR.

19 MR. HARVEY: NONE, JUDGE.

20 MR. KOGER: NONE, YOUR HONOR.

21 THE COURT: ALL RIGHT. THANK YOU VERY MUCH FOR
22 COMING, MR. VIGIER. YOU'RE EXCUSED. NEXT WITNESS?

23 THE COURT: THE STATE WOULD CALL DAVID STALEY.

24 THE COURT: DAVID STALEY.

25 DAVID STALEY, BEING CALLED AND

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P.O. Box 2896
Aiken, South Carolina 29802

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TUNZY SANDERS,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The judge erred by considering the prior testimony of jailhouse informer Vigier, since the defense was unable to confront and cross-examine Vigier about a subsequent revelation from the solicitor that there had been a "tacit understanding" he would receive "some benefit by virtue of his cooperation in this case."

STATEMENT OF FACTS

On January 11, 1999, a Barnwell County grand jury indicted Tunzy Sanders for murder, attempted armed robbery and conspiracy. Sanders (nineteen) stood trial with codefendants Michael Buckmon (twenty-one) and Maurice Benning (twenty-five) for the shooting of restaurant worker Minh Chapman during an attempted armed robbery. The jury found Sanders and Buckmon guilty as charged but acquitted Benning of everything except conspiracy. On appeal, the Supreme Court reversed Sanders' convictions and directed verdicts acquitting Buckmon of murder and attempted armed robbery. See State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000), and State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001).

Judge James R. Barber, III, presided at Sanders' retrial February 5-8, 2001. Defense counsel (Sanders' sister, Brenda, from Detroit) and Sanders waived a jury trial. ROA p. 7, lines 17 and 18. This time, Maurice Benning testified for the State, but revealed that Buckmon (!) had been the shooter. ROA p. 77, lines 10-16; ROA p. 82, line 20 - p. 83, line 17. At the previous trial, jailhouse informer David Staley claimed that Sanders had told him he shot Chapman. ROA p. 49, lines 1-12. At the retrial, Staley testified, "[H]e didn't really state who shot her." ROA p. 48, lines 17-25.

Benning's identification of Buckmon as the shooter and Staley's equivocation about Sanders' jailhouse admissions magnified the importance to the State's case of the testimony of another informer, Aurelien "Tony" Vigier. Vigier, a French citizen, testified at the first trial that "[Sanders] told me he killed a Chinese woman... He shot her." Vigier testimony p. 206, line 15 - p. 207, line 6; ROA p. 208, lines 12-16. At the time of that trial, Vigier was himself awaiting trial for assault and battery with intent to kill, armed robbery and two other

charges. Vigier testimony p. 191, line 20 – p. 193, line 3. Vigier testified that, while he hoped the state would give him a break in exchange for his testimony against Sanders, nothing had been offered or promised. Vigier testimony p. 197, lines 13–16; ROA p. 213, line 19 – p. 214, line 12.

After Sanders' initial trial, the State dropped three of the pending charges against Vigier and recommended probation on the other. ROA p. 19, lines 12–15. Vigier then promptly skipped the state and could not be found for Sanders' retrial. ROA p. 28, lines 14–19. Instead, the State intended to use his testimony from the previous trial. But, the solicitor admitted, while Vigier had not been given any express guarantees for testifying against Sanders at the first trial, "we told him his cooperation would be considered when it came time for his case to go to court." ROA p. 29, lines 15–20. And the state did in fact drop charges and recommend probation. The solicitor explained that his "standard practice" was to tell any prospective jailhouse informer, "I can't promise you anything. I can't agree to anything. We will take into consideration your cooperation after everything is all said and done." ROA p. 36, lines 11–15. He conceded that his negotiations with Vigier would have been admissible to impeach Vigier's testimony. ROA p. 20, lines 4–8. On this basis, the judge concluded that there had been a "tacit understanding" between Vigier and the State that he would receive "some benefit by virtue of his cooperation in this case..." ROA p. 40, line 13 – p. 41, line 3.

Defense counsel objected to the introduction of Vigier's testimony because "[w]e did not have the opportunity to cross-examine him on that information... [a]nd that deprives us [of the] right to confront the witnesses." ROA p. 19, lines 10–21. The judge ultimately ruled against the defense and admitted Vigier's prior testimony into evidence, but noted, "I

will consider that when I rule upon his credibility as to his testimony.” ROA p. 24, lines 15–17; ROA p. 32, line 13 – p. 34, line 14.

Sanders himself denied any involvement in the murder and attempted robbery of Minh Chapman. ROA p. 132, lines 3–5; ROA p. 141, lines 19–23.

The solicitor relied heavily on Vigier’s testimony when arguing against directed verdicts and in favor of Sanders’ guilt. ROA p. 166, line 16 – p. 167, line 24; ROA p. 196, line 25 – p. 197, line 2. The judge expressly relied on Vigier’s testimony in denying directed verdicts. ROA p. 115, lines 16–24.

ARGUMENT

The judge erred by considering the prior testimony of jailhouse informer Vigier, since the defense was unable to confront and cross-examine Vigier about a subsequent revelation from the solicitor that there had been a "tacit understanding" he would receive "some benefit by virtue of his cooperation in this case."

Tony Vigier's claim that he was testifying against Sanders for no other reason than a unilateral hope of receiving a break from the State on his pending charges was plainly misleading, if not outright deceptive. As noted, the judge at Sanders' retrial determined that there had been a "tacit understanding" between Vigier and the State that he would receive "some benefit by virtue of his cooperation in this case..." (As an aside, the solicitor should have corrected Vigier's misleading testimony at the initial trial. See Giglio v. United States, 405 U.S. 150 (1972), and Mooney v. Holohan, 294 U.S. 103 (1935).)

The Confrontation Clause of the Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him..." Article I, Section 14, of the South Carolina Constitution also states, "Any person charged with an offense shall enjoy the right... to be confronted with the witnesses against him..." In Coy v. Iowa, 487 U.S. 1012, 1016 (1988), the Supreme Court observed that it had "never doubted... that the Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." "The Confrontation Clause provides two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination." Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987). See, also, State v. Lewis, 324 S.C. 539, 478 S.E.2d 861 (Ct. App. 1996), and State v. Dennison, 305 S.C. 161, 406 S.E.2d 383 (Ct. App. 1991).

The fact that the judge in this case considered evidence of Vigier's bias – his “tacit understanding” with the State – in assessing the credibility of his testimony did not satisfy the Confrontation Clause, since that protection entitled Sanders to confront and cross-examine Vigier personally about that understanding. The judge should not have considered Vigier's prior testimony because of the lack of confrontation and cross-examination about his secret negotiations with the State.

A Confrontation Clause violation is subject to harmless error analysis. Delaware v. Van Arsdall, 475 U.S. 673 (1986). But:

Any assessment of harmlessness cannot include consideration of whether the witness' testimony would have been unchanged, or the [factfinder's] assessment unaltered, had there been confrontation; such an inquiry would obviously involve pure speculation, and harmlessness must therefore be determined on the basis of the remaining evidence.

Coy at 1021–22.

As noted, given Maurice Benning's identification of Michael Buckmon as the killer of Minh Chapman and informer Staley's equivocation about Sanders' admissions on that point, Tony Vigier's testimony became the centerpiece of the State's case. The solicitor relied on it in his closing argument, as did the judge in denying directed verdicts. The error cannot have been harmless.

For this reason, the Court should reverse Tunzy Sanders' convictions and remand for a new trial.

Respectfully submitted,

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

This 10th day of December, 2002.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

December 10, 2002

Joseph L. Savitz, III
1122 Lady Street, Suite 940
Columbia, SC 29201
803) 734-1330
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TUNZY SANDERS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Derrick K. McFarland, this 10th day of December, 2002.

Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 10th day of December, 2002.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

356 S.C. 214
Court of Appeals of South Carolina.

The **STATE**, Respondent,

v.

Tunzy Antwain **SANDERS**, Appellant.

No. 3684. | Heard Sept. 9, 2003. | Decided
Oct. 20, 2003. | Rehearing Denied Feb. 19,
2004. | Certiorari Denied May 18, 2005.

Defendant was convicted by a jury of murder, attempted armed robbery and criminal conspiracy. Defendant appealed, and the Supreme Court, 341 S.C. 386, 534 S.E.2d 696, reversed and remanded on the ground that the removal of defendant's sister as counsel before trial deprived defendant of his Sixth Amendment right to counsel. On retrial, after a bench trial, the Circuit Court, Barnwell County, James R. Barber, J., convicted defendant of the same charges. Defendant appealed. The Court of Appeals, Stilwell, J., held that defendant had sufficient opportunity and motive to cross-examine jailhouse informant at first trial, and thus admission of now-unavailable informant's prior testimony at retrial did not violate confrontation clause.

Affirmed.

West Headnotes (3)

[1] **Criminal Law**

☞ Testimony at Preliminary Examination, Former Trial, or Other Proceeding

Murder defendant, whose conviction was reversed due to removal of his sister as counsel before trial, had sufficient opportunity and motive at first trial to cross-examine jailhouse informant who testified that defendant admitted committing crime, and who was unavailable at time of retrial, and thus admission of informant's prior testimony at retrial did not violate confrontation clause, despite contention that sister would have cross-examined informant more thoroughly as to alleged deal with **State**; counsel at first trial asked informant if he expected to receive a deal, and had ample opportunity to inquire further, and defendant

unquestionably had motive to develop any weakness in informant's testimony. U.S.C.A. Const.Amend. 6; Rules of Evid., Rule 804(b)(1).

Cases that cite this headnote

[2] **Criminal Law**

☞ Availability of Declarant

When a hearsay declarant is not present for cross-examination at trial, the confrontation clause normally requires a showing that he is unavailable; even then, his statement is admissible only if it bears adequate indicia of reliability. U.S.C.A. Const.Amend. 6.

1 Cases that cite this headnote

[3] **Criminal Law**

☞ Out-Of-Court Statements and Hearsay in General

Reliability of a hearsay declarant's out-of-court statement, for purposes of determining its admissibility in light of a confrontation clause challenge, can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception; in other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness. U.S.C.A. Const.Amend. 6.

1 Cases that cite this headnote

Attorneys and Law Firms

****143 *215** Deputy Chief Attorney Joseph L. Savitz, III, Office of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Derrick K. McFarland, of Columbia; and Solicitor Barbara R. Morgan, of Aiken, for Respondent.

Opinion

STILWELL, J.

In a re-trial, *Tunzy Sanders* was convicted of murder, attempted armed robbery, and criminal conspiracy. He appeals, arguing his rights under the Confrontation Clause of the Sixth Amendment were violated when the trial court admitted the prior testimony of Aurelien Vigier, a jailhouse informer, inasmuch as he was unable to confront and cross-examine Vigier about an alleged "tacit understanding" that Vigier would receive "some benefit by virtue of his cooperation in this case." We affirm.

BACKGROUND

Sanders and two others were charged following the shooting death of a restaurant employee who was leaving at the close of business with that day's proceeds.

*216 At the first trial, two jailhouse informants, Aurelien Vigier and David Staley, testified appellant confessed to the crime while imprisoned. The *State* also introduced the statement of Temetrius Williams, which placed *Sanders* and his cohorts at the scene with the intent to commit a robbery. Williams retracted her statement on the stand.

The jury found *Sanders* guilty as charged. *Sanders* appealed the convictions on the ground his Sixth Amendment right to counsel was violated when his sister, an attorney from another *state*, was removed as counsel prior to trial. Our supreme court reversed the convictions and remanded the case for a new trial. *State v. Sanders*, 341 S.C. 386, 534 S.E.2d 696 (2000).

Prior to re-trial of the case, the *State* moved to admit a transcript of Vigier's testimony from the first trial into evidence, asserting Vigier could not be located for service of subpoena because he had left the *state* in violation of the terms of a probationary sentence. *Sanders* objected to the admission of the prior testimony, arguing its admission would violate the Confrontation Clause of the Sixth Amendment to the United *States* Constitution. Specifically, *Sanders*' sister, acting as defense counsel, asserted that had she been allowed to participate at the first trial she would have been more thorough than defense counsel was in cross-examining Vigier concerning his alleged deal with the *State* in exchange for his testimony against *Sanders*. She further asserted that facts regarding the alleged deal were revealed only after Vigier testified in the first trial. The trial court found Vigier's testimony was admissible under Rule 804, SCRE.

The case proceeded to re-trial without a jury. Despite *Sanders*' denial of any involvement in the murder or robbery, the trial court found *Sanders* guilty as charged and sentenced him to thirty-five years imprisonment for murder, twenty-five years imprisonment for armed robbery, and five years imprisonment for criminal conspiracy.

DISCUSSION

[1] [2] [3] *Sanders* asserts the admission of Vigier's prior testimony violated his Confrontation Clause rights because he was not afforded an opportunity to cross-examine the witness *217 regarding "subsequent revelations" pertaining to the *State's* alleged "deal" with the witness. We disagree.

[W]hen a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate "indicia of reliability." Reliability **144 can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness.

Ohio v. Roberts, 448 U.S. 56, 66, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980). Here, Vigier was unavailable and his prior testimony fell within an established hearsay exception. Thus, *Sanders*' Confrontation Clause rights were not violated.

Under Rule 804(b), SCRE, certain statements are not excluded by the hearsay rule if the declarant is unavailable as a witness. Rule 804(b)(1) provides:

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity

and similar motive to develop the testimony by direct, cross, or redirect examination.

"Unavailable" is defined in Rule 804(a) and includes situations in which the declarant is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance by process or other reasonable means. Here, it is uncontested that the State made numerous unsuccessful attempts to procure Vigier's appearance at the re-trial by subpoena and that Vigier was, therefore, unavailable within the meaning of Rule 804(a) and (b).

The more central question, however, is whether Sanders was afforded an opportunity and had a sufficiently similar motive to develop Vigier's testimony during the first trial. We agree with the trial court that Sanders had such motive and opportunity. At the first trial, Vigier testified that while he *218 was incarcerated with Sanders, Sanders told him he shot and killed the victim with a .22 caliber pistol, then cleaned the gun and threw it on top of a restaurant in Georgia. He further testified the State had not offered him a deal and that no promises were made to him to secure his testimony. During cross-examination, Vigier acknowledged he hoped he would get a deal because of his testimony.

During the re-trial, the assistant solicitor made the following statement regarding his conversations with Vigier before the first trial:

We were actually approached by his attorney ... and he asked us if we would give him consideration. And we told his attorney ... we couldn't get him a deal right now, but we would certainly take into account when ... it came time for him to go to court.... The State is willing to stipulate that he did receive a recommended probation sentence sometime after ... testifying in this trial, as well as the trial of his co-defendants. And it's the State's testimony that he was not given any deal, that we told him his cooperation

would be considered when it came time for his case to go to court.

In ruling the testimony admissible, the court stated that in its opinion "there was at least some tacit understanding that [Vigier] might get some benefit at some point in time by virtue of [his] cooperation."

Sanders would have this court hold that the assistant solicitor's statements amount to a significant revelation as to secret negotiations, and Sanders' unawareness of these negotiations during the prior proceedings negatively impacted his ability to effectively cross-examine Vigier. Our review of the record convinces us differently. The assistant solicitor's recount of his conversations with Vigier was consistent with Vigier's testimony at the first trial: Vigier expected he would receive some benefit from his testimony against Sanders, but the State made no promise of a deal to secure his testimony. Despite ample opportunity, the only question defense counsel asked Vigier about his communications with the solicitor's office was whether he was hoping to receive a deal from them. Additionally, although Sanders argues the change in other evidence made Vigier's testimony more central to the State's **145 *219 case in the re-trial, Vigier nevertheless testified Sanders confessed to the crimes and thus Sanders unquestionably had a motive to develop any potential weaknesses in his testimony during cross-examination. Because Sanders had sufficient opportunity and motive to develop Vigier's testimony during the original trial to satisfy the requirements of Rule 804 (b) (1), SCRE and because Vigier was unavailable, the court properly admitted Vigier's prior testimony in the re-trial. As such, Sanders' right of confrontation was not violated.

AFFIRMED.

HOWARD and KITTREDGE, JJ., concur.

All Citations

356 S.C. 214, 588 S.E.2d 142

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

TUNZY A. SANDERS)

#255493)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2006-CP-06-106

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
06 MAR 11 PM 1:55
CLERK OF COURT
BARNWELL COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broadriver Correctional Facility, Columbia, South Carolina.
2. Name and location of Court which imposed sentence Barnwell County General Sessions Court.
3. Name(s) of co-defendant(s) (if any) Michael Paul Buckmon and Maurice Benning.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder - 98-GS-06-180
 - (b) Attempted Armed Robbery - 99-GS-06-079
 - (c) Criminal Conspiracy - 99-GS-06-078
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) February 8, 2001
 - (b) a finding of guilty was made by the trial court.
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals (direct appeal)
 - ii. South Carolina Supreme Court
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. On direct appeal, the South Carolina Court of Appeals upheld the conviction of the Barnwell County Circuit Court (General Sessions).
 - ii. South Carolina Supreme Court denied the Petition for Certiorari which affirmed the decision of the South Carolina Court of Appeals.
 - iii. _____
 - (c) the date of each such result:
 - i. The Opinion of the South Carolina Court of Appeals was rendered on October 20,
-
- 2003.
- ii. The South Carolina Supreme Court denied the Petition for Certiorari on May 18,
- 2005.
- iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Rule 804, SCRE; SCRE Rule 804(a); SCRE Rule 804 (b)(1)
 - ii. Rule 804(a) and (b)
 - iii. Ohio v. Roberts, 448 U.S. 56, 66 (1980)

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not Applicable.
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See the answer attached hereto as Exhibit A which consist of Grounds No. 1 through Grounds No. 9.
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See the answer attached hereto as Exhibit A which consist of Grounds No. 1 through Grounds No. 9.
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No, other petitions under South Carolina law have been filed other than the direct appeals to the South Carolina Court of Appeals and the S.C. Supreme Court.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No, I have only filed direct appeals to the S.C. Court of Appeals and the S.C. Supreme Court. I also filed a Petition for Rehearing in the S.C. Court of Appeals on January 5, 2004.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. Not Applicable.

ii. Not Applicable.

iii. Not Applicable.

iv. _____

(b) the name and location of the Court in which each was filed:

i. Not Applicable.

ii. Not Applicable.

iii. Not Applicable.

iv. _____

(c) the disposition thereof:

i. Not Applicable.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Not Applicable.

ii. _____

iii. _____

iv. _____

such (e) if known, citations of any written opinions or orders entered pursuant to each disposition:

i. Not Applicable.

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes, via direct appeal to the S. C. Court of Appeals and the S. C. Supreme Court from the decision of the trial court.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Grounds No. 1 was presented via direct appeal to the S.C. Court of Appeals and

the S.C. Supreme Court. Grounds No. 1 has not been presented in any other State or Federal Court in any petition, motion or application.

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Grounds No. 1 was presented via direct appeal to the S.C. Court of Appeals and the S. C. Supreme Court.

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) See Appendix for Grounds No. 2 through No. 9. Grounds No. 2 through No. 9 have not previously been presented to any Court, State or Federal. My appellate counsel, Joseph Savitz, refused to address grounds No. 2-No. 9 in my direct appeals to the S.C. Court of Appeals and the S.C. Supreme Court. My sister who is an attorney, contacted Mr. Savitz via certified mail and facsimile to request that he address all of the issues raised at the trial court level. Mr. Savitz refused indicating that did not think he could prevail on those issues, even though he prevailed on those issues on appeal in the co-defendant, Michael Paul Buckmon's case.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of _____

(a) your arraignment and plea? No.

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Daniel W. Williams, Bedingfield & Williams, P. O. Box 616, Barnwell, South Carolina 29812.

ii. Brenda K. Sanders, 645 Griswold, Suite 717, Detroit, Michigan 48226.

iii. Joseph L. Savitz, III, South Carolina Office of Appellate Defense, 1205 Pendleton Street, Room 306, Columbia, South Carolina 29201.

(b) the proceedings at which each such attorney represented you:

i. The trial court in Barnwell County General Sessions Court.

ii. The trial court in Barnwell County General Sessions Court.

iii. The S.C. Court of Appeals and the S.C. Supreme Court.

19. State clearly the relief you seek in filing this application:

I am seeking to have my convictions imposed in the Barnwell County General Sessions Court overturned and I am requesting that I be released immediately from my detention.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of Barnwell)

VERIFICATION

I, TUNZY A. SANDERS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tunzy A. Sanders #255493 5.9.06

SWORN to and subscribed before me this 9th
day of May, 2006

Elizabeth Wone (LS)
Notary Public

My Commission Expires: July 29, 2007

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, TUNZY A. SANDERS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Tunzy A. Sanders # 255493 5-9-06
Applicant

SWORN or affirmed to and subscribed before me this

9th day of May, 2006

Elizabeth W. [Signature]
Notary Public

My Commission Expires

July 29, 2007

Tunzy A. Sanders

Appendix to Application For Post-Conviction Relief

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Appendix – Answers to Question 10 and Question 11 of Application for Post-Conviction Relief

Ground No. 1

Issue: Did the trial court err when it allowed the admission of Aurelien Vigier's prior testimony which violated applicant's Confrontation Clause rights because he was not afforded an opportunity to cross-examine the witness regarding "subsequent revelations" pertaining to the State's alleged "deal" with the witness?

At Applicant-Sanders first trial, Vigier testified that Applicant-Sanders had confessed to shooting Minh Chapman, the victim. Vigier also testified that while he hoped the State would give him a break in exchange for his testimony against Sanders, nothing had been offered or promised. Trial counsel for Applicant-Sanders had also failed to cross-examine Vigier on a taped statement that he gave to the assistant solicitor, which controverted his in-court testimony and would have been a source of impeachment. Trial counsel also failed to impeach Vigier regarding his favorable consideration for testifying against his own co-defendants. Subsequently, the State dropped three of the four pending charges (assault and battery with intent to kill, armed robbery and two other charges) against Vigier and recommended probation on the other. It was alleged by the assistant solicitor that Vigier skipped the state and could not be found for Sanders retrial. Prior to a retrial of the Applicant-Sanders' case, the State moved to admit a transcript of Vigier's testimony for the first trial into evidence. Sanders' sister, acting as defense counsel, asserted that had she been allowed to participate at the first trial she would have been more thorough than defense counsel was in cross-examining Vigier concerning his alleged deal with the State in exchange for his testimony against Applicant-Sanders. At the retrial of Applicant-Sanders, the assistant solicitor admitted that, while Vigier had not been given any express guarantees for testifying against

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Sanders at the first trial, "we told him his cooperation would be considered when it came time for his case to go to court. The assistant solicitor further conceded that these negotiations with Vigier would have been admissible to impeach his testimony. The trial judge found that there had been a "tacit understanding" between Vigier and the State that he would received "some benefit by virtue of his cooperation in this case." The State had failed to disclose at the first trial that Vigier would be given consideration for his testimony not only against Applicant-Sanders herein, but also for his testimony against the co-defendants in his own case. The trial court found Vigier's testimony was admissible under Rule 804, SCRE. The fact that the judge at the retrial considered the evidence of Vigier's bias in assessing the credibility of his testimony did not satisfy the Confrontation Clause, since that protection entitled Sanders to confront and cross-examine Vigier personally about his "tacit understanding" with the State. Therefore, Applicant-Sander's convictions should be reversed.

(a) There was no demonstration by the Solicitor that it undertook diligent efforts to secure Vigier's in-court testimony at the second trial as is first required to establish that a deponent is unavailable to testify. No diligent effort was made by the prosecutor to find the deponent, Vigier, for the second trial. The trial judge should not have admitted the sworn testimony. The assistant solicitor only contacted the former apartment manager and then Vigier's stepfather, Stanley Levine. Vigier is still listed at the same address as his stepfather, which is listed on the Internet.

(b) Vigier's testimony was unreliable and should have been excluded at the second trial. Vigier stated in a taped statement that he had read all of the witness statements in the applicant's case. Vigier indicated in his taped statement that he overheard applicant talking about a .25 pistol jamming. Vigier's in-court testimony changed as he indicated the applicant told him that the gun jammed. At trial Aurelien Vigier said he never read Sanders' case papers. On the taped statement, Aurelien Vigier said he read all of the statements gathered in Sanders case. Taped testimony also revealed that Vigier initiated the conversations with Sanders. Vigier also indicated that he was eavesdropping on Sanders conversations with his attorney in his taped statement. The testimony of the jailhouse informants was unreliable and was based on an incentive to perjure their testimony both against Applicant-Sanders as well as against their own co-

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defendants. Both jailhouse informants received very favorable treatment after their testimony against the Applicant-Sanders.

(c) Applicant-Sanders new attorney did not get the opportunity to cross-examine Vigier regarding his alleged deals with the State and his deal with the State to testify against his own co-defendants. Such information was revealed only after the second trial. The delay in revealing such information also constituted a Brady violation. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) which is also grounds for the dismissal of Applicant-Sanders' convictions. (Ground No. 9)

Vigier's testimony should have been excluded by the trial court for the reason that it was unreliable when taken under oath at the first trial. Vigier indicated in his taped statement that he overheard Tunzy talking about a .25 pistol jamming. Vigier's in-court testimony changed as he indicated he was told by the applicant that the gun jammed. Vigier also indicated that he was eavesdropping on Sanders' conversations with his attorney in his taped statement. Furthermore, the Applicant-Sanders' new acting defense attorney did not get the opportunity to examine Vigier regarding his negotiations with the Solicitor for favorable treatment if he testified against Applicant-Sanders as well as the co-defendant's in Vigier's own case. Such information did not surface until the second trial when only the transcript of Vigier's testimony was available.

The Rule that governs whether or not a deponent is unavailable is 804. Rule 804

places the burden of establishing the unavailability of declarant on the proponent of the hearsay, and the court must determine whether the declarant is unavailable as a witness. There is a more stringent applicant of the unavailability standard in criminal cases where the evidence is offered against the accused. 804 (a)(5) imposes on the proponent of the hearsay an obligation to employ "reason means" in attempting to procure the witness. Rule 804(a)(5) operates in conjunction with accused's Sixth Amendment right to confrontation. The United States Supreme Court has held that the

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prosecution must make diligent and good faith efforts to produce the declarant of hearsay statements made at a prior judicial hearing before offering such hearsay against the accused. Ohio v. Roberts 448, S.S.56, 100 S.Ct. 2531, 65 L. Ed. 2d 597 (1980) The Solicitor failed to establish that due diligence was exercised in attempting to procure the testimony of Aurelien Vigier. An attempt to contact him only at his former apartment complex and one contact with his stepfather does not constitute due diligence.

Additionally, Rule 804 (b) (1) requires that two tests should be satisfied in order to admit hearsay pursuant to this exception. These tests are the "opportunity test" and the "similar motive" test. Under the "similar motive test" the party against whom the hearsay is offered must have had a similar motive at the former proceeding in examining the declarant that is similar to the motive this party would have in examining the declarant if the declarant were now available at the instant trial. The motive in question pertains to the motive to develop or refute facts. An identical motive is not required. Sanders new counsel did not have a similar opportunity or similar motive to cross-examine Vigier about his tacit understanding with the State that he would get favorable treatment in his own case if he testified against Sanders and his own co-defendants. The prosecution did not disclose such information until the second trial. Therefore, a similar motive and opportunity did not exist from which to cross-examine Vigier about the foregoing facts. Therefore, Vigier's testimony should have been excluded. As a general constitutional principle, the state bears the burden in criminal cases of presenting live testimony, and failure to discharge that obligation diligently and in good faith prevents the use of the former testimony exception. In addition, the transcript of Vigier did not possess adequate indicia of reliability because it did not fall

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within a "firmly rooted" hearsay exception, or because it possessed "particularized guarantees" of trustworthiness. Whether a statement possesses "particularized guarantees" of trustworthiness is determined from the "totality of the circumstances that surround the making of the statement and that render the declarant particularly worthy of belief.

In its most recent analysis of the Confrontation Clause, the United States Supreme Court modified the long-standing exemption for evidence bearing adequate "indicia of reliability." Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). In Crawford, the Supreme Court established a new rule which bars out-of-court statements by a witness that are testimonial in nature unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. *Id.* at 68, 124 S.Ct. at 1374. There was no indicia of reliability established in the instant case and therefore, Vigier's transcript testimony should have been excluded pursuant to Crawford v. Washington, *supra*.

Ground No. 2

Issue: Did the trial judge err in ruling appellant's cellmates were not government agents at the time applicant allegedly made incriminating statements to them? Did the trial judge err in admitting the testimony of David Staley and Aurelien Vigier who were jailhouse informants who had initiated contact with the applicant and who were acting as government agents at the time the alleged statements were made by the applicant?

The trial court erred in admitting Aurelien Vigier's testimony and David Staley's testimony. Both informants were agents for the State when they solicited testimony from Tunzy A. Sanders. Both inmates were already known to have testified for the State. Both inmates, Vigier and Staley, testified against their own co-defendants in their

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own cases. They both provided information to the State in other cases before providing information to the State for Tunzy Sanders. At the Applicant-Sanders retrial, the Assistant Solicitor admitted that, while Vigier had not been given any express guarantees for testifying against Sanders at the first trial, "we told him his cooperation would be considered when it came time for his case to go to court." The trial judge found that there had been a "tacit understanding" between Vigier and the State that he would receive "some benefit by virtue of his cooperation in Applicant-Sanders case. In fact, the State dropped three of the four pending charges (assault and battery with intent to kill, armed robbery, and two other charges, as a result of Vigier's testimony against his own co-defendants and his testimony against Applicant-Sanders. Taped testimony revealed that Vigier initiated the conversations with Sanders. They were known to the State as jailhouse informants. David Staley had also testified against his co-defendants and against Applicant-Sanders. Grant Gibbons and Judge Cleary both present after the first trial when Staley received preferential or favorable treatment in the form of a reduction in his bond. They reduced bond by \$70,000.00 Staley's attorney was Tim Moore.

Staley was a labeled a snitch. The State intentionally placed both David Staley and Aurelien Vigier in the cell with Tunzy A. Sanders in order to obtain or to appear to obtain incriminating statements from Tunzy A. Sanders. The State did so, because there was no other evidence linking Tunzy A. Sanders to the alleged crimes for which he was charged. The evidence is clear that the applicant did not initiate any conversations with these jailhouse informants. Vigier initiated all the statements with applicant-Sanders. (See taped statements of Vigier). The information provided by Staley

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and Vigier did not corroborate the evidence presented by the Solicitor at trial because these jailhouse informants, who were acting as government agents, obtained their information from other sources. Because the testimony provided by the above-mentioned jailhouse informants was not the result of conversations initiated by the applicant and the testimony provided by the jailhouse informants controverted the actual evidence presented in the prosecutor's case-in-chief. Vigier said was listening in on conversations Sanders had with his attorney. Vigier first said Sanders told him the .25 jammed. However, Vigier stated in a taped statement that he overheard it. The use of that information, no matter how inaccurate, so obtained violated applicant's due process rights. Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964), State v. Quattlebaum 338 S.C. 441; 527 S.E.2d 105 (S.C. 2000)

When the government intentionally places a paid informant in close proximity to a defendant and tells him not to initiate any conversations with the defendant but to be alert to any incriminating statements, it violates the accused's Sixth Amendment right to counsel. State v. Quattlebaum, 388 S.C. 441; 527 S.E. 2d 105 (S.C. 2000); United State v. Henry, 447 U.S. 264, 100 S.Ct. 2183, 65 L.Ed.2d 115 (1980), Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964).

Vigier had testified against his own co-defendants and against Sanders. David Staley had also testified against his co-defendants and Sanders. Staley was a labeled a snitch. Both Staley and Vigier's testimony was unreliable and should have been excluded at the second trial. The manner in which they both alleged to have obtained the information to testify against Applicant-Sanders violated applicant's Sixth Amendment right to counsel.

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Ground No. 3

Issue: Did the trial court err when it denied the Appellant's Motion to Quash Maurice Benning's testimony?

The admission of Maurice Benning's testimony by the trial court was erroneous. Maurice Benning was arrested in Georgia prior to the case in question and charged with the crime of Entering Premises with the Intent to Commit Felony of Burglary. Maurice Benning also failed several polygraph tests administered to him before and after he submitted two statements regarding the alleged facts of the case as he saw it. The Solicitor knew that Benning's testimony was suspect because of his reliance on polygraph tests to gage his credibility. There is also evidence that Maurice Benning was highly intoxicated at the time he gave one of his statements which further diminishes the likelihood that he would offer the truth about his involvement, instead of implicating others. To further enforce and undergird Benning's false testimony, the Solicitor negotiated the dismissal of burglary/home evasion charges pending in the State of Georgia in exchange for Benning's testimony against Tunzy Sanders who had no prior contact with the criminal justice system and no prior convictions. Furthermore, Benning was detained in the Barnwell County Jail until he testified against Tunzy Sanders. All of these factors only encouraged Maurice Benning to perjure his testimony and exonerate his involvement in the alleged incident. Despite these circumstances and the high probability that Maurice Benning would fabricate his testimony, the Solicitor choose to proceed with Maurice Benning's testimony as a for co-defendant to secure a conviction against Tunzy Sanders. Appellant moved to quash Benning's testimony and the trial court erred in not granting the Motion to Quash. A conviction obtained by the knowing use of perjured testimony must be set aside if there is any reasonable

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likelihood that the false testimony could have affected the jury's verdict. Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), U. S. v. Bagley, 473 U.S. 667 (1985), Napue v. Illinois, 360 U.S. at 271, 79 S.Ct., at 1178; Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972);

Furthermore, the South Carolina Rules of Professional Conduct also prohibit a lawyer from knowingly offering evidence that the lawyer knows to be false. Lucas v. State of South Carolina, 352 S.C. 1; 572 S.E.2d 274 (S.C. 2002)

Pursuant to Rule 407, SCACR, Rules of Professional Conduct (RPC), Rule 3.3:

(a) A lawyer shall not knowingly ...

(4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

The Solicitor had some knowledge that Maurice Benning may offer false testimony in order to exonerate himself in the instant case. The gun was found in Benning's house and not the house of Tunzy Sanders. Benning was drunk at the time he gave at least one of his statements against his co-defendants and he failed a polygraph tests on all levels. Benning also was promised the dismissal of burglary charges if he testified against Tunzy Sanders who had no prior criminal record whatsoever. Benning was

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jailed until he proffered the testimony against Tunzy Sanders. All of these factors should have been indicators to the trial judge and the Solicitor that Benning's testimony was perjured. Therefore, the trial judge should have granted the appellant's Motion to Quash Benning's Testimony because of its unreliability and the fact that the Solicitor should have refused to offer such evidence if they reasonably believed that the testimony was false.

Grounds No. 4

Issue: Did the Appellant's appeal counsel provide ineffective assistance of counsel by failing to address all of the issues in his Appeal to the Court of Appeals and the Supreme Court despite the fact that the Appellant specifically requested that he do so and Appellant's counsel failed to address said issues despite the fact that he addressed multi issues in the co-defendants case and prevailed on those issues in the Court of Appeals?

The Appellant advised his appellate counsel, Joseph Savitz, via a letter sent certified mail and via a fax with confirmed receipt that he wanted several issues addressed at the appellate level and not just the one issue of the trial court's admission of a jailhouse informants testimony without the benefit of having him be cross-examined on the issue of his deals with the state. Appellant requested that his appellate counsel, Joseph

Savitz, address the directed verdict denial by the trial court, the admission of the ballistics evidence, the trial court's failure to grant the Motion to Quash Benning's testimony as well as other issues. Appellant's sister who is also an attorney also personally called and requested that Appellant's counsel, Joseph Savitz, address not just one issue but also all of the issues that were objected to in the trial court. Appellant's counsel refused. Appellant alleges that Joseph Savitz should have addressed all of the issues relating to the trial court's errors inasmuch as Joseph Savitz

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had prevailed on those same issues in co-defendant, Michael Paul Buckmon's case. (State v. Buckmon, 347 S.C. 316; 555 S.E.2d 402 (S.C. 2001)). The Supreme Court reviewing much of the same evidence found that the evidence only gave rise to a suspicion of guilt. In the matter of State v. Passmore, 363 S.C. 568; 611 S.E.2d 273 (S.C. App. 2005), The South Carolina Court of Appeals opined that in criminal cases, although the failure of an attorney to preserve an issue at trial will preclude appellate review of that issue, it may nonetheless be a ground in a civil action for post-conviction relief as a claim of ineffective assistance of counsel." (citing Fossick v. State, 317 S.C. 375, 453 S.E.2d 899 (1995)).

In addition, pursuant to Glaze v. State, 366 S.C. 271; 621 S.E.2d 655 (S.C. 2005), the Supreme Court of South Carolina opined that to establish a claim of ineffective assistance of counsel, applicant must establish that trial counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability the result would have been different. Patterson v. State, 359 S.C. 115, 117, 597 S.E.2d 150, 151 (2004) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). Applicant-Sanders also cites United States v. Lynell Linnie Taylor, 414 F.3d 528 (4th Cir. 2005) quoting United States v. Peak, 992 F.2d 39 (4th Cir. 1993) wherein the court held that counsel's failure to pursue an appeal requested by a Defendant constitutes ineffective assistance of counsel regardless of likelihood of success on the merits. Moreover, in the matter of Garvin v. State, 365 S.C. 16; 615 S.E.2d 451 (S.C. 2005) the Supreme Court ruled that in order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove counsel's

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performance was deficient and the deficient performance prejudiced the applicant's case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Thus, an applicant must show both error and prejudice to obtain relief in a PCR proceeding. Scott v. State, 334 S.C. 248, 513 S.E.2d 100 (1999). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 325 S.C. 182, 480 S.E.2d 733 (1997).

Appellant's counsel on appeal, Joseph Savitz, was familiar with the facts and evidence of Appellant's case as he filed one prior appeal on behalf of Appellant and one prior appeal on behalf of the Appellant's co-defendant, Michael Paul Buckmon. Joseph Savitz was successful with both appeals. The Supreme Court actually reviewed the almost identical evidence in co-defendant, Buckmon's case, making a determination that the evidence only gave rise to a suspicion of guilt. It behooved Mr. Savitz to present or revisit those same issues on appeal in Appellant's matter as he had a prior favorable ruling in co-defendant's case relative to the almost identical evidence. The failure of Mr. Savitz to revisit the above-mentioned issues in Appellant's case in light of the Supreme Court's prior ruling in Michael Paul Buckmon's case constitutes ineffective assistance of counsel. Appellant has already established that appellate counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, there was a reasonable probability that the result would have been different. Michael Paul Buckmon was released and his convictions dismissed. Appellate counsel's representation fell below an objective standard of reasonableness. Appellate counsel had already prevailed in co-defendant's case with the same court and

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the almost identical evidence. Appellant's appellate counsel's refusal was deliberate and done with the intent to sabotage Appellant's appeal. There was at least a probability that the result would have been different in Appellant's case had Appellant's appellate counsel proceeded with the address of all the issues objected to by the Appellant in the trial court. Such a failure constitutes ineffective assistance of counsel on the part of Appellant's appellate counsel. Joseph Savitz also had a duty to consult with Applicant-Sanders before filing the appeal and his sister, Brenda K. Sanders who was present at the trial. Joseph Savitz failed to do so. Counsel has a duty to consult with his client regarding his appeal. Roe v. Flores-Ortega, 528 U.S. 470, 478-80, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000).

Applicant-Sanders also alleges ineffective assistance of counsel on behalf of his trial attorney, Daniel Williams. At the first trial, Attorney Williams was in charge of cross-examining Aurelien Vigier. Attorney Williams also failed to cross-examine Vigier about his testimony against his own co-defendants. Mr. Williams did not adequately prepare for the cross-examination. Mr. Williams did not properly or adequately cross-examine Aurelien Vigier regarding his taped statement, which clearly controverted Vigier's in-court testimony. Attorney Williams also failed to impeach Aurelien Vigier's testimony with the taped statement, which had been transcribed for him. Attorney Williams failure to impeach Vigier about his taped statement constituted ineffective assistance of counsel. Attorney Williams also failed to preserve several issues for appeal in the second trial for Applicant-Sanders. The Massiah issues should have been preserved for appeal relating to David Staley and Aurelien Vigier who were known jailhouse informants and who had already agreed to testify against their own co-defendants.