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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

TREY LEVAR GARNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPEALLATE CASE NO. 2015-001688

APPENDIX

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SC SUPREME COURT

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

TREY GARNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
) INDICTMENT # 97-GS-40-21496,
) 97-GS-40-21497, 97-GS-40-21498
COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA,)
)
VS.)
) TRANSCRIPT OF RECORD
TREY GARNER,)
)
DEFENDANT.)
)

TRIAL HELD BEFORE THE HONORABLE J. DERHAM COLE, PRESIDING JUDGE, 5TH JUDICIAL CIRCUIT, AND JURY, AT THE RICHLAND COUNTY JUDICIAL CENTER, COLUMBIA, SOUTH CAROLINA, ON MARCH 9-12, 1998.

APPEARANCES:

R. KNOX McMAHON, ESQUIRE
JOENATHAN CHAPLIN, ESQUIRE
SOLICITORS FOR THE STATE

JAMES P. ROGERS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

NANCY S. AHRENS, CVR
COURT REPORTER

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LEGEND: (SW) STATE'S WITNESS, (DW) DEFENSE WITNESS, (IC) IN-CAMERA

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60	JOHN W. CHAPMAN	WM	SEAT	SEAT	
236	ELIZABETH G. PROCKO	WF	SEAT	SEAT	
37	GREGG M. BOYNTON	WM	SEAT	EXCUSE	
103	ELIZABETH B. ESTES	WF	SEAT	SEAT	
21	SHIRLEY M. BELL	BF	SEAT	SEAT	
102	JOSEPH M. EPTING	WM	SEAT	EXCUSE	
14	DENNIS R. BAIN	WM	SEAT	SEAT	
5	LYNDALL E. AKERS	WF	SEAT	EXCUSE	
174	R. ROSS JOLLY	WM	SEAT	SEAT	
315	CARRIE A. PURVIS	WF	SEAT	EXCUSE	
137	ETHEL M. HARRISON	BF	EXCUSE		
190	JOHN D. LARSON	WM	SEAT	EXCUSE	
141	MICHAEL W. HAGOOD	WM	SEAT	EXCUSE	
22	JENNIFER L. BENNETT	WF	SEAT	SEAT	
82	CHANDRA L. DAVIS	BF	SEAT	SEAT	
314	KIM L. WEBBER	BF	SEAT	EXCUSE	
142	IVAN W. HAYNES	WM	SEAT	SEAT	
151	DONALD L. HOPKINS	BM	EXCUSE		
24	ROSA L. JONES BLAKENEY	BF	EXCUSE		
100	REBECCA ELLIOTT	BF	SEAT	SEAT	
243	KENNETH L. RICE	BM	SEAT	SEAT	
157	MELVIN D. HUNSINGER	WM	SEAT	EXCUSE	
132	RAY GRANT	WM	SEAT	EXCUSE	
268	ARLENE B. SPROLES	WF	SEAT	SEAT	
ALTERNATES:					
152	SHARON L. HOPKINS	BF	SEAT	SEAT	
150	JAMES K. HOPE, III	WM	SEAT	EXCUSE	
98	AMOS E. EICHELBERGER	BM	SEAT	SEAT	

MONDAY, MARCH 9, 1998

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY PANEL. MY NAME IS DERHAM COLE. I'M A RESIDENT CIRCUIT JUDGE FROM SPARTANBURG COUNTY. THAT'S IN THE SEVENTH JUDICIAL CIRCUIT. I HAVE BEEN ASSIGNED TO PRESIDE OVER BOTH CIVIL AND CRIMINAL COURT HERE IN THE 5TH JUDICIAL FOR THE FIRST SIX MONTHS OF THIS YEAR AND HAVE BEEN PRESIDING SINCE JANUARY 1ST. THIS WEEK I WILL BE PRESIDING OVER A TERM OF GENERAL SESSIONS COURT HERE IN THIS COURTROOM. THE GENERAL SESSIONS COURT IS THE CRIMINAL SIDE OF THE CIRCUIT COURT. THE CIRCUIT COURT IS THE GENERAL TRIAL COURT IN SOUTH CAROLINA. IT HEARS BOTH CIVIL AND CRIMINAL CASES AND WHEN WE ARE SITTING AND DISPOSING OF CIVIL CASES IT'S CALLED THE COURT OF COMMON PLEAS. WHEN WE ARE SITTING AND DISPOSING OF CRIMINAL CASES IT'S CALLED THE COURT OF GENERAL SESSIONS. SO, THIS WEEK I WILL BE PRESIDING OVER A TERM OF GENERAL SESSIONS COURT. IF YOU ARE CALLED UPON TO PARTICIPATE IN THE TRIAL OF A CASE IN THIS COURTROOM IT WILL BE ONE OF A CRIMINAL NATURE; THAT IS, WHERE A PERSON HAS BEEN CHARGED OR ACCUSED OF HAVING COMMITTED SOME TYPE OF CRIMINAL OFFENSE. NOW IN THIS PARTICULAR CASE THE DEFENDANT IS TREY GARNER AND MR. GARNER HAS BEEN CHARGED IN THREE

INDICTMENTS WITH THREE SEPARATE AND DISTINCT OFFENSES ALTHOUGH THEY GENERALLY ARISE OUT OF ONE PARTICULAR EVENT THAT THE STATE ALLEGES OCCURRED ON OR ABOUT OCTOBER 27TH OF 1996. BY WAY OF THESE INDICTMENTS THE STATE IS CHARGING MR. GARNER WITH HAVING COMMITTED THE OFFENSE OF MURDER, WITH HAVING COMMITTED THE OFFENSE OF ARMED ROBBERY OR ATTEMPTED ARMED ROBBERY AND WITH HAVING COMMITTED THE OFFENSE OF CONSPIRACY TO COMMIT ARMED ROBBERY.

NOW, AS TO EACH OF THE CHARGES CONTAINED IN EACH OF THOSE INDICTMENTS THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY AND THAT PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN OF PROVING ALL OF THE ALLEGATIONS SET FORTH IN EACH OF THOSE INDICTMENTS. THE BURDEN OF PROVING ALL OF THE ESSENTIAL ELEMENTS OF EACH OF THE OFFENSES THAT THEY ALLEGE THIS DEFENDANT HAS COMMITTED AND, THEREFORE, THE BURDEN IS UPON THE STATE TO ESTABLISH THE GUILT OF THE DEFENDANT TO THE SATISFACTION OF A JURY BEYOND A REASONABLE DOUBT BEFORE ANY SUCH VERDICT COULD BE RETURNED.

NOW, BEFORE WE BEGIN WITH JURY SELECTION IN THE CASE, THERE ARE A NUMBER OF QUESTIONS THAT I'M GOING TO BE ASKING YOU COLLECTIVELY AND THE PURPOSE OF THESE QUESTIONS IS TO SIMPLY FIND OUT WHETHER OR NOT

THERE IS ANY REASON WHY ANY ONE OF YOU JURORS SHOULD NOT BE SELECTED TO SERVE AS A JUROR IN THE TRIAL OF THIS PARTICULAR CASE. SO, AS THESE QUESTIONS ARE ASKED OF YOU, SHOULD YOU NEED TO RESPOND, I WOULD SIMPLY ASK THAT YOU PLEASE STAND SO THAT WE CAN DETERMINE THAT PARTICULAR DISQUALIFICATION SHOULD THERE BE ONE.

NOW, FIRST OF ALL, AS I INDICATED TO YOU, THAT IS, THE PERSON WHO IS ACCUSED OF HAVING COMMITTED THESE OFFENSES BY THE STATE, IS TREY GARNER. MR. GARNER IS SEATED AT THE DEFENDANT'S TABLE. MR. GARNER, IF YOU WOULD, PLEASE STAND AND FACE THE JURY PANEL. (MR. GARNER STANDS) ALL RIGHT. THANK YOU. YOU MAY BE SEATED. MR. GARNER IS REPRESENTED BY MR. JIMMY ROGERS WHO IS HIS LAWYER AND WHO IS SEATED NEXT TO HIM AT THE DEFENDANT'S TABLE. IN THIS CASE THE STATE IS ALLEGING THAT MR. GARNER COMMITTED THE OFFENSE OF MURDER AND ALLEGES THAT THE PERSON THAT WAS KILLED WAS ONE JOE BROOKS. MR. BROOKS OPERATED A GROCERY BY THE NAME OF JOE'S GROCERY AND I BELIEVE IT WAS LOCATED IN THE HOPKINS COMMUNITY OF RICHLAND COUNTY.

MR. McMAHON: YES, SIR. CABIN CREEK ROAD.

THE COURT: ON CABIN CREEK ROAD IN THE HOPKINS COMMUNITY OF SOUTH CAROLINA. IS THERE ANY MEMBER OF

THE JURY PANEL WHO IS RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR WHO HAS ANY CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH EITHER THE DEFENDANT, MR. GARNER, OR ANY MEMBER OF HIS FAMILY OR THE VICTIM JOE BROOKS OR ANY MEMBER OF HIS FAMILY? DOES ANY MEMBER OF THE JURY PANEL KNOW MR. GARNER OR DID YOU KNOW MR. BROOKS OR ANY MEMBERS OF THEIR RESPECTIVE FAMILIES? IF SO, PLEASE STAND.

(NO RESPONSE)

THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS TRANSACTED ANY BUSINESS AT JOE'S GROCERY DOWN IN HOPKINS, SOUTH CAROLINA? IF SO, PLEASE STAND. YES, SIR.

JUROR: I LIVE AT HORRELL HILL IN HOPKINS, SOUTH CAROLINA, AND I'VE STOPPED AT THAT STORE ON MANY OCCASIONS.

THE COURT: AND YOUR NAME, PLEASE, SIR?

JUROR: MICHAEL HAGOOD.

THE COURT: HAGOOD. THAT'S JUROR NUMBER 141. IF YOU WILL JUST REMAIN STANDING THERE, MR. HAGOOD. YOU, SIR?

JUROR: I'M EDWARD MEEKS. I'M IN THE WHOLESALE BUSINESS AND AT ONE TIME SUPPLIED MR. BROOKS.

THE COURT: AT ONE TIME YOU SUPPLIED GROCERIES

AT JOE'S GROCERY?

MR. MEEKS: YES, SIR.

THE COURT: ALL RIGHT. JUST REMAIN STANDING, PLEASE. YES, MA'AM?

JUROR: I'M CARRIE PURVIS. I HAD A FRIEND THAT USED TO LIVE IN HOPKINS. I'VE BEEN IN THE STORE A COUPLE OF TIMES JUST TO BUY DRINKS AND STUFF.

THE COURT: AND I MISSED YOUR NAME?

MS. PURVIS: CARRIE PURVIS.

THE COURT: PURVIS. OKAY. I UNDERSTAND THAT NONE OF YOU THREE KNEW MR. BROOKS PERSONALLY BUT YOU HAD BEEN A CUSTOMER IN THE STORE OR HAD A BUSINESS RELATIONSHIP. WOULD THE FACT OF THE PREVIOUS RELATIONSHIP, WOULD IT INTERFERE IN ANY WAY WITH ANY OF YOUR ABILITIES TO BE FAIR AND IMPARTIAL IF YOU WERE SELECTED AS A JUROR IN THE TRIAL OF THIS CASE? MR. HAGOOD?

MR. HAGOOD: NO, SIR.

THE COURT: MR. MEEKS?

MR. MEEKS: NO, SIR.

THE COURT: MS. PURVIS.

MS. PURVIS: NO, SIR.

THE COURT: ALL RIGHT. THANK YOU. EACH OF YOU MAY BE SEATED. ANYONE ELSE DO ANY BUSINESS AT JOE'S GROCERY OR KNOW MR. BROOKS OR ANY MEMBER OF HIS

FAMILY OR MR. GARNER OR ANY MEMBER OF HIS FAMILY?

(NO RESPONSE)

THE COURT: THE STATE IS REPRESENTED BY KNOX McMAHON WHO IS AN ASSISTANT SOLICITOR FOR THE 5TH JUDICIAL CIRCUIT. I'LL ASK IF ANY MEMBER OF THE JURY PANEL IS RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR HAS ANY CLOSE PERSONAL, SOCIAL OR PROFESSIONAL RELATIONSHIP WITH EITHER OF THE LAWYERS INVOLVED IN THE TRIAL OF THIS CASE OR ANY LAWYER EMPLOYED IN THE 5TH JUDICIAL CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND.

(NO RESPONSE)

THE COURT: NOW, THERE ARE A NUMBER OF POTENTIAL WITNESSES THAT MIGHT BE CALLED DURING THE TRIAL OF THE CASE. I HAVE A LIST OF THOSE POTENTIAL WITNESSES. THIS DOES NOT MEAN NECESSARILY THAT ALL OF THESE WITNESSES WILL BE CALLED BUT IT DOES MEAN THAT THEY MAY POTENTIALLY BE CALLED. SO, I'LL RECITE A LIST OF THOSE WITNESSES AND AGAIN I'M SIMPLY TRYING TO FIND OUT IF ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY HAS ANY PERSONAL, SOCIAL OR PROFESSIONAL RELATIONSHIP WITH ANY OF THESE POTENTIAL WITNESSES AND IF YOU DO HAVE SUCH A RELATIONSHIP I WOULD SIMPLY ASK THAT YOU PLEASE STAND AS THE NAME IS CALLED AND ONCE I CONCLUDE RECITING

THE LIST OF THESE WITNESSES I WILL INQUIRE OF THOSE WHO ARE STANDING WHAT RELATIONSHIP YOU HAVE WITH WHICH WITNESS. WE HAVE SERGEANT ED GARDNER WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT. WE ALSO HAVE WENDALL HARRIS WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT. ANSON SHELLS, RICHLAND COUNTY SHERIFF'S DEPARTMENT. JOE LEATHERMAN, RICHLAND COUNTY SHERIFF'S DEPARTMENT. W. H. MANN, RICHLAND COUNTY SHERIFF'S DEPARTMENT. SCOTT McDONALD, RICHLAND COUNTY SHERIFF'S DEPARTMENT. TINA GOFF, RICHLAND COUNTY SHERIFF'S DEPARTMENT. TED KENNEDY, RICHLAND COUNTY SHERIFF'S DEPARTMENT. ROB STEVENS, RICHLAND COUNTY SHERIFF'S DEPARTMENT. MICHAEL RICHARDSON, RICHLAND COUNTY SHERIFF'S DEPARTMENT. ZANE PADGETT, RICHLAND COUNTY SHERIFF'S DEPARTMENT. BRUCE SCOTT, RICHLAND COUNTY SHERIFF'S DEPARTMENT. RANDY OWENS, RICHLAND COUNTY SHERIFF'S DEPARTMENT. A JIM SMITH WITH --

MR. McMAHON: HE'S WITH THE SHERIFF'S DEPARTMENT, ALSO, YOUR HONOR.

THE COURT: WITH RICHLAND COUNTY SHERIFF'S DEPARTMENT. VELLO PAAVEL, SOUTH CAROLINA LAW ENFORCEMENT DIVISION, COMMONLY REFERRED TO AS S.L.E.D. A JOSEPH D. POWELL OF S.L.E.D. GRAYSON D. AMICK, S.L.E.D. EDWARD W. CATALANO, A PHYSICIAN,

RICHLAND MEMORIAL HOSPITAL. THEODORE MARSHALL.

MR. McMAHON: CITIZEN, HOPKINS COMMUNITY.

THE COURT: THESE ARE JUST INDIVIDUALS.

MR. McMAHON: ALL OF THESE WILL BE CITIZENS PRIMARILY, IF NOT ALL, FROM THE HOPKINS AREA.

THE COURT: OKAY. THESE ARE ALL PRIVATE CITIZENS FROM THE HOPKINS COMMUNITY SO IF YOU THINK YOU MIGHT BE RELATED OR KNOW THEM, JUST STAND AND WE'LL TRY TO MAKE THAT CONNECTION. YES, MA'AM, LET ME START OVER HERE.

JUROR: PAT JOHNSTON. I DON'T KNOW WHAT MY JUROR NUMBER IS BUT I'M PERSONAL FRIENDS WITH DR. CATALANO'S WIFE.

THE COURT: OH, OKAY. WHAT I WANT YOU TO DO, MAYBE I DIDN'T MAKE THAT CLEAR. AS THE NAME IS CALLED, I WANT YOU TO STAND IF THERE IS SOME NAME THAT YOU ARE RELATED TO OR HAVE SOME CONNECTION WITH. JUST STAND AND REMAIN STANDING UNTIL I COMPLETE THE LIST AND THEN I'LL DISCUSS WITH YOU ANY RELATIONSHIP THAT YOU HAVE.

NOW, THE FOLLOWING WITNESSES HERE ARE PRIVATE CITIZENS FROM THE HOPKINS COMMUNITY. THEODORE MARSHALL, RAYMOND BOONE, MICHELLE DAVIS, ELLEN LENAHAN, DAYON LEMON, DORA DAVIS, MELVIN JORDAN, JAVORIS LEWIS, RUTHIE SCOTT, TERESA TUCKER, RONALD

BROOKS, JOHN BROOKS, JERMAINE McLEMORE, WILLIE SUMTER, LILY BATES, TASHAN WESTON, TAMIKE WESTON, VALDIS GARNER, BRIAN D. WATSON, TOM BROWN, GAUMAL BURKE. NOW, ARE THERE ANY OTHER WITNESSES OR POTENTIAL WITNESSES, MR. McMAHON?

MR. McMAHON: NONE FROM THE STATE, YOUR HONOR.

THE COURT: MR. ROGERS?

MR. ROGERS: MRS. ESSIE GARNER, TREY'S MOTHER, WILL BE A POSSIBLE WITNESS.

THE COURT: ALL RIGHT. MRS. GARNER IS SEATED RIGHT BEHIND THE DEFENDANT. ALL RIGHT. ANY MEMBERS OF THE JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE, HAVE ANY PERSONAL, SOCIAL OR PROFESSIONAL RELATIONSHIP WITH ANY OF THOSE POTENTIAL WITNESSES? IF SO, PLEASE STAND. ALL RIGHT, I'M GOING TO START RIGHT HERE. YES, MA'AM, YOUR NAME, PLEASE?

JUROR: ELIZABETH PROCKO.

THE COURT: AND WITH WHICH WITNESS DO YOU HAVE SOME RELATIONSHIP?

MS. PROCKO: I'M ACQUAINTED WITH DR. CATALANO.

THE COURT: OKAY. WOULD IT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN ANY WAY?

MS. PROCKO: NO, NO.

THE COURT: OKAY. THANK YOU, MA'AM. YES, MA'AM.

JUROR: LYNDELL AKERS. I'M ACQUAINTED WITH OFFICER GARDNER.

THE COURT: OKAY. AND WOULD THAT FACT INTERFERE IN ANY WAY WITH YOUR ABILITY TO BE FAIR AND IMPARTIAL IF YOU WERE SELECTED?

MS. AKERS: NO.

THE COURT: YOU'RE MS. AKERS?

MS. AKERS: YES, SIR.

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

JUROR: I'M PAT JOHNSTON. I'M PERSONAL FRIENDS WITH DR. CATALANO'S WIFE AND MY HUSBAND SUPPLIES UNIFORMS TO THE OFFICERS THAT ARE INVOLVED IN THIS PARTICULAR CASE.

THE COURT: SUPPLIES UNIFORMS TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

MS. JOHNSTON: YES, SIR. AND S.L.E.D.

THE COURT: AND S.L.E.D. OKAY. WOULD THAT BUSINESS RELATIONSHIP INTERFERE IN ANY WAY WITH YOUR ABILITY TO BE FAIR AND IMPARTIAL IF YOU WERE SELECTED?

MS. JOHNSTON: YES, IT WOULD.

THE COURT: IT WOULD? ALL RIGHT, MS. JOHNSTON, WE WILL EXCUSE YOU FROM SERVICE IN THE TRIAL OF THE CASE BUT WE'LL ASK THAT YOU PLEASE JUST REMAIN WITH

US UNTIL WE EXCUSE THE PANEL. ALL RIGHT. YOUR NAME, PLEASE, SIR.

JUROR: DR. HAROLD FRIEDMAN AND I'M A COLLEAGUE OF DR. CATALANO'S.

THE COURT: AND WOULD THAT INTERFERE IN ANY WAY WITH YOUR ABILITY TO BE FAIR AND IMPARTIAL?

DR. FRIEDMAN: IT MIGHT.

THE COURT: WELL, DO YOU THINK THERE'S A LIKELIHOOD THAT IT WOULD?

DR. FRIEDMAN: IT DEPENDS ON HIS TESTIMONY I WOULD GUESS, WHAT HE'S TESTIFYING TO.

THE COURT: WELL, LET ME SIMPLY ASK THIS QUESTION. IF DR. CATALANO TESTIFIED IN THE CASE AND THERE WERE OTHER WITNESSES THAT TESTIFIED CONTRARY TO WHAT HE MIGHT TESTIFY TO --

DR. FRIEDMAN: IT MIGHT INFLUENCE ME.

THE COURT: WOULD YOU BELIEVE HIS TESTIMONY OVER THAT OF ANOTHER WITNESS SIMPLY BECAUSE YOU KNOW HIM?

DR. FRIEDMAN: YES.

THE COURT: OKAY. WELL, WE'LL EXCUSE YOU FROM SERVICE IN THE TRIAL OF THIS CASE THEN.

MR. ROGERS: IF YOUR HONOR PLEASE, IN LIGHT OF THAT RESPONSE, I WOULD REQUEST THE COURT TO ASK OF JUROR NUMBER 236, MS. PROCKO, WHAT THE NATURE OF HER FRIENDSHIP -- IS IT PERSONAL OR PROFESSIONAL WITH DR.

CATALANO.

THE COURT: ALL RIGHT. MS. PROCKO, YOU SAID YOU KNEW DR. CATALANO'S --

MS. PROCKO: YES. IT'S JUST A CASUAL ACQUAINTANCE.

THE COURT: AND YOU TOLD ME EARLIER, DO YOU STILL STAND BY THE STATEMENT THAT IT WOULD NOT INTERFERE WITH YOUR ABILITY TO BE FAIR?

MS. PROCKO: NO.

THE COURT: OKAY. THANK YOU, MA'AM. ANYONE ELSE RELATED TO ANY OF THE WITNESSES OR HAVE SOME TYPE OF RELATIONSHIP?

(NO RESPONSE)

THE COURT: ALL RIGHT. AS I TOLD YOU, THE STATE ALLEGES BY WAY OF THE CHARGING PAPERS, THE INDICTMENTS, THAT THE DEFENDANT COMMITTED THE OFFENSE OF MURDER, OF ATTEMPTED ARMED ROBBERY AND CONSPIRACY TO COMMIT ARMED ROBBERY. IN THE CONSPIRACY THEY ALLEGED THAT HE DID WITH JERMAINE McLEMORE AND DAYON LEMON, CONSPIRE OR AGREED TO COMMIT THE OFFENSE OF ROBBERY, THAT BEING THE ROBBERY OF JOE'S GROCERY. THEY ALSO ALLEGE THAT HE AIDED AND ABETTED AND PARTICIPATED IN THE COMMISSION OF THE CRIME OF MURDER AND OF ATTEMPTED ARMED ROBBERY OF JOE BROOKS AT JOE'S GROCERY AS I INDICATED LOCATED IN HOPKINS. IS THERE

ANY MEMBER OF THE JURY PANEL WHO HAS ANY KNOWLEDGE ABOUT THE FACTS OR CIRCUMSTANCES THAT MIGHT RELATE TO THIS PARTICULAR CASE? THAT IS, HAVE YOU HEARD ANYTHING ABOUT THIS CASE FROM ANY PERSON OR ANY OTHER SOURCE AND THAT WOULD INCLUDE ANY TYPE OF MEDIA COVERAGE SHOULD THERE HAVE BEEN SOME WHETHER IT BE RADIO, TELEVISION OR NEWSPAPER. ANY MEMBER OF THE JURY PANEL KNOW ANYTHING ABOUT THE FACTS OR CIRCUMSTANCES THAT MIGHT RELATE TO THIS PARTICULAR CASE? IF SO, PLEASE STAND.

(NO RESPONSE)

THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS ALREADY FORMED OR EXPRESSED ANY OPINION AS TO WHAT YOU BELIEVE THE ULTIMATE DECISION SHOULD BE IN THE CASE BASED UPON SIMPLY WHAT YOU KNOW AT THIS POINT? IF SO, PLEASE STAND.

(NO RESPONSE)

THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO COULD NOT BE FAIR AND IMPARTIAL BASED SOLELY UPON THE NATURE OF THE ALLEGATIONS THAT ARE MADE AGAINST THIS DEFENDANT OR THE NATURE OF THE CASE ITSELF? IF SO, PLEASE STAND.

(NO RESPONSE)

THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO KNOWS OF ANY REASON THAT YOU'VE NOT BEEN

ASKED ABOUT BUT THAT YOU BELIEVE WOULD CAUSE YOU TO BE UNABLE TO BE FAIR AND IMPARTIAL IF YOU WERE SELECTED? IF SO, PLEASE STAND. YOUR NAME, PLEASE, MA'AM?

JUROR: SHARON COUSAR.

THE COURT: YOUR LAST NAME?

MS. COUSAR: COUSAR.

THE COURT: SPELL IT FOR ME.

MS. COUSAR: C-O-U-S-A-R (SPELLED)

THE COURT: AND YOU HAVE SOME REASON THAT YOU BELIEVE WOULD PREVENT YOU FROM BEING ABLE TO BE FAIR AND IMPARTIAL?

MS. COUSAR: YES, SIR.

THE COURT: DOES IT HAVE TO DO WITH ANY RELATIONSHIP THAT YOU MIGHT HAVE WITH ANYONE INVOLVED IN THE TRIAL OF THE CASE?

MS. COUSAR: YES, SIR.

THE COURT: AND DO YOU HAVE A PERSONAL RELATIONSHIP WITH ANY --

MS. COUSAR: NO, SIR.

THE COURT: WHAT TYPE OF RELATIONSHIP IS IT?

MS. COUSAR: A PAST RELATIONSHIP IN COURT WITH ONE OF THE LAWYERS.

THE COURT: OKAY. AND WOULD YOUR PREVIOUS RELATIONSHIP OR CONTACT WITH A LAWYER INVOLVED IN THE

CASE, WOULD THAT PREVENT YOU FROM BEING ABLE TO BE FAIR IN THE CASE?

MS. COUSAR: I THINK SO.

THE COURT: OKAY. WE WILL EXCUSE YOU FROM SERVING IN THE TRIAL OF THIS CASE. THAT'S JUROR NUMBER 77. ANY OTHER JUROR KNOW OF ANY REASON WHY YOU COULD NOT BE FAIR AND IMPARTIAL IF YOU WERE SELECTED AS A JUROR IN THE TRIAL OF THIS CASE? IF SO, PLEASE STAND.

(NO RESPONSE)

THE COURT: ANY OTHER QUESTIONS BY THE STATE?

MR. McMAHON: NONE FROM THE STATE, YOUR HONOR.

THE COURT: BY THE DEFENDANT?

MR. ROGERS: NONE FROM THE DEFENDANT, YOUR HONOR.

THE COURT: ALL RIGHT. DRAW US A JURY, PLEASE, MA'AM.

(DURING THE JURY SELECTION PROCESS, THE JURORS WERE CALLED FORWARD AND PEREMPTORY STRIKES WERE EXERCISED AS REFLECTED BY THE ATTACHED VOIR DIRE SHEET MADE A PART OF THIS RECORD AT PAGE 5.)

THE COURT: WE DO INTEND TO TAKE A LUNCH RECESS BUT I'M GOING TO ASK THOSE OF YOU WHO HAVE BEEN SELECTED BEFORE WE DO THAT TO PLEASE GO TO THE JURY ROOM WITH THE BAILIFF AND I'LL BRING YOU BACK IN JUST

A MOMENT OR TWO.

(JURY LEAVES THE JURY BOX AT 1:24 P.M.)

THE COURT: ARE THERE ANY MATTERS THAT NEED TO BE ADDRESSED REGARDING JURY SELECTION BY THE STATE?

MR. McMAHON: NO, YOUR HONOR. NONE FROM THE STATE.

THE COURT: BY THE DEFENDANT?

MR. ROGERS: YOUR HONOR, MAY I JUST HAVE THIRTY MORE SECONDS, PLEASE?

THE COURT: ALL RIGHT.

(PAUSE)

MR. ROGERS: WE HAVE NOTHING, YOUR HONOR.

THE COURT: OKAY.

(BALANCE OF VENIRE IS DISMISSED)

THE COURT: ANY MATTERS THAT NEED TO BE ADDRESSED BEFORE THE JURY IS SWORN?

MR. McMAHON: NONE FROM THE STATE, YOUR HONOR.

MR. ROGERS: NONE FROM THE DEFENSE.

THE COURT: ALL RIGHT. BRING THE JURY IN. ASK MR. CHAPMAN TO TAKE THE FOREPERSON'S SEAT.

(JURY RETURNS TO THE JURY BOX AT 1:26 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: THANK YOU, SIR. MR. CHAPMAN, YOU'VE BEEN SELECTED AS THE FOREPERSON OF THIS JURY AND THE PURPOSE OF YOUR SELECTION IN THAT CAPACITY IS TO

SERVE AS THE SPOKESPERSON FOR THE JURY AND IF DURING THE COURSE OF THIS TRIAL SOMETHING ARISES THAT NEEDS TO BE BROUGHT TO MY ATTENTION, THAT IS, YOU OR A FELLOW JUROR HAS SOME DIFFICULTY, PROBLEM OR QUESTION, IF YOU'LL LET ONE OF THE BAILIFFS KNOW THEY'LL DIRECT THOSE COMMENTS TO ME AND I'LL TRY TO ASSIST YOU IN WHATEVER WAY THAT I CAN TO ALLEVIATE THAT PROBLEM OR TO ANSWER THAT QUESTION. IT'S ALSO GOING TO BE YOU WHO WILL PRESIDE OVER THE DELIBERATIONS AT THE TIME THE JURY IS ASKED TO BEGIN THOSE DELIBERATIONS. THAT WILL NOT BE UNTIL THE END OF THE TRIAL AFTER ALL THE EVIDENCE HAS BEEN RECEIVED AND YOU HAVE BEEN INSTRUCTED AS TO THE LAW, BUT WHEN TIME COMES AND YOU ARE ASKED TO GO BACK TO BEGIN YOUR DELIBERATIONS IT WILL BE YOU WHO WILL PRESIDE OVER THAT PROCESS SIMPLY TO INSURE THAT IT'S CARRIED ON IN SOME ORDERLY FASHION. AND IT'S ALSO GOING TO BE YOU WHO WILL ACTUALLY WRITE THE VERDICT OF THE JURY WHATEVER THAT DECISION MIGHT BE AND YOU'LL DO THAT ON A VERDICT FORM THAT I'LL PROVIDE FOR YOU AT THE CONCLUSION OF THIS TRIAL FOR THAT PURPOSE.

DURING THE COURSE OF THE TRIAL YOU WILL ALWAYS OCCUPY THE SEAT THAT YOU ARE IN. THERE ARE ONLY IN THIS CASE THREE DESIGNATED SEATS. THE FOREPERSON ALWAYS OCCUPIES THAT FIRST SEAT AND THE TWO ALTERNATE

JURORS WILL ALWAYS OCCUPY SEATS ON THE BACK ROW THERE. NOW, MS. HOPKINS, AND MR. EICHELBERGER, YOU HAVE EACH BEEN SELECTED AS ALTERNATE JURORS. THE PURPOSE OF YOUR SELECTION IS FOR YOU TO TAKE THE PLACE OF ONE OF THE ORIGINAL JURORS IN THE EVENT THAT FOR SOME REASON ONE OF THOSE JURORS CANNOT CONTINUE TO SERVE DURING THE COURSE OF THE TRIAL. AND IF SOME EMERGENCY ARISES OR OTHER REASON THAT PREVENTS A JUROR FROM CONTINUING, THEN ONE OF YOU WILL TAKE THE PLACE OF THAT ORIGINAL JUROR. IN THE EVENT TWO JURORS ARE CALLED AWAY, THEN BOTH OF YOU WOULD PARTICIPATE. BUT YOUR PURPOSE IS TO SERVE AS A TWELFTH JUROR IN THE EVENT THAT ONE OF THE ORIGINAL CANNOT CONTINUE TO SERVE. NOW AT THE END OF THE TRIAL IF ALL OF THE ORIGINAL TWELVE JURORS ARE ABLE TO PARTICIPATE, THEN THE ALTERNATE JUROR SERVICE ENDS AND YOU ARE NOT ALLOWED TO PARTICIPATE FURTHER. IT IS IMPORTANT, HOWEVER, THAT YOU PAY CAREFUL ATTENTION THROUGHOUT THE COURSE OF THE TRIAL BECAUSE IT DOES QUITE OFTEN OCCUR FROM TIME TO TIME THAT ONE OF THE ORIGINAL JURORS MAY BE CALLED AWAY AND IN THAT EVENT THE ALTERNATE JUROR MAY BE CALLED UPON TO PARTICIPATE FULLY. SO, WE DO APPRECIATE YOUR SERVICE JUST AS WE DO THAT OF THE ORIGINAL TWELVE. NOW, THE FOREPERSON WILL HAVE THOSE DUTIES THAT I HAVE INDICATED THAT ARE

ASSIGNED TO THE FOREPERSON BUT THAT DOESN'T MEAN THAT THE FOREPERSON'S POSITION OR SERVICE IS MORE IMPORTANT THAN ANY OF YOU OTHER JURORS. THE DECISION OR THE VERDICT OF THE JURY IS THE UNANIMOUS CONSENSUS OPINION OF ALL TWELVE JURORS. ALL TWELVE JURORS WILL HAVE AN EQUAL SAY, AN EQUAL VOICE AND AN EQUAL VOTE IN WHAT THE ULTIMATE DECISION WILL BE SO ALL OF YOU SHOULD PAY CAREFUL ATTENTION THROUGHOUT THE COURSE OF THE TRIAL AND PARTICIPATE IN DELIBERATIONS WHEN THE TIME COMES FOR THOSE DELIBERATIONS. YOU MAY SWEAR THE PANEL.

(WHEREUPON THE JURY IS DULY SWORN AT 1:31 P.M.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, AS I PROMISED WE ARE GOING TO RECESS FOR LUNCH BUT BEFORE WE DO SO LET ME SIMPLY EXPLAIN TO YOU NOW THAT YOU HAVE BEEN SWORN YOU ARE UNDER AN OBLIGATION AND DUTY AS JURORS IN THE CASE TO FAIRLY TRY THE CASE AND TO FOLLOW ALL THE INSTRUCTIONS THAT I WILL BE GIVING YOU THROUGHOUT THE COURSE OF THE TRIAL AND AT ITS CONCLUSION. PRESENTLY, AS YOU ARE EXCUSED FOR LUNCH, YOU ARE INSTRUCTED THAT YOU ARE AT NO TIME TO DISCUSS THIS CASE WHATSOEVER WITH ANY PERSON. YOU ARE NOT PERMITTED TO DISCUSS THIS CASE AT ALL AT ANY TIME WITH ANY PERSON UNTIL YOU ARE ASKED TO BEGIN YOUR DELIBERATIONS. AS I TOLD YOU, THAT WILL NOT BE UNTIL

THE END OF THE TRIAL AFTER ALL OF THE EVIDENCE HAS BEEN RECEIVED AND UNTIL YOU HAVE BEEN INSTRUCTED AS TO THE LAW. IT'S ONLY AT THAT TIME THAT YOU'LL BE REQUESTED TO GO BACK TO BEGIN YOUR DELIBERATIONS. THAT'S THE PROCESS DESIGNED FOR YOU TWELVE JURORS TO DETERMINE WHAT YOU BELIEVE THE APPROPRIATE VERDICT SHOULD BE BASED UPON YOUR CONSIDERATION OF THE EVIDENCE AND YOUR APPLICATION OF THE LAW AS I WILL PROVIDE IT TO YOU AT THE END OF THIS TRIAL. BUT UNTIL THAT STAGE OF THE TRIAL COMES YOU ARE NOT PERMITTED IN ANY WAY WHATSOEVER TO DISCUSS THE CASE WITH ANY PERSON AND THAT INCLUDES YOUR FELLOW JURORS. YOU CAN'T DISCUSS THE CASE WITH YOUR FELLOW JURORS WHEN WE TAKE A BREAK, WHETHER WE TAKE A LUNCH RECESS OR AN OVERNIGHT RECESS. YOU ARE NOT IN ANY WAY PERMITTED TO DISCUSS THE CASE UNTIL YOU ARE ENGAGED IN DELIBERATIONS AT ITS CONCLUSION, AND YOU WILL BE INSTRUCTED WHEN THAT TIME COMES. SO, KEEP THAT IN MIND AT ANY TIME WHEN WE TAKE SOME RECESS, WHETHER IT BE A SHORT ONE OR A LONGER ONE. YOU ARE NOT PERMITTED TO DISCUSS THE CASE IN ANY FASHION WHATSOEVER.

NOW, YOU ARE GOING TO BE EXCUSED FOR LUNCH. YOU WILL BE GOING ON YOUR OWN. YOU GO WHEREVER YOU'D LIKE OR WHEREVER YOU WOULD NORMALLY GO. IT'S NOT

NECESSARY THAT YOU GO TOGETHER, YOU MAY GO TOGETHER IF YOU WISH TO. THAT'S SIMPLY UP TO YOU. BUT I WOULD ASK THAT YOU PLEASE REPORT BACK TO THE JURY ROOM THAT YOU HAVE JUST BEEN INTRODUCED TO AT TWO FORTY-FIVE THIS AFTERNOON, AT A QUARTER 'TIL THREE. I WOULD ASK THAT YOU PLEASE REPORT BACK TO THAT JURY ROOM.

NOW, LET ME ASK THAT WHEN YOU EXCUSE YOURSELVES FOR LUNCH THAT AS YOU LEAVE PLEASE LEAVE THE COURTHOUSE DIRECTLY AND GO WHEREVER YOU'D LIKE TO GO TO HAVE YOUR LUNCH AND WHEN YOU COME BACK PLEASE REPORT DIRECTLY TO THE JURY ROOM. IT'S IMPORTANT THAT YOU DO THAT BECAUSE IF FOR SOME REASON YOU STOP AND YOU LOITER IN THE HALLWAY OR IN THE LOBBY OR OUTSIDE YOU MAY BE INADVERTENTLY EXPOSED TO SOME DISCUSSION ABOUT THE CASE OR SOME CONVERSATION ABOUT THE CASE WHETHER IT BE FROM LAWYERS OR WITNESSES OR EVEN SPECTATORS THAT MIGHT BE IN COURTROOM. SO, IN ORDER TO AVOID ANY SUCH CONTACT OR EXPOSURE I WOULD SIMPLY ASK THAT WHEN YOU LEAVE PLEASE LEAVE THE COURTHOUSE PROPERTY DIRECTLY AND WHEN YOU COME BACK PLEASE REPORT DIRECTLY TO YOUR JURY ROOM. HOPEFULLY, IN THAT WAY WE WILL ALLEVIATE ANY POSSIBILITY THAT YOU MIGHT BE EXPOSED TO ANY CONVERSATION OR ANY DISCUSSION ABOUT THE CASE BECAUSE YOUR VERDICT OR

YOUR DECISION IN THE CASE MUST BE BASED SOLELY UPON THE EVIDENCE THAT IS RECEIVED DURING THE COURSE OF THIS TRIAL AND THE LAW THAT IS APPLICABLE THAT I WILL PROVIDE FOR YOU AT ITS CONCLUSION.

SO, WITH THAT SAID HAVE A GOOD LUNCH. PLEASE REPORT DIRECTLY TO THE JURY ROOM AT TWO FORTY-FIVE THIS AFTERNOON, AT A QUARTER 'TIL THREE THIS AFTERNOON. HAVE A GOOD LUNCH.

(JURY LEAVES THE JURY BOX AT 1:35 P.M.)

THE COURT: ARE THERE ANY MATTERS THAT NEED TO BE ADDRESSED BEFORE WE RECESS FOR LUNCH BY THE STATE?

MR. McMAHON: YOUR HONOR, JUST SO I'LL KNOW HOW MANY WITNESSES I NEED, ABOUT HOW LATE DO YOU RUN?

THE COURT: WELL, WE'LL GO TO -- GENERALLY, I TRY TO QUIT BETWEEN FIVE AND FIVE-THIRTY FOR THE BENEFIT OF THE JURY. IF FOR SOME REASON YOU HAVE A WITNESS THAT'S OUT OF POCKET OR IS LENGTHY I'LL GO TO SIX BUT I TRY NOT TO KEEP THE JURY HERE ANY LONGER THAN IS NECESSARY. WE ALREADY IMPOSE UPON THEIR DAYTIME HOURS AND I TRY NOT TO IMPOSE UPON THE EVENING HOURS IF WE CAN HELP IT. BUT BETWEEN FIVE AND SIX.

MR. McMAHON: THANK YOU, YOUR HONOR. NOTHING ELSE.

MR. ROGERS: JUDGE, I HAVE SEVERAL MOTIONS IN

LIMINE. I GUESS YOU WANT TO HEAR THEM WHEN WE COME BACK FROM LUNCH?

THE COURT: OKAY. WELL, I DIDN'T KNOW WE HAD SOME. I THOUGHT I ADDRESSED THE QUESTION OF MOTIONS OR OTHER MATTERS BEFORE WE PICKED THE JURY.

MR. ROGERS: I'M SORRY, I MISUNDERSTOOD YOU WANTED TO DO THAT PRIOR TO THE SELECTION OF THE JURY. THEY WILL BE BRIEF MATTERS, YOUR HONOR.

THE COURT: OKAY. WELL, WE'LL DO THOSE AFTER LUNCH. COURT IS IN RECESS UNTIL TWO FORTY-FIVE.

(LUNCHEON RECESS)

(COURT RESUMES AT 3:12 P.M.)

THE COURT: MR. ROGERS, YOU'VE GOT SOME MATTERS WE NEED TO ADDRESS BEFORE THE JURY IS BROUGHT IN?

MR. ROGERS: YES, YOUR HONOR, BRIEFLY. THE FIRST MATTER IS IN GOING THROUGH THE DISCOVERY MATERIAL I HAVE SEEN EVIDENCE AND TESTIMONY TO THE EFFECT THAT TREY GARNER MAY HAVE BEEN AT MR. BROOKS' GROCERY STORE AND HE WAS THOUGHT TO EITHER HAVE BEEN LOITERING FOR THE PURPOSE OF SELLING DRUGS OR ACTUALLY SELLING DRUGS. HE'S NOT BEEN CHARGED WITH THAT, CERTAINLY NOT IN THIS INDICTMENT OR ANY OTHER INDICTMENT WITH ANY ACTIVITY AT THE BROOKS' STORE AND WOULD ASK THE COURT TO RULE THAT NO MENTION BE MADE OF THE FACT THAT HE WAS UP THERE FOR THAT PURPOSE.

I THINK IT WOULD BE HIGHLY PREJUDICIAL TO THIS TRIAL.

THE COURT: OKAY. MR. McMAHON.

MR. McMAHON: YOUR HONOR, MAY IT PLEASE THE COURT, MY UNDERSTANDING OF THE BACKGROUND AND HISTORY ON THAT ON SEPTEMBER 27TH OF 1995 TWO RICHLAND COUNTY SHERIFF DEPUTIES OBSERVED TWO INDIVIDUALS AT THE PAY PHONE BOOTH WHICH IS IN THE PARKING LOT OF MR. BROOKS' STORE. THEY HAD RECEIVED SOME INFORMATION THAT THESE TWO INDIVIDUALS BY THIS PHONE BOOTH WERE DEALING IN CRACK COCAINE. AS THEY APPROACHED, ONE OF THE TWO INDIVIDUALS RAN FROM THEM. THE DEPUTIES PURSUED THAT INDIVIDUAL AND THEY CAUGHT THAT INDIVIDUAL IN AN OPEN FIELD BEHIND BROOKS' STORE. AS HE WAS RUNNING FROM THE POINT OF THE PAY BOOTH, PAY PHONE, TO THE FIELD BEHIND MR. BROOKS' STORE, HE WAS THROWING WHAT APPEARS TO BE PACKETS OF CRACK COCAINE FROM HIS POCKETS. NOW, MR. TREY GARNER WAS ARRESTED FOR THAT OFFENSE AND WAS CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE. HE WAS CHARGED AT THAT TIME AND HE WAS BOOKED INTO THE JAIL FOR THAT. NOW, I WOULD HAVE TESTIMONY FROM A LADY NAMED TERESA TUCKER WHO SAYS THAT ABOUT A YEAR PRIOR TO THE HOMICIDE OF MR. BROOKS THAT SHE WAS IN MR. BROOKS' STORE, THAT MR. BROOKS WAS COMPLAINING ABOUT TWO GUYS OUT BY THE PAY PHONE, THAT THEY WERE DEALING DRUGS

OUT THERE IN HIS PARKING LOT AND THAT HE WAS GONNA CALL THE SHERIFF'S DEPARTMENT ON THEM. MS. TUCKER SAID SHE LOOKED OUT AND SHE SAW TREY GARNER AND HIS BROTHER, VALDIS GARNER, THAT WHEN SHE LEFT FROM THE STORE SHE SAID Y'ALL BETTER GET AWAY BECAUSE MR. BROOKS IS GOING TO CALL THE POLICE ON YOU AND THAT TREY GARNER'S RESPONSE WAS, ACCORDING TO MS. TUCKER, FUCK JOE BROOKS. NOW, JUDGE, I'M GOING TO OFFER THIS TESTIMONY UNDER STATE V. ROBERT SOUTH. IT'S A LYLE TYPE OF THEORY AS IT BEING PART OF THE MOTIVE FOR THE ROBBERY. THAT BASED ON THE FACT THAT IF MR. GARNER -- WHETHER IT'S TRUE OR NOT -- IF MR. GARNER THOUGHT THAT MR. BROOKS TURNED HIM IN, THEN I'VE GOT AN INDEPENDENT WITNESS TALKING ABOUT THAT CONVERSATION COMING OUT AND WARNING MR. TREY GARNER OF MR. BROOKS' STATEMENT ABOUT CALLING THE POLICE AND MR. GARNER'S RESPONSE. THAT WITHIN THAT SAME TIME FRAME MR. TREY GARNER IS ARRESTED FOR POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE RUNNING FROM THE PARKING LOT OF BROOKS' STORE, THE SITE OF THE HOMICIDE. AS I SAY, I WOULD RELY ON THE STATE V. ROBERT SOUTH WHICH I'M SURE HIS HONOR IS MUCH MORE FAMILIAR WITH THAN I AM. THAT PARTICULAR CASE WAS A 1980 DISORDERLY CONDUCT THAT THE STATE USED UNDER ITS THEORY THAT A 1983 HOMICIDE OF A POLICE OFFICER WAS

MISIDENTIFICATION THAT SOUTH THOUGHT HE WAS KILLING THE OFFICER THAT HAD ARRESTED HIM FOR A DISORDERLY CONDUCT THREE YEARS PREVIOUS. AND THAT WAS JUST A THEORY.

THE COURT: WELL, HOW WAS THAT ESTABLISHED? THAT'S THE POINT.

MR. McMAHON: WELL, IT WAS ESTABLISHED IN SEVERAL WAYS. ONE WAY IT WAS ESTABLISHED WAS THE PHYSICAL SIMILARITIES BETWEEN THE DECEASED OFFICER --

THE COURT: NO, I MEAN WHO ESTABLISHED THE FACT THAT THAT WAS HIS INTENT WHEN HE KILLED ONE PERSON HE THOUGHT HE WAS KILLING ANOTHER WHO HE HAD SOME MOTIVE TO KILL? WHAT I'M SAYING IS YOU CAN'T JUST SPECULATE AS TO MOTIVE. YOU'VE GOT A RIGHT TO SHOW MOTION, NO QUESTION ABOUT THAT, BUT YOU CAN'T JUST SPECULATE AS TO WHAT IT IS. IF YOU'VE GOT SOME EVIDENCE OF IT AND NOT JUST SPECULATING AS TO WHAT A MOTIVE MIGHT HAVE BEEN OBVIOUSLY IT WOULD BE ADMISSIBLE. WHAT OTHER EVIDENCE DO YOU HAVE THAT THAT'S THE MOTIVE FOR HIM ROBBING MR. BROOKS? WAS IT MR. BROOKS WHO WAS SUPPOSED TO HAVE CALLED THE POLICE ABOUT HIS DEALING CRACK COCAINE?

MR. McMAHON: WELL, THE OTHER EVIDENCE I HAVE IS THE FACT THAT I HAVE AN INDEPENDENT WITNESS MAKING THAT STATEMENT TO MR. GARNER IN AND AROUND THE SAME

PERIOD OF TIME THAT MR. GARNER IS ARRESTED FOR THE CRACK COCAINE OFFENSE IN THE FIELD BEHIND THE PARKING LOT OF BROOKS' STORE IF I UNDERSTAND HIS HONOR'S QUESTION.

THE COURT: WELL, WHAT I'M SAYING IS THE FACT THAT HE WAS IN OR ABOUT THE STORE DEALING IN CRACK COCAINE AND THE FACT THAT -- WHAT WAS THE QUOTE FROM THE WITNESS?

MR. McMAHON: THE QUOTE AS TO MR. GARNER?

THE COURT: YES.

MR. McMAHON: FUCK MR. BROOKS.

THE COURT: I UNDERSTAND BUT WHAT WAS THE COMMENT BEFORE HE MADE THAT RESPONSE?

MR. McMAHON: SHE HAD SAID TO MR. GARNER Y'ALL BETTER GET AWAY FROM HERE, MR. BROOKS IS GOING TO CALL THE POLICE.

THE COURT: BUT IT WAS NOT THAT MR. BROOKS STATED HE WAS GOING TO CALL THE POLICE ON MR. GARNER. MR. BROOKS DIDN'T MAKE THE STATEMENT, DID HE? IT WAS THE WITNESS THAT MADE THE STATEMENT.

MR. McMAHON: CORRECT.

THE COURT: THAT'S WHAT I'M SAYING. IT APPEARS TO ME SOME SORT OF SPECULATION HAS GOT TO BE INVOLVED IN TYING THOSE TWO TOGETHER. WHAT ABOUT YOUR -- YOU GOT ANY OTHER WITNESS WHO WAS INVOLVED IN THE ROBBERY

THAT MIGHT TESTIFY THAT THAT'S EXACTLY WHAT IT WAS ABOUT?

MR. McMAHON: WELL, PART OF THEIR TESTIMONY IS GOING TO BE THAT -- FOR EXAMPLE, DAYON LEMON WILL TESTIFY THAT HE SOLD CRACK COCAINE FOR MR. GARNER, THAT HE OWED MR. GARNER SOME MONEY WHERE HE CAME UP SHORT ON CRACK COCAINE AND THAT PART OF THE REASON THEY WERE ROBBING MR. BROOKS IS THEY WERE GOING TO USE SOME OF THE PROCEEDS, MR. GARNER WAS, TO PURCHASE MORE CRACK COCAINE. NOW, MR. LEMON DOES NOT GO INTO THE PRIOR DRUG ARREST OF MR. GARNER AT BROOKS' STORE. I DON'T WANT TO MISLEAD THE COURT IN THAT PARTICULAR ASPECT. AND HE DOESN'T SAY THAT MR. GARNER CONVEYED THAT INFORMATION TO HIM, THAT I'M GOING TO ROB MR. BROOKS BECAUSE HE TURNED ME IN FOR DRUGS. I DON'T WANT TO MISLEAD THE COURT IN ANY MANNER BECAUSE MR. LEMON WOULDN'T TESTIFY TO THAT. MR. McLEMORE WOULD NOT EITHER ALTHOUGH HE IS AWARE OF THE DRUG ARREST OF MR. GARNER RESULTING FROM THE POLICE CHASING HIM FROM THE BROOKS PARKING LOT.

THE COURT: WELL, I DON'T BELIEVE THAT'S GOING TO BE SUFFICIENT BASIS FOR ADMITTING THAT PRIOR EVENT. NOW, IT MIGHT BE AS THE EVIDENCE DEVELOPS THAT YOU CAN ESTABLISH A SUFFICIENT FOUNDATION OR BASIS FOR THAT TO COME IN. BUT JUST THE BASICS OF

WHAT YOU AND MR. ROGERS HAVE TOLD ME I WOULD HAVE TO, AT LEAST AT THIS POINT, AGREE WITH MR. ROGERS THAT THAT IS HIGHLY SPECULATIVE, ONE, AND HIGHLY PREJUDICIAL ON THE OTHER. OBVIOUSLY, THE PREJUDICIAL EFFECT MIGHT BE OUTWEIGHED BY ITS PROBATIVE VALUE BUT AT THIS POINT I DON'T SEE A SUFFICIENT FOUNDATION FOR IT.

MR. McMAHON: ANOTHER THING THAT KIND OF SPINS OUT OF THAT PRIOR ARREST, YOUR HONOR, NOVEMBER 25TH OF 1996 APPROXIMATELY A MONTH AFTER THE HOMICIDE MR. GARNER FAILS TO APPEAR IN COURT IN RESPONSE TO THAT POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE CHARGE. ON THE 26TH OF NOVEMBER, 1996, A BENCH WARRANT IS ISSUED FOR HIS ARREST. THE OFFICERS HAD BEEN LOOKING FOR HIM BEFORE THAT TIME IN AN ATTEMPT TO FIND HIM, FIND OUT WHAT HE MAY KNOW ABOUT THE SITUATION. AS EARLY AS OCTOBER 29TH, '96, THEY HAD BEEN TO VARIOUS AND DIFFERENT LOCATIONS IN THE HOPKINS COMMUNITY, A TRAILER WHERE HE STAYED ON MINERVAVILLE AND HIS MOTHER'S HOME I BELIEVE AND HAD BEEN UNABLE TO LOCATE HIM DURING THAT PERIOD OF TIME. AS A MATTER OF FACT, ON NOVEMBER 26TH OF 1996 THEY HAD GONE TO HIS MOTHER'S RESIDENCE, THEY TALKED TO HIS BROTHER, VALDIS, OUT THERE. THEY WERE STILL UNABLE TO LOCATE HIM. IT TAKES DECEMBER AND JANUARY

OF '97, FEBRUARY, '97, MARCH OF '97, MARCH 19TH SPECIFICALLY, 1997, HE'S ARRESTED AT ANOTHER LOCATION WHERE THE OFFICER WAS EXECUTING A DRUG SEARCH WARRANT. NOW, I DID NOT INTEND TO GET INTO THE DRUG SEARCH WARRANT ISSUE AS FAR AS HIM BEING ASSOCIATED WITH SOMEONE ELSE BUT I THOUGHT I COULD GET INTO THE BENCH WARRANT AND THE FLIGHT AS IT MAY GO TO KNOWLEDGE OF GUILT. NOT WHAT THE BENCH WARRANT WAS FOR, THAT THEY ARE LOOKING FOR HIM, HE'S UNDER BOND TO APPEAR IN COURT. HIS BEHAVIOR CHANGES AND AS I UNDERSTAND IT -- I WANT TO MAKE SURE I UNDERSTAND HIS HONOR'S RULING -- THAT BENCH WARRANT IS BASED ON FAILURE TO APPEAR ON THE POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE THAT WE JUST DISCUSSED.

THE COURT: TELL ME AGAIN HOW THAT RELATES TO THIS CASE.

MR. McMAHON: WELL, I THINK IT RELATES TO THIS CASE AS FLIGHT IF HE'S FAILING TO APPEAR.

THE COURT: ON A CRACK COCAINE CHARGE IS EVIDENCE OF FLIGHT ON A MURDER CASE?

MR. McMAHON: THEY ARE LOOKING FOR HIM AT HIS HOUSE, LOOKING FOR HIM AT THE TRAILER, SENDING NOTICE TO HIS HOUSE TO COME TO COURT. I'M NOT SAYING GET INTO THE SUBSTANCE OF THE DRUG CHARGE BUT THAT HE'S EVEN FAILING TO APPEAR IN COURT. THEY ARE TALKING TO

HIS BROTHER AND FOR MONTHS HE FAILS TO APPEAR UP TO AND INCLUDING VIOLATING HIS BOND AND NOT APPEARING IN COURT.

THE COURT: ON A CRACK COCAINE CHARGE.

MR. McMAHON: YES, SIR.

THE COURT: HOW DOES THAT RELATE TO THIS CASE?

MR. McMAHON: FLIGHT.

THE COURT: HE'S RUNNING FROM THIS CASE?

MR. McMAHON: THAT'S RIGHT. BECAUSE HE HAD BEEN APPEARING PREVIOUSLY. PREVIOUS TO OCTOBER 27TH OF '96 HE HAD NOT BEEN VIOLATING THE TERMS OF HIS BOND.

THE COURT: YOU'RE SAYING HE HAD NOT BEEN ARRESTED ON THESE CHARGES?

MR. McMAHON: CORRECT, YES, SIR.

THE COURT: DO YOU HAVE EVIDENCE THAT HE HAD KNOWLEDGE OF THESE CHARGES, THAT HE HAD KNOWLEDGE OF A WARRANT ON THIS CHARGE AND HE WAS TRYING TO AVOID APPREHENSION?

MR. McMAHON: THERE WASN'T ANY WARRANT ON THESE CHARGES AT THAT TIME, YOUR HONOR.

THE COURT: THEN HOW WOULD HE BE FLEEING FROM THEM?

MR. McMAHON: WELL, JUDGE, ANY TIME SOMEBODY RUNS FROM THE POLICE WHETHER THERE'S A WARRANT ON HIM OR NOT, THAT'S EVIDENCE OF FLIGHT AS I UNDERSTOOD IT.

MR. ROGERS: BUT ON WHICH CHARGE, YOUR HONOR? THAT'S MY POINT.

THE COURT: WELL, IT WOULDN'T BE EVIDENCE OF FLIGHT TO AVOID RESPONSIBILITY FOR THESE CHARGES IF THESE CHARGES DIDN'T EXIST, WOULD IT? I MEAN WE ARE NOT TRYING THE CRACK COCAINE CASE. WE ARE TRYING THIS MURDER CASE.

MR. McMAHON: PERHAPS I MISUNDERSTAND. IF A PERSON RUNS FROM A SCENE, THAT'S EVIDENCE OF FLIGHT. AND THERE'S NO CHARGES PENDING AT THAT TIME. I'M SAYING I'M NOT GOING INTO THE SUBSTANCE OF HIS FAILURE TO APPEAR BUT THE FACT THAT PRE-HOMICIDE AND POST-HOMICIDE HIS BEHAVIOR CHANGED. HE'S APPEARING BEFORE. HE'S ANSWERING THE CALLS OF COURT. HE'S NOT VIOLATING THE TERMS OF HIS BOND. BUT THEREAFTER THESE OFFICERS CAN'T EVEN FIND HIM AFTER THE HOMICIDE. THEY GO TO HIS HOUSE, THEY CAN'T FIND HIM. THEY GO TO ANOTHER LOCATION AND THEY CAN'T FIND HIM.

THE COURT: HAS ANYBODY TOLD HIM THEY ARE LOOKING FOR HIM TO QUESTION HIM ON THESE CHARGES?

MR. McMAHON: THEY HAVEN'T TOLD HIM. I DON'T KNOW IF HIS FAMILY HAS TOLD HIM OR NOT. WE HAVE SENT HIM A NOTICE.

THE COURT: THEN I AGREE, THAT'S NOT EVIDENCE OF FLIGHT ON THESE CHARGES.

MR. McMAHON: ALL RIGHT, SIR. THANK YOU, YOUR HONOR.

MR. ROGERS: YOUR HONOR, THAT WAS MY SECOND MOTION IN LIMINE. MY THIRD WOULD BE --

THE COURT: NOW, UNDERSTAND THESE ARE ALL PRE-TRIAL MOTIONS. I DON'T KNOW HOW THE EVIDENCE IS GOING TO DEVELOP HERE AND WHO MIGHT TESTIFY AND WHO MIGHT NOT. THEY MIGHT OTHERWISE BECOME RELEVANT ON SOME POINT BUT RIGHT NOW YOU'RE JUST PROVIDING ME WITH COLD, STARK FACTS THAT YOU PROPOSE WILL BE ESTABLISHED AND I DON'T THINK THAT TESTIMONY OR EVIDENCE SHOULD BE ADMISSIBLE FOR THOSE REASONS. BUT IT MIGHT OTHERWISE CHANGE AS THE TRIAL PROGRESSES.

MR. ROGERS: YES, YOUR HONOR. THE THIRD ISSUE IS I FILED A MOTION FOR DISCOVERY IN THIS CASE IN JUNE OF 1997. OF COURSE, THAT MOTION IS CONTINUING. I WAS HANDED THIS MORNING FIVE LETTERS THAT THE STATE INTENDS TO INTRODUCE PURPORTING TO BE LETTERS EITHER FROM MY CLIENT TO THE CO-DEFENDANTS OR FROM THE CO-DEFENDANTS TO SOMEONE ELSE. THIS WAS THE FIRST TIME I'VE HAD TO SEE THESE LETTERS, YOUR HONOR, AND MY POSITION IS THAT IT'S VIOLATIVE OF MY RULE 5 MOTION FOR THEM TO GIVE ME THESE LETTERS AT THE NINTH HOUR. I'LL BE CANDID WITH THE COURT. I BECAME AWARE OF THE LETTERS FRIDAY NIGHT BY TALKING TO ONE OF THE CO-

DEFENDANTS' ATTORNEYS BUT I WAS JUST HANDED THE LETTERS AND HAVE HAD AN OPPORTUNITY TO GO OVER THEM AND MY POSITION, YOUR HONOR, IS THAT THEY SHOULD NOT BE ALLOWED TO INTRODUCE THESE LETTERS BECAUSE IT'S VIOLATIVE OF THE RULE 5 MOTION. TO PROVIDE THESE LETTER TO ME AT THE NINTH HOUR BEFORE TRIAL, THEY APPEAR TO BE INNOCUOUS ENOUGH BUT I DON'T KNOW IF THERE ARE ANY -- I HAVE NOT HAD TIME TO FULLY GO THROUGH THE LETTERS WITH MY CLIENT TO KNOW IF THERE ARE ANY LAND MINES THERE THAT I MAY WANT TO FULLY OBJECT. SO, I'M ASKING THE COURT INITIALLY TO FASHION A REMEDY AS A VIOLATION OF RULE 5 NOT TO ALLOW THEM TO INTRODUCE THESE LETTER AT THIS TIME.

THE COURT: ALL RIGHT. MR. McMAHON.

MR. McMAHON: YOUR HONOR, I RELY ON STATE V. RAYMOND PATTERSON FOR ONE. ACTUALLY, TO GIVE YOU A LITTLE BACKGROUND, I DIDN'T GET THE LETTERS UNTIL FRIDAY. THE LETTER RECEIVED BY EITHER DEFENDANT DAYON LEMON OR DEFENDANT JERMAINE McLEMORE, DURING THE COURSE OF MY INTERVIEWING THEM LAST WEDNESDAY I WAS MADE AWARE OF THE EXISTENCE OF THE LETTERS. I ASKED THEIR ATTORNEYS TO GET THE LETTERS TO ME. THAT WAS ACTUALLY ACCOMPLISHED I THINK FRIDAY. I WASN'T TRYING TO WITHHOLD THEM FROM MR. ROGERS AT ALL. AND I THINK I DID MEET WITH MR. ROGERS FRIDAY. IT COULD

HAVE BEEN THURSDAY. I APOLOGIZE NOT KNOWING EXACTLY THE DATE BUT I DIDN'T HAVE THEM THE LAST TIME I MET WITH HIM PERSONALLY. I DON'T THINK THEY VIOLATE RULE 5, I WANT THAT TO GO ON THE RECORD, REGARDLESS OF WHAT I THINK BUT I THINK UNDER STATE V. PATTERSON IT WOULD NOT BE A VIOLATION. I TURNED THEM OVER AS SOON AS I GOT THEM. AND RIGHT NOW I'M NOT SAYING I'M EVEN GOING TO OFFER ANY OF THEM.

THE COURT: WELL, AT WHAT POINT DO YOU THINK THEY MIGHT COME IN IF YOU WERE TO OFFER THEM? WOULD IT BE THIS AFTERNOON?

MR. McMAHON: NO, SIR.

THE COURT: OKAY. WELL, THAT OUGHT TO GIVE MR. ROGERS SUFFICIENT OPPORTUNITY TO DIGEST THEM AND DISCUSS THEM WITH HIS CLIENT AND THEN WE'LL ADDRESS THAT ISSUE LATER IF WE NEED TO.

MR. McMAHON: THANK YOU, YOUR HONOR.

MR. ROGERS: THANK YOU, YOUR HONOR. ONE FINAL ISSUE. IT WAS BROUGHT TO MY ATTENTION THAT OVER LUNCH A PROBLEM DEVELOPED BETWEEN ONE OF THE BROOKS AND VALDIS GARNER, MY CLIENT'S BROTHER. I JUST WANTED TO BRING IT TO THE COURT'S ATTENTION. I DON'T KNOW WHAT ELSE TO DO, YOU KNOW, TO KEEP THE FAMILIES APART SO WE WON'T HAVE ANY PROBLEM IN THE FUTURE. BUT I WANTED TO BRING IT TO THE COURT'S ATTENTION

THAT THERE WAS SOME PROBLEM AT LUNCH BETWEEN THE FAMILIES.

THE COURT: OKAY. WELL, LET ME JUST POINT OUT FOR THE BENEFIT OF THOSE IN THE AUDIENCE WHO MIGHT BE INTERESTED IN THE TRIAL OF THIS CASE EITHER FROM THE PROSPECTIVE OF A SPECTATOR OR AS A MEMBER OF A FAMILY OF ONE SIDE OR THE OTHER, WHETHER THAT BE MR. GARNER'S FAMILY OR MR. BROOKS' FAMILY, LET ME EXPLAIN SOMETHING AND BE CERTAIN THAT YOU UNDERSTAND IT. THERE WILL BE NO CONTACT BETWEEN THE FAMILIES. IT'S BEST THAT YOU SIMPLY AVOID ANY TYPE OF CONTACT, ANY CONVERSATIONS OR ANY DIFFICULTIES THAT MIGHT EXIST. IT'S QUITE NATURAL THAT THERE MAY BE SOME HARSH FEELINGS BETWEEN THE SIDES OR BETWEEN THE DECEDENT'S FAMILY AND THE DEFENDANT BUT UNDERSTAND THAT'S WHAT THIS CASE IS ABOUT. THAT'S WHY WE ARE HERE. WE ARE TO TRY THIS CASE AND THE CASE WILL BE TRIED ON ITS MERITS. WE'VE GOT A JURY SELECTED FOR THE PURPOSE OF MAKING THE DETERMINATION OF FACT IN THE CASE. IT IS NOT FOR FAMILY MEMBERS TO MAKE ANY DECISION OR MAKE ANY JUDGMENTS ABOUT THE CASE AND I CAN TELL YOU RIGHT NOW YOU'RE OPENING YOURSELF UP TO A GREAT DEAL OF PROBLEMS AND DIFFICULTY IF THERE'S GOING TO BE CONFLICTS OR THERE'S GOING TO BE CONTACT, THERE'S GOING TO BE DISCUSSIONS OR WHATEVER THERE MIGHT BE

BETWEEN THE FAMILIES AND I SUGGEST THAT YOU SIMPLY AVOID THAT AT ALL COST. WE DO NOT WANT TO HAVE ANY DIFFICULTIES ARISE AS A RESULT OF THE TRIAL OF THIS CASE. I'M SURE THAT THE SOLICITOR WILL TALK WITH THE BROOKS FAMILY AND EXPLAIN TO THEM WHAT IS EXPECTED OF THOSE FAMILY MEMBERS AND INTERESTED PERSONS FROM THAT PROSPECTIVE AND MR. ROGERS WILL EXPLAIN THE SAME TO INTERESTED MEMBERS FROM THE DEFENDANT'S FAMILY AND THAT PROSPECTIVE. BUT UNDERSTAND THAT IF WE HAVE ANY PROBLEMS I'LL HAVE TO DEAL WITH IT AND GENERALLY SPEAKING THAT'S A MATTER OF CONTEMPT SINCE I'VE ALREADY INSTRUCTED THE FAMILIES AS TO WHAT IS EXPECTED OF THEM THROUGHOUT THE COURSE OF THIS TRIAL. SO, LET'S NOT HAVE ANY OF THOSE PROBLEMS ARISE THAT I'LL NEED TO ADDRESS. LET'S JUST SIMPLY AVOID ANY POSSIBLE CONFLICT. IF YOU HAVE ANY QUESTIONS OR YOU HAVE SOME DIFFICULTY, YOU CAN EITHER TALK WITH THE SOLICITOR OR TALK WITH MR. ROGERS DEPENDING UPON YOUR PROSPECTIVE BUT LET THEM DEAL WITH IT AND ADDRESS IT TO THE COURT SHOULD ANY PROBLEM ARISE, BUT IF I NEED TO ADDRESS IT I WILL, BUT BE CERTAIN THAT I'LL HAVE TO DEAL WITH IT FROM A DIFFERENT PROSPECTIVE THAN TAKING ADVICE FROM YOUR LAWYERS OR LAWYERS REPRESENTING YOUR INTEREST BE CONCERNED.

ALL RIGHT. ANY OTHER MATTERS THAT WE NEED TO

ADDRESS BEFORE WE HAVE THE JURY BROUGHT IN?

MR. McMAHON: NOTHING FROM THE STATE, YOUR HONOR.

MR. ROGERS: NOTHING FROM THE DEFENDANT.

THE COURT: LET ME ALSO POINT OUT JUST FOR THE BENEFIT OF THOSE INTERESTED PERSONS SPECTATING, IF YOU HAVE AN INTEREST EITHER FROM A DEFENDANT'S PROSPECTIVE OR THE STATE'S PROSPECTIVE, DURING THE COURSE OF THE TRIAL WE DON'T WANT TO HAVE ANY OUTBURSTS, WE DON'T WANT TO HAVE ANY EMOTIONAL DISPLAYS, WE DON'T WANT TO HAVE ANY TYPE OF CONDUCT THAT WILL DISTRACT FROM THIS JURY'S FUNCTION AND DUTY AND THAT IS TO BE ABLE TO RENDER A FAIR AND JUST VERDICT BASED SOLELY UPON THE EVIDENCE RECEIVED. IF YOU HAVE ANY TYPE OF OUTBURST OR DISPLAY OF EMOTIONS, OBVIOUSLY THAT DETRACTS FROM THE JURY'S ABILITY TO CONCENTRATE ON WHAT THEY HAVE TO DO HERE. SO, I'M GOING TO ASK THAT SIMPLY IF YOU CAN'T CONTROL YOUR EMOTIONS OR YOU CAN'T CONTROL YOURSELF IN THAT RESPECT JUST SIMPLY PLEASE REMOVE YOURSELF FROM THE COURTROOM. IS THERE ANYONE THAT DOES NOT UNDERSTAND THAT REQUIREMENT? (NO RESPONSE) OKAY. BRING THE JURY IN, PLEASE SIR.

(JURY RETURNS TO THE JURY BOX AT 3;12 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

INTRODUCTORY REMARKS BY THE COURT

THE COURT: THANK YOU, SIR. GOOD AFTERNOON, LADIES AND GENTLEMEN. I APOLOGIZE IN THE DELAY IN HAVING YOU BROUGHT IN BUT FROM TIME TO TIME THERE WILL BE MATTERS THAT I'LL NEED TO ADDRESS AND I TRY TO ANTICIPATE THE LENGTH OF THOSE MATTERS AND SOMETIMES I'M NOT GOOD AT ESTIMATING THOSE AND SOMETIMES IT'S NOT EVEN POSSIBLE TO ACTUALLY BE SUCCESSFUL IN ESTIMATING THE EXACT AMOUNT OF TIME THAT MIGHT BE NECESSARY SO PLEASE BE PATIENT AND UNDERSTANDING IN THAT REGARD. I WILL TRY NOT TO IMPOSE UPON YOUR TIME ANY MORE THAN IS ABSOLUTELY NECESSARY IN ORDER FOR ME TO CARRY OUT MY DUTIES AND OBLIGATIONS AND I, OF COURSE, HAVE DUTIES AND OBLIGATIONS IN THE CASE JUST AS YOU DO AS JURORS SELECTED FOR THAT PURPOSE. NOW PRIOR TO LUNCH YOU WERE SWORN AND, OF COURSE, AS YOU ARE AWARE YOU HAVE BEEN SELECTED TO PARTICIPATE IN THE TRIAL OF THE CASE OF THE STATE VERSUS TREY GARNER. AS PARTICIPANTS IN THAT CASE IT'S GOING TO BE YOUR EXCLUSIVE DUTY TO DETERMINE WHAT THE FACTS ARE. YOU DO THAT THROUGH YOUR OWN EXAMINATION AND YOUR OWN EVALUATION OF ALL OF THE TESTIMONY AND OTHER EVIDENCE RECEIVED DURING THE COURSE OF THIS TRIAL. AND AT THE CONCLUSION OF THIS TRIAL YOU ARE GOING TO BE ASKED TO GO BACK INTO THE JURY ROOM AND TO BEGIN DELIBERATIONS. BY THAT

TIME YOU WILL HAVE RECEIVED ALL OF THE TESTIMONY AND ALL OF THE EVIDENCE TO BE CONSIDERED IN THE CASE. YOU WILL HAVE ALSO RECEIVED MY INSTRUCTION OR EXPLANATION AS TO THE LAW THAT'S APPLICABLE AND THEN YOU'LL SIMPLY BE ASKED TO GO BACK AND BEGIN YOUR DELIBERATIONS AND THROUGH THAT PROCESS YOU WILL EXAMINE ALL OF THAT EVIDENCE. YOU WILL DECIDE THE FACTS IN THE CASE. YOU WILL THEN APPLY THE LAW AS I WILL HAVE PROVIDED IT TO YOU AT ITS CONCLUSION AND THEN YOU'LL BE SIMPLY ASKED TO ARRIVE AT A DECISION OR A VERDICT. AND A VERDICT OF THE JURY IS SIMPLY A DECISION THAT IS FAIR AND JUST BASED SOLELY UPON THE EVIDENCE RECEIVED DURING THE COURSE OF THE TRIAL AND THE LAW THAT IS APPLICABLE TO THAT EVIDENCE AS I WILL PROVIDE IT.

NOW, AS I TOLD YOU PRIOR TO YOUR SELECTION, THIS IS A CRIMINAL CASE. THE DEFENDANT IS CHARGED WITH A CRIME. IN FACT, THE DEFENDANT IN THIS CASE IS CHARGED WITH THREE SEPARATE OFFENSES. THOSE THREE OFFENSES ARE THE OFFENSE OF MURDER, THE OFFENSE OF ATTEMPTED ARMED ROBBERY AND THE OFFENSE OF CONSPIRACY TO COMMIT ARMED ROBBERY. THE ALLEGATIONS THAT SET FORTH THOSE SEPARATE CHARGES ARE CONTAINED IN THREE SEPARATE INDICTMENTS. THERE IS A SEPARATE INDICTMENT AS TO EACH OF THE SEPARATE CHARGES. NOW, WHILE ALL

THESE ALLEGATIONS MAY BE ALLEGED TO HAVE ARISEN OUT OF ONE PARTICULAR EVENT THAT THE STATE ALLEGES OCCURRED BACK IN OCTOBER, SPECIFICALLY ON THE 27TH OF 1996, THEY ARE THREE SEPARATE AND DISTINCT CHARGES AND YOU WILL BE CALLED UPON AT THE CONCLUSION OF THIS TRIAL TO CONSIDER THE EVIDENCE THAT RELATES TO EACH, TO CONSIDER THE LAW THAT RELATES TO EACH AND TO DECIDE A SEPARATE AND DISTINCT VERDICT AS RELATES TO EACH OF THE INDICTMENTS DEPENDING UPON YOUR VIEW OF THE EVIDENCE AND YOUR APPLICATION OF THE LAW TO THE FACTS AS YOU DETERMINE THOSE FACTS TO BE.

NOW, AS I SAY THESE ARE CRIMINAL CASES AND CRIMINAL CASES WHICH ARE BROUGHT INTO THIS COURT ARE BROUGHT BY WAY OF THESE INDICTMENTS. THE INDICTMENTS THEMSELVES ARE NOT EVIDENCE IN THE CASE AND YOU WILL NOT CONSIDER THESE INDICTMENTS AS BEING ANY EVIDENCE AGAINST THIS DEFENDANT. THE INDICTMENTS ARE SIMPLY THE LEGAL DOCUMENTS BY WHICH A PERSON IS BROUGHT INTO THIS COURT AND IS FORMALLY PUT ON NOTICE AS TO WHAT THE STATE ALLEGES THAT THEY HAVE DONE BY WAY OF A CRIMINAL OFFENSE.

NOW, AS TO EACH OF THE CHARGES SET FORTH IN EACH OF THESE INDICTMENTS THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THAT PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN OF PROVING ALL OF THE

ALLEGATIONS SET FORTH IN THE INDICTMENT, THE BURDEN OF PROVING ALL OF THE ESSENTIAL ELEMENTS OF EACH OF THE CRIMES THAT THE STATE ALLEGES THIS DEFENDANT HAS COMMITTED AND, THEREFORE, THE BURDEN IS UPON THE STATE TO ESTABLISH THE GUILT OF THE DEFENDANT TO YOUR SATISFACTION BY EVIDENCE WHICH CONVINCES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. UNDER THE CONSTITUTION AND THE LAWS OF THIS STATE AS WELL AS OF THE UNITED STATES, EVERY PERSON WHO IS CHARGED WITH THE COMMISSION OF A CRIME IS PRESUMED TO BE INNOCENT. THE PRESUMPTION OF INNOCENCE REMAINS WITH EVERY DEFENDANT AND IT REMAINS WITH THIS DEFENDANT FROM THE MOMENT OF HIS ARREST, THROUGHOUT THE COURSE OF THE CRIMINAL PROCESS AND EVEN THROUGHOUT THE COURSE OF THIS TRIAL. THAT PRESUMPTION OF INNOCENCE WILL REMAIN WITH MR. GARNER EVEN WHEN YOU GO BACK INTO YOUR JURY ROOM TO BEGIN YOUR DELIBERATIONS IN THE CASE AND IT WILL STILL REMAIN WITH HIM THERE AND ALWAYS UNLESS YOU TWELVE JURORS DETERMINE THAT HE IS NO LONGER ENTITLED TO THAT PRESUMPTION OF INNOCENCE; THAT IS, BASED UPON YOUR OWN EXAMINATION OF THE EVIDENCE AND YOUR OWN EVALUATION OF ALL OF THE TESTIMONY AND YOUR APPLICATION OF THE LAW TO THE FACTS AS YOU DETERMINE THEM TO BE YOU TWELVE JURORS DETERMINE THAT HE HAS BEEN PROVEN GUILTY OF THE

CHARGE OR CHARGES SET FORTH IN THE INDICTMENT.

NOW, IT'S YOUR DUTY AND PURPOSE AS JURORS SELECTED IN THIS CASE TO LISTEN CAREFULLY THROUGHOUT THE COURSE OF THE TRIAL TO ALL OF THE TESTIMONY AND TO CONSIDER ANY OTHER EVIDENCE THAT MIGHT BE RECEIVED DURING THE COURSE OF THIS TRIAL. IT'S IMPORTANT THAT YOU DO THAT BECAUSE AT ITS CONCLUSION, AS I'VE STATED, YOU ARE GOING TO DETERMINE WHAT YOU BELIEVE THE TRUE FACTS TO BE AS THEY RELATE TO THIS PARTICULAR CASE. AND IN DECIDING THOSE FACTS YOU WILL APPLY THE LAW IN ORDER TO ARRIVE AT YOUR DECISION IN THE CASE.

NOW, THE WAY THE TRIAL WILL PROCEED IS THAT SHORTLY THE LAWYERS WILL STAND BEFORE YOU AND THEY WILL MAKE WHAT ARE CALLED OPENING STATEMENTS. THOSE OPENING STATEMENTS ARE NOT IN ANY WAY TO PROVIDE YOU WITH EVIDENCE THAT YOU WILL CONSIDER IN THE CASE IN ORDER TO ARRIVE AT YOUR DETERMINATION OF FACT. THE ONLY EVIDENCE THAT YOU WILL CONSIDER IN ARRIVING AT YOUR DETERMINATION OF FACT IS EVIDENCE WHICH IS RECEIVED DURING THE COURSE OF THE TRIAL EITHER BY WAY OF A WITNESS THAT WILL BE TESTIFYING FROM THAT WITNESS STAND BEFORE YOU OR PERHAPS BY THE INTRODUCTION OF SOME OTHER TYPE OF AN EXHIBIT, WHETHER IT BE A PHOTOGRAPH OR A DOCUMENT OR SOME

OTHER TYPE OF PHYSICAL EXHIBIT. THAT'S THE EVIDENCE THAT YOU WILL CONSIDER IN ARRIVING AT YOUR VERDICT IN THE CASE. BUT YOU SHOULD LISTEN CAREFULLY TO WHAT THE LAWYERS TELL YOU IN THOSE OPENING STATEMENTS BECAUSE THOSE OPENING STATEMENTS WILL SERVE TO PROVIDE YOU WITH A BASIC UNDERSTANDING AS TO WHAT THIS CASE IS ABOUT SO THAT YOU'LL HAVE SOME CONTEXT IN WHICH TO PLACE THE EVIDENCE THAT WE WILL BE RECEIVING SHORTLY THEREAFTER. ONCE THE OPENING STATEMENTS HAVE BEEN CONCLUDED, WE WILL BEGIN RECEIVING EVIDENCE. THE STATE HAS THE BURDEN OF PROOF IN THIS CASE. THE BURDEN IS UPON THE STATE TO ESTABLISH THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. THE STATE WILL GO FORWARD IN THEIR PRESENTATION OF PROOF BY WAY OF WITNESSES TESTIMONY AND OTHERWISE. ONCE THE STATE HAS CONCLUDED IN THEIR PRESENTATION, WE WILL THEN RECEIVE ANY EVIDENCE THAT THE DEFENDANT WISHES TO OFFER IN THE TRIAL OF THE CASE. KEEP IN MIND AS I HAVE STATED THE BURDEN IS NOT UPON THE DEFENDANT TO PROVE ANYTHING. THE BURDEN IS UPON THE STATE TO PROVE HIS GUILT AND, THEREFORE, THE DEFENDANT MAY CHOOSE NOT TO TESTIFY IN THE TRIAL OF THE CASE OR MAY CHOOSE NOT TO OFFER ANY OTHER TYPE OF EVIDENCE IN THE CASE. BOTH SIDES WILL, HOWEVER, BE AFFORDED AN OPPORTUNITY TO PRESENT EVIDENCE AND

ONCE ALL OF THAT EVIDENCE HAS BEEN RECEIVED WE WILL THEN PROCEED TO THAT STAGE OF THE TRIAL WHERE THE LAWYERS AGAIN WILL MAKE STATEMENTS BEFORE YOU. THOSE ARE CALLED FINAL ARGUMENTS OR FINAL SUMMATIONS. NOW, IT'S AT THAT STAGE OF THE TRIAL THAT THE LAWYERS WILL BE DISCUSSING WITH YOU THE EVIDENCE THAT YOU HAVE SEEN OR HEARD DURING THE COURSE OF THE TRIAL AND IT'S THROUGH THAT DISCUSSION OF EVIDENCE THAT EACH LAWYER WILL BE TRYING TO PERSUADE YOU THAT YOU SHOULD ARRIVE AT A PARTICULAR VERDICT IN THE CASE OR THAT THE EVIDENCE SUPPORTS A PARTICULAR TYPE OF VERDICT. OBVIOUSLY, THAT VERDICT FORM WOULD DEPEND LARGELY UPON THE EVIDENCE IN THE CASE AND ALSO THE ARGUMENTS TO BE MADE BY THE LAWYERS AND FROM WHICH PROSPECTIVE THEY ARE ARGUING THE CASE BEFORE YOU. ONCE THE LAWYERS HAVE CONCLUDED THEIR FINAL SUMMATIONS OR FINAL ARGUMENTS, I WILL THEN GIVE YOU THE INSTRUCTION OR EXPLANATION AS TO THE LAW. YOU WILL THEN GO BACK INTO THE JURY ROOM AND BEGIN YOUR DELIBERATIONS AND THROUGH THAT PROCESS YOU WILL EXAMINE ALL OF THE EVIDENCE, YOU WILL EVALUATE THE CREDIBILITY OF THE WITNESSES. YOU WILL DETERMINE THE FACTS, YOU WILL APPLY THE LAW AND YOU WILL ARRIVE AT A VERDICT OR DECISION THAT IS FAIR AND JUST TO BOTH THE STATE AND TO THE DEFENDANT BASED UPON THE EVIDENCE RECEIVED AND

THE LAW APPLICABLE TO THAT EVIDENCE.

ALL THAT WE ASK FOR YOU TO DO IS PAY CAREFUL ATTENTION THROUGHOUT THE COURSE OF THE TRIAL. DO NOT BEGIN MAKING UP YOUR MINDS OR FORMULATING YOUR OPINIONS AS TO WHAT YOU BELIEVE THE ULTIMATE VERDICT SHOULD BE UNTIL ALL OF THE EVIDENCE HAS BEEN RECEIVED AND UNTIL YOU HAVE BEEN INSTRUCTED AS TO THE LAW. IT'S ONLY AFTER THAT THAT YOU ARE PERMITTED TO ENGAGE IN THOSE DELIBERATIONS AND THAT AS I HAVE STATED IS THE PROCESS WHICH IS DESIGNED FOR YOU TWELVE JURORS TO SHARE YOUR IDEAS, YOUR VIEWS AND YOUR OPINIONS AS TO THE EVIDENCE AND TO ARRIVE AT A UNANIMOUS CONCLUSION OR DECISION. SO, PLEASE KEEP AN OPEN MIND THROUGHOUT THE COURSE OF THE TRIAL. DON'T BEGIN MAKING UP YOUR MINDS AS TO WHAT YOU BELIEVE THE APPROPRIATE VERDICT SHOULD BE UNTIL YOU'VE HAD THE BENEFIT OF ALL OF THE TESTIMONY AND ALL OF THE EVIDENCE AND THE INSTRUCTION AS TO THE LAW AND YOU HAVE BEEN THEN ASKED TO BEGIN WITH YOUR DELIBERATIONS. SO, LET ME THANK YOU IN ADVANCE FOR YOUR CAREFUL ATTENTION. PLEASE GIVE THE LAWYERS YOUR ATTENTION NOW AS THEY GIVE YOU THEIR OPENING STATEMENTS. SOLICITOR.

MR. McMAHON: MAY IT PLEASE THE COURT. MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, SUNDAY,

OCTOBER 27TH OF 1996 BEGAN FOR MR. JOE BROOKS LIKE MANY, MANY OTHER SUNDAYS DURING THE COURSE OF HIS LIFE. MR. BROOKS RAN A STORE, CONVENIENCE TYPE, GENERAL TYPE STORE IN THE HOPKINS COMMUNITY OF RICHLAND COUNTY FOR SOME TWENTY YEARS THERE ON WHAT IS KNOWN AS CABIN CREEK ROAD. AND ON SUNDAY HE WOULD OPEN UP EARLY. IT'S ALMOST KIND OF LIKE AN ANCHOR IN THAT -- ONE OF THE ANCHORS AT LEAST IN THAT COMMUNITY OF HOPKINS. AND HE WOULD OPEN EARLY ON SUNDAY MORNINGS AND STAY OPEN FOR SEVERAL HOURS AND THEN WOULD CLOSE AND HE'D COME TO CHURCH IN COLUMBIA AT GUNTER'S CHAPEL AND THEN AFTER CHURCH MAKE HIS TRIP BACK TO HOPKINS AND STOP AT VARIOUS PLACES AND DO SOME BUYING ON THE WAY BACK FOR THE WEEK AND THEN GO AND REOPEN HIS STORE ON MID AFTERNOON ON SUNDAYS. THREE O'CLOCK, THREE-THIRTY, FOUR O'CLOCK, SOMETHING LIKE THAT. AND ON THIS PARTICULAR SUNDAY ONE OF HIS WORKERS, A GENTLEMAN NAMED THEODORE -- I CALL HIM THEO -- BUT THEODORE MARSHALL HAD ACCOMPANIED HIM TO CHURCH THAT DAY AND HAD GONE WITH HIM ON HIS ROUNDS HEADED BACK TO HOPKINS AND WAS THERE THAT EVENING ON THE EVENING OF SUNDAY, THE 27TH. NORMALLY, MR. BROOKS WOULD COUNT MONEY, THE RECEIPTS FOR HIS STORE, ON SUNDAY EVENING AND HIS DAUGHTER, MICHELLE -- THIS LADY, THE FIRST LADY UP THERE THAT JUST KIND OF WAVED

HER HAND AT YOU, THAT'S HIS DAUGHTER, MICHELLE DAVIS, WHO WORKED AT THE TIME FOR THE STATE, BUT SHE WOULD NORMALLY GO DOWN THERE ON SUNDAYS AND HELP HER DADDY COUNT THE RECEIPTS AND THEN HE WOULD MAKE HIS WEEKLY DEPOSIT THE NEXT DAY ON MONDAY. AND SHE HAD TALKED WITH HIM THAT DAY AND HAD NOT GONE DOWN THIS PARTICULAR SUNDAY. THIS LAST SUNDAY, THE 27TH OF OCTOBER, '96, THE LAST SUNDAY OF MR. BROOKS' LIFE.

NOW, LADIES AND GENTLEMEN, WHAT TRANSPIRED THAT LATE AFTERNOON IS PART OF WHY WE ARE HERE. BUT AS HIS HONOR SAID THERE'S THREE SEPARATE INDICTMENTS AND TO GET THE FULL PICTURE YOU'VE GOT TO GO BACK A WEEK OR SO TO THAT CRIMINAL CONSPIRACY INDICTMENT. A CRIMINAL CONSPIRACY IS TWO OR MORE PEOPLE, AND HIS HONOR WILL EXPLAIN TO YOU IN GREAT DETAIL THE LAW OF SOUTH CAROLINA OF THE VARIOUS SUBSTANTIVE ELEMENTS OF CRIMINAL CONSPIRACY, ATTEMPTED ARMED ROBBERY AND MURDER. BUT THAT CONSPIRACY IS A PLAN BY TWO OR MORE PEOPLE TO COMMIT AN UNLAWFUL ACT. AND WHAT THE STATE ALLEGES HERE IS PRIOR TO THE 27TH THREE PEOPLE MINIMUM, THREE PEOPLE, JERMAINE McLEMORE WILL BE ONE OF THOSE THREE, DAYON LEMON WILL BE TWO OF THOSE THREE AND THREE OF THOSE THREE WILL BE TREY GARNER. THEY CONSPIRED TO ROB JOE BROOKS. AND WHY THEY DID THAT WAS BECAUSE TREY GARNER KNEW WHEN HE COUNTED THE

MONEY BECAUSE MICHELLE HAD COUNTED IT OUT IN THE OPEN THE SUNDAY BEFORE ON THE 20TH OF OCTOBER. AND HE KNEW. HE THOUGHT IT WOULD BE EASY. TREY GARNER. HE THOUGHT THAT. HE CONSPIRED WITH THESE OTHER TWO. NOW, IT'S NOT BECAUSE I SAY. JUST LIKE HIS HONOR SAID, WHAT I SAY I HOPE TO THINK IT'S IMPORTANT JUST LIKE WHAT MR. ROGERS SAYS BUT YOU'LL MAKE YOUR DECISION BASED ON THE EVIDENCE AND TESTIMONY PRESENTED BEFORE YOU FROM WITNESSES TESTIFYING UNDER OATH OBVIOUSLY. BUT THE CONSPIRACY IS THE PLAN AND THE SCHEMING AND THE CONVERSING AND THE TALKING BETWEEN DAYON LEMON, JERMAINE McLEMORE AND TREY GARNER. AND THE PLAN WAS WITH A GUN, ONE WAS GONNA BE THE LOOKOUT, ONE WAS GONNA BE THE GET-AWAY, ONE WAS GOING TO GO IN WITH THE GUN TO ROB MR. BROOKS, TO TAKE THAT WEEK'S PROCEEDS. THAT WAS THE PLAN. AND ON THAT SUNDAY IT WENT AS MR. GARNER AND THE OTHERS PLANNED. THEY WENT THERE IN JERMAINE McLEMORE'S AUTOMOBILE AND MR. GARNER WENT IN, PAID FOR SOME GAS FOR THAT CAR, SCOPED IT OUT SO TO SPEAK. HAD GAVE DAYON LEMON THE GUN TO USE, A NINE MILLIMETER. DAYON IS OUT IN THE CAR, JERMAINE IS OUT THERE PUMPING THE GAS. HE HAD GONE IN THE STORE, TOO. AND WHEN TREY GARNER GOT BACK IN THE CAR HE TALKED WITH DAYON AND SAID TOO MANY PEOPLE, WAIT A FEW MINUTES, WAIT BEHIND

THAT BUILDING AND HE GOES AND GETS BEHIND ANOTHER BUILDING AND LIES IN WAIT. DAYON LEMON. REMEMBER THAT NAME, THAT'S IMPORTANT. JERMAINE McLEMORE, THAT'S IMPORTANT. AND TREY GARNER. AND AFTER SOME PEOPLE HAD LEFT, SOME OTHER PEOPLE THAT WILL TESTIFY BEFORE YOU, SOME OTHER CUSTOMERS THAT WERE IN THAT STORE THAT HAD TO HAVE LEFT JUST MINUTES BEFORE THE HOMICIDE OF MR. BROOKS, DAYON LEMON WENT IN THERE WITH A NINE MILLIMETER SEMIAUTOMATIC PISTOL PROVIDED TO HIM BY TREY GARNER AND SHOT AND KILLED JOE BROOKS. SHOT HIM AT LEAST TWICE, ONCE IN HIS LEFT CHEST WHICH WAS FATAL WHICH DEVASTATED BOTH OF HIS LUNGS AND EXITED HIS BACK, AND ONCE RIGHT IN HIS FACE AND HIS NOSE OUT OF HIS JAW AND INTO HIS RIGHT CHEST. NONE FATAL. BUT THAT ONE IN THE LEFT CHEST FATAL. DAYON LEMON DID THAT. AND WHILE DAYON WAS IN THERE DOING THAT THEO -- REMEMBER THEO MARSHALL I TOLD YOU ABOUT -- HE WAS IN THERE. HE SAW -- HE CAN'T IDENTIFY MR. LEMON BUT HE SAW THE ARMED ROBBER COME IN CAMOUFLAGED AS HE WAS AND MR. MARSHALL WAS ABLE TO FLEE THE SCENE OUT THE BACK DOOR. AND MR. BROOKS LAY DYING AND ULTIMATELY DIED AS A RESULT OF THOSE INJURIES. DAYON LEMON THEN RAN OUT OF THAT STORE DOWN CABIN CREEK AND MET RIGHT BACK UP WITH HIS CO-CONSPIRATORS, JERMAINE McLEMORE AND TREY GARNER.

THE STATE HAS THE BURDEN OF PROVING THIS TO YOU BEYOND A REASONABLE DOUBT. YOU AS JUDGES OF THE FACTS WILL USE YOUR TALENTS, YOUR ABILITIES, YOUR EDUCATIONAL LEVELS, YOUR WORK HISTORIES, YOUR EXPERIENCES, FOCUS AND BRING THEM TO BEAR ON THE WITNESSES TESTIFYING UNDER OATH BASED ON WHAT YOU CAN BELIEVE, WHAT YOU CAN'T BELIEVE, WHAT IS TRUE, FALSE, SIFTING THROUGH, WHAT IS CONSISTENT AND INCONSISTENT. WHEN YOU DECIDE WHAT THE EVIDENCE IS, WHAT THE FACTS ARE, YOU COMPARE THE FACTS AS ONLY YOU AS A JURY AND JURORS DECIDE THE FACTS ARE TO THE STANDARD OF THE LAW AS HIS HONOR TELLS YOU THE LAW IS. YOU COMPARE YOUR FACTS TO THE STANDARD OF THE LAW AND YOU RETURN A VERDICT THAT SPEAKS THE TRUTH. NOTHING MORE, NOTHING LESS. WAS THERE A CONSPIRACY BETWEEN JERMAINE McLEMORE, DAYON LEMON AND TREY GARNER? WAS THERE AN ATTEMPTED ARMED ROBBERY OF MR. BROOKS AND WAS MR. BROOKS MURDERED?

NOW, EARLIER TODAY AND YOU MAY SAY, WELL, I HAVEN'T HEARD ANYTHING ABOUT TREY GARNER, TRIGGERMAN. EARLIER TODAY IN THIS VERY COURTROOM BEFORE THIS VERY JUDGE JERMAINE McLEMORE, THE GET-AWAY CAR DRIVER PLED GUILTY TO CRIMINAL CONSPIRACY AND TO ATTEMPTED ARMED ROBBERY. HE DIDN'T GO IN THE STORE. HE STAYED, HE DROVE THE GET-AWAY CAR, HE KNEW OF THE PLAN, HE

DROPPED DAYON OFF, HE WENT IN THE STORE WITH MR. GARNER BEFOREHAND TO SCOPE IT OUT. HE PLED GUILTY TO CRIMINAL CONSPIRACY AND ATTEMPTED ARMED ROBBERY. DAYON LEMON EARLIER TODAY IN THIS VERY COURTROOM STOOD BEFORE THIS JUDGE AND PLED GUILTY TO CRIMINAL CONSPIRACY, ATTEMPTED ARMED ROBBERY AND MURDER. HE IS THE TRIGGERMAN. HIS FINGER IS THE ONE THAT PULLED THE TRIGGER TWICE TO KILL THEIR DADDY. NO QUESTION ABOUT THAT. HE CONSPIRED WITH McLEMORE AND WITH TREY GARNER. AND YOU SAY, WELL, WAIT A MINUTE THEN; WHY ARE WE HERE IF THE PERSON THAT DID THE KILLING AND THE PERSON DRIVING THE GET-AWAY CAR PLED GUILTY, WHY ARE WE HERE. IN SOUTH CAROLINA IT IS A VERY IMPORTANT, STRONG PROPOSITION OF LAW IF YOU ARE PRESENT AIDING AND ABETTING YOU ARE AS GUILTY AS THE PERSON THAT STRIKES THE FATAL BLOW OR THAT FIRES THE FATAL ROUND. IT IS KNOWN UNDER THE LAW AS THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL. TWO OR MORE PEOPLE MAY BE GUILTY OF ONE MURDER, OF ONE ARMED ROBBERY ALTHOUGH ONLY ONE STRUCK THE FATAL BLOW OR FIRED THE FATAL ROUND. WE ALLEGE, OUR THEORY IS IN THIS CASE, IN THIS CASE WHERE JERMAINE McLEMORE HAS PLED GUILTY TO HIS CHARGES, WHERE DAYON LEMON HAS PLED GUILTY TO HIS CHARGES -- AND THEY'LL BOTH SIT UP HERE AND TESTIFY BEFORE YOU -- YOU WILL BE ABLE TO

WEIGH AND EVALUATE THEIR CREDIBILITY AND, YES, THEY WILL ADMIT THEIR INVOLVEMENT WHAT THEY HAVE AND HAVE NOT DONE, WHAT PART THEY PLAYED IN THIS CONSPIRACY, THIS ROBBERY, IN THIS HOMICIDE AND HOW THAT BEARS UPON THE GUILT OF TREY GARNER. BUT FOR THE NINE MILLIMETER BEING PLACED IN THE HAND OF DAYON LEMON AND DAYON LEMON PULLING THE TRIGGER, I SUBMIT NONE OF US WOULD BE HERE TODAY. AND YESTERDAY, SUNDAY, MICHELLE DAVIS, WOULD HAVE BEEN DOWN THERE COUNTING MONEY WITH HER DADDY JUST LIKE EVERY OTHER SUNDAY. BUT FOR THE NINE MILLIMETER THAT TOOK MR. BROOKS' LIFE AND BUT FOR TREY GARNER PROVIDING THE PLAN, PROVIDING THE GUN, PULLING THE STRINGS, IT'S TRITE TO SAY KINGPIN, THE SETUP MAN. TREY GARNER. THE HAND OF ONE IS THE HAND OF ALL. WE HAVE NOT ALLEGED BEFORE YOU LADIES AND GENTLEMEN THAT MR. GARNER PULLED THE TRIGGER OF THE NINE MILLIMETER, BUT HE PULLED THE TRIGGER THAT CONTROLLED DAYON LEMON. AND HIS HONOR WILL EXPLAIN ALL OF THIS LAW TO YOU.

LADIES AND GENTLEMEN, I ASK THAT YOU LISTEN TO THE EVIDENCE AS HIS HONOR SAID AS IT UNFOLDS. LISTEN TO THE TESTIMONY OF ALL THE WITNESSES. AND THESE WITNESSES THAT WILL TESTIFY BEFORE YOU -- McLEMORE AND LEMON -- THEY DON'T DO THAT OUT OF SOME SENSE OF GOOD CITIZENSHIP OR CIVIC DUTY BECAUSE IF THEY HAD

THAT SENSE OF GOOD CITIZENSHIP AND CIVIC DUTY THEY WOULD NOT HAVE BEEN CHARGED, WOULD NOT HAVE COMMITTED THESE TYPES OF CRIMES. BUT IT IS OUR POSITION WITH MR. GARNER BEING THE THUGPIN SO TO SPEAK, BEING THE ONE THAT PUTS DAYON LEMON UP TO IT AND PARTICIPATES AND GOES TO THE SCENE WITH HIM IS AS GUILTY AS IF HE PULLED THE TRIGGER. THE HAND OF ONE IS THE HAND OF ALL. I ASK FOR NOTHING MORE THAN YOUR ATTENTION WHICH I KNOW YOU WILL GIVE TO ALL THE PARTIES IN THIS CASE. EVALUATE THE EVIDENCE BASED ON YOUR GOOD JUDGMENT, BASED ON YOUR COMMON SENSE THAT YOU BRING INTO THE COURTROOM INTO THE JURY BOX AND BACK INTO THE JURY ROOM WITH YOU AND REACH A VERDICT THAT SPEAKS THE TRUTH AND THAT DOES JUSTICE IN THIS CASE. THANK YOU. THANK YOU, YOUR HONOR.

MR. ROGERS: MAY IT PLEASE THE COURT, YOUR HONOR.

THE COURT: MR. ROGERS.

MR. ROGERS: MR. FOREPERSON AND MEMBERS OF THE JURY, AS YOU HEARD THIS MORNING, MY NAME IS JIMMY ROGERS AND I REPRESENT TREY GARNER WHO IS CHARGED WITH MURDER, ATTEMPTED ARMED ROBBERY AND CONSPIRACY TO COMMIT ARMED ROBBERY. NO ONE DISPUTES THAT THE DEATH OF MR. BROOKS WAS A TERRIBLE AND UNFORTUNATE INCIDENT. AND IT IS EASY TO PAINT THIS CASE WITH A

BROAD BRUSH. AND LET ME SHOW YOU HOW EASY IT IS. I'M READING FROM THE INDICTMENT, WHICH IS ONLY THE CHARGING PAPER, THE INDICTMENT FOR MURDER AGAINST TREY GARNER, THAT TREY GARNER DID IN RICHLAND COUNTY ON OR ABOUT OCTOBER 27TH, 1996, FELONIOUSLY, WILFULLY AND WITH MALICE AFORETHOUGHT KILL ONE JOE BROOKS BY MEANS OF A GUNSHOT WOUND TO THE CHEST. NOW, THAT'S THE INDICTMENT. THAT'S THE CHARGING PAPER THAT GETS US HERE. BUT YOU JUST HEARD MR. McMAHON TELL YOU THAT TREY DIDN'T DO THAT. TREY DIDN'T SHOOT MR. BROOKS. MR. BROOKS WAS KILLED BY DAYON LEMON AND DAYON LEMON STOOD IN THIS COURT THIS MORNING AND PLED GUILTY TO THAT MURDER. SO, AGAIN WITH THE HORRIBLE NATURE OF THIS CRIME, TWO PEOPLE HAVE PLED GUILTY TO IT. TWO PEOPLE HAVE SAID WE DID IT. BUT LET ME TELL YOU WHAT ELSE THOSE TWO PEOPLE HAVE SAID. THEY PUT TREY IN IT. NOW, I THINK THE EVIDENCE WILL SHOW THAT THERE ARE ONLY TWO THINGS THAT COULD HAPPEN. THEY PUT HIM IN IT BECAUSE HE WAS IN IT OR THEY PUT HIM IN IT SO THEY COULD GET SOMETHING FOR THEMSELVES.

NOW, MR. McMAHON READ THIS MORNING OR I BELIEVE HIS HONOR READ A LIST OF PROSPECTIVE WITNESSES THAT THEY MAY OR MAY NOT CALL. I THINK THE LIST WAS RATHER LENGTHY. BUT I ASK YOU TO LISTEN CAREFULLY TO ALL THOSE WITNESSES BUT LISTEN ESPECIALLY CAREFULLY

TO DAYON AND JERMAINE BECAUSE THEY, I THINK THE EVIDENCE WILL SHOW, ARE THE ONLY TWO PEOPLE THAT IMPLICATE TREY AT ALL. AND HIS HONOR WILL TELL YOU THAT YOU USE YOUR COMMON SENSE WHEN YOU ARE JUDGING THE CREDIBILITY OF WITNESSES. YOU KNOW, THE BEAUTY OF OUR JUDICIAL SYSTEM IS WE JUST DON'T BLANKETLY ACCEPT WHAT PEOPLE SAY AND THAT'S WHAT YOUR JOB IS, TO ANALYZE, TO USE YOUR COMMON SENSE, TRY TO DETERMINE IF WHAT YOU HEAR FROM THIS WITNESS STAND IS TRUE OR NOT. IF YOU BELIEVE IT'S TRUE, THEN THE STATE HAS MET ITS BURDEN OF PROOF AND AS HIS HONOR TOLD YOU TREY DOESN'T HAVE TO PROVE ANYTHING. AND OUR SYSTEM OF JUSTICE RECOGNIZES THAT A PERSON CAN'T PROVE THE NEGATIVE. TREY HAS ENTERED A PLEA OF NOT GUILTY AND BY THAT HE IS SAYING I DIDN'T DO IT, I WASN'T INVOLVED. THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT HE WAS INVOLVED IN THIS. I'LL GIVE YOU AN EXAMPLE. IF I STOOD BEFORE YOU AND SAID I WAS FORTY-FIVE YEARS OLD -- I GUESS I LOOK FORTY-FIVE -- BUT THEN TOMORROW IF WE CAME IN COURT AND I STOOD BEFORE YOU AND I SAID I WAS FORTY-SIX YEARS OLD, YOU DON'T KNOW ME, YOU WOULDN'T QUITE KNOW WHAT TO BELIEVE. I HAVE TOLD TWO DIFFERENT STORIES. THAT YOU HAVE A DOUBT ABOUT WHAT MY AGE IS AND THE ONLY WAY YOU COULD RESOLVE THAT DOUBT IS BY,

I SUBMIT TO YOU, SOME OBJECTIVE PROOF -- MY BIRTH CERTIFICATE, MY DRIVER'S LICENSE -- SOMETHING MORE THAN JUST MY WORD. THAT'S AN EXAMPLE OF JUDGING CREDIBILITY BY LOOKING FOR PROOF. IT IS UNFORTUNATE THAT MR. BROOKS WAS KILLED BUT DON'T LET THE GOVERNMENT PAINT A BROAD BRUSH. DON'T LET THE GOVERNMENT LINK TREY INTO THIS JUST BECAUSE TWO GUYS SAID HE WAS. AND YOU'LL SEE THOSE TWO GUYS. SEE THEM TESTIFY AND LEARN WHAT, IF ANYTHING, THEY HAVE TO GAIN BY THEIR TESTIMONY.

NOW, ANOTHER THING I WANT YOU TO FOCUS ON WHEN YOU ARE LISTENING TO THE TESTIMONY IS, AS MR. McMAHON CORRECTLY STATED, THIS IS A CASE OF UNDER THE STATE'S THEORY HAND OF ONE, HAND OF ALL. AND HIS HONOR WILL TELL YOU WHAT THAT MEANS MORE PRECISELY AT THE END OF THE CASE AND I AGAIN WILL ADDRESS YOU ON THAT, THE STATE'S THEORY OF THEIR CASE. BUT I ASK YOU TO REMEMBER AS YOU ARE LISTENING TO THE TESTIMONY THAT IN ORDER FOR THEM TO PROVE TREY GUILTY UNDER THE HAND OF ONE, AIDER AND ABETTER THEORY THEY HAVE TO PROVE THAT HE WAS PRESENT AND KNOWINGLY AIDING AND ABETTING. I THINK AFTER YOU HEAR ALL OF THE EVIDENCE IN THIS CASE YOU'LL HAVE A DOUBT ABOUT TREY'S INVOLVEMENT, A DOUBT THAT YOU CAN ATTACH A REASON TO AND IF THAT IS TRUE, IF THAT IS THE CASE, YOU'LL HAVE

TO RETURN A VERDICT OF NOT GUILTY. THANK YOU.

THE COURT: SOLICITOR.

MR. McMAHON: MAY IT PLEASE THE COURT, THE STATE CALLS DEPUTY RICHARDSON TO THE STAND.

MICHAEL RICHARDSON, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A MICHAEL RICHARDSON.

DIRECT EXAMINATION BY

MR. McMAHON:

Q SIR, YOU ARE EMPLOYED BY THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

A I AM.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SHERIFF'S OFFICE?

A APPROXIMATELY THREE YEARS.

Q WHAT IS YOUR CURRENT POSITION WITH THE SHERIFF'S DEPARTMENT, DEPUTY RICHARDSON?

A I'M A LINE OFFICER.

Q AND IS THAT THE POSITION YOU'VE HELD DURING THAT THREE YEAR PERIOD OF TIME?

A THAT'S CORRECT.

Q WHAT WAS YOUR OCCUPATION PRIOR TO COMING WITH OUR SHERIFF'S OFFICE?

A I WAS IN EMERGENCY MEDICAL SERVICES.
Q AND FOR WHAT PERIOD OF TIME DID YOU DO THAT?
A APPROXIMATELY FOUR AND A HALF YEARS.
Q NOW, I WANT TO DIRECT YOUR ATTENTION BACK TO OCTOBER THE 27TH OF 1996. WERE YOU ON DUTY THAT PARTICULAR DAY?
A YES, I WAS.
Q AND DO YOU RECALL WHAT YOUR SPECIFIC ASSIGNMENT WAS THAT DAY?
A IT WOULD HAVE BEEN REGULAR PATROL ON THE STREET.
Q AND ARE YOU ASSIGNED TO A PARTICULAR AREA OF THE COUNTY?
A YES, I WAS. THAT NIGHT WE WERE IN THE LOWER RICHLAND AREA.
Q AND WHAT DO Y'ALL CONSIDER -- WHAT DOES THE SHERIFF'S DEPARTMENT CONSIDER THE LOWER RICHLAND AREA OF THE COUNTY?
A BASICALLY, EVERYTHING BLUFF ROAD OUTBOUND TO THE COUNTY LINE FROM THE CITY AS WELL AS PRETTY MUCH LEESBURG FROM THE CITY OUTBOUND.
Q AND WHAT HOURS OR SHIFT WERE YOU WORKING THAT DAY?
A I BELIEVE AT THAT TIME WE WERE ON A TEN AND A HALF HOUR SHIFT SO IT WOULD HAVE STARTED LATE AFTERNOON TO EARLY MORNING HOURS.
Q NOW, DID YOU RECEIVE A CALL TO GO A PARTICULAR

LOCATION IN RICHLAND COUNTY THAT EVENING, LATE THAT AFTERNOON?

A YES.

Q AND DO YOU RECALL APPROXIMATELY WHAT TIME YOU RECEIVED THAT CALL, DEPUTY RICHARDSON?

A THIS WOULD HAVE BEEN LATE AFTERNOON, EARLY EVENING HOURS, AROUND SIX OR SO.

Q WHAT WAS THE NATURE OF THE CALL?

A I DON'T RECALL HOW IT WAS PUT OUT. I BELIEVE IT WAS A DISTURBANCE OR POSSIBLY SOME TYPE OF SHOOTING SITUATION AT THAT TIME. IT WASN'T CONFIRMED.

Q I'M SORRY I INTERRUPTED YOU.

A I'M SORRY. IT JUST WAS NOT CONFIRMED AT THAT TIME WHAT WAS GOING ON.

Q AND WHAT LOCATION WAS THE CALL?

A IT WAS ON CABIN CREEK AND I BELIEVE MINERVAVILLE ROAD INTERSECTION.

Q WERE YOU FAMILIAR WITH THAT AREA?

A SOMEWHAT, YES, SIR.

Q WERE YOU OR ANY OTHER OFFICERS ASSIGNED TO RESPOND TO THIS PARTICULAR CALL?

A YES. IT WAS MYSELF AND DEPUTY STEVENS.

Q AND I BELIEVE THIS IS DEPUTY STEVENS HERE, IS THAT CORRECT?

A THAT'S CORRECT.

LOT OF STUFF.

MR. ROGERS: YOUR HONOR, EXCUSE ME. I DON'T OBJECT TO THE INTRODUCTION OF THOSE PHOTOGRAPHS BUT I DON'T BELIEVE HE CAN TESTIFY TO ITS CONTENTS PRIOR TO THEIR BEING INTRODUCED.

MR. McMAHON: THAT'S WHAT I WAS TRYING TO AVOID --

THE COURT: GO AHEAD AND MARK THEM. HE SAYS HE HAS NO OBJECTION TO THEM SO GO AHEAD AND MARK THEM.

MR. McMAHON: ALL RIGHT.

(PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS STATE'S EXHIBITS #4 THROUGH #9)

THE COURT: YOUR HONOR, MAY THE WITNESS STEP DOWN, SIR?

THE COURT: HE MAY. BE SURE THAT YOU SPEAK LOUDLY WHEN YOU ARE AWAY FROM THE MICROPHONE SO THAT THE COURT REPORTER WILL BE CERTAIN TO TAKE DOWN YOUR TESTIMONY.

A YES, SIR.

(WITNESS LEAVES STAND)

Q (BY MR. McMAHON) REFERRING NOW TO WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER ONE, YOU ARE FAMILIAR WITH THIS DIAGRAM?

A THAT'S CORRECT.

Q NOW, COULD YOU POINT OUT IF BLUFF ROAD, HIGHWAY 48,

IS DEPICTED ON THAT PARTICULAR DIAGRAM?
A YES, SIR, IT'S RIGHT HERE.
Q NOW, THIS WOULD BE ONE OF BOLD BLUE LINES?
A THAT'S CORRECT.
Q NOW, IF YOU'RE COMING BACK TOWARDS ME IN THIS DIRECTION, WOULD YOU BE COMING INTO COLUMBIA OR AWAY FROM COLUMBIA ON 48?
A AT THIS POINT IN TIME, YOU'D BE GOING INTO COLUMBIA TOWARDS YOU.
Q TOWARDS ME?
A CORRECT.
Q AND IN THIS DIRECTION YOU WOULD BE GOING TOWARDS GADSDEN OR EASTOVER?
A COUNTY LINE, YES, SIR.
Q NOW, THIS PARTICULAR ROADWAY, ARE YOU FAMILIAR WITH WHAT ROADWAY THAT IS?
A THAT'S LOWER RICHLAND BOULEVARD.
Q NOW, IF YOU'RE COMING DOWN LOWER RICHLAND BOULEVARD IN THIS DIRECTION, WOULD YOU INTERSECT WITH BLUFF ROAD, HIGHWAY 48?
A THAT IS CORRECT.
Q AND GOING IN THE OTHER DIRECTION, WHAT MAIN ROAD WOULD YOU INTERSECT WITH?
A EVENTUALLY GARNERS FERRY AND THEN LEESBURG.
Q NOW, COULD YOU POINT OUT FOR US, PLEASE, CABIN CREEK

ROAD.
A CABIN CREEK ROAD IS RIGHT UP HERE WHERE THE STORE IS.
Q NOW, RIGHT HERE AT CABIN CREEK, THIS APPEARS TO BE CABIN CREEK AND LOWER RICHLAND BOULEVARD. IS THAT -- DEPENDING ON YOUR PROSPECTIVE, OF COURSE -- IS THAT THE BEGINNING OR THE END OF CABIN CREEK ROAD IN THIS DIRECTION?
A CORRECT.
Q IT GOES NOT CROSS LOWER RICHLAND BOULEVARD?
A NO, SIR.
Q NOW, AS YOU TRAVEL DOWN CABIN CREEK, WHAT INTERSECTION IS RIGHT HERE?
A THIS IS MINERVAVILLE ROAD AND CABIN CREEK.
Q AND WHAT BUSINESS IS LOCATED AT THAT PARTICULAR INTERSECTION?
A THAT'S JOE BROOKS' STORE.
Q WOULD YOU HAVE COME IN IN THIS DIRECTION THAT I'M NOW INDICATING DOWN CABIN CREEK?
A CORRECT. WE CAME OFF LOWER RICHLAND DOWN CABIN CREEK PULLING RIGHT INTO THE STORE.
Q JUST A COUPLE OF OTHER THINGS. MEETING HOUSE ROAD, ARE YOU FAMILIAR WITH MEETING HOUSE ROAD?
A YES, I AM.
Q DOES THAT APPEAR ON STATE'S EXHIBIT NUMBER ONE?
A I BELIEVE IT'S SOUTH IF I'M NOT MISTAKEN. YES, RIGHT

HERE, MEETING HOUSE ROAD.
Q AND CLARKSON ROAD, DOES CLARKSON ROAD APPEAR ON STATE'S EXHIBIT NUMBER ONE?
A YES, IT RUNS PARALLEL TO CABIN CREEK.
Q NOW, REFERRING NOW TO STATE'S EXHIBIT NUMBER TWO, THIS WHERE I'M INDICATING HERE, WHAT ROADWAY WOULD THAT BE, DEPUTY RICHARDSON?
A THAT'S CABIN CREEK. THAT'S WHERE WE CAME IN.
Q SO, ORIENTING STATE'S TWO TO STATE'S ONE, IS THAT CABIN CREEK I'M POINTING TO NOW?
A CORRECT.
Q AND THIS ROADWAY HERE WOULD BE?
A THAT WOULD BE LOWER RICHLAND BOULEVARD. NO, I'M SORRY. THE'S MINERVAVILLE ROAD.
Q MINERVAVILLE ROAD. AND THAT'S THE VERY INTERSECTION WHERE BROOKS' STORE IS LOCATED, CORRECT?
A CORRECT.
Q NOW, WHERE IS THE FRONT OF BROOKS' STORE?
A YOU'RE FACING THE FRONT OFF OF CABIN CREEK ROAD.
Q SO, WHAT DIRECTION WOULD YOU HAVE ARRIVED FROM?
A WE WOULD HAVE COME IN TOWARDS MINERVAVILLE PULLING RIGHT INTO THE PARKING LOT.
Q NOW, I WANT TO SHOW YOU THIS PHOTOGRAPH, STATE'S EXHIBIT NUMBER FOUR. WHAT DOES THAT DEPICT, SIR?
A THAT'S THE FRONT DOOR TO THE STORE.

Q NOW, IT APPEARS ON THIS DIAGRAM, STATE'S EXHIBIT NUMBER TWO, IT'S GOT A FRONT DOOR HERE AND THEN OVER HERE A DOOR, A DOOR. WHICH OF THESE DOORS IS THIS ONE DEPICTED?
A THAT'S RIGHT HERE.
Q THIS ONE RIGHT HERE?
A CORRECT.
Q AND AS YOU GO INTO THIS DOOR ON THE RIGHT SIDE AS YOU GO IN, WHAT'S IN THAT AREA?
A I BELIEVE IT'S A COUNTER.
Q THE COUNTER.

MR. McMAHON: YOUR HONOR, MAY I HAND THIS TO THE JURY FOREMAN?

THE COURT: YOU MAY.

MR. McMAHON: THANK YOU.

Q (BY MR. McMAHON) NOW, LET'S TALK A BIT MORE ABOUT THE OUTSIDE. WHAT IS THIS OVER IN THIS AREA, SIR?
A I CAN'T SAY WHAT THAT WAS. IT APPEARED TO BE LIKE A STORAGE AREA. WE NEVER ACTUALLY ENTERED THAT BUILDING BUT IT LOOKS LIKE A SMALL SHED OF SOME SORT.
Q AND THEN OUT IN HERE?
A JUST THE FUEL PUMPS.
Q AND OVER IN THIS AREA?
A I CAN'T REALLY TESTIFY TO WHAT I SAW WHEN WE ORIGINALLY PULLED UP. THERE WERE A LOT OF PEOPLE

STANDING HERE. WE NEVER ACTUALLY WENT OVER INTO THIS AREA. WE CORDONED OFF THE AREA. SO, I COULDN'T TELL YOU WHAT WAS OVER THERE.

Q NOW, WHEN YOU SAY YOU CORDONED OFF THE AREA, AS A UNIFORMED OFFICER RESPONDING TO A CALL SUCH AS THIS, WHAT WOULD YOUR FIRST RESPONSIBILITY BE?

A WELL, WE WANT TO RENDER AID TO ANY TYPE OF VICTIM. WE WANT TO SECURE THE SCENE, TAKE STATEMENTS IMMEDIATELY FROM ANY WITNESS. OBVIOUSLY, CALL FOR ASSISTANCE IF NEEDED, INVESTIGATORS, LAB UNITS, THAT TYPE SITUATION.

Q WILL YOU DESCRIBE, PLEASE, DEPUTY RICHARDSON, THE SCENE UPON YOUR ARRIVAL? NOW, I'M NOT ASKING YOU GENERALLY THE LAYOUT. NUMBERS OF PEOPLE PRESENT, VEHICLES, WHAT YOU OBSERVED WHEN YOU FIRST ARRIVED.

A WHEN I PULLED IN, I PULLED TO THE LEFT SIDE OF THE GAS PUMPS. I BELIEVE E.M.S. HAD THEIR AMBULANCE PARKED SOMEWHERE IN THIS AREA. THEY HAD PULLED IN JUST PRIOR TO US. DEPUTY STEVENS WAS ALSO THERE BASICALLY AT THE SAME TIME I PULLED IN. THERE WAS ONE PATROL CAR ALREADY ON THE SCENE AND I WOULD SAY THERE WERE AT THAT POINT IN TIME ANYWHERE FROM TEN TO TWENTY PEOPLE SOMEWHERE OUT HERE IN THE PARKING LOT. AND WITHIN JUST A MATTER OF MINUTES NUMEROUS CARS STARTED PULLING OFF ON THE SIDE OF THE ROADWAY AND

THEN INTO THE PARKING LOT. SO, WE TAPED OFF FROM THIS AREA OVER HERE, DOWN AND AROUND TO SECURE THE SCENE.

Q NOW, WHEN YOU SAY TAPED OFF, WHAT ARE YOU REFERRING TO?

A PARAMETER TAPE OR CAUTION TAPE, SHERIFF LINE.

Q AND ONCE YOU DO THAT, WHAT IS THE PURPOSE OF DOING THAT?

A TO KEEP ANYTHING OUT OF THE SCENE, DON'T WANT IT TO BECOME CONTAMINATED.

Q AND WHAT AREA DID YOU HAVE CORDONED OFF?

A IF I RECALL, WE STARTED OVER HERE AT THE CORNER OF THE STORE. WE ACTUALLY TIED IT OFF TO A PATROL CAR, AROUND THE FUEL PUMPS AND SOMEWHERE EITHER TO THIS BUILDING OR THIS BUILDING, ONE OF THE TWO. IT PROTECTED THE ENTIRE ENTRY WAY AND THEN THE SURFACE AREA OVER HERE.

Q DID YOU ALSO HAVE THE OPPORTUNITY TO GO INTO THE INTERIOR OF BROOKS' STORE?

A YES.

Q AND REFERRING YOU NOW TO STATE'S EXHIBIT NUMBER THREE, YOU ARE FAMILIAR WITH THIS DIAGRAM?

A YES.

Q NOW, WHERE WOULD THE FRONT DOOR BE ON STATE'S EXHIBIT NUMBER THREE?

A RIGHT HERE NEXT TO THE COUNTER.
Q SO, STATE'S EXHIBIT NUMBER THREE IS BASICALLY THE SAME ORIENTATION AS STATE'S TWO, CORRECT?
A CORRECT.
Q AND AGAIN STATE'S EXHIBIT NUMBER FOUR, THIS PHOTOGRAPH?
A THAT WOULD BE THIS DOOR RIGHT HERE.
Q NOW, I WANT TO ASK YOU ON STATE'S EXHIBIT NUMBER FIVE, YOU'RE FAMILIAR WITH THIS PHOTOGRAPH?
A THAT'S AFTER YOU WALK THROUGH THE DOOR.
Q COULD YOU POINT OUT, ORIENT THE JURY ON STATE'S EXHIBIT NUMBER THREE WHERE THIS AREA WOULD BE HERE?
A I BELIEVE THAT'S GOING TO BE RIGHT HERE.
Q AND LET ME ASK YOU IN STATE'S FOUR, CAN YOU SEE THIS SIGN HERE, SIR?
A NO SMOKING SIGN?
Q YES, SIR. IS THAT THE SAME AS THE SIGN IN STATE'S FIVE?
A YEAH, NEXT TO THE COKE MACHINE.
Q SO, THAT'S JUST GOING ON INTO THE INTERIOR OF THE BUILDING, CORRECT?
A CORRECT.
Q AND AS I SHOW THIS TO THE JURY POINT ON STATE'S THREE AGAIN WHERE.
A YOU'RE WALKING THROUGH THE FRONT DOOR PARALLEL TO

THIS AND YOU'RE LOOKING BACK HERE. HERE'S THE COKE MACHINE LABELED RIGHT HERE.

Q I'M GOING TO FLIP TO THAT COKE MACHINE. THAT'S THE SAME COKE MACHINE IN STATE'S FOUR AND STATE'S FIVE?

A IT APPEARS TO BE, YES, SIR.

Q AND WHERE IS THAT ON THE DIAGRAM APPROXIMATELY?

A IT'S NEAR THE BACK OF THE STORE.

Q I REALIZE THAT'S NOT TO SCALE. NOW, COULD YOU DESCRIBE THAT COUNTER AREA JUST GENERALLY FOR US? I MEAN -- BY THAT I MEAN NOT WHAT'S ON IT OR SOMETHING LIKE THAT.

A YOU'RE TALKING ABOUT THIS SIDE OR THE FRONT SIDE?

Q HOW MANY SIDES IS IT TO THE COUNTER AREA?

A WELL, AS YOU WALK IN, THERE WERE A LOT OF PRODUCTS, VARIOUS TYPE OF PRODUCTS ON THIS SHELF AND -- HE REALLY HAD PRODUCTS THROUGHOUT THE WHOLE STORE. HE HAD A LOT OF SHELVING IN THERE THAT'S NOT DEPICTED ON HERE AS MUCH BUT THERE WAS A LOT OF PRODUCT ON HERE AND THE COUNTER WAS MORE OPEN. THIS IS ACTUALLY WHERE I THINK HE DEALT WITH THE CUSTOMERS.

Q AND THIS COUNTER HERE, WOULD IT BE HIGHER OR LOWER THAN THIS COUNTER HERE?

A THIS ONE IS MUCH HIGHER.

Q THIS IS MUCH HIGHER.

A I WOULD SAY FIVE OR SIX FEET IF I HAD TO GUESS.

Q AND WHICH PART OF THE COUNTER WOULD BE THE AREA WHERE THE PROPRIETOR WOULD DEAL WITH THE CUSTOMERS?
A IT WOULD PRETTY MUCH BE RIGHT HERE.
Q AND I WANT TO SHOW YOU STATE'S EXHIBIT NUMBER SIX AND ASK YOU IF YOU CAN IDENTIFY THIS PHOTOGRAPH FOR US, PLEASE?
A THAT WOULD BE FACING THE COUNTER THIS WAY.
Q SO, THIS AREA HERE, SPECIFICALLY WHERE WOULD THIS AREA BE?
A THAT WOULD BE RIGHT HERE.
Q RIGHT HERE? AND THIS BACK PEGBOARD, APPEARS TO BE PEGBOARD --
A THAT WOULD BE THE FRONT WALL.
Q AND SO -- AND I CAN PROBABLY DO BOTH OF THESE AT THE SAME TIME. STATE'S SEVEN. WHAT IS THIS AREA HERE?
A I BELIEVE THAT'S THE SIDE WE'RE LOOKING AT HERE. THE SAME THING.
Q THE SAME THING. AS A MATTER OF FACT, THAT'S WHAT I WAS GOING TO ASK YOU, DOES THIS ITEM HERE APPEAR TO BE THE SAME AS THIS ITEM HERE?
A CORRECT. JUST ON A DIFFERENT ANGLE.
Q SO, THAT'S THE FRONT COUNTER IN MR. BROOKS' STORE?
A CORRECT.
Q AND WHAT TYPE OF MATERIAL DOES IT LOOK TO BE ON TOP OF THAT COUNTER, DEPUTY RICHARDSON?

A ON TOP OF THE COUNTER?
Q YES, SIR.
A ASPIRIN BOTTLES.
Q NOT THE VARIOUS ITEMS. I'M TALKING ABOUT THIS MATERIAL RIGHT HERE.
Q OH. IT LOOKS LIKE CARPET TO ME.
Q LOOKS LIKE THE COUNTER IS CARPETED. AND THESE PHOTOGRAPHS, ARE THEY PRETTY MUCH AS IT APPEARED?
A I WOULD SAY SO. IT WAS PRETTY CLUTTERED BACK IN BEHIND THE COUNTER BUT THE ACTUAL FRONT OF THE COUNTER WASN'T REALLY MESSED UP THAT I RECALL.
Q IS THERE ANY WAY TO GET IN AND OUT BEHIND THE COUNTER WITHOUT GOING OVER THE COUNTER FROM THIS SIDE OR THIS SIDE?
A NOT WITHOUT GOING OVER IT. NOT THAT I OBSERVED.
Q NOW, AS WE CONTINUE ORIENTING THE PHOTOGRAPHS TO STATE'S EXHIBIT NUMBER THREE, AGAIN THIS AREA HERE, COULD YOU ORIENT THIS TO STATE'S EXHIBIT NUMBER EIGHT? DO YOU SEE ANY PART OF THAT?
A YES. I BELIEVE WE ARE LOOKING THIS WAY.
Q SO, AGAIN THIS ITEM I'M POINTING TO ON EIGHT --
A THAT'S THE SAME --
Q -- IS THE SAME I POINTED TO ON SIX?
A CORRECT.
Q AND THE SAME I POINTED TO ON SEVEN, IS THAT CORRECT?

A CORRECT.
Q SO, THESE WHERE I'M POINTING TO NOW WOULD BE THESE FREEZERS OR COOLERS HERE?
A RIGHT.
Q SO, YOU'D BE LOOKING IN THIS DIRECTION?
A CORRECT.
Q NOW, AGAIN, DEPUTY RICHARDSON, DOES THIS PHOTOGRAPH ACCURATELY AND FAIRLY DEPICT THAT FRONT AREA OF BROOKS' STORE AS YOU OBSERVED IT?
A YES, SIR.
Q NOW, THERE ARE ALSO PHOTOGRAPHS TAKEN OF THE -- THIS AREA LOOKING DOWN HERE, THIS LAST LEG OF THE COUNTER SO TO SPEAK, CORRECT?
A I BELIEVE SO, YES, SIR.
Q AND WOULD YOU PICK UP STATE'S EXHIBIT NUMBER TEN FOR ME? DO YOU SEE IT OVER THERE? IT SHOULD BE TEN. RIGHT THERE, SIR.

MR. McMAHON: I'M SORRY. ONE MOMENT, PLEASE. I APOLOGIZE.

Q (BY MR. McMAHON) I'M REFERRING TO STATE'S EXHIBIT NUMBER NINE. IF YOU'D STEP BACK OVER HERE FOR ME. STATE'S NUMBER NINE, WHAT AREA WOULD THAT BE DEPICTING AS FAR AS STATE'S THREE IS CONCERNED?
A THAT WOULD BE RIGHT HERE.
Q SO, THAT WOULD BE LOOKING DOWN IN THIS DIRECTION?

A CORRECT.
Q AND THIS FREEZER HERE, WOULD THAT BE THE SAME FREEZER I'M POINTING TO IN STATE'S EIGHT?
A CORRECT. IN EIGHT YOU'RE LOOKING AT IT AND IN NINE YOU ARE PARALLELING.
Q AND DOES THIS AGAIN CLEARLY AND ACCURATELY DEPICT THE AREA OF THE FLOOR IN BROOKS' STORE AS YOU OBSERVED IT THAT EVENING?
A YES, SIR.
Q NOW, LET ME ASK YOU THIS. DO YOU SEE THIS ITEM RIGHT HERE?
A THE DOOR?
Q YES, SIR. DO YOU SEE THAT? THAT'S A DOOR?
A YES, SIR.
Q WHAT IS THAT A DOOR TO?
A I BELIEVE IT'S THE DOOR THAT GOES BACK IN BEHIND THE COUNTER.
Q WHICH IS HERE?
A CORRECT.
Q SO, THAT'S THE WAY THE PROPRIETOR OR WHOEVER WOULD GET BEHIND THE COUNTER AT BROOKS' STORE?
A THAT'S THE ONLY ENTRY POINT I NOTICED.
Q DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE AREA INSIDE THE COUNTER?
A I DIDN'T GO BACK IN BEHIND THE COUNTER. I LOOKED

OVER THE COUNTER BUT THAT WAS MY ONLY OBSERVATION TO IT.

Q WOULD YOU DESCRIBE FOR THE JURY, PLEASE, YOUR OBSERVATION WHEN YOU LOOKED OVER THE COUNTER?

A WELL, THERE WAS A LOT OF BLOOD, ITEMS IN DISARRAY. LOOKED LIKE THERE HAD POSSIBLY BEEN A STRUGGLE. EVEN SOME MONEY LAYING ON THE GROUND THAT I RECALL.

MR. ROGERS: OBJECTION TO THE SPECULATIVE NATURE OF A POSSIBLE STRUGGLE.

A WELL, THERE WERE ITEMS LAYING ALL OVER THE GROUND.

THE COURT: WELL, HE CAN TESTIFY AS TO WHAT HE OBSERVED BUT DON'T TESTIFY AS TO WHAT YOU BELIEVE IT WAS CAUSED BY.

A YES, SIR.

Q (BY MR. McMAHON) NOW, WOULD YOU POINT FOR THE JURY, PLEASE, DEPUTY RICHARDSON, THE AREAS THAT YOU OBSERVED THIS BLOOD?

A IT WAS BACK BEHIND THE COUNTER AND ALSO OVER HERE ON THE FLOOR.

Q AND WHAT AREA OR AREAS WAS IT THAT YOU OBSERVED THE DISARRAY?

A BACK IN HERE BEHIND THE COUNTER.

Q NOW, E.M.S. -- I BELIEVE YOU TESTIFIED -- LET ME ASK YOU LIKE THIS. WAS THE AMBULANCE THERE BEFORE OR AFTER YOUR ARRIVAL?

A WHEN I PULLED INTO THE PARKING LOT, IT WAS THERE.
Q AND WAS MR. BROOKS BEING ATTENDED TO UPON YOUR ARRIVAL?
A I DID NOT ENTER THE STORE IMMEDIATELY. ONCE I KNEW THE SCENE WAS SECURE AND E.M.S. WAS ALREADY INSIDE WORKING ON THEIR PATIENT, OUR FIRST PRIORITY IS TO SECURE IT AND KEEP EVERYBODY OUT ONCE THE AID HAS BEEN RENDERED, SO AT THAT POINT IN TIME THERE WAS NO NEED FOR ME TO GO IN THE STORE. I THINK I PROBABLY DIDN'T GO IN FOR ANOTHER TEN MINUTES OR SO.
Q I UNDERSTAND. THANK YOU. I'M THROUGH WITH THESE DIAGRAMS. YOU CAN RE-TAKE STAND.

(WITNESS RESUMES STAND)

Q NOW, YOU'VE MADE THESE VARIOUS OBSERVATIONS, YOU'VE SECURED THE SCENE. DID YOU NOTIFY ANY OTHER UNITS OR DIVISIONS WITHIN THE SHERIFF'S DEPARTMENT?
A I RECALL CALLING IN A COUPLE OF TIMES BUT I BELIEVE AT THAT POINT IN TIME THEY WERE ALREADY DISPATCHED. I WOULD BE SPECULATING.
Q THEY WERE WHAT?
A I BELIEVE AT THAT POINT IN TIME THE SCENE HAD ALREADY BEEN DISPATCHED BY THE PREVIOUS OFFICER WHICH WOULD HAVE BEEN THE SERGEANT ON THE SCENE.
Q AND WHAT OTHER TYPES OF UNITS WERE NOTIFIED TO RESPOND TO THE SCENE?

A LAB UNITS, INVESTIGATORS, SUPERVISORS AS NEEDED.
Q AND WILL YOU AND OTHER UNIFORM OFFICERS REMAIN AT THE SCENE UNTIL LAB UNITS, INVESTIGATORS, SUPERVISORS ARRIVE?
A I WOULD SAY THE LINE OFFICER IS PROBABLY THE LAST ONE TO LEAVE.
Q AND THAT WOULD BE BECAUSE IT'S YOUR DUTY IN KEEPING THE SCENE SECURED?
A CORRECT.
Q NOW, I BELIEVE YOU SAID YOU ALSO WOULD ATTEMPT TO IDENTIFY ANY INDIVIDUALS THAT MAY HAVE BEEN WITNESSES?
A ONE OF OUR PRIORITIES ONCE WE GAIN A SCENE AND SECURE IT AND RENDER AID IS TO MAKE SURE THAT IF THERE ARE ANY WITNESSES TO PULL THEM ASIDE AND GATHER NAMES, INFORMATION UNTIL INVESTIGATORS CAN ARRIVE AND HANDLE THE SCENE FROM THERE.
Q AND DID Y'ALL DO THAT ON THIS PARTICULAR OCCASION?
A YES, SIR. AT THAT POINT IN TIME, WE -- I BELIEVE ONE PERSON AT THAT POINT IN TIME WAS PULLED ASIDE. MY MAIN PRIORITY AT THAT POINT IN TIME WAS REALLY SECURING THE SCENE.
Q AND LET ME HAND YOU AN ITEM AND ASK IF YOU CAN IDENTIFY THAT PARTICULAR ITEM FOR US?
A THIS IS THE CRIME SCENE LOG.

Q AND WHO WOULD BE RESPONSIBLE FOR FILLING OUT THE CRIME SCENE LOG?
A GENERALLY, THE FIRST OR SECOND OFFICER ON THE SCENE. WHOEVER TAKES -- YOU WORK TOGETHER BUT AT THIS POINT IN TIME I BELIEVE BOTH OF US WORKED HAND IN HAND WITH THIS.
Q AND THAT WOULD BE YOU AND DEPUTY?
A STEVENS.
Q DEPUTY STEVENS?
A CORRECT.
Q LET ME ASK YOU. DOES THE NAME RUTHIE SCOTT APPEAR ON THAT LOG?
A THAT'S THE FIRST NAME ON IT.
Q AND ALSO THE NAME THEODORE OR THEO MARSHALL?
A TED MARSHALL, YES.
Q AND SPECIFICALLY WOULD THAT LOG INDICATE THE APPROXIMATE TIME OF YOUR ARRIVAL?
A THIS LOG WOULDN'T NECESSARILY INDICATE OUR ARRIVAL. THIS LOG WOULD INDICATE WHEN WE ENTERED OR EXITED THE SCENE. OUR ARRIVAL TIME MAY BE DIFFERENT THAN THAT.
Q AND WHEN YOU SAY ENTERED OR EXITED THE SCENE, YOU ARE REFERRING TO BROOKS' STORE?
A CORRECT.
Q AND WHAT TIME WOULD THAT INDICATE YOU ENTERED BROOKS' STORE?

A AT 1845. SIX FORTY-FIVE.
Q SIX FORTY-FIVE P.M.?
A CORRECT.
Q AND WOULD THAT LOG INDICATE WHEN YOU ULTIMATELY CLEARED THE SCENE?
A THAT'S CORRECT.
Q AND WHAT TIME WOULD THAT HAVE BEEN?
A AT TEN FIFTY-FOUR.
Q THAT EVENING?
A THAT EVENING, CORRECT.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

CROSS EXAMINATION BY

MR. ROGERS:

Q JUST A COUPLE OF QUESTIONS, DEPUTY RICHARDSON. LET ME SEE THAT LOG SHEET, PLEASE. I TAKE IT THAT YOU HAD BEEN TO MR. BROOKS' STORE PRIOR TO OCTOBER 27TH, 1996?
A I'VE BEEN IN THE STORE ONCE.
Q YOU'VE BEEN IN IT?
A ONE TIME, YES, SIR.
Q JUST ONCE?
A YES, SIR.
Q SO, WHEN YOU ARRIVED THAT NIGHT IT WASN'T VERY FAMILIAR TO YOU, YOU HAD TO KIND OF ACQUAINT YOURSELF

WITH THE SURROUNDINGS?
A I SUPPOSE SO, SURE.
Q AND YOU FIRST TESTIFIED THAT YOU RECEIVED A CALL AROUND SIX O'CLOCK AND THEN YOU ARRIVED AT SIX FORTY-FIVE?
A WELL, THE ACTUAL DISPATCH TIME I HAVE HERE WRITTEN DOWN WAS 1825 WHICH IS SIX TWENTY-FIVE. AND I ARRIVED AT SIX THIRTY-FIVE.
Q YOU FILLED OUT THIS INCIDENT REPORT, DID YOU NOT? I SHOW YOU THAT. THAT CONFIRMS WHAT YOU JUST TESTIFIED TO.
A THAT'S CORRECT.
Q SO, THAT MEANS YOU RECEIVED THE CALL DISPATCHING YOU TO THE GROCERY STORE AT SIX TWENTY-FIVE?
A CORRECT.
Q SO, CLEARLY WHATEVER HAD HAPPENED HAD TO HAPPEN BEFORE SIX TWENTY-FIVE?
A AGREED.
Q AND YOU STAYED FOUR HOURS?
A SIX TWENTY-FIVE TO TEN FIFTY-FOUR.
Q APPROXIMATELY FOUR HOURS.
A CORRECT. APPROXIMATELY.
Q AND I BELIEVE YOUR TESTIMONY WAS YOU INITIALLY SECURED THE OUTSIDE SCENE IN THE PARKING LOT AND PUT UP THE TAPE?

A YES, SIR.
Q AND THEN YOU WENT INSIDE?
A YES, SIR.
Q REFERRING TO STATE'S EXHIBITS FOUR THROUGH NINE, YOU DID NOT TAKE THESE PHOTOGRAPHS?
A NO, SIR.
Q AND YOU DON'T KNOW WHEN THEY WERE TAKEN?
A NO, SIR.
Q CLEARLY, REFERRING TO STATE'S EXHIBIT FOUR, THAT LOOKS LIKE THAT PICTURE WAS TAKEN WITH THE USE OF A FLASH BULB?
A I CAN'T -- I HAVE NO IDEA.
Q YOU CAN'T TELL THAT?
A NO.
Q DOES IT LOOK LIKE IT'S DARK UP HERE UP AT THE TOP TO INDICATE THAT IT'S NIGHT?
A I WOULD SAY -- THAT COULD BE AN AWNING, I'M NOT SURE. IT APPEARS TO BE AT NIGHTTIME. I DON'T KNOW.
Q WHAT ABOUT ANY OF THESE PHOTOS? CAN YOU LOOK AT ANY OF STATE'S EXHIBITS FOUR THROUGH NINE AND BASED ON YOUR OBSERVATION OF THE STORE THAT NIGHT, CAN'T YOU TELL THAT A FLASH WAS USED?
A I'M NO EXPERT IN CAMERA USE. I CAN TELL YOU IT WAS NIGHTTIME. WHETHER A FLASH WAS USED OR NOT I HAVE NO IDEA, SIR.

Q I'M SORRY. BUT YOU CANNOT TELL US THAT THAT'S THE LIGHTING IN THE STORE AT THE TIME THE INCIDENT OCCURRED?
A I CAN'T TELL YOU THAT.
Q BECAUSE YOU DON'T KNOW. THESE PICTURES COULD BE MUCH LIGHTER THAN THE LIGHTING IN THE STORE?
A ANYTHING IS POSSIBLE. I COULDN'T TELL YOU.
Q YOU DIDN'T PREPARE STATE'S EXHIBIT ONE?
A NO, SIR.
Q BUT YOU TESTIFIED FROM YOUR KNOWLEDGE OF THE AREA BASED ON YOUR ROUTINE PATROL AND HAVING BEEN OUT THERE IN CONNECTION WITH THIS CASE?
A THAT THAT IS THE LOCATION?
Q YES.
A YES.
Q AND TO EVERYTHING ELSE YOU TESTIFIED TO THAT'S IN STATE'S EXHIBIT ONE?
A YES, SIR.
Q AGAIN, THIS IS CABIN CREEK ROAD WHERE MR. BROOKS' STORE IS?
A YES, SIR.
Q ARE YOU FAMILIAR THAT IF YOU GO FURTHER DOWN CABIN CREEK IN THIS DIRECTION THAT THERE'S A CHURCH DOWN HERE?
A I DON'T RECALL.

Q YOU DON'T KNOW?
A I DON'T RECALL ONE. THERE'S CHURCHES ALL OVER THAT AREA. IT'S POSSIBLE.
Q ALL RIGHT. AND DO YOU KNOW ANYTHING ABOUT -- ARE YOU FAMILIAR WITH GILWOOD ROAD?
A NO, SIR.
Q YOU'RE NOT?
A NO, SIR.

MR. ROGERS: THE COURT'S INDULGENCE JUST A MOMENT.

(PAUSE)

MR. ROGERS: THAT'S ALL I HAVE. THANK YOU.

MR. McMAHON: WE HAVE NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. CHAPLIN: THE STATE CALLS RUTHIE SCOTT.

RUTHIE T. SCOTT, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A MY NAME IS RUTHIE SCOTT.

DIRECT EXAMINATION BY MR. CHAPLIN:

Q HELLO, MS. SCOTT, HOW YOU DOING?

A OKAY.
Q I KNOW YOU ARE NERVOUS. YOU LOOK KIND OF NERVOUS.
A I AM.
Q I WANT YOU TO RELAX AND LISTEN TO MY QUESTIONS AND, YOU KNOW, FROM WHAT I ASK YOU RETURN AN ANSWER. WHERE DO YOU LIVE, MS. SCOTT?
A [redacted] TUCKER TOWN ROAD, GADSDEN, SOUTH CAROLINA.
Q THAT'S IN GADSDEN?
A YES.
Q HOW FAR AWAY IS THAT FROM MR. BROOKS' STORE?
A APPROXIMATELY EIGHT MILES.
Q ABOUT EIGHT MILES. DID YOU KNOW MR. JOE BROOKS?
A YES.
Q HOW DID YOU KNOW MR. JOE BROOKS?
A WELL, I CALL HER MY LITTLE GIRL BUT SHE'S ACTUALLY MY NIECE.
Q EXCUSE ME?
A I CALL HER MY LITTLE GIRL BUT SHE'S ACTUALLY MY NIECE. HE'S HER FATHER.
Q OKAY. YOU TAKE CARE OP YOUR NIECE?
A YES.
Q AND THAT IS MR. JOE BROOKS' --
A DAUGHTER.
Q DAUGHTER. OKAY. SO, ON 10-27 -- I WANT TO TAKE YOU BACK TO 10-27 OF '96. WERE YOU TAKING CARE OF YOUR

NIECE ON THAT DAY?
A YES, SIR.
Q ON THAT SAME DAY, DID YOU HAVE AN OCCASION TO SEE MR. BROOKS OR GO TO SEE HIM?
A YES. SHE WANTED TO GO -- SHE HAD BEEN ASKING TO GO BY TO SEE HIM ALL WEEK. AND THEN THAT DAY SHE JUST WANTED TO GO THERE.
Q WAS IT QUITE COMMON FOR HER TO WANT TO SEE HER FATHER?
A NO, SHE ALWAYS WANTED TO GO UP THERE.
Q BUT I GUESS MY QUESTION IS DID SHE NORMALLY GO LIKE EVERY WEEK OR EVERY TWO WEEKS?
A LIKE ONCE EVERY TWO WEEKS.
Q AND YOUR RELATIONSHIP TO HER MOTHER IS?
A SHE'S MY SISTER.
Q NOW, BACK TO THAT SAME DAY, 10-27-96. EXPLAIN WHAT DID YOU DO. DID YOU TAKE HER TO SEE HER FATHER?
A YES, I DID.
Q ABOUT WHAT TIME DID YOU GET TO MR. BROOKS' STORE?
A IT WAS BETWEEN SIX "O" EIGHT AND SIX-TWELVE.
Q WHO WAS PRESENT THERE? WHEN YOU PULLED IN, WHAT DID YOU SEE?
A WHEN I PULLED UP, NOBODY WAS OUTSIDE BUT MR. SUMTER AND HE WAS LEANING ON THE DRIVER'S SIDE OF HIS TRUCK PUTTING AIR IN HIS TIRE. I DIDN'T SEE NOBODY ELSE.

Q SO, WHEN YOU PULLED UP, YOU SAID YOU SAW MR. SUMTER?
A YES.
Q AND HE WAS PUTTING AIR IN HIS TIRE?
A YES.
Q I'M GOING TO TRY TO SHOW YOU SOMETHING TO HELP YOU OUT A LITTLE BIT TO FAMILIARIZE YOURSELF. THIS IS STATE'S EXHIBIT TWO.

MR. CHAPLIN: YOUR HONOR, MAY I ASK THE WITNESS TO PLEASE STEP DOWN?

THE COURT: YOU MAY. MS. SCOTT, HE'S GOING TO ASK YOU TO STEP DOWN AND REFER TO A CHART BUT REMEMBER THE COURT REPORTER IS HERE AND YOU ARE NOT NEAR A MICROPHONE SO YOU'LL HAVE TO SPEAK UP LOUD WHEN YOU RESPOND TO A QUESTION.

(WITNESS LEAVES STAND)

Q (BY MR. CHAPLIN) DO YOU RECOGNIZE WHAT THIS IS A PICTURE OF?
A YES.
Q WHAT IS IT?
A JOE BROOKS' STORE RIGHT HERE.
Q OKAY. SO, ON THAT DAY WHEN YOU PULLED IN, WHERE DID YOU PULL INTO?
A RIGHT HERE APPROXIMATELY. RIGHT HERE BY THE FRONT DOOR.
Q AND WHERE WAS MR. SUMTER AT THAT TIME WHEN YOU SAID

YOU SAW HIM?
A I WAS PULLED RIGHT HERE AND HE WAS RIGHT THERE. ABOUT ALONG IN HERE.
Q AND DID HE SEE YOU?
A YES, I SPOKE TO HIM.
Q THEN WHAT DID YOU DO?
A I WENT ON THE INSIDE OF THE STORE. THE COUNTER IS RIGHT HERE AND IT'S UP HIGH ABOUT LIKE THAT. AND WHEN I WALKED IN THE STORE --
Q CAN YOU STEP UP A LITTLE MORE SO SHE CAN SEE.
A I WALKED INTO TO STORE AND I CAME UP AROUND THE COUNTER AND I HEARD THIS FAINT MOANS AND HE SAID (AUDIBLE) AND THEN HE DIDN'T SAY IT ANY MORE. AND AS I CAME AROUND TOWARD THE MEAT CASE I SAW THIS BROKEN GLASS AND I CALLED MY LITTLE GIRL TOOTY, I SAID TOOTY, DON'T COME ANY FURTHER.
Q WHO IS TOOTY?
A JOE BROOKS' DAUGHTER. AND THEN THE GATE WHERE HE STANDS IT'S LIKE --
Q HOLD ON A SECOND. I'M SHOWING YOU STATE'S EXHIBIT NUMBER THREE. THAT WILL TAKE YOU MORE INSIDE OF THE STORE. DOES THAT HELP YOU A LITTLE BIT?
A YES.
Q OKAY.
A SO, AS I CAME AROUND THIS COUNTER, THIS DOOR WAS OPEN

AND I'VE NEVER BEEN UP THERE AND SAW THIS DOOR RIGHT HERE OPEN BEFORE.

Q NOW, THIS WOULD BE THE DOOR THAT MR. BROOKS WOULD GO THROUGH IN ORDER TO GET BEHIND THE COUNTER?

A YES.

Q WAS THIS THE ONLY ACCESSIBLE WAY FOR HIM TO GET IN BEHIND THE COUNTER?

A YES.

Q OKAY.

A SO, THEN WHEN I WALK BACK THERE ALL I SAW WAS HIM LAYING THERE. THE CASH REGISTER WAS DOWN ON HIM AND HE WAS SORT OF LIKE LAYING UP UNDER THE COUNTER AND ALL I CAN REMEMBER WAS HIS EYES AND HE WAS JUST LAYING THERE SO I DIDN'T TOUCH HIM. I JUST RAN BACK OUT. I LOCKED TOOTY IN THE CAR AND I DIALED 911 ON MY CELLULAR PHONE.

Q SO, ONCE YOU SAW MR. BROOKS' FEET AND THEN WENT A LITTLE BIT FURTHER AND THEN ACTUALLY SAW HIM, YOU SAW THE REGISTER LAYING ON HIM?

A ON TOP OF HIM AND, YOU KNOW, HE HAD LIKE BOXES OF STUFF AND IT WAS ALL DISARRAY, YOU KNOW.

Q AND THEN AFTER THAT YOU RAN?

A I RAN BACK OUT, LOCKED MY LITTLE GIRL IN MY CAR AND I TOLD HER TO GET IN THE CAR AND LOCK THE DOOR 'CAUSE I LEFT MY PURSE AND EVERYTHING IN THE CAR AND I TOOK

MY CELLULAR PHONE AND I CALLED 911.

Q YOU CAN STEP BACK TO YOUR SEAT. THANK YOU.

(WITNESS RESUMES STAND)

Q MS. SCOTT, DID YOU TOUCH ANYTHING WHILE YOU WERE INSIDE?

A NO, SIR.

Q ONCE YOU HEARD THE MOANS OF MR. BROOKS AND ACTUALLY SAW HIM, YOU WENT OUTSIDE?

A YES.

Q WHEN YOU WENT BACK OUTSIDE, DID YOU SPEAK TO SOMEONE THEN?

A I TOLD MR. SUMTER, I SAID JOE BROOKS IS LAYING IN THERE ON THE FLOOR. HE SAID --

MR. ROGERS: OBJECTION.

THE COURT: DON'T TESTIFY AS TO WHAT ANYONE ELSE SAID, PLEASE.

Q (BY MR. CHAPLIN) YOU CAN'T SAY WHAT MR. SUMTER SAID TO YOU. WHAT DID YOU TELL MR. SUMTER?

A I TOLD MR. SUMTER THAT JOE BROOKS WAS IN THERE ON THE FLOOR.

Q AND THEN WHAT DID YOU DO? AFTER YOU TOLD HIM HE WAS ON THE FLOOR, WHAT DID YOU DO THEN?

A THAT'S WHEN I WAS DIALING 911.

Q TO CALL THE POLICE?

A YES.

Q I WANT TO BACKTRACK JUST A LITTLE BIT. WAS THERE A REAL REASON -- I KNOW THAT MR. BROOKS WAS HER FATHER BUT WAS THERE ANOTHER UNDERLYING REASON FOR HIS DAUGHTER WANTING TO COME TO THE STORE THAT DAY?

A YES. SHE KEPT THIS LITTLE FRAME. JOE BROOKS HAD A LITTLE SMALL PICTURE OF HER AND IT WAS TAPED UP ON HIS WALL AND SHE WANTED TO GIVE HIM THIS LITTLE FRAME.

Q DO YOU HAVE THAT FRAME?

A YES.

Q CAN I SEE IT?

A (WITNESS COMPLIES)

Q SO, THIS IS THE FRAME HIS DAUGHTER WANTED HIM TO SEE?

A YES. SHE WANTED TO GIVE HIM THAT TO PUT THE PICTURE IN TO PUT IT ON HIS COUNTER.

Q SO, SHE MADE THIS FRAME?

A NO, SHE WAS SELLING SOMETHING AT SCHOOL.

MR. CHAPLIN: I'D LIKE TO INTRODUCE THIS FOR IDENTIFICATION PURPOSES.

MR. ROGERS: NO OBJECTION.

THE COURT: OKAY.

(PICTURE FRAME IS MARKED AND RECEIVED AS STATE'S EXHIBIT #10 FOR IDENTIFICATION PURPOSES ONLY)

Q (BY MR. CHAPLIN) NOW, ONCE YOU GOT BACK OUTSIDE AND ONCE YOU CALLED 911, WHAT OCCURRED AFTER THAT?

A WHEN I CALLED 911 I WAS ASKED WHERE I WAS AND I COULDN'T EVEN REMEMBER BECAUSE I WAS SO SCARED AND NERVOUS. SO, THEN THEY TOLD ME TO GO OUT TO THE ROAD PHONE, PAY PHONE BESIDE THE ROAD BUT IT WASN'T WORKING. SO, I CALLED 911 A SECOND TIME AND WHILE MR. SUMTER WENT TO GET MR. BROOKS' BROTHER I WAS JUST STANDING THERE. DIDN'T EVEN GO BACK IN THE STORE UNTIL A DEPUTY CAME.

Q HOW LONG DID YOU STAY THERE AFTER THE INCIDENT?

A IT SEEM LIKE IT WAS FOREVER BUT IT COULDN'T HAVE BEEN NO MORE THAN FIVE MINUTES.

Q THE OFFICER THAT WAS JUST ON THE STAND, YOU SAW WHEN THEY CAME?

A YES.

MR. CHAPLIN: I BEG THE COURT'S INDULGENCE.

(PAUSE)

MR. CHAPLIN: THANK YOU, MS. SCOTT. I HAVE NO FURTHER QUESTIONS.

CROSS EXAMINATION BY

MR. ROGERS:

Q MS. SCOTT, I JUST HAVE ONE. YOU TESTIFIED THAT YOU ARRIVED AT THE STORE BETWEEN SIX "O" EIGHT AND SIX-TWELVE?

A YES, SIR.

Q I'M JUST CURIOUS AS TO HOW YOU KNEW THAT?

A BECAUSE I LEFT MY DAUGHTER'S HOUSE AT EXACTLY SIX O'CLOCK. AND MY DAUGHTER LIVES RIGHT BEHIND LOWER RICHLAND SCHOOL.

Q SO, YOU ARE GUESSTIMATING THE TIME IT TOOK TO DRIVE FROM BEHIND LOWER RICHLAND TO CABIN CREEK AND MINERVAVILLE?

A YES.

Q YOU DIDN'T LOOK AT YOUR WATCH OR LOOK AT THE CLOCK IN YOUR CAR TO COME UP WITH THAT TIME?

A NO.

Q SO, COULD YOU BE OFF A LITTLE BIT?

A NO.

Q HOW LONG DOES IT TAKE YOU TO DRIVE FROM LOWER RICHLAND TO --

A NO MORE THAN FIVE TO SEVEN MINUTES.

MR. ROGERS: THANK YOU, MS. SCOTT.

MR. McMAHON: NOTHING FURTHER.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: THE STATE CALLS WILLIE SUMTER.

WILLIE SUMTER, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

DIRECT EXAMINATION BY

MR. McMAHON:

Q HOW YOU DOING, MR. SUMTER?

A FINE. HOW YOU DOING?

A FINE, SIR. WILL YOU TELL THE JURY YOUR NAME, PLEASE, SIR?

A MY NAME IS WILLIE FAYE SUMTER.

Q AND MR. SUMTER, WHERE DO YOU LIVE? WHERE DO YOU STAY?

A I LIVE AT [redacted] RAILSIDE ROAD, HOPKINS.

Q AND HOW LONG HAVE YOU LIVED ON RAILSIDE ROAD IN HOPKINS?

A ABOUT THIRTY YEARS NOW.

Q WHERE ARE YOU FROM, MR. SUMTER?

A I WAS FROM -- I WAS RAISED UP FROM WESTON OVER THERE, A LITTLE FURTHER DOWN THE ROAD.

Q WESTON IS JUST A LITTLE BIT FURTHER SOUTH FROM RAILSIDE?

A RIGHT.

Q AND WHO DO YOU STAY WITH THERE, MR. SUMTER?

A ME AND MY WIFE.

Q AND WHAT'S HER NAME?

A APHELIA SUMTER.

Q NOW, LET ME ASK YOU THIS. I BELIEVE YOU ARE RETIRED NOW, AREN'T YOU, SIR?

A RIGHT.

Q AND HOW LONG HAVE YOU BEEN RETIRED?
A OH, ABOUT FIFTEEN YEARS I GUESS.
Q AND WHAT KIND OF WORK DID YOU DO?
A I WORK WITH DREHER PACKING COMPANY.
Q AND DREHER PACKING COMPANY AS I REMEMBER IS ON THAT ROAD RIGHT THERE BY ROSEWOOD AND ASSEMBLY?
A ON SHOP ROAD.
Q SHOP ROAD. IS IT IN BUSINESS ANY MORE?
A THEY WENT OUT OF BUSINESS.
Q WENT OUT OF BUSINESS. BUT THAT'S WHO YOU WORKED FOR?
A THAT'S RIGHT.
Q AND THAT'S WHERE YOU RETIRED FROM?
A NO. THEY WENT OUT OF BUSINESS BEFORE I RETIRED.
Q AND YOU WENT TO WORK FOR SOMEONE ELSE?
A I WORK FOR DINNER BELL MEAT PACKING COMPANY.
Q AND THEN THAT'S WHO YOU RETIRED FROM?
A THEY WENT OUT OF BUSINESS --
Q YOU DIDN'T TELL ME ALL THIS BEFORE, MR. SUMTER. YOU RETIRED FROM THE MEAT PACKING BUSINESS, MR. SUMTER?
A NO, I DIDN'T RETIRE FROM NO JOB. JUST SOCIAL SECURITY.
Q I SEE. ALL RIGHT, SIR. NOW, YOU KNOW WHERE BROOKS' STORE IS AT?
A RIGHT.
Q YOU KNOW WHAT ROAD IT WAS ON?

A CABIN CREEK ROAD.
Q AND HOW WOULD YOU GO FROM YOUR HOUSE ON RAILSIDE TO MR. BROOKS' STORE ON CABIN CREEK?
A GO UP MARTIN LUTHER KING BOULEVARD AND GO OUT TO CABIN CREEK ROAD AND TURN TO THE RIGHT AND GO UP ON THE NEXT CORNER TO JOE BROOKS.
Q IF I LEAVE YOUR HOUSE ON RAILSIDE AND GO TO THE STOP SIGN, I INTERSECT WITH MARTIN LUTHER KING BOULEVARD, CORRECT?
A RIGHT.
Q AND THEN I TURN RIGHT ON MARTIN LUTHER KING?
A RIGHT.
Q AND THE NEXT STOP SIGN I COME TO WILL BE WHAT ROAD?
A THAT CABIN CREEK ROAD. YOU TURN RIGHT THERE.
Q AND THEN TURN RIGHT ON CABIN CREEK AND I'D BE ABOUT TWO BLOCKS FROM MR. BROOKS' STORE, IS THAT RIGHT?
A EXACTLY.
Q WERE YOU A REGULAR CUSTOMER OF MR. BROOKS'? DID YOU GO THERE REGULARLY?
A PRETTY REGULAR. I DIDN'T MISS A WEEK.
Q DIDN'T MISS A WEEK. NOW, I WANT TO DIRECT YOU BACK TO SUNDAY, OCTOBER 27TH OF '96, THE DAY MR. BROOKS GOT SHOT. DID YOU HAVE AN OCCASION TO BE AT HIS STORE THAT DAY?
A YES, SIR. I WENT UP THERE TO GET SOME AIR.

Q AIR FOR WHAT?
A MY TRUCK TIRE.
Q AND HAD YOU DROVE YOUR TRUCK DOWN THERE?
A THAT'S RIGHT.
Q NOW, WHERE DID YOU PARK YOUR TRUCK WHEN YOU GOT TO MR. BROOKS', MR. SUMTER?
A RIGHT STRAIGHT DOWN INTO THE STORE TO THE SECOND DOOR.
Q AND WHY ARE YOU PARKING THERE BY THAT SECOND DOOR?
A THAT'S WHERE THE AIR COME OUT AT, A LITTLE HOLE IN THE SIDE OF THE WALL TO STICK THE HOSE THROUGH.
Q AND LET ME SEE IF I CAN EXPLAIN THAT. WAS HIS AIR HOSE -- DID IT STAY OUTSIDE AT NIGHT?
A IT DON'T. HE DRAW IT BACK INSIDE.
Q INSIDE?
A RIGHT.
Q AND WHAT DID HE HAVE ON THE SIDE OF THE BUILDING WHERE YOU COULD GET TO THE AIR HOSE?
A A HOLE IN THE WALL.
Q AND THEN THEY COULD PUSH THAT AIR HOSE THROUGH THAT HOLE?
A THAT'S RIGHT.
Q NOW, WHEN YOU PARKED THERE BY THE SECOND DOOR BY THE AIR HOSE, DID YOU GO INSIDE?
A I WENT INSIDE AND, SEE, HE CHARGE A QUARTER. TWENTY

FIVE CENTS.
Q FOR AIR?
A THAT'S RIGHT.
Q SO, YOU GO IN AND PAY?
A I HAND IT TO A FELLOW RIGHT FACING THE DOOR. HE WAS STANDING FACING THE DOOR.
Q ALL RIGHT. DO YOU RECOGNIZE THIS FELLOW?
A YES, SIR, THAT HIM.
Q IS THAT WHO YOU GAVE YOUR QUARTER TO FOR THE AIR?
A THAT'S RIGHT.
Q DO YOU KNOW HIS NAME?
A I DON'T KNOW HIS NAME.
Q YOU DIDN'T KNOW IT THEN, DON'T KNOW IT NOW?
A I HEARD HIS NAME CALL BUT I DONE FORGOT IT.
Q AND DID HE WORK FOR MR. BROOKS?
A THEY SAY HE WORK FOR HIM.
Q THAT'S WHO YOU GAVE THE QUARTER TO?
A THAT'S RIGHT.
Q NOW, DID YOU SEE MR. BROOKS IN THE STORE?
A I DIDN'T SEE HIM BUT I HEAR HIM.
Q AND WHERE WERE YOU AT IN THE STORE WHEN YOU GAVE THAT GENTLEMAN THE QUARTER?
A ABOUT THREE STEPS INSIDE THE DOOR.
Q THE FRONT DOOR?
A THAT'S RIGHT.

Q AND WHEN YOU HEARD MR. BROOKS, WHAT DIRECTION WAS THAT HEARING COMING FROM? I MEAN WHERE WAS HE AT? COULD YOU TELL?

A HE WAS IN THE LITTLE OFFICE I CALL IT WHERE HE WAS TALKING TO SOME CUSTOMER OVER THERE.

Q NOW -- I DIDN'T MEAN TO INTERRUPT YOU, SIR.

A I HEAR HIM TALKING TO A CUSTOMER OVER THERE THAT HE WAS WAITING ON.

Q NOW, DID YOU SEE ANYBODY ELSE IN THE STORE BESIDES THE GENTLEMAN YOU GAVE THE QUARTER TO?

A THAT'S ALL I SEEN IS HIM.

Q NOW, AFTER YOU GIVE HIM THE QUARTER, WHERE DO YOU GO?

A I TURN AROUND AND WENT ON BACK OUTSIDE.

Q TO YOUR --

A MY TRUCK. AND HE PUT THE AIR HOSE THROUGH THE CRACK.

Q NOW, DID YOU PUT AIR IN THE TIRE OF YOUR TRUCK?

A I PUT AIR IN THE TIRE OF THE TRUCK AND I GOT A TANK ON THERE ABOUT SO HIGH AND I PUT AIR IN THAT.

Q AN AIR TANK?

A THAT'S RIGHT.

Q NOW, WHICH SIDE OF THE TRUCK WAS THE TIRE YOU WERE PUTTING AIR IN?

A ON THE DRIVER'S SIDE.

Q AND WOULD THAT HAVE BEEN THE FARTHEREST SIDE FROM THE FRONT DOOR OF MR. BROOKS' STORE?

A THAT'S RIGHT.
Q AND WHEN YOU ARE DOWN PUTTING AIR IN THE TIRE, CAN YOU HEAR THAT AIR COMPRESSOR?
A YES, I CAN HEAR THE AIR COMPRESSOR RIGHT NEXT TO THE WALL THERE.
Q WOULD YOU DESCRIBE IT AS LOUD OR NOT LOUD?
A IT'S PRETTY LOUD.
Q PRETTY LOUD?
A UH-HUH.
Q WOULD IT INTERFERE WITH YOUR HEARING OTHER THINGS AROUND YOU IF YOU'RE RIGHT UP THERE NEXT TO IT?
A IT DID WITH ME 'CAUSE I DIDN'T HEAR NOTHING ELSE.
Q NOW, YOU FILLED UP YOUR TIRE AND YOU FILLED UP YOUR AIR TANK I BELIEVE YOU SAID?
A THAT'S RIGHT.
Q WHILE YOU WERE THERE FILLING UP THE TIRE, DID YOU SEE ANYBODY COME BY YOU IN EITHER DIRECTION?
A AIN'T NOBODY PASSED ME EITHER WAY.
Q NOW, DO YOU RECALL IF IT WAS DARK?
A NO, IT WASN'T DARK.
Q WAS IT ABOUT DARK OR --
A NO, IT WAS BRIGHT.
Q NOW, LET ME ASK YOU, MR. SUMTER, WHAT'S THE NEXT THING THAT OCCURRED?
A I GOT THROUGH AND PUT THE TANK ON THE BACK OF THE

TRUCK AND PUT THE HOSE BACK THROUGH THE CRACK. THEN THE GIRL THAT JUST WENT OUT HERE JUST NOW, SHE DROVE UP.

Q THAT WAS MS. SCOTT?

A THAT'S RIGHT.

Q YOU KNEW HER?

A I KNOW HER WHEN I SEE HER. I HAD MET HER A LOT OF TIMES.

Q AND YOU SAY SHE DROVE UP?

A DROVE UP WITH -- I THINK SHE SAID WITH JOE BROOKS' DAUGHTER OR SOMETHING.

Q AND JOE BROOKS' DAUGHTER, WAS THAT A YOUNGER GIRL, A LITTLE GIRL?

A A LITTLE GIRL.

Q NOW, WHERE DID MS. SCOTT PARK?

A SHE PARK RIGHT AT THE DOOR.

Q THE FRONT DOOR?

A RIGHT.

Q AND DID YOU SEE HER GO INTO THE STORE?

A I DIDN'T SEE HER WENT IN BUT WHEN SHE OUT SHE COME RUNNING OVER THERE WHERE I WAS.

Q AND WHEN YOU SAY -- YOU DESCRIBED HER MOVEMENT AS RUNNING?

A YES, SIR. SHE COME BACK OVER THERE.

Q DID SHE APPEAR TO BE UPSET, MR. SUMTER?

A SHE WASN'T UPSET THEN 'CAUSE SHE THOUGHT NOBODY WAS IN THE STORE. AND I TOLD HER, I SAY, YEAH, IT IS SOMEBODY IN THERE. JOE AND ANOTHER LITTLE FELLOW.

Q YOU'RE TALKING ABOUT THE GENTLEMAN YOU GAVE THE QUARTER TO?

A THAT'S RIGHT.

Q AND THEN WHAT HAPPENED?

A SHE WENT BACK IN THERE AND SAID JOE BROOKS IN THERE GRUNTING ON THE FLOOR. THEN I WENT RUNNING IN THERE THEN.

Q ALL RIGHT, SIR. NOW, YOU SAY YOU WENT RUNNING IN THERE. WOULD YOU DESCRIBE FOR THE JURY WHAT YOU OBSERVED WHEN YOU WENT INTO MR. BROOKS' STORE?

A I WENT RUNNING IN AND WENT AROUND THE FRONT PART OF HIS OFFICE AND COME IN BACK THERE. HE GOT A DOOR BACK IN THE BACK. I COME TO THE DOOR ABOUT LIKE THAT THERE AND I STAND IN THE DOOR AND OVER IN THERE AND HE WAS ON THE FLOOR GRUNTING AND THE CASH REGISTER WAS ON HIS LEFT ARM.

Q COULD YOU DESCRIBE WHETHER OR NOT YOU OBSERVED ANY BLOOD IN THAT AREA AT THE TIME?

A I AIN'T SEEN NO BLOOD.

Q BUT HE WAS JUST MAKING GRUNTING SOUNDS?

A THAT'S RIGHT.

Q DID YOU TRY TO SPEAK TO HIM? DID YOU CALL HIS NAME

OR ANYTHING LIKE THAT?
A I DIDN'T SAY NOTHING TO HIM.
Q WHAT WAS THE POSITION OF THE CASH REGISTER?
A HE WAS LAYING DOWN AND IT WAS LAYING ON HIS ARM. HE MUST HAVE FELL FIRST AND THE CASH REGISTER FELL NEXT I RECKON.
Q WHAT DID YOU DO THEN, MR. SUMTER?
A WENT BACK OUTSIDE AND TOLD THAT GIRL I WAS GOING TO GET JOE BROOKS' BROTHER.
Q YOU KNEW MR. BROOKS' BROTHER?
A THAT'S RIGHT.
Q WHAT WAS HIS NAME?
A J.B.
Q AND WHERE DID J.B. LIVE IN RELATIONSHIP TO THE STORE?
A ABOUT A HALF A BLOCK.
Q AND DID YOU GO TELL MR. BROOKS' BROTHER?
A I WENT AND GOT HIM AND BRING HIM UP THERE. HE FOLLOW ME BACK UP THERE.
Q WHAT DID YOU DO WHEN YOU GOT BACK, MR. SUMTER?
A I GOT BACK AND HE WENT AROUND THERE AND TRY TO CALL THE AMBULANCE AND I THINK THEY TOLD HIM SOMEBODY HAD DONE ALREADY CALLED.
Q NOW, DID YOU EVER TOUCH ANYTHING IN OR AROUND OR BEHIND THE COUNTER AND THE OFFICE THAT YOU'RE REFERRING TO?

A I AIN'T TOUCH NOTHING BUT THE SIDE OF THE DOOR.
Q THE DOOR THAT GOES BACK INTO THE OFFICE?
A THAT'S RIGHT.
Q THAT'S WHAT YOU'RE REFERRING TO WHEN YOU LOOKED AT THIS OPENING, ABOUT THAT WIDE?
A THAT'S RIGHT.
Q NOW, MR. SUMTER, DID YOU REMAIN THERE AND TALK WITH THE POLICE THAT NIGHT?
A THAT'S RIGHT.
Q AND THEREAFTER YOU'VE TALKED TO THE POLICE ON OTHER OCCASIONS, CORRECT?
A THAT'S RIGHT.
Q AS A MATTER OF FACT, DID YOU HAVE AN OCCASION TO GO BACK DOWN TO BROOKS' STORE?
A I WENT BACK DOWN THERE AND READ WHATEVER YOU CALL IT.
Q I'M SORRY. I MISUNDERSTOOD YOU.
A THEY CALL ME BACK UP THERE TO MEET THEM UP THERE AND THEY WENT THROUGH IT.
Q AND YOU SHOWED THEM WHERE ALL YOU WERE AND WHAT ALL YOU DID, CORRECT?
A THAT'S RIGHT.
Q THEY WENT THROUGH IT WITH THE FRONT DOOR SHUT AND THE AIR COMPRESSOR ON, IS THAT CORRECT?
A THAT'S RIGHT.
Q DO YOU KNOW WHETHER OR NOT THEY FIRED A GUN WHEN YOU

WENT BACK DOWN THERE WITH THE POLICE?
A THEY SAY THEY FIRE A GUN.
Q YOU DIDN'T HEAR IT?
A I DIDN'T HEAR IT.
Q YOU DIDN'T HEAR IT WHEN THAT AIR COMPRESSOR WAS ON, CORRECT?
A THAT'S RIGHT.

MR. McMAHON: THANK YOU, MR. SUMTER. I DON'T HAVE ANY FURTHER QUESTIONS.

CROSS EXAMINATION BY

MR. ROGERS:

Q GOOD AFTERNOON, MR. SUMTER. DO YOU HAVE ANY IDEA WHAT TIME YOU GOT TO MR. BROOKS' STORE THAT DAY?
A NO.
Q DO YOU HAVE ANY IDEA HOW LONG YOU WERE THERE BEFORE MS. SCOTT CAME RUNNING OUT AND SAID MR. BROOKS IS GROANING?
A YOU MEAN FROM THE TIME I PAID AND WENT OUTSIDE?
Q NO, FROM THE TIME YOU FIRST GOT THERE. I BELIEVE YOUR TESTIMONY WAS YOU PULLED UP AND YOU PULLED UP BY THE AIR TANK.
A RIGHT.
Q AND YOU WENT INSIDE BUT YOU DIDN'T -- YOU WENT TO THE DOOR BUT YOU DIDN'T SEE MR. BROOKS BUT YOU HEARD HIM?
A THAT'S RIGHT.

Q IT COULDN'T HAVE BEEN ANYBODY ELSE? YOU'RE SURE IT WAS MR. BROOKS YOU HEARD?
A I KNOW HIS VOICE WHEN I HEAR IT.
Q OKAY. AND YOU GAVE MR. MARSHALL A QUARTER?
A THAT'S RIGHT.
Q AND YOU WENT BACK TO PUMP THE GAS?
A PUMP THE AIR.
Q I'M SORRY. PUMP THE AIR. AND THEN AT SOME POINT LATER MS. RUTHIE SCOTT CAME UP, WENT IN THE STORE AND THEN CAME BACK OUT?
A THAT'S RIGHT.
Q WHAT I'M TRYING TO FIND OUT IS HOW LONG DID IT TAKE FROM THE TIME YOU FIRST PULLED UP TO THE TIME MS. RUTHIE CAME RUNNING OUT? DO YOU HAVE ANY IDEA?
A IT WAS LESS THAN A HOUR.
Q CAN YOU BE ANY MORE PRECISE THAN THAT, ANY CLOSER? SOMEWHERE IN THE SPAN OF AN HOUR IS WHAT YOU SAY?
A THAT'S WHAT I SAY.

MR. ROGERS: THANK YOU.

MR. McMAHON: I HAVE NOTHING FURTHER, YOUR HONOR. THANK YOU, MR. SUMTER.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. CHAPLIN: THE STATE CALLS ELLEN LENAHAN.

ELLEN LENAHAN, AFTER BEING DULY SWORN BY THE

CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A ELLEN LENAHAN.

DIRECT EXAMINATION BY MR. CHAPLIN:

Q MS. LENAHAN, WHERE DO YOU LIVE?

A WHERE DO I LIVE NOW?

Q WHERE DO YOU LIVE?

A I'M IN GADSDEN NOW.

Q WHERE DID YOU LIVE ON 10-27 OF 1996?

A [redacted]QUAIL HILL DRIVE IN HOPKINS.

Q WHERE DO YOU WORK NOW?

A TARGET.

Q WHERE DID YOU WORK ON 10-27 OF '96?

A TARGET.

Q WHAT ELSE DID YOU DO ALONG WITH WORKING THERE AT TARGET ON 10-27 OF '96?

A WE DELIVERED SOME STATE NEWSPAPERS.

Q YOU DELIVERED THE STATE NEWSPAPER?

A UH-HUH.

Q HOW DO YOU KNOW OR DID YOU KNOW MR. JOE BROOKS?

A YES, I DID.

Q AND HOW DID YOU COME TO KNOW HIM?

A HE WAS RIGHT IN THE MIDDLE OF WHERE WE DELIVERED AND

WE ACTUALLY TOOK PAPERS OUT THERE FOR HIM TO SELL TO HIS CUSTOMERS.

Q SO, YOU DELIVERED PAPERS TO MR. BROOKS TO SELL?

A YES, SIR.

Q HOW OFTEN DID YOU GO TO MR. BROOKS' STORE TO DROP PAPERS OFF?

A EVERY DAY.

Q DID YOU HAVE AN OCCASION TO GO TO THE STORE ON 10-27 OF '96?

A ACTUALLY WE WERE THERE TWICE. ACTUALLY THREE TIMES AS A MATTER OF FACT. WE WERE THERE FIRST THING IN THE MORNING SUNDAY. WE MADE IT THERE ACTUALLY BEFORE HE GOT THERE TO OPEN THE STORE. AND AS HE CAME TO OPEN THE STORE, WE WENT IN WITH HIM.

Q SO, WHAT OCCURRED WHEN YOU WENT INSIDE?

A IN THE MORNING?

Q WHEN YOU WENT -- YOU SAID YOU WENT THREE TIMES?

A YES, IN THE MORNING THE FIRST TIME.

Q DID YOU HAVE AN OCCASION TO GO THAT AFTERNOON?

A YES, SIR.

Q ABOUT WHAT TIME DO YOU THINK IT WOULD HAVE BEEN?

A IT WAS SOMETIME BETWEEN SIX AND SIX-THIRTY. WE REALLY WEREN'T SURE OF THE TIME BECAUSE WE DID SIT THERE FOR A WHILE AND TALK.

Q ON THAT OCCASION WHEN YOU ENTERED, WHAT DID YOU DO

AND WHY DID YOU ENTER TO SEE HIM AT THAT TIME?
A ON SUNDAYS WE WENT TO COLLECT THE MONEY AND SPLIT THE MONEY WITH MR. BROOKS AS TO WHAT THE PROFIT WAS AND WHAT WAS CHARGED FOR THE PAPERS. I WENT IN AND HE WAS BUSY WITH SOMEONE SO I STOOD TO THE SIDE AND WAITED FOR HIM.
Q YOU SAY HE WAS BUSY WITH SOMEONE?
A YES.
Q DO YOU REMEMBER WHO THAT SOMEONE WAS?
A IT WAS NO ONE I HAD EVER SEEN BEFORE.
Q HOW DID HE LOOK?
A I GUESS THE ONLY WAY I CAN THINK TO DESCRIBE IS HE LOOKED KIND OF SCRUFFY.
Q AFTER HE SPOKE TO THAT INDIVIDUAL, WHAT DID YOU DO?
A HE ACTUALLY HAD ACKNOWLEDGED ME WHILE HE WAS TALKING TO THE OTHER INDIVIDUAL AND HE SAID SOMETHING ALONG THE LINES OF, HI, HON, HI, BABE, I'LL BE WITH YOU IN A MINUTE. AND THEN WHEN THIS OTHER GENTLEMEN LEFT HE BROUGHT THE CIGAR BOX THAT HE ACTUALLY KEPT THE MONEY IN FOR THE PAPER AROUND AND STOOD AND TALKED TO ME FOR A FEW MINUTES.
Q SO, HE BROUGHT THE CIGARETTE BOX THAT HE --
A CIGAR BOX, YES, SIR.
Q CIGAR BOX THAT HE HAD THE MONEY IN FROM THE NEWSPAPERS?

A YES, SIR.
Q AFTER HE COUNTED IT OUT, WHAT DID YOU DO WITH THE BOX?
A I HANDED IT BACK TO HIM BUT HE ALWAYS WANTED THE QUARTERS THAT WERE IN THERE SO WE SOLD THE QUARTERS BACK TO HIM AND HE SAT AND TALKED TO US FOR A FEW MINUTES.
Q I'M GOING TO SHOW YOU SOMETHING TO HELP YOU OUT A LITTLE BIT IN DESCRIBING THE WHEREABOUTS.

MR. CHAPLIN: YOUR HONOR, MAY I ASK THAT THE WITNESS STEP DOWN?

THE COURT: YOU MAY.

(WITNESS LEAVES STAND)

Q (BY MR. CHAPLIN) I'M SHOWING YOU STATE'S EXHIBIT THREE. NOW, WHERE WOULD YOU HAVE BEEN LOCATED COUNTING THE MONEY OR WOULD HE PASS YOU THE CIGAR BOX?
A ACTUALLY, WHEN I FIRST WENT IN, LIKE I SAID HE WAS STANDING HERE TALKING WITH SOMEONE. AND THERE WAS A SLIDE MACHINE FOR -- LOOKS LIKE A SLIDE MACHINE FOR QUARTERS AND EVERYTHING. WE STOOD THERE FOR A MINUTE AND ONCE HE CALLED ME TO LET ME KNOW HE WAS DONE WITH THIS PERSON HE WALKED OUT FROM HERE AND I STOOD DOWN AT THE END OF THE COUNTER HERE AND COUNTED IT.
Q AND AFTER COUNTING, WHAT DID YOU DO?

A I HANDED THE BOX BACK TO HIM AND I WALKED BACK OVER HERE BECAUSE WE WERE COUNTING UP THE QUARTERS BECAUSE HE WANTED TO BUY THE QUARTERS BACK FROM US.
Q NOW, WHAT'S LOCATED OVER HERE?
A THAT SLIDE MACHINE FOR THE QUARTERS.
Q SO, WHILE YOU WERE THERE, DID YOU OBSERVE ANYBODY COMING IN OR OUT?
A THERE WERE A COUPLE OF PEOPLE. LIKE I SAID, THERE WAS THE ONE MAN THAT WAS THERE WHEN WE FIRST GOT THERE. THE GENTLEMAN THAT JUST TESTIFIED FOR THE AIR, I WAS THERE WHEN HE CAME IN AND HE TALKED TO -- I'M NOT SURE OF THE NAMES, I'M SORRY.
Q WOULD YOU STAND UP, PLEASE?
A HE SPOKE WITH HIM FOR A MOMENT AND THIS GENTLEMAN WALKED TO THE BACK OF THE STORE.
Q OKAY.
A AS I SAID, I TALKED TO MR. BROOKS THERE A FEW MORE MINUTES BEFORE I LEFT.
Q SO, YOU WERE PRESENT INSIDE WHEN MR. SUMTER CAME?
A YES.
Q DO YOU REMEMBER WHY HE CAME OR DID YOU HEAR?
A I KNEW HE WAS COMING TO GET AIR. I COULD HEAR HIM SAYING THAT.
Q AND THEN AFTER HEARING THAT, WHAT DID YOU DO THEN?
A IT WAS A COUPLE MORE MINUTES BEFORE WE LEFT. MR.

BROOKS HAD ASKED US TO DON'T RUSH OFF OR SOMETHING ALONG THOSE LINES.

Q THEN YOU LEFT?

A YES, WE LEFT.

Q OKAY. YOU CAN STEP BACK UP.

(WITNESS RESUMES STAND)

MR. CHAPLIN: I HAVE NO FURTHER QUESTIONS, MRS. LENAHAN. WOULD YOU PLEASE ANSWER ANY QUESTIONS THAT THE DEFENSE WOULD HAVE.

MR. ROGERS: NO QUESTIONS. THANK YOU.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: THE STATE CALLS THEODORE MARSHALL.

THEODORE MARSHALL, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

DIRECT EXAMINATION BY

MR. McMAHON:

Q WOULD YOU INTRODUCE YOURSELF TO THE JURY, PLEASE? WHAT IS YOUR NAME?

A THEODORE MARSHALL.

Q AND, MR. MARSHALL, HOW OLD ARE YOU, SIR?

A I'M FORTY-EIGHT YEARS OLD.

Q AND WHERE DO YOU LIVE?

A [redacted]ALT ROAD, HOPKINS, SOUTH CAROLINA.
Q WHERE IS ALT ROAD IN RELATIONSHIP -- WHERE IS YOUR HOUSE IN RELATIONSHIP TO CABIN CREEK ROAD?
A WELL, IT'S ABOUT THREE HOUSES OFF OF ALT ROAD, YOU MAKE A RIGHT AND YOU BE ON CABIN CREEK ROAD.
Q IF I COME OUT ALT ROAD TO CABIN CREEK, WOULD I TURN RIGHT OR LEFT TO GO TO BROOKS' STORE?
A YOU MAKE A RIGHT.
Q RIGHT?
A UH-HUH.
Q AND ABOUT HOW FAR DOWN IS IT FROM ALT ROAD AND CABIN CREEK TO BROOKS' STORE?
A I'D SAY A QUARTER OF A MILE OR A LITTLE MORE.
Q NOW, WHO DO YOU LIVE WITH ON ALT ROAD?
A LIVE WITH MY MOTHER.
Q AND WHAT KIND OF WORK DO YOU DO? WHERE DO YOU WORK?
A MANCHESTER FARM.
Q MANCHESTER FARMS? IS THAT IN THAT AREA?
A YES, IT UP BY THE LITTLE ELEMENTARY SCHOOL.
Q HOPKINS ELEMENTARY?
A YEAH.
Q HOW LONG HAVE YOU WORKED THERE, MR. MARSHALL?
A ABOUT SEVEN MONTHS.
Q NOW, I WANT TO DIRECT YOUR ATTENTION BACK TO OCTOBER OF 1996. DID YOU KNOW JOE BROOKS?

A YES, I KNOWED HIM.
Q HOW DID YOU KNOW MR. BROOKS?
A I USED TO WORK FOR HIM.
Q WHAT KIND OF WORK DID YOU DO FOR MR. BROOKS?
A WELL, I KEEP EVERYTHING STOCK UP ON THE SHELF AND, YOU KNOW, DO LITTLE KNICKKNACK WORK FOR HIM.
Q WOULD YOU WORK FOR HIM AT HIS STORE?
A AT THE STORE.
Q HOW MANY DAYS A WEEK WOULD YOU WORK THERE, MR. MARSHALL?
A WELL, I WAS WORKING WITH HIM PRETTY REGULAR RIGHT THEN. HE JUST HIRED ME PART TIME FOR A WHILE.
Q WOULD YOU WORK FULL TIME OR PART TIME?
A I WAS WORKING PRETTY GOOD TIME WITH HIM THEN.
Q WOULD YOU WORK ON THE WEEKENDS, ALSO?
A YEAH.
Q SUNDAYS?
A YEAH, I HELP HIM ON SUNDAYS, TOO.
Q WAS ANYBODY ELSE WORKING WITH HIM STOCKING, DOING WHAT YOU WERE DOING ON THE WEEKENDS?
A WELL, HE HAD ANOTHER DUDE WORK AT NIGHT, YOU KNOW, NIGHT SHIFT.
Q NOW, I WANT TO GO BACK TO THAT SUNDAY, OCTOBER 27TH OF '96. DO YOU REMEMBER THAT DAY?
A I SURE DO.

Q DID YOU WORK FOR MR. BROOKS THAT DAY?
A I DID.
Q WHAT WAS HIS HABIT OR CUSTOM AS FAR AS OPENING THE STORE ON SUNDAY MORNINGS?
A HE WOULD OPEN THE STORE SUNDAY MORNING AND THEN GO TO CHURCH. CLOSE UP AND GO TO CHURCH.
Q SO, ABOUT WHAT TIME WOULD HE OPEN ON SUNDAY MORNINGS?
A I THINK I USUALLY GET DOWN THERE ABOUT EIGHT O'CLOCK.
Q AND ABOUT WHAT TIME WOULD HE CLOSE?
A I THINK EIGHT AT NIGHT. OH, YOU TALKING ABOUT FOR CHURCH?
Q THAT MORNING.
A I THINK ABOUT TEN-THIRTY OR ELEVEN.
Q SUNDAY MORNING?
A YEAH.
Q AND THEN WHERE WOULD HE GO?
A GO TO CHURCH.
Q HAD YOU EVER BEEN TO CHURCH WITH HIM?
A THAT WAS THE ONLY DAY THAT I WENT TO CHURCH WITH HIM.
Q OCTOBER 27TH OF '96 WAS THE ONLY DAY YOU HAD EVER BEEN TO CHURCH WITH HIM?
A THAT'S RIGHT.
Q NOW, WHERE DID Y'ALL GO TO CHURCH AT?
A IT'S A PLACE UP HERE IN TOWN. I DON'T KNOW EXACTLY THE NAME OF THE CHURCH.

Q WHAT'S IT NEAR?
A IT'S THE FIRST TIME I WAS IN THERE, YOU KNOW WHAT I'M SAYING?
Q THAT WASN'T THE FIRST TIME YOU HAD BEEN TO CHURCH?
A NO.
Q DO YOU REMEMBER THE NAME GUNTER'S CHAPEL?
A YEAH, THAT WHAT IT SOUND LIKE.
Q THAT'S HERE IN COLUMBIA?
A YES, IN COLUMBIA.
Q DID YOU GO TO CHURCH WITH MR. BROOKS THAT DAY?
A I DID.
Q AFTER CHURCH, DID YOU LEAVE CHURCH WITH MR. BROOKS?
A I LEFT WITH HIM.
Q AND WHERE DID Y'ALL GO WHEN YOU LEFT CHURCH?
A HE STOPPED TO A COUPLE OF PLACES DOING A LITTLE SHOPPING, YOU KNOW.
Q WHAT TYPE OF SHOPPING ARE YOU REFERRING TO?
A STUFF TO PUT ON THE SHELF, YOU KNOW, CAN GOODS.
Q STORE SHOPPING?
A YEAH, STORE SHOPPING.
Q NOW, DID Y'ALL GO BACK TO HIS STORE?
A YES.
Q AND WHEN YOU GOT BACK TO THE STORE, DID IT RE-OPEN FOR BUSINESS?
A YEAH, RE-OPEN FOR BUSINESS.

Q ABOUT WHAT TIME ARE YOU TALKING ABOUT APPROXIMATELY THAT Y'ALL WOULD HAVE OPENED BACK UP?
A I DON'T KNOW. ABOUT TWELVE SOMETHING OR PRETTY CLOSE TO ONE, SOMETHING LIKE THAT.
Q SUNDAY AFTERNOON?
A SUNDAY AFTERNOON.
Q DID YOU WORK THERE THE REST OF THE DAY?
A THE REST OF THE DAY.
Q NOW, WOULD Y'ALL BE BUSY ON SUNDAYS?
A SOMETIME IT BE PRETTY BUSY BUT IT WAS KIND OF SLOW THAT DAY.
Q WHAT OTHER THINGS WOULD YOU DO AT THE STORE ON SUNDAYS BESIDES STOCK THE SHELVES AS FAR AS YOUR CLOTHES ARE CONCERNED?
A OH, CUT A LITTLE MEAT, STUFF LIKE THAT.
Q I'M TALKING ABOUT AS FAR AS YOUR CLOTHES? WOULD YOU WASH ANY CLOTHES?
A OH, YES. YES.
Q WERE YOU DOING THAT THIS PARTICULAR SUNDAY?
A THAT'S WHAT I WAS DOING THAT SUNDAY.
Q NOW, DO YOU RECALL -- YOU'VE BEEN IN HERE AND SEEN CERTAIN PEOPLE TESTIFY, CORRECT?
A YES.
Q THE LADY THAT JUST TESTIFIED, MS. LENAHAN, DID YOU SEE HER ON THIS PARTICULAR SUNDAY?

A YES, I DID.
Q WHO HAD SHE COME THERE WITH?
A I KNOW IT WAS A BLACK GUY.
Q THERE WAS A FELLOW WITH HER, A GENTLEMAN WITH HER?
A YEAH.
Q AND WHY HAD SHE COME? DO YOU KNOW WHY SHE HAD COME TO BROOKS' STORE?
A SHE COME TO COLLECT MONEY FOR THE PAPER AND STUFF.
Q NOW, WHILE SHE WAS THERE, DO YOU RECALL SEEING MR. SUMTER?
A YES, I SEEN MR. SUMTER.
Q DID YOU HAVE ANY DEALINGS WITH MR. SUMTER?
A JUST GETTING THE QUARTER FROM HIM.
Q NOW, WHY DID HE GIVE YOU THE QUARTER?
A I DON'T KNOW. I GUESS I WAS THAT CLOSE, HE JUST GIVE IT TO ME TO GIVE TO MR. BROOKS.
Q WHAT WAS THE QUARTER FOR?
A FOR AIR.
Q AND HE GAVE YOU THE QUARTER AND WHAT DID YOU DO THEN, MR. MARSHALL?
A I GIVE IT TO MR. BROOKS.
Q NOW, AFTER YOU GAVE IT TO MR. BROOKS, WHERE DID YOU GO IN THE STORE?
A I WAS GOING BACK DOWN WHERE MY CLOTHES WAS DOWN THE HALLWAY.

Q WHAT, IF ANYTHING, DID YOU HAVE TO DO WITH THE AIR HOSE?
A WELL, I STUCK THE AIR HOSE OUT FOR HIM.
Q WHERE IS THE AIR HOSE IN BROOKS' STORE?
A IT'S RIGHT IN ABOUT THE MIDDLE OF THE STORE. THE SECOND DOOR DOWN.
Q IF THIS IS THE FRONT DOOR HERE, THE SECOND AND THIRD DOOR, IT WOULD BE BY THIS DOOR?
A RIGHT THERE.
Q NOW, YOU WOULD HAVE STUCK THE AIR HOSE OUT FROM THE INSIDE, CORRECT?
A RIGHT.
Q NOW, AFTER YOU STUCK THE AIR HOSE OUT, WHERE DID YOU GO THEN?
A WHERE I GO THEN? I START WALK BACK DOWN THE WAY A LITTLE WAYS DOWN THERE --
Q LET ME SLOW YOU DOWN. YOU STARTED WHAT?
A I COMING BACK UP, YOU KNOW, LIKE --
Q WERE YOU COMING BACK TOWARDS THE COUNTER?
A YEAH, COMING BACK TOWARDS THAT WAY.
Q DID YOU GO BACK TO THE COUNTER WHERE MR. BROOKS WAS AT?
A I HAVE TO TAKE HIM THE QUARTER, YEAH, UH-HUH.
Q AND WHEN YOU GOT BACK TO THE COUNTER, WHERE WAS MR. BROOKS AT?

A HE BEHIND THE COUNTER.
Q AND HOW WAS THE SETUP BEHIND THE COUNTER? WAS THE CASH REGISTER ON THE COUNTER?
A YES, IT WAS ON THE COUNTER.
Q OR WAS IT ON A TABLE BEHIND THE COUNTER?
A I THINK IT WAS ON THE TABLE BEHIND THE COUNTER.
Q AND DID MR. BROOKS HAVE ANY KIND OF STOOL OR CHAIR BACK THERE?
A YES, HE HAVE A LITTLE CHAIR.
Q NOW, WERE YOU -- YOU KNOW, THE COUNTER -- LET ME ASK YOU LIKE THIS. YOU'VE GOT THREE SIDES TO THE COUNTER?
A RIGHT.
Q WHERE WERE YOU AT AND WHERE WAS MR. BROOKS?
A I WAS IN THE FRONT OF THE COUNTER.
Q LET ME ASK YOU TO TAKE THIS POINTER -- JUST STAY RIGHT THERE -- AND POINT WHERE YOU WERE AT. IF THIS IS THE FRONT, WHERE WERE YOU AT?
A ABOUT RIGHT UP IN HERE.
Q IN HERE? OUTSIDE THE COUNTER?
A ON THE OUTSIDE OF THE COUNTER.
Q AND WHERE WAS MR. BROOKS?
A OVER BEHIND THE COUNTER.
Q BEHIND THE COUNTER?
A YEAH.

Q DID YOU SEE ANYONE AT THAT TIME?
A NO.
Q WHAT'S THE NEXT THING YOU SAW, MR. MARSHALL?
A THE NEXT THING I SAW?
Q YES, SIR. THE NEXT PERSON YOU SAW.
A WELL, I SEEN THIS LADY RIGHT HERE, THE ONE THAT WAS UP HERE JUST NOW, I DON'T KNOW HER NAME.
Q NOW, AFTER SHE LEFT, WERE YOU STILL AT THE COUNTER?
A NO, I WALKED ON BACK TO THE BACK.
Q DID YOU SEE ANYONE ELSE COME IN?
A NOT RIGHT AT THAT PARTICULAR TIME.
Q HOW MUCH TIME PASSED UNTIL THE NEXT PERSON YOU SAW COME IN APPROXIMATELY?
A I DON'T KNOW. THREE OR FOUR MINUTES.
Q AND WHERE WERE YOU AT WHEN THAT NEXT PERSON CAME IN?
A I WAS DOWN THERE WHERE THE WASHING MACHINE IS, YOU KNOW, IN THAT AREA BACK DOWN IN THERE.
Q AND WHO WAS THIS NEXT PERSON?
A I COULDN'T PLACE WHO IT WAS.
Q WHERE DID HE GO?
A WHATEVER HE DID HE PAID FOR WHATEVER HE GOT OR SOMETHING AND HE LEFT.
Q AFTER THAT PERSON LEFT, DID ANYONE ELSE COME IN?
A I DON'T REMEMBER SEEING ANYONE ELSE.
Q NOW, DID YOU HAVE AN OCCASION TO BE STANDING AT THE

COUNTER WHEN A PERSON COME IN THE FRONT DOOR?
A YES.
Q COULD YOU DESCRIBE HOW THIS PERSON WAS DRESSED THAT COME IN THE FRONT DOOR?
A WELL, IT SEEM TO ME LIKE HE HAD A BLUE JEAN COAT OR SOMETHING LIKE THAT AND HE WAS COVERED UP. I COULDN'T SEE THE FACE.
Q HOW WAS HIS FACE COVERED UP?
A IT WAS COVERED UP WITH SOME KIND OF STUFF. I KNOW IT WAS JUST COVERED UP REAL GOOD.
Q NOW, COULD YOU TELL IF THIS PERSON WAS A MALE OR A FEMALE?
A SEEM LIKE TO ME A MALE TO ME.
Q AND COULD YOU TELL JUST GENERALLY A YOUNG OR AN OLD MAN?
A IT WAS YOUNG.
Q WERE YOU ABLE TO TELL THE RACE WHETHER IT WAS A WHITE MALE OR AN AFRICAN AMERICAN MALE?
A YES. IT SOUND LIKE IT WERE A BLACK MALE.
Q BLACK MALE. YOUNG BLACK MALE. WERE YOU ABLE TO FULLY SEE THIS PERSON'S FACE?
A COULDN'T SEE THE FACE.
Q WAS HE CAMOUFLAGED IN SOME MANNER?
A YEAH.
Q NOW, WHERE WERE YOU STANDING WHEN YOU FIRST SAW THIS

PERSON, MR. MARSHALL?
A RIGHT IN FRONT OF -- I WERE TALKING TO HIM.
Q TALKING TO HIM WHO?
A MR. BROOKS. I WAS TALKING TO MR. BROOKS.
Q AND YOU SAY RIGHT IN FRONT OF HIM. WHERE WAS MR. BROOKS AT?
A HE'S BEHIND THE COUNTER.
Q SO, IF HE WAS BEHIND THE COUNTER, YOU WERE STANDING RIGHT ACROSS?
A I WAS STANDING RIGHT, YEAH, IN FRONT OF HIM.
Q NOW, IF THIS IS THE COUNTER HERE AND YOU ARE STANDING HERE, WHERE WOULD THIS PERSON HAVE BEEN WHEN YOU FIRST SAW HIM?
A HE WAS RIGHT UP ON HIM WHEN HE COME AROUND THE CORNER AND MADE THAT RIGHT. HE MADE THE RIGHT TURN.
Q AND THIS COUNTER OVER ON THIS SIDE GOING OUT THAT FRONT DOOR, IS IT HIGH?
A YEAH, IT'S PRETTY HIGH THERE.
Q WERE YOU ABLE TO SEE THE PERSON BEFORE HE ROUNDED THIS CORNER?
A NO, I DIDN'T SEE HIM 'TIL HE WAS AROUND THE CORNER.
Q NOW, WHAT, IF ANYTHING, DID YOU SEE HE HAD WHEN HE ROUNDED THE CORNER?
A ONLY THING WHEN I OBSERVE, I JUST SEE A GUN AND IT WENT OFF.

Q A GUN?
A YEAH.
Q HOW MUCH TIME PASSED FROM WHEN YOU SAW THE GUN 'TIL THE GUN WENT OFF?
A WHEN IT WENT OFF, I WAS GONE.
Q HOW MUCH TIME PASSED FROM WHEN YOU SAW THE GUN 'TIL WHEN IT WENT OFF? WHEN YOU FIRST SAW HIM WITH THE GUN 'TIL IT WENT OFF, HOW MUCH TIME PASSED?
A AIN'T MUCH TIME PASSED. IT WAS JUST LIKE BOOM AND THAT WAS IT.
Q BEFORE THE GUN WAS FIRED, DID YOU HEAR THIS PERSON SAY ANYTHING TO MR. BROOKS?
A NOT ANYTHING AT ALL.
Q NOW, WHAT DIRECTION WAS THE GUN POINTED?
A BEHIND THE COUNTER.
Q TOWARDS MR. BROOKS?
A YEAH.
Q NOW, WHEN YOU SAY YOU TOOK OFF, MR. MARSHALL, WHAT DIRECTION DID YOU GO?
A RIGHT THERE WHERE I WAS. I TURNED TO MY LEFT AND HIT THAT BACK DOOR.
Q AND IF I SHOW YOU ON STATE'S EXHIBIT NUMBER THREE WITHOUT YOU GETTING UP, THIS AREA RIGHT BACK IN HERE, WHAT IS THIS AREA HERE?
A IT'S THE COOKING AREA BACK UP IN THERE.

Q AND WHAT IS RIGHT IN HERE?
A IT'S A DOOR.
Q IS THAT WHAT YOU'RE REFERRING TO AS THE BACK DOOR?
A YEAH.
Q NOW, WAS THAT BACK DOOR LOCKED?
A NO, IT WASN'T LOCKED.
Q WOULD IT NORMALLY BE LOCKED OR UNLOCKED WHEN Y'ALL'S BUSINESS IS OPEN?
A NO, WE USUALLY KEEP IT OPEN.
Q UNLOCKED?
A YEAH, WE UNLOCK IT.
Q NOW, MR. MARSHALL, YOU HEARD ONE ROUND FIRED BEFORE YOU TURNED TO RUN?
A YEAH.
Q OR AS YOU TURNED TO RUN?
A WELL, WHEN IT WENT OFF I TURN AROUND.
Q HOW MANY OTHER ROUNDS DID YOU HEAR?
A RIGHT WHEN I GOT TO THE BACK DOOR, I HEARD ANOTHER SHOT.
Q THAT WAS BEFORE YOU GOT OUT THE BACK DOOR?
A YEAH. ABOUT TIME I WAS GETTING OUT THERE, YOU KNOW.
Q AND DID YOU HEAR ANY OTHER SHOTS?
A SOUND LIKE I HEARD ANOTHER ONE BUT I DON'T KNOW IF IT WAS THE BACK DOOR SLAMMING OR WHAT. I DON'T KNOW.
Q IF YOU WENT OUT THAT BACK DOOR, YOU PUT PRESSURE ON

IT MOVING QUICKLY, WOULD THAT CAUSE IT TO SLAM? CAUSE IT TO MAKE A NOISE?

A YEAH, IT MAKE A NOISE. MAKE A GOOD NOISE.

Q NOW, ONCE YOU GOT OUTSIDE, WHAT DID YOU DO, MR. MARSHALL?

A I TRIED TO JUMP A FENCE AND I COULDN'T JUMP IT.

Q NOW, THAT FENCE -- THERE IS A FENCE AROUND THE BACK AREA OF MR. BROOKS' STORE?

A RIGHT.

Q NOW, WHEN YOU COULDN'T JUMP IT, WHAT DID YOU DO?

A I RAN THE LONG WAY DOWN TO THE LEFT ALL THE WAY DOWN TO THE GATE.

Q TOWARDS MINERVAVILLE ROAD?

A YEAH.

Q AND WHEN YOU GOT THERE, WHICH WAY DID YOU GO?

A I WENT ACROSS THE FIELD. MADE A RIGHT AND WENT ACROSS THE FIELD.

Q AND WHERE DID YOU GO TO OVER THERE?

A TO THE FIRST HOUSE I GOT TO. I DON'T KNOW THE PEOPLE NAME.

Q AND WHAT DID YOU DO WHEN YOU GOT TO THAT HOUSE, MR. MARSHALL?

A I TOOK IT EASY FOR A LITTLE WHILE. I COULDN'T TALK I WAS SO, YOU KNOW, ALL UPSET. HE GIVE ME A MINUTE OR TWO TO SIT THERE, YOU KNOW, AND TELL HIM WHAT HAD

HAPPENED.
Q NOW, DID YOU GET SOMEONE TO THE DOOR?
A YEAH, HE CAME TO THE DOOR.
Q DO YOU KNOW WHO THAT PERSON WAS?
A WELL, THE WIFE AND THE HUSBAND CAME OUT BUT SHE CAME TO THE DOOR FIRST.
Q A LADY ANSWERED AND HER HUSBAND, IS THAT RIGHT?
A YEAH.
Q DID YOU KNOW HER?
A I DIDN'T REALLY KNOW 'EM BUT I SEEN 'EM.
Q AND WHAT DID YOU TELL THEM, MR. MARSHALL?
A I TOLD 'EM CALL 911, JOE BROOKS HAD GOT SHOT DOWN AT HIS STORE.
Q WAS THE CALL MADE TO 911?
A 911.
Q DID YOU TALK WITH 911?
A NO. THEY TELL ME TO STAY RIGHT THERE 'TIL THEY COME PICK ME UP.
Q DID YOU STAY AT THIS LADY AND GENTLEMAN'S HOUSE UNTIL THE POLICE GOT THERE?
A YEAH. I STAY THERE UNTIL THEY COME PICK ME UP.
Q NOW, MR. MARSHALL, DO YOU RECALL, DID YOU GO BACK TO THE STORE THAT EVENING?
A THEY TOOK ME BACK UP THERE THAT EVENING.
Q DID YOU TALK WITH THE POLICE THAT EVENING?

A YEAH, I TALKED TO 'EM.
Q THEODORE, LET -- I APOLOGIZE, EXCUSE ME. MR. MARSHALL, LET ME ASK YOU THIS. COULD YOU TELL THE JURY APPROXIMATELY WHAT TIME IT WAS WHEN THIS PERSON YOU DESCRIBED CAME IN THE STORE?
A IT WAS PRETTY NEAR SIX O'CLOCK I KNOW. IT MAY HAVE BEEN A FEW MINUTES AFTER OR SOMETHING LIKE THAT.
Q AND I WANT TO ASK YOU THE GUN THAT YOU SAW, WOULD YOU DESCRIBE THAT GUN FOR THE JURY, PLEASE?
A IT LOOK LIKE A SHINY GUN TO ME. I DON'T KNOW MUCH ABOUT GUNS, YOU KNOW.
Q WHEN YOU SAY SHINY, YOU'RE TALKING ABOUT CHROME LOOKING OR JUST CLEAN LOOKING?
A YEAH, IT SEEM LIKE CHROME LOOKING TO ME.
Q NOW, ARE YOU FAMILIAR WITH A REVOLVER THAT'S ROUND AND A SEMI-AUTOMATIC IS FLAT?
A I DIDN'T REALLY PAY --
Q DIDN'T PAY THAT MUCH ATTENTION?
A NO.
Q NOW, THE INDIVIDUAL THAT YOU SAW WITH THE GUN, WOULD YOU DESCRIBE FOR THE JURY, PLEASE, ABOUT HOW TALL HE WAS?
A MAYBE MY HEIGHT, ABOUT FIVE-EIGHT OR NINE.
Q HOW TALL ARE YOU?
A I'M FIVE-EIGHT.

Q AND WHAT ABOUT HIS BUILD OR HIS WEIGHT, HIS SIZE?
A I DON'T KNOW. A HUNDRED FIFTY, A HUNDRED AND SIXTY.
Q WHAT SIZE ARE YOU, MR. MARSHALL?
A HOW MUCH I WEIGH?
Q YES, SIR.
A ABOUT A HUNDRED AND THIRTY-FIVE.
Q AND WOULD IT APPEAR HE WEIGHED A LITTLE MORE THAN YOU?
A YEAH, I BELIEVE HE WEIGHED A LITTLE MORE THAN ME.
Q AND AGAIN WHAT AGE RANGE WOULD YOU PUT THIS PERSON?
A HE WERE YOUNG.
Q YOUNG KEEPS CHANGING FOR ME. WHAT DO YOU CALL YOUNG, MR. MARSHALL?
A I DON'T KNOW. MAYBE TWENTY SOMETHING.
Q NOW, YOU NEVER DID SEE THE PERSON AGAIN?
A NO.
Q AND WHAT PART OF HIS FACE WERE YOU ABLE TO SEE?
A I COULDN'T SEE NOTHING BUT JUST WHAT HE HAD ON. I COULDN'T SEE NO FACE.
Q IT WAS CAMOUFLAGED IN SOME MANNER?
A YES, IT WAS COVERED UP.
Q COVERED UP IN SOME MANNER.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

CROSS EXAMINATION BY

MR. ROGERS:

Q MR. MARSHALL, DID THE DEPUTY SHERIFFS THINK YOU WERE INVOLVED IN THIS INITIALLY? DID THEY CONSIDER YOU A SUSPECT?

MR. McMAHON: OBJECTION. I DON'T KNOW HOW HE COULD -- "A," I DON'T KNOW THE RELEVANCE AND, "B," IS HE ASKING HIM WHAT SOMEBODY ELSE THINKS?

THE COURT: WHAT'S THE RELEVANCE?

MR. ROGERS: I'LL MOVE ON, YOUR HONOR.

THE COURT: ALL RIGHT.

Q (BY MR. ROGERS) MR. MARSHALL, YOU WENT TO THE POLICE AND GAVE THEM A STATEMENT THAT DAY, DID YOU NOT?

A YES.

Q AND YOU WENT DOWN TO HEADQUARTERS?

A YES.

Q DID YOU GO DOWN VOLUNTARILY, YOU WANTED TO BE COOPERATIVE?

A YEAH, I WAS COOPERATIVE.

Q AND I BELIEVE YOU WENT SEVERAL DAYS AFTER THAT AND THEY ASKED YOU SOME FOLLOW-UP QUESTIONS?

A YEAH.

Q AND YOU TOLD THEM THE DATE OF THE INCIDENT THAT -- WELL, LET ME ASK IT THIS WAY. YOU DIDN'T TELL THEM THAT NIGHT ABOUT THIS FIRST MAN THAT CAME IN, DID YOU?

A I JUST TOLD 'EM A MAN CAME IN. I DIDN'T KNOW WHO HE WAS.
Q LET ME MAKE SURE WE'VE GOT THIS STRAIGHT. WHEN MR. McMAHON WAS ASKING YOU QUESTIONS, I BELIEVE WE TALKED ABOUT TWO FELLOWS. SOMEBODY THAT CAME IN AND WENT BACK OUT, SOMEBODY THAT YOU DIDN'T KNOW, AND THEN SOMEBODY CAME IN AND THERE WAS THE SHOOTING?
A UH-HUH.
Q IS THAT CORRECT?
A THAT'S RIGHT.
Q THAT'S WHAT YOU TOLD MR. McMAHON HERE TODAY IN COURT?
A UH-HUH.
Q BUT YOU DIDN'T TELL THE POLICE THAT, DID YOU, THE NIGHT THEY TOOK YOU DOWN TO HEADQUARTERS AND TOOK A STATEMENT FROM YOU? DID YOU?
A THEY DIDN'T TAKE ME DOWN TO HEADQUARTERS THAT NIGHT.
Q OH, YOU DIDN'T GO TO HEADQUARTERS?
A NO.
Q OH, OKAY. WHERE WAS THE STATEMENT GIVEN?
A IT WAS AT THE STORE.
Q OH, AT THE STORE?
A YEAH.
Q OKAY. LET ME SHOW YOU THIS DOCUMENT AND ASK YOU IS THAT THE STATEMENT YOU WROTE FOR THE POLICE THE NIGHT OF THE INCIDENT?

A YES.
Q THAT'S THE STATEMENT YOU GAVE THE POLICE THAT NIGHT?
A I THINK IT'S THE SAME ONE.
Q AND YOU SIGNED AT BOTTOM OF IT?
A I SIGNED TO BOTTOM OF IT, YES.
Q THAT IS YOUR SIGNATURE?
A YES.
Q AND YOU DIDN'T TELL THEM ABOUT THIS FIRST PERSON, YOU ONLY TOLD THEM ABOUT THE PERSON THAT SHOT MR. BROOKS, ISN'T THAT RIGHT?
A WHAT SECOND PERSON?
Q I THOUGHT YOU JUST TESTIFIED WHEN MR. McMAHON WAS QUESTIONING YOU THAT SOMEONE ELSE CAME IN THE STORE BEFORE THE YOUNG MAN THAT CAME IN AND DID THE SHOOTING. IS THAT NOT CORRECT?
A YES, UH-HUH.
Q AND YOU DON'T KNOW WHO THAT PERSON WAS?
A I DON'T KNOW.
Q BUT YOU DID NOT TELL THE POLICE THAT THAT NIGHT WHEN YOU GAVE YOUR STATEMENT?
A WHAT I DIDN'T TELL 'EM?
Q ABOUT THE FIRST GUY BEFORE THE SHOOTER.
A WELL, ONLY THING I DID WHEN HE ASK ME QUESTIONS I JUST ANSWER THEM, YOU KNOW,
Q WELL, YOUR STATEMENT -- I'M STARTING AT THE FOURTH

SENTENCE. WELL, LET ME START FROM THE BEGINNING. ON 10-27-96 I WAS WORKING PART TIME AT JOE'S GROCERY AT MINERVAVILLE AND CABIN CREEK. I CAME HERE AT THREE P.M. TO WORK WITH JOE BROOKS. AROUND SIX P.M. A BLACK MALE CAME TO THE STORE AND NEEDED AIR FOR HIS TRUCK TIRE. I GOT TWENTY-FIVE CENTS FROM THE CUSTOMER AND WENT AND PUT IT ON TOP OF THE CASH REGISTER FOR JOE. I THEN WENT TO THE BACK OF THE STORE TO GIVE THE MAN THE AIR HOSE WHICH WE KEPT INSIDE THE STORE. I THEN WALKED BACK UP TO THE FRONT OF THE STORE AND BEGAN SPEAKING WITH JOE. APPROXIMATELY TWO TO THREE MINUTES LATER A YOUNG BLACK MAN ENTERED THE STORE THROUGH THE FRONT DOOR. HE WALKED STRAIGHT UP TO THE COUNTER AND PULLED OUT A GUN. I MEAN THEY WEREN'T ASKING YOU QUESTIONS THEN. YOU WERE GOING THROUGH STEP BY STEP WHAT HAD HAPPENED, RIGHT?

A YEAH.

Q AND YOU DID NOT IN THIS VERSION TELL THEM ABOUT THIS OTHER PERSON THAT CAME IN BEFORE THE SHOOTER CAME IN, ISN'T THAT CORRECT?

A RIGHT. I WAS BACK IN THE BACK. I COULDN'T REALLY SEE -- WHEN PEOPLE COME IN, I DON'T REALLY PAY TOO MUCH ATTENTION TO THEM, YOU KNOW.

Q BUT YOU DIDN'T TELL THEM THAT NIGHT?

A I DIDN'T TELL THEM THAT?
Q IT'S NOT IN YOUR STATEMENT.
A WELL, THEY PROBABLY DIDN'T ASK ME THEN, YOU KNOW.
Q THEY DIDN'T ASK YOU. AND YOU DIDN'T INCLUDE IT?
A NO, WHAT I'M SAYING, I WAS ALL UPSET AND EVERYTHING. I TRIED TO REMEMBER AS MUCH AS I COULD OF IT.
Q AND YOU SAID HE WALKED STRAIGHT UP TO THE COUNTER AND PULLED OUT A GUN AND JOE WAS BEHIND THE COUNTER AT THAT TIME AND AS SOON AS I SAW THE GUN THE MAN SHOT JOE?
A YEAH.
Q AND THAT'S WHAT YOU HEARD? I MEAN THAT'S WHAT YOU SAW?
A THAT'S WHAT I SAW.
Q YOU DIDN'T HEAR ANY WORDS BETWEEN THE PERSON THAT WAS DOING THE SHOOTING AND MR. BROOKS LIKE GIVE ME THE MONEY OR GIVE IT UP?
A NO.
Q OR ANYTHING THAT WOULD INDICATE A ROBBERY?
A IT WAS NOTHING LIKE THAT.
Q HE JUST WALKED RIGHT IN, WALKED RIGHT UP TO HIM AND SHOT HIM?
A JUST LIKE THAT.
Q AND I BELIEVE YOU DESCRIBED THE GUN AS A SILVER AUTOMATIC?

A YEAH. IT LOOKED SILVER TO ME.
Q IT LOOKED SILVER TO YOU?
A YEAH.
MR. ROGERS: THE COURT'S INDULGENCE.
(PAUSE)
MR. ROGERS: I BELIEVE THAT'S ALL I HAVE YOUR HONOR.
MR. McMAHON: MAY IT PLEASE THE COURT, JUST VERY BRIEFLY.
REDIRECT EXAMINATION BY
MR. McMAHON:
Q MR. MARSHALL, MR. ROGERS ASKED YOU ABOUT THE STATEMENT YOU GAVE THE NIGHT OF THE 27TH?
A UH-HUH.
Q AND THAT PARTICULAR NIGHT, DID YOU ALSO DESCRIBE THE SUBJECT THAT SHOT JOE?
A YEAH.
Q AND THAT'S A QUESTION THAT THE POLICE ASKED YOU HERE?
A YEAH.
Q AND YOUR RESPONSE WAS BLACK MALE?
A YES.
Q FIVE-NINE, ONE THIRTY TO ONE FORTY-FIVE POUNDS. YOU SEE THAT THERE?
A YEAH, I SEE IT THERE.
Q WEARING A BLUE JEAN JACKET WITH A HOOD, BLUE JEAN

PANTS, LARGE AND HE HAD SOMETHING OFF WHITE IN COLOR ACROSS HIS FACE?

A YEAH.

Q HE ALSO HAD THE HOOD PULLED TIGHT AROUND HIS FACE?

A YEAH.

Q I COULD TELL THE SUBJECT WAS A YOUNG BLACK MALE ABOUT TWENTY-TWO OR TWENTY-THREE Y.O.A., YEARS OF AGE, HE WAS DARK SKINNED?

A YES.

Q DID YOU ALSO TELL THEM HOW MANY SHOTS YOU HEARD THAT NIGHT? YOU HEARD A TOTAL OF THREE SHOTS?

A YES.

Q AND THE OTHER PART MR. ROGERS READ WAS THE FIRST PAGE OF THE STATEMENT, CORRECT?

A RIGHT.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS, MR. MARSHALL.

MR. ROGERS: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: MAY I APPROACH THE BENCH?

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,

THIS IS A GOOD OPPORTUNITY FOR US TO RECESS FOR THE EVENING SO WE'LL DO THAT AT THIS TIME. LET ME REMIND YOU OF THE CAUTION AND INSTRUCTION GIVEN YOU EARLIER AND THAT IS YOU ARE NOT TO DISCUSS THIS CASE IN ANY FASHION WITH ANY PERSON DURING THE OVERNIGHT RECESS. IT'S PERFECTLY NATURAL WHEN YOU GO HOME YOUR HUSBANDS OR WIVES OR CHILDREN OR FRIENDS OR SOMEONE MAY INQUIRE AS TO WHETHER OR NOT YOU'VE BEEN PICKED TO SERVE ON A JURY AND, IF SO, WHAT KIND OF CASE YOU ARE SERVING IN. YOU SIMPLY CAN'T DISCUSS IT WITH THEM. YOU JUST TELL THEM THAT YOU ARE NOT PERMITTED TO DISCUSS IT IN ANY FASHION WHATSOEVER. AFTER THIS CASE IS OVER AND YOU HAVE RENDERED YOUR DECISION YOU MAY DISCUSS IT WITH WHOMEVER AND WHENEVER YOU LIKE, BUT UNTIL THAT TIME HAS COME YOU ARE NOT PERMITTED TO DISCUSS THE CASE IN ANY FASHION WITH ANY PERSON. SO, WITH THAT CAUTION IN MIND, HAVE A GOOD EVENING. PLEASE REPORT DIRECTLY TO YOUR JURY ROOM IN THE MORNING AT NINE-THIRTY. AT NINE-THIRTY IN THE MORNING PLEASE REPORT DIRECTLY TO THE JURY ROOM THAT YOU HAVE ALREADY BEEN SHOWN TO. HAVE A GOOD EVENING.

(JURY LEAVES THE JURY BOX AT 5:18 P.M.)

THE COURT: ARE THERE ANY MATTERS THAT NEED TO BE ADDRESSED BEFORE WE RECESS FOR THE EVENING BY THE STATE?

MR. McMAHON: NONE FROM THE STATE, YOUR HONOR.

THE COURT: BY THE DEFENDANT?

MR. ROGERS: NO, YOUR HONOR.

THE COURT: ALL RIGHT. COURT IS IN RECESS UNTIL NINE-THIRTY IN THE MORNING.

(EVENING RECESS)

TUESDAY, MARCH 10, 1998

(COURT RESUMES AT 9:45 A.M.)

THE COURT: ALL RIGHT. ARE THERE ANY MATTERS WE NEED TO ADDRESS BEFORE THE JURY IS BROUGHT IN?

MR. McMAHON: JUDGE, JUST FOR MY OWN PURPOSES OF TIMING, I HAVE SHOWN MR. ROGERS A NUMBER OF PHOTOGRAPHS THIS MORNING. I HAVE NOT HAD THEM MARKED YET. THERE ARE SEVEN. PERHAPS IF I COULD GET THEM NUMBERED SO I'LL KNOW WHAT I'M TALKING ABOUT. YOUR HONOR, JUST TO CORRECT THE RECORD BEFORE SHE PUTS ELEVEN THROUGH SEVENTEEN --

THE COURT: WELL, JUST MARK THEM FOR IDENTIFICATION.

MR. McMAHON: ALL FOR IDENTIFICATION.

(PHOTOGRAPHS ARE MARKED AND RECEIVED AS STATE'S EXHIBITS #11 THRU #17 FOR IDENTIFICATION PURPOSES ONLY)

MR. McMAHON: I THINK HE HAD NO OBJECTIONS TO ELEVEN, TWELVE, THIRTEEN, OR FOURTEEN.

MR. ROGERS: THAT'S CORRECT.

MR. McMAHON: I THINK HE HAS AN OBJECTION TO FIFTEEN, SIXTEEN AND SEVENTEEN.

THE COURT: ALL RIGHT. NOW, TELL ME BEFORE I GET MR. ROGERS -- SOLICITOR, TELL ME WHAT THE PURPOSE OF THE THREE PHOTOGRAPHS ARE AND WHAT THE SIGNIFICANT DIFFERENCE IS BETWEEN THE THREE, WHY YOU CAN'T USE ONE AS OPPOSED TO THREE?

MR. McMAHON: MAY I LOOK AT THEM TO MAKE MY RESPONSE TO HIS HONOR?

THE COURT: SURE.

MR. McMAHON: JUST TO BEGIN WITH JUST GENERALLY EACH AND EVERY ONE OF THE PHOTOGRAPHS SHOW THE CIRCUMSTANCES OF THE CRIME SCENE AND WE WOULD USE IT CIRCUMSTANTIALLY TO SHOW THE PLACE OF THE VICTIM BEHIND THE COUNTER. FURTHER, YOUR HONOR, YOU WILL SEE IN BOTH FIFTEEN AND SIXTEEN THERE IS AN ITEM HERE WHICH IS PART OF THE CASH REGISTER, IT'S THE TOP WHERE THE RECEIPT PAPER WOULD COME OUT, IF YOU WOULD LOOK ON SEVENTEEN THIS IS THE SAME AREA BUT THAT ITEM IS NOT THERE. THE TESTIMONY BY THE CRIME SCENE TECHNICIAN WOULD BE THAT AS THAT ITEM WAS REMOVED HE THEN LOCATED A SMALL ITEM THERE, THAT WOULD BE THE BULLET PROJECTILE THAT WAS RECOVERED FROM THE SCENE. A NINE MILLIMETER ROUND. AND THAT WOULD HAVE BEEN

PLACED IN A POSITION WHERE IT WAS UNDER THE BODY OF MR. BROOKS. LATER ON WHEN THE PATHOLOGIST TESTIFIES ONE OF THE ROUNDS WAS RECOVERED FROM THE BODY OF MR. BROOKS, ONE WAS AN ENTRANCE AND EXIT THROUGH AND THROUGH AND IT CAME OUT OF HIS BACK AND, OF COURSE, THAT WAS ON THE FLOOR AND THAT WOULD HELP PLACE THE VICTIM IN THE APPROPRIATE POSITION BEHIND THE COUNTER. I DON'T DISAGREE WITH THE COURT THAT FIFTEEN AND SIXTEEN ARE VERY SIMILAR. SEVENTEEN, ALTHOUGH IT IS THE SAME POSITION, IT SHOWS THAT AREA ONCE THAT PART OF THE CASH REGISTER HAD BEEN REMOVED WHERE YOU CAN ACTUALLY SEE THE BULLET PROJECTILE.

THE COURT: OKAY. AND THE PURPOSE OF SEVENTEEN IS TO SHOW THE PROJECTILE?

MR. McMAHON: YES, SIR.

THE COURT: AND THE PURPOSE OF FIFTEEN IS TO SHOW WHAT IS NOT REFLECTED IN SIXTEEN?

MR. McMAHON: AS I SAID, I DON'T DISAGREE WITH THE COURT THAT FIFTEEN AND SIXTEEN ARE VERY SIMILAR. AT A SLIGHTLY DIFFERENT ANGLE BUT OBVIOUSLY VERY SIMILAR IN THE SAME AREA.

THE COURT: LET ME SHOW YOU THE PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER SIXTEEN. YOU TELL ME IF THAT IS NOT THE PROJECTILE THAT'S REFLECTED IN SEVENTEEN?

MR. McMAHON: ALL RIGHT, SIR. (PAUSE) JUDGE, IT MAY BE. I APOLOGIZE.

THE COURT: IT APPEARS TO BE.

MR. McMAHON: MY EYES ARE -- THAT'S WHY I KEEP THIS PRETTY HANDY. I THINK THAT'S CLEARLY IT IN SEVENTEEN.

THE COURT: OKAY.

MR. McMAHON: THAT WAS MY PURPOSE IN SEVENTEEN. AS A MATTER OF FACT, I DIDN'T PICK UP ON THE PROJECTILE BEING IN ANY OF THE PHOTOGRAPHS UNTIL I HAD THEM ENLARGED IN THAT AREA AND THEN USED MY MAGNIFYING GLASS.

THE COURT: OKAY. IT APPEARS TO ME THAT SIXTEEN WOULD SHOW EVERYTHING THAT YOU WANT TO SHOW. NOW, MR. ROGERS, LET ME HEAR WHAT YOUR OBJECTION IS TO SIXTEEN OR FIFTEEN, SIXTEEN, AND SEVENTEEN BUT SPECIFICALLY SIXTEEN.

MR. ROGERS: JUDGE, MY OBJECTION IS PRIMARILY TO THE VIEW OF THE BLOOD IN EXHIBIT SIXTEEN. I MEAN I UNDERSTOOD THAT THE -- A PERSON TESTIFIED YESTERDAY AND THERE HAVE BEEN OTHER PHOTOGRAPHS INTRODUCED TO SHOW WHERE THE ITEMS WERE LOCATED IN THE STORE WHEN THE OFFICERS ARRIVED. RULE 401 OF EVIDENCE SAYS THAT RELEVANT EVIDENCE IS ANY EVIDENCE HAVING THE TENDENCY TO MAKE THE EXISTENCE OF A FACT MORE PROBABLE OR LESS

PROBABLE THAN IT WOULD BE WITHOUT THE EVIDENCE. I MEAN I THINK IT'S CLEAR THAT THE OFFICERS CAN TESTIFY AS TO WHERE THEY FOUND THE PROJECTILE. WE DON'T DISPUTE ANY OF THAT. OUR OBJECTION GOES TO BEING ABLE TO VIEW THE BLOOD IN THAT PHOTOGRAPH AND THEREBY HAVING MORE OF A PREJUDICIAL EFFECT THAN A PROBATIVE VALUE.

THE COURT: OKAY. WELL, WITH RESPECT TO STATE'S EXHIBIT NUMBER SIXTEEN HAVING LOOKED AT THE PHOTOGRAPH I THINK THE EXISTENCE OF THE BLOOD IS ACTUALLY A MINOR DETAIL. YOU COULDN'T REALLY -- IT DOESN'T STAND OUT TO ME IN THAT PARTICULAR PHOTOGRAPH AS IT DOES MORE SO IN STATE'S EXHIBIT NUMBER SEVENTEEN. ALSO, IT APPEARS THAT STATE'S EXHIBIT NUMBER SIXTEEN SHOWS EVERYTHING THAT THE STATE IS WISHING TO SHOW, SPECIFICALLY THE PROJECTILE ITSELF THAT THE SOLICITOR INDICATED WAS BETTER DISPLAYED IN SEVENTEEN. SEVENTEEN HAS A MORE GRAPHIC DEPICTION OF BLOOD BEING ON THE PAPERS ON THE FLOOR IN A CLOSE-UP FASHION. I DON'T FIND STATE'S EXHIBIT NUMBER SIXTEEN TO BE INFLAMMATORY AT ALL. IT IS RELEVANT TO THE ISSUES THAT THE STATE IS OFFERING TO PROVE THAT ARE RELEVANT TO THE CASE. SO, I'M GOING TO OVERRULE YOUR OBJECTION TO STATE'S EXHIBIT NUMBER SIXTEEN. I'LL SUSTAIN THE OBJECTION TO FIFTEEN AND SEVENTEEN

PRIMARILY BECAUSE THEY ARE CUMULATIVE.

ALL RIGHT. WHAT ELSE?

MR. McMAHON: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU WANT YOUR PHOTOGRAPHS BACK?

MR. McMAHON: YES, SIR.

THE COURT: I UNDERSTAND ELEVEN, TWELVE AND THIRTEEN THERE IS NO OBJECTION TO.

MR. ROGERS: THAT'S CORRECT.

MR. McMAHON: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. ANY OTHER MATTERS THAT NEED TO BE ADDRESSED BEFORE THE JURY IS BROUGHT IN?

MR. McMAHON: NOTHING FURTHER FROM THE STATE.

MR. ROGERS: NOTHING FROM THE DEFENSE.

THE COURT: OKAY. BRING THE JURY IN, PLEASE.

(JURY RETURNS TO THE JURY BOX AT 9:54 A.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. AS YOU WILL RECALL WHEN WE RECESSED YESTERDAY EVENING, THE STATE WAS IN THE PROCESS OF PRESENTING THEIR EVIDENCE BY WAY OF TESTIMONY AND OTHERWISE SO WE'LL CONTINUE WITH THAT THIS MORNING. SOLICITOR.

MR. CHAPLIN: THE STATE CALLS MS. LILY BATES.

LILY GAY BATES, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND

STATE YOUR FULL NAME FOR THE RECORD.

A MY NAME IS LILLY GAY BATES.

DIRECT EXAMINATION BY

MR. CHAPLIN:

Q GOOD MORNING, MRS. BATES.

A GOOD MORNING.

Q MRS. BATES, WHERE DO YOU LIVE?

A I LIVE AT [redacted] MINERVAVILLE ROAD, HOPKINS.

Q HOW LONG HAVE YOU LIVED THERE?

A A LITTLE OVER TWENTY-FIVE YEARS. IT WILL BE TWENTY-SIX YEARS THE 25TH OF THIS MONTH.

Q WHAT DO YOU DO?

A I TEACH.

Q WHERE DO YOU TEACH AT?

A I TEACH AT HOPKINS MIDDLE SCHOOL.

Q DID YOU KNOW MR. JOE BROOKS?

A YES, I DID.

Q HOW DID YOU KNOW MR. BROOKS?

A WELL, WE LIVED CLOSE TO EACH OTHER. IN OUR AREA YOU MIGHT CALL IT -- HE'S A NEIGHBOR YOU MIGHT SAY. PLUS, HE OWNS THE STORE THERE AND I KNOW HIM FROM THE COMMUNITY.

Q MRS. BATES, I'M GOING TO TAKE YOU BACK TO 10-27 OF '96. ON THAT DAY, DID ANYTHING UNUSUAL OCCUR ON THAT DAY?

A MOST DEFINITELY.
Q WHAT OCCURRED?
A WELL, A MAN CAME TO MY DOOR WHICH IS HIGHLY UNUSUAL AND VERY NERVOUS AND UPSET AND SAYING MR. JOE BROOKS HAD BEEN SHOT. AND I DIDN'T BELIEVE HIM AT FIRST. I WONDERED, YOU KNOW, WHAT'S GOING ON HERE. MR. BROOKS BEING SHOT, YOU KNOW. AND ANYWAY HE SAID HE HAD BEEN SHOT AND EVERYTHING AND WE NEED TO CALL 911.
Q WHO WAS THIS MAN? DID YOU KNOW THIS MAN?
A I HAD NEVER SEEN HIM BEFORE.
Q COULD YOU DESCRIBE HIM?
A YES, VERY SMALL MAN. LIGHT SKIN. SHORT.
Q LATER DID YOU LEARN THAT WAS MR. MARSHALL?
A YES, I DID.
Q SO, WHAT WAS MR. MARSHALL'S DEMEANOR AGAIN WHEN HE CAME TO YOUR FRONT DOOR?
A VERY UPSET AND EXCITED. I MEAN, YOU KNOW, LIKE HE WAS REALLY CONCERNED ABOUT MR. BROOKS. MR. BROOKS HAD REALLY BEEN SHOT AND HE WAS AFRAID THAT HE'D PROBABLY BE DEAD OR SOMETHING, YOU KNOW.
Q WHAT WAS HE WEARING? DO YOU REMEMBER?
A TO TELL YOU THE TRUTH, I DON'T REMEMBER WHAT HE WAS WEARING.
Q DID YOU NOTICE ANYTHING DIFFERENT ABOUT HIS FEET?
A ONE SHOE ON AND ONE SHOE OFF.

Q HE HAD WHAT?
A ONE SHOE ON AND ONE SHOE OFF.
Q SO, HE RAN FROM MR. BROOKS' STORE WITH ONE SHOE ON AND ONE SHOE OFF?
A I GUESS SO. WHEN I SAW HIM IT WAS ONE SHOE ON AND ONE SHOE OFF.
Q SO, HE ASKED YOU TO CALL?
A RIGHT, CALL FOR HELP. AND SO I WENT BACK IN THE HOUSE AND GOT MY PORTABLE PHONE. HE WAS AT MY FRONT DOOR. I WENT BACK IN AND GOT THE PORTABLE PHONE AND BROUGHT IT TO HIM. I MIGHT HAVE DIALED THE 911 NUMBER, I'M NOT SURE, AND GAVE HIM THE PHONE. I DON'T KNOW, BUT HE DID TALK WITH THE PEOPLE AT 911.
Q AFTER HE SPOKE TO THE INDIVIDUALS AT 911, WHAT DID HE DO THEN? DID HE STAY?
A OH, YES, HE REMAINED WITH ME BECAUSE HE SAID THAT THE OFFICER TOLD HIM TO STAY AT MY HOUSE UNTIL HE GETS THERE OR UNTIL HE GOT THERE. AND SO THAT'S WHAT HE DID AND I REMAINED THERE WITH HIM ALL THE TIME.
Q SO, NOW AFTER THE OFFICERS GOT THERE, WHAT OCCURRED THEN?
A WELL, HE WENT TO THE OFFICERS' CAR AND THEY SAT IN THE CAR FOR A WHILE AND TALKED OR WHATEVER AND LEFT.
Q ABOUT WHAT TIME DO YOU THINK IT WAS WHEN HE RAN HYSTERICALLY TO YOUR HOUSE?

A IT HAD TO HAVE BEEN SOMEWHERE IN THE VICINITY OF SIX. MAYBE BETWEEN FIVE FORTY-FIVE AND SIX, SOMETHING LIKE THAT. I DON'T KNOW EXACTLY.

Q SO, NOT REALLY DARK BUT --

A IT WAS NOT DARK, RIGHT. IT WASN'T.

Q PRIOR TO HIM COMING TO THE HOUSE THAT DAY, DID YOU JUST GET HOME OR YOU WERE HOME ALL DAY?

A I HAD BEEN HOME MAYBE AN HOUR OR TWO.

Q COMING FROM WHERE?

A I GUESS I WAS COMING FROM CHURCH OR FROM THE STORE OR SOMETHING. I DON'T REMEMBER EXACTLY WHERE I WAS COMING FROM.

MR. CHAPLIN: I BEG THE COURT'S INDULGENCE.

(PAUSE)

Q (BY MR. CHAPLIN) MRS. BATES, LET ME SHOW YOU A DIAGRAM. STATE'S EXHIBIT NUMBER TWO. DO YOU RECOGNIZE WHAT THIS IS A DIAGRAM OF?

A ALL RIGHT, YES. IT'S JOE BROOKS' STORE.

Q NOW, I KNOW IT DOESN'T ACTUALLY DEPICT IT BUT IN RELATION TO WHERE THE STORE IS LOCATED, WHERE WOULD YOUR HOUSE BE LOCATED?

A ON MINERVAVILLE RIGHT DOWN THIS WAY, ON MINERVAVILLE TO THE RIGHT.

Q SO, YOU WOULD BE RIGHT AROUND HERE?

A UH-HUH. I'M THE FIRST HOUSE FROM THE STORE ON

MINERVAVILLE.

Q AND I THINK YOU MENTIONED YOU WERE COMING FROM THE STORE. WHICH STORE WOULD THAT HAVE BEEN?

A MY HUSBAND OWNS G-MART GROCERY STORE LOCATED AT GADSDEN. SO, A LOT OF TIMES I STOP BY THERE PRIOR TO COMING HOME. THAT'S THE REASON I'M SAYING I MAY HAVE BEEN COMING FROM THERE DIRECTLY.

Q SO, YOUR HUSBAND OWNS A STORE AS WELL?

A YES, HE DOES.

MR. CHAPLIN: I HAVE NO FURTHER QUESTIONS.

MR. ROGERS: I DON'T HAVE ANY QUESTIONS FOR MRS. BATES.

THE COURT: YOU MAY STEP DOWN. THANK YOU.

MR. McMAHON: THE STATE CALLS WILLIAM MANN.

WILLIAM H. MANN, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

DIRECT EXAMINATION BY MR. McMAHON:

Q SIR, WOULD YOU INTRODUCE YOURSELF TO THE JURY, PLEASE? WHAT'S YOUR NAME?

A MY NAME IS WILLIAM MANN. I'M A FORENSIC INVESTIGATOR WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE RICHLAND

COUNTY SHERIFF'S DEPARTMENT?
A SINCE '89.
Q AND HOW LONG HAVE YOU BEEN ASSIGNED AS A FORENSIC INVESTIGATOR WITH THE SHERIPP'S OFFICE?
A I STARTED IN THE LAB IN '92.
Q SO, YOU'VE BEEN ASSIGNED TO THE LAB FOR SIX YEARS?
A APPROXIMATELY, YES.
Q PRIOR TO THE SIX YEARS THAT YOU WERE ASSIGNED TO THE LAB, WHAT WERE YOUR DUTIES AND RESPONSIBILITIES WITH THE SHERIFF'S OFFICE, MR. MANN?
A I WAS IN THE PATROL DIVISION ANSWERING CALLS FROM THE 911 DISPATCHER.
Q AND THAT WOULD BE AS A UNIFORMED SHERIFF'S DEPUTY?
A THAT'S CORRECT.
Q NOW, SIR, THOSE SIX YEARS IN THE LAB, WHAT ARE YOUR GENERAL DUTIES AND RESPONSIBILITIES IN THAT ASSIGNMENT?
A WE RESPOND TO THE CRIME SCENE CALLS THAT THE PATROL OFFICERS REQUEST. HOMICIDES, BREAK-INS, SUICIDES, SEXUAL ASSAULTS, ET CETERA. WE PROCESS THE SCENES, INCLUDING PHOTOGRAPHING, DOCUMENTING THE EVIDENCE LOCATION, COLLECTING THE EVIDENCE, PROCESSING IT IN THE LAB AND PACKAGING EVIDENCE EITHER FOR THE EVIDENCE ROOM OR TO THE S.L.E.D. CRIME LAB.
Q AND THAT HAS BEEN YOUR PRIMARY RESPONSIBILITY FOR THE

PAST SIX YEARS?

A YES, IT HAS.

Q COULD YOU GIVE THE JURY AN INDICATION OF HOW MANY CRIMES SCENES YOU WOULD RESPOND TO IN AN AVERAGE MONTH SAY?

A EXCESS OF FIFTY.

Q FIFTY PER MONTH?

A AT LEAST.

Q AND YOU DON'T ALWAYS HAVE TO DO EACH AND EVERY TASK AT EACH AND EVERY CRIME SCENE, IS THAT CORRECT?

A THAT'S CORRECT.

Q NOW, OFFICER MANN, WOULD YOU RELATE TO THE JURY, PLEASE, ANY PARTICULAR OR SPECIALIZED TRAINING YOU HAVE THAT WOULD QUALIFY YOU TO PROCESS CRIME SCENES?

A BASIC FINGERPRINT COURSE AT THE CRIMINAL JUSTICE ACADEMY. ANALYSIS OF MARIJUANA, BLOOD PATTERN ANALYSIS COURSE, CRIME SCENE RECONSTRUCTION AND MORE RELATED COURSES ALONG THE SAME LINES.

Q DID YOU ALSO HAVE THE OPPORTUNITY UPON YOUR INITIAL ASSIGNMENT TO THE LAB TO WORK WITH OTHER FORENSIC INVESTIGATORS THAT MAY HAVE BEEN MORE EXPERIENCED THAN YOU WERE AT THE TIME?

A THAT'S CORRECT.

Q DID YOU RESPOND TO BROOKS' STORE ON OCTOBER 27TH OF 1996?

A YES, I DID.
Q AND COULD YOU TELL US APPROXIMATELY WHAT TIME YOU ARRIVED?
A ACCORDING TO MY CALL SHEET, I ARRIVED AT 1850 WHICH IS TEN MINUTES TO SEVEN.
Q IN THE EVENING?
A THAT'S CORRECT.
Q AND WOULD THERE HAVE BEEN ANY OTHER FORENSIC LAB OFFICERS THAT RESPONDED TO BROOKS' STORE?
A AT THE TIME, IT WAS INVESTIGATOR LEATHERMAN. HE'S SERGEANT LEATHERMAN NOW. HE ALSO RESPONDED WITH ME. HE GOT THERE A SHORT TIME AFTER I DID.
Q COULD YOU DESCRIBE THE SCENE FOR US UPON YOUR ARRIVAL?
A THE AREA BEHIND THE COUNTER WHERE MR. BROOKS WOULD HAVE BEEN WAS IN DISARRAY. THERE WAS BLOOD ON THE FLOOR AND DIFFERENT ITEMS OF EVIDENCE THAT WE LATER COLLECTED.
Q AND IF I COULD, OFFICER MANN, IF I COULD GET YOU BACK OUTSIDE MOMENTARILY, DO YOU RECALL IF THE EXTERIOR OF BROOKS' STORE AS FAR AS THE FRONT OF IT HAD BEEN SECURED IN ANY MANNER?
A YES, IT HAD. THE LINE OFFICERS HAD SECURED IT AND WERE RESTRICTING ACCESS ONLY TO THOSE THAT HAD A NEED TO BE THERE.

Q AND HOW HAD THAT BEEN ACCOMPLISHED? WHAT DID YOU OBSERVE?
A I BELIEVE THEY HAD CRIME SCENE TAPE UP AND THEY HAD TWO OR THREE OF THEM OUTSIDE PHYSICALLY ADVISING PEOPLE NOT TO APPROACH.
Q NOW, SIR, YOU WENT THROUGH THAT AREA INTO THE INTERIOR OF BROOKS' STORE?
A THAT'S CORRECT.
Q AND AGAIN DESCRIBE THE INTERIOR OF MR. BROOKS' STORE UPON YOUR FIRST OBSERVATIONS.
A WENT IN THE FRONT DOOR AND YOU TAKE A RIGHT AND COME AROUND THE FRONT OF THE COUNTER AND ON AROUND AND THERE'S A DOOR LEADING INTO THE AREA BEHIND THE COUNTER AND IT WAS IN SOMEWHAT OF DISARRAY. ITEMS SCATTERED AROUND.
Q NOW, HOW DO YOU GO ABOUT PROCESSING THE SCENE INITIALLY?
A FIRST THING I DO BEFORE I TOUCH OR MOVE ANYTHING IS TAKE PHOTOGRAPHS OF THE SCENE TO DOCUMENT IT AS IT IS ON MY ARRIVAL AND THEN AS WE FIND ITEMS OF EVIDENCE WE MARK THEM AND WE TAKE FURTHER PHOTOS OF THEM AND DOCUMENT THE FACT WE FOUND THEM.
Q WERE BOTH STILL PHOTOGRAPHS AND A VIDEO OF THIS PARTICULAR LOCATION TAKEN?
A YES, THEY WERE.

Q DID YOU TAKE THE STILL PHOTOGRAPHS?
A I DID THE STILLS AND SERGEANT LEATHERMAN DID THE VIDEO.
Q NOW, SIR, DURING THE PERIOD OF TIME THAT Y'ALL ARE PHOTOGRAPHING OR PROCESSING THIS PARTICULAR SCENE, ARE THERE OTHER INDIVIDUALS WITHIN THE CRIME SCENE?
A ON THE OUTER EDGES OF IT. THE INVESTIGATORS WERE ON THE OUTSIDE OF THE AREA. AT THAT TIME, WE WERE THE ONLY ONES BEHIND THE COUNTER AREA.
Q AND NOW YOU ARE REFERRING TO THE COUNTER AND BEHIND THE COUNTER AREA, IS THAT CORRECT?
A CORRECT.
Q NOW, OFFICER MANN, YOU ARE FAMILIAR WITH THESE -- SPECIFICALLY, STATE'S EXHIBIT NUMBER TWO AND THREE, THE AREA OF THE EXTERIOR OF BROOKS' STORE AND THE INTERIOR OF BROOKS' STORE?
A CORRECT.

MR. McMAHON: YOUR HONOR, MAY I ASK THE WITNESS TO STEP DOWN?

THE COURT: YOU MAY.

(WITNESS LEAVES STAND)

Q (BY MR. McMAHON) I WANT TO START WITH STATE'S EXHIBIT NUMBER TWO AND YOU'RE FAMILIAR WITH THIS BEING A GENERAL LAYOUT OF THE EXTERIOR OF BROOKS' STORE?

A THAT'S CORRECT.
Q NOW, WHICH DIRECTION -- IF YOU COULD TURN JUST SLIGHTLY WHERE YOU CAN LOOK AT THE DIAGRAM AND STILL FACE TOWARDS THE JURY. WHICH DIRECTION WOULD YOU HAVE ARRIVED FROM, OFFICER MANN?
A I CAME DOWN CABIN CREEK THIS WAY.
Q AND WOULD YOU DESCRIBE JUST VERY GENERALLY AGAIN BRIEFLY THE AREA THAT WAS SECURED ON THE EXTERIOR OF THE BUILDING?
A THEY HAD THIS AREA IN HERE SECURED.
Q DO YOU RECALL WHAT THIS IS OVER HERE?
A ANOTHER BUILDING. IT WASN'T REALLY INVOLVED IN THE CRIME SCENE SO OTHER THAN NOTING IT WAS THERE I REALLY DON'T KNOW THAT MUCH ABOUT IT.
Q AND UP HERE AT THIS INTERSECTION, DO YOU RECALL WHAT WAS OVER HERE?
A THERE WERE SOME PAY PHONES OVER THERE I BELIEVE.
Q NOW, WHAT DOOR WOULD YOU HAVE ENTERED?
A AFTER I TALKED TO UNITS ON THE CRIME SCENE AND DETERMINED THEIR KNOWLEDGE, WHAT THEY KNEW ABOUT THE SCENE AND WHAT WAS GOING TO BE INSIDE, I APPROACHED THROUGH THE FRONT AND THERE WAS AN OFFICER SITTING HERE THAT I HAD TO SIGN IN WITH BEFORE I WENT IN.
Q DID YOU DO AN OVERVIEW, A KIND OF LOOK THROUGH OR WALK THROUGH OF THE AREA PRIOR TO DOING ANY

PHOTOGRAPHING?
A YES. I TOOK A GENERAL LOOK AND WE LOOKED AROUND AND DETERMINED WHAT WAS THERE AND THEN STARTED PHOTOGRAPHY.
Q SO, NOW LET ME GO TO STATE'S EXHIBIT NUMBER THREE. THIS WOULD DEPICT AGAIN GENERALLY THE INTERIOR OF BROOKS' STORE?
A YES, IT WOULD.
Q AND WHAT AREA ARE YOU TALKING ABOUT YOU DID KIND OF A WALK THROUGH?
A CAME IN THROUGH THESE DOORS, CAME UP PAYING ATTENTION TO EVERYTHING IN GENERAL. CAME AROUND, CAME DOWN AND THEN ENTERED BEHIND THE COUNTER HERE. I ALSO HAD LOOKED ACROSS THE COUNTER HERE AS I CAME AROUND IT. CAME IN AND THEN LOOKED THIS AREA OVER AND THEN STARTED THE PHOTOGRAPHY OF THE SAME GENERAL AREA.
Q AND RATHER THAN GO THROUGH BOTH YOUR DESCRIPTIONS AND YOUR OBSERVATIONS AND SECONDLY YOUR PHOTOGRAPHY, LET ME JUST START WITH THESE PHOTOGRAPHS. STATE'S EXHIBIT NUMBER FOUR. CAN YOU IDENTIFY THAT PHOTOGRAPH?
A THAT'S STANDING OUTSIDE HERE IN THE PARKING LOT AND TAKING AN OVERVIEW SHOT LOOKING IN THE FRONT DOOR OF THE STORE. THE COUNTER AREA WOULD BE BACK HERE TO THE RIGHT.

Q AND YOU CAN SEE SOME ITEMS RIGHT HERE THAT APPEAR TO BE STACKED. APPROXIMATELY WHERE WOULD THEY BE IN THE STORE?
A THEY ARE AT THE END OF THE COUNTER HERE.
Q IF YOU'LL LOOK AT STATE'S EXHIBIT NUMBER FIVE. DO YOU SEE THOSE SAME ITEMS?
A YES, THEY ARE. THEY ARE RIGHT HERE AS YOU COME IN THE DOOR IN THIS AREA RIGHT HERE.
Q AND YOU SEE THIS NO SMOKING SIGN HERE AND NO SMOKING SIGN HERE? I'M REFERRING TO STATE'S FOUR AND STATE'S FIVE. IS THAT THE SAME SIGN?
A YES, IT IS.
Q NOW, WHO TOOK THESE PHOTOGRAPHS?
A I DID.
Q NOW, DID YOU NOTICE ANYTHING IN DISARRAY OR UNUSUAL OF THIS AREA RIGHT IN HERE?
A THIS AREA REALLY WAS NOT IN ANY DISARRAY UNTIL YOU CAME AROUND. THE DISARRAY WAS LOCATED BACK HERE AND THERE WERE SOME ITEMS ON THE FLOOR DOWN THROUGH HERE.
Q NOW, SIR, I WANT TO GO TO STATE'S EXHIBIT NUMBER EIGHT. SIX, SEVEN AND EIGHT. THESE PARTICULAR PHOTOGRAPHS. ARE YOU FAMILIAR WITH THESE PHOTOGRAPHS, SIR?
A YES, I AM.
Q NOW, WHO TOOK THESE PHOTOGRAPHS?

A I ALSO TOOK THOSE PHOTOGRAPHS.
Q AND WHERE WOULD THEY BE TAKEN FROM AND WHAT ARE YOU LOOKING AT IN THESE PHOTOGRAPHS?
A OKAY. STARTING WITH THIS PHOTO, THESE TWO PHOTOS ARE LOOKING AT THE FRONT OF THE COUNTER FROM THE CUSTOMER SIDE.
Q NOW, AT THE TIME YOU TOOK THESE PHOTOGRAPHS, DID YOU NOTICE ANYTHING UNUSUAL ABOUT THAT AREA?
THE COURT: EXCUSE ME JUST A MINUTE, MR. McMAHON. YOU ARE BEHIND THAT CHART AND THE COURT REPORTER MAY NOT BE ABLE TO HEAR YOU AS CLEARLY AS SHE OTHERWISE COULD SO PLEASE SPEAK UP A LITTLE BIT LOUDER.
Q (BY MR. McMAHON) DID YOU NOTICE ANYTHING PARTICULARLY UNUSUAL ABOUT THE COUNTER AREA?
A AT THAT TIME, THE TOP OF THE COUNTER ITSELF?
Q YES, SIR.
A MAY I SEE THE PHOTOS A MINUTE? NO, SIR, NOT REALLY THE TOP OF THE COUNTER AREA. NOT AT THAT TIME.
Q NOW, THIS PARTICULAR PHOTOGRAPH, STATE'S EIGHT, WHAT VIEW WOULD THAT BE?
A THAT'S ALSO LOOKING ALONG THE FRONT OF THE COUNTER.
Q AND THIS ITEM HERE WOULD BE WHAT THAT I'M POINTING TO?
A THAT'S GOING TO BE A MEAT COUNTER THAT'S BACK IN THIS

AREA FREEZER.

Q AND DID YOU NOTICE ANYTHING UNUSUAL ABOUT THAT AREA IN THE FRONT OF THE COUNTER LOOKING BACK TOWARDS THE FREEZER?

A THERE WERE SOME ITEMS IN THIS GENERAL AREA THAT WERE ON THE FLOOR.

Q NOW, REFERRING THEN TO STATE'S EXHIBIT NUMBER NINE, DID YOU TAKE THAT PHOTOGRAPH?

A YES, I DID.

Q AND WHAT AREA DOES THAT DEPICT?

A THAT'S LOOKING ON AROUND THE CORNER. THIS IS YOUR FREEZER HERE WHICH WOULD BE THESE FREEZERS HERE. THERE IS A BROKEN MIRROR ON THE FLOOR AND THERE'S SOME ITEMS OF DEBRIS THERE, TRASH, WHATEVER AND THIS IS THE DOOR THAT ACTUALLY OPENED.

Q THIS? THAT'S WHERE YOU ARE POINTING?

A YES.

Q NOW, THESE ITEMS OF DEBRIS, WHAT DO THEY APPEAR TO BE?

A PAPER ITEMS OF SOME TYPE.

Q DID IT APPEAR TO BE MEDICAL WASTE?

A POSSIBLY COULD HAVE BEEN.

Q AND ALL OF THESE PHOTOGRAPHS WERE TAKEN AFTER MR. BROOKS HAD BEEN REMOVED?

A HE HAD BEEN REMOVED WHEN I ARRIVED.

Q AND AGAIN WHAT TIME DID YOU ACTUALLY ARRIVE?
A ACCORDING TO THE PAPERWORK, I ARRIVED AT TEN MINUTES TO SEVEN.
Q NOW, MR. MANN, YOU ALSO HAD THE OPPORTUNITY TO GO IN THERE BEHIND THE COUNTER, CORRECT?
A YES, I DID.
Q AND THIS DOOR THAT YOU POINTED OUT IN THIS PHOTOGRAPH?
A THAT'S CORRECT.
Q IS THAT THE ONLY ACCESS TO GO BEHIND THE COUNTER AREA?
A YES, IT IS.
Q I WANT TO SHOW YOU WHAT'S NOW BEEN MARKED AS STATE'S EXHIBIT NUMBER ELEVEN. DID YOU TAKE THIS PHOTOGRAPH?
A YES, I DID.
Q COULD YOU POINT OUT FOR THE JURY ON THIS PHOTOGRAPH WHAT AREA WE WOULD BE LOOKING AT AS FAR AS THE ORIENTATION OF STATE'S EXHIBIT NUMBER THREE?
A THIS AREA RIGHT HERE WOULD BE THIS AREA RIGHT HERE AND THIS COMES ON AROUND THIS WAY ON THE COUNTER.
Q COULD YOU JUST PUT IN THAT CORNER, FOR EXAMPLE, NUMBER ELEVEN?
A (WITNESS COMPLIES)
Q NOW, DESCRIBE FOR THE JURY YOUR OBSERVATIONS UP IN THIS AREA OF NUMBER ELEVEN?

A THE AREA WAS IN DISARRAY. ITEMS WERE ON THE FLOOR. THERE WERE SOME ITEMS SCATTERED AROUND. IT LOOKED LIKE SOME ITEMS UNDER THE COUNTER HAD POSSIBLY BEEN MOVED. AND THERE WAS SOME BLOOD ON THE FLOOR.

Q ARE YOU TALKING ABOUT ITEMS IN DISARRAY DOWN IN THE BOTTOM OF THIS PHOTOGRAPH?

A THAT'S CORRECT.

Q STATE'S ELEVEN. AND YOU TOOK OTHER PHOTOGRAPHS OF THAT AREA, CORRECT?

A YES, I DID.

Q NOW, ON THESE OTHER PHOTOGRAPHS, STATE'S EXHIBIT NUMBER TWELVE, WHAT AREA WOULD WE BE LOOKING AT HERE, OFFICER MANN?

A THIS IS BEHIND THE COUNTER AREA LOOKING OUT INTO THE STORE.

Q SO, THIS WHERE I'M POINTING TO NOW, IS THAT THE COUNTER?

A YES, IT IS.

Q AND THAT WOULD BE LOOKING IN THIS DIRECTION?

A CORRECT. THIS IS THIS COUNTER LOOKING OUT INTO THE STORE.

Q AND ON THIS PARTICULAR PHOTOGRAPH AND ORIENTING IT TO STATE'S EXHIBIT NUMBER SIX, SEE THESE ITEMS I'M POINTING TO ON SIX?

A YES, I DO.

Q AND DO YOU SEE THESE ITEMS I'M POINTING TO ON TWELVE?
A YES, I DO.
Q ARE THOSE THE SAME ITEMS?
A YES, THEY ARE.
Q SO, THAT'S JUST THE FRONT COUNTER OF BROOKS' STORE, ONE LOOKING FROM THE CUSTOMER'S SIDE AND ONE LOOKING FROM MR. BROOKS' SIDE?
A THAT'S CORRECT.
Q IS THAT CORRECT? AND YOU HAD AN OPPORTUNITY LATER ON TO SEARCH THIS AREA MORE THOROUGHLY, CORRECT?
A YES, I DID.
Q NOW, COULD YOU DESCRIBE YOUR OBSERVATIONS OF THE AREA BEHIND THE COUNTER?
A LIKE I SAID, IT WAS IN DISARRAY ALL BEHIND THE COUNTER AND SEVERAL ITEMS OF EVIDENCE WERE FOUND.
Q NOW, SIR, DID YOU OBSERVE ANY WHAT APPEARED TO BE BLOOD IN THIS AREA?
A YES, I DID. THE BLOOD WAS ON THE FLOOR IN THIS AREA RIGHT HERE.
Q REFERRING NOW TO STATE'S EXHIBIT NUMBER THIRTEEN, WHAT IS THAT A PHOTOGRAPH OF?
A THAT IS A PHOTOGRAPH OF THE AREA BEHIND THE COUNTER AND THESE CIGARETTES WOULD HAVE BEEN IN THIS AREA RIGHT HERE.
Q SO, THAT WOULD BE THE INSIDE OF THIS COUNTER, THIS

AREA?
A THAT'S CORRECT.
Q AND WHAT IS THIS ITEM RIGHT HERE?
A THIS IS A BLUE CHAIR THAT WAS BEHIND THE COUNTER.
Q AND I'M GOING TO ASK YOU LATER ON DID YOU HAVE AN OPPORTUNITY TO SEARCH MORE THOROUGHLY UNDER AND AROUND THAT BLUE CHAIR?
A YES, I DID.
Q NOW, YOU CAN SEE IN SOME OF THESE PHOTOGRAPHS -- I'LL GO BACK AND REFER TO THE VARIOUS NUMBERS -- FOR EXAMPLE, STATE'S EXHIBIT NUMBER ELEVEN AND STATE'S EXHIBIT NUMBER TWELVE, YOU CAN SEE THE CASH REGISTER, IS THAT CORRECT?
A THAT'S CORRECT. YOU CAN.
Q WAS THE CASH REGISTER SITTING IN THOSE PHOTOGRAPHS ON A TABLE OR ON THE COUNTER?
A IT'S SITTING ON A LITTLE TABLE.
Q DO YOU KNOW WHETHER OR NOT E.M.S. HAD TO MOVE THE CASH REGISTER TO ATTEND TO MR. BROOKS? TO MOVE IT OFF OF MR. BROOKS?
A I DON'T KNOW IF THEY MOVED IT OUT NOT. IT APPEARED IT HAD BEEN MOVED.
Q NOW, DO YOU KNOW IN THE AREA WHERE YOU ARE REFERRING TO THERE APPEARED TO BE IN DISARRAY, STATE'S EXHIBIT NUMBER SIXTEEN, IN THAT PARTICULAR THIS ITEM HERE,

WHAT IS THIS ITEM?
A THAT'S OFF THE CASH REGISTER. IT COVERS UP WHERE THE REGISTER TAPE, RECEIPT TAPE WOULD HAVE BEEN.
Q SO, THIS ITEM WOULD HAVE BEEN AT ONE POINT ATTACHED TO THIS CASH REGISTER?
A THAT'S CORRECT.
Q AND THAT'S THE MANNER IN WHICH YOU FOUND IT AND PHOTOGRAPHED IT?
A THAT'S CORRECT.
Q AND AS I GO THROUGH AND SHOW THIS TO THE JURY, WHAT IS ALL THIS SUBSTANCE UP IN HERE, OFFICER MANN?
A BLOOD.
Q NOW, DID YOU HAVE THE OPPORTUNITY TO EXAMINE THAT AREA MORE THOROUGHLY?
A YES, I DID. AS I CHECKED THROUGH THE AREA MOVING ITEMS A LITTLE BIT AT A TIME LOOKING AS THEY WERE MOVED.
Q AND FROM LOOKING AT THIS, THIS DISARRAY AND THIS BLOOD, FOR EXAMPLE, WHAT IS THIS ITEM HERE?
A IT'S A LAMP.
Q A LAMP. AND DOES THAT APPEAR TO BE OUT OF PLACE?
A YES, IT DOES.
Q AND THIS ITEM HERE?
A IT'S A HANDGUN IN A HOLSTER.
Q DOES THAT APPEAR TO BE OUT OF PLACE AS FAR AS BEING

ON THE FLOOR?
A YES, I'D SAY IT WOULD BE.
Q IN THE NUMBER OF CRIME SCENES THAT YOU'VE GONE TO, WHATEVER THE AVERAGE IS PER MONTH FOR SIX YEARS, AND MAKING THESE OBSERVATIONS OF DISARRAY AND THE CASH REGISTER AND ALL AND WHERE THE BLOOD WAS AT, COULD YOU PLACE THIS STICKER IN APPROXIMATELY THE POSITION WHERE YOU IN YOUR OPINION THE BODY WOULD HAVE BEEN?
A THE BODY WOULD HAVE BEEN IN THIS GENERAL AREA RIGHT HERE. THE BODY WAS GONE ON MY ARRIVAL SO I DON'T KNOW EXACTLY. I CAN ONLY GO BY THE SITUATION OF THE AREA AS I SAW IT.
Q AND THAT'S BASED ON YOUR OBSERVATIONS, BASED ON YOUR PHOTOGRAPHS, AMONG THOSE INCLUDING STATE'S EXHIBIT NUMBER SIXTEEN?
A THAT'S CORRECT.
Q NOW, DID YOU HAVE THE OPPORTUNITY TO LOOK AT THE AREA BOTH BESIDE AND BENEATH THIS PART OF THE CASH REGISTER?
A YES, I DID.
Q AND, YOU KNOW, I KEEP A MAGNIFYING GLASS ANYWAY BUT LET ME ASK YOU THIS. THIS ITEM RIGHT IN HERE, CAN YOU IDENTIFY THAT ITEM FOR US, PLEASE?
A THAT IS THE PROJECTILE THAT WAS RECOVERED FROM THE FLOOR WHERE THE BODY HAD BEEN LAYING. PROJECTILE

SLUG FROM THE WEAPON.
Q WERE YOU ABLE TO VIEW THAT BETTER AT THE SCENE THAN THIS PHOTOGRAPH DEPICTS?
A YES, I WAS.
Q NOW, WHEN YOU FIND AN ITEM SUCH AS THAT, WHAT DO YOU DO WITH IT?
A PHOTOGRAPH IT AND THEN COLLECT IT AS EVIDENCE.
Q AND WHY DO YOU COLLECT IT AS EVIDENCE?
A TO BE BROUGHT BACK AND SENT TO S.L.E.D. FOR BALLISTICS EXAMINATION.
Q COULD YOU -- THERE SHOULD BE A STICKER -- YES, NINE MILLIMETER PROJECTILE. COULD YOU PLACE THAT IN THE APPROXIMATE POSITION ON STATE'S EXHIBIT NUMBER ELEVEN OF WHERE YOU LOCATED THAT PROJECTILE?
A IT WOULD BE IN THE GENERAL AREA RIGHT THERE.

MR. McMAHON: YOUR HONOR, I WILL MARK THREE ITEMS. I UNDERSTAND WITHOUT OBJECTION, SIR.

MR. ROGERS: THAT'S CORRECT.

(PROJECTILE IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #18. SPENT SHELL IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #19. SPENT SHELL CASING IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #20)

Q (BY MR. McMAHON) NOW, I WANT TO SHOW YOU WHAT'S NOW BEEN MARKED AS STATE'S EXHIBIT NUMBER EIGHTEEN. DO YOU RECOGNIZE THIS ITEM AS FAR AS THE ENVELOPE?

A YES. I COLLECTED IT AT THE SCENE AND IT SAYS IT'S A PROJECTILE RECOVERED FROM THE FLOOR BY COUNTER NEAR VICTIM.
Q HOW MANY PROJECTILES DID YOU RECOVER FROM BROOKS' STORE?
A PROJECTILES? ONLY ONE.
Q AND THIS, WHEN YOU READ THAT, WHEN YOU TALK ABOUT YOU COLLECTED IT, IT THAT YOUR WRITING, ALSO?
A YES, IT IS.
Q AND WHAT IS THE PURPOSE IN COLLECTING THIS PROJECTILE AGAIN?
A TO BE SENT TO S.L.E.D. FOR BALLISTICS EXAMINATION.
Q LET ME SHOW YOU THIS ITEM AND ASK IF YOU CAN IDENTIFY IT FOR US, PLEASE?
A THE S.L.E.D. PROJECTILE THAT WAS COLLECTED.
Q NOW, ON THE DIAGRAM, STATE'S THREE, THE WAY WE HAVE IT DEPICTED, THE BODY AND THEN THE PROJECTILE, THE PROJECTILE WOULD HAVE ACTUALLY BEEN UNDER MR. BROOKS, CORRECT?
A YES, SIR. BECAUSE HIS BODY HAD BEEN REMOVED AND THE ITEM WAS STILL LAYING THERE ON THE FLOOR.
Q AND THIS WAS FORWARDED TO S.L.E.D. FOR BALLISTICS TESTING?
A THAT'S CORRECT.
Q NOW, I WANT TO GO BACK TO ONE OF THOSE PHOTOGRAPHS I

SHOWED YOU EARLIER THAT HAD THE BLUE CHAIR. STATE'S EXHIBIT NUMBER THIRTEEN. HOLD THAT FOR A MOMENT AND LET ME SHOW THIS TO THE REST OF THE JURY. STATE'S EXHIBIT NUMBER THIRTEEN AS I SHOW THIS PROJECTILE TO THE BACK ROW OF THE JURY, POINT ON THERE ANY CHAIR THAT YOU HAD TALKED ABOUT PREVIOUSLY.

A THIS BLUE CHAIR IS LOCATED IN THIS AREA RIGHT HERE.

Q NOW, I BELIEVE YOU ALSO TESTIFIED PREVIOUSLY YOU HAD THE OPPORTUNITY TO EXAMINE THE AREA BELOW THE BLUE CHAIR IN GREATER DETAIL?

A YES, I DID.

Q WHAT, IF ANYTHING, DID YOU FIND IN THAT AREA?

A A SPENT SHELL CASING.

Q NOW, I WANT TO SHOW YOU WHAT'S NOW BEEN MARKED AS STATE'S EXHIBIT NUMBER TWENTY. DO YOU RECOGNIZE THIS ITEM?

A SPENT SHELL CASING FROM FLOOR UNDER CHAIR.

Q AND WHOSE WRITING IS THIS?

A THAT'S MY WRITING.

Q AND WILL YOU AGAIN POINT ON STATE'S THREE WHERE YOU LOCATED THAT SHELL CASING?

A IT WOULD HAVE BEEN IN THIS AREA RIGHT HERE AT THE CHAIR.

Q COULD YOU REMOVE ONE OF THESE SMALL STICK-ONS THAT I HAVE AND PLACE IT IN THE APPROXIMATE POSITION WHERE

YOU LOCATED THAT SHELL CASING?
A APPROXIMATELY IN THIS AREA.
Q AND REMOVING THE ITEM FROM STATE'S TWENTY, DOES THAT APPEAR TO BE THE SHELL CASING?
A IT APPEARS TO BE, YES.
Q AND THAT'S A NINE MILLIMETER SHELL CASING?
A YES, IT IS.
Q AND DID YOU ALSO HAVE THE OPPORTUNITY TO EXAMINE N GREATER DETAIL THE TOP OF THE COUNTER OR THE FRONT COUNTER?
A YES, I DID.
Q AND I HAD ASKED YOU PREVIOUSLY ABOUT SOME ITEMS ON THAT COUNTER. STATE'S EXHIBIT NUMBER SIX, FOR EXAMPLE. YOU EXAMINED THIS AREA AROUND -- APPEARED TO BE CIGARETTES FOR SALE BY THE CIGARETTE AND SOME SKINS. YOU EXAMINED THAT AREA?
A THAT'S CORRECT.
Q NOW, WHAT, IF ANYTHING, DID YOU FIND IN THAT AREA?
A A NINE MILLIMETER SHELL CASING.
Q THE SAME CALIBER SHELL CASING AS THIS I HOLD IN MY HAND?
A SAME CALIBER, YES.
Q AND DID YOU PHOTOGRAPH THAT AREA IN GREATER DETAIL?
A YES, I DID.
Q SHOWING YOU STATE'S FOURTEEN, WHAT IS THAT A

PHOTOGRAPH OF?

A THAT IS THE SHELL CASING LYING UP THERE AMIDST THE MERCHANDISE.

Q CAN YOU SEE ON THIS PHOTOGRAPH, AGAIN FOR EXAMPLE STATE'S SIX, EITHER OF THESE ITEMS?

A HERE'S YOUR CIGARETTES RIGHT HERE. THEY ARE IN THIS CONTAINER. HERE'S YOUR SKINS IN THIS CONTAINER AND YOU CAN SEE A LITTLE BIT OF THIS JAR RIGHT HERE AND THE SHELL IS LAYING BETWEEN THEM.

Q POINT TO THE SHELL FOR ME, PLEASE, ON STATE'S --

A THAT IS THE SHELL CASING.

Q RIGHT HERE?

A THAT'S A CLOSEUP OF IT.

Q I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER NINETEEN?

A SHELL CASING FROM LEFT TOP OF COUNTER WHICH LEFT TOP WOULD BE AS YOU STOOD BEHIND THE COUNTER IN THIS AREA HERE.

Q NOW, WOULD YOU REMOVE THAT FROM STATE'S NINETEEN FOR ME, PLEASE?

A (WITNESS COMPLIES)

Q THIS STATE'S NINETEEN IS THE ACTUAL SHELL CASING I HAVE A PHOTOGRAPH OF IN STATE'S FOURTEEN?

A THAT'S CORRECT.

Q NOW, ALL OF THESE ITEMS I'VE JUST SHOWN YOU WERE

TAKEN INTO YOUR CUSTODY FOR FUTURE BALLISTICS TESTING BY S.L.E.D.?

A THAT'S CORRECT.

Q AND YOU'RE NOT A BALLISTICS EXAMINER?

A NO, SIR.

Q NOW, IF YOU WOULD, MR. MANN, TAKE THIS STICKER MARKED SHELL AND PLACE IT IN THE APPROXIMATE POSITION ON STATE'S EXHIBIT NUMBER THREE WHERE YOU LOCATED THIS SECOND SHELL CASING.

A ON TOP OF THE COUNTER IN THIS AREA.

Q SO, TOTALLY HOW MANY PROJECTILES, BULLETS, DID YOU RECOVER?

A COLLECTED ONE PROJECTILE BULLET, SLUG, DIFFERENT TERMS FOR THE SAME ITEM.

Q AND HOW MANY SHELL CASINGS, FIRED SHELL CASINGS, DID YOU RECOVER?

A TWO.

Q AND POINT THOSE OUT FOR ME, PLEASE, ON STATE'S THREE?

A ONE WAS UP ON TOP OF THE COUNTER, THE SECOND ONE BEHIND THE COUNTER IN THE FLOOR.

Q YOU CAN RETAKE THE STAND, SIR.

(WITNESS RESUMES STAND)

Q NOW, MR. MANN, IN ADDITION TO PHOTOGRAPHING, COLLECTING, PRESERVING THE EVIDENCE, WHAT OTHER DUTIES AND RESPONSIBILITIES DID YOU HAVE IN A CASE

SUCH AS THIS?

A PHOTOGRAPHED THE SCENE, COLLECTED THE EVIDENCE, SECURED IT, TOOK IT BACK TO THE CRIME LAB AT THE SHERIFF'S DEPARTMENT. IT WAS DOCUMENTED ON PAPER AND THEN IT WAS PACKAGED AND PREPARED TO GO TO S.L.E.D.

Q NOW, DID Y'ALL RECOVER ANY CASH FROM BROOKS' STORE?

A WE RECOVERED THE CASH REGISTER AND IT CONTAINED SOME CASH.

Q DO YOU RECALL HOW MUCH MONEY WAS IN THE CASH REGISTER?

A I'M GOING THROUGH THE CALL SHEETS NOW. CASH REGISTER WAS RECOVERED. CASH CURRENCY AND A BAG THAT WAS A S.C.N. DEPOSIT BAG HAD TWO THOUSAND AND TWENTY DOLLARS IN IT. ALSO, THERE WAS CASH AND COINS FROM THE CASH REGISTER THAT WAS A HUNDRED AND FORTY-FOUR DOLLARS AND FIFTY-NINE CENT.

Q WHAT KIND OF BAG DID YOU SAY IT WAS?

A IT WAS MARKED A S.C.N. DEPOSIT BAG.

Q AND DOES THAT APPEAR TO BE THAT BAG IN STATE'S THIRTEEN?

A THAT'S IT. THAT IS THE CASH BAG.

Q AND I WANT TO SHOW YOU --

MR. McMAHON: MAY I MARK THIS, YOUR HONOR. I UNDERSTAND MR. ROGERS HAS NO OBJECTION.

MR. ROGERS: THAT'S CORRECT.

(PHOTOGRAPH IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #21)

Q (BY MR. McMAHON) I'M HANDING YOU STATE'S EXHIBIT NUMBER TWENTY-ONE, THIS PARTICULAR ITEM, WHAT IS THAT ITEM?

A THAT IS THE CASH REGISTER RECOVERED AND THIS PHOTO WAS IN THE CRIME LAB AT THE SHERIFF'S DEPARTMENT.

Q NOW, THERE APPEARS TO BE SOME TYPE OF SUBSTANCE ON THAT CASH REGISTER. WHAT IS THAT?

A THAT IS THE FINGERPRINT POWDER THAT WAS USED TO PROCESS IT.

Q WERE YOU ABLE TO LIFT ANY PRINTS, IDENTIFY ANY PRINTS FROM THE CASH REGISTER?

A RESULTS WERE NEGATIVE ON LATENT PRINTS.

Q BUT Y'ALL DID DO THE PROCESSING ON THE CASH REGISTER AND OTHER ITEMS, CORRECT?

A THAT'S CORRECT.

Q AND THE PHOTO OF THE CASH REGISTER.

A YES.

Q AND THIS AREA RIGHT HERE I'M POINTING TO?

A THAT WOULD HAVE BEEN THE PLASTIC COVER OVER THE TAPE, REGISTER TAPE.

Q THE PLASTIC COVER --

A BUT IT'S MISSING.

Q -- THAT YOU POINTED OUT PREVIOUSLY IN STATE'S EXHIBIT

NUMBER SIXTEEN?
A THAT'S CORRECT.
Q AND ON STATE'S TWENTY-ONE, THE PHOTOGRAPH OF THE CASH REGISTER, AGAIN WHERE DID YOU TAKE THE PHOTOGRAPH OF THE CASH REGISTER?
A THAT WAS AFTER IT WAS INSIDE THE FORENSIC LAB AT THE SHERIFF'S DEPARTMENT SITTING ON THE COUNTER.
Q AND THAT DARK MATERIAL, THAT POWDER LOOKING SHADED MATERIAL ON THE CASH REGISTER, WHAT IS THAT?
A THAT'S FINGERPRINT POWDER.
Q HOW MUCH MONEY -- I APOLOGIZE, MR. MANN, THESE ARE THE LAST QUESTIONS I HAVE. HOW MUCH MONEY WAS IN THE CASH REGISTER?
A CASH AND COINS FROM THE CASH REGISTER WAS A HUNDRED AND FORTY-FOUR DOLLARS AND FIFTY-NINE CENT.
Q AND HOW MUCH MONEY WAS IN THE BANK BAG?
A TWO THOUSAND AND TWENTY DOLLARS.
Q TWO THOUSAND AND TWENTY DOLLARS?
A THAT'S CORRECT.
Q CASH?
A YES.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

MR. ROGERS: MAY IT PLEASE THE COURT.

THE COURT: MR. ROGERS.

CROSS EXAMINATION BY

MR. ROGERS:

Q DEPUTY MANN, I BELIEVE YOUR TESTIMONY WAS YOU ARRIVED AT MR. BROOKS' STORE APPROXIMATELY TEN MINUTES TO SEVEN THAT EVENING?

A I'VE GOT IT DOWN IN MILITARY TIME 1850 WHICH WOULD BE TEN MINUTES TO SEVEN.

Q WAS IT DARK?

A YES, IT WAS.

Q WHEN YOU ARRIVED?

A YES, IT WAS. IT WAS AT NIGHT.

Q I BELIEVE YOUR TESTIMONY WAS THAT WHEN YOU ARRIVED THE CRIME SCENE HAD ALREADY BEEN SECURED?

A YES, IT HAD.

Q AND THAT MEANT THAT THE TAPE WAS IN FRONT OF THE STORE?

A THEY HAD CRIME SCENE TAPE UP. I DON'T REMEMBER EXACTLY WHERE IT WAS BUT THEY HAD THE FRONT OF THE STORE SECURED.

Q AND I BELIEVE YOU TESTIMONY WAS THAT YOU WERE RESTRICTING ACCESS TO THE STORE?

A THE DEPUTIES ON THE SCENE WAS ALREADY RESTRICTING ACCESS. YOU HAD TO SIGN A LOG AS YOU WENT IN.

Q WERE THERE CIVILIANS ON THE SCENE?

A THERE WERE SOME OUT IN THE PARKING LOT.

Q PEOPLE CAME UP TO FIND OUT WHAT WAS GOING ON. THEY HAD HEARD MR. BROOKS HAD BEEN SHOT?
A YES, SIR.
Q SO, YOU DID SEE CIVILIANS?
A I DID SEE OTHER PEOPLE OUT THERE IN THE PARKING LOT, YES.
Q NOW, YOU TOOK THE PHOTOGRAPHS INSIDE THE STORE?
A YES, SIR.
Q DID YOU USE A FLASH?
A YES, SIR.
Q YOU USED A FLASH FOR ALL OF THE PHOTOGRAPHS?
A YES, SIR.
Q SO, THE WAY THE STORE IS ILLUMINATED ON THE INSIDE AND ON THE OUTSIDE, REFERRING TO STATE'S EXHIBIT NUMBER FOUR, IS NOT QUITE WHAT IT WOULD HAVE LOOKED LIKE THAT EVENING WITHOUT THE FLASH ILLUMINATING THE INTERIOR?
A RIGHT. IT PROBABLY WOULD HAVE BEEN DARKER.
Q NOW, WERE YOU THE CRIME SCENE RECONSTRUCTIONIST FOR THIS CASE?
A WHEN YOU SAY CRIME SCENE RECONSTRUCTION, COULD YOU CLARIFY EXACTLY WHAT YOU MEAN BY THAT?
Q WELL, YOU HAVE GIVEN CERTAIN OPINIONS ABOUT THE STORE BEING IN DISARRAY. I'M SORRY. I'M ASSUMING YOU'RE BASING THAT ON YOUR EXPERIENCE AS A CRIME SCENE

RECONSTRUCTIONIST?
A AS FAR AS A RECONSTRUCTIONIST PER SE I DON'T KNOW ABOUT USING THAT TERM BUT, YES, I DID MAKE THE DRAWINGS OF THE SCENE THAT NIGHT AND I DID TAKE THE PHOTOS AND ALL AND BASED ON THAT IS WHERE I DREW MY OPINIONS FROM, YES, SIR.
Q DID YOU TALK TO ANYBODY BEFORE YOU REACHED YOUR CONCLUSIONS?
A YES, SIR. WE TAKE AND PHOTOGRAPH AS WE GO, MAKE SKETCHES WHICH ONE THE SKETCHES IS HERE AND TALKING TO THE DEPUTIES THAT ARRIVED AMD FINDING OUT WHAT THEY SAW ON THEIR ARRIVAL, PLUS WHAT I OBSERVED MYSELF.
Q DID YOU TALK TO ANYBODY ELSE?
A LIKE WHO?
Q I'M ASKING YOU. DID YOU TALK TO ANYBODY ELSE?
A ONLY THE OFFICERS.
Q DID YOU TALK TO ANYONE ELSE BESIDES THE OFFICERS IN ARRIVING AT YOUR CONCLUSION ABOUT THE STATE OF DISARRAY OF THE STORE?
A AS FAR AS WITNESSES, NO.
Q AND I TAKE IT YOU HAD NEVER BEEN IN THE BROOKS' STORE BEFORE THIS INCIDENT?
A I POSSIBLY HAD STOPPED THERE ON OCCASION FOR A DRINK OR SOMETHING WHEN I WAS IN THAT AREA. I DON'T RECALL

FOR SURE.
Q YOU NEVER WENT BEHIND THE COUNTER?
A NO, NOT BEHIND THE COUNTER, NO.
Q SO, YOU HAVE NO FIRSTHAND KNOWLEDGE OF WHAT BEHIND THE COUNTER LOOKED LIKE BEFORE THAT EVENING?
A NO, SIR, I DON'T.
Q WHAT I'M GETTING AT IS YOU DON'T KNOW IF THE DISARRAY AS YOU CALL IT WAS AS A RESULT OF THE INCIDENT OR, YOU KNOW, PART OF IT WAS ALREADY IN DISARRAY?
A THAT'S CORRECT. I WOULDN'T KNOW THAT, NO, SIR.
Q SO, THAT YOU WERE AWARE THAT THIS CASH REGISTER WAS FOUND ON TOP OF MR. BROOKS?
A I DON'T HAVE FIRSTHAND KNOWLEDGE OF THAT. IT APPEARED THAT WAY BUT I DON'T HAVE FIRSTHAND KNOWLEDGE OF THAT.
Q BUT YOU WERE TOLD THAT BY THE OFFICERS ON THE SCENE THAT SAW THE BODY?
A YES.
Q AND THE CASH REGISTER HAD TO BE MOVED?
A YES, IT HAD TO BE MOVED BUT I DON'T KNOW BY WHO.
Q SO, IT'S POSSIBLE -- AGAIN WE DON'T KNOW -- IT'S POSSIBLE THAT AS MR. BROOKS WAS SHOT HE GRABBED THE CASH REGISTER AND IT FELL WITH HIM TO THE FLOOR?
A THAT'S VERY POSSIBLE.
Q AND SOME OF THE OTHER THINGS WERE IN DISARRAY AS A

RESULT OF HIM FALLING?
A IT COULD BE.
Q OR AS A RESULT OF IT WAS LIKE THAT BEFORE THE SHOOTING EVER TOOK PLACE?
A IT COULD BE. I REALLY DON'T HAVE ANY FIRSTHAND KNOWLEDGE OF THAT.
Q YOU ARE NOT SUGGESTING, ARE YOU, THAT THE DISARRAY WAS AS A RESULT OF SOMEONE GOING THROUGH THE MATERIALS?
A I REALLY DON'T KNOW.
Q YOU DON'T HAVE ANY WAY OF KNOWING?
A I CAN ONLY STATE HOW IT APPEARED WHEN I SAW IT.
Q AND I BELIEVE YOU RECOVERED SOME OTHER ITEMS THAT YOU NOTED. SOME PERSONAL CHECKS.
A THERE'S FORTY-ONE ITEMS ON HERE.
Q I'M REFERRING TO YOUR REPORT, PAGE TWO OF THREE.
A COULD I SEE THAT ONE?
Q YES. ITEM ELEVEN.
A ITEM ELEVEN ON THIS ONE SAYS FIVE PERSONAL CHECKS, THAT'S CORRECT.
Q DO YOU REMEMBER WHERE THEY WERE RECOVERED FROM?
A WITHOUT LOOKING AT PHOTOS NOT FOR SURE. THEY WERE BEHIND THE COUNTER AREA BUT EXACTLY WHERE I'D HAVE TO SEE THE PHOTOS.
Q DO YOU KNOW IF THE CASH REGISTER WAS FOUND IN THIS

POSITION? BY THAT I MEAN WAS THE DRAWER OPEN OR CLOSED?

A THAT I DON'T KNOW.

Q NO ONE EVER TOLD YOU?

A NO.

Q AND YOU DIDN'T ASK?

A THERE WAS NOBODY TO ASK AS FAR AS THAT BECAUSE THE E.M.S CREW HAD BEEN BACK THERE, TOO.

Q THAT'S WHAT I'M SAYING. YOU COULD HAVE ASKED E.M.S.

A THEY WERE GONE SO I DIDN'T HAVE AN OPPORTUNITY.

Q AND YOU NEVER FOLLOWED UP?

A NO, I DIDN'T FOLLOW THEM, NO.

Q YOU RECOVERED A .38 CALIBER REVOLVER, A .22 CALIBER HOLSTER AND REVOLVER. THAT WAS ALL BACK THERE BEHIND THE COUNTER?

A IT WAS A .38 CALIBER REVOLVER THAT HAD SIX LIVE ROUNDS IN IT. THAT WAS RECOVERED. AND THERE WAS ALSO A .22 CALIBER H&R REVOLVER AND IT HAD A BELT AND HOLSTER WITH IT.

Q MAY I SEE THAT DOCUMENT?

A SURE.

Q EXHIBIT THIRTEEN.

MR. ROGERS: THE COURT'S INDULGENCE A MOMENT, YOUR HONOR. CAN YOU ASSIST ME WHERE STATE'S THIRTEEN IS. OH, I'M SORRY.

Q (BY MR. ROGERS) STATE'S EXHIBIT NUMBER THIRTEEN IS THE PHOTOGRAPH THAT DEPICTS THE S.C.N. BANK BAG. IS THAT NOT CORRECT?

A YES, IT IS. IT'S LYING -- IN THIS PHOTO IT'S LYING AT THE FOOT OF A LITTLE TABLE THE REGISTER IS PRESENTLY SITTING ON WHEN I ARRIVED.

Q REFERRING TO STATE'S EXHIBIT NUMBER THREE, WHERE WOULD THAT BE ON THIS EXHIBIT?

A OKAY. THE CIGARETTE RACK IS OVER HERE. IT WOULD BE RIGHT IN THIS GENERAL HERE. RIGHT IN THERE. I'LL TRY TO POINT TO IT A LITTLE BETTER. RIGHT IN THIS GENERAL AREA RIGHT HERE.

Q IS THIS THE CASH REGISTER ON TOP?

A CASH REGISTER IS HERE ON TOP OF THIS LITTLE TABLE.

Q SO, SOMEBODY PUT THE CASH REGISTER THERE?

A YES, SIR.

Q DO YOU KNOW WHERE THE CASH REGISTER NORMALLY IS IN THE STORE?

A NO, SIR, NOT FOR SURE I DON'T.

Q AND THIS IS HOW THE BANK BAG WAS FOUND AS FAR AS YOU KNOW OUT IN THE OPEN?

A CORRECT.

Q CLEARLY MARKED S.C.N. AND ANYBODY LOOKING AT IT WOULD SEE IT'S A BANK BAG?

A IN THAT PHOTO THEY WOULD, YES.

Q ONE LAST AREA, DETECTIVE MANN. WITH RESPECT TO THE FINGERPRINTS ON THE CASH REGISTER, YOU SAID THERE WERE NEGATIVE RESULTS AND I JUST WANT TO KNOW WHAT THAT MEANS. DOES IT MEAN YOU FOUND PRINTS THAT YOU COULDN'T MATCH, YOU NEVER FOUND ANY PRINTS OR THAT YOU FOUND PRINTS THAT WERE PARTIAL. WHAT DOES NEGATIVE RESULTS MEAN IN THIS CASE?

A NEGATIVE RESULTS IN A CASE LIKE THIS MEANS THAT AFTER THE REGISTER HAS BEEN PROCESSED WITH POWDER AND I, TOO, USE A MAGNIFYING GLASS TO LOOK, IF YOU DON'T FIND RIDGE DETAIL THAT YOU CAN WORK WITH IT'S A NEGATIVE. IF YOU LOOK AT YOUR OWN FINGERS THERE'S LITTLE RIDGE LINES ON YOUR FINGERS. AND THAT'S HOW WE MATCH THE FINGERPRINTS AND WITHOUT THE RIDGE LINES THERE'S NOTHING TO WORK WITH. SO NO USEABLE PRINTS. NEGATIVE RESULTS MEANS WE DIDN'T FIND RIDGE LINES TO WORK WITH SO IT'S NEGATIVE.

MR. ROGERS: THANK YOU. THAT'S ALL.

MR. McMAHON: NOTHING IN REPLY.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: YOUR HONOR, MY NEXT WITNESS IS IN THE HOLDING CELL. IT MAY TAKE A FEW MINUTES.

THE COURT: ALL RIGHT. LET ME SEE Y'ALL JUST MINUTE.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: LADIES AND GENTLEMEN, WE ARE GOING TO TAKE A SHORT BREAK BEFORE WE CONTINUE WITH THE NEXT WITNESS. LET ME ASK YOU TO PLEASE GO TO YOUR JURY ROOM. DO NOT DISCUSS THE CASE IN ANY FASHION. WE'LL BRING YOU BACK SHORTLY.

(JURY LEAVES THE JURY BOX AT 10:48 A.M.)

THE COURT: WE'LL BE IN RECESS FOR ABOUT TEN MINUTES.

(RECESS)

THE COURT: (AT CONCLUSION OF RECESS) ARE WE READY FOR THE JURY?

MR. McMAHON: THE STATE'S READY.

MR. ROGERS: YOUR HONOR, BEFORE WE BRING THE JURY IN, I UNDERSTAND THE NEXT WITNESS IS JERMAINE McLEMORE. HE'S ONE OF THE CO-DEFENDANTS THAT PLED AND I WANT TO INFORM THE COURT THAT I INTEND TO GO IN DEPTH INTO THE NEGOTIATIONS ON HIS PLEA, WHAT HE COULD HAVE GOTTEN, PAROLE ELIGIBILITY. I JUST WANTED TO OUTLINE THAT FOR THE COURT SO WE WOULDN'T HAVE TO BREAK DOWN IN THE MIDDLE OF MY CROSS.

THE COURT: WELL, ARE YOU ANTICIPATING THE SOLICITOR IS GOING TO OBJECT TO YOUR GOING INTO THE

PLEA NEGOTIATIONS?

MR. ROGERS: YES, YOUR HONOR, I WAS.

THE COURT: DO YOU INTEND TO?

MR. McMAHON: NO, SIR.

THE COURT: HE DOESN'T INTEND TO. IT'S APPROPRIATE. ANYTHING FURTHER BEFORE WE BRING THE JURY IN?

MR. McMAHON: NOTHING FOR THE STATE.

MR. ROGERS: NOTHING FURTHER.

THE COURT: OKAY. BRING THEM IN, PLEASE. LET ME ASK THE SOLICITOR TO REMIND THE WITNESS TO SPEAK LOUDLY WHEN HE TESTIFIES.

(JURY RETURNS TO THE JURY BOX AT 11:13 A.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, SIR. SOLICITOR.

MR. McMAHON: MAY IT PLEASE THE COURT, THE STATE CALLS JERMAINE McLEMORE.

JERMAINE McLEMORE, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A JERMAINE McLEMORE.

DIRECT EXAMINATION BY

MR. McMAHON:

Q MR. McLEMORE, YOU'RE GOING TO HAVE TO SPEAK UP WHERE EVERYBODY ON THE JURY CAN HEAR YOU, OKAY?
A ALL RIGHT.
Q WHAT IS YOUR NAME? TELL ME YOUR NAME AGAIN.
A JERMAINE McLEMORE.
Q AND, JERMAINE, HOW OLD ARE YOU?
A TWENTY-TWO.
Q WHAT IS YOUR BIRTHDAY?
A [redacted]
Q OF WHAT YEAR?
A '75.
Q WHERE DOES YOUR FAMILY LIVE, MR. McLEMORE?
A IN HOPKINS.
Q SPECIFICALLY, WHAT'S THEIR ADDRESS IN HOPKINS?
A [redacted] CABIN CREEK.
Q CABIN CREEK ROAD?
A YEAH.
Q IS THAT THE SAME ROAD BROOKS' STORE IS ON?
A YES.
Q MR. McLEMORE, WERE YOU RAISED IN THAT AREA?
A YES.
Q WHERE DID YOU GO TO SCHOOL?
A LOWER RICHLAND.
Q DID YOU FINISH LOWER RICHLAND?
A YES.

Q NOW, TODAY, MR. McLEMORE, HOW OLD ARE YOU?
A TWENTY-TWO.
Q AND I WANT TO ASK YOU IN REGARDS TO THIS PARTICULAR CASE, MONDAY DID YOU PLEAD GUILTY TO CERTAIN CHARGES IN REGARDS TO THIS CASE?
A YES.
Q AMONG THOSE, DID YOU PLEAD GUILTY TO ATTEMPTED ARMED ROBBERY?
A YES.
Q STOOD BEFORE THIS JUDGE AND SAID YOU WERE GUILTY?
A YES.
Q ADMITTED YOUR GUILT?
A YES.
Q DO YOU UNDERSTAND WHAT TYPE OF SENTENCE POTENTIALLY YOU CAN GET FOR ATTEMPTED ARMED ROBBERY?
A YES.
Q WHAT?
A TWENTY YEARS.
Q HOW MANY?
A TWENTY.
Q TWENTY YEARS. DID YOU ALSO PLEAD GUILTY TO CRIMINAL CONSPIRACY?
A YES.
Q AND THAT WAS THE SAME DAY, MONDAY?
A YES.

Q BEFORE THIS JUDGE?
A YEAH.
Q DO YOU UNDERSTAND WHAT TYPE OF SENTENCE YOU CAN GET FOR CRIMINAL CONSPIRACY?
A YES.
Q HOW MUCH?
A FIVE YEARS.
Q SO, WHAT IS THE TOTAL NUMBER OF YEARS YOU CAN GET FOR YOUR GUILTY PLEA?
A TWENTY-FIVE YEARS.
Q NOW, MR. McLEMORE, YOU WERE ALSO ORIGINALLY CHARGED WITH MURDER, CORRECT?
A YES.
Q DID YOU PLEAD GUILTY TO MURDER?
A NO.
Q DID I DISMISS THE MURDER CHARGE AGAINST YOU?
A YES.
Q AND AS PART OF THAT AGREEMENT YOU AGREED TO TESTIFY TRUTHFULLY IN THIS TRIAL, CORRECT?
A YES.
Q HAVE I MADE ANY OTHER AGREEMENTS WITH YOU ABOUT HOW MUCH TIME YOU CAN GET FOR THESE CHARGES?
A NO, SIR.
Q SO, YOU CAN GET UP TO TWENTY-FIVE YEARS, CORRECT?
A YES.

Q AND HAVE I TOLD YOU THE ONLY PERSON THE SENTENCE IS UP TO IS THE JUDGE?
A YES.
Q NOW, YOU DID ALL THIS, OF COURSE, WITH AN ATTORNEY, CORRECT?
A YES.
Q YOU HAD AN ATTORNEY REPRESENTING YOU?
A YES.

MR. ROGERS: YOUR HONOR, I'D ASK MR. McMAHON NOT TO LEAD THIS WITNESS.

THE COURT: WELL, OKAY, DON'T LEAD HIM.

Q (BY MR. McMAHON) WHO WAS YOUR ATTORNEY, MR. McLEMORE?
A JOHN DUNCAN.
Q AND THAT'S MR. DUNCAN SEATED IN THE COURTROOM BACK HERE TODAY STANDING UP?
A YEAH.
Q NOW, MR. McLEMORE, DO YOU KNOW THE DEFENDANT IN THIS CASE, TREY GARNER?
A YES.
Q HOW LONG HAVE YOU KNOWN HIM?
A APPROXIMATELY TWO YEARS.
Q HOW LONG HAVE YOU KNOW HIM?
A ABOUT TWO YEARS.
Q DID YOU KNOW --

THE COURT: EXCUSE ME JUST A MINUTE. MR. McLEMORE, YOU'RE GOING TO HAVE TO HOLD YOUR HEAD UP AND SPEAK OUT AND SPEAK INTO THE MICROPHONE SO WE'LL BE CERTAIN THAT ALL THE JURORS AND THE COURT REPORTER CAN HEAR YOU.

Q (BY MR. McMAHON) DID YOU KNOW HIM BEFORE YOU WERE ARRESTED?

A YES.

Q HOW DID YOU KNOW HIM BEFORE YOU WERE ARRESTED?

A I MET HIM AT THE STORE.

Q AT WHAT STORE.

A AT JOE.

Q WHEN YOU SAY JOE -- MR. McLEMORE, HOLD YOUR HEAD UP. WHEN YOU SAY JOE'S STORE, WHOSE STORE ARE YOU TALKING ABOUT?

A JOE BROOKS.

Q DO YOU KNOW WHERE MR. GARNER LIVED?

A I KNOW WHERE HE LIVE WHEN HE MOVE DOWN HERE.

Q WHERE DID HE LIVE?

A I DON'T KNOW THE NAME OF THE ROAD.

Q WHERE IS THE ROAD IN RELATIONSHIP TO BROOKS' STORE?

A IT'S UP. IT'S LIKE STRAIGHT ACROSS BUT, YOU KNOW, YOU GOT TO GO DOWN A LITTLE BIT.

Q IS IT IN THE SAME GENERAL AREA AS BROOKS' STORE?

A YES.

Q AND THE SAME GENERAL AREA AS WHERE YOUR HOME WAS AT?
A YEAH.
Q NOW, DID YOU ALSO KNOW VALDIS GARNER?
A YES.
Q WHO IS VALDIS GARNER?
A TREY BROTHER.
Q DID YOU KNOW TASHAN WESTON?
A YEAH.
Q WHO IS TASHAN WESTON?
A HE'S A FRIEND.
Q WHERE DID TASHAN WESTON LIVE?
A ON MARTIN LUTHER KING.
Q HOW FAR IS MARTIN LUTHER KING BOULEVARD FROM BROOKS' STORE APPROXIMATELY?
A ABOUT A MILE AND A HALF.
Q NOW, DID TASHAN HAVE A NICKNAME?
A SCOOTER BAIT.
Q SAY IT AGAIN.
A SCOOTER BAIT.
Q SCOOTER BAIT. AND DID YOU KNOW DAYON LEMON?
A YEAH.
Q WHERE DID DAYON STAY?
A I DON'T KNOW THE NAME OF THE LITTLE AREA BUT IT WAS ACROSS THE TRACK FROM US.
Q IT WAS ACROSS FROM WHERE?

A ACROSS THE TRACK FROM US.
Q ACROSS THE TRACKS?
A YEAH.
Q HOW DID YOU KNOW THESE FOUR FELLOWS I JUST ASKED YOU ABOUT -- TREY GARNER, VALDIS, TASHAN WESTON AND DAYON LEMON?
A WE USED TO BE TOGETHER.
Q WHAT WOULD Y'ALL DO WHEN YOU WERE TOGETHER?
A SHOOT BASKETBALL AND STUFF.
Q HOW TALL ARE YOU?
A SIX-FIVE.
Q BACK BEFORE YOU WERE ARRESTED, HOW MUCH DID YOU WEIGH?
A ABOUT TWO-NINETY.
Q SAY IT AGAIN.
A ABOUT TWO-NINETY.
Q JERMAINE, YOU'RE GOING TO HAVE TO SPEAK UP, OKAY?
A ABOUT TWO-NINETY.
Q HOW MUCH DO YOU WEIGH NOW?
A TWO THIRTY-SIX.
Q NOW, GOING BACK TO OCTOBER OF 1996, THESE FOUR OTHER INDIVIDUALS I JUST ASKED YOU ABOUT -- DAYON LEMON, TREY GARNER, VALDIS GARNER AND TASHAN WESTON -- YOU KNEW ALL OF THEM BACK THEN?
A YEAH.

Q WHAT WOULD Y'ALL DO TOGETHER BACK THEN?
A SHOOT BASKETBALL.
Q AT ANY PARTICULAR PERSON'S HOUSE?
A AT TASHAN'S HOUSE.
Q TASHAN'S HOUSE. YOU REMEMBER THE DAY THAT MR. BROOKS WAS KILLED?
A YES.
Q I WANT TO ASK YOU ABOUT SOME EVENTS BEFORE THAT DAY, OKAY, JERMAINE?
A YES, SIR.
Q DID YOU HAVE AN OCCASION ON A SUNDAY BEFORE THE SUNDAY MR. BROOKS WAS KILLED TO BE AT TASHAN'S HOUSE?
A YES.
Q WHO ALL WAS THERE?
A ME, TASHAN, VALDIS AND TREY.
Q YOU, TASHAN, VALDIS AND TREY?
A AND DAYON.
Q AND DAYON. AND THIS DAY I'M TALKING ABOUT, THIS SUNDAY I'M TALKING ABOUT THAT YOU WERE AT TASHAN'S HOUSE, WAS TREY THERE?
A YEAH.
Q WAS DAYON THERE?
A YES.
Q WAS VALDIS THERE?
A YES.

Q WHAT IS THE RELATIONSHIP BETWEEN VALDIS AND TREY? ARE THEY KIN?
A BROTHERS.
Q BROTHERS?
A YEAH.
Q AND WAS TASHAN THERE?
A YEAH.
Q HIS LAST NAME IS WESTON?
A YES.
Q NOW, WHAT DID YOU SAY HIS NICKNAME WAS?
A SCOOTER BAIT.
Q SCOOTER BAIT. NOW, ON THIS PARTICULAR SUNDAY, WHOSE HOUSE WERE YOU AT?
A TASHAN.
Q AND WHAT WERE Y'ALL DOING AT TASHAN'S HOUSE?
A SHOOTING BASKETBALL.
Q AFTER Y'ALL WERE SHOOTING BASKETBALL, WHERE WERE Y'ALL AT?
A WE WAS ON THE FRONT PORCH.
Q SPEAK UP, JERMAINE.
A WE WAS ON THE FRONT PORCH.
Q ON THE FRONT PORCH AT TASHAN'S HOUSE?
A YES.
Q AND DID Y'ALL HAVE A CONVERSATION AT THAT TIME ABOUT MR. BROOKS?

A YES, SIR.
Q WHO STARTED THAT CONVERSATION?
A TREY.
Q WHO?
A TREY.
Q TREY GARNER. AND THAT'S WHO YOU'RE REFERRING TO, TREY GARNER?
A YEAH.
Q AND WHAT WAS THAT CONVERSATION ABOUT?
A ABOUT ROBBING JOE.
Q WHO BROUGHT UP THE IDEA OF ROBBING JOE?
A TREY.
Q NOW, WHEN YOU SAY JOE, YOU'RE REFERRING TO JOE BROOKS?
A YES.
Q TELL THE JURY, MR. McLEMORE, WHEN YOU SAY TREY BROUGHT UP THE IDEA OF ROBBING JOE BROOKS WHAT HE SAID, HOW IT WAS BROUGHT UP.
A JUST START TALKING ABOUT IT.
Q HE JUST STARTED TALKING ABOUT IT?
A YEAH.
Q AND WHO ALL WAS HE TALKING TO? WHO ALL WAS PRESENT?
A ME, VALDIS, TASHAN AND DAYON.
Q YOU, VALDIS, TASHAN --
A AND DAYON.

Q --- AND DAYON. NOW, WHY, IF HE SAID, WHY DID MR. GARNER, TREY GARNER, WANT TO ROB JOE BROOKS?
A HE USED TO SEE HIM COUNTING THE MONEY ON SUNDAYS.
Q SPEAK UP.
A HE USED TO SEE HIM COUNTING THE MONEY ON SUNDAYS.
Q HE'D SEE HIM COUNTING THE MONEY ON SUNDAYS?
THE COURT: MR. McLEMORE, I NEED FOR YOU TO LOOK AT MR. McMAHON WHEN YOU RESPOND TO THE QUESTIONS SO YOUR VOICE WILL PROJECT OUT INTO THE COURTROOM. WE ARE HAVING A HARD TIME HEARING YOUR ANSWERS.
Q (BY MR. McMAHON) WHY -- MR. McLEMORE, JUST LOOK AT ME. WHY DID HE SAY HE WANTED TO ROB MR. BROOKS?
A HE SEEN HIM COUNTING THE MONEY ON SUNDAYS.
Q AND YOU'RE TALKING ABOUT THE MONEY AT THE STORE?
A YES.
Q HOW DID HE SAY HE WAS GOING TO DO THIS ROBBERY?
A HE WAS ASKING WHO WAS GONNA GO IN AND DAYON SAY HE WOULD GO IN.
Q HE WAS ASKING WHAT?
A ASK WHO WAS GONNA GO IN. AND DAYON SAY HE WAS GOING IN.
Q WHO WAS ASKING WHO WAS GONNA GO IN?
A TREY.
Q WERE YOU ASKED WHETHER OR NOT YOU WERE GONNA GO IN?
A YEAH.

Q WHAT WAS YOUR RESPONSE?
A I TOLD HIM I WASN'T GOING IN.
Q DID YOU HAVE A PARTICULAR ROLE TO PLAY IN THE ROBBERY?
A JUST TO DRIVE.
Q TO DRIVE. DID YOU HAVE AN AUTOMOBILE?
A YEAH.
Q WHO WAS GOING TO GO IN TO MR. BROOKS' STORE?
A DAYON.
Q NOW, WAS THIS GOING TO BE A ROBBERY WITH A WEAPON? WITH A GUN?
A YEAH.
Q AND WHERE WERE Y'ALL GOING TO GET THE GUN?
A FROM TREY.
Q SO, WHO HAD THE GUN?
A TREY.
Q WHO PROVIDED THE GUN?
A TREY.
Q WHAT WAS THE RELATIONSHIP BETWEEN DAYON LEMON AND TREY?
A FRIENDS.
Q DID THEY HAVE ANY OTHER TYPE OF RELATIONSHIP?
A NOT THAT I KNOW OF.
Q WHAT, IF ANYTHING, DID TREY SAY HE WAS GONNA DO WITH THE PROCEEDS OF THE ROBBERY?

A WITH THE PROCEEDS?
Q YEAH, THE MONEY THAT Y'ALL GOT FROM THE ROBBERY?
A BUY SOME COCAINE WITH IT.
Q BUY WHAT?
A COCAINE.
Q WHO SAID HE WAS GONNA BUY COCAINE WITH IT?
A TREY.
Q NOW, WHAT INVOLVEMENT, IF ANY, DID DAYON HAVE WITH COCAINE?
A HE DIDN'T HAVE NOTHING.
Q WAS THERE ANY RELATIONSHIP BASED ON DRUGS BETWEEN DAYON AND TREY?
A YES, SIR.
Q WHAT WAS THAT?
A DAYON WAS SELLING FOR HIM.
Q DAYON WAS SELLING FOR WHO?
A TREY.
Q FOR TREY? DO YOU KNOW WHETHER OR NOT DAYON OWED TREY ANY MONEY?
A NO, I DIDN'T KNOW IF HE OWED HIM ANYTHING.
Q NOW, THE DAY Y'ALL FIRST TALKED ABOUT THIS, ROBBING JOE BROOKS, WHERE WERE Y'ALL AT, MR. McLEMORE?
A AT TASHAN HOUSE.
Q AND DID Y'ALL HAVE AN OCCASION TO LEAVE TASHAN'S HOUSE?

A I CAN'T REMEMBER.
Q LET ME ASK YOU THIS. OF THE FIVE INDIVIDUALS UP THERE -- JERMAINE McLEMORE, TREY GARNER, DAYON LEMON, VALDIS GARNER AND TASHAN WESTON -- WHO ALL AGREED TO PARTICIPATE IN THE ROBBERY?
A EVERYBODY EXCEPT VALDIS.
Q VALDIS DID NOT? SO, YOU AGREED?
A YEAH.
Q AND TREY?
A YES.
Q AND DAYON?
A YES.
Q TASHAN?
A YEAH.
Q DID HE GO WITH Y'ALL?
A NO.
Q DID VALDIS GO WITH Y'ALL?
A NO.
Q THE DAY THAT MR. BROOKS WAS KILLED, WAS THAT THE FIRST TIME Y'ALL HAD GONE DOWN TO BROOKS' STORE TO ROB IT?
A NO.
Q HOW MANY TIMES BEFORE THE DAY THAT MR. BROOKS WAS KILLED HAD Y'ALL BEEN DOWN THERE TO ROB MR. BROOKS?
A ONCE.

Q AND WHEN WAS THAT?
A THE SUNDAY BEFORE.
Q THE SUNDAY BEFORE THE DAY HE WAS KILLED? I'M SORRY, I COULDN'T HEAR YOU?
A THE SUNDAY BEFORE.
Q AND WHO ALL WENT DOWN THERE THE SUNDAY BEFORE?
A ME, TREY AND DAYON.
Q YOU, TREY AND DAYON. AND WHAT DID YOU DO THAT DAY?
A JUST PARK AND WAIT.
Q WHERE DID YOU PARK?
A ON MINERVAVILLE.
Q AND WHO WAS SUPPOSED TO GET OUT AND GO IN THE STORE?
A DAYON.
Q DID DAYON DO THE ROBBERY ON THAT FIRST DAY?
A NO.
Q WAS TREY WITH Y'ALL ON THAT FIRST DAY?
A YEAH.
Q YOU WERE ASSISTING DAYON IN BEING THE GETAWAY DRIVER?
A YES.
Q AND TREY WAS ASSISTING DAYON?
A YEAH.
Q DID HE PROVIDE DAYON THE GUN?
A YES.
Q BUT NOTHING HAPPENED THAT DAY, CORRECT?
A CORRECT.

Q NOW, I WANT TO GO TO OCTOBER 27TH OF '96, THE SUNDAY MR. BROOKS GOT KILLED. DID YOU HOOK UP WITH TREY AND DAYON ON THAT SUNDAY?
A YES.
Q WHERE WAS THAT AT?
A AT SLANK'S HOUSE.
Q SLANK'S HOUSE?
A YEAH.
Q NOW, JERMAINE, IF I LEAVE MR. BROOKS' STORE AND GO DOWN MINERVAVILLE, WHERE IS SLANK'S HOUSE?
A ON THE LEFT.
Q DO YOU KNOW MRS. BATES?
A YEAH.
Q THE SCHOOL TEACHER. DO YOU KNOW WHERE SHE LIVES?
A YOU HAVE TO PASS HER HOUSE.
Q AND HIS HOUSE WOULD BE ON THE SAME SIDE AS MRS. BATES OR ON THE OTHER SIDE?
A ON THE OTHER SIDE.
Q JERMAINE, STATE'S EXHIBIT NUMBER TWO, THIS BEING CABIN CREEK, THIS BEING MINVERVAVILLE, SLANK'S HOUSE WOULD BE UP THIS DIRECTION?
A YES.
Q ON THIS SIDE, IS THAT CORRECT?
A CORRECT.
Q AND MRS. BATES WOULD BE ON THIS SIDE?

A YEAH.
Q SLANK. NOW, WHAT AGE FELLOW IS SLANK?
A IN HIS THIRTIES.
Q IN HIS THIRTIES. HE'S NOT A TEENAGER IN HIS EARLY TWENTIES LIKE YOU OR MR. GARNER OR MR. LEMON, CORRECT?
A CORRECT.
Q WHAT DID Y'ALL GO BY SLANK'S HOUSE FOR?
A WE USED TO SIT OVER THERE AND TALK.
Q LET ME REPHRASE THAT. WHAT DID YOU GO BY SLANK'S HOUSE FOR?
A TO TALK TO HIM.
Q AND IS THAT WHERE YOU HOOKED UP WITH MR. LEMON AND MR. GARNER THAT DAY?
A YES.
Q DO YOU KNOW WHERE DAYON, MR. LEMON, WAS LIVING THAT DAY?
A WITH HIS GRANDMAMA.
Q AND WHERE DID HIS GRANDMAMA LIVE?
A DOWN ON MINERVAVILLE.
Q HIS GRANDMOTHER LIVED JUST FURTHER ON DOWN MINERVAVILLE, CORRECT?
A YEAH.
Q DID TREY GARNER HAVE A CAR?
A NO.

Q DID DAYON LEMON?
A NO.
Q WHEN YOU HOOKED UP WITH THEM THAT DAY, WHO WAS THE PERSON THAT HAD THE CAR?
A I HAD IT.
Q ABOUT WHAT TIME WAS IT WHEN Y'ALL FIRST GOT TOGETHER THAT DAY?
A PROBABLY ABOUT TWELVE-THIRTY OR ONE O'CLOCK.
Q TWELVE-THIRTY OR ONE O'CLOCK IN THE AFTERNOON?
A YEAH.
Q SUNDAY AFTERNOON?
A YEAH.
Q ABOUT HOW LONG DID Y'ALL STAY AT SLANK'S?
A ABOUT TWO OR THREE HOURS.
Q AND WHAT WERE Y'ALL DOING DURING THAT PERIOD OF TIME, MR. McLEMORE?
A JUST TALKING TO SLANK.
Q SAY IT AGAIN.
A TALKING TO SLANK.
Q FROM THERE, FROM SLANK'S, WHERE DID Y'ALL GO?
A TO TASHAN HOUSE.
Q TASHAN'S HOUSE?
A YEAH.
Q NOW, WHY WERE Y'ALL GOING BY TASHAN'S HOUSE?
A TO SEE IF HE WAS HOME.

Q AND WHY DID YOU WANT TO SEE IF TASHAN WAS HOME?
A TO SEE IF HE WAS GOING WITH US.
Q GOING WITH YOU TO DO WHAT?
A TO THE STORE.
Q TO WHOSE STORE?
A JOE.
Q TO DO WHAT?
A WE WAS GOING TO SEE --
Q SAY IT AGAIN.
A WE WAS GONNA SEE IF WE WAS GONNA DO IT THEN.
Q DO WHAT THEN?
A ROB JOE.
Q ROB JOE. SO, WHO LEFT SLANK'S TOGETHER?
A ME, TREY AND --
THE COURT: SPEAK UP, PLEASE.
A ME, TREY AND DAYON.
Q (BY MR. McMAHON) YOU, TREY AND DAYON?
A YEAH.
Q AND Y'ALL WENT FROM THERE TO WHOSE HOUSE?
A TASHAN.
Q AND THE PURPOSE WAS TO SEE IF TASHAN WAS GOING TO DO WHAT?
A SEE IF HE WAS STILL GOING WITH US.
Q TO DO WHAT?
A ROB JOE.

Q NOW, WHAT HAPPENED WHEN YOU GOT TO TASHAN'S?
A WE SHOT BASKETBALL.
Q WAS TASHAN HOME?
A YEAH.
Q LET ME ASK YOU. WHERE WAS VALDIS?
A VALDIS WAS WITH US THEN.
Q HE WAS WITH Y'ALL WHEN YOU LEFT SLANK'S?
A YES.
Q WAS HE WITH Y'ALL WHEN YOU GOT TO TASHAN'S?
A YEAH.
Q WAS TASHAN HOME?
A YEAH, HE WAS HOME.
Q TASHAN WAS HOME?
A YEAH.
Q ON THE DAY Y'ALL DID THE ROBBERY?
A HE WAS HOME EARLIER THAT DAY.
Q WAS HE HOME WHEN Y'ALL WENT BY THERE TO PICK HIM UP?
A NO.
Q AFTER BEING AT TASHAN'S, WHO LEFT TASHAN'S TOGETHER?
A ME, TREY AND DAYON.
Q WHAT ABOUT VALDIS?
A VALDIS WENT HOME.
Q HE WENT HOME?
A YEAH.
Q WHEN Y'ALL LEFT TASHAN'S, WHERE WERE Y'ALL GOING?

A TO JOE.
Q TO WHERE?
A TO THE STORE.
Q DID Y'ALL GO TO THE STORE?
A YES.
Q NOW, WHERE AT THE STORE DID YOU GO?
A JOE.
Q WHERE DID YOU GO SPECIFICALLY ON THE LOT OF MR. BROOKS' STORE?
A BY THE GAS TANK.
Q AND WHAT DID YOU DO WHEN YOU GOT THERE?
A GOT GAS.
Q NOW, EXPLAIN -- LET ME ASK YOU THIS FIRST. WHO ALL WAS IN THE CAR WHEN Y'ALL PULLED UP TO THE GAS TANKS?
A ME, TREY AND DAYON.
Q AND WHEN YOU GOT TO THE GAS TANKS, WHAT DID YOU DO?
A I WAS GONNA GET OUT AND PUMP THE GAS BUT THE TANK WASN'T ON.
Q SO, WHERE DID YOU GO?
A I WENT AND TELL JOE TO CUT THE TANK ON.
Q YOU WENT INSIDE?
A YEAH.
Q AND WHERE DID TREY GO?
A HE HAD CAME IN TO PAY FOR IT.
Q TREY WENT INSIDE TO PAY FOR IT?

A YEAH.
Q WHERE WAS DAYON WHEN YOU AND TREY WENT INSIDE?
A STILL IN THE CAR.
Q NOW, DID YOU SEE ANYBODY ELSE OUTSIDE?
A WILLIE FAYE.
Q WILLIE FAYE WHO?
A I THINK IT'S SUMTER.
Q SUMTER?
A YEAH.
Q YOU THINK IT'S SUMTER?
A YEAH.
Q ABOUT WHAT AGE GENTLEMAN IS WILLIE FAYE SUMTER?
A I DON'T KNOW. HE'S OLDER.
Q AND WHERE WAS HE AT?
A PUTTING AIR IN HIS TRUCK TIRE.
Q WHERE IS THE AIR HOSE?
A ABOUT MIDDLEWAYS OF THE STORE.
Q NOW, WHEN YOU WENT IN TO MR. BROOKS' STORE, AGAIN WHAT DID YOU GO IN FOR, MR. McLEMORE?
A TELL HIM TO CUT THE TANK ON.
Q AND WHO DID YOU TALK WITH? WHO DID YOU ASK TO CUT THE TANK ON?
A JOE.
Q WHERE WAS HE AT?
A STANDING BEHIND THE COUNTER.

Q WHO ELSE DID YOU SEE INSIDE?
A THE LITTLE RED DUDE THAT USED TO WORK THERE AND A WHITE LADY AND A BLACK DUDE PLAYING THE QUARTER MACHINE AND I DON'T KNOW THE OTHER PEOPLE.
Q YOU DESCRIBED HIM AS A LITTLE RED DUDE THAT USED TO WORK THERE?
A YEAH.
Q IS THAT CORRECT?
A YEAH.
Q AND YOU LATER LEARNED THAT'S MR. MARSHALL?
A YEAH.
Q AND YOU SAY THERE WAS A LADY?
A YES.
Q WHERE WAS SHE AT?
A THEY WAS PLAYING THE QUARTER MACHINE.
Q NOW, WHO ALL WAS AT THE QUARTER MACHINE?
A HER AND ANOTHER DUDE.
Q DID YOU ASK MR. BROOKS TO CUT THE PUMPS ON?
A YES.
Q AND DID HE DO THAT?
A YEAH.
Q AND WHERE WAS TREY?
A HE WAS COMING BACK OUT WITH ME.
Q NOW, WHEN YOU GOT BACK OUTSIDE, DID YOU PUMP GAS INTO YOUR AUTOMOBILE?

A YEAH.
Q AND WHERE WAS DAYON WHEN YOU FIRST GOT BACK OUTSIDE?
A IN THE CAR.
Q STILL IN YOUR CAR?
A YEAH.
Q AFTER YOU PUMPED THE GAS, WHERE DID YOU GO?
A I HAD BACKED UP AND THEN DAYON GOT OUT.
Q I'M SORRY, I COULDN'T UNDERSTAND YOU.
A I BACKED UP AND THEN DAYON GOT OUT.
Q NOW, FROM THE TIME WHEN YOU BACKED UP TO WHEN DAYON GOT OUT, WHERE WAS MR. GARNER?
A STILL IN THE CAR.
Q NOW, DID Y'ALL TALK ANY AT ALL DURING THAT PERIOD OF TIME?
A DID WE TALK? NO.
Q WELL, WHAT, IF ANYTHING, WAS SAID ABOUT THE ROBBERY THEN?
A HE JUST TOLD HIM WAIT 'TIL IT CLEAR.
Q SAY THAT AGAIN.
A WAIT 'TIL IT CLEAR UP SOME.
Q YOU SAY HE TOLD HIM?
A YEAH.
Q WHO ARE YOU REFERRING TO?
A TREY.
Q TREY TOLD WHO?

A DAYON.
Q TO DO WHAT?
A TO WAIT 'TIL IT CLEAR UP A LITTLE BIT.
Q REFERRING TO THE PEOPLE?
A YEAH.
Q NOW, WHAT, IF ANYTHING, HAD DAYON DONE TO DISGUISE HIMSELF WHILE HE WAS IN THE CAR?
A HE HAD A WHITE SHEET AND SOME KIND OF HOODED SWEATER ON.
Q AND WHERE HAD HE GOTTEN THIS WHITE SHEET FROM?
A IT WAS ONE THAT WAS IN MY CAR.
Q IT WAS IN YOUR CAR?
A YEAH.
Q WHY WAS THERE A WHITE SHEET IN YOUR CAR?
A I USED TO COVER MY WINDSHIELD UP AT NIGHT WITH IT.
Q AND WHAT DID HE DO WITH THE SHEET?
A TOOK PIECES OFF OF IT.
Q LIKE TORE IT?
A YEAH.
Q AND WHAT DID HE DO WITH THESE TORN PIECES OF SHEET?
A WRAPPED HIS FACE WITH IT.
Q WRAPPED HIS FACE?
A YEAH.
Q NOW, MR. McLEMORE, WHAT, IF ANYTHING, WAS SAID ABOUT SHOOTING MR. BROOKS?

A HE SAID JUST SHOOT HIM IN HIS SHOULDER.
Q WHO SAID SHOOT HIM IN THE SHOULDER?
A TREY.
Q DID YOU KNOW WHETHER OR NOT MR. BROOKS HAD A GUN?
A YEAH.
Q DID HE OR DIDN'T HE TO YOUR KNOWLEDGE?
A YES, HE HAD ONE.
Q WAS IT COMMON KNOWLEDGE IN THE COMMUNITY THAT MR. BROOKS HAD A GUN IN THE STORE?
A YES.
Q SO, WHO SAID SHOOT MR. BROOKS?
A TREY.
Q AND WHO DID HE TELL TO SHOOT MR. BROOKS?
A DAYON.
Q DID HE SAY WHY HE SHOULD SHOOT MR. BROOKS?
A NO.
Q NOW, DID DAYON HAVE A GUN?
A YES.
Q WHERE HAD DAYON GOTTEN THE GUN?
A FROM TREY.
Q WHEN HAD TREY GIVEN DAYON THE GUN?
A AT TASHAN HOUSE.
Q AT TASHAN'S HOUSE?
A YEAH.
Q WHEN Y'ALL PULLED OFF FROM THE GAS PUMPS, IT WAS YOU

AND TREY AND DAYON, IS THAT CORRECT?
A YEAH.
Q DID ANY ONE OF YOU THREE GET OUT OF YOUR CAR BEFORE YOU LEFT THE PARKING LOT AT MR. BROOKS' STORE?
A DAYON.
Q DAYON?
A YEAH.
Q DID YOU LET HIM OUT?
A YEAH.
Q AND WHY DID YOU LET HIM OUT?
A SO HE COULD GO BEHIND THE STORE.
Q WHAT STORE?
A THE LITTLE BUILDING THAT'S IN THE STORE YARD.
Q AND REFERRING AGAIN TO STATE'S EXHIBIT NUMBER TWO, MR. McLEMORE, THIS BEING BROOKS' STORE, ARE YOU REFERRING TO THIS OVER HERE?
A YEAH.
Q SO, WHAT WAS HE GOING TO DO THERE?
A JUST WAIT.
Q WAIT UNTIL WHAT?
A 'TIL IT CLEAR UP SOME.
Q AND WHO HAD TOLD HIM TO DO THAT?
A TREY.
Q NOW, WHAT WERE YOU AND TREY GOING TO DO?
A TO WAIT FOR HIM.

Q AND WHERE WERE Y'ALL GOING TO WAIT FOR HIM?
A ON A DIRT ROAD DOWN FROM THE STORE.
Q WHAT'S THE NAME OF THAT DIRT ROAD DOWN FROM THE STORE? DO YOU KNOW?
A NO.
Q IF I LEAVE BROOKS' STORE, WOULD I TURN RIGHT?
A RIGHT.
Q AND CROSS MINERVAVILLE, WHERE IS THE DIRT ROAD?
A YOU GOT TO GO DOWN ABOUT A QUARTER OF A MILE.
Q AND WHAT WERE Y'ALL GOING TO DO ON THE DIRT ROAD?
A WAIT ON DAYON.
Q NOW, WHY WERE Y'ALL GOING TO WAIT ON DAYON?
A SO WHEN HE WENT IN THE STORE AND CAME OUT HE COULD HAVE CAME AND GOT IN THE CAR.
Q SAY THAT AGAIN.
A SO WHEN HE WENT IN THE STORE AND CAME OUT HE COULD HAVE CAME AND GOT IN THE CAR.
Q AND WHEN HE CAME AND GOT IN THE CAR -- WHEN HE WENT IN THE STORE AND CAME OUT AND CAME AND GOT IN THE CAR, WHAT WERE Y'ALL GOING TO DO?
A LEAVE.
Q WITH DAYON?
A YEAH.
Q NOW, WHO WAS WITH YOU DURING THAT ENTIRE PERIOD OF TIME FROM WHEN YOU LET DAYON OUT UNTIL YOU NEXT SAW

DAYON?
A TREY.
Q DID Y'ALL WAIT ON DAYON?
A YEAH.
Q ABOUT HOW MUCH TIME PASSED FROM WHEN Y'ALL HAD LET DAYON OUT UNTIL HE SHOWED UP THERE WHERE Y'ALL WERE AT?
A ABOUT FIVE MINUTES.
Q AND COULD YOU DESCRIBE FOR US WHAT HIS CONDITION, WHAT HIS PHYSICAL APPEARANCE WAS WHEN Y'ALL NEXT SAW HIM?
A NO, IT WAS DARK.
Q COULD YOU DESCRIBE HOW HE WAS MOVING WHEN HE APPROACHED YOUR CAR? WAS HE WALKING, WAS HE RUNNING?
A HE WAS RUNNING.
Q AND DID HE GET IN THE CAR?
A YEAH.
Q WHEN HE GOT IN THE CAR, WHAT, IF ANYTHING, DID HE SAY?
A HE SAY HE HAD SHOT JOE. HE SAY THE FIRST TIME JOE WENT FOR HIS GUN SO HE SHOT AGAIN. HE SAY HE THINK HE HAD HIT HIM IN HIS FACE.
Q SO, HE SAID HE HAD SHOT JOE?
A YEAH.
Q DID HE SAY HOW MANY TIMES?

A HE SAID TWO.
Q AND HE SAID SOMETHING ABOUT HE THOUGHT JOE WENT FOR HIS GUN?
A YEAH.
Q SO, THE SECOND TIME WHERE DID DAYON SAY HE SHOT MR. BROOKS?
A IN HIS FACE. HE SAY HE THOUGHT HE HIT HIM IN THE FACE.
Q DID HE STILL HAVE THE GUN WITH HIM?
A YEAH.
Q WAS HE STILL CAMOUFLAGED AND HAD THE SHEET?
A YEAH.
Q NOW, AFTER HE GOT IN THE CAR, WHAT DID Y'ALL DO?
A DROVE OFF.
Q IN WHICH DIRECTION DID Y'ALL DRIVE OFF? TOWARDS CABIN CREEK OR AWAY FROM CABIN CREEK?
A AWAY FROM IT.
Q AND WHERE DID Y'ALL GO?
A TO THE BRIDGE.
Q NOW, LET ME SHOW YOU STATE'S EXHIBIT NUMBER ONE, MR. McLEMORE. THIS BEING CABIN CREEK AND THIS BEING MR. BROOKS' STORE, DO YOU SEE THAT?
A YEAH.
Q WOULD I GO IN THIS DIRECTION TO GET TO THE DIRT ROAD?
A YEAH.

Q WOULD IT BE THE FIRST ROAD TO THE RIGHT AFTER MINERVAVILLE?
A THAT'S RIGHT.
Q AND WHAT NAME DOES THAT APPEAR TO BE?
A GILWOOD.
Q GILWOOD. IS THAT THE ROAD Y'ALL WERE PARKED ON?
A YEAH.
Q HOW MUCH MONEY DID DAYON HAVE WITH HIM WHEN HE GOT BACK?
A NONE.
Q WHAT DID HE SAY ABOUT THE MONEY?
A HE SAY HE COULDN'T FIND THE BAG.
Q WHO ASKED HIM ABOUT THE MONEY?
A TREY.
Q WHAT WERE YOU GOING TO DO WITH THE MONEY? WHAT WAS TREY GOING TO DO WITH THE MONEY?
A GET COCAINE WITH IT.
Q NOW, MR. McLEMORE, CAN YOU SEE THIS DIAGRAM FROM WHERE YOU'RE SITTING?
A YEAH.
Q THIS BEING CABIN CREEK AND THIS BEING GILWOOD. IS THIS GILWOOD THE ROAD Y'ALL WERE PARKED ON?
A YEAH.
Q WHEN Y'ALL LEFT, DID YOU COME BACK OUT TOWARDS CABIN CREEK OR DID YOU GO AWAY FROM IT?

A WENT AWAY FROM IT.
Q NOW, RIGHT HERE WHERE IT INTERSECTS, THIS IS MEETING HOUSE ROAD?
A YEAH.
Q YOU'RE FAMILIAR WITH THAT?
A YEAH.
Q WHEN Y'ALL GOT TO THE INTERSECTION OF MEETING HOUSE AND GILWOOD, WHICH DIRECTION DID YOU GO?
A RIGHT.
Q TO THE RIGHT DOWN MEETING HOUSE AS IT APPEARS ON THIS DIAGRAM?
A YEAH.
Q AND THIS INTERSECTION HERE, MEETING HOUSE AND CLARKSON ROAD, IS THERE A STOP SIGN THERE?
A YEAH.
Q ON MEETING HOUSE?
A YEAH.
Q WHEN YOU GOT TO THIS INTERSECTION WHAT DID Y'ALL DO?
A TURNED LEFT.
Q TURNED LEFT. AND AFTER YOU TURNED LEFT ON CLARKSON, WHERE DID YOU STOP?
A AT THE BRIDGE.
Q THERE IS A BRIDGE THERE OVER A CREEK? I DON'T KNOW IF THAT'S GILLS CREEK OR NOT BUT -- IT MIGHT BE CABIN CREEK BUT ANYWAY YOU STOPPED ON THE BRIDGE?

A YEAH.
Q WHO DIRECTED YOU TO STOP ON THAT BRIDGE?
A TREY.
Q AND WHEN YOU STOPPED ON THE BRIDGE, WHAT WAS THE PURPOSE OF STOPPING ON THE BRIDGE?
A GET RID OF THE GUN.
Q NOW, YOU WERE DRIVING?
A YEAH.
Q WHEN YOU STOPPED ON THE BRIDGE, WHO, IF ANYONE, GOT OUT?
A TREY AND DAYON.
Q AND DID YOU SEE WHERE THEY WENT?
A NO, THEY JUST STEPPED OUT.
Q THEY STEPPED OUT?
A YEAH.
Q DID YOU SEE WHICH SIDE THEY GOT ON, WHETHER IT WAS YOUR PASSENGER SIDE OR DRIVER'S SIDE?
A PASSENGER SIDE.
Q WHO HAD THE GUN WHEN THEY GOT OUT?
A DAYON.
Q WHEN THEY GOT BACK IN, DID YOU EVER SEE THE GUN AGAIN?
A NO.
Q WHOSE IDEA WAS IT TO THROW THE GUN AWAY?
A TREY.

Q NOW, FROM HERE, FROM THE BRIDGE ON CLARKSON, WHERE DID YOU GO?
A STRAIGHT OUT.
Q TO?
A 48.
Q SO, YOU HAD COME DOWN CLARKSON AND WESTON AND COME OUT ON 48 HERE, BLUFF ROAD?
A YEAH.
Q FROM THERE WHERE DID YOU GO?
A TO HIS COUSIN HOUSE.
Q WHOSE COUSIN'S HOUSE?
A TREY.
Q SAY IT AGAIN.
A TREY.
Q NOW, WHERE IS HIS COUSIN'S HOUSE LOCATED AT?
A IN MYERSTOWN.
Q WAS HIS COUSIN HOME?
A NO.
Q HOW LONG DID Y'ALL STAY AT HIS COUSIN'S HOUSE?
A ABOUT FIVE MINUTES.
Q AND FROM THERE WHO LEFT TOGETHER?
A ME, TREY AND DAYON.
Q AND WHERE DID Y'ALL GO FROM THERE?
A TO THE DIRT ROAD.
Q WAS THAT DIRT ROAD BETWEEN HIS COUSIN'S HOUSE AND

GOING BACK TOWARDS MR. BROOKS' STORE?
A YEAH.
Q NOW, WHAT WAS THE PURPOSE OF GOING TO THIS DIRT ROAD?
A TO BURN THE CLOTHES.
Q BURN WHOSE CLOTHES?
A THE CLOTHES THAT DAYON HAD ON.
Q WHOSE IDEA WAS IT TO BURN THE CLOTHES?
A TREY.
Q NOW, WHY BURN THE CLOTHES?
A TO GET RID OF 'EM.
Q DID DAYON HAVE ON OTHER CLOTHES?
A YEAH.
Q AND DID THEY BURN THE CLOTHES?
A YEAH.
Q HAVE YOU SINCE SHOWN TO THE POLICE AND ME WHERE THAT TOOK PLACE?
A YEAH.
Q NOW, AFTER Y'ALL STOPPED AND BURNED THE CLOTHES, WHERE DID YOU GO FROM THERE, MR. McLEMORE?
A TO TREY HOUSE.
Q AND WHO DID YOU PICK UP AT TREY'S HOUSE?
A VALDIS.
Q DO YOU KNOW THE ROAD OR WHERE TREY WAS LIVING?
A I DON'T KNOW THE NAME OF THE ROAD.
Q NOW, YOU PICKED UP VALDIS AND FROM THERE WHERE DID

YOU GO?
A TO JAVORIS HOUSE.
Q NOW, WHERE DOES JAVORIS LEWIS LIVE?
A MASONRY CIRCLE.
Q MASONRY CIRCLE?
A YEAH.
Q AND YOU SEE THIS MAP AGAIN, STATE'S ONE. THIS ROAD HERE, WHAT ROAD IS THAT?
A MASONRY CIRCLE.
Q IS THAT THE ROAD JAVORIS LEWIS LIVES ON?
A YEAH.
Q NOW, AFTER YOU PICKED UP VALDIS TO GO TO JAVORIS LEWIS' RESIDENCE, WOULD YOU BE GOING UP CABIN CREEK?
A YEAH.
Q AND RIGHT HERE AT CABIN CREEK AND MINERVAVILLE, WHAT DIRECTION WOULD YOU GO?
A RIGHT. LEFT.
Q LEFT?
A YEAH.
Q AND GO DOWN MINERVAVILLE AND THEN RIGHT HERE WOULD YOU GO RIGHT?
A YEAH.
Q AND APPROXIMATELY WHERE ON THIS ROADWAY IS JAVORIS' HOUSE?
A IT'S ABOUT TO THE TOP.

Q ABOUT TO THE TOP. NEAR CABIN CREEK?
A YEAH.
Q WHO ALL WAS AT JAVORIS' HOUSE?
A JAVORIS, GAUMAL AND JONATHAN.
Q JAVORIS LEWIS?
A YEAH.
Q GAUMAL WHO?
A LEWIS.
Q AND JONATHAN?
A FLEMING.
Q CAN YOU SEE ANY PART OF BROOKS' STORE FROM JAVORIS' HOUSE?
A YEAH.
Q WHAT PART OF THE STORE CAN YOU SEE?
A THE BACK OF IT.
Q AND WOULD YOU TELL US WHAT TYPE OF ACTIVITY WAS GOING ON AT MR. BROOKS' STORE WHEN Y'ALL WERE AT JAVORIS HOUSE?
A THE POLICE AND STUFF WAS THERE.
THE COURT: SPEAK UP, PLEASE, MR. McLEMORE.
A I SAY THE POLICE AND STUFF WAS OUT THERE.
Q (BY MR. McMAHON) AND ABOUT WHAT TIME WAS IT -- APPROXIMATELY WHAT TIME WAS IT THAT Y'ALL WERE AT JAVORIS' HOUSE?
A ABOUT SEVEN.

Q AND WHO ALL WAS THERE? NOT AT JAVORIS' HOUSE BUT WHO ALL ARRIVED WITH YOU AT JAVORIS' HOUSE?
A TREY, VALDIS AND DAYON.
Q TREY, VALDIS AND DAYON?
A YEAH.
Q NOW, DID YOU HAVE AN OCCASION TO LEAVE JAVORIS' HOUSE?
A YEAH.
Q AND WHO DID YOU LEAVE WITH, MR. McLEMORE?
A DAYON.
Q AND WHEN YOU LEFT WHERE WAS TREY AND VALDIS?
A TALKING TO JAVORIS.
Q DID YOU RETURN LATER ON TO JAVORIS' HOUSE?
A YES.
Q WHEN YOU RETURNED, WHERE WAS TREY AND VALDIS?
A STILL THERE.
Q WHAT WAS YOUR CUT SUPPOSED TO BE?
A IT WASN'T NO CUT.
Q HAD Y'ALL DISCUSSED THAT?
A NO.
Q HAD TREY OR YOU OR DAYON SAID ANYTHING ABOUT WHAT YOU WERE SUPPOSED TO GET?
A NO.
Q WERE YOU PLANNING ON GETTING ANY MONEY?
A I DON'T KNOW. I WAS JUST DRIVING.

Q YOU WERE JUST DRIVING. NOW, YOU HAD TALKED EARLIER ABOUT SEEING MR. BROOKS COUNTING THE MONEY. HAD YOU EVER SEEN MR. BROOKS COUNT THE MONEY, JERMAINE?

A YEAH, I SEEN HIM COUNT IT.

Q WHO WOULD NORMALLY BE THERE WHEN HE COUNTED THE MONEY?

A NOBODY.

Q HAVE YOU EVER SEEN HIS DAUGHTER THERE WHEN HE COUNTED THE MONEY?

A YEAH, SOMETIMES.

Q WHAT WAS HER NAME?

A MICHELLE.

Q YOU KNEW HER?

A YEAH.

Q HAD TREY GARNER SAID ANYTHING ABOUT SEEING MICHELLE THERE?

A NO.

Q OR SEEING MR. BROOKS COUNT THE MONEY?

A YEAH.

Q NOW, MR. McLEMORE, YOU WERE ARRESTED UP IN MARCH OF '97, CORRECT?

A CORRECT.

Q YOU REMEMBER THE EXACT DATE?

A THE 20TH.

Q 20TH OF MARCH?

A YEAH.
Q SO, SOME FIVE MONTHS APPROXIMATELY HAD PASSED?
A YEAH.
Q THE DAY YOU WERE ARRESTED -- AND YOU TALKED TO THE POLICE THAT DAY? THE DAY YOU WERE ARRESTED?
A YEAH.
Q DID YOU GIVE THEM A WRITTEN STATEMENT THAT DAY?
A YEAH.
Q DID YOU SIGN A STATEMENT THAT DAY?
A YES, I SIGNED A STATEMENT.
Q WAS THAT THE FIRST DAY YOU HAD TALKED TO THE POLICE?
A NO.
Q DO YOU RECALL APPROXIMATELY WHEN THE FIRST TIME WAS THAT YOU TALKED TO THE POLICE?
A I THINK IT WAS -- MARCH 20TH.
Q THAT WAS THE LAST TIME, CORRECT?
A THAT WAS THE LAST TIME. I CAN'T REMEMBER THE FIRST TIME I TALKED TO 'EM.
Q BUT IT WAS MONTHS BEFORE MARCH 20TH?
A YEAH.
Q AND YOU GAVE THEM A WRITTEN STATEMENT THAT DAY?
A YEAH.
Q AND THAT WASN'T ENTIRELY TRUTHFUL, CORRECT?
A CORRECT.
Q THE FIRST STATEMENT YOU GAVE?

A YEAH.
Q THE NEXT STATEMENT YOU GAVE, MARCH 20TH, WHERE WERE YOU AT?
A AT HOME.
Q AT HOME. AND WHO TALKED WITH YOU THAT DAY?
A I CAN'T REMEMBER THE OFFICER NAME.
Q DO YOU SEE HIM?
A YEAH.
Q POINT HIM OUT FOR THE JURY.
A (WITNESS COMPLIES)
Q THESE TWO GENTLEMEN HERE?
A YEAH.
Q SERGEANT GARDNER AND THIS GENTLEMAN HERE, SERGEANT HARRIS?
A YEAH.
Q AND THAT DAY AT YOUR HOME YOU TOLD THEM WHAT HAPPENED AS FAR AS THE ROBBERY IS CONCERNED?
A YEAH.
Q AND WHO DID YOU TELL THEM WAS INVOLVED IN THE ROBBERY?
A ME, TREY AND DAYON.
Q YOU AND WHO?
A TREY AND DAYON.
Q THE GUN THAT DAYON USED, DO YOU KNOW WHAT TYPE OF GUN THAT WAS?

A NINE MILLIMETER.
Q NINE MILLIMETER?
A YEAH.
Q AND DO YOU KNOW WHERE DAYON GOT IT FROM?
A FROM TREY.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

CROSS EXAMINATION BY

MR. ROGERS:

Q JERMAINE, WHY ARE YOU TESTIFYING HERE TODAY?
A 'CAUSE I'D LIKE TO GET IT OUT.
Q EXCUSE ME?

THE COURT: MR. McLEMORE, YOU'RE GOING TO HAVE TO LOOK UP AND SPEAK OUT AND IF YOU'LL SPEAK TO MR. ROGERS THEN WE'LL BE ABLE TO HEAR EVERYTHING THAT YOU SAY BUT YOU'VE GOT TO SPEAK LOUDLY OR WE CAN'T HEAR IT.

A BECAUSE I JUST TOOK MY PLEA SO I CAN GET IT OVER WITH.
Q SO, YOU'RE TESTIFYING HERE TODAY TO GET IT OVER WITH?
A YEAH.
Q ANY OTHER REASON?
A NO.
Q THAT'S NOT TRUE, IS IT, MR. McLEMORE?
A IT'S TRUE.

Q YOU'RE TESTIFYING TO GET OUT FROM UNDER A MURDER CHARGE, ISN'T THAT TRUE?
A NO.
Q WHAT DO YOU MEAN NO? WEREN'T YOU CHARGED WITH MURDER?
A YEAH, I WAS CHARGED WITH MURDER.
Q WHAT HAPPENED TO THAT?
A TODAY?
Q WHAT HAPPENED TO YOUR MURDER CHARGE?
A THEY TOOK IT OFF.
Q CONTINGENT ON YOUR TESTIMONY HERE TODAY, ISN'T THAT TRUE?
A THAT'S TRUE BUT --
Q SO, THAT IF YOU DON'T TESTIFY THE WAY THEY WANT, THE MURDER CHARGE IS REINSTATED, ISN'T IT?
A NO, NO.
Q IT'S NOT?
A AS LONG AS THEY SAY IT WAS TRUE TESTIMONY.
Q OKAY. AS LONG AS YOU TESTIFY TRUTHFULLY. WHO IS GOING TO DETERMINE WHETHER OR NOT YOU TESTIFY TRUTHFULLY, THE JURY OR THE SOLICITOR'S OFFICE?
A THE JURY.
Q THE JURY?
A YEAH.
Q SO, HOW COULD -- IF THE JURY FINDS TREY NOT GUILTY,

YOU DIDN'T TESTIFY TRUTHFULLY, ISN'T THAT TRUE?
A IF THEY FIND HIM NOT GUILTY.
Q RIGHT?
A RIGHT.
Q AND THEN THE MURDER CHARGE IS REINSTITUTED AGAINST YOU, ISN'T THAT TRUE?
A I GUESS SO.
Q SO, YOU DO HAVE A LOT TO GAIN BY TESTIFYING HERE TODAY, TESTIFYING THE WAY THEY WANT YOU TO BECAUSE YOU HAVE TO GET OUT FROM UNDER A MURDER CHARGE, RIGHT?
A RIGHT.
Q AND WHAT DOES A MURDER CHARGE MEAN TO YOU? HOW LONG WOULD YOU STAY IN JAIL?
A I DON'T KNOW, I AIN'T NEVER HAD ONE.
Q EXCUSE ME?
A I AIN'T NEVER HAD ONE.
Q YOU DIDN'T DISCUSS THIS WITH YOUR LAWYER? YOUR LAWYER DIDN'T TELL YOU HOW MUCH TIME YOU WERE LOOKING AT ON A MURDER CHARGE?
A IT'S A THIRTY YEAR SENTENCE.
Q THIRTY YEARS, NO PAROLE, RIGHT?
A RIGHT.
Q AND HOW OLD ARE YOU?
A TWENTY-TWO.

Q YOU DON'T WANT TO DO THIRTY YEARS AT TWENTY-TWO, DO YOU?
A NO.
Q TWENTY IS BETTER, ISN'T IT?
A YEAH.
Q AND ABOUT YOUR TESTIMONY, HOW MANY TIMES HAS IT CHANGED?
A HOW MANY TIMES HAVE IT CHANGED?
Q YES. HOW MANY TIMES HAVE YOU TOLD A DIFFERENT STORY ABOUT WHAT HAPPENED?
A THIS IS THE SECOND TIME.
Q I DON'T THINK THAT'S CORRECT, MR. McLEMORE. LET'S GO THROUGH THEM, OKAY? YOU TALKED TO THE POLICE ON DECEMBER 11TH OF 1996, DID YOU NOT?
A YEAH.
Q LET ME SHOW YOU A COPY OF YOUR STATEMENT AND ASK IS THAT YOUR SIGNATURE AND YOUR STATEMENT THAT YOU GAVE TO THE POLICE?
A YEAH.
Q YOU TOLD THEM THEN THAT YOU, DAYON AND TREY WERE TOGETHER?
A YEAH.
Q THAT TREY LEFT YOU ALL FOR A TIME WHILE YOU AND DAYON WENT TO GO PURCHASE SOME MARIJUANA?
A NO, I DIDN'T SAY THAT.

Q EXCUSE ME?
A I DIDN'T SAY THAT.
Q LET ME DIRECT YOUR ATTENTION TO MIDWAY IN YOUR STATEMENT WHERE YOU SAID TREY STAYED THERE AND ME AND DAYON WENT BACK TO GET ANOTHER SACK OF WEED.
A YEAH.
Q ALL RIGHT. SO, YOU TOLD THE POLICE IN DECEMBER THAT THERE WAS A PERIOD WHERE YOU AND DAYON WERE TOGETHER AND TREY WASN'T WITH YOU?
A YEAH.
Q AND YOU TOLD THEM AT THAT TIME THAT Y'ALL HAD GONE TO GET MARIJUANA?
A YEAH.
Q YOU DIDN'T SAY ANYTHING IN THIS STATEMENT ABOUT A PLAN TO ROB ANYBODY, RIGHT?
A NO.
Q YOU DIDN'T SAY ANYTHING IN THIS STATEMENT ABOUT AN AGREEMENT BETWEEN THESE FIVE INDIVIDUALS UP ON THIS BOARD -- VALDIS AND TASHAN. YOU DIDN'T SAY ANYTHING ABOUT THAT, DID YOU?
A NO.
Q DID YOU?
A NO.
Q THEN IN MARCH YOU GET ARRESTED?
A YEAH.

Q WHERE WERE YOU WHEN YOU WERE ARRESTED?
A I WAS HOME.
Q AND THESE OFFICERS ARRESTED YOU?
A YEAH.
Q AND THEY TOLD YOU THAT YOU COULD BE CHARGED WITH MURDER?
A YEAH.
Q AND THAT'S WHEN YOU DECIDED I BETTER GET THIS OFF OF ME AND PUT IT ON SOMEBODY ELSE?
A NO.
Q THAT WAS THE FIRST TIME TREY'S NAME WAS MENTIONED IN BEING INVOLVED IN THIS ROBBERY, RIGHT? BY YOU?
A YEAH. WE HAD TALKED ABOUT IT EARLIER.
Q WE WHO?
A ME, TREY AND DAYON.
Q YEAH, OKAY. YOU, TREY AND DAYON. ALL RIGHT. BUT THAT WAS THE FIRST TIME THAT YOU HAD TOLD THE POLICE OFFICERS ANYTHING ABOUT TREY'S INVOLVEMENT WAS WHEN YOU HAD BEEN ARRESTED. YOU WERE TRYING TO GET THE HEAT OFF YOU, WEREN'T YOU?
A YEAH. NO, I WASN'T TRYING TO GET THE HEAT OFF ME. WE WAS ALL TOGETHER.
Q WELL, THAT'S WHAT WE ARE HERE TO DETERMINE IF Y'ALL WERE ALL TOGETHER. NOW -- SO, ON THE 20TH OF MARCH YOU GAVE A SECOND STATEMENT, RIGHT?

A RIGHT.
Q AND IT WAS IN THAT STATEMENT YOU NEVER SAID ANYTHING IN THAT STATEMENT ABOUT TASHAN BEING INVOLVED, DID YOU?
A I CAN'T REMEMBER.
Q I DIDN'T HEAR YOU.
A I CAN'T REMEMBER.
Q TAKE A MINUTE TO LOOK AT THAT STATEMENT AND SEE IF YOU SEE ANYTHING IN THERE ABOUT TASHAN BEING INVOLVED IN THIS PLAN.
A (PAUSE)
Q HAVE YOU HAD TIME YET?
A YEAH.
Q THERE'S NOTHING IN THE MARCH 20TH STATEMENT, THE DAY THAT YOU GOT ARRESTED FOR THIS -- YOU WERE CHARGED WITH MURDER ON THAT DAY, WEREN'T YOU?
A YEAH.
Q NOTHING IN THAT STATEMENT ABOUT VALDIS OR TASHAN AGREEING, RIGHT?
A RIGHT.
Q YOU JUST ADDED THAT TODAY, RIGHT?
A BECAUSE IT'S SUPPOSED TO BE A TRUTHFUL STATEMENT.
Q I'M SORRY. I CAN'T HEAR YOU.
A IT'S SUPPOSED TO BE A TRUTHFUL STATEMENT.
Q BUT THE FIRST TIME YOU EVER TOLD ANYBODY ABOUT THAT

WAS TODAY, RIGHT?
A NO.
Q YOU TALKED TO MR. McMAHON IN PREPARATION FOR YOUR TESTIMONY HERE, HAVEN'T YOU?
A YEAH.
Q YOU TALKED TO HIM, WHEN? LAST WEEK?
A YEAH.
Q AND DID YOU TALK TO HIM AGAIN AT THE BREAK WE TOOK JUST BEFORE YOU TESTIFIED THIS MORNING?
A YEAH.
Q IN THE MARCH 20TH STATEMENT, YOU DIDN'T MENTION ANYTHING ABOUT Y'ALL GOING UP THERE THE SUNDAY BEFORE TO DO THE ROBBERY, DID YOU?
A NO.
Q YOU DIDN'T PUT THAT IN THE STATEMENT. AND THE POLICE OFFICERS ASKED YOU AT THE END OF THAT STATEMENT IS THERE ANYTHING ELSE YOU WANT TO ADD, DIDN'T THEY?
A YEAH.
Q YOU DIDN'T ADD THAT. YOU ADDED THAT TODAY BECAUSE TODAY IS THE DAY YOU'RE GOING TO GET YOUR DEAL, RIGHT?
A (UNABLE TO HEAR RESPONSE)
THE COURT: MR. McLEMORE, WE CANNOT HEAR YOUR RESPONSES. YOU NEED TO LOOK AT MR. ROGERS AND SPEAK INTO THAT MICROPHONE, PLEASE, SIR. I DON'T WANT TO

HAVE TO KEEP TELLING YOU THAT.

Q (BY MR. ROGERS) NOW, LET ME TALK ABOUT WHAT YOU DID.

A OKAY.

Q YOU AGREED TO ROB MR. BROOKS?

A YEAH.

Q AND YOU TOOK DAYON TO THE STORE?

A YEAH.

Q AND THEN ACCORDING TO WHAT YOU SAY YOU PARKED DOWN HERE ON GILWOOD ROAD?

A YEAH.

Q COULD YOU SEE THE STORE FROM GILWOOD?

A NO, NOT FROM WHERE WE PARKED AT. YOU CAN SEE PARTS OF IT, YOU CAN'T SEE THE WHOLE THING.

Q SO, YOUR ROLE WAS TO TAKE DAYON THERE AND THEN PICK HIM UP?

A YEAH.

Q YOU COULDN'T EVEN ACT AS A LOOKOUT FROM THAT LOCATION, COULD YOU?

A NO.

Q BECAUSE YOU COULDN'T SEE THE STORE. THERE'S NO WAY YOU COULD WARN HIM, RIGHT?

A RIGHT.

Q SO, WHY WERE YOU CHARGED WITH MURDER?

MR. McMAHON: NO, SIR. NO, SIR. THAT'S A LEGAL ISSUE WHY HE'S CHARGED WITH MURDER. I OBJECT.

THE COURT: SUSTAINED.

Q (BY MR. ROGERS) THE MURDER CHARGE HAS BEEN DISMISSED, HASN'T IT?

A YES.

Q BUT YOU WERE ORIGINALLY CHARGED WITH MURDER ON THE 20TH?

A YES.

Q AND ON THE 20TH WHEN YOU WERE CHARGED WITH MURDER YOU PUT TREY IN IT WHEN YOU HADN'T BEFORE? EXCUSE ME?

THE COURT: SPEAK UP, PLEASE. SPEAK UP INTO THE MICROPHONE. LOOK UP.

A THAT'S WHEN I GIVE MY STATEMENT.

Q DID YOUR LAWYER EXPLAIN TO YOU THE HAND OF ONE, HAND OF ALL?

A YEAH.

Q SO, YOU UNDERSTAND THAT?

A YEAH.

Q YOU TESTIFIED THAT YOU HAD BEEN AT THE STORE MANY TIMES?

A YEAH.

Q YOU AND DAYON ARE FRIENDS, AREN'T YOU?

A YEAH.

Q HOW OLD IS DAYON?

A I THINK SEVENTEEN.

Q AND YOU'VE KNOWN DAYON LONGER THAN YOU'VE KNOWN TREY?

A NO.
Q YOU'VE KNOWN TREY LONGER THAN DAYON?
A THEY ABOUT THE SAME.
Q HOW OLD IS TREY?
A I THINK NINETEEN.
Q AND YOU'RE TWENTY-TWO?
A YEAH.
Q AND YOU HAD BEEN IN MR. BROOKS' STORE MANY TIMES?
A YEAH.
Q YOU SAW THAT HE COUNTED THE MONEY?
A YEAH.
Q YOU KNEW WHERE HE KEPT THE MONEY?
A NO. I DIDN'T KNOW WHERE HE KEPT IT BUT I KNOW I SEEN HIM COUNT IT.
Q YOU DIDN'T KNOW WHERE HE KEPT IT. BUT YOU KNEW THERE WAS MONEY IN THERE ON SUNDAY?
A YEAH.
Q ISN'T IT REALLY TRUE, MR. McLEMORE, THAT YOU AND DAYON PLANNED THIS ROBBERY AND ONLY YOU AND DAYON CARRIED IT OUT AND THAT'S WHY Y'ALL HAVE PLED GUILTY TO YOUR INVOLVEMENT IN THIS?
A NO, SIR.
MR. ROGERS: THE COURT'S INDULGENCE.
(PAUSE)
Q (BY MR. ROGERS) ONE LAST THING. WHEN YOU WENT IN

THE STORE ON THE DATE OF THE SHOOTING YOU SAW MR. MARSHALL, THE GUY YOU DESCRIBED AS THE LITTLE RED MAN?

A YEAH.

Q DID HE SEE YOU?

A I DON'T KNOW IF HE SEEN ME OR NOT.

Q YOU DIDN'T SPEAK TO HIM?

A NO.

Q AND WHAT DID YOU GO IN THE STORE FOR?

A TELL JOE TO CUT THE GAS TANK ON.

Q AND YOU PAID FOR GAS IN YOUR TRUCK?

A I HAD A CAR.

Q IN YOUR CAR I MEAN?

A TREY PAID FOR THE GAS.

Q TREY PAID FOR YOUR GAS?

A YEAH.

Q AND IT'S YOUR CAR?

A YEAH.

Q AND YOU PLANNED THIS ROBBERY WITH DAYON AND YOU WEREN'T GOING TO GET ANYTHING FOR IT?

A HUH? NO, WE DIDN'T NEVER TALK ABOUT THAT.

MR. ROGERS: THAT'S ALL I HAVE OF THIS WITNESS.

MR. McMAHON: MAY IT PLEASE THE COURT.

THE COURT: MR. McMAHON.

REDIRECT EXAMINATION BY

MR. McMAHON:

Q MR. McLEMORE, MR. ROGERS ASKED YOU ABOUT YOUR STATEMENT OF DECEMBER 11TH OF '96. I WANT TO HAND THIS UP TO YOU. IS THAT THE ORIGINAL OF THAT STATEMENT?

A YEAH.

Q AND HE ASKED YOU ABOUT BASICALLY THE LAST THREE LINES, THEN WE LEFT THERE AND WENT TO JAVORIS' HOUSE AND THAT WAS ABOUT EIGHT-TWENTY P.M. DO YOU SEE THAT?

A YEAH.

Q WHEN YOU SAY WE LEFT THERE, WHO ARE YOU REFERRING TO AS WE?

A WHEN WE LEFT JAVORIS' HOUSE?

Q NO, WHEN YOU SAY WE LEFT THERE AND WENT TO JAVORIS'. WHO ARE YOU REFERRING TO AS WE?

A WE LEFT THERE AFTER WE CAME FROM TATUM HOUSE.

Q SO, WHO WAS THERE --

MR. ROGERS: YOUR HONOR, I'M SORRY. I DIDN'T UNDERSTAND THAT RESPONSE.

THE COURT: YOU'LL HAVE TO REPEAT THAT ANSWER. NOBODY CAN HEAR IT.

A BEFORE WE WENT TO JAVORIS' HOUSE WE HAD WENT AND GOT VALDIS.

Q WHO ARRIVED AT JAVORIS' HOUSE TOGETHER?

A ME, TREY, DAYON AND VALDIS.
Q WHEN WAS IT IN THIS STATEMENT OF DECEMBER 11TH THAT YOU SAY YOU AND DAYON WENT TO BUY MARIJUANA?
A THAT WAS AFTER EVERYTHING HAPPEN.
Q WAS THAT AFTER GOING BY JAVORIS' HOUSE?
A YEAH.
Q WAS THAT AFTER THE SHOOTING?
A YEAH.
Q THAT DAY FROM THE TIME YOU HOOKED UP WITH DAYON AND TREY AT SLANK'S HOUSE THAT AFTERNOON, WERE YOU WITH TREY UNTIL YOU GOT TO JAVORIS' HOUSE THAT EVENING?
A YEAH.
Q ALSO, HE ASKED YOU ABOUT THE STATEMENT THAT YOU GAVE THE POLICE ON MARCH 20TH. LET ME HAND YOU THIS AND ASK YOU IF THAT'S A COPY OF THAT STATEMENT?
A YEAH.
Q NOW, WHERE WAS THAT STATEMENT TAKEN ON MARCH 20TH?
A MARCH 20TH? AT MY HOUSE.
Q HAD YOU SEEN THE POLICE EARLIER THAT DAY?
A YEAH.
Q THEY HAD SEEN YOU?
A YEAH.
Q THEY HAD TALKED WITH YOU? EARLIER THAT DAY? SPOKE WITH YOU?
A THAT WAS EARLIER THAT MORNING.

Q DID THEY ARREST YOU THAT MORNING?
A NO.
Q WHEN YOU GAVE THAT STATEMENT -- WHEN YOU GAVE THAT STATEMENT, WERE YOU ARRESTED BEFORE YOU GAVE THE STATEMENT OR AFTER?
A AFTER.
Q AFTER YOU GAVE THE STATEMENT?
A YEAH.
Q AND DID THEY ADVISE YOU OF YOUR RIGHTS?
A YEAH.
Q DID YOU HAVE TO TALK WITH THEM?
A YOU TALKING ABOUT BEFORE?
Q DID YOU HAVE TO TALK WITH THE POLICE?
A NO.
Q DID THEY MAKE YOU TALK WITH THEM?
A NO.
Q AND THAT'S WHEN YOU GAVE THAT STATEMENT?
A YEAH.
Q HOW MANY PAGES IS THAT STATEMENT?
A I DON'T KNOW. I THINK IT'S TWO, THREE... THREE.
THE COURT: SPEAK UP, PLEASE.
A IT'S THREE, FOUR.
Q (BY MR. McMAHON) LET ME SEE. THE WRITTEN PART OF IT, THE HANDWRITTEN PART IS ONE, TWO -- EXCUSE ME. THAT'S THE DECEMBER 11TH STATEMENT. THAT ONE THERE.

A IT'S THREE.
Q LET ME SEE IT PLEASE, MR. McLEMORE. YOU'VE GOT A RIGHTS FORM AND THEN ONE, TWO, THREE --
MR. McMAHON: DO YOU HAVE THE ORIGINAL OF THIS?
Q (BY MR. McMAHON) THERE'S FOUR PAGES, CORRECT?
A YEAH.
Q AND THAT'S ALL WHAT YOU TOLD THE POLICE BEFORE YOU WERE ARRESTED ON MARCH 20TH?
A YEAH.
Q AND WHO ALL DID YOU TELL THEM WAS INVOLVED IN THE ROBBERY OF OCTOBER 27TH OF '96?
A ME, TREY AND DAYON.
Q YOU, TREY AND DAYON?
A YEAH.
Q NOW, MR. ROGERS ASKED YOU SOME QUESTIONS ABOUT YOUR TESTIMONY AND TALKING WITH ME. AND YOU'VE MET WITH ME, CORRECT?
A YEAH.
Q AS A MATTER OF FACT, SUNDAY I HAD YOU RIDE AROUND AND SHOW ME ALL THESE LOCATIONS, DIDN'T I?
A YEAH.
Q AND HAVE I TOLD YOU TO TESTIFY THE WAY THEY WANTED IT?
A NO.
Q MEANING THE WAY I WANTED IT?

A NO.
Q WHAT HAVE I ALWAYS TOLD YOU TO TESTIFY TO, MR. McLEMORE?
A THE TRUTH.
Q THE TRUTH. WHETHER IT HELPS OR HURTS THE STATE, THE TRUTH, CORRECT?
A TRUE.
Q AND AS FAR AS YOUR SENTENCE, THE ONLY PERSON YOUR SENTENCE IS LEFT UP TO IS HIS HONOR, JUDGE COLE, CORRECT?
A CORRECT.
Q WHATEVER HE WANTS TO SENTENCE YOU TO UP TO TWENTY-FIVE YEARS?
A CORRECT.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

MR. ROGERS: I HATE TO BELABOR THE POINT BUT I JUST WANT TO ...

RECROSS EXAMINATION BY
MR. ROGERS:

Q YOU GAVE TWO STATEMENTS ON THE 20TH, DIDN'T YOU?
A ONE.

MR. McMAHON: NO, SIR.

MR. ROGERS: I MAY BE MISTAKEN.

MR. McMAHON: I APOLOGIZE.

(MR. McMAHON AND MR. ROGERS CONFER OFF THE RECORD)

MR. McMAHON: I APOLOGIZE FOR THE INTERRUPTION.

MR. ROGERS: THAT'S ALL RIGHT, YOUR HONOR. I HAD TWO STATEMENTS THAT APPEARED TO BE GIVEN BUT I WAS CORRECTED. THIS WAS THE OFFICER'S NOTES. THAT'S ALL.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

THE COURT: SOLICITOR, LET ME SEE YOU AND MR. ROGERS JUST A MINUTE, PLEASE.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

MR. McMAHON: THE STATE CALLS DAYON LEMON.

DAYON LEMON, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

THE COURT: MR. LEMON, YOU ARE GOING TO NEED TO GET CLOSER TO THAT MICROPHONE AND WE NEED YOU TO LOOK UP AND SPEAK OUT LOUDLY SO THAT ALL THE JURORS CAN HEAR YOUR TESTIMONY.

DIRECT EXAMINATION BY

MR. McMAHON:

Q WHAT IS YOUR NAME, SIR?
A DAYON LEMON.
Q MR. LEMON, I'M GOING TO ASK YOU TO SPEAK UP SO THAT ALL THESE FOLKS OVER HERE CAN HEAR YOUR TESTIMONY, OKAY? HOW OLD ARE YOU?
A SEVENTEEN.
Q SEVENTEEN?
A YES, SIR.
Q WHAT IS YOUR DATE OF BIRTH?
A [redacted]
Q [redacted]?
A UH-HUH.
Q SO, OCTOBER THE 27TH OF 1996 HOW OLD WERE YOU?
A I HAD JUST TURNED SEVENTEEN.
Q WHEN THIS EVENT HAPPENED?
A I JUST TURNED SIXTEEN.
Q JUST TURNED SIXTEEN?
A YES, SIR.
Q THE SEPTEMBER BEFORE THIS HAPPENED IN OCTOBER. I'VE TALKED WITH YOU BEFORE, CORRECT?
A YES, SIR.
Q I'VE TALKED WITH YOU WITH YOUR LAWYER AND WITHOUT YOUR LAWYER, CORRECT?
A YES, SIR.

Q HOW MUCH FORMAL EDUCATION, SCHOOLING, DO YOU HAVE, MR. LEMON?
A WELL, I WENT TO THE NINTH GRADE.
Q NOW, YOU PLED GUILTY TO CERTAIN CHARGES, CORRECT?
A YES, SIR.
Q ON THIS MONDAY IN THIS COURTROOM?
A YES, SIR.
Q YOU PLED GUILTY TO MURDER, IS THAT RIGHT?
A YES, SIR.
Q YOU ADMITTED YOU DID IT?
A YES, SIR.
Q YOU PLED GUILTY TO ATTEMPTED ARMED ROBBERY?
A YES, SIR.
Q PLED GUILTY TO CRIMINAL CONSPIRACY?
A YES, SIR.
Q IN REGARDS TO THIS CASE, CORRECT?
A YES, SIR.
Q YOU ALSO PLED GUILTY TO TWO CHARGES NOT RELATED TO THIS CASE?
A YES, SIR.
Q ASSAULT AND BATTERY WITH INTENT TO KILL, CORRECT?
A YES, SIR.
Q AND A CONSPIRACY TO COMMIT ESCAPE, CORRECT?
A YES, SIR.
Q AND THOSE CHARGES WERE PUT ON YOU AFTER YOU WERE PUT

IN JAIL?
A YES, SIR.
Q NOW, DAYON, MR. LEMON, I HAVE SAID ON BEHALF OF THE STATE THAT I'M GOING TO MAKE RECOMMENDATIONS OF YOUR SENTENCING? DO YOU UNDERSTAND THAT?
A YES, SIR.
Q WHAT IS YOUR UNDERSTANDING OF WHAT I'M GOING TO RECOMMEND?
A THIRTY YEARS.
Q THIRTY YEARS. AND WHAT IS YOUR UNDERSTANDING OF ANY PAROLE THAT YOU MIGHT RECEIVE?
A I DON'T GET ANY.
Q NONE. YOU UNDERSTAND I AM RECOMMENDING YOU SERVE THIRTY YEARS DAY FOR DAY?
A YES, SIR.
Q YOU UNDERSTAND THAT. SO, YOU WOULD HAVE TO SERVE A MINIMUM OF THIRTY YEARS BEFORE YOU CAN EVEN HOPE OF GETTING OUT. YOU UNDERSTAND THAT?
A YES, SIR.
Q CORRECT? AND YOU KNOW YOU COULD HAVE GOTTEN A LIFE WITHOUT PAROLE SENTENCE? DID YOUR LAWYER EXPLAIN THAT TO YOU?
A YES, SIR.
Q CORRECT? BUT MY RECOMMENDATION IS BASED ON WHAT?
A THE TRUTH.

Q ON THE TRUTH OF WHAT?
A OF WHAT HAPPEN.
Q OF WHAT HAPPENED. NOW, HAVE I TOLD YOU WHAT THE TRUTH WAS?
A NO.
Q HAVE I TOLD YOU WHAT TO TESTIFY TO?
A NO.
Q AND YOU'VE AGREED TO TESTIFY TRUTHFULLY?
A YES, SIR.
Q AND YOU'VE ADMITTED YOUR GUILT?
A YES, SIR.

THE COURT: MR. LEMON, YOU'RE GOING TO HAVE TO SPEAK UP.

Q (BY MR. McMAHON) MR. LEMON, WHO SHOT JOE BROOKS?
A I DID.
Q WHO WENT IN THE STORE AND ATTEMPTED TO ROB JOE BROOKS?
A I DID.
Q WHO DID YOU PLAN THE ROBBERY AND THE MURDER OF MR. BROOKS WITH?
A ME, JERMAINE, TREY AND SCOOTER BAIT.
Q SPEAK UP.
A ME, JERMAINE, TREY AND SCOOTER BAIT.
Q YOU, JERMAINE, TREY. WHO ELSE?
A AND TASHAN WESTON.

Q TASHAN. WHOSE PLAN WAS IT? WHO CAME UP WITH THE IDEA?
A TREY.
Q WHERE WERE Y'ALL AT WHEN THIS PLAN WAS FIRST DISCUSSED?
A TASHAN'S HOUSE.
Q TASHAN WESTON?
A YES, SIR.
Q AND DOES HE HAVE A NICKNAME?
A YES, SIR.
Q WHAT IS IT?
A SCOOTER BAIT.
Q WHERE DOES TASHAN WESTON LIVE?
A SIDE PRIOLEAU STORE.
Q WHAT ROAD IS THAT? DO YOU KNOW?
A NO, SIR.
Q WOULD YOU AND TREY AND DAYON -- EXCUSE ME. YOU AND TREY AND JERMAINE AND VALDIS EVER BE OVER AT TASHAN'S HOUSE?
A YES, SIR.
Q WHY WOULD Y'ALL BE OVER AT TASHAN'S HOUSE?
A TO SHOOT BALL.
Q BASKETBALL?
A YES, SIR.
Q WAS THERE A BASKETBALL GOAL OVER AT TASHAN'S?

A YES, SIR.
Q WHERE WERE YOU LIVING BACK WHEN THIS HAPPENED?
A [redacted] --
Q SPEAK UP.
A [redacted] MINER ROAD.
Q MINERVAVILLE ROAD?
A YES, SIR.
Q AND WHO WERE YOU LIVING WITH?
A MY GRANDMAMA.
Q JERMAINE, IS HE OLDER OR YOUNGER THAN YOU?
A OLDER.
Q TREY?
A OLDER.
Q VALDIS?
A OLDER.
Q TASHAN?
A OLDER.
Q SO, YOU WERE THE YOUNGEST OF THESE FIVE INDIVIDUALS?
A YES, SIR.
Q WHERE WERE YOU AT WHEN THE PLAN WAS FIRST DISCUSSED?
A IN JERMAINE'S CAR.
Q WHERE WERE YOU AT WHEN YOU FIRST DISCUSSED THE ROBBERY OF MR. BROOKS?
A OH, AT THE STORE.
Q AT THE STORE. BEFORE THAT HAD Y'ALL TALKED ABOUT IT

AT TASHAN'S?
A NO, SIR.
Q WHO FIRST BROUGHT IT UP?
A TREY DID.
Q TREY. AND WHERE WERE YOU AT WHEN TREY FIRST BROUGHT IT UP?
A LEAVING THE STORE.
Q WHAT WAS SAID?
A THAT THERE WAS LARGE --
Q SPEAK UP A LITTLE BIT.
A THERE WAS LARGE QUANTITIES OF MONEY ON THE FLOOR AND THAT WE SHOULD GET IT.
Q WHO SAID THERE WAS LARGE QUANTITIES OF MONEY?
A TREY DID.
Q HOW DID HE KNOW THAT? HOW DID HE SAY HE KNEW?
A HE SAW IT.
Q WHO HAD HE SEEN WITH THE MONEY?
A I BELIEVE MR. BROOKS.
Q WAS ANYONE ELSE THERE WHEN HE SAID HE SAW MR. BROOKS WITH THE MONEY?
A NO, I DON'T THINK SO.
Q HOW MUCH MONEY WAS HE TALKING ABOUT?
A I DON'T KNOW BUT I THINK IN THE RANGE OF THOUSANDS.
Q THOUSANDS. HOW MANY THOUSAND?
A ABOUT TWO OR THREE.

Q TWO OR THREE. NOW, WHAT WAS THE PLAN? HOW WAS THE ROBBERY GOING TO BE COMMITTED, MR. LEMON?
A I GO BEHIND THE STORE AND I WAIT FOR THEM TO GO DOWN THE ROAD AND BEEP THE HORN AND I GO IN AND ROB.
THE COURT: MR. LEMON, LET ME ASK YOU TO MOVE THAT MICROPHONE OVER TOWARDS YOUR FACE AS YOU SPEAK TO MR. McMAHON.
Q (BY MR. McMAHON) WHOSE IDEA WAS IT FOR YOU TO GO IN? WHO ASKED YOU TO GO IN?
A TREY AND MR. McLEMORE.
Q TREY AND WHO?
A McLEMORE.
Q WHERE DID YOU GET THE GUN FROM?
A IT WAS ON THE SEAT OR THE FLOOR.
Q WHO GAVE YOU THE GUN?
A I BELIEVE IT WAS JERMAINE.
Q WHOSE GUN WAS IT?
A I BELIEVE IT'S TREY'S GUN.
Q NOW, MR. LEMON, THE DAY THAT MR. BROOKS WAS KILLED, WAS THAT THE FIRST DAY Y'ALL HAD GONE DOWN TO THE STORE TO COMMIT THE ROBBERY?
A NO, SIR.
Q THE WEEK BEFORE HAD Y'ALL GONE DOWN THERE?
A YES, SIR.
Q WHAT WAS THE PLAN THE WEEK -- WHO HAD GONE DOWN THERE

A WEEK BEFORE?
A THE SAME THREE.
Q THE SAME THREE BEING?
A ME AND MR. McLEMORE AND TREY.
Q AND WHAT WAS YOUR INVOLVEMENT GOING TO BE THE WEEK BEFORE?
A SAME AS MY INVOLVEMENT AT THE ACTUAL KILLING.
Q YOU WERE GOING IN WITH THE GUN?
A YES, SIR.
Q AND WHAT WAS MR. McLEMORE AND MR. GARNER, TREY GARNER'S, INVOLVEMENT THE WEEK BEFORE?
A JERMAINE WAS DRIVING AND TREY WAS JUST JOY RIDE I GUESS.
Q WAS HE PART OF THE PLAN?
A YEAH. YES, SIR.
Q MR. LEMON, LET ME HAND YOU YOUR STATEMENT OF MARCH THE 20TH OF 1997 AND ASK YOU IF YOU'D REVIEW THAT FOR ME, PLEASE.
A READ IT OUT?
Q REVIEW IT FOR ME. TAKE A MINUTE AND READ IT BECAUSE I'M GOING TO ASK YOU SOME QUESTIONS ABOUT IT.
THE COURT: READ IT TO YOURSELF.
A (WITNESS COMPLIES)
Q (BY MR. McMAHON) HAVE YOU HAD AN OPPORTUNITY TO REVIEW IT, MR. LEMON?

A YES, SIR.
Q AND YOU'VE HAD OTHER CONVERSATIONS ABOUT THESE EVENTS, CORRECT?
A YES, SIR.
Q WHOSE IDEA WAS IT TO COMMIT THIS ROBBERY?
A MR. GARNER'S.
Q WHEN IN THE PAST HAVE YOU EVER USED THE TERM MR. GARNER WAS JOY RIDING?
A NEVER.
Q NEVER. THE FIRST DAY Y'ALL WENT DOWN THERE ON OCTOBER 20TH OF 1996, WHOSE IDEA WAS IT TO COMMIT THE ROBBERY?
A MR. GARNER'S.
Q AND, MR. LEMON, HAVE YOU SAID YOU ARE GOING TO TESTIFY TRUTHFULLY?
A YES, SIR.
Q WHO GAVE YOU THE GUN, MR. GARNER? EXCUSE ME, MR. LEMON.
A I BELIEVE TREY.
Q YOU BELIEVE TREY. WHO PROVIDED THE GUN?
A TREY DID.
Q NOW, THE DAY YOU WENT DOWN THERE ON OCTOBER 20TH, HOW DID YOU GET DOWN THERE?
A IN MR. McLEMORE'S CAR.
Q AND WHO ELSE WAS IN MR. McLEMORE'S CAR?

A TREY.
Q AND WHERE DID YOU GO WHEN YOU GOT DOWN TO THE STORE?
A BEHIND THE WHITE STORE.
Q THE FIRST TIME?
A YES, SIR.
Q BEHIND THE WHITE STORE. THE SAME STORE YOU WENT BEHIND THE DAY YOU MURDERED MR. BROOKS?
A YES, SIR.
Q WHAT WAS MR. McLEMORE AND MR. GARNER DOING OR WHERE WERE THEY SUPPOSED TO BE THAT FIRST TIME?
A SAME. DOWN THE DIRT ROAD.
Q THEY WERE GOING TO HELP YOU ESCAPE AFTER YOU COMMITTED THE ROBBERY?
A YES, SIR.
Q NOW, WHO DID YOU SEE COME OUT OF THE STORE THAT FIRST TIME?
A MR. BROOKS AND HIS DAUGHTER.
Q MR. BROOKS AND HIS DAUGHTER, MICHELLE?
A YES, SIR.
Q WAS IT DARK?
A YES, SIR.
Q AND WHAT DID YOU HAVE IN YOUR HAND?
A A PISTOL. NINE MILLIMETER PISTOL.
Q WHO HAD GIVEN YOU THAT NINE MILLIMETER PISTOL?
A MR. GARNER.

Q AND TELL THE JURY HOW YOU WERE DRESSED.
A I WAS DRESSED ALL THE WAY DOWN. YOU COULDN'T SEE NO PART OF MY BODY EXCEPT FOR MY EYES.
Q CAMOUFLAGED TO COMMIT THIS ARMED ROBBERY?
A YES, SIR.
Q AND YOU HAD THIS PISTOL?
A YES, SIR.
Q AND WHERE DID YOU SEE MICHELLE AND HER DADDY?
A COMING OUT THE STORE LOCKING UP.
Q WHAT DID MR. BROOKS HAVE IN HIS HAND?
A A PISTOL.
Q HIS PISTOL. HE WAS KNOWN TO HAVE A PISTOL, WASN'T HE?
A YES, SIR.
Q HAD MR. GARNER EVER SAID ANYTHING TO YOU ABOUT MR. BROOKS HAVING A PISTOL?
A YES, SIR.
Q SO, DID YOU COMMIT THE ROBBERY THAT DAY ON THE 20TH?
A NO, SIR.
Q AND WHOSE IDEA WAS IT, DAYON, FOR YOU TO GO IN?
A MR. GARNER.
Q AND YOU AGREED? SIR?
A YES, SIR.
Q WHAT WAS YOUR RELATIONSHIP WITH MR. GARNER?
A NONE.

Q DID YOU DO ANY WORK FOR HIM?
A HIS BROTHER, YEAH.
Q SIR?
A HIS BROTHER, YEAH.
Q WHAT KIND OF WORK?
A SOLD CRACK.
Q DID YOU OWE HIM ANY MONEY?
A YES, SIR.
Q WHY DID YOU OWE HIM MONEY?
A BECAUSE I MESSED THE MONEY UP.
Q YOU COME UP SHORT ON THE CRACK? SO, WHEN Y'ALL ROBBED MR. BROOKS WHAT WERE YOU GOING TO DO WITH THE MONEY?
A BUY MORE CRACK.
Q BUY MORE CRACK. MR. LEMON, DID YOU IMMEDIATELY AGREE TO GO IN THERE AND DO THIS?
A NO, SIR.
Q AND THE FIRST TIME YOU WENT OWN THERE TO DO IT YOU BACKED OUT, RIGHT?
A YES, SIR.

MR. ROGERS: OBJECTION.

MR. McMAHON: I APOLOGIZE.

MR. ROGERS: HE'S LEADING.

THE COURT: DON'T LEAD HIM.

MR. McMAHON: I APOLOGIZE.

Q (BY MR. McMAHON) THE FIRST TIME YOU WENT DOWN THERE TO DO IT, DID YOU OR DID YOU NOT COMPLETE THE ACT?
A NO, I DIDN'T.
Q BUT YOU HAD CONSPIRED TO DO IT AT THAT POINT?
A YES, SIR.
Q AND TELL THE JURY WHO YOU HAD CONSPIRED WITH? WHO YOU HAD PLANNED WITH?
A MY TWO CO-DEFENDANTS.
Q AND WHO ARE YOUR TWO CO-DEFENDANTS?
A MR. GARNER AND MR. McLEMORE.
Q NOW, ON OCTOBER 27TH -- LET ME ASK YOU. BETWEEN THE FIRST TIME YOU WENT DOWN THERE AND THE 27TH, DID YOU SEE TREY ANY TIME THAT WEEK?
A YES, SIR.
Q AND WOULD Y'ALL HAVE ANY CONVERSATIONS THAT WEEK ABOUT DOING IT?
A YES, SIR.
Q WHAT WOULD HE ASK YOU?
A AM I GONNA DO IT.
Q DID YOU ULTIMATELY AGREE TO DO IT?
A NO, SIR.
Q WHEN DID YOU AGREE TO DO IT?
A ON THAT SUNDAY.
Q ON THAT SUNDAY. NOW, THAT SUNDAY, WHEN DID YOU HOOK UP WITH TREY AND JERMAINE?

A ROUND ABOUT ELEVEN A.M. THAT MORNING.
Q WHERE AT?
A COMING OUT THE CUT FROM MY HOUSE.
Q YOU WERE COMING FROM YOUR GRANDMAMA'S HOUSE?
A YES, SIR.
Q AND THEY WERE COMING FROM A CUT?
A YES, SIR.
Q AND WHO WAS IT?
A TREY AND VALDIS.
Q TREY AND VALDIS, HIS BROTHER. AND WHERE DID Y'ALL GO FROM THERE?
A UP THE STREET. THAT'S WHEN WE MET JERMAINE.
Q AND WHERE DID YOU MEET JERMAINE AT?
A ON THE SAME STREET.
Q WHOSE HOUSE, WHOSE YARD?
A IT WAS SLANK'S.
Q SLANK'S HOUSE. DID Y'ALL STAY AT SLANK'S FOR A PERIOD OF TIME?
A WE STAY ENOUGH JUST TALKING.
Q WHEN Y'ALL LEFT SLANK'S, WHO ALL LEFT?
A ME, JERMAINE, VALDIS AND TREY.
Q AND WHERE DID Y'ALL GO FROM SLANK'S?
A SCOOTER BAIT HOUSE.
Q HOW WERE YOU TRAVELING?
A IN JERMAINE'S CAR.

Q WHY DID YOU GO BY SCOOTER BAIT'S?
A SEE WAS HE HOME TO SHOOT SOME BALL. SEE IF HE WAS HOME.
Q WAS HE SUPPOSED TO PARTICIPATE IN THE ROBBERY WITH YOU?
A YES, SIR.
Q WAS HE HOME?
A HUH-UH.
Q WHEN YOU GOT TO SCOOTER BAIT'S, WHAT DID VALDIS DO?
A HE SAT AROUND AND TALK AND HE LEFT.
Q AND WHEN Y'ALL LEFT SCOOTER BAIT'S, WHO LEFT TOGETHER?
A ME, JERMAINE AND TREY.
Q AND HOW DID Y'ALL LEAVE?
A IN JERMAINE'S CAR.
Q WHERE DID Y'ALL GO FROM THERE?
A TO MR. BROOKS' STORE.
Q WHEN YOU FIRST GOT TO MR. BROOKS' STORE, WHAT HAPPENED? WHAT DID Y'ALL DO?
A I STAYED IN THE CAR. TREY WENT TO PUMP SOME GAS AND JERMAINE WAS PUMPING. NO, EXCUSE ME. TREY WENT TO PAY FOR THE GAS, JERMAINE WAS PUMPING.
Q SO, YOU STAYED IN THE CAR?
A YES, SIR.
Q DID JERMAINE GET OUT OF THE CAR?

A YES, SIR.
Q DID TREY GET OUT OF THE CAR?
A YES, SIR.
Q AND WHERE DID HE GO?
A INSIDE TO PAY FOR THE GAS.
Q AND WHAT WAS THE PURPOSE OF HIM DOING THAT?
A CHECKING OUT THE SCENE.
Q CHECK OUT THE SCENE. EXPLAIN THAT TO ME.
A SEE IF EVERYTHING IS ALL RIGHT, LEGIT.
Q SAY THAT AGAIN.
A TO SEE IF EVERYTHING WAS STRAIGHT, LEGIT.
Q I DIDN'T HEAR THE LAST TERM.
A SEE IF EVERYTHING WAS ALL RIGHT, STRAIGHT.
Q SO WHAT?
A SO WE COULD PULL IT OFF.
Q SO WE COULD PULL IT OFF. AND WHEN YOU SAY WE COULD PULL IT OFF, WHO ARE YOU REFERRING TO?
A ME, TREY AND JERMAINE.
Q NOW, DID TREY COME BACK OUT OF THE STORE?
A YES, SIR.
Q AND DID HE GET INTO JERMAINE'S CAR?
A YES, SIR.
Q WHERE WERE YOU AT THEN?
A STILL IN THE CAR.
Q WHAT WERE YOU DOING IN THE CAR?

A BENDING DOWN.
Q SAY IT AGAIN.
A BENDING DOWN BEHIND THE SEAT.
Q HAD YOU CHANGED YOUR CLOTHING OR CHANGED YOUR APPEARANCE IN ANY MANNER?
A YES, SIR.
Q WHAT HAD YOU DONE?
A I WAS CAMOUFLAGED.
Q HOW DID YOU CAMOUFLAGE YOURSELF?
A WITH THE SAME EQUIPMENT I HAD BEFORE.
Q EXPLAIN WHAT IT WAS?
A SOME BLACK NYLON PANTS WITH A RIP IN THE SIDE. JERMAINE'S COAT AND A HOOD.
Q AND WHAT?
A JERMAINE'S COAT AND A HOOD AND SOME STUFF OVER MY HEAD.
Q AND WHAT ABOUT YOUR FACE?
A HAD A WHITE SHEET OVER IT.
Q NOW, YOU'RE TALKING ABOUT SOME PANTS WITH A RIP IN IT. WHAT TYPE OF PANTS WERE THOSE?
A SOME NYLON WINDBREAKER PANTS.
Q DID YOU HAVE PANTS ON UNDER THE NYLON PANTS?
A UH-HUH.
Q WHAT KIND OF PANTS DID YOU HAVE ON UNDER THE NYLON?
A SOME JEANS.

Q AND YOU SAY THE JOGGING TYPE PANTS WERE RIPPED?
A YES, SIR.
Q WHERE DID YOU GET THOSE PANTS, MR. LEMON?
A I CAN'T RECALL.
Q AND WHOSE COAT DID YOU HAVE ON?
A JERMAINE'S.
Q AND YOU HAD THE SHEET ON YOUR FACE?
A YES, SIR.
Q AND DID YOU HAVE THE GUN?
A YES, SIR.
Q WHO HAD GIVEN YOU THE GUN?
A TREY DID.
Q NOW, WHEN MR. GARNER GOT BACK IN THE CAR, DID Y'ALL TALK?
A YES, SIR.
Q WHAT WAS SAID?
A SAY GO DOWN THE ROAD, BEEP THE HORN TWICE AND YOU GO AHEAD IN.
Q SO, WHERE WERE YOU SUPPOSED TO GO?
A BEHIND THE WHITE STORE.
Q AND WHAT WAS THE HORN BEEPING FOR?
A TO LET ME KNOW EVERYTHING IS CLEAR AND GO AHEAD ON IN.
Q NOW, DID YOU SEE ANY OTHER AUTOMOBILE OR VEHICLE IN THAT PARKING LOT AT BROOKS' STORE?

A YES, SIR.
Q WHOSE?
A I SEEN MR. SUMTER'S.
Q AND YOU KNEW MR. SUMTER?
A YES, SIR.
Q WHERE WAS HE PARKED AT IN THE LOT?
A IN FRONT OF THE AIR PUMP.
Q AND YOU GOT BEHIND THIS OTHER BUILDING?
A YES, SIR.
Q AND WHERE DID JERMAINE AND TREY GO?
A THEY WENT DOWN THE STREET.
Q LET ME SHOW YOU THIS STATE'S EXHIBIT NUMBER TWO, THIS BEING BROOKS' STORE. IS THIS THE BUILDING YOU GOT BEHIND OVER HERE?
A YES, SIR.
Q AND WHY WERE YOU GOING TO GET BEHIND THAT BUILDING?
A SO, NOBODY COULD SEE ME BEFORE I GO IN.
Q DID YOU KNOW WHERE MR. McLEMORE OR JERMAINE AND MR. GARNER, TREY, WERE SUPPOSED TO BE? WHERE THEY WERE WAITING ON YOU AT?
A ON THE DIRT ROAD.
Q NOW, THEY BEEPED THE HORN?
A YES, SIR.
Q WHAT WAS THE PURPOSE OF BEEPING THE HORN?
A TO LET ME KNOW EVERYTHING IS ALL RIGHT.

Q AND DID YOU GO IN THE STORE?
A NO, NOT AT THAT PARTICULAR MOMENT.
Q HOW LONG DID YOU WAIT BEFORE YOU WENT IN THE STORE, MR. LEMON?
A ABOUT TEN, FIFTEEN MINUTES.
Q WHY DID YOU WAIT?
A BECAUSE THE OTHER CAR WAS PULLING UP AND LEAVING IN AND OUT.

MR. ROGERS: I DIDN'T HEAR THAT. I'M SORRY, YOUR HONOR.

THE COURT: PLEASE ANSWER THE QUESTION AGAIN.

A BECAUSE OTHER CARS WAS COMING IN AND OUT.
Q (BY MR. McMAHON) AFTER IT CLEARED OUT, DID YOU GO IN THE STORE?
A YES, SIR.
Q WHERE WAS MR. SUMTER WHEN YOU WENT IN THE STORE?
A I DIDN'T SEE HIM.
Q WAS HIS TRUCK STILL THERE?
A YES, SIR.
Q NOW, WHEN YOU WENT IN THE STORE, WHERE DID YOU GO?
A AROUND THE COUNTER.
Q HAD THERE BEEN ANY DISCUSSION PRIOR TO YOU GOING IN THE STORE ABOUT MR. BROOKS HAVING A GUN?
A YES, SIR.
Q HAD THERE BEEN ANY DISCUSSION ABOUT SHOOTING MR.

BROOKS?
A YES, SIR.
Q WHAT WAS THAT DISCUSSION?
A SAY IF HE LOOK LIKE HE'S PULLING A GUN SHOOT HIM THE SHOULDER.
Q WHO SAID THAT?
A MR. GARNER.
Q MR. GARNER SAID THAT. NOW, WHEN YOU WENT IN, WHERE DID YOU GO AND WHAT DID YOU DO WHEN YOU WENT IN THE STORE?
A CAME AROUND BY THE COUNTER AND THAT'S WHEN THAT SUMTER MAN, HE FLED, AND I SHOT MR. BROOKS.
Q DID YOU SAY ANYTHING TO MR. BROOKS BEFORE YOU SHOT HIM, MR. LEMON?
A NO.
Q WHERE WAS HE AT?
A BEHIND THE COUNTER.
Q WHERE WERE YOU?
A IN FRONT OF HIM.
Q AND AS YOU COME AROUND THE FRONT OF THE COUNTER, DID YOU IMMEDIATELY SHOOT?
A YES, SIR.
Q NOW, YOU SAY THERE WAS A FELLOW IN THERE. YOU USED THE NAME SUMTER.
A I MEAN MR. MARSHALL.

Q MR. MARSHALL. THAT WAS THE SLENDER FELLOW. HE RUN OUT THE BACK?
A YES, SIR.
Q DID MR. BROOKS SAY ANYTHING TO YOU?
A NO, SIR.
Q WHEN YOU SHOT, WHAT HAPPENED TO MR. BROOKS?
A HE FELL.
Q DID YOU SEE THE CASH REGISTER?
A YES, SIR.
Q WHAT HAPPENED TO THE CASH REGISTER?
A HE PULL IT DOWN WHEN HE WAS FALLING.
Q WAS IT ON TOP OF HIM?
A YES, SIR.
Q THEN WHAT DID YOU DO, MR. LEMON?
A I WENT BEHIND THE COUNTER.
Q HOW DID YOU GET BEHIND THE COUNTER?
A I WALKED.
Q DID YOU JUMP OVER THE COUNTER OR DID YOU GO AROUND AND GO IN THE DOOR?
A WENT AROUND.
Q HOW MANY TIMES DID YOU SHOOT?
A THREE.
Q THE FIRST TIME YOU SHOT, WHERE WERE YOU AT, MR. LEMON?
A IN FRONT OF THE CASH REGISTER.

Q ON THE CUSTOMER SIDE OF THE COUNTER?
A YES, SIR.
Q THE SECOND AND THIRD TIME YOU SHOT WHERE WERE YOU AT?
A IN THE STORE ON THE SIDE.
Q SIR?
A BEHIND THE COUNTER.
Q BEHIND THE COUNTER. WHAT POSITION WAS MR. BROOKS IN THE SECOND AND THIRD TIME YOU SHOT HIM?
A ON THE FLOOR IN A MOVING MOTION.
Q NOW, WHAT WAS YOUR PURPOSE IN GOING IN THERE?
A TO ROB.
Q TO ROB. DID YOU GET THE MONEY?
A NO, SIR.
Q WHY NOT?
A 'CAUSE I GOT SHOOK UP AND I RAN.
Q WHAT SHOOK YOU UP, MR. LEMON?
A THE POINT I KNOW I DID SOMETHING WRONG.
Q WHAT WAS MR. BROOKS' CONDITION?
A BAD.
Q DID YOU LOOK FOR THE MONEY?
A ABOUT THIRTY SECONDS OF LOOKING.
Q BUT YOU DIDN'T GET ANY?
A NO, SIR.
Q YOU LEFT WITHOUT ANY MONEY?
A YES, SIR.

Q WHEN YOU EXITED THE STORE, WHICH WAY DID YOU GO?
A TO THE RIGHT.
Q DID YOU GO OUT THE FRONT DOOR?
A YES, SIR.
Q TO THE RIGHT. NOW, WHEN YOU GO TO THE RIGHT, WHERE IS MR. SUMTER AT?
A BESIDE HIS TRUCK. ON THE LEFT SIDE OF HIS TRUCK.
Q SO, YOU RAN RIGHT PAST HIM. DID HE EVER LOOK UP?
A NO, SIR.
Q AND WHERE DID YOU RUN TO?
A TO JERMAINE'S CAR.
Q WHO WAS WAITING ON YOU IN JERMAINE'S CAR?
A TREY AND JERMAINE.
Q WHAT DID YOU TELL THEM WHEN YOU GOT BACK IN THE CAR?
A I THINK MR. BROOKS DEAD.
Q DID YOU TELL THEM WHAT YOU HAD DONE?
A YES, SIR.
Q DID YOU TELL THEM WHERE YOU HAD SHOT HIM?
A NO, SIR.
Q WHAT LOCATION?
A NO, SIR.
Q ABOUT THE FACE?
A NO, SIR.
Q YOU DON'T RECALL THAT?
A NO, SIR.

Q WHAT, IF ANYTHING, DID MR. GARNER ASK YOU ~~ABOUT~~?
A DID I GET THE MONEY.
Q HE ASKED YOU ABOUT THE MONEY? THAT WAS AFTER YOU GOT BACK IN THE CAR?
A YES, SIR.
Q WHAT DID YOU TELL HIM?
A I DIDN'T GET IT.
A DID YOU TELL HIM WHY?
A NO, SIR.
Q FROM THERE WHERE DID YOU GO?
A TO THE RIVER.
Q THE RIVER?
A YES, SIR.
Q YOU'RE TALKING ABOUT THE CONGAREE RIVER WHEN YOU SAY THE RIVER?
A I DON'T KNOW WHAT IT'S CALLED.
Q WHERE IS IT AT?
A CLARKSON ROAD.
Q CLARKSON ROAD. WHY DID Y'ALL STOP THERE?
A TO THROW THE GUN IN THE RIVER.
Q WHO GOT OUT OF THE CAR THERE? IS THERE A BRIDGE THERE?
A YES, SIR.
Q WHO GOT OUT?
A I DID.

Q DID TREY?
A YES, SIR.
Q AND WHAT DID Y'ALL DO THERE?
A MR. GARNER, HE DIDN'T DO ANYTHING. I DID. I PUT THE GUN OVER THE RIVER.
Q DID YOU TELL THE POLICE ABOUT THAT?
A YES, SIR.
Q DID YOU SHOW THEM THAT AREA?
A YES, SIR.
Q FROM THE BRIDGE WHERE DID YOU GO?
A TO BURN CLOTHES.
Q DID YOU STOP AT ANYONE'S HOUSE BEFORE YOU BURNED THE CLOTHES?
A NO, SIR.
Q DID YOU STOP AT ANYONE'S HOUSE AFTERWARDS?
A YES, SIR.
Q NOW, WHAT AREA DID YOU BURN THE CLOTHES IN, MR. LEMON?
A IT HAD TO BE IN THE GADSDEN AREA.
Q WHOSE IDEA WAS IT TO BURN THE CLOTHES?
A IT WAS TREY'S IDEA BUT WE ALL KNOW IT HAD TO BE DONE.
Q WHY?
A BECAUSE IT WAS EVIDENCE.
Q EVIDENCE? SO, YOU HAD THROWN THE GUN AWAY AND NOW YOU ARE GOING TO BURN THE CLOTHES. NOW, WHAT ABOUT

THE SHEETS?
A THAT WAS BURNED ALONG WITH THE CLOTHES.
Q THAT WAS BURNED WITH THEM?
A YES, SIR.
Q AND AFTER THAT, AFTER YOU BURNED THE CLOTHES, WHERE DID Y'ALL GO?
A WENT TO TREY COUSIN HOUSE.
Q AND WHAT WAS TREY'S COUSIN'S NAME? DO YOU REMEMBER?
A SINCE I COME TO SEE YOU IT'S CHARLES.
Q YOU DON'T REMEMBER FROM THEN. I UNDERSTAND. AND FROM THAT COUSIN'S HOUSE, WHERE DID Y'ALL GO?
A BACK TO TREY'S HOUSE.
Q AND PICKED UP?
A VALDIS.
Q VALDIS. AND AFTER YOU PICKED UP VALDIS, WHERE DID THE FOUR OF Y'ALL GO?
A TO JAVORIS HOUSE.
Q JAVORIS?
A LEWIS.
Q LEWIS. NOW, WHERE IS JAVORIS' HOUSE IN RELATION TO MR. BROOKS STORE?
A RIGHT BESIDE IT.
Q CAN YOU SEE PART OF MR. BROOKS' STORE FROM JAVORIS' HOUSE?
A FROM THE BACK PART.

Q AND WHO ALL WAS AT JAVORIS' HOUSE WHEN Y'ALL GOT THERE?
A I BELIEVE IT WAS GAUMAL, TROY AND JAVORIS.
Q GAUMAL, JAVORIS' BROTHER?
A YES, SIR.
Q THEN JAVORIS AND WHO ELSE?
A TROY.
Q TROY. NOW, AFTER Y'ALL GOT THERE, DID YOU -- WHAT WAS GOING ON AT BROOKS' STORE?
A IT WAS A MASS OF POLICE CARS OUT THERE.
Q POLICE AND AMBULANCE AND SUCH WERE THERE WHEN Y'ALL GOT TO JAVORIS'?
A YES, SIR.
Q DID YOU AND JERMAINE LEAVE JAVORIS' FOR A PERIOD OF TIME?
A YES, SIR.
Q AND WHEN Y'ALL LEFT, DID Y'ALL LEAVE TREY AND VALDIS THERE?
A YES, SIR.
Q WAS ALL OF THAT AFTER THE SHOOTING?
A YES, SIR.
Q AND Y'ALL WENT TO BUY SOME WEED, SOME MARIJUANA?
A YES, SIR.
Q IS THAT RIGHT?
A YES, SIR.

Q NOW, MR. LEMON, YOU MADE THE DECISION TO PARTICIPATE IN THIS CRIME, CORRECT?
A YES, SIR.
Q AND YOUR PARTICIPATION WAS YOU WENT IN WITH THE GUN AND PULLED THE TRIGGER, CORRECT?
A SAY IT AGAIN.
Q YOU WENT IN THE STORE OF MR. BROOKS' WITH THE GUN?
A YES, SIR.
Q AND PULLED THE TRIGGER, CORRECT?
A YES, SIR.
Q NOW, LET ME ASK YOU THIS. WHOSE PLAN WAS IT? WHO CAME UP WITH THE ORIGINAL PLAN?
A MR. GARNER.
Q NOW, THE TERM OUTLAW, WHAT DOES THAT MEAN?

MR. ROGERS: YOUR HONOR, I'M GOING TO OBJECT TO THAT. I DON'T SEE THE RELEVANCE. MAY WE APPROACH?

THE COURT: YOU MAY.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

MR. McMAHON: MAY IT PLEASE THE COURT.

Q (BY MR. McMAHON) STAND UP FOR ME A MINUTE, MR. LEMON. STAND RIGHT HERE.

(WITNESS LEAVES STAND)

Q THIS RIGHT HERE, WHAT DOES THAT SAY?

A OUTLAW.
Q OUTLAW.
(WITNESS RESUMES STAND)
Q NOW, DID OUTLAW HAVE A PARTICULAR MEANING TO YOU AND MR. GARNER?
A YES, SIR.
Q DID YOU HAVE TO EARN THE RIGHT TO HAVE THAT TATOO OUTLAW?
MR. ROGERS: HE'S LEADING.
THE COURT: DON'T LEAD HIM.
A SO TO SPEAK.
Q (BY MR. McMAHON) EXPLAIN THAT.
A IN ORDER TO GET THIS TATOO YOU GOT TO BE REAL, YOU KNOW.
Q GOT TO BE REAL?
A YES, SIR.
Q WHAT DOES THAT MEAN? EXPLAIN THAT.
A YOU GOT TO BE DOWN FOR WHATEVER, TRUE.
THE COURT: SPEAK MORE DIRECTLY INTO THE MICROPHONE, PLEASE.
Q (BY MR. McMAHON) DID YOU HAVE TO COMMIT AN ACT TO EARN THAT TATOO?
A NOT IN --
Q LET ME ASK YOU THIS, MR. LEMON. LET ME REPHRASE IT. WHEN DID YOU GET THAT TATOO?

A ABOUT TWO WEEKS AFTER THE CRIME HAD HAPPEN.
Q AFTER THE CRIME OF MR. BROOKS?
A YES, SIR.
Q AND WHAT ENTITLED YOU TO HAVE THAT TATOO OUTLAW?
A SAY IT AGAIN.
Q WHAT ENTITLED YOU TO HAVE THAT TATOO OUTLAW?
A THE CRIME I DID.
Q THE CRIME. WAS THAT PART OF YOUR REASON FOR COMMITTING THAT CRIME?
A NO. SIR.
Q SIR?
A NO, SIR.
Q WELL, WHO AUTHORIZED YOU TO HAVE THAT?
A AUTHORIZE ME TO HAVE IT?
Q YES, SIR.
A NOBODY DID. I WANTED IT SO I THOUGHT THE ONLY WAY I CAN BE DOWN TO GET IT IS TO BE DOWN.

MR. ROGERS: YOUR HONOR, MAY WE APPROACH?

THE COURT: YOU MAY.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

Q (BY MR. McMAHON) NOW, MR. LEMON, THE WEAPON THAT YOU USED, WHO GAVE YOU THAT WEAPON?
A MR. GARNER DID.

Q SIR?
A MR. GARNER DID.
Q AND WHAT CALIBER WEAPON WAS THAT?
A NINE.
Q NINE?

THE COURT: PUT YOUR HAND DOWN, PLEASE, AND SPEAK INTO THE MICROPHONE.

Q (BY MR. McMAHON) DOES THAT MEAN NINE MILLIMETER?
A YES, SIR.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: LADIES AND GENTLEMEN, THIS IS A CONVENIENT TIME FOR US TO RECESS FOR LUNCH. OF COURSE, THE WITNESS WILL UNDERGO CROSS EXAMINATION BY MR. ROGERS. WE'LL JUST SIMPLY DO THAT AFTER LUNCH. LET ME REMIND YOU OF MY CAUTION GIVEN TO YOU EARLIER AND THAT IS YOU'RE NOT TO DISCUSS THE CASE IN ANY FASHION WITH ANY PERSON, NOT EVEN AMONG YOURSELVES. AND ALSO THERE MAY BE SOME TYPE OF MEDIA COVERAGE THAT RELATES TO THE TRIAL WHETHER IT BE TELEVISION, RADIO OR NEWSPAPER. AS I TOLD YOU YESTERDAY BEFORE YOU WERE EXCUSED FOR THE DAY, IT'S IMPORTANT THAT YOUR DECISION IN THIS CASE BE BASED STRICTLY AND SOLELY UPON THE EVIDENCE RECEIVED DURING THE COURSE OF THE TRIAL AND THE LAW THAT I WILL PROVIDE YOU.

THAT'S WHY IT'S IMPORTANT THAT YOU NOT HAVE ANY DISCUSSIONS WITH ANYONE ABOUT THE CASE, NOT EVEN WITH YOUR FELLOW JURORS. IT'S ALSO, THEREFORE, IMPORTANT THAT YOU NOT BE EXPOSED TO ANY TYPE OF MEDIA COVERAGE THAT RELATES TO THE CASE, WHETHER IT BE SOMETHING ON THE TELEVISION OR SOMETHING HEARD ON THE RADIO OR SOME ARTICLE THAT MIGHT APPEAR IN THE NEWSPAPER. SO, I'M SIMPLY GOING TO INSTRUCT YOU ALSO AT THIS TIME THAT YOU ARE NOT TO ALLOW YOURSELF DURING ANY RECESS WHETHER IT BE FOR LUNCH OR A BREAK OR OVERNIGHT, YOU'RE NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY TYPE OF MEDIA COVERAGE WHATSOEVER. IF THERE'S SOMETHING IN THE NEWSPAPER YOU CAN HAVE SOMEONE SAVE THE ARTICLE IF YOU WISH TO READ IT LATER BUT YOU ARE NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY TYPE OF MEDIA COVERAGE WHATSOEVER WHILE THE TRIAL IS IN PROGRESS AND BEFORE YOU REACH YOUR DECISION. SO, WITH THAT IN MIND, HAVE A GOOD LUNCH. PLEASE REPORT DIRECTLY TO YOUR JURY ROOM AT TWO-THIRTY THIS AFTERNOON. AT TWO-THIRTY THIS AFTERNOON PLEASE REPORT DIRECTLY TO THE JURY ROOM.

(JURY LEAVES THE JURY BOX AT 1:00 P.M.)

THE COURT: MR. LEMON, YOU CAN STEP DOWN AND GO WITH THE OFFICERS.

(WITNESS TO THE SIDE)

THE COURT: LET THE RECORD REFLECT THAT DURING THE TESTIMONY OF THE LAST WITNESS AT THE STAGE WHERE THE SOLICITOR INTENDED TO INQUIRE OF THE WITNESS AS TO A TATOO OR AS TO HIS EARNING A TATOO OR AS TO HIS BELONGING TO A PARTICULAR GROUP OR GANG, MR. ROGERS ASKED TO APPROACH THE BENCH AND THERE WAS SOME DISCUSSION AS TO WHETHER OR NOT THAT INFORMATION WAS RELEVANT TO THE CASE. THE SOLICITOR INDICATED THAT HE WOULD SHOW THE RELEVANCE BY VIRTUE OF THE FACT THAT THE WITNESS WOULD TESTIFY THAT MR. GARNER REQUIRED SOME CRIMINAL ACT OF SOME TYPE TO BE COMMITTED IN ORDER FOR THE WITNESS TO BE ABLE TO EARN HIS POSITION OR PLACE IN A GANG OR A GROUP HEADED UP BY MR. GARNER AND THAT IN ORDER TO EARN HIS BADGE OF HONOR SO TO SPEAK BEING A TATOO THAT HE HAD TO COMMIT SOME CRIME AT THE DIRECTION OF MR. GARNER. BECAUSE OF THE NATURE OF THE RELEVANCY OF THAT INFORMATION TO THIS CASE I ALLOWED THE SOLICITOR TO ASK THOSE QUESTIONS AND TO ELICIT THAT INFORMATION. IT APPEARS FROM THE QUESTIONS THAT WERE ASKED OF THE WITNESS THAT THE WITNESS DID NOT RESPOND IN THE MANNER IN WHICH THE SOLICITOR ANTICIPATED THAT HE WOULD. HE DENIED THAT MR. GARNER AUTHORIZED HIM OR IN ANY WAY REQUIRED OF HIM TO COMMIT SOME ACT IN ORDER TO EARN THAT TATOO AND BASED UPON THAT RESPONSE TO THOSE

QUESTIONS MR. ROGERS THEN MADE A CONTEMPORANEOUS OBJECTION TO THAT INFORMATION AND ASKED TO BE HEARD ON THE RECORD AND I, OF COURSE, TOLD HIM THAT WE WOULD DO SO UPON THE DISCHARGE OF THE JURY FOR LUNCH. SO, MR. ROGERS, YOU MAY NOW PLACE ON THE RECORD YOUR OBJECTION IF YOU'D LIKE.

MR. ROGERS: WELL, YOUR HONOR, OF COURSE WE BOTH RELIED ON MR. McMAHON'S ASSERTION THAT THIS WAS GOING TO BE LINKED UP AND WAS GOING TO BE RELEVANT. I WAS DEATHLY AFRAID OF THAT WHOLE AREA COMING OUT BECAUSE I KNOW THE PREJUDICIAL EFFECT OF GANG ACTIVITY. I WAS HOPING ALL OF THIS WOULD NOT COME OUT. THAT'S WHY I DID NO VOIR DIRE ON GANGS HOPING THAT THIS WOULD NOT BE A PROBLEM. NOW, IT'S SURFACED AND WE CAN'T DISABUSE THIS JURY OF THE IDEA THAT HE NOW HAS A TATOO THAT HE SAYS HE GOT TWO WEEKS AFTER HE KILLED MR. BROOKS AS SOME KIND OF PAYMENT, AS SOME KIND OF BADGE OF HONOR FOR THAT ACT. NOW, HE DOESN'T SAY MR. GARNER AUTHORIZED IT NOW BUT HE IS SAYING AND HAS SAID THAT HE GOT THE TATOO AS A RESULT OF KILLING MR. BROOKS. MY WHOLE DEFENSE NOW IS HAMSTRUNG BECAUSE MR. GARNER HAS A TATOO. AND FOR HIM TO MAKE THAT CONNECTION AND LEAVE THAT IMPRESSION WITH THE JURY WHEN IT IS CLEARLY ERRONEOUS IT LEAVES IT TOO OPEN FOR SPECULATION AND INTERPRETATION THAT EVEN THOUGH

DAYON, MR. LEMON, HAS DENIED THE AUTHORIZATION, THE FACT THAT THEY MAY SUBSEQUENTLY LEARN THAT MR. GARNER HAS ONE IS GOING TO MAKE THE LINK NO MATTER WHAT YOU TELL THE JURY. SO, FOR THAT REASON, YOUR HONOR, I AM REQUESTING A MISTRIAL.

THE COURT: ALL RIGHT. SOLICITOR, DO YOU WANT TO BE HEARD?

MR. McMAHON: WELL, THAT'S EXACTLY WHAT CIRCUMSTANTIAL EVIDENCE IS IN MY MIND. HE'S TESTIFIED CONSISTENT WITH HIS STATEMENT. TO GET IT YOU HAVE TO DO SOMETHING SERIOUS. I'M NOT SURE ABOUT THE OUTLAW, I JUST KNOW I EARNED IT WITH THIS. SO, IT IS RELEVANT TO THE CRIME THAT WITHIN TWO WEEKS OF THE HOMICIDE HE GETS A TATOO OUTLAW AS A RESULT OF COMMITTING THIS CRIME. I MEAN THAT'S RELEVANT. THEY'VE GOT TO BELIEVE HIM AS TO WHETHER OR NOT HE COMMITTED THIS ACT, AS TO WHETHER OR NOT HE COMMITTED THIS ACT. I HADN'T GONE INTO ANYTHING ABOUT MR. GARNER, WHAT TATOOS HE MAY OR MAY NOT HAVE.

NOW, IF HE TAKES THE STAND AND HE'S GOT AN OUTLAW TATOO -- OF COURSE, OBVIOUSLY WE CROSS THAT BRIDGE, I'D SAY SURE THAT WOULD LINK IT UP. SURE THAT WOULD LINK IT UP. IT'S JUST LIKE A BRAND ON CATTLE SO TO SPEAK. IF ALL OF THEM INVOLVED ARE IN THE SAME THING AND HAVE THAT, THAT'S WHAT

CIRCUMSTANTIAL EVIDENCE IS. I DON'T THINK IT BECOMES MISTRIABLE AT THIS POINT JUST BECAUSE HE SAYS HE HASN'T AUTHORIZED ME TO DO IT BUT I GOT IT AS A RESULT OF COMMITTING THIS HOMICIDE. PLUS, I THINK THAT GOES TO MALICE. I THINK THAT'S PRETTY COLD BLOODIED THAT YOU GO IN THERE AND SHOOT SOMEBODY TWO OR THREE TIMES AND PART OF YOUR PAYOFF SO TO SPEAK EVEN IF IT'S FOR YOURSELF THAT YOU GET AN OUTLAW TATOO. NOW, I MAY HAVE HIM CHARGED WITH PRESENT AIDING AND ABETTING BUT I DON'T THINK I'M LIMITED IN THE AMOUNT OF MALICE THAT I MAY WANT TO SHOW EVEN THOUGH HE'S THE TRIGGERMAN AND HE'S A WITNESS THAT THE STATE HAS CALLED. HE'S SIXTEEN. THAT'S PRETTY COLD BLOODIED TO ME AND THAT'S WHAT I WANT TO SHOW IT AS. AND I WANT TO SHOW HIM COLD BLOODIED. AND I THINK THAT MALICE BLEEDS OVER SO TO SPEAK INTO ANY CO-DEFENDANT JUST AS THE ONE I'M TRYING UNDER THE HAND OF ONE HAND OF ALL THEORY. THANK YOU, YOUR HONOR.

THE COURT: MR. ROGERS.

MR. ROGERS: YOUR HONOR, I JUST WANT TO SAY MALICE COMES FROM MR. LEMON. I MEAN THERE'S NO -- THE IMPROPER INFERENCE OF SPILLING THAT MALICE OVER TO MR. GARNER NOW WILL BE THERE BECAUSE OF THE FACT THAT HE HAS A SIMILAR TATOO NO MATTER WHAT YOU SAY

NOW ABOUT THE TATOO. HE'S GOING TO BE LINKED TO MR. GARNER BY THE TATOO ALONE IN TERMS OF THE PLANNING. THAT GOES TO THE CREDIBILITY, IT GOES TO MY WHOLE THEORY OF THE DEFENSE, YOUR HONOR, AND THAT'S WHY I DIDN'T WANT ANY OF THIS OUTLAW BUSINESS TO COME OUT. NOW THAT IT'S OUT THERE'S NO WAY I CAN CURE IT. THE BURDEN HAS NOW SHIFTED TO MR. GARNER TO SOMEHOW EXPLAIN THAT HIS TATOO IS UNRELATED TO THAT TATOO AND AGAIN, YOUR HONOR, I'D MAKE A MOTION FOR A MISTRIAL.

THE COURT: WELL, OBVIOUSLY IT IS THE PREROGATIVE OF THE STATE TO INTRODUCE EVIDENCE THAT SHOWS THE ASSOCIATION OR CONNECTION OF MR. LEMON WITH THE DEFENDANT IN THIS CASE BECAUSE THAT IS THE THEORY OF THIS CASE IS THAT HE WAS A PARTICIPANT, HE WAS AN AIDER, HE WAS AN ABETTOR AND PARTICIPANTS IN THE CRIME ITSELF AND WAS PRESENT WHEN IT WAS IN FACT COMMITTED. AND, IN FACT, THE STATE'S THEORY AND EVIDENCE TENDS TO SHOW THAT IN FACT MR. GARNER WAS THE ONE THAT INSTIGATED THE OFFENSE TO START WITH. SO, OBVIOUSLY THEY HAVE A RIGHT TO PRESENT EVIDENCE THAT SHOWS THAT ASSOCIATION AND THAT CONNECTION BETWEEN MR. LEMON AND THE DEFENDANT IN THIS CASE. THE QUESTION SIMPLY AROSE AS TO WHETHER OR NOT IT WAS RELEVANT ON THE ISSUE AS TO HOW MR. LEMON GOT THE TATOO. I UNDERSTOOD FROM THE BENCH CONFERENCE THAT

THE WITNESS WOULD TESTIFY THAT HE EARNED IT IN THE COMMISSION OF THE CRIME AND THAT IT WAS AUTHORIZED BY THE DEFENDANT AND THE DEFENDANT REQUIRED SOME ACT SUCH AS THAT TO BE COMMITTED IN ORDER FOR HIM TO BE ENTITLED TO BE ABLE TO WEAR SUCH A TATOO. THAT DID NOT DEVELOP IN THE TESTIMONY OF THE CASE OR THE TESTIMONY OF THAT WITNESS. IN FACT, THE WITNESS DENIED THAT MR. GARNER OR ANYONE ELSE AUTHORIZED HIM TO HAVE THE TATOO AND THAT HE SIMPLY GOT THE TATOO AS A RESULT OF THE ACT THAT HE COMMITTED. PRESUMABLY, HE PUT IT ON HIMSELF. BUT I DON'T THINK HE CONNECTED THE DEFENDANT HERE WITH THE AUTHORIZING OF THAT TATOO OR REQUIRING SOME ACT BY THAT WITNESS IN ORDER TO EARN THE TATOO AND, THEREFORE, WHILE -- HAD I KNOW THOSE WERE GOING TO BE THE ANSWERS, I WOULD HAVE DETERMINED AND FOUND THAT THOSE QUESTIONS WERE NOT RELEVANT. UNDERSTANDING A DIFFERENCE SO FAR AS THE TESTIMONY WAS CONCERNED, I ALLOWED THE QUESTIONS. BUT AS IT TURNS OUT THE WITNESS DENIES THAT CONNECTION OR THAT ASSOCIATION AT LEAST SO FAR AS IT'S LIMITED TO THE TATOO AND MR. GARNER AND, THEREFORE, I FIND THERE IS NO PREJUDICE TO THIS DEFENDANT BASED UPON THE WITNESS' OWN TESTIMONY AND SO, THEREFORE, I WILL DENY YOUR MOTION AND REQUEST FOR A MISTRIAL.

ALL RIGHT. ANYTHING FURTHER BEFORE WE RECESS FOR LUNCH?

MR. McMAHON: NOTHING FROM THE STATE, YOUR HONOR.

MR. ROGERS: NOTHING FROM THE DEFENSE.

THE COURT: COURT IS IN RECESS UNTIL TWO-THIRTY.

(LUNCHEON RECESS)

(COURT RESUMES AT 2:36 P.M.)

THE COURT: ANY MATTERS WE NEED TO ADDRESS BEFORE THE JURY IS BROUGHT IN?

MR. McMAHON: JUDGE, THE ONLY ISSUE I WOULD HAVE IS I INTEND ON OFFERING A STATEMENT BY THE DEFENDANT. MR. ROGERS HAS NOT MADE A MOTION. I UNDERSTAND HE'S NOT GOING TO CONTEST THE VOLUNTARINESS OF THE STATEMENT. THERE ARE ADVICE OF RIGHTS FORMS THAT I WOULD MARK AS A COURT'S EXHIBIT AT THIS POINT. I'M NO LONGER SURE UNDER STATE V. VICTOR WHETHER I HAVE TO HAVE A HEARING OR NOT ALTHOUGH THERE'S NO CONTESTING OF THE STATEMENT. I JUST WANTED TO ASK FOR THE GUIDANCE OF THE COURT ON HOW YOU WANT ME TO PROCEED.

THE COURT: ALL RIGHT. MR. ROGERS, WHAT IS THE POSITION OF THE DEFENDANT?

MR. ROGERS: WE ARE NOT CHALLENGING THE STATEMENT OR THE VOLUNTARINESS.

THE COURT: DO YOU STIPULATE THAT THE STATEMENT WAS GIVEN BY THE DEFENDANT AND THAT IT WAS GIVEN FREELY AND VOLUNTARILY?

MR. ROGERS: YES.

THE COURT: HE WAS NOT UNDER ANY COMPULSION, COERCION OF ANY TYPE AND HE FREELY, KNOWINGLY AND INTELLIGENTLY GAVE THIS STATEMENT TO THE OFFICERS?

MR. ROGERS: YES, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. ANYTHING FURTHER?

MR. McMAHON: THEN THE ONLY OTHER QUESTION I WOULD HAVE, YOUR HONOR, IN LIGHT OF THAT WOULD YOU STILL CHARGE VOLUNTARINESS OR WILL THAT EVER BECOME AN ISSUE FOR THE JURY SINCE THERE HAS BEEN A STIPULATION?

THE COURT: THE VOLUNTARINESS WILL NOT BE AN ISSUE IF IT'S AGREED TO AND THERE'S NO QUESTION ABOUT IT AND THE DEFENDANT UNDERSTANDS -- WELL, LET ME ASK, MR. GARNER, WITH REGARD TO THE STATEMENT AS YOU'VE HEARD THE SOLICITOR HAS INDICATED --

MR. ROGERS: MAY I JUST EXPLAIN BRIEFLY?

THE COURT: SURE.

(MR. ROGERS AND THE DEFENDANT CONFER OFF THE RECORD)

MR. ROGERS: OKAY.

THE COURT: MR. GARNER, THE SOLICITOR HAS

INDICATED THAT HE'S GOING TO BE OFFERING A STATEMENT INTO EVIDENCE THAT YOU MADE TO SOME LAW ENFORCEMENT OFFICER OR OFFICERS AT SOME POINT THAT RELATES TO THE CHARGES THAT ARE NOW PENDING AGAINST YOU.

MR. ROGERS: EXCUSE ME, YOUR HONOR.

(MR. ROGERS AND THE DEFENDANT CONFER OFF THE RECORD)

MR. ROGERS: THE COURT'S INDULGENCE JUST A MOMENT, YOUR HONOR.

THE COURT: ALL RIGHT.

(MR. ROGERS CONTINUES TO CONFER WITH THE DEFENDANT OFF THE RECORD.)

MR. ROGERS: OKAY, YOUR HONOR, I'M SORRY. GO AHEAD.

THE COURT: MR. GARNER, NOW THE SOLICITOR HAS INDICATED AS I STATED THAT HE INTENDS TO OFFER INTO EVIDENCE BEFORE THE JURY A STATEMENT THAT YOU MADE OR THAT YOU GAVE TO LAW ENFORCEMENT OFFICERS AT SOME TIME SUBSEQUENT TO YOUR ARREST. WAS IT AFTER THE ARREST OR WAS IT BEFORE?

MR. McMAHON: IT WAS -- HE WAS IN JAIL IN CUSTODY NOT ON THESE CHARGES.

THE COURT: OKAY. BUT THEY WENT TO SEE HIM TO TALK TO HIM ABOUT THESE CHARGES?

MR. McMAHON: YES, SIR.

THE COURT: OKAY. SO, IT WAS PRIOR TO YOUR ARREST ON THESE CHARGES BUT OBVIOUSLY THE QUESTIONS THAT WERE ASKED OF YOU BY LAW ENFORCEMENT RELATED TO THESE CHARGES AND APPARENTLY AS A RESULT OF THAT QUESTIONING YOU AGREED TO TALK WITH THEM AND YOU GAVE A STATEMENT AND THAT STATEMENT HAS BEEN REDUCED TO WRITING. IS THAT CORRECT?

DEFENDANT GARNER: YES, SIR.

THE COURT: NOW, THE SOLICITOR INTENDS TO OFFER THAT STATEMENT INTO EVIDENCE BEFORE THE JURY SO THEY CAN CONSIDER IT IN WHATEVER FASHION THEY DEEM IS APPROPRIATE. BEFORE A STATEMENT OF THE DEFENDANT, THAT BEING YOU, CAN BE RECEIVED OR OFFERED INTO EVIDENCE, ORDINARILY IT WOULD HAVE TO BE DETERMINED BY THE COURT THAT ANY STATEMENT GIVEN BY YOU WAS FREELY AND VOLUNTARILY MADE. THAT IS, YOU KNOWINGLY AND INTELLIGENTLY WAIVED YOUR CONSTITUTIONAL RIGHTS AND YOU KNOWINGLY, INTELLIGENTLY, FREELY AND VOLUNTARILY GAVE THEM A STATEMENT. IN OTHER WORDS, YOU WEREN'T UNDER ANY COMPULSION, COERCION, THEY DIDN'T THREATEN, THEY DIDN'T DEPRIVE YOU OF ANY NECESSITIES OR COMFORTS AND THAT YOU WANTED TO TALK TO THEM, YOU WANTED TO TELL THEM WHAT YOU KNEW ABOUT THE CASE AND YOU WANTED TO ANSWER THEIR QUESTIONS. THAT IS, YOU DID SO OF YOUR OWN FREE WILL. NOW, YOUR

LAWYER HAS INDICATED THAT YOU DO NOT CONTEST THE VOLUNTARINESS OF THE STATEMENT. THAT IS, YOU DO NOT CONTEST THAT YOU GAVE A STATEMENT, THAT IT WAS FREELY AND VOLUNTARILY MADE. THAT IS, YOU UNDERSTOOD YOUR CONSTITUTIONAL RIGHTS, YOU UNDERSTOOD YOU HAD A RIGHT TO REMAIN SILENT. YOU UNDERSTOOD YOU HAD A RIGHT TO HAVE A LAWYER PRESENT. YOU UNDERSTOOD YOU DIDN'T HAVE TO TALK TO THEM OR TELL THEM ANYTHING AND THAT YOU FREELY AND WILLINGLY GAVE THOSE RIGHTS UP AND GAVE THEM A STATEMENT AND THAT THEY DIDN'T THREATEN YOU OR PROMISE YOU ANYTHING IN RETURN FOR IT.

(MR. ROGERS AND THE DEFENDANT CONFER OFF THE RECORD.)

MR. ROGERS: YOUR HONOR, WE PROBABLY NEED TO HAVE THE HEARING.

THE COURT: OKAY.

MR. McMAHON: I APOLOGIZE.

THE COURT: MR. ROGERS HAS CONFERRED WITH HIS CLIENT AND HE DOES WISH TO HAVE THE COURT DETERMINE WHETHER OR NOT THE STATEMENT WAS FREELY AND VOLUNTARILY MADE.

MR. McMAHON: THANK YOU, YOUR HONOR.

THE COURT: OKAY. AT WHAT POINT DO YOU ANTICIPATE GETTING TO THAT? WILL THAT BE THE NEXT WITNESS OR NOT?

MR. McMAHON: NO, SIR, IT WOULDN'T BE THE NEXT WITNESS BUT IT WOULD BE AFTER THE NEXT WITNESS.

THE COURT: HOW LONG DO YOU ANTICIPATE THE NEXT WITNESS' TESTIMONY TO TAKE? NOW, UNDERSTAND WE'VE STILL GOT CROSS EXAMINATION OF MR. LEMON TO GO.

MR. McMAHON: PROBABLY FIFTEEN MINUTES OR TWENTY MINUTES. THE NEXT WITNESS, NOT CROSS EXAMINATION.

THE COURT: OKAY. PERHAPS WE CAN TAKE A BREAK AFTER THAT AND WE'LL ADDRESS THAT ISSUE.

MR. McMAHON: THANK YOU, YOUR HONOR.

MR. ROGERS: YOUR HONOR, I MADE AN INQUIRY OF THE SOLICITOR'S OFFICE ABOUT THE PRIOR JUVENILE RECORD OF MR. LEMON AND I HAVE NOT RECEIVED A RESPONSE.

MR. McMAHON: I THOUGHT I HAD IT DOWN HERE WITH ME. THEY WENT UPSTAIRS TO DOUBLE-CHECK IT. I DON'T HAVE HIS JUVENILE RECORD BEFORE ME AS FAR AS ANY ADJUDICATIONS. I WILL TRY AND PRODUCE THAT FOR HIM PRIOR TO HIM GETTING OFF THE WITNESS STAND.

THE COURT: WELL, HOW LONG IS IT GOING TO TAKE? WE NEED TO DO THAT NOW.

MR. McMAHON: I DON'T KNOW HOW LONG IT'S GOING TO TAKE. I THOUGHT UNDER BLACK AND ARNOLD I'M NOT EVEN REQUIRED TO GIVE HIM THAT IF HE'S GOT EQUAL ACCESS TO IT. AS I UNDERSTAND IT, HE CAN MOVE FOR AN

ORDER TO GET HIS JUVENILE RECORD AND THEY ARE AS ACCESSIBLE TO HIM AS THEY ARE TO ME. I WAS JUST TRYING TO MOVE IT ALONG BECAUSE THAT'S THE FIRST TIME HE ASKED ME ABOUT IT. I DIDN'T HAVE IT.

THE COURT: WELL, I DIDN'T UNDERSTAND THAT WAS AN ISSUE. I THOUGHT YOU DID SAY THAT YOU WERE GOING TO PROVIDE IT TO HIM. I JUST SIMPLY ASKED HOW LONG WILL IT TAKE TO GET IT.

MR. McMAHON: I SAID I WAS GOING TO PROVIDE IT WHEN HE ASKED ME JUST NOW SO I COULD MOVE THE CASE ALONG. THAT'S WHAT I WAS RESPONDING TO. I DON'T KNOW HOW LONG IT WILL TAKE.

MR. CHAPLIN: SHE'S LOOKING IT UP RIGHT NOW.

THE COURT: OKAY. MR. ROGERS, HAVE YOU ATTEMPTED TO GET THE INFORMATION THROUGH OTHER METHODS?

MR. ROGERS: NO, YOUR HONOR, I HAVE NOT.

THE COURT: OKAY. WELL, WE'LL SEE IF IT'S AVAILABLE OR NOT.

MR. ROGERS: ALL RIGHT.

THE COURT: ALL RIGHT. ANYTHING FURTHER BEFORE THE JURY IS BROUGHT IN?

MR. McMAHON: NOTHING FROM THE STATE.

THE COURT: BRING MR. LEMON OUT, PLEASE.

(JURY RETURNS TO THE JURY BOX AT 2:47 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN. YOU WILL RECALL WHEN WE RECESSED FOR LUNCH THAT THE WITNESS HAS JUST COMPLETED DIRECT EXAMINATION CONDUCTED BY THE SOLICITOR SO WE'LL NOW PROCEED WITH CROSS EXAMINATION TO BE CONDUCTED BY MR. ROGERS.

MR. ROGERS: MAY IT PLEASE THE COURT.

DAYON LEMON, AFTER HAVING BEEN PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS:

CROSS EXAMINATION BY

MR. ROGERS:

Q MR. LEMON, YOU ARE HOW OLD NOW?

A SIXTEEN.

Q YOU'RE SIXTEEN NOW?

A YES, SIR.

Q AND AT THE TIME THIS HAPPENED YOU WERE HOW OLD?

A SIXTEEN. I'M SEVENTEEN NOW. I WAS SIXTEEN AT THE TIME.

Q YOU WERE SIXTEEN AT THE TIME. AND YOU ARE MORE FRIENDS WITH JERMAINE THAN YOU ARE WITH TREY, AREN'T YOU?

A NO, NOT REALLY.

Q HAVEN'T YOU KNOWN JERMAINE LONGER?

A NO, SIR.

Q DO YOU HANG AROUND WITH JERMAINE?
A YES, SIR.
Q NOW, LET'S TALK ABOUT WHAT YOU STAND TO GAIN FROM YOUR TESTIMONY. YOU DO STAND TO GAIN SOMETHING, DON'T YOU?
A IN A WAY, YEAH, IN A WAY NOT.
Q I'M SORRY?
A YEAH.
Q WHAT?
A LESS TIME I GUESS.
Q GET YOU TIME CUT, RIGHT?
A YES, SIR.
Q AND IT'S A SIGNIFICANT AMOUNT OF TIME, ISN'T IT?
A YES, SIR.
Q WELL, YOU WERE FACING A MURDER CHARGE, RIGHT, AND ON A MURDER YOU KNOW THAT THE SENTENCE IS FROM THIRTY YEARS TO LIFE?
A YES, SIR.
Q YOU KNEW THAT. AND YOU KNOW THAT THAT LIFE IS NOT PAROLABLE SO THAT WOULD MEAN THAT YOU WOULD BE IN PRISON FOR THE REST OF YOUR LIFE?
A YES, SIR.
Q YOU KNEW THAT. SO, YOU'RE GETTING A SUBSTANTIAL BREAK ON WHAT SENTENCE YOU'VE GOTTEN, ISN'T THAT TRUE?

A YES, SIR.
Q IN ADDITION TO JUST THAT ONE CHARGE YOU HAD SEVERAL OTHER CHARGES PENDING, ISN'T THAT TRUE?
A YES, SIR.
Q YOU HAD THE ATTEMPTED ARMED ROBBERY WHICH CARRIES UP TO TWENTY YEARS. YOU HAD THE CONSPIRACY TO ESCAPE FROM JAIL, THAT'S THREE YEARS. AND YOU HAD CONSPIRACY TO COMMIT ARMED ROBBERY, THAT WAS FIVE YEARS. YOU HAD THE A.B.I.K. WHICH WAS TWENTY YEARS. ISN'T THAT TRUE?
A YES, SIR.
Q AND THE JUDGE COULD HAVE STACKED ALL OF THEM ON TOP OF EACH OTHER WHICH MEANS A CONSECUTIVE SENTENCE, RIGHT?
A YES, SIR.
Q SO, YOU WERE FACING LIFE PLUS FORTY-EIGHT YEARS.
A YES, SIR.
Q YOU HAD AN ATTORNEY REPRESENTING YOU ON THESE CHARGES, DIDN'T YOU?
A YES, SIR.
Q THAT WAS MR. STRICKLER. AND HE TOLD YOU, DID HE NOT, THAT THIS CRIME COULD HAVE BEEN ELIGIBLE FOR A DEATH PENALTY?
A YES, SIR.
Q SO, YOU DIDN'T EVEN FACE THE DEATH PENALTY FOR WHAT

YOU HAVE ADMITTED THAT YOU DID?
A YES, SIR.
Q SO, YOU'RE GOING TO GET A THIRTY YEAR SENTENCE WITH EVERYTHING RUN CONCURRENT AS OPPOSED TO LIFE PLUS FORTY-EIGHT YEARS?
A YES, SIR.
Q THAT'S A GREAT INCENTIVE FOR YOU TO TESTIFY THE WAY YOU ARE, ISN'T IT?
A IF YOU SAY SO.
Q YES, I DO BECAUSE YOU'VE GIVEN SEVERAL DIFFERENT VERSIONS OF WHAT HAPPENED, HAVEN'T YOU?
A YES, SIR.
Q IN FACT, THE VERSION THAT YOU TESTIFIED TO THIS MORNING WAS EVEN DIFFERENT FROM THE LAST WRITTEN STATEMENT YOU GAVE, ISN'T THAT TRUE?
A I GUESS SO.
THE COURT: YOU NEED TO SPEAK UP, PLEASE.
Q (BY MR. ROGERS) THE POLICE OFFICERS TALKED TO YOU ON DECEMBER 11TH, 1996, IS THAT CORRECT?
A YES, SIR.
Q AND YOU GAVE A STATEMENT THEN. AND AT THAT TIME THE STATEMENT WAS PARTIALLY TRUE AND PARTIALLY UNTRUE. I HAND YOU A COPY OF THAT STATEMENT. ISN'T THAT CORRECT?
A YES, SIR.

Q PART OF IT WAS TRUE AND THE OTHER PART WAS NOT TRUE?
A YES, SIR.
Q YOU TOLD THE POLICE ON THAT DAY THAT THERE WAS A TIME THAT YOU AND JERMAINE LEFT TREY TO GO GET MARIJUANA?
A YES, SIR.
Q SO, THERE WAS A PERIOD OF TIME AROUND, I BELIEVE YOUR TESTIMONY WAS AROUND ALMOST DARK, SIX, SIX-THIRTY, THAT YOU LEFT TREY TO GO GET MARIJUANA. AND YOU DID NOT TELL THEM ANYTHING ABOUT YOUR INVOLVEMENT THEN?
A NO, SIR.
Q YOU LIED TO THEM?
A YES, SIR.
Q AND THE MONTHS THAT FOLLOWED, THE THREE MONTHS BEFORE MARCH 20TH WHEN YOU WERE ARRESTED, YOU MADE NO ATTEMPT TO CORRECT THAT LIE?
A NO, SIR.
Q THEN YOU WERE ARRESTED ON MARCH 20TH AND ON MARCH 20TH IS WHEN YOUR SECOND STATEMENT WAS PRODUCED THAT IMPLICATED TREY, WAS WHEN YOU THEN PUT TREY IN IT?
A YES, SIR.
Q RIGHT. WHAT HAPPENED? WHAT HAPPENED TO CHANGE YOUR MIND? WHAT MADE YOU THEN TELL WHAT YOU ARE NOW SAYING IS THE TRUTH AS OPPOSED TO THE THREE MONTHS BEFORE YOU DIDN'T CARE ABOUT WHAT THE TRUTH WAS?
A 'CAUSE I GOT A CONSCIENCE.

Q YEAH. THE POLICE --

MR. McMAHON: WAS THAT A QUESTION? I OBJECT.

THE COURT: LET'S DON'T HAVE ANY ASIDES, MR. ROGERS. PLEASE JUST ASK QUESTIONS.

MR. ROGERS: YES, YOUR HONOR, I APOLOGIZE TO THE COURT AND I APOLOGIZE TO MR. McMAHON.

Q (BY MR. ROGERS) BEFORE YOU GAVE THE STATEMENT, THE POLICE DIDN'T TELL YOU ALL THE CHARGES YOU WERE FACING? AND DIDN'T TELL YOU IF YOU DIDN'T TELL THEM WHAT THEY WANTED TO KNOW YOU'D BE GONE FOR THE REST OF YOUR LIFE? THEY DIDN'T TELL YOU THAT?

A NO, SIR.

Q ALL OF A SUDDEN YOUR CONSCIENCE GETS TO YOU AND YOU WILL NOW TELL THE TRUTH WHEN YOU ARE IN POLICE CUSTODY. RIGHT? NOBODY SAID IN ORDER TO GET THIS OFF OF YOU, IN ORDER FOR YOU TO NOT FACE THE DEATH PENALTY OR NOT GO TO JAIL FOR THE REST OF YOUR LIFE YOU HAD TO IMPLICATE OTHER PEOPLE? NOBODY TOLD YOU THAT?

THE COURT: YOU NEED TO ANSWER OUT LOUD. YOU CAN'T SHAKE YOUR HEAD.

A NO, SIR.

Q WHEN YOU WERE ARRESTED, WERE YOU HIGH?

A I WAS DRUNK.

Q DRUNK?

A YES, SIR.
Q OFF OF WHAT?
A MADDOG.
Q WHERE DID YOU GET IT?
A FROM THE STORE.
Q YOU BOUGHT IT?
A NO, SIR.
Q WHO BOUGHT IT?
A NO, ONE.
Q YOU STOLE IT?
A YES, SIR.
Q OH, YOU STOLE IT.

MR. McMAHON: I OBJECT TO THE RELEVANCY OF THAT. THAT'S A PRIOR BAD ACT THAT WOULD NOT BE RELEVANT TO THE ISSUES BEFORE THIS JURY.

THE COURT: WELL, I SUSTAIN THE OBJECTION ON THAT SPECIFIC QUESTION. PLEASE SPEAK UP, MR. LEMON.

Q (BY MR. ROGERS) SO, YOU WERE DRUNK?
A YES, SIR.
Q DID THE OFFICERS KNOW THAT?
A NO, SIR.
Q AND NOTHING WAS SAID TO YOU DURING THAT INTERROGATION OF A NATURE THAT WOULD MAKE YOU TELL AN UNTRUTH TO GET THIS DEAL?
A NO, SIR.

Q AND WE ONLY HAVE YOUR WORD FOR THAT, DON'T WE?
A YES, SIR.
Q WAS THAT INTERROGATION VIDEO TAPED?
A NO, SIR.
Q WAS THERE AN AUDIO TAPE?
A NOT THAT I KNOW OF.
Q THERE COULD HAVE BEEN. I MEAN OFFICERS COULD HAVE BROUGHT A TAPE RECORDER IN THERE AND TAPE RECORDED THE ENTIRE THING, RIGHT?
A YES, SIR.
Q AND THEN THIS JURY WOULD KNOW EXACTLY WHAT WAS SAID TO YOU IN ORDER TO GET YOU TO CHANGE YOU STORY?
A YES, SIR.
Q BUT YOU WANT THE JURY TO BELIEVE IT WAS ALL OF A SUDDEN YOUR CONSCIENCE, RIGHT?
A YES, SIR.
Q NOW, IN YOUR STATEMENT THAT YOU GAVE THEM IN MARCH YOU INDICATED THAT YOU MET UP WITH JERMAINE AND TREY AND VALDIS AND YOU WENT TO SCOOTER BAIT'S HOUSE?
A SLANK'S HOUSE.
Q EXCUSE ME?
A SLANK'S HOUSE.
Q YOU DIDN'T INDICATE IN YOUR STATEMENT OF MARCH 20TH THAT ALL OF YOU HAD GONE -- WHEN YOU FIRST MET UP HAD GONE TO SCOOTER BAIT'S HOUSE?

A WE WENT TO SLANK HOUSE AND THEN SCOOTER BAIT'S HOUSE.
Q WHEN YOU WENT TO SCOOTER BAIT'S HOUSE AND SCOOTER BAIT WAS THERE?
A NO, HE WASN'T.
Q LET ME SHOW YOU A COPY OF YOUR MARCH 20TH STATEMENT. DIRECTING YOUR ATTENTION TO THIS LINE. WOULD YOU READ THAT OUT LOUD?
A RIGHT HERE?
Q YES.
A THEN WE --
Q YOU NEED TO KEEP YOUR VOICE UP.
A THEN ME, JERMAINE, TREY AND VALDIS, WENT TO SCOOTER BAIT'S HOUSE. SCOOTER BAIT AND HIS SISTER WERE ALL THERE.
Q WERE ALL THERE. OKAY. JUST RIGHT AT THAT POINT. SO, YOU DID TELL THE POLICE ON THAT DAY THAT SCOOTER BAIT WAS HOME?
A THAT WHAT IT LOOK LIKE, YEAH.
Q I'M SORRY?
A YES, SIR.
Q BUT YOU TESTIFIED TODAY THAT WHEN YOU WENT TO SCOOTER BAIT'S HOUSE HE WASN'T THERE?
A HE WASN'T THERE.
Q SO, THAT'S INCORRECT AND WHAT YOU SAID TODAY IS TRUE?
A YES, SIR.

Q ALL RIGHT. AND IF YOU'LL TURN OVER TO THE NEXT PAGE -- LET ME HELP YOU FIND IT. AFTER THEY ASKED YOU SOME QUESTIONS --

THE COURT: EXCUSE ME JUST A MINUTE, MR. ROGERS. LET ME BE SURE THAT MICROPHONE IS WORKING. IS IT ON? IS ANYONE HAVING DIFFICULTY HEARING THE WITNESS? IS THAT MICROPHONE -- MR. BAILIFF, CAN YOU CHECK IT?

(BAILIFF COMPLIES)

THE COURT: ALL RIGHT. MR. LEMON, YOU APPARENTLY ARE GOING TO HAVE TO GET CLOSER TO THAT MICROPHONE AND SPEAK DIRECTLY INTO IT WHEN YOU SPEAK. YOU UNDERSTAND WHAT I'M SAYING, YOU'VE GOT TO SPEAK DIRECTLY INTO IT. YOU DON'T HAVE TO PUT YOUR MOUTH ON IT BUT YOU'VE GOT TO SPEAK DIRECTLY INTO IT SO IT WILL PICK UP YOUR RESPONSE. EXCUSE ME, MR. ROGERS.

MR. ROGERS: THAT'S QUITE ALL RIGHT, YOUR HONOR.

Q (BY MR. ROGERS) YOU TESTIFIED HERE THIS MORNING ON DIRECT THAT JERMAINE HAD GIVEN YOU THE GUN. DO YOU REMEMBER THAT TESTIMONY?

A YES, SIR.

Q AND I DIRECT YOUR ATTENTION TO YOUR STATEMENT -- LET'S GO ONE MORE -- LET'S START AT TREY HAD GIVEN IT TO ME. YOU SAID IN THAT STATEMENT TREY HAD GIVEN IT TO ME AT THE HOUSE WHEN I TOLD HIM I WAS DOWN WITH HIM. ISN'T THAT WHAT YOU SAID ON THE 20TH? AND

TODAY YOU SAID THAT JERMAINE GAVE YOU THE GUN, RIGHT?
A BUT THEN I CHANGE IT AND SAY TREY GAVE IT TO ME.
Q WHAT KIND OF GUN WAS IT?
A A NINE. NINE MILLIMETER.
Q DESCRIBE IT.
A THAT BIG.
Q WHAT COLOR?
A BLACK.
Q IT WASN'T SILVER?
A NO, SIR.
Q NOW, YOU TESTIFIED THAT ALL THESE PEOPLE AGREED WITH THE PLAN TO ROB?
A YES, SIR.
Q BUT YOU DIDN'T SAY THAT IN YOUR STATEMENT, DID YOU? YOU DIDN'T SAY THAT VALDIS WAS A PART OF IT OR THAT TASHAN WAS A PART OF IT. YOU DIDN'T PUT THEM IN UNTIL TODAY, RIGHT?
A YES, SIR.
Q YOU HAD BEEN TO THAT STORE, MR. BROOKS' STORE, BEFORE THIS HAPPENED?
A YES, SIR.
Q MANY TIMES?
A YES, SIR.
Q YOU KNEW ABOUT THE MONEY?
A YES, SIR.

Q AND YOU KNEW HE HAD MONEY?
A YES, SIR.
Q AND YOU KNEW HE COUNTED THE MONEY ON SUNDAY?
A YES, SIR.
Q YOU TESTIFIED TODAY THAT YOU SOLD CRACK FOR TREY'S BROTHER. YOU NEVER TOLD THE POLICE ANYTHING ABOUT THAT.
A YES, I DID.
Q IS IT IN THE STATEMENT?
A I DON'T KNOW.
Q TAKE A MOMENT TO LOOK IT OVER.
A (WITNESS COMPLIES)
Q AND THAT'S NOT IN YOUR FIRST STATEMENT EITHER. SO, TODAY WAS THE FIRST TIME YOU TOLD ANYBODY OR SAID TO ANYBODY THAT YOU WERE SELLING DRUGS FOR TREY'S BROTHER.
A YES, SIR.
Q SOMETHING NEW. ALL RIGHT. YOU SAID IN THAT STATEMENT SOMETHING ABOUT MR. MARSHALL SMOKING A REEFER IN THE STORE?
A NO, SIR.
Q LET ME SEE IF I CAN FIND IT FOR YOU.

MR. ROGERS: THE COURT'S INDULGENCE JUST A MOMENT, YOUR HONOR.

(PAUSE)

Q (BY MR. ROGERS) JOE IS BEHIND THE COUNTER AND MARSHALL WAS IN FRONT OF THE COUNTER FACING SMOKING REEFER. YOU DON'T REMEMBER SAYING THAT?
A NO.
Q SO, YOU TOLD THEM THAT BUT YOU DON'T REMEMBER SAYING IT OR YOU SAID IT AND IT DIDN'T HAPPEN?
A I DON'T REMEMBER SAYING IT.
Q EXCUSE ME?
A I DON'T REMEMBER SAYING IT.
Q THAT DIDN'T HAPPEN?
A I WAS PROBABLY REFERRING TO A CIGARETTE AND HE PROBABLY PUT REEFER DOWN I GUESS.
Q YOU MEANT A REGULAR CIGARETTE BUT YOU --
A I DON'T REMEMBER SAYING IT.
Q YOU DON'T REMEMBER SAYING THAT. OKAY. NOW, ACCORDING TO WHAT YOU'RE TELLING THIS JURY THE PLAN WAS THAT YOU WERE GOING TO ROB MR. BROOKS?
A YES, SIR.
Q NOTHING ELSE?
A NO, SIR.
Q YOU DIDN'T PLAN TO SHOOT HIM, YOU DIDN'T PLAN TO KILL HIM?
A NO, SIR.
Q YOUR PLAN WAS TO ROB HIM?
A YES, SIR.

Q YOU GET OUT, YOU GO -- REFERRING TO STATE'S EXHIBIT NUMBER TWO -- YOU GO, ACCORDING TO YOU, AND YOU HIDE BEHIND THIS BUILDING?
A YES, SIR.
Q ACCORDING TO YOUR TESTIMONY TODAY FOR TEN OR FIFTEEN MINUTES?
A YES, SIR.
Q WHERE WAS JERMAINE? I SHOW YOU STATE'S EXHIBIT NUMBER ONE. WHERE WAS JERMAINE WHILE YOU WERE IN THE STORE, IF YOU KNOW?
A I GUESS THEY WAS ON THE DIRT ROAD.
Q POINT THAT OUT TO ME, PLEASE.
A I DON'T KNOW WHERE IT'S AT.
Q THIS IS THE STORE, THAT'S CABIN CREEK ROAD AND THIS IS MINERVAVILLE.
A THIS GOING UP BUT WHICH ONE IS GOING DOWN.
Q THIS WAY IS THE STORE SO YOU'D BE LOOKING ACROSS CABIN CREEK ROAD THERE. CABIN CREEK WOULD GO DOWN OUT THIS WAY TO LOWER RICHLAND BOULEVARD. HAVE YOU GOT YOUR BEARINGS YET?
A I BELIEVE IT'S THIS WAY IF I'M NOT MISTAKEN.
Q YOU BELIEVE IT'S THIS WAY?
A WHICH EITHER SIDE IT WAS. I KNOW IT'S --
Q DOWN CABIN CREEK?
A YES, SIR. IT WAS ON THE RIGHT SIDE.

Q YOU SAID IN YOUR STATEMENT THOUGH YOU RAN OUT THE BACK DOOR AND RAN DOWN MINERVAVILLE. THAT'S NOT TRUE?
A NO, SIR.
Q YOU RAN DOWN CABIN CREEK TO GILWOOD? OR DO YOU KNOW?
A YES, SIR.
Q THAT'S WHERE YOU THINK YOU WENT?
A THAT'S THE FIRST TIME, THE SUNDAY BEFORE THE KILLING, THAT'S WHAT HAPPENED.
Q NO, I'M ASKING YOU ABOUT THE SUNDAY OF THE KILLING. I'LL GET BACK TO THE FIRST SUNDAY IN A MINUTE. BUT THE DAY THAT YOU KILLED MR. BROOKS, WHERE DID YOU RUN TO?
A I RAN DOWN TO GILWOOD WHERE THE DIRT ROAD WAS.
Q AND HOW FAR WAS GILWOOD FROM THE STORE?
A NOT THAT FAR.
Q CAN YOU SEE THE STORE FROM GILWOOD?
A IF YOU TO THE TOP OF THE ROAD YOU CAN.
Q TOP OF WHAT ROAD?
A TOP OF THE DIRT ROAD.
Q TOP OF WHAT?
A TOP OF THE DIRT ROAD YOU CAN SEE.
Q IF YOU'RE AT THE TOP HERE, YOU CAN SEE THE STORE?
A YES, SIR.
Q WHERE WAS JERMAINE WHEN YOU SAY YOU HEARD THE BEEPS?

A ON THE ROAD.
Q ON WHAT ROAD?
A ON CLARK -- ON CABIN CREEK GOING TOWARDS THE DIRT ROAD.
Q YOU SAW HIM WHEN HE BLEW?
A I CAN'T REMEMBER IF I DID OR NOT.
Q WELL, HOW DID YOU KNOW IF IT WAS JERMAINE BLOWING IF YOU DIDN'T SEE HIM?
A I KNOW THE SOUND OF THE HORN.
Q OH, YOU KNOW THE SOUND OF THE HORN. OKAY. SO, JERMAINE BLEW THE HORN WHEN HE WAS ON CABIN CREEK GOING AWAY FROM JOE'S STORE?
A YES, SIR.
Q AND THAT WAS THE SIGNAL TO YOU TO GO IN?
A YES, SIR.
Q BUT YOU DIDN'T. YOU WAITED?
A YES, SIR.
Q AND YOUR TESTIMONY WAS THAT YOU WAITED BECAUSE THERE WERE CARS PULLING UP?
A YES, SIR.
Q SO, THEN JERMAINE DIDN'T WARN YOU, DID HE? YOU'RE SAYING HE BLEW THE HORN TO GIVE YOU THE GREEN LIGHT BUT THEN THERE WERE CARS?
A HE STILL BLEW THE HORN.
Q BUT THAT DIDN'T HELP YOU AT ALL, DID IT?

A NO, SIR.
Q AND THERE WAS NOTHING THAT JERMAINE COULD HAVE DONE FROM THAT LOCATION TO HELP YOU WITH THE ROBBERY?
A NO, SIR.
Q AND YOU HAVEN'T TESTIFIED SO BUT THIS WAITING FIFTEEN MINUTES, TEN OR FIFTEEN MINUTES, WAS YOUR IDEA. NOBODY TOLD YOU TO DO THAT?
A NO, SIR.
Q AND NOBODY MADE YOU TRY TO ESCAPE FROM JAIL?
A NO, SIR.
Q NOBODY TOLD YOU OR MADE YOU HIT THE CORRECTIONAL OFFICER?

MR. McMAHON: OBJECTION. THAT'S NOT ADMISSIBLE. THAT'S ONLY ADMISSIBLE AS IT GOES TO CREDIBILITY, NOT THE FACTS OF THE UNDERLYING CASE. THAT IS A SEPARATE OFFENSE.

THE COURT: WELL, LET ME SEE Y'ALL JUST A MINUTE.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: I SUSTAIN THE OBJECTION.

Q (BY MR. ROGERS) TELL ME AGAIN, I FORGOT FROM THIS MORNING, WHAT YOU SAY YOU HAD ON WHEN YOU WENT IN THE

STORE.
A I HAD ON JERMAINE JACKET --
Q YOU NEED TO SPEAK UP.
A I HAD ON JERMAINE JACKET, A BLACK HOOD AND SOME BLACK WINDSWEATS, WINDBREAKER PANTS WITH A TORE IN THE SIDE.
Q WINDBREAKER PANTS, NOT JEANS?
A YES, SIR. I HAD JEANS UP UNDER IT.
Q COULD THEY BE SEEN?
A NO, SIR.
Q SO, IF SOMEBODY SAID THEY SAW YOU IN JEANS --
MR. McMAHON: OBJECTION. HE CAN'T PIT THE WITNESSES. I OBJECT.
THE COURT: SUSTAINED.
MR. ROGERS: I WITHDRAW THAT.
Q (BY MR. ROGERS) SO, YOU HAD ON WINDBREAKER PANTS?
A YES, SIR.
Q AND YOU CLAIM THAT YOU BURNED THE CLOTHES ON THE WAY TO THE COUSIN'S HOUSE OR AS YOU WERE RETURNING FROM THE COUSIN'S HOUSE?
A ON THE WAY TO THE COUSIN HOUSE.
Q ON THE WAY. ALL RIGHT. YOU KILLED MR. BROOKS ALL ON YOUR OWN, DIDN'T YOU? YOU SHOT HIM, RIGHT?
A YES, SIR.
Q WHEN YOUR PLAN WAS TO ROB HIM?

A YES, SIR.
Q AND YOU MADE NO ATTEMPT TO ROB HIM BEFORE YOU SHOT HIM? I MEAN YOU DIDN'T GO IN AND SAY, HEY, THIS IS A ROBBERY GIVE ME ALL YOUR MONEY. ~~YOU WENT~~ IN ~~FIRING?~~
A NO.
Q YOU FIRED ALMOST IMMEDIATELY WHEN YOU -- YOU DIDN'T ASK MR. BROOKS FOR ANY MONEY? YOU DIDN'T GIVE HIM A CHANCE TO GIVE YOU MONEY SO YOU WOULDN'T HAVE TO SHOOT HIM, DID YOU? YOU WENT IN THE STORE AND FIRED THREE TIMES POINT BLANK?
A YES, SIR.
Q AND THAT WAS ALL ON YOUR OWN?
A (NO VERBAL RESPONSE)

MR. ROGERS: MAY WE APPROACH, YOUR HONOR.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'VE GOT ONE MATTER I'LL NEED TO ADDRESS OUTSIDE OF YOUR PRESENCE. I'M GOING TO ASK YOU TO PLEASE GO TO YOUR JURY ROOM. DON'T DISCUSS THE CASE. WE'LL BRING YOU BACK SHORTLY.

(JURY LEAVES THE JURY BOX AT 3:12 P.M.)

MR. McMAHON: CAN I ASK HIM A COUPLE OF QUESTIONS ABOUT HIS JUVENILE RECORD?

MR. ROGERS: WE CAN'T QUITE FIGURE IT OUT.

REDIRECT EXAMINATION BY

MR. McMAHON:

Q MR. LEMON, WERE YOU CHARGED AS A JUVENILE WITH BURGLARY THIRD? BURGLARY THIRD DEGREE?

A I WAS CHARGE WITH IT BUT I DIDN'T GET GUILTY OF IT.

Q I'M SORRY. SAY THAT AGAIN.

A I WAS CHARGED WITH IT BUT I WASN'T FOUND GUILTY OF IT.

Q YOU WEREN'T FOUND GUILTY OF IT. PETTY LARCENY, WERE YOU FOUND GUILTY OF THAT?

A YES, SIR.

MR. McMAHON: JUDGE, IF I CAN GET THE FAMILY COURT ASSISTANT, I DON'T KNOW HOW TO READ THIS.

THE COURT: ALL RIGHT. WE'LL TAKE ABOUT FIVE MINUTES. Y'ALL LOOK IT OVER.

MR. McMAHON: WE'LL GET IT CLEARED UP. THANK YOU.

(RECESS)

THE COURT: (AT CONCLUSION OF RECESS) ALL RIGHT. ANY OTHER MATTERS THAT NEED TO BE ADDRESSED BEFORE WE BRING THE JURY IN?

MR. McMAHON: NO, SIR. I BELIEVE WE'VE

STIPULATED ON THE RECORD.

MR. ROGERS: YES.

THE COURT: BRING THE JURY IN, PLEASE.

(JURY RETURNS TO THE JURY BOX AT 3:36 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: ALL RIGHT, MR. ROGERS.

MR. ROGERS: THANK YOU, YOUR HONOR. I WOULD LIKE TO PUBLISH A STIPULATION.

THE COURT: ALL RIGHT.

MR. ROGERS: THE STATE AND THE DEFENDANT HAVE STIPULATED THAT MR. DAYON LEMON'S PRIOR CRIMINAL JUVENILE HISTORY CONSISTS OF AN ADJUDICATION FOR BURGLARY THIRD AND PETTY LARCENY.

CROSS EXAMINATION CONTINUED BY

MR. ROGERS:

Q YOUR TESTIMONY WAS THAT THE FIRST TIME YOU SAY THERE WAS ANY TALK ABOUT COMMITTING THIS ROBBERY WAS WHEN ALL OF YOU -- YOU, JERMAINE AND TREY -- LEFT THE GAS STATION THE SUNDAY BEFORE. THAT WAS THE FIRST TIME THAT IT WAS TALKED ABOUT PLANNING THIS ROBBERY, IS THAT CORRECT? WAS THAT YOUR TESTIMONY?

A YES, SIR.

Q AND IT WAS NOT AT TASHAN'S HOUSE?

A NO, SIR.

MR. ROGERS: THANK YOU. THAT'S ALL.

MR. McMAHON: MAY IT PLEASE THE COURT.

THE COURT: SOLICITOR.

REDIRECT EXAMINATION BY

MR. McMAHON:

Q MR. LEMON, YOU HAVE YOUR STATEMENTS UP THERE?

A YES, SIR.

Q THOSE ARE COPIES OF YOUR STATEMENTS THAT MR. ROGERS ASKED YOU ABOUT?

A YES, SIR.

Q HOW MANY OF THEM DO YOU HAVE UP THERE?

A SECOND STATEMENT AND FIRST STATEMENT.

Q AND THE FIRST STATEMENT, WHAT DATE WAS THAT GIVEN, MR. LEMON?

A DECEMBER 11TH.

Q OF 1996?

A YES, SIR.

Q AND THE SECOND STATEMENT, WHAT DATE WAS THAT GIVEN?

A MARCH 20TH, 1997.

Q AND THAT'S THE DATE YOU WERE ARRESTED? MARCH 20TH OF 1997, CORRECT?

A YES, SIR.

Q SO, YOU'VE GIVEN TWO WRITTEN STATEMENTS?

A YES, SIR.

Q AND MR. ROGERS ASKED YOU ABOUT BOTH OF THOSE WRITTEN STATEMENTS?

A YES, SIR.
Q NOW, THE FIRST TIME THE POLICE TALKED WITH YOU WAS WHEN YOU GAVE THAT FIRST WRITTEN STATEMENT?
A YES, SIR.
Q NOW, I WANT YOU TO LOOK AT THAT FIRST WRITTEN STATEMENT. DO YOU HAVE IT UP THERE?
A I DON'T HAVE THE WHOLE THING BUT -- YEAH, I GOT IT. YES, SIR.
Q DECEMBER 11TH OF '96?
A YES, SIR.
Q AND MR. ROGERS HANDED YOU HIS COPY OF IT UP THERE, CORRECT?
A YES, SIR.
Q WHO DID YOU SAY YOU WERE WITH THE FIRST TIME THE POLICE TALKED TO YOU DECEMBER 11TH OF '96? WHO DID YOU SAY YOU WERE WITH ON OCTOBER 27TH OF '96?
A JERMAINE, TREY.
Q SO, THE FIRST DAY YOU MENTIONED TREY'S NAME IS THE FIRST DAY THE POLICE TALKED TO YOU?
A YES, SIR.
Q IS THAT CORRECT? NOW, WHERE DID THE CONVERSATION TAKE PLACE AT?
A ON THAT DIRT ROAD. I FORGOT THE NAME OF IT.
Q IN THE AREA WHERE YOU WERE LIVING?
A YES, SIR.

Q ON A ROAD OFF OF MINERVAVILLE?
A YES, SIR.
Q YOU WERE LIVING WITH YOUR GRANDMOTHER, IS THAT -- WERE YOU LIVING WITH YOUR GRANDMOTHER AT THAT TIME?
A YES, SIR.
Q NOW, ON THAT DECEMBER 11TH, '96, STATEMENT YOU KNOW THEY ARE TALKING TO YOU ABOUT THE SUNDAY THAT JOE BROOKS GOT SHOT?
A YES, SIR.
Q AND THAT'S ON YOUR STATEMENT, CORRECT?
A YES, SIR.
Q AND YOU TELL THEM THAT MORNING WHAT HAPPENED, CORRECT?
A YES, SIR.
Q WHAT HAPPENED FIRST THAT MORNING THAT YOU RECALL?
A WE DIDN'T DO IT.
Q WHAT DID YOU TELL THE POLICE IN YOUR STATEMENT? WHAT DID YOU TELL THEM?
A YOU WANT ME TO READ THIS?
Q YES, SIR.
A ON THE SUNDAY JOE BROOKS --
Q I WANT YOU TO READ IT WHERE EVERYBODY ON THE JURY AN HEAR IT.
Q ON THE SUNDAY THAT JOE BROOKS GOT SHOT THAT MORNING I LOOKED OUT THE WINDOW OF MY HOUSE AND I SAW TREY

AND VALDIS COMING FROM THE CUT.

MR. ROGERS: YOUR HONOR, I'M GOING TO OBJECT AS THIS BEING IMPROPER REDIRECT. I ASKED HIM ABOUT LIMITED PORTIONS OF THE STATEMENT AND I DON'T THINK IT'S PROPER FOR THE SOLICITOR TO NOW PUT IN HIS ENTIRE STATEMENT.

THE COURT: I OVERRULE YOUR OBJECTION. GO AHEAD.

Q (BY MR. McMAHON) THIS IS THE STATEMENT HE ASKED YOU ABOUT?

A YES, SIR.

Q THE FIRST STATEMENT HE ASKED YOU ABOUT?

A YES, SIR.

Q AND THE FIRST PART YOU SAY ON THE SUNDAY THAT JOE BROOKS GOT SHOT THAT MORNING I LOOKED OUT OF THE WINDOW OF MY HOUSE AND I SAW WHO?

A TREY AND VALDIS.

Q COMING FROM THE CUT. NOW, THAT'S ON THE SECOND LINE, TREY'S NAME, CORRECT?

A YES, SIR.

Q SO, THE FIRST TIME YOU TOLD THE POLICE ABOUT BEING WITH TREY WAS THE FIRST TIME THE POLICE TALKED WITH YOU, CORRECT?

A YES, SIR.

Q YOU DIDN'T TELL THEM WHAT YOU HAD DONE?

A NO, SIR.
Q I MEAN LIKE MR. ROGERS SAID, YOU LIED TO THE POLICE ON DECEMBER 11TH OF '96 AS FAR AS COMMITTING THE CRIME, CORRECT?
A YES, SIR.
Q BUT WHO YOU WERE WITH THAT DAY?
A TREY AND JERMAINE.
Q AND DID YOU TELL THE POLICE THAT?
A YES, SIR.
Q NOW, AFTER YOU SAW TREY AND JERMAINE -- EXCUSE ME. AFTER YOU SAW TREY AND VALDIS THAT MORNING, WHERE DID YOU TELL THE POLICE YOU WENT?
A UP THE STREET.
Q UP WHAT STREET?
A MINERVAVILLE.
Q AND WHO WERE YOU GOING UP THE STREET WITH?
A TREY AND JERMAINE -- BEFORE WE GOT IN THE CAR IT WAS ME AND TREY AND VALDIS.
Q IT WAS YOU, TREY AND VALDIS?
A YES, SIR.
Q AND THEN WHO DID YOU RUN INTO?
A JERMAINE.
Q AND DID YOU TELL THE POLICE THAT?
A YES, SIR.
Q DID YOU TELL THE POLICE THAT THE FIRST TIME YOU

TALKED WITH THEM?
A YES, SIR.
Q NOW, DID Y'ALL GET IN THE CAR WITH JERMAINE?
A YES, SIR.
Q AND DID Y'ALL GO TO SCOOTER BAIT'S HOUSE THAT DAY?
A I TOLD 'EM WE WENT TO SCOOTER BAIT HOUSE BUT WE WENT TO SLANK'S HOUSE FIRST.
Q YOU WENT TO SLANK'S HOUSE FIRST?
A YES, SIR.
Q AND THEN YOU WENT TO SCOOTER BAIT'S?
A YES, SIR.
Q DID YOU ALSO TELL THE POLICE THAT THERE WAS A TIME VALDIS WAS NOT WITH Y'ALL THAT DAY?
A YES, SIR.
Q AND IS THAT IN YOUR STATEMENT?
A YES, SIR.
Q DID YOU TELL THE POLICE THE FIRST TIME YOU TALKED TO THEM ABOUT GOING TO TREY'S COUSIN'S HOUSE?
A YES, SIR.
Q DID YOU TELL THEM WHERE THAT HOUSE WAS?
A YES, SIR.
Q WHERE DID YOU TELL THEM IT WAS?
A GADSDEN.
Q DID YOU TELL THEM WHETHER OR NOT TREY'S COUSIN WAS HOME?

A YES, SIR.
Q WHAT DID YOU TELL THEM?
A HIS COUSIN WASN'T HOME SO WE TALKED TO HIS SISTER.
Q HIS COUSIN WAS OR WASN'T HOME?
A WASN'T.
Q AND AFTER YOU LEFT THE COUSIN'S HOUSE, DID YOU TELL THE POLICE WHAT YOU DID?
A YES, SIR.
Q WHO DID YOU SAY YOU WENT AND PICKED UP THEN?
A VALDIS.
Q AND IS THAT WHAT YOU TOLD THE POLICE THE FIRST TIME YOU TALKED TO THEM ON DECEMBER 11TH OF '96?
A YES, SIR.
Q DID YOU TELL THE POLICE ON DECEMBER 11TH OF '96 ABOUT GOING AND GETTING SOME MARIJUANA?
A YES, SIR.
Q DID YOU TELL THEM ABOUT GOING TO JAVORIS LEWIS' HOUSE?
A YES, SIR.
Q YOU DIDN'T TELL THE POLICE ABOUT YOUR INVOLVEMENT IN THE ROBBERY AND HOMICIDE THE FIRST TIME YOU TALKED TO THE POLICE, CORRECT?
A YES, SIR.
Q AND YOU DIDN'T TELL THEM ABOUT JERMAINE'S INVOLVEMENT IN THE ROBBERY AND HOMICIDE THE FIRST TIME YOU TALKED

TO THE POLICE?
A NO, SIR.
Q AND YOU DIDN'T TELL THEM ABOUT TREY'S INVOLVEMENT IN THE ROBBERY AND HOMICIDE --
MR. ROGERS: YOUR HONOR, I JUST OBJECT TO THE FORM OF THE QUESTION.
MR. McMAHON: I'LL REPHRASE IT.
THE COURT: REPHRASE IT.
Q (BY MR. McMAHON) DID YOU OR DID YOU NOT TELL THE POLICE THE FIRST TIME YOU TALKED WITH THEM ON DECEMBER 11TH, '96 ABOUT TREY'S INVOLVEMENT, IF ANY, IN THE ROBBERY AND HOMICIDE?
A NO, SIR.
Q NOW, MR. LEMON, THE SECOND TIME YOU TALKED TO THE POLICE, WHAT DATE WAS THAT?
A I THINK MARCH 3RD OF '97.
Q MARCH WHAT?
A MARCH THE 20TH.
Q AND WHAT ARE YOU LOOKING AT WHEN YOU GET THAT DATE? WHAT WERE YOU JUST LOOKING AT?
A INTERROGATION, ADVICE OF RIGHTS.
Q AND THAT'S -- THE INTERROGATION, ADVICE OF RIGHTS IS DATED MARCH 20TH OF '97?
A YES, SIR.
Q IS THAT THE SECOND TIME YOU TALKED TO THE POLICE?

A YES, SIR.
Q IS THAT THE SECOND STATEMENT YOU GAVE?
A YES, SIR.
Q AND IS THAT THE SECOND STATEMENT MR. ROGERS ASKED YOU ABOUT?
A YES, SIR.
Q WELL, LET ME ASK YOU SOMETHING. YOU HAVE THE STATEMENT IN FRONT OF YOU?
A YES, SIR.
Q IS THAT AN ENLARGEMENT OF THE ADVICE OF RIGHTS?
A YES, SIR.
Q AND ARE THESE ENLARGEMENTS OF EACH AND EVERY PAGE OF THAT STATEMENT?
A YES, SIR.
Q DID YOU SIGN EACH AND EVERY PAGE OF THAT STATEMENT?
A YES, SIR.
Q WHO TOOK THIS STATEMENT FROM YOU?
A OFFICER GARDNER AND THE OTHER INVESTIGATOR RIGHT THERE.
Q SERGEANT GARDNER AND SERGEANT HARRIS? THIS GENTLEMAN, THE OTHER INVESTIGATOR, THIS GENTLEMAN HERE?
A YES, SIR.

MR. McMAHON: YOUR HONOR, I WOULD LIKE TO USE THESE FOR DEMONSTRATIVE PURPOSES WITH THE JURY DURING

THE COURSE OF MY RE-DIRECT.

THE COURT: ALL RIGHT, SIR.

Q (BY MR. McMAHON) NOW, I WANT TO GO TO THE INTERROGATION OF RIGHTS. DID THEY TELL YOU YOUR RIGHTS?

A YES, SIR.

Q AND THAT'S THE STATEMENT THAT MR. ROGERS ASKED YOU ABOUT, CORRECT?

A YES, SIR.

Q AND THIS IS THE DATE YOU'RE REFERRING TO. CAN YOU SEE THIS, MR. LEMON?

A YES, SIR.

Q 3-20-97?

A YES, SIR.

Q 1822 P.M.?

A YES, SIR.

Q AND WHO WERE THE OFFICERS? CAN YOU READ THOSE NAMES?

A THAT'S GARDNER AND HARRIS.

Q AND DID THEY ADVISE YOU OF EACH AND EVERY ONE OF YOUR RIGHTS?

A YES, SIR.

Q AND DID YOU SIGN THAT YOU WERE ADVISED OF YOUR RIGHTS?

A YES, SIR.

Q AND WAIVED THOSE RIGHTS?

A YES, SIR.
Q NOW, DID THEY MAKE SOME KIND OF DEAL WITH YOU THEN?
A NO, SIR.
Q DID THEY THREATEN YOU IN ANY WAY?
A NO, SIR.
Q WHEN IS THE FIRST TIME YOU EVER TALKED WITH ME?
A LAST WEEK.
Q LAST WEEK.

MR. ROGERS: YOUR HONOR, MAY WE APPROACH A MOMENT?

THE COURT: UH-HUH.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO PLEASE GO TO YOUR JURY ROOM. I'VE GOT A MATTER I NEED TO ADDRESS. I'LL BRING YOU BACK SHORTLY.

(JURY LEAVES THE JURY BOX AT 3:52 P.M.)

MR. McMAHON: MAY IT PLEASE THE COURT. I JUST DIDN'T WANT TO TALK TOO LOUD. YOUR HONOR, ON PAGE FIVE OF SIX OF THE HANDWRITTEN STATEMENT SIGNED BY MR. LEMON, I WAS GOING TO USE THIS FOR PURPOSES OF REFRESHING HIS MEMORY AND I DO THINK I AGREE WITH THE COURT AND MR. ROGERS, WE ARE TALKING ABOUT TWO

SEPARATE THINGS UNDER 106 AND THE RULE OF COMPLETENESS IN SOME ASPECTS OF MR. ROGERS' CROSS EXAMINATION. BUT AFTER THE HOMICIDE -- AND I'M ALSO RELYING ON RULE 607 BASICALLY ON WHO CAN IMPEACH NOW. AFTER THE HOMICIDE IF YOU TAKE THIS IN CONTEXT WHEN MR. LEMON GOT BACK IN THE VEHICLE WITH MR. JERMAINE McLEMORE AND MR. TREY GARNER, ACCORDING TO HIS TESTIMONY, QUOTE, "I GOT IN AND JERMAINE SAID DID YOU DO IT. I SAID YES. TREY HOLLERED OUT 'THUG LIFE.' TREY SAID YOU DID IT. I SAID YEAH, I DIDN'T GET THE MONEY BUT JOE BROOKS IS DEAD. I HAD ASSUMED HE WAS GOING TO DIE. TREY AND JERMAINE SAID THAT I EARNED MY OUTLAW." I INTENDED ON GOING INTO THAT ON VARIOUS THEORIES, NOT ONLY 106 BUT 607, BECAUSE OF THE FACT THAT I THINK IT'S RELEVANT. I THINK IT'S PART OF THE RES GESTAE OR 803(1) OR (2), WHATEVER THE LAW IS NOW. FURTHER, THE THUG LIFE, HE SAID TREY HOLLERED OUT THUG LIFE. ON THE NEXT PAGE AN OFFICER ASKED MR. LEMON WHAT DOES THUG LIFE TATOO STAND FOR AND WHAT DOES OUTLAW STAND FOR. THUG LIFE MEANS, QUOTE, "THE HATE YOU GIVE LITTLE INFANTS, FUCK EVERYBODY. AND IT MEANS THE HEART OF A MAN. TO GET IT YOU'VE GOT TO DO SOMETHING SERIOUS. I'M NOT SURE ABOUT THE OUTLAW, I JUST KNOW I EARNED IT WITH THIS." I THINK HIS QUOTE OF THUG LIFE GOES TO THE MALICE IN HIS HEART

AND HIS EXPLANATION AND THEN THE OUTLAW IS ALL A PART OF THE RES GESTAE. AND I'M SAYING THAT I COULD ALSO AT THIS POINT -- I REALIZE IT'S REDIRECT BUT UNDER THE RULES I WOULD BE ABLE TO IMPEACH HIM ALSO. I'M NOT GOING BACK DID TREY AUTHORIZE THIS BUT THAT THIS IS WHAT WAS SAID AND THIS IS WHAT IT MEANS.

THE COURT: WELL, OF COURSE, THE ISSUE OF IMPEACHMENT IS PASSED. YOU KNOW, YOU HAD HIM ON DIRECT AND YOU DIDN'T IMPEACH HIM. HE DIDN'T GO INTO IT ON CROSS SO THAT TIME HAS PASSED. NOW, DO WE HAVE ANOTHER ISSUE THAT YOU WANT TO ADDRESS WITH THE STATEMENT?

MR. McMAHON: YES, SIR. I WANT TO GO INTO THE OTHER AREAS. I THINK AS FAR AS THE JURY IS CONCERNED WHEN MR. ROGERS ASKED QUESTIONS SUCH AS THE FIRST TIME YOU MENTIONED THIS WAS SO AND SO AND SO AND SO, I THINK UNDER SOME U.S.V. MASTERS THEORY OR SOMETHING LIKE THAT THE JURY OUGHT TO HAVE THE RIGHT TO CONSIDER THE CASE IN THE CONTEXT OF THE ENTIRE STATEMENT SO THAT THE JURY CAN DECIDE BASED ON THE STATEMENT WHEN WAS THE FIRST TIME MR. LEMON MENTIONED THIS VERSUS THE FIRST TIME MR. ROGERS IN HIS ASKING QUESTIONS SAYS HE MENTIONS THAT.

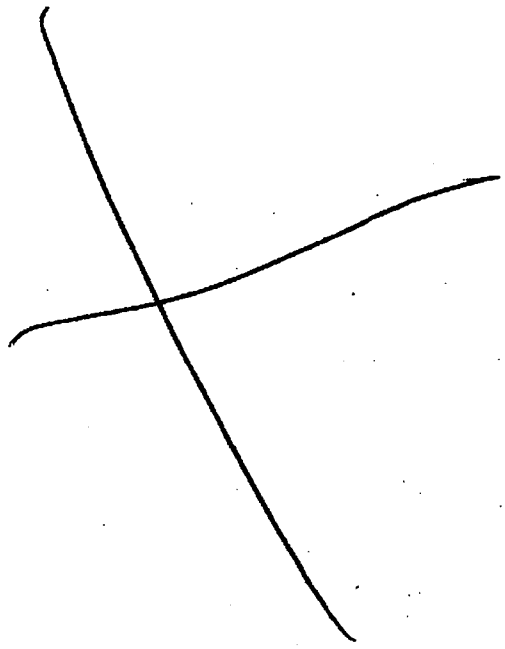
THE COURT: WELL, I DON'T DISAGREE WITH THAT AND IF YOU HAVE A STATEMENT -- I'M NOT SURE WHAT EXACTLY

YOU'RE REFERRING TO BUT IF MR. ROGERS IN A QUESTION SAID, WELL, YOU NEVER TOLD THE OFFICER THAT AND YOU'VE GOT A STATEMENT WHERE HE TOLD IT THEN I BELIEVE YOU'D HAVE A RIGHT TO REDIRECT HIM ON THAT ISSUE. BUT I DIDN'T UNDERSTAND THAT THAT WAS THE ISSUE THAT WE WERE ADDRESSING AT THE BENCH HERE.

MR. McMAHON: YES, SIR. MY POSITION IS I SHOULD BE ABLE TO GO INTO ALL OF THE STATEMENT FOR THE JURY TO DECIDE WHEN HE FIRST MADE COMMENTS ABOUT TREY OR TREY'S INVOLVEMENT, WHAT TREY DID OR DIDN'T DO, ON MARCH 20TH OF 1997.

THE COURT: WELL, WHAT I'M SAYING IS ALL OF THE STATEMENT WOULDN'T NECESSARILY GO TO SHOW THAT. IF YOU'VE GOT SOME PARTICULAR REFERENCE IN A STATEMENT WHERE HE DID MENTION TREY OR TREY'S PARTICIPATION AND MR. ROGERS THROUGH HIS EXAMINATION ELICITED INFORMATION HE HAD NOT TOLD HIM THAT THEN OBVIOUSLY YOU'VE GOT A RIGHT TO GO INTO THAT. BUT I MEAN THE WHOLE STATEMENT DOESN'T COME IN TO SHOW THAT HE MENTIONED TREY. THAT PORTION OF THE STATEMENT WHERE HE DID MENTION TREY OR HIS INVOLVEMENT WOULD COME IN TO ADDRESS THAT ISSUE OR TO SOLVE WHAT YOU PERCEIVE TO BE THE PROBLEM.

MR. McMAHON: I DON'T WANT TO VIOLATE HIS HONOR'S RULING. AS I UNDERSTAND IT I CANNOT GO INTO



STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
) INDICTMENT # 97-GS-40-21496,
) 97-GS-40-21497, 97-GS-40-21498
COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA,
VS.
TREY GARNER,
DEFENDANT.

TRANSCRIPT OF RECORD
VOL. II

TRIAL HELD BEFORE THE HONORABLE J. DERHAM COLE, PRESIDING JUDGE, 5TH JUDICIAL CIRCUIT, AND JURY, AT THE RICHLAND COUNTY JUDICIAL CENTER, COLUMBIA, SOUTH CAROLINA, ON MARCH 9-12, 1998.

APPEARANCES:

R. KNOX McMAHON, ESQUIRE
JOENATHAN CHAPLIN, ESQUIRE
SOLICITORS FOR THE STATE

JAMES P. ROGERS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

NANCY S. AHRENS, CVR
COURT REPORTER

THUG LIFE?

THE COURT: THAT'S CORRECT. WE'VE PASSED THAT. THAT ISSUE IS GONE. I RULED ON THAT EARLIER DURING DIRECT EXAMINATION AND, MR. ROGERS, YOU CORRECT ME IF I'M INCORRECT, BUT I DON'T BELIEVE MR. ROGERS WENT INTO THAT ON CROSS EXAMINATION. AND REDIRECT IS LIMITED TO THAT WHICH WAS BROUGHT OUT ON CROSS.

MR. McMAHON: SO, I COULDN'T EVEN IMPEACH HIM AT THIS POINT UNDER RULE 607?

THE COURT: NOT NOW.

MR. McMAHON: I CAN'T RECALL HIM. I MEAN I COULDN'T TURN AROUND AND RECALL HIM.

THE COURT: WELL, THAT WOULD DEFEAT THE WHOLE PURPOSE OF THE RULE. THE ISSUE ARISES WHEN YOU HAVE HIM ON DIRECT AND IT WAS NOT REQUESTED AT THAT POINT. THAT ISSUE IS PASSED. I THINK YOU ARE ATTACHING TOO MUCH SIGNIFICANCE TO THAT ANYWAY. THAT'S JUST MY OPINION BUT, YOU KNOW, THE ISSUE IS WHETHER OR NOT MR. GARNER WAS THERE. THE WITNESS HAS TESTIFIED TO THAT AND THEIR PRIOR ASSOCIATION AND PRIOR CONNECTION.

MR. McMAHON: YES, SIR. I HAD UNDERSTOOD I COULDN'T CALL HIS CREDIBILITY INTO ISSUE UNTIL HE WAS IMPEACHED. THAT'S WHY I WAS WAITING UNTIL THIS POINT TO GET INTO THE FACT OF MOVING UNDER 607 FOR THE

RIGHT TO IMPEACH HIM ON VARIOUS STATEMENTS THAT HE MAY HAVE MADE DURING THE COURSE OF HIS DIRECT EXAMINATION. HOWEVER, I DON'T WANT TO BELABOR THE POINT. I WON'T GO INTO THAT ISSUE.

THE COURT: ALL RIGHT. WELL, LET'S RESOLVE THE ISSUE OF ANY OTHER MATTERS YOU WANT TO GO INTO IN THE STATEMENT THAT RELATES TO WHAT HE TOLD THE OFFICERS, WHAT HE DIDN'T TELL THEM. AND THE ONLY REASON I SAY THAT IS SO THAT WE WON'T HAVE TO SEND THE JURY BACK OUT IF MR. ROGERS HAS AN OBJECTION.

MR. McMAHON: I DON'T THINK THERE'S ANY OTHER AREAS.

THE COURT: OKAY. ALL RIGHT. BRING THE JURY BACK, PLEASE.

(JURY RETURNS TO THE JURY BOX AT 3:59 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: ALL RIGHT. SOLICITOR.

MR. McMAHON: MAY IT PLEASE THE COURT.

THE COURT: YES, SIR.

REDIRECT EXAMINATION CONTINUED BY

MR. McMAHON:

Q NOW, MR. LEMON, THIS STATEMENT THAT MR. ROGERS BROUGHT UP HERE TO YOU, HOW MANY PAGES IS IT?

A SIX PAGES.

Q AND WHAT WERE YOU PROMISED BY THE POLICE BEFORE YOU

GAVE THAT STATEMENT?
A NOTHING.
Q HOW WERE YOU THREATENED BY THE POLICE BEFORE YOU GAVE THAT STATEMENT?
A I WASN'T THREATENED.
Q DID YOU TELL THE POLICE ON MARCH 20TH, '97, WHEN YOU GAVE THAT STATEMENT YOUR INVOLVEMENT?
A YES, SIR.
Q DID YOU TELL THEM JERMAINE'S INVOLVEMENT?
A YES, SIR.
Q DID YOU TELL THEM MR. TREY GARNER --

MR. ROGERS: OBJECTION, YOUR HONOR. HE IS LEADING.

THE COURT: DON'T LEAD HIM.

MR. McMAHON: YOUR HONOR, I DON'T QUITE UNDERSTAND WHY AT THAT POINT I COULDN'T GO INTO EXACTLY WHAT HE DID TELL THE POLICE IF THAT'S OBJECTIONABLE, THAT I COULD GO THEN INTO EACH AND EVERY LINE OF THE STATEMENT AND SAY IS THIS WHAT YOU TOLD THE POLICE.

THE COURT: WELL, YOU CAN SHOW -- I MEAN IF YOU WANT TO ASK HIM IF HE MADE A STATEMENT, YOU CAN ASK HIM THAT.

Q (BY MR. McMAHON) DID YOU MAKE A STATEMENT TO THE POLICE MARCH 20TH OF 1997?

A YES, SIR.
Q AND WITHOUT LEADING WHAT DID YOU TELL THE POLICE, MR. LEMON?
A MY CO-DEFENDANTS' INVOLVEMENT AND MINES, TOO.
Q DO WHAT NOW?
A ALL OF OUR INVOLVEMENTS IN THE CRIME.
Q CONSISTENT WITH WHAT YOU TESTIFIED TO TODAY?
A YES, SIR.
Q AND WHAT, IF ANYTHING, DID YOU TELL THE POLICE ABOUT OWING TREY GARNER ANY MONEY?
A THAT WAS -- THAT'S SOMETHING DIFFERENT. IT WASN'T PERTAINING TO THE CASE BUT -- IT WAS SOMETHING DIFFERENT.
Q DID YOU TELL THEM ON MARCH 20TH OF '97?
A YES, SIR.
Q NOW, WHEN YOU SAY IT'S SOMETHING DIFFERENT, LET ME REFER YOU TO PAGE FOUR OF THE STATEMENT THAT MR. ROGERS HANDED YOU. AND YOU'RE REFERRING TO THE WEEK BEFORE. MR. ROGERS ASKED YOU ABOUT THE WEEK BEFORE, CORRECT?
A YES, SIR.
Q DID YOU HAVE CONVERSATION, DID YOU OR DID YOU NOT HAVE CONVERSATIONS WITH MR. GARNER THE WEEK BEFORE ABOUT THE ROBBERY OF JOE BROOKS?
A YES, SIR.

Q DID YOU TELL THE POLICE THAT?
A YES, SIR.
Q SO, RIGHT HERE WHAT DID YOU TELL THE POLICE ABOUT THE WEEK BEFORE?
A READ THAT?
Q YES.
A THE WEEK BEFORE TREY CAME TO ME AND JERMAINE AND TOLD US ABOUT IT AND SAID LET'S HIT JOE BROOKS OFF.
Q AND WHAT, IF ANYTHING, DID YOU TELL THE POLICE ABOUT ANY MONEY FROM THERE TO THERE?
A I HAD MESSED UP SOME MONEY FROM TREY.
Q I HAD MESSED UP SOME MONEY FROM TREY. WERE YOU REFERRING TO DRUG MONEY?
A YES, SIR.
Q AND ON PAGE FIVE OF THE STATEMENT THAT MR. ROGERS ASKED YOU ABOUT AFTER YOU WENT IN, WHAT WERE YOU LOOKING FOR AFTER YOU SHOT HIM?
A A BLACK BAG THAT WAS SUPPOSED TO HAVE THE MONEY IN IT.
Q AND WHAT DID YOU TELL THE POLICE ABOUT THE BLACK BAG?
A TREY HAD TOLD ME ABOUT THE BLACK BAG. I DIDN'T FIND IT AND I JUST WANTED TO GET OUT OF THERE.
Q WAS MR. McLEMORE AND MR. GARNER BOTH IN MR. McLEMORE'S AUTOMOBILE WHEN YOU RAN THERE AFTER THE ATTEMPTED ROBBERY AND HOMICIDE OF MR. BROOKS?

A YES, SIR.
Q WAS THAT OR WAS THAT NOT PART OF THE PLAN?
A YES, SIR.
Q AND WHEN I SAY THE PLAN, WHOSE PLAN?
A MR. GARNER'S.
Q WHO ALL WAS PART OF THAT PLAN, MR. LEMON?
A ALL OF US.
Q ALL OF US. WHO DOES THAT INCLUDE?
A THE FIVE RIGHT THERE.
Q AND WHO FIRST COME UP WITH THE PLAN?
A TREY.
Q I'M NOT ASKING YOU WHAT IT WAS BUT DID YOU HAVE A CONVERSATION, YOU AND JERMAINE McLEMORE AND TREY GARNER, ABOUT WHAT HAD OCCURRED AFTER YOU GOT BACK INTO MR. McLEMORE'S CAR?
A YES, SIR.
Q NOW, WAS MR. GARNER PART OF THAT CONVERSATION?
A YES, SIR.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

MR. ROGERS: BRIEFLY.

RECROSS EXAMINATION BY

MR. ROGERS:

Q BASICALLY, WHAT WE HAVE IS THE FIRST STATEMENT YOU TOLD SOME TRUTHS AND SOME UNTRUTHS. THE SECOND

STATEMENT YOU CLAIM YOU TOLD SOME TRUTHS AND SOME UNTRUTHS, ISN'T THAT TRUE?

A YES, SIR.

Q RIGHT. AND HAD YOU TOLD THE POLICE OFFICERS ABOUT SOME DRUG DEAL YOU WEREN'T CHARGED WITH DRUGS, BEING INVOLVED IN DRUGS?

THE COURT: YOU NEED TO ANSWER OUT LOUD.

A OH. NO, SIR.

MR. McMAHON: YOUR HONOR, I WOULD MOVE BOTH STATEMENTS INTO EVIDENCE AT THIS POINT WITH THE CHARACTERIZATION THAT YOU TOLD THE POLICE ON DECEMBER 11TH SOME TRUTHS AND UNTRUTHS AND TOLD THEM DIFFERENT ON MARCH 20TH OF 1997 SO THAT THE JURY CAN CLEARLY KNOW WHAT WAS TOLD ON DECEMBER 11TH OF '96 AND WHAT WAS TOLD MARCH 20TH OF '97.

THE COURT: WELL, I KIND OF THOUGHT THAT'S WHAT THE EXAMINATION OF THIS WITNESS WAS ABOUT. IS THERE ANY OBJECTION TO IT?

MR. ROGERS: YES, SIR.

THE COURT: OKAY. I SUSTAIN THE OBJECTION.

MR. McMAHON: MAY I MARK THOSE STATEMENTS, YOUR HONOR, AS COURT'S EXHIBITS?

THE COURT: SURE. ANY OTHER QUESTIONS FOR THIS WITNESS?

MR. McMAHON: NO, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: IF I COULD MARK THESE AS STATE'S FOR IDENTIFICATION.

THE COURT: I THOUGHT THEY WERE COURT'S EXHIBITS.

MR. McMAHON: YES, SIR, THAT'S FINE.

(STATEMENTS ARE MARKED AS COURT'S EXHIBITS #1 AND #2)

MR. CHAPLIN: THE STATE CALLS GAUMAL BURKE.

GAUMAL BURKE, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A GAUMAL BURKE.

DIRECT EXAMINATION BY

MR. CHAPLIN:

Q HOW ARE YOU DOING, MR. BURKE?

A ALL RIGHT.

Q WHERE DO YOU LIVE? WHERE IS YOUR RESIDENCE RIGHT NOW, MR. BURKE?

A [redacted] GRETCHEN ROAD.

Q HOW LONG HAVE YOU LIVED THERE?

A ABOUT TWO MONTHS.

Q WHERE DID YOU LIVE PRIOR TO LIVING THERE?

A [redacted] MASONRY CIRCLE.
Q MASONRY CIRCLE. THAT'S LOCATED WHERE?
A HOPKINS, SOUTH CAROLINA.
Q HOW FAR IS THAT FROM MR. JOE BROOKS' STORE?
A ABOUT FIVE MINUTES. TWO OR THREE MINUTES.
Q CAN YOU SEE MR. BROOKS' STORE FROM WHERE YOU USED TO STAY?
A YEAH.
Q MR. BURKE, I'M GOING TO SHOW YOU A DIAGRAM. THIS IS STATE'S EXHIBIT TWO. DO YOU RECOGNIZE WHAT THIS IS A DIAGRAM OF?
A YEAH.
Q WHAT IS IT?
A THE STORE.
Q YOU CAN USE THIS POINTER FROM WHERE YOU ARE SITTING. NOW, BY THE USE OF THIS DIAGRAM, WHERE WOULD YOUR HOUSE BE LOCATED BY LOOKING AT THIS? WHERE WOULD YOUR HOUSE BE LOCATED? YOU MAY OR MAY NOT SEE IT ACTUALLY ON THIS DIAGRAM BUT IN CORRELATION TO THAT.
A OKAY. ON THAT SIDE.
Q UP HERE?
A UH-HUH.
Q YOU HOUSE WOULD BE LOCATED RIGHT IN HERE?
A YEAH.
Q SO, FROM WHERE THE HOUSE IS LOCATED YOU COULD SEE THE

STORE?
A UH-HUH.
Q I'M GOING TO TAKE YOU TO 10-27 OF '96, THE DAY -- THE JOE BROOKS KILLING. WHAT WERE YOU DOING THAT DAY?
A WELL, ME AND MY BROTHER WERE SITTING ON THE PORCH AND I HEARD A BACK DOOR FLEW OPEN AT THE STORE.
Q WHEN YOU SAY THE BACK DOOR FLEW OPEN, YOU MEAN YOUR HOUSE BACK DOOR?
A NO, THE STORE BACK DOOR.
Q SO, THE STORE BACK DOOR. YOU HEARD IT FLY OPEN?
A YES, SIR.
Q THEN WHAT OCCURRED?
A AFTER THAT I HEARD SOME AMBULANCE OVER TO THE STORE, COME OVER TO THE STORE. ME AND MY BROTHER WALKED OVER TO THE STORE AND THE OFFICERS ASKED US, YOU KNOW, HAD WE SEEN ANYBODY AT THE STORE BETWEEN FIVE AND TEN MINUTES.
Q NOT TO CUT YOU OFF, YOU SAY YOUR BROTHER?
A ME AND MY BROTHER WALKED TO THE STORE.
Q WHAT'S YOUR BROTHER'S NAME?
A JAVORIS LEWIS.
Q SO, AFTER YOU HEAR THE DOOR SLAM OPEN, YOU AND YOUR BROTHER WALKED OVER TO THE STORE?
A YEAH. FIRST, WE HEARD THE, YOU KNOW, AMBULANCE SIREN. THEN WE WALKED TO THE STORE.

Q THEN WHAT HAPPENED?
A THEN WE WENT TO THE STORE AND THE OFFICER ASKED US HAVE WE SEEN ANYBODY LEFT THE STORE LAST ABOUT FIVE OR TEN MINUTES. AND I SAID, NO, I AIN'T SEEN NOBODY. I WAS ABOUT TO WALK IN AND HE SAY, NO, YOU CAN'T GO IN THE STORE. AND THEN WE WALKED BACK HOME. WE WAS WALKING ON CABIN CREEK. OUR ROAD IS [redacted], I STAY ON [redacted] MASONRY CIRCLE. WE GOT TO ABOUT WHERE MY HOUSE AT AND WE SEEN A CAR COME UP THE ROAD.
Q NOT TO CUT YOU OFF, YOU ARE LEAVING THE STORE. YOU COULDN'T GO IN THE STORE BECAUSE THEY SAID SOMETHING HAD OCCURRED AT THE STORE?
A NO, HE JUST SAY, YOU KNOW, COULDN'T GO IN STORE. YOU KNOW, WE JUST WALKED BACK HOME.
Q BUT OBVIOUSLY SOMETHING HAD HAPPENED?
A YEAH.
Q SO, THEN COMING BACK FROM THE STORE, COMING BACK TO YOUR RESIDENCE AT THAT TIME YOU SAW WHAT?
A I SAW A CAR COME UP THE ROAD.
Q WHAT KIND OF CAR?
A IT WAS A NOVA, GOLDISH NOVA.
Q WHO WAS DRIVING THIS NOVA?
A JERMAINE McLEMORE.
Q WHO ELSE WAS WITH JERMAINE WHEN YOU SAW THAT CAR?
A JERMAINE, TREY GARNER, DAYON AND VALDIS.

Q AND THEN WHAT OCCURRED AFTER THAT, AFTER YOU SAW THEM? WHERE WERE THEY GOING?
A THEY WAS HEADING LIKE GOING TOWARDS, YOU KNOW, OUT. I DON'T KNOW WHERE THEY WAS GOING BUT HE WAS COMING PAST OUR HOUSE AND HE STOPPED.
Q SO, HE STOPPED AT YOUR HOUSE?
A UH-HUH.
Q THEN EVERYBODY GOT OUT OF THE CAR?
A YES, EVERYBODY GOT OUT THE CAR AND WE WAS JUST TALKING, YOU KNOW.
Q HOW LONG DID Y'ALL TALK AND DID EVERYONE STAY THERE?
A YEAH, WE TALKED ABOUT FIVE MINUTES AND THEN JERMAINE AND DAYON LEFT.
Q WHO IS WITH YOU NOW?
A JUST TREY AND VALDIS.
Q THEN WHAT DID YOU DO OR WHAT DID Y'ALL DO?
A WE TALKED AND WE WALKED OVER TO THE STORE. YOU KNOW, WE WAS STANDING OUT THERE, YOU KNOW, JUST LOOKING TO SEE WHAT WAS GOING ON. IT WAS A LOT OF PEOPLE OUT THERE THEN. AND THEN AFTER THAT WE STAY OVER THERE ABOUT FIVE OR TEN MINUTES THEN WE LEFT AND CAME BACK AND GO DOWN MASONRY ROAD.
Q SO, WHEN YOU SEE TREY, JERMAINE, DAYON AND VALDIS AT THAT TIME WHEN THEY STOPPED AT YOUR HOUSE, DO THEY KNOW THAT ANYTHING OCCURRED AT THAT TIME OR DO YOU

KNOW THAT THEY KNOW?
A NO. THEY WAS ACTING NORMAL.
Q SO, THEN TREY ALONG WITH VALDIS, AM I CORRECT?
A UH-HUH.
Q GO WITH YOU OVER TO THE STORE?
A YEAH, ME AND MY BROTHER WENT TO THE STORE.
Q DID ANY CONVERSATION TRANSPIRE BETWEEN THE FOUR OF Y'ALL THEN ABOUT WHAT'S TAKING PLACE OVER THERE AT THE STORE?
A NO.
Q ALL FOUR OF Y'ALL STAY AT THE SCENE FOR --
A YEAH, ABOUT FIVE OR TEN MINUTES AND THEN WE, YOU KNOW, LEFT.
Q AND CAME BACK OVER TO THE HOUSE?
A UH-HUH.

MR. CHAPLIN: I HAVE NO FURTHER QUESTIONS.

MR. ROGERS: JUST A COUPLE OF QUESTIONS, MR. BURKE.

CROSS EXAMINATION BY

MR. ROGERS:

Q YOU HAD THE IMPRESSION WHEN THE FOUR CAME TO YOUR HOUSE THAT EVENING THAT THAT WAS THE FIRST TIME THEY WERE LEARNING ABOUT THE SHOOTING, DIDN'T YOU?
A I DIDN'T KNOW WHAT THEY CAME TO THE HOUSE FOR.
Q BUT I MEAN YOU TOLD THEM MR. BROOKS GOT SHOT, DIDN'T

YOU?
A YEAH.
Q AND BASED ON THAT CONVERSATION WITH TREY AND HIS BROTHER, DIDN'T YOU THINK THAT WAS THE FIRST TIME THEY KNEW ABOUT THE SHOOTING?
A YEAH, I ASSUME.
Q AND THEN JERMAINE AND DAYON LEFT?
A UH-HUH.
Q IN JERMAINE'S CAR?
A YES.
Q AND THEN VALDIS, TREY'S BROTHER, AND YOU AND TREY WALKED TO THE STORE?
A NO, JUST ME, TREY AND MY BROTHER AND VALDIS WALKED TO THE STORE.
Q OH, YOUR BROTHER ALSO WENT. SO THE FOUR OF YOU WALKED UP TO THE STORE?
A UH-HUH.
Q BUT JERMAINE AND DAYON DIDN'T?
A NO.
Q YOU DIDN'T HEAR ANY SHOTS?
A NO.

MR. ROGERS: THANK YOU.

MR. McMAHON: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: THE STATE WOULD CALL SERGEANT ED GARDNER AND I BELIEVE THERE IS A MATTER OF LAW.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'VE GOT ONE MATTER OF LAW I NEED TO ADDRESS OUTSIDE OF YOUR PRESENCE SO PLEASE GO TO YOUR JURY ROOM. I'LL BRING YOU BACK SHORTLY.

(JURY LEAVES THE JURY BOX AT 4:14 P.M.)

THE COURT: ALL RIGHT. MR. ROGERS, LET ME SEE YOU AND MR. McMAHON JUST A MINUTE.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

(RECESS)

THE COURT: (AT CONCLUSION OF RECESS) BRING THE JURY IN. MR. ROGERS, HAVE YOU HAD TIME TO TALK TO YOUR CLIENT ABOUT HIS RIGHT TO HAVE A HEARING ON THE ISSUE OF VOLUNTARINESS?

MR. ROGERS: YES, YOUR HONOR, I HAVE. I TOOK A LITTLE MORE TIME THAN I DID EARLIER THIS MORNING. I THINK HE UNDERSTANDS THAT WE ARE NOT CHALLENGING THE VOLUNTARINESS OF THE STATEMENT.

THE COURT: OKAY. MR. GARNER, YOU'VE HEARD WHAT YOUR LAWYER SAID. AS I INDICATED TO YOU EARLIER, YOU HAVE A RIGHT TO HAVE A HEARING ON THE ISSUE OF THE

VOLUNTARINESS OF A STATEMENT AND IF YOU WISH TO CONTEST IT, THAT IS, IF IT'S YOUR POSITION THAT THE STATEMENT, IF YOU GAVE ONE, WAS NOT VOLUNTARILY MADE, YOU HAVING AN UNDERSTANDING OF YOUR CONSTITUTIONAL RIGHTS AND IT BEING INTELLIGENTLY GIVEN, THEN I CAN EXCLUDE THE STATEMENT. IT COULD NOT BE USED AGAINST YOU AND THE JURY WOULD NOT CONSIDER IT. AND EVEN IF I WERE TO ADMIT IT, IF YOU CONTEST IT, THE JURY COULD STILL DECIDE THE ISSUE AS TO WHETHER OR NOT IT WAS VOLUNTARY AND THEY WOULD BE TOLD THAT IF THEY FIND IT WAS NOT VOLUNTARY THEY ARE NOT TO CONSIDER IT IN ANY WAY.

AT THAT HEARING, OF COURSE, THE STATE WOULD HAVE TO GO FORWARD AND PUT UP SUFFICIENT EVIDENCE TO SATISFY THE COURT THAT IT WAS A VOLUNTARY STATEMENT AND YOU COULD TESTIFY OR NOT TESTIFY AT THAT HEARING. THAT WOULD BE SIMPLY UP TO YOU; HOWEVER, IF YOU WISH TO TESTIFY YOU COULD. AND I WOULD HAVE TO DECIDE WHETHER OR NOT THE STATEMENT WAS VOLUNTARY BASED UPON THE TOTALITY OF THE CIRCUMSTANCES RELATING TO ITS TAKING. AND THAT WOULD INCLUDE YOUR CONDITION OF SOBRIETY. THAT WOULD INCLUDE YOUR EDUCATION. THAT WOULD INCLUDE YOUR MENTAL CAPABILITIES. THAT WOULD INCLUDE THE CIRCUMSTANCES SURROUNDING THE INTERROGATION ITSELF, THAT IS, WHERE IT OCCURRED, HOW

IT OCCURRED, UNDER WHAT CIRCUMSTANCES IT OCCURRED, WHETHER YOU WERE DENIED ANY NECESSITIES OR WHETHER YOU WERE PROMISED ANYTHING, WHETHER YOU WERE THREATENED OR COERCED IN ANY WAY. ALL OF THOSE FACTORS ARE TO BE CONSIDERED IN THE COURT MAKING A DETERMINATION AS TO WHETHER OR NOT THE STATEMENT IS VOLUNTARY. AND IT'S UP TO YOU TO LET ME KNOW WHETHER OR NOT YOU WISH FOR ME TO HAVE A HEARING IN THAT MATTER. AS I'VE SAID YOU DON'T HAVE TO TESTIFY EVEN IF YOU HAVE THAT HEARING. THE STATE WOULD STILL HAVE THE BURDEN OF ESTABLISHING THE VOLUNTARINESS OF ANY STATEMENT THAT YOU MIGHT HAVE MADE. HAVE YOU HAD PLENTY OF TIME TO TALK WITH YOUR LAWYER ABOUT YOUR DECISION AS TO WHETHER OR NOT YOU WISH TO CONTEST THE VOLUNTARINESS OF THE STATEMENT?

DEFENDANT GARNER: YES, SIR.

THE COURT: AND DO YOU NEED MORE TIME TO TALK WITH HIM ABOUT IT?

DEFENDANT GARNER: NO, SIR.

THE COURT: AND DO YOU WISH TO CONTEST THE VOLUNTARINESS OF ANY STATEMENT MADE?

DEFENDANT GARNER: YES, SIR.

THE COURT: YOU WISH TO HAVE THE HEARING ON IT?

DEFENDANT GARNER: OH, NO, SIR.

THE COURT: YOU DON'T WISH TO HAVE A HEARING?

DEFENDANT GARNER: NO, SIR.

THE COURT: DO YOU ADMIT AND DO YOU AGREE THAT ANY STATEMENT YOU GAVE TO LAW ENFORCEMENT WAS FREELY AND VOLUNTARILY MADE?

DEFENDANT GARNER: YES, SIR.

THE COURT: YOU WERE ADVISED AS TO YOUR CONSTITUTIONAL RIGHTS?

DEFENDANT GARNER: YES, SIR.

THE COURT: YOU KNOWINGLY AND INTELLIGENTLY GAVE THOSE RIGHTS UP IN ORDER TO MAKE THE STATEMENT?

DEFENDANT GARNER: YES, SIR.

THE COURT: YOU WERE NOT UNDER THE INFLUENCE OF ANY SUBSTANCE --

DEFENDANT GARNER: OH, NO, SIR.

THE COURT: SIR?

DEFENDANT GARNER: NO, SIR.

THE COURT: AND YOU DID GIVE UP YOUR CONSTITUTIONAL RIGHTS VOLUNTARILY?

DEFENDANT GARNER: YES, SIR.

THE COURT: INTELLIGENTLY?

DEFENDANT GARNER: YES, SIR.

THE COURT: KNOWINGLY?

DEFENDANT GARNER: YES, SIR.

THE COURT: YOU WERE NOT PROMISED ANYTHING?

DEFENDANT GARNER: NO, SIR.

THE COURT: YOU WERE NOT THREATENED IN ANY WAY?

DEFENDANT GARNER: NO, SIR.

THE COURT: AND YOU AGREE THE STATEMENT WAS VOLUNTARY?

DEFENDANT GARNER: YES, SIR.

THE COURT: MR. ROGERS, ARE YOU SATISFIED THAT THE STATEMENT GIVEN BY YOUR CLIENT TO LAW ENFORCEMENT WAS FREELY AND VOLUNTARILY MADE BY YOUR CLIENT?

MR. ROGERS: YES, YOUR HONOR, I AM.

THE COURT: DO YOU AGREE THAT IT WAS KNOWINGLY AND INTELLIGENTLY GIVEN?

MR. ROGERS: YES, YOUR HONOR.

THE COURT: HE DID UNDERSTAND HIS CONSTITUTIONAL RIGHTS?

MR. ROGERS: YES, YOUR HONOR.

THE COURT: HE VOLUNTARILY WAIVED THOSE RIGHTS?

MR. ROGERS: YES, SIR.

THE COURT: ALL RIGHT. ANYTHING FURTHER BEFORE THE JURY IS BROUGHT IN?

MR. McMAHON: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: OKAY. BRING THE JURY IN, PLEASE.

(JURY RETURNS TO THE JURY BOX AT 4:39 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: THANK YOU, SIR. MR. McMAHON.

MR. McMAHON: MAY IT PLEASE THE COURT. THE STATE CALLS SERGEANT GARDNER TO THE STAND.

EDWARD GARDNER, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A SERGEANT EDWARD GARDNER.

DIRECT EXAMINATION BY

MR. McMAHON:

Q SIR, BY WHOM ARE YOU EMPLOYED?

A THE RICHLAND COUNTY SHERIFF'S OFFICE.

Q AND HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S OFFICE?

A BEEN WITH THE SHERIFF'S OFFICE ABOUT FIVE YEARS NOW, BEEN IN LAW ENFORCEMENT FOR TEN YEARS.

Q WHAT IS YOUR CURRENT POSITION WITH THE SHERIFF'S DEPARTMENT?

A CURRENTLY I'M A SERGEANT OVER INVESTIGATIONS.

Q AND WHAT VARIOUS POSITIONS HAVE YOU HELD IN YOUR FIVE YEARS WITH THE SHERIFF'S DEPARTMENT, SERGEANT GARDNER?

A BEGAN AS A ROAD DEPUTY. THEN I WAS PROMOTED TO AN INVESTIGATOR AND THEN I WAS PROMOTED TO AN ARMED ROBBERY/HOMICIDE INVESTIGATOR.

Q AS PART OF YOUR DUTIES AND RESPONSIBILITIES, WERE YOU ASSIGNED TO THE FOLLOW-UP INVESTIGATION OF THE

HOMICIDE OF JOE BROOKS?
A YES, SIR, I WAS.
Q AND WHEN WERE YOU FIRST ASSIGNED TO THIS PARTICULAR CASE?
A ON OCTOBER 28TH, 1996, THE DAY AFTER THE --
Q AND -- EXCUSE ME, I DIDN'T MEAN TO INTERRUPT YOU.
A THE DAY AFTER THE MURDER OF JOE BROOKS.
Q AND DID YOU REMAIN INVOLVED IN THE FOLLOW-UP INVESTIGATION ON VARIOUS DATES UP TO AND INCLUDING MARCH THE 20TH OF 1997?
A YES, SIR, I DID.
Q DID YOU HAVE AN OPPORTUNITY IN THE LATTER PART OF OCTOBER OF 1996 TO ATTEMPT TO LOCATE THE DEFENDANT, TREY GARNER?
A YES, SIR, I DID.
Q DID YOU HAVE CERTAIN ADDRESSES WITHIN THE HOPKINS COMMUNITY THAT YOU ATTEMPTED TO LOCATE HIM AT?
A YES, SIR.
Q WERE YOU ABLE TO LOCATE MR. GARNER DURING OCTOBER OF -- I MAY HAVE SAID SEVEN.

MR. ROGERS: YOUR HONOR, MAY WE APPROACH?

THE COURT: YES.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE

COURT REPORTER.)

Q (BY MR. McMAHON) SERGEANT GARDNER, DID YOU ATTEMPT TO LOCATE THE DEFENDANT AT THE END OF OCTOBER OF 1996?

A YES, SIR, I DID.

Q AND WHEN I'M TALKING ABOUT THE END OF OCTOBER, OBVIOUSLY YOU ARE NOT ASSIGNED UNTIL OCTOBER 28TH OF '96?

A YES, SIR.

Q SO, WHEN WAS THE FIRST TIME YOU ATTEMPTED TO LOCATE MR. GARNER?

A ON OCTOBER 28TH, 1996.

Q AND WERE YOU ULTIMATELY ABLE TO LOCATE HIM MARCH THE 20TH OF 1997?

A I WAS FIRST ABLE TO SPEAK WITH HIM ON MARCH 20TH, 1997, YES, SIR.

Q NOW, SPECIFICALLY DECEMBER 11TH OF 1996, DID YOU HAVE THE OPPORTUNITY TO TALK TO CERTAIN OTHER INDIVIDUALS IN REGARDS TO THIS PARTICULAR CASE?

A YES, SIR.

Q AMONG THOSE, DID YOU INTERVIEW ALONG WITH SERGEANT HARRIS JERMAINE McLEMORE?

A I BELIEVE IN DECEMBER I WAS WITH INVESTIGATOR SHELLS.

Q I APOLOGIZE. THAT'S DECEMBER THE 11TH OF '96?

A YES, SIR.

Q DID YOU INTERVIEW JERMAINE McLEMORE?
A YES, SIR, I BELIEVE I DID.
Q AND DID YOU ALSO HAVE THE OPPORTUNITY TO INTERVIEW DAYON LEMON?
A YES, SIR.
Q I WANT TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS COURT'S EXHIBIT NUMBER ONE. JUST TELL US WHAT THAT IS, PLEASE, SIR.
A THIS IS A WITNESS STATEMENT THAT WAS TAKEN FROM DAYON NIXON ON DECEMBER 11TH, 1996, AT ELEVEN FORTY-TWO IN THE MORNING.
Q DAYON NIXON. IS THAT THE SAME INDIVIDUAL AS DAYON LEMON?
A YES, SIR.
Q AND WHAT DATE AND TIME WAS THAT STATEMENT TAKEN?
A DECEMBER 11TH, 1996, AT ELEVEN FORTY-TWO IN THE MORNING.
Q AND WHO WAS THAT STATEMENT TAKEN BY?
A IT WAS WRITTEN BY INVESTIGATOR ANSON SHELLS AND I WAS A WITNESS TO IT.

MR. McMAHON: YOUR HONOR, I WOULD JUST ASK THIS BE MARKED AS STATE'S IDENTIFICATION.

THE COURT: OKAY.

(STATEMENT IS MARKED RECEIVED AS STATE'S EXHIBIT #22 FOR IDENTIFICATION PURPOSES ONLY)

Q (BY MR. McMAHON) NOW, THAT SAME DAY THAT YOU AND SERGEANT SHELLS TOOK COURT'S EXHIBIT NUMBER ONE AND STATE'S FOR I.D. TWENTY-TWO, DID YOU INTERVIEW ANY OTHER INDIVIDUALS IN REGARDS TO THAT CASE?

A YES, SIR, WE DID.

Q AND WHO WERE THOSE OTHER INDIVIDUALS?

A WE TOOK STATEMENTS FROM A JAVORIS LEWIS AND WE ALSO TOOK A STATEMENT FROM JERMAINE McLEMORE.

Q NOW, SIR, GOING FORWARD TO MARCH OF 1997, HAD THERE BEEN A CHANGE IN THE ASSIGNMENT OF THE OFFICERS ON THIS PARTICULAR CASE?

A YES, SIR, THERE WAS.

Q AND WOULD YOU EXPLAIN THAT TO THE JURY, PLEASE?

A INVESTIGATOR SHELLS WAS PROMOTED TO THE SERGEANT OVER THE WARRANT DIVISION AT WHICH POINT HIS RESPONSIBILITIES WERE CHANGED AND INVESTIGATOR HARRIS WAS ASSIGNED TO THE CASE TO WORK ALONG BESIDE MYSELF.

Q SO, YOU -- PREVIOUSLY YOU HAD BEEN WORKING WITH NOW SERGEANT SHELLS. ON UP IN MARCH OF '97 YOU WERE WORKING WITH INVESTIGATOR, DETECTIVE HARRIS?

A YES, SIR.

Q AS PART OF Y'ALL'S DUTIES AND RESPONSIBILITIES, DID YOU LOCATE THE DEFENDANT ON MARCH 20TH OF 1997?

A YES, SIR. MYSELF AND INVESTIGATOR HARRIS LOCATED HIM.

Q AND WHAT, IF ANYTHING, DID YOU INITIALLY ADVISE THE DEFENDANT OF?

A WE ADVISED MR. TREY GARNER OF HIS ADVICE OF RIGHTS, MIRANDA WARNING, OFF OF A RICHLAND COUNTY ADVICE OF RIGHTS FORM.

Q AND THEREAFTER DID YOU TAKE A STATEMENT FROM MR. GARNER?

A YES, SIR. TOOK A WRITTEN STATEMENT FROM MR. GARNER WHICH I WROTE AND MR. GARNER WENT AHEAD AND SIGNED.

Q NOW, I WANT TO SHOW YOU A DOCUMENT AND ASK IF YOU CAN IDENTIFY IT FOR US, PLEASE.

A THE FIRST PAGE IS THE RICHLAND COUNTY SHERIFF'S DEPARTMENT INTERROGATION, ADVICE OF RIGHTS FORM WHICH I USED ON MARCH 20TH, 1997, AT TEN "O" FIVE IN THE MORNING WHEN I FIRST MET MR. GARNER. THE FOLLOWING PAGES ARE THE THREE PAGES OF A WRITTEN STATEMENT THAT I TOOK FROM MR. TREY GARNER ON THAT DAY.

MR. McMAHON: YOUR HONOR, I WOULD OFFER THIS ADVICE OF RIGHTS AND STATEMENT INTO EVIDENCE AT THIS TIME.

MR. ROGERS: NO OBJECTION.

THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

(ADVICE OF RIGHTS AND STATEMENT ARE RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #23)

Q (BY MR. McMAHON) NOW, SERGEANT GARDNER, I WANT TO

SHOW YOU SOME OTHER DOCUMENTS AND ASK IS THIS AN ENLARGEMENT OF PAGE ONE OF STATE'S TWENTY-THREE?

A YES, SIR, IT IS.

Q AND AS I GO THROUGH, IS THIS PAGE ONE, PAGE TWO AND PAGE THREE OF THE STATEMENT THAT TREY GARNER GAVE YOU AND DETECTIVE HARRIS ON MARCH 20TH OF 1997?

A YES, SIR, IT IS.

MR. McMAHON: YOUR HONOR, I WOULD ALSO OFFER THESE.

MR. ROGERS: FOR DEMONSTRATIVE PURPOSES?

MR. McMAHON: I'D OFFER THEM INTO EVIDENCE.

THE COURT: THIS IS BLOWUPS OF THE SAME STATEMENT?

MR. McMAHON: YES, SIR, ENLARGEMENTS OF THE STATEMENT.

THE COURT: WELL, YOU CAN USE THEM FOR DEMONSTRATIVE PURPOSES BUT THE STATEMENT IS ALREADY IN EVIDENCE.

MR. McMAHON: DO YOU WANT ME TO HAVE THESE MARKED?

THE COURT: YOU CAN MARK THEM AS COURT'S EXHIBITS.

(BLOWUPS OF #23 ARE MARKED AS COURT'S EXHIBITS #3, #4, #5 AND #6)

Q (BY MR. McMAHON) NOW, SERGEANT, I BELIEVE YOU HAVE

STATE'S TWENTY-THREE IN FRONT OF YOU AND I BELIEVE YOU CAN KEEP YOUR SEAT. REFERRING TO WHAT HAS BEEN MARKED AS A COURT'S EXHIBIT, CAN YOU SEE WHAT I'M REFERRING TO?

A YES, SIR, I CAN.

Q JUST VERY BRIEFLY WHAT IS THIS DOCUMENT, WHAT DOES IT REPRESENT?

A THAT'S A RICHLAND COUNTY SHERIFF'S DEPARTMENT ADVICE OF RIGHTS FORM THAT REPRESENTS THE MIRANDA RIGHTS THAT WE READ TO MR. GARNER ON THAT MORNING.

Q AND I BELIEVE MR. GARNER THROUGH MR. ROGERS HAS STIPULATED YOU ADVISED MR. GARNER OF EACH AND EVERY ONE OF THESE RIGHTS AS THEY APPEAR ON THIS FORM?

A YES. THAT'S WHY THE CHECK MARK IS AFTER THEM.

Q AND DID HE SIGN HIS NAME INDICATING THAT HE WAS ADVISED OF HIS RIGHTS?

A YES, SIR, HE DID.

Q AND THAT HE UNDERSTOOD HIS RIGHTS?

A YES, SIR.

Q AND THEREAFTER DID HE WAIVE HIS RIGHTS?

A YES, SIR, HE DID.

Q AND DID HE INDICATE ON THIS FORM BY SIGNATURE THAT HE WAIVED HIS RIGHTS?

A YES, SIR.

Q AND DID HE AGREE TO TALK WITH Y'ALL?

A YES, SIR.
Q Y'ALL BEING YOURSELF AND DETECTIVE --
A HARRIS, YES, SIR.
Q -- HARRIS. NOW, THERE'S SOME WRITING HERE IN THE LOWER SIDE -- THIS SIDE. WHAT IS THIS WRITING?
A ONCE I READ A SUSPECT HIS ADVICE OF RIGHTS, AS A GENERAL RULE I ATTEMPT TO ASK HIM WHAT GRADE OF EDUCATION HE'S REACHED, WHETHER OR NOT HE'S INGESTED ANY ALCOHOL OR DRUGS OR IF HE'S UNDER THE INFLUENCE OF ANY ALCOHOL OR DRUGS AT THE TIME I'M TALKING TO HIM AND IF THE SUBJECT CAN READ AND WRITE BECAUSE I'M GOING TO GIVE HIM THE FORM TO READ AND SIGN.
Q THESE WOULD HAVE BEEN RESPONSES BY THE DEFENDANT?
A YES, SIR.
Q AND WHAT GRADE DID HE TELL YOU HE COMPLETED?
A HE SAID HE COMPLETED THE ELEVENTH GRADE.
Q AND WHAT, IF ANYTHING, DID HE SAY ABOUT BEING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?
A HE SAID HE WAS NOT UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.
Q AND YOU'RE TALKING ABOUT THE DAY YOU TOOK THE STATEMENT?
A THAT'S JUST WHEN I'M TALKING TO HIM, YES, SIR.
Q AND WHAT, IF ANYTHING, DID HE SAY ABOUT WHETHER OR NOT HE COULD READ OR WRITE?

A HE STATED HE COULD READ AND WRITE, YES, SIR.
Q NOW, SIR, GOING TO THE SECOND PAGE OF STATE'S EXHIBIT NUMBER TWENTY-THREE OF WHAT I NOW PUBLISH BEFORE THE JURY OR SHOW THE JURY, IS THAT THE FIRST PAGE OF THE STATEMENT?
A YES, SIR, IT IS.
Q AND WHOSE WRITING IS THIS UP AT THE TOP?
A THAT'S MY WRITING, SIR.
Q AGAIN, IT SAYS I, BLANK, TREY GARNER WRITTEN IN, AND IT GOES THROUGH AGAIN A RECITATION OF THE RIGHTS?
A YES, SIR.
Q WHAT, IF ANYTHING, DID MR. GARNER TELL YOU, SERGEANT, IN THE BODY OF THE FIRST PAGE OF THIS STATEMENT?
A EVERYTHING ON THE FIRST PAGE OF THE STATEMENT IS WHAT MR. GARNER TOLD ME.
Q AND WOULD YOU READ THAT FOR US, PLEASE?
A IT STATES I DON'T KNOW THE TIME JOE GOT KILLED. I DO KNOW THAT ME, JERMAINE McLEMORE AND DAYON NIXON WERE RIDING IN JERMAINE'S CAR.
Q LET ME STOP YOU THERE. THE JOE THAT YOU'RE REFERRING TO IS WHO?
A JOE BROOKS, SIR.
Q PRIOR TO QUESTIONING MR. GARNER, HAD YOU INDICATED TO HIM WHAT YOU WERE TALKING WITH HIM ABOUT?
A YES, SIR.

Q AND WHAT DID YOU TELL HIM?
A WE TOLD HIM THAT WE HAD BEEN TOLD THAT HE WAS WITH HIS FRIENDS THE DAY THAT JOE BROOKS GOT KILLED BUT WE NEEDED TO GET A STATEMENT FROM HIM ABOUT THAT.
Q AND WHO DID HE TELL YOU HE WAS WITH?
A HE SAID JERMAINE McLEMORE AND DAYON NIXON. I SPELLED DAYON INCORRECTLY. I DID NOT KNOW HOW HE SPELLED IT AT THE TIME.
Q AND HOW DID HE SAY THEY WERE TRAVELING?
A RIDING IN JERMAINE'S CAR.
Q AND WHAT DID HE TELL YOU NEXT?
A I DON'T KNOW THE EXACT TIME. WE WENT TO MY COUSIN, CHARLES LLOYD'S, HOUSE IN GADSDEN OFF OF 48.
Q NOW, 48, WHAT ROAD IS THAT KNOWN AS?
A BLUFF ROAD, SIR.
Q DOES THAT RUN TO GADSDEN?
A YES, SIR, IT DOES.
Q NOW, WHAT DID HE TELL YOU NEXT?
A HE WASN'T THERE BUT HIS SISTER, CAN'T REMEMBER HER NAME, SHE WAS THERE. WE TALKED TO HER. I TALKED TO HER FOR A COUPLE OF MINUTES AND WE LEFT. WE WENT TO MY HOUSE AND PICKED UP MY BROTHER, VALDIS --
Q NOW, LET ME STOP YOU HERE. UP TO THIS POINT, THE FIRST ONE, TWO, THREE, FOUR, FIVE, SIX LINES IT'S REFERENCES TO "WE."

A YES, SIR.
Q WHO IS THE "WE" THAT HE IS REFERRING TO, SERGEANT GARDNER?
A JERMAINE McLEMORE, DAYON NIXON AND TREY GARNER.
Q GO AHEAD, SIR. ON THE NEXT LINE?
A WE WENT TO MY HOUSE AND PICKED UP MY BROTHER, VALDIS, AND THEN WE WENT TO JAVORIS LEWIS' HOUSE BEHIND JOE BROOKS' STORE. JAVORIS, JONATHAN FLEMING AND GAUMAL, JAVORIS' BROTHER, WERE ALL IN THE YARD. THEY SAID FIVE "O' WAS AT JOE BROOKS' STORE.
Q ALL RIGHT. LET ME STOP YOU THERE. THEY SAID FIVE "O." WHAT DOES FIVE "O" REFER TO?
A IN MY EXPERIENCE FIVE "O" IS STREET LANGUAGE FOR THE POLICE. IT COMES FROM HAWAII FIVE "O."
Q THEY SAID FIVE "O" WAS AND NOW GOING TO YOUR NEXT PAGE OF STATE'S EXHIBIT NUMBER TWENTY-THREE, WOULD THAT BE COURT'S EXHIBIT NUMBER FIVE?
A YES, SIR. AT JOE BROOKS' STORE.
Q SO, THEY ARE SAYING THAT FIVE "O," THE POLICE, WAS AT JOE BROOKS' STORE?
A YES, SIR.
Q AND WHO DOES HE SAY HE'S WITH WHEN HE GOES TO JAVORIS LEWIS' AND GAUMAL'S HOUSE?
A HE SAYS HE'S WITH JERMAINE McLEMORE, DAYON NIXON AND HIS BROTHER, VALDIS.

Q JERMAINE McLEMORE, DAYON NIXON AND HIS BROTHER, VALDIS?
A YES, SIR.
Q AND ON COURT'S EXHIBIT NUMBER FOUR, THE PRECEDING PAGE, DID HE SAY HE PICKED UP VALDIS AFTER HE LEFT CHARLES LLOYD'S, HIS COUSIN'S, HOUSE?
A YES, HE DOES.
Q NOW, WHAT DOES HE NEXT SAY?
A THEY SAID FIVE "O" WAS AT JOE BROOKS' STORE. WE WALKED UP THERE AND THEY HAD IT TAPED UP. PEOPLE SAYING ALL KINDS OF --
Q GO RIGHT AHEAD. THIS IS THE LANGUAGE THAT HE USED?
A THIS IS THE LANGUAGE THAT HE USED.
Q AND THIS IS THE LANGUAGE YOU WROTE DOWN?
A YES, SIR.
Q ALL RIGHT, SIR. WE WALKED UP THERE AND THEY HAD IT TAPED. PEOPLE SAYING ALL KIND OF SHIT. ALL RIGHT. WHAT IS THE NEXT THING?
A SAYING JOE GOT SHOT.
Q GO AHEAD, SIR.
A WE WENT BACK TO JAVORIS' HOUSE AND THE NEXT DOOR NEIGHBOR, AN OLDER WOMAN, SHE SAID JOE BROOKS DONE DIED FROM BEING SHOT. WE ALREADY HAD SOME WEED SO ME, JERMAINE, DAYON AND VALDIS WENT TO HORRELL SCHOOL TO SHOOT SOME BALL AND THAT WAS IT.

Q NOW, DID YOU THEREAFTER, YOU OR DETECTIVE HARRIS, ASK MR. GARNER ANY QUESTIONS?
A I ASKED A SERIES OF QUESTIONS WHICH I NOTED ON HERE WITH A "Q" AND THEN I FOLLOW UP WITH THE QUESTION.
Q ON THE ORIGINAL, THIS BEING AN ENLARGEMENT OF THE ORIGINAL, DID IT KIND OF CUT THE "Q" AND THE "A" OFF ON THIS RIGHT SIDE?
A YES, SIR, IT DID.
Q WHAT WAS THE FIRST QUESTION YOU ASKED THE DEFENDANT?
A QUESTION: WHAT KIND OF CAR DOES JERMAINE HAVE?
Q AND HIS RESPONSE?
A ANSWER: GOLD NOVA, AN OLD ASS SHIT.
Q WHAT WAS THE NEXT QUESTION YOU ASKED THE DEFENDANT?
A QUESTION: DO YOU KNOW IF IT WAS LIGHT OR DARK WHEN YOU LEFT JAVORIS LEWIS' HOUSE? ANSWER: IT WAS -- HOLD ON. IT WAS NIGHTTIME.
Q THE NEXT QUESTION?
A QUESTION: HOW ABOUT WHEN YOU WENT TO CHARLES' HOUSE, WAS IT LIGHT OR DARK?
Q RESPONSE?
A ANSWER: IT WAS -- I DON'T KNOW. IT WAS A WHILE BACK.
Q NEXT QUESTION?
A QUESTION: BEFORE YOU WENT TO CHARLES' HOUSE, WHAT DID YOU DO THAT DAY? ANSWER --

Q NOW, CHARLES' HOUSE, YOU'RE REFERRING TO HIS COUSIN'S HOUSE OFF OF 48?
A YES, SIR.
Q AND YOU'RE ASKING HIM ABOUT THE PERIOD OF TIME BEFORE THEY WENT TO CHARLES' HOUSE?
A YES, SIR.
Q AND WHAT WAS HIS RESPONSE TO THAT?
A I DON'T KNOW WHAT TIME IT WAS BUT ME AND MY BROTHER WERE WALKING ON THE ROAD AND JERMAINE WAS COMING DOWN THE ROAD.
Q NOW, LET ME STOP YOU THERE. HIM AND HIS BROTHER WERE WALKING DOWN THE ROAD. HIS BROTHER IS WHO?
A THE ONLY BROTHER HE'S REFERRED TO IN THE STATEMENT TO THIS POINT WAS VALDIS.
Q AND WHO DID HE SAY WAS COMING DOWN THE ROAD?
A JERMAINE.
Q AND THEN WHAT HAPPENED? WHAT DID HE SAY?
A I'M NOT SURE HOW IT ALL WORKED OUT BUT AROUND TWO OR THREE ALL OF US WERE AT SLINK'S HOUSE AND THEN WE ALL WENT TO SCOOTER BAIT'S HOUSE.
Q NOW, SLINK'S HOUSE OR SLANK'S HOUSE, ARE YOU SURE WHICH PRONUNCIATION IT IS?
A NO, SIR, I'M NOT.
Q AND THE SLINK -- IS THAT YOUR SPELLING?
A YES, SIR.

Q DO YOU KNOW WHERE SLANK'S HOUSE IS AT?
A AT THIS TIME I DON'T. I COULDN'T SAY FOR SURE.
Q BUT WHO ALL DOES HE SAY ARE AT SLINKS'S OR SLANK'S HOUSE?
A WELL, HE REFERS TO ALL OF US WERE AT SLANK'S HOUSE.
Q AND THEN FROM SLANK'S HOUSE WHERE DID HE SAY ALL OF THEM WENT?
A THEN WE ALL WENT TO SCOOTER BAIT'S HOUSE.
Q AND WHAT, IF ANYTHING, DID HE SAY VALDIS DID THEN?
A HE SAYS THAT VALDIS WENT HOME.
Q NOW, YOU SAID YOU TOOK THAT STATEMENT DECEMBER 11TH OF '96 FROM DAYON LEMON. I BELIEVE STATE'S IDENTIFICATION TWENTY-TWO?
A I WAS PRESENT WHEN IT WAS TAKEN, YES, SIR.
Q AND YOU ALSO TOOK A STATEMENT FROM MR. LEMON ON THIS SAME DATE, MARCH 20TH OF '97?
A YES, SIR.
Q IS ALL THIS CONSISTENT?
A YES, SIR.
Q TO THIS POINT?
A YES, SIR. TO THE BEST OF MY RECOLLECTION IT'S CONSISTENT, YES, SIR.
Q NOW, AFTER THIS STATEMENT, STATE'S TWENTY-THREE, VALDIS WENT HOME. THERE'S THEN A REFERRAL TO THE THREE OF US. WHO IS THAT A REFERENCE TO?

A MY UNDERSTANDING THAT'S A REFERENCE TO JERMAINE, DAYON AND THE DEFENDANT, TREY GARNER.
Q THE THREE OF US WENT WHERE?
A THE THREE OF US DROVE TO JOE BROOKS' TO GET SOME GAS.
Q AND WHOSE CAR WERE THEY IN?
A AT THAT TIME IT WAS JERMAINE'S CAR. JERMAINE'S NOVA.
Q AND WHAT DATE IS THIS REFERRING TO?
A THIS IS REFERRING TO THE DAY THAT JOE BROOKS WAS KILLED.
Q AND WHAT IS THE NEXT THING HE SAYS?
A I DON'T KNOW HOW MUCH WE GOT. A COUPLE OF DOLLARS. ENOUGH TO GO TO GADSDEN AND BACK.
Q NOW, GOING TO THE NEXT PAGE OF MR. GARNER'S STATEMENT, COURT'S EXHIBIT NUMBER SIX. DO YOU SEE THAT, THAT'S AN ENLARGEMENT?
A YES, SIR. THE QUESTION AND ANSWER GOT CUT OFF AGAIN.
Q WHAT WAS THE NEXT QUESTION YOU ASKED HIM, SERGEANT GARDNER?
A WHO PAID FOR THE GAS, WHO PUMPED IT.
Q AND WHAT DID THE DEFENDANT TELL YOU? WHAT WAS HIS RESPONSE?
A I PAID FOR IT, JERMAINE PUMPED IT.
Q SO, WHO DID HE SAY PAID FOR THE GAS THAT WENT INTO JERMAINE'S CAR ON OCTOBER 27TH OF '96?
A TREY SAID HE DID.

Q AND WHO DID HE SAY PUMPED THE GAS?
A TREY SAID THAT JERMAINE PUMPED THE GAS.
Q AND WHO ALL DID HE SAY WENT DOWN THERE?
A HIMSELF, JERMAINE AND DAYON.
Q WHAT WAS THE NEXT QUESTION YOU ASKED HIM?
A HOW WELL DID YOU AND JOE BROOKS GET ALONG?
Q AND HIS RESPONSE?
A HE WAS COOL AS HELL. I KNOW HIM SINCE SIXTH, SEVENTH GRADE.
Q THE NEXT QUESTION?
A DID YOU EVER HAVE A PROBLEM WITH JOE BROOKS?
Q RESPONSE?
A NO.
Q THE NEXT QUESTION?
A HOW LONG WERE YOU IN THE STORE?
Q NOW, YOU ARE ASKING THE DEFENDANT HOW LONG HE, THE DEFENDANT, WAS IN THE STORE?
A YES, SIR.
Q AND WHAT WAS HIS RESPONSE TO YOU?
A A COUPLE OF MINUTES. THERE WAS A BLACK MAN AND A WHITE WOMAN AT THE QUARTER MACHINE STANDING BY IT CHILLING.
Q NOW, LET ME STOP YOU THERE. WERE Y'ALL EVER ABLE TO IDENTIFY THAT BLACK MAN AND THAT WHITE WOMAN THAT WAS AT THE QUARTER MACHINE STANDING BY IT CHILLING?

A YES, SIR.
Q AND WHO WAS THAT?
A I KNOW THE LADY HE'S SPEAKING OF WAS MS. LENAHAN.
Q AND THAT WAS THE LADY THAT TESTIFIED YESTERDAY, THE NEWSPAPER LADY?
A YES, SIR.
Q AND IT WAS THE GENTLEMAN WITH HER?
A YES, SIR.
Q MR. CUNNINGHAM. DO YOU RECALL THAT?
A YES, SIR.
Q NOW, WHAT IS THE NEXT THING THAT THE DEFENDANT SAID?
A I SEEN THAT OLD DUDE THAT WORKS FOR JOE, SOME SKINNY MOTHER FUCKER.
Q NOW, WERE YOU ABLE TO IDENTIFY WHO THAT WAS?
A YES, SIR.
Q AND WHO WAS THAT?
A THAT WOULD BE MR. MARSHALL.
Q NOW, WHAT WAS THE NEXT THING THAT THE DEFENDANT SAID?
Q I SEEN THAT OLD MAN WITH THAT TRUCK. HE LIVES AROUND THERE. HE WAS GETTING AIR FOR HIS TRUCK.
Q THAT INDIVIDUAL, WERE YOU ABLE TO IDENTIFY HIM?
A YES, SIR.
Q AND WHO WAS THAT?
A THAT WAS MR. SUMTER.
Q AND THAT WAS MR. SUMTER, THE GENTLEMAN THAT TESTIFIED

YESTERDAY?
A YES, SIR.
Q AND WHAT WAS THE NEXT THING HE SAID?
A THAT'S ALL I SEEN IN THAT MOTHER.
Q NOW, DID YOU ASK HIM ANOTHER QUESTION AFTER HE TOLD YOU WHO ALL HE SAW AT THE STORE?
A YES, SIR.
Q AND WHAT WAS THAT NEXT QUESTION?
A AFTER GETTING GAS, WHERE DID YOU GO?
Q AND HIS RESPONSE?
A JERMAINE DROVE ALL THREE OF US TO MY COUSIN'S HOUSE, CHARLES LLOYD. THE REST I TOLD YOU.
Q SO, WHO DOES HE SAY HE'S WITH AFTER HE LEAVES MR. BROOKS' STORE?
A JERMAINE, HIMSELF AND DAYON.
Q AND WHERE DOES HE SAY THEY GO?
A HE SAYS THEY WENT TO HIS COUSIN'S HOUSE, CHARLES LLOYD.
Q NOW, DID YOU GIVE HIM AN OPPORTUNITY AND ASK HIM A VERY GENERALIZED QUESTION NEXT?
A YES, SIR, I DID.
Q AND WHAT WAS THAT NEXT QUESTION?
A ANYTHING YOU WANT TO CHANGE ABOUT THIS STATEMENT? NOW, I WOULD READ THAT SENTENCE TO HIM AFTER I RE-READ THE STATEMENT TO HIM. SO, THE FIRST THING THERE

IS WE STOPPED, I READ HIM THE ENTIRE STATEMENT AND THEN I WROTE THAT SENTENCE OUT SAYING ANYTHING YOU WANT TO CHANGE ABOUT THIS STATEMENT.

Q YOU READ HIM EACH AND EVERY PAGE?

A YES, SIR.

Q AND WHAT WAS HIS RESPONSE TO YOU, SERGEANT?

A HIS RESPONSE WAS WHEN WE GOT TO JAVORIS' HOUSE THEY SAID THEY HEARD GUNSHOTS AND WERE GOING TO WALK UP TO JOE BROOKS' BUT FIVE "O" WAS THERE.

Q NOW, WHO DOES HE SAY WAS WITH HIM THROUGHOUT THAT AFTERNOON?

A THROUGHOUT THAT AFTERNOON HE SAYS HE WAS WITH JERMAINE AND DAYON AND AT ONE POINT HE WAS WITH HIS BROTHER, VALDIS.

Q AND WHO DOES HE SAY LEAVES THEM FOR ANY PERIOD OF TIME?

A VALDIS DOES.

Q WHO DOES HE SAY HE'S WITH WHEN HE GOES TO BROOKS' STORE THAT AFTERNOON?

A JERMAINE AND DAYON.

Q WHO DOES HE SAY HE GOES THERE WITH?

A JERMAINE AND DAYON.

Q AND HOW DOES HE GET THERE?

A IN JERMAINE'S NOVA.

Q WHO ALL DOES HE SAY HE SEES BESIDES JERMAINE AND

DAYON AT MR. BROOKS' STORE WHEN HE'S THERE THAT AFTERNOON OF THE 27TH OF OCTOBER OF '96?

A MR. CUNNINGHAM, MS. LENAHAN, MR. SUMTER, MR. MARSHALL.

Q AND WHO DOES HE SAY HE PAYS FOR THE GAS? DOES HE SAY WHO HE PAYS FOR THE GAS?

A HE SAYS HE PAID FOR THE GAS. I DON'T BELIEVE HE SAYS HE ACTUALLY PAID JOE BROOKS FOR THE GAS.

Q SO, HE DOESN'T MENTION JOE BROOKS?

A I DON'T BELIEVE HE DID.

Q HE SAYS AFTER THEY LEAVE MR. BROOKS' STORE, AFTER HE LEAVES MR. BROOKS' STORE, WHO DOES HE SAY HE'S WITH?

A JERMAINE AND DAYON.

Q IS THAT CONSISTENT WITH WHAT JERMAINE TELLS YOU?

A YES, SIR.

Q AND DAYON?

A YES, SIR.

Q JUST TO MAKE SURE I HAVE THAT STRAIGHT. COURT'S EXHIBIT NUMBER TWO, IS THAT THE STATEMENT YOU TOOK FROM MR. NIXON ON MARCH 20TH OF '97?

A THE FIRST PAGE IS THE ADVICE OF RIGHTS THAT WAS READ TO MR. NIXON AND SIGNED BY HIM. THE FOLLOWING ARE THE SIX PAGES THAT WERE TAKEN FROM -- THE SIX PAGE STATEMENT I TOOK FROM MR. NIXON.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY

FURTHER QUESTIONS.

CROSS EXAMINATION BY

MR. ROGERS:

Q INVESTIGATOR GARDNER, ARE YOU THE MAIN CASE INVESTIGATOR FOR THIS HOMICIDE?

A YES, SIR.

Q BUT YOU CAME IN HALFWAY INTO IT?

A NO, SIR.

Q WHEN WERE YOU FIRST ASSIGNED?

A OCTOBER 28TH, 1996.

Q OH, OKAY. SHORTLY AFTER IT OCCURRED.

A THE DAY FOLLOWING THE KILLING.

Q AND PRIOR TO MARCH 20TH OF 1997 YOU HAD NO EVIDENCE TO LINK TREY GARNER TO THIS CRIME?

A THAT'S CORRECT.

Q AND YOU TOOK JERMAINE'S STATEMENT ON THE 20TH?

Q YES, SIR.

Q YOU TOOK DAYON'S STATEMENT ON THE 20TH?

A YES, SIR.

Q AND DID YOU DO ANYTHING -- WITH THE EXCEPTION OF TALKING TO TREY, DID YOU DO ANYTHING ELSE WITH RESPECT TO THE INVESTIGATION AFTER TAKING THEIR TWO STATEMENTS?

A YES, SIR.

Q AND WHAT WAS THAT?

A AFTER TAKING THEIR TWO STATEMENTS -- I'M GOING TO REFER BACK TO SOME NOTES. LET'S SEE. WE SPOKE AGAIN WITH MR. MARSHALL. WE SPOKE TO MR. McLEMORE, MR. LEMON. WE MADE SEVERAL ATTEMPTS TO LOCATE -- EXCUSE ME. WE WENT BACK DOWN TO THE JAIL TO SPEAK AGAIN TO TREY. THE DAY AFTER WE HAD TAKEN THESE STATEMENTS, WE WENT DOWN TO CLARKSON WHERE BOTH DAYON AND JERMAINE HAD SAID THEY HAD THROWN THE GUN AND WE PUT THE DOG TEAM IN AT CLARKSON ROAD UNDER THE BRIDGE TO TRY AND LOCATE THE GUN.

Q THAT WAS AT ELEVEN O'CLOCK THE NEXT MORNING?

A YES, SIR.

Q WHAT TIME DID YOU TALK TO TREY?

A THERE'S A FEW OTHER THINGS I DID DO.

Q OH, I'M SORRY.

A ON THE 24TH OF MARCH VALDIS GARNER WAS ARRESTED AND CHARGED WITH MISPRISION OF A FELONY. ON THE 25TH -- THAT'S ABOUT ALL I CAN GO INTO SIR.

Q THAT WAS ON THE 25TH?

A THAT WAS ON THE 24TH WITH VALDIS.

Q WHAT TIME DID YOU TALK TO TREY?

A THE FIRST TIME WE TALKED TO TREY?

Q ON THE 20TH.

A THE FIRST TIME WE TALKED TO TREY WAS APPROXIMATELY TEN O'CLOCK IN THE MORNING, TEN "O" FIVE IN THE

MORNING.
Q THEN AT ELEVEN-THIRTY YOU WENT BACK TO THE STORE, RIGHT?
A YES, SIR.
Q AND YOU HAD INFORMATION AT THAT TIME OR AT SOME POINT MR. MARSHALL WAS A SUSPECT?
A YES, SIR.
Q AND WAS THEN?
A UP UNTIL THAT POINT EVERYONE WAS STILL A SUSPECT.
Q AND THEN AT 1330 YOU WENT BACK TO MR. MARSHALL'S?
A YES, SIR.
Q THAT'S THE 20TH. SO, 1330 WOULD BE TWO-THIRTY THAT AFTERNOON?
A I BELIEVE 1330 WOULD BE ONE-THIRTY.
Q ONE-THIRTY. THANK YOU. RIGHT?
A I THINK YOU'RE RIGHT.
Q AND HE DIDN'T GIVE YOU ANY INFORMATION TO IMPLICATE TREY?
A THAT'S CORRECT.
Q AND THEN AT TWO-THIRTY YOU ATTEMPTED TO LOCATE SUSIE HILLER?
A YES, SIR.
Q AND WITH NEGATIVE RESULTS?
A RIGHT.
Q THEN YOU TALKED TO JERMAINE AGAIN?

A YES, SIR.
Q SO, BETWEEN THE TIME THAT YOU TALKED TO TREY YOU DID NOT DEVELOP ANY OTHER EVIDENCE THAT IMPLICATED HIM?
A THAT'S CORRECT, SIR.
Q SO, WHAT HAPPENED CHRONOLOGICALLY WAS THIS INCIDENT HAPPENED IN OCTOBER OF '96?
A YES, SIR.
Q THEN YOU SPOKE -- YOU CONDUCTED AN INVESTIGATION THAT PROVED FRUITLESS BASICALLY? I MEAN YOU JUST DIDN'T HAVE MUCH?
A AT THAT TIME, THAT'S CORRECT, SIR.
Q AND THEN YOU SPOKE TO TREY AND DAYON ON THE 20TH?
A YES, SIR.
Q AND THEN ON THE 21ST YOU SIGNED A WARRANT FOR TREY'S ARREST?
A THERE'S ONE PART YOU'RE FORGETTING THERE. I TALKED TO TREY AND THEN I WENT AND I SPOKE TO JERMAINE AND DAYON. AND THEN I WENT AHEAD AND GOT THE WARRANT.
Q SO, YOU WENT BACK TO TREY? I MEAN YOU WENT BACK TO JERMAINE?
A YES, SIR. WE WENT TO TREY FIRST AND THEN WE WENT TO JERMAINE, DAYON AND THEN BACK DOWN TO TALK TO TREY AGAIN THAT DAY.
Q SO, YOU WENT BACK TO THEM?
A SIR?

Q YOU WENT BACK TO THOSE TWO?
A YES, SIR.
Q AND THEY TOLD YOU THE SAME THING THEY HAD TOLD YOU THE DAY BEFORE OR THE SAME DAY?
A NO, SIR. I TALKED TO THEM THAT ONE TIME THAT DAY. I THINK WE ARE GETTING OUR DAYS CONFUSED.
Q YES, I'M CONFUSED. I THOUGHT YOU TALKED TO TREY AND DAYON -- I'M SORRY. YES, JERMAINE AND DAYON BEFORE YOU TALKED TO TREY?
A NO, WE TALKED TO JERMAINE AND DAYON IN DECEMBER. SEE, ON THE 20TH --

MR. ROGERS: THE COURT'S INDULGENCE JUST A MOMENT.

(PAUSE)

A IF YOU'RE LOOKING FOR TIMES, YOU'LL SEE THAT THAT CAME AFTER WE TALKED TO TREY.
Q (BY MR. ROGERS) SO, YOU TALKED TO HIM AFTER?
A NO, WE TALKED TO JERMAINE AND DAYON AFTER WE TALKED TO TREY, YES, SIR.
Q SO, I HAD IT CONFUSED. YOU TALKED TO TREY FIRST?
A YES, SIR.
Q AND THEN DAYON AND JERMAINE?
A IT WAS TREY FIRST IN THE MORNING AND THEN WE FOUND JERMAINE LATER THAT AFTERNOON. WE TALKED TO JERMAINE AND THEN WE FOUND DAYON LATER THAT AFTERNOON. WE

TALKED TO DAYON AND THEN WE WENT BACK DOWN TO THE JAIL AND TALKED ONE MORE TIME TO TREY.

Q AND MY POINT IS THAT YOU HAD NO OTHER EVIDENCE THAT IMPLICATED TREY OTHER THAN WHAT JERMAINE AND DAYON HAD TOLD YOU?

A THE ONLY EVIDENCE I HAD THAT IMPLICATED TREY WAS WHEN WE TALKED TO TREY THAT MORNING AND HE IDENTIFIED EVERYBODY WHO WAS AROUND THE SCENE, YOU KNOW, WITHIN A MINUTE OF JOE BROOKS BEING KILLED. THAT'S WHY WE WENT TO TALK TO JERMAINE --

Q WELL, LET --

MR. McMAHON: LET HIM FINISH. I OBJECT.

THE COURT: LET HIM FINISH.

MR. ROGERS: I APOLOGIZE.

A I MEAN ONCE WE GOT THAT INFORMATION FROM TREY, THAT'S WHY WE TURNED AROUND AND WENT BACK TO TALK TO JERMAINE AND DAYON BECAUSE NOW WE REALIZED THESE FELLOWS WERE THERE AT LEAST WITHIN A MINUTE OR SO OF THE ACTUAL KILLING.

Q (BY MR. ROGERS) WHAT TIME WAS THE KILLING?

A I CAN'T TELL YOU EXACTLY WHAT TIME THE KILLING WAS.

Q WELL, THEN HOW DO YOU KNOW THEY WERE THERE WITHIN A MINUTE?

A BECAUSE HE DESCRIBED THE PEOPLE WHO WERE THERE SHORTLY BEFORE IT.

Q DID DAYON TELL YOU THAT HE WAITED THERE TEN TO FIFTEEN MINUTES BEFORE HE WENT IN?
A YES, HE DID.
Q SO, THEN IT COULDN'T HAVE BEEN A MINUTE. THEY COULDN'T HAVE BEEN THERE WITHIN A MINUTE OF WHEN THIS HAPPENED IF ACCORDING TO WHAT YOU SAY THEY TOLD YOU AND YOU BELIEVED THAT THEY WERE THERE, HE GOT GAS AND THEN THEY LEFT AND DAYON STAYED THERE FOR TEN OR FIFTEEN MINUTES, RIGHT?

MR. McMAHON: MAY I APPROACH THE BENCH?

THE COURT: YES, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

Q (BY MR. ROGERS) LET ME ASK IT THIS WAY, INVESTIGATOR GARDNER. WHEN YOU WENT TO TALK TO TREY, DID TELL HIM HE WAS A SUSPECT IN A MURDER?
A WE TOLD TREY WE WERE LOOKING INTO THE JOE BROOKS MURDER AND WE WONDERED WHERE HE WAS THAT DAY.
Q THAT DAY?
A THE DAY THAT JOE BROOKS WAS KILLED, YES, SIR.
Q AND YOU DID NOT ASK HIM -- I MEAN YOU DON'T EVEN KNOW THE TIME OF DEATH, RIGHT?
A I CANNOT SAY WITHIN A MINUTE WHAT TIME THE DEATH OCCURRED, SIR.

Q SOMEWHERE BETWEEN SIX AND SIX-THIRTY, RIGHT?
A YES, SIR.
Q AND YOU DIDN'T SPECIFICALLY ASK TREY WHERE WERE YOU BETWEEN SIX AND SIX-THIRTY, DID YOU?
A NO, SIR. I ACTUALLY ASK HIM TO TELL ME WHERE HE WAS THAT DAY. I LET HIM TELL ME IN HIS OWN WORDS.
Q RIGHT. HE TOLD YOU IN HIS OWN WORDS. SO, HAD YOU ASKED HIM WHERE HE WAS BETWEEN SIX AND SIX-THIRTY HE COULD HAVE GIVEN YOU A DEFINITIVE ANSWER MAYBE, COULDN'T HE, IF YOU HAD ASKED?
MR. McMAHON: OBJECTION. THAT'S SPECULATION WHAT ANSWER HE COULD OR COULD NOT HAVE GIVEN.
THE COURT: SUSTAINED.
Q (BY MR. ROGERS) BUT YOU DIDN'T ASK HIM THAT?
A I DIDN'T ASK HIM?
Q WHERE HE WAS BETWEEN SIX AND SIX-THIRTY, THE TIME OF DEATH?
A NO, SIR.
Q SO, YOU AS CHIEF CASE INVESTIGATOR HAVE GONE THROUGH BOTH JERMAINE'S AND DAYON'S STATEMENTS?
A YES, SIR.
Q AND BASICALLY BECAUSE THEY TOLD YOU TREY WAS THERE YOU BELIEVED THEM?
A AGAIN, I HAVE TO SAY THERE'S ONE OTHER PIECE THAT YOU ARE MISSING. THAT'S TREY IDENTIFYING ALL THE PEOPLE

THAT WERE AT THE STORE AT THAT TIME VERY CLOSE TO THE SHOOTING.

Q LET ME REPHRASE IT. BECAUSE THEY TOLD YOU TREY WAS INVOLVED YOU BELIEVED THEM?

A YES, SIR. AND THEY ALSO TOLD ME THEY WERE INVOLVED.

Q BUT THEY PUT TREY IN IT?

A YES, SIR.

Q WHEN THEY HADN'T BEFORE?

A THEY HADN'T PUT THEMSELVES IN IT EITHER BEFORE BUT, YES, SIR, THAT'S CORRECT.

Q I UNDERSTAND. SO, TREY TOLD YOU HE WENT TO THE GAS STATION?

A YES, SIR.

Q AND THEN HE SAID THEY LEFT?

A YES, SIR.

Q AND YOU DIDN'T ASK HIM SPECIFICALLY WHETHER HE, AFTER THEY LEFT THE GAS STATION WHEN HE BOUGHT THE GAS, IF HE WAS EVER APART FROM DAYON AND JERMAINE, DID YOU?

A NO, SIR.

Q SO, IT WAS BECAUSE OF WHAT TREY AND JERMAINE TOLD YOU THAT PLACED TREY THERE AT THE GAS STATION AT SOME POINT IS WHY YOU CONCLUDED HE WAS INVOLVED AND HAD KNOWLEDGE?

A IT'S BECAUSE OF WHAT TREY, DAYON AND JERMAINE TOLD ME, YES, SIR.

Q BECAUSE YOU ADMIT HE COULD HAVE BEEN PRESENT AND NOT HAD KNOWLEDGE? THAT'S A POSSIBILITY?

MR. McMAHON: YOUR HONOR, I OBJECT. THAT WOULD BE AN ISSUE FOR THE JURY.

THE COURT: SUSTAINED.

MR. ROGERS: VERY WELL.

Q (BY MR. ROGERS) SO, IT WAS BECAUSE OF TREY, JERMAINE -- EXCUSE ME. JERMAINE AND DAYON'S STATEMENTS IS THE REASON YOU CONCLUDED THAT TREY WAS PRESENT, INVOLVED AND HAD KNOWLEDGE?

A AGAIN I HAVE TO BEAT THIS HORSE BUT ALSO BECAUSE OF WHAT TREY TOLD ME, YES, SIR. BECAUSE OF THOSE THREE STATEMENTS.

Q WELL, TREY DIDN'T IMPLICATE HIMSELF IN THE CRIME. TREY SAID HE WAS THERE.

A YES, SIR.

MR. ROGERS: THAT'S ALL.

MR. McMAHON: MAY IT PLEASE THE COURT.

REDIRECT EXAMINATION BY MR. McMAHON:

Q SERGEANT GARDNER, HE ALSO -- I BELIEVE MR. ROGERS BEGAN BY ASKING YOU ABOUT YOUR FOLLOW-UP INVESTIGATION FROM MARCH 20TH OF '97 FORWARD?

A YES, SIR.

Q AND THE VARIOUS STEPS THAT YOU DID?

A YES, SIR.
Q WAS PART OF THAT TAKING A STATEMENT FROM THE DEFENDANT'S BROTHER, VALDIS?
A YES, SIR.
Q AND ---

MR. McMAHON: YOUR HONOR, MAY I APPROACH THE BENCH?

THE COURT: YES, SIR.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

Q (BY MR. McMAHON) AS PART OF YOUR INVESTIGATION, DID YOU INTERVIEW THE DEFENDANT'S BROTHER VALDIS GARNER?
A YES, SIR, I DID.
Q AND AS PART OF THAT, WHAT WAS HE CHARGED WITH?
A VALDIS GARNER WAS CHARGED WITH MISPRISION OF A FELONY.
Q SO, HE'S ALSO CHARGED IN CONNECTION WITH THIS, IS THAT CORRECT?
A YES, SIR.
Q NOW, MR. ROGERS ALSO ASKED YOU SOME QUESTIONS ABOUT WHAT EVIDENCE DID YOU HAVE, WHAT EVIDENCE DID YOU HAVE. AND I WANT TO GET THE SEQUENCE STRAIGHT. MARCH THE 20TH OF 1997 OF THE THREE INDIVIDUALS -- TREY GARNER, JERMAINE McLEMORE AND DAYON LEMON -- ON

MARCH 20TH OF '97 WHO DID YOU INTERVIEW FIRST?
A AT ABOUT TEN O'CLOCK IN THE MORNING WE FIRST INTERVIEWED TREY GARNER.
Q SO, HE WAS NUMBER ONE?
A YES, SIR.
Q THAT DAY ON THE 20TH?
A YES, SIR, ON THAT DAY.
Q PRIOR TO THE 20TH OF MARCH OF '97, HAD YOU INTERVIEWED TREY GARNER?
A NO, SIR. I COULDN'T LOCATE MR. GARNER TO INTERVIEW HIM.

MR. ROGERS: OBJECTION AND MOVE TO STRIKE.

THE COURT: HE JUST SIMPLY ASKED IF HE HAD TALKED TO MR. GARNER.

MR. ROGERS: I MOVE TO STRIKE THE LAST SENTENCE AND COULD NOT FIND HIM.

THE COURT: ALL RIGHT. I OVERRULE THE OBJECTION. GO AHEAD.

Q (BY MR. McMAHON) PRIOR TO MARCH THE 20TH OF '97, HAD YOU INTERVIEWED JERMAINE McLEMORE?
A YES, SIR.
Q AND DAYON LEMON?
A YES, SIR.
Q AND WHAT DATES WAS IT THAT YOU FIRST INTERVIEWED JERMAINE McLEMORE AND DAYON LEMON?

A I BELIEVE THAT WOULD BE DECEMBER 11TH.
Q OF '96?
A YES, SIR, I BELIEVE SO.
Q SO, NOW GOING BACK TO MARCH THE 20TH OF '97, YOU INTERVIEWED TREY GARNER FIRST THAT DAY. WHO DID YOU INTERVIEW OF THESE THREE NEXT?
A OF THE THREE, JERMAINE, DAYON AND TREY?
Q YES.
A THE NEXT ONE WE INTERVIEWED WOULD HAVE BEEN JERMAINE McLEMORE.
Q HE WOULD HAVE BEEN SECOND THAT DAY?
A YES, SIR.
Q AND WHO WAS NEXT?
A DAYON LEMON.
Q NOW, HE ASKED YOU ABOUT YOUR RELIANCE ON THE EVIDENCE AND WHAT THEY SAID, AND I WANT TO SHOW YOU COURT'S EXHIBIT NUMBER TWO. WHAT IS THIS DOCUMENT?
A THAT'S THE ADVICE OF RIGHTS FORM THAT WE READ TO DAYON NIXON LEMON ON MARCH 20TH OF '97.
Q AND IS THAT THE ATTACHED STATEMENT?
A YES, SIR, THAT'S THE ATTACHED STATEMENT THAT I TOOK FROM MR. NIXON LEMON.
Q AND THE STATEMENT YOU TOOK FROM MR. McLEMORE THAT DAY, WAS THAT ALSO IN WRITING?
A YES, SIR.

Q DO YOU HAVE THAT UP HERE WITH YOU?
A YES, SIR. WELL, NO, I DON'T BELIEVE IT IS. NO, IT'S NOT, SIR. IT'S DOWN AT THE TABLE.
Q LET ME SHOW YOU THIS AND ASK YOU IF THAT IS A COPY OF THE STATEMENT GIVEN BY JERMAINE McLEMORE, THE ADVICE OF RIGHTS AND THE ATTACHED STATEMENT ON 3-20-97?
A YES, SIR. THE FIRST PAGE IS THE ADVICE OF RIGHTS AND THE FOLLOWING FOUR PAGES APPEAR TO BE THE FOUR PAGES OF THE STATEMENT THAT I WROTE OUT THAT DAY.

MR. McMAHON: YOUR HONOR, I WOULD OFFER THIS COPY AS STATE'S FOR IDENTIFICATION.

MR. ROGERS: FOR I.D. ONLY?

THE COURT: THAT'S WHAT HE SAID.

MR. McMAHON: I.D., YES, SIR.

MR. ROGERS: NO OBJECTION.

(STATEMENT IS MARKED AND RECEIVED AS STATE'S EXHIBIT #24 FOR IDENTIFICATION PURPOSES ONLY)

Q (BY MR. McMAHON) NOW, MR. ROGERS ASKED YOU ABOUT YOUR RELIANCE ON THESE STATEMENTS AS FAR AS YOUR CHARGES AGAINST MR. GARNER?
A YES, SIR.
Q IS THAT CORRECT?
A THAT'S CORRECT.
Q AND ON THESE STATEMENTS -- WHEN I SAY THESE STATEMENTS, AGAIN I'M REFERRING TO STATE'S TWENTY-TWO

FOR IDENTIFICATION, STATE'S --
A NO, SIR, THAT WOULD BE DECEMBER.
Q REFERRING TO STATE'S TWENTY -- COURT'S EXHIBIT TWO FOR IDENTIFICATION AND STATE'S TWENTY-FOUR FOR I.D.
A YES, SIR.
Q EXCLUDING THE LAST TWO ATTACHED PAGES TO THIS DOCUMENT, DO YOU SEE WHERE I'M REFERRING TO?
A YES, SIR.
Q WHAT DID YOU RELY ON THESE DOCUMENTS? DO YOU UNDERSTAND MY QUESTION?
A I'M AFRAID I DON'T, SIR.
Q WELL, MR. ROGERS ASKED YOU DID YOU RELY ON THOSE STATEMENTS?
A YES, SIR.
Q WHAT IN THOSE STATEMENTS DID YOU RELY ON EXCLUDING THOSE LAST TWO PAGES OF MR. LEMON'S?
A EVERYTHING THAT WAS SAID BY THESE DEFENDANTS TO ME.
Q NOW, WAS THAT CONSISTENT?
A YES.
Q ONE WITH THE OTHER?
A YES, SIR, ABSOLUTELY.
Q WAS THAT CONSISTENT WITH WHAT YOUR INVESTIGATION HAD DETERMINED FROM THE PARTIES THAT WERE AT THE SCENE OF MR. BROOKS' HOMICIDE THAT DAY?
A YES, SIR.

Q THE CITIZENS?
A YES, SIR.
Q AND WAS IT ALSO CONSISTENT WITH WHO THE DEFENDANT SAYS WAS AT THE SCENE THAT DAY?
A YES, SIR.
Q THE CITIZEN WITNESSES?
A YES, SIR.
Q AND THE OTHER CO-DEFENDANTS, JERMAINE McLEMORE AND DAYON LEMON?
A YES, SIR.

MR. ROGERS: YOUR HONOR, I'D ASK HIM NOT TO TESTIFY. HE HAS A WITNESS ON THE STAND.

MR. McMAHON: YOUR HONOR, I'LL BE GLAD TO GO IN WORD FOR WORD.

THE COURT: WELL, I THOUGHT THE QUESTION WAS WAS IT CONSISTENT. THAT'S A PROPER QUESTION.

MR. ROGERS: VERY WELL. I WITHDRAW THE OBJECTION.

Q (BY MR. McMAHON) AFTER YOU TALKED TO MR. McLEMORE AND MR. LEMON -- MR. GARNER'S FIRST, MR. McLEMORE'S SECOND -- MR. GARNER JUST TELLS YOU WHAT WE PUBLISHED TO THE JURY EARLIER?
A YES, SIR.
Q MR. McLEMORE SECOND, MR. LEMON'S THIRD. DID YOU GO BACK AND TALK TO HIM AGAIN?

A YES, SIR, I DID.
Q AND HE DIDN'T TELL YOU ANYTHING DIFFERENT?
A NO, SIR. HE TOLD US WE COULDN'T PUT IT ON HIM.
Q THEN TWO OR THREE DAYS LATER, DID YOU TALK WITH HIS BROTHER?
A YES, SIR.
Q AND AS A RESULT OF THAT, WHAT DID YOU CHARGE HIS BROTHER WITH?
A MISPRISION OF A FELONY.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

MR. ROGERS: ONE LAST BRIEF QUESTION.

RECROSS EXAMINATION BY
MR. ROGERS:

Q YOU DIDN'T RELY ON ANYTHING THAT VALDIS TOLD YOU BECAUSE YOU GOT THE WARRANT AGAINST TREY THE DAY BEFORE YOU TALKED TO HIM, ISN'T THAT TRUE?
A THAT'S TRUE, SIR.
Q SO, YOU COULDN'T HAVE RELIED ON ANYTHING HE TOLD YOU?
A NO, SIR.

MR. McMAHON: I DIDN'T ASK HIM THAT QUESTION. I DIDN'T ASK HIM ABOUT RELYING ON VALDIS. I UNDERSTOOD I COULDN'T.

THE COURT: I UNDERSTAND. ANYTHING FURTHER?

MR. ROGERS: NO, YOUR HONOR.

MR. McMAHON: NO, SIR.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THIS IS A CONVENIENT TIME FOR US TO RECESS FOR THE EVENING SO WE'LL DO SO. LET ME REMIND YOU OF MY CAUTION GIVEN YOU EARLIER, YOU ARE NOT TO DISCUSS THE CASE IN ANY FASHION WITH ANY PERSON, ALLOW NO ONE TO DISCUSS IT WITH YOU. YOU ARE ALSO NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY TYPE OF MEDIA COVERAGE WHETHER IT BE TELEVISION, RADIO OR NEWSPAPER. SHOULD SOMETHING COME ON TELEVISION, TURN IT OFF. RADIO, TURN IT OFF. NEWSPAPER, PUT IT ASIDE. DO NOT ALLOW YOURSELF TO BE EXPOSED TO ANY TYPE OF MEDIA COVERAGE WHATSOEVER IN ADDITION TO HAVING ANY TYPE OF CONTACT OR DISCUSSIONS WITH OTHER PERSONS ABOUT THE CASE.

SO, WITH THAT IN MIND HAVE A GOOD EVENING. PLEASE REPORT DIRECTLY TO YOUR JURY ROOM AT NINE-THIRTY IN THE MORNING. NINE-THIRTY IN THE MORNING.

(JURY LEAVES THE JURY BOX AT 5:32 P.M.)

THE COURT: ALL RIGHT, ANY OTHER MATTERS WE NEED TO ADDRESS BEFORE WE RECESS?

MR. McMAHON: YOUR HONOR, THE ONLY ISSUE I WOULD HAVE JUST VERY BRIEFLY. ON PAGE THREE I THINK OF MR. GARNER'S STATEMENT HE IS ASKED A QUESTION: DID YOU

EVER HAVE A PROBLEM WITH JOE BROOKS; RESPONSE, NO. ONE OF OUR WITNESSES WOULD BE MR. BROOKS' DAUGHTER, MICHELLE DAVIS, AND SHE CAN REFUTE THAT PARTICULAR ISSUE ON THE PROBLEM OF NO. I THINK IT GOES TO, "A," HIS CREDIBILITY AND, "B," MOTIVE. WE'LL BE GLAD TO PROFFER HER IN THE MORNING AND LAY IT OUT MORE FULLY FOR HIS HONOR. I JUST DIDN'T WANT TO BRING IT OUT IN FRONT OF THE JURY WITHOUT ASKING HIS HONOR ABOUT IT.

THE COURT: WELL, WE'LL ADDRESS THAT IN THE MORNING IF IT'S NECESSARY.

MR. McMAHON: ALL RIGHT, SIR. I DON'T HAVE ANYTHING FURTHER.

MR. ROGERS: NOTHING.

THE COURT: ALL RIGHT. COURT IS IN RECESS UNTIL NINE-THIRTY.

(EVENING RECESS)

WEDNESDAY, MARCH 11, 1998

THE COURT: ANY MATTERS THAT NEED ADDRESSING BEFORE WE BRING THE JURY IN?

MR. McMAHON: YOUR HONOR, I HAD BROUGHT UP ONE MATTER YESTERDAY ON MS. DAVIS. SHE WILL BE THE STATE'S FIRST WITNESS. MR. CHAPLIN IS GOING TO PUT HER UP. THAT IS THE DAUGHTER OF MR. BROOKS. THAT'S JUST ON THE ISSUE OF PRIOR PROBLEMS BETWEEN THE VICTIM, MR. BROOKS, AND THE DEFENDANT, MR. GARNER.

THE COURT: ALL RIGHT. TELL ME AGAIN WHAT THE TESTIMONY WOULD BE THAT WOULD BE OFFERED.

MR. McMAHON: MAY MR. CHAPLIN ADDRESS THE COURT ON THAT MATTER? HE'S GOING TO PUT THE WITNESS UP.

THE COURT: OKAY, SURE. MR. CHAPLIN.

MR. CHAPLIN: YES, YOUR HONOR. THE QUESTION WOULD BE WHAT WAS THE RAPPORT BETWEEN MR. GARNER AND THE VICTIM, MR. JOE BROOKS, WAS THERE ANY DISSENSION OR, YOU KNOW, WHAT WAS THE RELATIONSHIP BETWEEN THE TWO. SHE WOULD JUST SAY FOR THE RECORD THERE WAS DISSENTION AND WHY THERE WAS DISSENTION.

THE COURT: AND WHAT WOULD SHE SAY WAS THE REASON?

MR. CHAPLIN: DUE TO MR. GARNER LOITERING AROUND THE FACILITY OR AROUND THE STORE TO ENHANCE HIS PURPOSES.

THE COURT: WELL, IS THERE GOING TO BE TESTIMONY THAT HE ORDERED HIM AWAY FROM THE PREMISES OR -- IN OTHER WORDS, I ASSUME THIS EVIDENCE IS BEING OFFERED FOR THE PURPOSE OF SHOWING SOME MOTIVE?

MR. CHAPLIN: YES, YOUR HONOR. WELL, AT FIRST IT'S GOING TO BE OFFERED NOW TO -- I THINK IT WAS BROUGHT OUT BY MR. ROGERS WHAT WAS THE RELATIONSHIP BETWEEN MR. GARNER AND THE VICTIM AND IT WAS I THINK IN HIS WORDS COOL, EVERYTHING WAS FINE BETWEEN THE

TWO.

THE COURT: WELL, I DON'T THINK MR. ROGERS BROUGHT THAT OUT. I THINK THAT WAS PERHAPS SET FORTH IN THAT STATEMENT THE STATE INTRODUCED.

MR. CHAPLIN: YOU ARE CORRECT. AND THAT IS TO REBUT THAT STATEMENT.

THE COURT: MR. ROGERS, DO YOU WANT TO BE HEARD?

MR. ROGERS: WELL, YOUR HONOR, IT SOUNDS LIKE THE SAME THING WE TALKED ABOUT TWO DAYS AGO WITH RESPECT TO THIS DRUG CHARGE. I MEAN I BELIEVE THE TESTIMONY, AND HE CAN CORRECT ME, WOULD BE THAT SOMEONE CAME OUT AND YELLED AT TREY MR. BROOKS IS GOING TO CALL THE POLICE ON YOU. AND THEN AT SOME LATER POINT THE POLICE CAME AND TREY RAN AND HE WAS ARRESTED. BUT THERE'S BEEN NO CONNECTION, THERE'S BEEN -- I DON'T THINK ANYBODY CAN TESTIFY THAT TREY KNEW AT ANY POINT THAT MR. BROOKS HAD CALLED THE POLICE ON HIM. AND WITHOUT THAT LINK THIS IS JUST CLEARLY SPECULATIVE.

THE COURT: WELL, THAT'S WHAT I UNDERSTOOD I GUESS IT WAS ON MONDAY WHEN WE DISCUSSED THIS THE FIRST TIME. I UNDERSTOOD THAT THERE WAS SUPPOSED TO BE TESTIMONY FROM A WITNESS, I'M NOT SURE WHETHER IT'S MS. DAVIS OR WHO IT MIGHT HAVE BEEN, BUT THAT SHE WAS GOING TO TESTIFY THAT THE DEFENDANT WAS UPSET

OR MAD WITH MR. BROOKS BECAUSE HE KNEW THAT MR. BROOKS HAD CALLED THE POLICE AND ACCUSED HIM OF DEALING DRUGS. NOW, IF THAT WERE THE TESTIMONY THEN THAT MIGHT GO TOWARDS PROVING SOME MOTIVE FOR THE SHOOTING. BUT JUST THE FACT THAT THEY MIGHT NOT HAVE GOTTEN ALONG OR THAT HE DIDN'T LIKE HIM HANGING AROUND HIS STORE, I DON'T KNOW THAT THAT'S SUFFICIENT TO SHOW ANY MOTIVE FOR ROBBERY WHERE THE OTHER TESTIMONY IN THE CASE INDICATES IT RELATED TO SOME OTHER MATTER.

MR. McMAHON: JUDGE, YOU'RE ABSOLUTELY CORRECT. MONDAY I ADDRESSED TWO WITNESSES ON THE MOTIVE ISSUE. ONE WAS TERESA TUCKER, A CITIZEN FROM THAT AREA. HER STATEMENT WAS THAT SHE KNEW TREY GARNER AND THAT SHE WAS FAMILIAR WITH MR. BROOKS, THAT SHE HAD WITNESSED AN OCCASION WHERE MR. BROOKS, AND I'M REFERRING TO JOE BROOKS, WAS UPSET WITH TREY GARNER DEALING DRUGS IN FRONT OF HIS STORE ON CABIN CREEK. SHE STATED ABOUT A YEAR AGO -- THIS STATEMENT WAS TAKEN NOVEMBER 15TH OF '96 -- ABOUT A YEAR AGO SHE WAS IN MR. BROOKS' STORE AND JOE BROOKS LOOKED OUTSIDE AND HE SAW TREY AND HIS BROTHER, VALDIS, HANGING OUT IN FRONT OF THE STORE. JOE SAID, QUOTE, "I TOLD THEM GUYS TO STOP HANGING OUT IN FRONT OF MY STORE. I'M GOING TO CALL THE POLICE." I ASKED JOE WHO HE WAS

TALKING ABOUT AND HE SAID THEM GUYS OUT THERE BY THE PAY PHONE BOOTH. HE MEANT TREY AND VALDIS. THEN I LEFT AND AS I WAS LEAVING I WAS HOLLERING AT THEM TELLING THEM THAT THEY HAD BETTER GET FROM AROUND THAT PHONE BOOTH AND THAT JOE WAS GOING TO CALL THE POLICE. THEY TOLD ME, QUOTE, "F. JOE," AND THEY KEPT ON HANGING OUT THERE. DO YOU KNOW IF JOE EVER CALLED THE POLICE? NO, BUT I USED TO SEE THE POLICE UP THERE. WHEN THINGS WOULD GET TOO HOT FOR THEM TO DEAL DRUGS UP AT JOE'S STORE, THEY WOULD MOVE DOWN TOWARDS MASONRY CIRCLE. SHE ALSO TALKS ABOUT SEEING TREY WITH A GUN IN THE PAST. THIS TIME FRAME IS CLOSELY ASSOCIATED BEING A YEAR PRIOR SHE SAYS TO THE DATE SHE GAVE THE STATEMENT.

THE COURT: THE DATE OF THE STATEMENT WAS WHAT?

MR. McMAHON: NOVEMBER 15TH OF '96. HE WAS ARRESTED BY RICHLAND COUNTY SEPTEMBER 27TH OF '95. SO, THAT WOULD TAKE THIS STATEMENT BACK TO THAT FALL OF '95 PERIOD OF TIME, ALSO. I HAD PERHAPS MISUNDERSTOOD AND I REALIZE NOW IT WAS A MOTION IN LIMINE THAT MR. ROGERS MADE AND NOT A FINAL RULING FROM THE COURT. PERHAPS I HAD MISUNDERSTOOD WHETHER OR NOT MS. TUCKER'S TESTIMONY WOULD BECOME ADMISSIBLE AT THIS POINT UNDER HIS MOTION.

THE COURT: WELL, HERE'S MY THOUGHT ON THAT. I

UNDERSTOOD WHEN WE HAD THIS DISCUSSION EARLIER THAT THERE WAS GOING TO BE TESTIMONY THAT MR. BROOKS HAD TOLD THE DEFENDANT TO STAY AWAY FROM THE STORE AND THAT HE HAD CALLED THE POLICE WHICH I INTERPRETED TO MEAN THAT THE POLICE CAME OUT AND PERHAPS QUESTIONED THE DEFENDANT. THAT WOULD PUT THE DEFENDANT ON NOTICE. THAT WOULD PROVE KNOWLEDGE ON HIS PART THAT MR. BROOKS HAD CALLED THE POLICE AND IF HE WERE MAD ABOUT IT THAT OBVIOUSLY WOULD BE EVIDENCE WHICH MIGHT TEND TO PROVE A FACT OF CONSEQUENCE, THAT BEING THE MOTIVE FOR THIS PARTICULAR OFFENSE HERE, NOT JUST THE MOTIVE FOR THE ROBBERY, BUT FOR THE MOTIVE OF ANY SHOOTING. BUT IF THAT'S THE EXTENT OF THE TESTIMONY I DON'T BELIEVE THAT'S SUFFICIENT TO CONNECT THAT UP.

MR. McMAHON: MR. CHAPLIN, OF COURSE, JUST WANTED GUIDANCE ON MS. DAVIS. THAT WOULD ALSO COVER MS. DAVIS' PRIOR RELATIONSHIP BETWEEN THE PARTIES. BASICALLY, WITHOUT GOING INTO THE DETAILS OF ANY PRIOR BAD RELATIONSHIP BETWEEN THE VICTIM, MR. BROOKS, AND THE DEFENDANT, MR. GARNER, I WANTED TO ATTEMPT TO GET OUT BEFORE THE JURY THAT THERE WERE PROBLEMS. NOT RELATED TO DRUGS NECESSARILY. I DON'T MEAN THAT NECESSARILY THAT THE PROBLEMS AROSE FROM MR. GARNER SELLING DRUGS AT THE LOT OF BROOKS' STORE, BUT THAT THERE WERE PROBLEMS BETWEEN MR. BROOKS AND

MR. GARNER AND HE HAD CONVEYED THE GENERALITIES, IF NOT THE SPECIFICS, OF THOSE PROBLEMS TO HIS DAUGHTER. IT'S KIND OF LIKE -- I KIND OF THOUGHT OF IT IN MY MIND LIKE THE OLD CLINKSCALES CASE WHERE THE ANIMUS OF THE PARTIES TO A HOMICIDE. I REALIZE THAT CASE WAS A SELF-DEFENSE CASE. I UNDERSTAND THAT. BUT THE ANIMUS OF THE PARTIES IS ADMISSIBLE IN A HOMICIDE, SELF-DEFENSE HOMICIDE. WELL, RIGHT NOW I'M STUCK WITH THE STATEMENT AND I REALIZE I MADE THAT DECISION TO OFFER THAT STATEMENT ALTHOUGH I THINK WHEN THE STATE MAKES A DECISION TO OFFER A STATEMENT AGAINST A DEFENDANT I CAN'T IN MY DIRECT PICK AND CHOOSE PARTS OF THE STATEMENT. I'VE GOT TO PUT ALL OF THE STATEMENT IN OF THE DEFENDANT AT THAT POINT IN TIME. AND WITH HIM ANSWERING AND RESPONDING, YOU KNOW, I THINK JOE WAS COOL; WERE THERE ANY PROBLEMS, NO. I REALIZE THAT'S SOMEWHAT A COLLATERAL ISSUE. I MEAN I CAN SEE KIND OF THE QUASI NATURE OF THAT SO TO SPEAK OF BEING A COLLATERAL ISSUE BUT I CAN ALSO SEE I DON'T WANT IT TO GO TO THE JURY THAT THERE ARE NO PROBLEMS BETWEEN MR. BROOKS AND MR. GARNER WHEN IN FACT THERE ARE. IT'S NOT QUITE GOING TO MOTIVE BUT IT'S GOING TO THE ENTIRE FACTUAL BASIS OF THE RELATIONSHIP BETWEEN THE VICTIM IN THIS MATTER AND MR. GARNER. AND, OF COURSE, I THINK THE JURY CAN

QUESTION HIS CREDIBILITY BASED ON THE FACT OF WHETHER OR NOT HE'S TAKING THE STAND THAT I HAVE PUT HIS STATEMENT IN EVIDENCE. THEY COULD STILL QUESTION THE BELIEVABILITY OF THAT STATEMENT.

THE COURT: NO QUESTION ABOUT THAT.

MR. McMAHON: AND LIKE I SAY, I'M JUST ASKING FOR GUIDANCE ON MS. DAVIS AT THIS POINT. I WON'T BELABOR THE POINT.

THE COURT: IS SHE JUST GOING TO TESTIFY THAT THERE WERE DIFFICULTIES BETWEEN MR. BROOKS AND THE DEFENDANT?

MR. CHAPLIN: EXACTLY, YOUR HONOR, THERE WERE DIFFICULTIES BETWEEN THE DEFENDANT AND THE VICTIM. I MEAN SHE WILL NOT GO INTO THE FACT THAT -- SHE WON'T SPECIFY THE REASON FOR THE DIFFICULTIES WAS THE FACT THAT HE WAS SELLING DRUGS ON THE PROPERTY. SHE WILL JUST GO INTO THE FACT THAT IT WASN'T A COOL SITUATION OR A SMOOTH SITUATION BETWEEN THE TWO.

THE COURT: ALL RIGHT. UNLESS OTHER TESTIMONY AND EVIDENCE DEVELOPS, I'M GOING TO SUSTAIN MR. ROGERS' OBJECTION TO THAT TESTIMONY.

MR. CHAPLIN: THANK YOU, YOUR HONOR.

THE COURT: AS I SAY, I UNDERSTOOD BEFORE THAT IT WAS GOING TOWARDS MOTIVE BUT THAT THERE WAS SOME DIFFICULTY BETWEEN MR. GARNER AND MR. BROOKS AND MR.

GARNER KNEW MR. BROOKS HAD CALLED THE POLICE ON HIM AND THAT WAS SOME REASON HE WAS GOING BACK TO EXACT SOME SORT OF REVENGE AND IF THAT WERE THE CASE, IF THAT WERE THE TESTIMONY, OBVIOUSLY I THINK THAT WOULD BE PROBABLY PERMITTED BECAUSE IT WOULD BE RELEVANT TO THE PROOF OF MOTIVE AT LEAST TO THE SHOOTING. BUT I DON'T THINK THE TESTIMONY THAT YOU OFFERED RISES TO THAT LEVEL.

MR. CHAPLIN: THE LAST THING, YOUR HONOR, I GUESS THE REASON I STATED SHE KNOWS OF WHAT YOU JUST STATED TO ME JUST THEN. SHE KNOWS OF THE WHOLE PICTURE ABOUT CONCERNING THE POLICE BEING CALLED AND THE DEFENDANT SAYING, YES, HE WAS GOING TO CALL THE POLICE, THE POLICE COMING OUT AND ARRESTING THE DEFENDANT. BUT AS FOR THE RECORD, I WAS GOING TO LIMIT HER TO HER TESTIMONY THAT MY THINKING WAS THAT YOU WEREN'T GOING TO ALLOW ME TO GET INTO THAT.

THE COURT: WELL, WHAT I'M SAYING IS THAT'S PERHAPS ADMISSIBLE ON THE ISSUE OF MOTIVE. IN OTHER WORDS, WHAT I'M SAYING IS SHE CAN'T JUST DO IT BASED UPON WHAT MR. BROOKS TOLD HER. IF SHE WAS PRESENT OR SHE KNEW BASED UPON PERSONAL KNOWLEDGE THAT MR. BROOKS HAD CALLED THE POLICE YOU WOULDN'T HAVE TO GO INTO THE FACT OF WHAT IT WAS ABOUT BUT YOU COULD GO INTO THE FACT THAT MR. BROOKS HAD ASKED MR. GARNER TO

LEAVE THE PREMISES, THAT HE HAD CALLED THE POLICE TO HAVE HIM REMOVED; THE POLICE CAME DOWN AND REMOVED HIM AND THAT MIGHT GIVE RISE TO SOME MOTIVE FOR MR. GARNER BEING INVOLVED IN THE SITUATION THAT HE'S INVOLVED IN HERE. BUT IF SHE KNOWS THAT FROM WHAT MR. BROOKS TOLD HER OR SOMEBODY ELSE TOLD HER THEN OBVIOUSLY I DON'T BELIEVE THAT WOULD BE PERMITTED.

MR. CHAPLIN: THANK YOU, YOUR HONOR.

MR. McMAHON: WE'RE READY, YOUR HONOR.

THE COURT: OKAY. BRING THE JURY IN, PLEASE.

MR. ROGERS: YOUR HONOR, OUT OF AN ABUNDANCE OF CAUTION I WOULD ASK IF YOU'D INQUIRE OF THE JURY IF THEY READ OR SAW ANY NEWS REPORTS ABOUT THE TRIAL.

THE COURT: I'LL BE GLAD TO.

(JURY RETURNS TO THE JURY BOX AT 9:48 A.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. AS YOU KNOW, WHEN WE RECESSED YESTERDAY THE STATE WAS STILL IN THE PROCESS OF PRESENTING THEIR EVIDENCE SO WE ARE GOING TO SHORTLY CONTINUE WITH THAT PROCESS. BEFORE WE DO THAT LET ME JUST SIMPLY ASK YOU. YOU WILL RECALL THAT WHEN WE RECESSED I HAVE BEEN GIVING YOU AN INSTRUCTION REGARDING NOT DISCUSSING THE CASE OR ALLOWING ANYONE TO DISCUSS IT WITH YOU AND NOT HAVING ANY TYPE OF EXPOSURE TO MEDIA COVERAGE SO I

SIMPLY WANT TO ASK IF ANY MEMBER OF THE JURY PANEL HAS HAD ANY DISCUSSIONS WHATSOEVER ABOUT THE CASE UP TO THIS POINT OR WHETHER ANYONE HAS ATTEMPTED TO CONTACT YOU AND DISCUSS THE CASE WITH YOU. IF SUCH DISCUSSIONS OR CONTACTS HAVE TAKEN PLACE I WOULD ASK THAT YOU PLEASE INDICATE SO BY RAISING YOUR HAND. (NO RESPONSE) LET THE RECORD REFLECT NO JUROR HAS RESPONDED. ALSO, LET ME ASK YOU WHETHER OR NOT ANY JUROR WAS EXPOSED TO ANY TYPE OF MEDIA COVERAGE DURING THE RECESS WHETHER IT BE RADIO, TELEVISION OR NEWSPAPER ARTICLES. IF YOU HAVE HAD ANY SUCH EXPOSURE I WOULD ASK THAT YOU PLEASE INDICATE SO BY RAISING YOUR HAND. (NO RESPONSE) LET THE RECORD REFLECT NO JUROR HAS RESPONDED IN THE AFFIRMATIVE. ALL RIGHT. MR. CHAPLIN.

MR. CHAPLIN: THE STATE CALLS MICHELLE DAVIS.

MICHELLE DENISE DAVIS, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A MY NAME IS MICHELLE DENISE DAVIS.

Q MS. DAVIS, WHAT IS YOUR RELATIONSHIP TO THE VICTIM, MR. JOE BROOKS?

A HE WAS MY DAD.

Q WHERE DO YOU LIVE?

A I LIVE AT [redacted]RICHARD SIMONS ROAD AND THAT'S IN EASTOVER.
Q HOW LONG HAVE YOU LIVED THERE?
A ABOUT SIX OR SEVEN YEARS.
Q WHERE ARE YOU EMPLOYED RIGHT NOW?
A JOE'S GROCERY IN HOPKINS.
Q WERE YOU ALWAYS EMPLOYED THERE?
A NO, I WASN'T.
Q WHERE WERE YOU EMPLOYED BEFORE?
A I WAS AN ACCOUNTANT SPECIALIST AT D.H.E.C., DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL.
Q WAS THERE ANY REASON FOR YOU LEAVING THAT JOB?
A YES, THERE WAS.
Q AND WHAT WAS THAT REASON?
A MY FATHER WAS KILLED OCTOBER OF '97 AND MY BROTHER AND I TOOK OVER THE STORE, HIS BUSINESS, THREE MONTHS LATER.
Q WHAT'S YOUR BROTHER'S NAME?
A RONALD BROOKS.
Q MS. DAVIS, I'M GOING TO TAKE YOU BACK ONE WEEK PRIOR TO THE DEATH OF YOUR FATHER WHICH WOULD HAVE BEEN THE 20TH OF OCTOBER. DO YOU RECALL THAT DAY?
A YES, I DO.
Q DO YOU RECALL GOING TO THE STORE THAT DAY?
A YES, I DO.

Q WHY WOULD YOU HAVE WENT TO THE STORE THAT DAY? OR WHY DO YOU NORMALLY GO TO THE STORE?
A I USUALLY WENT TO THE STORE ON SUNDAY AFTERNOONS TO HELP MY DAD WAIT ON A FEW CUSTOMERS, COUNT THE TILL FOR THE WEEK, GET IT READY FOR DEPOSIT SUNDAY AND HELP HIM CLOSE DOWN.
Q AND YOU WOULD DO THIS ON WHAT BASIS, WHAT REGULARITY WOULD THIS OCCUR?
A EVERY SUNDAY AFTERNOON.
Q SO, ON THIS SUNDAY AS MOST EVERY OTHER SUNDAY YOU WENT TO COUNT THE MONEY?
A YES, I DID.
Q YOU AND YOUR FATHER?
A YES.
Q WHEN YOU WERE THERE THAT DAY -- WHAT TIME DID YOU GET THERE THAT DAY?
A I GOT THERE AROUND A QUARTER OF FOUR.
Q AND WHAT ABOUT YOUR FATHER? WAS HE THERE WHEN YOU GOT THERE?
A NO, HE WASN'T THERE WHEN I GOT THERE. HE GOT THERE ABOUT FIVE MINUTES TO FOUR OR FOUR O'CLOCK SO I WAITED IN THE STORE YARD UNTIL HE GOT THERE.
Q THEN WHAT TOOK PLACE?
A WE WENT IN, HE UNLOCKED, OPENED UP AS USUAL. WE WENT IN. A FEW CUSTOMERS CAME IN. I WAITED ON A FEW

CUSTOMERS. HE COOKED DINNER. HE ALWAYS COOKS ME PEPPER STEAK WHEN I COME OVER USUALLY SO HE COOKED SOME PEPPER STEAK FOR ME AND WE SAT DOWN AND ATE AND I WAITED ON A FEW CUSTOMERS AND I STARTED COUNTING THE MONEY AROUND ABOUT SIX.

Q AND YOU SAY COUNT THE MONEY. WHERE DID YOU NORMALLY COUNT THE MONEY?

A USUALLY BEHIND THE COUNTER ON THE FLOOR.

Q I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER THREE.

A OKAY.

Q DO YOU RECOGNIZE WHAT THIS IS A DIAGRAM OF?

A YES, I DO.

Q WHERE WOULD YOU HAVE COUNTED THE MONEY?

A USUALLY IN THIS AREA BEHIND THE COUNTER ON THE FLOOR. THE CASH REGISTER WOULD HAVE BEEN SITTING HERE ON A SMALL TABLE AND I WOULD BE RIGHT HERE COUNTING THE MONEY ON THE FLOOR.

Q WHY WOULD YOU COUNT THE MONEY ON THE FLOOR BEHIND THE REGISTER?

A IT'S JUST, YOU KNOW, WE'VE ALWAYS DONE IT. HE LIKES ME TO WAIT ON THE CUSTOMERS AS WELL SO I COUNT THE MONEY AND WE STOP AND WAIT ON THE CUSTOMERS AND TAKE TURNS AND THIS WAY WE CAN BOTH BE OUT THERE, YOU KNOW, TO WAIT ON CUSTOMERS IF WE NEED TO.

Q SO, FROM THE AREA YOU JUST SHOWED ME AND SHOWED THE

JURY IT SEEMS AS THOUGH ANYONE COULD SEE YOU COUNTING THE MONEY FROM THAT POSITION, AM I CORRECT?

A YES. SEVERAL CUSTOMERS HAD MADE THE COMMENT, YOU KNOW, THAT WE SHOULDN'T DO IT BUT, YOU KNOW, DAD ALWAYS DID SO I MEAN I DIDN'T SEE A PROBLEM WITH IT.

Q ON THAT DAY, DID YOU HAVE AN OCCASION TO SEE MR. VALDIS GARNER, TREY GARNER, JERMAINE McLEMORE, DAYON LEMON? DID YOU SEE ANY OF THEM ON THAT DAY?

A I SAW TREY AND JERMAINE. I DIDN'T SEE DAYON OR VALDIS.

Q SO, YOU SAW THE DEFENDANT?

A YES, I DID.

Q AND WHAT WAS HE DOING?

A HE HAD COME IN TO PURCHASE SOME GAS AND HE PAID ME AND WENT BACK OUT.

Q HOW DO YOU KNOW JERMAINE WAS WITH HIM?

A WHEN I LOOK OUT THE WINDOW, THERE'S A SMALL WINDOW RIGHT WHERE WE ARE PUNCHING AT THE COMPUTER, YOU KNOW, PUNCHING THE GAS. IT'S A SMALL WINDOW THERE AND I LOOKED OUT TO MAKE SURE THEIR CAR WAS ALREADY PULLED UP TO THE TANK SO I COULD PUMP SOMEBODY ELSE TO GET THEIR GAS. AND I SAW JERMAINE OUT THERE.

Q WHO -- EXCUSE ME. GO AHEAD AND FINISH WHAT YOU HAD TO SAY.

A AND I SAW JERMAINE OUT THERE AT HIS CAR.

Q THEY WERE IN JERMAINE'S CAR?
A YES.
Q WHAT KIND OF CAR WAS THAT OR DO YOU KNOW?
A A NOVA. TANISH TYPE OF GOLD NOVA.
Q HOW DO YOU KNOW IT WAS A NOVA?
A WELL, I'M NOT GOOD ON CARS BUT MY OLDEST BROTHER, JOHN, HAS A NOVA SO, YOU KNOW, IT'S SIMILAR TO MY BROTHER'S CAR.
Q SO, TREY COMES INSIDE AND PAYS FOR GAS. YOU LOOK OUT OF THE SIDE WINDOW AND SEE JERMAINE?
A I SEE JERMAINE, YES.
Q DOES ANY OTHER CONVERSATION TAKE PLACE BETWEEN YOU AND TREY ONCE HE PAYS FOR THE GAS?
A NO. HE JUST ASKED ME FOR A COUPLE OF DOLLARS, TWO OR THREE DOLLARS WORTH OF GAS, NOTHING BIG, YOU KNOW.
Q MS. DAVIS, I'M GOING TO SHOW YOU A COUPLE OF PICTURES SHOWING YOU THE APPEARANCE OF BEHIND THE COUNTER. STATE'S EXHIBIT NUMBER ELEVEN. IS THIS NORMALLY HOW BEHIND THE COUNTER LOOKED ON A DAILY BASIS?
A NO.
Q WHAT'S DIFFERENT ABOUT HOW THIS PICTURE LOOKS AND HOW IT WOULD NORMALLY LOOK?
A THIS BOX OF BAGS DOWN OFF OF THE SHELF BECAUSE USUALLY ON SUNDAYS WHEN I CAME IN I ALWAYS PUT CIGARETTES UP, STRAIGHTEN THE SHELVES AND EVERYTHING

AND IT WASN'T LIKE THIS WHEN I CAME BACK THE FOLLOWING SUNDAY. THESE ITEMS DOWN HERE, THEY WOULDN'T HAVE BEEN ON THE FLOOR, THEY WOULD HAVE BEEN ON THESE SHELVES RIGHT HERE.

Q SO, NORMALLY BEHIND THE COUNTER WOULDN'T BE IN DISARRAY LIKE THIS?

A NO.

Q IT WOULD BE MORE ORGANIZED?

A YES.

Q AND HOW DO YOU SAY YOU WOULD KNOW IT WOULD BE MORE ORGANIZED?

A BECAUSE USUALLY ON SUNDAYS WHEN I CAME IN IF THERE WAS ANYTHING OUT OF PLACE I WOULD PICK IT UP BUT THINGS ON THE SHELF, THEY STAY THERE. I PUT CIGARETTES ON THE SHELVES AND THINGS LIKE THAT.

Q PERSONAL CHECKS. WHERE WOULD PERSONAL CHECKS BE KEPT BEHIND THE COUNTER?

A WELL, USUALLY ON SUNDAYS WE TAKE THEM OUT, TOTAL THE CHECKS UP AND HE'D KEEP IT UNDER THE TILL DRAWER IN THE CASH REGISTER. HE KEPT IT UNDER THERE SO MONDAY MORNINGS HE WOULD REMEMBER TO PUT THE ACCOUNT NUMBER ON AND I GUESS SIGN THEM AND HE ALSO LIKE TO LOOK THROUGH THEM ON MONDAY MORNINGS TO MAKE SURE THAT THERE WASN'T SOME CHECKS SOMEBODY HAD ASKED HIM TO HOLD FOR A WEEK OR FOR A COUPLE OF WEEKS. SO, HE

KEPT THEM UNDER THE TILL DRAWER IN THE CASH REGISTER.
Q AND WHAT ABOUT THE MONEY BAG ITSELF. ONCE YOU AND YOUR FATHER COUNT THE MONEY, WHAT WOULD HE DO WITH THAT MONEY BAG?
A UNDER THE COUNTER, THERE'S STORAGE SPACE UNDER THE COUNTER AND HE USUALLY KEPT IT UNDER THE COUNTER.
Q I WANT TO TAKE YOU BACK STILL ON THAT SAME DAY. WHEN TREY COMES IN TO PAY FOR THE GAS, CAN YOU SEE TREY AND CAN TREY SEE YOU COUNTING THE MONEY?
A YEAH, I ASSUME BECAUSE WHEN I GOT UP FROM COUNTING THE MONEY HE WAS ALREADY AT THE COUNTER AND THE MONEY WAS JUST ON THE FLOOR. YOU KNOW, I CAN'T MAKE ASSUMPTIONS OF WHAT HE SAW. IT WAS ON THE FLOOR AT THE TIME, YOU KNOW.

MR. CHAPLIN: I BEG THE COURT'S INDULGENCE.

(PAUSE)

Q (BY MR. CHAPLIN) CAN YOU DESCRIBE FOR THE JURY THE POSITIONING OF THAT CASH REGISTER, WHERE IT WOULD BE ON A NORMAL BUSINESS DAY OR A NORMAL DAY? WHERE IT SAT?
A THE COUNTER THAT THE CUSTOMERS CAME IN WHICH IS THE COUNTER WITH A CARPETED SURFACE AND THERE WAS A STAND A LITTLE BIT SHORTER THAN THE COUNTER THAT STOOD BACK THERE, A LITTLE IRON STAND, AND THE CASH REGISTER IS ON TOP OF THAT.

Q HOW OLD WAS YOUR FATHER WHEN HE DIED?
A SIXTY-SIX. HE WAS FIVE MONTHS FROM HIS SIXTY-SEVENTH BIRTHDAY.
Q WAS THERE ANY QUESTION IN YOUR MIND THAT THE INDIVIDUAL THAT YOU SAW THAT CAME IN AND PAID FOR GAS WAS TREY GARNER?
A NO.
Q WAS THERE ANY QUESTION IN YOUR MIND THE INDIVIDUAL DRIVING A TANISH COLOR NOVA YOU SAID OUT BY THE PUMP WAS JERMAINE McLEMORE?
A NO, THERE'S NO QUESTION.
Q HOW LONG DID YOU KNOW OR HOW LONG HAD YOU KNOWN MR. GARNER?
A I DIDN'T REALLY KNOW HIM PERSONALLY. I JUST KNEW HIM BECAUSE MY FATHER SAID WHO HE WAS. I DIDN'T KNOW HIM TO HAVE ANY CONVERSATION WITH HIM OR ANYTHING.
Q HOW LONG HAD YOU SEEN HIM AROUND?
A MAYBE A COUPLE OF YEARS BEFORE IN THE NEIGHBORHOOD MAYBE WALKING BY THE STORE.
Q AND THE SAME WITH JERMAINE?
A NO. I'VE KNOWN JERMAINE FOR AS LONG AS I'VE LIVED IN HOPKINS.

MR. CHAPLIN: THE COURT'S INDULGENCE.

(PAUSE)

Q (BY MR. CHAPLIN) NOW, I WANT TO ADVANCE YOU TO ONE

WEEK TO THE DATE OF THE ACTUAL MURDER OF YOUR FATHER. NOW, YOU STATED TO THE JURY THAT YOUR USUAL COURSE OF ACTION ON SUNDAY WAS GOING TO YOUR FATHER'S STORE AND COUNTING MONEY, AM I CORRECT?

A YES.

Q WHAT HAPPENED ON THIS DAY, ON 10-27 OF '96?

A THIS DAY I WAS LATE. I STOPPED TO COOK SOME DINNER FOR MY HUSBAND AND MY DAUGHTER WAS THERE AND SHE'S NOT QUITE TWO SO I WAS TRYING TO MAKE SURE EVERYTHING WAS READY FOR THEM. I CALLED MY FATHER AROUND FIVE-THIRTY, A QUARTER TO SIX AND TOLD HIM I WAS GOING TO BE LATE BUT I WAS ON MY WAY TO HELP HIM COUNT. AND HE TOLD ME, WELL, DON'T WORRY ABOUT IT, THAT HE WAS TIRED ANYWAY AND HE PROBABLY WOULD NOT COUNT IT UNTIL THE NEXT DAY BUT I TOLD HIM I WAS COMING ANYWAY.

Q SO, YOU CALLED YOUR FATHER TO TELL HIM THAT YOU WERE RUNNING LATE?

A YES, I DID.

Q ABOUT WHAT TIME DO YOU THINK THAT WAS?

A AROUND FIVE-THIRTY, QUARTER OF SIX. I CAN'T BE EXACTLY SURE BUT IT WAS AROUND THAT TIME.

Q BUT YOU KNEW YOU WERE RUNNING LATE?

A YES, I WAS BECAUSE I'M USUALLY THERE NO LATER THAN A QUARTER OF FOUR.

Q AND THEN YOU STATED YOU DID COME TO THE STORE OR DID

SOMETHING HAPPEN BEFORE YOU CAME TO THE STORE?
A WELL, WHAT HAPPENED WAS I WAS PUTTING MY STUFF IN THE CAR TO GO AND I FORGOT MY SWEATER SO IT WAS ABOUT SIX-TWENTY. I WAS RUNNING BACK UP THE STAIRS TO THE HOUSE TO GET MY SWEATER AND MY HUSBAND MET ME AT THE DOOR AND SAID THAT MY COUSIN, SYLVIA FLEMING, WAS ON THE PHONE AND WHEN I GOT TO THE PHONE SHE SAID, MICHELLE, SOMETHING HAPPENED AT THE STORE, SOMETHING HAPPENED TO YOUR DAD, WE DON'T KNOW WHAT. THEY WERE SPECULATIVE AT THAT TIME WHETHER HE HAD HAD A HEART ATTACK, HE HAD BEEN SHOT. THE AMBULANCES WERE DOWN THERE. SO, IMMEDIATELY AFTER THAT MY HUSBAND CAME WITH ME AND WE WENT TO THE STORE.
Q ABOUT WHAT TIME DO YOU THINK IT WAS WHEN YOU GOT TO THE STORE?
A WE PROBABLY GOT THERE AROUND A QUARTER OF SEVEN. AROUND THAT TIME.
Q AND WHAT WAS THE SCENE WHEN YOU GOT TO THE STORE?
A THERE WERE A LOT OF PEOPLE OUT IN THE STORE YARD. THERE WERE A LOT OF CARS UP AND DOWN CABIN CREEK BOULEVARD, SOME CARS IN THE HOUSE'S YARD ACROSS THE STREET. I DROVE UP AND SOMEBODY PART THE CROWD BECAUSE THEY RECOGNIZE ME AND LET ME PULL MY CAR IN THE YARD. BUT AS FAR AS I COULD WAS THE GAS PUMPS I BELIEVE BECAUSE THERE WAS SOME POLICE TAPE, THAT

YELLOW TAPE, FROM ONE SIDE OF THE STORE, AROUND THE GAS PUMPS TO THE OTHER SIDE. AND WHEN I LOOKED INTO THE DOUBLE DOORS THAT'S THE MAIN ENTRANCEWAY TO THE STORE I SAW MY UNCLE AND THEY HAD HIM SITTING IN A CHAIR AND THERE WERE OFFICERS, I CAN'T REMEMBER HOW MANY, JUST MILLING IN THE YARD.

Q SO, CARS WERE EVERYWHERE AND POLICE WERE EVERYWHERE WHEN YOU GOT THERE?

A YES, SIR.

Q SOMETHING I MEANT TO ASK YOU ABOUT CONCERNING THE SUNDAY BEFORE. ON 10-20 OF '96 WHEN Y'ALL GET FINISHED COUNTING MONEY OR HANDLING BUSINESS ON THAT DAY, DID YOU AND YOUR FATHER LEAVE TOGETHER?

A YES. THE SUNDAYS I CAME WE USUALLY LEFT TOGETHER AND HE'D GO HOME ON MARTIN LUTHER AND I GO HOME IN EASTOVER.

Q SO, WHEN HE'S LEAVING OR WHEN Y'ALL WERE LEAVING, I TAKE IT AT THAT TIME HE HAS THE MONEY ON HIM OR MONEY WITH HIM?

A USUALLY HE TAKES THE MONEY BAG WITH HIM.

Q WHAT DID HE NORMALLY TAKE WITH HIM ALONG WITH THAT MONEY BAG WHEN HE LEAVES THE STORE?

A USUALLY HE HAD HIS MONEY BAG AND HIS .38 PISTOL. SOMETIMES HIS RIFLE BUT NOT ALWAYS.

Q SO, HE WOULD HAVE A GUN ON HIM WHEN HE'S LEAVING HIS

STORE?
A ONE OR TWO.
Q ON THAT DAY, DID YOU SEE ANYONE OUTSIDE?
A NO.
Q WHEN Y'ALL WERE LEAVING?
A I DON'T RECALL SEEING ANYONE. I DON'T.
Q BUT Y'ALL DID LEAVE TOGETHER?
A YES, WE DID.
Q AND YOU DO REMEMBER YOUR FATHER BECAUSE I GUESS ON EVERY OCCASION HE WOULD HAVE A GUN, ONE OR TWO, WITH HIM FOR PROTECTION?
A THAT'S EVERY NIGHT CLOSING, EVERY MORNING OPENING.

MR. CHAPLIN: MS. DAVIS, I HAVE NO FURTHER QUESTIONS.

MR. ROGERS: MAY IT PLEASE THE COURT.

THE COURT: MR. ROGERS.

CROSS EXAMINATION BY

MR. ROGERS:

Q NOW, MS. DAVIS, DID I UNDERSTAND YOUR TESTIMONY THAT YOU DIDN'T WORK AT THE STORE BACK DURING THIS TIME, YOU JUST CAME IN ON SUNDAYS TO HELP YOUR FATHER?
A THAT IS TRUE. I WAS EMPLOYED WITH D.H.E.C. AT THAT TIME.
Q SO, YOU DIDN'T BEGIN WORKING AT THE STORE UNTIL AFTER HIS DEATH?

A FULL TIME?
Q YES.
A OH, I HAD WORKED FULL TIME BEFORE I WAS AT D.H.E.C. I USED TO STAY WITH MY FATHER AND I WORKED -- THIS IS MAYBE FOUR YEARS BEFORE HE GOT -- BUT DURING THAT TIME I DIDN'T START UNTIL AFTER.
Q WHEN YOU WORKED FULL TIME FOR YOUR FATHER, WHAT YEARS WOULD THAT HAVE BEEN IF YOU CAN RECALL?
A PROBABLY AROUND '90 TO '92, IN THAT RANGE. EITHER '89 TO '92 OR '90 TO '92.
Q AND WAS IT DURING THAT PERIOD OF TIME THAT YOU MET OR KNEW JERMAINE?
A WELL, I GREW UP IN HOPKINS SO -- I'M OLDER THAN HIM BUT I KNEW OF HIS FAMILY, YOU KNOW, DURING THAT TIME.
Q AND IS THE SAME TRUE WITH DAYON?
A I KNEW OF HIS FAMILY. DAYON IS QUITE A BIT YOUNGER THAN ME. I JUST KNEW OF HIM GOING TO SCHOOL WITH SOME YOUNGER COUSINS OF MINE.
Q BUT THE SAME LENGTH OF TIME THAT YOU KNEW JERMAINE?
A I KNEW JERMAINE LONGER THAN ANY OF THEM.
Q COULD YOU GIVE A GUESS AS TO HOW LONG YOU'VE KNOWN DAYON?
A EARLY 90'S, YOU KNOW, AS A SMALL CHILD COMING IN THE STORE.
Q AND HOW LONG HAVE YOU KNOWN TREY?

A I DON'T REALLY KNOW TREY. HE JUST CAME IN EVERY ONCE IN A WHILE. IT HASN'T BEEN -- I'M NOT USED TO SEEING HIM IN THE NEIGHBORHOOD NO LONGER THAN MAYBE THREE TO FIVE YEARS. I MEAN NOTHING LONG.

Q NOW, THE SUNDAY BEFORE YOUR FATHER WAS KILLED TREY CAME IN THE STORE AND PAID FOR GAS?

A YES.

Q AND THERE WAS NOTHING UNUSUAL ABOUT THAT?

A NO.

Q HE DIDN'T HANG AROUND LIKE HE WAS CASING THE JOINT OR ANYTHING THAT YOU NOTICED THAT WAS OUT OF THE ORDINARY?

A I DIDN'T NOTICE ANYTHING. HE JUST CAME TO PAY FOR GAS.

Q AND YOU DID SEE JERMAINE THAT DAY?

A YES.

Q YOU DID NOT SEE DAYON THAT DAY?

A I DID NOT.

Q AND ABOUT WHAT TIME WAS THIS?

A LATE EVENING, MAYBE SIX, SIX-THIRTY.

Q AND WHAT TIME DOES THE STORE CLOSE ON SUNDAYS?

A ABOUT SEVEN OR SEVEN-THIRTY. IT ALL DEPEND ON HOW TIRED MY FATHER WAS. IF HE WAS TIRED AT SEVEN HE'D CLOSE.

Q AND DID YOU STAY TO CLOSING TIME ON THAT SUNDAY?

A YES, I DID.
Q AND YOU NEVER SAW TREY ANY MORE THAT SUNDAY?
A NO, I DIDN'T.
Q YOU DIDN'T SEE DAYON AT ALL?
A NO.
Q ON THE OCCASIONS THAT YOU WOULD SEE TREY PRIOR TO THIS SUNDAY, WOULD IT ALWAYS BE IN THE STORE?
A SOMETIMES IN THE STORE, SOMETIMES WALKING PAST IT IF I GLANCE OUT BUT OTHER THAN THAT, NO.
Q ON THIS SUNDAY, DO YOU REMEMBER WHAT TREY WAS WEARING?
A I DON'T. USUALLY WHEN I SAW HIM HE HAD ON -- ONLY THING I CAN REMEMBER WAS A CAMOUFLAGE COAT LIKE WHAT THE ARMY WEAR. THAT'S THE ONLY THING OUT OF SPECIFIC CLOTHES.
Q BUT YOU CAN'T SAY THAT'S WHAT HE HAD ON SUNDAY, THE 20TH?
A NO.
Q YOU DIDN'T PAY ANY ATTENTION?
A NO.
Q DO YOU EVEN REMEMBER HOW TREY WAS WEARING HIS HAIR? DID HE HAVE IT BRAIDED?
A I BELIEVE HE HAD IT BRAIDED. I'M NOT SURE BUT I BELIEVE HE HAD IT BRAIDED.
Q AND ONE FINAL QUESTION. ON THE OCCASIONS THAT YOU

WOULD SEE TREY, WOULD YOU ALWAYS SEE HIM WITH HIS HAIR BRAIDED OR WITH HIS HAIR OUT OR BOTH WAYS?

A SOMETIMES BRAIDED. THE FIRST TIME I EVER SAW HIM HIS HAIR WASN'T BRAIDED, IT WAS JUST SHORT CUT. I MEAN NOTHING UNUSUAL.

Q SO, YOU'VE SEEN HIM BOTH WAYS?

A I'VE SEEN HIM BOTH WAYS.

MR. ROGERS: THANK YOU.

MR. CHAPLIN: NO FURTHER QUESTIONS.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: MAY IT PLEASE THE COURT, THE STATE CALLS INVESTIGATOR HARRIS.

WENDALL T. HARRIS, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

DIRECT EXAMINATION BY

MR. McMAHON:

Q SIR, WOULD YOU INTRODUCE YOURSELF TO THE JURY, PLEASE?

A GOOD MORNING. MY NAME IS WENDALL T. HARRIS.

Q AND, MR. HARRIS, BY WHOM ARE YOU EMPLOYED?

A THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE RICHLAND

COUNTY SHERIFF'S DEPARTMENT?

A BEEN EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT APPROXIMATELY TWO YEARS AND TEN YEARS IN LAW ENPORCEMENT ALL TOGETHER.

Q NOW, SIR, WHAT IS YOUR CURRENT POSITION WITH RICHLAND COUNTY?

A MY CURRENT POSITION IS NARCOTIC AGENT WITH THE SHERIFF'S DEPARTMENT.

Q AND HOW LONG HAVE YOU BEEN ASSIGNED TO NARCOTICS?

A APPROXIMATELY TWO MONTHS NOW.

Q WHAT OTHER POSITIONS HAVE YOU HELD, MR. HARRIS, OR DETECTIVE HARRIS, SINCE YOU'VE BEEN WITH THE SHERIFF'S OFFICE, SIR?

A MY FIRST POSITION WAS A LINE DEPUTY, PATROLMAN. I WAS PROMOTED UP TO MAJOR CRIMES INVESTIGATIONS AND CURRENTLY NOW I'M A NARCOTIC AGENT.

Q HOW MANY YEARS EXPERIENCE DID YOU HAVE, DETECTIVE HARRIS, IN LAW ENFORCEMENT WHEN YOU WENT WITH THE SHERIFF'S OFFICE?

A APPROXIMATELY EIGHT YEARS.

Q EIGHT YEARS?

A YES, SIR.

Q NOW, GOING BACK TO 1997, THE FIRST PART OF 1997, WHAT POSITION DID YOU HOLD WITH THE SHERIFF'S DEPARTMENT AT THAT TIME?

A MAJOR CRIMES INVESTIGATION, SIR.
Q AND AS A RESULT OF BEING ASSIGNED TO MAJOR CRIMES, WERE YOU ASSIGNED TO FOLLOW UP ALONG WITH SERGEANT GARDNER ON THIS PARTICULAR CASE?
A YES, I WAS. I WAS ASSIGNED TO THE CASE.
Q CAN YOU RECALL WHEN YOU WERE FIRST ASSIGNED TO THE CASE?
A YES, I DO.
Q WHEN WAS THAT?
A IT WOULD HAVE BEEN MARCH THE 18TH. 17TH OR 18TH.
Q OF '97?
A OF '97.
Q NOW, YOUR UNDERSTANDING, DETECTIVE HARRIS, WAS THAT SERGEANT GARDNER HAD BEEN ASSIGNED TO THE CASE FROM ITS BEGINNINGS? FROM OCTOBER OF '96?
A YES, SIR, THAT'S CORRECT.
Q AND YOU'RE FAMILIAR WITH THEN DETECTIVE AND NOW SERGEANT SHELLS?
A YES, I AM, SIR.
Q HAD HE BEEN TRANSFERRED IN SOME MANNER?
A HE WAS PROMOTED TO SERGEANT OVER THE WARRANT DIVISION IN THE EARLY PART OF FEBRUARY.
Q NOW, SIR, WHEN YOU WERE FIRST ASSIGNED THIS CASE, WHAT'S THE FIRST THING YOU DID, DETECTIVE HARRIS?
A REVIEWED THE CASE FILE.

Q AND THAT'S KIND OF TO GET AN OUTLINE OF WHAT HAD OCCURRED AND THE VARIOUS STEPS THAT HAD BEEN TAKEN IN THE INVESTIGATION UP TO THAT POINT?
A YES, SIR, BASICALLY.
Q NOW, I WANT TO DIRECT YOUR ATTENTION TO TWO DAYS AFTER YOU WERE ASSIGNED AS A MATTER OF FACT. MARCH THE 20TH OF 1997. WERE YOU WORKING ON THIS PARTICULAR CASE ON MARCH 20TH OF 1997?
A YES, I WAS, SIR.
Q AND AS A RESULT OF THAT, DID YOU AND SERGEANT HARRIS HAVE AN OPPORTUNITY TO INTERVIEW THE DEFENDANT IN THIS CASE, TREY GARNER?
A YES, WE DID.
Q NOW, SIR, I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER TWENTY-THREE AND ASK IF YOU CAN IDENTIFY THAT DOCUMENT FOR US, PLEASE?
A YES, SIR, IT'S THE RICHLAND COUNTY SHERIFF'S DEPARTMENT INTERROGATION, ADVICE OF RIGHTS FORMS.
Q NOW, WHO WAS THE FIRST PERSON THAT YOU AND SERGEANT GARDNER INTERVIEWED IN REGARDS TO THIS CASE ON THE DATE OF MARCH THE 20TH OF '97?
A THAT WOULD HAVE BEEN TREY GARNER, SIR.
Q AND WITHOUT GOING THROUGH ALL THE VARIOUS LINES OF THE DOCUMENT AND ALL OF WHAT I'VE HANDED TO YOU AS STATE'S EXHIBIT NUMBER TWENTY-THREE, WHAT I'M NOW

SHOWING TO THE JURY, COURT'S EXHIBIT NUMBER THREE, IS THAT THE ADVICE AND INTERROGATION OF RIGHTS THAT YOU AND SERGEANT GARDNER GAVE TO MR. GARNER, THE DEFENDANT, ON 3-20 OF '97?

A YES, SIR, IT IS.

Q AND HE WAS ADVISED AND WAIVED THOSE RIGHTS?

A HE DID.

Q DID Y'ALL THREATEN OR COERCE HIM IN ANY MANNER?

A NO, SIR.

Q DID HE TALK WITH Y'ALL FREELY AND VOLUNTARILY?

A YES, HE DID.

Q AND DID Y'ALL REDUCE HIS STATEMENTS AT THAT TIME TO WRITTEN FORM?

A YES, WE DID.

Q AND ARE THOSE THE NEXT THREE ATTACHED PAGES TO STATE'S EXHIBIT NUMBER TWENTY-THREE? THIS BEING THE FIRST PAGE, COURT'S FOUR?

A YES, SIR.

Q SECOND PAGE, COURT'S FIVE AND THIRD PAGE, COURT'S SIX, IS THAT CORRECT?

A THAT'S CORRECT, SIR.

Q NOW, DETECTIVE HARRIS, WITHOUT GOING THROUGH THE STATEMENT AGAIN LINE BY LINE AS I DID WITH SERGEANT GARDNER, BASICALLY WHAT DID THE DEFENDANT TELL Y'ALL ON MARCH THE 20TH OF '97?

A AS I RECALL, THE DEFENDANT TELLING SERGEANT GARDNER AND I THAT MOST OF THE AFTERNOON, APPROXIMATELY ROUND TWO TO THREE, HE WAS RIDING AROUND WITH MR. McLEMORE AND MR. LEMON MOST OF THAT AFTERNOON INTO THE LATE EVENING.

Q NOW, WHAT, IF ANYTHING, DID HE SAY ABOUT BEING AT BROOKS' STORE, WHETHER OR NOT HE WAS AT BROOKS' STORE THAT DAY?

A AT THE END OF HIS STATEMENT, HE DID STATE THAT HE WAS AT JOE BROOKS STORE GETTING GAS WITH THE CO-DEFENDANTS, MR. McLEMORE AND ALSO MR. LEMON, LATE IN THE EVENING ON THE 27TH OF OCTOBER, '96.

Q AND WHAT, IF ANYTHING, DID HE SAY ABOUT LEAVING BROOKS' STORE, WHO HE LEFT WITH AND WHERE HE WENT AT THAT TIME?

A HE STATED THAT HE LEFT WITH JERMAINE AND ALSO WITH DAYON AND THEY WENT TO HIS COUSIN'S HOUSE IN GADSDEN OFF 48.

Q AND AS I SAY, MR. HARRIS, NOT WANTING TO GO THROUGH THE ENTIRE STATEMENT LINE BY LINE AS I DID SERGEANT GARDNER, YOU WERE PRESENT DURING THAT ENTIRE PERIOD OF TIME?

A YES, I WAS.

Q AND WAS THE DEFENDANT, MR. GARNER, GIVEN AN OPPORTUNITY TO REVIEW THE WRITTEN STATEMENT?

A YES, HE WAS.
Q AND DID HE SIGN EACH AND EVERY PAGE OF THAT STATEMENT?
A YES, HE DID.
Q AND THAT STATEMENT WAS GIVEN FREELY AND VOLUNTARILY IN YOUR OPINION?
A YES, SIR.
Q NOW, AFTER Y'ALL INTERVIEWED THE DEFENDANT THAT DAY, WHERE DID Y'ALL GO IN REGARDS TO THIS CASE, DETECTIVE HARRIS?
A SIR, WE LEFT THERE AND WE VENTURED BACK DOWN TO JOE BROOKS'S STORE IN HOPKINS AND MET WITH HIS DAUGHTER, MICHELLE.
Q WERE YOU FAMILIAR WITH THAT AREA?
A NO, I WAS NOT.
Q YOU WERE NOT. NOW, -- AND MICHELLE, THAT'S THE LADY THAT JUST GOT OFF THE STAND JUST BEFORE YOU, CORRECT?
A YES, IT WAS, SIR.
Q NOW, AFTER TALKING WITH MICHELLE, WAS HER BROTHER THERE ALSO, RONALD, AT THAT TIME OR DO YOU RECALL?
A NO, THE YOUNG LADY WAS FRYING SOME CHICKEN AND PORK CHOPS RIGHT THERE IN THAT RED SWEATER.
Q THAT'S RIGHT, YES, SIR.
A I REMEMBER THAT.
Q I'VE BEEN DOWN THERE. YES, SIR. NOW, LET ME ASK YOU

NOW, DETECTIVE HARRIS, DID Y'ALL HAVE AN OPPORTUNITY AFTER YOU LEFT MR. BROOKS' STORE AND YOUR CONVERSATION WITH MS. DAVIS, LATER ON THAT DAY DID YOU HAVE AN OPPORTUNITY TO GO TO THE RESIDENCE OF JERMAINE McLEMORE?

A YES, WE DID.

Q AND WHERE WAS JERMAINE'S RESIDENCE?

A HIS RESIDENCE WAS OFF CABIN CREEK ROAD.

Q THE SAME ROAD THE STORE IS ON?

A YES, SIR.

Q AND WAS MR. McLEMORE THERE AT THAT TIME?

A YES, HE WAS, ALONG WITH SEVERAL OTHER INDIVIDUALS STANDING IN THE YARD.

Q NOW, DID YOU AND DETECTIVE GARDNER HAVE THE OPPORTUNITY TO TAKE A STATEMENT FROM MR. McLEMORE AT THAT TIME?

A YES, WE DID.

Q AND I WANT TO SHOW YOU STATE'S FOR IDENTIFICATION NUMBER TWENTY-FOUR. IS THAT THE STATEMENT THAT YOU TOOK FROM MR. McLEMORE ON THE 20TH?

A YES, THIS IS THE STATEMENT THAT SERGEANT GARDNER TOOK ON THAT DAY.

Q WERE YOU PRESENT?

A YES, I WAS.

Q NOW, LET ME ASK YOU, DETECTIVE HARRIS, PRIOR TO MARCH

20TH OF 1997, HAD YOU INTERVIEWED ANYBODY IN REGARDS TO THIS CASE?

A NO, I HAVEN'T.

Q YOU HAD BASICALLY REVIEWED THE FILE?

A YES, SIR.

Q AND WHEN TREY GARNER WAS INTERVIEWED THAT MORNING, WHO ALL WAS PRESENT DURING THE INTERVIEW OF TREY GARNER?

A THAT MORNING?

Q YES, SIR.

A IT WAS TREY, SERGEANT GARDNER AND MYSELF.

Q NOW, WHEN Y'ALL INTERVIEWED MR. McLEMORE, WHO ALL WAS PRESENT WHEN YOU AND SERGEANT GARDNER INTERVIEWED MR. McLEMORE?

A JUST MR. McLEMORE.

Q AND YOU AND SERGEANT GARDNER?

A YES, SIR.

Q WAS TREY GARNER EVER WITH JERMAINE McLEMORE WHEN Y'ALL TOOK JERMAINE'S STATEMENT?

A NO, SIR.

Q OR VICE VERSA, WAS JERMAINE McLEMORE EVER WITH TREY GARNER WHEN Y'ALL TOOK TREY GARNER'S STATEMENT?

A NO, SIR.

Q NOW, TELL THIS JURY, PLEASE, DETECTIVE HARRIS, HOW YOU THREATENED JERMAINE McLEMORE?

A NEVER DID, SIR.
Q WHAT PROMISES DID YOU MAKE TO HIM?
A DIDN'T MAKE ANY PROMISES TO HIM, SIR.
Q DID HE GIVE Y'ALL A STATEMENT?
A YES, HE DID.
Q WAS THAT STATEMENT GIVEN FREELY AND VOLUNTARILY?
A YES, SIR.
Q DID YOU TELL HIM WHAT TO SAY?
A NO, SIR.
Q DID YOU AND SERGEANT GARDNER MAKE A DEAL WITH MR. McLEMORE IN RETURN FOR THE STATEMENT HE GAVE ON MARCH 20TH OF 1997?
A NO, SIR. WE JUST WENT TO INTERVIEW HIM, SIR.
Q AS A MATTER OF FACT, HAVE YOU AND SERGEANT GARDNER EVER UP TO AND INCLUDING SITTING ON THIS WITNESS STAND TODAY EVER MADE A DEAL WITH MR. McLEMORE?
A NO, SIR.
Q WHO MAKES THE DEALS, SIR?
A SOLICITOR.
Q I DO IN MY CASES, CORRECT?
A YES, SIR.
Q AND DID Y'ALL TALK WITH ME THAT DAY?
A NO, SIR.
Q NOW, AS A RESULT OF TAKING THE STATEMENT FROM THE DEFENDANT, JERMAINE McLEMORE, WHAT, IF ANYTHING, WAS

DONE WITH MR. McLEMORE?
A SIR, HE WAS ARRESTED AND TRANSPORTED TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.
Q FOR WHAT CHARGES?
A MURDER.
Q WERE THERE OTHER CHARGES PLACED ON HIM AT THAT TIME OR DO YOU KNOW?
A NO, NOT AT THAT TIME.
Q LATER ON THERE WERE OTHER CHARGES PLACED AGAINST HIM?
A YES, SIR.
Q NOW, LET ME ASK YOU IN TRANSPORTING MR. McLEMORE, WHO ACTUALLY TRANSPORTED HIM, DETECTIVE HARRIS?
A SERGEANT GARDNER DID, SIR.
Q NOW, WAS DAYON LOCATED OR UNDER ARREST AT THAT TIME?
A AT THAT TIME?
Q YES, SIR.
A NO, SIR.
Q WHEN MR. McLEMORE WAS PLACED UNDER ARREST AND TRANSPORTED TO THE RICHLAND COUNTY DETENTION CENTER, WAS ANY OTHER PERSON, ANY OTHER DEFENDANT, WITH HIM?
A LET ME CLARIFY. HE WAS TRANSPORTED TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT AT THAT TIME.
Q I APOLOGIZE. WAS ANY OTHER DEFENDANT WITH HIM?
A NO, THERE WAS NOT.
Q AND HE HAD ALREADY GIVEN A WRITTEN STATEMENT?

A YES, SIR.
Q AND THAT'S STATE'S I.D. TWENTY-FOUR?
A YES, SIR, TWENTY-FOUR.
Q AND LET ME ASK YOU ON STATE'S I.D. TWENTY-FOUR, DOES IT SAY THE LOCATION AND THE DATE AND THE TIME THAT THE STATEMENT IS TAKEN FROM JERMAINE McLEMORE?
A YES, IT DOES.
Q AND WHAT IS THE LOCATION, DATE AND TIME OF THE STATEMENT FROM JERMAINE McLEMORE?
A THE LOCATION WOULD HAVE BEEN [redacted] CABIN CREEK ROAD WHICH WAS HIS RESIDENCE. THE DATE WAS MARCH THE 20TH, '97 AND THE TIME WAS APPROXIMATELY THREE-SEVENTEEN P.M.
Q NOW, DID YOU REMAIN IN THE HOPKINS AREA?
A YES, I DID.
Q AND AS A RESULT OF TAKING MR. McLEMORE'S STATEMENT -- AND BY THE WAY, WHERE WAS MR. GARNER -- LET ME WITHDRAW THAT. AS A RESULT OF TAKING MR. McLEMORE'S STATEMENT, DID YOU AND OTHER OFFICERS WANT TO INTERVIEW DAYON LEMON?
A YES, WE DID.
Q AND DID Y'ALL HAVE AN OPPORTUNITY TO BE IN MR. LEMON'S PRESENCE ON 3-20-97?
A YES, SIR, WE DID.
Q DID Y'ALL TAKE HIM INTO Y'ALL'S CUSTODY?

A YES, WE DID.
Q AND IN WHAT AREA WAS HE TAKEN INTO Y'ALL'S CUSTODY AT?
A WE ARRESTED HIM AT [redacted] LEMONWOOD CIRCLE WHICH WAS HIS MOTHER'S RESIDENCE.
Q IS THAT OFF OF CLARKSON ROAD?
A I THINK SO, SIR.
Q OFF THE ROAD THAT GOES BY HOPKINS SCHOOL?
A THAT'S RIGHT. THAT'S CORRECT.
Q AND AS A RESULT OF TAKING HIM INTO Y'ALL'S CUSTODY -- AND THIS WAS ON WHAT DATE?
A ON THE 20TH.
Q SAME DAY YOU HAD INTERVIEWED MR. GARNER THAT MORNING?
A YES, SIR.
Q SAME DAY Y'ALL HAD TAKEN THE STATEMENT FROM MR. McLEMORE?
A THAT'S CORRECT.
Q AS A RESULT OF TAKING HIM INTO Y'ALL'S CUSTODY, WHERE DID Y'ALL TAKE HIM TO?
A TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT, SIR.
Q AND AFTER GETTING HIM AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT, WHAT, IF ANYTHING, WAS MR. LEMON ADVISED OF?
A HIS MIRANDA RIGHTS, SIR.
Q AND THEREAFTER DID HE WAIVE THOSE RIGHTS AND AGREE TO

TALK WITH Y'ALL?
A YES, HE DID.
Q AND I WANT TO SHOW YOU COURT'S EXHIBIT NUMBER TWO. WHAT IS THIS DOCUMENT, SIR?
A THIS IS A RICHLAND COUNTY SHERIFF'S DEPARTMENT INTERROGATION, ADVICE OF RIGHTS FORM, SIR.
Q DID MR. LEMON GIVE Y'ALL A STATEMENT?
A YES, HE DID.
Q DOES THAT DOCUMENT INDICATE THE LOCATION, THE DATE AND THE TIME THAT STATEMENT WAS GIVEN?
A YES, IT DOES.
Q AND WHAT LOCATION, DATE AND TIME WAS THE STATEMENT GIVEN BY MR. LEMON?
A THE LOCATION WOULD HAVE BEEN THE RICHLAND COUNTY SHERIFF'S DEPARTMENT WHICH IS LOCATED AT 5623 TWO NOTCH ROAD. THE DATE WAS MARCH 20TH, '97. THE TIME, MILITARY TIME, 1822 HOUR WHICH WOULD HAVE BEEN SIX TWENTY-TWO IN THE EVENING.
Q SO, THAT'S THREE HOURS AND FIVE MINUTES IF I REMEMBER WHAT THE TIME WAS ON MR. McLEMORE'S STATEMENT AFTER Y'ALL HAD INTERVIEWED MR. McLEMORE?
A THAT'S CORRECT.
Q HIS WAS AT THREE-SEVENTEEN?
A THAT'S CORRECT, SIR.
Q MR. McLEMORE'S. AND MR. LEMONS WAS AT?

A SIX TWENTY-TWO.
Q NOW, WAS MR. LEMON EVER IN THE PRESENCE OF MR. McLEMORE PRIOR TO Y'ALL TAKING THE STATEMENT FROM MR. LEMON?
A NO, SIR.
Q OR VICE VERSA, WAS MR. McLEMORE EVER IN THE PRESENCE OF MR. LEMON PRIOR TO Y'ALL TAKING MR. McLEMORE'S STATEMENT?
A NO, SIR.
Q EACH AND EVERY STATEMENT THAT Y'ALL TOOK FROM THESE THREE INDIVIDUALS ON MARCH 20TH OF 1997, WERE THEY TAKEN SEPARATELY AND DISTINCTLY?
A YES, SIR.
Q WHAT PROMISES, IF ANY, DID YOU MAKE OR SERGEANT GARDNER MAKE TO DAYON LEMON IN RETURN FOR THE STATEMENT THAT HE GAVE?
A NONE, SIR.
Q WHAT THREATS OR COERCIVE ACTION DID YOU OR SERGEANT GARDNER TAKE TOWARDS MR. LEMON IN RETURN FOR THE STATEMENT THAT HE GAVE ON MARCH 20TH OF 1997?
A THERE WAS NONE.
Q ANY PROMISES, ANY DEALS?
A NO, SIR.
Q DID YOU HAVE THE AUTHORITY TO MAKE ANY PROMISES OR ANY DEALS?

A HAD NO AUTHORITY.
Q DID YOU OR SERGEANT GARDNER TALK WITH ME OR ANYONE WITH THE SOLICITOR'S OFFICE ON THE DAY OF MARCH 20TH OF 1997 CONCERNING ANY DEALS THAT Y'ALL WANTED TO OFFER DAYON LEMON IN RETURN FOR HIS STATEMENT?
A NO, SIR.
Q NOW, DID YOU TELL, SERGEANT GARDNER TELL, ANY OFFICER TELL DAYON LEMON WHAT TO SAY IN HIS STATEMENT OF MARCH 20TH OF 1997?
A NO, SIR.
Q WHO DID TREY GARNER SAY HE WAS WITH ON THE DAY OF OCTOBER 27TH OF 1996?
A HE STATED MOST OF THAT DAY HE WAS WITH JERMAINE McLEMORE AND ALSO DAYON LEMON.
Q AND WHO DID HE SAY HE WAS WITH AT BROOKS' STORE?
A JERMAINE AND DAYON.
Q IS THAT CONSISTENT WITH WHAT MR. McLEMORE SAID ON THE 20TH OF MARCH OF 1997?
A VERY CONSISTENT.
Q IS THAT CONSISTENT WITH WHAT DAYON LEMON SAID ON MARCH 20TH OF 1997?
A YES, SIR.
Q NOW, THESE TWO INDIVIDUALS, DAYON LEMON AND McLEMORE, WERE BEING KEPT SEPARATE AND APART, CORRECT?
A THAT'S CORRECT.

Q WHAT LOCATION, IF ANY, DID DAYON LEMON SHOW YOU OR ANY OTHER OFFICERS ON MARCH 20TH OF 1997?
A THERE WERE SEVERAL LOCATIONS. ON THE WAY TO THE JAIL FROM THE SHERIFF'S DEPARTMENT WE WENT BY BURGER KING IN ROUTE BECAUSE HE HAD BEEN THERE A COUPLE OF HOURS. IN ROUTE TO THE JAIL HE DROVE US NEAR THE BRIDGE WHERE HE STATED HE THREW -- THAT THEY THREW THE WEAPON OVER THE SIDE.
Q DAYON SHOWED YOU THAT LOCATION?
A YES, SIR.
Q WHAT ROAD IS THAT ON? DO YOU RECALL?
A (NO VERBAL RESPONSE)
Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER ONE. DO YOU RECALL STATE'S EXHIBIT NUMBER ONE AND THIS IS THE SCHOOL UP HERE, HOPKINS MIDDLE. IF YOU GO DOWN CLARKSON ROAD ...
A I JUST KNOW IT WAS A BRIDGE.
Q AND THAT'S WHERE THE CREEK CROSSES CLARKSON?
A RIGHT.
Q THAT YOU'RE FAMILIAR WITH. IS THAT THE LOCATION THAT MR. LEMON POINTED OUT TO Y'ALL?
A I THINK THAT'S THE GENERAL LOCATION, SIR.
Q AND HE RODE WITH Y'ALL AND SHOWED YOU THAT AREA, CORRECT?
A THAT'S CORRECT.

Q NOW, INDEPENDENT OF MR. LEMON SHOWING YOU THAT LOCATION, WHAT HAD JERMAINE SAID?
A THAT THE WEAPON WAS THROWN OVER A BRIDGE.
Q WERE THEIR STATEMENTS CONSISTENT ONE WITH THE OTHER?
A VERY CONSISTENT.
Q NOW, INVESTIGATOR HARRIS, YOU WERE NOT, I BELIEVE YOU TESTIFIED, FAMILIAR WITH THIS AREA?
A NO, I WAS NOT.
Q PRIOR TO MARCH 20TH OF 1997, BEYOND FAMILIARIZING YOURSELF WITH THE FILE, DID YOU KNOW DAYON LEMON?
A NO, SIR.
Q DID YOU KNOW JERMAINE McLEMORE?
A NO, SIR.
Q DID YOU KNOW TREY GARNER?
A NO, SIR.
Q DID YOU HAVE ANY REASON TO PUT ANY ONE OF THEM INTO ANY CRIME?
A NO, SIR.
Q UNLESS THEY WERE THERE?
A NO, SIR.
Q UNLESS THEY WERE IN IT BASED ON YOUR INVESTIGATION?
A THAT'S CORRECT, SIR.

MR. McMAHON: THANK YOU, DETECTIVE HARRIS. I DON'T HAVE ANY FURTHER QUESTIONS.

MR. ROGERS: THE COURT'S INDULGENCE, YOUR HONOR.

CROSS EXAMINATION BY

MR. ROGERS:

Q INVESTIGATOR HARRIS, WAS THIS THE FIRST MURDER INVESTIGATION THAT YOU HAD BEEN INVOLVED IN?

A YES, IT WAS, SIR.

Q AND DO YOU REMEMBER WHAT TIME YOU GOT TO JERMAINE McLEMORE'S HOUSE ON MARCH 20TH OF '97?

A APPROXIMATELY THREE O'CLOCK. SOMEWHERE IN THAT VICINITY.

Q DO YOU HAVE YOUR NOTES?

A SIR?

Q DO YOU HAVE YOUR NOTES?

A DO I HAVE MY NOTES?

Q YES, SIR.

A I HAVE SOME NOTES, SIR. I DON'T HAVE THE ORIGINAL NOTES.

Q DO YOU HAVE NOTES THAT WOULD REFLECT THAT TIME?

A BASED ON THE ADVICE OF RIGHTS FORMS. THAT WOULD BE THE NOTES THAT I WOULD USE.

Q RIGHT. YOU HAVE HIS ADVICE OF RIGHTS FORM THAT INDICATES THE TIME THAT HE SIGNED THE ADVICE OF RIGHTS FORM?

A YES, SIR.

Q WHAT I'M ASKING YOU IS DO YOU HAVE ANY DOCUMENT THAT INDICATES THE TIME THAT YOU ARRIVED AT JERMAINE'S

HOUSE?

A I HAVE SERGEANT GARDNER'S NOTES WHICH WERE MEMORIALIZED THE TIME THAT WE ARRIVED.

Q AND WHAT TIME WAS THAT?

A LIKE I SAID, APPROXIMATELY AROUND THREE, LITTLE AFTER THREE.

Q CAN I SEE THAT NOTE?

A I'D HAVE TO GET IT FROM SERGEANT GARDNER, SIR.

MR. ROGERS: YOUR HONOR, MAY I JUST BE SHOWN THAT NOTE?

THE COURT: YOU MAY IF HE HAS IT.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY AND OUT OF THE HEARING OF THE COURT REPORTER.)

Q (BY MR. ROGERS) ALL RIGHT. SO, YOU GOT TO JERMAINE'S HOUSE AT ABOUT THREE O'CLOCK?

A APPROXIMATELY.

Q AND YOU TOLD HIM THAT YOU WERE THERE TO INVESTIGATE A MURDER?

A BASICALLY, WE WERE DOING A FOLLOW-UP ON THE INVESTIGATION, YES, SIR.

Q WELL, YOU TOLD HIM SOMETHING TO GET HIM TO CONFESS TO HIS INVOLVEMENT IN THIS MURDER?

A THAT'S NOT TRUE, SIR.

Q WELL, I'M JUST TRYING TO FIND OUT WHAT HAPPENED.

A ARE YOU ASKING ME WHAT DID WE SAY?
Q YES.
A OKAY. WE ASKED HIM COULD WE SPEAK TO HIM. I DIDN'T KNOW WHO JERMAINE WAS. HE WAS STANDING IN THE GROUP AND WE ASKED WHO WAS JERMAINE McLEMORE. HE STEPPED AWAY FROM THE CROWD. WE ASKED HIM COULD WE SPEAK TO HIM FOR A MINUTE, PLEASE. HE SAID, OKAY, LET'S GO IN MY HOUSE, I DON'T WANT MY FRIENDS TO KNOW WHAT WE ARE DISCUSSING. SO, HE HAD THEM TO STEP AWAY. WE ENTERED HIS RESIDENCE. AT THAT TIME, INVESTIGATOR GARDNER WHICH IS NOW SERGEANT GARDNER TALKED WITH JERMAINE AND STATED THAT HIS STATEMENT WAS NOT COINCIDING WITH THE FIRST -- THE STATEMENT THAT HE GAVE BACK IN DECEMBER THERE WERE SOME THINGS THAT WAS NOT MATCHING UP AT THE TIME.
Q SO, YOU TOLD HIM THAT YOU DIDN'T BELIEVE WHAT HE SAID THE FIRST TIME?
A THAT'S NOT WHAT WE TOLD HIM.
Q IN OTHER WORDS --
A NO, THAT'S NOT WHAT WE WAS TELLING HIM.
Q YOU TOLD HIM THAT HIS FIRST STATEMENT DOESN'T LOOK LIKE IT'S TRUE AND WE'RE COMING BACK FOR A SECOND STATEMENT.
A NO, THAT'S NOT WHAT INVESTIGATOR GARDNER SAID, SIR.
Q I'M ASKING YOU WHAT WAS SAID TO HIM TO GET HIM TO

GIVE THIS STATEMENT.

A I'LL REPEAT. INVESTIGATOR GARDNER WHICH IS NOW SERGEANT GARDNER STATED TO HIM THAT THERE WERE SOME PROBLEMS WITH THE STATEMENT THAT HE RECEIVED BACK IN DECEMBER AND HE NEEDED TO CLARIFY SOME THINGS. THAT'S HOW THE INITIAL CONVERSATION GOT STARTED, SIR.

Q AND IT WAS AT THAT POINT THAT JERMAINE GAVE YOU THIS FULL RECITATION?

A NO. AT THAT POINT, SERGEANT GARDNER EXITED THE ROOM TO GO GET ANOTHER WITNESS STATEMENT FORM. AT THAT TIME I INTRODUCED MYSELF AS INVESTIGATOR HARRIS. I ADVISED HIM THAT I JUST GOT PROMOTED UP TO INVESTIGATIONS AND THAT I WAS BRINGING A NEW ENERGY TO THIS CASE.

Q THAT YOU WERE BRINGING A WHAT?

A A NEW ENERGY TO THIS CASE THAT WAS PENDING AND THAT I WAS GONNA SEE THAT JUSTICE WAS BROUGHT TO THE BROOKS FAMILY. AND THAT'S WHEN THE DEFENDANT STATED HE JUST COULDN'T TAKE IT ANY MORE.

Q AND IT WAS JUST YOU AND INVESTIGATOR GARDNER PRESENT?

A AT THAT TIME, I WAS THE ONLY ONE PRESENT WHEN HE STATED THAT HE WANTED TO TALK AND I STOPPED HIM RIGHT THERE.

Q SO, YOU TOLD HIM YOU WERE BRINGING NEW ENERGY, YOU WANTED TO BRING THIS TO JUSTICE AND THEN HE

CONFESSED?
A BASICALLY.
Q DO YOU CARRY A TAPE RECORDER?
A NO, I DON'T.
Q DO YOU OWN ONE?
A DO I OWN ONE?
Q OWN ONE?
A I OWN ONE NOW.
Q BUT YOU DIDN'T THEN?
A NO, I DIDN'T, SIR.
Q DID YOU GO TO THE ACADEMY?
A SURE I DID.
Q AND THEY TAUGHT YOU AT THE ACADEMY THAT YOU WERE TO TAKE FULL AND COMPLETE STATEMENTS OF EVERYTHING THAT'S CONNECTED WITH AN INVESTIGATION?
A NO, THAT'S NOT WHAT THEY TAUGHT ME AT THE ACADEMY.
Q THEY DON'T TEACH YOU THAT AT THE ACADEMY?
A NO. NO.
Q THEY DON'T TEACH YOU THAT YOU'RE SUPPOSED TO WRITE DOWN ALMOST EVERYTHING THAT YOU SEE, HEAR AND SAY SO THAT WHEN YOU HAVE TO COME BACK TO COURT MONTHS OR MAYBE YEARS DOWN THE LINE YOU WILL HAVE SOMETHING TO REFER TO.
A OKAY. YES, SIR. THAT'S CORRECT.
Q SO, AFTER YOU TOOK JERMAINE'S STATEMENT AND HE

IMPLICATES DAYON AND TREY, YOU THEN GO TO DAYON?
A THAT'S CORRECT.
Q DO YOU RECALL WHAT TIME YOU GO TO DAYON?
A APPROXIMATELY AROUND FOUR.
Q AND YOU GO TO DAYON'S HOUSE?
A YES, WE DID.
Q YOU AND HOW MANY OTHER OFFICERS?
A THERE WERE TWO OTHER SUPERVISORS. APPROXIMATELY SIX IN TOTAL.
Q THERE WEREN'T MORE THAN THAT?
A ABOUT SIX IN TOTAL, SIR.
Q DO YOU HAVE THAT RECORDED ANYWHERE, HOW MANY OFFICERS -- WELL, LET ME JUST SAY I WAS GIVEN TO UNDERSTAND IT WAS LIKE TWENTY OFFICERS. IS THAT NOT CORRECT?
A THAT WAS EXAGGERATED.
Q SO, YOU SAY IT WAS SIX.
A IT WAS SIX.
Q GUNS DRAWN?
A SIR?
Q GUNS DRAWN?
A NO, THERE WAS A LITTLE GIRL ON THE PORCH. DAYON WAS NOT HOME.
Q TREY HAD JUST TOLD Y'ALL -- I'M SORRY. JERMAINE HAD JUST TOLD Y'ALL THAT DAYON DID THE SHOOTING AND Y'ALL GO UP TO DAYON'S HOUSE WITH YOUR HANDS IN YOUR

POCKETS?
A SIR, I DON'T THINK WE WOULD HAVE OUR HANDS IN OUR POCKET. I THINK THAT'S --
Q GUNS WEREN'T DRAWN?
A NO, THEY WERE NOT.
Q SO, WHEN YOU GOT TO DAYON'S WHAT HAPPENED? WHAT TIME?
A APPROXIMATELY AROUND FOUR. AROUND FOUR O'CLOCK HOUR IN THE EVENING.
Q OKAY. FOUR. AND THAT WAS AT LEMONWOOD CIRCLE?
A THAT WAS AT [redacted] LEMONWOOD CIRCLE, SIR.
Q OKAYM, I'M SORRY. LEMON CIRCLE.
A THAT'S OKAY.
Q SO, YOU GOT THERE AT FOUR?
A APPROXIMATELY.
Q AND WHAT WAS SAID TO DAYON?
A AS I STATED, HE WAS NOT THERE AT THAT TIME, SIR.
Q WHEN DID HE COME?
A THIRTY, FORTY MINUTES LATER.
Q Y'ALL WAITED FOR HIM?
A YES, WE DID. SPOKE WITH HIS SISTER WHO IN TURN CALLED HIS MOTHER WHO WAS A SCHOOL BUS DRIVER. SHE CAME HOME AND SHE PAGED HIM AND TALKED TO HIM ON THE CELLULAR PHONE AND ADVISED HIM THAT HE NEEDED TO COME HOME IMMEDIATELY.

Q AND WHAT WAS SAID TO DAYON IN ORDER TO PRODUCE THIS STATEMENT?
A I'M SORRY?
Q WHAT WAS SAID TO DAYON IN ORDER TO PRODUCE THIS STATEMENT?
A THERE WAS NOTHING SAID IN ORDER -- I MEAN IN ORDER FOR HIM TO ...
Q HIS MOTHER CALLS HIM AND TELLS HIM THE POLICE ARE HERE, YOU NEED TO COME HOME. HE COMES HOME, SITS DOWN AND BEGINS TALKING?
A NO, HE DIDN'T JUST COME HOME, SIR.
Q WELL, EVENTUALLY HE CAME?
A NO, WE DID NOT ARREST HIM AT HIS HOME. THERE WERE SOME OTHER THINGS THAT TOOK PLACE PRIOR TO BRINGING HIM BACK TO LEMONWOOD CIRCLE, SIR.
Q WELL, PRIOR TO -- 1822 IS SIX TWENTY-TWO.
A THAT'S CORRECT.
Q HE WAS IN YOUR CUSTODY FROM FOUR-THIRTY TO SIX TWENTY-TWO?
A IT WAS A LITTLE LATER THAN FOUR-THIRTY.
Q WHAT WAS LATER? LATER THAN FOUR-THIRTY OR LATER THAN SIX TWENTY-TWO?
A NO. LATER THAN FOUR-THIRTY. I'D SAY IT WAS AROUND THIRTY OR FORTY-FIVE MINUTES. SOMEWHERE IN THERE.
Q QUARTER TO FIVE?

A ROUND ABOUT.
Q HE WAS IN YOUR CUSTODY FROM A QUARTER TO FIVE UNTIL SIX TWENTY-TWO WHEN HE SIGNED THIS ADVICE OF RIGHTS?
A RIGHT. INCLUDING THE TRIP BACK FROM HOPKINS BACK TO COLUMBIA AND ALSO ARRIVING AT THE SHERIFF'S DEPARTMENT.
Q WELL, I THOUGHT YOU TOOK A STATEMENT FROM HIM AT HIS HOUSE?
A NO, SIR. NEVER TOLD YOU THAT. TOOK THE STATEMENT AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT ON TWO NOTCH ROAD, SIR.
Q OKAY.
A TOOK JERMAINE'S STATEMENT AT HIS HOUSE.
Q OKAY. BUT YOU BROUGHT DAYON TO THE SHERIFF'S DEPARTMENT?
A YES, SIR.
Q HE WASN'T FREE TO LEAVE?
A NO, SIR.
Q HE WAS UNDER ARREST?
A YES, SIR.
Q BASED ON WHAT TREY HAD TOLD YOU, YOU HAD ARRESTED HIM?
A NO, SIR.
Q I'M SORRY.
A BASED ON WHAT JERMAINE McLEMORE STATED.

Q I'M SORRY. JERMAINE.
A BASED ON HIS OWN IMPLICATION AND ALSO BASED ON THE END STATEMENT THAT MR. GARNER GAVE.
Q ALL RIGHT. THAT THEY WERE AT THE GAS STATION. BUT BASED ON WHAT JERMAINE TOLD YOU, YOU ARRESTED DAYON AT HIS HOME, TOOK HIM TO THE SHERIFF'S DEPARTMENT WHERE THIS STATEMENT WAS PRODUCED?
A THAT'S CORRECT.
Q AND DID YOU TELL HIM THE SAME THING THAT YOU WERE BRINGING NEW ENERGY TO THIS INVESTIGATION AND YOU WANTED TO MAKE SURE THAT JUSTICE WAS DONE AND THAT WAS WHAT PROMPTED HIS CONFESSION?
A NEVER HAD TO SAY THAT, SIR.
Q HE JUST VOLUNTARILY CONFESSED?
A VOLUNTARILY.
Q WITHOUT Y'ALL EVER ASKING HIM A QUESTION?
A VOLUNTARILY AS IF HE JUST WANTED TO GET SOMETHING OFF HIS CHEST, SIR.
Q AND YOU ALSO COULD HAVE HAD THE CAPABILITY OF TAPING THAT WHOLE EVENT SO THE JURY WOULD KNOW EXACTLY WHAT HAPPENED?
A THAT'S NOT A PROCEDURE THAT THE SHERIFF'S DEPARTMENT USE. THAT'S CONSISTENT WITH JUST -- THAT'S NOT ONE OF THE POLICIES THAT WE DO.
Q RIGHT. BECAUSE YOU DON'T WANT THE JURY TO KNOW WHAT

YOU REALLY TELL THEM?

MR. McMAHON: NO, SIR, I OBJECT TO THAT CHARACTERIZATION NOT WANTING THE JURY TO KNOW.

THE COURT: WELL, REPHRASE THE QUESTION. I SUSTAIN THE OBJECTION.

Q (BY MR. ROGERS) YOU DON'T WANT IT KNOWN WHAT YOU REALLY TELL A SUSPECT, DO YOU?

A HE SIGNED A STATEMENT.

MR. McMAHON: I OBJECT TO THE FORM OF THE QUESTION.

THE COURT: I OVERRULE THE OBJECTION.

Q (BY MR. ROGERS) AND YOUR ANSWER IS YES OR NO?

A THAT'S NOT CORRECT, SIR.

Q THAT IS NOT WHY YOU DO NOT TAPE THESE KINDS OF THINGS?

A THAT'S RIGHT.

Q NOW, WHEN YOU TALKED TO TREY, TREY DIDN'T TELL YOU THAT AFTER THEY LEFT THE GAS STATION THAT THEY DROPPED HIM OFF AT THE CHURCH DOWN ON CABIN CREEK?

MR. McMAHON: OBJECTION UNLESS THERE'S SOME BASIS AND REASON FOR HIM ASKING THAT QUESTION AND HE CAN PRODUCE EVIDENCE OF THAT.

MR. ROGERS: I INTEND TO.

MR. McMAHON: THAT'S FINE.

A HE DID NOT PUT THAT IN HIS STATEMENT, SIR.

Q (BY MR. ROGERS) HE DIDN'T TELL YOU?
A HE DID NOT TELL US THAT.
Q YOU WROTE THE STATEMENT OUT?
A NO, I WAS A WITNESS TO THE STATEMENT.
Q OH, HE WROTE THE STATEMENT?
A YES, SIR.
Q SO, IT WAS NOT IN TREY'S HANDWRITING?
A NO. HE SIGNED IT.
Q DID HE READ IT?
A YES, HE DID.
Q YOU SAW HIM?
A YES, I DID. HE WAS ALSO ADVISED COULD HE READ AND WRITE AND HE CONFIRMED THAT, ALSO.
Q WELL, I THINK WHAT I'M ASKING YOU IS YOU KNOW HOW MANY PEOPLE DO WHEN YOU HAND SOMEBODY SOMETHING AND THEY JUST KIND OF SIGN IT OR DID HE SIT THERE AND GO LINE BY LINE? THAT'S ALL I'M ASKING?
A SIR, THIS WAS OVER A YEAR AGO. HE WAS RESPONSIBLE FOR READING IT. THAT WAS UP TO HIM. HE SAID HE WAS EDUCATED AND HE UNDERSTOOD HOW TO READ AND WRITE.
Q IT WAS OVER A YEAR AGO AND YOU DON'T REALLY REMEMBER WHAT YOU DID AT THE TAKING OF THAT STATEMENT?
A SIR, I UNDERSTAND THAT HE READ THE STATEMENT, HE SIGNED IT, HE AGREED THAT EVERYTHING ON THIS STATEMENT WAS CORRECT.

Q DID YOU MAKE ANY NOTES TO THAT EFFECT?
A NO, SIR.
Q NOW, AFTER JERMAINE AND DAYON WERE ARRESTED, DID YOU EVER GO BACK TO TREY TO TRY TO GET HIM TO CHANGE HIS FIRST STATEMENT?

MR. McMAHON: OBJECTION TO THE CHARACTERIZATION.

MR. ROGERS: ALL RIGHT. I'LL REPHRASE.

THE COURT: REPHRASE IT.

Q (BY MR. ROGERS) DID YOU EVER GO BACK TO TREY AND SAY, LOOK, YOUR TWO FRIENDS JUST RATTED YOU OUT, DO YOU WANT TO GIVE ANOTHER STATEMENT?
A YES, SIR.
Q DID YOU THREATEN HIM AT ALL WHEN YOU WENT BACK?
A NO, SIR.
Q DID SOMEBODY HAVE A CAST ON HIS ARM DURING THESE INTERROGATIONS, DID YOU OR INVESTIGATOR GARDNER? DID YOU HAVE A CAST ON YOUR ARM?
A DIDN'T HAVE A CAST ON. IT WAS IN A BRACE. A CLOTH LIKE BRACE WITH METAL FINGERS STICKING OUT OF THE PINKY FINGER.
Q WAS IT PLASTER?
A NO, IT WASN'T PLASTER. IT WAS, YOU KNOW, LIKE THE CLOTH, THE KIND YOU CAN TAKE ON AND OFF.
Q AND YOU NEVER THREATENED ANYBODY?
A NO, SIR.

Q YOU TESTIFIED THAT YOU HAD NEVER SEEN TREY BEFORE MARCH 20TH, CORRECT?
A THAT'S CORRECT.
Q BUT DID YOU FORGET ABOUT THE TIME THAT YOU WENT TO HIS MOTHER'S HOUSE WHEN SHE CALLED BECAUSE SOME BOYS HAD SHOT UP HER HOUSE AND TREY WAS THERE?
A YES, I DID. I DID FORGET.
Q SO, YOU HAD SEEN TREY?
A I DON'T REMEMBER TREY. TWO YEARS EARLIER I THINK I WAS WORKING A DIFFERENT REGION AND THEY HAD A SHOOTING CALL AND I RESPONDED DOWN TO THE AREA.
Q AND YOU'RE TELLING THIS JURY THAT NOTHING WAS EVER SAID TO TREY OR JERMAINE ABOUT THIS COULD BE A DEATH PENALTY CASE IF YOU DON'T TELL US WHAT WE WANT TO HEAR OR ANYTHING OF THAT NATURE?
A NO, SIR.
Q AND WE ONLY HAVE YOUR WORD?
A ALONG WITH THE STATEMENTS.

MR. ROGERS: THE COURT'S INDULGENCE.

(PAUSE)

Q (BY MR. ROGERS) YOU DID SAY ON YOUR WAY WHEN YOU WERE TAKING DAYON EITHER TO THE JAIL OR THE SHERIFF'S DEPARTMENT Y'ALL STOPPED BY BURGER KING?
A YES, WE DID.
Q AT HIS REQUEST?

A WELL, NOT REALLY AT HIS REQUEST. ANY TIME WE SPEND SEVERAL HOURS WITH A SUSPECT, YOU KNOW, IT'S THE SHERIFF'S DEPARTMENT POLICY THAT WE STOP AND GIVE THEM SOMETHING TO EAT. WE JUST FELT LIKE IT WOULD HELP HIM.

Q SO, HE HAD BEEN IN YOUR PRESENCE A GOOD WHILE?

A THE SUBJECT STATED HE WAS HUNGRY SO WE STOP AND BOUGHT HIM A BURGER AND A SODA.

MR. ROGERS: THANK YOU.

A YOU'RE WELCOME.

MR. McMAHON: MAY IT PLEASE THE COURT.

REDIRECT EXAMINATION BY

MR. McMAHON:

Q HE HAD ASKED YOU ABOUT TAKING THE STATEMENT SO THAT YOU'D HAVE A RECORD. WERE THE STATEMENTS WRITTEN OUT FOR A RECORD?

A YES, SIR.

Q AND THAT'S WHAT I'VE SHOWN TO YOU PREVIOUSLY. STATE'S EXHIBIT NUMBER TWENTY-THREE AND THE LARGE BOARD, THAT'S WHAT WAS WRITTEN OUT FOR THE RECORD OF TREY GARNER'S STATEMENT?

A YES, SIR.

Q AND HE SIGNED EACH AND EVERY PAGE?

A YES, HE DID.

MR. ROGERS: YOUR HONOR, EXCUSE ME JUST ONE

MINUTE. MAY I LOOK AT ...THIS ONE IS FOR I.D., YOUR HONOR.

MR. McMAHON: I UNDERSTAND THAT.

MR. ROGERS: I'M SORRY. WELL, I DIDN'T THINK THE JURY WAS SUPPOSED TO SEE IT IF IT WAS FOR I.D. THAT'S ALL.

MR. McMAHON: I WASN'T GOING TO SHOW IT TO THE JURY. I APOLOGIZE.

MR. ROGERS: I'M SORRY. YOU PUT IT IN CLOSE PROXIMITY. I'M SORRY, YOUR HONOR.

Q (BY MR. McMAHON) NOW --

MR. McMAHON: DID HE WANT TO MAKE A MOTION ON SOME MATTER BECAUSE OF THAT?

THE COURT: I DIDN'T HEAR ONE.

Q (BY MR. McMAHON) THOSE OTHER STATEMENTS, DID YOU TAKE THEM IN WRITING OR WERE THEY TAKEN IN WRITING SO THAT AN ACCURATE RECORD OF WHAT JERMAINE McLEMORE SAID TO Y'ALL WOULD REMAIN?

A THAT'S CORRECT, SIR.

Q AND ALSO DAYON LEMON?

A THAT'S CORRECT, SIR.

Q NOW, LET ME ASK YOU THIS. LOOKING AT TREY GARNER'S STATEMENT, POINT OUT FOR THE JURY, PLEASE, WHERE THERE IS ANY MENTION OF LETTING HIM OFF AT THE CHURCH?

A I'VE READ OVER IT, SIR. THERE'S NO MENTION.
Q AND DID YOU SAY -- DID MR. ROGERS ASK YOU EVEN AFTER YOU TALKED WITH MR. McLEMORE AND AFTER YOU TALKED TO MR. LEMON, YOU WENT BACK AND TALKED TO MR. GARNER?
A YES, WE DID.
Q GAVE HIM AN OPPORTUNITY TO SAY ANYTHING DIFFERENT OR CHANGE ANYTHING?
A THAT'S CORRECT.
Q WHAT DID HE TELL YOU ABOUT THE CHURCH THAT TIME?
A NEVER DID.
Q WHEN IS THE FIRST TIME YOU EVER HEARD ABOUT THE CHURCH?
A ABOUT TWO MINUTES AGO.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: YOU MAY STEP DOWN.

A THANK YOU, SIR.

(WITNESS TO THE SIDE)

MR. CHAPLIN: THE STATE CALLS ZANE PADGETT.

ZANE PADGETT, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A ZANE PADGETT.

DIRECT EXAMINATION BY

MR. CHAPLIN:

Q MR. PADGETT, WHERE ARE YOU EMPLOYED?

A I'M EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

A I'VE BEEN EMPLOYED WITH THE SHERIFF'S DEPARTMENT FOR ABOUT SIXTEEN AND A HALF YEARS.

Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT PERIOD?

A SIXTEEN AND A HALF YEARS, SIR.

Q EXACTLY WHAT DO YOU DO FOR THE SHERIFF'S DEPARTMENT?

A I'M PRESENTLY A LIEUTENANT. I'M THE SUPERVISOR IN CHARGE OF THE FORENSIC LABORATORY AT THE SHERIFF'S DEPARTMENT.

Q IS THERE ANY SPECIAL TRAINING OR SCHOOLING YOU NEED IN ORDER TO HOLD THE POSITION YOU HOLD?

A YES, SIR. FOR THE PAST FOURTEEN AND A HALF YEARS THAT I'VE BEEN INVOLVED IN FORENSICS I'VE ATTENDED NUMEROUS SCHOOLS. FINGERPRINT, BLOOD PATTERN ANALYSIS, RECONSTRUCTION, PHOTOGRAPHY, ARSON AND IT'S BEEN LITERALLY HUNDREDS OF SCHOOLS.

Q HOW MANY MURDER TRIALS HAVE YOU BEEN IN -- WELL, HOW MANY MURDER CASES HAVE YOU BEEN INVOLVED IN OR WENT TO THE SCENE?

A PROBABLY EASILY THREE HUNDRED IF NOT MORE. HUNDREDS.

Q HAVE YOU EVER TESTIFIED IN A MURDER TRIAL?

A YES, SIR. MANY TIMES.
Q HAVE YOU EVER BEEN OFFERED AS AN EXPERT IN FORENSICS AND NOT BEEN QUALIFIED?
A NO, SIR. ACTUALLY, I'M QUALIFIED IN SEVERAL AREAS OF FORENSICS.

MR. CHAPLIN: YOUR HONOR, AT THIS TIME I'D LIKE TO OFFER THIS WITNESS AS AN EXPERT IN FORENSIC SCIENCE.

MR. ROGERS: ONLY?

MR. CHAPLIN: I BEG THE COURT'S INDULGENCE. YOUR HONOR, I'D LIKE TO WITHDRAW THAT. I WOULD JUST LIKE TO OFFER HIM AS AN EXPERT PERIOD.

THE COURT: IN WHAT FIELD?

(PAUSE)

Q (BY MR. CHAPLIN) YOU STATED TO THE COURT THAT YOU HAVE BEEN QUALIFIED IN DIFFERENT AREAS?
A YES, SIR.
Q OF EXPERTISE?
A YES, SIR.
Q CAN YOU EXPLAIN TO THE COURT WHAT AREAS THOSE ARE?
A I'VE BEEN QUALIFIED AS AN EXPERT IN LATENT FINGERPRINTS, FORENSIC PHOTOGRAPHY, ARSON INVESTIGATION, BLOOD PATTERN ANALYSIS AND GENERAL CRIME SCENE COLLECTION AND EVIDENCE.
Q NOW, EACH OF THOSE, WHAT TYPE OF SCHOOLING FOR LATENT

PRINTS?

A I'VE BEEN THROUGH ACTUALLY SEVERAL SCHOOLS FOR LATENT PRINTS, SIR. BASIC FINGERPRINTS, ADVANCED LATENT FINGERPRINTS WHICH IS TAUGHT BY THE F.B.I. I'VE BEEN THROUGH PALM PRINT SCHOOL AND DONE ALSO A LOT OF ON-THE-JOB TRAINING WITH FINGERPRINTS AND OTHER EXPERTS.

Q AND THE OTHER AREA WAS?

A ARSON INVESTIGATION. I'VE BEEN THROUGH THE BASIC ARSON COURSE. I'VE WORKED SEVERAL SCENES WITH OTHER EXPERTS IN ARSON INVESTIGATION.

Q AND THE OTHER AREA?

A BLOOD PATTERN ANALYSIS. I'VE ATTENDED COURSES IN BLOOD PATTERN ANALYSIS, THREE SEPARATE COURSES. I'VE WORKED IN BLOOD PATTERN ANALYSIS FOR THE PAST TWO YEARS AND ALSO HAVE BEEN TRAINED BY EXPERTS AND WORKED WITH DIFFERENT SCENES WITH OTHER EXPERTS.

Q AND WAS THERE ANOTHER AREA?

A GENERAL CRIME SCENE EVIDENCE AND COLLECTION. THERE'S VARIOUS SCHOOLS THAT I'VE GONE THROUGH FOR COLLECTING EVIDENCE AND PHOTOGRAPHY AND FORENSIC PHOTOGRAPHY. I'VE ALSO WORKED WITH OTHER EXPERTS ON MANY CASES IN THOSE AREAS.

Q AND THE QUESTION I ASKED YOU EARLIER ABOUT BEING OFFERED AS AN EXPERT IN THOSE AREAS YOU JUST ARTICULATED TO ME, HAVE YOU EVER BEEN NOT QUALIFIED

TO TESTIFY IN ANY OF THOSE AREAS?
A NO, SIR, I HAVE NOT.
Q WHAT ABOUT JUST A GENERAL CRIME SCENE. IS THAT AN AREA IN WHICH YOU'RE --
A YES, SIR, I WAS QUALIFIED AS AN EXPERT IN THAT. THAT'S BASICALLY THE PRESERVATION AND COLLECTION OF EVIDENCE AND ACTUALLY WORKING A CRIME SCENE, THE PHOTOGRAPHY OF A CRIME SCENE, SECURING AND COLLECTING EVIDENCE AND DOING SOME ANALYSIS ON THE EVIDENCE.
Q SO, LIKE YOU JUST STATED PHOTOGRAPHY AS WELL AT THE CRIME SCENE?
A THAT'S CORRECT. YES, SIR.

MR. CHAPLIN: YOUR HONOR, AT THIS TIME I'D LIKE TO OFFER HIM AS AN EXPERT IN LATENT FINGERPRINTS, GENERAL CRIME SCENE PHOTOGRAPHY AND THE GENERAL CRIME SCENE ITSELF.

THE COURT: SECURING AND IDENTIFICATION AND COLLECTION OF EVIDENCE. MR. ROGERS?

MR. ROGERS: NO OBJECTION.

THE COURT: ALL RIGHT. HE IS SO QUALIFIED.

MR. CHAPLIN: THANK YOU.

Q (BY MR. CHAPLIN) IN THIS CASE, MR. PADGETT, WHAT DID YOU DO? WHAT WERE YOUR DUTIES IN THIS CASE?
A I WAS ACTUALLY -- HAD THE OPPORTUNITY TO ATTEND THE AUTOPSY OF THE DECEASED, MR. BROOKS, ON THE 28TH OF

THEM THEY MAY GET SOME OF THE OTHER PERSON'S BLOOD OR SKIN OR EVEN FIBERS FROM THEIR CLOTHING UP UNDERNEATH THEIR NAILS THAT WE COULD POSSIBLY LOOK AT IT A LATER TIME TO DO AN IDENTIFICATION ON. LIKE I SAID, IN THIS CASE THERE WAS NO FOREIGN MATERIAL UNDER MR. BROOKS' NAILS. ALSO, I COLLECTED THE CLOTHING AT THE AUTOPSY AND AT A LATER TIME TOOK THEM BACK TO THE LABORATORY, PHOTOGRAPHED THEM SEPARATELY AND TOOK CUTTINGS FROM THE CLOTHING OF AREAS WHERE A PROJECTILE OR A BULLET EITHER ENTERED THROUGH THE CLOTHING OR EXITED OUT OF THE CLOTHING AND WE KEPT THOSE SAMPLES FROM THE CLOTHING.

Q IS THAT COMMONLY DONE?

A THAT IS COMMONLY DONE AND THE REASON FOR THAT IS SOMETIMES YOU CAN TELL IF A PERSON WAS SHOT FROM A CLOSE RANGE BECAUSE THERE MAY BE GUN POWDER RESIDUE ON THE CLOTHING ITSELF. IF SOMEONE IS SHOT AT A VERY CLOSE RANGE, THE GUN POWDER ACTUALLY COMES OUT THE END OF A BARREL AND IT CAN ACTUALLY DEPOSIT ON THE CLOTHING. AND THAT WAS THE REASON THAT WE TAKE CUTTINGS FROM THE CLOTHING OF THE ENTRANCE WOUNDS AND/OR EXIT WOUNDS FROM THE CLOTHING.

Q DID YOU RETRIEVE ANYTHING?

A WE LOOKED AT THE CUTTINGS FROM THE CLOTHING BACK AT THE LABORATORY AND DID NOT SEE ANY INDICATION THAT

THERE WAS ANY GUN POWDER RESIDUE OR ANY TYPE OF RESIDUE ON THE CLOTHING.

Q I HAVE SOMETHING HERE, MR. PADGETT. DO YOU RECOGNIZE THIS?

A YES, SIR. THIS IS A PROJECTILE THAT WAS RECOVERED FROM THE AUTOPSY BY THE PATHOLOGIST. I WAS PRESENT WHEN IT WAS RECOVERED AND IT WAS RECOVERED FROM WITHIN MR. BROOKS' BODY. IT HAS MY NAME AND INITIALS ON IT AND THE DATE ON IT THAT I RECOVERED IT FROM THE AUTOPSY ITSELF.

Q AFTER RECOVERING IT, WHAT DID YOU DO WITH IT THEN?

A I SECURED IT AND TOOK IT BACK TO MY LABORATORY AND THEN IT WAS TURNED OVER TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, OTHERWISE KNOWN AS S.L.E.D., FOR POSSIBLE BALLISTICS COMPARISONS.

MR. CHAPLIN: I'D LIKE TO INTRODUCE IT INTO EVIDENCE AT THIS TIME.

MR. ROGERS: NO OBJECTION.

THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

(PROJECTILE IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #25)

Q (BY MR. CHAPLIN) MR. PADGETT, WOULD YOU DESCRIBE TO THE JURY YOUR OBSERVATIONS OF THE WOUNDS OF MR. BROOKS OR FROM THE BODY OF MR. BROOKS?

A YES, SIR. THERE WAS BASICALLY TWO ENTRANCE WOUNDS

INTO THE BODY OF MR. BROOKS. ONE OF THEM ENTERED IN THE LEFT CHEST AREA, IN THIS AREA, AND IT WAS AN OBVIOUS ENTRANCE WOUND. AND THERE ARE WAYS THAT YOU CAN TELL AT AUTOPSIES ESPECIALLY WHICH WOUNDS ARE ENTRANCE WOUNDS AND WHICH WOUNDS ARE EXIT WOUNDS. THERE'S ONE ENTRANCE WOUND THAT ENTERED HERE IN MR. BROOKS' BODY AND EXITED ABOUT MID BACK. THERE WAS NO PROJECTILE THAT WAS RECOVERED FROM THAT PARTICULAR WOUND BECAUSE IT ENTERED AND EXITED AND IT WAS NOT IN THE BODY ITSELF. THERE WAS ALSO ANOTHER ENTRANCE WOUND INTO MR. BROOKS' AREA HERE. WHAT THE PATHOLOGIST AND I FIGURED OUT IS THAT THE BULLET ENTERED HERE, EXITED THE RIGHT AREA HERE OF THE JAW AREA AND THEN ACTUALLY ENTERED BACK INTO THE SHOULDER AREA. SO, YOU HAVE AN ENTRANCE, AN EXIT AND THEN ANOTHER ENTRANCE. AND THIS PROJECTILE ITSELF WAS RECOVERED WITHIN THE BODY. THAT'S THE PROJECTILE THAT I JUST LOOKED AT THERE.

MR. CHAPLIN: MR. PADGETT, I HAVE NO FURTHER QUESTIONS.

MR. ROGERS: NO QUESTIONS.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: MAY IT PLEASE THE COURT, THE STATE CALLS AGENT VELLO PAAVEL.

VELLO PAAVEL, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A MY NAME IS VELLO PAAVEL, SPELLED V-E-L-L-O (SPELLED), P-A-A-V-E-L (SPELLED).

DIRECT EXAMINATION BY MR. McMAHON:

A SIR, BY WHOM ARE YOU EMPLOYED?

A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION WHICH IS COMMONLY KNOWN AS S.L.E.D.

Q HOW LONG HAVE YOU BEEN EMPLOYED THERE, AGENT PAAVEL?

A ALMOST ELEVEN YEARS.

Q AND WHAT IS YOUR CURRENT POSITION AT S.L.E.D.?

A I AM A FIREARMS AND TOOL MARK EXAMINER IN THE FIREARMS DEPARTMENT WITH THE FORENSIC SERVICES LABORATORY.

Q AGENT PAAVEL, WOULD YOU RELATE TO THE JURY, PLEASE, YOUR EDUCATIONAL BACKGROUND, TRAINING, EXPERIENCE IN YOUR PARTICULAR FIELD OF EXPERTISE?

A YES, SIR. I ATTENDED THE UNIVERSITY OF SOUTH CAROLINA. I HAVE A BACHELOR OF SCIENCE DEGREE, MY MAJOR IN CHEMISTRY. I'VE ALSO ATTENDED THE CRIMINAL JUSTICE ACADEMY AND AM A CERTIFIED OFFICER THERE. I'VE HAD THE OPPORTUNITY TO ATTEND SCHOOLS IN CRIME

SCENE RECONSTRUCTION, HOMICIDE INVESTIGATION AND I'VE ATTENDED ARMOR'S SCHOOLS AT THE VARIOUS FIREARMS MANUFACTURERS WHERE I HAD TO LEARN HOW TO FIX AND REPAIR THESE GUNS AND RECOGNIZE ANY PROBLEMS THAT THESE GUNS HAVE. I'VE ALSO HAD THE OPPORTUNITY TO ATTEND THE F.B.I. SCHOOL ON ADVANCED TECHNIQUES IN FIREARMS IDENTIFICATION. THIS WAS A SCHOOL WHERE I HAD THE OPPORTUNITY TO SEE THE LATEST TECHNIQUES IN FIREARMS IDENTIFICATION AND SEE WHAT KIND OF CHANGES HAVE HAPPENED BUT THE BULK OF MY TRAINING IN THE SPECIFIC AREA OF FIREARM AND TOOL MARK IDENTIFICATION CAME FROM MY INITIAL EMPLOYMENT AT S.L.E.D. WHAT I HAD TO DO WAS WORK --

Q LET ME STOP YOU JUST A MOMENT.

MR. ROGERS: YOUR HONOR, I WILL STIPULATE TO HIS QUALIFICATIONS AS AN EXPERT IN THE AREA OF BALLISTICS AND FIREARMS.

THE COURT: ALL RIGHT. HE IS SO QUALIFIED.

Q (BY MR. McMAHON) I DIDN'T MEAN TO CUT YOU OFF, AGENT PAAVEL. YOU HAVE TESTIFIED ON MANY OCCASIONS IN THE PAST IN THE AREA OF FIREARM IDENTIFICATION AND BALLISTICS?

A YES, SIR, I'VE TESTIFIED AS AN EXPERT IN SOUTH CAROLINA GENERAL SESSIONS COURT AND IN FEDERAL COURT APPROXIMATELY A HUNDRED AND NINETY TO A HUNDRED AND

NINETY-FIVE TIMES.

Q NOW, AGENT PAAVEL, WOULD YOU EXPLAIN FOR US, PLEASE, HOW S.L.E.D. BECOMES INVOLVED IN A LOCAL AGENCY'S CASE?

A MOST OF THE TIME S.L.E.D. GETS INVOLVED EITHER BY THE REQUEST OF THAT AGENCY FOR SOME SORT OF MAN POWER OR ASSISTANCE OR IN MY CASE THERE WILL BE A REQUEST FOR FORENSIC SERVICES OR SOME TYPE OF FORENSIC EXAMINATION. NORMALLY WHAT HAPPENS IS THE LOCAL AGENCY WILL BRING EVIDENCE TO THE S.L.E.D. FORENSIC SERVICES LABORATORY HERE IN COLUMBIA AND SUBMIT THAT EVIDENCE FOR FORENSIC EXAMINATION.

Q SIR, IN REGARDS TO THIS CASE, DID YOU HAVE THE OPPORTUNITY TO REVIEW CERTAIN ITEMS OF EVIDENCE?

A YES, SIR, I DID.

Q AND I WANT TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS STATE'S EIGHTEEN, NINETEEN, TWENTY AND TWENTY-FIVE AND ASK YOU IF YOU CAN LOOK AT THOSE ITEMS AND IDENTIFY THEM FOR US, PLEASE?

A (PAUSE) YES, SIR, I RECOGNIZE THESE ITEMS. THESE WERE SUBMITTED TO ME FOR EXAMINATION IN REFERENCE TO THIS INCIDENT.

Q I WANT TO START WITH STATE'S EIGHTEEN AND STATE'S TWENTY-FIVE I BELIEVE. COULD YOU TELL US -- I'M GOING TO HOLD TWENTY-FIVE IN MY HAND -- WHAT ARE

THESE ITEMS? THE ONE I'M HOLDING IN MY HAND, TWENTY-FIVE, AND THIS ONE HERE, AGENT PAAVEL?

A BOTH OF THESE ARE FIRED BULLETS OR PROJECTILES. THIS IS THE PART OF A PIECE OF AMMUNITION THAT WHEN IT IS FIRED IN A FIREARM THIS PART GOES THROUGH THE BARREL AND TRAVELS TOWARD A TARGET. SOMETIMES THE TERM BULLET IS USED INCORRECTLY TO DESCRIBE A WHOLE PIECE OF AMMUNITION OR A ROUND OF AMMUNITION BUT THE BULLET IS ACTUALLY THE PROJECTILE, THE PART THAT COMES OUT OF THE GUN AND TRAVELS TOWARD THE TARGET AND BOTH OF THESE ITEMS ARE FIRED BULLETS.

Q AND THE ONE I'M HOLDING IN MY HAND, TWENTY-FIVE, IT APPEARS THIS IS MARKED PROJECTILE FROM VICTIM?

A YES, SIR. THE CONTAINER IS MARKED PROJECTILE FROM VICTIM AND INDICATES V. BROOKS, JOE, RICHLAND COUNTY SHERIFF'S OFFICE.

Q AND EIGHTEEN, IT APPEARS IT CAME OUT OF AN ENVELOPE THAT'S MARKED?

A THIS PARTICULAR ENVELOPE WHICH CONTAINED STATE'S EXHIBIT NUMBER EIGHTEEN IS MARKED PROJECTILE FROM FLOOR BY COUNTER NEAR VICTIM AND VICTIM IS JOE BROOKS.

Q NOW, AS AN EXPERT IN YOUR FIELD, WHAT CAN YOU TELL US ABOUT THESE TWO ITEMS?

A NORMALLY, WHEN I DON'T HAVE A FIREARM FOR COMPARISON

PURPOSES I TRY TO DETERMINE WHAT TYPE OF GUN MAY HAVE FIRED THESE TYPES OF BULLETS. I ALSO TRY TO DETERMINE WHAT CALIBER THESE BULLETS MAY BE AND TRY TO GIVE THE INVESTIGATOR AS MUCH INFORMATION AS I CAN REGARDING THE MANUFACTURER OF BULLETS, THEIR ORIGIN AND WHAT TYPE OF GUN THEY COULD HAVE BEEN FIRED FROM.

Q NOW, WHAT CAN YOU TELL US SPECIFICALLY ABOUT THESE TWO, EIGHTEEN THAT I HOLD IN MY HAND AND TWENTY-FIVE THAT I'VE PREVIOUSLY SHOWN THE JURY?

A THESE TWO FIRED BULLETS ARE MOST CONSISTENT WITH BULLETS THAT I WOULD EXPECT TO FIND IN NINE MILLIMETER LUGER CALIBER AMMUNITION. THAT IS BASED ON THEIR DIAMETER, THEIR SIZE AND THEIR CONSTRUCTION. ALSO, I TRY TO DETERMINE WHETHER OR NOT THE TWO BULLETS WERE FIRED FROM ONE IN THE SAME GUN. THE WAY I DO THAT IS TO MICROSCOPICALLY EXAMINE THE MARKINGS THAT WERE LEFT ON THE BULLET AS A RESULT OF THAT BULLET TRAVELING THROUGH THE BARREL OF THE FIREARM. THE INSIDE OF MOST MODERN FIREARMS, RIFLES AND HANDGUNS, HAVE A DEVICE IN IT CALLED RIFLING. RIFLING IS A PROCESS THAT LEAVES RAISED AREAS IN THE BARREL. THESE AREAS ARE CALLED LANDS. THE DEPRESSED AREAS ARE CALLED GROVES. AND THESE LANDS AND GROVES ARE MERELY SPIRALS IN THE BARREL THAT ARE DESIGNED TO IMPART SPIN TO THE BULLET. THE PURPOSE OF RIFLING IS

TO GRAB THE BULLET AND CAUSE THE BULLET TO SPIN AS IT TRAVELS THROUGH THE BARREL; THEREFORE, IT SPINS WHEN IT COMES OUT OF THE BARREL. AND THE PURPOSE OF THAT FOR THE MANUFACTURERS IS TO MAKE THAT BULLET TRAVEL MORE ACCURATELY. MOST OF YOU HAVE PROBABLY SEEN A FOOTBALL THAT'S THROWN PROPERLY AND IT'S SPINNING POINT ON. IT GOES WHERE IT NEEDS TO GO WHEREAS IF IT WOBBLES THERE'S NO TELLING WHERE IT GOES. RIFLING CAUSES THE BULLET TO SPIN AND TRAVEL ACCURATELY. THE SIDE BENEFIT OF RIFLING TO ME IS THAT RIFLING CAUSES UNIQUE MARKINGS ON THE OUTSIDE OF THE BULLET. AS THAT BULLET TRAVELS THROUGH THE BARREL, IT IS MARKED AND SCRATCHED BY THE RIFLING THAT'S INSIDE THE BARREL. AND I CAN USE THOSE REMAINING MARKINGS THAT ARE FOUND ON THE BULLET TO IDENTIFY THAT BULLET AS BEING FIRED FROM A PARTICULAR GUN OR I CAN USE IT TO COMPARE TWO OR MORE BULLETS AND SAY WHETHER OR NOT THOSE TWO BULLETS WERE FIRED FROM THE SAME GUN.

Q AND IN THIS CASE COMPARING TWENTY-FIVE TO EIGHTEEN, THE BULLET FROM THE AUTOPSY WITH EIGHTEEN MARKED --

A BULLET FROM THE FLOOR?

Q PROJECTILE FROM FLOOR BY COUNTER NEAR VICTIM. WHAT WAS YOUR CONCLUSION?

A I CONCLUDED THAT THOSE TWO BULLETS WERE INDEED FIRED FROM THE SAME GUN.

Q AND WHAT CALIBER ARE THESE TWO BULLETS?
A AGAIN, THEY ARE MOST CONSISTENT WITH BULLETS THAT I FIND IN NINE MILLIMETER LUGER CALIBER CARTRIDGES. NOW, THE TERM LUGER DOES NOT MEAN IT IS FIRED FROM A LUGER MANUFACTURED PISTOL. NINE MILLIMETER LUGER IS JUST A NAME FOR THE AMMUNITION. IT CAN BE USED IN ANY BRAND OF FIREARM THAT IS CHAMBERED FOR A NINE MILLIMETER LUGER CALIBER AMMUNITION.
Q AND THAT'S THESE TWO BULLETS HERE?
A THAT'S CORRECT.
Q NOW, REFERRING TO NINETEEN AND TWENTY, WOULD YOU LOOK AT THOSE ITEMS AND IDENTIFY THEM FOR US, PLEASE, AND EXPLAIN YOUR EXAMINATION AND THE RESULT OF YOUR EXAMINATION.
A YES, SIR. NINETEEN AND TWENTY ARE TWO FIRED CARTRIDGE CASINGS. AND TO GIVE YOU A LITTLE INFORMATION ABOUT A CARTRIDGE CASING, THAT IS SIMPLY THE CONTAINER --
Q WHICH IS NINETEEN?
A BEAR WITH ME SO I CAN SEE MY MARKINGS HERE.
Q I WANT YOU TO TEACH ME HOW YOU SEE THAT ONE DAY.
A THIS IS THE CORRECT CONTAINER FOR THIS ONE AND THIS IS THE CORRECT CONTAINER HERE.
Q SO, I'M HOLDING STATE'S NINETEEN?
A YES, SIR, YOU ARE.

Q AND TWENTY IS WHAT YOU HAVE UP THERE?
A YES, SIR.
Q GO AHEAD. I DIDN'T MEAN TO INTERRUPT YOU.
A ANYWAY, TALKING ABOUT A CARTRIDGE CASE, THE CARTRIDGE CASE IS MERELY THE CONTAINER THAT HOLDS THE BULLET, THE GUN POWDER AND WHAT'S KNOWN AS THE PRIMER. THE PRIMER IS THE PART OF THE CARTRIDGE THAT IS STRUCK BY THE FIRING PIN OR THE HAMMER TO MAKE THE CARTRIDGE GO OFF OR IGNITE AND THAT IN TURN IGNITES THE GUN POWDER IN THE CARTRIDGE AND AS THE PRESSURE BUILDS INSIDE THAT CARTRIDGE, IT PUSHES THE BULLET DOWN THE BARREL AND OUT THE GUN. SO, WHEN YOU HAVE AN UNFIRED PIECE OF AMMUNITION, THAT IS CALLED A CARTRIDGE OR IT MAY BE CALLED A ROUND. SOME PEOPLE CALL IT A SHELL. IF YOU FIRED THE CARTRIDGE, WHAT YOU HAVE LEFT OVER IS THE FIRED CARTRIDGE CASING OR CASE AND THEN YOU HAVE THE BULLETS THAT TRAVEL DOWN THE BARREL TOWARD THE TARGET.

IN THIS PARTICULAR INSTANCE THESE CARTRIDGE CASINGS ARE NINE MILLIMETER LUGER CALIBER. NOW, THAT'S READILY DETERMINED BY LOOKING AT THE BOTTOM OF THE CARTRIDGE OR THE BASE OF THE CARTRIDGE WHERE ITS STAMPED NINE M.M. LUGER.

Q AND WHEN YOU TALK ABOUT THE BASE, THAT'S THE AREA I'M SHOWING NOW?

A YES, THAT IS THE BOTTOM OF THE CARTRIDGE. IT IS STAMPED NINE M.M. LUGER WHICH STANDS FOR NINE MILLIMETER LUGER.

Q AND ALTHOUGH I CAN'T READ THAT YOU WERE ABLE TO LOOK AT THAT. I COULD READ IT WITH A MICROSCOPE.

A OR A MAGNIFIER, YES, SIR.

Q ALSO, IT'S MARKED R.P. R.P. IS A MARKING OR STAMP THAT IS USED BY REMINGTON ARMS COMPANY. IT IS PUT ON THEIR AMMUNITION. IT STANDS FOR REMINGTON PETERS. BOTH OF THESE CARTRIDGE CASINGS ARE HEAD STAMPED WITH R.P. WHICH IS NEAR OR BESIDE THE NINE MILLIMETER LUGER DESIGNATION. SO, WE HAVE TWO FIRED NINE MILLIMETER LUGER CALIBER CARTRIDGE CASINGS WHICH ARE STAMPED R.P. WHICH INDICATES REMINGTON ARMS, REMINGTON PETERS AND POSSIBLY U.M.C. WHICH IS A SUBSIDIARY OF REMINGTON.

Q NOW, SIR, IT APPEARS TO BE A LITTLE INDENTION ON THE BASE OF THIS CARTRIDGE CASE?

A YES, SIR. IN THE BASE OF THIS CARTRIDGE CASE YOU WILL SEE A CIRCULAR AREA THAT IS SILVER COLORED COMPARED TO THE BRASS COLOR OF THE REST OF THE CARTRIDGE CASE. THE SILVER COLORED PART OR NICKEL COLORED PART IS THE PRIMER. AND AGAIN --

Q EXCUSE ME, I APOLOGIZE.

A THE PRIMER AGAIN IS THAT PART OF THE CARTRIDGE THAT

IS IGNITED BY THE IMPACT OF THE FIRING PIN. ON THE PRIMERS IN THESE TWO FIRED CARTRIDGE CASINGS YOU WILL SEE A DEFECT. IT'S A SEMICIRCULAR HEMISPHERICAL DEFECT. THAT IS THE MARK THAT WAS LEFT BY THE FIRING PIN. WHEN THE GUN FIRED THESE TWO CARTRIDGE CASINGS, THE FIRING PIN STRIKES THAT PRIMER, THE PRIMER IS IMPRESSED BY THE FIRING PIN AND THE IMPRESSION THAT IS LEFT HERE CAN BE USED FOR IDENTIFICATION PURPOSES. ALSO, THE AREA OF THE PRIMER AROUND THE FIRING PIN CAN BE USED AND ACTUALLY THE AREA OF THE CARTRIDGE HEAD OR BASE CAN ALSO BE USED TO COMPARE THE MARKINGS THAT WERE LEFT ON THE CARTRIDGE CASE AS A RESULT OF IT BEING FIRED IN A GUN. THE FIRING PIN, THE SLIDE, THE EXTRACTOR, THE EJECTOR AND EVEN THE CHAMBER OF THE BARREL FROM WHICH IT WAS FIRED CAN LEAVE MARKINGS ON THE CARTRIDGE CASINGS THAT I CAN USE TO COMPARE BY USE OF A COMPARISON MICROSCOPE AND DETERMINE WHETHER OR NOT THEY WERE FIRED BY ONE OR MORE GUNS.

Q AND YOU TALKED ABOUT THOSE VARIOUS THINGS, THE PRIMER AND EJECTOR AND SLIDE, SUCH AS THAT, DID YOU INNER COMPARE THESE TWO CARTRIDGE CASES, STATE'S NINETEEN AND TWENTY, WITH EACH OTHER?

A YES, SIR, I DID.

Q AND WHAT WAS THE RESULTS OF YOUR COMPARISON?

A THESE TWO FIRED CARTRIDGE CASINGS WERE FIRED BY ONE

GUN.
Q THE SAME GUN?
A YES, SIR.
Q AND THIS CARTRIDGE CASE, NINETEEN AND TWENTY, WAS CONSISTENT WITH THE BULLET -- AND I REALIZE THIS BULLET IS NOW FIRED AND OBVIOUSLY THIS IS A FIRED CARTRIDGE CASE -- WHERE THEY COULD HAVE BEEN PART OF ONE UNIT AT ONE TIME? THAT'S CONSISTENT?
A YES, SIR, THEY COULD HAVE BEEN. AGAIN, THE FIRED BULLETS ARE CONSISTENT WITH BEING NINE MILLIMETER LUGER CALIBER BULLETS AND THEY COULD HAVE COME FROM THESE CARTRIDGE CASINGS; HOWEVER, I CANNOT POSITIVELY TELL YOU WHETHER OR NOT THESE TWO BULLETS CAME FROM THESE TWO CARTRIDGE CASINGS.
Q WOULD YOU BE ABLE TO TELL IF YOU HAD THE GUN?
A IF I HAD THE GUN AND I SAY THE GUN -- I HAVE TO HAVE THE CORRECT GUN, THE GUN THAT FIRED EITHER THE BULLETS OR THE CARTRIDGE CASINGS. I COULD TELL YOU WHETHER OR NOT THE BULLETS WERE FIRED BY THAT ONE GUN AND I COULD TELL YOU WHETHER OR NOT THE CARTRIDGE CASINGS WERE FIRED BY THAT ONE GUN.
Q WERE MANY GUNS SUBMITTED TO YOU IN REGARDS TO THIS CASE?
A YES, SIR. SEVERAL GUNS WERE SUBMITTED TO ME. I COUNTED THEM EARLIER AND IT LOOKS LIKE APPROXIMATELY

TWENTY GUNS WERE SUBMITTED TO ME FOR COMPARISON.

Q WERE YOU ABLE TO IDENTIFY THE SPECIFIC GUN OF THOSE THAT WERE SUBMITTED TO YOU AS THE GUN THAT FIRED EITHER THESE BULLETS OR THESE CARTRIDGE CASINGS?

A SIR, NONE OF THE GUNS THAT HAVE BEEN SUBMITTED TO ME FOR COMPARISON IN REFERENCE TO THIS CASE FIRED THE BULLETS OR THOSE CARTRIDGE CASES.

Q AND IS THAT -- EXCUSE ME, I DIDN'T MEAN TO INTERRUPT YOU.

A I JUST WANT TO SAY I HAVE NOT RECEIVED THAT GUN KNOWINGLY.

Q AND IS THAT UNUSUAL IN A CASE WHERE Y'ALL ARE GIVING FORENSIC SUPPORT?

MR. ROGERS: OBJECTION TO WHETHER IT'S UNUSUAL OR NOT THAT HE CAN'T MATCH THE BULLET.

THE COURT: OVERRULED. YOU MAY ANSWER THE QUESTION.

Q (BY MR. McMAHON) IS THAT UNUSUAL IN A CASE SUCH AS THIS WHERE Y'ALL ARE REQUESTED FOR FORENSIC SUPPORT TO HAVE CERTAIN WEAPONS SUBMITTED THAT MAY NOT BE THE MURDER WEAPON?

A IT HAPPENS FAIRLY COMMONLY. A LOT OF OUR CASES INVOLVE JUST BULLETS AND CARTRIDGE CASINGS OR SHOTGUN SHELL CASINGS. IN MANY INSTANCES I EITHER DON'T HAVE A GUN SUBMITTED OR GUNS ARE SUBMITTED AND THEY DON'T

MATCH THE EVIDENCE CARTRIDGE CASINGS AND BULLETS.

Q BUT ALL THESE ITEMS ARE CONSISTENT ONE WITH THE OTHER?

A OH, YES, SIR. THE TWO BULLETS AGAIN ARE CONSISTENT WITH BEING NINE MILLIMETER LUGER CALIBER BULLETS.

Q FROM THE SAME GUN?

A FIRED BY THE SAME GUN. THE CARTRIDGE CASINGS ARE MOST CERTAINLY NINE MILLIMETER LUGER CALIBER CARTRIDGE CASINGS AND THEY WERE FIRED BY THE SAME GUN.

MR. McMAHON: THANK YOU, AGENT PAAVEL. I DON'T HAVE ANY OTHER QUESTIONS.

MR. ROGERS: NO QUESTIONS.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

THE COURT: LADIES AND GENTLEMEN OF THE JURY, THIS IS A CONVENIENT TIME FOR US TO TAKE A SHORT MORNING BREAK TO ALLOW YOU SOME TIME TO STRETCH, GET SOMETHING TO DRINK IF YOU'D LIKE SO WE'LL DO THAT. REMEMBER MY CAUTION. YOU'RE STILL NOT TO DISCUSS THE CASE IN ANY FASHION WHILE YOU ARE IN THE JURY ROOM. WE'LL BRING YOU BACK SHORTLY.

(JURY LEAVES THE JURY BOX AT 11:24 A.M.)

THE COURT: COURT IS IN RECESS FOR FIFTEEN MINUTES.

(RECESS)

THE COURT: (AT CONCLUSION OF RECESS) ALL RIGHT. ARE WE READY FOR THE JURY?

MR. McMAHON: THE STATE'S READY, YOUR HONOR.

MR. ROGERS: YES, YOUR HONOR.

THE COURT: BRING THEM IN.

(JURY RETURNS TO THE JURY BOX AT 11:48 A.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: ALL RIGHT. SOLICITOR.

MR. McMAHON: MAY IT PLEASE THE COURT, THE STATE CALLS DR. CATALANO.

EDWARD W. CATALANO, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A MY NAME IS EDWARD W. CATALANO, C-A-T-A-L-A-N-O (SPELLED).

DIRECT EXAMINATION BY MR. McMAHON:

Q SIR, WHAT IS YOUR OCCUPATION?

A I'M A MEDICAL DOCTOR WITH A SPECIALTY IN PATHOLOGY.

Q AND, DR. CATALANO, WILL YOU RELATE FOR THE JURY, PLEASE, YOUR EDUCATIONAL BACKGROUND, YOUR TRAINING AND YOUR EXPERIENCE IN YOUR PARTICULAR FIELD OF EXPERTISE?

A YES, SIR. I GRADUATED FROM THE UNIVERSITY OF SOUTH CAROLINA AND THEN WENT TO MEDICAL SCHOOL FOR FOUR YEARS AND RECEIVED A M.D. DEGREE. I THEN COMPLETED ONE YEAR OF INTERNSHIP AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON. TWO YEARS OF RESIDENCY AND THEN WENT TO JOHNS HOPKINS IN BALTIMORE FOR ANOTHER TWO YEARS OF RESIDENCY AND FELLOWSHIP. FOLLOWING THAT, I WAS IN THE ARMY ON STAFF AT WALTER REED ARMY HOSPITAL IN WASHINGTON, D.C. THEN I'VE BEEN IN PRACTICE IN COLUMBIA SINCE 1977.

MR. ROGERS: YOUR HONOR, FOR THE RECORD, I WILL STIPULATE TO DR. CATALANO'S EXPERTISE AND QUALIFICATIONS IN THE AREA OF PATHOLOGY.

MR. McMAHON: THANK YOU.

THE COURT: HE IS SO QUALIFIED.

Q (BY MR. McMAHON) DOCTOR, HAVE YOU EVER BEEN OFFERED AS AN EXPERT IN THE FIELD OF PATHOLOGY AND NOT ACCEPTED AS SUCH?

A NO, SIR.

Q AND HAVE YOU TESTIFIED ON MANY OCCASIONS AS AN EXPERT IN THAT FIELD?

A YES, SIR.

Q DOCTOR, WOULD YOU EXPLAIN FOR US, PLEASE, THE FIELD OF PATHOLOGY, SPECIFICALLY FORENSIC PATHOLOGY, AS IT WOULD RELATE TO A CASE SUCH AS THIS?

A FORENSIC PATHOLOGY IS THAT AREA OF PATHOLOGY THAT RELATES TO MEDICAL LEGAL MATTERS AND WITH REGARD TO FORENSIC PATHOLOGY WE PERFORM AUTOPSIES FOR THE CORONER OF RICHLAND COUNTY. AND IN THAT CAPACITY, THE GROUP I'M WITH, DOES POST MORTEM EXAMS, AUTOPSIES, IN WHICH WE EXAMINE THE BODY OF THE DECEASED FOR EVIDENCE OF DISEASE, TRAUMA OR OTHER ABNORMALITY. WHEN WE DO A POST MORTEM EXAM OR AN AUTOPSY, WE EXAMINE THE EXTERNAL ASPECT OF THE BODY FOR EVIDENCE OF DISEASE OR TRAUMA. WE THEN DO AN INTERNAL EXAMINATION THROUGH A DISSECTION TO SEE WHAT WE CAN FIND INTERNALLY AGAIN LOOKING FOR EVIDENCE OF DISEASE OR TRAUMA, ANY ABNORMALITY. WE ALSO PRESERVE BODILY FLUIDS -- URINE, BLOOD, EYE FLUID ON OCCASION, STOMACH CONTENTS ON OCCASION -- LOOKING FOR THE PRESENCE OR ABSENCE OF DRUGS AND OTHER SUBSTANCES OF ABUSE. WE THEN MAKE A REPORT AND WE SEND THAT REPORT TO THE CORONER.

Q DID YOU HAVE AN OPPORTUNITY IN THAT CAPACITY AS A PATHOLOGIST TO PERFORM AN AUTOPSY ON THE BODY OF JOE BROOKS ON OCTOBER 28TH OF 1996?

A YES, SIR, I DID.

Q AND, DOCTOR, WHERE WOULD THAT AUTOPSY HAVE BEEN CONDUCTED?

A THAT AUTOPSY WAS PERFORMED IN THE MORGUE AT THE

RICHLAND MEMORIAL HOSPITAL.

Q AND, DOCTOR, WOULD YOU RELATE TO THE JURY SPECIFICALLY HOW YOU WENT ABOUT CONDUCTING THE AUTOPSY ON MR. BROOKS, YOUR OBSERVATIONS?

A YES, SIR. THAT AUTOPSY WAS PERFORMED WITH THE ASSISTANCE OF PHILLIP PITTMAN, A PATHOLOGY ASSISTANT IN OUR DEPARTMENT, AND IN THE PRESENCE OF OFFICER ZANE PADGETT OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT AND OFFICER TED KENNEDY OF RICHLAND COUNTY SHERIFF'S DEPARTMENT. AND WHAT WE DID AT THE TIME WAS DID AN EXAMINATION OF THE EXTERNAL ASPECTS OF THE DECEASED. WE RECORDED ALL INJURIES AND THEN WE DID AN INTERNAL EXAMINATION TO CORRELATE ANY INTERNAL FINDINGS WITH THOSE EXTERNAL OBSERVATIONS.

Q AND WHAT WAS YOUR EXTERNAL OBSERVATIONS, DR. CATALANO?

A THERE WAS AN ABRASION OR WHAT IN LAY TERMS MIGHT BE CALLED A SCRAPE OF THE RIGHT KNEE ONLY ABOUT -- A LITTLE MORE THAN AN INCH OR SO IN DIAMETER. OBVIOUSLY NOT A SIGNIFICANT FINDING. AND IN ADDITION TO THAT THERE WAS A GUNSHOT WOUND OF THE RIGHT NOSTRIL. THIS GUNSHOT WOUND -- THE ENTRANCE WOUND WAS TO THE RIGHT NOSTRIL. IT EXITED FROM THE RIGHT JAW. IT THEN ENTERED THE RIGHT CHEST AND LOCATED IN THE SUBCUTANEOUS TISSUE OF THE RIGHT CHEST. I

RECOVERED A BULLET AND I GAVE THAT TO THE OFFICER WHO WAS PRESENT FROM THE RICHLAND COUNTY SHERIFF'S DEPARTMENT. IN ADDITION TO THAT, I ENCOUNTERED ANOTHER GUNSHOT WOUND OF THE LEFT CHEST. IT WAS ASSOCIATED WITH AN EXIT WOUND OF THE LEFT BACK. IN DISSECTING THE BODY I FOUND THAT THIS BULLET HAD GONE THROUGH THE UPPER LOBE OF THE LEFT LUNG AND THE LOWER LOBE OF THE LEFT LUNG AND IN THIS LEFT CHEST CAVITY WHERE THE LUNG WAS I FOUND APPROXIMATELY TWENTY-FIVE HUNDRED CC's OF BLOOD. AND TO TRY AND PUT THAT INTO MORE PRACTICAL TERMS, IF YOU GO, FOR EXAMPLE, TO THE RED CROSS AND YOU DONATE A UNIT OF BLOOD, THAT'S GOING TO BE ABOUT FIVE HUNDRED CC's. SO, THIS WAS THE EQUIVALENT TO FINDING ABOUT FIVE UNITS OF BLOOD IN THAT LEFT CHEST CAVITY AND THIS FOR ALL PRACTICAL PURPOSES IS ABOUT ALL THE BLOOD THAT COULD FIT IN THAT CHEST CAVITY. SO, THE CAUSE OF DEATH WAS EXSANGUINATION OR BLEEDING TO DEATH IN THIS LEFT CHEST CAVITY AND THAT WAS DUE TO THIS GUNSHOT WOUND OF THE LEFT CHEST WHICH RESULTED IN INJURIES TO THE UPPER AND LOWER LOBES OF THAT LEFT LUNG.

MR. McMAHON: YOUR HONOR, MAY THE DOCTOR STEP DOWN A MOMENT?

THE COURT: HE MAY.

Q IF YOU WOULD STEP DOWN.

(WITNESS LEAVES STAND)

Q DOCTOR, IF YOU WOULD AGAIN POINTING OUT ON ME YOUR OBSERVATIONS OF WHERE THE ENTRANCE WOUNDS WERE TO THE BODY OF JOE BROOKS.

A THE FIRST ENTRANCE WOUND THAT WE TALKED ABOUT WAS TO THE RIGHT NOSE SO IT ENTERED IN THE RIGHT NOSTRIL, WENT OWN THROUGH SOME OF THE SUPERFICIAL CONNECTIVE TISSUE AND BONY TISSUE OF THE RIGHT FACE. IT CAME OUT THE RIGHT JAW. IT THEN ENTERED INTO THE RIGHT CHEST -- WHEN I SAY ENTERED INTO THE RIGHT CHEST, IT ENTERED THROUGH THE SKIN AND MUSCLE TISSUE AND WENT DOWN REALLY OUTSIDE THE RIBCAGE BUT UNDERNEATH THE SKIN AND THE BULLET WAS RECOVERED IN THIS AREA IN THE MUSCULAR TISSUE UNDER THE SKIN.

Q DOCTOR, DO YOU USE A PROBE OF ANY TYPE IN ATTEMPTING TO DETERMINE THE ANGLES?

A WHAT WE DO MANY TIMES IS WE'LL USE A PROBE TO TRY AND DOCUMENT FOR DOCUMENTATION PURPOSES REALLY THE ANGLES SO THAT WE CAN RELATE THESE TO THE PATH THE BULLET TRAVELS TO SEE IF THERE IS ANY DEFLECTION OF AN ANGLE IF A BULLET HITS A BONE OR SOMETHING LIKE THAT. WHAT I WAS ABLE TO DO WITH THIS FIRST INJURY IS IF I HELD THE HEAD STRAIGHT LIKE THIS I WAS ABLE TO PASS A PROBE THROUGH THE ENTRANCE WOUND IN THE NOSE, OUT THE EXIT WOUND OF THE JAW, IN THE ENTRANCE WOUND OF THE

CHEST AND TO THE LOCATION THAT THE BULLET WAS LOCATED AND THIS PATH. THIS TRAJECTORY WAS ALL IN A STRAIGHT LINE WHICH COULD EASILY HAVE THIS PROBE PASSED THROUGH THIS TRAJECTORY.

Q SO, AS I UNDERSTAND IT, DOCTOR, THIS WOULD HAVE BEEN AS A RESULT OF ONE BULLET WOUND BUT THERE WOULD HAVE BEEN TWO ENTRANCES AND ONE EXIT AND THEN A FINAL RESTING POINT WITHIN THE BODY OF MR. BROOKS?

A CORRECT. OFTENTIMES WHEN WE HAVE AN ENTRANCE AND AN EXIT WOUND THAT BULLET GOES SOME PLACE ELSE OTHER THAN THE BODY BUT IN THIS CASE THE FIRST ENTRANCE AND EXIT WOUND WERE LINED UP EXACTLY IN A STRAIGHT LINE WITH THIS BULLET THAT SUBSEQUENTLY HAD NO EXIT WOUND AND WAS FOUND IN THE SOFT TISSUE. THE OTHER THING THAT GOES ALONG WITH THIS BEING THE SAME BULLET IS NORMALLY IF A BULLET JUST GOES THROUGH THE SKIN AND DOESN'T HIT ANY BONES OR ANYTHING IT WILL HAVE MORE THAN ENOUGH ENERGY LEFT TO EXIT. THIS BULLET ONCE IT ENTERED THE SKIN JUST TRAVELED FOR A RELATIVELY SHORT DISTANCE UNDER THE SKIN AND THEN CAME TO REST AND THAT INDICATES THAT MOST OF ITS ENERGY HAD BEEN ABSORBED PRIOR TO ENTERING THIS RIGHT CHEST.

Q AND, DOCTOR, AS I UNDERSTAND IT YOU RECOVERED ONLY ONE PROJECTILE, ONE BULLET FROM MR. BROOKS' BODY?

A YES, SIR.

Q AND STATE'S EXHIBIT NUMBER TWENTY-FIVE, PROJECTILE FROM VICTIM, THAT WAS THE ONE AND ONLY ONE THAT YOU DID RECOVER, CORRECT?

A CORRECT.

Q DOCTOR, I BELIEVE YOU INDICATED THERE WAS ANOTHER ENTRANCE WOUND TO THE BODY OF MR. BROOKS?

A THERE WAS A SECOND ENTRANCE WOUND THAT WAS LOCATED APPROXIMATELY SIX INCHES FROM -- TO THE LEFT OF THE MIDLINE AND IT WAS APPROXIMATELY IN THIS DIRECTION BECAUSE WHAT IT DID WAS IT WAS ABOUT SIX INCHES LATERAL HERE AND IT WAS ONLY ABOUT THREE AND A HALF INCHES LATERAL HERE AND IT WAS DOWN FORTY-EIGHT CENTIMETERS FROM THE TOP OF THE HEAD. SO, ROUGHLY IT WAS GOING IN A DOWNWARD DIRECTION AND THEN SLIGHTLY MEDIALLY, ALSO. SO, IF YOU'RE LOOKING AT ME IT'S GOING TO BE ROUGHLY THIS DIRECTION.

Q NOW, DOCTOR, OF THE TWO WOUNDS IN YOUR FIELD OF FORENSIC PATHOLOGY, WERE YOU ABLE TO TELL WHICH COMES FIRST?

A NO, SIR, I'M NOT. I CAN TELL YOU THIS WAS THE LETHAL INJURY AND THIS WAS, IF TREATMENT HAD BEEN RECEIVED IN A REASONABLE PERIOD OF TIME, THIS WAS NOT NECESSARILY A LETHAL WOUND.

Q AND WHERE YOU ARE POINTING, YOU'RE POINTING TO THE ONE WHERE IT ENTERED THE NOSE?

A CORRECT.
Q THAT WAS NON-LETHAL OR COULD HAVE BEEN NON-LETHAL IF TREATED WITHIN A PERIOD OF TIME?
A YES, SIR.
Q NOW, WHAT KIND OF INTERNAL DAMAGE DID THIS WOUND TO THE LEFT CHEST DO, DOCTOR?
A IT WENT THROUGH -- THE LEFT LUNG HAS TWO LOBES, THE RIGHT LUNG HAS THREE LOBES. BUT THE LEFT LUNG HAS TWO LOBES AND THIS BULLET WENT THROUGH BOTH OF THOSE LOBES, THE UPPER LOBE AND THE LOWER LOBE. SO, THERE WAS AN ENTRANCE AND AN EXIT WOUND TO THE UPPER LOBE, ENTRANCE AND AN EXIT WOUND TO THE LOWER LOBE, AND THEN AFTER EXITING THE LOWER LOBE IT WENT OUT THE BACK. BUT WHAT HAPPENED IN THE CHEST IS THE LUNGS, OF COURSE, ARE VERY VASCULAR. THE HEART PUMPS BLOOD TO THE LUNGS TO OXYGENATE THAT BLOOD SO THEN IT CAN PUMP THE OXYGENATED BLOOD TO THE REST OF THE BODY. SO, WHEN THIS BULLET WENT THROUGH THE UPPER AND LOWER LOBES OF THE LUNG IT SEVERED LARGE ARTERIES AND VEINS AND BASICALLY THE INDIVIDUAL BLED TO DEATH IN THAT LEFT CHEST CAVITY.
Q THANK YOU, DOCTOR. YOU CAN RE-TAKE THE STAND. I HAVE A FEW MORE QUESTIONS FOR YOU.

(WITNESS RESUMES STAND)

Q DOCTOR, COULD YOU GIVE US AN INDICATION OF WHAT

PERIOD OF TIME WITHIN YOUR FIELD OF EXPERTISE IT WOULD TAKE FROM THE INFLICTION OF THIS WOUND, THIS FATAL INJURY UNTIL DEATH?

A IT WOULD BE A SHORT PERIOD OF TIME. JUST A MATTER OF A COUPLE OF MINUTES.

Q NOW, WITHIN JUST A MATTER OF A COUPLE OF MINUTES, DOCTOR, FROM THE INFLICTION OF THE WOUND UNTIL DEATH OCCURRED, WOULD A VICTIM BE ABLE TO MAKE GROANING SOUNDS OR GRUNTING SOUNDS OR SOMETHING OF THAT NATURE?

A YES, SIR.

Q AND THEREAFTER OBVIOUSLY ONCE DEATH ENSUED THERE WOULD BE NO GROANING TYPE SOUNDS. THERE COULD POTENTIALLY BE OTHERS FROM WHATEVER SOURCES BUT THERE WOULD BE NO VOCAL TYPE OF SOUND FROM THE VICTIM, IS THAT CORRECT?

A THAT'S CORRECT.

Q AND YOU SAY WITHIN MINUTES?

A YES, SIR.

Q DOCTOR, IN YOUR INITIAL EXAMINATION OF THE BODY, WAS THE VICTIM CLOTHED OR UNCLOTHED AS YOU RECALL?

A I DON'T RECALL WITH CERTAINTY. TYPICALLY, WHAT HAPPENS IS THE BODY IS TRANSPORTED TO THE MORGUE AND THE CLOTHES ARE REMOVED AND GIVEN TO THE INVESTIGATOR FROM THE SHERIFF'S DEPARTMENT OR THE POLICE

DEPARTMENT DEPENDING ON WHETHER IT'S A CITY OR A COUNTY CASE. AND THEN THOSE CLOTHES ARE TRANSPORTED TO S.L.E.D. AND S.L.E.D. DOES THE EXAMINATION ON THE CLOTHES.

Q AND THE OFFICERS TAKE CUSTODY OF, FOR EXAMPLE, THE BULLET THAT YOU REMOVE, THE CLOTHING OF THE VICTIM AND SUCH AS THAT, IS THAT CORRECT?

A YES, SIR.

Q AND SO THE CAUSE OF MR. BROOKS' DEATH WOULD HAVE BEEN THIS FATAL GUNSHOT INJURY TO THE LEFT CHEST?

A YES, SIR.

MR. McMAHON: THANK YOU, DOCTOR. I DON'T HAVE ANY FURTHER QUESTIONS.

MR. ROGERS: NO QUESTIONS OF DR. CATALANO.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: THE STATE WOULD RECALL JUST VERY BRIEFLY SERGEANT GARDNER.

THE COURT: ALL RIGHT. MR. GARDNER, COME AROUND. YOU'VE PREVIOUSLY BEEN SWORN, SO YOU REMAIN UNDER OATH FOR THE PURPOSE OF THESE QUESTIONS, ALSO.

EDWARD GARDNER, AFTER HAVING BEEN PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY

MR. McMAHON:

Q SERGEANT, I JUST HAVE ONE MATTER FOR JURISDICTIONAL PURPOSES. ALL OF THIS AREA WE'VE REFERRED TO, BROOKS' STORE, CABIN CREEK ROAD, SPECIFICALLY WHAT COUNTY IS THAT LOCATED IN?

A RICHLAND COUNTY.

Q AND THAT'S INDICATED ON STATE'S EXHIBIT NUMBER ONE, RICHLAND COUNTY, HOPKINS AREA?

A YES, SIR, IT IS.

MR. McMAHON: THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS. THANK YOU, YOUR HONOR.

MR. ROGERS: NOTHING FURTHER.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. McMAHON: WITH THAT, YOUR HONOR, THE STATE RESTS.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THAT IS ALL OF TESTIMONY OR OTHER EVIDENCE TO BE OFFERED BY THE STATE AT LEAST IN THEIR CASE IN CHIEF. BEFORE WE GO FORWARD AND BEGIN WITH ANY TESTIMONY OR EVIDENCE TO BE RECEIVED BY THE DEFENSE, I'VE GOT SOME MATTERS OF LAW THAT I'LL NEED TO ADDRESS WITH THE LAWYERS. IT SHOULD TAKE ONLY A FEW MOMENTS SO I'M SIMPLY GOING TO ASK YOU IF YOU WILL, PLEASE, GO BACK TO YOUR JURY ROOM FOR JUST A FEW MINUTES AND WE'LL BRING YOU BACK SHORTLY.

(JURY LEAVES THE JURY BOX AT 12:06 P.M.)

THE COURT: MR. ROGERS, ANY MOTIONS OR OTHER MATTERS YOU'D LIKE TO ADDRESS BEFORE WE GO FURTHER?

MR. ROGERS: YES, YOUR HONOR. AT THIS TIME I WOULD MAKE A MOTION FOR A DIRECTED VERDICT. TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE GOVERNMENT AS THE COURT MUST DO AT THIS STAGE OF THE PROCEEDING, IT IS OUR POSITION THAT THE GOVERNMENT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE OF FACT TO SUBMIT TO THE JURY. SPECIFICALLY, ON THE ISSUE OF THE MURDER, THE GOVERNMENT'S THEORY OF THE MURDER OF MR. BROOKS IS ACCOMPLICE LIABILITY, HAND OF ONE, HAND OF ALL. IN ORDER FOR MR. GARNER TO BE CONVICTED OF THE DEATH OF MR. BROOKS, IT HAS TO HAVE BEEN THE NATURAL AND PROBABLE CONSEQUENCE OF THE ACT PLANNED. IF YOU RECALL, I ASKED DAYON SPECIFICALLY THE PLAN WAS TO ROB MR. BROOKS AND NOT TO SHOOT MR. BROOKS IF YOU BELIEVE DAYON'S TESTIMONY IN THAT REGARD. SO, HE ABSOLUTELY PROVIDED THE INFORMATION THAT NOTWITHSTANDING WHAT MAY HAVE BEEN SAID IN THE CAR ABOUT MR. BROOKS MIGHT GO FOR HIS GUN AND YOU MIGHT HAVE TO SHOOT HIM THAT IT WAS HIS UNDERSTANDING THAT HE WAS GOING IN THERE ONLY TO ROB AND HE SPECIFICALLY TESTIFIED YESTERDAY THAT THE ACT OF SHOOTING MR. BROOKS WAS HIS AND HIS ALONE. THAT WAS NOT A PART OF

THE PLAN. SO, IF THAT IS NOT A PART OF THE PLAN IT COULD NOT BE A NATURAL AND PROBABLE CONSEQUENCE OF THE ACT PLANNED WHICH WAS THE ROBBERY. MOREOVER, YOUR HONOR, I UNDERSTAND THAT IN ORDER TO BE AN AIDER AND ABETTOR OR THE HAND OF ONE, HAND OF ALL, YOU HAVE TO BE PRESENT AND KNOWINGLY AIDING AND ABETTING. AND I BELIEVE THE TESTIMONY WAS IF YOU BELIEVE THE STATE'S VERSION IS THAT TREY WENT IN INITIALLY TO CASE THE JOINT -- EXCUSE ME, CASE THE STORE. THEN DAYON GOT OUT OF THE CAR AND WALKED BEHIND THAT OTHER WHITE BUILDING. AS JERMAINE WAS LEAVING THE SCENE HE BLEW THE HORN. THAT WAS SUPPOSED TO HAVE BEEN THE SIGNAL GIVEN BY JERMAINE, NOT TREY BUT JERMAINE, FOR DAYON TO GO IN. DAYON'S OWN TESTIMONY WAS THAT HE DID NOT GO IN FOR TEN TO FIFTEEN MINUTES, THAT JERMAINE HAD PARKED HIS VEHICLE SOME DISTANCE AWAY ON GILWOOD ROAD AND AFTER HE COMMITTED THE MURDER HE THEN RAN TO THE CAR. YOUR HONOR, I AM AWARE THAT STATE V. WILLIAMS TALKS ABOUT CONSTRUCTIVE PRESENCE AND FINDS THAT YOU CAN FIND SOMEONE CONSTRUCTIVELY PRESENT IN THE COMMISSION OF THE OFFENSE IF HE WAS SOME DISTANCE AWAY, BUT THAT CASE SAID SO LONG AS HE WAS PLAYING SOME ROLE AS A LOOKOUT, DRIVER OR SIGNALER. NOW, I ASKED DAYON SPECIFICALLY WITH REFERENCE TO JERMAINE, WHAT DID JERMAINE DO WHEN HE

WAS PARKED THERE ON GILWOOD ROAD THAT AIDED OR ASSISTED YOU IN ANY WAY. AND I BELIEVE HIS RESPONSE WAS, NO, THAT HE HEARD -- THE SIGNAL WOULD HAVE BEEN FOR HIM TO GO IN. THAT WOULD HAVE BEEN BEFORE THE ACT I WOULD ALLEGE. THAT ACT WOULD BE AS AN ACCESSORY BEFORE THE FACT. BUT HE DIDN'T EVEN GO IN ON THAT SIGNAL SO I DON'T THINK THAT SIGNAL WOULD HAVE AIDED HIM. HE WAITED UNTIL HE THOUGHT THAT THE COAST WAS CLEAR, TEN TO FIFTEEN MINUTES BY HIS TESTIMONY, AND THEN HE WENT IN. AND I ASKED DAYON SPECIFICALLY WHAT, IF ANYTHING, COULD JERMAINE HAVE DONE AT GILWOOD ROAD TO AID YOU IN THE COMMISSION OF THIS OFFENSE AND HIS ANSWER WAS NOTHING. SO, BY EXTRAPOLATION, YOUR HONOR, IF YOU BELIEVE THAT TREY WAS IN THE CAR WITH JERMAINE, THOSE SAME FACTS WOULD APPLY TO TREY, THAT THERE WOULD HAVE BEEN NOTHING THAT HE COULD HAVE DONE IN THE CAR AT THAT TIME TO AID DURING THE COMMISSION OF THE CRIME. NOW, IF YOU BELIEVE THAT TREY PLANNED IT, THEN HE'S AN ACCESSORY BEFORE. IF YOU BELIEVE THAT SOMEHOW HE ENCOURAGED DAYON TO THROW THE GUN AWAY AND TO BURN THE CLOTHES, HE COULD BE CONSIDERED AN ACCESSORY AFTER, BUT, OF COURSE, HE'S NOT CHARGED WITH THOSE TWO OFFENSES. HE'S CHARGED WITH THE MURDER UNDER THE THEORY OF ACCOMPLICE LIABILITY, HAND OF ONE, HAND OF ALL. AND

FOR THOSE REASONS, YOUR HONOR, I WOULD SUBMIT THAT THE STATE HAS NOT SHOWN A PRIMA FACIE CASE AGAINST MR. GARNER.

THE COURT: THAT JUST RELATES TO -- YOU SPECIFICALLY DIRECTED THAT TO THE INDICTMENT FOR MURDER. WOULD IT ALSO APPLY TO THE INDICTMENT FOR ATTEMPTED ARMED ROBBERY?

MR. ROGERS: YES, YOUR HONOR, THOSE SAME ARGUMENTS AS WELL. AGAIN, HE DID NOTHING DURING THE COMMISSION OF THAT CRIME TO AID. ANYTHING THAT HE MAY HAVE DONE, IF BELIEVED, WOULD HAVE BEEN AN ACCESSORY BEFORE OR ACCESSORY AFTER.

THE COURT: DO YOU WANT TO ADDRESS THE CONSPIRACY INDICTMENT?

MR. ROGERS: SIMPLY, YOUR HONOR, BECAUSE OF THE CONFLICTING STATEMENTS OF JERMAINE AND DAYON, WE DON'T THINK THAT A JURY COULD AT ALL FIND ONE OF THOSE -- IT'S LIKE IMPEACHMENT TESTIMONY WHERE A WITNESS HAS SAID ONE THING AT ONE POINT AND ANOTHER THING AT ANOTHER POINT. IT WOULD BE IMPOSSIBLE FOR THE JURY TO CONCLUDE WITHOUT MORE WHICH VERSION TO ACCEPT. IT WOULD BE PURE SPECULATION AND FOR THOSE REASONS MY ARGUMENTS WOULD GO AS WELL TO THE CONSPIRACY.

THE COURT: ALL RIGHT. MR. McMAHON.

MR. McMAHON: YOUR HONOR, MAY IT PLEASE THE COURT. I WOULD RELY ON STATE V. GILBERT, 92 SOUTHEAST REPORTER, 125; STATE V. WILLIAMS, 199 SOUTHEAST 906; AND STATE V. HILL, 234 SOUTHEAST 2d 219 UNDER THE HAND OF ONE, HAND OF ALL, ACCOMPLICE LIABILITY THEORY. IT'S MY UNDERSTANDING THAT SEVERAL PERSONS WHEN PURSUING A COMMON DESIGN TO COMMIT AN UNLAWFUL ACT SET OUT TOGETHER OR IN SMALL PARTS AND EACH TAKES THE PART AGREED UPON OR ASSIGNED TO THEM, SOME TO COMMIT AN ACT, OTHERS TO WATCH FROM A PROPER DISTANCES AND STATIONS TO PREVENT INTERFERENCE OR SURPRISE OR TO ENCOURAGE THE COMMISSION OF THE UNLAWFUL ACT OR TO FAVOR IF NECESSARY THE ESCAPE OF THOSE IMMEDIATELY ENGAGED IN THE COMMISSION OF THE UNLAWFUL ACT UNDER THESE CIRCUMSTANCES IF THE ACT IS COMMITTED THE HAND OF ONE IS THE HAND OF ALL.

YOUR HONOR, EACH OF THOSE CASES WHICH I AM SURE HIS HONOR IS MUCH MORE FAMILIAR WITH THAN I AM SHOW THAT THEORY OF ACCOMPLICE LIABILITY BOTH AS TO THE ATTEMPTED ARMED ROBBERY AND TO THE MURDER. I THINK WHEN YOU GET INTO, AS MR. ROGERS HAS DONE, ARGUMENTS ON THE FACTS THAT SHOWS EXACTLY WHAT A JURY ISSUE IS. FOR EXAMPLE, THERE'S NO MENTION OF GIVING THE GUN TO DAYON BY MR. GARNER. OBVIOUSLY, AN ACT PRECEDING THE HOMICIDE IN FURTHERANCE OF THE HOMICIDE. I THINK THE

NATURAL AND PROBABLE CONSEQUENCES THEORY DOESN'T GO TO THE PLAN, BUT IT GOES TO WHAT THE LAW SAYS THE NATURAL AND PROBABLE CONSEQUENCES OF AN ARMED ROBBERY OR AN ATTEMPTED ARMED ROBBERY ARE. SO, I THINK IN LIGHT OF THE STANDARD IN WHICH THE COURT WOULD REVIEW THE EVIDENCE AT THIS STAGE OF THE PROCEEDING THERE'S AMPLE EVIDENCE TO SUBMIT EACH AND EVERY INDICTMENT TO THE JURY ON BOTH THE CRIMINAL CONSPIRACY, THE ATTEMPTED ARMED ROBBERY AND THE MURDER. THANK YOU, YOUR HONOR.

THE COURT: MR. ROGERS, DO YOU HAVE ANY REPLY?

MR. ROGERS: YOUR HONOR, IF I JUST MIGHT RESPOND BRIEFLY ABOUT THE PLAN. I THINK HIS ARGUMENT WOULD HOLD WATER IF THE TESTIMONY WERE SUCH THAT DAYON HAD GONE IN, YOU KNOW, AND SAID THIS IS A HOLDUP AND THEN MR. BROOKS HAD REACHED FOR A WEAPON. YOU KNOW, THAT IS THE KIND OF NATURAL AND PROBABLE CONSEQUENCES THAT YOU WOULD USUALLY FIND WHEN AN OFFENSE IS COMMITTED WITH A WEAPON. I BELIEVE THE TESTIMONY HERE, HOWEVER, IS THAT DAYON SAID, YOU KNOW, HE DIDN'T SAY ANYTHING. HE WENT IN AND KIND OF OUT OF A PANIC SITUATION HE JUST STARTED SHOOTING. SO, IT WASN'T THE NATURAL AND PROBABLE CONSEQUENCES NORMALLY ANTICIPATED IN AN ARMED ROBBERY, BUT IT WAS TOTALLY DIFFERENT BECAUSE HIS TESTIMONY ALMOST MADE IT LIKE

IT WAS A HIT. I WENT IN AND SHOT HIM FIRST AND THEN I BEGAN LOOKING FOR MONEY. SO, FOR THOSE REASONS I DON'T THINK THAT ARGUMENT HOLDS.

THE COURT: WELL, OF COURSE, WHAT YOU HAVE JUST POINTED OUT ALSO GOES TO SHOW WHY IT ACTUALLY WAS NOT A PANIC ON THE PART OF MR. LEMON. IT APPEARED TO BE OR THE JURY COULD INFER IT WAS DELIBERATE WHEN HE WENT INTO THE STORE AND HAD THE INTENT TO DO SO ALL ALONG. IN ANY EVENT, CONSIDERING THE EVIDENCE AND ANY REASONABLE INFERENCES THAT MIGHT BE DRAWN THEREFROM IN THE LIGHT MOST FAVORABLE TO THE STATE AS I AM REQUIRED TO DO UNDER THE LAW ON A MOTION FOR A DIRECTED VERDICT I DO FIND BASED UPON MY CONSIDERATION OF THE EVIDENCE THAT HAS BEEN PRESENTED THAT THERE IS SUFFICIENT EVIDENCE FROM WHICH A JURY COULD REASONABLY FIND ALL OF THE ESSENTIAL ELEMENTS OF EACH OF THE CRIMES THAT HAVE BEEN ALLEGED AGAINST THE DEFENDANT AND, THEREFORE, I'M GOING TO DENY EACH OF YOUR MOTIONS AS TO EACH SEPARATE INDICTMENT.

ANYTHING FURTHER BEFORE WE PROCEED WITH THE DEFENSE?

MR. ROGERS: I WOULD JUST NEED FIVE MINUTES, YOUR HONOR, IF I MAY.

THE COURT: ALL RIGHT. WE'LL TAKE THOSE FIVE MINUTES AND THEN COME BACK.

(RECESS)

THE COURT: (AT CONCLUSION OF RECESS) ALL RIGHT, MR. ROGERS, ARE YOU READY TO PROCEED WITH THE DEFENSE?

MR. ROGERS: YES, YOUR HONOR.

THE COURT: OKAY. BRING THE JURY IN, PLEASE.

(JURY RETURNS TO THE JURY BOX AT 12:31 P.M.)

BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

THE COURT: LADIES AND GENTLEMEN, AS YOU WERE PREVIOUSLY TOLD, THE STATE HAS RESTED THEIR CASE IN CHIEF SO WE'LL NOW PROCEED WITH THAT TO BE OFFERED BY WAY OF THE DEFENSE. MR. ROGERS.

MR. ROGERS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT, WE CALL MR. JOE COVINO.

JOSEPH COVINO, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A JOSEPH COVINO, C-O-V-I-N-O (SPELLED).

DIRECT EXAMINATION BY

MR. ROGERS:

Q MR. COVINO, HOW ARE YOU EMPLOYED?

A I'M A PRIVATE INVESTIGATOR.

Q AND HOW LONG HAVE YOU BEEN DOING THAT?

A APPROXIMATELY TEN YEARS.

Q AT MY REQUEST, DID YOU GO OUT TO CABIN CREEK ROAD THIS MORNING AND TAKE SOME PHOTOGRAPHS?
A YES, SIR, I DID.
Q I SHOW YOU THESE PHOTOGRAPHS AND ASK YOU IF THOSE ARE THE PHOTOGRAPHS THAT YOU TOOK AND IF THEY ACCURATELY REFLECT WHAT YOU OBSERVED THIS MORNING?
A YES, SIR, THEY ARE.

MR. ROGERS: YOUR HONOR, I'D LIKE TO INTRODUCE THESE TWO PHOTOGRAPHS INTO EVIDENCE.

MR. McMAHON: NO OBJECTION.

THE COURT: THEY ARE ADMITTED.

(PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS DEFENDANT'S EXHIBITS #1 AND #2)

Q MR. COVINO, I HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S EXHIBITS ONE AND TWO. CAN YOU TELL ME WHAT IS DEPICTED IN THOSE PHOTOGRAPHS?
A YES, SIR. THE BLACK TOP ROAD IS CABIN CREEK ROAD. THE DIRT ROAD IN THE FOREFRONT OF THE PHOTOGRAPH IS GILMORE, GILWOOD. GILWOOD.
Q GILWOOD ROAD. OKAY. AND THAT VIEW IS LOOKING IN WHAT DIRECTION?
A THE DIRECTION OF JOE'S STORE.
Q BACK TOWARDS JOE'S STORE?
A YES, SIR.
Q DID YOU CLOCK THE MILEAGE FROM GILWOOD ROAD TO THE

STORE?
A YES, SIR, I DID.
Q AND HOW FAR IS THAT?
A IT'S A LITTLE BIT BETTER THAN TWO TENTHS OF A MILE. ONE THOUSAND EIGHTY-TWO FEET.
Q AND REFERRING TO STATE'S EXHIBIT NUMBER ONE TO JUST GET A REFERENCE POINT, IF MR. BROOKS' STORE IS HERE, THIS IS CABIN CREEK ROAD AND THIS IS GILWOOD, YOU TOOK THE PICTURE AT WHAT LOCATION?
A FROM HERE BACK THIS WAY.

MR. ROGERS: YOUR HONOR, THAT WOULD BE ALL THE QUESTIONS I HAVE OF THIS WITNESS.

MR. McMAHON: NO QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

MR. ROGERS: MAY HE BE EXCUSED, YOUR HONOR.

THE COURT: HE MAY.

MR. ROGERS: WE CALL MS. ESSIE GARNER.

ESSIE M. GARNER, AFTER BEING DULY SWORN BY THE CLERK, TESTIFIES AS FOLLOWS:

DEPUTY CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

A ESSIE M. GARNER.

DIRECT EXAMINATION BY MR. ROGERS:

Q MS. GARNER, ARE YOU RELATED TO THE DEFENDANT, TREY?
A YES, HE'S MY SON.
Q AND WHERE DO YOU LIVE?
A [redacted]MEETING HOUSE ROAD, HOPKINS, SOUTH CAROLINA.
Q IS THAT NEAR CABIN CREEK?
A YES, IT IS.
Q AND HOW FAR DO YOU LIVE FROM JOE'S STORE?
A I'M NOT SURE. IT'S A LITTLE WAYS.
Q YOU CAN'T WALK, YOU HAVE TO RIDE?
A YES. IF I WALK, IT WOULD TAKE ME I WOULD SAY TWENTY-FIVE MINUTES TO WALK AROUND THERE.
Q IN OCTOBER OF 1996, WHERE WAS TREY LIVING?
A WEST COLUMBIA.
Q SO, ON THE DAY OF THIS EVENT WAS TREY LIVING WITH YOU?
A NO.
Q HE WAS LIVING IN WEST COLUMBIA?
A YES.
Q DID THERE EVER COME A TIME WHEN YOU SAW THIS OFFICER RIGHT HERE?
A I'VE SEEN HIM THREE TIMES.
Q WHEN WAS THE FIRST TIME YOU SAW HIM?
A MAY OF '96. HE AND ANOTHER UNIFORM OFFICER CAME TO MY HOUSE BECAUSE IT WAS A DRIVE-BY SHOOTING.
Q AND WAS TREY AT HOME THEN?

A YES.
Q DIRECTING YOUR ATTENTION TO THE DATE IN QUESTION, THE DATE THAT MR. BROOKS GOT SHOT, DID YOU SEE TREY THAT DAY?
A YES.
Q JUST TELL US WHEN AND WHERE IF YOU CAN REMEMBER?
A IT WAS IN THE AFTERNOON. I REMEMBER THE FOOTBALL GAME WAS ON, THE COWBOYS FOOTBALL GAME WAS ON BECAUSE I WAS WATCHING THAT. HE COME IN THE HOUSE AND GOT SOMETHING TO EAT, WATCH A LITTLE BIT OF THE GAME.
Q WAS YOUR OTHER SON HOME?
A YES.
Q AND HIS NAME IS?
A VALDIS GARNER.
Q DID THERE COME A TIME THAT YOU LEARNED ABOUT THE SHOOTING AT MR. BROOKS' STORE?
A YES.
Q AND HOW DID YOU LEARN IT?
A MS. RUTHIE SCOTT CALLED ME.
Q THAT WAS THE WOMAN THAT TESTIFIED HERE MONDAY?
A YES.
Q SHE CALLED YOU AND SHE SAID WHAT?
A WHEN THE PHONE RING, I ANSWER THE PHONE AND SHE SAID, ESSIE, CAN YOU COME GET DOANYA (ph). I SAID WHAT'S THE MATTER, SHE UPSET ME.

MR. ROGERS: THANK YOU, MS. GARNER.

MR. McMAHON: IF IT PLEASE THE COURT.

CROSS EXAMINATION BY

MR. McMAHON:

Q MS. GARNER, HOW LONG HAD YOUR SON, TREY, BEEN LIVING IN WEST COLUMBIA?

A AROUND THE SUMMER OF '97. THAT'S RIGHT. THIS SUMMER. AROUND MAY OF '97, THIS SUMMER. THIS PAST SUMMER.

Q LET ME BACK UP A MINUTE, MS. GARNER. THE SHOOTING OCCURRED IN '96.

A YES.

Q SO, YOU'RE SAYING THAT YOUR SON, TREY, MOVED OR WAS LIVING IN WEST COLUMBIA MAY OF '96?

A NO, NO. I AM CONFUSED. IT WAS '97. IT WAS '97. THIS PAST SUMMER I BELIEVE.

Q I'M NOT TRYING TO CONFUSE YOU, MS. GARNER. MAYBE MY QUESTIONS ARE INARTICULATE. THE SHOOTING HAPPENED IN OCTOBER OF '96.

A RIGHT.

Q AND YOUR SON, TREY, WAS NOT LIVING WITH YOU AT [redacted] MEETING HOUSE ROAD OCTOBER OF 1996, CORRECT?

A RIGHT. CORRECT.

Q SO, RATHER THAN WHEN HE MOVED TO WEST COLUMBIA, FOR WHAT PERIOD OF TIME HAD HE BEEN LIVING IN WEST

COLUMBIA BEFORE THE SHOOTING?

A MAY OF '96.

Q MAY OF '96. LIKE I SAY, I WASN'T TRYING TO CONFUSE YOU. I WANTED TO MAKE SURE WE WERE ON THE SAME WAVE LENGTH. AND WHERE IN WEST COLUMBIA WAS YOUR SON LIVING?

A OFF OF LEAPHART ROAD IN A MOBILE HOME.

Q OFF OF LEAPHART ROAD?

A UH-HUH.

Q AND THAT WOULD HAVE BEEN IN HENDRIX MOBILE HOMES?

A IT COULD BE HENDRIX. ALL I KNOW IS IT WAS A MOBILE HOME.

Q MOBILE HOME PARK?

A UH-HUH.

Q AND WHO WAS HE LIVING WITH IN THE MOBILE HOME PARK ON LEAPHART ROAD IN WEST COLUMBIA?

A THERE WAS A YOUNG LADY THAT LIVE THERE NAME ROBIN.

Q ROBIN --

A I DON'T REMEMBER HER LAST NAME.

Q YOU DON'T KNOW HER LAST NAME?

A NO, I DON'T.

Q AND THAT'S WHO HE WAS LIVING WITH IN MAY OF 1996?

A UH-HUH.

Q FORWARD, MAY, JUNE, JULY, AUGUST ON UP FOLLOWING, IS THAT CORRECT?

A UH-HUH.
Q WHAT TYPE OF TRANSPORTATION DID YOUR SON, TREY GARNER, HAVE IN THE FALL OF 1996?
A HE DIDN'T HAVE HIS OWN TRANSPORTATION. MY OLDEST SON WOULD BRING HIM DOWN OR HE WOULD CATCH A RIDE WITH THE GIRL IN THE GIRL'S CAR.
Q SO, THERE WOULD BE TIMES WHEN MR. GARNER, TREY, WOULD VISIT AND THE YOUNG LADY, ROBIN, WOULD BE WITH HIM? SHE HAD A CAR?
A NO. I SAID MY OLDEST SON WOULD BRING HIM DOWN.
Q I APOLOGIZE IF I MISUNDERSTOOD. WOULD THERE EVER BE TIMES WHEN ROBIN WOULD BRING HIM DOWN TO VISIT?
A I HADN'T SEEN HER BRING HIM DOWN.
Q AND YOUR OLDEST SON, WOULD THAT BE VALDIS OR MARQUIS?
A MARQUIS.
Q MARQUIS. AND HE HAD AN AUTOMOBILE BACK DURING THIS TIME, MARQUIS DID?
A NO, NOT HIS OWN AUTOMOBILE, NO.
Q HOW DID YOUR SON GET TO YOUR HOME, IF YOU KNOW, ON THE SUNDAY BEFORE THE SHOOTING HAPPENED?
A I DON'T KNOW. I DIDN'T ASK HIM. I WAS IN CHURCH WHEN HE CAME DOWN.
Q AND YOU, OF COURSE, KNOW JERMAINE McLEMORE?
A YES.
Q AND KNOW HIS FAMILY?

A YES.
Q AND HAD KNOWN HIM FOR A PERIOD OF TIME?
A NOT TOO LONG.
Q WHAT DO YOU CALL NOT TOO LONG, MS. GARNER?
A I CALL NOT TOO LONG -- I'VE SEEN JERMAINE. SOMETIMES HE CAME IN AND OUT OF MY HOUSE. I'D SAY MAYBE ABOUT SIX MONTHS HE CAME IN AND OUT OF MY HOUSE BUT I KNOW HIS FATHER AND HIS MOTHER.
Q AND TO YOUR KNOWLEDGE WAS TREY, YOUR SON, FRIENDS OF, ACQUAINTANCE OF JERMAINE McLEMORE?
A I WOULD ASSUME SO IF HE CAME TO THE HOUSE.
Q AND DAYON LEMON, YOU KNEW DAYON?
A VAGUELY.
Q WAS YOUR SON AN ACQUAINTANCE OR A FRIEND OF DAYON LEMON?
A DAYON HAD BEEN TO THE HOUSE A COUPLE OF TIMES BUT ...
Q AS A FRIEND OF YOUR SON, TREY?
A WELL, HE'S ALSO COME TO THE HOUSE, YOU KNOW, IF TREY WASN'T THERE SO I DON'T KNOW.
Q NOW, THAT PARTICULAR DAY, OCTOBER 20TH OF 1996, THE SUNDAY BEFORE THE SHOOTING HAPPENED, DID YOU SEE JERMAINE THAT DAY?
A THE SUNDAY BEFORE IT HAPPENED?
Q YES, MA'AM.
A NO, I DID NOT.

Q BUT YOU DID SEE JERMAINE THE SUNDAY IT HAPPENED?
A I DIDN'T SEE JERMAINE PRECISELY. I SAW JERMAINE WHEN HE PULL UP TO THE END OF MY DRIVEWAY TO PICK TREY AND VALDIS UP. I SAW THE CAR.
Q YES, MA'AM. WELL, DO YOU RECALL TALKING WITH THIS OFFICER AND OFFICER SHELLS ON NOVEMBER THE 26TH OF 1996, A MONTH AFTER THE HOMICIDE?
A YES, I DO.
Q AND DO YOU RECALL TELLING THE OFFICERS ON THAT PARTICULAR DAY THAT VALDIS WAS HOME?
A UH-HUH.
Q WHEN MR. BROOKS GOT SHOT? DO YOU RECALL TELLING THE OFFICERS THAT?
A I TOLD 'EM VALDIS WAS HOME DURING THE TIME THE FOOTBALL GAME WAS ON BUT I DIDN'T KNOW MR. BROOKS HAD GOTTEN SHOT.
Q SO, YOU DIDN'T HAVE ANY KNOWLEDGE OF THAT?
A NO, I DIDN'T.
Q BUT DID YOU TELL THEM ALSO THAT TREY AND HIS FRIENDS PICKED VALDIS UP?
A I DID.
Q SO, VALDIS WAS PICKED UP BY TREY AND HIS FRIENDS AND WHEN YOU LOOKED OUT HIS FRIENDS WOULD BE JERMAINE?
A YES. THE CAR. I SAW THE CAR SO I KNOW IT WAS JERMAINE'S CAR.