

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 12 2014

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. Supreme Court

Honorable Michael Nettles, Circuit Court Judge

Case No. 08-CP-43-00905
Appellate Case No. 2013-001968

BOBBY WAYNE STONE..... Petitioner,

v.

STATE OF SOUTH CAROLINA..... Respondent.

SUPPLEMENTAL APPENDIX
VOLUME I OF II

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

STATE OF S.C.,)
 PLAINTIFF)

VS.)

BOBBY WAYNE STONE,)
 DEFENDANT)

TRANSCRIPT OF RECORD
96-GS-43-698
VOLUME I OF V

SUMTER, SOUTH CAROLINA
JANUARY 28, 1997

B E F O R E:

HONORABLE MARKELY DENNIS, JUDGE; AND A JURY.

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

WADE KOLB, SOLICITOR
ATTORNEY FOR THE STATE

CAMERON LITTLEJOHN, ESQUIRE
JAMES BABB, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

KATHLEEN M. SIMMONS

CIRCUIT COURT REPORTER

I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

PERRY HEROD

MR. KOLB 17 55
MR. LITTLEJOHN 41

JOSEPH GALIMORE

MR. KOLB 57
MR. LITTLEJOHN 65

DANA WINGATE

MR. KOLB 78
MR. LITTLEJOHN 79

DR. HAROLD MORGAN

MR. BABB 81 95
MR. KOLB 87 96

KATHY MILES

MR. KOLB 140
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DANIEL BETHEA

MR. KOLB 172 184
MR. BABB 180

MARY RUTH MCLEOD

MR. KOLB 186 219
MR. BABB 205

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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		<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RAYMOND MACKESSY				
MR. KOLB	374			
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TOM DARNELL				
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<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
STACY DRAKEFORD				
MR. KOLB	537			
MR. LITTLEJOHN		545		
RICHARD HUNTON				
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<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u> <u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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EMILY REINHART				
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JOE GALLIMORE				
MR. KOLB	715			
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MARY G. WILSON				
MR. LITTLEJOHN	743			
MR. KOLB		751		
MICHELLE LYNCH				
MR. LITTLEJOHN	757		767	
MR. KOLB		764		769

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

TEANNE OEHLER

MR. LITTLEJOHN 771

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MR. KOLB	951			
MR. LITTLEJOHN		959		

STEVE LANEY

MR. KOLB	963		976	
MR. LITTLEJOHN		976		977

TOMMY MIMS

MR. KOLB	977			
MR. BABB		988		

GARY METTS

MR. KOLB	995			
MR. LITTLEJOHN		1001		

PEGGY KUBALA

MR. KOLB	1002			

KEVIN KUBALA

MR. KOLB	1007			

FRED KUBALA

MR. KOLB	1009			

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

LEANNA CROOKSHANKS

MR. KOLB 1021

TERESA B. KUBALA

MR. KOLB 1033

DR. HAROLD MORGAN

MR. LITTLEJOHN 1053		1066
MR. KOLB	1062	

BERNICE PERRY

MR. BABB 1078		1091
MR. KOLB	1090	

TAMMY WINDEHAM

MR. BABB 1092		
MR. KOLB	1096	

MELINDA PARROTT

MR. BABB 1097		
MR. KOLB	1105	

MICHELLE LYNCH

MR. BABB 1109

MARY WILSON

MR. BABB 1111		
MR. KOLB	1114	

<u>WITNESSES</u>	<u>DIRECT</u>	<u>I N D E X</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

DIANE RENEA CONNOR

MR. BABB	1114	
MR. KOLB		1116

TEANNE OEHLER

MR. LITTLEJOHN	1117	
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JERRY HYATT

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SENTENCE OF COURT : 1264

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1 THE COURT: ARE YOU ALL READY TO HEAR MOTIONS? LET
2 ME GET THE STUFF. I'LL BE RIGHT BACK.

3 (WHEREUPON THERE WAS A PAUSE).

4 THE COURT: GOOD MORNING, MR. STONE. LET THE RECORD
5 REFLECT THE DEFENDANT IS PRESENT. ALL RIGHT. AS I
6 UNDERSTAND AT THIS POINT WE HAVE A MOTION. IT WAS FILED BY
7 THE DEFENDANT TO SUPPRESS THE ALLEGED STATEMENT. IS THAT
8 CORRECT?

9 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: AS I FURTHER UNDERSTAND IN REVIEWING THAT
11 MOTION -- YOUR MOTION AT THIS POINT IS NOT -- DOES NOT
12 PERTAIN TO THE VOLUNTARINESS OF THE CONFESSION, BUT RATHER
13 TO THE WHETHER OR NOT IT'S ADMISSIBLE UNDER THE STATUTES.
14 YOU WANT TO DEAL WITH THE VOLUNTARINESS?

15 MR. LITTLEJOHN: YES, YOUR HONOR. I THINK THAT WOULD
16 BE NECESSARY.

17 THE COURT: I UNDERSTAND THAT, BUT LETS -- DON'T WE
18 NEED TO HEAR THE FIRST PART? BECAUSE IF WE GET -- IF THE
19 FIRST PART OF THE STATEMENT IS INADMISSIBLE, IF YOU HAVE
20 READ IT, IT DOESN'T MAKE ANY DIFFERENCE ABOUT THE
21 VOLUNTARINESS; DOES IT?

22 MR. LITTLEJOHN: YOUR HONOR, I BELIEVE THAT IS A
23 CORRECT STATEMENT. IN READING STATE VERSUS BUTLER, I'M NOT
24 SURE EXACTLY WHAT...

25 THE COURT: ARE YOU CONCEDED THAT THE STATUTORY

PERRY HEROD - DIRECT BY KOLB

1 SCHEME HAS BEEN -- INsofar AS THE APPARENT MANDATORY
2 LANGUAGE SHALL -- THAT THAT HAS BEEN MODIFIED OR REPEALED
3 BY THE CASES?

4 MR. LITTLEJOHN: NO, YOUR HONOR. WE ARE NOT.

5 THE COURT: OKAY.

6 MR. LITTLEJOHN: CONCEDING THERE ARE SOME FACTUAL
7 DIFFERENCES BETWEEN.

8 THE COURT: ALL RIGHT. LETS GO AHEAD AND DO IT ALL AT
9 ONE TIME. WE WILL HEAR THE TESTIMONY AND SEE.

10 MR. KOLB: YOUR HONOR, WE CALL PERRY HEROD.

11 THE COURT: ALL RIGHT.

12 PERRY HEROD, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. KOLB:

15 MR. KOLB: COULD I HAVE JUST A MOMENT? I WAS MAKING
16 COPIES FOR THE COURT OF WHAT I HAVE IN MY FILE UNDER THE
17 STATEMENT.

18 THE COURT: ALL RIGHT.

19 MR. KOLB: AND THEY ARE A LITTLE SLOW COMING. I
20 WANTED TO -- I THINK THE COURT WOULD LIKE A COPY TO REFER
21 TO WHILE WE DO THIS AND ALSO I NEED ONE.

22 THE COURT: ALL RIGHT, SIR.

23 (WHEREUPON THERE WAS A PAUSE).

24 MR. KOLB: JUDGE, THIS IS EVERYTHING WE WILL BE
25 REFERRING TO. THE DEFENSE, OF COURSE, HAS COPIES OF THAT.

PERRY HEROD - DIRECT BY KOLB

1 THE COURT: THANK YOU, SIR.

2 Q WOULD YOU GIVE US YOUR NAME, PLEASE.

3 A PERRY ALSTON HEROD.

4 Q AND HOW ARE YOU EMPLOYED?

5 A I'M A LIEUTENANT WITH THE SOUTH CAROLINA LAW
6 ENFORCEMENT DIVISION. I'M WITH SLED.

7 Q ALL RIGHT. AND AGENT HEROD, DID YOU PARTICIPATE IN
8 TAKING A STATEMENT FROM THE DEFENDANT BOBBY WAYNE STONE
9 DURING THE EARLY MORNING HOURS OF FEBRUARY THE 27TH, 1996?

10 A YES, SIR. I DID.

11 Q WOULD YOU TELL US WHAT THE CIRCUMSTANCES OF THAT
12 WERE, HOW YOU CAME TO BE IN THAT POSITION?

13 A WELL, THAT NIGHT AFTER BOBBY STONE HAD BEEN ARRESTED,
14 HE WAS BROUGHT TO THE LAW ENFORCEMENT CENTER. AND MYSELF
15 AND JOE GALLIMORE, INVESTIGATOR WITH THE SUMTER COUNTY
16 SHERIFF'S DEPARTMENT, WE WERE GOING TO INTERVIEW BOBBY
17 WAYNE STONE.

18 THAT INTERVIEW TOOK PLACE IN JOE GALLIMORE'S
19 OFFICE ON THE SECOND FLOOR OF LAW ENFORCEMENT CENTER,
20 COUNTY INVESTIGATIONS.

21 Q ALL RIGHT. AND DID YOU OR INVESTIGATOR GALLIMORE
22 THREATEN, COERCE OR INTIMIDATE MR. STONE IN ANY WAY TO GET
23 HIM TO TALK WITH YOU?

24 A NO, SIR.

25 Q DID YOU OFFER HIM ANY REWARD OR HOPE OF REWARD?

PERRY HEROD - DIRECT BY KOLB

1 A NO, SIR.

2 Q ALL RIGHT. I'M GOING TO IN A MINUTE ASK YOU ABOUT ANY
3 STATEMENTS THAT WERE MADE AFTER THE ADVICE OF RIGHTS, BUT
4 DID THE DEFENDANT IN FACT MAKE CERTAIN STATEMENTS NOT IN
5 RESPONSE TO YOUR QUESTIONING?

6 A YES, SIR. HE DID.

7 Q COULD YOU TELL THE COURT A LITTLE BIT ABOUT THAT?

8 A WHEN HE WAS FIRST BROUGHT TO THE LAW ENFORCEMENT
9 CENTER AND OUT IN THE PARKING LOT WHEN HE GOT OUT OF THE
10 VAN, THERE WERE A NUMBER OF OFFICERS STANDING AROUND THE
11 PARKING LOT.

12 AND AS HE GOT OUT OF THE VAN AND WAS BEING
13 BROUGHT INTO THE LAW ENFORCEMENT CENTER, HE SAID YA'LL
14 GETTING OFF ON THIS.

15 THEN HE WAS TAKEN UP TO COUNTY INVESTIGATIONS
16 AND HE WAS PLACED IN A CHAIR IN THE OPEN AREA OF COUNTY
17 INVESTIGATIONS AND HE MADE A COUPLE OF STATEMENTS DURING
18 THAT TIME.

19 Q ALL RIGHT, SIR. AND AS FAR AS THE PROCESS OF -- NOW,
20 THESE STATEMENTS THAT HE MADE, WERE THEY IN RESPONSE TO
21 QUESTIONING IN ANY WAY?

22 A NO, SIR.

23 Q ALL RIGHT. NOW, TELL US ABOUT THE ACTUAL PROCESS OF
24 TAKING A STATEMENT FROM MR. STONE. YOU SAY THAT WAS IN MR.
25 GALLIMORE'S OFFICE?

PERRY HEROD - DIRECT BY KOLB

1 A YES, IT WAS.

2 Q WHERE IS THIS IN RELATION TO THE OPEN AREA THAT YOU
3 JUST MENTIONED?

4 A AS YOU WALK INTO COUNTY INVESTIGATIONS ON THE SECOND
5 FLOOR OF THE LAW ENFORCEMENT CENTER, IT WILL BE THE FIRST
6 OFFICE TO THE RIGHT.

7 Q OKAY. WHAT -- THE OPEN AREA IS THE -- YOU SAID HE WAS
8 INITIALLY TAKEN UPSTAIRS AND SEATED IN THE OPEN AREA?

9 A YES. IN COUNTY INVESTIGATIONS. IT HAS VARIOUS
10 OFFICES AGAINST ONE WALL AND THEN THERE'S A OPEN AREA
11 WHERE THE SECRETARY'S DESK IS AND FILING CABINETS.

12 Q OKAY. AND HE WAS SEATED IN THERE FOR PERIOD OF TIME
13 BEFORE YOU AND OFFICER, INVESTIGATOR, GALLIMORE ACTUALLY
14 SAT HIM DOWN TO QUESTION HIM?

15 A YES, SIR.

16 Q ALL RIGHT. AND ONCE YOU WENT INTO INVESTIGATOR
17 GALLIMORE'S OFFICE, WAS THE DEFENDANT ADVISED OF HIS
18 CONSTITUTIONAL RIGHTS UNDER THE MIRANDA DECISION?

19 A YES, HE WAS.

20 Q AND COULD YOU EXPLAIN EXACTLY HOW THAT WAS DONE?

21 A INVESTIGATOR GALLIMORE HAD A RIGHTS FORM AND THIS
22 FORM -- ON THIS FORM IT WAS READ TO BOBBY WAYNE STONE. AT
23 THE TOP OF IT WAS WRITTEN 0155, 2-27-96. THEN HAS NUMBER 1
24 AND THIS WAS READ TO BOBBY WAYNE STONE.

25 THAT I HAVE A RIGHT TO REMAIN SILENT. NUMBER

PERRY HEROD - DIRECT BY KOLB

1 TWO. THAT ANYTHING I SAY MAY BE USED IN COURT AGAINST ME.
2 NUMBER THREE, THAT I AM ENTITLED TO TALK TO A LAWYER NOW
3 OR HAVE HIM OR HER PRESENT NOW OR ANY TIME DURING
4 QUESTIONING.

5 NUMBER FOUR. THAT -- EXCUSE ME -- THAT IF I CAN
6 NOT AFFORD A LAWYER ONE WILL BE APPOINTED FOR ME WITHOUT
7 COST BY THE COURT. NUMBER FIVE, THAT IF I DECIDE TO ANSWER
8 ANY QUESTIONS NOW THAT I MAY STOP THE QUESTIONING AT ANY
9 TIME I SO CHOOSE OR ASK TO SPEAK WITH A LAWYER AT ANY TIME
10 DURING THE QUESTIONING.

11 NUMBER SIX, THAT I UNDERSTAND EACH OF THESE
12 RIGHTS AND I AM WILLING TO ANSWER QUESTIONS AT THIS TIME
13 WITHOUT HAVING A LAWYER PRESENT.

14 Q ALL RIGHT.

15 A AND...

16 Q GO AHEAD.

17 A IT WAS SIGNED BY BOBBY WAYNE STONE, IT'S GOT BOBBY W
18 STONE, 1:58 A.M., 2-27-96. IT WAS WITNESSED BY JOE
19 GALLIMORE AND MYSELF, PERRY HEROD.

20 Q ALL RIGHT. AND IN FACT THESE RIGHTS WERE READ OUT
21 LOUD TO MR. STONE?

22 A YES, SIR.

23 Q WAS HE THEN SHOWN THIS FORM AND GIVEN AN OPPORTUNITY
24 TO READ OVER IT BEFORE SIGNING?

25 A YES, SIR. AFTER THE RIGHTS WERE READ TO HIM OFF THE

PERRY HEROD - DIRECT BY KOLB

1 FORM, HE WAS HANDED THE FORM. AND HE LOOKED AT IT AND THEN
2 HE HANDED IT BACK TO US AND THEN WE ASKED HIM IF HE
3 UNDERSTOOD HIS RIGHTS. AND HE SAID HE DID.

4 WE SAID YOU DO UNDERSTAND YOUR RIGHTS? AND IF
5 YOU DO UNDERSTAND THEM, THEN WE WOULD LIKE FOR YOU TO SIGN
6 THIS FORM. AND AT THAT TIME HE SIGNED IT AND THEN WE
7 WITNESSED IT.

8 Q ALL RIGHT. NOW, WHAT HAPPENED -- WELL, LET ME ASK YOU
9 AGAIN. DID IT APPEAR TO YOU THAT HE UNDERSTOOD HIS RIGHTS?

10 A YES, SIR.

11 Q DID IT APPEAR TO YOU THAT HE WAS -- UNDERSTAND IT WAS
12 DURING THE EARLY MORNING HOURS, BUT WAS HE SLEEPY AND
13 GROGGY OR ABLE AND ALERT AND ABLE TO UNDERSTAND WHAT WAS
14 GOING ON?

15 A HE SEEMED TO BE UNIMPAIRED TO ME. THAT HE
16 UNDERSTOOD. I ASKED HIM IF HE COULD READ AND WRITE. HE
17 SAID HE COULD. AND I ASKED HIM HOW FAR HE HAD GONE IN
18 SCHOOL. HE SAID HE COMPLETED THE 11TH GRADE.

19 Q ALL RIGHT, SIR. WAS IT AT THAT TIME OR A DIFFERENT
20 TIME THAT YOU ASKED HIM IF HE NEEDED ANY MEDICAL
21 ATTENTION? I KNOW THAT HE HAD -- I BELIEVE HE HAD BEEN
22 SCRATCHED UP IN THE COURSE OF THE ARREST?

23 A YES, SIR. WHEN WE FIRST GOT HIM INTO THE ROOM BEFORE
24 WE READ HIM HIS RIGHTS, HE HAD SAID THAT SLED BEAT MY ASS.
25 AND THEN AT THAT TIME I NOTED SOME SCRAPES I BELIEVE ON

PERRY HEROD - DIRECT BY KOLB

1 THE LEFT SIDE OF HIS HEAD AND THE RIGHT SIDE OF HIS HEAD.

2 AND THERE WAS A SCRATCH ON HIS NOSE AND THERE
3 WAS A BRUISE ON HIS CHEST. AND AT THAT TIME WE ASKED HIM
4 IF HE NEEDED ANY MEDICAL ATTENTION, DID HE NEED TO GO TO
5 THE HOSPITAL, DID HE NEED TO GO TO THE DOCTOR. AND HE
6 MADE SOME COMMENT NO, HE DID NOT.

7 Q ALL RIGHT. DO YOU REMEMBER HIS EXACT COMMENT?

8 A SOMETHING TO THE EFFECT THAT I DON'T NEED A DOCTOR.

9 Q OKAY. NOW, WHILE WE ARE ON THAT POINT, DID -- WERE
10 YOU INVOLVED IN THE ACTUAL ARREST OF THE DEFENDANT?

11 A NOT IN THE ACTUAL ARREST IN THE WOODS. I WAS ON THE
12 SCENE.

13 Q ALL RIGHT.

14 A BUT NOT IN THE AREA OF THE ARREST.

15 Q SO WHEN HE WAS BROUGHT OUT OF THE WOODS, YOU WERE
16 PRESENT AT THAT TIME?

17 A NO, SIR.

18 Q OKAY. SO YOU WERE NOT PRESENT WHEN HE WAS BROUGHT OUT
19 OF THE WOODS AND PUT IN THE VAN TO BE BROUGHT UP TO LAW
20 ENFORCEMENT?

21 A NO, SIR. I WAS PRESENT WHEN HE WAS TAKEN OUT OF THE
22 VAN AT THE LAW ENFORCEMENT CENTER.

23 Q OKAY. NOW, -- ALL RIGHT. AND AGAIN, BESIDES TELLING
24 YOU AND APPEARING TO YOU THAT HE DID UNDERSTAND HIS
25 RIGHTS, DID YOU OR OFFICER GALLIMORE OR ANYONE TO YOUR

PERRY HEROD - DIRECT BY KOLB

1 KNOWLEDGE THREATEN, COERCE OR INTIMIDATE HIM IN ANY WAY TO
2 GET HIM TO GIVE YOU A STATEMENT?

3 A NO, SIR.

4 Q OFFER HIM ANY REWARD, HOPE OF REWARD OR PROMISE OF
5 LENIENT TREATMENT TO GET HIM TO GIVE YOU A STATEMENT?

6 A NO, SIR.

7 Q OKAY. NOW, WHAT HAPPENED AFTER THE ADVICE OF RIGHTS?
8 LET ME GO AHEAD AND MARK THAT. DO YOU HAVE THE ORIGINAL OF
9 THAT ADVICE OF RIGHTS FORM?

10 A YES, SIR. I DO.

11 MR. KOLB: WE'D LIKE TO OFFER THIS INTO EVIDENCE FOR
12 PURPOSES OF THIS HEARING.

13 THE COURT: STATE'S EXHIBIT 1.

14 (WHEREUPON THERE WAS A PAUSE).

15 THE COURT: ANY OBJECTION?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 THE COURT: STATE'S EXHIBIT 1 FOR PURPOSES OF THE
18 HEARING. ONE PAGE DOCUMENT -- EXCUSE ME. ONE PAGE.

19 (STATE'S EXHIBIT NO. 1 MARKED FOR
20 IDENTIFICATION).

21 (WHEREUPON QUESTIONING RESUMED).

22 Q WHAT HAPPENED AFTER THE ADVICE OF RIGHTS OF 1:55,
23 1:58 A.M.?

24 A WE ASKED HIM IF HE UNDERSTOOD HIS RIGHTS, WE ASKED
25 HIM -- YOU KNOW -- IF HE NEEDED ANY MEDICAL ATTENTION, TO

PERRY HEROD - DIRECT BY KOLB

1 GO TO A DOCTOR.

2 WE ASKED HIM TO TELL US WHAT HE HAD DONE
3 STARTING WITH THE DAY BEFORE, JUST TO TELL US WHAT HE HAD
4 DONE SINCE HE GOT UP THE DAY BEFORE. AND HE JUST BEGAN TO
5 GO THROUGH THESE SERIES OF EVENTS.

6 Q ALL RIGHT. AND IN GOING THROUGH THAT, THOSE EVENTS,
7 DID IT EVENTUALLY LEAD UP TO HIM BEING PRESENT AT RUTH
8 GRIFFITH'S HOUSE?

9 A YES, SIR.

10 Q ALL RIGHT. WOULD YOU TELL US ABOUT -- I BELIEVE A
11 DIAGRAM WAS MADE.

12 A YES, SIR. WHEN WE ASKED HIM TO TELL US WHAT HE HAD
13 DONE, THEN HE -- HE WENT THROUGH IT. AND THEN WE ASKED HIM
14 IF HE COULD EXPLAIN TO US WHERE HE WAS. HE HAD SAID HE RUN
15 IN THE WOODS.

16 AND JOE GALLIMORE THEN DREW OUT A DIAGRAM OF THE
17 GENERAL AREA. AND WE ASKED BOBBY WAYNE STONE IF HE COULD
18 JUST SHOW US ON THIS DIAGRAM WHERE HE WAS AND WHERE HE HAD
19 GONE.

20 AND AT THAT TIME HE WAS GIVEN A RED PEN AND HE
21 DREW ON THE DIAGRAM WHERE HE WAS AND THEN THE ROUTE HE
22 TOOK FROM THE HOUSE BACK INTO THE WOODS.

23 Q ALL RIGHT. WHAT -- I NOTICE ON THE DIAGRAM IT SHOWS
24 WHERE THE WOODS ARE, IT SHOWS A FIELD, IT SHOWS A DITCH.
25 WHO ACTUALLY TOLD YOU THAT THOSE THINGS WERE THERE? THAT

PERRY HEROD - DIRECT BY KOLB

1 COME FROM YA'LL OR FROM STONE?

2 A NO. HE TOLD US ABOUT THE WOODED AREA AND THAT THERE
3 WAS A FIELD AND THEN A DITCH.

4 Q OKAY. AND SO THAT WAS DRAWN IN AT HIS DIRECTION?

5 A YES, SIR. I HAD NOT BEEN IN THAT AREA, SO I DIDN'T
6 KNOW WHAT WAS BACK THERE.

7 Q ALL RIGHT. YOU HAVE GOT THAT FORM?

8 A YES, SIR, I DO. IT WAS SIGNED BY BOBBY STONE AT 2:10
9 A.M., 2-27-96 AND WITNESSED BY JOE GALLIMORE AND PERRY
10 HEROD.

11 Q ALL RIGHT.

12 MR. KOLB: YOUR HONOR, WE WOULD OFFER THIS FORM INTO
13 EVIDENCE FOR PURPOSES OF THIS HEARING.

14 THE COURT: ANY OBJECTION?

15 MR. LITTLEJOHN: NO, YOUR HONOR.

16 THE COURT: STATE'S EXHIBIT 2 FOR PURPOSES OF THIS
17 PROCEEDING. ONE PAGE FORM.

18 (STATE'S EXHIBIT NO. 2 MARKED FOR
19 IDENTIFICATION).

20 (WHEREUPON QUESTIONING RESUMED).

21 Q ALL RIGHT. MR. HEROD, WHAT HAPPENED AFTER THAT?

22 A THEN AFTER THAT WE CONTINUED TO TALK AND WE ASKED HIM
23 AGAIN WHAT HAD TAKEN PLACE. AND AS FAR AS THE DIAGRAM, IT
24 TOOK -- I DON'T KNOW -- SOMETIME TWENTY, THIRTY MINUTES, I
25 DON'T KNOW EXACTLY HOW LONG TO GO THROUGH THE DIAGRAM.

PERRY HEROD - DIRECT BY KOLB

1 AND THEN WE WENT BACK THROUGH THE SERIES OF
2 EVENTS THAT HE HAD TOLD US.

3 WE WOULD TALK AND ASK QUESTIONS. AND THEN
4 APPROXIMATELY AROUND 4:00 IS WHEN WE STARTED TO TAKE THE
5 WRITTEN STATEMENT.

6 Q ALL RIGHT. NOW, AS I UNDERSTAND IT BASICALLY
7 EVERYTHING THAT ENDED UP IN THE WRITTEN STATEMENT HAD BEEN
8 DISCUSSED WITH HIM ORALLY A COUPLE OF DIFFERENT TIMES?

9 A YES, SIR.

10 Q SO HE WENT THROUGH IT ONCE, THEN YA'LL QUESTIONED HIM
11 ABOUT IT IN DETAIL?

12 A YES, SIR. WE WENT THROUGH IT SEVERAL TIMES. AND
13 DURING THIS TIME HE WAS -- HE WAS ALLOWED TO SMOKE. HE HAD
14 WANTED A CIGARETTE WHEN HE -- WHEN WE HAD GOTTEN INTO THE
15 ROOM HE WAS ALLOWED TO SMOKE FREELY.

16 HE HAD FIXED HIMSELF A CUP OF COFFEE. HE WAS
17 TAKEN TO THE BATHROOM. I BELIEVE HE DRANK A COKE. AND...

18 Q DURING THIS WHOLE PROCESS, WAS ANYTHING EVER DONE TO
19 CAUSE HIM TO BE UNCOMFORTABLE OR THREATENED BY YOU, BY THE
20 OFFICERS OR ANYONE ELSE?

21 A NO, SIR.

22 Q OKAY. NOW, HAVING TALKED THIS THROUGH SEVERAL TIMES
23 AND IN DETAIL, DID YOU EXPLAIN TO HIM THAT YOU WANTED TO
24 TAKE A WRITTEN STATEMENT DEALING WITH THE THINGS THAT YOU
25 HAD BEEN DISCUSSING FOR THE LAST COUPLE OF HOURS?

PERRY HEROD - DIRECT BY KOLB

1 A YES, SIR. WE ASKED HIM IF HE WOULD ANSWER SOME
2 QUESTIONS AND WE COULD TAKE A STATEMENT FROM HIM.

3 Q DID -- WAS IT EXPLAINED TO HIM HOW THE PROCESS --
4 THAT YOU PLANNED TO DO THAT?

5 A YES, SIR. WE TOLD HIM THAT WE WERE GOING TO ASK HIM A
6 QUESTION, WRITE THE QUESTION DOWN AND THEN WRITE HIS
7 ANSWER DOWN.

8 Q ALL RIGHT. AND THIS IS -- I KNOW THERE ARE DIFFERENT
9 WAYS TO TAKE A STATEMENT. THIS IS CALLED A QUESTION AND
10 ANSWER FORMAT OF TAKING A STATEMENT.

11 A YES, SIR.

12 Q NOW, DID HE AGREE TO GIVE A WRITTEN STATEMENT? I
13 UNDERSTAND HE AGREED TO TALK TO YOU AND HE HAD BEEN GIVEN
14 ALL THESE ORAL STATEMENTS. DID HE AGREE TO GIVE A WRITTEN
15 STATEMENT AT THAT TIME?

16 A YES, SIR. HE DID.

17 Q ALL RIGHT. AND YOU HAVE A FORM THERE THAT WAS DONE?

18 A YES, SIR.

19 Q STATEMENT FORM?

20 A INVESTIGATOR GALLIMORE, HE HAD A STATEMENT FORM. AT
21 THE TOP IT'S GOT STATEMENT. AND HE FILLED IT OUT, IT'S
22 GOT TIME, 0410, DATE 2-27-96, PLACE CRIMINAL
23 INVESTIGATIONS DIVISION OF SUMTER COUNTY SHERIFF'S
24 DEPARTMENT, 107 EAST HAMPTON AVENUE, SUMTER, SOUTH
25 CAROLINA.

PERRY HEROD - DIRECT BY KOLB

1 AND THEN INVESTIGATOR GALLIMORE FILLED THIS IN
2 BOBBY WAYNE STONE. SAYS I BOBBY WAYNE STONE -- AND HE
3 ASKED HIM HIS SOCIAL SECURITY NUMBER, 247-31-1905. GOT A W
4 SLASH M FOR WHITE MALE.

5 AND HE ASKED HIM HIS BIRTH DATE. 9-19-65. THAT
6 WAS WRITTEN ON THERE. THEN INVESTIGATOR GALLIMORE READ TO
7 HIM HAVING BEEN ADVISED OF MY RIGHTS UNDER THE FIFTH
8 AMENDMENT TO THE CONSTITUTION AS TO COMPULSORY SELF
9 INCRIMINATION, MY RIGHT OF COUNSEL AND MY RIGHT OF TRIAL,
10 AND KNOWING THAT ANYTHING I SAY MAY BE USED AGAINST ME IN
11 COURT -- IN A COURT OF LAW.

12 AND KNOWING THAT I DO NOT HAVE TO MAKE ANY
13 STATEMENT AT ALL DO HERE BY VOLUNTEER THE FOLLOWING TO S A
14 WHICH WOULD BE SPECIAL AGENT PERRY HEROD SLED AND I N V
15 INVESTIGATOR JOE GALLIMORE SUMTER COUNTY SHERIFF'S
16 DEPARTMENT WHO HAVE IDENTIFIED THEMSELVES AS LAW
17 ENFORCEMENT OFFICERS.

18 Q ALL RIGHT. NOW MR. HEROD, AFTER THAT YA'LL WENT
19 THROUGH A PROCESS OF ACTUALLY MR. GALLIMORE WOULD -- I
20 GUESS -- DID THE TWO OF YOU OFFICERS TALK ABOUT WHAT
21 QUESTIONS YOU WANTED TO ASK?

22 A WELL, HE WOULD WRITE SOME QUESTIONS AND THEN WE WOULD
23 COME UP WITH A QUESTION. AND SOME QUESTIONS WERE MINE,
24 SOME WERE HIS AND SOME WERE A COMBINATION OF THE TWO.

25 Q ALL RIGHT. SO WHEN YOU WROTE A QUESTION, MR.

PERRY HEROD - DIRECT BY KOLB

1 GALLIMORE ACTUALLY WROTE IT OUT ON THIS FORM BEFORE YOU
2 ASKED MR. STONE?

3 A YES, SIR.

4 Q ALL RIGHT. NOW, AND THIS IS NOT THE FIRST TIME HE HAD
5 BEEN ASKED THESE QUESTIONS. HE HAD BEEN ASKED AS YOU
6 MENTIONED A COUPLE OF TIMES OVER THE LAST TWO HOURS BEFORE
7 THIS; IS THAT RIGHT?

8 A YES, SIR. WE HAD DISCUSSED THIS.

9 Q OKAY. ALL RIGHT. AND SO BASICALLY THIS STATEMENT WAS
10 TO DOCUMENT WHAT HE HAD BEEN TELLING YOU IN ORAL
11 STATEMENTS?

12 A YES, SIR.

13 Q ALL RIGHT. AND THE PROCESS WENT THROUGH THE ENTIRE
14 STATEMENT THERE?

15 A YES, SIR. IN FACT THE FIRST QUESTION IT'S GOT 1 Q FOR
16 FIRST QUESTION. SAYS BOBBY, EARLIER WE ADVISED YOU OF
17 YOUR RIGHTS AND YOU AGREED TO ANSWER OUR QUESTIONS WITHOUT
18 SPEAKING TO A LAWYER, WITHOUT HAVING A LAWYER HERE; IS
19 THAT CORRECT? AND THE ANSWER WAS YES.

20 Q ALL RIGHT. NOW, AND YOU WENT ON THROUGH. OF COURSE
21 THE -- YOU HAVE THE WHOLE STATEMENT THERE?

22 A YES, SIR.

23 Q ALL RIGHT. LET ME GET THAT FROM YOU. YOU GOT THE
24 ORIGINAL?

25 A YES, SIR.

PERRY HEROD - DIRECT BY KOLB

1 Q YOU GOT TWO COPIES OR JUST ONE?

2 A JUST ONE.

3 Q ALL RIGHT. I WILL HAVE TO GIVE IT BACK TO YOU.

4 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THIS
5 STATEMENT FOR PURPOSES OF THIS HEARING.

6 THE COURT: ANY OBJECTION?

7 MR. LITTLEJOHN: NO OBJECTION.

8 THE COURT: STATES 3, EIGHT PAGE DOCUMENT. EVIDENCE
9 AT THIS TIME. WITHOUT OBJECTION.

10 (STATE'S EXHIBIT NO. 3 MARKED FOR
11 IDENTIFICATION).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q ALL RIGHT. MR. HEROD, WHOSE WORDS -- NOW, IN THE
14 ANSWERS THAT ARE WRITTEN ON THESE EIGHT PAGES, WHOSE WORDS
15 ARE THOSE?

16 A BOBBY WAYNE STONE.

17 Q NOW, AFTER THE -- SO THIS WAS A PRETTY LENGTHY
18 PROCESS TO WRITE OUT EVERYTHING YOU WERE ASKING HIM AND
19 THEN WRITE OUT HIS EXACT ANSWER?

20 A YES, SIR. IT TOOK TWO HOURS OR MORE TO COMPLETE THIS
21 STATEMENT.

22 Q ALL RIGHT. NOW, ONCE YOU GOT FINISHED, YOU AND MR.
23 GALLIMORE GOT FINISHED WRITING ALL OF THIS, ONE THING I
24 WANT TO ASK YOU IS GETTING TO THE FINAL PAGE THERE.

25 I NOTICE THAT IT'S WRITTEN OUT A THIRTY-FOUR

PERRY HEROD - DIRECT BY KOLB

1 QUESTION -- GOING ON TO THE TOP OF THE LAST PAGE, THE
2 EIGHTH PAGE. AND THEN SORT OF UP IN THE MARGIN ABOVE THAT
3 IS WRITTEN IN THE THIRTY-FIFTH AND THIRTY-SIXTH QUESTION.
4 COULD YOU EXPLAIN ABOUT THAT?

5 A YES, SIR. WE HAD COMPLETED THE STATEMENT AND ON THE
6 LAST PAGE EVERYTHING HAD BEEN WRITTEN IN AND A SPOT FOR
7 BOBBY WAYNE STONE TO SIGN, A SPOT FOR THE WITNESSES TO
8 SIGN AND WHERE IT WAS WRITTEN TO BE NOTARIZED.

9 AND AT THAT TIME WE THOUGHT OF A COUPLE MORE
10 QUESTIONS. SO WE THOUGHT WE HAD ROOM TO FIT THEM IN AT THE
11 TOP SO WE WOULDN'T HAVE TO HAVE AN ADDITIONAL PAGE. SO
12 THEY WERE JUST WRITTEN AT THE TOP OF THE LAST PAGE.

13 Q ALL RIGHT, SIR. NOW, SO ONCE THEN ALL THE QUESTIONS
14 AND ALL THE ANSWERS WERE WRITTEN IN AND BEFORE IT WAS
15 SIGNED AND NOTARIZED, WHAT PROCESS WAS GONE THROUGH THAT
16 RESULTED IN ALL OF THESE LINES WITH THE INITIALS B S ON
17 THEM AND THE SIGNATURE BOBBY W STONE IN THE MARGIN AND SO
18 FORTH?

19 A WELL, QUESTION THIRTY-FOUR SAYS BOBBY, I HAVE WRITTEN
20 THIS OUT. QUESTIONS Q'S AND YOUR ANSWERS A'S VERBATIM. WE
21 ARE GOING TO READ IT TO YOU THEN HAVE YOU READ IT YOURSELF
22 AND INITIAL AFTER EACH QUESTION AND ANSWER ON THE LINES.

23 HE READ OVER IT AND SIGNED EACH PAGE. THEN IT
24 SAYS I BOBBY WAYNE STONE HAVE READ THIS EIGHT PAGE
25 STATEMENT. I HAVE INITIALED AFTER EACH QUESTION AND EACH

PERRY HEROD - DIRECT BY KOLB

1 ANSWER AND THEN SIGNED EACH PAGE.

2 I SWEAR UNDER OATH THAT THIS STATEMENT IS TRUE
3 AND CORRECT TO THE BEST OF MY KNOWLEDGE, RECOLLECTIONS AND
4 BELIEFS SO HELP ME GOD. THEN WE WENT BACK TO THE
5 BEGINNING.

6 Q DID YOU GET HIM TO SIGN THAT AT THAT TIME?

7 A NO, SIR.

8 Q OKAY. GO AHEAD.

9 A WE WENT BACK TO THE BEGINNING OF THE STATEMENT
10 STARTING WITH QUESTION NUMBER ONE. AND EACH QUESTION WAS
11 READ TO HIM. AND AFTER EACH QUESTION WAS READ TO HIM, HE
12 WOULD INITIAL B S AFTER THE QUESTION. AND THEN AFTER THE
13 ANSWER HE WOULD INITIAL B S AGAIN FOR BOBBY STONE.

14 Q NOW, SO YOU'D READ THE QUESTION -- BASICALLY YOU
15 ASKED IT EARLIER AND WROTE IT?

16 A YES, SIR.

17 Q THEN HE GAVE AN ANSWER?

18 A YES, SIR.

19 Q SO YOU GO BACK?

20 A WE WENT BACK THROUGH IT AGAIN IN CASE THERE WERE ANY
21 CHANGES OR TO GIVE HIM THE OPPORTUNITY TO VIEW WHAT WAS
22 WRITTEN.

23 Q OKAY.

24 A IN THIS STATEMENT.

25 Q SO THIS IS SORT OF A SECOND TIME BACK THROUGH THE

PERRY HEROD - DIRECT BY KOLB

1 WRITTEN VERSION AND GOT HIM TO INITIAL AFTER EACH QUESTION
2 AND EACH ANSWER?

3 A YES, SIR.

4 Q ALL RIGHT. BESIDES READING IT TO HIM, WAS HE ALLOWED
5 TO LOOK AT IT HIMSELF AND READ IT BEFORE PUTTING AN
6 INITIAL THERE?

7 A YES, SIR.

8 Q OKAY. AND WHAT ABOUT THE SIGNATURES IN THE LEFT HAND
9 MARGIN OF EACH PAGE?

10 A THEN ON EACH PAGE HE SIGNED HIS NAME ON THE LEFT HAND
11 MARGIN OF EACH PAGE.

12 Q ALL RIGHT.

13 A AND THEN AFTER -- AFTER HE HAD DONE THAT ON THE FIRST
14 PAGE, HE SIGNED BOBBY W STONE AS WITNESSED BY MYSELF AND
15 JOE GALLIMORE.

16 AND THEN AGENT GARY MARTIN WITH SLED, HE CAME
17 INTO THE ROOM. AND HE WAS -- HE WAS IN THERE. WHILE BOBBY
18 WAYNE STONE WAS INITIALING SOME OF THESE, HE CAME IN
19 THERE. I DON'T REMEMBER EXACTLY WHEN IT WAS, BUT IT WAS
20 SOMETIME DURING THE PROCESS.

21 AND THEN HE HAD BOBBY WAYNE STONE SIGN THE
22 STATEMENT AND HE NOTARIZED IT AND THAT'S WHEN MYSELF AND
23 JOE GALLIMORE SIGNED AS WITNESSES.

24 Q ALL RIGHT. WHAT DID MR. MARTIN DO WITH THE ORIGINAL
25 OF THE STATEMENT AT THAT TIME?

PERRY HEROD - DIRECT BY KOLB

1 A THE ORIGINAL OF THE STATEMENT?

2 Q YEAH.

3 A AFTER BOBBY WAYNE STONE HAD SIGNED IT, I TOOK THE
4 ORIGINAL AND I WENT AND MADE SOME COPIES OF IT AND BROUGHT
5 THE COPIES BACK INTO THE ROOM.

6 Q ALL RIGHT. WHAT DID YOU DO WITH THOSE COPIES?

7 A I HAD MADE A COPY FOR MYSELF. I HAD MADE A COPY FOR
8 AGENT MARTIN. AND THEN A COPY WAS MADE AND GIVEN TO BOBBY
9 WAYNE STONE.

10 Q ALL RIGHT. DID YOU ACTUALLY PUT THE COPY IN MR.
11 STONE'S HANDS?

12 A YES, SIR. I HANDED HIM A COPY OF IT.

13 Q AND WAS HE HANDCUFFED AT THAT TIME DURING THE TAKING
14 OF THIS STATEMENT?

15 A YES, HE WAS. IN THE FRONT.

16 Q OKAY.

17 A HAND CUFFS IN THE FRONT.

18 Q SO HE WAS ABLE TO WRITE AND SIGN HIS NAME?

19 A YES, SIR.

20 Q WITH THE HANDCUFFS ON?

21 A YES, SIR.

22 Q ALL RIGHT. AND THIS QUESTION HAS COME UP. DO -- WITH
23 THIS MOTION HAVING BEEN MADE. BUT DO YOU DISTINCTLY
24 REMEMBER GIVING THE COPY TO MR. STONE?

25 A YES, SIR.

PERRY HEROD - DIRECT BY KOLB

1 Q ALL RIGHT. AND AS FAR AS HIM SIGNING FOR A COPY, WHAT
2 DID YOU CONSIDER IN THAT REGARD?

3 A WELL, ON THIS -- THE FIRST PAGE OF THE FORM AND THE
4 REST OF IT IS NOTEBOOK PAPER. SO EVERYTHING IS
5 HANDWRITTEN.

6 AND ON THE NORMAL STATEMENT FORMS THERE IS A
7 SPOT THAT SAYS I HAVE WRITTEN THIS STATEMENT AND GIVEN A
8 COPY, BUT ON THIS THERE WAS NOT ONE.

9 Q WELL, DO YOU CONSIDER THAT ALL THESE SIGNATURES THAT
10 HE PUT ALL OVER THIS EIGHT PAGE DOCUMENT AND THEN YOU
11 IMMEDIATELY GAVE HIM A COPY, THAT YOU WERE IN COMPLIANCE
12 WITH ANY LEGAL REQUIREMENT?

13 A YES, SIR.

14 Q ALL RIGHT. WHERE WAS THE LAST THAT YOU SAW THE COPY
15 -- NOW, THESE COPIES THAT WERE MADE OF THIS STATEMENT,
16 WERE THEY MADE RIGHT THERE AFTER IT WAS NOTARIZED AND
17 SWORN TO BY THE DEFENDANT AND NOTARIZED BY AGENT MARTIN?

18 A YES, SIR. THEY WERE MADE AFTER THE STATEMENT WAS
19 SIGNED.

20 Q ALL RIGHT. WHAT WAS THE LAST THAT YOU SAW OF THE COPY
21 THAT YOU GAVE TO MR. STONE?

22 A I HANDED BOBBY WAYNE STONE A COPY OF THE STATEMENT.
23 HE WAS SITTING IN FRONT OF JOE GALLIMORE'S DESK. HE HAD
24 SIGNED THIS STATEMENT ON JOE GALLIMORE'S DESK AND I HANDED
25 A COPY TO HIM AND I HAD GONE OUT AND DONE SOMETHING.

PERRY HEROD - DIRECT BY KOLB

1 AND I CAME BACK IN A FEW MINUTES LATER AND IT
2 WAS -- THERE WAS PAPER ROLLED UP LIKE THIS AND I SAW IT IN
3 HIS HAND.

4 Q ALL RIGHT, SIR. DID YOU EVER SEE IT AGAIN AFTER THAT?

5 A NO, SIR.

6 Q NOW, THESE COPIES THAT WERE MADE, WAS THAT JUST
7 STATE'S EXHIBIT 3 OR DID IT ALSO INCLUDE STATE'S EXHIBITS
8 1 AND 2? YA'LL MADE MULTIPLE COPIES OF 1 AND 2?

9 A I MADE A COPIES OF THOSE. I MADE COPIES ALSO.

10 Q ACTUALLY GIVEN COPIES OF STATE'S EXHIBIT 1, 2 AND 3?

11 A BOBBY WAYNE STONE WAS ONLY GIVEN A COPY OF THE
12 STATEMENT.

13 Q OKAY.

14 A I DIDN'T GIVE HIM A COPY OF THE MIRANDA RIGHTS OR THE
15 DIAGRAM.

16 Q OKAY. NOW, IN THIS WHOLE PROCESS, AGENT HEROD, AGAIN
17 I ASK YOU WAS ANYTHING DONE BY YOU OR ANYONE TO YOUR
18 KNOWLEDGE TO DEPRIVE MR. STONE OF HIS OWN FREE WILL AND
19 DECISION IN DECIDING WHETHER TO TALK WITH YOU?

20 A NO, SIR.

21 Q WAS ANY THREATS, COERCION, INTIMIDATION OR PROMISE OF
22 REWARD OR LENIENT TREATMENT GIVEN TO HIM TO GET HIM TO
23 GIVE THIS STATEMENT?

24 A NO, SIR.

25 Q OR THESE STATEMENTS. TALKING ABOUT THE ORAL

PERRY HEROD - DIRECT BY KOLB

1 STATEMENTS AS WELL AS THE WRITTEN STATEMENTS.

2 A NO, SIR.

3 Q ALL RIGHT. DO YOU ACTUALLY TAKE SOME NOTES OF ALL --
4 THAT THIS OCCURRED ALSO?

5 A YES, SIR. I DID.

6 Q AND EXPLAIN TO THE COURT ABOUT WHAT YOU DID IN THAT
7 REGARD.

8 A I MADE SOME NOTES DURING THE INTERVIEW BEFORE WE
9 STARTED TAKING THE WRITTEN STATEMENT. I HAD MADE I THINK A
10 COUPLE OF PAGES OF NOTES.

11 Q ALL RIGHT, SIR. AND HAVE YOU ACTUALLY GOT THOSE NOTES
12 WITH YOU?

13 A NO, SIR.

14 Q OH, YOU DON'T? OKAY. SO YOU DON'T HAVE YOUR ORIGINAL
15 NOTES?

16 A I DON'T HAVE IT WITH ME. I CAN GET IT.

17 Q IS IT HERE IN THE COURTROOM?

18 A YES, SIR.

19 Q OKAY. CAN YOU DO THAT?

20 THE COURT: YOU MAY STEP DOWN.

21 (WHEREUPON THE WITNESS LEFT THE STAND).

22 MR. KOLB: ALSO THAT MEMO.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q YOU HAVE GOT YOUR NOTES?

25 A YES, SIR.

PERRY HEROD - DIRECT BY KOLB

1 Q HOW MANY PAGES ARE THOSE?

2 A THREE PAGES.

3 Q ALL RIGHT. NOW, THAT WAS DURING THE PROCESS BETWEEN
4 1:55 AND 4:10 WHEN -- DURING THE ORAL STATEMENTS?

5 A YES, SIR. IT WAS.

6 Q ALL RIGHT. AND THESE ARE YOUR PERSONAL NOTES THAT YOU
7 TOOK DURING THAT TIME?

8 A YES, SIR.

9 Q ALL RIGHT.

10 MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THOSE FOR
11 PURPOSES OF THIS HEARING.

12 THE COURT: ANY OBJECTION? SHOW THEM TO MAKE SURE.

13 MR. LITTLEJOHN: YOUR HONOR, I HAVE A COPY OF THE
14 NOTES. I DON'T KNOW THAT THE NOTES ARE RELEVANT FOR
15 PURPOSES OF THIS HEARING.

16 THE COURT: RIGHT.

17 MR. KOLB: I'M DEALING WITH...

18 THE COURT: I SUSTAIN THE QUESTION. YOU CAN ASK HIM
19 ANY QUESTIONS YOU MAY FEEL NECESSARY TO REFRESH HIS
20 RECOLLECTION.

21 (WHEREUPON QUESTIONING RESUMED).

22 Q AND DID YOU ALSO DO A MEMORANDUM TO ME DATED APRIL
23 THE 11TH DEALING WITH SOME OF THE ORAL STATEMENTS THAT
24 WERE MADE BY THE DEFENDANT?

25 A YES, SIR. I DID.

PERRY HEROD - DIRECT BY KOLB

1 Q ALL RIGHT. AND THAT'S WHAT THIS FORM IS?

2 A YES, SIR.

3 Q TWO PAGE FORM?

4 A YES, SIR.

5 MR. KOLB: WOULD IT BE THE SAME OBJECTION ON THAT? I
6 WAS TRYING TO HAVE THE RECORD COMPLETE.

7 MR. LITTLEJOHN: SAME OBJECTION.

8 THE COURT: SUSTAINED. NOT RELEVANT.

9 MR. KOLB: OKAY.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MAY
12 HAVE.

13 A YES, SIR.

14 THE COURT: YOU MAY CROSS-EXAMINE.

15 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

16 CROSS-EXAMINATION BY MR. LITTLEJOHN:

17 Q GOOD MORNING, LIEUTENANT HEROD.

18 A GOOD MORNING.

19 Q LIEUTENANT, AS I UNDERSTAND YOUR TESTIMONY, YOU WERE
20 NOT OUT IN THE FIELD AT THE LOCATION AT THE TIME THAT
21 BOBBY STONE WAS ARRESTED; IS THAT CORRECT?

22 A I WAS NOT AT THE PLACE HE WAS ARRESTED. I WAS ON THE
23 SCENE SUPERVISOR. I WAS IN THE AREA, BUT I WAS NOT THERE
24 WHEN THE ACTUAL ARREST TOOK PLACE.

25 Q ALL RIGHT, SIR. IT'S YOUR UNDERSTANDING HE WAS

PERRY HEROD - CROSS BY LITTLEJOHN

1 ARRESTED, PLACED IN A VAN AND BROUGHT TO THE LAW
2 ENFORCEMENT CENTER?

3 A YES, SIR.

4 Q AND YOU WERE THERE WHEN HE WAS BROUGHT OUT OF THE VAN
5 TO BE TAKEN INTO THE LAW ENFORCEMENT CENTER?

6 A YES, SIR.

7 Q OKAY. LIEUTENANT HEROD, DID YOU SEE HIM EXIT THE VAN
8 AND GO INTO THE BUILDING?

9 A YES, SIR. I DID.

10 Q OKAY. AT THAT TIME I BELIEVE MR. STONE WAS HANDCUFFED
11 BEHIND HIS BACK?

12 A YES, SIR.

13 Q AND I BELIEVE THE OFFICERS THAT WERE ESCORTING HIM
14 USED KIND OF A HAND LOCK POSITION WHERE THEY RAISED HIS
15 ARMS UP BEHIND HIS BACK?

16 A HE WAS.

17 Q DO YOU RECALL THAT?

18 A TAKEN QUICKLY FROM THE VAN INTO THE BUILDING.

19 Q UH-HUH. HE WAS TAKEN QUICKLY AND VERY SECURELY; WAS
20 HE NOT?

21 A YES. HE WAS TAKEN IN THE BUILDING VERY QUICKLY.

22 Q OKAY. NOW, YOU INDICATED TO US THAT HE WAS TAKEN TO
23 THE SECOND FLOOR WHICH IS THE DETECTIVE OR INVESTIGATORS
24 DIVISION; IS THAT RIGHT?

25 A YES, SIR.

PERRY HEROD - CROSS BY LITTLEJOHN

1 Q OKAY. AND I BELIEVE YOU SAID AT FIRST HE WAS PLACED
2 IN AN OPEN AREA IN THAT OFFICE?

3 A YES, SIR.

4 Q AT THAT TIME HE WAS STILL HAND CUFFED BEHIND HIS
5 BACK; WAS HE NOT?

6 A YES, SIR. HE WAS.

7 Q AND DUE TO THE CIRCUMSTANCES OF THAT EVENING, I
8 BELIEVE THERE WERE A NUMBER OF INVESTIGATORS, DEPUTIES,
9 PEOPLE THAT WERE MILLING ABOUT IN THAT AREA; WERE THERE
10 NOT?

11 A YES, SIR.

12 Q AND AT SOME POINT THERE WERE PROBABLY FIVE OR SIX
13 DIFFERENT LAW ENFORCEMENT OFFICERS IN THE SAME ROOM WITH
14 MR. STONE; WOULD THAT BE A SAFE STATEMENT?

15 A AT THE BEGINNING. YES.

16 Q AT THE BEGINNING. AND HANDCUFFED BEHIND HIS BACK
17 STILL?

18 A YES, SIR.

19 Q LIEUTENANT HEROD, UNDERSTANDABLY EMOTIONS WERE RIDING
20 HIGH THAT NIGHT; WERE THEY NOT?

21 A YES, SIR. THEY WERE VERY HIGH.

22 Q WERE THERE COMMENTS MADE IN MR. STONE'S PRESENCE
23 WHILE HE WAS SITTING IN THAT ROOM HANDCUFFED BEHIND HIS
24 BACK THAT WERE DEROGATORY TOWARD MR. STONE?

25 A NONE THAT I HEARD.

PERRY HEROD - CROSS BY LITTLEJOHN

1 Q YOU DIDN'T HEAR ANY?

2 A NO, SIR. IN FACT, MY SUGGESTION WAS -- THERE WERE
3 SEVERAL SLED AGENTS ON THE SCENE. AND WE SAID THAT WE
4 WOULD TAKE SECURITY, THAT WE WOULD WATCH HIM. AND -- AND
5 THEN WE JUST MORE OR LESS HAD ALL OF THE DEPUTIES LEAVE
6 THAT AREA.

7 Q OKAY. BECAUSE YOU DIDN'T WANT ANYTHING TO HAPPEN?

8 A WE WANTED TO PROTECT HIM. AND EMOTIONS WERE VERY
9 HIGH. AND WANTED TO DO OUR JOB.

10 Q OKAY. AND IT WAS CLEAR TO EVERYBODY THAT EMOTIONS
11 WERE RUNNING HIGH; WAS IT NOT?

12 A WELL, YES. YES, IT WAS A VERY EMOTIONAL EVENING. I
13 MEAN, SOME OF THE DEPUTIES WERE UP THERE AND BEGAN CRYING
14 AND...

15 Q YES, SIR.

16 A VERY EMOTIONAL.

17 Q I UNDERSTAND. NOW, MR. STONE WAS RATHER AGITATED AT
18 FIRST; WAS HE NOT?

19 A NO, SIR. HE JUST -- WHEN I SAW HIM, HE WAS JUST
20 SITTING THERE.

21 Q OKAY. WELL, DIDN'T YOU TELL US HE MADE THE STATEMENT
22 YA'LL ARE GETTING OFF ON THIS?

23 A WHEN HE FIRST GOT OUT THE VAN, YES, THERE WERE A
24 NUMBER OF POLICE OFFICERS, I GUESS FIFTEEN OR TWENTY OUT
25 IN THE PARKING LOT.

PERRY HEROD - CROSS BY LITTLEJOHN

1 AND WHEN HE WAS BEING BROUGHT INTO THE BUILDING
2 HE JUST SAID YA'LL ARE GETTING OFF ON THIS.

3 Q OKAY. AND HE ALSO MADE THE STATEMENT SLED BEAT MY
4 ASS?

5 A YES, HE DID.

6 Q ALL RIGHT. OKAY. NOW, LIEUTENANT HEROD, HOW LONG WAS
7 MR. STONE LEFT IN THE OPEN AREA WITH OFFICERS COMING IN
8 AND OUT?

9 A I DON'T REMEMBER EXACTLY WHAT TIME HE WAS BROUGHT TO
10 THE LAW ENFORCEMENT CENTER, BUT I'M SURE IT WAS OVER AN
11 HOUR.

12 Q OKAY. DO YOU RECALL IF HE WAS TAKEN INTO CUSTODY
13 AROUND 11:00 OR SHORTLY THEREAFTER?

14 A I THINK SOMEWHERE AROUND IS 11 OR QUARTER AFTER.
15 YES, SIR.

16 Q ALL RIGHT, SIR. AND YOU SAID HE WAS BROUGHT TO THE
17 OPEN AREA. THEN HE REMAINED THERE. OFFICERS MILLING
18 ABOUT. THEN FINALLY YOU AND INVESTIGATOR GALLIMORE TOOK
19 HIM INTO A PRIVATE OFFICE?

20 A YES, SIR.

21 Q OKAY. AND I BELIEVE YOU INDICATED ONE OF THE FIRST
22 THINGS YOU DID WAS GIVE HIM WHAT ARE COMMONLY KNOWN AS
23 MIRANDA WARNINGS?

24 A YES, SIR.

25 Q WHICH HE SIGNED?

PERRY HEROD - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q AND ACCORDING TO STATE'S EXHIBIT NUMBER 1 FOR
3 PURPOSES OF THIS HEARING, THAT DOCUMENT WAS SIGNED AT 1:58
4 A.M.

5 A YES, SIR.

6 Q SO WE ARE TALKING ABOUT NEARLY THREE HOURS AFTER MR.
7 STONE'S ARREST?

8 A YES, SIR.

9 Q OKAY. NOW, HAD HE BEEN IN THE OPEN AREA FOR THE
10 MAJORITY OF THAT TIME?

11 A YES, SIR.

12 Q LIEUTENANT HEROD, YOU INDICATED THAT MR. STONE'S
13 PHYSICAL CONDITION AT THE TIME YOU FIRST SAW HIM -- THAT
14 HE HAD SOME SCRATCHES ON HIS ARMS, SCRATCH ON HIS NOSE,
15 ABRASIONS ON BOTH SIDES OF HIS FOREHEAD?

16 A YES, SIR.

17 Q IS THAT A FAIR DESCRIPTION?

18 A YES, SIR.

19 Q OKAY. DID YOU ALSO SEE THE BRUISE ON HIS CHEST?

20 A YES, SIR. HE HAD A BRUISE ON HIS CHEST.

21 Q OKAY. HE HAD A BRUISE ON HIS CHEST THAT WAS SHAPED
22 LIKE A BOOT; ISN'T THAT CORRECT?

23 A IT WAS A -- HAD A LONG -- IT WAS A LONG BRUISE.

24 Q APPEARED TO BE A FOOT PRINT; DID IT NOT?

25 A I COULDN'T TELL YOU IF IT WAS A FOOT PRINT OR NOT,

PERRY HEROD - CROSS BY LITTLEJOHN

1 NO.

2 Q ALL RIGHT. LET ME ASK YOU THIS: YOU INDICATED THAT
3 YA'LL ASKED MR. STONE IF HE WANTED MEDICAL ATTENTION AND
4 HE REFUSED?

5 A YES, SIR.

6 Q OKAY. IN LOOKING AT THE NOTES THAT YOU MADE -- IF YOU
7 HAVE THOSE IN FRONT OF YOU -- I NOTICE AT THE TOP BEFORE
8 YOU GET INTO THE SUBSTANCE OF THE STATEMENT YOU'VE GOT IN
9 THE RIGHT HAND CORNER NEED TO GO TO HOSPITAL.

10 A YES, SIR. IT SAYS SLED -- SAID SLED BEAT HIS ASS.
11 NEED TO GO TO THE HOSPITAL. NO.

12 Q SAYS NO?

13 A YES, SIR.

14 Q CAN I SEE YOUR COPY? THE COPY THE SOLICITOR GAVE ME
15 MAY HAVE CUT THAT NO OFF.

16 A YES, SIR. NEED TO GO TO THE HOSPITAL. NO.

17 Q YOU SEE THE COPY I HAVE DOESN'T HAVE THAT WORD ON IT.
18 OKAY.

19 A THIS IS THE ORIGINAL.

20 Q ALL RIGHT, SIR. DID IT APPEAR TO YOU, LIEUTENANT
21 HEROD, THAT MR. STONE HAD BEEN DRINKING THAT NIGHT?

22 A YES, SIR. I COULD SMELL SOME TYPE OF ALCOHOLIC
23 BEVERAGE ON HIS BREATH.

24 Q YOU COULD SMELL BEER ON HIM?

25 A I COULDN'T TELL WHAT IT WAS, BUT HE -- I DID SMELL IT

PERRY HEROD - CROSS BY LITTLEJOHN

1 FIRST.

2 Q ALL RIGHT. DO YOU KNOW WHETHER HE HAD INGESTED ANY
3 DRUGS THAT DAY?

4 A WE HAD ASKED HIM WHAT HE HAD DRANK OR IF HE HAD DONE
5 ANY DRUGS AND HE TOLD US HE HAD DRANK SOME BEER. HE SMOKED
6 A MARIJUANA CIGARETTE EARLY THE PREVIOUS MORNING.

7 Q OKAY. ALL RIGHT. NOW, BEFORE YOU GAVE HIM HIS MIRANDA
8 WARNINGS AND TOOK THIS STATEMENT FROM HIM, WERE ANY SORT
9 OF MEDICAL TESTS DONE TO DETERMINE WHAT HIS LEVEL OF
10 SOBRIETY WAS?

11 A NO, SIR.

12 Q WERE ANY -- I KNOW THERE ARE FIELD TESTS THAT LAW
13 ENFORCEMENT DO. WERE ANY FIELD TESTS DONE TO DETERMINE
14 WHETHER HE WAS SOBER OR NOT?

15 A NO, SIR. HE DID NOT APPEAR TO BE DRUNK OR INTOXICATED
16 OR IMPAIRED TO WHERE THAT HE COULDN'T THINK STRAIGHT. HE
17 WASN'T WOBBLING, YOU KNOW, SLURRED SPEECH AND HE WASN'T
18 ANYTHING LIKE THAT.

19 Q OKAY. OF COURSE, IT WAS HARD TO TELL WHETHER HE WAS
20 WOBBLING BECAUSE EVERYWHERE HE WENT HE WAS ESCORTED BY LAW
21 ENFORCEMENT; ISN'T THAT RIGHT?

22 A WELL, HE WASN'T PHYSICALLY TAKEN FROM PLACE TO PLACE.
23 HE WAS ALLOWED TO WALK.

24 Q ALL RIGHT. SO NO TESTING WAS DONE. NO FIELD TESTING
25 WAS DONE?

PERRY HEROD - CROSS BY LITTLEJOHN

1 A NO, SIR.

2 Q NOW, LIEUTENANT HEROD, ACCORDING TO STATE'S EXHIBIT 1
3 FOR PURPOSES OF THIS HEARING, I NOTICE THIS DOCUMENT WAS
4 SIGNED AT 1:58 A.M.

5 A YES, SIR.

6 Q OKAY. NOW, YOU INDICATED THAT THE NEXT STEP IN THE
7 INTERROGATION PROCEDURE WAS TO GET THE DIAGRAM DONE?

8 A WELL, WE ASKED HIM -- AFTER HE HAD SIGNED THE WAIVER
9 OF RIGHTS FORM, WE ASKED HIM JUST TO TELL US WHAT HE HAD
10 DONE BEGINNING THE DAY BEFORE.

11 Q OKAY.

12 A AND HE WENT THROUGH THAT AND THEN WE ASKED HIM WOULD
13 -- HE SAID HE GONE IN THE WOODS. WE THEN ASKED HIM IF HE
14 COULD TELL US -- YOU KNOW -- WHERE HE HAD GONE.

15 AND JOE GALLIMORE DREW A DIAGRAM. THEN AT THAT
16 TIME HE TOOK THE DIAGRAM AND EXPLAINED TO US WHERE HE HAD
17 GONE.

18 Q OKAY. SO BETWEEN THE MIRANDA WARNINGS AND THE
19 DIAGRAM, MR. STONE HAD GIVEN YOU AN EXPLANATION OF HIS
20 ACTIVITIES THAT EVENING; IS THAT WHAT I UNDERSTAND?

21 A HE HAD NOT GONE INTO GREAT DETAIL. HE HAD JUST
22 BASICALLY TOLD US WHAT HE HAD DONE.

23 Q OKAY. NOW, YOU INDICATED EARLIER THAT THE DIAGRAM,
24 PUTTING IT TOGETHER, GETTING IT SIGNED ETC. TOOK
25 APPROXIMATELY THIRTY TO FORTY MINUTES?

PERRY HEROD - CROSS BY LITTLEJOHN

1 A YES, SIR. IT TOOK A WHILE, THIRTY, FORTY MINUTES. I
2 DON'T REMEMBER HOW LONG. IT TOOK A WHILE.

3 Q OKAY. WAS THE DIAGRAM TIMED AND DATED AFTER IT WAS
4 PREPARED?

5 A I BELIEVE -- I DON'T REMEMBER IF HE SIGNED IT --
6 WELL, THE TIME WAS WRITTEN ON IT. I DON'T REMEMBER IF IT
7 WAS WHEN WE STARTED. I WOULD HAVE TO LOOK AT IT AGAIN.

8 Q LOOK AT IT AGAIN, SIR. AND QUITE FRANKLY I'M TRYING
9 TO UNDERSTAND WHY THE MIRANDA FORM WAS SIGNED AT 1:58 A.M.
10 AND THE DIAGRAM WAS SIGNED AT 2:10 A.M.

11 A I DON'T HAVE THAT.

12 Q I HAVE A COPY OF IT. LET ME SHOW YOU THE ORIGINAL.
13 IT'S STATE'S EXHIBIT 2 FOR PURPOSES OF THIS HEARING.

14 A IT'S GOT ON HERE THAT HE SIGNED IT 2:10 A.M..

15 Q ALL RIGHT, SIR. SO THE INFORMATION YOU GOT FROM MR.
16 STONE TO PREPARE THE DIAGRAM HAD TO HAVE BEEN GLEAMED FROM
17 1:58 A.M., INFORMATION RECEIVED -- THE DIAGRAM PREPARED --
18 THE DIAGRAM LINED OUT BY BOBBY STONE -- AND ALL THAT
19 OCCURRED IN TWELVE MINUTES?

20 A WELL, WHAT HAPPENED WAS WHEN JOE GALLIMORE SHOWED IT,
21 HE DREW THE DIAGRAM. WE ASKED HIM WHERE HE WENT. HE TOOK
22 THE RED PEN AND HE MARKED WHERE HE HAD GONE.

23 AND I WENT HERE. I WENT HERE. I CAME DOWN THIS
24 STREET. I WENT BACK THERE IN THE WOODS, YOU KNOW. ONLY
25 TOOK A MINUTE OR TWO TO DO THAT, FOR HIM TO DRAW IT. THEN

PERRY HEROD - CROSS BY LITTLEJOHN

1 WE HAD HIM SIGN IT AND THEN WE TALKED ABOUT THE DIAGRAM.

2 Q ALL RIGHT, SIR. SO WHAT YOU ARE TELLING US IS IT WAS
3 ACTUALLY TWELVE MINUTES RATHER THAN THIRTY TO FORTY
4 MINUTES?

5 A NO, SIR. IT WAS ONLY WHATEVER MINUTES IT WAS TILL HE
6 SIGNED IT BECAUSE AFTER HE HAD MARKED WHERE HE WENT IN RED
7 PEN THEN WE ASKED HIM TO GO AHEAD AND SIGN IT.

8 SO HE SIGNED IT. WE WITNESSED IT. AND THEN WE
9 CONTINUED TO DISCUSS IT.

10 Q OKAY. AND THAT TOOK TWELVE MINUTES FROM THE TIME HE
11 WAS MIRANDIZED?

12 A IT TOOK HIM TWELVE MINUTES FOR US TO GET HIM TO SIGN
13 IT. ASKED HIM TO SIGN IT AND THEN WE CONTINUED TO TALK
14 ABOUT IT.

15 Q OKAY. LIEUTENANT HEROD, DURING THE COURSE OF TAKING
16 THIS STATEMENT FROM BOBBY STONE, DID ANYBODY EVER SAY
17 ANYTHING TO BOBBY STONE ABOUT THINGS GOING BETTER FOR HIM
18 IF HE GAVE A STATEMENT?

19 A NO, SIR.

20 Q NOTHING LIKE THAT WAS SAID TO HIM?

21 A NO, SIR.

22 Q WAS THERE ANY PROMISE THAT ANY COOPERATION WOULD BE
23 MADE KNOWN TO THE COURT OR TO ANY AUTHORITY?

24 A NO, SIR. NONE THAT I REMEMBER.

25 Q ALL RIGHT. YOU DON'T RECALL? NOW LIEUTENANT HEROD,

PERRY HEROD - CROSS BY LITTLEJOHN

1 YOU INDICATED THAT YA'LL SPOKE WITH BOBBY WAYNE STONE AND
2 THAT HE GAVE YOU THE INFORMATION AND THEN INVESTIGATOR
3 GALLIMORE TOOK THE FORM WHICH HAS BEEN MARKED STATE'S
4 EXHIBIT 3 FOR PURPOSES OF THIS HEARING AND HE WROTE OUT
5 THE QUESTIONS AND HE WROTE OUT THE ANSWERS.

6 A YES, SIR.

7 Q IS THAT RIGHT?

8 A YES, SIR.

9 Q BOBBY STONE DIDN'T WRITE ANY OF THIS IN THE BULK OF
10 THE STATEMENT?

11 A NO, SIR.

12 Q IS THAT RIGHT?

13 A THAT IS JOE GALLIMORE'S HANDWRITING.

14 Q OKAY. AND I BELIEVE YOU INDICATED THAT THE QUESTIONS
15 WERE YOURS?

16 A WELL, SOME OF THE QUESTIONS WERE MINE. SOME WERE JOE
17 GALLIMORE'S. SOME OF THEM WE DISCUSSED. IT WAS A
18 COMBINATION.

19 Q OKAY. AND LET ME ASK YOU THIS: AS TO TWO A, ANSWER
20 TO THE SECOND QUESTION, THE WORDS YES IF IT'S OKAY. I
21 WILL FIX ME ANOTHER CUP WHILE WE ARE TALKING. WERE THOSE
22 BOBBY STONE'S WORDS?

23 A YES.

24 Q OKAY. AND I BELIEVE I WAS GOING TO ASK YOU HOW THE
25 INITIALING WENT, BUT I BELIEVE YOU INDICATED THAT -- TO

PERRY HEROD - CROSS BY LITTLEJOHN

1 SOLICITOR KOLB -- THAT THE ENTIRE STATEMENT WAS PREPARED?

2 A YES, SIR.

3 Q GIVEN TO BOBBY?

4 A YES, SIR.

5 Q THEN HE PUT HIS INITIALS. HE JUST WENT DOWN,
6 INITIALED EVERY QUESTION, EVERY ANSWER?

7 A NO, SIR. WE READ HIM EVERY QUESTION.

8 Q OKAY. DID YOU STOP AFTER EVERY QUESTION AND AFTER
9 EVERY ANSWER?

10 A YES.

11 Q AND HE IMMEDIATELY DID AT THAT POINT?

12 A YES, SIR.

13 Q OKAY. NOW, BEFORE YOU PREPARED THIS STATEMENT, YOU
14 HAD GOTTEN ALL OF THE INFORMATION YOU NEEDED TO PREPARE
15 THIS STATEMENT; DID YOU NOT?

16 A I...

17 Q LET ME EXPLAIN MY QUESTION. YOU HAD VERBALLY GOTTEN
18 FROM BOBBY STONE ALL OF THE INFORMATION YOU NEEDED TO
19 PREPARE THE QUESTION ANSWER STATEMENT?

20 A WE HAD DISCUSSED WHAT HAD TAKEN PLACE THAT NIGHT.

21 Q OKAY. AND THEN INVESTIGATOR GALLIMORE SAT DOWN, WROTE
22 OUT THE STATEMENT?

23 A WELL, WE WOULD WRITE OUT THE QUESTION AND ASK HIM AND
24 THEN HE WOULD GIVE US AN ANSWER THEN THAT WOULD BE WRITTEN
25 OUT.

PERRY HEROD - CROSS BY LITTLEJOHN

1 Q OKAY. NOW, QUESTIONS 35 AND 36, WERE THOSE AFTER
2 THOUGHTS?

3 A SIR?

4 Q WERE THOSE AFTER THOUGHTS?

5 A AFTER THOUGHTS?

6 Q YES, SIR. WAS THAT NOT INFORMATION YOU HAD DISCUSSED
7 WITH BOBBY?

8 A WELL, LIKE I SAID, WE HAD -- THE STATEMENT HAD BEEN
9 WRITTEN OUT AND THEN THE LAST PAGE HAD BEEN PREPARED FOR
10 HIM TO SIGN AND IT TO BE WITNESSED.

11 AND THEN AT THAT TIME WE JUST THOUGHT OF A
12 COUPLE OF QUESTIONS.

13 Q THOUGHT OF A COUPLE MORE QUESTIONS?

14 A YES, SIR. WE HAD DISCUSSED EARLIER.

15 Q OKAY. AND THOSE WERE QUESTIONS THE SUBSTANCE OF WHICH
16 BOBBY DENIED; RIGHT?

17 A YES, SIR.

18 Q LIEUTENANT HEROD, AFTER YOU HAD FINISHED THE PROCESS
19 OF GOING THROUGH QUESTION AND ANSWER, INITIALING, I
20 BELIEVE YOU INDICATED THAT LIEUTENANT MARTIN CAME IN AND
21 NOTARIZED BOBBY STONE'S SIGNATURE?

22 A YES, SIR. HE CAME IN DURING SOME POINT WHEN BOBBY
23 WAYNE STONE WAS INITIALING OR SIGNING THESE PAGES.

24 Q OKAY. UP UNTIL THAT TIME HAD IT JUST BEEN YOU AND
25 INVESTIGATOR GALLIMORE?

PERRY HEROD - CROSS BY LITTLEJOHN

- 1 A YES, SIR.
- 2 Q HAD OTHER SLED AGENTS COME IN AND OUT OF THE ROOM?
- 3 A NO, SIR. NOBODY HAD COME IN AND OUT.
- 4 Q DURING THIS WHOLE PERIOD OF TIME?
- 5 A NO, SIR.
- 6 Q OKAY. AND HOW DID LIEUTENANT MARTIN KNOW WHEN TO COME
- 7 IN?
- 8 A I HAD STEPPED TO THE DOOR AND SAID THAT WE WANTED TO
- 9 GET THE STATEMENT NOTARIZED.
- 10 Q OKAY. AND HE NOTARIZED IT?
- 11 A YES, HE DID.
- 12 Q DID LIEUTENANT MARTIN DO ANYTHING ELSE IN REGARD TO
- 13 THE STATEMENT AFTER HE NOTARIZED IT?
- 14 A NO, SIR. NOT THAT I RECALL.
- 15 Q DID HE HELP YOU MAKE COPIES OR ANYTHING?
- 16 A NO, SIR. I MADE THE COPIES.
- 17 Q YOU MADE THE COPIES?
- 18 A YES, SIR. I MADE THE COPIES AND THEN I BROUGHT THEM
- 19 BACK INTO THE ROOM. AND THEN I BELIEVE HE STAPLED HIS COPY
- 20 TOGETHER.
- 21 Q THAT'S LIEUTENANT MARTIN?
- 22 A YES, SIR.
- 23 Q OKAY. SO A COPY WAS MADE FOR HIM?
- 24 A YES, SIR.
- 25 Q AND YOU ARE TELLING US THAT YOU GAVE A COPY TO BOBBY

PERRY HEROD - CROSS BY LITTLEJOHN

1 STONE?

2 A YES, SIR. I DID.

3 Q OKAY. DID YOU GET A RECEIPT FOR THE COPY THAT YOU
4 GAVE TO BOBBY STONE?

5 A NO, SIR. I DID NOT.

6 Q DID INVESTIGATOR GALLIMORE OR LIEUTENANT MARTIN GET A
7 RECEIPT FOR THE COPY?

8 A NOT THAT I KNOW OF.

9 Q ALL RIGHT. DID ANYBODY IN LAW ENFORCEMENT GET A
10 RECEIPT FOR THE COPY OF THE STATEMENT THAT WAS GIVEN TO
11 BOBBY STONE?

12 A NOT THAT I KNOW OF.

13 MR. LITTLEJOHN: WOULD YOU INDULGE ME JUST A MOMENT,
14 YOUR HONOR?

15 THE COURT: YES, SIR. TAKE YOUR TIME.

16 (WHEREUPON THERE WAS A PAUSE).

17 (WHEREUPON QUESTIONING RESUMED).

18 Q JUST ONE FINAL QUESTION, LIEUTENANT. DURING THE
19 INTERVIEW PROCESS WITH BOBBY STONE, DID YOU HAVE OCCASION
20 TO LEAVE THE ROOM DURING THE COURSE OF THE SOME THREE
21 HOURS?

22 A I STEPPED TO THE DOOR AND I BELIEVE HE WAS TAKEN TO
23 THE BATHROOM. I BELIEVE HE WENT TO THE REST ROOM ONE
24 TIME. AND A COUPLE TIMES I WOULD GET UP AND OPEN THE DOOR,
25 LET SOME CIGARETTE SMOKE OUT.

PERRY HEROD - REDIRECT BY KOLB

1 I DON'T SMOKE. AND JOE GALLIMORE SMOKED FREELY
2 AND BOBBY WAYNE STONE DID ALSO. AND I'D JUST GET UP ON
3 OCCASION AND OPEN THE DOOR FOR A FEW MINUTES AND LET SOME
4 SMOKE OUT.

5 Q I CAN UNDERSTAND THAT. THANK YOU, LIEUTENANT.

6 THE COURT: REDIRECT?

7 REDIRECT EXAMINATION BY MR. KOLB:

8 Q YOU INDICATED YOU DIDN'T GET A SIGNED RECEIPT. DID
9 YOU CONSIDER ALL THE DIFFERENT INITIALS AND SIGNATURES
10 THAT HE GAVE IN THE SIGNING BEFORE A NOTARY COUPLED WITH
11 YOUR ACTUALLY PUTTING A COPY IN HIS HAND TO BE HIM SIGNING
12 THE RECEIPT FOR THE COPY?

13 MR. LITTLEJOHN: I OBJECT. I THINK HE'S GOING TO THE
14 LEGAL CONCLUSIONS.

15 THE COURT: WELL, I SUSTAIN. IF YOU WANT TO REPHRASE
16 THE QUESTION. SUSTAINED. DO NOT ANSWER THE QUESTION.

17 THE WITNESS: YES, SIR.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q WHAT -- DID YOU CONSIDER ALL THE SIGNATURES AND
20 NOTARIZING AND THE INITIALING THAT MR. STONE DID IN REGARD
21 TO WHETHER THAT WOULD CONSTITUTE A RECEIPT FOR THE COPY OF
22 THE STATEMENT ONCE YOU GAVE IT TO HIM?

23 A WELL, ONCE WE HAD PREPARED THIS STATEMENT, THEN HE
24 INITIALED IT AND SIGNED IT, SAYING THAT HE UNDERSTOOD IT
25 AND THAT THIS WAS HIS STATEMENT. AND I THEN GAVE HIM A

PERRY HEROD - REDIRECT BY KOLB

1 COPY OF IT.

2 Q ALL RIGHT. NOW, DURING THE PROCESS OF PREPARING THE
3 STATEMENT -- AND HE HAD AGREED TO GIVE A WRITTEN
4 STATEMENT?

5 A YES, SIR. HE DID.

6 Q ALL RIGHT. AND DID YA'LL INDICATE TO HIM THAT ONCE
7 THE WRITTEN STATEMENT WAS MADE THAT YOU WOULD GIVE HIM A
8 COPY OF IT? IS THAT SOMETHING THAT IS EXPLAINED TO A
9 DEFENDANT?

10 A NO, SIR. I DIDN'T TELL HIM THAT AT THAT TIME. BUT I
11 ALWAYS GIVE -- ANYONE WHO GIVES ME A STATEMENT, I ALWAYS
12 GIVE THEM A COPY OF IT.

13 Q ALL RIGHT. NO -- OKAY. ANYTHING ELSE?

14 THE COURT: RE-CROSS?

15 MR. LITTLEJOHN: I DON'T HAVE ANY RE-CROSS, YOUR
16 HONOR.

17 (WHEREUPON THE WITNESS LEFT THE STAND).

18 THE COURT: THANK YOU.

19 MR. KOLB: CALL JOE GALLIMORE, YOUR HONOR.

20 JOE GALLIMORE, BEING FIRST DULY
21 SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. KOLB:

23 Q ALL RIGHT. MR. GALLIMORE, YOU WERE PREVIOUSLY
24 EMPLOYED AS INVESTIGATOR WITH THE SUMTER COUNTY SHERIFF'S
25 DEPARTMENT?

JOE GALLIMORE - DIRECT BY KOLB

1 A YES, SIR. THAT'S CORRECT.

2 Q HOW ARE YOU CURRENTLY EMPLOYED?

3 A CAPTAIN OF INVESTIGATIONS FOR BISHOPVILLE POLICE
4 DEPARTMENT.

5 Q ALL RIGHT. NOW, I WANT TO SHOW YOU WHAT HAS BEEN
6 MARKED STATE'S EXHIBIT 1, 2 AND 3 FOR PURPOSES OF THIS
7 HEARING.

8 A STATE'S EXHIBIT FOR IDENTIFICATION 1, SIR, IS A
9 RIGHTS THAT I DID ON BOBBY WAYNE STONE. WAS INITIATED 1:55
10 A.M. ON FEBRUARY 27TH, 1996. AND IT WAS CONCLUDED AT 1:58
11 A.M. ON THE SAME DAY.

12 Q ALL RIGHT. WHO ELSE WAS PRESENT BESIDES YOU AND MR.
13 STONE?

14 A IT WAS -- IT WAS SPECIAL AGENT LIEUTENANT PERRY HEROD
15 OF SLED.

16 Q ALL RIGHT. HAD -- DID YOU THREATEN, COERCE OR
17 INTIMIDATE MR. STONE IN ANY WAY TO GET HIM TO GIVE YOU A
18 STATEMENT AND WAIVE HIS RIGHTS?

19 A NO, SIR. I DID NOT.

20 Q WAS ANY INDUCEMENT, PROMISE OF REWARD, HOPE OF
21 LENIENT TREATMENT GIVEN TO HIM TO GET HIM TO WAIVE HIS
22 RIGHTS AND GIVE YOU A STATEMENT?

23 A NO, SIR.

24 Q ALL RIGHT DID -- WHAT -- BEFORE YOU ACTUALLY GOT TO
25 THAT POINT AT 1:55, WHEN DID YOU FIRST COME IN CONTACT

JOE GALLIMORE - DIRECT BY KOLB

1 WITH HIM?

2 A I DON'T KNOW WHAT TIME I RETURNED TO THE LAW
3 ENFORCEMENT CENTER. I BELIEVE HE WAS ALREADY INSIDE AND
4 UPSTAIRS IN THE SHERIFF'S DEPARTMENT IN COUNTY
5 INVESTIGATIONS.

6 Q ALL RIGHT. AND DURING THE TIME -- SO WHEN YOU SAW HIM
7 UP THERE IN THE OPEN AREA BEFORE YOU TOOK HIM TO YOUR
8 OFFICE, DID HE MAKE ANY STATEMENTS NOT IN RESPONSE TO
9 QUESTIONING?

10 A NOT WHILE I WAS THERE.

11 Q OKAY. WHAT ABOUT WHEN YOU FIRST GOT HIM INTO THE
12 ROOM?

13 A FIRST GOT HIM IN THE ROOM, FIRST WORDS OUT OF HIS
14 MOUTH WERE THAT SLED BEAT MY ASS.

15 Q AND WHAT HAPPENED AS A RESULT OF THAT?

16 A ASKED HIM IF HE WANTED TO GO TO TUOMEY, WE WOULD TAKE
17 HIM OVER TO TUOMEY TO SEE A DOCTOR. IN LEAVING THE
18 EXPLICATIVE OUT---.

19 Q I NEED YOU TO GIVE HIS EXACT WORDS.

20 A HIS EXACT WORDS WERE I DON'T NEED TO SEE NO FUCKING
21 DOCTOR.

22 Q ALL RIGHT. WHAT SORT OF INJURIES, IF ANY, DID YOU SEE
23 TO HIM?

24 A HE HAD SCRATCHES AND ABRASIONS ABOUT HIS FACE, ON HIS
25 ARMS. HE HAD A REDDISH MARK OR BEGINNINGS OF A BRUISE ON

JOE GALLIMORE - DIRECT BY KOLB

1 HIS CHEST.

2 Q ALL RIGHT. HAD YOU BEEN OUT TO THE SCENE WHERE -- ON
3 TAYLOR STREET -- WHERE MRS. GRIFFITH LIVES, THEN THE WOODS
4 BETWEEN MRS. GRIFFITH'S HOUSE AND WHERE HE WAS ACTUALLY
5 ARRESTED?

6 A THAT NIGHT?

7 Q YES, SIR.

8 A NO, SIR. I WAS -- I WAS AT THE SCENE AT MRS.
9 GRIFFITH'S HOUSE. I DID NOT SEE HIM BROUGHT OUT OF THE
10 WOODS. I DID NOT SEE HIM IN THE WOODS. I DIDN'T GO IN THE
11 WOODS.

12 Q OKAY. WHAT CAN YOU TELL US ABOUT YOUR OBSERVATIONS OF
13 THE INJURIES THAT YOU SAW?

14 A THEY WERE REAL CONSISTENT WITH RUNNING THROUGH THE
15 WOODS.

16 Q ALL RIGHT, SIR. AFTER HE -- YOU ADVISED HIM OF HIS
17 RIGHTS AND HE AGREED TO WAIVE HIS RIGHTS OR ACTUALLY IN
18 THAT PROCESS -- LET ME ASK YOU -- DID IT APPEAR TO YOU
19 THAT HE UNDERSTOOD WHAT YOU WERE EXPLAINING TO HIM WHEN
20 YOU READ THOSE RIGHTS TO HIM?

21 A YES, SIR.

22 Q TELL THE COURT ABOUT THAT.

23 A FIRST OF ALL, I MADE SURE THAT HE COULD READ THE
24 ENGLISH LANGUAGE. AND I ASKED HIM IF HE KNEW HIS
25 INTELLIGENCE LEVEL. NO. CAN YOU READ THE ENGLISH

JOE GALLIMORE - DIRECT BY KOLB

1 LANGUAGE.

2 ASKED HIM IF HE WAS DRUNK. MY PERSONAL
3 OBSERVATIONS HE DID NOT APPEAR TO BE UNDER THE INFLUENCE
4 OF ALCOHOL NOR DID HE APPEAR TO BE UNDER THE INFLUENCE OF
5 DRUGS.

6 BUT I ASKED HIM IF HE WAS -- IF HE WAS DRUNK, I
7 HAD A COUPLE OF BEERS TO DRINK WAS A RESPONSE. NO, I'M
8 NOT DRUNK. ASKED HIM IF HE WAS -- IF HE WAS HIGH. HE TOLD
9 ME HE WASN'T.

10 HE APPEARED TO BE COGNIZANT. TOTALLY AWARE OF
11 HIS SURROUNDINGS AND AN ACTIVE PARTICIPANT IN WHAT WAS
12 GOING ON. HE APPEARED KNOWING AND INTELLIGENT.

13 Q ALL RIGHT, SIR. WHAT HAPPENED AFTER THE WAIVER OF
14 RIGHTS WAS SIGNED?

15 A AFTER THE WAIVER OF RIGHTS WAS ACCOMPLISHED AND HE
16 PLACED HIS SIGNATURE ON IT, LIEUTENANT HEROD SAID BOBBY,
17 WON'T YOU TELL US WHAT ALL YOU DID YESTERDAY STARTING WITH
18 WHEN YOU GOT UP. AND IT WAS -- IT WAS JUST QUICK.

19 I MEAN, WELL, WE GOT UP, SMOKED A MARIJUANA
20 CIGARETTE, WENT AND GOT A LITTLE BIT OF BEER THAT DAY.
21 WENT OUT IN THE WOODS. LOOKED AT SOME GUNS. WENT TARGET
22 SHOOTING. DRANK SOME BEER.

23 WENT OVER TO SEE MY FRIEND RUTH, BUT SOME GIRL
24 RUN ME OFF. WENT BACK, HAD ANOTHER BEER, DID A LITTLE BIT
25 MORE SHOOTING, WENT BACK TO SEE RUTH.

JOE GALLIMORE - DIRECT BY KOLB

1 AND WAS KNOCKING ON THE DOOR AND HEARD SOMEBODY
2 YELLING -- A MAN'S VOICE FROM OUTSIDE THE HOUSE. AND
3 TURNED AROUND ON THE PORCH, GUN WENT OFF. SCARED ME SO
4 BAD I RAN OFF. BANG.

5 I MEAN LIKE THAT. AND IT WAS -- WELL, WAIT A
6 SECOND, LETS -- TO MAKE SURE WHAT HOUSE WE ARE TALKING
7 ABOUT AND WHERE YOU RAN, AND I MEAN THIS WAS -- HE CAME
8 OUT WITH IT SO QUICK, IT WAS AMAZING TO ME.

9 AND I SKETCHED OUT THE DIAGRAM. TOLD HIM I'D
10 LIKE YOU TO GO OVER THIS WITH US AND MAKE SURE WE ARE ALL
11 SINGING OFF THE SAME SHEET OF MUSIC HERE. I SKETCHED IT
12 OUT IN BLACK PEN. I'M NOT AN ARTIST.

13 GAVE MR. STONE A RED PEN AND ASKED HIM TO TRACE
14 -- TO SHOW ME WHERE HE WAS. TO TRACE THE AREA THAT HE
15 WAS IN -- THAT HE FLED FROM -- IN THE DIRECTION OF FLIGHT.

16 HE WAS EXPLAINING WHAT WAS WHERE. AND THERE IS
17 THE WOODS BACK HERE. AND I COULD SEE WHEN I WAS AT THE
18 CRIME SCENE, I COULD SEE THE WOODS. I MEAN, THERE WERE
19 WOODS THERE.

20 BUT WHEN HE STARTS TALKING ABOUT DITCHES AND
21 FIELDS, I -- WHERE, YOU KNOW -- HE SAID ABOUT OVER HERE
22 SOMEWHERE, OKAY, TO A FIELD IN THERE. HE HAD THE ADVANTAGE
23 OF HAVING BEEN THERE. I HADN'T.

24 Q ALL RIGHT, SIR. AFTER THE DIAGRAM WAS DONE, WHAT
25 OCCURRED?

JOE GALLIMORE - DIRECT BY KOLB

1 A AFTER THE DIAGRAM WAS DONE, WE WENT BACK OVER SLOWLY
2 AS TO WHAT HAPPENED IN MORE DETAIL. I WAS MAKING NOTES AS
3 TO WHAT HE HAD TO SAY. LIEUTENANT HEROD WAS MAKING NOTES
4 AS TO WHAT HE HAD TO SAY.

5 LIEUTENANT HEROD HAD SOME QUESTIONS AND ASKING
6 HIM TO CLARIFY SOMETHING OR HE'D MAKE A STATEMENT AND I
7 WOULD SEE SOMETHING LIKE I'D CONSIDER SIGNIFICANT AND ASK
8 HIM TO CLARIFY THAT FOR ME.

9 AND AFTER WE HAD BEEN THROUGH THIS PROBABLY A
10 TOTAL OF THREE TIMES -- ONCE VERY BRIEFLY -- YOU KNOW --
11 WHEN THE DIAGRAM WAS DONE AND THEN PROBABLY TWO MORE TIMES
12 AFTER THAT WITH MYSELF, LIEUTENANT HEROD MAKING NOTES,
13 THEN A WRITTEN STATEMENT WAS TAKEN.

14 Q ALL RIGHT, SIR. NOW, BEFORE WE GET INTO THE WRITTEN
15 STATEMENT.

16 A ALL RIGHT.

17 Q YOU HAD -- DID YOU MAKE -- YOU REFERRED TO YOUR
18 NOTES. IS THIS THE -- I THINK I GOT FOUR PAGES HERE. THE
19 FOURTH RELATES TO SUBSEQUENT EVENTS. THE FIRST THREE
20 PAGES GENERALLY WERE YOUR PERSONAL NOTES, DEAL WITH THE
21 STATEMENTS AND THE PROCESS OF TAKING A STATEMENT FROM MR.
22 STONE?

23 A YES, SIR. THAT'S CORRECT.

24 Q ALL RIGHT. I BELIEVE THE DEFENSE HAS THAT. TELL US
25 ABOUT THE WRITTEN STATEMENT.

JOE GALLIMORE - DIRECT BY KOLB

1 A I TOLD MR. STONE THAT I WOULD LIKE TO TAKE WHAT ALL
2 HE HAS HAD TO SAY AND I WOULD LIKE TO GET IT DOWN IN
3 WRITING TO ESTABLISH A FIRM RECORD OF WHAT WAS SAID THAT
4 NIGHT.

5 I TOLD HIM I WOULD DO THE WRITING FOR HIM SO HE
6 WOULDN'T HAVE TO -- WOULDN'T HAVE TO. AND THAT WAY IT
7 WOULD PRECLUDE ANY CHANCE OF MYSELF OR LIEUTENANT HEROD
8 MISQUOTING HIM AT SOME FUTURE POINT AND HE AGREED TO THAT.

9 Q ALL RIGHT. AND YOU HEARD -- I WON'T TAKE UP TIME WITH
10 COURT. YOU HEARD AGENT HEARD DISCUSS THE PROCESS YA'LL
11 WENT THROUGH THAT RESULTED IN EXHIBIT 3, THIS EIGHT PAGE
12 STATEMENT?

13 A YES, SIR.

14 Q OKAY. NOW, DURING THIS WHOLE PROCESS DID ANYONE
15 THREATEN, COERCE OR INTIMIDATE MR. STONE OR OFFER HIM ANY
16 REWARD, HOPE OF REWARD, PROMISE OF LENIENT TREATMENT TO
17 GET HIM---.

18 A NO, SIR.

19 Q -- TP GIVE YOU THE INFORMATION HE GAVE YOU?

20 A NO, SIR.

21 Q ALL RIGHT. IF YOU WOULD ANSWER ANY QUESTIONS THE
22 DEFENSE MAY HAVE.

23 THE COURT: YOU MAY CROSS-EXAMINE.

24 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

25 THE COURT: YES, SIR.

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 CROSS-EXAMINATION BY MR. LITTLEJOHN:

2 Q INVESTIGATOR GALLIMORE -- IS IT STILL INVESTIGATOR OR
3 DO YOU HAVE A DIFFERENT TITLE?

4 A IT'S CAPTAIN.

5 Q CAPTAIN GALLIMORE, I BELIEVE YOU INDICATED THAT MR.
6 STONE WAS ALREADY INSIDE THE LAW ENFORCEMENT CENTER WHEN
7 YOU FIRST SAW HIM?

8 A YES, SIR.

9 Q SO YOU DIDN'T OBSERVE ANY OF THE SITUATION INVOLVING
10 HIS ARREST?

11 A I -- NO, SIR. I DIDN'T SEE ANYTHING INVOLVING HIS
12 ARREST AND I DON'T REMEMBER SEEING HIM UNLOADED FROM A
13 VEHICLE AND TRANSPORTED INTO THE LAW ENFORCEMENT CENTER. I
14 BELIEVE HE WAS ALREADY UPSTAIRS WHEN I GOT BACK.

15 Q OKAY. AND I BELIEVE YOU INDICATED YOU DIDN'T SEE
16 WHERE HE WAS ARRESTED?

17 A NO, SIR.

18 Q OKAY. NOW, YOU INDICATED TO US, SIR, THAT WHEN BOBBY
19 FIRST CAME IN, HE MADE A COUPLE OF STATEMENTS CONCERNING
20 SLED HAVING BEAT HIM UP?

21 A YES, SIR.

22 Q IS THAT RIGHT?

23 A YES, SIR.

24 Q AND YOU OBSERVED INJURIES TO HIS FACE; DID YOU NOT?

25 A YES, SIR.

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 Q YOU OBSERVED SCRATCHES ON HIS ARM?

2 A SCRATCHES TO HIS FACE. SCRAPES ON HIS ARMS.

3 Q HE HAD SCRAPES ON BOTH SIDES OF HIS FOREHEAD; DIDN'T
4 HE?

5 A I DON'T REMEMBER IF IT WAS BOTH SIDES.

6 Q YOU DON'T RECALL THAT?

7 A I DON'T REMEMBER WHICH SIDE. I REMEMBER HE WAS
8 SCRATCHED UP. I REMEMBER IT REMINDED ME OF VIETNAM,
9 RUNNING THROUGH THE WOODS AND WHAT I LOOKED LIKE
10 AFTERWARDS.

11 Q BUT YOU HAVE ABSOLUTELY NO BASIS FOR KNOWING OR
12 ANYTHING THAT BOBBY STONE RAN THROUGH THE WOODS THAT
13 NIGHT; DO YOU?

14 A HE TOLD US THAT HE HAD RUN THROUGH THE WOODS.

15 Q OKAY. DID YOU SEE HIM RUN?

16 A NO.

17 Q YOU WEREN'T THERE?

18 A NO, I WASN'T.

19 Q YOU OBSERVED A BRUISE ON HIS CHEST; DID YOU NOT?

20 A YES, SIR. I DID.

21 Q APPEARED TO BE A BOOT PRINT; ISN'T THAT A SAFE
22 DESCRIPTION?

23 A IT APPEARED TO BE CONSISTENT WITH A FOOT PRINT OR IT
24 COULD HAVE BEEN CONSISTENT WITH A FOOT PRINT.

25 Q OKAY. AND I BELIEVE IN YOUR REPORT TO SOLICITOR KOLB

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 YOU INDICATED THAT MR. STONE HAD MINOR ABRASIONS,
2 LASCERATIONS AND BRUISES TO THE FACE, ARMS AND CHEST THAT
3 YOU THOUGHT WERE CONSISTENT WITH RUNNING THROUGH WOODS AT
4 NIGHT?

5 A YES, SIR.

6 Q CAN YOU TELL US HOW A BOOT PRINT BRUISE IS CONSISTENT
7 WITH BEING HURT IN THE WOODS?

8 A I CAN'T IDENTIFY THAT AS A BOOT PRINT. IT COULD BE
9 CONSISTENT WITH A SHOE IMPRESSION. IT ALSO COULD HAVE BEEN
10 FROM RUNNING INTO A TREE.

11 Q COULD HAVE BEEN FROM RUNNING INTO A TREE?

12 A A TREE OR A STUMP OR SOME OTHER OBJECT.

13 Q OKAY.

14 A I DON'T KNOW IF IT WAS A BOOT PRINT AND I AM NOT
15 PREPARED TO TESTIFY TO THAT FACT.

16 Q WELL CAPTAIN GALLIMORE, YOU THOUGHT HIS INJURIES WERE
17 SUFFICIENTLY BAD THAT YOU TOOK PHOTOGRAPHS OF HIM; DID YOU
18 NOT?

19 A I DON'T REMEMBER IF I TOOK PHOTOGRAPHS OR IF I HAD
20 THEM TAKEN. I DON'T---

21 Q LET ME SHOW YOU THIS DOCUMENT PROVIDED BY THE STATE.
22 AND THESE ARE APPARENTLY COPIES OF POLAROID PHOTOGRAPHS
23 AND IT HAS YOUR IDENTIFICATION MARKER ON TOP.

24 A YES, SIR. I TOOK THE PHOTOGRAPHS.

25 Q OKAY. AND DOES THAT APPEAR TO BE AN ACCURATE

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 REPRESENTATION OF THE PHOTOGRAPHS THAT YOU TOOK ON THAT
2 NIGHT, FEBRUARY -- OR THAT EARLY MORNING -- FEBRUARY 27TH?

3 A IT APPEARS TO BE A TERRIBLE REPRODUCTION OF THE
4 POLAROID PHOTOGRAPHS I TOOK.

5 Q YOU WILL HAVE TO TALK TO THE SOLICITOR ABOUT THAT.

6 MR. LITTLEJOHN: YOUR HONOR, I'D LIKE TO INTRODUCE
7 THIS FOR THE RECORD DEFENDANT'S EXHIBIT 1 JUST FOR
8 PURPOSES OF THIS HEARING.

9 THE COURT: ANY OBJECTION?

10 MR. KOLB: YOU WANT THE ORIGINALS?

11 THE COURT: BE HELPFUL IF WE COULD HAVE THE
12 ORIGINALS. HOW MANY ARE THERE?

13 MR. LITTLEJOHN: FOUR, YOUR HONOR.

14 THE COURT: BE DEFENDANT'S EXHIBITS 1, 2, 3 AND 4 FOR
15 PURPOSES OF THIS HEARING. ANY OBJECTION, MR. SOLICITOR?

16 MR. KOLB: NO, SIR.

17 THE COURT: INTO EVIDENCE WITHOUT OBJECTION.

18 (WHEREUPON THERE WAS A PAUSE).

19 THE COURT: EACH BEING A PHOTOGRAPH.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q CAPTAIN GALLIMORE, DO THESE APPEAR---

22 THE COURT: MARK THEM SO WE CAN HAVE THEM INTRODUCED.

23 MR. LITTLEJOHN: ALL RIGHT. I'M... I FORGOT. FEDERAL
24 COURT YOU DO IT THIS WAY.

25 (DEFENDANT'S EXHIBIT NO. 1, 2, 3 AND 4 MARKED

JOE GALLIMORE - CROSS BY LITTLEJOHN

FOR IDENTIFICATION).

THE COURT: EXCUSE ME FOR INTERRUPTING. TRYING TO
EXPEDITE IT.

(WHEREUPON QUESTIONING RESUMED).

Q SHOW YOU NOW WHAT HAS BEEN MARKED AS DEFENSE EXHIBITS
1 THROUGH 4 FOR PURPOSES OF THIS HEARING. AND I BELIEVE
YOU PREVIOUSLY IDENTIFIED THOSE AS THE ORIGINAL POLAROID
PHOTOGRAPHS THAT YOU TOOK OF BOBBY STONE ON THE MORNING OF
FEBRUARY 27TH, 1996; IS THAT CORRECT?

A THESE ARE COPIES OF THE PICTURES THAT WERE TAKEN AND
THE COLOR COPIES. IT WASN'T THAT HIS INJURIES, THE
SCRAPES, THE ABRASIONS AND THE CONTUSIONS WERE SO BAD THAT
I THOUGHT THEY NEEDED TO BE PHOTOGRAPHED.

THE NEXT DAY I ALSO EXPOSED PHOTOGRAPHS OF
SERGEANT DOUG BRANNON OF THE SUMTER POLICE DEPARTMENT WHO
HAD ONLY BEEN WALKING THROUGH THE WOODS THAT NIGHT. HE HAD
VERY LIGHT SCRAPES ON HIM.

DOUG HAD DONE A BETTER JOB OF PROTECTING HIS
FACE GOING THROUGH THE WOODS. I HAD PHOTOGRAPHS TAKEN
BECAUSE MR. STONE IN FACT HAD SCRAPES, LASCERATIONS, ETC.
AND HE WAS COMPLAINING OF POLICE BRUTALITY.

AND I THOUGHT THAT IN HAVING THE PHOTOGRAPHS
TAKEN, THAT ANYONE LOOKING AT THE PHOTOGRAPHS WOULD SEE
THAT THEY WERE MORE CONSISTENT WITH RUNNING THROUGH THE
WOODS IN THE DARKNESS AS OPPOSED TO BLOWS, BEATINGS OR

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 WHATEVER. AND THAT'S WHY THE PHOTOGRAPHS WERE TAKEN, SIR.

2 Q AND THE INJURIES YOU WERE CONCERNED ABOUT HIM
3 SUSTAINING RUNNING THROUGH THE WOODS INCLUDED THE BRUISE
4 THAT LOOKED LIKE A BOOT PRINT?

5 A THE BRUISE ON HIS CHEST, I -- COULD HAVE BEEN A BOOT
6 PRINT. I DON'T KNOW. HE HAD A BRUISE ON HIS CHEST. I WILL
7 GIVE YOU THAT.

8 Q ALL RIGHT. CAPTAIN GALLIMORE, WERE YOU PRESENT WHEN
9 MR. STONE WAS BROUGHT INTO THE INVESTIGATOR'S DIVISION AT
10 THE LAW ENFORCEMENT CENTER?

11 A NO, SIR. I BELIEVE HE WAS ALREADY UPSTAIRS WHEN I
12 ARRIVED BACK IN THE LAW ENFORCEMENT CENTER.

13 Q OKAY. ALL RIGHT. I BELIEVE YOU INDICATED IN YOUR
14 STATEMENT TO SOLICITOR KOLB THAT YOU CAME IN, STARTED
15 ARRANGING THE OFFICE?

16 A YES, SIR.

17 Q OKAY. HE WAS SITTING IN AN OUTER OFFICE OR AN OPEN
18 AREA?

19 A YES, SIR.

20 Q HANDCUFFED BEHIND HIS BACK?

21 A YES, SIR.

22 Q THERE WERE OFFICERS IN AND OUT?

23 A YES, SIR.

24 Q THERE WERE AGITATED OFFICERS IN AND OUT?

25 A YES, SIR.

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 Q THERE WERE COMMENTS BEING MADE IN MR. STONE'S
2 PRESENCE?

3 A I DON'T THINK SO.

4 Q YOU DON'T RECALL THAT?

5 A NO, SIR. I DON'T. HAD I HEARD ANYTHING LIKE THAT, I
6 WOULD HAVE GOTTEN MY BOSS. AND SLED SUGGESTED THAT HE BE
7 MOVED TO A MORE PRIVATE OFFICE BECAUSE WE OBVIOUSLY
8 WOULDN'T NEED -- IT WOULD BE UNPROFESSIONAL TO LET
9 SOMETHING LIKE THAT GO ON.

10 Q WELL, APPARENTLY SHORTLY THEREAFTER YOU MOVED HIM TO
11 A PRIVATE OFFICE; DID YOU NOT?

12 A YES, SIR. AFTER I WAS DIRECTED THAT I WOULD BE
13 PARTICIPATING IN THE INTERVIEW WITH MR. STONE WITH
14 LIEUTENANT HEROD.

15 Q AND THAT'S WHEN YOU AND LIEUTENANT HEROD BEGAN THE
16 INTERVIEW OF BOBBY STONE?

17 A YES, SIR.

18 Q OKAY. AND YOU HAVE IDENTIFIED FOR US STATE'S EXHIBIT
19 FOR PURPOSES OF THIS HEARING NUMBER 1, THE MIRANDA FORM?

20 A YES, SIR.

21 Q WHICH I BELIEVE YOU HAVE THERE IN FRONT OF YOU?

22 A YES, SIR.

23 Q AND AS INDICATED, THE TIME ON THAT DOCUMENT IS WHAT,
24 SIR?

25 A INITIATED 1:55, COMPLETED AT 1:58.

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 Q OKAY. AND AS I UNDERSTOOD YOUR TESTIMONY ON DIRECT,
2 CAPTAIN, YOU SAID AFTER THE MIRANDA FORM WAS SIGNED, THAT
3 BOBBY STONE VERY QUICKLY TOLD YOU OF THE EVENTS OF THAT
4 DAY; IS THAT RIGHT?

5 A YES, SIR.

6 Q OKAY. AND THEN AT THAT POINT YOU BEGAN TO PREPARE THE
7 DIAGRAM?

8 A YES, SIR.

9 Q AND THE DIAGRAM WAS PREPARED AND THEN IT WAS SIGNED
10 AT 2:10 A.M.

11 A YES, SIR.

12 Q SOME TWELVE MINUTES LATER?

13 A YES, SIR.

14 Q ALL RIGHT. AND OF COURSE, YOU WERE SITTING IN HERE
15 WHEN I WAS ASKING LIEUTENANT HEROD ABOUT THE TIME
16 DIFFERENTIAL BETWEEN THE MIRANDA FORM AND THE DIAGRAM;
17 WERE YOU NOT?

18 A THAT'S CORRECT. I WAS.

19 Q OKAY. NOW, CAPTAIN GALLIMORE, YOU INDICATED THAT MR.
20 STONE DID NOT APPEAR TO YOU TO BE UNDER THE INFLUENCE OF
21 ANYTHING?

22 A NO, SIR.

23 Q OKAY. COULD YOU SMELL BEER ON HIM?

24 A LIGHT ODOR. NOT HEAVY.

25 Q JUST A LIGHT ODOR. NOT A HEAVY ODOR?

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 A NO.

2 Q OKAY. AND IN FACT, HE TOLD YOU SOMETIME DURING THE
3 COURSE OF YOUR INTERVIEW THAT HE HAD HAD SOME TWELVE BEERS
4 THAT DAY.

5 A NO, HE SAID DURING THE COURSE OF THE INTERVIEW THAT
6 HE AND ANOTHER FELLOW HAD SPLIT A TWELVE PACK THAT DAY. HE
7 ALSO SAID THAT HE NORMALLY RUNS THROUGH AT LEAST A TWELVE
8 PACK A DAY BY HIMSELF, SOMETIMES A TWENTY-FOUR CASE.

9 Q OKAY. SO HE DIDN'T TELL YOU THAT HE HAD JUST HAD A
10 LITTLE BIT OF BEER?

11 A INITIALLY.

12 Q INITIALLY HE TOLD YOU THAT?

13 A INITIALLY SAID LITTLE BEER.

14 Q OKAY.

15 A WANT TO QUALIFY WHAT CONSTITUTES A LITTLE BIT OF
16 BEER?

17 Q THANK YOU FOR THAT, CAPTAIN. NOW, YOU WENT THROUGH
18 AND PREPARED THE STATEMENT THAT HAS BEEN MARKED STATE'S
19 EXHIBIT NUMBER 3?

20 A YES, SIR.

21 Q FOR PURPOSES OF THIS HEARING.

22 A YES, SIR.

23 Q AND THE HANDWRITING ON HERE IS -- WITH THE EXCEPTION
24 OF MR. STONE'S INITIALS, MR. STONE'S SIGNATURE AND THE
25 SIGNATURES OF LIEUTENANT HEROD AND LIEUTENANT MARTIN --

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 ALL THE WRITING IS YOURS; IS IT NOT?

2 A YES, SIR.

3 Q OKAY. AND THE QUESTIONS ARE A COMBINATION OF
4 QUESTIONS PREPARED BY YOU AND LIEUTENANT HEROD?

5 A YES, SIR.

6 Q IS THAT RIGHT? AND CAPTAIN GALLIMORE, YOU GAVE MR.
7 STONE THE MIRANDA WARNINGS AT 1:58 A.M.

8 A YES, SIR.

9 Q ACCORDING TO STATE'S EXHIBIT 1. AND THEN HE SIGNED
10 THIS STATEMENT AT 4:10 A.M.; IS THAT RIGHT?

11 A I DON'T REMEMBER IF THAT WAS WHEN HE SIGNED IT OR IF
12 THAT'S WHEN WE STARTED IT.

13 Q DO YOU RECALL WHICH WAY IT WAS? WAS IT 4:10 WHEN YOU
14 BEGAN?

15 A PROBABLY 4:10 WHEN WE BEGAN.

16 Q WHEN YOU BEGAN. OKAY. THEN APPROXIMATELY HOW LONG DID
17 IT TAKE FOR YOU TO WRITE OUT THIS ENTIRE STATEMENT AND
18 HAVE BOBBY STONE INITIAL IT?

19 A I DON'T KNOW. HOUR AND A HALF. TWO HOURS.

20 Q COULD HAVE BEEN AN HOUR AND A HALF OR TWO HOURS.
21 OKAY. SO WE ARE TALKING 5:40 OR 6:10 A.M.; RIGHT?

22 A YES, SIR.

23 Q NOW MR. STONE WAS ARRESTED SHORTLY AFTER 11 ON
24 FEBRUARY 26TH 1996; IS THAT YOUR UNDERSTANDING?

25 A 11:06 IF I REMEMBER CORRECTLY.

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 Q AND SO HE HAD BEEN IN YOUR CUSTODY OR THAT OF THE
2 SUMTER COUNTY SHERIFF'S DEPARTMENT OR SLED EVER SINCE THAT
3 TIME?

4 A YES, SIR.

5 Q BEFORE HE SIGNED STATE'S EXHIBIT NUMBER 3 FOR
6 PURPOSES OF THIS HEARING?

7 A YES, SIR.

8 Q AND DO YOU RECALL -- DID YOU TAKE THE PICTURES AT THE
9 CONCLUSION OF THE STATEMENT?

10 A YES, SIR. AFTER THE STATEMENT WAS TAKEN, THAT'S WHEN
11 THE PICTURES WERE TAKEN, I BELIEVE.

12 Q ALL RIGHT, SIR. AND I NOTICE ON THE...

13 MR. KOLB: JUDGE, I REALIZED THE PHOTOS I GAVE UP
14 WERE COPIES THEY HAD MADE FOR ME. I THINK MR. GALLIMORE IS
15 LOOKING FOR HIS NOTES ON THEM. CAN WE SUBSTITUTE THESE
16 FOUR FOR THE...

17 THE COURT: ANY OBJECTION? ALL RIGHT. LETS...

18 MR. KOLB: ACTUALLY GOT A TIME ON THEM AND THOSE
19 OTHERS DON'T....

20 (DEFENDANT'S EXHIBIT NO. 1, 2, 3 AND 4 RE-MARKED
21 FOR IDENTIFICATION).

22 (WHEREUPON QUESTIONING RESUMED).

23 Q CAPTAIN GALLIMORE, SHOW YOU WHAT SOLICITOR KOLB
24 FURNISHED US. AND WILL SUBSTITUTE THOSE AS THE ORIGINAL
25 DEFENDANT'S 1 THROUGH 4 FOR PURPOSES OF THIS HEARING.

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 A YES, SIR. THESE ARE MINE.

2 Q AND I BELIEVE IT INDICATES THAT THOSE PICTURES WERE
3 TAKEN AT 6:45?

4 A 6:45.

5 Q THAT WOULD BE 6:45 A.M. ON FEBRUARY 27TH, 1996?

6 A YES, SIR.

7 Q SO FROM 11:00 ON THE NIGHT OF FEBRUARY 26TH UNTIL
8 THAT TIME MR. STONE WAS IN THE CUSTODY OF THE SUMTER
9 COUNTY SHERIFF'S DEPARTMENT?

10 A YES, SIR. HE WAS IN LAW ENFORCEMENT CUSTODY.

11 Q OKAY. DURING THAT TIME DID HE EVER CONSULT WITH ANY
12 ONE OTHER THAN YOU GENTLEMAN?

13 A NO, SIR.

14 Q DID HE RECEIVE ANY SORT OF MEDICAL TREATMENT, FIRST
15 AID OR ANYTHING?

16 A NO, SIR. SAID HE DIDN'T WANT ANYTHING.

17 Q WAS HE HANDCUFFED THE ENTIRE TIME?

18 A YES, SIR.

19 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
20 MOMENT, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 (WHEREUPON THERE WAS A PAUSE).

23 (WHEREUPON QUESTIONING RESUMED).

24 Q CAPTAIN GALLIMORE, LET ME ASK YOU ONE FINAL THING.

25 THIS IS A COPY OF THE COUNTY SUPPLEMENTARY REPORT THAT WAS

JOE GALLIMORE - CROSS BY LITTLEJOHN

1 FURNISHED TO US BY THE SOLICITOR'S OFFICE. DO YOU
2 RECOGNIZE THAT DOCUMENT?

3 A YES, SIR.

4 Q AND I BELIEVE THAT BEARS YOUR SIGNATURE AT THE
5 BOTTOM, THE ORIGINAL?

6 A I PREPARED THIS DOCUMENT.

7 Q YOU PREPARED THAT DOCUMENT?

8 A YES, SIR.

9 Q NOW, THERE IS A NOTATION THERE AS TO 1:54 A.M.: YOU
10 SEE THAT AT THE TOP?

11 A YES, SIR.

12 Q AND THAT WAS THE SAME TIME THAT YOU ADMINISTERED THE
13 MIRANDA WARNINGS AND MR. STONE -- ACCORDING TO YOU --
14 QUICKLY CAME OUT WITH HIS STORY?

15 A YES, SIR.

16 Q DOES THAT REFRESH YOUR MEMORY AS TO THE AMOUNT OF
17 BEER THAT BOBBY WAYNE STONE TOLD YOU INITIALLY HE HAD HAD?

18 A THIS WAS DONE SOMEWHERE AFTER THE FACT. I WASN'T
19 SITTING THERE DOING THIS AS HE IS TALKING.

20 Q WHAT DOES THAT INDICATE AS TO THE AMOUNT OF BEER THAT
21 BOBBY STONE TOLD YOU HE HAD?

22 A THE SAME THING THAT'S IN THE STATEMENT. I HAD A CASE,
23 TWELVE CANS OF BUDWEISER REGULAR.

24 Q OKAY. AS OPPOSED TO A LITTLE BIT?

25 A AS OPPOSED TO A LITTLE BIT, YES. LIKE I SAID, SIR,

DANA WINGATE - DIRECT BY KOLB

1 THAT WAS -- THAT WASN'T WRITTEN AS HE WAS TALKING. THAT
2 WAS SOMEWHAT AFTERWARDS.

3 MR. LITTLEJOHN: THAT'S ALL I HAVE AT THIS TIME, YOUR
4 HONOR.

5 THE COURT: REDIRECT?

6 MR. KOLB: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN.

8 MR. KOLB: CALL DANA WINGATE.

9 DANA WINGATE, BEING FIRST DULY
10 SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. KOLB:

12 Q GIVE US YOUR NAME AND HOW YOU ARE EMPLOYED.

13 A INVESTIGATOR DANA WINGATE. INVESTIGATOR, SUMTER
14 COUNTY SHERIFF'S DEPARTMENT.

15 Q MR. WINGATE, AFTER BOBBY STONE WAS ARRESTED
16 APPROXIMATELY 11:06 P.M. FEBRUARY 26TH HE WAS TAKEN TO THE
17 LAW ENFORCEMENT CENTER HERE IN SUMTER?

18 A YES, SIR. HE WAS.

19 Q WHEN DID YOU COME TO BE IN HIS PRESENCE?

20 A I WAS THE CLOSEST INVESTIGATOR TO THE SHERIFF'S
21 DEPARTMENT WHEN -- THE COUNTY INVESTIGATIONS OFFICE --
22 WHEN THEY BROUGHT HIM UP THE STAIRS INTO THE COUNTY
23 INVESTIGATIONS.

24 Q DID YOU STAY WITH HIM FROM THAT TIME UNTIL
25 INVESTIGATOR GALLIMORE AND SLED AGENT HEROD BEGAN THE

DANA WINGATE - CROSS BY LITTLEJOHN

1 PROCESS OF QUESTIONING HIM?

2 A I STAYED WITH HIM UNTIL TWO SLED FORENSICS AGENTS
3 CAME UP AND WE TOOK HIM BACK TO JUVENILE INVESTIGATIONS TO
4 DO A G S R GUN SHOT RESIDUE KIT. AND I LEFT HIM WITH THE
5 SLED AGENTS AT THAT POINT.

6 Q ALL RIGHT. AND DURING THE TIME THAT YOU WERE WITH HIM
7 -- AND HOW LONG A PERIOD OF TIME THEN WERE YOU WITH HIM
8 IN THE INVESTIGATIVE DIVISION OF THE LAW ENFORCEMENT
9 CENTER?

10 A MAYBE AN HOUR AND HALF. JUST A ROUGH GUESS. I
11 DIDN'T...

12 Q ALL RIGHT. DID ANYONE THREATEN HIM OR MAKE ANY
13 THREATENING STATEMENTS IN HIS PRESENCE WHEN YOU WERE
14 THERE?

15 A NO, SIR. NO ONE DID.

16 Q NO ONE AT ALL?

17 A NO, SIR.

18 Q DID MR. STONE EVER MAKE ANY STATEMENTS?

19 A HE AT ONE TIME LOOKED AT BUSTER -- I CAN'T REMEMBER
20 HIS NAME. ONE OF THE SLED AGENTS. AND SAID HE HAD A HARD
21 FOOT. BUSTER JUST MORE OR LESS LOOKED AT HIM AND LEFT IT
22 AT THAT.

23 Q ALL RIGHT. OKAY. ANSWER ANY QUESTIONS THE DEFENSE MAY
24 HAVE.

25 THE COURT: CROSS-EXAMINE.

DANA WINGATE - CROSS BY LITTLEJOHN

1 CROSS-EXAMINATION BY MR. LITTLEJOHN:

2 Q VERY BRIEFLY. INVESTIGATOR WINGATE, MATERIAL
3 FURNISHED TO ME INDICATED THAT BOBBY MAY HAVE SAID BUSTER
4 HAD A BIG FOOT; WASN'T---.

5 A BIG FOOT, HARD FOOT. HE WAS JUST TALKING TO BUSTER
6 ABOUT HIS FOOT. NOT EXACTLY SURE EXACTLY WHAT HE SAID AS
7 TO THAT EFFECT.

8 Q I UNDERSTAND. WERE YOU IN THE OPEN AREA WHEN BOBBY
9 WAS FIRST BROUGHT IN?

10 A I WAS IN THE OPEN AREA OF COUNTY INVESTIGATIONS WHEN
11 THEY BROUGHT HIM IN, WHEN THEY SAT HIM IN THE CHAIR IN THE
12 MIDDLE OF THE FLOOR.

13 AND I SAT AT A DESK WITH HIM APPROXIMATELY
14 FIFTEEN FEET BEHIND ME TO MY RIGHT THE ENTIRE TIME.

15 Q OKAY. HE WAS HAND CUFFED BEHIND HIS BACK?

16 A YES, SIR. HE WAS.

17 Q THERE WERE INVESTIGATORS, DETECTIVES, SLED AGENTS
18 COMING IN AND OUT?

19 A YES, SIR. NO ONE CAME NEAR HIM. EVERYONE STAYED TO
20 THAT OTHER SIDE OF THE ROOM.

21 Q UNDERSTANDABLY TENSIONS WERE RUNNING HIGH THAT NIGHT;
22 WERE THEY NOT?

23 A YES, SIR.

24 Q YOU COULD FEEL IT?

25 A YES, SIR. IT WAS MY OPINION EVERYONE HANDLED VERY

DANA WINGATE - CROSS BY LITTLEJOHN

1 PROFESSIONALLY, NO ONE MADE ANY THREATS OF ANY TYPE TOWARD
2 HIM. NOT EVEN THE LEERS OR WHAT YOU MIGHT CONSIDER
3 AGITATED LOOKS.

4 Q ALL RIGHT, SIR. BUT THERE WERE A NUMBER OF OFFICERS
5 IN THERE, BOBBY WAS HANDCUFFED BEHIND HIS BACK. AND YOU
6 SAY HE WAS SITTING IN A CHAIR IN THE MIDDLE OF THE ROOM?

7 A YES, SIR.

8 Q ALL RIGHT. NO FURTHER QUESTIONS.

9 THE COURT: REDIRECT?

10 MR. KOLB: NOTHING, YOUR HONOR.

11 THE COURT: YOU MAY STEP DOWN. THANK YOU.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 MR. KOLB: YOUR HONOR, THAT IS ALL WE HAVE.

14 THE COURT: ANYTHING FROM THE DEFENSE?

15 MR. LITTLEJOHN: INDULGE ME JUST A MOMENT, YOUR
16 HONOR.

17 THE COURT: YES, SIR.

18 (WHEREUPON THERE WAS A PAUSE).

19 MR. BABB: YES, YOUR HONOR. WE CALL DOCTOR HAROLD C
20 MORGAN.

21 THE COURT: ALL RIGHT. MR. MORGAN?

22 DR. MORGAN, BEING FIRST DULY

23 SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. BABB:

25 Q GOOD MORNING, SIR.

DR. HAROLD MORGAN - DIRECT BY BABB

1 A GOOD MORNING.

2 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD.

3 A HAROLD CLIFFORD MORGAN.

4 Q ALL RIGHT, SIR. AND WOULD YOU BRIEFLY TELL US WHAT
5 SORT OF TRAINING YOU HAVE HAD -- YOU'RE A MEDICAL DOCTOR?

6 A I'M A MEDICAL DOCTOR. SPECIALIZE IN PSYCHIATRY AND
7 SUB-SPECIALIZE IN FORENSIC PSYCHIATRY.

8 Q ALL RIGHT, SIR. HAVE YOU HAD OCCASION TO EVER
9 PHYSICALLY EXAMINE MR. BOBBY WAYNE STONE?

10 A YES.

11 Q DO YOU RECALL WHEN THAT WAS?

12 A I COULD TELL YOU -- MARCH THE 1ST, 1996.

13 Q OKAY. COULD YOU TELL US -- PLEASE DESCRIBE WHAT YOU
14 SAW, THE EXTENT OF HIS INJURIES.

15 A OKAY. I HAVE A REPORT HERE.

16 MR. KOLB: YOUR HONOR, I OBJECT AT THIS POINT.

17 THE COURT: YOU OBJECT?

18 MR. KOLB: I HAVE NO REPORT FROM HIM. HE INDICATES AN
19 EXAMINATION IN MARCH OF 96. THERE HAS BEEN NO DISCOVERY
20 PROVIDED TO ME WHATSOEVER OF ANY REPORT OR EXAMINATION BY
21 DR. MORGAN.

22 THE COURT: YOU HAVE A REPORT?

23 MR. BABB: NO, SIR.

24 THE COURT: THERE WAS NO REPORT. OVERRULED.

25 MR. KOLB: JUDGE, ONE FURTHER OBJECTION IS THAT I WAS

DR. HAROLD MORGAN - DIRECT BY BABB

1 ADVISED BY THE DEFENSE ATTORNEYS LAST WEEK THAT THEY HAD
2 JUST RETAINED DR. MORGAN TO DO A PSYCHIATRIC EXAMINATION
3 AND WAS FIRST NOTICED THAT THEY HAD EVEN RETAINED HIM.
4 THEY INFORMED MY---.

5 THE COURT: SOLICITOR, WE'RE TALKING ABOUT A MOTION
6 HEARING AT THIS POINT, SIR. OVERRULED. YOU MAY PROCEED.

7 (WHEREUPON QUESTIONING RESUMED)?

8 A NO, SIR. MY NOTES FROM THAT EXAMINATION---.

9 Q YOU MAY RE-FRESH YOUR MEMORY.

10 A OKAY. I SAW HIM AT THE BROAD RIVER CORRECTIONAL
11 INSTITUTION IN COLUMBIA IN THE COMPANY OF HIS ATTORNEY,
12 MR. BABB. WHAT I SAW PHYSICALLY ABOUT HIM IS -- REALLY
13 ABOUT ALL I DID WAS JUST TO TALK WITH HIM BRIEFLY AND TO
14 LOOK HIM OVER PHYSICALLY.

15 THERE WAS A RECENT BRUISE ABOUT THE SIZE OF A
16 QUARTER ON THE INNER ASPECT OF HIS LEFT ARM. THE LEFT
17 WRIST WAS TENDER AND SLIGHTLY DISCOLORED. AND THERE WERE
18 SUPERFICIAL SCRATCHES AND CUTS ON HIS LEFT HAND.

19 HIS RIGHT WRIST HAD A LARGE BRUISE OF RECENT
20 ORIGIN THAT WAS BECOMING DARK AND DISCOLORED. IT WAS
21 APPROXIMATELY TWO AND A HALF INCHES LONG AND IT'S RAISED
22 JUST ABOVE -- AND HE COMPLAINED OF PAIN WHEN I MOVED IT.

23 THERE WERE SCRATCHES AND SUPERFICIAL CUTS OF THE
24 BACK OF HIS RIGHT HAND, BUT NOT OVER HIS LEFT ARM OR RIGHT
25 ARM. THERE WAS A LONG SCRATCH FROM THE LEFT TEMPLE AREA

DR. HAROLD MORGAN - DIRECT BY BABB

1 DOWN THROUGH THE LEFT CHEEK AS WELL AS AN ABRASION WHICH
2 IS JUST A KIND OF A SCRAPE.

3 AND THE RIGHT TEMPLE AREA WITH CUTS THERE. AREA
4 ON THE FOREHEAD -- ALL OF WHICH WERE SUPERFICIAL. JUST
5 BELOW THE LEFT CLAVICLE WHICH IS COLLAR BONE HERE, THERE
6 WAS A LARGE BRUISE APPROXIMATELY FIVE INCHES IN IT'S
7 LONGEST DIAMETER AND BETWEEN THE LEFT NIPPLE AND THE
8 STERNUM WHICH IS THE BREAST BONE.

9 THERE WAS A LARGE TRIANGULAR SHAPED BRUISE OF
10 RECENT ORIGIN WHICH IS BEGINNING TO SHOW TYPICAL
11 DISCOLORATION AND IT WAS ABOUT FIVE INCHES LONG AT IT'S
12 GREATEST DIAMETER.

13 THE RIGHT KNEE SHOWS A SLIGHT BRUISING WITH
14 TENDERNESS AND SUPERFICIAL SCRATCHES OF THE RIGHT LEG. THE
15 LEFT LEG HAS SUPERFICIAL SCRATCHES AND A BRUISE ON THE
16 INNER ASPECT OF THE CALF.

17 THE BUTTOCKS AND GENITAL AREA WERE NOT EXAMINED
18 BECAUSE HE SAID HE HAD NO INJURIES IN THAT AREA. HE
19 REPORTED THAT HE HAD HAD BLOOD FROM HIS EAR. THERE WAS A
20 BRUISE BEHIND THE RIGHT EAR WITH THE EXTERNAL PART OF THE
21 EAR SLIGHTLY BRUISED.

22 INSPECTED THE EAR CANAL WITH A GADGET THAT'S
23 USED FOR THAT. I SAW NO BLOOD IN THAT, BUT I COULD NOT
24 ACTUALLY VISUALIZE THE EAR DRUM. THAT'S REALLY ABOUT IT SO
25 FAR AS THE PHYSICAL EXAMINATION.

DR. HAROLD MORGAN - DIRECT BY BABB

1 I DID LATER SEE SOME X-RAYS -- I'M SORRY --
2 REPORTS FROM THE EMERGENCY ROOM ABOUT X-RAYS.

3 MR. BABB: COURT'S INDULGENCE.

4 THE COURT: YES, SIR.

5 (WHEREUPON QUESTIONING RESUMED).

6 Q WOULD THE ORIGIN OF THE ABRASIONS, DOCTOR, WERE THEY
7 SUCH -- DID THEY APPEAR TO BE CONSISTENT WITH A BEATING
8 SUCH AS A KICKING OR STOMPING?

9 A THEY WOULD BE, SIR.

10 Q THE BRUISE TO THE CHEST AREA?

11 A SURE.

12 Q I NOTICE YOU SAY THAT THERE WERE SCRATCHES ON THE
13 HANDS.

14 A YES.

15 Q OKAY. AND SOME -- A SCRATCH ON THE FACE?

16 A YES.

17 Q BUT THEN THE BRUISES WERE IN THE CHEST AREA?

18 A YES, THE BRUISE IS WHERE -- FAIRLY LARGE BRUISE IS
19 FROM THE CHEST, MORE ON THE LEFT SIDE OF THE CHEST UP
20 AROUND THE COLLAR BONE AND THEN BESIDE -- AROUND THE
21 BREAST.

22 Q AND THE ABRASION ON HIS HEAD UP IN HIS TEMPLE I
23 BELIEVE YOU SAID, DOCTOR.

24 A OKAY. YEAH. THERE IS AN ABRASION IN THE RIGHT TEMPLE
25 AREA WITH SOME SUPERFICIAL CUTS IN THAT AREA ON THE

DR. HAROLD MORGAN - DIRECT BY BABB

1 FOREHEAD.

2 Q WOULD THAT ABRASION BE CONSISTENT WITH BEING KICKED
3 BY A BOOT IN THE HEAD?

4 A ABRASIONS REALLY IS A SCRAPE, SO IT'S USUALLY FROM A
5 MORE -- A HARD SCRUBBING ACTION AGAINST THE SKIN INSTEAD
6 OF SOMETHING BEING PULLED AGAINST IT. OR AN OBJECT I
7 GUESS COULD BE RUBBED AGAINST IT HARD ENOUGH, BUT IT'S NOT
8 EXACTLY...

9 Q WELL, I MEAN A DEAD ON KICK. I MEAN -- YOU KNOW -- A
10 GLANCING---.

11 A YEAH. A GLANCING KIND OF SCRAPING WOULD DO THAT.

12 Q ALL RIGHT, SIR. THE ONE ON HIS CHEST LOOKED -- DID
13 IT LOOK MORE TO YOU LIKE IT WAS A...

14 A THAT'S THE BLOWS, YES.

15 Q ALL RIGHT. SO BASICALLY LOOKED LIKE HE HAD A PRETTY
16 GOOD BEATING?

17 A THAT'S WHAT IT LOOKED LIKE, YEAH. AND THAT'S PRETTY
18 MUCH WHAT THE EMERGENCY ROOM REPORT INDICATED.

19 Q WOULD YOU FIND IT HARD TO BELIEVE HE SUFFERED ALL OF
20 THESE WOUNDS BY JUST RUNNING THROUGH BRIARS?

21 A CERTAINLY THE SCRATCHES AND SUPERFICIAL CUTS COULD BE
22 FROM RUNNING THROUGH BUSHES. I DON'T THINK YOU GOT THAT --
23 THE HARD BRUISES THAT WERE APPARENT ON THE CHEST -- FROM
24 RUNNING THROUGH THE WOODS.

25 I SUPPOSE YOU COULD FALL ON SOMETHING MAYBE AND

DR. HAROLD MORGAN - DIRECT BY BABB

1 DO THAT, BUT IT WOULD BE PRETTY HARD TO DO, I THINK.

2 Q ALL RIGHT, SIR. PLEASE ANSWER ANY QUESTIONS...

3 A SURE.

4 Q THE SOLICITOR MAY HAVE.

5 THE COURT: YOU MAY CROSS-EXAMINE, MR. SOLICITOR.

6 CROSS-EXAMINATION BY MR. KOLB:

7 Q DOCTOR, DID YOU INFORM MR. BABB ABOUT YOUR FINDINGS?

8 A HE WAS PRESENT, SO I'M SURE WE TALKED ABOUT IT AT
9 THAT TIME.

10 Q SO YOU REPORTED YOUR FINDINGS TO HIM?

11 A I DID NOT REPORT THEM IN ANY KIND OF OFFICIAL WAY,
12 BUT LET ME SEE. HE MAY HAVE LEFT WHEN I FINISHED. LET ME
13 LOOK AT MY NOTES. IT SEEMS TO ME...

14 MR. BABB WAS THERE AND I'M SURE WE TALKED ABOUT
15 IT TO SOME EXTENT. I DON'T RECALL ANYTHING MORE THAN THAT.
16 I DIDN'T SEND HIM ANY KIND OF REPORT. I DID MAKE SOME
17 NOTES FOR MYSELF.

18 Q DID HE ASK YOU NOT TO SEND HIM A WRITTEN REPORT?

19 A NO, HE TOLD ME WHEN HE LEFT THAT HE WOULD CONTACT ME
20 IF HE NEEDED ANYTHING MORE.

21 Q DID -- AND HAVE YOU TALKED TO MR. BABB AFTER THAT
22 EXAMINATION BEFORE TODAY?

23 A I TALKED TO HIM ON THE 13TH OF JANUARY OF THIS YEAR.

24 Q ALL RIGHT. AND DID YOU---

25 A NOR THE FIRST TIME SINCE THAT TIME. I HAVE TALKED

DR. HAROLD MORGAN - CROSS BY KOLB

1 WITH HIM I THINK MAYBE A DAY OR TWO AGO ABOUT HIS FEE.

2 Q ALL RIGHT, SIR. AND YOU TOLD HIM THAT YOU -- WHAT YOU
3 HAD FOUND. YOU REPORTED THAT TO HIM?

4 A IN THE COURSE OF MY EXAMINATION, I ASSUME. I DON'T
5 RECALL EXACTLY. BUT I ASSUME THAT WE TALKED ABOUT IT AT
6 THAT TIME. THE CALL ON THE 13TH OF THIS MONTH WAS ABOUT
7 SOMETHING ELSE.

8 Q WELL, WERE YOU PAID FOR THE EXAMINATION THAT YOU DID
9 ON MARCH THE 1ST, 1996?

10 A I ASSUME SO, BUT I DON'T REALLY KNOW ABOUT THAT.
11 THOSE KINDS OF RECORDS ARE KEPT...

12 MR. BABB: YOUR HONOR, THIS IS JUST TOTALLY
13 IRRELEVANT AT THIS POINT.

14 THE COURT: I'M GOING TO ALLOW SOME LEEWAY, BUT LETS
15 APPROACH, PLEASE. MAKE USE OF THIS TIME.

16 (WHEREUPON A BENCH CONFERENCE WAS HELD).

17 (WHEREUPON QUESTIONING RESUMED).

18 Q DOCTOR, DID YOU -- IS THIS A COPY OF THE SAME MEDICAL
19 EMERGENCY ROOM AND RADIOLOGY REPORT THAT YOU REVIEWED?

20 A I AM SURE IT IS, YES.

21 Q AND THAT'S TYPICALLY THE TYPE OF MEDICAL RECORDS THAT
22 YOU REVIEW AND RELY ON IN YOUR PRACTICE AS A PHYSICIAN?

23 A YES. ONE OF THE KINDS OF RECORDS THAT I SEE.

24 MR. KOLB: WE WOULD LIKE TO OFFER THIS REPORT INTO
25 EVIDENCE.

DR. HAROLD MORGAN - CROSS BY KOLB

1 THE COURT: ANY OBJECTION?

2 MR. BABB: I DON'T KNOW THAT I HAVE EVEN SEEN IT,
3 YOUR HONOR.

4 THE COURT: WELL, LOOK AT IT AND SEE.

5 (WHEREUPON THERE WAS A PAUSE).

6 MR. BABB: YOUR HONOR, I WOULD OBJECT.

7 THE COURT: ASK HIM ANY QUESTIONS YOU WANT ABOUT IT.
8 IT'S NOT RELEVANT TO THIS PROCEEDING AT THIS POINT. IF
9 YOU WANT TO ASK HIM ABOUT SPECIFICS, I WILL ALLOW YOU TO
10 GO INTO SOME DETAIL WITH IT, SOLICITOR. SUSTAINED.

11 MR. KOLB: ALL RIGHT. OF COURSE, OFFER IT INTO
12 EVIDENCE, BUT I ASK CAN HIM ABOUT IT.

13 THE COURT: SURE.

14 MR. KOLB: ALL RIGHT.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q DOCTOR, DOESN'T THIS INDICATE THAT THE DEFENDANT --
17 DID MR. STONE TELL YOU THAT HE WAS TAKEN TO THE EMERGENCY
18 ROOM?

19 MR. BABB: YOUR HONOR, I OBJECT TO HIM GOING INTO
20 QUESTIONS ABOUT ANY CONVERSATIONS BETWEEN---.

21 MR. KOLB: JUDGE, HE'S TESTIFIED.

22 THE COURT: I ASSUME HE'S REFERRING TO THE REPORT,
23 WHATEVER IS IN THAT REPORT. YOU MENTIONED THE REPORT AND
24 EXAMINING HIM. I'M GOING TO ALLOW HIM TO REVIEW THAT
25 REPORT WITH THE DOCTOR -- WITH THE WITNESS.

DR. HAROLD MORGAN - CROSS BY KOLB

1 MR. BABB: YES, SIR, YOUR HONOR.

2 MR. KOLB: JUDGE, ALSO I WAS GOING TO ASK HIM FIRST
3 ABOUT WHAT MR. STONE TOLD HIM. HE TESTIFIED EXTENSIVELY
4 WHAT MR. STONE REPORTED.

5 THE COURT: TOLD HIM?

6 MR. KOLB: TOLD HIM HIMSELF.

7 MR. BABB: LET ME CLARIFY. THAT'S MY POINT. IT'S A
8 STATEMENT OF THE DEFENDANT THAT I'M OBJECTING TO.

9 MR. KOLB: THE WITNESS REFERRED EXTENSIVELY----

10 THE COURT: JUST HOLD ON A SECOND, MR. SOLICITOR. AT
11 THIS POINT IN THE PROCEEDINGS -- PROCEEDINGS FOR -- THE
12 PURPOSE OF THIS PROCEEDING IS TO DETERMINE VOLUNTARINESS
13 OF THE STATEMENT. THEREFORE I WOULD SUSTAIN THE OBJECTION
14 AT THIS POINT.

15 MR. KOLB: ALL RIGHT.

16 (WHEREUPON QUESTIONING RESUMED).

17 Q DID THE DEFENDANT INDICATE TO YOU HOW THE INJURIES
18 OCCURRED?

19 MR. BABB: YOUR HONOR...

20 THE COURT: I WILL ALLOW THAT QUESTION.

21 MR. BABB: YOUR HONOR, LET ME JUST PROTECT -- MAKE
22 SURE.

23 THE COURT: GO AHEAD. YOU OBJECT TO ANY STATEMENT OF
24 THE DEFENDANT. HE JUST -- THE ONLY THING HE ASKED HIM WAS
25 DID HE INDICATE.

DR. HAROLD MORGAN - CROSS BY KOLB

1 MR. BABB: YES, SIR. I UNDERSTOOD IT. I SAID, YOUR
2 HONOR, I DIDN'T SAY OBJECT. I WANT TO BE SURE.

3 THE COURT: ALL RIGHT. YOU OBJECT TO THAT ONE BECAUSE
4 IT WOULD BE IN ESSENCE A PUBLICATION OF HIS STATEMENT?

5 MR. BABB: HE'S GOING INTO HIS STATEMENT AND HIS WORK
6 PRODUCT.

7 THE COURT: ALL RIGHT. I OVERRULE THE OBJECTION.

8 MR. BABB: YES, SIR.

9 THE COURT: AT THIS POINT YOU MAY ANSWER THAT
10 QUESTION.

11 WITNESS: DID HE INDICATE TO ME WHAT HAD HAPPENED?
12 IS THAT THE QUESTION?

13 (WHEREUPON QUESTIONING RESUMED).

14 Q YES.

15 A YES, SIR. HE DID.

16 Q ALL RIGHT. AND DID HE INDICATE TO YOU THAT HE
17 ACTUALLY TRIPPED, THAT HE RAN THROUGH THE WOODS?

18 MR. BABB: YOUR HONOR...

19 THE COURT: I SUSTAIN THAT OBJECTION.

20 MR. KOLB: JUDGE, I MAY NOT BE FOLLOWING THIS, BUT I
21 THOUGHT HE WAS TESTIFYING TO INJURIES TO THE DEFENDANT --
22 THAT THE DEFENDANT---.

23 THE COURT: TALKING ABOUT HIS -- YOU ARE GETTING INTO
24 STATEMENTS. YOU DON'T NEED THAT FOR THE PURPOSE OF THIS
25 PROCEEDING RIGHT NOW. I RULED THAT THAT IS NOT RELEVANT AT

DR. HAROLD MORGAN - CROSS BY KOLB

1 THIS TIME.

2 MR. KOLB: JUDGE, CAN I PROFFER ONE THING -- JUST
3 PROFFER?

4 THE COURT: PROFFER.

5 (WHEREUPON QUESTIONING RESUMED).

6 Q JUST EXPLAIN TO THE COURT THE BASIS OF WHY I AM
7 ASKING THIS.

8 THE COURT: WHAT'S THE BASIS?

9 MR. KOLB: JUDGE, THE BASIS WHY I AM ASKING IS THAT
10 MR. STONE TOLD EVERYONE THAT WHILE HE WAS GOING THROUGH
11 THE WOODS HE TRIPPED OVER A LOG AND FELL DOWN. THAT'S
12 WHERE HE WAS LAYING WHEN THE POLICE FOUND HIM. HE FELL
13 OVER A LOG IN THE WOODS BY HIS OWN ADMISSION.

14 THE COURT: MR. SOLICITOR, WE ARE NOT GETTING INTO
15 WHAT HE SAID. WE ARE GETTING INTO -- THE ONLY ISSUE THAT
16 I'M TRYING AT THIS POINT IS VOLUNTARINESS OF WHAT HE SAID
17 AND WHETHER HE CONTRADICTED IT IS NOT AN ISSUE BEFORE ME
18 AT THIS POINT, SIR.

19 LETS STAY FOCUSED ON THE MATTER BEFORE THE COURT
20 AT THIS TIME.

21 MR. KOLB: ALL RIGHT.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q NOW DR. MORGAN, IN THE EMERGENCY ROOM REPORT THAT YOU
24 REVIEWED, THAT'S A REPORT FROM 10 A M ON THE MORNING OF
25 FEBRUARY 27TH?

DR. HAROLD MORGAN - CROSS BY KOLB

1 A LET ME FIND THE ONE... I DON'T SEE THE DATE. WHERE IS
2 THE DATE?

3 Q I'M... RIGHT HERE, 10 A.M.

4 A IT'S 10 A.M. BUT...

5 Q 2:27?

6 A THERE WE GO. YES, THAT'S RIGHT.

7 Q AND ISN'T -- DOESN'T THE DOCTOR THERE -- DR. SANDY
8 COOPER, M.D.

9 A I CAN'T READ THE WRITING, BUT THAT LOOKS CLOSE
10 ENOUGH.

11 Q YES, SIR. AND IT INDICATES THIRTY YEAR OLD WHITE MALE
12 WHO STATES WHILE BEING TAKEN INTO CUSTODY OF POLICE HE WAS
13 HIT AND---

14 MR. BABB: OBJECTION.

15 THE COURT: SUSTAINED. MR. SOLICITOR, MOVE ON, SIR.
16 NOW, I'M GOING TO -- I HAVEN'T DONE IT YET. I'M GOING TO
17 INVOKE RULE 611 ON YOU IF YOU CONTINUE, SIR. LETS GO ONTO
18 THE MATTERS AT HAND. I HAVE ALREADY RULED, SIR.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q ALL RIGHT. DOCTOR, YOU DO NOT HAVE ANY PERSONAL
21 KNOWLEDGE OF WHAT HAPPENED TO MR. STONE AT THE TIME OF HIS
22 ARREST?

23 A NO. I DO NOT.

24 Q NO PERSONAL KNOWLEDGE WHATSOEVER?

25 A MY OWN DIRECT OBSERVATION YOU MEAN?

DR. HAROLD MORGAN - CROSS BY KOLB

1 Q YES.

2 A I DO NOT.

3 Q YES. NOTHING FURTHER.

4 THE COURT: THANK YOU, SIR. ANY REDIRECT?

5 MR. BABB: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: YOU MAY COME DOWN.

7 MR. KOLB: ONE OTHER QUESTION, JUDGE.

8 THE COURT: ALL RIGHT.

9 (WHEREUPON QUESTIONING RESUMED).

10 Q WERE THE INJURIES THAT YOU SAW CONSISTENT WITH
11 RUNNING THROUGH THE WOODS, FALLING AND FALLING OVER,
12 RUNNING INTO TREES, RUNNING THROUGH DITCHES WITH BRIARS,
13 FALLING OVER A LOG AND FALLING ACROSS A STUMP? COULD THEY
14 JUST BE -- JUST AS CONSISTENT WITH THAT?

15 A CERTAINLY SUPERFICIAL INJURIES, THERE WERE CUTS AND
16 SCRATCHES THAT WERE SUPERFICIAL AND COULD BE CONSISTENT
17 WITH RUNNING THROUGH BUSHES AND BRIARS AND GETTING SCRAPED
18 BY LIMBS AND THAT SORT OF THING.

19 AND I SUPPOSE -- YES, I SUPPOSE IT COULD BE
20 CONSISTENT WITH FALLING ON SOME OBJECT LIKE THAT.

21 Q THE RADIOLOGY REPORT THAT YOU REVIEWED ALSO FROM THAT
22 SAME DAY SHOWED NO ABNORMALITY?

23 A SEEMED TO -- DIDN'T IT SHOW AN OLD RIB FRACTURE OR
24 SOMETHING?

25 Q WHICH WOULDN'T HAVE ANYTHING TO DO WITH THAT.

DR. HAROLD MORGAN - RECROSS BY BABB

1 A YES, SIR.

2 Q OKAY. THANK YOU.

3 THE COURT: REDIRECT?

4 REDIRECT EXAMINATION BY MR. BABB:

5 Q DR. MORGAN, JUST TO CLARIFY A POINT HERE. IN THE
6 MEDICAL PROFESSION WHEN YOU ARE TALKING ABOUT A RADIOLOGY
7 REPORT, NOW, WE ARE TALKING ABOUT X-RAYS?

8 A RIGHT.

9 Q SO WHEN WE SAY...

10 A USUALLY.

11 Q WHEN WE SAY NO ABNORMALITIES, WE'RE -- THAT INFERS
12 THAT THERE IS NO BROKEN BONES -- THERE IS SOMETHING WRONG
13 WITH THE BONES?

14 A X-RAY PICKS UP THE HARD STRUCTURES GENERALLY, NOT THE
15 SOFT TISSUE DAMAGE. WOULDN'T SHOW A BRUISE FOR EXAMPLE.

16 Q I'M TRYING TO GET TO THE POINT. IT DOESN'T COVER
17 BRUISES, CUTS, THAT SORT OF STUFF?

18 A NO, IT WAS SOME CONCERN HE MIGHT HAVE A FRACTURED
19 RIB, SO THAT'S WHY THEY TOOK THE X-RAY.

20 Q ALL RIGHT, SIR. THANK YOU.

21 THE COURT: RE-CROSS?

22 MR. KOLB: NOTHING.

23 THE COURT: YOU MAY COME DOWN.

24 (WHEREUPON THE WITNESS LEFT THE STAND).

25 THE COURT: ADDITIONAL WITNESSES?

DR. HAROLD MORGAN - RECROSS BY BABB

1 MR. LITTLEJOHN: THAT WILL BE THE PRESENTATION ON
2 BEHALF OF THE DEFENSE, YOUR HONOR.

3 THE COURT: VERY WELL. CARE TO MAKE A BRIEF
4 ARGUMENT?

5 MR. KOLB: JUDGE, ONE THING. AS THE COURT KNOWS WE
6 YESTERDAY DISCUSSED THIS HEARING, BOTH SIDES -- I TOLD THE
7 COURT I WAS PLANNING TO CALL TWO OFFICERS, THEY INDICATED
8 IT COULD BE DONE IN AN HOUR.

9 AT THAT TIME I TOLD THE COURT THAT DEPENDING
10 UPON ISSUES RAISED I HAVE GOT DOZENS OF OTHER WITNESSES.
11 I HAVE GOT ALL THE SLED AGENTS IN THE ARREST.

12 THE COURT: SOLICITOR, I DON'T NEED TO HEAR ALL OF
13 THE SLED AGENTS, SIR. OKAY.

14 MR. KOLB: ALL RIGHT, SIR. I JUST WANTED THE COURT TO
15 KNOW.

16 THE COURT: THANK YOU.

17 MR. KOLB: IF THERE IS A QUESTION ABOUT THE BEATING
18 DURING THE ARREST, I SURE WANT TO CLARIFY THAT WITH THE
19 COURT.

20 THE COURT: THANK YOU, SIR. BE HAPPY TO HEAR FROM
21 YOU.

22 MR. BABB: COURT'S INDULGENCE FOR JUST A MINUTE.

23 (WHEREUPON THERE WAS A PAUSE).

24 MR. BABB: YOUR HONOR, MAY WE APPROACH?

25 THE COURT: MR. SOLICITOR?

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(WHEREUPON A BENCH CONFERENCE WAS HELD).

THE COURT: DR. MORGAN, I ASK THAT YOU REMAIN WITH US FOR A FEW MOMENTS, PLEASE, SIR, IF YOU CAN. THANK YOU, SIR. BE HAPPY TO HEAR FROM YOU.

MR. LITTLEJOHN: THANK YOU, YOUR HONOR. YOUR HONOR, OF COURSE BEFORE THE COURT ARE THE VARIOUS STATES EXHIBITS INVOLVING THE...

THE COURT: LET ME HAVE THEM, PLEASE.

MR. LITTLEJOHN: BEFORE THE COURT ARE THE STATES 1, 2 AND 3 WHICH CONCERN THE -- OBVIOUSLY THE STATEMENT WHICH WAS GIVEN BY MY CLIENT ON FEBRUARY 27TH, 1996.

YOUR HONOR, WHILE ON PAPER IT APPEARS THAT MR. STONE ACKNOWLEDGED HIS MIRANDA WARNINGS, AGREED TO PROCEED AND GIVE A STATEMENT, IT'S OBVIOUS FROM THE TESTIMONY THAT WAS ADDUCED THIS MORNING THAT THERE WERE CIRCUMSTANCES THAT OBVIOUSLY CAME TO BARE UPON THE VOLUNTARINESS OF THAT STATEMENT.

AS THE COURT HEARD, MR. STONE HAD BEEN INJURED DURING THE COURSE OF THE ARREST. THERE IS A DISPUTE AS TO HOW HE BECAME INJURED, BUT OBVIOUSLY THERE IS NO QUESTION HE WAS INJURED.

HE WAS OBVIOUSLY AGITATED. HE TOLD CAPTAIN GALLIMORE APPARENTLY FROM HIS NOTES THAT HE HAD HAD SOME TWELVE BEERS THAT DAY. I THINK THERE WAS ALSO MENTION FROM LIEUTENANT HEROD THAT DURING THE COURSE OF THE STATEMENT

1 MR. STONE ADMITED SMOKING SOME MARIJUANA.

2 YOUR HONOR, IT WAS OBVIOUS THAT -- AND
3 UNDERSTANDABLE -- THAT TENSIONS WERE RUNNING HIGH THAT
4 NIGHT, THAT MR. STONE WAS PLACED INTO A ROOM THERE AT THE
5 INVESTIGATIVE DIVISION, HAND CUFFED BEHIND HIS BACK.
6 THERE WERE NUMEROUS OFFICERS IN THERE.

7 HE HAD NO ONE TO TALK TO -- NO ONE TO COUNSEL
8 HIM. AND I THINK GIVEN THE TOTALITY OF THE CIRCUMSTANCES,
9 THERE IS A REAL QUESTION AS TO WHETHER HE VOLUNTARILY
10 WAIVED HIS RIGHTS TO GIVE A STATEMENT WITHOUT COUNSEL
11 BEING PRESENT.

12 AND I UNDERSTAND WHAT'S ON PAPER AND I -- THERE
13 IS OBVIOUSLY NO WAY TO DISPUTE THOSE DOCUMENTS, BUT I
14 THINK GIVEN ALL OF THE CIRCUMSTANCES, THAT THERE IS A
15 SEVERE AND SERIOUS QUESTION AS TO WHETHER THIS STATEMENT
16 WAS VOLUNTARILY GIVEN.

17 THE COURT: ALL RIGHT, SIR. ANYTHING FROM THE STATE
18 IN RESPONSE?

19 MR. KOLB: YOUR HONOR, JUST THAT WE DIDN'T GO -- HAVE
20 THE ENTIRE STATEMENT READ OUT LOUD FOR THE COURT, BUT I
21 ASSUME THE COURT HAD READ OVER IT.

22 AND WE TALKED ABOUT SINCE EARLY THE FOLLOWING
23 MORNING, HE SMOKED -- HE CLAIMS TO HAVE SMOKED ONE JOINT
24 MONDAY MORNING ABOUT TEN O'CLOCK, TOOK NO PRESCRIPTION
25 MEDICINES, NO OTHER DRUGS, AND THAT HE SPLIT A TWELVE PACK

1 OF BEER WITH ANOTHER INDIVIDUAL.

2 AND HE NORMALLY DRINKS A CASE OF BEER A DAY.
3 AND THIS WAS MUCH LATER. ALTHOUGH THERE WAS A SLIGHT
4 SMELL OF ALCOHOL ON HIS BREATH, BOTH OF THE OFFICERS THAT
5 TOOK THE STATEMENT TESTIFIED THAT HE DID NOT APPEAR TO BE
6 UNDER THE INFLUENCE TO THEM. APPEARED TO IN FACT BE VERY
7 MUCH ALERT.

8 JUDGE, I THINK THESE TWO OFFICERS HANDLED THE
9 MATTER VERY PROFESSIONALLY UNDER THE CIRCUMSTANCES AND THE
10 EVIDENCE SHOWS THE STATEMENT WAS VOLUNTARILY GIVEN.

11 THE COURT: THANK YOU, SIR. FIRST OF ALL THE ISSUE
12 BEFORE THE COURT DEALS SOLELY WITH THE VOLUNTARINESS OF
13 THE CONFESSION.

14 THE EVIDENCE BEFORE THE COURT INDICATES FIRST
15 THAT WHICH IS PRESENTED BY THE DEFENDANT AS TO THE ONE
16 ISSUE -- WHICH HAS BEEN RAISED REPEATEDLY THROUGH THIS
17 PROCESS -- CONCERNING THE BRUISING ON THE DEFENDANT WHICH
18 ARE IN SOME WAY REFLECTED FROM THE DEFENDANT'S EXHIBITS 1
19 THROUGH 4.

20 THE TESTIMONY BEFORE THE COURT IS THAT THERE IS
21 A POSSIBLE -- THE DOCTOR DID NOT -- THE DOCTOR'S TESTIMONY
22 DID NOT RISE TO THE LEVEL GENERALLY REQUIRED RECOGNIZED IN
23 THIS STATE AS BEING TO A REASONABLE DEGREE OF MEDICAL
24 CERTAINTY THAT THESE BRUISES WERE CAUSED BY OR WERE THE
25 RESULT OF A BEATING.

1 HE SAID YES IT WOULD BE CONSISTENT WITH A
2 BEATING, IT WOULD ALSO BE CONSISTENT WITH INJURIES WHICH
3 COULD HAVE BEEN SUSTAINED BY RUNNING THROUGH THE WOODS AND
4 FALLING.

5 CERTAINLY THE LEVEL OF THE BURDEN OF THE
6 REQUIRED PROOF AT THIS POINT IS BY A PREPONDERANCE OF THE
7 EVIDENCE.

8 I FIND FURTHER THAT THAT REALLY IN THIS
9 PARTICULAR CASE DOES NOT HAVE ANY SIGNIFICANCE INSOFAR AS
10 CAUSING THE COURT TO FEEL THAT IT EFFECTED THE
11 VOLUNTARINESS OF THE STATEMENT.

12 THE DEFENDANT BY THE NOTES WHICH ARE PRESENT AND
13 BY THE TESTIMONY WAS IN CUSTODY APPROXIMATELY 11:30. THE
14 STATEMENT GIVEN WAS AT 4:10 A.M. THE NEXT MORNING. THAT'S
15 SOME FIVE HOURS FOLLOWING ANY ALLEGED ALTERCATION OR
16 BEATING -- ASSUMING THAT -- AND THERE IS NO PROOF THAT IT
17 OCCURRED AFTER HE WAS IN CUSTODY.

18 THE TESTIMONY HERE BEFORE THE COURT TODAY AS
19 PERTAINS TO THIS PROCEEDING IS THAT WHEN HE ARRIVED HE WAS
20 IN THE PRESENCE OF AN INDIVIDUAL -- THAT IS MR. WINGATE --
21 WHO OBSERVED HIM FOR ONE AND A HALF HOURS, AT WHICH TIME
22 HE OBSERVED NO ONE THREATENING HIM, HE OBSERVED NOTHING
23 OUT OF THE ORDINARY. HE WAS KEPT IN A ROOM.

24 YES, HE WAS HANDCUFFED. NO QUESTION ABOUT THAT
25 THROUGHOUT THE PROCESS. FURTHERMORE, THAT THE TESTIMONY OF

1 THE LIEUTENANT HEROD AND CAPTAIN GALLIMORE WERE TO THE
2 EFFECT THAT NONE OF THEM THREATENED HIM, STRUCK HIM, BEAT
3 HIM, DID ANYTHING OF OUT OF THE ORDINARY TO HIM.

4 AND WHEN I SAY ORDINARY, WHAT IS TYPICALLY DONE
5 WITH INVESTIGATIONS AND DISCUSSIONS AND OBTAINING A
6 STATEMENT, CLEARLY THERE IS NO EVIDENCE OF ANY SUCH
7 BEATING OR ANY THREAT, ASSUMING SUCH BEATING DID OCCUR,
8 THAT IT WOULD CONTINUE THEREBY PLACING HIM IN SOME THREAT
9 OR FEAR IF HE DIDN'T GIVE A STATEMENT SOME BEATING
10 SUBSEQUENTLY WOULD IMMEDIATELY FOLLOW -- IF IN FACT A
11 BEATING OCCURRED -- AND THE COURT HAS NOT MADE ANY
12 SPECIFIC FINDING OR DETERMINATION AS TO WHETHER OR NOT A
13 BEATING DID OCCUR.

14 WITH RESPECT TO THE VOLUNTARINESS OF IT -- OF
15 THE STATEMENT -- CLEARLY THE STATEMENT -- CLEARLY STATE'S
16 EXHIBIT NUMBER 1, THE DEFENDANT WAS ADVISED OF HIS MIRANDA
17 WARNINGS OF HIS FIFTH -- WAS ADVISED OF HIS FIFTH AND
18 SIXTH AMENDMENT, FIFTH AND SIXTH CONSTITUTIONAL AMENDMENT
19 CONSTITUTIONAL RIGHTS AND CLEARLY UNDERSTOOD THE
20 FOLLOWING.

21 THAT HE HAD THE RIGHT TO REMAIN SILENT, THAT IF
22 HE STATED OR DECIDED TO GIVE UP THAT RIGHT, ANYTHING HE
23 SAID WOULD BE USED AGAINST HIM. HE WAS CLEARLY ADVISED
24 THAT HE HAD THE RIGHT TO HAVE AN ATTORNEY.

25 THAT IF HE COULD NOT AFFORD ONE ONE WOULD BE

1 APPOINTED FOR HIM. HE CLEARLY WAS ADVISED THAT IF HE
2 WANTED TO ASK QUESTIONS, THAT HE ASK THE QUESTIONS, HE
3 COULD AND THEN HE COULD LIKEWISE STOP.

4 HE INDICATED HIS UNDERSTANDING OF THAT AS HE
5 SIGNED THE FORM. AND CLEARLY THE TESTIMONY IS THAT EACH
6 OF THE OFFICERS WERE CONVINCED IN THEIR OPINION HE FULLY
7 UNDERSTOOD THOSE RIGHTS.

8 THERE IS NOTHING TO SUGGEST THAT AT ANY TIME HE
9 DECIDED TO STOP. THERE IS NOTHING TO SUGGEST AT ANY TIME
10 -- I THINK A QUESTION WAS ASKED WAS HE ALLOWED TO CONSULT
11 WITH ANYONE. THERE IS NO INDICATION AT ANY TIME DID HE
12 REQUEST THAT.

13 I ALSO NOTE THAT FURTHERMORE ACCORDING TO
14 CAPTAIN GALLIMORE'S TESTIMONY THAT HE DREW THE DIAGRAM IN
15 BLACK, INDICATED THAT HE HAD PROVIDED THE DEFENDANT A RED
16 PEN.

17 I NOTICED THAT STATE'S EXHIBIT 2 HAS A RED PEN
18 WITH WAIVERED LINES RUNNING ACROSS THE PAGE AND CLEARLY
19 THE -- BEING BLOCKED IN RED AS WELL -- FURTHER INDICATING
20 THE DEFENDANT'S WILLINGNESS TO MAKE A STATEMENT AND
21 COOPERATING WITH THE -- WITH THE INVESTIGATION.

22 THE STATEMENT, STATE'S EXHIBIT 3, CLEARLY
23 CONTAINS THE INITIALS OF THE DEFENDANT, THE SIGNATURE OF
24 THE DEFENDANT. THE INITIALS ARE REFLECTED ON THE
25 QUESTIONS AND THE ANSWERS THROUGHOUT.

1 CLEAR FROM THE TESTIMONY OF LIEUTENANT HEROD TWO
2 QUESTIONS WERE APPARENTLY WRITTEN, THAT THEN THEY WERE
3 READ TO HIM ONE BY ONE AT WHICH TIME THE INITIALS WERE
4 THEN AFFIXED TO THE -- TO STATE'S EXHIBIT 3.

5 THE COURT WOULD FIND THAT THAT IS AN INDICATION
6 FIRST THE STATEMENT BEING TAKEN, WRITTEN OUT, GIVING THIS
7 DEFENDANT AN OPPORTUNITY TO DO TWO THINGS, NUMBER ONE TO
8 CHANGE IT, BUT NUMBER TWO TO STATE HE DOESN'T WISH NOT TO
9 DISCUSS THE MATTER.

10 TWO OPPORTUNITIES. WHICH TIME HE AGAIN CONFIRMED
11 IT ACCORDING TO THE RECORD AND BY THE PREPONDERANCE OF
12 THE EVIDENCE ON EACH OCCASION BY SIGNING IT.

13 FOR THOSE REASONS THE COURT DOES FIND BY A
14 PREPONDERANCE OF THE EVIDENCE THAT THE STATEMENT WAS
15 VOLUNTARILY MADE, THAT THERE IS NO EVIDENCE THAT THE
16 STATEMENT WAS COERCED, THAT THERE WAS ANY THREAT, THAT
17 THERE WAS ANY PROMISE OF REWARD GIVEN TO THE DEFENDANT TO
18 ENCOURAGE HIM TO MAKE THAT STATEMENT.

19 AND THAT AT ALL TIMES THROUGHOUT HE FULLY
20 UNDERSTOOD HIS RIGHTS AND CHOSE TO DO SO. AND I WISH TO
21 RESPOND ALSO WITH RESPECT TO THE ISSUE AND ALLEGATIONS
22 CONCERNING HIS STATE OF SOBRIETY OR DEGREE OF BEING UNDER
23 THE INFLUENCE.

24 CLEARLY THERE IS TESTIMONY THAT HE -- SOME
25 QUESTION AS TO WHETHER HE CONSUMED A LITTLE OR TWELVE

1 BEERS.

2 AND BY THE PREPONDERANCE OF THE EVIDENCE IN THIS
3 STATE, CLEARLY THAT THE TESTIMONY THAT HE TYPICALLY --
4 THAT IT WAS HIS PRACTICE TO CONSUME TWELVE TO A CASE OF
5 BEER WOULD INDICATE TO THE COURT AND SUPPORT THE FINDINGS
6 OF THE OFFICERS THAT HE DID NOT APPEAR TO BE UNDER THE
7 INFLUENCE -- ASSUMING THAT HE IN FACT DID CONSUME THE
8 TWELVE BEERS.

9 FOR THOSE REASONS I DO NOT FIND THAT -- THAT BY
10 THE PREPONDERANCE OF THE EVIDENCE REFLECTS THAT HE DID NOT
11 UNDERSTAND WHAT WAS OCCURRING AND IT EFFECTED HIS ABILITY
12 TO MAKE ANY JUDGMENT WITH REGARD TO GIVING A STATEMENT.

13 FOR THOSE REASONS I DO CONCLUDE THAT THE
14 STATEMENT WAS VOLUNTARILY AS PROVIDED BY THIS -- THE SOLE
15 PURPOSE OF THIS HEARING AND WILL ALLOW IT TO BE SUBMITTED
16 TO THE JURY FOR THEIR CONSIDERATION AND DETERMINATION AS
17 TO WHETHER OR NOT IT WAS VOLUNTARY BEYOND A REASONABLE
18 DOUBT.

19 OKAY. THANK YOU. WE WILL BE AT RECESS AT THIS
20 POINT FOR ABOUT FIVE MINUTES. YES?

21 MR. BABB: WE TALKED ABOUT SOMETHING WE WANTED TO PUT
22 ON THE RECORD. YOU SAID TO WAIT. WANT TO DO THAT BEFORE
23 OR AFTER THE RECESS?

24 THE COURT: WITH RESPECT TO...

25 MR. BABB: DR. MORGAN.

1 THE COURT: DR. MORGAN -- EXCUSE ME. LETS DO THAT
2 BEFORE WE RECESS. WANT TO MAKE A STATEMENT?

3 MR. BABB: YOUR HONOR, AS THE COURT IS AWARE, WE HAD
4 DR. MORGAN ALSO EVALUATE HIM, THE DEFENDANT MR. STONE, AND
5 WE FEEL THAT THERE IS NO QUESTION BUT THAT HE IS
6 COMPETENT.

7 THE COURT: ALL RIGHT.

8 MR. BABB: TO STAND TRIAL. WANTED THE RECORD TO
9 REFLECT THAT.

10 THE COURT: ALL RIGHT. LET ME ASK YOU THIS: YOU DID
11 THAT NOT FOR ANYTHING THAT YOU HAD OBSERVED THROUGHOUT
12 YOUR INVOLVEMENT WITH MR. STONE, BUT MERELY TO CONFIRM
13 YOUR OBSERVATIONS THAT HE WAS COMPETENT?

14 MR. BABB: THAT IS CORRECT, SIR. GIVEN THE NATURE OF
15 THIS CASE WE FELT THAT THAT WOULD BE IN THE BEST INTEREST
16 OF ALL CONCERNED.

17 THE COURT: ALL RIGHT.

18 MR. BABB: WITH NO QUESTION.

19 THE COURT: DR. MORGAN, YOU ARE PRESENT. DO YOU FEEL
20 THAT YOU NEED TO COME FORWARD AND RESPOND TO THAT
21 STATEMENT IN ANY WAY, THAT THE DEFENDANT BASICALLY AS MR.
22 BABB INDICATED -- THAT THERE IS NO QUESTION THAT THIS
23 DEFENDANT IS COMPETENT.

24 DR. MORGAN: WHEN I EXAMINED HIM LAST WEEK THAT WAS
25 CLEARLY MY IMPRESSION. QUITE AWARE OF EVERYTHING

1 THE COURT: NOT AN ISSUE THEN AT THIS POINT. IS THAT
2 CORRECT, MR. BABB?

3 MR. BABB: THAT IS CORRECT.

4 THE COURT: VERY WELL. THANK YOU. THE RECORD IS
5 COMPLETE AS TO THE COMPETENCY OF THE DEFENDANT.

6 (WHEREUPON A BRIEF RECESS WAS TAKEN).

7 THE COURT: ANYTHING FROM THE STATE BEFORE WE BRING IN
8 THE JURY?

9 MR. KOLB: NO, SIR.

10 THE COURT: ANYTHING FROM THE DEFENDANT?

11 MR. LITTLEJOHN: YOUR HONOR, WE HAVE SEVERAL MATTERS
12 I THINK WE NEED TO BRING TO THE COURT'S ATTENTION BEFORE
13 WE BEGIN. FIRST THING IS WE WOULD MOVE UNDER RULE 615 TO
14 HAVE THE WITNESSES IN THIS CASE SEQUESTERED.

15 THE COURT: OKAY.

16 MR. LITTLEJOHN: WE ASK PERMISSION OF THE COURT TO
17 ALLOW US TO HAVE THE APPOINTED INVESTIGATOR HERE TO ASSIST
18 US DURING THE FIRST PHASE OF THE TRIAL. AND IF WE GET TO
19 THE SECOND PHASE, WE HAVE ANOTHER INVESTIGATOR. WE'D LIKE
20 TO ASK THAT HE BE ALLOWED TO STAY.

21 THE COURT: I'LL ALLOW YOU THE INVESTIGATOR AND I
22 WILL AFFORD THE STATE THE SAME. YOU MAY CHOOSE WHICH ONE
23 YOU WANT IN THIS PHASE WITH YOU AND THE SECOND PHASE AS
24 WELL. OTHERWISE I WOULD LIKE THE WITNESSES SEQUESTERED,
25 PLEASE.

1 MR. KOLB: JUDGE, WHAT ABOUT -- WE GOT A NUMBER --
2 DOES THAT EXTEND TO EVERYONE? I'VE GOT A NUMBER OF THE
3 VICTIM'S FAMILY MEMBERS.

4 THE COURT: IF YOU DON'T INTEND TO CALL THESE
5 PERSONS, NOT GOING TO SEQUESTER THEM SINCE THE ISSUES ARE
6 SEPARATE. THE PERSONS THAT ARE GOING TO TESTIFY -- IS YOUR
7 MOTION TO BOTH PHASES OF SEQUESTRATION OR ONLY THE PHASE
8 THAT WE ARE DEALING WITH BECAUSE WE DON'T KNOW IF WE ARE
9 GOING TO GET TO THE SECOND PHASE.

10 MR. LITTLEJOHN: ASK THE WITNESSES BE SEQUESTERED AS
11 TO TWO PHASES OF THE TRIAL. SO THE WITNESSES IN THE SECOND
12 PHASE COULD BE HERE DURING THE FIRST PHASE AND VICE VERSA.

13 THE COURT: I'M GOING TO SEQUESTER ANY WITNESS THAT
14 YOU INTEND TO CALL IN THIS FIRST PHASE. THEY MUST BE
15 SEQUESTERED. IF THERE ARE WITNESSES HERE THAT MAY TESTIFY
16 IN THE SECOND PHASE IF WE GET TO THAT POINT THEY MAY
17 REMAIN IN THE COURT; ALL RIGHT?

18 MR. KOLB: JUDGE, ONE OTHER THING THAT I KNOW AS FAR
19 AS SECURITY IN THE COURTROOM, I BELIEVE -- I'M SURE
20 THERE'S SOME OTHER PEOPLE HERE, BUT I BELIEVE THE
21 SHERIFF'S DEPARTMENT'S INTENT WAS -- I NOTICE MR. MORRIS
22 AND MR. ALSBROOKS SITTING OVER THERE.

23 AND THEY ARE POTENTIAL WITNESSES IN THE GUILT
24 PHASE, BUT I THINK THEY ARE ALSO HERE AS FAR AS SECURITY
25 IS CONCERNED. NO? ALL RIGHT. SORRY.

1 THE COURT: OKAY. SO ANYBODY THAT'S GOING TO BE A
2 WITNESS, THEY NEED TO BE PLACED IN ANOTHER ROOM, ANOTHER
3 LOCATION.

4 MR. KOLB: I CAN KEEP ONE CHIEF INVESTIGATOR, HAVE
5 INVESTIGATOR...

6 THE COURT: ABSOLUTELY. YOU CHOOSE. OKAY?
7 ANYTHING---.

8 MR. KOLB: YOUR HONOR, DO YOU HAVE A PROBLEM WITH THE
9 EVIDENCE CUSTODIAN STAYING? REALLY BE HELPFUL FOR ME TO
10 BE IN HERE.

11 THE COURT: ANY OBJECTION TO THE EVIDENCE CUSTODIAN
12 BEING IN?

13 MR. LITTLEJOHN: SEEING HOW HE'S IN RAID, NO, YOUR
14 HONOR.

15 THE COURT: THE EVIDENCE CUSTODIAN STAYS. BUT MR.
16 SOLICITOR YOU STATED YOUR FIRST WITNESS -- AND I WILL GIVE
17 YOU TIME. YOU REALLY NEED TO BE OUT DURING THE OPENING
18 STATEMENTS. ALL RIGHT, SIR. OKAY.

19 MR. KOLB: ALL WITNESS HERE EXCEPT FAMILY MEMBERS
20 THAT ARE ONLY GOING TO TESTIFY IN THE PENALTY PHASE, IF WE
21 GET TO THAT, WE NEED TO GO DOWN STAIRS, MRS. PRIS WILL
22 TAKE YOU TO 211. YA'LL NEED TO GO.

23 (WHEREUPON THERE WAS A PAUSE).

24 THE COURT: ALL RIGHT.. ANYTHING ELSE?

25 MR. LITTLEJOHN: ONE OTHER ASPECT. THE JACKSON V

1 DENO HEARING WE DIDN'T GET TO WAS THE QUESTION OF THE
2 RECEIPT OF THE STATEMENT.

3 THE COURT: WELL, THAT WOULDN'T BE IN -- WE WERE
4 TALKING IN THERE. THAT REALLY WOULDN'T BE -- AFTER
5 TALKING WITH YOU, I REALIZE I WAS A BIT PREMATURE IN
6 ASKING THE QUESTION BECAUSE JACKSON V DENO HEARING REALLY
7 DEALS WITH THE VOLUNTARINESS OF THE STATEMENT ALONE, IT
8 DOES NOT GO TO ANY OTHER REASONS THAT MAY BE THERE FOR THE
9 INTRODUCTION OF THE STATEMENT SHOULD IT BE OFFERED FOR
10 PURPOSES OF BEING AN EXHIBIT IN THE TRIAL.

11 I ASSUME THAT'S THE RECEIPT YOU ARE TALKING
12 ABOUT AS REQUIRED BY THE STATUTE?

13 MR. LITTLEJOHN: YES, YOUR HONOR. WE CAN TAKE IT UP
14 AT THAT TIME.

15 THE COURT: I THINK AT THIS POINT ANYTHING THAT I
16 RULE ON WOULD HAVE TO BE IN LIMINE, SO IT REALLY -- I
17 MEAN, I WILL BE HAPPY TO DISCUSS WITH YOU, BUT I DON'T
18 KNOW THE QUESTION -- NEED TO WAIT ON THE JURY TO DO THAT
19 BECAUSE IT'S NOT BINDING ON THE COURT.

20 MR. LITTLEJOHN: YOUR HONOR, THE NEXT THING WE HAVE
21 AND I DON'T KNOW EXACTLY WHAT POINT THE COURT WOULD WANT
22 TO HEAR THIS -- BUT SEEING HOW WE ARE ABOUT TO ENTER INTO
23 OPENING STATEMENTS, WE WOULD LIKE TO MAKE A MOTION IN
24 LIMINE PURSUANT TO RULES OF EVIDENCE NUMBER 403 TO EXCLUDE
25 ANY MENTION CONCERNING THE THEFT OF THE SAMMY THORRELL

1 TRUCK AND THE DISPOSITION OF THE WEAPONS PRIOR TO FEBRUARY
2 26TH, 1996.

3 THE COURT: INTEND TO MENTION THAT IN OPENING
4 STATEMENTS?

5 MR. KOLB: NO, SIR. THAT IS THE FIRST PORTION OF OUR
6 PROOF. WHAT HAPPENED JUDGE, THE TWO WEAPONS AT THE CRIME
7 SCENE -- OR THE DEFENDANT CLAIMS HE BOUGHT THEM FROM
8 SOMEBODY IN HIS STATEMENT.

9 AND WE WOULD SHOW -- PURPOSE OF IT BE SHOWING AS
10 FAR AS HIS CREDIBILITY IN THE STATEMENT, THAT'S NOT TRUE.
11 THE PROOF WOULD BE THAT ON FEBRUARY THE 10TH MR. FERRELL'S
12 TRUCK AND A NUMBER OF GUNS THAT WERE IN IT WERE STOLEN AND
13 THAT THE NEXT TIME HE SAW THOSE GUNS WAS WHEN HE (SIC) WAS
14 RECOVERED FROM LAW ENFORCEMENT.

15 AND THAT WOULD BE THE PROOF -- HE CAN'T SAY WHO
16 STOLE HIS TRUCK, JUST TO SHOW THAT THE GUNS HAD BEEN
17 STOLEN.

18 THE COURT: LET ME ASK YOU A QUESTION. THE GUN IN
19 QUESTION -- ASSUME THERE IS A GUN THAT WILL BE INTRODUCED
20 AND THERE WILL BE SOME TESTIMONY -- WITH REGARDING A GUN .

21 MR. KOLB: YES, SIR.

22 THE COURT: THERE IS NO QUESTION. AS I UNDERSTAND,
23 HE WAS FOUND IN POSSESSION OF A FIREARM. IS THAT CORRECT?

24 MR. KOLB: YES, SIR.

25 THE COURT: BE TESTIMONY TO THAT AFFECT. AT THIS

1 STAGE -- AND OF COURSE I'M NOT GOING TO -- THIS INDICATION
2 IS NOT BY ANY STRETCH SAYING YOU CAN NEVER INTRODUCE IT IN
3 THIS PROCEEDING BECAUSE I DON'T KNOW WHAT IS GOING TO
4 HAPPEN.

5 BUT AT THIS STAGE I WOULD SUSTAIN ANY OBJECTION
6 AT -- BECAUSE THE RELEVANCE AT THIS POINT WHICH DOES NOT
7 APPEAR TO THE COURT ON IT'S FACE -- BECAUSE THE ISSUE OF
8 HOW HE ACQUIRED IT IS REALLY NOT GOING TO BE DETERMINEED
9 IN THIS CASE.

10 AND I BELIEVE THAT WHILE IT MAY HAVE SOME
11 PROBATIVE VALUE, THE PREJUDICIAL IMPACT TO THE DEFENDANT
12 FAR OUT EXCEEDS THE PROBATIVE VALUE BECAUSE THERE IS NO
13 QUESTION THE GUN ITSELF WAS IMPORTANT.

14 NO QUESTION. AND I GUESS THE TESTS -- I ASSUME
15 THERE WAS SOME TESTS RUN ON THAT AND ALL OF THAT IS
16 RELEVANT, IT DOESN'T HAVE ANYTHING TO DO -- IT DOESN'T
17 MAKE, ASSIST THE TRIERS OF FACT IN ANY WAY TO FIND THAT IT
18 WAS STOLEN FROM SOMEONE.

19 SO I WILL EXCLUDE IT. HOWEVER ON THE ISSUE OF
20 CREDIBILITY THAT'S A DIFFERENT STORY.

21 MR. KOLB: WELL JUDGE, THAT'S THE MAIN ISSUE.

22 THE COURT: WELL, THERE IS NO ISSUE OF CREDIBILITY AT
23 THIS POINT, MR. SOLICITOR. ALL YOU ARE DOING IS PROVING
24 YOUR CASE. AND AT THIS POINT CREDIBILITY OF YOUR OFFICERS
25 IS NOT BEING CHALLENGED.

1 IF THERE IS SOME QUESTION ABOUT HE NEVER HAD THE
2 GUN, THAT HE -- THERE IS AN ISSUE THAT THAT WASN'T THE GUN
3 THAT IT -- AND HE NEVER HAD IT, THAT'S A DIFFERENT STORY.

4 BUT RIGHT NOW, I DON'T HAVE IT. SO I'M JUST
5 TELLING YOU AT THIS POINT I AM NOT GOING TO ALLOW IT IF
6 THAT'S HOW YOU INTEND TO INTRODUCE IT.

7 MR. KOLB: JUDGE, LET ME THINK FOR JUST A MOMENT.
8 JUDGE WHAT THAT'S GOING TO DO -- OF COURSE, I HAVE ABOUT
9 -- THE FIRST FIVE WITNESSES DEALT WITH THAT. AND SO THIS
10 MEANS AS FAR AS SCHEDULING, SOON AS WE FINISH WITH OPENING
11 STATEMENTS, I'M GOING TO HAVE TO RE-GROUP ON THIS.

12 THE COURT: WELL, I CAN'T IMAGINE HOW YOU ARE GOING
13 TO HAVE TO ASSUME, SIR. YOU GOT YOUR NUMBER SIX WITNESS --
14 ASSUMING ALL FIVE ARE NECESSARY -- IN THE HOLE READY TO GO
15 AND YOU TALKED WITH HIM, SO IT WON'T BE A MATTER OF BUT
16 JUST CALLING THAT WITNESS; WILL IT?

17 MR. KOLB: MY POINT IS I THOUGHT I HAD---.

18 THE COURT: YOU GOT SOME ASSISTANTS THERE. THEY DON'T
19 NEED TO ASSIST YOU WITH OPENING STATEMENTS. THEY CAN GO
20 AHEAD AND BE DOING THAT, SIR. OKAY? THANK YOU, SIR.
21 ANYTHING ELSE?

22 MR. LITTLEJOHN: ONE SHORT MATTER. JUST SO IT DOESN'T
23 COME OUT IN OPENING STATEMENT. YOUR HONOR, THE DEFENSE
24 WOULD STIPULATE AS TO COUNT ONE OF THE INDICTMENT THAT THE
25 -- ONE OF THE ELEMENTS CHARGED IS THAT THE DEFENDANT HAD

1 PREVIOUS CONVICTIONS SUCH AS IF HE COMMITTED THIS
2 BURGLARY, IT WOULD BE A FIRST DEGREE IN THE ABSENCE OF ANY
3 OTHER FACTS.

4 WE WOULD STIPULATE THAT HE DOES HAVE THOSE PRIOR
5 CONVICTIONS AND ASK THE COURT TO INSTRUCT THE STATE NOT TO
6 BRING THAT...

7 THE COURT: VERY WELL. THE JURISDICTION OF THE COURT
8 -- JURISDICTION OF THE CHARGE IS STIPULATED. THE
9 INSTRUCTIONS TO THE JURY AND DEFINING FIRST BURGLARY IN
10 THE FIRST DEGREE IS LIKewise STIPULATED.

11 IN OTHER WORDS, WHAT YOU ARE DEALING WITH NOW IS
12 SOLELY THE PROOF OF WHETHER OR NOT THE OTHER ELEMENTS
13 REQUIRE REASONABLE DOUBT ESTABLISHED BY -- BEYOND A
14 REASONABLE DOUBT; IS THAT RIGHT?

15 MR. LITTLEJOHN: THAT'S CORRECT, SIR.

16 THE COURT: VERY WELL. SO THERE WON'T BE ANY NEED TO
17 DISCUSS THE SUPPORT FOR THE CHARGE OF BURGLARY IN THE
18 FIRST DEGREE BEING RELATED TO PRIOR OFFENSES. ANYTHING
19 ELSE?

20 MR. KOLB: JUDGE, JUST A MINUTE. I'M WRITING A LIST
21 OF WITNESSES.

22 THE COURT: OKAY.

23 (WHEREUPON THERE WAS A PAUSE).

24 THE COURT: ALL RIGHT. ANYTHING ELSE, MR. SOLICITOR?

25 MR. KOLB: THE ONLY THING IS I JUST WANT TO

1 UNDERSTAND IS THAT IN THE DEFENDANT'S STATEMENT HE SAYS
2 WHERE HE GOT THE GUN FROM. AND THAT WAS WHAT I WAS
3 CONCERNED WITH.

4 THE COURT: SOLICITOR...

5 MR. KOLB: SAYING NOT AT THIS TIME---.

6 THE COURT: AGAIN, I AM TALKING ABOUT THIS TIME. I AM
7 TALKING ABOUT YOUR FIRST WITNESSES. I DON'T KNOW HOW THIS
8 EVIDENCE IS GOING FORWARD.

9 THAT'S THE NICE THING ABOUT IN LIMINE. IT GIVES
10 BOTH SIDES AN INDICATION OF MY -- AND I STATED IT FOR YOU
11 -- THE BASIS THAT I WOULD EXCLUDE IT.

12 MR. KOLB: YES, SIR.

13 THE COURT: IF THERE ARE OTHER REASONS AS THE TRIAL
14 UNFOLDS -- AND MANY TIMES THERE ARE -- CERTAINLY I AM NOT
15 RULING ON THOSE BECAUSE I HAVEN'T HEARD THEM YET AND I
16 CAN'T ANTICIPATE THEM.

17 MR. KOLB: JUST WANT TO EXPLAIN TO THE COURT THE
18 DEFENSE MADE SPECIFIC INQUIRIES. WANTED TO FIND OUT WHAT
19 WAS RECOVERED, WHO FROM.

20 THE COURT: SO WHAT---.

21 MR. KOLB: ABOUT THE TRUCK. WE RECOVERED THE GUNS
22 AND NEVER IN ANY WAY ADVISED ME THAT THEY WERE GOING TO
23 OBJECT TO THAT UNTIL JUST THIS MOMENT, AND IT KIND OF
24 THROWS ME OFF AS FAR AS MY PRESENTATION OF EVIDENCE.

25 THE COURT: MR. SOLICITOR, LET ME ASK YOU A QUESTION.

1 HOW LONG HAVE YOU BEEN A TRIAL LAWYER?

2 MR. KOLB: A LONG TIME, SIR.

3 THE COURT: I THOUGHT SO. ABOUT AS LONG AS I WAS AND
4 LONGER MAYBE. WE KNOW -- AND ONE OF THE THINGS THAT YOU
5 TEACH -- I WORK WITH MOCK TRIAL KIDS -- IS YOU GOT ONE
6 THING ABOUT BEING A TRIAL LAWYER IS YOU LEARN HOW TO MAKE
7 ADJUSTMENTS.

8 AND YOU HAVE BEEN DOING IT FOR A NUMBER OF
9 YEARS. I'M SURE IT'S NOT GOING TO THROW YOU FOR A LOOP,
10 SIR.

11 IF YOU NEED A COUPLE OF MINUTES TO GET THIS
12 PERSON, PLEASE FEEL FREE TO ASK ME FOR IT. BUT I DON'T
13 NEED TO HEAR ALL ABOUT THEM. NOT TELLING YOU THAT, SIR.
14 THANK YOU. ANYTHING ELSE? ANYTHING ELSE?

15 MR. KOLB: NO, SIR.

16 THE COURT: THANK YOU, SIR. BRING THE JURY IN.

17 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
18 11:08 A.M.)

19 THE COURT: LADIES AND GENTLEMEN, PLEASE BE SEATED.
20 GOOD MORNING. LAST TIME I SAW YOU WE WERE IN GEORGETOWN.
21 HOW DID YOU GET HERE? I HOPE YOU HAD A RESTFUL EVENING. I
22 AM SURE IT WASN'T AS RESTFUL AS PROBABLY YOU'VE SPENT IN
23 THE PAST.

24 I COULD CERTAINLY UNDERSTAND THAT. BUT I AGAIN
25 APPRECIATE YOUR BEING HERE. I KNOW I SPEAK FOR BOTH

1 PARTIES, THE STATE AND MR. STONE AND ALL THOSE CONNECTED
2 THAT THEY APPRECIATE AS WELL YOUR BEING HERE.

3 IN JUST A MOMENT I'M GOING TO ASK THE CLERK TO
4 ADMINISTER THE OATH TO YOU, BUT BEFORE WE DO LET ME JUST
5 TELL YOU A COUPLE OF THINGS.

6 THE THREE ALTERNATES, THESE WILL BE YOUR CHAIRS.
7 NOW, YOU DON'T HAVE TO TAKE -- YOU DON'T HAVE TO KEEP THE
8 SAME ONE, BUT IF YOU WANT TO THAT'S OKAY AS WELL.

9 THROUGHOUT THE TRIAL THOSE WILL REMAIN YOUR
10 CHAIRS. OKAY? THE REST OF YOU DO NOT HAVE ASSIGNED SEATS.
11 SOME STATES DO ASSIGN A JUROR A SEAT AND IN SOME WAYS I
12 KIND OF WOULD LIKE THAT. THEN I COULD GET A NAME AND A
13 FACE TOGETHER AND HELP THE COURT SOMEWHAT.

14 BUT WE DON'T DO THAT IN THIS STATE AND AS A
15 RESULT YOU ARE FREE TO TAKE ANY SEAT YOU WISH AS WE MOVE
16 IN AND OUT OF THE COURTROOM.

17 NOW, IT'S BEEN MY EXPERIENCE HOWEVER THAT FROM
18 TIME TO TIME JURORS BECOME ACCUSTOMED TO A POSITION AND
19 THEY KIND OF LIKE THAT LOCATION. AND THEY KIND OF -- WHEN
20 THEY COME IN, THEY GRAB THAT SEAT. AND IF YOU WANT TO DO
21 THAT, THAT'S OKAY. THERE IS NOTHING WRONG WITH THAT.

22 JUST WOULD ASK YOU SO THAT FOR INSTANCE IF THIS
23 LADY SEATED HERE IS IN THE SEAT AND SOMEBODY ELSE -- MAKE
24 SURE WE HAVE ARRANGEMENTS TO GET AROUND AND ASSIST THEM IN
25 THAT. BUT OTHER THAN THAT, YOU MAY TAKE ANY SEAT YOU WISH

1 EXCEPT FOR ONE.

2 AND I ASSUME THIS GENTLEMAN -- THIS IS THE CHAIR
3 NORMALLY OCCUPIED BY THE PRESIDING JUROR. IF YOU HAPPEN
4 TO BE OCCUPYING THE PRESIDING JUROR'S CHAIR. THIS DOESN'T
5 MEAN ANYTHING YET.

6 THE STATUTE ALLOWS ME TO APPOINT THE PRESIDING
7 JUROR OR YOU TO SELECT THAT INDIVIDUAL. NOW, FIRST I USED
8 TO APPOINT THEM SOMETIMES AND THEN ALLOW YOU TO SELECT
9 THEM.

10 SINCE ABOUT THE FIRST THREE MONTHS OF DOING THIS
11 FOR THE LAST TWO AND A HALF YEARS I HAVE LET YOU SELECT
12 THEM BECAUSE I -- NUMBER ONE, YOU DON'T HAVE TO DO IT ANY
13 PARTICULAR TIME.

14 NUMBER TWO, I THINK YOU, AFTER YOU GET TO KNOW
15 ONE ANOTHER, CAN BETTER PICK THAT INDIVIDUAL. LET ME
16 ASSURE YOU SOMETHING. DOESN'T CHANGE THE STATUS AT ALL. IT
17 DOESN'T GIVE YOU ANY GREATER POWER OR ANY GREATER
18 RESPONSIBILITY.

19 CERTAINLY WILL NOT INCREASE YOUR PAY. IT WON'T
20 GIVE YOU ANY SPECIAL PRIVILEGES. IT ONLY SAYS THAT YOU
21 ARE THE PERSON THAT WILL BE RESPONSIBLE FOR SIGNING ANY
22 VERDICT FORMS THAT MAY BE HANDED TO YOU.

23 YOU WILL BE RESPONSIBLE FOR ACTUALLY RECEIVING
24 THE EVIDENCE, IF THERE BE ANY EXHIBITS THAT BE INTRODUCED
25 IN THIS TRIAL -- THAT YOU WILL RECEIVE THEM.

1 YOU WILL BE RESPONSIBLE FOR KEEPING THEM WHILE
2 YOU ARE IN THE JURY ROOM AND FOR RETURNING THEM AFTER YOU
3 HAVE COMPLETED YOUR NEED FOR THOSE -- FOR THOSE DOCUMENTS.

4 OTHER THAN THAT AND POSSIBLY JUST MAYBE
5 ORGANIZING THE DELIBERATION, THAT REALLY IS THE EXTENT OF
6 YOUR ROLE. FOR THAT YOU DO GET ONE BENEFIT. YOU GET A
7 CHAIR AND THAT WILL BE YOUR CHAIR THROUGHOUT THE TRIAL
8 ONCE YOU HAVE SELECTED THAT INDIVIDUAL.

9 SO I WOULD ASK YOU SOME TIME, AT SOME POINT
10 DURING THIS PROCEEDING THAT YOU -- AFTER YOU HAD A CHANCE
11 TO TALK AMONG YOURSELVES -- THAT YOU SELECT YOUR PRESIDING
12 JUROR.

13 THE ONLY REQUIREMENT IS IT MUST BE FROM THE
14 TWELVE OF YOU. THE ALTERNATES ARE NOT ABLE TO SERVE AT
15 THIS TIME. SO YOU SELECT THAT INDIVIDUAL. LET ME KNOW.
16 LET THE BAILIFFS KNOW AND I WILL THEN ADVISE THE PARTIES
17 WHO THAT INDIVIDUAL IS AND THAT WILL BE YOUR CHAIR THEN
18 FOR THE BALANCE OF THE TRIAL.

19 OTHER THAN THAT I THINK THAT WILL CONCLUDE THE
20 PRELIMINARY DISCUSSION I HAVE. NOW, I WOULD ASK YOU
21 PLEASE GIVE YOUR ATTENTION TO THE CLERK AND WOULD YOU
22 PLEASE ADMINISTER THE OATH.

23 (WHEREUPON THE JURY WAS SWORN).

24 THE COURT: THANK YOU, SIR. I BET YOU DIDN'T THINK
25 THIS MORNING YOU WOULD EVER USE THOSE WORDS. WELL AND

1 TRULY TRY AND TRUE DELIVERANCE GIVE. INTERESTING WORDS.
2 INCREDIBLY IMPORTANT WORDS.

3 THOSE WORDS REALLY SUM UP WHAT WE HAVE BEEN
4 ABOUT SINCE MONDAY. AND YOU MAY THINK WELL WE HAVEN'T
5 HEARD ANY TESTIMONY YET AND YOU WOULD BE ABSOLUTELY RIGHT.
6 WE HAVEN'T BEEN PLACED UNDER OATH YET.

7 WELL, NOT FOR THE PURPOSE THAT YOU JUST -- NOT
8 THAT OATH, YOU ARE RIGHT. BUT WE HAVE BEEN ABOUT SEEKING
9 TO ASSIST YOU AND ALL OF US IN ACCOMPLISHING THAT, A TRUE
10 DELIVERANCE MAKE. THE TRUTH. THAT'S WHAT WE ARE ABOUT.

11 THAT'S YOUR MISSION. THAT'S WHAT THIS WHOLE
12 PROCESS SEEKS TO ACCOMPLISH. I WANT YOU TO UNDERSTAND
13 SOMETHING FROM THE START. YOU HAVE HEARD QUESTIONS ASKED
14 ABOUT BEING FAIR AND IMPARTIAL.

15 WE HAVE HAD -- WE WENT TO GREAT LENGTHS IN
16 TALKING ABOUT THAT FROM TIME TO TIME EVEN WHEN WE WERE
17 TOGETHER INDIVIDUALLY. AND DISCUSSING IT. AND YOU MAY HAVE
18 SAID GRACIOUS, HOW MANY TIMES CAN I TELL HIM THAT I WILL
19 BE FAIR.

20 BUT IT'S IMPORTANT BECAUSE THE STATE, MR. STONE,
21 THAT'S THE MAIN THING THAT THEY BOTH SEEK. THAT YOU BE
22 FAIR. THAT YOU BE IMPARTIAL IN MAKING YOUR DETERMINATION.
23 AND THAT YOU DO ONE THING, THAT YOU SPEAK THE TRUTH.

24 THAT'S ALL ANYONE WILL ASK YOU. THAT'S ALL YOU
25 WILL BE EVER ASKED TO DO. NOW, SOMETHING JUST HAPPENED

1 THAT'S VERY IMPORTANT TO THIS PROCEEDING.

2 THIS ROBE AND I GUESS IT'S PROBABLY BROUGHT OVER
3 FROM WHEN WE STARTED THIS COUNTRY FROM ENGLAND, PART OF MY
4 -- I SAY SOMETIMES I NEED TO GO GET DRESSED BECAUSE I MAY
5 -- YOU MAY HAVE SEEN ME WORKING IN THE COURTROOM WITHOUT
6 IT ON, BUT THIS IS A PART OF MY UNIFORM.

7 THIS IS A PART OF MY RESPONSIBILITY. THIS IS A
8 PART OF MY BEING A JUDGE OF THE LAW, THIS ROBE THAT I
9 HAVE. BUT IT DOESN'T -- THE ROBE IS NOT WHAT MAKES ME THE
10 JUDGE. THE ROBE DOESN'T DEFINE MY RESPONSIBILITY.

11 THE CONSTITUTION AND THE LAW OF THIS STATE
12 DEFINE MY RESPONSIBILITY. NOW, WHILE YOU MAY NOT HAVE A
13 ROBE THAT YOU WILL WEAR, YOU NOW EACH ONE OF YOU AND
14 COLLECTIVELY HAVE BECOME A JUDGE IN THIS PROCEEDING BY
15 VIRTUE OF THAT OATH.

16 NOW, OUR ROLES ARE CLEARLY DEFINED BY OUR LAW.
17 AND THEY DO NOT OVER LAP AT ALL. YOU ARE NOW AND YOU HAVE
18 BECOME THE SOLE JUDGES OF THE FACTS. THERE IS NO ONE THAT
19 YOU CAN SEE IN THIS ROOM, NO ONE THAT'S IN THIS COUNTY,
20 THIS STATE OR THIS COUNTRY HAS THAT RESPONSIBILITY. THAT'S
21 YOURS. SOLELY YOURS. THAT INCLUDES ME.

22 PLEASE UNDERSTAND THAT. YOU MAY HEAR THAT MORE
23 THAN ONCE. MY RESPONSIBILITY IS TO BE THE JUDGE OF THE
24 LAW. YOUR RESPONSIBILITY IS TO BE THE JUDGE OF THE FACTS
25 -- OF THE FACTS.

1 AND TOGETHER, TOGETHER WE WILL HELP RESOLVE THIS
2 DISPUTE. NOW, HOW DOES HE MEAN TOGETHER? WHAT DOES HE
3 MEAN? WELL, HOLD ON TO THAT THOUGHT BECAUSE I THINK
4 THERE'S A PART THAT I MIGHT SHARE WITH YOU IN JUST A
5 MOMENT THAT REALLY ILLUSTRATES IT CLEARLY.

6 CERTAINLY AS THE JUDGE OF THE LAW IT'S MY
7 RESPONSIBILITY TO PRESIDE OVER THESE PROCEEDINGS. THIS
8 PROCEEDING THEN WAS STARTED IN THE JURY SELECTION PROCESS.

9 THE NEXT STEP OF THIS PROCEEDING WILL BE WHEN I
10 CONCLUDED MY REMARKS TO YOU WILL BE TO TURN TO THE
11 SOLICITOR AND ADVISE HIM HE MAY GIVE THE OPENING REMARKS
12 ON BEHALF OF THE STATE. AND THAT BEGINS THE FIRST STAGE
13 OF THE TRIAL -- OF THE ACTUAL TRIAL ITSELF.

14 YOU WILL FOLLOW THAT WITH THE EVIDENTIARY
15 PORTION OF THE TRIAL. WHEN THE EVIDENTIARY PORTION IS
16 COMPLETED, YOU WILL MOVE INTO THE CLOSING ARGUMENTS. AND
17 THEN THE LAST STAGE OF THE TRIAL WILL BE WHEN I GIVE YOU
18 THE INSTRUCTION ON THE LAW.

19 NOW, I'M GOING TO TALK ABOUT THOSE FOUR STAGES
20 FOR YOU. AND I THINK WHEN WE TALK ABOUT IT YOU WILL BEGIN
21 TO SEE HOW TOGETHER WE RESOLVE THIS MATTER.

22 THE OPENING STATEMENT IS A TIME WHEN THE
23 ATTORNEYS WILL HAVE THE FIRST TIME TO SPEAK TO YOU
24 DIRECTLY. NOW, THAT HAPPENS TWICE IN A TRIAL. OPENING
25 STATEMENTS AND CLOSING ARGUMENTS.

1 NOTICE OPENING STATEMENT OR STATEMENTS? CLOSING
2 ARGUMENT OR ARGUMENTS. THE WORD -- THE WORD IS
3 INTENTIONAL. STATEMENT VERSUS ARGUMENT. THE OPENING
4 STATEMENT IS A NON ARGUMENTATIVE STATEMENT OF WHAT EACH
5 SIDE, WHAT THEY BELIEVE THE EVIDENCE WILL SHOW, WHAT YOU
6 WILL HEAR DURING THIS TRIAL. SORT OF AN OVER VIEW, IF YOU
7 WILL, OF THE TRIAL.

8 THE CLOSING ARGUMENTS WILL COME AT THE END OF
9 THE EVIDENTIARY PORTION AND AT THAT TIME THEY WILL ARGUE
10 TO YOU WHAT EVIDENCE HAS BEEN INTRODUCED AND THE
11 REASONABLE INFERENCES THAT MAY BE DRAWN FROM THAT
12 EVIDENCE.

13 NOW, BOTH OF THOSE STAGES ARE VERY IMPORTANT AS
14 EVERY STAGE IS IMPORTANT IN ANY TRIAL. YOU SHOULD -- AND I
15 KNOW THAT YOU WILL -- GIVE THEM YOUR UNDIVIDED ATTENTION.
16 ATTENTION.

17 THEY ARE OFFICERS OF THIS COURT. REMEMBER MONDAY
18 I SAID THAT WE ALL HAD CERTAIN ROLES AND RESPONSIBILITIES
19 IN THIS PROCESS? AND IN THIS PROCESS IT MEANS NOT ONLY
20 JUST WHAT WE WERE ABOUT WHILE WE WERE IN GEORGETOWN, BUT
21 THIS PROCESS MEANS THIS JURY TRIAL.

22 AND IT TAKES ALL OF US DOING OUR JOBS. SO
23 REMEMBER, THEY HAVE A VERY IMPORTANT ROLE AND YOU SHOULD
24 GIVE THEM YOUR ATTENTION. BUT I WOULD HASTEN TO ADD THAT
25 THEIR REMARKS ARE NOT EVIDENCE.

1 NOW, WHAT DOES HE MEAN BY THAT? WELL, I MEAN
2 THIS. THE EVIDENCE WILL COME FROM THIS WITNESS CHAIR. YOU
3 WILL HEAR THE WITNESSES. YOU WILL HAVE AN OPPORTUNITY TO
4 SEE THEM, TO OBSERVE THEM. YOU WILL HAVE AN OPPORTUNITY TO
5 POSSIBLY EVEN DURING THE TRIAL, BUT CERTAINLY AFTER IT'S
6 OVER -- ANY EXHIBITS THAT ARE OFFERED OR INTRODUCED
7 THROUGH THEIR TESTIMONY THAT BECOMES EVIDENCE.

8 AND YOU WILL HAVE AN OPPORTUNITY TO REVIEW THAT
9 WHEN YOU BEGIN YOUR DELIBERATIONS. BUT LADIES AND
10 GENTLEMEN, IT'S UPON THAT EVIDENCE THAT YOU AND FROM THAT
11 EVIDENCE THAT YOU MUST DETERMINE THE FACTS AND THE TRUTH.

12 THAT'S THE -- EVIDENCE IS WHAT YOU WILL FOCUS.
13 THAT'S YOUR FOCUS IN THIS MATTER. AFTER YOU HAVE HEARD THE
14 CLOSING ARGUMENTS AND AFTER THE EVIDENCE -- AND LET ME SAY
15 SOMETHING ABOUT THE EVIDENCE PORTION.

16 ONE OF THE THINGS THAT YOU DO -- WHAT DOES HE
17 MEAN DETERMINE THE FACTS? WELL, WHAT I MEAN IS YOU
18 DETERMINE WHAT YOU BELIEVE TO BE CREDIBLE, BELIEVABLE,
19 WHAT YOU BELIEVE TO BE THE TRUTH AND THE WEIGHT THAT YOU
20 WISH TO GIVE TO IT.

21 IF YOU THINK ABOUT IT, THEN I HOPE THAT YOU WILL
22 THINK ABOUT IT DURING THIS PROCESS WHEN YOU HAVE TIME TO
23 REFLECT. A JURY TRIAL IS REALLY A COMMON SENSE EXERCISE.

24 I MENTIONED TO SOME OF YOU THAT YOU WILL
25 CERTAINLY OR WILL BE ASKED AND I DON'T THINK ANYONE HERE

1 WILL ASK YOU TO LEAVE YOUR COMMON SENSE WHEN YOU GO BACK
2 TO THE RAMADA INN AND LEAVE IT THERE OR LEAVE IT IN THE
3 JURY ROOM.

4 YOU ARE CERTAIN EXPECTED -- THAT'S THE REASON
5 YOU WERE SELECTED AS A COMMON SENSE INDIVIDUAL, A PERSON
6 THAT THE STATE AND MR. STONE FELT COULD SIT DOWN AND
7 LISTEN TO THIS EVIDENCE, APPLY YOUR GOOD JUDGMENT, YOUR
8 SENSE OF REASON, YOUR SENSE OF LOGIC AND MAKE DECISIONS
9 ABOUT WHAT YOU BELIEVE TO BE THE TRUTH.

10 AND THAT'S PRECISELY WHAT YOU WILL DO HERE IN
11 THIS PROCESS DURING THE EVIDENTIARY PORTION. NOW, AT THE
12 CONCLUSION OF THAT EVIDENCE, EVIDENTIARY PORTION AND AFTER
13 THE CLOSING ARGUMENTS, I WILL IN THE LAST STAGE OF THE
14 TRIAL GIVE YOU AN INSTRUCTION ON THE LAW.

15 THERE WERE QUESTIONS ASKED SOME IN THESE WORDS
16 AND SOME MAYBE NOT EXACTLY THESE WORDS, BUT I WOULD
17 REITERATE THAT EACH ONE OF YOU HAS STATED THAT YOU WILL
18 NOT MAKE YOUR DECISION AND BY YOUR VERY PRESENCE AND BY
19 THAT OATH YOU HAVE STATED BOTH TO THE STATE AND MR. STONE
20 THAT YOU WILL NOT DECIDE THIS CASE UNTIL YOU HAVE BEEN
21 INSTRUCTED TO BEGIN YOUR DELIBERATIONS.

22 THAT'S WHAT THAT MEANS. THAT'S WHAT THAT PROCESS
23 IS. IT'S THEN THAT YOU WILL MAKE YOUR DECISIONS. BUT UNTIL
24 THAT POINT, YOU HAVE PROMISED THAT YOU WILL KEEP AN OPEN
25 MIND.

1 AND THAT WOULD INCLUDE EVEN THOUGH THE
2 EVIDENTIARY PORTION MAY BE CONCLUDED AND FOLLOWED BY THE
3 CLOSING ARGUMENTS, YOU STILL HAVE NOT HEARD THE LAW WHICH
4 YOU HAVE TO APPLY TO THE EVIDENCE.

5 THAT'S THE LAST STAGE OF THE TRIAL. SO REMEMBER
6 THAT AS WE GO THROUGH THIS PROCESS. NOW, DURING THAT
7 PORTION I WOULD REMIND YOU THAT IT'S MY RESPONSIBILITY TO
8 MAKE DECISIONS OF THE LAW. THAT'S WHAT MY ROLE IS, TO
9 PRESIDE OVER IT AND TO MAKE RULINGS ON MATTERS OF LAW.

10 GENERALLY THAT WILL OCCUR OUTSIDE OF YOUR
11 HEARING. IN FACT, YOU MAY ASK WHY DID HE TELL US TO COME
12 AT 9:30? AND WE WERE HERE, WE DIDN'T GET IN THIS
13 COURTROOM UNTIL ABOUT 10:30 OR SO?

14 WE STARTED AT 8:30 THIS MORNING AND IT JUST RAN
15 OVER AND I APOLOGIZE TO YOU. SOMETIMES YOU PLAN, BUT
16 SOMETIMES THINGS HAPPEN AND THEY -- MAYBE YOU HAVE HAD
17 THAT HAPPEN IN YOUR LIFE.

18 I HOPE IT DOESN'T OCCUR FREQUENTLY, BUT PLEASE
19 FORGIVE ME WHEN IT DOES. THANK YOU FOR YOUR PATIENCE. BUT
20 THOSE ARE -- THAT'S PRECISELY WHAT THIS PROCESS
21 CONTEMPLATES.

22 BECAUSE GENERALLY IT'S DONE OUT OF YOUR
23 HEARING. WHY IS IT? BECAUSE IT'S SOME PRIVATE PROCEEDING.
24 BUT IF YOU THINK ABOUT IT, THAT'S SOLELY MY
25 RESPONSIBILITY.

1 IF YOU START GETTING INVOLVED IN THAT, THEN YOU
2 KIND OF STEPPED OVER INTO MY ROLE. SO TO AVOID THAT AND TO
3 MAKE IT SO THAT YOU DON'T HAVE TO BLOCK IT OUT OF YOUR
4 MIND, IT'S DONE OUT OF YOUR HEARING AND THAT'S THE SOLE --
5 I MEAN, THAT'S THE REASON THAT WE DO THAT.

6 THERE IS ONE OCCASION, HOWEVER, IN THE TRIAL OF
7 A CASE WHERE YOU WILL HEAR MORE THAN LIKELY SOME RULE OR A
8 MATTER OF LAW. SOME OF YOU MAY HAVE SERVED AS A JUROR
9 BEFORE.

10 AND IF YOU HAVE, YOU HEARD OR YOU MAYBE HAVE
11 OBSERVED SOME TRIALS ON T V SOMEWHERE SOMETIME. YOU HEARD
12 ONE OF THE ATTORNEYS SAY OBJECTION, YOUR HONOR. WHAT WAS
13 THAT ATTORNEY SAYING?

14 HE IS SAYING, YOUR HONOR, THERE IS A MATTER OF
15 LAW THAT WE NEED FOR YOU TO RESOLVE. NOW, SHOULD YOU
16 CONSIDER THAT -- ALL OF THE FACTS -- THAT THAT ATTORNEY
17 MAKES THAT OBJECTION?

18 ABSOLUTELY NOT. BECAUSE IF YOU DID, AGAIN YOU
19 STEPPED OVER INTO MY ROLE. THAT'S MY RESPONSIBILITY. AN
20 ATTORNEY IS AN OFFICER OF THIS COURT.

21 ANY RULINGS ON THOSE MATTERS -- AND THOSE
22 GENERALLY DEAL WITH OUR RULES OF EVIDENCE. MY RULINGS
23 WILL BE ONE OF TWO. I WILL EITHER OVERRULE THE OBJECTION
24 OR I WILL SUSTAIN IT.

25 NOW, IF I SUSTAIN IT, WHAT HAVE I SAID? I SAID

1 AS A MATTER OF LAW THAT THAT QUESTION MAY NOT BE ANSWERED
2 OR MAY NOT BE ASKED.

3 ONE OF THE THINGS WE TALK ABOUT -- SOME OF US
4 FROM TIME TO TIME -- IS HAVING TO SET ASIDE A HUMAN
5 NATURE, HAVING TO REMEMBER CERTAIN THINGS THAT WE DO. AND
6 I DON'T KNOW WHETHER THIS MAY APPLY TO YOU, BUT IF IT DOES
7 I NEED TO MENTION IT TO YOU.

8 IF YOU WOULD HAVE A TENDENCY OF SAYING WELL I
9 WONDER WHAT THE WITNESS WOULD HAVE SAID OR I WONDER WHY,
10 THEN I WOULD ASK YOU TO MAKE SURE THAT YOU -- YOU MAKE A
11 CONSCIOUS EFFORT NOT TO DO THAT.

12 BECAUSE IF YOU DO, YOU HAVE STEPPED OVER INTO MY
13 ROLE AND BEING A PART OF THAT PROCESS IN THAT -- THAT'S
14 NOT WHAT THE SYSTEM CONTEMPLATES.

15 IF I OVERRULE THE OBJECTION, WHAT AM I SAYING?
16 I HAVE SAID THE WITNESS MAY ANSWER THE QUESTION OR THE
17 QUESTION MAY BE ANSWERED, BUT HAVE I NOW SAID TO YOU
18 LADIES AND GENTLEMEN, NOW THIS IS A FACT YOU MUST
19 BELIEVE? HEAVENS, NO.

20 BECAUSE IF I DID, THEN I STEPPED OVER INTO YOUR
21 ROLE. I HAVE THEN INVADDED YOUR PROVINCE. NOW THE
22 RESPONSIBILITY SHIFTS. MY RESPONSIBILITY IS TO MAKE A
23 DETERMINATION WHETHER OR NOT UNDER THE LAW IT IS
24 PERMISSIBLE AND ONCE I RULE THEN IT'S UP TO YOU.

25 YOU DECIDE WHETHER YOU BELIEVE IT AND YOU DECIDE

1 THE WEIGHT THAT YOU WISH TO GIVE TO IT. SO YOU SEE, THAT'S
2 AN EXAMPLE OF HOW WE WILL TRY THIS DISPUTE, HOW WE WILL
3 RESOLVE THIS MATTER.

4 YOU WILL DEAL WITH THE MATTER OF FACT. I WILL
5 DEAL WITH THE MATTER OF LAW. I MENTIONED TO YOU AT THE
6 START OF THE TRIAL SOME PRINCIPLES AND I'M NOT GOING TO GO
7 INTO THOSE IN ANY GREAT DETAIL.

8 I WOULD MENTION TO YOU HOWEVER PRINCIPALS OF
9 LAW. I DISCUSSED WITH YOU THE PRESUMPTION OF INNOCENSE
10 AND WE HAVE GONE OVER THAT GENERALLY AND INDIVIDUALLY. AND
11 EACH ONE OF YOU INDICATED AN UNDERSTANDING OF IT AND I
12 WOULD CERTAINLY REMIND YOU OF THAT.

13 AND REMIND YOU THAT THE BURDEN IS UPON THE
14 STATE, OF COURSE, AS WE DISCUSSED TO PROVE IT'S CASE
15 BEYOND A REASONABLE DOUBT. AND I WOULD TELL YOU NOW THAT I
16 WILL DEFINE THAT FOR YOU DURING THE CHARGE, BUT WOULD TELL
17 YOU THAT A REASONABLE DOUBT IS THAT DOUBT WHICH WOULD
18 CAUSE A REASONABLE CONSCIENTIOUS JUROR WHO IS IN SEARCH OF
19 THE TRUTH TO HESITATE TO ACT.

20 THAT'S WHAT WE ARE TALKING ABOUT. THAT TYPE OF
21 EVIDENCE. AND I WILL GIVE YOU A GREATER EXPLANATION FOR
22 IT. JUST HOLD ON TO THAT AS BEING SORT OF A BRIEF SUMMARY
23 OR NUT SHELL STATEMENT OF WHAT REASONABLE DOUBT
24 CONTEMPLATES BY THAT TERM.

25 IN THIS PARTICULAR TRIAL, THAT'S THE LEVEL THAT

1 WE ARE TALKING ABOUT. SOME OF YOU MAY HAVE BEEN ON A JURY,
2 HAVE HEARD ANOTHER STANDARD IN A CIVIL PROCEEDING -- AND I
3 REMIND YOU THIS IS NOT A CIVIL PROCEEDING -- WHERE THEY
4 HEARD A GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE.

5 IF YOU HAVE AND YOU HAVE BEEN A PART OF THAT,
6 YOU NEED TO SET IT ASIDE BECAUSE IT DOESN'T HAVE ANYTHING
7 TO DO WITH THIS PROCEEDING. THIS ONE IS BEYOND A
8 REASONABLE DOUBT.

9 THAT'S THE STANDARD THAT YOU ARE -- THAT THE
10 STATE MUST MEET IN PROVING THIS CASE. LADIES AND
11 GENTLEMEN, I LOOK FORWARD TO TRYING THIS CASE WITH YOU. I
12 LOOK FORWARD TO WORKING WITH YOU IN THIS MATTER.

13 IT TRULY IS AN HONOR TO WORK WITH FOLKS LIKE
14 YOU, TO SERVE AS A JUDGE WITH YOU JUDGES. AND I KNOW THAT
15 YOU WILL GIVE YOUR ATTENTION TO THIS MATTER AND THAT YOU
16 WILL CONSCIENTIOUSLY FOLLOW YOUR OATH.

17 THANK YOU AGAIN. AND NOW I WOULD ASK YOU TO
18 GIVE YOUR ATTENTION TO THE SOLICITOR. MR. SOLICITOR, YOU
19 MAY GIVE THE OPENING STATEMENT ON BEHALF OF THE STATE.

20 MR. KOLB: THANK YOU.

21 OPENING STATEMENT BY MR. KOLB.

22 I WANT TO INTRODUCE MYSELF TO YOU AGAIN. MY
23 NAME IS WADE KOLB AND I HAVE THE HONOR AND PRIVILEGE OF
24 HAVING BEEN ELECTED TO SERVE AS SOLICITOR FOR THE THIRD
25 JUDICIAL CIRCUIT. THAT'S SUMTER, LEE, CLARENDON AND

1 WILLIAMSBURG COUNTIES.

2 AND I'VE SERVED IN THAT CAPACITY FOR THE LAST
3 FOURTEEN YEARS. ACTUALLY ASSISTANT SOLICITOR BEFORE THAT.
4 AS YOU PROBABLY ALREADY KNOW, THE JOB OF THE SOLICITOR IS
5 TO REPRESENT THE PUBLIC INTEREST IN THE PROSECUTION OF
6 CRIMINAL CASES IN THIS COURT AND THAT'S WHAT I WILL BE
7 DOING IN THIS CASE.

8 ASSISTING ME IS VERNIE WILLIAMS WITH US DOWN
9 FROM GEORGETOWN AND ALSO JANELLE SMITH. THEY'RE ASSISTANT
10 SOLICITORS. AND PERHAPS OTHER MEMBERS OF OUR STAFF WILL
11 BE ASSISTING THEM. AND BARBARA JEAN WILEY IS OUR VICTIM
12 ADVOCATE. WORKS CLOSELY WITH VICTIMS IN THE CASES.

13 YOU HAVE ALREADY FOUND OUT THAT IT INVOLVES THE
14 DEFENDANT BOBBY WAYNE STONE WHO HAS BEEN CHARGED WITH A
15 CRIME IN THIS CASE. LET ME TELL YOU A LITTLE BIT ABOUT THE
16 VICTIM IN THIS CASE WHO IS AT LOSS. ACTUALLY TWO VICTIMS.

17 FIRST IS RUTH GRIFFITH. SHE'S A LADY WHO LIVED
18 -- IS LIVING NOW STILL AT 817 TAYLOR STREET HERE IN
19 SUMTER. JUST TO GIVE YOU AN IDEA WHERE THAT IS. WE ARE
20 RIGHT HERE IN THE MIDDLE OF TOWN. EVENTUALLY FIND OUT THE
21 POLICE DEPARTMENT IS PRETTY MUCH RIGHT ACROSS THE STREET.

22 AND THE CENTER OF SUMTER IS MAIN STREET AND
23 LIBERTY STREET. AND LIBERTY STREET -- YOU GO OUT EAST AND
24 IT'S EAST/WEST ROAD. YOU GO OUT TO THE EAST, WHAT WE CALL
25 THE LAKE CITY OR CONWAY HIGHWAYS, THE ROAD THAT GOES OUT

1 OF TOWN OUT TOWARDS LAKE CITY.

2 KIND OF GO OFF TO THE BEACH. BUT ANY WAY, JUST
3 AS YOU LEAVE THE CENTER OF TOWN BASICALLY WHERE WE ARE AND
4 JUST GO OUT EAST ON LIBERTY STREET ABOUT A MILE OR SO, THE
5 ROAD BRANCHES OFF TO THE RIGHT. BASICALLY GOES SOUTH.

6 IT'S CALLED BOULEVARD ROAD. AND THAT -- THERE'S
7 A COMMUNITY OVER THERE. AND ALL OF BOULEVARD ROAD -- ONCE
8 YOU'RE GOING SOUTH -- TURN DOWN TO THE LEFT, GOES UP INTO
9 THE NEIGHBORHOOD WHERE MRS. GRIFFITH LIVES A COUPLE MILES
10 FROM THE CENTER OF TOWN.

11 NOT SURE EXACTLY. BUT NOT FAR OUT OF TOWN. JUST
12 SORT OF BORDERLINE SUBURBAN RURAL COMMUNITY. AND HER
13 ADDRESS IS 817 TAYLOR STREET. AND MRS. GRIFFITH WAS LIVING
14 THERE AND SHE WAS A VICTIM OF A BURGLARY ON THIS NIGHT,
15 MONDAY FEBRUARY THE 26TH 1996.

16 SO A LITTLE LESS THAN A YEAR AGO. AND BEGAN
17 ABOUT 5:39 THAT NIGHT. AND YOU WILL HEAR BOBBY WAYNE
18 STONE CAME UP TO HER HOUSE ARMED WITH WEAPONS AND WAS NOT
19 JUST ASKED TO LEAVE, BUT DEMANDED.

20 AND THEY WERE SCARED ENOUGH TO CALL THE POLICE.
21 AND THEN THE SECOND VICTIM GOT INVOLVED AND THAT'S DEPUTY
22 CHARLES KUBALA. CHARLIE KUBALA WAS A DEPUTY SHERIFF OF
23 SUMTER COUNTY IN UNIFORM. DRIVING A MARKED PATROL CAR.
24 ANSWERING CALLS JUST LIKE BURGLARY IN PROGRESS CALLS.

25 AND CHARLIE KUBALA, THIRTY-TWO YEAR OLD DEPUTY

1 WAS MARRIED, HAS TWO CHILDREN, PARENTS AND OTHER FAMILY
2 MEMBERS THAT YOU MAY MEET DURING THE COURSE OF THE TRIAL.

3 DEPUTY KUBALA ANSWERED THE CALL WHEN IT FIRST
4 CAME IN AT 5:39. HE WAS DISPATCHED THROUGH THE NORMAL
5 PROCESS. THE VICTIM MRS. GRIFFITH CALLS IN -- YOU WILL
6 MEET MRS. GRIFFITH'S DAUGHTER BY THE WAY, MARY RUTH MCLEOD
7 WHO WAS THERE WITH HER AND ALSO HER NEIGHBOR ACROSS THE
8 STREET, GENTLEMAN BY THE NAME OF LANDROW TAYLOR, WHO ARE
9 ALL INVOLVED IN THIS.

10 ANY WAY, THEY CALLED LAW ENFORCEMENT 5:39 ABOUT
11 THIS PERSON BEING THERE, BOBBY WAYNE STONE. AND BY THE
12 TIME DEPUTY KUBALA GOT THERE, STONE HAD GONE OFF INTO THE
13 WOODS -- AS I MENTIONED PRETTY MUCH RURAL AREA. YOU WILL
14 SEE THAT.

15 THERE'S WOODS AND SO FORTH THERE. AND HE HAD
16 GONE OFF INTO THE WOODS. SO DEPUTY KUBALA -- YOU WILL HEAR
17 ABOUT WHAT HAPPENED -- TOLD THEM IF THEY HAD ANY PROBLEM,
18 GET BACK IN TOUCH WITH LAW ENFORCEMENT.

19 AT APPROXIMATELY 7:00, APPROXIMATELY AN HOUR AND
20 A HALF, BUT APPROXIMATELY 7:00 STONE CAME BACK. THE
21 EVIDENCE WILL SHOW THIS. AND ACTUALLY CAME UP ON TO THE
22 PORCH OF THE HOUSE ARMED WITH A WEAPON INTENDING TO COMMIT
23 A CRIME. THEREFORE COMMITTED BURGLARY AT THAT TIME.

24 EARLIER HE HAD JUST KNOCKED ON THE OUTSIDE DOOR,
25 THE BACK OF THE HOUSE. BUT ON THIS OCCASION AFTER KNOWING

1 HE WAS NOT WANTED THERE AND COMING ON TO THE PORCH AND
2 BANGING ON THE BACK DOOR ARMED WITH A DEADLY WEAPON, HE
3 ACTUALY COMMITTED BURGLARY WHEN HE DID THAT.

4 AND SO THEY AGAIN THEY CALLED. CALLED FOR DEPUTY
5 KUBALA, BURGLARY IN PROGRESS. COMING BACK. AND DEPUTY
6 KUBALA CAME BACK. AND AS YOU WILL FIND OUT AT ABOUT 7:08
7 P.M. ON THAT NIGHT DEPUTY KUBALA WAS SHOT AND KILLED.

8 HE WAS SHOT. HE WAS ACTUALLY HIT TWO TIMES.
9 ONCE HERE IN THE NECK AND WENT DOWN. SEVERED THE ARTERY
10 WHICH SUPPLIES BLOOD TO THE BRAIN, THROUGH HIS LUNG. AND
11 THAT SHOT IN ITSELF WAS FATAL.

12 ALSO ANOTHER SHOT THAT ENTERED HIS EAR AND SORT
13 OF I GUESS YOU'D SAY BOUNCED OFF OF HIS BRAIN HERE AND
14 DOWN INTO HIS SPINAL COLUMN. AND THAT SHOT IN ITSELF WAS
15 FATAL.

16 HE WAS HIT BY TWO SHOTS. THREE SHOTS WERE FIRED.
17 THEY WERE FIRED FROM WITHIN THE PORCH. YOU WILL HEAR
18 EVIDENCE THAT THREE 22 BULLETS WERE SHOT BY THIS PISTOL
19 THROUGH THE SCREEN DOOR OF THE PORCH.

20 IN OTHER WORDS, THE OUTER SCREEN DOOR OF THE
21 PORCH. MR. STONE WAS UP ON THE PORCH AND DEPUTY KUBALA
22 CAME AROUND -- WE SUBMIT THE EVIDENCE WILL SHOW THAT HE
23 WAS AMBUSHED BY BOBBY STONE AND SHOT BASICALLY FROM THE
24 SIDE, FROM THE RIGHT SIDE. AND HE WAS ACTUALLY SHOT AT
25 THREE TIMES, HIT TWICE AND DIED RIGHT THERE ON THE SCENE.

1 STONE THEN RAN AWAY AND WAS FOUND SHORTLY
2 THEREAFTER ABOUT 11:00 AT NIGHT UP IN THE WOODS NEARBY
3 THERE WHILE STILL IN POSSESSION OF THE PISTOL THAT EXPERT
4 WITNESSES FROM STATE LAW ENFORCEMENT DIVISION, BALLISTICS
5 WITNESSES, WILL TELL YOU THAT PISTOL MATCHES THE BULLETS
6 -- MATCH THE BULLET TO THE PISTOL.

7 AND YOU WILL HEAR EVIDENCE THAT THAT PISTOL THAT
8 HE WAS FOUND WITH MATCHES THE BULLETS THAT WERE RECOVERED
9 FROM THE BODY OF DEPUTY KUBALA. AND LADIES AND GENTLEMEN,
10 THAT'S WHAT WE ARE HERE ABOUT.

11 WE WILL PRESENT THAT AND MUCH MORE EVIDENCE TO
12 YOU ABOUT THE SURROUNDING CIRCUMSTANCES OF THE CASE. AND
13 WE ASK YOU, AS I KNOW YOU WILL, GIVE YOUR CLOSEST
14 ATTENTION TO ALL OF THE EVIDENCE. THANK YOU.

15 THE COURT: THANK YOU, SOLICITOR. MR. LITTLEJOHN?

16 MR. LITTLEJOHN: MAY IT PLEASE THE COURT.

17 THE COURT: YES, SIR.

18 OPENING STATEMENT BY MR. LITTLEJOHN.

19 LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR
20 WHAT YOU HAVE BEEN THROUGH THUS FAR AND WHAT YOU WILL GO
21 THROUGH AS THIS TRIAL PROGRESSES. WINSTON CHURCHILL ONCE
22 SAID THAT THE MOST IMPORTANT DUTY A CITIZEN CAN RENDER FOR
23 THEIR COUNTRY DURING PEACE TIME IS THAT OF JURY SERVICE.

24 AND WE THANK YOU FOR RENDERING THAT SERVICE.
25 EVEN THOUGH IT IS A DUTY THAT WE ALL REALIZE WE MUST

1 PERFORM, I'M SURE MANY OF YOU ARE SORRY THAT YOU HAVE TO
2 BE HERE. THAT'S UNDERSTANDABLE.

3 BUT I WANT YOU TO KNOW THAT EVERYONE AT THE
4 DEFENSE TABLE IS SORRY THAT YOU HAVE TO BE HERE ALSO.
5 EVERYONE AT THE DEFENSE TABLE IS SORRY THAT THE FAMILY OF
6 SERGEANT CHARLES KUBALA HAS TO BE HERE FOR THE TRIAL OF
7 STATE VERSUS BOBBY STONE.

8 THE REASON WHY WE ARE HERE TODAY, ALL OF US,
9 INVOLVES A TRAGIC AND AN UNFORESEEN SERIES OF EVENTS THAT
10 OCCURRED ON FEBRUARY 26TH, 1996. THESE EVENTS RESULTED IN
11 THE SHOCKING, VERY UNTIMELY DEATH OF SERGEANT KUBALA.

12 IT'S UNFORTUNATE THAT WE ARE HERE BECAUSE AS YOU
13 ARE GOING TO SEE, THE EVENTS OF THAT DAY LED UP TO AN
14 INCIDENT THAT OCCURRED BETWEEN AN INSTANT AND A MATTER OF
15 SECONDS AND THAT'S WHY WE ARE HERE TODAY.

16 NOW, WE CAN HAVE NOTHING BUT PRAISE FOR SERGEANT
17 KUBALA AND THE JOB HE DID. PERSONALLY I WAS A PROSECUTOR,
18 STATE PROSECUTOR, FEDERAL PROSECUTOR FOR A TOTAL OF ABOUT
19 ELEVEN AND A HALF YEARS.

20 I WORKED WITH POLICE OFFICERS, STATE OFFICERS
21 LOCAL OFFICERS, FEDERAL OFFICERS. AND FROM WHAT I CAN TELL
22 HE WAS ONE OF THE BEST.

23 YOU ARE GOING TO HEAR THAT SERGEANT KUBALA WAS
24 SENT AS A RESULT OF A 911 CALL ON FEBRUARY 26TH TO THE
25 HOME OF RUTH GRIFFITH WHICH MR. KOLB INDICATED SHE LIVES

1 AT 817 TAYLOR STREET WHICH IS RIGHT OUTSIDE THE CITY OF
2 SUMTER.

3 I ASK YOU LADIES AND GENTLEMEN TO CAREFULLY
4 WEIGH AND CONSIDER THE EVENTS AND THE HISTORY THAT LED UP
5 TO THAT 911 CALL, THE EVENTS AS THEY RELATE TO RUTH
6 GRIFFITH WHO LIVED AT THAT HOUSE.

7 I SUGGEST TO YOU THAT THIS HISTORY OF THE EVENTS
8 LEADING UP TO FEBRUARY 26TH IS CRITICAL TO YOUR
9 DETERMINATION AS TO WHETHER THE STATE HAS PROVEN BOBBY
10 STONE GUILTY OF THE CRIMES IN THIS INDICTMENT.

11 UNFORTUNATELY SERGEANT KUBALA HAD NO SAY. HE HAD
12 NO PART IN SHAPING THESE EVENTS. MAYBE HAD HE GOTTEN THERE
13 EARLIER, WE WOULDN'T BE HERE. PERHAPS THINGS WOULD BE
14 DIFFERENT. BUT WE CAN'T CHANGE THINGS.

15 YOUR CONCERN NOW IS WHETHER THE STATE PROVES
16 BOBBY STONE GUILTY OF THESE THINGS WHICH HE STANDS ACCUSED
17 OF.

18 NOW LADIES AND GENTLEMEN, YOU COLLECTIVELY ARE
19 THE PRODUCT OF A VERY EXACTING AND TIME CONSUMING SEARCH
20 BY THE COURT, BY THE STATE, BY THE DEFENSE, TO FIND A FAIR
21 AND IMPARTIAL JURY TO CONSIDER THIS CASE.

22 YOU AND YOUR FELLOW JURORS WERE ASKED WHAT
23 PROBABLY SEEMED LIKE AS MY GOOD FRIEND CALVIN WHO USED TO
24 BE CALVIN HOBBS SAID YOU WERE ASKED A BAZILLION (SIC)
25 QUESTIONS.

1 BUT THOSE QUESTIONS WERE DESIGNED TO FIND THE
2 FAIREST, THE MOST NEUTRAL, THE MOST IMPARTIAL JURY AND WE
3 THINK WE HAVE FOUND THAT WITH YOU TWELVE LADIES AND
4 GENTLEMEN AND YOU THREE ALTERNATES WHO BECAME ALTERNATES
5 BECAUSE OF THE WAY THE THINGS WERE DRAWN.

6 BUT BOBBY STONE IS GLAD THAT YOU WERE THE JUDGES
7 OF THE FACTS FOR THIS, HIS ONE DAY IN COURT. YOU HAVE AN
8 AWESOME RESPONSIBILITY AND AS YOU ARE AWARE, THERE IS A
9 GREAT MAGNITUDE AND GREAT SEVERITY TO THESE CHARGES.

10 THERE IS A GREAT MAGNITUDE AND GREAT SEVERITY TO
11 THE POTENTIAL SENTENCES INVOLVED. BUT YOU WERE SELECTED
12 BECAUSE WE REALIZED AND KNEW THAT YOU WOULD PROTECT THOSE
13 CONSTITUTIONAL RIGHTS AND PRIVILEGES THAT NOT ONLY BOBBY
14 STONE, BUT ALL OF US ENJOY.

15 AND THOSE RIGHTS INCLUDE SOME OF THOSE THINGS WE
16 ASKED YOU ABOUT. AS A JURY TO BE FAIR AND IMPARTIAL. AS A
17 JURY TO WAIT UNTIL ALL OF THE EVIDENCE IS IN BEFORE MAKING
18 ANY DECISION.

19 AS A JURY TO NOT REQUIRE THE DEFENDANT TO PROVE
20 ANYTHING IN THIS CASE BECAUSE THE LAW SAYS THE STATE HAS
21 THE TOTAL BURDEN OF PROOF.

22 AND AS THE JURY TO REQUIRE THE STATE TO PRESENT
23 TO YOU CONVINCING EVIDENCE THAT PROVES THEIR CASE BEYOND
24 ALL REASONABLE DOUBT. THAT IS WHAT YOU AGREED TO DO WHEN
25 YOU TOOK THAT OATH JUST A FEW MINUTES AGO.

1 AND LIKE I SAY, BOBBY STONE IS GLAD TO HAVE YOU
2 AS THE MEMBERS OF HIS JURY. NOW, LADIES AND GENTLEMEN,
3 PLEASE REALIZE THAT THE FIRST PHASE OF THIS TRIAL STANDS
4 BY ITSELF.

5 YOU MUST CONSIDER IN THIS STAGE OF THE TRIAL
6 WHETHER THE STATE HAS MET IT'S VERY HEAVY BURDEN OF
7 PROVING IT'S CASE. AND WE HAVE DISCUSSED THAT AND HIS
8 HONOR WILL TELL YOU WHAT THAT BURDEN IS AND HOW YOU ARE TO
9 APPLY THE LAW TO THE FACTS AS YOU FIND THEM.

10 BUT DURING THE JURY SELECTION PROCESS, YOU WERE
11 ASKED ABOUT YOUR VIEWS ON CAPITAL PUNISHMENT, THE DEATH
12 PENALTY, AND IMPRISONMENT FOR LIFE, BECAUSE BASED ON YOUR
13 -- IN THE PROCEDURE IT WAS NECESSARY TO ASK THOSE
14 QUESTIONS BEFORE THIS TRIAL BEGAN.

15 BUT BARE IN MIND THIS IS THE GUILT PHASE, THE
16 FIRST PHASE THAT WE ARE ABOUT TO START RIGHT NOW -- IS NOT
17 JUST A STEPPING STONE TO THE PENALTY PHASE.

18 THE STATE MUST MEET THE BURDEN OF PROOF OF
19 PROVING THE GUILT OF BOBBY WAYNE STONE AND THEY MUST PROVE
20 HIM GUILTY OF MURDER BEFORE WE GET TO THAT STAGE. THAT IS
21 ALL YOU NEED TO BE CONCERNED WITH RIGHT NOW.

22 AND LADIES AND GENTLEMEN, I WANT YOU TO KNOW
23 THAT WE CONTEND THAT AFTER THE STATE HAS PRESENTED IT'S
24 CASE, YOU WILL BE CONVINCED THAT BOBBY STONE DID NOT
25 COMMIT MURDER AND THE STATE WILL NOT HAVE PROVEN IT.

1 WE CONTEND THAT WHAT BOBBY STONE DID ON THE
2 EVENING OF FEBRUARY 26TH, 1996, DID NOT CONSTITUTE
3 BURGLARY IN THE FIRST DEGREE.

4 WE ALSO CONTEND THAT THE THIRD COUNT IN THE
5 INDICTMENT CHARGING HIM WITH BEING IN A POSSESSION OF A
6 PISTOL DURING A CRIME OF VIOLENCE ALSO DIDN'T OCCUR.

7 LADIES AND GENTLEMEN, JIM BABB AND I ALSO HAVE
8 AN AWESOME RESPONSIBILITY IN THIS PROCEDURE. AS APPOINTED
9 COUNSEL FOR BOBBY STONE, WE HOPE WE CAN PRESENT HIS
10 DEFENSE TO YOU IN THE BEST POSSIBLE WAY.

11 WE DO HAVE THE SUPPORT OF SOME INVESTIGATORS,
12 BUT WE DON'T HAVE THE RESOURCES LIKE THE SOLICITOR'S
13 OFFICE OR SLED OR IT'S FORENSIC LAB OR THE SUMTER COUNTY
14 SHERIFF'S OFFICE.

15 BUT WE THINK ONCE ALL THE EVIDENCE IS IN -- AND
16 THAT'S ONLY WHEN YOU CAN START CONSIDERING THIS CASE --
17 AND ONCE THE EVIDENCE IS IN YOU WILL BE CONVINCED THAT THE
18 STATE HAS NOT PROVED THE THREE ITEMS CHARGED IN THIS
19 INDICTMENT. I DO THANK YOU VERY MUCH.

20 THE COURT: SOLICITOR, YOU MAY CALL YOUR FIRST
21 WITNESS.

22 MR. KOLB: CALL KATHY MILES.

23 KATHY MILES, BEING FIRST DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT: KATHY SPELLED WITH K OR C?

KATHY MILES - DIRECT BY KOLB

1 WITNESS: KATHY WITH A K.

2 THE COURT: LAST NAME?

3 WITNESS: KATHY MILES.

4 THE COURT: THANK YOU.

5 DIRECT EXAMINATION BY MR. KOLB:

6 Q MRS. MILES, HOW ARE YOU EMPLOYED?

7 A I'M EMPLOYED AT SUMTER LAW ENFORCEMENT CENTER AS A
8 COMMUNICATIONS CHIEF TECHNICIAN.

9 Q ALL RIGHT. AND I HAVE HERAD THE WORD BEFORE
10 DISPATCHER. WHAT DOES THAT MEAN?

11 A DISPATCHER OF POLICE CALLS FOR SERVICE AND FIRE CALLS
12 FOR SERVICE.

13 Q ALL RIGHT. AND HOW DOES THAT HAPPEN?

14 A IT HAPPENS WHEN AN INDIVIDUAL CALLS 911 OR AN
15 ADMINISTRATIVE NUMBER AND REQUESTS POLICE OR FIRE
16 SERVICES.

17 Q ALL RIGHT. AND HERE IN SUMTER COUNTY, ARE THOSE
18 CALLS, DOES THAT INCLUDE THE SHERIFF'S DEPARTMENT, CITY
19 POLICE DEPARTMENT AND THE FIRE DEPARTMENT AND AMBULANCE
20 AND SO FORTH?

21 A WE ARE THE PRIMARY ANSWERING POINT FOR THOSE
22 AGENCIES.

23 Q ALL RIGHT. WHERE IS YOUR -- I GUESS YOU CALL IT THE
24 DEPARTMENT -- ACTUALLY LOCATED?

25 A OUR DEPARTMENT IS LOCATED AT 107 EAST HAMPTON AVENUE

KATHY MILES - DIRECT BY KOLB

1 IN THE LAW ENFORCEMENT CENTER BUILDING.

2 Q ALL RIGHT. SO THAT'S BASICALLY A BLOCK FROM -- RIGHT
3 ACROSS THE STREET FROM HERE?

4 A YES, SIR.

5 Q AND IS IT A SECURE AREA UPSTAIRS OR YOU -- EVERYBODY
6 COMING AND GOING?

7 A NO, SIR. WE ARE SECURE BEHIND LOCKED DOORS.

8 Q ALL RIGHT. NOW, WHAT SORT OF RECORDS ARE KEPT OF
9 THESE CALLS THAT COME IN AND ACTIONS TAKEN?

10 A WE KEEP HISTORIAL COMPUTERIZED RECORDS THAT ARE
11 GENERATED AS WE RECEIVE THE CALL AND CALLS THROUGH THE
12 PROCESS -- WHEN THE CALL IS DISPATCHED AND ALL. THAT
13 INCLUDES DATES AND TIMES OF THE MOVEMENT ON THE CALLS.

14 AND WE ALSO MAINTAIN DISTRICT PHONE RECORDINGS
15 OF CALLS THAT COME IN, TAPED RECORDINGS.

16 Q NOW, THERE -- WHEN YOU ARE TALKING WITH POLICE
17 OFFICERS, HOW DO YOU TALK WITH THEM? A CITIZEN CALLS IN
18 OVER A TELEPHONE LINE. 911 YOU SAID GENERALLY?

19 A RIGHT.

20 Q HOW DO YOU TALK TO THE POLICE OFFICERS?

21 A BY RADIO, BY TELEPHONES.

22 Q OKAY. SOMETIMES YOU TALK TO THEM BY TELEPHONE WHEN
23 THEY ARE OUT IN A CAR MAKING A CALL IN?

24 A YEAH.

25 Q ALL RIGHT. NOW THESE RADIOS, ARE THEY IN THE CARS

KATHY MILES - DIRECT BY KOLB

1 THEMSELVES OR SOME OF THE POLICE OFFICERS HAVE RADIOS THEY
2 CAN CARRY AROUND WITH THEM? COULD YOU EXPLAIN THAT?

3 A CORRECT. ALL OF THE CARS ARE EQUIPPED WITH A RADIO.
4 AND MOST OF THE OFFICERS HAVE WALKIE TALKIES THAT THEY
5 CARRY AROUND. AND -- FOR USE WHEN THEY ARE AWAY FROM THE
6 CAR.

7 Q WHEN YOU ARE -- WHEN THE POLICE OFFICER IS TALKING
8 OVER THE WALKIE TALKIE, WHAT HAPPENED? WHAT OCCURS?

9 A WE JUST RECEIVE TRANSMISSIONS AS WE WOULD AS IF THEY
10 WERE IN A CAR.

11 Q AND WHAT DOES HE HAVE TO DO TO TRANSMIT SOMETHING TO
12 YOU?

13 A PRESS THE A BUTTON ON THE WALKIE TALKIE AND TALK.

14 Q REMEMBER YOU'RE NOT TALKING TO ME, YOU'RE TALKING TO
15 THESE JURORS. MAY NOT KNOW ALL OF THIS. SO YOU HAVE TO
16 PUSH A BUTTON ON THE RADIO?

17 A RIGHT. YOU HAVE TO PUSH A BUTTON ON THE WALKIE
18 TALKIE, THE RADIO, THE PORTABLE RADIO THAT THEY CARRY AND
19 SAY YOUR MESSAGE.

20 Q ALL RIGHT. IS IT THE SAME THING WITH THE RADIO THEY
21 HAVE IN THE CAR? THEY ACTUALLY HAVE TO PUSH A BUTTON TO
22 TRANSMIT OR TALK TO YOU?

23 A AS WELL AS I KNOW, YES. THEY HAVE ONE, A HAND
24 MICROPHONE THAT GOES TO THE RADIO AND THEY PRESS ONE
25 BUTTON AND SAY THEIR MESSAGE TO YOU.

KATHY MILES - DIRECT BY KOLB

1 Q WHAT ABOUT THEM HEARING YOU? HOW DO THEY DO THAT?
2 DO THEY HAVE TO TAKE AN ACTION TO HEAR YOU?

3 A THERE IS NO ACTION TO HEAR US.

4 Q SO IF THE WALKIE TALKIE FOR INSTANCE IS TURNED ON AND
5 YOU'RE TALKING OVER THE AIR, THAT'S GOING TO COME OUT OVER
6 EVERY WALKIE TALKIE?

7 A IF IT'S TURNED ON. THAT'S CORRECT.

8 Q ALL RIGHT. NOW, WHAT ABOUT IN THE CAR? HOW DID THEY
9 HEAR YOU?

10 A THERE IS A SPEAKER. THE RADIO IS EQUIPPED WITH A
11 SPEAKER IN THE CAR AND IT ALSO WORKS THE SAME WAY. IF IT'S
12 ON THEY CAN HEAR US.

13 Q NOW, DOES YOUR DEPARTMENT MAKE RECORDINGS OF THESE
14 POLICE RADIO TRANSMISSIONS AS WELL AS THE 911 CALLS THAT
15 COME INTO THE -- YOUR DEPARTMENT?

16 A YES. THE RADIO TRANSMISSIONS AND THE 911 LINES ARE
17 RECORDED.

18 Q ALL RIGHT. SO IF THREE PEOPLE CALL IN 911 AT THE SAME
19 TIME, THERE IS THREE DIFFERENT RECORDINGS GOING ON?

20 A CORRECT. WE CAN RECORD ALL OF THE INCOMING LINES,
21 ADMINISTRATIVE AND INDIVIDUAL CALLS.

22 Q IS THIS PRETTY COMPLICATED SYSTEM -- BE ABLE TO
23 RECORD ALL THOSE TRANSMISSIONS?

24 A IT HAS INDIVIDUAL DAILY LINES FOR THE DIFFERENT
25 TELEPHONE LINES THAT ARE COMING INTO THE DEPARTMENT.

KATHY MILES - DIRECT BY KOLB

1 Q ALL RIGHT. NOW, DID YOU GO INTO THE RECORDS THAT YOU
2 KEEP THERE, PARTICULARLY THE TAPE RECORDING RECORDS, TO
3 MAKE A TAPED RECORDING, ONE SINGLE TAPED RECORDING, OF THE
4 RELEVANT TRANSMISSIONS TO THIS PARTICULAR CASE?

5 A I'M SORRY. COULD YOU REPEAT IT?

6 Q WAS A TAPE RECORDING MADE OF THE RELEVANT RECORDS YOU
7 HAVE BY WAY OF TAPE RECORDINGS RELATING TO THIS PARTICULAR
8 CASE?

9 A OKAY. AREA YOU ASKING IF IT WAS DUPLICATED? IF THE
10 MASTER TAPE WAS DUPLICATED?

11 Q RIGHT.

12 A YES, IT WAS DUPLICATED.

13 Q ALL RIGHT. EXPLAIN WHAT THE MASTER TAPE IS AND SO
14 FORTH.

15 A OKAY. THE MASTER TAPE WOULD BE A LARGE TAPE THAT'S ON
16 THE MACHINE. AND IT'S ABOUT A -- ABOUT FIFTEEN INCHES WIDE
17 AND IT IS WHAT IS RECORDING. IT'S ABOUT AN INCH THICK.

18 THAT'S WHAT IS RECORDING TO THE -- THAT'S WHAT
19 IS NECESSARY TO RECORD THAT MANY ACTIVITIES GOING ON AT
20 ONE TIME -- WHEN I SAID THAT WE WOULD RECORD ALL THE
21 LINES. AND THAT'S THE MASTER TAPE. THAT'S THE TAPE THAT'S
22 UNINTERRUPTED.

23 THAT'S NOT STOPPED FOR ANY REASON DURING THE
24 TWENTY-FOUR HOUR PERIOD UNTIL WE CHANGE IT AT EACH -- AT
25 EACH NIGHT AT MIDNIGHT. IT'S NOT INTERRUPTED DURING THAT

KATHY MILES - DIRECT BY KOLB

1 TIME. AND THAT'S WHAT THE MASTER TAPE IS.

2 Q ALL RIGHT.

3 A THE LARGE TAPE FROM THE MACHINE.

4 Q SO YOU WENT BACK TO THAT MASTER, THAT'S BASICALLY
5 RECORDING FIFTEEN DIFFERENT THINGS AT ONE TIME? AND IT'S
6 STRETCHED OUT OVER THAT -- THE PORTIONS THAT WERE RELEVANT
7 TO THIS PARTICULAR CASE -- AND MADE ONE TAPE FOR US?

8 A YES.

9 Q ALL RIGHT.

10 MR. KOLB: YOUR HONOR, AT THIS TIME WE WOULD LIKE TO
11 OFFER THIS 911 TAPE INTO EVIDENCE.

12 THE COURT: ANY OBJECTION?

13 MR. KOLB: IT'S THE ONE YA'LL HAVE LISTENED TO.

14 MR. LITTLEJOHN: YOUR HONOR, I WAS ALLOWED TO LISTEN
15 TO THE MASTER TAPE AND...

16 THE COURT: WELL, HOLD ON JUST ONE SECOND.

17 (WHEREUPON THERE WAS A PAUSE).

18 THE COURT: LADIES AND GENTLEMEN, WHAT WE ARE ABOUT
19 TO DO -- LET ME EXPLAIN THIS. THIS MAY HAPPEN. TWO WAYS OF
20 TAKING UP MATTERS OF LAW OUT OF YOUR PRESENCE. ONE IS TO
21 HAVE YOU RETIRE TO YOUR JURY ROOM. AND ANOTHER IS TO USE
22 WHAT IS KNOWN AS A -- USED TO BE A BENCH CONFERENCE, BUT
23 IN RECENT TIMES IT'S BECOME MORE KNOWN AS A SIDE BAR.

24 THAT'S WHAT WE ARE ABOUT TO DO RIGHT NOW. IT'S
25 DONE OUT OF YOUR HEARING. IF DURING THESE TIMES THAT WE

KATHY MILES - DIRECT BY KOLB

1 HAVE THESE, IF YOU WANT TO STRETCH, PLEASE FEEL FREE TO DO
2 SO.

3 JUST ASK YOU NOT TO LEAVE THE JURY BOX, BUT THIS
4 IS DONE PURPOSELY FOR MY PURPOSE AND NOT FOR YOURS AND
5 HOPEFULLY NOT TO INCONVENIENCE YOU RUNNING IN AND OUT OF
6 THE COURTROOM. IF YOU WILL INDULGE US JUST A MOMENT.

7 (WHEREUPON A BENCH CONFERENCE WAS HELD).

8 THE COURT: ALL RIGHT. COME -- WAIT JUST A SECOND.

9 (WHEREUPON A BENCH CONFERENCE WAS HELD).

10 THE COURT: THANK YOU, GENTLEMAN. YOU WANT TO HAVE
11 THE TAPE MARKED STATE'S EXHIBIT 4?

12 (STATE'S EXHIBIT NO. 4 MARKED FOR
13 IDENTIFICATION).

14 THE COURT: ANY OBJECTION TO THE ADMISSION OF THE
15 TAPE AS PER OUR DISCUSSION AT SIDE BAR?

16 MR. LITTLEJOHN: NO, YOUR HONOR. AS I UNDERSTAND IT
17 CAPTAIN MILES IS GOING TO AUTHENTICATE. THAT'S JUST...

18 THE COURT: I -- SHE MARKED IT AND WE WILL ALLOW HER
19 TO AUTHENTICATE THAT TAPE ITSELF AND THEN I WILL INTRODUCE
20 IT WITHOUT OBJECTION SUBJECT TO HER AUTHENTICATION.

21 (STATE'S EXHIBIT NO. 4 MARKED FOR
22 IDENTIFICATION).

23 THE COURT: LET ME SAY THIS TOO AT THIS POINT SO I
24 WON'T HAVE TO INTERRUPT THE SOLICITOR AGAIN. THE TAPE IS
25 OF A LONG -- ABOUT FORTY MINUTES -- I THINK THE ENTIRE

KATHY MILES - DIRECT BY KOLB

TAPE.

WE HAVE AGREED THAT THERE ARE PARTS OF THAT THAT
DON'T HAVE ANYTHING TO DO WITH THIS PROCEEDING, SO THE
SOLICITOR IS GOING TO SIMPLY FAST FORWARD IT TO THOSE
PARTS THAT HE WANTS TO PLAY AT THIS -- AT THIS PORTION.

PLEASE UNDERSTAND SOMETHING. NOBODY IS TRYING TO
HIDE ANYTHING FROM YOU. THAT'S JUST -- WE WERE JUST THERE
TRYING TO EXPEDITE SO YOU DIDN'T HAVE TO SIT HERE AND
LISTEN TO THE FULL FORTY MINUTES.

SO THAT'S THE REASON THAT WE ARE DOING THAT.
THAT'S WHAT THE SOLICITOR WILL BE DOING. THANK YOU,
SOLICITOR. YOU MAY PROCEED.

(WHEREUPON THERE WAS A PAUSE).

THE COURT: BEFORE YOU PLAY IT, YOU WANT TO SHOW HER
THE TAPE? I WANT HER TO AUTHENTICATE THAT.

MR. KOLB: I DON'T KNOW IF SHE CAN LOOK AT THE TAPE
ITSELF AND SAY THAT THIS IS WHAT I RECEIVED. I THINK SHE
WILL HAVE TO HEAR IT TO DO THAT ACTUALLY.

THE COURT: WANT THE JURY TO BE EXCUSED FOR THIS?

MR. KOLB: JUDGE, TO EXPLAIN -- SHE PUTS HER -- SHE
HAS HER VOICE ON IT SAYING THIS IS SO AND SO.

THE COURT: THAT'S OKAY.

MR. KOLB: AS SOON AS SHE HEARS THAT...

MR. LITTLEJOHN: IF SHE CAN AUTHENTICATE IT AS WE GO
ALONG, I'M ASSUMING THE SOLICITOR IS GOING TO ASK...

KATHY MILES - DIRECT BY KOLB

1 THE COURT: WHY DON'T YOU PLAY A PORTION OF IT THEN
2 STOP AND ASK HER IF SHE CAN AUTHENTICATE IT. THANK YOU.

3 (TAPE PLAYED).

4 (WHEREUPON QUESTIONING RESUMED).

5 Q YOU RECOGNIZE THAT TAPE AS THE ONE YOU PREPARED?

6 A YES.

7 Q OKAY. NOW...

8 THE COURT: ALL RIGHT. YOU OFFERING THAT INTO
9 EVIDENCE?

10 MR. KOLB: YES, SIR.

11 THE COURT: ANY OBJECTION?

12 MR. LITTLEJOHN: NO, YOUR HONOR,.

13 THE COURT: VERY WELL. STATE'S EXHIBIT 4 IS ADMITTED
14 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.

15 (STATE'S EXHIBIT NO. 4 MARKED FOR EVIDENCE).

16 MR. KOLB: I WAS THINKING THERE WAS A TIME ON HERE.

17 (WHEREUPON QUESTIONING RESUMED).

18 Q DID YOU HEAR A TIME AS WE PLAYED THAT?

19 A NO, I DIDN'T.

20 Q LET ME...

21 (REWINDING TAPE).

22 MR. KOLB: IF YOU LISTEN FOR A TIME IF YOU WOULD,
23 PLEASE.

24 (WHEREUPON TAPE WAS PLAYED).

25 THE COURT: EXCUSE ME. SEE IF YOU CAN TURN IT DOWN

KATHY MILES - DIRECT BY KOLB

1 AND SEE IF IT'S BEING DISTORTED BECAUSE IT'S LOUD FOR THAT
2 MIKE. SEE IF IT'S JUST A LITTLE BIT -- MAYBE IT WILL BE
3 CLEARER WITHOUT SO MUCH VOLUME, WE CAN JUST TRY IT.

4 MR. KOLB: LET ME STOP IT THERE AND ASK HER A
5 QUESTION.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q MRS. MILES, WHAT WAS THAT WE JUST HEARD A TAPE OF?

8 A THAT WAS A CALL COMING IN TO 911.

9 Q ALL RIGHT. LET ME GIVE YOU SOMETHING ELSE. IS THIS
10 ALSO A RECORD FROM YOUR DEPARTMENT?

11 A YES, IT IS.

12 Q ALL RIGHT. AND TELL US -- EXPLAIN TO US WHAT THAT
13 IS.

14 A THIS IS THE COMPUTER ENTRY WHERE THE OPERATOR WHO
15 RECEIVED THE TELEPHONE CALL TYPED THE DATA THAT WAS
16 RECEIVED INTO THE COMPUTER SYSTEM WHEN MAKING A RECORD.

17 Q AND AS A RESULT OF THAT 911 TELEPHONE CALL?

18 A CORRECT.

19 Q AND CAN YOU TELL US FROM YOUR RECORDS WHAT THE TIME
20 OF THAT CALL WAS?

21 A OKAY. THE COMPUTER TIME SHOWS THAT IT WAS 1739.

22 Q WHAT TIME IS THAT? THAT'S MILITARY TIME?

23 A 5:39, YES.

24 Q 5:39 P.M.

25 A YES.

KATHY MILES - DIRECT BY KOLB

1 Q ALL RIGHT. NOW, FROM THE RECORDS AND FROM YOUR
2 LISTENING TO THE OVERALL TAPE, WAS THAT CALL DISPATCHED TO
3 A CERTAIN DEPUTY TO ANSWER THAT CALL?

4 A ACCORDING TO THIS RECORD IT WAS GIVEN TO UNIT 113. I
5 DIDN'T HEAR IT DISPATCHED YET.

6 Q OKAY. SO WHAT'S GETTING READY TO BE ON THE TAPE NOW
7 IS THE PART OF THE AIR -- THE POLICE TRANSMISSIONS -- AND
8 YOU WILL DISPATCH IT TO UNIT 113 -- OR NOT YOU, BUT YOUR
9 DEPARTMENT?

10 A CORRECT.

11 Q NOW, WHO IS 113?

12 A AT THAT TIME 113 WAS SERGEANT KUBALA.

13 Q ALL RIGHT.

14 (WHEREUPON TAPE WAS PLAYED).

15 (WHEREUPON QUESTIONING RESUMED).

16 Q WAS THAT YOU ACTUALLY SAYING 1742 THERE?

17 A I WILL NEED TO HEAR IT AGAIN.

18 (WHEREUPON TAPE WAS PLAYED).

19 (WHEREUPON QUESTIONING RESUMED).

20 Q IS THAT YOU?

21 A IT'S MY VOICE. I DON'T KNOW -- WAS IT 17? WHAT TIME
22 IT WAS, I DIDN'T HEAR THAT. BUT IT'S MY VOICE.

23 (WHEREUPON TAPE WAS PLAYED).

24 (WHEREUPON QUESTIONING RESUMED).

25 Q DID YOU HEAR THAT?

KATHY MILES - DIRECT BY KOLB

1 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

2 Q ALL RIGHT. NOW THAT'S -- HOW ARE YOU GETTING THAT
3 TIME AS YOU ARE MAKING THAT TAPE?

4 A AS WE WERE DUPLICATING THE TAPE FROM THE MASTER, I
5 WAS NARRATING AND PUTTING THE TIME IN. AS WE PLAY THE
6 MASTER TAPE BACK, THE TIME IS DISPLAYED ON THE MACHINE
7 ITSELF, SO THE MACHINE -- IT STAMPS THAT TIME.

8 THE TAPE IS TIME STAMPED THROUGHOUT THE
9 TWENTY-FOUR HOURS THAT IT'S RECORDING. AND WHEN YOU PLAY
10 TAPES BACK IT DISPLAYS THE TIME THAT THE RECORDING IS
11 COMING FROM.

12 Q ALL RIGHT. SO AS YOU WERE MAKING THIS TAPE ON A
13 MACHINE PROBABLY SIMILAR TO THIS ONE, YOU WERE JUST
14 LOOKING AT THE TIME THAT WAS ON THE MACHINE?

15 A I WAS LOOKING AT THE TIME AND PUTTING THE TIME ON THE
16 TAPE.

17 Q ALL RIGHT. OKAY. AND DID YOU HEAR ACTUALLY THE CALL
18 DISPATCHED YET ON THE TAPE OR WAS THAT WHAT'S COMING UP
19 NEXT?

20 A OKAY. YEAH.

21 (WHEREUPON TAPE WAS PLAYED).

22 (WHEREUPON QUESTIONING RESUMED).

23 Q LET ME STOP THAT. COULD YOU EXPLAIN TO US WHAT
24 HAPPENED RIGHT THERE?

25 A THE CALL WAS DISPATCHED TO 113 AS A PENDING CALL AND.

KATHY MILES - DIRECT BY KOLB

1 Q TO 113. SEE, WHAT I DON'T WANT YOU TO DO -- YOU CAN
2 USE THESE NUMBERS I WANT YOU TO EXPLAIN THEM THE 113. SO
3 OFFICER KUBALA WAS TOLD TO GO WHERE?
4 A HE WAS TOLD THERE WAS AN OUTSTANDING CALL ON TAYLOR
5 STREET, AT NUMBER 817 TAYLOR STREET.
6 Q ALL RIGHT. SO WHAT DOES A PENDING 1080 MEAN? I
7 THINK THAT'S WHAT WAS SAID THERE.
8 A PENDING MEANS THAT THERE IS A SUSPICIOUS PERSON AND
9 THAT THE CALL NEEDS TO BE CHECKED INTO.
10 Q ALL RIGHT.
11 (WHEREUPON TAPE WAS PLAYED).
12 (WHEREUPON QUESTIONING RESUMED).
13 Q THAT JUST HAPPENED TO BE OVER THERE.
14 A UNRELATED CALL BEING GIVEN OUT TO ANOTHER OFFICER.
15 Q ALL RIGHT.
16 (WHEREUPON TAPE WAS PLAYED).
17 (WHEREUPON QUESTIONING RESUMED).
18 Q THAT'S YOUR VOICE?
19 A UH-HUH.
20 Q SO 1756 WHICH WOULD BE 5:56?
21 A YES.
22 Q ALL RIGHT. LET ME -- ARE YOU -- WHAT WAS THAT THAT WE
23 JUST HEARD?
24 A IT WAS TWO DIFFERENT THINGS GOING ON. THE FIRST THEY
25 WERE AGAIN SAYING THAT THIS 1080 CALL WAS PENDING AND THE

KATHY MILES - DIRECT BY KOLB

1 UNIT NEEDED TO BE IN ROUTE AND THEN SECOND WAS THE OTHER
2 UNRELATED CALL.

3 Q OKAY.

4 MR. KOLB: JUDGE, I THINK I CAN FAST FORWARD IT A
5 LITTLE BIT NOW. WANT ME TO KEEP A RECORD OF WHERE WE AGREE
6 THAT IT'S NOT RELEVANT?

7 THE COURT: YES. THE RECORD OF -- WE'LL KEEP A RECORD
8 OF WHAT YOU PUBLISH, IF YOU WILL.

9 MR. KOLB: ALL RIGHT, SIR.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q THAT WAS YOUR VOICE 1805, 6:05 P.M.?

12 A CORRECT.

13 Q OKAY.

14 (WHEREUPON TAPE WAS PLAYED).

15 (WHEREUPON QUESTIONING RESUMED).

16 Q DID YOU HEAR WHAT YOU SAID AS FAR AS THE TIME THERE?

17 A NO, I DIDN'T HEAR THAT. I WILL NEED TO HEAR THAT
18 AGAIN.

19 Q ALL RIGHT. WHAT WAS THE TRANSMISSION RIGHT BEFORE
20 YOU CAME ON THE TIME? OR LET ME ASK YOU THIS: WHAT DOES
21 10 23 TAYLOR STREET MEAN?

22 A 10 23 MEANS ARRIVED AT THE SCENE.

23 Q ALL RIGHT. AND AGAIN 113 IS OFFICER SERGEANT KUBALA?

24 A RIGHT.

25 Q SO THAT WOULD INDICATE HE'S AT TAYLOR STREET?

KATHY MILES - DIRECT BY KOLB

- 1 A YES.
- 2 Q 10 23 MEANS ARRIVED AT THE CALL?
- 3 A YES.
- 4 Q OKAY. NOW, LET ME REWIND THAT SLIGHTLY AND SEE IF YOU
- 5 CAN HEAR YOURSELF GIVING THE TIME ON THERE.
- 6 (WHEREUPON REWINDING TAPE).
- 7 (WHEREUPON QUESTIONING RESUMED).
- 8 Q DID YOU HEAR THAT IN 1806 AND 26 SECONDS. THAT WAS
- 9 YOUR VOICE?
- 10 A I DIDN'T HEAR THAT.
- 11 Q OKAY. LET ME... SO THAT WAS AT 6:06 AND A FEW SECONDS
- 12 AFTER?
- 13 A YES, SIR.
- 14 Q AND THAT WAS SERGEANT KUBALA INDICATING TO YOU
- 15 DISPATCHERS THAT HE WAS AT TAYLOR STREET?
- 16 A YES, SIR.
- 17 Q OKAY.
- 18 MR. KOLB: I THINK I CAN FAST FORWARD IT, JUDGE.
- 19 THE COURT: ALL RIGHT, SIR.
- 20 (WHEREUPON TAPE WAS PLAYED).
- 21 (WHEREUPON QUESTIONING RESUMED).
- 22 Q WHAT WOULD THAT INDICATE?
- 23 A I WILL NEED TO HEAR IT AGAIN.
- 24 Q OKAY.
- 25 (WHEREUPON TAPE WAS PLAYED).

KATHY MILES - DIRECT BY KOLB

1 A 113 IS CALLING ANOTHER UNIT, BUT I CAN'T HEAR WHICH
2 UNIT IT IS THAT HE IS CALLING.

3 (WHEREUPON TAPE WAS PLAYED).

4 (WHEREUPON QUESTIONING RESUMED).

5 Q NOW, THAT IS YOU?

6 A YES.

7 Q GIVING THE TIME AGAIN. THAT'S -- SO YOU ACTUALLY
8 SKIPPED PART OF THE TAPE THERE AND I FAST FORWARDED. SO
9 IT'S 6:26, 28 AND THAT'S GIVING THE TIME FOR WHAT YOU ARE
10 GETTING READY TO PUT ON TAPE HERE?

11 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

12 Q ALL RIGHT.

13 (WHEREUPON TAPE WAS PLAYED).

14 (WHEREUPON QUESTIONING RESUMED).

15 Q COULD YOU EXPLAIN TO US WHAT WAS JUST HEARD AT 6:26?

16 A SERGEANT KUBALA SAYING THAT HE HAD -- THAT HE WAS
17 LEAVING THE SCENE.

18 Q ALL RIGHT. THAT'S WHAT 10 8 TAYLOR MEANS?

19 A 10 8, YEAH.

20 (WHEREUPON TAPE WAS PLAYED).

21 (WHEREUPON QUESTIONING RESUMED).

22 Q LET ME -- YOU WERE GIVING -- OFFICER KUBALA HAD LEFT
23 AT 6:26. AND THIS IS 6:54 AND 57 SO BASICALLY 6:55?

24 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

25 Q WHEN YOU SAID---

KATHY MILES - DIRECT BY KOLB

1 THE COURT: MA'AM, EXCUSE ME A SECOND. YOU NEED TO
2 SAY YES.

3 WITNESS: YES.

4 (WHEREUPON QUESTIONING RESUMED).

5 Q OKAY.

6 THE COURT: THANK YOU.

7 Q WAS THAT YOUR VOICE SAYING CALL HIM IN ON LINE 21 OF
8 911?

9 A THAT'S MY VOICE.

10 Q SO WHAT YOU ARE DOING IS IN PREPARING THIS TAPE
11 TELLING US WHERE IT'S COMING FROM THEN PUTTING IT ON THE
12 TAPE TO TAPE IT?

13 A YES.

14 Q OR TO MAKE A DUPLICATE OF IT?

15 A YES.

16 Q ALL RIGHT.

17 (WHEREUPON TAPE WAS PLAYED).

18 (WHEREUPON QUESTIONING RESUMED).

19 Q COULD YOU EXPLAIN TO US WHAT OCCURRED THERE AFTER
20 THAT 911 CALL FROM TAYLOR STREET CAME IN?

21 A OKAY. THE CALL CAME IN AND THE DISPATCHER GAVE THE
22 OFFICER THE CALL BY RADIO TO RESPOND BACK SAYING THAT THE
23 INDIVIDUAL HAD RETURNED.

24 Q ALL RIGHT. WAS THERE SOME -- WHAT WAS 10 59 OR WHAT
25 WAS THAT?

KATHY MILES - DIRECT BY KOLB

1 A 10 59 IS A MAN WITH A GUN.

2 Q OKAY.

3 MR. KOLB: THINK I CAN FAST FORWARD IT HERE SOME,
4 JUDGE.

5 THE COURT: ALL RIGHT, SIR.

6 (WHEREUPON THERE WAS A PAUSE).

7 (WHEREUPON TAPE WAS PLAYED).

8 (WHEREUPON QUESTIONING RESUMED).

9 Q WHAT WAS THAT THERE?

10 A SERGEANT KUBALA SAYING THAT HE'S IN SERVICE, CODE 42,
11 WHICH MEANS SUBJECT ADVISED. BUT I DIDN'T HEAR WHERE HE
12 WAS LEAVING FROM.

13 Q ALL RIGHT.

14 (WHEREUPON TAPE WAS PLAYED).

15 (WHEREUPON QUESTIONING RESUMED).

16 Q COULD YOU TELL US WHAT THAT WAS?

17 A SERGEANT KUBALA WAS ASKING THE DISPATCHER IF HE
18 COPIED THAT THE INDIVIDUAL WAS BACK ON TAYLOR STREET.

19 Q OKAY. IF HE COPIED. WHAT DO YOU MEAN BY THAT?

20 A HAD HE HEARD CORRECTLY THAT...

21 Q OKAY. ALL RIGHT. THANK YOU. THAT'S WHAT WAS
22 DISPATCHED?

23 (WHEREUPON TAPE WAS PLAYED).

24 (WHEREUPON QUESTIONING RESUMED).

25 Q THAT'S 7:02?

KATHY MILES - DIRECT BY KOLB

- 1 A YEAH, 7:02.
- 2 (WHEREUPON TAPE WAS PLAYED).
- 3 (WHEREUPON QUESTIONING RESUMED).
- 4 Q THAT'S YOUR VOICE?
- 5 A YES.
- 6 (WHEREUPON TAPE WAS PLAYED).
- 7 (WHEREUPON QUESTIONING RESUMED).
- 8 Q LET ME ASK YOU IF YOU CAN EXPLAIN WHAT IS OCCURRING
- 9 THERE.
- 10 A THE LAST CODE THAT WE JUST HEARD WAS ATTEMPTING 1073
- 11 WHICH IS BREAK IN. 10 84 IS IN PROGRESS.
- 12 Q ALL RIGHT. NOW I MEAN WHO IS -- WHOSE -- A DISPATCHER
- 13 IS DISPATCHING THAT?
- 14 A DISPATCHER, CORRECT.
- 15 Q OVER POLICE RADIO TO SERGEANT KUBALA?
- 16 A YES.
- 17 Q AND AT THE SAME TIME TALKING WITH MRS. GRIFFITH ON
- 18 THE 911 LINE?
- 19 A YES, SPEAKING WITH AN INDIVIDUAL.
- 20 Q OKAY.
- 21 (WHEREUPON TAPE WAS PLAYED).
- 22 (WHEREUPON QUESTIONING RESUMED).
- 23 Q COULD YOU HEAR THE TIME YOU GAVE THERE?
- 24 A I JUST HEARD THE SECONDS.
- 25 Q ALL RIGHT. THE -- WHAT WAS THE TRANSMISSION?

KATHY MILES - DIRECT BY KOLB

1 A THE TRANSMISSION WAS SERGEANT KUBALA ARRIVING AT THE
2 CALL.

3 Q ALL RIGHT. SO I BELIEVE IT SAID 10 10, 10 23, 10 13
4 SERGEANT KUBALA -- 10 13 MEANS WHAT?

5 A ARRIVED AT THE SCENE OF THE CALL.

6 Q ALL RIGHT. DID YOU HEAR THE TIME THAT YOU GAVE? I
7 WANTED TO MAKE SURE WE HAD THE EXACT TIME.

8 A COULD I HEAR IT AGAIN?

9 (WHEREUPON TAPE WAS PLAYED).

10 (WHEREUPON QUESTIONING RESUMED).

11 Q DID YOU HEAR THAT? DID YOU HEAR YOURSELF THERE?

12 A I CAN HEAR THE LAST PART -- THE SECONDS. THE 55
13 SECONDS.

14 Q OKAY. MIGHT HAVE TO TURN IT UP A LITTLE.

15 A 1906.

16 Q IS THAT WHAT YOU -- 19 -- SO 1906 AND 55 SECONDS. SO
17 BASICALLY 7:07 P.M. ON THAT DATE IS WHEN HE ARRIVED AT THE
18 SCENE?

19 A YES, SIR.

20 Q OKAY.

21 (WHEREUPON TAPE WAS PLAYED).

22 (WHEREUPON QUESTIONING RESUMED).

23 Q NOW, WAS THAT YOUR VOICE GIVING THE TIME?

24 A YES, IT WAS.

25 Q SO BASICALLY THIS IS JUST A MINUTE LATER WHILE WE

KATHY MILES - DIRECT BY KOLB

1 WERE WAITING THERE BASICALLY WITH NOTHING HAPPENING. AND
2 19 50 55 SO...

3 A YES.

4 Q BASICALLY ONE MINUTE LATER, ALMOST 7:08, FIVE SECONDS
5 BEFORE 7:08. WHAT WAS THE 113 YOU HEARD?

6 A 113? THE DISPATCHER WAS CALLING 113 ON THE RADIO.

7 Q ALL RIGHT. LET ME BACK THAT UP JUST A LITTLE BIT SO
8 WE CATCH THAT AGAIN.

9 (WHEREUPON TAPE WAS PLAYED).

10 (WHEREUPON QUESTIONING RESUMED).

11 Q ALL RIGHT. I WANT TO ASK YOU ABOUT THAT. NOW, YOU
12 GAVE THE TIME 19 07 55 FOR THAT LAST TRANSMISSION THERE.
13 ONE MINUTE AFTER HE HAD GIVEN 10 23 ARRIVING AT 817
14 TAYLOR. WHAT WERE THOSE THINGS THAT HAPPENED RIGHT THERE?
15 IF YOU WOULD INTERPRET THOSE NUMBERS FOR US.

16 A OKAY. WHEN HE ARRIVED, THE DISPATCHER CALLED HIM
17 AGAIN TO ADVISE HIM OF ANOTHER PENDING CALL THAT WAS
18 OUTSTANDING AND NEEDED ATTENTION.

19 Q WHAT DOES 10 46 MEAN?

20 A 10 46 IS A DISABLED MOTORIST.

21 Q SO DISABLED -- 10 46 OAKLAND AND WEST WOOD. I THINK
22 DESCRIBED THE CAR. THE DISPATCHER IS BASICALLY CALLING
23 SERGEANT KUBALA ABOUT A PENDING DISABLED MOTORIST?

24 A YES.

25 Q 10 46 OAKLAND AND WEST WOOD. AND WHAT DID YOU HEAR

KATHY MILES - DIRECT BY KOLB

1 RIGHT AFTER YOU HEAR THAT CALL DISPATCHED? WHAT IS THAT
2 THAT YOU HEAR AFTER THAT?

3 A SERGEANT KUBALA ASKING TO HOLD CALLS, THE OUTSTANDING
4 CALLS.

5 Q OKAY. SO THAT'S ACTUALLY SERGEANT KUBALA'S VOICE
6 SAYING HOLD ALL CALLS, I'M 10 6. WHAT DOES THAT MEAN?

7 A 10 6, BUSY.

8 Q OKAY. SO NOW, WHAT I WANT TO ASK YOU -- AT THIS
9 PARTICULAR TIME YOU INDICATED THE POLICE, ONCE THEY GET
10 OUT OF THEIR CAR, CAN TAKE A WALKIE TALKIE WITH THEM?

11 A YES, THEY CAN.

12 Q ALL RIGHT. AND WHEN THEY WANT TO DISPATCH, TALK TO
13 YOU, THEY PUSH A BUTTON AND TALK?

14 A YES.

15 Q SO OFFICER KUBALA PUSHED A BUTTON AND SAID HOLD ALL
16 CALLS I'M 10 6?

17 A YES.

18 Q THAT'S WHAT WE HEARD THE TAPE OF RIGHT THERE?

19 A RIGHT.

20 Q OKAY. NOW, WHERE THE CALL FROM THE DISPATCHER TO HIM
21 SAID 113, 10 46 OAKLAND AND WEST WOOD AND SO FORTH, HOW
22 WOULD -- HOW DID OFFICER KUBALA HEAR THAT? OR LET ME ASK
23 YOU. IF HE WERE OUT OF HIS CAR, HOW WOULD HE HEAR THAT?

24 A IF HE WERE OUT OF THE CAR, HE WOULD HAVE HEARD IT ON
25 HIS WALKIE TALKIE.

KATHY MILES - DIRECT BY KOLB

1 Q ALL RIGHT. NOW, DOES HE HAVE AN EAR PIECE IN HIS EAR
2 OR COME OUT LOUD OVER THE WALKIE TALKIE?

3 A I DON'T KNOW IF HE WAS WEARING AN EAR PIECE OR NOT.
4 IF NOT, IT WOULD COME OUT LOUDER ON THE WALKIE TALKIE.

5 Q ALL RIGHT. SO IF HE DIDN'T HAVE AN EAR PIECE, IT
6 WOULD HAVE COME OUT THE 10 13, 10 46 OAKLAND AND WEST
7 WOOD. WOULD HAVE BEEN OUT LOUD FOR ANYBODY TO HEAR?

8 A YES.

9 MR. LITTLEJOHN: I'M GOING TO OBJECT. I DON'T KNOW
10 HOW THIS WITNESS CAN ANSWER THAT QUESTION.

11 THE COURT: SUSTAINED OBJECTION. BEYOND SCOPE.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q NOW, IN PREPARING THIS TAPE, AFTER THAT ON OR ABOUT
14 ONE MINUTE AFTER HE ARRIVED AT THE SCENE AND WHICH WAS --
15 YOUR TAPE SHOWED TO BE 7:07 55 SECONDS, IS THERE ANYTHING
16 RECEIVED FROM OFFICER KUBALA AFTER HOLD ALL CALLS I'M 10 6
17 MEANING BUSY?

18 DID YOU EVER RECEIVE ANYTHING BACK FROM OFFICER
19 KUBALA AFTER THAT -- ON THAT -- WAS RECORDED ON THE TAPES?

20 A I WOULD NEED TO LISTEN FURTHER.

21 Q OKAY. ALL RIGHT.

22 (WHEREUPON TAPE WAS PLAYED).

23 (WHEREUPON QUESTIONING RESUMED).

24 Q ALL RIGHT. SO AFTER THAT 19 07 55 SECONDS HOLD ALL
25 CALLS, WE ARE 10 6, WAS THERE ANYTHING ELSE FROM OFFICER

KATHY MILES - DIRECT BY KOLB

1 KUBALA?

2 A I DIDN'T HEAR ANYTHING ELSE.

3 Q ALL RIGHT. NOW, YOU GAVE 19 08 30 IS FOR -- THIS NEXT
4 THING YOU GOT ON TAPE.

5 A YES.

6 Q ALL RIGHT.

7 (WHEREUPON TAPE WAS PLAYED).

8 (WHEREUPON QUESTIONING RESUMED).

9 Q NOW, YOU HAVE BASICALLY RETURNED THE POLICE
10 TRANSMISSION TAPE TO THE TAPE YOU WERE TAPING?

11 A RIGHT, CORRECT.

12 Q I GUESS MAYBE THE REVERSE OF THAT. AND PLAYED AGAIN
13 THAT PART, THE LAST TRANSMISSION FROM OFFICER KUBALA?

14 A YES.

15 Q AND KNEW WE ARE GOING TO SEE WHAT FOLLOWS AFTER THAT
16 ON THE REGULAR POLICE TAPE?

17 A YES.

18 Q OVER THE AIR, RADIO TRANSMISSIONS?

19 A CORRECT.

20 Q WHAT I AM LISTENING FOR IS IF YOU WOULD SIGNAL ME
21 WHEN TO STOP, WHEN THE NEXT OFFICER GETS THERE IF YOU
22 WOULD, BECAUSE I WANT TO GET THAT.

23 (WHEREUPON TAPE WAS PLAYED).

24 (WHEREUPON QUESTIONING RESUMED).

25 Q DID YOU HEAR WHAT WAS SAID THERE?

KATHY MILES - DIRECT BY KOLB

1 A I DON'T KNOW WHAT THAT WAS.

2 Q IF SOMEBODY SAID WHAT'S YOUR 20, WHAT WOULD THAT
3 MEAN?

4 A WHERE ARE YOU? WHAT'S YOUR LOCATION.

5 Q OKAY.

6 (WHEREUPON TAPE WAS PLAYED).

7 (WHEREUPON QUESTIONING RESUMED).

8 Q LET ME STOP THAT. OFFICER 130. WHO WAS THAT AT THAT
9 TIME?

10 A DEPUTY PRINCE.

11 Q JOHN PRINCE? AND YOU GAVE THE TIME 1909 AND 27
12 SECONDS FOR THAT TRANSMISSION. THAT WAS 130 SUMTER BASE.
13 THEN A QUESTION YOU ON TAYLOR; IS THAT RIGHT?

14 A (WHEREUPON SUBJECT INDICATED NODDING HEAD). 10 23.

15 Q AND WHAT WAS THE TRANSMISSION 10 52, 10 33?

16 A AN AMBULANCE IS NEEDED, EMERGENCY.

17 Q ALL RIGHT. AND THAT WAS OFFICER PRINCE OVER -- OVER
18 THE RADIO BACK TO YA'LL?

19 A YEAH.

20 Q ALL RIGHT. NOW, SOMETHING I WANT TO CLARIFY. YOU HAD
21 19 07 55 APPROXIMATELY WAS THE LAST TRANSMISSION YOU HAVE
22 ON THE TAPE, ANY RECORD OF -- FROM OFFICER KUBALA; IS THAT
23 RIGHT?

24 A RIGHT.

25 Q 19 07 55. AND 19 08 30 WAS WHEN THE LINE -- WHEN THE

KATHY MILES - DIRECT BY KOLB

1 LAST 911 CALL CAME IN FROM MRS. GRIFFITH THAT AN OFFICER
2 WAS SHOT?

3 A RIGHT.

4 Q 19. AND OF COURSE THAT CALL LASTED FOR A COUPLE OF
5 MINUTES. BUT THEN YOU BACKED UP ON THE AIR TAPE AND 10 09
6 27 IS DEPUTY PRINCE SAYING THEY NEED AN AMBULANCE?

7 A YES.

8 Q ALL RIGHT.

9 MR. KOLB: JUST A MOMENT PLEASE, YOUR HONOR.

10 THE COURT: YES, SIR. TAKE YOUR TIME.

11 (WHEREUPON THERE WAS A PAUSE).

12 Q MRS. MILES, IF YOU WOULD ANSWER ANY QUESTIONS THE
13 DEFENSE MAY HAVE.

14 THE COURT: YOU MAY CROSS-EXAMINE, MR. LITTLEJOHN.

15 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

16 CROSS-EXAMINATION BY MR. LITTLEJOHN:

17 Q GOOD AFTERNOON, CAPTAIN MILES.

18 A HI.

19 Q YOU REMEMBER ME?

20 A YES.

21 Q OKAY. IF YOU RECALL ON SEPTEMBER 17TH OF THIS YEAR,
22 TOMMY DAVIS WHO IS AN INVESTIGATOR THAT WORKS WITH ME AND
23 I CAME TO THE 911 DISPATCH CENTER AND LISTENED TO THESE
24 TAPES.

25 A YES.

KATHY MILES - CROSS BY LITTLEJOHN

1 Q DO YOU RECALL THAT?

2 A YES.

3 Q DID YOU DO THIS COMPOSITE TAPE THAT WE JUST BEEN
4 LISTENING TO SOME TIME AFTER THAT?

5 A THIS TAPE THAT WE ARE LISTENING TO?

6 Q RIGHT.

7 A NO.

8 Q IT HAD ALREADY BEEN DONE?

9 A THIS TAPE WAS RECORDED WHILE YOU WERE IN ATTENDANCE.

10 Q OKAY. DID YOU RECORD IT OR DID LIEUTENANT MARTIN
11 RECORD IT?

12 A THIS TAPE IS NOT MY TAPE.

13 Q OKAY. THAT'S WHAT I'M GETTING AT. WHO RECORDED THIS
14 TAPE?

15 A LIEUTENANT MARTIN WAS THERE RECORDING THE TAPE.

16 Q OKAY. I UNDERSTOOD THAT YOU WOULD HAVE RECORDED IT,
17 BUT ACTUALLY LIEUTENANT MARTIN DID?

18 A HE WAS THERE RECORDING.

19 Q I RECALL HE WAS RECORDING. OKAY. CAPTAIN MILES, AS I
20 UNDERSTAND IT, YOU HAVE ONE MASTER REEL THAT RECORDS ALL
21 THE CALLS THAT COME IN WHETHER THEY ARE RADIO DISPATCH
22 CALLS OR FIRE CALLS OR AMBULANCE CALLS OR 911 CALLS; IS
23 THAT RIGHT?

24 A YES.

25 Q AND APPARENTLY THERE ARE DIFFERENT TRACKS ON THAT ONE

KATHY MILES - CROSS BY LITTLEJOHN

1 MASTER TAPE AND YOU ARE TAPING THINGS SIMULTANEOUSLY; IS
2 THAT RIGHT?

3 A THAT IS.

4 Q OKAY. NOW AS I UNDERSTAND IT, THE FIRST CALL THAT
5 PERTAINS TO THIS MATTER CAME IN AT 7:39 P.M. I MEAN --
6 EXCUSE ME -- 5:39 P.M., 1739 P.M. ON FEBRUARY 26TH, 1996?

7 A YES.

8 Q OKAY. AND THE CALLER IDENTIFIED HERSELF AS RUTH
9 GRIFFITH'S DAUGHTER; IS THAT CORRECT?

10 A I'M NOT CERTAIN. I COULD LISTEN TO IT AND CONFIRM IF
11 THAT'S WHAT I HEAR.

12 Q BUT YOU HAVE LISTENED TO THAT TAPE; HAVE YOU NOT?

13 A I HAVE.

14 Q OKAY. THE CALLER, THE FEMALE CALLER, INDICATED THAT
15 THERE WAS A MAN AT THE HOUSE?

16 A RIGHT.

17 Q AND THAT HE HAD BEEN RUN OFF; IS THAT RIGHT? DO YOU
18 RECALL THAT?

19 A THEY WANTED AN OFFICER TO COME OVER THERE BECAUSE HE
20 WAS THERE.

21 Q OKAY. DO YOU RECALL HER INFORMING THE DISPATCHER THAT
22 THERE WAS A MAN THAT HAD COME TO THE WINDOW, THAT HE HAD
23 BEEN RUN OFF AND GONE INTO THE WOODS?

24 A SOME TIME DURING THE EVENTS, BUT I AM NOT -- I CAN'T
25 TELL YOU THAT IT WAS ON THE FIRST CALL.

KATHY MILES - CROSS BY LITTLEJOHN

1 Q ALL RIGHT. BUT YOU REALIZE THERE WAS A CALL AT 1739
2 HOURS?

3 A RIGHT.

4 Q THAT WAS THE FIRST CALL THAT WE ARE REALLY CONCERNED
5 WITH?

6 A RIGHT.

7 Q ON THAT DATE. NOW, AS I UNDERSTAND IT, AT 1756 HOURS
8 SERGEANT KUBALA WHO WAS UNIT 113 RESPONDED TO THAT 911
9 CALL?

10 A I DIDN'T MAKE NOTES OF THE TIMES SINCE WE WERE GOING
11 THROUGH IT, BUT I CAN CONFIRM THAT IF THAT'S WHAT'S ON THE
12 TAPE.

13 Q OKAY. I'M SORRY. I THOUGHT YOU HAD NOTES WRITTEN DOWN
14 AS TO SOME OF THESE TIMES?

15 A NO, I DON'T. I DON'T HAVE ANY NOTES.

16 Q I BELIEVE THE TAPE INDICATED THAT'S WHEN HE RESPONDED
17 AT 1756 HOURS. AND THAT HE INDICATED THAT HE HAD ARRIVED
18 AT 1806 HOURS. DOES THAT SOUND CORRECT?

19 A THAT SOUNDS CLOSE.

20 Q THE TAPE IS IN EVIDENCE, SO...

21 A OKAY. YES.

22 Q OKAY. SO THAT WOULD HAVE BEEN APPROXIMATELY
23 TWENTY-SEVEN MINUTES AFTER THE INITIAL CALL?

24 A I HAVE NOT DONE THE ADDITIONS.

25 Q ASSUMING MY ADDITION IS CORRECT, WOULD HAVE BEEN

KATHY MILES - CROSS BY LITTLEJOHN

1 ABOUT TWENTY-SEVEN MINUTES FROM THE TIME THE CALL WAS
2 PLACED TO 911 INDICATING THAT THE PERSON HAD BEEN RUN OFF
3 AND WHEN SERGEANT KUBALA ARRIVED.

4 A IF YOUR ADDITION IS CORRECT FROM WHAT NOTES YOU HAVE,
5 BECAUSE I DON'T HAVE THOSE NOTES, NO.

6 Q ALL RIGHT. THANK YOU. ALL RIGHT. AS I UNDERSTOOD,
7 SERGEANT KUBALA RESPONDED TO THIS CALL APPROXIMATELY TEN
8 MINUTES BEFORE HE ARRIVED AND OF COURSE WE DON'T KNOW WHAT
9 HIS LOCATION WAS. SO IT MAY HAVE EASILY TAKEN HIM THAT
10 LONG TO GET THERE; WOULD THAT BE A FAIR ASSUMPTION?

11 A COULD YOU RESTATE THAT?

12 Q I'LL REPHRASE IT. DO YOUR RECORDS INDICATE WHERE
13 SERGEANT KUBALA WAS WHEN HE RESPONDED TO THE CALL?

14 A NOT ON THE RECORDS THAT I HAVE.

15 Q OKAY. NOW, SOLICITOR KOLB WAS ASKING YOU ABOUT A
16 SERIES OF CALLS THAT OCCURRED AFTER THAT. AND I BELIEVE
17 YOU INDICATED THAT AT 1904 AND 14 SECONDS THERE WAS A 911
18 CALL BY A FEMALE REPORTING AN ATTEMPTED BREAK IN?

19 A WHEN I TRANSLATED THE TAPE FOR HIM, YES, IT WAS
20 SOMEONE CALLING ME TO REPORT AN ATTEMPTED BREAK IN.

21 Q OKAY. AND I BELIEVE THE RECORDS INDICATE THAT IT WAS
22 SOMETHING -- APPROXIMATELY THREE MINUTES LATER WHEN
23 SERGEANT KUBALA SIGNED DOWN AT 817 TAYLOR STREET?

24 A I DIDN'T DO THE ADDITION ON THE TIME.

25 Q YOU DIDN'T MAKE A MENTAL NOTE OF THE TIMES?

KATHY MILES - CROSS BY LITTLEJOHN

1 A NO, I DIDN'T.

2 Q OKAY. BUT IF THAT'S IN THE RECORD -- OKAY. NOW,
3 SOLICITOR KOLB ASKED YOU ABOUT THE CAR RADIO AND THE
4 WALKIE TALKIE THAT THE DEPUTIES USED.

5 AND I BELIEVE YOU INDICATED THERE WAS NO WAY TO
6 TELL WHETHER THE PARTICULAR DEPUTY WAS USING HIS CAR RADIO
7 IN RECEIVING A CALL OR WHETHER HE WAS RECEIVING A CALL
8 OVER THE WALKIE TALKIE. IS THAT RIGHT?

9 A I CAN'T TELL.

10 Q THERE'S NO WAY TO TELL?

11 A IF HE'S IN THE CAR OR IF HE'S ON THE WALKIE TALKIE.

12 Q OKAY. SO THE CALL WHICH YOU IDENTIFIED AND WE SPOKE
13 ABOUT IT 1907 AND 55 SECONDS COULD HAVE BEEN EITHER THE
14 CAR RADIO OR THE WALKIE TALKIE; IS THAT RIGHT?

15 A WHEN HE RETURNED TO SAY THAT HE HAD ARRIVED OR...

16 Q RIGHT. WHEN HE TURNED DOWN THE DISABLED CAR CALL.

17 A CORRECT. THAT COULD HAVE BEEN IN THE CAR.

18 Q COULD HAVE BEEN EITHER ONE?

19 A UH-HUH.

20 Q AND YOU DON'T HAVE ANY IDEA WHAT THE VOLUME LEVEL WAS
21 OF EITHER HIS CAR RADIO OR THE WALKIE TALKIE; DO YOU?

22 A NO, I DON'T.

23 Q I BELIEVE THAT'S ALL I HAVE.

24 MR. LITTLEJOHN: WOULD YOU INDULGE ME JUST A MOMENT,
25 YOUR HONOR?

KATHY MILES - CROSS BY LITTLEJOHN

1 THE COURT: YES, SIR. TAKE YOUR TIME.

2 (WHEREUPON THERE WAS A PAUSE).

3 MR. LITTLEJOHN: THAT'S ALL WE HAVE AT THIS TIME,
4 YOUR HONOR.

5 MR. KOLB: JUDGE, WOULD BE REDIRECT, BUT I'D LIKE TO
6 PLAY THE TIME OF THE ARREST TO ESTABLISH THAT TIME IF IT'S
7 ALL RIGHT WITH THE COURT. IT WILL BE VERY BRIEF.

8 THE COURT: DO WE NEED THAT OR THE PERSON -- ARREST
9 TIME OF ARREST CAN NOT BE INTRODUCED INTO EVIDENCE THROUGH
10 SOMEBODY ELSE? DO YOU HAVE ANY OBJECTION TO HIM PLAYING
11 ADDITIONAL PARTS OF THE TAPE?

12 MR. LITTLEJOHN: YOUR HONOR, I UNDERSTOOD THERE WOULD
13 BE ADDITIONAL WITNESSES.

14 THE COURT: I SUSTAIN IT. WE DON'T NEED TO PLAY IT.
15 THANK YOU, SIR. SUSTAIN THE OBJECTION. IT'S NOT PROPER
16 REDIRECT. ANY ADDITIONAL QUESTIONS, SOLICITOR?

17 MR. KOLB: NO, SIR.

18 THE COURT: VERY WELL. YOU MAY STEP DOWN.

19 (WHEREUPON THE WITNESS LEFT THE STAND).

20 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. I'M
21 GOING TO LET YOU BREAK AT THIS POINT TO TAKE OUR LUNCH
22 BREAK. I JUST WANTED TO DISCUSS -- SINCE WE'RE MOVING IN
23 MASS, WE WILL GIVE YOU A LITTLE EXTRA TIME BECAUSE YOU GOT
24 TO GET EVERYBODY IN, TAKE YOU THERE, THEN COLLECT
25 EVERYBODY, SO WE WILL PROBABLY USE -- I WAS JUST ASKING

KATHY MILES - CROSS BY LITTLEJOHN

1 THEM THE TIME FRAME FOR LUNCH. ABOUT AN HOUR AND A HALF.

2 DURING THE DAY THAT WILL GIVE YOU SOME TIME TO
3 TRANSPORT YOU THERE, GET YOU THERE, TAKE CARE, HAVE TO RUN
4 BACK IN THE ROOM OR SOMETHING OF THAT NATURE AND TAKE CARE
5 OF ANYTHING YOU MAY NEED.

6 SO I'M GOING TO LET YOU GO UNTIL ABOUT 2:30.
7 PLEASE DO NOT DISCUSS THIS CASE AMONG YOURSELVES. DO NOT
8 BEGIN YOUR DELIBERATIONS IN ANY FASHION WHATSOEVER.

9 WE WILL SEE YOU AT 2:30 THIS AFTERNOON. HAVE A
10 NICE LUNCH. EVERYBODY ELSE PLEASE REMAIN SEATED WHILE THE
11 JURY LEAVES.

12 (WHEREUPON THE JURY LEFT THE COURTROOM AT 1:01
13 P.M.)

14 THE COURT: IS THERE ANYTHING FROM THE STATE BEFORE
15 WE RECESS?

16 MR. KOLB: NO, SIR.

17 THE COURT: ANYTHING FROM THE DEFENSE BEFORE WE
18 RECESS?

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: THANK YOU VERY MUCH. BE AT EASE UNTIL
21 2:30, PLEASE.

22 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

23 THE COURT: STATE READY?

24 MR. KOLB: YES, SIR, YOUR HONOR.

25 THE COURT: DEFENSE READY?

DANIEL BETHEA - DIRECT BY KOLB

1 MR. LITTLEJOHN: YES, YOUR HONOR.

2 THE COURT: LET THE RECORD REFLECT MR. STONE IS
3 PRESENT. BRING THE JURY IN, PLEASE.

4 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
5 2:39 P.M.)

6 THE COURT: THANK YOU, LADIES AND GENTLEMEN. HOPE YOU
7 HAD A GOOD LUNCH. WE ARE READY TO GO, SOLICITOR, YOU MAY
8 CALL YOUR NEXT WITNESS, SOLICITOR.

9 MR. KOLB: THANK YOU, YOUR HONOR. CALL DANNY BETHEA
10 DANIEL BETHEA, BEING FIRST DULY
11 SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. KOLB:

13 Q MR. BETHEA, WHERE DO YOU LIVE?

14 A 435 MIDWAY STREET.

15 Q IS THAT NEAR WHERE MRS. RUTH GRIFFITH LIVES?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. HAVE YOU HAD AN OPPORTUNITY TO LOOK OVER
18 THESE TAX MAPS THAT WE HAVE TAPED TOGETHER ON THE BACK OF
19 HERE?

20 MR. BABB: YOUR HONOR.

21 THE COURT: YES, SIR.

22 MR. BABB: MAY WE APPROACH THE BENCH?

23 THE COURT: YES, YOU MAY.

24 MR. BABB: WOULD ASK BEFORE THAT'S PRESENTED....

25 (WHEREUPON A BENCH CONFERENCE WAS HELD).

DANIEL BETHEA - DIRECT BY KOLB

1 THE COURT: YOU MAY CONTINUE, MR. SOLICITOR.

2 MR. KOLB: ALL RIGHT.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q MR. BETHEA, YOU OBSERVED THESE FOUR SUMTER COUNTY TAX
5 MAPS WE HAVE TAPED TOGETHER HERE?

6 A RIGHT.

7 Q AND DOES THAT FAIRLY AND ACCURATELY REPRESENT THE
8 AREA AROUND WHERE YOU LIVE?

9 A YES, SIR.

10 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER IT INTO
11 EVIDENCE AT THIS TIME.

12 THE COURT: ALL RIGHT.

13 MR. BABB: YOUR HONOR, I'D LIKE TO NOTE AN OBJECTION.

14 THE COURT: ALL RIGHT. SUBJECT TO OBJECTION.

15 COUNSEL, REMIND US AT THE NEXT BREAK. WE WILL PLACE THAT
16 WHAT WAS TAKEN UP AT SIDE BAR AND PUT IT ON THE RECORD AT
17 THE FIRST BREAK.

18 SUBJECT TO THE OBJECTION OF COUNSEL, IT'S
19 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 5. IT'S A
20 COMPILATION OF TAX MAPS TAPED TOGETHER. THERE ARE FOUR IN
21 NUMBER, MR. SOLICITOR?

22 MR. KOLB: YES, SIR.

23 THE COURT: FOUR MAPS TOGETHER.

24 (STATE'S EXHIBIT NO. 5 MARKED FOR EVIDENCE).

25 (WHEREUPON QUESTIONING RESUMED).

DANIEL BETHEA - DIRECT BY KOLB

1 Q MR. BETHEA, CAN YOU SEE IT ALL RIGHT FROM UP THERE?

2 A YES, SIR.

3 Q OKAY. I'M GOING TO ASK YOU ABOUT IT A LITTLE BIT.

4 WHAT IS -- I'M GOING TO TRACE SOMETHING. YOU TELL ME WHAT
5 THAT IS?

6 A I CAN'T SEE IT NOW.

7 THE COURT: IF YOU NEED TO GO DOWN, MR. BETHEA, YOU
8 CAN, BUT I WOULD ASK THAT YOU DO ONE THING. MAKE SURE THAT
9 YOU SPEAK LOUDLY ENOUGH SO THAT ALL THE JURORS CAN HEAR.

10 THAT WILL BE THE ONLY REQUIREMENT. IF YOU NEED
11 TO GO DOWN AND LOOK AT IT, PLEASE FEEL FREE TO DO SO.

12 WITNESS: OKAY.

13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 (WHEREUPON QUESTIONING RESUMED).

15 Q IF YOU WOULD STAND OVER HERE AND I WILL LET YOU HOLD
16 THE POINTER. WOULD YOU SHOW US WHERE BOULEVARD ROAD IS ON
17 THIS MAP.

18 A RIGHT HERE.

19 THE COURT: KEEP YOUR VOICE UP, MR. BETHEA.

20 WITNESS: OKAY.

21 MR. KOLB: REAL LOUD.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q WHICH WAY WOULD BE GOING INTO TOWN?

24 A (INDICATING).

25 Q AND THAT WOULD BE NORTH?

DANIEL BETHEA - DIRECT BY KOLB

1 A RIGHT.

2 Q AND THEN WHAT WOULD -- GOING THAT WAY WOULD BE GOING
3 SOUTH?

4 A RIGHT.

5 Q ALL RIGHT. NOW, OFF OF BOULEVARD ROAD RIGHT HERE,
6 WHAT IS THIS STREET?

7 A I BELIEVE THAT'S RIDGEWAY STREET.

8 Q ALL RIGHT.

9 A THAT BE THE STREET I LIVE ON.

10 Q WHERE IS YOUR HOUSE ACTUALLY ON THAT STREET?

11 A RIGHT IN THIS AREA. RIGHT IN THIS AREA.

12 Q ALL RIGHT, SIR. AND ARE YOU FAMILIAR WITH THE
13 RESIDENCE OF RUTH GRIFFITH AT 817 TAYLOR STREET?

14 A YES, SIR.

15 Q COULD YOU POINT THAT OUT FOR US.

16 A HER HOUSE WOULD BE RIGHT HERE. RIGHT IN THAT AREA.

17 Q ALL RIGHT. SO THIS -- LET ME ASK YOU. THIS -- AT THE
18 END OF RIDGEWAY THERE'S A STREET GOING THIS WAY?

19 A RIGHT.

20 Q WHAT STREET IS THAT?

21 A I BELIEVE THAT'S TAYLOR STREET.

22 Q ALL RIGHT, SIR. NOW, JUST SOME OTHER LAND MARKS IN
23 THE AREA. CAN YOU TELL US WHAT THIS STREET IS RIGHT HERE?

24 A I BELIEVE THAT'S BELK STREET, I BELIEVE.

25 Q AND WHAT'S THIS LARGE BUILDING HERE?

DANIEL BETHEA - DIRECT BY KOLB

1 A THE BOYS CLUB.

2 Q THERE'S A SALVATION ARMY BOYS AND GIRLS CLUB?

3 A YES, SIR.

4 Q ALL RIGHT. NOW, ARE YOU FAMILIAR WITH THE AREA
5 BETWEEN THE SALVATION ARMY BOYS AND GIRLS CLUB AND THE
6 BACK OF YOUR HOUSE IS SHOWN GENERALLY WHERE MY HAND IS ON
7 THIS DIAGRAM?

8 A YES, SIR.

9 Q NOW, I KNOW THESE PHOTOGRAPHS WERE TAKEN IN 1989. CAN
10 YOU TELL US IN FEBRUARY 1996 WHAT THAT AREA WAS LIKE
11 BEHIND YOUR HOUSE?

12 A IT'S BASICALLY THE SAME. IT HASN'T CHANGED MUCH.

13 Q ALL RIGHT. AND SO WHAT IS THIS SHOWN RIGHT -- THIS
14 SORT OF LIGHTER COLORED AREA HERE?

15 A THAT'S JUST A WHEAT FIELD. THAT'S ALL THAT IS.

16 Q OKAY.

17 A WHEAT FIELD.

18 Q THE AREA AROUND IT, PARTICULARLY THIS AREA IN HERE,
19 WHAT IS THIS?

20 A THAT'S WOODS.

21 Q ALL RIGHT. OKAY. ARE YOU PARTICULARLY FAMILIAR WITH
22 THIS FIELD AND IF SO WHY?

23 A WELL, I...

24 Q SPEAK UP LOUD.

25 A MY LITTLE BOY GOT A FOUR WHEELER AND WE RIDE IN THAT

DANIEL BETHEA - DIRECT BY KOLB

1 FIELD A GOOD BIT.

2 Q ALL RIGHT, SIR. I THINK THAT'S EVERYTHING. IF YOU'D
3 YOU GO BACK AND TAKE THE STAND.

4 (WHEREUPON THE WITNESS RESUMED THE STAND).

5 (WHEREUPON QUESTIONING RESUMED).

6 Q MR. BETHEA, DO YOU KNOW DEPUTY CHARLIE KUBALA?

7 A YES, SIR.

8 Q AND HOW WAS IT YOU KNEW HIM?

9 A I WORKED WITH HIS BROTHER KEVIN, KNEW HIM IN
10 CONSTRUCTION. HE WOULD COME UP THERE OCCASIONALLY AND WE
11 WOULD TALK.

12 Q OKAY. YOU WORKED WITH HIM WHERE?

13 A AT NEWMAN CONSTRUCTION. THAT'S IN THE PAST.

14 Q OKAY. KEVIN IN THE COURTROOM? OKAY. YOU MIND
15 STANDING UP? THAT'S CHARLIE'S BROTHER KEVIN. LOOKS A GOOD
16 BIT LIKE CHARLIE?

17 A YES, SIR.

18 Q AND YA'LL WORKED TOGETHER?

19 A RIGHT.

20 Q OKAY. DID YOU ON THE EVENING OF MONDAY OR ACTUALLY
21 THE NIGHT OF MONDAY, FEBRUARY THE 26TH, 1996, DID YOU HAVE
22 OCCASION TO SEE CHARLIE KUBALA?

23 A YES.

24 Q AND IF SO, WHERE?

25 A WELL, I SEEN HIM -- HE WAS PASSING MY HOUSE.

DANIEL BETHEA - DIRECT BY KOLB

- 1 Q ALL RIGHT.
- 2 A WHEN HE WAS GOING TO THE WOODS.
- 3 Q AND WHERE WERE YOU WHEN YOU SAW THAT?
- 4 A I WAS RIGHT BY THE ROAD. STANDING RIGHT BY THE ROAD.
- 5 Q YOU WERE OUT IN YOUR YARD?
- 6 A YES, SIR.
- 7 Q AND WHEN YOU SAY HE WAS PASSING BY, HOW DID HE PASS
- 8 BY?
- 9 A HE WAS PROBABLY GOING ABOUT FORTY, THIRTY-FIVE, FORTY
- 10 MILES AN HOUR.
- 11 Q HE WAS IN THE CAR THEN?
- 12 A RIGHT. YEAH.
- 13 Q SEE, WE CAN'T ASSUME THINGS.
- 14 A OKAY.
- 15 Q SO HE WAS IN -- WHAT KIND OF CAR WAS IT?
- 16 A HE WAS IN A WHITE POLICE CAR.
- 17 Q ALL RIGHT. WAS IT A MARKED CAR?
- 18 A NO, I DON'T KNOW. NO, IT WASN'T MARKED. HE HAD A
- 19 BUNCH OF LIGHTS ON IT.
- 20 Q ALL RIGHT. SO YOU COULD TELL IT WAS A POLICE CAR?
- 21 A RIGHT. OH, YEAH. OH, YEAH.
- 22 Q ALL RIGHT. NOW, TELL US WHAT HAPPENED. YOU SAW
- 23 DEPUTY KUBALA GOING IN WHAT DIRECTION ON RIDGEWAY STREET?
- 24 A HE WAS HEADED TOWARDS RUTH'S HOUSE, MRS. GRIFFITH.
- 25 Q ALL RIGHT. NOW, AFTER YOU SAW CHARLIE KUBALA, WHAT

DANIEL BETHEA - DIRECT BY KOLB

1 HAPPENED?

2 A I -- JUST LIKE I SAID, I HEARD THREE SHOTS.

3 Q ALL RIGHT. HOW LONG AFTER YOU SAW HIM PASS YOU WAS IT
4 BEFORE YOU HEARD THOSE SHOTS?

5 A MAYBE A MINUTE. I MEAN, IT WASN'T LONG.

6 Q ALL RIGHT. AND WHEN YOU HEARD THE SHOTS, COULD YOU
7 TELL US WHAT YOU HEARD?

8 A JUST POW, POW, POW.

9 Q ALL RIGHT. SO THREE DISTINCT SOUNDS OF GUN FIRE?

10 A RIGHT.

11 Q ALL RIGHT. AND WHAT HAPPENED AFTER YOU HEARD THAT?

12 A WELL, I STARTED WALKING DOWN THAT WAY AND THEN
13 ANOTHER OFFICER PASSED. AND BY THAT TIME, HE WAS DONE OUT
14 THE CAR. AND HE HOLLERED, TOLD ME TO GET BACK. SO I
15 TURNED AROUND AND WENT BACK HOME.

16 Q ALL RIGHT. IF YOU WOULD ANSWER ANY QUESTIONS THE
17 DEFENSE MAY HAVE.

18 THE COURT: CROSS-EXAMINE?

19 CROSS-EXAMINATION BY MR. LITTLEJOHN:

20 Q MR. BETHEA, AS I UNDERSTOOD IT YOU LIVE ON RIDGEWAY
21 STREET?

22 A THAT'S CORRECT.

23 Q HOW FAR OFF OF BOULEVARD ROAD IS YOUR HOUSE?

24 A I'D SAY HALF A MILE MAYBE.

25 Q HALF A MILE? HOW MANY HOUSES DOWN WOULD YOU BE?

DANIEL BETHEA - CROSS BY LITTLEJOHN

1 A I SAY ABOUT SIX HOUSES.

2 Q SIX HOUSES?

3 A RIGHT.

4 Q OKAY. THEN I BELIEVE RIDGEWAY ENDS, YOU TAKE A LEFT
5 AND IT TURNS INTO TAYLOR STREET?

6 A RIGHT.

7 Q IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q HOW MANY HOUSES ARE THERE BETWEEN YOUR HOUSE AND
10 TAYLOR STREET?

11 A I BELIEVE FIVE. I BELIEVE. I BELIEVE, YEAH.

12 Q SO YOU WOULD BE SOMEWHERE IN THE MIDDLE?

13 A IN THE MIDDLE.

14 Q OF RIDGEWAY STREET?

15 A RIGHT.

16 Q OKAY. NOW, YOU SAW DEPUTY KUBALA GO PAST YOUR HOUSE?

17 A THAT'S CORRECT.

18 Q YOU SAY HE WAS IN A POLICE CAR?

19 A THAT'S CORRECT.

20 Q OKAY. AND DO YOU RECALL ABOUT WHAT TIME THIS WAS?

21 A IT WAS BEFORE DARK. IT WAS RIGHT BEFORE DAWN. I MEAN,
22 I COULD STILL SEE GOOD, YOU KNOW. YOU COULD STILL SEE.

23 Q OKAY. SO YOU HAD ENOUGH LIGHTING TO SEE HIS CAR?

24 A OH, YEAH. OH, YEAH.

25 Q OKAY. AND OBVIOUSLY YOU COULD SEE HIM?

DANIEL BETHEA - CROSS BY LITTLEJOHN

- 1 A RIGHT.
- 2 Q SO THERE MUST HAVE BEEN ENOUGH LIGHT?
- 3 A RIGHT.
- 4 Q OKAY. SO WE ARE TALKING ABOUT SOME TIME BEFORE
- 5 OBVIOUSLY SUN DOWN?
- 6 A RIGHT.
- 7 Q OKAY. AND THIS WAS FEBRUARY 26TH?
- 8 A I DON'T REMEMBER THE DATE.
- 9 Q HOW ABOUT -- DO YOU REMEMBER -- IT WAS IN FEBRUARY?
- 10 A RIGHT.
- 11 Q 1996? OKAY. SO WHEN SERGEANT KUBALA WENT PAST YOUR
- 12 HOUSE, WERE YOU STANDING IN THE FRONT YARD?
- 13 A THAT'S CORRECT. I WAS STANDING RIGHT BY THE ROAD.
- 14 Q YOU WERE STANDING?
- 15 A NEAR THE ROAD.
- 16 Q OKAY. SO HE GOES DOWN RIDGEWAY PAST YOUR HOUSE?
- 17 A THAT'S CORRECT.
- 18 Q HE HAS TO GO FIVE MORE HOUSES, TAKES A LEFT ON TAYLOR
- 19 STREET?
- 20 A RIGHT.
- 21 Q OKAY. THEN IF I -- IF I'M CORRECT -- MRS. GRIFFITH
- 22 LIVES AT THE END OF TAYLOR STREET ON THE OTHER SIDE?
- 23 A NO, THE END OF RIDGEWAY STREET YOU COULD PULL RIGHT
- 24 IN HER DRIVEWAY. YOU WOULDN'T HAVE TO TURN TO GO DOWN
- 25 TAYLOR STREET. YOU COULD JUST DRIVE. IF YOU WENT STRAIGHT,

DANIEL BETHEA - CROSS BY LITTLEJOHN

1 YOU WOULD RUN INTO HER HOUSE.

2 Q OKAY. LET ME GET IT STRAIGHT. TAYLOR STREET SITS
3 HERE AND RIDGEWAY...

4 A RUNS INTO.

5 Q RUNS INTO MRS. GRIFFITH'S HOUSE?

6 A RIGHT.

7 Q THEN THERE'S ANOTHER STREET DOWN ON THIS END?

8 A THAT'S CORRECT.

9 Q WHAT STREET IS THAT?

10 A I COULDN'T TELL YOU. HOLLAWAY STREET, I BELIEVE. I
11 BELIEVE HOLLAWAY RUNS IN BETWEEN THE TWO. IT'S RIDGEWAY,
12 HOLLAWAY. AND MY OWN MOTHER LIVES ON THAT STREET -- CAN'T
13 EVEN TELL YOU THE NAME OF IT.

14 Q OKAY. SO ANY WAY, YOU ARE OUT IN YOUR YARD ON
15 RIDGEWAY?

16 A RIGHT.

17 Q IT'S LIGHT OUTSIDE?

18 A RIGHT.

19 Q YOU SEE SERGEANT KUBALA GOING DOWN THE ROAD?

20 A THAT'S CORRECT.

21 Q OKAY. HE GOES FIVE OR SIX HOUSES DOWN, OBVIOUSLY HAS
22 TO GO ACROSS THE STREET TO GET TO MRS. GRIFFITH'S YARD?

23 A THAT'S CORRECT.

24 Q OKAY. AND WHAT DID YOU DO AFTER THAT? DID YOU GO
25 BACK IN YOUR HOUSE?

DANIEL BETHEA - CROSS BY LITTLEJOHN

1 A NO, THAT'S WHEN I HEARD THE SHOTS. AND LIKE I SAID,
2 I STARTED WALKING DOWN THAT WAY. THEN ANOTHER OFFICER
3 PASSED AND THEN HE MOTIONED FOR ME -- HOLLERED -- TOLD ME
4 TO GET BACK. TOLD ME TO GO BACK HOME.

5 Q OKAY. SO YOU DIDN'T...

6 A I TURNED AROUND AND WALKED BACK.

7 Q YOU DIDN'T SEE ANY SHOTS FIRED?

8 A NO, SIR. I DIDN'T SEE ANY. I JUST HEARD THREE SHOTS.

9 Q YOU JUST HEARD THEM. YOU DON'T KNOW WHO SHOT THEM?

10 A NO, SIR.

11 Q YOU DIDN'T SEE ANYBODY SHOOT?

12 A NO, SIR.

13 Q OKAY.

14 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
15 MOMENT, JUDGE.

16 THE COURT: YES, SIR.

17 (WHEREUPON THERE WAS A PAUSE).

18 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR. THANK
19 YOU.

20 THE COURT: REDIRECT, SOLICITOR?

21 REDIRECT EXAMINATION BY MR. KOLB:

22 Q YOU WERE ASKED IF THIS WAS BEFORE SUN DOWN. ARE YOU
23 SAYING IT WASN'T BLACK DARK? STILL ALL DAY OUT?

24 A YES, SIR.

25 MR. LITTLEJOHN: I OBJECT TO THE LEADING QUESTION.

DANIEL BETHEA - REDIRECT BY KOLB

1 THE COURT: I'LL ALLOW HIM TO RESTATE THE QUESTION.
2 SIMPLY ASKED HIM IF HE WAS -- BEFORE I RULE ON THE
3 OBJECTION. RESTATE YOUR QUESTION, MR. SOLICITOR.

4 (WHEREUPON QUESTIONING RESUMED).

5 Q YOU THINK IT WAS -- WAS IT STILL BROAD DAYLIGHT OUT?

6 A IT WAS KIND OF DUSK DARK.

7 Q DUSK DARK?

8 A RIGHT. I MEAN IT WASN'T 12:00, YOU KNOW. IT WAS DUSK
9 DARK. I COULD STILL SEE.

10 Q ALL RIGHT. THANK YOU. YOU CAN COME DOWN.

11 THE COURT: RE-CROSS?

12 MR. LITTLEJOHN: NO, YOUR HONOR.

13 THE COURT: YOU MAY COME DOWN. THANK YOU, SIR.

14 (WHEREUPON THE WITNESS LEFT THE STAND).

15 MR. KOLB: CALL MARY RUTH MCLEOD.

16 (WHEREUPON THERE WAS A PAUSE)

17 MR. KOLB: YOUR HONOR, CAN HE BE EXCUSED? MR. BETHEA
18 BE EXCUSED?

19 THE COURT: ANY OBJECTION?

20 MR. LITTLEJOHN: NO, YOUR HONOR.

21 THE COURT: MR. BETHEA, YOU ARE FREE TO LEAVE. THANK
22 YOU VERY MUCH, SIR.

23 MARY RUTH MCLEOD, BEING FIRST
24 DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT: YOU MAY EXAMINE THE WITNESS

DANIEL BETHEA - REDIRECT BY KOLB

1 DIRECT EXAMINATION BY MR. KOLB:

2 Q SPEAK UP LOUDLY. PLEASE GIVE US YOUR NAME.

3 A MARY RUTH MCLEOD.

4 Q AND MRS. MCLEOD, IS RUTH GRIFFITH KIN TO YOU?

5 A SHE'S MY MOTHER.

6 Q ALL RIGHT. OKAY. KEEP YOUR VOICE UP, NOW. THAT'S YOUR
7 MOTHER?

8 A YES, SIR.

9 Q AND WHERE DOES SHE LIVE?

10 A 817 TAYLOR STREET.

11 Q OKAY. HAVE YOU EVER LIVED THERE WITH HER?

12 A YES, SIR. I HAVE.

13 Q ALL RIGHT. DID YOU ACTUALLY GROW UP IN THAT HOUSE?

14 A WE MOVED IN WHEN I WAS A TEEN-AGER.

15 Q OKAY. AND AT THE TIME OF FEBRUARY 26TH 1996, WERE YOU
16 LIVING THERE WITH HER ON A DAILY BASIS?

17 A YES, SIR. I WAS.

18 Q YOU WERE?

19 A UH-HUH.

20 Q ALL RIGHT. SINCE THEN DO YOU -- I BELIEVE YOU HAVE
21 GOTTEN MARRIED?

22 A I WASN'T MARRIED AT THE TIME, BUT I MET MY HUSBAND
23 THEN.

24 Q ALL RIGHT. SO WHEN YOU WERE TALKING ABOUT -- I WANT
25 TO SHOW YOU SOME PHOTOGRAPHS. CAN YOU IDENTIFY THIS

DANIEL BETHEA - REDIRECT BY KOLB

1 PHOTOGRAPH?

2 A YES, SIR. THAT'S MY MOTHER'S HOUSE.

3 Q ALL RIGHT.

4 MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THIS INTO
5 EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MR. KOLB: GOT A SERIES THEY DON'T HAVE OBJECTION
8 TOO, JUDGE.

9 THE COURT: GO AHEAD AND MARK THEM STARTING WITH
10 NUMBER 6.

11 MR. KOLB: 7, YOUR HONOR.

12 THE COURT: LET ME -- SO WE CAN BE CLEAR ON THE
13 RECORD. I WILL READ THOSE IN IF I COULD. YOU NEED TO MARK
14 THEM, THOUGH.

15 MR. KOLB: OKAY.

16 THE COURT: SORRY, MY FAULT. MY FAULT. LETS MARK
17 THEM.

18 THE COURT: ANY OBJECTION TO THESE PHOTOGRAPHS?

19 MR. BABB: NO, YOUR HONOR.

20 (STATE'S EXHIBIT NO. 6 THROUGH 12 MARKED FOR
21 IDENTIFICATION).

22 (WHEREUPON QUESTIONING RESUMED).

23 Q YOU LOOK AT ALL OF THESE. TELL US IF YOU CAN
24 IDENTIFY THEM.

25 A YES, SIR. THAT'S...

DANIEL BETHEA - REDIRECT BY KOLB

1 Q WELL, DON'T -- JUST LOOK THROUGH ALL OF THEM RIGHT
2 NOW.

3 A YES, SIR. THEY ARE ALL OF MOM'S HOUSE.

4 Q YOU...

5 THE COURT: YOU OFFER THEM ALL?

6 MR. KOLB: YES, SIR.

7 THE COURT: NO OBJECTION; IS THAT CORRECT.

8 MR. BABB: THAT IS CORRECT, YOUR HONOR.

9 THE COURT: STATE'S EXHIBIT 6 IS A PHOTOGRAPH, A
10 COLOR PHOTOGRAPH, SHOWING APPEARS TO BE THE FRONT OF A
11 HOUSE INTO EVIDENCE WITHOUT OBJECTION.

12 STATE'S EXHIBIT 7, A COLOR PHOTOGRAPH SHOWING
13 THE FRONT OF A HOUSE TO THE SIDE. SOMEWHAT TO AN ANGLE.

14 STATE'S EXHIBIT 8 SHOWING WHAT APPEARS TO BE THE
15 REAR OF A HOUSE.

16 MR. KOLB: ACTUALLY THE SIDE.

17 THE COURT: SIDE OF IT? ALL RIGHT. STATE'S EXHIBIT
18 9, PHOTOGRAPH SHOWING -- APPEARS TO BE THE SIDE OF A
19 HOUSE. STATE'S EXHIBIT 10, A COLOR PHOTOGRAPH SHOWING --
20 LOOKS LIKE THE REAR OF A HOUSE.

21 MR. KOLB: YES, SIR.

22 THE COURT: STATE'S EXHIBIT 11 IS A PHOTOGRAPH
23 SHOWING THE SIDE OF A HOUSE FROM A DISTANCE. STATE'S
24 EXHIBIT 12, ANOTHER PHOTOGRAPH SHOWING THE SIDE OF A
25 HOUSE, ALL INTO EVIDENCE WITHOUT OBJECTION.

DANIEL BETHEA - REDIRECT BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q WANT YOU TO GIVE US A LITTLE MORE DETAIL. NUMBER 6,
3 WHAT DOES THAT SHOW?

4 (STATE'S EXHIBIT NO. 6 THROUGH 12 MARKED FOR
5 EVIDENCE)?

6 A THAT SHOWS THE FRONT OF THE HOUSE.

7 Q NOW, IF YOU DROVE DOWN RIDGEWAY STREET -- BASICALLY
8 AT THE END OF RIDGEWAY STREET, WHAT IS THE STREET THAT'S
9 THERE?

10 A TAYLOR STREET.

11 Q ALL RIGHT. NOW, CAN YOU GO TO THE LEFT ON TAYLOR
12 STREET OR JUST...

13 A NO, SIR. JUST TO THE RIGHT.

14 Q SO IT'S ACTUALLY RIDGEWAY DEAD ENDS INTO THE END OF
15 TAYLOR STREET?

16 A YES, SIR.

17 Q YOU CAN ONLY GO TO THE RIGHT ON TAYLOR?

18 A THAT'S RIGHT.

19 Q AND WHEN YOU DRIVE DOWN RIDGEWAY STREET TO THAT DEAD
20 END, WHAT IS RIGHT IN FRONT OF YOU?

21 A THE DRIVEWAY TO MY MOTHER'S HOUSE.

22 Q ALL RIGHT. AND WHEN YOU ARE THERE AT THE DEAD END OF
23 RIDGEWAY INTO TAYLOR, STANDING LOOKING AT YOUR MOTHER'S
24 HOUSE, WHAT WOULD YOU SEE IN RELATION TO EXHIBIT 6?

25 A THE FRONT OF MY MOTHER'S HOUSE.

DANIEL BETHEA - REDIRECT BY KOLB

1 Q SO SAME THING YOU SEE THERE?

2 A UH-HUH.

3 Q ALL RIGHT. LET ME SHOW THIS TO THE JURORS. NOW,
4 EXHIBIT NO. 7. WHAT DOES THIS SHOW?

5 A THIS IS THE LEFT SIDE OF THE HOUSE FACING THE HOUSE.

6 Q WHEN WE SAY LEFT SIDE -- OR I THINK WE GOT A MAP OVER
7 THERE. WE ALREADY DESIGNATED NORTH AND SOUTH. SO THAT
8 WOULD BE THE NORTH SIDE OF YOUR HOUSE?

9 A I CAN'T -- I COULDN'T TELL YOU WHICH SIDE.

10 Q OKAY.

11 A ALL I KNOW IS YOU ARE FACING IT, IT'S THE LEFT SIDE.

12 Q SO IF YOU ARE FACING IT STANDING IN THE ROAD LOOKING
13 AT THE HOUSE JUST LIKE EXHIBIT 6, THIS WOULD BE TO THE
14 LEFT?

15 A THAT'S RIGHT.

16 Q THE LEFT SIDE OF YOUR HOUSE?

17 A UH-HUH.

18 Q AND THAT'S SORT OF FROM AN ANGLE?

19 A YES, SIR.

20 Q ALL RIGHT. AND ONE THING I WANT TO ASK YOU ABOUT.
21 STICKING OFF TO THE FAR LEFT SIDE OF THIS PICTURE IS A --
22 SORT OF A SMALLER WHITE THING. WHAT IS THAT?

23 A THAT'S THE PORCH OFF FROM THE WASHROOM.

24 Q PORCH -- KEEP YOUR VOICE UP.

25 A PORCH OFF FROM THE SIDE OF THE WASHROOM.

DANIEL BETHEA - REDIRECT BY KOLB

1 Q ALL RIGHT. NOW, EXHIBIT NO. 9. WHAT DOES THAT SHOW?

2 A THAT'S THE LEFT HAND SIDE OF THE HOUSE STANDING
3 BESIDE THE HOUSE, NOT IN FRONT, BUT ON THE SIDE.

4 Q SO THAT'S LOOKING AT DIRECTLY FROM THE SIDE?

5 A YES, SIR.

6 Q ON THE LEFT HAND SIDE?

7 A YES, SIR.

8 Q ALL RIGHT. AND SORT OF IN THE CENTER OF THIS PICTURE
9 NEXT TO THE PROPANE TANK, THAT WHITE AREA AGAIN IS WHAT?

10 A THAT'S THE LITTLE PORCH GOING OFF FROM THE WASHROOM
11 ON THE SIDE OF THE HOUSE.

12 Q ALL RIGHT. DID THAT WASHROOM -- IS THERE ACTUALLY A
13 DOOR INTO THE HEATED PORTION OF THE HOUSE THERE?

14 A YES, SIR.

15 Q SO INSIDE THAT DOOR IS THE WASHROOM?

16 A YES, SIR.

17 Q ALL RIGHT. NOW, TOWARDS THE -- I GUESS THE BACK OF
18 THE HOUSE I CAN SEE LITTLE A PART OF A SOMETHING BLACK
19 THERE. WHAT IS THAT?

20 A THAT'S A SCREEN DOOR COMING OFF FROM THE KITCHEN.

21 Q ALL RIGHT. AND WHAT ARE YOU -- THERE ARE SOME STEPS
22 GOING UP TO IT?

23 A YES, SIR.

24 Q HOW DO YOU AND YOUR MOTHER REFER TO THAT DOOR?

25 A THE BACK DOOR.

DANIEL BETHEA - REDIRECT BY KOLB

- 1 Q THAT'S THE BACK DOOR?
- 2 A YES, SIR.
- 3 Q THE ONE IN BACK HERE? WHAT DO YOU REFER TO THE DOOR
- 4 HERE AS, THIS LITTLE WHITE PORCH?
- 5 A THE SIDE DOOR.
- 6 Q THAT'S THE SIDE DOOR?
- 7 A YES, SIR.
- 8 Q ALL RIGHT. ACTUALLY OFF THE LEFT HAND SIDE, BUT ONE
- 9 IS IN BACK. ONE IS ON THE SIDE WHERE THIS LITTLE SCREENED
- 10 IN PORCH IS?
- 11 A THAT'S RIGHT.
- 12 Q ALL RIGHT. EXHIBIT NO. 8, CAN YOU TELL US WHAT THAT
- 13 SHOWS?
- 14 A THAT'S THE DIRECT CORNER -- THE BACK OF THE HOUSE.
- 15 Q OKAY. SO THIS WOULD BE CONTINUING SORT OF LIKE GOING
- 16 AROUND THE HOUSE IN A CIRCLE?
- 17 A YES, SIR.
- 18 Q THIS GIVES A BETTER DOOR -- BETTER VIEW -- OF WHAT
- 19 YOU ACTUALLY CALL YOUR BACK DOOR?
- 20 A YES, SIR.
- 21 Q AND WHAT -- ARE THESE STEPS ACTUALLY GOING UP INTO
- 22 THAT SCREEN PORCH OFF OF THE WASHROOM DOOR?
- 23 A YES, SIR.
- 24 Q OFF THE SIDE DOOR?
- 25 A THAT'S RIGHT.

DANIEL BETHEA - REDIRECT BY KOLB

1 Q ALL RIGHT. AND YOU CAN ACTUALLY SEE THE SCREEN DOOR
2 INTO THAT?

3 A YES, SIR.

4 Q WASHROOM SIDE DOOR PORCH?

5 A YES, SIR.

6 Q ALL RIGHT. COME ON. NO. 10.

7 A THAT'S THE BACK SIDE OF THE HOUSE.

8 Q ALL RIGHT. SORT OF FROM THE...

9 A RIGHT SIDE.

10 Q OKAY.

11 A IF YOU ARE LOOKING AT THE FRONT OF THE HOUSE.

12 Q LOOKING AT THE HOUSE, FRONT OF TAYLOR STREET, THE
13 RIGHT SIDE OF THE HOUSE?

14 A YES, SIR. HAVE TO GO TO THE RIGHT SIDE OF THE HOUSE
15 TO GET THIS PICTURE.

16 Q OKAY.

17 Q THESE PICTURES WERE ACTUALLY TAKEN AFTER SOME
18 OFFICERS GOT THERE AND CHECKING THINGS, THAT'S -- WHO THIS
19 IS IN THIS PICTURE?

20 A YES, SIR.

21 Q I'M GOING TO ASK YOU ABOUT 11 AND 12 TOGETHER, AS TO
22 WHAT THEY SHOW.

23 A THEY JUST SHOW IN THE RIGHT SIDE OF THE HOUSE WHERE
24 MY MOTHER ALWAYS PARKS HER CAR.

25 Q ALL RIGHT. AND THAT'S ACTUALLY YOUR MOTHER'S CAR?

DANIEL BETHEA - REDIRECT BY KOLB

1 A YES, SIR.

2 Q IS THAT WHERE HER CAR WAS PARKED THIS NIGHT?

3 A YES, SIR.

4 Q ALL RIGHT. AND THE WINDOW THAT'S CLOSEST TO THE FRONT
5 OF THE HOUSE, WHO IS INSIDE THAT WINDOW?

6 A THAT'S MY MOTHER'S BEDROOM, FRONT BEDROOM.

7 Q ALL RIGHT. MRS. MCLEOD, ON THIS NIGHT OF FEBRUARY THE
8 26TH, 1996, YOU SAY YOU WERE STAYING WITH YOUR MOTHER AT
9 THAT TIME?

10 A YES, SIR.

11 Q ALL RIGHT. AND COULD YOU TELL US WHAT, IF ANYTHING,
12 HAPPENED UNUSUAL THIS EVENING?

13 A WHEN I CAME IN FROM WORK, I WAS STAYING WITH MY
14 MOTHER AND MY DAUGHTER WAS STAYING WITH HER DAD. AND I
15 CALLED TO CHECK ON HER. HER DAD WAS GOING OUT OF TOWN, SO
16 I HAD TO SPEND THE NIGHT WITH HER.

17 SO I WAS ON THE PHONE AND MY MOTHER CAME RUNNING
18 THROUGH THE LIVING ROOM SAYING IT'S HIM, IT'S HIM.

19 MR. BABB: OBJECTION. MOVE TO STRIKE.

20 THE COURT: HOLD ON JUST ONE SECOND. SUSTAINED.

21 MR. KOLB: WOULD THIS BE RES GESTAI, JUDGE?

22 THE COURT: NOT TO THAT POINT.

23 MR. KOLB: CAN WE APPROACH ON THE SIDE, JUDGE?

24 THE COURT: BE HAPPY TO HEAR YOU. LETS HAVE THE...

25 (WHEREUPON A BENCH CONFERENCE WAS HELD).

DANIEL BETHEA - REDIRECT BY KOLB

1 THE COURT: SUSTAIN THE OBJECTION.

2 (WHEREUPON QUESTIONING RESUMED).

3 Q BEFORE YOU SAY ANYTHING THAT YOUR MOTHER SAID, COULD
4 YOU JUST TELL US WHAT WAS HER CONDITION AT THE TIME SHE
5 SAID IT? WHAT WAS -- HOW?

6 A SHE WAS SCARED LIKE A RUNNING CHICKEN, SCARED OUT OF
7 HER WITS.

8 Q ALL RIGHT. AND WHERE HAD SHE BEEN IMMEDIATELY BEFORE
9 MAKING ANY STATEMENTS TO YOU?

10 A SHE WAS STANDING AT THE BACK DOOR WHICH GOES INTO THE
11 KITCHEN.

12 Q AND WHEN YOU SAID THIS -- WHEN WE GOT STRAIGHT BEFORE
13 -- ACTUALLY TWO DOORS OFF OF THAT LEFT SIDE, ONE IS AT
14 THE REAR OF THE HOUSE AND -- WHICH YA'LL CALL THE BACK
15 DOOR?

16 A UH-HUH.

17 Q AND ONE OFF THE WASHROOM?

18 MR. BABB: I OBJECT TO THE FORM OF THE QUESTION.

19 THE COURT: SUSTAINED. LETS DON'T...

20 (WHEREUPON QUESTIONING RESUMED).

21 Q WHEN YOU ARE TALKING ABOUT THE BACK DOOR, WHICH DOOR
22 ARE YOU TALKING ABOUT?

23 A THE ONE THAT I CALL THE BACK DOOR IS THE ONE THAT
24 COMES OUT THE KITCHEN.

25 Q ALL RIGHT. NOW, APPROXIMATELY WHAT TIME DID YOU GET

DANIEL BETHEA - REDIRECT BY KOLB

1 OFF WORK THAT DAY?

2 A I THINK IT WAS 3:00. SOMETIMES WE WORK TILL 4, BUT I
3 BELIEVE IT WAS 3:00.

4 Q ALL RIGHT. DO YOU KNOW APPROXIMATELY WHAT TIME IT
5 WAS THAT YOUR MOTHER WENT TO THE BACK DOOR?

6 A I WANT TO SAY AROUND 4 OR A LITTLE BIT AFTER BECAUSE
7 I HAD BEEN HOME A FEW MINUTES.

8 Q OKAY. NOW, LET ME ASK YOU THIS. IN RELATION TO --
9 DID YOU ULTIMATELY CALL 911?

10 MR. BABB: YOUR HONOR, I OBJECT TO THE FORM.

11 THE COURT: I OVERRULE THAT. HE CAN ASK. OVERRULED.
12 MAY ANSWER THE QUESTION.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q DID YOU CALL THE POLICE DEPARTMENT?

15 A I DID TALK TO THE POLICE DEPARTMENT.

16 Q ALL RIGHT. HOW LONG -- HOW LONG AFTER YOUR MOTHER
17 WENT TO THE BACK DOOR WAS IT BEFORE YOU CALLED THE POLICE
18 DEPARTMENT?

19 A ABOUT TEN MINUTES OR SO.

20 Q ALL RIGHT. SO IF THE RECORD SHOWS YOU CALLED THE
21 POLICE DEPARTMENT AT 5:39 P.M., DOES THAT SOUND RIGHT TO
22 YOU?

23 A THAT SOUNDS RIGHT.

24 Q ALL RIGHT. SO YOU DON'T KNOW THE EXACT TIME?

25 A NO, SIR.

DANIEL BETHEA - REDIRECT BY KOLB

1 Q ALL RIGHT. NOW, WHY DID YOUR MOTHER GO TO THE BACK
2 DOOR TO START WITH?

3 A SOMEONE WAS KNOCKING ON IT.

4 Q ALL RIGHT.

5 MR. KOLB: YOUR HONOR, I THINK WE HAVE LAID THE
6 FOUNDATION AT THIS TIME -- TIME AND PLACE.

7 THE COURT: WELL...

8 MR. KOLB: EXCITED UTTERANCE.

9 THE COURT: GO AHEAD AND ASK YOUR QUESTION, PLEASE.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q NOW, WHAT HAPPENED AFTER YOUR MOTHER WENT TO THE
12 DOOR?

13 MR. BABB: I OBJECT.

14 THE COURT: OBJECT TO WHAT? THAT QUESTION WHAT
15 HAPPENED AFTER YOUR MOTHER WENT TO THE DOOR? OVERRULED.

16 (WHEREUPON QUESTIONING RESUMED).

17 THE COURT: YOU MAY ANSWER THE QUESTION.

18 A SHE CAME RUNNING THROUGH THE KITCHEN AND THROUGH THE
19 LIVING ROOM AND WAS SCARED. AND SHE WAS -- JUST SAID IT'S
20 HIM, IT'S HIM.

21 MR. BABB: I OBJECT. MOVE TO STRIKE.

22 THE COURT: ALL RIGHT. OVERRULED.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q AND GO AHEAD AND TELL US WHAT HAPPENED FROM THEN ON.

25 A AND I WAS ON THE PHONE.

DANIEL BETHEA - REDIRECT BY KOLB

1 Q KEEP YOUR VOICE UP LOUD NOW, PLEASE.

2 A I WAS ON THE PHONE WITH MY COUSIN. AND I SAID I HAD
3 JUST HUNG UP. WAS WALKING OUT THE BEDROOM. I SAID WHO IS
4 IT, MOM? MOM, WHO'S AT THE DOOR? AND SHE SAID IT WAS
5 BOBBY WAYNE STONE.

6 SO SHE SAID I DON'T WANT HIM HERE. I DON'T WANT
7 HIM IN HERE. SO I WENT TO THE BACK DOOR AND I LOOKED OUT
8 AND I WENT OUT THE BACK DOOR AND HE WAS WALKING ACROSS THE
9 YARD.

10 AND HAD WENT INTO MY DADDY'S SHED RIGHT BEHIND
11 THE HOUSE. AND I THOUGHT MAYBE HE WAS GOING TO STEAL
12 SOMETHING. SO I WALKED OUTSIDE AND ASKED HIM WHAT WAS HE
13 DOING? HE SAID HE WAS GOING HOME.

14 AND I SAID WELL, THIS ISN'T THE WAY HOME. WHAT
15 ARE YOU DOING? ARE YOU GOING TO STEAL SOMETHING? AND HE
16 SAID NO. I SAID WELL GET ON HOME WHERE EVER YOU ARE GOING,
17 GO HOME. SO HE WALKED TO THE EDGE OF THE WOODS BEHIND THE
18 HOUSE.

19 SO I WATCHED HIM WALK OUT THERE. AND HE HAD
20 SOMETHING POOCHED OUT THE BACK OF HIS JACKET AND I THOUGHT
21 TO MYSELF GOODNESS HE'S ALREADY TOOK SOMETHING.

22 BUT I DIDN'T SAY NOTHING BECAUSE I WAS KIND OF
23 SCARED BECAUSE HE HAD A CAN IN HIS HANDS, LOOKED LIKE A
24 BEER CAN. I THOUGHT MAYBE HE HAD BEEN DRINKING, SO I
25 WASN'T GOING TO BOTHER HIM.

DANIEL BETHEA - REDIRECT BY KOLB

1 AND SO I STOOD THERE FOR A MINUTE AND WATCHED
2 HIM. THEN I SAID WELL, I'M GOING TO WALK OUT THERE, SEE
3 IF I GET HIM TO LEAVE. SO I WALKED TO THE EDGE OF THE
4 WOODS AND WAS LOOKING AROUND.

5 AND I HEARD A CRACK LIKE THE LIMBS -- YOU KNOW
6 -- WHEN YOU STEP ON THEM. AND I LOOKED THAT WAY AND HE
7 WAS STANDING UP THERE LOOKING THROUGH A LITTLE PATCH OF
8 WOODS.

9 AND HE WAS JUST KIND OF STARING OUT IN THE OPEN.
10 AND I ASKED HIM AGAIN, I SAID WELL, WHAT ARE YOU DOING?
11 HE SAID I'M GOING HOME. I SAID YOU BETTER GO. AND WHEN I
12 LOOKED AT HIM, HE WAS STANDING THERE HOLDING THE GUN
13 ACROSS HIS ARMS LIKE A HUNTER CARRIED A GUN WHEN THEY WALK
14 THROUGH THE WOODS.

15 Q ALL RIGHT. LET ME STOP YOU THERE.

16 (WHEREUPON THERE WAS A PAUSE).

17 (WHEREUPON QUESTIONING RESUMED).

18 Q DOES THIS APPEAR TO BE THE SAME GUN HE HAD AT THAT
19 TIME?

20 A YES, SIR.

21 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THIS
22 FOR IDENTIFICATION AT THIS TIME.

23 THE COURT: ALL RIGHT. MARK IT FOR IDENTIFICATION
24 STATE'S EXHIBIT NUMBER 13 FOR I.D. ONLY. ANY OBJECTION TO
25 MARKING IT FOR I.D.?

DANIEL BETHEA - REDIRECT BY KOLB

1 MR. BABB: NO, SIR, YOUR HONOR.

2 (STATE'S EXHIBIT NO. 13 MARKED FOR
3 IDENTIFICATION).

4 (WHEREUPON QUESTIONING RESUMED).

5 Q AND MRS. MCLEOD, WHEN YOU FIRST SAW HIM WALKING AWAY
6 FROM YOUR BACK DOOR, COULD YOU TELL US HOW HE WAS DRESSED
7 AT THAT TIME?

8 A HE HAD ON -- LOOKED TO BE LIKE A...

9 Q KEEP YOUR VOICE UP.

10 A LIKE A LEATHER JACKET. IT WAS KIND OF RUST COLORED
11 LIKE THE LEAVES OF THE FALL AND HAD KIND OF A BAND AROUND
12 THE WAIST, MAKE IT -- YOU KNOW -- TIGHTER WHEN YOU BUTTON
13 IT.

14 AND THAT'S WHERE I SEEN THE LITTLE POOCHIE LONG
15 PART STICKING OUT THE BACK WHEN HE WALKED OFF AND I
16 THOUGHT MAYBE HE HAD STOLE SOMETHING, YOU KNOW.

17 Q ALL RIGHT. NOW, WHEN YOU WERE TALKING TO HIM, DID YOU
18 TALK TO HIM ABOUT THAT YOUR MOTHER DIDN'T WANT HIM THERE?

19 A I TOLD HIM THAT WE HAD HAD TROUBLE WITH HIM BEFORE AT
20 MY MOTHER'S HOUSE AND THAT MY MOTHER DIDN'T LIVE ALONE ANY
21 MORE, THAT I WOULD BE THERE AND HE WASN'T COMING BACK UP
22 THERE NO MORE BECAUSE I'D HAVE HIM LOCKED UP.

23 Q YOU ACTUALLY TOLD HIM THAT?

24 A I DID TELL HIM THAT. YES, SIR.

25 Q ALL RIGHT. NOW, WAS THAT BEFORE OR AFTER YOU WERE

DANIEL BETHEA - REDIRECT BY KOLB

1 TALKING TO HIM ABOUT THAT HE SAID HE WAS GOING HOME?

2 A THAT WAS DURING THE SAME TIME. WE WERE STILL STANDING
3 ON THE BARN, AT THE BARN, YOU KNOW OR SHED.

4 Q SHOW YOU ANOTHER PHOTOGRAPH. ASK IF YOU CAN IDENTIFY
5 THIS.

6 A THIS IS THE BARN AND THE SHED, THE SHED UNDER BACK OF
7 IT. THAT'S WHERE WE WERE STANDING TALKING.

8 MR. BABB: HAVE NO OBJECTION.

9 THE COURT: VERY WELL. STATES 14, COLOR PHOTOGRAPH
10 INTO EVIDENCE WITHOUT OBJECTION.

11 (STATE'S EXHIBIT NO. 14 MARKED FOR EVIDENCE).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q NOW, DID YOU WALK AWAY FROM HIM OR LOSE SIGHT OF HIM
14 BEFORE YOU LOOKED AND SAW HIM WITH THE GUN?

15 A YES, SIR. I SAW...

16 Q NOW, EXPLAIN THAT TO ME. I'M NOT SURE I UNDERSTOOD
17 THAT.

18 A HE HAD WENT INTO THE EDGE OF THE WOODS AND TURNED TO
19 THE LEFT AND WALKED LIKE HE WAS GOING HOME. THERE WAS A
20 PATH THROUGH THERE LIKE IT HAD BEEN WELL WALKED BEFORE. SO
21 -- AND THEN I DIDN'T SEE HIM.

22 I SAID WELL, I'M GOING TO THE EDGE OF THE WOODS
23 AND LOOK. SO I WENT AND I DIDN'T SEE ANYTHING FOR A
24 SECOND. THEN I HEARD THE LIMB CRACK LIKE I SAID. AND I
25 LOOKED TOWARD THAT DIRECTION.

DANIEL BETHEA - REDIRECT BY KOLB

1 AND HE WAS STANDING BEHIND A LITTLE PATCH OF
2 TREES JUST STARING FIXED OUT, YOU KNOW, LIKE AT THE HOUSE.

3 Q ALL RIGHT. AND HOW WAS HE DRESSED AT THAT TIME?

4 A HE DIDN'T HAVE HIS JACKET ON THEN. HE HAD A SHIRT ON
5 THAT WAS KIND OF STILL RUSTY COLORED, BUT IT LOOKED LIKE
6 IT HAD MAYBE A PLAID, BEIGE PLAID THROUGH IT, STRIPED.

7 Q GOT THOSE?

8 (SOLICITOR SPEAKING TO COURT REPORTER).

9 (WHEREUPON QUESTIONING RESUMED).

10 Q I'M GOING TO SHOW YOU FOUR PHOTOGRAPHS AND ASK YOU IF
11 YOU CAN IDENTIFY THIS SHIRT SHOWN IN THESE FOUR
12 PHOTOGRAPHS.

13 A YES, SIR. THAT'S THE SHIRT...

14 Q ALL RIGHT. AND AS FAR AS THE DEFENDANT'S APPEARANCE,
15 THAT -- I DIDN'T ASK YOU. DO YOU SEE THIS PERSON IN THE
16 COURTROOM HERE TODAY?

17 A YES, SIR. HE'S CHANGED A LOT. CLEANED UP A LOT. BUT I
18 SEE HIM.

19 Q ALL RIGHT.

20 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THESE
21 PHOTOGRAPHS INTO EVIDENCE.

22 THE COURT: LET'S APPROACH.

23 (WHEREUPON A BENCH CONFERENCE WAS HELD).

24 THE COURT: YOU WITHDRAW? THAT WILL BE ALL RIGHT,
25 SIR.

DANIEL BETHEA - REDIRECT BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q AFTER YOU SAW THAT AND SAW HIM WITH A WEAPON, WHAT
3 DID YOU DO THEN, MRS. MCLEOD?

4 A I SAID A BAD WORD. I DON'T USUALLY CUSS, BUT THAT
5 WAS AN ODD DAY AND I TOLD HIM HE BETTER GET ON TO WHERE HE
6 WAS GOING IN BECAUSE I WAS GOING IN TO CALL THE POLICE.

7 Q YOU TOLD HIM YOU WERE GOING TO CALL THE POLICE?

8 A YES, SIR. AND I TURNED AROUND AND WALKED IN THE
9 HOUSE. I DIDN'T RUN. I DIDN'T -- YOU KNOW -- DO ANYTHING.
10 I JUST WALKED IN THE HOUSE AND CLOSED THE DOOR AND TOLD MY
11 MOM TO CALL THE POLICE BECAUSE HE HAD A GUN.

12 Q ALL RIGHT. NOW, HAVE YOU HEARD THE 911 CALL WHERE YOU
13 ARE ON THERE?

14 A YES, SIR. I HAVE.

15 Q ALL RIGHT. WHAT HAPPENED AFTER THAT CALL?

16 A MR. KUBALA CAME AND HE TALKED WITH US A SECOND. THEN
17 WE WALKED OUT THE BACK YARD TO SHOW HIM -- YOU KNOW --
18 WHERE THE SHED WAS, WHERE HE WALKED AND WHERE THE WOODS
19 AND EVERYTHING WAS.

20 AND ME AND HIM WALKED TO THE EDGE OF THE WOODS
21 AND LOOKED AGAIN AND WE DIDN'T SEE ANYTHING. AND WE HAD
22 ANOTHER LITTLE SHED LIKE ON THE LAND AND WE LOOKED IN ALSO
23 AND DIDN'T SEE ANYTHING.

24 SO WE CAME BACK UP TO THE HOUSE AND WE STOOD
25 THERE AND TALKED A FEW MINUTES AND HE SAID GO IN THE HOUSE

DANIEL BETHEA - REDIRECT BY KOLB

1 AND DON'T COME OUT, BUT TO KEEP A WATCH OUT IN CASE HE
2 COME BACK AND CALL HIM RIGHT -- HIM RIGHT BACK.

3 AND DROVE BY. AND WE WERE TALKING, WE HEARD
4 NOISE BACK THERE LIKE SOMETHING HAD FELL OR STUMBLED OR
5 SOMETHING, SO HE WENT BACK OUT THERE BY HIMSELF AND LOOKED
6 AGAIN, BUT HE DIDN'T SEE ANYTHING.

7 AND HE CAME BACK UP TO THE HOUSE, WE TALKED A
8 COUPLE MORE MINUTES AND THEN HE LEFT.

9 Q ALL RIGHT. HOW WAS DEPUTY KUBALA DRESSED WHEN HE
10 CAME?

11 A HE HAD ON HIS POLICE UNIFORM. I THINK IT WAS A TAN
12 UNIFORM, I BELIEVE.

13 Q BUT WAS IT OBVIOUS TO YOU THAT HE WAS A POLICE
14 OFFICER WHEN YOU SAW HIM?

15 A YES, SIR.

16 Q WHAT HAPPENED AFTER THAT?

17 A WELL, LIKE I SAID, MY DAUGHTER'S FATHER WAS OUT OF
18 TOWN. I HAD TO SPEND THE NIGHT WITH HER. SO I TRIED TO GET
19 MY MOTHER TO LEAVE AND GO WITH ME AND SHE SAID NO, I'M
20 GOING TO CALL MY FRIEND AND I'M GOING TO SPEND THE NIGHT
21 WITH HER.

22 I SAID OKAY, MOM. I SAID BUT I'M GOING TO CHECK
23 ON MY DAUGHTER AND I WILL CALL YOU TIME AS I GET HOME.
24 WELL, IT PROBABLY TOOK ME ABOUT TEN MINUTES OR SOMETHING
25 LIKE THAT TO GET TO MY MOTHER'S HOUSE -- TO MY DAUGHTER'S

DANIEL BETHEA - REDIRECT BY KOLB

1 HOUSE.

2 AND I CALLED HER ABOUT SOON AS WE GOT IN THE
3 HOUSE AND SHE ANSWERED THE PHONE. ALL SHE COULD SAY IS
4 HE'S BEEN SHOT, HE'S BEEN SHOT, THE POLICEMAN IS BLEEDING.
5 THAT'S ALL I COULD GET OUT OF HER. SHE WAS HYSTERICAL.

6 Q ALL RIGHT. MRS. MCLEOD, CAN YOU DESCRIBE HOW -- YOU
7 SAY HE LOOKED DIFFERENT TODAY. CAN YOU DESCRIBE HOW HE
8 LOOKED THAT DAY?

9 A YES, SIR, I CAN. HE WAS -- HIS FACE WAS A LITTLE BIT
10 RED LOOKING AND HIS HAIR WAS LONGER AND IT WAS A LITTLE
11 REDDER, TOO. HIS EYES LOOKED KIND OF GLAZED OUT. THEY
12 LOOKED LIKE MAYBE HE WAS TIRED OR SOMETHING.

13 AND WHEN HE WAS WALKING, HE WAS WALKING KIND OF
14 WOBBLING, YOU KNOW.

15 Q IF YOU WOULD ANSWER ANY QUESTIONS THE DEFENSE MAY
16 HAVE.

17 THE COURT: YOU MAY CROSS-EXAMINE, MR. BABB.

18 MR. BABB: MAY IT PLEASE THE COURT.

19 THE COURT: YES, SIR.

20 CROSS-EXAMINATION BY MR. BABB:

21 MR. BABB: COULD I RETRIEVE THOSE THE PICTURES, YOUR
22 HONOR.

23 THE COURT: YES.

24 Q GOOD AFTERNOON, MRS. MCLEOD.

25 A GOOD AFTERNOON.

MARY RUTH MCLEOD - CROSS BY BABB

1 Q NOW MRS. MCLEOD, RUTH GRIFFITH IS YOUR MOTHER IF I
2 UNDERSTOOD YOU CORRECTLY.

3 A YES, SIR.

4 Q AND YOU WERE AT THE RESIDENCE ON FEBRUARY 26TH 1996?

5 A YES, SIR.

6 Q THAT IS CORRECT? AND YOU HAVE MENTIONED THAT AFTER
7 THE KNOCK WAS HEARD ON THE DOOR, IT WAS ABOUT TEN MINUTES
8 LATER THAT THE POLICE WERE CALLED; IS THAT CORRECT?

9 A IT WAS -- YES, SIR.

10 Q I BELIEVE YOU SAID TEN MINUTES?

11 A SOMETHING LIKE THAT. A FEW MINUTES. MAYBE FIFTEEN
12 BECAUSE I...

13 Q CLOSER TO FIFTEEN YOU THINK?

14 A YES, SIR, BECAUSE I DIDN'T...

15 Q NOW, THIS SIDE PORCH. WHAT IS THAT PORCH PRIMARILY
16 USED FOR?

17 A IT'S A DOOR THAT GOES IN AND OUT OF THE WASHROOM. WE
18 NEVER USED IT TOO MUCH, YOU KNOW, AT ALL. MY FATHER AND
19 MOTHER HAD A WOOD STOVE AND A LOT OF TIMES THEY KEPT WOOD
20 ON THAT BACK PORCH TO KEEP IT DRY WHERE IT BE EASY TO GET
21 TO, YOU KNOW.

22 IF YOU WANT TO TAKE CLOTHES OUT, YOU GO OUT THAT
23 DOOR ALSO, BUT THAT WAS MAINLY WHAT IT WAS USED FOR, TO
24 KEEP WOOD ON.

25 Q KEEP WOOD ON AND YOU GO OUT THAT DOOR IF YOU WERE

MARY RUTH MCLEOD - CROSS BY BABB

1 HANGING CLOTHES OUTSIDE?

2 A SOMETIMES.

3 Q AND THEN YOU HAVE A -- THERE IS ALSO WHAT YOU CALL
4 THE BACK DOOR THAT GOES INTO THE KITCHEN?

5 A YES, SIR.

6 Q IS THAT THE DOOR LIKE WHEN YOU OR YOUR MOTHER BUYS
7 GROCERIES SHE NORMALLY PULLS AROUND THERE A -- THEN YOU --
8 THAT DOOR TO GO IN, CARRY THE GROCERIES INTO THE HOUSE?

9 A THAT'S RIGHT.

10 Q OKAY. NOW, ON THE POINTS THAT YOU HAD MENTIONED
11 EARLIER, I BELIEVE YOU SAID WHEN DEPUTY KUBALA CAME, THAT
12 HE ACTUALLY WENT INTO THE WOODS TWICE?

13 A WE WENT TO THE EDGE OF THE WOODS THE FIRST TIME AND
14 THE SECOND TIME WE WENT A LITTLE BIT FURTHER INTO THE
15 WOODS, SO...

16 Q IT WAS TWO DIFFERENT TIMES?

17 A YES, SIR.

18 Q TWO DIFFERENT OCCASIONS THAT HE WENT OUT THERE?

19 A YES, SIR.

20 Q OKAY. AND I BELIEVE YOU SAID THERE WAS A PATH IN THE
21 WOODS?

22 A YES, SIR. MY FATHER USED TO DO A LOT OF COOKING OF
23 HOGS AND HE HAD A BARBEQUE PIT BACK THERE AT THE EDGE OF
24 THE WOODS IN THE YARD. AND THE FENCE HAD BEEN BROKEN DOWN
25 WHERE PEOPLE HAD BEEN COMING BACK AND FORTH IN AND OUT.

MARY RUTH MCLEOD - CROSS BY BABE

1 Q SO FAIRLY REGULARLY TRAVELED TYPE PATH?

2 A YES, SIR.

3 Q AND YOU SAID WHEN MR. STONE LEFT, THAT HE TOOK THE
4 PATH AND HEADED TOWARDS HIS HOUSE?

5 A HE WENT THAT WAY. I WASN'T SURE WHERE HIS HOUSE WAS,
6 BUT HE WENT THROUGH THE WOODS IN THAT DIRECTION.

7 Q TOWARDS HIS HOUSE?

8 A I GUESS. I THINK HIS HOUSE WAS LIKE DOWN THE ROAD ON
9 THE LEFT, SOMEWHERE BACK UP IN THERE.

10 Q OKAY. NOW, YOUR MOTHER MRS. RUTH GRIFFITH OWNS A
11 PISTOL; DOESN'T SHE?

12 A YES, SIR.

13 Q OKAY. DO YOU KNOW WHAT TYPE OF PISTOL IT IS?

14 A NO, SIR. I THINK SHE SAID -- I'M NOT SURE WHAT KIND.
15 MAYBE A 22 PISTOL. I AM NOT FAMILIAR WITH GUNS.

16 Q I UNDERSTAND.

17 A YOU KNOW, AS FAR AS...

18 Q HAVE YOU EVER SEEN HER SHOOT THE PISTOL?

19 A NO, SIR. I HAVE NEVER SEEN HER SHOOT.

20 Q ARE YOU AWARE OF HER EVER SHOOTING IT?

21 A I THINK SHE SHOT IT ONE TIME, BUT I AM NOT SURE.

22 Q WAS SHE TARGET PRACTICING OR WAS IT SHOT IN THE
23 HOUSE?

24 A I DON'T KNOW. I DON'T KNOW THAT.

25 Q NOW, YOUR MOTHER IS HOW OLD?

MARY RUTH MCLEOD - CROSS BY BABB

1 A SIXTY-TWO.

2 Q OKAY. AND I BELIEVE YOUR MOM HAS SOME HEART PROBLEMS?

3 A YES, SIR. SHE'S HAD TWO HEART ATTACKS.

4 Q AND SHE HAS SOME NERVE PROBLEMS, TOO; DOESN'T HE?

5 A YES, SIR.

6 Q AND SHE TAKES MEDICATION FOR HER HEART?

7 A YES, SIR.

8 Q OKAY. SHE TAKES SOME BLOOD PRESSURE TYPE MEDICINE AS
9 WELL?

10 A I THINK SHE TAKES SOMETHING FOR HER NERVES. NOT SURE
11 ABOUT BLOOD PRESSURE. I DON'T THINK SHE HAS ANYTHING
12 WRONG WITH BLOOD PRESSURE.

13 Q SHE ALSO TAKES MEDICATION FOR DEPRESSION; DOES SHE
14 NOT?

15 A YES, SIR. SHE DOES.

16 Q OKAY. AND THESE MEDICATIONS SHE TAKES REGULARLY; IS
17 THAT CORRECT?

18 A YES, SIR.

19 Q THIS IS DAILY -- SHE'S UNDER DAILY MEDICATION?

20 A YES, SIR.

21 Q OKAY. AND SHE HAS -- WAS IT THREE, FOUR DIFFERENT
22 DOCTORS AS WELL?

23 A I THINK DR. STATLER WAS HER ONLY DOCTOR.

24 Q YOU THINK THAT'S HER ONLY DOCTOR?

25 A THAT'S ABOUT THE ONLY DOCTOR SHE GOT FOR HER HEART.

MARY RUTH MCLEOD - CROSS BY BABB

1 Q OKAY. AND SHE GETS NERVOUS PRETTY EASILY; DOESN'T
2 SHE?

3 A YES, SIR.

4 Q OKAY. AND WHEN SHE GETS NERVOUS SHE SOMETIMES
5 DRINKS; DOESN'T SHE?

6 A SHE HAS DRANK BEER BEFORE. YES, SIR.

7 Q YOU SAY A BEER BEFORE?

8 A SHE HAS DRANKEN (SIC) BEER BEFORE.

9 Q SHE DOESN'T REGULARLY DRINK?

10 A SHE'S NOT AN ALCOHOLIC IF THAT'S WHAT YOU'RE ASKING.
11 SHE DRINKS AN OCCASIONAL BEER.

12 Q AN OCCASIONAL BEER WITH HER MEDICATION?

13 A NOT WITH IT, NO, SIR. IN BETWEEN TAKING IT SOMETIMES
14 SHE WILL DRINK ONE.

15 Q YOU MEAN SHE DOESN'T TAKE HER PILLS WITH THE
16 MEDICATION (SIC)?

17 A NO.

18 Q WHILE SHE -- SHE DOESN'T SWALLOW IT WITH THE BEER?

19 A NO, SIR.

20 Q OKAY. I UNDERSTAND, BUT SHE MAY BE ON MEDICATION
21 WHILE SHE IS DRINKING?

22 A YES, SIR.

23 Q OKAY. DOES SHE GO OUT DRINKING WITH ANY PEOPLE TO
24 YOUR KNOWLEDGE?

25 A SHE USED TO GO OUT WITH SOME OF HER FRIENDS. SHE HAS

MARY RUTH MCLEOD - CROSS BY BABB

1 TWO LADY FRIENDS THAT SHE GOES OUT WITH A LOT AND -- OR
2 USED TO. SHE DOESN'T MUCH ANY MORE.

3 AND THEY WERE -- I THINK THEY WOULD HAVE A BEER.
4 ONE OF THEM DIDN'T DRINK AT ALL AND THE OTHER TWO WOULD
5 LIKE HAVE A BEER.

6 Q OKAY. WAS ONE OF THOSE FRIENDS MARY GRIFFITH WILSON?

7 A NO, SIR.

8 Q DO YOU KNOW MARY GRIFFITH WILSON?

9 A I THINK THAT'S MY AUNT.

10 Q NOW, SHE...

11 A YEARS AGO. SHE MAY HAVE YEARS AGO, BUT NOT IN THE
12 LAST FOUR YEARS, FIVE YEARS.

13 Q OKAY. WELL, AS A MATTER OF FACT YOUR, AUNT HASN'T
14 DRANK FOR A NUMBER OF YEARS; IS THAT CORRECT?

15 A I HAVEN'T SEEN MY AUNT IN OVER A YEAR.

16 Q HAVEN'T SEEN HER IN OVER A YEAR?

17 A NO, SIR.

18 Q SINCE THIS INCIDENT?

19 A BEFORE THEN PROBABLY.

20 Q OKAY. NOW, YOUR AUNT, MRS. WILSON, SHE WAS YOUR
21 FATHER'S SISTER?

22 A YES, SIR.

23 Q IS THAT CORRECT?

24 A YES, SIR.

25 Q AND HER AND YOUR MOM OVER THE YEARS HAVE BEEN PRETTY

MARY RUTH MCLEOD - CROSS BY BABB

1 CLOSE TO EACH OTHER; HAVEN'T THEY?

2 A YES, SIR.

3 Q ALMOST TO THE POINT OF ALMOST BEING LIKE REAL SISTERS
4 INSTEAD OF JUST SISTER IN LAWS?

5 A YES, SIR.

6 Q OKAY. AND I BELIEVE ON OCCASION THAT MRS. MARY
7 GRIFFITH WILSON HAS STAYED THERE AND ASSISTED YOUR MOM
8 BEFORE?

9 A SHE...

10 Q LIKE WHEN SHE HAD A BROKE LEG?

11 A SHE STAYED THERE BEFORE ONCE OR TWICE, NOT MUCH.

12 Q OKAY. SHE HAS LIVED THERE FOR BRIEF PERIODS IN THE
13 PAST AS WELL; HASN'T SHE?

14 A MAYBE A WEEK AT A TIME, SOMETHING LIKE THAT. BUT
15 NOTHING PERMANENT OR MONTHLY OR ANYTHING LIKE THAT.

16 Q I UNDERSTAND. BUT JUST BRIEF PERIODS SHE WOULD
17 ACTUALLY BE LIVING IN THE RESIDENCE, STAYING IN THE
18 RESIDENCE?

19 A YEAH.

20 Q ALL RIGHT. DIDN'T THEY USED TO GO OUT DRINKING
21 SOMETIMES?

22 A GOSH, I GUESS MAYBE TWENTY YEARS AGO.

23 Q MAYBE TWENTY YEARS AGO. DO YOU EVER RECALL THEM
24 GOING TO FRANK'S TRUCK STOP?

25 A WHEN I WAS A CHILD. YES, SIR. I REMEMBER.

MARY RUTH MCLEOD - CROSS BY BABB

1 MR. KOLB: I OBJECT TO RELEVANCE ON THIS LINE OF.

2 THE COURT: I ALLOWED YOU SOME LEE WAY. LETS MOVE ON.
3 WE COVERED THIS AREA. NO POINT IN---.

4 MR. BABB: ALL RIGHT, SIR.

5 (WHEREUPON QUESTIONING RESUMED).

6 Q MARY GRIFFITH WILSON HAS A DAUGHTER; IS THAT CORRECT?

7 A YES, SIR.

8 Q ALL RIGHT. AND THAT DAUGHTER'S NAME IS MICHELLE
9 LYNCH?

10 A YES, SIR.

11 Q IS THAT CORRECT? AND YOU HAVE KNOWN HER OVER THE
12 YEARS?

13 A YES, SIR.

14 Q SHE WOULD BE YOUR COUSIN?

15 A THAT'S RIGHT.

16 Q THAT'S RIGHT. AND SHE HAS ACTUALLY LIVED WITH YOUR
17 MOTHER BEFORE; HASN'T SHE?

18 A YES, SIR.

19 Q OKAY. NOW, HER BEST FRIEND IS MELINDA SUN PARROTT;
20 ISN'T IT?

21 A I DON'T KNOW.

22 Q DO YOU KNOW IF THEY ARE FRIENDS AT ALL?

23 A I DON'T KNOW.

24 Q SHE KNOWS BOBBY WAYNE STONE; DOESN'T SHE?

25 A WHO?

MARY RUTH MCLEOD - CROSS BY BABB

1 Q MICHELLE.

2 A AS FAR AS I KNOW, YES, SIR. I THINK THEY WERE LIVING
3 TOGETHER AT ONE TIME.

4 Q THAT'S WHAT YOU TOLD AGENT MARTIN; WASN'T IT?

5 A YES, SIR.

6 Q YA'LL HAD A DISCUSSION ABOUT THE DAY AFTER THIS
7 INCIDENT OCCURRED?

8 A I THINK THEY TALKED TO MY MOTHER ABOUT THAT.

9 Q OKAY. DID THEY NOT TALK WITH YOU ON FEBRUARY THE
10 28TH?

11 A I BELIEVE THEY DID. YES, SIR.

12 Q OVER HERE AT THE SHERIFF'S OFFICE?

13 A YES, SIR.

14 Q OKAY. LATE THAT EVENING?

15 A UH-HUH.

16 Q AND THAT EVENING YOU TOLD HIM THAT MICHELLE HAD LIVED
17 WITH MR. STONE; IS THAT CORRECT?

18 A YES, SIR.

19 Q AND YOU ALSO TOLD THEM THAT SHE AND MR. STONE -- WHEN
20 I SAY SHE, I'M TALKING ABOUT YOUR COUSIN MICHELLE -- HAD
21 BEEN TO YOUR MOTHER'S HOUSE ON A NUMBER OF OCCASIONS?

22 A YES, SIR. THAT'S WHAT MY MOTHER TOLD ME. THEY HAD
23 VISITED HER.

24 Q THEY COME AND VISIT. THEY WOULD USE THE PHONE?

25 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

MARY RUTH MCLEOD - CROSS BY BABB

1 Q GOING BACK AGAIN TO FEBRUARY 26TH OF 1996...

2 MR. BABB: COURT'S INDULGENCE ONE MOMENT. LET ME
3 CHECK ONE THING.

4 THE COURT: YES, SIR.

5 (WHEREUPON QUESTIONING RESUMED).

6 Q NOW, YOU WENT TO THE KITCHEN WINDOW ON THAT EVENING
7 AND YOU LOOKED OUT THE WINDOW; IS THAT CORRECT? AND YOU
8 SAW MR. STONE WALKING ACROSS THE YARD?

9 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

10 Q AND...

11 A YES, SIR.

12 Q YOU SAW HIM GO OVER TO THAT SHED AREA?

13 A YES, SIR.

14 Q AND IT'S KIND OF CRAWLING UP UNDER IT?

15 A NO, SIR, STANDING UP. HE WALKED UP UNDER IT. STAND UP
16 ON THE SHED.

17 Q OH, I UNDERSTAND YOU. HE WAS WALKING UNDER THE SHED.
18 AND YOU WENT OUT AND I BELIEVE YOU SAID THAT WHEN YOU --
19 WHEN HE LOOKED AT YOU, THAT HIS EYES WERE KIND OF GLAZED?

20 A YES, SIR. LIKE HE WAS STARING OUT.

21 Q FAR OUT LOOKING?

22 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

23 Q AND THAT HE WAS STARING AWAY?

24 A NOT AT THAT TIME. WHEN I SAW HIM IN THE WOODS IS WHEN
25 HE WAS STARING. STARING OUT, YOU KNOW.

MARY RUTH MCLEOD - CROSS BY BABB

1 Q DID YOU TELL AGENT MARTIN SO I WALKED OUT THERE TO
2 THE SHED AND I ASKED HIM WHAT HE WAS DOING, BUT WHEN HE
3 LOOKED AT ME HIS EYES WERE KIND OF GLAZED AND FAR OUT
4 LOOKING.

5 HE WAS KIND OF STARING AWAY. THEN HE LOOKED AT
6 ME AND I ASKED HIM WHAT HE WAS DOING. AND HE SAYS HE
7 WASN'T DOING NOTHING?

8 A THAT'S RIGHT. SAID HE WASN'T DOING ANYTHING.

9 Q OKAY. THEN YOU ASKED HIM WHAT ARE YOU DOING? AND HE
10 SAID I'M GOING HOME.

11 A YES, SIR.

12 Q OKAY. HE DIDN'T ARGUE WITH YOU?

13 A NO, SIR.

14 Q HE STARTED LEAVING?

15 A YES, SIR.

16 Q THEN AS HE WAS WALKING AWAY HE WAS STUMBLING; WAS HE
17 NOT?

18 A YES, SIR. NOT A LOT, JUST A LITTLE BIT.

19 Q RIGHT. AND HE HAD A CAN IN HIS HAND?

20 A YES, SIR.

21 Q IT WAS A BEER CAN; WASN'T IT?

22 A ALL I COULD SAY IT WAS A SILVER CAN. LOOKED LIKE A
23 BEER CAN TO ME. I'M NOT REAL FAMILIAR WITH A LOT OF BEERS.

24 Q THEN HE WALKED OUT TO THE BARBEQUE PIT WHERE YOU WERE
25 TALKING ABOUT WHERE THAT PATH IS ACROSS THE FENCE TO THE

MARY RUTH MCLEOD - CROSS BY BABB

1 WOODS, HEADED TOWARD HIS HOME?

2 A YES, SIR.

3 Q YOU WALKED UP, OUT THERE A LITTLE FURTHER. YOU HEARD
4 SOMETHING. YOU LOOK AND HERE HE IS STARING OFF INTO SPACE
5 AGAIN?

6 A YES, SIR. HE WAS STARING AT THE HOUSE.

7 Q HE WAS STARING AT THE HOUSE?

8 A YES, SIR.

9 Q YOU DIDN'T TELL AGENT MARTIN THAT; DID YOU?

10 A HE WAS STARING TOWARD THE HOUSE WHENEVER HE WAS
11 STANDING UP HOLDING THE GUN ACROSS HIS ARM -- TWO ARMS
12 LIKE A HUNTER WOULD HOLD IT -- AND STARING THROUGH THIS
13 LITTLE PATCH OF WOODS AT THE HOUSE.

14 Q BUT YOU DIDN'T TELL THAT TO AGENT MARTIN ON FEBRUARY
15 28TH 1996; DID YOU?

16 A I SAID HE WAS STARING THROUGH THE WOODS.

17 Q OKAY.

18 A AND HE HAD TO STARE AT THE HOUSE IF HE LOOKED THROUGH
19 THE WOODS.

20 Q AND YOU TOLD HIM HE BETTER GET OUT OF THERE RIGHT
21 NOW?

22 A YES, SIR.

23 Q OKAY. OKAY. THEN YOU WENT BACK IN AND CALLED THE
24 OFFICER AND THEN THEY CAME?

25 A YES, SIR.

MARY RUTH MCLEOD - CROSS BY BABB

1 Q AND MR. STONE DIDN'T COME BACK DURING THAT TIME?

2 A NOT WHILE I WAS THERE. NO, SIR.

3 Q OKAY. AND NOW YOU HAD COME THERE THAT DAY IN YOUR
4 CAR; IS THAT CORRECT?

5 A YES, SIR.

6 Q OKAY. SO -- AND THEN YOU GOT BACK IN YOUR CAR AND
7 YOU LEFT?

8 A YES, SIR.

9 MR. BABB: COURT'S INDULGENCE JUST A MOMENT.

10 THE COURT: YES, SIR. TAKE YOUR TIME.

11 (WHEREUPON THERE WAS A PAUSE).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q WHEN YOU WENT BACK TO THE HOUSE, IT WAS TEN OR
14 FIFTEEN MINUTES BEFORE YOU CALLED THE POLICE?

15 A IT WAS -- NO, SIR. BEFORE THEY CAME THERE. BECAUSE WE
16 TALKED -- IT WAS ABOUT -- I GUESS WHEN I WENT IN I TOLD
17 MAMA RIGHT THEN, I SAID CALL THE POLICE, HE GOT A GUN.

18 AND SHE WENT IN, WAS GOING TO CALL. AND SHE WAS
19 SO UPSET, I TALKED TO THEM. AND TOLD THEM -- YOU KNOW --
20 DID THE CALL. THEN THEY CAME RIGHT OUT THERE.

21 Q THEY CAME RIGHT THEN?

22 A YES, SIR. IT WASN'T LONG. IT WAS ABOUT FIVE, TEN
23 MINUTES, SOMETHING LIKE -- IT WASN'T VERY LONG BEFORE THEY
24 GOT THERE.

25 Q I WANT YOU TO THINK CAREFULLY. SURE IT WASN'T

MARY RUTH MCLEOD - REDIRECT BY KOLB

1 TWENTY-SEVEN MINUTES?

2 A IT DIDN'T SEEM LIKE A REAL LONG TIME BEFORE THEY
3 CAME.

4 MR. BABB: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: REDIRECT?

6 REDIRECT EXAMINATION BY MR. KOLB:

7 Q AFTER DEPUTY KUBALA LEFT YOUR MOTHER'S HOUSE, HOW
8 LONG WAS IT BEFORE YOU LEFT?

9 A IT WASN'T VERY LONG. MUST HAVE BEEN ABOUT TEN
10 MINUTES.

11 Q AFTER HE LEFT?

12 A MAYBE FIFTEEN BECAUSE I WAS ARGUING WITH MY MOM
13 TRYING TO GET HER TO COME IN.

14 Q I KNOW YOU ARE NOT REAL SET ON THE TIMES, BUT AS FAR
15 AS DAY LIGHT AND DARKNESS, WHAT WAS IT WHEN YOU LEFT YOUR
16 MOTHER'S HOUSE?

17 A IT WAS STILL LIGHT WHEN I LEFT, BUT IT WAS LIKE
18 DUSK. HAD TO TURN CAR LIGHTS ON WHEN I LEFT, BUT YOU
19 COULD STILL SEE.

20 Q ALL RIGHT.

21 MR. KOLB: ANYTHING ELSE FROM THE DEFENSE?

22 THE COURT: RE-CROSS?

23 MR. BABB: NOTHING, YOUR HONOR.

24 THE COURT: YOU MAY COME DOWN.

25 (WHEREUPON THE WITNESS LEFT THE STAND).

RUTH GRIFFITH - DIRECT BY KOLB

1 MR. KOLB: CALL RUTH GRIFFITH.

2 RUTH GRIFFITH, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: PLEASE STATE YOUR FULL NAME AND SPELL
5 YOUR LAST FOR THE RECORD.

6 WITNESS: RUTH RIDGEHILL GRIFFITH, G R I F F I T H.

7 THE COURT: THANK YOU, MA'AM.

8 DIRECT EXAMINATION BY MR. KOLB:

9 Q MRS. GRIFFITH, IF YOU WOULD KEEP YOUR VOICE UP LOUD
10 AND I'LL ASK YOU SOME QUESTIONS. WHERE DO YOU LIVE?

11 A 817 TAYLOR STREET.

12 Q ALL RIGHT. AND MARY RUTH MCLEOD IS YOUR DAUGHTER?

13 A YES, SIR.

14 Q ALL RIGHT. AND ACROSS TAYLOR STREET -- BASICALLY FROM
15 YOUR HOUSE ACROSS TAYLOR STREET WHICH WOULD BE AT THE
16 CORNER OF RIDGEWAY AND TAYLOR, WHO LIVES THERE?

17 A MR. TAYLOR, LANDROW TAYLOR.

18 Q ALL RIGHT. AND MR. -- WHO LIVES AT MR. TAYLOR'S HOUSE
19 WITH HIM?

20 A HIS WIFE.

21 Q OKAY. MR. AND MRS. TAYLOR LIVE THERE?

22 A YES, SIR.

23 Q ALL RIGHT. I'M GOING TO ASK YOU IF YOU CAN IDENTIFY
24 THIS.

25 A YES, SIR.

RUTH GRIFFITH - DIRECT BY KOLB

1 Q WHAT IS THIS?

2 A MY BACK SCREEN -- MY WASHROOM BACK PORCH SCREEN DOOR.

3 Q ALL RIGHT.

4 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THERE
5 INTO EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MR. LITTLEJOHN: YOUR HONOR, IF I COULD SEE IT.

8 THE COURT: SURE. TAKE YOUR TIME.

9 (WHEREUPON THERE WAS A PAUSE).

10 THE COURT: ANY OBJECTION?

11 MR. LITTLEJOHN: NO, YOUR HONOR.

12 THE COURT: STATE'S EXHIBIT NUMBER 15 IS ENTERED INTO
13 EVIDENCE. IT IS THE SCREEN DOOR. IN EVIDENCE WITHOUT
14 OBJECTION.

15 (STATE'S EXHIBIT NO. 15 MARKED FOR EVIDENCE).

16 (WHEREUPON QUESTIONING RESUMED).

17 Q MRS. GRIFFITH, YOU REMEMBER THE NIGHT THIS OCCURRED
18 FEBRUARY THE 26TH, 1996?

19 A YES, SIR.

20 Q GOT THOSE PHOTOGRAPHS BACK? ARE THEY RIGHT... WE
21 HAVE ALREADY MARKED SOME PHOTOGRAPHS INTO EVIDENCE. CAN
22 YOU JUST LOOK THROUGH THESE AND TELL US IF THEY SHOW YOUR
23 HOUSE.

24 A MY HOUSE?

25 Q JUST LOOK THROUGH ALL OF THEM.

RUTH GRIFFITH - DIRECT BY KOLB

1 A THAT'S MY HOUSE.

2 Q SO NO. 14 SHOWS THE SHED BEHIND YOUR HOUSE AND 6
3 THROUGH 12 SHOW YOUR HOUSE?

4 A YES, SIR.

5 Q ALL RIGHT. I WANT TO SHOW YOU SPECIFICALLY STATE'S
6 EXHIBIT NO. 8. DOES THAT SHOW YOUR -- THAT SAME SCREEN
7 DOOR WE JUST MARKED INTO EVIDENCE ACTUALLY ON YOUR
8 WASHROOM SIDE PORCH?

9 A YES, SIR.

10 Q ALL RIGHT. AND WERE YOU FAMILIAR WITH THE CONDITION
11 OF THAT SCREEN DOOR BEFORE THIS INCIDENT ON FEBRUARY THE
12 26TH?

13 A YES, SIR.

14 Q AND WERE THERE ANY HOLES OR CUTS IN THE SCREEN BEFORE
15 THIS INCIDENT OCCURRED THAT NIGHT?

16 A NO, SIR.

17 Q ALL RIGHT. NOW, MRS. GRIFFITH, I WANT TO BACK UP A
18 MINUTE BEFORE FEBRUARY THE 26TH. DO YOU -- DID YOU KNOW
19 BOBBY WAYNE STONE?

20 A YES, SIR.

21 Q ALL RIGHT. AND HOW WAS IT THAT YOU KNEW HIM?

22 A HE WAS LIVING AND GOING WITH MY HUSBAND'S NIECE.

23 Q WHAT'S YOUR HUSBAND'S NIECE'S NAME?

24 A MICHELLE LYNCH.

25 THE COURT: HOLD ONE SECOND. YES, SIR?

RUTH GRIFFITH - DIRECT BY KOLB

1 MR. LITTLEJOHN: COULD WE APPROACH THE BENCH JUST ONE
2 MINUTE?

3 (WHEREUPON A BENCH CONFERENCE WAS HELD).

4 THE COURT: LADIES AND GENTLEMEN, ABOUT AN HOUR AND
5 FIFTEEN MINUTES. CAN'T ADD VERY WELL. THERE'S A MATTER I
6 NEED TO TAKE UP OUT OF YOUR PRESENCE. THOUGHT WE COULD
7 ACCOMPLISH IT AT SIDE BAR -- A MATTER OF LAW.

8 I'LL ASK YOU TO GO TO YOUR JURY ROOM. DO NOT
9 DISCUSS THIS CASE AMONG YOURSELVES. WE WILL BE WITH YOU
10 SHORTLY. THANK YOU VERY MUCH.

11 (WHEREUPON THE JURY LEFT THE COURTROOM AT 3:49
12 P.M.)

13 THE COURT: ALL RIGHT. FIRST OF ALL BEFORE WE GET TO
14 THIS, MR. BABB, YOU OBJECTED TO STATE'S EXHIBIT 5 WHICH IS
15 THE MAPS. STATE YOUR OBJECTION, PLEASE, ON THE RECORD.

16 MR. BABB: YES, YOUR HONOR. THE OBJECTION WAS ON THE
17 BASIS OF THESE AREAL PHOTOGRAPHS WERE TAKEN IN FEBRUARY OF
18 1989.

19 THE NUMBER OF THINGS BESIDES JUST THE PASSAGE OF
20 TIME HAS OCCURRED, ONE OF WHICH WAS HURRICANE HUGO IN
21 SEPTEMBER OF THAT YEAR.

22 THE COURT: I'M FROM BERKELEY COUNTY. I REALIZE
23 BERKELEY COUNTY MAPS DON'T LOOK A THING IN THE WORLD LIKE
24 THEY DO AFTER HUGO.

25 MR. BABB: OF COURSE, IT HAS CROPS. AND YOU KNOW HOW

RUTH GRIFFITH - DIRECT BY KOLB

1 THE FIELDS CAN KIND OF CHANGE AND MOVE. THAT WAS THE BASIS
2 OF THE OBJECTION.

3 THE COURT: VERY WELL. I APPRECIATE THAT. I THINK
4 THAT WOULD GO TO THE WEIGHT, A JURY ISSUE AND NOT TO THE
5 ADMISSIBILITY. I OVERRULE IT ON THAT BASIS. THANK YOU,
6 SIR.

7 MR. BABB: THANK YOU, YOUR HONOR.

8 THE COURT: YES, SIR. NOW MR. SOLICITOR, WE WANT TO
9 TALK ABOUT AN ISSUE. DISCUSSED IT AT SIDE BAR. THERE WAS
10 AN OBJECTION ABOUT POSSIBLE STATEMENTS WHERE WE ARE GOING
11 WITH SOME PRIOR DEALINGS WITH THE DEFENDANT.

12 MR. KOLB: JUDGE, I UNDERSTOOD FROM OPENING STATEMENT
13 THAT THE DEFENSE WANTED TO GET INTO THE ALL THE EVENTS
14 LEADING UP TO WHAT HAPPENED THAT NIGHT, PRIOR
15 RELATIONSHIP, DEFENDANT -- I MEAN, PART OF THE LAST
16 EXAMINATION OF THE DAUGHTER WAS DEALING WITH THE DEFENDANT
17 CLAIMING THAT MRS. GRIFFITH IS AN OLD DRINKING BUDDY OF
18 HIS AND THEY'VE GONE OUT TOGETHER NUMEROUS TIMES TOGETHER
19 AND ALL, VEHEMENTLY DENIES THAT.

20 THE COURT: I DON'T HAVE ANY PROBLEM WITH YOUR
21 ESTABLISHING SHE DOESN'T HAVE ANY SOCIAL RELATIONSHIP WITH
22 HIM. THAT'S FINE.

23 WHAT I HAVE UNDERSTOOD WE WERE TALKING ABOUT WAS
24 BAD -- OR SOME ACTS THAT COULD BE CONSTRUED AS BAD
25 CONDUCT, SOME OTHER ACTS THAT MAY COME IN THAT I THINK

RUTH GRIFFITH - DIRECT BY KOLB

1 WOULD BE PREJUDICIAL AND SHOULD NOT BE IN THE RECORD.

2 YOU CERTAINLY ARE FREE TO ESTABLISH -- AND YOU
3 CAN DO SO WITHOUT BRINGING OUT ANY PRIOR BAD ACTS, I
4 THINK. IF THERE ARE ANY. I DON'T KNOW WHETHER THERE ARE OR
5 THERE AREN'T.

6 BUT FROM THAT STANDPOINT WITH RESPECT TO WHETHER
7 OR NOT SHE WOULD HAVE BEEN CORDIAL TO HIM AND THERE WOULD
8 HAVE BEEN A REASON FOR HIM TO COME ON SOCIAL BASIS, YOU
9 ARE CERTAINLY FREE TO ESTABLISH THAT, BUT YOU DON'T NEED
10 TO GO INTO BAD ACTS.

11 MR. KOLB: I JUST DON'T KNOW HOW WE ARE GOING TO DO
12 IT, JUDGE. I'M GOING TO BE FRANK WITH YOU. IT'S REALLY
13 INTERTWINED.

14 THE COURT: BE HAPPY TO ANSWER QUESTIONS YOU CAN
15 GIVE. ALL YOU HAVE TO DO IS WERE YOU SOCIAL FRIENDS WITH
16 MR. STONE, DID YOU HAVE OCCASIONS TO GO OUT DRINKING WITH
17 HIM?

18 IF SHE -- I ASSUME THE ANSWERS TO THOSE
19 QUESTIONS ARE NO. BUT I MEAN, THAT ESTABLISHES WHAT YOU
20 ARE LOOKING TO ESTABLISH, I BELIEVE.

21 MR. KOLB: ALL RIGHT, SIR. WHAT YOU SPECIFICALLY
22 DON'T WANT HER TO MENTION IS THAT HE WAS ON PROBATION.

23 THE COURT: I DON'T WANT HER TO GET INTO ANY PRIOR
24 BAD ACTS, BE IT PROBATION OR ANYTHING, BECAUSE OF A
25 POTENTIAL RISK THAT IT WOULD CREATE.

RUTH GRIFFITH - DIRECT BY KOLB

1 I DON'T KNOW WHAT THE DEPOSITION IS GOING TO BE,
2 BUT MY FEELING IS AT THIS JUNCTURE I AGREE WITH YOU WHOLE
3 HEARTEDLY THE ISSUE THAT HE WAS NOT WELCOME THERE IS
4 CERTAINLY RELEVANT.

5 TO THE DEGREE THAT IT TIES IN WITH PRIOR
6 PROBLEMS, IF THAT IS THE ONLY REASON, THEN I WILL -- I
7 WILL BE HAPPY FOR YOU TO PROFFER THAT NOW SO THAT WE CAN
8 HAVE A DETERMINATION AS TO WHETHER OR NOT IT THEY FIND IT
9 OBJECTIONABLE.

10 BUT IF IT'S NOT ANYTHING OF THAT NATURE, THEN I
11 THINK YOU CAN ESTABLISH THAT JUST ASKING TYPICAL QUESTIONS
12 THAT YOU WOULD ASK SOMEONE THAT CLAIMS TO HAVE SOCIAL
13 RELATION, SHE CAN CERTAINLY TESTIFY. SHE IS HERE TO
14 RESPOND TO THAT.

15 MR. KOLB: YES, JUDGE. JUST SO THE COURT
16 UNDERSTANDS...

17 THE COURT: MRS. GRIFFITH, YOU MUST UNDERSTAND
18 SOMETHING. LET ME MAKE IT CLEAR. IF YOU HAVE SOME
19 KNOWLEDGE, SOMETHING KNOWN ABOUT SOME STATEMENT -- YOU MAY
20 HAVE KNOWLEDGE ABOUT SOME PROBATION, PREVIOUS PROBATION --
21 YOU MAY NOT STATE THAT UNDER ANY CIRCUMSTANCES IN THIS
22 PROCEEDING. YOU UNDERSTAND?

23 THE WITNESS: YES, SIR.

24 THE COURT: ALL RIGHT. THANK YOU.

25 MR. KOLB: JUDGE, PART OF THAT IS THAT SHE -- THIS

RUTH GRIFFITH - DIRECT BY KOLB

1 MICHELLE LYNCH IS A RELATIVE OF HERS. THEY HAD HAD
2 CONVERSATIONS WHERE SHE FELT THAT SHE HAD BEEN THREATENED
3 FOR TURNING IN BOBBY STONE ABOUT PROBATION.

4 I UNDERSTAND IT'S A PROBLEM. I WANT YOU TO KNOW
5 HOW IT'S REALLY LACED INTO ALL OF THIS. AND THEY WERE
6 ASKING ABOUT THIS MICHELLE LYNCH. NOW, THAT WAS BROUGHT
7 OUT BY THEM. THE OTHER THING IS---.

8 THE COURT: SOLICITOR---.

9 MR. KOLB: NOT ARGUING. JUST WANT YOU TO UNDERSTAND
10 ALL THE FACTS.

11 THE COURT: I UNDERSTAND THE DILEMMA THE STATE FACES
12 WITH RESPECT TO THE BURGLARY. YOU ELECTED TO TRY HIM FOR
13 BURGLARY AND MURDER.

14 I'M TELLING YOU NOW THAT I'M GOING TO LOOK --
15 THE AREA THAT'S CONTROLLING THESE DECISIONS IS THE MURDER
16 SITUATION BECAUSE THAT'S THE ONE THAT THE JURY IS GOING TO
17 SET A PUNISHMENT ON.

18 SO I'M GOING TO TELL YOU NOW THAT I AM NOT GOING
19 TO ALLOW ANYTHING THAT COULD POSSIBLY BE CONSIDERED --
20 THAT IS SO CLOSE AS A CLOSE CALL -- IT'S NOT COMING IN IN
21 THIS AREA; OKAY?

22 MR. KOLB: ALL RIGHT.

23 THE COURT: NOW, HOW THAT AFFECTS YOUR BURGLARY
24 SITUATION, I UNDERSTAND THAT. WE WILL DEAL WITH THAT.

25 MR. KOLB: ALL RIGHT.

RUTH GRIFFITH - DIRECT BY KOLB

1 THE COURT: OKAY?

2 (WHEREUPON THERE WAS A PAUSE).

3 THE COURT: ALL RIGHT. ARE WE READY TO RESUME?

4 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
5 3:56 P.M.).

6 THE COURT: THANK YOU, LADIES AND GENTLEMEN. READY TO
7 CONTINUE. MR. SOLICITOR, YOU MAY CONTINUE.

8 (WHEREUPON QUESTIONING RESUMED).

9 Q HAVE YOU EVER GONE OUT WITH BOBBY STONE -- WITH HIM
10 INDIVIDUALLY OR EVER IN A GROUP?

11 A NO, SIR.

12 Q NEVER UNDER ANY CIRCUMSTANCES?

13 A NO, SIR.

14 Q DID YOU HAVE ANY SOCIAL RELATIONS WITH HIM AT ALL?

15 A NO, SIR.

16 Q WAS HE AT ANY TIME WELCOME AT YOUR HOUSE?

17 A WHEN HE CAME TO PICK MY NIECE UP -- I MEAN, MY
18 HUSBAND'S NIECE. I MEAN, HE CAME AND PICKED HER UP AND
19 LEFT.

20 Q ALL RIGHT. WHEN WAS THAT IN RELATION TO THIS
21 INCIDENT? THIS IS A YEAR OR MORE PRIOR TO THIS?

22 A YEAH. YES, SIR.

23 Q ALL RIGHT. SO WITHIN THE LAST -- AND AS I
24 UNDERSTAND --

25 MR. KOLB: JUDGE, CAN I LEAD TO AVOID ANY PROBLEM

RUTH GRIFFITH - DIRECT BY KOLB

1 WITH THIS?

2 THE COURT: IF IT'S OBJECTED -- NOT LEADING TILL IT'S
3 OBJECTED TO.

4 (WHEREUPON QUESTIONING RESUMED).

5 Q MRS. GRIFFITH, WAS MICHELLE LYNCH STAYING WITH YOU
6 FOR A SHORT PERIOD OF TIME?

7 A YES, SIR.

8 Q AND DURING THAT SHORT PERIOD OF TIME, TWO OR THREE
9 OCCASIONS THAT BOBBY STONE CAME OVER TO PICK HER UP TO GO
10 OUT ON A DATE?

11 A HE WOULD COME AND GET HER TO GO TAKE HER HOME, BUT
12 SHE STAYED WITH ME BEFORE SHE LIVED WITH HIM. I MEAN, SHE
13 LIVED WITH HIM BEFORE SHE COME AND STAYED WITH ME. AND
14 SHE WENT -- HE WOULD COME PICK HER UP AND TAKE HER BACK.

15 Q ALL RIGHT. NOW, WHEN HE CAME INTO YOUR HOUSE, WAS IT
16 TO BE A GUEST WITH YOU AND SOCIALIZE WITH YOU?

17 A NO, SIR.

18 Q JUST TO GET HER AND THEN LEAVE?

19 A YES, SIR.

20 Q ALL RIGHT. NOW, ON THE AFTERNOON AND NIGHT OF
21 FEBRUARY THE 26TH 1996, WAS BOBBY STONE -- DID HE HAVE
22 YOUR CONSENT TO COME TO YOUR HOUSE OR TO ENTER YOUR HOUSE,
23 PORCHES OR ANY PORTION OF YOUR DWELLING?

24 A NO, SIR.

25 Q YOU ABSOLUTELY CERTAIN ABOUT -- THAT HE DID NOT HAVE

RUTH GRIFFITH - DIRECT BY KOLB

1 YOUR CONSENT TO DO THAT?

2 A I'M POSITIVE.

3 Q AND DID YOU WANT HIM THERE AT ALL?

4 A NO, SIR.

5 Q ALL RIGHT. AND HOW DID YOU FEEL ABOUT HIM AT THAT
6 TIME?

7 A I WAS AFRAID OF HIM.

8 Q ALL RIGHT. NOW, COULD YOU TELL US WHAT HAPPENED THAT
9 RESULTED IN YOU AND YOUR DAUGHTER MAKING THAT FIRST CALL
10 TO 911 ON THAT -- I THINK THE CALL WAS MADE AT 5:39 P.M.
11 WHAT HAD HAPPENED SOME TIME BEFORE 5:39?

12 A HE KNOCKED ON MY BACK DOOR AND I SAID -- SEEN IT WAS
13 HIM AND I DIDN'T OPEN THE DOOR.

14 Q ALL RIGHT. YOU HEARD SOMEBODY KNOCKING AT THE BACK
15 DOOR?

16 A YES, SIR.

17 Q AND WHAT DID YOU DO AFTER YOU HEARD THE KNOCKING?

18 A I WENT TO THE BACK DOOR TO SEE WHO IT WAS.

19 Q ALL RIGHT. NOW, WHEN WE TALKED ABOUT BACK DOORS --
20 LET ME JUST BE CRYSTAL CLEAR.

21 A THAT'S THE KITCHEN DOOR.

22 Q ALL RIGHT. THIS EXHIBIT HERE, EXHIBIT NO. 8, YOU
23 POINT OUT ON HERE WHICH ONE IS THE BACK DOOR.

24 A I CALL IT -- THIS ONE KNOCKING ON THE FIRST TIME.

25 Q ALL RIGHT. SPEAK UP LOUD. SO THIS IS THE BACK ONE

RUTH GRIFFITH - DIRECT BY KOLB

1 HERE?

2 A UH-HUH.

3 Q IT STEPS CLOSEST TO THE BACK OF THE HOUSE?

4 A INTO THE KITCHEN.

5 Q AND JUST SO WE DISTINGUISH THINGS OVER HERE WHERE
6 THIS WHITE PORCH IS WITH THE SCREEN DOOR YOU TALKED ABOUT,
7 WHAT DO YOU CALL THAT DOOR?

8 A THE BACK DOOR LEADING INTO THE WASHROOM.

9 Q ALL RIGHT. SO THE -- THAT WOULD BE THE WASHROOM DOOR
10 WHERE THE PORCH IS. AND WHEN YOU'RE TALKING ABOUT
11 KNOCKING AT THE BACK DOOR, TALKING ABOUT WHERE THIS BACK
12 PORCH IS HERE?

13 A YEAH.

14 Q ALL RIGHT. NOW, SO YOU HEARD KNOCKING AT THE BACK
15 DOOR AND WHAT DID YOU DO?

16 A I WENT TO SEE WHO WAS AT THE BACK DOOR.

17 Q AND WHAT -- HOW DID YOU FIND OUT WHO WAS THERE?

18 A I PULLED THE CURTAIN BACK AND BOBBY WAYNE STONE.

19 Q ALL RIGHT. WHAT DID YOU DO WHEN YOU SAW HIM? HOW --
20 WHEN YOU SAY BOBBY WAYNE STONE, WHO WAS THAT?

21 A THAT ONE SITTING RIGHT THERE, BUT HE LOOKS MUCH
22 BETTER.

23 Q HE LOOKS BETTER NOW?

24 A HE LOOKS BETTER THAN HE DID THEN.

25 Q ALL RIGHT. AND WHAT DID YOU DO WHEN YOU SAW IT WAS

RUTH GRIFFITH - DIRECT BY KOLB

1 HIM?

2 A I WENT BACK IN THE ROOM AND I SAW WHO IT WAS AND TOLD
3 HER THAT BOBBY WAYNE STONE WAS AT MY DOOR, TELLING THAT --
4 WHAT I SAID?

5 Q WELL, LETS SEE. DID YOU SAY YOU DIDN'T WANT HIM
6 THERE?

7 A I DID NOT WANT HIM THERE, NO.

8 Q ALL RIGHT. NOW, WHAT HAPPENED AFTER THAT?

9 A MY DAUGHTER GOT OFF THE PHONE AND -- I MEAN, OPENED
10 THE DOOR AND RUNNING OUT THE YARD. AND HE WENT ON THE
11 SHED AND SHE ASKED HIM WHERE HE THINK HE WAS GOING.

12 HE SAID I'M GOING HOME. AND SHE TOLD HIM THAT
13 WASN'T THE WAY HOME AND HE BETTER GET HIS SELF OUT OF MY
14 YARD, THAT I WASN'T LIVING BY MYSELF ANY MORE, THAT SHE
15 LIVED THERE WITH ME.

16 AND THEN -- THEN SHE FOLLOWED HIM INTO THE
17 WOODS.

18 Q ALL RIGHT. NOW, AFTER A WHILE DID YOUR DAUGHTER COME
19 BACK IN?

20 A YES, SIR.

21 Q AND WHAT DID YOU AND SHE DO WHEN SHE CAME BACK IN?

22 A SHE TOLD ME SHE WAS GOING TO CALL THE COPS BECAUSE HE
23 HAD A GUN.

24 Q ALL RIGHT. AND DID YA'LL DO THAT?

25 A SHE DID.

RUTH GRIFFITH - DIRECT BY KOLB

1 Q AND WHAT HAPPENED AS A RESULT OF THAT CALL?

2 A STARTED THE BALL. SERGEANT KUBALA CAME OUT AND HER
3 AND SERGEANT KUBALA WENT BACK INTO THE WOODS LOOKING FOR
4 HIM. BUT HE MUST HAVE BEEN HIDING, I GUESS.

5 Q THEY DIDN'T FIND HIM?

6 A NO, SIR.

7 Q ALL RIGHT. WHAT HAPPENED AFTER THAT?

8 A SERGEANT KUBALA SAT UP AND TALKED WITH US A FEW
9 MINUTES AND HE TOLD ME THAT IF HE CAME BACK DON'T HESITATE
10 TO CALL HIM. AND THAT THEN MY DAUGHTER HAD TO GO OVER TO
11 HER DAUGHTER -- KEEP HER DAUGHTER A LITTLE WHILE.

12 AS SOON AS SHE -- IT WASN'T LONG AFTER SHE LEFT
13 HE CAME BACK IN THE YARD. HE CAME BACK IN MY BACK YARD.
14 SHOT A GUN IN MY BACK YARD.

15 Q ALL RIGHT. YOU HEARD GUN SHOTS IN YOUR BACK YARD?

16 A YES, SIR.

17 Q THEN WHAT DID YOU DO WHEN YOU HEARD THESE SHOTS?

18 A I CALLED MR. TAYLOR.

19 Q NOW, THAT'S LANDROW TAYLOR THAT LIVES ACROSS THE
20 STREET?

21 A YES, SIR.

22 Q AND...

23 A HE CAME.

24 Q TELL US ABOUT THAT.

25 A HE CAME RUNNING OVER THERE. AND I ASKED HIM DID HE

RUTH GRIFFITH - DIRECT BY KOLB

1 HEAR SHOTS IN MY BACK YARD AND HE SAID YES. AND HE COME
2 RUNNING OVER THERE AND HE CALLED 911 AGAIN.

3 Q ALL RIGHT. AND SO YA'LL HAD CALLED AND REPORTED THAT
4 YOU HAD CALLED EARLIER AND THE OFFICER HAD BEEN THERE. AND
5 NOW YOU HEARD SHOTS?

6 A YES, SIR.

7 Q ALL RIGHT. NOW, BEFORE THE OFFICER GOT THERE IN
8 RESPONSE TO THAT CALL, DID SOMETHING ELSE HAPPEN?

9 A HE CAME ON -- KNOCK -- HE CAME ON MY BACK PORCH.

10 Q ALL RIGHT. BEFORE HE WAS ON THE BACK PORCH, DID YOU
11 HEAR ANYTHING ELSE OUTSIDE YOUR HOME?

12 A YES. HE WAS -- MY BEDROOM WINDOW AND MY CAR WAS
13 PARKED THERE.

14 Q NOW, HOW -- WHAT DID YOU HEAR OR SEE?

15 A I DIDN'T LOOK. I WAS SCARED.

16 Q ALL RIGHT.

17 A I KNEW HE HAD A GUN. HE WAS TRYING TO GET MY CAR DOOR
18 OPEN. THEN I THOUGHT HE WAS CUTTING THE PHONE LINE, BUT
19 THANK GOD HE WASN'T.

20 Q NOW, YOUR TELEPHONE LINES ACTUALLY COME OUT OF THE
21 WINDOW OF YOUR BEDROOM WINDOW?

22 A YES, SIR.

23 Q WOULD THAT BE ON THE -- AS YOU ARE STANDING ON TAYLOR
24 STREET LOOKING AT YOUR HOUSE, YOUR BEDROOM WINDOW IS ON
25 THE RIGHT SIDE OF THE HOUSE?

RUTH GRIFFITH - DIRECT BY KOLB

1 A YES, SIR.

2 Q IS THAT WHERE YOU ALSO PARK YOUR CAR?

3 A YES, SIR.

4 Q ALL RIGHT. AND YOU THOUGHT THE PHONE LINES WERE BEING
5 CUT WHEN YOU HEARD NOISE IN THAT AREA?

6 MR. LITTLEJOHN: OBJECT TO LEADING QUESTION.

7 THE COURT: SUSTAINED. REPHRASE YOUR QUESTION.

8 (WHEREUPON QUESTIONING RESUMED).

9 Q NOW, AFTER YOU HEARD THE NOISE IN THAT AREA, WHAT
10 HAPPENED?

11 A HE WENT AROUND THE HOUSE, WENT BACK AROUND THE HOUSE
12 AND CAME UP ON THE BACK PORCH.

13 Q WHEN YOU SAY BACK PORCH...

14 A THE SIDE PORCH.

15 Q ALL RIGHT.

16 A LEADING TO THE LAUNDRY ROOM.

17 Q ALL RIGHT.

18 A WASHROOM.

19 Q NOW, DID HE HAVE YOUR CONSENT TO ENTER ON TO YOUR
20 BACK PORCH THERE?

21 A NO, SIR.

22 Q NOW, WHAT HAPPENED? HOW DO YOU KNOW HE WAS ON THE
23 BACK PORCH BACK THERE?

24 A I COULD HEAR HIM.

25 Q WHAT WAS HE DOING?

RUTH GRIFFITH - DIRECT BY KOLB

1 A HE WAS TRYING TO GET THE -- HE HAD THE SCREEN DOOR
2 OPEN AND THEN HE WAS TRYING TO GET -- I HAD THE DOOR -- A
3 PANE OF GLASS IN THAT, BUT I BROKE IT OUT. I LOCKED
4 MYSELF OUT OF THE HOUSE.

5 Q ALL RIGHT.

6 A AND HE WAS COMING IN THAT.

7 Q HOLD ON. LETS GO INTO THAT A LITTLE MORE. SO YOU
8 COME ON TO THAT PORCH THROUGH A SCREEN DOOR?

9 A YES, SIR.

10 Q AND THEN THERE'S A WOODEN DOOR WITH GLASS PANES IN
11 IT?

12 A YES, SIR.

13 Q AND -- THAT WERE GOING INTO THE HEATED PORTION OF THE
14 HOUSE?

15 A YES, SIR.

16 Q WHICH WOULD BE THE LAUNDRY ROOM?

17 A YES, SIR.

18 Q ALL RIGHT. AND YOU INDICATED PRIOR TO THIS INCIDENT
19 THAT YOU HAD BROKEN THE GLASS PANE OUT?

20 A YES, SIR.

21 Q WHAT WAS THE PURPOSE OF DOING THAT?

22 A I LOCKED MY KEYS IN THE HOUSE. I HAD LOCKED MYSELF
23 OUT.

24 Q ALL RIGHT. WHAT DID YOU DO AFTER BREAKING THAT GLASS
25 OUT AS FAR AS REPAIRING THE DOOR AFTER YOU BROKE YOUR OWN

RUTH GRIFFITH - DIRECT BY KOLB

- 1 PAIN OF GLASS OUT TO GET IN THE HOUSE?
- 2 A I---.
- 3 Q WHAT'S THAT?
- 4 A I NAILED A BOARD.
- 5 Q SO YOU PUT A BOARD UP THERE WHERE THE GLASS HAD BEEN
- 6 AND NAILED IT IN PLACE?
- 7 A YES, SIR.
- 8 Q ALL RIGHT. NOW, WHEN YOU -- WHAT DID YOU ACTUALLY
- 9 HEAR ON THAT WASHROOM SIDE PORCH AREA? WHAT WERE YOU --
- 10 DID YOU HEAR ABOUT THAT?
- 11 A AT FIRST IT SOUND LIKE HE WAS DOING THIS, SCRAPING
- 12 SOMETHING AT THE BOTTOM OF THE BOARD. AND THEN HE WAS
- 13 KNOCKING IT.
- 14 Q ALL RIGHT. YOU HEARD -- WHEN YOU SAY KNOCKING,
- 15 BANGING ON THE DOOR?
- 16 A UH-HUE.
- 17 Q ON THAT BOARD?
- 18 A YES, SIR.
- 19 Q ALL RIGHT. NOW, AFTER ALL OF THIS WAS OVER WITH, DID
- 20 YOU -- WAS THERE ANYTHING DIFFERENT ABOUT THAT BOARD THAN
- 21 HAD BEEN EARLIER?
- 22 A YEAH, IT WAS JUST SWINGING FROM A NAIL LEFT.
- 23 Q SO IT HAD BEEN KNOCKED LOOSE?
- 24 A YES, SIR.
- 25 Q ALL RIGHT. AND TO KNOCK THAT LOOSE REQUIRED SOMETHING

RUTH GRIFFITH - DIRECT BY KOLB

1 TO ACTUALLY GO INTO THE HEATED PORTION OF YOUR HOUSE?

2 MR. LITTLEJOHN: OBJECT TO LEADING QUESTION.

3 THE COURT: SUSTAINED. REPHRASE YOUR QUESTION. DON'T
4 LEAD YOUR WITNESSES, SOLICITOR.

5 MR. KOLB: GOT A LITTLE BIT AHEAD THERE.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q WOULD -- YOU EXPLAINED ABOUT THAT BOARD. WHILE YOU
8 HEARD THAT NOISE ON YOUR BACK PORCH, HAD THE DEPUTY --
9 YA'LL -- THE CALL -- THAT WAS MADE AFTER YOU HEARD THE
10 SHOTS?

11 A YES, SIR.

12 Q THE FIRST -- WELL, THE SECOND CALL. DID YOU CALL A
13 THIRD TIME TO 911?

14 A YES, SIR.

15 Q NOW, WHILE YOU ACTUALLY HEARD THIS NOISE---.

16 MR. LITTLEJOHN: I'M GOING TO OBJECT TO LEADING.

17 THE COURT: SUSTAINED. MR. SOLICITOR, REFRAIN FROM
18 LEADING YOUR WITNESS. ASK THE QUESTION. LET HER ANSWER,
19 PLEASE.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q THAT WAS -- AT WHAT TIME WAS IT -- WHAT WAS GOING ON
22 WHEN YOU CALLED 911 FOR THE THIRD TIME?

23 A HE WAS COMING IN. HE HAD THE BOARD. IT WAS -- HE WAS
24 JUST COMING IN.

25 Q AND HOW DID YOU FEEL HEARING THAT?

RUTH GRIFFITH - DIRECT BY KOLB

1 A I WAS -- I WAS FRANTIC. I WAS SCARED.

2 Q WHAT DID YOU THINK WAS GOING TO HAPPEN TO YOU?

3 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT.

4 THAT'S SPECULATION.

5 THE COURT: SUSTAINED.

6 WITNESS: I THOUGHT HE WAS---.

7 THE COURT: NO, MA'AM. NO, MA'AM. YOU MAY NOT ANSWER
8 THAT QUESTION. JURY DISREGARD THAT WITNESSES ANSWER.

9 WITNESS: I'M SORRY. I'M SORRY.

10 (WHEREUPON QUESTIONING RESUMED).

11 Q DID YOU HAVE ANY REASON TO BE AFRAID OF HIM, MRS.
12 GRIFFITH?

13 A YES, SIR.

14 Q ALL RIGHT. NOW, AFTER CALLING AND TELLING THE
15 DISPATCH, WHAT DID YOU LEARN WHEN YOU CALLED THE POLICE IN
16 THAT THIRD CALL TO 911?

17 A WHAT DID I LEARN?

18 Q RIGHT.

19 A SHE ASKED ME TO STAY ON THE PHONE. AND I TOLD HER I
20 WAS STANDING BY THE WINDOW AND I WAS AFRAID, COULD I HANG
21 UP? AND I HUNG UP.

22 Q ALL RIGHT. WHAT HAPPENED AFTER THAT?

23 A HE WAS COMING ON IN, SERGEANT KUBALA CAME. AND THEN
24 I, I---.

25 Q WHERE DID SERGEANT KUBALA COME TO YOUR HOUSE? WHAT

RUTH GRIFFITH - DIRECT BY KOLB

1 PART?

2 A AROUND -- HE -- HE -- I BELIEVE---.

3 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT.

4 SHE SAYS I BELIEVE. IF SHE DOESN'T KNOW OF HER OWN

5 PERSONAL KNOWLEDGE, I DON'T THINK SHE CAN ANSWER.

6 THE COURT: NO, SIR. I'M GOING TO ALLOW HER. YOU CAN

7 CROSS-EXAMINE HER.

8 MR. KOLB: I WILL DO IT DIFFERENTLY, YOUR HONOR.

9 (WHEREUPON QUESTIONING RESUMED).

10 Q CAN YOU IDENTIFY THIS PHOTOGRAPH?

11 A YES, SIR.

12 Q DOES THAT SHOW THE LOCATION -- EXCUSE ME. WHAT DOES

13 THAT PHOTOGRAPH SHOW?

14 A IT SHOWS THE LEFT SIDE OF MY HOUSE WHERE MY CAR IS

15 PARKED.

16 Q ALL RIGHT.

17 A AND WHERE SERGEANT KUBALA WAS.

18 Q KNEW GOING TO GET IN TROUBLE. LEFT AND RIGHT. IF

19 YOU ARE STANDING IN TAYLOR STREET LOOKING AT YOUR HOUSE,

20 WHICH SIDE OF THE HOUSE DID YOU PARK YOUR CAR ON?

21 A THE RIGHT.

22 Q OKAY. AND WHERE DID SERGEANT KUBALA PULL UP HIS

23 PATROL CAR IN RELATION TO YOUR CAR?

24 A RIGHT DRIVE.

25 Q RIGHT UP NEXT TO YOURS?

RUTH GRIFFITH - DIRECT BY KOLB

1 A YES, SIR.

2 Q AND THIS PHOTOGRAPH SHOWS THAT?

3 A YES, SIR.

4 MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THIS INTO
5 EVIDENCE.

6 THE COURT: OKAY. ANY OBJECTION?

7 MR. LITTLEJOHN: NO OBJECTION.

8 THE COURT: VERY WELL. STATE'S EXHIBIT 16 PHOTOGRAPH
9 INTO EVIDENCE WITHOUT OBJECTION.

10 (STATE'S EXHIBIT NO. 16 MARKED FOR EVIDENCE).

11 (WHEREUPON QUESTIONING RESUMED).

12 Q AFTER DEPUTY KUBALA GOT THERE, WHAT OCCURRED?

13 A HE WENT AROUND THE HOUSE TO THE BACK SIDE. AND THEN I
14 HEARD SERGEANT KUBALA SAY HALT AND THEN I HEARD THE GUN
15 SHOOTING.

16 Q ALL RIGHT. TELL US WHAT YOU HEARD?

17 A I HEARD SERGEANT KUBALA SAY HALT THEN I HEARD BAM,
18 BAM, BAM, BAM. I THINK IT WAS FOUR. I BELIEVE IT WAS FOUR
19 SHOTS.

20 Q AND WHAT HAPPENED? WHAT DID YOU DO AFTER HEARING
21 THESE SHOTS?

22 A I STOOD THERE FOR A MINUTE WITH MY HANDS OVER MY
23 EARS. THEN MR. TAYLOR WENT OUT THERE AND RUN BACK AND
24 TOLD ME TO CALL THE AMBULANCE, THAT THE DEPUTY WAS ON THE
25 GROUND.

RUTH GRIFFITH - DIRECT BY KOLB

1 Q ALL RIGHT. LET ME BACK UP JUST A MINUTE. WHEN YOU AND
2 MR. TAYLOR WERE INSIDE YOUR HOUSE BEFORE THE DEPUTY GOT
3 THERE, DID YOU OR MR. TAYLOR SAY ANYTHING TO MR. STONE ON
4 THE OUTSIDE?

5 A MR. TAYLOR HOLLERED AT HIM ONE TIME.

6 Q WHAT DID HE HOLLER AT HIM?

7 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT. I
8 SHOULD HAVE OBJECTED BEFORE. I DON'T THINK THERE IS ANY
9 FOUNDATION FOR THAT QUESTION.

10 THE COURT: I SUSTAIN THE OBJECTION. CAN'T ANSWER
11 ANYTHING MR. TAYLOR SAID.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q OKAY. GOING FORWARD THEN TO AFTER THE DEPUTY WAS
14 THERE AND YOU HEARD THE SHOTS, THEN WHAT HAPPENED?

15 A I CALLED 911.

16 Q ALL RIGHT. SO THAT WAS THAT FOURTH CALL THAT WE HAVE
17 HEARD. YOU HAVE HEARD IT BEFORE?

18 A YES, SIR.

19 Q ALL RIGHT. WHILE YOU WERE ON THE PHONE, WHAT DID MR.
20 TAYLOR DO?

21 A HE CAME BACK IN THE HOUSE. MADE HIM COME BACK IN THE
22 HOUSE.

23 Q SO HE WAS IN THE HOUSE WHEN YOU CALLED 911?

24 A YES, SIR.

25 Q TO REPORT THE SHOT?

RUTH GRIFFITH - DIRECT BY KOLB

1 A YES, SIR.

2 Q SO HE HAD GONE OUT THEN WHILE YOU WERE CALLING?

3 A HE WENT OUT, BUT HE CAME BACK IN.

4 Q ALL RIGHT. MRS. GRIFFITH, I THINK WE'VE GOT SOME
5 PICTURES THAT WERE TAKEN LATER ON THAT NIGHT THAT SHOWED A
6 PORCH LIGHT ON THAT SIDE PORCH. THIS IS EXHIBIT 9. THIS
7 WHITE AREA, IS THAT THE SIDE WASHROOM SCREENED PORCH?

8 A YES, SIR.

9 Q IT SHOWS A LIGHT ON THERE?

10 A YEAH. I CUT IT ON.

11 Q WAS THAT LIGHT ON -- AT WHAT TIME DID YOU CUT THAT
12 ON? WHEN DID YOU CUT IT ON?

13 A AFTER SERGEANT KUBALA WAS SHOT.

14 Q SO WHEN HE WAS SHOT, THAT LIGHT WAS NOT ON?

15 A NO, SIR.

16 Q WHEN YOU WERE HEARING THE NOISE ON THAT PORCH, THAT
17 LIGHT WAS NOT ON?

18 A NO, SIR.

19 Q WAS THE POLICE CAR THAT'S SHOWN IN THE PHOTOGRAPH --
20 WAS DEPUTY KUBALA IN THAT CAR BOTH TIMES WHEN HE CAME TO
21 YOUR HOUSE?

22 A YES, SIR.

23 Q AND WAS HE IN A -- WHAT DID OFFICER KUBALA LOOK LIKE
24 WHEN YOU SAW HIM?

25 A THE FIRST TIME OR THE SECOND?

RUTH GRIFFITH - DIRECT BY KOLB

1 Q WELL, THE FIRST TIME. THAT'S RIGHT -- EXCUSE ME. THE
2 TIME YOU ACTUALLY TALKED TO HIM.

3 A HE HAD A MUSTACHE. AND HE WAS -- HE WAS A REAL NICE
4 LOOKING MAN -- PERSON. AND HE WAS A REAL NICE PERSON.

5 Q I APPRECIATE YOU SAYING THAT. I'M TALKING ABOUT HIS
6 CLOTHING SPECIFICALLY. HOW WAS HE DRESSED?

7 A IN A DEPUTY SUIT.

8 Q ALL RIGHT.

9 A A DEPUTY.

10 Q COULD YOU...

11 A TAN.

12 Q COULD YOU...

13 A HE HAD ON A TAN SHIRT.

14 Q WHAT -- AND COULD YOU TELL THAT HE WAS A DEPUTY
15 SHERIFF?

16 A YES, SIR.

17 MR. KOLB: JUST A MOMENT PLEASE, YOUR HONOR.

18 (WHEREUPON THERE WAS A PAUSE).

19 MR. KOLB: ANSWER ANY QUESTIONS THAT THE DEFENSE MAY
20 HAVE.

21 THE COURT: YOU MAY CROSS-EXAMINE, MR. LITTLEJOHN.

22 MR. KOLB: EXCUSE ME. I FORGOT SOMETHING.

23 (WHEREUPON QUESTIONING RESUMED).

24 Q MRS. GRIFFITH, AFTER HEARING THE SHOTS, THE OTHER
25 DEPUTIES AND THEN AN AMBULANCE ARRIVED?

RUTH GRIFFITH - DIRECT BY KOLB

1 A I DIDN'T UNDERSTAND YOU.

2 Q YOU INDICATED A WHILE AGO YOU ACTUALLY SAW DEPUTY
3 KUBALA TWICE, ONCE WHEN HE CAME AFTER YA'LL CALLED AT 5:39
4 P.M.

5 A YES.

6 Q THEN A SECOND TIME. WHEN WAS THAT SECOND TIME YOU SAW
7 HIM?

8 A HE WAS LAYING ON THE GROUND.

9 Q ALL RIGHT. AND WHERE WAS HE LAYING ON THE GROUND?

10 A BETWEEN -- I HAD TWO LITTLE STEPS. HE WAS LAYING
11 RIGHT BETWEEN THEM IN THAT.

12 Q ALL RIGHT. AND WHERE DID YOU GO TO SEE HIM IN THAT
13 POSITION?

14 A AT MY BACK -- AT MY KITCHEN DOOR.

15 Q ALL RIGHT. AND DID YOU EVER GO ON THE LAUNDRY ROOM
16 PORCH?

17 A NO, SIR.

18 Q OKAY. DID YOU EVER SEE ANYTHING ON THE LAUNDRY ROOM
19 PORCH?

20 A NO, SIR.

21 Q DID YOU EVER GO ON TO SEE WHAT'S BEEN MARKED EXHIBIT
22 13 FOR IDENTIFICATION?

23 A OH, YEAH. I WENT.

24 Q TELL US HOW YOU HAPPENED TO SEE THAT.

25 A WHEN I TURNED THE PORCH LIGHT, ONE OF THE DEPUTIES,

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 WHOEVER WAS OUT THERE, CAME IN THROUGH MY HOUSE ASKED ME
2 WAS THERE A WAY OUT ON THAT LITTLE BACK PORCH.

3 AND HE WENT OUT THAT DOOR AND THAT'S WHEN HE
4 SHOWED MY DAUGHTER AND ME THAT GUN.

5 Q ALL RIGHT. HAD YOU EVER SEEN THAT GUN THERE BEFORE?

6 A NO, SIR.

7 Q ON YOUR PORCH?

8 MR. KOLB: ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

9 THE COURT: NOW YOU MAY CROSS-EXAMINE, MR.
10 LITTLEJOHN.

11 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

12 CROSS-EXAMINATION BY MR. LITTLEJOHN:

13 Q GOOD AFTERNOON, MRS. GRIFFITH. I BELIEVE WE HAVE MET
14 BEFORE.

15 A YES, SIR.

16 Q HOW ARE YOU TODAY?

17 A NERVOUS.

18 Q I CAN UNDERSTAND. MRS. GRIFFITH, BEFORE WE BEGIN, LET
19 ME MAKE SURE YOU AND I HAVE AN AGREEMENT; OKAY?

20 A OKAY.

21 Q IF YOU DON'T UNDERSTAND ANY OF MY QUESTIONS, PLEASE
22 ASK ME TO REPEAT THEM BECAUSE I WANT TO MAKE SURE YOU
23 UNDERSTAND MY QUESTIONS BEFORE YOU ANSWER THEM. IS THAT
24 FAIR ENOUGH?

25 A YES, SIR.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q OKAY. MRS. GRIFFITH, MICHELLE LYNCH IS YOUR HUSBAND

2 -- YOUR LATE HUSBAND'S NIECE; IS THAT CORRECT?

3 A YES, SIR. YES.

4 Q OKAY. AND MICHELLE LIVES IN SUMTER SOMETIMES AND
5 LIVES IN BELTON SOMETIMES?

6 A I DON'T -- GREENVILLE. IS BELTON IN GREENVILLE?

7 Q BELTON IS NOT TOO FAR FROM GREENVILLE. SOMEWHERE IN
8 THE GREENVILLE AREA?

9 A SOMEWHERE.

10 Q AND THEN SOMETIMES SHE LIVES IN SUMTER?

11 A YES, SIR.

12 Q OKAY. AND ON ONE OCCASION SHE LIVED WITH YOU; DID SHE
13 NOT?

14 A YES, SIR.

15 Q STAYED WITH YOU FOR A WHILE?

16 A YES, SIR.

17 Q AND SHE WAS OCCASIONALLY A VISITOR AT YOUR HOUSE OVER
18 THE PAST YEARS; ISN'T THAT RIGHT?

19 A YES, SIR.

20 Q AS A MATTER OF FACT, SHE LIKED YOU AND YA'LL LIKED
21 EACH OTHER; DIDN'T YOU?

22 A A TIME.

23 Q A TIME? FOR A LONG TIME; RIGHT?

24 A YEAH.

25 Q OKAY. AND SHE WAS LIVING AT YOUR HOUSE WHEN SHE WAS

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 DATING BOBBY STONE; ISN'T THAT RIGHT?

2 A NO, SIR.

3 Q DIDN'T YOU SAY BOBBY STONE WOULD COME OVER AND PICK
4 HER UP TO GO OUT ON DATES?

5 A THAT'S -- HE CAME BY TO PICK HER UP AND TAKE HER
6 HOME. THAT'S WHEN SHE WAS LIVING WITH HIM.

7 Q ALL RIGHT. SO SHE WOULD BE VISITING AT YOUR HOUSE,
8 HE'D COME OVER THERE AND PICK HER UP; RIGHT?

9 A YEAH. YES, SIR.

10 Q OKAY. AND HE'D COME RIGHT UP TO YOUR DOOR; WOULD HE
11 NOT?

12 A YES, SIR. HE DID.

13 Q ALL RIGHT. WHAT -- WOULD HE COME UP TO THE FRONT
14 DOOR?

15 A YES, SIR.

16 Q OKAY. CAN -- AND THAT'S THE... LOOKING AT STATE'S
17 EXHIBIT 7, THAT WOULD BE THE DOOR INSIDE THE SCREEN PORCH;
18 RIGHT?

19 A YES. YES, SIR.

20 Q CORRECT?

21 A UH-HUH.

22 Q OKAY. SO HE'D COME UP ON THE SCREEN PORCH AND COME UP
23 TO YOUR FRONT DOOR, KNOCK ON THE DOOR, PICK UP MICHELLE?

24 A YES, SIR.

25 Q OKAY. NOW, MRS. GRIFFITH, MICHELLE LYNCH'S MOTHER IS

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 MARY GRIFFITH WILSON; CORRECT?

2 A YES, SIR.

3 Q AND SHE IS THE SISTER OF YOUR LATE HUSBAND; IS THAT
4 CORRECT?

5 A YES, SIR.

6 Q OKAY. AND YOU HAVE KNOWN HER FOR LETS JUST SAY MANY,
7 MANY YEARS?

8 A YES, SIR.

9 Q OKAY. AND SHE LIVES IN SUMTER; DOESN'T SHE?

10 A SOMETIMES SHE LIVES IN LYNCHBURG WITH HER MOTHER AND
11 SOMETIMES SHE LIVES IN SUMTER.

12 Q OKAY. I BELIEVE SHE'S TAKING CARE OF HER ILL MOTHER;
13 ISN'T THAT RIGHT?

14 A SHE WAS.

15 Q YOU HAVEN'T SEEN HER FOR A WHILE?

16 A NO, I HAVEN'T.

17 Q BUT YA'LL USED TO BE VERY CLOSE; DID YOU NOT?

18 A YES, SIR.

19 Q AND IN FACT ON OCCASIONS, FOR SHORT OCCASIONS, SHE
20 LIVED WITH YOU?

21 A YES, SIR.

22 Q AT 817 TAYLOR STREET?

23 A YES, SIR.

24 Q AND YA'LL WERE VERY CLOSE FRIENDS; WERE YOU NOT?

25 A YES, SIR, WE WERE.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q YA'LL SOCIALIZED TOGETHER?

2 A YES, WE DID.

3 Q YA'LL WOULD GO OUT TO RESTAURANTS AND DIFFERENT
4 PLACES TOGETHER?

5 A YES, WE DID.

6 Q YA'LL WOULD GO TO THE TRUCK STOP OUT ON NORTH FIFTEEN
7 AND GO DANCING; WOULDN'T YOU?

8 A YES, WE DID.

9 Q YA'LL DID THAT A LOT; DIDN'T YOU?

10 A YES, WE DID.

11 Q AND ON SOME OF THE OCCASIONS YOU WENT OUT THERE
12 DANCING, YOU WOULD BE WITH MARY GRIFFITH WILSON AND
13 MICHELLE AND OTHER FRIENDS AND BOBBY STONE?

14 A NO, SIR. NOT WITH BOBBY STONE.

15 Q YOU ARE TELLING US BOBBY STONE WAS NEVER THERE IN A
16 SOCIAL SETTING WITH YOU?

17 A NO. NO. NEVER.

18 Q ALL RIGHT. AND MRS. GRIFFITH, YOU OCCASIONALLY GO TO
19 A PLACE CALLED GRIFFITH'S STORE; DON'T YOU?

20 A ABOUT TWO YEARS AGO, THREE YEARS AGO, SOMETHING.

21 Q OKAY. AND IT'S KIND OF A COUNTRY STORE AND A LITTLE
22 BAR TYPE PLACE?

23 A YES, SIR.

24 Q PEOPLE GO THERE TO DRINK BEER?

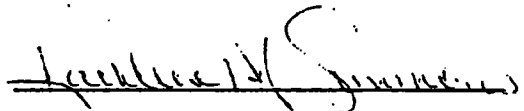
25 A AND SHOOT POOL.

C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF JANUARY, 1997.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

APRIL 3, 1997



CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

STATE OF S.C.,)
PLAINTIFF)

VS.)

BOBBY WAYNE STONE,)
DEFENDANT)

TRANSCRIPT OF RECORD
96-GS-43-698
VOLUME II OF V

SUMTER, SOUTH CAROLINA
JANUARY 28, 1997

B E F O R E:

HONORABLE MARKELY DENNIS, JUDGE; AND A JURY.

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

WADE KOLB, SOLICITOR
ATTORNEY FOR THE STATE

CAMERON LITTLEJOHN, ESQUIRE
JAMES BABB, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

KATHLEEN M. SIMMONS
CIRCUIT COURT REPORTER

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q SHOOT POOL?

2 A TALK.

3 Q PLAY THE MACHINES?

4 A YES, SIR.

5 Q AND YOU GO THERE AND DRINK BEER AND PLAY THE
6 MACHINES?

7 A NO, I DID NOT PLAY NO MACHINES.

8 Q BUT YOU DRANK BEER THERE?

9 A YES, I DID.

10 Q OKAY. AND ON OCCASION WHEN YOU WERE IN THERE DRINKING
11 BEER, BOBBY STONE WOULD BE IN THERE DRINKING BEER; ISN'T
12 THAT RIGHT?

13 A I DON'T RECALL HIM BEING IN THERE, BUT HE MIGHT HAVE.
14 I MEAN, HE COULD HAVE BEEN.

15 Q YOU DON'T RECALL SEEING BOBBY STONE IN THERE?

16 A NO, SIR.

17 Q OKAY. DO YOU EVER RECALL BEING AT A PLACE WHERE YOU
18 HAD HAD TOO MUCH TO DRINK TO DRIVE AND BOBBY STONE CAME
19 AND PICKED YOU UP AND TOOK YOU HOME?

20 MR. KOLB: I OBJECT.

21 THE COURT: SUSTAINED.

22 WITNESS: NO, SIR.

23 THE COURT: NO, MA'AM. I SUSTAIN THE OBJECTION. MOVE
24 ON, MR. LITTLEJOHN.

25 MR. LITTLEJOHN: ALL RIGHT, SIR.

RUTE GRIFFITH - CROSS BY LITTLEJOHN

(WHEREUPON QUESTIONING RESUMED).

Q MRS. GRIFFITH, BOBBY STONE DID SOME WORK AT YOUR HOUSE ONE TIME; DIDN'T HE?

A HE SPREAD A PILE OF DIRT IN MY DRIVEWAY.

Q OKAY. AND HE SPREAD THAT DIRT FOR YOU WITH A BACK HOE; DIDN'T HE?

A YES, HE DID.

Q OKAY. AND YOU PAID HIM FOR THAT OR DID IT AS A FAVOR?

A I BELIEVE I PAID HIM \$20.

Q PAID HIM \$20. OKAY. AND ONE TIME HE WORKED ON YOUR SEPTIC TANK; DIDN'T HE?

A NO. HE DID NOT.

Q YOU DON'T RECALL THAT?

A NO, I DO NOT.

Q ALL RIGHT. IN REGARD TO YOUR HOUSE, MRS. GRIFFITH, HOW LONG HAVE YOU LIVED IN THAT HOUSE?

A SINCE 72 MAYBE, 72.

Q OKAY. AND SOME OF THAT TIME YOU LIVED THERE BY YOURSELF?

A YES, SIR.

Q AND SOME OF THAT TIME -- I BELIEVE EARLY -- YOU LIVED THERE WITH YOUR HUSBAND?

A YES, SIR.

Q OKAY. AND AFTER HE PASSED AWAY, DIFFERENT PEOPLE LIVED AT YOUR HOUSE WITH YOU; DID THEY NOT?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 A SOME FRIENDS, YEAH.

2 Q LIKE YOUR DAUGHTER LIVED THERE FOR A WHILE?

3 A YES, SIR.

4 Q AND MICHELLE LIVED THERE FOR A WHILE?

5 A YES, SIR.

6 Q AND MARY GRIFFITH WILSON LIVED THERE FOR A WHILE?

7 A YES, SIR.

8 Q OKAY. NOW, YOU TOLD US ABOUT -- AND I ASKED YOU IN
9 REGARD TO STATE'S EXHIBIT NO. 7 YOU HAVE A FRONT PORCH
10 THERE ON YOUR HOUSE; DON'T YOU?

11 A YES, I DO.

12 Q YOU SIT OUT THERE QUITE A BIT?

13 A SOMETIMES.

14 Q SOMETIMES? CHAIRS OUT THERE?

15 A YEAH. YES, SIR.

16 Q AND PEOPLE COME AND GO THROUGH YOUR FRONT DOOR BY
17 GOING THROUGH THAT PORCH; DO THEY NOT?

18 A YES, SIR.

19 Q OKAY. AND THEN THAT DIDN'T CAUSE YOU ANY PROBLEM; DID
20 IT?

21 A NO.

22 Q OKAY. NOW, WE HAVE HEARD SOME DISCUSSION CONCERNING
23 THE SIDE PORCH. THE SIDE PORCH WAS A VERY SMALL PORCH; WAS
24 IT NOT?

25 A YES, SIR.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

- 1 Q OKAY. AND I BELIEVE YOUR DAUGHTER INDICATED THAT YOU
2 HAD OCCASIONALLY STORED WOOD OUT THERE.
- 3 A YEAH.
- 4 Q STORED WOOD OUT THERE?
- 5 A UH-HUH.
- 6 Q I BELIEVE THERE ARE SOME PAINT CANS OUT THERE ON THE
7 NIGHT THAT THIS HAPPENED.
- 8 A YES, SIR.
- 9 Q NO CHAIRS OR ANYTHING OF THAT NATURE?
- 10 A NO, SIR.
- 11 Q OKAY. SO IT WAS KIND OF A STORAGE AREA?
- 12 A YES, SIR.
- 13 Q OKAY. AND YOU EXPLAINED TO US THAT THE DOOR GOING
14 FROM THAT PORCH INTO YOUR LAUNDRY ROOM WAS ONE OF THESE
15 DOORS THAT HAS WINDOW PANES IN IT?
- 16 A YES, SIR.
- 17 Q HAS SIX WINDOW PANES AT THE TOP HALF OF THE DOOR?
- 18 A YES, SIR.
- 19 Q AND YOU EXPLAINED TO US HOW ON SOME OCCASION YOU
20 WOULD -- LOCKED YOURSELF OUT, SO YOU KNOCKED OUT A PANE TO
21 GET INTO THE HOUSE?
- 22 A YES, SIR.
- 23 Q OKAY. SO YOU BROKE THE PANE, REACHED IN, TURNED THE
24 KNOB, OPENED THE DOOR AND WENT IN?
- 25 A YES, SIR.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q OKAY. SO AFTER THAT, YOU TOOK A BOARD AND PUT IT OVER
2 THERE?

3 A YES, I DID.

4 Q AND I BELIEVE THAT BOARD WAS JUST A LITTLE THIN
5 BOARD; WASN'T IT?

6 A IT WASN'T VERY THICK.

7 Q WASN'T VERY THICK AT ALL?

8 A NOT VERY. I DON'T...

9 Q WASN'T LIKE A 1 X 6 OR 2 X 4 OR ANYTHING LIKE THAT.
10 IT WAS A LITTLE THIN KIND OF PIECE OF WALL COVERING OR
11 SOMETHING; WASN'T IT?

12 A I DON'T KNOW. I DON'T KNOW THE LOG. I DON'T KNOW
13 ANYTHING ABOUT LOGS, BUT IT WAS JUST A BOARD. I THOUGHT IT
14 WAS A BOARD.

15 Q LITTLE THIN BOARD?

16 A YEAH.

17 Q YOU NAILED IT UP THERE YOURSELF?

18 A YES, SIR.

19 Q OKAY. AND I DON'T BELIEVE THERE IS ANY DEAD BOLT ON
20 THAT DOOR; IS THERE?

21 A NO, SIR.

22 Q JUST A KNOB LIKE...

23 A THAT'S RIGHT.

24 Q OKAY. NOW MRS. GRIFFITH, ON THE AFTERNOON OF FEBRUARY
25 26TH 1996, HAD YOU HAD ANYTHING TO DRINK THAT AFTERNOON?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

- 1 A NO, SIR.
- 2 Q OKAY. HAD YOU TAKEN -- YOUR DAUGHTER EXPLAINED TO US
- 3 THAT YOU TAKE VARIOUS MEDICATIONS FOR A HEART CONDITION.
- 4 A YES, I DO.
- 5 Q OKAY. AND WERE YOU ON THOSE MEDICATIONS ON THAT
- 6 AFTERNOON?
- 7 A YES, SIR.
- 8 Q IN FACT, YOU ARE ON THEM EVERY DAY?
- 9 A YES, SIR.
- 10 Q CONTINUOUSLY?
- 11 A YES, SIR.
- 12 Q OKAY. WHEN DID YOUR DAUGHTER ARRIVE AT YOUR HOUSE AS
- 13 BEST YOU CAN RECALL?
- 14 A I CAN'T -- I CAN'T REMEMBER. SHE GOT -- I THINK SHE
- 15 WORKED ON IT LATE. IT MUST HAVE BEEN 4:30.
- 16 Q OKAY. 4 OR 4:30?
- 17 A BUT I BELIEVE -- I MEAN, I DON'T KNOW. I REALLY DON'T
- 18 KNOW.
- 19 Q AT THAT TIME -- WHAT TIME DID SHE USUALLY GET OFF OF
- 20 WORK IF YOU RECALL?
- 21 A 3:00.
- 22 Q 3:00?
- 23 A UH-HUH.
- 24 Q YOU THINK SHE WAS RUNNING A LITTLE BIT LATER THIS
- 25 AFTERNOON?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q OKAY. NOW WHEN SHE GOT THERE, WAS THERE ANYBODY ELSE
3 AT YOUR HOUSE?

4 A NO, SIR.

5 Q YOU WERE THERE BY YOURSELF?

6 A YES, SIR.

7 Q NOW, YOU EXPLAINED TO THE JURY THAT AT SOME PART OF
8 THE AFTERNOON BOBBY STONE CAME TO YOUR KITCHEN DOOR?

9 A YES, SIR. HE DID.

10 Q AND HE KNOCKED ON THE DOOR?

11 A YES, HE DID.

12 Q OKAY. AND I BELIEVE THAT DOOR ALSO HAS WINDOW PANES
13 IN IT; DOESN'T IT?

14 A YES, SIR.

15 Q AND YOU EXPLAINED TO US HOW YOU PARTED THE CURTAIN.

16 A YES, SIR.

17 Q AND SAW BOBBY STONE?

18 A YES, SIR.

19 Q OKAY. AND AT THAT POINT HE WAS JUST KNOCKING ON YOUR
20 DOOR?

21 A YES.

22 Q OKAY. AND YOU DIDN'T OPEN THE DOOR AT THAT POINT?

23 A NO, SIR.

24 Q YOU WENT AND TOLD YOUR DAUGHTER, MRS. MCLEOD, THAT
25 BOBBY STONE WAS AT YOUR BACK DOOR?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q OKAY. AND AS A RESULT OF THAT, YOUR DAUGHTER WENT TO
3 THE BACK DOOR AND BOBBY STONE WAS WALKING AWAY?

4 A YES, SIR.

5 Q IS THAT WHAT YOU UNDERSTOOD?

6 A I DIDN'T SEE HIM WHEN HE STARTED WALKING AWAY. I SEEN
7 RUN TO THE DOOR, OPEN THE DOOR AND RUN HIM -- SHE WAS
8 JUST...

9 Q OKAY. AFTER SHE WENT OUT OF THE DOOR, DID YOU LOOK
10 OUT TO SEE WHAT WAS GOING ON?

11 A YEAH.

12 Q OKAY. NOW, DO YOU KNOW TO YOUR OWN KNOWLEDGE AT THAT
13 POINT WHETHER YOUR DAUGHTER KNEW BOBBY STONE?

14 A SHE DID NOT KNOW HIM.

15 Q SHE DIDN'T KNOW ANYTHING ABOUT HIM?

16 A SHE KNEW HE TRIED TO---.

17 Q WAIT A MINUTE. DID SHE KNOW HIM PERSONALLY?

18 A NO, SHE DID NOT.

19 Q OKAY. DID SHE KNOW ANYTHING ABOUT ANY PRIOR CONTACTS
20 THAT YOU MIGHT HAVE HAD WITH BOBBY STONE?

21 A SHE---.

22 Q ON THE AFTERNOON OF FEBRUARY 26TH?

23 A I DON'T UNDERSTAND WHAT YOU SAID.

24 Q OKAY. LET ME REPHRASE THE QUESTION. AT THE TIME HE
25 CAME TO YOUR DOOR ON FEBRUARY 26TH, TO YOUR KNOWLEDGE DID

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 YOUR DAUGHTER KNOW THAT HE HAD BEEN TO YOUR HOUSE --
2 INSIDE YOUR HOUSE BEFORE?

3 A NOT THAT DAY.

4 Q OKAY. DID SHE KNOW THAT IN FACT HE HAD BEEN TO YOUR
5 HOUSE WITH MICHELLE?

6 A YES, SHE HAD.

7 Q AND HAD SOCIALIZED WITH YOU?

8 A HE DIDN'T SOCIALIZE WITH ME.

9 Q IS IT YOUR TESTIMONY BOBBY STONE AND MICHELLE NEVER
10 CAME TO YOUR HOUSE TO DRINK BEER?

11 A THEY WEREN'T DRINKING BEER. I WAS THAT ONE TIME.

12 Q SO BOBBY AND MICHELLE CAME IN YOUR HOUSE AND YOU WERE
13 DRINKING BEER ON ONE OCCASION?

14 A YES, I DID.

15 Q COULD IT HAVE BEEN MORE THAN ONE OCCASION, MRS.
16 GRIFFITH?

17 A NO, SIR.

18 Q ARE YOU ABSOLUTELY SURE ABOUT THAT?

19 A I AM SURE.

20 Q OKAY. WAS THERE EVER A TIME THAT THEY CAME OVER TO
21 YOUR HOUSE AND HAD SOME MARIJUANA?

22 A I DON'T THINK SO. NO.

23 Q ARE YOU ABSOLUTELY SURE OF THAT?

24 A I'M SURE.

25 Q OKAY. YOU DON'T RECALL SEEING MICHELLE WITH SOME

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 MARIJUANA AT YOUR HOUSE?

2 A MICHELLE HAD ALL KINDS OF THINGS AT MY HOUSE. I
3 DON'T KNOW WHAT SHE HAD ON THIS PARTICULAR EVENING.

4 Q WELL, DID YOU EVER SEE HER WITH MARIJUANA IN YOUR
5 HOUSE?

6 A YES, I DID.

7 Q AND DID YOU EVER SEE HER SMOKING MARIJUANA IN YOUR
8 HOUSE?

9 A NO.

10 Q DID SHE AND BOBBY STONE EVER SMOKE MARIJUANA IN YOUR
11 HOUSE IN YOUR PRESENCE?

12 A I WAS IN THE KITCHEN GETTING SOME PLASTIC BAGS FOR
13 THEM TO PUT ON THEIR FEET SO THEY COULD GET BACK TO THE
14 HOUSE BECAUSE THEY COULDN'T DRIVE TO THE HOUSE, THEY HAD
15 TO WALK.

16 Q UH-HUH.

17 A AND THEY DIDN'T WANT TO GET MUD ON THEIR FEETS (SIC).
18 AND I CAME BACK IN THERE AND THEY WERE -- IT WAS SOMETHING
19 ABOUT THIS LONG. IT WASN'T -- I DON'T KNOW. IT WAS JUST --
20 IT WASN'T A BIG CIGARETTE.

21 Q BUT FROM WHAT YOU UNDERSTOOD, IT WAS A SMALL
22 MARIJUANA CIGARETTE?

23 A IT LOOKED JUST LIKE ABOUT THAT BIG. I DON'T KNOW.

24 Q AND MICHELLE AND BOBBY WERE SMOKING IT; WEREN'T THEY?

25 A YES, SIR. I GUESS THEY WERE.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q DID YOU TRY IT?

2 A NO, I DIDN'T.

3 Q MRS. GRIFFITH, DID YOU WANT YOUR DAUGHTER TO KNOW
4 THAT BOBBY STONE AND MICHELLE LYNCH HAD EVER BEEN IN YOUR
5 HOUSE SMOKING MARIJUANA?

6 A I DIDN'T -- I DIDN'T CARE IF SHE KNEW.

7 Q YOU DIDN'T WANT HER TO KNOW; DID YOU?

8 A I DIDN'T CARE IF SHE KNEW.

9 Q YOU DIDN'T CARE, BUT YOU DIDN'T WANT HER TO KNOW;
10 ISN'T THAT A FACT? ISN'T THAT A FACT?

11 A WELL, I REALLY DIDN'T WANT THEM SMOKING IT HERE. I
12 DIDN'T WANT THEM IN THERE.

13 Q BUT IN FACT THEY DID?

14 A I RECKON IT WAS -- IT WAS JUST A TINY LITTLE THING.

15 Q OKAY. AND AT THE TIME YOU SAID YOU WERE DRINKING
16 BEER?

17 A YEAB. I WAS DRINKING BEER.

18 Q OKAY. AND YOU SAY THAT ONLY HAPPENED ONE TIME?

19 A THAT'S ALL.

20 Q COULD THERE HAVE BEEN OTHER TIMES THAT BOBBY AND
21 MICHELLE WERE THERE JUST DRINKING BEER WITH YOU?

22 A NO, SIR.

23 Q YOU DON'T RECALL ANY OTHER TIMES?

24 A NO, SIR.

25 Q NOW MRS. GRIFFITH, ON THE AFTERNOON OF FEBRUARY 26TH

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 FROM WHAT I UNDERSTOOD FROM YOUR TESTIMONY, WHEN BOBBY
2 CAME TO YOUR DOOR, YOU SAW THAT IT WAS BOBBY KNOCKING AT
3 YOUR DOOR AND YOU IMMEDIATELY WENT TO YOUR DAUGHTER;
4 RIGHT?

5 A YES, SIR.

6 Q YOU NEVER HAD ANY CONVERSATION WITH BOBBY STONE?

7 A NO.

8 Q ON THAT AFTERNOON OR ANY TIME THAT DAY?

9 A NO, I DIDN'T.

10 Q OKAY. AND WHAT YOU TOLD US WAS THAT YOUR DAUGHTER
11 WENT OUTSIDE AND THAT BOBBY HAD WALKED AWAY FROM YOUR
12 HOUSE.

13 A YES, SIR.

14 Q HE HAD WALKED UP UNDER A SHED, I BELIEVE.

15 A YES.

16 Q YOUR DAUGHTER WAS TELLING HIM BASED ON WHAT YOU HAD
17 TOLD YOUR DAUGHTER THAT HE WAS NOT WANTED THERE AT YOUR
18 HOUSE; ISN'T THAT RIGHT?

19 A SHE KNEW I DIDN'T WANT HIM AT MY HOUSE.

20 Q AND SHE TOLD HIM TO LEAVE?

21 A YES, SIR.

22 Q AND HE LEFT?

23 A YES, HE DID.

24 Q AND I BELIEVE YOU INDICATED WHEN YOU TALKED TO
25 LIEUTENANT MARTIN AND THE OTHER AGENTS THAT IT APPEARED TO

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 YOU THAT BOBBY WAS HYPED UP ON SOMETHING?

2 A HE LOOKED LIKE IT.

3 Q HE LOOKED LIKE HE WAS HYPED UP ON SOMETHING?

4 A HE DIDN'T LOOK LIKE HE DOES TODAY.

5 Q WAS HE WOBBLING WHEN HE WALKED?

6 A YES, HE WAS STAGGERING.

7 Q HE WAS WHAT?

8 A HE STAGGERED.

9 Q HE STAGGERED WHEN HE WALKED. OKAY. AND YOU SAW HIM
10 WALK OUT OF YOUR YARD INTO THE WOODS; RIGHT?

11 A YES, I DID.

12 Q AND I BELIEVE YOUR DAUGHTER HAD HAD A CONVERSATION
13 WITH HIM UP UNDER THE SHED. AND AT THAT POINT DID YOU
14 HEAR BOBBY SAY I AM GOING HOME?

15 A YES, I DID.

16 Q OKAY. YOU HEARD THAT. OKAY. AND HE LEFT AFTER THAT;
17 RIGHT?

18 A YES, HE DID.

19 Q AND TO YOUR KNOWLEDGE DID BOBBY KNOW YOUR DAUGHTER,
20 MARY MCLEOD?

21 A I DON'T THINK HE -- I KNOW HE DIDN'T.

22 Q YOU DON'T THINK HE DID?

23 A NO, I DON'T.

24 Q OKAY. AND MRS. GRIFFITH, OF COURSE -- LET ME BACK UP
25 A SECOND. YOU HAVE A PISTOL IN YOUR HOUSE; DON'T YOU?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

- 1 DON'T YOU OWN A PISTOL?
- 2 A IT'S MY SON'S PISTOL, BUT I KEEP IT.
- 3 Q YOU KEEP IT. WHAT KIND OF PISTOL IS IT?
- 4 A A THIRTY-TWO, I BELIEVE. I DON'T...
- 5 Q COULD IT BE A 22?
- 6 A NO, IT'S A THIRTY-TWO PISTOL. I MEAN IT'S GOT...
- 7 Q THIRTY-TWO?
- 8 A I HAD NO BULLETS IN IT.
- 9 Q BUT WHEN YOUR DAUGHTER RAN BOBBY STONE OFF, SHE
- 10 DIDN'T HAVE YOUR PISTOL; DID SHE?
- 11 A NO. SHE DID NOT.
- 12 Q SO SHE WAS UNARMED?
- 13 A THAT'S RIGHT.
- 14 Q AND AT THAT TIME YOU DIDN'T SEE BOBBY WITH ANY KIND
- 15 OF WEAPON; DID YOU?
- 16 A NO, I DIDN'T.
- 17 Q NOW, ACCORDING TO YOU HE WALKED INTO THE WOODS. AND
- 18 AS I UNDERSTAND YOUR TESTIMONY, THAT WAS THE LAST TIME YOU
- 19 SAW HIM THAT DAY; RIGHT?
- 20 A NO, HE CAME BACK. SHOOTING IN MY YARD.
- 21 Q DID YOU SEE HIM SHOOTING IN YOUR YARD OR DID YOU HEAR
- 22 IT?
- 23 A I HEARD IT.
- 24 Q YOU HEARD IT, BUT YOU DIDN'T SEE IT?
- 25 A I DIDN'T SEE IT.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q OKAY. SO YOU DIDN'T SEE HIM AGAIN AFTER HE WALKED
2 INTO THE WOODS AFTER YOUR DAUGHTER HAD CHASED HIM OFF OF
3 YOUR PROPERTY?

4 A NO, I DIDN'T. I WAS SCARED. HE HAD A GUN.

5 Q OKAY. NOW, AFTER YOUR DAUGHTER CHASED BOBBY OFF, A
6 FEW MINUTES LATER SHE CALLED 911 AS I UNDERSTAND IT.

7 A YES, SIR.

8 Q OKAY. AND AFTER SOME LENGTH OF TIME, DEPUTY KUBALA
9 CAME OUT THERE.

10 A YES, SIR.

11 Q RIGHT?

12 A YES, SIR.

13 Q AND ACCORDING TO THE RECORDS THAT HAVE BEEN PLACED
14 INTO EVIDENCE, IT APPEARS THAT BETWEEN THE TIME THE 911
15 CALL WAS MADE AND WHEN SERGEANT KUBALA GOT THERE, IT WAS
16 ABOUT TWENTY-SEVEN MINUTES. DOES THAT SOUND CORRECT TO
17 YOU?

18 A YES, SIR.

19 Q OKAY.

20 A I RECKON.

21 Q ALL RIGHT. SO IN THAT TWENTY-SEVEN MINUTES, BOBBY
22 STONE NEVER CAME BACK TO YOUR HOUSE; DID HE?

23 A NOT THE -- NO, SIR.

24 Q AND HE NEVER CAME BACK AND POINTED A GUN AT YOU; DID
25 HE?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 A NO.

2 Q AND HE NEVER CAME BACK AND THREATENED YOU; DID HE?

3 A HE WAS THREATENING ME WHEN HE WAS COMING IN. I MEAN,
4 THAT WAS A THREAT; WASN'T IT?

5 Q AFTER YOUR DAUGHTER CHASED HIM OFF, YOU DIDN'T SEE
6 HIM AGAIN THAT DAY?

7 A NO, I DIDN'T.

8 Q OKAY. NOW, AFTER THAT YOUR DAUGHTER LEFT AND WENT TO
9 HER HOUSE AND LEFT YOU THERE BY YOURSELF; IS THAT RIGHT?

10 A SHE WENT TO HER EX- HUSBAND'S HOUSE AND LEFT ME
11 THERE.

12 Q AND THERE WAS NOBODY THERE WITH YOU AT THE TIME?

13 A NO, SIR.

14 Q OKAY. NOW, I BELIEVE YOU INDICATED TO US AT THAT
15 POINT IS WHEN YOU HEARD SOMETHING OUTSIDE, SHORTLY AFTER
16 YOUR DAUGHTER LEFT.

17 A YES, SIR.

18 Q OKAY. AND YOU INDICATED YOU HEARD SOMETHING AT THE
19 WINDOW, HEARD SOMETHING AT THE CAR, BUT YOU DIDN'T LOOK
20 OUTSIDE?

21 A NO.

22 Q DIDN'T LOOK OUTSIDE?

23 A NO, I DIDN'T.

24 Q OKAY. YOU CALLED MR. TAYLOR WHO LIVES ACROSS THE
25 STREET FROM YOU.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q ACTUALLY, THERE IS ONE HOUSE DIRECTLY ACROSS THE
3 STREET FROM YOU AND THEN HE LIVES ONE HOUSE DOWN; ISN'T
4 THAT RIGHT?

5 A IN A TRAILER.

6 Q IN A TRAILER WITH HIS WIFE?

7 A YES, SIR.

8 Q AND YOU CALLED AND HIS WIFE WAS ON THE PHONE. DID I
9 UNDERSTAND? OR ONE OF THE STATEMENTS SAID SHE WAS ON THE
10 PHONE. I DIDN'T KNOW WHETHER YOU HAD CALL WAITING OR...

11 A I CALLED AND I'M SO UPSET, I TALKED TO HIM. I ASKED
12 HIM SOMEBODY SHOOTING IN MY BACK YARD? DID HE HEAR
13 SOMEBODY SHOOTING IN MY BACK YARD.

14 Q ALL RIGHT. AND AS A RESULT OF THIS HE CAME OVER?

15 A HE SAID YES, SOMEBODY WAS SHOOTING IN MY BACK YARD.
16 AND HE CAME OVER.

17 Q OKAY. NOW, MR. TAYLOR ARRIVES AT YOUR HOUSE AND AT
18 THAT POINT NOBODY HAD CALLED 911; IS THAT CORRECT?

19 A NO. NOBODY HADN'T CALLED.

20 Q YOU HADN'T CALLED. TO YOUR KNOWLEDGE HE HADN'T
21 CALLED?

22 A NO, HE CALLED WHEN HE GOT TO MY HOUSE.

23 Q SO HE CALLED 911 WHEN HE GOT TO YOUR HOUSE?

24 A YES, SIR.

25 Q OKAY. AND THAT WAS AS A RESULT OF YOUR HEARING THESE

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 SHOTS OUT IN THE BACK?

2 A YES, SIR.

3 Q OKAY. NOW, AS I UNDERSTAND IT, SHORTLY THEREAFTER YOU
4 HEARD SOMEBODY BEATING OR KNOCKING ON THE DOOR THAT LEADS
5 INTO YOUR LAUNDRY ROOM?

6 A YES, SIR.

7 Q THIS IS THE DOOR THAT IS COVERED WITH THE THIN BOARD
8 WHERE YOU HAD BROKEN THE PANE OUT?

9 A YEAH.

10 Q AND LETS BE CRYSTAL CLEAR. THAT PANE WAS THE PANE
11 CLOSEST TO THE KNOB; WAS IT NOT?

12 A YEAH. YES, SIR.

13 Q OKAY. NOW, AT THAT POINT A SECOND CALL WENT TO 911.
14 IS THAT RIGHT?

15 A YES, SIR.

16 Q OKAY. AND IN THAT SECOND CALL YOU REPORTED THIS
17 ACTIVITY, THE KNOCKING OR BEATING ON THE DOOR?

18 A YES, SIR.

19 Q RIGHT. SOMETHING -- AND LET ME GET STRAIGHT ON ONE
20 THING. MRS. GRIFFITH, IN YOUR DIRECT TESTIMONY WHEN YOU --
21 SOLICITOR KOLB WAS ASKING YOU QUESTIONS.

22 A YES, SIR.

23 Q YOU SAID SOMETHING ABOUT YOU HEARD A SCRAPING AT THE
24 BOTTOM OF THE DOOR.

25 A YES, I DID.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q YOU DID?

2 A YES.

3 Q ARE YOU SURE ABOUT THAT?

4 A I'M POSITIVE.

5 Q DID YOU TELL THE 911 OPERATOR THAT THERE WAS A
6 SCRAPING AT THE BOTTOM OF THE DOOR?

7 A NO, I DIDN'T.

8 Q WHEN YOU WERE INTERVIEWED BY LIEUTENANT MARTIN AND
9 THE SLED AGENTS ON TWO OCCASIONS, YOU NEVER SAID ANYTHING,
10 ANYTHING ABOUT A SCRAPING AT THE BOTTOM OF THE DOOR; DID
11 YOU?

12 A NO, I DIDN'T.

13 Q OKAY. NOW, AFTER THIS SECOND CALL WENT TO 911, I
14 BELIEVE YOU SAID THE KNOCKING OR THE BEATING CONTINUED; IS
15 THAT RIGHT?

16 A YES, IT DID. YES, SIR.

17 Q OKAY. AND YOU AND MR. TAYLOR GOT DOWN IN A CORNER IN
18 THE LIVING ROOM; IS THAT RIGHT?

19 A HE WAS SITTING IN THE CHAIR.

20 Q HE WAS SITTING IN A CHAIR IN THE LIVING ROOM?

21 A YES, SIR. I WAS STANDING UP.

22 Q YOU WERE STANDING UP. OKAY. AND THE WAY THE LAUNDRY
23 ROOM IS SITUATED, ACTUALLY THERE -- YOU HAVE TO GO THROUGH
24 TWO DOORS TO GET INTO THE LAUNDRY ROOM; ISN'T THAT
25 CORRECT?

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q OKAY. AND THEY ARE AT A NINETY DEGREE ANGLE TO EACH
3 OTHER?

4 A YES, SIR.

5 Q SO YOU WEREN'T LOOKING AT THE DOOR THAT THE KNOCKING
6 AND THE BEATING WAS COMING FROM?

7 A NO, SIR.

8 Q YOU WEREN'T. OKAY. NOW, AT THAT POINT I BELIEVE BASED
9 ON THE INFORMATION YOU GAVE LIEUTENANT MARTIN, MR. TAYLOR
10 HAD YOUR GUN.

11 A YES, SIR.

12 Q OKAY. AND HE ALSO HAD A FLASHLIGHT?

13 A YES, SIR.

14 Q OKAY. AND THE KNOCKING CONTINUED. BUT AS I
15 UNDERSTAND YOUR TESTIMONY, NOBODY EVER CAME IN THAT DOOR.
16 THAT DOOR WAS NEVER OPENED.

17 A NO, IT WASN'T. BUT HE WOULD HAVE IF SERGEANT KUBALA
18 HADN'T COME. HIS LIGHTS AND---.

19 Q MA'AM, I JUST ASKED YOU A SIMPLE QUESTION, PLEASE.
20 THAT DOOR WAS NEVER OPENED BY WHOEVER WAS KNOCKING ON IT?

21 A NO.

22 Q OKAY. AND THE GLASS AND THE OTHER FIVE PANES OF THAT
23 DOOR WAS NEVER BROKEN OUT BY WHOEVER WAS KNOCKING ON IT;
24 RIGHT?

25 A SAY THAT AGAIN.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q THE FIVE PANES OF GLASS THAT WERE LEFT IN ON THE --
2 OF THAT BACK DOOR WERE NEVER BROKEN OUT?

3 A NO, THEY WEREN'T.

4 Q OKAY. AND YOU INDICATED THAT THE BOARD HAD BEEN PUT
5 UP WITH A NUMBER OF NAILS THAT YOU HAD PUT UP.

6 A YES, SIR.

7 Q RIGHT? AND IT HAD BEEN DISPLACED IN SOME MANNER;
8 RIGHT?

9 A HE HAD IT ALL, ALL EXCEPT ONE NAIL HOLDING AND IT WAS
10 SWINGING.

11 Q IT WAS SWINGING. BUT NOBODY EVER REACHED INSIDE AND
12 TURNED THE KNOB AND OPENED THAT DOOR?

13 A NO, SIR.

14 Q NOW MRS. GRIFFITH, YOU DESCRIBED FOR US HOW DEPUTY
15 KUBALA CAME UP IN HIS PATROL CAR. I BELIEVE WE HAVE ONE
16 PICTURE... THANK YOU.

17 MRS. GRIFFITH, LET ME SHOW YOU WHAT'S PREVIOUSLY
18 BEEN MARKED STATE'S EXHIBIT 16. YOU HAD IDENTIFIED THIS
19 PHOTOGRAPH BEFORE THE CAR; RIGHT?

20 A YES, SIR.

21 Q THIS APPEARS TO BE A PHOTOGRAPH THAT WAS TAKEN ON THE
22 NIGHT OF FEBRUARY 26TH?

23 A YES, SIR.

24 Q AND THIS APPEARS TO BE SERGEANT KUBALA'S PATROL CAR?

25 A YES, SIR.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q OKAY. AND I BELIEVE YOU CAN FAIRLY MAKE OUT THE
2 HEADLIGHTS OF YOUR CAR.

3 A YES, SIR.

4 Q OKAY. SO AS YOU ARE LOOKING AT YOUR HOUSE FROM
5 TAYLOR STREET, YOUR CAR IS PARKED ON THE SIDE OF YOUR
6 HOUSE; CORRECT?

7 A YES, SIR.

8 Q SERGEANT KUBALA'S CAR IS POINTING TOWARD THE CORNER
9 OF YOUR HOUSE, THE RIGHT FRONT CORNER.

10 A YES, SIR.

11 Q NOW, THE LITTLE PORCH THAT WE HAVE BEEN TALKING ABOUT
12 IS CATICORNER TO THAT CORNER; IS IT NOT?

13 A YOU GO AROUND THE HOUSE.

14 Q IT'S ON THE COMPLETE OPPOSITE CORNER OF THE HOUSE?

15 A YES, SIR.

16 Q ISN'T THAT RIGHT?

17 A (WHEREUPON SUBJECT INDICATED NODDING HEAD).

18 Q OKAY. MRS. GRIFFITH, SOLICITOR KOLB ASKED YOU ABOUT
19 THE LIGHT THAT WAS ON THE SMALL PORCH ON THE SIDE. YOU
20 INDICATED THAT THE KNOCKING WAS GOING ON, SERGEANT KUBALA
21 CAME UP, THAT LIGHT WAS NOT ON?

22 A NO, SIR.

23 Q IT WAS NOT CUT ON UNTIL LATER AFTER YOU HEARD THE
24 SHOTS FIRED; IS THAT RIGHT?

25 A THAT'S RIGHT.

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 Q ALL RIGHT. AND FROM WHAT YOU INDICATED TO US, AFTER
2 SERGEANT KUBALA ARRIVED, THE ONLY THINGS YOU HEARD WERE
3 HALT AND TWO, THREE OR FOUR SHOTS FIRED?

4 A YES, SIR.

5 Q THE PERSON WHO WAS ON YOUR PORCH, YOU DID NOT SEE
6 THEM LEAVE OR WHICH WAY THEY WENT; IS THAT CORRECT?

7 A NO, I DIDN'T. NO.

8 MR. LITTLEJOHN: IF YOU'LL INDULGE ME JUST A MOMENT,
9 YOUR HONOR.

10 THE COURT: YES, SIR.

11 (WHEREUPON THERE WAS A PAUSE).

12 MR. LITTLEJOHN: THOSE ARE ALL OF THE QUESTIONS I
13 HAVE.

14 THE COURT: ALL RIGHT. BEFORE YOU REDIRECT,
15 SOLICITOR. LADIES AND GENTLEMEN, I KNOW YOU ALL STEPPED
16 OUT FOR A FEW MINUTES, BUT WE HAVEN'T. I'M GOING TO TAKE
17 A BREAK AT THIS POINT.

18 LET THE COURT REPORTER STRETCH AS WELL. SO
19 PLEASE, I'M GOING TO LET YOU GO TO YOUR JURY ROOM. DO NOT
20 DISCUSS THIS CASE AMONG YOURSELVES. DO NOT BEGIN YOUR
21 DELIBERATIONS IN ANY FASHION. WE WILL BE WITH YOU PROBABLY
22 IN ABOUT TEN MINUTES OR SO. THANK YOU.

23 (WHEREUPON THE JURY LEFT THE COURTROOM AT 4:48
24 P.M.)

25 THE COURT: BE AT EASE. MRS. GRIFFITH, YOU MAY NOT

RUTH GRIFFITH - CROSS BY LITTLEJOHN

1 TALK WITH ANYONE. I SUGGEST -- YOU MAY COME DOWN, BUT I
2 SUGGEST YOU STAY IN THIS AREA RIGHT HERE.

3 YOU MAY NOT GO BACK OVER TO COUNSEL TABLE;
4 OKAY? AT THIS POINT. WE WILL BE AT EASE. ANYTHING FROM
5 THE STATE BEFORE WE TAKE OUR RECESS AT THIS POINT?

6 MR. KOLB: NO, SIR.

7 THE COURT: ANYTHING FROM THE DEFENDANT BEFORE WE
8 RECESS?

9 MR. LITTLEJOHN: NO, YOUR HONOR.

10 THE COURT: THANK YOU. BE AT EASE.

11 (WHEREUPON A BRIEF RECESS WAS TAKEN).

12 THE COURT: READY?

13 MR. KOLB: YES, SIR.

14 THE COURT: IS THE DEFENSE READY?

15 MR. LITTLEJOHN: YES, YOUR HONOR.

16 THE COURT: VERY WELL. BRING US THE JURY, PLEASE.

17 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
18 5:00 P.M.)

19 THE COURT: THANK YOU, LADIES AND GENTLEMEN. THE
20 JURY IS PRESENT. WE ARE READY TO CONTINUE. SOLICITOR, YOU
21 MAY REDIRECT.

22 REDIRECT EXAMINATION BY MR. KOLB:

23 Q MRS. GRIFFITH, THE DEFENSE ASKED YOU ABOUT THIS TIME
24 WHEN MICHELLE LYNCH WAS STAYING WITH YOU.

25 A YES, SIR.

RUTH GRIFFITH - REDIRECT BY KOLB

1 Q HOW LONG WAS THAT BEFORE FEBRUARY 26TH 1996?

2 A I BELIEVE IN 94.

3 Q 94?

4 A I BELIEVE.

5 Q ALL RIGHT. AND SPECIFICALLY DO YOU RECALL THE DATE OF
6 SEPTEMBER THE 4TH 1995? DON'T SAY ANYTHING ABOUT WHAT
7 HAPPENED, BUT YOU REMEMBER SOMETHING OCCURRING ON
8 SEPTEMBER THE 4TH 1995?

9 A YES, SIR.

10 Q DID YOU AND LAW ENFORCEMENT MAKE IT CRYSTAL CLEAR TO
11 MR. STONE ON THAT DAY THAT HE WAS NOT WELCOME AT YOUR
12 HOUSE?

13 A YES, SIR.

14 Q AND FROM SEPTEMBER THE 4TH, 1995, UNTIL FEBRUARY THE
15 26TH 1995, 1996, HAD BOBBY WAYNE STONE BEEN AT YOUR HOUSE
16 FOR ANY REASON WHATSOEVER?

17 A NO, SIR.

18 Q WAS MICHELLE LYNCH AT YOUR HOUSE ON FEBRUARY THE
19 26TH, 1996?

20 A NO, SIR.

21 Q ALL RIGHT. WANT TO SHOW YOU STATE'S EXHIBIT NO. 6.
22 WHAT DOES THAT SHOW?

23 A MY HOME.

24 Q THE FRONT OF YOUR HOUSE AS IF YOU ARE STANDING ON
25 TAYLOR STREET?

RUTH GRIFFITH - REDIRECT BY KOLB

1 A UH-HUH.

2 Q ALL RIGHT. AND TO THE FRONT LEFT OF YOUR HOUSE,
3 THAT'S THE PORCH MR. LITTLEJOHN WAS TALKING ABOUT? THE
4 FRONT PORCH?

5 A YES.

6 Q THAT'S YOUR FRONT PORCH?

7 A YES, SIR.

8 Q WHAT'S THIS ON THE FRONT RIGHT OF YOUR HOUSE?

9 A THAT'S THE WINDOW IN MY BEDROOM.

10 Q ALL RIGHT. SO THAT'S THE -- YOUR BEDROOM ACTUALLY IS
11 ON THE FRONT LEFT HAND CORNER -- WELL, FACING THE HOUSE,
12 FRONT RIGHT HAND CORNER TO YOUR HOUSE?

13 A YES.

14 Q ALL RIGHT. AND WHAT'S THAT IN THE WINDOW ON THE FRONT
15 OF YOUR HOUSE?

16 A MY AIR CONDITIONER.

17 Q AND WHO OWNED THAT AIR CONDITIONER?

18 A MY DAUGHTER AND HER HUSBAND PUT IT IN THERE FOR ME
19 BECAUSE MY---

20 Q ALL RIGHT. AND HAD YOU PRIOR TO FEBRUARY THE 26TH,
21 1996, HAD YOU DISCUSSED THAT AIR CONDITIONER WITH YOUR
22 DAUGHTER AND ANY PROBLEMS THAT YOU HAD HAD WITH IT?

23 MR. LITTLEJOHN: I'M GOING TO OBJECT. I THINK THE
24 SOLICITOR IS INDIRECTLY DOING WHAT HE CAN'T DO DIRECTLY.

25 THE COURT: WELL, I DON'T RECALL ANYTHING

RUTH GRIFFITH - REDIRECT BY KOLB

1 SPECIFICALLY ABOUT THE AIR CONDITIONER. I SUSTAIN THE
2 OBJECTION TO IMPROPER REDIRECT.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q YOU MENTIONED THAT ON FEBRUARY THE 26TH, 1996, THE
5 FIRST TIME MR. STONE CAME TO YOUR HOUSE, YOU -- WHAT DID
6 YOU TELL -- DID YOU --

7 MR. KOLB: NEED TO LEAD, JUDGE.

8 (WHEREUPON QUESTIONING RESUMED).

9 Q DID YOU TELL YOUR DAUGHTER AT THAT TIME THAT'S BOBBY
10 STONE, I DON'T WANT HIM HERE?

11 MR. LITTLEJOHN: YOUR HONOR, I OBJECT.

12 THE COURT: YOU ALREADY COVERED THAT IN
13 DIRECT-EXAMINATION. DON'T NEED TO REITERATE THAT. WE'VE
14 ALREADY BEEN THROUGH THAT.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q HAD -- PRIOR TO THAT TIME, HAD YOU EVER TOLD YOUR
17 DAUGHTER THAT YOU DID NOT WANT BOBBY STONE AROUND YOUR
18 HOUSE?

19 MR. LITTLEJOHN: YOUR HONOR?

20 A YES, SIR.

21 MR. LITTLEJOHN: I OBJECT. IT'S IMPROPER.

22 THE COURT: I WILL ALLOW THE QUESTION. YOU WENT INTO
23 GREAT DETAIL ABOUT HAVING OPPORTUNITIES. NO, SIR, I
24 OVERRULE THAT OBJECTION.

25 MR. KOLB: THANK YOU. THAT'S ALL.

RUTH GRIFFITH - RECROSS BY LITTLEJOHN

1 THE COURT: ALL RIGHT. RE-CROSS?

2 RECROSS-EXAMINATION BY MR. LITTLEJOHN:

3 Q JUST ONE THING. AS I UNDERSTOOD YOUR EARLIER
4 TESTIMONY THAT AFTER MICHELLE LYNCH LIVED AT YOUR HOUSE --
5 IS WHEN SHE MOVED IN WITH BOBBY?

6 A I REALLY MADE HER LEAVE MY HOUSE. I THINK SHE WAS
7 STAYING, BUT SHE'D STAY ABOUT ANYWHERE SHE CAN STAY.

8 Q BUT I BELIEVE YOU INDICATED AFTER SHE LIVED AT HER
9 HOUSE IS WHEN BOBBY WOULD COME GET HER, TAKE HER HOME TO
10 THEIR HOUSE; IS THAT RIGHT?

11 A THAT'S RIGHT.

12 Q THANK YOU, MA'AM.

13 THE COURT: NO. NO, SIR, MR. SOLICITOR. DOESN'T WORK
14 THAT WAY, SOLICITOR. THANK YOU, SIR. YOU MAY COME DOWN,
15 MRS. GRIFFITH. THANK YOU.

16 (WHEREUPON THE WITNESS LEFT THE STAND).

17 MR. KOLB: LANDROW TAYLOR.

18 THE COURT: GOOD AFTERNOON, MR. TAYLOR. PLEASE STATE
19 YOUR FULL NAME AND SPELL YOUR NAME FOR ME PLEASE FOR THE
20 RECORD.

21 LANDROW TAYLOR, BEING FIRST DULY
22 SWORN, TESTIFIED AS FOLLOWS:

23 WITNESS: LANDROW TAYLOR. L A N D R O W TAYLOR, T A Y
24 L O R.

25 THE COURT: THANK YOU, SIR. YOU CAN POSITION THAT

LANDROW TAYLOR - DIRECT BY KOLB

1 MIKE. YOU CAN MOVE IT SO YOU DON'T HAVE -- THANK YOU.
2 POSITION IT WHERE YOU ARE COMFORTABLE AND YOU CAN TALK
3 INTO THAT MIKE, MR. TAYLOR

4 DIRECT EXAMINATION BY MR. KOLB:

5 Q MR. TAYLOR, YOU ARE A NEIGHBOR TO MRS. RUTH GRIFFITH?

6 A YES, SIR.

7 Q ALL RIGHT. AND WHAT'S YOUR ADDRESS?

8 A 487 RIDGEWAY.

9 Q RIDGEWAY STREET?

10 A YES, SIR.

11 Q AND YOU LIVE THERE WITH WHO?

12 A MY WIFE.

13 Q ALL RIGHT. AND COULD YOU TELL US ON THE EVENING OF
14 FEBRUARY THE 26TH 1996, THAT IF YOU HAD OCCASION TO GO TO
15 MRS. GRIFFITH'S HOME?

16 A SHE CALLED ME.

17 Q SHE CALLED YOU?

18 A YES, SIR.

19 Q YOU KNOW WHAT TIME SHE CALLED YOU?

20 A 6:47.

21 Q ALL RIGHT. AND HOW DID YOU KNOW IT WAS HER WHEN SHE
22 CALLED?

23 A SHE TOLD ME.

24 Q OKAY.

25 A COME OVER HERE.

LANDROW TAYLOR - DIRECT BY KOLB

1 Q ALL RIGHT. NOW, TELL US WHAT HAPPENED ONCE SHE CALLED
2 YOU.

3 A SHE SAID SHOOTING BACK OF HER HOUSE AND TOLD ME TO GO
4 OVER THERE AND...

5 Q HAD YOU HEARD ANYTHING?

6 A YES, SIR. I HEARD THE GUN SHOOTING.

7 Q ALL RIGHT. NOW, WHAT DID YOU DO AFTER SHE CALLED YOU?

8 A I WENT OVER THERE.

9 Q ALL RIGHT. AND WHEN YOU SAY YOU WENT OVER THERE,
10 WHERE DID YOU GO, OUTSIDE HER HOUSE OR INSIDE HER HOUSE?

11 A INSIDE THE HOUSE.

12 Q INSIDE. WAS THERE ANYONE ELSE IN THE HOUSE EXCEPT
13 HER?

14 A NOT AT THAT TIME. NO, SIR.

15 Q ALL RIGHT. NOW, WHAT HAPPENED AFTER YOU WERE -- YOU
16 GOT TO HER HOUSE?

17 A WELL, SOMEBODY CAME AT HER CAR AND---

18 Q LET ME ASK YOU THIS. BEFORE THAT, DID YOU EVER MAKE A
19 TELEPHONE CALL?

20 A YES, SIR.

21 Q ALL RIGHT. TELL US ABOUT THAT.

22 A I CALLED THE COP, TOLD THEM ABOUT -- TOLD THEM ABOUT
23 THE SHOOTING IN BACK OF HER HOUSE.

24 Q ALL RIGHT, SIR. AND AFTER YOU MADE THAT CALL, WHAT
25 HAPPENED?

LANDROW TAYLOR - DIRECT BY KOLB

1 A WELL, I GOT SOMEBODY TO COME OUT THERE TO THE CAR AND
2 -- TRIED TO BREAK IN HER CAR. I CALLED AGAIN. I CALLED
3 THE LAW AGAIN, TOLD THEM TO COME OUT. TRYING TO BREAK IN
4 HER CAR.

5 THEY COME OVER THERE. AND THEY COME OUT THERE.
6 I DON'T KNOW WHAT SIDE OF THE HOUSE HE WENT AROUND. AND
7 HE WENT AROUND ONE SIDE THEN THE OTHER.

8 Q ALL RIGHT. LET ME -- PRETTY QUICK. DID YA'LL --
9 BEFORE THE OFFICER GOT THERE -- DID YOU HEAR ANYTHING ELSE
10 OTHER THAN THE NOISE AROUND THE CAR OVER ON THE -- HER
11 BEDROOM SIDE OF THE HOUSE?

12 A NO, SIR. THAT WAS ALL I HEARD WAS THAT -- JUST MINUTE
13 OR TWO, PEOPLE OVER THERE TRYING TO BEAT OVER THE DOOR
14 DOWN.

15 Q TRYING TO BEAT THE DOOR DOWN?

16 A YES, SIR.

17 Q WHICH DOOR IS THAT?

18 A THE SIDE DOOR. THAT -- THE LITTLE ROOM.

19 Q ALL RIGHT. WHAT HAPPENED WHEN YA'LL HEARD THAT?

20 A WELL, HE -- HE...

21 Q DID YOU SAY ANYTHING?

22 A YES, SIR. I HOLLERED AT HIM.

23 Q WHAT DID YOU HOLLER?

24 A I ASKED HIM WHAT HE TRYING TO DO BACK THERE. AND
25 ABOUT THAT TIME THE DEPUTY COME UP.

LANDROW TAYLOR - DIRECT BY KOLB

1 Q ALL RIGHT.

2 A AND WHEN YOU HOLLERED, DID IT STOP?

3 A WELL, JUST A SECOND OR TWO AND HE WENT RIGHT BACK AT
4 IT.

5 Q ALL RIGHT. AND YOU SAY ABOUT THE TIME THE DEPUTY CAME
6 UP.

7 A YES, SIR.

8 Q WHERE DID HE PULL UP?

9 A RIGHT -- THE LEFT HAND SIDE OF HER HOUSE. I MEAN --
10 HE DROVE UP.

11 Q ALL RIGHT.

12 A WHEN HE COME FIRST DRIVING -- HE CAME IN THE SECOND
13 DRIVEWAY.

14 Q WHEN YOU ARE STANDING IN TAYLOR STREET LOOKING AT HER
15 HOUSE, FROM THE STREET LOOKING AT HER HOUSE, WHICH SIDE OF
16 THE HOUSE DID HE PULL UP TO?

17 A ON THE RIGHT HAND SIDE, THE RIGHT HAND DRIVEWAY.

18 Q ALL RIGHT. NOW, DID YOU ACTUALLY SEE THE DEPUTY'S CAR
19 PULL UP?

20 A YES, SIR.

21 Q WHAT DID YOU DO WHEN YOU SAW THE DEPUTY'S CAR?

22 A I MOTIONED WITH HIM WITH MY LIGHT. HE MOVED AROUND
23 THERE.

24 Q YOU HAD A FLASHLIGHT?

25 A I DON'T REMEMBER.

LANDROW TAYLOR - DIRECT BY KOLB

1 Q ALL RIGHT. YOU MOTIONED TO THE DEPUTY?

2 A I MOTIONED TO THE DEPUTY. HE WENT AROUND THERE.

3 Q YOU ACTUALLY SAW THE DEPUTY GET OUT OF HIS CAR?

4 A YES, SIR.

5 Q ALL RIGHT. AND WHAT HAPPENED AFTER YOU SAW THE DEPUTY
6 GET OUT OF HIS CAR?

7 A I WENT BACK INTO THE HOUSE.

8 Q ALL RIGHT. AND DO YOU KNOW FOR SURE WHICH SIDE OF THE
9 HOUSE THE DEPUTY WENT AROUND?

10 A NO, SIR.

11 Q YOU JUST SAW HIM GET OUT OF THE CAR?

12 A YES, SIR.

13 Q ALL RIGHT. AND WHAT HAPPENED AFTER YOU WENT BACK IN
14 THE HOUSE? LET ME ASK YOU -- DID YOU ACTUALLY GO OUT OF
15 THE HOUSE TO SEE THE DEPUTY?

16 A NO, SIR. NO, SIR.

17 Q WHAT DID YOU DO?

18 A I'M WAITING -- I WENT IN THE HOUSE AND DEPUTY GOT
19 AROUND TO THE CORNER.

20 Q NO. WHEN YOU WERE INSIDE MRS. GRIFFITH'S HOUSE.

21 A YES, SIR.

22 Q ALL RIGHT. WHEN YOU SAW THE DEPUTY'S CAR DRIVE UP.

23 A YES, SIR.

24 Q WHAT DID YOU DO? WHERE DID YOU GO TO SEE HIM GET OUT
25 OF HIS CAR?

LANDROW TAYLOR - DIRECT BY KOLB

1 A I SAY ON THE PORCH.

2 Q YOU WENT ON THE FRONT PORCH?

3 A YES, SIR.

4 Q ALL RIGHT. AND ONCE YOU SAW HIM GET OUT OF HIS CAR,
5 WHAT DID YOU DO?

6 A I WENT BACK IN THE HOUSE.

7 Q ALL RIGHT. THEN TELL US WHAT HAPPENED AFTER THAT.

8 A I DON'T KNOW WHAT SIDE OF THE HOUSE HE WENT AROUND
9 ON. AND...

10 Q YOU DON'T KNOW WHICH SIDE HE WENT AROUND ON?

11 A NO, SIR. NO, SIR.

12 Q ALL RIGHT.

13 A AND WHEN HE GOT AROUND THERE, I HEAR HIM SAY HOLD
14 IT. AND ABOUT THAT TIME HEARD ONE SHOT AND JUST A SPLIT
15 SECOND THERE WERE THREE OR FOUR MORE. IT WAS SHOOTING SO
16 FAST.

17 Q TELL US WHAT IT SOUNDED LIKE.

18 A WELL, I THOUGHT BOTH OF THEM SHOOTING TO START WITH.
19 SHOOTING SO FAST.

20 Q ALL RIGHT. WELL, JUST TELL US WHAT IT SOUNDED LIKE TO
21 YOU.

22 A WELL, PISTOL.

23 Q NO, I MEAN -- CAN YOU LIKE BAM -- YOU KNOW...

24 A IT JUST ONE SHOT AND SPLIT SECOND WAS THREE OR FOUR
25 MORE JUST...

LANDROW TAYLOR - DIRECT BY KOLB

1 Q ALL RIGHT, SIR. SO THERE WAS A LITTLE PAUSE, SHORT
2 PAUSE AFTER THE SMALL ONE THEN SOME MORE?

3 A RIGHT. YES, SIR.

4 Q ALL RIGHT. WHAT DID YOU DO AFTER YOU HEARD THOSE
5 SHOTS?

6 A I LOOKED OUT AND SEEN ANOTHER DEPUTY PULLING IN THE
7 YARD.

8 Q ALL RIGHT. WHAT DID YOU DO THEN?

9 A I RUN OUT THERE AND TOLD HIM -- I LOOKED BACK AND I
10 SEEN THE FLASHLIGHT LAYING DOWN IN THE YARD. AND I TOLD
11 HIM ABOUT THAT OUT THERE -- THE DEPUTY DOWN OUT THERE.

12 AND HE RUN AROUND THERE. AND HE TOLD ME GO BACK
13 IN THE HOUSE. I WENT BACK IN THE HOUSE.

14 Q ALL RIGHT. WHAT DID YOU TELL MRS. GRIFFITH -- MRS.
15 GRIFFITH -- WHEN YOU GOT THAT---

16 A I TOLD MRS. GRIFFITH -- SHE GOING TO THE PHONE AT
17 THAT TIME. I TOLD HER TELL HER THAT THE DEPUTY DOWN, SEND
18 AN AMBULANCE AND ALL THAT.

19 Q DID YOU ACTUALLY SEE THE LOCATION OF WHERE THE DEPUTY
20 WAS DOWN?

21 A YES, SIR.

22 Q AND COULD YOU DESCRIBE THAT LOCATION? WHAT WAS HIS
23 POSITION?

24 A HE WENT RIGHT BACKWARD.

25 Q ON HIS BACK?

LANDROW TAYLOR - DIRECT BY KOLB

- 1 A YES, SIR.
- 2 Q WHAT PART OF THE -- WHAT -- WHERE WAS HE?
- 3 A WELL, OFF FROM THE DOOR WHERE LAID DOWN -- SHOOTING
- 4 COME FROM.
- 5 Q ALL RIGHT, SIR. AND YOU SAY YOU SAW A FLASHLIGHT BY
- 6 THE DEPUTY?
- 7 A YES, SIR.
- 8 Q AND WHAT WAS THE CONDITION OF THAT FLASHLIGHT?
- 9 A SIR?
- 10 Q WHAT -- WAS THE FLASHLIGHT ON OR OFF?
- 11 A ON.
- 12 Q FLASHLIGHT WAS ON?
- 13 A YES, SIR.
- 14 Q AND WHAT ABOUT THE PORCH LIGHT ON THAT SIDE OF THE
- 15 HOUSE?
- 16 A NO, SIR.
- 17 Q IT WAS OFF?
- 18 A YES, SIR. BUT THE SECOND THE DEPUTY -- HE LEFT THE
- 19 LIGHT -- HEADLIGHTS ON IN HIS CAR.
- 20 Q WHAT'S THAT NOW?
- 21 A THAT SECOND DEPUTY COME UP. HE LEFT THE SPOT LIGHT.
- 22 Q HE HAD HIS HEADLIGHTS ON?
- 23 A YES.
- 24 Q TO LIGHT UP THAT BACK AREA THERE?
- 25 A YES, SIR.

LANDROW TAYLOR - DIRECT BY KOLB

1 Q ALL RIGHT. AND WAS THAT HOW YOU COULD SEE THE DEPUTY
2 LAYING BACK THERE?

3 A YES, SIR. YES, SIR.

4 Q ALL RIGHT. DID AN AMBULANCE EVER COME?

5 A YES, SIR.

6 Q WHAT DID YOU DO AFTER THE AMBULANCE CAME?

7 A THEY TOLD ME TO HOLD THE LIGHT.

8 Q SO YOU WENT BACK OUTSIDE?

9 A YES, SIR. AND CUT THE LIGHTS TO -- THEY TRIED -- YOU
10 KNOW...

11 Q SO AMBULANCE PEOPLE TOLD YOU TO HOLD THE LIGHT FOR
12 THEM?

13 A YES, SIR.

14 Q YOU SHINED A LIGHT FOR THEM?

15 A YES, SIR.

16 Q ALL RIGHT. WHAT HAPPENED? WHAT DID THEY DO WITH THE
17 DEPUTY, THE AMBULANCE?

18 A DEPUTY IN AN AMBULANCE AND WHEN THEY GOT AROUND
19 THERE, SOMEBODY HOLLERING AT ME, TOLD ME GET BACK IN THE
20 HOUSE. AND I HAD A FLASHLIGHT. I GAVE THEM ONE OF THEM.
21 I LAID IT BY THE AMBULANCE. I WALKED.

22 Q THAT FLASHLIGHT WAS THE FLASHLIGHT THAT THE AMBULANCE
23 PEOPLE HAD HANDED YOU, ASKED YOU TO HOLD?

24 A IT WAS.

25 Q WHILE THEY WORKED ON THE DEPUTY?

LANDROW TAYLOR - DIRECT BY KOLB

1 A THAT WAS THE DEPUTY'S LIGHT.

2 Q ALL RIGHT. DID YOU REALIZE UNTIL JUST RECENTLY THAT
3 THAT WAS ACTUALLY THE DEPUTY'S FLASHLIGHT?

4 A I KNOW IT WAS THE DEPUTY'S FLASHLIGHT.

5 Q YOU DIDN'T KNOW IT AT THE TIME, THOUGH?

6 A NO, SIR.

7 Q OKAY.

8 COURT REPORTER: NEED TO CHANGE DISKS, JUDGE.

9 (WHEREUPON THERE WAS A PAUSE).

10 THE COURT: WE'RE READY.

11 (WHEREUPON QUESTIONING RESUMED).

12 Q AFTER YOU SAW THE DEPUTY DOWN THERE AND THE OTHER
13 DEPUTY WENT TO HIM, YOU WENT BACK IN THE HOUSE?

14 A YES, SIR.

15 Q DID YOU HEAR ANY OTHER SHOTS AFTER THAT?

16 A NO, SIR. I DIDN'T.

17 Q ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU,
18 PLEASE.

19 THE COURT: CROSS-EXAMINE?

20 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

21 CROSS-EXAMINATION BY MR. LITTLEJOHN:

22 Q GOOD AFTERNOON, MR. TAYLOR.

23 A HEY.

24 Q MR. TAYLOR, I BELIEVE YOU INDICATED THAT MRS.
25 GRIFFITH CALLED YOU AT 6:47 P.M. ON THAT DAY?

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q AND HOW DID YOU KNOW IT WAS 6:47?

3 A I GOT ONE OF THEM LITTLE BOX ON MY TELEPHONE AND IT
4 CATCH ALL THE NUMBERS THAT ANYBODY CALL ME ON THE
5 TELEPHONE.

6 Q CALLER I.D.

7 A YES, SIR.

8 Q AND IT SAID MRS. GRIFFITH'S NAME ON IT?

9 A ON THE TELEPHONE.

10 Q JUST HER TELEPHONE?

11 A YES, SIR.

12 Q OKAY. AND YOU KNEW HER TELEPHONE NUMBER?

13 A YES, SIR.

14 Q RIGHT? AND I BELIEVE YOU INDICATED AT THAT POINT SHE
15 ASKED YOU IF YOU HAD HEARD GUN SHOTS?

16 A YES, SIR.

17 Q AND SHE ASKED YOU TO CALL A DEPUTY?

18 A YES, SIR.

19 Q IS THAT RIGHT? NOW, YOU DIDN'T CALL 911 OR CALL A
20 DEPUTY FROM YOUR HOUSE; DID YOU?

21 A NO, SIR.

22 Q AND THE REASON YOU DIDN'T WAS WHAT?

23 A MY WIFE ON THE PHONE.

24 Q YOUR WIFE WAS ON THE PHONE?

25 A YES, SIR.

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 Q LET ME UNDERSTAND THIS, MR. TAYLOR. YOUR WIFE WAS ON
2 THE PHONE, BUT MRS. GRIFFITH CALLED YOU?

3 A YES, SIR.

4 Q GOT CALL WAITING?

5 A NO, SIR. I TOLD HER -- I TOLD MY WIFE -- YOU KNOW --
6 TALK TO HER. I GO ON.

7 Q SO YOUR WIFE WAS TALKING WITH MRS. GRIFFITH OR
8 TALKING WITH SOMEONE ELSE?

9 A YES, SIR. MRS. GRIFFITH. I RECKON MRS. GRIFFITH. SHE
10 THE ONE THAT PHONE.

11 Q ALL RIGHT. I'M JUST TRYING TO UNDERSTAND HOW YOU
12 COULD CALL 911 IF BOTH YOUR WIFE AND MRS. GRIFFITH
13 WERE---.

14 A I WAIT TO MRS. GRIFFITH'S TO CALL 911.

15 Q SO SHE GOT OFF THE PHONE WITH YOUR WIFE SO YA'LL
16 COULD CALL 911 WHEN YOU EVENTUALLY GOT TO MRS. GRIFFITH'S
17 HOUSE; RIGHT?

18 A YES, SIR.

19 Q OKAY. NOW, YOU SAY YOU WENT INTO MRS. GRIFFITH'S
20 HOUSE AND YOU HEARD SOMETHING OUT AROUND IN THE AREA OF
21 MRS. GRIFFITH'S CAR; IS THAT RIGHT?

22 A RIGHT.

23 Q YOU DIDN'T SEE ANYBODY?

24 A NO, SIR.

25 Q YOU JUST HEARD SOMETHING?

LANDROW TAYLOR - CROSS BY LITTLEJOHN

- 1 A YES, SIR.
- 2 Q YOU THOUGHT IT WAS SUSPICIOUS. YOU THOUGHT IT WAS
3 SUSPICIOUS; RIGHT?
- 4 A RIGHT.
- 5 Q OKAY.
- 6 A WELL, I KNOW SOMEBODY OUT THERE TRYING TO BREAK IN
7 HER CAR.
- 8 Q BUT YOU DIDN'T SEE ANYBODY?
- 9 A NO, SIR.
- 10 Q YOU DIDN'T SEE WHAT THEY WERE DOING?
- 11 A NO, SIR.
- 12 Q YOU DIDN'T SEE ANYTHING, ANY DAMAGE TO MRS.
13 GRIFFITH'S CAR; DID YOU?
- 14 A (SHOOK HEAD). THE DOOR KNOB ON THE CAR SHAKE LIKE
15 THAT -- YOU KNOW -- AROUND IT.
- 16 Q DID YOU SEE ANY DAMAGE TO MRS. GRIFFITH'S CAR?
- 17 A NO, SIR.
- 18 Q YOU JUST HEARD SOME NOISES?
- 19 A YES, SIR.
- 20 Q AND YOU ASSUMED SOMEBODY WAS TRYING TO BREAK IN?
- 21 A YES, SIR.
- 22 Q NOW, YOU INDICATED THAT YOU WENT ON THE PORCH, THE
23 FRONT PORCH, AND SAW THE DEPUTY PULL UP.
- 24 A YES, SIR.
- 25 Q RIGHT? AND HE PULLED HIS CAR UP -- AS YOU'RE ON

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 TAYLOR STREET LOOKING AT MRS. GRIFFITH'S HOUSE, PULLED UP
2 TO THE RIGHT HAND CORNER; CORRECT?

3 A YES, SIR.

4 Q AND THAT IS THE CORNER THAT'S OPPOSITE OF THE LITTLE
5 PORCH THAT OPENS INTO THE WASH ROOM; IS IT NOT?

6 A OPPOSITE. YES, SIR.

7 Q OPPOSITE THE HOUSE?

8 A YES, SIR.

9 Q CATI CORNER?

10 A YES, SIR.

11 Q NOW, MR. GRIFFITH, I BELIEVE -- EXCUSE ME. MR.
12 TAYLOR, I BELIEVE AT THAT POINT YOU MOTIONED FOR THE
13 DEPUTY TO GO AROUND TO THE SIDE OF THE HOUSE; RIGHT?

14 A YES, SIR.

15 Q AND YOU MOTIONED WITH YOUR FLASHLIGHT?

16 A I DON'T REMEMBER IF I HAD A FLASHLIGHT OR NOT.

17 Q YOU DON'T RECALL WHETHER YOU HAD A FLASHLIGHT OR NOT?

18 A NO, SIR.

19 Q MR. TAYLOR, DO YOU RECALL GIVING---

20 A I WENT IN THE HOUSE. I DON'T KNOW WHERE THE DEPUTY
21 WENT, AROUND ON THE RIGHT HAND SIDE OR THE LEFT HAND SIDE.

22 Q YOU DON'T KNOW WHICH SIDE HE WENT ON?

23 A NO, SIR.

24 Q OKAY. NOW MR. TAYLOR, DO YOU REMEMBER GIVING A
25 STATEMENT TO SLED?

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q AND I BELIEVE THAT WAS ON JUNE 26TH, 1996?

3 A GOT TO TALK LOUD. I CAN'T HEAR.

4 Q YOU ARE HARD OF HEARING?

5 A YES, SIR.

6 Q I'M SORRY. I WILL SPEAK UP. YOU GAVE LIEUTENANT GARY
7 MARTIN OF SLED A STATEMENT ON JUNE 26TH, 1996; DID YOU
8 NOT?

9 A YES, SIR.

10 Q OKAY. AND DO YOU RECALL IN THAT STATEMENT STATING
11 ABOUT THAT TIME WE SAW A DEPUTY DRIVE UP, I MOTIONED WITH
12 MY FLASHLIGHT FOR THE DEPUTY TO GO AROUND TO THE BACK OF
13 THE HOUSE?

14 A I MIGHT HAVE HAD A FLASHLIGHT. I DON'T -- I DON'T --
15 THAT BEEN ABOUT A YEAR AGO. I DON'T REMEMBER WHETHER I HAD
16 A FLASHLIGHT OR NOT.

17 Q SO YOU REMEMBER THERE BEING A FLASHLIGHT THERE AND IT
18 MIGHT HAVE BEEN YOURS?

19 A NO, I DIDN'T HAVE THAT FLASHLIGHT.

20 Q YOU DIDN'T HAVE A FLASHLIGHT?

21 A I DIDN'T TAKE NO FLASHLIGHT OVER THERE. NO, SIR.

22 Q OKAY. SO THIS SWORN STATEMENT THAT YOU GAVE TO
23 LIEUTENANT MARTIN THEN IS WRONG?

24 A WELL, I MOTIONED FOR HIM TO GO AROUND THE HOUSE. BUT
25 I DON'T KNOW WHETHER I HAD A FLASHLIGHT OR NOT.

LANDROW TAYLOR - CROSS BY LITTLEJOHN

- 1 Q OKAY.
- 2 A ALL I KNOW -- ALL THAT SHOOTING, I CAN'T REMEMBER.
- 3 Q BUT THIS WAS IN JUNE OF LAST YEAR. I MEAN, YOU HAD
- 4 TIME TO THINK ABOUT IT; HADN'T YOU?
- 5 A YES, SIR. BUT I BELIEVE IT...
- 6 Q SO YOU DON'T RECALL?
- 7 A I DON'T REMEMBER WHETHER THEY HAD A FLASHLIGHT OR
- 8 NOT.
- 9 Q OKAY. AFTER THE DEPUTY WENT AROUND THE HOUSE, YOU
- 10 WENT BACK IN THE LIVING ROOM WITH MRS. GRIFFITH?
- 11 A YES, SIR.
- 12 Q AND I BELIEVE YA'LL HAD A PISTOL?
- 13 A YES, SIR.
- 14 Q OKAY. AND WERE YOU SITTING IN THE CHAIR?
- 15 A NO, SIR.
- 16 Q WHAT WERE YOU DOING? WHAT WAS YOUR POSITION IN THE
- 17 HOUSE WITH MRS. GRIFFITH?
- 18 A MRS. GRIFFITH STANDING UP LIKE THE BACK ROOM BACK
- 19 THERE -- YOU KNOW -- TRYING TO HIDE TO KEEP HIM FROM
- 20 SHOOTING IN THE WINDOW. AND...
- 21 Q SHE WAS STANDING IN THE BATHROOM?
- 22 A NO, I SAID BACK THERE NEXT TO THE BATHROOM.
- 23 Q NEXT TO THE BATHROOM?
- 24 A YES, SIR.
- 25 Q OKAY. AND THE BATHROOM WOULD BE NEXT TO HER BEDROOM;

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 RIGHT?

2 A NO, THERE'S ANOTHER BEDROOM IN BETWEEN HER BEDROOM
3 AND THE BATHROOM.

4 Q ALL RIGHT. BUT IT WOULD BE -- AS YOU COME IN THE
5 FRONT DOOR, BE ON THE RIGHT HAND SIDE OF THE HOUSE;
6 WOULDN'T IT?

7 A THE BATHROOM?

8 Q YES, SIR.

9 A NO, BE AT THE BACK OF IT. BACK OF THE LIVING ROOM
10 THERE.

11 Q OKAY. IT BE ON THE OPPOSITE SIDE OF THE HOUSE FROM
12 THIS LITTLE PORCH THAT WE ARE TALKING ABOUT?

13 A YES, SIR.

14 Q WHERE THE SHOOTING TOOK PLACE?

15 A YES, SIR.

16 Q AND SHE WAS IN THE CORNER?

17 A YES, SIR.

18 Q WHERE WERE YOU?

19 A I WAS BACK UP BEHIND THE ROCKING CHAIR. I HOLLERED AT
20 HIM, TOLD HIM -- ASKING HIM WHAT HE WAS TRYING TO DO. AND
21 HE STOPPED FOR A SECOND OR TWO AND WENT RIGHT BACK AT IT.
22 BY THAT TIME THE DEPUTY COME UP.

23 Q SO YOU WERE BEHIND THE ROCKING CHAIR?

24 A YES, SIR.

25 Q YOU WEREN'T SITTING IN AN EASY CHAIR IN THE LIVING

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 ROOM. YOU WERE BEHIND THE ROCKING CHAIR?

2 A I DON'T REMEMBER EASY CHAIR OR WHAT CHAIR. I KNOW IT
3 WAS A BIG CHAIR.

4 Q YOU WERE BEHIND THE CHAIR THEN?

5 A YES, SIR.

6 Q OKAY. NOW, AT THIS POINT, MR. TAYLOR, I BELIEVE YOU
7 INDICATED THAT YOU HEARD THE DEPUTY SAY HOLD IT?

8 A YES, SIR.

9 Q OKAY. HE DIDN'T SAY HALT. HE SAID HOLD IT?

10 A HALT. HALT. HE SAID HALT OR HOW YOU CALL IT. AND
11 ABOUT THAT TIME THERE WAS ONE SHOT AND THEN JUST A SPLIT
12 SECOND THERE WAS THREE OR FOUR MORE.

13 Q OKAY. SO YOU THINK THERE WERE FOUR SHOTS OR FIVE
14 SHOTS?

15 A I WOULD WANT TO SAY FOUR, FOUR SHOTS. THERE WAS ONE
16 THEN IT'S A SPLIT SECOND THERE WERE THREE OR FOUR MORE
17 SHOTS.

18 Q IN RAPID SUCCESSION?

19 A JUST LIKE THAT.

20 Q JUST LIKE THAT?

21 A YEAH.

22 Q OKAY. AND YOU ARE A FAMILIAR WITH GUNS; AREN'T YOU,
23 MR. TAYLOR?

24 A WELL, I AIN'T HAD ONE IN YEARS. I USED TO HUNT ALL
25 THE TIME.

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 Q YOU ARE PRETTY GOOD SHOT; AREN'T YOU?

2 A NO, SIR.

3 Q YOU ARE NOT? OKAY. NOW MR. TAYLOR, I BELIEVE YOU
4 SAID THAT YOU WENT TO THE FRONT OF THE HOUSE AND YOU SAW
5 ANOTHER DEPUTY COME UP?

6 A YES, SIR.

7 Q RIGHT? HE CAME IN THE OTHER DRIVEWAY, THAN THE ONE
8 SERGEANT KUBALA HAD COME IN?

9 A STRAIGHT -- YES, SIR.

10 Q OKAY. AND IN COMING IN THAT DRIVEWAY HE CAME STRAIGHT
11 FORWARD AND STOPPED; DID HE NOT?

12 A YES, SIR.

13 Q WITH HIS HEADLIGHTS ON?

14 A YES, SIR.

15 Q WHICH ILLUMINATED THE LEFT HAND SIDE OF THE HOUSE?

16 A RIGHT. YES, SIR.

17 Q AND AT THAT POINT YOU CAME OUT TO MEET HIM?

18 A YES, SIR.

19 Q AND YOU INDICATED THAT YOU SAW WHAT YOU BELIEVED TO
20 BE A FLASHLIGHT LAYING ON THE GROUND?

21 A YES, SIR.

22 Q DO YOU RECALL SEEING A WALKIE TALKIE LAYING ON THE
23 GROUND?

24 A SIR?

25 Q DID YOU RECALL SEEING A WALKIE TALKIE LAYING ON THE

LANDROW TAYLOR - CROSS BY LITTLEJOHN

1 GROUND?

2 A YES, SIR.

3 Q YOU DID?

4 A YES, SIR.

5 Q OKAY. AND AT THAT POINT THE DEPUTY TOLD YOU TO GO
6 BACK INSIDE?

7 A RIGHT. YES, SIR.

8 Q OKAY. AND WITH THE DEPUTY'S HEADLIGHTS BURNING BACK
9 THERE, IT WAS QUITE ILLUMINATED; WASN'T IT?

10 A ON THAT SIDE YOU COULD SEE BACK THERE GOOD.

11 Q YOU COULD SEE BACK THERE REAL GOOD. OKAY. AND STILL
12 THE PORCH LIGHT WAS NOT ON?

13 A NOT ON.

14 Q OKAY. NOW -- AND YOU INDICATED IN ANSWERING MR.
15 KOLB'S QUESTIONS THAT YOU DIDN'T HEAR ANY OTHER SHOTS
16 AFTER THAT?

17 A NO, SIR.

18 Q OKAY. AND SHORTLY THEREAFTER THE AMBULANCE CAME UP?

19 A YES, SIR.

20 Q AND THERE WAS A FLASHLIGHTS THAT CAME FROM SOMEWHERE
21 AND YOU HELPED ILLUMINATE.

22 A THAT WAS THE DEPUTIES FLASHLIGHT.

23 Q DID YOU PICK IT UP?

24 A I THINK ONE OF THE AMBULANCE FELLOWS PICK IT UP, HAND
25 IT TO ME TOLD ME, TO HOLD THAT LIGHT FOR HIM.

LANDROW TAYLOR - REDIRECT BY KOLB

1 Q OKAY. LET ME ASK YOU THIS: DID YOU SEE THEM PICK IT
2 UP?

3 A I DON'T RECALL.

4 Q ALL YOU KNOW IS ONE OF THE AMBULANCE ATTENDANTS GAVE
5 YOU A FLASH LIGHT AND YOU HELD THAT FLASHLIGHT?

6 A YES, SIR.

7 Q OKAY.

8 MR. LITTLEJOHN: I BELIEVE THAT'S ALL I HAVE. IF YOU
9 COULD INDULGE ME JUST A MOMENT, PLEASE.

10 THE COURT: YES, SIR.

11 (WHEREUPON THERE WAS A PAUSE).

12 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

13 THE COURT: REDIRECT, MR. SOLICITOR?

14 REDIRECT EXAMINATION BY MR. KOLB:

15 Q MR. TAYLOR, DID YOU OR MRS. GRIFFITH EVER FIRE HER
16 GUN?

17 A NO, SIR.

18 Q ABSOLUTELY CERTAIN OF THAT?

19 A I'M CERTAIN OF THAT.

20 Q NOW, I HEARD YOU SAY SOMETHING IN RESPONSE TO THE
21 DEFENSE QUESTIONING ABOUT SCARED TO SHOOT THROUGH A
22 WINDOW. WHAT ARE YOU TALKING ABOUT?

23 A WELL, WHEN SHE -- WHEN HE HAD GOT OUT, HER CAR -- I
24 TOLD HER LETS SHUT THE BEDROOM DOORS BECAUSE THE WINDOWS
25 BY THERE WAS SHINING RIGHT IN THERE WHERE HE WAS.

LANDROW TAYLOR - REDIRECT BY KOLB

1 MR. LITTLEJOHN: I'M SORRY. I CAN'T HEAR THE
2 WITNESS.

3 THE COURT: IF YOU'LL PLEASE SPEAK UP OR MOVE THAT
4 MIKE SO THAT YOU -- YOU CAN MOVE THAT MIKE OVER SO YOU CAN
5 TALK INTO IT.

6 WITNESS: AND I SAID LETS GET SOMEWHERE WHERE HE
7 CAN'T SEE US ON THE OUTSIDE.

8 (WHEREUPON QUESTIONING RESUMED).

9 Q WERE YOU -- WHAT WERE YOU AFRAID OF?

10 A AFRAID OF GETTING SHOT.

11 Q YOU WERE AFRAID HE WOULD SHOOT YOU THROUGH THE
12 WINDOW?

13 A YES, SIR.

14 Q NOW, WHY WERE YOU BEHIND THAT BIG CHAIR?

15 A WELL, HE WAS JUST LIKE BROKEN IN THAT BACK DOOR THERE
16 OR SIDE DOOR AND...

17 Q SO...

18 A I DIDN'T WANT HIM TO COME IN THERE AND START SHOOTING
19 ME.

20 Q WERE YOU AFRAID?

21 A YES, SIR.

22 Q ALL RIGHT. NOTHING FURTHER.

23 THE COURT: RE-CROSS?

24 MR. LITTLEJOHN: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: YOU MAY COME DOWN, SIR. THANK YOU, SIR.

DR. JOEL SEXTON - DIRECT BY KOLB

1 (WHEREUPON THE WITNESS LEFT THE STAND).

2 MR. KOLB: YOUR HONOR, WE CALL DR. JOEL SEXTON.

3 THE COURT: ALL RIGHT. DR. SEXTON.

4 DR. JOEL SEXTON, BEING FIRST DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 THE COURT: STATE YOUR FULL NAME. SPELL YOUR LAST
7 NAME FOR THE RECORD.

8 WITNESS: DR. JOEL STEPHEN SEXTON, S E X T O N.

9 THE COURT: THANK YOU, SIR.

10 WITNESS: YOU ARE WELCOME

11 DIRECT EXAMINATION BY MR. KOLB:

12 Q HOW ARE YOU EMPLOYED?

13 A I'M PRIVATELY EMPLOYED AS THE DIRECTOR OF THE
14 LABORATORY FOR NEWBERRY COUNTY MEMORIAL HOSPITAL. I'M ALSO
15 A CONSULTING FORENSIC PATHOLOGIST FOR APPROXIMATELY 32 --
16 46 COUNTY CORONERS.

17 Q DR. SEXTON, YOU ARE A MEDICAL DOCTOR SPECIALIZING IN
18 PATHOLOGY?

19 A YES. THAT'S CORRECT.

20 Q AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE
21 JURY ABOUT YOUR EDUCATION AND EXPERIENCE IN THAT AREA?

22 A I GRADUATED FROM THE MEDICAL UNIVERSITY IN
23 CHARLESTON, SOUTH CAROLINA. THEN TOOK A RESIDENCY IN
24 PATHOLOGY---.

25 MR. LITTLEJOHN: YOUR HONOR, WE WOULD BE MORE THAN

DR. JOEL SEXTON - DIRECT BY KOLB

1 HAPPY TO STIPULATE TO DR. SEXTON'S QUALIFICATIONS.

2 THE COURT: VERY WELL. I WILL ALLOW YOU TO GO ON IF
3 YOU FEEL NECESSARY. BUT LET ME EXPLAIN TO THE LADIES AND
4 GENTLEMEN.

5 LADIES AND GENTLEMEN, GENERALLY WITNESSES THAT
6 COME IN AND TESTIFY ARE NOT ALLOWED TO RENDER OPINIONS.
7 HOWEVER, OUR RULES DO PERMIT THAT WHEN A WITNESS BECAUSE
8 OF THEIR BACKGROUND, THEIR WORK EXPERIENCE, THEIR
9 EDUCATION AND TRAINING AND THE LIKE, THAT THEY HAVE AN
10 EXPERTISE IN CERTAIN AREAS, THEY MAY BE ALLOWED TO RENDER
11 OPINIONS IN THE AREA OF THEIR EXPERTISE.

12 NOW, THESE OPINIONS, LADIES AND GENTLEMEN, ARE
13 TO ASSIST YOU AS THE FINDERS OF FACT. THEY ARE NOT MEANT
14 TO CONTROL YOUR JUDGMENT BUT RATHER TO ASSIST YOU AS YOU
15 DEAL WITH THE ISSUES.

16 YOU ARE TO CONSIDER THE TESTIMONY OF AN EXPERT
17 HOWEVER, THE SAME AS YOU WOULD ANY OTHER WITNESS THAT MAY
18 TESTIFY BEFORE YOU. I WILL GIVE YOU FURTHER INSTRUCTIONS
19 IN THE CHARGE, BUT THAT LITTLE BIT WILL SUFFICE.

20 DR. SEXTON, BECAUSE OF ALL THAT I JUST
21 DISCUSSED, WILL BE ALLOWED TO RENDER OPINIONS IN AN AREA
22 OF FORENSIC PATHOLOGY. VERY WELL. YOU MAY CONTINUE AND IF
23 YOU WISH TO EXAMINE HIM FURTHER THAT WILL BE FINE.

24 (WHEREUPON QUESTIONING RESUMED).

25 Q BRIEFLY. DR. SEXTON, WOULD YOU TELL US ABOUT WHERE

DR. JOEL SEXTON - DIRECT BY KOLB

1 YOU HAVE BEEN ENGAGED IN THE PRACTICE OF FORENSIC
2 PATHOLOGY OVER YOUR CAREER?

3 A AFTER FINISHING MY TRAINING AT THE MEDICAL
4 UNIVERSITY, I THEN BECAME BOARD CERTIFIED NATIONALLY IN
5 ANATOMIC PATHOLOGY, CLINICAL PATHOLOGY AND FORENSIC
6 PATHOLOGY. AND THEN I FUNCTIONED AS THE HEAD OF THE
7 FORENSIC SECTION OF THE DEPARTMENT OF PATHOLOGY AT THE
8 MEDICAL UNIVERSITY FROM 1972 THROUGH 1983.

9 AT THAT TIME I WAS A CONSULTANT FORENSIC
10 PATHOLOGIST FOR ALL OF THE COUNTY CORONERS AND IN CHARGE
11 OF TEACHING THE DOCTORS WHO WERE TRAINING IN THAT AREA AS
12 WELL AS THE PHYSICIANS TRAINING IN THE AREA OF PATHOLOGY
13 AND THE MEDICAL STUDENTS AND SOME OF THE OTHER STUDENTS
14 THAT WE LECTURED TO.

15 AFTER I MOVED TO NEWBERRY IN 1983, AS I
16 MENTIONED I BECAME PERSONALLY IN CHARGE OF THE LABORATORY
17 AT THE HOSPITAL AND THE CONSULTANT PATHOLOGIST FOR THE
18 CORONERS.

19 IN ADDITION WHEN I WAS IN CHARLESTON I WAS THE
20 CHARLESTON COUNTY MEDICAL EXAMINER WHICH IS THE MEDICAL
21 EQUIVALENT OF A CORONER AND IN THAT CAPACITY WAS
22 RESPONSIBLE FOR INVESTIGATING THE DEATHS OF THOSE PERSONS
23 EITHER DYING OF VIOLENT DEATHS OR THOSE DYING OUTSIDE OF
24 THE HOSPITAL AND NOT UNDER THE TREATMENT OF A PHYSICIAN,
25 WHICH WAS ABOUT 560 CASES A YEAR OF WHICH ABOUT 125

DR. JOEL SEXTON - DIRECT BY KOLB

1 REQUIRED AN AUTOPSY.

2 PLUS WE DID ABOUT 360 AUTOPSIES FROM CORONERS
3 ACROSS THE STATE AT THAT TIME.

4 Q WOULD YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF THE
5 JURY WHAT A PATHOLOGIST SPECIALIZES -- A MEDICAL DOCTOR
6 WHO IS A PATHOLOGIST, WHAT THAT MEANS AND THEN THE SUB-
7 SPECIALTY OF FORENSIC PATHOLOGY.

8 A A PATHOLOGIST IS A PHYSICIAN WHO THROUGH THEIR
9 TRAINING LEARN HOW TO DIAGNOSE VARIOUS DISEASES AND
10 ILLNESS BY LOOKING AT THE TISSUE GROSSLY AND UNDER
11 MICROSCOPE OR EVALUATING WHAT'S DONE WITH THAT FLUID IN
12 THE CHEMISTRY LABORATORY OR THE CYTOLOGY LABORATORY OR THE
13 BLOOD BANK.

14 SO A PATHOLOGIST EXAMINES TISSUE REMOVED AT
15 SURGERY BY YOUR PHYSICIAN TO DETERMINE IF YOU HAVE CANCER
16 OR SOME OTHER TYPE CONDITION, SUPERVISES THE LABORATORY
17 WHERE VARIOUS FLUIDS ARE EXAMINED TO MAKE SURE THE TESTS
18 ARE DONE ACCURATELY AND HELP YOUR PHYSICIAN INTERPRET
19 THOSE RESULTS AND DOES AUTOPSIES ON PERSONS DYING IN THE
20 HOSPITAL TO DETERMINE MORE ABOUT THAT ILLNESS OR DISEASE
21 SO THAT WE CAN BETTER TREAT OTHER PEOPLE IN THE FUTURE.

22 THE AREA OF FORENSIC PATHOLOGY USES THIS
23 INFORMATION I JUST DISCUSSED. PLUS A FORENSIC PATHOLOGIST
24 IS FURTHER TRAINED IN TRAUMA PATHOLOGY, HOW TO RECOGNIZE
25 WHAT GUN SHOT WOUNDS LOOK LIKE, WHAT STAB WOUNDS LOOK LIKE

DR. JOEL SEXTON - DIRECT BY KOLB

1 AND THE OTHER TYPES OF TRAUMA.

2 AND TO LEARN MORE ABOUT NOT JUST THE CAUSE OF A
3 DEATH, BUT THE CIRCUMSTANCES SURROUNDING THAT DEATH, IN
4 OTHER WORDS HOW THAT DEATH ACTUALLY OCCURRED OR HOW
5 VARIOUS INJURIES ON THE BODY OCCURRED.

6 WE ARE ALSO TAUGHT TO UNDERSTAND TOXICOLOGY AND
7 THE EFFECTS OF DRUGS AND CHEMICALS ON THE BODY AND TO
8 EXAMINE BODIES AT SCENES TO DETERMINE AGAIN INFORMATION
9 ABOUT THE CIRCUMSTANCES SURROUNDING THAT FROM BLOOD
10 SPATTERS OR POSITIONS, OTHER THINGS THAT MIGHT BE PRESENT
11 AT THE SCENE.

12 SO A FORENSIC PATHOLOGIST IS A PHYSICIAN WHO IS
13 FURTHER TRAINED IN HOW TO UNDERSTAND TRAUMA AS IT RELATES
14 TO TRAUMATIC DEATHS AND UNDERSTANDING OF THE CIRCUMSTANCES
15 SURROUNDING THOSE DEATHS.

16 Q AND DR. SEXTON, DID YOU HAVE AN OCCASION TO CONDUCT A
17 AUTOPSY ON THE BODY OF DEPUTY CHARLES KUBALA?

18 A YES, I DID. ON THE 27TH OF FEBRUARY OF LAST YEAR,
19 1996.

20 Q ALL RIGHT. WERE -- WANT TO GET A FEW EVIDENTIARY
21 THINGS OUT OF THE WAY FIRST. SAMPLES TAKEN. WAS ANYONE
22 PRESENT TO RECEIVE SAMPLES TO SEND OFF TO THE LABORATORY?

23 A YES. ONE OF THE SLED AGENTS MR. LAROSA WAS PRESENT
24 AND HE TOOK THE TOXICOLOGY SAMPLES THAT WE COLLECTED,
25 VARIOUS FLUIDS FROM THE BODY, BLOOD AND VITREOUS AND

DR. JOEL SEXTON - DIRECT BY KOLB

1 URINE.

2 HE ALSO TOOK THE FRAGMENTS OF BULLET AND THE
3 OTHER BULLET THAT WE RECOVERED AND THE MISCELLANEOUS
4 PIECES OF CLOTHING THAT WERE CARRIED FOR EXAMINATION.

5 Q NOW, WERE -- WHAT WERE THE CONDITION OF DEPUTY
6 KUBALA'S HANDS WHEN YOU FIRST SAW HIM?

7 A LET ME LOOK AT THE PHOTOGRAPHS HERE. THEY WERE IN
8 PAPER BAGS TO PROTECT THE HANDS FROM BEING --
9 CONTAMINATION OR LOSS OF ANY EVIDENCE ON THE HANDS.

10 Q AFTER YOU EXAMINED -- HIS HANDS HAD BEEN PROTECTED --
11 AND AFTER YOU EXAMINED THEM, WHAT WAS DONE FROM THE
12 SCIENTIFIC STANDPOINT AT THAT TIME?

13 A LET ME CHECK OUR SHEETS HERE. I DON'T RECALL US DOING
14 ANY SAMPLES ON THE HANDS, BUT USUALLY WE DO SWAB THE HANDS
15 AND THESE SWABS ARE USED THEN TO EVALUATE WHETHER THERE IS
16 ANY PRIMER RESIDUE ON THE HANDS.

17 Q THAT WOULD HAVE BEEN DONE BY SLED AGENT LAROSA THEN?

18 A IT WOULD HAVE BEEN EVIDENTLY, BECAUSE I DO NOT SEE
19 WHERE WE TRANSFERRED THAT TO AGENT LAROSA THAT HE WAS
20 PRESENT AT -- MY RECOLLECTION IS I'VE SEEN THE REPORTS
21 THAT HE DID DO THAT TEST AT THE TIME.

22 Q ALL RIGHT, SIR. COULD YOU TELL US ABOUT YOUR
23 EXAMINATION OF THE BODY OF DEPUTY KUBALA AND YOUR
24 DETERMINATION OF THE CAUSE OF DEATH.

25 A WE ASK THAT THE BODY BE BROUGHT JUST AS IT'S FOUND

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1 ONCE DEATH HAS BEEN PRONOUNCED. THE DECEASED HAD BEEN
2 WORKED ON. THE HOSPITAL -- SOME OF THE CLOTHING HAD BEEN
3 REMOVED.

4 THERE WAS STILL SOME CLOTHING ON THE BODY
5 INCLUDING A BULLET PROOF VEST. WE EXAMINED THE BODY
6 EXTERNALLY, PHOTOGRAPHING IT AND REPORTING WHAT WE SAW.

7 THEN WE CLEANED UP THE BODY LOOKING FOR
8 INJURIES, BEING CAREFUL NOT TO DESTROY ANY EVIDENCE IN THE
9 PROCESS. AND WE FOUND ONLY TWO INJURIES. BUT THEY WERE
10 BOTH FATAL INJURIES.

11 ONE WAS A GUN SHOT WOUND THAT ENTERED THE RIGHT
12 EAR. INSIDE YOUR EAR YOU HAVE AN INTERNAL HELIX AS WELL
13 AS THE OUTSIDE HELIX AROUND THE EDGE OF THE EAR. THE
14 BULLET CREASED THAT INTERNAL HELIX AND THEN WENT DOWNWARD
15 AND ENTERED THE CENTER OF THE EAR, NOT IN THE EAR CANAL,
16 BUT IN THE FLESHY PART OF THE EAR, CONTINUED ON THROUGH
17 THE EAR AND STRUCK WHAT WE CALL THE MASTOID PROCESS, WHICH
18 IS THE PORTION OF YOUR SKULL THAT PROTRUDES DOWN BEHIND
19 AND UNDER YOUR EAR.

20 IT THEN RICOCHETED INTO BROKEN PIECES AND
21 TRAVELED ON DOWN TO THE NECK. THE FORCE OF IMPACT ON THAT
22 MASTOID PROCESS CAN BE ENOUGH TO CAUSE DEATH. THAT'S WHY
23 THEY DISCOURAGE FIGHTERS FROM HITTING EACH OTHER IN THE
24 BACK OF THE HEAD WHICH THEY CALL RABBIT PUNCH, EVEN WITH
25 GLOVED FISTS, THE IMPACT IN THAT AREA WHICH IS CLOSEST TO

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1 YOUR BRAIN STEM THE MEDULLA AND PONDUS WHICH IS PART OF
2 THE BRAIN THAT CONDUCTS YOUR IMPULSES TO THE HEART AND
3 LUNGS TO KEEP YOUR HEART AND LUNGS FUNCTIONING.

4 IT'S SO CLOSE TO THAT AREA THAT IT CAN BE FATAL
5 JUST THIS BLOW TO THE FIST CAN CERTAINLY -- AN IMPACT WITH
6 A BULLET CAN ALSO BE FATAL. THE OTHER ENTRANCE WOUND WAS
7 AT THE BASE OF THE NECK RIGHT HERE ACROSS THE TOP OF THE
8 SHOULDER.

9 THE BULLET PASSING FROM RIGHT TO LEFT AND
10 DOWNWARD ENTERING THE NECK AT THIS POINT, PASSING THROUGH
11 THE NECK AND INTO THE LEFT LUNG AND INTO THE LEFT BACK
12 PASSING DOWNWARD TO THE REAR AND TO THE LEFT.

13 THE BULLETS RECOVERED WERE BOTH WHAT WE CALL AN
14 ELECTRODE PLATED WHICH IS A PROCESS WHERE THEY SIMPLY
15 INFLATE (SIC) A SMALL AMOUNT OF COPPER ON THE SURFACE OF A
16 LEAD BULLET AND BOTH OF THEM WERE CONSISTENT WITH 22
17 CALIBER BULLETS, ONE FRAGMENT IN PRETTY LARGE PIECES, THE
18 OTHER ONE WAS PRETTY MUCH INTACT.

19 THE INTACT ONE WAS THE ONE THAT ENDED UP HERE IN
20 THE LEFT CHEST. THE ONE THAT ENTERED THE NECK AT THIS
21 POINT AND PRESENTED TO THE LEFT CHEST PASSED THROUGH TWO
22 MAJOR VESSELS AS WELL AS THE LUNG AND PASSED THROUGH THE
23 CORRODED ARTERY WHICH IS AN ARTERY THAT CARRIES BLOOD
24 DIRECTLY FROM YOUR HEART TO THE BRAIN.

25 THERE ARE TWO OF THEM THAT GO UP THE FRONT OF

DR. JOEL SEXTON - DIRECT BY KOLB

1 THE NECK. THE BULLET ALSO PASSED THROUGH THE AORTA WHICH
2 IS THE LARGE VESSEL CARRYING BLOOD OUT OF THE HEART
3 THROUGH -- THROUGHOUT THE WHOLE BODY.

4 AND THEN WENT INTO THE LEFT LUNG SO THAT IT
5 CAUSED INTERNAL BLEEDING IN THE CHEST. THE LOSS OF BLOOD
6 FROM THAT BULLET COULD HAVE CAUSED DEATH JUST AS THE
7 IMPACT ON THE BULLET DID ON THE HEAD COULD HAVE CAUSED
8 DEATH.

9 THE OTHER THING I SHOULD MENTION IS THAT WHEN WE
10 EXAMINE THE GUN SHOT WOUNDS, THAT'S WHY WE ARE CAREFUL TO
11 LOOK DOWN AND PHOTOGRAPH BEFORE WE DO ANYTHING TO THEM AND
12 THEN IN WASHING THEM WE WASH AWAY THE -- ANY BLOOD OR
13 DEBRIS THAT MIGHT BE THERE BY NOT PUTTING THE WATER STREAM
14 DIRECTLY ON THAT AREA BUT ABOVE IT AND LET IT FLOW ACROSS
15 IT.

16 BECAUSE IF WE DO THAT THEN THE BLOOD OR OTHER
17 DEBRIS WASHING AWAY ANY SOOT OR POWDER PARTICLE WILL
18 REMAIN. AND WHAT WE ARE TRYING TO ESTABLISH IS HOW CLOSE
19 THE GUN MIGHT HAVE BEEN AT THE TIME THE GUN FIRED.

20 IN THIS CASE THERE WAS NO EVIDENCE OF CLOSE
21 RANGE FIRE EITHER IN THE FORM OF POWDER PARTICLES OR
22 TATTOOES WHERE THE POWDER ACTUALLY PENETRATES THE SKIN AND
23 CHEMICALLY BOND WITH TISSUE OR ANY SOOT WHERE THE POWDER
24 HAS COMPLETELY BURNED AND JUST LEFT THE SOOT OR THE GAS ON
25 THE SKIN WHICH CAN EASILY BE WASHED OFF.

DR. JOEL SEXTON - DIRECT BY KOLB

1 NOR WAS ANY CHARRING OF THE EDGE OF THE WOUND OR
2 ANY CHEMICAL CHANGES THAT WE REFER TO AS CARBON MONOXIDE
3 CHANGE DOWN DEEP IN THE WOUND SO THAT IT WAS NO EVIDENCE
4 EITHER IN THE EAR WOUND OR THE NECK WOUND THAT THE GUN WAS
5 CLOSE TO THE INDIVIDUAL AT THE TIME IT FIRED.

6 BY CLOSE WE NORMALLY MEAN ANYWHERE FROM A FOOT
7 AND A HALF ALL THE WAY UP TO TOUCHING. IF THE GUN HAD
8 FIRED A FOOT AND A HALF TO TWO FEET AWAY WOULD GENERALLY
9 NOT LEAVE ANYTHING ON THE SKIN THAT WE COULD SEE AT
10 AUTOPSY.

11 Q ALL RIGHT, SIR. DID YOU ALSO EXAMINE CLOTHING IN THAT
12 CONNECTION AS FAR AS BEING TRACED -- SHOW CLOSE RANGE
13 WOUNDS?

14 A I GROSSLY EXAMINED THE SHIRT THAT CAME WITH THE
15 DECEASED AND IT HAD BULLET HOLES IN THE SHIRT BOTH AT THE
16 TOP OF THE SHIRT AND THE COLLAR. AND THESE BULLET HOLES
17 DID NOT SHOW ANY EVIDENCE OF GROSS SOOT OR POWDER
18 PARTICLES ON THEM.

19 Q NOW, IN THAT FINDING IN REGARD TO THE WOUNDS
20 THEMSELVES AND THE SHIRT, WOULD INDICATE THE MUZZLE OF THE
21 GUN WAS AT LEAST HOW FAR AWAY FROM DEPUTY KUBALA WHEN HE
22 WAS SHOT?

23 A AT LEAST TWO FEET AWAY. MAYBE A LITTLE CLOSER. BUT
24 EITHER BETWEEN A FOOT AND A HALF TO TWO FEET WAS THE
25 DISTANCE THAT POWDER WOULD TRAVEL AND STILL PENETRATE THE

DR. JOEL SEXTON - DIRECT BY KOLB

1 SKIN OR BE LEFT STUCK ON THE CLOTHING SO WE CAN EASILY SEE
2 IT AT AUTOPSY.

3 THERE ARE CHEMICAL WAYS OF DETECTING SMALLER
4 AMOUNTS OF POWDER THAT ARE DISBURSED OVER THE CLOTHING,
5 BUT GROSSLY IT GENERALLY HAS TO BE THAT CLOSE.

6 Q COULD IT HAVE BEEN -- SO YOU -- NOT FIND, THAT MEANS
7 IT WAS NOT WITHIN TWO FEET?

8 A IN MY OPINION THAT IS CORRECT.

9 Q AND COULD IT HAVE BEEN LONGER THAN THAT?

10 A IN MY OPINION IT WOULD HAVE BEEN FURTHER THAN TWO
11 FEET AWAY. CANNOT SAY HOW MUCH FURTHER, BUT JUST FURTHER
12 THAN TWO FEET.

13 THE -- ANOTHER THING THAT CAN HAPPEN IS IT CAN
14 GO THROUGH SOME OBJECT THAT COLLECTS THIS POWDER BEFORE IT
15 GETS TO THE SKIN, BUT EITHER IT DID THAT OR WAS GREATER
16 THAN TWO FEET AWAY.

17 Q ALL RIGHT. DID YOU LOOK FOR ANY OTHER POSSIBLE CAUSE
18 OF DEATH BESIDES THESE TWO BULLET WOUNDS THAT YOU
19 INDICATED BOTH WOULD HAVE BEEN FATAL?

20 A YES. WE DID A COMPLETE EXAMINATION WHILE WE ARE
21 LOOKING AT ALL THE INTERNAL ORGANS, EXAMINING THEM GROSSLY
22 AND MICROSCOPICALLY TO SEE IF WE SEE ANY EVIDENCE OF
23 DISEASE OR ILLNESS OR ANY OTHER INJURY.

24 AND THERE WAS NO OTHER INJURY AND NO ILLNESS OR
25 DISEASE THAT WE DETECTED.

DR. JOEL SEXTON - DIRECT BY KOLB

1 Q ALL RIGHT. OKAY. AND DID YOU TURN THE CLOTHING AND
2 ALL OF THESE SAMPLES AS WELL AS THE BULLETS OVER TO AGENT
3 LAROSA?

4 A AGENT LAROSA TOOK EVERYTHING BUT THE WEDDING BAND,
5 THE WATCH AND THE UNDER SHORTS. ALL OF THE EXTERNAL
6 CLOTHING AND THE FLUIDS THAT WE COLLECTED AND THE BULLETS
7 WERE TURNED OVER TO AGENT LAROSA.

8 Q YOU INDICATED THE DECEASED CAME TO YOU STILL WEARING
9 A BULLET PROOF VEST?

10 A THAT'S CORRECT.

11 Q WHAT CAN YOU TELL US ABOUT THAT?

12 A JUST THAT IT WAS THERE ON THE BODY.

13 Q ALL RIGHT.

14 A IT WAS IN AN AREA -- SO IF THE BULLETS DID NOT GO
15 INTO THAT AREA. IN OTHER WORDS THE BULLETS ENTERED THE
16 NECK. THE VEST COVERS FROM THIS PART OF THE BODY DOWN,
17 PRIMARILY THE CHEST AND THE BACK.

18 THERE ARE GAPS IN THE VEST AROUND THE NECK AREA
19 AND DEPENDING UPON THE SIZE OF THE VEST SOMETIMES ON
20 EITHER SIDE.

21 MR. KOLB: COULD WE PLEASE MARK THESE FOR
22 IDENTIFICATION.

23 (STATE'S EXHIBIT NO. 17 AND 18 MARKED FOR
24 IDENTIFICATION).

25 (WHEREUPON QUESTIONING RESUMED).

DR. JOEL SEXTON - DIRECT BY KOLB

1 Q DR. SEXTON, IF YOU WOULD LOOK AT WHAT'S BEEN MARKED
2 FOR IDENTIFICATION EXHIBIT 17 AND 18 AND TELL US IF YOU
3 CAN IDENTIFY THOSE.

4 A STATE'S EXHIBIT 18 IS IN A CONTAINER THAT BEARS MY
5 INITIALS AND THE NAME OF THE DECEASED. INSIDE THIS
6 CONTAINER ARE THREE LARGE FRAGMENTS OF A 22 CALIBER
7 BULLET.

8 I TAKE TWO PHOTOGRAPHS, ONE FRONT AND BACK OF
9 THE BULLETS WHEN I REMOVE THEM BEFORE I SEND THEM. THESE
10 FRAGMENTS MATCH THESE TWO PHOTOGRAPHS I TOOK.

11 THIS IS THE BULLET THAT ENTERED THE RIGHT EAR OR
12 THAT I ARBITRARILY LABELED NUMBER ONE. I DO NOT KNOW THE
13 ORDER THAT THESE SHOTS WERE FIRED IN. I SIMPLY LABEL FROM
14 THE TOP OF THE BODY DOWNWARD AN ARBITRARY NUMBER SO THAT I
15 CAN KEEP TRACK OF EACH ONE.

16 BUT THIS IS THE ONE THAT ENTERED THE RIGHT EAR
17 AND IT'S LABELED NUMBER ONE. IT MATCHES MY PHOTOGRAPHS AND
18 IS IN A VIAL WITH MY LABEL AND MY INITIALS ON IT.

19 EXHIBIT NUMBER 17 IS IN A VIAL THAT AGAIN HAS MY
20 INITIALS AND THE APPROPRIATE LABEL. THIS BULLET ALSO
21 MATCHES THE PHOTOGRAPHS THAT I TOOK FROM THE FRONT AND THE
22 REAR AND BULLETS GET -- HIT -- PART OF THE BODY IN
23 PARTICULAR, THE BONE, THEY GET DEFORMED.

24 AND THE SHAPE OF THIS BULLET IS VERY UNIQUE SUCH
25 THAT BY LOOKING AT THE PHOTOGRAPH I CAN SEE THAT IT WOULD

DR. JOEL SEXTON - CROSS BY LITTLEJOHN

1 BE ALMOST IMPOSSIBLE FOR SOMEONE TO DUPLICATE THESE
2 IRREGULARITIES ON A SIMILAR BULLET SO THAT WE CAN MATCH MY
3 PHOTOGRAPHS.

4 IT ALSO BEARS MY MARK. AND IT'S THE BULLET THAT
5 I REMOVED FROM THE LEFT CHEST OF OFFICER KUBALA. AND
6 ARBITRARILY DESIGNATED NUMBER TWO.

7 Q DO YOU HAVE PHOTOGRAPHS THAT YOU'D LIKE TO ILLUSTRATE
8 YOUR TESTIMONY, DR. SEXTON?

9 A I ALWAYS TAKE PHOTOGRAPHS. IT WOULD BE APPROPRIATE
10 FOR ILLUSTRATING THE TESTIMONY.

11 MR. KOLB: LET ME SEE.

12 (WHEREUPON A BENCH CONFERENCE WAS HELD).

13 MR. KOLB: IF YOU WOULD ANSWER ANY QUESTIONS THE
14 DEFENSE MAY HAVE.

15 THE COURT: YOU MAY CROSS-EXAMINE.

16 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

17 CROSS-EXAMINATION BY MR. LITTLEJOHN:

18 Q GOOD AFTERNOON, DR. SEXTON.

19 A GOOD AFTERNOON.

20 Q NICE TO SEE YOU AGAIN.

21 A MY PLEASURE.

22 Q I HAVE JUST A COUPLE OF QUESTIONS. YOU NEVER WENT TO
23 THE LOCATION WHERE THE SHOTS WERE FIRED; DID YOU?

24 A THAT'S RIGHT. I HAVE BEEN TOLD WHAT THE LOCATION
25 LOOKED LIKE, BUT I HAVE NOT BEEN THERE.

DR. JOEL SEXTON - CROSS BY LITTLEJOHN

1 Q YOU HAVE NOT BEEN THERE. YOU HAVE NOT EXAMINED THAT
2 LOCATION?

3 A THAT'S CORRECT.

4 Q OKAY. AND WHAT YOU ARE TELLING US IS WHAT YOU WERE
5 ABLE TO PUT TOGETHER FROM EXAMINING THE BODY OF SERGEANT
6 KUBALA?

7 A YES. THAT'S CORRECT.

8 Q OKAY. AND I BELIEVE YOU INDICATED THAT YOUR
9 EXAMINATION REVEALED THAT BASED ON THE LACK OF ANY KIND OF
10 GUNPOWDER OR SOOT OR STIPPLING, THAT THE SHOT HAD TO COME
11 FROM AT LEAST TWO FEET AWAY IN YOUR OPINION?

12 A AT LEAST TWO FEET AWAY OR HAVE SOMETHING BETWEEN IT
13 AND THE GUN THAT WOULD COMPLETELY ABSORB ANY POWDER
14 PARTICLES.

15 Q LIKE A PILLOW OR SOMETHING LIKE THAT?

16 A PILLOW OR THICK -- OR ANY NUMBER OF THINGS THAT COULD
17 DO THAT, WOOD WOULD NOT BE THE CASE BECAUSE THE BULLET
18 WOUNDS THEMSELVES WERE NOT THE KIND YOU WOULD EXPECT TO
19 SEE AFTER A BULLET HAD GONE THROUGH SOMETHING, SOME
20 SUBSTANCE, BUT THEY WERE TYPICAL OF -- NORMALLY SEE AS
21 ENTRANCE GUNSHOT WOUNDS, BUT LARGER THAN USUAL PROBABLY
22 BECAUSE OF WHAT THEY HAD GONE THROUGH AT THE SCENE.

23 Q OKAY. AND SO THE SHOTS COULD HAVE BEEN FIRED FROM TWO
24 FEET OR A HUNDRED YARDS OR SOMEWHERE IN BETWEEN?

25 A CORRECT.

DR. JOEL SEXTON - CROSS BY LITTLEJOHN

1 Q OKAY.

2 MR. LITTLEJOHN: THAT'S ALL I HAVE. THANK YOU, YOUR
3 HONOR.

4 THE COURT: REDIRECT, MR. SOLICITOR?

5 MR. KOLB: NO, SIR.

6 THE COURT: YOU CAN COME DOWN.

7 THE WITNESS: CAN I BE EXCUSED?

8 THE COURT: ANY OBJECTION TO DR. SEXTON BEING
9 EXCUSED?

10 MR. KOLB: NO, SIR.

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

12 THE COURT: YOU ARE FREE TO LEAVE. THANK YOU.
13 (WHEREUPON THE WITNESS LEFT THE STAND).

14 MR. KOLB: JOHN PRINCE.

15 JOHN PRINCE, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 THE COURT: GOOD EVENING, MR. PRINCE. ONCE YOU GET
18 SITUATED IF YOU'D PLEASE STATE YOUR FULL NAME FOR THE
19 RECORD, SPELL YOUR LAST.

20 (WHEREUPON THERE WAS A PAUSE).

21 THE COURT: WHAT WAS THE LAST? SPELL YOUR LAST NAME.

22 WITNESS: JOHN D. PRINCE JUNIOR P R I N C E

23 DIRECT EXAMINATION BY MR. KOLB:

24 Q MR. PRINCE, HOW ARE YOU EMPLOYED?

25 A CORPORAL WITH SUMTER COUNTY SHERIFF'S DEPARTMENT.

JOHN PRINCE - DIRECT BY KOLB

1 Q AND WERE YOU ON THE SAME SHIFT WITH DEPUTY CHARLIE
2 KUBALA?

3 A YES, SIR.

4 Q HE WAS A SERGEANT AT THE TIME OF HIS DEATH?

5 A YES, SIR. THAT'S CORRECT.

6 Q AND I BELIEVE YOU ARE A CORPORAL NOW?

7 A YES, SIR. THEN I WAS A SENIOR DEPUTY.

8 Q ALL RIGHT. WHAT -- YOU HAVE GOT ON UNIFORM TODAY.

9 WHAT DIFFERENCE WOULD THERE BE BETWEEN THE UNIFORM HE WAS
10 WEARING AT THE TIME HE WAS WEARING IT AND THE KIND YOU
11 HAVE ON NOW?

12 A IT WAS THE IDENTICAL UNIFORM EXCEPT FOR THE INSIGNIA
13 OF THE RANK.

14 Q COULD YOU EXPLAIN TO US ABOUT THE WALKIE TALKIES THAT
15 YOU HAVE AVAILABLE TO YOU, SPECIFICALLY THE TYPE HE HAD
16 AVAILABLE TO HIM AT THAT TIME?

17 A YES, SIR. IT'S HAND HELD UNIT. MOST OF US HAVE
18 BRACKETS ON THE BELT. WE SPIN THEM AROUND WHEN WE NEED TO
19 TALK. PUT THEM TO OUR MOUTH, TALK TO THEM. LOCK THEM BACK
20 ON A BELT KEEP.

21 Q ALL RIGHT. HOW DO YOU HEAR THE DISPATCHERS CALLING
22 YOU AND OTHER DEPUTIES THROUGH THAT WALKIE TALKIE?

23 A IT HAS A SPEAKER BUILT INTO THE TOP PORTION OF IT.

24 Q SO YOU'RE THE ONLY PERSON WHO CAN HEAR IT?

25 A NO, SIR. IT'S JUST BASICALLY LIKE A RADIO SYSTEM.

JOHN PRINCE - DIRECT BY KOLB

1 ANYBODY AROUND CAN HEAR IT.

2 Q ALL RIGHT, SIR. WHAT ABOUT THE FLASHLIGHT THAT DEPUTY
3 KUBALA HAD AT THE TIME OF HIS DEATH? CAN YOU TELL US
4 ABOUT IT?

5 A OKAY. WE ARE ALL ISSUED IT. IT'S CALLED A MAG LIGHT
6 FLASHLIGHT. IT'S AN ELECTRIC CHARGING BRACKET INSIDE THE
7 VEHICLE, LEAVE IT IN THE BRACKET SO IT WILL STAY CHARGED
8 UP. LIGHT -- TIME WHEN YOU NEED IT, PULL IT OUT THE
9 BRACKET AND CARRY IT WITH YOU.

10 Q ALL RIGHT. WHAT SIZE IS IT?

11 A IT'S ABOUT THE SIZE OF A 3D CELL LIGHT EXCEPT BEING
12 RE-CHARGED. IT HAS ONE LONG THIN BATTERY.

13 Q CAN YOU -- I MEAN, HOLD UP YOUR HANDS.

14 A IT'S APPROXIMATELY ABOUT THIS LONG.

15 Q ALL RIGHT, SIR.

16 A VERY HEAVY BLACK METAL.

17 Q ALL RIGHT. ALSO WANT TO ASK YOU ABOUT THE EQUIPMENT
18 HE HAD AS FAR AS HANDCUFFS AT THAT TIME.

19 A ALL DEPUTIES ARE ISSUED ONE PAIR OF HANDCUFFS. WE
20 HAVE DIFFERENT STYLE HOLDERS. SOME OF THEM HAVE AN OPEN
21 HOLDER WHERE THEY JUST SLIDE IN THE BACK. SOME OF THEM
22 HAVE A HOLD OR A SNAP TO HOLD THEM IN BETTER.

23 Q COULD -- WHAT KIND DID HE HAVE AT THAT TIME?

24 A SERGEANT KUBALA HAD A OPEN STYLE HANDCUFF WHERE HE
25 JUST SLIPPED IT IN AND OUT.

JOHN PRINCE - DIRECT BY KOLB

1 Q WHAT'S THE SIGNIFICANCE OF THAT AS FAR AS WHAT WOULD
2 HAPPEN IF YOU FELL ON THE GROUND?

3 A IT'S A POSSIBILITY WITH THE OPEN STYLE THAT EITHER
4 RUNNING OR EXERTING YOURSELF THAT THEY COULD POSSIBLY FALL
5 OUT.

6 Q SO THERE'S NO CLASP OVER THAT OPEN STYLE TO HOLD IT
7 IN?

8 A NO, SIR.

9 Q IS THAT SO YOU CAN REACH IN GRAB---

10 A YOU NEED TO RESTRAIN SOMEBODY REAL QUICK, NOT SAY
11 ACTIVE SITUATION -- IT'S EASIER NOT HAVING TO GO DOWN TO A
12 SNAP. JUST REACH BACK AND GRAB IT.

13 Q ALL RIGHT. WHAT ABOUT THE TYPE OF WEAPON THAT
14 SERGEANT KUBALA HAD AT THE TIME OF HIS DEATH?

15 A AT THAT TIME THE SHERIFF'S DEPARTMENT WAS CARRYING A
16 STAINLESS STEEL NINE MILIMETER SMITH SEMIAUTOMATIC PISTOL.

17 Q AND EXPLAIN THAT TO US AND HOW MANY SHOTS IT COULD
18 HOLD.

19 A OKAY. IT WAS A -- CALLED A 16 SHOT GUN WHICH WAS ONE
20 IN THE MAGAZINE. AND FIFTEEN -- CORRECTION. ONE IN THE
21 CYLINDER, BARREL, AND FIFTEEN IN THE MAGAZINE.

22 Q ALL RIGHT. ALL RIGHT. WITH THAT BACKGROUND LET ME ASK
23 YOU WHAT YOUR CALL NUMBER WAS ON FEBRUARY 26TH 1996?

24 A MY CALL NUMBER AT THAT TIME WAS 130. 130.

25 Q ON OR ABOUT 6:54 OR LEADING UP TO 7:00 ON FEBRUARY

JOHN PRINCE - DIRECT BY KOLB

1 26TH 1996, DID YOU RECEIVE A CALL TO ASSIST OFFICER KUBALA
2 IN A SITUATION AT 817 TAYLOR STREET?

3 A YES, SIR. I DID.

4 Q DID YOU -- COULD YOU TELL US WHO ARRIVED THERE BEFORE
5 THE OTHER?

6 A OKAY. SERGEANT KUBALA HAD ALREADY ARRIVED AT THE
7 SCENE AND I'M NOT SURE ABOUT THE EXACT TIME. I WAS THERE I
8 KNOW WITHIN PROBABLY TWO MINUTES AT THE MOST AFTER HE HAD
9 ALREADY ARRIVED.

10 Q ALL RIGHT, SIR. AND LISTENING OVER YOUR RADIO, DID
11 YOU HEAR HIM SIGN DOWN AT THE SCENE?

12 A YES, SIR. I DID.

13 Q HE 1023?

14 A 1023.

15 Q HAVE YOU LISTENED TO THE 911 TAPE OF WHAT OCCURRED
16 THAT NIGHT?

17 A YES, SIR. I HAVE.

18 Q DID YOU HEAR AFTER HIM -- HE -- SIGNED DOWN, AN
19 ADDITIONAL TRANSMISSION FROM HIM ABOUT 1046 OAKLAND AND
20 TAYLOR OR SOMETHING, OAKLAND AND -- ANY WAY, SOME OTHER
21 STREET?

22 A IT WAS ANOTHER STREET, A 1046 VEHICLE WHICH MEANS
23 ASSIST A MOTORIST. SOMEBODY WAS APPARENTLY BROKE DOWN ON
24 THE SIDE OF THE ROAD AND THEY WANTED A DEPUTY TO GO BY AND
25 CHECK.

JOHN PRINCE - DIRECT BY KOLB

1 Q DID YOU HEAR ANY RESPONSE BY DEPUTY KUBALA AFTER THAT
2 TRANSMISSION?

3 A YES, SIR. BEST OF MY MEMORY HE SAID THAT THEY WOULD
4 HOLD ALL CALLS, HE WAS 10 6 WHICH MEANS HE WAS VERY BUSY,
5 HE WAS IN AN ACTIVE CALL. SO IF THEY WOULD HOLD ALL CALLS
6 HE WOULD GET BACK TO THEM LATER.

7 Q DID YOU HEAR -- AND WAS THAT AFTER HE HAD SIGNED DOWN
8 1023 BEING AT THE CALL LOCATION?

9 A YES, SIR. IT WAS. HE HAD ALREADY ARRIVED.

10 Q AND DID YOU HEAR ANY ADDITIONAL TRANSMISSIONS BY HIM
11 AFTER THAT TIME?

12 A NO, SIR. THAT WAS THE LAST TIME I HEARD HIS VOICE.

13 Q DID YOU ACTUALLY CALL FOR HIM AFTER THAT AND FAIL TO
14 RECEIVE A RESPONSE?

15 A YES, SIR. BEST OF MY RECOLLECTION IS I DID TRY TO
16 CALL HIM ONE TIME.

17 Q ALL RIGHT. WHAT HAPPENED WHEN YOU ARRIVED AT 817
18 TAYLOR STREET?

19 A OKAY. UPON MY FIRST ARRIVAL MR. TAYLOR WAS COMING OUT
20 THE FRONT DOOR AND HAD A GUN IN HIS HAND. AND I REMEMBER
21 THERE WAS A PREVIOUS CALL AT THE HOUSE EARLIER AND IT WAS
22 SAID TO BE A YOUNGER PERSON THERE, SO I KNEW HE WASN'T THE
23 PERPETRATOR.

24 I TOLD HIM TO GO BACK IN THE HOUSE, ANOTHER
25 DEPUTY WOULD COME GET HIM, LET HIM KNOW WHEN IT WOULD BE

JOHN PRINCE - DIRECT BY KOLB

1 SAFE TO COME OUT. AND I SHINED MY SPOT LIGHT ON THE LEFT
2 SIDE OF THE HOUSE.

3 HE SAID A DEPUTY HAD BEEN SHOT AND I SAW A BODY
4 BACK THERE AT THE HOUSE AND THAT'S WHEN HE RAN IN THE
5 HOUSE AND I WENT STRAIGHT TO THE BODY I SAW IN THE BACK
6 YARD.

7 Q ALL RIGHT. COULD YOU TELL US WHERE YOU SAW DEPUTY
8 KUBALA, WERE THERE ANY LIGHTS IN THAT AREA OTHER THAN WHAT
9 YOU HAD BROUGHT TO THERE?

10 A NO, SIR. IT WAS COMPLETELY DARK.

11 Q ALL RIGHT. DID YOU SEE A FLASHLIGHT?

12 A YES, SIR. SERGEANT KUBALA HAD HIS FLASHLIGHT WITH
13 HIM.

14 Q AND WAS IT ON OR OFF?

15 A YES, SIR. IT WAS ON.

16 Q HIS WAS ON? AND NO OUTSIDE LIGHTS ON THE HOUSE?

17 A NO, SIR.

18 Q ALL RIGHT. COULD YOU DESCRIBE FOR THE LADIES AND
19 GENTLEMEN OF THE JURY THE EXACT POSITION OF HIS BODY WHEN
20 YOU FOUND HIM THERE? I KNOW THAT'S HARD FOR YOU, BUT I'VE
21 GOT TO ASK YOU.

22 A YES, SIR. THE BODY WAS -- IF YOU ARE LOOKING AT THE
23 HOUSE IN THE DIRECTION I'M SITTING OR THE DIRECTION OF THE
24 JURY, YA'LL THE BACK OF THE HOUSE, HE WAS FACING DIRECTLY
25 TOWARD THE HOUSE LIKE HE HAD FELL STRAIGHT BACKWARDS, HIS

JOHN PRINCE - DIRECT BY KOLB

1 FLASHLIGHT HAD BEEN UP UNDER HIS RIGHT ARM BECAUSE HE HAD
2 TO TAKE IT OUT OF HIS LEFT ARM.

3 HIS GUN WAS IN HIS RIGHT HAND, BUT HE HAD TO
4 MOVE HIS FLASHLIGHT SO HE CAN GRAB HIS RADIO TO TALK. AND
5 HE WAS LAYING ON THE GROUND JUST STRAIGHT BACKWARD. HIS
6 WALKIE TALKIE WAS RIGHT OFF THE FINGER TIPS OF HIS LEFT
7 HAND.

8 HIS GUN WAS RIGHT OFF THE FINGER TIPS OF HIS
9 RIGHT HAND AND HIS FLASHLIGHT WAS PARALLEL WITH HIS ARM IN
10 BETWEEN HIS ARM AND HIS CHEST.

11 Q AND YOU -- LAYING ON HIS BACK?

12 A YES, SIR.

13 Q AT THAT TIME COULD YOU SEE HIS HANDCUFFS AT ALL?

14 A NO, SIR.

15 Q ALL RIGHT. WHAT WERE THE POSITIONS OF HIS LEGS?

16 A HIS FEET WERE KIND OF CLOSE TOGETHER AND HIS LEGS
17 WERE KIND OF BOWED OUT AT THE KNEES.

18 Q ALL RIGHT. WHAT DID YOU DO AFTER FINDING HIM IN THAT
19 POSITION? AND COULD YOU TELL US WHAT IF ANYTHING YOU
20 OBSERVED ABOUT HIM AT THAT TIME?

21 A THERE WAS A LOT OF BLOOD. IT WAS COMING OUT OF HIS
22 MOUTH AND BY HIS NECK. I WAS TRYING TO CHECK A PULSE AND
23 RENDER FIRST AID SEE IF HE WAS STILL POSSIBLY ALIVE.

24 I ROLLED HIM OVER ON HIS SIDE TO TRY TO CLEAR
25 HIS AIR PASSAGE. AND AFTER THAT, I THOUGHT I HEARD A NOISE

JOHN PRINCE - DIRECT BY KOLB

1 COMING FRO, THE BACK OF THE HOUSE DIRECTION. SO I TURNED.

2 Q NOW, WHEN YOU SAY BACK FROM THE HOUSE, THE HOUSE
3 ITSELF OR THE LOT BY THE HOUSE?

4 A WELL, THIS BASICALLY WAS THE SIDE OF THE HOUSE --
5 HOUSE -- WHERE THE PORCH IS AND THEN THERE'S THE BACK
6 YARD, THE SHED AND SOME WOODS BEHIND IT.

7 Q ALL RIGHT.

8 A IN THE DIRECTION OF THE SHED AND THE WOODS I THOUGHT
9 I HEARD A NOISE AND TOOK MY LIGHT -- JUST GOT A LITTLE
10 PUSH BUTTON SWITCH. IF YOU BARELY TOUCH IT, IT WILL TURN
11 ON FOR A SECOND THEN LET IT BACK OFF INSTEAD OF LEAVING IT
12 ON.

13 SO I JUST PUMPED IT AND I WASN'T SURE WHETHER I
14 THOUGHT I SAW SOMETHING IN THE -- WHETHER I HEARD A
15 NOISE. AND THEN SHORTLY RIGHT AFTER THAT I HEARD A GUN
16 SHOT. THEN I LET CHARLIE'S BODY ROLL BACK OVER AND I WENT
17 TO THE CORNER OF THE HOUSE TO COVER IT.

18 Q FOR COVER. WHAT DO YOU MEAN BY THAT?

19 A WELL, I SAY WHEN I HEARD THE SHOT I DIDN'T KNOW IF HE
20 WAS BEING SHOT AT ME, OR WHAT, SO I WENT TO THE CORNER OF
21 THE HOUSE TO PUT A BLOCKADE OR SOMETHING BETWEEN ME AND
22 THE DIRECTION OF THE GUN SHOT.

23 Q ALL RIGHT. DID YOU -- WHAT DID YOU DO AS FAR AS
24 CALLING FOR AN AMBULANCE?

25 A I IMMEDIATELY -- EVEN BEFORE THIS HAPPENED I CALLED

JOHN PRINCE - DIRECT BY KOLB

1 ON THE RADIO, I SAID I NEED A 105 WHICH IS AN AMBULANCE
2 1033 WHICH MEANS EMERGENCY SITUATION, OFFICER WAS DOWN.

3 Q ALL RIGHT. NOW, AT THE TIME YOU HEARD THIS SHOT THAT
4 YOU HEARD THE NOISE, SHINED THE LIGHT AND HEARD FIRE FROM
5 THE GUN, WAS LANDROW TAYLOR OR ANYBODY ELSE OUT THERE WITH
6 YOU?

7 A NO, SIR. THEY WERE STILL IN THE HOUSE.

8 Q ALL RIGHT.

9 MR. KOLB: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 (STATE'S EXHIBIT NO. 19 THRU 25 MARKED FOR
12 IDENTIFICATION).

13 THE COURT: 19 THROUGH 25. GO AHEAD AND IDENTIFY
14 THEM. THEN I WILL LET THEM LOOK AT THEM ALL.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q MR. PRINCE --.

17 MR. KOLB: YOU NEED TO LOOK AT THEM, JUDGE?

18 THE COURT: NO.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q DEPUTY PRINCE, IF YOU WOULD, CAN YOU IDENTIFY STATE'S
21 EXHIBIT NUMBER 19?

22 A YES, SIR. THAT IS THE PORCH ON THE BACK OF THE
23 RESIDENCE AT 817 TAYLOR STREET.

24 Q ALL RIGHT. AND COULD YOU USING THIS PHOTOGRAPH, COULD
25 YOU LOCATE THE BODY OF DEPUTY KUBALA AS YOU FOUND IT THERE

JOHN PRINCE - DIRECT BY KOLB

1 FOR US. SHOW WHERE IT WOULD BE IN THAT PHOTOGRAPH.

2 A THE BODY, IF YOU LOOK IN THE PICTURE YOU CAN ALSO SEE
3 THE BLOOD STAINS WAS NEAR THE HEAD AND THE FEET WERE NEAR
4 THE CONCRETE ON THE BOTTOM OF THE SLAB THERE.

5 Q THE HEAD WAS WHERE THE BLOOD -- ARE HERE BE UP NEAR
6 THE CONCRETE?

7 A YES, SIR.

8 Q NOW, WHEN YOU SAY CONCRETE, YOU ARE TALKING ABOUT THE
9 STEPS OR THE ACTUAL CONCRETE?

10 A I'M REFERRING TO SLAB OF CONCRETE.

11 MR. LITTLEJOHN: YOUR HONOR, MAY I STAND OVER HERE?

12 THE COURT: YES, YOU MAY. AND WHILE YOU ARE DOING
13 THAT, LET ME JUST -- YOU HAVE NO OBJECTION TO THESE
14 PHOTOGRAPHS?

15 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: PLAINTIFFS -- EXCUSE ME. STATES 19
17 THROUGH 25 ARE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.
18 THEY EACH BEING A COLOR PHOTOGRAPH.

19 (STATE'S EXHIBIT NO. 19 THRU 25 MARKED FOR
20 EVIDENCE).

21 (WHEREUPON QUESTIONING RESUMED).

22 Q I'M GOING TO ASK YOU IN REGARD TO 25. TELL US WHAT
23 THAT SHOWS.

24 A ALL RIGHT. IN THIS PICTURE HERE NUMBER 5 WOULD BE HIS
25 WALKIE TALKIE WHICH WOULD HAVE BEEN BY HIS LEFT HAND.

JOHN PRINCE - DIRECT BY KOLB

1 NUMBER 7 IS THE AREA OF HIS HEAD WHERE THE BLOOD STAIN
2 THERE IS.

3 HIS HANDCUFFS WOULD HAVE BEEN ON HIS RIGHT SIDE
4 RIGHT BEHIND HIS PISTOL. ON THE BACK SIDE OF HIS RIGHT
5 SIDE.

6 Q YOU DIDN'T -- UNTIL THEY REMOVED THE BODY, YOU DIDN'T
7 SEE THE HANDCUFFS UNDER HIM?

8 A NO, SIR. I DID NOT.

9 Q THEY WERE UNDER HIM ONCE HIS BODY WAS REMOVED?

10 A APPARENTLY SO. YES, SIR.

11 Q ALL RIGHT. NOW, COULD YOU IDENTIFY EXHIBITS 20, 21,
12 22, 23 AND 24?

13 A INDIVIDUALLY OR JUST...

14 Q DO THEY SHOW DIFFERENT ANGLES INTO THAT SAME
15 LOCATION?

16 A YES, SIR. LETS SEE.

17 Q GO AHEAD. TELL---

18 A 21 AND 20 ARE JUST IS BASICALLY THE SAME SHOT. 22.

19 Q LET ME ASK YOU ABOUT THIS. ON 21 AND 22 -- OR EXCUSE
20 ME -- 20 AND 21, IN THE BACKGROUND TOWARDS TAYLOR STREET I
21 SEE SOME LIGHTS OUT THERE. WHAT IS THAT?

22 A OKAY. THESE TWO LIGHTS THAT -- IF YOU LOOK AT THE
23 PICTURE YOU WILL SEE LITTLE METAL POLES. THESE WERE SET UP
24 BY THE INVESTIGATOR TO ILLUMINATE THE SCENE PROCESS.

25 Q ALL RIGHT. THAT WASN'T THERE WHEN YOU ARRIVED?

JOHN PRINCE - DIRECT BY KOLB

1 A NO, SIR.

2 Q AND VARIOUS ONES OF THESE PHOTOGRAPHS INCLUDING BOTH
3 OF THESE, THE LIGHT IS ON ON THIS LITTLE WHITE SIDE
4 SCREENED PORCH. WAS THAT ON WHEN YOU ARRIVED?

5 A NO, SIR. THAT PORCH LIGHT WAS OFF.

6 Q OKAY. 24. WHAT DOES THAT SHOW?

7 A OKAY. PICTURE 24 SHOWS THE WALKIE TALKIE. I DON'T
8 HAVE THE PART WITH ME TODAY THAT FITS INTO IT. I'VE GOT A
9 CLIP ON MY SIDE THAT FITS IN. YOU HAVE TO ROTATE 180
10 DEGREES UP SIDE DOWN TO TAKE IT OFF OF YOUR BELT.

11 YOU HAVE TO POSSIBLY DO THE SAME TO LOCK IT BACK
12 ON. AND THIS WAS---.

13 Q SO THAT'S NOT SOMETHING LIKE THESE HANDCUFFS THAT
14 JUST FALL OUT?

15 A NO, SIR.

16 Q OKAY. YOU SAID IT WAS JUST OFF OF HIS LEFT HAND
17 FINGER?

18 A OFF HIS LEFT HAND. APPARENTLY AFTER HIS LAST RADIO
19 TRANSMISSION HE DIDN'T EVEN HAVE TIME TO HOOK IT BACK ON
20 HIS BELT.

21 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO
22 OBJECT.

23 THE COURT: I SUSTAIN THE OBJECTION. THE JURY
24 DISREGARD THAT LAST STATEMENT AS SPECULATIVE.

25 (WHEREUPON QUESTIONING RESUMED).

JOHN PRINCE - DIRECT BY KOLB

1 Q WHAT DOES EXHIBIT 23 SHOW?

2 A EXHIBIT 23 IS CHARLIE'S HANDCUFFS LAYING ON THE
3 GROUND.

4 Q AND EXHIBIT NO. 22?

5 A 22 IS JUST A WIDER ANGLE SHOT OF THE PORCH ON THE
6 SIDE OF 817 TAYLOR STREET.

7 Q SHOWS THAT LIGHT ON THE PORCH ONLY. IS THAT -- THAT'S
8 DIFFERENT FROM HOW YOU SAW IT?

9 A YES, SIR. THE LIGHT WAS NOT ON.

10 Q OKAY.

11 A WHEN I FIRST ARRIVED.

12 Q THE EVIDENCE -- PEOPLE ARRIVED, PUT THESE CONES UP TO
13 NUMBER THESE ITEMS, TAKE PICTURES. THE CONES WEREN'T THERE
14 WHEN YOU GOT THERE?

15 A NO, SIR.

16 Q OKAY.

17 (WHEREUPON THERE WAS A PAUSE).

18 (WHEREUPON QUESTIONING RESUMED).

19 Q DEPUTY PRINCE, WHEN WE FIRST SAW THESE PHOTOGRAPHS IN
20 PREPARATION FOR THE TRIAL, DID YOU KNOW WHERE -- WHAT HAD
21 HAPPENED TO CHARLIE'S FLASHLIGHT -- HAD BEEN THERE WHEN
22 YOU ARRIVED?

23 A NO, SIR. THE -- AFTER SOME OTHER DEPUTIES ARRIVED TO
24 THE SCENE, I ADVISED THEM OF ANOTHER SHOT. I SAID IT CAME
25 FROM THE BACK AREA. I NEED -- WE NEED TO CLEAR THIS SHED

JOHN PRINCE - DIRECT BY KOLB

1 AREA. E M S CAME ON THE SCENE. I SAY IT WAS PITCH BLACK
2 DARK.

3 THEY ASKED ME TO USE MY FLASHLIGHT. I SAID NO, I
4 HAVE GOT TO GO BACK HERE AND WE HAVE GOT TO TRY TO CLEAR
5 THIS AREA. AND THEY PICKED UP CHARLIE'S LIGHT AND USED IT.
6 I DON'T KNOW WHAT HAPPENED TO IT AFTER THAT.

7 Q BEFORE ALL THAT OCCURRED, WHAT HAPPENED TO HIS GUN,
8 CHARLIE'S GUN?

9 A SERGEANT -- AT THAT TIME CORPORAL MIKE WINSTON WAS
10 ONE OF THE NEXT DEPUTIES ON THE SCENE AND HE SECURED THE
11 GUN.

12 Q ALL RIGHT. DID YOU ACTUALLY CHECK CHARLIE'S GUN TO
13 SEE IF IT HAD BEEN FIRED?

14 A NO, SIR. I DIDN'T.

15 Q SERGEANT WINSTON DID THAT? WAS THE LOCATION---.

16 MR. LITTLEJOHN: I'M GOING TO OBJECT TO THE LEADING
17 QUESTIONS.

18 THE COURT: SUSTAINED.

19 (WHEREUPON QUESTIONING RESUMED).

20 Q DID --

21 MR. KOLB: I NEED TO GET ONE OF THE PHOTOGRAPHS BACK
22 WHEN THE JURY IS FINISHED LOOKING AT THEM, JUDGE. I WILL
23 WAIT FOR JUST A MINUTE.

24 THE COURT: WHICH ONE IS IT? LADIES AND GENTLEMEN, I
25 WOULD REMIND YOU THESE PHOTOGRAPHS, YOU WILL HAVE THEM

JOHN PRINCE - CROSS BY LITTLEJOHN

1 WITH YOU IN THE JURY ROOM IN YOUR DELIBERATIONS.

2 (WHEREUPON QUESTIONING RESUMED).

3 Q I'M GOING TO ASK YOU, DEPUTY PRINCE, IN RELATION TO
4 EXHIBIT 25 HERE, WOULD YOU POINT OUT -- I THINK YOU
5 POINTED OUT HIS HANDCUFFS WERE ACTUALLY UNDER THE BODY
6 WHEN YOU FIRST SAW IT IN RELATION OF THE WALKIE TALKIE AND
7 THE HEAD WAS BACK HERE WHERE THE BLOOD STAIN IS.

8 WHERE ON THIS PHOTOGRAPH DID YOU SEE HIS
9 PISTOL? I REALIZE IT'S BEEN REMOVED, BUT AT WHAT
10 LOCATION?

11 A I UNDERSTAND. THE PISTOL WOULD HAVE BEEN PROBABLY
12 JUST A LITTLE BIT BELOW THE HANDCUFFS, PROBABLY ON THE --
13 LITTLE BIT TO THE RIGHT.

14 Q AND WHEN YOU SAY OFF THE FINGER TIPS OF HIS RIGHT
15 HAND, WHAT DO YOU MEAN? EXPLAIN THAT IN A LITTLE MORE
16 DETAIL.

17 A IF SAY FOR INSTANCE THIS WAS A GUN I WAS HOLDING,
18 WHEN HE FELL BACK IT WAS JUST LIKE RIGHT AT THE EDGE OF
19 HIS FINGER TIPS.

20 Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE,
21 PLEASE.

22 THE COURT: YOU MAY CROSS-EXAMINE.

23 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

24 CROSS-EXAMINATION BY MR. LITTLEJOHN:

25 Q CORPORAL PRINCE, IN REGARD TO SOME OF SOLICITOR

JOHN PRINCE - CROSS BY LITTLEJOHN

1 KOLB'S QUESTIONS, YOU INDICATED AS TO THE VARIOUS PIECES
2 OF EQUIPMENT THAT ARE ISSUED TO SUMTER COUNTY SHERIFF'S
3 DEPUTIES THAT THERE ARE HANDCUFFS, WALKIE TALKIE, NINE
4 MILIMETER SEMI- AUTOMATIC PISTOL AND HANDCUFFS AMONG OTHER
5 THINGS; IS THAT RIGHT?

6 A YES, SIR.

7 Q OKAY. AND I BELIEVE YOU TOLD US ABOUT THE HANDCUFFS
8 AND HOW THEY WERE CARRIED BY SERGEANT KUBALA. YOU
9 INDICATED THAT THERE WAS A MAG LIGHT THAT HE HAD THAT
10 EVENING.

11 A RIGHT. IT'S CALLED A MAG LIGHT. IT'S A FLASHLIGHT,
12 RE-CHARGEABLE FLASHLIGHT. IT'S JUST A NAME BRAND.

13 Q MADE OF HEAVY ALUMINUM?

14 A YES, SIR.

15 Q YOU CAN ALSO USE IT AS A CLUB IF YOU NEED, TOO;
16 RIGHT?

17 A THAT'S FOR ILLUMINATION PURPOSES.

18 Q OKAY. WHEN YOU ARRIVED AT 817 TAYLOR STREET, YOU
19 INDICATED THAT MR. TAYLOR WAS OUT IN FRONT OF THE HOUSE?

20 A WHEN HE SAW MY CAR PULL UP, HE CAME OUT THE FRONT
21 PORCH.

22 Q HE CAME OUT THE FRONT PORCH?

23 A ON IN THE FRONT YARD.

24 Q AND HE HAD A PISTOL IN HIS HAND?

25 A YES, SIR.

JOHN PRINCE - CROSS BY LITTLEJOHN

1 Q AND YOU IMMEDIATELY TOLD HIM TO GO BACK IN THE HOUSE;
2 DID YOU NOT?

3 A YES, I DID.

4 Q OKAY. AND I BELIEVE THAT YOU DESCRIBED THE LEFT SIDE
5 OF THE HOUSE WHERE SERGEANT KUBALA WAS FOUND AS BEING
6 COMPLETELY DARK; IS THAT RIGHT?

7 A YES, SIR. IT WAS.

8 Q OKAY. AND AS THE SOLICITOR KOLB ASKED YOU, THE PORCH
9 LIGHT WAS NOT ON?

10 A NO, SIR. IT WAS NOT.

11 Q OKAY. NOW, WHEN YOU APPROACHED SERGEANT KUBALA, YOU
12 INDICATED TO US THAT HIS PISTOL WAS AT THE FINGER TIPS OF
13 HIS RIGHT HAND; IS THAT RIGHT?

14 A THAT IS CORRECT.

15 Q AND YOU SAID HIS FLASHLIGHT WAS BETWEEN HIS RIGHT ARM
16 AND HIS BODY; IS THAT RIGHT?

17 A YES, SIR. IT WAS LYING PARALLEL LIKE HIS ARM -- IN
18 BETWEEN HIS ARM AND HIS CHEST.

19 Q BETWEEN HIS ARM AND HIS CHEST?

20 A UH-HUH.

21 Q AND IT WAS LAYING ON THE GROUND?

22 A YES, SIR.

23 Q OKAY. YOU SAID HIS HANDCUFFS WERE UNDER HIM WHICH YOU
24 LATER LEARNED?

25 A RIGHT. YES, SIR.

JOHN PRINCE - CROSS BY LITTLEJOHN

1 Q AND HIS WALKIE TALKIE WAS LAYING AT THE FINGER TIPS
2 OF HIS LEFT HAND?

3 A YES, SIR. CORRECT.

4 Q , OKAY. NOW, YOU TOLD US THAT AS YOU WERE ADMINISTERING
5 AID TO SERGEANT KUBALA, YOU HEARD WHAT YOU BELIEVE TO BE A
6 SHOT?

7 A I HEARD A NOISE AND THEN SHORTLY AFTER I HEARD A GUN
8 SHOT.

9 Q OKAY. COULD YOU TELL WHAT SORT OF GUN SHOT IT WAS?

10 A IT -- ALL I COULD TELL YOU FROM THE BODY -- FROM THE
11 SOUNDS IT WAS A SMALL CALIBER.

12 Q SMALL CALIBER. DID YOU HEAR ANY SLUGS HIT ANYWHERE
13 NEAR WHERE YOU WERE?

14 A NO, I DID NOT.

15 Q YOU DO NOT KNOW IN WHAT AREA, IN WHAT DIRECTION A
16 SHOT MAY HAVE BEEN FIRED?

17 A NO, I DO NOT.

18 Q AND CORPORAL PRINCE, YOU DIDN'T SEE ANYONE OUT THERE
19 IN THE BACK YARD OR SEE ANYBODY ON THE PORCH THAT NIGHT;
20 DID YOU?

21 A NO. THE ONLY THING I SAW ON THE PORCH WAS A SHOTGUN
22 LAYING IN THE CORNER.

23 Q OKAY. DEPUTY PRINCE, I BELIEVE YOU SAID THAT YOU
24 ARRIVED THERE APPROXIMATELY TWO MINUTES AFTER SERGEANT
25 KUBALA SIGNED DOWN AT THAT LOCATION?

JOHN PRINCE - REDIRECT BY KOLB

1 A I'M NOT SURE EXACTLY ON THE TIME. I AM THINKING IT'S
2 THE TIME FRAME.

3 Q OKAY. AND WHEN YOU ARRIVED, MR. TAYLOR WAS COMING OUT
4 OF THE HOUSE?

5 A YES, SIR.

6 Q AND YOU DIRECTED HIM TO GO RIGHT BACK IN THE HOUSE?

7 A YES, SIR.

8 Q WHICH HE DID?

9 A YES, SIR.

10 Q AND YOU TOLD US IN REGARD TO THE FLASHLIGHT THAT YOU
11 SAW THERE THAT APPARENTLY SOME OF THE E M S PEOPLE GOT IT?

12 A YES, SIR. WHEN THEY CAME TO WORK ON HIM, IT WAS SO
13 DARK THEY NEEDED SOME LIGHT. AND LIKE I SAY, THEY ASKED
14 ME TO USE MINE. I SAID NO, I NEEDED MINE, USE THAT ONE
15 RIGHT THERE.

16 Q AND IT SUBSEQUENTLY DISAPPEARED?

17 A I ASSUMED E M S TOOK IT. I NEVER DID SEE IT AGAIN
18 AFTER THAT.

19 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
20 MINUTE, YOUR HONOR.

21 THE COURT: YES, SIR.

22 (WHEREUPON THERE WAS A PAUSE).

23 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

24 THE COURT: REDIRECT, SOLICITOR?

25 REDIRECT EXAMINATION BY MR. KOLB:

MICHAEL WINSTON - DIRECT BY KOLB

1 Q I ASKED YOU ABOUT THE DARK ON THAT SIDE OF THE HOUSE?

2 A YES, SIR.

3 Q WHEN YOU ARRIVED, WAS IT DAYTIME, NIGHT TIME OR WHAT?

4 A IT WAS NIGHT.

5 Q THANK YOU. THAT'S ALL.

6 THE COURT: RE-CROSS?

7 MR. LITTLEJOHN: NO, YOUR HONOR.

8 THE COURT: YOU MAY COME DOWN, SIR.

9 (WHEREUPON THE WITNESS LEFT THE STAND).

10 THE COURT: SOLICITOR?

11 MR. KOLB: MICHAEL WINSTON.

12 THE COURT: HOW LONG IS THIS WITNESS?

13 MR. KOLB: ABOUT THE SAME AS...

14 THE COURT: BRING HIM ON. THAT'S FINE.

15 MICHAEL WINSTON, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 THE COURT: PLEASE STATE YOUR FULL NAME FOR ME.
18 SPELL YOUR LAST NAME.

19 THE WITNESS: MICHAEL J WINSTON, W I N S T O N
20 DIRECT EXAMINATION BY MR. KOLB:

21 Q DEPUTY WINSTON, DID YOU RESPOND TO THE SCENE AT 817
22 TAYLOR STREET?

23 A YES, I DID.

24 Q WERE YOU ON THE SAME SHIFT THAT SERGEANT CHARLIE
25 KUBALA WAS?

MICHAEL WINSTON - DIRECT BY KOLB

1 A YES, I WAS.

2 Q AND WHO WAS THERE BEFORE YOU GOT THERE? TRYING TO
3 GET THE ORDER OF ARRIVAL.

4 A DEPUTY JOHN PRINCE WAS AT THE SCENE.

5 Q ALL RIGHT. AND COULD YOU TELL US WHAT YOU OBSERVED AS
6 FAR AS WERE YOU THERE IN FRONT OF THE AMBULANCE PEOPLE?

7 A I ARRIVED SOMETIME SIMULTANEOUSLY WITH LIEUTENANT
8 HOBBS AND DEPUTY HOBBS WAS THE PASSENGER IN MY CAR. THE
9 FRONT OF THE HOUSE HAS LIKE TWO DRIVEWAYS AND WE ARRIVED
10 AT THE SAME TIME.

11 I EXITED MY VEHICLE AND RAN INTO THE LEFT OF THE
12 HOUSE. CALLED OUT TO FIND OUT WHERE DEPUTY PRINCE WAS.
13 WHEN I ARRIVED AT THE SIDE, HE WAS KNEELING OVER SERGEANT
14 KUBALA.

15 Q ALL RIGHT. COULD YOU -- DID YOU SEE THE POSITION OF
16 DEPUTY -- SERGEANT KUBALA'S BODY?

17 A YES, I DID.

18 Q WOULD YOU DESCRIBE THAT FOR THE JURY.

19 A HE WAS LAYING ON HIS BACK. THERE WAS A FLASHLIGHT
20 BETWEEN HIS LEFT ARM AND BODY. HIS WALKIE TALKIE, HIS HAND
21 HELD RADIO WAS JUST ABOUT IN HIS LEFT HAND AND HIS
22 AUTOMATIC WEAPON, HIS PISTOL, WAS AT THE FINGER TIPS OF
23 HIS RIGHT HAND.

24 Q ALL RIGHT. AND THE FLASHLIGHT WAS ON HIS LEFT SIDE OR
25 RIGHT SIDE?

MICHAEL WINSTON - DIRECT BY KOLB

1 A RIGHT SIDE.

2 Q ALL RIGHT, SIR. AND WAS IT ON OR OFF?

3 A ON. THE FLASHLIGHT WAS ON.

4 Q WAS THERE ANY OTHER LIGHTING THERE OTHER THAN WHAT
5 HAD BEEN BROUGHT BY YOUR CARS?

6 A NO, SIR. IT WAS VERY DARK ON THAT CORNER.

7 Q ALL RIGHT. WHAT DID YOU DO IN REGARD TO SERGEANT
8 KUBALA'S SERVICE PISTOL?

9 A WELL, AFTER COUPLE INCIDENTS TAKE PLACE...

10 Q GO AHEAD AND TELL US WHAT HAPPENED.

11 A ONCE I COME TO THE SIDE, DEPUTY PRINCE INFORMED ME
12 THAT HE HAD BEEN SEEING SOMETHING BEHIND HIM AND THAT
13 LEADING TO A SHED AT THE BACK OF THE HOUSE. MYSELF,
14 LIEUTENANT HOBBS CLEARED THAT HOUSE -- THE SHED, I'M
15 SORRY.

16 AND I WENT BACK TO TRYING TO FIND OUT AND I
17 PICKED UP HIS HAND. TRIED TO WAKE HIM. THAT'S WHEN I
18 SEEN THE HANDGUN RIGHT THERE.

19 PICKED UP THE HANDGUN, THE SLIT ON TOP THE GUN,
20 SLIDE BACK AND THEN RELEASED THE MAGAZINE JUST TO CHECK IT
21 OUT. ALL THE BULLETS AND EVERYTHING WAS THERE. AND I PUT
22 THE GUN IN MY POCKET.

23 Q ALL RIGHT. NOW, WHAT'S YOUR PURPOSE IN SECURING THE
24 WEAPON AT THAT TIME?

25 A IT'S JUST SOMETHING I HAVE ALWAYS BEEN TRAINED TO

MICHAEL WINSTON - DIRECT BY KOLB

1 DO. PRIOR MILITARY IS THAT ANY TIME THAT YOU HAVE AN
2 UNKNOWN INCIDENT, UNKNOWN SCENE IS TO SECURE ANY WEAPON.

3 Q AND DID YOU LOOK TO SEE IF SERGEANT KUBALA'S WEAPON
4 HAD BEEN FIRED?

5 A YES, I CHECKED THE NUMBER OF ROUNDS. IT WAS FULLY
6 LOADED MAGAZINE.

7 Q EXPLAIN TO THE JURY ABOUT HOW YOU CHECK THE FULLY
8 LOADED -- MAKE SURE IT HAD NOT BEEN FIRED?

9 A THE 9 MILIMETER SMITH AND WESSON REVOLVER THAT WE
10 WERE ISSUED AT THAT TIME LOADED WILL HAVE SIXTEEN ROUNDS,
11 THERE WILL BE ONE IN THE CHAMBER AND FIFTEEN IN THE
12 MAGAZINE.

13 WHEN I SLIDE BACK THE TOP, YOU CAN SEE THE ROUND
14 IN THE CHAMBER. AND WHEN I RELEASED THE MAGAZINE JUST A
15 FEW MILIMETERS YOU COULD SEE THAT -- THE HOLES IN THE
16 MAGAZINES TELLS YOU HOW MANY IS IN IT. IT WAS A FULL CLIP.

17 Q OKAY. SO YOU DETERMINED THAT HIS GUN HAD NOT BEEN
18 FIRED?

19 A RIGHT. YES, SIR.

20 Q ALL RIGHT. AND YOU SAY YOU PUT IT IN YOUR POCKET TO
21 SECURE IT AT THAT TIME?

22 A YES, I DID.

23 Q WHAT WAS DONE WITH IT AFTER THAT?

24 A A FEW MINUTES LATER I GIVE THE WEAPON TO LIEUTENANT
25 HOBBS. HE WAS GOING TO LEAVE THE SCENE. AND I GIVE IT TO

MICHAEL WINSTON - DIRECT BY KOLB

1 HIM AND HE SECURED IT IN THE FRONT OF HIS CAR.

2 Q SO IT WAS REMOVED FROM THE SCENE BEFORE THE OFFICERS
3 GOT THERE TO TAKE THE PHOTOGRAPHS?

4 A YES.

5 Q ALL RIGHT. LATER ON THAT NIGHT AS SLED ARRIVED, DID
6 YOU HAVE A ROLE IN TURNING THE GUN OVER TO SLED?

7 A YES. THE QUESTION WAS BROUGHT UP WHERE THE HANDGUN,
8 IT WAS. AND I HAD TOLD THEM I HAD SECURED IT, GIVEN IT TO
9 LIEUTENANT HOBBS. WE MET AT THE OFFICE WHERE LIEUTENANT
10 HOBBS GIVE ME THE KEYS TO HIS CAR. I WENT BACK DOWN AND
11 GOT THE WEAPON FROM THE BACK OF THE TRUNK.

12 Q FROM THE TRUNK OF LIEUTENANT HOBBS' CAR?

13 A FROM HIS VEHICLE. YES, SIR.

14 Q THEN WHAT DID YOU DO WITH IT?

15 A I PASS IT OVER TO CAPTAIN RICHARDSON.

16 Q ALL RIGHT. SO THAT'S YOUR CAPTAIN RICHARDSON?

17 A SUMTER COUNTY SHERIFF'S DEPARTMENT. THAT'S MY PATROL
18 CAPTAIN.

19 Q ALL RIGHT. NOW, I KNOW I SORT OF GOT INTO CHAIN OF
20 CUSTODY ON EVIDENCE, BUT TELL US ABOUT WHAT -- AS YOU
21 ARRIVED, WHAT THE KEY ELEMENT WAS GOING ON, WHAT NEEDED TO
22 BE DONE THERE?

23 A WE NEEDED TO SECURE THE AREA. WE HAD AN UNKNOWN
24 INDIVIDUAL OR INDIVIDUALS. WE WEREN'T PRETTY SURE OR
25 NOT. SO THE MAIN PURPOSE FIRST WAS TO GET THAT SHED

MICHAEL WINSTON - DIRECT BY KOLB

1 CLEARED.

2 AND ONCE WE FOUND OUT THERE WAS NOBODY IN THAT,
3 THEN IT WAS GETTING RESCUE TO TAKE CARE OF SERGEANT
4 KUBALA, THAT THE WEAPON SECURED, GET THE SCENE SECURED SO
5 WE GET PEOPLE IN THERE.

6 Q ALL RIGHT, SIR.

7 MR. KOLB: JUST A MOMENT, PLEASE.

8 MR. KOLB: HAVE TWO EXHIBITS, YOUR HONOR, MARK FOR
9 IDENTIFICATION.

10 (STATE'S EXHIBIT NO. 26 AND 27 MARKED FOR
11 IDENTIFICATION).

12 (WHEREUPON QUESTIONING RESUMED).

13 Q INVESTIGATOR WINSTON, THESE APPEAR TO BE THE SAME AND
14 I REALIZE YOU CAN'T SAY FOR SURE. ALL YOU DID WAS TURN
15 THEM OVER. THOSE THE SAME TYPE FIFTEEN EXCUSE ME, SIXTEEN
16 UNFIRED NINE MILIMETER CARTRIDGES THAT YOU OBSERVED IN
17 SERGEANT KUBALA'S GUN?

18 A YES, SIR. THEY VERY SIMILAR TO WHAT WAS IN...

19 Q ALL RIGHT. AND EXHIBIT 27, THIS APPEAR TO BE THE SAME
20 GUN THAT YOU CHECKED, FINDING IT AT THE SCENE NEXT TO
21 SERGEANT KUBALA'S BODY?

22 A YES, SIR. IT IS.

23 Q ALL RIGHT. YOU TOLD US ABOUT YOUR ROLE IN CHAIN OF
24 CUSTODY OF TURNING THESE ITEMS OVER TO OTHER OFFICERS?

25 A YES.

MICHAEL WINSTON - CROSS BY LITTLEJOHN

1 Q ALL RIGHT, SIR. ANSWER ANY QUESTIONS THE DEFENSE MAY
2 HAVE.

3 THE COURT: CROSS-EXAMINATION?

4 CROSS-EXAMINATION BY MR. LITTLEJOHN:

5 Q GOOD EVENING.

6 A GOOD EVENING, SIR.

7 Q DEPUTY WINSTON, WHEN YOU ARRIVED AT 817 TAYLOR
8 STREET, I BELIEVE YOU INDICATED THAT YOU ARRIVED
9 SIMULTANEOUSLY WITH OTHER OFFICERS?

10 A TWO VEHICLES PULLED UP AT THE SAME TIME.

11 Q AND WHO WAS IN THOSE TWO VEHICLES?

12 A IT WAS MYSELF AND DEPUTY TONY HOLCOMBE IN MY VEHICLE.
13 AND LIEUTENANT HOBBS WAS IN HIS OWN VEHICLE.

14 Q ALL RIGHT. YA'LL ARRIVED AT ABOUT THE SAME TIME?

15 A YES, SIR.

16 Q OKAY. AND APPARENTLY E M S VEHICLE ARRIVED SHORTLY
17 THEREAFTER?

18 A YES, WITH LIEUTENANT HOBBS. IT CAME INTO THE FIRST
19 DRIVEWAY. I CAME INTO THE SECOND DRIVEWAY.

20 Q OKAY. HOW LONG WAS IT AFTER YOU ARRIVED THAT THE E M
21 S VEHICLE GOT THERE?

22 A SECONDS. SECONDS.

23 Q OKAY. DID YOU GET TO THE LOCATION WHERE SERGEANT
24 KUBALA WAS BEFORE THE E M S PEOPLE?

25 A YES.

MICHAEL WINSTON - CROSS BY LITTLEJOHN

1 Q YOU DID?

2 A YES, SIR.

3 Q OKAY. DID YOU SECURE THIS WEAPON THAT HAS BEEN MARKED
4 STATE'S EXHIBIT 27 FOR I.D.? DID YOU SECURE IT AT THAT
5 TIME?

6 A INITIALLY, NO.

7 Q OKAY. HOW LONG WAS IT AFTER YOU GOT THERE THAT YOU
8 SECURED IT?

9 A MINUTE AND A HALF, TWO MINUTES, WE CLEARED THE SHED
10 BEHIND THE HOUSE FIRST.

11 Q ALL RIGHT. WERE THE E M S PEOPLE ALLOWED TO GO BACK
12 TO THE REAR OF THE HOUSE PRIOR TO YOUR CLEARING THE AREA?

13 A E M S CAME UP TO THE HOUSE. ASKED IF THE SCENE WAS
14 CLEARED. WE SAID NO.. THEY STAYED THERE UNTIL WE CLEARED
15 THAT SHED AND WENT BACK TO THE...

16 Q SO YOU WENT BACK TO THE PORCH AFTER SECURING THE BACK
17 YARD AND THE SHED?

18 A YES, SIR.

19 Q OKAY. AT THAT POINT YOU SECURED THIS WEAPON, STATE'S
20 EXHIBIT 27 FOR IDENTIFICATION PURPOSES?

21 A I DID.

22 Q THEN THE E M S PEOPLE CAME UP AND BEGAN THEIR
23 TREATMENT OF SERGEANT KUBALA?

24 A YES. ONCE THE SHED HAD BEEN CLEARED, THERE WAS THREE
25 OR FOUR PARTIES CAME UP AT THE SAME TIME.

MICHAEL WINSTON - CROSS BY LITTLEJOHN

1 Q OKAY. AND I BELIEVE YOU INDICATED TO US THAT YOU
2 DETERMINED THAT GUN WAS FULLY LOADED?

3 A YES, SIR. IT WAS SIXTEEN ROUNDS.

4 Q OKAY. AND THEN YOU LOCKED IT IN LIEUTENANT HOBBS'
5 TRUNK?

6 A NO, SIR. I HANDED THE WEAPON TO LIEUTENANT HOBBS.

7 Q OKAY.

8 A HE PUT IT IN HIS TRUNK.

9 Q I UNDERSTAND. THEN LATER ON YOU GOT IT FROM
10 LIEUTENANT HOBBS' TRUNK?

11 A YES. I SEEN HIM PUT IT IN AND HE LEFT THE SCENE.
12 LATER ON I GOT IT FROM HIS TRUNK.

13 Q I UNDERSTAND. OF COURSE, THE SERIAL NUMBER ON THAT
14 WEAPON TELLS US IT'S ORIGIN; WOULDN'T IT?

15 A YES, IT WOULD.

16 Q ALL RIGHT. THANK YOU. I BELIEVE THAT'S ALL I HAVE.

17 THE COURT: REDIRECT?

18 MR. KOLB: NO, SIR.

19 THE COURT: YOU MAY COME DOWN.

20 (WHEREUPON THE WITNESS LEFT THE STAND).

21 THE COURT: THANK YOU, SIR. ALL RIGHT, LADIES AND
22 GENTLEMEN. THANK YOU VERY MUCH. I'M GOING TO LET YOU GO
23 NOW FOR THE EVENING. PLEASE DO NOT DISCUSS THIS CASE AMONG
24 YOURSELVES.

25 DO NOT BEGIN YOUR DELIBERATIONS IN ANY FASHION

MICHAEL WINSTON - CROSS BY LITTLEJOHN

1 WHATSOEVER. WE WILL SEE YOU IN THE MORNING AT 9:30. HAVE A
2 GOOD...

3 (WHEREUPON THE JURY LEFT THE COURTROOM).

4 THE COURT: ANYTHING FROM THE STATE BEFORE WE RECESS
5 FOR THE EVENING? DO YOU HAVE ANY MATTERS WE NEED TO TAKE
6 UP FROM THE STATE? AT THIS POINT?

7 MR. KOLB: JUST A MOMENT, YOUR HONOR.

8 (WHEREUPON THERE WAS A PAUSE).

9 MR. KOLB: JUDGE, I HAVE JUST BEEN...

10 (WHEREUPON THERE WAS A PAUSE).

11 MR. KOLB: JUDGE, I'VE JUST BEEN ADVISED -- WE GOT A
12 FAX FROM THE SOLICITOR'S OFFICE FROM GEORGETOWN COUNTY.
13 WHAT THEY INFORM ME IS JUROR PHILLIP ALLEN WHO...

14 THE COURT: I KNOW.

15 (WHEREUPON THERE WAS A PAUSE).

16 THE COURT: YOU KNOW ABOUT THAT.

17 MR. KOLB: THEY INFORMED ME THAT THE PHILLIP ALLEN
18 THAT WAS SUMMONSED FOR JURY DUTY IS THIS FELLOW'S FATHER
19 APPARENTLY, HAS A DIFFERENT BIRTHDATE. AND OKAY. THE SON
20 WAS SUMMONSED FOR JURY DUTY. THE FATHER SHOWED UP ANY
21 WAY.

22 IT'S THE WRONG PERSON AND WORSE THAN THAT OF
23 COURSE WE -- AND THE SHERIFF'S DEPARTMENT DOWN THERE
24 CHECKED THE RECORD OF THE GUY WHO WAS SUPPOSED TO BE THE
25 JUROR AND IT WAS CLEAR AND THE GUY WHO IS THE JUROR HAS A

1 PENDING CRACK CHARGE, POSSESSION OF CRACK COCAINE. I'VE
2 GOT A COPY OF THE ARREST WARRANT HERE IN GEORGETOWN
3 COUNTY.

4 OBVIOUSLY, OF COURSE, WE DON'T THINK HE'S
5 QUALIFIED AT ALL. OBVIOUSLY IF WE HAD KNOWN THAT, WOULD
6 HAVE MADE A SIGNIFICANT DIFFERENCE EVEN IF HE IS THE
7 PROPER JUROR. I THOUGHT I SHOULD BRING THAT IMMEDIATELY TO
8 THE COURT'S ATTENTION.

9 THE COURT: ALL RIGHT, SIR. LET ME HAVE THE
10 INFORMATION THAT YOU HAVE. I WILL LOOK AT THE LIST THAT I
11 HAVE. I HAVE A COPY OF IT. I HAVE MY COPY OF THE LIST HERE
12 WITH ME. CHECK IT. AND WE WILL SEE. ANYTHING ELSE?

13 MR. KOLB: NO, SIR.

14 THE COURT: ALL RIGHT. ANYTHING FROM THE DEFENDANT AT
15 THIS POINT?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 THE COURT: BE AT EASE. TAKE CARE OF THAT MATTER IN
18 THE MORNING.

19 (WHEREUPON THIS CASE WAS IN RECESS FOR THE
20 EVENING)

21 JANUARY 24, 1997.

22 THE COURT: YA'LL HAD A CHANCE TO CONFER?

23 MR. LITTLEJOHN: DID YOU WANT TO MEET WITH THE
24 JUROR?

25 THE COURT: YES. IF YA'LL WOULD LIKE.

1 MR. LITTLEJOHN: THAT'S FINE.

2 THE COURT: IF YOU HAVE NO OBJECTION I WILL MEET WITH
3 HIM IN CHAMBERS.

4 MR. LITTLEJOHN: NO OBJECTION.

5 THE COURT: WANT ME TO EXPLORE BOTH OR JUST DISCUSS
6 WITH HIM THE ISSUE ABOUT THE BIRTH DATE WHICH IS CLEARLY
7 -- IT'S OBVIOUS HIS SON IS -- IT'S THE PHILLIP ALLEN WHO
8 WAS BORN IN 73 AND THIS GENTLEMAN IS BORN IN 50. HE'S
9 FORTY-THREE, FORTY-FOUR YEARS OLD, SO CLEARLY THAT'S NOT
10 THE ONE.

11 MR. LITTLEJOHN: YOUR HONOR, I THINK THAT'S REALLY
12 THE ONLY... THE ONLY CONCERN.

13 THE COURT: VERY WELL. THANK YOU. ANY OBJECTION TO MY
14 CONFERRING WITH HIM IN...

15 MR. LITTLEJOHN: NO, YOUR HONOR.

16 THE COURT: LET THE RECORD ALSO REFLECT THAT MR.
17 STONE WAS PRESENT DURING THIS ENTIRE CONVERSATION. THANK
18 YOU. BE WITH YOU IN JUST A SECOND.

19 (WHEREUPON A BRIEF RECESS WAS TAKEN).

20 THE COURT: I HAD AN OPPORTUNITY. I JUST MET WITH MR.
21 ALLEN. MR. ALLEN DOES HAVE A SON. HE SAID THAT THE REASON
22 THAT HE THOUGHT IT WAS HIM BECAUSE HIS SON HAS BEEN LIVING
23 IN NORTH CAROLINA, BUT HAS JUST MOVED BACK.

24 HE LIVES IN GEORGETOWN WITH HIM AT THAT ADDRESS.
25 BUT HE SAID BECAUSE HE HAD BEEN IN NORTH CAROLINA FOR SOME

1 TIME, HE JUST ASSUMED IT WAS TO HIM, IT DID NOT HAVE
2 JUNIOR ON IT AND THAT'S WHY HE RESPONDED.

3 I ADVISED MR. ALLEN THE BIRTH DATE WAS CLEARLY
4 THE JUROR THAT WAS SUMMONSED WAS HIS SON AND NOT HIM. THEN
5 I HAD NO ALTERNATIVE BUT TO EXCUSE HIM. HE UNDERSTOOD. I
6 THANKED HIM FOR HIS SERVICES AND HE IS NOW BEING ARRANGED
7 TO TRANSPORT HIM BACK TO GEORGETOWN COUNTY.

8 ACCORDING TO THE RULE 47 OF OUR CIVIL RULES OF
9 PROCEDURE, THE FIRST ALTERNATE CHOSEN IS NOW ELEVATED TO
10 THE JURY. ANY OBJECTION FROM THE STATE?

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

12 THE COURT: ANY OBJECTION FROM MR. STONE?

13 MR. LITTLEJOHN: NO, YOUR HONOR.

14 THE COURT: FIRST ALTERNATE I BELIEVE IS MRS. GRAHAM
15 AND SHE WILL NOW BECOME -- I WILL PLACE HER ON THE JURY
16 THIS MORNING. ANYTHING ELSE BEFORE WE BRING THE JURY
17 BACK? ANYTHING FROM THE STATE? ANYTHING?

18 MR. KOLB: NO, SIR.

19 THE COURT: ANYTHING FROM THE DEFENDANT?

20 MR. LITTLEJOHN: NO, YOUR HONOR.

21 THE COURT: THANK YOU. BRING THE JURY IN, PLEASE.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM).

23 THE COURT: THE ALTERNATE JUROR FOR THE RECORD IS
24 JUROR NUMBER 65, KEVIN L GRAHAM.

25 THE COURT: THANK YOU VERY MUCH. THANK YOU, LADIES

1 AND GENTLEMEN. YOU LOOK FRESH AND RESTED, RARING TO GO.
2 YOU WILL NOTICE THAT THERE IS ONE EMPTY SEAT THIS MORNING.
3 SOMETHING HAS COME UP AND I HAD TO EXCUSE MR. ALLEN FROM
4 FURTHER PARTICIPATION IN THIS MATTER.

5 IT WAS A MIX UP IN WHICH JUROR WAS SUMMONSED.
6 APPARENTLY HE HAS A SON AND IT WAS HIS SON AND NOT MR.
7 ALLEN. SO HE HAS BEEN EXCUSED FROM PARTICIPATION IN THIS
8 JURY. MRS. GRAHAM, YOU ARE THE FIRST ALTERNATE THAT WAS
9 CHOSEN, SO I NEED FOR YOU PLEASE -- YOU WILL NOW LOSE THAT
10 NICE SEAT AND YOU WILL MOVE BACK AND TAKE YOUR SEAT AT THE
11 END RIGHT HERE, PROBABLY THE EASIEST WAY.

12 YOU NOW WILL CONTINUE TO OCCUPY ANY SEAT THAT
13 YOU WISH IN THE JURY BOX AS WE MOVE IN AND OUT OF THE
14 COURTROOM. THANK YOU, LADIES AND GENTLEMEN. NOW WE ARE
15 READY TO CONTINUE AND I WILL NOW ASK YOU TO DIRECT YOUR
16 ATTENTION TO THE NEXT WITNESS.

17 MR. SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

18 MR. KOLB: THANK YOU, YOUR HONOR. ALL EDDIE HOBBS.

19 EDDIE HOBBS, BEING FIRST DULY
20 SWORN, TESTIFIED AS FOLLOWS:

21 THE COURT: GOOD MORNING, SIR. IF YOU WOULD PLEASE
22 FOR THE RECORD STATE YOUR FULL NAME AND SPELL YOUR LAST.

23 WITNESS: JEAN MIDDLE INITIAL E HOBBS, H O B B S. I'M
24 A JUNIOR.

25 THE COURT: THANK YOU, SIR. SOLICITOR?

EDDIE HOBBS - DIRECT BY KOLB

1 DIRECT EXAMINATION BY MR. KOLB:

2 Q DEPUTY HOBBS, YOU'RE A LIEUTENANT WITH THE SUMTER
3 COUNTY SHERIFF'S DEPARTMENT?

4 A YES, I AM.

5 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

6 A I BEEN WITH SUMTER COUNTY SHERIFF'S DEPARTMENT OVER
7 THIRTEEN YEARS.

8 Q ALL RIGHT. AND DID YOU RESPOND TO THE SCENE AT 817
9 TAYLOR STREET ON THE NIGHT OF FEBRUARY 26TH 1996?

10 A YES, I DID.

11 Q IN SEQUENCE, WHO WAS THERE BEFORE YOU ARRIVED AND WHO
12 ARRIVED AFTER YOU PUT IN -- HOW QUICK YOU GOT THERE?

13 A WHEN THE CALL TURNED INTO A BURGLARY IN PROGRESS, I
14 MYSELF AND DEPUTY PRINCE INITIATED BLUE LIGHTS. JOHN
15 PRINCE PROBABLY BE THERE IN A MATTER OF TWO MINUTES.

16 Q ALL RIGHT. WERE YOU THERE AHEAD OF THE AMBULANCE?

17 A WHEN I WAS MAKING A TURN OFF OF BOULEVARD -- IT TURNS
18 INTO RIDGEWAY. I MET THE AMBULANCE WAS COMING DOWN THE
19 ROAD. I LET IT GO IN FRONT OF ME AND I WAS DIRECTLY
20 BEHIND THE AMBULANCE AT THAT TIME.

21 Q ALL RIGHT. NOW, AT THE -- WHAT WAS THE FIRST THING
22 THAT HAPPENED AT THE SCENE?

23 A I WENT AROUND THE LEFT SIDE OF THE HOUSE. AND ON MY
24 WAY AROUND, MR. TAYLOR WAS ON THE PORCH. I TOLD MR. TAYLOR
25 TO GO BACK INTO THE HOUSE. AND I WENT AROUND TO CHECK WITH

EDDIE HOBBS - DIRECT BY KOLB

1 DEPUTY PRINCE. WHAT I FOUND AT THE SCENE WAS SERGEANT
2 KUBALA LAYING ON THE GROUND AND DEPUTY PRINCE WAS AT HIS
3 HEAD.

4 Q ALL RIGHT. AND WHAT WAS THE FIRST -- WHAT WAS
5 BUSINESS AFTER THAT?

6 A MY FIRST ACT WAS TO FIND OUT HOW CHARLIE WAS, HOW
7 SERGEANT KUBALA WAS. BEFORE I WENT TO DO THAT, DEPUTY
8 PRINCE TOLD ME THAT SOMEONE HAS FIRED AT HIM. SHOTS HAD
9 BEEN FIRED AT HIM. THAT WAS HIS WORDS.

10 THEN I IMMEDIATELY DREW MY WEAPON AND TOOK A
11 POSITION ON THE CORNER OF THE REAR LEFT SIDE OF THE HOUSE
12 AND I PUT UP POSITION THERE WAITING FOR -- FOR CHARLIE TO
13 BE CLEARED, E M S TO MOVE IN.

14 Q ALL RIGHT. NOW, DID YA'LL ACTUALLY GO BACK AND CLEAR
15 THE SHED, MAKE SURE NOBODY WAS BACK THERE?

16 A WHEN DEPUTY WINSTON AND DEPUTY HORTON, BOTH, WE ALL
17 ON THE SAME SIDE OF THE HOUSE, MYSELF -- I PULLED DEPUTY
18 HORTON AND DEPUTY WINSTON AND WE WENT TO THE SHED THAT WAS
19 IMMEDIATELY BEHIND THE HOUSE.

20 AND WE WENT TO CLEAR THAT BY FORCING THE DOORS
21 AND GETTING TO THE WINDOWS AS BEST WE COULD AND A VISUAL
22 LOOK. AND THAT'S WHEN WE CLEARED THE SHED AT THAT TIME.

23 Q ALL RIGHT. AND DID THE E M S WORKERS THEN COME TO
24 DEPUTY KUBALA?

25 A I TALKED TO A YOUNGER E M S WORKER AND HE WAS COMING

EDDIE HOBBS - DIRECT BY KOLB

1 AROUND THE REAR OF THE HOUSE. AS A MATTER OF FACT, I -- HE
2 SAW MY WEAPON DRAWN AND I WAS POINTING AND TOOK POSITION
3 TO THE REAR OF THE YARD.

4 AND HE ASKED ME WAS THE AREA CLEAR, WAS IT FREE
5 OF DANGER IS WHAT HE BASICALLY WAS ASKING ME AND I TOLD
6 HIM NO.

7 AND I TOLD HIM HE NEEDED TO GET OUT OF THE LINE
8 OF FIRE AND THAT'S WHEN HE WENT AROUND TO THE FRONT. HE
9 RETURNED THE WAY HE CAME.

10 Q ALL RIGHT. ONCE YOU CLEARED THE SHED, DID THE E M S
11 PEOPLE COME TO DEPUTY KUBALA?

12 A THEY WERE ALREADY -- WHEN I CLEARED, WHEN THE SHED
13 WAS CLEARED, WE FELT SURE THAT NO ONE WAS IN THE SHED, I
14 WENT BACK TO SERGEANT KUBALA. E M S WAS WORKING AT THAT
15 TIME. THEY HAD ALREADY BEGUN.

16 Q ALL RIGHT, SIR. NOW, TELL US WHAT YOU DID AS FAR AS
17 OFFICER KUBALA'S WEAPON?

18 A AT THIS PARTICULAR POINT SERGEANT -- HE'S A SERGEANT
19 NOW -- BUT DEPUTY WINSTON, HIM AND DEPUTY PRINCE WERE WITH
20 CHARLIE. I WENT AHEAD AND WENT TO SECURE WITNESSES TO WHAT
21 WAS GOING ON.

22 I WENT AROUND AND TALKED TO THEM AND THAT'S WHEN
23 I DEVELOPED A SUSPECT OF BOBBY WAYNE STONE FROM THE
24 WITNESSES INTERVIEWS.

25 Q ALL RIGHT. THAT'S THE -- MRS. GRIFFITH AND MR.

EDDIE HOBBS - DIRECT BY KOLB

1 TAYLOR?

2 A YES, SIR.

3 Q ALL RIGHT. AND AS A RESULT OF THAT WAS IT PUT OUT
4 OVER THE POLICE RADIO?

5 A AT THAT TIME I PUT AN ANNOUNCEMENT OUT FOR A SUSPECT
6 AND I GAVE THE GENERAL DESCRIPTION OF BOBBY WAYNE STONE
7 AND I CALLED IN THE DESCRIPTION MRS. GRIFFITH REMEMBERED
8 AND REPORTED TO ME AND I PUT THAT ON THE RADIO AT THAT
9 TIME.

10 Q ALL RIGHT. NOW, WERE LAW ENFORCEMENT IN SUMTER COUNTY
11 THAT RESPONDED TO THE SCENE PUT UP A PERIMETER AROUND?

12 MR. LITTLEJOHN: I OBJECT TO THE LEADING QUESTION.

13 THE COURT: SUSTAINED. PLEASE REPHRASE YOUR
14 QUESTION.

15 (WHEREUPON QUESTIONING RESUMED).

16 Q WHAT WAS DONE BY LAW ENFORCEMENT IN THIS GENERAL AREA
17 DEPICTED ON STATE'S EXHIBIT 5 HERE?

18 A OKAY.

19 Q OFF BOULEVARD ROAD?

20 A ONCE AGAIN, I IMMEDIATELY -- THERE WAS JUST -- THERE
21 WAS DEPUTY HORTON, DEPUTY PRINCE, DEPUTY WINSTON AND
22 MYSELF. I LEFT DEPUTY HORTON WITH MRS. GRIFFITH FOR HER TO
23 -- ANYTHING THAT SHE WOULD REPORT, DEPUTY HORTON WAS
24 GOING TO RELATE TO ME AND ANYBODY ELSE AT THE SCENE.

25 I AT THAT TIME DECIDED WITH SUCH A SMALL GROUP

EDDIE HOBBS - DIRECT BY KOLB

1 OF PEOPLE WE DID A SMALL PERIMETER. WE BROUGHT UP DEPUTY
2 PRINCE'S VEHICLE INTO THE BACK YARD AND SHINED THE WOODS
3 WHERE WE HEARD THE -- SOUNDED LIKE STEPS.

4 WELL, WE LIT UP THE BACK YARD, THE BACK EDGE OF
5 THE WOODS AS BEST WE COULD. AT THAT TIME I HAVE ALREADY
6 CALLED OUT THE INVESTIGATOR AND I ALREADY CALLED OUT THE
7 COMMANDER ON CALL.

8 WE DID THAT SO PEOPLE WHO WERE ALREADY OUT, THAT
9 WAS OFF DUTY AND THEY WERE VOLUNTEERING. THE FIRST STEP I
10 DID THEN WAS TO -- I PUT TWO UNITS AT THE BOYS CLUB
11 BECAUSE I WAS BEING FAMILIAR WITH THOSE PATHS IN THOSE
12 WOODS FROM OTHER CALLS.

13 I KNEW WHERE THAT PATH LEAD. AND THAT'S -- THAT
14 WAS THE FIRST STEP I DID. AFTER THAT, IT PROBABLY WOULD BE
15 THE BEST TO STEP UP THE PERIMETER AND EVERYTHING. I SET
16 UP PROBABLY ABOUT SIX MORE PEOPLE WHO CAME UP TO THE SCENE
17 AND WE PUT THEM ON DIFFERENT PARALLEL ROADS TO THE HOUSE.

18 AT THAT -- AFTER THAT I RESPONDED TO TERESA
19 KUBALA'S HOUSE.

20 Q ALL RIGHT.

21 A IT...

22 Q LET ME ASK YOU. WHILE YOU WERE AT THE SCENE AT 817
23 TAYLOR STREET, DID YOU RECEIVE CUSTODY OF OFFICER KUBALA'S
24 GUN?

25 A YES, I DID. WHEN I LEFT DEPUTY HORTON WITH MRS.

EDDIE HOBBS - DIRECT BY KOLB

1 GRIFFITH AND I HAD DEPUTY PRINCE BRING THE VEHICLE UP TO
2 THE EDGE OF THE WOODS, MY DEPUTY WINSTON -- AT THAT TIME
3 HE TURNED TO ME AND SAID I HAVE THE SERGEANT'S GUN.

4 AND I SAID WELL GIVE IT TO ME. HE HANDED ME THE
5 GUN. HE SAID HE CHECKED IT AND I SAID VERY GOOD. AT THAT
6 TIME I WENT TO MY CAR, STILL ON THE ROADWAY IN FRONT OF
7 MRS. GRIFFITH'S HOUSE.

8 I LEFT DEPUTY PRINCE AND DEPUTY WINSTON AT THE
9 PERIMETER I SET UP THERE IN THE BACK YARD AND WENT TO MY
10 TRUNK AND I OPENED MY TRUNK. THERE IS A LIGHT THAT COMES
11 ON IN THE BACK OF MOST ALMOST ALL POLICEMAN'S CARS AND I
12 HAVE ONE.

13 AND I CHECKED THE WEAPON AT THAT TIME, HAD A
14 FULL MAGAZINE AND ONE AT THE CHAMBER.

15 Q ALL RIGHT. AND WHAT DID THAT INDICATE TO YOU WHEN YOU
16 CHECKED THAT?

17 A WELL, THE WEAPON COULD ONLY HOLD SIXTEEN ROUNDS,
18 FIFTEEN IN THE MAGAZINE AND ONE IN THE CHAMBER. I
19 PHYSICALLY SMELLED THE WEAPON. AND ALL OF THOSE THINGS
20 TELL ME -- ALL THE SENSES TELLS ME THAT THE WEAPON WAS NOT
21 FIRED.

22 Q ALL RIGHT. AND THERE WERE SIXTEEN LIVE ROUNDS IN THE
23 WEAPON?

24 A YES, THERE WAS.

25 Q NOW, WHAT DID YOU DO AFTER CHECKING?

EDDIE HOBBS - DIRECT BY KOLB

1 A I SECURED IT INTO MY TRUNK. BASICALLY HAVE A BOX THAT
2 I PUT INTO A TUPPERWARE LIKE BOX AND I CLOSED THAT AND
3 THEN I SHUT THE TRUNK.

4 Q ALL RIGHT.

5 A AND I ALSO -- I ALSO LOCKED THE RELEASE HANDLE IN MY
6 CAR DOOR.

7 Q LATER ON THAT EVENING, WHAT DID YOU DO AS FAR AS
8 FURTHER CHAIN OF CUSTODY ON THE GUN?

9 A AFTER MY VISIT TO TERESA KUBALA'S HOUSE, I RETURNED
10 TO THE STATION FOR DEBRIEFING AND TALKING TO MY SHIFT.
11 THIS WAS APPROXIMATELY 1:00. DEPUTY WINSTON CAME TO ME AND
12 SAID THAT THEY ARE ASKING FOR CHARLIE'S----

13 MR. LITTLEJOHN: HAVE TO OBJECT TO THE HEARSAY
14 STATEMENT.

15 THE COURT: SUSTAINED.

16 (WHEREUPON QUESTIONING RESUMED).

17 Q DID -- WHAT DID YOU DO AS FAR AS TURNING THE GUN OVER
18 TO SOMEBODY?

19 A I WAS TOLD THAT CHARLIE, IT WAS REPORTED TO ME----

20 MR. LITTLEJOHN: YOUR HONOR.

21 THE COURT: SUSTAINED. DON'T TELL US WHAT ANYBODY
22 TOLD YOU OFFICER, JUST TELL US WHAT YOU DID, SIR. ANSWER
23 THE QUESTION .

24 WITNESS: YES, SIR. I GAVE THE GUN -- I GAVE MY KEYS
25 TO DEPUTY WINSTON AND DEPUTY WINSTON WENT AND GOT MY GUN.

EDDIE HOBBS - DIRECT BY KOLB

1 I SAW HIM COME BACK UP. BUT -- GOT SERGEANT KUBALA'S GUN.
2 I SAW DEPUTY WINSTON COME BACK UP WITH THE WEAPON AND GO
3 INTO THE CAPTAIN'S OFFICE.

4 Q ALL RIGHT. AND THAT'S CAPTAIN...

5 A RICHARDSON. CAPTAIN BOBBY RICHARDSON. THAT'S THE
6 PATROL CAPTAIN.

7 Q NOW, YOU MENTIONED GETTING INFORMATION ON THE SUSPECT
8 BEING BOBBY WAYNE STONE, A PHYSICAL DESCRIPTION. WHAT WAS
9 THE PHYSICAL DESCRIPTION GIVEN?

10 A RATHER REFER TO THE REPORT THAT I WAS GIVEN OUT. BUT
11 IT WAS BASICALLY A VERY GENERAL DESCRIPTION OF A RED HAIR,
12 STRINGY FACIAL HAIR, THAT -- LIKE I SAID, I WOULD RATHER
13 REFER TO NOTES TO GET THE EXACT HEIGHT AND WEIGHT, BUT
14 THAT'S WHY I TAKE THEM AND WRITE THE REPORT.

15 Q ALL RIGHT.

16 A BUT I -- WHAT I WAS GIVEN IS WHAT I WROTE ON TO THE
17 REPORT.

18 Q LIKE TO REFER TO THIS INCIDENT REPORT?

19 A YES, SIR.

20 Q DEFENSE HAS A COPY. THAT'S THE TWO PAGE INCIDENT
21 REPORT.

22 A DESCRIPTION WAS 5-4, WEIGHED 140 POUNDS, RED HAIR,
23 BLUE EYES.

24 Q ALL RIGHT. THANK YOU, SIR. NOW, YOU MENTIONED -- I
25 CALLED YOU LIEUTENANT. WHAT DOES THAT MEAN?

EDDIE HOBBS - DIRECT BY KOLB

1 A LIEUTENANT IS ME AND SERGEANT KUBALA RAN A SHIFT
2 TOGETHER. COMPRISES OF SIX OR SEVEN MEN DEPENDING UPON HOW
3 MANY PEOPLE YOU HAVE AT A TIME. WE WERE CALLED SUPERVISORS
4 ON THAT SHIFT.

5 ME BEING A LIEUTENANT JUST A WEE BIT AHEAD OF A
6 SERGEANT. SO I WAS INITIALLY ULTIMATELY RESPONSIBLE FOR
7 THE SHIFT ON ANY GIVEN DATE.

8 Q AND WHAT IS THE SHIFT MEAN, THOUGH? WHAT DOES THAT
9 DO?

10 A A SHIFT IS LIKE I SAID A GROUP OF SIX OR SEVEN PEOPLE
11 AND WE WORK SHIFTS OF TEN HOURS. THIS PARTICULAR DAY IT
12 WAS AN AFTERNOON SHIFT. SO WE STARTED THE DAY AT 3:00 AND
13 WE END THE DAY AT 1 A.M.

14 WE ANSWER CALLS, RESPOND TO CALL SERVICE SUCH AS
15 THIS ONE. BUT IT COULD BE ANYTHING FROM JUST TAKING A
16 REPORT OF A LARCENY TO A DOMESTIC SITUATION OR SOMETHING
17 AS SERIOUS AS THIS.

18 Q SO WHEN YOU MENTIONED SIX OR SEVEN MEN, THAT COVERS
19 THE WHOLE COUNTY, ALL OF SUMTER COUNTY?

20 A YES, SIR. THAT'S CORRECT.

21 Q YOU KNOW HOW MANY SQUARE MILES THERE ARE IN SUMTER
22 COUNTY?

23 A OVER 60,000, I BELIEVE.

24 Q AND SO YOU'VE GOT A BIG AREA TO COVER?

25 A IT'S A TREMENDOUS AREA.

EDDIE HOBBS - DIRECT BY KOLB

1 Q ALL RIGHT. NOW, YOU INDICATED ABOUT GOING TO TERESA
2 KUBALA'S HOUSE. WHO IS THAT?

3 A TERESA KUBALA IS CHARLIE KUBALA'S WIFE.

4 Q ALL RIGHT. I GUESS IT'S OBVIOUS -- EXPLAIN WHY YOU
5 WOULD GO THERE.

6 A THEY, AT THE HOSPITAL THEY CALLED FOR A -- FOR
7 SUPERVISOR.

8 MR. LITTLEJOHN: I HAVE TO OBJECT TO ANY HEARSAY THAT
9 HE MAY HAVE GLEAMED FROM THE HOSPITAL AND AS TO THE
10 RELEVANCE.

11 THE COURT: I SUSTAIN AS TO RELEVANCE. LETS MOVE ON,
12 MR. SOLICITOR.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q CAN YOU IDENTIFY THIS PICTURE?

15 A THIS IS A PICTURE OF SERGEANT KUBALA.

16 Q ALL RIGHT.

17 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THIS
18 INTO EVIDENCE.

19 THE COURT: ANY OBJECTION?

20 MR. LITTLEJOHN: NO, YOUR HONOR.

21 THE COURT: VERY WELL. INTO EVIDENCE AS STATE'S
22 EXHIBIT 28 WITHOUT OBJECTION.

23 (STATE'S EXHIBIT NO. 28 MARKED FOR EVIDENCE).

24 MR. KOLB: ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

25 THE COURT: CROSS-EXAMINE.

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 CROSS-EXAMINATION BY MR. LITTLEJOHN:

2 Q LIEUTENANT HOBBS, YOU WERE THE SHIFT SUPERVISOR ON
3 THAT EVENING?

4 A THAT'S CORRECT.

5 Q SO WHEN YOU ARRIVED, YOU WERE MORE OR LESS IN CHARGE
6 OF THE INVESTIGATION AND THE SUBSEQUENT EVENTS?

7 A I WAS IN CHARGE EVEN BEFORE I ARRIVED BY PROCESS OF
8 RADIO. YOU KNOW, I'M ALWAYS RESPONSIBLE FOR THE SHIFT.

9 Q OKAY. SO YOU WERE RESPONSIBLE FOR SECURING THE SCENE,
10 MAKING SURE THE PHYSICAL EVIDENCE WAS MAINTAINED AND
11 DISPATCHING YOUR OFFICERS FOR VARIOUS DUTIES?

12 A THAT IS TRUE, BUT I WOULD SAY PRIMARY RESPONSIBILITY
13 WOULD BE OFFICER SAFETY, MY SAFETY, ANY OTHER CITIZEN
14 SAFETY WOULD COME FIRST.

15 ONCE THAT'S ACCOMPLISHED THEN I TURN TO PHYSICAL
16 EVIDENCE AND BEING RESPONSIBLE FOR THAT. I JUST -- PROPER
17 ORDER.

18 Q THEN THE ANSWER IS YES, THOSE THINGS?

19 A AFTER I DID THOSE OTHER THINGS. YES, SIR.

20 Q OKAY. AND YOU INDICATED THAT YOU ARRIVED SOME TWO
21 MINUTES AFTER CORPORAL PRINCE?

22 A YES, SIR.

23 Q AND I BELIEVE YOU SAID THE AMBULANCE IMMEDIATELY CAME
24 IN FRONT OF YOU?

25 A I LET THE AMBULANCE TURN IN FRONT OF ME ON TO

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 RIDGEWAY.

2 Q DO YOU KNOW WHO THE E M S OPERATORS WERE THAT NIGHT?

3 A I KNEW ONE PERSONALLY BEFORE THE INCIDENT AND ONE WAS
4 -- THE YOUNG ONE WAS NEW TO ME AT THAT TIME. I HAVE NOT
5 MET HIM BEFORE.

6 Q WHO WAS THE E M S TECHNICIAN THAT YOU KNEW?

7 A I KNOW HIM BY THE NAME AS JUNIOR.

8 Q JUNIOR. OKAY. NOW, I BELIEVE YOU SAID WHEN YOU
9 ARRIVED LANDROW TAYLOR WAS ON THE FRONT PORCH?

10 A I KNOW HIM AS MR. TAYLOR. YES, SIR.

11 Q OKAY. DID HE HAVE A WEAPON IN HIS HAND?

12 A I BELIEVE HE DID. I BELIEVE HE HAD A TYPE OF RIFLE.

13 Q TYPE OF RIFLE?

14 A NOT QUITE SURE. THAT'S WHAT I REMEMBER. YES, SIR.

15 Q IT WAS A LONG GUN THOUGH?

16 A YES, SIR.

17 Q WAS NOT A PISTOL?

18 A I DON'T REMEMBER THE PISTOL.

19 Q OKAY. YOU TOLD HIM TO GO IN THE HOUSE AND HE DID?

20 A THAT'S RIGHT.

21 Q OKAY. AND I BELIEVE YOU INDICATED THEN THAT YOU WENT
22 TO CORPORAL PRINCE AND HE INDICATED TO YOU THAT SHOTS HAD
23 BEEN FIRED?

24 A HE SAID A SHOT HAD BEEN FIRED AT HIM.

25 Q DID HE SAY A SHOT OR SHOTS?

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 A HE SAID A SHOT HAD BEEN FIRED AT HIM.

2 Q HE SAID IT WAS FIRED AT HIM?

3 A THAT'S WHAT HE TOLD ME THAT NIGHT. YES, SIR. THAT
4 WAS HIS WORDS TO ME.

5 Q OKAY. NOW, I BELIEVE YOU INDICATED AT THAT POINT YOU
6 SET UP THE PERIMETER BY DISPATCHING DIFFERENT OFFICERS. I
7 BELIEVE YOU SAID YOU SENT TWO TO THE BOYS CLUB?

8 A THAT WAS AFTER THE CLEARING OF THE SHED AND -- BUT
9 PEOPLE STARTED SIGNING UP ON THE AIR, DEPUTIES OFF DUTY.
10 AND AT THAT TIME AFTER CLEARING THE SHED AND TOUCHING BASE
11 WITH MRS. GRIFFITH AND LEAVING DEPUTY HORTON THERE AT THAT
12 TIME PEOPLE STARTED SIGNING UP, SAID WHERE DO YOU NEED ME
13 AND I STARTED PLACING THEM AT THAT TIME.

14 Q I BELIEVE YOU INDICATED YOU PLACED TWO UNITS AT THE
15 BOYS CLUB?

16 A YES, SIR.

17 Q THEN YOUR OTHER UNITS YOU PUT ON PARALLEL STREETS TO
18 RIDGEWAY STREET?

19 A PARALLEL STREETS TO -- WELL, ALL OVER THE
20 NEIGHBORHOOD, BUT IN BLOCK SECTIONS AND THEY WERE STAYING
21 MOBILE, PATROLLING UP AND DOWN THOSE STREETS IN THE BLOCK
22 AREAS OF THAT IMMEDIATE NEIGHBORHOOD.

23 Q THOSE WERE THE STREETS THAT TURN OFF OF BOULEVARD
24 STREET?

25 A YES, SIR. THAT'S CORRECT.

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 Q AND MOST OF THEM WOULD GO WHAT, ABOUT A BLOCK OR TWO
2 BLOCKS OFF OF BOULEVARD?

3 A IT IS A SMALL SUBDIVISION. I WOULD SAY MOST OF THEM.
4 THERE MIGHT BE SOME THREE, BUT YOU ARE RIGHT, MOST OF THEM
5 PROBABLY TWO.

6 Q MOST OF THEM GO LIKE IN A U SHAPE AND COME BACK?

7 A SOME DO NOT CONNECT TO EACH OTHER BY ROADS, BUT...

8 Q OKAY. ALL RIGHT, SIR. NOW, LIEUTENANT HOBBS, HOW
9 LONG DID YOU REMAIN THERE AT 817 TAYLOR STREET?

10 A I DID NOT GET A SIGN DOWN TIME. FORTY-FIVE TO AN
11 HOUR.

12 Q FIVE TO AN HOUR?

13 A TOTAL TIME.

14 Q OKAY. LET ME SHOW YOU THIS INCIDENT REPORT THAT
15 SOLICITOR KOLB SHOWED YOU.

16 A SURE, SIR.

17 Q AND IT INDICATES ON THERE A DEPART TIME OF 2350
18 HOURS?

19 A YES, SIR.

20 Q THAT BE 11:50; IS THAT CORRECT?

21 A YES, SIR.

22 Q OKAY. AND THAT'S THE TIME THAT YOU DEPARTED THE
23 AREA?

24 A NO, SIR. THAT'S GOING TO BE THE SIGN OFF TIME FROM
25 WHEN THE DEPUTY WHO -- THE LAST DEPUTY WHO CLEARED THAT

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 SCENE, HIS SIGN OUT TIME.

2 Q OKAY.

3 A OTHER DEPUTIES CAN COME IN AND OUT OF CRIME SCENES,
4 BUT WHEN THE SCENE IS OFFICIALLY OVER, THAT'S WHAT TIME IS
5 DOCUMENTED.

6 BECAUSE I LEAVE DOES NOT MEAN THAT SCENE IS
7 THROUGH OR THAT INCIDENT IS THROUGH.

8 Q I SEE. BUT YOU ARE STILL IN CHARGE OF THE DEPUTIES
9 THAT ARE STILL AT THE SCENE?

10 A CAPTAIN ALSBROOKS RESPONDED AND HE'S BEEN IN
11 INVESTIGATIONS AND I TURNED IT OVER TO HIM, THE PERIMETER.
12 I TOLD HIM WHERE I PUT EACH PERSON.

13 I TOLD -- TO THE BEST OF MY MEMORY I GAVE HIM A
14 LIST OF EVERYBODY WHO I KNEW THAT CHECKED IN WITH ME.

15 Q OKAY.

16 A AT THAT TIME IT TURNED -- I WOULD SAY THERE WAS
17 PROBABLY A DOZEN DEPUTIES OUT THERE AT THAT TIME.

18 Q OKAY. AND YOU WROTE UP THIS INCIDENT REPORT AS KIND
19 OF A WRAP UP OF THE EVENINGS EVENTS; IS THAT RIGHT?

20 A YES, SIR. THAT'S TRUE.

21 Q OKAY. AND LET ME ASK YOU THIS: LIEUTENANT HOBBS, YOU
22 HAVE INCIDENT TYPE AT THE -- AT THE VERY TOP?

23 A YES, SIR. I SEE THE INCIDENT TYPE.

24 Q AND IT SAYS ATTEMPTED BURGLARY?

25 A YES, SIR.

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 Q AND THEN GOING TO THE RIGHT IT SAYS COMPLETED AND YOU
2 CHECKED NO?

3 A YES, SIR. IT IS CHECKED.

4 Q AND NEXT TO THAT IT SAYS FORCED ENTRY AND YOU CHECKED
5 NO?

6 A OKAY. AS YOU -- IF YOU LOOK TO THE BOTTOM OF THE
7 REPORT, MY NAME IS UP THERE AND SO IS DEPUTY TONY HORTON.
8 WHAT HAPPENED WAS DEPUTY HORTON STARTED THE REPORT AND I
9 WROTE THE NARRATIVE BECAUSE HE WAS CALLED AWAY BY SLED TO
10 GO BACK IN MRS. GRIFFITH'S HOUSE AFTER IT WAS OVER.

11 Q SO SOMEBODY ELSE CHECKED NO TO FORCED ENTRY?

12 A YES, SIR. THAT'S CORRECT.

13 Q AND YOU -- BUT YOU SIGNED OFF ON THIS REPORT?

14 A THAT IS CORRECT ALSO.

15 Q SO OBVIOUSLY ONE OF THE DEPUTIES OUT THERE---.

16 A NO, I UNDERSTAND WHAT HE DID. I'M JUST -- I AM
17 MAKING THAT CLEAR AT THIS TIME. WHAT HAPPENED TO THE
18 REPORT AND WHAT HAPPENED THAT NIGHT AND THE CHAOS OF IT
19 ALL.

20 Q AND SO WHAT YOU ARE INDICATING TO US IS ONE OF THE
21 DEPUTIES WHO WAS ON THE SCENE INDICATED THAT THERE WAS NO
22 FORCED ENTRY IN THIS OFFICIAL INCIDENT REPORT?

23 A THAT'S WHY THE MARK IS BLOCKED.

24 Q TWO TYPES?

25 A YES, SIR. BECAUSE THE MURDER WOULD NOT BE COINCIDED

EDDIE HOBBS - CROSS BY LITTLEJOHN

1 WITH A FORCED ENTRY OUT IN A YARD.

2 Q BUT LIEUTENANT, IT SAYS FORCED ENTRY; NO?

3 A WHEN YOU SAID TWO TIMES.

4 Q TWO TIMES?

5 A THAT'S THE ONLY PART, THE MURDER WOULD NOT BE A
6 FORCED ENTRY OUT IN THE YARD. I MEAN YOU ARE TALKING ABOUT
7 TWO TIMES. THAT'S WHAT I AM SPEAKING OF.

8 Q IT SAYS IT TWO TIMES; DOESN'T IT?

9 A YES, SIR. IT DOES.

10 Q THANK YOU. NO FURTHER QUESTIONS.

11 THE COURT: VERY WELL. REDIRECT, SOLICITOR?

12 MR. KOLB: NO. COME DOWN.

13 THE COURT: ALL RIGHT. THANK YOU, MR. HOBBS. YOU CAN
14 STEP DOWN.

15 (WHEREUPON THE WITNESS LEFT THE STAND).

16 MR. KOLB: BOBBY RICHARDSON.

17 BOBBY RICHARDSON, BEING FIRST
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE COURT: THANK YOU. IF YOU WOULD PLEASE FOR THE
20 RECORD STATE YOUR FULL NAME AND SPELL YOUR LAST.

21 WITNESS: OKAY. ROBERT WILLIAM RICHARDSON, R I C H A
22 R D S O N.

23 THE COURT: THANK YOU, SIR.

24 DIRECT EXAMINATION BY MR. KOLB:

25 Q CAPTAIN RICHARDSON, HOW ARE YOU EMPLOYED?

BOBBY RICHARDSON - DIRECT BY KOLB

1 A I'M EMPLOYED BY THE SUMTER COUNTY SHERIFF'S OFFICE.

2 Q YOUR POSITION AND RESPONSIBILITY?

3 A I'M THE PATROL CAPTAIN AS WELL AS OVER THE TRAFFIC
4 DIVISION.

5 Q ALL RIGHT, SIR. ARE RECORDS KEPT AT THE SHERIFF'S
6 DEPARTMENT OF WEAPONS ISSUED TO SPECIFIC DEPUTIES?

7 A YES, SIR. THEY ARE.

8 Q SERIAL NUMBERS?

9 A YES, SIR.

10 Q ASK YOU IF YOU CAN IDENTIFY STATE'S EXHIBIT NUMBER
11 27.

12 A YES, SIR. THIS IS THE SMITH AND WESSON NINE
13 MILIMETER. MODEL 5946. ACCORDING TO THE SERIAL NUMBER
14 THIS WEAPON WAS ISSUED TO SERGEANT CHARLIE KUBALA.

15 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THIS
16 INTO EVIDENCE AT THIS TIME.

17 THE COURT: ANY OBJECTION?

18 MR. LITTLEJOHN: NO, YOUR HONOR.

19 THE COURT: VERY WELL.

20 (STATE'S EXHIBIT NO. 27 MARKED FOR EVIDENCE).

21 THE COURT: 27 INTO EVIDENCE WITHOUT OBJECTION.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q DID YOU RECEIVE EXHIBIT 27 ON THE NIGHT OF FEBRUARY
24 26TH, 1996?

25 A ACTUALLY IT WAS THE MORNING OF THE 27TH.

BOBBY RICHARDSON - DIRECT BY KOLB

1 Q OKAY. SO AFTER MIDNIGHT?

2 A YES, SIR.

3 Q ALL RIGHT. TELL US ABOUT THAT.

4 A I RECEIVED THAT PARTICULAR WEAPON FROM SERGEANT MIKE
5 WINSTON WHO IS ALSO A PATROL OFFICER. AND AT 3:30 A.M. I
6 TURNED THAT WEAPON OVER TO SPECIAL AGENT TOM DARNELL WITH
7 SLED.

8 Q DID YOU TAMPER WITH IT IN ANY WAY?

9 A NO, SIR.

10 Q DURING THE TIME YOU HAD IT?

11 A NO, SIR.

12 Q ALL RIGHT. ANSWER ANY QUESTIONS THE DEFENSE MAY
13 HAVE.

14 MR. LITTLEJOHN: NO QUESTIONS.

15 THE COURT: YOU MAY COME DOWN, MR. RICHARDSON. THANK
16 YOU, SIR.

17 (WHEREUPON THE WITNESS LEFT THE STAND).

18 MR. KOLB: LEROY DENNIS.

19 THE COURT: LET ME SEE YA'LL JUST A SECOND, PLEASE.

20 (WHEREUPON A BENCH CONFERENCE WAS HELD)

21 LEROY DENNIS, BEING FIRST DULY

22 SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. KOLB:

24 Q GIVE US YOUR NAME AND OCCUPATION, PLEASE.

25 A MY NAME IS LEROY DENNIS. I'M A PARAMEDIC, SUMTER

LEROY DENNIS - DIRECT BY KOLB

1 COUNTY E M S.

2 Q NEED TO SPEAK A LITTLE LOUDER.

3 A I'M SORRY. LEROY DENNIS, EMPLOYED I'M A PARAMEDIC
4 WITH SUMTER COUNTY E M S.

5 Q AND E M S IS EMERGENCY MEDICAL SERVICES?

6 A YES, SIR. THAT'S CORRECT.

7 Q WHAT WE CALL AMBULANCE PERSONNEL?

8 A YES, SIR.

9 Q ALL RIGHT. AND YOU ARE AN EMERGENCY MEDICAL
10 TECHNICIAN?

11 A YES, SIR.

12 Q ALL RIGHT. IN THE COURSE OF YOUR DUTIES, DO YOU KEEP
13 RECORDS AND REPORTS IN THE REGULAR COURSE OF BUSINESS?

14 A YES, SIR.

15 Q ALL RIGHT, SIR. AND IS THIS A REPORT THAT YOU
16 PREPARED ABOUT THE CALL TO 817 TAYLOR STREET?

17 A YES, SIR.

18 Q ALL RIGHT. I WANT TO ASK YOU WHAT TIME YOU WERE
19 CALLED THAT NIGHT.

20 A THE CALL CAME IN AT 1911.

21 Q ALL RIGHT. 1911 IS 7:11 P.M.

22 A YES, SIR. THAT'S CORRECT.

23 Q ALL RIGHT. AND WHAT TIME -- GIVE US THE TIMES AFTER
24 THAT. I WILL GO BACK AND ASK YOU WHAT OCCURRED.

25 A THE CALL CAME IN ON 1111 P.M.. WE WERE IN ROUTE AT

LEROY DENNIS - DIRECT BY KOLB

1 7:12.

2 Q VOICE -- A LOT LOUDER.

3 A SORRY. 7:11 THE CALL CAME IN. AND DISPATCH THE SAME.
4 AT 19 OR 7:12 P.M. WE RESPONDED WHICH MEANS THE AMBULANCE
5 ACTUALLY LEFT THE STATION. WE ARRIVED ON THE SCENE AT 817
6 TAYLOR STREET AT 7:18 AND WE DEPARTED WITH OUR---

7 Q 7:18 P.M.?

8 A YES, SIR. THAT'S CORRECT.

9 Q ALL RIGHT. OKAY.

10 A WE -- I'M SORRY. WE GOT ON THE SCENE AT 7:18.

11 Q ALL RIGHT.

12 A WE LEFT THE SCENE AT 7:35 P.M.. AND GOT TO THE
13 HOSPITAL AT 7:40.

14 Q ALL RIGHT. COULD YOU TELL US WHAT YOU FOUND WHEN YOU
15 GOT TO THE SCENE?

16 A ONCE THE SCENE WAS SECURED FOR US TO PROCEED WITH OUR
17 PATIENT CARE, WE FOUND DEPUTY KUBALA LYING ON THE GROUND
18 WITHOUT A PULSE, WITHOUT BREATHING, BLOOD ALL OVER HIS
19 FACE, EARS, NECK, CHEST. THAT WAS ABOUT IT.

20 Q NOW, YOU SAID -- YOUR VOICE IS SO SOFT. AND YOU --
21 YOU REALLY DON'T WANT TO KEEP IT UP. YOU SAID THAT
22 SOMETHING ABOUT A PULSE. AND I COULDN'T HEAR YOU...

23 A OKAY. HE DID NOT HAVE A PULSE. HE WAS NOT BREATHING.

24 Q ALL RIGHT. COULD YOU TELL US ABOUT THE POSITION OF
25 HIS BODY?

1 LEROY DENNIS - DIRECT BY KOLB

2 A HE WAS LYING ON HIS BACK WHICH IS FACE -- FACE UP.
3 HIS HANDS WERE SPREAD OUT. THE PALM OF HIS HANDS WERE UP.
4 AND HIS LEFT HAND OR OFF HIS LEFT HAND FINGER TIPS WAS A
5 WALKIE TALKIE.

6 ON THE SIDE OF HIS RIGHT HAND A FEW INCHES FROM
7 HIS FINGER TIPS WAS A HANDGUN. AND THERE WAS A FLASHLIGHT
8 IF I'M NOT MISTAKEN THAT WAS UNDER HIS LEFT ARM, I
9 BELIEVE.

10 Q YOU REMEMBER WHETHER IT WAS ON OR OFF?

11 A I BELIEVE IT WAS ON.

12 Q ALL RIGHT, SIR. WHEN YOU INDICATE NO PULSE AND NOT
13 BREATHING, DID THAT CIRCUMSTANCE EVER CHANGE FROM THE TIME
14 YOU ARRIVED UNTIL YOU GOT TO THE HOSPITAL?

15 A NO, SIR.

16 Q OKAY. WHAT HAPPENED TO THAT FLASHLIGHT, IF YOU KNOW?

17 A I DON'T REMEMBER, SIR.

18 Q DID YA'LL HAVE SOMEBODY HELP YOU WITH LIGHTING DURING
19 WORKING ON THE...

20 A MR. TAYLOR HELD A LIGHT FOR US UNTIL WE COULD GET MR.
21 KUBALA TO THE BACK OF OUR AMBULANCE WHERE IT WAS PROPER
22 LIGHTING FOR FURTHER PATIENT CARE.

23 Q ALL RIGHT. THEN YA'LL LEFT AND WENT ON TO THE
24 HOSPITAL?

25 A YES, SIR.

Q ALL RIGHT. AND WHEN I SAY YA'LL, ARE THERE TWO PEOPLE

LEROY DENNIS - DIRECT BY KOLB

1 ON THE CALL?

2 A YES, SIR.

3 Q ALL RIGHT. WHO ELSE WAS WITH YOU?

4 A JUNIOR DAVIS.

5 Q ALL RIGHT.

6 A WAS MY PARTNER.

7 Q ALL RIGHT. IS THERE -- DO YA'LL HAVE ROLES? I NOTICE
8 ON YOUR REPORT GOT TWO DIFFERENT ROLES. WHO IS THE PRIMARY
9 PATIENT ATTENDANT ON THIS CALL?

10 A I AM, SIR.

11 Q ALL RIGHT. AND THE SECOND ATTENDANT WAS MR. DAVIS?

12 A YES, SIR. CORRECT.

13 Q ALL RIGHT. IF YOU WOULD ANSWER ANY QUESTIONS THE
14 DEFENSE MAY HAVE.

15 THE COURT: ANY QUESTIONS?

16 MR. LITTLEJOHN: JUST A FEW.

17 CROSS-EXAMINATION BY MR. LITTLEJOHN:

18 Q MR. DENNIS?

19 A YES, SIR.

20 Q WHEN YOU ARRIVED AT 817 TAYLOR STREET AND WENT TO THE
21 LOCATION WHERE SERGEANT KUBALA WAS, WAS IT DARK?

22 A YES, SIR.

23 Q VERY DARK; WASN'T IT?

24 A YES, SIR.

25 Q OKAY. YOU INDICATED THAT YOU -- THERE WAS A

LEROY DENNIS - CROSS BY LITTLEJOHN

1 FLASHLIGHT THERE. AND YOU SAY MR. TAYLOR HELD IT FOR
2 YA'LL?

3 A YES, SIR. HE HELD IT FOR US.

4 Q AND YOU DON'T KNOW WHAT HAPPENED TO THAT FLASHLIGHT?

5 A I AM NOT CERTAIN. I WAS MORE WORRIED ABOUT THE
6 PATIENT.

7 Q I UNDERSTAND. DID IT GO ON THE AMBULANCE WITH YA'LL?

8 A I'M NOT SURE, SIR.

9 Q YOU DON'T KNOW. OKAY. MR. DENNIS, WERE YOU SUBPOENAD
10 TO COME TO COURT?

11 A YES, SIR.

12 Q WERE YOU SUBPOENAED TO COME TO THE COURTHOUSE LAST
13 WEEK?

14 A I DON'T BELIEVE SO.

15 Q YOU DON'T THINK SO? DID YOU COME UP HERE TO A
16 MEETING?

17 A NOT HERE, SIR.

18 Q WHERE WAS IT?

19 A LAW ENFORCEMENT CENTER.

20 Q WHO ALL WAS THERE?

21 A MISCELLANEOUS PEOPLE.

22 Q DIFFERENT SHERIFF'S DEPARTMENT PEOPLE?

23 A SEVERAL DEPUTIES.

24 Q SOLICITOR'S OFFICE?

25 A YES, SIR.

LEROY DENNIS - CROSS BY LITTLEJOHN

1 Q OKAY. THAT'S ALL.

2 THE COURT: REDIRECT?

3 MR. KOLB: THANK YOU. THAT'S ALL.

4 THE COURT: THANK YOU. YOU MAY STEP DOWN, MR. DENNIS.

5 (WHEREUPON THE WITNESS LEFT THE STAND).

6 MR. KOLB: YOUR HONOR, WE CALL RAY MACKESSY.

7 THE COURT: ALL RIGHT.

8 RAY MACKESSY, BEING FIRST DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 THE COURT: STATE YOUR FULL NAME FOR THE RECORD AND
11 SPELL YOUR LAST .

12 WITNESS: M A C K E S S Y

13 DIRECT EXAMINATION BY MR. KOLB:

14 Q MR. MACKESSY, CAN YOU TELL US ABOUT YOUR POSITION,
15 WHAT YOUR JOB IS?

16 A MY RANK IS INVESTIGATOR. I'M -- MY DUTIES ARE CRIME
17 SCENE TECHNICIAN AND EVIDENCE CUSTODIAN.

18 Q AND SUMTER COUNTY SHERIFF'S DEPARTMENT?

19 A YES. THAT'S CORRECT.

20 Q ALL RIGHT. AND HOW LONG HAVE YOU BEEN INVOLVED IN LAW
21 ENFORCEMENT?

22 A 26 YEARS.

23 Q COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY A
24 LITTLE BIT ABOUT YOUR CAREER?

25 A I STARTED MY CAREER IN BALTIMORE WHERE I AM FROM. I

RAY MACKESSY - DIRECT BY KOLB

1 SPENT FIFTEEN YEARS WITH THE BALTIMORE POLICE DEPARTMENT.

2 I MOVED HERE IN 1985 AND WAS HIRED AS A DEPUTY SHERIFF FOR

3 SUMTER COUNTY SHERIFF'S DEPARTMENT IN JANUARY OF 1986

4 WHERE I HAVE REMAINED FOR THE LAST ELEVEN YEARS.

5 Q ALL RIGHT, SIR. I BELIEVE YOU MARRIED A SUMTER GIRL
6 AND LIVE HERE?

7 A YES, SIR.

8 Q INVESTIGATOR MACKESSEY, DURING THE TIME YOU HAVE BEEN
9 WITH THE SHERIFF'S DEPARTMENT YOU WERE AN INVESTIGATOR AND
10 THEN WORKED IN HANDLING CRIME SCENES?

11 A YES, SIR. I STARTED OUT AS A DEPUTY IN THE PATROL
12 DIVISION WHERE I STAYED FOR APPROXIMATELY EIGHTEEN MONTHS.
13 THEN PROMOTED TO INVESTIGATOR WHERE I WORKED CASES FOR A
14 NUMBER OF YEARS.

15 AND I WAS ALSO EVIDENCE CUSTODIAN WHEN I CAME
16 OVER TO INVESTIGATIONS AND HANDLED -- STARTED HANDLING
17 CRIME SCENE PROCESSING. WASN'T UNTIL APPROXIMATELY 1991 I
18 BELIEVE THAT I STARTED HANDLING CRIME SCENE PROCESSING AND
19 EVIDENCE WORK ON A FULL TIME BASIS AND I DIDN'T WORK CASES
20 ANY MORE.

21 Q COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY
22 ABOUT YOUR TRAINING IN CRIME SCENE PROCESSING?

23 A MY TRAINING IN CRIME SCENE PROCESSING STARTED IN
24 BALTIMORE WHERE I WENT THROUGH LATENT FINGERPRINT
25 PROCESSING SCHOOL CONDUCTED BY THE F.B.I. AND THE

RAY MACKESSY - DIRECT BY KOLB

1 BALTIMORE POLICE.

2 ALSO DEALT WITH CRIME SCENE PROCESSING ALSO. I
3 HAVE ALSO RECEIVED TRAINING FROM THE SOUTH CAROLINA
4 CRIMINAL JUSTICE ACADEMY IN CRIME SCENE PROCESSING, LATENT
5 FINGERPRINT PROCESSING BOTH BASIC AND ADVANCED.

6 I HAVE ALSO RECEIVED TRAINING IN BASIC AND
7 ADVANCED PHOTOGRAPHY AND I HAVE ATTENDED A NUMBER OF
8 SCHOOLS RANGING FROM THREE DAYS TO A WEEK CONDUCTED BY THE
9 F.B.I. AT VARIOUS LOCATIONS IN SOUTH CAROLINA ON LATENT
10 PRINT, FINGER PRINT PROCESSING AND CRIME SCENE PROCESSING.

11 Q COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY A
12 LITTLE BIT ABOUT THE PAPER WORK AND PROCESSES THAT ARE
13 INVOLVED IN KEEPING UP THE EVIDENCE AND SEALED CONTAINERS,
14 EVIDENCE ROOMS, THAT SORT OF THING.

15 A YES, SIR. WHEN EVIDENCE IS BROUGHT TO THE EVIDENCE
16 ROOM EITHER BY MYSELF OR OTHER OFFICERS, THEY FILL OUT
17 WHAT IS CALLED A CHAIN OF CUSTODY PROCEEDING WHERE THEY
18 LIST WHERE THEY RECEIVE THE ITEM OR WHO THEY RECEIVED IT
19 FROM, THE DATE AND TIME THEY RECEIVED THAT ITEM, THE CARD
20 ALSO HAS A PLACE FOR THE CASE NUMBER OF THAT PARTICULAR
21 CASE AND THE NAME OF THE OFFICER WHO SEIZED THAT EVIDENCE.

22 IN THE BLOCK BELOW THAT IS A DESCRIPTION BLOCK
23 AND THEY LIST EACH ITEM THAT THEY ARE TURNING IN AND A
24 BRIEF DESCRIPTION OF THAT ITEM.

25 ONCE IT COMES INTO THE EVIDENCE ROOM I ASSIGN A

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1 PROPERTY NUMBER TO IT. AND ALSO A VIN NUMBER WHERE I AM
2 GOING TO STORE THAT ITEM IN THE EVIDENCE ROOM.

3 I FIX MY INITIALS AND MY PROPERTY NUMBER TO THAT
4 EVIDENCE THAT DOESN'T REQUIRE ANY KIND OF LATENT
5 FINGERPRINT PROCESSING. I DON'T WANT TO DESTROY OR WRITE
6 OVER AN AREA THAT MAY HAVE A FINGER PRINT ON IT.

7 THE ITEM IS THEN PLACED IN VARIOUS TYPES OF
8 PACKAGING, HEAT SEALED BAGS. IF I PLACE AN ITEM IN A HEAT
9 SEALED BAG I THEN AFFIXING MY INITIALS AND DATE OVER THE
10 SEAL.

11 I ALSO STORE ITEMS IN ENVELOPES, LARGE MANILLA
12 ENVELOPES OR VIALS OR GROCERY BAGS. ONCE I SEAL THAT BAG
13 OR THAT ITEM, I THEN PUT TAMPER PROOF EVIDENCE TAPE OVER
14 THAT AND SIGN MY INITIALS AND DATE IT.

15 IF THAT EVIDENCE IS TAMPERED WITH IN ANY WAY I
16 WOULD KNOW IT BECAUSE THAT TAPE WOULD BE BROKEN. IF AN
17 ITEM IS TO GO TO SLED, I AM USED TO THE SLED PACKAGING,
18 WHAT THEY REQUIRE.

19 I WOULD PACKAGE IT ACCORDING TO THEIR STANDARDS
20 AND TRANSPORT THE ITEM TO SLED WHERE I WOULD TURN IT OVER
21 TO A SLED EVIDENCE CUSTODIAN OR LOG IN TECHNICIAN.

22 Q EXPLAIN TO US ABOUT THE PROCESS PARTICULARLY AT SLED
23 OF WHY YOU PUT THINGS IN SEALED CONTAINERS AND WHAT THE
24 PURPOSE OF THAT IS.

25 A THE PURPOSE OF PUTTING SOMETHING IN A SEALED

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1 CONTAINER WITH YOUR INITIALS AND DATE ON IT IS TO PROTECT
2 IT -- ONE PROTECT THE EVIDENCE AND ALSO TO PROTECT IT FROM
3 ANY SORT OF TAMPERING SO NO ONE CAN OPEN THAT UNLESS IT
4 WOULD BE AUTHORIZED PERSONS THAT ARE DEALING DIRECTLY WITH
5 THAT EVIDENCE.

6 Q ALL RIGHT. IF YOU WANT SOMETHING LOOKED AT AT SLED BY
7 A PARTICULAR DEPARTMENT AT SLED, DO YOU ACTUALLY HAVE TO
8 TAKE THE ITEM TO THAT DEPARTMENT AT SLED?

9 A I WILL TAKE THE ITEM TO SLED. OF COURSE, I FILL OUT A
10 SLED ANALYSIS REQUEST FORM WHICH LISTS THE ITEM AND THE
11 EXAM THAT I AM REQUESTING. I WILL TAKE THAT ITEM TO SLED
12 AND TURN IT IN -- EITHER TURN IT OVER TO THE SLED LOG IN
13 PERSONNEL OR DIRECTLY OVER TO A PERSON SAY IN THE LATENT
14 FINGERPRINT SECTION WHO IS GOING TO BE POSSESSING THAT
15 ITEM FOR FINGERPRINTS. I WILL TURN IT OVER TO HIM RIGHT
16 THERE AT LOG IN.

17 Q WHAT I WANT YOU TO EXPLAIN IS ABOUT THE PURPOSE OF
18 THE HEAT SEALED BAG THAT YOU DON'T HAVE TO ACTUALLY TAKE
19 IT TO THE ANALYST.

20 A DON'T HAVE TO TAKE EXACTLY RIGHT TO THE ANALYST. I
21 CAN TURN IT OVER TO LOG IN. THE SEAL IS NOT GOING TO BE
22 BROKEN UNTIL IT GETS TO THE LAB TECHNICIAN THAT'S ACTUALLY
23 GOING TO BE DOING THE PROCESSING.

24 Q ALL RIGHT. SO IF YOU PUT SOMETHING IN A CONTAINER AND
25 SEAL IT WITH EVIDENCE TAPE OR HEAT SEALED BAG AND IT'S -

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1 AND THEN THE TECHNICIAN RECEIVES IT FROM LOG IN PEOPLE AT
2 SLED STILL IN THAT CONTAINER STILL SEALED, WHAT DOES THAT
3 ENABLE US TO DO?

4 A ENABLE US TO TELL THE EVIDENCE HAS NOT BEEN TAMPERED
5 WITH AT ALL SINCE LEAVING THE CRIME SCENE.

6 Q ALL RIGHT, SIR. NOW, YOU HAVE BEEN IN THE COURTROOM
7 MAINTAINING THE EVIDENCE AND I KNOW WE HAVE A LOT OF BOXES
8 OVER HERE. HOLD THIS ONE UP AS AN EXAMPLE. BUT WHAT IS
9 THIS RED AND YELLOW STUFF ON HERE?

10 A THE YELLOW TAPE, THIS IS THE EVIDENCE TAMPERING TAPE
11 THAT SLED GIVES. THE LAB WOULD SEAL THAT OR LOG IN WOULD
12 SEAL THAT.

13 THE OTHER RED AND WHITE TAPE IS THE TAPE WE USE
14 AT THE SUMTER COUNTY SHERIFF'S DEPARTMENT. THERE IS A
15 WHITE SECTION ON THE BOTTOM WHERE I SIGN MY INITIALS AND
16 DATE ANY TIME THAT BOX IS OPENED AND RE-SEALED AND PUT A
17 SEAL ON IT STATING WHEN WE RESEALED THAT WEAPON AND IT
18 STAYS IN THE EVIDENCE ROOM.

19 Q ALL RIGHT. BESIDES YOU SEALING ITEMS AND THEN THE
20 ACTUAL TECHNICIANS AT SLED UNSEALING IT OR TESTING IT, HAS
21 IT BEEN RE-SEALED AND UNSEALED AND RE-SEALED AGAIN A
22 NUMBER OF TIMES AND IF SO CAN YOU EXPLAIN THAT.

23 A YES, SIR. IT'S RE-SEALED NUMBER OF TIMES FOR VARIOUS
24 REASONS. WHEN IT COMES BACK FROM SLED I WANT TO CHECK TO
25 SEE WHAT THE ITEMS ARE THAT I AM RECEIVING FROM SLED AND

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1 VERIFY THAT.

2 SLED, WHEN THEY SEND BACK THE PAPERWORK THEY
3 HAVE A BAR SYSTEM. ALL THEY HAVE IS A BAR NUMBER. IT
4 DOESN'T REALLY TELL ME EXACTLY WHAT IS INSIDE THAT, BUT I
5 IMAGE MAY BE SEVERAL ITEMS IN THAT PACKAGE.

6 SO I OPEN MY -- I UNSEAL IT. I BREAK THE SLED
7 EVIDENCE SEAL AND LIST ON AN EVIDENCE CARD EXACTLY WHAT I
8 AM RECEIVING FROM SLED. I THEN RESEAL IT WITH MY EVIDENCE
9 TAPE, INITIALS AND DATE ON IT.

10 THERE IS OTHER TIMES WHERE THE SOLICITORS
11 OFFICE, DEFENSE ATTORNEYS, INVESTIGATORS FOR DEFENSE
12 ATTORNEY ALSO COME OVER AND REQUEST TO SEE EVIDENCE PRIOR
13 TO TRIAL.

14 THE EVIDENCE WILL THEN BE UNSEALED AND I WILL
15 SEAL IT BACK UP. A LOT OF TIMES IT GETS TO THE POINT WHERE
16 YOU ARE SEALING AND UNSEALING SO SOME TIMES YOU RUN OUT OF
17 ROOM FOR THE TAPE, SPOTS WHERE THE TAPE WENT.

18 THE EVIDENCE IS CONTAINED IN THAT EVIDENCE ROOM
19 IN MY POSSESSION THE WHOLE TIME.

20 Q ALL RIGHT. AND YOU KEEP VERY STRICT RECORDS IN THIS
21 REGARD?

22 A YES, SIR. I DO.

23 Q AND WE SUPPLIED THE DEFENSE IN THIS CASE WITH COPIES
24 OF ALL OF YOUR RECORDS OF EVIDENCE?

25 A YES, SIR.

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1 Q CONTROL? AND HAS THE DEFENSE AS WELL AS MY OFFICE
2 REVIEWED WITH YOU THE EVIDENCE IN THIS CASE?

3 A YES, SIR.

4 Q OKAY. DURING THIS TRIAL SO FAR A HAVE YOU BEEN OVER
5 HERE UNSEALING ITEMS, I GOT READY TO OFFER THEM INTO
6 EVIDENCE?

7 A YES, SIR.

8 Q MR. MACKESSY, ON THE NIGHT OF FEBRUARY THE 26TH,
9 1996, DID YOU RESPOND TO 817 TAYLOR STREET?

10 A YES, SIR.

11 Q ALL RIGHT. AND WHAT WAS YOUR RESPONSIBILITY?

12 A MY RESPONSIBILITY AT FIRST WAS JUST TO SECURE THE
13 AREA, TO STAND BY. I WAS THEN INSTRUCTED ONCE THE AREA WAS
14 CLEARED IT AND WAS SAFE ENOUGH FOR ME TO MOVE IN, TO
15 CONDUCT A CRIME SCENE PROCESSING. I WAS THEN ASKED TO
16 CONDUCT THE CRIME SCENE PROCESSING AT THAT HOUSE AND OF
17 THAT AREA.

18 Q DID YOU TAKE THESE PHOTOGRAPHS THAT -- HOLD UP A
19 GROUP OF THEM HERE. HOLD UP A GROUP OF THEM HERE.

20 A YES, SIR, I TOOK THESE PHOTOGRAPHS.

21 Q I WANT TO ASK YOU SPECIFICALLY IN REGARD TO STATE'S
22 EXHIBIT NUMBER 25. THAT'S ONE OF THE ONES YOU TOOK. DID
23 YOU DESCRIBE WHERE THAT AREA WAS AND WHAT ITEMS ARE
24 LOCATED THERE?

25 A THE ITEMS IN THIS PHOTOGRAPH ON STATE'S EXHIBIT

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1 NUMBER 25 DEPICT THREE CONES, ORANGE CONES THEY USE AT
2 CRIME SCENES TO MARK EVIDENCE WHEN I'M PHOTOGRAPHING.
3 FIVE, SIX AND SEVEN.

4 NUMBER 5 IS PORTABLE WALKIE TALKIE THAT I FOUND
5 ON THE GROUND NEAR THE STEPS OF THE SIDE PORCH. NUMBER 6
6 IS A PAIR OF HANDCUFFS ALSO NEAR THE SIDE OF THE PORCH ON
7 THE GROUND. NUMBER 7 IS THE SMALLER BLOOD THERE BY THE
8 SIDE PORCH.

9 Q ALL RIGHT. LET ME ASK YOU ABOUT THOSE ITEMS IN
10 PARTICULAR. WHAT CAN YOU TELL US ABOUT THAT WALKIE TALKIE?

11 A THE WALKIE TALKIE WAS LYING FACE DOWN WITH THE
12 SPEAKER AGAINST THE GROUND. WHEN I FIRST APPROACHED THIS
13 CRIME SCENE INITIALLY JUST TO TAKE A QUICK LOOK -- AREA
14 NOT SECURED, BUT I AT LEAST WANTED TO TAKE A QUICK LOOK AT
15 WHAT I WAS DEALING WITH OVER THERE.

16 SO I WALKED AROUND. AS YOU'RE FACING THE HOUSE
17 AT 817 TAYLOR I WALKED TO THE LEFT SIDE AND CAME AROUND TO
18 THE SIDE PORCH AREA. I GOT WITHIN TEN FEET OF THIS WALKIE
19 TALKIE AND I HEARD WHAT APPEARED TO BE RADIO
20 TRANSMISSIONS.

21 DUE TO CIRCUMSTANCES, I DID FEEL KIND OF EARIE.
22 I TURNED AROUND. I THOUGHT MAYBE SOMEONE WAS STANDING
23 BEHIND ME WITH A WALKIE TALKIE.

24 AND WHEN I TURNED AROUND, I DIDN'T SEE ANYONE
25 AND I LOOKED FORWARD SO THAT IT WAS THE WALKIE TALKIE ON

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1 THE GROUND THE RADIO TRANSMISSIONS WERE COMING OVER. AND
2 IT WAS VERY LOUD AND CLEAR.

3 I HEARD THE DISPATCHER TALKING AND I HEARD UNITS
4 ANSWERING ALTHOUGH I DO NOT REMEMBER WHICH DISPATCHER OR
5 WHICH UNIT.

6 Q ALL RIGHT. AND WHEN YOU INDICATED FACE DOWN, WHAT
7 DOES THAT MEAN?

8 A FACE DOWN WOULD BE THE SPEAKER IS AGAINST THE GROUND
9 WHICH IS MUFFLING THE SOUNDS OF THE WALKIE TALKIE. IT
10 SOUNDED RATHER LOUD AND CLEAR TO ME WHEN I HEARD IT.

11 Q IN REGARD TO THE SUSPECTED BLOOD STAIN, WHAT DID YOU
12 DO IN REGARD TO THAT ITEM OF EVIDENCE?

13 A WHAT I DID IS I TAKE A COTTON SWAB, ONE COTTON SWAB.
14 I PLACED PLASTIC GLOVES ON MY HANDS AND THEN SERVED THE
15 COTTON SWAB INTO THE AREA OF BLOOD AND PLACED THE COTTON
16 SWAB INTO A STYROFOAM CONTAINER. IT HAS TO BE DRIED PRIOR
17 TO PACKAGING AND SENT TO SLED.

18 Q AND YOU GOT AN EVIDENCE CARD IN REGARD TO THAT ITEM?

19 A YES, SIR. ON MY EVIDENCE CARD I HAVE INDICATED ITEM
20 6.

21 Q ALL RIGHT. AND WHAT DID YOU DO WITH THAT ITEM
22 ULTIMATELY?

23 A THAT ITEM WAS -- AFTER THE SCENE HAD BEEN PROCESSED,
24 THE ITEM WAS TAKEN BACK TO THE EVIDENCE ROOM.

25 Q I'M GOING TO -- I REALIZE TAKING YOU OUT OF ORDER,

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1 BUT I WANT TO DEAL WITH EACH ITEM OF EVIDENCE ONE AT A
2 TIME. YOU ARE TALKING ABOUT THE COTTON SWAB?

3 A YES. COTTON SWAB WAS ACTUALLY TAKEN TO SLED FOR
4 SEROLOGY TESTING ON MARCH 8TH OF 96.

5 Q AND EXPLAIN TO US WHAT YOU DID WITH THE PACKAGE, THAT
6 ITEM?

7 A IN THAT ITEM GENERALLY WHAT I DO WITH COTTON SWAB IS
8 ONCE IT'S DRIED, I PUT IT IN A VIAL. I WILL PUT THAT VIAL
9 IN A PLASTIC BAG, HEAT SEALABLE BAG, SEAL IT UP AND THEN
10 PLACE IT IN THE REFRIGERATOR UNTIL IT'S TIME TO GO TO
11 SLED.

12 Q ALL RIGHT. AND DID YOU TURN IT OVER IN THAT CONDITION
13 WITHIN A HEAT SEALED CONTAINER TO THE SLED LOG IN SECTION
14 ON MARCH THE 8TH 1996?

15 A YES, SIR. I DID.

16 Q ALL RIGHT. DID YOU FROM THE TIME YOU TOOK THE SAMPLE
17 UNTIL YOU TURNED IT OVER TO SLED, DID YOU ALLOW ANYONE TO
18 TAMPER WITH IT AND WAS IT IN YOUR SOLE CUSTODY AND
19 CONTROL?

20 A IT WAS SEALED WITH MY INITIALS AND DATE ON IT. WAS
21 NOT TAMPERED WITH.

22 Q ALL RIGHT. NOW, AGAIN GOING BACK TO THE CRIME SCENE.
23 I WANT TO ASK YOU ABOUT THE -- JUST UP FROM THAT AREA. A
24 PORCH THAT'S THERE. WELL, WHAT IS SHOWN IN 20, 21 AND 22.
25 IF YOU WOULD HOLD THOSE UP WHEN YOU INDICATE TO THE JURY.

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1 A STATE'S EXHIBIT NUMBER 20 IS A PHOTOGRAPH THAT I TOOK
2 AFTER PLACING THE ORANGE CONES DOWN ON THE GROUND. I ALSO
3 HAVE A CONE NUMBER TWO THERE. THAT'S MARKED ON THE STEPS.
4 CONES NUMBER FIVE, SIX AND SEVEN I HAVE ALREADY TESTIFIED
5 TO BEING THE EQUIPMENT THAT I FOUND ON THE GROUND.

6 AND THAT SHOWS THE PORCH WITH THE LIGHTS ON IT
7 AS I FOUND IT WHEN I GOT TO THE SCENE. THE PORCH LIGHT
8 WAS ON. STATE'S EXHIBIT NO. 2 TWO SHOWS ANOTHER VIEW OF
9 THAT SIDE PORCH.

10 THAT BE STANDING -- IF YOU WERE STANDING FACING
11 THE HOUSE, THE PORCH IS ON THE LEFT SIDE OF THE HOUSE.
12 WELL, THIS IS LOOKING TOWARDS THE SIDE OF THAT PORCH. AND
13 IT SHOWS THE CONES AND THERE IS -- THERE IS TWO OTHER
14 INVESTIGATORS AT THE SCENE THERE ALSO. STATE'S EXHIBIT
15 NUMBER...

16 Q BE ON THE BACK OF IT.

17 A STATE'S EXHIBIT NO. 2 1 IS JUST ANOTHER PHOTOGRAPH OF
18 THAT AREA THAT WAS IN STATE'S EXHIBIT 20. BASICALLY ABOUT
19 THE SAME PHOTOGRAPH.

20 Q I WANT TO ASK YOU IF YOU CAN IDENTIFY THESE TWO
21 PHOTOGRAPHS.

22 A THESE ARE PHOTOGRAPHS THAT I TOOK ACTUALLY IT WAS
23 AFTER MIDNIGHT ON THE 27TH OF FEBRUARY, 1996. THIS
24 PHOTOGRAPH DEPICTS THE SCREEN.

25 Q IF YOU CAN IDENTIFY THOSE.

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1 MR. KOLB: WE WOULD OFFER THEM INTO EVIDENCE, YOUR
2 HONOR.

3 MR. LITTLEJOHN: NO OBJECTION.

4 THE COURT: VERY WELL. STATE'S EXHIBIT 29, PHOTO.
5 STATE'S EXHIBITS 30 ANOTHER PHOTO INTO EVIDENCE WITHOUT
6 OBJECTION.

7 (STATE'S EXHIBIT NO. 29 AND 30 MARKED FOR
8 EVIDENCE).

9 (WHEREUPON QUESTIONING RESUMED).

10 Q REFER TO THEM BY NUMBER IF YOU WOULD AND HOLD THEM UP
11 WHERE THE JURY CAN SEE THEM.

12 A STATE'S EXHIBIT NUMBER 29 IS A PHOTOGRAPH OF A SCREEN
13 DOOR ON THE SIDE PORCH. YOU WILL NOTICE THAT THERE IS A
14 YELLOW SCALE TAPE IN THE PHOTOGRAPH. THAT IS ON A RIP THAT
15 I SAW OR TEAR IN THE SCREEN OF THAT SIDE DOOR.

16 STATE'S EXHIBIT NUMBER 30 DEPICTS A CLOSE UP OF
17 THAT SCALE OF THE RIP IN THE DOOR, THE SCREEN OF THE DOOR.

18 Q ALL RIGHT. ALL RIGHT. WE ALREADY MARKED THIS IN
19 EVIDENCE AS -- YOU SEE IT? OKAY. IT'S EXHIBIT 15. BUT DO
20 YOU RECOGNIZE THOSE INITIALS RIGHT THERE?

21 A YES, SIR. THAT'S MY INITIALS AND THE PROPERTY NUMBER
22 OF THIS CASE.

23 Q AND THIS IS THAT SAME SCREEN DOOR THAT'S PICTURED IN
24 THOSE PHOTOGRAPHS?

25 A YES, IT IS.

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1 Q ACTUALLY LOOKING AT IT FROM THIS WAY IS THE WAY YOU
2 GOT THE PICTURE. THIS BE THE OUTSIDE OF THE DOOR?

3 A YES, SIR. THAT'S ON THE OUTSIDE.

4 Q ALL RIGHT, SIR. NOW, COULD YOU NOTE ANYTHING, ANY
5 OTHER DEFECTS IN THE SCREEN BESIDES THE TEAR THAT IS RIGHT
6 HERE AND SHOWN ON THOSE PHOTOGRAPHS?

7 A YES, SIR. I NOTICED SOME MORE BELOW THAT THAT
8 PARTICULAR NIGHT I -- IT DIDN'T APPEAR TO BE BULLET HOLES.
9 IT JUST APPEARED TO BE MAYBE A TEAR WITH A SCREEN -- MAYBE
10 ONE STRAND OR SO. IT WAS JUST TORN. LOOKED LIKE JUST ONE
11 STRAND ON EACH.

12 Q HOW MANY HOLES DID YOU NOTICE?

13 A I NOTICED THREE.

14 Q ALL RIGHT. AND WOULD YOU POINT OUT ON THIS EXHIBIT
15 WHERE THAT WAS?

16 A YES, SIR. THAT HOLES WERE IN THIS AREA RIGHT HERE.

17 Q ALL RIGHT. SO THE PIECES OF SCREEN THAT'S BEEN
18 REMOVED THERE?

19 A YES, SIR.

20 Q FOR TESTING? AND DID YOU ACTUALLY NOTE THOSE MARKS
21 AS FAR AS THE -- MAKE MEASUREMENTS OF THEM AT THAT TIME?

22 A YES, SIR.

23 Q ALL RIGHT.

24 A NOT AT THAT TIME. I MADE THE MEASUREMENTS LATER WHEN
25 I RECEIVED IT.

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1 Q WHEN YOU ACTUALLY TOOK THE DOOR?

2 A YES, SIR.

3 Q ALL RIGHT. OKAY. WAS THIS SECTION OF SCREEN UP HERE
4 THAT'S MISSING NOW, WAS THAT MISSING THAT NIGHT?

5 A NO, SIR. THAT WAS IN TACT.

6 Q ALL RIGHT. NOW, ASK IF YOU CAN IDENTIFY THIS
7 PHOTOGRAPH.

8 A YES, SIR. I CAN.

9 Q NOT -- OKAY.

10 MR. KOLB: WE OFFER IT INTO EVIDENCE.

11 MR. LITTLEJOHN: NO OBJECTION.

12 THE COURT: STATE'S EXHIBIT 31 PHOTOGRAPH, COLOR
13 PHOTOGRAPH, INTO EVIDENCE WITHOUT OBJECTION.

14 (STATE'S EXHIBIT NO. 31 MARKED FOR EVIDENCE).

15 (WHEREUPON QUESTIONING RESUMED).

16 Q TELL US WHAT THAT EXHIBIT 31 SHOWS.

17 A STATE'S EXHIBIT NUMBER 31 WHICH I HAVE DESIGNATED AS
18 CONE NUMBER EIGHT IS A SPORTING ARMS MANUFACTURER 410
19 GAUGE BREACH TYPE SINGLE SHOT SHOTGUN. MODEL IS SNAKE
20 CHARMER TWO AND IT BARES A SERIAL NUMBER OF 19131.

21 I FOUND THIS SHOTGUN LAYING ON THE FLOOR -- OF
22 COURSE -- ON THE PORCH LEANING UP AGAINST THE WALL OF THE
23 PORCH.

24 Q ALL RIGHT.

25 A AS YOU ARE FACING THE PORCH DOOR IT WOULD BE ON THE

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1 LEFT HAND CORNER, THE LOWER CORNER.

2 Q SHOW YOU WHAT'S BEEN MARKED EXHIBIT 13 FOR
3 IDENTIFICATION AND ASK YOU IF YOU CAN IDENTIFY THAT.

4 A YES, SIR. THAT'S THE SHOTGUN THAT I SEIZED THAT'S IN
5 THAT PHOTOGRAPH.

6 Q YOU ABLE TO IDENTIFY IT BY SERIAL NUMBER?

7 A BY SERIAL NUMBER. I DIDN'T MARK IT WITH MY MARK
8 BECAUSE IT WAS BEING SENT TO THE LAB FOR LATENT PRINT
9 PROCESSING.

10 MR. KOLB: WE'D LIKE TO OFFER THAT INTO EVIDENCE AT
11 THIS TIME.

12 THE COURT: ANY OBJECTION?

13 MR. LITTLEJOHN: NO OBJECTION.

14 THE COURT: THANK YOU. STATE'S EXHIBIT FORMERLY
15 MARKED FOR IDENTIFICATION PURPOSES 13 IS NOW INTO EVIDENCE
16 WITHOUT OBJECTION AS A FIREARM.

17 (STATE'S EXHIBIT NO. 13 MARKED FOR EVIDENCE).

18 (WHEREUPON QUESTIONING RESUMED).

19 Q WHAT WAS THE CONDITION OF THAT GUN WHEN YOU FOUND IT
20 THERE?

21 A WHEN I FOUND IT THERE, I HAD -- I SAW THAT THE HAMMER
22 OF THE WEAPON WAS BACK. IT WAS COCKED READY FOR FIRING.

23 Q HAMMER BACK READY FOR FIRING?

24 A YES, SIR.

25 Q DID YOU DETERMINE WHETHER IT WAS LOADED OR NOT?

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1 A YES, SIR. CAREFULLY. I WAS WEARING GLOVES TO
2 PROTECT IT SO IT WOULDN'T GET MY PRINTS ON THE GLOVE. I
3 OPENED THE WEAPON VERY CAREFULLY. WAS IN A COCKED
4 POSITION.

5 I OPENED THE WEAPON TO SEE IF IT WAS LOADED AND
6 I DID FIND A SHELL INSIDE. A LIVE SHELL.

7 Q COULD YOU IDENTIFY THIS PHOTOGRAPH?

8 A YES, SIR. I CAN.

9 MR. KOLB: OFFER THAT INTO EVIDENCE, YOUR HONOR.

10 THE COURT: ANY OBJECTION?

11 MR. LITTLEJOHN: NO, YOUR HONOR.

12 THE COURT: STATE'S EXHIBITS 32, ANOTHER PHOTOGRAPH,
13 INTO EVIDENCE WITHOUT OBJECTION. COLOR PHOTOGRAPH.

14 (STATE'S EXHIBIT NO. 32 MARKED FOR EVIDENCE).

15 (WHEREUPON QUESTIONING RESUMED).

16 Q WHAT DOES 32 SHOW AND WHAT'S THE PURPOSE OF THAT
17 PHOTOGRAPH?

18 A STATE'S EXHIBIT 32 SHOWS THE SHOTGUN WITH A BREACH
19 OPEN WITH A LIVE SHOT GUN SHELL IN THE CHAMBER. AND IT
20 ALSO SHOWS THE HAMMER IN A COCKED POSITION AS I FOUND IT.

21 Q ALL RIGHT, SIR. CAN YOU IDENTIFY THIS PHOTOGRAPH?

22 A YES, I CAN.

23 Q WHAT DOES THAT SHOW -- EXCUSE ME.

24 MR. KOLB: OFFER IT INTO EVIDENCE.

25 THE COURT: ANY OBJECTION?

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1 MR. LITTLEJOHN: NO, YOUR HONOR.

2 THE COURT: STATE'S EXHIBIT 33, ANOTHER PHOTO INTO
3 EVIDENCE WITHOUT OBJECTION.

4 (STATE'S EXHIBIT NO. 33 MARKED FOR EVIDENCE).

5 (WHEREUPON QUESTIONING RESUMED).

6 Q WHAT DOES THAT SHOW?

7 A STATE'S EXHIBIT NO. 33 SHOWS A SERIAL NUMBER OF A
8 SHOTGUN READING 19131 WHICH I HAVE NOTED ON MY EVIDENCE
9 CARD.

10 Q ALL RIGHT. AND YOU KEPT THAT JUST SO -- FOR THE
11 RECORD PURPOSES?

12 A YES, SIR.

13 Q ALL RIGHT. WERE THERE ANY OTHER SHELLS IN THE SHOT
14 GUN?

15 A YES, THERE WERE TWO LIVE 410 GAUGE SHOTGUN SHELLS IN
16 A STOCK COMPARTMENT OF THE WEAPON.

17 Q CAN YOU IDENTIFY THIS PHOTOGRAPH? YOU -- THAT'S A
18 COPY. HAVE YOU ACTUALLY GOT THE ORIGINAL OF THAT OVER
19 THERE?

20 A YES, SIR.

21 Q WHERE WOULD THAT BE?

22 A IT'S BEHIND THE BOX THAT'S THERE BY THE SEAT THAT I
23 WAS SITTING IN. SHOULD BE LABELED ON... SIR, I HAVE THE
24 ORIGINAL PHOTOGRAPH THAT I CAN IDENTIFY. THEY LOOK...

25 MR. KOLB: YOUR HONOR, WE'D LIKE TO OFFER THAT INTO

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1 EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MR. LITTLEJOHN: NO, YOUR HONOR.

4 THE COURT: STATE'S EXHIBIT 34, A PHOTOGRAPH IN
5 EVIDENCE WITHOUT OBJECTION.

6 (STATE'S EXHIBIT NO. 34 MARKED FOR EVIDENCE).

7 (WHEREUPON QUESTIONING RESUMED).

8 Q NOW, COULD YOU DEMONSTRATE WHAT'S SHOWN ON EXHIBIT 34
9 FOR US? WELL, TELL US ABOUT IT FIRST THEN DEMONSTRATE IT
10 WITH THE SHOTGUN ITSELF.

11 A STATE'S EXHIBIT 34 IS A POLAROID PHOTOGRAPH THAT I
12 TOOK OF THE SHOTGUN THAT YOU JUST SAW WITH THE STOCK
13 COMPARTMENT OPEN SHOWING TWO SHOTGUN SHELLS IN THAT STOCK
14 COMPARTMENT.

15 THE WEAPON IS IN A BOX. THAT'S WHAT I PUT IT IN
16 TO TRANSPORT IT FROM THE CRIME SCENE TO PROTECT IT FROM
17 DISTURBING ANY LATENT FINGERPRINTS THAT MAY BE ON THE
18 WEAPON.

19 THE WEAPON -- THE STOCK COMPARTMENT OF THE
20 WEAPON IS BACK HERE. OF COURSE, THE SHELLS ARE NOT IN
21 HERE, BUT THAT'S HOW IT WAS IN THE PHOTOGRAPH AND THE TWO
22 SHELLS WERE IN THE LOWER TWO HOLES THERE.

23 Q ALL RIGHT, SIR. CAN YOU IDENTIFY THIS PHOTOGRAPH?

24 A YES, SIR. I CAN.

25 MR. KOLB: OFFER THAT INTO EVIDENCE, YOUR HONOR.

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1 MR. LITTLEJOHN: NO OBJECTION.

2 THE COURT: STATES 35. PHOTOGRAPH -- COLOR
3 PHOTOGRAPH -- INTO EVIDENCE WITHOUT OBJECTION.

4 (STATE'S EXHIBIT NO. 35 MARKED FOR EVIDENCE).

5 (WHEREUPON QUESTIONING RESUMED).

6 Q MAC, IF YOU'D HOLD IT UP SO THE JURY CAN SEE IT.
7 WHAT VANTAGE POINT WAS THAT PHOTOGRAPH TAKEN FROM?

8 A I WAS STANDING JUST AT THE THRESHOLD OF THE -- OF THE
9 SIDE PORCH OF THE DOOR.

10 Q ALL RIGHT. SO YOU HAD OPENED THE SCREEN DOOR?

11 A YES, SIR. I OPENED THE SCREEN DOOR. I BELIEVE
12 SOMEONE WAS HOLDING IT -- THE DOOR OPEN. I DON'T REMEMBER
13 WHO IT WAS.

14 Q ALL RIGHT.

15 A I TOOK THE PHOTOGRAPH.

16 Q WHAT IS THE LITTLE BLACK THING IN THE CORNER RIGHT
17 HERE? IF YOU WOULD POINT THAT OUT.

18 A OKAY. RIGHT HERE YOU WILL NOTICE THE STOCK SECTION OF
19 THAT SHOTGUN THAT YOU JUST SAW LEANING UP AGAINST THE
20 WALL.

21 Q ALL RIGHT. NOW, THERE ARE THREE OTHER CONES IN THAT
22 PHOTOGRAPH. COULD YOU TELL US WHAT THEY INDICATE?

23 A YES, SIR. OF COURSE THERE IS FOUR CONES TOTAL. NUMBER
24 8 IS MARKED. THAT'S THE SHOTGUN. CONES NINE, TEN AND 11
25 ARE FIRED 22 CALIBER CASINGS THAT I FOUND ON THE FLOOR OF

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1 THE PORCH.

2 Q ALL RIGHT, SIR. AND DID YOU TAKE THOSE INTO EVIDENCE
3 AND ACTUALLY DOCUMENT THEIR LOCATION ON THE PORCH?

4 A YES, SIR. I DID.

5 Q ALL RIGHT. CAN YOU IDENTIFY THESE TWO PHOTOGRAPHS?

6 A YES, SIR. I CAN.

7 Q ALL RIGHT.

8 MR. KOLB: OFFER THESE INTO EVIDENCE, YOUR HONOR.

9 THE COURT: THREE OF THEM?

10 MR. KOLB: YES, SIR.

11 THE COURT: 36, 37 AND 38. STATE'S EXHIBITS EACH
12 BEING A PHOTOGRAPH, ANY OBJECTION.

13 MR. LITTLEJOHN: NO, YOUR HONOR.

14 THE COURT: INTO EVIDENCE WITHOUT OBJECTION.

15 (STATE'S EXHIBIT NO. 36, 37 AND 38 MARKED FOR
16 EVIDENCE).

17 (WHEREUPON QUESTIONING RESUMED).

18 Q TELL US WHAT THESE SHOW.

19 A STATE'S EXHIBITS 36 SHOWS THE FIRED 22 CALIBER
20 CARTRIDGE CASING THAT I DESIGNATED AS NUMBER NINE ON THE
21 FLOOR OF THE SIDE PORCH.

22 STATE'S EXHIBIT 37 IS A PHOTOGRAPH OF A FIRED 22
23 CALIBER CARTRIDGE CASING THAT I FOUND ON THE SIDE PORCH
24 DESIGNATED AS NUMBER 10.

25 AND STATE'S EXHIBIT 38 IS A PHOTOGRAPH OF A 22

RAY MACKESSY - DIRECT BY KOLB

1 CALIBER FIRED CARTRIDGE CASING THAT I DESIGNATE NUMBER 11
2 FOUND IN THE CORNER OF THE SIDE PORCH.

3 Q WHAT DID YOU DO WITH THOSE THREE 22 CALIBER CARTRIDGE
4 CASINGS?

5 A I PUT THEM IN ENVELOPES.

6 Q ALL RIGHT. AFTER YOU SECURED THEM, COULD YOU TELL US
7 WHAT YOU DID WITH THEM?

8 A AFTER I SECURED THEM AND TOOK THEM BACK TO THE LAW
9 ENFORCEMENT CENTER, I GAVE THEM TO SLED AGENT TOM DARNELL
10 OF THE SLED LAB WHO WAS THE CRIME SCENE TECHNICIAN FROM
11 SLED THAT RESPONDED TO THE SCENE.

12 AGENT DARNELL IS ALSO I BELIEVE IN THE LATENT
13 FINGERPRINT SECTION AT SLED LAB.

14 Q ALL RIGHT.

15 A THESE ITEMS STAYED AT SLED UNTIL SEPTEMBER 16TH OF 96
16 WHEN I PICKED THEM UP FROM SLED AGENT OR SLED LIEUTENANT
17 IRA PARNELL WHO WAS ASSIGNED TO THE BALLISTICS DIVISION AT
18 SLED LAB.

19 I PICKED THEM UP FROM HIM AND TRANSPORTED THEM
20 BACK TO THE EVIDENCE ROOM TO THE LAW ENFORCEMENT CENTER
21 WHERE THEY HAVE BEEN UNTIL NOW.

22 Q ALL RIGHT, SIR. LET ME ASK YOU ALSO. INTENDED TO KEEP
23 AN ORDER ON THIS. WHAT ABOUT EXHIBIT 15, THIS SCREEN DOOR.
24 WHAT CAN YOU TELL US ABOUT DOING WITH IT?

25 A THE SCREEN DOOR -- ON FEBRUARY 28TH I WENT BACK TO

RAY MACKESSY - DIRECT BY KOLB

1 817 TAYLOR STREET AND SEIZED THE STORM DOOR AT THAT POINT
2 WITH THE PERMISSION OF MRS. GRIFFITH.

3 I THEN PUT A PIECE OF PAPER OVER THE AREA OF THE
4 HOLES THAT I HAD SEEN THERE EARLIER AND THAT DOOR -- THAT
5 DOOR WAS TRANSPORTED TO SLED ON MARCH 8TH OF 1996 TO BE
6 EXAMINED FOR ANY GUNPOWDER PRIMER RESIDUE.

7 AND ALSO WITH THE HOLES -- THERE WERE IN FACT
8 BULLET HOLES. REMAINED IN THE SLED LAB UNTIL JANUARY 17TH
9 OF THIS YEAR, 97, WHEN I PICKED IT UP FROM THE SLED LOG IN
10 AND TRANSPORTED IT BACK HERE TO SUMTER.

11 Q ALL RIGHT, SIR. LET ME ASK YOU ABOUT THE SHOTGUN
12 ALSO, THE 410 SHOTGUN YOU HAVE UP THERE. TELL US ABOUT THE
13 CHAIN OF CUSTODY ON IT.

14 A I RECEIVED THAT FROM THE SCENE SUSPENDED IN A BOX
15 WHEN I LEFT THE SCENE ON FEBRUARY 26TH OF 1996. ON MARCH
16 8TH OF 1996 I THEN TRANSPORTED THE SHOTGUN TO SLED LOG IN
17 LAB WHERE I TURNED IT OVER TO TOM DARNELL, SLED AGENT TOM
18 DARNELL, REQUESTING THAT BALLISTICS AND LATENT FINGER
19 PRINT PROCESSING BE CONDUCTED ON THE WEAPON.

20 Q ALL RIGHT. AND DID YOU KEEP IN YOUR SOLE CUSTODY AND
21 CONTROL DURING THAT ON FEBRUARY 26TH, 27TH UNTIL MARCH
22 8TH?

23 A YES, SIR. IT WAS SECURED IN THE EVIDENCE ROOM.

24 Q NOW, THE THREE LIVE SHOTGUN SHELLS THAT ORIGINALLY
25 WERE IN THE SHOTGUN, WERE THEY ACTUALLY TAKEN TO SLED ON

RAY MACKESSY - DIRECT BY KOLB

1 MARCH 8TH OR A LATER DATE?

2 A THEY WERE TAKEN AT A LATER DATE TO SLED FOR LATENT
3 FINGER PRINT PROCESSING.

4 Q THEY WERE IN YOUR SOLE CUSTODY AND CONTROL FROM THE
5 TIME AT THE SCENE UNTIL THEY WERE TAKEN TO SLED?

6 A YES, SIR. THAT'S CORRECT.

7 Q ALL RIGHT. WHEN DID YOU TAKE THEM UP THERE?

8 A THOSE WERE TAKEN UP SEPTEMBER 18TH OF 1996.

9 Q AND WHAT CONDITION WERE THEY SUBMITTED? WHO WERE
10 THEY GIVEN TO AT SLED?

11 A THEY WERE GIVEN TO -- I BELIEVE THEY WERE GIVEN TO
12 SLED LOG IN. I BELIEVE TOM DARNELL CAME DOWN AND PICKED
13 THEM UP.

14 Q DIRECTED TO TOM DARNELL? WERE THEY ALSO IN A SEALED
15 CONTAINER BY YOU?

16 A YES, SIR. THEY WERE.

17 Q ALL RIGHT.

18 Q SHOW YOU ANOTHER PHOTOGRAPH. ASK YOU IF YOU CAN
19 IDENTIFY THIS.

20 A YES, SIR.

21 MR. KOLB: OFFER THAT INTO EVIDENCE, YOUR HONOR.

22 MR. LITTLEJOHN: NO OBJECTION.

23 THE COURT: VERY WELL. STATE'S EXHIBIT 39, ANOTHER
24 PHOTO, INTO EVIDENCE WITHOUT OBJECTION.

25 (STATE'S EXHIBIT NO. 39 MARKED FOR EVIDENCE).

RAY MACKESSY - DIRECT BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q WHAT DOES THIS SHOW, MR. MACKESSY?

3 A STATE'S EXHIBIT 39 IS A PHOTOGRAPH I TOOK OF SERGEANT
4 KUBALA'S PATROL CAR, MARKED PATROL CAR. AND OF -- I
5 BELIEVE IT'S MRS. GRIFFITH'S BUICK PARKED NEXT TO THE
6 HOUSE.

7 Q ALL RIGHT, SIR. NOW, LET ME ASK YOU ABOUT BESIDES
8 SEIZING THIS SCENE, THE VARIOUS ITEMS THAT WE HAVE
9 DISCUSSED, WHAT ELSE DID YOU DO AS FAR AS CRIME SCENE
10 PROCESSING?

11 A BESIDES THE PHOTOGRAPHS, RECEIVING THE EVIDENCE, I
12 ALSO RESEARCH THE AREA TO SEE IF THERE IS ANY OTHER
13 EVIDENCE THAT COULD BE TAKEN IN AND WE DIDN'T FIND ANY.

14 I ALSO MEASURED -- THAT NIGHT I MEASURED THE TWO
15 CRIME SCENE SKETCHES THAT NIGHT OF THE HOUSE AND SHOWING
16 THE LOCATION AT THE CORNER OF RIDGEWAY AND TAYLOR AND ALSO
17 DID ANOTHER CRIME SCENE SKETCH OF THE SIDE PORCH AND THE
18 MEASUREMENTS OF THE EVIDENCE THAT I FOUND ON THE PORCH,
19 THREE CARTRIDGE CASES AND THE SHOTGUN.

20 Q ALL RIGHT, SIR. DID YOU DO ANY CHECKING FOR POSSIBLE
21 FINGERPRINTS?

22 A I EXAMINED THE DOOR ITSELF, THE INSIDE DOOR OF THE
23 PORCH AND THE OUTSIDE DOOR. I FELT THE CONDITIONS WERE NOT
24 SUITABLE FOR LATENT PROCESSING. THEY WERE COVERED WITH
25 WHAT APPEARED TO BE EITHER COBB WEBBS OR CLUMPS OF DUST.

RAY MACKESSY - DIRECT BY KOLB

1 THERE WAS ALSO A VERY THIN COATING OF MOISTURE.
2 IT WAS AT NIGHT AND I IMAGE THAT'S WHERE THE MOISTURE WAS
3 COMING FROM. I DIDN'T DO ANY LATENT PROCESSING AT THE
4 SCENE, THOUGH.

5 Q ALL RIGHT. EXPLAIN -- A LOT OF US HAVE THE IDEA ANY
6 TIME YOU TOUCH SOMETHING YOU LEAVE A FINGER PRINT AND
7 THAT'S THE REASON I ASKED YOU ABOUT YOUR TRAINING. I WANT
8 YOU TO EXPLAIN THAT TO THE JURY.

9 A WELL, A FINGER PRINT -- IT'S HARD TO DETERMINE A
10 FINGER PRINT, ACTUALLY HOW LONG IT LASTS REALLY. LASTS A
11 FEW SECONDS UP TO YEARS AND YEARS.

12 THE LATENT FINGERPRINT --- YOUR FINGER PRINT IS
13 COMPOSED OF DIFFERENT CHEMICALS. PERSPIRATION IS DIVIDED
14 INTO AREAS OF SALTS, FATS, AMINO ACIDS.

15 WHEN YOU APPLY POWDER TO A SURFACE, IT BRINGS UP
16 THIS PRINT, POWDER ATTACHES TO THIS PERSPIRATION AND
17 BRINGS UP THE LATENT PRINT. THE LATENT PRINT -- YOUR
18 FINGER IS DIVIDED INTO RIDGES AND THAT'S WHAT A FINGER
19 PRINT IS.

20 IT'S ACTUALLY LIKE A STAMP PACK WHEN YOU TAKE
21 LIKE A CALENDAR DATE AND YOU PUT IT ON AN INK PAD THEN PUT
22 IT ON THE SURFACE. THE RAISED PORTION ARE THE RIDGES --
23 ARE WHAT HIT THE SURFACE AND CAUSE THE FINGER PRINT.

24 Q AND WHAT -- EXPLAIN TO US WHAT IT WAS ABOUT THIS
25 SCREEN DOOR AND THE INTERIOR DOOR ON THE PORCH THAT YOU

RAY MACKESSY - DIRECT BY KOLB

1 FELT WERE NOT SUITABLE?

2 A I FELT -- WERE ALL COATED WITH THIN MOISTURE OR
3 SOMETHING, MAYBE DEW OR SOMETHING FROM THAT NIGHT. AND THE
4 POWDER -- IF I HAD TO PUT POWDER ON IT, IT WOULD HAVE JUST
5 SMEARED IT.

6 AND I INSPECTED IT TO SEE IF I COULD. I ALWAYS
7 VISUALLY INSPECT AN ARTICLE OF EVIDENCE FOR PROCESSING OF
8 FINGERPRINTS. I WILL VISUALLY INSPECT IT TO SEE IF I CAN
9 SEE THE FINGERPRINTS ON THE SURFACE PRIOR TO APPLYING ANY
10 TYPE OF POWDER. AND I DIDN'T SEE ANY.

11 Q ALL RIGHT, SIR. MR. MACKESSEY, DID YOU GO TO A SCENE
12 NEARBY UPON THE ARREST OF BOBBY WAYNE STONE?

13 A YES, SIR. I WENT TO -- AFTER I SECURED ALL OF THE
14 EVIDENCE FROM 817 TAYLOR STREET IN MY VEHICLE, I'M THE
15 ONLY ONE WITH A KEY TO THAT VEHICLE. I THEN WENT TO A
16 WOODED AREA NEAR THE BOYS CLUB.

17 I BELIEVE IT WAS CALLED BELK STREET, WHERE I
18 STOOD BY WITH A SLED AGENT AT THE LOCATION OF MR. STONE'S
19 ARREST.

20 Q I'M GOING TO ASK YOU IF YOU CAN IDENTIFY THIS
21 PHOTOGRAPH.

22 A YES, SIR. I CAN.

23 MR. KOLB: OFFER THIS INTO EVIDENCE, YOUR HONOR.

24 MR. LITTLEJOHN: NO OBJECTION.

25 THE COURT: STATE'S EXHIBIT NUMBER 40, A PHOTO, INTO

RAY MACKESSY - DIRECT BY KOLB

1 EVIDENCE WITHOUT OBJECTION. COLOR PHOTO.

2 (STATE'S EXHIBIT NO. 40 MARKED FOR EVIDENCE).

3 (WHEREUPON QUESTIONING RESUMED).

4 Q TELL US WHAT EXHIBIT 40 SHOWS, MR. MACKESSY.

5 A EXHIBIT NUMBER 40 -- EXHIBIT NUMBER 40 SHOWS A 22
6 CALIBER PISTOL, IT'S A HIGH STANDARD MAKE, MODEL 103
7 PAINTING A SERIAL NUMBER OF 1135105.

8 IT HAS A CLIP IN IT AND ALSO ONE FIRED 22
9 CALIBER CARTRIDGE THAT IS LODGED IN THE INJECTION PORT OF
10 THE WEAPON.

11 Q ALL RIGHT.

12 A I SAW THIS WEAPON THAT NIGHT WHEN I WAS SENT AROUND
13 TO THE WOODED AREA TO STAND BY WITH A SLED AGENT WHO WAS
14 THERE AWAITING THE ARRIVAL OF THE SLED CRIME SCENE TEAM.

15 Q WHAT YOU JUST DESCRIBED AS FAR AS THE SERIAL NUMBER
16 AND CONDITION OF THE GUN, DID YOU KNOW THAT AT THE TIME
17 YOU WERE STANDING THERE?

18 A YES, SIR. WHEN -- AT THE TIME I WAS STANDING THERE I
19 REALIZED THE SERIAL NUMBER OF IT WHEN THE SLED CRIME SCENE
20 UNIT HAD GOT TO THE SCENE AND SUSPENDED THE WEAPON IN THE
21 BOX.

22 Q SO IN OTHER WORDS, WHILE YOU ARE STANDING THERE
23 WATCHING IN THAT CONDITION, YOU DIDN'T KNOW THE SERIAL
24 NUMBER?

25 A NOT AT THAT TIME. I DIDN'T KNOW.

RAY MACKESSY - DIRECT BY KOLB

1 Q BUT YOU STAYED THERE UNTIL THEY ACTUALLY TOOK CUSTODY
2 OF THE GUN?

3 A YES, SIR. I WATCHED AS A PHOTOGRAPH TAKEN BY THEM
4 AND I WATCHED THEM PHOTOGRAPH IT AND SEIZE IT.

5 Q ALL RIGHT, SIR. AND THAT WAS TOM DARNELL?

6 A YES, SIR. TOM DARNELL AND I BELIEVE THERE WAS
7 ANOTHER AGENT THERE WITH HIM. I BELIEVE IT WAS JOHN BLACK,
8 BUT I AM NOT CERTAIN.

9 Q ALL RIGHT, SIR. NOW, WHO WAS THE SLED AGENT THAT YOU
10 STOOD BY ON THAT LOCATION IN THE WOODS WATCHING THAT GUN
11 WHERE IT WAS PICTURED IN THAT PHOTOGRAPH?

12 A FIRST NAME IS RICHARD. I CAN'T REMEMBER HIS LAST
13 NAME. HE WAS ONE OF THE MEMBERS OF THE SEARCH TEAM THAT
14 NIGHT.

15 Q ALL RIGHT. COULD YOU EXPLAIN WHAT THE SEARCH TEAM
16 IS.

17 A SEARCH TEAM WAS A SWAT TEAM, I BELIEVE, THAT WAS SENT
18 DOWN FROM SLED TO SEARCH THE WOODED AREA.

19 Q ALL RIGHT. ANY -- BESIDES PEOPLE, WAS THERE ANY OTHER
20 THING THERE?

21 A THERE WAS A CIGARETTE LIGHTER, I BELIEVE.

22 Q NO, I'M -- LOOKING FOR THE DEFENDANT?

23 A WAS THERE.

24 Q SLED SWAT TEAM. WHAT DOES THAT INCLUDE?

25 A WELL, WHEN THE SLED SWAT TEAM WAS GOING THROUGH --

RAY MACKESSEY - DIRECT BY KOLB

1 AND I BELIEVE WE HAD A COUPLE OFFICERS, LOCAL OFFICERS,
2 WERE ASSISTING, THEY FOUND SOME---.

3 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO HAVE TO
4 OBJECT UNLESS INVESTIGATOR MACKESSEY WAS PRESENT AND
5 OBSERVED.

6 THE COURT: I SUSTAIN THE OBJECTION.

7 (WHEREUPON QUESTIONING RESUMED).

8 Q WAS THERE A HELICOPTER?

9 A YES, SIR. THERE WAS A HELICOPTER.

10 Q SO -- SO THERE'S A HELICOPTER AND OFFICERS LOOKING?

11 A YES, SIR.

12 Q AFTER THE DEFENDANT IS ARRESTED, YOU WENT OVER TO
13 WHERE HE HAD BEEN ARRESTED -- REPORTED HE HAD BEEN
14 ARRESTED?

15 MR. LITTLEJOHN: OBJECT TO THE FORM OF THE QUESTION.

16 THE COURT: SUSTAIN THE OBJECTION. REPHRASE YOUR
17 QUESTION.

18 (WHEREUPON QUESTIONING RESUMED).

19 Q WHAT DID YOU DO AFTER TO GET TO WHERE EXHIBIT 40 IS
20 TAKEN, WHAT DID YOU -- WHERE DID YOU GO?

21 A I WENT TO THE BOYS CLUB. I WENT TO THE REAR OF THE
22 BOYS CLUB WOODED AREA, EDGE OF THE WOODED AREA. I WALKED
23 BACK APPROXIMATELY SIXTY TO SEVENTY FEET.

24 I AM NOT SURE. IT WAS NO MORE THAN SEVENTY FEET
25 BACK INTO THE WOODED AREA WHERE THE SLED AGENT WAS

RAY MACKESSY - DIRECT BY KOLB

1 STANDING. AND I STOOD THERE WITH HIM UNTIL THE CRIME SCENE
2 TEAM FROM SLED ARRIVED.

3 Q ALL RIGHT. NOW, COULD YOU COME DOWN ON STATE'S
4 EXHIBIT NUMBER 5 -- HAVE A RED PEN? SOME KIND OF COLORED
5 PEN?

6 (WHEREUPON THE WITNESS LEFT THE STAND).

7 Q SHOW US WHERE THE BOYS CLUB IS AND THEN MARK THE
8 APPROXIMATE AREA WHERE YOU WERE STANDING.

9 A BOYS CLUB IS LOCATED RIGHT HERE. I PARKED AT THE EDGE
10 OF THIS WOODED AREA.

11 THE COURT: HOLD ON JUST ONE SECOND BEFORE YOU WRITE
12 THAT. LETS APPROACH.

13 (WHEREUPON A BENCH CONFERENCE WAS HELD).

14 THE COURT: LET THE RECORD REFLECT WE HAD A BENCH
15 CONFERENCE CONCERNING STATE'S EXHIBIT NUMBER 5. BY
16 AGREEMENT WE WILL ALLOW THE WITNESS TO MARK ON STATE'S
17 EXHIBIT 5, HOWEVER IT PRESERVES IN EVERY RESPECT THE
18 OBJECTION MADE BY THE DEFENDANT AT THE TIME OF THE
19 INTRODUCTION OF THAT EXHIBIT. THANK YOU VERY MUCH. YOU MAY
20 CONTINUE, SIR.

21 (WHEREUPON QUESTIONING RESUMED).

22 Q MR. MACKESSY, IF YOU WOULD JUST -- YOU CAN POINT OUT
23 WHERE YOU MARKED AND WHERE YOU PARKED YOUR VEHICLE. I JUST
24 WANT YOU TO MARK -- YOU MEASURED THE DISTANCE UP INTO THE
25 WOODS TO WHERE YOU STOOD BY THAT GUN?

RAY MACKESSY - DIRECT BY KOLB

1 A NO, SIR. I DIDN'T MEASURE THAT. I JUST STOOD BY
2 WHITE AWAITING THE CRIME SCENE TEAM. I JUST -- IN
3 ESTIMATING SIXTY OR SEVENTY FEET BACK.

4 Q YOU KNOW THE APPROXIMATE LOCATION OF WHERE IT WOULD
5 SHOW ON THIS MAP?

6 A YES, SIR.

7 Q I WANT YOU TO MARK THAT LOCATION.

8 A OKAY. WHERE THE WEAPON WAS APPROXIMATELY.

9 Q YOU DREW A LITTLE RED CIRCLE?

10 A YES, SIR.

11 Q ALL RIGHT, SIR.

12 THE COURT: WHY DON'T YOU WRITE WEAPON THERE, PLEASE,
13 SO WE ARE ALL...

14 MR. KOLB: ALL RIGHT.

15 (WHEREUPON THE WITNESS RESUMED THE STAND).

16 (WHEREUPON QUESTIONING RESUMED).

17 Q NOW STATE'S EXHIBIT 40, IS THAT THE WEAPON YOU ARE
18 TALKING ABOUT ON THAT DIAGRAM?

19 A YES, SIR. IT IS.

20 Q ALL RIGHT. AND YOU STOOD BY -- DID YOU TAMPER -- YOU
21 OR ANYONE -- TAMPER WITH THAT WEAPON IN THE LOCATION WHERE
22 IT'S PICTURED IN THAT PHOTOGRAPH FROM THE TIME YOU ARRIVED
23 THERE UNTIL AGENT DARNELL WITH SLED ARRIVED TO RECEIVE IT
24 INTO EVIDENCE?

25 A NO, SIR. I NEVER TOUCHED THE WEAPON AT ALL.

RAY MACKESSY - DIRECT BY KOLB

1 Q ALL RIGHT. NOW, EXPLAIN WHAT YOU LEARNED ABOUT THE
2 WEAPON ONCE AGENT DARNELL DID GET THERE AND TAKE IT INTO
3 HIS CUSTODY.

4 A WHEN HE TOOK IT INTO HIS CUSTODY, WHEN HE LIFTED IT
5 OUT OF THERE AND HE -- FIRST THEY PHOTOGRAPHED IT. AND
6 THEN THEY LIFTED THE WEAPON OUT OF THERE AND SUSPENDED IT
7 IN A CARDBOARD BOX.

8 AT THAT TIME IS WHEN THEY WERE LOOKING AT THE
9 BRAND NAME OF THE WEAPON AND THE SERIAL NUMBER AND SUCH.
10 THEY WERE HANDLING IT VERY CAREFULLY BECAUSE IT WAS GOING
11 TO BE PROCESSED FOR LATENT FINGER PRINTS.

12 Q ALL RIGHT, SIR. MR. MACKESSY, ON THE DAYLIGHT HOURS
13 OF THE FOLLOWING DAY THE 27TH, DID YOU HAVE OCCASION TO GO
14 BACK OUT TO THAT SAME GENERAL AREA?

15 A YES, SIR.

16 Q AND -- WELL... ONE OTHER THING, DURING THE NIGHT DID
17 YOU HAVE OCCASION TO SEE A SHOTGUN SHELL THAT NIGHT?

18 A YES, SIR. I RECEIVED A SHOTGUN SHELL FROM SLED
19 LIEUTENANT IRA PARNELL, 4 10 GAUGE SHOTGUN SHELL.

20 Q ALL RIGHT. IS THERE A PHOTOGRAPH OF THAT SHELL?

21 A NO, SIR. HE -- THEY FOUND IT IN THE SEARCH. THERE MAY
22 BE A COLOR PHOTOGRAPH OF THAT SHELL WHEN I LATER GOT BACK
23 TO THE LAW ENFORCEMENT CENTER.

24 Q CAN YOU...

25 A YES. THAT APPEARS TO BE THE SHELL.

RAY MACKESSY - DIRECT BY KOLB

1 Q ALL RIGHT, SIR.

2 MR. KOLB: OFFER THIS INTO EVIDENCE, YOUR HONOR.

3 THE COURT: ANY OBJECTION?

4 MR. LITTLEJOHN: LET ME SEE THE PHOTOGRAPH, PLEASE.

5 (WHEREUPON THERE WAS A PAUSE).

6 MR. LITTLEJOHN: NO OBJECTION.

7 THE COURT: VERY WELL. STATE'S EXHIBIT NUMBER 41,
8 COLOR PHOTO, IN EVIDENCE WITHOUT OBJECTION.

9 (STATE'S EXHIBIT NO. 41 MARKED FOR EVIDENCE).

10 (WHEREUPON QUESTIONING RESUMED).

11 Q DID YOU PHOTOGRAPH THE ONES OUT OF THE SHOTGUN?

12 A I BELIEVE I PHOTOGRAPHED THOSE ALSO.

13 Q IS THIS THE ONE OUT OF THE WOODS? ARE YOU SURE OF
14 THAT?

15 A I CAN'T BE SURE. I'M SORRY. I DIDN'T MARK THAT
16 PHOTOGRAPH WHEN I TOOK IT AS TO WHAT IT WAS. IT'S HARD TO
17 TELL FROM THAT PHOTOGRAPH -- IT'S BEEN FIRED OR IF IT'S A
18 LIVE.

19 MR. KOLB: YOUR HONOR, WE WITHDRAW IT. IF HE IS NOT
20 CERTAIN, I'D RATHER NOT OFFER IT.

21 THE COURT: VERY WELL. STATES 41 IS WITHDRAWN. ANY
22 OBJECTION?

23 (WHEREUPON QUESTIONING RESUMED).

24 Q YOU DID RECEIVE A SHOTGUN SHELL FROM IRA PARNELL?

25 A YES, SIR. I DID.

RAY MACKESSY - DIRECT BY KOLB

1 Q WHAT DID YOU DO WITH THAT SHOTGUN SHELL?

2 A THAT SHOTGUN SHELL WAS LATER TAKEN TO SLED ON MARCH
3 8TH OF 96 FOR BALLISTICS.

4 Q WHAT CONDITION DID YOU TAKE IT TO SLED?

5 A IT WAS SEALED.

6 Q SEALED CONTAINER?

7 A SEALED CONTAINER.

8 Q ALL RIGHT, SIR. ALL RIGHT. NOW I ASK YOU ABOUT
9 DAYLIGHT ON THE 27TH IF YOU HAD OCCASION TO GO BACK OUT TO
10 THIS GENERAL AREA?

11 A YES, SIR. I DID.

12 Q TELL US ABOUT THAT.

13 A I WAS AT THE LAW ENFORCEMENT CENTER AND RECEIVED A
14 CALL FROM SLED AGENT GARY MARTIN WHO WANTED ME TO COME OUT
15 TO A WOODED AREA JUST NORTH OF 817 TAYLOR STREET WHERE HE
16 HAD FOUND SEVERAL ITEMS THAT HE WANTED ME TO PHOTOGRAPH TO
17 SEIZE AS EVIDENCE.

18 Q ALL RIGHT. AND DID YOU DO THAT?

19 A YES, SIR.

20 Q CAN YOU IDENTIFY THIS PHOTOGRAPH?

21 A YES, SIR. I CAN.

22 Q AND WHAT DOES THAT SHOW? EXCUSE ME.

23 MR. KOLB: OFFER THAT INTO EVIDENCE, YOUR HONOR.

24 THE COURT: ANY OBJECTION?

25 MR. LITTLEJOHN: NO, YOUR HONOR.

RAY MACKESSY - DIRECT BY KOLB

1 THE COURT: STATE'S EXHIBIT 4 1, BLACK AND WHITE
2 PHOTOGRAPH. IN EVIDENCE WITHOUT OBJECTION.

3 (STATE'S EXHIBIT NO. 41 MARKED FOR EVIDENCE).

4 (WHEREUPON QUESTIONING RESUMED).

5 Q HOLD THAT UP AND TELL THE JURY WHAT THAT SHOWS.

6 A STATE'S EXHIBITS 41, YOU'LL NOTICE THE CONES VERSUS
7 THE BLACK AND WHITE. THERE ARE ORANGE CONES AS YOU NOTICED
8 IN THE COLOR PHOTOGRAPHS. THESE ORANGE CONES MARK VARIOUS
9 ITEMS THAT SLED AGENT GARY MARTIN WANTED ME TO SEIZE.

10 Q ALL RIGHT. ARE YOU FAMILIAR WITH THE APPROXIMATE
11 LOCATION OF THAT AREA ON THIS MAP?

12 A YES, SIR.

13 Q AND CAN YOU COME DOWN AND MARK THAT AGAIN FOR US?

14 A YES, SIR. GIVE YOU A LITTLE BEARING HERE -- THIS IS
15 THE BOYS CLUB AS WE SAID BEFORE. THIS IS 817 TAYLOR STREET
16 HERE.

17 Q CAN YOU STAND ON THIS SIDE? YOU CAN USE THE POINTER
18 SO YOU CAN...

19 A SEE, THIS -- THE BOYS CLUB IS HERE. I HAVE ALREADY
20 MARKED WHERE THE WEAPON WAS LOCATED, 22 PISTOL. 817 TAYLOR
21 STREET IS HERE. AND THE AREA THAT I FOUND OR THE AREA THAT
22 SLED AGENT GARY MARTIN ASKED ME TO GO TO APPROXIMATELY
23 RIGHT THERE.

24 Q DID YOU MARK THAT AREA? OKAY? OKAY.

25 MR. KOLB: JUDGE, YOU WANT US TO DESIGNATE THAT IN

RAY MACKESSY - DIRECT BY KOLB

1 SOME WAY?

2 THE COURT: MAKE A RECORD OF WHAT HE JUST DID.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q GOING TO BE TALKING ABOUT BEER CANS AND SHELLS.

5 HOWEVER, YOU WANT TO PUT AN A OR X OR SOME LETTER SO THAT
6 WE WILL KNOW...

7 THE COURT: WHAT'S HE WRITING?

8 A BEER CAN.

9 Q THAT'S GOOD ENOUGH?

10 THE COURT: OKAY.

11 MR. KOLB: WE UNDERSTAND THE OTHER THINGS.

12 (WHEREUPON QUESTIONING RESUMED).

13 Q WHAT ITEMS DID YOU -- LETS TALK FIRST ABOUT THE BEER
14 CANS. CAN YOU IDENTIFY THESE FIVE PHOTOGRAPHS?

15 A YES, I CAN.

16 MR. KOLB: FIVE DIFFERENT ONES.

17 THE COURT: OKAY.

18 MR. KOLB: OFFER THESE INTO EVIDENCE, YOUR HONOR.

19 MR. LITTLEJOHN: NO OBJECTION.

20 THE COURT: VERY WELL. 42, 43, 44, 45 AND 46 EACH
21 BEING A BLACK AND WHITE PHOTOGRAPH INTO EVIDENCE WITHOUT
22 OBJECTION.

23 (STATE'S EXHIBIT NO. 42, 43, 44, 45 AND 46
24 MARKED FOR EVIDENCE).

25 (WHEREUPON QUESTIONING RESUMED).

RAY MACKESSY - DIRECT BY KOLB

1 Q COULD YOU TELL US WHAT THESE SHOW?

2 A STATE'S EXHIBIT 4 TWO THROUGH 46 ARE PHOTOGRAPHS I
3 TOOK OF FIVE BUT TWELVE OUNCE EMPTY -- FIVE TWELVE OUNCE
4 BUDWEISER BEER CANS, FIVE OF THEM, THAT WERE FOUND IN THAT
5 AREA THAT I SEIZED THAT DAY.

6 Q DID YOU SEE ANY OTHER BEER CANS?

7 A NO, SIR. WE SEARCHED THE AREA VERY WELL AND THERE WAS
8 NO OTHER BEER CANS.

9 Q ALL RIGHT. WHAT WAS DONE WITH THOSE FIVE BEER CANS
10 AFTER YOU PHOTOGRAPHED THEM?

11 A I SUSPENDED EACH OF THE CANS IN A CARDBOARD BOX AS TO
12 PROTECT THEM BECAUSE I WANTED TO SEND THEM TO SLED FOR
13 LATENT PROCESSING.

14 Q DID YOU KEEP THEM IN YOUR SOLE CUSTODY AND CONTROL
15 UNTIL YOU TOOK THEM TO SLED?

16 A YES, SIR. THEY WERE IN MY CUSTODY THE WHOLE TIME AND
17 I TOOK THEM TO SLED ON MARCH 8TH OF 1996 FOR LATENT
18 PROCESSING. AND ALSO I HAVE MARKED BALLISTICS. THERE WAS
19 SOME HOLES IN THE CANS.

20 Q ALL RIGHT. DID YOU HAVE WHO YOU ACTUALLY TURNED THEM
21 OVER TO?

22 A I TURNED IT OVER AT SLED LOG IN. I BELIEVE IT WAS TOM
23 DARNELL WITH -- THAT I TURNED IT OVER TO.

24 Q ALL RIGHT.

25 A HE CAME DOWN FROM UPSTAIRS.

RAY MACKESSY - DIRECT BY KOLB

1 Q IN THAT SAME AREA, DID YOU FIND ANYTHING ELSE IN
2 RELATION TO BEER CANS?

3 A YES, SIR. I FOUND A -- WHAT I CALL A PLASTIC CAN
4 HOLDER, THAT IS A PLASTIC -- PIECE OF PLASTIC THAT A SIX
5 PACK WOULD BE HELD IN. I FOUND THAT.

6 Q THAT'S JUST ONE OF THEM OR HOW...

7 A THERE WAS JUST ONE THERE. THAT'S ALL I FOUND WAS ONE.
8 ALSO NEARBY WAS A PRICE TAG WITH THE NUMBERS 459 ON IT.

9 Q LIKE \$4.59?

10 A YES, SIR.

11 Q ALL RIGHT. AND HOW BIG WAS THAT?

12 A IT'S A TYPICAL THING THAT YOU WOULD SEE ON TOP OF A
13 -- IF YOU BOUGHT A SIX PACK OF BEER -- YOU KNOW -- YOU
14 WOULD SEE THAT ORANGE PRICE TAG ON THAT. AND THAT'S WHAT
15 IT APPEARED TO BE.

16 Q ALL RIGHT. ANY FIREARMS LOCATED IN THAT AREA?

17 A NO FIREARMS, BUT ONE SPENT 22 CALIBER CARTRIDGE
18 CASING A FEDERAL GRANT (SIC) WHICH I HAVE PHOTOGRAPHS --
19 AS NUMBER ONE AT THE SCENE WAS LOCATED.

20 Q ALL RIGHT.

21 A YES, SIR. I CAN IDENTIFY THESE PHOTOGRAPHS.

22 Q TELL ME WHICH ONE IS THE 22? I CAN'T TELL MYSELF.

23 A THIS PHOTOGRAPH.

24 Q ALL RIGHT.

25 MR. KOLB: WE OFFER THIS INTO EVIDENCE.

RAY MACKESSY - DIRECT BY KOLB

1 THE COURT: ANY OBJECTION?

2 MR. LITTLEJOHN: NO, YOUR HONOR.

3 THE COURT: STATE'S EXHIBIT 47, BLACK AND WHITE
4 PHOTO, INTO EVIDENCE WITHOUT OBJECTION.

5 (STATE'S EXHIBIT NO. 47 MARKED FOR EVIDENCE).

6 (WHEREUPON QUESTIONING RESUMED).

7 Q TELL THE JURY WHAT 47 SHOWS.

8 A 47 IS THE SPENT 22 OR FIRED 22 CALIBER CARTRIDGE
9 CASING THAT WAS FOUND BY THE -- BY SLED AGENT GARY MARTIN.
10 HE ASKED ME TO PHOTOGRAPH IT.

11 Q ALL RIGHT. COULD YOU TELL US WHAT YOU DID WITH THAT
12 22 CARTRIDGE CASING.

13 A YES, SIR. THAT WAS HELD IN A SEALED CONTAINER, HELD
14 IN THE CUSTODY ROOM UNTIL MARCH 8TH OF 1996 WHEN I TOOK IT
15 TO SLED FOR BALLISTIC TESTING.

16 Q ALL RIGHT.

17 MR. KOLB: JUST A MOMENT PLEASE, YOUR HONOR.

18 THE COURT: YES, SIR. TAKE YOUR TIME.

19 (WHEREUPON THERE WAS A PAUSE).

20 THE COURT: SOLICITOR, ARE YOU ABOUT FINISHED?

21 MR. KOLB: YES, SIR. JUST A COUPLE. I WAS JUST
22 MAKING SURE -- I WAS CHECKING.

23 THE COURT: I WAS GOING TO TAKE A BREAK IF YOU
24 WEREN'T QUITE FINISHED.

25 MR. KOLB: CLOSE TO BEING FINISHED.

RAY MACKESSY - DIRECT BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q MR. MACKESSY, CAN YOU IDENTIFY THIS PHOTOGRAPH?

3 A YES, SIR. I CAN.

4 Q ALL RIGHT.

5 MR. KOLB: COULD -- WE WILL OFFER THIS INTO EVIDENCE,
6 YOUR HONOR. CIGARETTE LIGHTER.

7 MR. LITTLEJOHN: NO OBJECTION.

8 THE COURT: ALL RIGHT. STATE'S EXHIBIT 48, COLOR
9 PHOTO? COLOR PHOTO INTO EVIDENCE WITHOUT OBJECTION.

10 (STATE'S EXHIBIT NO. 48 MARKED FOR EVIDENCE).

11 (WHEREUPON QUESTIONING RESUMED).

12 Q COULD YOU TELL US WHAT 48 SHOWS.

13 A YES, SIR. STATE'S EXHIBIT 48 IS A PHOTOGRAPH TAKEN BY
14 SLED CRIME SCENE TEAM ON THE NIGHT OF I BELIEVE THIS WAS
15 AFTER MIDNIGHT ON THE 27TH, EARLY -- OF A CIGARETTE
16 LIGHTER, A BIC CIGARETTE LIGHTER WHICH IS BLACK IN COLOR.
17 IT WAS FOUND NEAR THE SCENE OF THE ARREST OF MR. STONE.

18 Q THAT'S THE AREA YOU MARKED ON THE DIAGRAM AND PUT
19 WEAPON?

20 A YES, SIR. IT IS.

21 Q ALL RIGHT. WAS THAT THERE AS YOU WERE STANDING BY
22 WITH SLED AGENT RICHARD, YOU DON'T KNOW HIS LAST NAME?

23 A YES, SIR.

24 Q AND UNTIL TOM DARNELL AND THE OTHERS ARRIVED AT THAT
25 LOCATION?

RAY MACKESSY - DIRECT BY KOLB

1 A YES, SIR. I STOOD THERE WITH THEM AND NOBODY TOUCHED
2 THEM.

3 Q ALL RIGHT. OKAY. CAN YOU IDENTIFY THIS PHOTOGRAPH?

4 A YES, SIR. I CAN.

5 MR. KOLB: OFFER THIS INTO EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MR. KOLB: SHOWS HIS VAN AT THE WOODS.

8 MR. LITTLEJOHN: LET ME SEE? I HAVE NEVER SEEN THIS
9 ONE.

10 (WHEREUPON THERE WAS A PAUSE).

11 MR. LITTLEJOHN: YOUR HONOR, COULD WE APPROACH THE
12 BENCH?

13 THE COURT: SURE.

14 (WHEREUPON A BENCH CONFERENCE WAS HELD).

15 (WHEREUPON QUESTIONING RESUMED).

16 Q MR. MACKESSY, WHAT CAN YOU TELL US ABOUT THE WOODS IN
17 THE AREA THERE WHERE THE GUN AND THE CIGARETTE LIGHTER
18 WERE FOUND?

19 A IT WAS RATHER DENSE. I KEPT GOING THROUGH BRIARS AND
20 STICKING TO MY PANTS LEG AND IT WAS A RATHER HEAVILY
21 DENSED AREA.

22 Q ALL RIGHT, SIR. IF YOU WOULD ANSWER ANY QUESTIONS THE
23 DEFENSE MAY HAVE.

24 THE COURT: LETS STOP. WE ARE GOING TO TAKE A BREAK
25 AT THIS POINT, LADIES AND GENTLEMEN. GO TO YOUR JURY ROOM.

RAY MACKESSY - DIRECT BY KOLB

1 PROBABLY BE ABOUT FIFTEEN MINUTES OR SO.

2 DO NOT DISCUSS THIS MATTER AMONG YOURSELVES. DO
3 NOT BEGIN YOUR DELIBERATIONS IN ANY MANNER. IF YOU SHOULD
4 NEED LONGER FOR ANY REASON, JUST LET US KNOW.

5 (WHEREUPON THE JURY LEFT THE COURTROOM AT 11:27
6 A.M.)

7 THE COURT: SOLICITOR, COULD I -- WE NEED THAT
8 PHOTOGRAPH NOW THAT YOU HAD A MATTER -- I UNDERSTAND WE
9 HAD A SIDE BENCH CONFERENCE CONCERNING IT -- THAT NOW WILL
10 BECOME COURT'S EXHIBIT NUMBER 5, COLOR PHOTOGRAPH OF A
11 WOODED AREA.

12 (COURT'S EXHIBIT NO. 5 MARKED FOR
13 IDENTIFICATION).

14 THE COURT: NOW MR. LITTLEJOHN, YOU WANT TO PLACE ON
15 THE RECORD STATEMENTS WE HAD AT SIDE BAR CONCERNING
16 COURT'S EXHIBIT NUMBER 5.

17 MR. LITTLEJOHN: YES, YOUR HONOR. IT'S INDICATED BY
18 THE SOLICITOR THAT IS APPARENTLY A PHOTOGRAPH THAT WAS
19 TAKEN BY SOME OF THE SLED OFFICERS. TO MY KNOWLEDGE I HAVE
20 NEVER SEEN THAT PHOTOGRAPH.

21 WE HAD PREVIOUSLY REQUESTED AND DISCOVERY AND
22 WERE ASSURED THAT WE HAD ALL PHOTOGRAPHS PERTINENT TO THIS
23 CASE. OBVIOUSLY ONE PHOTOGRAPH. MUST BE A ROLL OF
24 PHOTOGRAPHS OR AT LEAST A PARTIAL ROLL.

25 WE HAVEN'T BEEN FURNISHED IT. AND HERE WE ARE

RAY MACKESSY - DIRECT BY KOLB

1 IN THE FRIDAY OF THE FIFTH DAY OF THIS TRIAL, IT KIND OF
2 CONCERNS ME IF THE SOLICITOR PLANS ON USING THOSE
3 PHOTOGRAPHS.

4 THE COURT: ALL RIGHT.

5 MR. KOLB: JUDGE, ON SEPTEMBER 24TH 1996.

6 THE COURT: YES, SIR.

7 MR. KOLB: I GAVE THEM ITEM 40, COPIES OF FOURTEEN
8 SLED CRIME SCENE PHOTOS.

9 THE COURT: YES, SIR.

10 MR. KOLB: I'D LIKE FOR THEM TO PRODUCE THAT AT THIS
11 TIME AND WE WILL SEE A COPY OF THAT PICTURE.

12 THE COURT: YOU ARE TELLING ME THAT THAT WAS ONE OF
13 THE FOURTEEN ITEMS?

14 MR. KOLB: YES, SIR. YES, SIR.

15 (WHEREUPON THERE WAS A PAUSE).

16 MR. KOLB: I DON'T KNOW IF THEY ORDERED THEM FROM THE
17 SLED ORIGINAL, BUT WHAT I DID IS XEROX THEM IN THE
18 XEROX---.

19 MR. LITTLEJOHN: IF I COULD INQUIRE OF THE SOLICITOR
20 IF THOSE WERE PHOTOCOPIES OR ACTUAL...

21 MR. KOLB: PHOTOCOPIES.

22 MR. LITTLEJOHN: WELL...

23 MR. BABB: ITEM FOURTEEN, CRIME SCENE PHOTOS?

24 MR. KOLB: RIGHT.

25 MR. LITTLEJOHN: YOUR HONOR, MR. BABB HAS SHOWN ME

RAY MACKESSY - DIRECT BY KOLB

1 WHERE WE DID RECEIVE PHOTO COPIES. I DIDN'T RECOGNIZE THE
2 ORIGINAL OF THIS.

3 THE COURT: I UNDERSTAND. ALL RIGHT. NOW...

4 MR. LITTLEJOHN: STAND CORRECTED.

5 THE COURT: DO YOU WISH NOW TO INTRODUCE COURT'S
6 EXHIBIT 5 INTO EVIDENCE?

7 MR. KOLB: JUDGE, I WOULD LIKEWISE -- IT SHOWS HIS
8 VAN AT THE LOCATION, SHOWS THE NATURE OF THOSE WOODS AND I
9 THINK IT'S IMPORTANT.

10 THE COURT: VERY WELL.

11 MR. LITTLEJOHN: NO OBJECTION.

12 THE COURT: ALL RIGHT. WHAT FOR THE PURPOSES OF THIS
13 RECORD IS NOW -- HAS BEEN REFERENCED AS COURT'S EXHIBIT 5
14 WILL -- NOW CAN YOU PLACE OVER THE TOP OF IT -- WILL NOW
15 BECOME STATE'S EXHIBIT 50.

16 FOR THE RECORD FOR THE REVIEW PURPOSES STATE'S
17 EXHIBIT 5 AND STATE'S EXHIBIT 50 ARE THE SAME. WHETHER WE
18 INTRODUCED IT OR NOT, I DON'T KNOW. I MAY... THAT COULD BE
19 49.

20 MR. LITTLEJOHN: I HAD 48 AT THE LAST PHOTO THE
21 CIGARETTE LIGHTER.

22 THE COURT: THANK YOU VERY MUCH. IT IS 49. STATE'S
23 EXHIBIT 49, NOT 50.

24 (STATE'S EXHIBIT NO. 49 MARKED FOR EVIDENCE).

25 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE BEFORE

RAY MACKESSEY - DIRECT BY KOLB

1 WE RECESS.

2 MR. KOLB: NO, SIR.

3 THE COURT: ANYTHING FROM THE DEFENDANT?

4 MR. LITTLEJOHN: NO, YOUR HONOR.

5 THE COURT: VERY WELL. WE WILL BE AT EASE. I WOULD
6 ASK YOU NOT TO HAVE ANY CONVERSATIONS WITH ANYONE FROM THE
7 SIDE. JUST SIT AROUND HERE. THAT WILL BE GOOD. THANK YOU.

8 (WHEREUPON A BRIEF RECESS WAS TAKEN).

9 MR. KOLB: JUDGE?

10 THE COURT: YES, SIR. I WAS JUST ON MR. MACKESSEY --
11 I SAID I WAS THROUGH, BUT HE'S THE EVIDENCE CUSTODIAN AND
12 THERE ARE OTHER ITEMS OF EVIDENCE THAT...

13 THE COURT: YOU GOING TO INTRODUCE TO FINISH -- OR SO
14 -- I MEAN -- YOU GOING TO HAVE TO FINISH?

15 MR. KOLB: I'M TELLING THE COURT I RESERVED THE RIGHT
16 TO RECALL HIM LATER.

17 THE COURT: DON'T NEED TO; DO YOU?

18 MR. KOLB: WELL, LIKE THE 22 PISTOL AND ALL OF THAT.
19 HE'S GOT THE 22 PISTOL NOW. I DIDN'T WANT TO BRING IT -- I
20 WANTED TO BRING IT THROUGH...

21 MR. LITTLEJOHN: HE'S ON THE BACK SIDE OF CHAIN OF
22 CUSTODY.

23 MR. KOLB: FEW OTHER THINGS LIKE THAT.

24 THE COURT: ALL RIGHT. WELL... HOWEVER YOU WANT TO
25 WORK IT. WE WILL WORK AROUND THAT. NOT A PROBLEM.

RAY MACKESSEY - DIRECT BY KOLB

1 (WHEREUPON THERE WAS A PAUSE).

2 THE COURT: ANYTHING FROM THE STATE BEFORE WE BRING
3 THE JURY BACK?

4 MR. KOLB: NO, SIR.

5 THE COURT: ANYTHING FROM THE DEFENDANT BEFORE WE
6 BRING THE JURY BACK?

7 MR. LITTLEJOHN: NO, YOUR HONOR.

8 THE COURT: LET THE RECORD REFLECT THE DEFENDANT IS
9 PRESENT. BRING THE JURY IN, PLEASE.

10 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
11 11:44 A.M.)

12 THE COURT: THANK YOU VERY MUCH, LADIES AND
13 GENTLEMEN. THE SOLICITOR, I BELIEVE, DURING THE BREAK YOU
14 INDICATED YOU HAD A FEW MORE QUESTIONS.

15 MR. KOLB: YES, SIR.

16 THE COURT: YOU MAY CONTINUE, SIR.

17 MR. KOLB: ONE ADDITIONAL PHOTOGRAPH WE OFFERED AND
18 HAD MARKED AS EXHIBIT 49.

19 THE COURT: ALL RIGHT. THAT WILL BE EXHIBIT 49. ANY
20 OBJECTION?

21 MR. LITTLEJOHN: NO, YOUR HONOR.

22 THE COURT: VERY WELL. EXHIBIT 49, COLOR PHOTO INTO
23 EVIDENCE WITHOUT OBJECTION.

24 (WHEREUPON QUESTIONING RESUMED BY MR. KOLB).

25 Q INVESTIGATOR MACKESSEY, CAN YOU TELL US WHAT THAT

RAY MACKESSEY - DIRECT BY KOLB

1 SHOWS?

2 A STATE'S EXHIBIT 49 DEPICTS A PHOTOGRAPH TAKEN BY THE
3 SLED CRIME SCENE TEAM. SHOWS MY CRIME SCENE VAN PARKED AT
4 THE EDGE OF THE WOODED AREA APPROXIMATELY SIXTY, SEVENTY
5 FEET BACK INTO THAT WOODED AREA.

6 THAT'S WHERE WE ENTERED THAT FROM THE PARKING
7 ~~LOT OR GRASSY AREA BEHIND THE BOYS CLUB. THAT DEPICTS THE~~
8 WOODED AREA THAT WE ENTERED TO -- GOING BACK THERE.

9 Q ALL RIGHT.

10 MR. KOLB: THAT'S ALL I HAVE AT THIS TIME. LIKE TO BE
11 ABLE TO RECALL HIM LATER ON OTHER MATTERS.

12 THE COURT: VERY WELL. YOU MAY CROSS-EXAMINE, MR.
13 LITTLEJOHN.

14 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

15 CROSS-EXAMINATION BY MR. LITTLEJOHN:

16 Q INVESTIGATOR MACKESSEY, DO YOU RECALL THE TIME WHEN
17 YOU ARRIVED AT 817 TAYLOR STREET ON THE NIGHT OF FEBRUARY
18 26TH 1996?

19 A SOMEWHERE AROUND 8 P.M.

20 Q AROUND 8 P.M.?

21 A YES, SIR.

22 Q AND I BELIEVE THE OFFICERS WHO INITIALLY RESPONDED
23 GOT THERE APPROXIMATELY FORTY-FIVE MINUTES BEFORE YOU?

24 A YES, SIR. THERE WERE SEVERAL OFFICERS THERE.

25 Q OKAY. BUT THEY HAD BEEN THERE FOR SOME TIME?

RAY MACKESSEY - CROSS BY LITTLEJOHN

- 1 A YES, SIR.
- 2 Q AND PRECEDING YOU AT LEAST WERE CORPORAL PRINCE?
- 3 A YES, SIR..
- 4 Q THE -- OBVIOUSLY THE E M T TECHNICIANS.
- 5 A YES, SIR.
- 6 Q OFFICER WINSTON?
- 7 A YES, SIR.
- 8 Q HE WAS THERE BEFORE YOU GOT THERE?
- 9 A YES, SIR.
- 10 Q AND LIEUTENANT HOBBS?
- 11 A YES, SIR.
- 12 Q OKAY. NOW, INVESTIGATOR MACKESSEY, YOU INDICATED THAT
- 13 YOUR RESPONSIBILITY THAT NIGHT WAS TO SECURE THE SCENE AND
- 14 SECURE ANY PHYSICAL EVIDENCE THAT MIGHT BE COLLECTED; IS
- 15 THAT RIGHT?
- 16 A THE SCENE WAS SECURED PRIOR TO MY ARRIVAL. IT WAS --
- 17 WHEN I TOOK OVER THE CRIME SCENE PROCESSING, IT WAS MY JOB
- 18 NOT ONLY TO PROCESS, BUT TO MAKE SURE EVERYTHING WAS---.
- 19 Q YOUR JOB WAS TO MAINTAIN THE INTEGRITY OF ANY
- 20 PHYSICAL ITEMS THAT MIGHT BE FOUND AND COULD BE USED FOR
- 21 EVIDENTIARY PURPOSES; RIGHT?
- 22 A YES, SIR.
- 23 Q OKAY. NOW, AND YOU SAID THAT YOU EXAMINED THE PORCH
- 24 AREA?
- 25 A YES, SIR.

RAY MACKESSY - CROSS BY LITTLEJOHN

1 Q AND YOU INDICATED TO US THAT YOU EXAMINED THE SCREEN
2 DOOR AND YOU EXAMINED THE INTERIOR DOOR?

3 A YES, SIR.

4 Q OKAY. AND ONE ASPECT OF THAT -- I BELIEVE YOU TOLD US
5 YOU ATTEMPTED TO ASCERTAIN THE IDENTIFIABLE FINGERPRINTS
6 THAT COULD BE LIFTED FOR COMPARISON PURPOSES?

7 A NOT IDENTIFIABLE. I WOULD HAVE TO SEE, DO A VISUAL
8 INSPECTION TO SEE IF THERE IS ANY MARKS ON THERE THAT I
9 COULD SEE THAT WOULD APPEAR TO BE POSSIBLE FINGER MARKS.

10 Q ALL RIGHT. AND YOU DETERMINED THAT THE CONDITIONS
11 WERE SUCH THAT YOU WOULDN'T BE ABLE TO LIFT ANY PRINTS
12 EVEN IF THERE WERE SOME THERE?

13 A YES, SIR. THAT'S MY DETERMINATION.

14 Q AND THAT WAS BASED ON THE MOISTURE FACTORS AND THE
15 FACT THAT THE INTERIOR DOOR WAS COVERED WITH I THINK YOU
16 SAID DUST AND COBB WEBBS?

17 A YES, SIR. AND THE WOOD WAS LIKE A WHITE -- IT WAS A
18 CHIPPED WOOD.

19 Q CHIPPED WOOD?

20 A IN OTHER WORDS THE PAINT WAS CHIPPING.

21 Q WAS CHIPPING OFF?

22 A YES.

23 Q ALL RIGHT. AND I BELIEVE YOU TOOK SOME PHOTOGRAPHS
24 INSIDE THE PORCH. AND OF THE PHOTOGRAPHS THAT I HAVE SEEN
25 THAT HAVE BEEN INTRODUCED, I BELIEVE STATE'S EXHIBIT 31

RAY MACKESSEY - CROSS BY LITTLEJOHN

1 DEPICTS A PORTION OF THE INTERIOR DOOR?

2 A YES, SIR.

3 Q AND PHOTOGRAPH 35 DEPICTS THE BOTTOM OF THE INTERIOR
4 DOOR?

5 A YES, SIR. THAT'S CORRECT.

6 Q OKAY. AND INVESTIGATOR MACKESSEY, SINCE THAT TIME I
7 BELIEVE THAT PORCH HAS BEEN ENCLOSED?

8 A SINCE THE NIGHT OF THIS INCIDENT?

9 Q YES, SIR.

10 A UP TILL TODAY?

11 Q YES, SIR.

12 A YES, SIR. I BELIEVE SO. IT HAD THE DOOR ON IT, THE
13 SCREEN DOOR, PRIOR TO MY REMOVAL OF IT.

14 Q OKAY. ALL RIGHT. NOW, IN REGARD TO STATE'S EXHIBIT
15 31, THAT DEPICTS THE 410 GAUGE SHOTGUN THAT YOU FOUND IN
16 THE CORNER?

17 A YES, SIR.

18 Q AND YOU PREVIOUSLY DESCRIBED FOR US THE CONDITION OF
19 THAT SHOTGUN AND YOU INDICATED THAT IT WAS IN A COCKED
20 POSITION?

21 A YES, SIR. THAT'S HOW I FOUND IT.

22 Q OKAY. AND YOU INDICATED THAT THERE WAS A LIVE ROUND
23 IN THIS CHAMBER?

24 A YES, SIR.

25 Q OKAY. SO THAT GUN COULD HAVE BEEN FIRED, BUT HAD NOT

RAY MACKESSY - CROSS BY LITTLEJOHN

1 BEEN FIRED INsofar AS THAT LIVE ROUND?

2 A YES, SIR.

3 Q OKAY. INVESTIGATOR MACKESSEY, LET ME SHOW YOU NOW
4 WHAT ARE STATE'S EXHIBITS 7, 8 AND 19. AND I BELIEVE THESE
5 THREE PICTURES DEPICT IN VARIOUS ANGLES THE SIDE PORCH
6 WHERE YOU FOUND THE SHOTGUN AND WHERE YOU FOUND THE 22
7 CALIBER CASINGS; IS THAT RIGHT?

8 A YES, SIR.

9 Q OKAY. AND IF YOU WOULD, LET ME SEE ONE OF THEM. THIS
10 IS STATE'S EXHIBIT 8. THIS SHOWS TO THE FAR RIGHT OF THE
11 PHOTOGRAPH THE SIDE OF THE FRONT PORCH; DOES IT NOT?

12 A YES, SIR. IT SHOWS THE SIDE AND ALSO THE SCREEN DOOR.

13 Q THEN AS YOU COME AROUND THAT SIDE OF THE HOUSE THERE
14 IS WHAT APPEARS TO BE A LARGE PROPANE TANK?

15 A YES, SIR.

16 Q OKAY. THEN AND IT -- ONE APPROACHES AND GOES AROUND
17 THE LEFT HAND SIDE OF THE HOUSE IS WHEN THEY GET TO THE
18 SCREENED IN PORCH; CORRECT?

19 A YES, SIR.

20 Q NOW, THE BOTTOM PORTION OF THE SCREENED IN PORCH IS
21 ACTUALLY BOARDED IN; ISN'T THAT RIGHT?

22 A THE BOTTOM PORTION OF THE INTERIOR DOOR?

23 Q NO, THE BOTTOM PORTION OF THAT SMALL PORCH WHERE YOU
24 FOUND THE SHOTGUN?

25 A YES, SIR. ONE SIDE OF IT IS.

RAY MACKESSY - CROSS BY LITTLEJOHN

1 Q OKAY. WELL, LETS LOOK AT STATE'S EXHIBIT 7.

2 A YES, SIR. TWO SIDES ARE BOARDED HALF WAY.

3 Q THAT SHOWS WHERE THE FRONT IS BOARDED?

4 A YES, SIR.

5 Q AND THE UPPER PORTION OF THAT PORCH IS SCREENED?

6 A YES, SIR.

7 Q CORRECT? AND THE SIDE, THE LEFT HAND SIDE OF THAT
8 PORCH IS ALSO BOARDED?

9 A YES, SIR.

10 Q AND UPPER PORTION OF THE SCREEN?

11 A YES, SIR.

12 Q OKAY. NOW, INVESTIGATOR MACKESSEY, DID YOU TAKE ANY
13 MEASUREMENTS CONCERNING THE BOARDED SIDE AS DEPICTED IN
14 STATE'S EXHIBIT 19?

15 A I HAVE TO REFER TO MY CRIME SCENE SKETCHES. I DON'T
16 HAVE THEM ON THE STAND WITH ME.

17 Q OKAY.

18 A I BELIEVE I GOT TO LOOK AT THE SKETCHS TO BE...

19 Q DO YOU RECALL -- WOULD YOU LIKE TO LOOK AT THEM?

20 A YES, SIR. I WOULD.

21 Q OKAY. LET ME GET THEM. THOSE THREE SHEETS SHOW THE
22 DIAGRAMS THAT YOU DID?

23 A YES, SIR. THESE ARE THE DIAGRAMS THAT I DREW.

24 Q PLEASE REVIEW THOSE AND THEN TELL US IF YOU HAVE ANY
25 SORT OF MEASUREMENT CONCERNING THE BOARDED IN PORTION OF

RAY MACKESSEY - CROSS BY LITTLEJOHN

1 THE SIDE PORCH.

2 A NO, SIR. I DO NOT.

3 Q OKAY. DID YOU PHYSICALLY EXAMINE TO SEE WHERE THE
4 BOARDED PART OF THE PORCH WAS IN RELATION TO THE GROUND?

5 A I OBSERVED THE BOARDED PORTION.

6 Q OKAY. WELL, AS YOU WERE STANDING ON THE GROUND NEXT
7 TO THE SIDE PORCH, THE BOARDED PORTION WOULD ACTUALLY BE
8 SUBSTANTIALLY OVER YOUR HEAD; WOULD IT NOT?

9 A YES, SIR.

10 Q OKAY. AND THAT WOULD BE OVER YOUR HEAD?

11 A YES, SIR. IT WAS OVER MY HEAD.

12 Q AND HOW TALL ARE YOU, SIR?

13 A SIX FOOT.

14 Q AND I BELIEVE SERGEANT KUBALA WAS 5-8?

15 A YES, SIR.

16 Q ALL RIGHT. COUPLE OF LAST THINGS. INVESTIGATOR
17 MACKESSEY, YOU INDICATED ON STATE'S EXHIBIT NUMBER 5 THAT
18 YOU HAVE ALREADY MARKED IT SO THAT THE JURY WILL HAVE IT.
19 BUT YOU INDICATED THAT UP HERE IS THE PLACE WHERE THE
20 WEAPON WAS FOUND?

21 A YES, SIR.

22 Q AND THAT'S SOMEWHERE -- SOME DISTANCE INTO THE WOODS
23 LEADING OFF THIS FIELD THAT SURROUNDS THE BOYS CLUB;
24 RIGHT?

25 A YES, SIR. THAT'S CORRECT.

RAY MACKESSY - CROSS BY LITTLEJOHN

1 Q OKAY. AND I BELIEVE YOU INDICATED THAT -- GET MY
2 BEARINGS -- TAYLOR STREET AND RIDGEWAY IS SOMEWHERE DOWN
3 HERE; IS THAT RIGHT?

4 A YES, SIR, IN THAT...

5 Q OKAY. AND THEN THE BEER CANS WERE FOUND UP IN THIS
6 WOODED AREA?

7 A YES, SIR.

8 Q IS THAT RIGHT?

9 A YES, SIR.

10 Q YOU SAID THIS WAS A VERY REMOTE AREA?

11 A YES, SIR. IT WAS OPEN FIELD THERE AND WOODED AREA.
12 AND THE WOODED AREA WAS -- KIND OF LOOKED LIKE HUGO DAMAGE
13 --

14 Q OKAY.

15 A -- AREA.

16 Q BUT YOU WERE DIRECTED TO THE AREA WHERE THESE BEER
17 CANS WERE FOUND BY ONE OF THE SLED AGENTS?

18 A MY SERGEANT, SERGEANT MIKE MORRIS WHO WAS BACK THERE
19 WITH SLED AGENT GARY MARTIN.

20 Q OKAY.

21 A DIRECTED ME TO THAT AREA.

22 Q AND YOU WENT TO THAT AREA THE FOLLOWING DAY. THAT'S
23 WHEN YOU RETRIEVED THE BEER CANS?

24 A YES, SIR.

25 Q TOOK THE BLACK AND WHITE PHOTOGRAPHS?

RAY MACKESSY - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q WAS THAT THE ONLY AREA THAT YOU ATTEMPTED TO GATHER
3 EVIDENCE IN?

4 A YES, SIR. THAT WAS THE AREA I WAS ASKED TO RESPOND
5 TO COLLECT THAT EVIDENCE.

6 Q OKAY. AND AS YOU INDICATED THIS WAS A REMOTE AREA
7 THAT -- COULD HAVE BEEN BEER CANS OTHER PLACES, COULD HAVE
8 BEEN SHELL CASINGS OTHER PLACES?

9 A I DON'T KNOW. THE AREA WE SEARCHED, I DIDN'T FIND
10 ANY FURTHER BEER CANS OR SHELL CASINGS.

11 Q BUT THAT WAS THE ONLY AREA YOU SEARCHED?

12 A WELL, THAT WAS THE ONLY AREA INITIALLY THAT SLED
13 AGENT GARY MARTIN AND SERGEANT MIKE MORRIS WERE IN AND I
14 SEARCHED THAT IMMEDIATE AREA, SOMEWHAT OUTSIDE THAT
15 IMMEDIATE AREA.

16 Q OKAY.

17 A NOT FAR.

18 Q LET ME ASK YOU ONE FINAL THING WHILE WE HAVE THE
19 DIAGRAM UP. DURING THE COURSE OF THE EVENING ON FEBRUARY
20 26TH, AS I UNDERSTOOD IT, FROM TAYLOR STREET HERE, TAYLOR,
21 AT RIDGEWAY, RIDGEWAY RUNS THIS WAY PERPENDICULAR WITH
22 BOULEVARD; RIGHT?

23 A YES, SIR.

24 Q AND THERE IS ANOTHER PARALLEL STREET DOWN HERE, A --
25 THERE'S A PARALLEL STREET UP HERE, BELK STREET, THAT GOES

RAY MACKESSY - CROSS BY LITTLEJOHN

1 TO THE BOYS CLUB; RIGHT?

2 A YES, SIR.

3 Q AND THE OFFICERS WERE DISPATCHED TO THESE PARALLEL
4 STREETS IN ORDER TO SET UP A PERIMETER?

5 A I'M NOT FAMILIAR WITH WHERE THE OFFICERS WERE
6 DISPATCHED. I WASN'T PRIVY TO THAT INFORMATION.

7 Q OKAY.

8 MR. LITTLEJOHN: IF YOU'LL INDULGE ME JUST A MOMENT,
9 YOUR HONOR.

10 THE COURT: YES, SIR. TAKE YOUR TIME.

11 (WHEREUPON THERE WAS A PAUSE).

12 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

13 THE COURT: ANY RE-DIRECT, SOLICITOR?

14 MR. KOLB: NO, SIR.

15 THE COURT: YOU MAY COME DOWN, SIR. THANK YOU.

16 (WHEREUPON THE WITNESS LEFT THE STAND)

17 TOM DARNELL, BEING FIRST DULY
18 SWORN, TESTIFIED AS FOLLOWS:

19 THE COURT: POSITION THAT MIKE WHERE YOU NEED IT TO
20 BE AND THEN PLEASE STATE YOUR FULL NAME AND SPELL YOUR
21 LAST FOR THE RECORD.

22 THE WITNESS: THOMAS EDWARD DARNELL, D A R N E L L
23 DIRECT EXAMINATION BY MR. KOLB:

24 Q MR. DARNELL, HOW ARE YOU EMPLOYED?

25 A I WORK FOR THE STATE LAW ENFORCEMENT DIVISION KNOWN

THOMAS DARNELL - DIRECT BY KOLB

1 AS SLED.

2 Q AND HOW LONG HAVE YOU BEEN INVOLVED IN LAW
3 ENFORCEMENT?

4 A FOR APPROXIMATELY FIFTEEN YEARS.

5 Q YOU CAN YOU TELL THE -- WHAT IS YOUR JOB CURRENTLY AT
6 SLED?

7 A I'M AN AN AGENT THAT WORKS IN THE CRIME SCENE
8 FINGERPRINT LABORATORY AT SLED.

9 Q AND COULD YOU TELL THE COURT AND LADIES AND GENTLEMEN
10 OF THE JURY ABOUT YOUR TRAINING AND EXPERIENCE LEADING
11 INTO INTO THAT LINE OF WORK?

12 A I HAVE A BACHELOR OF SCIENCE DEGREE IN CRIMINAL
13 JUSTICE FROM THE UNIVERSITY OF SOUTH CAROLINA. I GRADUATED
14 FROM THERE IN 1982. I BEGAN MY LAW ENFORCEMENT CAREER WITH
15 THE RICHLAND COUNTY SHERIFF'S OFFICE WHERE I WAS EMPLOYED
16 FOR EIGHT YEARS.

17 I BEGAN WORKING AT SLED IN APRIL OF 1990. I'VE
18 TAKEN NUMEROUS COURSES DEALING WITH FINGERPRINTS, BASIC
19 FINGERPRINTS AS WELL AS ADVANCED LATENT FINGER PRINT
20 TECHNIQUES WHICH WAS TAUGHT BY THE FEDERAL BUREAU OF
21 INVESTIGATIONS WHICH WAS HELD AT THE ACADEMY IN COLUMBIA.

22 I HAVE TAKEN OTHER COURSES DEALING WITH CRIME
23 SCENES SUCH AS FOOT WEAR. I HAVE DEALT WITH OR STUDIED
24 ABOUT BLOOD SPATTER, VARIOUS COURSES THAT DEAL WITH CRIME
25 SCENES IN THE PROCESSING OF CRIME SCENES.

THOMAS DARNELL - DIRECT BY KOLB

1 I HAVE ALSO COMPLETED AN EIGHTEEN MONTH IN-HOUSE
2 TRAINING PROGRAM AT SLED. IN ADDITION TO THE SCHOOLS THAT
3 I HAVE MENTIONED, THERE WERE -- THERE HAVE BEEN NUMEROUS
4 SEMINARS WHICH I HAVE ATTENDED.

5 AND I'M ALSO A CERTIFIED INSTRUCTOR AT THE
6 ACADEMY IN COLUMBIA WHICH IS THE ACADEMY THAT TRAINS ALL
7 LOCAL AND COUNTY AND LOCAL LAW ENFORCEMENT AGENCIES.

8 I'M ALSO A MEMBER OF THE INTERNATIONAL
9 ASSOCIATION IDENTIFICATION WHICH IS A BODY OF MEMBERS
10 INTERNATIONALLY WIDE THAT DEAL WITH CONTINUING EDUCATION
11 THAT MIGHT COME UP AND CERTAIN AREAS OF THE FORENSIC
12 SCIENCE AREA.

13 Q ALL RIGHT, SIR. AND COULD -- YOU'VE PREVIOUSLY
14 TESTIFIED AND BEEN QUALIFIED AS AN EXPERT IN FINGER PRINT
15 IDENTIFICATION IN COURTS IN THIS STATE?

16 A YES, SIR. I HAVE.

17 MR. KOLB: YOUR HONOR, WE OFFER HIM TO THE COURT AS
18 AN EXPERT.

19 THE COURT: CARE TO EXAMINE HIM AS TO THAT?

20 MR. LITTLEJOHN: NO, YOUR HONOR. WE RECOGNIZE HIS
21 CREDENTIALS.

22 THE COURT: VERY WELL. YOU WISH -- AND CRIME SCENE
23 INVESTIGATION AND...

24 MR. KOLB: CRIME SCENE INVESTIGATION ALSO.

25 THE COURT: ALL RIGHT. VERY WELL. LADIES AND

THOMAS DARNELL - DIRECT BY KOLB

1 GENTLEMEN, AGAIN AS YESTERDAY THIS WITNESS BECAUSE OF
2 BACKGROUND AND TRAINING WILL BE ALLOWED TO RENDER OPINIONS
3 IN THE AREA OF CRIME SCENE INVESTIGATIONS AND
4 SUB-SPECIALTY LATENT PRINT ANALYSIS.

5 AND AGAIN YOU WILL CONSIDER THIS TESTIMONY THE
6 SAME AS YOU WOULD ANY OTHER WITNESS THAT TESTIFIES. I
7 WILL GIVE YOU FURTHER INSTRUCTIONS AT THE CONCLUSION OF
8 THIS MATTER.

9 HIS OPINIONS ARE TO ASSIST YOU AND CERTAINLY NOT
10 TO CONTROL YOUR JUDGMENT SO PLEASE LISTEN TO THE
11 TESTIMONY. MR. SOLICITOR, YOU MAY CONTINUE.

12 MR. KOLB: THANK YOU, SIR.

13 (WHEREUPON QUESTIONING RESUMED).

14 Q MR. DARNELL, DID YOU COME OVER TO ASSIST US IN THIS
15 INVESTIGATION REGARDING 817 TAYLOR STREET AND...

16 A YES, SIR.

17 Q THE DEATH OF DEPUTY CHARLIE KUBALA?

18 A YES, SIR. I WAS.

19 Q IF YOU WOULD TELL US APPROXIMATELY WHEN YOU ARRIVED.

20 A I RECEIVED THE CALL INITIALLY AROUND MIDNIGHT ON THE
21 26TH OR THE MORNING OF THE 27TH. I ARRIVED ABOUT 1:00 THAT
22 MORNING.

23 Q ALL RIGHT, SIR. COULD YOU TELL US WHAT WAS THE FIRST
24 THING YOU DID WHEN YOU ARRIVED?

25 A THE FIRST THING THAT I DID OR THE FIRST THING THAT I

THOMAS DARNELL - DIRECT BY KOLB

1 WAS ASKED TO DO WAS TO GO TO THE SHERIFF'S OFFICE AND
2 PERFORM A GUN SHOT RESIDUE COLLECTION PROCESS ON THE
3 DEFENDANT.

4 Q ALL RIGHT. EXPLAIN TO THE LADIES AND GENTLEMEN OF THE
5 JURY ABOUT THAT.

6 A BASICALLY THE GUN SHOT RESIDUE COLLECTION KIT
7 CONSISTS OF WHAT WE CALL LITTLE STUBBIES THAT HAVE A
8 ADHESIVE PART TO IT. AND WE TAKE THE STUBBIES AND WE WILL
9 ACTUALLY COME IN CONTACT WITH THE HANDS, WITH THE BACK OF
10 THE HANDS AND WITH THE PALMS OF THE HAND.

11 YOU HAVE ONE STUBBIE FOR EACH, FOR EACH AREA OF
12 THE HAND. YOU HAVE ONE STUBBIE FOR THE BACK OF THE LEFT
13 HAND, ONE FOR THE BACK OF THE RIGHT HAND AND YOU HAVE ONE
14 FOR EACH PALM.

15 I'M TRAINED IN HOW TO COLLECT THAT EVIDENCE, BUT
16 I AM NOT TRAINED IN TAKING IT BACK TO ANALYZE IT. THAT
17 PROCESS WAS DONE TO THE DEFENDANT AND PLACED INTO A SEALED
18 ENVELOPE AND TRANSPORTED BACK TO SLED TO BE EXAMINED BY
19 THE TRACE DEPARTMENT AT SLED.

20 Q ALL RIGHT. NOW, SO AFTER DOING THAT, WHAT IS CALLED A
21 G S R KIT. COULD YOU EXPLAIN WHY IT'S CALLED THAT.

22 A G S R STANDS FOR GUN SHOT RESIDUE.

23 Q ALL RIGHT. AND YOU TOOK THAT FROM THE DEFENDANT FIRST
24 THING YOU ARRIVED?

25 A I DID.

THOMAS DARNELL - DIRECT BY KOLB

1 Q AND THE DEFENDANT IN THIS CASE IS BOBBY STONE SITTING
2 WITH HIS ATTORNEYS AT DEFENSE TABLE?

3 A THAT'S CORRECT.

4 Q OKAY. AFTER TAKING THAT KIT, YOU MENTIONED SEALED --
5 YOU SEALED IT?

6 A YES, SIR.

7 Q ALL RIGHT. AND THEN YOU TURNED IT IN IN A SEALED
8 CONDITION TO BE ANALYZED BY THE TRACE DEPARTMENT?

9 A YES, SIR. IT WAS TRANSPORTED BACK TO SLED BY ME AND
10 IT WAS LOGGED IN AT CENTRAL EVIDENCE LATER TO BE
11 TRANSFERRED TO TRACE LAB FOR EXAMINATION.

12 Q ALL RIGHT. NOW, WHAT DID YOU DO NEXT?

13 A I WAS ASKED TO GO TO THE LOCATION WHERE THE SHOOTING
14 TOOK PLACE. I WAS ASKED TO EXAMINE A COUPLE OF WINDOWS ON
15 THE OUTSIDE OF THE RESIDENCE.

16 Q ALL RIGHT. AND WHAT WAS THE PURPOSE OF THAT
17 EXAMINATION?

18 A THE INFORMATION THAT I HAD BEEN GIVEN WAS THAT THERE
19 MIGHT HAVE BEEN---

20 MR. LITTLEJOHN: I'M GOING TO HAVE TO OBJECT TO ANY
21 HEARSAY.

22 THE COURT: ALL RIGHT. I SUSTAIN THE OBJECTION.
23 PLEASE REPHRASE.

24 MR. KOLB: EXCUSE ME.

25 THE COURT: GO AHEAD.

THOMAS DARNELL - DIRECT BY KOLB

1 (WHEREUPON QUESTIONING RESUMED).

2 Q DID YOU EVER FIND ANY SURFACES SUITABLE FOR FINGER
3 PRINT IDENTIFICATION ON THE EXTERIOR OF THE HOUSE?

4 A THE TWO WINDOWS WHICH I DUSTED FOR PRINTS WERE NOT
5 REAL SUITABLE. IT WAS A WHITE PAINTED SURFACE. THE PAINT
6 WAS CRACKING ON IT.

7 I DID ATTEMPT TO DEVELOP PRINTS ON THOSE AREAS,
8 BUT I WAS UNSUCCESSFUL. I ALSO DID NOT NOTICE ANY SIGNS OF
9 THOSE TWO PARTICULAR WINDOWS HAVING BEEN OPENED OR HAVING
10 BEEN FORCED ENTRY.

11 Q ALL RIGHT. WHAT ABOUT AFTER THAT?

12 A AFTER THAT I WAS -- I RESPONDED TO A WOODED LOCATION
13 IN ORDER TO COLLECT A WEAPON THAT WAS ON THE GROUND.

14 Q ALL RIGHT.

15 A BUNCH OF THEM.

16 Q CAN YOU TELL US WHAT IS SHOWN -- TELL US ABOUT THOSE
17 PHOTOGRAPHS AND IDENTIFY THEM BY NUMBER IF YOU WOULD,
18 PLEASE.

19 A STATES 40 IS A PHOTOGRAPH WHICH I TOOK ON THAT
20 MORNING AND THE PHOTOGRAPH SHOWS A WEAPON, A HANDGUN,
21 WHICH WAS ON THE GROUND SORT OF UNDERNEATH A FALLEN TREE.

22 STATES 48 IS A PHOTOGRAPH WHICH I ALSO TOOK IN
23 THE SAME GENERAL AREA. WAS A BLACK IN COLOR CIGARETTE
24 LIGHTER WHICH WAS ALSO LYING NEXT TO THE WEAPON, NEXT TO
25 THE HANDGUN.

THOMAS DARNELL - DIRECT BY KOLB

1 Q ALL RIGHT. CAN YOU IDENTIFY THIS?

2 A YES, I CAN.

3 Q COULD YOU TELL US WHAT THAT IS.

4 A THIS IS THE HIGH STANDARD 22 CALIBER HANDGUN WHICH I
5 COLLECTED THAT NIGHT.

6 Q ALL RIGHT.

7 A ON THE GROUND.

8 Q AND AS SHOWN IN THAT EXHIBIT 40?

9 A YES, IT IS. IT'S SHOWN IN STATE'S 40.

10 Q ALL RIGHT. HOW DO YOU IDENTIFY THAT GUN?

11 A I IDENTIFIED IT WITH THE SERIAL NUMBER WHICH I HAD IN
12 MY REPORT AS BEING THAT OF 1135105. THE SAME NUMBER
13 APPEARS ON THIS WEAPON.

14 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THIS
15 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION? LETS HAVE IT MARKED AT
17 THIS POINT. PLEASE.

18 (WHEREUPON THERE WAS A PAUSE).

19 THE COURT: STATE'S 51 IS A 22 CALIBER PISTOL.

20 (WHEREUPON THERE WAS A PAUSE).

21 THE COURT: ANY OBJECTION?

22 MR. LITTLEJOHN: YOUR HONOR, I DON'T HAVE ANY
23 OBJECTION. I'M ASSUMING THE STATE WILL CONNECT IT UP AS WE
24 GO.

25 THE COURT: I BELIEVE...

THOMAS DARNELL - DIRECT BY KOLB

1 MR. KOLB: THAT'S -- WE WILL CONNECT IT UP
2 DEFINITELY.

3 THE COURT: ALL RIGHT.

4 MR. LITTLEJOHN: I RENEW MY -- I WILL.

5 THE COURT: WHY DON'T WE...

6 MR. LITTLEJOHN: IF IT ISN'T DONE, I WILL OBJECT AT
7 THAT TIME.

8 THE COURT: HOLD IT UP. IT WILL BE STATE'S EXHIBIT
9 50 FOR I.D. AT THIS POINT. 50. YEAH. EXCUSE ME. I'M SORRY.

10 (STATE'S EXHIBIT NO. 50 MARKED FOR
11 IDENTIFICATION).

12 Q CAN YOU IDENTIFY THESE ITEMS?

13 A YES, I CAN.

14 Q CAN YOU TELL US WHAT THEY ARE?

15 A THIS IS THE MAGAZINE THAT WAS REMOVED FROM THE
16 PISTOL. ONCE I REMOVED THE MAGAZINE, WAS FOUND TO CONTAIN
17 A TOTAL OF FIVE UNFIRED 22 CALIBER CARTRIDGES.

18 Q ALL RIGHT.

19 A AND THE OTHER CONTAINER I HAVE A 22 CALIBER CARTRIDGE
20 CASE THAT HAD BEEN FIRED. THE CARTRIDGE CASE WAS ACTUALLY
21 REMOVED FROM THE CHAMBER OF THE WEAPON AND THIS WAS
22 REMOVED BY ME.

23 Q ALL RIGHT, SIR. AND SO WHAT WAS THE CONDITION OF THIS
24 GUN WHEN YOU RECEIVED IT IN THE WOODS AS PICTURED IN
25 EXHIBIT 40 THERE?

THOMAS DARNELL - DIRECT BY KOLB

1 A THE MAGAZINE AND THE UNFIRED 22'S WERE ACTUALLY IN
2 THE WEAPON IN THE -- IN THE RIB OF THE WEAPON. AND THE
3 FIRED 22 CARTRIDGE CASE WAS IN THE CHAMBER. IT HAD NOT
4 EJECTED APPARENTLY AND WAS PRESENT IN THE CHAMBER.

5 THE WEAPON WAS LIKE I SAID HAD THE MAGAZINE IN
6 IT. THAT WAS LOADED. HAD THE FIRED CARTRIDGE CASE IN THE
7 CHAMBER AS ONE, ONE PIECE. I TOOK IT BACK TO SLED AS IT
8 WAS WHEN I COLLECTED IT.

9 PROPERLY PACKAGED IT BY SUSPENDING IT IN A BOX.
10 AND ONCE I GOT BACK TO THE LABORATORY, THAT'S WHEN I BROKE
11 THE WEAPON APART AND FOUND THE FIRED AND UNFIRED 22'S
12 WITHIN THE GUN.

13 Q ALL RIGHT.

14 MR. KOLB: AND WE WOULD LIKE TO OFFER.

15 THE COURT: LETS MARK IT.

16 MR. KOLB: 51 AND 52.

17 THE COURT: STATE'S EXHIBIT 51 WILL BE A PLASTIC BAG
18 CONTAINING MAGAZINE FOR I.D. ONLY AT THIS POINT. 52 IS THE
19 CASING 22 CASING CONTAINING IN THE PLASTIC BAG FOR I.D..
20 ONLY AT THIS POINT.

21 (STATE'S EXHIBIT NO. 51 AND 52 MARKED FOR
22 IDENTIFICATION).

23 (WHEREUPON QUESTIONING RESUMED).

24 Q WHEN YOU INDICATED THE MAGAZINE WAS LOADED, IS THAT
25 FULLY LOADED?

THOMAS DARNELL - DIRECT BY KOLB

1 A NO, SIR. IT WAS NOT.

2 Q FIVE SHELLS THAT WERE THERE, IT WOULD NOT MEAN IT WAS
3 FULLY LOADED?

4 A NO, SIR. THE FIVE WOULD NOT COMPLETELY FILL THE
5 MAGAZINE. NO, SIR.

6 Q WHAT DID YOU DO AFTER THAT?

7 A WELL, ONCE I CHECKED THE WEAPON, I RETURNED BACK TO
8 THE SHERIFF'S OFFICE AND I COLLECTED THE COAT AND THE
9 SHOES OF THE DEFENDANT TO BE TRANSPORTED BACK TO SLED.

10 Q DID YOU ALSO TAKE PHOTOGRAPHS OR DIRECT PHOTOGRAPHS
11 BE TAKEN BY SOMEONE ASSISTING YOU AT THE CRIME SCENE AT
12 817 TAYLOR?

13 A YES, SIR.

14 Q AND THESE PHOTOGRAPHS AND THE OTHERS BESIDES 40 AND
15 41, CAN YOU IDENTIFY THOSE?

16 A YES, I CAN.

17 Q ALL RIGHT. WHAT CAN YOU TELL US ABOUT THOSE?

18 A THESE ARE SIMPLY EXTERIOR PHOTOGRAPHS OF THE
19 RESIDENCE WHICH WAS TAKEN ON THAT MORNING. THE PHOTOGRAPHS
20 WERE TAKEN IN VARIOUS ANGLES WALKING AROUND THE HOUSE.

21 Q ALL RIGHT. WHAT ABOUT NUMBER 49?

22 A STATE'S 49 IS THE AREA OF WOODS WHERE THE -- WHERE
23 STATE'S 50 WAS LOCATED. IT WAS -- WE ARE STANDING IN A
24 OPEN FIELD AREA LOOKING INTO THE WOODS.

25 AND JUST INSIDE THE WOOD LINE WAS WHERE THE

THOMAS DARNELL - DIRECT BY KOLB

1 WEAPON WAS FOUND AND IT WAS ALSO WHERE THERE WAS ANOTHER
2 SLED AGENT STANDING THERE OVER THE WEAPON TO KEEP IT
3 SECURE.

4 Q ALL RIGHT, SIR. NOW, DID YOU HAVE OCCASION TO RECEIVE
5 FROM INVESTIGATOR RAY MACKESSY THREE CARTRIDGE, 22
6 CARTRIDGE CASES IDENTIFIED AS COMING FROM THE PORCH AT 817
7 TAYLOR STREET?

8 A YES, SIR.

9 Q AND WHEN DID YOU RECEIVE THOSE?

10 A I RECEIVED THOSE ON THE 27TH OF FEBRUARY, EARLY THAT
11 MORNING.

12 Q ALL RIGHT. HOW ABOUT DID YOU HAVE OCCASION TO RECEIVE
13 THE WEAPON AS IDENTIFIED AS BEING THE WEAPON OF SERGEANT
14 CHARLIE KUBALA -- FOR THE RECORD IT'S STATE'S EXHIBIT 27
15 -- IN EVIDENCE?

16 A YES, SIR. I RECEIVED THAT AS WELL ON THE 27TH OF
17 FEBRUARY AT 3:30 A.M.

18 Q AND WHAT WAS THE CONDITION -- ALSO HAVE EXHIBIT 26 IN
19 EVIDENCE. WHAT CAN YOU TELL US ABOUT EXHIBIT 27 AND 26 AT
20 THE TIME YOU RECEIVED IT?

21 A I RECEIVED THE WEAPON FULLY LOADED AND I SIMPLY
22 PACKAGED IT UP AND TOOK IT BACK TO SLED.

23 Q ALL RIGHT, SIR. ALL RIGHT. MR. DARNELL, LET ME ASK
24 YOU ABOUT WHAT DO YOU DO. TELL US A LITTLE BIT ABOUT
25 FINGER PRINT IDENTIFICATION.

THOMAS DARNELL - DIRECT BY KOLB

1 A BASICALLY YOU HAVE A LATENT FINGER PRINT WHICH IS A
2 FINGER PRINT LEFT BY CHANCE OR BY ACCIDENT. NORMALLY IT'S
3 JUST A PARTIAL -- IT'S A PARTIAL FINGERPRINT THAT MIGHT BE
4 LEFT OR IT MIGHT NOT BE LEFT, DEPENDING ON VARIOUS
5 CIRCUMSTANCES.

6 A FINGERPRINT IS SIMPLY ABOUT 98 TO 99 PERCENT
7 MOISTURE THAT EXUDES FROM TINY PORES IN YOUR SKIN. IT
8 DEPENDS ON HOW AN ITEM IS HANDLED. IT DEPENDS ON -- YOU
9 KNOW -- THE AMOUNT OF PRESSURE.

10 IT DEPENDS UPON THINGS LIKE THE WEATHER. IT
11 DEPENDS UPON THE SURFACE. IT IS NOT NECESSARY THAT SOMEONE
12 WILL LEAVE A FINGER PRINT EVERY TIME YOU TOUCH SOMETHING.
13 IT'S JUST A CHANCE.

14 AND THEN YOU HAVE TO USE CERTAIN TECHNIQUES TO
15 DEVELOP THAT FINGERPRINT, WHETHER IT BE THE USE OF BLACK
16 POWDER OR WHETHER IT BE CHEMICALS OR CERTAIN LIGHTS THAT
17 WE MIGHT USE.

18 NO ONE HAS THE SAME FINGER PRINT. BUT YOU HAVE
19 TO -- LIKE I SAID, YOU HAVE TO CONSIDER THE FACT THAT NO
20 ONE CAN, YOU KNOW, YOU CAN'T TOUCH SOMETHING EVERY TIME
21 AND LEAVE A FINGER PRINT.

22 IT'S A -- IT'S A CHANCE, A CHANCE THAT YOU WILL.
23 IT'S A CHANCE THAT YOU WON'T.

24 Q IN REGARD TO EXHIBIT 50 FOR IDENTIFICATION, I BELIEVE
25 51 AND 52, THAT'S THE GUN FOUND AT THE SCENE OF THE

THOMAS DARNELL - DIRECT BY KOLB

1 DEFENDANT'S ARREST, DID YOU -- AFTER RECEIVING IT AS YOU
2 JUST DESCRIBED, DID YOU KEEP IT IN YOUR SOLE CUSTODY AND
3 CONTROL UNTIL DOING YOUR WORK ON IT AT SLED HEAD QUARTERS?

4 A YES, SIR. ONCE IT WAS IN MY CUSTODY AS LONG AS I WAS
5 DOING MY EXAMINATION FINGERPRINTS. THEN LATER IT WAS
6 TRANSFERRED TO ANOTHER DEPARTMENT AND YES IT WAS IN MY
7 CUSTODY.

8 Q ALL RIGHT. AND THAT'S A HIGH STANDARD 22 PISTOL?

9 A YES, SIR.

10 Q DID YOU CHECK THAT PISTOL, THE MAGAZINE AND ALL THE
11 CARTRIDGE CASES THAT ARE THERE IN EXHIBITS 50, 51 AND 52
12 FOR FINGER PRINTS?

13 A I DID. YES, SIR.

14 Q WHAT WERE THE RESULTS OF THOSE?

15 A THE RESULT OF THE FINGER PRINT EXAMINATION WAS THAT
16 THE WEAPON ITSELF AND THE MAGAZINE CONTAINED INSUFFICIENT
17 RIDGE DETAIL FOR IDENTIFICATION.

18 WHICH WHAT THAT MEANS IS THAT THERE WAS NOT
19 ENOUGH DETAIL TO BE ABLE TO IDENTIFY ANYONE. THERE WERE
20 PRINTS PRESENT, BUT I JUST -- THERE WASN'T ENOUGH TO
21 IDENTIFY IT TO ANYONE.

22 Q ALL RIGHT, SIR.

23 A ON THE CARTRIDGE CASES, THE FIRED CARTRIDGE CASES
24 THERE WAS NO AREA -- THERE WERE NO AREAS OF RIDGE DETAIL
25 DEVELOPED ON THOSE ITEMS.

THOMAS DARNELL - DIRECT BY KOLB

1 Q ALL RIGHT. WHILE YOU HAD THAT GUN, EXHIBIT 50, DID
2 YOU MAKE A SWAB OF THAT GUN?

3 A I DID. YES, SIR.

4 Q COULD YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF THE
5 JURY ABOUT THAT.

6 A THERE WAS AN AREA OF BLOOD ON WHAT I SUSPECTED TO BE
7 BLOOD PRESENT ON THE RIGHT SIDE OF THE WEAPON NEAR THE
8 TRIGGER. THAT AREA WAS SIMPLY SWABBED WITH A MOIST LIKE A
9 Q TIP ALMOST.

10 THAT WAS SWABBED BY ME AND THEN IT WAS AIR
11 DRIED, PACKAGED AND TRANSFERRED TO CENTRAL EVIDENCE TO BE
12 LOGGED IN AND TO BE TRANSFERRED TO ANOTHER DEPARTMENT IN
13 SLED AT A LATER DATE.

14 Q ALL RIGHT. WHEN YOU SAY PACKAGED, IS THAT PUT INTO A
15 SEALED ENVELOPE?

16 A YES, SIR. IT WOULD BE PUT INTO A BROWN OR A BROWN
17 ENVELOPE -- ONLY AFTER IT'S BEEN AIR DRIED. AND THEN IT
18 WOULD BE SEALED WITH EVIDENCE TAPE AND I WOULD HAVE HAD MY
19 INITIALS AND THE DATE ON THAT ENVELOPE.

20 Q ALL RIGHT. AND THAT WAS SWABBED FOR YOU AND SEALED UP
21 FOR THE SEROLOGY DEPARTMENT?

22 A YES, SIR.

23 Q WHAT -- AFTER THAT, WHAT DID YOU DO WITH ITEM 50, 51
24 AND 52, THE HIGH STANDARD PISTOL AND THAT MAGAZINE AND
25 THOSE CARTRIDGE CASES?

THOMAS DARNELL - DIRECT BY KOLB

1 A ONCE I COMPLETED MY EXAMINATION IT WAS -- THE ITEMS
2 WERE PACKAGED IN A SEALED BOX. AND I PERSONALLY
3 TRANSFERRED THOSE ITEMS TO SLED TO THE FIREARMS LABORATORY
4 AND PLACED IN A WHAT WE CALL A FIRE LOG OR A SECURED AREA
5 WITHIN THE FIREARM LABORATORY.

6 AND THEN THE ITEM WOULD BE PICKED UP BY AN AGENT
7 IN THAT LABORATORY OF THE FIREARMS SECTION AT A LATER
8 TIME.

9 Q ALL RIGHT. AND THAT WAS -- SO THOSE ITEMS 50, 51 AND
10 52 WERE ALL SEALED AND CARRIED BY YOU TO THE FIREARMS
11 DEPARTMENT?

12 A YES, SIR. THEY WERE PLACED IN A SEALED BOX, PROPERLY
13 PACKAGED AND TRANSFERRED TO THE FIRE LOG AT -- IN THE
14 FIREARMS LABORATORY.

15 Q TELL US WHAT DID YOU DO IN REGARD TO THE THREE
16 CARTRIDGE CASES INDICATED -- HOLD ON JUST A MINUTE. CAN
17 YOU IDENTIFY THIS?

18 A YES, I CAN.

19 Q TELL US HOW YOU DO THAT.

20 A I HAVE MY INITIALS ON EACH ENVELOPE THAT I RECEIVED
21 FROM INVESTIGATOR MACKESSEY WITH THE SHERIFF'S OFFICE. AND
22 THESE ENVELOPES ARE ALSO INSIDE THE SEALED OR A -- WHAT
23 WAS AT ONE TIME A HEAT SEALED ENVELOPE. IT WAS DONE BY ME.
24 AND IT ALSO HAS MY INITIALS.

25 Q AND ARE THOSE THE...

THOMAS DARNELL - DIRECT BY KOLB

1 MR. KOLB: WE WOULD LIKE TO OFFER THAT FOR
2 IDENTIFICATION AT THIS TIME, YOUR HONOR.

3 THE COURT: VERY WELL. EACH CONTAINS ONE CASING?

4 MR. KOLB: YES, SIR. THEY ARE STAPLED TOGETHER. BE --
5 SUITS US TO BE ONE EXHIBIT.

6 THE COURT: LETS MARK THEM SEPARATELY, I THINK. JUST
7 OUT OF ABUNDANCE OF CAUTION. STATE'S EXHIBIT 53 IS A
8 PLASTIC BAG CONTAINER CARTRIDGE CASING FOR I.D. ONLY, 22
9 CASING.

10 STATE'S EXHIBIT 54 A BAG CONTAINING A 22
11 CARTRIDGE CASING. 55 IS A BAG CONTAINING A 22 CARTRIDGE
12 CASING. HOW YOU WANT...

13 MR. KOLB: AND EACH BAG CONTAINS IN ADDITION TO
14 CARTRIDGE CASING AN EVIDENCE BAG.

15 THE COURT: BROWN EVIDENCE BAG. VERY WELL.

16 (STATE'S EXHIBIT NO. 53, 54 AND 55 MARKED FOR
17 IDENTIFICATION).

18 (WHEREUPON QUESTIONING RESUMED).

19 Q WHAT WAS DONE WITH THESE? THIS IS 53, 54 AND 55 FOR
20 IDENTIFICATION.

21 A THE 22 CARTRIDGE CASING WERE THE ONES THAT HAD
22 ACTUALLY BEEN FIRED I RECEIVED FROM INVESTIGATOR MACKESSEY
23 WITH THE SHERIFF'S OFFICE EARLY MORNING HOURS OF THE 27TH,
24 TRANSPORTED BACK TO SLED LABORATORY FOR PROCESSING.

25 PROCESSING FOR FINGERPRINTS AND ALSO TO BE LATER

THOMAS DARNELL - DIRECT BY KOLB

1 TRANSFERRED TO THE FIREARMS LABORATORY FOR COMPARISON TO A
2 WEAPON.

3 AFTER COMPLETING AN EXAMINATION OF FINGER
4 PRINTS, THE RESULT WAS THAT THERE WERE NO AREAS OF FINGER
5 PRINTS OR NO AREAS OF RIDGE DETAIL PRESENT ON THE
6 CARTRIDGE CASES, WHICH REALLY DOESN'T SURPRISE ME A WHOLE
7 LOT BECAUSE YOU HAVE A VERY SMALL AREA TO BEGIN WITH.

8 IT'S NOT IMPOSSIBLE TO GET FINGERPRINTS ON AN
9 ITEM SUCH AS THIS, BUT HIGHLY IMPROBABLE. BUT THE RESULT
10 IN THIS CASE WAS THAT THERE WERE NO AREAS WHERE PRINTS
11 WERE PRESENT.

12 Q ALL RIGHT. AFTER CHECKING FOR THAT, WHAT DID YOU DO
13 WITH THOSE THREE CARTRIDGE CASES?

14 A THESE THREE ITEMS, 53, 54 AND 55 WERE ALSO PLACED IN
15 A SEALED BOX. THEY ARE -- THEY WERE ACTUALLY IN THE SAME
16 SEALED BOX THAT CONTAINS STATE'S 50, STATE'S 51, STATE'S
17 26 AND 27 AND THEN THEY WERE TRANSFERRED TO THE FIRE LOG
18 AT SLED.

19 Q THEY ALSO IN THE SEPARATE BAGS IN THERE AND SEALED
20 INDIVIDUALLY?

21 A YES, SIR. EACH CARTRIDGE CASE HAS IT'S SEPARATE
22 CONTAINER. IT HAS THE BROWN ENVELOPE WHICH BEARS THE
23 EVIDENCE TAPE WHERE IT WAS SEALED BY INVESTIGATOR
24 MACKESSEY WHEN HE GAVE IT TO ME.

25 AND THEN IT -- ALSO YOU CAN SEE THE CARTRIDGE

THOMAS DARNELL - DIRECT BY KOLB

1 CASE, THE TOP OF THE PLASTIC BAG AND THEN IT WAS HEAT
2 SEALED AT THE VERY TOP AND IT HAS THE DATE THAT I HEAT
3 SEALED IT AND MY INITIALS. AND EACH CARTRIDGE CASE HAS A
4 SEPARATE CONTAINER.

5 Q ALL RIGHT. AND IN -- SEALED INDIVIDUALLY. THEN YOU
6 PUT THE THREE OF THOSE SEALED CONTAINERS INSIDE ANOTHER
7 SEALED BOX TO SUBMIT TO THE FIREARMS DEPARTMENT?

8 A YES, SIR. THEY WERE ALL PLACED IN ONE BOX BEING THAT
9 THEY WERE GOING TO THE SAME -- THE SAME DEPARTMENT FOR
10 THE SAME TYPE EXAMINATION.

11 Q THE BLACK CIGARETTE LIGHTER THAT IS SHOWN HERE IN
12 EXHIBIT 48.

13 A YES, SIR.

14 Q WELL, COULD YOU TELL US WHAT HAPPENED IN REGARD TO
15 IT?

16 A THE CIGARETTE LIGHTER WAS ALSO TAKEN BACK TO SLED AND
17 PROCESSED FOR FINGERPRINTS.

18 Q WHERE WAS IT YOU ACTUALLY OBTAINED THAT?

19 A IT WAS ON THE GROUND LYING NEXT TO WHERE THE STATE'S
20 50 WAS FOUND.

21 Q ALL RIGHT. NOW, WHAT DID YOU DO -- AND SO YOU
22 ACTUALLY RETRIEVED IT THERE AFTER TAKING THE PICTURE?

23 A YES, SIR.

24 Q ALL RIGHT. WHAT WAS DONE WITH IT?

25 A IT WAS TAKEN BACK TO SLED TO BE PROCESSED FOR

THOMAS DARNELL - DIRECT BY KOLB

1 FINGERPRINTS AS WELL. WITH THE RESULT BEING THAT THERE
2 WERE NO AREAS OF RIDGE DETAIL, NO AREAS OF FINGER PRINTS
3 TO BE FOUND.

4 Q ALL RIGHT, SIR. I WANT TO ASK YOU ABOUT... EXHIBIT
5 NUMBER 13 THAT'S IN EVIDENCE. EVER HAVE OCCASION TO
6 RECEIVE THAT?

7 A YES, SIR.

8 Q COULD YOU TELL US ABOUT THAT?

9 A THIS IS A SNAKE CHARMER 410 SHOTGUN. HAS MY INITIALS
10 ON THE RIGHT SIDE OF THE WEAPON. IT WAS BROUGHT IN TO BE
11 PROCESSED FOR FINGERPRINTS.

12 Q ALL RIGHT. AND WHEN WAS THAT?

13 A LIKE TO CHECK MY NOTES REAL QUICK.

14 (WHEREUPON THERE WAS A PAUSE).

15 A IT WAS BROUGHT IN ON MARCH 28TH OF 96 BY INVESTIGATOR
16 MACKESSEY WITH THE SHERIFF'S OFFICE AND I RECEIVED IT
17 DIRECTLY FROM HIM AT SLED.

18 Q ALL RIGHT. WHAT WAS THE RESULTS OF YOUR EXAMINATION
19 OF THAT ITEM FOR FINGER PRINTS?

20 A THE RESULT WAS THAT THERE WERE NO AREAS OF RIDGE
21 DETAIL PRESENT THAT I COULD IDENTIFY. THERE WERE AREAS
22 PRESENT, BUT THEY WERE INSUFFICIENT FOR IDENTIFICATION.

23 Q AND THAT'S WITH MR. STONE OR ANYONE ELSE?

24 A THAT'S CORRECT.

25 Q ALL RIGHT. WHAT DID YOU DO WITH THAT SHOT GUN AFTER

THOMAS DARNELL - DIRECT BY KOLB

1 CHECKING FOR FINGER PRINTS?

2 A IT WAS SEALED AND IT WAS OR IT WAS PACKAGED IN A
3 SEALED CONTAINER THEN IT WAS TAKEN OVER TO SLED FIREARMS
4 LABORATORY AND GIVEN TO IRA PARNELL WITH THE SLED FIREARMS
5 LABORATORY.

6 Q ALL RIGHT. THERE WERE -- DID YOU HAVE OCCASION TO
7 RECEIVE FIVE EMPTY TWELVE OUNCE BUDWEISER BEER CANS?

8 A YES, SIR.

9 Q AND COULD YOU TELL US ABOUT THAT.

10 A I GOT THOSE ON THE SAME DAY AS I GOT THE SHOTGUN ON
11 MARCH THE 8TH. THE BEER CANS, THEY WERE EMPTY TWELVE OUNCE
12 BUDWEISER BEER CANS. THEY WERE PROCESSED FOR FINGER
13 PRINTS.

14 Q HOW DID YOU RECEIVE THEM? IN SEALED CONTAINERS OR
15 DIRECTLY -- DIRECTLY FROM MR. MACKESSEY?

16 A YES, SIR. I GOT THOSE STRAIGHT FROM INVESTIGATOR
17 MACKESSEY. ON MARCH THE 8TH, BROUGHT THOSE IN TO THE
18 LABORATORY. THEY WERE PROCESSED FOR FINGER PRINTS AND
19 THERE WERE INSUFFICIENT AREAS OF RIDGE DETAIL DEVELOPED.
20 COULD NOT BE IDENTIFIED TO ANYONE.

21 Q OKAY. WHAT WAS DONE WITH THEM AFTER THAT?

22 A THE BEER CANS WERE PACKAGED IN A SEALED CONTAINER AND
23 THEN TAKEN TO CENTRAL EVIDENCE TO BE LATER RETURNED TO THE
24 SUMTER SHERIFF'S OFFICE. THERE WERE NO OTHER EXAMINATIONS
25 THAT WERE NEEDED TO BE DONE ON THOSE BEER CANS.

THOMAS DARNELL - DIRECT BY KOLB

1 Q ALL RIGHT, SIR. DID YOU HAVE OCCASION TO RECEIVE --
2 AT THE TIME YOU RECEIVED THE SHOTGUN THAT'S IN EVIDENCE,
3 WAS IT LOADED?

4 A I AM NOT ONE HUNDRED PERCENT SURE. I DON'T BELIEVE IT
5 WAS LOADED WHEN I GOT IT. I THINK IT WAS UNLOADED WHEN I
6 RECEIVED IT.

7 Q ALL RIGHT. SO AT A LATER DATE WERE THE THREE SHELLS
8 SUBMITTED TO YOU?

9 A ON MARCH 28TH OF 96 THERE WAS A 410 SHOTGUN SHELL
10 THAT HAD BEEN FIRED THAT WAS ALSO SUBMITTED ALONG WITH
11 THE -- THE SAME DAY AS THE SHOTGUN WAS BROUGHT IN.

12 Q ALL RIGHT. DO YOU -- AND WHAT WAS THE RESULTS OF
13 THAT?

14 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK HE HAS
15 LAID THE PROPER FOUNDATION FOR THIS TESTIMONY.

16 (WHEREUPON QUESTIONING RESUMED).

17 Q WHO DID YOU RECEIVE THAT FROM?

18 THE COURT: WAIT JUST A SECOND. AS TO -- AS TO THIS,
19 AS TO THE ONE THAT'S IN EVIDENCE?

20 MR. KOLB: SHOTGUN SHELL, JUDGE.

21 THE COURT: SHOTGUN SHELL?

22 MR. LITTLEJOHN: YES, SIR.

23 MR. KOLB: LET ME EXPLAIN.

24 THE COURT: I SUSTAIN THE OBJECTION. I SUSTAIN THE
25 OBJECTION. YOU CAN PROCEED. LAY A FOUNDATION.

THOMAS DARNELL - DIRECT BY KOLB

1 MR. KOLB: JUDGE, CAN WE APPROACH, YOUR HONOR?

2 THE COURT: UH-HUH.

3 (WHEREUPON A BENCH CONFERENCE WAS HELD).

4 THE COURT: YOU MAY CONTINUE.

5 MR. KOLB: THANK YOU, SIR.

6 (WHEREUPON QUESTIONING RESUMED).

7 Q THE FIRED 410 SHELL THAT YOU RECEIVED, WHO DID YOU
8 RECEIVE THAT FROM?

9 A THE FIRED 410 SHOTGUN SHELL WAS BROUGHT IN BY
10 INVESTIGATOR MACKESSEY. I SEE IT IN MY NOTES THAT THAT
11 PARTICULAR SHELL WAS SUBMITTED ONLY FOR BALLISTICS. IT WAS
12 ONLY SUBMITTED TO GO TO THE FIREARMS LABORATORY.

13 Q ALL RIGHT.

14 A THAT WAS BROUGHT IN ON MARCH THE 8TH.

15 Q SO DID YOU RECEIVE IT FROM MR. MACKESSEY AND THEN
16 TRANSPORT IT?

17 A ACTUALLY THE FIRED 410 SHOTGUN SHELL NEVER ACTUALLY
18 CAME INTO MY CUSTODY. IT WAS SIMPLY BROUGHT IN. I HAVE THE
19 LOG IN SHEET WHERE I COULD SEE IT WAS BROUGHT IN ON MARCH
20 THE 8TH OF 96.

21 Q OKAY. ALL RIGHT. SO YOU DIDN'T CHECK THAT ONE OR
22 HAVE ANYTHING TO DO WITH TRANSPORTING IT TO FIREARMS?

23 A NO, SIR.

24 Q ALL RIGHT. IF YOU WOULD CHECK THE SEPTEMBER THE 16TH
25 1996 IN REGARD TO OR SEPTEMBER THE 18TH IN REGARD TO THREE

THOMAS DARNELL - DIRECT BY KOLB

1 SHOTGUN SHELLS.

2 A CORRECT. ON SEPTEMBER 18TH OF 96 THERE WERE A TOTAL
3 OF THREE UNFIRED 410 SHOTGUN SHELLS THAT WERE BROUGHT IN
4 BY INVESTIGATOR MACKESSEY AND I RECEIVED THOSE DIRECTLY
5 FROM INVESTIGATOR MACKESSEY. I WAS ASKED TO PROCESS THOSE
6 FOR FINGER PRINTS.

7 Q AND WHAT WAS THE RESULT OF THAT?

8 A THE RESULT WAS THAT THERE WERE NO AREAS OF RIDGE
9 DETAIL OR NO AREAS OF FINGER PRINTS ON THE UNFIRED SHOTGUN
10 SHELLS.

11 Q ALL RIGHT.

12 MR. KOLB: JUDGE, CAN WE HAVE JUST A MINUTE?

13 THE COURT: YES, SIR. TAKE YOUR TIME.

14 (WHEREUPON QUESTIONING RESUMED).

15 Q DEPUTY KUBALA'S WEAPON, WHAT DID YOU DO WITH IT?
16 IT'S EXHIBIT 27 AND -- 26 AND 27?

17 A THE STATE'S 27 AND 26 WERE BOXED UP IN A SEALED
18 CONTAINER AND TRANSFERRED TO THE SLED FIREARMS LABORATORY
19 ALONG WITH STATE'S 50 AND STATE'S 51.

20 Q OKAY. AND ALSO 52?

21 A CORRECT.

22 Q ALL RIGHT. WHAT DID YOU DO WITH -- YOU INDICATED YOU
23 HAD GOTTEN THE DEFENDANT'S JACKET?

24 A YES, SIR.

25 Q TELL US WHAT YOU DID WITH IT.

THOMAS DARNELL - DIRECT BY KOLB

1 A THE JACKET WAS PLACED IN A BROWN PAPER BAG AND IT WAS
2 SEALED UP AND TRANSPORTED BACK TO SLED BY ME. IT WAS
3 SUBMITTED TO -- IT WAS LOGGED IN BY ME AT THE EVIDENCE --
4 AT THE CENTRAL EVIDENCE ROOM AND IT WAS TO BE TRANSFERRED
5 LATER TO THE TRACE DEPARTMENT AT SLED.

6 Q ALL RIGHT.

7 MR. KOLB: IF YOU WOULD ANSWER ANY -- EXCUSE ME.

8 THE COURT: JUST ONE SECOND.

9 MR. LITTLEJOHN: OH, I'M SORRY.

10 MR. KOLB: ANSWER ANY QUESTIONS THE DEFENSE MIGHT
11 HAVE.

12 THE COURT: YOU MAY CROSS-EXAMINE, MR. LITTLEJOHN.

13 CROSS-EXAMINATION BY MR. LITTLEJOHN:

14 Q INVESTIGATOR DARNELL, HOW ARE YOU DOING THIS
15 AFTERNOON?

16 A FINE, THANK YOU.

17 Q YOU EXPLAINED TO THE JURY AND TO THE COURT THE
18 TRAINING THAT YOU HAD RECEIVED.

19 A YES, SIR.

20 Q TO BE IN YOUR PRESENT POSITION, YOU RECEIVED A LOT OF
21 THAT TRAINING FROM DON GIRNDT SITTING OVER THERE; DIDN'T
22 YOU?

23 A I DID. YES, SIR.

24 Q LET ME ASK YOU A FEW THINGS ABOUT YOUR EXAMINATION AT
25 817 TAYLOR STREET ON THAT NIGHT.

TOM DARNELL - CROSS BY LITTLEJOHN

1 A YES, SIR.

2 Q YOU INDICATED TO US THAT YOU WENT TO TWO WINDOWS THAT
3 WERE AT THE FRONT OF THE HOUSE?

4 A I THINK THEY WERE ACTUALLY ON THE RIGHT. I THINK
5 FACING THE HOME ON THE RIGHT SIDE OF THE HOUSE.

6 Q OKAY. THAT BE ON THE FRONT AND THE RIGHT SIDE? IS
7 THAT A PHOTOGRAPH THERE THAT WOULD... ALL RIGHT. THIS IS
8 STATE'S EXHIBIT TEN. IS THAT ONE OF THE WINDOWS THAT WAS
9 PROCESSED?

10 A YES, SIR.

11 Q OKAY. AND STEP UP HERE. AND I BELIEVE THAT'S ON THE
12 RIGHT HAND SIDE OF THE HOUSE?

13 A YES, SIR. FACING THE HOUSE IT WOULD BE ON THE RIGHT.

14 Q OKAY. NOW, AND THE OTHER ONE THAT IS DEPICTED IN
15 STATE'S EXHIBIT 12.

16 A YES, SIR.

17 Q AND THIS WOULD BE THE FRONT WINDOW?

18 A WELL, THE WINDOW THAT I'M -- IS BEING SHOWN HERE THAT
19 I ACTUALLY PROCESSED. THE TWO SIDE BY SIDE ON THE RIGHT
20 SIDE OF THE DOOR.

21 Q OKAY. I SEE. I SEE. AND YOU INDICATED TO US THAT IN
22 YOUR EXAMINATION OF THOSE WINDOWS, YOU WERE UNABLE TO FIND
23 ANY COMPARABLE PRINTS OR ANY -- ANY FINGER PRINTS THAT YOU
24 COULD LATER IDENTIFY?

25 A THAT'S CORRECT. YES, SIR.

TOM DARNELL - CROSS BY LITTLEJOHN

1 Q OKAY. I BELIEVE YOU ALSO INDICATED THERE WAS NO SIGN
2 OF ATTEMPTED ENTRY?

3 A NO, SIR. THERE WAS NOT.

4 Q OKAY. WERE YOU ASKED TO EXAMINE THE CAR THAT WAS
5 PARKED THERE?

6 A THE CAR WAS -- YOU KNOW -- WE LOOKED AT THE CAR.
7 DIDN'T DO ANYTHING FURTHER WITH THE VEHICLE.

8 Q OKAY. NOTHING REMARKABLE ABOUT THE CAR?

9 A NO, SIR.

10 Q OKAY. YOU HAVE IDENTIFIED SOME PHOTOGRAPHS YOU TOOK.
11 DO YOU RECALL HOW MANY PHOTOGRAPHS YOU TOOK?

12 A THERE WAS ONE ROLL. I HAVE WRITTEN DOWN IT WAS ONE
13 ROLL OF COLOR FILM THAT WAS LOGGED IN SLED. OUR ROLLS
14 CONSIST OF 24 EXPOSURES. IT WOULD BE NO MORE THAN 24, BUT
15 WOULD PROBABLY BE LESS THAN THAT. WE DON'T ALWAYS SHOOT
16 THE WHOLE ROLL.

17 Q I UNDERSTAND. COULD HAVE BEEN FOURTEEN?

18 A COULD HAVE BEEN. YES, SIR.

19 Q OKAY. INVESTIGATOR DARNELL, ALL IN ALL THE VARIOUS
20 ITEMS THAT YOU -- THAT YOU EXAMINED FOR FINGERPRINT
21 COMPARISON, IS IT SAFE TO SAY THAT IN NONE OF THE
22 INSTANCES WHERE THERE WAS GUN CARTRIDGES, WINDOW,
23 EVERYTHING YOU EXAMINED, THERE WAS NOT SUFFICIENT RIDGE
24 DETAIL TO MAKE A COMPARISON?

25 A THAT'S CORRECT. YES, SIR.

TOM DARNELL - CROSS BY LITTLEJOHN

1 Q OKAY. NOW, ISN'T IT TRUE THAT UNDER SOME
2 CIRCUMSTANCES, THOUGH, IF YOU DON'T HAVE SUFFICIENT RIDGE
3 DETAIL TO MAKE A COMPARISON THAT YOU CAN USE WHAT RIDGE
4 DETAIL YOU HAVE TO EXCLUDE FINGERPRINTS?

5 A BASICALLY IF AN AREA OF RIDGE DETAIL IS INSUFFICIENT
6 FOR IDENTIFICATION, IT'S JUST THAT. IT'S INSUFFICIENT FOR
7 IDENTIFICATION.

8 IN FINGER PRINT WORK YOU HAVE THREE ANSWERS OR
9 THREE CONCLUSIONS. YOU ARE GOING TO HAVE POSITIVE RESULTS.
10 YOU ARE GOING TO HAVE NEGATIVE RESULTS OR YOU ARE GOING TO
11 HAVE INSUFFICIENT IDENTIFICATION.

12 THERE'S NO IN BETWEEN. ACTUALLY THERE COULD BE
13 FOUR THAT WOULD BE SIMPLY -- NO FINGER PRINTS, BUT
14 INSUFFICIENT MEANS THAT THERE IS NOT ENOUGH TO IDENTIFY TO
15 ANYONE.

16 Q OKAY. SO THERE IS NOT ENOUGH TO OR NOT ENOUGH TO
17 EXCLUDE A KNOWN FINGER PRINT?

18 A THAT'S CORRECT.

19 Q OKAY. NOW INVESTIGATOR DARNELL, DID YOU TAKE ANY
20 MEASUREMENTS WHILE YOU WERE AT THE CRIME SCENE?

21 A NO, SIR. I DID NOT.

22 Q WERE YOU ASKED TO TAKE ANY MEASUREMENTS BY ANYBODY
23 FROM SUMTER COUNTY?

24 A NO, SIR. ARE YOU REFERRING TO THE -- WHICH SCENE? I
25 MEAN, I WENT TO TWO DIFFERENT OR THREE DIFFERENT

TOM DARNELL - CROSS BY LITTLEJOHN

1 LOCATIONS.

2 Q I'M TALKING ABOUT AT THE HOUSE.

3 A NO, SIR. IT WAS MY UNDERSTANDING THAT THE INITIAL
4 SCENE HAD ALREADY BEEN PROCESSED OR EXAMINED BY THE
5 SHERIFF'S OFFICE, SO MEASUREMENTS WERE NOT DONE BY ME.

6 NO, SIR.

7 Q SO YOU DIDN'T DO ANY PROCESSING OF THE SIDE PORCH?

8 A NO, SIR. I DID NOT.

9 Q OKAY. OFFICER DARNELL, ON OCCASION DOES NOT SLED TAKE
10 OVER THE PROCESSING OF A SCENE WHERE A LOCAL LAW
11 ENFORCEMENT OFFICER IS INVOLVED?

12 A NORMALLY WE -- YOU KNOW -- SLED DOES GET CALLED IN
13 MOST TIMES OR OCCASIONALLY TO PROCESS SCENES WHERE THERE
14 ARE LAW ENFORCEMENT PERSONNEL INVOLVED, BUT NOT ALWAYS.

15 Q OKAY.

16 A THAT CALL IS -- IS -- COMES BACK TO THE LOCAL
17 AUTHORITIES, WHETHER OR NOT THEY THINK THEY NEED OUR
18 ASSISTANCE FORENSICALLY, WHICH IS THE AREA THAT I AM IN --
19 I DEAL WITH THE SCENE ITSELF.

20 I DON'T DEAL WITH INTERVIEWING, TAKING
21 STATEMENTS OR WHAT HAVE YOU. BUT IT'S NOT ALWAYS THE CASE.

22 Q I UNDERSTAND. THANK YOU, SIR.

23 A YES, SIR.

24 MR. LITTLEJOHN: YOUR HONOR, IF YOU'LL INDULGE ME
25 JUST A MOMENT. I MIGHT HAVE A COUPLE MORE QUESTIONS.

TOM DARNELL - CROSS BY LITTLEJOHN

1 THE COURT: YES, SIR.

2 (WHEREUPON THERE WAS A PAUSE).

3 (WHEREUPON QUESTIONING RESUMED).

4 Q JUST A COUPLE THINGS, INVESTIGATOR DARNELL. WHAT TIME
5 WAS IT WHEN YOU ARRIVED AT THIS SCENE?

6 A THE -- I ARRIVED AT THE SHERIFF'S OFFICE AT 1 A.M. ON
7 THE MORNING OF THE 27TH OF FEBRUARY. THAT WAS THE FIRST
8 PLACE I WENT.

9 Q WHAT TIME WERE YOU CALLED?

10 A I WAS CALLED AT MIDNIGHT ON THAT, THE 26TH OR THE
11 MORNING OF THE 27TH.

12 Q OKAY. AND THE PHOTOGRAPHS THAT YOU HAVE IDENTIFIED
13 THAT YOU TOOK, THE ONE ROLL, THAT'S ALL THE PHOTOGRAPHS
14 YOU TOOK? YOU DIDN'T TAKE ANY OF THE HOUSE?

15 A OF THE -- THESE.

16 Q OTHER THAN THE EXTERIOR OF THE HOUSE?

17 A JUST TOOK THE EXTERIOR AND PHOTOGRAPHS WHERE THE
18 WEAPON WAS RECOVERED.

19 Q ALL RIGHT, SIR. THANK YOU VERY MUCH.

20 THE COURT: YES, SIR. RE-DIRECT?

21 MR. KOLB: NO, SIR.

22 THE COURT: YOU MAY COME DOWN.

23 (WHEREUPON THE WITNESS LEFT THE STAND) .

24 THE COURT: SOLICITOR, HOW LONG IS YOUR NEXT WITNESS
25 DO YOU ANTICIPATE?

TOM DARNELL - CROSS BY LITTLEJOHN

1 MR. KOLB: IT WOULD TAKE LONGER THAN TWENTY MINUTES.

2 THE COURT: ALL RIGHT, SIR. I'M GOING TO USE THIS AS
3 A BREAK IN THE TRIAL SO WE WON'T HAVE TO INTERRUPT THE
4 TESTIMONY.

5 LADIES AND GENTLEMEN, I'LL LET YOU GO TO LUNCH
6 AT THIS POINT. PLEASE DO NOT BEGIN YOUR DELIBERATIONS IN
7 ANY FASHION. DO NOT DISCUSS THE CASE AMONG YOURSELVES.

8 WE WILL RESUME -- GIVE YOU AN HOUR AND A HALF AT
9 2:15. THANK YOU VERY MUCH. YOU MAY RETIRE. EVERYBODY
10 REMAIN SEATED PLEASE WHILE THE JURY GOES OUT.

11 (WHEREUPON THE JURY LEFT THE COURTROOM AT 12:48
12 P.M.)

13 THE COURT: ANYTHING FROM THE STATE BEFORE WE
14 RECESS?

15 MR. KOLB: NO, SIR.

16 THE COURT: ANYTHING FROM THE DEFENSE BEFORE WE
17 RECESS?

18 MR. LITTLEJOHN: NO, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH. BE AT EASE UNTIL
20 2:15.

21 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

22 THE COURT: YA'LL READY? ALL RIGHT. LET THE RECORD
23 REFLECT MR. STONE IS PRESENT. STATE'S READY TO PROCEED.
24 DEFENSE READY TO PROCEED?

25 MR. LITTLEJOHN: YES, YOUR HONOR.

TOM DARNELL - CROSS BY LITTLEJOHN

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

2 (WHEREUPON THE JURY ENTERED THE COURTROOM AT
3 2:31 P.M.)

4 THE COURT: THANK YOU, LADIES AND GENTLEMEN. HAD A
5 GOOD LUNCH. WE WILL BREAK. I NOTICE THAT YOU'VE HAVE BEEN
6 TAKING THAT SEAT. IS THAT JUST YOU JUST LIKE THAT SEAT OR
7 DOES THAT INDICATE SOMETHING ELSE HAPPENED?

8 FOREMAN: YES.

9 THE COURT: INDICATES YOU'VE BEEN SELECTED AS THE
10 PRESIDING JUROR?

11 FOREMAN: YES, SIR.

12 THE COURT: VERY WELL. THANK YOU SO MUCH. APPRECIATE
13 IT. ALL RIGHT. SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

14 MR. KOLB: LAROSA, YOUR HONOR.

15 PAUL LAROSA, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 THE COURT: MR. LAROSA, AFTER YOU'RE SEATED IF YOU
18 WILL PLEASE SIR GET THE MICROPHONE POSITIONED WHERE YOU
19 NEED IT. STATE YOUR FULL NAME FOR THE RECORD. SPELL YOUR
20 LAST.

21 WITNESS: PAUL C LAROSA, THE THIRD. L A R O S A.

22 THE COURT: THANK YOU, SIR.

23 DIRECT EXAMINATION BY MR. KOLB:

24 Q MR. LAROSA, HOW ARE YOU EMPLOYED?

25 A I'M EMPLOYED WITH THE STATE LAW ENFORCEMENT DIVISION

PAUL LAROSA - DIRECT BY KOLB

1 IN COLUMBIA.

2 Q ALL RIGHT. AND DID YOU HAVE OCCASION TO ATTEND THE
3 AUTOPSY IN NEWBERRY, SOUTH CAROLINA, ON FEBRUARY THE 27TH,
4 1996?

5 A YES, SIR. I DID.

6 Q AND THAT WAS THE AUTOPSY ON THE BODY OF DEPUTY
7 CHARLES KUBALA BY -- CONDUCTED BY DR. JOEL SEXTON?

8 A YES, SIR. IT WAS.

9 Q ALL RIGHT. AND DID DR. SEXTON TURN OVER ITEMS OF
10 EVIDENCE TO YOU IN THE COURSE OF THAT AUTOPSY?

11 A YES, SIR.

12 Q LET ME ASK YOU IF YOU CAN IDENTIFY WHAT'S PREVIOUSLY
13 BEEN MARKED AS STATE'S EXHIBIT 17 AND 18 FOR
14 IDENTIFICATION.

15 A YES, SIR. I CAN.

16 Q ALL RIGHT. AND TELL US WHAT HAPPENED AS FAR AS THOSE
17 ITEMS WERE CONCERNED.

18 A THESE TWO ITEMS WERE REMOVED FROM MR. KUBALA AT THE
19 AUTOPSY BY DR. SEXTON AND THEY WERE THEN TRANSFERRED TO
20 MYSELF TO BE BROUGHT BACK TO SLED.

21 Q ALL RIGHT. AND WHAT DID YOU DO WITH THOSE TWO ITEMS
22 THERE?

23 A I SECURED THESE ITEMS WITHIN THE LATENT PRINT CRIME
24 SCENE UNIT WHICH I AM ASSIGNED, THEN TRANSFERRED TO
25 SPECIAL AGENT TOM DARNELL.

PAUL LAROSA - DIRECT BY KOLE

1 Q AT THAT TIME, MR. DARNELL WAS BASICALLY YOUR
2 SUPERVISOR. YOU WERE ASSISTING HIM?

3 A YES, SIR. I WAS TOM'S -- MR. DARNELL'S -- BACK UP
4 THAT EVENING.

5 Q ALL RIGHT. SO YOU TURNED THOSE OVER. YOU ALLOWED NO
6 ONE TO TAMPER WITH THEM IN ANY WAY?

7 A NO, SIR. I SECURED THEM.

8 Q WHAT OTHER ITEMS DID YOU RECEIVE FROM DR. SEXTON?

9 A ALONG WITH THE BULLETS, THE PROJECTILES, I RECEIVED
10 ONE VEST, ONE TAN SHIRT, ONE WHITE T SHIRT, THE SEROLOGY
11 EVIDENCE WHICH INCLUDES BLOOD, THE TOXICOLOGY EVIDENCE
12 WHICH INCLUDES DEBRING (SIC), URINE, LITER (SIC) AND OTHER
13 BLOOD AND BODY FLUIDS, THE BALLISTICS AND COMPLETED A G S
14 R KIT, GUN SHOT RESIDUE KIT AT THE TIME OF THE AUTOPSY.

15 Q ALL RIGHT. LET ME ASK YOU ABOUT THOSE INDIVIDUALLY.
16 TELL US ABOUT THE CLOTHING THAT YOU MENTIONED. WHAT TYPE
17 OF VEST WAS THAT?

18 A THAT WAS A POLICE ISSUED BULLET PROOF VEST.

19 Q ALL RIGHT. AND YOU SAID A TAN SHIRT. WHAT KIND OF
20 SHIRT WAS THAT?

21 A YES, SIR. THAT WOULD HAVE BEEN HIS UNIFORM SHIRT.

22 Q ALL RIGHT. AND WHITE T SHIRT?

23 A YES, SIR.

24 Q AND THOSE WERE THERE WITH THE BODY AT AUTOPSY THAT
25 YOU ATTENDED?

PAUL LAROSA - DIRECT BY KOLB

1 A YES, SIR. THEY WERE.

2 Q AND WHAT DID YOU DO WITH THOSE ITEMS?

3 A I SECURED THOSE AT THE SLED HEADQUARTERS IN THE
4 LATENT PRINT CRIME SCENE UNIT THEN TRANSFERRED THOSE ITEMS
5 TO SPECIAL AGENT TOM DARNELL.

6 Q THAT WOULD HAVE BEEN ON THE NEXT DAY, FEBRUARY 28TH?

7 A YES, SIR.

8 Q ALL RIGHT. LET ME ASK YOU ABOUT THE G S R KIT. TELL
9 US ABOUT THAT.

10 A THE G S R KIT IS WHAT WE CALL -- COMMONLY KNOWN AS
11 THE GUN SHOT RESIDUE KIT WHICH INCLUDES TWO SAMPLES, A
12 STUB AND A SWAB OF THE HAND.

13 AND THIS CAN TELL WHETHER AN INDIVIDUAL HAS
14 FIRED OR HANDLED A WEAPON THAT HAS RECENTLY BEEN FIRED OR
15 HELD ANYTHING THAT WOULD HOLD THE SAME TYPE OF CHEMICALS
16 THAT A WEAPON THAT HAD BEEN FIRED WOULD HOLD.

17 Q TELL US ABOUT DEPUTY KUBALA'S HANDS WHEN YOU FIRST
18 SAW HIM.

19 A WHEN I FIRST SAW DEPUTY KUBALA'S HANDS, THEY WERE IN
20 A -- SECURED WITH PAPER BAGS, BROWN PAPER BAGS. AND THIS
21 IS A USUAL PROCEDURE AT A CRIME SCENE TO SECURE THE HANDS
22 WITHIN THESE BAGS.

23 TO PROTECT THEM FOR ANY TRACE OR ANY OTHER
24 EVIDENCE THAT MIGHT BE NEEDED AT THE TIME OF THE AUTOPSY.

25 Q ALL RIGHT, SIR. AND DID YOU REMOVE THE BAGS FROM HIS

PAUL LAROSA - DIRECT BY KOLB

1 HANDS AND CONDUCT THIS G S R TEST?

2 A YES, SIR. I REMOVED THE BROWN BAGS FROM THE HANDS. I
3 EXAMINED THEM AND THERE WAS BLOOD NOTED ON THE HANDS. THE
4 HANDS WERE THEN BOTH STUBBED AND SWABBED AND THE EVIDENCE
5 SEALED INSIDE A G S R KIT AND BROUGHT BACK TO SLED AND
6 SECURED AND THEN TRANSFERRED TO AGENT TOM DARNELL.

7 Q ALL RIGHT. AND SO YOU ACTUALLY WITH THIS G S R KIT --
8 YOU ACTUALLY SEALED IT UP YOURSELF?

9 A YES, SIR. THERE IS A SINGLE PIECE OF EVIDENCE TAPE
10 THAT YOU CAN PUT OVER THE BACK OF IT AND THEN INITIAL AND
11 THIS IS WHAT I DID.

12 Q ALL RIGHT. SO -- AND YOU GAVE THAT TO DARNELL, TOM
13 DARNELL ALSO?

14 A YES, SIR.

15 Q ALREADY SEALED BY YOU?

16 A YES, SIR.

17 Q ALL RIGHT. NOW, YOU MENTIONED SOME BLOOD SAMPLES THAT
18 -- FOR THE PURPOSE OF GOING TO THE SEROLOGY LAB AT SLED.
19 WHAT ACTUAL SAMPLES WERE OBTAINED FOR THAT PURPOSE?

20 A WELL, IT'S USUAL PROCEDURE THEY TAKE DIFFERENT
21 SAMPLES OF BLOOD AT AN AUTOPSY, SECURE THEM THERE WITHIN A
22 ZIP-LOCK TYPE OF A BAG. IT'S AN EVIDENCE BAG. SEALED AND
23 THEN SIGNED BY THE PATHOLOGIST.

24 AND THEN WE WERE TO BRING THEM BACK TO SLED AND
25 THEN LATER TRANSFER THEM TO THE DIFFERENT UNITS WITHIN THE

PAUL LAROSA - DIRECT BY KOLB

1 CRIME SCENE OR THE FORENSIC LAB WHICH WILL NEED THOSE FOR
2 FURTHER PROCESSING.

3 Q SO THIS BLOOD IS ACTUALLY DRAWN FROM THE BODY BY DR.
4 SEXTON IN YOUR PRESENCE?

5 A YES, SIR. IT WAS.

6 Q AND YOU OBSERVED THAT BEING DONE?

7 A I WAS PRESENT AT THE AUTOPSY THE WHOLE TIME AND SAW
8 HIM PLACE THE EVIDENCE INTO THE EVIDENCE BAG AND SEALED
9 AND SIGNED.

10 Q WHAT WAS OBTAINED FOR SEROLOGY? HOW MANY TUBES OF
11 BLOOD?

12 A FOR THE PURPOSE OF SEROLOGY, TWO PURPLE TOP TUBES OF
13 BLOOD WERE COLLECTED AND ONE RED TOP TUBE OF BLOOD WAS
14 COLLECTED.

15 Q IS THAT JUST THE DIFFERENT COLOR TEST TUBE?

16 A YES, SIR. THE TOP OF IT IS DIFFERENT AND THAT IS FOR
17 THE SEROLOGY DEPARTMENT'S USE.

18 Q ALL RIGHT. AND ONCE THOSE THREE TUBES WERE OBTAINED
19 FOR SEROLOGY, THEY WERE PUT INSIDE A SEPARATE EVIDENCE
20 ENVELOPE AND SEALED BY DR. SEXTON IN YOUR PRESENCE?

21 A YES, SIR. THEY WERE.

22 Q AND IN TAKING THEM BACK IN THAT SEALED CONDITION, WHO
23 DID YOU GIVE THEM TO?

24 A THOSE WERE SECURED WITHIN A REFRIGERATOR THAT WE HAVE
25 WITHIN THE LATENT PRINT CRIME SCENE UNIT AND THEN

PAUL LAROSA - DIRECT BY KOLB

1 TRANSFERRED TO SPECIAL AGENT TOM DARNELL THE NEXT
2 AFTERNOON.

3 Q ALL RIGHT. NOW, YOU MENTIONED TOXICOLOGY. WHAT WERE
4 THE DIFFERENT SAMPLES THAT WERE OBTAINED?

5 A IN THE AUTOPSY THE PATHOLOGIST REMOVED A BOTTLE OF
6 BRAIN, SOME LIVER.

7 Q THAT'S A SAMPLE FROM THE BRAIN?

8 A YES, SIR. IT'S A DIFFERENT SAMPLE. AND HE PLACES IT
9 WITHIN A SPECIFIC BOTTLE LABELED FOR THE APPROPRIATE
10 SUBSTANCE THAT HE'S REMOVED FROM THE BODY.

11 AND THESE WERE ALL SEPARATELY PACKAGED AND
12 SEALED AT THE TIME OF THE AUTOPSY BY THE PATHOLOGIST AND
13 BROUGHT BACK AND PUT IN THE APPROPRIATE FREEZER OR
14 REFRIGERATOR AND THEN TRANSFERRED TO SPECIAL AGENT TOM
15 DARNELL.

16 Q AND WHAT WERE THOSE SPECIFIC SAMPLES THAT YOU
17 RECEIVED FOR THE PURPOSE OF GIVING THEM TO YOUR TOXICOLOGY
18 DEPARTMENT?

19 A BRAIN, LIVER, URINE, THREE TUBES OF BLOOD, ONE TUBE
20 OF BILE AND ONE TUBE OF VITROUS.

21 Q ALL RIGHT, SIR. ANSWER ANY QUESTIONS THE DEFENSE MAY
22 HAVE.

23 THE COURT: ANY QUESTIONS?

24 MR. LITTLEJOHN: NO QUESTIONS.

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

TOM DARNELL - DIRECT BY KOLB

1 (WHEREUPON THE WITNESS LEFT THE STAND).

2 MR. KOLB: RECALL TOM DARNELL, YOUR HONOR.

3 TOM DARNELL, BEING FIRST DULY
4 REMINDED OF OATH, TESTIFIED AS FOLLOWS:

5 THE COURT: MR. DARNELL, I WOULD REMIND YOU SIR YOU
6 ARE UNDER OATH.

7 WITNESS: YES, SIR.

8 THE COURT: THANK YOU, SIR.

9 DIRECT EXAMINATION BY MR. KOLB:

10 Q MR. DARNELL, I WANT TO ASK YOU ABOUT A FEW OTHER
11 MATTERS. DID YOU HAVE OCCASION TO -- WERE YOU ABLE TO
12 ATTEND THE AUTOPSY BY DR. SEXTON OF THE BODY OF DEPUTY
13 CHARLES KUBALA?

14 A NO, SIR. I WAS NOT.

15 Q AND WHAT WAS DONE IN THAT REGARD?

16 A AGENT LAROSA HAD BEEN ASKED BY ME TO ATTEND THE
17 AUTOPSY HELD IN NEWBERRY.

18 Q ALL RIGHT. AND WERE THERE A NUMBER OF SAMPLES THAT HE
19 OBTAINED AT THE AUTOPSY THAT WERE TURNED OVER TO YOU?

20 A YES, THERE WERE.

21 Q I WANT TO ASK YOU ABOUT WHAT'S BEEN MARKED FOR
22 IDENTIFICATION ITEMS 17 AND 18 AND ASK YOU WHAT WAS DONE
23 WITH THOSE.

24 A STATE'S 17 AND 18 ARE BROWN PLASTIC BOTTLES THAT
25 CONTAINED -- ONE CONTAINS PROJECTILE FRAGMENTS. THE OTHER

TOM DARNELL - DIRECT BY KOLB

1 CONTAINS A PROJECTILE THAT WERE RECOVERED BY THE
2 PATHOLOGIST AT THE AUTOPSY, BROUGHT BACK TO SLED BY AGENT
3 LAROSA. IT WAS GIVEN TO ME THE NEXT DAY.

4 AND THEN I ULTIMATELY PACKAGED THOSE TWO ITEMS
5 IN THE SAME SEALED BOX WITH THE WEAPONS, THE 22 AS WELL AS
6 THE NINE MILLIMETER. AND THOSE ITEMS WERE TRANSFERRED OVER
7 TO THE SLED LABORATORY.

8 Q ALL RIGHT. NOW, THAT BOX THAT YOU PUT ALL THAT
9 EVIDENCE IN, DID YOU SEAL IT YOURSELF FOR SUBMISSION TO
10 THE FIREARMS LAB?

11 A YES, SIR. I SURE DID.

12 Q ALL RIGHT. AND NOW, I WANT TO ASK YOU ABOUT SOME
13 ITEMS OF CLOTHING, THE DEPUTY'S BULLET PROOF VEST, UNIFORM
14 SHIRT AND WHITE T SHIRT. DID YOU HAVE OCCASION TO RECEIVE
15 THOSE?

16 A YES, I DID.

17 Q ALL RIGHT. TELL US WHAT WAS -- HOW -- WHEN YOU
18 RECEIVED THOSE AND WHAT WAS DONE IN THAT REGARD.

19 A THE CLOTHING HAD TO BE ALLOWED TO BE AIR DRIED FIRST
20 OF ALL. ONCE IT WAS AIR DRIED, THEN THE NEXT DAY WHICH
21 WOULD HAVE BEEN THE 28TH OF FEBRUARY, THE ITEMS WERE
22 TRANSFERRED FROM AGENT LAROSA TO MYSELF.

23 AND THEN THOSE ITEMS WERE TAKEN DOWN STAIRS TO
24 CENTRAL EVIDENCE AND THEY WERE LOGGED IN AND LATER TO BE
25 DISTRIBUTED TO THE APPROPRIATE SECTION IN THE LABORATORY.

TOM DARNELL - DIRECT BY KOLB

1 Q ALL RIGHT, SIR. NOW, WHEN YOU SUBMITTED THE VEST, THE
2 UNIFORM SHIRT AND WHITE T SHIRT, WERE THOSE PUT IN A
3 CONTAINER AND SEALED?

4 A YES, THEY WERE. YES, THEY WERE.

5 Q LET ME ASK YOU ABOUT TWO PURPLE TOP TUBES OF BLOOD.
6 THE RED TOP TUBE OF BLOOD YOU KNOW WAS INTENDED FOR THE
7 SEROLOGY DEPARTMENT. DID YOU HAVE OCCASION TO RECEIVE
8 THOSE?

9 A YES, I DID.

10 Q TELL US ABOUT THAT.

11 A ORDINARILY WHEN BODY FLUIDS COME FROM AN AUTOPSY OR
12 FROM DR. SEXTON, HE WOULD HAVE -- THE FLUIDS WOULD BE
13 PLACED IN A PLASTIC BAG AND HEAT SEALED.

14 AND I -- I DID NOT TAMPER WITH THE CONTENTS OF
15 THE -- OR WITHIN THE BAG. THE BAG ITSELF WAS TAKEN DOWN TO
16 LOG IN AND LOGGED IN BY THE APPROPRIATE PEOPLE AND THEN IT
17 WAS LATER DISTRIBUTED TO THROUGHOUT THE LABORATORY.

18 Q YOUR PART OF IT WAS RECEIVING THOSE TUBES ALREADY IN
19 THE HEAT SEALED ENVELOPE AND JUST MAINTAINING THE HEAT
20 SEALED ENVELOPE AND CONTENTS UNTIL YOU TURNED THEM IN TO
21 THE REFRIGERATOR IN THE LOG IN AREA?

22 A THAT'S CORRECT.

23 Q AND THAT WAS IN A SEALED CONDITION?

24 A YES, IT WAS.

25 Q DID YOU ALLOW ANYONE TO TAMPER WITH THIS OR ANY OTHER

TOM DARNELL - DIRECT BY KOLB

1 EVIDENCE WHILE IT WAS IN YOUR CUSTODY?

2 A NO, SIR.

3 Q WHAT ABOUT ITEMS FROM TOXICOLOGY?

4 A SAME THING APPLIED TO THOSE ITEMS AS WELL. THEY WERE
5 IN THE SEALED BAG BY THE PATHOLOGIST. THEY WERE LOGGED IN
6 AT SLED AND THEN DISTRIBUTED TO THE DEPARTMENT'S
7 LABORATORY.

8 Q AND YOU RECEIVED THOSE IN A SEALED CONDITION FROM
9 OFFICER LAROSA AND JUST MAINTAINED -- UNTAMPERED WITH?

10 A THAT'S CORRECT.

11 Q UNTIL YOU -- YA'LLS LOG IN SECTION REFRIGERATOR?

12 A YES, SIR.

13 Q OKAY. YOU MENTIONED OFFICER, DEFENDANT STONE'S COAT
14 THAT YOU OBTAINED IT. AND YOU TOLD US WHAT YOU DID WITH
15 IT.

16 A YES, SIR.

17 Q I NEED TO MARK THIS FOR IDENTIFICATION AT THIS TIME.
18 CAN YOU IDENTIFY THIS AS BEING THAT COAT?

19 A YES, I CAN.

20 Q AND THAT'S THE BROWN COAT?

21 A YES, SIR, IT IS. IT'S IN A BROWN PAPER BAG. IT HAS
22 MY INITIALS. THIS PARTICULAR ITEM WAS PLACED IN A BOX AND
23 SEALED, MARKED WITH EVIDENCE TAPE AND IT ALSO HAS MY
24 INITIALS T D ON THE BOTTOM.

25 Q I THINK YOU TESTIFIED TO ALL THAT EARLIER, JUST

TOM DARNELL - DIRECT BY KOLB

1 DIDN'T HAVE IT MARKED.

2 THE COURT: STATE'S EXHIBIT 56 FOR IDENTIFICATION ONE
3 BOX I BELIEVE WITH A BROWN PAPER BAG CONTAINING THE COAT.

4 MR. KOLB: YES, SIR.

5 THE COURT: VERY WELL.

6 MR. KOLB: ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

7 MR. LITTLEJOHN: WE HAVE NO QUESTIONS.

8 THE COURT: YOU MAY COME DOWN, SIR. THANK YOU.

9 MR. KOLB: JEFF HOLLIFIELD.

10 (WHEREUPON THE WITNESS LEFT THE STAND)

11 JEFF HOLLIFIELD, BEING FIRST DULY
12 SWORN, TESTIFIED AS FOLLOWS:

13 THE COURT: MR. HOLLIFIELD, IF YOU WOULD PLEASE
14 POSITION YOURSELF AND MOVE THE MIKE WHERE YOU NEED IT,
15 THEN ONCE YOU'VE ACCOMPLISHED THAT IF YOU WOULD STATE YOUR
16 FULL NAME AND SPELL YOUR LAST FOR THE RECORD.

17 WITNESS: MY NAME IS JEFFREY MORRIS HOLLIFIELD, H O L
18 L I F I E L D.

19 DIRECT EXAMINATION BY MR. KOLB:

20 Q MR. HOLLIFIELD, WOULD YOU TELL US WHAT YOU ARE DOING
21 NOW.

22 A I'M CURRENTLY -- EXCUSE ME. I'M CURRENTLY FULL TIME
23 STUDENT AT MCRONE RESEARCH INSTITUTE IN CHICAGO, ILLINOIS.

24 Q AND WHAT ARE YOU STUDYING THERE?

25 A SPECIALIZE IN TEACHING COURSES ON DOING ANALYTICAL

JEFF HOLLIFIELD - DIRECT BY KOLB

1 CHEMISTRY WITH MICROSCOPES.

2 Q ALL RIGHT. AND WHERE WERE YOU EMPLOYED BEFORE YOUR
3 CURRENT ACTIVITIES?

4 A I WAS EMPLOYED PREVIOUSLY WITH THE SOUTH CAROLINA LAW
5 ENFORCEMENT DIVISION AND I WAS ASSIGNED TO THE TRACE
6 EVIDENCE DEPARTMENT.

7 Q HOW LONG WERE YOU EMPLOYED AT SLED?

8 A TEN YEARS..

9 Q AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE
10 JURY ABOUT YOUR EDUCATION AND TRAINING AND EXPERIENCE
11 LEADING UP TO YOUR CAREER THAT YOU HAD AT SLED IN THE
12 TRACE DEPARTMENT THERE?

13 A OKAY. I RECEIVED A BACHELORS DEGREE AND ALSO MASTERS
14 DEGREE IN CHEMISTRY, BOTH FROM FURMAN UNIVERSITY. I
15 PARTICIPATED IN AN INTERNSHIP FOR A BRIEF TIME WITH THE
16 GREENVILLE COUNTY CRIME LAB.

17 ONCE I WAS HIRED BY SLED, I ATTENDED THE SOUTH
18 CAROLINA CRIMINAL JUSTICE ACADEMY FROM THE LAW ENFORCEMENT
19 TRAINING AND THEN WAS AT SLED FOR TEN YEARS, THREE YEARS
20 IN THE DRUG IDENTIFICATION DEPARTMENT, SEVEN YEARS IN
21 TRACE EVIDENCE.

22 Q ALL RIGHT. AND DID YOU AFTER BEING -- HAD YOU
23 RECEIVED ANY ADDITIONAL TRAINING IN THE AREA OF TRACE
24 IDENTIFICATION?

25 A YES, SIR. I RECEIVED IN-HOUSE TRAINING FROM OTHER

JEFF HOLLIFIELD - DIRECT BY KOLB

1 EXAMINERS. AND ALSO WHILE I WAS THERE ATTENDED SEVERAL
2 SCHOOLS. THESE ARE ONE WEEK COURSES AROUND THE COUNTRY
3 THAT TEACH SPECIFIC AREAS OF TRACE ANALYSIS.

4 MR. KOLB: YOUR HONOR --

5 (WHEREUPON QUESTIONING RESUMED).

6 Q WELL, DURING THE TIME YOU WERE EMPLOYED AT SLED, WERE
7 YOU QUALIFIED TO TESTIFY AS AN EXPERT IN THIS FIELD ON ANY
8 OCCASIONS?

9 A YES, SIR. YES, I WAS. I TESTIFIED IN MAGISTRATE
10 COURTS, GENERAL SESSIONS COURTS AND FEDERAL COURTS IN
11 SOUTH CAROLINA AND ALSO IN GEORGIA. ABOUT 118 TIMES.

12 Q ALL RIGHT.

13 MR. KOLB: YOUR HONOR, WE WOULD OFFER HIM TO THE
14 COURT AS AN EXPERT.

15 THE COURT: CARE TO EXAMINE HIM AS TO THAT?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 THE COURT: VERY WELL. YOU WANT HIM TO RENDER
18 OPINIONS IN FIELD OF CHEMICAL ANALYSIS OR TRACE ANALYSIS?

19 MR. KOLB: YES, SIR.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, AGAIN
21 ANOTHER WITNESS THAT WILL BE ALLOWED TO RENDER OPINIONS
22 INCLUDING TRACE ANALYSIS. YOU WILL CONSIDER THIS TESTIMONY
23 OF COURSE THE SAME AS YOU WOULD ANY OTHER WITNESS. YOU MAY
24 CONTINUE.

25 (WHEREUPON QUESTIONING RESUMED).

JEFF HOLLIFIELD - DIRECT BY KOLB

1 Q OKAY. MR. HOLLIFIELD, COULD YOU TELL US A LITTLE BIT
2 ABOUT THE SCIENCE INVOLVED IN YOUR FIELD OF FORENSIC
3 EXPERTISE?

4 A OKAY. IN TRACE EVIDENCE WE ANALYZE TRACE -- VERY
5 SMALL PIECES OF EVIDENCE AND THESE -- THIS WOULD INCLUDE
6 THINGS SUCH AS HAIRS, FIBERS, PAINT PIGMENTS, PAINT CHIPS,
7 GLASS, EXPLOSIVE RESIDUES AND GUN SHOT RESIDUES.

8 CONCERNING GUN SHOT RESIDUES THERE ARE REALLY
9 TWO MAJOR AREAS OR TWO DIFFERENT TYPES OF EXAMS THERE. ONE
10 TEST FOR GUN SHOT RESIDUE IS TO LOOK FOR RESIDUE FROM
11 WEAPONS THAT APPEARS ON PEOPLE'S HANDS WHO ARE SUSPECTED
12 OF HAVING FIRED A WEAPON.

13 THE SECOND TYPE OF TEST FOR GUN SHOT RESIDUE IS
14 DONE ON ARTICLES OF CLOTHING, WHICH CAN BE EITHER SUBJECTS
15 CLOTHES OR VICTIMS CLOTHES TO LOOK FOR ANY GUN POWDER
16 RESIDUE THAT'S AROUND SAY A BULLET HOLE THAT'S LEFT FROM
17 WHERE A PERSON WAS SHOT.

18 Q WHAT IS IT ABOUT A GUN BEING FIRED THAT RESULT IN
19 TRACE EVIDENCE BEING LEFT BEHIND?

20 A WHEN THE BULLET ACTUALLY EXPLODES, A LOT OF THE
21 PRIMER AND POWDER THAT ARE ENCAPSULATED IN THE BULLET ARE
22 RELEASED AND THEY EXIT THE GUN IN SEVERAL DIFFERENT
23 PLACES.

24 IT COULD BE AROUND THE -- AROUND THE TRIGGER,
25 AROUND THE CYLINDER, ON THE REVOLVER, OR AROUND THE

JEFF HOLLIFIELD - DIRECT BY KOLB

1 MAGAZINE OPENINGS ON A SEMIAUTOMATIC OR AUTOMATIC WEAPON.

2 THE MAJORITY OF THE POWDER THAT COMES OUT OF THE
3 GUN IS AT THE END OF THE BARREL. BUT BECAUSE OF THAT, IF A
4 PERSON'S HANDS OR CLOTHING ARE VERY CLOSE TO THAT WEAPON,
5 EITHER TOUCHING IT OR VERY NEAR IT, THEN THAT RESIDUE,
6 POWDER, SMOKE AND WHAT HAVE YOU WILL BE DEPOSITED ON THOSE
7 ARTICLES.

8 Q ALL RIGHT, SIR. AND THAT IS SOMETHING THAT YOU LOOK
9 FOR?

10 A RIGHT.

11 Q HOW DO YOU LOOK FOR IT? WHAT IS IT YOU DO TO LOOK
12 FOR -- TO FIND THAT TRACE EVIDENCE PRESENT?

13 A CONCERNING THE HANDS, WE USE WHAT ARE CALLED GUN SHOT
14 RESIDUE KITS OR G S R KITS. THESE ARE MADE UP OF TWO
15 SEPARATE TYPES OF COLLECTION DEVICES. THERE'S A SET OF Q
16 TIPS WHICH ARE SIMPLY SWAPPED OVER THE VARIOUS AREAS OF
17 THE HANDS AND ALSO SET OF STUBS, STICKY STUBS THAT ARE
18 USED TO DAB THE HANDS AND THERE FOR THE STUBS.

19 AND THE Q TIPS -- THERE IS AN INDIVIDUAL SAMPLE
20 FOR EACH AREA OF THE HANDS WHICH WOULD INCLUDE THE BACK OF
21 THE LEFT, PALM OF THE LEFT, BACK OF THE RIGHT AND PALM OF
22 THE RIGHT.

23 Q ALL RIGHT. AND DID YOU HAVE AN OCCASION TO RECEIVE G
24 S R KITS THAT WERE IN SEALED CONDITION AND IDENTIFY IT AS
25 COMING FROM THE DEFENDANT IN THIS CASE BOBBY STONE AND

JEFF HOLLIFIELD - DIRECT BY KOLB

1 ANOTHER ONE IDENTIFIED AS COMING FROM THE VICTIM IN THIS
2 CASE, CHARLES KUBALA?

3 A YES, SIR. I DID. I RECEIVED BOTH OF THOSE FROM THE
4 EVIDENCE STORAGE AREA ON MARCH 13TH OF 96.

5 Q ALL RIGHT. NOW, THE OFFICERS HAVE TESTIFIED
6 PREVIOUSLY ABOUT SEALING THOSE ITEMS AND TURNING THEM IN
7 TO YA'LLS STORAGE AREA. EXPLAIN TO US WHETHER OR NOT YOU
8 COULD TELL FROM THE TIME YOU RECEIVED THEM WHETHER THEY
9 HAD BEEN TAMPERED WITH AT ANY TIME IN THAT STORAGE AREA?

10 A WHEN WE RECEIVED EVIDENCE FROM THE STORAGE AREA, THE
11 EVIDENCE IS ALWAYS IN EITHER BAGS OR BOXES OR BOTH. AND
12 THEY ARE SEALED WITH EVIDENCE TAPE WHICH BARE THE INITIALS
13 OF THE LAST PERSON WHO SEALED IT.

14 AND IT'S EASILY TORN, SO IF SOMEONE HAS OPENED
15 THE BOX OR BAG SINCE THOSE INITIALS HAVE BEEN PLACED
16 THERE, IT COULD EASILY BE TAPED IF IT HAD BEEN OPENED.

17 Q IN THE CASE OF THOSE TWO G S R KITS, WHAT CAN YOU
18 TELL US ABOUT WHETHER OR NOT THE KITS HAD BEEN TAMPERED
19 WITH SINCE THE TIME THAT IN REGARD TO BOBBY WAYNE STONE,
20 TOM DARNELL HAD SEALED IT AND IN REGARD TO DEPUTY KUBALA
21 PAUL C LAROSA HAD SEALED IT?

22 A THE ENVELOPE I RECEIVED WAS SEALED WITH TOM DARNELL'S
23 INITIALS. HAD LOGGED IT INTO EVIDENCE. INSIDE OF THAT BAG
24 THERE WERE TWO SEPARATE ENVELOPES OR ENVELOPES -- THERE
25 WERE TWO SEPARATE ENVELOPES, EACH FOR AN INDIVIDUAL KIT.

JEFF HOLLIFIELD - DIRECT BY KOLB

1 ONE FOR SUBJECT, ONE FOR VICTIM. AND EACH OF
2 THOSE WERE ALSO SEALED WITH EVIDENCE TAPE AND INITIALED BY
3 THE PERSON WHO DID THE COLLECTION.

4 Q ALL RIGHT. NOW, DID YOU ALSO HAVE OCCASION TO RECEIVE
5 WHAT'S BEEN MARKED AS EXHIBIT 56 FOR IDENTIFICATION?

6 A YES, SIR. THIS IS THE BROWN COAT THAT WAS SUBMITTED
7 TO ME FROM THE SUBJECT IN THIS CASE AND IT BEARS MY
8 INITIALS AND ITEM NUMBER ON THE COLLAR.

9 Q OKAY. SO YOU ACTUALLY MARKED THE COAT AFTER YOU
10 RECEIVED IT?

11 A YES, SIR.

12 Q ALL RIGHT. NOW, WHAT WAS THE CONDITION OF THE
13 EVIDENCE WHEN YOU RECEIVED IT AS FAR AS THE -- WHETHER IT
14 WAS SEALED OR NOT?

15 A IT WAS CONTAINED IN THE BAG AND THE BOX. AND BOTH
16 WERE SEALED WITH EVIDENCE TAPE AND INITIALED.

17 Q WHAT DID THAT INDICATE TO YOU AS FAR AS WHETHER IT
18 HAD BEEN TAMPERED WITH IN ANY WAY SINCE SEALED BY SERGEANT
19 DARNELL?

20 A DID NOT APPEAR TO HAVE BEEN TAMPERED WITH SINCE IT
21 WAS SEALED.

22 Q THAT IS SOMETHING YOU LOOK FOR?

23 A YES, SIR.

24 Q DID YOU ALSO RECEIVE A BULLET PROOF VEST, SUMTER
25 SHERIFF'S OFFICE AND UNIFORM SHIRT AND A WHITE T SHIRT?

JEFF HOLLIFIELD - DIRECT BY KOLB

1 A YES, SIR, I DID. AND LIKEWISE I ALSO RECEIVED THOSE
2 FROM THE TRACE EVIDENCE STORAGE AREA AND THAT WOULD HAVE
3 BEEN ON APRIL THE 10TH OF 96.

4 Q WHAT WAS THE CONDITION OF THE CONTAINER OR CONTAINERS
5 THAT THEY WERE IN?

6 A THEY WERE THE SAME AS THE COAT. THEY WERE IN SEALED
7 BOXES WITH EVIDENCE TAPE AND INITIALS.

8 Q AND WHAT DID THAT INDICATE TO YOU AS TO WHETHER THEY
9 HAD BEEN TAMPERED WITH IN ANY WAY SINCE SEALED IN THOSE
10 CONTAINERS BY AGENT DARNELL?

11 A THEY DID NOT APPEAR TO HAVE BEEN OPENED OR TAMPERED
12 WITH SINCE THAT TIME.

13 Q ALL RIGHT. NOW, AFTER RECEIVING THOSE ITEMS OF
14 EVIDENCE, DID YOU CONDUCT TESTS ON THOSE ITEMS?

15 A YES, I DID.

16 Q COULD YOU TELL US ABOUT THE -- YOUR TESTS AS FAR AS
17 THE GUN SHOT RESIDUE ON THE KIT FROM THE DEFENDANT IN THIS
18 CASE BOBBY WAYNE STONE?

19 A THE KIT FROM THE HANDS?

20 Q RIGHT.

21 A YES, SIR. MY RESULTS FROM THE KIT FROM BOBBY STONE
22 INDICATED THAT THERE WAS GUN SHOT RESIDUE ON THE RIGHT
23 HAND, BOTH ON THE PALM OF THE HAND AND ALSO THE BACK OF
24 THE HAND.

25 ALSO FOUND HIGH LEVELS OR ELEVATED LEVELS OF

JEFF HOLLIFIELD - DIRECT BY KOLB

1 LEAD ON THE LEFT HAND. BUT IN ORDER TO CONFIRM THAT AS A
2 GUN SHOT, AS HAVING COME FROM GUN SHOT RESIDUE, THERE ARE
3 SOME OTHER METALS THAT MUST BE DETECTED.

4 AND SO THAT WAS PRESENT ONLY FOR THE LEFT, BUT
5 THE RIGHT HAND WAS PRESENT OR WAS POSITIVE FOR GUN SHOT
6 RESIDUE.

7 Q ALL RIGHT. THE RIGHT HAND WAS POSITIVE FOR GUN SHOT
8 RESIDUE ON THE PALM AND THE BACK OF THE HAND?

9 A YES, SIR.

10 Q AND WHAT DID THAT -- WHAT WOULD THAT INDICATE TO YOU?

11 A THAT WOULD INDICATE THAT THE -- THAT THE INDIVIDUAL
12 DID IN FACT FIRE A WEAPON, WOULD BE CONSISTENT WITH THAT
13 AND ALSO THAT THE SAMPLES WERE COLLECTED WITHIN A TIMELY
14 MANNER, IN OTHER WORDS, BEFORE SAY AN EIGHT OR TEN HOUR
15 PERIOD WHERE THE METALS CAN BE WORN AWAY AND ALSO BEFORE
16 THE INDIVIDUAL WASHED THEIR HANDS.

17 Q ALL RIGHT. NOW, WHAT DID YOU DETERMINE IN REGARD TO
18 BOBBY STONE'S COAT, THE BROWN COAT THAT IS ITEM 56 FOR
19 IDENTIFICATION. I BELIEVE IT'S 56.

20 A YES, SIR. 56. STATE'S EXHIBIT 56.

21 Q YEAH.

22 A I SPRAYED THE SLEEVES OF THE COAT WITH A CHEMICAL
23 THAT REACTS WITH LEAD. AND THAT TESTING INDICATED A
24 POSITIVE REACTION FOR LEAD, SPECIFIC TEST FOR LEAD.

25 AND THE LEAD WAS FOUND ON THE LEFT SLEEVE, THE

JEFF HOLLIFIELD - DIRECT BY KOLB

1 OUTER PART OF THE LEFT SLEEVE RIGHT NEAR THE CUT.

2 Q ALL RIGHT, SIR. WHAT DID YOU DETERMINE AS FAR AS THE
3 -- FROM THE GUN SHOT RESIDUE KIT FROM DEPUTY CHARLIE
4 KUBALA?

5 A FROM CHARLIE KUBALA I DETECTED LEAD ON THE RIGHT
6 PALM.

7 Q ALL RIGHT. SO THEN AS FAR AS THE LEFT HAND AND THE
8 LEFT AND THE RIGHT, THE BACK OF THE RIGHT HAND, YOUR TESTS
9 WERE NEGATIVE?

10 A THAT'S CORRECT.

11 Q ALL RIGHT. WHAT DOES THAT INDICATE OR WOULD THAT BE
12 CONSISTENT WITH MERELY HANDLING A WEAPON?

13 A IT COULD BE. THE -- AS I MENTIONED EARLIER, BEFORE I
14 CAN SAY FOR SURE THAT IT'S FROM GUN SHOT RESIDUE, I WOULD
15 NEED TO DETECT SEVERAL OTHER METALS.

16 BUT LEAD BEING THE MOST CONCENTRATED OF THE
17 METALS IN GUN PRIMER IS GOING TO SHOW UP BEFORE THE OTHER
18 ONES DO. BUT BY IT BEING ON THE PALM OF THE HAND AND NOT
19 THE BACK OF THE HAND, THE SIGNIFICANCE THERE WOULD BE THAT
20 IT WOULD NOW BE FROM FIRING A WEAPON.

21 SOMEONE FIRES A WEAPON, YOU WOULD EXPECT TO FIND
22 IT ON THE PALM AND THE BACK. IF IT'S JUST ON THE PALM,
23 THEN MORE THAN LIKELY IT WOULD BE FROM -- IF IT IS FROM
24 THE GUN SHOT RESIDUE -- THEN IT WOULD BE FROM HANDLING A
25 WEAPON THAT HAD BEEN FIRED PREVIOUSLY.

JEFF HOLLIFIELD - DIRECT BY KOLB

1 Q ALL RIGHT. WHAT CAN YOU TELL US ABOUT THE EXAMINATION
2 OF DEPUTY KUBALA'S UNIFORM SHIRT T SHIRT AND BULLET PROOF
3 VEST?

4 A I EXAMINED ALL THREE OF THESE ITEMS FOR GUN SHOT
5 RESIDUE ON CLOTHING. THE FIRST THING I LOOK FOR ON THE
6 VICTIM'S CLOTHING IS TO SEE WHETHER OR NOT THERE ARE ANY
7 HOLES PRESENT WHICH MAY OR MAY NOT BE BULLET HOLES ON THE
8 T SHIRT AND THE VEST DID NOT FIND ANY HOLES WHATSOEVER.

9 ON THE OUTSIDE SHIRT, THE SHERIFF'S DEPUTY'S
10 SHIRT, I DID FIND THREE HOLES. I REPORTED -- I REPORTED
11 THAT I DID NOT BELIEVE THOSE WERE BULLET HOLES FOR TWO
12 REASONS.

13 ONE IS I DID NOT FIND CORRESPONDING HOLES IN THE
14 T SHIRT WHICH WOULD HAVE BEEN UNDERNEATH. THE EXCEPTION
15 THERE MAY BE WITH THE COLLAR WHERE THE SHIRT HAS A COLLAR
16 AND THE T SHIRT DOESN'T.

17 AND ALSO I SPRAYED THEM WITH A CHEMICAL TO TEST
18 SPECIFICALLY FOR LEAD AND THAT TEST WAS NEGATIVE.

19 Q ALL RIGHT. SO DID YOU FIND ANY GUNPOWDER RESIDUE ON
20 THE OFFICER'S CLOTHING WHATSOEVER?

21 A NO, I DID NOT.

22 Q IF THE GUN IS FIRED FROM CLOSE RANGE, WITHIN TWO
23 FEET, WOULD THERE -- WOULD YOU EXPECT TO FIND GUN SHOT
24 RESIDUE ON THE VICTIMS CLOTHES?

25 A YES, I WOULD. I WOULD -- I WOULD EXPECT TO FIND IT UP

JEFF HOLLIFIELD - CROSS BY LITTLEJOHN

1 TO SAY FIVE OR SIX FEET.

2 Q OKAY. SO THE DISTANCE WOULD BE -- YOU WOULD EXPECT TO
3 BE BEYOND THAT IN THE ABSENCE OF GUN SHOT RESIDUE ON THE
4 CLOTHING?

5 A CORRECT.

6 Q IF YOU WOULD, ANSWER ANY QUESTIONS THE DEFENSE MAY
7 HAVE.

8 THE COURT: CROSS-EXAMINE?

9 CROSS-EXAMINATION BY MR. LITTLEJOHN:

10 Q JUST A COUPLE OF QUESTIONS, MR. HOLLIFIELD. AS I
11 UNDERSTOOD YOUR TESTIMONY, YOU SAID THAT YOUR EXAMINATION
12 OF THE G S R KIT THAT CAME FROM BOBBY STONE INDICATED
13 ELEVATED LEVELS OF LEAD ON HIS LEFT HAND PALM AND BACK?

14 A PALM AND BACK. YES, SIR.

15 Q AND IN ORDER TO DETERMINE WHETHER THAT WAS GUN SHOT
16 RESIDUE, YOU WOULD HAVE TO DO ADDITIONAL TESTING?

17 A NO, SIR. THE TEST WAS DONE FOR THE OTHER METALS. THE
18 ONLY METAL THAT SHOWED UP AS BEING ABOVE A CERTAIN
19 THRESHOLD WAS THE LEAD. THEREFORE I REPORTED POSITIVE ONLY
20 FOR LEAD.

21 Q ONLY FOR LEAD?

22 A CORRECT.

23 Q OKAY. SO YOU DIDN'T FIND ENOUGH LEAD IN OTHER
24 RESIDUES TO MAKE A DETERMINATION THAT A GUN WAS FIRED FROM
25 HIS LEFT HAND?

JEFF HOLLIFIELD - CROSS BY LITTLEJOHN

1 A AS TO WHETHER OR NOT -- AS TO WHETHER OR NOT THAT
2 LEAD WAS ACTUALLY FROM GUN SHOT RESIDUE, RIGHT.

3 Q OKAY. COULD HAVE BEEN FROM ANOTHER CAUSE?

4 A EXACTLY.

5 Q OKAY. I UNDERSTAND. AND YOU INDICATED THAT THE
6 ELEVATED AMOUNT OF LEAD IN THE G S R KIT FROM DEPUTY
7 KUBALA INDICATED ELEVATED LEAD IN HIS RIGHT PALM?

8 A CORRECT.

9 Q OKAY. CONSISTENT WITH HANDLING A GUN?

10 A YES, SIR.

11 Q OKAY. AND MR. HOLLIFIELD, AS I UNDERSTAND IT, YOUR
12 EXAMINATION OF THE SHIRT REVEALED WHAT YOU CONCLUDED WAS
13 ONE BULLET HOLE?

14 A I FOUND THREE HOLES WHICH MAY OR MAY NOT BE BULLET
15 HOLES. THE TESTING THAT I DID INDICATED THAT THEY WERE
16 MORE LIKELY NOT BULLET HOLES. BUT FOUND THREE -- FOUND
17 THREE HOLES.

18 Q AND SO YOU CAN'T CONCLUSIVELY SAY THEY ARE BULLET
19 HOLES OR NOT?

20 A NO, SIR. I CAN'T.

21 Q THEY COULD HAVE BEEN HOLES FROM ANOTHER CAUSE?

22 A THEY COULD BE BULLET HOLES OR COULD BE HOLES FROM
23 ANOTHER CAUSE.

24 Q OR YOU COULD HAVE A SITUATION WHERE ONE BULLET MADE
25 ALL THREE HOLES?

JEFF HOLLIFIELD - CROSS BY LITTLEJOHN

1 A THAT'S POSSIBLE.

2 Q OKAY. IN ANY EVENT, YOU FOUND NO GUN SHOT RESIDUE ON
3 DEPUTY TUBES SHIRT?

4 A CORRECT.

5 Q WHICH WOULD BE INDICATIVE TO YOU THAT THE -- IF HE
6 WAS SHOT, THE SHOT HAD TO COME FROM AT LEAST FIVE TO SIX
7 OR GREATER DISTANCE AWAY?

8 A EITHER THAT OR THAT THE RESIDUE WERES WASHED AWAY
9 EITHER FROM AN EXCESSIVE AMOUNT OF BLOOD OR RAIN IF IT
10 WERE RAINING THAT NIGHT.

11 Q OKAY.

12 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

13 THE COURT: REDIRECT?

14 REDIRECT EXAMINATION BY MR. KOLB:

15 Q TO CLARIFY, MR. LITTLEJOHN ASKED YOU THAT YOU COULD
16 NOT CONCLUDE THAT STONE FIRED A GUN FROM HIS LEFT HAND.
17 YOU SAY STONE'S RIGHT HAND?

18 A CONCERNING THE RIGHT HAND, I DID FIND EACH OF THE
19 METALS THAT ARE NECESSARY TO CONCLUDE THAT THAT RESIDUE
20 HAD TO HAVE COME FROM THE FIRING OF A WEAPON.

21 Q AND THAT WAS ON THE PALM AND BACK OF THE HAND, THE
22 RIGHT HAND?

23 A BOTH SIDES OF THE RIGHT HAND. YES, SIR.

24 Q AND WHAT DOES THAT INDICATE TO YOU?

25 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK THIS IS

JEFF HOLLIFIELD - REDIRECT BY KOLB

1 PROPER REDIRECT.

2 THE COURT: I WILL ALLOW IT.

3 (WHEREUPON QUESTIONING RESUMED).

4 WITNESS: IT INDICATES TO ME THAT THE RIGHT HAND WAS
5 EITHER AGAINST OR VERY VERY CLOSE TO A WEAPON WHEN IT WAS
6 DISCHARGED AND THAT THOSE SAMPLES WERE COLLECTED WITHIN
7 SEVERAL HOURS.

8 Q ALL RIGHT. OKAY. THANK YOU.

9 THE COURT: RE-CROSS?

10 MR. LITTLEJOHN: I DON'T HAVE ANYTHING.

11 THE COURT: YOU MAY COME DOWN.

12 (WHEREUPON THE WITNESS LEFT THE STAND).

13 MR. KOLB: CALL JOHN BARRON.

14 (WHEREUPON THERE WAS A PAUSE).

15 MR. KOLB: MR. HOLLIFIELD BE EXCUSED TO GO BACK?

16 THE COURT: ANY OBJECTION? YOU ARE FREE TO LEAVE.

17 MR. LITTLEJOHN: NO OBJECTION.

18 THE COURT: HAVE A GOOD TRIP, SIR.

19 THE WITNESS: THANK YOU, SIR.

20 THE COURT: THANK YOU.

21 (WHEREUPON THERE WAS A PAUSE).

22 THE COURT: MR. HOLLIFIELD, PLEASE COME FORWARD.

23 CAN'T LEAVE YET. THAT WAS THE WHOLE POINT. I WOULD REMIND
24 YOU SIR THAT YOU ARE STILL UNDER OATH.

25 WITNESS: OKAY.

JEFF HOLLIFIELD - REDIRECT BY KOLB

(WHEREUPON THE WITNESS RESUMED THE STAND).

THE COURT: ANY OBJECTION TO MR. HOLLIFIELD BEING
RECALLED?

MR. LITTLEJOHN: NO, YOUR HONOR.

THE COURT: VERY WELL.

REDIRECT EXAMINATION BY MR. KOLB:

Q I FORGOT TO ASK YOU. WHAT DID YOU -- AFTER YOUR
TESTING, WHAT DID YOU DO WITH THE BULLET PROOF VEST, THE
UNIFORM SHIRT AND THE WHITE T SHIRT?

A I PLACED THEM BACK INTO THE BAGS AND BOXES THAT THEY
WERE IN ORIGINALLY. I SEALED THOSE. WELL, I INITIALED THE
OBJECTS FIRST, PLACED THEM BACK IN THE BAGS AND BOXES,
SEALED THE BAGS AND BOXES AND INITIALED THE EVIDENCE TAPE
ON THE BOXES AND THEN I PLACED IT BACK IN A TRACE STORAGE
AREA.

Q ALL RIGHT.

A AND THAT WAS ON APRIL THE 10TH OF 96.

Q ALL RIGHT. AND ALSO IN REGARD TO MR. STONE'S COAT.

A I DID EXACTLY THE SAME THING. REPACKAGED IT,
INITIALED IT AND PLACED IT BACK IN THE STORAGE AREA. AND
THAT, TOO, WAS ON APRIL 10TH, 96.

Q ALL RIGHT. AND YOU SO YOU PUT IT IN A SEALED
CONTAINER?

A YES, SIR.

Q INITIALED THE SEAL?

JEFF HOLLIFIELD - REDIRECT BY KOLB

1 A EXACTLY.

2 Q ALL RIGHT. THANK YOU. APOLOGIZE FOR FORGETTING.

3 THE COURT: NO APOLOGY NECESSARY. CROSS-EXAMINATION?

4 MR. LITTLEJOHN: NO, YOUR HONOR.

5 THE COURT: MR. HOLLIFIELD, I THINK YOU CAN GO.

6 (WHEREUPON THE WITNESS LEFT THE STAND).

7 THE WITNESS: THANK YOU.

8 THE COURT: LET US KNOW. GIVE US YOUR PHONE NUMBER

9 SO WE CAN CALL YOU. YOU GOING THROUGH ATLANTA?

10 WITNESS: GO THROUGH ATLANTA.

11 THE COURT: ALL RIGHT, SIR. WE WILL CALL YOU IF WE
12 NEED YOU.

13 JOHN BARRON, BEING FIRST DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 THE COURT: ONCE YOU GET YOURSELF SITUATED, POSITION
16 THAT MIKE WHERE YOU NEED IT, PLEASE NOW STATE YOUR FULL
17 NAME FOR THE RECORD AND SPELL YOUR LAST NAME.

18 WITNESS: JOHN C BARRON, B A R R O N.

19 THE COURT: THANK YOU, SIR.

20 DIRECT EXAMINATION BY MR. KOLB:

21 Q MR. BARRON, COULD YOU TELL US HOW YOU ARE EMPLOYED?

22 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
23 DIVISION.

24 Q AND WHAT PART OF SLED DO YOU WORK IN?

25 A I WORK IN THE FORENSIC SCIENCES DEPARTMENT IN THE

JOHN BARRON - DIRECT BY KOLB

1 TRACE EVIDENCE SECTION.

2 Q ALL RIGHT. THAT'S THE SAME SECTION JEFF HOLLIFIELD
3 USED TO WORK IN?

4 A THAT'S CORRECT. WE USED TO BE CO-WORKERS.

5 Q ALL RIGHT. AND HOW LONG HAVE YOU BEEN EMPLOYED AT
6 SLED?

7 A 22 YEARS.

8 Q ALL RIGHT. COULD YOU TELL THE COURT AND LADIES AND
9 GENTLEMEN OF THE JURY ABOUT YOUR EDUCATION, TRAINING AND
10 EXPERIENCE IN THAT FIELD OF WORK?

11 A YES. I HAVE A BACHELORS OF SCIENCE DEGREE IN
12 MICROBIOLOGY FROM CLEMSON UNIVERSITY. UPON MY EMPLOYMENT
13 AT SLED I BEGAN TRAINING IN VARIOUS ASPECTS OF FORENSICS
14 AND EXAMINATIONS.

15 I'VE BEEN TRAINED IN MANY DIFFERENT AREAS, BUT
16 MAINLY IN THE PARTICULAR AREA OF TRACE EVIDENCE ANALYSIS
17 DEALING WITH TRACE METALS. I HAVE RECEIVED TRAINING FROM
18 MY SUPERVISOR WHO IS JOSEPH POWELL.

19 AND AFTER EXTENSIVE TRAINING WITH HIM AND ALSO
20 TRAINING THROUGH INSTRUMENT COMPANIES WHO ACTUALLY SELL US
21 THE INSTRUMENTS WE USE AND PROVIDE TRAINING AND EXPERTISE
22 IN HOW TO USE THEM, HOW TO INTERPRET THE DATA.

23 AND ALSO I AM ASSOCIATED WITH THE SOUTHERN
24 ASSOCIATION OF FORENSIC SCIENTISTS, TRACE EVIDENCE
25 EXAMINER, SOUTHERN ASSOCIATION OF FORENSIC SCIENTISTS AS A

JOHN BARRON - DIRECT BY KOLB

1 REGIONAL ORGANIZATION OF PROFESSIONALS.

2 AND OF COURSE AS A PROFESSIONAL ORGANIZATION WE
3 HAVE TRAINING, SEMINARS TWICE A YEAR WHICH WE ARE
4 ENCOURAGED TO ATTEND AND I HAVE ATTENDED SEVERAL OF THOSE
5 AND RECEIVED I GUESS YOU MIGHT SAY CERTIFICATE OR WHATEVER
6 OF COMPLETION OF VARIOUS PROGRAMS OFFERED THROUGH THEM.

7 AND I HAVE BEEN IN THE TRACE EVIDENCE DEPARTMENT
8 SINCE THIS INCEPTION WHICH WAS CONCEIVED ABOUT EIGHT YEARS
9 AGO. AND HAVE BEEN PART OF THEM SINCE WE BEGAN AND HAVE
10 TESTIFIED IN THE STATE OF SOUTH CAROLINA ON NUMEROUS
11 OCCASIONS AS FAR AS TRACE EVIDENCE IS CONCERNED.

12 Q PREVIOUS OCCASIONS YOU WERE CALLED UPON TO TESTIFY,
13 WERE YOU QUALIFIED AS AN EXPERT IN THE FIELD?

14 A YES, SIR.

15 MR. KOLB: WE WOULD OFFER HIM TO THE COURT.

16 THE COURT: CARE TO EXAMINE AS TO QUALIFICATIONS?

17 MR. LITTLEJOHN: I CAN'T OBJECT. I THINK I'VE
18 QUALIFIED MR. BARRON MYSELF.

19 THE COURT: AGAIN AS THE PREVIOUS WITNESSES, HE WILL
20 BE ALLOWED TO RENDER OPINIONS IN THE FIELD OF TRACE
21 ANALYSIS. YOU MAY CONTINUE.

22 (WHEREUPON QUESTIONING RESUMED).

23 Q MR. BARRON, DID YOU HAVE OCCASION TO RECEIVE STATE'S
24 EXHIBIT 15?

25 A YES, SIR. I DID.

JOHN BARRON - DIRECT BY KOLB

1 Q ALL RIGHT. WHAT CAN YOU TELL US ABOUT -- LET ME SHOW
2 YOU. LET ME TALK ABOUT THIS CUTTING RIGHT HERE. AND THIS
3 CUTTING UP HERE.

4 A YES.

5 Q THIS THE LOWER CUTTING THERE. WHAT CAN YOU TELL US
6 ABOUT THAT?

7 A THE LOWER CUTTING CONTAINED THREE SMALL HOLES THAT
8 WERE -- WAS IN THE SCREEN AT THE TIME OF MY INITIAL
9 EXAMINATION.

10 Q ALL RIGHT. WHEN YOU MADE THAT CUTTING, WAS THAT AREA
11 COVERED WITH ANYTHING?

12 A YES, IT WAS. IT HAD PLAIN BROWN PAPER ON BOTH SIDES
13 OF THE SCREEN DOOR KIND OF FASTENED TO THE WOOD SECTION TO
14 COVER UP THAT PART OF THE SCREEN.

15 Q ALL RIGHT. AND WHAT DID YOU DO WITH THAT SECTION OF
16 THE SCREEN?

17 A I HAD IT IN MY POSSESSION.

18 Q SO YOU MADE THE CUTTING YOURSELF?

19 A YES, I DID.

20 Q BEEN IN YOUR CUSTODY AND CONTROL EVER SINCE?

21 A YES, SIR.

22 MR. KOLB: YOUR HONOR, WE'D WOULD LIKE TO OFFER THIS
23 INTO EVIDENCE.

24 THE COURT: ANY OBJECTION?

25 MR. LITTLEJOHN: NO, YOUR HONOR.

JOHN BARRON - DIRECT BY KOLB

1 THE COURT: VERY WELL. IT'S A PLASTIC BAG CONTAINING
2 CUTTING -- CONTAINING SCREEN, STATE'S EXHIBIT 57 INTO
3 EVIDENCE WITHOUT OBJECTION.

4 (STATE'S EXHIBIT NO. 57 MARKED FOR EVIDENCE)

5 (WHEREUPON QUESTIONING RESUMED).

6 Q WOULD YOU MIND STEPPING DOWN AND SHOWING THE LADIES
7 AND GENTLEMEN OF THE JURY. WANT YOU TO EXPLAIN THE WHITE
8 STUFF THAT'S ON THE SCREEN AND ALSO POINT OUT THE HOLES.

9 A ALL RIGHT. OKAY. THE---.

10 MR. KOLB: SPEAK UP LOUD.

11 THE COURT: SPEAK LOUDLY, PLEASE SIR.

12 WITNESS: YES, SIR. THIS SMALL CUTTING OF THE SCREEN
13 DOOR CAME FROM THE -- THIS INNER SECTION OF THIS LARGER
14 SCREEN.

15 AND THERE ARE THREE SMALL HOLES IN THIS SMALL
16 CUTTING OF SCREEN. EACH OF THESE HOLES WAS NUMBERED BY
17 MYSELF USING A WHITE CHALK LIKE MARKER. AND NUMBERED THE
18 HOLES HOLE NUMBER ONE, HOLE NUMBER TWO, HOLE NUMBER THREE.

19 Q ALL RIGHT, SIR. YOU MIGHT AS WELL JUST STAY THERE IF
20 YOU WOULD. LET ME -- DO YOU HAVE -- CAN YOU TELL US ABOUT
21 THIS CUTTING UP HERE?

22 A YES, SIR. THIS CUTTING WAS MADE SUBSEQUENT TO THIS
23 ONE. AFTER SOME TEST FIRING WAS MADE BY AGENT IRA PARNELL
24 AND THE FIREARMS DEPARTMENT AT SLED.

25 HE ACTUALLY FIRED FOUR ROUNDS THROUGH THE SCREEN

JOHN BARRON - DIRECT BY KOLB

1 DOOR AND CREATED SOME FOUR SMALL HOLES THERE AND I CUT OUT
2 THE SECTION AROUND THOSE HOLES.

3 Q ALL RIGHT. WERE YOU -- DID YOU COME INTO HIS PRESENCE
4 WHILE HE STILL HAD THE SCREEN DOOR?

5 A RIGHT. I SURELY DID.

6 Q AND YOU ACTUALLY CUT THAT OUT IN HIS PRESENCE?

7 A YES, SIR.

8 Q ALL RIGHT.

9 MR. KOLB: YOUR HONOR, WE WOULD LIKE TO OFFER THAT
10 INTO EVIDENCE.

11 THE COURT: ALL RIGHT. YOU HAVE THAT BAG -- IS IT
12 SEPARATE?

13 MR. KOLB: YES, SIR.

14 THE COURT: STATE'S EXHIBIT 58, ANOTHER PLASTIC BAG
15 CONTAINING SCREEN.

16 (STATE'S EXHIBIT NO. 58 MARKED FOR EVIDENCE).

17 THE COURT: INTO EVIDENCE WITHOUT OBJECTION; IS THAT
18 CORRECT?

19 MR. LITTLEJOHN: THAT'S CORRECT.

20 THE COURT: THANK YOU.

21 (WHEREUPON QUESTIONING RESUMED).

22 Q WOULD YOU SHOW THAT TO THE JURY?

23 A AGENT PARNELL PLACED LABELS ON THE SCREEN WHERE HE --
24 JUST BELOW WHERE HE PRODUCED THE SMALL HOLES BY TEST
25 FIRING THROUGH THE SCREEN DOOR.

JOHN BARRON - DIRECT BY KOLB

1 MR. KOLB: ALL RIGHT, SIR. IF YOU WOULD, YOU CAN
2 RE-TAKE THE STAND NOW.

3 (WHEREUPON QUESTIONING RESUMED).

4 Q ALL RIGHT. MR. BARRON, IN REGARD TO -- SEE IF WE CAN
5 GET THE NUMBERS HERE. REGARD TO EXHIBIT 57, THE FIRST
6 CUTTING YOU DID FROM THE LOWER PORTION OF THE DOOR, DID
7 YOU TEST AND OBTAIN ANY POSITIVE RESULTS IN REGARD TO GUN
8 SHOT RESIDUE?

9 A I OBTAINED POSITIVE RESULTS WITH RESULT OF -- AS IN
10 THE SENSE OF FINDING LEAD. AND LEAD VAPOR IS PRODUCED WHEN
11 A GUN IS FIRED. THERE IS A TREMENDOUS AMOUNT OF HEAT
12 PRESSURE AS THE BULLET EXITS THE BARREL OF A GUN.

13 AND SOME OF THAT LEAD IS VAPORIZED AND CAST OUT
14 OF THE WEAPON AND MAY SET ON ANY OBJECT THAT IS NEARBY.
15 ALSO AS THE BULLET PASSES THROUGH AN OBJECT IT CAN LEAVE
16 LEAD RESIDUE AROUND THE RIM OF THE PERIMETER OF THE HOLE
17 THROUGH WHERE THE OBJECT PASSES AND I FOUND IN THE AREA OF
18 THE VICINITY AROUND THIS HOLE A LEAD CLOUD, IF YOU WILL,
19 UPON TESTING IT AND THIS IS INDICATED WITH THE FACT THAT
20 IT COULD BE GUN SHOT RESIDUE.

21 ALSO THE HOLES WERE EXAMINED MICROSCOPICALLY TO
22 COMPARE THE EFFECTS OF THE KNOWN TEST FIRING TO THE SCREEN
23 DOOR WITH THAT OF THE UNKNOWN HOLES. AND...

24 Q WHEN YOU SAY KNOWN, JUST MAYBE EXPLAIN THAT A LITTLE
25 MORE.

JOHN BARRON - DIRECT BY KOLB

1 A THAT WOULD BE THE LONGER HOLE, HOLES IN IT DONE BY
2 IRA PARNELL, ACTUAL KNOWN TEST FIRING.

3 Q ALL RIGHT.

4 A THE OTHER THREE HOLES IN THIS INTERSECTION OF THE
5 DOOR WOULD BE THE UNKNOWN HOLES AND WE WERE ASKED TO
6 DETERMINE IF THOSE HOLES COULD HAVE BEEN CAUSED BY THE
7 FIRING OF A WEAPON.

8 Q ALL RIGHT, SIR.

9 A AND SO THE RESULT OF THE TEST -- OF THE UNKNOWN HOLES
10 AND IN REFERENCE TO THE KNOWN HOLES AND ALSO IN REFERENCE
11 TO THE ENTIRE SCREEN DOOR IS ACTIVITY TO -- TESTING FOR
12 LEAD INDICATES THAT THERE WAS A PATTERN OF LEAD AROUND THE
13 THREE HOLES IN THIS INTERSECTION WHICH COULD BE FROM GUN
14 SHOT RESIDUE. AND THE HOLES THEMSELVES ARE MICROSCOPIC
15 AND CONSISTENT WITH KNOWN TEST FIRING HOLES IN THE OTHER
16 PART OF THE SCREEN DOOR.

17 Q ALL RIGHT. NOW, IS THE SCREEN ITSELF, THE SCREENING
18 ITSELF METAL?

19 A NOW A DAYS THEY MAKE SCREEN DOORS USING NYLON OR
20 POLYESTER FILAMENTS SO THE -- MAY APPEAR TO BE OLD
21 FASHIONED ALUMINUM SCREEN, BUT IN THIS PARTICULAR CASE
22 IT'S NOT, IT'S A SYNTHETIC POLYMER, PROBABLY NYLON
23 POLYESTER THAT IS MESHED TOGETHER TO APPEAR TO BE LIKE THE
24 OLD ALUMINUM SCREEN DOORS.

25 Q ALL RIGHT. NOW, HOW DO YOU -- WHEN YOU FIND THE

JOHN BARRON - DIRECT BY KOLB

1 RESIDUE CONSISTENT WITH GUNPOWDER RESIDUE AROUND THE THREE
2 HOLES IN THE CENTER OF THE DOOR, HOW DO YOU KNOW IT'S JUST
3 NOT THE SCREEN THAT HAS LEAD ALL OVER IT?

4 A BECAUSE I TESTED THE SCREEN OUTSIDE OF THE PERIMETER
5 OF THE HOLES.

6 Q AND THAT'S THE REST OF THIS DOOR OVER HERE?

7 A THAT'S CORRECT.

8 Q NOT JUST THE CUTTINGS YOU HAVE THERE, THE WHOLE DOOR?

9 A THE WHOLE DOOR.

10 Q ALL RIGHT, SIR.

11 A I EVENTUALLY TESTED THE WHOLE DOOR AND THERE WAS NO
12 REACTION TO TESTING FOR LEAD IN ANY OTHER AREA EXCEPT THE
13 PERIMETER OF THE THREE HOLES IN THIS INTERSECTION.

14 Q IF YOU WOULD, ANSWER ANY QUESTIONS THE DEFENSE MAY
15 HAVE.

16 THE COURT: CROSS-EXAMINE?

17 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION BY MR. LITTLEJOHN:

19 Q JOHN, HOW DO YOU ACTUALLY EXTRACT THE LEAD FROM THE
20 SCREEN?

21 A WELL, I DIDN'T EXTRACT THE LEAD FROM THE SCREEN.

22 Q HOW DO YOU DETECT IT'S PRESENCE?

23 A THE LEAD WAS DETECTED USING A CHEMICAL TEST THAT
24 ACTUALLY DEVELOPS LEAD INTO A COLOR. IT'S CALLED A
25 CRUMTHORY (SIC) CHEMICAL REACTION AND THE LEAD ACTUALLY

JOHN BARRON - CROSS BY LITTLEJOHN

1 FORMS A PURPLE DYE.

2 AND I USED A PIECE OF WHITE PAPER BEHIND THE
3 SCREEN AND APPLIED THE CHEMICAL IN A WET FORM AND OF
4 COURSE IT WENT THROUGH THE SCREEN AND IT MADE AN
5 IMPRESSION OF PURPLE DYE WHICH IS SPECIFICALLY FOR SLED ON
6 TO THE WHITE PAPER.

7 Q THAT IS THE TEST THAT IS NORMALLY USED FOR -- IN
8 ORDER TO TEST FOR LEAD RESIDUE UNDER THESE CIRCUMSTANCES?

9 A WELL, UNDER THESE CIRCUMSTANCES WE HAD NEVER -- AT
10 THIS POINT -- UP TO THIS POINT WE HAD NEVER TESTED A
11 SCREEN DOOR FOR LEAD.

12 AND SO INITIALLY I TRIED ONE TECHNIQUE NOT
13 GIVING ANY TYPE OF A GOOD RESULTS. AND THEN LATER ON I
14 TRIED A CHEMICAL CAMPHORIC TEST WHICH DID GIVE GOOD
15 RESULTS.

16 Q OKAY. AND IN FACT YOU ISSUED A REPORT ON OCTOBER 4TH
17 INDICATING THAT YOU HAD EXAMINED THREE HOLES FOR THE
18 PRESENCE OF TRACE METALS AND NONE WERE FOUND?

19 A RIGHT. USING THE FIRST TECHNIQUE THAT I JUST
20 MENTIONED, THE RESULTS THERE WERE SUCH THAT I COULD NOT
21 MAKE A DETERMINATION AS TO WHETHER OR NOT THE HOLES WERE
22 CAUSED BY THE PASSAGE OF THE BULLET.

23 Q OKAY. SO THE FIRST TEST WAS NEGATIVE?

24 A FIRST TEST WAS INCONCLUSIVE AS FAR AS WHETHER OR NOT
25 IT WAS CAUSED -- ANY RESIDUE WAS CAUSED BY THE PASSAGE OF

JOHN BARRON - CROSS BY LITTLEJOHN

1 THE BULLET.

2 Q OKAY. BUT THAT TEST INDICATED NO TRACE METALS WERE
3 FOUND ON THE DOOR; RIGHT?

4 A WELL, WE DID FIND SOME TRACE METALS. BUT WE COULD NOT
5 TELL WHETHER OR NOT THE TRACE METALS WERE FROM THE PASSAGE
6 OF THE BULLET OR WHETHER OR NOT THEY WERE ENVIRONMENTAL
7 AND -- BUT THE OTHER TESTS DEFINITELY SHOWED ME -- BECAUSE
8 IT ENABLED ME TO TEST THE WHOLE SCREEN DOOR -- THAT IT WAS
9 NOT ENVIRONMENTAL.

10 Q THAT IT WAS NOT ENVIRONMENTAL?

11 A RIGHT. BECAUSE IF IT WAS ENVIRONMENTAL, THEN THE
12 OTHER PARTS OF THE SCREEN DOOR SHOULD TEST POSITIVE AS
13 WELL.

14 Q BUT THAT WAS NEGATIVE?

15 A RIGHT.

16 Q AND SO WHEN YOU RAN THE SECOND TEST, THAT'S WHEN YOU
17 FOUND THE TRACE METALS?

18 A THAT'S WHEN I FOUND A SPECIFIC POSITIVE TEST FOR LEAD
19 INDICATED BY THE PURPLE DYE THAT WE WERE TALKING ABOUT.

20 Q OKAY.

21 A WHICH ALSO ENABLED ME TO TEST THE REST OF THE SCREEN
22 DOOR AND FOUND IT WAS NEGATIVE WHEREAS THE FIRST TEST ONLY
23 ENABLED ME TO EXAMINE THE PERIMETER OF THE -- AND SHORT
24 DISTANCE OUT FROM THE HOLES.

25 Q JOHN, IN REGARDS TO THE REST OF THE DOOR, WAS