

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Greenville County

S.C. SUPREME COURT

Honorable R. Knox McMahon, Circuit Court Judge

STANLEY L. BUTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001721

APPENDIX

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1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF GREENVILLE

3 THE STATE OF SOUTH CAROLINA, :

4 PLAINTIFF, :

5 VS. :

96-GS-23-3380 - 3386

6 STANLEY L. BUTLER, :

7 DEFENDANT. :

8

TRANSCRIPT OF RECORD

9 THE STATE OF SOUTH CAROLINA, :

10 PLAINTIFF, :

11 VS. :

96-GS-23-3561 - 3567

12 SHANNON R. TODD, :

13 DEFENDANT. :

14

GREENVILLE, SOUTH CAROLINA
JULY 22, 23, 1996

15

16 B E F O R E :

17 THE HONORABLE C. VICTOR PYLE, JUDGE

18

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1 (STATE'S EXHIBIT NUMBER 1, BANK BAG, MARKED
2 FOR IDENTIFICATION.)

3 (STATE'S EXHIBIT NUMBER 2, PLASTIC BAG, MARKED
4 FOR IDENTIFICATION.)

5 THE COURT: ANYTHING BEFORE I BRING UP THE PANEL?

6 MR. CRANE: YES, WE HAVE SOME PRE-TRIAL MOTIONS.

7 THE COURT: AS TO JURY SELECTION?

8 MR. CRANE: JUDGE, I WOULD. I REPRESENT MR.
9 SHANNON TODD, JUDGE. JUDGE, 20-7-430 INDICATES THAT THE
10 CIRCUIT COURT LACKS JURISDICTION TO A 16-YEAR-OLD.

11 NOW 27, IS IT 309, JUDY?

12 MS. MUNSON: YES, YOUR HONOR, 309.

13 THE COURT: 20-WHAT?

14 MR. CRANE: 20-7-430 IS THE STATUTE THAT BASICALLY
15 SAYS THAT JURISDICTION LIES EXCLUSIVELY WITH THE FAMILY COURT
16 FOR ANYONE UNDER THE AGE OF 17.

17 THE COURT: ALL RIGHT, IS THERE NOT SOME PROVISION
18 THAT ALLOWS THEM TO BE WAIVED UP?

19 MR. CRANE: THERE'S A PROVISION TO ALLOW HIM TO BE
20 WAIVED UP; HE HAS NEVER HAD A WAIVER HEARING. THE OTHER
21 PROVISION 2-370, YOU PROBABLY NEED TO LOOK IN THE SUPPLEMENT,
22 JUDGE, WHICH PURPORTS TO DEFINE WHAT A CHILD IS. AND IT, IN
23 FACT, DOES THAT. IT STILL, IT'S ANYBODY UNDER THE AGE OF 17.
24 IT SAYS, HOWEVER, IF A PERSON UNDER 16 YEARS OF AGE COMMITS
25 CERTAIN OFFENSES, THEN HE IS NO LONGER A CHILD AND THAT THE

1 DISCRETION LIES WITH THE SOLICITOR.

2 WE WOULD SUBMIT THAT IS UNCONSTITUTIONAL AND
3 INAPPROPRIATE, AND THAT MY CLIENT IS STILL ENTITLED TO A
4 HEARING IN FAMILY COURT TO DETERMINE WHETHER THE FAMILY COURT
5 OUGHT TO TAKE CARE OF IT OR THE CIRCUIT COURT. IT'S BASED, I
6 MEAN, IT'S AN AGE THING. OTHER 16-YEAR-OLDS ARE HANDLED IN
7 FAMILY COURT, AND HE IS NOT. I WOULD SUBMIT THAT IT'S
8 DISCRIMINATORY AGAINST HIM, AND, FURTHER, IT'S AGAINST THE
9 CONSTITUTION TO ALLOW THE SOLICITOR ALONE TO HAVE THAT TYPE
10 OF JURISDICTION WHEN, IN FACT, 20-7-430 PUTS EXCLUSIVE
11 JURISDICTION IN FAMILY COURT.

12 THE COURT: WHAT IS YOUR POSITION, SOLICITOR?

13 MR. CRANE: I CONTEND THE STATUTES ARE AMBIGUOUS
14 AND CONTRADICTORY TO EACH OTHER, AND YOU HAVE GOT TO
15 INTERPRET THEM IN FAVOR OF MY CLIENT, THAT THE STATUTE 7-430
16 WOULD ALLOW HIM TO STAY IN FAMILY COURT UNTIL A HEARING IS
17 HELD.

18 MS. MUNSON: THE STATE'S POSITION IS 20-7-430, MR.
19 CRANE'S STATUTE THAT SAYS WHAT A CHILD IS AND WHAT NEEDS TO
20 BE DONE WITH THE CHILD. THE OTHER STATUTE, I DON'T SEE THAT
21 THEY ARE AMBIGUOUS AT ALL, 20-7-390 CLEARLY SAYS A CHILD DOES
22 NOT MEAN A PERSON UNDER THE AGE OF 16, 16 OR OLDER WHO IS
23 CHARGED WITH A CLASS A., B., C., OR D. FELONY, SO IT'S VERY
24 CLEAR THE FACT THAT HE WAS CHARGED WITH THESE FELONIES MAKES
25 HIM NOT A CHILD FOR THE PURPOSES OF MR. CRANE'S STATUTE.

1 AS FAR AS THE CONSTITUTIONALITY OF THE DISCRETION AND
2 THINGS OF THAT NATURE, JUDGE, YOU KNOW THE DISCRETION IS
3 THERE BECAUSE SOME JUVENILES HAVE MORE PROBLEMS THAN OTHERS,
4 SOME JUVENILES HAVE RECORDS, SOME DON'T, AND THAT'S WHY
5 DISCRETION IS THERE. WHEN A YOUNG PERSON GETS IN TROUBLE
6 WITHOUT A RECORD, PROBABLY THE THING TO DO IS TAKE IT BACK TO
7 FAMILY COURT. BUT THE DISCRETION NEEDS TO BE THERE, AND IT
8 IS THERE ACCORDING TO THE STATUTE, AND IT'S THE STATE'S
9 POSITION THAT WE DO HAVE JURISDICTION.

10 MR. CRANE: YOUR HONOR, MY CLIENT TELLS ME HE HAS
11 BEEN TO FAMILY COURT ONCE, AND THAT WAS, WHAT, FOR A SECOND
12 DEGREE BURGLARY, AND THAT IS IT. IF THE SOLICITOR WANTS TO
13 TALK ABOUT SOMEONE WITH A LONG CRIMINAL RECORD, THIS IS NOT
14 MY CLIENT. YOUR HONOR, EVEN 20-7-430 THAT I MENTIONED IN
15 PARAGRAPH FOUR, I BELIEVE IT IS, AND FIVE STILL ALLOWS FOR A
16 TRANSFER HEARING IN CERTAIN CASES AND KIDS INVOLVING THE AGE
17 OF 16. AND I WOULD SUBMIT THAT THEY ARE AMBIGUOUS AND
18 PROBABLY UNCONSTITUTIONAL. I DON'T THINK THAT OUR STATUTES
19 AND THE CONSTITUTION ARE BROAD ENOUGH TO ALLOW THE SOLICITOR
20 TO HAVE THE DISCRETION ABOUT THE LIVELIHOOD OF A CHILD.

21 THE COURT: DOES THE SOLICITOR HAVE DISCRETION IN
22 OTHER AREAS?

23 MS. MUNSON: I'M SORRY, YOUR HONOR, WHAT OTHER
24 AREAS?

25 THE COURT: DOESN'T THE SOLICITOR HAVE DISCRETION

1 IN OTHER MATTERS?

2 MS. MUNSON: YES, WE HAVE DISCRETION IN ALL KINDS
3 OF AREAS WHETHER OR NOT TO GO FORWARD WITH THE CASE, TO
4 RECUSE A CASE, DROP A CASE COMPLETELY.

5 THE COURT: THE FACT THAT THE SOLICITOR HAS
6 DISCRETION MAKES IT UNCONSTITUTIONAL OR VAGUE? LET ME READ
7 THIS.

8 MR. CRANE: YES, SIR.

9 THE COURT: (PAUSE, VIEWING DOCUMENT.) I AM GOING
10 TO DENY YOUR MOTION, MR. CRANE, BECAUSE 20-7-390 WAS A PART
11 OF THE 1995 ACT, AND THAT, OF COURSE, WOULD SUPERSEDE
12 ANYTHING EARLIER WHICH --

13 MR. CRANE: YOUR HONOR, MAY IT PLEASE THE COURT, --

14 THE COURT: -- WHICH --

15 MR. CRANE: NO, SIR, IT WAS, ALSO, SIGNED AT THE
16 SAME TIME ACCORDING TO THE DATES IN MY CODE BOOK. AS A
17 MATTER OF FACT, THEY CAME INTO LAW WITHOUT THE GOVERNOR'S
18 SIGNATURE ON THE SAME DATE, SO IT DOESN'T SUPERSEDE. THEY
19 ARE TOGETHER. I WOULD, AGAIN, --

20 THE COURT: LOOKS TO ME THAT 20-7-390 IS VERY CLEAR
21 ON WHAT THE LEGISLATURE INTENDED TO BE DONE WITH PEOPLE 16
22 YEARS OF AGE OR OLDER CHARGED WITH CLASS A., B., C., AND D.
23 FELONIES AS DEFINED IN 16-1-20. AND SIMPLY BECAUSE IT GIVES
24 THE SOLICITOR DISCRETION TO SEND IT TO FAMILY COURT OR TO
25 PROSECUTE IT HERE, I DON'T BELIEVE THAT MAKES IT

1 UNCONSTITUTIONAL. YOUR MOTION IS DENIED.

2 MR. CRANE: I WOULD MAKE THE SAME MOTION ON THE
3 OTHER GROUND THAT THE SOLICITOR HAS ABUSED THE DISCRETION
4 BECAUSE THERE ARE SOME PEOPLE IN THIS CIRCUIT THAT ARE NOT
5 SENT TO CIRCUIT COURT, AND MY CLIENT HAS BEEN SINGLED OUT.

6 THE COURT: NO, SIR, I DENY YOUR MOTION ON THAT
7 GROUND, LIKEWISE. YOU HAVE NOT SHOWN ME ANY STATISTICS WHERE
8 HE HAS ABUSED THAT DISCRETION.

9 ALL RIGHT, ANYTHING ELSE?

10 MR. CRANE: YOUR HONOR, I WOULD MOVE AT THIS TIME
11 FOR THE TWO CO-DEFENDANTS TO BE SEVERED AND HAVE SEPARATE
12 DISTINCT TRIALS. IN REVIEWING THE INFORMATION THAT HAS BEEN
13 SUPPLIED TO ME, IT APPEARS THERE MAY BE SOME EVIDENCE AGAINST
14 MR. STANLEY BUTLER, JOHN ROLLINS' CLIENT, THAT WOULD HAVE
15 NOTHING TO DO WITH MY CLIENT, WHICH HAS TO DO WITH SOME
16 FINGERPRINTS, AND JUST BY ASSOCIATION OF TRIAL MY CLIENT
17 COULD BE, PERHAPS, CONVICTED OF SOMETHING HE DIDN'T DO.

18 THE COURT: SOLICITOR, WHAT IS YOUR POSITION ON
19 THAT?

20 MS. MUNSON: YOUR HONOR, THE STATE'S POSITION IS
21 THAT ALL THE EVIDENCE THAT IS GOING TO COME FORWARD IS GOING
22 TO BE PREJUDICIAL TO BOTH STANLEY BUTLER AND SHANNON TODD,
23 WHICH IS GOING TO BE SHANNON TODD HAD THE WEAPON AND PLANNED
24 THE ROBBERY, AND, YES, THERE WILL BE FINGERPRINT TESTIMONY AS
25 TO MR. BUTLER THAT DOES NOT APPLY TO MR. TODD. YOUR HONOR,

1 WE HAVE 10 WITNESSES. MOST OF THEM ARE CIVILIANS. THERE IS
2 NO HARM FROM ONE OR THE OTHER. THE TESTIMONY IS GOING TO BE
3 BAD FOR BOTH OF THEM.

4 THE COURT: I DENY THAT MOTION, MR. CRANE.

5 MR. CRANE: YOUR HONOR, I WOULD MAKE A MOTION THAT
6 TWO SEPARATE AND DISTINCT JURIES BE DRAWN, AND IF THE CASES
7 BE TRIED AT THE SAME TIME THAT WHEN EVIDENCE TO MR. BUTLER
8 COMES ABOUT WHICH DOES NOT APPLY TO MR. TODD, THAT MY
9 PARTICULAR JURY FOR MR. TODD BE EXCUSED FROM THE COURTROOM.

10 THE COURT: I AM NOT GOING TO DO THAT EITHER. THE
11 MOTION IS DENIED.

12 MR. ROLLINS: YOUR HONOR, I HAVE ONE MOTION, YOUR
13 HONOR, AS A MATTER OF HOUSEKEEPING. AS FAR AS MR. BUTLER,
14 THESE ARE TWO DEFENDANTS THAT HAVE BEEN CHOSEN BY THE
15 SOLICITOR TO BE TRIED TOGETHER. I WOULD ASK THE COURT TO
16 CLARIFY AS ABOUT THE LAST ARGUMENT RULE, IF MR. BUTLER DOES
17 NOT PRESENT ANY EVIDENCE IN THIS TRIAL WOULD MR. BUTLER HAVE
18 THE LAST ARGUMENT?

19 THE COURT: HE WILL NOT.

20 MR. ROLLINS: WE ASK THE COURT TO NOTE OUR
21 OBJECTION FOR THE RECORD.

22 THE COURT: ALL RIGHT, SIR. BRING THE PANEL UP.

23 MS. MUNSON: I'M SORRY, I HAVE KIDNAPPING
24 INDICTMENT SHANNON TODD. I SERVED MR. CRANE WITH NOTICE OF A
25 MOTION TO ASK THAT IT BE AMENDED, THE WORDING ON MR. TODD'S

1 KIDNAPPING, AMENDED TO SAY HE DID UNLAWFULLY SEIZE, CONFINE,
2 ABDUCT, KIDNAP, AND CARRY AWAY, THE STATE'S MOTION ON ALL
3 FOUR INDICTMENTS, OR CARRY AWAY, BRINGING IT IN LINE WITH THE
4 STATUTE.

5 THE COURT: ALL RIGHT, MOTION GRANTED.

6 BRING THE JURY UP.

7 THESE ARE IDENTICAL INDICTMENTS AGAINST EACH DEFENDANT,
8 ARE THEY NOT?

9 MS. MUNSON: YES, YOUR HONOR.

10 MR. ROLLINS: YOUR HONOR, MINE HAD POSSESSION OF
11 FIREARM AND WEAPON. HE HAS AN INDICTMENT FOR THAT, I'M
12 SORRY. EXCUSE ME, YOUR HONOR.

13 MR. CRANE: YOUR HONOR, I DO HAVE ONE OTHER MATTER.
14 PERHAPS YOU CALL IT HOUSEKEEPING, OR WHATEVER. I HAVE BEEN
15 ADVISED BY ONE OF MY ALIBI WITNESSES THAT WITHOUT MAKING ANY
16 ACCUSATIONS, THERE WAS A VALID THREAT MADE TO HER BY THE
17 PROSECUTION, BY MS. MUNSON IN THIS CASE. APPARENTLY SHE HAS
18 INTERVIEWED MS. PATRICIA GERMAN, SEATED BACK HERE IN THE RED
19 SWEATER. I HAVE, ALSO, INTERVIEWED HER. MS. MUNSON KNOWS
20 SHE'S GOING TO BE AN ALIBI WITNESS AND THIS MORNING MADE
21 REMARKS TO HER SOMETHING TO THE EFFECT OF, "I KNOW THAT YOU
22 KNOW THE BOYS WERE OVER THERE, AND I KNOW THAT YOU COULD
23 TESTIFY TO THAT. AND IF YOU DON'T TESTIFY TO THAT OR IF YOU
24 TESTIFY OTHERWISE, I AM GOING TO GET A WARRANT FOR YOUR
25 ARREST." I SUBMIT THAT IS INTIMIDATION OF MY WITNESS AND

1 IMPROPER.

2 THE COURT: ALL RIGHT, HOLD THE PANEL UP JUST A
3 MINUTE, PLEASE.

4 (BAILIFF COMPLIED.)

5 THE COURT: WHAT IS YOUR POSITION, SOLICITOR?

6 MS. MUNSON: I DIDN'T THREATEN HER. I HAD
7 INFORMATION THAT SHE WAS NOT BEING TRUTHFUL. I DID TELL HER
8 THAT SHE NEEDED TO TELL THE TRUTH, AND THAT IF I FOUND OUT
9 THAT SHE WAS DOING ANYTHING OTHER THAN TELLING THE TRUTH, I
10 WOULD SEEK PROSECUTION AGAINST HER FOR MISPRISION OF A
11 FELONY.

12 THE COURT: YOU STAND BY THAT, SOLICITOR?

13 MS. MUNSON: YES, SIR. I REASSURED HER TO TELL THE
14 TRUTH. THAT IS EXACTLY WHAT I DID.

15 THE COURT: BRING THE PANEL IN NOW.

16 (THE JURY PANEL ENTERED THE COURTROOM AT
17 APPROXIMATELY 10:26 A.M.)

18 THE COURT: LADIES AND GENTLEMEN, AT THIS TIME WE
19 WILL SELECT A JURY IN THE CASE OF THE STATE AGAINST SHANNON
20 RODRIGUEZ TODD, AND STANLEY LOUIS BUTLER.

21 MR. BUTLER, AND, MR. TODD, WOULD YOU, PLEASE, STAND UP
22 AND FACE THE JURY PANEL A MOMENT FOR ME, PLEASE?

23 (BOTH COMPLIED.)

24 THE COURT: THANK YOU. YOU CAN BE SEATED NOW.

25 THEY ARE EACH INDICTED FOR ARMED ROBBERY, POSSESSION OF

1 A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, AND FOUR
2 CASES OF KIDNAPPING.

3 THESE INDICTMENTS ALLEGE THAT BACK ON OR ABOUT MARCH 10,
4 1996, WHILE ARMED WITH A DEADLY WEAPON, THAT ALLEGED TO BE A
5 RIFLE, THEY ROBBED LINDA MICHAELOVE, M-I-C-H-A-E-L-O-V-E,
6 MICHAELOVE AT FUDDRUCKERS RESTAURANT OF U.S. CURRENCY.

7 THE NEXT INDICTMENT ALLEGES THAT AT THAT TIME THEY WERE
8 IN POSSESSION OF A FIREARM, THAT BEING A RIFLE, DURING THE
9 COMMISSION OF ARMED ROBBERY, WHICH IS ALLEGED TO BE A VIOLENT
10 CRIME.

11 IT IS, FURTHER, ALLEGED IN THE OTHER INDICTMENTS THAT ON
12 THAT SAME DATE THEY KIDNAPPED MICHAEL JARVIS, TODD MILAM OR
13 MILAN, LINDA MICHAELOVE, AND TIM WAITER.

14 NOW POTENTIAL WITNESSES IN THE CASE WILL BE M.L. GALE,
15 TIM WAITER, MICHAEL JARVIS, LINDA MICHAELOVE OR MICHAELOVE,
16 REGINALD PITMAS, M.R. HUGHES, J.F. KELLETT, D.W. KELLY,
17 PATRICIA GERMAN, AND AUSTIN TODD PERRY. I WOULD INQUIRE AT
18 THIS TIME IF ANY MEMBER OF THE JURY PANEL IS RELATED BY BLOOD
19 OR MARRIAGE, OR CONNECTED BY EMPLOYMENT TO THE DEFENDANTS OR
20 TO ANY POTENTIAL WITNESS IN THE CASE, OR ARE YOU SENSIBLE OR
21 AWARE OF ANY BIAS OR ANY PREJUDICE WITH RESPECT TO EITHER
22 DEFENDANT, TO THE STATE, OR TO THE SUBJECT MATTER OF THE
23 CASE, THAT BEING AN ALLEGED ARMED ROBBERY, KIDNAPPING, AND
24 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
25 CRIME, OR DO YOU KNOW OF ANY REASON WHY YOU COULD NOT GIVE

1 THESE DEFENDANTS AND THE STATE A FAIR AND IMPARTIAL TRIAL
2 BASED ON THE LAW AND EVIDENCE TO BE PRESENTED? IF SO, WOULD
3 YOU, PLEASE, STAND? (PAUSE.)

4 DO I HAVE ANY MEMBER OF THE PANEL WHO HAS ANY
5 CONNECTION, BUSINESS, FAMILY, SOCIAL, OR OTHERWISE WITH JOE
6 WATSON, THE SOLICITOR, OR ANY MEMBER OF HIS STAFF, OR WITH
7 LAW ENFORCEMENT, WHETHER THAT BE FEDERAL, STATE, COUNTY, OR
8 MUNICIPAL? IF SO, WOULD YOU, PLEASE, STAND AND GIVE ME YOUR
9 NAME? (PAUSE.)

10 LARRY CRANE AND JOHN ROLLINS REPRESENT THE DEFENDANTS --

11 YES, SIR?

12 MR. LAWRENCE: I HAVE AN UNCLE. IS THAT --

13 THE COURT: ALL RIGHT, SIR, TELL ME ABOUT IT,
14 PLEASE, SIR.

15 MR. LAWRENCE: HE'S IN THE F.B.I.

16 THE COURT: AND YOUR NAME, SIR?

17 MR. LAWRENCE: STEVEN LAWRENCE.

18 THE COURT: WOULD THAT IN ANY WAY INTERFERE WITH
19 YOUR ABILITY TO GIVE THE DEFENDANTS OR THE STATE A FAIR
20 TRIAL?

21 MR. LAWRENCE: I DO NOT BELIEVE SO.

22 THE COURT: THANK YOU, SIR. YOU ARE QUALIFIED.

23 MS. PARRIS: MY EX-FATHER-IN-LAW WAS -- IS A
24 RETIRED POLICE CAPTAIN.

25 THE COURT: ALL RIGHT, AND YOUR NAME, PLEASE,

1 MA'AM?

2 MS. PARRIS: PAT PARRIS.

3 THE COURT: MS. PARRIS, WOULD THAT IN ANY WAY
4 INTERFERE WITH YOUR ABILITY TO GIVE THE DEFENDANTS OR THE
5 STATE A FAIR TRIAL?

6 MS. PARRIS: NO, SIR.

7 THE COURT: THANK YOU. DO I HAVE ANY CLIENTS NOW
8 OR FORMERLY OF MR. CRANE OR MR. ROLLINS? (PAUSE.)

9 ALL RIGHT, NOW THE STRIKES ARE 10 FOR THE STATE AND 10
10 FOR EACH DEFENDANT.

11 LADIES AND GENTLEMEN, WHEN YOUR NAME IS CALLED, I WILL
12 ASK THAT YOU, PLEASE, STAND AND REMAIN STANDING FOR FURTHER
13 INSTRUCTIONS.

14 THE CLERK: NUMBER 119, LARRY E. VAUGHN. (WHITE
15 MALE.) WHAT SAYS THE STATE?

16 MS. MUNSON: PLEASE, PRESENT MR. VAUGHN.

17 THE CLERK: WHAT SAYS THE DEFENDANT BUTLER.

18 MR. ROLLINS: SWEAR THE JUROR.

19 THE CLERK: WHAT SAYS THE DEFENDANT TODD?

20 MR. CRANE: SWEAR HIM.

21 THE COURT: HAVE A SEAT IN THE JURY BOX, PLEASE.
22 COME FORWARD, MR. VAUGHN, AND HAVE A SEAT IN THE JURY BOX.

23 47, HUGH W. GILCREST. (WHITE MALE.) WHAT SAYS THE
24 STATE?

25 MS. MUNSON: PLEASE, EXCUSE MR. GILCREST FROM THE

1 TRIAL OF THIS MATTER.

2 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE. JUST
3 REMAIN IN YOUR SEAT, PLEASE.

4 49, BRADY B. FOWLER. (WHITE MALE.) WHAT SAYS THE
5 STATE?

6 MS. MUNSON: PLEASE, PRESENT MR. FOWLER.

7 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

8 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

9 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

10 46, LYNN S. GAW. (WHITE FEMALE.) WHAT SAYS THE STATE?

11 MS. MUNSON: PLEASE, PRESENT MS. GAW.

12 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

13 MR. ROLLINS: SWEAR THE JUROR.

14 THE CLERK: WHAT SAYS DEFENDANT TODD?

15 MR. CRANE: SWEAR HER.

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

17 104, JOHN A. RYDER. (WHITE MALE.) WHAT SAYS THE STATE?

18 MS. MUNSON: PLEASE, PRESENT MR. RYDER.

19 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

20 MR. ROLLINS: SWEAR THE JUROR.

21 THE CLERK: WHAT SAYS DEFENDANT TODD?

22 MR. CRANE: SWEAR HIM.

23 THE CLERK: HAVE A SEAT IN THE JURY BOX.

24 20, JEFFREY S. BISHOP. (WHITE MALE.) WHAT SAYS THE
25 STATE?

1 MS. MUNSON: PLEASE, PRESENT MR. BISHOP.

2 THE CLERK: WHAT SAYS DEFENDANT BUTLER.

3 MR. ROLLINS: SWEAR THE JUROR.

4 THE CLERK: WHAT SAYS DEFENDANT TODD?

5 MR. CRANE: SWEAR HIM.

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

7 84, PEGGY OWENS. (BLACK FEMALE.) WHAT SAYS THE STATE?

8 MS. MUNSON: PLEASE, PRESENT MS. OWENS.

9 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

10 MR. ROLLINS: SWEAR THE JUROR.

11 THE CLERK: WHAT SAYS DEFENDANT TODD?

12 MR. CRANE: SWEAR HER.

13 THE CLERK: HAVE A SEAT IN THE JURY BOX.

14 32, DEIDRA B. CHRISTIE. (WHITE FEMALE.) WHAT SAYS THE
15 STATE?

16 MS. MUNSON: PLEASE, EXCUSE MS. CHRISTIE FROM THE
17 TRIAL OF THIS MATTER.

18 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

19 85, PATRICIA N. PARRIS. (WHITE FEMALE.) WHAT SAYS THE
20 STATE?

21 MS. MUNSON: PLEASE, PRESENT MS. PARRIS.

22 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

23 MR. ROLLINS: SWEAR THE JUROR.

24 THE CLERK: WHAT SAYS DEFENDANT TODD?

25 MR. CRANE: EXCUSE HER.

1 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

2 115, CURRAN D. SULLIVAN. (BLACK FEMALE.) WHAT SAYS THE
3 STATE?

4 MS. MUNSON: PLEASE, PRESENT MS. SULLIVAN.

5 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

6 MR. ROLLINS: SWEAR THE JUROR.

7 THE CLERK: WHAT SAYS DEFENDANT TODD?

8 MR. CRANE: SWEAR HER.

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

10 40, WALTER R. EASTERLING. (WHITE MALE.) WHAT SAYS THE
11 STATE?

12 MS. MUNSON: PLEASE, PRESENT MR. EASTERLING.

13 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

14 MR. ROLLINS: PLEASE, SWEAR THE JUROR.

15 THE CLERK: WHAT SAYS DEFENDANT TODD?

16 MR. CRANE: SWEAR HIM.

17 THE CLERK: HAVE A SEAT IN THE JURY BOX.

18 36, GLEN E. COX. (BLACK MALE.) WHAT SAYS THE STATE?

19 MS. MUNSON: PLEASE, PRESENT MR. COX.

20 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

21 MR. ROLLINS: SWEAR THE JUROR.

22 THE CLERK: WHAT SAYS DEFENDANT TODD?

23 MR. CRANE: SWEAR HIM.

24 THE CLERK: HAVE A SEAT IN THE JURY BOX.

25 133, DANIEL L. TURNER. (WHITE MALE.) WHAT SAYS THE

1 STATE?

2 MS. MUNSON: PLEASE, PRESENT MR. TURNER.

3 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

4 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

5 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

6 2, JOHN W. ALDRET, JR. (WHITE MALE.) WHAT SAYS THE

7 STATE?

8 MS. MUNSON: PLEASE, PRESENT MR. ALDRET.

9 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

10 MR. ROLLINS: SWEAR THE JUROR.

11 THE CLERK: WHAT SAYS DEFENDANT TODD?

12 MR. CRANE: EXCUSE HIM IN THIS TRIAL, PLEASE.

13 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

14 3, STEVE E. ALVERSON. (WHITE MALE.) WHAT SAYS THE

15 STATE?

16 MS. MUNSON: PLEASE, PRESENT MR. ALVERSON.

17 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

18 MR. ROLLINS: SWEAR THE JUROR.

19 THE CLERK: WHAT SAYS DEFENDANT TODD?

20 MR. CRANE: EXCUSE HIM.

21 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

22 19, CORA B. BETHEA; CORA P. BETHEA. (BLACK FEMALE.)

23 WHAT SAYS THE STATE?

24 MS. MUNSON: PLEASE, PRESENT MS. BETHA.

25 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

1 MR. ROLLINS: SWEAR THE JUROR.

2 THE CLERK: WHAT SAYS DEFENDANT TODD?

3 MR. CRANE: SWEAR HER.

4 THE CLERK: HAVE A SEAT IN THE JURY BOX.

5 16, LISA L. BENNINGER. (WHITE FEMALE.) WHAT SAYS THE
6 STATE?

7 MS. MUNSON: PLEASE, PRESENT MS. BENNINGER.

8 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

9 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

10 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

11 131, KAREN N. HOLAWAY. (WHITE FEMALE.) WHAT SAYS THE
12 STATE?

13 MS. MUNSON: PLEASE, PRESENT MS. HOLAWAY.

14 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

15 MR. ROLLINS: SWEAR THE JUROR.

16 THE CLERK: WHAT SAYS DEFENDANT TODD?

17 MR. CRANE: EXCUSE HER.

18 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

19 56, MICHAEL A. HEATON. (WHITE MALE.) WHAT SAYS THE
20 STATE?

21 MS. MUNSON: PLEASE, EXCUSE MR. HEATON FROM THE
22 TRIAL OF THIS MATTER.

23 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

24 126, JOHN. J. WASATONIC. (WHITE MALE.) WHAT SAYS THE
25 STATE?

1 MS. MUNSON: PLEASE, EXCUSE MR. WASATONIC FROM THE
2 TRIAL OF THIS MATTER.

3 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

4 127, JERRY R. GODFREY. (WHITE MALE.) WHAT SAYS THE
5 STATE?

6 MS. MUNSON: PLEASE, PRESENT MR. GODFREY.

7 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

8 MR. ROLLINS: SWEAR THE JUROR.

9 THE CLERK: WHAT SAYS DEFENDANT TODD?

10 MR. CRANE: SWEAR HIM.

11 THE CLERK: HAVE A SEAT IN THE JURY BOX.

12 62, RICKY E. HOWARD. (WHITE MALE.) WHAT SAYS THE
13 STATE?

14 MS. MUNSON: PLEASE, PRESENT MR. HOWARD.

15 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

16 MR. ROLLINS: SWEAR THE JUROR.

17 THE CLERK: WHAT SAYS DEFENDANT TODD?

18 MR. CRANE: SWEAR HIM.

19 THE CLERK: HAVE A SEAT IN THE JURY BOX.

20 53, JAMES A. HARDEE. (BLACK MALE.) WHAT SAYS THE
21 STATE?

22 MS. MUNSON: PLEASE, PRESENT MR. HARDEE.

23 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

24 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

25 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

1 132, PATRICIA L. HUNNICUT. (WHITE FEMALE.) WHAT SAYS
2 THE STATE?

3 MS. MUNSON: PLEASE, PRESENT MRS. HUNNICUT.

4 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

5 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

6 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

7 THE CLERK: 86, BENNY R. PENELL. (WHITE MALE.)
8 WHAT SAYS THE STATE?

9 MS. MUNSON: PLEASE, EXCUSE MR. PENELL FROM THE
10 TRIAL OF THIS MATTER.

11 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

12 15, LISA M. BELUE. (WHITE FEMALE.) WHAT SAYS THE
13 STATE?

14 MS. MUNSON: PLEASE, PRESENT MS. BELEU.

15 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

16 MR. ROLLINS: SWEAR THE JUROR.

17 THE CLERK: WHAT SAYS DEFENDANT TODD?

18 MR. CRANE: EXCUSE HER.

19 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

20 72, STEPHEN A. LAWRENCE. (WHITE MALE.) WHAT SAYS THE
21 STATE?

22 MS. MUNSON: PLEASE, PRESENT MR. LAWRENCE.

23 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

24 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

25 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

1 124, DANA R. WHITTEN. (WHITE MALE.) WHAT SAYS THE
2 STATE?

3 MS. MUNSON: PLEASE, PRESENT MR. WHITTEN.

4 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

5 MR. ROLLINS: PLEASE, EXCUSE THIS JUROR.

6 THE CLERK: YOU MAY BE EXCUSED IN THIS CASE.

7 13, EDWIN N. BAYNE. (WHITE MALE.) WHAT SAYS THE STATE?

8 MS. MUNSON: PLEASE, PRESENT MR. BAYNE.

9 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

10 MR. ROLLINS: SWEAR THE JUROR.

11 THE CLERK: WHAT SAYS DEFENDANT TODD?

12 MR. CRANE: SWEAR HIM.

13 THE CLERK: HAVE A SEAT IN THE JURY BOX.

14 THE COURT: MS. SULLIVAN.

15 MS. SULLIVAN: YES.

16 THE COURT: WOULD YOU COME TAKE THIS FIRST SEAT AND
17 SERVE AS FOREMAN ON THIS FIRST CASE FOR ME, PLEASE, MA'AM.
18 JUST HAVE A SEAT.

19 (MS. SULLIVAN STOOD UP.)

20 THE COURT: JUST HAVE A SEAT, TAKE THAT FIRST SEAT,
21 AND SERVE AS FOREMAN ON THIS CASE FOR ME, PLEASE, MA'AM.

22 MS. SULLIVAN: YES, SIR.

23 THE COURT: ALL RIGHT, NOW GIVE ME ONE ALTERNATE.
24 ONE STRIKE FOR THE STATE, AND TWO FOR THE DEFENSE.

25 MR. CRANE: FOR EACH DEFENDANT?

1 THE COURT: NO, ONE.

2 MR. CRANE: YOUR HONOR.

3 THE COURT: YOU EACH HAVE ONE. (PAUSE.) ALL
4 RIGHT.

5 THE CLERK: 98, CHARLES W. RICE. (WHITE MALE.)
6 WHAT SAYS THE STATE?

7 MS. MUNSON: PLEASE, PRESENT MR. RICE.

8 THE CLERK: WHAT SAYS DEFENDANT BUTLER?

9 MR. ROLLINS: SWEAR THE JUROR.

10 THE CLERK: WHAT SAYS DEFENDANT TODD?

11 MR. CRANE: SWEAR HIM.

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

13 THE COURT: ALL RIGHT, SWEAR THE JURY, PLEASE.

14 THE CLERK: LADIES AND GENTLEMEN, PLEASE, STAND AND
15 RAISE YOUR RIGHT HAND FOR THE OATH IN THESE CASES.

16 (THE JURY WAS SWORN AT APPROXIMATELY 10:50 A.M.)

17 THE COURT: NOW, LADIES AND GENTLEMEN, I WILL GIVE
18 YOU A SHORT RECESS BEFORE WE START THIS CASE. WHILE ON
19 RECESS, DON'T TALK ABOUT IT. YOU DO NOT BEGIN DISCUSSING THE
20 FACTS OF THIS CASE UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY,
21 THE ARGUMENTS BY THE ATTORNEYS, AS WELL AS MY CHARGE ON THE
22 LAW.

23 TAKE THE JURY OUT, PLEASE.

24 (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
25 10:51 A.M.)

1 THE COURT: AND I NEED THE BALANCE OF THE PANEL TO
2 REPORT BACK DOWNSTAIRS TO THE JURY ASSEMBLY ROOM. THANK YOU
3 VERY MUCH.

4 (THE REMAINING JURY PANEL EXITED THE COURTROOM
5 AT APPROXIMATELY 10:52 A.M.)

6 THE COURT: OKAY, NOW, LADIES AND GENTLEMEN, WILL
7 THIS CASE TAKE THE BALANCE OF THE DAY?

8 MR. CRANE: I WOULD THINK SO, JUDGE.

9 MS. MUNSON: YES, SIR, YOUR HONOR.

10 THE COURT: SO I CAN HAVE THE PANEL CALL IN IF THE
11 OTHER COURT IS NOT GOING TO USE THEM?

12 MS. MUNSON: I WOULD BELIEVE SO, YOUR HONOR.

13 (BAILIFF CONFERRED WITH COURT.)

14 THE COURT: ALL RIGHT, BRING HIM IN.

15 (JUROR ENTERED THE COURTROOM.)

16 THE COURT: YES, SIR. YOU CAN JUST STAND RIGHT
17 THERE. YOU ARE MR. BAYNE?

18 MR. BAYNE: YES, SIR.

19 THE COURT: AND, MR. BAYNE, WOULD YOU EXPLAIN TO ME
20 WHAT?

21 MR. BAYNE: WELL, SIR, THIS GENTLEMAN -- DID YOU
22 WORK AT THE KOGER CENTER DURING LAST WINTER FOR TEMPORARY
23 SERVICES?

24 THE COURT: WELL, HOLD ON JUST A MINUTE. TELL ME
25 WHAT YOU THINK, SIR.

1 MR. BAYNE: I'M AN EMPLOYEE OF B.W. BUILDERS.

2 THE COURT: YES?

3 MR. BAYNE: DURING LAST WINTER AT THE KOGER CENTER,
4 WE WERE REMODELING.

5 THE COURT: YES?

6 MR. BAYNE: AND THERE WAS A LOT OF TEMPORARY
7 EMPLOYEES THERE.

8 THE COURT: OKAY.

9 MR. BAYNE: AND I THINK --

10 THE COURT: AND YOU THINK MAYBE --

11 MR. BAYNE: I THINK THAT THIS GENTLEMAN WAS ONE OF
12 THEM.

13 THE COURT: ALL RIGHT, WELL, MY QUESTION TO YOU,
14 SIR, IS, WOULD THAT IN ANY WAY INTERFERE WITH YOUR ABILITY TO
15 GIVE HIM OR THE STATE A FAIR TRIAL IF THAT IS THE CASE?

16 MR. BAYNE: MORE THAN A FAIR TRIAL, I'M AFRAID,
17 SIR. I LIKED HIM. I LIKED HIM QUITE A BIT.

18 THE COURT: ALL RIGHT, SO YOU CAN RETIRE BACK TO
19 THE JURY ROOM, PLEASE, SIR.

20 MR. BAYNE: OKAY, THANK YOU.

21 THE COURT: ALL RIGHT, WHAT IS YOUR POSITION,
22 LADIES AND GENTLEMEN?

23 MS. MUNSON: YOUR HONOR, MY POSITION IS, NUMBER
24 ONE, I WOULD LIKE TO INQUIRE WHETHER HE SAID ANYTHING ELSE TO
25 THE REST OF THE JURORS ABOUT WHAT A FINE YOUNG MAN STANLEY

1 BUTLER IS. NUMBER TWO, I THINK WE HAVE NO CHOICE BUT TO TAKE
2 HIM OFF AND USE THE ALTERNATE.

3 THE COURT: ALL RIGHT, BRING HIM BACK IN RIGHT
4 QUICK. (PAUSE.)

5 LONNIE, ARE THEY BRINGING MR. BAYNE BACK IN FOR ME?

6 THE BAILIFF: YES, SIR.

7 (MR. BAYNE ENTERED THE COURTROOM.)

8 THE COURT: NOW, MR. BAYNE, YOU HAVE TOLD ME THAT
9 BECAUSE OF YOUR RELATIONSHIP WITH THE DEFENDANT THAT THAT
10 WOULD INFLUENCE YOU WITH YOUR ABILITY TO GIVE THE STATE A
11 FAIR TRIAL IN THIS CASE. NOW MY QUESTION TO YOU NOW, SIR,
12 IS, HAVE YOU DISCUSSED THIS WITH ANY OTHER MEMBER OF THIS
13 JURY PANEL?

14 MR. BAYNE: NO, SIR.

15 THE COURT: YOU HAVE NOT SAID A WORD --

16 MR. BAYNE: NO, SIR.

17 THE COURT: -- TO ANYONE ELSE?

18 MR. BAYNE: NO, SIR.

19 THE COURT: OKAY, THANK YOU, SIR. IF YOU WILL JUST
20 REMAIN RIGHT OUTSIDE THE COURTROOM FOR A MINUTE.

21 MR. BAYNE: OKAY.

22 THE COURT: THANK YOU, SIR.

23 (MR. BAYNE EXITED THE COURTROOM.)

24 THE COURT: ALL RIGHT, MR. CRANE, MR. ROLLINS.

25 MR. ROLLINS: YES, YOUR HONOR, AS I UNDERSTAND IT,

1 THE STATE'S POSITION IS TO PUT IN THE ALTERNATE.

2 MS. MUNSON: YES, SIR, YOUR HONOR.

3 THE COURT: YES.

4 MR. ROLLINS: OKAY. YOUR HONOR, WE'D OBJECT TO
5 THAT. OUR POSITION WOULD BE THAT THE MAN HAS TESTIFIED THAT
6 HE COULD RENDER A FAIR TRIAL TO THIS DEFENDANT, AND WE
7 BELIEVE HE NEEDS TO STAY ON THE JURY.

8 THE COURT: I DID NOT UNDERSTAND HIM TO SAY THAT.

9 MR. ROLLINS: HE SAID HE WOULD BE MORE THAN FAIR,
10 YOUR HONOR. I DON'T KNOW WHAT THAT MEANS. IF WE COULD GET
11 HIM TO CLARIFY THAT STATEMENT.

12 THE COURT: ALL RIGHT.

13 MR. ROLLINS: BUT, I MEAN, IF HE CAN REMAIN
14 IMPARTIAL AND DO WHATEVER THE -- WHATEVER IS PRESENTED TO HIM
15 ON THE STAND, I THINK HE'S --

16 THE COURT: ALL RIGHT, I WILL INQUIRE FURTHER.

17 MR. CRANE, YOU --

18 MR. CRANE: THAT'S WHAT I HEARD HIM SAY, JUDGE, --

19 THE COURT: ALL RIGHT.

20 MR. CRANE: -- THAT HE WOULD BE MORE THAN FAIR.

21 THE COURT: BRING HIM BACK IN, PLEASE - MR. BAYNE.

22 (MR. BAYNE ENTERED THE COURTROOM.)

23 THE COURT: MR. BAYNE.

24 MR. BAYNE: YES, SIR.

25 THE COURT: WOULD YOU TELL ME, AGAIN, PLEASE, SIR,

1 I NEED SOME CLARIFICATION; YOU HAVE TOLD ME THAT YOU WORKED
2 WITH THIS YOUNG GENTLEMAN AND THAT YOU LIKED HIM VERY MUCH.

3 MR. BAYNE: YES.

4 THE COURT: NOW MY QUESTION TO YOU, SIR, IS BECAUSE
5 OF THAT, CAN YOU GIVE THE STATE IN THIS CASE A FAIR TRIAL?
6 WOULD THAT IN ANY WAY INTERFERE WITH YOUR ABILITY TO BE A
7 FAIR AND IMPARTIAL JUROR ON THIS CASE?

8 MR. BAYNE: NO, SIR, IT WILL NOT.

9 THE COURT: SO YOU COULD PUT ASIDE THAT FRIENDSHIP
10 AND --

11 MR. BAYNE: YES, SIR.

12 THE COURT: -- JUDGE THIS --

13 MR. BAYNE: I JUST WANTED TO CLEAR UP THAT I THINK
14 I KNOW THIS GENTLEMAN.

15 THE COURT: THAT'S FINE, AND THAT'S PERFECTLY ALL
16 RIGHT; BUT MY QUESTION TO YOU IS, DESPITE YOUR RELATIONSHIP
17 WITH HIM, CAN YOU PUT THAT ASIDE AND BASE YOUR DECISION IN
18 THIS CASE SOLELY ON THE EVIDENCE TO BE PRESENTED?

19 MR. BAYNE: ON THE EVIDENCE TO BE PRESENTED, YES,
20 SIR.

21 THE COURT: THANK YOU VERY MUCH. I APPRECIATE IT.
22 YOU CAN RETIRE NOW BACK TO THE JURY PANEL.

23 (MR. BAYNE EXITED THE COURTROOM.)

24 THE COURT: ALL RIGHT, MR. BAYNE WILL REMAIN ON
25 THIS JURY PANEL.

1 ALL RIGHT, NOW YOU WANT TO MAKE BRIEF OPENING STATEMENTS
2 TO THE JURY?

3 MS. MUNSON: YES, SIR.

4 THE COURT: AND ARE YOU READY TO PROCEED?

5 MR. ROLLINS: YES, SIR.

6 MS. MUNSON: YES, SIR.

7 MR. CRANE: MAY I HAVE ABOUT TWO MINUTES --

8 THE COURT: YES, SIR.

9 MR. CRANE: -- TO LET SOME OTHER CLIENTS GO, JUDGE?

10 THE COURT: YES, SIR.

11 MR. CRANE: THANK YOU.

12 (RECESS.)

13 THE COURT: ALL RIGHT, BRING THE JURY PANEL.

14 (THE JURY ENTERED THE COURTROOM AT APPROXIMATELY
15 11:02 A.M.)

16 THE COURT: ALL RIGHT, SOLICITOR.

17 MS. MUNSON: MAY IT PLEASE THE COURT.

18 LADIES AND GENTLEMEN, THE EVIDENCE WILL SHOW THAT IN THE
19 EARLY MORNING HOURS OF MARCH THE 10TH, 1996, THE FUDDRUCKERS
20 ON WOODRUFF ROAD IN GREENVILLE COUNTY WAS ROBBED. THERE WERE
21 FOUR EMPLOYEES IN THE STORE AT THE TIME. THERE WERE NO
22 CUSTOMERS OR ANYTHING. THE EVIDENCE WILL SHOW THAT AS ONE
23 EMPLOYEE WAS LEAVING OUT THE BACK DOOR, TWO MEN RUSHED IN.
24 ONE OF THEM HAD A GUN. THE FOUR EMPLOYEES WERE ORDERED ONTO
25 THE FLOOR, AND THEN THREE OF THE EMPLOYEES WERE PUT INTO A

1 WALK-UP COOLER. THE EVIDENCE WILL SHOW THAT THEN ONE OF THE
2 GUNMEN TOOK THE FOURTH EMPLOYEE, THE MANAGER, AT GUNPOINT,
3 MADE HER GO INTO THE OFFICE AREA, GET ON HER KNEES AND OPEN
4 THE SAFE. THE EVIDENCE WILL SHOW THAT SHE THEN, TOO, WAS
5 DEPOSITED INTO THE FOOD WALK-UP COOLER, AND THAT THOSE FOUR
6 PEOPLE WERE ORDERED TO STAY THERE FOR A PERIOD OF TIME.

7 NOW THERE WERE THREE PEOPLE CHARGED IN THIS CRIME. ONE
8 OF THEM IS AUSTIN TODD PERRY. HE WAS CHARGED WITH ARMED
9 ROBBERY. HE WAS DRIVING THE GETAWAY CAR, IF YOU WILL. NOW
10 AUSTIN TODD PERRY IS GOING TO COME IN HERE TODAY, AND HE'S
11 GOING TO TAKE THE STAND, AND HE'S GOING TO TELL YOU WHAT HE
12 KNOWS ABOUT THIS ROBBERY.

13 THE EVIDENCE WILL SHOW THAT THE OTHER TWO PEOPLE, THE
14 PEOPLE THAT RUSHED INTO FUDDRUCKERS, HELD PEOPLE AT GUNPOINT,
15 AND PUT THEM IN THE COOLER ARE SHANNON TODD AND STANLEY
16 BUTLER.

17 IN ORDER FOR YOU TO RENDER A VERDICT OF GUILTY IN THIS
18 CASE, WHICH WE WILL ASK YOU TO DO, EACH OF YOU MUST BE
19 CONVINCED BEYOND A REASONABLE DOUBT THAT THESE TWO COMMITTED
20 ALL THE ELEMENTS OF THE OFFENSES. AND THE REASON I TELL YOU
21 THAT IS BECAUSE RIGHT NOW YOU MIGHT HAVE AN IDEA OF WHAT YOU
22 THINK ARMED ROBBERY IS, OR WHAT YOU THINK KIDNAPPING IS, BUT
23 THROUGH YOUR OATH, AND WE KNOW THAT YOU WILL HONOR YOUR OATH,
24 KIDNAPPING, AND ARMED ROBBERY, AND USE OF A FIREARM DURING
25 THE COMMISSION OF A VIOLENT CRIME, THESE THINGS ARE NOT WHAT

1 YOU MIGHT THINK THEY ARE. THESE THINGS ARE WHAT HIS HONOR
2 TELLS YOU THAT THEY ARE.

3 MY NAME IS JUDY MUNSON. I'M ONE OF THE ASSISTANT
4 SOLICITORS FOR THE THIRTEENTH CIRCUIT. IT'S MY DUTY AND IT'S
5 MY GREAT PRIVILEGE TO REPRESENT THE PEOPLE OF GREENVILLE
6 COUNTY IN THIS MATTER.

7 AT THE CLOSE OF THE CASE I'LL HAVE A CHANCE TO TALK WITH
8 YOU AGAIN, AND AT THAT TIME I WILL ASK YOU TO FIND THOSE TWO
9 DEFENDANTS GUILTY OF ARMED ROBBERY, OF KIDNAPPING, AND OF USE
10 OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THANK
11 YOU FOR YOUR TIME..

12 THE COURT: MR. ROLLINS.

13 MR. ROLLINS: PLEASE THE COURT, YOUR HONOR.

14 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS JOHN
15 ROLLINS, JR., AND I'M AN ATTORNEY FROM GREER, AND I REPRESENT
16 MR. STANLEY BUTLER WHO IS SEATED OVER THERE BESIDE ME.

17 MR. CRANE REPRESENTS MR. TODD, AND HE WILL BE ABLE TO
18 TALK WITH YOU AFTER I GET THROUGH TALKING WITH YOU.

19 THE SOLICITOR, AS SHE TOLD YOU, SHE HAS GIVEN YOU WHAT
20 THEY BELIEVE THE EVIDENCE WILL SHOW IN THIS CASE WHAT
21 HAPPENED. I SUBMIT TO YOU, LADIES AND GENTLEMEN OF THE JURY,
22 THAT THE EVIDENCE IS THERE AS TO WHAT HAPPENED. THE QUESTION
23 THAT YOU'RE GOING TO HAVE TO DECIDE IS, WHO DID IT? LISTEN
24 TO THE EVIDENCE THAT IS PLACED TO YOU ON THE STAND. WE
25 BELIEVE THERE WILL BE NO CREDIBLE EVIDENCE WHATSOEVER THAT

1 SHOWS THAT MY CLIENT STANLEY BUTLER WAS AT THIS PLACE WHEN
2 THIS CRIME OCCURRED.

3 THE STATE HAS THE BURDEN OF PROOF, AND HIS HONOR WILL
4 TELL YOU THAT. THE STATE HAS THE BURDEN OF PROOF ALWAYS TO
5 PROVE EACH AND EVERY ELEMENT OF THE CRIME. THEY MUST PROVE
6 THIS BURDEN BEYOND A REASONABLE DOUBT. AND HIS HONOR, I
7 BELIEVE, WILL TELL YOU LATER THAT A REASONABLE DOUBT IS A
8 DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
9 ACT. AND THE EVIDENCE THAT YOU BASE YOUR DECISION ON, LADIES
10 AND GENTLEMEN, IT'S UP TO YOU TO DECIDE WHAT THE FACTS ARE IN
11 THIS CASE. WHO YOU BELIEVE, WHAT THE FACTS ARE, ALL THAT IS
12 YOUR BUSINESS. IT'S YOUR DUTY TO DECIDE THOSE THINGS. AND
13 YOU DECIDE THOSE THINGS FROM WHAT IS PRESENTED TO YOU ON THIS
14 STAND, NOT ON CONJECTURE, NOT ON WHAT YOU MAY THINK HAS
15 HAPPENED, BUT WHAT IS PRESENTED TO YOU ON THE STAND. AND
16 WHEN YOU LISTEN TO ALL THOSE THINGS, I BELIEVE THAT YOU WILL
17 FIND THAT MR. BUTLER IS INNOCENT OF THESE CHARGES. THANK
18 YOU.

19 THE COURT: MR. CRANE.

20 MR. CRANE: THANK YOU, JUDGE.

21 MADAM FOREMAN, LADIES AND GENTLEMEN, GOOD MORNING. MY
22 NAME IS LARRY CRANE. I WILL BE REPRESENTING MR. TODD, SEATED
23 IN THE STRIPED SHIRT CLOSEST TO ME OVER THERE AT THE TABLE.

24 THE SOLICITOR HAS TOLD YOU WHAT THE CHARGES ARE, MR.
25 ROLLINS HAS TALKED TO YOU JUST BRIEFLY, AND NOW IT'S MY

1 OPPORTUNITY TO DO THE SAME.

2 THERE ARE SIX CHARGES AGAINST MY CLIENT SHANNON TODD -
3 ARMED ROBBERY, THE FOUR KIDNAPPINGS, AND THE POSSESSION OF A
4 FIREARM DURING THE COMMISSION OF AN OFFENSE. THE SOLICITOR
5 HAS INDICATED TO YOU SOMETHING OF WHAT SHE INTENDS TO PROVE
6 TO YOU AND WHAT THE EVIDENCE WILL SHOW TO YOU. SHE HAS
7 INDICATED THAT AUSTIN TODD PERRY HAS ADMITTED TO BEING
8 INVOLVED IN THIS ARMED ROBBERY. BUT FOR SOME UNKNOWN REASON,
9 AND MAYBE THEY'LL EXPLAIN IT, HE HAS ONLY BEEN CHARGED WITH
10 ARMED ROBBERY; WHEREAS, THESE TWO FELLOWS WHO SIT BEFORE YOU
11 ARE CHARGED ALSO WITH FOUR COUNTS OF KIDNAPPING, AND USE OF A
12 WEAPON DURING THE COMMISSION OF AN OFFENSE.

13 NOW I WILL SUBMIT TO YOU THAT THE EVIDENCE WILL SHOW YOU
14 THAT WHAT THE STATE IS RELYING ON TO CONVINCE YOU THERE WAS A
15 KIDNAPPING WAS THAT SOMEONE WENT INTO THAT STORE WITH A
16 WEAPON AND MADE SOMEBODY MOVE FROM ONE SPOT TO ANOTHER AND
17 PUT THEM IN A COOLER, AND THEN THOSE TWO FOLKS THAT WERE IN
18 THAT STORE LEFT AND LEFT THE PEOPLE THERE. NOW IF THAT'S A
19 KIDNAPPING, THAT'S WHAT THE SOLICITOR IS ASKING YOU TO
20 BELIEVE.

21 THE EVIDENCE WILL, ALSO, SHOW YOU, I WOULD SUBMIT, THAT
22 ONLY ONE PERSON HAD A GUN; BUT, YET, TWO PEOPLE ARE CHARGED
23 WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF AN
24 OFFENSE. NOW THE SOLICITOR MAY RELY ON SOMETHING IN SOUTH
25 CAROLINA CALLED THE HAND OF ONE IS THE HAND OF ALL WHERE TWO

1 OR MORE PEOPLE COMBINE TO DO AN OFFENSE, AND THEN THEY ARE
2 ALL JUST AS GUILTY AS THE OTHER. WELL, THEN I COME BACK TO
3 THE POINT, WHY DOESN'T MR. AUSTIN PERRY HAVE ALL OF THE
4 CHARGES AGAINST HIM?

5 YOU KNOW WHAT ELSE YOU'RE GOING TO HAVE TO LISTEN TO AND
6 WHAT YOU WILL HEAR DURING THE TESTIMONY, IS THAT THE ONLY
7 EVIDENCE THEY HAVE AGAINST SHANNON TODD IS A STATEMENT FROM
8 THE ADMITTED ARMED ROBBER, AUSTIN PERRY.

9 NOW UNFORTUNATELY FOR MY CLIENT, SHANNON TODD, WE HAVE
10 TO GO TO TRIAL TOGETHER WITH MR. PERRY. THERE IS NO
11 STATEMENT AGAINST MR. PERRY THAT I'M AWARE OF. SO, YOU KNOW,
12 YOU WILL HAVE TO LISTEN TO FIND OUT WHY HE'S EVEN HERE, BUT
13 YOU, ALSO, NEED TO LISTEN REAL CAREFULLY BECAUSE IF YOU DO, I
14 SUBMIT TO YOU THAT YOU WILL FIND OUT THAT THE POLICE TALKED
15 TO AUSTIN PERRY AND HE INITIALLY LIED TO THEM, DENIED ANY
16 KNOWLEDGE UNTIL THEY WENT BACK TO HIM, AND SAID, "HEY, MR.
17 PERRY, WE HAVE GOT SOME OTHER INFORMATION ON YOU. YOU SURE
18 YOU DON'T WANT TO TELL US WHAT'S GOING ON?" AND SO MR.
19 PERRY, BEING CAUGHT IN THE ARMED ROBBERY, THEN COMES UP WITH
20 THE STORY WHICH HAPPENS TO INCLUDE MY CLIENT'S NAME IN A
21 STATEMENT GIVEN TO HIM.

22 NOW THE SOLICITOR IS RELYING ON HER RENDITION OF THE
23 FACTS BASED SOLELY AND ENTIRELY ON THE STATEMENT OF AN
24 ADMITTED ARMED ROBBER, AUSTIN PERRY, BECAUSE I WILL ALSO
25 SUBMIT TO YOU THAT THE WITNESSES FROM FUDDRUCKERS WILL NOT BE

1 ABLE TO IDENTIFY ANYBODY BY EITHER HEIGHT, WEIGHT, WHAT THEY
2 LOOKED LIKE, VOICE, OR ANYTHING.

3 ONE OF THE FELLOWS HAD ON A YELLOW BANDANNA AND A HOODED
4 SHIRT. THE OTHER ONE HAD ON A WELDER'S MASK. ACCORDING TO
5 THE EVIDENCE YOU ARE ABOUT TO HEAR, I WILL SUBMIT TO YOU THAT
6 YOU WILL HEAR THAT THE ONE WITH THE BANDANNA HAD A WEAPON,
7 THE OTHER FELLOW DIDN'T HAVE ANYTHING.

8 LISTEN CAREFULLY TO WHAT YOU HEAR TODAY. YOU WILL NOT
9 HEAR ANYTHING FROM ANYBODY AT FUDDRUCKERS THAT WILL TIE
10 EITHER ONE OF THESE TWO FELLOWS TO THAT OFFENSE. THE ONLY
11 PERSON THAT CAN POSSIBLY TIE SHANNON TODD TO THAT OFFENSE IS
12 THE ADMITTED ARMED ROBBER, AUSTIN PERRY, WHO AFTER BEING
13 CAUGHT BY LAW ENFORCEMENT IN A FIRST LIE, CHANGES HIS STORY
14 AND SAYS, "WELL, LET ME TELL YOU WHAT REALLY HAPPENED. I
15 DROVE THE CAR. I DIDN'T EVEN GO IN." HOW DO WE KNOW THAT?
16 HOW DO WE KNOW AUSTIN PERRY ISN'T THE ONE THAT WENT INTO THE
17 STORE --

18 THE COURT: MR. CRANE, YOU'RE -- I'VE GIVEN YOU A
19 LOT OF LEEWAY, SIR, --

20 MR. CRANE: I UNDERSTAND.

21 THE COURT: -- IN ARGUING THE CASE IN OPENING
22 STATEMENT, AND YOU KNOW I DON'T ALLOW THAT, SIR.

23 MR. CRANE: THANK YOU, JUDGE.

24 THE COURT: SO LET'S WRAP IT UP.

25 MR. CRANE: LISTEN TO WHAT AUSTIN PERRY IS GOING TO

1 TELL YOU BECAUSE THAT'S WHERE THEIR WHOLE CASE LIES AGAINST
2 SHANNON TODD. THERE'S NO FINGERPRINTS, NOTHING EXCEPT THE
3 STATEMENT OF AN ADMITTED ARMED ROBBER WHO WAS CAUGHT AND
4 CORNERED AND POINTED A FINGER AT MY CLIENT.

5 NOW THE SOLICITOR SAID SHE'S GOING TO ASK YOU AT THE END
6 OF THE CASE TO FIND HIM GUILTY. I'M GOING TO ASK YOU TO
7 LISTEN CAREFULLY AND FIND HIM NOT GUILTY BECAUSE THERE'S NOT
8 GOING TO BE ENOUGH BELIEVABLE, CREDIBLE EVIDENCE TO CONVICT
9 SHANNON TODD. THANK YOU.

10 THE COURT: SOLICITOR.

11 MS. MUNSON: MAY IT PLEASE THE COURT, THE STATE
12 CALLS M.L. GALE.

13 MICHAEL LEE GALE, FIRST BEING SWORN TO TELL
14 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
15 TESTIFIES AS FOLLOWS:

16 THE CLERK: STATE YOUR NAME.

17 THE WITNESS: MICHAEL LEE GALE.

18 THE CLERK: THANK YOU. YOU MAY HAVE A SEAT.

19 DIRECT EXAMINATION BY MS. MUNSON:

20 Q MR. GALE, WHO DO YOU WORK FOR?

21 A I WORK FOR THE GREENVILLE COUNTY SHERIFF'S OFFICE.

22 Q AND WHAT ARE YOUR DUTIES?

23 A I'M A MASTER DEPUTY. MY DUTY IS ROUTINE PATROL, AND
24 SOMETIMES SUPERVISING CAPABILITIES, BUT MOSTLY PATROL.

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

- 1 A SIX YEARS.
- 2 Q OKAY. DID YOU GET A CALL WHILE WORKING FOR THE
- 3 SHERIFF'S OFFICE IN REFERENCE TO THIS CASE?
- 4 A YES, MA'AM, ON THE NIGHT IN QUESTION, ABOUT 0123 THERE
- 5 WAS AN ALL POINTS BOLO THAT WENT OUT ACROSS THE AIR IN
- 6 REFERENCE TO AN ARMED ROBBERY THAT HAD JUST OCCURRED AT
- 7 FUDDRUCKERS.
- 8 Q OKAY, WHEN YOU SAY 0123, TELL ---
- 9 A AROUND 1:30 IN THE MORNING.
- 10 Q OKAY, YOU RECEIVED A CALL THAT IT WAS AT FUDDRUCKERS?
- 11 A IT WAS AN ALL-POINTS BOLO THAT WAS GIVEN OUT OVER THE
- 12 RADIO, AND THEY GAVE IT OUT TO THE CLOSEST UNIT TO RESPOND,
- 13 AND IT JUST HAPPENED TO BE THAT I WAS RIGHT THERE ON THE
- 14 SCENE THAT NIGHT.
- 15 Q OKAY, WHICH FUDDRUCKERS IS THAT?
- 16 A THAT'S THE ONE ON WOODRUFF ROAD.
- 17 Q OKAY, AND WHAT COUNTY IS THAT?
- 18 A GREENVILLE COUNTY.
- 19 Q IF YOU COULD STAND DOWN, PLEASE, MR. GALE, AND TAKE A
- 20 LOOK AT THIS DIAGRAM.
- 21 A (COMPLIED.)
- 22 Q TAKE A MINUTE TO LOOK AT THAT AND SEE IF IT LOOKS
- 23 FAMILIAR TO YOU.
- 24 A IT DOES.
- 25 Q OKAY. IF YOU COULD SPEAK UP, AND, PLEASE, SHOW THE

1 JURY WHAT THIS DIAGRAM SHOWS.

2 A THIS DIAGRAM SHOWS WOODRUFF ROAD RIGHT HERE. IT, ALSO,
3 SHOWS FUDDRUCKERS. IT SHOWS THE OTHER BAR BESIDE IT, THE
4 PARKING LOT HERE, AND, ALSO, THIS RESTAURANT AND THE DOORS
5 BEHIND IT. THIS IS 385. THIS IS A FENCE LINE THAT RUNS
6 ACROSS PARALLEL TO 385.

7 Q OKAY. WHERE WERE YOU WHEN YOU GOT THIS CALL?

8 A WHEN I GOT THIS CALL, ROUGHLY I WAS ABOUT RIGHT HERE.
9 IN THIS AREA RIGHT HERE.

10 Q AND FOR PURPOSES OF THE COURT REPORTER, WOULD YOU
11 INDICATE WHERE "RIGHT HERE" IS?

12 A WOODRUFF ROAD. RIGHT AT WOODRUFF ROAD. RIGHT AT
13 GARLINGTON, I GUESS A LITTLE BIT BEFORE IT BUT FOR THE
14 COURT'S PURPOSES, I'D SAY PROBABLY A LITTLE BIT BEYOND THE
15 RAILROAD TRACKS ON WOODRUFF ROAD.

16 Q OKAY, AND WHERE DID YOU GO?

17 A I MADE A U-TURN AND WENT RIGHT BACK, AND I PARKED RIGHT
18 HERE IN THE FRONT PARKING OF FUDDRUCKERS, RIGHT ABOUT HERE.

19 Q OKAY, MR. GALE, IF YOU COULD RETAKE THE STAND, PLEASE.

20 A (COMPLIED.)

21 Q OKAY, SO ABOUT WHAT TIME WAS IT WHEN YOU GOT INTO THE
22 PARKING LOT AT FUDDRUCKERS?

23 A IT WAS RIGHT AT 1:30.

24 Q AND DID YOU GO IN?

25 A NOT RIGHT AT FIRST, I DIDN'T. I WAS WAITING TO SEE

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1. EXACTLY WHAT HAPPENED. WHAT HAPPENED IS THE CALL CAME DOWN
2 THAT THERE WAS AN ARMED ROBBERY IN PROGRESS. WHAT WE DO,
3 FIRST OF ALL, IS WE STOP, WE MAKE SURE THAT THE BUILDING IS
4 SAFE BEFORE WE ENTER, WE MAKE SURE THE ARMED ROBBERS ARE
5 STILL ON THE SCENE. IT WASN'T UNTIL ABOUT A MINUTE LATER
6 THAT WE GOT ANOTHER CALL THAT SAID THE ROBBERY HAD OCCURRED
7 ABOUT 30 MINUTES PRIOR TO THE INCIDENT, AND THAT THEY HAD PUT
8 IN A COOLER. THEREFORE, AT THAT TIME I WENT AHEAD AND EXITED
9 MY VEHICLE, AND WENT UP TO THE FRONT WINDOW WHERE I WAS MET
10 BY THE COMPLAINANT OR THE VICTIM IN THIS CASE CAME OUT AND
11 LET ME INTO THE STORE.

12 Q OKAY, AND WHEN YOU GOT INTO THE STORE, WHAT DID YOU
13 OBSERVE?

14 A THE PEOPLE, THEY WERE KIND OF LIKE BEWILDERED AND A
15 LITTLE BIT IN SHOCK. THEY WERE WALKING AROUND AND THEY
16 SEEMED TO BE UPSET. THEY SAID THEY HAD BEEN ROBBED. AND
17 THERE WAS A LITTLE BIT OF CONFUSION AT FIRST BECAUSE AFTER
18 THIS INCIDENT HAPPENED, A LOT OF PEOPLE WERE JUST WANDERING
19 TRYING TO UNDERSTAND WHAT HAPPENED, AND I REALLY COULDN'T GET
20 ANYTHING FROM THEM AT FIRST. SO WHAT I'D LIKE TO DO IN THIS
21 CASE IS LET THEM TRY TO CALM DOWN FOR A LITTLE BIT AND LET
22 THEM TRY TO RECALL OR JUST REMEMBER WHAT HAPPENED, AND THEN I
23 GO ABOUT INTO TALKING AS TO WHAT HAPPENED AT THAT POINT IN
24 TIME.

25 Q HOW MANY PEOPLE WERE IN FUDDRUCKERS WHEN YOU GOT THERE?

1 A OH, ROUGHLY I WOULD SAY ABOUT SIX OR SEVEN THAT I KNOW
2 RIGHT OFF THE BAT.

3 Q OKAY, DO YOU KNOW WHO THEY WERE?

4 A NO, RIGHT OFF THE BAT, I DIDN'T KNOW WHO THEY WERE..

5 Q OKAY. WERE ANY OTHER LAW ENFORCEMENT PERSONNEL EITHER
6 CALLED TO THE SCENE OR ON THE SCENE?

7 A THERE WAS A COUPLE OF OTHER CARS THAT CAME UP PRIOR TO
8 WHEN I CAME -- WELL, AFTER I CAME UP THERE, BUT BASICALLY
9 AFTER THE INCIDENT HAD ALREADY OCCURRED AND THEY WERE
10 SECURED. AND THEY WERE RELEASED, AND I WAS ABOUT THE ONLY
11 ONE ON THE SCENE FOR INITIAL PURPOSES.

12 Q OKAY. WHAT ELSE DID LAW ENFORCEMENT DO ON THE SCENE
13 OTHER THAN TALK TO THE PEOPLE WHO WERE IN FUDDRUCKERS?

14 A WELL, WE SECURED THE AREA. WE SEARCHED THE AREA, AND
15 WE WENT OUT LOOKING FOR THE SUSPECTS. WE TRIED TO SECURE AS
16 MUCH OF THE INNER WORKINGS AS WE COULD, TRIED TO KEEP PEOPLE
17 OUT OF THE CRIME SCENE AREA SO WE COULD GET IT SET UP FOR
18 FORENSICS EVIDENCE TO COME IN. WE DIDN'T WANT TO RUIN THE
19 CRIME SCENE, SO WE TRIED TO KEEP IT AS ORGANIZED AS POSSIBLE.

20 Q OKAY, AND AS PART OF YOUR DUTIES AS A SHERIFF'S DEPUTY,
21 DO YOU HAVE -- HOW DO YOU IDENTIFY THIS PARTICULAR INCIDENT
22 WHEN YOU ARE WANTING TO GO BACK AND WORK ON THE CASE, OR WHEN
23 YOU WANT TO RECALL THE CASE? HOW DO YOU IDENTIFY THIS
24 PARTICULAR CASE?

25 A I'M NOT QUITE SURE I'M FOLLOWING YOU.

1 Q DO YOU IDENTIFY IT BY THE NAME OF THE RESTAURANT, OR DO
2 YOU IDENTIFY IT BY THE VICTIM'S NAME? HOW DO YOU IDENTIFY
3 THIS CASE?

4 A IDENTIFY IT BY VICTIM AND --- AND ---

5 Q OKAY, IS IT ASSIGNED A NUMBER, OR?

6 A IT'S ASSIGNED A CASE NUMBER, YES, MA'AM.

7 Q AND DO YOU KNOW WHAT THE CASE NUMBER IS IN THIS
8 PARTICULAR INCIDENT?

9 A I DON'T HAVE THE REPORT WITH ME, NO.

10 Q IS THERE ANYTHING THAT WOULD HELP REFRESH YOUR MEMORY
11 AS TO WHAT THE CASE NUMBER IS?

12 A IF I COULD SEE A COPY OF THE REPORT.

13 Q OKAY. ALL RIGHT. (PAUSE, VIEWING DOCUMENT.) WHAT IS
14 THIS I'M SHOWING YOU RIGHT HERE, MR. GALE?

15 A THIS IS MY, WHAT WE CALL A CODE FIVE. IT'S THE
16 INCIDENT REPORT THAT I TOOK ON THE EVENING OF THIS CRIME.

17 Q OKAY, AND WHAT IS THE CASE NUMBER?

18 A THE CASE NUMBER IS 96034820.

19 MS. MUNSON: THANK YOU. I HAVE NOTHING FURTHER OF
20 THIS WITNESS AT THIS TIME.

21 THE COURT: ANY QUESTIONS, MR. ROLLINS?

22 CROSS-EXAMINATION BY MR. ROLLINS:

23 Q DID YOU TAKE ANY STATEMENTS, OFFICER GALE, FROM ANYONE
24 AT THE LOCATION?

25 A NO, SIR.

1 Q WERE YOU THE MAIN INVESTIGATING OFFICER?

2 A I WAS THE PRELIMINARY INVESTIGATING OFFICER WHEN I
3 FIRST ARRIVED ON THE SCENE; THE CASE GIVEN TO AN INVESTIGATOR
4 AFTER I TOOK THE PRELIMINARY INVESTIGATION.

5 Q DID YOU RECOVER ANY EVIDENCE?

6 A NO, SIR.

7 Q AND YOU DID NOT TAKE ANY STATEMENTS?

8 A NO, SIR, I DID NOT TAKE ANY STATEMENTS.

9 Q OKAY, SO BASICALLY YOU WERE THERE TO SECURE THE AREA?

10 A YES, SIR. (PAUSE.) BASICALLY MY REPORT SHOULD REFLECT
11 AN INITIAL INTERVIEW OF THE WITNESSES THAT WERE ON THE SCENE
12 AT THE TIME BEING, BUT I DID NOT TAKE ANY FIELD STATEMENTS AT
13 THAT POINT IN TIME.

14 MR. ROLLINS: THANK YOU. THAT'S ALL THE QUESTIONS
15 I HAVE.

16 THE COURT: MR. CRANE.

17 MR. CRANE: THANK YOU, JUDGE.

18 CROSS-EXAMINATION BY MR. CRANE:

19 Q OFFICER GALE, DO YOU REMEMBER WHO YOU INTERVIEWED ON
20 THE SCENE?

21 A I INTERVIEWED THE COMPLAINANT. I CAN'T REMEMBER HER
22 NAME RIGHT OFF THE BAT, BUT THE MANAGER OF THE STORE THAT WAS
23 THE MANAGER AT THE TIME.

24 MR. CRANE: IS SHE HERE, JUDY? WILL YOU ASK HER TO
25 WALK IN THE COURTROOM?

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1 YOUR HONOR, COULD I ASK THAT A WITNESS, PLEASE, COME IN
2 THE COURTROOM SO HE CAN IDENTIFY HER?

3 THE COURT: ALL RIGHT.

4 (A WOMAN ENTERED THE COURTROOM.)

5 Q DOES THIS APPEAR TO BE THE LADY THAT YOU SPOKE TO THAT
6 NIGHT?

7 A YES, SIR, IT IS.

8 Q OKAY, YOU DON'T RECALL HER NAME THOUGH?

9 A MS. MICHAELOVE, I BELIEVE, IS HER NAME.

10 MR. CRANE: ALL RIGHT, THANK YOU. APPRECIATE IT.

11 MS. MUNSON: YOU CAN GO, MS. MICHAELOVE.

12 MS. MICHAELOVE: OKAY. (LEFT THE COURTROOM.)

13 Q ALL RIGHT. I PRESUME, AS YOU TESTIFIED, YOU ASKED HER
14 BASICALLY WHAT HAPPENED?

15 A YES, SIR.

16 Q AND WERE YOU YOU GIVEN ANY INFORMATION AS TO WHAT YOU
17 WERE THEN LOOKING FOR?

18 A I'M NOT SURE I FOLLOW YOU.

19 Q ALL RIGHT. HOW MANY PEOPLE WAS INDICATED CAME INTO THE
20 STORE?

21 A FROM MY UNDERSTANDING TWO WERE INDICATED THAT CAME INTO
22 THE STORE.

23 Q AND WHAT COLOR WAS THEIR SKIN?

24 A THEY SAID THEY WERE BLACK, BLACK MALES.

25 Q BLACK MALES?

1 A YES.

2 Q DID THEY GIVE ANY DESCRIPTION OF THE TWO PEOPLE?

3 A THEY BASICALLY GAVE ME A GENERALIZED DESCRIPTION. THEY
4 GAVE ME WHAT THEY WERE WEARING, AND BASICALLY. --

5 Q WHAT DID THEY--

6 A -- WHAT THEIR HEIGHT WAS.

7 Q -- TELL YOU THEY WERE WEARING, THE FIRST ONE?

8 A IF I COULD HAVE MY CODE FILE. I CAN'T RECALL RIGHT OFF
9 THE BAT.

10 (MS. MUNSON HANDED DOCUMENT TO MR. CRANE, WHO
11 HANDED SAME TO THE WITNESS.)

12 A THANK YOU, SIR.

13 Q TO HELP YOU, MR. GALE, I BELIEVE YOU'LL FIND THAT ABOUT
14 HALFWAY DOWN ON PAGE 2.

15 A YES, SIR.

16 Q WERE THEY OF DIFFERENT HEIGHTS, OR THE SAME HEIGHT?

17 A IT SAYS BOTH WERE ABOUT THE SAME HEIGHT, ABOUT THE SAME
18 HEIGHT. ONE WAS WEARING A WHITE HOODED SWEATSHIRT WITH THE
19 HOOD PULLED OVER HIS HEAD.

20 Q A WHITE HOODED SWEATSHIRT WITH THE HOOD OVER HIS HEAD,
21 AND WHAT WAS HE WEARING ON HIS FACE?

22 A HE WAS, ALSO, WEARING A YELLOW BANDANNA WHICH WAS
23 COVERING HIS FACE FROM THE NOSE DOWN TO HIS NECK..

24 Q AND WAS HE ARMED?

25 A HE WAS, ALSO, ARMED WITH A RIFLE, POSSIBLY A 22 CALIBER

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1 GUN.

2 Q SO THE FELLOW WITH THE HOODED SWEATSHIRT, YELLOW
3 BANDANNA, ACCORDING TO THEIR REPORT, HAD THE 22 RIFLE?

4 A ACCORDING TO THE STATEMENT, YES, SIR.

5 Q ALL RIGHT... WHAT WAS THE SECOND SUSPECT WEARING?

6 A THE SECOND SUSPECT WAS WEARING A WELDER'S MASK AND HAD
7 A STARTER TYPE JACKET WHICH WAS BLUE, WHITE, AND YELLOW WITH
8 THE WORDS "MICHIGAN" PRINTED ACROSS THE MIDDLE.

9 Q ALL RIGHT. WHICH SUSPECT MADE MS. MICHAELOVE GET TO
10 HER KNEES, THE ONE WITH THE GUN, OR THE OTHER ONE?

11 A OKAY, --

12 MS. MUNSON: YOUR HONOR, I'M GOING TO HAVE TO
13 OBJECT AT THIS TIME. IT'S IMPROPER CROSS-EXAMINATION. I
14 DIDN'T ASK HIM ANY OF THIS STUFF.

15 THE COURT: YES, I -- WELL.

16 MS. MUNSON: AND MS. MICHAELOVE IS HERE TO TESTIFY
17 TO THAT. HE CAN ONLY TESTIFY AS TO WHAT HE HEARD.

18 MR. CRANE: WELL, THAT'S WHY I'M ASKING NOW BECAUSE
19 SHE IS HERE AND CAN BE -- I MEAN, I CAN CALL THEM BACK AND --

20 THE COURT: WHAT WAS YOUR QUESTION NOW ON THIS, MR.
21 CRANE?

22 MR. CRANE: WHICH ONE OF THE --

23 THE COURT: NOW IS THIS INFORMATION THAT YOU,
24 YOURSELF, TOOK DOWN, SIR, IN TALKING WITH THESE PEOPLE?

25 THE WITNESS: YES, THIS IS WHAT SHE SAID.

- 1 THE COURT: ALL RIGHT, SIR, GO AHEAD.
- 2 Q WHICH ONE MADE HER GET DOWN ON HER KNEES?
- 3 A THE SUSPECT WITH THE RIFLE.
- 4 Q ALL RIGHT. WHICH ONE ORDERED HER TO OPEN THE SAFE?
- 5 A (PAUSE, VIEWING DOCUMENT.) HE ASKED HER WHERE THE SAFE
- 6 WAS.. SHE TOLD HIM THE SAFE WAS IN THE OFFICE.
- 7 Q WELL, WAIT A MINUTE, LET ME -- LET ME HEAR THAT AGAIN.
- 8 HE ASKED HER WHERE THE SAFE WAS, RIGHT?
- 9 A YES, SIR.
- 10 Q ALL RIGHT. AND WHAT ELSE DID HE ASK HER ABOUT THE
- 11 SAFE?
- 12 A WHAT I HAVE SAYS, "THE SUSPECT WITH THE RIFLE MADE THE
- 13 COMPLAINANT GET ON HER KNEES, THEN HELD THE GUN TO HER HEAD
- 14 AND ASKED HER WHERE THE SAFE WAS."
- 15 Q ALL RIGHT.
- 16 A "SHE TOLD HIM WHERE THE SAFE WAS, IN THE OFFICE. HE
- 17 THEN TOLD HER TO GIVE HIM THE KEY."
- 18 Q AND SHE TOLD HIM WHAT ABOUT A KEY?
- 19 A "SHE TOLD HIM THERE WAS NO KEY. IT WAS A COMBINATION
- 20 LOCK."
- 21 Q ALL RIGHT. DID SHE EVENTUALLY OPEN THE SAFE?
- 22 A I WOULD ASSUME SO.
- 23 Q ALL RIGHT. NOW WERE ANY OF THE PEOPLE IN FUDDRUCKERS
- 24 ABLE TO GIVE YOU ANY CONCRETE IDENTIFICATION OF THE TWO
- 25 PEOPLE THAT WERE IN THE STORE THAT NIGHT?

- 1 A WHAT DO YOU MEAN BY "CONCRETE IDENTIFICATION"?
- 2 Q TELL YOU WHO IT WAS.
- 3 A NO.
- 4 Q WAS THERE ANYTHING ABOUT THEM THAT THEY COULD IDENTIFY?
- 5 A NOT -- NOT OUTSIDE OF WHAT I HAVE READ TO YOU.
- 6 Q ALL RIGHT. WELL, HOW ABOUT DOWN TOWARDS THE BOTTOM OF
- 7 PAGE THREE WHERE IT SAYS THAT "COMPLAINANT STATED," YOU SEE
- 8 THAT?
- 9 A ONE SECOND. (PAUSE, VIEWING DOCUMENT.)
- 10 Q ABOUT FIVE LINES FROM THE BOTTOM.
- 11 A "THE COMPLAINANT STATED THE SUSPECT'S VOICES WERE NOT
- 12 FAMILIAR."
- 13 Q GO AHEAD.
- 14 A "AND SHE DID NOT BELIEVE THEM TO BE EX-EMPLOYEES."
- 15 Q ALL RIGHT, VOICES NOT FAMILIAR, AND DID NOT BELIEVE
- 16 THEM TO BELIEVE EX-EMPLOYEES. DO YOU KNOW WHETHER OR NOT
- 17 SHANNON TODD, IN FACT, WORKED AT THAT SAME FUDDRUCKERS?
- 18 A I HAVE NO IDEA.
- 19 Q DO YOU KNOW WHETHER OR NOT AUSTIN PERRY WORKED AT THAT
- 20 FUDDRUCKERS?
- 21 A NO, SIR, I DON'T.
- 22 Q DID YOU ON THE NEXT DAY TALK TO THE OWNER OF THE STORE?
- 23 A I BELIEVE I TALKED TO THE OWNER OF THE STORE THAT
- 24 EVENING.
- 25 Q WERE ANY --

1 MS. MUNSON: YOUR HONOR, I'M GOING TO OBJECT,
2 AGAIN, ABOUT CONVERSATIONS WITH THE OWNER AFTER THE INCIDENT.
3 THIS IS GOING INTO THE INVESTIGATION. IT DOESN'T HAVE
4 ANYTHING TO DO WITH THESE TWO DEFENDANTS.

5 THE COURT: WELL, GO AHEAD, MR. CRANE.

6 Q WERE YOU GIVEN THE NAMES OF ANY OTHER POTENTIAL
7 SUSPECTS?

8 A I WAS GIVEN THE NAME OF THREE OF THE VICTIMS, BUT I
9 WASN'T GIVEN ANY OTHER NAMES EXCEPT FOR ONE, ONE SUSPECT
10 MIGHT HAVE BEEN GERMANE MCCULLOUGH.

11 Q GERMANE MCCULLOUGH.

12 A YES, SIR.

13 Q THAT WAS GIVEN TO YOU BY THE OWNER OF THE STORE?

14 A YES, SIR.

15 Q AND HE, TOO, WAS AN EMPLOYEE, WASN'T HE?

16 A I WOULD ASSUME HE WAS.

17 Q NOW DID THE OWNER TELL YOU HE SUSPECTED GERMANE
18 MCCULLOUGH?

19 A HE TOLD ME THAT HE HAD BEEN -- HAD CAUGHT HIM STEALING
20 BEFOREHAND, BUT HE DIDN'T EXACTLY SUSPECT HIM RIGHT OFF THE
21 BAT BECAUSE OF THAT INCIDENT.

22 Q CAUGHT HIM STEALING FROM WHAT?

23 A FROM THE STORE.

24 Q FROM THE SAFE, WASN'T IT? REMEMBER THAT?

25 A I DON'T EXACTLY HAVE THE SAFE DOWN THERE. ALL I KNOW

1 IS THEY TOLD ME HE HAD BEEN CAUGHT STEALING BEFORE. THEY
2 DIDN'T SAY WHERE.

3 Q ALL RIGHT. DO YOU KNOW WHETHER OR NOT -- DID HE TELL
4 YOU THAT AUSTIN PERRY HAD ALSO BEEN CAUGHT STEALING FROM THE
5 STORE?

6 A NO, SIR.

7 Q DO YOU HAVE ANY FINGERPRINTS OR ANY PHYSICAL EVIDENCE
8 THAT WOULD TIE MY CLIENT, SHANNON TODD, TO THAT ARMED ROBBERY
9 THAT NIGHT?

10 A YOU'D HAVE TO TALK TO THE INVESTIGATOR THAT
11 INVESTIGATED THE --

12 Q OH, BUT YOU DON'T?

13 A I DON'T HAVE, NO, SIR.

14 Q OKAY. AND NO ONE ON THE SCENE HAS EVER IDENTIFIED
15 SHANNON TODD THAT NIGHT?

16 A NOT ON THE SCENE THAT NIGHT, NO, SIR.

17 MR. CRANE: OKAY. THANK YOU, SIR.

18 A YOU'RE WELCOME.

19 **REDIRECT EXAMINATION BY MS. MUNSON:**

20 Q MR. GALE, WAS THE OWNER THERE THAT NIGHT? (PAUSE.)
21 THE OWNER THAT YOU TALKED TO THAT GAVE YOU THE NAME "GERMANE
22 MCCULLOUGH"?

23 A WHEN I FIRST CAME, THEY WERE NOT THERE. THEY CAME
24 LATER. IT WAS AT THE END OF THE INVESTIGATION WHEN I WAS
25 WRITING THE CODE UP, THEY CAME OUT THERE.

1 Q OKAY, SO THE OWNER DOESN'T KNOW ANYTHING ABOUT WHAT
2 HAPPENED INSIDE THE STORE?

3 A NO.

4 MS. MUNSON: OKAY. NOTHING FURTHER, YOUR HONOR.

5 THE COURT: STEP DOWN.

6 MS. MUNSON: YOUR HONOR, THE STATE CALLS TIM
7 WAITER.

8 YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

9 THE COURT: ANY OBJECTION TO EXCUSING THE WITNESS?

10 MR. CRANE: IF HE'S ON CALL, JUDGE, I DON'T HAVE
11 ANY OBJECTION IF HE CAN BE REACHED.

12 THE COURT: ALL RIGHT, SUBJECT TO BEING RECALLED IF
13 NECESSARY.

14 MR. CRANE: THANK YOU, SIR.

15 TIM WAITER, FIRST BEING SWORN TO TELL THE
16 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIES
17 AS FOLLOWS:

18 THE CLERK: STATE YOUR NAME FOR THE RECORD.

19 THE WITNESS: TIM WAITER.

20 THE CLERK: THANK YOU. YOU MAY HAVE A SEAT.

21 DIRECT EXAMINATION BY MS. MUNSON:

22 Q ALL RIGHT, TIM, WHERE DO YOU WORK?

23 A I WORK AT FUDDRUCKERS.

24 Q YOU STILL WORK THERE?

25 A YES, I DO.

TIM WAITER/DIRECT-MUNSON

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- 1 Q OKAY, HOW OLD ARE YOU?
- 2 A 17.
- 3 Q DO YOU GO TO SCHOOL, ALSO?
- 4 A YES, I GO TO MAULDIN.
- 5 Q I'M SORRY?
- 6 A MAULDIN.
- 7 Q OKAY. WERE YOU WORKING AT FUDDRUCKERS THE NIGHT THAT
- 8 IT WAS ROBBED?
- 9 A YES, I WAS.
- 10 Q WHAT HOURS WERE YOU WORKING THAT NIGHT?
- 11 A WELL, I CAME IN AT 5:30, AND I WAS SCHEDULED TO CLOSE.
- 12 Q OKAY, WHAT IS CLOSING, ABOUT WHAT TIME?
- 13 A THAT WAS A SATURDAY NIGHT, AND CLOSING IS AT 11:00.
- 14 AND WE USUALLY HAVE TO STAY ABOUT AN HOUR, AN HOUR-AND-A-HALF
- 15 LATER TO GET EVERYTHING DONE.
- 16 Q OKAY. WHO ELSE WAS IN THERE, IN THE STORE, WITH YOU
- 17 THE NIGHT THAT IT WAS ROBBED?
- 18 A THERE WAS MICHAEL JARVIS, TODD MILAM, AND LINDA, OUR
- 19 MANAGER.
- 20 Q OKAY, ABOUT WHAT TIME DID THE ROBBERY OCCUR?
- 21 A BETWEEN 12:30 AND 1:00 O'CLOCK.
- 22 Q OKAY. HOW DID THE ROBBERS GET INTO THE STORE?
- 23 A THEY RANG THE BUZZER, AND I LET THEM IN. THERE'S A
- 24 PEEPHOLE, BUT I DIDN'T LOOK THROUGH IT.
- 25 Q OKAY. WHAT BUZZER ARE YOU TALKING ABOUT?

1 A WELL, THERE'S A BUZZER NEXT TO THE SIDE OF THE DOOR.
2 THE DOOR AUTOMATICALLY LOCKS FROM THE OUTSIDE AND YOU CAN'T
3 GET IN UNLESS SOMEBODY OPENS THE DOOR. AND THERE'S A BUZZER
4 RIGHT NEXT TO IT THAT RINGS THROUGH THE STORE AS SOMEBODY
5 PUSHES IT.

6 Q OKAY. SO WHEN THE BUZZER RANG, YOU OPENED THE DOOR?

7 A YES, I DID.

8 Q OKAY, WHAT HAPPENED WHEN YOU OPENED THE DOOR?

9 A WELL, AT FIRST I SAW ONE PERSON IN THE -- IN THE WHITE
10 JACKET AND BANDANNA, AND HE PUSHED HIS WAY IN, AND I GUESS
11 KIND OF PUT THE GUN TO ME AND PUSHED ME BACK IN THE STORE,
12 AND THEN BOTH OF THE MEN CAME IN.

13 Q OKAY, YOU SAY HE HAD A WHITE JACKET AND A BANDANNA?

14 A (NODDED HIS HEAD; NO VERBAL RESPONSE.)

15 Q WHAT KIND OF A JACKET?

16 A WELL, I JUST NOTICED THAT IT WAS LIKE A PUFFY WINTER
17 JACKET.

18 Q OKAY. WAS HIS FACE COVERED?

19 A BY THE BANDANNA, JUST BELOW, OR COVERING THE NOSE AND
20 UP ABOVE IT WHERE YOU COULD SEE HIS EYES.

21 Q COULD YOU SEE HIS HAIR?

22 A NO, HE HAD THE HOOD OVER HIS HEAD.

23 Q OKAY. SO WHEN YOU OPENED THE DOOR AND THE GUY WITH THE
24 BANDANNA PUSHED HIS WAY IN, YOU SAY HE HAD A GUN, WHAT KIND
25 OF A GUN?

TIM WAITER/DIRECT-MUNSON

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1 A A RIFLE; TO MY KNOWLEDGE. I DON'T KNOW MUCH ABOUT
2 GUNS.

3 Q OKAY, AND WHAT DID HE DO WITH WHAT WHEN HE FIRST CAME
4 IN?

5 A WELL, HE JUST KIND OF HELD IT OUT SO WE COULD SEE THAT
6 HE HAD IT, AND PUSHED HIS WAY IN. HE DIDN'T REALLY -- I MEAN
7 HE KIND OF PUT IT TO US AND STUFF, OR TO ME, BUT HE DIDN'T
8 USE IT OR ANYTHING.

9 Q DID HE SAY ANYTHING AT THAT TIME?

10 A NO, I DON'T THINK SO.

11 Q OKAY. NOW WHEN THE OTHER PERSON CAME IN, WHAT DID HE
12 LOOK LIKE?

13 A WELL, ALL I REMEMBER ABOUT HIM WAS THAT HE HAD THE
14 WELDER'S MASK ON. I DON'T REMEMBER ANYTHING ELSE ABOUT WHAT
15 HE WAS WEARING.

16 Q OKAY. DO YOU REMEMBER ABOUT WHAT SIZE THE GUYS WERE?

17 A THEY WERE BOTH ABOUT MY HEIGHT, WHICH IS, I GUESS, A
18 LITTLE BIT SHORT FOR A MALE. THEY WERE MAYBE ABOUT 5-8, 5-9.

19 Q OKAY. HOW LONG AFTER THE GUY WITH THE GUN CAME IN DID
20 THE GUY WITH THE WELDER'S MASK COME IN?

21 A OH, IT WAS JUST -- HE FOLLOWED A COUPLE OF SECONDS
22 AFTER. THEY WERE RIGHT TOGETHER.

23 Q OKAY. IF YOU WOULD STAND DOWN HERE FOR A SECOND FOR
24 ME, PLEASE, TIM.

25 A (COMPLIED.)

- 1 Q AND IF YOU COULD SHOW THE JURY ON THIS DIAGRAM --
2 THE COURT: TRADE PLACES WITH HIM..
3 Q (COMPLIED.) SHOW THE JURY ON THE DIAGRAM WHERE ON THE
4 FUDDRUCKERS' BUILDING THE DOOR WAS THAT YOU OPENED. -
5 A WELL, THE BACK DOOR IS RIGHT HERE.
6 Q OKAY, AND WHAT IS THE AREA TO THE -- YOUR LEFT OF THAT
7 DOOR?
8 A RIGHT THERE?
9 Q WHAT IS THIS SQUARED AREA INSIDE THE FUDDRUCKERS'
10 BUILDING?
11 A OH, THIS IS THE COOLER, AND THEN I GUESS THE VERY BACK
12 OF THIS IS THE FREEZER.
13 Q OKAY. GO BACK TO THE STAND.
14 A (COMPLIED.)
15 Q TIM, DO YOU REMEMBER WHERE MICHAEL, AND TODD, AND LINDA
16 WERE WHEN THOSE TWO GUYS RUSHED IN?
17 A WELL, I DON'T KNOW WHERE LINDA WAS, BUT -- OR MICHAEL,
18 BUT I KNOW TODD WAS JUST DOWN THE HALL, PRETTY FAR DOWN SO
19 THAT HE WASN'T TOO CLOSE TO US. .
20 Q HE WAS DOWN THE HALL; COULD YOU SEE HIM?
21 A YES, I COULD SEE HIM.
22 Q OKAY: ABOUT HOW FAR AWAY WAS HE FROM YOU?
23 A I GUESS ABOUT 15 OR 20 FEET.
24 Q OKAY, AND YOU DON'T KNOW WHERE MICHAEL WAS OR LINDA?
25 A WELL, I KNOW MICHAEL ENDED UP IN THE SAME PLACE THAT I

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1 WAS. HE WAS PRETTY CLOSE TO ME. I DON'T REMEMBER EXACTLY
2 WHERE HE WAS WHEN THEY CAME IN THOUGH.

3 Q OKAY. WHAT WAS THE FIRST THING THAT WAS TOLD TO YOU,
4 OR WHAT WAS THE FIRST THING THAT HAPPENED AFTER THEY HAD
5 GOTTEN IN AND PUSHED THEIR WAY IN?

6 A WELL, I THINK ONE OF THEM TOLD US TO GET TO THE GROUND,
7 AND WE JUST GOT ON OUR KNEES AND PUT OUR HEADS TO THE FLOOR.

8 Q DO YOU KNOW WHICH ONES SAID THAT?

9 A OH, YES, IT WAS THE GUY WITH THE GUN.

10 Q OKAY. HOW DID HE SAY IT?

11 A WELL, ACTUALLY IT WAS PRETTY POLITE. I REMEMBER AFTER
12 THE WHOLE ROBBERY THAT I THOUGHT IT WAS BASICALLY, FOR A
13 ROBBERY IT WAS, I GUESS, A GOOD ONE. I MEAN, EVERYBODY WAS
14 PRETTY POLITE, AND DIDN'T PUT MUCH PRESSURE ON US.

15 Q SO WHAT DID HE SAY?

16 A JUST "GET TO THE FLOOR."

17 Q AND YOU DID?

18 A UH-HUH (NODDED HIS HEAD).

19 Q AFTER YOU GOT TO THE FLOOR DID -- COULD YOU SEE IF TODD
20 AND MICHAEL WERE ON THE FLOOR, AS WELL?

21 A MICHAEL GOT DOWN NEXT TO ME JUST PROBABLY ABOUT 5 OR 10
22 SECONDS LATER; BUT TODD WAS ALL THE WAY DOWN THE HALL, AND I
23 THINK HE CRAWLED OVER TO WHERE WE WERE.

24 Q OKAY, WHY DID HE CRAWL?

25 A I GUESS HE DIDN'T WANT TO GIVE THE PEOPLE WHO WERE

1 ROBBING US ANY REASONS TO SHOOT HIM.

2 Q OKAY. DID YOU SEE WHERE LINDA WAS AFTER YOU WERE
3 ORDERED TO THE GROUND?

4 A WELL, SHE CAME UP NEXT TO US. WE ALL GOT IN A LINE AND
5 LINED UP ON THE GROUND.

6 Q OKAY. YOU SAY THEY WERE POLITE, BUT DID YOU FEEL LIKE
7 THEY WERE ASKING YOU OR TELLING YOU TO GET ON THE GROUND?

8 A YEAH, THEY WERE TELLING US TO DO IT.

9 Q DID YOU HAVE ANY DOUBT ABOUT THAT?

10 A NO.

11 Q OKAY. AFTER LINDA GOT OVER TO WHERE YOU WERE -- WHERE
12 WAS THIS, BY THE WAY, AFTER EVERYONE WAS TOGETHER?

13 A WE WERE ALL IN THE VERY CORNER OF THE STORE, RIGHT NEXT
14 TO THE DOOR.

15 Q THE AREA NEXT TO THAT DOOR, IS IT A WIDE OPEN AREA? IS
16 IT CRAMPED? WHAT DOES IT LOOK LIKE?

17 A IT'S PRETTY CRAMPED. THERE'S A WASHER AND A DRYER
18 THERE, AND IT'S BASICALLY JUST A CORNER.

19 Q OKAY. AFTER ALL FOUR OF YOU WERE TOGETHER AND ON THE
20 GROUND, WHAT HAPPENED NEXT?

21 A WELL, ONE OF THEM, THE GUY WITH THE GUN, TOLD LINDA TO
22 GET UP AND TOOK HER INTO THE OFFICE, AND WE DIDN'T HEAR
23 ANYTHING AFTER THAT. BUT THEN THE GUY WITH THE WELDER'S
24 MASK, I THINK, JUST TAPPED MICHAEL JARVIS ON THE SHOULDER AND
25 OPENED UP THE COOLER DOOR AND LET HIM INTO THERE, AND THEN

TIM WAITER/DIRECT-MUNSON

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1 TODD AND I FOLLOWED.

2 Q OKAY. DID HE SAY ANYTHING THAT YOU HEARD, --

3 A NO.

4 Q -- THE GUY WITH THE WELDER'S MASK?

5 A HE DIDN'T SAY ANYTHING.

6 Q OKAY. HOW DID THE COOLER DOOR GET OPENED?

7 A HE OPENED IT UP, AND I GUESS KIND OF PULLED MICHAEL IN
8 THERE.

9 Q OKAY. AND THEN DID HE MAKE ANY KIND OF -- HOW DID YOU
10 KNOW THAT YOU WERE SUPPOSED TO GO IN THE COOLER, AS WELL?

11 A WELL, I KIND OF LOOKED UP AND WATCHED WHERE HE WAS
12 GOING, AND THEN HE POINTED AT ME, AND SO I JUST GOT UP AND
13 WALKED AND FOLLOWED MICHAEL.

14 Q OKAY. SO MICHAEL WENT IN, AND THEN YOU WENT IN?

15 A (NODDED HIS HEAD; NO VERBAL RESPONSE.)

16 Q DID TODD EVER COME INTO THE COOLER, TOO?

17 A YEAH, TODD FOLLOWED IN AFTER ME.

18 Q OKAY. WHY DID YOU GO INTO THE COOLER?

19 A WELL, IT SEEMED LIKE THE GUY WAS WANTING US TO GO IN
20 THERE, AND HE PRETTY MUCH FORCED US IN THERE, I GUESS.

21 Q DID YOU FEEL LIKE YOU COULD REFUSE HIM?

22 A IF I DID, IT WOULD BE A DANGER. IT'S NOT SOMETHING I
23 WANTED TO REFUSE.

24 Q OKAY. SO YOU ARE IN THE COOLER WITH MICHAEL AND TODD.
25 HOW LONG DID YOU STAY IN THERE BY YOURSELVES?

1 A JUST WITH -- JUST WITH THOSE TWO, LINDA WAS GONE
2 PROBABLY FOR ABOUT A MINUTE OR A MINUTE-AND-A-HALF, AND THEN
3 SHE CAME IN.

4 Q OKAY, WHEN DID LINDA COME IN?

5 A WHEN? - JUST ABOUT A MINUTE-AND-A-HALF AFTER WE WERE IN
6 THERE.

7 Q WHENEVER THE COOLER DOOR WAS OPENED FOR LINDA TO COME
8 IN, WHAT COULD YOU SEE OUTSIDE?

9 A WELL, I NOTICED THAT THE GUY WITH THE GUN HAD LET HER
10 BACK IN JUST, YOU KNOW.

11 Q DID YOU SEE HIM -- WHERE WAS HE IN RELATION TO HER?
12 WAS HE IN FRONT OF HER, BEHIND HER?

13 A HE WAS BEHIND HER.

14 Q OKAY. AND WHERE WAS THE WEAPON WHEN LINDA WAS GOING IN
15 THE COOLER?

16 A HE HAD IT AT HIS SIDE.

17 Q WAS IT DOWN, OR UP, OR DO YOU REMEMBER?

18 A I DON'T REMEMBER.

19 Q OKAY. COULD YOU SEE THE WELDER'S MASK GUY AS LINDA WAS
20 COMING INTO THE COOLER?

21 A WELL, THEY WERE BOTH TOGETHER RIGHT AT THE DOOR WHEN
22 THEY LET HER BACK IN.

23 Q OKAY. DID YOU GET A LOOK AT THE FACES OF EITHER ONE OF
24 THE GUYS?

25 A ONLY THE GUY WITH THE BANDANNA. I MEAN, I ONLY NOTICED

- 1 HIS EYES BECAUSE THE BANDANNA COVERED THE BOTTOM OF HIS FACE.
- 2 Q OKAY. WHEN -- AFTER LINDA GOT INTO THE COOLER, AND THE
- 3 ROBBERS LEFT, HOW LONG DID YOU STAY IN THE COOLER?
- 4 A WELL, LINDA ASKED THEM HOW LONG WE SHOULD STAY IN
- 5 THERE, AND THEN THE GUY WITH THE GUN SAID IF WE WAITED IN
- 6 THERE FOR 30 MINUTES WE WOULD BE ALL RIGHT.
- 7 Q HE SAID WHAT NOW?
- 8 A HE SAID IN -- LINDA SAID, "HOW LONG SHOULD WE STAY IN
- 9 HERE?" AND HE SAID, "IF YOU WAIT IN HERE FOR 30 MINUTES,
- 10 THEN YOU SHOULD BE ALL RIGHT."
- 11 Q OKAY. DID YOU HEAR THEM LEAVE? COULD YOU HEAR FROM
- 12 INSIDE THE COOLER?
- 13 A NO, WE COULDN'T HEAR. THERE'S A FAN ON IN THE COOLER,
- 14 AND IT'S PRETTY LOUD.
- 15 Q OKAY. WELL, HOW LONG WOULD YOU SAY YOU STAYED IN THE
- 16 COOLER?
- 17 A WE STAYED IN THERE ABOUT 25 MINUTES.
- 18 Q WHY DID YOU DO THAT?
- 19 A WELL, WE JUST DIDN'T WANT TO CAUSE ANY PROBLEMS IN CASE
- 20 THEY WERE STILL AROUND.
- 21 MS. MUNSON: I HAVE NOTHING FURTHER AT THIS TIME,
- 22 YOUR HONOR.
- 23 THE COURT: MR. ROLLINS.
- 24 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.
- 25 THE COURT: MR. ROLLINS.

1 CROSS-EXAMINATION BY MR. ROLLINS:

2 Q MR. WAITER, WHEN THESE PEOPLE BARGED IN AT NIGHT, DID
3 YOU RECOGNIZE ANY OF THEM AT ALL?

4 A NO, I DIDN'T.

5 Q DID THE OFFICERS EVER GIVE YOU ANY PHOTOGRAPHS TO LOOK
6 AT?

7 A NO, THEY DIDN'T.

8 Q SO THEY DIDN'T GIVE YOU ANY TYPE OF LINEUP PICTURES --

9 A NO.

10 Q -- FOR YOU TO IDENTIFY ANYBODY WITH?

11 A NO, SIR.

12 Q AND I BELIEVE YOU SAID ALL THAT YOU COULD SEE WAS THE
13 PERSON'S EYES?

14 A YES.

15 Q SO YOU DON'T KNOW WHO THAT PERSON WAS WHO WAS TALKING
16 TO YOU ABOUT, I BELIEVE YOU USED THE TERM, POLITELY TALKED TO
17 YOU --

18 A NO.

19 Q -- TO MOVE AROUND IN THAT STORE?

20 A NO, I DIDN'T RECOGNIZE HIM.

21 Q YOU STILL DON'T KNOW TO THIS DAY?

22 A NO.

23 MR. ROLLINS: THANK YOU.

24 THE COURT: MR. CRANE.

25 MR. CRANE: MAY IT PLEASE THE COURT.

1 CROSS-EXAMINATION BY MR. CRANE:

2 Q MR. WAITER, HOW ARE YOU TODAY?

3 A PRETTY GOOD.

4 Q GOOD. HOW LONG HAD YOU WORKED AT FUDDRUCKERS PRIOR TO
5 THAT INCIDENT?

6 A UMM, PROBABLY A LITTLE OVER A YEAR.

7 Q DID YOU EVER WORK WITH SHANNON TODD?

8 A YES, I DID. ONLY A FEW TIMES THOUGH.

9 Q OKAY. YOU TALKED WITH SHANNON TODD WHILE YOU WORKED
10 WITH HIM?

11 A A LITTLE BIT.

12 Q OKAY. THE VOICE THAT YOU HEARD ORDER YOU TO GET INTO
13 THE COOLER, WAS THAT THE VOICE OF SHANNON TODD?

14 A I DIDN'T RECOGNIZE THE VOICE.

15 Q SO YOU DID NOT RECOGNIZE THE VOICE AS THAT OF SHANNON
16 TODD?

17 A NO, I DIDN'T.

18 Q ALL RIGHT. HAD YOU EVER SEEN SHANNON TODD WEAR A
19 MICHIGAN STARTERS JACKET TO WORK BEFORE?

20 A NO.

21 Q ALL RIGHT. DID YOU RECOGNIZE THE VOICE OF THE PERSON
22 THAT HAD THE RIFLE?

23 A NO, I DIDN'T.

24 Q DO YOU KNOW WHEN DURING THAT WEEK WAS THE LAST TIME
25 THAT SHANNON TODD HAD WORKED?

- 1 A I DON'T REMEMBER.
- 2 Q DO YOU KNOW AUSTIN PERRY?
- 3 A I DO KNOW HIM.
- 4 Q AND WHEN WAS HE LAST OUT THERE AT WORK, IF YOU RECALL,
- 5 THAT WEEK?
- 6 A THE LAST TIME I SAW HIM WAS A COUPLE OF DAYS BEFORE THE
- 7 ROBBERY. I ONLY WORK ON WEEKENDS, SO I DON'T SEE MANY
- 8 EMPLOYEES TOO OFTEN.
- 9 Q OKAY, AND AUSTIN PERRY DID NOT WORK THAT WEEKEND? THAT
- 10 SATURDAY?
- 11 A I DON'T REMEMBER.
- 12 Q HOLD ON JUST A MOMENT, PLEASE, SIR. (PAUSE, VIEWED
- 13 DOCUMENT.) WHAT TIME DID YOU NORMALLY GO TO WORK ON
- 14 SATURDAY?
- 15 A I WOULD GO IN AT 5:30.
- 16 Q 5:30 IN THE EVENING?
- 17 A YES.
- 18 Q OKAY, SO IF AUSTIN PERRY HAD WORKED THAT DAY, YOU
- 19 DIDN'T SEE HIM AFTER 5:30?
- 20 A NO, I DIDN'T.
- 21 Q YOU DON'T KNOW IF HE WORKED THAT EARLIER SHIFT OR NOT?
- 22 A I DON'T KNOW.
- 23 Q OKAY. HAVE YOU EVER SEEN AUSTIN PERRY WEAR A MICHIGAN
- 24 STARTERS JACKET TO WORK?
- 25 A NO.

TIM WAITER/CROSS-CRANE

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1 Q WAS AUSTIN PERRY ABOUT THE SAME HEIGHT AS THE PERSON
2 YOU SAW COME IN??

3 A I GUESS HE MIGHT HAVE BEEN A LITTLE BIT TALLER THOUGH.

4 Q ALL RIGHT. AND DID YOU SEE ANY VEHICLES OUTSIDE THE
5 STORE THAT PARTICULAR NIGHT?

6 A NO, I DIDN'T.

7 Q ALL RIGHT, ONE MOMENT, PLEASE. (CONFERRED WITH MR.
8 ROLLINS.) DO YOU KNOW GERMANE MCCULLOUGH?

9 A YES, I DO.

10 Q DID YOU KNOW WHEN HE LAST WORKED -- WELL, DOES HE WORK
11 OUT THERE, OR DID HE WORK OUT THERE?

12 A HE DID AT THE TIME. I THINK HE WAS FIRED ABOUT TWO
13 WEEKS AGO, OR A WEEK AGO.

14 Q OKAY, BUT AT THE TIME HE WAS WORKING THERE?

15 A YES, HE WAS.

16 Q WERE YOU AWARE OF THE DIFFICULTIES THAT MCCULLOUGH AND
17 TERRY HAD WHILE WORKING OUT THERE?

18 A WHO IS TERRY?

19 Q I'M SORRY, AUSTIN PERRY.

20 A OH. NO, I DIDN'T KNOW THERE WERE ANY DIFFICULTIES.

21 Q OKAY. WAS GERMANE MCCULLOUGH ABOUT THE SAME HEIGHT AS
22 THE PEOPLE THAT WERE IN THE STORE?

23 A YES.

24 Q THE PERSON THAT HAD THE WELDER'S MASK, DID YOU SEE A
25 WEAPON IN THEIR HAND?

1 A NO.

2 Q HOW MANY WEAPONS DID YOU SEE AT THE ARMED ROBBERY?

3 A JUST ONE.

4 Q AND DID THE PERSON WITH THE WELDER'S MASK OR THE PERSON
5 WITH THE RIFLE EVER GRAB YOU OR ANYBODY AND FORCE YOU INTO
6 THE COOLER?

7 A YES.

8 Q HOW DID THEY DO THAT?

9 A WELL, WHEN THEY TOOK MICHAEL JARVIS INTO THE COOLER,
10 HE GRABBED HIS SHIRT AND PULLED HIM UP TO STAND AND THEN KIND
11 OF LET HIM INTO THE COOLER.

12 Q I UNDERSTAND. I SAID, DID THEY DO THAT TO YOU?

13 A NO.

14 Q NO ONE EVER TOUCHED YOU THAT NIGHT?

15 A YES, WHEN THEY PUT ME ON THE GROUND, I THINK HE JUST
16 KIND OF LOWERED ME WITH HIS HAND, PUT HIS HAND ON MY SHOULDER
17 AND POINTED TO THE GROUND. HE DIDN'T SAY MUCH.

18 Q WHICH ONE DID THAT?

19 A THE ONE WITH THE GUN.

20 Q THE ONE WITH THE GUN, NOT THE OTHER FELLOW?

21 A THE ONE WITH THE WELDER'S MASK, I DON'T THINK HE DID
22 ANYTHING TO ME.

23 MR. CRANE: OKAY, THANK YOU, SIR.

24 THE COURT: ANY REDIRECT?

25 MS. MUNSON: YES, SIR, BRIEF.

1 REDIRECT EXAMINATION BY MS. MUNSON:

2 Q THE INDIVIDUAL WITH THE WELDER'S MASK THAT FORCED YOU
3 INTO THE COOLER, DID HE SAY ANYTHING?

4 A I DON'T REMEMBER HIM SAYING ANYTHING.

5 Q OKAY. ARE YOU A MICHIGAN FAN?

6 A NO.

7 Q I MEAN, DO YOU PAY ATTENTION TO WHAT PEOPLE WEAR AT
8 WORK?

9 A NO.

10 Q OKAY. WHAT RACE IS AUSTIN TODD PERRY?

11 A AUSTIN IS WHITE.

12 Q WHAT WAS THE RACE OF THE TWO PEOPLE THAT CAME INTO THE
13 STORE THAT NIGHT AND PUT YOU IN THE COOLER?

14 A WELL, THE ONE WITH THE BANDANNA AND THE HOOD, I COULD
15 TELL WAS BLACK BECAUSE I COULD SEE THE UPPER PART OF HIS
16 FACE. BUT THE ONE WITH THE WELDER'S MASK ON, I COULDN'T
17 TELL.

18 Q WAS HE WEARING GLOVES?

19 A I DIDN'T NOTICE.

20 MS. MUNSON: OKAY, THAT'S FINE.

21 THE COURT: STEP DOWN.

22 MR. CRANE: MAY I ASK ONE FOLLOW-UP?

23 THE COURT: YES.

24 RECROSS-EXAMINATION BY MR. CRANE:

25 Q SO WHAT YOU'RE TELLING US, MR. WAITER, IS THAT THE

1 PERSON WITH THE WELDER'S MASK, YOU DON'T EVEN KNOW WHAT RACE
2 HE WAS?

3 A NO, I DON'T.

4 MR. CRANE: THANK YOU, SIR.

5 THE COURT: STEP DOWN.

6 MS. MUNSON: YOUR HONOR, THE STATE CALLS MICHAEL
7 JARVIS.

8 MICHAEL JARVIS, FIRST BEING SWORN TO TELL
9 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
10 TESTIFIES AS FOLLOWS:

11 THE CLERK: STATE YOUR NAME.

12 THE WITNESS: MICHAEL JARVIS.

13 THE CLERK: THANK YOU. YOU MAY BE SEATED.

14 DIRECT EXAMINATION BY MS. MUNSON:

15 Q MR. JARVIS, HOW OLD ARE YOU?

16 A 16.

17 Q AND WHERE DO YOU GO TO SCHOOL?

18 A MAULDIN HIGH SCHOOL.

19 Q DO YOU WORK ANYWHERE?

20 A AT FUDDRUCKERS, YES.

21 Q ARE YOU WORKING THERE NOW?

22 A YES, I AM.

23 Q OKAY, AND YOU WERE WORKING WITH FUDDRUCKERS IN MARCH OF
24 '96?

25 A YES, I WAS.

MICHAEL JARVIS/DIRECT-MUNSON

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1 Q AND WERE YOU WORKING THERE THE NIGHT THAT FUDDRUCKERS
2 WAS ROBBED?

3 A YES, MA'AM, I WAS.

4 Q OKAY. ABOUT WHAT TIME DO YOU THINK THE ROBBERY
5 OCCURRED?

6 A THE BEST I CAN REMEMBER IT WAS ABOUT 1:00.

7 Q OKAY. HOW DID THE ROBBERS GET INTO FUDDRUCKERS?

8 A THEY RANG THE BACK BUZZER, WHICH IS BY THE BACK DOOR ON
9 THE OUTSIDE.

10 Q UH-HUH, SO, AND THEN AFTER THEY RANG THE BUZZER, WHAT
11 HAPPENED?

12 A TIM LET THEM IN.

13 Q OKAY. WERE THERE ANY OTHER CUSTOMERS OR ANYONE ELSE IN
14 THE STORE?

15 A THERE WAS JUST TIM WAITER, TODD MILAN, MYSELF, AND THE
16 MANAGER.

17 Q OKAY, AND WAS THE RESTAURANT OPENED OR CLOSED?

18 A IT WAS CLOSED.

19 Q AND WHERE WERE YOU WHEN TIM OPENED THE DOOR AND LET THE
20 ROBBERS IN?

21 A I WAS CLEANING OUT A DRAIN ON THE FLOOR PRETTY MUCH
22 ABOUT TWO FEET TO THE LEFT OF HIM.

23 Q TO THE LEFT OF THE DOOR?

24 A OKAY, WELL, LIKE IF THE DOOR -- IF YOU COME IN THE
25 DOOR, I WAS ON THE RIGHT.

1 Q OKAY. WHICH ONE -- WELL, WHAT DID YOU SEE AFTER TIM
2 RANG -- AFTER THE BUZZER RANG AND TIM OPENED THE DOOR, WHAT
3 WAS THE FIRST THING YOU SAW?

4 A THE GUY WITH THE GUN AND THE YELLOW BANDANNA ON HIS
5 FACE CAME IN.

6 Q WHAT KIND OF GUN DID HE HAVE?

7 A IT WAS A RIFLE. I DON'T KNOW WHAT IT WAS. I DIDN'T
8 REALLY NOTICE.

9 Q DID YOU SEE HOW HE WAS HOLDING IT?

10 A HE WAS HOLDING IT WITH BOTH HANDS.

11 Q OKAY. WHAT DID HE DO AS SOON AS -- THE GUY WITH THE
12 GUN, WHAT WAS THE FIRST THING HE DID WHEN HE CAME IN?

13 A TOLD US TO GET ON THE FLOOR.

14 Q OKAY, AND WHAT DID YOU DO?

15 A WE GOT ON THE FLOOR.

16 Q OKAY, AND DID YOU SEE WHAT TODD DID?

17 A NO. I DIDN'T SEE WHAT HE DID.

18 Q DO YOU KNOW WHERE HE WAS?

19 A HE IS BACK DOWN THE HALL CLEANING THE SINKS.

20 Q OKAY. SO AFTER YOU GOT ON THE FLOOR, DID YOU SEE
21 ANYONE ELSE COME IN?

22 A PRETTY MUCH THEY CAME IN AT THE SAME TIME, SO I SAW THE
23 GUY WITH THE WELDER'S MASK, TOO.

24 Q AFTER THEY CAME IN AND TOLD YOU TO GET ON THE FLOOR,
25 WHAT WAS THE NEXT THING THAT HAPPENED?

MICHAEL JARVIS/DIRECT-MUNSON

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- 1 A I JUST REMEMBER THE GUY WITH THE GUN TELLING LINDA,
2 ASKING HER WHERE THE MONEY WAS AND WHERE THE SAFE WAS; AND,
3 SO, HIM AND HER WENT IN THE OFFICE, AND THE OTHER GUY WITH
4 THE WELDER'S MASK LOOKED LIKE HE WAS LOOKING FOR A PLACE TO
5 PUT US DOWN THE HALL THAT GOES TO THE BAKERY.
- 6 Q OKAY. AND THEN AFTER LINDA HAD GONE WITH THE GUY WITH
7 THE GUN, WHAT HAPPENED NEXT?
- 8 A THE GUY WITH THE WELDER'S MASK PICKED ME UP BY THE BACK
9 OF MY SHIRT AND OPENED THE COOLER AND PUT ME IN THERE.
- 10 Q DID HE SAY ANYTHING TO YOU?
- 11 A NO, HE DIDN'T SAY A WORD THE WHOLE TIME THAT I CAN
12 REMEMBER.
- 13 Q OKAY, WHEN HE PICKED YOU UP BY THE BACK OF THE SHIRT,
14 DID HE LIFT YOU, OR JUST?
- 15 A I WOULDN'T SAY THAT HE TOTALLY PICKED ME UP, BUT HE
16 BROUGHT ME UP.
- 17 Q AND THEN WHAT DID HE DO ONCE YOU WERE STANDING?
- 18 A LIKE KIND OF LED ME INTO THE COOLER.
- 19 Q DID HE HAVE HIS HAND ON YOU WHILE HE WAS TAKING YOU TO
20 THE COOLER?
- 21 A YES, HE DID.
- 22 Q OKAY, WAS THERE ANYONE ELSE IN THE COOLER WHEN YOU GOT
23 THERE?
- 24 A NO, I WAS THE FIRST TO GO IN.
- 25 Q ABOUT HOW FAR OF A WALK WAS IT FROM WHERE YOU WERE TO

1 WHERE THE GUY WITH THE WELDER'S MASK PULLED YOU UP AND FORCED
2 YOU TO THE COOLER?

3 A I WOULD SAY IT WAS SEVEN OR EIGHT FEET TO THE COOLER.

4 Q OKAY. ONCE YOU GOT IN THE COOLER, COULD YOU SEE WHAT
5 ELSE WAS HAPPENING?

6 A NO, I HAD MY BACK TO THE DOOR. I JUST WENT TO THE FAR
7 SIDE OF THE COOLER AND STOOD OVER THERE.

8 Q OKAY. DID ANYONE ELSE COME INTO THE COOLER WHILE YOU
9 WERE THERE?

10 A YES, TIM FOLLOWED ME, AND THEN TODD WAS AFTER HIM.

11 Q OKAY. DID YOU SEE ANY CONTACT BETWEEN TIM WHO OPENED
12 THE DOOR, AND TODD WHO WAS CLEANING THE DRAINS?

13 A NO.

14 Q OKAY. AFTER THE GUYS CAME IN, YOU NEVER SAW TODD UNTIL
15 HE WAS IN THE COOLER?

16 A RIGHT.

17 Q OKAY. ONCE YOU GUYS GOT IN THE COOLER, DID LINDA EVER
18 COME IN THERE?

19 A YES, SHE CAME IN AFTER -- ONE OR TWO MINUTES AFTER WE
20 WERE, ALL THREE OF US WERE IN THERE.

21 Q OKAY. WHERE WERE YOU WHEN THE DOOR TO THE COOLER
22 OPENED AGAIN, AND LINDA CAME IN, WHERE INSIDE THE COOLER?

23 A I WAS FACING THE DOOR THAT GOES INTO THE FREEZER, WHICH
24 IS IN THE BACK PART OF THE COOLER.

25 Q OKAY, SO DID YOU ACTUALLY SEE LINDA COME IN?

MICHAEL JARVIS/DIRECT-MUNSON

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- 1 A NO. I JUST HEARD BOTH LINDA AND THE GUY WITH THE GUN
2 COME IN.
- 3 Q OKAY. DID EITHER ONE OF THE ROBBERS COME INTO THE
4 COOLER?
- 5 A I GUESS THAT THE GUY WITH THE GUN MUST HAVE STEPPED
6 FOOT IN TO TALK TO US, BUT I WOULDN'T SAY THAT HE CAME RIGHT
7 UP NEXT TO US.
- 8 Q OKAY. ONCE LINDA WAS IN THE COOLER, WAS THERE ANY
9 CONVERSATION AT ALL FROM EITHER OF THE ROBBERS TO YOU?
- 10 A NOT TO ME, BUT THEY TALKED TO LINDA.
- 11 Q COULD YOU HEAR WHAT WAS BEING SAID?
- 12 A YES, I COULD.
- 13 Q WHAT DID YOU HEAR?
- 14 A ONCE WE WERE IN THERE, LINDA SAID, "WHAT DO YOU WANT US
15 TO DO?" AND THE GUY SAID, "JUST STAY IN THERE FOR 30
16 MINUTES," AND THEN SO WE DID THAT.
- 17 Q OKAY. WHEN THEY LEFT, WHERE DID YOU GUYS STAY?
- 18 A JUST THE SAME PLACE, WE WERE IN THE COOLER.
- 19 Q OKAY, DO YOU KNOW ABOUT HOW LONG YOU STAYED IN THERE?
- 20 A I WOULD SAY IT WAS ABOUT 25 MINUTES.
- 21 Q WHY DID YOU STAY IN THE COOLER?
- 22 A I DIDN'T WANT TO GO OUT THERE BECAUSE THEY COULD HAVE
23 STILL BEEN THERE.
- 24 Q DID YOU FEEL LIKE YOU WERE FREE TO LEAVE?
- 25 A NO, I FELT LIKE I HAD TO STAY IN THERE THE WHOLE 30

MICHAEL JARVIS/CROSS-ROLLINS

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1 MINUTES OR SOMETHING COULD HAPPEN TO ME.

2 Q THE PEOPLE THAT CAME IN WITH THE GUN, CAN YOU GIVE US
3 ANY OTHER DESCRIPTION OF THE PERSON WITH THE GUN OTHER THAN
4 HOODED SHIRT AND BANDANNA?

5 A NO.

6 Q DO YOU KNOW WHAT RACE HE WAS?

7 A I CAN'T BE SURE BECAUSE I JUST GOT RIGHT ON THE FLOOR
8 RIGHT WHEN THEY SAID IT.

9 Q OKAY. DO YOU KNOW IF IT WAS A MALE OR A FEMALE?

10 A I COULD PRETTY MUCH TELL BY THE VOICE FROM THE GUY WITH
11 THE GUN -- HE WAS THE ONLY ONE THAT TALKED, BUT I COULD TELL
12 FROM HIS VOICE THAT HE WAS A MALE.

13 Q OKAY, AND CAN YOU -- DID YOU GET A LOOK AT THE GUY WITH
14 THE WELDER'S MASK? CAN YOU GIVE ANY DESCRIPTION OF HIM?

15 A NO, I JUST REMEMBER THE WELDER'S MASK.

16 MS. MUNSON: I HAVE NOTHING FURTHER AT THIS TIME,
17 YOUR HONOR.

18 THE COURT: MR. ROLLINS.

19 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.

20 CROSS-EXAMINATION BY MR. ROLLINS:

21 Q IS IT JARVIS?

22 A YES, SIR.

23 Q MR. JARVIS, WHEN ALL THIS WAS HAPPENING, YOU SAY YOU
24 WERE RIGHT BESIDE THE DOOR?

25 A WELL, I WAS ABOUT TWO FEET FROM THE DOOR INTO THE

MICHAEL JARVIS/CROSS-ROLLINS

75

1 RESTAURANT.

2 Q OKAY, BUT, I MEAN, YOU WERE VERY CLOSE --

3 A YES.--

4 Q -- IN PROXIMITY OF THE DOOR?

5 A YES, I WAS REAL CLOSE. YES, SIR.

6 Q AND THE FIRST THING YOU DID WHEN THEY CAME IN, THEY
7 SAID, "EVERYBODY GET DOWN ON THE FLOOR"?

8 A YES, I GOT RIGHT DOWN, YES, SIR.

9 Q YOU DID EXACTLY LIKE THEY SAID?

10 A YES, SIR.

11 Q SO YOU WEREN'T LAYING ON THE FLOOR LOOKING AROUND, WERE
12 YOU?

13 A NO, SIR, I HAD MY HEAD TO THE FLOOR, NOT LOOKING AT
14 ANYTHING.

15 Q AND THEN WHILE YOU WERE DOWN THERE, I BELIEVE THAT YOU
16 SAID THAT YOU ONLY HEARD -- AS FAR AS THE PERSON IN THE
17 BANDANNA AND THE HOOD OVER HIS HEAD, YOU ONLY HEARD HIS
18 VOICE, RIGHT?

19 A RIGHT.

20 Q AND AS FAR AS HIS RACE OR ANYTHING --

21 A NO.

22 Q -- YOU COULDN'T BE SURE OF THAT?

23 A NO, I CAN'T REMEMBER ANYTHING, NO.

24 Q AS FAR AS THE PERSON WITH THE WELDER'S MASK, YOU
25 COULDN'T -- YOU NEVER HEARD HIM AT ALL, DID YOU?

MICHAEL JARVIS/CROSS-CRANE

76

1 A NO, SIR, I DIDN'T HEAR HIM TALKING.

2 Q OKAY, SO YOU DON'T KNOW IF THAT PERSON WAS BLACK, OR
3 WHITE, OR WHAT?

4 A NO, SIR.

5 Q AND HE NEVER TALKED THE WHOLE TIME THAT HE WAS THERE?

6 A NO, SIR.. BUT I WOULD SAY BY HIS STRENGTH THAT HE HAD
7 TO PICK ME UP THAT IT WASN'T A FEMALE.

8 Q ALL RIGHT. BY "PICK YOU UP," HE DIDN'T PHYSICALLY LIFT
9 YOU OFF THE GROUND, DID HE?

10 A HE DIDN'T TOTALLY LIFT ME OFF THE GROUND, BUT --

11 Q HE KIND OF LIKE GOT YOU?

12 A YES.

13 MR. ROLLINS: OKAY, THANK YOU.

14 THE COURT: MR. CRANE.

15 CROSS-EXAMINATION BY MR. CRANE:

16 Q MR. JARVIS, HOW LONG HAD YOU BEEN WORKING OUT AT
17 FUDDRUCKERS AT THE TIME OF THE ROBBERY?

18 A I'D SAY A YEAR MAYBE.

19 Q ALL RIGHT.

20 A CLOSE TO A YEAR.

21 Q DID YOU KNOW SHANNON TODD?

22 A I HAD WORKED WITH HIM A FEW TIMES.

23 Q DO YOU KNOW WHAT HIS VOICE SOUNDS LIKE?

24 A I GUESS I TALKED TO HIM, BUT I DIDN'T PARTICULARLY HAVE
25 IT IN MY MIND.

MICHAEL JARVIS/CROSS-CRANE

77

1 Q WELL, THAT'S FINE, BUT THE PERSON THAT YOU HEARD
2 TALKING THAT NIGHT WASN'T SHANNON TODD'S VOICE, WAS IT?

3 A I CAN'T REMEMBER IF IT IS OR NOT.

4 Q WELL, CAN YOU TELL US -- YOU DON'T KNOW WHETHER IT WAS
5 OR WASN'T?

6 A RIGHT. I CAN'T -- I CAN'T SAY FOR SURE THAT IT WAS.

7 Q COULD YOU RECOGNIZE THE VOICE YOU HEARD THAT NIGHT AS
8 THAT OF SHANNON TODD?

9 A NO, SIR, I CAN'T.

10 Q CANNOT, OKAY. THE GUY WITH THE WELDER'S MASK, YOU
11 DON'T EVEN KNOW IF HE'S WHITE OR BLACK?

12 A NO, I HAVE NO IDEA.

13 Q ALL RIGHT. YOU DON'T KNOW IF HE MIGHT HAVE BEEN
14 AUSTIN PERRY, DO YOU?

15 A NO, SIR.

16 Q YOU, ALSO, WORKED WITH AUSTIN PERRY, DIDN'T YOU?

17 A YES, SIR.

18 Q HAVE YOU EVER SEEN SHANNON TODD WEAR THE MICHIGAN STATE
19 STARTER JACKET FROM MICHIGAN?

20 A NO, SIR.

21 Q HAVE YOU EVER SEEN AUSTIN PERRY WEAR ONE?

22 A NO, SIR.

23 Q ALL RIGHT. DO YOU KNOW -- WHAT TIME DID YOU WORK ON
24 THAT DAY?

25 A I DON'T REMEMBER EXACTLY WHAT TIME I CAME IN, BUT I

MICHAEL JARVIS/CROSS-CRANE

78

1 WOULD SAY IT WAS BETWEEN 5:00 AND 6:00, AND I WORKED UNTIL
2 CLOSE.

3 Q ALL RIGHT. SO IF AUSTIN PERRY HAD WORKED EARLIER, YOU
4 WOULDN'T KNOW ANYTHING ABOUT IT?

5 A NO, SIR.

6 Q AND PRIOR TO THAT PARTICULAR NIGHT, DO YOU KNOW WHEN
7 THE LAST TIME WAS THAT YOU MIGHT HAVE WORKED WITH SHANNON
8 TODD?

9 A NO, SIR, I DON'T REMEMBER THAT.

10 Q HOW ABOUT AUSTIN PERRY?

11 A I BELIEVE IT WAS ONE OR TWO DAYS AFTER THE ROBBERY.

12 Q ALL RIGHT, WHAT ABOUT BEFORE THE ROBBERY?

13 A NO, I DON'T REMEMBER THAT.

14 Q OKAY. DID AUSTIN PERRY TELL YOU ANYTHING ABOUT BEING
15 INVOLVED IN AN ARMED ROBBERY TWO DAYS AFTER THE ROBBERY?

16 A NO, SIR. HE JUST ASKED ME QUESTIONS ABOUT IT.

17 Q ASKED YOU QUESTIONS ABOUT IT?

18 A YES.

19 Q WHAT KIND OF QUESTIONS?

20 A LIKE WHAT HAPPENED.

21 Q LIKE WHAT HAPPENED?

22 A YES, SIR.

23 Q DID YOU TELL HIM EVERYTHING THAT HAPPENED?

24 A YES, SIR, ALL THAT I COULD REMEMBER.

25 Q DID YOU SEE ANY VEHICLES OUTSIDE THE RESTAURANT?

MICHAEL JARVIS/CROSS-CRANE

79

- 1 A NO. I WAS INSIDE THE WHOLE TIME, NO, SIR.
- 2 Q AND HOW MANY WEAPONS DID YOU SEE?
- 3 A ONLY THAT ONE RIFLE.
- 4 Q AND THAT WAS HELD BY THE PERSON WITH THE BANDANNA?
- 5 A YES, SIR.
- 6 Q I CAN'T RECALL WHICH IS -- WELL, YOU SAID YOU CANNOT BE
- 7 SURE WHETHER THAT PERSON WAS WHITE OR BLACK?
- 8 A NO, SIR, I CAN'T REMEMBER.
- 9 Q AND HAVE NO IDEA ABOUT THE PERSON WITH THE WELDER'S
- 10 MASK?
- 11 A NONE AT ALL, NO, SIR.
- 12 Q DO YOU KNOW GERMANE MCCULLOUGH?
- 13 A YES, SIR.
- 14 Q WHAT COLOR IS HE?
- 15 A HE'S BLACK.
- 16 Q DO YOU KNOW IF HE WORKED THAT DAY?
- 17 A HE WORKED EARLIER THAT DAY.
- 18 Q ALL RIGHT, HOW DO YOU KNOW THAT?
- 19 A BECAUSE HE WAS THERE WHEN I GOT THERE.
- 20 Q WELL, WAS AUSTIN PERRY THERE WHEN YOU GOT THERE?
- 21 A NOT THAT I REMEMBER, NO, SIR.
- 22 Q DO YOU KNOW AT THE TIME OF YOUR OWN KNOWLEDGE THAT BOTH
- 23 MR. PERRY AND MR. MCCULLOUGH HAD SOME DIFFICULTIES WITH
- 24 FUDDRUCKERS?
- 25 MS. MUNSON: OBJECTION, YOUR HONOR.

1. THE COURT: I SUSTAIN THE OBJECTION TO THAT.
2. MR. CRANE: THANK YOU, MR. JARVIS.
3. THE COURT: ANY REDIRECT?
4. MS. MUNSON: NOTHING FURTHER, YOUR HONOR.
5. THE COURT: THANK YOU. STEP DOWN.
6. LET'S GIVE THE JURY A SHORT RECESS. TAKE THE JURY OUT,
7. PLEASE.
8. MS. MUNSON: YOUR HONOR, MAY WE EXCUSE MR. WAITER?
9. THE COURT: WAIT, WAIT.
10. MS. MUNSON: -- MR. WAITER AND MR. JARVIS?
11. THE COURT: WAIT JUST A MINUTE. TAKE THE JURY OUT,
12. PLEASE.
13. (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
14. 11:53 A.M.)
15. THE COURT: ALL RIGHT, SOLICITOR, WHAT WERE YOU
16. SAYING?
17. MS. MUNSON: I WAS JUST ASKING THAT MR. WAITER AND
18. MT. JARVIS BE EXCUSED.
19. THE COURT: ANY OBJECTION TO EXCUSING THESE
20. WITNESSES?
21. MR. ROLLINS: NO OBJECTION, YOUR HONOR.
22. MR. CRANE: I DON'T BELIEVE SO, YOUR HONOR.
23. THE COURT: THEY ARE EXCUSED.
24. MR. CRANE: THANK YOU, YOUR HONOR.
25. THE COURT: ALL RIGHT, A SHORT RECESS.

LINDA MICHAELove/DIRECT-MUNSON

81

1 (RECESS.)

2 THE COURT: ALL RIGHT, BRING THE JURY.

3 (THE JURY ENTERED THE COURTROOM AT APPROXIMATELY
4 12:09 P.M.)

5 THE COURT: ALL RIGHT, SOLICITOR.

6 MS. MUNSON: MAY IT PLEASE THE COURT, YOUR HONOR,
7 THE STATE CALLS LINDA MICHAELove.

8 LINDA MICHAELove, FIRST BEING SWORN TO TELL
9 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
10 TESTIFIES AS FOLLOWS:

11 THE CLERK: STATE YOUR NAME FOR THE RECORD.

12 THE WITNESS: LINDA MICHAELove.

13 THE CLERK: THANK YOU. HAVE A SEAT.

14 DIRECT EXAMINATION BY MS. MUNSON:

15 Q MS. MICHAELove, WHO DO YOU WORK FOR?

16 A FUDDRUCKERS.

17 Q AND WERE YOU WORKING FOR THEM IN MARCH OF 1996?

18 A YES, MA'AM.

19 Q OKAY, WHAT CAPACITY WERE YOU WORKING FOR THEM IN MARCH
20 OF 1996?

21 A A MANAGER.

22 Q AT WHICH STORE?

23 A THE WOODRUFF ROAD STORE.

24 Q WHAT ARE SOME OF YOUR DUTIES AS THE MANAGER?

25 A I DO THE NIGHT DEPOSIT, MAKE SURE EVERYTHING IS CLEANED

LINDA MICHAELove/DIRECT-MUNSON

82

1 UP OR IS READY TO GO FOR THE PERSON COMING IN THE NEXT
2 MORNING.

3 Q OKAY, AND WERE YOU WORKING AT FUDDRUCKERS THE NIGHT OF
4 THE ROBBERY?

5 A YES, MA'AM.

6 Q OKAY, DO YOU REMEMBER ABOUT WHAT TIME THAT OCCURRED?

7 A ABOUT 10 MINUTES TO 1:00.

8 Q ALL RIGHT. DID YOU SEE THE ROBBERS ACTUALLY ENTER THE
9 STORE?

10 A YES, MA'AM.

11 Q OKAY, WHERE WERE YOU WHEN THEY ENTERED THE STORE?

12 A AT THE BACK DOOR WHERE THEY CAME IN.

13 Q OKAY. HOW DID THEY GET IN?

14 A ONE OF THE EMPLOYEES HAD JUST FINISHED UP HIS DUTIES,
15 AND I HAD CHECKED HIM OUT, AND HE WAS GETTING READY TO LEAVE,
16 AND HE PUT HIS HAND ON THE DOOR KNOB AT THE SAME TIME THE
17 BELL RANG, WHICH THE DOOR IS LOCKED FROM THE OUTSIDE, AND
18 BEFORE I COULD SAY, ASK WHO IT IS, HE HAD ALREADY TURNED THE
19 HANDLE AND THEY CAME THROUGH THE DOOR. THE FIRST THING I SAW
20 WAS THE GUN.

21 Q OKAY. THE BELL THAT RANG, WHERE IS THAT NOW?

22 A IT'S ON THE OUTSIDE.

23 Q OKAY, AND WHAT IS THE PURPOSE OF HAVING THAT BELL
24 OUTSIDE?

25 A FOR DELIVERY PEOPLE DURING THE DAY, THEY RING THE BELL

LINDA MICHAELove/DIRECT-MUNSON

83

1 BECAUSE WE KEEP THE BACK DOOR LOCKED.

2 Q OKAY, IS IT -- HOW OFTEN DOES IT HAPPEN THAT AFTER
3 CLOSING AT APPROXIMATELY 1:00 IN THE MORNING THAT BELL RINGS?

4 A IF THE GUYS ARE TAKING OUT TRASH, IF THE DOOR CLOSES,
5 WHICH IT'S SUPPOSED TO, THEY ARE NOT SUPPOSED TO PROP IT
6 OPEN, IT WILL CLOSE AND THE BELL WILL RING BECAUSE THEY'LL
7 HAVE TO COME BACK IN.

8 Q OKAY, DID YOU KNOW -- WELL, HOW MANY EMPLOYEES DID YOU
9 KNOW THAT YOU HAD WORKING THAT NIGHT?

10 A AT THE TIME?

11 Q AT THE TIME OF THE ROBBERY.

12 A THERE WERE STILL THREE EMPLOYEES IN THE STORE.

13 Q OKAY, WERE ANY OF THEM MISSING THAT YOU KNEW OF?

14 A NO.

15 Q OKAY, SO WHEN THE BELL RANG, DID YOU THINK -- WHAT DID
16 YOU THINK THAT THAT WAS MEANING?

17 A IT WENT THROUGH MY MIND THAT -- IN FACT, I HAD --
18 BEFORE I COULD GET IT OUT OF MY MOUTH, HE HAD OPENED THE
19 DOOR, TO ASK WHO WAS THERE BECAUSE I DON'T OPEN THE DOOR FOR
20 PEOPLE AT THAT TIME OF NIGHT.

21 Q OKAY. YOU SAY THE FIRST THING YOU SAW WAS A GUN?

22 A RIGHT.

23 Q WHAT KIND OF A GUN?

24 A A LONG-BARRELLED GUN. IT LOOKED LIKE A RIFLE.

25 Q OKAY. WHERE WAS THE GUN EXACTLY WHEN YOU SAW IT?

LINDA MICHAEL LOVE/DIRECT-MUNSON

84

1 A THE PERSON WHO CAME THROUGH THE DOOR WITH IT FIRST HAD
2 IT IN HIS HAND. IT WAS LIKE AHEAD OF HIM.

3 Q OKAY. AND WHAT DID HE DO WITH THE GUN AS HE CAME IN?

4 A HE WAS HOLDING IT LIKE THIS, AND HE TOLD US ALL TO GET
5 ON THE FLOOR.

6 Q AND WHAT DID YOU DO?

7 A I GOT ON THE FLOOR.

8 Q OKAY. DID YOU SEE ANYONE COME IN AFTER THE GUY WITH
9 THE GUN?

10 A THERE WAS SOMEBODY BEHIND HIM.

11 Q OKAY. DID YOU GET A GOOD LOOK AT EITHER ONE OF THEM?

12 A THE ONE THAT HAD THE GUN HAD ON, I THOUGHT IT WAS A
13 BEE-KEEPER'S MASK, BUT THEY TELL ME IT WAS A WELDER'S MASK.
14 IT JUST HAD A SLIT ABOUT ACROSS THE FRONT. HE WAS VERY
15 WELL-COVERED. THE OTHER GUY HAD A BANDANNA ACROSS HIS FACE
16 AND A HOOD ON HIS HEAD, I BELIEVE.

17 Q OKAY. AFTER YOU WERE ORDERED ONTO THE FLOOR, WHAT WAS
18 THE NEXT THING THAT HAPPENED?

19 A I THINK THEY ASKED WHERE THE -- WHERE THE SAFE WAS.
20 AND I SAID IT WAS IN THE OFFICE.

21 Q AS THEY CAME IN AND ORDERED YOU TO THE GROUND, WHERE
22 WERE THE OTHER EMPLOYEES?

23 A TWO OF THEM WERE AT THE DOOR WITH ME, THE GUY THAT WAS
24 GETTING READY TO 160
25 EAVE AND MIKE JARVIS. THE OTHER GUY, TODD, WAS OVER AT THE

LINDA MICHAELove/DIRECT-MUNSON

85

1 DISH MACHINE. THEY MADE HIM CRAWL FROM THE DISH MACHINE OVER
2 TO WHERE WE WERE AT THE BACK DOOR ON HIS HANDS AND KNEES.

3 Q OKAY, TELL THE JURY WHAT YOU MEAN WHEN YOU SAY "THEY
4 MADE HIM CRAWL."

5 A THEY TOLD HIM TO.

6 Q WHICH ONE TOLD HIM TO CRAWL?

7 A I DON'T KNOW. I WAS ON THE FLOOR BY THEN. I DON'T
8 KNOW.

9 Q OKAY, BUT YOU HEARD A VOICE TELL HIM TO CRAWL?

10 A RIGHT.

11 Q ALL RIGHT, DID HE EVER GET TO WHERE -- DID TODD, WHO
12 WAS BY THE SINK, EVER GET TO WHERE YOU AND MICHAEL AND TIM
13 WERE?

14 A RIGHT, HE DID.

15 Q OKAY. ONCE TODD GOT TO WHERE THE REST OF YOU THREE
16 WERE, WHAT HAPPENED NEXT?

17 A THEY TOLD THE THREE BOYS THAT -- TO GET INTO THE
18 FREEZER, TO GO INTO THE FREEZER.

19 Q OKAY. DO YOU KNOW WHICH ONE SAID THAT?

20 A NO, I DON'T.

21 Q OKAY. AFTER THE BOYS WERE IN THE FREEZER, WHAT
22 HAPPENED NEXT?

23 A THEY ASKED ME, AGAIN, ABOUT THE SAFE, AND I TOLD THEM
24 THAT IT WAS IN THE OFFICE, AND THEY PUT ME -- THEY TOOK ME IN
25 THE OFFICE AND MADE ME OPEN THE SAFE.

LINDA MICHAEL LOVE/DIRECT-MUNSON

86.

1 Q OKAY, WHEN YOU SAY "THEY," THEY WERE TOGETHER?

2 A YES, MA'AM.

3 Q BOTH OF THEM?

4 A YES, MA'AM.

5 Q AND DO YOU REMEMBER WHICH ONE ASKED YOU -- DID THEY
6 BOTH TALK?

7 A THE ONE IN THE WELDER'S MASK DIDN'T TALK AS MUCH AS THE
8 ONE WITH THE BANDANNA.

9 Q OKAY.

10 A I DON'T -- IT DIDN'T APPEAR TO ME THAT HE DID. HE WAS
11 MORE QUIET, I THINK, THAN THE -- THE ONE WITH THE BANDANNA
12 WAS DOING MOST OF THE TALKING.

13 Q OKAY. WHAT IS THE DISTANCE FROM THE BACK DOOR TO THE
14 OFFICE?

15 A (PAUSE.) FIVE STEPS MAYBE.

16 Q OKAY. AND DESCRIBE FOR THE JURY, IF YOU WILL, WHAT THE
17 OFFICE LOOKS LIKE.

18 A IT'S A VERY SMALL ROOM. IT HAS A DESK THAT HAS A
19 WINDOW IN FRONT OF IT SO YOU CAN SEE OUT ON THE COOK LINE;
20 AND IT HAS A DESK AT THE BACK PART OF IT, AND THE SAFE SITS
21 AGAINST THIS WALL. THERE'S A DESK HERE, A DESK THERE, AND
22 THE SAFE RIGHT THERE. IT'S NOT VERY LARGE.

23 Q OKAY. FROM THE FLOOR -- WHEN YOU WERE ORDERED ONTO THE
24 FLOOR, YOUR TRIP TO THE OFFICE, WERE YOU WALKING?

25 A YES.

LINDA MICHAELove/DIRECT-MUNSON

87

- 1 Q OKAY. WHERE WAS THE PERSON THAT HAD THE GUN WHEN YOU
2 WERE WALKING TO THE OFFICE?
- 3 A BEHIND ME.
- 4 Q OKAY. COULD YOU SEE WHAT HE WAS DOING WITH THE GUN?
- 5 A HE HAD IT AT MY BACK.
- 6 Q HOW DO YOU KNOW THAT?
- 7 A BECAUSE I FELT IT.
- 8 Q OKAY.
- 9 A HE POKED ME WITH IT.
- 10 Q HOW MANY TIMES DID HE POKE YOU IN THE BACK WITH THE
11 GUN?
- 12 A I REALLY DON'T REMEMBER. I JUST REMEMBER BEING POKED
13 IN THE BACK. AND WHEN I WAS ON MY KNEES, HE WAS POKING IT AT
14 MY HEAD.
- 15 Q WHEN YOU WERE ON YOUR KNEES WHERE?
- 16 A AT THE BACK DOOR WHERE THEY CAME IN.
- 17 Q HOW MANY TIMES DID HE POKE YOU IN THE HEAD?
- 18 A (PAUSE.) FIVE OR SIX. I DON'T -- I DON'T REALLY
19 REMEMBER. IT'S KIND OF TRAUMATIC.
- 20 Q ONCE YOU GOT INTO THE OFFICE, TELL US HOW YOU WENT
21 ABOUT OPENING THE SAFE.
- 22 A I JUST USED THE COMBINATION. IT'S A COMBINATION SAFE.
- 23 Q OKAY.
- 24 A THEY KEPT SAYING, "HURRY UP. HURRY UP."
- 25 Q ALL RIGHT, AND WHERE WAS THE WEAPON WHILE YOU WERE

LINDA MICHAELove/DIRECT-MUNSON

88

1 OPENING THE SAFE?

2 A IN MY BACK.

3 Q DO YOU KNOW HOW MANY -- DO YOU KNOW WHICH OF THE
4 ROBBERS WAS IN THE OFFICE WITH YOU WHILE YOU WERE OPENING THE
5 SAFE?

6 A I THINK THEY WERE BOTH THERE. THERE WOULD BE ROOM FOR
7 BOTH OF THEM TO BE THERE.

8 Q OKAY. AFTER YOU DID THE COMBINATION, DID YOU PULL THE
9 SAFE OPEN, OR WHAT DID YOU DO?

10 A YES, I OPENED THE DOOR.

11 Q ALL RIGHT. AFTER YOU HAD OPENED THE DOOR, WHAT WAS THE
12 VERY NEXT THING THAT HAPPENED?

13 A THEY ORDERED ME BACK DOWN ON THE FLOOR WHERE I WAS
14 BEFORE.

15 Q HOW DID THEY GO ABOUT DOING THAT?

16 A I THINK THE GUY WITH THE GUN BACKED OUT, AND THEN I
17 WENT -- I WENT OUT AND WE WENT BACK DOWN ON THE FLOOR.

18 Q OKAY. HOW LONG DID YOU STAY ON THE FLOOR?

19 A HE RANSACKED THE OFFICE. I -- I HAD MY HEAD DOWN, BUT
20 I COULD HEAR. HE WAS PULLING REGISTER DRAWERS AND SLINGING
21 THEM EVERYWHERE, AND JUST REALLY RANSACKING THE OFFICE.

22 Q WHICH ONE WAS DOING THAT?

23 A THE ONE WITH THE BANDANNA.

24 Q OKAY. AFTER THE NOISE IN THE OFFICE STOPPED, WHAT WAS
25 THE NEXT THING THAT HAPPENED?

LINDA MICHAEL LOVE/DIRECT-MUNSON

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1 A THE GUY FROM THE OFFICE, THE ONE IN THE OFFICE CAME OUT
2 AND ASKED ME FOR A KEY TO THE FREEZER, AND I TOLD HIM WE
3 DIDN'T HAVE A KEY. AND HE ORDERED ME INTO THE FREEZER WITH
4 THE GUYS.

5 Q OKAY, WAS THAT TRUE, THAT YOU DON'T HAVE A KEY?

6 A NO, WE DON'T HAVE A KEY.

7 Q OKAY.

8 A THAT'S VERY TRUE.

9 Q WHILE THE GUY WAS RANSACKING THE OFFICE AND YOU WERE ON
10 THE FLOOR --

11 A UH-HUH.

12 Q -- WHERE WAS THE GUY WITH THE WELDER'S MASK?

13 A HE WAS POKING THE GUN AT ME, IN MY BACK AND IN MY HEAD.

14 Q AFTER THE NOISE STOPPED AND YOU WERE ORDERED INTO THE
15 COOLER, HOW DID THAT HAPPEN? HOW DID YOU GET TOLD TO GET IN
16 THE COOLER?

17 A THE GUY CAME OUT OF THE OFFICE AND HE ASKED FOR THE
18 KEY, AND I TOLD HIM WE DIDN'T HAVE ONE. AND BY THAT TIME I
19 WAS ON MY FEET, AND THEY TOLD ME TO GO IN THE PLACE WITH THE
20 GUYS. AND I SAID, "HOW LONG DO YOU WANT US TO STAY HERE?"
21 AND HE SAID, "AT LEAST 30 MINUTES."

22 Q OKAY, AND DID YOU DO THAT?

23 A YES, MA'AM.

24 Q WHY DID YOU STAY IN THE COOLER 30 MINUTES?

25 A I FELT LIKE THEY HAD LEFT, BUT I HAD THREE YOUNG MEN

LINDA MICHAELove/DIRECT-MUNSON

90

1 WITH ME, AND I'M SURE IT WAS VERY TRAUMATIC FOR THEM, ALSO,
2 AND WHEN I WOULD SAY, "DO YOU WANT ME TO CHECK?" THEY WOULD
3 SAY, "NO, WE WANT TO STAY FOR 30 MINUTES." SO WE STAYED FOR
4 30 MINUTES.

5 Q HAD YOU EVER BEEN ROBBED BEFORE?

6 A NOT LIKE THAT, NO.

7 Q OKAY, SO WHAT WOULD YOU TELL THE JURY ABOUT YOUR
8 THOUGHT PROCESS AT THE TIME?

9 A I JUST DIDN'T WANT THEM TO KILL ANYBODY. I JUST WANTED
10 THEM TO TAKE WHAT THEY WANTED AND LEAVE.

11 Q YOU SAID PART OF YOUR DUTIES AS MANAGER AT FUDDRUCKERS
12 IS TO DO THE NIGHT DEPOSITS?

13 A (NODDED HER HEAD; NO VERBAL REAPONSE.)

14 Q DO YOU NEED TO TAKE A MOMENT, MS. MICHAELove?

15 THE COURT: WOULD YOU LIKE SOME WATER?

16 (THE BAILIFF GAVE THE WITNESS A CUP OF WATER.)

17 Q ARE YOU ALL RIGHT?

18 A UH-HUH (NODDED HER HEAD).

19 Q MS. MICHAELove, I'M GOING TO HAND YOU THESE GLOVES
20 FIRST. YOU MIGHT WANT TO PUT THOSE ON. THIS IS KIND OF
21 MESSY.

22 A (COMPLIED, PUT ON RUBBER GLOVES.)

23 Q OKAY, WHAT I'M SHOWING YOU HERE IS STATE'S EXHIBIT
24 NUMBER 1 FOR IDENTIFICATION PURPOSES ONLY, AND STATE'S
25 EXHIBIT NUMBER 2 FOR IDENTIFICATION PURPOSES ONLY. IF YOU

LINDA MICHAELove/DIRECT-MUNSON

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1 COULD JUST TAKE A LOOK AT THOSE. FIRST LET'S TALK ABOUT
2 STATE'S EXHIBIT NUMBER 1 FOR IDENTIFICATION PURPOSES ONLY.

3 A OKAY, IT'S OURS.

4 Q DO YOU RECOGNIZE THAT?

5 A YES, MA'AM.

6 Q HOW DO YOU RECOGNIZE IT?

7 A IT'S THE BAG WE KEEP OUR SAFE CHANGE IN.

8 Q OKAY. CAN YOU OPEN IT UP?

9 A UH-HUH (NODDED HER HEAD).

10 Q OKAY, WHAT APPEARS TO BE INSIDE OF STATE'S EXHIBIT
11 NUMBER 1 FOR IDENTIFICATION PURPOSES ONLY?

12 A THERE'S A DEPOSIT SLIP WITH MY INITIALS ON IT, AND THE
13 DATE, AND THE AMOUNT. AND THERE'S RIPPED-UP CHECKS.

14 Q OKAY, THE DEPOSIT SLIP, YOU SAY YOUR INITIALS ARE ON
15 THERE?

16 A YES, MA'AM.

17 Q OKAY, WHAT DOES THAT DEPOSIT SLIP INDICATE TO YOU?

18 A THIS IS THE BAG THAT THEY TOOK FROM THE SAFE THAT
19 NIGHT.

20 Q OKAY. NOW IF YOU WOULD JUST TAKE A MINUTE AND LOOK AT
21 STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION PURPOSES ONLY.

22 A (PAUSE, VIEWING STATE'S EXHIBIT NUMBER 2 FOR I.D.)

23 Q MS. MICHAELove, DO YOU RECOGNIZE THAT?

24 A YES, MA'AM.

25 Q HOW DO YOU RECOGNIZE IT?

LINDA MICHAELove/DIRECT-MUNSON

92

1 A THIS IS THE DISPOSABLE BAGS THAT WE USE, AND THAT'S MY
2 HANDWRITING.

3 Q OKAY, WHAT IS THE PURPOSE OF THIS DISPOSABLE BAG?

4 A WE PUT IT IN A -- THE NIGHT DEPOSITORY.

5 Q OKAY.

6 A WE DON'T DO IT THAT NIGHT. WE DO IT THE NEXT DAY.

7 Q OKAY, SO IS THERE A DATE ON THIS BAG, AS WELL?

8 A I DON'T SEE A DATE ON IT.

9 Q IS THERE ANYTHING IN STATE'S EXHIBIT NUMBER 1 THAT
10 WOULD INDICATE TO YOU THAT THIS BAG WAS ALSO TAKEN THAT
11 NIGHT?

12 A YES, MA'AM.

13 Q WHAT IS -- WHAT WOULD HELP YOU?

14 A WELL, THE DEPOSIT SLIP WOULD HAVE BEEN IN THIS BAG --

15 Q IN THAT --

16 A -- AND THOSE CHECKS WOULD HAVE BEEN IN THIS BAG.

17 Q IN THAT BAG?

18 A YES, MA'AM.

19 Q OKAY, THANK YOU, MA'AM. IF YOU WILL TAKE THOSE OFF,
20 I'LL TAKE THEM FROM YOU.

21 A (COMPLIED, TOOK OFF RUBBER GLOVES AND HANDED THEM TO
22 MS. MUNSON.)

23 Q THANKS A LOT. MS. MICHAELove, CAN YOU TELL THE JURY
24 HOW MUCH WAS TAKEN FROM FUDDRUCKERS THAT NIGHT, HOW MUCH
25 MONEY?

LINDA MICHAELove/CROSS-ROLLINS

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1 A AN EXACT AMOUNT?

2 Q NO, MA'AM.

3 A I THINK IT WAS CLOSE TO \$5,000.

4 Q WELL, AFTER THE ROBBERY, DID YOU LOOK IN THE SAFE AND
5 SEE WHAT WAS MISSING, IF ANYTHING?

6 A WE WEREN'T ALLOWED TO TOUCH ANYTHING. I DIDN'T WANT TO
7 TOUCH ANYTHING IN CASE THERE WERE FINGERPRINTS, BUT I COULD
8 TELL THAT THE DEPOSIT BAG WAS GONE AND THE SAFE CHANGE BAG
9 WAS GONE.

10 Q SO THE BLUE BAG CONTAINED WHAT?

11 A IT CONTAINED THE CHANGE THAT WE USED DURING THE -- ON
12 THE WEEKEND.

13 Q WHEN YOU SAY "CHANGE," ARE YOU TALKING ABOUT JUST
14 COINS?

15 A NO, MA'AM, IN THAT BAG WOULD HAVE BEEN BILLS.

16 Q OKAY, AND THE PLASTIC BAG, STATE'S EXHIBIT 2 FOR
17 IDENTIFICATION PURPOSES ONLY, WOULD HAVE CONTAINED WHAT?

18 A THE DEPOSIT, THE MONEY THAT WAS TAKEN IN THAT NIGHT AND
19 THE CHECKS.

20 MS. MUNSON: OKAY, I HAVE NOTHING FURTHER AT THIS
21 TIME, YOUR HONOR.

22 THE COURT: MR. ROLLINS.

23 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.

24 CROSS-EXAMINATION BY MR. ROLLINS:

25 Q IS IT MICHAELove?

LINDA MICHAELove/CROSS-ROLLINS

94

1 A YES, SIR.

2 Q MS. MICHAELove, I BELIEVE YOU SAID YOU WERE BACK AT THE
3 DOOR WHEN THIS ROBBERY OCCURRED?

4 A YES, SIR.

5 Q THEY TOLD EVERYBODY TO GET ON THE FLOOR, AND YOU
6 COMPLIED WITH THEIR ORDER?

7 A YES, SIR.

8 Q AND DID YOU EVER GET TO SEE AT ANY TIME WHAT RACE THESE
9 PEOPLE WERE?

10 A THE ONLY ONE THAT I CAN TELL YOU WAS THAT WAS A
11 PARTICULAR RACE WAS THE PERSON WITH THE BANDANNA, ONLY
12 BECAUSE I COULD SEE SOME OF HIS SKIN.

13 Q AND WHERE WAS THAT SKIN LOCATED?

14 A AROUND THE EYE AREA.

15 Q AROUND THE EYE AREA?

16 A UH-HUH (NODDED HER HEAD).

17 Q AND IT WAS DARK IN COLOR?

18 A YES, SIR.

19 Q DO YOU KNOW IF THE REST OF HIS SKIN WAS LIGHT IN COLOR?

20 A HE HAD A BANDANNA ACROSS HIS FACE, I COULDN'T TELL YOU.

21 Q SO ALL YOU CAN SAY IS THAT IT WAS DARK AROUND HIS EYES?

22 A YES, SIR.

23 Q YOU DON'T KNOW IF IT WAS MAKEUP, OR WHAT?

24 A NO, SIR.

25 Q AND THEN AS FAR AS THE PERSON IN THE WELDER'S MASK,

LINDA MICHAEL LOVE/CROSS-ROLLINS

95

- 1 COULD YOU TELL WHAT HE WAS --
- 2 A NO, SIR.
- 3 Q -- AS FAR AS RACE?
- 4 A NO, SIR.
- 5 Q AND WAS HE WEARING GLOVES?
- 6 A I DON'T REMEMBER.
- 7 Q OKAY. AND THEN THE PERSON IN THE MASK, I BELIEVE YOU
- 8 SAID THAT THE PERSON IN THE MASK HAD THE RIFLE AT ONE TIME?
- 9 A AS FAR AS I KNOW, HE HAD IT ALL THE TIME.
- 10 Q AND BY "MASK," WE'RE TALKING ABOUT WELDER'S MASK?
- 11 A UH-HUH (NODDED HER HEAD).
- 12 Q THE PERSON WITH THE WELDER'S MASK HAD THE RIFLE THE
- 13 WHOLE TIME?
- 14 A YES, SIR.
- 15 Q AND THAT PERSON WAS THE ONE POKING YOU WITH THE RIFLE?
- 16 A YES, SIR.
- 17 Q YOU SAID THAT YOU HAD BEEN ROBBED BEFORE, BUT NOT LIKE
- 18 THAT. WHAT OTHER TYPE ROBBERIES HAVE YOU HAD THEN?
- 19 A I WAS IN MY CHURCH WHEN I WAS ROBBED. THERE WERE 150
- 20 PEOPLE PRESENT.
- 21 Q ARE YOU AWARE OF ANY OTHER TYPE OF PEOPLE BREAKING INTO
- 22 THE SAFE AT YOUR LOCATION?
- 23 A NO, SIR.
- 24 Q AND DO YOU KNOW AUSTIN PERRY?
- 25 A YES, SIR.

LINDA MICHAELove/CROSS-CRANE

96

1 Q DID HE WORK FOR YOU?

2 A HE WORKED FOR FUDDRUCKERS, YES, SIR.

3 Q DID MR. PERRY EVER STEAL ANYTHING FROM FUDDRUCKERS TO
4 YOUR KNOWLEDGE?

5 A UMMM. TO MY DIRECT KNOWLEDGE, NO, SIR.

6 Q I MEAN, DO YOU HAVE KNOWLEDGE OF HIM STEALING SOMETHING
7 FROM FUDDRUCKERS?

8 A I -- I DON'T -- IT SEEMS LIKE I HEARD THAT THERE WAS A
9 THEFT THERE THAT HE WAS INVOLVED IN, BUT I HAVE NO DIRECT
10 KNOWLEDGE OF IT.

11 Q EVEN WITH YOU BEING THE MANAGER OF THAT STORE, THERE
12 ARE OTHER PEOPLE THAT ARE OVER YOU?

13 A YES, SIR.

14 Q SO YOU'RE JUST A SHIFT MANAGER?

15 A YES, SIR.

16 Q ALL RIGHT. AND AS FAR AS STANLEY BUTLER, DO YOU KNOW
17 THAT NAME AT ALL?

18 A THE ONLY WAY I KNOW IT IS FROM THE -- (PAUSE) --

19 Q FROM WHAT WE'RE DOING HERE TODAY?

20 A YES, SIR.

21 MR. ROLLINS: ALL RIGHT, THANK YOU, MA'AM.

22 MR. CRANE: PLEASE THE COURT.

23 THE COURT: MR. CRANE.

24 CROSS-EXAMINATION BY MR. CRANE:

25 Q MS. MICHAELove, DO YOU KNOW GERMANE MCCULLOUGH?

LINDA MICHAELove/CROSS-CRANE

97

- 1 A YES, SIR.
- 2 Q DID HE, ALSO, WORK AT FUDDRUCKERS?
- 3 A YES, SIR.
- 4 Q DID YOU, ALSO, HEAR THAT HE WAS INVOLVED WITH MR. TERRY
- 5 WHEN THEY WENT INTO THE SAFE ONE OTHER TIME?
- 6 A THIS -- I HEARD ABOUT IT AFTER THIS PARTICULAR ROBBERY.
- 7 Q THAT BOTH MCCULLOUGH AND TERRY HAD BEEN CAUGHT TAKING
- 8 MONEY FROM FUDDRUCKERS' SAFE, AND WERE, IN FACT, PAYING IT
- 9 BACK, RIGHT?
- 10 A YES, SIR.
- 11 Q ALL RIGHT, AND FOR WHATEVER REASONS-CHARGES WERE NEVER
- 12 FILED AGAINST THEM FOR THAT, WERE THEY?
- 13 A I DON'T KNOW, SIR.
- 14 Q ALL RIGHT. WAS MONEY TAKEN OUT WEEKLY FROM THEIR
- 15 PAYCHECKS?
- 16 A I DON'T KNOW, SIR. I DON'T HANDLE THEIR PAYROLL.
- 17 Q DID YOU KNOW SHANNON TODD, THIS FELLOW SEATED OVER
- 18 HERE?
- 19 A I HAD MET HIM THE DAY BEFORE THE ROBBERY.
- 20 Q WHERE HAD YOU MET HIM?
- 21 A HE HAD COME TO WORK.
- 22 Q OKAY. DID YOU KEEP TIME RECORDS OF WHEN THOSE PEOPLE
- 23 WORKED?
- 24 A DID I KEEP THEM?
- 25 Q DID SOMEBODY KEEP TIME RECORDS?

LINDA MICHAELove/CROSS-CRANE

98

- 1 A THEY PUNCH IN ON A COMPUTER, A TIME CLOCK, YES, SIR.
- 2 Q CAN YOU IDENTIFY WHAT THESE THREE DOCUMENTS ARE, MA'AM?
- 3 A THAT IS OUR SCHEDULE FOR THE WEEK.
- 4 Q ALL RIGHT. DOES IT SHOW AUSTIN PERRY. IS THAT AUSTIN,
- 5 THE NAME DOWN THERE?
- 6 A YES, SIR.
- 7 Q DOES THAT SHOW WHEN HE WORKED?
- 8 A YES, SIR.
- 9 Q WHEN DOES IT SHOW HE WORKED?
- 10 A WHAT DATE DO YOU WANT?
- 11 Q WELL, DID HE WORK EVERY DAY EXCEPT FOR WHAT?
- 12 A WEDNESDAY.
- 13 Q WEDNESDAY, ALL RIGHT. ARE THESE RECORDS KEPT IN THE
- 14 NORMAL COURSE OF BUSINESS OF FUDDRUCKERS?
- 15 A YES, SIR.
- 16 Q WHO DOES THEM?
- 17 A WHO DOES THE RECORDS, OR WHO DOES THE SCHEDULES?
- 18 Q WHO DID THIS PIECE OF PAPER? (PAUSE.) IF YOU KNOW.
- 19 A UMMM, ONE OF THE MANAGERS. I'M NOT SURE WHICH ONE DID
- 20 IT.
- 21 Q SO MR. PERRY WORKED EVERY DAY EXCEPT WEDNESDAY?
- 22 A YES, SIR.
- 23 Q WOULD YOU SEE A -- DO YOU KNOW JOSHUA TERRY, I BELIEVE
- 24 IS HIS NAME?
- 25 A YES, SIR.

LINDA MICHAELove/CROSS-CRANE

99

- 1 Q WOULD YOU SEE IF HE WORKED THAT WEEK?
- 2 A (PAUSE, VIEWING DOCUMENT.) I THINK THAT'S JOSHUA RIGHT
- 3 THERE.
- 4 Q ALL RIGHT.
- 5 A AND HE WORKED EVERY DAY BUT MONDAY AND FRIDAY.
- 6 Q WELL, DOES IT SHOW THAT HE WORKED IN THE KITCHEN ON
- 7 SATURDAY?
- 8 A YES, SIR. HE WAS SCHEDULED TO WORK IN THE KITCHEN ON
- 9 SATURDAY.
- 10 Q SCHEDULED, BUT WE DON'T KNOW IF HE WORKED OR NOT?
- 11 A NO, SIR.
- 12 Q AND DOES THAT SCHEDULE, ALSO, HAVE SHANNON DOWN?
- 13 A YES, SIR.
- 14 Q WOULD YOU KNOW IF THAT, IN FACT, WAS SHANNON TODD?
- 15 A HE WAS THE ONLY SHANNON, I'M PRETTY SURE, THAT WE HAD
- 16 WORKING --
- 17 Q ALL RIGHT.
- 18 A -- FOR US AT THE TIME.
- 19 Q DID HE, IN FACT, WORK THURSDAY OF THAT WEEK?
- 20 A IT SHOWS HERE THAT HE WAS OFF THURSDAY.
- 21 Q OFF THURSDAY, AND WORKED WEDNESDAY, SO HE WORKED ON
- 22 WEDNESDAY, BUT AUSTIN PERRY WAS OFF ON WEDNESDAY, CORRECT,
- 23 ACCORDING TO THE SCHEDULE?
- 24 A YES, SIR.
- 25 Q AND AUSTIN PERRY WORKED ON THURSDAY, BUT SHANNON WAS

LINDA MICHAEL LOVE/CROSS-CRANE

100

1 OFF ON THURSDAY?

2 A RIGHT.

3 Q AND WILL YOU LOOK AT THE SCHEDULES AND TELL US IF THEY
4 BOTH WORKED ON FRIDAY AND SATURDAY ACCORDING TO THE SCHEDULE?

5 A ACCORDING TO THE SCHEDULE SHANNON WAS SCHEDULED FRIDAY
6 AND SATURDAY. SHANNON WAS LET-GO FRIDAY NIGHT.

7 Q SO SHANNON DID NOT WORK SATURDAY THEN?

8 A NO, SIR.

9 Q DID HE WORK FRIDAY NIGHT?

10 A HE CAME IN FOR HIS SHIFT, AND HE WAS LET-GO SHORTLY
11 AFTER THAT.

12 Q WAS THAT BECAUSE YOU HAD TOO MANY WORKING ALREADY?

13 A I THINK SO.

14 Q ALL RIGHT, AND HOW ABOUT AUSTIN PERRY THEN, WHAT DID HE
15 DO ON FRIDAY AND SATURDAY?

16 A HE WAS OUR FRONT PREP PERSON FRIDAY AND SATURDAY.

17 Q IN THE MORNING HOURS, 8:00 TO 3:00?

18 A ON SATURDAY, HE WAS. ON FRIDAY, HE WAS 5:30 TO CLOSE.

19 Q ALL RIGHT, SO ACCORDING TO YOUR SCHEDULES AUSTIN PERRY
20 AND SHANNON TODD WERE NOT WORKING TOGETHER ON WEDNESDAY AND
21 THURSDAY OF THAT WEEK, IS THAT CORRECT?

22 A RIGHT.

23 Q ALL RIGHT. THANK YOU FOR THAT. (PAUSE.) NOW THE --
24 ARE YOU SURE THAT THE PERSON THAT HAD THE RIFLE WAS WEARING A
25 WELDER'S MASK OR SOME TYPE OF MASK?

LINDA MICHAEL LOVE/CROSS-CRANE

101

- 1 A AM I SURE?
- 2 Q YES, MA'AM.
- 3 A I'LL TELL YOU, SIR, IT'S BEEN FOUR MONTHS, I'M PRETTY.
- 4 SURE THAT IT WAS THE ONE WITH THE WELDER'S MASK. IT COULD
- 5 HAVE BEEN THE OTHER PERSON. I JUST KNOW THERE WAS A BIG GUN.
- 6 Q THERE WAS A RIFLE?
- 7 A YES, THERE WAS A GUN. I DON'T KNOW WHAT KIND, SIR.
- 8 I'M NOT FAMILIAR WITH FIREARMS.
- 9 Q OKAY, BUT YOU DON'T KNOW TODAY WHETHER IT WAS THE ONE
- 10 WITH THE BANDANNA OR THE ONE WITH THE WELDER'S MASK, IS THAT
- 11 CORRECT?
- 12 A I -- I'M PRETTY SURE IT WAS THE ONE WITH THE WELDER'S
- 13 MASK.
- 14 Q ALL RIGHT. WHICHEVER ONE DIDN'T HAVE THE GUN, WHAT DID
- 15 THAT PERSON DO?
- 16 A HE WAS -- HE WAS THE ONE THAT WAS AT THE COOLER DOOR
- 17 THAT PUT THE THREE GUYS IN THE COOLER. HE WAS, ALSO, THE ONE
- 18 THAT WENT IN THE OFFICE AND RANSACKED THE OFFICE AFTER I GOT
- 19 THE SAFE OPEN.
- 20 Q ALL RIGHT. DO MOST OF THE EMPLOYEES KNOW WHERE THE
- 21 SAFE IS?
- 22 A YES, SIR.
- 23 Q DO THEY, ALSO, KNOW THAT THERE IS NO KEY TO IT?
- 24 A I'M NOT SURE THAT THEY WOULD KNOW THAT.
- 25 Q WELL, THEN --

LINDA MICHAELove/CROSS-CRANE

102

1. A WE KEEP OUR OFFICE DOOR LOCKED.
2. Q OKAY. IS IT SAFE TO SAY THAT IF AN EMPLOYEE HAD
3. COMMITTED THE ROBBERY, THEY WOULDN'T NEED TO ASK YOU WHERE
4. THE SAFE WAS?
5. A (PAUSE.) SAY -- I'M SORRY, ASK THE QUESTION AGAIN.
6. Q SHANNON TODD IS CHARGED WITH THIS ARMED ROBBERY.
7. A YES, SIR.
8. Q SHANNON TODD IS AN EMPLOYEE OF FUDDRUCKERS. YOU JUST
9. TOLD THE JURY THAT THE EMPLOYEES KNOW WHERE THE SAFE IS.
10. SHANNON TODD WOULDN'T HAVE TO ASK YOU WHERE THE SAFE IS,
11. WOULD HE?
12. A NO, SIR, HE WOULDN'T. I WOULDN'T THINK HE WOULD. I
13. ONLY SAW HIM THE ONE TIME.
14. Q AND SHANNON TODD WOULDN'T HAVE TO ASK YOU WHETHER OR
15. NOT THERE IS A KEY TO OPEN THE SAFE, WOULD HE?
16. A NO, SIR.
17. Q AND SHANNON TODD WOULDN'T HAVE TO ASK YOU FOR A KEY TO
18. LOCK THE DOOR OF THE COOLER BECAUSE HE KNEW THERE WASN'T A
19. KEY?
20. A WELL, NOW HE WAS NOT INVOLVED WITH THE COOLER, SO HE
21. PROBABLY WOULDN'T KNOW WHETHER THERE WAS ONE TO THE COOLER,
22. SIR.
23. Q ALL RIGHT, AND THE VOICES YOU HEARD THAT NIGHT, YOU
24. CANNOT IDENTIFY THEM AS SHANNON TODD'S, CAN YOU?
25. A OH, NO, SIR.

LINDA MICHAELove/CROSS-CRANE

103

1 Q AS A MATTER OF FACT, YOU'RE NOT TELLING THIS JURY THAT
2 YOU KNOW IT WAS SHANNON TODD THAT WAS THERE, ARE YOU?

3 A NO, SIR.

4 Q YOU DON'T HAVE ANY IDEA WHO IT WAS THAT WAS THERE, DO
5 YOU?

6 A NO, SIR.

7 Q NOW THE ONE PERSON, WHICH ONE DID YOU SAY YOU SAW THE
8 SKIN OF? THE ONE WITH THE BANDANNA?

9 A RIGHT.

10 Q AND YOU SAID THAT PERSON WAS BLACK?

11 A I FEEL LIKE, YES, HE WAS BLACK.

12 Q YOU DON'T KNOW WHAT COLOR THE OTHER PERSON WAS?

13 A NO, SIR.

14 Q COULD HAVE BEEN AUSTIN PERRY, COULDN'T IT?

15 A YES, SIR.

16 Q ALL RIGHT. COULD HAVE BEEN A WHITE PERSON, COULDN'T
17 IT?

18 A COULD HAVE, YES, SIR.

19 Q AND YOU SAID THE ONE WITH THE MASK DIDN'T DO MUCH
20 TALKING, DID HE?

21 A NO, SIR.

22 Q BECAUSE HE DIDN'T WANT YOU TO IDENTIFY HIS VOICE?

23 A I DON'T KNOW THAT, SIR.

24 Q OKAY. BUT YOU DIDN'T RECOGNIZE THE VOICE OF SHANNON
25 TODD?

1 A NO, SIR. (PAUSE.) I HAD ONLY SPOKEN TO HIM ON FRIDAY
2 JUST FOR A FEW MINUTES. I WOULDN'T HAVE RECOGNIZED HIS VOICE
3 ANYWAY.

4 Q HAVE YOU EVER SEEN MCCULLOUGH, PERRY, SHANNON TODD, OR
5 JOSHUA TERRY WEAR A MICHIGAN STARTERS JACKET TO WORK?

6 A I DON'T REMEMBER, SIR.

7 MR. CRANE: ONE MOMENT, PLEASE. (CONFERRED WITH
8 MR. ROLLINS. CONFERRED WITH MS. MUNSON. PAUSE, VIEWING
9 DOCUMENT.)

10 YOUR HONOR, I WOULD LIKE TO OFFER THESE THREE DOCUMENTS
11 INTO EVIDENCE.

12 THE COURT: ANY OBJECTION?

13 MS. MUNSON: NO OBJECTION, YOUR HONOR.

14 THE COURT: WITHOUT OBJECTION.

15 MR. CRANE: WE COULD MARK IT AS ONE OR THREE,
16 HOWEVER YOU WANT TO DO IT.

17 (DEFENDANT'S EXHIBIT NUMBER 1, WEEKLY
18 SCHEDULE FOR WEEK ENDING 3/10/96, MARKED FOR IDENTIFICATION
19 AND RECEIVED INTO EVIDENCE.)

20 MR. CRANE: THANK YOU, MA'AM.

21 REDIRECT EXAMINATION BY MS. MUNSON:

22 Q MS. MICHAELove, CAN YOU SAY FROM LOOKING AT THOSE
23 DOCUMENTS WHETHER OR NOT YOU WERE WORKING ON THOSE NIGHTS?

24 A I KNOW I WORKED FRIDAY AND SATURDAY NIGHT BECAUSE I
25 WAS THERE WHEN SHANNON WAS LET GO. AND SATURDAY NIGHT I

LINDA MICHAEL LOVE/RECROSS-CRANE

105

1 WORKED BECAUSE I WAS CLOSING MANAGER.

2 Q OKAY, WHEN YOU SAY "HE WAS LET GO," WHAT DO YOU MEAN?

3 A HE MADE THE COMMENT TO US THAT HE COULDN'T COME TO WORK
4 UNLESS HE RODE WITH GERMANE MCCULLOUGH, AND THE OTHER MANAGER
5 THAT WAS ON DUTY WITH ME TOLD HIM THAT WE NEEDED HIM TO WORK
6 WHEN WE NEEDED HIM TO WORK, NOT WHEN HE COULD GET A RIDE, AND
7 IF HE COULDN'T ARRANGE A RIDE, THEN WE DIDN'T NEED HIM.

8 Q OKAY, DOES IT HAPPEN AT ALL IN A RESTAURANT LIKE
9 FUDDRUCKERS THAT A PERSON IS SCHEDULED TO WORK AND DOESN'T
10 COME IN?

11 A YES.

12 Q DOES IT HAPPEN THAT PEOPLE TRADE HOURS, LIKE, "I'M
13 SCHEDULED TO WORK TODAY. WILL YOU WORK FOR ME TODAY, AND
14 I'LL WORK FOR YOU TOMORROW?" DOES THAT HAPPEN AT
15 FUDDRUCKERS?

16 A YES.

17 Q WHEN THAT HAPPENS, IS IT NECESSARILY INDICATED SO ON
18 THE SCHEDULE?

19 A NO, IT'S NOT INDICATED ON THE SCHEDULE.

20 MS. MUNSON: OKAY. I HAVE NOTHING FURTHER, YOUR
21 HONOR.

22 MR. CRANE: YOUR HONOR, I HAVE SOME MORE QUESTIONS
23 THEN.

24 **RECROSS-EXAMINATION BY MR. CRANE:**

25 Q YOU PAY THEM FOR WORKING, DON'T YOU?

LINDA MICHAELove/RECROSS-CRANE

106

1 A YES, SIR.

2 Q ALL RIGHT. CAN YOU IDENTIFY WHAT THESE RECORDS MIGHT
3 BE?

4 A THESE ARE OUR PAYROLL RECORDS.

5 Q PAYROLL RECORDS FROM WHERE? (PAUSE.) FROM
6 HEADQUARTERS?

7 A YES, SIR.

8 Q ALL RIGHT, AND IS THAT SHANNON TODD'S ON TOP?

9 A YES, SIR.

10 Q AND WHEN DOES IT LAST INDICATE HE ACTUALLY GOT A PAY
11 CHECK FROM Y'ALL?

12 A 1/14/96, IT LOOKS LIKE.

13 Q ALL RIGHT. I DON'T WANT TO MIS-STEER YOU, BUT DIDN'T
14 HE GET ONE THE NEXT WEEK OR A COUPLE OF WEEKS LATER?

15 A WAIT A MINUTE. (PAUSE, VIEWING DOCUMENT.) I'M NOT TOO
16 FAMILIAR WITH THESE. 1/29, IT LOOKS LIKE.

17 Q ALL RIGHT, BUT THESE RECORDS WOULDN'T INDICATE WHEN
18 THEY WORKED, WHAT DAYS OR HOURS, WOULD THEY?

19 A (PAUSE, VIEWING DOCUMENT.) NO, SIR, NOT THIS
20 PARTICULAR THING. IT JUST SHOWS THEIR GROSS.

21 Q ALL RIGHT. BUT THAT, COMING FROM CORPORATE HEAD-
22 QUARTERS, DOES SHOW THAT THE LAST CHECK HE GOT WAS FOR WORK
23 DONE IN JANUARY, CORRECT?

24 A YES, SIR, AS FAR AS I CAN TELL.

25 Q IT DOESN'T SHOW ANY PAYCHECK FOR ANY WORK THAT HE MAY

LINDA MICHAELove/RECROSS-CRANE

107

- 1 OR MAY NOT HAVE DONE IN MARCH; RIGHT?
- 2 A RIGHT..
- 3 Q ALL RIGHT. LET'S LOOK AT THIS NEXT ONE. (PAUSE,
4 VIEWING DOCUMENT.) WELL, WOULD THAT BE THE SAME, OR ARE
5 THERE RECORDS HERE FOR JOSHUA TERRY FOR THE WEEK OF 3/10 AND
6 3/17, ISN'T IT?
- 7 A YES, SIR. 3/24, 3/31, 4/7, AND 4/14.
- 8 Q HOW ABOUT THIS, CAN YOU IDENTIFY WHAT THAT IS?
- 9 A OKAY, THIS IS A PRINTOUT DAILY. IT LOOKS LIKE A DAILY
10 -- NO, THIS IS THE WEEKLY TOTAL.
- 11 Q FOR AUSTIN PERRY?
- 12 A YES, SIR, RIGHT HERE.
- 13 Q BUT THERE, AGAIN, THAT SHOWS HE WORKED THAT WEEK, BUT
14 DOESN'T SHOW THE DAYS?
- 15 A RIGHT.
- 16 Q OKAY.
- 17 A THIS IS A CUMULATIVE REPORT, IS WHAT THAT IS.
- 18 Q IS THIS A DAILY REPORT HERE ON AUSTIN PERRY?
- 19 A (PAUSE, VIEWING DOCUMENT.) SATURDAY 3/9/96, YES, SIR.
- 20 Q OKAY. DOES THAT SHOW ALL OF THE EMPLOYEES, OR JUST
21 AUSTIN PERRY?
- 22 A WELL, IT SHOWS MORE OF THEM. THERE'S MORE ON THERE.
- 23 Q OKAY. IS THAT FOR FRIDAY FOR AUSTIN PERRY?
- 24 A YES, SIR.
- 25 Q IS THAT FOR TUESDAY?

REGINALD PITMAS/DIRECT-MUNSON

108

1 A YES, SIR.

2 Q ALL RIGHT. DO YOU SHOW ANY FOR WEDNESDAY AND THURSDAY?

3 A NO, SIR. NOT ON THIS, I DON'T.

4 Q ALL RIGHT. WHO BROUGHT THESE TO COURT TODAY? DO YOU
5 REMEMBER? IS IT THE FELLOW RIGHT THERE IN THE WHITE SHIRT?

6 A YES, SIR, MR. JOHNSON.

7 MR. CRANE: THANK YOU. ANSWER ANY QUESTIONS THE
8 SOLICITOR MIGHT HAVE.

9 MS. MUNSON: I HAVE NOTHING FURTHER, YOUR HONOR.

10 THE COURT: STEP DOWN.

11 MS. MUNSON: YOUR HONOR, AT THIS TIME THE STATE
12 CALLS REGINALD PITMAS.

13 REGINALD PITMAS, FIRST BEING SWORN TO TELL
14 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
15 TESTIFIES AS FOLLOWS:

16 THE CLERK: STATE YOUR NAME.

17 THE WITNESS: REGINALD PITMAS.

18 THE CLERK: THANK YOU. YOU MAY BE SEATED.

19 DIRECT EXAMINATION BY MS. MUNSON:

20 Q MR. PITMAS, WHERE DO YOU WORK?

21 A I TEACH BIOLOGY AT CHRIST CHURCH EPISCOPAL SCHOOL.

22 Q HOW LONG HAVE YOU BEEN THERE?

23 A FOURTEEN YEARS.

24 Q OKAY, AND DID YOU -- HOW DID YOU GET INVOLVED IN THIS
25 CASE?

REGINALD PITMAS/DIRECT-MUNSON

109

1 A I HAPPENED TO SEE ON SUNDAY MORNING WHAT I THOUGHT AT
2 FIRST WAS A POCKETBOOK LYING IN THE MEDIAN OF MAULDIN ROAD.

3 Q OKAY. DO YOU REMEMBER THE DATE?

4 A IT WAS SUNDAY.

5 Q OKAY. DO YOU REMEMBER ABOUT WHAT TIME IT WAS?

6 A ABOUT 10:00 IN THE MORNING.

7 Q OKAY, BUT DO YOU REMEMBER THE DATE, LIKE AS TO THE
8 NUMBER?

9 A NO, I DON'T.

10 Q OKAY. DO YOU REMEMBER THE MONTH?

11 A MARCH.

12 Q OKAY. SO WHERE, AGAIN, DID YOU FIND WHAT YOU THOUGHT
13 WAS A PURSE?

14 A IT WAS IN THE MEDIAN ON MAULDIN ROAD. IT HAS -- IT'S
15 OLD MAULDIN ROAD. IT'S THE ONE THAT RUNS BY THE SEWER
16 TREATMENT PLANT. AND THEY HAVE A VERY WIDE DIVIDED MEDIAN
17 THERE, AND I SAW WHAT I ASSUMED, AT FIRST, WAS A PURSE. I
18 THOUGHT SOMEBODY HAD STUCK IT ON THEIR CAR OR SOMETHING, AND
19 HAD DRIVEN OFF FROM CHURCH, AND HAD DROPPED IT. SO I TURNED
20 AROUND IN THE PARKING LOT OF THE JOHN DEERE TRACTOR
21 DEALERSHIP THERE AND CAME BACK AND PICKED IT UP. AND WHEN I
22 OPENED THE DOOR OF THE CAR, I SAW THAT IT WAS A BANK BAG, AND
23 FLOPPED IT ON THE SEAT SINCE I WAS OVER PARKED IN THE MIDDLE
24 OF TRAFFIC, AND PULLED INTO THE PARKING LOT AGAIN TO OPEN IT
25 TO SEE WHO IT BELONGED TO BECAUSE IT HAD A LABEL THAT SAID

REGINALD PITMAS/DIRECT-MUNSON

110

1 "SAFE CHANGE." AND, AGAIN, I ASSUMED SOMEBODY HAD MADE A
2 DEPOSIT AND AGAIN JUST STUCK IT UP ON THEIR CAR, AND IT HAD
3 BLOWN OFF.

4 Q SO WHICH WAY WERE YOU HEADED UP MAULDIN ROAD?

5 A I WAS HEADED FROM MAULDIN TOWARD 85.

6 Q OKAY. AND AS YOU GOT THIS BANK BAG IN YOUR CAR, DID
7 YOU OPEN IT UP?

8 A NOT IN THE MIDDLE OF THE ROAD. I WAITED UNTIL I GOT IN
9 THE PARKING LOT. THE ONLY THING IT HAD ON IT WAS THE BANK'S
10 NAME, AND I FIGURED THAT INSIDE THERE WOULD PROBABLY BE
11 SOMETHING THAT WOULD TELL ME WHO IT BELONGED TO.

12 Q OKAY.

13 A WHEN I OPENED THE BAG, I LOOKED INSIDE AND THERE WERE A
14 BUNCH OF TORN-UP CHECKS, AND AT THAT POINT I DECIDED THAT
15 SOMEBODY HAD NOT LOST THE BAG. BUT I COULD READ ON ONE OF
16 THE CHECKS THAT IT WAS MADE OUT TO FUDDRUCKERS, SO I CALLED
17 THEM AND JUST ASKED IF THEY HAD LOST A BAG. AND THEY -- THE
18 INDIVIDUAL WHO I SPOKE TO, WHICH I DON'T REMEMBER AT THE
19 MOMENT, SAID, "JUST A MINUTE," AND SOMEONE CAME BACK ON THAT
20 IDENTIFIED THEMSELVES AS A MANAGER AND SAID THAT THEY HAD
21 BEEN ROBBED THE NIGHT BEFORE. AND I TOLD THEM WHO I WAS AND
22 THAT I HAD THE BAG. AND THEN THE NEXT DAY OFFICER KELLY CAME
23 BY THE SCHOOL AND PICKED IT UP.

24 Q OKAY. WHEN YOU OPENED UP THE BAG TO LOOK IN IT, DID
25 YOU SEE ANYTHING OTHER THAN TORN-UP CHECKS?

REGINALD PITMAS/DIRECT-MUNSON

111

1 A YES. THERE WAS A LARGE PLASTIC BAG THAT LOOKED LIKE IT
2 HAD SOME TYPE OF DEPOSIT PAPER OR SLIP OR SOMETHING ON IT.

3 Q . OKAY.

4 A BUT, AS I SAID, IT WAS THE -- THE CHECK THAT GAVE ME
5 THE NAME OF THE COMPANY, IT HAD "FUDDRUCKERS" ON IT.

6 Q OKAY, SO YOU FOUND THE BAG ON SUNDAY MORNING, AND WHEN
7 DID YOU CALL FUDDRUCKERS?

8 A THAT AFTERNOON.

9 Q OKAY.

10 A WELL, ACTUALLY AS SOON AS I GOT HOME.

11 Q OKAY. AND THEN WHAT DID YOU DO WITH THE BAG WHEN YOU
12 GOT HOME?

13 A WHEN I GOT HOME -- I WAS ON MY WAY TO ANDERSON. I
14 LOCKED THE BAG -- I DIDN'T TOUCH IT ANYMORE. I LEFT IT ON
15 THE FRONT SEAT OF THE CAR, AND LOCKED THE CAR. I GOT TO
16 SCHOOL THE NEXT DAY, AND, AGAIN, THAT'S WHEN OFFICER KELLY
17 PICKED IT UP.

18 Q OKAY.

19 A I HAD TO CATCH THE CORNER OF THE BAG TO MOVE IT JUST
20 ENOUGH SO I COULD SEE WHAT WAS IN THERE, AND THAT'S WHEN I
21 SAW THE CHECKS. I COULD -- I HAD SEEN THE CHECKS. I COULD
22 SEE THE NAME ON THE CHECK.

23 Q DID YOU TEAR UP ANY OF THE CHECKS?

24 A NO.

25 Q DID YOU CHANGE THE CONDITION OF ANYTHING THAT YOU FOUND

REGINALD PITMAS/DIRECT-MUNSON

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1 IN. THE BAG OR ON THE BAG?

2 A NO, NONE AT ALL.

3 Q YOU MIGHT WANT TO WEAR THESE.

4 A (PUT ON RUBBER GLOVE.)

5 Q ALL RIGHT, MR. PITMAS, I'M SHOWING YOU STATE'S EXHIBIT
6 NUMBER 1 FOR IDENTIFICATION PURPOSES ONLY. IF YOU CAN JUST
7 TAKE A LOOK AT THAT.

8 A YES, THAT LOOKS LIKE THE BAG.

9 Q OKAY.

10 Q IF YOU DON'T MIND OPENING IT UP?

11 A UH-HUH (COMPLIED). YES, THAT'S ABOUT THE WAY IT LOOKED
12 WHEN I GOT IT, AND EXCEPT THAT WAS CRAMMED IN THERE, TOO.

13 Q WHEN YOU SAY "THAT WAS CRAMMED IN THERE, TOO," ARE YOU
14 TALKING ABOUT STATE'S EXHIBIT NUMBER 2 FOR I.D. PURPOSES?

15 A YES.

16 Q OKAY. NOW DOES THIS, DID THIS TEAR, DID YOU CREATE THE
17 TEAR OR ANY OF THE TORN CHECKS?

18 A OH, NO.

19 Q AND WHERE EXACTLY WERE THE TORN-UP CHECKS AND THE
20 DEPOSIT SLIP?

21 A AS WELL AS I REMEMBER, SOME OF THE CHECKS WERE
22 SCATTERED AROUND IN THE BOTTOM OF THE BAG, AND THERE MAY HAVE
23 BEEN STILL A FEW FRAGMENTS LEFT IN THAT, BUT ON THAT I'M NOT
24 TERRIBLY SURE.

25 Q OKAY. THANK YOU. IF YOU WANT TO TAKE THE GLOVES OFF.

REGINALD PITMAS/CROSS-CRANE

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1 A OKAY. (COMPLIED.)

2 MS. MUNSON: I HAVE NOTHING FURTHER OF THIS
3 WITNESS, YOUR HONOR.

4 THE COURT: MR. ROLLINS.

5 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.

6 CROSS-EXAMINATION BY MR. ROLLINS:

7 Q MR. PITMAS, WHEN YOU WERE LEAVING OR GOING DOWN MAULDIN
8 ROAD, DO YOU LIVE IN THAT AREA?

9 A YES, WE HAVE AN APARTMENT IN SIMPSONVILLE. WE ARE
10 RESTORING A HOME IN ANDERSON, AND THAT'S WHERE I WAS HEADED.

11 Q SO YOU WERE COMING FROM MAULDIN TO HIT THE INTERSTATE,
12 IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q OKAY. AND YOU SAW THIS LYING IN THE MIDDLE OF THE
15 MEDIAN?

16 A YES, SIR.

17 Q A GRASS MEDIAN?

18 A NO, NO. IT'S ONE OF THE DIVIDED PAVEMENT WHERE IT'S
19 GOT THE YELLOW LINES.

20 Q OKAY, SO IT WAS JUST SITTING IN THE ROAD BASICALLY?

21 A YES, SIR.

22 Q OKAY. WHEN IT WAS SITTING IN THE ROAD, IT CAUGHT YOUR
23 ATTENTION, DID IT NOT?

24 A YES, SIR.

25 Q SO YOU DON'T KNOW WHO ELSE'S ATTENTION IT CAUGHT BEFORE

REGINALD PITMAS/CROSS-CRANE

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1 YOU GOT THERE, DO YOU?

2 A OH, NO.

3 Q AND THAT'S A PRETTY BUSY, TRAVELED ROAD, ISN'T IT?

4 A YES.

5 Q AND WHEN YOU GOT THERE, IT WAS JUST SITTING IN THE
6 MIDDLE OF THE ROAD, AND YOU SAW -- YOU, BEING A GOOD
7 SAMARITAN, THOUGHT SOMEBODY MAY HAVE LOST IT, IS THAT
8 CORRECT?

9 A THAT'S CORRECT.

10 Q SO WHEN YOU WENT BY THERE, YOU JUST STOPPED AND GOT OUT
11 OF YOUR CAR?

12 A NO. I TURNED AROUND IN THE -- IN OTHER WORDS, I WAS
13 BASICALLY PAST IT, OR BEFORE I REALIZED WHAT I THOUGHT IT
14 WAS.

15 Q YES, SIR.

16 A AND, SO, I TURNED AROUND. THERE'S A JOHN DEERE TRACTOR
17 DEALERSHIP THERE. I TURNED AROUND IN THAT PARKING LOT, CAME
18 BACK, HEADED TOWARD MAULDIN, AND THERE WAS ENOUGH SPACE WHERE
19 I COULD PULL OFF AND JUST OPEN MY DOOR, AND REACHED DOWN AND
20 GOT IT.

21 Q YOU JUST REACHED DOWN TO GET IT?

22 A YES.

23 Q OKAY, SO YOU DIDN'T GET OUT OF THE CAR?

24 A NO.

25 Q YOU PULLED UP AND GOT IT, OKAY. BUT WHEN YOU PICKED IT

REGINALD PITMAS/CROSS-CRANE

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1 UP, DID IT LOOK JUST LIKE THAT? ALL YOU SAW WAS A BLUE BAG,
2 RIGHT?

3 A WITH "SAFE CHANGE" WRITTEN ACROSS IT.

4 Q WHEN YOU TOOK THAT -- WHERE DID YOU TAKE THAT TO OPEN
5 IT UP AND LOOK IN IT?

6 A BACK TO THE JOHN DEERE TRACTOR DEALERSHIP.

7 Q SO YOU TURNED AROUND AGAIN?

8 A CORRECT.

9 Q TO GO BACK. AND WHEN YOU TURNED AROUND AGAIN AND WENT
10 BACK AND OPENED THIS BAG, I BELIEVE YOU SAID YOU LOOKED
11 THROUGH IT TO FIND OUT WHAT WAS GOING ON WITH IT?

12 A I OPENED IT UP TO SEE IF THERE WAS ANYTHING -- IT WAS
13 NOT MARKED ON THE INSIDE OF THIS, I MEAN, ON THE OUTSIDE AS
14 FAR AS THE COMPANY IS CONCERNED, OTHER THAN THE BANK; AND
15 WHEN I OPENED IT UP AND SAW THAT THERE WERE A BUNCH OF
16 TORN-UP CHECKS, I GOT THE IMPRESSION THAT IT WASN'T SOMETHING
17 THAT SOMEBODY HAD JUST LOST FROM BLOWING OFF THE TOP OF THEIR
18 CAR.

19 Q AND YOU HAD TO LOOK THROUGH THOSE CHECKS TO FIND OUT
20 SOME NAMES?

21 A SOME OF THEM WERE, THE CHUNKS WERE FAIRLY LARGE AND I
22 COULD READ "FUDDRUCKERS" ON IT, YOU KNOW, "PAY TO THE ORDER
23 OF," I COULD MAKE OUT "FUDDRUCKERS" ON ONE OF THOSE.

24 Q YOU HANDLED THIS PLASTIC BAG THAT YOU HANDLED TODAY, IS
25 THAT CORRECT?

REGINALD PITMAS/CROSS-CRANE

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1 A I MOVED THE PLASTIC BAG BY THE TOP-MOST CORNER USING
2 REALLY MOSTLY JUST MY FINGERNAILS ONCE I REALIZED THAT THERE
3 WERE TORN-UP CHECKS IN THERE, THAT THIS MIGHT BE SOMETHING
4 OTHER THAN SOMETHING THAT SOMEBODY HAD JUST LOST.

5 Q BUT THAT WAS AFTER YOU HAD HANDLED THE BAG?

6 A THE OUTSIDE, YES, SIR.

7 Q AND LOOKED THROUGH AS FAR AS THE CHECKS?

8 A NO. WHEN I OPENED THE -- THE BAG AND I SAW THAT THERE
9 WERE TORN-UP CHECKS ON THE INSIDE, I WAS EXTREMELY CAREFUL
10 THEN HOW I MOVED THE MUCH LARGER PLASTIC BAG SO I COULD GET
11 SOME TYPE OF ADDRESS OR POSSIBLY THE OWNER.

12 Q WAS THERE ANY CHANGE IN THAT BAG?

13 A IF THERE WAS, I WAS NOT AWARE OF IT.

14 Q AND THE POLICE CAME -- THIS WAS SUNDAY THAT YOU WERE
15 DOING ALL OF THAT, AND YOU CALLED THE POLICE SUNDAY?

16 A I CALLED FUDDRUCKERS SUNDAY.

17 Q FUDDRUCKERS SUNDAY?

18 A AND WHEN I SPOKE WITH THE INDIVIDUAL THERE, I ASKED
19 THEM IF THEY HAD LOST A BANK BAG, THAT I HAD FOUND IT. AND
20 THEN I THINK THEY PUT THE MANAGER ON, AND HE SAID THEY HAD
21 BEEN ROBBED THE NIGHT BEFORE. AND I SAID THAT I HAD THE BAG,
22 AND I FELT THEY CERTAINLY WOULD KNOW WHO THE INVESTIGATING
23 OFFICER WAS. I GOT TO SCHOOL MONDAY MORNING, AND OFFICER
24 KELLY CALLED ME THERE.

25 Q AND WHEN -- SO YOU HAD IT MONDAY?

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1 A HE CAME AND GOT IT MONDAY MORNING.

2 Q NOW DURING THE TIME THAT YOU WERE HANDLING ALL THIS,
3 THIS BAG DIDN'T HAVE ALL THIS FINGERPRINT POWDER ALL OVER IT,
4 DID IT?

5 A NO, SIR.

6 Q IT WAS JUST A CLEAN BAG?

7 A YES, SIR.

8 Q AND DURING THIS TIME, DID -- AFTER YOU GOT THROUGH, DID
9 THE POLICE FINGERPRINT YOU?

10 A NO, SIR.

11 Q OKAY. AND I BELIEVE YOU STATED THAT YOU DON'T KNOW HOW
12 IT GOT TO MAULDIN ROAD?

13 A NO, SIR.

14 Q OR HOW MANY PEOPLE HAD HANDLED IT BEFORE YOU PICKED IT
15 UP OUT OF THE ROAD AT 10:00 O'CLOCK ON SUNDAY MORNING?

16 A NO, SIR.

17 MR. ROLLINS: THANK YOU, SIR.

18 THE COURT: MR. CRANE.

19 MR. CRANE: NO QUESTIONS, YOUR HONOR.

20 MS. MUNSON: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: STEP DOWN.

22 MS. MUNSON: YOUR HONOR, WE ASK THAT THIS WITNESS
23 BE EXCUSED.

24 THE COURT: ANY OBJECTION TO EXCUSING THIS WITNESS?

25 MR. ROLLINS: NO OBJECTION.

1 MR. CRANE: NO OBJECTION.

2 THE COURT: ALL RIGHT, YOU WANT TO APPROACH,
3 COUNSEL, AND LET'S SEE ABOUT --

4 (BENCH CONFERENCE.)

5 THE COURT: ALL RIGHT, NOW, LADIES AND GENTLEMEN,
6 WE WILL SUSPEND AT THIS TIME AND WE'LL PICK BACK UP AT 2:15.
7 DURING THE LUNCH RECESS DO NOT TALK ABOUT THIS CASE AMONG
8 YOURSELVES OR WITH ANYONE ELSE. IF ANYBODY CONTACTS YOU AND
9 TRIES TO TALK TO YOU ABOUT THIS CASE, GET THEIR NAMES AND
10 ADDRESSES AND REPORT THAT TO ME.

11 NOW I'M GOING TO ASK THAT YOU, PLEASE, KEEP YOUR BADGES
12 ON DURING LUNCH. THIS IS FOR THE REASON THAT I WANT EVERYONE
13 INVOLVED IN THIS CASE TO KNOW THAT YOU ARE A JUROR ON THE
14 CASE AND THEY SHOULD NOT DISCUSS THIS CASE IN YOUR PRESENCE.
15 WITH THAT, PLEASE, BE BACK AT 2:15. THANK YOU.

16 (THE JURY EXITED THE COURTROOM AT
17 APPROXIMATELY 12:50 P.M.)

18 THE COURT: ALL RIGHT, SEE YOU BACK AFTER LUNCH.

19 (RECESS FROM APPROXIMATELY 12:51 P.M. UNTIL
20 APPROXIMATELY 2:23 P.M.)

21 THE COURT: READY TO PROCEED?

22 MS. MUNSON: YES, SIR. HE'S STILL NOT HERE, SO I'M
23 JUST GOING TO GO AHEAD AND MIX IT UP A LITTLE BIT.

24 THE COURT: ALL RIGHT, BRING THEM ON.

25 (THE JURY ENTERED THE COURTROOM AT APPROXIMATELY

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1 2:24 P.M.)

2 THE COURT: ALL RIGHT, SOLICITOR.

3 MS. MUNSON: PLEASE THE COURT, YOUR HONOR, THE
4 STATE CALLS MAT HUGHES.

5 THE CLERK: MR. HUGHES, COME AROUND, PLEASE, AND
6 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

7 MATTHEW R. HUGHES, FIRST BEING SWORN TO TELL
8 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
9 TESTIFIES AS FOLLOWS:

10 THE CLERK: STATE YOUR NAME?

11 THE WITNESS: MATTHEW HUGHES.

12 THE CLERK: THANK YOU. HAVE A SEAT.

13 DIRECT EXAMINATION BY MS. MUNSON:

14 Q MR. HUGHES, WHO DO YOU WORK FOR?

15 A I WORK FOR GREENVILLE COUNTY DEPARTMENT OF COMMUNITY
16 SERVICES IN THE FORENSICS DIVISION.

17 Q WHAT DO YOU DO IN THE FORENSICS DIVISION?

18 A I DO CRIME SCENE WORK, PROCESSING FOR LATENT
19 FINGERPRINTS, PHOTOGRAPHY, AND COLLECTION AND PRESERVATION OF
20 EVIDENCE.

21 Q OKAY, TELL THE JURY ABOUT THE TRAINING YOU GOT IN ORDER
22 TO BE AN EXAMINER AND FOR COLLECTING LATENT PRINTS.

23 A OKAY, I AM NOT A CERTIFIED LATENT EXAMINER.

24 Q OKAY.

25 A I DO THE CRIME SCENE PART. I HAVE BEEN TO VARIOUS

MATTHEW R. HUGHES/VOIR DIRE BY ROLLINS

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1 SCHOOLS PUT ON BY THE SOUTH CAROLINA CRIMINAL JUSTICE
2 ACADEMY, AND, ALSO, AN ON-THE-JOB TRAINING PROGRAM. I AM A
3 CERTIFIED LAW ENFORCEMENT OFFICER. I HAD THREE YEARS PRIOR
4 EXPERIENCE IN UNIFORM PATROL BEFORE I CAME TO WORK IN THE
5 FORENSICS DIVISION WHERE I HAVE BEEN FOR THE LAST FIVE YEARS.

6 Q OKAY. HOW MANY TIMES WOULD YOU SAY THAT YOU HAVE
7 ATTEMPTED TO COLLECT LATENT PRINTS?

8 A PROBABLY THOUSANDS.

9 Q OKAY. HOW MANY TIMES HAVE YOU TESTIFIED IN COURT AS AN
10 EXPERT IN COLLECTING LATENT PRINTS?

11 A I HAVE BEEN QUALIFIED AS AN EXPERT IN THE GREENVILLE
12 COUNTY COURT SYSTEM ON CRIME SCENE PROCESSING AND
13 INVESTIGATIONS.

14 MS. MUNSON: OKAY. YOUR HONOR, AT THIS TIME I
15 SUBMIT MR. HUGHES TO THE COURT AS AN EXPERT.

16 THE COURT: GENTLEMEN, ANY VOIR DIRE TOUCHING UPON
17 HIS EXPERTISE IN THIS AREA?

18 MR. ROLLINS: I DON'T BELIEVE SHE ASKED HIM HOW
19 MANY TIMES, YOUR HONOR.

20 VOIR DIRE EXAMINATION BY MR. ROLLINS:

21 Q HOW MANY TIMES?

22 A I WAS QUALIFIED AS AN EXPERT LAST MONTH. I HAVE
23 TESTIFIED IN GENERAL SESSIONS FEDERAL COURT PROBABLY 50, 60
24 TIMES.

25 MR. ROLLINS: AND AS I UNDERSTAND IT, YOUR HONOR,

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1 HE'S THE PERSON THAT DEVELOPED THE PRINTS, NOT EXAMINED THEM
2 BUT DEVELOPED THEM?

3 MS. MUNSON: THAT'S CORRECT.

4 THE WITNESS: EXACTLY:

5 MR. ROLLINS: THANK YOU, YOUR HONOR.

6 MR. CRANE: NO OBJECTION.

7 THE COURT: HE'S QUALIFIED.

8 CONTINUED DIRECT EXAMINATION BY MS. MUNSON:

9 Q ALL RIGHT, MR. HUGHES, DID YOU GET SOME EVIDENCE THAT
10 YOU HAD TRIED TO LIFT PRINTS FROM IN REFERENCE TO THIS CASE?

11 A YES, I DID.

12 Q OKAY, WHEN DID THAT HAPPEN?

13 A ON THE 13TH OF MAY I RECEIVED A PHONE CALL FROM OUR
14 PROPERTY AND EVIDENCE SECTION AT THE LAW ENFORCEMENT CENTER
15 ADVISING ME THAT OFFICER KELLY, OR I MEAN INVESTIGATOR KELLY
16 HAD BROUGHT SOME EVIDENCE IN THAT NEEDED TO BE PROCESSED FOR
17 LATENT FINGERPRINTS, AT WHICH TIME I RESPONDED DOWN TO OUR
18 LATENT SECTION AND RECEIVED THAT EVIDENCE BY SIGNING A
19 PROPERTY AND EVIDENCE SHEET TO MAINTAIN CUSTODY ON THE
20 EVIDENCE.

21 Q OKAY. ONCE YOU RECEIVED THE EVIDENCE FROM THE PROPERTY
22 AND EVIDENCE ROOM, WHAT DID YOU DO WITH IT?

23 A THAT EVIDENCE WAS TAKEN BACK TO OUR FORENSIC LAB WHERE
24 WE PROCESSED THAT EVIDENCE OR I PROCESSED THAT EVIDENCE FOR
25 FINGERPRINTS, LATENT FINGERPRINTS, AND DID OBTAIN SEVERAL

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1 LATENT LIFTS, LATENT FINGERPRINT LIFTS, WHICH WERE FORWARDED
2 TO OUR LATENT SECTION FOR EXAMINATION.

3 Q OKAY. MR. HUGHES, LET ME JUST ASK YOU -- (PAUSE) -- IF
4 YOU COULD TAKE A LOOK AT STATE'S EXHIBIT NUMBER 1 AND NUMBER
5 2 FOR IDENTIFICATION PURPOSES ONLY?

6 A (PAUSE, VIEWED.) OKAY.

7 (STATE'S EXHIBIT NUMBER 3, EVIDENCE BAG WITH
8 PROPERTY AND EVIDENCE SHEET, MARKED FOR IDENTIFICATION.)

9 Q AND IF YOU COULD ALSO LOOK AT STATE'S EXHIBIT NUMBER 3
10 FOR IDENTIFICATION PURPOSES ONLY?

11 A (PAUSE, VIEWED.) THIS IS THE PROPERTY AND EVIDENCE
12 SHEET WHICH I RECEIVED FROM PROPERTY AND EVIDENCE. THIS
13 SHEET IS SIGNED WITH MY NAME, AND IT HAS THAT THE ITEMS WERE
14 COLLECTED FOR PROCESSING ON 3/12 AT 12:00 IN THE AFTERNOON.
15 I RECEIVED THESE ITEMS TO BE PROCESSED FOR LATENT
16 FINGERPRINTS.

17 Q OKAY, AND WHAT IS THE CASE NUMBER ON THAT EVIDENCE --

18 A THE CASE NUMBER ON THIS EVIDENCE SHEET IS A SHERIFF'S
19 OFFICE CASE NUMBER 96-34820.

20 Q IS THAT NUMBER IMPORTANT IN YOUR JOB?

21 A YES, THAT IS. THAT IS THE WAY THAT WE TRACK ALL
22 EVIDENCE. IT IS FILED UNDER THAT CASE NUMBER.

23 Q OKAY. AND THE REST OF STATE'S EXHIBIT NUMBER 3 FOR
24 IDENTIFICATION PURPOSES, WHAT ELSE IS THERE?

25 A THIS IS A BAG THAT THE ITEMS THAT I COLLECTED WERE

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1 PLACED IN AFTER I FINISHED PROCESSING THEM. THIS IS MY
2 HANDWRITING ON THE BAG EXPLAINING WHAT IT IS; ALSO, MY
3 INITIALS ARE ON THE BOTTOM OF THE BAG EXPLAINING WHAT WAS IN
4 THE BAG.

5 Q OKAY. NOW IF YOU WOULD JUST TAKE A LOOK AT STATE'S
6 EXHIBIT NUMBER 1 FOR IDENTIFICATION PURPOSES. DO YOU
7 RECOGNIZE THAT?

8 A THIS IS, ALSO, A BANK BAG LABELED "SAFE CHANGE," WHICH
9 I RECEIVED FROM PROPERTY AND EVIDENCE. THE BANK BAG IS ALSO
10 MARKED WITH MY INITIALS, BEING THAT I HAD IT IN MY POSSESSION
11 AND I DID PROCESS IT FOR LATENT FINGERPRINTS.

12 Q OKAY. STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION
13 PURPOSE ONLY?

14 A STATE'S EXHIBIT NUMBER 2 IS A BANK BAG, A PLASTIC BANK
15 BAG, WHICH I DID ALSO PROCESS, LABEL WITH MY INITIALS DOWN AT
16 THE BOTTOM OF IT FOR IDENTIFICATION PURPOSES.

17 Q OKAY. WHEN YOU SAY YOU PROCESSED THESE ITEMS FOR
18 LATENT PRINTS --

19 A RIGHT.

20 Q -- TELL THE JURY EXACTLY WHAT YOU DID WITH THE BLUE
21 BANK BAG, STATE'S EXHIBIT NUMBER 1 FOR IDENTIFICATION
22 PURPOSES ONLY.

23 A OKAY. THE BAGS WERE PROCESSED WITH A CONVENTIONAL
24 METHOD OF PROCESSING. IT'S BASICALLY USING A BRUSH AND APPLY
25 A GRAPHITE-BASED POWDER TO THE SURFACES WHICH ADHERE'S WITH

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1 THE OILS WHICH ARE LEFT BEHIND BY THE FINGERS. AND THAT'S
2 THE DEVELOPMENT OF LATENT FINGERPRINTS. AT THAT TIME THE
3 LATENT FINGERPRINTS ARE LIFTED WITH A 3-M TYPE SCOTCH TAPE
4 WHICH IS CLEAR TAPE, AND PLACED ON A WHITE CARD TO BE SENT UP
5 TO OUR LATENT SECTION. ALSO, BEFORE I LIFTED THESE
6 FINGERPRINTS, I DID PHOTOGRAPH THESE FINGERPRINTS, ALSO USING
7 A PHOTOGRAPHY METHOD OF PHOTOGRAPHING THEM, AND SENT SOME
8 PHOTOGRAPHS OF THE LATENT FINGERPRINTS ALSO WITH THE LIFTED
9 LATENTS.

10 Q OKAY. WHY DID YOU PHOTOGRAPH THE LATENTS AFTER YOU HAD
11 LIFTED THEM?

12 A WELL, SURFACES LIKE THAT, I WANT TO MAKE SURE THAT
13 THEY'RE GOING TO COME OFF WELL. THEY WERE VERY VISIBLE ONCE
14 I APPLIED THE POWDER TO THEM. I PHOTOGRAPHED THEM BEFORE
15 LIFTING THEM. THAT WAY, IF THERE WAS ANY PROBLEM WITH
16 LIFTING THEM, OR IF THEY DIDN'T WANT TO COME OFF THE SURFACE
17 -- THE PLASTIC TEARS SOMETIMES -- JUST TO PREVENT LOSS OF
18 EVIDENCE, I DID PHOTOGRAPH THEM BEFORE I LIFTED THEM.

19 Q SO YOU -- JUST SO I HAVE THE TIME FRAME RIGHT, YOU PUT
20 THE POWDER ON AND THEN PHOTOGRAPHED?

21 A YES, THEY WERE PHOTOGRAPHED.

22 Q AND THEN TRIED TO LIFT THE PRINTS FROM THE SURFACE?

23 A YES, THEY WERE LIFTED FROM THE SURFACE.

24 Q OKAY. AS TO STATE'S EXHIBIT NUMBER 1 FOR

25 IDENTIFICATION PURPOSES ONLY, THE BLUE BAG, WERE YOU ABLE TO

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1 LIFT ANY PRINTS FROM THIS ITEM?

2 A NO PRINTS WERE TAKEN FROM THAT ITEM.

3 Q OKAY. WHAT ABOUT STATE'S EXHIBIT NUMBER 2 FOR
4 IDENTIFICATION PURPOSES ONLY?

5 A STATE'S EXHIBIT NUMBER 2 IS THE PLASTIC BAG; YES, I DID
6 OBTAIN SOME LATENT FINGERPRINTS OFF OF THAT BAG.

7 Q OKAY.

8 (STATE'S EXHIBIT NUMBER 4, FINGERPRINT CARDS,
9 MARKED FOR IDENTIFICATION.)

10 Q MR. HUGHES, I JUST HANDED YOU WHAT HAS BEEN MARKED FOR
11 IDENTIFICATION PURPOSES ONLY AS STATE'S EXHIBIT NUMBER 4.
12 WOULD YOU JUST TAKE A LOOK AT THAT. DO YOU RECOGNIZE THAT
13 EXHIBIT?

14 A YES. THIS IS A LATENT ENVELOPE FROM OUR OFFICE. THESE
15 ARE WHAT WE PUT OUR LATENT FINGERPRINTS IN. THEY ARE PUT IN
16 THESE ENVELOPES WITH CASE NUMBER, CASE NUMBER COINCIDING WITH
17 THE CASE NUMBER FROM THIS CASE. THESE ARE PLACED IN A LOCKED
18 BOX IN OUR OFFICE DOWNSTAIRS IN THE FORENSICS PART. THE KEYS
19 ONLY HAVE -- THE ONLY TWO PEOPLE HAVING KEYS ARE OUR TWO
20 LATENT EXAMINERS. EACH MORNING AT THE BEGINNING OF THE
21 MORNING THEY COME DOWN AND TAKE CUSTODY OF THESE AND TAKE
22 THEM UP TO THE LATENT SECTION.

23 Q OKAY. IF YOU WOULD LOOK INSIDE OF STATE'S EXHIBIT
24 NUMBER 4, DO RECOGNIZE WHAT'S IN THERE?

25 A THESE ARE THE LATENT LIFT CARDS AND THE PHOTOGRAPHS OF

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1 THE LATENTS.

2 Q THAT YOU DID IN REFERENCE TO THIS CASE?

3 A THAT I DID IN REFERENCE TO THIS. EACH ONE OF THEM IS
4 MARKED WITH THE CASE NUMBER, THE TYPE OF INCIDENT, WHERE I
5 LIFTED IT FROM, THE EXACT LOCATION IT CAME FROM OFF OF THE
6 ITEM, AND MARKED WITH MY INITIALS AND THE NUMBER OF LATENTS
7 THAT I HAVE.

8 Q OKAY. NOW IN REFERENCE TO THIS CASE -- AND STATE'S
9 EXHIBIT NUMBER 2 FOR IDENTIFICATION PURPOSE ONLY, I WILL LET
10 YOU LOOK AT IT AGAIN -- SHOW THE JURY FROM WHERE ON THIS
11 EXHIBIT WERE YOU ABLE TO LIFT LATENT PRINTS.

12 A THE LATENT FINGERPRINTS WERE LIFTED FROM THIS PART OF
13 THE BAG, WHICH I HAD TO CUT AWAY TO BE ABLE TO GET ACCESS TO
14 IT. IT BASICALLY FITS IN THIS AREA.

15 THIS TEAR WAS ALREADY IN THE BAG, AND BASICALLY I HAVE
16 JUST CUT ALONG THE SEAM HERE TO REMOVE THAT FROM THE BAG.
17 THE LATENT FINGERPRINTS I LIFTED ARE FROM THE INSIDE, AS IF
18 ONE WAS REACHING INSIDE AND TEARING OPEN THE BAG.

19 Q OKAY. NOW HOW MANY LATENT PRINTS DID YOU GET FROM THE
20 INSIDE OF STATE'S EXHIBIT NUMBER 2?

21 A (PAUSE, VIEWING.) FOUR.

22 Q OKAY, WITH -- AND GO AGAIN WITH THE JURY, HOW YOU WENT
23 ABOUT LIFTING THE PRINTS FROM THIS SURFACE.

24 A OKAY. THE SURFACE WAS PROCESSED WITH A GRAPHITE-BASED
25 POWDER, WHICH MAKES THE FINGERPRINTS VISIBLE, ADHERES TO THE

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1 OILS WHICH ARE LEFT BEHIND BY THE FINGERS, AT WHICH TIME I
2 DID TAKE SOME PHOTOGRAPHS OF THE LATENT FINGERPRINTS, AND
3 THEN APPLIED A TAPE TO THEM, A CLEAR SCOTCH TYPE TAPE,
4 REMOVING THE LATENTS. IT TAKES UP THE POWDER WHICH IS ON THE
5 SURFACE, AND PLACED THE POWDER ONTO THE WHITE CARDS.

6 Q OKAY.

7 A THIS IS BASICALLY WHAT IT LOOKS LIKE WHEN THAT'S DONE,
8 THIS BEING THE CLEAR TAPE AND THE POWDER UP UNDER THE TAPE.

9 Q WHAT DID YOU DO WITH THOSE WHITE CARDS AFTER YOU HAD
10 LIFTED LATENT PRINTS?

11 A OKAY. I FILLED OUT THE APPROPRIATE INFORMATION ON THE
12 BACK OF THE CARDS. THEN THESE WERE PLACED INTO THE LOCK BOX
13 IN OUR FORENSICS DIVISION. I ACTUALLY PROCESSED THESE ITEMS
14 AT ABOUT 2:00 IN THE MORNING. I WAS ON THIRD SHIFT AT THE
15 TIME. THEY WERE PLACED IN THE LOCK BOX, AT WHICH TIME THE
16 NEXT MORNING, OR MONDAY MORNING -- I DON'T KNOW EXACTLY WHAT
17 DATE IT WAS, WHAT DAY OF THE WEEK IT WAS -- ONE OF OUR LATENT
18 EXAMINERS WOULD HAVE PICKED THESE UP EITHER THE FOLLOWING
19 MORNING OR ON MONDAY MORNING.

20 Q OKAY. WHAT INFORMATION IS ON THE FRONT OF STATE'S
21 EXHIBIT NUMBER 4?

22 A IT BASICALLY STATES THE VICTIM, THE VICTIM'S ADDRESS,
23 WHERE I ACTUALLY TOOK MY ACTIONS AT, BEING THE LAW
24 ENFORCEMENT CENTER WHERE I PROCESSED THE STUFF AT. IT STATES
25 THE TYPE OF CRIME, AND HAS THE CASE NUMBER, THE INVESTIGATOR

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1 BEING INVESTIGATOR KELLY, AND MY NAME; AND I, ALSO, HAD A
2 TRAINEE WITH ME, AND HIS NAME IS ALSO ON THE LATENT ENVELOPE.

3 MS. MUNSON: OKAY. I HAVE NOTHING FURTHER FROM
4 THIS WITNESS AT THIS TIME, YOUR HONOR.

5 THE COURT: MR. ROLLINS.

6 MR. ROLLINS: PLEASE THE COURT, YOUR HONOR.

7 CROSS-EXAMINATION BY MR. ROLLINS:

8 Q MR. HUGHES, I BELIEVE YOU SAID THAT YOU DID NOT LIFT
9 ANY PRINTS FROM THE OUTSIDE OF THIS BAG?

10 A NOT FROM THE OUTSIDE OF THAT BAG, NO, I DID NOT.

11 Q THAT WOULD BE STATE'S EXHIBIT NUMBER 1?

12 A THAT'S CORRECT.

13 Q DID YOU TRY TO?

14 A YES, I DID.

15 Q YOU JUST WEREN'T SUCCESSFUL?

16 A I WAS NOT SUCCESSFUL.

17 Q DID YOU FIND ANY SMUDGES AT ALL?

18 A THERE WAS NO USEFUL LATENTS LIFTED FROM THAT. AS FAR
19 AS SMUDGES, I DON'T LIFT SMUDGES.

20 Q OKAY. YOU SAW WHAT APPEARED TO BE FINGERPRINTS; IT WAS
21 JUST FINGERPRINTS YOU COULDN'T READ, IS THAT CORRECT?

22 A THERE -- I COULD SEE SOME AREAS THAT APPEARED TO HAVE
23 BEEN HANDLED, BUT NOTHING THAT WAS USABLE.

24 Q OKAY. AND AS A MATTER OF FACT, I THINK IT WAS KIND OF
25 LIKE, YOU CAN KIND OF SEE IT'S STILL GOT A LITTLE BIT OF THAT

MATTHEW R. HUGHES/CROSS-ROLLINS

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1 POWDER ON IT, DOES IT NOT?

2 A YOU CAN SEE THE RESIDUE OF POWDER ON IT.

3 Q OKAY. AND YOU WOULDN'T LIFT WHAT WE'RE TALKING ABOUT
4 FINGERPRINTS UNLESS YOU COULD ACTUALLY READ THE FINGERPRINT,
5 CORRECT?

6 A WE WOULD LIFT A LATENT THAT APPEARED TO BE A USABLE
7 LATENT, YES.

8 Q OKAY. IF IT WAS JUST A SMUDGE, YOU WOULDN'T EVEN
9 BOTHER?

10 A WELL, I MAY LOOK AT IT AND PLACE IT ON A WHITE CARD,
11 AND THEN YOU CAN USUALLY SEE MORE ABOUT IT BECAUSE OF THE
12 CONTRAST.

13 Q OKAY. YOU DIDN'T EXAMINE THESE FINGERPRINTS?

14 A NO, I AM NOT A LATENT EXAMINER.

15 Q YOU JUST PULL THEM?

16 A I JUST LIFT THEM.

17 Q OKAY. AND DID YOU GO TALK WITH ANYBODY ELSE THAT MIGHT
18 HAVE HANDLED THIS BAG?

19 A THAT IS NOT MY RESPONSIBILITY. I JUST PROCESS THE
20 ITEMS AS THEY COME INTO THE OFFICE.

21 Q THAT THEY GAVE TO YOU?

22 A EXACTLY.

23 Q AND YOU DON'T COMPARE THEM WITH ANYTHING?

24 A NO, I DO NOT COMPARE THEM.

25 Q NOW ARE THERE OTHER WAYS THAT YOU TRIED TO LIFT

MATTHEW R. HUGHES/CROSS-ROLLINS

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1 ANYTHING OFF THE TORN CHECKS ON THE INSIDE?

2 A YES. I USED A CHEMICAL CALLED NINHYDRON ON THOSE.

3 THERE WAS NO LATENTS THAT WE WERE -- I FORWARDED THE CHECKS

4 -- OUR LATENT SECTION LOOKED AT THE CHECKS AND THERE WAS NO

5 USABLE LATENTS ON THOSE CHECKS THAT THEY COULD USE.

6 Q HAD MARKS, BUT NOTHING THEY COULD LIFT?

7 A EXACTLY.

8 Q AND YOU LIFTED, I BELIEVE, FOUR?

9 A I LIFTED ACTUALLY FIVE LATENT FINGERPRINTS, BUT FOUR OF
10 THEM WERE ON THE INSIDE OF THE BAG.

11 Q WHERE WAS THE FIFTH ONE?

12 A IT WAS FROM THE EXTERIOR.

13 Q OF THE PLASTIC BAG?

14 A OF THE PLASTIC BAG.

15 Q AND YOU ARE NOT A CERTIFIED EXAMINER. YOU ARE JUST A
16 LIFTER -- I MEAN, EXCUSE ME, A PROCESSOR?

17 A I AM NOT A LATENT EXAMINER, YES.

18 Q OKAY.

19 A I CAN EXAMINE LATENTS, BUT I AM NOT A QUALIFIED LATENT
20 EXAMINER FOR COURT PURPOSES.

21 MR. ROLLINS: OKAY, THANK YOU.

22 MS. MUNSON: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: MR. CRANE.

24 MS. MUNSON: OH, I'M SORRY.

25 MR. CRANE: PLEASE THE COURT.

MATTHEW R. HUGHES/CROSS-CRANE

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1 CROSS-EXAMINATION BY MR. CRANE:

2 Q MR. HUGHES, DID YOU NUMBER YOUR LATENT LIFTS?

3 A YES.

4 Q HOW ARE THEY NUMBERED?

5 A THEY ARE NUMBERED SUCH AS ONE OF FIVE, TWO OF FIVE,
6 THREE OF FIVE, FOUR OF FIVE, FIVE OF FIVE.

7 Q IS THERE A FIVE-A?

8 A THERE COULD BE. THE PHOTOGRAPHY PART MAY BE LISTED AS
9 "A." I WOULD HAVE TO LOOK AT IT. USUALLY WHEN THERE IS A
10 "A" OR A "B," THAT IS USUALLY A SECOND LIFT OF ANOTHER
11 LATENT.

12 Q (PAUSE, VIEWING CARDS.) WOULD THE PHOTOGRAPHS HAVE A
13 DIFFERENT NUMBER THAN THE --

14 A THE PHOTOGRAPHS MAY BE CONSIDERED AS "A" AND "B," OR
15 "A," LIKE 1-A, 2-A, 3-A, BECAUSE THEY ARE PHOTOGRAPHS OF THE
16 SAME THING THAT IS THE LIFT.

17 Q (PAUSE, VIEWING CARDS.) IN LOOKING AT THIS SHEET OF
18 PAPER, WHICH IS NOT YOUR WORK --

19 A OKAY.

20 Q -- ALL RIGHT, CAN YOU FIND THE APPROPRIATE LIFTS FOR
21 THESE NUMBERS HERE FOR ME?

22 A (PAUSE, VIEWED CARDS.) OKAY, HERE IS NUMBER ONE.

23 Q OKAY.

24 A AND THIS, ALSO, GOES TO NUMBER ONE.

25 Q OKAY.

MATTHEW R. HUGHES/CROSS-CRANE

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- 1 A (PAUSE, VIEWING CARDS.) THIS IS 5-A.
- 2 Q OKAY..
- 3 A RIGHT HERE. AND NUMBER THREE. AND THIS IS LATENT LIFT
- 4 NUMBER THREE.
- 5 Q SO THERE'S ACTUALLY SIX LIFTS?
- 6 A THERE ARE SIX LIFTS. 5 AND 5-A ARE LIFTS OF THE SAME
- 7 FINGERPRINT.
- 8 Q OKAY.
- 9 A I WOULDN'T NUMBER IT AS 6; THEN IT WOULD SAY THAT I
- 10 LIFTED SIX LATENTS FROM IT INSTEAD OF ONLY FIVE.
- 11 Q OKAY. AND WHAT DID YOU SAY ABOUT GETTING PRINTS OFF OF
- 12 THE OUTSIDE?
- 13 A THE OUTSIDE OF WHAT?
- 14 Q THE BAG.
- 15 A I WAS NOT ABLE TO OBTAIN ANY USABLE LATENTS FROM THE
- 16 OUTSIDE OF THE BAG.
- 17 Q WHAT ABOUT THE OUTSIDE OF THE PLASTIC BAG?
- 18 A THERE WAS ONE LATENT LIFTED FROM THE OUTSIDE OF THE
- 19 PLASTIC BAG.
- 20 Q ALL RIGHTY, AND IN ALL OF THESE LITTLE PIECES OF PAPER
- 21 IN THERE THERE WAS NOTHING THAT YOU COULD LIFT OFF OF ANY OF
- 22 THAT?
- 23 A THERE WAS NOTHING THAT WAS USABLE OFF OF THE PIECES OF
- 24 PAPER. (PAUSE.) THEY WERE ALL PROCESSED.
- 25 Q WERE THERE ANY PRINTS -- DOES IT APPEAR THAT THIS BAG

MATTHEW R. HUGHES/CROSS-CRANE

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1 WAS TORN LIKE THIS SOMEHOW?

2 A THE BAG WAS TORN PRIOR TO ME RECEIVING THE BAG. THE
3 ONLY "ALTERCATIONS" I MADE TO THE BAG WAS THAT AS I SPLIT IT
4 ALONG THE SEAM, AND THIS AREA ENABLED ME TO REMOVE THIS PART
5 SO THAT I COULD -- THE LATENT THAT I OBTAINED ON THE BACK OF
6 THIS PIECE WOULD BE MORE ACCESSIBLE TO ME FOR LIFT PURPOSES.

7 Q ALL RIGHT, AND SO YOU SAY THE BACK, THAT'S THIS PIECE
8 TORN, IT WAS CONNECTED LIKE THAT WHEN YOU GOT THE BAG?

9 A IT WAS CONNECTED LIKE THAT WHEN I GOT THE BAG.

10 Q DID YOU FIND ANY PRINTS ON ANYTHING ELSE?

11 A THERE WAS ONE LATENT LIFT LIFTED OFF THE OUTSIDE OF THE
12 BAG.

13 MR. CRANE: THANK YOU, SIR.

14 MS. MUNSON: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: STEP DOWN.

16 MS. MUNSON: YOUR HONOR, MAY THIS WITNESS BE
17 EXCUSED?

18 THE COURT: ANY OBJECTION TO EXCUSING THIS WITNESS?

19 MR. ROLLINS: NO, SIR.

20 MR. CRANE: NO, SIR.

21 THE COURT: HE'S EXCUSED.

22 MS. MUNSON: AT THIS TIME THE STATE CALLS LT.
23 KELLETT.

24 JACKIE F. KELLETT, FIRST BEING SWORN TO TELL
25 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,

JACKIE F. KELLETT/DIRECT-MUNSON.

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1 TESTIFIES AS FOLLOWS:

2 THE CLERK: STATE YOUR NAME.

3 THE WITNESS: JACKIE F. KELLETT.

4 THE CLERK: THANK YOU. HAVE A SEAT.

5 DIRECT EXAMINATION BY MS. MUNSON:

6 Q LT. KELLETT, WHO DO YOU WORK FOR?

7 A I'M EMPLOYED BY THE GREENVILLE COUNTY DEPARTMENT OF
8 COMMUNITY SERVICES, AND I'M ASSIGNED TO THE FORENSIC
9 DIVISION.

10 Q WHAT ARE YOUR DUTIES IN THE FORENSIC DIVISION?

11 A I'M A LIEUTENANT IN CHARGE OF THE IDENTIFICATION IN THE
12 LATENT FINGERPRINT SECTION.

13 Q OKAY. HOW LONG HAVE YOU BEEN IN THE LATENT SECTION OF
14 GREENVILLE COUNTY?

15 A I'VE BEEN EMPLOYED WITH THE LATENT SECTION SINCE 1982.

16 Q ALL RIGHT. TELL THE JURY ABOUT YOUR TRAINING TO BECOME
17 A LATENT FINGERPRINT EXAMINER.

18 A I HAVE ATTENDED THE 40 HOURS OF TRAINING BY THE SOUTH
19 CAROLINA CRIMINAL JUSTICE ACADEMY IN COLUMBIA IN BASIC
20 FINGERPRINT EXAMINATION. I'VE ALSO RECEIVED ANOTHER 40 HOURS
21 OF TRAINING OF ADVANCED LATENT FINGERPRINT EXAMINATION GIVEN
22 BY THE F.B.I. ACADEMY. I'VE, ALSO, ATTENDED A THREE-WEEK
23 COURSE IN ADMINISTRATIVE ADVANCED LATENT FINGERPRINT TRAINING
24 ADMINISTERED BY -- I ATTENDED THE F.B.I. ACADEMY IN QUANTICO,
25 VIRGINIA. AND THEN I'VE, ALSO, HAD JUST A LOT OF ON-THE-JOB

JACKIE F. KELLETT/DIRECT-MUNSON

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1 EXPERIENCE IN LOOKING AT LATENT PRINTS DAY AFTER DAY.

2 Q OKAY. ABOUT HOW MANY TIMES WOULD YOU SAY THAT YOU HAVE
3 EXAMINED LATENT PRINTS?

4 A I HAVE LOOKED AT HUNDREDS OF THOUSANDS OF THEM.

5 Q OKAY. HOW MANY TIMES HAVE YOU TESTIFIED IN COURT AS A
6 LATENT FINGERPRINT EXAMINER?

7 A I'VE BEEN CERTIFIED AND TESTIFIED AS AN EXPERT IN BOTH
8 FEDERAL, STATE, AND LOCAL COURTS PROBABLY 25 TO 50 TIMES.

9 MS. MUNSON: OKAY. YOUR HONOR, AT THIS TIME WE
10 OFFER LT. KELLETT AS AN EXPERT IN THE EXAMINATION OF LATENT
11 FINGERPRINTS.

12 MR. ROLLINS: NO OBJECTION, YOUR HONOR.

13 MR. CRANE: NO OBJECTION, JUDGE.

14 THE COURT: SHE'S QUALIFIED. PROCEED.

15 MS. MUNSON: THANK YOU.

16 Q LT. KELLETT, I HAND YOU STATE'S EXHIBIT NUMBER 4 FOR
17 IDENTIFICATION PURPOSES ONLY. CAN YOU TAKE A LOOK AT THAT?

18 A (PAUSE, VIEWED.) YES.

19 Q DO YOU RECOGNIZE IT?

20 A YES. THESE ARE THE LATENT PRINTS THAT WERE LIFTED BY
21 SERGEANT HUGHES REFERENCE AN ARMED ROBBERY AT FUDDRUCKERS.
22 EVERY TIME THEY LIFT LATENT PRINTS, AN ENVELOPE LIKE THIS IS
23 FILLED OUT AND PLACED IN A LOCK BOX DOWNSTAIRS IN THE CRIME
24 SCENE SECTION, AND MYSELF AND SERGEANT WILKERSON ARE THE ONLY
25 ONES THAT HAVE KEYS TO THIS BOX. THESE PRINTS ARE PICKED UP

JACKIE F. KELLETT/DIRECT-MUNSON

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1 BY US EVERY MORNING AT THE BEGINNING OF THE SHIFT.

2 Q OKAY. IS THERE ANYTHING ON STATE'S EXHIBIT NUMBER 4 TO
3 INDICATE THAT YOU HAVE HANDLED IT?

4 A YES. THE PRINTS WERE ORIGINALLY PICKED UP, RECEIVED BY
5 SERGEANT WILKERSON ON THE MORNING OF 3/14/96, AND THEN LATER
6 THAT DAY -- WELL, I HAD MATCHED THESE PRINTS TO A SUSPECT IN
7 THE CASE ON 3/20/96, AND MY INITIALS ARE ACROSS THE TOP OF
8 THE LATENT.

9 Q OKAY. FIRST OF ALL, LT. KELLETT, LET ME JUST GET THAT
10 FROM YOU. PLEASE, EXPLAIN TO THE JURY EXACTLY WHAT A LATENT
11 PRINT IS.

12 A ALL RIGHT. A LATENT PRINT IS MUCH LIKE A LITTLE KID'S
13 STAMP. YOU KNOW HOW YOU TAKE A STAMP, THE RAISED PORTION,
14 AND YOU STICK IT IN INK, AND WHEN YOU PUT IT DOWN ON
15 SOMETHING, IT LEAVES AN IMPRESSION BEHIND. WELL, YOUR
16 FINGERS DO THE SAME THING. WHENEVER YOU TOUCH SOMETHING --
17 EVERYBODY -- YOU CAN LOOK AT YOUR OWN FINGERS AND SEE THE
18 RIDGES. THAT'S WHAT THE OILS, THE HAND, COME OUT OF THE TINY
19 RIDGES ON THE TOP, AND WHEN YOU TOUCH SOMETHING LIKE THAT,
20 YOU LEAVE THAT IMPRESSION BEHIND. IT'S JUST LIKE YOU'RE
21 TAKING A LITTLE STAMP AND PUTTING YOUR FINGERS UP THERE.
22 WELL, THAT'S WHAT WE CALL A LATENT PRINT. MOST LATENT PRINTS
23 ARE HIDDEN PRINTS. YOU CANNOT SEE THEM WITH THE NAKED EYE,
24 AND THEY HAVE TO BE DEVELOPED THROUGH THE USE OF FINGERPRINT
25 POWDERS OR CHEMICALS. WE HAVE A LASER THAT WE USE SOMETIMES.

JACKIE F. KELLETT/DIRECT-MUNSON

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1 THERE'S A LOT OF THINGS THAT YOU USE. SO WE USE THESE
2 CHEMICALS. AND IN THIS CASE SERGEANT HUGHES USED FINGERPRINT
3 POWDER, BASIC FINGERPRINT POWDER; AND ONCE YOU DUST THE
4 POWDER ON THERE, IT CLINGS TO THE OIL OF THE LITTLE STAMP
5 THAT'S LEFT BEHIND BY YOUR FINGERS AND IT MAKES THAT
6 IMPRESSION, AND THEN YOU JUST TAKE THE LIFT TAPE, PLACE IT ON
7 TOP OF THE LATENT PRINTS, AND YOU RUB IT WITH YOUR FINGERNAIL
8 AND YOU CAN PICK IT UP, AND THERE'S YOUR PRINT. AND IT'S
9 JUST TRANSFERRED TO A WHITE CARD TO MAKE IT MORE VISIBLE,
10 LIKE I SAID, TO HELP THE CONTRAST OF IT. AND THAT'S WHAT WE
11 CALL A LATENT PRINT. IT'S A HIDDEN PRINT THAT'S DEVELOPED.

12 Q AND YOU DID RECEIVE THIS FROM SERGEANT HUGHES IN
13 REFERENCE TO LATENT PRINTS IN THIS CASE?

14 A THAT'S CORRECT.

15 Q OKAY. WHAT DID YOU DO ONCE YOU RECEIVED THESE CARDS,
16 STATE'S EXHIBIT NUMBER 4, FOR IDENTIFICATION PURPOSES?

17 A WELL, I HAD A KNOWN SUSPECT THAT WAS PROVIDED TO ME BY
18 INVESTIGATOR KELLY, DOUG KELLY WITH THE SHERIFF'S OFFICE; AND
19 UPON EXAMINING THE KNOWN PRINTS OF THIS SUSPECT AGAINST THE
20 LATENT PRINTS THAT WERE LIFTED AT THE SCENE, I WAS ABLE TO
21 EFFECT AN IDENTIFICATION IN THIS CASE.

22 Q OKAY. HOW DO YOU KNOW, HOW DO YOU GO ABOUT EXAMINING A
23 PRINT AND SEEING WHETHER IT MATCHES, WHETHER A LATENT PRINT
24 MATCHES A KNOWN PRINT?

25 A THE FIRST THING YOU DO IS YOU TAKE THE LATENT PRINT AND

JACKIE F. KELLETT/DIRECT-MUNSON

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1 YOU TRY TO LOOK AT IT TO SEE IF YOU CAN DETERMINE A PATTERN
2 TYPE, WHAT TYPE PRINT THIS LATENT MIGHT BE. THERE'S THREE
3 BASIC PATTERN TYPES THAT EVERYBODY HAS. THERE'S LOOPS,
4 WHIRLS, AND ARCHES. NOW SOME PEOPLE CAN BE ALL LOOPS, AND
5 SOME CAN BE ALL WHIRLS, OR YOU CAN HAVE A COMBINATION OF ONE
6 OR TWO OR ALL THREE. SO THE FIRST THING I DO IS LOOK AND SEE
7 WHAT PATTERN TYPE THAT MY LATENT PRINT IS.

8 IN THIS CASE, THE LATENT PRINTS THAT WE HAD WERE A LOOP
9 PATTERN TYPE, OKAY. THEN I LOOKED AT THE KNOWN FINGERPRINT
10 CARD OF THE PERSON THAT I WAS CHECKING AND SEE IF I HAVE A
11 SIMILAR PATTERN, LIKE IN THIS PERSON'S HANDS, IN THEIR
12 FINGERS; AND IN THIS CASE, I DID.

13 ONCE YOU DETERMINE THAT YOU HAVE A SIMILAR PATTERN TYPE,
14 THEN IT'S JUST A MATTER OF PICKING OUT INDIVIDUAL POINTS AND
15 START LOOKING FOR THEM. AND THEN ONCE YOU FIND THEM, YOU
16 JUST START, YOU KNOW, COUNTING OVER ONE MORE, ONE MORE, ONE
17 MORE, ONE MORE, UNTIL YOU MAKE AN IDENTIFICATION.

18 I HAVE A CHART PREPARED OF THE MATCH THAT I MADE IF YOU
19 WOULD LIKE TO SHOW THE JURY.

20 Q LET'S DO THAT.

21 A AND EXPLAIN TO THEM HOW WE DO THIS. MAY I APPROACH THE
22 JURY?

23 THE COURT: YES.

24 Q LET ME ASK YOU ONE QUESTION, LT. KELLETT, BEFORE YOU
25 START THAT. WHEN YOU SAY THAT YOU START LOOKING FOR POINTS,

JACKIE F. KELLETT/DIRECT-MUNSON

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1 WHAT DO YOU MEAN, WHAT POINTS?

2 A WELL, THERE'S A LOT OF DIFFERENT THINGS THAT WE USE TO
3 MAKE AN IDENTIFICATION. THESE BLACK LINES THAT YOU SEE HERE,
4 THOSE ARE CALLED THE RIDGES. OKAY, YOU CAN LOOK AT YOUR OWN
5 FINGERS, AND THE LITTLE LINES THAT YOU SEE THERE, THOSE ARE
6 THE RIDGES OFF YOUR HANDS, OKAY.

7 NOW TO GET AN INK PRINT LIKE THIS, THIS INK PRINT, THIS
8 IS WHEN THE PERSON WAS FINGERPRINTED, AND THE FINGER IS JUST
9 ROLLED AND FINGERPRINTED, AND THEN IT'S TRANSFERRED TO THE
10 FINGERPRINT CARD, AND THAT'S WHAT WE CALL AN INK PRINT, OKAY.
11 AND THEN THE LATENT PRINT IS THE ONE ON TOP. THIS IS THE ONE
12 LIFTED FROM THE CRIME SCENE.

13 ALL RIGHT, NOW THE LITTLE RIDGES THAT YOU HAVE HERE,
14 THERE ARE CERTAIN THINGS THAT MAKE THEM UNIQUE. YOU KNOW,
15 YOU TWO LADIES COULD BOTH HAVE THE SAME TYPE LOOPS, BUT YOUR
16 LITTLE POINTS ARE GOING TO BE DIFFERENT. EVERY SINGLE
17 PERSON. NO TWO PEOPLE HAVE THE SAME POINTS OF IDENTIFICATION
18 THAT ARE GOING TO BE IN THE SAME EXACT PLACE. SO WHAT YOU
19 LOOK FOR, WHEN TWO RIDGES COME TOGETHER AND THEY CONVERGE AND
20 MAKE ONE, WE CALL THAT A BIFURCATION. THAT'S A POINT THAT WE
21 LOOK FOR, AN IDENTIFICATION. IF A RIDGE JUST COMES UP AND
22 STOPS, IF IT RUNS OUT OF SPACE AND IT STOPS, WE CALL THAT A
23 RIDGE ENDING. THAT'S ANOTHER POINT THAT WE LOOK FOR. SO
24 THAT IS WHAT I DO WHEN I START TO DO THIS. IF YOU'LL LOOK,
25 POINT NUMBER ONE, THIS IS POINT NUMBER ONE IN THE LATENT

JACKIE F. KELLETT/DIRECT-MUNSON

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1 PRINT THAT WAS LIFTED, IT'S WHAT WE CALL A BIFURCATION. TWO
2 RIDGES HAVE COME TOGETHER AND MADE ONE, OKAY. SEE HOW THIS
3 KIND OF LOOPS DOWN AND MAKES LIKE A LITTLE MOON LIKE THING AT
4 THE TOP. THE RIDGES COME TOGETHER AND MAKE ONE. SO POINT
5 NUMBER ONE IN THE INK IS THE SAME AS POINT NUMBER ONE IN THE
6 LATENT. ALL RIGHT, IF YOU GO OVER AND YOU SKIP AND YOU GO
7 ONE, TWO, WE HAVE WHAT WE CALL AN ENDING RIDGE; SO YOU SKIP A
8 RIDGE THERE, GO UP SLIGHTLY TO THE LEFT, AND THERE'S ANOTHER
9 MINI RIDGE HERE, RIGHT. NOW IF YOU START FROM THERE AT POINT
10 NUMBER TWO, AND YOU COUNT OVER FROM THE BOTTOM OF THIS LITTLE
11 ONE -- REMEMBER TALKING ABOUT THE LITTLE TOP OF THE MOON --
12 YOU COME AROUND AND THAT'S WHAT WE CALL ANOTHER BIFURCATION,
13 THE TWO RIDGES THAT COME TOGETHER AND THEY HAVE MADE ONE, SO
14 THAT'S ANOTHER POINT OF IDENTIFICATION. ALL RIGHT, IF YOU
15 COUNT UP FROM THERE, AND GO UP DIRECTLY STRAIGHT, WE HAVE
16 ANOTHER BIFURCATION, THE TWO RIDGES COMING TOGETHER; THAT'S
17 POINT NUMBER 4. AND I JUST CONTINUE IN THIS MANNER UNTIL I
18 AM SATISFIED BEYOND ANY DOUBT WHATSOEVER THAT THESE TWO
19 PRINTS WERE MADE, YOU KNOW, THIS LATENT PRINT WAS MADE BY
20 THIS PERSON.

21 NOW I HAVE EIGHT POINTS CHARTED HERE. BUT I, ALSO, HAVE
22 FIVE MORE PLOTTED UP THERE THAT I JUST DIDN'T DRAW THE LINES
23 IN BECAUSE IT MAKES THE CHART LOOK MESSY. WE LIKE TO BALANCE
24 EVERYTHING OUT. BUT ONCE YOU DO THAT, IT'S JUST A MATTER OF
25 COUNTING THE RIDGES OVER AND BEING SURE THAT EVERYTHING IS

JACKIE F. KELLETT/DIRECT-MUNSON

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1 WHERE IT SHOULD BE. YOU KNOW, IF YOU CAN'T FIND SOMETHING
2 HERE THAT OUGHT TO BE THERE, IT'S NOT A MATCH. JUST ONE
3 LITTLE POINT IS ENOUGH, THAT'S IT, NO MATCH. BUT THERE WAS
4 NOTHING IN THE LATENT PRINT THAT I COULD NOT FIND IN THE INK
5 PRINT.

6 Q OKAY.

7 A SO IN ALL, I HAVE EIGHT, NINE, TEN, THERE'S THIRTEEN
8 POINTS I HAVE CHARTED ON HERE, AND I COULD HAVE DRAWN SOME
9 MORE; BUT THERE ARE TOO MANY THERE.

10 Q OKAY, THANK YOU. LT. KELLETT, HOW WAS THIS CHART
11 PREPARED?

12 A I PREPARED THIS IN MY OFFICE. WE JUST PUT THE LATENT
13 PRINT UNDER A CAMERA AND TAKE A PICTURE OF IT AND PUT THE INK
14 PRINT UNDER THE CAMERA AND TAKE A PICTURE OF IT, AND JUST
15 ENLARGE IT ONE TIME, AND THEN YOU JUST CUT IT OUT AND GLUE IT
16 ON THE CHART, AND PUT YOUR NUMBERS, AND YOU'RE READY.

17 Q OKAY. THIS PHOTOGRAPH THAT'S BLOWN UP OF THIS LATENT
18 PRINT, WHICH ONE OF THESE IS ON THE CHART?

19 A THAT IS LATENT LIFT NUMBER THREE. IN ALL, I MATCHED
20 FOUR PRINTS TO THE SUSPECT IN THE CASE. THIS IS LATENT LIFT
21 NUMBER THREE. IT CAME OFF THE INSIDE OF THE TORN PLASTIC
22 BANK BAG. AND THIS IS JUST A PHOTOGRAPH OF THAT SAME LATENT.
23 FINGER NUMBER THREE IS THE RIGHT MIDDLE FINGER ON A PERSON.

24 Q OKAY. NOW YOU SAY THAT YOU HAVE CHARTED EIGHT POINTS,
25 AND THAT THERE ARE SEVERAL MORE THAT YOU HAVE DOTTED ON HERE,

JACKIE F. KELLETT/DIRECT-MUNSON

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1 FIVE MORE, AND YOU COULD HAVE KEPT GOING?

2 A YES, THAT'S CORRECT.

3 Q HOW MANY POINTS DO YOU NEED BEFORE YOU CAN RENDER YOUR
4 EXPERT OPINION THAT THE LATENT PRINT IS THE SAME PRINT AS THE
5 KNOWN PRINT?

6 A THERE IS NO MAGIC NUMBER THAT, YOU KNOW, THE F.B.I. HAS
7 COME OUT WITH, OR ANYTHING THAT SAYS YOU MUST HAVE "X" NUMBER
8 OF POINTS TO EFFECT AN IDENTIFICATION. IT'S NORMALLY LEFT UP
9 TO THE LATENT PRINT EXAMINER AND THE POLICY OF THAT
10 DEPARTMENT. I AM VERY COMFORTABLE GOING, YOU KNOW, FROM TEN
11 TO TWELVE POINTS TO MAKE AN IDENTIFICATION. LIKE I SAID, I
12 HAVE WHAT, THIRTEEN? THIRTEEN THERE MARKED ON THERE, AND
13 THEN THERE IS PROBABLY ANOTHER FIVE OR SIX MORE, SO YOU'RE
14 LOOKING AT, YOU KNOW, CLOSE TO TWENTY POINTS ON THAT ONE,
15 WHICH LEAVES NO DOUBT IN MY MIND WHATSOEVER, YOU KNOW, WHO
16 THAT PRINT BELONGS TO.

17 OUR LATENTS ARE ALSO -- ONCE I MAKE A MARCH IT IS
18 CONFIRMED BY THE OTHER LATENT EXAMINER, SO THERE'S NOT JUST
19 ONE PERSON LOOKING AT IT. IN THIS CASE IT WAS CONFIRMED BY
20 SERGEANT WILKERSON.

21 MS. MUNSON: OKAY. I WANT TO HAVE THIS MARKED.

22 (STATE'S EXHIBIT NUMBER 5, LATENT CHART,
23 MARKED FOR IDENTIFICATION.)

24 Q OKAY, NOW, LT. KELLETT, YOU SAID YOU MADE FOUR MATCHES
25 FROM THE CARDS THAT YOU GOT?

JACKIE F. KELLETT/DIRECT-MUNSON

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1 A THAT IS CORRECT.

2 Q OKAY, AND IN LOOKING AT STATE'S EXHIBIT NUMBER 4 FOR
3 IDENTIFICATION PURPOSES, PLEASE, TELL THE JURY WHICH FINGERS
4 AND WHICH OF THOSE MATCHED?

5 A THE FIRST ONE THAT I HAVE MATCHED, WHICH IS THE ONE I
6 MADE THE CHART OF, IS FINGER NUMBER THREE, ALL RIGHT; WHICH
7 SAID THAT IS THE RIGHT MIDDLE FINGER, OKAY. AND THAT WAS
8 LATENT LIFT NUMBER THREE. AND IT CAME OFF THE INSIDE OF THE
9 TORN PLASTIC BANK BAG.

10 ALL RIGHT, ANOTHER LATENT THAT I MATCHED IS LATENT
11 NUMBER FIVE-A, AND IT IS THE NUMBER SEVEN-FINGER WHICH IS THE
12 LEFT INDEX FINGER; AND THAT, ALSO, CAME OFF THE INSIDE OF THE
13 TORN PLASTIC BANK BAG.

14 ANOTHER LATENT THAT I MATCHED IS LATENT LIFT NUMBER ONE,
15 AND THAT IS ALSO THE NUMBER-THREE FINGER WHICH IS THE RIGHT
16 MIDDLE FINGER. THAT CAME OFF THE INSIDE OF THE TORN PLASTIC
17 BANK BAG.

18 AND THEN THE LAST ONE THAT I MATCHED IS A PHOTOGRAPH OF
19 LATENT LIFT NUMBER TWO, WHICH IS THIS ONE RIGHT HERE. AND IT
20 IS THE NUMBER-THREE FINGER, WHICH IS ALSO THE RIGHT MIDDLE
21 FINGER, AND IT CAME OFF THE INSIDE OF THE TORN PLASTIC BANK
22 BAG.

23 THERE WAS ONE LATENT LIFT THAT I COULD NOT MAKE AN
24 IDENTIFICATION OF, AND IT'S LATENT LIFT NUMBER FOUR.

25 Q OKAY.

JACKIE F. KELLETT/CROSS-ROLLINS

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1 A AND IT CAME OFF THE EXTERIOR OF THE PLASTIC BANK BAG.

2 Q OKAY. DO YOU HAVE AN EXPERT OPINION AS TO WHOM THE
3 LATENT PRINTS WERE THAT WERE RECOVERED FROM THE INSIDE OF THE
4 BANK BAG?

5 A YES, MA'AM. THE PRINTS THAT WERE LEFT BEHIND ON THOSE
6 BANK BAGS WERE MADE BY STANLEY LOUIS BUTLER.

7 Q OKAY, LT. KELLETT, WHAT IS THE POSSIBILITY IN YOUR
8 EXPERT OPINION BASED ON YOUR TRAINING THAT THOSE PRINTS COULD
9 BELONG TO ANYONE ELSE, ANYONE ELSE OTHER THAN STANLEY LOUIS
10 BUTLER?

11 A THERE IS NO POSSIBILITY.

12 MS. MUNSON: I HAVE NOTHING FURTHER, YOUR HONOR.

13 THE COURT: ALL RIGHT, MR. ROLLINS.

14 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.

15 **CROSS-EXAMINATION BY MR. ROLLINS:**

16 Q OFFICER KELLETT, THE STATE'S EXHIBIT NUMBER FIVE THAT
17 HAS BEEN MARKED FOR IDENTIFICATION, I BELIEVE YOU SAID THAT
18 YOU WERE -- I SHOW YOU -- I BELIEVE YOU SAID THAT YOU WERE
19 MATCHING POINTS ON THESE PARTICULAR THINGS, IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q AND THIS INKED PHOTO -- THIS PHOTOGRAPH OF THIS INKED
22 PRINT DOWN AT THE BOTTOM, THAT'S ONE THAT'S OFF OF THE
23 FINGERPRINT CARD, IS THAT CORRECT?

24 A YES.

25 Q AND THAT WAS TAKEN UNDER IDEAL CONDITIONS, RIGHT?

JACKIE F. KELLETT/CROSS-ROLLINS

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- 1 A YES.
- 2 Q AND YOU CAN SEE NEARLY ALL OF THAT FINGERPRINT?
- 3 A THAT'S CORRECT.
- 4 Q AND THE PARTICULAR FINGERPRINT THAT YOU HAVE THE LATENT
- 5 ON, WE'RE ONLY SEEING ABOUT HOW MUCH OF THAT? ABOUT HALF?
- 6 A PROBABLY HALF.
- 7 Q PROBABLY HALF?
- 8 A UH-HUH (NODDED HER HEAD).
- 9 Q AND I BELIEVE THE HALF WOULD BE THE?
- 10 A THE TOP HALF.
- 11 Q THE TOP HALF. SO WHEN WE'RE TALKING -- SO THAT'S ABOUT
- 12 WHERE THE BOTTOM OF IT RUNS, IS THAT CORRECT?
- 13 A THAT'S CORRECT.
- 14 Q AND WE DON'T HAVE NECESSARILY THIS QUADRANT HERE?
- 15 A NO.
- 16 Q SO WE'RE TALKING ABOUT ONLY A FOURTH OF IT MAYBE?
- 17 A WELL, -- (PAUSE) --
- 18 Q HALF TO A FOURTH?
- 19 A I WOULD LEAN MORE TOWARDS HALF, IF IT WERE ME.
- 20 Q OKAY. AND WHEN YOU'RE MATCHING THESE POINTS, YOU HEAR
- 21 PEOPLE SAY THERE ARE NO TWO FINGERPRINTS ARE ALIKE, DON'T
- 22 YOU?
- 23 A THAT'S CORRECT.
- 24 Q AND MOST OF THEM AREN'T. THERE MAY BE SOME DUPLICATION
- 25 AFTER A BILLION PEOPLE, MIGHT THERE?

JACKIE F. KELLETT/CROSS-ROLLINS

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1 A NO, SIR, THERE IS NOT.

2 Q THERE IS NOT? IN YOUR OPINION, THERE'S NO --

3 A NO TWO PRINTS HAVE EVER BEEN FOUND TO BE THE SAME.

4 Q OKAY. AND WHAT YOU'RE BASING YOUR OPINION HERE ON IS A
5 WHOLE FINGER PRINT, RIGHT? IS THAT CORRECT?

6 A NO.

7 Q YOU'RE BASING IT ON HALF A FINGERPRINT, AREN'T YOU?

8 A WELL, THE THING IS, MOST LATENT PRINTS, I WOULD SAY 75
9 PERCENT OF THE TIME WHEN YOU LIFT A LATENT PRINT, YOU ARE
10 ONLY GETTING A PARTIAL PRINT. MOST PEOPLE THAT I KNOW, YOU
11 KNOW, WHEN THEY'RE TOUCHING THINGS, OR TEARING THINGS OPEN,
12 OR THROWING THINGS DOWN, THEY'RE NOT PUTTING THEIR FINGERS
13 DOWN NICE AND NEAT FOR YOU AND MAKING A NICE LITTLE NEAT
14 STAMP LIKE YOU GET UNDER, AS YOU SAY, IDEAL CONDITIONS. THAT
15 IS VERY RARE, INDEED, TO BE ABLE TO GET A LATENT PRINT OF
16 THAT QUALITY. YOU JUST DON'T SEE THAT VERY MUCH, UNLESS THE
17 PERSON JUST ABSOLUTELY PICKED THE GLASS OUT OF THE WINDOW
18 VERY CAREFULLY AND PUT IT RIGHT BACK DOWN FOR YOU AND NEVER
19 MOVED HIS HANDS. LATENT PRINTS, WHEN THEY'RE DONE LIKE THIS,
20 PEOPLE ARE TEARING, RIPPING, AND SMUDGING, AND SMEARING, SO
21 THAT'S WHY YOU ONLY GET A SMALL PORTION.

22 Q RIGHT. BUT IF YOU HAD THE WHOLE PORTION, YOU COULD SAY
23 BEYOND ANY DOUBT?

24 A NO, I CAN SAY BEYOND ANY DOUBT THAT THAT PRINT WAS MADE
25 BY STANLEY LOUIS BUTLER.

JACKIE F. KELLETT/CROSS-ROLLINS

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1 Q BUT YOU DON'T KNOW WHAT'S RIGHT HERE, DO YOU?

2 A NO, SIR, I DON'T SEE THAT PART, BUT I DON'T NEED TO.

3 Q WELL, LET'S JUST SAY FOR ARGUMENT THERE WAS A SCAR
4 HERE, AND THERE WASN'T A SCAR HERE, --

5 A THAT WOULD --

6 Q -- THAT WOULD BE TWO DIFFERENT PEOPLE, WOULDN'T IT?

7 A THAT COULD NOT. THAT COULD MEAN THAT MR. BUTLER
8 SCARRED HIS FINGER AT A LATER DATE FROM WHEN HE WAS
9 ORIGINALLY PRINTED. SAY HE WAS NOT PRINTED UNTIL 1990, AND
10 EVERYTHING WAS FINE WITH HIS FINGERS. AND IN 1994, HE CUT
11 HIS FINGERS, OKAY, AND HE LEFT A BAD SCAR: WE DON'T HAVE A
12 FINGERPRINT CARD WITH THAT BAD SCAR THERE.

13 Q LET'S SAY THOUGH THERE IS A SCAR HERE, AND MR. BUTLER
14 DIDN'T CUT HIS FINGER. WOULD THAT BE SOMEBODY ELSE'S
15 FINGERPRINT?

16 A NO, SIR, NOT FROM THE POINTS THAT I HAVE CHARTED THERE,
17 THERE'S NO WAY.

18 Q SO YOU'RE SAYING THAT EVEN THOUGH THIS FINGERPRINT THAT
19 WE HAVE ON THIS BAG, EVEN THOUGH IF IT WAS FOUND LATER TO BE
20 DISSIMILAR BELOW THAT HALF, YOU'RE STILL SAYING IT'S STANLEY
21 BUTLER'S FINGERPRINT?

22 A IT WOULD NOT BE DISSIMILAR, NO, SIR.

23 Q HOW DO YOU KNOW THAT?

24 A I KNOW BECAUSE THERE'S ENOUGH POINTS THERE THAT I KNOW
25 THAT THAT COULD NOT BE MADE BY ANYONE OTHER THAN STANLEY

JACKIE F. KELLETT/CROSS-ROLLINS

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1 BUTLER.

2 Q BUT YOU'RE ONLY SEEING HALF A PRINT?

3 A IT DOESN'T MATTER.

4 THE COURT: ALL RIGHT, THAT HAS BEEN ASKED AND
5 ANSWERED, MR. ROLLINS, SEVERAL TIMES.

6 MR. ROLLINS: YES, SIR.

7 Q DID YOU EVER DO ANYBODY ELSE'S FINGERPRINTS COMPARING
8 THEIR FINGERPRINTS WITH THESE?

9 A WE CHECKED SEVERAL PEOPLE ON THIS CASE. I HAVE ALSO
10 CHECKED -- WOULD YOU LIKE THEIR NAMES?

11 Q THAT'LL BE FINE. DO YOU HAVE THEIR NAMES?

12 A YES, SIR. THERE WERE SOME LATENTS LIFTED FROM THE
13 ORIGINAL CRIME SCENE AT FUDDRUCKERS ON THE DATE OF THE ARMED
14 ROBBERY. WE CHECKED SHANNON R. TODD. THEY WERE NOT MADE BY
15 HIM. WE CHECKED --

16 Q MR. TODD, THAT'S THE SHANNON R. TODD THAT'S IN THE
17 COURTROOM TODAY?

18 A YES, SIR. WE CHECKED TWO DIFFERENT GARNEL STRICKLANDS.
19 THE PRINTS WERE NOT MADE BY THIS PERSON. WE CHECKED GERMANE
20 MCCULLOUGH. THE PRINTS WERE NOT MADE BY GERMANE. WE CHECKED
21 LINDA MICHAELove, I BELIEVE, WHO WAS ONE OF THE VICTIMS AT
22 THE CRIME SCENE. THE PRINTS WERE NOT MADE BY HER. WE
23 CHECKED AUSTIN T. PERRY. THE PRINTS WERE NOT MADE BY HIM.
24 AND WE, ALSO, CHECKED STANLEY L. BUTLER ON THESE, OKAY. AND
25 THESE PRINTS THAT WERE LIFTED AT THE ORIGINAL CRIME SCENE

JACKIE F. KELLETT/CROSS-ROLLINS

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1 WERE NOT MADE BY ANY OF THOSE PEOPLE.

2 THESE PRINTS THAT WERE LIFTED AT FUDDRUCKERS AT THE
3 ORIGINAL CRIME SCENE, CAME OFF -- ALL OF THEM CAME OFF OF THE
4 FRONT OF THE VACUUM CLEANER THAT WAS LOCATED NEAR THE SAFE.
5 I DON'T KNOW IF THAT COULD POSSIBLY HAVE BEEN MOVED BY
6 SOMEONE, OR TOUCHED, OR HANDLED, BUT THOSE WERE THE ONLY
7 PRINTS THAT CAME FROM FUDDRUCKERS.

8 WE ALSO RAN THESE PRINTS ON THE AFFES SYSTEM, THE AFFES
9 COMPUTER SYSTEM, AND DID NOT GET A MATCH. SO THEY COULD BE
10 MADE BY ANY OTHER EMPLOYEE THAT WORKED THERE, OR SOMEBODY
11 THAT MAYBE HANDLED THE VACUUM CLEANER AT SOME POINT IN TIME.

12 ON THE PRINTS AT FUDDRUCKERS THAT SERGEANT HUGHES GOT
13 OFF THE BAG, WE CHECKED --

14 Q WE'RE TALKING ABOUT THE BAG NOW?

15 A YES, RIGHT, THE PLASTIC BAG THERE. OF ALL THE LIFTS
16 THAT WERE OBTAINED THERE, FOUR OF THE FIVE WERE MADE BY MR.
17 BUTLER. THE ONE REMAINING LIFT CAME OFF THE EXTERIOR OF THE
18 PLASTIC BAG, AND IT IS UNIDENTIFIABLE. THERE'S NOT ENOUGH
19 POINTS HERE TO EFFECT AN IDENTIFICATION. AND IT WOULDN'T
20 MATTER HOW MANY PEOPLE I LOOKED AT, I DON'T HAVE ENOUGH
21 POINTS TO SAY DEFINITELY YES OR NO THAT THIS IS THAT PERSON.

22 Q OKAY. DID YOU COMPARE ANY FINGERPRINTS WITH REGINAD
23 PITMAS?

24 A NO, SIR, I DID NOT.

25 Q SO YOU DIDN'T COMPARE ANY OF HIS. DID YOU -- THIS BAG

JACKIE F. KELLETT/CROSS-ROLLINS

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1 THAT WE'RE TALKING ABOUT THAT YOU ARE SO SURE OF MR. BUTLER'S
2 FINGERPRINTS ARE ON, YOU DON'T KNOW HOW THOSE FINGERPRINTS
3 GOT THERE, DO YOU?

4 A HE HAD TO HAVE TOUCHED THE BAG.

5 Q BUT, I MEAN, YOU DON'T KNOW WHERE, DO YOU?

6 A NO, SIR, I DON'T KNOW AT WHAT POINT IN TIME HE TOUCHED
7 IT, NO.

8 Q YOU DON'T KNOW WHETHER HE TOUCHED THAT BAG ON MAULDIN
9 ROAD?

10 A NO, SIR, I DO NOT.

11 Q AND THERE IS NO WAY FOR YOU TO GIVE A TIME, IS THERE?

12 A NO, SIR, THERE IS NOT.

13 Q AS FAR AS ANY FINGERPRINTS OF MR. BUTLER INSIDE
14 FUDDRUCKERS ITSELF, THERE WERE NONE RECOVERED, WERE THERE?

15 A THAT'S CORRECT.

16 Q AS A MATTER OF FACT, I BELIEVE YOU SAID YOU COULD
17 EXCLUDE HIM FROM THE FINGERPRINTS ON THE VACUUM CLEANER?

18 A THAT'S CORRECT, THOSE PRINTS WERE NOT HIS.

19 Q AND YOU DIDN'T COMPARE ANYTHING ON THE CHECKS, THAT'S
20 CORRECT?

21 A THERE WAS NOTHING THERE THAT WAS USABLE.

22 Q ALL YOU COMPARED WAS WHAT WAS PRESENTED TO YOU?

23 A THAT'S CORRECT.

24 MR. ROLLINS: THANK YOU.

25 THE COURT: MR. CRANE, ANY QUESTIONS?

JACKIE F. KELLETT/CROSS-CRANE

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1 MR. CRANE: JUST ONE OR TWO, JUDGE.

2 CROSS-EXAMINATION BY MR. CRANE:

3 Q SERGEANT KELLETT --

4 A LIEUTENANT.

5 Q WONDERFUL.

6 A YOU ALWAYS DO THAT.

7 Q WONDERFUL. LIEUTENANT. THE NEXT TRIAL I'LL CALL YOU
8 CAPTAIN, OKAY?

9 A OKAY, THAT'D BE GOOD.

10 Q OF ALL OF THE PRINTS THAT WERE LIFTED AND COULD BE
11 COMPARED WITH SOMEBODY ELSE, THERE WAS ONLY FOUR THAT YOU
12 WERE ABLE TO MATCH UP, AND THOSE WERE MATCHED, ACCORDING TO
13 YOU, TO STANLEY BUTLER?

14 A THAT'S CORRECT.

15 Q WAS THERE INFORMATION THAT ONE OF THE TWO PEOPLE HAD
16 HANDLED THE VACUUM THAT YOU TALKED ABOUT?

17 A YOU KNOW, I'M SURE FOR THE PRINTS TO BE INCLUDED IN THE
18 ENVELOPE THAT SOMEONE MUST HAVE SUSPECTED THAT THE VACUUM HAD
19 EITHER BEEN POSSIBLY MOVED OR TOUCHED BY ONE OR MORE OF THE
20 SUSPECTS. I DON'T THINK THEY WOULD PUT THEM IN THERE IF THEY
21 DIDN'T HAVE ANY BEARING ON THE CASE.

22 Q YOU, ON DIRECT EXAMINATION, STARTED TALKING ABOUT ALL
23 OF THESE OTHER WONDERFUL PROCEDURES THAT YOU CAN USE TO TAKE
24 PRINTS. DID YOU TRY ANY OF THOSE ON ANY OF THE CHECKS?

25 A THAT WAS SERGEANT HUGHES' RESPONSIBILITY, AND I THINK

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1 HE SAID HE USED NINHYDRON, WHICH IF YOU DON'T GET ANYTHING
2 OFF NINHYDRON. OFF OF CHECKS, YOU'RE NOT GOING TO GET
3 ANYTHING.

4 Q ALL RIGHT, AND ALL OF THE PRINTS AND WHAT I WILL CALL
5 PHYSICAL EVIDENCE FROM THE CRIME SCENE THAT YOU INVESTIGATED,
6 IS THERE ANYTHING THAT LINKS SHANNON TODD TO THAT OFFENSE?

7 A THERE WERE NO LATENTS MATCHED TO MR. TODD.

8 MR. CRANE: THANK YOU, MA'AM.

9 THE COURT: STEP DOWN.

10 THE WITNESS: MAY I BE EXCUSED, SIR?

11 THE COURT: ANY OBJECTION TO EXCUSING THE
12 LIEUTENANT?

13 MR. ROLLINS: NO OBJECTION, YOUR HONOR.

14 THE COURT: THANK YOU.

15 MS. MUNSON: YOUR HONOR, AT THIS TIME, THE STATE
16 CALLS DOUG KELLY.

17 DOUG KELLY, FIRST BEING SWORN TO TELL THE
18 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIES
19 AS FOLLOWS:

20 THE CLERK: STATE YOUR NAME.

21 THE WITNESS: DOUG KELLY.

22 THE CLERK: THANK YOU. HAVE A SEAT, PLEASE.

23 DIRECT EXAMINATION BY MS. MUNSON:

24 Q MR. KELLEY, WHO DO YOU WORK FOR?

25 A THE GREENVILLE COUNTY SHERIFF'S DEPARTMENT.

DOUG KELLY/DIRECT-MUNSON

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1 Q AND WHAT IS YOUR RANK?

2 A I'M AN INVESTIGATOR AND MASTER DEPUTY.

3 Q AND WHAT ARE YOUR DUTIES AS AN INVESTIGATOR AND MASTER
4 DEPUTY?

5 A AT PRESENT I'M ATTACHED TO THE SOUTHERN AREA COMMAND OF
6 THE SHERIFF'S OFFICE. MY PRIMARY CONCERN IS IN THE AREA OF
7 ARMED ROBBERIES.

8 Q AND WERE YOU WORKING FOR THE SHERIFF'S OFFICE AS AN
9 INVESTIGATOR IN MARCH OF '96?

10 A I WAS.

11 Q AND WERE YOU ASSIGNED THE CASE AT FUDDRUCKERS?

12 A I WAS.

13 Q CAN YOU TELL THE JURY WHAT THE CASE NUMBER WAS THAT WAS
14 ASSIGNED TO THE FUDDRUCKERS CASE?

15 A OKAY, I WAS ASSIGNED CASE NUMBER 96-34820.

16 Q OKAY. WHEN WAS THE FIRST TIME THAT YOU BECAME INVOLVED
17 IN THIS CASE?

18 A ON MARCH THE 11TH, WHICH WOULD HAVE BEEN A MONDAY, THE
19 REPORT WAS ASSIGNED TO ME AND THAT'S WHEN I FIRST GOT STARTED
20 ON IT.

21 Q OKAY, WHEN YOU FIRST GOT THE CASE ASSIGNED TO YOU WHAT
22 WAS THE FIRST THING THAT YOU DID?

23 A THE FIRST THING I DID WAS CONTACT THE MANAGERS OR THE
24 OWNERS OF FUDDRUCKERS AND SET UP A TIME WHERE I COULD COME
25 OUT AND TALK WITH THEM ABOUT THE SITUATION.

DOUG KELLY/DIRECT-MUNSON

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1 Q OKAY, AND IN DOING YOUR INVESTIGATION, WHAT IS IT
2 EXACTLY THAT YOU'RE LOOKING FOR?

3 A WELL, WE GO BACK AND TALK TO EACH WITNESS OR VICTIM
4 THAT WAS INVOLVED IN IT AND WE TRY TO REBUILD THE CASE AS
5 THEY REMEMBER IT, AND THEN FROM THERE WE TRY TO DEVELOP A
6 SUSPECT IN THE MATTER AND EVENTUALLY MAKE AN ARREST.

7 Q OKAY, AND DID YOU EVENTUALLY DEVELOP ANY SUSPECTS IN
8 THIS CASE?

9 A I DID.

10 Q WHO ARE THE SUSPECTS YOU DEVELOPED IN THIS CASE?

11 A THE SUSPECTS WE DEVELOPED IN THIS CASE WAS SHANNON
12 RODRIGUEZ TODD AND AUSTIN PERRY AND STANLEY LOUIS BUTLER.

13 Q OKAY. DID YOU EVER TALK WITH AUSTIN PERRY?

14 A I DID.

15 Q WHEN DID YOU TALK WITH HIM FIRST?

16 A THE FIRST TIME I HAD ANY CONTACT WITH AUSTIN PERRY WAS
17 ON MARCH THE -- I BELIEVE IT WAS ON MARCH THE 13TH.

18 Q OKAY, HOW DID YOU MAKE CONTACT WITH HIM?

19 A AUSTIN WAS AN EMPLOYEE OF FUDDRUCKERS, AND I WAS IN THE
20 PROCESS OF CONTACTING MOST OF THE EMPLOYEES THERE FOR THE
21 PURPOSE OF DOING SOME BACKGROUND INVESTIGATION, AND I CALLED
22 AUSTIN AT HIS HOME.

23 Q OKAY, AND DID HE COME IN AND SPEAK WITH YOU?

24 A HE DID. HE CAME IN ON THE 14TH.

25 Q DID HE COME IN WHEN YOU CALLED HIM?

DOUG KELLY/DIRECT-MUNSON

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1 A YES, MA'AM.

2 Q OKAY, WHERE DID HE SPEAK WITH YOU?

3 A HE CAME TO MY OFFICE AND -- SOMETIME THAT MORNING ON
4 THE 14TH OF MARCH.

5 Q DO YOU KNOW IF ANYONE WAS WITH HIM?

6 A AT THAT TIME, NO, HE WAS ALONE. HE WAS BY HIMSELF.

7 Q OKAY. DID YOU READ HIM HIS RIGHTS?

8 A I DID.

9 Q ALL RIGHT, AND DID YOU TELL HIM THAT YOU WANTED TALK TO
10 HIM ABOUT THIS CASE?

11 A I DID.

12 Q WHAT DID YOU SAY TO HIM?

13 A BASICALLY THAT, YOU KNOW, I INTRODUCED MYSELF AGAIN AS
14 TO WHO I WAS AND WHAT I WAS DOING, AS FAR AS INVESTIGATING
15 THE ARMED ROBBERY THAT TOOK PLACE. AND THEN I HAD DEVELOPED
16 SOME INFORMATION THAT AUSTIN MAY HAVE KNOWN WHAT HAPPENED.
17 AND, OF COURSE, I HAD ALREADY READ HIM HIS RIGHTS AT THAT
18 TIME, AND OBTAINED A SIGNED WAIVER OF RIGHTS FORM.

19 WHEN I ADVISED MR. PERRY THAT THE INFORMATION I GOT WAS
20 THAT HE MAY KNOW OR HAVE SOME INFORMATION INVOLVING THE ARMED
21 ROBBERY, HE SAID HE WOULD BE MORE THAN HAPPY TO TALK WITH ME
22 ABOUT THE SITUATION ITSELF.

23 Q OKAY, AND DID YOU QUESTION HIM ABOUT WHETHER OR NOT HE
24 KNEW ABOUT THE ROBBERY OR COMMITTED THE ROBBERY?

25 A AT FIRST, I DID.

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1 Q OKAY, AND HOW DID HE RESPOND?

2 A FIRST HE GAVE ME A STORY THAT I WAS ABLE TO LEAVE THE
3 ROOM BRIEFLY AND GO AND CHECK ON. WE FOUND OUT THAT WAS NOT
4 SO, AND THEN WE WENT BACK IN TO TALK WITH HIM AND TOLD HIM
5 THAT WE HAD TALKED TO CERTAIN PEOPLE, OR I HAD TALKED TO
6 CERTAIN PEOPLE, THE ONES THAT HE SAID HE HAD BEEN WITH ON THE
7 NIGHT THAT THIS HAD HAPPENED, AND HE THEN STATED THAT HE WAS
8 INVOLVED IN IT AND HE WANTED TALK TO ME FURTHER ABOUT IT.

9 Q OKAY. AFTER YOU CAME BACK IN THE ROOM AND TOLD HIM
10 THAT YOU HAD CHECKED ON HIS STORY, HOW LONG AFTER THAT DID HE
11 START TO COOPERATE?

12 A JUST WITHIN A MINUTE.

13 Q OKAY.

14 A YOU KNOW, JUST AS SOON AS I CAME BACK AND ADVISED HIM
15 THAT THE STORY HE HAD TOLD ME WASN'T PANNING OUT, THAT SOME
16 OF THE PEOPLE THAT HE SAID HE WAS WITH COULDN'T CONFIRM IT.
17 HE THEN, YOU KNOW, AND, AGAIN, IT WAS JUST MINUTES, HE SAID,
18 "I'M GOING TO TELL YOU THE TRUTH. I WAS INVOLVED IN IT."

19 Q OKAY. WHAT DID YOU TELL HIM UP TO THAT POINT IN ORDER
20 TO GET HIS COOPERATION?

21 A THAT I HAD SOME INFORMATION THAT HE MAY HAVE MADE A
22 STATEMENT THAT THE FUDDRUCKERS WAS GOING TO BE ROBBED AND
23 THAT HE WAS GOING TO BE A PART OF IT.

24 Q OKAY, WHAT DID YOU OFFER HIM?

25 A I DIDN'T OFFER HIM ANYTHING.

DOUG KELLY/DIRECT-MUNSON

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1 Q OKAY, AND DID YOU THREATEN HIM AT ALL IN ORDER TO GET
2 HIM TO COOPERATE?

3 A NO, I DID NOT.

4 Q OKAY. SO WHEN HE BEGAN TO COOPERATE, WHAT DID HE TELL
5 YOU THAT HE HAD DONE? DID HE TELL YOU THAT HE WAS INVOLVED
6 IN THE ROBBERY?

7 A YES, MA'AM.

8 Q HOW DID HE SAY HE WAS INVOLVED?

9 A OKAY, HE STATED THAT, YOU KNOW, HE WAS AN EMPLOYEE OUT
10 AT FUDDRUCKERS --

11 MR. CRANE: YOUR HONOR, I OBJECT. I MEAN, IF THEY
12 ARE GOING TO PRODUCE MR. PERRY, THAT'S FINE, BUT FOR HIM TO
13 READ HIS STATEMENT AT THIS TIME, I THINK IS INAPPROPRIATE.

14 MS. MUNSON: HE'S NOT READING THE STATEMENT.

15 MR. CRANE: HE'S TELLING WHAT THE MAN TOLD HIM; AND
16 THAT'S HEARSAY. I OBJECT.

17 THE COURT: OVERRULED. GO AHEAD.

18 Q HOW DID HE TELL YOU HE WAS INVOLVED WITH THE ROBBERY?

19 A OKAY, HE JUST STATED THAT HE HAD BEEN AN EMPLOYEE OUT
20 THERE AND HAD HAD A CONVERSATION WITH SHANNON, AND THAT THIS
21 ROBBERY WAS GOING TO BE PLANNED, AND THAT. -- (PAUSE) --

22 MR. CRANE: JUDGE, I OBJECT, RESPECTFULLY.

23 THE COURT: TAKE THE JURY OUT, PLEASE.

24 (THE JURY EXITED THE COURTROOM AT
25 APPROXIMATELY 3:12 P.M.)

1 THE COURT: NOW, SOLICITOR, WE MAY BE GETTING THE
2 HORSE BEFORE THE CART. YOU'RE TELLING ME THAT MR. PERRY IS
3 GOING TO TESTIFY?

4 MS. MUNSON: YES, SIR. HE'S HERE IN THE COURTROOM.

5 THE COURT: WELL, --

6 MS. MUNSON: NOT IN THE COURTROOM, BUT HE IS HERE.

7 THE COURT: I UNDERSTAND. WELL, WHY DON'T YOU PUT
8 HIM UP FIRST, AND THEN PUT THE INVESTIGATOR UP? (PAUSE.)

9 WHAT'S YOUR POSITION AS FAR AS HIM TESTIFYING AT THIS POINT
10 WHAT WAS TOLD TO HIM BY PERRY AS BEING HEARSAY?

11 MS. MUNSON: THAT IT'S A CO-DEFENDANT,
12 CO-CONSPIRATOR'S STATEMENT.

13 THE COURT: HOW ABOUT THAT, MR. CRANE?

14 MR. CRANE: THERE'S NO CONSPIRACY CHARGED HERE,
15 YOUR HONOR.

16 MS. MUNSON: THERE'S NOT A CHARGE, BUT THERE'S
17 GOING TO BE TESTIMONY FROM NOT ONLY INVESTIGATOR KELLEY, BUT
18 OFFICER PERRY, THAT IT WAS PLANNED, THAT IT WAS A PLANNED
19 ROBBERY. THERE DOESN'T HAVE TO BE A CHARGE IN ORDER FOR HIM
20 TO BE A CO-CONSPIRATOR.

21 MR. CRANE: FURTHERMORE, HE'S NOT ON TRIAL. AND,
22 SECONDLY, HE'S NOT CHARGED WITH KIDNAPPING OR CARRYING A
23 PISTOL OR ANYTHING.

24 THE COURT: WELL, THAT DOESN'T CONCERN ME ABOUT
25 THAT.

1 MR. CRANE: YOUR HONOR, THEY'RE TRYING TO COME IN.
2 THE BACK DOOR. I DON'T KNOW IF MR. PERRY'S GOING TO TESTIFY
3 TO WHAT'S IN THE STATEMENT. HE CAN TAKE THE STAND AND PLEAD
4 THE FIFTH BECAUSE HE IS CHARGED WITH ARMED ROBBERY. HE'S
5 REPRESENTED BY JOHN MAULDIN. NOW IF THIS -- IF THIS
6 DETECTIVE TESTIFES AND MR. PERRY CHOOSES NOT TO TAKE THE
7 STAND AND TESTIFY, THEN WE'RE OUT OF LUCK.

8 THE COURT: HOW ABOUT THAT?

9 MS. MUNSON: IT'S STILL MY POSITION, YOUR HONOR,
10 THAT IT'S ADMISSIBLE. HE DOESN'T HAVE TO BE CHARGED WITH
11 ANYTHING IN ORDER TO BE A CO-CONSPIRATOR. NOT ONLY IS HE A
12 CO-CONSPIRATOR, HE'S A CO-DEFENDANT. YES, HE COULD TAKE THE
13 STAND AND SAY, "I'M NOT SAYING ANYTHING," BUT THAT'S
14 IRRELEVANT AS TO WHETHER OR NOT THIS INVESTIGATOR CAN TESTIFY
15 ABOUT WHAT A CO-CONSPIRATOR TOLD HIM IN REFERENCE TO THIS
16 CASE.

17 MR. CRANE: YOUR HONOR, WHETHER HE'S A CO-
18 CONSPIRATOR OR NOT, MY CLIENT HAS THE RIGHT TO CROSS-EXAMINE
19 HIM; AND IF HE CHOOSES NOT TO TESTIFY, WE DON'T HAVE THAT
20 RIGHT. I DON'T THINK THE CO-CONSPIRATOR EXCEPTION TO THE
21 HEARSAY RULE GOES QUITE THAT FAR. I THINK THE MAN -- NOW I
22 COULD BE WRONG HERE, I BELIEVE THE MAN HAS GOT TO BE SITTING
23 HERE ON TRIAL WITH US, AND HE'S NOT. THEY CHOSE NOT TO DO
24 THAT.

25 THE COURT: ALL RIGHT, LET'S TAKE A RECESS. LET ME

1 DO SOME RESEARCH.

2 MR. CRANE: THANK YOU, JUDGE.

3 MS. MUNSON: THANK YOU, YOUR HONOR.

4 (RECESS FROM APPROXIMATELY 3:16 UNTIL
5 APPROXIMATELY 3:31 P.M.)

6 THE COURT: ALL RIGHT, I WANT TO TAKE THE OFFICER'S
7 TESTIMONY OUT OF THE PRESENCE OF THE JURY BEFORE I RULE.

8 MS. MUNSON: ALL RIGHT.

9 THE COURT: I JUST WANT TO KNOW WHAT MR. PERRY TOLD
10 YOU.

11 THE WITNESS: AGAIN, ON THE 14TH OF MARCH WHEN I
12 TALKED TO MR. PERRY, AT FIRST HE HAD STATED THAT, YOU KNOW,
13 HE WAS AT A HOME IN HOLLY TREE THERE WITH HIS GIRLFRIEND AND
14 SOME OTHER INDIVIDUALS. WHEN I CHECKED IT, AND TALKED WITH
15 HIS GIRLFRIEND --

16 THE COURT: NO, I WANT TO KNOW JUST THE TESTIMONY
17 CONCERNING THE DEFENDANT TODD.

18 THE WITNESS: (PAUSE, VIEWING DOCUMENT.) MR. PERRY
19 THEN TOLD ME THAT HE HAD HAD A CONVERSATION WITH SHANNON
20 TODD, AND THAT SHANNON TOLD HIM THAT HE KNEW OF ANOTHER
21 INDIVIDUAL OR ANOTHER "DUDE," AS HE CALLED HIM, COULD ROB OR
22 WAS GOING TO ROB FUDDRUCKERS ON SATURDAY OR LATE SATURDAY
23 NIGHT AFTER CLOSING. THIS CONVERSATION APPARENTLY TOOK PLACE
24 ON MARCH THE 7TH, OR SOMETIME IN THAT VICINITY, AS THEY LEFT
25 WORK ONE DAY. WHEN THE SATURDAY CAME AROUND, MR. PERRY WAS

1 PAGED BY SHANNON TODD, AND MR. PERRY WAS IN SPARTANBURG, I
2 BELIEVE. HE STATED THAT HE CALLED SHANNON BACK AND WAS TOLD
3 TO COME PICK HIM UP, WHICH HE DID DOWN IN SOMEWHERE IN THE
4 VICINITY OF SAINT FRANCIS HOSPITAL. FROM THERE THEY WENT
5 OVER TO THE ROOSEVELT HEIGHTS OR TO THE APARTMENTS OVER THERE
6 -- HE THOUGHT IT WAS APARTMENT 90-SOMETHING AT THE TIME --
7 AND PICKED UP ANOTHER INDIVIDUAL, WHOM HE ONLY KNEW BY THE
8 FIRST NAME OF STAN, AND THEN THEY LEFT FROM THE APARTMENT
9 THERE. AND HE, SHANNON, WAS CARRYING A SHEET OUT OF THE
10 APARTMENT. IT WAS -- SOMETHING WAS WRAPPED UP IN IT. HE WAS
11 CARRYING IT WITH ONE HAND, AND PUT IT IN THE TRUNK OF MR.
12 PERRY'S CAR. IT WAS HIS BROTHER'S CAR. AND THEY DROVE
13 AROUND FOR A SHORT TIME AND WENT OVER TO THE FUDDRUCKERS
14 RESTAURANT, IN THAT GENERAL AREA IN THERE, AND HE PARKED. I
15 GUESS AT MIDORI'S PARKING LOT WHICH IS ADJACENT. ONE OF THE
16 RESTAURANT'S ADJACENT TO FUDDRUCKERS. SHANNON EXITED THE
17 CAR, AND HE WAS WEARING THE WELDER'S MASK. AND THE GUY THAT
18 HE KNEW BY STAN GOT OUT. HE STATES THAT HE JUST SAT THERE
19 UNTIL THEY LEFT AND WENT AROUND BEHIND FUDDRUCKERS. THEY
20 WERE GONE SOME FIVE MINUTES. AND HE SAID WHEN THEY CAME OUT,
21 HE GOT BACK INTO THE CAR AND DROVE DOWN TO THE AUGUSTA ROAD
22 APARTMENTS WHERE THEY WENT INTO APARTMENT 265, WHICH IS THE
23 APARTMENT OF PATRICIA GERMAN, WHICH MR. PERRY STATES IS THE
24 GIRLFRIEND OF SHANNON TODD; STAYED THERE FOR A SHORT WHILE
25 AND THEN HE LEFT. AND SHANNON TODD AND STANLEY -- AT THE

1 TIME HE JUST KNEW "STAN" -- WERE STILL AT THE APARTMENT.

2 THE COURT: IS THIS AFTER THE ALLEGED ROBBERY?

3 THE WITNESS: YES, THE ROBBERY HAD TAKEN PLACE.

4 THE COURT: ALL RIGHT.

5 THE WITNESS; AND HE CARRIED THEM OVER TO AUGUSTA
6 HILLS APARTMENTS.

7 THE COURT: ALL RIGHT; MR. CRANE, I'M GOING TO
8 ADMIT THIS TESTIMONY BASED ON STATE AGAINST SULLIVAN. I'M
9 READING NOW FROM COLLINS SOUTH CAROLINA EVIDENCE.

10 MR. CRANE: PAGE NUMBER, JUDGE.

11 THE COURT: 392. IN GENERAL THERE ARE FOUR
12 ELEMENTS THAT MUST BE SHOWN TO USE CO-CONSPIRATOR STATEMENTS
13 FOR THE TRUTH OF THE MATTER ASSERTED. THEY ARE, ONE, A
14 CONSPIRACY EXISTED. THAT HAS BEEN SHOWN. SECONDLY, THE
15 DEFENDANT AND THE DECLARANT WERE MEMBERS OF THE CONSPIRACY.
16 THAT'S SHOWN. THE STATEMENT WAS MADE IN THE COURSE OF THE
17 CONSPIRACY. THAT HAS BEEN SHOWN. THE STATEMENT WAS MADE IN
18 FURTHERANCE OF THE CONSPIRACY. (PAUSE.)

19 MR. CRANE: THAT HASN'T --

20 THE COURT: WHETHER THE PROPONENT OF THE STATEMENT
21 HAS SATISFIED THESE ELEMENTS IS WITHIN THE DISCRETION OF THE
22 TRIAL COURT. PRIMA FACIE EVIDENCE OF A CONSPIRACY MUST BE
23 PROVED TO MAKE THE CO-CONSPIRATOR'S STATEMENT'S ADMISSIBLE.
24 BASED ON THE EVIDENCE THAT I HAVE HAD PRESENTED UP UNTIL THIS
25 TIME, CERTAINLY IT IS. (PAUSE.)

1 MR. CRANE: YOUR HONOR, MOST OF WHAT HE JUST READ
2 OCCURRED AFTER THE OFFENSE, AND THAT WOULD NOT SATISFY NUMBER
3 FOUR. THE STATEMENT, YOU SAY THE STATEMENT WAS IN
4 FURTHERENCE OF THE CONSPIRACY.

5 THE COURT: YES.

6 MR. CRANE: HE'S GOING TO TESTIFY TO WHAT THEY DID,
7 AND HOW THEY DID IT.

8 THE COURT: YES.

9 MR. CRANE: AND WHERE THEY WENT, AND THAT'S -- YOUR
10 HONOR, THAT'S THE WRITTEN STATEMENT THAT MR. PERRY GAVE.

11 THE COURT: WELL, --

12 MR. CRANE: NOW IF YOU'LL LOOK -- JUDGE,
13 RESPECTFULLY, IF YOU'LL LOOK ON PAGE 361 OF THAT SAME BOOK,
14 YOU WILL FIND "NON-TESTIFYING CO-DEFENDANT'S CONFESSION,"
15 WHICH BEGINS WITH "BRUTON," WHICH BASICALLY SAYS THAT THE
16 CONFESSION OF THE NON-TESTIFYING CO-DEFENDANT THAT IMPLICATES
17 THE DEFENDANT IS PRESUMED TO BE UNRELIABLE. AND THERE ARE
18 SEVERAL CASES THAT SAY, IN FACT, SUCH STATEMENTS MAY BE AMONG
19 THE MOST UNRELIABLE AND UNFAIR THAT CAN BE USED. IT GOES ON
20 TO GIVE SOME EXCEPTIONS, ONE OF WHICH WOULD BE IF MY CLIENT
21 HAD GIVEN A STATEMENT ADMITTING IT. MY CLIENT SAYS HE DIDN'T
22 DO IT. AND, FURTHERMORE, THE PURPOSE OF THE CROSS-
23 EXAMINATION IS TO DETERMINE THE RELIABILITY OF THE STATEMENT.
24 IF YOU'LL NOTICE, JUDGE, FROM THE GET-GO WHEN THIS TRIAL
25 STARTED, I HAD LINDA -- I FORGOT YOUR LAST NAME NOW.

1 MS. MICHAELove: MICHAELove.

2 MR. CRANE: SHE TESTIFIED THAT THE WORK RECORDS
3 INDICATE THAT SHANNON TODD DID NOT WORK ON THURSDAY THE 7TH
4 OF MARCH; WHEREIN, THE STATEMENT SAYS HE DID, SO THE
5 STATEMENT ITSELF BEGINS OFF BEING UNRELIABLE BECAUSE THE
6 STATEMENT SAYS THAT MR. PERRY AND MY CLIENT WERE AT WORK WHEN
7 THEY DISCUSSED THIS. AND THAT CAN'T BE.

8 THE COURT: ALL RIGHT, I'M STILL GOING TO ADMIT IT.
9 ALL RIGHT, BRING THE JURY.

10 MR. CRANE: YOUR HONOR, AT THIS POINT THEN I WOULD
11 LIKE MR. PERRY TO BE DIRECTED TO BE HERE IN THE MORNING. IF
12 THEY DON'T CALL HIM AS A WITNESS, I INTEND TO CALL HIM.

13 THE COURT: ALL RIGHT.

14 MS. MUNSON: NO PROBLEM.

15 THE COURT: BRING THE JURY.

16 MR. CRANE: AND I TAKE EXCEPTION TO YOUR RULING.

17 (THE BAILIFF CONFERRED WITH THE COURT.)

18 THE COURT: OH, YES, WHAT'S THE JUROR'S NAME?

19 THE BAILIFF: COX.

20 THE COURT: I HAVE ANOTHER JUROR WHO INDICATES HE
21 NEEDS TO TALK ABOUT BEING A JUROR ON THIS CASE. MR. COX?

22 THE BAILIFF: YES, SIR.

23 THE COURT: BRING HIM IN.

24 THE COURT: OKAY, YOU CAN STEP DOWN NOW FOR A
25 MINUTE.

1 (THE WITNESS COMPLIED.)

2 (A MAN ENTERED THE COURTROOM.)

3 THE COURT: HEY, MR. COX.

4 MR. COX: HI.

5 THE COURT: I UNDERSTAND YOU NEEDED TO TALK WITH US
6 CONCERNING YOUR SERVICE ON THIS CASE AS A JUROR?

7 MR. COX: YES, SIR.

8 THE COURT: CAN YOU TELL ME ABOUT THAT, PLEASE,
9 SIR?

10 MR. COX: BECAUSE I WOULDN'T HAVE AN OBJECTIVE
11 OPINION ABOUT THE CASE. I HAVEN'T FORMED AN OPINION, BUT I
12 RECOGNIZE SOMEONE THAT'S PROBABLY KIN TO THE DEFENDANT IN
13 THIS CASE.

14 THE COURT: IN THE COURTROOM?

15 MR. COX: IN THE COURTROOM. AND BEING THAT MY
16 BROTHER WAS IN THE COURTROOM AND HE WAS A DEFENDANT, I DON'T
17 THINK I CAN GIVE AN OBJECTIVE OPINION TO -- TO THIS VERDICT
18 HERE IN THIS COURTROOM.

19 THE COURT: SO YOU DO NOT THINK THAT YOU CAN
20 CONTINUE AS A FAIR AND IMPARTIAL JUROR ON THIS CASE; IS THAT
21 WHAT YOU'RE TELLING ME, SIR?

22 MR. COX: YES, SIR.

23 THE COURT: SOLICITOR, DO YOU HAVE ANY QUESTIONS
24 YOU WANT TO ASK OF MR. COX?

25 MS. MUNSON: I DON'T, OTHER THAN, YOUR HONOR,

1 WHETHER OR NOT HE HAS DISCUSSED HIS OPINION OR HIS FEELINGS
2 WITH ANY OF THE OTHER JURORS.

3 THE COURT: HAVE YOU DISCUSSED THIS WITH ANY OTHER
4 MEMBER OF THIS JURY PANEL, MR. COX?

5 MR. COX: NO, I JUST TALKED TO THE JURY FOREMAN,
6 AND I JUST ASKED HER WHAT SHOULD I DO IN THIS CASE, I MEAN,
7 YOU KNOW.

8 THE COURT: DID YOU DISCUSS WITH THE FORELADY YOUR
9 PROBLEM?

10 MR. COX: YES.

11 THE COURT: ABOUT?

12 MR. COX: WELL, I JUST TOLD HER THAT I -- I
13 COULDN'T BE OBJECTIVE.

14 THE COURT: ALL RIGHT, BUT YOU DIDN'T GO INTO ANY
15 DETAIL?

16 MR. COX: NO.

17 THE COURT: ALL RIGHT. OKAY, MR. ROLLINS, OR, MR.
18 CRANE, DO YOU HAVE ANY QUESTIONS YOU WANT TO ASK MR. COX?

19 MR. ROLLINS: ONE MOMENT, YOUR HONOR.

20 (MR. CRANE CONFERRED WITH MR. ROLLINS.)

21 MR. CRANE: MR. COX, ABOUT THE ONLY REAL QUESTION
22 THAT I NEED TO KNOW, AND THE JUDGE HAS PROBABLY ALREADY
23 ANSWERED, OR YOU HAVE ALREADY ANSWERED IT: IN THIS
24 PARTICULAR TRIAL A JUROR IS REQUESTED TO LISTEN TO ALL OF THE
25 EVIDENCE AND RENDER A FAIR AND IMPARTIAL VERDICT FOR BOTH THE

1 STATE AND THE DEFENDANT.

2 MR. COX: EXACTLY.

3 MR. CRANE: IS IT MY UNDERSTANDING THAT YOU'RE
4 TELLING THE COURT THAT YOU COULD NOT RENDER A FAIR AND AN
5 IMPARTIAL VERDICT?

6 MR. COX: I DON'T THINK SO. BEING HONEST WITH YOU,
7 I DON'T THINK I COULD.

8 MR. CRANE: THAT'S IT.

9 MR. ROLLINS: NOTHING FURTHER.

10 THE COURT: THANK YOU, MR. COX. I APPRECIATE YOU
11 TELLING ME THAT, AND BECAUSE OF THAT THEN I WOULD REMOVE YOU
12 FROM FURTHER SERVICE ON THIS CASE.

13 THE BALANCE OF THE PANEL IS GOING TO CALL IN TONIGHT TO
14 BE NOTIFIED AS TO WHAT TIME TO REPORT BACK TOMORROW.

15 MR. COX: UH-HUH.

16 THE COURT: YOU HAVE A SLIP THERE, LONNIE?

17 THE BAILIFF: WE'LL GET HIM ONE, JUDGE.

18 THE COURT: ALL RIGHT, IF YOU WILL, AFTER 6:00
19 O'CLOCK TONIGHT CALL THIS NUMBER THAT THEY WILL GIVE TO YOU
20 AND IT WILL TELL YOU WHAT TIME TO CALL BACK TOMORROW.

21 MR. COX: ALL RIGHT.

22 THE COURT: THANK YOU VERY MUCH. APPRECIATE YOU
23 TELLING ME THAT, MR. COX.

24 ALL RIGHT, BRING THE JURY IN NOW.

25 MR. CRANE: YOUR HONOR.

1 THE COURT: HOLD ON.

2 MR. CRANE: RESPECTFULLY --

3 WE DON'T NEED THE JURY, SIR.

4 THE BAILIFF: ALL RIGHT.

5 MR. CRANE: RESPECTFULLY, ON BEHALF OF MR. TODD, I
6 WOULD MOVE FOR A MISTRIAL. THIS IS NOW THE SECOND JUROR IN
7 WHICH WE HAVE HAD A PROBLEM. NEITHER ONE OF THEM WAS THE
8 ALTERNATE. HAD WE KNOWN OF THE PARTICULAR PROBLEM PRIOR TO
9 PICKING AND SWEARING A JURY, WE MAY HAVE EXECUTED OUR
10 PEREMPTORY CHALLENGES IN A DIFFERENT FASHION.

11 THE COURT: AND THAT MOTION IS DENIED. THIS IS
12 SOMETHING THAT THIS JUROR FOUND OUT ABOUT AFTER THE TRIAL WAS
13 UNDER WAY, AS I UNDERSTAND IT; SO YOUR MOTION IS DENIED.
14 BRING THE JURY.

15 MR. ROLLINS: WE'D, ALSO, RENEW THAT MOTION.

16 THE COURT: ALL RIGHT.

17 (THE JURY ENTERED THE COURTROOM AT
18 APPROXIMATELY 3:43 P.M.)

19 THE COURT: NOW, LADIES AND GENTLEMEN OF THE JURY,
20 IT HAS BECOME NECESSARY FOR ME TO RELIEVE MR. COX FROM
21 FURTHER SERVICE ON THIS CASE, AND THAT'S WHY WE HAVE AN
22 ALTERNATE. SO, MR. RICE, YOU ARE NOW BROUGHT UP AND YOU ARE
23 NOW A MEMBER OF THIS PANEL.

24 ALL RIGHT, COME BACK AROUND, PLEASE, INVESTIGATOR. YOU
25 ARE STILL UNDER OATH.

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1 CONTINUED DIRECT EXAMINATION BY MS. MUNSON:

2 Q ALL RIGHT, MR. KELLY, WHEN YOU TALKED WITH AUSTIN PERRY
3 ABOUT THIS INCIDENT, TELL THE JURY WHAT HE TOLD YOU ABOUT HIS
4 INVOLVEMENT IN THE ARMED ROBBERY AT FUDDRUCKERS ON THE 10TH
5 OF MARCH.

6 A OKAY, AUSTIN, BEING AN EMPLOYEE AT THE RESTAURANT,
7 ALONG WITH A SHANNON TODD, STATED THEY HAD HAD SOME SORT OF
8 CONVERSATION WITH REFERENCE TO THE RESTAURANT BEING ROBBED.
9 THIS CONVERSATION APPARENTLY TOOK PLACE SOMEWHERE AROUND
10 MARCH THE 7TH, SOMEWHERE IN THAT AREA. THE -- MR. TODD HAD
11 STATED THAT HE KNEW THIS DUDE NAMED STAN THAT COULD DO FUDDS,
12 OR ROB FUDDRUCKERS, AND THAT THEY WERE PLANNING ON DOING IT
13 ON THIS SATURDAY, OR LATE SATURDAY NIGHT AFTER CLOSING.

14 MR. PERRY STATES THAT ON THAT DATE HE CALLED IN AND
15 DIDN'T WORK, OR SOMETHING. BUT, ANYWAY, HE WENT ON TO
16 SPARTANBURG AFTER HE HAD TAKEN HIS GIRLFRIEND SOMEWHERE.
17 DURING THE TIME HE WAS IN SPARTANBURG, SHANNON TODD PAGED
18 HIM. HE CALLED HIM BACK AND APPARENTLY A MEETING WAS SET FOR
19 HIM TO COME PICK HIM UP IN GREENVILLE; AND MR. PERRY STATED
20 THAT HE CAME DOWN TO SOMEWHERE AROUND SAINT FRANCIS HOSPITAL
21 -- HE WASN'T REAL SURE OF THE ADDRESS -- PICKED UP SHANNON.
22 FROM THERE THEY PROCEEDED OVER TO THE ROOSEVELT HEIGHTS
23 APARTMENTS IN GREENVILLE. HE SAID IT WAS TO APARTMENT 90-
24 SOMETHING. HE WASN'T REAL SURE WHICH APARTMENT IT WAS, BUT
25 IT WAS IN THE 90'S..

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1 THERE THIS OTHER INDIVIDUAL NAMED STAN, WHO HE DID NOT
2 KNOW, JUST KNEW FIRST NAME, WAS MET. AFTER A SHORT TIME,
3 THEY LEFT. SHANNON TODD CARRIED A SHEET OUT OF THE APARTMENT
4 AND SOMETHING WRAPPED UP IN IT. HE SAID HE CARRIED IT WITH
5 ONE HAND, THAT IT WAS SORT OF LONG; PUT IT IN THE TRUNK OF
6 HIS CAR, AND THEY LEFT.

7 Q LET ME INTERRUPT YOU RIGHT THERE, INVESTIGATOR. WHERE
8 DID THIS CONVERSATION ABOUT "DOING FUDDS" TAKE PLACE BETWEEN
9 SHANNON TODD AND AUSTIN PERRY?

10 A OKAY, SHANNON AND AUSTIN HAD APPARENTLY WORKED THAT DAY
11 AND WAS ON -- AND LEFT AFTER WORK AND WERE TOGETHER IN THE
12 CAR, AND THE CONVERSATION CAME UP.

13 Q OKAY. PRIOR TO AUSTIN PERRY TELLING YOU THE NAME
14 "STAN," --

15 A UH-HUH.

16 Q -- PRIOR TO THAT, WHAT DID YOU TELL AUSTIN PERRY ABOUT
17 THE INFORMATION YOU HAD GATHERED IN THIS CASE?

18 A PRIOR TO LEARNING WHO OR AUSTIN WAS SAYING SOMETHING
19 ABOUT STAN, I HAD FOUND OUT THAT AUSTIN HAD HAD THAT
20 CONVERSATION WITH SHANNON, AND THAT -- THAT WAS THE REASON I
21 WANTED TO TALK TO HIM ABOUT IT -- THAT THEY HAD PLANNED THE
22 ARMED ROBBERY.

23 Q OKAY. WHAT DID YOU TELL AUSTIN PERRY, WHEN YOU WERE
24 INTERVIEWING HIM, WHAT DID YOU TELL HIM ABOUT THE NAME
25 "STAN"? DID YOU MENTION THAT TO AUSTIN PERRY? THAT'S WHAT

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1 I'M ASKING.

2 A NO, I DIDN'T MENTION ANYTHING ABOUT "STAN." I DIDN'T
3 KNOW WHO STAN WAS, DIDN'T -- HAD NOT HEARD OF STAN DURING THE
4 TIME THAT I HAD FIRST STARTED TALKING TO AUSTIN PERRY.

5 Q OKAY.

6 A AUSTIN PERRY BROUGHT UP THE NAME OF "STAN."

7 Q OKAY, NOW AFTER AUSTIN PERRY WENT TO PICK UP SHANNON
8 TODD AND STAN, --

9 A UH-HUH.

10 Q -- WHERE DID THEY GO NEXT?

11 A THEY RODE AROUND FOR JUST A SHORT WHILE, AND THEN ENDED
12 UP OVER AT MIDORI'S, WHICH IS THE RESTAURANT THAT'S ADJACENT
13 TO FUDDRUCKERS ON WOODRUFF ROAD.

14 Q OKAY.

15 A IN THE PARKING LOT.

16 Q OKAY. AFTER THEY GOT OVER TO THE RESTAURANT AREA, WHAT
17 DID AUSTIN PERRY TELL YOU THAT HE DID?

18 A AUSTIN STAYED IN THE CAR. HE PULLED THE CAR UP IN THE
19 PARKING LOT. SHANNON AND THIS STAN EXITED THE VEHICLE.
20 SHANNON PUT ON A -- WHAT HE'S CALLING A WELDER'S MASK. THEY
21 LEFT AND WENT AROUND BEHIND THE FUDDRUCKERS RESTAURANT. NOW
22 THIS WAS SOMETIME AFTER MIDNIGHT. AND AUSTIN STAYED THERE IN
23 THE CAR WHEN THEY GOT OUT, WENT AROUND BEHIND FUDDRUCKERS.
24 HE SAID IT WAS SEVERAL MINUTES. THEY CAME BACK, GOT BACK
25 INTO THE CAR, AND THEY LEFT. THEY PROCEEDED TO GO TO AUGUSTA

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1 HILLS APARTMENTS, TO THE APARTMENT 265, WHICH WE FOUND OUT IS
2 THE APARTMENT OF SHANNON TODD'S GIRLFRIEND.

3 Q WHOSE CAR DID AUSTIN TODD PERRY TELL YOU THAT WAS
4 DRIVEN?

5 A OKAY, AUSTIN SAID HE WAS IN HIS BROTHER'S WHITE
6 SUNBIRD, THAT HE HAD -- IT WAS HIS CAR THAT THEY WERE IN THAT
7 MIGHT.

8 Q OKAY. WHAT DID AUSTIN TODD PERRY TELL YOU ABOUT WHAT
9 WAS GOING TO HAPPEN INSIDE THE RESTAURANT?

10 A HE DIDN'T KNOW WHAT WAS GOING TO HAPPEN ON THE INSIDE.
11 HE JUST KNEW THAT THEY WERE GOING TO ROB, YOU KNOW,
12 FUDDRUCKERS. AS FAR AS WHAT TOOK PLACE INSIDE, HE HAD NO
13 KNOWLEDGE OF WHAT WAS GOING ON, OR HOW THE ROBBERY WAS TAKING
14 PLACE.

15 Q OKAY. AFTER -- AFTER AUSTIN PERRY AND THE OTHER TWO
16 DEFENDANTS WENT TO AUGUSTA HILLS, WHAT DID AUSTIN PERRY TELL
17 YOU THAT HE DID THEN?

18 A OKAY, THEY ALL STAYED THERE, OR HE STAYED THERE WITH
19 THEM FOR ABOUT FIVE MINUTES, AND HE LEFT; AND STAN AND
20 SHANNON TODD WERE STILL THERE. HE LEFT AND WENT BACK, PICKED
21 UP HIS GIRLFRIEND, AND WENT ON HOME.

22 Q OKAY, AND THE FIRST TIME YOU HAD A CONVERSATION WITH
23 AUSTIN PERRY WAS WHEN?

24 A THE FIRST TIME I HAD ANY CONVERSATION, I TALKED WITH
25 HIM BY PHONE JUST TO TELL HIM THAT I NEEDED TO TALK WITH HIM.

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1 THEN ON THE 14TH OF MARCH HE CAME UP, AND WE SAT DOWN AND
2 INTERVIEWED THEM AT THAT POINT.

3 Q OKAY. IN THE COURSE OF YOUR INVESTIGATION, WHAT OTHER
4 SUSPECTS WERE DEVELOPED, IF ANY?

5 A I DIDN'T DEVELOP ANY. THESE THREE WERE THE ONES THAT
6 EMERGED AS BEING THE ONLY SUSPECTS THAT I COULD COME UP WITH.

7 Q OKAY, WHEN SOMEONE IS DEVELOPED AS A SUSPECT, WHAT DO
8 YOU DO?

9 A WELL, THE WAY WE START DEVELOPING INFORMATION IS TO
10 GATHER UP THE INFORMATION FOR PROBABLE CAUSE TO SEE IF THEY
11 HAD ACCESS TO BEING AT SUCH A PLACE; WERE THEY TOGETHER? YOU
12 KNOW, IT'S JUST NUMEROUS THINGS THAT YOU DO JUST TO MAKE SURE
13 THAT YOU HAVE ENOUGH TO BE ABLE TO CHARGE SOMEBODY.

14 Q OKAY, AND IN DEVELOPING YOUR SUSPECTS IN THIS CASE,
15 WHERE DID THAT INFORMATION COME FROM?

16 A IT STARTED WITH, I GUESS, BASICALLY AUSTIN PERRY IS THE
17 ONE IT STARTED WITH. WE HAD GOTTEN SOME INFORMATION AS TO
18 AUSTIN; BUT WHEN WE GOT TO AUSTIN PERRY THROUGH WHAT HE TOLD
19 US, THAT'S REALLY WHAT GOT US MOVING A LITTLE QUICKER ON THE
20 WHOLE INVESTIGATION.

21 Q OKAY, AND YOU CHARGED HIM WITH WHAT?

22 A AUSTIN?

23 Q YES.

24 A AUSTIN PERRY WAS CHARGED WITH ARMED ROBBERY.

25 Q OKAY. HE WAS NOT CHARGED WITH ANYTHING ELSE, CORRECT?

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1 A THAT'S CORRECT.

2 Q EXPLAIN TO THE JURY WHY HE WAS NOT CHARGED WITH
3 KIDNAPPING.

4 A WELL, THE KIDNAPPING, WHEN I INTERVIEWED MR. PERRY, AND
5 YOU KNOW, HE DECIDED HE WAS GOING TO COOPERATE WITH US IN
6 OUR INVESTIGATION, I INFORMED HIM THAT WHAT HAD HAPPEN ON THE
7 INSIDE OF THE RESTAURANT THAT NIGHT. HE WAS NOT AWARE THAT
8 THE EMPLOYEES HAD BEEN TAKEN AND HAD BEEN PUT INTO THE COOLER
9 OR ANYTHING OF THAT NATURE. AND BASED ON THAT, AND I HAVE NO
10 INFORMATION THAT HAS BEEN MADE AVAILABLE TO ME THAT HE HAD
11 ANY KNOWLEDGE THAT THE EMPLOYEES WERE TAKEN AND DONE THAT
12 WAY; SO I DIDN'T REALLY HAVE ENOUGH TO CHARGE HIM WITH
13 KIDNAPPING. SO I COULDN'T CHARGE HIM.

14 Q OKAY. TELL THE JURY WHAT YOU OFFERED, OR TELL THE JURY
15 HOW YOU WENT ABOUT TRYING TO GET AUSTIN PERRY TO COOPERATE
16 WITH YOU.

17 A WELL, AUSTIN FIRST TOLD US THE FIRST STORY; OF COURSE,
18 YOU KNOW, THEN I TRIED TO GO OUT AND BACK UP WHAT HE SAID AND
19 I TALKED TO THE PEOPLE WHOSE NAMES THAT HE HAD GIVEN ME.
20 WHEN THEY DIDN'T CONFIRM WHERE HE HAD BEEN THAT NIGHT, I WENT
21 BACK IN AND TALKED TO AUSTIN AND I TOLD HIM THAT THESE PEOPLE
22 JUST WEREN'T BACKING UP HIS STORY, THAT HE APPARENTLY WAS NOT
23 TELLING ME THE TRUTH, AND THAT IT WAS GOING TO BE IN HIS BEST
24 INTEREST TO GO AHEAD AND TELL ME THE TRUTH ABOUT IT, THAT I
25 HAD ENOUGH INFORMATION RIGHT NOW TO TALK TO HIM AND BE

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1 LOOKING AT HIM AS A SUSPECT IN THIS ARMED ROBBERY. AND AT
2 THAT POINT, THAT'S JUST WHERE HE STOPPED, AND HE SAID, "I WAS
3 INVOLVED IN IT." SO NOTHING WAS THREATENED. HE WASN'T
4 OFFERED ANYTHING. HE JUST VOLUNTARILY GAVE US THAT
5 INFORMATION THEN AFTER THAT.

6 MS. MUNSON: OKAY. I HAVE NOTHING FURTHER AT THIS
7 TIME, YOUR HONOR.

8 THE COURT: MR. ROLLINS.

9 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.

10 **CROSS-EXAMINATION BY MR. ROLLINS:**

11 Q INVESTIGATOR KELLY, AUSTIN PERRY JUST VOLUNTEERED THIS
12 INFORMATION TO YOU?

13 A DURING THE COURSE OF OUR INTERVIEW, AFTER, OF COURSE,
14 WE TRIED TO SUBSTANTIATE THE FIRST STORY HE TOLD US AND WE
15 COULDN'T, HE THEN JUST BROKE, AND SAID, "I WAS INVOLVED IN
16 IT."

17 Q SO AFTER YOU CAUGHT HIM IN A LIE, HE BROKE; IS THAT
18 RIGHT?

19 A AFTER I CAME BACK AND TOLD HIM THAT I COULDN'T
20 SUBSTANTIATE HIS STORY, RIGHT, HE JUST SAID, "THAT'S IT."

21 Q AND ALL THIS STUFF JUST CAME FLOWING?

22 A WELL, HE JUST BEGAN TELLING ME. I SAID, "WELL, JUST
23 TELL ME WHAT HAPPENED," AND THAT'S WHAT HE DID, HE JUST
24 STARTED TELLING ME EVERYTHING, YOU KNOW.

25 Q OKAY, WHILE HE WAS VOLUNTEERING ALL THIS INFORMATION,

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1 DID HE VOLUNTEER ANY INFORMATION ABOUT A SAFECRACKING JOB HE
2 DID AT THAT SAME FUDDRUCKERS WITH GERMANE MCCULLOUGH?

3 A NO, SIR.

4 Q HE DIDN'T SAY ANYTHING ABOUT THAT?

5 A I DON'T KNOW ANYTHING ABOUT A SAFECRACKING, NO, SIR.

6 Q DO YOU KNOW ANYTHING ABOUT THEM STEALING FROM THE SAFE
7 THERE?

8 A I'M AWARE OF SOME INTERNAL INVESTIGATION THAT
9 FUDDRUCKERS WAS DOING WITH AUSTIN PERRY AND GERMANE
10 MCCULLOUGH, BUT NOT WHETHER IT WAS INVOLVING A SAFECRACKING.

11 Q WAS IT RELATED TO STEALING FROM THE SAFE?

12 A I DIDN'T GET INTO ANY DETAIL WHEN THEY WERE TELLING ME
13 ABOUT IT, SO I DON'T KNOW. THEY SAID THEY WERE HANDLING IT
14 FROM AN INTERNAL SIDE.

15 Q WELL, THAT WOULDN'T BE IMPORTANT ON A THEFT FROM
16 FUDDRUCKERS, IF THEY'RE STEALING FROM FUDDRUCKERS?

17 A WHEN THE FIRST INFORMATION CAME TO ME WHEN WE WERE
18 TALKING, WHEN WE DEVELOPED THE -- I BELIEVE HIS NAME WAS
19 JIMMY CANBANNON, HE WAS ONE OF THE DAY MANAGERS OUT THERE.
20 WHILE I WAS THERE HE HAD GIVEN ME THE INFORMATION THAT A
21 POSSIBLE SUSPECT HAD BEEN CALLED IN TO HIM BY SOME UNKNOWN
22 INDIVIDUAL. OF COURSE, WE WERE CONCERNED ABOUT SOME INTERNAL
23 THEFT THAT THEY HAD, BUT WE REALLY DIDN'T PURSUE IT AT THAT
24 POINT.

25 Q OKAY, YOU ONLY CHARGED AUSTIN PERRY WITH ARMED ROBBERY?

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1 A THAT'S RIGHT.

2 Q AND THE REASON YOU SAID THAT IS THAT HE DIDN'T HAVE ANY
3 KNOWLEDGE OF THE KIDNAPPING THAT WAS GOING ON ON THE INSIDE?

4 A NO, SIR, HE WAS THE GETAWAY DRIVER. HE WAS OUTSIDE AND
5 WHAT WAS TAKING PLACE INSIDE, AS FAR AS WHAT THEY WERE DOING
6 TO THE EMPLOYEES, I COULDN'T SAY THAT HE KNEW THAT THAT WAS
7 HAPPENING OR NOT.

8 Q BUT ISN'T THE LAW IN SOUTH CAROLINA THAT HE DON'T HAVE
9 TO KNOW WHAT'S GOING ON INSIDE? THE HAND OF ONE IS THE HAND
10 OF ALL, ISN'T IT?

11 A THAT'S THE REASON HE WAS CHARGED WITH ARMED ROBBERY.

12 Q WELL, THE HAND OF ONE IS THE HAND OF ALL; THERE WAS A
13 KIDNAPPING GOING ON, WASN'T IT?

14 MS. MUNSON: YOUR HONOR, I'M GOING TO OBJECT AT
15 THIS POINT TO HIM --

16 THE COURT: I SUSTAIN THE QUESTION, AND INSTRUCT
17 THE JURY TO DISREGARD THE LAST QUESTION.

18 Q DID YOU GIVE HIM A BOND?

19 A HE WAS CARRIED BEFORE MAGISTRATE THOMPSON, AND THE BOND
20 WAS SET.

21 Q DID YOU GO WITH HIM?

22 A I CAN'T REMEMBER IF ANOTHER OFFICER WENT. I BELIEVE I
23 DID BECAUSE I CALLED HIS FATHER, AND HIS FATHER COME UP AND
24 WE WENT TO MAGISTRATE'S THOMPSON'S OFFICE.

25 Q BUT Y'ALL RECOGGED HIM, DIDN'T YOU, LET HIM SIGN HIS

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1 OWN BOND?

2 A WE DIDN'T. THE JUDGE RECOGGED HIM AT 25,000, I
3 BELIEVE.

4 Q YEAH, BUT Y'ALL TALKED TO THE JUDGE, DIDN'T YOU?

5 A I'M SURE I DISCUSSED SOMETHING WITH THE JUDGE, BUT THAT
6 WAS THE JUDGE'S DECISION.

7 Q DOES THE JUDGE JUST LET ALL THE PEOPLE OUT ON RECOG
8 THAT COMMIT ARMED ROBBERIES?

9 MS. MUNSON: OBJECTION, YOUR HONOR.

10 THE COURT: I SUSTAIN THE OBJECTION TO THE
11 QUESTION.

12 Q SO ALL YOU HAVE THEN IS THIS STATEMENT FROM MR. PERRY,
13 IS THAT CORRECT?

14 A I HAVE A STATEMENT FROM MR. PERRY, YES, SIR.

15 Q DO YOU HAVE ANY FINGERPRINTS OF THIS MAN ON THE INSIDE
16 OF THAT BUILDING?

17 A NO, SIR.

18 Q DO YOU HAVE ANY --

19 A ARE YOU TALKING ABOUT MR. BUTLER?

20 Q YES, EXCUSE ME, MR. BUTLER. DO YOU HAVE ANY EVIDENCE
21 OF ANYBODY SEEING MR. BUTLER IN THAT BUILDING?

22 A NO, SIR.

23 Q DO YOU HAVE ANY EVIDENCE OF MR. BUTLER SPENDING ANY OF
24 THIS MONEY THAT WAS STOLEN FROM THIS PLACE?

25 A NO, SIR.

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1 Q AND I BELIEVE MR. PERRY TOLD YOU ALL HE GOT OUT OF IT
2 WAS \$10 WORTH OF GAS, IS THAT RIGHT?

3 A THAT WAS IN HIS STATEMENT, YES.

4 MR. ROLLINS: THANK YOU. THAT'S ALL I HAVE.

5 THE COURT: MR. CRANE.

6 CROSS-EXAMINATION BY MR. CRANE:

7 Q DETECTIVE KELLY, YOU HAVE CONFUSED ME BY YOUR
8 TESTIMONY. WE NEED TO TRY TO CLARIFY IT.

9 A OKAY.

10 Q YOU STATED ON DIRECT EXAMINATION FIRST OFF THAT MR.
11 PERRY TOLD YOU THAT ON SATURDAY HE CALLED IN AND DIDN'T WORK.
12 AND THEN YOU SAID THAT HE WORKED THAT DAY WITH SHANNON TODD,
13 AND WHEN THEY GOT OFF, THEY HAD TALKED ABOUT IT. NOW WOULD
14 YOU, PLEASE, TELL ME --

15 A NO, SIR, THAT WASN'T WHAT I TESTIFIED TO.

16 Q THAT'S WHAT YOU TESTIFIED TO.

17 A WHAT I TESTIFIED TO WAS THAT WHEN THEY PLANNED THIS
18 ROBBERY, IT WAS, I THINK, ON THE 7TH --

19 Q WHICH WAS A THURSDAY --

20 A -- OF MARCH.

21 Q -- WASN'T IT?

22 A I GUESS THAT'S WHAT IT WAS.

23 Q AND YOU, ALSO -- HAVE YOU CHECKED THE WORK RECORDS TO
24 DETERMINE THAT SHANNON TODD DIDN'T EVEN WORK --

25 A THAT WAS THE FIRST DAY THAT I --

DOUG KELLY/CROSS-CRANE

180

1 Q I HAVEN'T FINISHED MY QUESTION.

2 A I'M TRYING TO ANSWER YOUR FIRST ONE.

3 MR. CRANE: JUDGE, --

4 THE COURT: GO AHEAD AND LET HIM ANSWER THE
5 QUESTION.

6 A THE CONVERSATION THAT THEY HAD WAS TWO OR THREE DAYS
7 BEFORE THE ROBBERY TOOK PLACE. THEY WERE AT WORK. WHEN THEY
8 GOT OFF IS WHEN THEY DISCUSSED IT AND PLANNED THE ROBBERY.
9 THEN THE ROBBERY TOOK PLACE TWO OR THREE DAYS LATER. AND
10 IT'S MY UNDERSTANDING AT THAT POINT THAT HE DID NOT WORK.

11 Q THAT'S ACCORDING TO AUSTIN PERRY?

12 A THAT'S HIS --

13 Q YOU'RE CONSIDERING THAT AN ADMITTED ARMED ROBBER IS THE
14 ONE THAT'S TELLING THE TRUTH, AND NOT THESE TWO FELLOWS OVER
15 HERE, AREN'T YOU?

16 A NO, I'M JUST GOING BY WHAT HE STATED.

17 Q WELL, LET'S GO BY WHAT HE STATED. THE STATEMENT THAT
18 HE GAVE, THE SIGNED WRITTEN STATEMENT -- BY THE WAY, IS HE
19 PRESENT IN THE COURTHOUSE TODAY?

20 A IN THE COURTHOUSE?

21 Q IS MR. PERRY HERE TODAY?

22 A I HAVEN'T SEEN HIM IN THE COURTROOM.

23 Q IS HE IN THE COURTHOUSE?

24 A I DON'T KNOW.

25 Q YOU DON'T KNOW IF HE'S OUTSIDE IN ONE OF THE ROOMS?

DOUG KELLY/CROSS-CRANE

181

- 1 A NO, SIR, I DON'T.
- 2 Q IS HE PREPARED TO TESTIFY TODAY?
- 3 A I HAVEN'T TALKED WITH HIM.
- 4 Q SO YOU DON'T KNOW IF HE IS EVEN WILLING TO SIT DOWN IN
- 5 THAT CHAIR AND TELL THE JURY THAT THIS IS THE TRUTH, DO YOU?
- 6 A I HAVEN'T TALKED TO MR. PERRY.
- 7 Q DO YOU IMAGINE HE'S GOING TO TESTIFY?
- 8 A I'M SURE HE IS.
- 9 Q WELL, LET'S GET BACK TO THE STATEMENT WHICH IS
- 10 BASICALLY WHAT YOU READ FROM A MOMENT AGO. DOESN'T IT SAY
- 11 THAT "ON THURSDAY, MARCH 7TH, I WAS AT WORK AT FUDDRUCKERS.
- 12 SHANNON, WHO WORKS THERE, ALSO TOLD ME THAT HE AND THIS DUDE
- 13 WAS GOING TO DO FUDDS"? ISN'T THAT WHAT IT SAYS IN THE
- 14 STATEMENT?
- 15 A HE SAID HE AND THIS DUDE NAMED STAN WAS GOING TO DO
- 16 FUDDS.
- 17 Q ON THURSDAY, MARCH 7?
- 18 A YES.
- 19 Q AND DID YOU NOT HEAR THE TESTIMONY THAT MR. TODD DIDN'T
- 20 EVEN WORK ON THE 7TH?
- 21 A I DON'T KNOW WHETHER HE WORKED OR NOT.
- 22 Q DID YOU CHECK THE RECORDS?
- 23 A NO, SIR, I DID NOT.
- 24 Q WOULD YOU LIKE TO SEE THE RECORDS FROM FUDDRUCKERS?
- 25 (SHOWED DOCUMENT TO THE WITNESS.) IT'S BEEN IDENTIFIED THAT

DOUG KELLY/CROSS-CRANE

182

1 THAT WAS SHANNON TODD. CAN YOU SHOW ME WHERE IT SHOWS THAT
2 HE WORKED?

3 A I DON'T KNOW. I'VE NEVER SEEN THIS BEFORE, AND I'M NOT
4 FAMILIAR WITH THE SCHEDULES OUT THERE.

5 Q I WILL BE GLAD TO SHOW YOU. HERE IS SHANNON TODD --
6 MS. MUNSON: YOUR HONOR, I'M GOING TO OBJECT TO
7 THIS.

8 THE COURT: YES, I SUSTAIN THE OBJECTION TO THIS.
9 MOVE ON, MR. CRANE.

10 Q AND WERE YOU ABLE TO DETERMINE WHETHER OR NOT AUSTIN
11 PERRY WORKED ON WEDNESDAY OF THAT WEEK?

12 A NO, SIR, I DID NOT CHECK.

13 Q WELL, IF IT SAYS THAT THEY WERE WORKING ON THE THURSDAY
14 MARCH THE 7TH, AND THEY, IN FACT, WEREN'T, THEN THAT'S NOT
15 TRUE, IS IT?

16 A NO, SIR, I'M GOING BY WHAT HIS STATEMENT SAYS.

17 Q YOU'RE GOING BY WHAT HE TOLD YOU?

18 A YES, SIR, WHAT HE GAVE, HIS WRITTEN STATEMENT.

19 Q NOW WHAT ABOUT THE SATURDAY OF THE ARMED ROBBERY, DID
20 HE WORK OR DIDN'T HE WORK? WHAT DID HE TELL YOU?

21 A (PAUSE, VIEWING DOCUMENT.) HE SAID HE WORKED UNTIL
22 ABOUT 4:30 IN THE AFTERNOON.

23 Q WHY DID HE TESTIFY THAT HE SAID HE DIDN'T WORK?

24 A THAT MAY HAVE BEEN REFERENCE TO ANOTHER INDIVIDUAL.

25 THERE ARE SEVERAL INDIVIDUALS THAT I HAD TALKED WITH, AND I

DOUG KELLY/CROSS-CRANE

183

1 JUST DIDN'T READ HIS STATEMENT WORD-FOR-WORD.

2 Q AND YOU, ALSO, TESTIFIED THAT HE WORKED WITH SHANNON
3 TODD ON THAT DAY?

4 A NOT ON --

5 Q THAT'S NOT TRUE EITHER --

6 A NOT ON SATURDAY.

7 Q THAT'S WHAT YOU TESTIFIED TO?

8 A NO, SIR.

9 Q ALL RIGHT. WHEN YOU TALKED WITH MS. MICHAELOVE, DID
10 SHE NOT TELL YOU THAT SHE COULDN'T RECOGNIZE ANY OF THE
11 VOICES OF THE --

12 A SHE MAY HAVE. WE DISCUSSED SEVERAL THINGS. I DIDN'T
13 MAKE ANY NOTATION TO THAT EFFECT.

14 Q SIR, I BEG TO DIFFER WITH YOU, BUT YOU DID. PAGE TWO
15 OF TWO OF YOUR REPORT?

16 A (PAUSE, VIEWING DOCUMENT.)

17 Q THE MIDDLE OF THE PAGE, "SHE DID NOT RECOGNIZE ANY OF
18 THE TWO VOICES OF THE SUSPECTS."

19 A OKAY, THAT'S COMING FROM THE ORIGINAL REPORT THAT MIKE
20 GALE HAD TAKEN. I BELIEVE SHE STATED IT IN THERE. THAT'S
21 JUST REPEATED.

22 Q AND, ALSO, IN THE ORIGINAL REPORT IT SAYS THAT IT WAS
23 HER OPINION THAT WHOEVER DID IT DIDN'T WORK THERE, ISN'T IT?

24 A FROM THE ORIGINAL REPORT, I GUESS SO, YES, SIR.

25 Q AND YOU TOLD MR. ROLLINS THAT YOU DIDN'T KNOW ANYTHING

DOUG KELLY/CROSS-CRANE

184

1 ABOUT A SAFECRACKING THAT GERMANE MCCULLOUGH AND AUSTIN PERRY
2 HAD BEEN INVOLVED IN; BUT LOOK AT THE SAME PAGE OF THAT
3 REPORT YOU'RE LOOKING AT RIGHT THERE.

4 A THERE'S NO REFERENCE TO A SAFECRACKING IN IT.

5 Q ALL RIGHT, YOU ARE CORRECT ABOUT THAT; HOWEVER, IT DOES
6 SAY "TWO EMPLOYEES, GERMANE MCCULLOUGH AND AUSTIN PERRY,
7 ADMITTED TO THE THEFT." EXCUSE ME, READ THE LINE ABOVE THAT.
8 "INFORMATION WAS GATHERED AND CONTACT WITH THE INFORMANT WILL
9 BE MADE. A PRIOR THEFT FROM THE SAFE, SOME \$1500, HAD
10 OCCURRED SOME MONTHS AGO, AND TWO EMPLOYEES, GERMANE
11 MCCULLOUGH AND AUSTIN PERRY, ADMITTED TO THE THEFT."

12 A THAT'S CORRECT. THAT'S NOT SAFECRACKING. THERE WAS NO
13 FORMAL CHARGE MADE. THAT WAS AN INTERNAL THING WITH
14 FUDDRUCKERS.

15 Q WELL, IF THEY BROKE IN THE SAFE, ISN'T THAT SAFE-
16 CRACKING?

17 MS. MUNSON: OBJECT, AGAIN, YOUR HONOR.

18 THE COURT: YES, I SUSTAIN THE OBJECTION, AND
19 INSTRUCT THE JURY TO DISREGARD THE COMMENT BY THE ATTORNEY.

20 Q DID YOU KNOW THAT THEY HAD TAKEN MONEY FROM THE SAFE?

21 A I WAS INFORMED BY THE -- WHEN I FIRST MADE CONTACT
22 WITH, I BELIEVE, IT'S KIM MARTIN AND MS. MICHAELove OUT THERE
23 THAT THEY HAD HAD A PROBLEM, AN INTERNAL PROBLEM, WITH THESE
24 TWO INDIVIDUALS. BUT AS FAR AS THE DETAILS OF IT, I CAN'T
25 TELL YOU THE DETAILS OF WHAT THEY DID OR DID NOT DO BECAUSE

DOUG KELLY/CROSS-CRANE

185

1 THEY FILED NO FORMAL COMPLAINT; AND THEY WERE HANDLING, YOU
2 KNOW, THE WHOLE SITUATION THEMSELVES.

3 Q DID ANYBODY AT FUDDRUCKERS TELL YOU THAT THEY HAD EVER
4 HAD ANY PROBLEMS WITH SHANNON TODD WHILE HE WORKED THERE?

5 A I DON'T RECALL BECAUSE I DON'T THINK HE HAD WORKED
6 THERE VERY LONG.

7 Q ALL RIGHT. NOW REFERRING TO YOUR REPORT DATED 3/19/96,
8 PAGE ONE DOWN AT THE BOTTOM.

9 A (PAUSE, VIEWING DOCUMENT.)

10 Q ISN'T IT A FACT THAT BASICALLY WHEN YOU FIRST GOT
11 AUSTIN PERRY INTO THE OFFICE, HE JUST DENIED EVERYTHING?

12 A (PAUSE, VIEWING DOCUMENT.) THAT'S CORRECT.

13 Q AND IT WASN'T -- DID YOU JUST LET HIM SIT THERE, AND GO
14 DO SOME FOLLOW-UP, OR HOW DID YOU -- HOW LONG WAS HE THERE IN
15 YOUR OFFICE BEFORE HE FINALLY DECIDED, "WELL, YEAH, I'M GOING
16 TO TELL YOU WHAT HAPPENED"?

17 A WELL, IT COULDN'T HAVE BEEN 15 OR 20 MINUTES AFTER I
18 HAD TALKED WITH HIM THAT HE GAVE ME THIS STORY ABOUT BEING
19 OVER AT A RESIDENCE AT HOLLY TREE AND GAVE ME SOME NAMES.
20 WHEN I LEFT THE ROOM TO GO CHECK THE STORY AND TALKED TO
21 THESE PEOPLE, THEY COULDN'T CONFIRM THAT. IT DIDN'T TAKE BUT
22 THREE OR FOUR MINUTES TO TALK TO THEM, AND THEN I WENT BACK
23 IN.

24 Q WHO DID YOU CALL?

25 A HIS GIRLFRIEND MELISSA LAMBERT.

DOUG KELLY/CROSS-CRANE

186

1 Q WHAT'S HER NAME?

2 A I'M SORRY?

3 Q WHAT'S HER NAME?

4 A WHICH ONE?

5 Q HIS GIRLFRIEND.

6 A OKAY, THE GIRLFRIEND WAS MELISSA LAMBERT.

7 Q UH-HUH.

8 A AND SHE REALLY LIVES WITH HIM. SHE IS MORE LIKE SHE'S
9 A COMMON-LAW WIFE.

10 THE INDIVIDUAL AT HOLLY TREE WAS A JAMIE CLOSE. I
11 DIDN'T GET TO TALK WITH HER, BUT I TALKED WITH HER MOTHER.
12 THAT'S THE HOUSE THEY WERE SUPPOSED TO BE AT. NEITHER OF
13 THOSE INDIVIDUALS COULD CONFIRM THAT MR. PERRY HAD BEEN THERE
14 THAT EVENING. MELISSA WAS, BUT AUSTIN WASN'T.

15 Q HOW MANY TIMES DID YOU HAVE TO CALL MELISSA?

16 A I CALLED HER ONCE. AT FIRST SHE TOLD ME THAT THEY WERE
17 ALL AT THE RESIDENCE OF 2130; AND BEFORE I WENT BACK IN THE
18 ROOM, SHE TURNED AROUND AND CALLED ME BACK AND TOLD ME THEN
19 THAT SHE HAD TOLD ME A STORY, THAT -- (PAUSE) --

20 Q SO SHE LIED TO YOU?

21 A RIGHT.

22 Q AND THEN WHEN YOU WENT BACK IN AND SAID, "WELL, MELISSA
23 HAS TURNED. SHE'S NOT GOING TO VOUCH FOR YOU." THEN THAT'S
24 WHEN HE GAVE YOU THIS STATEMENT, ISN'T IT?

25 A YES, SIR, THAT'S CORRECT.

DOUG KELLY/CROSS-CRANE

187

1 Q NOT UNTIL THEN, ISN'T THAT CORRECT?

2 A THAT'S CORRECT.

3 Q DID YOU NOT, ALSO, ASK FOR A SEARCH WARRANT FOR THE
4 APARTMENT OF MY CLIENT'S GIRLFRIEND?

5 A YES, WE DID. WE OBTAINED A SEARCH WARRANT, I BELIEVE,
6 ON MARCH THE 10TH, BUT IT WAS NEVER EXECUTED.

7 Q THAT WAS PATRICIA GERMAN?

8 A PATRICIA GERMAN, APARTMENT 265, AUGUSTA HILLS.

9 Q WERE YOU ABLE TO LEARN THAT HE STAYED THERE FREQUENTLY?

10 A WE -- AFTER I TALKED TO PATRICIA, RIGHT, SHE
11 PRETTY-WELL CONFIRMED THAT, YOU KNOW, HE HAD BEEN THERE OFF
12 AND ON.

13 Q THAT HE HAD BEEN THERE?

14 A UH-HUH (NODDED HIS HEAD).

15 Q DID SHE TELL YOU HE HAD BEEN THERE THAT NIGHT?

16 A WHEN I HAD TALKED WITH PATRICIA, SHE STATED SHE WASN'T
17 THERE, SHE HADN'T SEEN HIM THE NIGHT THAT THIS HAPPENED.

18 Q IS THAT IN YOUR REPORT SOMEWHERE?

19 A NO, SIR.

20 Q WHERE -- IT'S NOT IN YOUR REPORT?

21 A NO, SIR.

22 Q THAT'S NOT A VITAL PIECE OF EVIDENCE THAT YOU SHOULD
23 HAVE WRITTEN DOWN?

24 A NO, SIR.

25 Q WELL, WHEN DID YOU HAPPEN TO DECIDE THAT'S WHAT SHE

1 TOLD YOU?

2 A WELL, THAT WAS THE CONVERSATION WE HAD WHEN SHANNON AND
3 SHE CAME INTO THE OFFICE ON THE -- I DON'T KNOW IF IT WAS THE
4 18TH OF -- WHENEVER HE TURNED HIMSELF IN.

5 Q NOW YOU'RE SAYING THAT SHANNON TODD CAME IN WITH
6 PATRICIA GERMAN ON 3/18/96, RIGHT?

7 A I BELIEVE THAT'S CORRECT, MR. CRANE.

8 Q AND WAS ADVISED OF HIS MIRANDA WARNINGS, RIGHT?

9 A CORRECT.

10 Q HOW OLD WAS HE ON THAT DATE? --

11 A AT THAT TIME HE WAS 16.

12 Q AND WAS HIS MOTHER, ALSO, CALLED?

13 A YES, SIR, SHE WAS CALLED.

14 Q AND YOU MADE ALL KIND OF NOTES THAT HE WAS ADVISED OF
15 THE WARRANTS. DID HE DENY ANY INVOLVEMENT IN IT?

16 A YES, HE DENIED IT.

17 Q SAID HE DIDN'T KNOW WHO STAN WAS?

18 A HE -- I ASKED HIM ABOUT STAN. HE JUST WOULDN'T GIVE ME
19 THE INFORMATION, AS FAR AS HIS LAST NAME GOES.

20 Q HOW DO YOU KNOW HE KNEW WHO IT WAS?

21 A I DON'T.

22 Q ALL RIGHT. WHAT WAS HE CHARGED WITH?

23 A WHO IS "HE"?

24 Q MR. TODD.

25 A SHANNON?

DOUG KELLY/CROSS-CRANE

189

1 Q YES.

2 A LET'S SEE, SHANNON WAS CHARGED WITH ARMED ROBBERY, AND
3 FOUR COUNTS OF KIDNAPPING, THE USE OF A FIREARM DURING THE
4 COMMISSION OF A VIOLENT CRIME.

5 Q AND SAFECRACKING, RIGHT?

6 A AND SAFECRACKING.

7 Q OKAY. THAT'S NOT BEFORE THE COURT TODAY, IS IT?

8 A NO.

9 Q ALL RIGHT. DO YOU KNOW WHAT HAS HAPPENED TO THAT?

10 A NO, SIR, I DO NOT.

11 MS. MUNSON: OBJECTION, YOUR HONOR.

12 THE COURT: I SUSTAIN THE OBJECTION.

13 Q ALL RIGHT, NOW HE WASN'T GIVEN A BOND, WAS HE?

14 A NO, SIR, HE WAS CARRIED BEFORE MAGISTRATE TAYLOR.

15 (PAUSE, VIEWING DOCUMENT.) CORRECTION, THE WARRANTS WERE
16 ISSUED BY MAGISTRATE TAYLOR. HE WAS CARRIED BEFORE, I
17 BELIEVE, MAGISTRATE THOMPSON AGAIN. NO BOND WAS SET AT THAT
18 TIME.

19 Q HAS HE GOTTEN OUT OF JAIL SINCE THE ARREST?

20 A I DON'T KNOW, SIR.

21 Q ALL RIGHT. SO IS THAT BECAUSE HE DIDN'T DECIDE TO TELL
22 YOU WHATEVER STORY HE WANTED TO TELL YOU, OR IS THAT BECAUSE
23 YOU BELIEVED THIS OTHER FELLOW MORE THAN HIM?

24 A NO, SIR, I BELIEVE THE CHARGE WAS KIDNAPPING AND THE
25 MAGISTRATE CAN'T SET BOND. IT HAS TO BE SET BY A CIRCUIT

1 COURT.

2 Q ALL RIGHT, HAVE YOU EVER FOUND ANY RIFLE OR ANYTHING?

3 A NO, SIR.

4 Q ANY GUN?

5 A NO, SIR.

6 Q HAVE YOU FOUND ANY YELLOW BANDANNA?

7 A NO, SIR.

8 Q HAVE YOU FOUND A WELDER'S MASK?

9 A NO, SIR.

10 Q HAVE YOU FOUND A MICHIGAN STARTERS JACKET?

11 A NO, SIR.

12 Q HAVE YOU LEARNED OF ANYBODY THAT COULD TELL YOU THAT
13 EITHER ONE OF THESE FELLOWS WORE A MICHIGAN STARTERS JACKET?

14 A NO, SIR.

15 Q HAVE YOU EVEN TRIED TO FIND THAT OUT?

16 A I'VE ASKED, I BELIEVE IT WAS PATRICIA GERMAN WHEN I --

17 Q WHAT DID SHE TELL YOU?

18 A -- TALKED WITH HER. SHE DIDN'T KNOW. SHE SAID, "I
19 DON'T KNOW."

20 Q HAVE YOU TALKED TO SHANNON'S MOM WHETHER HE HAS A
21 MICHIGAN STARTER JACKET

22 A NO, SIR. THE ONLY TIME I DISCUSSED ANYTHING WITH MRS.
23 TODD, OR SHANNON'S MOTHER, WAS WHEN SHE RESPONDED WHEN WE
24 ARRESTED SHANNON; AND I ADVISED HER OF WHAT THE CHARGES WERE
25 AT THAT TIME.

DOUG KELLY/CROSS-CRANE

191

1 Q DO YOU HAVE ANY HAIR SAMPLES FROM THE CRIME SCENE?

2 A NO, SIR.

3 Q ANY OTHER TYPE OF PHYSICAL EVIDENCE FROM THE CRIME

4 SCENE OTHER -- WELL, AS A MATTER OF FACT, YOU DON'T HAVE ANY
5 FROM THE CRIME SCENE, DO YOU?

6 A NO, SIR.

7 Q NOTHING FROM THE CRIME SCENE? NOT EVEN AN IDENTIFICA-
8 TION OF ANYBODY, DO YOU?

9 A FROM THE CRIME SCENE?

10 Q YES, SIR.

11 A NO, SIR, JUST FROM THE BANK BAG.

12 Q AS A MATTER OF FACT, FROM WHAT I UNDERSTAND, MOST OF
13 THE WITNESSES CAN'T EVEN TELL US IF THE PEOPLE WERE BLACK OR
14 WHITE, CAN THEY?

15 A WHAT I HEARD THIS MORNING, THEY'RE HAVING TROUBLE WITH
16 ONE.

17 Q ALL RIGHT, AND MOST OF THEM, AND, AS A MATTER OF FACT,
18 ALL OF THEM HAVE INDICATED THAT THEY DID NOT RECOGNIZE THE
19 VOICE AS THAT OF SHANNON TODD, HAVEN'T THEY?

20 A I BELIEVE THAT'S WHAT I HEARD.

21 Q ALL RIGHT. AND FROM THIS BANK BAG, ARE THERE ANY
22 FINGERPRINTS THAT YOU'RE AWARE OF THAT BELONG TO SHANNON
23 TODD?

24 A NO, SIR.

25 Q IS THERE ANYBODY THAT CAN PUT SHANNON TODD ON MAULDIN

DOUG KELLY/CROSS-CRANE

192

1 ROAD SOMETIME AFTER THE ARMED ROBBERY?

2 A I DON'T KNOW THE DIRECTION THEY TOOK WHEN THEY LEFT
3 FUDDRUCKERS, SO I DON'T KNOW.

4 Q YOU DON'T? DIDN'T MR. PERRY TELL YOU?

5 A HE SAID SOMETHING ABOUT 85 WHEN THEY WENT TO AUGUSTA
6 HILLS.

7 Q WELL, DID HE EVER SAY ANYTHING ABOUT GOING DOWN MAULDIN
8 ROAD?

9 A NO, SIR.

10 Q DO YOU KNOW IF HE WENT DOWN MAULDIN ROAD?

11 A NO, SIR.

12 Q HOW WAS HE TRAVELING?

13 A HE JUST SAID WHEN HE LEFT FUDDRUCKERS, HE WENT TOWARDS
14 85.

15 Q I'LL REPHRASE THE QUESTION. WHAT WAS HE TRAVELING IN?

16 A IN?

17 Q YES, SIR.

18 A HIS VEHICLE, OR HIS BROTHER'S VEHICLE, A WHITE SUNBIRD.

19 Q DID YOU QUESTION HIS BROTHER ABOUT THAT?

20 A NO, SIR.

21 Q DID YOU LOOK AT THE CAR TO SEE IF THERE WERE FINGER-
22 PRINTS IN THE CAR BELONGING TO SHANNON TODD?

23 A NO, SIR.

24 Q DID YOU EVER FIND THE CAR?

25 A NO, SIR, WE DID NOT.

DOUG KELLY/CROSS-CRANE

193

1 Q DID YOU FIND ANY WITNESSES OUT THERE AT FUDDRUCKERS
2 THAT CAN EVEN TELL YOU THAT A WHITE CAR WAS OUT THERE THAT
3 NIGHT?

4 A NO, SIR. MOST OF THE PLACES WERE CLOSED THAT NIGHT.

5 Q AND -- ONE MOMENT, PLEASE. (PAUSE, VIEWING DOCUMENT.)
6 DID YOU QUESTION PATRICIA GERMAN AS TO WHETHER OR NOT AUSTIN
7 PERRY WAS IN HER APARTMENT THAT NIGHT?

8 A WHEN I TALKED TO PATRICIA, AND I BELIEVE IT WAS ON THE
9 18TH, I -- WHEN SHE BROUGHT SHANNON IN, I ADVISED HER OF WHAT
10 WAS TAKING PLACE. AT THAT TIME I DID ASK HER IF SHE
11 REMEMBERS ANYBODY COMING IN HER APARTMENT THAT NIGHT. SHE
12 SAID SHE DIDN'T, SHE WASN'T THERE.

13 Q WASN'T THERE?

14 A THAT'S WHAT SHE SAID AT THAT POINT. AND THEN I ASKED
15 HER IF SHE KNEW WHO THIS STAN WAS. SHE SAID, "NO, BUT I
16 THINK I CAN FIND OUT FOR YOU."

17 Q DID SHE --

18 A WHICH SHE --

19 Q GO AHEAD.

20 A -- WHICH SHE DID. LATER ON, I BELIEVE ON THE 18TH, SHE
21 CALLED ME BACK AND STATED THAT THE STAN SUSPECT'S LAST NAME
22 WAS BUTLER, THAT HE WAS STAYING IN APARTMENT 91 IN ROOSEVELT
23 HEIGHTS.

24 Q SHE FOUND THAT OUT FOR YOU?

25 A YES.

DOUG KELLY/REDIRECT-MUNSON

194

1 Q SOMEHOW OFF OF THE STREET?

2 A I GUESS.

3 Q HOW LONG DID -- DID AUSTIN PERRY INDICATE TO YOU
4 WHETHER OR NOT HE WENT INTO MS. GERMAN'S APARTMENT WHEN THEY
5 WENT BACK?

6 A THAT WAS MY IMPRESSION OF WHAT HE SAID: HE SAID, "WE
7 JUST WENT TO THE APARTMENT AND WE STAYED THERE FOR ABOUT" --
8 HE STAYED THERE WITH THEM FOR ABOUT 5 MINUTES, SO I ASSUME HE
9 WENT IN.

10 Q DID HE SAY WHETHER HE SAW MS. GERMAN?

11 A I DON'T RECALL HIM SAYING THAT.

12 Q OKAY. SO, MR. KELLY, IN A NUTSHELL ALL YOU HAVE TO
13 CHARGE MR. TODD WITH IS DERIVED FROM THE WRITTEN STATEMENT OF
14 A CONFESSED ARMED ROBBER THAT YOU CAUGHT IN A LIE, ISN'T
15 THAT CORRECT?

16 A I HAVE GOT THE STATEMENTS, YES.

17 MR. CRANE: THANK YOU, SIR.

18 THE COURT: ANY REDIRECT?

19 MS. MUNSON: YES, SIR, YOUR HONOR.

20 REDIRECT EXAMINATION BY MS. MUNSON:

21 Q DID YOU GET ANY INFORMATION ON THIS CASE FROM GERMANE
22 MCCULLOUGH?

23 A ANY INFORMATION?

24 Q RIGHT.

25 A NO, MA'AM, NONE WHATSOEVER.

DOUG KELLY/REDIRECT-MUNSON

195

1 Q WAS HE EVER INTERVIEWED AS A SUSPECT?

2 MR. CRANE: YOUR HONOR, I DON'T THINK THAT'S
3 CORRECT OR PROPER CROSS, OR REDIRECT, OR WHATEVER.

4 THE COURT: OVERRULED. GO AHEAD.

5 Q WAS HE A PART OF THIS INVESTIGATION AT ALL?

6 A WE HAVE SEVERAL PEOPLE WE WERE LOOKING AT. OF COURSE,
7 GERMANE WAS ONE OF THEM.

8 Q OKAY.

9 A BUT I NEVER INTERVIEWED HIM AT ANY POINT.

10 Q IN LOOKING AT HIM, HOW DID YOU GO ABOUT LOOKING AT
11 GERMANE MCCULLOUGH?

12 A WHEN THEY MENTIONED SOMETHING ABOUT THE INTERNAL
13 THEFTS, OF COURSE, I SAW THE NAME "GERMANE MCCULLOUGH" ON
14 THERE, OF COURSE. YOU KNOW, THAT WOULD AUTOMATICALLY SAY YOU
15 NEED TO LOOK AT IT.

16 Q AND WHY DID YOU TAKE YOUR ATTENTION AWAY FROM GERMANE
17 MCCULLOUGH?

18 A THAT'S WHEN THE INFORMATION WAS RECEIVED BY JIMMY
19 CANBANNON FROM SOME UNKNOWN PHONE CALL THAT THE PERSON WE
20 NEED TO BE LOOKING AT WAS AUSTIN PERRY.

21 Q OKAY. I NEED SOME CLARIFICATION. YOU SAID THAT
22 SHANNON TODD WOULD NOT GIVE YOU THE INFORMATION ON STAN?

23 A CORRECT, I ASKED HIM WHO STAN --

24 Q WHAT DO YOU MEAN BY THAT?

25 A I ASKED HIM WHO HE WAS, AND HE SAID, YOU KNOW, "I'M NOT

DOUG KELLY/REDIRECT-MUNSON

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1 GOING TO TELL YOU," OR SOMETHING TO THAT EFFECT. HE JUST
2 WOULDN'T DISCUSS IT WITH ME ANY FURTHER.

3 Q OKAY. WHICH HE HAD A RIGHT TO DO?

4 A OH, YES, THAT'S RIGHT.

5 Q OKAY. DID SHANNON TODD GET NO BOND AS PUNISHMENT?

6 A NO, MA'AM.

7 Q DID AUSTIN PERRY GET A BOND IN ORDER TO -- AS A REWARD
8 FOR HIS COOPERATION?

9 A NO, MA'AM.

10 Q DID YOU TELL HIM YOU WERE GOING TO GIVE HIM A BOND IF
11 HE WOULD COOPERATE?

12 A I TOLD HIM THE OPTIONS OF WHAT, YOU KNOW, HE WAS GOING
13 TO HAVE TO DO, YOU KNOW, THE JUDGE REALLY MAKES THE FINAL
14 DECISION ABOUT BONDS AND THAT SORT OF THING. WE DON'T HAVE
15 ANY CONTROL OF THAT.

16 Q OKAY. WHY DID YOU NOT EXECUTE THE SEARCH WARRANT AT
17 PATRICIA GERMAN'S HOUSE?

18 A ONE OF THE UNIFORM OFFICERS HAD MADE CONTACT WITH, I
19 BELIEVE, PATRICIA AND HAD GOTTEN A PAGER NUMBER FOR SHANNON.
20 WHEN THEY PAGED HIM, HE TOLD ME HE WOULD BE IN. WE JUST
21 DIDN'T EXECUTE THE WARRANT.

22 Q SO THE WARRANT WAS FOR SHANNON TODD'S BODY?

23 A CORRECT.

24 MS. MUNSON: I HAVE NOTHING FURTHER.

25 MR. CRANE: I DO, JUDGE.

DOUG KELLY/RE CROSS-CRANE

197

1 RE CROSS-EXAMINATION BY MR. CRANE:

2 Q DETECTIVE KELLY, DID I NOT NO MORE THAN AN HOUR AGO ASK
3 YOU WHO THE POSSIBLE SUSPECT WAS IN REFERENCE TO YOUR REPORT
4 THAT YOU JUST ANSWERED TO THIS SOLICITOR WAS AUSTIN PERRY,
5 BUT, YET, YOU SAT IN THAT CHAIR RIGHT THERE AND TOLD ME YOU
6 DIDN'T HAVE A SUSPECT?

7 A NO, SIR.

8 Q WHAT DID YOU TELL ME?

9 A THAT'S NOT CORRECT.

10 Q WHAT DID YOU TELL ME?

11 A WHAT YOU ASKED ME WAS, WAS I LOOKING AT PARTICULARLY
12 ONE SUSPECT AT THAT TIME. WE WERE LOOKING AT SEVERAL.

13 Q DID I NOT ASK YOU TO REFER TO THIS, AND I SPECIFICALLY
14 SAID, "WHO WAS THAT SUSPECT?"

15 A I DON'T KNOW WHO THAT SUSPECT WAS.

16 Q WELL, HOW DID YOU JUST TELL HER --

17 A YOU ASKED ME --

18 Q -- AUSTIN PERRY?

19 A YOU ASKED ME THIS ON A BREAK.

20 Q THAT'S RIGHT. THAT'S WHAT SHE --

21 A I SAID I DON'T KNOW. AND YOU SAID THAT THE INFORMATION
22 THAT THE PHONE CALL WAS RECEIVED FROM JIMMY CANBANNON THAT WE
23 NEEDED TO BE LOOKING AT AUSTIN PERRY. I DIDN'T KNOW WHETHER
24 HE WAS A SUSPECT OR NOT. WE DIDN'T KNOW WHAT HE KNEW.

25 Q JIMMY CANBANNON TOLD YOU THAT AUSTIN PERRY WAS A

DOUG KELLY/RECROSS-CRANE

198

1 SUSPECT?

2 A NO, HE SAID HE HAD RECEIVED A PHONE CALL FROM SOMEONE
3 SAYING THAT AUSTIN PERRY IS WHO WE NEEDED TO TALK WITH; THAT
4 HE MAY HAVE SOME INFORMATION ON. WHICH THAT'S WHAT WE DID.

5 MR. CRANE: THANK YOU.

6 THE COURT: STEP DOWN.

7 MS. MUNSON: YOUR HONOR, THE STATE CALLS AUSTIN
8 PERRY. (PAUSE.)

9 WHILE WE'RE WAITING, JUDGE, I GUESS THIS IS A GOOD TIME
10 FOR ME TO MOVE INTO EVIDENCE STATE'S EXHIBITS NUMBER 1, 2, 3,
11 AND 4 FOR IDENTIFICATION PURPOSES INTO EVIDENCE.

12 THE COURT: ALL RIGHT, ANY OBJECTION, GENTLEMEN?

13 MR. CRANE: YES, SIR, THEY HAVEN'T COMPLETED THE
14 CHAIN. I OBJECT.

15 THE COURT: ALL RIGHT, SUBJECT TO YOUR OBJECTION,
16 PUT IT IN.

17 MS. MUNSON: IF THERE'S AN ARGUMENT ON THE CHAIN,
18 YOUR HONOR, I THINK I CAN HANDLE THAT.

19 MR. CRANE: WELL, I'VE ALREADY MADE THE OBJECTION,
20 AND HE RULED.

21 THE COURT: GO AHEAD.

22 (STATE'S EXHIBIT NUMBERS 1, 2, 3, AND 4
23 RECEIVED INTO EVIDENCE.)

24 THE CLERK: STOP RIGHT THERE, PLACE YOUR LEFT HAND
25 ON THE BIBLE, AND RAISE YOUR RIGHT, PLEASE.

AUSTIN PERRY/DIRECT-MUNSON

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1 AUSTIN PERRY, FIRST BEING SWORN TO TELL THE
2 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIES
3 AS FOLLOWS:

4 THE CLERK: STATE YOUR NAME.

5 THE WITNESS: AUSTIN PERRY.

6 THE CLERK: OKAY, HAVE A SEAT.

7 DIRECT EXAMINATION BY MS. MUNSON:

8 Q MR. PERRY, HOW OLD ARE YOU?

9 A 17.

10 Q ARE YOU WORKING ANYWHERE?

11 A YES, MA'AM, I'M CURRENTLY A LIFEGUARD.

12 Q WHERE?

13 A AT NEELY FARMS POOL.

14 Q ARE YOU STILL IN HIGH SCHOOL?

15 A I GRADUATED.

16 Q WHEN DID YOU GRADUATE?

17 A THIS YEAR.

18 Q OKAY. WHERE ARE YOU LIVING NOW?

19 A I'M LIVING WITH MY PARENTS CURRENTLY. I'M GETTING A
20 RESIDENCE ON THEIR LAND.

21 Q ARE YOU MARRIED?

22 A YES, MA'AM.

23 Q OKAY, WHAT'S YOUR WIFE'S NAME?

24 A MELISSA.

25 Q WERE YOU WORKING AT FUDDRUCKERS IN MARCH OF 1996?

- 1 A YES, MA'AM, I SURE WAS.
- 2 Q HOW LONG HAD YOU BEEN WORKING THERE?
- 3 A AROUND SEVEN MONTHS.
- 4 Q OKAY. DID YOU HELP PLAN AN ARMED ROBBERY?
- 5 A I WOULDN'T SAY REALLY "PLANNED." I KIND OF WENT WITH
- 6 IT.
- 7 Q BUT YOU WERE INVOLVED WITH AN ARMED ROBBERY AT
- 8 FUDDRUCKERS ON MARCH THE 10TH?
- 9 A YES, MA'AM.
- 10 Q OKAY. TELL THE JURY WHAT YOUR ROLE IN THAT WAS.
- 11 A I WAS THE DRIVER OF THE CAR -- (PAUSE) -- THAT --
- 12 Q WHOSE CAR DID YOU DRIVE?
- 13 A I DROVE MY BROTHER'S CAR.
- 14 Q ABOUT WHAT TIME DID THIS TAKE PLACE?
- 15 A I GUESS AROUND 1:00 IN THE MORNING.
- 16 Q OKAY, WHO WERE YOU WITH WHEN YOU DROVE TO FUDDRUCKERS
- 17 TO COMMIT ARMED ROBBERY?
- 18 A SHANNON TODD AND STAN BUTLER.
- 19 Q DO YOU SEE THEM IN THE COURTROOM?
- 20 A YES, MA'AM.
- 21 Q SHOW THE JURY WHERE THEY ARE..
- 22 A SITTING OVER THERE (POINTING).
- 23 MS. MUNSON: YOUR HONOR, LET THE RECORD SHOW THAT
- 24 HE HAS POINTED OUT THE DEFENDANTS.
- 25 THE COURT: ALL RIGHT.

AUSTIN PERRY/DIRECT-MUNSON

201

- 1 Q HOW DO YOU KNOW SHANNON TODD?
- 2 A HE USED TO WORK AT FUDDRUCKERS WITH ME.
- 3 Q HOW MANY TIMES WOULD YOU SAY YOU WORKED WITH HIM?
- 4 A I DON'T KNOW, MAYBE 10 OR 15 AT THE MOST.
- 5 Q 10 OR 15?
- 6 A TIMES AT THE MOST.
- 7 Q OKAY. HAD YOU EVER MET STANLEY BUTLER BEFORE THAT
- 8 NIGHT?
- 9 A ONCE WHEN I HAD TAKEN SHANNON HOME AND I TOOK GERMANE
- 10 MCCULLOUGH HOME, I MET HIM THEN.
- 11 Q OKAY. WHEN YOU TOOK SHANNON TODD HOME, HOW MANY TIMES
- 12 DID YOU TAKE HIM HOME?
- 13 A FOUR OR FIVE MAYBE.
- 14 Q OKAY. WHERE WOULD YOU TAKE HIM WHEN YOU WOULD TAKE HIM
- 15 HOME?
- 16 A I WOULD USUALLY TAKE HIM TO HIS GIRLFRIEND'S HOUSE OVER
- 17 ON 25.
- 18 Q DO YOU KNOW THE NAME OF THE APARTMENTS?
- 19 A I COULDN'T TELL YOU THE NAME OF THEM.
- 20 Q OKAY. IF YOU WERE LEAVING FUDDRUCKERS AND YOU WERE
- 21 TAKING SHANNON TODD HOME, WHICH WAY WOULD YOU GO?
- 22 A I WOULD GO DOWN '85 UNTIL I GOT OFF ON BUSINESS 25, AND
- 23 GOING TOWARD GREENWOOD, YOU TURN IN FRONT OF GODIVA'S TO THE
- 24 RIGHT.
- 25 Q AND THE APARTMENTS ARE WHERE?

AUSTIN PERRY/DIRECT-MUNSON

202

1 A IN FRONT OF GODIVA'S ON THE RIGHT SIDE OF THE ROAD.

2 Q OKAY. HAD YOU EVER BEEN INSIDE SHANNON TODD'S
3 GIRLFRIEND'S APARTMENT?

4 A I HAD THE NIGHT OF THE ROBBERY.

5 Q OKAY, DO YOU KNOW WHAT APARTMENT NUMBER SHANNON TODD'S
6 GIRLFRIEND LIVES IN?

7 A I'M NOT SURE OF THE NUMBER, BUT I CAN GO THERE IF I HAD
8 TO.

9 Q OKAY. DO YOU KNOW HER NAME?

10 A NO, MA'AM.

11 Q HAD YOU EVER SEEN HER?

12 A I SAW HER LAYING ON THE COUCH THAT NIGHT.

13 Q WHAT NIGHT?

14 A THE NIGHT OF THE ROBBERY.

15 Q OKAY, LET'S TALK ABOUT THE ROBBERY. DO YOU REMEMBER
16 THE DATE THAT THAT TOOK PLACE?

17 A I DON'T REMEMBER THE DATE.

18 Q OKAY.

19 A IT WAS SATURDAY NIGHT, I KNOW THAT MUCH.

20 Q HAD YOU WORKED AT FUDDRUCKERS THAT DAY?

21 A YES, MA'AM. I WENT IN THAT MORNING AND OPENED. I
22 WORKED PRODUCE, SO I HAD TO BE THERE AROUND 8:00 AND GOT OFF
23 AROUND 4:00.

24 Q AND WHEN DID YOU LEAVE FUDDRUCKERS ON THE NIGHT OF THE
25 ROBBERY?

AUSTIN PERRY/DIRECT-MUNSON

203

- 1 A AROUND 4:00 OR 5:00.
- 2 Q OKAY. WHEN YOU LEFT FUDDRUCKERS, WHERE DID YOU GO?
- 3 A I WENT HOME, TOOK A SHOWER, OF COURSE. I TALKED TO MY
- 4 GIRLFRIEND, OR SHE WAS MY GIRLFRIEND AT THE TIME. I TALKED
- 5 TO HER FOR AWHILE. SHE WENT TO ONE OF HER FRIEND'S HOUSES,
- 6 AND I WENT TO SPARTANBURG.
- 7 Q OKAY. DID ANYTHING HAPPEN WHILE YOU WERE IN
- 8 SPARTANBURG IN REFERENCE TO THE ROBBERY?
- 9 A THE ONLY THING THAT HAPPENED WHILE I WAS IN
- 10 SPARTANBURG, I WAS AT A FRIEND'S HOUSE; AND AFTER I LEFT
- 11 THERE, I GOT A PAGE FROM SHANNON OR SHANNON TODD.
- 12 Q OKAY, HOW DO YOU KNOW THAT IT WAS SHANNON TODD THAT WAS
- 13 PAGING YOU?
- 14 A HE PUT A CODE IN AFTER IT SAID 357 SO I KNEW WHO IT
- 15 WAS. AND I STOPPED AND I CALLED, AND HE SAID, YOU KNOW,
- 16 "THIS IS SHANNON. COME PICK ME UP." I WAS LIKE, YOU KNOW,
- 17 "WHAT FOR?" HE SAID, "WELL, WE'RE GOING TO GO DO FUDDS." I
- 18 SAID, "ALL RIGHT."
- 19 Q DID HE PUT A PHONE NUMBER IN FOR YOU TO CALL, ALONG
- 20 WITH THE 357?
- 21 A YES, MA'AM.
- 22 Q DO YOU REMEMBER THE PHONE NUMBER?
- 23 A NO.
- 24 Q HAD YOU -- DID YOU RECOGNIZE IT?
- 25 A I HAD RECOGNIZED IT.

AUSTIN PERRY/DIRECT-MUNSON

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1 Q OKAY, AND WHAT IS IT, IS IT THE CODE THAT LET YOU KNOW
2 THAT IT WAS SHANNON TODD?

3 A YES, IT WAS THE CODE THAT HAD LET ME KNOW WHO IT WAS.

4 Q OKAY. WHEN DID HE TELL YOU THAT THAT WAS HIS CODE?

5 A MAYBE A WEEK, A WEEK-AND-A-HALF BEFORE.

6 Q BEFORE WHAT?

7 A THE NIGHT OF THE ROBBERY.

8 Q OKAY. SO YOU GOT A PAGE; ABOUT WHAT TIME WAS THIS WHEN
9 YOU WERE IN SPARTANBURG WHEN YOU GOT A PAGE FROM SHANNON
10 TODD?

11 A UH-HUH. IT WAS ABOUT -- IT WAS KIND OF EARLY. IT WAS
12 ABOUT 10:30 OR 11:00.

13 Q AND YOU WERE IN SPARTANBURG?

14 A I WAS ON MY WAY. I WAS ALMOST IN GREENVILLE BY THAT
15 TIME.

16 Q OKAY. SO WHEN YOU STOPPED, YOU SAY YOU STOPPED TO CALL
17 HIM, HOW DID YOU CALL HIM?

18 A ON A PAY PHONE.

19 Q ALL RIGHT. AND WHEN YOU TALKED WITH HIM, HOW DID HE
20 IDENTIFY HIMSELF?

21 A HE SAID, "THIS IS SHANNON. WHERE ARE YOU AT?" WELL, I
22 TOLD HIM WHERE I WAS AT, AND I TOLD HIM THAT I WOULD COME
23 PICK HIM UP IF HE WANTED ME TO AFTER HE ASKED, YOU KNOW, HE
24 TOLD ME TO COME PICK HIM UP. I SAID, "ALL RIGHT."

25 Q WHEN HE SAID TO YOU, "LET'S DO FUDDS," WHAT DID YOU

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1 THINK THAT MEANT?

2 A THAT HE WANTED TO ROB THE PLACE.

3 Q THAT HE WANTED TO ROB THE PLACE?

4 A YES. WELL, I GUESS HE WANTED BOTH OF US TO ROB THE
5 PLACE.

6 Q WELL, YOU'RE NOT DENYING THAT YOU'RE GUILTY, ARE YOU?

7 A NO, MA'AM.

8 Q YOU ARE GUILTY?

9 A YES, MA'AM.

10 Q OKAY. AFTER YOU HUNG UP WITH HIM, WHERE DID YOU GO TO
11 PICK HIM UP?

12 A OVER BY SAINT FRANCIS HOSPITAL. I'M NOT SURE OF
13 EXACTLY THE EXACT LOCATION, BUT.

14 Q CAN YOU DESCRIBE THE HOUSE?

15 A KIND OF DARK. IT WAS -- I'M NOT REAL SURE WHAT COLOR
16 THE HOUSE WAS.

17 Q WAS IT A HOUSE OR AN APARTMENT?

18 A IT WAS A HOUSE.

19 Q DID YOU PULL UP IN THE DRIVEWAY?

20 A NO, I PULLED UP BEHIND HIS GIRLFRIEND'S CAR WHICH WAS
21 PARKED RIGHT THERE WHERE HE WAS TALKING WITH HER.

22 Q SO YOU SAY YOU PULLED UP BEHIND HIS GIRLFRIEND'S CAR;
23 HOW DO YOU KNOW THAT THAT WAS HIS GIRLFRIEND'S CAR?

24 A HE TOLD ME WHEN HE CAME BACK TO THE CAR. I ASKED HIM
25 WHO IT WAS. HE SAID THAT IT WAS HIS GIRLFRIEND'S CAR.

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1 Q SO WHERE WAS SHANNON TODD WHEN YOU PULLED UP AT THAT
2 HOUSE ON SAINT FRANCIS?

3 A HE WAS TALKING TO HIS GIRLFRIEND ON THE DRIVER'S SIDE..

4 Q WAS HE IN THE CAR OR OUTSIDE?

5 A HE WAS OUTSIDE THE CAR.

6 Q OKAY, AND YOU PULLED UP, AND THEN HOW LONG DID IT TAKE
7 HIM TO COME BACK TO THE CAR WITH YOU?

8 A MAYBE FIVE MINUTES.

9 Q ALL RIGHT. WHEN HE GOT IN THE CAR WITH YOU, WHAT
10 HAPPENED NEXT?

11 A HE SAID, "ARE YOU READY TO GO DO THIS?" I SAID, "I
12 GUESS." AND HE SAID, "WELL, LET'S GO PICK UP STAN." I WAS
13 LIKE, "WHERE DOES HE LIVE? YOU'VE GOT TO TELL ME WHERE TO
14 GO." SO HE TOLD ME WHERE TO GO, AND WE RODE TO STAN'S HOUSE.
15 IT WAS AN APARTMENT.

16 Q ALL RIGHT, WHEN YOU GOT TO STAN'S HOUSE, WHAT DID YOU
17 DO?

18 A WE WENT INTO HIS APARTMENT. WE SAT AROUND AND TALKED
19 FOR A WHILE. AND THEN I DON'T KNOW, IT WAS KIND OF LATE, SO
20 WE LEFT TO GO ROB FUDDRUCKERS.

21 Q OKAY. AS YOU WERE COMING OUT, DID YOU ALL COME OUT
22 TOGETHER OUT OF STAN'S APARTMENT?

23 A NO. HE TOLD ME TO GO OUT FIRST. HE SAID THE COPS WERE
24 KIND OF AROUND THERE A GOOD BIT THAT DAY. HE SAID THEY WERE
25 PICKING UP PEOPLE FOR TRESPASSING. SO I WENT OUT FIRST. HE

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- 1 TOLD ME TO POP THE TRUNK. SO I POPPED THE TRUNK.
- 2 Q WHO TOLD YOU TO GO OUT FIRST?
- 3 A STAN.
- 4 Q AND WHO TOLD YOU TO POP THE TRUNK?
- 5 A STAN.
- 6 Q OKAY. SO WHEN YOU WENT OUT, DID YOU GET INTO YOUR CAR?
- 7 A YEAH, I POPPED THE TRUNK AND GOT INTO THE CAR AND
- 8 STARTED IT UP.
- 9 Q OKAY. HOW LONG AFTER THAT WAS IT THAT STAN AND SHANNON
- 10 CAME OUT?
- 11 A MAYBE A MINUTE OR TWO.
- 12 Q ALL RIGHT, AS THEY WERE WALKING TOWARD YOU, DID YOU
- 13 NOTICE THAT THEY WERE CARRYING ANYTHING?
- 14 A YES, THEY WERE CARRYING A SHEET, KIND OF LONG; KIND OF
- 15 CARRYING IT ON THE TOP.
- 16 Q WHO WAS CARRYING THAT?
- 17 A SHANNON WAS CARRYING THAT.
- 18 Q SO HE WAS CARRYING THE SHEET IN WHAT WAY?
- 19 A KIND OF HOLDING IT FROM THE TOP, AND IT WAS GOING DOWN,
- 20 AND HE PUT IT IN THE TRUNK.
- 21 Q THE SHEET WAS JUST -- HE WAS CARRYING IT AT THE TOP OF
- 22 IT?
- 23 A YES.
- 24 Q OKAY. DID IT LOOK HEAVY, OR --
- 25 A IT --

AUSTIN PERRY/DIRECT-MUNSON

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- 1 Q -- HOW DID IT LOOK?
- 2 A WELL, IT LOOKED LONG.
- 3 Q THE SHEET LOOKED LONG?
- 4 A YEAH, I MEAN, I HAD AN IDEA OF WHAT WAS IN THE SHEET.
- 5 Q WHAT DO YOU MEAN YOU HAD AN IDEA OF WHAT WAS IN THE
- 6 SHEET?
- 7 A I KIND OF FIGURED IT, YOU KNOW, THAT IT WAS A WEAPON OF
- 8 SOME SORT.
- 9 Q WELL, WHAT DID IT LOOK LIKE WAS IN THE SHEET?
- 10 A IT LOOKED LIKE A GUN WAS IN THE SHEET.
- 11 Q OKAY. WHO HAD THE GUN?
- 12 A SHANNON HAD THE GUN ON THE WAY OUT.
- 13 Q OKAY. DO YOU REMEMBER WHAT SHANNON WAS WEARING?
- 14 A I DON'T REMEMBER WHAT KIND OF CLOTHES HE HAD ON WHEN HE
- 15 GOT IN.
- 16 Q OKAY. WAS HE CARRYING ANYTHING ELSE?
- 17 A NO, HE HAD HIS STUFF. HE HAD A WELDING MASK AND A BAG
- 18 WITH SOME STUFF IN IT. AND HE HAD IT ALREADY IN THE CAR.
- 19 Q THAT WAS ALREADY IN YOUR CAR?
- 20 A YES.
- 21 Q WHEN YOU WERE WALKING OUT TO THE -- WHILE YOU WERE AT
- 22 STAN'S HOUSE, SHANNON AND STAN ARE COMING OUT, AND THE
- 23 WELDER'S MASK WAS ALREADY IN YOUR CAR?
- 24 A YES, MA'AM.
- 25 Q WHEN DID THE WELDER'S MASK GET IN YOUR CAR?

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- 1 A WHEN WE -- WHEN I WENT TO PICK HIM UP AT HIS
2 GIRLFRIEND'S HOUSE OR HIS HOUSE WHEN HE WAS OUTSIDE TALKING
3 TO HIS GIRLFRIEND, HE HAD THE BAG IN HIS HAND.
- 4 Q AT THE RESIDENCE OFF OF SAINT FRANCIS DRIVE?
- 5 A YES.
- 6 Q NEAR SAINT FRANCIS HOSPITAL?
- 7 A YES.
- 8 Q OKAY. NOW SHANNON IS COMING OUT WITH THE WEAPON: DID
9 STAN HAVE ANYTHING?
- 10 A HE HAD A BAG LIKE A BI-LO BAG. IT HAD SOME STUFF IN
11 IT.
- 12 Q OKAY. DO YOU REMEMBER WHAT HE WAS WEARING?
- 13 A I REMEMBER HE HAD A HOODED SWEATSHIRT ON. THAT'S ALL
14 I REMEMBER THAT I KNEW HE HAD ON FOR SURE.
- 15 Q OKAY.
- 16 A I COULDN'T TELL YOU WHAT COLOR IT WAS OR ANYTHING.
- 17 Q WHEN THEY GOT TO THE CAR, DO YOU REMEMBER WHO GOT IN
18 WHICH SEAT?
- 19 A I BELIEVE SHANNON GOT IN THE FRONT AND STAN GOT IN THE
20 BACK. AND THE -- EVERYTHING ELSE WAS REALLY IN THE BACK
21 EXCEPT FOR THE BAG THAT THEY HAD.
- 22 Q OKAY. NOW ABOUT WHAT TIME WAS THIS THAT YOU LEFT
23 STAN'S RESIDENCE TO GO ROB FUDDRUCKERS?
- 24 A IT COULD HAVE BEEN ABOUT A QUARTER TO 12:00, 12:00
25 O'CLOCK.

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- 1 Q OKAY, DID YOU GO RIGHT TO FUDDRUCKERS?
- 2 A NO, MA'AM, WE -- WE RODE BY IT ONCE OR TWICE, YOU KNOW,
- 3 TO KIND OF LOOK AND SEE WHO WAS THERE, HOW MANY PEOPLE, HOW
- 4 MANY CARS. THEN WE RODE BACK AROUND. WE WAITED FOR A WHILE.
- 5 AND THEN I RODE OVER AND PARKED BEHIND MIDORI'S.
- 6 Q OKAY, IF YOU WOULD STAND DOWN, PLEASE, AUSTIN.
- 7 A (COMPLIED.)
- 8 Q WOULD YOU COME THIS WAY. STAND ON THIS SIDE. STAND ON
- 9 THIS SIDE, AND FACE THE JURY.
- 10 A (COMPLIED.)
- 11 Q SHOW THEM WHERE YOU WENT IN AND WHERE YOU PARKED.
- 12 A OKAY, WE --
- 13 THE COURT: SPEAK UP LOUD NOW, PLEASE.
- 14 A WE CAME DOWN THIS ROAD HERE AND CUT AROUND THIS RIGHT
- 15 HERE BEHIND FUDDRUCKERS FROM HERE, CAME AROUND BACK BEHIND
- 16 AND THERE WAS A LOADING DOCK HERE BEHIND THERE, SO WE JUST
- 17 BACKED IN SO IT WOULDN'T LOOK LIKE ANYTHING WAS GOING ON.
- 18 AND I KEPT THE CAR RUNNING AFTER THE TRUNK WAS POPPED, AND
- 19 THEY GOT OUT.
- 20 Q OKAY, GO BACK TO THE STAND.
- 21 A (COMPLIED.)
- 22 Q SO AFTER YOU PARKED YOUR CAR BEHIND MIDORES, BACKED IN,
- 23 --
- 24 A UH-HUH.
- 25 Q -- AND POPPED THE TRUNK, WHAT HAPPENED NEXT?

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1 A WELL, I WAS SITTING THERE FOR A LITTLE BIT AND SHANNON
2 CAME AROUND THE SIDE OF THE WINDOW AND KNOCKED ON IT, AND
3 KIND OF YELLED AT ME. HE HAD HIS WELDER'S MASK ON. IT KIND
4 OF SCARED ME. YOU KNOW, I WASN'T EVEN REALLY EXPECTING THAT.
5 AND HE SAID, "WELL, YOU KNOW, BE READY. BE READY." I SAID,
6 "ALL RIGHT." SO THEY LEFT. AND I DON'T KNOW, IT SEEMED LIKE
7 IT TOOK FOREVER. YOU KNOW, IT HAD PROBABLY BEEN ABOUT 10
8 MINUTES, AND THEY CAME BACK.

9 Q DID YOU SEE WHO HAD THE WEAPON?

10 A NO.

11 Q DO YOU KNOW WHICH WAY SHANNON TODD AND STANLEY BUTLER
12 WENT AFTER THEY LEFT YOUR CAR TO ROB FUDDRUCKERS?

13 A THEY WALKED ALONG THE FENCE LINE FROM MIDORES TO
14 FUDDRUCKERS.

15 Q OKAY, WERE THEY WALKING?

16 A I DON'T KNOW. THEY WERE EITHER WALKING OR RUNNING, I
17 GUESS.

18 Q OKAY. AFTER THEY GOT BACK TO THE CAR -- FIRST OF ALL,
19 HOW DID YOU KNOW THAT THEY HAD GOTTEN BACK?

20 A WELL, THEY CAME BACK, AND WHEN THEY CAME BACK, THEY
21 WERE RUNNING. YOU KNOW, THE DOORS WERE ALREADY UNLOCKED.
22 THEY JUMPED IN THE CAR, AND THEY SAID, "GO, GO, GO."

23 Q WHICH SEATS DID THEY GET IN?

24 A THEY GOT IN -- WE -- THEY GOT IN THE BACK SEATS. WE
25 THOUGHT IT WAS BETTER BECAUSE, YOU KNOW, WE DIDN'T KNOW IF

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1 THEY CALLED THE COPS OR WHATNOT; AND IF THEY HAD, THEN THEY
2 WOULD BE LOOKING FOR TWO PEOPLE IN A CAR; SO, WE SAID, YOU
3 KNOW, "GET IN THE BACK SEAT SO IT WILL ONLY LOOK LIKE ONE
4 PERSON IS IN THE CAR."

5 Q WHEN THEY GOT BACK TO THE CAR, DID YOU NOTICE WHO HAD A
6 WEAPON?

7 A NO. THE TRUNK WAS STILL POPPED WHEN THEY CAME BACK.

8 Q OKAY.

9 A THE TRUNK WAS CLOSED. THE DOORS OPENED, AND I TOOK
10 OFF.

11 Q OKAY, SO WHILE THEY WERE AWAY FROM YOU, THE TRUNK WAS
12 STILL OPEN?

13 A UH-HUH (NODDED HIS HEAD).

14 Q ALL RIGHT, AND WHEN THEY GOT BACK, DID ONE OF THEM
15 CLOSE THE TRUNK?

16 A YES, THE TRUNK -- TRUNK SLAMMED SHUT AND THEN WE TOOK
17 OFF.

18 Q OKAY. WHEN YOU LEFT MIDORES PARKING LOT, WHERE DID YOU
19 GO?

20 A WE WENT OUT THE BACK WAY, THE WAY WE CAME IN, THE WAY
21 WE CAME IN, HIT GARLINGTON, TURNED OUT RIGHT THERE AT THAT
22 LIGHT, AND THEN WENT DOWN TO 85, AND THEN TO HIS GIRLFRIEND'S
23 APARTMENT.

24 Q WHY WERE YOU GOING TO HIS GIRLFRIEND'S APARTMENT?

25 A THAT'S WHERE I WAS TOLD TO GO, I GUESS.

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- 1 Q DO YOU KNOW WHO -- WHO TOLD YOU TO GO THERE?
- 2 A SHANNON.
- 3 Q HOW DID HE SAY IT?
- 4 A HE SAID, "GO, GO" -- HE SAID, "GO TO MY HOUSE," I MEAN,
- 5 THAT'S WHERE I KNEW HE WAS TALKING ABOUT.
- 6 Q OKAY.
- 7 A SO I LEFT TO GO THERE.
- 8 Q WAS THERE ANYTHING IN THE CAR THAT YOU NOTICED AFTER
- 9 THE ROBBERY AT FUDDRUCKERS HAD TAKEN PLACE?
- 10 A I DON'T THINK I UNDERSTAND YOUR QUESTION.
- 11 Q DID YOU NOTICE ANYTHING THAT THEY HAD WITH THEM?
- 12 A OH, THEY HAD THAT BLACK DUFFLE BAG AND THE BI-LO BAG
- 13 AND THEY WERE BOTH ALL STUFFED INTO -- THE BI-LO BAG WAS
- 14 STUFFED INTO THE BLACK DUFFLE BAG, AND THEY HAD THAT WITH
- 15 THEM. YOU KNOW, WE WENT -- THEN WE WENT TO HIS GIRLFRIEND'S
- 16 APARTMENT AND WENT INSIDE, AND WENT INTO THE BATHROOM; AND
- 17 THAT'S WHEN I KNEW THAT, YOU KNOW, THEY HAD ACTUALLY DONE IT.
- 18 AND KIND OF POURED THE MONEY OUT ON THE FLOOR: AND, YOU
- 19 KNOW, I SAID, "I DON'T KNOW YOU. YOU DON'T KNOW ME." AND
- 20 SAID, OR GAVE ME MONEY FOR GAS.
- 21 Q OKAY, WHEN YOU GOT INTO THE APARTMENT -- FIRST OF ALL,
- 22 HOW DID YOU GET INTO THE APARTMENT?
- 23 A HIS GIRLFRIEND LET US IN THE DOOR.
- 24 Q DO YOU REMEMBER, DID ANY OF YOU KNOCK?
- 25 A YES, SHANNON KNOCKED ON THE DOOR FIRST.

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- 1 Q OKAY, AND HIS GIRLFRIEND LET YOU IN?
- 2 A UH-HUH (NODDED HIS HEAD).
- 3 Q AND WHERE DID YOU GO?
- 4 A INTO THE BATHROOM.
- 5 Q OKAY, DID YOU HAVE ANY CONVERSATION YOURSELF WITH HIS
- 6 GIRLFRIEND?
- 7 A NO.
- 8 Q WHERE DID SHE GO AFTER YOU THREE CAME IN?
- 9 A SHE LAID BACK DOWN ON THE COUCH.
- 10 Q OKAY, AND YOU WENT TO THE BACK OF THE APARTMENT, AND
- 11 YOU SAY THAT'S WHEN YOU KNEW THE ROBBERY HAD BEEN -- THAT'S
- 12 WHEN YOU KNEW THEY DID IT. HOW DID YOU KNOW THEY HAD DONE
- 13 IT?
- 14 A OH. WHEN WE WERE IN THE BATHROOM, THEY PUT THE MONEY
- 15 OUT IN THE FLOOR THAT WAS IN THAT DUFFLE BAG, AND, YOU KNOW,
- 16 JUST KIND OF THREW IT OUT.
- 17 Q WHAT WAS THE MONEY IN?
- 18 A A BI-LO BAG AND A MONEY BAG, AND A DUFFLE BAG, OF
- 19 COURSE.
- 20 Q OKAY, DID YOU SEE ANYTHING ELSE?
- 21 A UH-UH (SHOOK HIS HEAD). BESIDES THE MONEY. I MEAN,
- 22 THAT'S THE ONLY THING I WAS REALLY LOOKING AT.
- 23 Q OKAY, DID YOU ASK THEM FOR SOME OF THAT MONEY?
- 24 A I ASKED THEM FOR MONEY FOR GAS. I SAID, "I DON'T KNOW
- 25 YOU, AND YOU DON'T KNOW ME."

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- 1 Q WHY JUST MONEY FOR GAS?
- 2 A I DON'T KNOW, I GUESS I WAS THINKING ABOUT IT WHEN THEY
3 WERE DOING IT, AND I DIDN'T -- I DIDN'T FEEL LIKE, YOU KNOW,
4 IT WAS MY MONEY TO TAKE, SO I GUESS I DIDN'T.
- 5 Q BUT YOU HAD BEEN IN TROUBLE BEFORE AT FUDDRUCKERS FOR
6 TAKING MONEY THAT WASN'T YOURS, HADN'T YOU?
- 7 A YES, MA'AM.
- 8 Q HOW LONG BEFORE THIS ARMED ROBBERY DID YOU TAKE MONEY
9 FROM FUDDRUCKERS?
- 10 A FOUR MONTHS MAYBE.
- 11 Q OKAY, HOW DID YOU GET CAUGHT?
- 12 A A GUY I WORKED WITH NAMED NATE, HE -- HE SAID SOMETHING
13 TO HIS BROTHER, AND THEY WERE GOING TO SAY SOMETHING TO HIS
14 BROTHER ABOUT IT, AND THEY JUST WENT AHEAD, AND, YOU KNOW, WE
15 ALL JUST -- WE ALL KIND OF GOT TOGETHER, THREE OF US THAT HAD
16 -- WERE INVOLVED WITH IT GOT TOGETHER AND TOLD JIMMY, THE
17 MANAGER THAT WAS WORKING, YOU KNOW, THAT IT WAS US, THAT WE
18 HAD DONE IT.
- 19 Q FROM WHERE DID YOU GET THE MONEY THAT YOU TOOK FROM
20 FUDDRUCKERS?
- 21 A IT WAS IN THE SAFE AT -- THERE.
- 22 Q WAS THE SAFE LOCKED?
- 23 A NO. IT WAS KIND OF PARTIALLY CRACKED, SO.
- 24 Q WAS IT YOU THAT TOOK IT?
- 25 A YES, I WAS THE ONE THAT OPENED THE DOOR AND WALKED OUT

- 1 WITH IT.
- 2 Q AND THEN LATER YOU FELT THE HEAT?
- 3 A YES.
- 4 Q SO YOU TOLD -- (PAUSE) --
- 5 A YES.
- 6 Q -- MR. CANBANNON THAT YOU HAD DONE IT?
- 7 A YES.
- 8 Q OKAY, TELL THE JURY ABOUT THE CONVERSATION IN THE CAR
- 9 AFTER THE ARMED ROBBERY.
- 10 A WELL, THERE REALLY WASN'T TOO MUCH OF A CONVERSATION.
- 11 I MEAN, THERE WAS A LOT OF -- I MEAN ADRENALINE RUSH,
- 12 EXCITEMENT, EVERYBODY WAS, YOU KNOW, WE WERE JUST EAGER TO
- 13 GET SOMEWHERE, YOU KNOW, BECAUSE WE WERE KIND OF WORRIED
- 14 ABOUT THE COPS. I MEAN THE REAL THING WAS, YOU KNOW, JUST
- 15 GO. SO I WENT.
- 16 Q OKAY. THE SATURDAY THAT SHANNON PAGED YOU WHEN YOU
- 17 CALLED HIM BACK?
- 18 A YES, MA'AM.
- 19 Q THAT'S NOT THE FIRST TIME YOU TALKED ABOUT THIS ARMED
- 20 ROBBERY WITH SHANNON TODD, IS IT?
- 21 A NO, M'AM.
- 22 Q WHEN DID YOU TALK ABOUT THIS ARMED ROBBERY WITH SHANNON
- 23 TODD PRIOR TO THE ACTUAL EVENT?
- 24 A IT MUST HAVE BEEN EARLIER THAT WEEK REALLY.
- 25 Q DO YOU KNOW EXACTLY WHAT DATE?

AUSTIN PERRY/DIRECT-MUNSON

217

- 1 A NOT EXACTLY THE DATE.
- 2 Q OKAY. WHERE WERE YOU WHEN YOU HAD A CONVERSATION WITH
- 3 SHANNON TODD ABOUT ROBBING FUDDRUCKERS?
- 4 A WE WERE AT FUDDRUCKERS.
- 5 Q WAS IT DURING WORK HOURS?
- 6 A YEAH, WE WERE ON BREAK WHEN WE HAD TALKED ABOUT IT.
- 7 AND WE HAD TALKED ABOUT IT ONCE BEFORE WHEN I HAD TAKEN HIM
- 8 HOME. AND THAT WAS --
- 9 Q OKAY, ABOUT HOW MANY TIMES DID YOU TALK ABOUT IT?
- 10 A THREE OR FOUR.
- 11 Q AND IN THESE TIMES THAT YOU HAD A CONVERSATION WITH
- 12 SHANNON TODD ABOUT ROBBING FUDDRUCKERS, WHAT DID HE SAY TO
- 13 YOU?
- 14 A HE JUST SAID, "YOU WANT TO DO FUDDS?" HE SAID IT WAS
- 15 -- IT WAS A PLACE THAT, YOU KNOW, WE MADE A LOT -- WE DID A
- 16 LOT OF BUSINESS, AND, YOU KNOW, AND THEY MADE A LOT OF MONEY,
- 17 YOU KNOW, AND THAT IT WOULD BE AN IDEAL PLACE TO GO AND DO
- 18 THIS, SO WHY NOT DO IT? HE SAID IT WOULD HAVE BEEN EASY.
- 19 THEY LEAVE THE DOORS UNLOCKED A LOT OF TIMES AFTER THE STORE
- 20 OPENS OR IT CLOSES. HE SAID IT WAS JUST TOO EASY FOR HIM TO
- 21 DO IT, FOR US TO DO IT.
- 22 Q AND YOU WENT ALONG WITH HIM?
- 23 A YES, MA'AM.
- 24 Q YOU NEED TO TELL THE JURY WHY YOU DID THAT.
- 25 A I DON'T KNOW. I GUESS JUST STUPIDITY.

1 Q WHEN YOU FOUND OUT THAT YOUR NAME WAS A SUSPECT IN THIS
2 ARMED ROBBERY, YOU WENT AND TALKED TO DOUG KELLY, DIDN'T YOU?

3 A YES, MA'AM.

4 Q AND HE ASKED YOU ABOUT IT?

5 A YES, MA'AM.

6 Q AND YOU TOLD HIM A LIE?

7 A YES, MA'AM, I DID.

8 Q YOU TOLD HIM YOU WERE SOMEWHERE ELSE WITH YOUR
9 GIRLFRIEND, AND IT COULDN'T HAVE BEEN YOU?

10 A RIGHT.

11 Q AND THEN WHAT HAPPENED?

12 A AND HE CALLED MY GIRLFRIEND AND ASKED WHERE I WAS THAT
13 NIGHT. AND I HAD SAID -- AND SHE LIED TO HIM THE FIRST TIME,
14 TOO. AND HE WAITED AWHILE AND CALLED HER BACK, AND SHE SAID,
15 "OFFICER, KELLY, I CAN'T TELL YOU A LIE," YOU KNOW, "HE
16 WASN'T WITH ME ON THE SATURDAY NIGHT." AND HE SAID, "OKAY,
17 THANK YOU FOR YOUR HONESTY," AND HE CAME BACK IN AND TALKED
18 TO ME. AND THEN WHEN HE CAME BACK IN THERE TO TALK TO ME,
19 YOU KNOW, HE TOLD ME TO GIVE IT TO HIM STRAIGHT, OR, YOU
20 KNOW, DON'T GIVE IT TO HIM AT ALL, YOU CAN GIVE IT TO WHOEVER
21 AT THE TRIAL.

22 Q WHAT DID THE OFFICER OFFER YOU IN ORDER TO GET YOU TO
23 COOPERATE?

24 A HE DIDN'T OFFER ME ANYTHING.

25 Q DID HE THREATEN YOU?

AUSTIN PERRY/DIRECT-MUNSON

219

1 A NO.

2 Q WHY DID YOU COOPERATE?

3 A I DON'T KNOW. IT JUST SEEMS -- IT JUST SEEMS BETTER;
4 YOU KNOW, IF YOU'RE GOING TO GET CAUGHT TO GO AHEAD AND SAY,
5 "I GOT CAUGHT," THAN TO LIE ABOUT IT WHEN EVERYBODY ELSE
6 KNOWS THE TRUTH ANYWAY.

7 Q DID YOU HAVE ANY CONVERSATIONS WITH DOUG KELLY ABOUT
8 TESTIFYING IN COURT?

9 A NO, HE DIDN'T -- HE DIDN'T MENTION. YOU KNOW, TESTIFY-
10 ING. HE SAID THAT YOU MAY HAVE TO TESTIFY, YOU KNOW, IF
11 THERE'S NO OTHER EVIDENCE OR WHATNOT. AND I SAID, "WELL,
12 OKAY."

13 Q DID YOU HAVE ANY CONVERSATIONS WITH THE SOLICITOR'S
14 OFFICE ABOUT TESTIFYING?

15 A YES.

16 Q TELL THE JURY WHAT HAS BEEN OFFERED YOU IN EXCHANGE FOR
17 YOUR TESTIMONY TODAY.

18 A NOTHING.

19 Q TELL THE JURY IN WHAT WAY YOU'VE BEEN THREATENED IN
20 ORDER TO GET YOU TO TESTIFY TODAY.

21 A IN NO WAY.

22 Q SO WHY ARE YOU TESTIFYING?

23 A I DON'T KNOW, I FEEL LIKE I DID SOMETHING WRONG; I FEEL
24 LIKE I'VE GOT TO RIGHT IT SOME WAY.

25 MS. MUNSON: I HAVE NOTHING FURTHER AT THIS TIME.

AUSTIN PERRY/CROSS-ROLLINS

220

1 YOUR HONOR.

2 THE COURT: MR. ROLLINS.

3 MR. ROLLINS: IF IT PLEASE THE COURT, YOUR HONOR.

4 CROSS-EXAMINATION BY MR. ROLLINS:

5 Q MR. PERRY,

6 A SIR?

7 Q YOU SAID YOU DIDN'T PLAN THIS ROBBERY?

8 A NO, SIR.

9 Q ALL SOMEBODY HAD TO DO IS COME UP TO YOU AND SAY,

10 "LET'S DO FUDDS," IS THAT RIGHT?

11 A IN A MATTER OF SPEAKING.

12 Q WHAT WOULD YOU HAVE DONE IF THEY HAD SAID, "LET'S GO
13 KILL SOMEBODY"?

14 A THERE'S A DIFFERENCE IN ROBBERY AND KILLING SOMEBODY.

15 Q SO ROBBERY IS WHERE YOU DRAW THE LINE?

16 A I GUESS. I'M A REAL IMPRESSIONABLE PERSON. I MEAN, I
17 DIDN'T --

18 Q WELL, ROBBERY IS NOTHING NEW TO YOU, IS IT?

19 A I HAD TAKEN MONEY BEFORE, BUT.

20 Q THAT'S RIGHT, STEALING AIN'T NO BIG DEAL FOR YOU, IS
21 IT?

22 A YES, SIR, IT IS.

23 Q IT IS?

24 A (NODDED HIS HEAD; NO VERBAL RESPONSE.)

25 Q IS IT A BIG DEAL WHEN YOU GET CAUGHT?

AUSTIN PERRY/CROSS-ROLLINS

221

- 1 A IT'S A BIG DEAL WHEN I DO IT.
- 2 Q WHY DIDN'T YOU COME TELL THESE OFFICERS THAT YOU DID
- 3 THIS UP FRONT?
- 4 A I DON'T KNOW.
- 5 Q NOW YOU SAID YOU WERE DRIVING YOUR BROTHER'S CAR?
- 6 A YES, SIR.
- 7 Q WHERE IS THAT CAR AT?
- 8 A IT'S AT MY BROTHER'S HOUSE.
- 9 Q WHERE IS THAT?
- 10 A FOUNTAIN INN.
- 11 Q FOUNTAIN INN?
- 12 A UH-HUH (NODDED HIS HEAD).
- 13 Q DID YOU EVER TAKE THE POLICE DOWN THERE?
- 14 A NO, SIR.
- 15 Q YOU DIDN'T?
- 16 A UH-UH (SHOOK HIS HEAD).
- 17 Q YOU NEVER DID TELL THE POLICE, "COME ON DOWN HERE AND
- 18 LOOK AT MY BROTHER'S CAR, AND LET ME LET YOU TAKE SOME
- 19 FINGERPRINTS ON IT AND PROVE TO YOU PEOPLE THAT THESE TWO MEN
- 20 WERE IN THAT CAR"? YOU DIDN'T DO THAT, DID YOU?
- 21 A NO, SIR.
- 22 Q AND, AS A MATTER OF FACT, YOU DIDN'T EVEN OFFER IT TO
- 23 THE POLICE, DID YOU?
- 24 A NO, SIR.
- 25 Q BUT YOU TOLD THEM YOU WERE IN YOUR BROTHER'S SUNBIRD,

AUSTIN PERRY/CROSS-ROLLINS

222

1 DIDN'T YOU?

2 A YES, SIR.

3 Q DID THEY GO TALK TO YOUR BROTHER?

4 A NO, SIR.

5 Q HE'S AVAILABLE, ISN'T HE?

6 A YES, SIR.

7 Q WHAT DOES HE DO IN FOUNTAIN INN?

8 A HE WORKED FOR MILLIKEN AT THE TIME.

9 Q OKAY, SO HE'S A RESPECTABLE FELLOW, ISN'T HE?

10 A YES, SIR.

11 Q HE'S NOT HIDING FROM ANYBODY, IS HE?

12 A NO, SIR.

13 Q BUT THEY DIDN'T GO TALK TO HIM?

14 A UH-UH (SHOOK HIS HEAD).

15 Q NOW YOU DON'T REMEMBER THE DATE OF THIS, DO YOU?

16 A NOT THE EXACT DATE.

17 Q OKAY, AND IT'S PRETTY SUBSTANTIAL. THIS IS ARMED

18 ROBBERY OF THE PLACE YOU WERE WORKING FOR, AND YOU DON'T EVEN

19 KNOW THE DATE OF IT?

20 A THAT'S CORRECT.

21 Q YOU REMEMBER ALL THESE FINE LITTLE DETAILS, IS THAT

22 TRUE?

23 A YES, SIR.

24 Q NOW YOU SAID SHANNON TODD -- AND THIS IS SHANNON TODD

25 HERE, RIGHT?

AUSTIN PERRY/CROSS-ROLLINS

223

- 1 A YES, SIR.
- 2 Q YOU SAID SHANNON TODD PAGED YOU?
- 3 A YES, SIR.
- 4 Q WHY HAVE YOU GOT A PAGER, WORKING AT FUDDRUCKERS?
- 5 A BECAUSE I HAVE A WIFE AND I HAVE A LITTLE GIRL; IN
- 6 CASE SOMETHING EVER HAPPENS, I WOULD LIKE TO KNOW.
- 7 Q WHO IS THAT PAGER WITH? WHAT COMPANY?
- 8 A I'M NOT SURE OF THE NAME OF IT. MY PARENTS WOULD.
- 9 THEY PAY THE BILL.
- 10 Q THEY PAY THE BILL FOR IT?
- 11 A YES, SIR.
- 12 Q SO IT'S PROBABLY A LOCAL PAGER, ISN'T IT?
- 13 A YES, SIR.
- 14 Q AND DID YOU TELL THE POLICE, "HEY, I GOT A -- I GOT A
- 15 PAGE FROM THIS FELLOW ON SUCH AND SUCH A DATE. HE DIALED
- 16 357." DID YOU TELL THEM THAT?
- 17 A I DON'T KNOW IF I TOLD THEM THAT, OR I DIDN'T.
- 18 Q DID YOU TELL THE POLICE, "HEY, THERE MAY BE SOME PAGER
- 19 RECORDS DOWN THERE TO PROVE TO ME OR TO PROVE TO Y'ALL THAT
- 20 HE CALLED ME"? DID YOU DO THAT?
- 21 A NO, SIR.
- 22 Q THEY DIDN'T GO GET ANY RECORDS, DID THEY?
- 23 A NO, SIR.
- 24 Q NOW YOU SAY YOU WENT OVER TO STAN'S HOUSE?
- 25 A YES, SIR.

AUSTIN PERRY/CROSS-ROLLINS

224

- 1 Q IS THIS THE STAN YOU'RE TALKING ABOUT?
- 2 A YES, SIR.
- 3 Q DID YOU TAKE THE POLICE OVER THERE?
- 4 A NO, SIR.
- 5 Q DID YOU SAY, "POLICE, COME ON WITH ME AND I WILL TAKE
- 6 YOU TO A MAN'S HOUSE THAT I JUST MET ONE TIME, AND SHOW YOU
- 7 THAT HOUSE WHERE THIS MAN LIVES, AND YOU CAN FIND OUT THAT'S
- 8 STANLEY BUTLER"? YOU DIDN'T DO THAT, DID YOU?
- 9 A NO, SIR.
- 10 Q SO ALL THEY'VE GOT IS YOUR WORD THAT YOU WENT TO HIS
- 11 HOUSE?
- 12 A YES, SIR.
- 13 Q AND YOU'RE TELLING THIS JURY THAT ALL THEY HAD TO SAY
- 14 TO YOU WAS, "LET'S GO DO FUDDS," AND ALL YOU GOT WAS \$10 FOR
- 15 GAS MONEY?
- 16 A YES, SIR.
- 17 Q WHAT DID YOU DO WITH THE MONEY YOU STOLE FROM FUDDS THE
- 18 FIRST TIME?
- 19 A I HAD KEPT IT FOR AWHILE. I DON'T KNOW REALLY WHAT I
- 20 DID WITH IT, KIND OF SPENT SOME.
- 21 Q DID IT JUST EVAPORATE?
- 22 A NO, SIR, IT DID NOT.
- 23 Q YOU SAID IT WAS EASY, WHY NOT DO IT; IS THAT WHAT YOU
- 24 TOLD THIS JURY JUST A FEW MOMENTS AGO?
- 25 A THAT WAS THE REASON.

AUSTIN PERRY/CROSS-ROLLINS

225

- 1 Q THAT WAS THE REASON?
- 2 A THAT IS THE REASONING BEHIND IT.
- 3 Q BUT WHY HAVE YOU GOT A CHANGE OF HEART NOW?
- 4 A I DON'T KNOW, YOU GET INTO SOMETHING AND THEN YOU
- 5 FIGURE IT'S A LITTLE LATE TO GET OUT, YOU DO WHAT'S BEST.
- 6 Q OH, YEAH, YOU'RE IN IT NOW, AREN'T YOU?
- 7 A YES, SIR
- 8 Q YOU'RE IN IT TO THE TUNE OF ARMED ROBBERY, AREN'T YOU?
- 9 A YES, SIR.
- 10 Q AND ANYTHING ELSE THEY WANT TO THROW AT YOU, AREN'T
- 11 YOU?
- 12 A YES, SIR.
- 13 Q DID THE OFFICERS THAT TALKED TO YOU TELL YOU THAT THEY
- 14 COULD CHARGE YOU WITH THE SAME THING THAT WAS GOING ON INSIDE
- 15 THAT PLACE?
- 16 A YES, SIR, THEY DID.
- 17 Q WHY DIDN'T THEY CHARGE YOU?
- 18 A THEY DIDN'T TELL ME. I DIDN'T ASK. I WAS JUST
- 19 THANKFUL I ONLY GOT CHARGED WITH THE ARMED ROBBERY.
- 20 Q AS A MATTER OF FACT, IT'S JUST THANKFUL YOU DIDN'T DO
- 21 ANY TIME IN JAIL, DID YOU?
- 22 A NO, SIR.
- 23 Q YOU DIDN'T EVEN -- AS A MATTER OF FACT, YOU AIN'T
- 24 SPENT ONE DAY IN JAIL ABOUT THIS, HAVE YOU?
- 25 A NO, SIR.

- 1 Q THEY LET YOU SIGN YOUR OWN BOND, DIDN'T THEY?
- 2 A YES, SIR, THEY DID.
- 3 Q YOU DIDN'T EVEN HAVE TO POST A DOLLAR, DID YOU?
- 4 A NO, SIR.
- 5 Q AND, MEANWHILE, YOU'RE WALKING THE STREETS, AREN'T YOU?
- 6 A YES, SIR.
- 7 Q CHARGED WITH ARMED ROBBERY. (PAUSE.) YOU SAY NOTHING
- 8 IS OFFERED TO YOU BY THE STATE?
- 9 A NO, SIR.
- 10 Q BUT YOU AIN'T BEING TRIED TODAY, ARE YOU?
- 11 A NO, SIR.
- 12 Q AS A MATTER OF FACT, THEY'RE GOING TO WAIT UNTIL THEY
- 13 SEE WHAT YOU SING ABOUT ON THAT STAND, AREN'T THEY?
- 14 A I'M NOT SURE.
- 15 Q YOU'RE NOT SURE?
- 16 A I DON'T KNOW. I'M NOT EXPECTING ANYTHING.
- 17 Q YOU'RE NOT EXPECTING ANYTHING, YOU'RE JUST DOING THIS
- 18 OUT OF THE GOODNESS OF YOUR HEART?
- 19 A YES, SIR.
- 20 Q JUST LIKE YOU DID IT OUT OF THE GOODNESS OF YOUR HEART
- 21 TO DRIVE A CAR OVER THERE AND ROB FUDDS?
- 22 A YES, SIR.
- 23 Q WHAT DO YOU HAVE OTHER THAN YOUR TESTIMONY, ANY OTHER
- 24 EVIDENCE, WHAT DO YOU HAVE THAT THESE YOUNG MEN WERE ACTUALLY
- 25 DOING THAT ROBBERY?

AUSTIN PERRY/CROSS-ROLLINS

227

1 A THAT'S IT.

2 Q JUST YOUR TESTIMONY?

3 A YES, SIR.

4 Q THAT YOU HAVE NOT BOTHERED TO CORROBORATE ONE BIT WITH
5 THE POLICE, HAVE YOU?

6 A YES, SIR, I HAVE.

7 Q WELL, YOU DIDN'T TAKE THEM TO THIS MAN'S HOUSE YOU
8 ALLEGEDLY WENT TO, DID YOU?

9 A I WASN'T ASKED TO.

10 Q YOU DIDN'T VOLUNTEER ANY INFORMATION ABOUT YOUR PAGE
11 THAT YOU SO-CALLED GOT FROM THIS YOUNG MAN OVER HERE, DID
12 YOU?

13 A I WASN'T ASKED TO.

14 Q WELL, LET'S JUST SAY THEY DIDN'T ASK YOU TO DO
15 ANYTHING, YOU WOULD JUST KEEP YOUR MOUTH SHUT?

16 A I DON'T KNOW IF IT WOULD HAVE COME TO THAT. IT MAY
17 HAVE.

18 Q WELL, YOU WOULD HAVE KEPT YOUR MOUTH SHUT IF THEY
19 HADN'T FOUND OUT ABOUT IT, WOULDN'T YOU?

20 A I DON'T KNOW.

21 Q YOU DON'T KNOW? YOU LIED TO THE POLICE, DIDN'T YOU?

22 A YES, BUT I TOLD THE TRUTH AFTERWARDS.

23 Q AFTER THEY CAUGHT YOU.

24 A I COULD HAVE LIED AGAIN.

25 Q PARDON?

AUSTIN PERRY/CROSS-CRANE

228

1 A I COULD HAVE LIED AGAIN.

2 Q AND YOU COULD BE LYING NOW?

3 A YES, SIR, YOU'RE PROBABLY RIGHT.

4 THE COURT: MR. CRANE.

5 MR. CRANE: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION BY MR. CRANE:

7 Q MR. PERRY, THERE'S A COUPLE OF INTERESTING THINGS THAT
8 YOU TOLD THIS JURY; ONE OF THEM, THE SOLICITOR ASKED YOU IF
9 YOU WERE TOLD YOU MIGHT NEED TO TESTIFY, AND YOU ANSWERED YOU
10 WERE, IS THAT CORRECT?

11 A YES, SIR.

12 Q AS A MATTER OF FACT, I BELIEVE YOU ANSWERED THE
13 QUESTION BY SAYING YOU WERE TOLD YOU MIGHT HAVE TO TESTIFY IF
14 THERE WAS NO OTHER EVIDENCE, ISN'T THAT TRUE?

15 A YES, SIR, IT IS.

16 Q AND IN THIS PARTICULAR CASE, THERE AIN'T NO OTHER
17 EVIDENCE, IS THERE, AGAINST SHANNON TODD?

18 A I GUESS NOT.

19 Q EXCEPT YOUR TESTIMONY?

20 A (NODDED HIS HEAD; NO VERBAL RESPONSE.)

21 Q AND IF WE BELIEVE YOUR TESTIMONY, THEN SHANNON TODD IS
22 PROBABLY GUILTY, ISN'T THAT WHAT IT ALL COMES DOWN TO?

23 A YES, SIR, I GUESS IT IS.

24 Q AND YOU'RE -- YOU WILL HAVE TO SPEAK UP SO THAT THESE
25 JURORS CAN HEAR YOU OVER HERE, SIR.

AUSTIN PERRY/CROSS-CRANE

229

- 1 A OKAY.
- 2 Q YOU'RE A CONFESSED PERSON THAT WENT INTO A SAFE AND
- 3 STOLE \$1500 FROM YOUR EMPLOYER, ARE YOU NOT?
- 4 A YES, SIR.
- 5 Q YOU'RE A CONFESSED ARMED ROBBER, ARE YOU NOT?
- 6 A YES, SIR.
- 7 Q AND AS THE SOLICITOR SAID -- AND I'M GOING TO USE HER
- 8 WORDS TO HAUNT YOU, SIR, UNTIL YOU GO TO JAIL -- ON THE
- 9 SAFECRACKING, OR WHATEVER YOU WANT TO CALL IT, YOU DIDN'T SAY
- 10 ANYTHING UNTIL, AS SHE SAID, "THE HEAT WAS ON," ISN'T THAT
- 11 RIGHT?
- 12 A YES, SIR.
- 13 Q AND YOU DIDN'T SAY ANYTHING IN THIS CASE UNTIL THE HEAT
- 14 WAS ON, ISN'T THAT RIGHT?
- 15 A I DON'T REALLY GUESS THE HEAT WAS ON.
- 16 Q YOU DON'T? WELL, WAS MELISSA LAMBERT YOUR WIFE ON
- 17 MARCH 10TH OF 1996?
- 18 A NO, SIR.
- 19 Q SHE WAS YOUR GIRLFRIEND, WASN'T SHE?
- 20 A YES, SIR.
- 21 Q AND THE POLICE WERE CALLING HER, WEREN'T THEY?
- 22 A YES, SIR.
- 23 Q AND SHE WASN'T STANDING BEHIND YOU, WAS SHE?
- 24 A NO, SIR.
- 25 Q SO THE HEAT WAS ON, WASN'T IT?

AUSTIN PERRY/CROSS-CRANE

230

- 1 A I DON'T REALLY CONSIDER THAT HEAT.
- 2 Q OH, YOU DON'T?
- 3 A NO, SIR.
- 4 Q OFFICER KELLY TOLD YOU HE HAD YOU, AND HE KNEW YOU WERE
- 5 LYING. IT DOESN'T TAKE MUCH TO GET YOU TO TELL, DOES IT?
- 6 A IF THAT'S THE WAY YOU WANT TO PUT IT.
- 7 Q I'M JUST PUTTING IT THE WAY YOU TESTIFIED. TELL ME WHO
- 8 THE THIRD PARTY IS THAT TOOK THE \$1500 WITH YOU.
- 9 A IT WAS GERMANE MCCULLOUGH.
- 10 Q PARDON?
- 11 A GERMANE MCCULLOUGH.
- 12 Q WHO'S THE SECOND PARTY?
- 13 A NATE WHITTENBURG.
- 14 Q NATE WHITTENBURG; DID YOU TELL ON NATE, TOO?
- 15 A NO.
- 16 Q DID NATE TELL ON HIMSELF?
- 17 A YES, SIR.
- 18 Q ALL RIGHT, AND YOU ALL DECIDED TO TELL ABOUT THAT WHEN
- 19... THE HEAT WAS ON? (PAUSE.) RIGHT?
- 20 A YES, SIR.
- 21 Q AND FOR WHATEVER REASON, FUDDRUCKERS LET YOU STAY
- 22 EMPLOYED WITH THEM?
- 23 A YES, SIR.
- 24 Q WERE THEY TAKING MONEY OUT OF YOUR PAYCHECK?
- 25 A YES, SIR, THEY WERE.

AUSTIN PERRY/CROSS-CRANE

231

1 Q NOW WHAT WAS IT THAT YOU SAID YOU WENT TO SPARTANBURG
2 FOR THE NIGHT OF THE ROBBERY?

3 A I WENT TO ONE OF MY FRIEND'S HOUSE THAT I HADN'T SEEN.
4 IN AWHILE.

5 Q WHO WAS THAT?

6 A BRIAN DAVIS.

7 Q WHY DID YOU HAPPEN TO GO SEE MR. DAVIS?

8 A HE HAD CALLED ME EARLIER.

9 Q DID YOU TELL THE POLICE THAT?

10 A NO, SIR.

11 Q HAVE THEY TALKED TO BRIAN DAVIS?

12 A NO, SIR.

13 Q HOW LONG WERE YOU IN SPARTANBURG?

14 A NOT VERY LONG.

15 Q WHAT TIME DID YOU GET OVER THERE?

16 A I DON'T KNOW, MAYBE ABOUT 7:30 OR 8:00.

17 Q HOW LATE DID YOU WORK ON SATURDAY?

18 A UNTIL 4:00 OR 5:00.

19 Q UNTIL 4:00 OR 5:00?

20 A YES, SIR.

21 Q WHEN WAS IT THAT YOU SAID YOU DISCUSSED THIS SUPPOSED
22 ARMED ROBBERY WITH SHANNON TODD?

23 A EARLIER THAT WEEK.

24 Q I HAVE A STATEMENT SIGNED BY YOU THAT SAYS IT WAS ON
25 THURSDAY, MARCH 7TH, WHILE AT WORK.

AUSTIN PERRY/CROSS-CRANE

232

- 1 A YES, SIR.
- 2 Q IS THAT CORRECT?
- 3 A IT MUST BE.
- 4 Q WOULD IT SURPRISE YOU TO LEARN THAT MR. TODD DIDN'T
- 5 WORK ON THURSDAY, MARCH 7TH?
- 6 A NO, IT WOULDN'T.
- 7 Q IT WOULDN'T? WELL, THEN THIS IS NOT TRUE, IS IT?
- 8 A THE DATE AND DAY MUST BE WRONG.
- 9 Q EXCUSE ME?
- 10 A THE DATE MUST BE WRONG.
- 11 Q I THINK EVERYTHING ELSE IN HERE IS WRONG, TOO, ISN'T
- 12 IT?
- 13 MS. MUNSON: OBJECTION, YOUR HONOR.
- 14 THE COURT: I SUSTAIN THE OBJECTION.
- 15 MR. CRANE: I'LL REPHRASE IT. THANK YOU, JUDGE.
- 16 Q IS EVERYTHING ELSE IN HERE, ALSO, WRONG?
- 17 A NO, SIR.
- 18 Q ALL RIGHT, WHAT DATE WAS IT IF IT WASN'T ON THURSDAY,
- 19 THE 7TH? WAS IT WEDNESDAY, THE 6TH?
- 20 A I COULDN'T POSITIVELY BE SURE.
- 21 Q WELL, WAS IT THE DAY BEFORE ON FRIDAY, OR DO YOU KNOW?
- 22 A I KNOW IT WASN'T THE DAY BEFORE.
- 23 Q WELL, WAS IT WEDNESDAY?
- 24 A I COULDN'T BE SURE.
- 25 Q WAS IT TUESDAY?

AUSTIN PERRY/CROSS-CRANE

233

1 MS. MUNSON: YOUR HONOR, I'M GOING TO OBJECT.

2 THE COURT: HE HAS ANSWERED THE QUESTION, MR.

3 CRANE.

4 Q ALL RIGHT, DO YOU KNOW IF YOU WORKED ON WEDNESDAY?

5 A I THINK I DID.

6 Q WELL, WOULD IT SURPRISE YOU TO LEARN THAT YOU DIDN'T?

7 A NO.

8 Q ALL RIGHT. HOW MANY TIMES DID YOU TELL DETECTIVE KELLY
9 THAT YOU AND SHANNON TODD TALKED ABOUT THIS ARMED ROBBERY?

10 A I MAY HAVE TOLD HIM A FEW, OR I GAVE HIM A NUMBER.

11 Q CAN YOU READ, SIR?

12 A YES, SIR.

13 Q WOULD YOU READ YOUR STATEMENT AND TELL ME HOW MANY
14 TIMES YOU TOLD HIM YOU TALKED ABOUT THE ARMED ROBBERY?

15 A (PAUSE, VIEWING DOCUMENT.) I DON'T THINK IT REALLY
16 SAYS.

17 Q IT SAYS ONCE, DOESN'T IT? AND IT SAYS THURSDAY, THE
18 7TH OF MARCH, DOESN'T IT?

19 A YES, SIR.

20 Q SO IT DOESN'T SAY ANYTHING ABOUT ANY OTHER TIMES Y'ALL
21 MAY HAVE DISCUSSED ANY ARMED ROBBERY, DOES IT?

22 A NO, SIR.

23 Q DID YOU EVER SEE HIM, MR. TODD, WEAR A MICHIGAN
24 STARTERS JACKET TO WORK?

25 A I MAY HAVE. I MAY HAVE NOT.

AUSTIN PERRY/CROSS-CRANE

234

- 1 Q WHAT DO YOU MEAN BY THAT ANSWER THEN?
- 2 A IT'S BEEN A LONG TIME SINCE I WORKED AT FUDDRUCKERS.
- 3 Q AND WHAT WAS THE WEATHER LIKE ON MARCH 11TH -- MARCH
- 4 10TH OF THIS YEAR?
- 5 A I DON'T KNOW THE MARCH WEATHER.
- 6 Q YOU DON'T KNOW? WAS IT COLD OR NOT?
- 7 A I DON'T KNOW.
- 8 Q YOU'VE TESTIFIED YOU DON'T KNOW WHAT MR. TODD WAS
- 9 WEARING THAT NIGHT THOUGH, ISN'T THAT CORRECT?
- 10 A YES, SIR.
- 11 Q ALL RIGHT. WHEN YOU PICKED UP, ACCORDING TO YOU, MR.
- 12 TODD, THAT WAS OVER BY SAINT FRANCIS HOSPITAL?
- 13 A YES, SIR, IT WAS.
- 14 Q WHO LIVED THERE?
- 15 A HE TOLD ME HE LIVED THERE.
- 16 Q DO YOU KNOW IF HIS MOTHER LIVED THERE.
- 17 A I'M NOT SURE IF HIS MOTHER LIVED THERE OR NOT.
- 18 Q AND YOU'RE SAYING THAT YOU SAW HIS GIRLFRIEND THERE?
- 19 A YES, SIR.
- 20 Q AND THAT WAS ABOUT WHAT TIME?
- 21 A I COULDN'T TELL YOU THE EXACT TIME.. A LITTLE AFTER
- 22 11:00 MAYBE.
- 23 Q AND THEN THE TWO OF YOU, THE TWO OF YOU, ACCORDING TO
- 24 YOUR STATEMENT, WENT TO STAN'S?
- 25 A YES, SIR.

AUSTIN PERRY/CROSS-CRANE

235

- 1 Q WERE THERE PEOPLE OUT IN FRONT OF STAN'S APARTMENT OVER
2 THERE?
- 3 A NO, SIR.
- 4 Q NO ONE ELSE, THERE'S NO OTHER WITNESSES THAT CAN PUT
5 YOU TWO TOGETHER?
- 6 A NO, SIR.
- 7 Q IT'S YOUR WORD AGAINST HIS WORD, ISN'T IT?
- 8 A YES, SIR.
- 9 Q WHERE DID THE WELDING MASK COME FROM?
- 10 A HE HAD IT WHEN HE GOT IN THE CAR WITH ME.
- 11 Q DID HE HAVE A GUN WITH HIM?
- 12 A WHEN HE GOT IN THE CAR WITH ME.
- 13 Q WHEN YOU WENT TO STAN'S HOUSE, IS THAT WHEN THE SHEET
14 AND SOME ITEM WAS TAKEN OUT OF THE HOUSE AND PUT IN THE CAR?
- 15 A YES, SIR.
- 16 Q DID YOU EVER SEE THAT ITEM?
- 17 A I SAW THE SHEET.
- 18 Q YOU DON'T KNOW WHAT WAS UNDER THE SHEET?
- 19 A NO, SIR.
- 20 Q DID YOU EVER SEE WHAT WAS UNDER THE SHEET?
- 21 A NO, SIR.
- 22 Q YOU WEREN'T INTERESTED IN KNOWING WHAT WAS UNDER THE
23 SHEET?
- 24 A I HAD AN IDEA.
- 25 Q YOU HAD AN IDEA?

- 1 A I DIN'T --
- 2 Q WAS IT A BROOM HANDLE?
- 3 A NO, SIR.
- 4 Q DID YOU LOOK AT IT?
- 5 A YES, SIR.
- 6 Q WELL, THEN TELL THEM WHAT IT WAS IF YOU LOOKED AT IT.
- 7 A I DIDN'T LOOK, I DIDN'T SEE WHAT WAS UNDER THE SHEET,
- 8 BUT I HAD A PRETTY GOOD IDEA THAT IT WAS A GUN OF SOME SORT.
- 9 Q AND WHAT DID MR. BUTLER HAVE ON THAT NIGHT?
- 10 A I KNOW HE HAD A HOODED SWEATSHIRT ON.
- 11 Q WHAT COLOR?
- 12 A I COULDN'T TELL YOU THE COLOR.
- 13 Q CAN'T EVEN TELL US THE COLOR?
- 14 A NO, SIR.
- 15 Q DID HE HAVE ANYTHING COVERING HIS FACE?
- 16 A HE HAD A BANDANA.
- 17 Q WHAT COLOR?
- 18 A I WASN'T SURE.
- 19 Q YOU CAN'T TELL US THAT EITHER?
- 20 A NO, SIR.
- 21 Q ARE YOU SURE YOU WERE THERE?
- 22 A YES, SIR.
- 23 Q NOW YOU WENT IN THE BACK WAY TO FUDDRUCKERS AND PARKED
- 24 ON THE OTHER END OF MIDORES?
- 25 A YES, SIR.

AUSTIN PERRY/CROSS-CRANE

237

- 1 Q AND YOU SAY THEY WALKED DOWN THE FENCE AND WENT IN THE
2 BACK DOOR?
- 3 A YES, SIR.
- 4 Q WAS THE TRUNK REMAINING OPEN OR CLOSED?
- 5 A IT WAS OPENED.
- 6 Q WAS THE LIGHT ON OR OFF?
- 7 A LIGHT ON FOR?
- 8 Q THE TRUNK.
- 9 A I DON'T KNOW. I DIDN'T HAVE A TRUNK LIGHT.
- 10 Q DOESN'T HAVE A TRUNK LIGHT. WERE THE DOORS OF THE CAR
11 OPEN OR CLOSED?
- 12 A THEY WERE CLOSED.
- 13 Q ALL RIGHT. DID YOU SEE ANYBODY ELSE OUT THERE THAT
14 NIGHT?
- 15 A NO, SIR.
- 16 Q AND SO YOU WAITED UNTIL THEY CAME OUT?
- 17 A YES, SIR.
- 18 Q TELL US WHAT THEY HAD IN THEIR HANDS.
- 19 A THEY HAD THEIR DUFFLE BAGS.
- 20 Q THE DUFFLE BAGS?
- 21 A YES, SIR.
- 22 Q WHERE DID THE DUFFLE BAGS COME FROM?
- 23 A THOSE WERE THE DUFFLE BAGS THAT SHANNON HAD WHEN HE HAD
24 -- WHEN I PICKED UP HIM, AND WHEN I HAD PICKED UP STAN.
- 25 Q HOW BIG A DUFFLE BAG?

- 1 A MAYBE THIS BIG (INDICATING).
- 2 Q DID THEY TAKE THEM WITH THEM INTO THE STORE?
- 3 A YES, SIR.
- 4 Q ARE YOU SURE OF THAT?
- 5 A YES, SIR, THEY WEREN'T IN THE CAR WHEN THEY LEFT.
- 6 Q AND WHEN THEY GOT BACK INTO THE CAR, WHAT ARE YOU
- 7 SAYING WAS IN THE BAGS?
- 8 A MONEY WAS IN THE BAGS BECAUSE THEY WERE THE SAME DUFFLE
- 9 BAGS THAT WERE IN THE BATHROOM WHEN WE PUT ALL THE MONEY OUT.
- 10 Q TELL ME ABOUT, YOU SAID SOMETHING ABOUT A BI-LO BAG?
- 11 A YES, THERE WAS A BI-LO BAG AND --
- 12 Q LIKE THIS ONE HERE?
- 13 A NO, SIR.
- 14 Q WHAT KIND OFF BI-LO BAG?
- 15 A IT WAS A KIND OF A THIN BI-LO BAG.
- 16 Q A WHAT?
- 17 A LIKE A PAPER BI-LOW BAG -- A PLASTIC BAG.
- 18 Q PLASTIC?
- 19 A YES, SIR.
- 20 Q WHAT WAS IN THE PLASTIC BI-LO BAG?
- 21 A THE MONEY BAG WAS IN THE PLASTIC BI-LO BAG.
- 22 Q WHAT DID THE MONEY BAG LOOK LIKE?
- 23 A I THINK IT WAS BLUE.
- 24 Q WHAT WAS IN THE MONEY BAG?
- 25 A MONEY.

AUSTIN PERRY/CROSS-CRANE

239

- 1 Q ALL RIGHT. WHERE DID Y'ALL GO WHEN YOU LEFT.
2 FUDDRUCKERS?
3 A TO HIS GIRLFRIEND'S HOUSE.
4 Q LET ME SEE NOW. THEY BOTH CARRIED DUFFLE BAGS INTO THE
5 PLACE?
6 A NO, IT WAS ONLY ONE DUFFLE BAG.
7 Q WHO HAD THE DUFFLE BAG?
8 A SHANNON HAD THE DUFFLE BAG.
9 Q HE CARRIED THE DUFFLE BAG IN; WHO CARRIED THE RIFLE?
10 A I RECKON STANLEY DID.
11 Q AND WAS THE BI-LO BAG INSIDE THE DUFFLE BAG?
12 A YES, SIR.
13 Q AND INSIDE THE BI-LO BAG WAS THE BLUE THING?
14 A YES, SIR.
15 Q WHEN DID Y'ALL OPEN THE BLUE THING?
16 A WHEN WE GOT BACK TO HIS GIRLFRIEND'S HOUSE.
17 Q HAD YOU BEEN TO PATRICIA'S HOUSE PRIOR TO GOING TO
18 FUDDRUCKERS?
19 A IS THAT --
20 Q SHANNON'S GIRLFRIEND?
21 A YES, SIR.
22 Q YOU SAID SHE WAS ON THE COUCH?
23 A YES, SIR.
24 Q WHAT COLOR IS THE COUCH?
25 A I DON'T KNOW, IT WAS DARK.

AUSTIN PERRY/CROSS-CRANE

240

- 1 Q WHAT?
- 2 A I DON'T KNOW, IT WAS DARK IN THE APARTMENT.
- 3 Q IT WAS DARK?
- 4 A YES.
- 5 Q SHE DIDN'T HAVE LIGHTS IN HER APARTMENT?
- 6 A THEY WERE OFF. IT WAS KIND OF LATE.
- 7 Q THEY WERE OFF, SO Y'ALL SAT AROUND IN THE DARK?
- 8 A WE WENT TO THE BATHROOM.
- 9 Q WHAT DO YOU MEAN "WE WENT"?
- 10 A ALL THREE OF US WENT TO THE BATHROOM.
- 11 Q THE THREE OF YOU WENT TO THE BATHROOM?
- 12 A YES, SIR.
- 13 Q WHAT DID PATRICIA DO?
- 14 A SHE LAID BACK DOWN ON THE COUCH.
- 15 Q SO SHE WOULD HAVE SEEN YOU IF, IN FACT, YOU WERE THERE?
- 16 A YES, SIR.
- 17 Q WHAT ELSE IS IN THAT LIVING ROOM?
- 18 A THERE WAS A T.V., A COUCH. THE LIVING ROOM JOINS THE
- 19 KITCHEN.
- 20 Q HOW MANY TIMES HAD YOU BEEN OVER TO THE APARTMENT?
- 21 A HOW MANY TIMES HAD I BEEN IN IT OR OVER?
- 22 A IN IT.
- 23 A MAYBE ONCE OR TWICE.
- 24 Q WHEN WAS THAT?
- 25 A WHEN I HAD TAKEN SHANNON HOME BEFORE.

AUSTIN PERRY/CROSS-CRANE

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- 1 Q HAD SHE SEEN YOU?
- 2 A SHE MAY HAVE.
- 3 Q .OKAY. ALL RIGHT, SO THEN Y'ALL GO AND YOU RODE AROUND
- 4 SOMEWHERE, RIGHT, PRIOR TO GOING TO DO THE ROBBERY?
- 5 A YES, SIR.
- 6 Q AND YOU'RE OVER THERE MAYBE 10 MINUTES. DID YOU SAY
- 7 YOU WENT BACK TO HER APARTMENT?
- 8 A YES, SIR.
- 9 Q WHERE WAS SHE WHEN YOU GOT BACK?
- 10 A SHE WAS ON THE COUCH.
- 11 Q ALL RIGHT. DID SHE TALK TO ANY OF Y'ALL WHILE YOU WERE
- 12 THERE?
- 13 A SHE TALKED TO SHANNON.
- 14 Q SHE SEEMED TO BE OKAY THAT NIGHT?
- 15 A YES, SIR.
- 16 Q NOTHING UNUSUAL ABOUT HER, RIGHT?
- 17 A SLEEPY MAYBE.
- 18 Q WHAT?
- 19 A SLEEPY MAYBE.
- 20 Q OKAY. AND WHEN YOU GOT BACK AND DID SHE HAVE TO OPEN
- 21 THE DOOR FOR YOU?
- 22 A YES, SIR.
- 23 Q AND LET Y'ALL IN?
- 24 A YES, SIR.
- 25 Q AND THE THREE OF YOU WENT WHERE?

1 A INTO THE BATHROOM. WE CAME INTO THE LIVING ROOM. I
2 DIDN'T SAY ANYTHING. AND SHE LAID BACK DOWN ON THE COUCH.
3 WE WENT INTO THE BATHROOM.

4 Q AND THAT'S WHERE Y'ALL -- ALL RIGHT, WHEN YOU WENT IN
5 THE BATHROOM, TELL ME WHAT HAPPENED.

6 A THEY DUMPED THE DUFFLE BAG OUT ON THE FLOOR, AND I
7 SAID, "WELL, I DON'T KNOW YOU. LET'S GET OUT." AND I LEFT.
8 I SAID, I ASKED HIM FOR MONEY.

9 Q 10 BUCKS?

10 A NO, "I NEED MONEY FOR GAS."

11 Q ALL RIGHT. WHEN YOU WERE CALLED TO TALK TO DETECTIVE
12 KELLY, AND YOU LIED TO HIM?

13 A YES, SIR.

14 Q THEN YOU DECIDED TO TELL HIM WHAT WAS GOING ON. THE
15 SOLICITOR ASKED YOU WHAT DID HE SAY? MR. PERRY, YOU STARTED
16 TO ANSWER THE QUESTION BY SAYING, "GIVE IT TO ME STRAIGHT,
17 OR"; WOULD YOU, PLEASE, FINISH WHAT YOU WERE GOING TO TESTIFY
18 TO AS TO WHAT DETECTIVE KELLY SAID TO YOU?

19 A I'M NOT SURE I UNDERSTAND.

20 Q THAT'S WHY I'M ASKING THE QUESTION BECAUSE ON DIRECT
21 EXAMINATION YOU SAID, "DETECTIVE KELLY SAID, 'GIVE IT TO ME
22 STRAIGHT, OR.'" AND YOU NEVER FINISHED YOUR SENTENCE. I'M
23 ASKING YOU TO FINISH YOUR SENTENCE.

24 A HE SAID, "GIVE IT TO ME STRAIGHT OR YOU WILL BE SITTING
25 IN JAIL WITH A LITTLE BIT OF TIME TO THINK ABOUT IT."

AUSTIN PERRY/CROSS-CRANE

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- 1 Q AH.
- 2 A SO I TOLD HIM.
- 3 Q "GIVE IT TO ME STRAIGHT OR YOU'RE GOING TO BE SITTING.
- 4 IN JAIL WITH TIME TO THINK ABOUT IT"?
- 5 A RIGHT.
- 6 Q GEE, THE HEAT'S GETTING HOTTER, ISN'T IT?
- 7 A YES, SIR.
- 8 Q ISN'T IT?
- 9 A YES, SIR.
- 10 Q AND NOT UNTIL DETECTIVE KELLY THREATENS TO PUT YOU IN
- 11 JAIL AND LET YOU THINK ABOUT IT DID YOU COME UP WITH THE
- 12 STORY, DID YOU?
- 13 A IT WASN'T A STORY. IT'S THE TRUTH.
- 14 Q IT'S A STATEMENT, AND THAT'S WHEN YOU TOLD THEM ABOUT
- 15 IT?
- 16 A YES, SIR.
- 17 Q AND AS A RESULT OF TELLING THEM ABOUT IT, YOU DIDN'T GO
- 18 TO JAIL FOR ONE LITTLE BIT OF TIME, DID YOU?
- 19 A NO, SIR.
- 20 Q SO, IN FACT, YOU WERE THREATENED WITH SOMETHING IN
- 21 ORDER TO GIVE THIS STATEMENT, WEREN'T YOU?
- 22 A IF YOU WANT TO CALL IT THAT.
- 23 Q AND THEN YOU SAID WHEN YOU GET CAUGHT, YOU MIGHT AS
- 24 WELL GO AHEAD AND TELL; THE HEAT WAS ON, SO YOU TOLD A STORY,
- 25 RIGHT?

- 1 A YOU MIGHT AS WELL TELL THE TRUTH.
- 2 Q YOU SAY THAT NOTHING WAS OFFERED TO YOU. WHAT DO YOU
- 3 EXPECT TO GET OUT OF THIS?
- 4 A I DON'T KNOW, I HOPE TO CLEAR MY NAME A LITTLE BIT.
- 5 Q EXCUSE ME?
- 6 A I KIND OF HOPE TO CLEAR MY NAME A LITTLE BIT.
- 7 Q CLEAR YOUR NAME. ARE YOU REPRESENTED BY AN ATTORNEY?
- 8 A YES, SIR.
- 9 Q HAVE YOU HAD DISCUSSIONS AS TO WHAT TO EXPECT OUT OF
- 10 THIS?
- 11 A NO, SIR.
- 12 Q YOU HAVEN'T TALKED TO HIM AT ALL ABOUT WHAT TO EXPECT?
- 13 A NO, SIR.
- 14 Q SO YOU ARE JUST UP HERE HOPING FOR THE BEST?
- 15 A YES, SIR.
- 16 Q YOU SAID YOU'RE AN IMPRESSIONABLE PERSON. TELL ME WHAT
- 17 YOU MEAN BY THAT.
- 18 A I DON'T KNOW, I GUESS I LIKE TO DO THINGS THAT ARE FUN.
- 19 Q FUN LIKE ARM-ROB PEOPLE?
- 20 A I DON'T KNOW, I LIKE TO DO THINGS THAT ARE EXCITING.
- 21 Q LIKE ARM-ROB PEOPLE?
- 22 A IT DEPENDS ON WHAT YOU LIKE.
- 23 Q PARDON?
- 24 A IT DEPENDS ON WHAT YOU LIKE.
- 25 Q AND YOU LIKE TO ARM-ROB PEOPLE?

AUSTIN PERRY/REDIRECT-MUNSON

245

1 A NO, SIR.

2 Q YOU DID THOUGH. TELL THIS JURY THE TRUTH, THAT YOU
3 WERE THE ONE THAT WENT IN WITH THAT MASK ON YOUR FACE.

4 A I'M NOT THE ONE THAT WENT IN WITH THE MASK ON MY FACE.

5 Q YOU'RE NOT THE ONE THAT WENT IN?

6 A NO, SIR.

7 Q WELL, WHEN YOU LEFT THERE, HOW DID THE BAG GET OUT ON
8 MAULDIN ROAD?

9 A THAT MAY BE SOMETHING YOU'LL HAVE TO ASK YOUR CLIENT.

10 Q MY CLIENT WASN'T THERE, MR. PERRY. I'VE ASKED MY
11 CLIENT. I'M ASKING YOU HOW THE BAG GOT OUT ON MAULDIN ROAD.
12 WHO TOOK IT OUT THERE?

13 A I DON'T KNOW.

14 Q AND YOU ARE SO IMPRESSIONABLE THAT AFTER YOU INVOLVED
15 YOURSELF IN AN ARMED ROBBERY, TELL THE JURY WHAT YOU DID THE
16 NEXT MORNING.

17 A I WENT TO WORK.

18 Q YOU WENT TO WORK?

19 A YES, SIR.

20 Q AT FUDDRUCKERS?

21 A YES, SIR.

22 MR. CRANE: THANK YOU, SIR.

23 REDIRECT EXAMINATION BY MS. MUNSON:

24 Q YOU HAVEN'T SPENT ANY TIME IN JAIL YET, HAVE YOU?

25 A NO, MA'AM.

1 Q IN YOUR CONVERSATIONS WITH LAW ENFORCEMENT IN GENERAL,
2 WHAT HAVE YOU BEEN OFFERED?

3 A NOTHING.

4 Q ARE YOU TESTIFYING BECAUSE YOU'RE AFRAID OF DOUG KELLY?

5 A NO, SIR -- NO, MA'AM.

6 Q DID YOU COOPERATE WITH DOUG KELLY BECAUSE YOU'RE AFRAID
7 OF GOING TO JAIL?

8 A NO, MA'AM.

9 Q AND WHAT YOU HAVE TOLD HIM IN REFERENCE TO THIS CASE,
10 WHAT YOU HAVE TOLD THIS JURY TODAY IS THE TRUTH?

11 A YES, MA'AM.

12 Q WHAT DO YOU THINK IS GOING TO HAPPEN TO YOU IF YOU LIE
13 UP HERE?

14 A I WILL GO TO JAIL.

15 Q DO YOU THINK YOU'RE GOING TO GO TO JAIL ANYHOW?

16 A PROBABLY.

17 Q IS IT UNUSUAL FOR SHANNON TODD TO BE IN YOUR CAR OR THE
18 CAR YOU HAD THAT NIGHT?

19 A THE CAR I HAD THAT NIGHT, YES.

20 Q HE HAD NEVER BEEN IN THAT ONE BEFORE?

21 A NO.

22 Q AND YOU TOOK IT BACK TO YOUR BROTHER?

23 A YES.

24 Q OKAY.. AND STAN --

25 A UH-HUH.

AUSTIN PERRY/REDIRECT-MUNSON

247

- 1 Q -- THIS MAN RIGHT HERE, DID YOU EVER KNOW HIS LAST
2 NAME?
- 3 A NO, MA'AM.
- 4 Q OKAY. WHEN WAS THE FIRST TIME YOU HEARD THAT NAME?
- 5 A HIS LAST NAME?
- 6 Q UH-HUH (NODDED HER HEAD).
- 7 A THE DAY I WENT AND IDENTIFIED HIS PICTURE AT THE
8 SHERIFF'S DEPARTMENT.
- 9 Q OKAY. WHAT WERE YOU TOLD BY THE SOLICITOR'S OFFICE IN
10 REFERENCE TO WHAT'S GOING TO HAPPEN TO YOU? WHAT DOES THE
11 OUTCOME OF THIS TRIAL HAVE TO DO WITH WHAT IS GOING TO HAPPEN
12 TO YOU?
- 13 A NOTHING.
- 14 Q DID YOU LIE IN THE STATEMENT THAT YOU GAVE TO DOUG
15 KELLY?
- 16 A THE VERY FIRST STATEMENT I GAVE TO HIM, BUT NOT THE
17 SECOND ONE.
- 18 Q THE WRITTEN STATEMENT?
- 19 A THE WRITTEN STATEMENT, NO.
- 20 Q DID YOU LIE ABOUT THE DATE OF THAT YOU WERE BEING AT
21 WORK?
- 22 A I'M NOT SURE. I MEAN, I MAY HAVE. I'M NOT SURE. I'M
23 NOT REAL GOOD WITH DATES.
- 24 Q WELL, IN YOUR STATEMENT THAT IT SAYS MARCH THE 7TH, IS
25 THAT A LIE? YOU SAID MARCH THE 7TH ON PURPOSE TO LIE?

AUSTIN PERRY/REDIRECT-MUNSON

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- 1 A OH, NO.
- 2 Q WHEN YOU GOT YOUR PAGE FROM SHANNON TODD, IT WAS --
- 3 WERE YOU IN SPARTANBURG?
- 4 A NO, MA'AM. I WAS ALMOST IN GREENVILLE.
- 5 Q DO YOU KNOW WHAT COUNTY YOU WERE IN?
- 6 A I WAS IN GREENVILLE COUNTY.
- 7 Q ABOUT WHERE WERE YOU?
- 8 A PROBABLY ON THE EAST SIDE OF GREENVILLE.
- 9 Q WHY DID YOU GO BACK TO THE BATHROOM WHEN YOU GOT TO
- 10 SHANNON TODD'S GIRLFRIEND'S HOUSE?
- 11 A I GUESS HE DIDN'T WANT HIS GIRLFRIEND TO SEE.
- 12 Q BUT HE DIDN'T SAY ANYTHING ABOUT THAT?
- 13 A NO.
- 14 Q AND YOU SAID THAT THE BLUE BAG WAS INSIDE THE BI-LO
- 15 BAG?
- 16 A RIGHT.
- 17 Q AND IT WAS OPENED IN THE BATHROOM?
- 18 A RIGHT.
- 19 Q WHO OPENED IT?
- 20 A I THINK STANLEY DID.
- 21 Q DO YOU KNOW WHAT WAS INSIDE OF IT? DID YOU SEE?
- 22 A MONEY, I THINK.
- 23 Q DID YOU SEE ANYTHING ELSE?
- 24 A MAYBE SALES RECEIPTS, VOID SLIPS. I'M NOT EXACTLY SURE
- 25 WHAT WAS IN THERE.

AUSTIN PERRY/RECROSS-CRANE

249

1 MS. MUNSON: OKAY. I HAVE NOTHING FURTHER AT THIS
2 TIME.

3 MR. ROLLINS: JUST ONE QUESTION, YOUR HONOR.

4 RECROSS-EXAMINATION BY MR. ROLLINS:

5 Q YOU SAY THAT THEY SHOWED YOU A LINEUP?

6 A OH, NO, SIR. I WAS SHOWN A PICTURE.

7 Q ONE PICTURE?

8 A AND THEY ASKED ME, "IS THIS THE GUY?"

9 Q THEY SHOWED YOU ONE PICTURE THOUGH?

10 A YES, SIR.

11 Q JUST ONE?

12 A UH-HUH (NODDED HIS HEAD).

13 MR. ROLLINS: THANK YOU, SIR.

14 THE COURT: STEP DOWN.

15 ALL RIGHT NOW, LADIES AND GENTLEMEN, WE'RE GOING TO
16 SUSPEND AT THIS TIME. WE'LL PICK BACK UP TOMORROW MORNING AT
17 9:00 O'CLOCK. NOW WHEN YOU LEAVE HERE TODAY, DO NOT TALK
18 ABOUT THIS CASE AMONG YOURSELVES OR WITH ANYONE ELSE. THIS
19 INCLUDES EVEN MEMBERS OF YOUR OWN FAMILY. YOU CAN TELL
20 FAMILY MEMBERS THAT YOU'RE SERVING ON JURY, WHAT KIND OF CASE
21 IT IS THAT YOU'RE SERVING ON, BUT, AS I SAY, DON'T DISCUSS
22 THE FACTS OF THE CASE WITH THEM OR ANYONE ELSE. IF ANYBODY
23 CONTACTS YOU AND TRIES TALK TO YOU ABOUT THIS CASE, GET THEIR
24 NAMES AND ADDRESSES AND REPORT THAT TO ME.

25 NOW I'M GOING TO ASK THAT YOU KEEP YOUR BADGES ON WHEN

1 YOU LEAVE THE COURTHOUSE AND WHEN YOU COME BACK IN IN THE
2 MORNING, AGAIN, SO THAT EVERYONE INVOLVED WILL KNOW THAT YOU
3 ARE A JUROR AND THEY SHOULD NOT DISCUSS THIS CASE IN YOUR
4 PRESENCE.

5 NOW UNDER THE OATH YOU TOOK IN THIS CASE, YOU SWORE TO
6 TRY THE CASE BASED ONLY AND SOLELY ON THE TESTIMONY AND
7 EVIDENCE PRESENTED IN THIS COURTROOM. AND I, THEREFORE, TELL
8 YOU THAT IT WOULD BE A VIOLATION OF YOUR OATH FOR YOU TO READ
9 ANYTHING IN THE NEWSPAPER ABOUT THIS CASE IF THERE IS
10 ANYTHING IN THE NEWSPAPER ABOUT IT. IN OTHER WORDS, IGNORE
11 ALL MEDIA COVERAGE, IF ANY, ABOUT THIS CASE. AND WITH THAT,
12 I WILL ASK THAT YOU BE BACK AT 9:00 O'CLOCK IN THE MORNING.
13 THANK YOU. YOU ARE EXCUSED.

14 (THE JURY EXITED THE COURTROOM.)

15 THE COURT: ALL RIGHT, WHERE DO WE STAND? IS THAT
16 -- (PAUSE) --

17 MS. MUNSON: YOUR HONOR, I MAY HAVE ONE MORE
18 WITNESS DEPENDING ON -- (PAUSE) --

19 THE COURT: ALL RIGHT, THAT'S FINE. SEE YOU BACK
20 AT 9:00 O'CLOCK IN THE MORNING.

21 (COURT ADJOURNED FOR THE DAY IN THE CAPTIONED
22 CASE ON JULY 22, 1996, AND RESUMED ON JULY 23, 1996.)

23 THE COURT: MS. MUNSON, DO YOU HAVE ADDITIONAL
24 TESTIMONY?

25 MS. MUNSON: I MIGHT. THE WITNESS IS LEE ANN

1 JOHNSTON. SHE WAS NOT ON MY WITNESS LIST. AFTER MR. CRANE
2 INTRODUCED INTO EVIDENCE THIS SCHEDULE FROM FUDDRUCKERS, MRS.
3 JOHNSTON, WHO IS ONE OF THE OWNERS OF FUDDRUCKERS, WENT BACK
4 AND COLLECTED SOME RECORDS.

5 WHAT HER TESTIMONY WOULD BE IS THAT SHANNON TODD DIDN'T
6 CLOCK IN DURING THE WEEK PRIOR TO THE ROBBERY, BUT HE DID, IN
7 FACT, WORK 23 HOURS THE WEEK PRIOR TO THE ROBBERY; ALTHOUGH,
8 FROM HER RECORDS, SHE CAN'T TELL EXACTLY WHAT DAYS.

9 THE COURT: ALL RIGHT, DO YOU OBJECT TO THAT?

10 MR. CRANE: IT'S GOING TO SHOW THE SAME THING THAT
11 I'VE ALREADY GOT IN EVIDENCE. I DON'T THINK I OBJECT TO IT.

12 THE COURT: ALL RIGHT.

13 MR. CRANE: IT SHOWS THAT HE DIDN'T WORK ON
14 THURSDAY.

15 THE COURT: OKAY, THAT'S FINE.

16 AND THEN THAT'LL BE IT?

17 MS. MUNSON: THAT WILL BE IT. I HAVE ONE OTHER
18 THING I NEED TO ASK THE COURT ABOUT. MR. CRANE TOLD ME THAT
19 HE HAD AN ALIBI WITNESS, PATRICIA GERMAN. I SUB- -- AND I'M
20 ENTITLED TO KNOW WHERE SHE'S GOING TO TESTIFY.

21 THE COURT: SURE, YOU ARE.

22 MS. MUNSON: BUT I DON'T KNOW, JUDGE, BECAUSE IN MY
23 CONVERSATIONS WITH HER, AND CONVERSATIONS WITH LAW
24 ENFORCEMENT, I REALLY DON'T KNOW WHAT SHE'S GOING TO SAY. WE
25 NEED TO NARROW HER DOWN. WE NEED TO HAVE HER NAILED DOWN.

1 THE COURT: MR. CRANE, SHE'S ENTITLED TO KNOW THAT.

2 MS. MUNSON: AND WHERE IS SHE IS GOING TO SAY THAT
3 SHE WAS WITH THE DEFENDANT.

4 MR. CRANE: I TOLD HER ABOUT THAT LADY LAST WEEK.
5 SHE -- BY THE WAY, SHE HASN'T SERVED THE NOTICE ON ME, BUT
6 SHE'S GOING TO SAY THAT SHANNON WAS AT HER HOUSE. SO IS --
7 AND, ALSO, SHANNON'S MOTHER AND SISTER ARE GOING TO TESTIFY.
8 BUT SHE NEVER -- SHE NEVER FILED ANY WRITTEN NOTICE ON ME
9 ASKING FOR AN ALIBI; ALTHOUGH, I TOLD HER THAT I THOUGHT SHE
10 WAS ENTITLED TO IT, I TOLD HER I THOUGHT PATRICIA WAS GOING
11 TO TESTIFY.

12 MS. MUNSON: YOUR HONOR, I HAVE -- THERE ARE COPIES
13 IN THE CLERK'S OFFICE WHERE I SERVED MR. TODD'S ORIGINAL
14 LAWYER; AND IF I HAVE TO GO BACK AND SERVE EVERY LAWYER THAT
15 HE GETS -- BUT THE DEFENDANT WAS ON NOTICE. MR. MITCHELL
16 SERVED ME WITH A DISCOVERY MOTION. I GAVE MR. CRANE
17 DISCOVERY BASED ON THAT.

18 THE COURT: ALL RIGHT, WHAT IS IT SPECIFICALLY YOU
19 WANT TO KNOW?

20 MR. CRANE: WHERE HE WAS.

21 MS. MUNSON: RIGHT.

22 MR. CRANE: SHE IS GOING TO SAY HE WAS AT HER
23 APARTMENT.

24 MS. MUNSON: NOW MR. CRANE HAS, ALSO, MENTIONED TWO
25 OTHER WITNESSES, AND I, YOU KNOW, IF THEY ARE ALIBI

1 WITNESSES, I NEED TO KNOW THAT, TOO, BECAUSE HE DIDN'T TELL
2 ME ABOUT THAT UNTIL JUST NOW.

3 MR. CRANE: WELL, THEY'RE NOT ALIBI WITNESSES FOR.
4 12:55 A.M. ON THE 10TH. THEY ARE WITNESSES THAT WILL TESTIFY
5 WHAT THEY DID THAT EVENING WITH SHANNON TODD, AND WHERE THEY
6 TOOK HIM.

7 NOW SHE CAN CERTAINLY TALK TO PATRICIA. IS PATRICIA
8 HERE?

9 UNIDENTIFIED SPEAKER: I HAVEN'T SEEN HER.

10 MR. CRANE: WELL, SHE KNOWS TO BE HERE, RIGHT?

11 UNIDENTIFIED SPEAKER: YES.

12 MS. MUNSON: THAT'S FINE, YOUR HONOR, I'M JUST
13 CONCERNED ABOUT THE ALIBI.

14 THE COURT: ALL RIGHT. OKAY.

15 MR. CRANE: SHE'S ALREADY TALKED TO PATRICIA
16 BECAUSE MS. MUNSON IS THE ONE WHO TOLD PATRICIA SHE WAS GOING
17 TO GET HER FOR PERJURY IF SHE DIDN'T TESTIFY.

18 THE COURT: ALL RIGHT. BRING THE JURY.

19 MR. ROLLINS: YOUR HONOR, BEFORE YOU BRING THE JURY
20 IN, --

21 THE COURT: HOLD ON. HOLD ON.

22 (THE BAILIFF COMPLIED.)

23 MR. ROLLINS: WE HAVE A COUPLE OF MOTIONS TO PUT ON
24 THE RECORD OUTSIDE THE HEARING OF THE JURY.

25 THE COURT: ALL RIGHT.

1 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR,
2 YESTERDAY THE STAR WITNESS THAT PLACED THESE INDIVIDUALS AT
3 THE SCENE OF THE CRIME TESTIFIED THAT -- MR. AUSTIN PERRY
4 TESTIFIED THAT HE DID NOT KNOW MR. STANLEY BUTLER AT ALL
5 PRIOR TO THIS OCCASION, HAD NEVER SEEN MR. BUTLER, NOR KNEW
6 HIM. HE KNEW MR. TODD FROM WORKING WITH HIM, BUT HE DIDN'T
7 KNOW MR. BUTLER. HE SAID THAT MR. BUTLER WAS THERE AT THE
8 ROBBERY. HE SAID THAT WHEN HE WAS TALKED TO BY THE POLICE AT
9 THAT TIME THAT THE POLICE DID A PHOTO LINEUP WITH HIM. THE
10 POLICE GAVE HIM ONE PHOTO, THAT PHOTO BEING STANLEY BUTLER,
11 AND THAT'S THE PERSON THAT HE IDENTIFIED. WE BELIEVE, YOUR
12 HONOR, THAT'S UNCONSTITUTIONALLY SUGGESTIVE AND THAT THEY
13 HAVE TAINTED THE IMPORT OF IDENTIFICATION, AND WE WOULD ASK
14 THAT THAT BE SUPPRESSED.

15 THE COURT: AND THAT MOTION IS DENIED.

16 MR. ROLLINS: ALL RIGHT, SIR. ALSO, YOUR HONOR,
17 SINCE THERE'S BEEN TWO LAWYERS BEEN INVOLVED IN THIS CASE,
18 MR. CRANE HAS MADE NOTIONS THAT I WOULD LIKE TO PUT ON THE
19 RECORD THAT I JOINED IN THOSE MOTIONS.

20 THE COURT: THAT'S FINE.

21 MR. ROLLINS: THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT, BRING THE JURY.

23 (THE JURY ENTERED THE COURTROOM AT APPROXIMATELY
24 9:15 A.M.)

25 THE COURT: GOOD MORNING.

LEE ANN JOHNSTON/DIRECT-MUNSON

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1 JURORS: GOOD MORNING.

2 THE COURT: ALL RIGHT, MS. MUNSON.

3 MS. MUNSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
4 THE COURT. THE STATE CALLS LEE ANN JOHNSTON.

5 LEE ANN JOHNSTON, FIRST BEING SWORN TO TELL
6 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
7 TESTIFIES AS FOLLOWS:

8 THE CLERK: STATE YOUR NAME FOR THE RECORD.

9 THE WITNESS: LEE ANN JOHNSTON.

10 THE CLERK: THANK YOU. YOU MAY HAVE A SEAT.

11 **DIRECT EXAMINATION BY MS. MUNSON:**

12 Q WHAT DO YOU DO FOR A LIVING, MRS. JOHNSTON?

13 A I'M A PARTNER AT FUDDRUCKERS.

14 Q OKAY, AND ARE YOU FAMILIAR WITH THE ROBBERY THAT TOOK
15 PLACE AT FUDDRUCKERS. IN MARCH --

16 A I AM.

17 Q -- OF '96?

18 A UH-HUH.

19 Q AND DID YOU BRING SOME RECORDS TODAY FROM FUDDRUCKERS?

20 A I DID.

21 Q OKAY, WHERE ARE THESE RECORDS KEPT?

22 A THESE RECORDS ARE KEPT IN THE RESTAURANT, BUT WE ASKED
23 FOR THOSE RECORDS YESTERDAY BECAUSE WE WERE TRYING TO

24 DETERMINE WHEN MR. TODD HAD WORKED, AND IT REALLY BOTHERED ME
25 THAT WE DIDN'T HAVE HIM ON THAT PAYROLL REPORT. SO I WENT

LEE ANN JOHNSTON/DIRECT-MUNSON

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1 BACK TO TRY TO FIGURE OUT WHY WE DIDN'T, AND I FOUND OUT WHY
2 HE WAS NOT ON THAT REGISTER REPORT.

3 Q OKAY. WHAT RECORDS DID YOU BRING WITH YOU TODAY IN
4 REFERENCE TO WHETHER OR NOT SHANNON TODD WORKED THE WEEK
5 PRIOR TO THE ROBBERY AT FUDDRUCKERS?

6 A WE HAVE A SCHEDULE, A WEEKLY SCHEDULE THAT WE KEEP
7 ATTACHED TO ALL OF OUR PAYROLL REPORTS, AND PART OF THAT
8 WEEKLY SCHEDULE IS A PAYROLL CORRECTION FORM, AND THE PAYROLL
9 CORRECTION FORM ALLOWS EMPLOYEES WHO EITHER FORGOT TO CLOCK
10 OUT, OR DIDN'T CLOCK OUT, OR NEVER CLOCKED IN TO GET THEIR
11 HOURS RECORDED.

12 Q OKAY, AND DID YOU BRING ONE OF THOSE REPORTS WITH YOU
13 TODAY?

14 A I DID.

15 Q AND WHAT IS THIS DOCUMENT RIGHT HERE?

16 A THIS IS THE ACTUAL PAYROLL CORRECTION FORM FROM THE
17 WEEK OF THE PAYROLL ENDING MARCH 10TH, '96.

18 Q SO THIS IS A COPY OF THE ORIGINAL DOCUMENT?

19 A RIGHT.

20 Q YOU HAVE THE ORIGINAL DOCUMENT RIGHT THERE?

21 A I DO.

22 Q WHAT'S ON THE BACK OF THE ORIGINAL DOCUMENT?

23 A IT'S A BLANK FORM. I MEAN, IT'S BLANK ON THE BACK.

24 MS. MUNSON: OKAY. YOUR HONOR, AT THIS TIME I'D
25 ASK THAT THIS BE MARKED AS AN EXHIBIT.

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1 THE COURT: ANY OBJECTION?

2 MR. CRANE: MAY WE SEE IT, PLEASE?

3 MR. COURT: SURE.

4 MS. MUNSON: I'D LIKE IT MARKED FOR IDENTIFICATION
5 PURPOSES.

6 THE COURT: WELL, OKAY.

7 (MS. MUNSON SHOWED DOCUMENT TO MR. CRANE.)

8 MR. CRANE: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 MS. MUNSON: THANK YOU, YOUR HONOR.

11 (STATE'S EXHIBIT NUMBER 6, PAYROLL CORRECTION
12 FORM, MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

13 Q OKAY, IN LOOKING AT STATE'S EXHIBIT NUMBER 6, WHAT
14 EXACTLY DOES THIS FORM SHOW AS TO SHANNON TODD?

15 A TO SHANNON TODD. IT SHOWS THAT DURING THAT WEEK ENDING
16 MARCH 10TH, HE WORKED 23 HOURS, AND WAS NOT ON THE ORIGINAL
17 PAYROLL REPORT BECAUSE HE NEVER HAD AN ASSIGNED NUMBER TO
18 CLOCK IN WITH. YOU HAVE TO HAVE A NUMBER IN ORDER TO GET
19 INTO THE REGISTER SYSTEM TO CLOCK IN TO RECORD YOUR HOURS.
20 AND THIS SAYS THAT HE WORKED 23 HOURS THAT WEEK AND HE
21 INITIALED IT SAYING THAT THE REASON HE DIDN'T CLOCK IN IS
22 BECAUSE HE DIDN'T HAVE AN ASSIGNED NUMBER.

23 Q OKAY, AND OVER HERE WHERE IT SAYS "EMPLOYEE SIGNATURE,"
24 WHAT IS THE POLICY AT FUDDRUCKERS? WHO SIGNS THAT?

25 A THE EMPLOYEE HAS TO INITIAL AND SIGN THAT VERIFYING

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1 THAT THAT ACTUALLY WAS AN ADJUSTMENT TO THEIR PAYROLL.

2 Q OKAY. NOW THE MARCH 8TH DATE OUT TO THE LEFT WHERE IT
3 SAYS "STATE ERROR MADE," --

4 A UH-HUH.

5 Q -- WHAT DOES THAT INDICATE?

6 A THAT JUST MEANS THAT WE CAUGHT IT ON THAT DATE. HE
7 MUST HAVE SAID, "LISTEN, I STILL DON'T HAVE A CLOCK-IN
8 NUMBER. WE NEED TO MAKE AN ADJUSTMENT." IT DOESN'T MEAN
9 THAT HE WORKED 23 HOURS ON THAT DATE. IT'S JUST THAT THAT
10 WAS THE DATE THE ERROR WAS RECORDED ON THE FORM.

11 Q OKAY. AND OVER IN THIS COLUMN WHERE IT SAYS "DATE
12 CORRECTION MADE," IT'S BLANK, WHAT DOES THAT INDICATE?

13 A THAT INDICATES THAT IT WAS NEVER ACTUALLY RECORDED INTO
14 THE PAYROLL REGISTER SYSTEM.

15 Q OKAY.

16 A THE MANAGEMENT HAS TO -- IT GETS RECORDED. THE MANAGER
17 HAS TO GO THROUGH THE SYSTEM AND MAKE THE CORRECTION, AND
18 THEN THEY INITIAL IT SAYING THAT THEY, IN FACT, ADDED THOSE
19 HOURS TO THAT EMPLOYEE'S WEEKLY SCHEDULE TO THEIR PAYROLL.

20 Q OKAY, SO THE EARLIER PAYROLL REPORT THAT SHOWED HIS
21 LAST PAYCHECK IS JANUARY WAS DUE TO THIS ERROR?

22 A RIGHT.

23 Q OKAY. NOW THIS DOESN'T SHOW WHAT DAYS HE WORKED DURING
24 THAT WEEK, DOES IT?

25 A IT DOES NOT. IT JUST SAYS THAT DURING THE WEEK OF

LEE ANN JOHNSTON/CROSS-CRANE

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1 MARCH THE 3RD THROUGH THE 10TH, HE WORKED 23 HOURS.

2 MS.. MUNSON: OKAY. I HAVE NOTHING FURTHER, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT, ANY QUESTIONS, GENTLEMEN?

5 MR. CRANE: YES, SIR.

6 THE COURT: MR. CRANE.

7 CROSS-EXAMINATION BY MR. CRANE:

8 Q MS. JOHNSTON, IN OTHER WORDS, YOU OWE SHANNON FOR 23
9 HOURS?

10 A THAT'S POSSIBLE.

11 Q POSSIBLE?

12 A YES, SIR.

13 Q WELL, YOU HAVEN'T PAID HIM YET, HAVE YOU?

14 A NO, SIR, WE HAVEN'T.

15 Q THEN WHAT'S THE POSSIBILITY? HE'S OWED 23 HOURS' PAY,
16 ISN'T HE?

17 A YES, SIR, BUT I GUESS WE JUST NEVER GOT THROUGH THAT
18 BECAUSE HE WAS TERMINATED ON SATURDAY.

19 Q TERMINATED SATURDAY WHAT?

20 A THAT SATURDAY THAT THE ROBBERY OCCURRED, HE HAD BEEN
21 TERMINATED THAT -- EARLY THAT EVENING.

22 Q WELL, YOUR -- MICHAEL LOVE SAID HE WAS TERMINATED FRIDAY
23 NIGHT.

24 A WELL, I'M SORRY, MAYBE IT WAS FRIDAY NIGHT.

25 Q WELL, WAS HE TERMINATED FRIDAY NIGHT OR SATURDAY?

LEE ANN JOHNSTON/CROSS-CRANE

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1 A IT COULD HAVE BEEN FRIDAY OR SATURDAY.

2 Q WHETHER HE WAS TERMINATED FRIDAY OR SATURDAY, YOU'LL
3 ISSUE HIM A CHECK FOR 23 HOURS NOW, WILL YOU NOT?

4 A WE SHOULD, YES, SIR.

5 Q OKAY. NOW FROM LOOKING AT THIS DOCUMENT THAT YOU JUST
6 PRODUCED INTO EVIDENCE, CAN YOU TELL US FROM THAT DOCUMENT,
7 DOES THAT CHANGE THESE DOCUMENTS AT ALL?

8 A IT SAYS -- THESE DOCUMENTS SAY THAT HE WORKED 11 HOURS.
9 IF THAT, IN FACT, IS SHANNON TODD ON THE SCHEDULE. AND THIS
10 DOCUMENT SAYS HE WORKED 23 HOURS FOR THAT WEEK.

11 Q WELL, CAN THIS, DOES THIS DOCUMENT TELL US THAT HE, IN
12 FACT, DID OR DID NOT WORK ON THURSDAY? CAN YOU TELL?

13 A I CANNOT TELL.

14 Q THIS DOCUMENT, HOWEVER, SHOWS THAT SHANNON DID NOT WORK
15 ON THURSDAY, DOESN'T IT?

16 A IF IT SHOWS THAT, THEN THAT MAY BE POSSIBLE.

17 Q ALL RIGHT, WELL, THESE ARE YOUR RECORDS FROM YOUR
18 COMPANY, ARE THEY NOT?

19 A THEY ARE, BUT THEY CHANGE A LOT. IN THE RESTAURANT
20 BUSINESS, THEY CHANGE A LOT.

21 Q AND THIS DOCUMENT SHOWS THAT AUSTIN DID NOT WORK ON
22 WEDNESDAY, DOESN'T IT, RIGHT HERE?

23 A IT DOES, UH-HUH.

24 Q SO THERE'S NOTHING DIFFERENT FROM THESE DOCUMENTS THAN
25 THIS, IS THERE? AS A MATTER OF FACT, THIS --

LEE ANN JOHNSTON/CROSS-CRANE

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1 A IT SAYS SHANNON WORKED MORE HOURS HERE.

2 Q I UNDERSTAND, BUT THIS DOCUMENT MORE OR LESS CONFIRMS
3 THESE DOCUMENTS, DOESN'T IT?

4 A NOT REALLY.

5 MR. CRANE: OKAY. THANK YOU, MA'AM.

6 THE COURT: STEP DOWN.

7 MS. MUNSON: YOUR HONOR, THAT'S THE STATE'S CASE.

8 THE COURT: ALL RIGHT, TAKE THE JURY OUT A MINUTE,
9 PLEASE.

10 (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
11 9:20 A.M.)

12 THE COURT: ALL RIGHT, ANY MOTIONS?

13 MR. CRANE: YES, SIR. YOUR HONOR, ON BEHALF OF MR.
14 TODD, I WOULD MOVE THAT ALL CHARGES BE DISMISSED IN THAT THE
15 STATE HAS FAILED TO PROVE JURISDICTION OF THE COURT. WE HAVE
16 HEARD A LOT OF TESTIMONY ABOUT A FUDDRUCKERS. WE'VE LOOKED
17 AT A DIAGRAM, BUT NO ONE HAS INDICATED WHAT COUNTY IT
18 HAPPENED IN.

19 THE COURT: YES, SIR, THERE'S TESTIMONY IN THE
20 RECORD TO THAT EFFECT.

21 MR. CRANE: YOUR HONOR, I WOULD AT THIS TIME MOVE
22 THAT INDICTMENT NUMBER 96-3562 CHARGES MR. TODD WITH
23 KIDNAPPING ON A TODD MILAM BE DISMISSED. THERE IS NO
24 TESTIMONY FROM TODD MILAM THAT --

25 THE COURT: HOW ABOUT THAT, MS. MUNSON?

1 MS. MUNSON: YOUR HONOR, THERE WAS TESTIMONY FROM
2 THE OTHER THREE OTHER PEOPLE THAT HE WAS ORDERED TO CRAWL
3 FROM ONE AREA TO ANOTHER, AND THAT HE WAS ORDERED IN THE
4 COOLER WITH EVERYONE ELSE.

5 THE COURT: THAT'S CORRECT. THAT MOTION IS DENIED.

6 MR. CRANE: WELL, YOUR HONOR, WE DON'T KNOW, WE
7 HAVEN'T HAD THE OPPORTUNITY TO CROSS-EXAMINE HIM; WE DON'T
8 KNOW IF TODD MILAM VOLUNTARILY WENT, WHETHER HE KNEW THESE
9 BOYS, OR ANTHING.

10 MS. MUNSON: YOUR HONOR, HE CAN'T CROSS-EXAMINE A
11 DEAD PERSON EITHER, BUT IT'S STILL MURDER. THERE WAS
12 TESTIMONY OF WHAT HAPPENED TO TODD MILAM.

13 THE COURT: I UNDERSTAND. THE MOTION IS DENIED.

14 MR. CRANE: YOUR HONOR, WE WOULD MOVE THAT THE
15 CHARGES BE DISMISSED IN THAT THE EVIDENCE TAKEN IN THE LIGHT
16 MOST FAVORABLE TO THE STATE IS INSUFFICIENT TO GO TO THE JURY
17 ON THESE CHARGES.

18 THE COURT: AND THAT MOTION IS DENIED.

19 MR. ROLLINS: YOUR HONOR, WE, ALSO, JOIN IN THE
20 SAME MOTIONS. WE, ALSO, ASK, YOUR HONOR, TO RENEW OUR MOTION
21 TO SUPPRESS THE IDENTIFICATION.

22 THE COURT: AND YOUR MOTIONS, LIKEWISE, ARE DENIED.

23 THE COURT: ALL RIGHT, ANYTHING BEFORE I BRING THE
24 JURY?

25 MR. CRANE: YES, SIR. I WOULD LIKE TO, FOR

1 CLARIFICATION PURPOSES, FIND OUT WHAT PRIOR OFFENSES THE
2 COURT MAY ALLOW THE STATE TO --

3 THE COURT: OKAY.

4 MR. CRANE: MY CLIENT HAS A JUVENILE CONVICTION.

5 THE COURT: IF IT'S INVOLVING MORAL TERPITUDE OR
6 OTHERWISE FITS THE RULE, THEN IT WILL BE ALLOWED.

7 MR. CRANE: OKAY, THANK YOU.

8 MR. ROLLINS: YOUR HONOR, AT THIS TIME, TOO, I
9 THINK IT MIGHT BE APPROPRIATE WHILE THE JURY IS OUT, MY
10 CLIENT, I'VE DISCUSSED WITH HIM ABOUT HIS RIGHT TO TAKE THE
11 STAND, AND HIS RIGHT NOT TO TAKE THE STAND.

12 THE COURT: ALL RIGHT, PUT HIM UNDER OATH, PLEASE.

13 THE CLERK: STAND AND RAISE YOUR RIGHT HAND.

14 STANLEY L. BUTLER, FIRST BEING SWORN TO TELL
15 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
16 TESTIFIES AS FOLLOWS:

17 THE COURT: MR. BUTLER, MR. ROLLINS REPRESENTS YOU,
18 IS THAT CORRECT, SIR?

19 MR. BUTLER: YES, SIR.

20 THE COURT: AND HAVE YOU TALKED WITH HIM AS OFTEN
21 AND FOR AS LONG AS YOU FEEL NECESSARY FOR HIM TO PROPERLY
22 REPRESENT YOU IN THIS CASE?

23 MR. BUTLER: YES, SIR.

24 THE COURT: YOU ARE SATISFIED WITH HIS SERVICES?

25 MR. BUTLER: YES, SIR.

1 THE COURT: NOW HE HAS EXPLAINED TO YOU THAT IT IS
2 YOUR CONSTITUTIONAL RIGHT NOT TO TAKE THE STAND AND TESTIFY
3 OR PRESENT EVIDENCE?

4 MR. BUTLER: YES, SIR.

5 THE COURT: HE HAS EXPLAINED THAT TO YOU?

6 MR. BUTLER: YES, SIR.

7 THE COURT: THAT IS A RIGHT PROVIDED TO YOU BY OUR
8 CONSTITUTION; AND IN MAKING THAT DECISION, IF YOU DO NOT
9 TESTIFY, THEN I WILL TELL THIS JURY THAT THEY IN NO WAY CAN
10 USE THAT AGAINST YOU, THAT THEY CAN'T EVEN DISCUSS IT IN THE
11 JURY ROOM BECAUSE THE BURDEN REMAINS ON THE STATE TO PROVE
12 YOU GUILTY BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?

13 MR. BUTLER: YES, SIR.

14 THE COURT: NOW WITH THAT UNDERSTANDING, HAS MR.
15 ROLLINS ALSO EXPLAINED TO YOU THAT YOU CAN GET ON THIS STAND
16 AND TESTIFY AND TELL THIS JURY YOUR SIDE OF THE STORY? YOU
17 CAN DO THAT.

18 MR. BUTLER: (NODDED HIS HEAD; NO VERBAL RESPONSE.)

19 THE COURT: YOU UNDERSTAND THAT?

20 MR. BUTLER: YES, SIR.

21 THE COURT: YOU'RE TELLING ME THAT YOU DON'T WANT
22 TO DO THAT?

23 MR. BUTLER: NO, SIR.

24 THE COURT: YOU WANT TO WAIVE YOUR RIGHT, AND NOT
25 -- I MEAN, YOU WANT TO EXERCISE YOUR RIGHT NOT TO TESTIFY,

1 AND REMAIN SILENT?

2 MR. BUTLER: YES, SIR.

3 THE COURT: YOU'RE NOT GOING TO PRESENT ANY
4 TESTIMONY OR ANY EVIDENCE IN YOUR DEFENSE, IS THAT WHAT
5 YOU'RE TELLING ME?

6 MR. BUTLER: THAT'S CORRECT.

7 THE COURT: NOW IS THIS A DECISION YOU HAVE MADE?

8 MR. BUTLER: YES, SIR.

9 THE COURT: MR. ROLLINS HAS PUT NO PRESSURE ON YOU
10 NOT TO TAKE THE STAND AND TESTIFY?

11 MR. BUTLER: NO, SIR.

12 THE COURT: AND, AGAIN, THIS IS YOUR OWN DECISION?

13 MR. BUTLER: YES, SIR.

14 THE COURT: AND ARE YOU UNDER THE INFLUENCE OF ANY
15 ALCOHOL, DRUG, OR ANY OTHER SUBSTANCE RIGHT AT THIS MOMENT?

16 MR. BUTLER: NO, SIR.

17 THE COURT: ARE YOU SOBER?

18 MR. BUTLER: YES, SIR.

19 THE COURT: YOU KNOW WHAT YOU'RE DOING?

20 MR. BUTLER: YES.

21 THE COURT: AND YOU, YOURSELF, HAVE MADE THE
22 DECISION NOT TO TESTIFY?

23 MR. BUTLER: YES, SIR.

24 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

25 MR. BUTLER: THE ELEVENTH GRADE.

1 THE COURT: YOU CAN READ AND WRITE THEN?

2 MR. BUTLER: YES, SIR.

3 THE COURT: ALL RIGHT, ANY OTHER QUESTIONS, MR.
4 ROLLINS, THAT YOU NEED TO --

5 MR. ROLLINS: NO, SIR, I BELIEVE THAT'S SUFFICIENT,
6 YOUR HONOR.

7 THE COURT: ALL RIGHT, SIR.

8 MR. CRANE.

9 MR. CRANE: YOUR HONOR, I HAVE A PERPLEXING
10 SITUATION. MS. PATRICIA GERMAN WAS HERE ALL DAY YESTERDAY,
11 AND FOR WHATEVER REASON, SHE IS NOT HERE THIS MORNING. THE
12 THING THAT TROUBLES ME IS THAT IT CAME TO OUR ATTENTION, LAW
13 ENFORCEMENT AND MYSELF, AT THE END OF THE PROCEEDINGS
14 YESTERDAY THAT THERE WERE TWO BLACK MALE INDIVIDUALS SITTING
15 IN THE BACK OF THE COURTROOM THAT DURING THE ENTIRE DAY WERE
16 MAKING REMARKS AND WERE STARING DOWN THESE TWO DEFENDANTS,
17 AND I'M -- AS A MATTER OF FACT, WORDS WERE PASSED AT THE
18 ELEVATOR AS WE WERE LEAVING, AND I THINK OFFICER JOLLEY COULD
19 ATTEST TO THAT.

20 OFFICER JOLLEY: YES.

21 MR. CRANE: AND I'M JUST CONCERNED THAT SHE'S NOT
22 HERE BECAUSE SOMETHING HAS HAPPENED TO HER. AND SHE IS VERY
23 CRUCIAL TO MY CLIENT, SO I WOULD LIKE TO ASK FOR A VERY SHORT
24 RECESS --

25 THE COURT: ALL RIGHT.

1 MR. CRANE: -- TO TRY AND FIND OUT WHAT'S GOING ON.

2 THE COURT: THAT'LL BE FINE.

3 MR. CRANE: THANK YOU, JUDGE.

4 (RECESS FROM APPROXIMATELY 9:28 A.M. UNTIL
5 APPROXIMATELY 9:45 A.M.)

6 THE COURT: ALL RIGHT, NOW, MR. ROLLINS, YOU WANT
7 TO REST YOUR CASE IN THE PRESENCE OF THE JURY?

8 MR. ROLLINS: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: AND THEN, MR. CRANE, YOU'LL HAVE SOME
10 TESTIMONY TO PRESENT?

11 MR. CRANE: YES, SIR.

12 THE COURT: NOW HOW ABOUT MR. TODD, WILL HE TAKE
13 THE STAND AND TESTIFY?

14 MR. CRANE: YOUR HONOR, AT THIS POINT, DEPENDING ON
15 HOW THINGS GO, I WOULD ANTICIPATE THAT HE WOULD NOT TAKE THE
16 STAND.

17 THE COURT: ALL RIGHT, DO WE NEED TO GET THAT ON
18 THE RECORD NOW OR DO YOU WANT TO WAIT?

19 MR. CRANE: LET'S WAIT AND SEE, JUDGE.

20 THE COURT: ALL RIGHT. BRING THE JURY.

21 (THE JURY ENTERED THE COURTROOM AT 9:47 A.M.)

22 THE COURT: ALL RIGHT, MR. ROLLINS.

23 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR,
24 AT THIS TIME STANLEY BUTLER RESTS HIS CASE, YOUR HONOR.

25 THE COURT: THANK YOU, SIR.

SONYA TODD/DIRECT-CRANE

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1 MR. CRANE.

2 MR. CRANE: THANK YOU, JUDGE. WE WOULD LIKE TO
3 CALL SONYA TODD TO THE WITNESS STAND, PLEASE.

4 THE COURT: ALL RIGHT.

5 MR. CRANE: COME AROUND SONYA.

6 SONYA TODD, FIRST BEING SWORN TO TELL THE
7 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIES
8 AS FOLLOWS:

9 THE CLERK: STATE YOUR NAME FOR THE RECORD.

10 THE WITNESS: SONYA TODD.

11 THE CLERK: BEG YOUR PARDON?

12 THE WITNESS: SONYA TODD.

13 THE CLERK: THANK YOU. YOU MAY HAVE A SEAT.

14 DIRECT EXAMINATION BY MR. CRANE:

15 Q MS. TODD, WHERE DO YOU LIVE?

16 A [REDACTED] -- IT'S [REDACTED]

17 Q OKAY, WHO DO YOU LIVE WITH?

18 A MY MOTHER.

19 Q ALL RIGHT. IS THIS YOUR BROTHER OVER HERE, SHANNON?

20 A (NODDED HER HEAD; NO VERBAL RESPONSE.)

21 Q YOU HAVE TO SPEAK UP.

22 A YES.

23 Q OKAY. DO YOU REMEMBER WHEN SHANNON GOT ARRESTED FOR
24 THESE OFFENSES WE HAVE BEEN ON TRIAL FOR?

25 A UH-HUH, YES, SIR.

SONYA TODD/DIRECT-CRANE

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1 Q AND DO YOU REMEMBER BACK TO, IT WOULD BE SATURDAY,
2 MARCH 9TH OF THIS YEAR?

3 A YES, SIR.

4 Q ALL RIGHT. NOW THE ARMED ROBBERY APPARENTLY OCCURRED
5 JUST AFTER MIDNIGHT ON MARCH 10TH OF 1996. ON MARCH 9TH OF
6 1996, DID YOU HAVE AN OCCASION TO SEE YOUR BROTHER?

7 A THE LAST TIME I SEEN SHANNON WAS, I GUESS, THAT
8 SATURDAY WE TOOK HIM HOME.

9 Q ALL RIGHT. WELL, WHERE WERE YOU BEFORE YOU TOOK HIM
10 HOME?

11 A I WAS AT MY MOTHER'S HOUSE.

12 Q ALL RIGHT, AND WHO ELSE WAS OVER AT YOUR MOTHER'S
13 HOUSE?

14 A MY LITTLE SISTER, MY SON, AND MY MOTHER.

15 Q AND WAS SHANNON THERE?

16 A YES.

17 Q ALL RIGHT. AND WHAT DO YOU MEAN BY "YOU TOOK HIM
18 HOME"?

19 A WE TOOK HIM OVER TO PATRICIA'S HOUSE.

20 Q WHO IS "WE"?

21 A ME AND MY MOTHER.

22 Q OKAY, IN WHOSE CAR?

23 A HER CAR.

24 Q DID SHANNON HAVE A CAR?

25 A NO, SIR.

SONYA TODD/DIRECT-CRANE

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- 1 Q ALL RIGHT, DID SHANNON DRIVE?
- 2 A NO, SIR.
- 3 Q HOW OLD IS SHANNON?
- 4 A 17.
- 5 Q NOW. HOW OLD WAS HE BACK THEN?
- 6 A 16.
- 7 Q ALL RIGHT. AND WHEN YOU WENT OVER TO PATRICIA'S HOUSE
- 8 ON THAT SATURDAY NIGHT, DID YOU HAVE AN OCCASION TO SEE
- 9 ANYBODY WHEN YOU WERE OVER THERE?
- 10 A NO, SIR.
- 11 Q DID Y'ALL GO IN THE APARTMENT, OR DID YOU JUST LET
- 12 SHANNON OFF?
- 13 A JUST DROPPED HIM OFF.
- 14 Q ALL RIGHT, AND APPROXIMATELY WHAT TIME WAS THAT?
- 15 A 10:00.
- 16 Q OKAY. DID ANYONE OTHER THAN YOUR MOTHER AND YOU AND
- 17 SHANNON GO IN THE CAR OVER THERE?
- 18 A MY SON AND MY LITTLE SISTER.
- 19 Q HOW OLD IS YOUR SON AND LITTLE SISTER?
- 20 A FOUR AND NINE.
- 21 Q AND NINE?
- 22 A (NODDED HER HEAD; NO VERBAL RESPONSE.)
- 23 MR. CRANE: OKAY, THANK YOU. ANSWER ANY QUESTIONS
- 24 THE SOLICITOR MIGHT HAVE, PLEASE.
- 25 MS. MUNSON: MAY IT PLEASE THE COURT, YOUR HONOR.

SONYA TODD/CROSS-MUNSON

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1 CROSS-EXAMINATION BY MS. MUNSON:

2 Q MS. TODD, WHILE YOU WERE INSIDE YOUR MOTHER'S HOUSE ON
3 THAT NIGHT, DID YOU NOTICE ANYBODY OUT IN FRONT OF THE HOUSE?

4 A NO, MA'AM.

5 Q OKAY. WHAT DID YOU DO LAST SATURDAY NIGHT?

6 A I WAS AT HOME.

7 Q OKAY. WHEN WAS THE FIRST TIME YOU HEARD THAT SHANNON
8 HAD GOTTEN ARRESTED?

9 A THAT MONDAY MORNING. MY MOTHER CALLED ME AT WORK.

10 Q THE MONDAY AFTER THE ROBBERY?

11 A UH-HUH (NODDED HER HEAD).

12 Q SO, BUT YOU'RE NOT SURE?

13 A (SHOOK HER HEAD, NO VERBAL RESPONSE.)

14 Q OKAY. YOUR MOTHER CALLED YOU AT WORK TO TELL YOU THAT
15 HE WAS -- (PAUSE) --

16 A HE HAD BEEN ARRESTED.

17 Q -- THAT HE HAD BEEN CHARGED?

18 A UH-HUH (NODDED HER HEAD).

19 Q OKAY. WELL, YOU WOULD AGREE WITH ME, WOULDN'T YOU,
20 THAT IT'S A PRETTY SIGNIFICANT THING IN YOUR LIFE WHEN YOUR
21 MOTHER CALLS YOU TO TELL YOU THAT YOUR YOUNGER BROTHER HAS
22 BEEN ARRESTED? AND YOU DON'T REMEMBER THE DATE?

23 A THE DATE?

24 Q THE DATE. THE DAY OR DATE.

25 A IT WAS ON A MONDAY.

BARBARA BOYD/DIRECT-CRANE

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1 Q OKAY, BUT YOU THINK IT WAS RIGHT AFTER THE ROBBERY?

2 A (NODDED HER HEAD; NO VERBAL RESPONSE.)

3 MS. MUNSON: OKAY, THAT'S FINE. THANK YOU.

4 THE COURT: STEP DOWN.

5 MR. CRANE: BARBARA BOYD, PLEASE, COME AROUND.

6 THE CLERK: PLACE YOUR LEFT HAND ON THE BIBLE, AND
7 RAISE YOUR RIGHT.

8 BARBARA BOYD, FIRST BEING SWORN TO TELL THE
9 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIES
10 AS FOLLOWS:

11 THE CLERK: STATE YOUR NAME FOR THE RECORD.

12 THE WITNESS: BARBARA BOYD.

13 THE CLERK: THANK YOU. HAVE A SEAT.

14 DIRECT EXAMINATION BY MR. CRANE:

15 Q MRS. BOYD, DO YOU LIVE AT THE SAME ADDRESS WE JUST
16 HEARD ABOUT?

17 A YES, SIR.

18 Q ALL RIGHT, AND SHANNON IS YOUR SON?

19 A YES, SIR.

20 Q OKAY. DO YOU REMEMBER BACK TO MARCH 9TH, 1996?

21 A YES, SIR.

22 Q DO YOU REMEMBER ABOUT WHEN SHANNON WAS ARRESTED?

23 A ABOUT, YES.

24 Q OKAY. ON MARCH 9TH, NOW THAT WAS A SATURDAY. MARCH
25 10TH WAS A SUNDAY. DO YOU RECALL WHETHER OR NOT YOU WERE

BARBARA BOYD/DIRECT-CRANE

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- 1 WITH SHANNON ON THAT SATURDAY EVENING?
- 2 A I REMEMBER WE WERE ALL TOGETHER. IT WAS LIKE OUR
- 3 FAMILY NIGHT.
- 4 Q YOUR FAMILY NIGHT?
- 5 A UH-HUH (NODDED HER HEAD).
- 6 Q WHO ALL WAS THERE?
- 7 A MY DAUGHTER, MY GRANDBABY, MY SMALL DAUGHTER, AND
- 8 SHANNON WAS THERE.
- 9 Q AND WHAT WERE Y'ALL DOING?
- 10 A WE CALL IT "FAMILY NIGHT" BECAUSE WE ALL, LIKE, GET
- 11 TOGETHER AND TALK, AND PROBABLY WRESTLE, AND JUST THE FAMILY
- 12 STUFF, JUNK STUFF, I CALL IT.
- 13 Q JUNK STUFF?
- 14 A YEAH.
- 15 Q DID YOU HAPPEN TO SEE PATRICIA GERMAN THAT NIGHT?
- 16 A I THINK SHE WAS OVER THERE EARLIER IN THE EVENING.
- 17 Q ALL RIGHT. AND DID YOU HAPPEN TO SEE ANY WHITE MEN
- 18 COME TO YOUR HOUSE ON THAT NIGHT?
- 19 A NO, NOT TO MY HOUSE.
- 20 Q NOW WERE YOU AT THE TRIAL YESTERDAY?
- 21 A YES.
- 22 Q DID YOU SEE AUSTIN PERRY TESTIFY?
- 23 A YES.
- 24 Q HAVE YOU EVER SEEN HIM BEFORE?
- 25 A NO. I SEEN A GUY IN THE HALL THAT I THOUGHT WAS HIM BY

1 THE NEWSPAPER. BUT WHEN HE CAME IN HERE, IT WAS LIKE, NO.

2 Q OKAY. WELL, ON MARCH 9TH OF 1996 DID YOU SEE AUSTIN
3 PERRY DRIVING A WHITE CAR COME TO YOUR HOUSE AND TALK TO
4 SHANNON?

5 A NO, SIR.

6 Q ALL RIGHT. DO YOU KNOW THIS FELLOW IN THE SHIRT HERE,
7 STANLEY BUTLER?

8 A I HAVE SEEN HIM AROUND.

9 Q HAVE YOU EVER SEEN HIM HANG OUT WITH SHANNON?

10 A NO.

11 Q HAVE YOU EVER SEEN HIM OVER AT YOUR HOUSE?

12 A NO, NOT MY HOUSE.

13 Q YOU'VE JUST SEEN HIM IN THE NEIGHBORHOOD?

14 A I'VE SEEN HIM IN DIFFERENT NEIGHBORHOODS, YES.

15 Q OKAY. NEVER WITH SHANNON?

16 A NO.

17 Q ON THE PARTICULAR NIGHT OF MARCH 9TH, 1996, DID YOU
18 HAVE AN OCCASION TO TAKE SHANNON SOMEWHERE?

19 A I -- HE -- WE WERE ALL, LIKE, HAVING A GOOD TIME, I
20 MEAN, TALKING AND GOING ON, AND I THINK HE ASKED ME ABOUT
21 10:00 OR A LITTLE AFTER, "MOM, WILL YOU TAKE ME HOME?" AND
22 I'M LIKE, "SHANNON, DIDN'T YOUR GIRLFRIEND JUST LEAVE?" AND
23 I PROBABLY RAISED A LITTLE SAND BECAUSE I'LL RAISE SAND IF
24 YOU ASK ME REAL LATE TO TAKE YOU SOMEWHERE BECAUSE I'M
25 NORMALLY ASLEEP BY 11:00. AND I GAVE HIM A RIDE HOME. THEN

BARBARA BOYD/DIRECT-CRANE

275

1 I ENDED UP TAKING MY DAUGHTER BY HER FRIEND'S HOUSE.

2 Q ALL RIGHT, SO YOU DIDN'T WANT TO TAKE HIM BECAUSE IT
3 WAS SO LATE?

4 A YES, SIR.

5 Q BUT DID YOU TAKE HIM TO PATRICIA GERMAN'S HOUSE?

6 A YES, SIR.

7 Q AND DO YOU HAVE ANY RECOLLECTION OF ABOUT WHAT TIME YOU
8 MIGHT HAVE GOTTEN TO PATRICIA GERMAN'S HOUSE?

9 A IT WAS AFTER 10:00. PROBABLY 10:15, MAYBE 10:20,
10 BECAUSE IT'S WAY ON DOWN AUGUSTA ROAD.

11 Q OKAY. DID YOU GO INTO THE APARTMENT THAT NIGHT?

12 A NO, SIR.

13 Q DID YOU SEE PATRICIA GERMAN THAT NIGHT?

14 A NO. I JUST LET HIM OUT AND KEPT GOING.

15 Q DID YOU EVER SEE THE WHITE MAN THAT TESTIFIED YESTERDAY
16 WHO WAS THE CO-DEFENDANT ANY TIME THAT NIGHT?

17 A UH-UH (SHOOK HER HEAD).

18 Q NOW HAVE YOU EVER SEEN SHANNON WITH A MICHIGAN STARTERS
19 TYPE JACKET?

20 A NO, SIR.

21 Q HAVE YOU EVER KNOWN HIM TO OWN ONE?

22 A NO, SIR.

23 Q ALL RIGHT, AFTER THE ARMED ROBBERY, DID YOU EVER SEE
24 SHANNON WITH ANY UNUSUALLY LARGE AMOUNTS OF MONEY?

25 A NO, I WISH -- (PAUSE) -- NO, SIR.

BARBARA BOYD/CROSS-MUNSON

276

1 MR. CRANE: OKAY. (PAUSE.) THANK YOU, MA'AM.
2 ANSWER ANY QUESTIONS THE SOLICITOR MIGHT HAVE.
3 CROSS-EXAMINATION BY MS. MUNSON:
4 Q GOOD MORNING, MRS. BOYD.
5 A GOOD MORNING.
6 Q THIS FAMILY NIGHT, IS THIS SOMETHING YOU DO LIKE EVERY
7 FRIDAY NIGHT?
8 A WE DO IT WHENEVER WE CAN.
9 Q OKAY.
10 A WHENEVER WE CAN ALL GET TOGETHER.
11 Q SO IS THERE ANYTHING PARTICULAR ABOUT THIS FAMILY
12 NIGHT, LIKE A BIRTHDAY, OR GRADUATION, OR ANYTHING LIKE THAT?
13 A NO, I JUST KNOW THAT WAS MY LAST TIME WITH MY SON.
14 Q YOU THOUGHT IT WAS YOUR LAST TIME WITH YOUR SON?
15 A NO, I KNEW IT WAS MY LAST NIGHT WITH MY SON, THAT I
16 HAVE SEEN MY SON, THAT WE HAVE ALL BEEN TOGETHER. (PAUSE.)
17 I KNOW BECAUSE MY SON WENT TO JAIL ON MARCH THE 18TH.
18 Q THAT'S THE DAY THAT HE WAS ARRESTED?
19 A THAT'S THE DAY THAT HE WAS ARRESTED.
20 Q OKAY, SO YOU HAD FAMILY NIGHT PRIOR TO HIS ARREST?
21 A THE WEEK BEFORE, YES, MA'AM.
22 Q AND YOU KNEW THAT HE WAS GOING TO GET ARRESTED?
23 A HE CALLED ME AT WORK. HE TOLD ME THAT MR. KELLY, SOME
24 OFFICER FROM THE POLICE STATION, HAD BEEN CALLING HIM ALL
25 WEEKEND AND WANTING HIM TO COME DOWN. I SAID, "WELL,

BARBARA BOYD/CROSS-MUNSON

277

1 SHANNON, YOU GO DOWN AND SEE WHAT HE WANTS." I SAID, "IF YOU
2 NEED ME, YOU CALL ME AT WORK." AND HE CALLED ME AT WORK ON
3 MONDAY PROBABLY ABOUT -- I HADN'T BEEN THERE A GOOD 30
4 MINUTES OR SO. HE CALLED ME ALMOST AT 10:00. HE CALLED ME
5 AND SAID, "MOM, MR. KELLY HAS ARRESTED ME." AND THEN MR.
6 KELLY, I THINK I TALKED TO HIM ON THE PHONE, AND THEN I WENT
7 ON DOWN TO THE POLICE STATION.

8 Q OKAY. YOU WOULD SAY YOUR SON LOVES YOU, DON'T YOU?

9 A YEAH. I LOVE HIM, TOO.

10 Q DON'T YOU THINK THAT HE WOULD PROTECT YOU?

11 A PROTECT ME?

12 Q YES, MA'AM.

13 A YES.

14 Q IF HE HAD COMMITTED A CRIME, DON'T YOU THINK HE WOULD
15 PROTECT YOU?

16 A I DON'T THINK MY SON COMMITTED A CRIME.

17 Q I'M NOT ASKING YOU IF YOU THINK HE COMMITTED A CRIME.

18 I'M SURE YOU DON'T. I'M ASKING YOU: IF HE DID, KNOWING THAT
19 HE LOVES YOU, WOULDN'T HE WANT TO PROTECT YOU?

20 A WHAT SON WOULDN'T?

21 Q THAT'S TRUE.

22 A YES.

23 Q THAT'S WHAT I'M ASKING YOU.

24 A UH-HUH (NODDED HER HEAD.)

25 Q THANK YOU. YOU SAY YOU'VE SEEN STANLEY BUTLER AROUND?

BARBARA BOYD/CROSS-MUNSON

278

- 1 A UH-HUH (NODDED HER HEAD).
- 2 Q AROUND WHERE?
- 3 A DIFFERENT NEIGHBORHOODS. I'VE GOT A NIECE THAT LIVES
- 4 OVER IN -- (PAUSE) -- ROOSEVELT, --
- 5 Q UH-HUH.
- 6 A -- AND I THINK I'VE SEEN HIM OVER THERE.
- 7 Q DO YOU HAVE CONVERSATIONS WITH HIM?
- 8 A NO.
- 9 Q OKAY. BUT YOU HAVE NEVER SEEN HIM WITH SHANNON?
- 10 A NO.
- 11 Q HAVE YOU EVER SEEN SHANNON WITH ANY OF HIS FRIENDS FROM
- 12 WORK?
- 13 A I CALL HIM "SHORT MAN"; I HAVE SEEN HIM WITH HIM.
- 14 Q JUST HIM?
- 15 A YES.
- 16 Q OKAY, BUT YOU HAVE NEVER SEEN HIM WITH AUSTIN PERRY?
- 17 A NO, I'VE NEVER SEEN AUSTIN.
- 18 Q OR STANLEY BUTLER?
- 19 A NO.
- 20 Q HOW OLD IS PATRICIA GERMAN, YOUR SON'S, WHAT YOU
- 21 CALLED, GIRLFRIEND?
- 22 A SHE'S OLDER THAN SHANNON.
- 23 Q WELL, DO YOU KNOW HOW OLD SHE IS?
- 24 A I'M SAYING ABOUT 19, MAYBE 20.
- 25 Q OKAY. YOU GOT INFORMATION ON THE 18TH THAT YOUR SON

BARBARA BOYD/CROSS-MUNSON

279

1 HAD BEEN ARRESTED, CORRECT?

2 A UH-HUH (NODDED HER HEAD).

3 Q OKAY. WHEN WAS THE FIRST TIME YOU REALIZED THAT YOU

4 HAD TAKEN HIM -- I MEAN, HOW DID YOU GO ABOUT THE THOUGHT

5 PROCESS OF FIGURING OUT THAT, "OH, THAT SATURDAY WE HAD

6 FAMILY NIGHT, AND I TOOK HIM TO PATRICIA GERMAN'S"? WHEN DID

7 THAT COME TO YOU?

8 A IT'S NOT A THOUGHT PROCESS. IT'S LIKE I SAID, IT WAS

9 THE LAST TIME I WAS WITH MY SON.

10 Q SO YOU KNEW BEFORE HE WAS ARRESTED THAT THERE WAS GOING

11 TO BE A PROBLEM?

12 A NO, I DIDN'T KNOW THERE WAS GOING TO BE A PROBLEM. I

13 NEVER KNEW THAT.

14 Q OKAY, I'M SORRY, I DON'T MEAN TO BE DIFFICULT. I'M

15 JUST TRYING TO ASK YOU --

16 A YOU ARE TRYING TO BE THOUGH.

17 Q NO, MA'AM, AND I TRULY APPOLOGIZE IF YOU FIND MY

18 DEMEANOR DIFFICULT. I'M JUST TRYING TO GET MYSELF

19 STRAIGHTENED OUT. I'M A LITTLE SLOW SOMETIMES. I THOUGHT I

20 HEARD YOU SAY THAT ON FRIDAY NIGHT WHEN YOU HAD YOUR FAMILY

21 NIGHT --

22 A NO, IT WAS ON SATURDAY NIGHT THAT WE HAD OUR FAMILY

23 NIGHT.

24 Q SO IT WAS SATURDAY NIGHT YOU HAD FAMILY NIGHT?

25 A UH-HUH (NODDED HER HEAD).

BARBARA BOYD/CROSS-MUNSON

280

1 Q THAT WOULD BE MARCH THE 9TH?

2 A I DON'T KNOW DATES VERY WELL. I JUST KNOW ON THAT
3 WEEKEND ME AND MY KIDS HAD OUR FAMILY NIGHT. I MEAN, WE -- I
4 CALL IT -- YOU CALL IT "FAMILY NIGHT," WE CALL IT GETTING
5 TOGETHER.

6 Q OKAY.

7 A AND THAT FOLLOWING MONDAY A WEEK LATER, ON THE 8-- I
8 REMEMBER THE MARCH THE 18TH MY SON WAS ARRESTED.

9 Q OKAY.

10 A ALL I REMEMBER IS DROPPING MY SON AT PATRICIA'S HOUSE
11 THAT NIGHT.

12 Q OKAY, THERE'S JUST TWO THINGS THAT I'M UNCLEAR ABOUT,
13 AND I APPRECIATE YOUR PATIENCE, I REALLY DO. YOUR GET
14 TOGETHER WITH ALL YOUR FAMILY MEMBERS, THAT WAS FRIDAY NIGHT
15 OR SATURDAY NIGHT, THE NIGHT OF THE ROBBERY? I'M SORRY, WAS
16 IT FRIDAY NIGHT OR SATURDAY NIGHT?

17 A I DIDN'T KNOW ANYTHING ABOUT THE ROBBERY. (PAUSE.)

18 Q DO YOU KNOW IF IT WAS FRIDAY NIGHT OR SATURDAY NIGHT?

19 A IT WAS SATURDAY NIGHT.

20 Q IT WAS SATURDAY NIGHT. OKAY. OKAY, THERE'S ONLY ONE
21 OTHER THING I'M UNCLEAR ON, AND I'M SORRY ABOUT THAT.

22 (PAUSE.) WELL, I THINK I CAN FIGURE IT OUT. I APPRECIATE
23 YOUR PATIENCE, MRS. BOYD.

24 MR. CRANE: YOUR HONOR, MAY I FOLLOW UP?

25 THE COURT: ALL RIGHT.

BARBARA BOYD/REDIRECT-CRANE

281

1 REDIRECT EXAMINATION BY MR. CRANE:

2 Q I CAN'T ANTICIPATE WHAT THE SOLICITOR IS UNCLEAR ABOUT,
3 BUT YOU INDICATED THAT WHEN YOU SAW SHANNON ON SATURDAY THE
4 9TH, THAT WAS THE LAST TIME YOU SAW HIM OVER AT YOUR HOUSE,
5 IS THAT CORRECT?

6 A UH-HUH (NODDED HER HEAD).

7 Q AND I THINK WHAT THE SOLICITOR MAY BE UNCLEAR ABOUT IS,
8 YOU TESTIFIED THAT SHANNON STARTED CALLING YOU THE FOLLOWING
9 WEEKEND TELLING YOU THAT THE DETECTIVE WAS CALLING HIM,
10 WANTED TO TALK TO HIM; IS THAT WHAT YOU SAID?

11 A NO, THAT -- WE WERE TOGETHER ON THAT SATURDAY NIGHT.

12 Q I UNDERSTAND THAT.

13 A OKAY.

14 Q AND THAT'S THE LAST TIME YOU SAW HIM?

15 A THAT'S THE LAST TIME I SAW SHANNON.

16 Q AND THEN A WEEK --

17 A DURING THAT WEEK I GOT ONE OR TWO PHONE CALLS FROM
18 SHANNON. HE SAID THIS DETECTIVE HAD BEEN CALLING HIM THAT
19 WEEKEND.

20 Q THE NEXT WEEKEND?

21 A THE NEXT WEEKEND.

22 Q RIGHT.

23 A SHANNON SAID THAT THE DETECTIVE HAD -- HE SAID HE HAD
24 BEEPED HIM. HE GAVE HIM HIS BEEPER NUMBER. HE SAID HE HAD
25 BEEPED HIM. HE SAID HE HAD TALKED WITH HIM ON THE PHONE,

BARBARA BOYD/REDIRECT-CRANE

282

1 AND I TOLD SHANNON, I SAID, WELL, -- HE SAID MR. KELLY SAID
2 BE DOWN THERE ON MONDAY MORNING. I SAID, "SHANNON, YOU GO
3 DOWN THERE AND SEE WHAT HE WANTS."

4 Q ALL RIGHT, AND THAT WEEKEND YOU DIDN'T SEE SHANNON?

5 A NO, I DIDN'T.

6 Q AND, SO, THEN THAT FOLLOWING MONDAY IS WHEN HE WENT
7 DOWN THERE?

8 A UH-HUH (NODDED HER HEAD).

9 Q AND THAT'S HOW YOU REMEMBER THAT IT WAS THE SATURDAY
10 BEFORE THE ARMED ROBBERY?

11 A YES.

12 MR. CRANE: OKAY. I HOPE THAT CLARIFIES THE
13 SOLICITOR. THANK YOU.

14 THE COURT: ANYTHING ELSE, SOLICITOR?

15 MS. MUNSON: BEG THE COURT'S INDULGENCE, YOUR
16 HONOR. (PAUSE.) YOUR HONOR, I APPRECIATE THE COURT'S
17 PATIENCE, AS WELL. I HAVE NO FURTHER QUESTIONS.

18 THE COURT: THANK YOU. YOU CAN STEP DOWN.

19 MR. CRANE: ALL RIGHT, PATRICIA GERMAN, PLEASE,
20 COME AROUND.

21 THE CLERK: PLACE YOUR LEFT HAND ON THE BIBLE, AND
22 RAISE YOUR RIGHT, PLEASE.

23 PATRICIA GERMAN, FIRST BEING SWORN TO TELL
24 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
25 TESTIFIES AS FOLLOWS:

PATRICIA GERMAN/DIRECT-CRANE

283

1 THE CLERK: STATE YOUR NAME FOR THE RECORD.

2 THE WITNESS: PATRICIA GERMAN.

3 THE CLERK: THANK YOU. HAVE A SEAT.

4 DIRECT EXAMINATION BY MR. CRANE:

5 Q MS. GERMAN, WHERE DO YOU LIVE?

6 A AUGUSTA HILLS.

7 Q AUGUSTA HILLS?

8 A UH-HUH (NODDED HER HEAD).

9 Q IS THAT AN APARTMENT COMPLEX?

10 A IT'S APARTMENT 265.

11 Q ALL RIGHT. WHERE IS THAT LOCATED IN GREENVILLE?

12 A ON AUGUSTA ROAD NEAR 385, I-85.

13 Q I-85 AND AUGUSTA ROAD?

14 A UH-HUH (NODDED HER HEAD).

15 Q ON ARE YOU RELATED TO SHANNON?

16 A GIRLFRIEND/BOYFRIEND.

17 Q BOYFRIEND/GIRLFRIEND. HOW LONG Y'ALL BEEN DATING?

18 A I GUESS ABOUT NOVEMBER.

19 Q NOVEMBER OF '95?

20 A '95.

21 Q OKAY. WERE YOU BOYFRIEND/GIRLFRIEND IN MARCH OF '96?

22 A SURE.

23 Q DID YOU HAVE AN OCCASION TO SEE HIM ON MARCH 9TH, 1996?

24 A WELL, THE WEEKEND, I'M SURE. I SEE HIM EVERY WEEKEND.

25 Q DO YOU RECALL WHETHER OR NOT YOU HAD BEEN OVER TO HIS

PATRICIA GERMAN/DIRECT-CRANE

284

1 MOTHER'S HOUSE THAT EVENING?

2 A WELL, I WAS OVER THERE ON A SATURDAY.

3 Q YES, MA'AM.

4 A UH-HUH (NODDED HER HEAD).

5 Q NOW DO YOU REMEMBER WHEN SHANNON GOT ARRESTED?

6 A WELL, I REMEMBER I CARRIED HIM SOMEWHERE MONDAY
7 MORNING.

8 Q MONDAY MORNING, A WEEK AFTER THE ARMED ROBBERY?

9 A UH-HUH (NODDED HER HEAD).

10 Q YOU TOOK HIM UP THERE?

11 A I TOOK HIM THERE.

12 Q ALL RIGHT, SO THINKING BACK FROM THAT, THE SATURDAY,
13 NOT THE TWO DAYS BEFORE THAT, BUT A WEEK BEFORE, IS THAT WHEN
14 YOU WERE OVER AT HIS MOTHER'S HOUSE?

15 A YES.

16 Q WHEN YOU WERE OVER THERE WERE YOU DRIVING, OR HOW WERE
17 YOU OVER THERE?

18 A I WAS DRIVING.

19 Q DID YOU GET OUT OF THE CAR OR DID YOU STAY IN YOUR CAR?

20 A STAYED IN THE CAR.

21 Q AND DID YOU EVER SEE A WHITE FELLOW WHO TESTIFIED
22 YESTERDAY BY THE NAME OF AUSTIN PERRY?

23 A NO, SIR.

24 Q DID YOU EVER SEE A WHITE CAR THAT AUSTIN PERRY SAYS HE
25 WAS DRIVING OVER AT HIS MOTHER'S HOUSE?

PATRICIA GERMAN/DIRECT-CRANE

285

- 1 A NO, SIR.
- 2 Q ALL RIGHT. WHEN YOU LEFT HIS MOTHER'S HOUSE, SHANNON'S
- 3 MOTHER'S HOUSE, DID SHANNON GO WITH YOU?
- 4 A NO, SIR.
- 5 Q AND WHERE DID YOU GO?
- 6 A I WENT HOME.
- 7 Q DID SHANNON EVENTUALLY COME OVER TO YOUR HOUSE?
- 8 A YES, ABOUT 45 MINUTES LATER, OR AN HOUR.
- 9 Q DO YOU KNOW HOW HE GOT THERE?
- 10 A HIS MOM.
- 11 Q DID YOU SEE HIS MOTHER OR SISTER WHEN SHANNON CAME
- 12 OVER?
- 13 A WELL, I HEARD THEM IN THE BACKGROUND WHEN HE KNOCKED ON
- 14 THE DOOR.
- 15 Q ALL RIGHT, AND WHERE WERE YOU WHEN SHANNON CAME AND
- 16 KNOCKED ON THE DOOR?
- 17 A I WAS LOOKING OUT THE WINDOW.
- 18 Q ALL RIGHT. DO YOU HAVE ANY RECOLLECTION OF ABOUT WHAT
- 19 TIME IT WAS?
- 20 A 10:00 SOMETHING.
- 21 Q OKAY. YOU'RE NOT REAL SURE, JUST 10:00 SOMETHING?
- 22 A 10:00 SOMETHING.
- 23 Q ALL RIGHT, AND WHAT DID YOU AND SHANNON DO WHEN HE CAME
- 24 OVER?
- 25 A WHAT DID WE DO? WELL, WE GOT READY FOR BED AND TALKED.

PATRICIA GERMAN/DIRECT-CRANE

286

1 Q ALL RIGHTY. DID YOU SEE AUSTIN PERRY, THAT WHITE
2 FELLOW THAT TESTIFIED YESTERDAY, AND THIS GUY COME OVER THERE
3 WITH SHANNON PRIOR TO YOU GOING TO BED?

4 A NO, SIR.

5 Q ALL RIGHTY. DID SHANNON EVER LEAVE THE APARTMENT THAT
6 EVENING?

7 A NO, SIR. I DON'T SEE HOW. I TOSSED AND TWISTED AND
8 TURNED, I MEAN, YOU KNOW, HE WAS THERE, I MEAN, HOW COULD HE
9 LEAVE?

10 Q ALL RIGHT. WHERE WAS HE WHEN YOU WOKE UP THE NEXT
11 MORNING?

12 A HE WAS IN MY BED WHERE I WAS AT.

13 Q AND HE WAS IN YOUR BED WHEN YOU WENT TO SLEEP?

14 A THAT'S RIGHT.

15 Q ALL RIGHT. NOW SOMETIME AFTER MIDNIGHT, PROBABLY
16 AROUND 1:15 OR 1:30, DID YOU HAVE AN OCCASION TO SEE SHANNON
17 UP AND ABOUT THE APARTMENT IN THE PRESENCE OF THIS FELLOW AND
18 THE WHITE MAN THAT TESTIFIED YESTERDAY IN YOUR APARTMENT?

19 A NO, SIR. I WOKE UP IN THE MIDDLE OF THE NIGHT AND I
20 SEEN SHANNON, AND I WENT RIGHT BACK TO SLEEP.

21 Q WHERE WAS SHANNON?

22 A HE WAS IN MY BEDROOM.

23 Q ALL RIGHT. DID ANY THREE GUYS COME INTO YOUR APARTMENT
24 SOMETIME AFTER 1:30 CARRYING DUFFLE BAGS, CARRYING A RIFLE,
25 CARRYING A SHEET, WEARING A MICHIGAN STARTERS JACKET, AND GO

PATRICIA GERMAN/DIRECT-CRANE

287

- 1 INTO YOUR BATHROOM AND SPLIT THE LOOT FROM THE ROBBERY AT
2 FUDDRUCKERS?
- 3 A NO, SIR.
- 4 Q HAVE YOU EVER SEEN AUSTIN PERRY ON THAT NIGHT AT YOUR
5 APARTMENT?
- 6 A NO, SIR.
- 7 Q HAVE YOU EVER SEEN AUSTIN PERRY BEFORE?
- 8 A ON A PICTURE. AND THEN WHEN HE GOT UP HERE, HE DIDN'T
9 LOOK LIKE THE SAME PERSON ON THE PICTURE.
- 10 Q ALL RIGHT. HAS HE EVER BEEN TO YOUR APARTMENT BEFORE
11 THAT YOU'RE AWARE OF?
- 12 A NO, SIR.
- 13 Q AS FAR AS YOU KNOW, HAS HE EVER BEEN IN YOUR APARTMENT?
- 14 A NO, SIR.
- 15 Q HAVE YOU EVER SEEN A WELDER'S MASK? DO YOU KNOW WHAT
16 THAT IS?
- 17 A I GUESS A MASK.
- 18 Q HAVE YOU EVER SEEN SHANNON WITH ANY TYPE OF WELDER'S
19 MASK?
- 20 A NO, SIR.
- 21 Q ON THE NIGHT OF THE ARMED ROBBERY, DID YOU HAPPEN TO
22 SEE A YELLOW BANDANNA?
- 23 A NO, SIR.
- 24 Q AND HAVE YOU EVER KNOWN SHANNON TO OWN OR WEAR A
25 MICHIGAN STARTERS JACKET?

PATRICIA GERMAN/DIRECT-CRANE

288

1 A NO, SIR.

2 Q THE ROBBERY WHICH OCCURRED ON THE 10TH OF MARCH,
3 SHORTLY THEREAFTER, DID SHANNON HAVE AN UNUSUAL AMOUNT OF
4 MONEY?

5 A HE DIDN'T HAVE ANY MONEY, PERIOD.

6 Q DIDN'T HAVE ANY MONEY?

7 A RIGHT.

8 Q ALL RIGHT. NOW SINCE YOU HAVE BEEN TOGETHER WITH
9 SHANNON FROM NOVEMBER OF '95, HAVE YOU EVER SEEN THIS FELLOW
10 HERE, STANLEY BUTLER?

11 A NO, SIR. I MEAN, I MAY HAVE SEE HIM IN ROOSEVELT.
12 THAT'S BECAUSE MY SISTER LIVES DOWN THERE, BUT AS FAR AS
13 KNOWING HIM, I DON'T KNOW HIM.

14 Q HAVE YOU EVER KNOWN -- WELL, WHILE YOU WERE IN THE
15 PRESENCE OF SHANNON, HAVE Y'ALL EVER BEEN TOGETHER WITH
16 STANLEY BUTLER?

17 A NO, SIR.

18 Q HAVE YOU EVER KNOWN SHANNON TO HANG OUT WITH STANLEY
19 BUTLER?

20 A NO, SIR.

21 Q AND ON THE PARTICULAR NIGHT OF THE ARMED ROBBERY, DID
22 YOU SEE ANYBODY AT YOUR APARTMENT OTHER THAN SHANNON TODD?

23 A NO, SIR.

24 Q AND ON THE PARTICULAR NIGHT OF THE ARMED ROBBERY DID
25 SHANNON TODD EVER LEAVE YOUR APARTMENT AFTER HE CAME THERE

PATRICIA GERMAN/CROSS-MUNSON

289

1 SOMETIME DURING THE 10:00 O'CLOCK HOUR?

2 A NO, SIR.

3 MR. CRANE: OKAY. ANSWER ANY QUESTIONS THE STATE
4 MIGHT HAVE.

5 THE COURT: SOLICITOR.

6 MS. MUNSON: THANK YOU, YOUR HONOR.

7 CROSS-EXAMINATION BY MS. MUNSON:

8 Q MS. GERMAN, IT'S YOUR TESTIMONY THAT SHANNON TODD COULD
9 NOT HAVE COMMITTED THAT ROBBERY BECAUSE HE WAS IN YOUR BED
10 ALL NIGHT; IS THAT YOUR TESTIMONY?

11 A YES, MA'AM.

12 Q NOW WHEN DID YOU REALIZE THAT YOUR BOYFRIEND THAT YOU
13 LOVE WAS IN YOUR BED ALL NIGHT AND COULDN'T HAVE COMMITTED
14 THE ROBBERY? WHEN DID YOU REALIZE THAT?

15 A WHEN DID I REALIZE IT?

16 Q YES, MA'AM, WHEN DID YOU REALIZE THAT?

17 A WHEN HE CAME HOME AND THEN WHEN I TOSSED AND TWISTED
18 AND TURNED, AND I SEEN HE WAS STILL THERE.

19 Q WHEN HE CAME HOME FROM WHERE?

20 A WHEN HE CAME FROM HIS MAMA'S HOUSE.

21 Q WHEN DID YOU FIND OUT HE HAD BEEN CHARGED WITH ROBBERY?

22 A WHEN DID I FIND OUT? ON A MONDAY.

23 Q MONDAY, WAY AFTER THE ROBBERY?

24 A MONDAY WHEN I TURNED HIM IN TO FIND OUT--

25 Q YOU TURNED HIM IN?

PATRICIA GERMAN/CROSS-MUNSON

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1 A -- WHAT WAS GOING ON.

2 Q YOU TURNED HIM IN?

3 A -- THAT'S RIGHT.

4 Q -- YOU WENT IN AND YOU TALKED WITH DOUG KELLY, THIS MAN
5 RIGHT BACK HERE?

6 A YES.

7 Q AND YOU TOLD HIM YOU DIDN'T KNOW ANYTHING ABOUT IT?

8 A I SURE DIDN'T BECAUSE HE DIDN'T KNOW HIS-SELF. WHAT'S
9 GOING ON, THAT'S WHAT I WANTED TO KNOW. SATURDAY MORNING,
10 THAT'S WHEN THEY CAME TO MY DOOR, AND MY SISTER WAS THERE.
11 AND THEN MONDAY MORNING WE TURNED HIM IN. WE WANTED TO KNOW
12 WHAT WAS GOING ON.

13 Q YOU KNEW -- DID YOU OR DID YOU NOT KNOW WHEN YOU TURNED
14 SHANNON IN TO THIS INVESTIGATOR, DID YOU OR DID YOU NOT KNOW
15 THAT HE HAD BEEN -- THAT HE WAS BEING CHARGED WITH ROBBING
16 FUDDRUCKERS ON THAT SATURDAY NIGHT?

17 A I SURE DIDN'T.

18 Q YOU DIDN'T KNOW?

19 A THE ONLY THING I KNEW WAS THAT HE WAS PROBABLY GOING TO
20 COURT FOR SOME CHARGES HE ALREADY HAD. FUDDRUCKERS DIDN'T
21 HAVE NOTHING TO DO WITH IT.

22 Q WHEN YOU WENT TO SEE DOUG KELLY --

23 A THAT'S RIGHT, WHAT WAS HE CHARGED FOR, I WANTED TO KNOW
24 POINTBLANK.

25 Q AND DOUG KELLY DIDN'T TELL YOU WHAT HE WAS BEING

PATRICIA GERMAN/CROSS-MUNSON

291

- 1 CHARGED WITH?
- 2 A I GUESS AFTER HE HAD DONE TALKED TO SHANNON.
- 3 Q DID HE TELL YOU OR NOT?
- 4 A HE TOLD ME LATER, YEAH, WHAT WAS GOING ON.
- 5 Q OKAY.
- 6 A AND I'M LIKE, STILL I DON'T KNOW WHAT'S GOING ON.
- 7 Q YOU DON'T KNOW WHAT'S GOING ON?
- 8 A I DIDN'T KNOW WHAT WAS GOING ON BECAUSE, LIKE I SAY, I
- 9 COULDN'T SEE HOW HE COULD HAVE ARMED-ROBBED, YOU KNOW, IF HE
- 10 WAS AT MY HOUSE ON A SATURDAY NIGHT.
- 11 Q OKAY, IF YOU HAVE KNOWN -- SINCE THAT SATURDAY NIGHT IF
- 12 YOU'VE KNOWN THAT HE COULDN'T HAVE COMMITTED THIS ARMED
- 13 ROBBERY --
- 14 A UH-HUH.
- 15 Q -- WHY DID YOU NOT TELL THAT TO DOUG KELLY?
- 16 A WELL, I TOLD HIM THAT.
- 17 Q WHEN DID YOU TELL HIM THAT?
- 18 A WHEN I WAS UP THERE MONDAY MORNING.
- 19 Q YOU TOLD HIM ON THAT MONDAY MORNING WHEN YOU WENT TO
- 20 TURN SHANNON IN, YOU TOLD THAT INVESTIGATOR, AND I'M GOING TO
- 21 PUT HIM BACK ON THE STAND --
- 22 A PUT HIM BACK UP HERE.
- 23 Q -- YOU TOLD THAT INVESTIGATOR THAT SHANNON COULDN'T
- 24 HAVE COMMITTED THE ROBBERY BECAUSE HE WAS IN YOUR BED ALL
- 25 NIGHT?

PATRICIA GERMAN/CROSS-MUNSON

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- 1 A THAT'S RIGHT.
- 2 Q OKAY. YOU HAVE BEEN UP HERE ON OTHER MATTERS AROUND
- 3 THIS CASE, HAVEN'T YOU?
- 4 A I HAVE BEEN UP HERE.
- 5 Q FOR OTHER COURT PROCEEDINGS INVOLVING THIS CASE BEFORE
- 6 TODAY?
- 7 A YES, WITH SHANNON, YES.
- 8 Q OKAY, YOU KNOW WHAT MY ROLE IS, DON'T YOU? YOU KNOW
- 9 I'M THE PROSECUTOR?
- 10 A UH-HUH (NODDED HER HEAD).
- 11 Q WHEN DID YOU TELL ME THAT THIS MAN THAT YOU LOVE, THIS
- 12 INNOCENT PERSON, COULDN'T HAVE COMMITTED AN ARMED ROBBERY?
- 13 WHEN DID YOU TELL ME THAT?
- 14 A WHEN DID I TELL YOU THAT?
- 15 Q YES, WHEN DID YOU TELL ME THAT?
- 16 A THE DAY YOU CALLED ME. I DON'T KNOW WHAT DAY IT WAS,
- 17 BUT YOU CALLED ME.
- 18 Q I CALLED YOU?
- 19 A UH-HUH (NODDED HER HEAD).
- 20 Q ARE YOU SURE IT WASN'T THAT I PUT A SUBPOENA IN YOUR
- 21 DOOR AND YOU CALLED ME? ISN'T THAT HOW IT WENT?
- 22 A WELL, THAT'S THE SAME THING, YOU CALLED -- WELL, THAT'S
- 23 THE SAME THING, YOU PUT A SUBPOENA IN MY DOOR, AND I'M
- 24 CALLING YOU TO FIND OUT WHAT'S THE PROBLEM HERE.
- 25 Q AND YOU TOLD ME THAT DAY ON THE PHONE THAT HE COULDN'T

PATRICIA GERMAN/CROSS-MUNSON

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1 HAVE COMMITTED THE ROBBERY?

2 A HE COULDN'T HAVE COMMITTED THE ARMED ROBBERY AND THE
3 KIDNAPPING.

4 Q WHEN YOU WENT IN TO SEE DOUG KELLY, DID YOU GET UPSET
5 AT SHANNON? ISN'T IT TRUE THAT YOU GOT UPSET AT SHANNON
6 BECAUSE DOUG KELLY TOLD YOU FOR THE FIRST TIME THAT SHANNON
7 TODD WAS ONLY 16?

8 A NO, I MEAN, THAT DON'T HAVE NOTHING TO DO WITH --

9 Q DIDN'T YOU GET UPSET ABOUT THAT?

10 A OKAY, THAT DIDN'T HAVE NOTHING TO DO WITH AN ARMED
11 ROBBERY EITHER, DID IT?

12 Q DID YOU OR DID YOU NOT GET UPSET ABOUT IT?

13 A I GOT SHOCKED, OKAY. THAT'S WHAT IT WAS, I GOT SHOCKED
14 BECAUSE --

15 Q AND YOU REACTED BY SAYING, BY GETTING MAD, AND GOING
16 OUT AND GATHERING INFORMATION ON THIS CASE BECAUSE YOU WERE
17 MAD AT HIM, DIDN'T YOU?

18 A NO.

19 Q AND YOU'RE THE ONE WHO TOLD DOUG KELLY WHO STANLEY
20 BUTLER IS, AREN'T YOU?

21 A NO, I DID NOT.

22 Q YOU DIDN'T CALL --

23 A HE SAID, "WHO IS STAN?" I SAID, "I DON'T KNOW STAN."

24 Q BUT YOU --

25 A HE SAID ABOUT HE WAS GOING TO ARREST ME AND HE WAS

PATRICIA GERMAN/CROSS-MUNSON

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1 GOING TO SEARCH WARRANT MY HOUSE; SO POINTBLANK I SAID, "I
2 CAN FIND OUT. I DON'T KNOW WHO STAN IS, BUT I CAN FIND OUT."

3 Q MS. GERMAN, IT'S A YES OR NO QUESTION."

4 MR. CRANE: YOUR HONOR, I OBJECT. IT'S NOT A YES
5 OR NO QUESTION.

6 MS. MUNSON: I'LL --

7 THE COURT: HOLD ON.

8 MS. MUNSON: I'LL LET HER FINISH.

9 THE COURT: HOLD ON. NOW SLOW DOWN. THE COURT
10 REPORTER CANNOT TAKE ALL OF YOU TALKING AT ONE TIME.

11 NOW ASK THE QUESTION. AND, PLEASE, MA'AM, ANSWER THE
12 QUESTION, ALL RIGHT? NOW LISTEN FOR THE QUESTION.

13 THE WITNESS: OKAY.

14 Q DID YOU NOT TELL DOUG KELLY THAT STAN IS, IN FACT,
15 STANLEY BUTLER?

16 A MY SISTER CALLED.

17 Q DID YOU OR DID YOU NOT --

18 A NO, I DID NOT.

19 Q YOU DID NOT CALL --

20 A NO, I DID NOT.

21 Q -- DOUG KELLY AND TELL HIM THAT?

22 A I CALLED MY SISTER, OKAY.

23 Q OKAY.

24 A BECAUSE I DIDN'T KNOW STAN. AND I STILL DON'T KNOW
25 HIM. I KNOW HIM BY HIS FACE BECAUSE I SEE HIM.

PATRICIA GERMAN/CROSS-MUNSON

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1 Q BUT YOU --

2 A I DON'T KNOW HIM.

3 Q OKAY.

4 A I'M SURE. POINTBLANK, MY SISTER STAYS IN ROOSEVELT.
5 SHE SHOULD KNOW HIM. SHE DON'T KNOW OF HIM, BUT SHE KNOWS
6 HIS NAME. I'M SURE OF THAT.

7 Q YOU'RE SURE OF THAT. DO YOU REMEMBER HAVING A
8 CONVERSATION IN A ROOM OUT HERE IN MY PRESENCE AND IN THE
9 PRESENCE OF THIS MAN RIGHT HERE?

10 A YES.

11 Q AND DO YOU REMEMBER SAYING TO THIS MAN THAT THE ONLY
12 ANSWER YOU COULD GIVE IS "YES" WHEN I ASKED YOU --

13 A NO, I DID NOT. I SAID, "WHAT DO YOU WANT ME TO SAY?
14 YES?" THAT'S EXACTLY WHAT I SAID. "YOU WANT ME TO SAY YES?"
15 AND YOU SAID, "NO, I DON'T WANT YOU TO LIE." AND SO I WASN'T
16 GOING TO LIE.

17 Q I SAID THAT I WANTED YOU TO LIE?

18 A THAT'S RIGHT, "DON'T LIE TO ME." I SAID, "WHAT DO YOU
19 WANT ME TO SAY, YES?" AND WHAT YOU SAID?

20 Q WAIT A MINUTE.

21 A YOU DON'T WANT ME TO LIE TO YOU, SO AUTOMATICALLY YOU
22 MUST BE DOUBTING ME NOW.

23 Q MS. GERMAN, DID I ASK YOU TO LIE?

24 A THAT'S WHAT YOU SAID, THAT'S WHAT I SAID, "DO YOU WANT
25 ME TO SAY THAT THREE GUYS WAS IN MY HOUSE?" AND WHAT DID YOU

PATRICIA GERMAN/CROSS-MUNSON

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1 SAY THEN?

2 Q I SAID I WANT YOU TO TELL THE TRUTH.

3 A THAT'S RIGHT. OKAY, THEN AUTOMATICALLY YOU MUST BE ON
4 MY SIDE ABOUT THE SITUATION THEN.

5 Q MS. GERMAN --

6 A BECAUSE I DON'T HAVE NO REASON TO LIE. I DON'T HAVE NO
7 REASON TO LIE, OKAY.

8 Q DO YOU NEED A MINUTE TO CALM DOWN?

9 A NO, I DON'T. I'M SAYING I DON'T HAVE NO REASON TO LIE
10 THOUGH. I GOT TO BE LYING BECAUSE THERE WAS NO ARMED ROBBERY
11 TOWARDS SHANNON TODD?

12 Q YOU WEREN'T AT FUDDRUCKERS, RIGHT?

13 A I SURE WASN'T.

14 Q AND IT'S YOUR TESTIMONY --

15 A SO I WOULDN'T KNOW WHAT HAPPENED AT FUDDRUCKERS.

16 Q DID YOU TELL ME, DID YOU SAY IN THE PRESENCE OF THIS
17 MAN RIGHT HERE IN THIS ROOM OUTSIDE THAT YOU HAD BEEN
18 DRINKING AT SHANNON'S MOM'S HOUSE?

19 A I DRUNK A COUPLE OF BEERS.

20 Q AND THAT YOU WERE SLEEPY?

21 A AND I WAS READY TO GO HOME, RIGHT.

22 Q AND THAT YOU WERE GROGGY?

23 A NO, I WASN'T GROGGY. I DIDN'T SAY THAT. THAT'S YOUR
24 WORD, "GROGGY."

25 Q OKAY. SO YOU HAD BEEN DRINKING AND YOU WERE SLEEPY?

PATRICIA GERMAN/CROSS-MUNSON

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- 1 A AND I WAS READY TO GO HOME.
- 2 Q OKAY, AND WHEN YOU WENT HOME, YOU LAID ON THE COUCH?
- 3 A LAID ON THE COUCH.
- 4 Q AND WHEN SHANNON CAME IN, HE KNOCKED?
- 5 A SURE DID.
- 6 Q AND DIDN'T HE KNOCK BECAUSE YOU TOOK HIS KEY FROM HIM
- 7 TO MAKE SURE HE WOULD COME HOME?
- 8 A THANK YOU.
- 9 Q DID HE?
- 10 A YES.
- 11 Q ISN'T THAT WHAT YOU SAID?
- 12 A YES.
- 13 Q THEN WHEN HE CAME IN, YOU WENT BACK TO THE BEDROOM?
- 14 A WELL, WE TALKED FOR A WHILE AND THEN WE WENT ON BACK TO
- 15 THE BEDROOM.
- 16 Q AND THAT'S WHERE YOU STAYED THE WHOLE NIGHT?
- 17 A AND HE, TOO, SO, YOU KNOW.
- 18 Q AND YOU WERE AWAKE?
- 19 A THAT'S RIGHT. AND WE WENT BACK TO SLEEP.
- 20 Q OKAY, AND AT SOME POINT DURING THE NIGHT YOU HEARD A
- 21 LITTLE RUMBLING AROUND OR SOMETHING, AND YOU WOKE UP?
- 22 A UH-HUH (NODDED HER HEAD).
- 23 Q AND SHANNON WAS IN THE BEDROOM AND -- (PAUSE) --
- 24 A I GUESS PICKING WITH ME, YOU KNOW, SAYING BECAUSE I HAD
- 25 WENT TO SLEEP. I'M SURE HE WAS WATCHING T.V.

PATRICIA GERMAN/CROSS-MUNSON

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1 Q DO YOU KNOW WHAT TIME THAT WAS?

2 A I MEAN, IT COULDN'T HAVE BEEN TOO LONG BECAUSE THE SHOW
3 THAT WAS ON WAS THE SAME SHOW THAT WAS GOING OFF WHEN I WOKE
4 UP.

5 Q WHEN WAS THE FIRST TIME THAT YOU TOLD ANYBODY THAT
6 SHANNON TODD COULDN'T HAVE COMMITTED THIS CRIME BECAUSE HE
7 WAS IN YOUR BED? WHEN WAS THE FIRST TIME YOU TOLD ANYBODY
8 THAT?

9 A WHEN I HAD TALKED TO DOUG KELLY.

10 Q OKAY, YOU DIDN'T SEE AUSTIN PERRY THAT NIGHT?

11 A NO, MA'AM, I DON'T EVEN KNOW AUSTIN-PERRY.

12 Q SO WHEN SHANNON WAS TALKING TO HIS GIRLFRIEND IN THE
13 CAR, YOU WERE NOT THAT GIRLFRIEND, RIGHT?

14 A I AM HIS GIRLFRIEND.

15 Q BUT YOU WEREN'T THE ONE THAT HE WAS TALKING TO IN THE
16 CAR WHEN HE TOLD AUSTIN PERRY THAT HE WAS TALKING WITH HIS
17 GIRLFRIEND OUT IN FRONT OF HIS MOM'S HOUSE? THAT WASN'T YOU?

18 A I WAS HIS GIRLFRIEND. I WAS AT HIS HOUSE IN THE CAR.

19 Q SO YOU DID HAVE A CONVERSATION WITH HIM. YOU WERE IN
20 YOUR CAR. HE'S AT THE WINDOW?

21 A THANK YOU.

22 Q THAT HAPPENED?

23 A WE WAS TALKING.

24 Q OKAY, BUT YOUR TESTIMONY IS THAT AUSTIN PERRY OR NO ONE
25 IN A WHITE CAR DROVE UP?

PATRICIA GERMAN/REDIRECT-CRANE

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1 A SURE DIDN'T. ONLY CAR WAS THERE WAS HIS MAMA'S BROWN
2 BUICK. NO OTHER CAR.

3 Q . OKAY. (PAUSE, VIEWING DOCUMENT.) OKAY, I APPRECIATE
4 YOUR TIME, MS. GERMAN.

5 MS. MUNSON: I HAVE NOTHING FURTHER, YOUR HONOR.

6 THE COURT: MR. CRANE.

7 MR. CRANE: YES, SIR.

8 REDIRECT EXAMINATION BY MR. CRANE:

9 Q MS. GERMAN, THE SOLICITOR ASKED YOU ABOUT A
10 CONVERSATION WITH HER AND THIS MAN OUT HERE?

11 A UH-HUH (NODDED HER HEAD).

12 Q WOULD YOU -- HOW DID THE SOLICITOR REACT WHEN YOU
13 WOULDN'T GO ALONG WITH HER STORY?

14 A THREATENED ME. TO PUT ME IN JAIL.

15 Q THREATENED TO PUT YOU IN JAIL?

16 A THANK YOU.

17 Q IN OTHER WORDS, --

18 A TALKING ABOUT I HAVE A CHILD. I'AM SURE I HAVE A
19 CHILD. OKAY, THEN WHAT'S THE PROBLEM? YOU WANT ME TO SAY
20 THAT THREE GUYS WAS IN MY HOUSE?

21 Q ISN'T THAT WHAT SHE WAS TELLING YOU TO SAY?

22 A THANK YOU. UH-HUH (NODDED HER HEAD)..

23 Q ANSWER THE -- JUST SAY YES OR NO.

24 A YES.

25 Q SHE WAS TELLING YOU TO TESTIFY THAT THERE WERE THREE

- 1 GUYS --
- 2 A THAT I KNEW THREE GUYS WAS IN MY HOUSE.
- 3 Q AND YOU TOLD HER THAT WASN'T TRUE?
- 4 A THAT'S NOT TRUE.
- 5 Q AND SHE THREATENED TO ARREST YOU AND PUT YOU IN JAIL?
- 6 A PUT ME IN JAIL, JUST BECAUSE I DON'T KNOW THREE GUYS
- 7 WAS IN MY HOUSE. I KNEW FOR SURE THERE COULDN'T BE THREE
- 8 GUYS IN MY HOUSE. I SEEN SHANNON TODD WHEN HE WALKED IN THE
- 9 DOOR.
- 10 Q IN OTHER WORDS, YOU'RE TESTIFYING TO WHAT YOU REMEMBER,
- 11 AND SHE'S TRYING TO GET YOU TO TESTIFY TO WHAT AN ADMITTED
- 12 ARMED ROBBER HAS SAID HAPPENED?
- 13 A THANK YOU.
- 14 Q BUT YOU'RE TELLING THE STORY AS YOU RECALL IT TO BE?
- 15 A YES, SIR.
- 16 Q YOU DIDN'T SEE THREE GUYS IN YOUR HOUSE?
- 17 A SURE DIDN'T.
- 18 Q AND IF SHE'S GOING TO PUT YOU IN JAIL FOR YOUR
- 19 TESTIMONY, THAT'S A CHANCE YOU'VE GOT TO TAKE, ISN'T IT?
- 20 A A CHANCE I HAVE TO TAKE BECAUSE I KNOW I'M NOT LYING.
- 21 MR. CRANE: THANK YOU, MA'AM.
- 22 THE COURT: ANYTHING ELSE?
- 23 MS. MUNSON: NO, SIR.
- 24 THE COURT: STEP DOWN.
- 25 MR. CRANE: YOUR HONOR, MAY WE TAKE A MATTER UP

1 WITH THE COURT?

2 THE COURT: ALL RIGHT, TAKE THE JURY OUT, PLEASE.

3 (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
4 10:16 A.M.)

5 THE COURT: ALL RIGHT, MR. CRANE.

6 MR. CRANE: YOUR HONOR, SHANNON TODD WILL NOT
7 TESTIFY. IF YOU WISH TO QUESTION HIM.

8 THE COURT: ALL RIGHT, PUT HIM UNDER OATH, PLEASE.

9 THE CLERK: RAISE YOUR RIGHT HAND.

10 SHANNON L. TODD, FIRST BEING SWORN TO TELL
11 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
12 TESTIFIES AS FOLLOWS:

13 THE CLERK: STATE YOUR NAME.

14 MR. TODD: SHANNON TODD.

15 THE COURT: MR. TODD, HOW OLD ARE YOU, SIR?

16 MR. TODD: 17.

17 THE COURT: AND HOW MUCH EDUCATION DO YOU HAVE?

18 MR. TODD: EXCUSE ME, SIR?

19 THE COURT: HOW MUCH EDUCATION DO YOU HAVE?

20 MR. TODD: ELEVENTH.

21 THE COURT: SO YOU KNOW HOW TO READ AND WRITE?

22 MR. TODD: YES, SIR.

23 THE COURT: NOW MR. CRANE REPRESENTS YOU?

24 MR. TODD: YES, SIR.

25 THE COURT: AND YOU'VE TALKED WITH HIM AS OFTEN AND

1 FOR AS LONG AS YOU FEEL NECESSARY FOR HIM TO PROPERLY
2 REPRESENT YOU?

3 MR. TODD: YES, SIR.

4 THE COURT: WHEN YOU HAVE TALKED WITH HIM, YOU
5 UNDERSTAND, OR YOU'VE UNDERSTOOD YOUR TALKS WITH HIM?

6 MR. TODD: YES, SIR.

7 NOW DO I UNDERSTAND YOU HAVE MADE A DECISION NOT TO
8 TESTIFY IN THIS CASE?

9 MR. TODD: YES, SIR.

10 THE COURT: THAT IS YOUR CONSTITUTIONAL RIGHT. YOU
11 HAVE ABSOLUTELY NO BURDEN IN THIS CASE. THE BURDEN IS ON THE
12 STATE TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT. AND I
13 WILL EXPLAIN THAT TO THE JURY BY TELLING THEM THAT YOUR
14 DECISION NOT TO TESTIFY IN THIS CASE CAN IN NO WAY BE HELD
15 AGAINST YOU; THEY CAN'T EVEN DISCUSS IT IN THE JURY ROOM.
16 YOU UNDERSTAND THAT?

17 MR. TODD: YES, SIR.

18 THE COURT: WITH THAT UNDERSTANDING, DO YOU ALSO
19 UNDERSTAND THAT YOU CAN GET ON THIS STAND AND TELL THIS JURY
20 YOUR SIDE OF THE STORY? YOU CAN DO THAT, --

21 MR. TODD: YES, SIR.

22 THE COURT: -- YOU KNOW THAT?

23 MR. TODD: YES, SIR.

24 THE COURT: BUT YOU'RE TELLING ME THAT YOU,
25 YOURSELF, HAVE MADE A DECISION NOT TO TESTIFY?

1 MR. TODD: YES, SIR.

2 THE COURT: HAS MR. CRANE PUT ANY PRESSURE ON YOU
3 NOT TO TAKE THE STAND --

4 MR. TODD: NO, SIR.

5 THE COURT: -- AND TESTIFY?

6 MR. TODD: NO, SIR.

7 THE COURT: THIS IS A DECISION YOU, YOURSELF, HAVE
8 MADE?

9 MR. TODD: YES, SIR.

10 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY
11 ALCOHOL, DRUG, OR ANY OTHER SUBSTANCE RIGHT AT THIS MOMENT?

12 MR. TODD: NO, SIR.

13 THE COURT: YOU ARE SOBER, YOU KNOW WHAT YOU'RE
14 DOING, AND YOU HAVE MADE THE DECISION NOT TO TESTIFY?

15 MR. TODD: YES, SIR.

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

17 ALL RIGHT, IS THERE ANYTHING IN REPLY?

18 MS. MUNSON: YES, SIR, THE STATE WOULD BE CALLING
19 TWO WITNESSES IN REPLY.

20 THE COURT: ALL RIGHT.

21 MR. CRANE: YOUR HONOR, I NEED TO REST ON THE
22 RECORD, I IMAGINE, JUDGE.

23 THE COURT: SURE. ALL RIGHT, BRING THE JURY.

24 (THE JURY ENTERED THE COURTROOM AT
25 APPROXIMATELY 10:21 A.M.)

DOUG KELLY/REPLY DIRECT-MUNSON

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1 THE COURT: ALL RIGHT, MR. CRANE.

2 MR. CRANE: YOUR HONOR, MR. TODD WOULD REST AT THIS
3 TIME.

4 THE COURT: ALL RIGHT, IS THERE ANY REPLY?

5 MS. MUNSON: MAY IT PLEASE THE COURT, YOUR HONOR,
6 YES, SIR, AT THIS TIME THE STATE WOULD RE-CALL INVESTIGATOR
7 DOUG KELLY.

8 THE COURT: COME AROUND, SIR, YOU ARE STILL UNDER
9 OATH. YOU MAY BE SEATED.

10 MR. CRANE: YOUR HONOR, WE WOULD RENEW OUR MOTIONS
11 THAT HAVE BEEN MADE.

12 THE COURT: YES, WE WILL TAKE CARE OF THAT.

13 DOUG KELLY, HAVING BEEN PREVIOUSLY SWORN TO
14 TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
15 TESTIFIES AS FOLLOWS:

16 **REPLY DIRECT EXAMINATION:**

17 Q MR. KELLEY, DID YOU EVER HAVE A CONVERSATION WITH
18 PATRICIA GERMAN ABOUT THIS CASE?

19 A I DID.

20 Q AND WHERE WAS THAT?

21 A IT WAS IN MY OFFICE ON MARCH THE 18TH, 1996.

22 Q WHO WAS WITH HER WHEN YOU HAD THIS CONVERSATION WITH
23 HER?

24 A WHEN I HAD THE CONVERSATION WITH PATRICIA, SHE AND I
25 WERE ALONE; BUT SHANNON TODD HAD ACCOMPANIED HER TO MY OFFICE

DOUG KELLY/REPLY DIRECT-MUNSON

305

1 ON THAT SAME DAY. HE WAS IN AN INTERVIEW ROOM.

2 Q OKAY. DID YOU LET HER KNOW WHAT HE WAS BEING CHARGED
3 WITH?

4 A YES, MA'AM. I HAD GONE AHEAD AND TAKEN CARE OF READING
5 HIM THE WARRANTS AND ADVISING SHANNON TODD OF THE ARREST AND
6 THE WARRANTS THAT WE HAD OUTSTANDING FOR HIM, AND WENT BACK
7 OUTSIDE AND I TALKED WITH MS. GERMAN ABOUT THE INCIDENT, TOLD
8 HER WHAT -- WHAT WAS TAKING PLACE, THAT SHANNON WAS BEING
9 ARRESTED, AND INFORMED HER THAT IT WAS INVOLVING FUDDRUCKERS
10 ARMED ROBBERY. AND AT THE TIME I ASKED HER DID SHE REMEMBER
11 ANYTHING ABOUT THEM BEING BY HER APARTMENT ON THE NIGHT OR
12 EARLY MORNING HOURS THAT THIS OCCURRED.

13 Q OKAY, AND WHAT DID SHE SAY IN RESPONSE TO THAT
14 QUESTION?

15 A SHE SAID SHE DIDN'T KNOW ANYTHING ABOUT THAT. AS I
16 RECALL, SHE SAID SHE WASN'T EVEN THERE DURING THAT TIME FRAME
17 AT HER APARTMENT.

18 Q OKAY. DID YOU EVER HAVE ANY OTHER CONVERSATION WITH
19 PATRICIA GERMAN IN REFERENCE TO THIS CASE?

20 A YES, MA'AM. DURING THAT SAME INTERVIEW OR DISCUSSION
21 THAT WE WERE HAVING THERE, I ASKED HER IF SHE KNEW ANYBODY BY
22 THE NAME OF STAN, THAT THAT WAS THE POSSIBLE THIRD SUSPECT
23 THAT WE HAD IN THE ARMED ROBBERY. SHE SAID, "NO, BUT I THINK
24 I CAN FIND OUT." I ADVISED HER IT WAS SOMEWHERE IN ROOSEVELT
25 HEIGHTS, APARTMENT 90-SOMETHING, AND SHE SAID, "I'LL FIND OUT

DOUG KELLY/REPLY DIRECT-MUNSON

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1 WHO IT IS."

2 Q OKAY. WHAT DID YOU SAY TO HER IN ORDER TO GET HER TO
3 SAY, "I'LL FIND OUT"? HOW DID THAT --

4 A I HADN'T SAID ANYTHING. SHE JUST VOLUNTARILY SAID
5 THAT. I ADVISED HER, I TOLD HER THAT SHANNON WAS BEING
6 CHARGED AND THAT HE WAS ONLY 16 YEARS OLD AT THE TIME, AND
7 SHE GOT KIND OF UPSET ABOUT THAT. AND AT THAT POINT SHE JUST
8 SAID, "WELL, I CAN FIND OUT WHO STAN IS FOR YOU."

9 Q OKAY, AND THAT WAS ON THE 18TH?

10 A THAT WAS ON THE 18TH.

11 Q DID YOU EVER HAVE ANOTHER CONVERSATION WITH HER ABOUT
12 STAN?

13 A I RECEIVED A PHONE CALL LATER ON THAT DAY -- FROM AN
14 INDIVIDUAL STATING THAT IT WAS PATRICIA -- TO MY OFFICE. SHE
15 SAID, "I'VE GOT SOME INFORMATION FOR YOU. I THINK THE LAST
16 NAME OF THE SUSPECT THAT YOU'RE LOOKING FOR, STAN, IS BUTLER,
17 AND HE'S LIVING IN APARTMENT 91," WHICH WAS, BASED ON THE
18 STATEMENT THAT WE HAD, BEING ROOSEVELT HEIGHTS APARTMENT
19 90-SOMETHING WITH A STAN SUBJECT, THAT'S HOW WE GOT THE THIRD
20 SUSPECT, STAN BUTLER.

21 Q OKAY. DID THE VOICE SOUND FAMILIAR TO YOU?

22 A IT -- IN TALKING WITH HER EARLIER THAT MORNING, IT
23 SOUNDED LIKE THE SAME PERSON. AGAIN, THEY JUST IDENTIFIED
24 THEMSELVES AS BEING PATRICIA. THAT'S ALL THEY SAID.

25 Q OKAY. THE WOMAN THAT TOOK THE STAND AND TESTIFIED, DID

DOUG KELLY/REPLY CROSS-CRANE

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1 YOU RECOGNIZE HER AS THE SAME WOMAN THAT YOU TALKED WITH, THE
2 SAME WOMAN THAT TURNED IN SHANNON TODD?

3 A YES, THAT'S THE SAME LADY THAT CAME UP WITH HIM THAT
4 MORNING, THAT DAY ON THE 18TH.

5 Q ALL RIGHT. AFTER THE 18TH, LATER ON THE DAY OF THE
6 18TH WHEN YOU GOT A PHONE CALL IDENTIFYING STANLEY BUTLER,
7 DID YOU HAVE ANY OTHER CONVERSATIONS WITH PATRICIA GERMAN
8 ABOUT SHANNON TODD?

9 A JUST NOTHING MORE THAN THE PHONE CALL THAT SAID THAT
10 BUTLER WAS THE LAST NAME OF THE SUSPECT. AFTER THAT WE HAD
11 NO MORE CONVERSATIONS.

12 Q DID SHE EVER TRY TO CONTACT YOU ANYMORE AFTER THAT?

13 A NO, MA'AM.

14 MS. MUNSON: OKAY. NOTHING FURTHER AT THIS TIME,
15 YOUR HONOR.

16 THE COURT: MR. CRANE.

17 MR. CRANE: THANK YOU, JUDGE.

18 REPLY CROSS-EXAMINATION BY MR. CRANE:

19 Q DETECTIVE KELLY, LET'S SEE IF I'VE GOT THIS RIGHT. YOU
20 ASKED HER WHETHER OR NOT SHE KNEW ANYTHING, IF SHE KNEW ABOUT
21 THE THREE PEOPLE BEING AT HER APARTMENT; AND HER ANSWER WAS
22 SHE DIDN'T KNOW ANYTHING ABOUT THAT?

23 A NO, I ASKED HER IF SHE REMEMBERED THAT NIGHT, AND IF
24 SOME OF THESE PEOPLE CAME TO HER APARTMENT. I DON'T KNOW IF
25 I SAID THREE OR WHAT, BUT I JUST SAID PEOPLE CAME TO HER

1 APARTMENT AFTER, YOU KNOW, THE ROBBERY HAD TAKEN PLACE. AND
2 HER RESPONSE, AS I RECALL, WAS, "I DON'T KNOW ANYTHING ABOUT
3 IT. I WASN'T EVEN AT HOME," OR, "I WASN'T THERE."

4 Q DID YOU MAKE A NOTE OF THAT?

5 A NO, SIR, NOT AT THAT TIME.

6 Q DID YOU MAKE A NOTE OF THAT AT ANY TIME?

7 A IT MAY HAVE BEEN SOMEWHERE IN THE NOTES THAT I WAS JUST
8 TALKING WITH HER, THAT I JOTTED IT DOWN. AS FAR AS TYPING IT
9 OUT, NO, SIR, I DIDN'T TYPE IT OUT.

10 Q WELL, WOULD YOU SHOW ME THOSE NOTES THAT YOU JOTTED
11 DOWN THAT SHE SAID THAT?

12 A I SAID I MAY HAVE. I DON'T -- I DON'T SEE IT ANYWHERE
13 IN THIS FILE. IT'S JUST SOMETHING I REMEMBER.

14 Q WOULD YOU SHOW -- DO YOU HAVE A TAPE-RECORDING OF HER
15 CONVERSATION?

16 A NO, SIR.

17 Q IS THERE ANY REASON YOU DIDN'T TESTIFY YESTERDAY TO THE
18 CONVERSATIONS YOU CLAIM TO HAVE HAD WITH HER?

19 A I THINK I DID TESTIFY THAT I HAD TALKED TO MS. GERMAN
20 AND --

21 Q YOU DIDN'T --

22 A -- SHE SAID THE SAME THING, THAT SHE WAS NOT THERE.

23 Q YOU THINK YOU TESTIFIED TO THAT YESTERDAY?

24 A I DID, I TESTIFIED TO THAT YESTERDAY.

25 Q ALL RIGHT. NOW AS A RESULT OF MS. GERMAN TELLING YOU

DOUG KELLY/REPLY REDIRECT-MUNSON

309

1 THAT SHE WOULD TRY TO FIND OUT THE LAST NAME OF STAN, YOU
2 FOUND OUT?

3 A AFTER I RECEIVED A PHONE CALL FROM -- (PAUSE) ---

4 Q FROM SOMEONE?

5 A FROM SOMEONE STATING THAT IT WAS PATRICIA.

6 Q OKAY.

7 A THEY GAVE ME THE LAST NAME OF BUTLER.

8 Q OKAY. IS THAT SORT OF LIKE THE NOTE WE TALKED ABOUT
9 YESTERDAY WHERE JIMMY CABANNON ALSO CALLED YOU ABOUT A
10 MESSAGE AND YOU SAID, "WELL, MAYBE IT REALLY WASN'T JIMMY,
11 BUT"? IS THAT THE SAME TYPE OF, YOU THINK IT WAS GERMAN OR
12 NOT?

13 A NO, SIR. NO, SIR.

14 Q YOU DON'T KNOW THAT IT WAS GERMAN, DO YOU?

15 A NO, SIR. ALL I KNOW IS THE INDIVIDUAL SAID, "THIS IS
16 PATRICIA."

17 MR. CRANE: OKAY. NOW -- (PAUSE) -- THANK YOU.

18 MS. MUNSON: BRIEF REDIRECT.

19 REPLY REDIRECT EXAMINATION BY MS. MUNSON:

20 Q INVESTIGATOR KELLY, WHEN YOU'RE DIGGING INTO A CASE,
21 WHEN YOU REALLY DON'T KNOW WHAT'S GOING ON AND YOU COME UPON
22 A DEAD-END, DO YOU ALWAYS MAKE A POINT TO WRITE DOWN THE NO
23 LEADS AND THE DEAD-ENDS?

24 A NO, SIR, WE FOLLOW -- NO, MA'AM, WE JUST FOLLOW THE
25 LEAD THAT WE FEEL LIKE IS GIVING US THE BEST INFORMATION THAT

F.M. ELLIOTT/REPLY DIRECT-MUNSON

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1 WE HAVE, AND ONCE WE GET TO A DEAD-END, WE CLOSE THAT PART OF
2 IT OUT.

3 MS. MUNSON: OKAY, I HAVE NOTHING FURTHER AT THIS
4 TIME, YOUR HONOR.

5 THE COURT: STEP DOWN.

6 MS. MUNSON: YOUR HONOR, THE STATE CALLS F.M.
7 ELLIOTT.

8 THE CLERK: RAISE YOUR RIGHT HAND.

9 F.M. ELLIOTT, FIRST BEING SWORN TO TELL THE
10 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIES
11 AS FOLLOWS:

12 THE CLERK: STATE YOUR NAME, PLEASE.

13 THE WITNESS: F.M. ELLIOTT.

14 THE CLERK: THANK YOU.

15 **REPLY DIRECT EXAMINATION BY MS. MUNSON:**

16 Q MR. ELLIOTT, WHO DO YOU WORK FOR?

17 A THE THIRTEENTH CIRCUIT SOLICITOR'S OFFICE. I'M A
18 CRIMINAL INVESTIGATOR.

19 Q OKAY. ARE YOU ASSIGNED TO ANY PARTICULAR AREA?

20 A I'M ASSIGNED TO THE VIOLENT CRIMES UNIT, OR A VIOLENT
21 CRIMES UNIT.

22 Q OKAY. DO WE NORMALLY WORK TOGETHER?

23 A YES.

24 Q OKAY. WERE YOU WITH ME YESTERDAY WHEN WE HAD A
25 CONVERSATION WITH PATRICIA GERMAN?

F.M. ELLIOTT/REPLY DIRECT-MUNSON

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1 A YES, I WAS.

2 Q OKAY, WHERE DID THAT TAKE PLACE?

3 A IT TOOK PLACE IN THE SECOND JURY ROOM TO THE LEFT AFTER
4 YOU EXIT THE COURTROOM.

5 Q OKAY. TELL THE JURY THE PURPOSES OF THAT CONVERSATION.

6 A MS. MUNSON ASKED ME TO ACCOMPANY HER WHILE SHE TALKED
7 WITH MS. GERMAN YESTERDAY. ORIGINALLY MS. GERMAN WAS TO BE A
8 STATE'S WITNESS, AND SHE WANTED TO TALK TO MS. GERMAN JUST TO
9 RECONFIRM WHAT HER TESTIMONY WAS GOING TO BE IN THIS TRIAL.
10 AND WHEN WE ENTERED THE ROOM AND SPOKE WITH HER, MS. MUNSON
11 ASKED HER IF HER TESTIMONY WAS STILL GOING TO BE THAT SHE
12 DIDN'T REMEMBER ANYTHING ABOUT SHANNON TODD COMING TO HER
13 APARTMENT. AND THAT'S WHEN WE STARTED HEARING SEVERAL
14 DIFFERENT STORIES OF, YOU KNOW, WHAT SHE WAS GOING TO TESTIFY
15 TO.

16 Q OKAY, SO ORIGINALLY WHEN WE GOT HER IN THIS ROOM IN
17 HERE SHE SAID, WE ASKED HER, "DO YOU REMEMBER ANYTHING THAT
18 HAPPENED THAT NIGHT?" AND SHE SAID WHAT?

19 A WELL, YOU ASKED HER IF HER STATEMENT, IF HER TESTIMONY
20 WAS STILL GOING TO BE THE SAME AS WHAT Y'ALL HAD DISCUSSED
21 LAST WEEK OVER THE TELEPHONE, THAT SHE DIDN'T REMEMBER
22 ANYTHING.

23 Q OKAY, AND HOW DID SHE RESPOND TO THAT?

24 A SHE SAY, "NO, I REMEMBER HIM BEING THERE ALL NIGHT."
25 SO THAT'S WHEN THE CONFLICT STARTED BETWEEN WHAT SHE SAID AND

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1 WHAT SHE TOLD YOU LAST WEEK. YOU SAID, "WELL, I REMEMBER YOU
2 TELLING ME LAST WEEK THAT YOU DIDN'T REMEMBER ANYTHING, AND
3 NOW YOU'RE TELLING ME THAT HE WAS THERE WITH YOU ALL NIGHT."

4 Q SO THEN SHE SAID, "I REMEMBER HIM BEING THERE ALL
5 NIGHT"; DID HER STORY CHANGE AGAIN AFTER WE PRESSED HER?

6 A HER STORY CHANGED, I BELIEVE, TWICE THE FIRST
7 INTERVIEW. AND THEN WE HAD A SECOND INTERVIEW APPROXIMATELY
8 AN HOUR LATER, AND HER STORY CHANGED AGAIN. AND SHE WAS --
9 SHE WAS GETTING QUITE AGITATED THAT -- WE -- I FELT LIKE THAT
10 SHE WAS CAUGHT UP IN THE MIDDLE, THAT SHE DIDN'T KNOW
11 EXACTLY, YOU KNOW, WHAT TO DO.

12 Q OKAY. WHEN YOU SAY "WE PRESSED HER," TELL THE JURY
13 WHAT EXACTLY WENT ON IN THAT ROOM.

14 A WELL, AFTER WE FELT LIKE THAT SHE WAS AGITATED AND
15 UPSET, CAUGHT UP IN THE MIDDLE, THAT SHE DIDN'T KNOW EXACTLY
16 WHAT TO TESTIFY TO, WE WANTED TO KNOW THE TRUTH, WE WANTED
17 HER TO -- THAT'S WHAT WE TOLD HER, WAS JUST TELL THE TRUTH.
18 DON'T TELL ANYTHING BUT EXACTLY WHAT HAPPENED. DON'T STAND
19 -- DON'T COVER UP FOR ANYBODY. JUST TELL WHAT HAPPENED.

20 AFTER WE SAID THAT, SHE SAID, "WELL, I'M GOING TO HAVE
21 TO SAY" -- WELL, WE WERE DISCUSSING WHETHER MR. TODD, MR.
22 BUTLER, AND THE OTHER CO-DEFENDANT HAD COME TO HER HOUSE
23 DURING THE NIGHT. AND AT FIRST SHE SAID, "WELL, I WAS ON THE
24 COUCH AND I GOT UP, AND I LET MR. TODD IN, BUT I DIDN'T SEE
25 ANYBODY." AND IN DISCREPANCY OF SAYING ONE THING AND

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1 ANOTHER, SHE FINALLY, AFTER WE EXPLAINED TO HER THE
2 SERIOUSNESS OF NOT TELLING THE TRUTH, THAT IF SHE GOT UP HERE
3 AND TESTIFIED AND TOLD A LIE, THAT SHE COULD PERJURE HERSELF
4 AND SHE COULD GET HERSELF IN A LOT OF TROUBLE, SHE COULD BE
5 CHARGED, AFTER WE TOLD HER THAT, WE TOLD HER, WE SAID, "WE
6 DON'T WANT YOU TO TELL ANYTHING BUT THE TRUTH. WE DON'T WANT
7 YOU TO MAKE UP ANYTHING. WE DON'T WANT YOU TO PLEASE US. WE
8 DON'T WANT YOU TO PLEASE THEM. WE JUST WANT YOU TO TELL THE
9 TRUTH. BUT IF YOU LIE, AND WE KNOW ABOUT IT, IF WE HAVE
10 TESTIMONY THAT SHOWS YOU'RE LYING, THEN YOU COULD BE
11 CHARGED." AFTER WE SAID THAT, SHE SAID, "WELL, I'M GOING TO
12 HAVE TO SAY THAT THEY WERE WITH HIM."

13 MS. GERMAN: THAT'S A LIE.

14 THE COURT: ALL RIGHT, LET'S HAVE ORDER.

15 Q DID SHE SAY THAT IN RESPONSE TO A QUESTION THAT I PUT
16 TO HER?

17 A YES, MA'AM.

18 Q WHAT WAS THE QUESTION THAT I PUT TO HER AFTER WE
19 EXPLAINED TO HER, AFTER WE TOLD HER THAT SHE NEEDS TO TELL
20 THE TRUTH, WHAT WAS THE QUESTION I PUT TO HER?

21 A THE QUESTION WAS, IS, "WAS STANLEY BUTLER AND THE OTHER
22 CO-DEFENDANT," -- AND I'M DRAWING A BLANK ON HIS NAME RIGHT
23 THIS MINUTE, THE OTHER CO-DEFENDANT -- "WERE THEY WITH MR.
24 TODD WHEN THEY CAME TO HER DOOR IN THE MIDDLE OF THE NIGHT,
25 THE NIGHT OF THE ROBBERY?"

1 Q AND DO YOU REMEMBER HER EXACT WORDS?

2 A SHE SAID, "I'M GOING TO HAVE TO SAY THEY WERE."

3 Q OKAY, AFTER THAT?

4 A THEN SHE CHANGED THAT STORY IMMEDIATELY AFTER WE WALKED
5 OUT, AND, WHAT, AN HOUR LATER WE -- WELL, I SAW HER TALKING
6 TO SEVERAL PEOPLE IN THE HALLWAY, AND ABOUT AN HOUR LATER WE
7 WERE BACK IN THE ROOM TO RECONFIRM WHAT HER TESTIMONY IS
8 GOING TO BE, AND HER STORY WAS TOTALLY CHANGED AGAIN.

9 Q HOW HAD IT CHANGED AGAIN?

10 A WELL, IT HAD CHANGED BACK TO, "HE WAS IN MY APARTMENT
11 ALL NIGHT LONG."

12 MS. MUNSON: OKAY, I HAVE NOTHING FURTHER AT THIS
13 TIME, YOUR HONOR.

14 THE COURT: MR. CRANE.

15 **REPLY CROSS-EXAMINATION BY MR. CRANE:**

16 Q BASICALLY SHE WAS THREATENED WITH ARREST, WASN'T SHE?

17 A WELL, MR. CRANE, I WOULDN'T CALL IT --

18 Q YES OR NO?

19 A NO, SIR, IT WASN'T A THREAT.

20 Q DID YOU HEAR THIS PROSECUTOR STAND RIGHT HERE AND ADMIT
21 TO ME WHEN I WAS STANDING RIGHT HERE THAT SHE THREATENED THAT
22 LADY? THIS MORNING IN THIS COURTROOM DID YOU HEAR MS. MUNSON
23 AGREE WITH ME THAT SHE THREATENED THAT WITNESS WITH ARREST?
24 WERE YOU IN THE COURTROOM WHEN SHE DID THAT?

25 A I PROBABLY -- I'M SURE I WAS.

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1 Q DID YOU HEAR HER SAY THAT? DID YOU HEAR THIS
2 PROSECUTOR ADMIT THAT SHE THREATENED THAT LADY WITH ARREST IF
3 SHE DIDN'T TELL THE STORY SHE WANTED TO HEAR?

4 A MR. CRANE, SOMETIMES I'M INVOLVED IN SOMETHING ELSE ON
5 THE BENCH, ON OUR TABLE, AND I APOLOGIZE, BUT SOMETIMES I
6 DON'T HEAR EVERYTHING THAT Y'ALL ARE SAYING BECAUSE I'M
7 LOOKING AT NOTES OR WHATNOT, AND, NO, SIR, I DID NOT. BUT
8 I'M NOT SAYING THAT SHE DIDN'T SAY IT. I JUST DON'T RECALL
9 IT BEING SAID.

10 Q MR. ELLIOTT, WE WERE TALKING, WE WERE RAISING OUR VOICE
11 AT EACH OTHER. HOW COULD YOU HAVE NOT HEARD IT IF YOU WERE
12 SEATED RIGHT THERE, AND MS. MUNSON WAS STANDING RIGHT HERE
13 NEXT TO YOU --

14 THE COURT: MR. CRANE, HE'S ANSWERED THE QUESTION,
15 SIR..

16 A I JUST DON'T RECALL HEARING HER SAY IT. I MEAN, I'M
17 SURE IF SHE SAID IT IN THE PRESENCE OF THEY JURY, THEY HEARD
18 IT. I MEAN, I CAN'T DISPUTE WHETHER, YOU KNOW, SHE DID OR
19 NOT. I JUST DIDN'T HEAR HER SAY IT. I WAS PROBABLY MAKING
20 SOME NOTES AND JUST DIDN'T HEAR IT.

21 Q DID YOU HEAR THIS PROSECUTOR THREATEN TO PUT HER IN
22 JAIL IF SHE DIDN'T TESTIFY THAT SHE KNEW THERE WERE THREE
23 GUYS IN THAT APARTMENT?

24 A SHE DIDN'T THREATEN HER. SHE TOLD HER, "YOU COULD BE
25 CHARGED IF YOU PERJURE YOURSELF ON THE STAND." THAT'S WHAT

1 SHE TOLD HER. SHE DIDN'T SAY, "I'M THREATENING YOU." AND
2 SHE DIDN'T SAY IT IN A HOSTILE MANNER. SHE SAID, "MS.
3 GERMAN, DO YOU REALIZE THE POSITION YOU'RE PUTTING YOURSELF
4 IN?" SHE WAS VERY NICE TO HER WHEN SHE TOLD HER. SHE SAID,
5 "DO YOU REALIZE THE POSITION YOU'RE PUTTING YOURSELF INTO IF
6 YOU GET UP ON THE STAND AND PERJURE YOURSELF?"

7 Q WAS SHE TALKING WITH HER YESTERDAY THE SAME WAY SHE WAS
8 QUESTIONING HER TODAY IN THE COURTROOM?

9 A SHE WAS --

10 MS. MUNSON: OBJECTION, YOUR HONOR.

11 MR. CRANE: EXCUSE ME?

12 THE COURT: HOLD ON.

13 MS. MUNSON: AT THIS POINT, NUMBER ONE, I DON'T SEE
14 THE RELEVANCE OF THAT, AS TO WHAT THIS WITNESS SAID. AND,
15 NUMBER TWO, AT THIS POINT I WILL PROFFER MYSELF TO THE COURT
16 FOR CROSS-EXAMINATION BY MR. CRANE.

17 THE COURT: NO, I -- MR. CRANE. I WANT YOU TO MOVE
18 ON TO SOMETHING ELSE NOW, SIR.

19 MR. CRANE: OKAY. CAN HE ANSWER THAT QUESTION? I
20 MEAN, I DON'T --

21 THE COURT: NO, SIR, I WANT TO MOVE ON TO SOMETHING
22 ELSE, MR. CRANE.

23 Q WHAT DO YOU MEAN THAT SHE WAS FIRM?

24 THE COURT: MR. CRANE.

25 MR. CRANE: SIR?

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1 THE COURT: I SAID I WANT YOU TO MOVE ON TO SOME
2 OTHER AREA, SIR. THIS QUESTION HAS BEEN ASKED AND ANSWERED.

3 Q DID YOU WRITE DOWN OR TAPE-RECORD ANY CONVERSATION
4 BETWEEN YOURSELF OR THE SOLICITOR AND PATRICIA GERMAN?

5 A NO, SIR.

6 Q DO YOU HAVE ANY OTHER WITNESSES ACCORDING TO YOU THAT
7 SHE SAID, "WELL, I'M GOING TO HAVE TO SAY THAT THEY WERE
8 THERE THAT NIGHT"?

9 A COULD YOU REPEAT THAT, PLEASE?

10 Q YES, SIR. YOU TESTIFIED ON DIRECT THAT AT ONE TIME
11 DURING -- WELL, HOW MANY TIMES DID Y'ALL TALK TO PATRICIA
12 GERMAN ON MONDAY?

13 A THREE TIMES.

14 Q AND ALL OF THOSE TIMES WERE WHEN SHE WAS BY HERSELF?

15 A YES, SIR.

16 Q DID SHE HAVE AN ATTORNEY WITH HER?

17 A NO, SIR.

18 Q DID YOU READ HER HER CONSTITUTIONAL RIGHTS?

19 A NO, SIR.

20 Q ALL RIGHT. DO YOU KNOW WHAT KIND OF EDUCATION SHE'S
21 GOT?

22 A NO, SIR.

23 Q DO YOU KNOW HOW OLD SHE IS?

24 A I THINK SHE SAID A LITTLE WHILE AGO ON THE STAND.

25 Q I DON'T THINK SHE DID. I ASKED YOU, DO YOU --

1 A NO, SIR, I DON'T KNOW.

2 Q DO YOU KNOW IF SHE HAS HAD ANY DEALINGS WITH THE COURTS
3 BEFORE?

4 A NO, SIR.

5 Q WHEN SHE TALKED TO YOU THE FIRST TIME YESTERDAY, WAS
6 SHE ALREADY AGITATED?

7 A NO, SIR, NOT THE FIRST TIME.

8 Q ALL RIGHT. WHEN DID MS. MUNSON APPEAR TO GET HER
9 AGITATED?

10 A WHEN MS. MUNSON ASKED HER -- WELL, WHEN SHE CONFLICTED
11 WITH WHAT MS. MUNSON HAD -- (PAUSE) --

12 Q TOLD HER TO SAY?

13 A -- DISCUSSED WITH HER -- NO, SIR. NO, SIR. SHE DIDN'T
14 TELL HER TO SAY ANYTHING. WHEN MS. MUNSON ASKED HER, YOU
15 KNOW, "IS YOUR TESTIMONY STILL WHAT YOU TOLD ME LAST WEEK
16 OVER THE TELEPHONE?"

17 Q SHE SAID NO.

18 A SHE SAID, "NO, HE WAS WITH ME ALL NIGHT."

19 Q AND THEN TWO MORE TIMES FOR THE REST OF THE MORNING YOU
20 GUYS TRIED TO GET HER TO CHANGE THAT, DIDN'T YOU?

21 A NO, SIR, WE DIDN'T. WE DIDN'T TRY TO GET HER TO TELL.
22 WE JUST -- IT WAS OBVIOUS THAT THERE WAS A CONFLICTING
23 TESTIMONY. LAST WEEK SHE TOLD MS. MUNSON ONE THING.
24 YESTERDAY WHEN SHE GOT UP HERE TO THE COURTROOM, SHE WAS
25 TELLING SOMETHING ELSE.

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1 Q WELL, FOR WHATEVER REASON, AFTER WHATEVER YOU ALL WENT
2 THROUGH YESTERDAY, AND AFTER SHE KNOWS THAT YOU'RE GOING TO
3 PERHAPS CHARGE HER WITH AN OFFENSE, SHE CAME UP AND SWORE
4 ON THE BIBLE AND TOLD A STORY, DIDN'T SHE?

5 A SHE TOLD A STORY:

6 Q AND THAT'S NOT THE ONE YOU WANT TO HEAR, IS IT?

7 A SIR, ALL I WANT TO HEAR IS -- A WITNESS ON A STAND IS
8 TO TELL THE TRUTH.

9 Q AND YOU'RE RELYING ON AUSTIN PERRY'S STATEMENT,
10 CORRECT? (PAUSE.) AS TO SHANNON TODD? THERE'S ABSOLUTELY
11 NO OTHER EVIDENCE AGAINST SHANNON TODD, IS THERE?

12 A SIR, ALL I'M RELYING ON WITH THE CONVERSATION WITH HER
13 IN THAT ROOM IN THERE IS THE CONFLICTING STATEMENTS SHE'S
14 MADE.

15 Q I UNDERSTAND THAT. DO YOU KNOW OF ANY OTHER EVIDENCE
16 AGAINST SHANNON TODD?

17 MS. MUNSON: YOUR HONOR, I'M GOING TO HAVE TO
18 OBJECT TO THIS. HE'S NOT AN INVESTIGATOR.

19 THE COURT: I SUSTAIN THE OBJECTION TO THE
20 QUESTION.

21 MR. CRANE: HE'S NOT AN INVESTIGATOR?

22 MS. MUNSON: IN THIS CASE.

23 THE COURT: I INSTRUCT THE JURY TO DISREGARD THE
24 LAST QUESTION ASKED BY MR. CRANE.

25 MR. CRANE: THANK YOU, JUDGE.

1 THE COURT: STEP DOWN.

2 THE WITNESS: YES, SIR.

3 THE COURT: ALL RIGHT, ANYTHING ELSE IN REPLY,
4 SOLICITOR?

5 MS. MUNSON: NO, SIR, YOUR HONOR.

6 THE COURT: TAKE THE JURY OUT AGAIN, PLEASE.

7 (THE JURY EXITED THE COURTROOM AT
8 APPROXIMATELY 10:39 A.M.)

9 THE COURT: NOW, MR. ROLLINS, AND, MR. CRANE, ANY
10 FURTHER MOTIONS?

11 MR. CRANE: ADDITIONAL MOTIONS?

12 THE COURT: WELL, DO YOU WANT TO RENEW YOUR
13 MOTIONS?

14 MR. CRANE: I WOULD RENEW THE MOTIONS THAT WE MADE,
15 YOUR HONOR, YES, SIR. DO I NEED TO RESTATE THEM?

16 THE COURT: NO, YOU DO NOT. I DENY ALL MOTIONS
17 FORMERLY MADE.

18 MR. ROLLINS: AND WE WILL JOIN THOSE, FOR THE
19 RECORD, YOUR HONOR.

20 THE COURT: NOW, SOLICITOR, ARE YOU GOING TO WAIVE
21 OPENING ARGUMENT?

22 MS. MUNSON: YES, SIR. I DO HAVE A REQUEST FOR
23 JURY CHARGE.

24 THE COURT: ALL RIGHT.

25 (MS. MUNSON HANDED DOCUMENT TO MR. CRANE, MR.

1 ROLLINS, AND THE COURT.)

2 THE COURT: THAT'S COVERED IN MY CHARGE.

3 MS. MUNSON: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT, WHO'S GOING FIRST, MR.
5 ROLLINS OR MR. CRANE?

6 MR. ROLLINS: I WILL GO FIRST, YOUR HONOR.

7 THE COURT: OKAY. ABOUT HOW MUCH TIME DO YOU THINK
8 YOU WANT TO TALK TO THE JURY?

9 MR. ROLLINS: ME PERSONALLY?

10 THE COURT: YES.

11 MR. ROLLINS: MINE WILL BE VERY BRIEF, YOUR HONOR,
12 PROBABLY ABOUT 10 MINUTES.

13 THE COURT: THAT'S FINE. I'M NOT -- I'M JUST
14 TRYING TO GET SOME IDEA WHEN TO GET THE NEXT CASE READY FOR
15 TRIAL.

16 MR. CRANE: YOUR HONOR, I WOULDN'T THINK MINE, AS
17 YOU KNOW I TALK A WHILE, BUT THIS THING'S KIND OF CONFINED.
18 I WOULD THINK 15, 20 MINUTES.

19 THE COURT: THAT'S FINE.

20 MS. MUNSON: I FEEL ABOUT THE SAME, YOUR HONOR.

21 THE COURT: OKAY, I'LL GIVE YOU A COUPLE OF MINUTES
22 TO GET YOUR THOUGHTS TOGETHER.

23 MS. MUNSON: THANK YOU, YOUR HONOR, APPRECIATE
24 THAT.

25 (RECESS.)

1 THE COURT: OKAY, BRING THEM ON.

2 (THE JURY ENTERED THE COURTROOM AT
3 APPROXIMATELY 10:56 A.M.)

4 THE COURT: OKAY, MR. ROLLINS.

5 MR. ROLLINS: MAY IT PLEASE THE COURT, YOUR HONOR.

6 LADIES AND GENTLEMEN OF THE JURY, ONCE AGAIN, I AM JOHN
7 ROLLINS, JR., AND I REPRESENT MR. STANLEY BUTLER, WHO IS
8 SEATED THERE BESIDE ME.

9 YOU HAVE HAD THE OPPORTUNITY OVER THE PAST TWO DAYS TO
10 HEAR EVIDENCE PRESENTED TO YOU ON THE STAND; AND THE REASON
11 MR. BUTLER IS HERE IS HE IS CHARGED WITH ARMED ROBBERY OF
12 FUDDRUCKERS, FOUR KIDNAPPINGS OUT OF THAT ARMED ROBBERY, AND
13 POSSESSION OF A FIREARM WHILE COMMITTING A VIOLENT CRIME.
14 THAT'S WHAT HE IS CHARGED WITH. AND IT'S UP TO YOU TO HEAR
15 THE INFORMATION GIVEN TO YOU FROM THE WITNESS STAND. IT'S UP
16 TO YOU TO HEAR THAT INFORMATION AND DECIDE ON THE FACT. AS
17 HIS HONOR WILL TELL YOU, YOU'RE THE TRYER OF FACTS. HE IS
18 THE TRYER OF LAW. HE WILL GIVE YOU THE LAW, AND YOU APPLY IT
19 TO THE FACTS AS YOU DECIDE WHAT THE FACTS ARE.

20 NOW IN THIS CASE, IT STARTS WAY BEFORE MARCH 10TH, 1996.
21 IT ALL STARTS WHEN TWO PEOPLE BY THE NAME OF AUSTIN PERRY AND
22 GERMANE MCCULLOUGH, WHO IS IN THE COURTROOM BACK THERE IN
23 THAT GREEN SHIRT THAT YOU DIDN'T HEAR FROM TODAY OR
24 YESTERDAY, THOSE TWO PEOPLE BREAK INTO A SAFE. THEY'RE
25 WORKING AT FUDDRUCKERS, BREAK INTO THE SAFE AND TAKE \$1500

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1 AND FOR WHATEVER REASON, FUDDRUCKERS ALLOWED THEM TO WORK
2 THERE TO PAY THIS MONEY BACK.

3 LATER FUDDRUCKERS IS ROBBED ON MARCH THE 10TH, 1996.
4 IT'S ROBBED BY TWO INDIVIDUALS, ONE WEARING A HOODED
5 SWEATSHIRT WITH A YELLOW BANDANNA; THE OTHER ONE WEARING A
6 WELDER'S MASK. YOU HEARD THE VICTIMS IN THE CASE STATE THEY
7 COULDN'T TELL WHAT RACE THEY WERE. ONE LADY SAID IT HAD
8 BLACK EYES AROUND ONE OF THEM, AND SHE BELIEVED THAT PERSON
9 TO BE A BLACK PERSON. THE OTHER ONE, THEY COULDN'T TELL WHAT
10 RACE IT WAS, THAT PERSON WAS. THE ONE WITH THE WELDER'S MASK
11 DIDN'T TALK MUCH. DURING THIS ROBBERY EVERYBODY WAS TOLD TO
12 GET ON THE FLOOR. THEY LATER PUT THEM INSIDE THE FREEZER
13 THERE WHILE THEY ROBND THE PLACE AND TOOK THE MONEY FROM THE
14 SAFE. THEY DON'T KNOW WHERE THEY WENT, DON'T KNOW WHERE THE
15 MONEY WAS DIVIDED, DON'T KNOW WHAT MONEY WAS STOLEN. ALL YOU
16 HEARD WAS THAT THERE WAS MONEY STOLEN.

17 LATER THE NEXT MORNING, SUNDAY MORNING AT 10:00 O'CLOCK
18 ON MAULDIN ROAD THERE WHERE THE SEWER TREATMENT PLANT IS, A
19 ROAD THAT'S SO BUSY THAT THEY'RE WIDENING THAT ROAD, PROBABLY
20 ONE OF THE BUSIEST STREETS IN GREENVILLE COUNTY, A MAN, MR.
21 PITMAS, WORKS FOR CHRIST CHURCH SCHOOL, IS GOING TO CHURCH
22 THAT MORNING AND HAPPENS TO SEE THIS; NOT LYING ON THE SIDE
23 OF THE ROAD, BUT SITTING IN THE MIDDLE OF THE ROAD ON THE
24 PAVEMENT, JUST LIKE THAT, SITTING IN THE MIDDLE OF THE ROAD.
25 HE GOES BY IT AND SEES IT, AND HE THINKS IT MIGHT BE

1 SOMEBODY'S POCKETBOOK; HE BEING A GOOD SAMARITAN, HE GOES BY
2 AND PICKS IT UP. HE TURNS AROUND AND GOES BY AND PICKS IT
3 UP. GOES DOWN THERE AND LOOKS AT IT AND HE REALIZES IT'S A
4 LITTLE BIT MORE THAN A POCKETBOOK - IT'S GOT CHECKS AND
5 THINGS IN IT, AND A PLASTIC BAG. HE DOESN'T KNOW HOW LONG IT
6 HAD BEEN LYING THERE, OR HOW IT GOT THERE. HE CALLS THE
7 POLICE. THEY FIND OUT IT'S FROM FUDDRUCKERS.

8 THE POLICE DO A LITTLE INVESTIGATING ON THE BAG, TAKE
9 SOME FINGERPRINTS OFF. THEY TAKE SOME FINGERPRINTS OFF THIS
10 BAG HERE THAT HAS FINGERPRINT POWDER ALL OVER IT. THEY LIFT
11 FINGERPRINTS THAT THEY WOULD HAVE YOU BELIEVE BELONG TO MY
12 CLIENT, MR. STANLEY BUTLER. THEY'RE SAYING THAT THEY MATCH
13 WITH ALL THESE POINTS, THAT THEY BELONG TO MR. BUTLER. I
14 SUBMIT TO YOU THAT'S A QUESTION FOR YOU TO DECIDE; AND IF YOU
15 DECIDE THESE FINGERPRINTS BELONG TO MR. BUTLER, YOU NEED TO
16 DECIDE THE NEXT QUESTION, WHICH IS HOW THEY GOT THERE. THIS
17 BAG WASN'T FOUND AT FUDDRUCKERS. THIS BAG WASN'T FOUND CLOSE
18 TO FUDDRUCKERS. THIS BAG WAS FOUND OUT IN THE MIDDLE OF THE
19 ROAD AT 10:00 O'CLOCK IN THE MORNING, SOME 10 HOURS LATER
20 AFTER THE ROBBERY. HAS THE STATE PROVED TO YOU THAT THEY
21 WERE IN THAT BAG WHEN IT LEFT FUDDRUCKERS? I SUBMIT TO YOU
22 THEY HAVE NOT. THERE COULD HAVE BEEN ANY TYPE OF INTERVENING
23 CIRCUMSTANCES. YOU COULD HAVE HAD MR. BUTLER COME BY AND
24 LOOK AT IT JUST LIKE MR. PITMAS DID, AND THERE IS HIS
25 FINGERPRINTS THEN.

1 IF THEY HAD ONLY FOUND MR. PITMAS' FINGERPRINTS ON
2 THERE, WOULD THEY HAVE CHARGED HIM WITH THIS ROBBERY? THAT'S
3 REASONABLE DOUBT. AND HIS HONOR WILL TELL YOU THAT
4 REASONABLE DOUBT IS A DOUBT WHICH WOULD CAUSE A REASONABLE
5 PERSON TO HESITATE TO ACT. THERE'S A LOT OF REASONABLE DOUBT
6 IN THIS CASE. ALL WE'VE GOT IN THIS CASE IS THIS BAG FOUND
7 ON THE ROAD WITH MY CLIENT'S FINGERPRINTS IN IT, SUPPOSEDLY;
8 AND WE HAVE A CONFESSED ROBBER, THEIF, BY THE NAME OF MR.
9 AUSTIN PERRY THAT TOOK THE STAND, WHO HAD ALREADY ROBBED
10 FUDDRUCKERS WITH MR. MCCULLOUGH BACK THERE EARLIER. HE GETS
11 UP HERE AND SAYS, "OH, LET ME TELL YOU ALL ABOUT IT." HE
12 DIDN'T KNOW ANYTHING ABOUT IT WHEN THE POLICE WERE
13 QUESTIONING HIM BEFORE BECAUSE HE WAS A PRIME SUSPECT, HIM
14 ROBBING THE PLACE FROM BEFORE. HE DIDN'T KNOW ANYTHING ABOUT
15 ANYTHING, SO THEY STARTED PUTTING THE HEAT ON, THREATENED HIM
16 WITH, "WE'LL PUT YOU IN JAIL AND LET YOU THINK ABOUT WHAT YOU
17 KNOW." THEN IT JUST, BOOM, "I KNOW EVERYTHING."

18 AND WHAT DID HE KNOW? HE SAID HE WAS DRIVING HIS
19 BROTHER'S CAR, DROVE THE SUNBIRD DOWN THERE, "AND I JUST
20 DROVE THE CAR. I DIDN'T GET OUT AND GO IN. I JUST DROVE THE
21 CAR." BUT WHAT DID THE POLICE DO TO CORROBORATE WHAT HE WAS
22 SAYING? DID THEY GO LOOK AT THE CAR? NO. DID THEY
23 FINGERPRINT THE CAR TO SEE IF ANY OF THESE TWO INDIVIDUALS
24 WERE ON THAT TRUNK LID, THAT THEY WERE THE ONES OPENING AND
25 CLOSING IT? NO. DID THEY EVEN GO TALK WITH THE BROTHER WHO

1 WORKED FOR MILLIKEN, A RESPECTABLE FELLOW; HE'S DOWN THERE
2 EVERY DAY. DID THEY EVEN GO TALK TO HIM? NO. HE SAID,
3 "AUSTIN HAD PAGED ME EARLIER." HE SAID, "I'VE GOT A PAGER.
4 HE PAGED ME EARLIER, THAT HE DIALED 357 ON THE PAGER TO LET
5 ME KNOW TO COME GET HIM."

6 "DID YOU OFFER THIS TO THE POLICE?" "NO." "DID YOU
7 HELP THE POLICE GET ANY RECORDS FROM THE PAGING COMPANY THAT
8 KEEPS RECORDS ON ALL THIS STUFF? DID YOU SHOW THEM THAT TO
9 CORROBORATE WHAT YOU'RE TALKING ABOUT?" "WELL, NO, UH-UH."

10 HE SAID, "I, ALSO, WENT OVER THERE," TO MY CLIENT, "MR.
11 BUTLER'S HOME. WE WENT OVER THERE FOR AWHILE. WE WENT AND
12 PICKED HIM UP." ALL THESE RIFLES, ALL THIS STUFF. "WELL,
13 WELL, WHERE IS THIS PLACE AT?" "WELL, I DON'T REALLY KNOW.
14 I DON'T REALLY KNOW." "DID YOU TAKE THE POLICE OVER THERE TO
15 SHOW THEM THAT THIS IS THE MAN'S HOUSE?" "NO." "DID YOU
16 TAKE THE POLICE IN THERE AND LET THEM SEE THAT'S WHERE
17 STANLEY BUTLER LIVED?" "NO." AGAIN, REASONABLE DOUBT.

18 HIS HONOR WILL TELL YOU, TOO, MR. PERRY -- EXCUSE ME --
19 MR. PERRY IS TELLING ALL THIS TO THE POLICE BECAUSE HE'S
20 AFRAID HE'S GOING TO GO TO JAIL. WHAT WAS HE CHARGED WITH,
21 MR. PERRY? ARMED ROBBERY; THAT'S ALL.

22 HIS HONOR WILL TELL YOU LATER, I BELIEVE THAT HE'S GOING
23 TO CHARGE YOU THAT THE LAW IN SOUTH CAROLINA IS "THE HAND OF
24 ONE IS THE HAND OF ALL." AND HE WILL TELL YOU THAT MEANS
25 THAT WHEN PEOPLE GO OUT TOGETHER TO COMMIT A CRIME, IT WON'T

1 MATTER IF SOMEBODY IS SITTING IN THE CAR AND BEING THE
2 LOOKOUT OR BEING THE GETAWAY DRIVER. HE'S AS GUILTY AS THE
3 PEOPLE THAT WENT INSIDE AND KIDNAPPED, AND ROBBED, AND HAD A
4 FIREARM. BUT WHAT DID THEY DO FOR MR. PERRY? THEY DIDN'T
5 CHARGE HIM WITH ANY OF THOSE THINGS, DIDN'T CHARGE HIM WITH
6 ANYTHING. THEY LET HIM GO DOWN TO THE MAGISTRATE AND HE
7 SIGNED HIS OWN BOND FOR ARMED ROBBERY, \$25,000, JUST PUT HIS
8 SIGNATURE ON THE LINE AND WALKED OUT. NEVER SPENT A MINUTE
9 IN JAIL.

10 NOW THEY CHARGED MY CLIENT, AND MR. TODD, THEY GO TO THE
11 SAME MAGISTRATE. HE WON'T SET THEM A BOND. WHAT IS THAT?
12 PREFERENTIAL TREATMENT. WHY? BECAUSE HE'S TALKING, AND HE'S
13 GOING TO DO ANYTHING HE CAN TO KEEP OUT OF JAIL; TO INCLUDE
14 PUTTING THESE TWO INDIVIDUALS THERE WITH HIM.

15 IF YOU'LL REMEMBER BACK, THE WITNESSES TOLD SOME VERY
16 INTERESTING THINGS. THERE WAS ONE PERSON THAT WAS TALKING
17 ALL THE TIME. THE ONE THAT THEY SAID HAD THE YELLOW BANDANNA
18 THAT HAD -- THAT YOU COULD TELL THAT HE HAD DARK SKIN UP
19 HERE, AND THE ONE IN THE WELDER'S MASK DIDN'T TALK AT ALL,
20 DIDN'T TALK MUCH AT ALL. I SUBMIT TO YOU, LADIES AND
21 GENTLEMEN, THERE WERE TWO PEOPLE THAT ROBBED THAT PLACE THAT
22 NIGHT, AND THOSE TWO PEOPLE WERE GERMANE MCCULLOUGH AND
23 AUSTIN PERRY.

24 AND WHEN IT CAME TIME AND THE HEAT WAS ON, YOU HEARD MR.
25 PERRY - AS LONG AS HE DIDN'T GET CAUGHT, HE COULD LIE ALL THE

1 TIME. AND WHEN HE GETS CAUGHT, HE LIES AGAIN TO GET OUT OF
2 IT. AND HE'S BASICALLY OUT OF IT. HE DOESN'T HAVE ALL THE
3 CHARGES THESE OTHER PEOPLE ARE LOOKING AT. HE HAS DONE WHAT
4 HE NEEDED TO DO.

5 MR. MCCULLOUGH, HE'S SITTING HERE IN THE COURTROOM, HE'S
6 NOT CHARGED WITH ANY OF IT. WHY? BECAUSE MR. PERRY IS
7 TAKING CARE OF MR. MCCULLOUGH. AND THAT'S WHAT YOU'VE GOT IN
8 THIS CASE, LADIES AND GENTLEMEN. YOU'VE GOT THE MAN WHO CAME
9 UP HERE AND PLACED HIS HAND ON THIS BIBLE, SWORE TO TELL THE
10 TRUTH, AND YOU HEARD HIM TALK. HE'S VERY SOFT-SPOKEN. HE
11 TALKS SO LOW, YOU COULDN'T EVEN HEAR HIM. YOU, ALSO, HEARD
12 ONE OF THE WITNESSES SAY, "THE MAN IN THE WELDER'S MASK WHEN
13 HE TALKED, HE WAS SOFT-SPOKEN." WHY? BECAUSE THEY'D
14 RECOGNIZE HIS VOICE. HE'S SOMEBODY THEY'RE PAYING REAL
15 PARTICULAR ATTENTION TO THERE.

16 LADIES AND GENTLEMEN, YOU TAKE ALL OF THE EVIDENCE AWAY
17 THAT IS NOT OUT OF THE MOUTH OF MR. PERRY, AND ALL YOU HAVE
18 GOT IS THIS BAG THAT'S SITTING ON MAULDIN ROAD FOR 10 HOURS.
19 THE STATE HAS FAILED TO PROVE THEIR CASE TO YOU BEYOND ANY --
20 BEYOND A REASONABLE DOUBT, AND THEY MUST PROVE THAT CASE
21 BEYOND A REASONABLE DOUBT. AND WHEN THEY DON'T DO THAT, YOU
22 MUST RENDER A VERDICT OF NOT GUILTY. WE BELIEVE THE PEOPLE
23 -- YOU SAW THE PEOPLE THAT COMMITTED THE CRIME. THEY'RE IN
24 THE COURTROOM TODAY, BUT THEY'RE NOT STANLEY BUTLER, AND
25 THEY'RE NOT MR. TODD. THANK YOU.

F.M. ELLIOTT/REPLY CROSS-CRANE

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1 THE COURT: MR. CRANE.

2 MR. CRANE: THANK YOU, JUDGE.

3 MADAM FORELADY, LADIES AND GENTLEMEN, I WANT TO THANK
4 YOU FOR YOUR ASSISTANCE FOR THE LAST TWO DAYS. IT'S BEEN A
5 RELATIVELY SHORT TRIAL. WE'RE NOT LIKE CALIFORNIA WHERE WE
6 GO FOR MONTHS, AND MONTHS, AND MONTHS. YOU SAW HOW RAPIDLY
7 WE CAN PICK A JURY AND GET THINGS GOING, GET THEM MOVING.

8 IF DURING THE TRIAL THERE'S BEEN SOME THINGS THAT I HAVE
9 SAID, OR ACTIONS THAT I HAVE DONE THAT MAY HAVE OFFENDED YOU,
10 I APOLOGIZE, BUT I ASK YOU NOT TO HOLD THAT AGAINST SHANNON
11 TODD. MYSELF, THE SOLICITOR, MR. ROLLINS, WE DO THIS FOR A
12 LIVING, AND IT'S AN ADVERSARY PROCEEDING, AND ADVERSARIES
13 QUITE NATURALLY, DO NOT AGREE WITH EACH OTHER, AND SOMETIMES
14 HEATED DISCUSSIONS OCCUR, AND THAT'S PART OF WHAT GOES ON IN
15 THIS COURTROOM.

16 BUT TODAY IS THE MOST IMPORTANT DAY IN SHANNON TODD'S
17 LIFE. YOU'VE GOT A FELLOW WHO IS CURRENTLY 17 YEARS OLD, WHO
18 AT THE TIME OF THIS PARTICULAR EVENT WAS 16 YEARS OLD, WHO
19 HAS BEEN ARRESTED FOR FOUR COUNTS OF KIDNAPPING, ARMED
20 ROBBERY, USE OF A WEAPON DURING THE COMMISSION OF AN OFFENSE,
21 AND THE SAFE-CRACKING WHICH IS NOT BEFORE YOU -- YOU DON'T
22 NEED TO WORRY ABOUT THE SAFE-CRACKING, JUST THE OTHER CHARGES
23 -- AND A FELLOW WHO SINCE MARCH 18TH OF 1996 HAS BEEN IN
24 JAIL, UNLIKE MR. PERRY.

25 NOW THE JUDGE WILL TELL YOU WHAT THE LAW IS, AND I'M NOT

1 GOING TO GO INTO ANY GREAT DETAIL. WE ALL KNOW WHAT ARMED
2 ROBBERY IS. IT'S THE TAKING OF THE GOODS OF ANOTHER THROUGH
3 THE USE OF A DEADLY WEAPON. ALL RIGHT, THERE'S BEEN SOME
4 TESTIMONY THAT THERE WAS, LOOKED LIKE THAT A RIFLE WAS USED,
5 AND THAT MONEY WAS TAKEN.

6 THERE IS, ALSO, THE CHARGES OF KIDNAPPING. LET ME GET
7 WHAT THE OTHER CHARGE, USE OF THE WEAPON DURING THE
8 COMMISSION OF VIOLENT OFFENSE; THAT WOULD BE THE GUN.

9 THEN THERE'S THE KIDNAPPING. THE KIDNAPPING IS WHEN A
10 PERSON ABDUCTS, SEIZES, CONFINES, OR CARRIES AWAY A PERSON OF
11 ANOTHER. NOW WHAT YOU HAVE TO DECIDE -- I'M GOING TO LET THE
12 JUDGE TELL YOU WHAT THE LAW IS, AND YOU HAVE TO DECIDE
13 WHETHER OR NOT THE LAW FITS TO WHAT YOU HAVE HEARD TODAY. I
14 WOULD SUBMIT TO YOU THAT IF WE GO AFTER EVERY ARMED ROBBER
15 WITH A CHARGE OF KIDNAPPING, IT WOULD BE SIMILAR TO THIS
16 CASE. YOU KNOW, FOR EXAMPLE, IS IT KIDNAPPING IF AN ARMED
17 ROBBER COMES IN AND MAKES A STORE CLERK GO FROM THE FRONT
18 DOOR TO THE CASH REGISTER, TAKES THE MONEY AND THEN LEAVES?
19 IS THAT KIDNAPPING? I DON'T KNOW. IS IT KIDNAPPING IN THIS
20 CASE? THAT'S FOR YOU TO DECIDE.

21 AS MR. ROLLINS INDICATED, AND AS THE EVIDENCE SHOWED
22 YOU, THERE WERE TWO PEOPLE THAT WENT INTO THAT FUDDRUCKERS.
23 THE PROBLEM IS, YOU DON'T KNOW WHO THEY WERE. THE PROBLEM
24 IS, AUSTIN PERRY HAS TRIED TO TELL YOU WHO THEY WERE, AND I
25 WOULD SUBMIT TO YOU THAT HE'S NOT TELLING THE TRUTH FOR THE

1 REASONS THAT MR. ROLLINS GAVE YOU AND OTHERS THAT I'M ABOUT
2 TO TELL YOU.

3 WHAT YOU HAVE TO RELY ON IS THE EVIDENCE BEFORE YOU OR
4 THE LACK OF EVIDENCE, AND YOU HAVE TO BE CONVINCED BEYOND ALL
5 REASONABLE DOUBT; AS MR. ROLLINS SAID; A DOUBT WHICH CAUSES A
6 REASONABLE JUROR TO HESITATE TO ACT. A DOUBT WHICH CAUSES
7 YOU TO HAVE A QUEASY FEELING. VERY MUCH SO, YOU KNOW, WE
8 CAN'T REALLY SEE OUTSIDE. WE HAVEN'T HAD MUCH RAIN RECENTLY,
9 BUT A REASONABLE DOUBT WOULD BE SOMETHING LIKE IF THE WINDOWS
10 WERE OPEN AND WE SAW RAIN, WE COULD SAY I DON'T THINK THE SUN
11 IS SHINING BECAUSE I SEE RAIN. THEY'VE GOT TO GET BEYOND
12 SOMETHING LIKE THAT. IF YOU'VE GOT A PROBLEM WITH THEIR
13 TESTIMONY, REGARDLESS OF HOW SLIGHT IT IS, THAT'S A
14 REASONABLE DOUBT.

15 NOW, YOU KNOW, MR. ROLLINS TOLD YOU ABOUT MR. BUTLER
16 THAT IF YOU TAKE AWAY THE STATEMENT OF AUSTIN PERRY THEN THE
17 ONLY THING YOU'VE GOT IS THIS BANK BAG. I TOLD YOU WHEN WE
18 STARTED THIS TRIAL THAT IT'S UNFORTUNATE FOR MR. TODD, WE
19 HAVE TO GO TO TRIAL WITH MR. BUTLER BECAUSE IF YOU TAKE AWAY
20 THE STATEMENT FROM MR. PERRY, AND IF WE WERE NOT AT TRIAL
21 WITH MR. BUTLER, THAT BANK BAG WOULDN'T BE HERE EITHER. SO
22 WHAT WOULD YOU HAVE AGAINST MR. TODD? ABSOLUTELY NOTHING.
23 NO EVIDENCE WHATSOEVER AGAINST MR. TODD IF YOU TAKE AWAY THE
24 STATEMENT OF AUSTIN PERRY.

25 NOW WHAT YOU HAVE TO DECIDE, AND THIS IS THE WHOLE CRUX

1 OF THE MATTER, IS MR. AUSTIN PERRY TELLING YOU THE TRUTH OR
2 NOT? BOTH OF THESE CLIENTS HAVE PLED NOT GUILTY. BY
3 PLEADING NOT GUILTY, THEY'RE SAYING, "WE DIDN'T DO IT." THEY
4 DON'T HAVE TO TESTIFY. THEY CHOSE NOT TO TESTIFY; AND THE
5 JUDGE WILL TELL YOU, YOU CAN'T HOLD THAT AGAINST THEM. ...
6 THAT'S NOT TO ENTER INTO YOUR DELIBERATIONS WHATSOEVER.
7 THAT'S THEIR CONSTITUTIONAL RIGHT, NOT TO TESTIFY.

8 MR. TODD HAD AN ALIBI, AND HE HAD THOSE PEOPLE TESTIFY
9 FOR HIM TODAY. WHAT COULD HE ADD TO THAT? I MEAN, YOU HAD
10 SONYA, AND YOU HAD HIS MOTHER, AND YOU HAD PATRICIA TELL YOU
11 ABOUT THAT NIGHT ON MARCH 9TH. WHAT MORE CAN HE SAY, IS THAT
12 "I WAS OVER AT PATRICIA'S"?

13 WHEN YOU TRY TO DETERMINE WHETHER OR NOT MR. PERRY IS
14 TELLING THE TRUTH, YOU HAVE THE RIGHT TO WEIGH THE
15 CREDITABILITY OF THE WITNESSES, THE BELIEVABILITY. WHO HAS
16 THE MOST TO GAIN OR LOSE? THINK ABOUT THIS: DOES MR. PERRY
17 HAVE ANYTHING TO LOSE BY TESTIFYING AND GIVING THE STATEMENT
18 THAT HE DID? OR DOES HE NOT HAVE EVERYTHING TO GAIN? THE
19 JUDGE IS GOING TO TELL YOU THAT THE HAND OF ONE IS THE HAND
20 OF ALL. BUT MR. PERRY FINDS HIMSELF NOT EVEN CHARGED WITH
21 FOUR SERIOUS OFFENSES OF KIDNAPPING; WHEREIN, IF THESE GUYS
22 ARE CONVICTED, THAT'S FOUR SEPARATE SENTENCES THAT THEY COULD
23 GET. EACH OF THEM COULD RUN BACK-TO-BACK. THEY COULD BE IN
24 JAIL FOR A LONG TIME. AND MR. PERRY KNOWS THAT BECAUSE MR.
25 PERRY HAS PLAYED THE GAME BEFORE. MR. PERRY AND MR.

1 MCCULLOUGH ARE THE ONES THAT BROKE INTO THE SAFE AND TOOK THE
2 \$1500. THINK ABOUT WHAT YOU HEARD IN THE STORE.

3 NOW, YOU KNOW, MR. ROLLINS AND I DO NOT GET THE
4 OPPORTUNITY TO SPEAK TO YOU AGAIN AFTER THE SOLICITOR. THE
5 WAY THE PROCEDURES WORK, WE ARGUE FIRST; SHE COMES BACK;
6 SHE'S GOING TO TALK ABOUT ALL THE THINGS WE'VE SAID TO YOU
7 AND TRY AND CHANGE YOUR MIND. WHAT YOU NEED TO CONSIDER IS,
8 THINK ABOUT THAT; DO MR. ROLLINS AND MYSELF THIS ONE FAVOR:
9 AT THE END OF THE SOLICITOR'S ARGUMENT, AND AFTER YOU LISTEN
10 TO THE JUDGE, THINK ABOUT WHAT WE MIGHT SAY TO RESPOND TO
11 WHATEVER SHE'S GOING TO SAY TO YOU. YOU KNOW, HOW WOULD MR.
12 CRANE RESPOND TO THE SOLICITOR'S REMARKS? THINK ABOUT THAT.
13 HOW WOULD HE RESPOND IF HE WERE DEFENDING THESE FELLOWS WHO
14 SAID THEY DIDN'T DO IT?

15 THERE IS ABSOLUTELY NO EVIDENCE OF ANYBODY IN THAT STORE
16 THAT CAN BE IDENTIFIED. THE ONLY EVIDENCE FROM ONE OF THE
17 WITNESSES, AS MR. ROLLINS SAID, IS THAT ONE OF THE GUYS HAD
18 BLACK AROUND HIS EYES, WHICH WOULD BE VERY SIMILAR TO MR.
19 MCCULLOUGH WEARING A BANDANNA. THE SECOND GUY THAT WAS IN
20 THERE WITH THE WELDER'S MASK, WE DON'T EVEN KNOW WHAT RACE HE
21 WAS. WE DON'T KNOW IF HE'S WHITE OR BLACK. WHAT WE DO KNOW
22 IS THAT ACCORDING TO ONE OF THE WITNESSES, HE WAS RELATIVELY
23 POLITE AND SOFT-SPOKEN.

24 NOW WHEN YOU START THINKING ABOUT IT, AND I WOULD
25 ANTICIPATE THAT THE SOLICITOR IS GOING TO TALK SOMETHING

1 ABOUT PATRICIA GERMAN, AND, YOU KNOW, NOT BEING SURE,
2 CHANGING HER STORIES, OR WHATEVER IT IS. WELL, THINK ABOUT
3 THIS; A VERY IMPORTANT ISSUE IN THIS WHOLE CASE, YOU HAD TWO
4 YOUNG MALES YESTERDAY TESTIFY THAT THE FELLOW THAT CAME IN
5 WITH THE RIFLE IN HIS HAND WAS WEARING A YELLOW BANDANNA.
6 AND WHAT DID MS. MICHAELove TESTIFY TO, THE LADY WHO WAS
7 FORCED TO GET ON THE GROUND? WHO DID SHE SAY HAD THE RIFLE
8 IN THEIR HAND? -- THE GUY WITH THE MASK. THAT'S JUST WHAT I'M
9 TALKING ABOUT THE LITTLE DIFFERENCE, WHAT PEOPLE REMEMBER.
10 YOU KNOW, WHAT ELSE, SOME OF THE THINGS -- NOW YOU'VE
11 HEARD MOST OF AUSTIN PERRY'S STATEMENT GIVEN TO YOU, AND
12 BEFORE I FORGET, I WANT TO TELL YOU THIS: DID THE PEOPLE IN
13 THE STORE AT FUDDRUCKERS, ANY ONE OF THE THREE, MENTION
14 ANYTHING TO YOU ABOUT DUFFLE BAGS BEING CARRIED BY THE ARMED
15 ROBBERS? REMEMBER, MR. PERRY SAYS THAT THESE TWO GUYS GOT
16 OUT OF THE CAR WITH DUFFLE BAGS AND A RIFLE. NOW IF THE TWO
17 GUYS WERE CARRYING DUFFLE BAGS, DON'T YOU THINK THE GUYS IN
18 FUDDRUCKERS WOULD HAVE TOLD YOU THAT? MR. PERRY SAYS THAT
19 WHEN THEY GOT BACK TO PATRICIA GERMAN'S, THEY OPENED THE
20 DUFFLE BAGS AND INSIDE WAS A BI-LO BAG, AND INSIDE THE BI-LO
21 BAG WAS THIS BLUE BAG. DID ANYBODY AT FUDDRUCKERS TELL YOU
22 ANYTHING ABOUT PUTTING THIS OR ANYTHING IN A BI-LO BAG?
23 WHERE IS HE GETTING THIS INFORMATION FROM? (PAUSE.)
24 ALL OF THE WITNESSES THAT WERE AT FUDDRUCKERS, I DON'T
25 CARE HOW YOU INTERPRET THEM, TESTIFIED THAT THE VOICE THEY

1 HEARD WAS NOT SHANNON TODD'S VOICE, DIDN'T THEY? ALL OF THEM
2 SAID THEY COULD NOT RECOGNIZE THAT VOICE AS BEING SHANNON
3 TODD'S VOICE FROM EITHER ONE OF THE TWO PEOPLE.

4 MS. MICHAELove TESTIFIED -- NOW KEEP IN MIND SHANNON IS
5 THE ONE THAT WORKED THERE. THIS FELLOW DIDN'T, ALL RIGHT.
6 MRS. MICHAELove TESTIFIED THAT ALL OF THE EMPLOYEES KNEW
7 WHERE THE SAFE WAS, ALL OF THE EMPLOYEES KNEW IT DIDN'T OPEN
8 WITH A KEY, AND ALL OF THE EMPLOYEES KNEW THERE WAS NO LOCK
9 FOR THE COOLER; BUT, YET, THE GUYS THAT CAME IN ASKED, "WHERE
10 IS THE SAFE? WHERE IS THE COMBINATION? WHERE IS THE LOCK?"
11 IT COULDN'T HAVE BEEN SHANNON TODD. AND, FURTHERMORE, MRS.
12 MICHAELove TOLD THE DETECTIVES THAT IN HER OPINION IT WAS NO
13 EX-EMPLOYEE, SO IT COULDN'T HAVE BEEN SHANNON TODD.

14 WHEN WE TALK ABOUT DETECTIVE KELLY AND WHAT HE MAY OR
15 MAY NOT HAVE DONE, IT'S INTERESTING TO ME THAT, YOU KNOW,
16 HALFWAY THROUGH A TRIAL HE SEEMS TO REMEMBER SOMETHING, HE
17 DOESN'T HAVE ANY NOTES ON IT, HE DOESN'T HAVE ANY TAPE-
18 RECORDING, HE DOESN'T EVEN HAVE ANY ROUGH NOTES; AND IT TURNS
19 OUT THAT IT'S JUST HE AND ONE PERSON BEHIND CLOSED DOORS, AND
20 IT'S HIS WORD AGAINST THAT PERSON. THAT'S WHAT THEY'RE
21 TRYING TO DO TO PATRICIA GERMAN. YOU KNOW, THERE'S NO
22 QUESTION -- I HOPE THERE'S NO QUESTION IN ANY OF YOUR MINDS
23 THAT SHE WAS THREATENED IF SHE TESTIFIED HOW THE STATE DIDN'T
24 WANT HER TO TESTIFY. YOU'VE HEARD THAT. IT CAME FROM THEIR
25 SIDE. IT CAME FROM HER. BUT I'M GOING TO GET TO THAT IN A

1 MINUTE.

2 BUT WHEN WE TALK ABOUT LACK OF EVIDENCE, THINGS THAT
3 DETECTIVE KELLY PERHAPS SHOULD HAVE DONE, BUT WE KNOW DIDN'T
4 DO. WHERE'S THE JACKET, THE MICHIGAN STARTERS JACKET? I
5 HAVEN'T SEEN IT. WHERE'S THE RIFLE? WHERE'S THE WHITE
6 HOODED JACKET, OR SWEATSHIRT, WHATEVER IT IS? WHERE'S THE
7 WELDER'S MASK? WHERE'S THE BANDANNA? I HAVEN'T SEEN ANY OF
8 IT. WHERE'S THE STATEMENT GIVEN BY AUSTIN PERRY'S BROTHER
9 ABOUT AUSTIN USING THE CAR THAT NIGHT? WHERE'S THE
10 FINGERPRINTS FROM THE WHITE CAR THAT SUPPOSEDLY WOULD BELONG
11 TO SHANNON TODD AND STANLEY BUTLER? WHERE'S THE -- WHERE'S
12 THE RESULTS OF THE SEARCH WARRANT AT STANLEY BUTLER'S HOUSE?
13 WHERE'S THE RESULTS OF THE SEARCH WARRANT AT SHANNON TODD'S
14 HOUSE OR AT PATRICIA GERMAN'S APARTMENT? LADIES AND
15 GENTLEMEN, YOU DON'T HAVE ANY OF THIS. THERE'S ABSOLUTELY
16 NOTHING THAT TIES SHANNON TODD TO AN ARMED ROBBERY AT
17 FUDDRUCKERS. NO PRINTS. NO HAIR SAMPLES. NO D.N.A. TESTS.
18 YOU KNOW, YOU'LL BE ABLE TO LOOK AT THIS BAG THAT I'VE
19 GOT HIDDEN UNDER THE TABLE BECAUSE IT DOESN'T HAVE ANYTHING
20 TO DO WITH SHANNON TODD. THEY HAVE GOT ALL KINDS OF TORN UP
21 CHECKS. HE WANTS YOU TO BELIEVE THAT HE CAN GET A LITTLE OLD
22 FINGERPRINT -- I STILL CAN'T FIGURE OUT HOW HE GOT THIS OFF
23 THE INSIDE OF A BAG IF SOMEONE TEARS IT FROM THE OUTSIDE, BUT
24 HE SAYS HE DID, AND, YET, HE CAN'T GET ANY OTHER PRINTS OFF
25 OF ALL OF THAT JUNK THAT'S IN THAT BAG. I DON'T KNOW IF THAT

1 PRINT BELONGS TO STANLEY BUTLER. I KNOW THAT IT DOESN'T
2 BELONG TO SHANNON TODD.

3 YOU KNOW, IF THE BAG WAS OUT THERE ON MAULDIN ROAD, WHY
4 DIDN'T PERRY TELL YOU ABOUT IT? IF YOU THINK ABOUT PERRY,
5 YOU KNOW, MR. ROLLINS KIND OF HIT ON IT, I THINK THAT YOU ALL
6 HAVE SEEN TESTIFY IN THIS TRIAL THE PERSON BEHIND THE
7 WELDER'S MASK. THAT POLITE, SOFT-SPOKEN INDIVIDUAL, THE ONE
8 THAT WE DON'T KNOW IF HE WAS WHITE OR BLACK. I THINK THAT
9 PERSON IS AUSTIN PERRY, THE THRILL-SEEKER, THE IMPRESSIONABLE
10 PERSON. HEY, THESE ARE NOT MY WORDS. THESE ARE HIS WORDS,
11 THE IMPRESSIONABLE PERSON, THE ONE THAT SEEKS THRILLS BY
12 COMMITTING ARMED ROBBERIES. THE ONE THAT SEEKS THRILLS BY
13 BREAKING INTO SAFES AND STEALING MONEY.

14 YOU KNOW WHAT ELSE, WHEN I TALK ABOUT DEMEANOR OF
15 WITNESSES AND CREDIBILITY, IF YOU THINK ABOUT HOW HE SAT UP
16 THERE NICE AND CALM, AND SMOOTH, AND COLD, AND CALCULATED,
17 AND DECEIVING. THAT GUY KNOWS HOW TO PLAY THE GAME. THE
18 SOLICITOR SAID IT BEST, SHE'LL HATE HERSELF FOR SAYING IT.
19 "WHEN THE HEAT IS ON, HE CRACKS." DID HE GO AND TELL
20 FUDDRUCKERS ABOUT THE \$1500 AFTER HE TOOK IT? NO, NOT UNTIL
21 THE HEAT WAS ON. WHEN HE WAS CALLED IN TO TALK TO DOUG
22 KELLY, DID HE TELL DOUG KELLY, "HEY, I KNOW ALL ABOUT IT.
23 LET ME TELL YOU ABOUT IT"? NO, NOT UNTIL THE HEAT WAS ON,
24 WHEN THEY HAD HIM, WHEN HIS GIRLFRIEND WOULD NO LONGER STAND
25 BY HIS SUPPOSED LIES, HE SAYS, "WELL, LET ME TELL YOU

1 SOMETHING ABOUT IT." AND WHAT DID HE TELL HIM? HE BEGINS
2 HIS STORY WITH A LIE: "ON THURSDAY MARCH 7TH, 1996, WHILE AT
3 WORK WITH SHANNON TODD, HE TALKED TO ME ABOUT ARMED-ROBBERING
4 FUDDRUCKERS."

5 LADIES AND GENTLEMEN, THE RECORDS ARE HERE. THEY DON'T
6 DECEIVE US. SHANNON TODD DIDN'T WORK ON THURSDAY, MARCH 7TH.
7 AUSTIN PERRY DID. SHANNON TODD DID WORK, ACCORDING TO THESE,
8 ON WEDNESDAY. AUSTIN PERRY DID NOT. AND AUSTIN PERRY TOLD
9 YOU THAT IT WASN'T ON FRIDAY OR SATURDAY WHEN THEY TALKED.
10 HE STARTS HIS STATEMENT BY TELLING YOU A LIE, AND CONTINUES
11 THEREAFTER.

12 IF YOU WILL RECALL, IT WAS NOT UNTIL I WAS ABLE TO BRING
13 OUT FROM AUSTIN PERRY THAT HE WAS THREATENED WITH JAIL THAT
14 HE GAVE THE STATEMENT. UNTIL DOUG KELLY SAYS, "I'M GOING TO
15 ARREST YOU AND PUT YOU IN JAIL AND LET YOU THINK ABOUT IT,"
16 THAT'S WHEN HE DECIDED, WELL, I BETTER LOOK OUT FOR AUSTIN
17 PERRY AND LET ME GIVE THEM SOMEBODY; SO HE GIVES THEM THESE
18 OTHER TWO GUYS. IT WORKED. THE HEAT WAS ON. HE PUT OUT THE
19 FIRE. HE HAS YET TO DO A DAY IN JAIL FOR HIS OFFENSE. HE
20 HAS YET TO BE CHARGED WITH KIDNAPPING, OR SAFECRACKING, OR
21 USE OF A WEAPON DURING THE COMMISSION OF AN ARMED ROBBERY.
22 INSTEAD, AT THIS POINT HE IS SKATING THROUGH ALL OF THIS WITH
23 ONE COUNT OF ARMED ROBBERY. AND DO YOU REALLY THINK THAT HE
24 DOESN'T EXPECT SOMETHING OUT OF THAT?

25 AS MR. ROLLINS INDICATED, IF, IN FACT, SHANNON TODD

1 CALLED AUSTIN PERRY ON THE PAGE, WHY DIDN'T THEY GO TO THE
2 PAGING COMPANY AND GET RECORDS? YOU KNOW THAT WOULD BE
3 PRETTY GOOD EVIDENCE, BUT IT'S NOT HERE. THE REASON THEY
4 DIDN'T DO ANYTHING IS BECAUSE IT DIDN'T HAPPEN.

5 DOES IT MAKE ANY SENSE TO YOU THAT THIS WHITE GUY IS
6 EITHER SUCH A THRILL-SEEKER, OR HOWEVER ELSE YOU WANT TO
7 DESCRIBE HIM, THAT HE'S GOING TO DO ALL OF THESE THINGS HE
8 TOLD YOU HE DID AND RISK GOING TO PRISON FOR 10 BUCKS? DO
9 YOU REALLY BELIEVE THAT IF THIS WENT DOWN, HE GOT 10 BUCKS?

10 REMEMBER WHAT ELSE HE SAID? NOW I -- YOU KNOW, IF I
11 MISQUOTE THE FACTS, YOU TAKE WHAT YOU HEARD. IT'S MY
12 RECOLLECTION THAT HE TESTIFIED THAT HE WENT TO SHANNON'S
13 HOUSE AND SAW HIM TALKING TO HIS GIRLFRIEND; THEN THEY WENT
14 AND GOT BUTLER, AND THEN I BELIEVE HE SAID THEY WENT TO
15 PATRICIA GERMAN'S APARTMENT FOR A SHORT PERIOD; THEN THEY
16 WENT OUT RIDING, AND THEN THEY WENT BACK. NOW THE PROBLEM
17 WITH THAT IS, PATRICIA GERMAN TELLS YOU SHE HAS NEVER SEEN
18 AUSTIN PERRY. SHE DIDN'T SEE HIM THAT NIGHT. SHE HAD NEVER
19 SEEN HIM BEFORE. SONYA TODD TOLD YOU WHAT HAPPENED ON MARCH
20 7TH. SHANNON'S MOTHER TOLD YOU WHAT HAPPENED ON MARCH 7TH.
21 NOW THE ONLY THING THEY CAN DO, LADIES AND GENTLEMEN, THEY
22 HAVE COME IN TO TELL YOU THAT THEY HAD A FAMILY MEETING, THAT
23 THEY, IN FACT, TOOK SHANNON OVER THERE. THEY DIDN'T COME IN
24 HERE TO TELL YOU THAT THEY KNOW WHAT HAPPENED AFTER ABOUT
25 10:15 OR 10:20; BUT IT TELLS YOU THE SEQUENCE OF EVENTS.

1 THEY GAVE HIM THE RIDE TO PATRICIA GERMAN'S, NOT AUSTIN
2 PERRY. THEY DIDN'T SEE AUSTIN PERRY. WHY WOULD THREE OF
3 THEM COME IN HERE AND TELL YOU SOMETHING THAT'S NOT SO? DOES
4 IT MAKE ANY SENSE TO YOU?

5 NOW, YOU KNOW, I DON'T KNOW, BUT I WOULD VENTURE TO
6 GUESS THAT MOST OF YOU KNOW WHERE THIS FUDDRUCKERS IS.
7 YOU'VE GOT THIS 385 RUNNING RIGHT NEXT-DOOR TO IT. THEY SHOW
8 A FENCE RIGHT HERE. DOES IT MAKE ANY SENSE TO YOU THAT THESE
9 TWO GUYS ARE GOING TO GET OUT OF A CAR WAY OVER HERE AND WALK
10 DOWN THIS FENCE LINE RIGHT NEXT TO 385 WITH A RIFLE IN THEIR
11 HAND? DOES THAT MAKE SENSE TO ANYBODY? AND THEN GO IN THERE
12 AND COMMIT AN ARMED ROBBERY?

13 LADIES AND GENTLEMEN, LIKE THE STATE, THE DEFENDANT CAN
14 ONLY BRING TO YOU THOSE WITNESSES THAT ARE AVAILABLE, AND CAN
15 ONLY PRESENT TO YOU THE TESTIMONY OF THOSE WITNESSES AS THEY
16 CHOOSE TO TESTIFY. YOU HAVE HEARD FROM SHANNON'S SISTER,
17 MOTHER, AND PATRICIA AS TO WHAT HAPPENED. YOU'VE HEARD FROM
18 AUSTIN PERRY AS TO WHAT HIS STORY IS. YOU HAVE TO DECIDE
19 WHO'S TELLING THE TRUTH. YOU HAVE TO DECIDE WHETHER THE
20 STATE HAS CONVINCED YOU BEYOND A REASONABLE DOUBT THAT
21 SHANNON TODD IS GUILTY OF ARMED ROBBERY, FOUR COUNTS OF
22 KIDNAPPING, AND USE A WEAPON DURING THE COMMISSION OF A
23 VIOLENT OFFENSE. YOU HAVE TO DECIDE WHETHER IT'S FAIR AND
24 CORRECT THE WAY THIS CASE HAS BEEN DONE; WHETHER OR NOT
25 AUSTIN PERRY SHOULD BE ALLOWED TO GO WITH ONE COUNT OF ARMED

1 ROBBERY AND THESE OTHER GUYS HAVE SIX CHARGES; WHETHER OR NOT
2 PATRICIA GERMAN SHOULD BE SUBJECTED TO THREATS OF ARREST IF
3 SHE TESTIFIES THE WAY THE STATE DOESN'T WANT HER TO TESTIFY.
4 THAT'S WHAT THEY'VE DONE TO THIS LADY. SHE DIDN'T WANT TO
5 TESTIFY FOR MY CLIENT BECAUSE THEY THREATENED TO PUT HER IN
6 JAIL. THEY'VE GOT ONE STORY FROM AUSTIN PERRY, AND THAT'S
7 WHAT THEY'RE GOING TO LIVE AND DIE WITH, AND THAT'S
8 UNFORTUNATE. THEY'VE GOT THREE OTHER WITNESSES OVER THERE,
9 AND JUST THINK OF THIS, WE'RE GOING TO START ARRESTING
10 EVERYBODY THAT TESTIFIES FOR A DEFENDANT THAT DOESN'T SAY
11 WHAT THE STATE WANTS THEM TO SAY. DOES THAT MAKE ANY SENSE
12 TO YOU? IS THERE ANY QUESTION IN YOUR MIND BUT THAT THE
13 GOVERNMENT, WITH ALL OF THEIR POWER, THREATENED THAT LADY
14 WITH ARREST IF, IN FACT, SHE DIDN'T SAY THAT THREE BOYS WERE
15 OVER AT HER HOUSE THAT NIGHT. THAT HAPPENED, LADIES AND
16 GENTLEMEN, AND THAT'S NOT FAIR. AND IF IT DID HAPPEN, AND
17 THERE SHOULD BE NO QUESTION IN YOUR MIND THAT IT DID, SHE
18 STILL HAD THE FORTITUDE TO COME UP HERE AND SWEAR ON THAT
19 BIBLE AND TESTIFY THAT THEY WERE NOT OVER AT HER APARTMENT
20 THAT NIGHT, THAT SHE WAS WITH SHANNON TODD ALL NIGHT, AND
21 THAT THE STORY THAT AUSTIN PERRY GAVE IS A LIE, RISKING THE
22 POSSIBILITY OF LEAVING THIS COURTROOM WHEN THE TRIAL IS OVER
23 AND BEING ARRESTED. NOW WHY WOULD SHE DO THAT IF WHAT SHE
24 SAID WASN'T TRUE? DO YOU THINK THEY'RE GOING TO STILL ARREST
25 HER IF, IN FACT, YOU BELIEVE HER AND FIND THESE BOYS NOT

1 GUILTY, BECAUSE THAT'S WHAT YOU OUGHT TO DO.

2 TO REITERATE IN JUST A NUTSHELL, LADIES AND GENTLEMEN,
3 THERE IS ABSOLUTELY NO EVIDENCE AGAINST SHANNON TODD THAT HE
4 COMMITTED AN ARMED ROBBERY. THE ONLY THING YOU'VE GOT IS
5 THAT PACK OF LIES FROM AUSTIN PERRY. I HOPE YOU'RE NOT
6 CONVINCED BY THAT PACK OF LIES. I HOPE AND ASK THAT YOU FIND
7 SHANNON TODD NOT GUILTY OF ALL CHARGES. THANK YOU.

8 THE COURT: SOLICITOR.

9 MS. MUNSON: MAY IT PLEASE THE COURT.

10 LADIES AND GENTLEMEN, MR. CRANE SAID THAT I WOULD STAND
11 UP HERE AND TRY TO GET YOU TO CHANGE YOUR MIND. WELL, I'M
12 NOT GOING TO DO THAT BECAUSE I KNOW YOU'RE GOING TO BE TRUE
13 TO YOUR OATH, AND I KNOW THAT NOT ONE OF YOU HAS MADE UP YOUR
14 MIND YET BECAUSE YOU TOOK AN OATH NOT TO; SO I'M NOT GOING TO
15 TRY TO CHANGE YOUR MIND. BUT ONE THING I AM GOING TO ASK YOU
16 TO DO IS NOT TO BE MULLING OVER IN YOUR HEAD WHAT YOU THINK
17 EITHER ONE OF THESE GUYS MIGHT SAY BECAUSE, TRUE TO YOUR
18 OATH, WHAT THEY SAY IS NOT WHAT YOU PROMISED ON YOUR OATH TO
19 MAKE YOUR DECISION ON. YOU TOOK AN OATH TO MAKE YOUR
20 DECISION BASED ON THE FACTS, BASED ON THE EVIDENCE, BASED ON
21 THE TESTIMONY. WE KNOW THAT YOU WILL DO THAT.

22 LET'S JUST GET RIGHT TO IT WITH MR. CRANE'S BIG FINISH
23 ABOUT WHAT THE GOVERNMENT HAS DONE. YOU SHOULD HAVE IT DOWN
24 IN YOUR MIND ABOUT IF ANYONE WAS THREATENED BECAUSE THAT'S
25 NOT WHAT THE TESTIMONY WAS. AND YOU KNOW WHAT, LADIES AND

1 GENTLEMEN, IF YOU DON'T LIKE SOME OF THE METHODS, IF YOU
2 DIDN'T LIKE SOMEONE INVESTIGATING A CRIME SAYING TO SOMEONE
3 WHO IS LYING, "YOU TELL ME THE TRUTH BECAUSE IF I CATCH YOU
4 LYING, YOU'RE IN TROUBLE." IF YOU DON'T LIKE THAT, I'M
5 SORRY; BUT, SEE, THIS IS THE REAL WORLD AND THE TRUTH HIDES
6 IN SOME NASTY PLACES, YOU KNOW IT. AND WHEN YOU START
7 DIGGING IN THE DIRT IN SOME NASTY PLACES, YOU'RE NOT GOING TO
8 LIKE SOME OF THE THINGS THAT YOU'RE GOING TO FIND, BUT YOU
9 CAN ALWAYS WASH IT OFF. SO IF YOU DON'T LIKE SOME OF THE
10 METHODS, DON'T TAKE IT OUT ON THE CASE.

11 AND LET'S TALK ABOUT THIS "HEAT IS ON THING." I'M GLAD
12 I SAID IT.

13 YOU KNOW, PATRICIA GERMAN'S TESTIMONY REMINDS ME OF A
14 COUNTRY SONG, AND IF SOME OF YOU DON'T LIKE COUNTRY MUSIC,
15 YOU WILL JUST HAVE TO FORGIVE ME. THE WORDS ARE SOMETHING
16 LIKE, "THAT'S MY STORY, AND I'M STICKING TO IT. AND
17 THROUGHOUT THE SONG THE MAN IS SINGING ABOUT HOW HE GOT
18 CAUGHT DOING THIS AND THAT, AND HIS WOMAN IS GETTING MAD AT
19 HIM, AND HIS LIES GET MORE AND MORE RIDICULOUS; AND HE SAYS,
20 "THAT'S MY STORY, AND I'M STICKING TO IT." THAT'S HOW SOME
21 PEOPLE REACT WHEN THEY'RE CAUGHT IN A LIE NO MATTER HOW
22 RIDICULOUS IT IS. YOU KNOW THIS. IF ANY OF YOU HAVE KIDS,
23 YOU KNOW IT. IF ANY OF YOU HAVE PEOPLE THAT YOU WORK WITH,
24 YOU KNOW THAT THIS HAPPENS. SOME PEOPLE, WHEN THEY'RE CAUGHT
25 IN A LIE, "I DIDN'T DO IT." AND I SUBMIT TO YOU THAT'S HOW

1 PATRICIA GERMAN IS REACTING. IMAGINE THE POSITION THAT SHE'S
2 IN. I DON'T THINK ANYBODY WOULD WANT TO BE IN THE POSITION
3 SHE'S IN. SHE'S BEEN BACK THERE WITH STANLEY TODD'S MOM
4 DURING THE WHOLE TRIAL. SHE KNOWS THAT THERE'S TESTIMONY
5 THAT THESE THREE PEOPLE WERE IN HER APARTMENT. SHE DOESN'T
6 WANT ANYTHING TO HAPPEN TO HIM. SHE DOESN'T WANT TO
7 DISPLEASE HIS MOM. NO ONE WOULD WANT TO BE IN THAT POSITION.
8 "THAT'S MY STORY, AND I'M STICKING TO IT."

9 NOW OTHER PEOPLE, WHEN YOU TELL THEM A LIE -- WHEN YOU
10 CATCH THEM LYING, THEY COME CLEAN. EVERYONE DOESN'T REACT
11 THE SAME WAY. THIS IS COMMON SENSE. YOU KNOW THE MOST
12 IMPORTANT THING ABOUT AUSTIN PERRY IS THAT HE DID GET CAUGHT.
13 HE IS IN THE ROOM WITH DOUG KELLY, AND HE SAYS, "I DON'T KNOW
14 ANYTHING ABOUT IT. I KNOW NOTHING ABOUT IT. I WAS WITH MY
15 GIRLFRIEND." THAT WAS A LIE. AND WHAT DID DOUG KELLY DO?
16 HE MADE HIM SIT THERE AND HE WENT AND CHECKED OUT HIS STORY,
17 AND FOUND OUT THAT HE WAS LYING; COMES BACK AND SAYS, "YOU'RE
18 LYING. YOUR STORY DOESN'T CHECK OUT." WHAT DID HE DO THEN?
19 ALL RIGHT, THEN HE TOLD WHAT HE KNEW ABOUT THE ROBBERY. BUT
20 WHAT DID HE LEARN FROM THAT, LADIES AND GENTLEMEN? WHAT DID
21 AUSTIN PERRY LEARN FROM THAT? AND I'M GOING TO SAY THIS SO
22 MANY TIMES YOU'RE GOING TO GET SICK OF IT. HE LEARNED FROM
23 THAT POINT ON THAT EVERYTHING HE SAID, DOUG KELLY WAS GOING
24 TO CHECK OUT. HE KNEW HE COULD NOT GET AWAY WITH LYING TO
25 DOUG KELLY. HE KNEW HE COULD NOT GET AWAY WITH IT. HE TRIED

1 IT. IT DIDN'T WORK. AND HE KNEW THAT IMMEDIATELY DOUG KELLY
2 WAS GOING TO CHECK OUT WHAT HE KNOWS.

3 NOW LET'S LOOK AT THE LITTLE CONNECTION THERE. DOUG
4 KELLY COMES BACK IN. WHAT HAPPENED? THIS IS WHAT HAPPENED.
5 WHO WAS THE OTHER GUY? STAN. WHAT DO YOU KNOW ABOUT HIM.
6 STAN, THAT'S ALL I KNOW. AUSTIN PERRY TOOK THE STAND, AND HE
7 SAID, "THAT'S STAN. THAT'S THE GUY WITH THE YELLOW BANDANNA
8 AND THE HOODED SWEATSHIRT WITH THE RIFLE. THAT'S STAN." NOW
9 HE KNEW DOUG KELLY WAS GOING TO CHECK IT OUT. AND WHAT DO WE
10 HAVE, LADIES AND GENTLEMEN? OH, HOW INCONVENIENT, WE HAVE
11 STANLEY LOIS BUTLER'S FINGERPRINT ON THE INSIDE, NOT OF THIS
12 BAG, BUT OF THE BAG THAT LINDA MICHAELove TESTIFIED WAS
13 SEALED UP WITH MONEY IN IT. HIS RIGHT INDEX -- HIS RIGHT
14 MIDDLE FINGER, AND HIS LEFT INDEX FINGER RIGHT INSIDE THE
15 TEAR. AUSTIN PERRY IS TELLING YOU THE TRUTH BECAUSE HE KNEW
16 HE WAS GOING TO GET CAUGHT. HE KNEW THAT EVERYTHING HE TOLD
17 DOUG KELLY, DOUG KELLY WAS GOING TO CHECK OUT. NOW THE
18 DEFENSE WANTS TO SAY, "HEY, WHAT ABOUT THE HAIR SAMPLES?
19 WHAT ABOUT THE D.N.A.? WHAT ABOUT THIS? WHAT ABOUT THAT?
20 THIS IS REAL LIFE. LINDA MICHAELove'S TEARS UP HERE, THIS
21 IS REAL LIFE. THIS GOES ON IN GREENVILLE COUNTY. THIS IS
22 NOT L.A. THIS IS NOT MURDER-ONE, OR PERRY MASON WHERE ALL OF
23 A SUDDEN SOME KIND OF EVIDENCE MATERIALIZES. THERE IS NO
24 SCRIPT, EXCEPT FOR THE SCRIPT LAID DOWN BY SHANNON TODD WHEN
25 HE WAS TALKING WITH AUSTIN ABOUT THE ROBBERY. THAT'S THE

1 SCRIPT. "LET'S DO FUDDS. IT'S EASY. I KNOW HOW WE CAN GET
2 IN. THERE'S A BUZZER AT THE BACK DOOR. YOU RING IT." THEY
3 RANG IT. THEY GOT IN. "IT'S EASY." THEY GOT AWAY. THAT'S
4 THE SCRIPT.

5 AND, YOU KNOW, THE DEFENSE POINTED OUT SOMETHING THAT I
6 APPRECIATE. MR. HUGHES TESTIFIED THAT HE TOOK EVERY SINGLE
7 PIECE OF THESE CHECKS AND TREATED THEM WITH SOMETHING, I
8 BELIEVE HE CALLED NINHYDRON. NINHYDRON. AND JACKIE KELLET,
9 WHO I SUBMIT TO YOU COULD NOT BE ANY MORE CREDIBLE AS AN
10 EXPERT -- SHE HAS BEEN DOING THIS FOR YEARS -- TESTIFIED THAT
11 IF YOU CAN'T GET A PRINT WITH NINHYDRON, THEN THERE'S
12 PROBABLY NOT ONE THERE. SOMEBODY TORE THESE CHECKS UP
13 OBVIOUSLY. SOMEBODY TOUCHED THEM OBVIOUSLY. NOW WHAT DOES
14 THAT TELL YOU? SEE, THE DEFENSE IS HOPING THAT YOU GOOD
15 PEOPLE WILL IGNORE, NUMBER ONE, YOUR OATH, AND IGNORE, NUMBER
16 TWO, YOUR COMMON SENSE. WHAT DOES IT TELL YOU? THAT EVERY
17 TIME SOME ITEM IS TOUCHED, THERE IS NOT NECESSARILY A
18 FINGERPRINT. AND BIG DEAL IF SHANNON TODD'S FINGERPRINTS HAD
19 BEEN FOUND INSIDE FUDDRUCKERS. HE WAS FIRED THE NIGHT
20 BEFORE. LOOK OVER HERE AT THE COP. LOOK WHAT THEY'RE DOING.
21 LOOK WHAT THEY'RE NOT DOING. IT'S THE COPS' FAULT THAT WE'RE
22 HERE. IT'S THE PROSECUTOR'S FAULT THAT WE'RE HERE. IT'S THE
23 FAULT OF THOSE ANIMALS THAT WENT INTO FUDDRUCKERS AND TOOK A
24 RIFLE. YOU KNOW, LINDA MICHAELove DIDN'T KNOW WHETHER OR NOT
25 SHE WAS GOING TO GO HOME THAT NIGHT. SHE WAS POKED MORE THAN

1 ONCE WITH A RIFLE IN THE BACK, IN THE HEAD. IN THE BACK, AND
2 IN THE HEAD WITH A RIFLE. AND THOSE YOUNG TEEN-AGED BOYS
3 THAT TESTIFIED, YOU KNOW, MR. WAITER THOUGHT EVERYBODY WAS
4 KIND OF POLITE. BUT THEN WHEN I QUESTIONED HIM, "WERE YOU
5 FREE TO LEAVE?" "NO, MA'AM." "DID YOU FEEL LIKE YOU WERE
6 CONFINED?" "YES, MA'AM." "WHY DID YOU DO WHAT YOU WERE
7 TOLD?" THEY WERE ALL AFRAID. NOW THAT IS REAL LIFE. AND
8 LET'S NOT IGNORE THAT. WE'RE HERE BECAUSE STANLEY BUTLER AND
9 SHANNON TODD COMMITTED THAT ARMED ROBBERY. AND THEY'RE
10 SMARTER THAN AUSTIN PERRY. THEY WERE ALL COVERED UP. DON'T
11 GIVE THE THIEVES CREDIT FOR BEING SMART, SAY, WELL, THEY'E
12 SMART. WE'RE GOING TO LET THEM GET AWAY WITH IT, THEY DIDN'T
13 SHOW THEIR FACES; THEREFORE, BECAUSE THEY DIDN'T SHOW THEIR
14 FACES, BECAUSE THEY WANT TO COVER UP, WE'RE GOING TO LET THEM
15 GO.

16 AUSTIN PERRY TOLD YOU THE TRUTH. HE KNEW THAT
17 EVERYTHING HE SAID DOUG KELLY WAS GOING TO CHECK OUT. DID
18 YOU HEAR HIM ON THE STAND SAY, "I AM SURE, MR. CRANE, IT WAS
19 MARCH THE 7TH. THAT'S WHEN I WAS AT WORK. THAT'S WHEN WE
20 TALKED ABOUT IT. I KNOW HOW WE TALKED ABOUT IT. WE SAT
21 DOWN. I WROTE IT DOWN. THIS IS HOW IT WENT." HE WASN'T
22 SURE OF THE DATE. HE WASN'T SURE. AND IF HE IS GOING TO
23 LIE, WHY NOT MAKE IT A GOOD LIE? WHY NOT REALLY GIVE YOU
24 PEOPLE SOMETHING? WHY DIDN'T HE DO IT LIKE THAT? WHEN HE
25 WAS TALKING TO DOUG KELLY, "WHO IS STAN?" "STAN IS ALL I

1 KNOW. MAYBE ROOSEVELT HEIGHTS. WE WENT OVER THERE SOMEWHERE
2 ABOUT 90." GUESS WHAT, THAT CHECKED OUT. STANLEY BUTLER
3 LIVES IN ROOSEVELT HEIGHTS AT APARTMENT 91. HIS FINGERPRINTS
4 WERE ON THE INSIDE OF THAT BAG WHERE THE MONEY WAS. YOU KNOW
5 WHAT, IT DOESN'T MATTER HOW LONG AFTER THE ROBBERY IT WAS
6 FOUND. HE CAN'T GET RID OF THIS. HE WANTS TO. AUSTIN PERRY
7 CHECKED OUT. DID YOU HEAR ANY TESTIMONY ABOUT -- I MEAN,
8 LET'S ADMIT TO LIE ABOUT SOMEBODY, TO GET ON THE STAND AND
9 TAKE AN OATH TO TELL THE TRUTH IN FRONT OF YOU PEOPLE, IN
10 FRONT OF THE JUDGE, AND TO SAY SHANNON TODD DID IT WHEN HE
11 REALLY DIDN'T, NOW YOU'VE GOT TO ADMIT, YOU HAVE GOT TO
12 REALLY HAVE A REASON TO DO SOMETHING LIKE THAT. THERE'S NO
13 ANIMOSITY. THERE'S NOTHING BAD BETWEEN SHANNON TODD AND
14 AUSTIN PERRY. HE ASKED HIM FOR RIDES HOME. HE TOOK HIM HOME
15 FROM TIME TO TIME. THEY'RE CO-WORKERS. AND YOU KNOW WHAT,
16 SHANNON TODD IS SO SMART -- HE'S YOUNG, BUT HE'S SMART. HE'S
17 SMART ENOUGH TO CONVINCE PATRICIA GERMAN THAT HE'S NOT 16.
18 THAT'S HOW SMART HE IS. HE KNOWS AUSTIN PERRY IS
19 IMPRESSIONABLE. HE KNOWS AUSTIN PERRY IS STUPID. HE KNOWS
20 AUSTIN PERRY WILL DRIVE THEM WHEREVER THEY WANT TO GO BECAUSE
21 AUSTIN PERRY WANTS TO BE, YOU KNOW, COOL. HE KNEW THAT.
22 THAT'S WHY HE PICKED AUSTIN PERRY, GIVE HIM A RIDE A FEW
23 TIMES, AND SEE WHAT'S GOING ON.

24 AND YOU KNOW WHAT'S SO FUNNY, I ASKED HIM, "HOW DO YOU
25 KNOW THAT IT WAS SHANNON TODD THAT WAS PAGING?" "HE PUT HIS

1 CODE IN, 357." HOW ELSE WOULD HE KNOW THAT? HE PREYED ON
2 AUSTIN PERRY. AUSTIN PERRY IS PAYING FOR IT. BIG DEAL, HE
3 HASN'T BEEN IN JAIL YET. WHAT DID HE TELL YOU YESTERDAY? I
4 ASKED HIM, "DO YOU THINK YOU'RE GOING TO PRISON?" HE SAID,
5 "YES, MA'AM, I PROBABLY AM." THIS IS STILL HANGING OVER HIM.
6 AND YOU KNOW WHAT, IF YOU'VE GOT 700 POUNDS ON YOUR
7 SHOULDERS, AND IT'S MORE THAN YOU CAN CARRY, WHAT DOES IT
8 MATTER IF YOU ADD ANOTHER 100 POUNDS? DO YOU THINK THAT
9 YOUNG BOY THAT TESTIFIED YESTERDAY CARES WHETHER OR NOT HE'S
10 GOT FIVE OR ONE CHARGE? HE'S IN DEEP, AND HE KNOWS IT. HE
11 TOOK THE STAND AND TOLD YOU HE WAS GUILTY OF ARMED ROBBERY.
12 DID HE FUDGE? NO. MR. CRANE WOULD PRESENT HIM AS
13 CALCULATING, COLD. DID HE FLUSH? DID HE BLUSH? YES, HE
14 DID. AND DEMEANOR IS SO IMPORTANT. SEE, THIS IS SOMETHING
15 THAT YOU AS JURORS THAT THE DEFENSE WANTS YOU TO IGNORE.
16 EVERY SINGLE DAY OF YOUR LIVES SOMEBODY THAT YOU MAY NOT KNOW
17 OR MAY JUST KNOW A LITTLE BIT, THEY ARE GOING TO TELL YOU
18 SOMETHING. YOU KNOW, IT MIGHT HAPPEN AT WORK. IT MIGHT
19 HAPPEN AT HOME. IT MIGHT HAPPEN WITH A NEIGHBOR. YOU
20 ALWAYS, EVERY SINGLE DAY OF YOUR LIFE HAVE TO MAKE DECISIONS
21 ABOUT WHETHER OR NOT SOMEBODY IS TELLING THE TRUTH. HOW DO
22 YOU DO THAT? WELL, ONE WAY IS, IS THERE ANYTHING ELSE THAT
23 CHECKS OUT? WE KNOW THAT STANLEY BUTLER'S FINGERPRINTS ON
24 THE INSIDE OF THIS BAG CHECK OUT. DEMEANOR IS VERY
25 IMPORTANT. I WOULD SUBMIT TO YOU THAT AUSTIN PERRY WAS NOT

1 DEFENSIVE. HE WAS CAUGHT. HE IS WHAT HE IS. HE HELPED WITH
2 THIS ROBBERY, AND HE KNOWS HE DID. AND WHY NOT DO IT AGAIN,
3 YOU KNOW? HE TOOK SOME MONEY OUT OF THE SAFE, AND WHAT
4 HAPPENED TO HIM AS A RESULT OF THAT? HE TOOK MONEY FROM
5 FUDDRUCKERS, AND THEN WHAT HAPPENED TO HIM AS A RESULT OF
6 THAT? HE KEPT HIS JOB. THEY JUST TOOK THE MONEY BACK OUT OF
7 HIS PAYCHECK. WHY NOT DO IT AGAIN? AND, SEE, I'M IN-THE
8 CAR. I'M NOT AS GUILTY. I'M NOT POKING THAT GUN IN
9 ANYBODY'S BACK. I'M NOT THREATENING TO KILL ANYBODY. ALL
10 THAT'S GOING TO HAPPEN TO HIM, YEAH, IF THEY FIND OUT I'LL
11 HAVE TO PAY SOME MORE MONEY BACK. NOW HE KNOWS THAT IT ISN'T
12 JUST FUDDRUCKERS HE MESSED WITH. NOW HE KNOWS WHAT WENT ON
13 INSIDE THAT STORE.

14 AND HE DID HAVE A CHOICE. THE DEFENSE BROUGHT OUT THAT
15 HE IS REPRESENTED BY A LAWYER. AND WE ALL KNOW HOW LAWYERS
16 ARE. YET, HE STOOD UP THERE AND TOLD YOU HE HAD NO DEALS.
17 HE IS NAKED ON THAT STAND. AND I ASKED HIM, "WHAT DOES THE
18 OUTCOME OF THIS TRIAL HAVE TO DO WITH YOU?" "NOTHING." DID
19 HE SAY, "WELL, IF THEY'RE FOUND GUILTY, THEN I'LL GET AWAY.
20 IF THEY'RE FOUND NOT GUILTY, THEN I'M GOING TO HAVE TO GO."
21 IT DOESN'T HAVE ANYTHING TO DO WITH IT. THAT'S WHAT'S IN HIS
22 MIND AS HE'S TESTIFYING. NO MATTER WHAT THE DEFENSE WANTS TO
23 SAY, I SAID, OR ANYBODY ELSE SAID, YOU, AS JURORS, USING YOUR
24 GOOD GOD-GIVEN COMMON SENSE, WHAT WAS IN HIS MIND? HE SAT
25 THERE AND IN HIS MIND, HE DOESN'T KNOW WHAT'S GOING TO HAPPEN

1 TO HIM NOW. THE POINT IS, HE'S TELLING YOU THE TRUTH. HE'S
2 GUILTY, AND HE DID IT. SHANNON TODD IS GUILTY. HE'S THE ONE
3 IN THE WELDER'S MASK. HE'S THE ONE THAT DIDN'T TALK. HE'S
4 THE ONE PULLING PEOPLE INTO THE COOLER. STANLEY BUTLER IS
5 THE GUY WITH THE BANDANNA, THE HOODED SWEATSHIRT.

6 YOU KNOW, I ASKED AUSTIN PERRY ON THE STAND, THIS CASE
7 HAS BEEN GOING ON SINCE MARCH, WHY DIDN'T HE TAKE THE STAND
8 IF HE'S GOING TO LIE, AND SAY, "I SWEAR SHANNON TODD WAS
9 WEARING A MICHIGAN JACKET." I ASKED HIM THAT, AND WHAT DID
10 HE SAY? "I DON'T REALLY KNOW." WHY DIDN'T HE -- IF HE'S
11 GOING TO LIE TO YOU, WHY DIDN'T HE REALLY LIE, REALLY JUICE
12 IT UP? "I DON'T REALLY KNOW WHAT HE WAS WEARING. I THINK
13 STANLEY BUTLER WAS WEARING A HOODED SWEATSHIRT. I DON'T
14 KNOW, I SAW A BANDANNA, BUT I DON'T KNOW WHAT COLOR IT IS."
15 HE KNOWS THESE THINGS. HE KNEW THAT EVERYTHING HE SAID WAS
16 GOING TO BE CHECKED OUT, HE KNEW WHAT. HE LEARNED THAT.
17 HE'S NOT SMART, BUT HE LEARNED THAT LEASON REAL QUICK, DIDN'T
18 HE? HE LEARNED IT, AND HE'S TELLING YOU THE TRUTH NOW.

19 (PAUSE, VIEWING DOCUMENT.) I'M SORRY THAT I'M STOPPING
20 IN THE MIDDLE OF THIS, BUT I DON'T WANT TO MISS ANYTHING.
21 AND I KNOW YOU'RE PROBABLY TIRED OF LISTENING TO ME, BUT I
22 WON'T KEEP YOU ANYMORE BECAUSE THIS IS IMPORNTANT TO THE
23 STATE, TOO. AND IT'S IMPORTANT TO THE PEOPLE THAT WERE IN
24 THAT STORE. IT'S IMPORTANT TO THEIR FAMILIES. THIS ISN'T
25 JUST ABOUT THE LAW, DEFENDANTS, AND RIGHTS. THERE WERE FOUR

1 PEOPLE IN THAT STORE THAT DIDN'T EVEN KNOW WHAT WAS GOING TO
2 HAPPEN TO THEM THAT NIGHT, AND WE'RE NOT HERE BECAUSE OF
3 THEM. WE'RE HERE BECAUSE THESE GUYS TRIED TO PLAY IT SMART,
4 COVER UP. THEY'RE SO SMART, AREN'T THEY? WELL, STANLEY
5 BUTLER MESSED UP. WE KNOW THAT.

6 AND BY THE WAY, WHERE DID THAT LAST NAME COME FROM?
7 STANLEY BUTLER, WHERE DID THE NAME "BUTLER" COME FROM?
8 SHANNON TODD'S GIRLFRIEND. NOW THERE'S NO CONNECTION
9 BETWEEN BUTLER AND TODD? SHE DENIED EVEN MAKING THE PHONE
10 CALL AFTER SHE HAD TOLD THE OFFICER, "YEAH, THAT'S RIGHT, I'M
11 GOING TO CALL. I'M GOING TO FIND OUT. I'M GOING TO FIND OUT
12 WHO STAN IS." SHE CALLS BACK LATER THE SAME DAY. OF COURSE,
13 ON THE STAND SHE SAYS SHE DIDN'T. IMAGINE THE PRESSURE SHE
14 MUST BE UNDER. THAT'S HER STORY, AND SHE'S STICKING TO IT.

15 LADIES AND GENTLEMEN, THE FUSS THAT THE DEFENDANTS HAVE
16 MADE OVER THE LACK OF EVIDENCE, IT REMINDS ME OF SOMETHING
17 THAT HAPPENED AT MY HOUSE NOT TOO LONG AGO. MY MOM WAS
18 MAKING A CAKE, AND IT REALLY SMELLED GOOD. IT WAS A POUND
19 CAKE. AND SHE WENT OUT OF THE ROOM TO DO SOMETHING, AND MY
20 DAD COMES BACK DOWN AND TAKES OUT A PIECE. WELL, SHE LAID IN
21 TO HIM, "YAW, YAW, YAW, YAW." "I'M MAKING A CAKE. IT'S NOT
22 FINISHED. IT DOESN'T HAVE ANY ICING ON IT." AND HE SAID,
23 "IT'S JUST AS GOOD WITHOUT THE ICING." HEY, WOULDN'T IT BE
24 GREAT IF WE HAD VIDEO CAMERAS, AND WE HAD 700 POLICE OFFICERS
25 THAT COULD DO NOTHING 24 HOURS A DAY BUT RUN AROUND AND TRY

1 TO FIND THE THINGS THAT THESE TWO PEOPLE DID IN FUDDRUCKERS?
2 WOULDN'T THAT BE GREAT? THAT'S ICING. AUSTIN PERRY, THESE
3 FINGERPRINTS, PATRICIA GERMAN GIVING UP THE NAME OF STANLEY
4 BUTLER, THAT'S THE CAKE.

5 WHEN YOU WERE GIVEN YOUR BADGES AS JURORS, YOU WERE
6 GIVEN MORE THAN JUST A PLACE ON THIS JURY. LADIES AND
7 GENTLEMEN, YOU WERE HANDED THE SWORD OF JUSTICE, AND IT'S A
8 TWO-EDGED SWORD WITH ONE EDGE, YOU, AS THE JURORS, BRING IT
9 DOWN AND CUT AWAY THE TIES THAT BIND THE INNOCENT PEOPLE TO
10 THIS COURT, AND THAT'S A GOOD THING. SHANNON TODD IS NOT
11 INNOCENT. SHANNON TODD PUT ON THAT WELDER'S MASK. SHANNON
12 TODD PLANNED THE ROBBERY. SHANNON TODD IS GUILTY. STANLEY
13 BUTLER IS GUILTY. AND ON BEHALF OF THE PEOPLE OF GREENVILLE
14 COUNTY, I ASK YOU TO BRING THAT SWORD DOWN WITH THE OTHER
15 EDGE, AND FIND THEM GUILTY AS THEY ARE CHARGED. THANK YOU
16 FOR YOUR TIME.

17 THE COURT: NOW THERE'S NO ONE IN OR OUT OF THE
18 COURTROOM DURING THE CHARGE; SO IF ANYONE NEEDS TO LEAVE, NOW
19 IS THE TIME. (PAUSE.)

20 NOW, LADIES AND GENTLEMEN OF THE JURY, I'M THE JUDGE OF
21 THE LAW IN THIS CASE, BUT YOU ARE THE JUDGES OF THE FACTS.
22 THE CONSTITUTION OF OUR STATE DOES NOT ALLOW ME TO CHARGE YOU
23 ON THE FACTS OF THIS CASE, OR TO DISCUSS THE FACTS WITH YOU,
24 OR IN ANY WAY OR MANNER LET YOU KNOW WHAT MY PERSONAL
25 FEELINGS, IF ANY, ARE ABOUT THIS CASE. THAT IS BECAUSE YOU,

1 AND YOU ALONE, ARE THE JUDGE OF THE FACTS. THEREFORE, IF
2 DURING THE COURSE OF THIS TRIAL, OR IF DURING THE COURSE OF
3 MY CHARGE YOU HAVE A FEELING OR YOU HAVE BEEN LEFT WITH THE
4 IMPRESSION THAT I HAVE A PERSONAL FEELING ABOUT THIS CASE ONE
5 WAY OR ANOTHER, THEN YOU DISREGARD THAT FEELING OR THAT
6 IMPRESSION. YOU, AND YOU ALONE, ARE THE JUDGES OF THE FACTS.

7 NOW IT'S YOUR DUTY, AND YOUR DUTY ALONE, TO WEIGH THE
8 TESTIMONY AND EVIDENCE PRESENTED IN THIS CASE AND TO PASS
9 UPON THE CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES
10 YOU HEARD TESTIFY. IN THIS CONNECTION YOU HAVE THE RIGHT TO
11 BELIEVE ALL THAT A WITNESS TOLD YOU, OR YOU CAN DISBELIEVE
12 ALL A WITNESS TOLD YOU. YOU CAN BELIEVE A PART OF WHAT A
13 WITNESS TOLD YOU, AND DISBELIEVE A PART OF WHAT A WITNESS
14 TOLD YOU. YOU CAN BELIEVE ONE WITNESS AS AGAINST SEVERAL, OR
15 YOU CAN BELIEVE SEVERAL AS AGAINST ONE. YOU, ALSO, HAVE THE
16 RIGHT TO TAKE INTO CONSIDERATION ANY BIAS, OR PREJUDICE, OR
17 INTEREST YOU FEEL A WITNESS IN THE CASE MIGHT HAVE.

18 NOW I'VE TOLD YOU I'M THE JUDGE OF THE LAW, AND IT IS MY
19 DUTY TO CHARGE YOU THE LAW WHICH APPLIES TO THE FACTS IN THE
20 CASE. IT IS NOT A QUESTION OF WHAT YOU FEEL THE LAW MIGHT
21 BE, OR WHAT IT SHOULD BE. IT IS NOT NECESSARILY WHAT THE
22 LAWYERS MAY HAVE TOLD YOU. IT IS BECAUSE UNDER YOUR OATH,
23 YOU ARE REQUIRED TO TAKE THE LAW AS I GIVE IT TO YOU, APPLY
24 THAT LAW TO THE FACTS AS YOU DETERMINE THOSE FACTS TO BE AND
25 TO WRITE YOUR VERDICT ACCORDINGLY. IT'S, ALSO, MY DUTY TO

1 SEE THAT THIS TRIAL IS CONDUCTED ACCORDING TO THE RULES OF
2 COURT, AS WELL AS THE RULES OF EVIDENCE WHICH APPLY TO THE
3 ADMISSIBILITY OF TESTIMONY AND EVIDENCE AS I UNDERSTAND THOSE
4 RULES TO BE, AND, THEREFORE, YOU'RE NOT TO CONSIDER IN ANY
5 WAY OR MANNER TESTIMONY OR EVIDENCE WHICH WAS RULED OUT BY ME
6 AS BEING NOT ADMISSIBLE.

7 NOW IN THIS CASE, AS IN ALL CRIMINAL CASES, THESE
8 DEFENDANTS COME INTO THIS COURTROOM PRESUMED TO BE INNOCENT.
9 AND THIS PRESUMPTION CONTINES AND CARRIES THROUGH THE ENTIRE
10 TRIAL UNTIL AND UNLESS IT IS REMOVED BY EVIDENCE WHICH
11 SATISFIES YOU OF THEIR GUILT BEYOND A REASONABLE DOUBT.

12 THE BURDEN IS ON THE STATE IN THIS CASE TO PROVE THESE
13 DEFENDANTS GUILTY, AND TO PROVE EACH AND EVERY ELEMENT OF THE
14 OFFENSES WITH WHICH THEY ARE CHARGED BEYOND A REASONABLE
15 DOUBT.

16 LADIES AND GENTLEMEN, OUR LAW DOES NOT COMPEL A
17 DEFENDANT IN A CRIMINAL CASE TO TAKE THE STAND AND TESTIFY.
18 AND NO PRESUMPTION OF GUILT MAY BE RAISED AND NO INFERENCES
19 OF ANY KIND MAY BE DRAWN FROM THESE DEFENDANTS' DECISION NOT
20 TO TESTIFY. THE LAW NEVER IMPOSES UPON A DEFENDANT IN A
21 CRIMINAL CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES, OR
22 PRODUCING ANY EVIDENCE, OR OF TESTIFYING; THEREFORE, THE
23 DECISION BY THESE DEFENDANTS NOT TO TAKE THE STAND AND
24 TESTIFY IN THEIR BEHALF CANNOT BE TAKEN, HELD, DISCUSSED, OR
25 CONSIDERED AGAINST THEM IN ANY MANNER WHATSOEVER.

1 LADIES AND GENTLEMEN, A PRINCIPAL IN A CRIME IS ONE WHO
2 EITHER IN PERSON PERPETRATES THAT CRIME, OR WHO, BEING
3 PRESENT, AIDS, ABETS, AND ASSISTS IN THE COMMISSION OF THAT
4 CRIME OR CRIMES. WHEN ONE DOES AN ACT IN THE PRESENCE OF AND
5 WITH THE ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. IN
6 OTHER WORDS, THE HAND OF ONE IS THE HAND OF ALL. AND WHERE
7 TWO OR MORE ACTING WITH A COMMON DESIGN OR INTENT ARE PRESENT
8 AT THE COMMISSION OF A CRIME, IT MATTERS NOT BY WHOSE
9 IMMEDIATE AGENCY THE CRIME IS COMMITTED. AS I HAVE SAID, ALL
10 ARE GUILTY OR WOULD BE GUILTY: INTENT, HOWEVER, IS A
11 NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON DESIGN
12 OR INTENT TO COMMIT THE CRIME OR CRIMES, AND THE CRIME OR
13 CRIMES MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE
14 PERSON AIDING AND ABETING BY SOME OVERT ACT.

15 NOW PRESENCE AT THE COMMISSION OF A CRIME MEANS TO BE
16 SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE
17 COMMISSION THEREOF. STATED SOMEWHAT DIFFERENTLY, LADIES AND
18 GENTLEMEN, IF SEVERAL PERSONS IN THE PURSUANCE OF A COMMON
19 DESIGN TO COMMIT AN UNLAWFUL ACT SET OUT TOGETHER AND EACH
20 TAKES A PART AGREED UPON OR ASSIGNED TO HIM, SOME TO COMMIT
21 THE ACT, OTHERS TO WATCH AT PROPER DISTANCES AND STATIONS TO
22 PREVENT INTERFERENCE OR SURPRISE, OR TO ENCOURAGE THE
23 COMMISSION OF THE CRIME, OR TO FAVOR, IF NECESSARY, THE
24 ESCAPE OF THOSE IMMEDIATELY ENGAGED IN THE COMMISSION OF THE
25 CRIME, UNDER ANY OF THESE CIRCUMSTANCES IF THE CRIME IS

1 COMMITTED, THE ACT OF ONE IS THE ACT OF ALL, AND ALL WOULD BE
2 GUILTY.

3 NOW THESE DEFENDANTS ARE FIRST CHARGED WITH ARMED
4 ROBBERY. NOW IN ORDER TO HELP YOU BETTER UNDERSTAND THE
5 ELEMENTS OF THE OFFENSE, IT IS NECESSARY FOR ME TO DEFINE
6 LARCENY FOR YOU AND DEFINE ROBBERY FOR YOU. NOW LARCENY IS
7 DEFINED AS THE TAKING AND CARRYING AWAY BY ANY PERSON OF THE
8 GOODS OR THINGS PERSONAL OF ANOTHER WITH THE FELONIOUS; THAT
9 IS, THE UNLAWFUL INTENT TO DEPRIVE THAT OWNER OF HIS OR HER
10 PROPERTY AND TO CONVERT IT TO THE TAKER'S OWN USE.

11 ROBBERY NOW THEN IS THE FELONIOUS OR UNLAWFUL TAKING OF
12 THE MONEY OR PERSONAL PROPERTY OF ANOTHER OF ANY VALUE FROM
13 THE PERSON OF ANOTHER OR IN THE PRESENCE OF THAT PERSON BY
14 USING VIOLENCE, OR BY PUTTING THAT PERSON IN FEAR. NOW
15 ROBBERY INCLUDES ALL OF THE ELEMENTS THAT ARE NECESSARY TO
16 CONSTITUTE LARCENY AS I HAVE DEFINED LARCENY TO YOU, BUT THE
17 AGGRAVATING CIRCUMSTANCES NECESSARY TO CONSTITUTE ROBBERY AS
18 DISTINGUISHED FROM LARCENY ARE THESE: FIRST OF ALL, THE
19 TAKING MUST NOT ONLY BE WITHOUT CONSENT, BUT IT MUST ALSO BE
20 ACCOMPLISHED WITH FORCE OR BY PUTTING A -- BY VIOLENCE OR BY
21 PUTTING THAT PERSON IN FEAR. AND, SECONDLY, THE PROPERTY
22 MUST BE TAKEN FROM THE PERSON OF ANOTHER, BUT IF IT IS TAKEN
23 IN HIS OR HER PRESENCE, THEN IT IS TAKEN CONSTRUCTIVELY FROM
24 THAT PERSON. IN OTHER WORDS, FOR THE PURPOSE OF ROBBERY, A
25 THING IS IN THE PRESENCE OF A PERSON IF IT BE WITHIN HIS OR

1 HER REACH, INSPECTION, OBSERVATION, OR CONTROL SO THAT HE OR
2 SHE COULD RETAIN POSSESSION OF IT IF NOT OVERCOME BY VIOLENCE
3 OR PREVENTED BY FEAR...

4 NOW LADIES AND GENTLEMEN, ROBBERY AS I HAVE DEFINED THAT
5 TO YOU WHILE ARMED WITH A DEADLY -- ARMED ROBBERY IS ROBBERY
6 AS I HAVE DEFINED THAT TO YOU WHILE ARMED WITH A DEADLY
7 WEAPON. NOW SECTION 16-11-330 OF OUR CODE OF LAWS PROVIDES
8 IN PART AS FOLLOWS: ANY PERSON CONVICTED OF THE CRIME OF
9 ROBBERY WHILE ARMED WITH A PISTOL, DIRK, SLINGSHOT, METAL
10 KNUCKLES, RAZOR, OR OTHER DEADLY WEAPON SHALL SUFFER
11 PUNISHMENT.

12 NOW I CHARGE YOU, LADIES AND GENTLEMEN, THAT ONE NEED
13 NOT BE ARMED AT THE PRECISE MOMENT THAT A VICTIM'S MONEY OR
14 PROPERTY IS TAKEN. IT IS SUFFICIENT THAT THE PERPETRATOR BE
15 ARMED AND THAT THE TAKING BE ACCOMPLISHED WITH VIOLENCE, OR
16 THAT THE VICTIM BE UNDER THE THREAT OF BEING HARMED AT THE
17 TIME THE MONEY OR PROPERTY IS TAKEN.

18 THESE DEFENDANTS ARE NEXT CHARGED WITH KIDNAPPING. NOW
19 SECTION 16-3-910 OF OUR CODE OF LAWS PROVIDES IN PART AS
20 FOLLOWS: WHOEVER SHALL UNLAWFULLY SEIZE, CONFINED, INVEIGLE,
21 DECOY, KIDNAP, ABDUCT, OR CARRY AWAY ANY OTHER PERSON BY ANY
22 MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW SHALL BE GUILTY OF
23 A FELONY. KIDNAPPING, LADIES AND GENTLEMEN, IS THE TAKING OR
24 CARRYING AWAY OF A PERSON FROM ONE PLACE TO ANOTHER BY
25 UNLAWFUL FORCE, OR BY FRAUD AND AGAINST THAT PERSON'S WILL.

1 YOU CAN SEE THERE ARE SEVERAL ELEMENTS OF THIS OFFENSE, EACH
2 OF WHICH THE STATE MUST PROVE BEYOND A REASONABLE DOUBT.
3 FIRST OF ALL, THE STATE MUST PROVE AN INTENT TO VIOLATE THE
4 LAW, IN THIS CASE TO KIDNAP.

5 NOW INTENT MEANS AN AIM, A PURPOSE, OR A GOAL. STATED.
6 DIFFERENTLY, IT IS THE STATE OF A PERSON'S MIND WHICH DIRECTS
7 HIS ACTION IN VIOLATING THE LAW. SECONDLY, THERE MUST BE A
8 TAKING OR A CARRYING AWAY OF THE PERSON FROM ONE PLACE TO
9 ANOTHER. IN THIS CONNECTION, THE PLACE FROM WHICH OR TO
10 WHICH A PERSON IS REMOVED IS NOT MATERIAL OR IMPORTANT. ANY
11 REMOVAL OF A PERSON AFTER HE OR SHE IS UNDER THE CONTROL OF
12 THE TAKER WITH THE REQUISITE INTENT TO KIDNAP IS SUFFICIENT
13 BECAUSE IT IS THE FACT OF REMOVAL AND NOT THE DISTANCE WHICH
14 CONSTITUTES KIDNAPPING. NEXT, OR THIRD, FORCE MUST HAVE BEEN
15 INVOLVED. BUT THIS DOESN'T NECESSARILY MEAN ACTUAL PHYSICAL
16 FORCE INJURING THE PERSON, BUT CAN BE THE -- CAN RESULT FROM
17 THE THREATENED USE OF FORCE BY PLACING THAT PERSON IN FEAR OF
18 HIS OR HER LIFE, OR HAVE SUSTAINING SERIOUS BODILY HARM.
19 AND, FOURTH, THERE MUST HAVE BEEN AN ABSENCE OF CONSENT BY
20 THE PERSON ALLEGEDLY KIDNAPPED; THAT IS, THE TAKING OR
21 CARRYING AWAY MUST BE AGAINST THE WILL OF THE PERSON
22 ALLEGEDLY KIDNAPPED BECAUSE IF THE PERSON TAKEN WHO IS
23 CAPABLE IN LAW OF CONSENTING GOES VOLUNTARILY AND WITHOUT
24 OBJECTION, THERE CAN BE NO KIDNAPPING. HOWEVER, LADIES AND
25 GENTLEMEN, I CHARGE YOU THAT A CONSENT OBTAINED BY THREATS OR

1 FEAR IS NOT A LEGAL CONSENT, AND A TAKING OR CARRYING AWAY
2 BASED ON ANY SUCH CONSENT WOULD CONSTITUTE KIDNAPPING. NOW
3 THE OFFENSE OF KIDNAPPING COMMENCES WHEN ONE IS WRONGLY AND
4 UNLAWFULLY DEPRIVED OF HIS OR HER FREEDOM, AND CONTINUES
5 UNTIL FREEDOM IS RESTORED.

6 THESE DEFENDANTS ARE, LASTLY, CHARGED WITH VIOLATION OF
7 SECTION 16-23-490, AND THIS SECTION OF THE CODE READS IN PART
8 AS FOLLOWS: IF A PERSON IS IN POSSESSION OF A FIREARM OR
9 VISIBLY DISPLAYS WHAT APPEARS TO BE A FIREARM DURING THE
10 COMMISSION OF A VIOLENT CRIME, AND IS CONVICTED OF COMMITTING
11 OR ATTEMPTING TO COMMIT A VIOLENT CRIME AS DEFINED IN SECTION
12 16-1-60, HE MUST BE IMPRISONED IN ADDITION TO THE PUNISHMENT
13 PROVIDED FOR THE PRINCIPAL CRIME. NOW UNDER THE STATUTE,
14 LADIES AND GENTLEMEN, I READ TO YOU "FIREARM" MEANS ANY
15 REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL OR IS DESIGNED TO
16 OR MAY READILY BE CONVERTED TO EXPEL A PROJECTILE. SO BEFORE
17 THESE DEFENDANTS CAN BE CONVICTED OF THIS OFFENSE, THESE
18 DEFENDANTS MUST HAVE BEEN FOUND GUILTY BY YOU IN THIS
19 INSTANCE OF ARMED ROBBERY AND/OR KIDNAPPING, AND THE STATE
20 MUST HAVE PROVED BEYOND A REASONABLE DOUBT THAT THESE
21 DEFENDANTS WERE IN POSSESSION OF OR DISPLAYED A FIREARM AS I
22 HAVE DEFINED THAT TERM TO YOU DURING THE COMMISSION OF A
23 CRIME OR CRIMES.

24 NOW THE DEFENDANT TODD IN THIS CASE PLEADS IN THIS CASE
25 AS A DEFENSE ALIBI. NOW THE DEFENSE OF ALIBI MEANS THAT THIS

1 DEFENDANT CLAIMS THAT HE WAS NOT THERE WHEN THESE CRIMES WERE
2 COMMITTED, BUT WAS SOMEWHERE ELSE, AND, HENCE, COULD NOT HAVE
3 COMMITTED THESE CRIMES. THE WORD "ALIBI" MEANS "ELSEWHERE."
4 BUT LADIES AND GENTLEMEN, I CHARGE YOU THIS IS NOT AN
5 AFFIRMATIVE DEFENSE AND THIS DEFENDANT DOES NOT HAVE THE
6 BURDEN OF PROVING IT. ON THE CONTRARY, THE STATE HAS THE
7 BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THIS
8 DEFENDANT; THAT IS, MR. TODD WAS PRESENT AT THE SCENE OF
9 THESE ALLEGED CRIMES, AND THAT HE ACTUALLY COMMITTED OR
10 PARTICIPATED IN THEM BECAUSE IN A CASE SUCH AS THIS, THE
11 PRESENCE OF THIS DEFENDANT AT THE PLACE OF THE CRIME OR
12 CRIMES AT THE TIME OF THEIR COMMISSION IS ESSENTIAL TO HIS
13 GUILT. AND IN SUCH A CASE THE STATE MUST PROVE THE PRESENCE
14 OF THIS DEFENDANT BEYOND A REASONABLE DOUBT, AND IF ON ALL OF
15 THE EVIDENCE IN THE CASE YOU HAVE A REASONABLE DOUBT THAT
16 THIS DEFENDANT WAS PRESENT IN PERSON AT THE TIME AND PLACE IN
17 QUESTION, THEN YOU WOULD RESOLVE THAT DOUBT IN HIS FAVOR AND
18 FIND HIM NOT GUILTY.

19 LADIES AND GENTLEMEN, IF FROM THE EVIDENCE IN THIS CASE
20 YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THESE
21 DEFENDANTS ARE GUILTY AS CHARGED IN THESE INDICTMENTS, THEN
22 IT WOULD BE YOUR DUTY TO ACQUIT THEM. UNDER THE OATH YOU
23 TOOK IN THIS CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND
24 SOLELY ON THE TESTIMONY AND EVIDENCE PRESENTED IN THIS
25 COURTROOM. I TELL YOU THAT IT IS YOUR DUTY TO LAY ASIDE ALL

1 BIAS OR PREJUDICE OR SYMPATHY YOU MAY HAVE IN REACHING YOUR
2 VERDICT.

3 LADIES AND GENTLEMEN, THE WORD VERDICT IS TAKEN FROM THE
4 LATIN WORD VEREDICTO, WHICH MEANS TO SPEAK THE TRUTH. YOU
5 CERTAINLY HAVE NO FRIENDS TO REWARD IN THIS CASE OR ENEMIES
6 TO PUNISH. I CHARGE YOU TO ABIDE BY YOUR OATH AND RETURN
7 VERDICTS WHICH SPEAK THE TRUTH.

8 NOW MENTION HAS BEEN MADE DURING THE COURSE OF THIS
9 TRIAL OF PENALTIES WITH RESPECT TO ONE OR MORE OF THE
10 OFFENSES. NOW YOU'RE NOT CONCERNED WITH PENALTIES OR WITH
11 SENTENCING. THAT IS A FUNCTION OF MINE UPON A FINDING OF
12 GUILT BY YOU, THE JURY.

13 AS I SAID EARLIER, YOU ARE THE JUDGES OF THE FACTS IN
14 THIS CASE AND YOU DETERMINE ONLY IF THESE DEFENDANTS ARE
15 GUILTY OR NOT GUILTY OF ANY ONE OR MORE OF THE CHARGES PLACED
16 AGAINST THEM, AND AFTER APPLYING THE LAW AS I HAVE GIVEN THAT
17 TO YOU.

18 NOW, LADIES AND GENTLEMEN, YOU WILL HAVE IN THE JURY
19 ROOM WITH YOU THE INDICTMENTS IN THESE CASES. THESE
20 INDICTMENTS DO NOT CONSTITUTE EVIDENCE. THEY MERELY SET
21 FORTH THE ALLEGATIONS BY THE STATE. THESE INDICTMENTS ARE
22 THE LEGAL DOCUMENT BY WHICH CASES ARE BROUGHT INTO THIS
23 COURTROOM AND PRESENTED TO YOU FOR YOUR DETERMINATION. WITH
24 RESPECT TO EACH INDICTMENT, LADIES AND GENTLEMEN, THERE ARE
25 ONE OR TWO POSSIBLE VERDICTS, GUILTY OR NOT GUILTY. AND

1 WHATEVER YOUR VERDICT IS ON EACH INDICTMENT, IT MUST BE
2 UNANIMOUS; THAT IS, ALL 12 OF YOU MUST AGREE.

3 NOW, MADAM FOREMAN, YOU WILL FIND ON THE BACK OF EACH
4 INDICTMENT THAT IT SAYS "VERDICT," AND THEN A SPACE.
5 WHATEVER THE UNANIMOUS VERDICT OF THE JURY IS ON EACH OF THE
6 INDICTMENTS, YOU WILL WRITE IT OUT IN THAT SPACE, EITHER
7 GUILTY OR NOT GUILTY, AND THEN SIGN YOUR NAME ON THE LINE
8 WHERE IT SAYS "FOREMAN OF THE JURY."

9 NOW, LADIES AND GENTLEMEN, AT THIS TIME I AM REQUIRED TO
10 SUSPEND AND GO OVER MY CHARGE WITH THE ATTORNEYS. I NEED FOR
11 YOU TO GO BACK INTO YOUR JURY ROOM; BUT DON'T BEGIN
12 DELIBERATING UNTIL I SEND WORD IN FOR YOU TO DO SO. THANK
13 YOU.

14 (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
15 12:11 P.M.)

16 THE COURT: ANYTHING FURTHER FROM THE STATE?

17 MS. MUNSON: NOTHING FROM THE STATE, YOUR HONOR.

18 MR. ROLLINS: YOUR HONOR, MR. CRANE HAS A MOTION,
19 AND WE'LL JOIN IN HIS MOTION.

20 THE COURT: ALL RIGHT.

21 MR. CRANE: YOUR HONOR, I WOULD JUST ASK THAT YOU
22 EMPHASIZE TO THE JURY THAT EACH INDICTMENT IS TO BE ACTED
23 UPON INDEPENDENTLY OF EACH OTHER AND RULED UPON, GUILTY OR
24 NOT GUILTY, AND THAT EACH DEFENDANT ALSO NEEDS TO BE ACTED
25 UPON INDEPENDENTLY AND THAT THERE CAN BE DIFFERENT -- (PAUSE)

1 --

2 THE COURT: WELL, I THOUGHT I HAD DONE THAT.

3 MR. CRANE: WELL, YOU TOLD THEM THEY HAD TO FIND
4 EACH ONE GUILTY OR NOT GUILTY, BUT I DON'T KNOW THAT YOU
5 INDICATED THAT EACH DEFENDENT -- I MEAN, THERE CAN BE
6 DIFFERENT DECISIONS FOR THE TWO DEFENDANTS. YOU KNOW, THEY
7 MAY FIND MR. BUTLER GUILTY OF ALL OF IT, AND --

8 THE COURT: I DON'T HAVE ANY PROBLEM WITH TELLING
9 THE JURY THAT. ANYTHING ELSE?

10 MR. CRANE: WELL, YES. WE WOULD -- EXCUSE ME -- AT
11 THIS TIME, AGAIN, MOVE TO DISMISS THE INDICTMENTS THAT
12 CONCERN TODD FOR KIDNAPPING.

13 THE COURT: ALL RIGHT, I UNDERSTAND THAT, AND I
14 DENY THAT MOTION. OKAY.

15 MS. MUNSON: I HAVE ONE QUESTION, YOUR HONOR, AS TO
16 THE -- YOU GRANTED THE MOTION TO AMEND THE KIDNAPPING
17 INDICTMENTS.

18 THE COURT: I HAVE DONE SO.

19 MS. MUNSON: THANK YOU.

20 THE COURT: BRING THEM BACK.

21 (THE JURY ENTERED THE COURTROOM AT APPROXIMATELY
22 12:15 P.M.)

23 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I
24 WANTED TO BE SURE THAT YOU UNDERSTAND MY CHARGE WITH RESPECT
25 TO YOUR DELIBERATIONS. IT'S NECESSARY FOR YOU TO CONSIDER

1 EACH ONE OF THESE INDICTMENTS. THERE ARE SIX INDICTMENTS
2 AGAINST EACH DEFENDANT, AND IT'S NECESSARY FOR YOU TO
3 CONSIDER EACH ONE OF THE INDICTMENTS AND TO REACH A UNANIMOUS
4 VERDICT ON EACH ONE OF THEM, EITHER GUILTY OR NOT GUILTY.
5 YOU UNDERSTAND THAT?

6 (ALL JURORS NODDED.)

7 THE COURT: OKAY, NOW WITH THAT, I WILL ASK THAT
8 YOU NOW RETIRE TO YOUR JURY ROOM AND BEGIN YOUR
9 DELIBERATIONS. I'LL HAVE THE COURT REPORTER GET ALL THE
10 EXHIBITS TOGETHER, AND BRING THEM IN TO YOU SHORTLY. THANK
11 YOU VERY MUCH.

12 (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
13 12:17 P.M.)

14 MR. ROLLINS: YOUR HONOR, MAY I APPROACH?

15 THE COURT: YES, SIR.

16 (BENCH CONFERENCE.)

17 THE COURT: I UNDERSTAND MR. MICHAEL AND ALLEN
18 BAILEY ARE IN THE COURTROOM. WOULD THEY, PLEASE, STAND UP?

19 (TWO MEN STOOD UP.)

20 THE COURT: GENTLEMEN, I'VE HAD SOME REPORTS THAT
21 THERE HAS BEEN SOME MOUTHING BY YOU CONCERNING THIS DEFENDANT
22 AND ONE -- AT LEAST MAYBE ONE OTHER POTENTIAL WITNESS IN THE
23 CASE THAT MAY HAVE TESTIFIED. NOW I DON'T KNOW WHETHER OR
24 NOT THAT'S TRUE.

25 SPEAKER: I HAVEN'T SAID ANYTHING.

1 THE COURT: WELL, I HOPE YOU UNDERSTAND, GENTLEMEN,
2 THAT IF THAT IS TRUE AND I FIND OUT ABOUT IT, THEN THAT
3 CONSTITUTES CONTEMPT OF COURT AND INTIMIDATION OF WITNESSES,
4 AND I'LL PUT YOU JAIL RIGHT QUICK. DO EACH OF YOU UNDERSTAND
5 THAT?

6 SPEAKER: YES, SIR.

7 THE COURT: DO YOU UNDERSTAND IT, SIR?

8 (MAN NODDED HIS HEAD.)

9 THE COURT: ALL RIGHT.

10 (BAILIFF CONFERRED WITH THE COURT.)

11 THE COURT: YES, GO AHEAD AND TAKE THE EXHIBIT TO
12 THE JURY.

13 ALL RIGHT, IF YOU WILL BE AT EASE. I'M GETTING READY TO
14 START ANOTHER CASE.

15 (OFF THE RECORD IN THIS CASE AT APPROXIMATELY 12:20
16 P.M. THE COURT TOOK UP OTHER MATTERS. COURT RESUMED IN THE
17 CAPTIONED CASE AT APPROXIMATELY 2:45 P.M.)

18 THE COURT: NOW, LADIES AND GENTLEMEN, I'M INFORMED
19 WE HAVE A VERDICT IN THIS CASE. OF COURSE, WE DON'T KNOW
20 WHAT THAT VERDICT IS, BUT I NEED TO INSTRUCT EVERYONE IN THE
21 COURTROOM THAT REGARDLESS OF THE VERDICT IN THIS CASE, I WILL
22 NOT PERMIT ANY OUTBURSTS OF ANY KIND, NO DISPLAYS OF EMOTION.
23 SHOULD THERE BE ANY, THEN THAT WILL CONSTITUTE CONTEMPT OF
24 COURT, AND I WILL ASSURE YOU I WILL PUNISH ACCORDINGLY.

25 NOW IS THERE ANYONE IN THE COURTROOM WHO DOES NOT

1 UNDERSTAND WHAT I JUST SAID? IF SO, PLEASE, STAND UP SO THAT
2 I CAN TRY TO BETTER EXPLAIN IT TO YOU. (PAUSE.)

3 ALL RIGHT, BRING THE JURY.

4 (THE JURY ENTERED THE COURTROOM AT APPROXIMATELY
5 2:46 P.M.)

6 THE CLERK: MADAM FORELADY, IF YOU HAVE REACHED
7 VERDICTS, GIVE THEM TO THE BAILIFF, PLEASE.

8 (THE FORELADY COMPLIED. THE BAILIFF HANDED SAME TO
9 THE CLERK, WHO HANDED SAME TO THE COURT.)

10 THE COURT: ALL RIGHT, PUBLISH THE VERDICTS,
11 PLEASE.

12 THE CLERK: YOUR HONOR, THESE ARE VERDICTS IN THE
13 STATE VERSUS SHANNON RODRIGUEZ TODD, CASE -96-GS-3561,
14 INDICTED FOR KIDNAPPING; VERDICT, NOT GUILTY. 96-GS-3562,
15 INDICTED FOR KIDNAPPING, NOT GUILTY. 96-GS-3563, INDICTED
16 FOR KIDNAPPING, NOT GUILTY. 96-GS-3564, INDICTED FOR
17 KIDNAPPING, NOT GUILTY. 96-GS-3565, INDICTED FOR POSSESSION
18 OF FIREARMS DURING THE COMMISSION TO ATTEMPT TO COMMIT
19 VIOLENT CRIME, NOT GUILTY. 96-GS-3566, INDICTED FOR ARMED
20 ROBBERY, NOT GUILTY. ALL ARE SIGNED CURRAN D. SULLIVAN,
21 FORELADY.

22 CASES 96-GS-3384; STANLEY LOUIS BUTLER, INDICTED FOR
23 KIDNAPPING, GUILTY. 96-GS-3383, INDICTED FOR KIDNAPPING,
24 GUILTY. 96-GS-3382, KIDNAPPING, GUILTY. 96-GS-3380,
25 KIDNAPPING, GUILTY. 96-GS-3386, POSSESSION OF FIREARM DURING

1 COMMISION TO ATTEMPT TO COMMIT CRIMINAL VIOLENT CRIME,
2 GUILTY. AND 96-GS-3381, ARMED ROBBERY, GUILTY. ALL ARE
3 SIGNED CURRAN D. SULLIVAN, FORELADY.

4 THESE ARE YOUR VERDICTS, SO SAY YOU ALL?

5 (ALL JURORS NODDED THEIR HEADS.)

6 THE COURT: ANYTHING FURTHER FROM THE JURY, MR.
7 ROLLINS?

8 MR. ROLLINS: YES, YOUR HONOR, WE'D ASK THAT THE
9 JURY BE POLLED.

10 THE COURT: ALL RIGHT, POLL THE JURY, PLEASE.

11 THE CLERK: LADIES AND GENTLEMEN, THE VERDICTS THAT
12 I JUST PUBLISHED WERE THE VERDICTS THAT YOU REACHED WHILE YOU
13 WERE BACK IN YOUR JURY ROOM. I ASK YOU, WAS IT YOUR VERDICT
14 THEN, AND IS IT STILL YOUR VERDICT? WHEN I CALL YOUR NAME,
15 PLEASE, ANSWER YES OR NO.

16 CURRAN D. SULLIVAN?

17 MS. SULLIVAN: YES.

18 THE CLERK: LARRY E. VAUGHN?

19 MR. VAUGHN: YES.

20 THE CLERK: LYNN G. GAW?

21 MS. GAW: YES.

22 THE CLERK: JOHN A. RYDER?

23 MR. RYDER: YES.

24 THE CLERK: JEFFREY S. BISHOP?

25 MR. BISHOP: YES.

1 THE CLERK: PEGGY OWENS?

2 MS. OWENS: YES.

3 THE CLERK: WALTER E. EASTERLING?

4 MR. EASTERLING: YES.

5 THE CLERK: CORA B. BETHEA?

6 MS. BETHEA: YES.

7 THE CLERK: JERRY R. GODFREY?

8 MR. GODFREY: YES.

9 THE CLERK: RICKY E. HOWARD.

10 MR. HOWARD: YES.

11 THE CLERK: EDWIN M. BAYNE?

12 MR. BAYNE: YES.

13 THE CLERK: CHARLES W. RICE?

14 MR. RICE: YES.

15 THE CLERK: THANK YOU.

16 THE COURT: ANYTHING FURTHER FROM THE JURY, LADIES
17 AND GENTLEMEN?

18 MS. MUNSON: NOTHING FROM THE STATE, YOUR HONOR.

19 MR. ROLLINS: NOTHING, YOUR HONOR.

20 MR. CRANE: NOTHING, YOUR HONOR.

21 THE COURT: THANK YOU, LADIES AND GENTLEMEN, FOR
22 YOUR SERVICE ON THIS CASE. I CAN GIVE YOU THE REST OF THE
23 AFTERNOON OFF. I'LL NEED YOU BACK IN THE MORNING. I'LL ASK
24 THAT YOU REPORT TO THE JURY ASSEMBLY ROOM AT 10:00 O'CLOCK IN
25 THE MORNING. 10:00 O'CLOCK IN THE MORNING. THANK YOU,

1 YOU'RE EXCUSED UNTIL THAT TIME.

2 (THE JURY EXITED THE COURTROOM AT APPROXIMATELY
3 2:50 P.M.)

4 THE COURT: ALL RIGHT, ANY MOTIONS?

5 MR. ROLLINS: YES, YOUR HONOR. AT THIS TIME THE
6 DEFENDANT STANLEY BUTLER WOULD MOVE FOR A VERDICT OF
7 ACQUITTAL IN THIS CASE BECAUSE DUE TO THE INCONSISTENT
8 VERDICT. IF YOU TAKE THE STATE'S CASE, YOUR HONOR, THERE IS
9 EITHER TWO PEOPLE, OR THERE'S NOT TWO PEOPLE THERE, AND THE
10 TWO PEOPLE THAT THE STATE SAID WERE THERE WERE THESE TWO
11 INDIVIDUALS HERE; ONE INDIVIDUAL THE JURY HAS FOUND NOT
12 GUILTY ON ALL CHARGES, SO THEY'RE SAYING THAT HE WASN'T EVEN
13 THERE. THERE IS NO EVIDENCE. THESE ARE VERY INCONSISTENT
14 VERDICTS, AND IT'S IMPROPER AND WE BELIEVE THAT MR. BUTLER
15 DID NOT GET A FAIR TRIAL AS TO THE CHARGES PRESENTED TO HIM.

16 THE COURT: AND THAT MOTION IS DENIED.

17 MR. ROLLINS: ALSO, YOUR HONOR, AT THIS TIME WE
18 MOVE FOR A NEW TRIAL BY RENEWING OUR MOTIONS THAT WE HAD
19 PREVIOUSLY.

20 THE COURT: THAT MOTION IS, LIKEWISE, DENIED.

21 (PAUSE.) ANYTHING ELSE?

22 MR. ROLLINS: NO, SIR, THAT'S ALL.

23 THE COURT: THANK YOU VERY MUCH. ALL RIGHT, COME
24 AROUND; PLEASE.

25 NOW, MR. BUTLER, YOU EXERCISED YOUR CONSTITUTIONAL RIGHT

1 NOT TO TESTIFY OR PRESENT EVIDENCE IN THIS CASE. AT THIS
2 TIME YOU HAVE A RIGHT TO ADDRESS THE COURT WITH RESPECT TO THE
3 SENTENCE THAT I IMPOSE UPON YOU. DO YOU HAVE ANYTHING THAT
4 YOU WOULD LIKE TO SAY NOW BEFORE I SENTENCE YOU, SIR?

5 MR. BUTLER: CONCERNING MY SENTENCE?

6 THE COURT: YES, SIR. (PAUSE.)

7 MR. ROLLINS: IF THERE'S ANYTHING YOU WANT HIM TO
8 TAKE INTO CONSIDERATION.

9 THE COURT: IS THERE ANYTHING YOU WANT TO TELL ME
10 BEFORE I SENTENCE YOU?

11 MR. BUTLER: YES. I'M NOT GUILTY.

12 THE COURT: OKAY, THAT'S FINE. ANYTHING ELSE?

13 MR. BUTLER: YES. I MEAN, OKAY; IF THE ONLY LINK
14 TO ME TO THIS CASE WAS THROUGH SHANNON TODD, AND BY
15 ASSOCIATING WITH HIM THAT'S THE ONLY WAY I WAS SUPPOSED TO
16 HAVE MET AUSTIN TODD, IF HE WAS FOUND NOT GUILTY, HOW WAS I
17 FOUND -- I DON'T UNDERSTAND HOW I WAS FOUND GUILTY OF THAT.

18 THE COURT: WELL, THE JURY FOUND BEYOND A
19 REASONABLE DOUBT THAT YOU ARE GUILTY IN THIS CASE, I SUSPECT,
20 BECAUSE YOUR FINGERPRINTS WERE FOUND ON THE MONEY BAG.

21 MR. BUTLER: THAT'S IMPOSSIBLE.

22 THE COURT: MR. ROLLINS, IS THERE ANYTHING THAT YOU
23 WOULD LIKE TO SAY, SIR?

24 MR. ROLLINS: YES, SIR, MAY IT PLEASE THE COURT,
25 YOUR HONOR, HE'LL BE -- MR. BUTLER WILL BE 24 NEXT MONTH. HE

1 HAS AN ELEVENTH GRADE EDUCATION, AND HE'S GOTTEN HIS G.E.D.
2 HE'S CURRENTLY, YOUR HONOR, DOING A ONE-YEAR REVOCATION
3 SENTENCE AT PERRY CORRECTIONAL FOR POSSESSION OF A PISTOL
4 CHARGE. HE, ALSO, HAS A Y.O.A. PAROLE VIOLATION THAT HE SAYS
5 WILL BE COMING UP SOON.

6 YOUR HONOR, WE'D ASK THE COURT TO CONSIDER THE FACTS
7 THAT WERE PRESENTED. THE JURY HAS RENDERED A VERDICT; AND IF
8 THE FACTS ARE AS THE JURY SAYS THEY ARE, THIS ARMED ROBBERY
9 WAS NOT A -- IT WAS A TERRIBLE THING, BUT IT WAS NOT AN
10 AGGRAVATED ARMED ROBBERY WHERE THEY'RE BEATING THE PEOPLE
11 THERE OR ANYTHING OF THAT NATURE. ALSO, THE KIDNAPPING, IN
12 THIS CASE, YOUR HONOR, WAS NOT AN AGGRAVATED KIDNAPPING OF
13 ANY KIND. IT WAS JUST A KIDNAPPING THAT THEY PLACED THESE
14 PEOPLE IN THE COOLER FOR THEIR PROTECTION WHILE THEY WERE
15 ROBBING THE PLACE AND EXITED THE PREMISES. WE'D ASK THE
16 COURT TO CONSIDER THOSE FACTS AND GIVE HIM SOME TYPE OF
17 SENTENCE THAT WOULD NOT BE CONSECUTIVE.

18 THE COURT: PRIOR RECORD, SOLICITOR?

19 MS. MUNSON: HIS PRIOR RECORD, YOUR HONOR, BEGINS
20 IN 1990. HE WAS CONVICTED SEPTEMBER THE 20TH, 1990, OF
21 UNLAWFUL POSSESSION OF A PISTOL. HE WAS CONVICTED 12/21 OF
22 1990 WITH DISCHARGING A FIREARM INTO A DWELLING, AND OF
23 SIMPLE POSSESSION OF CRACK.

24 MR. ROLLINS: YOUR HONOR, HE TELLS ME THOSE WERE
25 DISMISSED.

1 MR. BUTLER: THE SHOOTING INTO A DWELLING.

2 MR. ROLLINS: THE SHOOTING INTO A DWELLING WAS
3 DISMISSED.

4 MR. MUNSON: HE WAS CONVICTED OF STRONG-ARMED
5 ROBBERY ON APRIL THE 8TH, 1992, FOR WHICH HE RECEIVED A
6 YOUTHFUL OFFENDER SENTENCE. HE WAS CONVICTED OF RECEIVING
7 AND HAVING IN POSSESSION STOLEN GOODS APRIL THE 6TH OF 1994.
8 HE WAS CONVICTED AGAIN OF UNLAWFUL POSSESSION OF A PISTOL
9 MARCH THE 20TH, 1995. HE WAS CONVICTED OF CRIMINAL DOMESTIC
10 VIOLENCE JUNE THE 30TH, 1994, AND CONVICTED OF FAILURE TO
11 COMPLY ON THAT SAME DATE.

12 THE COURT: (PAUSE, VIEWING DOCUMENT.) ALL RIGHT,
13 MR. BUTLER, ON INDICTMENT 96-3381, WHICH IS THE INDICTMENT
14 FOR ARMED ROBBERY, THE SENTENCE OF THE COURT IS YOU BE
15 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30
16 YEARS. ON 96-3380, WHICH IS THE INDICTMENT FOR KIDNAPPING,
17 THE SENTENCE OF THE COURT IS YOU BE COMMITTED TO THE
18 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20 YEARS, THAT
19 SENTENCE TO RUN CONSECUTIVE TO THE OTHER SENTENCE. ON EACH
20 OF THE OTHER THREE KIDNAPPING INDICTMENTS, 96-3382, 83, AND
21 84, THE SENTENCE OF THE COURT IS YOU BE CONFINED FOR A PERIOD
22 OF 20 YEARS, THOSE SENTENCES TO RUN CONCURRENT. AND ON
23 96-3386 CHARGING YOU WITH POSSESSION OF FIREARM DURING THE
24 COMMISSION OF A VIOLENT CRIME, THE SENTENCE IS THAT YOU BE
25 COMMITTED FOR A PERIOD OF 5 YEARS, THAT SENTENCE TO RUN

1 CONCURRENT TO THE OTHER SENTENCES.

2 MS. MUNSON: THANK YOU, YOUR HONOR.

3 MR. ROLLINS: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT, WE'LL TAKE A SHORT RECESS.

5 END OF TRANSCRIPT OF RECORD - - -

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1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, VIVIAN E. FERNALD, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
7 CAPTIONED MATTER RELATIVE TO APPEAL IN THE COURT OF COMMON
8 PLEAS FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 22ND AND
9 23RD DAYS OF JULY 1996.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

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13
14
15 Vivian E. Fernald
16 VIVIAN E. FERNALD
17 CIRCUIT COURT REPORTER
18
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, ... Respondent,

v.

Stanley Lewis Butler, ... Appellant.

Appeal From Greenville County
C. Victor Pyle, Circuit Court Judge

Unpublished Opinion No. 97-UP-640
Submitted December 2, 1997 - Filed December 10, 1997

AFFIRMED

Assistant Appellate Defender Robert M. Dudek, of South Carolina Office of Appellate Defense, for appellant.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney Salley W. Elliott, and Assistant Attorney General Caroline Callison Tiffin, all of Columbia; and Joseph J. Watson, of Greenville, for respondent.

PER CURIAM: Stanley L. Butler appeals his convictions for armed robbery, four counts of kidnaping, and possession of a firearm during a violent crime. We affirm.¹

Facts

This case involves an early morning robbery of a Fuddrucker's restaurant in Greenville, South Carolina, on Sunday, March 10, 1996. Although no one was injured during the robbery, four employees of the restaurant were placed into a cooler for thirty

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

STATE v. BUTLER

minutes while the robbers fled, taking a bank bag with more than four thousand dollars. No one could identify either of the two robbers because they were heavily disguised.

Investigator Doug Kelly testified that after discussing the incident with employees of Fuddruckers he "developed" three suspects in the robbery: Shannon Rodriguez Todd, Austin Perry, and Butler. Todd and Perry both worked at Fuddruckers. On an earlier occasion, Perry had been involved in another incident in which money was taken from the restaurant safe, but was allowed to continue working and repay the money by having it deducted from his paycheck. Kelly testified he learned Butler's name from Todd's girlfriend.

The only physical evidence in the case was a stolen bank bag with "torn up checks" found by Reginald Pitmas, a biology teacher at Christ Episcopal School. On the day of the robbery, Pitmas found the bag lying in the median of a busy highway in Greenville. Pitmas called Fuddruckers Restaurant that afternoon and gave the bag to law enforcement authorities the following Monday at his school. Investigators later determined that four fingerprints inside the bag matched known samples of Butler's fingerprints.

Butler was tried with co-defendant Todd. At their trial, Perry testified for the State. The jury acquitted Todd of all charges, but convicted Butler of armed robbery, four counts of kidnaping, possession of a firearm during a violent crime.

Analysis

On appeal, Butler maintains the trial court erred in admitting the bank bag and fingerprint card. He contends the State failed to establish an acceptable chain of custody between the time Investigator Kelly took the bag from Pitmas and the time the bag was tested for fingerprints and Butler's prints were identified. He further argues, but cites no authority for, the propositions that the use of fingerprint evidence requires establishment of a chain of custody to negate the possibilities of tampering and innocent touching of the evidence by the party in question at someone else's behest. Regarding the fingerprint card, Butler suggests this evidence was inadmissible for the additional reason that the State failed to explain its procedures for maintaining fingerprint records. We reject these arguments.

In State v. Glenn, Opinion No. 2678 (S.C. Ct. App. - refiled September 19, 1997) (Davis Adv. Sh. No. 27 at 9) this court held that establishment of a strict chain of custody is not necessary for the admission of non-fungible evidence. This court further held that the evidence challenged on appeal, namely, a piece of porcelain fragment from which law enforcement obtained the defendant's fingerprint, was non-fungible in that it was unique and readily identifiable, in contrast to such evidence as drugs or blood samples, which are not readily identifiable and susceptible to tampering. We view State v. Glenn as controlling authority for our holding that the trial court in the present case acted within its discretion

STATE v. BUTLER

in admitting the bank bag and fingerprint card. Any defects in the chain of custody would affect only the weight or credibility of the evidence rather than its admissibility. State v. Wells, ___ S.C. ___, 426 S.E.2d 814 (Ct. App. 1992).

AFFIRMED.

GOOLSBY, HEARN, and STILWELL, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville Sc.)

IN THE COURT OF COMMON PLEAS

2012-CP-23- 04208

Stanley Lewis Butler #233704)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS & READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Correctional Inst. 4848
Goldmine Hwy SC. 29067
2. Name and location of Court which imposed sentence Greenville SC.
3. Name(s) of co-defendant(s) (if any) Shannon Todd - Austin Perry
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 96-G5-23-3381 - Armed Robbery

- (b) 96-GS-23-3387 Thru 96-GS-23-3385 Kidnapping
- (c) 96-GS-23-3386 Poss of a firearm during the Comm of Crim
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) (Armed Robbery (1) 7-23-96 30 years)
- (b) (Kidnapping (4) 7-23-96 40 years)
- (c) Poss of a Firearm (1) 7-23-96 5 years)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Direct Appeal.
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. The Court of Appeal
- ii. Post-Conviction-Relief.
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. Affirmed
- iii. _____
- (c) the date of each such result:
- i. 12-10-97
- ii. 7-16-01
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Glenn, Opinion # 2678 (SC Ct App- refiled 9-19-97)
- ii. Davis adv sh # 2707a) State v. Wells, SC, 426 SE.2d 814 (Ct App 1992)
- iii. Rule 71.1(e) SCRCP- Strickland v. Washington- Cherry v. State.
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) I did Appeal.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed to investigate Case
- (b) Conflict of Interest
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. No
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. No
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. No _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. No _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. No _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. No _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. No _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) No
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
(b) your trial, if any? John Rollins JR
(c) your sentencing? _____
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Robert Dudek, WG. Yarbrough
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. _____
ii. _____
iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
ii. _____
iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Conviction, Remand new Trial.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville S.C.)

VERIFICATION

I, Stanley Lewis Butler, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Stanley Butler

SWORN to and subscribed before me this 13
day of June, 2012.

Catherine A. Amerson (L.S.)
Notary Public

My Commission Expires Commission Expires December 22, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Stanley Lewis Butler, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Stanley Butler

Applicant

SWORN or affirmed to and subscribed before me this

13 day of June, 2012.

Carlisle A. Amos

Notary Public

My Commission Expires: ~~My Commission Expires~~ December 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2012-CP-23-4208
COUNTY OF GREENVILLE	)	
	)	
Stanley Lewis Butler,	)	
S.C.D.C. No. 233704,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief (PCR) application filed June 29, 2012, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the May 1996 term of the Greenville County Grand Jury for four counts of kidnapping (1996-GS-23-3380, -3382, -3383, -3384), armed robbery (1996-GS-23-3381), and possession of a weapon during commission of a violent crime (1996-GS-23-3386). He was represented by John Rollins, Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 23, 1996, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty years for three counts of kidnapping, thirty years for armed robbery, and five years for possession of a weapon during commission of a violent crime. Judge Pyle levied a consecutive sentence of twenty years for one count of kidnapping (1996-GS-23-3380).

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Butler, Op. No. 97-UP-640 (S.C. Ct. App. filed Dec. 10, 1997).

The Applicant filed a PCR application on June 26, 1998 (1998-CP-23-2305). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to prepare for trial.
 - b. Failed to present alibi witnesses.

An evidentiary hearing was convened on April 12, 2000 at the Greenville County Courthouse. In addition to the above issues, the Applicant alleged trial counsel was ineffective in failing to obtain an independent fingerprint expert. William G. Yarborough, Esquire represented the Applicant. The Honorable James E. Brogdon, Jr. denied and dismissed the PCR application by order dated July 16, 2001. The Applicant did not appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Conflict of interest.

For the purpose of this Return, the Respondent incorporates the Greenville County Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on July 23, 1996 and the South Carolina Court of Appeals affirmed on December 10, 1997. This application was filed on June 29, 2012, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

The Court should also summarily dismiss the current Application because it is successive

to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent moves to summarily dismiss the application because it is

successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

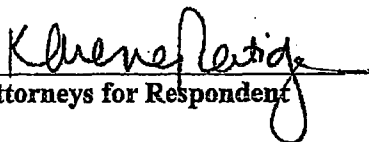
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Sept. 11, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Stanley Lewis Butler,)
S.C.D.C. No. 233704,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
2012-CP-23-4208

CONDITIONAL ORDER OF DISMISSAL

FILED
2012 SEP 01 PM 2:59
CLERK

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 29, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the May 1996 term of the Greenville County Grand Jury for four counts of kidnapping (1996-GS-23-3380, -3382, -3383, -3384), armed robbery (1996-GS-23-3381), and possession of a weapon during commission of a violent crime (1996-GS-23-3386). He was represented by John Rollins, Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 23, 1996, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty years for three counts of kidnapping, thirty years for armed robbery, and five years for possession of a weapon during commission of a violent crime. Judge Pyle levied a consecutive

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sentence of twenty years for one count of kidnapping (1996-GS-23-3380).

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Butler, Op. No. 97-UP-640 (S.C. Ct. App. filed Dec. 10, 1997).

The Applicant filed a PCR application on June 26, 1998 (1998-CP-23-2305). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to prepare for trial.
 - b. Failed to present alibi witnesses.

An evidentiary hearing was convened on April 12, 2000 at the Greenville County Courthouse. In addition to the above issues, the Applicant alleged trial counsel was ineffective in failing to obtain an independent fingerprint expert. William G. Yarborough, Esquire represented the Applicant. The Honorable James E. Brogdon, Jr. denied and dismissed the PCR application by order dated July 16, 2001. The Applicant did not appeal.

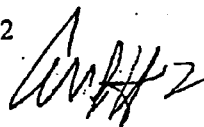
II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Conflict of interest.

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C.



Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on July 23, 1996 and the South Carolina Court of Appeals affirmed on December 10, 1997. This application was filed on June 29, 2012, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law."

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in

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Am#3

the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

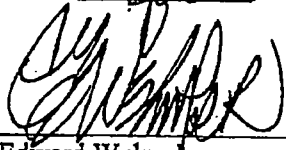
As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

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AND IT IS SO ORDERED this 19 day of Sept, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit


_____, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Steeley Lewis Butler,
S.C.D.C. No. 233704)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FILED - CLERK OF COURT
IN THE COURT OF COMMON PLEAS
2012-CP-23-4208
PAUL B. WICKENSHER

2012 SEP 25 P 1:16

MOTION TO AMEND

This motion is placed before the Court to express the reasons that the applicant has filed a second Post-conviction Relief Application (PCRA), filed June 29, 2012. Applicant is requesting a hearing to determine if first Post-conviction Relief Counsel, William G. Yerborough was ineffective by mishandling the case and not seeking timely review after the order of dismissal.

I.

The Applicant is currently confined in the South Carolina Department of Corrections. The applicant was indicted at the May 1996 term of the Greenville County Grand Jury for four counts of Kidnapping (1996-GS-23-3380, -3382, -3383, -3384), Armed robbery (1996-GS-23-5381), and Possession of a weapon during the commission of a Violent Crime (1996-GS-23-3386) Represented by John Rollins, Jr.

Applicant was convicted on all counts on July 23, 1996, The Honorable

C. Victor Pyle, Jr. sentenced the Applicant to 50 years under the new parole guidelines.

A notice of appeal was filed at the South Carolina Court of appeals. Robert M. Dudek, Esquire of the South Carolina office of appellate defense perfected the appeal. The Court of appeals affirmed the convictions and sentences. *State v. Butler*, OP. NO. 97-UP-640 (S.C. Ct. App. filed Dec. 10, 1997).

The Applicant filed a PCR application on June 26, 1998 (1998-CP-23-2305). The applicant raised the issues of Ineffective assistance of counsel; Failed to prepare for trial, Failed to present alibi witness, and Failed to refute State's fingerprint evidence. Among several other issues that was not briefed or documented, Applicant was represented by William G. Yarbrough at the evidentiary hearing on April 12, 2000 at the Greenville County Courthouse. The Honorable James E. Bragdon, Jr. denied and dismissed the PCR application by order July 16, 2001. The order was not appealed and the applicant will explain why.

II.

The current PCR application is successive because applicant has been denied complete access to the appellate process. *Austin v. State* 409 S.E. 2d 395. The right to seek appellate review of denial of PCR is expressly authorized by State Law S.C. Code § 17-27-100.

III.

Due to the fact that applicants PCR Attorney William G. Harborough during the process of the PCR, Prior to the ruling the applicants attorney was arrested. The applicant was without assistance of counsel and did not have notice served before the ruling of the PCR hearing. Rule 413, rules for disciplinary enforcement. Rule 30: Notice to clients. A disbarred or suspended lawyer shall promptly notify, or cause to be notified, all clients being represented in a pending matter.

Applicant did not knowingly or intelligently waive or fail to comply with the uniform Post-conviction Procedure Act, S.C. Code Ann. §§ 17-27-10. Austin appeals do not have to be filed within the one year Statute of limitations because they are belated appeals intended to correct unjust procedural defects. Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991).

Without counsel to follow through with what he was retained to do, the applicant did not know how to proceed in the process. Therefore he should not be denied the chance to have a hearing to determine if appellant knowingly and intelligently waive his right to appellate review.

IV.

The Applicant is aware that successive applications and appeals are disfavored because it allows an applicant to receive more than "one bite at the apple" as it were. Matthews v. EVatt, 105 F. 3d 907, 916 (1997). All applicants are entitled to a full and fair oppor-

tunity to present claims in one PCR application and that includes the right to appellate review, *ODom v. State* 523 S.E. 2d 753. Under the Post-conviction relief rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple"; This bite includes an applicants right to appeal the denial of a PCR application; and the right to assistance of counsel in that appeal. Rules Civ. Proc., Rule 71.1 (6).

Appellants PCR attorney did not comply with the law or his obligation to his client, with not only seeking timely review but also with the issues of the first PCR in its entirety. *Ace v. State*, 305 S.C. 448, 450, 409 S.E. 2d 392, Any grounds finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds grounds for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

In light of the PCR counsels personal legal issues and the evidence on record, the lack of arguable briefed issues in the first application. The appellant did not have adequate legal representation and should be allowed to go forward with the current application and raise the issues that counsel failed to amend to original Application

V.

Based upon the facts in this matter, the applicant is requesting that the Court hold an evidentiary hearing to determine if the applicant is entitled to a successive application.

Respectfully Submitted

Stanley Lewis Butler
233704
Kershaw Corr. Inst.
4848 Gold mine Hwy.
Kershaw S.C. 29062

Sept. 14, 2012

By: Stanley L. Butler
Applicant

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

2012-CP-23-4208

Stanley Lewis Butler,)
S.C.D.C. No. 233704,)

Applicant,)

FINAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

2013 JAN 3 P 2:15

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSMEIER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 29, 2012. The Respondent made its return on September 11, 2012, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed September 19, 2012 and filed September 24, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 25, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Motion to Amend" and filed September 25, 2012, the Applicant argues the attorney in his first PCR action was ineffective. The Applicant argues his prior PCR attorney was arrested and did not file an appeal.



This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on July 23, 1996 and the South Carolina Court of Appeals affirmed on December 10, 1997. As this action was filed on June 29, 2012, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on April 12, 2000. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("[A]n applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

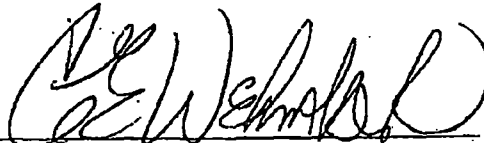
This Court notes the order of dismissal in the Applicant's first PCR action was signed on July 16, 2001 and the current PCR application was filed June 29, 2012. This Court finds the doctrine of laches further justifies the dismissal of the current PCR application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981). This Court notes that almost eleven years have elapsed, since the first PCR action was dismissed. It is highly unlikely that a transcript from the April 12, 2000 hearing is still in existence. This Court finds the Applicant's delay in requesting an

appeal from his first PCR application would greatly prejudice the Respondent. See Whitehead v. State, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002) (finding the doctrine of laches may be raised as a defense to an Austin claim).

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this _____ day of 12/14, 2012.



G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

STANLEY L. BUTLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000362

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

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(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner is entitled to a belated appeal of the denial of his first application for post-conviction relief?

STATEMENT

Petitioner was convicted of four (4) counts of kidnapping, armed robbery, and possession of a weapon after a jury trial held before the Honorable C. Victor Pyle, Jr., on July 23, 1995, in Greenville County. There were four (4) twenty (20) year sentences imposed for kidnapping with one (1) of them being consecutive. There was a thirty (30) year sentence for armed robbery, and a five (5) year sentence for possession of a weapon. John Robbins, Jr., Esquire, was defense counsel. Judy M. Munson, Esquire, was the solicitor. (App. p. 1 – p. 374).

Petitioner appealed his convictions and they were affirmed by the Court of Appeals on December 10, 1997. State v. Butler, Op. No. 97-UP-640. (App. p. 399).

Petitioner filed an application for post-conviction relief on June 26, 1998. An evidentiary hearing was held on April 12, 2000, before the Honorable James E. Brogdon, Jr. Petitioner was represented by William G. Yarborough, Esquire. The application was dismissed by order dated July 16, 2001. There was no appeal. (App. p. 399).

Petitioner filed his current application for post-conviction relief on June 29, 2012. (App. p. 376 – p. 382). Respondent filed a return and motion to dismiss dated September 11, 2012. Respondent alleged the current application was successive and that it was filed after the statute of limitations had expired. (App. p. 398 – p. 402). On September 19, 2012, the Honorable G. Edward Welmaker issued a conditional order of dismissal giving petitioner twenty (20) days to show why the order should not become final. (App. p. 403 – p. 407). Petitioner filed a motion to amend on September 25, 2012. (App. p. 393 – p. 397).

On January 14, 2013, Judge Welmaker issued a final order of dismissal denying and dismissing petitioner's application for post-conviction relief. The order found petitioner's second application for post-conviction relief successive and filed outside the statute of limitations. The

order also found that the doctrine of laches also justified dismissal of the second PCR application. (App. p. 408 – p. 410).

Petitioner filed a petition for writ of certiorari pursuant to Rule 243(c), SCACR, that was dated February 1, 2013. (App. p. 383 – p. 389).

This petition follows.

ARGUMENT

Petitioner is entitled to a belated appeal of the denial of his first application for post-conviction relief.

In Gamble v. State, 298 S.C. 176, 379 S.E.2d 118 (1989), the court held that a second application for post-conviction relief was not successive where the first application was dismissed at the request of the applicant and the State consented and the order dismissing the application did not do so with prejudice. The applicant was entitled to one bite at the apple. In Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982), the court held that a successive application was allowed when the applicant's first application was dismissed without the assistance of counsel and without a hearing. In Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), the court held that a second application for post-conviction relief was not successive when an applicant was alleging that PCR counsel was ineffective in failing to appeal the denial of the first PCR application. In King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), a procedure was set forth for the review of the denial of PCR applications based on an applicant's failure to properly waive the right to appellate review of a prior denial. In a case like this, the procedure set forth is as follows:

When the post-conviction relief judge has found that the applicant is *not* entitled to an Austin v. State review, the petition shall raise the question of waiver of the right to appellate review of the previous post-conviction relief order along with all other questions petitioner seeks to have reviewed from that order. The petition shall also contain a "Statement of Austin Questions" listing the questions to be raised if an Austin v. State review is granted. An Austin petition addressing the questions will not be allowed unless certiorari is granted on the Austin v. State question.

In Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), the court held that the one-year statute of limitations did not apply to a petitioner's appeal from the summary denial of an application for post-conviction relief based on the denial of the right to appeal.

In this case, petitioner wrote in his petition for writ of certiorari pursuant to Rule 243(c), SCACR, that he did not knowingly and intelligently waive the right to appellate review of the denial of his first PCR application. His PCR attorney was arrested and then disbarred and failed to appeal the denial of petitioner's PCR application. Petitioner's current application is not successive and is not barred by the statute of limitations. Laches should not apply because petitioner was not at fault in failing to seek appellate review of the denial of his first PCR application.

CONCLUSION

Petitioner should be entitled to a new PCR hearing.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robt M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of May, 2013.

STATEMENT OF AUSTIN QUESTIONS

Because there is no transcript of petitioner's first PCR hearing, appellate counsel is unable to formulate a "Statement of Austin Questions." Instead, petitioner should be granted a new PCR hearing.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

STANLEY L. BUTLER,

PETITIONER,

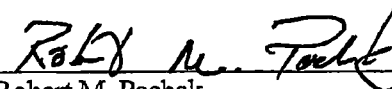
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, and Stanley Butler, #233704, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, Columbia, SC 29201, this 30th day of May, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of May, 2013.


Notary Public for South Carolina

My Commission Expires: November 16, 2022.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-000362

Stanley Lewis Butler, ... Petitioner,

v.

State of South Carolina, ... Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General
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(803) 734-3737

ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

1. Whether Petitioner is entitled to a belated appeal of the denial of his first application for post-conviction relief?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the May 1996 term of General Sessions for four counts of kidnapping (1996-GS-23-3380, -3382, -3383, -3384), armed robbery (1996-GS-23-3381), and possession of a weapon during commission of a violent crime (1996-GS-23-3386). (App.pp.411-22). John Rollins, Jr., Esquire represented Petitioner.

After the State called the case to trial, Petitioner was found guilty. On July 23, 1996, the Honorable C. Victor Pyle, Jr. sentenced Petitioner to concurrent terms of twenty years for three counts of kidnapping, thirty years for armed robbery, and five years for possession of a weapon during commission of a violent crime. Judge Pyle levied a consecutive sentence of twenty years for one count of kidnapping (1996-GS-23-3380). (App.pp.373-74).

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed Petitioner's convictions and sentences. State v. Butler, Op. No. 97-UP-640 (S.C. Ct. App. filed Dec. 10, 1997).

Petitioner filed an application for post-conviction relief (PCR) on June 26, 1998 (1998-CP-23-2305). A hearing was held at the Greenville County Courthouse on April 12, 2000. Petitioner was present and represented by William G. Yarborough, Esquire. The Honorable James E. Brogdon, Jr. denied relief in an order dated July 16, 2001.

Petitioner filed a second PCR application on June 29, 2012 (2012-CP-23-4208). (App.pp.376-82). Respondent submitted a return and motion to dismiss and the

Honorable G. Edward Welmaker issued a conditional order of dismissal filed September 24, 2012. (App.pp.398-402; pp.403-07). Though Petitioner submitted a response to the conditional order, Judge Welmaker issued a final order of dismissal filed January 3, 2013. (App.pp.408-10).

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

The PCR judge did not err in dismissing Petitioner’s second PCR application.

Petitioner argues he is entitled to a review of the issues from his first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This argument is without merit.

In his second PCR application, Petitioner raised the issue of “Ineffective assistance of counsel.” (App.p.378). Petitioner stated the facts supporting this issue were “Failed to investigate case. Conflict of interest.” (App.p.378). After Respondent submitted its return and motion to dismiss (dated September 11, 2012) and the conditional order of dismissal was filed (filed September 24, 2012), Petitioner raised the issue of whether he was entitled to appellate review of the denial of his first PCR

application for the first time in his "Motion to Amend" (filed September 25, 2012). (App.pp.393-97).

In denying Petitioner's second application for post-conviction relief, the PCR judge found it must be dismissed because (1) it was filed after the expiration of the statute of limitations and (2) it was barred by the doctrine of laches. The PCR judge made this finding after reviewing Petitioner's "Motion to Amend." (App.pp.408-10).

A.

The PCR judge did not err in dismissing Petitioner's second PCR application because it was not timely filed pursuant to the Uniform Post-Conviction Procedure Act. South Carolina Code Ann. § 17-27-45(a) (2003) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

This Court has held the statute of limitations shall apply to all PCR applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Petitioner was convicted of the offenses he challenges in this application on July

23, 1996 and the South Carolina Court of Appeals affirmed his convictions and sentences on December 10, 1997. Petitioner was therefore required to file his application before December 10, 1998. This application was filed on June 29, 2012, which was more than thirteen years after the statutory filing period had expired. Based on the pleadings before the PCR judge, there was no genuine issue of material fact that would justify the circumvention of the statute of limitations. As such, the PCR judge did not err in granting Respondent's motion to dismiss and issuing both the conditional and final orders of dismissal in this case. There is certainly probative evidence to support the PCR judge's findings in this case. See Cherry v. State, 300 S.C. at 119, 386 S.E.2d at 626.

B.

The PCR judge did not err in dismissing Petitioner's second PCR application because it was barred by the doctrine of laches. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an individual from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981). To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. at 283, 277 S.E.2d at 890-91 (citation omitted).

The evidentiary hearing for Petitioner's first PCR application was held on April 12, 2000. The final order dismissing that application was dated July 16, 2001. Petitioner

did not file a second PCR application for more than thirteen years. Petitioner was not reasonably diligent in pursuing a review of the denial of his first PCR application. It is simply not believable that Petitioner learned his first PCR application had not been appealed more than a decade after the fact. Petitioner's delay in filing this second PCR application has prejudiced Respondent, as a transcript of the first PCR hearing is no longer available and it is highly doubtful Petitioner's PCR attorney would still have files from a case he argued in 2000. Laches clearly operates to bar Petitioner's second PCR application. See id. This Court has specifically found the doctrine of laches can be used to bar an Austin review. See Whitehead v. State, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002).

There is no evidence in the record Petitioner ever asked PCR counsel to file an appeal and that counsel failed to do so. Rather, Petitioner's entire argument is that PCR counsel should have automatically filed an appeal on his behalf. Petitioner, however, has failed to cite to any authority to support such an argument. Petitioner failed to meet his burden of proving the doctrine of laches does not operate to bar this second PCR application. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

C.

As Petitioner failed to meet this burden of proving he was entitled to review of the issues from his first PCR application, the PCR judge did not err in denying this second PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General
S.C. Bar # 68331

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: Karen Ratigan
ATTORNEYS FOR RESPONDENT

July 5, 2013

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-000362

Stanley Lewis Butler,.....Petitioner,

v.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 5th day of July, 2013.


KAREN C. RATIGAN
S.C. Bar # 68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

Stanley L. Butler, Petitioner,

v.

State of South Carolina, Respondent.

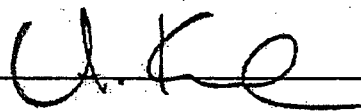
Appellate Case No. 2013-000362

ORDER

This matter is before the Court on a petition for a writ of certiorari. We grant the petition for a writ of certiorari and direct the parties to brief the following issue and any other issue of arguable merit:

Did the PCR court commit an error of law when it denied and dismissed Petitioner's PCR application based on the doctrine of laches when the State did not plead laches as an affirmative defense?

The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

 J.

Columbia, South Carolina

cc: Karen Christine Ratigan, Esquire
Alan McCrory Wilson, Esquire
Robert M. Pachak, Esquire

RECEIVED

JAN 22 2015

SC OFFICE OF
APPELLATE DEFENSE

FILED

1-22-15 

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

STANLEY L. BUTLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000362

BRIEF OF PETITIONER

ROBERT M. PACHAK
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(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUES PRESENTED

I.

Whether petitioner is entitled to a belated appeal of the denial of his first application for post-conviction relief?

II.

Did the PCR court commit an error of law when it denied and dismissed petitioner's PCR application based on the doctrine of laches when the State did not plead laches as an affirmative defense?

STATEMENT

Petitioner was convicted of four (4) counts of kidnapping, armed robbery, and possession of a weapon after a jury trial held before the Honorable C. Victor Pyle, Jr., on July 23, 1995, in Greenville County. There were four (4) twenty (20) year sentences imposed for kidnapping with one (1) of them being consecutive. There was a thirty (30) year sentence for armed robbery, and a five (5) year sentence for possession of a weapon. John Robbins, Jr., Esquire, was defense counsel. Judy M. Munson, Esquire, was the solicitor. (App. p. 1 – p. 374).

Petitioner appealed his convictions and they were affirmed by the Court of Appeals on December 10, 1997. State v. Butler, Op. No. 97-UP-640. (App. p. 399).

Petitioner filed an application for post-conviction relief on June 26, 1998. An evidentiary hearing was held on April 12, 2000, before the Honorable James E. Brogdon, Jr. Petitioner was represented by William G. Yarborough, Esquire. The application was dismissed by order dated July 16, 2001. There was no appeal. (App. p. 399).

Petitioner filed his current application for post-conviction relief on June 29, 2012. (App. p. 376 – p. 382). Respondent filed a return and motion to dismiss dated September 11, 2012. Respondent alleged the current application was successive and that it was filed after the statute of limitations had expired. (App. p. 398 – p. 402). On September 19, 2012, the Honorable G. Edward Welmaker issued a conditional order of dismissal giving petitioner twenty (20) days to show why the order should not become final. (App. p. 403 – p. 407). Petitioner filed a motion to amend on September 25, 2012. (App. p. 393 – p. 397).

On January 14, 2013, Judge Welmaker issued a final order of dismissal denying and dismissing petitioner's application for post-conviction relief. The order found petitioner's second application for post-conviction relief successive and filed outside the statute of limitations. The

order also found that the doctrine of laches also justified dismissal of the second PCR application. (App. p. 408 – p. 410).

Petitioner filed a petition for writ of certiorari pursuant to Rule 243(c), SCACR, that was dated February 1, 2013. (App. p. 383 – p. 389).

A petition for writ of certiorari was filed on May 30, 2013. On January 22, 2015, this Court issued an order granting the petition and directing the parties to submit briefs.

This brief of petitioner follows.

A separate brief will be submitted addressing the statement of the Austin question.

ARGUMENT I

Petitioner is entitled to a belated appeal of the denial of his first application for post-conviction relief.

In Gamble v. State, 298 S.C. 176, 379 S.E.2d 118 (1989), the court held that a second application for post-conviction relief was not successive where the first application was dismissed at the request of the applicant and the State consented and the order dismissing the application did not do so with prejudice. The applicant was entitled to one bite at the apple. In Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982), the court held that a successive application was allowed when the applicant's first application was dismissed without the assistance of counsel and without a hearing. In Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), the court held that a second application for post-conviction relief was not successive when an applicant was alleging that PCR counsel was ineffective in failing to appeal the denial of the first PCR application. In King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), a procedure was set forth for the review of the denial of PCR applications based on an applicant's failure to properly waive the right to appellate review of a prior denial. In a case like this, the procedure set forth is as follows:

When the post-conviction relief judge has found that the applicant is *not* entitled to an Austin v. State review, the petition shall raise the question of waiver of the right to appellate review of the previous post-conviction relief order along with all other questions petitioner seeks to have reviewed from that order. The petition shall also contain a "Statement of Austin Questions" listing the questions to be raised if an Austin v. State review is granted. An Austin petition addressing the questions will not be allowed unless certiorari is granted on the Austin v. State question.

In Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), the court held that the one-year statute of limitations did not apply to a petitioner's appeal from the summary denial of an application for post-conviction relief based on the denial of the right to appeal.

In this case, petitioner wrote in his petition for writ of certiorari pursuant to Rule 243(c), SCACR, that he did not knowingly and intelligently waive the right to appellate review of the denial of his first PCR application. His PCR attorney was arrested and then disbarred and failed to appeal the denial of petitioner's PCR application. Petitioner's current application is not successive and is not barred by the statute of limitations. He is entitled to a belated appeal of the denial of his first application for post-conviction relief.

ARGUMENT II

The PCR court committed an error of law when it denied and dismissed Petitioners PCR application based on the doctrine of laches because the State did not plead laches as an affirmative defense.

In Dearbury v. State, 367 S.C. 34, 625 S.E.2d 212 (2006), the South Carolina Supreme Court wrote:

The State also contends petitioner's PCR application is barred by laches. However, laches is an affirmative defense that must be pleaded pursuant to Rule 8 (c), SCRCP. See also, Adams v. B & D, Inc., 297 S.C. 416, 377 S.E.2d 315 (1989). The State did not plead laches and accordingly is barred from asserting it now.

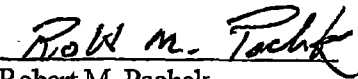
The State did not plead laches as an affirmative defense in this case. Therefore, the PCR court committed an error of law when it denied and dismissed petitioner's PCR application based on the doctrine of laches.

In Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), the South Carolina Supreme Court set out a procedure to be followed when laches is properly raised. Because it was not properly raised in this case, it is not an issue.

CONCLUSION

The doctrine of laches should not operate to bar petitioner's case from going forward.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER.

This 23rd day of February, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

STANLEY L. BUTLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000362

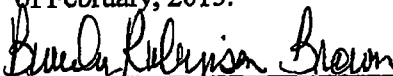
CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Karen Ratigan, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Stanley L. Butler, Kershaw Correctional Institution, 4848 Gold Mine Highway Kershaw, SC 29067-8069, this 23rd day of February, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of February, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: December 9, 2024

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-000362

Stanley Lewis Butler, ... Petitioner,

v.

State of South Carolina, ... Respondent.

**MOTION TO RELAX RULE 243(F)
AND CONSENT TO REMAND**

COMES NOW, Respondent, above named, by and through the undersigned counsel,
making its Motion to Relax Rule 243(f) and Consent to Remand, and would show unto this
Court:

I.

Respondent's Brief of Respondent in the above-captioned matter was due to be filed
and served on June 25, 2015. Respondent, however, does not wish to submit a Brief of
Respondent in this case. Rather, Respondent would ask this Court to relax Rule 243(f),
SCACR in order to allow Respondent to consent to this Court vacating the order of dismissal
and remanding the matter to circuit court for the appointment of counsel and an evidentiary

hearing upon Petitioner's original pleading (a post-conviction relief application).

Respondent submits, however, that remand cannot occur until its Motion to Certify the Case to the South Carolina Supreme Court – which was filed on May 5, 2015 and withdrawn on June 24, 2015 – is ruled upon. Once the Supreme Court accepts Respondent's withdrawal of its motion and issues an order, Respondent prays this Court will remand the matter to circuit court.

II.

WHEREFORE, it is respectfully requested that this Motion to Relax Rule 243(f) and Consent to Remand be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:


Attorneys for Respondent

June 29, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-000362

Stanley Lewis Butler, ... Petitioner,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Motion to Relax Rule 243(f) and Consent to Remand upon Petitioner by depositing a copy of the same in interagency mail and addressed to:

Robert M. Pachak, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 29th day of June, 2015.


KAREN C. RATIGAN, S.C. Bar # 68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

The South Carolina Court of Appeals

Stanley L. Butler, Petitioner,

v.

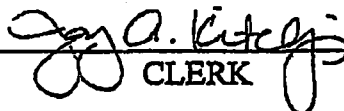
State of South Carolina, Respondent.

Appellate Case No. 2013-000362

ORDER

With the consent of the parties, we vacate the PCR court's order of dismissal and remand this case to the Greenville County Court of Common Pleas for an evidentiary hearing on the allegations contained in Butler's PCR application and motion to amend. The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY 
CLERK

Columbia, South Carolina

cc: Karen Christine Ratigan, Esquire
Robert M. Pachak, Esquire
Alan McCrory Wilson, Esquire

FILED

Sept 1, 2015 

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2012CP2304208
	)	
Stanley L. Butler,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

April 20, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE R. KNOX McMAHON, Judge.

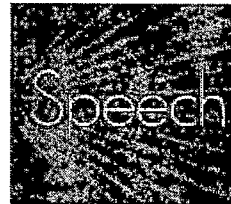
A P P E A R A N C E S:

BRIAN JOHNSON, Esquire
Attorney for the Applicant

PATRICK SCHMECKPEPER, Esquire
Attorney for the Respondent

Teresa B. Johnson, CVR-M
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 20th day of April, 2016 at approximately 10:44 a.m.)

THE COURT: All right, uh, Mr.

Schmeckpeper.

MR. SCHMECKPEPER: Thank you, Your Honor.

May it please the Court. This is the matter of Stanley Lewis Butler versus the State of South Carolina, 2012-CP-23-4208. The applicant was indicted in May of 1996 in Greenville County for four counts of Kidnaping, one count of Armed Robbery and Possession of a Weapon during the Commission of a Violent Crime.

He proceeded to trial and was ultimately found guilty. On July 23rd, 1996, he was sentenced to concurrent -- current terms of 20 years for three of the counts of Kidnaping, 30 years for Armed Robbery and five years for Possession of a Weapon during the Commission of a Violent Crime. He was also sentenced to a consecutive sentence of 20 years for one of the counts of Kidnaping. That was Judge Pyle presiding.

Following a notice of appeal and perfection of appeal, the Court of Appeals affirmed

1 applicant's conviction of those sentences in an
2 opinion filed December 10th, 1997. Applicant,
3 subsequently, filed a PCR application on June
4 26th of 1998. There was an evidentiary hearing
5 on April 12th, 2000 at the Greenville County
6 Courthouse. After which, the Honorable James
7 Brogdon denied and dismissed the application by
8 order dated July 16th, 2001. The applicant did
9 not appeal.

10 This application, the current application,
11 I think it's a second application, was filed on
12 June 29th, 2012. He's alleged ineffective
13 assistance of trial counsel, uh, and also
14 ineffective assistance of PCR counsel for
15 failing to file an appeal.

16 At this time, Your Honor, the State moves
17 for dismissal on all of applicant's claims in
18 his entire application. Concerning the
19 allegations that trial counsel was ineffective,
20 the State argues that those claims are barred
21 specifically by the doctrine -- the prohibition
22 against successive filings of PCR, as well as
23 the fact that they were filed outside the
24 statute of limitations.

25 Concerning the claim that applicant's PCR

1 counsel was ineffective for failing to file an
2 appeal, the State submits those claims are also
3 barred by latches. Again, applicant's initial
4 PCR was denied over 10 years ago. Latches is
5 defined as, and I quote, delayed for
6 unreasonable and unexplained length of time
7 under circumstances affording opportunity for
8 diligence to do what in law should have been
9 done. In determining whether or not a PCR
10 should be denied or barred under latches, it's
11 a highly factual -- it's a highly factual
12 analysis -- fact-specific analysis taking into
13 account whether or not the State has been
14 prejudiced by applicant's unreasonable delay.

15 In this case, I would submit that the State
16 has been prejudiced. First off, we don't even
17 know if witnesses remember anything about the
18 case. We don't remember -- we don't know if
19 witnesses remember anything about the case or
20 if they remember the case at all.

21 In addition, I don't even know if the
22 transcript's available. Under rule -- beg the
23 Court's indulgence. Under Rule 607 of the
24 South Carolina Appellate Court Rules, uh,
25 transcripts must be retained for a period of

1 five years after, uh, the actual -- five years
2 after the actual date of recording. After
3 that, they can be destroyed. We don't even
4 know if there's a PCR transcript, so it would
5 be very difficult for the State to respond to
6 any allegations.

7 **THE COURT:** All right. And then, Mr.
8 Schmeckpeper, I do not have a package.

9 **MR. SCHMECKPEPER:** I apologize, Your
10 Honor.

11 (WHEREUPON, there is a pause.)

12 **THE COURT:** All right. Mr. Johnson?

13 **MR. JOHNSON:** Thank you, Your Honor. May
14 it please the Court. Your Honor, I think it
15 might be prudent, uh, before I respond to the
16 Attorney General, before the hearing started, I
17 believe we approached off the record on the
18 procedures here today. I'm inquiring as to
19 Your Honor's instructions on how we are
20 proceeding so that I could apprise my client
21 and argue appropriately, Your Honor.

22 **THE COURT:** Well, I reviewed Justice --
23 now, Chief Justice Pleicones' decision that you
24 handed up previously *Whitehead versus the*
25 *State*, opinion number 25567, filed December 16,

1 2002. The first question asked was, may
2 latches bar an *Austin* review? Second, may
3 latches properly be raised by the State in this
4 matter? And third, what procedure shall be
5 followed where latches is properly raised as a
6 defense to an *Austin* claim?

7 It appears that latches is an affirmative
8 defense and must be pled. And it does appear,
9 after the Attorney General handed me up an
10 amended return and motion to dismiss that, uh,
11 in their paragraph 5 of that return they have
12 affirmatively pled the doctrine of latches.
13 And then it directs the Court that what occurs,
14 uh, after the court determines whether the
15 latches defense is or is not available, it
16 further says in cases where latches is properly
17 raised as a defense to an *Austin* claim, the PCR
18 court shall hear evidence on this defense, that
19 is latches, at the same time that it hears the
20 applicant's *Austin* claim on the merits. I will
21 take I will now hear evidence on the defense of
22 latches and also on the applicant's *Austin*
23 claim on the merits.

24 **MR. JOHNSON:** Yes, sir, Your Honor.

25 **THE COURT:** All right. And I guess my

1 next question is does that make sense, Mr.
2 Johnson and Mr. Attorney General?

3 **MR. JOHNSON:** Makes sense to me, Judge.

4 **THE COURT:** All right.

5 **MR. JOHNSON:** Now, for clarification, at
6 this time, it's not the applicant's goal to
7 reconstruct the record. That's to be decided,
8 I suppose, Your Honor. Is that correct?

9 **THE COURT:** I think, uh, -- I think that's
10 a separate issue.

11 **MR. JOHNSON:** Yes, sir, Your Honor.

12 **THE COURT:** Give me, uh, -- if I find that
13 the -- if I find for the applicant on both the
14 Austin claim and the latches defense, then the
15 applicant shall proceed according to the
16 procedure outlined in *King versus State*. The
17 State may cross-petition for review of the
18 latches. I think *King versus State* is the case
19 on the reconstruction of the record in Judge
20 Mobley's order and Judge Bristow, I believe.

21 **MR. JOHNSON:** Yes, sir, Your Honor.

22 **THE COURT:** So I think that procedure then
23 depends on what my rulings are. If I find for
24 the State on both latches and *Austin*, it
25 directs the applicant and petitioner to file a

1 petition for cert addressing both rulings on
2 those merits and shall include a list of issues
3 that would be raised were the *Austin* review
4 granted.

5 If I find for the State on the latches and
6 for the petitioner on the *Austin* claim, the
7 petitioner shall raise the latches issue on the
8 merits in his petition for writ of cert, in
9 addition to following the procedure outlined in
10 *King*.

11 And if I find for the petitioner on the
12 latches defense and for the State on the
13 *Austin*, in other words, if I find for the
14 petitioner on latches and for the State on
15 *Austin*, petitioner shall follow the *King versus*
16 *State* procedure; the State may cross-petition
17 for review on latches. So I guess it's two
18 separate right things right now, latches and
19 *Austin*.

20 MR. JOHNSON: Yes, sir, Your Honor.

21 THE COURT: Do you agree, Mr. Johnson?

22 MR. JOHNSON: I agree.

23 THE COURT: Do you agree, Solicitor -- Mr.
24 Attorney General?

25 MR. SCHMECKPEPER: Yes, Your Honor. I

1 just have one more point just to make for the
2 record.

3 **THE COURT:** Sure.

4 **MR. SCHMECKPEPER:** This case has
5 previously been dismissed. Originally, in our
6 return, a motion to dismiss was filed in this
7 case and a conditional order of dismissal was
8 signed; and a final order of dismissal was
9 signed by -- a final order of dismissal was
10 signed and clocked. This case went to an
11 appeal. It was dismissed, I think, based on
12 statute of limitations and successiveness. The
13 applicant raised *Austin* in a subsequent amended
14 pleading. Final order of dismissal addressed
15 latches.

16 Following appeal, the applicant and counsel
17 -- by consent of both the parties, the Court of
18 Appeals vacated an evidentiary hearing. I have
19 the order. I believe it's in the judge's
20 packet too. I can pass this up. It wasn't
21 clear on the issue of latches. I don't think
22 that's actually been ruled on.

23 **THE COURT:** Let me, uh,...(Pause.)

24 Show me what you are referring to,
25 Solicitor -- excuse me, Mr. Attorney General.

1 I think we're looking at the same document, but
2 I want to make sure.

3 MR. SCHMECKPEPER: Your Honor, do you have
4 a copy of the final order of dismissal?

5 THE COURT: Yes, sir. I do. That's
6 January 3rd, 2013?

7 MR. JOHNSON: Yes, sir.

8 MR. SCHMECKPEPER: Yes, Your Honor. I'm
9 handing up an opinion of the order from the
10 Court of Appeals.

11 THE COURT: Yes, sir. I think we're
12 looking at the same thing. (Pause.)

13 All right. And I, uh -- I see it's been
14 remanded to this court for an evidentiary
15 hearing on the allegations contained in the PCR
16 application and motion to amend. Is that
17 correct?

18 MR. SCHMECKPEPER: That's correct, Your
19 Honor.

20 THE COURT: What are the, uh, allegations
21 in his PCR application and motion to amend, Mr.
22 Johnson?

23 MR. JOHNSON: Your Honor, he -- in his
24 motion to amend, he argues that his PCR action
25 was ineffective because his PCR attorney was

1 arrested and did not file an appeal on his
2 behalf. So the *Austin* appeal is the issue in
3 his amended application.

4 **THE COURT:** What about his application
5 itself? Was it different allegations in it?

6 **MR. JOHNSON:** Well, they were different
7 allegations against the underlying attorney,
8 John Rollins. I, uh, -- I suppose I could be
9 wrong, Your Honor, but I, uh, -- I assumed that
10 the issue before us today was only with regards
11 to whether or not his PCR attorney should have
12 filed an appeal and whether he is entitled to
13 one. I don't know if Patrick can confirm or
14 deny that.

15 **THE COURT:** I'm just trying to decide what
16 it is that the Court of Appeals is directing
17 the circuit court to do.

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** According to this, they are
20 remanding it for an evidentiary hearing on the
21 allegations contained in Mr. Butler's PCR
22 application and motion to amend.

23 **MR. SCHMECKPEPER:** Your Honor, my
24 understanding is, uh, because this is a consent
25 order, because the State volun -- this wasn't

1 the Court of Appeals coming in and saying an
2 evidentiary hearing is necessary. It was both
3 parties coming together and agreeing to have a
4 hearing -- I think that the actual agreement
5 was to go over the *Austin* claim. I don't know
6 because I wasn't a party to those
7 conversations. This all happened before I got
8 here. However, I don't think that bars your
9 consideration of the State's motion to dismiss
10 in this matter.

11 **THE COURT:** All right. All right. Well,
12 let's go forward then and I will hear -- you
13 may address, Mr. Johnson, as to latches and
14 also the *Austin* issue.

15 **MR. JOHNSON:** Yes, sir, Your Honor. May
16 it please the Court?

17 **THE COURT:** Yes, sir.

18 **MR. JOHNSON:** First of -- first of all, in
19 response to the Attorney General's argument
20 regarding latches, Your Honor, uh, the case law
21 previously stated that the doctrine of latches
22 generally prevents an applicant from seeking
23 review of his conviction, especially where
24 delay affects the availability of -- to refute
25 the applicant's claims. And so, Your Honor, I

1 think the first question is whether or not the
2 State -- the Attorney General has the ability
3 to defend himself -- defend themselves from the
4 claims with which my client has made. I would
5 argue that because it comes down to a simple
6 claim of whether or not he's entitled to a
7 belated appeal, whether or not that appeal was
8 filed, whether or not that that was discussed
9 with the applicant, I think that latches in
10 this circumstance, at least, should not apply.
11 That's my argument there.

12 Second, Judge, with regards to the final
13 order of dismissal that was filed on January
14 3rd, 2013, in the final order of dismissal, on
15 the third page where the judge had signed, it
16 references *Whitehead versus State*. It actually
17 goes into the language, uh, that, uh, applies
18 to latches. For example, Your Honor, the last
19 two sentences say the court notes that almost
20 11 years have elapsed since the first PCR
21 action was dismissed. It's highly unlikely
22 that a transcript from the April 12th, 2000
23 hearing is still in existence. The court finds
24 that the applicant's delay in requesting an
25 appeal from his first PCR application greatly

1 prejudices the respondent.

2 Now, Your Honor, this is the order that was
3 appealed and went up to the appeals court. I
4 understand that they -- there may have been a
5 consent order or an agreement to come back
6 here. But I would argue, myself, in response,
7 essentially, the principal of res judicata.
8 This issue has been decided. The doctrine --
9 they have alleged latches previously. This
10 went up to the appeals -- to the Supreme Court
11 on a writ.

12 Now, we are back here today. Your Honor, I
13 would submit that that issue has been decided.
14 Therefore, we should proceed on whether or not
15 the *Austin* claim itself should proceed to the
16 Supreme Court for a petition of writ.

17 **THE COURT:** Let me ask y'all to do this on
18 latches. Just brief it. Brief the latches
19 issues. You know, it's an issue on the law,
20 the timeline -- y'all both are going to agree
21 on the timeline on what occurred. It appears
22 that rather than doing it in this manner, it
23 would be more efficient for y'all and for the
24 court just to brief it. I'll give you an
25 extended period of time, whatever you need, to

1 do that.

2 It's an interesting issue, although I find
3 that every issue is interesting. But, just
4 brief the latches issue as the court directs.
5 I'm not going to decide it today, so I can go
6 ahead and hear the *Austin* claim today.

7 Are you prepared for that, Mr. Johnson?

8 **MR. JOHNSON:** Yes, sir, Your Honor.

9 **THE COURT:** You prepared for that?

10 **MR. SCHMECKPEPER:** Yes, Your Honor.

11 **THE COURT:** All right. Let's hear the
12 *Austin* issue. We need to take evidence on
13 that. I can decide the other one on the
14 briefs.

15 **MR. JOHNSON:** Yes, sir. Yes, sir, Your
16 Honor.

17 **THE COURT:** All right.

18 **MR. JOHNSON:** At this time, I would call
19 Stanley Lewis Butler to the stand.

20 **THE COURT:** All right. Mr. Butler, would
21 you come around and be sworn for us please.

22 **THE CLERK:** Mr. Butler, please place your
23 left hand on the Bible and raise your right
24 hand.

25 **STANLEY BUTLER**

1 having first been duly sworn, testifies as follows:

2 **THE CLERK:** Thank you. You may be seated.

3 Please state your full name for the record.

4 **THE WITNESS:** Stanley Lewis Butler.

5 **THE CLERK:** Thank you.

6 **THE COURT:** All right. Yes, Mr. Johnson.

7 **MR. JOHNSON:** Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 **BY MR. JOHNSON:**

10 **Q** All right. Mr. Butler, you filed an action
11 for post-conviction relief in this matter; is that
12 correct?

13 **A** Yes, sir.

14 **Q** And in addition, you are familiar with some
15 of the procedural history of how your case is here
16 today; is that correct?

17 **A** Yes, sir.

18 **Q** And is it your understanding basically that
19 you filed an application in 2012, that application
20 was amended, it was conditionally dismissed and now
21 we are back here today to decide whether or not your
22 motion to amend to get your PCR -- denial of your PCR
23 heard by the Supreme Court; is that correct?

24 **A** Yes, sir.

25 **Q** All right. Can you please -- at this point

1 in time, I want to allow you to set forth the
2 background facts by which the appeal or failing to
3 file the appeal was made, okay? Can you please tell
4 the court what happened after your denial of your
5 first PCR application.

6 **A** Okay. During the process of PCR, uh, some
7 things went on with my attorney that I wasn't, you
8 know, aware of, because I was incarcerated. But it
9 was through a news reporting about him being arrested
10 and --

11 **MR. SCHMECKPEPER:** Your Honor, I'd object.
12 This is hearsay.

13 **THE WITNESS:** Well, it's a -- I have --

14 **THE COURT:** Let -- let -- let -- let me
15 rule on it.

16 Rephrase your question, Mr. Johnson, with
17 the contact that he had had with his attorney
18 after the post-conviction relief hearing.

19 **BY MR. JOHNSON:**

20 **Q** Mr. Butler, after your hearing for post-
21 conviction relief, did you speak or have
22 communication with your attorney?

23 **A** After? No, sir.

24 **Q** Okay. Did you ever have an understanding
25 of why that may have been?

1 A Like I said, the only thing that I got
2 was --

3 Q I'm not asking you what you saw. I'm
4 asking what your understanding of it was -- is.

5 A I didn't know anything to do as far as what
6 else was expected of me of the proceeding. So, you
7 know, I was just basically just stuck. After the
8 outcome of the PCR, I didn't know anything about the
9 law or nothing like that then. That was the purpose
10 of hiring an attorney to perfect my PCR for me.

11 Q So you didn't speak with him after the PCR
12 hearing?

13 A No, I didn't speak with anybody about it.
14 It just was over with. I didn't have an opportunity
15 to actually contact him at all or nothing like that.

16 Q In your application, you basically claim
17 that he wasn't able to do it because he was arrested;
18 is that correct?

19 A Yes, sir.

20 Q Is that your understanding of what
21 happened?

22 A Well, I got the -- I wrote the -- somebody
23 -- I started looking at -- I had some guys that asked
24 me about my case during, uh, -- you know, on the
25 yard. It was like what step are you at. So I was,

1 like, I told them. They was like, well, you missed a
2 step. And I didn't know. So when I started
3 researching it, I actually wrote a letter to the, uh,
4 South Carolina Bar Lawyer Referral Services. And
5 they sent me the paperwork dated December the 11th,
6 2012. And then they sent me the, uh, --

7 **MR. SCHMECKPEPER:** Your Honor, I object
8 again to hearsay.

9 **THE COURT:** All right. Well, if Mr.
10 Butler was incarcerated and he had written the
11 South Carolina Referral Service, I will allow
12 that.

13 **THE WITNESS:** Yeah, they sent me the
14 paperwork about his particular case where he was
15 disbarred and arrested and stuff. From that
16 point, I started reading about the appeals and
17 appellate review and stuff. And I learned about
18 the *Austin* claims. And I started researching
19 it, looking into it and seeing similarities to
20 my situation dealing with me not having access
21 to a full bite of the apple as far as the PCR is
22 concerned.

23 And I filed a -- I actually filed the
24 paperwork before this paperwork here came back.
25 That's why it was amended later. Once it came

1 back, I amended it for confirmation of my actual
2 allegations against, you know, raising the
3 issues of having a belated appeal and not having
4 access. That's why the amended part was done
5 later, because I didn't have that information in
6 my possession until I filed the second part, the
7 amended, uh, portion of the PCR, the motion to
8 amend.

9 BY MR. SMITHS:

10 Q So with regards to your motion to amend and
11 the allegations you made, you believe basically your
12 inability to communicate, due to circumstances that
13 your attorney was suffering, prevented you from being
14 able to file an appeal in the appropriate time frame?

15 A Yes, sir.

16 Q And at this point in time, you are asking
17 the court to consider allowing your appeal or
18 allowing you a belated appeal pursuant to *State*
19 *versus Austin*?

20 A Yes.

21 Q Please answer any questions Mr. -- the
22 Attorney General has -- the State has.

23 CROSS-EXAMINATION

24 BY MR. SCHMECKPEPER:

25 Q Good morning, Mr. Butler.

1 **A** Good morning.

2 **Q** I'm just going to go through the timeline
3 again real quick. When did you write the -- when did
4 you write the -- I mean, who did you write a letter
5 to?

6 **A** The lawyers -- South Carolina Bar Lawyer
7 Referral Services ---

8 **Q** And when did you --

9 **A** --- in Columbia.

10 **Q** And when was that?

11 **A** This was in 2012.

12 **MR. SCHMECKPEPER:** Your Honor, I have no
13 further questions.

14 **MR. JOHNSON:** No redirect, Your Honor.

15 **THE COURT:** Thank you.

16 Thank you very much.

17 **MR. SCHMECKPEPER:** Your Honor, at this --

18 **THE COURT:** Yes, sir.

19 **MR. JOHNSON:** Go right ahead.

20 **MR. SCHMECKPEPER:** At this point, I'd move
21 for summary judgement. The applicant hasn't
22 stated that he asked Mr. Yarborough for an
23 appeal. There had been no testimony to that
24 fact.

25 **THE COURT:** Thank you. All right.

1 Thank you, Mr. Butler.

2 I'm just curious intellectually, which I'm
3 very -- I don't become intellectual very often.
4 Is there a summary judgement motion available at
5 the end of the case? Is it a directed verdict
6 or is it a motion to dismiss on a rule?
7 Footnoted in a case of Judge Jefferson out of
8 Charleston, I've learned this, if there's no
9 directed verdict in a non-jury trial, Rule 41.
10 I wondered if that appeals to a PCR. Being that
11 as it may, it's only an intellectual summary
12 issue. I certainly understand the substance of
13 the motion.

14 You have any response, Mr. Johnson?

15 **MR. JOHNSON:** Yes, sir. I have *State*
16 *versus Austin* before me. The primary issue that
17 we have is an issue of whether, in fact, the
18 petitioner was denied an opportunity to seek
19 appellate review. The main portion that we have
20 here is my client basically testified that Mr.
21 Yarborough was unavailable. There was -- he's
22 already testified that, uh, because of the
23 circumstances that he was suffering -- he
24 wouldn't have been able to communicate with Mr.
25 Yarborough at all. And that's the primary

1 thing.

2 For example, Your Honor, if, uh, I guess
3 it's kind of an absence of evidence thing. From
4 what we are familiar with the OJ trial, the
5 absence of evidence is not evidence of absence.
6 I think that we have a situation where there was
7 no way he could have asked him for anything
8 because, as he testified to, there were
9 circumstances that he was suffering that would
10 not allow him to contact Mr. Yarborough and he
11 did not have contact with him. That's
12 essentially the argument that Mr. Butler is
13 making. We'd ask you to consider his
14 application based on those facts.

15 **THE COURT:** All right. You care to
16 respond, Mr. Schmeckpeper?

17 **MR. SCHMECKPEPER:** Your Honor, I mean, I
18 don't there's really any testimony that the
19 applicant attempted to contact Mr. Yarborough or
20 had any interest in filing an appeal.

21 **THE COURT:** Thank you. Thank you very
22 much. I'll take the Austin -- do you have any,
23 uh, evidence or testimony you want to present?

24 **MR. SCHMECKPEPER:** Your Honor, I'd call Mr.
25 Yarborough, the PCR counsel.

1 **THE COURT:** Mr. Yarborough, if you'll come
2 around please.

3 **THE WITNESS:** Good morning, Your Honor.

4 **THE COURT:** Good morning. How are you,
5 sir?

6 **THE WITNESS:** Good. How are you?

7 **THE CLERK:** Mr. Yarborough, place your
8 left hand on the Bible and raise your right
9 hand.

10 **WILLIAM YARBOROUGH**

11 having first been duly sworn, testifies as follows:

12 **THE CLERK:** Thank you. You may be seated.
13 Please state your full name for the record.

14 **THE WITNESS:** William G. Yarborough.

15 **DIRECT EXAMINATION**

16 **BY MR. SCHMECKPEPER:**

17 **Q** Mr. Yarborough, do you remember anything
18 about this case?

19 **A** I remember that -- when I walked in, I
20 remembered Mr. Butler. I don't remember what
21 capacity that I represented him in. If he said I
22 represented him in a PCR, I'm sure I did.

23 **Q** So you don't -- you remember whether or not
24 in a PCR hearing he asked you to file an appeal?

25 **A** I don't. I just went back and looked at

1 the dates, just for clarification. I think my, uh,
2 health and my troubles started about four months
3 after Mr. Butler's PCR hearing was held. I can't
4 answer the question as to whether or not we filed an
5 appeal.

6 My practice would have been to file an
7 appeal in a PCR within whatever the time frame for
8 it. I can not tell you if -- that time frame is so
9 close to that period, I just can't tell you the
10 answer to it. I don't think that anywhere there's a
11 file. If Mr. Butler says he communicated to me and
12 wanted a PCR filed, I can't say that that didn't
13 happen. I also -- if he did, I would have done it.
14 Okay. So I don't know the answer.

15 **MR. SCHMECKPEPER:** I have no further
16 questions. Thank you, Mr. Yarborough.

17 **THE COURT:** Mr. Johnson?

18 **MR. JOHNSON:** One second, Your Honor.

19 (Pause.)

20 Your Honor, I don't have any questions of
21 this witness.

22 **THE COURT:** Thank you. Thank you very
23 much. Thank you, Mr. Yarborough for being with
24 us this morning.

25 Any other witnesses, Mr. Attorney General?

1 **MR. SCHMECKPEPER:** Your Honor, the State
2 rests.

3 **THE COURT:** Anything additional, Mr.
4 Johnson?

5 **MR. JOHNSON:** Yes, sir. Just one brief
6 reply -- testimony in reply, Your Honor. Just
7 one second. (Pause.)

8 Your Honor, I call Pauline Butler, the
9 applicant's mother.

10 **THE COURT:** All right. Ms. Butler, if you
11 would, come around for us please and be sworn.

12 **PAULINE BUTLER**
13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you. You may be seated.
15 Please state your full name for the record.

16 **THE WITNESS:** Pauline Butler.

17 **DIRECT EXAMINATION**

18 **BY MR. JOHNSON:**

19 **Q** Ms. Butler, you are the applicant's mother;
20 is that correct?

21 **A** Yes.

22 **Q** All right. Now, uh, you've been in the
23 courtroom for the testimony of both your son and Mr.
24 Yarborough; is that correct as well?

25 **A** Yes.

1 Q Are you familiar with the circumstances by
2 which Mr. Yarborough represented your son?

3 A Yes.

4 Q In an action for post-conviction relief?

5 A Yes.

6 Q All right. Now, after the hearing was over
7 and your son was denied his PCR application or his
8 application for post-conviction relief, did you
9 contact his attorney on the matter?

10 THE COURT: That's not in reply.

11 MR. JOHNSON: Well, he -- I believe, uh, --
12 I believe, uh, -- Your Honor, if I may, I
13 believe the attorney's asked if -- the attorney
14 stated if they contacted him and asked, that he
15 would have done it.

16 THE COURT: Wait a minute. We can go back
17 and check the record. He said he would have
18 asked, I would have done it. That was, uh, --
19 now, I can ask Madam Court Reporter,
20 Ms. Johnson, to check that.

21 MR. JOHNSON: I believe that's correct,
22 Your Honor. And I, uh, -- if I may argue the
23 point, I believe communication can be made on
24 Mr. Butler's behalf.

25 THE COURT: Wasn't Mr. -- I'm very

1 specific -- reply is very specific testimony.
2 Mr. Yarborough wasn't asked do you recall or not
3 recall anyone contacting you on Mr. Butler's
4 behalf. It's not reply to Mr. Yarborough's
5 testimony.

6 **MR. JOHNSON:** Yes, sir, Your Honor. I
7 respect your ruling in this matter.

8 **THE COURT:** Thank you. Thank you very
9 much.

10 All right. Thank you, Ms. Butler, you may
11 step down.

12 **MR. JOHNSON:** Your Honor, one question.
13 Just for potential purposes -- I don't know how
14 you are going to rule, but for potential
15 purposes of appeal or otherwise, may I preserve
16 the record by asking her her testimony?

17 **THE COURT:** All right. Step back around
18 here, Ms. Butler, please. You're still under
19 oath.

20 **BY MR. JOHNSON:**

21 **Q** Ms. Butler, did -- this is for purpose of
22 preserving the record, but did you try to contact Mr.
23 Yarborough after your son's PCR case was denied?

24 **A** I did.

25 **Q** Were you able to reach him successfully?

1 A Not really, no.

2 Q Now, uh, with regards to your son's right
3 to appeal, the next steps in the matter, is that why
4 you were going to contact him?

5 A I don't understand the question.

6 Q With regards to your son's appeal or next
7 steps to your son's PCR application, is that why you
8 were trying to contact him?

9 A Yes.

10 MR. JOHNSON: Your Honor, I have no further
11 questions.

12 THE COURT: Anything, Mr. Attorney
13 General?

14 **CROSS-EXAMINATION**

15 BY MR. SCHMECKPEPER:

16 Q Good morning, Ms. Butler. Who did you --
17 when did you try and contact Mr. Yarborough?

18 A I can't hear too good. I'm sorry.

19 Q When did you try to contact Mr. Yarborough?

20 A When? I talked to him during the time he
21 was supposed to represent my son because I paid him
22 to represent my son, but I don't remember the date or
23 anything.

24 Q You talked to him after the hearing? You
25 said you talked to him after the hearing or you

1 attempted to contact him after the hearing?

2 **A** No, he was incarcerated. They said he was
3 in jail.

4 **Q** Did you attempt to talk to him after the
5 hearing?

6 **A** No.

7 **MR. SCHMECKPEPER:** I have no further
8 questions.

9 **THE COURT:** Anything further, Mr. Johnson?

10 **MR. JOHNSON:** No, sir, Your Honor.

11 **THE COURT:** Thank you, Ms. Butler. You
12 may step down.

13 **MR. JOHNSON:** Nothing further from the
14 applicant, Your Honor.

15 **THE COURT:** All right. Anything -- well,
16 I don't think there's any reply. I ruled there
17 was no reply. That was just for the record.

18 **MR. SCHMECKPEPER:** Your Honor, just for the
19 record, I would appreciate the opportunity to
20 recall Mr. Yarborough to clear some stuff up,
21 but I'll respect your ruling.

22 **THE COURT:** For what purpose?

23 **MR. SCHMECKPEPER:** Specifically the
24 allegations that Mr. Yarborough was incarcerated
25 at that time.

1 **THE COURT:** All right. So I have in-
2 camera sur-reply without a jury, correct?

3 **MR. SCHMECKPEPER:** Yes, Your Honor.

4 **THE COURT:** All right. I will allow that.

5 You are still under oath, Mr. Yarborough.

6 Again, this all in-camera at this time.

7 I'm not taking it into consideration. All
8 right.

9 All right, Mr. Schmeckpeper.

10 **WILLIAM YARBOROUGH**

11 having previously been sworn, testified as
12 follows:

13 **DIRECT EXAMINATION**

14 **BY MR. SCHMECKPEPER:**

15 **Q** Mr. Yarborough, were you incarcerated
16 immediately following the applicant's hearing?

17 **A** No, no. I was not. And we -- if she would
18 have contacted the office and I was not there, she
19 would have been referred to Jeff Merriam who was the
20 counsel who took over and handled all of my cases. I
21 was in -- I did go to a treatment center for alcohol
22 addiction; and Mr. Merriam and I were -- would
23 contact each other on a weekly basis to discuss any
24 of my cases that may have come up at that time.

25 **Q** Thank you, Mr. Yarborough. I have no

1 further questions.

2 **THE COURT:** Mr. Johnson?

3 **MR. JOHNSON:** No questions, Your Honor.

4 **THE COURT:** Thank you again, Mr.

5 Yarborough.

6 **THE WITNESS:** Thank you.

7 **MR. SCHMECKPEPER:** Your Honor, the State
8 rests.

9 **THE COURT:** All right. I'm just going to
10 ask that y'all submit proposed orders. With
11 your briefs, with the latches brief and with the
12 proposed *Austin* orders, y'all know how busy you
13 are, tell me the period of time you need.

14 **MR. JOHNSON:** Your Honor, 60 total days.

15 **THE COURT:** Say it again.

16 **MR. JOHNSON:** 60 days.

17 **THE COURT:** 60?

18 **MR. JOHNSON:** Yes.

19 **THE COURT:** Sounded like a sentence. I
20 didn't like that.

21 **MR. JOHNSON:** Yes, sir.

22 **THE COURT:** Go right ahead.

23 **MR. SCHMECKPEPER:** 60 days is fine, Your
24 Honor.

25 **THE COURT:** All right. That will be fine.

1 60 days for both the briefs and the proposed
2 orders. Make sure you exchange with each other.

3 **MR. JOHNSON:** Yes, sir, Your Honor.

4 **THE COURT:** Okay.

5 **MR. JOHNSON:** Thank you, Judge.

6 **THE COURT:** Thank you very much.

7 Thank you, Mr. Johnson.

8 Thank you, Mr. Yarborough.

9 Good luck to you, Mr. Butler. Good luck to
10 you.

11 **MR. BUTLER:** All right. Thank you.

12

13 **(WHEREUPON, the proceedings conclude at**
14 approximately 11:23 a.m.)

15

16

17

18

CERTIFICATE

36

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth 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 Court of Common Pleas for Greenville, South Carolina, on this 16th day of June, 2016

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2012-CP-23-4208
COUNTY OF GREENVILLE	)	
	)	
Stanley Lewis Butler,	)	
S.C.D.C. No. 233704,	)	
	)	
Applicant,	)	
	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL E. WICKER
2016 AUG 9 PM 2 21

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 29, 2012.¹ Respondent filed its Return and Motion to Dismiss on January 19, 2016. An evidentiary hearing into the matter was convened on April 20, 2016, at the Greenville County Courthouse. Applicant was present at the hearing and was represented by Brian Johnson, Esquire. Also present was Applicant's previous PCR counsel, William G. Yarborough, Esquire, who also testified. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the May 1996 term of the Greenville County Grand Jury for four counts of kidnapping (1996-GS-23-3380, -3382, -3383, -3384), armed robbery (1996-GS-23-3381), and possession of a weapon during commission of a violent crime (1996-GS-23-3386). He was represented by John Rollins,

¹ A more in-depth explanation of the procedural history of this specific action is provided below.

Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 23, 1996, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of 20 years for three counts of kidnapping, 30 years for armed robbery, and 5 years for possession of a weapon during commission of a violent crime. Judge Pyle levied a consecutive sentence of 20 years for one count of kidnapping (1996-GS-23-3380).

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Butler, Op. No. 97-UP-640 (S.C. Ct. App. filed Dec. 10, 1997).

The Applicant filed a PCR application on June 26, 1998 (1998-CP-23-2305). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to prepare for trial.
 - b. Failed to present alibi witnesses.

An evidentiary hearing was held on April 12, 2000 at the Greenville County Courthouse. In addition to the above issues, the Applicant alleged trial counsel was ineffective in failing to obtain an independent fingerprint expert. William G. Yarborough, Esquire represented the Applicant. The Honorable James E. Brogdon, Jr. denied and dismissed the PCR application by order dated July 16, 2001. The Applicant did not appeal.

Applicant filed this application on June 29, 2012. Respondent subsequently filed a return and motion to dismiss. The Honorable G. Edward Welmaker signed a Conditional Order of Dismissal on September 19, 2012, provisionally dismissing the application with prejudice and

giving Applicant twenty (20) days in which to respond. On September 25, 2012, Applicant submitted an amendment to his application raising, for the first time, ineffective assistance of PCR counsel for failing to appeal the denial of his previous application. On January 13, 2013, Judge Welmaker issued a Final Order dismissing the matter with prejudice, specifically finding that Applicant's Austin² claim was barred by the equitable doctrine of laches.

Applicant appealed. In his petition for writ of certiorari, Applicant argued that his claim should not be barred by laches because he was not at fault in failing to seek appellate review of the denial of his first PCR application. The Court of Appeals granted certiorari on a single, unraised issue: whether the PCR court committed an error of law when it denied and dismissed Applicant's PCR application based on the doctrine of laches when the State did not plead laches as an affirmative defense. Respondent filed a Motion to Certify the matter to the Supreme Court of South Carolina, arguing that the Court of Appeals had deviated from the South Carolina Appellate Court Rules in directing the parties to address an unraised question and "any other issue of arguable merit." That motion was subsequently withdrawn. Respondent and Applicant ultimately consented to remand the matter to Circuit Court for a new hearing. The Court of Appeals' order followed. Thereafter, Respondent submitted an amended return and motion to dismiss, in which it addressed Applicant's amended application and specifically pled laches.

Allegations

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:

² Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) (allowing belated appeal from the denial of post-conviction relief where failure to file a notice of appeal was the result of counsel's ineffective assistance).

- a. Failure to investigate.
- b. Conflict of interest.

In the Applicant's "Motion to Amend" filed on September 25, 2012, the Applicant raised the following allegation:

- 1. Ineffective assistance of PCR counsel:
 - a. Failed to file an appeal from denial of first PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Austin Claim

Applicant first alleges that his PCR counsel was ineffective for failing to file an appeal off of the denial of his application for post-conviction relief. This Court finds Applicant's claim is barred by the equitable doctrine of laches. Further, after hearing all the evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his burden.

i. Laches

Respondent raised the defense of laches in its pleadings and at the evidentiary hearing. Applicant argued laches as a defense was barred by the doctrine of *res judicata*, as it had already

been raised and ruled upon in Judge Welmaker's previous order dismissing the application. This Court finds *res judicata* does not prevent this Court from considering laches at this point in the proceedings; it further finds the doctrine of laches bars Applicant's Austin claim.

a. Procedural Bar to Laches as a Defense

Res judicata does not preclude Respondent from raising laches as a defense to Applicant's Austin claim. *Res judicata* encompasses both claim preclusion and issue preclusion. Catawba Indian Nation v. State, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014). Claim preclusion bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated. Id. Issue preclusion bars relitigation of only the particular issues that were actually litigated and decided in the prior suit. Id. This Court finds neither claim preclusion nor issue preclusion is applicable in this case. Applicant has not brought a new suit; rather, the Court of Appeals remanded the matter based on the consent on both parties. Accordingly, it is the *same action* and *res judicata* does not apply.

This Court further finds the Court of Appeals order remanding this case for an evidentiary hearing does not bar Respondent from raising laches as a defense. Instead, the ruling simply reflects the will of both parties that the matter be remanded to circuit court. The order did not rule on laches – in fact, the only substantive requirement of the order is that an evidentiary hearing take place. As the issue was not addressed or ruled upon by the Court of Appeals, Respondent is not precluded – as a procedural matter – from raising laches as an affirmative defense. Nor is this Court precluded from considering it. Further, holding an evidentiary hearing is actually consistent with the procedure required for resolving a claim of laches in the context of an Austin claim. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002)

(holding that in cases where laches is properly raised as a defense to an Austin post-conviction relief claim, the PCR court shall hear evidence on the defense at the same time it hears the applicant's Austin claim on the merits). This Court has complied with the Court of Appeals order in holding an evidentiary hearing, and has also complied with Whitehead. It therefore finds Respondent is free to raise laches as a defense.

b. Applicability of Laches to Applicant's Austin Claim

This Court finds that the Applicant's current PCR application must be dismissed because it violates the doctrine of laches. While the Applicant argues he is raising an Austin issue, Respondent submits this does not prevent the dismissal of his case. The Applicant filed this PCR application 14 years after his direct appeal and almost 11 years after the denial of his first PCR application. The Respondent submits the doctrine of laches bars the Applicant from raising his allegations in a PCR application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981). To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. at 283, 277 S.E.2d at 890-91 (citation omitted).

The Applicant's delay has greatly prejudiced the Respondent. A transcript of the Applicant's first PCR hearing is now unavailable. In addition, as elicited at the evidentiary hearing, Applicant's counsel on his first PCR case has very little memory of his representation of

the Applicant. PCR Tr. p. 26, l. 19-22. If the Applicant had sought post-conviction relief within a reasonable time, neither of these problems would exist. Therefore, this allegation is dismissed based on the Applicant's lack of diligence in processing his claim for relief. See Whitehead v. State, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002) (finding the doctrine of laches may be raised as a defense to an Austin claim).

ii. Merits

Alternatively, concerning the underlying Austin claim, this Court finds Applicant has failed to meet his burden. There is a statutory right to seek appellate review of the denial of post-conviction relief. S.C. Code Ann. § 17-27-100 (2016). Under Austin, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. Odom v. State, 337 S.C. 256, 259-60, 523 S.E.2d 753, 754-55 (1999).

a. Discussion

This Court finds Applicant did not ask for an appeal of the denial of his PCR application. Applicant testified that he did not speak with his attorney, William G. Yarborough, following his initial PCR hearing. PCR Tr. p. 20, l. 11-13. In fact, Applicant did not testify at any point that he actually *wanted* to appeal the PCR court's decision until he learned about the possibility of an Austin claim. PCR Tr. p. 21, l. 13-8. According to the testimony presented at the evidentiary hearing, Applicant did not learn about the Austin claim until roughly 2012, after he wrote a letter to the South Carolina Lawyer Referral Services. PCR Tr. p. 22-23.

Counsel testified that he remembered the applicant, but was unable to remember in what capacity he represented him. PCR Tr. p. 26, l. 19-22. Counsel testified that he did not know whether he was ever asked to file an appeal. PCR Tr. p. 26, l. 23 - p. 27, l. 14. Counsel testified that looking at the dates, his health and troubles³ started about four months after Applicant's PCR hearing was held. Counsel testified that if Applicant had requested he file an appeal he would have done so. PCR Tr. p. 27, l. 11-14. This Court finds Applicant has failed to meet his burden. Applicant's testimony is not credible. Counsel's testimony that he would have filed an appeal had Applicant asked him to is credible.

Additionally, in light of the substantial delay in filing, this Court finds that Applicant waived his right to appeal the denial of his PCR application. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). The order denying Applicant's PCR application specifically advised him that he was required to file a notice of intent to appeal within thirty days in order to secure appellate review. It appears from the record and testimony presented at the evidentiary hearing that Applicant "failed to insist upon" his right to appeal until 2012 – roughly twelve years after the order of dismissal was signed. Accordingly, this Court finds Applicant made a knowing and voluntary waiver of his right to appeal.

³ Counsel was placed on incapacity inactive status on September 1, 2000, and subsequently disbarred for conduct unrelated to this case. In re Yarborough, 342 S.C. 387, 536 S.E.2d 870 (2000); 343 S.C. 316, 540 S.E.2d 462 (2000). Counsel has since been reinstated. 403 S.C. 365, 744 S.E.2d 499 (2013).

b. Proffered Testimony

This Court also heard proffered testimony from Applicant's mother, Pauline Butler. While not in evidence, this Court finds Ms. Butler's testimony, even if taken as true, would not assist Applicant in meeting his burden. First, her testimony was internally contradictory. At one point, Ms. Butler said that she attempted to contact counsel after her son's PCR case was denied, but was unable to. PCR Tr. p. 30, l. 21 - p. 31, l. 1. On cross-examination, Ms. Butler testified that she did not remember the date that she tried to contact counsel, and did not attempt to contact counsel after the hearing. PCR Tr. p. 31, l. 20 - p. 32, l. 6. Ms. Butler did not say whether her son ever indicated to her that he wanted to appeal the denial of his post-conviction relief application. Accordingly, Ms. Butler's version of events leaves open thest distinct possibility that she attempted to approach counsel on her own initiative and well after the time for filing an appeal had expired. This Court will not assist Applicant in meeting his burden by filling in critical gaps in his story with speculation.

Further, counsel also proffered testimony that he was not incarcerated after Applicant's evidentiary hearing, and that if she had contacted the office and he was not there, she would have been referred to another attorney – Jeff Merriam – who took over and handled all of his cases. PCR Tr. p. 33. Counsel acknowledged that he did go to a treatment center for alcohol addiction, but that he regularly communicated with Mr. Merriam to discuss his cases. Id. This Court finds counsel's testimony credible. Accordingly, Applicant has failed to meet his burden even *with* the above proffered testimony.

Non-Austin Claims for Relief

i. Statute of Limitations

This Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offenses he challenges in this application on July 23, 1996 and the South Carolina Court of Appeals affirmed on December 10, 1997. This application was filed on June 29, 2012, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Successive

Summary dismissal of the remaining allegations is also warranted because they are

successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

CONCLUSION

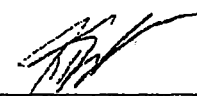
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

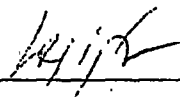
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of July, 2016.


 R. KNOX MCMAHON
 Presiding Judge
 Thirteenth Judicial Circuit


 _____, South Carolina

WITNESSES

Doug Kelly

GCSO

4/11/96

ARREST WARRANT NO. E 590895

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY
Foreman of Grand Jury

VERDICT

Guilty

Carroll D. Sullivan
Foreman of Petit Jury

Date:

7-22-96

DOCKET NO. **96-GS-23** **3380**

The State of South Carolina,

County of GREENVILLE

on appeal

COURT OF GENERAL SESSIONS

MAY

TERM 1996

7/22/96

GUILTY

THE STATE

vs.

STANLEY LEWIS BUTLER

0095 ✓

Indictment for

KIDNAPPING

VIOLATION § 16-3-910

191

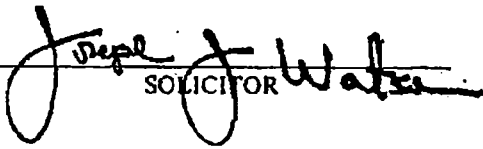
FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on May 28, 1996,
the Grand Jurors of Greenville County present upon their oath:

That STANLEY LEWIS BUTLER did in Greenville County on or about March 10, 1996, wilfully, knowingly, and unlawfully commit the offense of kidnapping in that the said defendant did seize, confine, kidnap, abduct or carry away Linda Michalove. This is in violation of South Carolina Code of Laws § 16-3-910.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

96 GS-23 3381
DOCKET NO.

JMM

The State of South Carolina,

County of GREENVILLE

on appeal

COURT OF GENERAL SESSIONS

MAY

TERM 1996

7/22/96

GUILTY

THE STATE

vs.

STANLEY LEWIS BUTLER

WITNESSES

Doug Kelly

GCSO

4/11/96

ARREST WARRANT NO. E 590892

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY
Foreman of Grand Jury

VERDICT

Guilty

0139 ✓

Indictment for Armed
Robbery and Robbery

VIOLATION § 16-11-330

Carroll D. Sullivan 7/22/96
Foreman of Petit Jury Date:

194

FORM 20 (1/91)

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

INDICTMENT FOR ARMED ROBBERY

~~XXXXXXXXXX~~

At a Court of General Sessions, convened on May 28, 1996
 the Grand Jurors of Greenville County present upon their oath:

COUNT ONE — ARMED ROBBERY

That STANLEY LEWIS BUTLER did in
Greenville County on or about March 10, 1996 while armed with a deadly
 weapon, to wit: A Rifle
 feloniously take from the person or presence of Employees by means of
 force or intimidation goods or monies of Fuddrucker's Restaurant such goods or monies being
 described as follows: Monies totaling \$4,670.00

with intent to deprive the owner permanently of such property.

~~COUNT TWO — ARMED ROBBERY~~

That _____ did in _____
 County on or about _____ feloniously take from the
 person or presence of _____ by means of
 force or intimidation goods or monies of _____
 such goods or monies being described as follows: _____

with intent to deprive the owner permanently of such property.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Joseph J. Waters
 SOLICITOR

96-GS-23 3382
DOCKET NO. JMM

The State of South Carolina,

County of GREENVILLE

On appeal

COURT OF GENERAL SESSIONS

MAY

TERM 1996

7/2/96

GUILTY THE STATE
vs.

STANLEY LEWIS BUTLER

0095✓

Indictment for

KIDNAPPING

VIOLATION § 16-3-910

190

WITNESSES

Doug Kelly

GCSO

4/11/96

ARREST WARRANT NO. E 590896

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Guilty

[Signature]
Foreman of Petit Jury

Date:

7-22-96

FORM 32 (12/87)

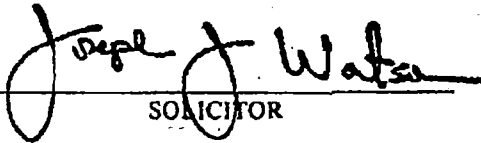
STATE OF SOUTH CAROLINA)
GREENVILLE)
COUNTY OF _____)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on May 28, 1996,
the Grand Jurors of Greenville County present upon their oath:

That STANLEY LEWIS BUTLER did in Greenville County on or about
MARCH 10, 1996, wilfully, knowingly, and unlawfully commit the
offense of kidnapping in that the said defendant did seize,
confine, kidnap, abduct or carry away Tim Walter. This is in
violation of South Carolina Code of Laws § 16-3-910.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

WITNESSES

Doug Kelly

GCSO

4/11/96

ARREST WARRANT NO. E 590897

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY
Foreman of Grand Jury

VERDICT

Guilty

Foreman of Petit Jury

Date:

7-22-96

DOCKET 96-GS-23 3383
JMM

The State of South Carolina,

County of GREENVILLE

on appeal

COURT OF GENERAL SESSIONS

MAY

TERM 1996

7/22/96

GUILTY
THE STATE
vs.

STANLEY LEWIS BUTLER

0095

Indictment for

KIDNAPPING

VIOLATION § 16-3-910

189

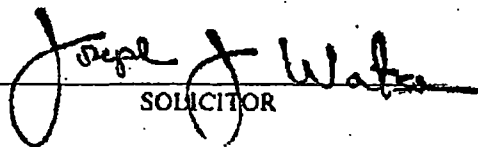
FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on May 28, 1996,
the Grand Jurors of Greenville County present upon their oath:

That STANLEY LEWIS BUTLER did in Greenville County on or about March 10, 1996, wilfully, knowingly, and unlawfully commit the offense of kidnapping in that the said defendant did seize, confine, kidnap, abduct or carry away Todd Milan. This is in violation of South Carolina Code of Laws § 16-3-910.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Doug Kelly

GCSO

4/11/96

ARREST WARRANT NO. E 590898

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Guilty

Corran D. Sessions

Foreman of Petit Jury

Date:

7-22-96

96-GS-23

3384 JMM
The State of South Carolina,

County of GREENVILLE

on appeal

COURT OF GENERAL SESSIONS

MAY TERM 1996

9/25/96

GUILTY

THE STATE

VS.

STANLEY LEWIS BUTLER

0095

Indictment for

KIDNAPPING

VIOLATION § 16-3-910

128

FORM 32 (12/87)

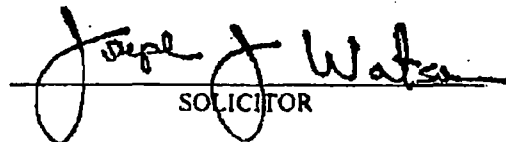
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on May 28, 1996,
the Grand Jurors of Greenville County present upon their oath:

That STANLEY LEWIS BUTLER did in Greenville County on or about March 10, 1996, wilfully, knowingly, and unlawfully commit the offense of kidnapping in that the said defendant did seize, confine, kidnap, abduct or carry away Michael Jarvis. This is in violation of South Carolina Code of Laws § 16-3-910.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

96-66-23 3386

JMM

The State of South Carolina,

County of GREENVILLE

on appeal

COURT OF GENERAL SESSIONS

MAY TERM 1996

7-23-96

GUILTY THE STATE

vs.

STANLEY LEWIS BUTLER

WITNESSES

Doug Kelly

GCSO

4/11/96

ARREST WARRANT NO. E 590893

ACTION OF GRAND JURY

~~TRUE BILL~~

[Signature]
FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Guilty

[Signature] 7/22/96
Foreman of Petit Jury Date:

0549 ✓
Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime
VIOLATION § 16-23-490

193

FORM 8 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

INDICTMENT FOR ~~ASSAULT AND BATTERY WITH INTENT TO KILL~~
~~POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME~~

At a Court of General Sessions, convened on May 28, 1996
 the Grand Jurors of Greenville County present upon their oath:

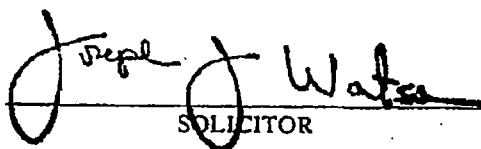
~~COUNTY OF GREENVILLE, ASSAULT AND BATTERY WITH INTENT TO KILL~~

That _____
 did in _____ County on or about _____, with
 malice aforethought commit an assault and battery upon one _____
 _____ with intent to kill the said victim.

ONE
 COUNT ~~ONE~~ — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
 OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That STANLEY LEWIS BUTLER
 did in Greenville County on or about March 10, 1996, possess or
 visibly display a firearm or visibly display a knife during the commission or attempted commission
 of a violent crime, to wit: Armed Robbery,
 in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
 provided.


 SOLICITOR