

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

VOLUME I OF V

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SC SUPREME COURT

RONALD TILLMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002499

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT # 89-GS40-0745
 COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA,)
)
 VS.) TRANSCRIPT OF RECORD
)
 RONALD S. TILLMAN,)
)
 DEFENDANT.)
 _____)

TRIAL HELD BEFORE THE HONORABLE DON S. RUSHING,
 PRESIDING JUDGE, 5TH JUDICIAL CIRCUIT, AND JURY, AT THE RICHLAND
 COUNTY JUDICIAL CENTER, COLUMBIA, SOUTH CAROLINA, BEGINNING ON
 JANUARY 15, 1990.

APPEARANCES:

CREIGHTON B. COLEMAN, ESQUIRE
 JAMES M. MORTON, ESQUIRE
 WILLIAM D. BILTON, ESQUIRE
 SOLICITORS FOR THE STATE

JACK B. SWERLING, ESQUIRE
 JENNIFER KNEECE SHEALY, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT

NANCY S. ARHENS, CVR
 COURT REPORTER

2 THE COURT: GOOD MORNING LADIES AND GENTLEMEN
3 OF THE JURY PANEL. IF YOU WILL NOW GIVE ME YOUR ATTENTION,
4 WE ARE GOING TO COMMENCE THE TRIAL OF THE CASE BY SELECTING
5 A JURY IN A CASE THAT'S ENTITLED THE STATE OF SOUTH CAROLINA
6 VERSUS RONALD S. TILLMAN WHO IS CHARGED IN THIS BILL OF
7 INDICTMENT WHICH I HOLD IN MY HAND BY THE GRAND JURY OF
8 RICHLAND COUNTY WITH THE OFFENSE OF MURDER. AND I'M GOING
9 TO IDENTIFY TO YOU THIS CASE BY READING TO YOU THE
10 INDICTMENT. IT READS THAT RONALD S. TILLMAN DID IN RICHLAND
11 COUNTY ON OR ABOUT THE 26TH DAY OF DECEMBER, 1988,
12 FELONIOUSLY, WILFULLY AND WITH MALICE AFORETHOUGHT KILL ONE
13 DONALD I. SUTTON, S-U-T-T-O-N (SPELLED), BY MEANS OF A PISTOL
14 AND THAT THE SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.
15 NOW, THAT'S THE INDICTMENT, THAT'S THE ALLEGATIONS MADE IN
16 THE INDICTMENT. THE DEFENDANT IN THIS CASE, RONALD S.
17 TILLMAN, IS REPRESENTED BY MR. JACK SWERLING--MR. SWERLING,
18 IF YOU WILL STAND UP. (MR. SWERLING STANDS) AND MRS.
19 JENNIFER SHEALY (MS. SHEALY STANDS). THANK YOU. MR. TILLMAN,
20 WOULD YOU PLEASE STAND UP AND FACE THE JURY PANEL? (MR.
21 TILLMAN STANDS) THIS IS THE DEFENDANT RONALD S. TILLMAN.
22 THANK YOU. YOU MAY BE SEATED. THE STATE IN THIS CASE IS
23 REPRESENTED BY SOLICITORS COLEMAN, MORTON AND BILTON. MR.
24 COLEMAN, WOULD YOU STAND UP, MR. CREIGHTON COLEMAN. (MR.
25 COLEMAN STANDS) MR. JIM MORTON. (MR. MORTON STANDS) MR.
26 WILLIAM BILTON. MR. BILTON MAY BE OUT OF THE COURTROOM. HE

1 WILL BE PARTICIPATING. NOW, LADIES AND GENTLEMEN, I'M GOING
2 TO DIRECT SOME QUESTIONS TO YOU. IF ANY OF THESE QUESTIONS
3 APPLY TO YOU, PLEASE STAND UP AND REMAIN STANDING UNTIL SUCH
4 TIME AS I HAVE RESOLVED IT WITH YOU. IF YOU DO NOT UNDERSTAND
5 THE QUESTION THAT I'M ASKING OR THE WORDS THAT I'M USING, IF
6 YOU WILL PLEASE RAISE YOUR HAND AND I WILL EXPLAIN IT TO YOU
7 FURTHER. IT'S ABSOLUTELY IMPERATIVE THAT YOU HEAR AND
8 UNDERSTAND THE QUESTIONS I DIRECT TO YOU SO PLEASE ASSIST
9 ME, LADIES AND GENTLEMEN, BY LETTING ME KNOW SIMPLY BY
10 RAISING YOUR HAND OR STANDING UP AND I'LL REPEAT IT FOR YOU
11 AND EXPLAIN IT TO YOU FURTHER IF IT'S NECESSARY. ONCE AGAIN
12 IF YOU CANNOT HEAR ME JUST RAISE YOUR HAND AND I'LL REPEAT
13 IT. I NOW DIRECT THE FOLLOWING QUESTIONS TO EACH OF YOU.
14 IF ANY OF THESE QUESTIONS APPLY, PLEASE STAND AND REMAIN
15 STANDING UNTIL SUCH TIME AS I'VE INDICATED I'VE RESOLVED IT
16 WITH YOU. ARE THERE ANY MEMBERS OF THE PETIT JURY PANEL WHO
17 ARE RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH THE
18 DEFENDANT, RONALD S. TILLMAN, WHOM I'VE ALREADY INTRODUCED
19 TO YOU? SO, IF YOU ARE RELATED BY BLOOD OR CONNECTED BY
20 MARRIAGE WITH THE DEFENDANT, RONALD S. TILLMAN, PLEASE STAND.
21 NO RESPONSE. ARE THERE ANY MEMBERS OF THE PETIT JURY PANEL
22 WHO ARE RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH DONALD
23 I. SUTTON, S-U-T-T-O-N (SPELLED), OR ANY MEMBER OF HIS
24 IMMEDIATE FAMILY? IF YOU ARE RELATED BY BLOOD OR CONNECTED
25 BY MARRIAGE WITH DONALD SUTTON OR ANY MEMBER OF HIS IMMEDIATE

1 FAMILY, PLEASE STAND. NO RESPONSE. IS ANY MEMBER OF THE
2 PETIT JURY PANEL EMPLOYED BY--YOU OR ANY MEMBER OF YOUR
3 IMMEDIATE FAMILY--EMPLOYED BY ANY LAW ENFORCEMENT AGENCY?
4 IF SO, PLEASE STAND. IF YOU OR ANY MEMBER OF YOUR IMMEDIATE
5 FAMILY IS EMPLOYED BY A LAW ENFORCEMENT AGENCY. NOW, WHEN
6 I SAY IMMEDIATE FAMILY I'M TALKING ABOUT YOUR SPOUSE OR YOUR
7 CHILD OR CHILDREN, MOTHER, FATHER, BROTHER, SISTER.

8 JUROR: THAT DOES NOT MEAN HIGHWAY DEPARTMENT, DOES IT?

9 THE COURT: YES, MA'AM. LAW ENFORCEMENT IS SHERIFF'S
10 DEPARTMENT, MUNICIPAL, CITIES, HIGHWAY DEPARTMENT.

11 JUROR: I'M EMPLOYED BY THE HIGHWAY DEPARTMENT.

12 THE COURT: GIVE US YOUR NAME, PLEASE, AND NUMBER.

13 JUROR: SANDRA KROLL, K-R-O-L-L (SPELLED).

14 THE COURT: DO YOU KNOW YOUR NUMBER, MS. KROLL?

15 MS. KROLL: 109.

16 THE COURT: YES.

17 JUROR: I'M EMPLOYED BY THE STATE HIGHWAY DEPARTMENT.

18 THE COURT: YOUR NAME ALSO?

19 JUROR: GEORGE T. PITTS.

20 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED. THE
21 LADY IN THE GREEN DRESS STOOD FOR SOME REASON.

22 JUROR: MY BROTHER-IN-LAW IN A PAROLE OFFICER.

23 THE COURT: GIVE US HIS NAME.

24 JUROR: DANNY DRAFTS.

25 THE COURT: IS THAT IN RICHLAND COUNTY?

1 JUROR: YES.

2 THE COURT: YOUR NAME AND NUMBER?

3 JUROR: DEBORAH SLOAN, JUROR 180.

4 THE COURT: THANK YOU. ANYONE ELSE? VERY GOOD. NOW,
5 LADIES AND GENTLEMEN, I'M GOING TO READ OUT A LONG LIST OF
6 WHAT ARE KNOWN AS POTENTIAL WITNESSES AND I'M GOING TO GO
7 REASONABLY SLOW AND YOU LISTEN VERY CAREFULLY. THE QUESTION
8 TO YOU IS THIS. ARE ANY MEMBERS OF THE PETIT JURY PANEL,
9 YOURSELVES, RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH
10 ANY OF THE NAMED WITNESSES OR POTENTIAL WITNESSES THAT I AM
11 GOING TO READ TO YOU? AND IF YOU ARE I WANT YOU TO STAND UP
12 AS I CALL THE NAME. BRIAN O'CONNELL, COLUMBIA POLICE
13 DEPARTMENT. LLOYD DUNHAM, D-U-N-H-A-M (SPELLED), SHERIFF'S
14 DEPARTMENT. DR. ARMSTRONG WHO IS A PATHOLOGIST WITH THE
15 RICHLAND MEMORIAL HOSPITAL. HAYES MALLOY, M-A-L-L-O-Y
16 (SPELLED). GABBY WELLS, W-E-L-L-S (SPELLED). VITO McKIE.
17 BRIDGETTE SHELL. CHELSEA SHELL. LISA BRISBY, B-R-I-S-B-Y
18 (SPELLED). RANDY MONDOR, M-O-N-D-O-R (SPELLED). LISA
19 MISICKA, M-I-S-I-C-K-A (SPELLED). JIM DAVIS. MARK AUSTIN,
20 RICHLAND COUNTY SHERIFF'S DEPARTMENT. JOHN EDWARDS,
21 SHERIFF'S DEPARTMENT. LT. JIMMY STEWART, SHERIFF'S
22 DEPARTMENT. CAPTAIN BILLY BROWN, SHERIFF'S DEPARTMENT. JOHN
23 CHRISTY, S.L.E.D. ART SULTON, S-U-L-T-O-N (SPELLED),
24 SHERIFF'S DEPARTMENT. RICK McGEE, SHERIFF'S DEPARTMENT.
25 STEVE FELSBURG, F-E-L-S-B-U-R-G (SPELLED), SHERIFF'S

1 DEPARTMENT. ANDREW CALDWELL, C-A-L-D-W-E-L-L (SPELLED),
2 SHERIFF'S DEPARTMENT. CAPTAIN JOHN ROGERS, R-O-G-E-R-S
3 (SPELLED), DILLON POLICE DEPARTMENT. VELLA PAAVEL, P-A-A-
4 V-E-L (SPELLED), S.L.E.D. AGENT JOE POWELL, S.L.E.D. RUFUS
5 McQUEEN, M-c-Q-U-E-E-N (SPELLED). GARY WATTS, CORONER'S
6 OFFICE. BRUCE HALL, H-A-L-L (SPELLED), WORKS WITH GOODYEAR
7 TIRE. JAMES BYNUM. B-Y-N-U-M (SPELLED). TOMMY LEE BYNUM.
8 TRACEY ARCHIE, A-R-C-H-I-E (SPELLED). KENNETH GARDNER.
9 WANDA WHETSTONE, W-H-E-T-S-T-O-N-E (SPELLED). TRAY AUSTIN.
10 ROBERT ANDERSON. WALTER BENEFIELD. LISA BRISBY. DUSTY
11 BROWN. TOMMY LEE BYNUM. LLOYD DUNHAM. SCOTT ENGLISH.
12 NORRIS EVANS. CURTIS GEER, G-E-E-R (SPELLED). STEVE
13 GILMORE, G-I-L-M-O-R-E (SPELLED). LARRY GREEN. DARLENE
14 HAYES. JEFFREY ISAACS, I-S-A-A-C-S (SPELLED). NATHANIEL
15 JAMISON, J-A-M-I-S-O-N (SPELLED). WILLIAM LEWIS, L-E-W-I-
16 S (SPELLED). MARVIN LOVEJOY, L-O-V-E-J-O-Y (SPELLED). GENE
17 HOWE, H-O-W-E (SPELLED). VETO McKIE, M-c-K-I-E (SPELLED).
18 BUTCH NUTALL, N-U-T-A-L-L (SPELLED). WOODY POPLIN, P-O-P-
19 L-I-N (SPELLED). SOPHIA PRINGLE, P-R-I-N-G-L-E (SPELLED).
20 MIKE ROBERTS. ALBERTINE ROBINSON, R-O-B-I-N-S-O-N (SPELLED).
21 ALPHONSO SHELL. BRIDGETTE SHELL. CHELSEA SHELL. JANETTA
22 SPANN, S-P-A-N-N (SPELLED). FRANCES WALKER. CHRIS
23 WESSINGER, W-E-S-S-I-N-G-E-R (SPELLED). HERMAN WHALEY, W-
24 H-A-L-E-Y (SPELLED). DAVID WHALEY. MATTHEW WHITAKER. HENRY
25 WILLIAMS. KENNEDY WILLIAMS. LARRY WISE, W-I-S-E (SPELLED).

1 FRANK WRIGHT, W-R-I-G-H-T (SPELLED). NORRIS BRADLEY, B-R-A-
2 D-L-E-Y (SPELLED).

3 MR. SWERLING: YOUR HONOR, ONE MORE WOULD BE DAVID
4 BYNUM. I HAVEN'T HEARD HIS NAME CALLED. IF YOU COULD ADD
5 HIM TO THE LIST.

6 THE COURT: DAVID BYNUM, B-Y-N-U-M (SPELLED). SO,
7 LADIES AND GENTLEMEN, IF YOU ARE RELATED BY BLOOD OR
8 CONNECTED BY MARRIAGE WITH ANY OF THOSE NAMED INDIVIDUALS
9 I'LL ASK THAT YOU PLEASE STAND. NO RESPONSE. HAS ANY MEMBER
10 OF THE PETIT JURY PANEL FORMED OR EXPRESSED AN OPINION AS TO
11 THE GUILT OR INNOCENCE OF THE DEFENDANT, RONALD S. TILLMAN?
12 THAT WOULD MEAN THAT YOU KNOW SOMETHING ABOUT THE CASE AND
13 AS SUCH YOU HAVE FORMED AN OPINION, SO I WANT TO KNOW IF YOU
14 KNOW ANYTHING ABOUT THIS CASE, IF YOU'VE AN OPINION AS TO THE
15 GUILT OR INNOCENCE OF THE DEFENDANT, RONALD S. TILLMAN. IF
16 SO, PLEASE STAND. NO RESPONSE. ARE THERE ANY MEMBERS OF THE
17 PETIT JURY PANEL WHO ARE CONSCIOUS OF ANY INTEREST, ANY BIAS-
18 -I'M SORRY, YES, MA'AM. COME UP HERE.

19 (JUROR APPROACHES THE BENCH)

20 THE COURT: COME RIGHT HERE WITH COUNSEL.

21 JUROR: ANNETTE SUMTER, NUMBER 196. I KNOW THAT THEY
22 RUN A COMMUNITY STORE WHERE MY AUNT LIVE AND I HAVE BEEN IN
23 THE STORE AND SEEN HIM QUITE OFTEN BUT I DON'T KNOW HIM
24 PERSONALLY.

25 THE COURT: YOU ARE TALKING ABOUT THE DEFENDANT HIMSELF?

1 MS. SUMTER: YES, SIR.

2 THE COURT: YOU GO INTO THAT STORE YOURSELF?

3 MS. SUMTER: WELL, NOT ALL THE TIME. WHEN I GO TO SEE
4 MY AUNT, I GO IN AND GET SOMETHING FOR HER BUT I DON'T KNOW
5 HIM AS FAR AS TALKING TO HIM OR ANYTHING.

6 THE COURT: DOES ANY MEMBER OF YOUR FAMILY, YOURSELF
7 INDIVIDUALLY, HAVE WHAT THEY CALL AN OPEN ACCOUNT WHERE YOU
8 CHARGE THERE OR ANYTHING?

9 MS. SUMTER: NO.

10 THE COURT: DO YOU KNOW OF ANY REASON THAT YOU COULD NOT
11 BE FAIR AND IMPARTIAL TO THE STATE OF SOUTH CAROLINA AND THE
12 DEFENDANT IN THIS CASE?

13 MS. SUMTER: NO. I DON'T KNOW OF ANY REASON WHY.

14 THE COURT: YOU ARE NOT RELATED TO HIM PERSONALLY?

15 MS. SUMTER: NO, SIR.

16 THE COURT: ANY OTHER QUESTION BY THE STATE?

17 MR. MORTON: NONE FROM ME.

18 MR. SWERLING: NONE FROM THE DEFENSE.

19 THE COURT: THANK YOU. YOU MAY GO BACK. THANK YOU FOR
20 BRINGING THAT TO MY ATTENTION. LADIES AND GENTLEMEN, I READ
21 YOU A LIST OF POTENTIAL WITNESSES AND PART OF THE QUESTION
22 WAS WERE YOU RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY
23 OF THOSE NAMED INDIVIDUALS. I ALSO ASK DO YOU KNOW ANY OF
24 THESE INDIVIDUALS SOCIALLY OR PROFESSIONALLY? IF SO, PLEASE
25 STAND. ANY OF THE PEOPLE, WITNESSES NAMES THAT I READ OUT

1 TO YOU. IF YOU KNOW THEM SOCIALLY OR PROFESSIONALLY. YOUR
2 NAME, PLEASE?

3 JUROR: ROBERT SPENCER.

4 THE COURT: AND WHICH ONES DO YOU KNOW?

5 MR. SPENCER: GARY WATTS.

6 THE COURT: IS THAT SOCIALLY OR PROFESSIONALLY?

7 MR. SPENCER: PROFESSIONALLY.

8 THE COURT: IDENTIFY IT A LITTLE FURTHER FOR ME.

9 MR. SPENCER: I'M AN ADMINISTRATIVE ASSISTANT WITH
10 BAPTIST MEDICAL CENTER AND I HAVE TO CONTACT THE CORONER'S
11 OFFICE WHENEVER WE HAVE THAT TYPE DEATH.

12 THE COURT: VERY GOOD. YES, MA'AM. NAME AND NUMBER.

13 JUROR: I KNOW BILLY BROWN JUST FROM LIVING IN
14 BLYTHEWOOD.

15 THE COURT: NAME AND NUMBER?

16 JUROR: 180.

17 THE COURT: AS YOU STAND UP, GIVE ME YOUR NAME AND
18 NUMBER. YES, SIR.

19 JUROR: GLEN (UNABLE TO HEAR) I DON'T KNOW MY NUMBER
20 BUT I KNOW GENE HOWE, ONE OF THE WITNESSES.

21 THE COURT: AND HOW DO YOU KNOW HIM?

22 JUROR: JUST SOCIALLY.

23 REPORTER: JUDGE, I'M SORRY, I DIDN'T GET HIS NAME.

24 THE COURT: WE ARE GOING TO GET HIS NUMBER FOR YOU.

25 CLERK OF COURT: 122.

1 THE COURT: ANYONE ELSE?

2 JUROR: JOSEPH MOORE. I KNOW VITO McKIE.

3 THE COURT: THAT IS YOUR NUMBER, MR. MOORE?

4 MR. MOORE: I DON'T KNOW.

5 THE COURT: LET'S LOOK IT UP.

6 CLERK OF COURT: 135.

7 THE COURT: YOU KNOW WHO, SIR?

8 MR. MOORE: VITO McKIE.

9 THE COURT: HOW DO YOU KNOW HIM? SOCIALLY?

10 MR. MOORE: WELL, YOU KNOW, HIS FATHER AND I GREW UP
11 TOGETHER. I KNOW HIM PERSONALLY.

12 THE COURT: LET'S BE QUIET NOW. ANYONE ELSE? VERY GOOD.
13 LADIES AND GENTLEMEN, I'M GOING TO TELL YOU NOW RIGHT IN THE
14 MIDDLE OF THIS. I DON'T ALLOW HARDLY ANY TALKING IN THIS
15 COURTROOM EXCEPT WHAT GOES ON AT THE BAR HERE FOR A VERY GOOD
16 REASON. ANY PERSON THAT COMES INTO THIS COURTROOM IS
17 ENTITLED TO RECEIVE AND OBTAIN A FAIR TRIAL. I DON'T KNOW
18 HOW I CAN DELIVER A FAIR TRIAL TO A PERSON, THE STATE OR THE
19 DEFENDANT, WHEN THERE IS NOISE GOING ON IN THE COURTROOM
20 BECAUSE THE JURY THAT'S GOING TO BE TRYING THIS CASE HAS GOT
21 TO HEAR WHAT'S BEING TESTIFIED TO AND OFFERED AS EVIDENCE IN
22 THIS CASE. SO, I TELL YOU NOW I DON'T PUT UP WITH IT AND I
23 DON'T ALLOW IT. IF YOU DO IT, THE BAILIFFS ASK YOU TO SIT
24 DOWN, YOU PERSIST, I'M GOING TO PUT YOU IN JAIL. SO, PLEASE,
25 LADIES AND GENTLEMEN, DO NOT MAKE ME DO SOMETHING I DON'T

1 WANT TO DO, BUT I CANNOT ALLOW THAT TO HAPPEN. ALL RIGHT.
2 IS ANY MEMBER OF THE PETIT JURY PANEL OR ANY MEMBER OF YOUR
3 IMMEDIATE FAMILY AS I HAVE DEFINED FOR YOU WHAT AN IMMEDIATE
4 FAMILY MEANS RELATED TO ANY MEMBER OF THE SOLICITOR'S OFFICE
5 OF THE 5TH JUDICIAL CIRCUIT? NOW, THAT INVOLVES THE
6 SOLICITOR'S OFFICE. IF YOU KNOW THEM OR ARE RELATED BY BLOOD
7 OR MARRIAGE OR ANY OF THE PEOPLE THAT WORK THERE, THE STAFF,
8 INVESTIGATORS OR SECRETARIES, ETC. IF SO, PLEASE STAND. NO
9 RESPONSE. IS ANY MEMBER OF THE PETIT JURY PANEL RELATED BY
10 BLOOD OR CONNECTED BY MARRIAGE WITH ANY MEMBER OF MR.
11 SWERLING'S LAW FIRM. THAT'S SWERLING, HARPOOTLIAN AND
12 McCULLOUGH AND THEY HAVE OTHER MEMBERS IN THEIR LAW FIRM.
13 IF YOU ARE RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY
14 OF THOSE, PLEASE STAND. NO RESPONSE. IS ANY MEMBER OF THE
15 PETIT JURY PANEL PERSONALLY--IN OTHER WORDS, ARE YOU
16 PERSONALLY--ACQUAINTED WITH ANY MEMBERS OF THE SOLICITOR'S
17 OFFICE OF THE 5TH JUDICIAL CIRCUIT? IF YOU ARE PERSONALLY
18 ACQUAINTED. IF SO, PLEASE STAND. THAT MEANS IF YOU KNOW
19 THEM, YOU MAY SOCIALLY SEE THEM OR WHAT. YES, MA'AM.

20 JUROR: I KNOW MR. ANDERS. I DON'T SEE HIM SOCIALLY BUT
21 I DO KNOW HIM PERSONALLY.

22 THE COURT: AND YOUR NAME AND NUMBER.

23 JUROR: SANDRA KROLL, NUMBER 109.

24 THE COURT: THANK YOU. SAME QUESTION AS IT WOULD APPLY
25 TO MR. SWERLING OR ANY MEMBER OF HIS LAW FIRM. IF YOU KNOW

1 THEM PERSONALLY OR PERSONALLY ACQUAINTED WITH MR. SWERLING
2 OR ANY MEMBER OF HIS LAW FIRM. YOUR NAME, SIR?

3 JUROR: STEVE BRAWLEY.

4 THE COURT: AND YOUR NUMBER?

5 MR. BRAWLEY: 24.

6 THE COURT: AND WHO DO YOU KNOW?

7 MR. BRAWLEY: McCULLOUGH.

8 THE COURT: McCULLOUGH. THANK YOU. ANYONE ELSE? VERY
9 GOOD. HAS ANY MEMBER OF THE PETIT JURY PANEL READ ANYTHING
10 ABOUT THIS CASE IN THE NEWSPAPER OR SEEN ANYTHING ON THE T.V.
11 ABOUT IT OR HEARD ANYTHING ON THE RADIO CONCERNING THE
12 ALLEGATIONS IN THIS CASE? IF SO, PLEASE STAND. IF YOU'VE
13 HEARD ANYTHING ABOUT IT ON THE RADIO, SEEN ANYTHING ON THE
14 T.V. OR READ IT IN THE NEWSPAPER, PLEASE STAND. NO
15 RESPONSE. HAS ANY MEMBER OF THE PETIT JURY PANEL DISCUSSED
16 ANYTHING CONCERNING THIS CASE WITH ANYONE ELSE AT ANY TIME
17 PRIOR TO COMING TO THIS COURTROOM TODAY OR OVERHEARD ANYONE
18 ELSE DISCUSS ANYTHING ABOUT THIS CASE? IF SO, PLEASE STAND.
19 NO RESPONSE. HAS ANYONE EVER EXPRESSED TO YOU, THAT MEANS
20 YOU AS A JUROR, AN OPINION ABOUT THE GUILT OR INNOCENCE OF
21 THIS DEFENDANT? IN OTHER WORDS, HAVE YOU OVERHEARD ANYONE
22 EXPRESS THAT OR HAS ANYONE EXPRESSED THAT TO YOU, THE GUILT
23 OR INNOCENCE OF THIS DEFENDANT? IF SO, PLEASE STAND. NO
24 RESPONSE. I'VE ALREADY COVERED NUMBER 9. IS ANY MEMBER OF
25 THE PETIT JURY PANEL CONSCIOUS OF ANY INTEREST, ANY BIAS OR

1 ANY PREJUDICE FOR OR AGAINST THE DEFENDANT, RONALD TILLMAN?
2 IF SO, PLEASE STAND. NO RESPONSE. I BELIEVE I'VE ALREADY
3 ASKED THIS QUESTION BUT I'M GOING TO ASK IT AGAIN JUST TO BE
4 SURE. IS ANY MEMBER OF THE PETIT JURY PANEL RELATED BY BLOOD
5 OR CONNECTED BY MARRIAGE OR ARE YOU AN ACQUAINTANCE WITH
6 DONALD SUTTON, THE DECEASED, OR ANY MEMBER OF HIS IMMEDIATE
7 FAMILY? IF SO, PLEASE STAND. IF YOU ARE ACQUAINTED WITH HIM
8 OR ANY MEMBER OF HIS FAMILY. NO RESPONSE. DOES ANY MEMBER
9 OF THE PETIT JURY PANEL KNOW OF ANY REASON WHATEVER WHY YOU
10 WOULD NOT BE IMPARTIAL TO BOTH THE STATE OF SOUTH CAROLINA
11 AND TO THE DEFENDANT IN THIS CASE? IF YOU DO, PLEASE STAND,
12 IF YOU KNOW OF ANY REASON. NO RESPONSE. ANY FURTHER INQUIRY
13 OF THE PETIT JURY PANEL BY THE STATE?

14 MR. MORTON: NONE FROM THE STATE, YOUR HONOR.

15 THE COURT: BY THE DEFENSE?

16 MR. SWERLING: YOUR HONOR, COULD WE APPROACH ONE MOMENT?

17 (MR. MORTON AND MR. SWERLING APPROACH THE BENCH OUT OF
18 THE PRESENCE OF THE COURT REPORTER)

19 THE COURT: IS ANY MEMBER OF THE PETIT JURY PANEL
20 RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR A CLOSE PERSONAL
21 ACQUAINTANCE OF ALFRED "BUDDY" BETHEA? IF SO, PLEASE STAND.
22 NO RESPONSE. ANY FURTHER INQUIRY BY THE STATE OR DEFENSE?

23 MR. MORTON: NO, SIR, YOUR HONOR.

24 MR. SWERLING: NO, YOUR HONOR.

25 THE COURT: GENTLEMEN, LET THE RECORD REFLECT THE JURY

1 BOX HAS BEEN IMPANELED ACCORDING TO LAW. THE CAPSULES ARE
2 HAVE BEEN PLACED IN THE BOX AND ROTATED. IS THERE ANY
3 OBJECTION TO THE CLERK DRAWING BY THE STATE OR DEFENSE?

4 MR. MORTON: NO, SIR.

5 MR. SWERLING: NO, SIR.

6 (WHEREUPON THE JURY, AFTER BEING DULY QUALIFIED, IS
7 IMPANELED AT 12:00 NOON, SAMMY J. HICKS, FOREMAN, TWO
8 ALTERNATES BEING SELECTED.)

9 THE COURT: MRS. SLOAN, YOU ARE THE SECOND ALTERNATE IN
10 THIS CASE. MR. REID, YOU ARE FIRST ALTERNATE. THE TWO OF
11 YOU THROUGHOUT THE TRIAL OF THIS CASE WILL SIT ON THE BACK
12 ROW THERE. YOU MAY SIT ANYWHERE YOU'D LIKE ON THE BACK ROW
13 EXCEPT PLEASE DO NOT SIT IN THE CORNER SEAT THERE. THE
14 BAILIFF WILL BE SITTING WITH YOU THERE. IT WILL PROBABLY BE
15 DIFFICULT FOR YOU TO HEAR IF YOU SIT IN THE VERY FAR END
16 CORNER BUT ANY OF THE OTHER SEATS YOU MAY SIT IN. MR. HICKS,
17 I HAVE DESIGNATED YOU AS THE FOREPERSON OR THE SPOKESPERSON
18 FOR THE JURY. AT THIS TIME I'D LIKE TO THANK YOU FOR BEING
19 WILLING TO SERVE IN THAT CAPACITY AS WELL. THE SEAT YOU ARE
20 PRESENTLY OCCUPYING IS RESERVED FOR YOU THROUGHOUT THE TRIAL
21 OF THE CASE. NOW, YOU WILL COMMUNICATE ANY MESSAGES THAT
22 THE JURY MAY HAVE FOR THE COURT AND, OF COURSE, REPORT THE
23 VERDICT OF THE JURY WHEN IT HAS A VERDICT. THE REMAINING
24 MEMBERS OF THE JURY MAY SWITCH AROUND ANY WAY YOU CHOOSE OR
25 SEE FIT IN THE JURY AREA BUT DO NOT OCCUPY THE FOREPERSON'S

1 SEAT, NOR MAY YOU SIT ON THE BACK ROW. OKAY? SO, WHAT I'M
2 TELLING YOU IS YOU DON'T HAVE TO SIT IN THE SAME SEAT EVERY
3 TIME BUT YOU PROBABLY WILL. MOST JURORS DO. NOW, LADIES AND
4 GENTLEMEN, I'M GOING TO HAVE YOU STEP BACK INTO THE JURY
5 ROOM. BEFORE I DO I WANT TO EXPLAIN A COUPLE OF THINGS TO
6 YOU. I'M GOING TO RELEASE YOU IN JUST A MOMENT AND HAVE YOU
7 REPORT BACK TOMORROW MORNING. THERE ARE SOME THINGS THAT WE
8 NEED TO TAKE UP AND DISPOSE OF THAT WILL NOT NEED YOUR
9 PRESENCE. BUT I TELL YOU NOW THAT YOU ARE NOT TO DISCUSS
10 THIS CASE AT ANY TIME AMONG YOURSELVES AND CERTAINLY NOT WITH
11 ANYONE ELSE. SO, WHEN YOU GO BACK TO THE JURY YOU CANNOT
12 TALK ABOUT THIS CASE AT ANY TIME UNTIL I TELL YOU TO. AND
13 THAT WILL NOT OCCUR UNTIL I'VE GIVEN YOU THE CASE TO DECIDE.
14 IN ADDITION TO WHICH--AND I KNOW IT WILL BE DIFFICULT AFTER
15 TODAY AND TOMORROW WHEN WE START INTO TAKING THE TESTIMONY
16 AND WHEN YOU GO HOME FOR LUNCH OR IN THE EVENING TIME AND
17 YOUR FAMILY AND FRIENDS KNOW YOU ARE SERVING ON A JURY AND
18 THEY ARE GOING TO SAY WHAT CASE ARE YOU SITTING ON, TELL ME
19 ABOUT IT. YOU CAN'T DO THAT EITHER. THE REASON FOR IT,
20 LADIES AND GENTLEMEN, IS WHEN YOU START TO TALK ABOUT
21 SOMETHING YOU START TO FORM AN OPINION AND YOU ARE NOT TO
22 FORM ANY OPINIONS IN THIS CASE UNTIL YOU'VE HEARD ALL THE
23 TESTIMONY AND EVIDENCE AND I HAVE INSTRUCTED YOU UPON THE
24 LAW. YOU KNOW, IF YOU START TO TALK ABOUT SOMETHING YOU WILL
25 FORM AN OPINION. IT'S HUMAN NATURE, HUMAN NATURE FOR ME AND

1 IT WOULD BE HUMAN NATURE FOR YOU. SO, I'M INSTRUCTING YOU
2 NOW THAT YOU ARE NOT TO DISCUSS THIS CASE NOR ALL ANYONE
3 ELSE. NOW, IF SOMEONE SHOULD ATTEMPT TO TALK TO YOU ABOUT
4 THIS CASE, THEY KNOW YOU ARE A JUROR BECAUSE YOU'VE GOT THOSE
5 BADGES ON YOU AND I WANT YOU TO WEAR THAT JUROR BADGE
6 PROMINENTLY DISPLAYED ON THE OUTER PART OF YOUR GARMENT AT
7 ALL TIMES WHEN YOU ARE AROUND THIS COURTHOUSE BECAUSE I DON'T
8 WANT ANYONE TO SAY INNOCENTLY THAT THEY DIDN'T KNOW YOU WERE
9 A JUROR BECAUSE I'M GOING TO PUT THEM IN JAIL WHERE THEY
10 BELONG. YOU AND I CANNOT ALLOW THAT TO HAPPEN AND I TELL YOU
11 NOW I WANT TO SEE THOSE BUTTONS DISPLAYED UPON YOUR PERSON.
12 NOW, IF ANYONE SHOULD AT ANY OTHER TIMES ATTEMPT TO DISCUSS
13 THIS CASE WITH YOU, PLEASE DO NOT ALLOW THAT TO HAPPEN. YOU
14 REMOVE YOURSELF AND YOU REPORT IT PROMPTLY TO THIS COURT.
15 I'LL TAKE CARE OF THAT SITUATION. IN ADDITION TO WHICH,
16 LADIES AND GENTLEMEN, YOU ARE NOT TO READ ANYTHING ABOUT THIS
17 IN THE PAPER IF THERE BE ANY, AND WE NEVER KNOW WHEN THERE
18 IS GOING TO BE NEWS COVERAGE. YOU ARE NOT TO LISTEN TO
19 ANYTHING ON THE RADIO ABOUT THIS CASE OR WATCH ANYTHING ON
20 T.V. ABOUT IT. SO, IF IT HAPPENS TO BE ANY COVERAGE IN ANY
21 OF THOSE MEDIAS AND YOU SEE IT, PLEASE PUT IT DOWN, TURN IT
22 OFF, REMOVE YOURSELF. LADIES AND GENTLEMEN, YOU ARE TO
23 DECIDE THIS CASE BASED UPON YOUR VIEW OF THE EVIDENCE IN
24 ACCORDANCE WITH THE LAW THAT I WILL GIVE TO YOU, NOT BASED
25 UPON SOMEONE ELSE'S VIEW, AND THAT'S THE REASON. NOW, IF YOU

1 WILL, STEP BACK INTO THE JURY ROOM. THEY ARE GOING TO SHOW
2 YOU WHERE TO REPORT FOR THE REST OF THIS WEEK. PROBABLY THIS
3 CASE IS GOING TO LAST YOU FOR THE REST OF THIS WEEK. AND I'M
4 GOING TO BRING YOU BACK IN JUST A FEW MOMENTS. IT MIGHT BE
5 FIVE OR TEN MINUTES AND I'LL GIVE YOU FURTHER INSTRUCTIONS.
6 GO AHEAD AND GET THEM SOME COFFEE OR COKES IF THEY WANT THEM.

7 (THE JURY LEAVES THE JURY BOX AT 12:00 NOON)

8 THE COURT: ALL RIGHT. THE JURY IS NOW OUTSIDE THE
9 PRESENCE OF THE COURT. GENTLEMEN, YA'LL HAD PREVIOUSLY
10 REQUESTED THE COURT THAT I NOT SWEAR THE JURY UNTIL IN THE
11 MORNING. IS THAT STILL IN LINE WITH WHAT YA'LL DESIRE?

12 MR. SWERLING: THAT WOULD BE OUR REQUEST, YOUR HONOR,
13 DUE TO SOME OF THE EVIDENTIARY ISSUES THAT NEED TO BE
14 RESOLVED.

15 THE COURT: SIR?

16 MR. SWERLING: DUE TO SOME EVIDENTIARY ISSUES THAT NEED
17 TO BE RESOLVED AS WELL AS SOME INVESTIGATIVE ISSUES THAT NEED
18 PURSUING.

19 THE COURT: IS THERE ANY REASON THE JURY COULD NOT BE
20 SWORN AT THIS TIME IF I CHOSE TO DO SO BY THE STATE OR
21 DEFENSE?

22 MR. MORTON: WE DON'T HAVE ANY MOTIONS AT THIS TIME.

23 MR. SWERLING: YOUR HONOR, THE ONLY THING--THE REASON
24 THAT I REQUESTED THEY NOT IS THAT IN THE EVENT THAT I WOULD
25 HAVE TO MOVE FOR A CONTINUANCE BASED UPON --

1 THE COURT: SURE I UNDERSTAND. OKAY.

2 MR. SWERLING: --ON SOMETHING THAT WE MAY NOT BE ABLE
3 TO DEVELOP TODAY ON THIS NEW WITNESS THAT THE STATE ALLEGEDLY
4 HAS.

5 THE COURT: ALL RIGHT. VERY GOOD.

6 MR. SWERLING: IF YOUR HONOR PLEASE, JUST SO THE RECORD
7 WILL REFLECT, I HAVE DISCUSSED WITH MY CLIENT ANY BATSON
8 ISSUES AND HE IS SATISFIED WITH THE JURY AT THIS TIME. WE
9 DO NOT MAKE ANY CHALLENGE FOR BATSON NOTWITHSTANDING THE FACT
10 THAT THE RECORD--

11 THE COURT: WELL, THAT'S THE REASON I ASKED THE
12 QUESTION. MY OTHER PANEL IS HERE. I BELIEVE I COULD GO
13 AHEAD AND SWEAR THEM BUT I'M DOING AT YA'LL'S REQUEST NOT TO
14 SWEAR THEM UNTIL IN THE MORNING. I WANTED TO RESOLVE IF
15 THERE WAS A BATSON. SO, WHAT YOU ARE SAYING IS NO BATSON.

16 MR. SWERLING: THERE IS NO BATSON CHALLENGE. AND I'VE
17 DISCUSSED THAT FULLY WITH MR. TILLMAN.

18 THE COURT: THANK YOU. I'M CERTAIN YOU DID. NOW,
19 GENTLEMEN, NOW IN CONNECTION WITH YA'LL'S REQUEST, THESE
20 PEOPLE IN THE AUDIENCE, ARE THEY WITNESSES, POTENTIAL
21 WITNESSES, ARE THEY DEFENDANTS THAT SHOULD BE SOME PLACE
22 ELSE?

23 MR. MORTON: YOUR HONOR, SOME OF THEM MAY BE POTENTIAL
24 WITNESSES. I WILL TRY AND EXCUSE AS MANY AS MR. SWERLING AND
25 I CAN AGREE ON CAN BE EXCUSED. SOME OF THEM I THINK NEED TO

1 STICK AROUND. WE WILL TELL THOSE WITNESSES.

2 THE COURT: ALL RIGHT, GENTLEMEN, I'M GOING TO BRING THE
3 JURY BACK IN AND LET THEM GO. I WANTED TO MAKE SURE THE
4 BATSON PROBLEM WAS TAKEN CARE OF BEFORE I GOT RID OF THE
5 JURY. SO, IF THERE'S NOTHING ELSE, LET ME BRING THE JURY
6 BACK IN, IF THEY ARE READY--DID THEY WANT COKE?
7 FIND OUT. I'LL GIVE THEM TIME TO DRINK THEIR COKE AND WORK
8 WITH THEM. MR. SOLICITOR AND MR. SWERLING, HOW DO YA'LL WANT
9 TO DO TODAY? DO YOU WANT TO GO RIGHT INTO THE MATTERS RIGHT
10 NOW, DO YOU WANT TO STOP AND COME BACK AFTER LUNCH? I'LL DO
11 WHICHEVER ONE YA'LL WANT TO DO.

12 MR. MORTON: YOUR HONOR, WE WOULD PREFER TO STOP AND
13 COME BACK AFTER LUNCH IF THE COURT WOULD GIVE US THAT TIME
14 TO LOOK UP SOME STUFF.

15 THE COURT: IS THAT OKAY WITH YOU, MR. SWERLING?

16 MR. SWERLING: YOUR HONOR--

17 THE COURT: WHAT TO THEY WANT?

18 BAILIFF: THEY WANT TO COME BACK IN HERE.

19 THE COURT: ALL RIGHT. BRING THEM BACK IN HERE AND LET
20 ME TAKE CARE OF IT.

21 (THE JURY RETURNS TO THE JURY BOX AT 12:04 P.M.)

22 THE COURT: LADIES AND GENTLEMEN, I'M GOING TO NOW
23 EXCUSE YOU UNTIL IN THE MORNING. SO, THIS MEANS THAT YOU MAY
24 GO HOME, GO TO WORK, WHATEVER YOU'D LIKE TO DO BUT IN THE
25 MORNING WHEN YOU COME BACK I WANT YOU TO REPORT TO THE JURY

1 ROOM THAT YOU WERE IN. THE BAILIFFS WILL BE THERE AND WE
2 WANT YOU HERE NO LATER THAN 9:30. IF YOU COME AT 9:00 OR IN
3 BETWEEN THEY'LL BE THERE AND THEY'LL GET YOU COFFEE OR
4 WHATEVER YOU NEED AND MAKE IT AS REASONABLY COMFORTABLE FOR
5 YOU AS WE POSSIBLY CAN. NOW, LADIES AND GENTLEMEN, THE
6 NORMAL HOURS THAT WE ARE GOING TO RUN ARE GOING TO BE
7 GENERALLY FROM ABOUT 9:30, WE MAY START EARLIER DEPENDING ON
8 THE EVIDENCE AND YOUR ABILITY TO GET HERE, 9:30 UNTIL AROUND
9 1:00. WE'LL STOP AROUND 1:00 AND THEN START BACK AROUND
10 2:00, 2:15. OKAY? AFTER THAT WE'LL RESUME AND RUN TO AROUND
11 5:30. IT MAY RUN A LITTLE SHORTER DEPENDING ON HOW THE
12 TESTIMONY IS GOING. BUT YOU CAN APPRISE YOUR FAMILIES OF
13 THAT. IF YOU HAVE TO BE SOMEWHERE AT 5:30 OR 6:00 YOU MIGHT
14 TELL THEM YOU MAY BE LATE A LITTLE BIT BY THE TIME WE GET YOU
15 OUT. THE ANTICIPATED LENGTH OF TIME FOR THE TRIAL OF THIS
16 CASE IS SOMEWHERE BETWEEN TWO AND THREE DAYS THAT WE
17 ANTICIPATE. SO, IT WILL PROBABLY TAKE US UP FOR THE REST OF
18 THE WEEK WITH YOU AS FAR AS YOU PLANNING. NOW, I'M GOING TO
19 RELEASE YOU NOW UNTIL IN THE MORNING. REMEMBER WHAT I SAID
20 ABOUT NOT LETTING ANYONE DISCUSS THIS CASE WITH YOU OR READ
21 ANYTHING OR WATCHING ANYTHING OR LISTENING ANYTHING ABOUT
22 THIS CASE. DOES ANYONE HAVE ANY QUESTIONS CONCERNING WHAT
23 I'VE INSTRUCTED YOU SO FAR? (NO RESPONSE) VERY GOOD. YOU
24 ARE RELEASED NOW UNTIL TOMORROW MORNING AT 9:30 BACK UP HERE.
25 DON'T GO DOWNSTAIRS, YOU COME HERE TO THAT JURY ROOM. YOU

1 MAY GO. I HOPE YOU HAVE A NICE AFTERNOON. SEE YOU TOMORROW.

2 (THE JURY LEAVES THE JURY BOX AT 12:07 P.M.)

3 THE COURT: ALL RIGHT, THE JURORS ARE NOW GONE. WHAT
4 TIME, GENTLEMEN, THIS AFTERNOON? YOU WANT 2:00 OR 2:30?
5 WHATEVER SUITS YOU.

6 MR. MORTON: 2:30, YOUR HONOR.

7 MR. SWERLING: YES, SIR.

8 THE COURT: VERY GOOD. 2:30 THIS AFTERNOON. ANYTHING
9 ELSE YOU NEED TO TAKE UP WITH THE COURT?

10 MR. SWERLING: YOUR HONOR, AS I UNDERSTAND IT, AS FAR
11 AS THIS MR. GARDNER THE STATE IS GOING TO ALLOW US ACCESS TO
12 HIS RECORDS.

13 MR. MORTON: THAT'S THE WITNESS, YOUR HONOR, WHO IS
14 PRESENTLY IN JAIL WHO THEY SAY MAY HAVE SOME MEDICAL HISTORY.
15 WE CERTAINLY DON'T HAVE ANY OBJECTIONS TO GIVING MR. SWERLING
16 ALL WE HAVE.

17 MR. SWERLING: WE SUBMIT IT'S DISCOVERABLE UNDER BRADY
18 IF HE HAS ANY KIND OF HISTORY OF CRIMINAL CONVICTIONS OR
19 MENTAL PROBLEMS.

20 THE COURT: WELL, I THINK THEY JUST SAID THEY WERE GOING
21 TO GIVE IT TO YOU.

22 MR. SWERLING: THAT'S OUR POSITION.

23 MR. COLEMAN: JUDGE, PRIOR TO DOING THAT, I THINK WE
24 PROBABLY OUGHT TO GIVE A CALL OVER TO FEDERAL COURT TO-- HIS
25 LAWYER I THINK IS SANDRA HICKS WHO IS A FEDERAL PUBLIC

1 DEFENDER TO MAKE SURE SHE HAS NO PROBLEM WITH IT. SOMEBODY
2 IN THE U.S. ATTORNEY'S OFFICE. I DON'T SEE ANY PROBLEM BUT
3 I DON'T KNOW ALL OF THE RULES OF DISCOVERY AND THAT TYPE OVER
4 THERE SO I THINK WE NEED TO CHECK WITH THEM TO BE SURE.

5 THE COURT: ALL RIGHT. WELL, YOU BE PREPARED TO ARGUE
6 IT AT 2:30 IF YOU DON'T GIVE IT TO HIM AND HE NEEDS IT AS
7 SOON AS YOU CAN GIVE IT TO HIM.

8 MR. MORTON: WE'LL CALL RIGHT NOW, YOUR HONOR. WE'LL GET
9 RIGHT ON IT.

10 THE COURT: ANYTHING ELSE?

11 MR. SWERLING: NO, SIR.

12 THE COURT: THANK YOU, GENTLEMEN. SEE YOU AFTER LUNCH.

13 (LUNCH RECESS AT 12:10 P.M.)

14 (COURT RESUMES AT 2:40 P.M.)

15 THE COURT: ALL RIGHT, MADAM COURT REPORTER, LET THE
16 RECORD REFLECT THAT ALL COUNSEL ARE NOW PRESENT AND THE
17 DEFENDANT. ARE YOU GENTLEMEN READY TO PROCEED?

18 MR. SWERLING: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. MORTON: YOUR HONOR, IF I MIGHT, I THINK IT WOULD
21 HELP EXPLAIN TO THE COURT IF I BASICALLY WENT THROUGH SORT
22 OF A CHRONOLOGY OF WHAT HAS TRANSPIRED WE THINK IN RELATION
23 TO THIS CASE OVER THE LAST YEAR AND A HALF.

24 THE COURT: ALL RIGHT.

25 MR. MORTON: THE MAIN PLAYERS IN THIS SITUATION ARE, OF

1 COURSE, THE DEFENDANT, RONALD TILLMAN.

2 MR. SWERLING: EXCUSE ME, YOUR HONOR. I REQUESTED ANY
3 WITNESSES IN THE CASE BE EXCLUDED WHILE THE STATE IS
4 PRESENTING ITS FACTUAL SUMMARY. THERE ARE WITNESSES IN COURT
5 AND I WOULD ASK THAT WHILE THE STATE IS GOING THROUGH, WHILE
6 WE ARE MAKING ARGUMENTS ON THESE LEGAL MATTERS THEY BE
7 EXCLUDED FROM THE COURT.

8 THE COURT: FOR WHAT REASON?

9 MR. SWERLING: WELL, YOUR HONOR, BECAUSE THE STATE IS
10 GOING TO BE ARGUING ITS POSITION WITH RESPECT TO WHY THESE
11 THINGS ARE ADMISSIBLE AND IF THE WITNESSES ARE PRESENT IN THE
12 COURTROOM AND UNDERSTAND AND ARE LISTENING TO THE STATE'S
13 POSITION IT'S GOING TO BE DIFFICULT FOR ME TO CROSS EXAMINE
14 THEM AS TO WHAT THEIR INDEPENDENT RECOLLECTION IS AND WHAT
15 THE STATE'S SUMMARY IS.

16 THE COURT: ALL RIGHT. THERE IS NO REASON FOR THEM TO
17 BE IN THE COURTROOM AT THIS TIME. HAVE THEM STEP OUT IN THE
18 HALLWAY WILL BE FINE.

19 MR. MORTON: YOUR HONOR, DOES THAT INCLUDE POLICE
20 OFFICERS?

21 THE COURT: DO YOU HAVE A REASON FOR THEM BEING HERE?

22 MR. MORTON: NO, SIR. THAT'S FINE.

23 THE COURT: YOU CAN GO AHEAD.

24 MR. MORTON: YOUR HONOR, AS I WAS SAYING, THE MAIN
25 PLAYERS IN THIS SITUATION ARE, OF COURSE, RONALD TILLMAN, THE

1 DEFENDANT, A FELLOW BY THE NAME OF DONALD OR "DUCK" SUTTON
2 WHO IS THE VICTIM IN THIS CASE WHO WAS KILLED ON SEPTEMBER
3 THE 26TH, 1988--DECEMBER THE 26TH, 1988. THE STATE'S MAIN
4 WITNESS IS AN EYE WITNESS THE STATE ALLEGES TO THE MURDER,
5 A MAN BY THE NAME OF HAYES MALLOY. BUT IF I CAN TAKE YOU
6 BACK A LITTLE BIT, YOUR HONOR, TO SEPTEMBER 23RD, 1988, A
7 BURGER KING RESTAURANT IN DILLON WAS ROBBED. WITNESSES TO
8 THAT ROBBERY IN DILLON INCLUDED THE PEOPLE IN THE STORE WHO
9 STATED TO THE POLICE THAT THREE MEN, ALL BLACK MALES, CAME
10 IN AND ROBBED THE STORE AT GUNPOINT. IN THAT ROBBERY MISTERS
11 TILLMAN, SUTTON AND A FELLOW BY THE NAME OF FRANK WRIGHT WERE
12 ARRESTED. DONALD SUTTON, THE VICTIM IN OUR CASE, GAVE A
13 WRITTEN STATEMENT TO CAPTAIN JOE ROGERS WHO IS HERE TO
14 TESTIFY THAT THE DEFENDANT IN THIS CASE, MR. RONALD TILLMAN,
15 HELPED HIM ROB THE BURGER KING IN DILLON. ALSO, MR. FRANK
16 WRIGHT, WHO WAS ALSO ARRESTED FOR THE BURGER KING ROBBERY IN
17 DILLON, GAVE A STATEMENT TO CAPTAIN ROGERS THAT HE AND MR.
18 SUTTON AND MR. TILLMAN WERE INVOLVED IN THE ROBBERY OF THAT
19 BURGER KING. HE ALSO TOLD CAPTAIN ROGERS, HOWEVER, THAT HE
20 WOULD NOT ADMIT TO THAT IN COURT, HE DID NOT GIVE A WRITTEN
21 STATEMENT OF ANY KIND, THAT IF ASKED TO TESTIFY HE WOULD NOT
22 ADMIT TO MAKING THAT STATEMENT. CAPTAIN ROGERS IS HERE TO
23 TESTIFY THAT MR. WRIGHT GAVE A STATEMENT AND THAT PRIMARILY
24 DONALD SUTTON GAVE A WRITTEN STATEMENT IMPLICATING MR. RONALD
25 TILLMAN IN THAT ROBBERY.

1 THE COURT: TELL ME ABOUT THE DEFENDANT WRIGHT. HAS HE
2 BEEN TRIED?

3 MR. MORTON: ALL THE CHARGES--HE HAS BEEN TRIED I
4 BELIEVE IN A BANK ROBBERY CASE.

5 MR. SWERLING: YOUR HONOR, MR. WRIGHT'S CHARGES IN
6 DILLON WERE NOL PROSSED. HE WAS ACQUITTED IN THE BANK
7 ROBBERY HERE IN COLUMBIA. THE ARMED ROBBERY IN COLUMBIA.
8 HE WAS NOT A DEFENDANT IN THE BANK ROBBERY TRIAL. SO, HE IS
9 AVAILABLE TO THE STATE.

10 THE COURT: BUT YOU ARE SAYING THE DEFENDANT WRIGHT GAVE
11 AN ORAL STATEMENT TO CAPTAIN ROGERS?

12 MR. MORTON: YES, SIR.

13 THE COURT: THAT HE ALONG WITH THE OTHER TWO COMMITTED
14 THE ROBBERY IN DILLON?

15 MR. MORTON: YES, SIR.

16 THE COURT: NOW, IF THAT IS CORRECT DO YOU PLAN ON
17 CALLING WRIGHT AS A WITNESS?

18 MR. MORTON: WE DON'T ANTICIPATE IT AT THIS TIME, YOUR
19 HONOR, BUT WE DON'T WANT TO RULE IT OUT RIGHT NOW. MR.

20 SWERLING: I'M SORRY, YOUR HONOR, I DIDN'T--USING FRANK--
21 I'M SORRY.

22 THE COURT: HE SAID HE DID NOT RULE IT OUT.

23 MR. MORTON: YOUR HONOR, LATER THAT MONTH AND I'M NOT
24 SURE OF THE CORRECT DATE, I HAVE THEM MIXED UP. LATER THAT
25 MONTH I BELIEVE, YOUR HONOR--

1 MR. SWERLING: YOUR HONOR, IF THE STATE COULD KEEP THE
2 RECORD CLEAR SO THAT WE CAN ALL ADDRESS EACH ISSUE
3 INDIVIDUAL, IF WE COULD ADDRESS EACH INSTANCE THE STATE
4 INTENDS TO OFFER UNDER LYLE.

5 THE COURT: WELL, I THINK WHAT HE'S TRYING TO DO RIGHT
6 NOW, MR. SWERLING, IS SIMPLY TO GIVE THE COURT SOME
7 UNDERSTANDING OF THE CRIME CHARGED. SEE, I DON'T KNOW
8 ANYTHING ABOUT THE CRIME AND I THINK WHAT HE'S TRYING TO DO
9 IS GIVE ME A LITTLE BACKGROUND. NOW, AFTER HE'S GIVEN ME THE
10 BACKGROUND IF YOU'D LIKE TO SUPPLEMENT BY WHAT YOU CONSIDER
11 AS THE CORRECT BACKGROUND AND THEN YOUR PROCEDURE THAT'S
12 FINE. HE'S NOT GETTING TO THE LYLE ISSUE YET. HE'S TRYING
13 TO GIVE ME A BACKGROUND SO I'LL UNDERSTAND IT AND BE ABLE TO
14 MAKE AN INTELLIGENT DECISION ON THE LYLE ISSUE I BELIEVE IS
15 HIS PURPOSE. ISN'T THAT CORRECT, MR. MORTON?

16 MR. MORTON: YES, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT. YOU MAY PROCEED.

18 MR. MORTON: YOUR HONOR, IF I MIGHT BACK UP A LITTLE
19 BIT. I GOT THE DATES MIXED UP. THE DILLON ARMED ROBBERY AS
20 I SAID WAS SEPTEMBER 23RD. HOWEVER, ON SEPTEMBER 10TH THERE
21 WAS A BURGER KING ROBBED HERE IN COLUMBIA ON DEVINE STREET.
22 THE WITNESSES FROM THE BURGER KING ON DEVINE STREET TESTIFIED
23 AND GAVE STATEMENTS THAT THAT INVOLVED THREE MEN, ALL BLACK
24 MALES, ALL WHO CAME IN AND ROBBED THE STORE.

25 THE COURT: WAIT A MINUTE NOW. TO MAKE SURE YOU HAVEN'T

1 CONFUSED ME. ONE OCCURRED ON SEPTEMBER 10TH, THAT WAS IN
2 1988.

3 MR. MORTON: 1988 IN COLUMBIA.

4 THE COURT: AND WHICH WITNESSES CAME IN AND SAID THAT
5 BECAUSE YOU'VE ALREADY TOLD ME ON THE 23RD ONE THAT THE
6 VICTIM SUTTON GAVE A STATEMENT TO CAPTAIN ROGERS SAYING THAT
7 THE THREE OF THEM DID IT AND YOU TOLD ME THAT FRANK WRIGHT
8 GAVE AN ORAL STATEMENT TO CAPTAIN ROGERS BUT NOW HE SAYS HE
9 WILL NOT TESTIFY ACCORDING TO THAT.

10 MR. MORTON: LET ME MAYBE CLARIFY MYSELF. THE DILLON
11 ROBBERY OCCURRED ON SEPTEMBER THE 23RD.

12 THE COURT: I'VE GOT THAT.

13 MR. MORTON: THE CASHIERS AND THE PEOPLE THAT WORKED AT
14 THE DILLON BURGER KING SAY THAT THREE MEN CAME IN AND ROBBED
15 THEM. DONALD SUTTON GAVE A STATEMENT TO CAPTAIN ROGERS OF
16 THE DILLON POLICE THAT SAID THAT HE AND FRANK WRIGHT AND
17 RONALD TILLMAN ROBBED THAT BURGER KING.

18 THE COURT: IN DILLON?

19 MR. MORTON: IN DILLON. FRANK WRIGHT GAVE A STATEMENT
20 TO CAPTAIN ROGERS THAT HE, DONALD SUTTON AND RONALD TILLMAN
21 ROBBED THAT BURGER KING IN DILLON WHICH HE LATER SAID I WILL
22 NOT GO TO COURT AND TESTIFY ABOUT THAT.

23 THE COURT: THAT'S WHAT I SAID. GO AHEAD.

24 MR. MORTON: ON SEPTEMBER THE 10TH IN COLUMBIA A BURGER
25 KING HAS BEEN ROBBED. WITNESSES FROM THE BURGER KING, THE

1 CLERKS AND SO FORTH TESTIFIED THAT THREE BLACK MALES CAME IN
2 AND ROBBED THEM OF MONEY AT GUNPOINT. ON SEPTEMBER 27TH OF
3 1988, LATER THAT WEEK, THE DEFENDANT RONALD TILLMAN GAVE LT.
4 JIMMY STEWART OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT AN
5 ORAL STATEMENT TO WHICH HE SAID I WAS GOOD FOR THE ROBBERY
6 AT THE BURGER KING ON DEVINE, I STOOD BY THE BACK DOOR WHILE
7 MISTERS WRIGHT AND SUTTON ROBBED THAT BURGER KING ON DEVINE
8 STREET. HIS CO-DEFENDANT IN THAT CASE AND THE VICTIM IN THIS
9 CASE, DONALD SUTTON, TOLD OFFICERS OF THE CAYCE POLICE
10 DEPARTMENT--THEY HAD BEEN ARRESTED OVER THERE ON SOME
11 CHARGES--THAT THE DEFENDANT AND HE AND FRANK WRIGHT COMMITTED
12 THE ROBBERY ON DEVINE STREET. MR. FRANK WRIGHT ALSO GAVE
13 THOSE OFFICERS FROM CAYCE A WRITTEN STATEMENT SAYING
14 BASICALLY THE SAME THING, THAT HE, SUTTON, AND RONALD
15 TILLMAN, THE DEFENDANT IN THIS THING, ALL PARTICIPATED IN THE
16 DEVINE STREET ROBBERY. SUBSEQUENT, YOUR HONOR, WE WILL
17 PRESENT TESTIMONY FROM SEVERAL WITNESSES WHO ARE FROM
18 COLUMBIA WHO ARE PREPARED TO COME HERE AND TESTIFY TODAY THAT
19 RONALD TILLMAN KNEW OF THESE STATEMENTS THAT DONALD SUTTON
20 HAD MADE AGAINST HIM, THAT HE NOT ONLY KNEW OF THEM BUT THAT
21 HE COMMENTED TO SEVERAL OF OUR WITNESSES, INCLUDING HAYES
22 MALLOY OUR MAIN WITNESS, THAT HE HAD TO GET RID OF DONALD
23 SUTTON BECAUSE DONALD SUTTON WAS GOING TO SINK HIM. DONALD
24 SUTTON WAS THE ONLY THING BETWEEN HIM AND GOING TO JAIL SO
25 TO SPEAK. I'M PARAPHRASING IT, YOUR HONOR, BUT WE HAVE

1 SEVERAL WITNESSES THAT HE TOLD THAT TO. WE ALSO, OF COURSE,
2 HAVE WITNESSES WHO WILL TESTIFY THAT, OF COURSE, RONALD
3 TILLMAN KNEW ALL ABOUT THIS. YOUR HONOR, HAYES MALLOY AND
4 OTHER WITNESSES WILL TESTIFY THAT RONALD TILLMAN OFFERED THEM
5 MONEY, HAYES MALLOY AND AT LEAST TWO OTHER PEOPLE HAVE GIVEN
6 STATEMENTS THAT RONALD TILLMAN OFFERED THEM THOUSANDS OF
7 DOLLARS--ONE GOT ONE THOUSAND, ONE GOT FIVE THOUSAND,
8 SOMEBODY ELSE TEN THOUSAND DOLLARS--IF THEY WOULD KILL THE
9 WITNESS DONALD SUTTON IN THE BURGER KING ARMED ROBBERIES FOR
10 HIM, THAT ON THE NIGHT IN QUESTION THAT MR. TILLMAN AND HAYES
11 MALLOY WERE IN A CAR.

12 THE COURT: THE NIGHT IN QUESTION BEING DECEMBER 26TH,
13 1988?

14 MR. MORTON: DECEMBER 26TH, 1988, YOUR HONOR. THAT
15 RONALD TILLMAN AND HAYES MALLOY WERE IN A CAR, THAT RONALD
16 TILLMAN MADE CERTAIN PHONE CALLS IN ORDER TO INDUCE THE
17 VICTIM IN THIS CASE, DONALD SUTTON, TO MEET UP WITH HIM AT
18 A CERTAIN POINT, THAT DONALD SUTTON DID MEET WITH THEM, THAT
19 DONALD SUTTON FOLLOWED MR. TILLMAN AND MR. MALLOY TO A SCENE,
20 TO A PLACE HERE IN COLUMBIA, THAT RONALD TILLMAN AT THAT
21 POINT HANDED MR. HAYES MALLOY, OUR WITNESS, A GUN AND SAID
22 HERE'S THE GUY, DO IT, AT WHICH POINT MR. MALLOY SAID, NO,
23 I'M NOT GOING TO DO IT. AT THAT POINT, THEY PROCEEDED TO A
24 CHURCH, THAT RONALD TILLMAN TOOK THE GUN, GOT OUT OF THE CAR,
25 THAT HE CALLED DONALD SUTTON OVER WHOM HE HAD KNOWN FOR A

1 LONG TIME, PUT HIS ARM AROUND HIM AND PULLED OUT A .22
2 CALIBER GUN AND SHOT HIM ONCE IN THE RIGHT TEMPLE AND ANOTHER
3 TIME BETWEEN THE EYES. YOUR HONOR, AS FAR AS THESE TESTIMONY
4 ABOUT THESE OTHER ARMED ROBBERIES THE STATE SUBMITS IS
5 CRUCIAL TO OUR PROVING OF MOTIVE IN THIS CASE UNDER STATE V.
6 LYLE. DESPITE THE FACT THAT THE ARMED ROBBERY HERE OF THE
7 BURGER KING ON DEVINE STREET WAS--THE DEFENDANT WAS ACQUITTED
8 IN THAT CASE--THE STATE WOULD SUBMIT THAT EVIDENCE OF, NUMBER
9 ONE, HIS CONFESSION TO THAT, STATEMENTS BY THE OTHER TWO CO-
10 DEFENDANTS IN THAT ROBBERY THAT HE WAS INVOLVED SHOULD BE
11 EVIDENCE THAT THE JURY SHOULD CONSIDER DESPITE HIS ACQUITTAL
12 ON THOSE CHARGES.

13 THE COURT: STATEMENTS OF CO-DEFENDANTS?

14 MR. MORTON: STATEMENT OF MR. SUTTON, THE STATEMENT OF
15 MR. WRIGHT TO THE POLICE, HIS CONFESSION. RONALD TILLMAN'S
16 CONFESSION THAT HE WAS IN FACT AT THAT BURGER KING. HIS
17 STATEMENT TO LT. JIMMY STEWART THAT HE WAS GOOD FOR THAT ONE,
18 HE STOOD BY THE BACK DOOR, SHOULD BE EVIDENCE DESPITE THE
19 ACQUITTAL THAT THE JURY SHOULD BE ABLE TO CONSIDER AS MOTIVE.
20 YOUR HONOR, IN THE DILLON CASE--

21 THE COURT: WAIT JUST A MINUTE.

22 MR. MORTON: OKAY.

23 THE COURT: LET ME REVIEW IT A MINUTE. YOU ARE SAYING
24 THAT THAT BACKGROUND THAT YOU ARE OFFERING YOU WANT TO OFFER
25 THE STATEMENT OF THE DECEASED, DONALD SUTTON, RIGHT, TO OTHER

1 WITNESSES THAT DONALD SUTTON AND THIS DEFENDANT COMMITTED THE
2 OTHER CRIME? RIGHT?

3 MR. MORTON: YOUR HONOR, WE WOULD ALSO--

4 THE COURT: JUST TELL ME YES OR NO.

5 MR. MORTON: YES.

6 THE COURT: ALL RIGHT. YOU WANT TO ALSO OFFER THE
7 STATEMENT OF FRANK WRIGHT WHO WAS IT WAS ALLEGED TO BE ONE
8 OF THE THREE WHO COMMITTED THE CRIMES WHO IS STILL ALIVE
9 TODAY WHO THE CASE IN DILLON WAS NOL PROSSED AND YOU ARE
10 TALKING ABOUT THE ROBBERY OF THE BURGER KING DOWN ON DEVINE
11 STREET. YOU WANT TO OFFER HIS STATEMENT TO A POLICE OFFICER.
12 IS THAT RIGHT?

13 MR. MORTON: YOUR HONOR, ALL I WANT TO OFFER, AND I BEG
14 THE COURT'S INDULGENCE ON THIS, IS THE FACT THAT THE BURGER
15 KINGS WERE ROBBED, THAT MR. TILLMAN CONFESSED TO ROBBING THE
16 BURGER KING HERE ON DEVINE STREET--

17 THE COURT: WELL, THAT'S THE THIRD POINT. THERE ARE
18 THREE DIFFERENT THINGS AND SOME OF THEM MAY BE ADMISSIBLE OR
19 MAY NOT BE ADMISSIBLE FOR DIFFERENT REASONS AND WE CAN'T TAKE
20 IT AS A PACKAGE, MR. MORTON.

21 MR. MORTON: YES, SIR.

22 THE COURT: THEY HAVE TO BE DISSECTED AND TAKEN ONE PART
23 AT A TIME.

24 MR. MORTON: OKAY.

25 THE COURT: AND THAT'S THE REASON I'M ASKING YOU. I'LL

1 GO OVER IT WITH YOU AGAIN. YOU GAVE ME THE BACKGROUND
2 SCENARIO AND AS I UNDERSTAND IT THERE ARE ACTUALLY TWO
3 ROBBERIES, THE ONE ON SEPTEMBER 10TH, '88, OF BURGER KING ON
4 DEVINE STREET IN COLUMBIA, AND ONE ON SEPTEMBER 23RD, 1988,
5 IN DILLON. THE ONE IN DILLON NO ONE HAS EVER BEEN CONVICTED
6 OF THAT CRIME OR TRIED FOR IT. THE ONE ON SEPTEMBER 10TH,
7 THE BURGER KING ROBBERY ON DEVINE STREET, THIS DEFENDANT AT
8 LEAST, TILLMAN, HAS BEEN TRIED FOR IT AND BEEN FOUND NOT
9 GUILTY OF IT.

10 MR. MORTON: THAT'S CORRECT.

11 THE COURT: BUT INsofar AS THAT IS CONCERNED THE
12 DECEASED SUTTON SUPPOSEDLY, AND I SAY SUPPOSEDLY, GAVE A
13 STATEMENT TO LAW ENFORCEMENT OFFICERS AT LEAST THAT HIMSELF
14 AND THIS DEFENDANT COMMITTED THAT CRIME. ALL RIGHT.

15 MR. MORTON: THAT'S CORRECT.

16 THE COURT: ALSO, FRANK WRIGHT SUPPOSEDLY GAVE A
17 STATEMENT TO AN OFFICER THAT HE ALONG WITH SUTTON AND THIS
18 DEFENDANT COMMITTED THAT CRIME.

19 MR. MORTON: YES, SIR.

20 THE COURT: AND FRANK WRIGHT IS ALIVE.

21 MR. MORTON: YES, SIR.

22 THE COURT: AND YOU WANT TO OFFER THOSE STATEMENTS, THE
23 STATEMENT OF THE DECEASED SUTTON TO THAT OFFICER.

24 MR. MORTON: YES, SIR.

25 THE COURT: AND YOU WANT TO OFFER THE STATEMENT OF FRANK

1 WRIGHT TO THE OFFICER.

2 MR. MORTON: YES, SIR.

3 THE COURT: OKAY. I'M WITH YOU. NOW, YOU ALSO WANT TO
4 OFFER THE STATEMENT OF THE DEFENDANT TILLMAN THAT HE
5 COMMITTED THE BURGER KING ROBBERY ON SEPTEMBER 10TH, 1988.

6 MR. MORTON: YES, SIR.

7 THE COURT: ALL RIGHT. THOSE ARE THE THREE THINGS SO
8 FAR.

9 MR. MORTON: YES, SIR.

10 THE COURT: OKAY. I JUST WANTED TO CATCH UP WITH YOU
11 TO MAKE SURE WE WERE THINKING ON THE SAME LINE.

12 MR. MORTON: YOUR HONOR, PRIMARILY IF THE COURT WOULD
13 LET ME INTRODUCE THOSE STATEMENTS I CERTAINLY WANT TO
14 INTRODUCE THEM. ABSENT THAT, YOUR HONOR, I WOULD LIKE TO
15 JUST SIMPLY INTRODUCE THE FACT THAT THE ROBBERIES OCCURRED
16 AND THAT RONALD TILLMAN, OF COURSE, HAS MADE STATEMENTS TO
17 THESE OTHER WITNESSES THAT HE KNEW THAT DONALD SUTTON HAD
18 IMPLICATED HIM IN THOSE CRIMES AND THAT HE WAS GOING TO TAKE
19 CARE OF DONALD SUTTON BECAUSE DONALD SUTTON HAD MADE
20 STATEMENTS AGAINST HIM IN THOSE CRIMES. THE COURT: ALL
21 RIGHT. THE SCENARIO CHANGES. NOW, YOU WANT TO OFFER THAT
22 THE DEFENDANT TILLMAN HIMSELF HAS TOLD WITNESSES THAT HE KNEW
23 SUTTON, THE DECEASED IN THIS CASE, THE VICTIM--

24 MR. MORTON: YES, SIR.

25 THE COURT: --HAD IMPLICATED HIM IN BOTH OF THOSE

1 CRIMES. RIGHT?

2 MR. MORTON: YES, SIR.

3 THE COURT: AND FURTHER YOU WANT TO GO ON AND OFFER
4 TESTIMONY THAT HE SAID HE WAS GOING TO HAVE HIM KILLED?

5 MR. MORTON: YES, SIR.

6 THE COURT: ALL RIGHT.

7 MR. MORTON: ALSO, YOUR HONOR, OF COURSE, WE WOULD LIKE
8 TO OFFER EVIDENCE OF THE WARRANTS IN THOSE CASES.

9 THE COURT: WHY?

10 MR. MORTON: WELL, I THINK SO THE JURY CAN HAVE THAT AS
11 DOCUMENTATION THAT THEY WERE IN FACT CHARGED. YOUR HONOR,
12 AS TO THE DILLON--

13 THE COURT: WHY DON'T YOU OFFER THE INDICTMENTS?

14 MR. MORTON: WELL, YOUR HONOR, WE ARE NOT--THE
15 INDICTMENTS WILL BE FINE. WE ARE PRIMARILY CONCERNED WITH
16 SHOWING THAT HE WAS JUST ARRESTED AND HE WAS CHARGED. YOUR
17 HONOR, AS FAR AS THE DILLON BANK ROBBERY IS CONCERNED--I MEAN
18 THE DILLON ARMED ROBBERY IS CONCERNED THIS IS A SITUATION
19 WHERE CAPTAIN ROGERS OF THE DILLON COUNTY POLICE DEPARTMENT
20 WILL TESTIFY THAT HE FELT AND THE SOLICITOR OVER THERE,
21 GORDON McBRIDE, FELT THAT THE ONLY EVIDENCE THEY HAD IN THE
22 DILLON ROBBERY, THE MAIN EVIDENCE THAT THEY HAD, WAS THE
23 STATEMENT OF DONALD SUTTON. THE WRITTEN STATEMENT THAT
24 DONALD SUTTON GAVE IMPLICATING RONALD TILLMAN, THAT AFTER
25 DONALD SUTTON WAS KILLED THEY HAD NO CASE AND THAT,

1 THEREFORE, THEY DISMISSED THAT BURGER KING ROBBERY AGAINST
2 RONALD TILLMAN BECAUSE HE HAD KILLED THE ONLY WITNESS AGAINST
3 HIM. EXCEPT FOR FRANK WRIGHT WHO HAD, OF COURSE, RECANTED.
4 SO, YOUR HONOR, WHAT WE ARE FACED WITH IS A SITUATION WHERE
5 RONALD TILLMAN HAS WE THINK AND SUBMIT HAS COMMITTED A
6 ROBBERY IN DILLON WHERE HE HAS MURDERED THE ONLY WITNESS
7 AGAINST HIM AND WE, THEREFORE, THINK IT IS CRUCIAL AND
8 ESSENTIAL TO OUR CASE THAT WE BE ABLE TO SHOW TO THE JURY TO
9 PROVE MOTIVE UNDER STATE V. LYLE WHY HE KILLED THIS WITNESS.
10 YOUR HONOR, AT THIS POINT IT MIGHT BE A GOOD BREAKING POINT
11 FOR MR. SWERLING TO RESPOND. THERE ARE SOME OTHER THINGS
12 THAT, OF COURSE, WE WANT TO GO INTO.

13 THE COURT: ALL RIGHT. LET'S LET MR. SWERLING RESPOND
14 IN ANY FASHION. NOT ARGUMENTATIVE AT THIS TIME, ANYTHING
15 FACTUALLY--WELL, THEY ARGUE THAT THESE ARE THE FACTS THAT YOU
16 CONTEND ARE MISREPRESENTATION OF SOME SORT OF THE FACTS.

17 MR. SWERLING: YOUR HONOR, FRANKLY AT THIS POINT EVEN
18 THOUGH DESPITE THE FACT THAT WE FILED DISCOVERY MOTIONS A
19 LONG TIME AGO IN THIS CASE WE HAVE NOT BEEN FURNISHED
20 ANYTHING FROM THE DILLON COUNTY CASE. NOT ONE PIECE OF
21 EVIDENCE DO I HAVE.

22 THE COURT: YOU MEAN STATEMENTS?

23 MR. SWERLING: I HAVE NOTHING FROM THE STATE THAT THEY
24 INTEND TO OFFER IN THIS TRIAL.

25 THE COURT: WHAT DO YOU CONTEND YOU WOULD BE ENTITLED

1 TO AS FAR AS ANY RULE OF DISCOVERY?

2 MR. SWERLING: STATEMENTS THAT WERE MADE IN THE CASE,
3 TESTS. I MEAN IF WE ARE GOING TO TRY THE DILLON COUNTY CASE-

4
5 THE COURT: OTHER THAN SCIENTIFIC TESTS AND STATEMENTS
6 MADE.

7 MR. SWERLING: EVERYTHING THE RULE ALLOWS.

8 THE COURT: WHAT ELSE WOULD YOU BE ENTITLED TO?

9 MR. SWERLING: NOTHING BUT WHAT THE RULE ALLOWS. I HAVE
10 NOT BEEN GIVEN ANY OF THAT AS OF RIGHT NOW DESPITE THE FACT
11 THAT WE HAD FILED MOTIONS A LONG, LONG TIME AGO. MANY MONTHS
12 AGO.

13 THE COURT: NO COMPLIANCE WITH DISCOVERY RULE. ALL
14 RIGHT. GO AHEAD, MR. SWERLING.

15 MR. SWERLING: DO YOU WANT ME TO CONTINUE, YOUR HONOR?

16 THE COURT: YES, IF YOU'D LIKE.

17 MR. SWERLING: WELL, YOUR HONOR, BASICALLY I GUESS WHAT
18 I WOULD HAVE IS MORE OF AN ARGUMENT MORE OR LESS THAN THE
19 FACTUAL BECAUSE I CAN'T--

20 THE COURT: WHAT WE WERE TRYING TO DO, HE WAS TRYING TO
21 GIVE ME A BACKGROUND FROM THEIR POSITION. AS YOU KNOW, EVEN
22 UNDER THE LYLE ISSUE I DON'T MAKE THE DETERMINATION OF THE
23 BELIEVABILITY. THAT'S NOT THE ISSUE BEFORE THE COURT BUT
24 WHAT IS IT AND WHETHER OR NOT IT'S ADMISSIBLE. SO, UNLESS
25 YOU HAVE SOME STRONG DISAGREEMENT THAT'S WHAT THE WITNESS

1 WILL TESTIFY, OF COURSE, THE IN CAMERA HEARING THAT WE ARE
2 CONDUCTING RIGHT NOW, THE IN LIMINE MOTION, IS PREDICATED
3 UPON THAT BEING THE WAY IT WOULD COME DOWN IF I WERE TO RULE
4 IT WOULD BE ADMISSIBLE. IF IT DOESN'T COME DOWN THAT WAY,
5 THEN THE RULES CHANGE.

6 MR. SWERLING: WELL, YOUR HONOR, I CANNOT COMMENT ON THE
7 DILLON COUNTY CASE BECAUSE I JUST HAVE NOTHING TO SUPPORT OR
8 DISPROVE WHAT THE STATE CONTENDS HAPPENED IN THE DILLON
9 COUNTY CASE. SO, TO SUPPLEMENT THAT OR DELETE FROM THE
10 FACTUAL PRESENTATION MADE BY THE SOLICITOR I'M NOT IN A
11 POSITION TO DO THAT.

12 THE COURT: WELL, LET'S FIND OUT WHAT HE SAYS ABOUT YOUR
13 DISCOVERY OBJECTION. WHAT ABOUT THAT, MR. MORTON? HE SAYS
14 YOU'VE NOT MADE COMPLIANCE WITH HIS MOTION AND RIGHT TO
15 DISCOVERY UNDER THE RULE, THAT BEING FOR STATEMENTS AND ANY
16 SCIENTIFIC TESTING THAT YOU WOULD OFFER.

17 MR. MORTON: YOUR HONOR, WE HAVE NOT DONE ANY SCIENTIFIC
18 TESTING. AS FAR AS THE STATEMENTS THAT ARE CONCERNED, WE
19 HAVE JUST ACQUIRED THOSE STATEMENTS TODAY.

20 THE COURT: IT DOESN'T MATTER WHEN YOU ACQUIRE THEM.
21 THE QUESTION IS DID YOU COMPLY.

22 MR. MORTON: WE HAVE NOT GIVEN HIM THE STATEMENTS BY
23 DONALD SUTTON THAT WERE MADE TO THE POLICE IN THE DILLON
24 CASE.

25 MR. SWERLING: YOUR HONOR, I MIGHT NOTE FOR THE RECORD

1 THAT OUR MOTION--

2 THE COURT: WAIT A MINUTE. WAS HE ENTITLED TO DONALD
3 SUTTON'S STATEMENTS? WHAT ARE YOU ENTITLED TO?

4 MR. SWERLING: I BELIEVE I'M ENTITLED TO THE STATEMENTS
5 OF ANY WITNESSES, ANY STATEMENTS OF MY CLIENT, CRIMINAL
6 RECORDS, TESTS, ANALYSES. IF THEY ARE GOING TO TRY THE
7 DILLON CASE I SUBMIT THAT I'M ENTITLED TO EVERYTHING I'D BE
8 ENTITLED TO IF I WAS REPRESENTING MR. TILLMAN IN THE DILLON
9 COUNTY CASE. THEY HAVEN'T GIVEN ME ANYTHING DESPITE THE FACT
10 THAT ON FEBRUARY 21ST, 1989, WE FILED OUR DISCOVERY MOTION
11 IN THIS CASE WHICH IS ALMOST A YEAR AGO. AND OUR BRADY
12 MOTION ALSO. THIS CASE IS NOT JUST A COUPLE OF MONTHS OLD.

13

14 THE COURT: THIS CASE?

15 MR. SWERLING: THIS CASE IS A YEAR OLD.

16 THE COURT: ALL RIGHT.

17 MR. MORTON: YOUR HONOR, MR. SWERLING HAS REPRESENTED
18 MR. TILLMAN FOR QUITE SOME TIME NOW. I UNDERSTAND HIS
19 DILEMMA. I WAS UNAWARE THAT WE HAD TO FURNISH HIM WITH
20 STATEMENTS MADE BY THE VICTIM, DONALD SUTTON, CONCERNING
21 ANOTHER PRIOR BAD ACT CASE FOR DISCOVERY IN THIS CASE. WE
22 WOULD CERTAINLY BE WILLING TO GIVE HIM THAT. I THINK HE'S
23 REPRESENTED--

24 MR. SWERLING: IT HAS NOTHING TO DO WITH WHETHER I
25 REPRESENT MR. TILLMAN OR NOT. I DID NOT REPRESENT HIM IN

1 DILLON COUNTY. I NOTIFIED MR. McBRIDE I WAS NOT REPRESENTING
2 HIM IN DILLON COUNTY. I HAVE NOTHING FROM THE 5TH CIRCUIT
3 SOLICITOR'S OFFICE WITH RESPECT TO DILLON COUNTY. SO, I MEAN
4 AT THE VERY LEAST SANCTIONS SHOULD BE IMPOSED TO PRECLUDE THE
5 ADMISSION OF THAT TESTIMONY ON THAT BASIS. I'VE GOT A LOT
6 OF OTHER OBJECTIONS TO IT, TOO.

7 THE COURT: I DON'T SEEM TO HAVE A COPY OF THE RULE
8 HERE. DO YOU HAVE IT?

9 MR. SWERLING: NO, YOUR HONOR. I CAN GIVE YOU A COPY
10 OF MY MOTION.

11 THE COURT: THE DISCOVERY RULE.

12 MR. SWERLING: THIS IS VERBATIM FROM THE RULE.

13 THE COURT: HOW DO YOU READ THE TERM STATEMENT OF ANY
14 WITNESS? IS IT WRITTEN OR ORAL OR BOTH? THERE IS A
15 DISTINCTION IN THE RULE AS YOU KNOW.

16 MR. SWERLING: I THINK WE ARE ENTITLED. THE WAY IT'S
17 BEEN INTERPRETED IS ANY ORAL OR WRITTEN STATEMENT THE STATE
18 HAS AN OBLIGATION TO TURN OVER TO US. AND WE HERE AT THE
19 MORNING OF TRIAL.

20 THE COURT: DO YA'LL NOT HAVE A COPY? I'VE GOT A
21 SUMMARY TO IT. DO YOU HAVE A COPY OF THE RULE?

22 MR. SWERLING: I DON'T HAVE IT.

23 THE COURT: THANK YOU, MR. MORTON. I DIDN'T BRING THAT
24 BECAUSE I DIDN'T ANTICIPATE HAVING IT OR I WOULD. FRANKLY
25 I WAS A LITTLE CONCERNED ABOUT THAT. MAYBE THIS IS WRONG.

1 AS I READ THE RULE AND YOU TELL ME--HAS A COURT ORDERED THEM
2 TO PROVIDE YOU WITH THOSE STATEMENTS OF ALL OTHER WITNESSES?
3 NOW, CLEARLY YOU ARE ENTITLED TO THE DEFENDANT. WHAT YOU ARE
4 RAISING IS WHETHER YOU ARE ENTITLED TO STATEMENTS OF
5 PROSECUTION WITNESSES, ISN'T THAT RIGHT?

6 MR. SWERLING: THAT'S CORRECT.

7 THE COURT: NOW, AS I READ THE RULE AND MAYBE I DON'T
8 HAVE THE CORRECT VERSION OF IT EITHER, AND I'LL BE HAPPY TO
9 BE ENLIGHTENED ABOUT IT, IT SAYS UNLESS THE COURT--IT SAYS
10 PROVIDED FURTHER THE COURT MAY UPON A SUFFICIENT SHOWING
11 REQUIRE THE PRODUCTION OF ANY STATEMENT OF ANY PROSPECTIVE
12 WITNESS PRIOR TO THE TIME SUCH WITNESS TESTIFIES. OTHERWISE,
13 UPON MOTION MADE BY COUNSEL FOR THE DEFENSE ONCE THE WITNESS
14 HAS TESTIFIED YOU ARE ENTITLED TO A WRITTEN STATEMENT.
15 THAT'S WHAT THE RULE SAYS. IT DOES NOT SAY YOU ARE ENTITLED
16 TO IT RIGHT NOW OR BEFORE UNLESS ORDERED BY A COURT. AND
17 THAT'S MY QUESTION, HAS A COURT ORDERED THAT?

18 MR. SWERLING: NO, THERE'S BEEN NO COURT ORDER BECAUSE
19 THE SOLICITOR HAS MAINTAINED AN OPEN FILE POLICY. WE'VE
20 NEVER BEEN PROVIDED THAT.

21 THE COURT: SO, YOUR POSITION UNDER YOUR MOTION WHICH
22 SAYS THAT YOU ARE ENTITLED TO STATEMENTS OF ANY WITNESS OR
23 PROSPECTIVE PROSECUTION WITNESS EXISTENCE WHICH IS KNOWN YOU
24 ARE NOT ENTITLED TO UNDER THE RULE UNLESS THE COURT ORDERS
25 THAT PRIOR. YOU ARE ENTITLED TO IT AT THE TIME THE WITNESS

1 TESTIFIES BUT REALLY IT'S NOT A GROUNDS AT THIS TIME AS I
2 READ THE RULE. I THOUGHT THAT WAS CORRECT. THAT'S THE
3 REASON I WANTED TO TAKE A LOOK AT IT. TAKE IT BACK, MR.
4 MORTON.

5 MR. SWERLING: OF COURSE, YOUR HONOR, WE DO HAVE--

6 THE COURT: I AGREE WITH YOU ON THE OTHER PART ABOUT
7 ANY--MR. MORTON, I DO AGREE WITH HIM ANY STATEMENT OF
8 EVIDENCE ABOUT THE CRIME, IF ALLOWED, AS TO THE DILLON ARMED
9 ROBBERY OR ANY OTHER ARMED ROBBERY THAT YOU CONTEND WOULD BE
10 ADMISSIBLE IF I DEEM IT ADMISSIBLE HE WOULD BE ENTITLED TO
11 BE PROVIDED THAT, ANY SCIENTIFIC TESTING IN THAT REGARD, ANY
12 STATEMENTS MADE BY THE DEFENDANT HIMSELF. HE'S ENTITLED TO
13 THAT. I BELIEVE HE'S ENTITLED TO THAT.

14 MR. SWERLING: YOUR HONOR, ADDITIONALLY THERE ARE
15 SEVERAL OTHER REASONS WHY WE DON'T THINK FIRST OF ALL THAT
16 THESE THINGS SHOULD BE ADMISSIBLE. FIRST OF ALL, AS TO MR
17 SUTTON'S STATEMENT--THIS IS NOT EVEN A LYLE ISSUE. IT'S A
18 CONFRONTATION.

19 THE COURT: I AGREE WITH THAT. I AGREE WITH THAT. LET
20 ME HEAR YOU ON THAT, MR. MORTON. YOU WANT TO ARGUE AND OFFER
21 INTO THE RECORD OF THIS CASE A STATEMENT MADE BY SOMEONE WHO
22 IS DECEASED, RIGHT?

23 MR. MORTON: YES, SIR, YOUR HONOR.

24 THE COURT: NOW, TO A THIRD PART, THAT BEING THE
25 OFFICER. MR. SUTTON IS NOT AVAILABLE TO TESTIFY, HE'S NOT

1 AVAILABLE FOR EXAMINATION, CROSS EXAMINATION. YOU KNOW, THE
2 LYLE ISSUE DOESN'T ALLOW YOU TO GET IN JUST RANK HEARSAY IN
3 EVIDENCE. IT ALLOWS YOU TO PUT IN DIRECT TESTIMONY AND
4 EVIDENCE ON AN ISSUE OF ANOTHER CRIME TO PROVE A CERTAIN
5 POINT. THAT'S WHAT LYLE DID. IT DOESN'T JUST THROW ALL THE
6 RULES OUT THE DOOR. BUT YOU WANT ME TO ALLOW INTO THE RECORD
7 THE STATEMENT MADE BY NOT ONLY SUTTON, BUT BY FRANK WRIGHT
8 WHO IS ALIVE. BY A THIRD PARTY. PLEASE TELL ME WHAT RULE
9 ALLOWS YOU TO DO THAT?

10 MR. MORTON: YOUR HONOR, I AGREE WITH YOU. I'LL
11 WITHDRAW THAT REQUEST.

12 THE COURT: I DON'T KNOW HOW YOU COULD DO IT. I REALLY
13 DON'T. I THINK THERE MIGHT BE A WAY TO GET IN FRANK WRIGHT.
14 THERE MIGHT BE A WAY TO GET IN SUTTON BUT NOT THE WAY YOU ARE
15 GOING RIGHT NOW. YOU HAVE TO LAY SOME OTHER DIFFERENT GROUND
16 RULES. NOW, ON TILLMAN, NOW THAT'S A DIFFERENT QUESTION.
17 TILLMAN IS A STATEMENT MADE BY THE DEFENDANT HIMSELF
18 ALLEGEDLY. HE MAY DENY IT BUT IF THEY PUT UP A WITNESS TO
19 TESTIFY THAT TILLMAN COMMITTED THOSE ROBBERIES, THAT ROBBERY
20 ON SEPTEMBER 10TH, 1988, NOW THE QUESTION IS IS THAT--THAT'S
21 NOT HEARSAY. IT'S HEARSAY BUT IT'S AN ADMISSION AGAINST YOUR
22 PENAL INTEREST IN ESSENCE WHICH MAKES IT ADMISSIBLE IF IT'S
23 DEEMED ALL OTHER REASONS ADMISSIBLE. FOR THE PURPOSE OF
24 ARGUMENT I DON'T THINK YOU CONTEND THAT THEY DON'T HAVE A
25 WITNESS WHO IS GOING TO SAY THAT MR. TILLMAN DID ADMIT TO THE

1 SEPTEMBER 10TH, '88, ARMED ROBBERY.

2 MR. SWERLING: LT. STEWART WILL TESTIFY TO THAT. HE
3 TESTIFIED IN THE LAST TRIAL.

4 THE COURT: SO THE QUESTION IS IS THAT ADMISSIBLE UNDER
5 LYLE TO SHOW AS THEY ARGUE MOTIVE.

6 MR. SWERLING: CAN I ADDRESS THAT?

7 THE COURT: AND WHY IT SHOULD NOT BE ADMITTED. DO YOU
8 WANT TO BE HEARD ON THAT? THEY HANDED US UP A NUMBER OF
9 CASES. DID YOU GET THEM?

10 MR. SWERLING: YOUR HONOR, I'VE LOOKED AT THOSE CASES
11 AND I FIND THEM INTERESTING. THEY HAVE ALL BEEN DECIDED
12 UNDER RULE 404 OF THE FEDERAL RULES IN CRIMINAL PROCEDURE AND
13 801D2 OF THE RULES OF CRIMINAL PROCEDURE WHICH ARE NOT
14 FOLLOWED IN SOUTH CAROLINA. OUR COURT HAS PLACED A MUCH
15 STRICTER INTERPRETATION ON THE ADMISSION OF OTHER CRIMES THAN
16 FEDERAL COURTS HAVE. AND OUR SUPREME COURT HAS IN THE LAST
17 TWO YEARS REVERSED NO LESS THAN SEVEN CASES WHERE LYLE ISSUES
18 WERE LET IN ERRONEOUSLY. SO, OUR COURT ADHERES TO A VERY
19 HIGH STANDARD ABOUT LYLE WHEREAS THE FEDERAL COURTS HAVE
20 SPECIFIC RULES ALLOWING IN THAT EVIDENCE. SO, THESE CASES
21 ARE WORTHLESS AS FAR AS I'M CONCERNED IN THIS JURISDICTION.

22 THE COURT: HAND ME THE CASES YOU RELY UPON IN THAT
23 REGARD. WE HAVE THEM. I DON'T THINK OUR COURT HAS EVER
24 ADDRESSED THIS ISSUE SPECIFICALLY 'CAUSE I WENT BACK TO ALL
25 THOSE CASES TO TAKE A LOOK AT THAT.

1 MR. SWERLING: I MEAN THAT'S THE NEXT POINT I WANT TO
2 BRING OUT. WHAT WE ARE TALKING ABOUT HERE IS THE STATE IS
3 ASKING THIS COURT TO STEP OUT ON NEW GROUND WHICH HAS NEVER
4 EVEN BEEN TRIED BY THE SOUTH CAROLINA SUPREME COURT OR
5 ADDRESSED BY THE SOUTH CAROLINA SUPREME COURT. I SUBMIT THAT
6 IT'S NEVER BEEN ADDRESSED BECAUSE IT IS SO FAR REMOVED FROM
7 THE LYLE ISSUE THAT IT'S NEVER BECOME AN ISSUE BEFORE.
8 HERE'S WHAT THE STATE WANTS TO DO. LYLE NORMALLY DEALS WITH
9 EVIDENCE OF OTHER CRIMES WHICH HAVE NOT RESULTED IN
10 CONVICTIONS. THAT'S STATE VS. LYLE. THAT'S PROOF OF OTHER
11 CRIMES.

12 THE COURT: NO QUESTION. LYLE, AND IT ALWAYS CONCERNED
13 ME TOO BECAUSE IT ALWAYS SAYS CRIMES FOR WHICH A PERSON HAS
14 NOT BEEN CHARGED WITH EITHER BY WARRANT OR INDICTMENT. I
15 ALWAYS QUERY MYSELF BECAUSE SOUTH CAROLINA TO MY KNOWLEDGE,
16 THEY MAY HAVE IN SOME OF THE OLD CASES, HAS NEVER ADDRESSED,
17 WELL, WHAT IF THEY HAVE BEEN CHARGED WITH IT. NOW, THE RULES
18 CHANGE BECAUSE I HAVEN'T SEEN THE CASE WHERE THEY OFFERED THE
19 ISSUE ON A LYLE ISSUE WHERE THE PERSON HAD BEEN CHARGED WITH
20 IT.

21 MR. SWERLING: I THINK IT GETS STRICTER.

22 THE COURT: WELL, ONCE AGAIN I DON'T KNOW OF A SOUTH
23 CAROLINA CASE THAT SAYS THAT. YOU MAY HAVE ONE BUT I'D LIKE
24 TO SEE IT.

25 MR. SWERLING: THERE IS NO CASE, YOUR HONOR, BUT WHAT

1 I'D SAY IS THIS. IF THE COURT IN LYLE SET OUT A METHOD IN
2 WHICH THE STATE COULD OFFER PROOF OF OTHER CRIMES THAT DID
3 NOT RESULT IN CONVICTIONS, WERE JUST CHARGES, AND HOLDS THE
4 COURTS TO A VERY HIGH STANDARD AS TO WHETHER OR NOT TO ADMIT
5 EVIDENCE OF OTHER CRIMES UNDER THOSE CIRCUMSTANCES THEN
6 CLEARLY IF SOMEONE HAS BEEN INDICTED AND A CHARGE HAS BEEN
7 NOL PROSSED OR IF SOMEONE HAS BEEN INDICTED AND FOUND NOT
8 GUILTY ON THOSE CRIMES I WOULD SUBMIT THAT OUR SUPREME COURT
9 WOULD NEVER EXTEND THE ADMISSION OF LYLE TESTIMONY IN THOSE
10 CIRCUMSTANCES BECAUSE YOU ARE GOING INTO--NOT ONLY ARE YOU
11 JUST TALKING ABOUT EVIDENCE OF OTHER CRIMES THAT HE'S BEEN
12 ACCUSED OF BUT NOT CHARGED, HERE HE WAS ACCUSED OF IT BUT NOT
13 CHARGED WITH. HERE'S HE WAS ACCUSED OF IT, CHARGED OF IT AND
14 IT WAS NOL PROSSED IN THE DILLON CASE. IN THE RICHLAND CASE
15 HE WAS FOUND NOT GUILTY OF IT. SO, THEY ARE GOING WAY BEYOND
16 THE BOUNDS OF WHAT LYLE EVER HELD. ALL LYLE EVER SAID WAS,
17 AND I WOULD POINT OUT THE RULE IS--I GUESS THE ARGUMENT IS
18 A LITTLE DISJUNCTIVE, YOUR HONOR, BUT THE RULE IS GENERALLY
19 THAT EVIDENCE OF OTHER CRIMES IS NOT ADMISSIBLE. LYLE CARVES
20 OUT THIS SPECIFIC EXCEPTION IF YOU CAN SHOW ONE OF THESE FIVE
21 ELEMENTS--MOTIVE, COMMON SCHEME, DESIGN, PLAN, IDENTITY, WHAT
22 HAVE YOU.

23 THE COURT: AS LONG AS YOU DON'T INCLUDE CHARACTER WHICH
24 IS WHAT MOST WILL DO.

25 MR. SWERLING: RIGHT. AND THAT'S ONE OF THE THINGS I

1 HAVE SOME CONCERN IN. FIRST OF ALL, UNDER STATE VS. THOMAS,
2 AND, YOUR HONOR, THAT'S 151 SOUTHEAST 2d 855, THAT'S THE
3 GENERAL RULE THAT THESE CRIMES ARE NOT ADMISSIBLE GENERALLY.
4 STATE VS. GAMBLE SAID THAT IT'S ERROR TO ADMIT TESTIMONY OF
5 OTHER CRIMES WHERE IT PUTS THE DEFENDANT'S CHARACTER IN
6 ISSUE. OKAY. THAT'S ONE OF THE THINGS THAT THE COURT HAS
7 TO LOOK AT. THAT'S ONE OF THE BALANCING TESTS THAT THE COURT
8 HAS TO LOOK AT. THE COURT ALSO SAID IN STATE VS. LYLE WHICH
9 IS, OF COURSE, THE LEADING CASE, THAT THE EVIDENCE SHOULD NOT
10 COME IN UNLESS IT'S NECESSARY. THERE'S GOT TO BE A SHOWING
11 OF NECESSITY BY THE STATE. MOTIVE IN A MURDER CASE IS NOT
12 A NECESSARY ELEMENT. IN FACT, IT IS NOT AN ELEMENT OF THE
13 CRIME OF MURDER. THE STATE NEED NOT PROVE MOTIVE AND AS A
14 MATTER OF FACT I BELIEVE YOUR HONOR'S CHARGE SAYS THAT
15 CLEARLY.

16 THE COURT: SAYS IT CLEARLY.

17 MR. SWERLING: SO, IT'S NOT NECESSARY FROM THAT
18 VIEWPOINT. LYLE ALSO SAYS--

19 THE COURT: NOW, YOU ARE QUOTING FROM WHICH CASE? STATE
20 VS. GAMBLE?

21 MR. SWERLING: THESE ARE GAMBLE, THOMAS SO FAR, LYLE.
22 YOUR HONOR, THE EVIDENCE OF THE OTHER CRIMES HAS TO BE
23 CLOSELY CONNECTED IN TIME AND PLACE. HERE YOU'VE GOT A
24 KILLING IN DECEMBER 26TH, 1988, AND THEY ARE ALLEGING IT GOES
25 BACK TO SOME CRIME BACK SEPTEMBER 10TH, 1988, AND SEPTEMBER

1 23RD, 1988. I SUBMIT THAT IS NOT CLOSELY CONNECTED IN TIME
2 AND PLACE AS REQUIRED BY THE SUPREME COURT'S DECISIONS IN THE
3 LAST COUPLE OF YEARS. STATE VS. CONYERS IS AN INTERESTING
4 CASE, 233 SOUTHEAST 2d 95 WHICH SORT OF GOES ALONG WITH THE
5 ARGUMENT I WAS JUST MAKING. IT SAYS THE PROOF OF THE OTHER
6 CRIMES MUST BE CLEAR AND CONVINCING. OKAY. PROOF OF OTHER
7 CRIMES MUST BE CLEAR AND CONVINCING WHEN YOU ARE DEALING WITH
8 SITUATIONS WHERE A PERSON IS ACCUSED OF OTHER CRIMES AND THE
9 STATE WANTS TO GET IN THOSE OTHER CRIMES TO SHOW ONE OF THE
10 FIVE ELEMENTS THAT LYLE ADDRESSES. BUT HERE THE STATE IS NOT
11 OFFERING THE PROOF OF JUST OTHER CRIMES. THEY ARE OFFERING
12 PROOF OF CRIMES, NUMBER ONE, THAT ARE NOL PROSSED IN DILLON
13 COUNTY FOR WHATEVER REASON, AND I CAN'T GO INTO THE HEAD OF
14 THE SOLICITOR OR DETECTIVE; AND NUMBER TWO OF A CASE THAT HE
15 WAS ACQUITTED OF. HE HAS STOOD TRIAL FOR THAT CASE AND THE
16 JURY FOUND HIM NOT GUILTY EVEN WITH THE STATEMENT THE STATE
17 SAYS ALLEGEDLY HE MADE TO LT. STEWART. THAT WAS ADMITTED IN
18 THAT TRIAL AND THE JURY REJECTED IT. AS FAR AS THE DILLON
19 COUNTY CASE THE STATE CAN'T STAND HERE AND TELL ME THEY
20 DIDN'T HAVE AN ISSUE IN THAT CASE BECAUSE THEY HAD FRANK
21 WRIGHT WHO MADE AN ADMISSION IN THAT CASE, TOO. SOLICITOR
22 MORTON JUST TOLD THE COURT THAT FRANK WRIGHT SAID, YEAH, WE
23 DID THE CRIME, WE DID THIS DILLON COUNTY ARMED ROBBERY BUT
24 I WON'T TESTIFY TO THAT IN COURT. WELL, WHETHER FRANK WRIGHT
25 WANTS TO TESTIFY TO IT IN COURT OR NOT, THAT'S ADMISSIBLE.

1 SO, I CAN'T BELIEVE THAT THEIR DECISION TO DISMISS THIS CASE
2 WAS SOLELY BASED ON THE FACT OF THE UNAVAILABILITY OF SUTTON.
3 BUT CONYERS IS IMPORTANT BECAUSE I DON'T THINK WE GET TO THE
4 CLEAR AND CONVINCING STANDARD IN THIS CASE OR WE EVEN HAVE
5 TO BECAUSE OF THE FACT THAT HE WAS INDICTED IN BOTH CASES,
6 ONE WAS NOL PROSSED AND ONE HE WAS FOUND NOT GUILTY OF
7 BECAUSE IF IN FACT THAT IS STILL THE STANDARD, THE PROOF MUST
8 BE CLEAR AND CONVINCING, I WOULD SUBMIT THE STATE IN MAKING
9 THE OFFER OF PROOF THEY HAVE CANNOT SHOW THE COURT THAT THEY
10 HAVE CLEAR AND CONVINCING EVIDENCE OF THESE OTHER CRIMES.
11 YOUR HONOR, STATE VS. WILSON AT 266 SOUTHEAST 2d 426 SAYS
12 THAT IF THERE'S ANY DOUBT AT ALL AS TO THE CONNECTION BETWEEN
13 THE TWO CASES THAT DOUBT HAS TO RESOLVED IN THE DEFENDANT'S
14 FAVOR. OUR COURT HAS SAID THAT OVER AND OVER AGAIN AS LATE
15 AS STATE VS. SMITH JUST A FEW WEEKS AGO. YOUR HONOR, IT'S
16 AN INTERESTING CASE, STATE VS. GORE I HAVE. IT'S OPINION
17 NUMBER 22167 SOUTH CAROLINA DECIDED ON OCTOBER 9TH, 1984,
18 WHERE THE COURT HAD LET IN EVIDENCE OF A PRIOR FIRE THAT THE
19 DEFENDANT SUPPOSEDLY COMMITTED IN AN ARSON CASE. IN THAT
20 CASE IT DID NOT RESULT IN AN ARREST OF THE DEFENDANT BUT IT
21 WAS STRIKINGLY SIMILAR AND THE COURT IN THAT CASE HELD IT
22 SHOULD NOT BE ADMISSIBLE BECAUSE THERE WAS NO PROBATIVE
23 EVIDENCE LINKING THE DEFENDANT TO THAT PARTICULAR CASE. HERE
24 I THINK A DECISION BY A SOLICITOR TO NOL PROS A CASE OR A
25 DECISION BY A JURY TO ACQUIT A DEFENDANT IS BETTER EVIDENCE

1 THAN THEY HAD IN STATE VS. GORE. YOUR HONOR, STATE VS.
2 WILSON IS A 1980 CASE WHICH ADDRESSED LYLE AND THE LANGUAGE
3 IN LYLE THAT A LOT OF PEOPLE FORGET IS THAT THE COURT CARVED
4 OUT AN EXCEPTION UNDER LYLE BUT RECOGNIZED THAT THE
5 INEVITABLE TENDENCY OF THIS EVIDENCE IS TO RAISE A LEGALLY
6 SPURIOUS PRESUMPTION OF GUILT IN THE MINDS OF THE JURORS AND,
7 THEREFORE, ANY DOUBT ABOUT THE EVIDENCE SHOULD BE RESOLVED
8 IN THE DEFENDANT'S FAVOR. THE LYLE COURT WAS VERY CONCERNED
9 ABOUT THAT AND OUR COURT HAS BECOME MORE AND MORE CONCERNED
10 ABOUT THAT AS THE YEARS HAVE GONE ON. YOUR HONOR IS FAMILIAR
11 WITH STATE VS. JOHNSON WHICH WAS DECIDED AUGUST 24TH, 1987.
12 AND IN THAT CASE THERE WAS A MURDER OF A HIGHWAY PATROLMAN.
13 THE COURT IN THAT CASE HAS SAID, WELL, SOME OF THAT EVIDENCE
14 SHOULD HAVE COME IN BUT OTHER EVIDENCE AND THE DETAILS SHOULD
15 NOT HAVE COME IN. THE COURT HAS AGAIN LIMITED THE ADMISSION
16 OF LYLE TESTIMONY. IN THAT PARTICULAR CASE THEY HAD PROOF
17 THAT THE DEFENDANT WAS THERE AT THE SCENE AND ACTUALLY
18 COMMITTED THE HOMICIDE OF THE HIGHWAY PATROLMAN AND HAD SOME
19 OTHER PEOPLE IN THE BACK OF A VAN. IN THAT CASE THEY
20 REVERSED THE TRIAL COURT BECAUSE THEY LET IN TOO MUCH
21 EVIDENCE. JUST A COUPLE OF OTHER NOTATIONS, YOUR HONOR. THE
22 ANALYSIS THAT I CAN SEE THAT'S NECESSARY UNDER LYLE IS THAT
23 THE COURT SHOULD EXCLUDE EVIDENCE IF THERE'S A CHARACTER LINK
24 IN THE EVIDENCE CHAIN AND I THINK THAT CLEARLY HERE THERE IS
25 A CHARACTER LINK IN THE EVIDENCE CHAIN. THEY ARE GOING AFTER

THE DEFENDANT'S CHARACTER. THEY ARE GOING TO TRY AND SEEK TO PROVE THE DEFENDANT IS GUILTY OF THIS CRIME BECAUSE HE ALLEGEDLY COMMITTED TWO OTHER ROBBERIES, ONE WHICH THE STATE HAS CHOSEN TO NOL PROS AND ONE WHICH HE WAS FOUND NOT GUILTY OF. NUMBER TWO, THE COURT SHOULD EXCLUDE LYLE EVIDENCE IF THE COURT DOES NOT CLEARLY PERCEIVE THE CONNECTION OF EACH LINK WITH THE IMMEDIATELY PRECEDING LINK IN THE CHAIN OF EVIDENCE. AT THIS POINT THERE ARE TOO MANY BREAKS IN THE CHAIN OF EVIDENCE, IN THE LINKS, FOR THE COURT I SUBMIT TO CLEARLY SEE WHAT THE STATE IS TRYING TO DO OR CLEARLY SEE A CHAIN THAT THE STATE IS SEEKING TO ESTABLISH. AND, OF COURSE, THE OBVIOUS THING THAT THE COURT HAS TO WEIGH THE PREJUDICIAL EFFECT AGAINST THE PROBATIVE VALUE. SO, YOUR HONOR, I THINK WHAT WE COME DOWN TO IS A SITUATION THAT THE STATE IS GOING INTO THAT ASKS THIS COURT TO ADOPT THE POSITION THAT GOES WELL BEYOND LYLE I GUESS IN SUMMARY IS WHAT I'M SAYING. I DON'T THINK THE STATE HAS MET IN ITS FACTUAL PRESENTATION TO THE COURT THE ELEMENTS NECESSARY FOR THIS COURT TO MAKE AN ANALYSIS TO ALLOW THE EVIDENCE IN THAT THEY SEEK TO ADMIT IN UNDER LYLE, NUMBER ONE. NUMBER TWO, I WOULD SUBMIT THAT THE STATE IS ASKING YOU TO GO EVEN FURTHER THAN LYLE. LYLE ONLY ALLOWS IN EVIDENCE OF OTHER CRIMES WHERE THERE IS NO CONVICTION AND THEN YOU TALK ABOUT SITUATIONS WHERE THERE ARE NO CONVICTIONS AND UNDER WHAT CIRCUMSTANCES THAT TESTIMONY CAN COME IN AND WHERE A PERSON

1 IS NOT CHARGED. HERE THIS MAN WAS FOUND NOT GUILTY OF ONE
2 CHARGE AND THEY ARE STILL TRYING TO GO AFTER HIM ON THAT.
3 THEY ARE STILL TRYING TO OFFER EVIDENCE OF THAT CASE. WE'VE
4 TRIED THAT CASE ONCE BEFORE. THE JURY REJECTED THE STATE'S
5 PRESENTATION. AND IN DILLON COUNTY THAT'S BEEN DISMISSED.
6 THAT'S BEEN NOL PROSSED FOR SOME TIME. FRANK WRIGHT IS ALIVE
7 AND WELL. THEY COULD HAVE CALLED HIM AS A WITNESS IN THE
8 DILLON COUNTY CASE, THEY CAN CALL HIM AS A WITNESS IN THIS
9 CASE OR ATTEMPT TO BUT THEY CAN'T STAND HERE AND HONESTLY SAY
10 THAT THAT WAS THE SOLE REASON FOR DISMISSING THAT CASE
11 BECAUSE MR. SUTTON IS NOT AVAILABLE. SO, YOUR HONOR, WE
12 SUBMIT THAT UNDER NO CIRCUMSTANCE SHOULD EVIDENCE OF EITHER
13 ONE OF THOSE ARMED ROBBERIES BE ADMISSIBLE IN THE TRIAL OF
14 THIS CASE UNDER ANY THEORY THAT OUR SUPREME COURT HAS EVER
15 FOLLOWED OR THAT OUR SUPREME COURT HAS EVER PASSED DOWN. I
16 THINK THIS GOES BEYOND ANYTHING OUR COURT WOULD ALLOW. AND
17 AGAIN, YOUR HONOR, AS I SAID AND POINTED OUT BEFORE--YOU
18 CAN'T GET MUCH NEWER THAN THIS. NOVEMBER 13TH, 1989, OUT OF
19 ANDERSON COUNTY THERE IS A SITUATION WHERE A NOTE WAS FOUND
20 ON THE BODY OF A MURDER VICTIM WHERE THE MURDER VICTIM
21 ALLEGEDLY ADMITTED TO KILLING SOME OTHER PERSON. THEY LET
22 IN EVIDENCE OF THE OTHER KILLING IN THAT CASE. THE COURT
23 SAID AGAIN, AND THIS IS SOMETHING THAT'S JUST BE HANDED DOWN
24 SEVEN OR EIGHT TIMES OVER THE LAST TWO YEARS, EVIDENCE OF
25 PRIOR BAD ACTS IS ADMISSIBLE UNDER LYLE IF IT TENDS TO SHOW

1 MOTIVE OR A COMMON SCHEME OR PLAN AND ITS PROBATIVE VALUE
2 OUTWEIGHS ITS PREJUDICIAL EFFECT. THIS COURT HAS RECOGNIZED
3 THE DANGER OF PREJUDICE WHERE THE PRIOR BAD ACTS ARE NOT
4 SUBJECT TO CONVICTION AND HAS LIMITED THE STATE'S USE OF THIS
5 EVIDENCE WITH CONVICTIONS. THE WAY I READ THAT IS EVEN IF
6 THERE IS A CONVICTION THE SUPREME COURT IS GOING TO LOOK AT
7 IT VERY CAREFULLY AS TO WHETHER OR NOT IT SHOULD BE
8 ADMISSIBLE. AND THEN THE COURT GOES ON TO SAY TO BE
9 ADMISSIBLE PROOF OF PRIOR BAD ACTS MUST BE CLEAR AND
10 CONVINCING. WE FIND THE EVIDENCE CONCERNING MS. PRESLEY'S
11 MURDER SHOULD NOT HAVE BEEN ADMITTED UNDER LYLE. THE PROOF
12 THAT THE APPELLATE COMMITTED THE CRIME IS NOT CLEAR AND
13 CONVINCING. IN FACT, THERE IS NO EVIDENCE PLACING HIM AT THE
14 SCENE OF THE MURDER. THE PREJUDICE FROM THE ADMISSION OF
15 THIS EVIDENCE FAR OUTWEIGHS ITS PROBATIVE VALUE TO
16 DEMONSTRATE EITHER MOTIVE OR COMMON SCHEME OR DESIGN, AND
17 THEY REVERSED THE CASE. WE NOT ONLY DON'T HAVE A CONVICTION
18 HERE, WE HAVE AN EXACT OPPOSITE. WE HAVE AN ACQUITTAL. AND
19 WE HAVE THE NOL PROS BY A SOLICITOR. AND I JUST DON'T THINK
20 BY ANY STRETCH OF THE IMAGINATION THAT SHOULD COME INTO
21 EVIDENCE IN THIS PARTICULAR TRIAL OF THE CASE. EXCUSE ME.
22 THE OTHER THING I WANT TO POINT OUT WHICH MRS. SHEALY POINTED
23 OUT IS THE ARGUMENT ABOUT NECESSITY WHICH LYLE CLEARLY
24 ADDRESSED. THE STATE CONTENDS THEY'VE GOT AN EYE WITNESS IN
25 THIS CASE. WHAT POSSIBLE NECESSITY CAN THEY SHOW OTHER THAN

1 THE FACT THAT THEY HAVE AN EYE WITNESS IN THIS CASE TO ALLOW
2 IN EVIDENCE OF OTHER CRIMES FOR WHICH THE DEFENDANT'S CHARGES
3 HAVE BEEN DISMISSED OR HE'S BEEN ACQUITTED OF. SO, UNDER ANY
4 THEORY OR ANY ANALYSIS THAT YOU WANT TO LOOK AT UNDER LYLE
5 OR WHETHER THEY WANT TO EXTEND LYLE IT JUST DOES NOT APPEAR
6 THAT IT'S ADMISSIBLE EVIDENCE.

7 THE COURT: MR. SWERLING, AS I RECALL THE JOHNSON CASE
8 IT WAS A LYLE ISSUE BUT THE REAL PROBLEM WITH THE CASE WAS
9 THEY DIDN'T OFFER ENOUGH EVIDENCE OF THE OTHER CRIME. THEY
10 SIMPLY OFFERED IN THE NOTE. HAD THEY OFFERED IN OTHER
11 EVIDENCE WHICH WOULD HAVE BEEN CLEAR AND CONVINCING EVIDENCE
12 THEN THE DECISION MAY HAVE BEEN DIFFERENT. ALL THEY DID WAS
13 OFFER IN THE NOTE. THEY DIDN'T OFFER ANY OTHER EVIDENCE OF
14 THAT OTHER CRIME WHICH CAUSED THE LYLE PROBLEM. LYLE SAYS,
15 YOU KNOW, TO OFFER EVIDENCE OF OTHER CRIMES YOU'VE GOT TO
16 PROVE THE OTHER CRIME, TOO, IN ESSENCE. THAT'S WHAT YOU END
17 UP DOING.

18 MR. SWERLING: I GUESS WHAT I'M SAYING, JUDGE, IS HOW
19 CAN YOU PROVE THE OTHER CRIME IN THIS COURTROOM NOW WHEN HE'S
20 ALREADY BEEN ACQUITTED OF IT. AND HOW CAN YOU PROVE THE
21 OTHER CRIME WHEN THE SOLICITOR MADE THE DETERMINATION TO NOL
22 PROS HIS CASE. I MEAN THAT JUST GOES AGAINST EVERYTHING LYLE
23 STANDS FOR.

24 THE COURT: WELL, A COUPLE OF THINGS. YOU KNOW THEY HAD
25 A DECISION FROM A FORMER CHIEF JUSTICE OF THE SUPREME COURT,

1 JUSTICE LEWIS, WHO WROTE A DIALOGUE IN A CASE OF ALL THE
2 THINGS THAT TERMINATED THE CASE, ONE OF WHICH WAS A NOL PROS.
3 YOU AND I BOTH KNOW THAT A NOL PROS DOES NOT TERMINATE A CASE
4 BECAUSE THE SOLICITOR CAN INDICT AND TRY THEM ALL DAY LONG
5 AFTER THEY NOL PROS THE CASE. THEY CAN BRING THE CASE BACK
6 AND INDICT THEM AND TRY THEM FOR IT. IN FACT, WHEN THEY HAD
7 THE OLD CONTINGENCY DOCKETS THAT'S WHAT THEY USED OFTENTIMES.
8 SO, A NOL PROS TECHNICALLY DOES NOT DO THAT. THE OTHER THING
9 IS UNDER THE QUESTION THAT CONCERNS ME IS YOU RATIONALLY TRY
10 TO EVALUATE WHY ARE THESE DECISIONS THIS WAY. LYLE GENERALLY
11 DEALS WITH CASES WHERE--IN FACT, ALL OF THEM IN SOUTH
12 CAROLINA WHERE THEY HAVE NOT BEEN USUALLY INDICTED OR CHARGED
13 OR TRIED SO YOU PUT UP EVIDENCE OF OTHER CRIMES TO PROVE ONE
14 OF THESE THINGS--MOTIVE, INTENT, COMMON PLAN OR SCHEME.
15 LET'S ASSUME THAT THERE WAS A CONVICTION. NOW, WHAT ARE THE
16 GUIDELINES BECAUSE, YOU KNOW, THE RULE IS YOU CAN'T OFFER A
17 CONVICTION OF ANOTHER CRIME UNLESS THE WITNESS TAKES THE
18 STAND HIMSELF AND THEN IT COMES IN FOR IMPEACHMENT PURPOSES
19 ONLY ON CREDIBILITY IF IT'S A CRIME OF MORAL TURPITUDE. DO
20 THOSE TWO RULES SQUARE THEMSELVES AND THE QUESTION IS--AND
21 I'M GOING TO ASK YOU THIS AND I'M GOING TO ASK MR. MORTON
22 THAT--LET'S ASSUME THAT THEY CONVICTED HIM OF THE CRIME FOR
23 WHICH HE WAS FOUND NOT GUILTY. NOW, COULD THEY USE IT AT THIS
24 TIME WITHOUT HIM TESTIFYING?

25 MR. SWERLING: I DON'T BELIEVE THEY COULD USE IT UNLESS

1 HE TOOK THE STAND AND TESTIFIED AND PUT HIS CHARACTER IN
2 ISSUE BECAUSE IT COMES IN ONLY FOR THE PURPOSE OF
3 IMPEACHMENT.

4 THE COURT: THAT WOULD PROVE THE CRIME AND THEN THEY PUT
5 UP THE FACT THAT HE WAS TRIED FOR IT, WOULDN'T THEY?

6 MR. SWERLING: I THINK THE COURT WOULD RULE THAT IT'S
7 ONLY ADMISSIBLE FOR THE PURPOSES OF IMPEACHING HIS
8 CREDIBILITY, NOT AS TO WHETHER OR NOT HE COMMITTED THE CRIME
9 FOR WHICH HE STANDS CHARGED AND THE ONLY TIME THAT WOULD COME
10 IN IS IF HE TOOK THE WITNESS STAND.

11 THE COURT: WELL, YOU SEE, THE LYLE ISSUE ISN'T A
12 CREDIBILITY ISSUE. THAT'S NOT THE ISSUE IN LYLE AS YOU KNOW.
13 THE LYLE ISSUE IS PROOF OF ANOTHER CRIME TO SHOW THAT HE
14 COMMITTED THIS CRIME BY SHOWING A COMMON PLAN AND SCHEME,
15 MOTIVE.

16 MR. SWERLING: JUDGE, I STILL THINK YOU HAVE TO GO
17 THROUGH THE ANALYSIS. EVEN IF THERE WAS A CONVICTION, I
18 SUPPOSE YOU'D STILL HAVE TO GO THROUGH THE ANALYSIS THAT THEY
19 DO IN LYLE IN WHICH--

20 THE COURT: THAT IT'S NECESSARY.

21 MR. SWERLING: IT'S GOT TO BE NECESSARY. IT'S GOT TO BE
22 CLEAR AND CONVINCING. DOUBT HAS TO BE RESOLVED IN FAVOR OF
23 THE DEFENDANT. IF THERE IS A CHARACTER LINK IN THE CHAIN,
24 IT'S NOT ADMISSIBLE. IF THE COURT DOES NOT CLEARLY PERCEIVE
25 CONNECTIONS OF EACH LINK IN THE CHAIN WITH THE ONE

1 IMMEDIATELY PRECEDING IT, IT'S NOT ADMISSIBLE. IF ITS
2 PREJUDICIAL EFFECT OUTWEIGHS ITS PROBATIVE VALUE, IT'S NOT
3 ADMISSIBLE. SO, YOU'D STILL HAVE TO MAKE THAT DETERMINATION.

4 THE COURT: IT SEEMS A LITTLE RIDICULOUS FOR A COURT IN
5 HINDSIGHT IF A JURY HAS FOUND SOMEBODY GUILTY OF IT FOR ME
6 TO THEN SAY, WELL, THE EVIDENCE IS NOT CLEAR AND CONVINCING
7 TODAY. THAT MEANS THAT I'M EITHER WRONG OR THE TRIAL JUDGE
8 THAT HEARD THE CASE WAS WRONG AND SHOULD HAVE SET IT ASIDE,
9 DOESN'T IT? THOSE TWO DON'T SQUARE WITH ME. THEN YOU HAVE
10 TO ASK YOURSELF ON THE SECOND SIDE IF THE JURY HAS ALREADY
11 FOUND HIM NOT GUILTY DO I NOW HAVE THE RIGHT TO SUPPLANT THAT
12 DECISION. YOU KNOW, THE FEDERAL DECISIONS THAT THEY HAVE
13 SEEM TO INDICATE THAT YOU CAN DO IT ON A LIMITED BASIS.

14 MR. SWERLING: THAT'S BECAUSE THEY HAVE RULE 404 AND
15 RULE 802 WHICH ARE MUCH BROADER THAN SOUTH CAROLINA'S
16 STANDARD AND WHICH HAS BEEN INTERPRETED TO BE MUCH BROADER.
17 I MEAN IN FEDERAL COURT YOU BASICALLY CAN GO INTO THAT KIND
18 OF STUFF. I MEAN I WOULD SUBMIT EVEN THE FEDERAL COURT WOULD
19 HAVE SOME DIFFICULTY WITH THE FACT THAT A PERSON WAS
20 ACQUITTED AND LETTING IT IN OR THE FACT THAT THE CASE HAD
21 BEEN NOL PROSSED AND LETTING IT IN. THE COURT: THEY
22 DON'T HAVE ANY PROBLEM WITH HIM WITH THEY ACQUIT HIM. THEY
23 HAVE A COUPLE OF CASES WHERE THEY DID IT.

24 MR. SWERLING: WELL, YOUR HONOR, I ONLY GOT THOSE BEFORE
25 I GOT HERE BUT IN READING AT LEAST ONE OF THEM AGAIN IT WAS

1 DECIDED UNDER RULE 404, UNITED STATES VS. RILEY. IT WAS
2 DECIDED UNDER 404b AS TO WHETHER OR NOT IT SHOULD HAVE BEEN
3 ADMITTED AND IT WAS A GUILTY PLEA. THEY ARE TALKING ABOUT
4 A GUILTY PLEA IN THAT CASE, WHETHER OR NOT THAT SHOULD HAVE
5 BEEN ADMITTED AT THE TRIAL OF THE CASE. WE DON'T HAVE ANY
6 KIND OF SITUATION LIKE THAT. WE ARE NOT DEALING WITH THAT
7 KIND OF SITUATION. WE ARE DEALING WITH SOMEONE WHO WAS FOUND
8 NOT GUILTY. HE DIDN'T PLEAD GUILTY. AND THE CASE WAS NOL
9 PROSSED IN DILLON COUNTY.

10 THE COURT: YOU SAID RILEY?

11 MR. SWERLING: U.S. VS. RILEY. THIS IS A CASE WHERE
12 THEY USED A PRIOR CONVICTION--

13 THE COURT: I DON'T THINK I'VE GOT THAT ONE.

14 MR. SWERLING: THIS IS WHAT THEY HANDED ME. BUT, YOUR
15 HONOR, AFTER HAVING DEALT IN FEDERAL COURT QUITE EXTENSIVELY
16 I CAN TELL YOU THAT 404 AND 802 ALLOW IN A LOT OF EVIDENCE
17 THAT IS JUST NOT ADMISSIBLE IN STATE COURT. AND THAT'S
18 SOMETHING WE CONFRONT ALL THE TIME. I THINK OUR COURT HAS
19 PROBABLY TAKEN A STRICTER INTERPRETATION OF EVIDENCE OF OTHER
20 CRIMES THAN MOST OTHER COURTS. PLUS, YOUR HONOR, YOU ARE
21 TALKING ABOUT SOMETHING THAT HAPPENED THREE MONTHS BEFORE THE
22 EVENTS IN QUESTION. WHERE IS THE CLOSE CONNECTION IN TIME
23 AND PLACE? LYLE TALKS ABOUT A SERIES OF EVENTS OR
24 TRANSACTIONS SO INTERRELATED TO EACH OTHER THAT THE PROOF OF
25 ONE NECESSARILY TENDS TO PROVE EVIDENCE OF THE OTHER. YOU'VE

1 GOT A THREE MONTH SPAN IN HERE BETWEEN TWO EVENTS.

2 THE COURT: TIME IS A FACTOR BUT IT'S, YOU KNOW, THE
3 AMOUNT OF TIME HAS TO BE TAKEN INTO CONSIDERATION.

4 MR. SWERLING: WELL, I WOULD SUBMIT MY ARGUMENT WOULD
5 BE A LOT WEAKER IF WE HAD TALKED ABOUT SOMETHING THAT
6 HAPPENED IN OCTOBER BUT WE ARE TALKING ABOUT A THREE MONTH'S
7 TIME SPAN HERE AND I THINK THAT HAS TO BE PART OF THE
8 ANALYSIS, TOO. IT'S JUST A FACTOR.

9 THE COURT: ANYTHING ELSE? LET ME HEAR FROM MR. MORTON.
10 MR. MORTON.

11 MR. MORTON: YOUR HONOR, I'M GETTING A LITTLE CONFUSED
12 HERE. I WOULD LIKE TO GO BACK AGAIN AND ADDRESS WHAT YOU
13 ORIGINALLY ASKED ABOUT WHETHER OR NOT A CONVICTION OF THE
14 ARMED ROBBERY HERE COULD BE ADMITTED. I THINK CLEARLY IT
15 WOULD BE ADMITTED. I THINK THAT STATE V. LYLE AND IT'S
16 PROGENY AND ALL THE CASES THAT HAVE FOLLOWED HAVE SAID THAT,
17 OF COURSE, THE STATE CANNOT OFFER CHARACTER EVIDENCE IN ITS
18 CASE IN CHIEF EXCEPT TO PROVE MOTIVE, THAT IN A SITUATION
19 WHERE WE HAVE OTHER PRIOR BAD ACTS OBVIOUSLY THEY GO TO A
20 DEFENDANT'S CHARACTER IF THEY ARE A BAD ACT BUT IF THEY ARE
21 A BAD ACT AND IT FALLS IN ONE OF THOSE EXCEPTIONS ENUMERATED
22 UNDER LYLE, HERE BEING MOTIVE, THAT YOU CAN BRING IT IN. I
23 THINK YOU CORRECTLY STATED, YOUR HONOR, THAT WHAT WE ARE
24 FACING HERE IS A NOVEL ISSUE IN THIS STATE. AND I THINK
25 AGAIN YOU HAVE TO LOOK BECAUSE IT'S A NOVEL ISSUE AND IT

1 HASN'T BEEN ADDRESSED BY THIS STATE I THINK THE FEDERAL
2 COURTS CAN OFFER US SOME GUIDANCE ON THAT. I THINK RILEY
3 SAYS THAT THE FACT OF AN ACQUITTAL, NOT A CONVICTION, THE
4 FACT OF AN ACQUITTAL IN A CRIMINAL CASE DOES NOT BAR THE USE
5 OF THE OTHER ACT. STATE VS. HUGGLESTON THE COURT HELD THAT
6 THE TRIAL COURT NEED NOT MAKE A PRELIMINARY FINDING THAT THE
7 DEFENDANT IN FACT COMMITTED THE OTHER ACT BY ANY STANDARD,
8 CLEAR AND CONVINCING OR PREPONDERANCE, BUT INSTEAD NEED ONLY
9 DETERMINE THAT THERE IS SUFFICIENT EVIDENCE TO SUPPORT A
10 FINDING BY THE JURY BY A PREPONDERANCE OF THE EVIDENCE THAT
11 THE DEFENDANT COMMITTED THAT ACT. THUS, THE TRIAL COURT DOES
12 NOT INVOLVE ITSELF IN WEIGHING CREDIBILITY AND MAKES NO
13 DECISION AT ALL THAT THE DEFENDANT ACTUALLY COMMITTED THE
14 OTHER ACT. AND IN U.S. V. COURIER, YOUR HONOR, IT SAYS--

15 THE COURT: BUT HASN'T OUR STATE, MR. MORTON, SAID THAT
16 THE EVIDENCE DOES HAVE TO BE IN THAT FASHION? I MEAN I
17 RECOGNIZE THAT'S A UNITED STATES DECISION OR FEDERAL COURT
18 DECISION BUT, YOU KNOW, WHERE OUR COURT HAS SPOKEN ON SUCH
19 AN ISSUE IT'S NOT A QUESTION THAT'S NOVEL. CLEARLY THE
20 QUESTION ABOUT WHETHER OR NOT AN ACQUITTAL OR THAT EVIDENCE
21 CAN BE USED UNDER THAT PURPOSE IS NOVEL BUT THE STANDARD OF
22 THE EVIDENCE.

23 MR. MORTON: YOUR HONOR, WHAT WE ARE FACED HERE AND I
24 JUST WANT TO ADDRESS THE FACTS AGAIN IF I CAN--

25 THE COURT: ALL RIGHT.

1 MR. MORTON: WHAT WE ARE FACED HERE IS A SITUATION WHERE
2 IT IS A VERY IMPORTANT ISSUE FOR US TO BE ABLE TO PROVE
3 MOTIVE IN THIS CASE. MR. SWERLING IS CORRECT WHEN HE SAYS
4 THAT MOTIVE IS NOT AN ELEMENT IN THIS CRIME. I DON'T KNOW
5 WHEN MOTIVE IS EVER AN ELEMENT. I DON'T KNOW THAT THAT IS
6 THE STANDARD THAT THE COURTS WOULD HAVE US APPLY, THAT WE
7 HAVE TO PROVE THAT HE WAS DEAD, THAT IT WAS WITH MALICE
8 AFORETHOUGHT, THAT IT OCCURRED IN RICHLAND COUNTY. I CAN'T
9 THINK OF MANY CRIMES IN WHICH MOTIVE IS AN ELEMENT. YOU
10 SIMPLY HAVE TO PROVE THAT THE CRIME HAPPENED. I ASSURE YOU
11 INTENT IS AN ELEMENT BUT NOT MOTIVE. I DON'T KNOW--AND, OF
12 COURSE, I MAY BE ENLIGHTENED ON THAT. BUT HERE, YOUR HONOR,
13 LET ME ADDRESS ONE OTHER THING. CLEAR AND CONVINCING
14 EVIDENCE, I DON'T KNOW WHAT EVIDENCE IS MORE CLEAR AND MORE
15 CONVINCING THAN THE DEFENDANT'S OWN CONFESSION IN THE CASE.
16 HERE WE HAVE EVIDENCE THAT IS CLEAR THAT THE POLICE OFFICER
17 CAN TAKE THE STAND. HE, OF COURSE, IS SUBJECT TO CROSS
18 EXAMINATION BY MR. SWERLING THAT HE MADE A CONFESSION ABOUT
19 THE CASE HERE IN COLUMBIA. YOUR HONOR, WE NOT OFFERING TO
20 PROVE--AND IN FACT WE'LL STIPULATE AND MR. SWERLING CAN ARGUE
21 THAT HE WAS FOUND NOT GUILTY OF THAT. WE ARE ONLY OFFERING
22 IT TO SHOW THAT HE WAS ARRESTED, THAT HE WAS CHARGED, THAT
23 HE WAS INVOLVED, THAT STATEMENTS WERE MADE BY HIM ADMITTING
24 TO IT, STATEMENTS WERE ADMITTED BY OUR WITNESS IMPLICATING
25 HIM TO PROVE MOTIVE. YOUR HONOR, AS TO THE DILLON COUNTY

1 CASE OBVIOUSLY THEY DID NOT HAVE MUCH OF A CASE I DON'T THINK
2 WHERE YOU HAVE A WRITTEN, SIGNED STATEMENT BY A CO-DEFENDANT,
3 DONALD SUTTON, AS OPPOSED TO THE STATEMENT OF FRANK WRIGHT
4 AT THE POLICE STATION WHERE HE SAYS I WAS THERE, RONALD
5 TILLMAN WAS THERE, DUCK SUTTON WAS THERE BUT IF YOU EVER ASK
6 ME ABOUT IT I'M DENYING IT, I'M NOT GOING TO TAKE THAT STAND
7 AND ADMIT IT; IN FACT, I WILL DENY THAT WE WERE EVER THERE.
8 YOUR HONOR, WHEN A DEFENDANT CAN COMMIT AN ARMED ROBBERY
9 WHERE THE CO-DEFENDANT IS THE ONLY OTHER WITNESS IN A CASE
10 IN WHICH THEY WENT IN WITH STOCKING MASKS OVER THEIR HEAD AND
11 ROBBED SOMEBODY, WHEN HE CAN KILL THE ONLY WITNESS THAT THE
12 STATE HAS AGAINST HIM AND THEN IN HIS TRIAL FOR MURDER CLAIM
13 THAT THE FACT OF WHY HE WAS DOING THAT CANNOT BE INTRODUCED,
14 YOUR HONOR, I THINK IS A SAD STATE OF AFFAIRS. IN THE
15 COLUMBIA CASE THE EVIDENCE THAT THEY HAD, AND THE JURY
16 CONSIDERED IT THERE AND I SUBMIT THAT THE JURY SHOULD BE ABLE
17 TO CONSIDER IT HERE, THEY HAD A STATEMENT BY DONALD SUTTON
18 WHO HAD BEEN KILLED BY THE TIME THEY TRIED THAT CASE. DONALD
19 SUTTON WAS DEAD. THAT STATEMENT DID NOT COME IN. FRANK
20 WRIGHT REFUSED TO TESTIFY. THEY HAD A STATEMENT ABOUT FRANK
21 WRIGHT THAT WAS CONFLICTING IN THE SENSE THAT HE DESCRIBED
22 ONE BURGER KING ARMED ROBBERY FACTUALLY AND ANALOGIZED IT TO
23 THE ONE THEY WERE TRYING. IT WAS A VERY CONFUSING STATEMENT
24 BY FRANK WRIGHT. FRANK WRIGHT DID NOT TESTIFY IN THAT TRIAL,
25 REFUSED TO TESTIFY AND WOULD HAVE TAKEN THE 5TH AMENDMENT.

1 SO, YES, IN FACT MR. RONALD TILLMAN WAS SUCCESSFUL. HE
2 KILLED THE MAIN WITNESS AGAINST HIM IN BOTH OF THESE CASES.
3 ALL THAT WE ARE SAYING, YOUR HONOR, IS THAT WE BE ALLOWED TO
4 INTRODUCE THAT AS A MOTIVE. WE DON'T CARE THAT HE WAS
5 CONVICTED, THAT HE WAS--IN FACT, WE'LL STIPULATE TO IT. YOUR
6 HONOR, THE STATE FEELS THAT IT'S CLEARLY CONNECTED. IF THIS
7 ISN'T CONNECTED, I CAN'T THINK OF ANOTHER CASE THAT IS. IT'S
8 SIMPLY WE ARE NOT INTRODUCING IT TO PROVE HIS CHARACTER. THE
9 REASON THAT THE CASE WAS NOL PROSSED AND ONE OF THE MAJOR
10 REASONS THAT THE JURY CAME BACK WITH A VERDICT OF ACQUITTAL
11 IS BECAUSE HE HAD KILLED THE WITNESS AGAINST HIM. ALL WE ARE
12 TRYING TO SHOW IS HIS MOTIVE IN THIS CASE. YOUR HONOR, IT'S
13 NOT GOING TO MAKE A LOT OF SENSE. I MEAN SURE WE HAVE AN
14 EYE WITNESS BUT THE EYE WITNESS IS GOING TO HAVE TO TESTIFY
15 AND WE HAVE OTHER EVIDENCE THAT RONALD TILLMAN STATEMENTS
16 THAT HE MADE TO WITNESSES IN THIS CASE THAT HE WANTED THIS
17 MAN KILLED BECAUSE OF THE STATEMENTS IN THESE OTHER ARMED
18 ROBBERIES.

19 THE COURT: WELL, IF YOU HAVE THAT, WHY DO YOU NEED TO
20 PROVE THE OTHER ARMED ROBBERIES. IF YOU HAVE WITNESSES THAT
21 ARE GOING TO SAY THAT HE THE REASON THAT HE DID IT, RONALD
22 TILLMAN TOLD THAT WITNESS, WAS BECAUSE OF THESE OTHER ARMED
23 ROBBERIES AND HE WAS GOING TO TELL ON HIM THEN WHY DO YOU
24 NEED TO PROVE THE OTHER CRIMES? WHY DO YOU NEED THAT?

25 MR. MORTON: WELL, OF COURSE, THOSE WITNESSES ARE GOING

1 TO BE SUBJECT TO CROSS EXAMINATION BY MR. SWERLING AND I
2 THINK IT'S--

3 THE COURT: ALL WITNESSES ARE.

4 MR. MORTON: YES, SIR. I THINK IT'S JUST A LOT MORE
5 PROBATIVE THAT WE BE ABLE TO SHOW THE JURY THAT HE WAS IN
6 FACT CHARGED IN THOSE CRIMES AND THAT HE WAS GOING TO TRIAL,
7 THAT STATEMENTS HAD BEEN MADE AGAINST HIM FROM POLICE
8 OFFICERS OR FROM OUR WITNESSES THEMSELVES. I THINK IT'S JUST
9 A LOT MORE PROBATIVE ON THE ISSUE AND I THINK IT'S VERY
10 IMPORTANT THAT WE BRING THAT ACROSS OVER AND ABOVE OUR OTHER
11 WITNESSES WHO HAVE CERTAIN RELATIONS TO MR. TILLMAN, THAT,
12 YOU KNOW, MR. SWERLING WILL, OF COURSE, BE ABLE TO CROSS
13 EXAMINE THEM ON, WELL, YOU DON'T KNOW THAT THAT'S TRUE, ALL
14 YOU KNOW IS WHAT RONALD TILLMAN TOLD YOU AND HE REALLY DIDN'T
15 TELL YOU THAT AND THAT KIND OF THING. I THINK HARD EVIDENCE
16 FROM POLICE OFFICERS IN THOSE TWO CASES IS MUCH MORE
17 PROBATIVE THAN THE WITNESSES THAT WE HAVE.

18 MR. SWERLING: JUDGE, COULD I JUST RESPOND BRIEFLY?

19 THE COURT: YES, SIR.

20 MR. SWERLING: IT SEEMS INCREDIBLE TO ME THAT THE STATE
21 THINKS THAT THEY CAN USE A STATEMENT THAT MR. TILLMAN GAVE
22 IN A ROBBERY FOR WHICH HE WAS ACQUITTED IN THIS PARTICULAR
23 CASE. THERE'S NO AUTHORITY FOR THAT. I'VE NEVER SEEN THAT
24 HAPPEN, I'VE NEVER SEEN ANY CASE THAT SAYS IT CAN HAPPEN.
25 WHEN A MAN--HE'S ACQUITTED IN THAT CASE AND THEY STILL WANT

1 TO GO AHEAD IN THIS PARTICULAR CASE AND USE SOME STATEMENT
2 THAT HE PURPORTEDLY MADE IN THAT CASE. I'VE NEVER HEARD OF
3 THAT. I'VE NEVER HEARD OF IT, I'VE NEVER SEEN IT. I'VE
4 NEVER SEEN A CASE THAT EVEN ADDRESSED THAT ISSUE. IT'S NOT
5 ADMISSIBLE UNDER ANY KIND OF LYLE THEORY. HE'S BEEN
6 ACQUITTED OF THAT CHARGE. I SUBMIT IT'S PLACING HIM IN
7 JEOPARDY AGAIN TO HAVING HIM STAND TRIAL ON THAT CHARGE AGAIN
8 AND WE ARE GOING TO HAVE TO GO BACK AND TRY THE WHOLE CASE
9 AGAIN IN THIS MURDER CASE. I MEAN I CAN SEE WHAT THE STATE
10 IS GOING TO DO AND WHAT I CAN SEE HAPPENING HERE IS A THREE
11 WEEK TRIAL TRYING THE DILLON COUNTY CASE, TRYING THE BURGER
12 KING CASE, TRYING THE BANK ROBBERY CASE AND TRYING THE MURDER
13 CASE. THEY WANT TO GO AHEAD AND RE-LITIGATE ALL OF THESE
14 THINGS. THE ONLY WAY THAT I CAN DEFEND THIS MAN OF THE
15 MURDER CHARGE IF THEY LET IN ALL THAT STUFF IS TO ATTACK
16 THOSE PARTICULAR CASES AGAIN. AND WHERE THE SOLICITOR HAS
17 ALREADY MADE A DECISION TO THROW ONE OF THEM OUT AND A JURY
18 HAS ALREADY MADE A DECISION TO THROW THE OTHER ONE OUT.

19 MR. MORTON: YOUR HONOR, I DON'T CARE ABOUT GETTING HIS
20 CONFESSION IN. I'LL WITHDRAW THAT. IF I HAVE REQUESTED
21 THAT, I WILL WITHDRAW IT. I'M SIMPLY OFFERING IT TO THE
22 COURT AS CLEAR AND CONVINCING EVIDENCE THAT THE EVIDENCE OF
23 THOSE OTHER CRIMES SHOULD COME IN. I WILL NOT ADMIT RONALD
24 TILLMAN'S CONFESSION IN THAT CASE. I'M SIMPLY SAYING THE
25 FACT THAT THOSE CRIMES OCCURRED, THAT HE WAS CHARGED AND THE

1 POLICE OFFICERS THAT ARE GOING TO TAKE THE STAND TO SAY THAT
2 HE WAS CHARGED, DONALD SUTTON WAS CHARGED, FRANK WRIGHT WAS
3 CHARGED IN BOTH OF THOSE CRIMES SHOULD BE BEFORE THE JURY.
4 I DON'T CARE WHETHER RONALD TILLMAN'S CONFESSION COMES IN ON
5 THAT OR NOT. AND WE'LL IN FACT SAY THAT HE WAS FOUND NOT
6 GUILTY IF MR. SWERLING WANTS TO SAY THAT. I MEAN THAT'S
7 FINE.

8 MR. SWERLING: YOUR HONOR, MY POSITION IS IT OUGHT NOT
9 TO BE REFERRED TO AT ALL. THEY'VE GOT HIM CHARGED WITH
10 MURDER. THEY HAVE TO PROVE IT WAS AN INTENTIONAL KILLING
11 WITH MALICE AFORETHOUGHT. THERE IS NO NEED TO GO AHEAD AND
12 PUT IN EVIDENCE OF THESE TWO OTHER CRIMES NOT ONLY FOR WHICH
13 HE WAS JUST ACCUSED OF, BUT WHAT WHICH HE WAS ACQUITTED FOR
14 AND WHICH ONE WAS DISMISSED. HE WASN'T JUST ACCUSED OF IT,
15 HE WAS ACQUITTED AND ONE WAS DISMISSED BY THE SOLICITOR.
16 LET'S TRY THE MURDER CASE. THEY'VE GOT WITNESSES.

17 THE COURT: WHAT MY CONCERN IS ABOUT HOW ARE YOU GOING
18 TO PROVE--WE'LL START WITH THE ONE IN DILLON. HOW ARE YOU
19 GOING TO PROVE THAT ONE?

20 MR. MORTON: YOUR HONOR, WE'RE GOING TO PROVE THOSE BY
21 PUTTING THE POLICE OFFICERS.

22 THE COURT: WHO'S GOING TO DO WHAT?

23 MR. MORTON: WHO IS GOING TO SAY THAT THESE GENTLEMEN
24 WERE ARRESTED AND CHARGED IN DILLON COUNTY.

25 THE COURT: ALL RIGHT. HOW DOES THAT PROVE IT.

1 MR. MORTON: I'M NOT TRYING TO PROVE IT.

2 THE COURT: YOU ARE JUST SAYING YOU ARE GOING TO THROW
3 UP THE EVIDENCE--

4 MR. MORTON: YOUR HONOR, I'M SAYING THE FACT THAT THEY
5 WERE CHARGED, THE FACT THAT RONALD TILLMAN THOUGHT HE WAS
6 ABOUT TO GO TO JAIL FOR THAT AND THE FACT THAT HE THOUGHT HE
7 WAS GOING TO HAVE TO STAND TRIAL FOR THAT GAVE HIM A MOTIVE
8 TO TRY AND MURDER THE ONLY WITNESS THAT WAS AGAINST HIM IN
9 ORDER THAT HE COULD BE SET FREE.

10 THE COURT: WELL, I UNDERSTAND WHAT YOU ARE SAYING BUT,
11 YOU KNOW, LYLE SAYS THAT IN ORDER FOR YOU TO PRESENT THAT
12 EVIDENCE IT MUST GO TO SHOW THE PROOF OF ONE OF THOSE THINGS
13 AND IT MUST BE CLEAR AND CONVINCING EVIDENCE. THE FEDERAL
14 RULE SEEMS TO INDICATE IN FEDERAL CASES IT'S NOT NECESSARY
15 FOR YOU TO HAVE THAT BURDEN BECAUSE THE WEIGHT IS FOR THE
16 JURY. BUT SEE I DON'T QUITE UNDERSTAND THAT. IN SOUTH
17 CAROLINA WHETHER OR NOT EVIDENCE IS ADMITTED INTO THE RECORD
18 IS A QUESTION OF LAW, THE ADMISSIBILITY OF IT, AND UNDER LYLE
19 WE ARE DEALING WITH WHETHER OR NOT EVIDENCE IS ADMISSIBLE AND
20 I AM CONCERNED AT THAT TIME BY THE WEIGHT BECAUSE OF THE LYLE
21 REQUIREMENTS THAT THE EVIDENCE OFFERED--NOT WHETHER IT'S
22 BELIEVED OR NOT, BUT IF BELIEVED--IN OTHER WORDS, IF THE
23 EVIDENCE IF PRESENTED, IF BELIEVED WOULD BE CLEAR AND
24 CONVINCING. I DON'T HAVE TO REACH THE POSITION THAT IT IS
25 BELIEVABLE BUT I MUST REACH THE POSITION THAT THAT EVIDENCE

1 IF BELIEVED IS CLEAR AND CONVINCING. YOU SEE WHAT I'M SAYING?

2 MR. MORTON: YES, SIR.

3 THE COURT: I THINK I HAVE TO REACH THAT POINT BEFORE
4 I CAN ALLOW THE EVIDENCE TO BE ADMITTED. THE REASON I MAKE
5 THAT ANALOGY TO YOU, MR. MORTON, IS IF YOU PUT UP A WITNESS
6 TO SAY, WELL, HE WAS CHARGED WITH A CRIME, HE AND THREE OTHER
7 PEOPLE, HOW DOES THAT PROVE BY CLEAR AND CONVINCING EVIDENCE
8 THAT HE DID IT? SO, THE NEXT ANSWER IS, WELL, HOW DO I DO
9 THAT. HOW ARE YOU GOING TO PUT THAT EVIDENCE IN?

10 MR. MORTON: YOUR HONOR, THERE AGAIN I'M NOT TRYING TO
11 PROVE THAT HE DID IT.

12 THE COURT: I KNOW YOU'RE NOT BUT THE PROBLEM WITH IT
13 IS WHY IS THE EVIDENCE ADMISSIBLE AGAINST THE PERSON--YOU
14 SEE, IF YOU DIDN'T HAVE TO PUT SOME BURDEN ON THE EVIDENCE,
15 MR. MORTON, THEN EVERY TIME SOMEBODY WAS CHARGED WITH A CRIME
16 THEN YOU WOULD SAY, WELL, IT'S GOING TO PROVE COMMON PLAN OR
17 SCHEME OR MOTIVE AND SO I'M GOING TO PUT AN OFFICER ON THE
18 STAND AND SAY THAT THEY WERE CHARGED WITH ROBBERY OR LARCENY.
19 YOU KNOW, WE ARE TRYING HIM FOR LARCENY THIS TIME AND I'M
20 GOING TO PUT UP A WITNESS THAT SAY SHE WAS CHARGED WITH
21 LARCENY. I AIN'T GONNA PROVE THAT HE DID IT, I'M JUST GOING
22 TO PUT UP A WITNESS THAT SAID HE WAS CHARGED WITH IT. YOU
23 SEE HOW RIDICULOUS AND ABSURD THAT IS?

24 MR. MORTON: YES, SIR, BUT I DON'T THINK THAT'S THE
25 SITUATION THAT WE HAVE HERE.

1 THE COURT: WELL, WHAT IS THE SITUATION WE HAVE HERE?

2 MR. MORTON: THE SITUATION THAT WE HAVE HERE IS IN FACT
3 THAT THEY WERE IN FACT CHARGED WITH THE ROBBERY THERE, THAT
4 MR. SUTTON MADE STATEMENTS AGAINST MR. TILLMAN, THAT HE KNEW
5 THAT MR. SUTTON MADE STATEMENTS AGAINST HIM AND THAT,
6 THEREFORE, HE HAD A MOTIVE TO KILL THE WITNESS AGAINST HIM.

7 THE COURT: MR. MORTON, YOU MAY BE ENTITLED TO CLEARLY
8 PUT UP EVIDENCE THAT THIS DEFENDANT, IF HE DID, MADE
9 STATEMENTS TO OTHER PEOPLE WHO TESTIFY. THAT WITNESS
10 TESTIFIED THAT HE TOLD HIM THAT HE WAS GOING TO KILL HIM FOR
11 TESTIFYING AGAINST HIM OR SAYING HE WAS GOING TO TELL ON HIM
12 ABOUT THE OTHER ROBBERIES. OKAY. NOW, THAT ISSUE DOESN'T
13 COME IN FOR THE TRUTH OF WHETHER OR NOT IT WAS SAID TO SHOW,
14 AS YOU SAY, THE INTENT IN THE MIND OF THE DEFENDANT WHETHER
15 HE INTENDED TO MURDER OR THAT HE DID MURDER HIM. BUT YOU
16 WANT TO GO FURTHER AND JUST PUT IN THE WARRANTS CHARGING AND
17 SAYING THAT IT COMES IN UNDER A LYLE ISSUE. MR. MORTON:
18 YES, SIR. I THINK IT'S ESSENTIAL. I MEAN IT NOT ONLY
19 CORROBORATES WHAT THE OTHER WITNESSES SAY BUT I THINK IT'S
20 VERY PROBATIVE AS TO THE ELEMENT OR AS TO THE EXCEPTION UNDER
21 LYLE OF MOTIVE. I DON'T KNOW THAT LYLE WOULD EVER SAY THAT
22 IN ORDER FOR A CASE TO BE ADMITTED AS A PRIOR BAD ACT THAT
23 IT HAS TO GO TO PROVE AN ELEMENT. I DON'T THINK LYLE SAYS
24 THAT, I DON'T THINK THE CASE LAW SAYS THAT BECAUSE I DON'T
25 KNOW THAT MOTIVE--SURELY THEY ARE NOT SAYING THAT MOTIVE HAS

1 TO BE AN ELEMENT BEFORE YOU CAN ADMIT ANOTHER CRIME.

2 THE COURT: LET ME EXPLAIN SOMETHING TO YOU, MR. MORTON,
3 FOR THE PURPOSE OF THIS DISCUSSION. IF IT WERE AS YOU
4 PERCEIVE IT TO BE THEN WHY IF YOU HAD A PERSON WHO WAS
5 CHARGED WITH BURGLARY, THE OLD HOUSEBREAKING. IT MAKES MORE
6 SENSE TO SAY HOUSEBREAKING THAN BURGLARY, STOREBREAKING,
7 WHATEVER YOU WANT TO CALL IT. WE CALL IT BURGLARY NOW, YOU
8 KNOW, FIRST, SECOND, THIRD. HE COMMITTED FOUR OTHER OFFENSES
9 OF BURGLARY AND THEY ALL HAPPEN TO BE HOUSES AND IN EVERY ONE
10 OF THEM HE TOOK T.V.'s SO ON THIS TIME HE'S CHARGED WITH
11 BURGLARIZING A HOUSE WHERE HE TOOK A T.V. NOW, DO YOU THINK
12 YOU ARE ENTITLED TO PUT UP IN THE STATE'S CASE THE OTHER
13 CRIMES OR THE INDICTMENTS OR THE WARRANTS CHARGING THAT HE
14 DID IT? WHY AREN'T YOU DOING THE SAME THING?

15 MR. MORTON: WELL, BECAUSE UNLESS THE PROSECUTOR IN THAT
16 CASE CAN SHOW THAT THERE WAS A COMMON SCHEME INVOLVED CLEARLY
17 NOT. HERE I THINK WE WILL BE ABLE TO SHOW THAT ONE OF THE
18 EXCEPTIONS UNDER LYLE IS MOTIVE, THAT WE CAN SHOW MOTIVE
19 SIMPLY BY THE FACT THAT HE WAS CHARGED UNDER THESE AND HE
20 TRIED TO KILL A WITNESS AGAINST HIM. I DON'T THINK IF
21 SOMEBODY GOES OUT AND COMMITS FIVE BURGLARIES THAT YOU CAN
22 ADMIT THE OTHER FOUR. CLEARLY NOT BECAUSE THAT'S NOT
23 NECESSARILY A COMMON SCHEME. WE HAVE TO SATISFY THE COURT
24 IF IN FACT IT WAS A COMMON SCHEME. JUST BECAUSE SOME MAD
25 RAPES FOUR OR FIVE PEOPLE DOESN'T NECESSARILY MEAN THAT THE

1 OTHER FOUR ARE GOING TO COME IN TO PROVE THE FIFTH. CLEARLY
2 NOT UNLESS, OF COURSE, YOU CAN SHOW THAT IT WAS A COMMON
3 SCHEME. HOWEVER, YOUR HONOR, THIS IS A MOTIVE CASE. THIS
4 DEFENDANT IS GOING TO BE REWARDED FOR WHAT HE DID. I MEAN
5 IF THIS ISN'T A CLEAR SITUATION OF TRYING TO PROVE MOTIVE FOR
6 THE JURY TO CONSIDER I DON'T KNOW WHEN MOTIVE WOULD EVER BE
7 AN EXCEPTION UNDER LYLE, YOUR HONOR. YOUR HONOR, IT'S AS IF--
8 --AND I DON'T THINK I HAVE TO EXPLAIN THIS TO YOU--ME AND MR.
9 COLEMAN GO ROB A BANK AND MR. COLEMAN SAYS THAT HE'S GOING
10 TO TESTIFY AGAINST ME SO I KILL MR. COLEMAN. AND I CANNOT
11 THEN HAVE INTRODUCED AGAINST ME THE REASON, THE MOTIVE BEHIND
12 IT? I THINK CLEARLY THAT'S WHAT LYLE ADDRESSES IN ITS MOTIVE
13 EXCEPTION.

14 THE COURT: MR. MORTON, YOU'VE GOT TESTIMONY AND
15 EVIDENCE THAT THEY DID DO IT. I MEAN THAT'S THE REASON HE
16 SAYS HE DID IT, RIGHT? BUT YOU WANT TO GO FURTHER AND THEN
17 PROVE THE CRIME AND YOU SAY THAT IT'S NECESSARY, RIGHT, FOR
18 YOU TO DO THAT? ISN'T THAT ONE OF THE REQUIREMENTS?

19 MR. MORTON: YOUR HONOR, I DON'T THINK NECESSITY. THERE
20 AGAIN I THINK WE ARE ARGUING OVER THE FACT THAT NECESSITY AS
21 FAR AS AN ELEMENT OF THE CRIME. AGAIN, IT'S WHAT LYLE
22 ADDRESSES.

23 THE COURT: WHAT DO YOU SAY IT ADDRESSES?

24 MR. MORTON: I SAY IT ADDRESSES THE FACT THAT YOU CAN
25 PROVE OTHER BAD ACTS AND CRIMES IN THE STATE'S CASE IN CHIEF

1 IF IT FALLS UNDER ONE OF THOSE EXCEPTIONS.

2 THE COURT: OKAY. WELL, TELL ME WHY THEY REVERSED THE
3 JOHNSON CASE. HAND ME A COPY OF THAT JOHNSON CASE. TELL ME
4 WHY THEY REVERSED IT IN NOVEMBER OF THIS YEAR WHEN THEY
5 PROVED A PRIOR CRIME, ANOTHER PRIOR BAD ACT. TELL ME WHY
6 THEY REVERSED THAT, MR. MORTON, IF WHAT YOU SAY IS RIGHT.
7 TELL ME WHY THE SOUTH CAROLINA SUPREME COURT REVERSED THAT
8 CASE.

9 MR. MORTON: I DON'T HAVE A COPY OF THAT CASE RIGHT NOW.
10 IF I COULD LOOK AT IT.

11 THE COURT: THIS IS THE ONE IN GREENVILLE JUDGE TRAXLER
12 TRIED. THEY WERE TRYING HIM FOR ONE MURDER AND THEY PUT IN
13 A STATEMENT FROM ANOTHER--

14 MR. SWERLING: I'M SORRY, YOUR HONOR. YOU MEAN SMITH.

15 THE COURT: IS IT SMITH?

16 MR. SWERLING: YES. I SAID JOHNSON, TOO BUT IT'S SMITH.

17 THE COURT: IT WAS JUDGE TRAXLER'S CASE. I REMEMBER THE
18 TRIAL JUDGE.

19 MR. MORTON: DO YOU HAVE ANOTHER COPY OF IT, JACK?

20 MR. SWERLING: NO, THAT'S MY ONLY COPY.

21 THE COURT: YOU SEE IT WAS OFFERED IN THAT CASE TO PROVE
22 MOTIVE AND COMMON SCHEME OR PLAN. THIS WAS DECIDED NOVEMBER
23 OF '89.

24 MR. SWERLING: I THINK IT'S INTERESTING TO NOTE, YOUR
25 HONOR, THAT IN THE LAST TWO YEARS ALMOST EVERY LYLE ISSUE

1 BEFORE THE COURT WITH THE EXCEPTION OF ONE OR TWO WERE
2 REVERSED BECAUSE EVIDENCE THAT THE STATE CONTENDED WAS
3 ADMISSIBLE UNDER LYLE WAS NOT ADMISSIBLE ACCORDING TO THE
4 COURT'S ANALYSIS.

5 THE COURT: WELL, I SAYS THE COURT HAS RECOGNIZED THE
6 DANGER OF PREJUDICE WHERE THE PRIOR BAD ACTS ARE NOT SUBJECT
7 TO CONVICTION AND HAS LIMITED THE STATE'S USE OF THIS
8 EVIDENCE. WHAT DO YOU THINK THEY MEAN WHEN THEY SAY HAS NOT
9 BEEN SUBJECTED TO CONVICTION WHEN THERE HAS BEEN A NOT
10 GUILTY? WHAT DO YOU THINK THEY'LL THINK ABOUT IT THEN OR
11 WHERE IT'S BEEN NOL PROSSED?

12 MR. MORTON: I THINK IT'S A DIFFERENT SITUATION WHEN A
13 CASE HAS SIMPLY BEEN--SOMEONE HAS BEEN ACQUITTED OR CONVICTED
14 FOR WHATEVER REASON AS OPPOSED TO THE SITUATION WE HAVE HERE.

15 THE COURT: WELL, WHY DO YOU THINK THEY SAY THAT, MR.
16 MORTON? THEY SAY THE COURT HAS RECOGNIZED THE DANGER OF
17 PREJUDICE WHERE THE PRIOR BAD ACTS ARE NOT SUBJECT TO
18 CONVICTION? WHAT DO YOU THINK THEY MEAN BY THAT?

19 MR. MORTON: THEY SAY THAT BECAUSE THEY DO NOT WANT
20 PEOPLE COMING TO COURT AND TESTIFYING ABOUT OTHER BAD ACTS
21 THAT WOULD REFLECT ON THE DEFENDANT'S CHARACTER WHICH CANNOT
22 BE PROVED, WHICH THEY HAVE NO CLEAR AND CONVINCING EVIDENCE
23 THEY WERE EVER COMMITTED WHICH IS NOT THE SITUATION THAT WE
24 HAVE HERE.

25 THE COURT: YOU DO WHEN THE MAN HAS BEEN FOUND NOT

1 GUILTY.

2 MR. MORTON: YOUR HONOR, WE HAVE THE REASON HE HAS BEEN
3 FOUND NOT GUILTY AND MORE IMPORTANTLY THE REASON THEY
4 DISMISSED THE CASE AGAINST HIM IN DILLON WAS BECAUSE OF THIS
5 CASE. BECAUSE OF THIS IS THE REASON. THAT'S NOT A SITUATION
6 WHERE YOU HAVE SOMEONE COMING IN HERE AND TRYING TO PROVE THE
7 DEFENDANT HAS A BAD CHARACTER BECAUSE OF SOME OTHER THINGS
8 THAT HE'S DONE.

9 THE COURT: YOU ALSO ARGUE TO ME THAT THE STANDARD ON
10 THE EVIDENCE SHOULD BE NOTHING, JUST THAT YOU OUGHT TO BE
11 ABLE TO OFFER IT. AND THIS CASE THEY REAFFIRM TO BE
12 ADMISSIBLE PROOF OF PRIOR BAD ACTS MUST BE CLEAR AND
13 CONVINCING. I ASKED YOU THAT A WHILE AGO.

14 MR. MORTON: YOUR HONOR, I'M NOT TRYING TO SAY THAT WE
15 DON'T HAVE ANY EVIDENCE THAT HE COMMITTED THESE OTHER CRIMES.
16 I TRIED TO ENUMERATE THAT WE DO HAVE EVIDENCE.

17 THE COURT: ALL RIGHT. YOU DO BUT HOW DO YOU GET THAT
18 EVIDENCE IN? IT'S STILL SUBJECT TO THE SAME RULES. LET'S
19 TAKE THE ONE IN DILLON. NOW, LET'S PROVE THE MURDER CASE IN
20 DILLON. HOW DO YOU GO ABOUT PROVING THE MURDER CASE IN
21 DILLON? YOU CAN'T PUT IT IN BY AN OFFICER SAYING THAT A THIRD
22 PARTY TOLD HIM THAT THIS MAN DID IT. THAT'S RANK HEARSAY.
23 IT'S NOT A DECLARATION AGAINST HIS PENAL INTEREST. IT'S NOT
24 ADMISSIBLE. HOW DO YOU GET IT IN? NOW, IF YOU WANT TO OFFER
25 HIS STATEMENT, THEN YOU ARE GETTING INTO A DIFFERENT

1 QUESTION. YOU ARE GETTING TO THE FACT THAT THERE IS SOME
2 EVIDENCE THAT HE COMMITTED THE CRIME. ARE YOU SAYING THAT
3 THIS MAN ON THE DILLON CASE GAVE A CONFESSION AND, IF SO, WHY
4 DIDN'T THEY TRY HIM IN DILLON FOR IT?

5 MR. MORTON: NO, SIR.

6 THE COURT: ALL RIGHT. SO, THAT'S OUT OF THE WAY. SO,
7 DILLON IS GONE THEN, ISN'T IT? BECAUSE YOU DON'T HAVE ANY
8 EVIDENCE THAT HE COMMITTED IT.

9 MR. MORTON: YOUR HONOR, I'M NOT TRYING TO PROVE THAT
10 HE COMMITTED IT.

11 THE COURT: WELL, YOU HAVE TO, DON'T YOU?

12 MR. MORTON: NO, SIR.

13 THE COURT: YOU'VE GOT TO OFFER IT. TO BE ADMISSIBLE
14 PROOF OF PRIOR ACTS MUST BE CLEAR AND CONVINCING.

15 MR. MORTON: YOUR HONOR--

16 THE COURT: WHAT CLEAR AND CONVINCING EVIDENCE IS NOT,
17 YOU KNOW, AND EVEN IN A CIVIL CASE WHERE THEY TRY TO
18 DISTINGUISH BETWEEN THE TWO, THEY SAY IT'S A DIFFERENT
19 BURDEN, THE BURDEN IS BY THE GREATER WEIGHT OR PREPONDERANCE
20 OF THE EVIDENCE. YOU JUST TIP THE SCALES, ALL RIGHT? BUT
21 IF YOU HAVE SUCH AS A FRAUD CASE THE EVIDENCE AS TO FRAUD
22 MUST BE CLEAR AND CONVINCING AND IT EANS THAT THAT EVIDENCE
23 MUST BE SO STRONG THAT, YOU KNOW, IT COMPLETELY ALMOST
24 REFUTES ANY OTHER DECISION BUT THAT'S WHAT OCCURRED. SO,
25 YOU ARGUE THAT PROOF BEYOND A REASONABLE DOUBT, CLEAR AND

1 CONVINCING ARE MILES APART. I DON'T SEE HOW THAT COULD BE.
2 I REALLY DON'T. I DON'T SEE HOW THEY COULD BE.

3 MR. MORTON: ALTERNATIVELY THEN, YOUR HONOR, WE WILL
4 SIMPLY ADMIT THAT EVIDENCE FOR IT'S RELEVANCY, NOT UNDER A
5 LYLE THEORY TO PROVE THAT HE COMMITTED THAT ACT TO PROVE THAT
6 HE WAS CHARGED WITH IT. WE THINK THAT IS RELEVANT TO HIS
7 FRAME OF MIND, HIS STATE OF MIND AND TO HIS MOTIVE IN THIS
8 CASE.

9 MR. SWERLING: THE ONLY WAY THAT CAME IN IS UNDER LYLE
10 IF IT IS RELEVANT.

11 THE COURT: THE PROBLEM IS PROVING--YOU JUST CAN'T PUT
12 IN CHARGES ON ANOTHER PERSON, MR. MORTON. I THINK YOU'VE GOT
13 A REAL PROBLEM WITH DILLON. WHAT ARE YOU ARGUE, YOUR LEGAL
14 PREMISES ARE BASICALLY GOOD EXCEPT THAT YOU JUST CAN'T SAY
15 THAT I'M GOING TO PUT SOMEBODY UP THERE WHO IS GOING TO TELL
16 ME THIRD HAND. THAT EVIDENCE THAT YOU OFFER AS TO THE CRIME
17 IN DILLON MUST BE UNDER THE SAME RULES OF EVIDENCE THAT IF
18 HE WERE TRYING IT HERE TODAY BECAUSE THAT'S WHAT YOU ARE
19 DOING. BUT IF YOU CAN'T PUT UP SOMEBODY TO PROVE THAT THIS
20 MAN COMMITTED THE CRIME IN DILLON, LET'S FORGET ABOUT THE
21 LYLE ISSUE 'TIL WE GET TO THAT POINT. I MEAN THAT'S LYLE IN
22 ITSELF BUT THAT EVIDENCE MUST BE CLEAR AND CONVINCING. YOU
23 DON'T HAVE ANYBODY WHO CAN TESTIFY HE COMMITTED THE CRIME IN
24 DILLON, DO YOU, UNLESS YOU PUT FRANK WRIGHT UP? THEN WE GET
25 TO FRANK WRIGHT AND THEN THE QUESTION IS WITH THAT TESTIMONY--

1 -LET'S ASSUME THAT FRANK WRIGHT WOULD TESTIFY THAT HE DID THE
2 CRIME IN DILLON WITH SUTTON AND NOW YOU'VE GOT THAT IN AND
3 THEN YOU PUT UP A WITNESS WHO SAYS THE REASON THAT HE KILLED
4 SUTTON WAS BECAUSE SUTTON WAS GOING TO SAY THAT HE DID THE
5 CRIME IN DILLON. OKAY? THEN YOU'VE GOT A DIFFERENT
6 QUESTION. THE NOL PROS DOESN'T BOTHER ME BECAUSE A NOL PROS
7 IN MY VIEW IS NO ADJUDICATION. THEY CAN TRY HIM TOMORROW ON
8 THAT. IT DOES BOTHER ME ABOUT THE NOT GUILTY FINDING,
9 ADJUDICATION, ON THE ONE HERE IN COLUMBIA. IT BOTHERS ME AND
10 I RECOGNIZE WHAT THE FEDERAL SAYS BUT OUR CASES DON'T SAY THE
11 SAME THING THAT THE FEDERAL CASES SAY, MR. MORTON. AND
12 THAT'S NOT A CONSTITUTIONAL ISSUE, IT'S AN EVIDENTIARY ISSUE.
13 WE DON'T HAVE TO FOLLOW THE SAME FEDERAL RULES AS LONG AS
14 THEY ARE NOT CONSTITUTIONALLY REQUIRED. AND THE RULE DEALING
15 WITH THE ADMISSIBILITY OF EVIDENCE IN THIS CASE IS NOT A
16 CONSTITUTIONAL ISSUE, IT'S AN EVIDENTIARY ISSUE GOVERNED BY
17 STATE SUBSTANTIVE RULES AND PROCEDURAL RULES. I WAS AMAZED
18 WHAT THOSE CASES SAID TO BE HONEST WITH YOU BUT CLEARLY THE
19 FEDERAL WOULD ALLOW YOU TO USE SUCH EVIDENCE, BUT I DON'T
20 KNOW HOW YOU GET AROUND THE SOUTH CAROLINA DECISIONS AND THE
21 LAST ONE THAT THEY'VE RENDERED IN THE STATE BEING STATE VS.
22 SMITH, OPINION NUMBER 23101, WHICH SAYS CLEARLY THE PROOF OF
23 THE PRIOR BAD ACT MUST BE CLEAR AND CONVINCING AND YOU
24 YOURSELF ADMIT YOU DON'T HAVE SUCH TESTIMONY AND EVIDENCE AS
25 TO THE DILLON. ISN'T THAT CORRECT?

1 MR. MORTON: YOUR HONOR, I DON'T HAVE IT BECAUSE HE
2 KILLED THE ONLY WITNESS IN THE DILLON CASE.

3 THE COURT: WELL, I CAN'T HELP THAT, MR. MORTON, AND YOU
4 CAN'T HELP THAT. YOU KNOW, WE'VE JUST GOT TO PLAY BY THE
5 RULES THAT WE'VE GOT. I CAN'T HELP THAT AND YOU CAN'T
6 EITHER. THOSE THINGS HAPPEN AND IT'S UNFORTUNATE AND IF HE
7 DID IT THEN HE OUGHT TO HAVE BEEN PROSECUTED FOR IT BUT, YOU
8 KNOW, THAT DOESN'T CHANGE THE GUIDELINES THAT I'VE GOT TO
9 LIVE BY OR YOU EITHER ONE. YOU ARE TRYING HIM FOR THE MURDER
10 OF THE MAN. WHETHER HE DID IT BECAUSE OF THAT, THE QUESTION
11 IS WHETHER OR NOT HE MURDERED THAT MAN. YOU JUST WANT THE
12 OTHER EVIDENCE IN. IF YOU CAN GET IT UNDER SOME BASIS I'M
13 GOING TO LET YOU GET IT IN BUT YOU ARE GOING TO HAVE TO
14 SATISFY ME THAT IT'S ADMISSIBLE.

15 MR. MORTON: YOUR HONOR, AS I UNDERSTAND IT THEN THE
16 ONLY WAY THAT WE CAN GET IN THE DILLON COUNTY ROBBERY IS IF
17 FRANK WRIGHT WOULD COME IN HERE AND TESTIFY.

18 THE COURT: NO. PUT SOMEBODY ELSE ON THE STAND THAT'S
19 GOING TO SAY THAT THIS MAN DID IT. HAVE YOU GOT SOMEBODY
20 THAT CAN DO THAT?

21 MR. MORTON: YOUR HONOR, I CAN PUT SOMEBODY ON THE STAND
22 TO SAY THEY WERE IN FACT ROBBED.

23 THE COURT: THAT IS NOT GOOD ENOUGH. YOU KNOW THAT.
24 THAT WOULDN'T PASS MUSTER ON ANYTHING.

25 MR. MORTON: YES, SIR. IT JUST SEEMS TO ME, YOUR HONOR,

1 THAT HE'S BEING REWARDED. WHAT YOU ARE SAYING IS THAT IF TWO
2 PEOPLE GO OUT AND COMMIT A CRIME AND ONE OF THEM--

3 THE COURT: MR. MORTON, PLEASE DON'T TELL ME I'M
4 REWARDING SOMEBODY. THAT'S NOT MY JOB AND THAT'S NOT THE
5 PURPOSE I'M HERE AND IF YOU THINK YOU ARE GOING TO CHANGE MY
6 DECISION USING THOSE KIND OF WORDS AND TERMS YOU ARE NOT
7 GOING TO DO IT. I'M CALLING IT ACCORDING TO THE LAW. I TAKE
8 AN OATH TO FOLLOW THE LAW. I'M CALLING IT THE WAY I SEE IT
9 AND I DON'T CALL THEM ANY OTHER WAY. I DON'T CARE WHERE THE
10 STICKS FALL. THEY FALL. I CALL THEM LIKE I SEE THEM. YOU
11 KNOW, WHEN A MAN IS AFFORDED A FAIR TRIAL I AFFORD MYSELF A
12 FAIR TRIAL BECAUSE SOME DAY I MIGHT BE ON TRIAL, SOME DAY YOU
13 MIGHT BE ON TRIAL AND THAT'S WHAT HE AND EVERYBODY ELSE THAT
14 WALKS IN THIS COURTROOM IS ENTITLED TO. SOMETIMES, YOU KNOW,
15 GUILTY PEOPLE GET FOUND NOT GUILTY AND BENEFIT TO PROTECT
16 INNOCENT PEOPLE. AND THAT'S WHAT WE ARE HERE FOR AND I HOPE
17 IT ALWAYS STAYS THAT WAY. SO, I'M NOT REWARDING ANYBODY.
18 I'M NOT GOING TO REWARD YOU AND I'M NOT GOING TO REWARD THIS
19 DEFENDANT OR HIS LAWYER. I'M GOING TO CALL IT THE WAY I SEE
20 IT. NOW, YOU ARGUE WHATEVER YOU'D LIKE BUT I'M GOING TO CALL
21 IT THE WAY I SEE IT.

22 MR. MORTON: I BEG THE COURT'S INDULGENCE. YOUR HONOR,
23 MAY I SEE THAT SMITH CASE?

24 THE COURT: SURE. I READ THAT CASE, MR. MORTON. YOU
25 KNOW, THEY JUST DIDN'T PUT IN EVIDENCE TO PROVE THE CRIME.

1 ALL THEY DID WAS PUT IN THE NOTE AND THE NOTE BY ITSELF IS
2 SOMEWHAT SIMILAR TO THE CASE WHERE THEY TRIED A PERSON FOR
3 MURDER AND THE EVIDENCE AS HE COMMITTED IT WITH A .22 PISTOL
4 AND THEY TOOK OUT A .25 SLUG OUT OF THE WALL AND THEY PUT
5 THAT INTO THE CASE, TOO. IT WASN'T RELEVANT TO THE ISSUE IN
6 THE CASE AND IT PROVED ANOTHER CRIME OR SOMETHING AND THEY
7 REVERSED THAT ONE, TOO.

8 MR. MORTON: I THINK I UNDERSTAND THE WAY THE COURT'S
9 LEANING AND I'M BEYOND THAT CASE NOW. I WAS JUST CONSIDERING
10 ASKING YOU SOME OTHER THINGS. AS I UNDERSTAND IT THEN, YOUR
11 HONOR, WHAT I BELIEVE YOU ARE ABOUT TO RULE IS THAT WE CANNOT
12 GET FROM POLICE OFFICERS THE FACT THAT RONALD TILLMAN WAS
13 ARRESTED AND CHARGED WITH THE DILLON COUNTY ROBBERY.

14 THE COURT: OKAY. FIRST TELL ME IN YOUR CASE IN CHIEF
15 YOU'VE FIRST GOT TO--YOU ARE PUTTING IN THAT HE'S CHARGED
16 WITH ANOTHER CRIME, RIGHT? IN ORDER TO PUT IN THE PROOF OF
17 A CHARGE OF ANOTHER CRIME IT HAS TO COME WITHIN SOME
18 EXCEPTION UNDER OUR RULES WHICH IS THE LYLE ISSUE, RIGHT?

19 MR. MORTON: YES, SIR.

20 THE COURT: AND UNDER LYLE YOU'VE GOT PROVE IN MY VIEW
21 AND BASED ON THAT CASE THAT THE EVIDENCE WAS CLEAR AND
22 CONVINCING. YOU TELL ME THAT YOU DON'T HAVE ANYONE WHO YOU
23 CAN PUT ON THE STAND WITH DIRECT, CIRCUMSTANTIAL EVIDENCE OR
24 OTHERWISE WHICH WOULD REASONABLY TEND TO PROVE THAT THIS
25 DEFENDANT COMMITTED THE CRIME, ONE OF WHICH IS BECAUSE ONE

1 OF THE PERSONS ALLEGED TO HAVE DONE IT IS DEAD BEING THE
2 REASON YOU SAY FOR KILLING HIM, THE OTHER BEING MR. WRIGHT
3 YOU SAY WON'T TESTIFY AND AS I UNDERSTAND YOU DON'T INTEND
4 TO CALL HIM AND YOU DON'T HAVE ANYONE WHO CAN IDENTIFY HIM
5 AS BEING THE PERSON THAT COMMITTED THE CRIME, RIGHT?

6 MR. MORTON: THAT'S CORRECT.

7 THE COURT: OKAY. IF THAT IS WHERE YOU ARE, YOU ARE
8 RIGHT. I AGREE WITH YOU. YOU ARE NOT GOING TO BE ABLE TO
9 OFFER THE TESTIMONY OF THE CHARGE OF THE ARMED ROBBERY IN THE
10 DILLON CASE. YOU ARE EXACTLY RIGHT. NOT UNDER THAT THEORY
11 YOU SURE WON'T. NOW, THAT DOESN'T PROHIBIT YOU, MR. MORTON--
12 --PLEASE UNDERSTAND ME BECAUSE YOU'VE INDICATED YOU HAVE SUCH
13 TESTIMONY--THAT HE TOLD OTHER PEOPLE WHO ARE GOING TO TESTIFY
14 THAT HE DID IT FOR THAT REASON. NOW, THAT'S AN ADMISSION,
15 COUNSELLOR.

16 MR. SWERLING: OF COURSE, YOUR HONOR, AS TO THAT I WOULD
17 LIKE TO ARGUE THAT AT THE APPROPRIATE TIME.

18 THE COURT: I'LL LET YOU ARGUE IT. YOU ARE GOING TO
19 ARGUE HIS STATEMENT MADE TO SOMEONE ELSE AS TO KILLING THIS
20 DEFENDANT AND THE REASON THAT HE KILLED HIM. I MEAN THIS
21 VICTIM.

22 MR. SWERLING: THE FACT THAT HE SAID TO SOMEONE ELSE
23 THAT HE INTENDED TO KILL THIS INDIVIDUAL--

24 THE COURT: NO, I UNDERSTOOD THEY ARE SAYING THAT HE
25 SAID I KILLED HIM BECAUSE HE WAS GOING TO TELL ON ME FOR

1 COMMITTING AN ARMED ROBBERY.

2 MR. SWERLING: THAT I HAVE A PROBLEM WITH. FIRST OF
3 ALL, I THINK IT'S CLEARLY ADMISSIBLE. THE LAST PART OF IT-

4

5 THE COURT: WHY IS IT NOT?

6 MR. SWERLING: I THINK IT PUTS CHARACTER IN ISSUE.

7 THE COURT: HE'S MAKING A STATEMENT AS TO WHAT HE DID.

8 MR. SWERLING: IT STILL PUTS HIS CHARACTER IN ISSUE.

9 WHAT THE STATE IS SEEKING IN ITS CASE IN CHIEF--NOW, IF HE
10 TOOK THE STAND I PROBABLY WOULDN'T HAVE A LEG TO STAND ON,
11 BUT IF IT'S DONE IN THE STATE'S CASE IN CHIEF FOR THEM TO PUT
12 IN EVIDENCE OF OTHER CRIMES BY EVEN ANOTHER INDIVIDUAL STILL
13 PUTS HIS CHARACTER IN ISSUE. THAT CASE I WAS REFERRING TO--
14 -IF THE COURT WILL GIVE ME ONE MOMENT (PAUSE).

15 THE COURT: WHAT DO YOU DO WHEN YOU SAY, MR. SWERLING,
16 FOR EXAMPLE, SOMEONE WALKS IN AND SAYS, YOU KNOW, AFTER A
17 MURDER HAS OCCURRED THAT A MAN TOLD ME HE WAS RUNNING AROUND
18 ON HIS WIFE SO I'LL SHOOT HIM, OKAY? YOU HAVE DONE THE SAME
19 THING. ADULTERY IS A CRIME UNDER OUR STATUTES. IT'S ANOTHER
20 CRIME, ISN'T IT? THEY HAVEN'T BEEN INDICTING PEOPLE FOR IT
21 BUT THEY USED TO. YOU ARE RIGHT. BUT --

22 MR. SWERLING: WELL, YOUR HONOR, IN THIS CASE, AND I WAS
23 TRYING TO LOOK FOR THE CASE I WAS REFERRING TO, THERE WAS A
24 SIMILAR CASE DEALING WITH A SIMILAR ISSUE WHERE THE STATE
25 READ INTO THE RECORD A DEFENDANT'S CONFESSION WITH RESPECT

1 TO A CRIME. BUT IN READING IN EVIDENCE OF THE CONFESSION AT
2 THAT TIME THEY ALSO WENT INTO OTHER PORTIONS OF THE STATEMENT
3 WHICH REFER TO OTHER CRIMES. THE SUPREME COURT REVERSED THAT
4 CASE SAYING THAT PART OF THE CONFESSION DEALT WITH THE CRIME
5 FOR WHICH HE WAS BEING CHARGED WAS CLEARLY ADMISSIBLE, BUT
6 EVIDENCE THAT HE ADMITTED TO IN THAT STATEMENT AS TO OTHER
7 CRIMES WAS NOT ADMISSIBLE BECAUSE IT PUT HIS CHARACTER IN
8 ISSUE AND HE HAD NOT YET TENDERED HIS CHARACTER. AND I THINK
9 YOU HAVE THAT SITUATION HERE.

10 THE COURT: YOU'RE RIGHT ABOUT THE CASE. I'M FAMILIAR
11 WITH THE CASE.

12 MR. SWERLING: YOU KNOW THE CASE I'M REFERRING TO AND
13 IT'S A LEADING CASE. THE NAME ESCAPES ME. I JUST CAN'T
14 THINK OF IT. ALL I CAN THINK OF IS STATE VS. KNEECE. BUT
15 THAT'S THE CLASSIC CASE. THE SUPREME COURT IN THAT CASE SAID
16 EVEN THOUGH IT WAS IN A CONFESSION THE COURT WENT TOO FAR IN
17 ALLOWING IN THE DEFENDANT'S CONFESSION AS TO OTHER CRIMES.
18 THAT'S EXACTLY WHAT THE STATE WANTS TO DO IN THIS CASE. IT
19 STILL PUTS HIS CHARACTER IN ISSUE. AND WE ARE TALKING ABOUT
20 TWO DIFFERENT STANDARDS. ONE IS THEIR CASE IN CHIEF AND ONE
21 IS FOR IMPEACHMENT PURPOSES. I'VE GOT SOME PROBLEMS IF MR.
22 TILLMAN TAKES THE STAND IN MY ARGUMENT THAT THAT TESTIMONY
23 SHOULDN'T COME IN EITHER ON CROSS EXAMINATION OR IN REPLY.
24 BUT IN THEIR CASE IN CHIEF THE CASE IN CHIEF HAS TO BE
25 SANITIZED A LITTLE BIT MORE SO THAN WHEN MY CASE GOES UP OR

1 IN REPLY. AND I THINK THE STATE BY EVEN TRYING TO OFFER IT
2 THROUGH WHAT MR. MORTON SUGGESTED WOULD BE TESTIMONY OF OTHER
3 WITNESSES IT'S STILL ATTACKS HIS CHARACTER AND HE HAS NOT YET
4 TENDERED HIS CHARACTER. HE MAY OR MAY NOT TESTIFY IN THE
5 CASE. IF HE DOES TESTIFY, WE MAY HAVE SOME PROBLEMS WITH
6 THAT.

7 THE COURT: I'LL LET YOU RESPOND TO THAT. WE JUMPED ONE
8 ISSUE AND I DIDN'T GIVE YOU AN OPPORTUNITY TO ARGUE ON THAT
9 ISSUE AND THAT IS THE QUESTION ABOUT THE ARMED ROBBERY HERE
10 IN COLUMBIA WHICH HE WAS FOUND NOT GUILTY OF.

11 MR. MORTON: YOUR HONOR, I DON'T MEAN TO BEAT A DEAD
12 HORSE. WE ARE NOT TRYING TO INTRODUCE EVIDENCE CLEAR AND
13 CONVINCING OR OTHERWISE THAT THIS DEFENDANT COMMITTED SOME
14 OTHER ACT. WE MERELY WANT TO SHOW THAT HE WAS CHARGED WITH
15 ANOTHER ACT. I UNDERSTAND MR. SWERLING'S OBJECTIONS THAT
16 THAT GOES TO HIS CHARACTER. OUR POSITION IS, OF COURSE, THAT
17 IT'S PROBATIVE VALUE IS SUCH AND MR. SWERLING CAN ARGUE, THE
18 COURT CAN INSTRUCT THE JURY THAT THEY ARE TO CONSIDER THE
19 CASE IN DILLON WERE NOL PROSSED, THAT THE ONE HERE HE WAS
20 ACQUITTED ON. WE SIMPLY WANT TO BE ABLE TO SHOW NOT THE FACT
21 THAT HE COMMITTED THAT ACT BY ANY CLEAR AND CONVINCING
22 EVIDENCE, BUT JUST THE FACT THAT THE COLUMBIA POLICE AND THE
23 DILLON COUNTY POLICE CHARGED HIM WITH A CRIME. AND
24 INSTRUCTION FROM THE COURT, ARGUMENT BY MR. SWERLING, CROSS
25 EXAMINATION BY MR. SWERLING THAT THEY ARE NOT TO CONSIDER

1 THAT IN ANY WAY AS ATTACKING HIS CHARACTER AND IN FACT HE WAS
2 FOUND--IT WAS DISMISSED AND WHATEVER--WE JUST SIMPLY WANT TO
3 SHOW--AND I DON'T KNOW--I THINK IT'S RELEVANT EVIDENCE TO
4 SHOW HIS MOTIVE.

5 MR. SWERLING: IT'S NOT A QUESTION OF RELEVANCY. THAT'S
6 EXACTLY WHAT THE LYLE COURT--THE POSITION THE STATE IS
7 ADVOCATING RIGHT NOW IS EXACTLY WHAT THE LYLE COURT CONDEMNED
8 WHEN THEY SAID THE INEVITABLE TENDENCY OF SUCH EVIDENCE IS
9 TO RAISE A LEGALLY SPURIOUS PRESUMPTION OF GUILT IN THE MINDS
10 OF THE JURORS. THAT'S EXACTLY WHAT'S BEEN CONDEMNED IN LYLE
11 AND THE STATE HAS JUST CONCEDED THAT'S WHAT THEY WANT TO USE
12 IT FOR.

13 MR. MORTON: I THINK I'VE CONCEDED JUST THE OPPOSITE.

14 THE COURT: NO, NO. YOU IN A VERY NICE WAY ARE TRYING
15 TO SAY THAT BUT I THINK YOU DO CONCEDE THAT, MR. MORTON,
16 BECAUSE WHAT OTHER REASON WOULD YOU HAVE. YOU SEE, YOU ARE
17 TRYING HIM FOR OTHER CRIMES BY JUST PUTTING IN EVIDENCE
18 ANYTHING THAT HE WAS CHARGED WITH AND YOU RAISE THE SPECTER
19 TO THE JURY THAT HE HAS A BAD CHARACTER, THAT HE'S COMMITTING
20 CRIMES OUT THERE, OKAY? AND THE LAW SAYS YOU CAN'T TRY HIM
21 LIKE THAT. YOU CAN'T DO THAT. THEY CREATED THE LYLE CASE--
22 -LYLE GAVE A WAY TO USE UNDER CERTAIN CIRCUMSTANCES THAT
23 EVIDENCE BUT IT SET A CRITERIA WHICH YOU MUST FOLLOW.
24 UNFORTUNATELY YOU CAN'T REACH THE BASIC CRITERIA BECAUSE THE
25 SOUTH CAROLINA SUPREME COURT IS DIFFERENT THAN THE UNITED

1 STATES SUPREME COURT OR THE FEDERAL COURTS. OUR COURT SAYS
2 THE EVIDENCE MUST BE CLEAR AND CONVINCING. YOU WANT TO PUT
3 IN THAT HE WAS JUST CHARGED AND LEAVE IT THERE. SEE, THE
4 FACT THAT SOMEBODY'S CHARGED WITH A CRIME AND NOTHING ELSE
5 IS JUST TREMENDOUSLY PREJUDICIAL AND YOU SHOULDN'T BE ALLOWED
6 TO PUT IT IN UNLESS YOU CAN PUT IT ALL IN AND SAY THAT IT IS
7 CLEAR AND CONVINCING EVIDENCE THAT HE COMMITTED THE CRIME AND
8 THE REASON IT COMES IN HERE IS THAT IT SHOWS HIS MOTIVE IN
9 THIS CASE, HIS INTENT OR A COMMON SCHEME AND PLAN AND DESIGN
10 FROM THAT CRIME WHICH SHOWS HE COMMITTED THIS CRIME BECAUSE
11 THAT'S WHAT YOU ARE DOING. OTHERWISE, YOU ARE PUTTING IT IN
12 TO ASSASSINATE HIS CHARACTER, THAT HE'S A BAD PERSON. NOW,
13 IF HE PUTS HIS CHARACTER IN ISSUE AT ANY POINT IN TIME YOU
14 MAY CHANGE THE RULE. AND AS I SAID BEFORE, YOU KNOW, IF YOU
15 HAD ANYBODY--OF COURSE, IF YOU HAD ANYBODY THEY WOULD HAVE
16 PROBABLY TRIED HIM FOR IT DOWN IN DILLON--THAT SAID THAT HE
17 COMMITTED THE CRIME THAT WAS EVIDENCE THAT WOULD SATISFY WHAT
18 IN THIS COURT'S VIEW WOULD BE CLEAR AND CONVINCING AND THEN
19 IF I DETERMINED THAT IT WAS, YOU KNOW, NOT SO REMOTE THEN IT
20 MIGHT BE ADMISSIBLE. BUT YOU ARE RIGHT. I'M NOT GOING TO
21 LET YOU PUT INTO THE RECORD THAT HE WAS CHARGED BECAUSE YOU
22 ARE JUST DEFEATING THE WHOLE PURPOSE--IN LYLE IF I DO THAT
23 IRREGARDLESS OF THE FACT THAT YOU WANT TO SAY, JUDGE, I'LL
24 EVEN STIPULATE THAT HE WAS FOUND NOT GUILTY OF THAT CRIME AND
25 THE OTHER ONE THE CASE WAS NOL PROSSED. GOODNESS GRACIOUS.

1 NOT A VERY BIG CONCESSION. JUST THINK ABOUT IT THIS WAY, MR.
2 MORTON. HE'S CHARGED WITH MURDER. JUST THINK ABOUT IT LIKE
3 ANY OTHER MURDER CASE THAT YOU'VE GOT AND TRY HIM FOR MURDER.
4 THE OTHER IS JUST SURPLUSAGE.

5 MR. MORTON: YOUR HONOR, I UNDERSTAND THAT MOTIVE IS NOT
6 AN ELEMENT TO A MURDER AND I UNDERSTAND WHAT THE ELEMENTS OF
7 MURDER ARE. ONE OF THE ELEMENTS OF MURDER, HOWEVER, I
8 BELIEVE IS INTENT. I'M TRYING TO OFFER THIS EVIDENCE TO SHOW
9 HIS INTENT.

10 THE COURT: WELL, YOU'VE BEEN ARGUING MOTIVE. YOU
11 HAVEN'T SAID INTENT YET. THIS IS THE FIRST TIME YOU'VE SAID
12 INTENT.

13 MR. SWERLING: THEY DON'T NEED IT FOR INTENT. IF
14 SOMEBODY PUTS A GUN TO SOMEBODY'S HEAD, THAT'S ALL THE INTENT
15 THEY NEED. THE COURT: HE'S ENTITLED THOUGH IN THE OFFER
16 OF EVIDENCE,

17 MR. SWERLING--YOU KNOW, INTENT IS IN THE PERSON'S MIND AND
18 THE ONLY THING YOU CAN DO IS LOOK TO THE EVIDENCE TO
19 DETERMINE WHAT IS IN A PERSON'S MIND. THAT'S WHAT A JURY
20 DOES EVERY TIME THEY DECIDE THE ISSUE OF INTENT IN A CRIME.
21 HE HASN'T ARGUED THAT BEFORE. HE'S NOW JUMPED SHIP AGAIN ON
22 ME. HE DIDN'T ARGUE INTENT BEFORE JUST THEN. IF YOU HAVE,
23 I DIDN'T HEAR YOU.

24 MR. MORTON: NO, SIR. WELL, I THINK I MAY HAVE
25 MENTIONED IT BUT I MAY VERY WELL NOT HAVE. I KNOW I DIDN'T

1 A LOT. I WAS TO--

2 MR. SWERLING: I SUBMIT THERE ARE LESS REASONS TO ALLOW
3 IT UNDER ANY EVIDENCE OF INTEND THAN THEY DID MOTIVE BECAUSE,
4 NUMBER ONE, THIS IS EITHER A CASE OF MURDER OR IT'S NOT
5 GUILTY. EITHER THEY ARE GOING TO BELIEVE HAYES MALLOY THAT
6 HE PUT A GUN TO THE FELLOW'S HEAD AND KILLED HIM WHICH IS AN
7 INTENTIONAL KILLING OBVIOUSLY. IF YOU PUT A GUN TO SOMEONE'S
8 RIGHT TEMPLE AND THEN SHOOT THEM IN THE EYES YOU CERTAINLY
9 AREN'T INTENDING TO INFLECT JUST BODILY HARM ON THEM, YOU ARE
10 TRYING TO KILL THEM.

11 THE COURT: WELL, LET ME HEAR HIM ON IT, MR. SWERLING.
12 GO AHEAD, MR. MORTON.

13 MR. MORTON: WHICH IS EXACTLY OUR PURPOSE, YOUR HONOR.
14 WE DON'T WANT TO BE PUT IN A SITUATION WHERE THEY BELIEVE
15 HAYES MALLOY OR THEY CUT THIS GUY LOOSE. WE WANT TO HAVE
16 OTHER EVIDENCE TO SHOW INTENT. OBVIOUSLY IF YOU PUT A GUN
17 TO SOMEBODY'S HEAD AND PULL THE TRIGGER YOU INTENDED TO DO
18 IT BUT WE NEED TO SHOW INTENT IN OTHER WAYS OTHER THAN FROM
19 THE TESTIMONY OF HAYES MALLOY. WE CAN SHOW THAT INTENT
20 THROUGH HIS MOTIVE IS WHAT I WAS TRYING TO SAY.

21 MR. SWERLING: INTENT GOES TO WHETHER OR NOT YOU INTEND
22 TO COMMIT THE ACT. IF HE KILLED HIM AND THEY CAN PROVE HE
23 KILLED HIM WITH A PISTOL, THAT ESTABLISHES INTENT. THE FACT
24 THAT HE MAY HAVE COMMITTED A ROBBERY THREE MONTHS BEFORE HAS
25 NOTHING TO DO WITH INTENT. THE ONLY ARGUABLE BASIS WOULD BE

1 MOTIVE. INTENT IS TALKING ABOUT THE STATE OF HIS MIND AT THE
2 TIME HE COMMITTED THE ACT. THEY'VE GOT EVIDENCE THAT THEY
3 PURPORT TO SHOW THE JURY THAT HE SHOT HIM IN FRONT OF HAYES
4 MALLOY WITH A .22 PISTOL. THAT'S THE INTENT. IT'S AN
5 INTENTIONAL KILLING. WE ARE NOT ARGUING SELF-DEFENSE, WE ARE
6 NOT ARGUING ACCIDENT, WE ARE NOT ARGUING VOLUNTARY
7 MANSLAUGHTER. IT'S EITHER MURDER OR IT'S NOT GUILTY. SO,
8 I SUBMIT THAT INTENT IS NOT GOING TO BE AN ISSUE IN THE CASE.
9 IT'S EITHER THE JURY FINDS THAT HE PULLED THE GUN, IF HE
10 PULLED THE TRIGGER ON THE GUN THEY'VE GOT THE INTENT. MR.
11 MORTON IS THINKING ABOUT INTENT IN THE PAST. THIS IS NOT
12 WHAT WE ARE TALKING ABOUT. LYLE TALKS ABOUT INTENT AT THE
13 TIME OF THE COMMISSION OF THE ACT.

14 MR. MORTON: YOUR HONOR, JUST BECAUSE WE HAVE HAYES
15 MALLOY DOWN THERE SAYING THAT THIS MAN INTENDED TO KILL HIM
16 WHEN HE PULLED THAT TRIGGER DOESN'T MEAN THAT WE SHOULD BE
17 PRECLUDED FROM OFFERING OTHER EVIDENCE THAT SHOWS HIS INTENT.

18 THE COURT: OH, NO. NOBODY SAYS THAT, MR. MORTON.

19 MR. MORTON: WELL, MR. SWERLING SAYS WE HAVE THAT AND
20 THAT'S ALL WE NEED AND THAT'S NOT THE CASE.

21 MR. SWERLING: WHAT OTHER EVIDENCE OF INTENT DO YOU NEED
22 OTHER THAN THE FACT THAT SOMEONE PUT A GUN TO SOMEONE'S HEAD
23 AND PULLED THE TRIGGER.

24 THE COURT: WELL, YOU ARE NOT ENTITLED TO TELL THE STATE
25 HOW MANY WITNESSES TO PUT UP ON THE ISSUE THOUGH, MR.

1 SWERLING.

2 MR. SWERLING: NO, SIR. I'M TALKING ABOUT AT THE TIME
3 OF THE COMMISSION OF THE OFFENSE. HE'S TRYING TO BOOTSTRAP
4 SOMETHING IN FROM SEPTEMBER TALKING ABOUT THE ISSUE OF INTENT
5 NOW. THE INTENT IS AT THE TIME OF THE COMMISSION OF THE ACT,
6 NOT WHAT HAPPENED THREE MONTHS BEFORE. SAME THING WITH
7 MANSLAUGHTER. WHEN YOU TALK ABOUT MANSLAUGHTER IT'S GOT TO
8 BE SUDDEN HEAT AND PASSION. IT CAN'T BE SOMETHING THAT'S
9 TWELVE HOURS BEFORE OR FIFTEEN HOURS BEFORE. WE ARE TALKING
10 ABOUT INTENT AT THE TIME OF THE COMMISSION OF THE ACT.

11 MR. MORTON: YOUR HONOR, FOR ALL I KNOW MR. SWERLING CAN
12 COME IN HERE AND SAY THAT HIS MAN INTENDED TO SCARE MR.--

13 MR. SWERLING: I'LL STIPULATE FOR THE RECORD, YOUR
14 HONOR, THAT IN NO WAY WILL I REFER TO MY CLIENT THAT THE GUN
15 WAS ACCIDENTALLY DISCHARGED OR THAT HE WAS ONLY TRYING TO PUT
16 A SCRAPE ON HIS HEAD OR ANYTHING OF THAT NATURE. IT WAS
17 EITHER A CASE OF EITHER HE WAS THERE OR HE WASN'T THERE,
18 EITHER HE DID IT OR HE DIDN'T.

19 MR. MORTON: WILL YOU STIPULATE THAT HE PUT THE GUN TO
20 HIS HEAD AND PULLED THE TRIGGER?

21 MR. SWERLING: IF YOU'LL STIPULATE THAT HAYES MALLOY IS
22 A LIAR AND HE PROBABLY DID THE KILLING HIMSELF.

23 THE COURT: COME ON, GENTLEMEN. LET'S GET TO THE ISSUES
24 WE ARE HERE FOR.

25 MR. MORTON: YOUR HONOR, I HAVE NOTHING FURTHER AS TO

1 THE ISSUES THAT WE HAVE ADDRESSED SO FAR.

2 THE COURT: ANY OTHER RESPONSE?

3 MR. SWERLING: NOT IF WE ARE TALKING ABOUT THE TWO ARMED
4 ROBBERIES AT THIS POINT.

5 MR. MORTON: YOUR HONOR, AS I UNDERSTAND IT, WE ARE
6 TALKING ABOUT THE ARMED ROBBERIES AS REGARDS TO THE POLICE
7 OFFICERS TESTIFYING ABOUT THE EVIDENCE. WE ARE NOT FINISHED,
8 I HOPE, TALKING ABOUT THE EVIDENCE FROM OUR LAY WITNESSES
9 THAT HE MADE STATEMENTS TO THEM AND SO FORTH.

10 THE COURT: WELL, YOU NEED TO GO AHEAD AND GET INTO
11 THAT. YOU WERE GOING TO OFFER THE TESTIMONY OF OTHER CRIMES,
12 ONE BEING ONE THAT WAS NOL PROSSED AND THE OTHER ONE BEING
13 THAT HE WAS FOUND NOT GUILTY. AND YOU'VE TOLD THE COURT THAT
14 YOU CANNOT PROVE BY CLEAR AND CONVINCING EVIDENCE IN ESSENCE
15 THAT HE COMMITTED THE CRIME IN DILLON. AND THE SECOND
16 PROBLEM IN SOUTH CAROLINA YOU'VE GOT THE EVIDENCE THAT HE WAS
17 FOUND NOT GUILTY OF THE SEPTEMBER 10TH ARMED ROBBERY RIGHT
18 HERE IN RICHLAND COUNTY, TRIED BY A JURY AND FOUND NOT
19 GUILTY.

20 MR. MORTON: AFTER THE DEATH OF DONALD SUTTON. AND,
21 YOUR HONOR, I UNDERSTAND IT'S A BALANCING SITUATION THAT YOU
22 HAVE TO GO TO AS TO THE PROBATIVE VALUE VERSUS THE
23 PREJUDICIAL EFFECT. I CERTAINLY UNDERSTAND THE PREJUDICIAL
24 EFFECT ON HIM TO HAVE WITNESSES COME IN HERE AND SAY THAT RON
25 TILLMAN SAID THAT HE WAS GOING TO KILL "DUCK" SUTTON BECAUSE

1 "DUCK" SUTTON MADE STATEMENTS AGAINST HIM IN THE ARMED
2 ROBBERIES THAT THEY HAD COMMITTED TOGETHER. I UNDERSTAND THE
3 PREJUDICIAL EFFECT IN THAT. BUT I ALSO FEEL LIKE THE
4 PROBATIVE VALUE OF THAT, THAT BEING HIS STATE OF MIND, HIS
5 INTENT, WHAT HE WAS DETERMINED, THE FACT THAT HE WAS OFFERING
6 PEOPLE MONEY TO HAVE THEM DO THIS AND WHY IS VERY, VERY
7 PROBATIVE ON THIS ISSUE AS TO WHETHER OR NOT HE IN FACT
8 KILLED DONALD SUTTON. YOU KNOW, I'M SIMPLY NOT TRYING--

9 THE COURT: MR. MORTON, PLEASE DON'T MISUNDERSTAND ME.
10 I UNDERSTAND YOU HAVE A DILEMMA AND YOU'VE JUST GOT TO COMPLY
11 WITH THE RULES. I THINK IF ALL THAT YOU SAY IS TRUE AND
12 CORRECT IT'S UNFORTUNATE BUT THE RULES DON'T ALLOW YOU TO DO
13 THAT. YOU ARE ENTITLED TO OFFER ANY THREATS THAT HE HAS MADE
14 AGAINST THE DEFENDANT, THE WITNESS THAT HE WAS GOING TO PAY
15 SOMEBODY TO HAVE HIM KILLED. I DON'T THINK THAT MR. SWERLING
16 WOULD CONTEND THAT THAT EVIDENCE IS NOT ADMISSIBLE, WOULD
17 YOU?

18 MR. SWERLING: WHICH PART?

19 THE COURT: A WITNESS IS GOING TO SAY FOR WHATEVER IT'S
20 WORTH, THE JURY'S GOT TO BELIEVE IT OR DISBELIEVE IT, THAT
21 THIS DEFENDANT OFFERED OTHER PEOPLE MONEY TO KILL THE
22 DECEASED VICTIM. MR. SWERLING: WELL, I MEAN I'D LIKE TO

23 OBJECT TO IT. I'M

24 NOT SO SURE. IT DEPENDS ON HOW IT'S PRESENTED. I WON'T
25 STIPULATE AT THIS TIME.

1 THE COURT: THAT BLAND STATEMENT THOUGH, HOW COULD IT
2 NOT BE ADMISSIBLE?

3 MR. SWERLING: IT PROBABLY IS IF THE PROPER FOUNDATION
4 IS LAID.

5 THE COURT: BUT THE SECOND PART IS MR. MORTON WOULD LIKE
6 TO ALSO FURTHER SAY THAT THE REASON HE OFFERED HIM MONEY WAS
7 BECAUSE HE WAS GOING TO TESTIFY AS TO THE ARMED ROBBERY.

8 MR. SWERLING: THAT'S WHAT I--I MEAN I THINK THAT'S
9 WHERE WE'RE AT NOW.

10 THE COURT: WHICH IS EVIDENCE OF ANOTHER CRIME.

11 MR. MORTON: YOUR HONOR, COULD WE POSSIBLY INSTRUCT OUR
12 WITNESSES THEN TO SAY SOMETHING SHORT OF OTHER CRIMES, THAT
13 HE HAD OFFERED MONEY OR THAT FOR SOME OTHER ACT--

14 THE COURT: NO, I THINK YOU ARE GOING TO HAVE TO STOP
15 BECAUSE YOU ARE DEALING WITH ANY OTHER ACT WOULD BE A PRIOR
16 BAD ACT WHICH IS, YOU KNOW, ANOTHER CRIME. NOW, MR. SWERLING
17 IS NOT FOOLISH ENOUGH TO KNOW THAT--AND HE MAY DO IT, HE
18 COULD DO IT FOR WHATEVER STRATEGICAL REASON--THAT IF HE PUTS
19 UP SOME EVIDENCE IN SOME FASHION MAY OPEN THE DOOR FOR YOU
20 TO BE ABLE TO DO THAT ON REPLY BUT FOR THE TIME BEING YOU ARE
21 GOING TO BE LIMITED WITH PROVING THAT HE DID OR DID NOT
22 COMMIT THIS CRIME OF MURDER FOR THE REASONS STATED.

23 MR. MORTON: YOUR HONOR, THERE WILL ALSO BE SOME
24 TESTIMONY IN THIS--IT MIGHT POSSIBLY BE DEPENDING ON YOUR
25 RULING IN THIS AND MR. SWERLING I THINK REITERATED BACK IN

1 CHAMBERS THAT HE WAS IN FACT GOING TO ASK A QUESTION ABOUT
2 SOME DOPE, SOME DRUG DEALINGS BETWEEN OUR WITNESS, HAYES
3 MALLOY, AND MR. RONALD TILLMAN.

4 MR. SWERLING: NO, I WAS TALKING ABOUT BETWEEN HAYES
5 MALLOY AND DONALD SUTTON. MY CONTENTION IS DONALD SUTTON AND
6 HAYES MALLOY WERE GETTING TOGETHER THAT NIGHT BASED UPON
7 HAYES MALLOY'S STATEMENT THAT HE WAS TRYING TO BUY DRUGS FROM
8 RONALD TILLMAN. I MEAN, I'M SORRY, DONALD SUTTON. HAYES
9 MALLOY EVEN ADMITTED HE WAS HIGH ON COKE THAT NIGHT. I MEAN
10 I'D LIKE TO GO INTO THAT WITH HIM. WHAT HAPPENED, JUDGE, IS
11 HE GAVE A STATEMENT ON THE 26TH WHICH WAS A LIE AND CAME BACK
12 ON THE 3RD OF JANUARY AND GAVE ANOTHER STATEMENT AND SAID THE
13 REASON HE LIED WAS BECAUSE HE WAS HIGH ON THE NIGHT THAT HE
14 MADE THE OTHER STATEMENT AND HE WANTED TO CHANGE IT. SO,
15 THAT'S WHAT I'M REFERRING TO. I INTEND TO--I WOULD REQUEST
16 THAT I BE ALLOWED TO PURSUE THAT. THERE IS NO CLEAR AND
17 CONVINCING PROOF THAT MR. TILLMAN HAD DEALT IN DRUGS, HE HAS
18 NEVER BEEN CHARGED WITH ANY DRUG OFFENSES EVER.

19 MR. MORTON: YOUR HONOR--

20 THE COURT: BE CAREFUL ABOUT THE TERMS YOU USE THOUGH.
21 I THINK THAT AN IMPERMISSIBLE COMMENT, LIED.

22 MR. SWERLING: NO, I'M TALKING ABOUT FOR THE PURPOSE
23 HERE. HE ADMITTED HE LIED. THE STATEMENT SAID HE LIED. I
24 LIED THE NIGHT I GAVE THE STATEMENT. THAT'S NOT MY
25 CHARACTERIZATION, THAT'S WHAT THE WITNESS HIMSELF SAID, I

1 LIED.

2 THE COURT: MY COMMENT IS THAT THE USE OF THAT TERM IN
3 MY VIEW IS A IMPERMISSIBLE COMMENT UPON A WITNESS'S TESTIMONY
4 WHICH THE JURY HAS TO DETERMINE. THEY HAVE TO DETERMINE WHO
5 IS TELLING THE TRUTH. AND FOR YOU TO ASK THE WITNESS YOU ARE
6 LYING, AREN'T YOU, IN MY VIEW IS AN IMPROPER QUESTION AND A
7 COMMENT UPON HIS--

8 MR. SWERLING: YOUR HONOR WOULDN'T PREVENT ME FROM
9 ASKING HIM IF HE TOLD IN THE STATEMENT HE LIED.

10 THE COURT: YOU CAN ASK HIM WHAT HE SAID, IF HE SAID IT.

11 MR. SWERLING: I UNDERSTAND WHAT YOU ARE SAYING I CAN'T
12 CHARACTERIZE--

13 THE COURT: IT'S JUST LIKE ARGUMENT TO THE JURY.

14 MR. MORTON: YOUR HONOR, MR. RONALD TILLMAN'S STATEMENT
15 THAT HE GAVE THE POLICE ON JANUARY 4TH WHEN HE WAS ARRESTED
16 FOR THE KILLING OF DONALD SUTTON IN WHICH HE STATES THAT
17 DONALD SUTTON CALLED ME AROUND 3:00 OR 4:00 P.M. HE WANTED
18 TO KNOW IF I HAD ANY PACKAGE, COCAINE AND MARIJUANA. I TOLD
19 HIM, NO--

20 THE COURT: MR. MORTON, WHY DON'T YOU HAND ME THAT AND
21 LET ME READ IT. WE'VE BEEN OUT HERE SINCE ABOUT 2:30. ARE
22 YA'LL ABOUT READY TO STEP IN THE RESTROOM FOR A MINUTE?

23 MR. MORTON: YES, SIR.

24 THE COURT: WE'LL TAKE ABOUT TEN OR FIFTEEN MINUTES.
25 ARE THERE ANY MORE STATEMENTS THAT YOU WANT ME TO LOOK AT?

1 MR. MORTON: NO, SIR, I DON'T KNOW OF ANYTHING FROM THE
2 STATE ON THIS ISSUE COMING UP RIGHT NOW.

3 THE COURT: I'LL READ THE STATEMENT. YA'LL TAKE A SHORT
4 RECESS ABOUT TEN MINUTES.

5 (RECESS)

6 (NOTE: THE COURT RECESSED TO CHAMBERS AND ADJOURNED FOR
7 THE EVENING).

8 (COURT RESUMES JANUARY 16, 1990)

9 THE COURT: LET THE RECORD SHOW COUNSEL FOR THE STATE
10 ARE PRESENT, COUNSEL FOR THE DEFENDANT AND THE DEFENDANT.
11 IS THE STATE READY TO PROCEED?

12 MR. COLEMAN: YES, YOUR HONOR.

13 THE COURT: IS THE DEFENSE READY TO PROCEED?

14 MR. SWERLING: YES, YOUR HONOR. IF YOUR HONOR WOULD
15 ALLOW A MOMENT TO SUMMARIZE AS TO WHAT I UNDERSTAND THE
16 RESOLUTIONS ARE OF THE EVIDENTIARY ISSUES FOR THE RECORD SO
17 THAT WE ALL HAVE A CLEAR UNDERSTANDING. WILL THAT BE ALL
18 RIGHT WITH THE COURT?

19 THE COURT: WELL, WE'LL DO THIS. COUNSEL FOR THE STATE
20 IN THE IN CAMERA HEARING WITHOUT OFFERING TESTIMONY
21 SUMMARIZED THE TESTIMONY THAT WOULD BE OFFERED. HE SEEKS TO
22 OFFER EVIDENCE OF PRIOR BAD ACTS, ONE BEING A ROBBERY CHARGE
23 WHICH HE WAS INDICTED FOR ON SEPTEMBER THE 10TH, 1988, OF THE
24 BURGER KING HERE IN COLUMBIA AND A ROBBERY OF THE BURGER KING
25 IN DILLON ON SEPTEMBER 23RD, 1988. THE SEPTEMBER 23RD, 1988,

1 ROBBERY IN DILLON WAS NOL PROSSED BY THE SOLICITOR DOWN
2 THERE; THE SEPTEMBER 10TH, 1988, ARMED ROBBERY HERE IN
3 COLUMBIA WAS TRIED AND THE DEFENDANT WAS FOUND NOT GUILTY.
4 THE STATE STATED TO THE COURT THAT THEY HAD NO OTHER
5 TESTIMONY AS TO THE COMMISSION OF THE CRIME OF THE ROBBERY
6 IN DILLON OTHER THAN THE ARRESTING OFFICER SAYING THAT THEY
7 WERE ARRESTED HIM AND WITNESSES WHO WOULD GIVE A DESCRIPTION
8 BUT COULD NOT IDENTIFY THIS DEFENDANT. WITH THAT EXPLANATION
9 THE COURT MADE A FINDING THAT THAT EVIDENCE DID NOT COMPLY
10 OR COMPORT WITH THE REQUIREMENTS OF STATE VS. LYLE AND,
11 THEREFORE, DENIED THE OFFER OF SUCH EVIDENCE DURING THE TRIAL
12 OF THE CASE. ON THE SEPTEMBER THE 10TH ROBBERY HERE IN
13 COLUMBIA THE DEFENDANT WAS TRIED AND FOUND NOT GUILTY. THE
14 STATE MADE AN EXCELLENT ARGUMENT UNDER THE FEDERAL RULES OF
15 EVIDENCE AS WELL AS FAIRLY GOOD ARGUMENT THAT THE EVIDENCE
16 OUGHT TO BE ADMISSIBLE EVEN THOUGH THERE HAD BEEN AN
17 ACQUITTAL; HOWEVER, THE LATEST CASE IN THE STATE OF SOUTH
18 CAROLINA, I BELIEVE WE SAID STATE VS. JOHNSON, I BELIEVE
19 STATE VS. SMITH IS THE CORRECT OPINION IN NOVEMBER OF 1988
20 BEING A MURDER CASE TRIED IN GREENVILLE IN FRONT OF JUDGE
21 TRAXLER. BASICALLY THE REASONING IS THAT THAT CASE ONCE
22 AGAIN REAFFIRMED THE REQUIREMENTS THAT THE OFFER OF SUCH
23 EVIDENCE MUST BE BY CLEAR AND CONVINCING EVIDENCE. THE
24 COURT'S VIEW IS THAT THAT EVIDENCE BECAUSE THE DEFENDANT WAS
25 ACQUITTED AND FOUND NOT GUILTY AT A FULL TRIAL THE DEFENDANT

1 IN ESSENCE IF WE ALLOWED IT AGAIN WOULD BE TRIED AGAIN. YOU
2 HAD A JURY WHICH REACHED A DETERMINATION THAT THE STATE
3 FAILED TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. THE
4 COURT FINDING THAT THE STATE COULD NOT OFFER SUCH EVIDENCE
5 IN SUCH A CLEAR AND CONVINCING AND SHOULD NOT BE ALLOWED TO
6 DO SO ONCE BEING TRIED AND FOUND NOT GUILTY. I, THEREFORE,
7 DISALLOWED THE OFFER OF SUCH EVIDENCE. THE ONLY OTHER THING
8 THAT WAS BROUGHT UP WAS THE STATEMENTS OF THE DEFENDANT
9 HIMSELF ALLEGING THAT HE COMMITTED THE BURGLARY AT THE BURGER
10 KING ON SEPTEMBER 10TH, 1988. AS FAR AS THE TRIAL OF THIS
11 CASE BECAUSE OF THE COURT'S RULING THAT'S NOT ADMISSIBLE
12 EITHER ON THIS CHARGE, A CHARGE OF MURDER. FINALLY, THE LAST
13 THING WAS THE STATEMENT OF THE DEFENDANT WHICH I WAS PROVIDED
14 A COPY OF WHICH I DO NOT HAVE NOW. YA'LL MUST HAVE PICKED
15 IT BACK UP. THE QUESTION WAS WHETHER OR NOT STATEMENTS MADE
16 BY THE DEFENDANT ON THE DATE OF THE ALLEGED CRIME THAT HE'S
17 BEING TRIED FOR TODAY OF A DRUG DEAL AND THE EVIDENCE ABOUT
18 SUCH DRUG TRANSACTION SHOULD BE ADMITTED INTO THE RECORD OF
19 THIS CASE. BASED ON WHAT THE COURT'S VIEW OF THE STATEMENT
20 IS--AND, OF COURSE, I MAY CHANGE MY OPINION BASED ON WHAT
21 OCCURS DURING THE TRIAL BUT AT THIS TIME IT APPEARS IT'S ALL
22 PART AND PARCEL AND CANNOT BE REDACTED SO AS TO FLOW
23 ACCURATELY AND CLEARLY FOR THEM. IT IS ANOTHER CRIME BUT IT
24 SHOWS THE MODUS OPERANDI OF THE SCHEME AS ALLEGED BY THE
25 STATE AT THIS TIME AND, IF BELIEVED, THE BASIS AND REASON FOR

1 THE KILLING OF THE VICTIM IN THIS CASE. FOR THOSE REASONS
2 I'M GOING TO ALLOW THAT EVIDENCE AND TESTIMONY BEING OFFERED
3 IF ASSUMING ONCE AGAIN THEY CAN COMPLY UNDER A JACKSON VS.
4 DENNO HEARING. NOW, THOSE WERE THE RULINGS AS I RECALL.

5 MR. SWERLING: YOUR HONOR, AS I UNDERSTOOD ALSO THE
6 COURT BASED UPON OUR CONVERSATIONS IN CHAMBERS WHEN WE DID
7 NOT COME BACK OUT AND PUT ON THE RECORD ABOUT THE BANK
8 ROBBERY THAT YOUR HONOR WAS NOT GOING TO ALLOW THE STATE TO
9 GO INTO THE BANK ROBBERY OF DECEMBER 12TH, 1988.

10 THE COURT: OH, YES. THAT WAS A BANK ROBBERY WHICH
11 INVOLVED NOT THE VICTIM IN THIS CASE AS I RECALL IT.
12 ALLEGEDLY THIS DEFENDANT AND ANOTHER PERSON. THE PURPOSE THE
13 STATE SEEKS TO OFFER IT IS THEY HAD EVIDENCE OR THEY HAD
14 INFORMATION THAT THE PURPOSE THAT THE DEFENDANT IN THIS CASE
15 WAS DOING IT IN ORDER TO OBTAIN MONEY IN ORDER TO PAY SOMEONE
16 TO COMMIT THE MURDER OF THE VICTIM IN THIS CASE.

17 MR. SWERLING: THAT'S EXCLUDED ALSO.

18 THE COURT: THAT'S EXCLUDED AS WELL. I DO NOT EXCLUDE
19 OFFERS OF PAYMENTS OF MONEY TO OTHER WITNESSES FOR THE
20 PURPOSE OF KILLING THE VICTIM IN THIS CASE. THAT WOULD
21 CLEARLY BE ADMISSIBLE IF THAT'S THE EVIDENCE.

22 MR. SWERLING: YES, SIR. AS I UNDERSTOOD IT THE OTHER
23 PART OF THAT RULING, YOUR HONOR, WAS THAT ALTHOUGH THEY COULD
24 REFER TO THE FACT THAT THEY HAD BEEN OFFERED MONEY TO KILL
25 THE DECEASED THEY COULD NOT OFFER EXPLANATIONS AS TO WHY THE

1 DEFENDANT WANTED THE DECEASED KILLED BECAUSE THAT WOULD BE
2 REFERRING BACK TO THE ROBBERIES. I THOUGHT WE HAD
3 ESTABLISHED THAT THEY COULD SAY THAT HE HAD OFFERED ME
4 \$5,000.00 TO KILL SOMEONE BUT NOT THAT HE HAD OFFERED ME
5 \$5,000.00 TO KILL SOMEONE BECAUSE HE HAD MADE A STATEMENT
6 AGAINST ME IN A BANK ROBBERY IN DILLON OR A ROBBERY OF A
7 BURGER KING.

8 THE COURT: WELL, I'M NOT SO SURE I WENT THAT FAR. MR.
9 MORTON, WHAT'S YOUR VIEW OF THAT?

10 MR. MORTON: YOUR HONOR, I'M NOT SURE THE COURT RULED
11 ON THAT OR NOT. OF COURSE, IT'S OUR OPINION THAT THAT IS A
12 STATEMENT AGAINST INTEREST.

13 THE COURT: WELL, MOST STATEMENTS ARE AGAINST THE
14 INTEREST. THE PROBLEM, MR. MORTON, IS WHETHER OR NOT THAT
15 TESTIMONY FOR THE PURPOSE HE'S SAYING THERE'S ANOTHER CRIME
16 OUT THERE. ONCE AGAIN, CAN YOU SEPARATE IT? IN OTHER WORDS,
17 YOU CAN'T ALLOW OFFERS OF OTHER CRIMES WHEN YOU ARE TRYING
18 HIM FOR A DIFFERENT CRIME BECAUSE OF THE PREJUDICIAL EFFECT.
19 ALL EVIDENCE SHOULD BE PREJUDICIAL. THE QUESTION IS WHETHER
20 OR NOT THAT EVIDENCE IS SO PREJUDICIAL THAT IT OUTWEIGHS THE
21 PROBATIVE VALUE OF OFFERING IT INTO THE RECORD. THAT'S THE
22 RULE. SO, THE QUESTION IS DOES IT.

23 MR. SWERLING: YOUR HONOR, I DON'T THINK I HAVE ANY
24 ARGUMENT AS TO WHETHER OR NOT--I HAVE NO LEGAL ARGUMENT
25 BASICALLY AS TO WHETHER OR NOT A WITNESS CAN GET ON THE STAND

1 AND SAY RONALD TILLMAN OFFERED ME MONEY TO DO SOMETHING, BUT
2 BY GOING TO THE SECOND QUESTION AS TO WHY, GETTING BACK INTO
3 THE LYLE SITUATION WHICH WE'VE ALREADY RESOLVED IT COULD NOT
4 COME IN. IT'S BASICALLY BOOTSTRAPPING AND IF THEY ARE
5 ALLOWED TO DO IT THAT WAY THEY ARE BASICALLY GETTING IT IN
6 ANYWAY. WE WOULD OBJECT TO THE WITNESSES GOING THAT FAR TO
7 SAY THE PURPOSE OR THE REASON WHY MR. TILLMAN WANTED MR.
8 SUTTON KILLED ACCORDING TO THE STATE'S THEORY OF THE CASE.

9 THE COURT: ARE YOU FINISHED?

10 MR. SWERLING: YES, SIR.

11 THE COURT: ALL RIGHT. NOW, MR. MORTON.

12 MR. MORTON: YOUR HONOR, WE ARE NOT TRYING TO BOOTSTRAP
13 ANYTHING. THIS IS A STATEMENT THAT THE DEFENDANT HIMSELF
14 SAID. HE SAID IT. HE MESSED UP. IT HAPPENS TO BE THAT IT'S
15 AGAINST HIS INTEREST. HE MADE IT TO CERTAIN WITNESSES AND
16 I UNDERSTAND WHAT THE BALANCING FACTOR IS BUT IT'S--

17 THE COURT: DON'T STOP AT THAT, MR. MORTON. LET ME
18 INTERRUPT YOU HERE. THAT'S NO DIFFERENT THAN A PERSON GIVING
19 A CONFESSION TO MULTIPLE CRIMES AND YOU ARE TRYING IT FOR ONE
20 CRIME AND THE COURTS HAVE GENERALLY SAID YOU CAN'T PUT IN ALL
21 THOSE OTHER CRIMES. OKAY?

22 MR. MORTON: YES, SIR.

23 THE COURT: SO, THAT'S THE BASIC RULE. NOW, THERE ARE
24 EXCEPTIONS TO IT BUT TAKE ME FROM THERE, OKAY? IS THE
25 PURPOSE OF SHOWING THAT IT WAS ANOTHER CRIME, HE'S SAYING

1 THEY OFFERED HIM MONEY SO HE COULD GET MONEY TO KILL THE
2 VICTIM IN THIS CASE BECAUSE HE WAS GOING TO TELL ON THE OTHER
3 ARMED ROBBERY, YOU KNOW, OTHER ROBBERY IN THE CASE, THAT
4 BEING THE ROBBERY OF THE BURGER KING. IS THAT PART
2 NECESSARY BEING THE QUESTION BECAUSE YOU ARE TELLING ABOUT
3 ANOTHER CRIME ALLEGED TO HAVE BEEN COMMITTED BY THE VICTIM
4 IN THIS CASE. AND IN FACT AS I RECALL THIS IS THE ONE THAT
5 IT WAS NOL PROSSED, THE DILLON ONE, WASN'T IT? IT WAS THE
6 DILLON ONE. WAS IT THE DILLON ONE OR THE COLUMBIA ONE?

7 MR. SWERLING: WELL, ARGUABLY HE'S TRYING TO TIE HIM
8 INTO BOTH. WHICH WOULD ALSO CAUSE THE JURY TO SPECULATE.
9 I MEAN I THINK IT'S A VERY SPECULATIVE KIND OF TESTIMONY.
10 I THINK AGAIN--

11 THE COURT: I'M NOT SO SURE IT'S NOT ADMISSIBLE. THE
12 PROBLEM WITH IT IS IT'S SO CLOSE THAT I DON'T KNOW IT'S WORTH
13 VENTURING A REVERSAL ON.

14 MR. MORTON: YOUR HONOR, WE DON'T HAVE ANY NEW ARGUMENT.
15 WE SUBMIT IT FOR THE PURPOSES OF INTENT.

16 THE COURT: I THINK IT SHOWS, YOU KNOW, THE REASONING
17 IN THE WHOLE SCHEME OF THINGS. YOU REALLY DON'T EVER HAVE
18 TO SHOW A REASON FOR MURDER, DO YOU? I MEAN YOU JUST HAVE
19 TO SHOW THAT HE DID IT WITH MALICE AFORETHOUGHT.

20 MR. MORTON: YES, SIR.

21 MR. SWERLING: WHICH EXISTS AT THE TIME OF THE
22 COMMISSION OF THE OFFENSE. BUT I THINK THIS WOULD PUT HIS

1 CHARACTER IN ISSUE IF HE WENT INTO--

2 THE COURT: WELL, YOU KNOW, YOU KEEP SAYING WHICH EXISTS
3 AT THE TIME, MR. SWERLING. YOU KNOW, MALICE CAN BE SHOWN BY
4 THE LAYING IN WAIT. YOU KNOW, IF A PERSON WERE PLANNING THE
5 COMMISSION OF THE CRIME.

6 MR. SWERLING: WELL, I THINK WHAT I'M TRYING TO SAY,
7 JUDGE, IS THE INTENT IS AT THE TIME OF THE COMMISSION OF THE
8 CRIME. WHAT THE INTENT WAS AT THAT TIME. IF YOUR INTENT WAS
9 TO COMMIT MURDER WITH MALICE AFORETHOUGHT THEN IT'S MURDER.
10 AND, YOU KNOW, CLEARLY THE EVIDENCE IN THIS CASE IS GOING TO
11 SHOW AND A WITNESS IS GOING TO TESTIFY THAT MR. TILLMAN PUT
12 A GUN TO THE INDIVIDUAL'S HEAD AND SHOT HIM. NOW, IF THE
13 JURY BELIEVES THAT THERE'S ONLY ONE CONCLUSION THEY CAN COME
14 TO. IT'S NOT A QUESTION OF WHETHER IT'S GOING TO BE
15 MANSLAUGHTER OR MURDER OR MURDER VERSUS INVOLUNTARY
16 MANSLAUGHTER OR SELF-DEFENSE. SO, INTENT IS REALLY NOT GOING
17 TO BE AN ISSUE IN THE CASE. CREDIBILITY OF THE WITNESSES IS
18 GOING TO BE AN ISSUE AS TO WHETHER OR NOT THE JURY BELIEVES
19 THE TESTIMONY OF THE STATE'S WITNESSES THAT MR. TILLMAN
20 PULLED THE TRIGGER. I THINK YOUR HONOR WILL SEE NOT ONLY NOW
21 BUT AT THE CONCLUSION OF THE CASE IT'S REALLY NO OTHER ISSUE
22 TO BE RESOLVED.

23 THE COURT: I'M NOT SURE I REALLY AGREE IN THE WHOLE
24 SCHEME OF THINGS, MR. SWERLING. THE PROBLEM I HAVE IS IT'S
25 SO CLOSE I JUST DON'T KNOW IF IT'S WORTH, YOU KNOW, GOING

1 THROUGH THE GYRATIONS OVER THAT POINT. THEY ARE EITHER GOING
2 TO BELIEVE THE WHOLE SCHEME OF THINGS--I'M NOT GOING TO ALLOW
3 IT, MR. MORTON. I DON'T THINK YOU NEED IT. IT'S NOT
4 NECESSARY TO PROVE THE CRIME. YOU ARE PROTECTED ON THE
5 RECORD.

6 MR. MORTON: YOUR HONOR, ALTERNATIVELY MAY WE BE ALLOWED
7 TO ASK OUR WITNESSES IF RONALD TILLMAN TOLD THEM WHY AND NOT
8 HAVE THEM ANSWER, YES, HE SAID SUCH AND SUCH. SAY DID RONALD
9 TILLMAN TELL YOU HE WAS GOING TO KILL--

10 THE COURT: I DON'T SEE ANYTHING WRONG WITH THAT. AS
11 LONG AS THEY DON'T SAY THE ULTIMATE REASON. THEY CAN SAY
12 YES. WHAT DO YOU SAY ABOUT THAT?

13 MR. SWERLING: WELL, YOUR HONOR, I THINK THAT IS
14 ALLOWING THE JURY TO SPECULATE.

15 THE COURT: IT IS. YOU ARE RIGHT WHEN YOU THINK ABOUT
16 IT IN THAT VAIN. YOU ARE ALLOWING THEM TO SPECULATE. HOW
17 DO YOU GET AROUND THAT? HOW DO YOU GET AROUND THE FACT THAT
18 YOU LEAVE THEM OUT THERE SPECULATING?

19 MR. MORTON: WELL, YOUR HONOR, I MEAN I THINK IT HURTS
20 OUR CASE WITHIN--MR. SWERLING IS RIGHT WHEN HE SAYS THAT WE
21 HAVE A WITNESS WHO IS DOWN THERE AND IS GOING TO SAY THAT HIS
22 MAN PULLED THE TRIGGER. THE WHOLE QUESTION OF INTENT, YOUR
23 HONOR, I THINK MUST BE PROVED BY OTHER WAYS. I DON'T THINK
24 WE SHOULD BE PRECLUDED FROM RELYING ON OUR ONE WITNESS TO
25 PROVE THAT HE INTENDED TO KILL HIM.

1 THE COURT: OH, NO, NOBODY'S DOING THAT. YOU CAN PROVE
2 LYING IN WAIT, SOME EXPRESSION--

3 MR. MORTON: THIS IS HOW WE ARE TRYING TO CORROBORATE
4 WHAT HE IS SAYING AND TRYING TO PROVE INTENT. I DON'T THINK
5 IT'S PREJUDICIAL TO MR. SWERLING'S CLIENT AT ALL.

6 THE COURT: WHEN IS THIS WITNESS COMING ON THE STAND?

7 MR. MORTON: ABOUT THIRD OR FOURTH.

8 THE COURT: I'M GOING TO THINK ABOUT IT FURTHER. BEFORE
9 YOU OFFER THAT TESTIMONY YOU APPRISE THE COURT AND I'LL
10 DECIDE AT THAT TIME, ALL RIGHT?

11 MR. MORTON: THANK YOU, YOUR HONOR.

12 THE COURT: ANYTHING ELSE?

13 MR. MORTON: YES, SIR, YOUR HONOR. IF I MIGHT BE
14 ALLOWED I'M GOING TO GIVE YOU A LITTLE BIT MORE CHRONOLOGY
15 CONCERNING SOME OF THESE THINGS. ON DECEMBER 12TH RONALD
16 TILLMAN WAS CHARGED, LATER CONVICTED, OF ROBBING A BANK ON
17 BLUFF ROAD, S.C.N., WHICH, OF COURSE, WE WILL NOT GO INTO.
18 WE HAVE INSTRUCTED OUR WITNESSES NOT TO MENTION ANYTHING
19 ABOUT THE BANK ROBBERY. ON DECEMBER THE 12TH--

20 THE COURT: HE WAS CONVICTED IN FEDERAL COURT FOR THAT
21 ONE?

22 MR. MORTON: YES, SIR. CONVICTED IN FEDERAL COURT. ON
23 THAT SAME DAY OUR WITNESS WOULD HAVE TESTIFIED--OF COURSE,
24 HE WILL NOT BE ABLE TO TESTIFY NOW--THAT HE OBSERVED MR.
25 TILLMAN AND MR. TOMMY LEE BYNUM, HIS COHORT IN THE BANK

1 ROBBERY, CUTTING THE MONEY, BURNING THE BANK BAG, THROWING
2 THE WEAPON BEHIND THE BUSHES AT A PARTY SHOP THAT THEY USED
3 TO ROB THAT BANK. ON THAT DAY, YOUR HONOR, MR. HAYES MALLOY
4 WHO IS OUR MAIN WITNESS IN THIS CASE WENT TO THE RICHLAND
5 COUNTY SHERIFF'S DEPARTMENT AND TOLD THEM THAT HE HAD SOME
6 INFORMATION AND TOLD THEM ABOUT THE BANK ROBBERY AND THAT
7 RONALD TILLMAN HAD DONE IT. TWO DAYS LATER HE GOES TO THE
8 F.B.I. AND ON THAT DAY HE WAS CLASSIFIED AS AN INFORMANT BY
9 THE F.B.I. BY A WOMAN BY THE NAME OF LISA MISICKA AT WHICH
10 TIME HE GAVE THE F.B.I. INFORMATION CONCERNING THAT BANK
11 ROBBERY AND RONALD TILLMAN. I'M TELLING YOU THIS, YOUR
12 HONOR, BECAUSE ON DECEMBER 21ST HE TALKED AGAIN TO THE F.B.I.
13 AND AT THAT TIME FOR THE FIRST TIME HE TOLD THE F.B.I. NOT
14 ONLY INFORMATION ABOUT THE BANK ROBBERY AGAIN, BUT THAT
15 RONALD TILLMAN HAD COME TO HIM AND OFFERED HIM MONEY TO KILL
16 DONALD SUTTON. OKAY. WE WANT TO BE ABLE TO SHOW THE COURT,
17 SHOW THE JURY THAT HAYES MALLOY WAS COOPERATING WITH RICHLAND
18 COUNTY SHERIFF'S DEPARTMENT AND WITH THE F.B.I. WITHOUT, OF
19 COURSE, MENTIONING THAT HE WAS TELLING THEM INFORMATION ABOUT
20 THE BANK ROBBERY. WE THINK IT'S VERY IMPORTANT THAT WE BE
21 ABLE TO SAY, HAYES, WHAT DID YOU DO ON DECEMBER 12TH AND HE
22 BE ABLE TO RESPOND THAT HE WENT TO THE RICHLAND COUNTY
23 SHERIFF'S DEPARTMENT WITH INFORMATION ABOUT RONALD TILLMAN
24 AND HE WENT TO THE F.B.I. ON THE 14TH AND THE 21ST WITH
25 INFORMATION ABOUT RONALD TILLMAN. I DON'T THINK THERE'S

1 GOING TO BE ANY ARGUMENT ABOUT THE FACT THAT HE CAN SAY THAT
2 ON THE 21ST HE WENT TO THE F.B.I. ABOUT RONALD TILLMAN MAKING
3 THE HIT. WE WANT TO EXPLAIN TO THE JURY THAT ON DECEMBER
4 12TH AND DECEMBER 14TH HE WAS CONCERNED ABOUT THE SITUATION
5 AND IT'S VERY IMPORTANT TO HIS CREDIBILITY THAT WE BE ABLE
6 TO SHOW NOT THAT HE TOLD THEM ABOUT THE BANK ROBBERY OR ANY
7 OTHER KIND OF ILLEGAL DEALING, BUT SIMPLY THAT HE WAS
8 COOPERATING WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT AND
9 GIVING THEM INFORMATION ABOUT RONALD TILLMAN.

10 MR. SWERLING: JUDGE, I'VE GOT SOME REAL PROBLEMS WITH
11 THAT. I DON'T THINK THAT'S THE LAW IN THIS STATE. FIRST OF
12 ALL, IT'S BOLSTERING A WITNESS'S TESTIMONY. NUMBER TWO, IT'S
13 OFFERING PRIOR CONSISTENT STATEMENTS. NUMBER THREE, IT'S IN
14 VIOLATION OF THE RULES SET OUT IN STATE VS. COOPER AND D.S.S
15 VS. SHILLINGS AND STATE VS. DOE AND THAT LINE OF CASES WHERE
16 THE COURT HAS REPEATEDLY SAID WE ARE NOT GOING TO ALLOW IN
17 TESTIMONY OF CORROBORATION. FOR EXAMPLE, IN A RAPE VICTIM
18 OF WHAT SHE TOLD A D.S.S. WORKER OR WHAT SHE TOLD A DOCTOR
19 OR WHAT SHE TOLD THE DETECTIVE. WE ARE ONLY GOING TO ALLOW
20 IN EVIDENCE AS TO TIME AND DATE. AND CLEARLY WHAT THE STATE
21 IS TRYING TO DO IS TRYING TO ESTABLISH MR. MALLOY'S
22 CREDIBILITY BY OFFERING TESTIMONY OF THIRD PARTY WITNESSES
23 AS TO WHAT MR. MALLOY TOLD THEM. I THINK THE AREA IS THAT
24 LINE OF CASES THAT SAYS YOU CAN'T DO THAT AND IN ADDITION TO
25 THE FACT IT BOLSTERS THE WITNESS'S TESTIMONY AND IT'S

1 OFFERING EVIDENCE OF PRIOR CONSISTENT STATEMENTS. SO, I
2 WOULD STRENUOUSLY OBJECT TO ANY TESTIMONY COMING IN THAT MR.
3 MALLOY WAS A COOPERATING INDIVIDUAL AND WAS GIVING THEM
4 INFORMATION ABOUT A MURDER. I MEAN I THINK THAT'S THE ONLY
5 ARGUMENT I CAN MAKE. I THINK THAT IS THE ARGUMENT. I THINK
6 IT'S PRETTY CLEAR. THE STATE IS TRYING TO GET AROUND WHAT
7 OUR COURT HAS SAID CANNOT BE DONE.

8 MR. MORTON: YOUR HONOR, WE ARE NOT TRYING TO OFFER THE
9 RICHLAND COUNTY SHERIFF'S DEPARTMENT OR THE F.B.I. TO SAY
10 WHAT HAYES MALLOY TOLD THEM. I'M GOING TO ASK HAYES MALLOY
11 WHAT HE TOLD THEM ON DECEMBER THE 12TH. WHAT DID YOU DO ON
12 DECEMBER THE 12TH? I WENT TO THE SHERIFF'S DEPARTMENT AND
13 I TOLD THEM SUCH AND SUCH.

14 MR. SWERLING: NO, HE CAN'T DO THAT. YOU'VE ALREADY
15 RULED HE CAN'T GO INTO THE BANK ROBBERY.

16 THE COURT: NO, NO. HE'S SAYING--HE'S NOT SAYING, MR.
17 SWERLING, THAT HE'S GOING TO OFFER THE FEDERAL GOVERNMENT
18 WITNESS--WAS IT A UNITED STATES ATTORNEY? LISA? WAS IT AN
19 F.B.I. AGENT?

20 MR. MORTON: SHE WAS AN F.B.I. AGENT, YOUR HONOR. IS
21 AN F.B.I. AGENT.

22 THE COURT: AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
23 SAYING THAT HE CAME AND MADE REPORTS. HE'S OFFERING THE
24 WITNESS, HAYES MALLOY, TO SAY THAT HE MADE A REPORT.

25 MR. SWERLING: MADE A REPORT ABOUT WHAT?

1 THE COURT: CONCERNING RONALD TILLMAN.

2 MR. SWERLING: ABOUT WHAT AGAIN? TO ALLOW A WITNESS TO
3 GET UP ON THE STAND AND SAY I MADE A REPORT TO THE SHERIFF'S
4 DEPARTMENT WITHOUT TELLING THE JURY WHAT ALLOWS THE JURY TO
5 SPECULATE AND IT'S JUST CONJECTURE.

6 THE COURT: WELL, IT DOESN'T AS TO THE DECEMBER 21ST.
7 THE QUESTION IS WHETHER THE ONES PRIOR TO THE DECEMBER 21ST.
8 THE ONE ON DECEMBER 21ST CLEARLY IS PROBATIVE ON THE ISSUE.

9
10 MR. SWERLING: MR. MALLOY CAN TESTIFY I SUPPOSE AS TO
11 WHAT HE TOLD THE F.B.I. ON THE 21ST.

12 THE COURT: OH, YES.

13 MR. SWERLING: BUT--WELL, THEY ARE SAYING THEY WANT TO
14 OFFER TESTIMONY ON THE 21ST HE TOLD THEM ABOUT WHAT?

15 THE COURT: HE WANTS TO OFFER TWO OR THREE DIFFERENT
16 THINGS, ONE BEING ON DECEMBER THE 12TH ROBBERY. IT IS
17 SHORTLY AFTER THAT HE SAW ALLEGEDLY THE DEFENDANT IN THIS
18 CASE AND THE OTHER DEFENDANT SPLITTING UP THE MONEY AND HE
19 MADE THAT REPORT TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
20 WHO THEN TURNED HIM OVER TO THE F.B.I. APPARENTLY BECAUSE OF
21 BEING IN A BANK. AND HE BECAME AN UNDERCOVER OR CONFIDENTIAL
22 INFORMER OR INFORMANT OF SOME SORT. AND THERE MAY HAVE BEEN
23 ANOTHER TIME IN BETWEEN. THEN, OF COURSE, THE 21ST OCCASION.
24 THE QUESTION IT DOESN'T SEEM TO ME THAT THE 21ST OCCASION
25 IS ANY QUESTION ABOUT IT. HIS TESTIMONY IS THAT THIS MAN ON

1 THE 21ST OFFERED HIM MONEY TO KILL THE DECEASED IN THIS CASE
2 AND HE MAKES A REPORT TO LAW ENFORCEMENT OF THAT CRIME. HE'S
3 REPORTED A CRIME. NOT THE TRUTH OF IT BUT THE FACT HE'S
4 REPORTED A CRIME. OTHERWISE, HE COULD BECOME INVOLVED. HE
5 REPORTS AN OFFER TO KILL SOMEBODY. HE'S REQUIRED TO REPORT
6 IT, ISN'T HE? NO PROBLEM WITH THAT. THAT'S NOT BOLSTERING.
7 HE'S SIMPLY REPORTING HE COMMITTED A CRIME. SAY MY HOUSE WAS
8 BROKEN INTO AND I CALLED LAW ENFORCEMENT THAT THIS MAN
9 OFFERED ME MONEY TO KILL SOMEBODY. THE QUESTION IS WHETHER
10 OR NOT THE--MR. MORTON, I UNDERSTAND WHAT YOUR NEED IS BUT
11 YOU MAY BE ABLE TO USE IT FOR SOME OTHER PURPOSE BUT I'M NOT
12 GOING TO LET YOU GO INTO IT ON DIRECT. IT MAY BE ADMISSIBLE
13 FOR SOME OTHER REASON BUT, YOU KNOW, YOU ARE JUST RED
14 FLAGGING TOO MANY THINGS. THIS THING HAS GOT ENOUGH HERRINGS
15 IN IT ANYWAY. YOU DON'T NEED TO PUT A WHOLE ROOM FULL OF
16 FISH OUT HERE. IT REALLY IS. YOU'VE GOT MORE LITTLE GADGETS
17 GOING ON IN THIS CASE THAN MOST CASES HAVE IN A LIFETIME.
18 YOU ARE JUST COMPLICATING THE PROBLEMS WITH THOSE KIND OF
19 THINGS.

20 MR. MORTON: ALL RIGHT, SIR.

21 THE COURT: I'M GOING TO ALLOW THE DECEMBER 21ST REPORT.
22 I'M GOING TO ALLOW IT IF THE TESTIMONY WAS THAT THE DEFENDANT
23 IN THIS CASE OFFERED THIS WITNESS MONEY TO KILL THE DECEASED
24 IN THIS CASE, AND HE MADE A REPORT, REPORTED IT PROMPTLY TO
25 LAW ENFORCEMENT.

1 MR. MORTON: YOUR HONOR, I'M NOT TRYING TO PICK AT
2 STRAWS BUT I HOPE THAT I WOULD BE ABLE TO ASK HAYES MALLOY
3 WHAT, IF ANYTHING, HE DID ON DECEMBER THE 12TH. COULD HE SAY
4 I WENT TO THE SHERIFF'S DEPARTMENT AND GAVE THEM SOME
5 INFORMATION?

6 THE COURT: WELL, YOU SEE THAT'S ABOUT ANOTHER CRIME.
7 WE ARE GOING ALONG AND PROVING ANOTHER CRIME. IS THE
8 QUESTION SHOWING THE IDENTITY OF THE DEFENDANT, YOU KNOW, A
9 QUESTION OF WHETHER OR NOT HE WAS THE PERSON THAT HAYES
10 MALLOY WAS TALKING ABOUT?

11 MR. MORTON: YOUR HONOR, I'M NOT TRYING TO PROVE ANY
12 OTHER CRIME. I AM NOT TRYING TO DEFAME MR. TILLMAN'S
13 CHARACTER BY THAT. I WILL NOT MENTION MR. TILLMAN'S NAME.
14 I WILL INSTRUCT MY WITNESS NOT TO MENTION RONALD TILLMAN'S
15 NAME. I SIMPLY THINK I SHOULD BE ABLE TO SHOW WHAT KIND OF
16 PERSON MY WITNESS IS, THAT HE WENT TO THE RICHLAND COUNTY
17 SHERIFF'S DEPARTMENT ON DECEMBER 12TH ABOUT CERTAIN
18 INFORMATION.

19 MR. SWERLING: WELL, THAT'S EXACTLY THE REASON YOU ARE
20 NOT ALLOWED TO DO IT. THAT'S BOLSTERING. THAT'S WHAT THEY
21 CALL BOLSTERING. HE'S TRYING TO SHOW WHAT KIND OF PERSON HIS
22 WITNESS IS. THAT'S BOLSTERING.

23 THE COURT: HE'S JUST TELLING WHAT HE DID. IT'S NOT
24 BOLSTERING IN THE SENSE OF SOMEONE ELSE GETTING UP AND
25 SAYING, OH, YES, HE CAME AND MADE THE REPORT AND HE DID THIS.

1 YOU KNOW, FOR THE PURPOSE OF ISSUING A SEARCH WARRANT THE
2 OFFICER WHO DID IT WOULD BE AUTHORIZED TO GET ON THE STAND
3 AND SAY THAT HE HAD AN INFORMANT AND HE CAN IDENTIFY HIM THIS
4 TIME SINCE YOU KNOW WHO HE IS AND SAY HE PROVIDED THE
5 INFORMATION. THE INFORMATION ISN'T OFFERED FOR THE TRUTH OF
6 THE MATTER. IT'S SIMPLY THE BASIS ON WHICH THE OFFICER ACTED
7 UPON.

8 MR. SWERLING: YOUR HONOR, I THINK AGAIN THE JURY IS
9 GOING TO SIT THERE AND WONDER WHAT DID HE REPORT.

10 MR. MORTON: YOUR HONOR, THE JURY IS GOING TO BE SITTING
11 THERE WONDERING A LOT ABOUT MOTIVE AND EVERYTHING ELSE.

12 MR. SWERLING: IT'S NOT PROBATIVE. YOUR HONOR, IT'S NOT
13 A PROBATIVE ISSUE ABOUT THE FACT THAT HE WENT TO THE RICHLAND
14 COUNTY SHERIFF'S DEPARTMENT ON THE 12TH. NOW, ON THE 21ST
15 I'VE GOT SOME PROBLEMS WITH THAT BUT ON THE 12TH THERE'S NO
16 PROBATIVE EVIDENCE THERE. IT'S NOT RELEVANT TO ANYTHING
17 WHETHER OR NOT HE WENT TO THE RICHLAND--HE DID NOT--EXCUSE
18 ME, YOUR HONOR, I'D LIKE TO SAY THIS. I THINK HE NEVER SAID
19 ON THE 12TH OR UP UNTIL THE 21ST THAT RONALD TILLMAN WAS
20 TRYING TO KILL DONALD SUTTON. THAT'S WHAT IS IN ISSUE IN
21 THIS CASE.

22 THE COURT: OH, I KNOW THAT. THEY ARE NOT OFFERING IT
23 TO SHOW THE COMMISSION OF THE CRIME. THEY ARE OFFERING IT
24 TO SHOW THAT THIS WITNESS WAS AN INFORMANT. WHAT OTHER
25 REASON WOULD IT BE OTHER THAN, YOU KNOW, LIKE PUTTING THE

1 CHARACTER OF THE WITNESS ON THE STAND IN ISSUE, YOU KNOW,
2 SAYING HE'S A GOOD PERSON OR, YOU KNOW.

3 MR. SWERLING: WELL, THAT'S WHAT I MEANT BY BOLSTERING,
4 JUDGE. BOLSTERING HIS CHARACTER.

5 MR. MORTON: WELL, A CENTRAL ISSUE IN THIS CASE, YOUR
6 HONOR, IS THE FACT--

7 THE COURT: WELL, IF HE ATTACKS HIM IN SOME FASHION ON
8 HIS CROSS I MAY ALLOW IT BUT AT THIS TIME I'M NOT GOING TO
9 ALLOW IT ON THE 12TH. ALL RIGHT.

10 MR. MORTON: YOUR HONOR, ON ANOTHER POINT ON THE 14TH
11 HE WAS CLASSIFIED AS AN INFORMANT BY THE F.B.I.

12 THE COURT: SO WHAT? YOU THINK YOU'RE SUPPOSED TO BE
13 ABLE TO COME IN AND TELL THEM BECAUSE HE'S CLASSIFIED AS AN
14 INFORMANT FOR THE F.B.I. THAT MAKES HIM, YOU KNOW, SOME KIND
15 OF UNBELIEVABLE WITNESS? OR BELIEVABLE WITNESS? YOU KNOW,
16 THAT CHARACTERIZATION HAS NOTHING TO DO WITH WHETHER OR NOT
17 HE COMMITTED THE CRIME OF MURDER. IT REALLY DOESN'T. AND
18 IN FACT IT GOES TO THE QUESTION OF HIS CREDIBILITY BECAUSE
19 ONCE THEY CLASSIFY THEM THEY START PAYING THEM MONEY TO GIVE
20 THEM INFORMATION. WHEN WE START GETTING PAID TO GIVE
21 INFORMATION, YOU KNOW, YOUR CREDIBILITY IS SOMEWHAT
22 QUESTIONABLE AT TIMES. MR. MORTON: YOUR HONOR, IT'S EITHER
23 HAYES MALLOY OR IT'S RONALD TILLMAN. MR. SWERLING IS GOING
24 TO GET UP HERE AND SAY THAT HAYES MALLOY WAS THE ONE THAT
25 KILLED DONALD SUTTON DOWN THERE THAT NIGHT. I THINK WE

1 SHOULD BE ABLE TO SHOW THAT HAYES MALLOY TOLD THE F.B.I.
2 BEFORE IT HAPPENED THAT IT WAS GOING TO HAPPEN. OBVIOUSLY
3 ON THE 21ST HE CAN SAY THAT HE TOLD THE F.B.I. ON THE 21ST
4 THAT RONALD TILLMAN HAD OFFERED HIM MONEY TO KILL DONALD
5 SUTTON. THERE'S NOT A DISPUTE ABOUT THAT I DON'T THINK.

6 THE COURT: ON THE 21ST, NO. YOU WANT TO BE ABLE TO
7 HAVE THE MAN TESTIFY THAT HE WAS CLASSIFIED AS AN INFORMANT
8 AND A PAID INFORMANT I ASSUME FOR THE F.B.I.

9 MR. MORTON: IF I CAN EXPLAIN WHY, YOUR HONOR. ON THE
10 24TH HE WENT TO TALK TO A GIRL NAMED LISA MISICKA. I'M
11 SORRY, ON THE 14TH. ON THE 14TH HAYES MALLOY WENT TO TALK
12 WITH A GIRL NAMED LISA MISICKA WHO AT THAT TIME GAVE HIM A
13 CARD, GAVE HIM HER BEEPER NUMBER, TOLD HIM THAT IF ANYTHING
14 ELSE EVER DEVELOPED PLEASE CALL HER. LISA MISICKA BEING
15 CHRISTMAS THEN WENT ON VACATION OUT OF STATE. TWO OTHER
16 AGENTS PICKED UP THE CASE AND CONTACTED HAYES MALLOY. ALL
17 I WANT TO BE ABLE TO SHOW IS THAT ON THE 21ST WHEN AGENT
18 RANDY MONDOR TALKED TO HAYES MALLOY THAT HE KNEW HE WAS
19 ALREADY AN INFORMANT.

20 THE COURT: WHAT'S THE RELEVANCE OF THAT? WHAT DOES IT
21 GO TO SHOW OR PROVE ON THE ISSUES AND THE CRIME CHARGED?
22 THAT'S THE CRITICAL PROBLEM. I UNDERSTAND FROM YOUR
23 PROSPECTIVE THAT THAT'S REAL IMPORTANT BUT, YOU KNOW, IN THE
24 WHOLE SCHEME OF THINGS THE LAW REQUIRES THAT EVIDENCE BE
25 RELEVANT ON THE ISSUES THAT YOU ARE TRYING. YOU SEE, THAT'S

1 THE PROBLEM. HOW IS IT RELEVANT ON THE ISSUE WE ARE TRYING?

2 MR. MORTON: YOUR HONOR, IT'S RELEVANT BECAUSE ON
3 DECEMBER 26TH, THE DAY OF THE MURDER, WHEN HAYES MALLOY FELT
4 LIKE THE MURDER WAS GOING TO COME DOWN HE TRIED TO CONTACT
5 LISA MISICKA BY THE FACT THAT SHE HAD GIVEN HIM HER BEEPER
6 NUMBER AND HER TELEPHONE NUMBER. THAT AFTERNOON, THE DAY OF
7 THE MURDER, HE SAID, MY GOD, SOMETHING'S GOING DOWN, I'VE GOT
8 TO GET IN TOUCH WITH LISA MISICKA WHO HAD INTERVIEWED HIM AND
9 HAD CLASSIFIED HIM AS AN INFORMANT ON THE 14TH. IT'S REAL
10 IMPORTANT THAT HE BE ABLE TO TELL THE JURY AND SHE BE ABLE
11 TO CORROBORATE WHAT HE TRIED TO DO WITH HER AND THE FACT THAT
12 SHE HAD CLASSIFIED HIM AS AN INFORMANT.

13 MR. SWERLING: WELL, IF THEY ARE GOING TO--

14 THE COURT: WAIT A MINUTE.

15 MR. SWERLING: I'M SORRY, YOUR HONOR.

16 THE COURT: HOW CAN SHE CORROBORATE WHAT WAS IN HIS MIND
17 IF HE DIDN'T MAKE THE CALL?

18 MR. MORTON: SHE CAN'T CORROBORATE IT BUT SHE CAN SAY
19 THAT HE WAS CLASSIFIED AS AN INFORMANT WHEN SHE TESTIFIES AND
20 ON WHAT DATE. SHE WAS OUT OF TOWN. HE COULDN'T FIND HER ON
21 THAT DAY.

22 MR. MORTON: I UNDERSTAND. ALL OF THAT IS GOOD
23 INFORMATION, YOU KNOW, BUT WHAT DOES IT GO TO SHOW TO PROVE
24 THE CRIME CHARGED? NOW, IF YOU WERE LOOKING TO GET A SEARCH
25 WARRANT AND ESTABLISH PROBABLE CAUSE FOR THE PURPOSE OF

1 ISSUING A SEARCH WARRANT, YOU MAY HAVE SOME LEGITIMATE
2 ARGUMENTS, MR. MORTON. BUT HOW DOES IT GO TO PROVE THAT THIS
3 PERSON DID OR DID NOT COMMIT THE CRIME OF MURDER? SIMPLY
4 BECAUSE THE WITNESS YOU OFFER SAYS I THINK IT'S GOING DOWN
5 TODAY SO I NEED TO CALL THIS F.B.I. AGENT WHO HAS MADE ME A
6 CONFIDENTIAL INFORMANT BUT HE DOESN'T GET HER. BUT HE WANTS
7 TO SAY THAT HE TRIED TO CALL HER AND THEN YOU WANT HER TO
8 COME IN AND SAY, OH, YES, YOU KNOW, HE WAS A CONFIDENTIAL
9 INFORMANT. THAT'S WHAT YOU ARE SAYING. YOU KNOW, FROM YOUR
10 PROSPECTIVE I CAN UNDERSTAND HOW THAT SEEMS EXTREMELY
11 IMPORTANT TO THE GOVERNMENT AND THE STATE ON THE ISSUE BUT
12 IT'S NOT RELEVANT ON THE ISSUE OF WHETHER OR NOT HE COMMITTED
13 THE CRIME OF MURDER. ON THE DIRECT ISSUE. YOU ARE TRYING
14 COLLATERAL ISSUES IS WHAT YOU ARE DOING. YOU ARE TRYING
15 COLLATERAL ISSUES BECAUSE YOU FEEL LIKE YOU'VE GOT A WEAKNESS
16 WITH YOUR WITNESS, AND I CAN'T HELP THAT AND YOU CAN'T
17 EITHER. IT'S UNFORTUNATE BUT IT DOESN'T CHANGE THE
18 GUIDELINES AND THE RULES OF WHETHER OR NOT IT'S ADMISSIBLE,
19 MR. MORTON.

20 MR. MORTON: MAY MY WITNESS SAY THAT HE WENT TO THE
21 F.B.I. ON THE 14TH?

22 THE COURT: ONCE AGAIN, WHAT IS THE RELEVANCE OF THAT
23 AS TO WHETHER OR NOT THIS PERSON COMMITTED THE CRIME OF
24 MURDER BECAUSE THE REASON YOU TOLD ME A WHILE AGO HE WENT ON
25 THE 14TH WAS BECAUSE HE HAD SEEN THEM DIVIDING UP MONEY FROM

1 A BANK ROBBERY FOR WHICH HE WAS THEREAFTER TRIED AND
2 CONVICTED. HOW IS IT RELEVANT ON THE ISSUE HERE? I MEAN
3 IT'S RELEVANT IN THE WHOLE SCHEME OF KNOWING WHAT THE
4 CRIMINAL ACTIVITY OF THE DEFENDANT MAY HAVE BEEN BUT THE
5 QUESTION--YOU KNOW, ALL YOU ARE DOING IS ASKING FOR--YOU
6 KNOW, IF YOU ARE GOING TO SPEND THE TIME, A WEEK, TO TRY THIS
7 MAN AND IF YOU GET A CONVICTION ON IT YA'LL WANT IT TO
8 STICK.

9 MR. MORTON: YES, SIR, I UNDERSTAND. THANK YOU, YOUR
10 HONOR.

11 THE COURT: ANYTHING ELSE?

12 MR. SWERLING: I JUST WANTED TO ADVISE THE COURT THAT
13 WE HAVE GONE AHEAD AND TAKEN YOUR ORDER AND IT'S BEING SERVED
14 ON ALL THE INSTITUTIONS AS OF RIGHT NOW.

15 THE COURT: THIS IS IN REGARD--I'VE FORGOTTEN THE
16 WITNESS'S NAME.

17 MR. SWERLING: KENNETH GARDNER.

18 THE COURT: KENNETH GARDNER. THE COURT HAS ORDERED THAT
19 THEY PROVIDE HIM WITH COPIES OF ANY OF HIS MENTAL HEALTH
20 TREATMENT. WHEN THAT COMES BACK I WANT TO MAKE SURE THE
21 STATE GETS A COPY OF IT AND, MR. COLEMAN, YOU ARE SUPPOSED
22 TO EXAMINE IT AS WELL FOR ANY OTHER INFORMATION YOU MAY HAVE
23 IN YOUR FILE THAT MAY BE EXCULPATORY TO THIS DEFENDANT OR
24 AFFECT THE CREDIBILITY OF ANY WITNESS THAT MAY TESTIFY IN THE
25 CASE, SPECIFICALLY THIS WITNESS.

1 MR. SWERLING: YOUR HONOR, AS OF THIS TIME, WE HAVE NOT
2 RECEIVED ANYTHING FROM THEIR FILE.

3 THE COURT: I KNOW THAT. I KNOW THAT. I HAVEN'T
4 ORDERED THEM TO BECAUSE THEY AT THIS POINT DON'T HAVE AN
5 OBLIGATION TO PROVIDE IT TO YOU. KENNETH GARDNER, IF HE IS
6 A WITNESS, THEY WOULD ONLY BE UNDER THE RULES REQUIRED TO
7 PROVIDE YOU WITH A COPY OF ANY STATEMENT HE MADE OR ANY
8 EXCULPATORY INFORMATION OR ANY PROMISES MADE TO THE WITNESS.
9 THE GOVERNMENT AT THIS TIME, THAT BEING MR. COLEMAN,
10 REPRESENTS THERE ARE NONE SUCH PROMISES MADE TO THE WITNESS
11 THAT HAVE NOT BEEN DIVULGED AND THAT ANY STATEMENT THAT HE
12 HAS GIVEN WRITTEN THEY WILL PROVIDE YOU WITH A COPY WHEN THE
13 WITNESS TESTIFIES WHICH IS REQUIRED UNDER THE RULE.

14 MR. SWERLING: BUT, YOUR HONOR, WE ARE ASKING THAT THAT
15 BE PROVIDED BEFOREHAND BECAUSE UNDER THE RULE IT'S IN YOUR
16 DISCRETION THAT IF IT WOULD DELAY THE TRIAL OF THE CASE OR
17 FOR GOOD CAUSE THE COURT CAN ORDER THAT THE STUFF BE TURNED
18 OVER TO US BEFOREHAND.

19 THE COURT: IS THERE ANY SUCH STATEMENT FROM KENNETH
20 GARDNER WRITTEN?

21 MR. COLEMAN: THEY'VE GOT IT.

22 THE COURT: THEY'VE GOT IT.

23 MR. SWERLING: YOUR HONOR, WITH RESPECT TO WHAT THEY
24 HAVE IN THEIR FILE CONCERNING MR. GARDNER'S MEDICAL
25 CONDITION, HIS MENTAL HEALTH, WE HAVE NOT BEEN PROVIDED THAT.

1 WE BELIEVE THAT WE ARE ENTITLED TO THAT UNDER BRADY. THEY
2 HAVE THAT IN THEIR FILE, TOO.

3 THE COURT: WELL, I'VE ORDERED IT FOR YOU. WE DON'T
4 KNOW THAT WHAT YOU ARE GOING TO HAVE IS ANY DIFFERENT, AND
5 MR. COLEMAN IS GOING TO EXAMINE THAT. IF THERE IS ANY
6 QUESTION HE'S GOING TO PROVIDE IT TO ME.

7 MR. SWERLING: YOUR HONOR, I THOUGHT LAST NIGHT AT THE
8 BREAK HE WAS GOING TO DO THAT AND MAKE A DECISION THIS
9 MORNING.

10 THE COURT: HE CAN'T DO IT UNTIL HE SEES WHAT YOU GET.

11 MR. COLEMAN: YOUR HONOR, ANOTHER ISSUE WE MAY BE ABLE
12 TO RESOLVE BEFORE WE GET ROLLING AND THAT IS MR. MORTON
13 INSTRUCTED THE COURT YESTERDAY SOME OF OUR FIRST WITNESSES
14 ARE GOING TO TESTIFY AS TO WHAT HAYES MALLOY TOLD THEM WITHIN
15 AN HOUR AND A HALF TO TWO HOURS AFTER THE MURDER. THE
16 STATE'S POSITION IS THAT THOSE ARE EXCITED UTTERANCES AND
17 THEY SHOULD BE ABLE TO COME IN.

18 MR. SWERLING: YOUR HONOR, AGAIN I THOUGHT THAT WAS
19 RESOLVED. THAT IS NOT A SPONTANEOUS UTTERANCE, IT'S NOT A
20 RES GESTAE SITUATION. THE FACT THAT HE REPORTED SOMETHING-
21 -I MEAN THE FACT THAT THEY WANT TO PUT UP SOMEBODY FROM THE
22 CITY POLICE DEPARTMENT TO SAY WE RECEIVED A CALL AT 10:21.
23 THERE'S NOTHING I CAN DO ABOUT THAT. BUT TO GO INTO THE
24 CONTENTS AND THE DETAILS OF IT VIOLATES COOPER AND SCHLINS
25 EVERY OTHER CASE THE SUPREME COURT HAS DECIDED ABOUT ALLOWING

1 A WITNESS TO GO BEYOND THE DATE AND TIME OF AN EVENT.

2 THE COURT: LET ME FIND OUT THE FULL FACTUAL SCENARIO.
3 YOU MENTIONED IT LAST NIGHT WHEN WE WERE ALL TRYING TO
4 RESOLVE SOME OF THESE OTHER ISSUES AFTER WE TOOK THE BREAK
5 WHEN ALL OF US WERE IN MY CHAMBERS. AS I UNDERSTAND IT THE
6 WITNESS MALLOY WENT--YOU ARE TALKING ABOUT SHORTLY AFTER THE
7 CRIME WAS COMMITTED.

8 MR. COLEMAN: HOUR AND A HALF TO TWO HOURS.

9 THE COURT: WENT TO SOME MOTEL OR HOTEL?

10 MR. COLEMAN: YES, SIR.

11 THE COURT: AND MADE A REPORT TO A DESK PERSON?

12 MR. COLEMAN: YES, SIR.

13 THE COURT: WHO THEN CALLED THE POLICE DEPARTMENT?

14 MR. COLEMAN: YES, SIR.

15 THE COURT: AND YOU WANT TO OFFER THE DESK PERSON?

16 MR. COLEMAN: NO, SIR. WE WANT TO OFFER AN INVESTIGATOR
17 WITH THE SHERIFF'S DEPARTMENT AND A CITY POLICE OFFICER TO
18 TELL WHAT HAYES MALLOY TOLD THEM UNDER EXCITED UTTERANCES.

19 THE COURT: NO. NO. I DON'T SEE THAT AS BEING AN
20 EXCITED UTTERANCE, COUNSELLOR. I WILL LET HIM TESTIFY THAT
21 THEY REPORTED, YOU KNOW, THAT HAYES MALLOY AS SOON AS HE
22 TESTIFIED HE SAID HE SAW THIS SAYS HE MADE A REPORT TO LAW
23 ENFORCEMENT. THE OFFICER CAN TESTIFY AS TO DATE AND TIME
24 THAT HIS REPORT WAS MADE BUT NOT THE CONTENT OF IT. NO, SIR.
25 THAT DOESN'T COMPLY UNDER EXCITED UTTERANCE OR RES GESTAE.

1 I'M NOT GOING TO ALLOW IT. WHAT ELSE?

2 MR. COLEMAN: I THINK THAT'S IT, JUDGE.

3 THE COURT: ALL RIGHT. WE'VE GOT TO SWEAR THE JURY THIS
4 MORNING. ALL RIGHT, LET'S BRING THE JURY IN, PLEASE. MADAM
5 COURT REPORTER, PUT ON THE RECORD COUNSEL FOR THE STATE AND
6 COUNSEL FOR THE DEFENSE ASKED THAT I INSTRUCT THE JURY ON
7 REASONABLE DOUBT. IS THAT CORRECT, MR. SWERLING?

8 MR. SWERLING: YES, SIR.

9 THE COURT: I USUALLY DO IT IN MY OPENING INSTRUCTIONS
10 AS WELL AS CLOSING.

11 (THE JURY RETURNS TO THE JURY BOX AT 10:13 A.M.)

12 THE COURT: GOOD MORNING, MR. FOREMAN, LADIES AND
13 GENTLEMEN. I APOLOGIZE TO YOU FOR NOT BRINGING YOU BACK OUT
14 WHEN I TOLD YOU WE'D BRING YOU OUT BUT WE HAD SOME OTHER
15 MATTERS THAT WE STILL WERE UNABLE TO RESOLVE FROM YESTERDAY
16 EVENING AND IT JUST TOOK US THAT AMOUNT OF TIME TO DO IT BUT
17 WE WERE HERE AT THE TIME THAT I HAD YOU PRESENT, BUT I DO
18 APOLOGIZE TO YOU FOR THAT INCONVENIENCE. MADAM CLERK, IF YOU
19 WOULD AT THIS TIME PLEASE SWEAR THE JURY AND THE TWO
20 ALTERNATES.

21 (WHEREUPON THE JURY IS SWORN AT 10:15 A.M.)

22 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, BEFORE
23 WE ACTUALLY COMMENCE THE TRIAL OF THE CASE I'M GOING TO GIVE
24 YOU WHAT IS KNOWN AS A PRELIMINARY INSTRUCTION. IT DESIGNED
25 TO KIND OF ACQUAINT YOU AND APPRISE YOU WITH HOW A CASE IS

1 TRIED IN GENERAL SESSIONS COURT. WE CALL IT CRIMINAL COURT.
2 AND I'M GOING TO OUTLINE TO YOU FROM BEGINNING TO END HOW A
3 CASE IS TRIED IN A VERY SHORTENED FASHION AS WELL AS TO
4 APPRISE YOU OF SOME VERY BASIC GUIDELINES THAT APPLY TO EVERY
5 CASE THAT'S TRIED IN GENERAL SESSIONS COURT. THE PURPOSE OF
6 THIS IS TO HOPEFULLY MAKE YOU FEEL MORE COMFORTABLE.
7 PROBABLY MOST OF YOU IT MAY BE THE FIRST TIME THAT YOU'VE
8 SERVED IN A COURTROOM IN A TRIAL OF THIS NATURE AND I'M
9 CERTAIN MOST OF YOU HAVE NORMAL APPREHENSIONS ABOUT WHAT IS
10 GOING TO BE EXPECTED OF YOU AND WHAT ARE YOUR DUTIES, AND I'M
11 GOING TO OUTLINE THOSE TO YOU AT THIS TIME. ONCE AGAIN,
12 HOPEFULLY IT WILL MAKE YOU FEEL MORE COMFORTABLE IN THOSE
13 RESPONSIBILITIES. I'M SURE THAT EACH OF YOU NOW FULLY
14 APPRECIATES THAT THIS COURT, THE COURT OF GENERAL SESSIONS
15 FOR RICHLAND COUNTY, EXISTS FOR THE PURPOSE OF RESOLVING
16 QUESTIONS OF ALLEGED CRIMINAL CONDUCT ARISING BETWEEN THE
17 STATE OF SOUTH CAROLINA AND THE DEFENDANT. NOW, IT'S A
18 GUARANTEED RIGHT OF EVERY CITIZEN THAT A CHARGE OF CRIMINAL
19 CONDUCT BE PRESENTED IN OPEN COURT ACCORDING TO CERTAIN RULES
20 OF PROCEDURE, AND I'M GOING TO EXPLAIN THOSE TO YOU IN JUST
21 A MOMENT. EACH OF THE PARTIES, BOTH THE STATE OF SOUTH
22 CAROLINA AND THIS DEFENDANT, HAVE AN EQUAL RIGHT TO THE
23 OPPORTUNITY OF THIS JUDICIAL PROCEEDING AND TO HAVE YOU AS
24 THE JURY SELECTED AND NOW SWORN FOR THE TRIAL OF THIS CASE.
25 NOW, ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTY AS A JURY

1 LIES ESSENTIALLY IN THE OATH THAT YOU HAVE NOW TAKEN TO WELL
2 AND TRULY TRY AND TO DETERMINE THE FACTS IN THIS CASE. NOW,
3 THAT OATH THAT YOU HAVE JUST TAKEN IN A VERY ESSENTIAL WAY
4 SAYS THAT YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE.
5 I'M THE JUDGE OF THE LAW AND I'LL EXPLAIN THAT TO YOU FURTHER
6 IN JUST A MOMENT, BUT YOU ARE THE JUDGES OF THE FACTS.
7 OBVIOUSLY NOW, LADIES AND GENTLEMEN, ANY CASE THAT IS TRIED
8 IN THIS COURTROOM WILL INVOLVE A QUESTION ABOUT WHAT HAPPENED
9 OR HOW SOMETHING CAME TO HAPPEN OR WHO, IF ANYONE, DID
10 ANYTHING IN A PARTICULAR OCCURRENCE OR CIRCUMSTANCE.
11 THEREFORE, FROM THIS POINT FORWARD NO ONE CONCERNED WITH THIS
12 TRIAL HAS THE RIGHT TO DECIDE ANY QUESTION OF FACT IN THIS
13 TRIAL OR THE TRUTH OF IT EXCEPT YOU, THE JURY, BECAUSE YOU
14 ARE THE JUDGES OF THE FACTS. THEREFORE, THE FACTS THEN ARE
15 FOR YOUR RESOLUTION AND YOUR DECISION AND YOURS ALONE. AND
16 AFTER YOU HAVE HEARD ALL OF THE EVIDENCE IN THIS CASE THEN
17 IT WILL BE YOUR DUTY BY YOUR MUTUAL AND YOUR JOINT
18 DISCUSSIONS, IT MEANS THAT ALL OF YOU WILL DISCUSS IT, AND
19 TO DETERMINE THE TRUTH OF THIS CASE BY DECIDING THE WEIGHT
20 AND THE BELIEVABILITY OF EACH PART OF THE EVIDENCE AND BY
21 APPLYING THE LAW OF THE CASE THERETO. NOW, NOTE THAT. NOW,
22 LADIES AND GENTLEMEN, UNDER OUR SYSTEM YOU ARE THE JURY AND
23 THE JUDGES OF THE FACTS. I'M NOT PERMITTED TO HAVE AN
24 OPINION ABOUT THE FACTS IN THIS CASE BECAUSE I WOULD BE
25 INVADING YOUR PROVINCE IF I DID SO. I AM THE JUDGE OF THE

1 LAW, SO AS THE JUDGE OF THE LAW WHAT ARE MY RESPONSIBILITIES?
2 THEY ARE PROVIDED BY CONSTITUTION JUST LIKE YOURS ARE. MY
3 RESPONSIBILITIES INCLUDE TO PRESIDE OVER THIS TRIAL. I AM
4 THE PRESIDING OFFICER. TO RULE UPON OR PASS UPON THE
5 ADMISSIBILITY OF THE EVIDENCE THAT'S OFFERED DURING THE TRIAL
6 OF THE CASE. THINK ABOUT THAT. TO RULE UPON OR PASS UPON
7 THE ADMISSIBILITY. SEE, WHETHER OR NOT EVIDENCE COMES INTO
8 THE RECORD OF A CASE IS A QUESTION OF LAW. IF IT'S OFFERED,
9 IT'S UP TO ME TO DECIDE WHETHER OR NOT IT IS ADMISSIBLE UNDER
10 THESE RULES THAT I TOLD YOU ABOUT. ONCE I ADMIT THAT
11 EVIDENCE THOUGH IT IS UP TO YOU, THE JURY, TO DETERMINE ITS
12 WEIGHT OR BELIEVABILITY. I HAVE NO RIGHT TO CONSIDER WHAT
13 THE WEIGHT OR BELIEVABILITY OF THE EVIDENCE IS BECAUSE THAT'S
14 WHAT YOU DO AS JURORS. JUST AS IF I SAY THAT SOMETHING IS
15 NOT ADMISSIBLE AND YOU MAY HAVE HEARD IT, SOMETIMES THAT
16 HAPPENS. AN ATTORNEY WILL MAKE AN OBJECTION AFTER THE
17 WITNESS HAS MADE A STATEMENT. YOU WILL HEAR ME SAY I
18 INSTRUCT YOU TO DISREGARD AND DISABUSE FROM YOUR MIND THAT
19 RESPONSE AND THAT MEANS THAT UNDER YOUR OATH AS JURORS--
20 PLEASE TAKE HIM OUTSIDE AND DON'T HAVE SOMEONE TALKING IN
21 THIS COURTROOM WHEN I'M GIVING AN INSTRUCTION. MR. OFFICER,
22 DON'T YA'LL DO THAT AGAIN. DON'T EVER LET THAT HAPPEN AGAIN.

23 LADIES AND GENTLEMEN, IF I DON'T ALLOW THE EVIDENCE
24 TO COME IN THE RECORD I WILL INSTRUCT YOU YOU ARE TO
25 DISREGARD IT AND DISABUSE IT FROM YOUR MIND AND YOU MAY NOT

1 WEIGH IT OR CONSIDER IT. NOW, UNDER YOUR OATH AS JURORS, YOU
2 TAKE AN OATH JUST AS I TAKE AN OATH, THAT YOU WILL ACCEPT AND
3 APPLY THE LAW AS I WILL STATE IT TO YOU AND YOU WILL VIOLATE
4 YOUR OATH IF YOU WALK BACK INTO THAT JURY ROOM AND SAY I
5 DON'T CARE WHAT THE LAW IS, I THINK IT OUGHT TO BE THIS WAY,
6 BECAUSE YOU HAVE TAKEN AN OATH TO ACCEPT THE LAW AS I WILL
7 STATE IT TO YOU. AND I WOULD VIOLATE MY OATH IF I WERE TO
8 COMMENT ON THE FACTS IN THIS CASE BECAUSE THAT'S YOUR
9 RESPONSIBILITY. SO, YOU SEE EACH OF US HAVE THESE
10 RESPONSIBILITIES AND EACH OF US MUST BE MINDFUL OF WHOSE
11 RESPONSIBILITY IT IS. SO, IN ADDITION TO RULING OR PASSING
12 UPON THE ADMISSIBILITY OF THE EVIDENCE I ALSO AM REQUIRED TO
13 INSTRUCT YOU AS TO THE LAW THAT APPLIES TO THE ISSUES IN THIS
14 CASE WHICH I WILL DO AT THE CONCLUSION OF THE TESTIMONY AND
15 EVIDENCE. AND ONCE AGAIN YOU MUST ACCEPT THE LAW AS I WILL
16 STATE IT TO YOU PRECISELY AND THAT INCLUDES IF YOU SHOULD
17 HAVE A DIFFERENT IDEA AS TO WHAT YOU THINK THE LAW IS OR
18 OUGHT TO BE IN THIS CASE AND IT SHOULD NOT AGREE WITH WHAT
19 I TELL YOU THE LAW IS YOU ARE REQUIRED TO SET ASIDE THAT
20 MISCONCEPTION ON YOUR PART BECAUSE I AM THE JUDGE OF THE LAW
21 AND YOU MUST ACCEPT IT AS I GIVE IT TO YOU.

22 NOW, YOU HEARD ME TALK ABOUT RULE UPON OR PASS UPON THE
23 ADMISSIBILITY OF THE EVIDENCE. I'M NOT REQUIRED TO TELL YOU
24 THESE THINGS BUT I LIKE TO BECAUSE I WANT YOU TO FEEL GOOD
25 AND FEEL COMFORTABLE ABOUT WHAT'S GOING ON. I WANT YOU TO

1 KNOW WHAT'S GOING ON IN THIS COURTROOM. JUST LIKE YOU ARE
2 SITTING BACK THERE IN THAT JURY ROOM, I KNOW MOST OF YOU
3 SAID, GOOD LORD, WHAT ARE THEY DOING; YOU KNOW, FOR GOD
4 SAKES, THEY TOLD ME TO BE HERE AT 9:30, WHY DIDN'T WE START.
5 BUT WHEN OBJECTIONS ARE MADE AND WHAT WE TRY TO DO IS TO TAKE
6 CARE OF SOME MATTERS ABOUT EVIDENCE THAT WE HOPE WILL MAKE
7 THE CASE PROCEED ON ONCE WE GET YOU OUT HERE. EVEN THOUGH WE
8 TRY, SOMETIMES I'M GOING TO HAVE TO STILL SEND YOU BACK
9 THERE, BUT LET ME TELL YOU WHAT HAPPENS. WHEN EVIDENCE IS
10 OFFERED AS I TOLD YOU I'M THE JUDGE OF THE LAW AND WHETHER
11 OR NOT EVIDENCE COMES IN IS A QUESTION OF LAW. YOU'VE ALL
12 PROBABLY WATCHED SOME OF THE LEGAL PROGRAMS ON T.V. AND THEY
13 ARE REALLY GOOD, VERY ENTERTAINING. SOME OF THEM ARE FAIRLY
14 REALISTIC, SOME OF THEM ARE FAIRLY UNREALISTIC, BUT YOU
15 PROBABLY HAVE NOTED ON THOSE PROGRAMS THAT THE ATTORNEYS
16 PORTRAYED IN THE PROGRAMS THEY OBJECT TO EVIDENCE AND THEY'LL
17 SAY, "YOUR HONOR, I OBJECT. THAT'S HEARSAY," OR "THAT'S NOT
18 RELEVANT." THOSE ARE JUST TWO OF THESE RULES OF PROCEDURE
19 I TOLD YOU ABOUT. WE HAVE MANY OF THEM AND OUR RULES OF
20 PROCEDURE HAVE ONE PURPOSE AND ONE PURPOSE ALONE, LADIES AND
21 GENTLEMEN. THEY INSURE, THESE RULES THAT WE HAVE, THAT THE
22 EVIDENCE THAT YOU RECEIVE AND CONSIDER IS THE MOST
23 TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE. YOU SEE, THAT'S
24 THE MOTIVATION AND REASON FOR IT. NOW, WHAT IS HEARSAY? I'M
25 GOING TO EXPLAIN TO YOU WHAT HEARSAY IS SO YOU'LL UNDERSTAND

1 IT. I'M NOT REQUIRED TO DO THIS. BUT I WANT YOU TO UNDERSTAND
2 IT. HEARSAY LEGALLY DEFINED IS AN OUT OF COURT STATEMENT
3 OFFERED INTO THE RECORD OF THIS CASE FOR THE TRUTH OF THE
4 MATTER ASSERTED. THAT'S LEGAL JARGON. HERE'S WHAT IT MEANS
5 IN EVERYDAY TERMS. WITNESS "A" TAKES THE STAND, FOR EXAMPLE.
6 WITNESS "A" IN THEIR TESTIMONY, AND I'M GOING TO USE THE NAME
7 JOHN BROWN FIGURATIVELY AS WELL. WITNESS "A" SAYS, "WELL,
8 JOHN BROWN TOLD ME HE SAW SO AND SO DO SOMETHING." THE
9 ATTORNEY OBJECTS AND SAYS, "YOUR HONOR, I OBJECT, THAT'S
10 HEARSAY." WELL, THINK ABOUT IT. WITNESS "A" IS NOT TELLING
11 YOU WHAT WITNESS "A" SAW OR DID. WITNESS "A" IS TELLING YOU
12 WHAT SOMEONE ELSE NAMED JOHN BROWN TOLD WITNESS "A" THAT JOHN
13 BROWN SAW SOMEONE DO. OKAY? AND IT'S SAID OUT OF THIS
14 COURTROOM SO IT'S AN OUT OF COURT STATEMENT OFFERED IN THE
15 RECORD OF THIS CASE FOR THE TRUTH. SEE, IT FITS THE
16 DEFINITION. BESIDES THAT, THINK ABOUT IT. WHAT DO YOU DO
17 AS JURORS? YOU LOOK UPON THE WITNESSES, YOU JUDGE THEIR
18 Demeanor, WHAT THEY SAY, HOW THEY SAY IT. HOW ARE YOU ABLE
19 TO JUDGE JOHN BROWN'S Demeanor BECAUSE HE'S NOT TESTIFYING,
20 WITNESS "A" IS TESTIFYING. WITNESS "A" IS NOT TELLING YOU
21 WHAT THEY SAY, IN ADDITION TO WHICH IT DENIES THE OTHER SIDE
22 THE OPPORTUNITY TO ASK JOHN BROWN WHAT HE REALLY DID SEE.
23 SO, YOU SEE, YOU WOULDN'T WANT TO DETERMINE THESE ISSUES IN
24 A CASE BASED ON THAT TYPE OF EVIDENCE. WHY NOT? BECAUSE
25 IT'S NOT COMPETENT AND IT'S NOT RELIABLE EVIDENCE. SO, IF

1 THE ATTORNEY OBJECTS YOU WILL HEAR ME, IF IT FALLS IN THAT
2 CATEGORY UNLESS OR SOME OTHER REASON UNDER OUR RULES IT'S
3 ADMISSIBLE, SAY ME SAY I SUSTAIN THAT OBJECTION WHICH MEANS
4 THAT I AGREE WITH THEM AND YOU MAY NOT CONSIDER THAT EVIDENCE
5 EVEN THOUGH YOU MAY HAVE HEARD IT. ALL OF THESE RULES HAVE
6 THAT SAME PURPOSE. NOW, SOMETIMES WHEN THEY OBJECT I'M GOING
7 TO HAVE TO ASK YOU TO STEP BACK INTO THE JURY ROOM AND I KNOW
8 THAT'S INCONVENIENT AND I APOLOGIZE TO YOU AT THIS TIME. THE
9 REASON-- AND I'M NOT TRYING TO KEEP ANYTHING FROM YOU--THE
10 REASON I HAVE TO DO THAT IS SOMETIMES I HAVE TO DISCUSS WITH
11 THESE ATTORNEYS LIKE WE DID ALL DAY YESTERDAY AFTERNOON AND
12 THIS MORNING DEALING WITH EXHIBITS AND THINGS THEY ARE GOING
13 TO BE PRESENTING TO YOU--SOMETIMES I HAVE TO DISCUSS WITH
14 THEM THEIR VIEW OF WHY IT'S ADMISSIBLE. THEY ARE ENTITLED
15 TO ARGUE TO ME AND I HAVE TO COMMENT BACK TO THEM. IF YOU
16 WERE TO HEAR ME HAVE THAT DIALOGUE WITH THEM YOU COULD INFER
17 EVEN THOUGH I TELL YOU NOT TO THAT I HAVE AN OPINION ABOUT
18 THE FACTS IN THE CASE. SO, IN AN ABUNDANCE OF CAUTION I SEND
19 YOU OUT. SO, THAT'S THE REASON, LADIES AND GENTLEMEN. NO
20 OTHER REASON. IN ADDITION TO WHICH, LADIES AND GENTLEMEN,
21 PLEASE DO NOT CONCLUDE OR DECIDE WHEN I RULE UPON AN
22 EVIDENTIARY OBJECTION THAT I FAVOR ONE SIDE OR THE OTHER.
23 I DO NOT. I'M RULING UPON IT UNDER THE LAW. SO, PLEASE DO
24 NOT CONCLUDE FROM MY RULINGS THAT I FAVOR ONE SIDE OR THE
25 OTHER. AND PLEASE DO NOT INFER FROM ANYTHING THAT I SAY TO

1 YOU NOW OR ANYTHING THAT I SAY DURING THE TRIAL OF THIS OR
2 IN MY FINAL INSTRUCTIONS THAT I HAVE AN OPINION ABOUT THE
3 FACTS IN THE CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN
4 OPINION ABOUT THE FACTS. THAT'S FOR YOU, THE JURY.

5 NOW, LADIES AND GENTLEMEN, PROCEDURALLY THE FIRST THING
6 THAT WILL HAPPEN IS THAT THE ATTORNEY FOR THE SOLICITOR'S
7 OFFICE, AND THIS WILL BE AS I UNDERSTAND DEPUTY SOLICITOR
8 CREIGHTON COLEMAN, IS GOING TO APPEAR BEFORE YOU AND MAKE
9 WHAT WE CALL AN OPENING STATEMENT. NOW, THEY'LL EITHER READ
10 TO YOU THE INDICTMENT, TELL YOU WHAT THE CHARGE MADE AGAINST
11 THE DEFENDANT IS AND LIMITEDLY IDENTIFY TO YOU THE ISSUES IN
12 THIS CASE. AFTER THAT THE ATTORNEY FOR THE DEFENDANT WILL
13 BE EXTENDED THE SAME OPPORTUNITY TO MAKE WHAT WE CALL AN
14 OPENING STATEMENT TO YOU. NOW, THESE OPENING STATEMENTS BY
15 THE ATTORNEYS ARE NOT EVIDENCE. YOU CANNOT CONSIDER WHAT THE
16 ATTORNEYS SAY AS EVIDENCE UNLESS I TELL YOU SO. THE EVIDENCE
17 COMES FROM THE WITNESS STAND. YOU SHOULD PAY ATTENTION TO
18 WHAT THEY SAY TO YOU BECAUSE THEY ARE GOING TO IDENTIFY TO
19 YOU THE ISSUE IN THE CASE OR THE ISSUES THAT THEY WANT YOU
20 TO DECIDE FOR THEM. NOW, AFTER THESE OPENING STATEMENTS
21 HAVE BEEN COMPLETED THEN THEY WILL PROCEED BY PRESENTING THE
22 EVIDENCE THAT THEY WANT YOU TO CONSIDER, ONCE AGAIN WITH THE
23 STATE PUTTING UP ITS EVIDENCE BECAUSE THE STATE HAS THE
24 BURDEN OF PROOF IN THIS CASE, AND I'M GOING TO EXPLAIN THAT
25 TO YOU. AFTER ALL THE EVIDENCE THAT THEY WANT YOU TO

1 CONSIDER HAS BEEN PRESENTED THEN THE ATTORNEYS WILL APPEAR
2 BACK BEFORE YOU ONCE AGAIN AND AT THIS TIME THEY ARE GOING
3 TO MAKE WHAT WE CALL SUMMATIONS, MORE APTLY REFERRED TO AS
4 ARGUMENTS, BECAUSE THE LAWYERS ARE PERMITTED TO ARGUE AT THAT
5 TIME. IN OTHER WORDS, IN THE OPENING STATEMENTS THEY ARE NOT
6 PERMITTED TO ARGUE. IN THE CLOSING STATEMENTS THEY CAN, THEY
7 CAN ARGUE TO YOU. IN OTHER WORDS, THEY ARE GOING TO TRY TO
8 PERSUADE YOU TO AGREE WITH THEIR VERSION OF THE FACTS IN THIS
9 CASE. AFTER THEY HAVE DONE THAT I WILL THEN CHARGE YOU,
10 WHICH SIMPLY MEANS TO INSTRUCT YOU UPON THE LAW. AFTER THAT
11 YOU'LL RETIRE TO THE JURY ROOM TO REACH A VERDICT IN THIS
12 CASE. SO, YOU SEE, THAT'S HOW A CASE IS TRIED IN A VERY
13 SIMPLIFIED FASHION FROM BEGINNING TO END.

14 NOW, THE DEFENDANT IN THIS CASE, AND THAT IS RONALD S.
15 TILLMAN, REPRESENTED BY MR. JACK SWERLING, HAS ENTERED A PLEA
16 OF NOT GUILTY TO THE CHARGES CONTAINED IN THIS INDICTMENT.
17 NOW, THE INDICTMENT WHICH I HOLD IN MY HAND IS NOT EVIDENCE
18 IN THE CASE AND YOU MAY NOT CONSIDER IT AS EVIDENCE. IT IS
19 SIMPLY THE WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE OR
20 CHARGES AGAINST THE DEFENDANT AND IT'S HOW THIS CASE IS
21 PROCESSED INTO THIS COURTROOM. THE PLEA OF NOT GUILTY BY THE
22 DEFENDANT PLACES UPON THE STATE OF SOUTH CAROLINA THE BURDEN
23 OF PROOF IN THIS CASE AND I'M NOW GOING TO EXPLAIN TO YOU
24 WHAT WE MEAN BY THE BURDEN OF PROOF. SO, THE BURDEN OF PROOF
25 IS UPON THE STATE. THE DEFENDANT IS PRESUMED IN LAW INNOCENT

1 OF ALL THE CHARGES CONTAINED IN THIS INDICTMENT. THE BURDEN
2 OF PROOF REQUIRES THAT THE STATE OF SOUTH CAROLINA PROVE THE
3 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT. THAT'S THE
4 BURDEN. AND, THEREFORE, CONSISTENT WITH THAT BURDEN OF PROOF
5 BY THE STATE, THE DEFENDANT--OR WE COULD SAY ACCUSED PARTY;
6 THEY MEAN THE SAME THING--SHALL BE PRESUMED INNOCENT AND THAT
7 PRESUMPTION OF INNOCENCE IS SUFFICIENT TO COMPEL A VERDICT
8 OF NOT GUILTY OR A VERDICT OF ACQUITTAL UNLESS YOU, THE JURY,
9 IN THIS CASE CONCLUDE THAT THE STATE HAS SATISFIED ITS
10 OBLIGATION TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE
11 DOUBT. NOW, WHAT DO I MEAN BY A REASONABLE DOUBT? A
12 REASONABLE DOUBT IS NOT A FANCIFUL OR IMAGINARY, WHIMSICAL,
13 SLIGHT OR WEAK DOUBT. A REASONABLE DOUBT IS A DOUBT WHICH
14 MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF
15 THE TRUTH IN A CASE HESITATE. PROOF BEYOND A REASONABLE
16 DOUBT MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER
17 THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT
18 UPON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS. A
19 REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN THE CASE
20 OR FROM THE LACK OR ABSENCE OF EVIDENCE IN THE CASE. THE
21 JURY, AND YOU, THIS JURY IN THIS CASE, MUST DETERMINE WHETHER
22 OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THIS
23 DEFENDANT.

24 NOW, I EXPLAINED TO YOU ON YESTERDAY THAT YOU ARE NOT
25 TO UNDERTAKE TO DISCUSS THIS CASE AMONG YOURSELVES AT ANY

1 TIME UNTIL I TELL YOU AND THAT DOESN'T OCCUR UNTIL THE
2 CONCLUSION OF THE CASE AND I HAVE INSTRUCTED YOU UPON THE
3 LAW, AS WELL AS NOT TO READ ANYTHING IN THE NEWSPAPER, IF
4 THERE BE ANY, OR LISTEN TO ANYTHING ON THE RADIO OR SEE
5 ANYTHING ON T.V. I ALSO REMIND YOU, LADIES AND GENTLEMEN,
6 IF YOU CANNOT HEAR OR SEE AT ANY TIME DURING THE TRIAL OF
7 THIS CASE IF YOU'LL JUST RAISE YOUR HAND FOR ME AND LET ME
8 KNOW. I'LL HAVE THE WITNESS REPEAT IT FOR YOU OR SPEAK UP.
9 NOW, LADIES AND GENTLEMEN, YOU ARE NOT PERMITTED TO ASK
10 QUESTIONS. I'M LIMITEDLY ALLOWED TO DO SO IF IT'S NECESSARY
11 TO CLARIFY A POINT OR TO HAVE THE WITNESS REPEAT THE
12 QUESTION. IT IS THE RESPONSIBILITY OF THE ATTORNEYS TO
13 PRESENT TO YOU AND I THE EVIDENCE THAT THEY WANT YOU TO
14 CONSIDER. SO, PLEASE UNDERSTAND YOU ARE NOT PERMITTED, IN
15 ADDITION TO WHICH, YOU KNOW, IF YOU STARTED ASKING QUESTIONS,
16 SOMETIMES YOU DON'T LIKE THE WAY A WITNESS ANSWERS OR THE
17 ANSWER THEY GAVE YOU AND SO QUESTIONS START DETERMINING THEIR
18 CREDIBILITY OR BELIEVABILITY BASED ON THAT. SO, YOU AND I
19 ARE NOT TO BE INVOLVED IN THE ADVERSARY PROCESS. OUR
20 RESPONSIBILITIES, AND I'M CERTAIN EACH OF YOU WILL BE MINDFUL
21 OF IT, ARE TO BE ATTENTIVE TO ALL THE EVIDENCE THAT'S
22 PRESENTED IN THE CASE. NOW, IF AT ANY TIME YOU GET TIRED OR
23 YOU NEED A BREAK, RAISE YOUR HAND AND WE'LL STOP. IF I SEND
24 YOU BACK FOR A RECESS OR A BREAK AND YOU HAVEN'T HAD ENOUGH
25 TIME, MR. FOREMAN, JUST TELL US. YOU WAIT ON US ENOUGH,

1 WE'LL WAIT ON YOU. SO, PLEASE DO NOT THING--I'M MINDFUL OF
2 THE TIME AND ABOUT EVERY HOUR AND FIFTEEN, THIRTY MINUTES
3 I'LL TRY TO STOP AND GIVE YOU A BREAK. SOMETIMES IT DEPENDS
4 ON THE WITNESSES BUT I'M MINDFUL OF THAT, BUT IF I DON'T STOP
5 IN TIME YOU RAISE YOUR HAND AND LET ME KNOW. OKAY?

6 WHATEVER YOUR VERDICT IS, MR. FOREMAN AND LADIES AND
7 GENTLEMEN, IT MUST A UNANIMOUS VERDICT. ALL TWELVE OF YOU
8 MUST AGREE ON THE VERDICT THAT YOU AUTHORIZE YOUR FOREMAN TO
9 WRITE FOR YOU. NOW, MR. FOREMAN, LADIES AND GENTLEMEN, I'VE
10 COMPLETED MY INSTRUCTIONS TO YOU AND I WANT TO THANK YOU FOR
11 YOUR ATTENTION. I HOPE THIS ASSISTS YOU IN UNDERSTANDING
12 WHAT YOUR RESPONSIBILITIES ARE IN THIS CASE AND YOUR ROLE AS
13 JURORS. NOW, ONE FURTHER THING. AS I TOLD YOU, THE
14 DEFENDANT IN THIS CASE IS CHARGED WITH THE CRIME OF MURDER.
15 MURDER--I'M GOING TO GIVE YOU THE FULL AND COMPLETE
16 INSTRUCTION ON IT--IS DEFINED BY OUR STATUTE OF THE UNLAWFUL
17 KILLING OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT
18 EITHER EXPRESSED OR IMPLIED. NOW, THAT'S HOW MURDER IS
19 DEFINED. AS I TOLD YOU, I'LL EXPLAIN THAT TO YOU FURTHER AND
20 IN DETAIL AT THE APPROPRIATE TIME IN THE CASE. ALL RIGHT,
21 MR. SOLICITOR, AT THIS TIME YOU MAY MAKE YOUR OPENING
22 STATEMENT.

23 MR. COLEMAN MAKES AN OPENING STATEMENT.

24 (DURING MR. COLEMAN'S OPENING STATEMENT, THE FOLLOWING
25 OBJECTIONS WERE MADE:

1 (ONE) MR. COLEMAN: YOU ARE GOING TO ALSO HEAR TESTIMONY
2 FROM HAYES MALLOY. HE'S ONE OF THE STATE'S WITNESSES.
3 ON DECEMBER 21ST, 1988, HAYES MALLOY CONTACTED THE
4 F.B.I., CONTACTED THE F.B.I. AND TOLD THEM OF RONALD
5 TILLMAN'S INTENTIONS OF KILLING--

6 MR. SWERLING: IF YOUR HONOR PLEASE, I THINK HE'S
7 GETTING INTO THE EVIDENTIARY ARGUMENTS AT THIS POINT. I'D
8 HAVE TO OBJECT. YOUR HONOR WILL HAVE TO RULE ON THE
9 ADMISSIBILITY OF THESE THINGS AT THAT TIME.

10 THE COURT: LET'S NOT DEAL WITH ANY EVIDENCE THAT MAY
11 BE TENDERED, MR. COLEMAN.

12
13 (TWO) MR. COLEMAN: HE WAS A SCARED MAN THAT NIGHT.
14 SINCE THEN HE'S A SCARED MAN. AFTER HE SHOWED THE
15 AUTHORITIES WHERE THE BODY WAS AT BROWN'S CHAPEL OUT IN
16 ARTHUR TOWN--YA'LL MAY KNOW WHERE THAT IS--AFTER HE SHOWED
17 THE AUTHORITIES WHERE THE BODY WAS THE AUTHORITIES SAID THIS
18 FELLOW KNOWS SOMETHING ABOUT THIS MURDER.

19 MR. SWERLING: YOUR HONOR, I HAVE TO OBJECT.

20 THE COURT: I SUSTAIN THE OBJECTION. MR. COLEMAN, YOU
21 CANNOT ARGUE THE CASE AT THIS TIME. YOU CANNOT DO THAT. THAT
22 COMES AFTER ALL THE EVIDENCE.

23 MR. COLEMAN: YES, SIR.

24
25 (THREE) MR. COLEMAN: HE WAS A SCARED MAN. HE WILL

1 TELL YOU THAT FOR A LOT OF DIFFERENT REASONS, ONE OF WHICH-

2 -

3 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S ARGUING.

4 THE COURT: YA'LL APPROACH THE BENCH.

5 (MR. COLEMAN AND MR. SWERLING APPROACH THE BENCH OUT OF
6 THE PRESENCE OF THE COURT REPORTER)

7 THE COURT: ALL RIGHT.)

8 MR. COLEMAN CONCLUDES HIS OPENING STATEMENT.

9 MR. SWERLING MAKES OPENING STATEMENT.

10 (DURING MR. SWERLING'S OPENING STATEMENT, THE FOLLOWING
11 OBJECTIONS WERE MADE:

12 (ONE) MR. SWERLING: THE WITNESS IN THIS CASE HAS COME
13 FORWARD AND SAID I SAW EVERYTHING.

14 MR. COLEMAN: YOUR HONOR, I OBJECT. HE'S ARGUING TO THE
15 JURY.

16 MR. SWERLING: YOUR HONOR, IF I MAY BE PERMITTED THIS
17 IS EXACTLY WHAT MR. COLEMAN TOLD THE JURY, MR. MALLOY WAS
18 CHARGED WITH THE MURDER AND HE DISMISSED THE MURDER AND I AM
19 JUST GOING INTO THAT.

20 MR. COLEMAN: YOUR HONOR--

21 THE COURT: YA'LL APPROACH THE BENCH.

22 (MR. SWERLING AND MR. COLEMAN APPROACH THE BENCH OUT OF
23 THE PRESENCE OF THE COURT REPORTER)

24 (TWO) MR. SWERLING: THE STATE JUST DISMISSED THE CASE
25 LAST FRIDAY. FRIDAY, JANUARY 12TH, 1990. OVER ONE YEAR THE

1 STATE HELD OVER MR. MALLOY'S HEAD--

2 MR. COLEMAN: YOUR HONOR, AGAIN I OBJECT. HE'S ARGUING
3 TO THE JURY.

4 THE COURT: NOT YET.)

5 MR. SWERLING CONCLUDES HIS OPENING STATEMENT.

6 MR. COLEMAN: YOUR HONOR, THE STATE CALLS BRIAN
7 O'CONNELL TO THE STAND.

8 THE COURT: LADIES AND GENTLEMEN, IF YA'LL WILL GO AHEAD
9 AND STEP BACK IN THE JURY ROOM AND TAKE A RECESS. I'LL GIVE
10 YOU ABOUT TEN OR FIFTEEN MINUTES. WE'VE HAD EVERYBODY OUT
11 HERE ABOUT AN HOUR AND A HALF. I NEED TO GIVE THEM A BREAK.

12 (THE JURY LEAVES THE JURY BOX AT 11:02 A.M.)

13 THE COURT: ALL RIGHT, GENTLEMEN, WE ARE GOING TO TAKE
14 A RECESS AND YOU ARE GOING TO SHOW DURING THE RECESS PERIOD
15 THE EXHIBITS THE STATE IS GOING TO OFFER SO THAT WILL MOVE
16 THROUGH THE TRIAL. COURT WILL BE IN RECESS.

17 (RECESS)

18 THE COURT: (AT CONCLUSION OF RECESS) ARE YOU GENTLEMEN
19 READY TO PROCEED?

20 MR. COLEMAN: YOUR HONOR, I HAVE SHOWED JACK THE
21 PHOTOGRAPHS AND THINGS. HE DIDN'T HAVE A PROBLEM EXCEPT FOR
22 ABOUT ONE.

23 THE COURT: LET ME SEE THE ONES YOU HAVE A PROBLEM WITH?
24 WHAT'S THE PROBLEM?

25 MR. COLEMAN: WELL, THE BODY. IT'S AT A DISTANCE, YOUR

1 HONOR. IT SHOWS THE RELATIONSHIP OF THE BODY TO THE AIR
2 CONDITIONER. I JUST WANT THE JURY TO KNOW EXACTLY WHERE THE
3 BODY WAS FOUND.

4 MR. SWERLING: I THINK THE PICTURE OF THE BODY IS NOT
5 PROBATIVE TO ANY ISSUE IN THE CASE, IT'S NOT RELEVANT AND,
6 IF IT IS, THE PROBATIVE VALUE IS OUTWEIGHED BY THE
7 PREJUDICIAL EFFECT.

8 THE COURT: WELL, IT'S NOT GORY. YOU CAN'T SEE ANY
9 BLOOD, YOU CAN'T SEE ANY OF THAT SHOWN IN THIS BLACK AND
10 WHITE. AND, OF COURSE, THE QUESTION IS WHETHER OR NOT THE
11 WITNESS WHO TOOK THE PHOTOGRAPH IS ABLE TO SAY THAT THE
12 PHOTOGRAPH ASSISTS HIM IN DESCRIBING AND DEPICTING TO THE
13 JURY. IF HE DOES, I'M GOING TO LET HIM USE IT. IT'S NOT
14 PREJUDICIAL IN THE SENSE OF WHAT'S SHOWN THEREIN OTHER THAN
15 IT'S THE BODY. IT'S NOT A CLOSEUP EITHER. WHAT ELSE? ALL
16 RIGHT, BRING THE JURY IN, PLEASE.

2 (THE JURY RETURNS TO THE JURY BOX AT 11:18 A.M.)

3 BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

4 THE COURT: LET THE RECORD SO REFLECT. YOU MAY CALL
5 YOUR FIRST WITNESS, MR. COLEMAN.

6 MR. COLEMAN: YOUR HONOR, THE STATE CALLS BRIAN
7 O'CONNELL TO THE STAND.

8 BRIAN KENNETH O'CONNELL, AFTER BEING DULY SWORN BY THE
9 CLERK, TESTIFIES AS FOLLOWS:

10 DIRECT EXAMINATION BY

1 MR. COLEMAN:

2 Q MR. O'CONNELL, WHERE ARE YOU EMPLOYED?

3 A COLUMBIA POLICE DEPARTMENT.

4 Q AND WHAT ARE YOUR DUTIES THERE?

5 A I'M A PATROLMAN.

6 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

7 A THREE YEARS.

8 Q TAKING YOU BACK TO DECEMBER 26TH, 1988, WERE YOU PERFORMING
9 YOUR DUTIES AS A POLICE OFFICER THAT EVENING?

10 A YES, I WAS.

11 Q DID YOU HAVE AN OCCASION TO GO TO THE COMFORT INN LOCATED ON
12 ELMWOOD AND MAIN?

13 A YES, I DID.

14 Q OKAY. IF YOU WOULD, PLEASE EXPLAIN TO THE JURY WHAT
15 PRECIPITATED THAT CALL AND WHAT HAPPENED THERE.

16 A WE WERE DISPATCHED TO THE CALL AT THE COMFORT INN. WE WERE
17 SUMMONSED BY THE MANAGEMENT. WHEN WE ARRIVED, THE CALL WAS
18 IN REFERENCE TO--

19 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO WHAT WAS
20 SAID. IT WOULD BE HEARSAY. IT WOULD BE THIRD HAND HEARSAY
21 COMING FROM A DISPATCHER.

22 THE COURT: WELL, IT IS HEARSAY, COUNSEL, BUT IS IT
23 OFFERED FOR THE TRUTH OF THE MATTER OR TO SHOW SIMPLY THAT
24 THEY RESPONDED TO A CALL AND THE PURPOSE OF THE CALL. I'LL
25 ALLOW IT IN FOR THAT PURPOSE. IT'S NOT OFFERED FOR THE

1 TRUTH, ONLY TO SHOW THAT THEY RESPONDED TO A CALL. GO
2 AHEAD.

3 Q GO AHEAD.

4 A WE RESPONDED TO A CALL WHICH WAS PUT OUT AS A 1068 CALL WHICH
5 MEANS A MENTAL SUBJECT. WHEN WE ARRIVED IN THERE, WE MET
6 WITH THE PERSON WHICH WAS POINTED OUT TO US BY THE
7 MANAGEMENT. AT THAT POINT, THIS PERSON WAS VERY NERVOUS,
8 SCARED AND VERY PERSISTENT HE WANTED--

9 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO ANY FURTHER
10 DETAILS REGARDING WHAT SOMEONE TOLD THIS OFFICER THROUGH THE
11 DISPATCHER AS TO WHAT THIS INDIVIDUAL LOOKED LIKE.

12 THE COURT: I DIDN'T HEAR HIM. HE MAY HAVE BEEN BUT I
13 THOUGHT HE WAS DESCRIBING THE PERSON HE SAW. HE MAY DESCRIBE
14 HIM BUT DO NOT GIVE ANY FURTHER TESTIMONY CONCERNING WHAT
15 SOMEONE TOLD YOU IN THAT REGARD.

16 A YES, SIR. WE MET WITH--IT WAS A BLACK MALE SUBJECT. WHEN
17 APPROACHED US I NOTICED RIGHT AWAY THAT HE WAS VERY SCARED
18 AND EXCITED.

19 MR. SWERLING: OBJECTION, YOUR HONOR.

20 THE COURT: JUST A MINUTE.

21 MR. SWERLING: I OBJECT TO HIS CONCLUSION THAT THE
22 INDIVIDUAL WAS SCARED. I THINK HE CAN DESCRIBE HIS
23 APPEARANCE BUT HE CANNOT COME TO A CONCLUSION AS TO WHAT THE
24 INDIVIDUAL'S STATE OF MIND WAS.

25 THE COURT: I SUSTAIN THE OBJECTION. YOU MAY DESCRIBE--

1 -WHEN YOU SAY THE PERSON WAS SCARED YOU ARE REACHING A
2 CONCLUSION YOURSELF AND THE ULTIMATE CONCLUSION HAS TO BE
3 REACHED BY THE JURY. YOU MAY DESCRIBE WHAT YOU SAW BUT YOU
4 CANNOT REACH YOUR OWN OPINION ABOUT THAT. YOU SEE WHAT I'M
5 SAYING, A CONCLUSION? JUST DESCRIBE WHAT YOU SAW.

6 A THE SUBJECT APPEARED TO ME TO BE NERVOUS AND EXCITED. OUR
7 JOB THERE WAS TO MAKE SURE THAT NOTHING HAPPENED, YOU KNOW,
8 PRESERVE THE PEACE. AT THE TIME WE WERE INSIDE THE LOBBY OF
9 THE COMFORT INN WE ESCORTED THE SUBJECT OUT THE DOOR INTO THE
10 PARKING LOT WHERE WE BEGAN ASKING HIM QUESTIONS ABOUT WHAT
11 HAD HAPPENED.

12 Q WHAT HAPPENED NEXT?

13 MR. SWERLING: I WOULD OBJECT TO ANYTHING THE SUBJECT
14 TOLD THIS OFFICER AS BEING HEARSAY.

15 Q AS A RESULT OF YOUR CONVERSATION WITH THIS INDIVIDUAL, WHAT
16 DID YOU DO?

17 A I NOTIFIED THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

18 Q WHY?

19 A BECAUSE THE SUBJECT WAS PASSING INFORMATION ON TO US THAT
20 WOULD BE OF INTEREST TO THE RICHLAND COUNTY SHERIFF'S
21 DEPARTMENT.

22 Q WHAT INFORMATION?

23 A HE STATED THAT HE HAD FOUND A BODY--

24 MR. SWERLING: OBJECTION.

25 THE COURT: I SUSTAIN THE OBJECTION. DON'T TELL WHAT

1 THE MAN SAID TO HIM. NOW, HE CAN SAY AS A RESULT OF
2 INFORMATION HE DID SOMETHING BUT YOU CAN'T GET AROUND IN THAT
3 FASHION. I INSTRUCT THE JURY TO DISREGARD THAT RESPONSE.
4 IT'S NOT APPROPRIATE.

5 Q AS A RESULT OF YOUR CONVERSATION WITH THIS INDIVIDUAL, WHAT
6 DID YOU DO?

7 A I THEN IMMEDIATELY NOTIFIED THE RICHLAND COUNTY SHERIFF'S
8 DEPARTMENT THROUGH OUR DISPATCHER AND DETAINED THE SUBJECT
9 THERE OF HIS OWN FREE WILL UNTIL RICHLAND COUNTY GOT THERE.

10 Q OKAY. APPROXIMATELY WHAT TIME WAS THIS?

11 A I DON'T REMEMBER. IT WAS IN THE EVENING TIME IS ALL I CAN
12 REMEMBER.

13 Q DID YOU FIND OUT HIS NAME?

14 A I DID NOT WRITE IT DOWN, NO.

15 Q CAN YOU DESCRIBE HIM?

16 A HE WAS A BLACK MALE. APPEARED TO BE IN HIS 20's, MID 20's,
17 MEDIUM HEIGHT, I'D SAY ABOUT FIVE TEN.

18 Q DID YOU SMELL ANY ALCOHOL ON HIM?

19 A NO, I DIDN'T SMELL ALCOHOL.

20 Q DID HE APPEAR TO BE INTOXICATED?

21 MR. SWERLING: OBJECTION, YOUR HONOR. THERE NO
22 RELEVANCE IF THE OFFICER CAN'T IDENTIFY WHO THE INDIVIDUAL
23 IS. THERE'S NO RELEVANCE IN THE TESTIMONY.

24 MR. COLEMAN: YOUR HONOR, HE CAN TESTIFY IF HE APPEARED
25 INTOXICATED.

1 MR. SWERLING: IT'S NOT RELEVANT TESTIMONY AT THIS
2 POINT. HE DOESN'T KNOW WHO WAS TALKING TO.

3 MR. COLEMAN: YOUR HONOR, WE ARE MERELY TRYING TO SHOW
4 THE Demeanor OF THE VICTIM--OF THE WITNESS.

5 MR. SWERLING: HE HASN'T IDENTIFIED THAT PERSON AS BEING
6 A WITNESS. IT'S NOT RELEVANT AT THIS TIME.

7 THE COURT: ASK HIM IF HE KNOWS WHO THE PERSON IS?

8 Q DO YOU KNOW WHO THE PERSON WAS?

9 A I DIDN'T KNOW HIM AT THE TIME OR PRIOR TO THAT THAT CALLED
10 BUT I CAN RECOGNIZE.

11 Q DO YOU KNOW WHAT HIS NAME WAS NOW?

12 A NO, I DO NOT KNOW THE NAME. I KNOW HIM ONLY BY SIGHT.

13 Q AT THE TIME HE GAVE YOU THE INFORMATION, WHAT DID YOU
14 BELIEVE?

15 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO WHAT HE
16 BELIEVED.

17 THE COURT: I SUSTAIN THE OBJECTION.

18 Q WHAT TIME DID YOU GET OFF THAT NIGHT?

19 A ELEVEN O'CLOCK, 11:00 P.M.

20 Q SO, IT WAS PRIOR TO THAT?

21 A YES, IT WAS.

22 Q CAN YOU GIVE US AN ESTIMATION? I MEAN--

23 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S ALREADY SAID
24 HE CANNOT GIVE AN ESTIMATE, HE DOESN'T KNOW WHAT TIME IT WAS.
25 IT WAS IN THE EVENING.

1 THE COURT: HE'S ASKING TO GIVE AN ESTIMATE OF TIME.
2 I'M GOING TO ALLOW HIM TO SEE IF HE CAN REFINE IT IN THE TIME
3 PERIOD THAT HE GOT OFF IF HE KNOWS. IF HE DOESN'T KNOW, THE
4 WITNESS IS REQUIRED--YOU ARE UNDER OATH, YOU'VE GOT TO TELL
5 THE TRUTH.

6 Q DO YOU KNOW WHAT TIME IT WAS WHEN YOU ARRIVED AT THE COMFORT
7 INN?

8 A NOT EXACTLY. NO, I DO NOT.

9 Q OKAY. CAN YOU GIVE US AN APPROXIMATION?

10 A I WOULD SAY AROUND 8:00 P.M.

11 Q OKAY. DID YOU DETAIN HIM 'TIL RICHLAND COUNTY CAME?

12 A YES, I DID. I STAYED WITH HIM. HE APPEARED TO ME THAT HE
13 WANTED TO TALK TO ANOTHER AUTHORITY.

14 Q OKAY.

15 MR. COLEMAN: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

16 THE COURT: CROSS EXAMINATION.

17 CROSS EXAMINATION BY

18 MR. SWERLING:

19 Q YOU SAY YOU GOT--YOU HAVE COMMITTED YOURSELF TO MR. COLEMAN
20 THAT YOU WERE AT THAT COMFORT INN AT 8:00 AT NIGHT?

21 A NO, I SAID APPROXIMATELY 8:00. THAT WAS A GUESS.

22 Q COULD IT HAVE BEEN AS LATE AS 10:00 OR 11:00?

23 A I WOULDN'T THINK IT WAS 11:00 BECAUSE I GET OFF AT 11:00.
24 I WOULDN'T HAVE BEEN THERE.

25 Q YOU DON'T REMEMBER, DO YOU?

1 A I DON'T REMEMBER EXACTLY WHAT TIME. I STATED I DIDN'T.

2 Q AND YOU DO REMEMBER, HOWEVER, YOU NOTIFIED RICHLAND COUNTY

3 SHERIFF'S DEPARTMENT IMMEDIATELY?

4 A YES, SIR.

5 Q SO, WHATEVER TIME THEY GOT THE CALL YOU WOULD AGREE THAT WAS

6 DONE IMMEDIATELY AFTER YOU ARRIVED AT THE SCENE?

7 A THEY ARRIVED SHORTLY AFTER.

8 Q SHORTLY? A FEW MINUTES?

9 A I WILL SAY LESS THAN TEN MINUTES.

10 Q LESS THAN TEN MINUTES. SO, WHATEVER THEIR RECORDS REFLECT

11 YOU ARRIVED THERE TEN MINUTES BEFORE THEY DID?

12 A APPROXIMATELY.

13 Q IS THAT CORRECT?

14 A YES.

15 Q OKAY. NOW, AS I UNDERSTAND WHAT YOU TESTIFIED TO YOU WERE

16 DISPATCHED THERE BECAUSE THERE WAS MENTAL PATIENT?

17 A I DIDN'T SAY MENTAL PATIENT. I SAID A MENTAL SUBJECT.

18 Q MENTAL SUBJECT.

19 A THAT COULD BE ANYTHING FROM SOMEONE ACTING ERRATICALLY AND

20 THAT'S JUST INFORMATION THAT THE DISPATCHER RELATES.

21 Q THAT'S WHAT I'M SAYING. THE DISPATCHER RELATED TO YOU IT WAS

22 A MENTAL SUBJECT?

23 A YES.

24 MR. SWERLING: NO FURTHER QUESTIONS.

25 THE COURT: ANY REDIRECT?

1 MR. COLEMAN: NO, YOUR HONOR.

2 THE COURT: YOU MAY STEP DOWN.

3 (WITNESS TO THE SIDE)

4 MR. COLEMAN: YOUR HONOR, THE STATE CALLS INVESTIGATOR
5 LLOYD DUNHAM TO THE STAND.

6 LLOYD DUNHAM, AFTER BEING DULY SWORN BY THE CLERK,
7 TESTIFIES AS FOLLOWS:

8 DIRECT EXAMINATION BY

9 MR. COLEMAN:

10 Q INVESTIGATOR DUNHAM, WHERE ARE YOU EMPLOYED?

11 A WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

12 Q AND WHAT ARE YOUR DUTIES?

13 A I'M AN INVESTIGATOR.

14 Q AND ON DECEMBER 26TH, 1988, WERE YOU AN INVESTIGATOR?

15 A YES, SIR, I WAS.

16 Q HOW LONG HAD YOU BEEN AN INVESTIGATOR AT THAT TIME?

17 A I'D BEEN AN INVESTIGATOR PROBABLY ABOUT A MONTH, TWO MONTHS.

18 Q OKAY. DID YOU HAVE AN OCCASION TO RESPOND TO THE COMFORT INN
19 LOCATED ON ELMWOOD AND MAIN ON DECEMBER 26TH, 1988?

20 A YES, SIR, I DID.

21 Q WHAT PRECIPITATED THAT CALL AND WHAT DID YOU FIND OUT ONCE
22 YOU GOT THERE?

23 A I RECEIVED A CALL THROUGH MY DISPATCH TO RESPOND TO THE
24 COMFORT INN ON NORTH MAIN AND MEET WITH CITY UNITS THERE.
25 ONCE THERE I MET WITH OFFICERS BLEVINS AND O'CONNELL, UNIFORM

1 OFFICERS. THEY EXPLAINED TO ME AT THIS TIME THEY HAD A BLACK
2 MALE SUBJECT BY THE NAME OF HAYES MALLOY THAT HAD SOME
3 INFORMATION REGARDING A BODY THAT WAS LOCATED OUT IN THE
4 COUNTY.

5 Q OKAY. WHAT HAPPENED NEXT?

6 A WELL, I MET WITH MR. MALLOY, DETERMINED THAT THE INFORMATION
7 HE HAD WARRANTED FURTHER INVESTIGATION SO I THEN--

8 Q EXPLAIN. DID YOU OBSERVE MR. MALLOY?

9 A YES, SIR, I DID.

10 Q EXPLAIN HIS DEMEANOR.

11 A WELL, HE WAS UPSET, HIGHLY AGITATED, RAMBLING ON CONTINUOUSLY
12 DIFFERENT INFORMATION THAT WAS BASICALLY OVERWHELMING TO ME
13 AT FIRST JUST COMING ON THE SCENE AND SPEAKING TO HIM. IT
14 WAS A LOT OF INFORMATION HE WAS GIVING OUT AT THE TIME.

15 Q OKAY. WHAT DID YOU DO NEXT?

16 A WELL, AFTER SPEAKING TO HIM FOR TEN OR FIFTEEN MINUTES,
17 SOMETHING LIKE THAT AND DETERMINING THAT THERE WAS SOME
18 PROBABLY VALIDITY TO WHAT HE WAS SAYING--

19 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO HIS MAKING
20 A CONCLUSION.

21 THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS
22 INSTRUCTED TO DISREGARD THE STATEMENT BY THE WITNESS AS TO
23 THE VALIDITY OF THE STATEMENT, THE VALIDITY OF THE STATEMENTS
24 MADE BY THE WITNESS MALLOY. THE JURY IS TO DISREGARD THAT
25 COMMENT.

1 Q AT THE TIME YOU GOT THERE, DID YOU BELIEVE MR. MALLOY?

2 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO WHETHER OR
3 NOT HE BELIEVED HIM.

4 THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS
5 INSTRUCTED TO DISREGARD THE QUESTION. IT'S NOT A PROPER
6 QUESTION, SOLICITOR.

7 Q WHAT DID YOU DO AFTER YOU GOT THIS INFORMATION?

8 A I THEN PUT MR. MALLOY IN MY CAR WITH ME, HE VOLUNTARILY CAME,
9 AND WE PROCEEDED TO DRIVE TO THIS LOCATION IN THE COUNTY.

10 Q WHERE IS THAT LOCATION?

11 A IT'S GOING TO BE BARNES STREET WHICH IS OFF BLUFF ROAD.

12 Q OKAY. WHEREABOUTS ON BARNES STREET DID YOU GO?

13 A IT'S GOING TO BE THE BROWN A.M.E. CHAPEL.

14 Q OKAY. WHAT DID YOU DISCOVER THERE?

15 A WELL, WE PULLED INTO THE PARKING LOT. THE DIRT DRIVEWAY OF
16 THE CHURCH. AND WE STOPPED THE CAR AND HE AT THIS POINT
17 POINTED OUT A MONTE CARLO THAT WAS SITTING TO THE RIGHT OF
18 MY VEHICLE. AND HE SAID THAT THAT WAS THE VICTIM'S VEHICLE
19 AND THAT BEHIND THE--I BELIEVE IT'S GOING TO BE AN
20 ADMINISTRATION TYPE BUILDING OF THE CHURCH, A SEPARATE
21 BUILDING, THAT THE VICTIM WOULD BE BEHIND THAT BUILDING.

22 Q WHAT DID YOU DO NEXT?

23 A WELL, I INSTRUCTED HIM TO STAY IN THE VEHICLE. I GOT OUT OF
24 MY CAR, WALKED TOWARDS THE CORNER AND AT THIS POINT WHEN I
25 GOT TO THE CORNER I COULD SEE ON THE GROUND A BLACK MALE

1 SUBJECT FACE UP WITH A LARGE AMOUNT OF BLOOD FROM ABOUT THE
2 HEAD AREA.

3 Q WHAT DID YOU DO NEXT?

4 A WELL, AT THIS POINT, I WALKED A LITTLE CLOSER, EXAMINED,
5 DETERMINE THAT INDEED THE SUBJECT WAS DECEASED AND THEN I
6 RETURNED BACK TO MY VEHICLE. AT THIS POINT, I CALLED FOR
7 ADDITIONAL UNITS.

8 Q OKAY. INVESTIGATOR DUNHAM, I'M GOING TO ASK YOU TO LOOK
9 THROUGH THESE PICTURES. LOOK AT THAT AND SEE IF YOU
10 RECOGNIZE THOSE PICTURES?

11 A YES, I DO. THIS IS OF--

12 Q JUST LOOK THROUGH ALL OF THEM.

13 A (WITNESS COMPLIES) YES, SIR, I BELIEVE ALL OF THESE ARE
14 GOING TO BE OF THE LOCATION.

15 Q OKAY. DO ALL OF THOSE PHOTOGRAPHS TRULY AND ACCURATELY
16 REPRESENT THE WAY THE SCENE WAS THAT NIGHT?

17 A YES, SIR, THEY DO.

18 Q OKAY.

19 MR. COLEMAN: YOUR HONOR, AT THIS TIME THE STATE WILL
20 OFFER THESE PHOTOGRAPHS INTO EVIDENCE.

21 THE COURT: ANY OBJECTION?

22 MR. SWERLING: I DON'T BELIEVE I HAVE ANY OBJECTION
23 EXCEPT THE ONE I DISCUSSED AT THE SIDE BAR.

24 MR. SWERLING: NO OBJECTION.

25 THE COURT: HAND THEM TO THE COURT REPORTER AND HAVE HER

1 MARK THEM AND HAND THEM BACK TO ME MR. COLEMAN.

2 (PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS STATE'S
3 EXHIBITS #1-16)

4 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
5 OBJECTION EXHIBITS WHICH WILL BE DESIGNATED AS STATE'S
6 EXHIBIT NUMBER 1 DESCRIBED AS AN EIGHT BY TEN BLACK AND WHITE
7 PHOTOGRAPH. STATE'S EXHIBIT NUMBER 2, EIGHT BY TEN BLACK AND
8 WHITE PHOTOGRAPH. STATE'S EXHIBIT NUMBER 3, EIGHT BY TEN
9 BLACK AND WHITE PHOTOGRAPH. STATE'S EXHIBIT NUMBER 4, EIGHT
10 BY TEN BLACK AND WHITE PHOTOGRAPH. STATE'S EXHIBIT NUMBER
11 5, EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH. STATE'S EXHIBIT
12 NUMBER 6, EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH. STATE'S
13 EXHIBIT NUMBER 7, EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH.
14 STATE'S EXHIBIT NUMBER 8, EIGHT BY TEN BLACK AND WHITE
15 PHOTOGRAPH. STATE'S EXHIBIT NUMBER 9, EIGHT BY TEN BLACK AND
16 WHITE PHOTOGRAPH. STATE'S EXHIBIT NUMBER 10, EIGHT BY TEN
17 BLACK AND WHITE PHOTOGRAPH. STATE'S EXHIBIT NUMBER 11, AN
18 EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH. STATES' EXHIBIT
19 NUMBER 12, EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH. STATE'S
20 EXHIBIT NUMBER 13, EIGHT BY TEN COLOR PHOTO. STATE'S EXHIBIT
21 NUMBER 14, AN EIGHT BY TEN COLOR PHOTO. STATE'S EXHIBIT
22 NUMBER 15, AN EIGHT BY TEN, COLOR PHOTOGRAPH. STATE'S
23 EXHIBIT NUMBER 16, EIGHT BY TEN COLOR PHOTOGRAPH. ALL OF
24 THESE ARE NOW IN THE RECORD OF THIS CASE WITHOUT OBJECTION.
25 MR. FOREMAN, LADIES AND GENTLEMEN, THEY ARE GOING TO USE THE

1 PHOTOGRAPHS AND PROBABLY HAND THEM OVER TO YOU TO LOOK AT.
2 AS WITH ANY EXHIBIT THAT'S ADMITTED INTO THE RECORD, THEY ARE
3 GOING TO HAND IT TO YOU AND IF YOU WILL TAKE A LOOK AT IT,
4 PASS IT ALONG ALL THE WAY TO THE BACK TO THE ALTERNATES AND
5 THEN GIVE THEM TO THE BAILIFF AND HE'LL BRING THEM BACK DOWN
6 AND PUT THEM ON THE--KEEP THE EVIDENCE ON THE EVIDENCE TABLE
7 OUT HERE, ALL RIGHT? NOW, WHAT THEY WANT YOU TO DO IS TAKE
8 A LOOK AT IT. YOU DON'T HAVE TO EXAMINE IT MINUTELY BECAUSE
9 EVERY EXHIBIT THAT'S ADMITTED INTO THE RECORD WILL BE SENT
10 TO THE JURY ROOM WHEN YOU ARE GIVEN THE CASE TO DETERMINE IN
11 THIS. SO, FOR THE TIME BEING TAKE A LOOK AT IT AND PASS IT
12 ALONG. ALL RIGHT? YOU MAY PUBLISH OR HAVE HIM DESCRIBE.

13 Q INVESTIGATOR DUNHAM, I'M GOING TO SHOW YOU WHAT'S MARKED AS
14 STATE'S EXHIBIT 1 THROUGH 16 AND JUST BRIEFLY, NUMBER ONE,
15 IDENTIFY THE EXHIBIT YOU ARE LOOKING AT AND BRIEFLY EXPLAIN
16 WHAT THAT IS. IF YOU GET SOME THAT ARE REDUNDANT, YOU CAN
17 --

18 A ALL RIGHT. STATE'S EXHIBIT NUMBER 1 WILL BE BEHIND THE
19 ADMINISTRATION BUILDING THAT I WAS SPEAKING OF WHERE THE
20 VICTIM'S BODY WAS FOUND.

21 Q WHAT IS BEHIND THAT ADMINISTRATIVE BUILDING?

22 A YOU'RE TALKING ABOUT THE AIR COMPRESSOR--I MEAN THE AIR
23 CONDITIONING, A DRIVEWAY AREA.

24 Q OKAY. WHERE WAS THE BODY FOUND THAT NIGHT?

25 A RIGHT NEXT TO THE AIR CONDITIONER.

1 Q OKAY. DOES THAT PHOTOGRAPH SHOW THE BODY?

2 A NO, SIR.

3 Q OKAY.

4 A THE SECOND ONE WILL BE ALSO THE BACK SIDE OF THE
5 ADMINISTRATION BUILDING. IT IS TAKEN A LITTLE FURTHER AWAY
6 AND IT ALSO DOES NOT INDICATE--DOES NOT HAVE THE BODY IN IT.

7 Q OKAY.

8 A NUMBER 3 WHICH WILL BE A LONG SHOT OF THE BROWN A.M.E. CHAPEL
9 WITH THE ENTRANCE DRIVEWAY, THE ADMINISTRATION BUILDING AND
10 THE MAIN BARNES STREET TO THE RIGHT.

11 Q OKAY.

12 A NUMBER 4 IS A REVERSE VIEW OF THE BACK BEHIND THE
13 ADMINISTRATION BUILDING SHOWING THE AIR COMPRESSOR, AIR
14 CONDITIONING UNIT AND, OF COURSE, THE BODY IS NOT THERE ALSO.
15 NUMBER 5 WOULD BE A NIGHTTIME PHOTOGRAPH OF THE SCENE OF THE
16 ADMINISTRATION BUILDING FROM IT AS YOU VIEW IT FROM THE
17 DRIVEWAY. NUMBER 6 WILL BE A VIEW OF THE VICTIM'S VEHICLE
18 WHICH IS PARKED TO THE LEFT OF THE MAIN CHURCH BUILDING.

19 Q LET ME STOP YOU. IS THERE WHERE THIS VEHICLE APPEARED THAT
20 NIGHT?

21 A YES, SIR. IT IS AS IT APPEARS. NUMBER 7 IS A NIGHTTIME
22 PHOTOGRAPH OF, AS I'M CALLING IT, THE ADMINISTRATION BUILDING
23 OR TO THE LEFT. OKAY. NUMBER 8 WILL BE THE ADMINISTRATION
24 BUILDING. AGAIN, IT WILL BE THE BACK SIDE WITH THE AIR
25 CONDITIONING UNIT AND IN THIS PICTURE IT DOES HAVE THE VICTIM

1 BESIDE THE AIR CONDITIONING UNIT.

2 Q IS THAT WHERE THE VICTIM WAS THE NIGHT--

3 A THAT IS AS I FOUND HIM.

4 Q OKAY.

5 A NUMBER 9 WILL BE ANOTHER VIEW OF THE ADMINISTRATION BUILDING
6 TAKEN FROM THE OPPOSITE SIDE OF THE DRIVEWAY. THIS WOULD BE
7 A DAYTIME PHOTOGRAPH. THERE WOULD BE NO VICTIM IN THAT
8 PHOTOGRAPH. NUMBER 10, ANOTHER LONG VIEW, A LITTLE BIT
9 FURTHER VIEW FROM THE CEMETERY BEHIND THE ADMINISTRATION
10 BUILDING. NUMBER 11 WILL BE A CEMETERY SIDE VIEW OF THE
11 ADMINISTRATION BUILDING, FRONT AND THE LEFT SIDE OF THE MAIN
12 CHAPEL BUILDING. NUMBER 12 WILL BE ANOTHER FRONT VIEW,
13 DAYTIME PHOTOGRAPH, OF THE ADMINISTRATION BUILDING AND THE
14 MAIN CHAPEL TAKEN DURING THE DAYTIME. NUMBER 13 WILL BE A
15 COLOR PHOTOGRAPH OF THE MAIN CHAPEL, ADMINISTRATION BUILDING,
16 THE DRIVEWAY ENTRANCE WHICH IN ENTERED AND BARNES STREET TO
17 THE RIGHT. NUMBER 14 WILL BE ANOTHER COLOR PHOTOGRAPH THIS
18 TIME OF THE BACK OF THE ADMINISTRATION BUILDING WHERE THE AIR
19 CONDITIONING UNIT WAS AND NO BODY PRESENT. THESE ARE
20 REDUNDANT. THIS IS ANOTHER COLOR PHOTOGRAPH OF THE
21 ADMINISTRATION BUILDING, BACK SIDE, AND THE SAME FOR THIS ONE
22 ALSO.

23 Q OKAY. AT WHAT TIME DID YOU ARRIVE AT THE COMFORT INN?

24 A IT WAS RIGHT AROUND 11:00. I'VE GOT MY NOTES.

25 Q AT THE COMFORT INN?

1 A YES, SIR.

2 Q WHAT TIME DID YOU ARRIVE AT THE SCENE?

3 A IT WAS A SHORT TIME THEREAFTER. 11:15, 11:20.

4 Q AT NIGHT?

5 A YES, SIR.

6 MR. COLEMAN: I BEG THE COURT'S INDULGENCE. (PAUSE)
7 YOUR HONOR, AT THIS TIME THE STATE WILL OFFER INTO EVIDENCE
8 A NOT TO SCALE REPLICA OF THE SCENE. MR. SWERLING DOES NOT
9 OBJECT.

10 MR. SWERLING: NO OBJECTION.

11 THE COURT: HAVE THE COURT REPORTER MARK IT THEN,
12 PLEASE.

13 (SKETCH IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT
14 #17)

15 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
16 OBJECTION AN EXHIBIT WHICH WILL BE DESIGNATED STATE'S EXHIBIT
17 NUMBER 17 WHICH IS A DRAWING APPROXIMATELY TWENTY-FOUR INCHES
18 BY THIRTY-SIX INCHES NOW ADMITTED WITHOUT OBJECTION.

19 Q INVESTIGATOR DUNHAM, I'M GOING TO ASK YOU TO STEP DOWN.

20 (WITNESS LEAVES STAND)

21 A THIS IS A DRAWING OF THE AREA. THIS IS WHERE WE ENTERED FROM
22 OFF OF ZION COMING OFF OF BARNES AND WHERE I PULLED MY CAR
23 WAS RIGHT ABOUT HERE IN FRONT OF THE CHURCH, THIS BEING WHAT
24 I'VE BEEN CALLING THE MAIN CHAPEL AND THIS IS WHAT I'VE BEEN
25 CALLING THE ADMINISTRATION CENTER. THIS HERE IS THE AIR

1 CONDITIONING UNIT AND TO THE RIGHT SIDE OF THAT IS WHERE I
2 FOUND THE VICTIM.

3 Q OKAY. I WANT TO GET YOU TO PUT A CIRCLE WHERE YOU FOUND THE
4 VICTIM.

5 A (WITNESS COMPLIES)

6 Q OKAY. WHAT ELSE IS IN THE AREA?

7 A OKAY. LABELED TO THIS, LIKE I SAY, IS A DIRT DRIVEWAY. DOWN
8 IN HERE WOULD BE THE CEMETERY AREA I WAS TALKING ABOUT THAT
9 THE PICTURE WAS TAKEN FROM. THIS I BELIEVE WAS GOING TO BE
10 AN ABANDONED BUILDING TYPE EMPTY STRUCTURE AND THIS IS JUST
11 ANOTHER RESIDENCE ACROSS THE STREET. AND THIS IS A LIGHT
12 POLE THAT WAS THERE RIGHT NEXT ILLUMINATING THE FRONT SIDE
13 OF THIS BUILDING.

14 Q WAS THE LIGHT WORKING?

15 A YES, SIR, IT WAS.

16 Q EXPLAIN WHERE YOU SAW THE VICTIM'S CAR WHEN YOU APPROACHED.

17 A ALL RIGHT. WHEN WE PULLED IN, ME AND MR. HAYES MALLOY, WE
18 PULLED IN, WE STOPPED ABOUT RIGHT IN HERE SOMEWHERE, JUST
19 ABOUT RIGHT THERE. WHEN WE STOPPED HE IMPLIED TO ME THAT THE
20 VEHICLE WAS--THE VICTIM'S VEHICLE WAS RIGHT HERE AND THAT IF
21 I WENT AROUND THE CORNER I'D FIND THE VICTIM.

22 Q OKAY. YOU CAN HAVE A SEAT.

23 (WITNESS RESUMES STAND)

24 Q DID THIS OCCUR IN RICHLAND COUNTY?

25 A YES, SIR, IT SURE DID.

1 Q WHEN YOU ARRIVED, WHAT DID YOU OBSERVE AROUND THE BODY, IF
2 ANYTHING?

3 A LIKE I SAID, HE WAS IN A FACE UP POSITION, BLOOD ABOUT THE
4 HEAD AREA. THERE WAS NO ITEMS THAT I CAN RECALL AROUND HIM
5 AT ALL. HE WAS ON THE PAVEMENT GRASS SECTION RIGHT THERE.

6 MR. COLEMAN: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

7 THE COURT: CROSS EXAMINATION.

8 CROSS EXAMINATION BY

9 MR. SWERLING:

10 Q COULD YOU STEP DOWN AGAIN, MR. DUNHAM.

11 (WITNESS LEAVE STAND)

12 Q COULD YOU MARK ON THIS DIAGRAM WHERE THE MONTE CARLO WAS?

13 A IT WOULD BE RIGHT HERE NEXT TO WHAT I'VE BEEN CALLING THE
14 MAIN CHAPEL.

15 Q HOW ABOUT JUST MARK THAT MONTE CARLO WITH YOUR PEN.

16 A (WITNESS COMPLIES)

17 Q AND WOULD YOU MARK THAT SUTTON FOR THE RECORD.

18 A (WITNESS COMPLIES)

19 MR. SWERLING: I HAVE NO FURTHER QUESTIONS.

20 THE COURT: ANY REDIRECT?

21 MR. COLEMAN: NO, YOUR HONOR.

22 THE COURT: YOU MAY STEP DOWN.

23 (WITNESS TO THE SIDE)

24 MR. COLEMAN: YOUR HONOR, THE STATE CALLS DR. ALEXANDER
25 TO THE STAND. ARMSTRONG.

1 DR. WILLIAM ARMSTRONG, AFTER BEING DULY SWORN BY THE
2 CLERK, TESTIFIES AS FOLLOWS:

3 DIRECT EXAMINATION BY

4 MR. COLEMAN:

5 MR. SWERLING: YOUR HONOR, IF I COULD JUST LET THE
6 RECORD REFLECT I HAVE NO OBJECTION TO DR. ARMSTRONG
7 TESTIFYING AT THIS TIME NOTWITHSTANDING THE FACT THAT THE
8 PERSON HAS NOT BEEN IDENTIFIED JUST TO ACCOMMODATE THE DOCTOR
9 AND HIS SCHEDULE BUT AT THIS TIME I DO NOT THINK THE
10 TESTIMONY WOULD BE APPROPRIATE. I JUST WANT THE RECORD TO
11 REFLECT I HAVE NO OBJECTION AT THIS TIME.

12 Q DR. ARMSTRONG, WHERE ARE YOU EMPLOYED?

13 A I'M A PATHOLOGIST AT RICHLAND MEMORIAL HOSPITAL.

14 Q AND HOW LONG HAVE YOU BEEN A PATHOLOGIST?

15 A FOR APPROXIMATELY CLOSE TO TWENTY YEARS I GUESS.

16 Q AND CAN YOU TELL THE JURY YOUR EDUCATIONAL BACKGROUND?

17 MR. SWERLING: I STIPULATE THAT HE'S A QUALIFIED
18 FORENSIC PATHOLOGIST.

19 THE COURT: WITHOUT OBJECTION THE WITNESS IS SO
20 QUALIFIED AS A FORENSIC PATHOLOGIST AND AUTHORIZED TO RENDER
21 AN OPINION IN THAT AREA. IF YOU'D LIKE TO FURTHER ELABORATE
22 ON HIS QUALIFICATIONS YOU MAY DO SO BUT HE'S BEEN SO
23 QUALIFIED.

24 Q OKAY. EXPLAIN TO THE JURY WHERE YOU WENT TO SCHOOL AND YOUR
25 HONORS AND DEGREES.

1 A WELL, I GRADUATED FROM THE UNIVERSITY OF MICHIGAN MEDICAL
2 SCHOOL AND THEIR RESIDENCY PROGRAM IN PATHOLOGY. I SPENT TWO
3 YEARS IN THE ARMY AT WALTER REED ARMY MEDICAL CENTER AND TWO
4 YEARS AT HENRY FORD HOSPITAL IN DETROIT AS A STAFF
5 PATHOLOGIST AND I'VE BEEN AT RICHLAND MEMORIAL FOR THE PAST
6 ELEVEN YEARS PLUS. AND IN THAT CAPACITY WE PERFORM FORENSIC
7 AUTOPSIES FOR THE CORONER'S OFFICE IN RICHLAND COUNTY.

8 Q AND HAVE YOU TESTIFIED BEFORE IN COURT AS AN EXPERT WITNESS?

9 A YES, I HAVE.

10 Q DID YOU HAVE AN OCCASION TO PERFORM AN AUTOPSY ON THE VICTIM
11 IN THIS CASE, DONALD SUTTON?

12 A YES, I DID.

13 Q AND WHAT WAS YOUR FINDING?

14 A MR. SUTTON SUSTAINED TWO BULLET WOUNDS TO THE HEAD. ONE WAS
15 IN THE LEFT EYEBROW AND NOSE REGION AND THE OTHER ONE WAS IN
16 THE RIGHT SIDE OF HIS HEAD. HE AS A RESULT OF THESE TWO
17 INJURIES DIED AND IN ADDITION HE HAD ASPIRATED BLOOD FROM
18 SUSTAINING INJURIES TO THE HEAD.

19 Q DID YOU MAKE ANY OBSERVATIONS AROUND THE ENTRY WOUNDS OF
20 THESE BULLETS?

21 A THE ENTRY WOUND TO THE BULLET WOUND SUSTAINED IN THE EYEBROW-
22 NOSE REGION WAS FIRED AT RELATIVELY CLOSE RANGE. AND I'M
23 JUDGING THAT BASED ON THE FACT THAT THERE WAS A CIRCLE OF
24 POWDER BURNS AROUND THIS BULLET WOUND AND THE ENTRANCE WOUND
25 OF THIS BULLET WAS RELATIVELY SMOOTH WHICH ALSO INDICATES

1 THAT IT WAS NOT AT POINT BLANK RANGE OR PRESSED AGAINST THE
2 SKIN BUT IT WAS NEAR THE SKIN AND WE CANNOT DETERMINE WITHOUT
3 KNOWING THE SPECIFIC WEAPON EXACTLY WHAT THE DISTANCE WAS BUT
4 IT WAS A MATTER OF PROBABLY INCHES.

5 Q DID YOU MEASURE THE POWDER THAT WAS AROUND THE WOUND?

6 A YES, I DID. WE USE THE METRIC SYSTEM TO MEASURE, MAKE ALL
7 OUR MEASUREMENTS AND IT WAS 1.5 TO 1.8 CENTIMETERS IN
8 DIAMETER AND IN INCH IS 2.5 CENTIMETERS SO IT WAS
9 APPROXIMATELY FIVE EIGHTS TO THREE QUARTERS OF AN INCH IN
10 DIAMETER ROUGHLY.

11 Q OKAY. CAN YOU GIVE US AN ESTIMATED TIME OF DEATH IN THIS
12 CASE?

13 A I CANNOT GIVE A CLEAR ESTIMATED TIME OF DEATH. BY HISTORY
14 FORM THE INVESTIGATING OFFICER--

15 MR. SWERLING: YOUR HONOR, I OBJECT TO THAT. THERE HAS
16 BEEN NO FOUNDATION LAID FOR THAT AT THIS TIME.

17 THE COURT: I SUSTAIN THE OBJECTION.

18 Q CAN YOU GIVE AN ESTIMATED TIME OF DEATH?

19 A NO.

20 Q WHY NOT?

21 A THE BODY WAS TRANSPORTED TO THE MORGUE COOLER AT RICHLAND
22 MEMORIAL SOMETIME EITHER DURING THE NIGHT OR THE DAY BEFORE
23 I PERFORMED THE AUTOPSY. WHEN THIS HAPPENS IT DISTORTS THE
24 COOLING OF THE BODY AND THE DEVELOPMENT OF RIGOR MORTIS AND
25 SOME OF THE STANDARD THINGS THAT WE USE TO JUDGE THE TIME OF

1 DEATH SO THAT'S WHY I COULDN'T REALLY ACCURATELY SAY.

2 Q OKAY. DID YOU RETRIEVE THE BULLETS FROM DONALD SUTTON?

3 A YES, I DID. THEY WERE WITHIN HIS HEAD.

4 Q OKAY. WHAT DID YOU DO WITH THOSE?

5 A THOSE WERE GIVEN TO THE FORENSIC INVESTIGATORS, CHRISTY AND
6 SULTON, AT THE TIME OF THE AUTOPSY.

7 Q OKAY. DID YOU EXTRACT BLOOD AND URINE FROM THE VICTIM?

8 A YES, I DID. BLOOD SPECIMENS AND URINE WERE DRAWN FOR
9 TOXICOLOGY STUDIES.

10 Q OKAY. AND WHAT DID YOU DO WITH THOSE?

11 A THOSE I RELEASED TO THE CORNER'S OFFICE.

12 Q OKAY. DID YOU GIVE THOSE TO A REPRESENTATIVE OF THE
13 CORONER'S OFFICE?

14 A YES.

15 Q OKAY.

16 MR. COLEMAN: I BEG THE COURT'S INDULGENCE. (PAUSE)

17 YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

18 THE COURT: CROSS EXAMINATION.

19 CROSS EXAMINATION BY

20 MR. SWERLING:

21 Q DR. ARMSTRONG, IN THE FIELD OF PATHOLOGY, FORENSIC PATHOLOGY
22 PARTICULARLY, YOU ARE LOOKING AT OTHER AREAS OF THE BODY TO
23 DETERMINE--TO GET A GROSS ANATOMICAL VIEW AND AN INTERNAL
24 VIEW OF REASONS WHY AN INDIVIDUAL MAY HAVE DIED, IS THAT
25 CORRECT?

1 A YES.

2 Q OKAY. AND, OF COURSE, YOU ALSO LOOK FOR OTHER PARTICULAR
3 ITEMS ABOUT THE BODY WHICH MIGHT PROVIDE SOME EXPLANATIONS
4 AS TO THE MANNER OF DEATH OR THE TIME OF DEATH OR PHYSICAL
5 CONFRONTATION OR THINGS OF THAT NATURE, IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q AND ALSO IN THE FIELD OF FORENSIC PATHOLOGY YOU CAN MAKE
8 ESTIMATIONS CONCERNING DISTANCES POSSIBLY OR ANGLES THAT A
9 BULLETS WERE FIRED AT AND THINGS OF THAT NATURE, IS THAT
10 CORRECT?

11 A THAT'S CORRECT.

12 Q OKAY. NOW, YOU TESTIFIED THERE WERE POWDER BURNS ON THE
13 NASAL SIDE, IS THAT CORRECT, AND THAT WAS ON THE--

14 A LEFT.

15 Q LEFT. OKAY. THAT WOULD HAVE BEEN OVER HERE?

16 A YES, SIR.

17 Q ALL RIGHT. AND BASED UPON A REASONABLE DEGREE OF MEDICAL
18 CERTAINTY WHAT WOULD YOU SAY MOST PROBABLY WOULD HAVE BEEN
19 THE DISTANCE THAT THAT SHOT WAS FIRED FROM SINCE THERE WERE
20 POWDER BURNS AND THEY HAD A CIRCUMFERENCE?

21 A WELL, AS I SAID EARLIER, IT DEPENDS A LOT ON THE WEAPON. I
22 WOULD ESTIMATE THAT AN INCH OR THEREABOUTS, POSSIBLY TWO
23 INCHES.

24 Q SOMEWHERE BETWEEN AN INCH AND TWO INCHES. IS THAT WHAT I
25 UNDERSTOOD YOUR TESTIMONY TO BE?

1 A WELL, AGAIN DEPENDING ON THE WEAPON.

2 Q DEPENDING UPON THE WEAPON. WERE YOU ABLE TO MAKE ANY

3 DETERMINATION AS TO THE CALIBER OF THE BULLET IN THIS CASE?

4 A WE SOMETIMES WILL MAKE COMMENT ABOUT THAT BUT IN THIS CASE

5 I DEFERRED EVALUATION OF THE CALIBER.

6 Q AND THE WOUND IN THE RIGHT SIDE--WAS IT IN THE TEMPLE?

7 A YES.

8 Q WOULD THAT HAVE BEEN RIGHT HERE? OKAY. I NOTICE FROM YOUR

9 REPORT THAT THERE WERE NO POWDER BURNS.

10 A THAT'S CORRECT.

11 Q SO, THAT WOULD INDICATE A SHOT THAT WAS NOT FIRED AT CLOSE

12 RANGE, WOULD IT NOT?

13 A THAT'S CORRECT.

14 Q OKAY. WHERE THERE ARE NO POWDER BURNS--IN OTHER WORDS, WOULD

15 YOU EXPLAIN TO THE JURY HOW POWDER BURNS GET ON SOMEONE WHO

16 IS SHOT?

17 A YES. WHEN A WEAPON IS FIRED, A GUN, NOT ONLY THE BULLET

18 COMES OUT, BUT INCINERATED PARTICLES OF GUN POWDER AND

19 WADDING DEPENDING ON THE TYPE OF BULLET AND CASINGS ARE ALSO

20 RELEASED. THE POWDER PORTION OF THE EXHAUST WILL TRAVEL

21 CERTAINLY MUCH LESS FAR THAN THE BULLET DOES. IN FACT, IT

22 DOESN'T TRAVEL VERY FAR AT ALL AND THAT DEPENDS AGAIN A LOT

23 ON THE WEAPON. I CANNOT REALLY TESTIFY AS TO HOW FAR POWDER

24 WILL TRAVEL BUT WE DO KNOW THAT AT CLOSE ENOUGH RANGE THE

25 POWDER WILL BE EMBEDDED INTO THE SKIN AS SMALL FLECKS OF DARK

1 MATERIAL AND IT FOLLOWS A FAIRLY CHARACTERISTIC CIRCULAR
2 PATTERN.

3 Q AND IF PROPER TESTS WERE PERFORMED BY BALLISTICS EXPERTS THAT
4 DETERMINATION CAN BE MADE BY USING SIMILAR WEAPONS UNDER SAME
5 OR SIMILAR CIRCUMSTANCES TO ESTABLISH A PATTERN, IS THAT NOT
6 CORRECT?

7 A YES.

8 Q NOW, POWDER BURNS WILL APPEAR ON A PERSON OR A HUMAN BEING
9 WHO IS SHOT WHEN A PISTOL IS FIRED AT WHAT DISTANCE
10 GENERALLY? A RANGE.

11 A I DON'T KNOW WHETHER I'VE EVER SEEN THE GREATEST DISTANCE
12 THAT POWDER BURNS CAN BE ATTAINED, BUT IT WOULD BE SUCH THAT
13 WE COULD SEE THEM ON THE BODY WOULD PROBABLY BE MEASURED IN
14 FEET. YOU KNOW, ONE TO TWO FEET.

15 Q SO, IF SOMEONE WERE SHOT WITH A PISTOL WHICH IS A LIGHTER
16 CALIBER AND ALSO WITH LESS FLECK I SUPPOSE OR POWDER BURN
17 THAN RIFLE ANYWHERE FROM TWO FEET DOWN--IF THE PISTOL IS HELD
18 FROM TWO FEET DOWN FROM A HUMAN BEING YOU WOULD EXPECT TO
19 FIND POWDER BURNS, IS THAT CORRECT?

20 MR. COLEMAN: YOUR HONOR, I'M GOING TO OBJECT AT THIS
21 TIME. I DON'T THINK HE'S QUALIFIED AS AN EXPERT IN THE
22 FIRING OF WEAPONS.

23 MR. SWERLING: HE SAID HE WAS, YOUR HONOR. HE'S A
24 FORENSIC PATHOLOGIST. HE STUDIES POWDER BURNS.

25 MR. COLEMAN: THAT HAS NOTHING TO DO WITH THE DISTANCE

1 OF POWDER BURNS.

2 THE COURT: I DON'T THINK HE'S BEEN QUALIFIED. YOU MAY
3 WANT TO QUALIFY HIM IN THAT AREA, MR. SWERLING. HE'S BEEN
4 TESTIFYING SUBSTANTIALLY TO IT UNOBJECTED TO.

5 Q DOCTOR, AS PART OF YOUR TRAINING AS A FORENSIC PATHOLOGIST,
6 DO YOU STUDY POWDER BURNS?

7 A WELL, WE DO TO A LIMITED EXTENT. YOU KNOW, THOSE GENERALLY
8 ARE BETTER HANDLED BY BALLISTICS EXPERTS SO WE ONLY TRY TO
9 TAKE IT SO FAR AND THAT IS SIMPLY THAT POWDER BURNS ARE
10 PRESENT OR NOT.

11 Q AND IN YOUR TRAINING AS A PATHOLOGIST BOTH IN SCHOOL AND IN
12 YOUR PRACTICE, AREN'T YOU CALLED UPON SOMETIMES TO ESTIMATE
13 HOW FAR BULLETS OR A SHOT WAS FIRED FROM, WHAT DISTANCE?

14 A WE ARE CALLED UPON TO TESTIFY TO THAT AND SOMETIMES WE FEEL
15 ABLE TO SAY SOMETHING AND SOMETIMES NOT.

16 Q AND THAT'S BASED UPON YOUR TRAINING AND EXPERIENCE, IS THAT
17 CORRECT?

18 A YES.

19 Q AND IN YOUR TRAINING AND EXPERIENCE OF OVER A PERIOD OF
20 TWENTY YEARS YOU HAVE STUDIED POWDER BURNS AND DISTANCES OF
21 PARTICULAR WEAPONS BOTH IN TRAINING AND EXPERIENCE, HAVE YOU
22 NOT?

23 A TO A LIMITED EXTENT, YES.

24 Q AND YOU'VE ALSO TESTIFIED IN COURT, THIS COURTROOM AND THE
25 OTHER COURTROOM, ON OTHER OCCASIONS AS TO POSSIBILITIES OF

1 DISTANCES OR THE PROBABILITY OF DISTANCES BETWEEN SOME
2 PARTICULAR CALIBER WEAPON AND A WOUND, HAVE YOU NOT?

3 A YES.

4 Q AND YOU HAVE DONE SO AT THE REQUEST OF THESE THREE GENTLEMEN
5 RIGHT HERE, HAVE YOU NOT?

6 A YES.

7 Q OKAY.

8 MR. SWERLING: YOUR HONOR, I'D LIKE TO PURSUE THE
9 QUESTION A LITTLE FURTHER.

10 THE COURT: I FIND HIM SO QUALIFIED. YOU MAY
11 PROCEED.

12 Q NOW, WOULD YOU FROM TWO FEET THEN TO ZERO OR TWO FEET DOWN,
13 YOU WOULD EXPECT TO FIND--IF I WAS HOLDING A PISTOL TWO FEET
14 FROM A HUMAN DOWN TO THE BODY, YOU WOULD EXPECT TO FIND A
15 POWDER BURN, IS THAT CORRECT? FROM YOUR EXPERIENCE.

16 A WELL, WHEN YOU GET OUT INTO THE TWO FEET RANGE, THE SPRAY IS
17 QUITE BROAD OR MAY BE QUITE BROAD AND SO YOU MAY NOT SEE IT
18 VISUALLY.

19 Q OKAY. BUT YOU COULD WITH A CLOSER INSPECTION?

20 A YES. THERE ARE METHODS THAT THE FORENSIC INVESTIGATORS HAVE
21 TO DETECT THE PRESENCE OF POWDER AND IT MAY BE ONLY THROUGH
22 THAT THAT YOU CAN DETECT IT.

23 Q NOW, WITH RESPECT TO THE ENTRY IN THE RIGHT TEMPLE YOU DID
24 NOT SEE ANY POWDER BURNS?

25 A NO, I DIDN'T.

1 Q AND BASED UPON YOUR EXPERIENCE AND YOUR TRAINING, WOULD THAT
2 INDICATE TO YOU THAT THE SHOT WAS FIRED AT A DISTANCE GREATER
3 THAN TWO FEET?

4 A AS A ROUGH APPROXIMATION AS NEAR AS I CAN TELL, THAT WOULD
5 BE WHAT I WOULD ESTIMATE.

6 Q WITHOUT KNOWING WHAT THE WEAPON WAS?

7 A YES.

8 Q AT LEAST TWO FEET AWAY WOULD EXPLAIN THE ABSENCE OF POWDER
9 BURNS, IS THAT CORRECT?

10 A YES.

11 Q ALL RIGHT. ONE OTHER THING. NOW, YOU DON'T ONLY LOOK AT THE
12 WOUNDS THEMSELVES. YOU LOOK AT OTHER AREAS OF THE BODY?

13 A THAT'S CORRECT.

14 Q BECAUSE THAT MAY BECOME IMPORTANT IN DETERMINING CAUSE OF
15 DEATH AND WHETHER CERTAIN POST MORTEM OR PRE-DEATH ABUSE
16 MIGHT HAVE BEEN TAKEN ON THE BODY OR SOMETHING OF THAT
17 NATURE, IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q YOU HAVE TO LOOK AT THOSE THINGS. AND THE SOLICITOR DIDN'T
20 ASK YOU ABOUT THIS BUT LET ME ASK YOU SOMETHING. DID YOU
21 NOTICE ANYTHING PARTICULAR, PARTICULARLY UNUSUAL ABOUT THE-
22 -I GUESS IT'S CALLED THE M.P. JOINTS OF THE THUMBS? I DON'T
23 KNOW WHAT THOSE ARE, MAYBE YOU CAN EXPLAIN THOSE TO THE JURY.

24 A YES. THERE WERE TWO SYMMETRICAL ABRASIONS THAT I DETECTED
25 ON THE INSIDE OF THE THUMB. THE M.P. STANDS FOR

1 METACARPOPHALANGEAL JOINT AND THAT'S ESSENTIALLY THE BASE OF
2 THE THUMB. AND TWO ABRADED AREAS WERE FOUND ESSENTIALLY OVER
3 THE BONE OF THESE JOINTS AND THEY WERE BOTH--THEY WERE EQUAL
4 IN ROUGHLY DIMENSION.

5 Q DOCTOR, IF YOU WOULD, COULD YOU COME DOWN HERE AND SHOW THE
6 JURY ON THE BOARD HERE?

7 A YES.

8 Q I UNDERSTAND YOU ARE NOT AN ARTIST BUT COULD YOU JUST DRAW
9 WHAT YOU ARE TALKING ABOUT, WHAT YOU FOUND?

10 (WITNESS LEAVES STAND)

11 A A PERSON IS HOLDING HIS HANDS AT YOU LIKE THIS (INDICATING).

12 THE COURT: MR. WITNESS, DRAW IT FIRST AND THEN I'LL
13 HAVE YOU STAND ON THE OTHER SIDE AND DESCRIBE IT FOR US,
14 OKAY?

15 A OKAY. THIS IS THE RIGHT HAND, THIS IS THE LEFT HAND WITH THE
16 PALMS FACING YOU. THERE WAS AN ABRADED AREA ON EACH SIDE
17 THAT AS I SAID WAS OVER THIS AREA OF THE THUMB.

18 Q GO AHEAD AND TAKE THE STAND.

19 (WITNESS RESUMES STAND)

20 Q FOR OUR LAY INFORMATION, WHAT DO YOU MEAN BY AN ABRADED AREA?

21 A AN ABRASION IS ESSENTIALLY A SCRAPING INJURY.

22 Q SCRAPE. AND THESE WERE SYMMETRICAL MEANING WHAT?

23 A THEY WERE EQUAL IN SIZE AND LOCATED IN THE SAME PLACE ON EACH
24 SIDE ON EACH HAND.

25 Q NOW, DID YOU ALSO FIND ANYTHING IN THOSE ABRASIONS WHICH YOU

1 AS A PATHOLOGIST THOUGHT WAS SIGNIFICANT?

2 A MAY I JUST CHECK MY NOTES ON THIS?

3 Q CERTAINLY.

4 A I FOUND FRAGMENTS OF WHAT APPEARED TO BE DRIED GRASS, LAWN
5 GRASS, IN THE AREAS OF THE WOUND AND IN THE WOUND. AND
6 JUDGING FROM THE APPEARANCE OF THESE I ASSESSED THEM AS
7 OCCURRING MOST PROBABLY AFTER DEATH.

8 Q NOW, WHERE ELSE DID YOU NOTICE FRAGMENTS OF GRASS, IF YOU
9 DID?

10 A LET'S SEE. LET ME CHECK THIS AGAIN.

11 Q CERTAINLY.

12 A THEY WERE OBSERVED ON THE ARMS IN AREAS NOT ABRADED.

13 Q SO, WHAT YOU ARE TELLING THE JURY IS YOU FOUND TWO ABRASIONS
14 ON THE THUMBS?

15 A YES.

16 Q WITH GRASS IN THEM?

17 A YES.

18 Q AND IN YOUR OPINION THOSE WERE POST MORTEM, IN OTHER WORDS,
19 AFTER DEATH?

20 A YES, SIR.

21 Q THESE ABRASIONS WERE MADE. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q HOW CAN YOU TELL THAT THESE ARE POST MORTEM? WHAT IS IT?
24 IS IT A VISUAL OBSERVATION YOU CAN MAKE AND THAT MAKES THE
25 DETERMINATION THAT THESE ABRASIONS WERE PUT ON THERE POST

1 MORTEM?

2 A YES. THE TISSUE IN LIVING PEOPLE RESPOND DIFFERENTLY AND
3 LOOKS DIFFERENTLY THAN WHEN IT HAS OCCURRED IN AN ORGANISM
4 OR A PERSON WHO IS DEAD. AND IT HAS A LOT TO DO WITH THE
5 BLEEDING AND TISSUE RESPONSE. IN OTHER WORDS, THERE WAS
6 ESSENTIALLY NO BLEEDING IN THE ABRASIONS THEMSELVES, THE
7 SCRAPES, AND, OF COURSE, PEOPLE WHO ARE DEAD DO NOT BLEED AND
8 PEOPLE WHO ARE ALIVE DO. THOSE, PLUS THE OVERALL--IT HAS
9 MORE OR LESS OF A GLASSY APPEARANCE TO IT RATHER THAN A ROUGH
10 APPEARANCE.

11 Q SO, YOUR CONCLUSIONS THESE WERE INFLICTED POST MORTEM, AFTER
12 DEATH?

13 A YES.

14 Q AND YOU FOUND GRASS IN THOSE WOUNDS AND YOU AS WELL FOUND
15 GRASS UP AND DOWN THE ARMS, IS THAT CORRECT?

16 A YES, THAT'S CORRECT.

17 Q BASED UPON YOUR EXPERIENCE AS FORENSIC PATHOLOGIST, DID YOU
18 REACH A CONCLUSION AS TO WHETHER OR NOT AFTER DEATH THE BODY
19 WAS DRAGGED?

20 A I CANNOT TELL CERTAINLY PRECISELY HOW THESE OCCURRED BUT FROM
21 THE MOST LIKELY ESTIMATE I WOULD SAY IT APPEARED AS THOUGH
22 THE BODY HAD BEEN DRAGGED.

23 Q FROM ONE POINT TO ANOTHER AFTER DEATH?

24 A YES.

25 MR. SWERLING: NO FURTHER QUESTIONS.

1 THE COURT: ANY REDIRECT?

2 MR. COLEMAN: YES, SIR.

3 REDIRECT EXAMINATION BY

4 MR. COLEMAN:

5 Q DR. ARMSTRONG, CAN YOU TELL DID DONALD SUTTON DIE INSTANTLY?

6 MR. SWERLING: OBJECTION, YOUR HONOR. NOT PROPER
7 REDIRECT.

8 MR. COLEMAN: YOUR HONOR, HE BROUGHT IN THE QUESTION AS
9 TO APPROXIMATE TIME OF DEATH.

10 MR. SWERLING: I DON'T THINK I DID. I DON'T THINK THERE
11 WAS ANY QUESTION ASKED ABOUT--

12 THE COURT: WELL, YOU'VE ALSO GONE INTO, COUNSEL, ABOUT
13 THE ABRASIONS TO THE HAND. I'M GOING TO ALLOW HIM TO GO INTO
14 IT. IT'S PROPER REDIRECT. GO AHEAD.

15 Q CAN YOU TELL US IF HE DIED INSTANTLY FROM THE WOUND TO THE
16 HEAD?

17 A HE DID NOT DIE INSTANTLY BUT RELATIVELY SOON. IN I WOULD SAY
18 A MATTER OF MINUTES AFTER BEING SHOT AND I BASE THAT ON THE
19 FACT THAT HE HAD LIVED LONG ENOUGH TO ASPIRATE BLOOD IN HIS
20 LUNGS FROM THE WOUND THAT WAS INFLECTED HERE (INDICATING).

21 Q I SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT NUMBER 8. DO YOU
22 NOTICE THE BODY LYING?

23 A YES, SIR.

24 Q OKAY. WHAT IS HE LYING ON?

25 A GRASS.

1 Q AND WHAT ELSE?

2 A AND PART ON DIRT.

3 Q OKAY. COULD THE ABRASIONS ON HIS HAND HAVE COME FROM THE
4 FALL ON PAVEMENT?

5 MR. SWERLING: NOT A PROPER FOUNDATION BEEN LAID FOR
6 THAT.

7 THE COURT: I SUSTAIN THAT OBJECTION.

8 Q TAKE A LOOK AT THIS PHOTOGRAPH. WHAT DOES THAT APPEAR TO BE?

9 MR. SWERLING: IF YOUR HONOR PLEASE, IT'S NOT IN
10 EVIDENCE YET.

11 MR. COLEMAN: HE CAN SAY WHAT IT APPEARS TO BE, YOUR
12 HONOR.

13 THE COURT: NO. HE'S GOT TO IDENTIFY IT FIRST. IT'S NOT
14 IN EVIDENCE. IS IT IN EVIDENCE?

15 MR. COLEMAN: NO, SIR.

16 THE COURT: WELL, HE CAN'T SAY WHAT IT APPEARS TO BE.
17 YOU CAN'T TESTIFY TO AN EXHIBIT UNTIL IT'S IN EVIDENCE. I
18 SUSTAIN THE OBJECTION.

19 Q DOCTOR, I ASK YOUR OPINION TO A MEDICAL CERTAINTY, TO A
20 DEGREE OF MEDICAL CERTAINTY, IF AN INDIVIDUAL STANDING ON
21 PAVEMENT AND HE FELL ON THAT PAVEMENT, COULD THOSE ABRASIONS
22 BE CAUSED BY FALLING ON PAVEMENT?

23 A IN MY OPINION, NO.

24 MR. COLEMAN: OKAY. NO FURTHER QUESTIONS.

25 MR. SWERLING: NO QUESTIONS.

1 THE COURT: YOU MAY STEP DOWN.

2 (WITNESS TO THE SIDE)

3 MR. BILTON: MAY WE APPROACH THE BENCH, YOUR HONOR?

4 THE COURT: YES.

5 (MR. BILTON AND MR. SWERLING APPROACH THE BENCH OUT OF
6 THE PRESENCE OF THE COURT REPORTER)

7 THE COURT: LADIES AND GENTLEMEN, WE ARE AT A POINT THAT
8 WE NEED TO DO SOME THINGS BUT INSTEAD OF SENDING YOU BACK AND
9 SEEING IF WE CAN CONTINUE ON I'M GOING TO LET YOU GO TO LUNCH
10 AND I WANT YOU BACK AT 2:00, OKAY? NOW, AT 2:00 THE SOONER
11 WE GET ALL OF THIS DONE WE'LL BE PREPARED TO GO FORWARD BUT
12 FOR SOME REASON IF WE RUN LONGER IT MAY BE A LITTLE LATER
13 BECAUSE I'VE GOT TO GIVE THEM TIME TO GET SOME LUNCH, TOO,
14 AS YOU WOULD EXPECT. REMEMBER MY INSTRUCTIONS ABOUT NOT
15 DISCUSSING THE CASE. GO AHEAD AND GO TO LUNCH. GO OUT THE
16 BACK AREA WAY, OKAY? BE BACK IN YOUR JURY ROOM AT TWO
17 O'CLOCK, OKAY?

18 (THE JURY LEAVES THE JURY BOX AT 12:20 P.M.)

19 THE COURT: ALL RIGHT, THE JURY IS OUTSIDE THE PRESENCE
20 OF THE COURT. WHERE IS THE STATE HOSPITAL RECORD? COME
21 FORWARD, PLEASE.

22 FARROLL GUNTER, AFTER BEING DULY SWORN BY THE CLERK,
23 TESTIFIES AS FOLLOWS:

24 DIRECT EXAMINATION BY

25 THE COURT:

1 Q YOU ARE EMPLOYED WITH WHO?

2 A SOUTH CAROLINA STATE HOSPITAL.

3 Q IN WHAT CAPACITY?

4 A I'M THE REGISTRAR.

5 Q AS SUCH ARE YOU THE CUSTODIAN OF THE RECORDS OF ALL PATIENTS
6 THAT ARE TREATED THERE?

7 A YES, SIR.

8 Q AND WERE YOU REQUESTED TO BY ORDER OF THIS COURT TO PRODUCE
9 THE RECORD OF A PATIENT?

10 A YES, I WAS, YOUR HONOR.

11 Q AND HAVE YOU BROUGHT THAT RECORD WITH YOU?

12 A YES, I HAVE, YOUR HONOR.

13 Q WOULD YOU TURN IT OVER TO THE COURT AT THIS TIME, PLEASE?
14 HAND IT TO THE COURT REPORTER. IS THAT THE ORIGINAL?

15 A NO, YOUR HONOR. THIS RECORD HAS BEEN PHOTOCOPIED OR
16 MICROFILMED AND THIS IS A COPY OF THE MICROFILMED, SIR.

17 Q IS IT A COMPLETE COPY OF THE RECORDS THAT YOU HAVE?

18 A IT IS THE COMPLETE RECORD OF THE PSYCHIATRIC RECORD
19 MAINTAINED AT THE SOUTH CAROLINA STATE HOSPITAL, YOUR HONOR.

20 THE COURT: ANY OTHER QUESTIONS OF THIS WITNESS? YOU MAY
21 STEP DOWN AND YOU MAY GO.

22 MR. SWERLING: YOUR HONOR, IF I MIGHT.

23 CROSS EXAMINATION BY

24 MR. SWERLING:

25 Q IS THIS THE RECORDS THAT ARE KEPT IN THE ORDINARY COURSE OF

1 BUSINESS BY THE SOUTH CAROLINA STATE HOSPITAL?

2 A YES, THEY ARE.

3 Q ARE THEY MADE CONTEMPORANEOUSLY WITH THE EXAMINATIONS THAT

4 ARE CONDUCTED AND THE TESTS THAT ARE PERFORMED?

5 A EVERYTHING THAT TOOK PLACE DURING THE STAY AT THE SOUTH

6 CAROLINA STATE HOSPITAL IS MAINTAINED IN THE RECORD.

7 Q MR. GUNTER, AS I UNDERSTAND IT, YOU ARE THE CUSTODIAN OF THE

8 RECORDS?

9 A YES.

10 Q AND YOU CERTIFY THAT THOSE ARE THE OFFICIAL RECORDS OF THE

11 SOUTH CAROLINA STATE HOSPITAL?

12 A I DO.

13 THE COURT: THE PERSON'S NAME WAS KENNETH INGRAM?

14 MR. SWERLING: KENNETH GARDNER.

15 THE COURT: GARDNER. ALL RIGHT. YOU MAY GO, SIR.

16 (WITNESS TO THE SIDE)

17 THE COURT: MADAM REPORTER, MAKE THAT A COURT'S EXHIBIT.

18 (STATE HOSPITAL RECORD IS MARKED AS COURT'S EXHIBIT #1)

19 THE COURT: DO YOU NEED THIS PHOTOCOPY BACK?

20 MR. GUNTER: NO.

21 THE COURT: ALL RIGHT. I ALSO ORDER THAT THE RECORD NOT

22 BE MADE AVAILABLE TO ANYONE OTHER THAN COUNSEL FOR THE STATE

23 AND COUNSEL FOR THE DEFENSE OR AS ORDERED BY THE SOUTH

24 CAROLINA SUPREME COURT. THANK YOU, SIR. ANY OTHER CUSTODIAN

25 OF THE RECORDS PRESENT? IS THERE ANY QUESTION ABOUT THE USE

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18 MR. BILTON: YES, YOUR HONOR. I PREVIOUSLY ASKED MR.

19 SWERLING WHETHER HE WAS GOING TO CONTEST THE VOLUNTARINESS

20 OF THE STATEMENT OF THE DEFENDANT. I WAS WAITING.

21 MR. SWERLING: IF YOUR HONOR PLEASE, WE DO NOT. MR.

22 TILLMAN DOES NOT. I'VE EXPLAINED TO HIM HIS RIGHTS. DOES

23 NOT CONTEST THE VOLUNTARINESS OF THE STATEMENT OR WHETHER OR

24 NOT HE GAVE AN EFFECTIVE, INTELLIGENT WAIVER. HOWEVER, I DO

25 BELIEVE THAT THE STATEMENT IS NOT AN ADMISSION AGAINST

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1 INTEREST. IT IS AN EXCULPATORY STATEMENT AND SHOULD NOT BE
2 ADMISSIBLE AT THIS STAGE OF THE TRIAL. THE ONLY METHOD BY
3 WHICH I UNDERSTAND IT CAN COME IN IS IF IT'S A STATEMENT
4 AGAINST HIS INTEREST.

5 THE COURT: WELL, I READ IT AND HE DENIES THE CRIME.
6 IT'S NOT THE TYPICAL "CONFESSION" BUT AS I UNDERSTAND THE
7 STATE'S POSITION IS IT'S AN ADMISSION AS TO HIS LOCATION AND
8 WHEREABOUTS ON THE TIME IN QUESTION WHICH MAY OR MAY NOT
9 DEFEAT ANY ALIBI DEFENSE WHICH, OF COURSE, THE STATE HAS TO
10 PROVE THE DEFENDANT WAS PRESENT AT THE SCENE OF THE CRIME
11 WHEN IT WAS COMMITTED AND FOR THAT REASON THE COURT DOES FIND
12 THAT IT IS AN ADMISSION AGAINST INTEREST.

13 MR. SWERLING: YOUR HONOR, THEN WITH RESPECT TO THE
14 STATEMENT AND PURSUANT TO STATE VS. GAMBLE, 146 SOUTHEAST 2d
15 709, A 1966 CASE, THE SUPREME COURT HELD IN THAT CASE THAT
16 WHILE IT WAS PERMISSIBLE TO INTRODUCE A CONFESSION IN A
17 CONSENT RAPE PROSECUTION PORTIONS OF THE CONFESSION WHICH
18 RELATED TO OTHER CRIMES SHOULD HAVE BEEN REDACTED AND WE
19 WOULD ASK THE COURT AND THE SOLICITOR TO REDACT ANY REFERENCE
20 TO ANY OTHER CRIMES IN THE STATEMENT, MORE SPECIFICALLY
21 REFERENCES TO DRUG DEALING COCAINE, MARIJUANA, FRONTING MONEY
22 FOR IT. AS HELD IN STATE VS. GAMBLE THE DEFENDANT HAS NOT
23 YET TENDERED HIS CHARACTER AND THAT WOULD PUT HIS CHARACTER
24 IN ISSUE. ALSO, YOUR HONOR--

25 THE COURT: DO YOU HAVE A COPY OF STATE VS. GAMBLE?

1 MR. SWERLING: NO, YOUR HONOR.

2 THE COURT: DOES GAMBLE NOT INVOLVE CRIMES THAT WERE
3 COMMITTED ON DIFFERENT DATES AND OCCASION AND WERE NOT ONES
4 THAT ALLEGEDLY OCCURRED ON THE SAME DATE AND TIME AS THE
5 CRIME FOR WHICH HE WAS BRING TRIED?

6 MR. SWERLING: WELL, YOUR HONOR, THE ISSUE IN THIS CASE
7 IS WHETHER OR NOT IT PUT HIS CHARACTER IN ISSUE FOR OTHER
8 CRIMES. HE'S NEVER BEEN CHARGED WITH ANY DRUG OFFENSES.
9 HE'S NOT EVEN AT THIS POINT A YEAR LATER ALLEGED TO HAVE
10 COMMITTED ANY DRUG OFFENSES. THERE IS NO EVIDENCE IN THE
11 RECORD THAT THIS WAS A DRUG DEAL. IF THIS WAS A DRUG DEAL,
12 THEN THERE MIGHT NOT BE THAT SAME ARGUMENT BUT MERE
13 REFERENCES TO THE FACT THAT THERE WAS A MEETING AND THAT
14 THERE WAS AN EXPECTATION OF GETTING COCAINE AND MARIJUANA I
15 SUBMIT PUTS HIS CHARACTER IN ISSUE WHEN HE HAS NOT YET
16 TENDERED.

17 THE COURT: DO YOU HAVE GAMBLE?

18 MR. SWERLING: NO, I DON'T HAVE A COPY OF IT, YOUR
19 HONOR.

20 THE COURT: GIVE ME THE CITE. I'LL SEND FOR IT.

21 MR. SWERLING: 146 SOUTHEAST 2d 709. FOR THE PURPOSE
22 OF THE RECORD YOU HAVE THE OFFICER WHO APPRISED THE DEFENDANT
23 OF HIS MIRANDA WARNINGS TO CONDUCT A JACKSON VS. DENNO
24 HEARING?

25 MR. BILTON: YES, YOUR HONOR.

1 THE COURT: LET'S TAKE IT UP.

2 MR. SWERLING: YOUR HONOR, I'M NOT CONTESTING--

3 THE COURT: I UNDERSTAND.

4 MR. BILTON: HE'S NOT CONTESTING THE VOLUNTARINESS.

5 THE COURT: I UNDERSTAND THAT. PRESENT HIM. I'M GOING
6 TO REQUIRE YOU TO DO IT.

7 JOHN EDWARDS, AFTER BEING DULY SWORN BY THE CLERK,
8 TESTIFIES AS FOLLOWS:

9 DIRECT EXAMINATION BY

10 MR. BILTON:

11 Q INVESTIGATOR EDWARDS, WHERE ARE YOU EMPLOYED, SIR?

12 A RICHLAND COUNTY SHERIFF'S DEPARTMENT.

13 Q AND HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S DEPARTMENT?

14 A ABOUT FOURTEEN YEARS.

15 Q OKAY. DID YOU HAVE AN OCCASION TO TAKE A STATEMENT FROM THE
16 DEFENDANT IN THIS CASE, RONALD TILLMAN?

17 A YES, I DID.

18 Q I SHOW YOU THIS AND ASK IF YOU CAN IDENTIFY THESE TWO
19 DOCUMENTS?

20 A YES. THIS IS THE ADVICE OF RIGHT FORM THAT I ADVISED RONALD
21 S. TILLMAN HIS RIGHTS ON JANUARY THE 4TH OF '89 AND I ALSO
22 HAVE THE TIME, THAT 1545 WHICH WOULD BE 3:45. AND ALSO I
23 HAVE A STATEMENT WHICH IS A HANDWRITTEN STATEMENT THAT I WRIT
24 FROM RONALD S. TILLMAN.

25 Q OKAY, SIR. WHERE DID THIS TAKE PLACE?

1 A AT THE SHERIFF'S DEPARTMENT.

2 Q AT RICHLAND COUNTY?

3 A YES, IT IS.

4 Q OKAY. WOULD YOU TELL THE COURT, PLEASE, WHAT, IF
5 ANYTHING, YOU ADVISED HIM PRIOR TO TAKING HIS STATEMENT?

6 A HIS RIGHTS. HIS CONSTITUTIONAL RIGHTS.

7 Q WOULD YOU ENUMERATE THOSE?

8 A YES, I WILL. I HAVE IT WRITTEN HERE WHERE I CHECKED EACH
9 INDIVIDUAL. I HAVE BEFORE WE ASKS YOU ANY QUESTION, YOU MUST
10 UNDERSTAND YOUR RIGHTS. YOU HAVE A RIGHT TO REMAIN SILENT.
11 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE
12 A RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASKS YOU ANY
13 QUESTIONS AND HAVE A LAWYER WITH YOU DURING QUESTIONING. IF
14 YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU
15 BEFORE ANY QUESTIONING IF YOU WISH. IF YOU DECIDE TO ANSWER
16 QUESTIONS NOW WITHOUT A LAWYER PRESENT YOU STILL HAVE THE
17 RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT
18 TO STOP ANSWERING QUESTIONS AT ANY TIME UNTIL YOU TALK TO A
19 LAWYER. AND YOU CAN SEE BY THE CHECK MARK THAT I CHECKED
20 EACH ONE AS I READ THEM TO HIM AND I ASKED HIM DID HE
21 UNDERSTAND IT AND HE SAID, YEAH, HE DID. AND HE SIGNED HIS
22 NAME AS RONALD TILLMAN. THAT'S HIS HANDWRITING HERE. AND
23 ALSO AT THE BOTTOM HERE I GOT WAIVER OF RIGHTS. AND I GOT
24 A CHECK MARK HERE. IT SAYS I HAVE READ THIS STATEMENT OF MY
25 RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO

1 TALK AND ANSWER QUESTIONS. I UNDERSTAND AND KNOW WHAT I AM
2 DOING. NO PROMISES HAVE BEEN MADE TO ME AND NO PRESSURE OR
3 COERCION OF ANY KIND HAS BEEN USED AGAINST ME. AND RONALD
4 TILLMAN SIGNED IT. AND ALSO WITNESS BY MARK AUSTIN.

5 Q INVESTIGATOR AUSTIN?

6 A YES.

7 Q DID YOU PROMISE HIM ANYTHING IN EXCHANGE FOR HIS STATEMENT?

8 A I DIDN'T PROMISE HIM NOTHING.

9 Q DID YOU COERCE HIM OR THREATEN HIM IN ANY WAY?

10 A NO, SIR.

11 Q DID HE APPEAR TO YOU TO HAVE UNDERSTOOD HIS CONSTITUTIONAL
12 RIGHTS?

13 A YES, HE DID.

14 Q WERE ANY WEAPONS PRESENT?

15 A WE ALWAYS CARRY FIREARMS OURSELF 'CAUSE WE POLICE OFFICERS.

16 Q WAS IT IN YOUR HOLSTER?

17 A YES, IT WAS IN THE HOLSTER.

18 Q HOW MANY PEOPLE WERE PRESENT WHEN YOU TOOK THE STATEMENT FROM
19 HIM?

20 A IT WAS A TOTAL OF THREE. IT WAS RONALD TILLMAN, MARK AUSTIN
21 AND MYSELF.

22 Q MAY I SEE THE ADVICE OF RIGHTS FORM?

23 A YES.

24 MR. BILTON: YOUR HONOR, AT THIS TIME I WOULD ASK TO
25 MARK THIS AS STATE'S FOR IDENTIFICATION PURPOSES.

1 THE COURT: WHAT IS IT?

2 MR. BILTON: THE ADVICE OF RIGHTS.

3 THE COURT: OKAY. HAND IT TO COUNSEL AND MAKE SURE HE'S
4 SEEN IT. HAVE YOU SEEN IT?

5 MR. SWERLING: FOR THE PURPOSES OF THIS HEARING, I HAVE
6 NO OBJECTION.

7 THE COURT: MARK IT AS STATE'S EXHIBIT FOR THE PURPOSE
8 OF THIS HEARING.

9 (ADVICE OF RIGHTS IS RECEIVED AS STATE'S IDENTIFICATION
10 "A")

11 Q INVESTIGATOR EDWARDS, LET ME SHOW YOU THIS DOCUMENT AND ASK
12 YOU IF YOU CAN IDENTIFY THIS, PLEASE?

13 A YES. THIS IS A HANDWRITTEN STATEMENT THAT I TOOK MYSELF WHICH
14 WAS GIVEN BY RONALD S. TILLMAN ON JANUARY 4TH. I GOT 1620
15 WHICH WOULD BE 4:20 IN THE AFTERNOON.

16 Q 4:20 IN THE AFTERNOON?

17 A YES.

18 Q AND WHO WAS PRESENT WHEN THIS STATEMENT WAS GIVEN?

19 A MARK AUSTIN AND ALSO RONALD TILLMAN.

20 MR. BILTON: YOUR HONOR, AT THIS TIME, I'D LIKE TO ASK
21 THE WITNESS TO PUBLISH THE STATEMENT.

22 THE COURT: WHEN YOU SAY A HANDWRITTEN STATEMENT, WAS
23 IT A HANDWRITTEN STATEMENT BY THE DEFENDANT OR WAS IT A
24 HANDWRITTEN STATEMENT TAKEN BY THIS OFFICER? IT'S HIS NOTES?

25 A IT WAS TAKEN BY ME.

1 THE COURT: ALL RIGHT. SO, IT'S AN ORAL STATEMENT. GO
2 AHEAD.

3 Q WOULD YOU PLEASE PUBLISH THE STATEMENT?

4 A I HAVE A TYPED COPY. WHICH ONE YOU WANT ME TO READ FROM? THE
5 HANDWRITTEN OR THE TYPED COPY.

6 Q FROM THE ORIGINAL.

7 A OKAY.

8 MR. SWERLING: YOUR HONOR, I'LL WAIVE THE READING OF IT.
9 I MEAN THE READING OF THE STATEMENT HAS NOTHING TO DO WITH
10 THE VOLUNTARINESS OF THE STATEMENT.

11 THE COURT: WELL, ANY STATEMENT ON THE ADVICE OF RIGHTS
12 WHAT WAS SAID BUT IF YOU HAVE NO OBJECTION TO HIM PUBLISHING
13 WHAT HIS NOTES WERE THEN I'LL HEAR THAT BECAUSE ONE OF THE
14 ISSUES ARE IS WHAT WAS SAID AS WELL EVEN IN AN ORAL
15 STATEMENT.

16 MR. SWERLING: THERE'S NO CONTENTION THAT WHAT WAS SAID
17 IN HERE IS NOT WHAT MR. TILLMAN SAID.

18 THE COURT: ALL RIGHT. YOU HAVE BEEN PROVIDED WITH A
19 SUMMARY OR COPY OF HIS NOTES IN ESSENCE?

20 MR. SWERLING: YOUR HONOR, IT'S ACTUALLY--IT'S A
21 STATEMENT, YOUR HONOR, SIGNED BY RONALD TILLMAN BUT IN THE
22 DETECTIVE'S HANDWRITING.

23 THE COURT: OKAY. THE DEFENDANT ACTUALLY DID SIGN THE
24 STATEMENT? ALL RIGHT. IT'S NOT AN ORAL STATEMENT, IT'S A
25 WRITTEN STATEMENT. ALL RIGHT. IF IT'S A WRITTEN STATEMENT

1 THEN YOU CAN JUST HAVE HER MARK IT. DID YOU PROVIDE THE
2 DEFENDANT WITH A COPY OF IT?

3 A YES.

4 THE COURT: AT THE TIME THE STATEMENT WAS GIVEN?

5 A YES.

6 THE COURT: ALL RIGHT. THAT'S SUFFICIENT. MARK THE
7 STATEMENT.

8 Q DID HE SIGN IT?

9 A YES, HE DID.

10 MR. BILTON: AT THIS TIME, I WOULD MOVE IT INTO EVIDENCE
11 FOR THIS HEARING.

12 THE COURT: WELL, LET'S JUST HOLD ON FOR A MINUTE. ARE
13 YOU THROUGH WITH THIS WITNESS ON THAT? ON THIS ISSUE?

14 MR. BILTON: YES, SIR.

15 THE COURT: ANY CROSS EXAMINATION?

16 MR. SWERLING: YOUR HONOR--

17 THE COURT: HAND IT TO THE COURT REPORTER.

18 (STATEMENT IS MARKED AS STATE'S IDENTIFICATION "B")

19 CROSS EXAMINATION BY

20 MR. SWERLING:

21 Q MR. EDWARDS, DID YOU TELL MR. TILLMAN WHAT HE WAS BEING
22 QUESTIONED ABOUT? WHAT HE WAS A SUSPECT FOR?

23 A AFTER ADVISING HIM OF HIS RIGHTS I THINK I PROBABLY DID. I
24 DON'T HAVE IT IN MY NOTES. I HAVE MY FOLLOW-UP. I PROBABLY
25 DID TOLD HIM WHY HE WAS THERE AND WHY WE WAS QUESTIONING HIM.

1 Q WHY WAS HE DOWN THERE?

2 A WE WAS INVESTIGATING THE MURDER OF DONALD SUTTON.

3 Q HAD HE ALREADY BEEN CHARGED WITH MURDER?

4 A I THINK WE ALREADY HAD THE ARREST WARRANT AND I THINK WE HAD
5 ALREADY SERVED IT. I THINK. BETWEEN AUSTIN OR MYSELF SERVED
6 THE WARRANT BUT HE WAS AWARE OF WHY HE WAS THERE.

7 Q THAT'S WHAT I'M SAYING. HE HAD BEEN CHARGED WITH MURDER AND
8 HE GAVE YOU A STATEMENT AFTER HE HAD BEEN CHARGED WITH
9 MURDER?

10 A YES, WE HAD SERVED HIM WITH ARREST PAPERS, YES.

11 Q ALL RIGHT. AND THAT WAS THE SCOPE OF YOUR INVESTIGATION TO
12 FIND OUT WHAT HE KNEW ABOUT THE MURDER OF DONALD SUTTON?

13 A THAT'S CORRECT.

14 Q OKAY. YOU DIDN'T ADVISE HIM YOU WERE INVESTIGATING ANY OTHER
15 CRIME, DID YOU?

16 A NO.

17 MR. SWERLING: NO FURTHER QUESTIONS.

18 THE COURT: ANYTHING ELSE?

19 MR. BILTON: NO, SIR.

20 THE COURT: YOU MOVE FOR THE STATEMENT TO BE ADMITTED?

21 MR. BILTON: THE STATE WOULD MOVE TO HAVE THE STATEMENT
22 ADMITTED?

23 THE COURT: ANY OBJECTION?

24 MR. SWERLING: YOUR HONOR, I HAVE NO OBJECTION TO THE
25 STATEMENT BEING ADMITTED FOR THE PURPOSE OF THIS HEARING.

1 I DO AGAIN REQUEST THAT THE COURT REDACT REFERENCES TO
2 COCAINE OR MARIJUANA AND ANY DEALINGS RELATING THERETO
3 BECAUSE THERE'S BEEN SHOWING BY THE STATE THAT HE MADE A
4 VOLUNTARY AND INTELLIGENT WAIVER AS TO THOSE PARTICULAR
5 CRIMES. IN FACT, THE OFFICER TESTIFIED HE WAS BEING
6 INVESTIGATED FOR THE MURDER CASE ITSELF AND AGAIN IT PUTS HIS
7 CHARACTER IN ISSUE WHEN HE HAS NOT YET TENDERED. AND I WOULD
8 OBJECT TO THOSE PORTIONS OF THE STATEMENT DEALING WITH
9 COCAINE AND MARIJUANA DEALING.

10 (STATEMENT IS MARKED AS STATE'S IDENTIFICATION "B")

11 THE COURT: IT A NINE PAGE WRITTEN STATEMENT,
12 HANDWRITTEN, SIGNED RONALD TILLMAN, DATED THE 4TH DAY OF
13 JANUARY, 1989. RESERVING THE COURT'S RULING ON THOSE ISSUES
14 THE COURT HAVING CONDUCTED A JACKSON VS. DENNO HEARING AS
15 REQUIRED, 378 U.S. 368, THE COURT FINDS THAT THE CONFESSION
16 IS ACCEPTED HEREIN AT THIS TIME UNTIL THE COURT FURTHER RULES
17 ON THE OBJECTION DEALING WITH ALLEGED OTHER CRIMES, THE
18 STATEMENT BY THE DEFENDANT AS TO OTHER CRIMES, THAT INDEED
19 THE CONFESSION WAS ADMISSIBLE INTO THE RECORD AND THE COURT
20 HAVING CONSIDERED ALL OF THE EVIDENCE THE COURT HAS EXTENDED
21 TO MR. SWERLING THE OPPORTUNITY TO OFFER ANY EVIDENCE THAT
22 HE WOULD LIKE TO OFFER ON THESE ISSUES. AS I UNDERSTAND IT
23 THEY HAVE CHOSEN NOT TO OFFER ANY FURTHER EVIDENCE. THE
24 COURT, THEREFORE, IS CONVINCED BEYOND A REASONABLE DOUBT, AND
25 I SO FIND, THAT BEFORE THE ALLEGED INCRIMINATING STATEMENT

1 AND CONFESSION WAS OBTAINED FROM THE DEFENDANT THAT THE
2 DEFENDANT WAS ADVISED FULLY HIS RIGHTS UNDER THE 5TH AND 6TH
3 AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THAT
4 THE DEFENDANT WAS ADVISED OF HIS CONSTITUTIONAL SAFEGUARDS
5 AS REQUIRED BY MIRANDA VS. ARIZONA, 384 U.S. 436, AND THE
6 CASES WHICH FOLLOW, THE ADVICE OF RIGHTS BEING THAT THE
7 DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT HE HAD
8 A RIGHT TO REMAIN SILENT, THAT HE WAS ADVISED PRIOR TO ANY
9 SUCH INTERROGATION THAT IF HE WAIVED HIS RIGHT TO REMAIN
10 SILENT AND MADE A STATEMENT THAT SUCH STATEMENT CAN AND WOULD
11 BE USED AGAINST HIM IN A COURT OF LAW; FURTHER, THAT HE WAS
12 ADVISED THAT HE HAD A RIGHT TO EMPLOY OR SELECT AN ATTORNEY
13 OF HIS OWN CHOICE AND THAT IF HE DID NOT HAVE SUCH FUNDS OR
14 MONIES TO EMPLOY AN ATTORNEY THAT THE COURT WOULD APPOINT A
15 LAWYER IF HE DESIRED WITHOUT COST OR EXPENSE TO HIM, THAT HE
16 HAD A RIGHT TO HAVE AN ATTORNEY PRESENT WITH HIM AT ALL TIMES
17 DURING THE INTERVIEWS AND ALL INTERROGATIONS AND THAT HE WAS
18 ADVISED FURTHER PRIOR TO ANY INTERROGATION THAT HE HAD A
19 RIGHT TO CONSULT WITH AN ATTORNEY OR WITH HIS ATTORNEY BEFORE
20 THE INTERROGATION; AND THE DEFENDANT WAS FURTHER ADVISED
21 PRIOR TO ANY INTERROGATION THAT HE HAD A RIGHT TO INTERRUPT
22 AND TERMINATE THE INTERROGATION AT ANY TIME AND THAT HE HAD
23 A FURTHER RIGHT TO STOP ANSWERING ANY QUESTIONS AT ANY TIME
24 DURING THE INTERROGATION. FURTHER, THE COURT FINDS THAT THE
25 DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT IF

1 DURING THE INTERROGATION HE DESIRED AN ATTORNEY THE
2 INTERROGATION WOULD CEASE UNTIL AN ATTORNEY WAS PROVIDED FOR
3 HIM AND HE WOULD BE GIVEN AN OPPORTUNITY TO CONSULT WITH HIS
4 ATTORNEY PRIOR TO ANY INTERROGATION. THE COURT FINDS THEN
5 THAT THE DEFENDANT DID KNOWINGLY AND INTELLIGENTLY WAIVE HIS
6 CONSTITUTIONAL RIGHTS UNDER THE 5TH AND 6TH AMENDMENTS TO THE
7 CONSTITUTION OF THE UNITED STATES AND THOSE REQUIRED
8 SAFEGUARDS BY MIRANDA VS. ARIZONA. THE COURT FURTHER FINDS
9 THAT THE ALLEGED INCRIMINATING STATEMENT OR CONFESSION
10 OBTAINED FROM THE DEFENDANT WAS FREELY, VOLUNTARILY GIVEN
11 WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE INFLUENCE,
12 WITHOUT REWARD, WITHOUT PROMISE OR HOPE OF REWARD, WITHOUT
13 PROMISE OF LENIENCY, WITHOUT THE THREAT OF INJURY AND WITH
14 COMPULSION OR INDUCEMENT OF ANY KIND AND THAT SUCH ALLEGED
15 INCRIMINATING STATEMENT OR CONFESSION WAS THE VOLUNTARY
16 PRODUCT OF THE FREE AND UNCONSTRAINED CHOICE AND WILL OF THE
17 DEFENDANT. THE COURT, THEREFORE, FINDS ALL OF THE FOREGOING
18 CONCLUSIONS BEYOND A REASONABLE DOUBT AND I, THEREFORE, FIND
19 THAT THE INCRIMINATING STATEMENT OR CONFESSION IS ADMISSIBLE
20 INTO THE EVIDENCE OF THIS CASE, SUBJECT, HOWEVER, TO THE
21 COURT'S DECISION AS TO WHETHER OR NOT TO REDACT IT AS TO ANY
22 OTHER ALLEGED CRIMES. I SO FIND. ALL RIGHT. NOW,
23 GENTLEMEN, I'VE JUST BEEN PROVIDED A COPY OF THE STATE VS.
24 GAMBLE. DO YOU WANT TO BRING UP THE WITNESS THAT YOU INTEND
25 TO OFFER THAT TESTIMONY AND LET ME HEAR IT LIVE?

1 MR. MORTON: YOUR HONOR--

2 MR. BILTON: MR. KENNETH GAMBLE?

3 THE COURT: YES. MALLOY.

4 MR. COLEMAN: YOUR HONOR, YOU'RE TALKING ABOUT THE DRUG
5 TESTIMONY?

6 THE COURT: NO. GOING TO THE NEXT STEP OF I'VE GOT TO
7 DECIDE ON THE DRUG TESTIMONY BASED ON WHAT'S IN HERE IN THE
8 STATEMENT AND IN STATE VS. GAMBLE. THE OTHER THING THAT HE
9 OBJECTS TO WAS THE TESTIMONY, AS I UNDERSTOOD IT, HAYES
10 MALLOY IS THE NEXT WITNESS, ISN'T HE?

11 MR. MORTON: YES, SIR.

12 THE COURT: TESTIMONY ABOUT HAYES MALLOY OF HIS
13 PARTICIPATION AS AN INFORMANT FOR THE FEDERAL GOVERNMENT AND--
14 -

15 MR. SWERLING: IF THE COURT WOULD INDULGE ME, I
16 UNDERSTOOD THAT THE COURT RULED THAT THE STATE WAS NOT
17 ALLOWED TO GO INTO THE 12TH AND 14TH INCIDENTS TO ESTABLISH
18 HE WAS A CONFIDENTIAL INFORMANT BECAUSE THAT WOULD BE
19 BOLSTERING HIS CHARACTER. I THOUGHT WE HAD ALREADY RESOLVED
20 THAT.

21 THE COURT: I HAVE BUT THE OTHER PART OF IT WAS THAT
22 THEY HAD SEEN HIM--I'M TRYING TO REMEMBER THE DATES. I KNOW
23 THEY SAW HIM THE 21ST WAS WHEN HE MADE THE REPORT.

24 MR. SWERLING: RIGHT. YOUR HONOR SAID THAT HAYES MALLOY
25 COULD TESTIFY TO THAT.

1 THE COURT: HE'S GOING TO TESTIFY TO THAT. AT THE TIME
2 THAT HE DID, HIS STATEMENT AT THE TIME WAS THAT HE HAD BEEN
3 OFFERED SOME MONEY BY THIS DEFENDANT.

4 MR. SWERLING: CORRECT. ON THE 21ST. THAT'S CORRECT.
5 I THOUGHT WE HAD RESOLVED THE 12TH AND 14TH ISSUE AS TO
6 WHETHER OR NOT HE WAS COOPERATING WITH LAW ENFORCEMENT.

7 THE COURT: WE HAVE. WHAT, MR. BILTON?

8 MR. BILTON: YOUR HONOR, I'M NOT CERTAIN THAT ON THE
9 21ST MR. MALLOY WAS OFFERED MONEY. IT'S MY UNDERSTANDING-
10 -

11 MR. MORTON: WHAT'S HE SAYING, IF I MAY INTERRUPT, I
12 DON'T THINK THEY ARE SAYING HE WAS OFFERED MONEY ON THE 21ST.
13 HE MADE A STATEMENT ON THE 21ST THAT HE WAS OFFERED MONEY.

14 MR. SWERLING: HE MADE A STATEMENT THAT HE HAD BEEN
15 OFFERED MONEY.

16 THE COURT: THAT'S CORRECT. ALL RIGHT. WHAT DO YOU-
17 -

18 MR. SWERLING: MY OBJECTION IS, AND WHAT I THOUGHT WE
19 WERE ADDRESSING AT THIS POINT, WAS THE UNRESOLVED ISSUE WHICH
20 I THOUGHT WE HAD RESOLVED LAST NIGHT WAS THAT THE WITNESS
21 MALLOY AS WELL AS OTHER WITNESSES CAN TESTIFY THAT MR.
22 TILLMAN SOLICITED THOSE WITNESS TO KILL MR. SUTTON BUT THAT
23 THEY COULD NOT GO BEYOND THAT AS TO THE REASONS WHY.

24 THE COURT: THAT BEING THE ROBBERY.

25 MR. SWERLING: THE ARMED ROBBERIES AND THE FACT THAT HE

1 HAD GIVEN A STATEMENT WITH RESPECT TO THOSE. I THOUGHT WE
2 HAD RESOLVED THAT LAST NIGHT IN CHAMBERS THAT THEY WERE NOT
3 ALLOWED TO GO BACK INTO THAT BECAUSE THEY WOULD BE DOING THE
4 SAME THING THROUGH THE BACK DOOR THEY WEREN'T BEING ALLOWED
5 TO DO THROUGH THE FRONT DOOR, AND THAT WAS GETTING IN
6 EVIDENCE THAT MR. TILLMAN HAD COMMITTED OTHER CRIMES, OTHER
7 ROBBERIES, BUT THAT THEY WOULD BE ALLOWED TO SAY MR. TILLMAN
8 APPROACHED ME AND SAID WOULD YOU KILL MR. SUTTON FOR
9 \$5,000.00.

10 THE COURT: WHAT DO YOU SAY ARE THE ISSUES?

11 MR. MORTON: YOUR HONOR, I AGREE WITH MR. SWERLING I
12 THOUGHT THAT WAS THE RULING. THE ONLY FOLLOW-UP I HAD THAT
13 I DON'T THINK WE EVER RESOLVED WAS WOULD I BE ABLE TO ASK
14 THESE WITNESSES DID HE TELL YOU WHY. DID HE TELL YOU WHY HE
15 WANTED MR. SUTTON KILLED TO WHICH THEY COULD RESPOND YES OR
16 NO AND I WOULD NOT EXPLORE THAT ANY FURTHER.

17 THE COURT: WELL, WE WENT ONE STEP FURTHER PAST THAT,
18 TOO, BECAUSE HE THEN RAISED AN OBJECTION THAT LEADS TO IT AS
19 BEING SPECULATIVE. I AGREE WITH THAT. THERE WAS SOMETHING
20 ELSE YOU WANTED TO GO TO AND I DIDN'T MAKE A NOTE OF IT TO
21 BE HONEST WITH YOU.

22 MR. SWERLING: I THINK THAT'S WHEN THEY GOT INTO THE
23 CONFIDENTIAL INFORMANT THAT CAME UP THIS MORNING. MR.
24 MORTON'S RECOLLECTION AND MINE IS THAT WE WERE AT A POINT
25 WHERE THE WITNESS COULD SAY HE TRIED TO HIRE ME TO KILL

1 SUTTON BUT THAT WAS THE END OF IT. THEY COULDN'T DO ANY
2 FURTHER THAN THAT AND MR. MORTON WANTS TO ASK THE WITNESS DID
3 HE TELL YOU WHY HE WANTED TO AND I OBJECT TO THAT BECAUSE
4 THAT ALLOWS THE JURY TO SPECULATE AS TO WHY.

5 THE COURT: BUT YOU AGREE THAT'S WHERE WE ARE?

6 MR. MORTON: YES, SIR.

7 THE COURT: ALL RIGHT. DO YOU WANT TO MAKE ANY FURTHER
8 COMMENTS ON IT?

9 MR. MORTON: YOUR HONOR, THE JURY IS, OF COURSE,
10 SPECULATING ON EVERYTHING THAT HAPPENED OUT THERE THAT NIGHT.
11 I MEAN THEY ARE SPECULATING--

12 THE COURT: WELL, NO, NO, YOU'VE GOT TO BE CAREFUL ABOUT
13 THAT, MR. MORTON. YOU ARE NOT ALLOWED TO LEAVE THE JURY IN
14 TOTAL SPECULATION. IF YOU ARE AT THAT POINT, I'M GOING TO
15 TAKE CARE OF IT FOR YOU. THE CASE IS GOING TO BE GONE.
16 EVIDENCE CAN'T BE SPECULATIVE, IT MUST BE RELEVANT TO THE
17 ISSUE AND DIRECT ON THE POINT AND A REASONABLE INFERENCE IS
18 DEDUCIBLE FROM THAT. OKAY?

19 MR. MORTON: YES, SIR. IF I MIGHT EXPLORE THIS A LITTLE
20 BIT FURTHER, YOUR HONOR. I THINK I SHOULD BE ABLE TO ASK THE
21 WITNESSES WHO HAVE PROVIDED US WITH STATEMENTS AND WHO HAVE
22 TOLD US THAT DONALD SUTTON--THAT MR. TILLMAN WAS MAD AT
23 DONALD SUTTON BECAUSE OF STATEMENTS THAT HE HAD MADE AGAINST
24 HIM. I WOULD ONLY ASK, AND I THINK I HAVE THE RIGHT TO ASK
25 THOSE WITNESSES, DID MR. TILLMAN EXPRESS ANY FEELINGS TO YOU

1 ABOUT HOW HE FELT ABOUT DONALD SUTTON AT THAT TIME AND HAVE
2 THEM RESPOND YES OR NO AND SAY WHAT WERE THOSE FEELINGS
3 WITHOUT THEM SAYING HE WAS MAD AT HIM FOR GIVING A STATEMENT,
4 JUST FOR THEM TO RESPOND HE WAS NOT PARTICULAR ENAMORED WITH
5 DONALD SUTTON AT THAT TIME. IF I CAN DO THAT, YOUR HONOR,
6 THEN I THINK I SHOULD BE ABLE TO ASK THEM WHY. THAT LAYS THE
7 BACKGROUND FOR THE QUESTION DID HE TELL YOU WHY HE, YOU KNOW,
8 WAS MADE AND THEY CAN SAY YES.

9 THE COURT: I UNDERSTAND WHAT YOU ARE SAYING. WHY ARE
10 WE BACK IN THE SAME BOX THAT WE WERE IN ALL DAY YESTERDAY
11 AFTERNOON, THAT BEING THE LYLE ISSUE THAT NOW WE ARE COMING
12 BACK TO TWO ROBBERIES, ONE OF WHICH HE WAS FOUND NOT GUILTY
13 OF, THE OTHER ONE WHICH WAS DISMISSED. THE ONE THAT WAS
14 DISMISSED AS I UNDERSTOOD YOU TOLD ME YESTERDAY YOU DON'T
15 HAVE--FROM YOUR VIEW CLEAR AND CONVINCING EVIDENCE. YOU CAN
16 PUT UP A WITNESS TO SAY HE WAS CHARGED WITH IT. WHY ARE WE
17 NOT BACK IN THE SAME POSITION?

18 MR. MORTON: YOUR HONOR, WE ARE NOT BACK THERE BECAUSE
19 I'M NOT TRYING TO GET FROM THESE WITNESSES THE FACT THAT
20 RONALD TILLMAN WAS MAD AT DONALD SUTTON BECAUSE--

21 THE COURT: I KNOW. YOU ARE TRYING TO SHOW A STATE OF
22 MIND, IN ESSENCE HIS MOTIVE FOR DOING IT. BUT THE PROBLEM
23 IS YOU STILL GO BACK TO IT. YOU GO BACK TO IT BECAUSE ONCE
24 AGAIN WE ARE TALKING ABOUT IT BEING A ROBBERY. BUT YOU WANT
25 TO BE ABLE TO SAY A ROBBERY, NOT NECESSARILY THE ROBBERY OF

1 THE BURGER KING IN DILLON OR THE ROBBERY OF THE BURGER KING
2 HERE IN COLUMBIA. YOU JUST WANT THEM TO SAY A ROBBERY.

3 MR. MORTON: NO, NOTHING ABOUT A ROBBERY. JUST WHAT HIS
4 FEELINGS WERE, DID HE EXPRESS ANY FEELINGS TOWARD THE VICTIM
5 AT THAT TIME.

6 THE COURT: AND THEY WERE?

7 MR. MORTON: AND THEY SAID THAT HE WAS MAD AT HIM OR
8 UPSET. I DON'T KNOW WHAT THEY ARE GOING TO SAY. THEY
9 INDICATED TO ME THAT THEY WERE MAD AT HIM OR UPSET AT HIM.

10 THE COURT: AND YOU WANT TO STOP THERE?

11 MR. MORTON: YES, SIR.

12 THE COURT: I UNDERSTAND THAT. BUT, YOU SEE, THAT'S THE
13 PROBLEM--YOU KNOW, IT'S AS BAD TO STOP THERE ALMOST AS IT IS
14 TO LET YOU GO THE NEXT QUESTION AND ASK THEM WHY, AND THAT
15 IS YOU ARE LEAVING THE JURY GUESSING, DO YOU NOT?

16 MR. MORTON: YES, SIR. BUT I DON'T SEE WHY I SHOULD NOT
17 BE ALLOWED TO DO THAT. I'M NOT IMPINGING ON HIS CHARACTER
18 IN ANY WAY. I'M NOT INTRODUCING EVIDENCE IN THE STATE'S
19 CASE IN CHIEF ANYTHING ABOUT ANY OTHER CRIME FOR WHICH HE HAS
20 NOT BEEN CONVICTED. I'M NOT INTRODUCING HIS CHARACTER. I'M
21 MERELY ASKING THEM AS EVIDENCE IN THIS CASE WHICH I THINK IS
22 RELEVANT, HARD EVIDENCE WHAT HIS FEELINGS ABOUT THE VICTIM
23 WERE AT THAT TIME AND THAT'S ALL.

24 THE COURT: YOU ARE ASKING THE WITNESS TO TELL YOU WHAT
25 TILLMAN SAID.

1 MR. MORTON: YES, SIR.

2 THE COURT: IN OTHER WORDS, IT'S EITHER PRIOR THREATS
3 OR ILLWILL TOWARD THE DECEASED?

4 MR. MORTON: YES, SIR.

5 THE COURT: THAT'S WHAT IT AMOUNTS TO, ISN'T IT?

6 MR. SWERLING: WELL, JUDGE, THE PROBLEM, AND I THINK
7 YOUR HONOR HIT IT RIGHT ON THE HEAD, WHAT IT GOES BACK IS
8 IT'S EITHER REFERRING BACK TO THE SAME POT WE GOT OUT OF
9 YESTERDAY OR IT'S CREATING A NEW PROBLEM WHICH WOULD ALLOW
10 THE JURY TO SPECULATE WHY WAS MR. TILLMAN UPSET WITH HIM.
11 I GUARANTEE IF THAT TESTIMONY IS ALLOWED IN THE FIRST
12 QUESTION THAT THE JURY IS GOING TO COME BACK WITH WHEN THEY
13 GO OUT TO DELIBERATE IS WHY WAS MR. TILLMAN ANGRY WITH MR.
14 SUTTON. AND THAT'S JUST GOING TO ALLOW THEM TO SPECULATE
15 ABOUT IT. SO, I MEAN I THINK IT'S JUST AS HARMFUL TO ALLOW
16 IN PART OF IT THAN TO ALLOW IN ALL OF IT. I MEAN THE WITNESS
17 CAN GET ON THE STAND, THE WITNESS CAN TESTIFY THAT HE TRIED
18 TO HIRE HIM FOR \$5,000.00 TO KILL--

19 THE COURT: THE PROBLEM IS WE'RE MAKING THE WITNESS--
20 HE'S GOT TO GO TALK TO HIS WITNESS BECAUSE ALLEGEDLY WHAT THE
21 DEFENDANT SAID TO THE WITNESSES WAS I'M GOING TO GIVE YOU
22 MONEY TO KILL DONALD SUTTON BECAUSE HE IS GOING TO TELL ON
23 ME FOR ROBBERY. SO, IN ESSENCE WE ARE HAVING TO MAKE THE
24 WITNESS REDACT HIS STATEMENT, YOU KNOW, MADE TO THE WITNESS.

25 MR. SWERLING: RIGHT. BUT THAT'S DONE ALL THE TIME

1 WHERE IT PUTS CHARACTER IN ISSUE OR WHEN IT VIOLATES STATE
2 VS. LYLE. I MEAN WITNESSES'S TESTIMONY HAS TO BE REDACTED
3 IN MANY CASES.

4 THE COURT: REDACTING MEANS TO ELIMINATE. CHANGING IS
5 A DIFFERENT THING. REDACTING MEANS TO TAKE IT OUT OF AND,
6 YOU KNOW, THAT'S EASY IN A WRITTEN STATEMENT BUT WE CAN'T BE
7 IN THE BUSINESS OF GOING TO TELLING WITNESSES WHAT TO SAY.

8 MR. SWERLING: WELL, YOU CAN TELL A WITNESS NOT TO
9 MENTION A POLYGRAPH.

10 THE COURT: THAT'S RIGHT. YOU CAN TELL THEM NOT TO
11 MENTION THINGS.

12 MR. SWERLING: YOU CAN TELL THEM NOT TO MENTION THE
13 FACT--

14 THE COURT: WAIT A MINUTE, MR. SWERLING. OUR PROBLEM
15 IS THAT MR. MORTON IS IN THE DILEMMA OF EITHER HAVING TO GO
16 TO THE WITNESS AND SAYING YOU EITHER CAN'T SAY THIS OR YOU'VE
17 GOT TO CHANGE WHAT YOU ARE GOING TO SAY BECAUSE I DON'T THINK
18 ANY OF THE WITNESSES ARE SAYING IT THE WAY HE'S SAYING IT
19 BECAUSE THEY TOLD HIM, AS I UNDERSTAND, THE DEFENDANT HERE
20 OFFERED THEM MONEY TO KILL HIM AND BECAUSE--

21 MR. SWERLING: AND I'M SAYING THE BECAUSE IS WHAT'S NOT
22 ADMISSIBLE AND HE CAN INSTRUCT THE WITNESSES NOT TO TESTIFY
23 AS TO THE BECAUSE. THAT'S NOT CHANGING ANY TESTIMONY, THAT'S
24 JUST TELLING THEM THEY CANNOT TESTIFY ABOUT THAT JUST LIKE
25 TELLING THE WITNESS THAT HE CAN'T TESTIFY ABOUT A POLYGRAPH.

1 THE COURT: YES. YOU WANT TO ASK THEM WHY AND YOU'RE
2 SAYING THEY ARE GOING TO SAY BECAUSE HE WAS MAD AT HIM. IS
3 THAT REALLY WHAT HE SAID?

4 MR. MORTON: YES, SIR. I APOLOGIZE IF I CONFUSED THE
5 COURT. THERE ARE OTHER WITNESSES OTHER THAN THOSE THAT HE
6 OFFERED MONEY TO KILL DONALD SUTTON. THERE ARE OTHER
7 WITNESSES.

8 THE COURT: SUCH AS?

9 MR. MORTON: SUCH AS FRIENDS OF BOTH THE VICTIM AND THE
10 DEFENDANT WHO WILL SAY THAT--AND I REALIZE WHAT THE COURT'S
11 RULING IS ON THIS--WHO HAVE TOLD US IN WRITTEN STATEMENTS
12 THAT RONALD TILLMAN KNEW ABOUT "DUCK" SUTTON'S STATEMENTS
13 AGAINST HIM. I UNDERSTAND THAT THEY CANNOT SAY THAT.
14 CONSEQUENTLY HE EXPRESSED SOME FEELINGS TOWARD DONALD SUTTON
15 THAT I MERELY WANT TO ASK HIM DID HE EXPRESS ANY FEELINGS
16 TOWARD THE VICTIM AT THAT TIME AND THEY CAN SAY, YES, HE DID
17 OR, NO, HE DIDN'T. IF THEY SAY, YES, HE DID, I THINK I
18 SHOULD BE ABLE TO ASK HIM WHAT WERE HIS FEELINGS TOWARD THE
19 VICTIM AT THAT TIME. IF THE RESPONSE IS THAT HE WAS MAD OR
20 HE WAS ANGRY OR HE WAS UPSET I THINK THAT'S RELEVANT
21 EVIDENCE.

22 THE COURT: WELL, YOU KNOW, I DON'T KNOW WHAT THESE
23 PEOPLE ARE GOING TO SAY AND I'VE BEEN GETTING DIFFERENT
24 VERSIONS AND I DON'T THINK ANYBODY INTENDS TO DO THAT. YOU
25 CALL A WITNESS, WHEN YOU GET TO THAT POINT I'M GOING TO HEAR

1 WHAT THEY'VE GOT TO SAY SPECIFICALLY BEFORE I RULE.

2 MR. MORTON: ALL RIGHT, SIR.

3 THE COURT: WHAT ELSE?

4 MR. MORTON: YOUR HONOR, ABOUT THE FACT THAT MR. HAYES
5 MALLOY--

6 MR. SWERLING: YOUR HONOR, CAN I GET A CLARIFICATION?
7 THE RULING THAT YOU MADE YESTERDAY THAT MR. MORTON AND I
8 AGREE YOU MADE THEY CANNOT GO INTO THE BANK FACTS.

9 THE COURT: THAT STANDS.

10 MR. SWERLING: THAT STANDS THAT THEY CANNOT GO INTO--
11 THE WITNESS CANNOT TESTIFY THAT HE HIRED ME BECAUSE HE WANTED
12 TO KILL HIM BECAUSE HE HAD GIVEN A STATEMENT. THAT STANDS.

13 THE COURT: THAT'S RIGHT.

14 MR. SWERLING: WHAT WE ARE TALKING ABOUT IS SOMETHING
15 ELSE. SO, THEY CAN SIMPLY ADVISE THEIR WITNESSES AT THIS
16 POINT NOT TO REFER TO THE REASON WHY.

17 THE COURT: IF IT WAS BECAUSE OF THE--IF HE SAYS HE
18 WANTED TO KILL HIM BECAUSE HE WAS MAD AT HIM THAT'S A
19 DIFFERENT QUESTION, ISN'T IT?

20 MR. SWERLING: OKAY.

21 THE COURT: I DON'T KNOW WHAT THEY ARE GOING TO SAY.

22 MR. SWERLING: RIGHT. I THINK WHAT WE ALL AGREE ON NOW
23 IS THAT MR. MORTON--

24 THE COURT: THE THINGS ABOUT THE PRIOR CRIME, THAT BEING
25 THE BANK ROBBERY OR THE ARMED ROBBERY.

1 MR. SWERLING: AND ANY STATEMENTS THAT HE GAVE.

2 THE COURT: THAT'S OUT.

3 MR. SWERLING: OKAY.

4 MR. MORTON: YOUR HONOR, MR. HAYES MALLOY HAS INDICATED
5 THAT HE HAS OBSERVED DURING THIS PERIOD OF TIME MR. RONALD
6 TILLMAN PAYING "DUCK" OR GIVING HIM MONEY, THE IMPLICATION
7 BEING THAT HE WAS TRYING TO BRIBE HIM NOT TO TESTIFY AGAINST
8 HIM IN COURT. I REALIZE, OF COURSE, THE COURT WOULD PROBABLY
9 FEEL LIKE THE SECOND PART OF THAT, THE BRIBERY PART, MAY NOT
10 BE ADMISSIBLE UNLESS THE DEFENDANT TOLD THAT TO HAYES MALLOY,
11 THAT HE WAS IN FACT BRIBING HIM. I THINK MR. MALLOY SHOULD
12 AT LEAST BE ABLE TO SAY HE OBSERVED THE DEFENDANT PAYING MR.
13 SUTTON MONEY OR GIVING HIM MONEY IF HE SAW THAT.

14 MR. SWERLING: THERE'S NO PROBATIVE VALUE TO THAT.
15 ABSOLUTELY NONE. IT'S NOT RELEVANT TO ANY ISSUE IN THIS
16 CASE. THEY CAN'T EVEN TESTIFY AS TO WHAT IT WAS FOR. I MEAN
17 IT'S JUST LIKE--

18 THE COURT: YOU KNOW, YA'LL WANT TO TRY THE CASE BEFORE
19 ANYBODY TESTIFIES. IT'S THE MOST UNBELIEVABLE THING I'VE
20 EVER SEEN IN MY LIFE. WHY DON'T YOU JUST PUT THE WITNESS UP
21 AND LET YOU OBJECT.

22 MR. MORTON: YOUR HONOR, I JUST DIDN'T WANT TO GET IN
23 ANY TROUBLE, YOU KNOW.

24 THE COURT: NOBODY IS GOING TO GET IN TROUBLE. JUST DO
25 YOUR JOB. HE'S GOT TO OBJECT, YOU PUT IT UP. I'LL RULE ON

1 IT.

2 MR. MORTON: ALL RIGHT, SIR. THAT'S ALL I HAVE.

3 THE COURT: ALL RIGHT. THE RULE THAT YOU CITED IN GAMBLE
4 SAYS GENERALLY PROOF OF ANOTHER DIRECT SUBSTANTIVE CRIME IS
5 NOT ADMISSIBLE IN THE PROSECUTION FOR A DIFFERENT CRIME
6 UNLESS THERE IS SOME LEGAL CONNECTION BETWEEN THE TWO UPON
7 WHICH IT CAN BE SAID THAT ONE TENDS TO ESTABLISH THE OTHER
8 OR SOME ESSENTIAL FACT IN ISSUE. ALL RIGHT. THAT'S THE
9 RULE. THAT'S WHAT GAMBLE SAYS. IN THE GAMBLE THEY ADMITTED
10 AN ENTIRE CONFESSION OF THE DEFENDANT CHARGED WITH RAPE
11 ELUDING TO THE COMMISSION OF OTHER CRIMES WHICH WERE NOT
12 MATERIAL AND WHICH WERE NOT RELATED TO THE RAPE ALLEGEDLY
13 COMMITTED BY THE DEFENDANT AND WHO HAD NOT TENDERED IN ISSUE
14 OF HIS CHARACTER. IN THAT CASE THE STATEMENT HAD ADMISSIONS
15 BY THAT DEFENDANT BEING TRIED FOR THE CRIME OF RAPE OF THE
16 CRIMES OF HOUSEBREAKING AND LARCENY WHICH WERE WHOLLY
17 DISCONNECTED AND TOTALLY UNRELATED TO THE CRIME OF RAPE. IN
18 OTHER WORDS, IT DIDN'T HAPPEN AT THE TIME THE RAPE OCCURRED
19 WHICH IS WHAT I WOULD HAVE SUSPECTED. THE GENERAL RULE THAT
20 IF IT BEARS SOME LOGICAL RELATIONSHIP TO THE CRIME AND TO THE
21 TIME IN QUESTION THEN IT CAN BE ADMITTED.

22 MR. SWERLING: YOUR HONOR, MY POSITION WOULD BE THAT IN
23 READING THE STATEMENT AND IN LISTENING TO THE PROFFER THAT'S
24 MADE BY THE STATE THE EXISTENCE OF MARIJUANA OR COCAINE HAS
25 NOTHING TO DO WHATSOEVER WITH THE DEATH OF DONALD SUTTON AND,

1 THEREFORE, IS NOT RELEVANT. THE STATE CONTENDS THE REASON
2 DONALD SUTTON WAS KILLED WAS NOT BECAUSE OF SOME COCAINE OR
3 MARIJUANA BUT BECAUSE OF SOME LETTERS OR BECAUSE OF A
4 STATEMENT HE HAD GIVEN IMPLICATING MR. TILLMAN IN SOME ARMED
5 ROBBERIES. SO, THIS IS NOT PROBATIVE OF ANY ISSUE IN THE
6 CASE. IT'S NOT CONNECTED TO THE MURDER BY THE STATE'S OWN
7 PROFFER OF PROOF AND, THEREFORE, IT WOULD BE NOT RELEVANT AND
8 WOULD PUT HIS CHARACTER IN ISSUE. IT'S ANOTHER CRIME WHICH
9 DOES NOT COME UNDER ONE OF THE EXCEPTIONS TO LYLE BECAUSE
10 EVEN THE STATE DOESN'T CONTEND HE WAS KILLED BECAUSE OF
11 DRUGS. I WOULD NOT HAVE THAT ARGUMENT IF THE STATE CONTENDED
12 HE WAS KILLED BECAUSE OF SOME INVOLVEMENT IN SOME DRUG
13 BUSINESS.

14 THE COURT: WHAT DO YOU SAY TO THAT? AS I UNDERSTAND
15 IT, THE REASON YA'LL SAY IS YOU ARE SAYING HE WAS DOING THIS
16 IN ORDER TO ENTICE HIM OR INDUCE HIM DOWN THERE.

17 MR. COLEMAN: THAT'S RIGHT. HE WAS LURED DOWN.

18 THE COURT: BUT THAT'S NOT WHAT HE SAYS IN THE
19 STATEMENT. WHO SAYS THAT?

20 MR. COLEMAN: OUR WITNESS. HAYES MALLOY.

21 THE COURT: HE'S GOING TO SAY THE DRUG DEAL WAS SET UP
22 IN ORDER TO INDUCE HIM DOWN?

23 MR. COLEMAN: NOT ONLY THAT, YOUR HONOR, IT'S IMPERATIVE
24 TO OUR CASE TO SHOW WHY HAYES MALLOY WAS IN THE CAR WITH
25 RONALD TILLMAN. THAT GOES TO SHOW THAT THEY WERE GOING DOWN

1 THERE FOR THE DRUG DEAL. THAT IS A MATERIAL FACT TO OUR CASE
2 WHY HE GOT IN THE CAR OTHER REASONS BESIDE MURDERING DONALD
3 SUTTON.

4 MR. SWERLING: HAYES MALLOY MAY BE ABLE TO TESTIFY TO
5 THAT, JUDGE.

6 THE COURT: WELL, THEY REFER MOLLY HAYES IN THE
7 STATEMENT, IN HIS ALLEGED STATEMENT. IT SAYS HE WAS STILL
8 AT THE STORE, MOLLY HAYES CALLED AROUND 6:45, THIS WAS THE
9 SECOND CALL FROM MOLLY. MOLLY WANTED ME TO TAKE HER--IS IT
10 MOLLY?

11 MR. SWERLING: MOLLY IS A WOMAN. THAT'S NOT HAYES
12 MALLOY.

13 THE COURT: OKAY. I THOUGHT MAYBE THEY JUST REVERSED
14 THE NAMES HERE.

15 A NO, THAT'S MOLLY.

16 MR. SWERLING: THAT'S A GOOD POINT. YOU COULD CONCLUDE
17 THAT. MOLLY HAYES. HAYES MALLOY.

18 THE COURT: THAT'S THE WAY IT LOOKED.

19 MR. SWERLING: YES, I KNOW. I DIDN'T REALIZE IT BUT
20 IT'S A DIFFERENT PERSON.

21 THE COURT: I LOOKED TO SEE IF HAYES MALLOY IS MENTIONED
22 IN HERE IS WHAT I WAS TRYING TO DO, IN THIS STATEMENT.

23 MR. SWERLING: YOUR HONOR, MY RECOLLECTION IS THAT HE'S
24 NOT. I DON'T BELIEVE HE IS YOUR HONOR.

25 THE COURT: ALL RIGHT. GENTLEMEN, I'M GOING TO LOOK AT

1 IT OVER LUNCH TIME. I'LL LET YOU KNOW AFTER LUNCH WHETHER
2 OR NOT--YOU HAVE YOUR WITNESS PREPARED TO EITHER NOT TESTIFY
3 TO IT, OKAY? THIS GAMBLE ON A PORTION OF THE LAW IS CORRECT.
4 YOU KNOW, THIS OCCURRED SHORTLY BEFORE MIRANDA CAME OUT.
5 THEY REACHED SOME DECISIONS IN THE GAMBLE CASE THAT WERE
6 CONTRARY TO MIRANDA.

7 MR. SWERLING: THAT'S THE OTHER ISSUE THAT HE WAS BEING
8 INVESTIGATED. WE ARE GOING TO ESTABLISH THAT ON THE RECORD.
9 THEY TOLD HIM HE WAS BEING CHARGED WITH MURDER ACCORDING TO
10 LT. EDWARDS AND THAT HE WAS NEVER ADVISED OF HIS RIGHTS AND
11 NEVER WAIVED HIS RIGHTS AS TO ANY KIND OF DRUG DEAL OR ANY
12 DRUG TRANSACTION. HE WAS NEVER--

13 THE COURT: SO, YOU'RE SAYING INSTEAD OF BEING A
14 TRANSACTIONAL WAIVER--

15 MR. SWERLING: I'M SAYING HE NEVER WAIVED HIS RIGHTS AS
16 TO ANY CRIME CONCERNING DRUGS BECAUSE THE POLICE NEVER TOLD
17 HIM HE WAS BEING INVESTIGATED ABOUT DRUGS. THEY TOLD HIM HE
18 WAS BEING INVESTIGATED ABOUT A MURDER.

19 THE COURT: I UNDERSTAND.

20 MR. SWERLING: SO, IT COULDN'T BE A WAIVER.

21 THE COURT: I UNDERSTAND WHAT YOU ARE SAYING. ANYTHING
22 ELSE? LET'S GO TO LUNCH, GENTLEMEN.

23 MR. SWERLING: YOUR HONOR, ONE THING. THERE'S BEEN SOME
24 TESTIMONY THAT'S BEEN DEVELOPED THROUGH THE PATHOLOGIST THAT
25 MR. MALLOY IS NOT AWARE OF AT THIS POINT. I WOULD REQUEST AND

1 I KNOW MY COLLEAGUE WOULD NOT DISCUSS THAT WITH HIM BUT I
2 JUST WANT THE RECORD TO REFLECT THAT HE HAS BEEN SEQUESTERED
3 AND THAT NO ONE, INCLUDING THE OFFICERS, SHOULD DISCUSS ANY
4 TESTIMONY WITH MR. MALLOY THAT'S ALREADY TAKEN PLACE IN THE
5 COURTROOM.

6 THE COURT: I DIDN'T SEQUESTER ANY WITNESSES.

7 MR. SWERLING: YOUR HONOR, WE HAVE ALL THE WITNESSES
8 SEQUESTERED.

9 THE COURT: YA'LL MAY HAVE DONE IT. DID YA'LL MAKE A
10 MOTION? I DON'T RECALL A MOTION FOR SEQUESTRATION IN THIS
11 COURTROOM.

12 MR. SWERLING: WE MADE ONE YESTERDAY.

13 THE COURT: YOU DID? IF YOU DID I DON'T RECALL IT.
14 YA'LL ASKED ME TO GET ALL THE WITNESSES OUT WHEN WE WERE
15 ARGUING HIS MOTION BUT THERE WAS NO MOTION FOR SEQUESTRATION
16 IN THIS TRIAL, MR. SWERLING. YOU MAY HAVE INTENDED THAT BUT
17 THAT'S NOT WHAT HAPPENED. THERE WERE A BUNCH OF PEOPLE IN
18 HERE AND YOU SAID GET THEM OUT WHILE WE ARGUE THESE THINGS
19 AND I SAID, WELL, SURE, OKAY, NO PROBLEM. AND I ASKED WHY
20 AND MOVED THEM OUT BUT THERE WAS NO, YOUR HONOR, I MOVE TO
21 SEQUESTER THE WITNESSES IN THIS CASE.

22 MR. SWERLING: YOUR HONOR, I APOLOGIZE THEN. THE STATE
23 AND THE DEFENSE HAVE KEPT THEIR WITNESSES OUT OF THE
24 COURTROOM THIS MORNING. IT WAS MY UNDERSTANDING THAT WAS A
25 MUTUAL ISSUE.

1 THE COURT: WELL, THEY MAY HAVE BUT I DIDN'T ORDER IT.

2 MR. SWERLING: THEY HAVE BEEN TELLING THEIR WITNESSES
3 TO STAY OUT AND WE'VE BEEN TELLING OUR WITNESSES TO STAY OUT
4 SO I WOULD MOVE THAT THAT CONSENSUAL SEQUESTRATION BE MADE
5 AN ORDER BECAUSE WE HAVE KEPT THE WITNESSES OUT AND SO HAVE
6 THEY.

7 MR. MORTON: IN ANY EVENT, YOUR HONOR, I DO NOT INTEND
8 ON TALKING TO HAYES MALLOW ABOUT ANY OF THE TESTIMONY HERE.

9 THE COURT: IF YA'LL AGREED TO IT, I ASSUME YA'LL
10 CONSENTED THEN TO SEQUESTRATION. IF YA'LL CONSENTED IT'S FINE
11 WITH THE COURT.

12 MR. BILTON: JUDGE, WE WOULD LIKE TO KEEP THE
13 INVESTIGATING OFFICER.

14 THE COURT: YOU ARE ENTITLED TO HAVE THE CHIEF
15 INVESTIGATING OFFICER. AND A WITNESS COMES DOWN, UNLESS YOU
16 ANTICIPATE HIM COMING UP ON REPLY, YOU CAN RETAIN HIM. ALL
17 RIGHT. LUNCH TIME. TWO O'CLOCK.

18 (LUNCHEON RECESS)

19 (COURT RESUMES AT 2:12 P.M.)

20 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT ALL
21 COUNSEL ARE PRESENT, STATE, COUNSEL FOR THE DEFENSE AND THE
22 DEFENDANT. GENTLEMEN, I'VE EXAMINED THE ISSUE BEFORE US AND
23 THAT IS WHETHER TO REDACT THE ALLEGED STATEMENT. OF COURSE,
24 I MUST NOTE FOR THE RECORD THAT IT IS NOT A CONFESSION TO THE
25 CRIME. THE PURPOSE I UNDERSTAND IS TO SHOW THE DATES AND

1 TIMES WHEN HE WAS INTERVIEWED APPARENTLY TO REFUTE ANY ALIBI
2 OF THE DEFENDANT AND ALSO TO POSSIBLY PLACE HIM AT THE SCENE
3 OR NEAR THE SCENE OF THE CRIME AT THE TIME IT WAS COMMITTED.
4 THE DEFENSE MOVES TO REDACT THE STATEMENT, REALLY NOT
5 CONTESTING THE QUESTION OF VOLUNTARINESS OR THE ADVICE OF
6 RIGHTS AND ANY JACKSON VS. DENNO HEARING, BUT IF THE
7 STATEMENT IS AN ADMISSION SIMPLY ASKS THE COURT TO REDACT THE
8 STATEMENT AS TO STATEMENTS MADE BY THE DEFENDANT IN THIS CASE
9 OF ANOTHER CRIME, THAT BEING POSSESSION OR INTENT TO POSSESS
10 AND DISTRIBUTE CONTROLLED SUBSTANCES, COCAINE AND MARIJUANA.
11 THE PRINCIPLE BEFORE THE COURT IS ON THE PROSECUTION IS FOR
12 ONE CRIME PROOF OF ANOTHER DIRECT SUBSTANTIVE CRIME GENERALLY
13 IS NEVER ADMISSIBLE UNLESS THERE IS SOME LEGAL CONNECTION
14 BETWEEN THE TWO FOR WHICH IT CAN BE SAID THAT ONE TENDS TO
15 ESTABLISH THE OTHER FOR SOME ESSENTIAL FACT IN ISSUE IS THE
16 PRINCIPLE. AND THE GENERAL RULE THAT A STATEMENT IN THE
17 NATURE OF AN ADMISSION OR CONFESSION IN ORDER TO BE
18 ADMISSIBLE MUST RELATE TO THE OFFENSE IN QUESTION. NOW, AS
19 I SAID THE STATEMENT IS NOT A STATEMENT OF THE CRIME FOR
20 WHICH HE IS CHARGED BECAUSE IT'S NOT AN ADMISSION IN ANY
21 SENSE. IT MAY REFUTE AN ALIBI OR IT MAY BE THE BASIS TO
22 PLACE HIM AT THE SCENE WITH THE PROOF OF OTHER EVIDENCE BUT
23 IT CERTAINLY CANNOT BE CONSIDERED TO BE AN ADMISSION. I,
24 THEREFORE, FIND AND CONCLUDE THAT THE STATEMENT AS TO THE
25 OTHER CRIME, THAT BEING THE CRIME OF POSSESSION OR INTENT TO

1 POSSESS DRUGS OR DISTRIBUTE DRUGS, IS NOT ADMISSIBLE FOR THAT
2 REASON AND WE'LL REDACT IT FROM THE STATEMENT. NOW, IT HAS
3 NOT BEEN MARKED AND THAT IS THE HANDWRITTEN STATEMENT OF THE
4 OFFICER SIGNED BY THE DEFENDANT A COPY OF WHICH HAS BEEN
5 TESTIFIED TO WAS PROVIDED TO THE DEFENDANT. I WOULD SUGGEST,
6 GENTLEMEN, THAT WE REDACT THE STATEMENT IN THE FIRST
7 PARAGRAPH TO STOP AFTER THE SECOND SENTENCE, DONALD SUTTON
8 CALLED ME AROUND 3:30 OR 4:00 P.M. PERIOD, STOP THERE. AND
9 DELETE THE REST OF THAT PARAGRAPH. YOU WOULD START AGAIN AT
10 ABOUT 5:45 OR 6:00 P.M. DONALD ARRIVED, AND CARRY ALL THE WAY
11 THROUGH UNTIL YOU COME TO THE FOURTH PARAGRAPH WHICH SAYS
12 AFTER THE CONVERSATION DONALD AND I WENT INTO THE LIQUOR
13 STORE. DONALD AND ME WAS TALKING ABOUT WHAT HAD HAPPENED.
14 RIGHT THERE I WOULD REDACT BY REMOVING FROM IT THE REST OF
15 THAT PARAGRAPH WHICH SAYS I STARTED COUNTING THE MONEY IN
16 THE CASHIER. DONALD ALSO ASKED ME ABOUT DRUGS WHICH HAD
17 AGREED TO FRONT HIM TO MAKE SOME MONEY. TOLD HIM I DIDN'T
18 HAVE IT. DONALD THEN ASKED ME FOR SOME MONEY. I GAVE DONALD
19 FIVE DOLLARS FOR GAS IN ONE BILL. WE ACTUALLY COULD LEAVE
20 IN DONALD THEN ASKED ME FOR SOME GAS MONEY. THAT WOULD BE
21 OKAY. I GAVE HIM FIVE DOLLARS IN ONE BILL, STOPPING AFTER
22 I DIDN'T HAVE IT. THE REST OF THE STATEMENT, AS I UNDERSTAND
23 IT, COUNSEL FOR THE DEFENSE DOES NOT OBJECT TO IT UNDER THAT
24 THEORY.

25 MR. SWERLING: THAT'S CORRECT.

1 THE COURT: WHAT SAYETH THE STATE? DO YOU WANT TO COME
2 UP HERE AND LOOK AT THE ONE I'VE GOT?

3 MR. MORTON: YES, SIR, YOUR HONOR.

4 (MR. MORTON APPROACHES THE BENCH)

5 THE COURT: WHAT I WOULD SUGGEST, MR. MORTON, IS REDACT
6 STARTING RIGHT HERE AND THE REST OF THAT AND THEN RIGHT HERE
7 WHERE I STARTED AND STOP RIGHT THERE.

8 MR. MORTON: DO YOU HAVE A COPY OF HIS STATEMENT WHILE
9 I DISCUSS THIS?

10 MR. SWERLING: I DON'T HAVE A COPY. ALL YOU HAVE GIVEN
11 ME WAS A WRITTEN STATEMENT.

12 MR. MORTON: YOU CAN LOOK WITH ME.

13 THE COURT: WAIT A MINUTE. YOU'VE GOT A COPY OF THE
14 DEFENDANT'S STATEMENT GIVEN TO HIM.

15 MR. SWERLING: I'VE GOT A COPY OF THE WRITTEN STATEMENT,
16 JUDGE. THEY HAVE A TYPED VERSION WHICH I'VE NEVER RECEIVED
17 A COPY OF.

18 THE COURT: OKAY.

19 MR. MORTON: YOUR HONOR, AS I UNDERSTAND IT, YOU WOULD
20 PROPOSE IN THE FIRST PARAGRAPH STARTING AT HE WANTED TO KNOW
21 IF I HAD ANY PACKAGE.

22 THE COURT: COCAINE OR MARIJUANA.

23 MR. MORTON: COCAINE AND MARIJUANA. I TOLD HIM NOTHING
24 WAS HAPPENING MEANING THAT I DIDN'T HAVE ANYTHING. OKAY.
25 THE STATE WOULD SUBMIT THAT THAT IS WHERE THE REDACTION IN

1 THAT PARAGRAPH SHOULD END. THE LAST SENTENCE THAT DONALD
2 STATED THAT HE WOULD BE DOWN AND GAVE NO TIME SHOULD BE LEFT
3 IN.

4 THE COURT: I DON'T HAVE A PROBLEM WITH THAT. DO YOU
5 HAVE ANY PROBLEM WITH THAT?

6 MR. SWERLING: NO.

7 THE COURT: THAT'S OKAY. I DON'T HAVE ANY PROBLEM WITH
8 THAT EITHER. THAT'S OKAY.

9 MR. MORTON: THEN, YOUR HONOR, AS I UNDERSTAND IT, YOU
10 SKIPPED DOWN TO PARAGRAPH FOUR?

11 THE COURT: YES.

12 MR. MORTON: THIRD SENTENCE. I STARTED COUNTING THE
13 MONEY IN THE CASHIER, ALL THE WAY UNTIL--

14 THE COURT: AND DONALD THEN ALSO ASKED ME ABOUT THE
15 DRUGS WHICH HE HAD AGREED TO FRONT HIM TO MAKE SOME MONEY,
16 I TOLD HIM I DIDN'T HAVE IT. THAT'S WHERE YOU STOP.

17 MR. MORTON: YES, SIR.

18 MR. SWERLING: PICKING UP WHERE DONALD ASKED HIM FOR
19 SOME GAS MONEY? THAT'S WHAT YOU ARE ALLOWING IN?

20 THE COURT: YES. I GAVE DONALD FIVE DOLLARS.

21 MR. SWERLING: THE FOURTH SENTENCE IS COMING OUT. IT
22 WOULD BE THE FOURTH SENTENCE IN THE FOURTH PARAGRAPH.

23 THE COURT: ACTUALLY YOU COULD LEAVE IN I STARTED
24 COUNTING MONEY IN THE CASHIER, THAT WILL BE FINE. DONALD
25 THEN ASKED ME FOR SOME GAS MONEY. THAT WOULD PROBABLY MAKE

1 MORE SENSE. LET'S TAKE OUT DONALD ALSO ASKED ME ABOUT DRUGS
2 WHICH I HAD AGREED TO FRONT HIM TO MAKE SOME MONEY; I TOLD
3 HIM I DIDN'T HAVE IT. TAKE THAT OUT.

4 MR. SWERLING: FOURTH AND FIFTH SENTENCE.

5 THE COURT: YES. DOES THAT MAKE MORE SENSE?

6 MR. MORTON: YES, YOUR HONOR.

7 THE COURT: THAT'S FINE. ALL RIGHT. YOU WANT TO TAKE
8 WHITE OUT ON THE ORIGINAL OR SUBSTITUTE A COPY FOR IT?

9 MR. MORTON: WHITE OUT IS FINE WITH ME.

10 THE COURT: HAVE YOU GOT A COPY OF THIS THAT WE CAN USE?

11 MR. MORTON: A CLEAN COPY?

12 THE COURT: YES. I'M TALKING ABOUT THIS ONE.

13 MR. SWERLING: THIS IS A TYPED COPY.

14 THE COURT: THIS IS WHAT GOES. NOT THE TYPED COPY
15 BECAUSE IT'S A WRITTEN STATEMENT. THAT'S THE EVIDENCE, THE
16 BEST EVIDENCE, OKAY? THE ORIGINAL, GENTLEMEN, I'M GOING TO
17 HAVE THE COURT REPORTER MARK AS A COURT'S EXHIBIT. SHE WILL
18 RETAIN IT NOT TO GO TO THE JURY.

19 (STATEMENT IS MARKED AS COURT'S EXHIBIT #2)

20 THE COURT: ALL RIGHT. WHAT ELSE, GENTLEMEN?

21 MR. SWERLING: NOTHING FURTHER.

22 MR. MORTON: NOTHING FURTHER.

23 THE COURT: ALL RIGHT. ARE YA'LL READY TO PROCEED? WHO
24 IS YOUR NEXT WITNESS?

25 MR. MORTON: HAYES MALLOY, YOUR HONOR.

1 THE COURT: HAVE YOU GOT HIM UP AND READY TO GO?

2 MR. MORTON: HE'S RIGHT HERE.

3 THE COURT: ALL RIGHT, BRING THE JURY IN.

4 MR. SWERLING: OH, YOUR HONOR.

5 THE COURT: JUST A MINUTE.

6 MR. SWERLING: I'M SORRY, I APOLOGIZE.

7 THE COURT: JUST A MINUTE.

8 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
9 COURT REPORTER)

10 THE COURT: ARE YA'LL READY NOW?

11 MR. MORTON: YES, SIR.

12 THE COURT: WE ARE GOING TO TAKE OUT ON THE LAST
13 STATEMENT THE LAST TWO QUESTIONS AND ANSWERS ON THE VERY LAST
14 PAGE. BRING THE JURY IN.

15 (THE JURY RETURNS TO THE JURY BOX AT 2:27 P.M.)

16 THE COURT: ALL RIGHT. ALL MEMBERS OF THE JURY ARE NOW
17 BACK PRESENT BEFORE THE COURT. YOU MAY CALL YOUR NEXT
18 WITNESS, COUNSELLOR.

19 MR. MORTON: YOUR HONOR, THE STATE CALLS HAYES MALLOY
20 TO THE STAND.

21 HAYES MALLOY, AFTER BEING DULY SWORN BY THE CLERK,
22 TESTIFIES AS FOLLOWS:

23 DIRECT EXAMINATION BY

24 MR. MORTON:

25 Q HAYES, WHERE ARE YOU FROM?

BROOKLYN, NEW YORK.

WHEN WERE YOU BORN THERE?

. I MEAN

AND WHEN DID YOU MOVE TO SOUTH CAROLINA?

TWELVE YEARS AGO.

DID YOU MOVE DOWN HERE WITH YOUR FAMILY?

YES.

HOW OLD WERE YOU THEN?

I WAS ABOUT THIRTEEN.

THIRTEEN. SO YOU MOVED HERE WITH YOUR FAMILY YOU SAY ABOUT
TWELVE YEARS AGO?

YES.

OKAY. AND WHERE DOES YOUR FAMILY LIVE OR WHERE DID YA'LL
MOVE TO HERE IN COLUMBIA?

WELL, WE FIRST MOVED DOWN TO MY GRANDFATHER'S HOUSE ON
HIGHLAND STREET.

OKAY. AND WHERE IS THAT?

THAT'S DOWN OFF OF BLUFF ROAD.

OKAY. IS IT NEAR THE PARTY SHOP THAT WAS OWNED BY MR.
TILLMAN?

IT'S A FEW MILES AWAY FROM THAT.

OKAY. BUT DOES YOUR FAMILY STILL LIVE THERE?

NO. MY MOTHER IS STAYING OVER IN WASHINGTON PARK.

OKAY. WHERE IS WASHINGTON PARK?

RIGHT DOWN THE STREET FROM THE PARTY SHOP.

1 Q OKAY. SO, YOUR MOTHER AT THE TIME WAS LIVING RIGHT NEAR THE
2 PARTY SHOP, IS THAT RIGHT?

3 A YES.

4 Q ON DECEMBER 26TH WHERE WERE YOU LIVING? WERE YOU LIVING WITH
5 YOUR MOTHER?

6 A WELL, I WAS STAYING OVER AT A GIRL FRIEND.

7 Q OKAY. WHERE DOES YOUR GIRL FRIEND LIVE?

8 A ON BULL STREET.

9 Q OKAY. ABOUT WHERE ON BULL STREET?

10 A RIGHT ACROSS THE STREET FROM THE STATE HOSPITAL.

11 Q OKAY. NOW, YOU SAY YOU HAVE FAMILY IN THE AREA NEAR
12 TILLMAN'S PARTY SHOP, IS THAT RIGHT?

13 A YES.

14 Q WHAT KIND OF FAMILY DO YOU HAVE THERE?

15 A JUST MY MOTHER. WELL, MY SISTER JUST WENT OFF TO COLLEGE.

16 Q DO YOU ALSO HAVE FRIENDS IN THAT AREA THAT LIVE AROUND THERE?

17 A YES.

18 Q OKAY. DID YOU SOMETIMES GO TO TILLMAN'S PARTY SHOP?

19 A YES.

20 Q HAYES, I WANT TO ASK YOU ABOUT SOME CHARGES THAT YOU HAVE
21 PENDING IN OUR OFFICE. DO YOU HAVE A CHARGE PENDING AGAINST
22 YOU NOW OF ASSAULT AND BATTERY WITH INTENT TO KILL?

23 A YES, I DO.

24 Q OKAY. AND WHEN WERE YOU CHARGED WITH THAT?

25 A THAT WAS AFTER DONALD SUTTON GOT KILLED.

1 Q OKAY. DONALD SUTTON GOT KILLED ON THE 26TH OF DECEMBER OF
2 1988. ABOUT HOW MANY DAYS AFTER THAT WERE YOU CHARGED WITH
3 ASSAULT AND BATTERY WITH INTENT TO KILL?

4 A I COULDN'T--

5 Q ONE DAY, TWO DAYS, A WEEK?

6 A ABOUT TWO.

7 Q TWO DAYS?

8 A ABOUT TWO.

9 Q TELL US WHAT HAPPENED ON THAT OCCASION.

10 A WELL, I WAS DOWN THERE GAMBLING TO A CLUB DOWN ON ATLAS ROAD.
11 WE WAS PLAYING FOUR BALL. THIS GUY ACCUSED ME OF STEALING
12 HIS COCAINE. HE SAID--HE THOUGHT I TOOK IT, RIGHT? SO, HE
13 SAID, COME ON, MAN, GIVE ME MY COCAINE. I TOLD HIM I DIDN'T
14 HAVE IT. I TOLD HIM TO SEARCH ME BUT HE DIDN'T WANT TO
15 SEARCH ME. I TOOK MY PISTOL OUT OF MY POCKET, PUT IT ON THE
16 POOL TABLE AND TOLD THIS MAN TO SEARCH ME AGAIN. AND HE TOLD
17 ME--

18 MR. SWERLING: I'M SORRY. HE SAID HE TOOK THE PISTOL
19 OUT? I COULDN'T HEAR.

20 A YES, I TOOK MY PISTOL OUT AND PLACED IT ON THE POOL TABLE AND
21 TOLD THIS MAN TO SEARCH ME. HE SAID "F" THAT, YOU GONNA GIVE
22 ME MY YOU KNOW WHAT. AND I SAID, WAIT A MINUTE, WE DON'T
23 HAVE TO GO THROUGH THAT. I SAT DOWN AND HE STARTED PACING
24 UP AND DOWN, YOU KNOW, BY THE POOL TABLE. HE SAID, WELL, IF
25 I DON'T GET MY STUFF SOMEBODY GONNA END UP LIKE THAT MAN

1 BEHIND THE CHURCH.

2 MR. SWERLING: IF YOUR HONOR PLEASE, I HAVE TO OBJECT
3 TO THE RELEVANCY OF ANY FURTHER EXPLANATION ABOUT WHAT THIS
4 MAN DID.

5 MR. MORTON: YOUR HONOR, AS I UNDERSTAND IT, MR.
6 SWERLING IS GOING TO GO INTO THE FACTS BEHIND--

7 THE COURT: WELL, YOU MAY WANT TO DO IT ON REDIRECT BUT,
8 YOU KNOW, IT'S NOT NECESSARY AT THIS TIME.

9 Q LET ME ASK YOU THIS, HAYES. WHEN DID YOU BUY THE GUN, THE
10 PISTOL YOU ARE TALKING ABOUT PULLING OUT OF YOUR POCKET?
11 WHEN DID YOU ACQUIRE THAT?

12 A AFTER DONALD SUTTON GOT KILLED.

13 Q AFTER DONALD SUTTON GOT KILLED?

14 A YES.

15 Q DO YOU REMEMBER WHERE YOU BOUGHT THAT GUN FROM?

16 A PEOPLE'S PAWN SHOP ON ASSEMBLY STREET.

17 Q OKAY. AND THAT WOULD HAVE BEEN WHAT DATE? DO YOU REMEMBER?

18 A THE 27TH I BELIEVE.

19 Q OKAY. BUT IT WAS AFTER DONALD SUTTON WAS MURDERED?

20 A YES.

21 Q DID YOU HAVE A GUN THE NIGHT DONALD SUTTON WAS MURDERED?

22 A NO.

23 Q OKAY. HAYES, AFTER DONALD SUTTON WAS MURDERED YOU WERE
24 ARRESTED ALONG WITH RONALD TILLMAN AND CHARGED WITH MURDER,
25 WERE YOU NOT?

1 A YES, I WAS.

2 Q AND WERE YOU GIVEN A BOND ON THAT CHARGE?

3 A YES.

4 Q DO YOU REMEMBER WHAT YOUR BOND WAS ON THAT CHARGE?

5 A IT WAS \$7,500 BUT I HAD TO PAY TEN PERCENT OF THAT.

6 Q OKAY.

7 A THEY SAID AFTER--

8 MR. SWERLING: OBJECTION HEARSAY.

9 A --I APPEAR IN COURT I CAN GET MY MONEY BACK.

10 Q THAT'S OKAY.

11 THE COURT: WAS THERE AN OBJECTION TO THAT?

12 MR. SWERLING: TO THE HEARSAY PART. I WITHDRAW THE
13 OBJECTION.

14 Q HOW LONG DID THESE CHARGES REMAIN ON YOU, THIS CHARGE OF
15 MURDER?

16 A FOR ABOUT A YEAR. A YEAR.

17 Q OKAY. WHEN WERE YOU NOTIFIED THAT THESE CHARGES AGAINST YOU
18 WERE DISMISSED?

19 A JANUARY THE 12TH, '90.

20 Q WHICH WAS ABOUT FOUR OR FIVE DAYS AGO, IS THAT RIGHT?

21 A YES.

22 Q OKAY. WHO TOLD YOU THOSE CHARGES WERE DISMISSED AGAINST YOU?

23 A I BELIEVE IT WAS MR. BILTON.

24 Q OKAY. MR. BILTON RIGHT HERE?

25 A YES.

1 Q IS THAT RIGHT? OKAY. NOW, HAYES, DID WE PROMISE YOU
2 ANYTHING TO GET YOU TO COME TO COURT AND TESTIFY THE WAY YOU
3 ARE GOING TO TESTIFY TODAY?
4 A NO.
5 Q DID WE OFFER YOU ANYTHING OR TELL YOU TO SAY ANYTHING OTHER
6 THAN THE TRUTH IN THIS CASE?
7 A NO.
8 Q AND ARE YOU TESTIFYING IN HERE TODAY IN EXCHANGE FOR SOME
9 PROMISE OR REWARD, SUCH AS THE DISMISSAL OF ANY CHARGES THAT
10 THE SOLICITOR'S OFFICE HAS MADE TO YOU?
11 A NO. I WAS GONNA TESTIFY ANYWAY.
12 Q WHAT IS THE ONLY THING THAT WE PROMISED YOU WE WOULD DO ABOUT
13 THIS CASE?
14 A I WAS PROMISED THAT IF I GOT UP ON THE STAND AND LIED I WOULD
15 BE PROSECUTED.
16 Q DID YOU KNOW DONALD SUTTON?
17 A NO.
18 Q WHEN DID YOU FIRST BECOME AWARE OF WHAT DONALD SUTTON'S NAME
19 WAS?
20 A AFTER HE WAS KILLED.
21 Q AFTER HE WAS KILLED. AND DID YOU EVER TALK TO RONALD TILLMAN
22 ABOUT DON SUTTON?
23 A YES.
24 Q OKAY. HOW OFTEN AND WHERE WOULD HE MENTION THIS MAN TO YOU?
25 A DOWN TO THE PARTY SHOP.

1 Q WHEN HE TALKED ABOUT THIS MAN THAT WE NOW KNOW AS DONALD
2 SUTTON I BELIEVE YOU SAID, DID YOU KNOW A NAME TO PUT WITH
3 A PERSON?
4 A NO.
5 Q OKAY. SO, WHEN HE TALKED ABOUT DONALD SUTTON, WHO WOULD HE
6 REFER TO HIM AS?
7 A HIS PARTNER, THIS DUDE OR SOMETHING ELSE.
8 Q OKAY. DID YOU EVEN KNOW AT THE TIME WHO HE WAS TALKING
9 ABOUT?
10 A NO.
11 Q OKAY.
12 A BUT HE, YOU KNOW, ONE DAY WHEN DONALD SUTTON CAME DOWN THERE
13 RON POINTED HIM OUT, YOU KNOW, SAYING THAT'S THE DUDE.
14 Q OKAY. SPEAK UP IN THE MICROPHONE NOW. DID RONALD TILLMAN
15 EVER TRY AND GET YOU TO DO SOMETHING FOR RONALD TILLMAN?
16 A YES.
17 Q WHAT DID HE SAY TO YOU?
18 A HE ASKED ME IF I KNEW ANYBODY THAT WOULD KILL DONALD SUTTON.
19 Q WHAT DID YOU RESPOND?
20 A I TOLD HIM I DIDN'T KNOW.
21 Q ABOUT WHEN WAS THIS, HAYES?
22 A I CAN'T SAY WHAT DAY IT WAS.
23 Q ABOUT WHEN?
24 A IT WAS IN DECEMBER.
25 Q DECEMBER OF 1988?

1 A YES.

2 Q OKAY. DID HE EVER OFFER YOU ANY MONEY?

3 A YES, HE DID.

4 Q WHAT DID HE SAY?

5 A HE OFFERED ME \$5,000.00 TO KILL DONALD SUTTON.

6 Q OKAY. AND WHAT DID YOU SAY TO HIM AT THAT TIME?

7 A I TOLD HIM, YEAH, I WILL.

8 Q OKAY. WHY DID YOU TELL HIM THAT?

9 A BECAUSE I WAS GETTING--

10 Q LET ME ASK YOU THIS. DID YOU EVER HAVE ANY INTENTION WHEN
11 YOU TOLD HIM THAT OF KILLING DONALD SUTTON?

12 MR. SWERLING: I OBJECT TO THE LEADING QUESTION.

13 THE COURT: JUST A MINUTE.

14 MR. SWERLING: I OBJECT TO THE LEADING NATURE OF THE
15 QUESTION.

16 MR. MORTON: YOUR HONOR, I ASKED HIM DID HE EVER HAVE
17 ANY INTENTION OF KILLING DONALD SUTTON WHEN HE TOLD RONALD
18 TILLMAN THAT HE WOULD GO ALONG WITH IT.

19 THE COURT: WELL, IT'S BORDERLINE. IF YOU HAD SAID WHAT
20 WAS YOUR INTENTION IN THAT REGARD IT WOULD HAVE BEEN MUCH
21 SIMPLER. HE'S YOUR WITNESS. YOU CAN'T LEAD HIM. LET'S
22 PROCEED.

23 Q AFTER RONALD TILLMAN ASKED YOU THAT AND YOU RESPONDED THAT,
24 YES, YOU WOULD, WHAT WAS YOUR INTENTION?

25 A TO GO STRAIGHT TO THE POLICE WITH IT.

1 Q OKAY. AND ON DECEMBER 21ST, DID YOU GO TO THE POLICE WITH
2 IT?

3 A YES. I TALKED TO A F.B.I. AGENT, RANDY MONDOR.

4 Q WHAT WAS HIS NAME?

5 A RANDY MONDOR.

6 Q DID YOU TALK WITH ANY OTHER F.B.I. AGENT ON THAT DAY ABOUT
7 IT?

8 A YES. OFFICER DAVIS.

9 Q WAS IT JIM DAVIS?

10 A YES.

11 Q OKAY. WHERE DID YOU MEET THEM?

12 A I MET THEM ON ELMWOOD AND BULL, ON THE CORNER OF ELMWOOD AND
13 BULL.

14 Q OKAY. AND WERE THEY IN A CAR OR WERE THEY WALKING OR WHAT?
15 TELL US ABOUT IT.

16 A THEY WAS SITTING IN A CAR WAITING FOR ME TO COME UP THERE.

17 Q OKAY. AND WHAT DID YOU TELL THEM ABOUT RONALD TILLMAN ABOUT
18 WHAT HE SAID?

19 MR. SWERLING: I OBJECT TO ANY FURTHER TESTIMONY ALONG
20 THIS REGARD. HE'S TRYING TO BOLSTER HIS OWN WITNESS.

21 MR. MORTON: I'M JUST ASKING HIM WHAT HE TOLD THE F.B.I.
22 ON DECEMBER 21ST, YOUR HONOR.

23 THE COURT: WHY ISN'T IT STILL BOLSTERING? COME UP
24 HERE.

25 (MR. MORTON AND MR. SWERLING APPROACH THE BENCH OUT OF

1 THE PRESENCE OF THE COURT REPORTER)

2 Q HAYES, DID YOU MAKE A REPORT TO THE F.B.I. ABOUT WHAT RONALD
3 TILLMAN HAD OFFERED YOU?

4 A YES, I DID.

5 Q AND THAT WAS ON WHAT DATE?

6 A THE 21ST OF DECEMBER.

7 Q OKAY. AFTER THE 21ST OF DECEMBER, DID YOU--WERE YOU AROUND
8 THE PARTY SHOP SOME MORE DOWN ON SHOP ROAD?

9 A YES, I WAS.

10 Q AND WAS THAT MR. TILLMAN'S PARTY SHOP?

11 A YES.

12 Q AND DID YOU SEE MR. TILLMAN ANY AFTER THE 21ST, BETWEEN THE
13 21ST AND THE 26TH?

14 A YES, I DID.

15 Q AND DID YOU TALK WITH HIM?

16 A YES.

17 Q AND DID HE SAY ANYTHING TO YOU ABOUT THIS PERSON WHOM HE HAD
18 AT THAT POINT SORT OF DESCRIBED TO YOU?

19 A HE SAID--WELL, DECEMBER THE 26TH HE DID TELL ME HE'S COMING
20 DOWN.

21 Q OKAY. ANY TIME BETWEEN THE 21ST AND 26TH DID YOU HAVE ANY
22 MORE CONVERSATIONS WITH RONALD TILLMAN ABOUT THIS PERSON,
23 ABOUT THIS PERSON WHOM HE DESCRIBED THAT YOU LATER FOUND OUT
24 WAS DONALD SUTTON?

25 A YES.

1 Q AND WHAT DID HE SAY TO YOU?

2 A HE SAID I HAVE TO GET RID OF THIS GUY.

3 Q OKAY. LET ME DIRECT YOUR ATTENTION TO DECEMBER THE 26TH.

4 WHAT DID YOU DO ON DECEMBER THE 26TH? TELL US FROM THE

5 BEGINNING OF THE DAY WHERE YOU WERE AND WHAT YOU WERE DOING

6 IF YOU CAN REMEMBER.

7 A WELL, I REMEMBER STANDING OUTSIDE ACROSS THE STREET AT THE

8 D&M SUPERMARKET OUTSIDE DRINKING WITH SOME FELLOWS AND RON

9 CAME OVER THERE AND TOLD ME, HE SAID, YEAH, MY BOY'S COMING

10 DOWN. AND RIGHT THEN I STARTED THINKING, I SAID HE PROBABLY

11 WANTED TO HAVE THE BOY KILLED TONIGHT. SO, I STARTED CALLING

12 F.B.I. AGENT AND RICHLAND COUNTY INVESTIGATOR.

13 Q OKAY. THIS WAS ON DECEMBER 26TH, IS THAT RIGHT?

14 A RIGHT.

15 Q THE DAY AFTER CHRISTMAS?

16 A RIGHT.

17 Q WHO DID YOU TRY AND GET IN CONTACT WITH AT THE F.B.I.?

18 A LISA MISICKA.

19 Q AND WHO IS SHE? IS SHE AN AGENT WITH THE F.B.I.?

20 A YES, SHE IS.

21 Q OKAY. WERE YOU EVER ABLE TO GET IN TOUCH WITH LISA MISICKA

22 ON DECEMBER THE 26TH?

23 A NO. I CALLED HER TWICE. I CALLED ON THE BEEPER AND BY

24 PHONE, YOU KNOW, TO THE OFFICE.

25 Q OKAY. DID SHE EVER RESPOND TO YOU?

1 A NO.

2 Q TELL US, HAYES, ABOUT ON INTO THE AFTERNOON AND EARLY PART
3 OF THE EVENING WHAT WAS HAPPENING.

4 A I WAS JUST SITTING AROUND JUST DRINKING WITH THE FELLOWS,
5 TALKING WITH HE FELLOWS.

6 Q WAS RON THERE?

7 A YES, HE WAS.

8 Q OKAY. WHAT WAS RON DOING?

9 A I FORGOT. HE WAS, YOU KNOW, IN THE STORE MOST OF THE TIME.

10 Q DID HE STAY THERE THE WHOLE TIME?

11 A YES.

12 Q DID HE EVER LEAVE OR ANYTHING?

13 A NOT UNTIL LATER ON.

14 Q OKAY. TELL ME ABOUT THAT..

15 A HE LEFT. IT WAS ABOUT 6:00, 7:00, SOMETHING LIKE THAT. AND
16 WHEN HE--WELL, WHEN HE LEFT HE SAID HE WAS GONNA DROP
17 SOMEBODY OFF AND STOP BY HIS MOTHER'S AND HE WOULD BE RIGHT
18 BACK.

19 Q OKAY. IN THE MEANTIME WHILE RON WAS GONE, DID DONALD SUTTON
20 COME DOWN THERE?

21 A YES.

22 Q THERE AGAIN YOU DID NOT KNOW DONALD SUTTON'S NAME AT THAT
23 POINT?

24 A NO.

25 Q DID YOU GO SPEAK WITH DONALD SUTTON?

1 A YES, I DID.

2 Q AND WHAT DID YOU SAY TO DONALD SUTTON?

3 A I TOLD DONALD SUTTON THAT MR. TILLMAN HAD DONE WENT TO THE

4 FOUNTAIN BLEAU. I THINK HE WENT IN THE STORE AND BOUGHT HIM

5 A BEER AND WHEN HE WAS ON HIS WAY OUT THAT'S WHEN I TOLD HIM

6 RON WENT TO THE FOUNTAIN BLEAU.

7 Q WHY DID YOU TELL DONALD THAT?

8 A SO I CAN GET HIM AWAY FROM THERE BEFORE RON GET THERE.

9 Q WHY WERE YOU WORRIED ABOUT THAT?

10 A 'CAUSE I COULDN'T GET IN CONTACT WITH THE AGENTS I WAS

11 CALLING.

12 Q WHAT WERE YOU TRYING TO DO BY TELLING HIM THAT?

13 A TRYING TO SAVE HIM.

14 Q WHAT DID DONALD DO?

15 A DONALD. HE LEFT.

16 Q WHILE HE WAS GONE, DID RON COME BACK?

17 A YES. HE CAME BACK ABOUT THIRTY MINUTES LATER.

18 Q WAS ANYBODY WITH HIM?

19 A VITO McKIE.

20 Q OKAY. DID YOU KNOW WHO VITO McKIE WAS AT THAT TIME? I MEAN

21 DID YOU KNOW A NAME TO PLACE WITH THAT PERSON?

22 A NO.

23 Q HAD YOU SEEN HIM BEFORE?

24 A NO.

25 Q YOU HAD NOT SEEN VITO McKIE BEFORE?

1 A WELL, I ONLY SEEN HIM TWICE. THE NIGHT DONALD GOT KILLED AND
2 THE NEXT DAY.

3 Q OKAY. BUT YOU LATER WERE ABLE TO SAY--

4 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING HIS
5 WITNESS.

6 THE COURT: I SUSTAIN THE OBJECTION.

7 Q ABOUT WHAT TIME WAS IT, HAYES, WHEN RON AND VITO GOT THERE?

8 A ABOUT 8:30.

9 Q WHERE WAS DONALD AT THAT TIME? WAS HE THERE?

10 A HE WAS GONE.

11 Q OKAY. AND DID YOU TALK TO RON WHEN HE CAME BACK?

12 A WELL, YEAH, 'CAUSE WE WAS SUPPOSED TO BE GOING SOMEWHERE.

13 Q OKAY. AND DID YOU IN FACT GET IN THE CAR WITH RONALD
14 TILLMAN?

15 A YES.

16 Q AND WHERE WERE YA'LL GOING?

17 A OVER BY OLYMPIA AVENUE.

18 Q OKAY. TELL US WHAT HAPPENED WHEN YOU LEFT.

19 A ME AND RON GOT IN THE CAR. HE SAID--HE PULLED OUT THE
20 PISTOL.

21 Q HOLD ON FOR A MINUTE. OKAY. GO AHEAD, I'M SORRY. I DIDN'T
22 MEAN TO INTERRUPT.

23 A WHEN WE GOT IN THE CAR, HE PULLED OUT THE PISTOL AND HE
24 SHOWED ME THE PISTOL AND HE SAID LOOK WHAT MY BOY, VITO, GAVE
25 ME.

1 Q WHAT KIND OF PISTOL WAS IT?

2 A IT WAS A SMALL CALIBER. I COULDN'T TELL REALLY WHAT KIND IT

3 REALLY WAS.

4 Q WHAT DID IT LOOK LIKE?

5 A IT COULD HAVE BEEN A .32, .38. IT WAS KIND OF SMALL.

6 Q WHAT COLOR WAS IT?

7 A BLACK WITH A PEARL HANDLE.

8 Q OKAY. AND HE SAID WHAT?

9 A LOOK WHAT MY BOY, VITO, GAVE ME.

10 Q THEN WHAT DID HE SAY?

11 A THEN--WELL, HE DIDN'T SAY TOO MUCH THEN. WE WAS ON OUR WAY

12 UP SHOP ROAD.

13 Q WHAT DID YOU SAY IN RESPONSE TO THAT?

14 A I CAN'T REMEMBER. I JUST, YOU KNOW, SAID OH, YEAH.

15 SOMETHING LIKE THAT. I'M NOT SURE WHAT I SAID TO HIM. WE

16 WAS ON OUR WAY UP SHOP ROAD, DONALD SUTTON PULLS UP BEHIND

17 US HITTING HIS HIGH BEAM AND LOW BEAM HEADLIGHTS. RON SAID

18 YOU GONNA TAKE CARE OF HIM FOR ME. IT TOLD HIM NO. WE

19 TURNED ON ABBEY, SHOT ACROSS BLUFF ROAD. WE CAME TO A LITTLE

20 SLOW DOWN, SHOT ACROSS BLUFF ROAD, WENT INTO ARTHURTOWN.

21 Q LET ME STOP YOU RIGHT THERE FOR A MINUTE. LET ME BACK YOU

22 UP JUST A LITTLE BIT. I WANT YOU TO EXPLAIN THIS CAREFULLY

23 TO THE JURY. AFTER YOU GOT IN THE CAR WITH RON, YA'LL WENT

24 ON DOWN THE STREET, IS THAT CORRECT?

25 A YES.

1 Q OKAY. HOW FAR HAD YOU GOTTEN FROM THE PARTY SHOP WHEN YOU
2 SAW DONALD SUTTON PULL UP BEHIND YOU?
3 A ABOUT A HALF A BLOCK OR A BLOCK.
4 Q NOW, TELL US ONCE AGAIN WHAT DONALD SUTTON WAS DOING WHEN HE
5 PULLED UP BEHIND YOU.
6 A HE WAS FLICKING HIS HIGH BEAM AND HIS LOW BEAM ON AND OFF.
7 YOU KNOW, FLICKING ON HIGH AND LOW.
8 Q OKAY. AND HAD RONALD SHOWED THE GUN TO YOU AT THAT POINT?
9 A YES. AS WE GOT INTO THE CAR.
10 Q OKAY. HAD HE SAID HERE--
11 A YES. THIS IS WHAT MY BOY, VITO, GAVE ME.
12 Q OKAY. HAD HE SAID ANYTHING ELSE AT THE TIME DONALD SUTTON
13 PULLED UP BEHIND YOU? DO YOU REMEMBER?
14 A YES. HE SAID--WHEN DONALD SUTTON PULLED UP BEHIND US HE SAY,
15 HEY, YOU GONNA TAKE CARE OF HIM FOR ME. I TOLD HIM NO. THEN
16 HE SAID I GIVE YOU \$10,000.00. I STILL TOLD HIM I TURNED HIM
17 DOWN.
18 Q OKAY. HOW DID YOU FEEL AT THAT POINT WHEN YOU LEFT THE SHOP
19 AND DONALD SUTTON PULLED UP BEHIND YOU AND RONALD TILLMAN
20 OFFERED YOU THAT GUN? HOW WERE YOU FEELING?
21 A I WAS NERVOUS AND SCARED FOR HIM AND ME.
22 Q WHAT DID YOU FEEL LIKE MIGHT HAPPEN?
23 A THAT HE MIGHT TURN OVER AND KILL ME FOR NOT HELPING HIM OUT.
24 Q OKAY. WHAT DID YOU FEEL, IF ANYTHING, MIGHT HAPPEN TO DONALD
25 SUTTON?

1 A I'M PRETTY SURE I WAS FEELING THAT HE WAS GOING TO KILL HIM.
2 AND HE DID.
3 Q OKAY. AFTER YA'LL--AFTER THAT, AFTER RONALD MADE THAT
4 STATEMENT, WHERE DID YA'LL PROCEED TO?
5 A INTO ARTHURTOWN RIGHT ACROSS BLUFF ROAD.
6 Q AND WHERE DID YOU GO THEN?
7 A BEHIND A CHURCH. BROWN CHAPEL CHURCH.
8 Q WERE YOU HAVING ANY CONVERSATION AT THAT POINT?
9 A NO.
10 Q DO YOU REMEMBER HOW LONG IT TOOK YA'LL TO GET FROM THE PARTY
11 SHOP TO BROWN CHAPEL'S CHURCH?
12 A ABOUT FIVE, TEN MINUTES. SOMETHING LIKE THAT.
13 Q DO YOU KNOW HOW FAR THAT IS? DO YOU HAVE ANY IDEA HOW FAR
14 THAT IS?
15 A IT'S NOT EVEN A MILE. I WOULDN'T SAY IT'S A MILE AWAY.
16 Q SO, FROM THE PARTY SHOP TO THE CHURCH IS LESS THAN A MILE,
17 IS THAT RIGHT?
18 A YES.
19 Q TELL US WHAT HAPPENED WHEN YOU GOT TO THE CHURCH?
20 A RON GOT OUT THE CAR AND DONALD GOT OUT HIS CAR. DONALD
21 PARKED HIS CAR ON THE OTHER SIDE OF THE CHURCH AND RON PARKED
22 HIS CAR ON THE OTHER SIDE OF THE CHURCH.
23 Q COME ON DOWN HERE AND LET ME GET YOU TO SHOW THE JURY ON THIS
24 DIAGRAM.
25 (WITNESS LEAVES STAND)

1 Q LET ME GET YOU TO BACK UP. ARE YOU FAMILIAR WITH THIS PART
2 OF TOWN? YOU SEE SHOP ROAD RIGHT HERE?

3 A YES.

4 Q OKAY. YOU ARE GOING TO HAVE TO SPEAK UP. IS THIS SHOP ROAD
5 RIGHT HERE?

6 A YES.

7 Q WHERE DOES YOUR MOTHER LIVE? SHOW US WHERE YOUR MOTHER
8 LIVES. MAKE SURE THE JURY CAN SEE WHERE YOU ARE POINTING TO.

9 A IN WASHINGTON PARK AREA RIGHT HERE. MY MOTHER STAY HERE THIS
10 FIRST STREET RIGHT UP IN HERE.

11 Q OKAY. BACK UP AND LET ME MOVE THIS A LITTLE CLOSER WHERE
12 THEY CAN SEE. OKAY, LET ME ASK YOU A COUPLE OF QUESTIONS.
13 THIS IS SHOP ROAD RIGHT HERE?

14 A YES.

15 Q THIS IS OWENS FIELD?

16 A RIGHT.

17 Q THIS IS WILLIAMS BRICE STADIUM?

18 A RIGHT.

19 Q THIS IS BLUFF ROAD?

20 A RIGHT.

21 Q RIGHT HERE. SHOW US WHERE YOUR MOTHER LIVED.

22 A RIGHT UP IN HERE.

23 Q YOU ARE GOING TO HAVE TO SPEAK UP NOW SO EVERYBODY CAN HEAR
24 YOU.

25 A MY MOTHER MY STAY RIGHT UP IN THIS AREA RIGHT HERE.

1 Q OKAY. SHOW US WHERE TILLMAN'S PARTY SHOP IS?
2 A RIGHT UP IN HERE.
3 Q OKAY. NOW, CAN YOU FIND ON THAT MAP WHERE BROWN'S CHAPEL
4 CHURCH IS?
5 A IT SHOULD BE SOMEWHERE ATLAS ROAD, BLUFF ROAD, ARTHURTOWN
6 RIGHT HERE. IT SHOULD BE RIGHT HERE.
7 THE COURT: SPEAK UP LOUD. SHE'S GOT TO HEAR YOU.
8 SPEAK UP LOUD.
9 A ALL RIGHT. ABBEY ROAD LEADS TO BLUFF ROAD, CROSS BLUFF ROAD
10 INTO ARTHURTOWN. THIS THE SAME STREET WE TOOK AND WE CAME
11 THROUGH THIS WAY AND CAME AND HIT RIGHT UP IN HERE WHERE THE
12 CHURCH IS.
13 Q ALL RIGHT. THE CHURCH IS ON BARNES STREET, IS THAT RIGHT?
14 A YES.
15 Q OKAY. I WANT YOU TO SHOW ME ABOUT HOW FAR UP BARNES STREET
16 IS THE CHURCH.
17 A SOMEWHERE RIGHT UP IN HERE.
18 Q OKAY. SO, HERE'S THE PARTY SHOP RIGHT THERE WERE THAT NUMBER
19 3 IS. LET'S MARK THAT. HERE'S THE PARTY SHOP RIGHT HERE,
20 IS THAT RIGHT?
21 A YES, SIR.
22 Q OKAY. AND THIS IS WHERE THE CHURCH IS, IS THAT RIGHT?
23 A YES, SIR.
24 Q AND YOU SAY ALL OF THAT IS APPROXIMATELY HOW FAR?
25 A ABOUT A HALF A MILE. NOT EVEN A MILE.

1 Q OKAY. I WANT YOU TO SHOW THE JURY WHEN YOU LEFT THE PARTY
2 SHOP THAT NIGHT IN THE CAR, WHOSE CAR WERE YOU IN?
3 A TILLMAN'S.
4 Q WHAT KIND OF CAR WAS IT?
5 A A RIVIERA. I THINK IT WAS A '87 RIVIERA. I'M NOT SURE.
6 Q OKAY. WHO WAS DRIVING?
7 A RON.
8 Q OKAY. WHAT KIND OF CAR WAS DONALD SUTTON IN?
9 A A BURGUNDY COLOR CAR.
10 Q SPEAK UP.
11 A A BURGUNDY COLOR CAR.
12 Q WHEN YOU LEFT THE PARTY SHOP, SHOW US THE ROUTE THAT YOU TOOK
13 TO GET FROM THE PARTY SHOP TO THE CHURCH.
14 A WE CAME STRAIGHT UP SHOP ROAD, HIT ABBEY ROAD--
15 Q OKAY. LET ME STOP YOU RIGHT THERE. BEFORE YOU HIT ABBEY
16 ROAD, HAD DONALD SUTTON PULLED IN BEHIND YOU?
17 A YES.
18 Q HE HAD?
19 A YES.
20 Q SPEAK UP NOW. GO AHEAD.
21 A OKAY. DONALD, HE CAUGHT UP WITH US RIGHT UP AROUND IN HERE
22 AND THAT'S WHEN HE STARTED FLICKING ON HIS HIGH BEAM AND HIS
23 LOW BEAM. AND THEN RON SIGNAL HIM TO FOLLOW US AND WHICH HE
24 DID. AND WE HEAD DOWN ABBEY ROAD AND WENT ACROSS BLUFF ROAD
25 RIGHT INTO ARTHURTOWN AND WENT DOWN ON THIS STREET RIGHT

1 HERE.

2 Q TURNED RIGHT. OKAY. IF THIS IS BARNES STREET, OKAY--IN

3 OTHER WORDS, THAT BARNES STREET IS RIGHT HERE, IS THAT RIGHT?

4 A YES.

5 Q OKAY. NOW, WHAT IS THIS RIGHT HERE?

6 A THAT'S ONE PART OF THE CHURCH.

7 Q OKAY. ONE PART OF THE CHURCH. WHAT IS THIS RIGHT HERE?

8 A THIS IS ANOTHER PART OF THE CHURCH.

9 Q OKAY. DO YOU REMEMBER WHETHER OR NOT THERE WAS ANY LIGHTING

10 OUT THERE THAT NIGHT?

11 A YES. IT WAS A LIGHT BACK UP IN HERE.

12 Q LIGHT UP IN HERE?

13 A RIGHT.

14 Q WHAT KIND OF LIGHT WAS THAT? DO YOU REMEMBER?

15 A I THINK A STREET POLE LIGHT.

16 Q NOW, WHEN YA'LL PULLED IN HERE, WHAT KIND OF DRIVE IS THAT?

17 A PAVED DRIVE OR A DIRT DRIVE OR WHAT?

18 A DIRT ROAD THAT LEADS TO THE CEMETERY.

19 Q OKAY. SO, THIS IS A DIRT ROAD RIGHT HERE. WHERE DID RONALD

20 TILLMAN PARK HIS CAR?

21 A RIGHT ALONG IN HERE.

22 Q WHERE IS THE CEMETERY? SHOW US WHERE THE CEMETERY IS.

23 A THE CEMETERY IS SOMEWHERE BACK UP IN HERE.

24 Q OKAY. THE CEMETERY IS DOWN HERE. SHOW US ONCE AGAIN ABOUT

25 WHERE RON TILLMAN PARKED HIS CAR.

1 A RIGHT UP IN HERE.

2 Q OKAY. PARKED THE CAR RIGHT HERE. NOW, WHICH WAY DID HE PULL
3 IN? DID HE BACK IN OR DID HE PULL STRAIGHT IN?

4 A HE WAS FACE IN.

5 Q SO, HE PULLED STRAIGHT IN?

6 A RIGHT.

7 Q WHAT ABOUT DONALD SUTTON, WHERE DID HE PULL HIS CAR?

8 A SOMEWHERE RIGHT UP ON THE CORNER LIKE THIS.

9 Q OKAY. RIGHT UP IN HERE?

10 A YES.

11 Q ON THIS CHURCH OR THIS CHURCH?

12 A THIS CHURCH RIGHT HERE. RIGHT UP IN THERE.

13 Q PULLED UP RIGHT UP IN THERE.

14 MR. SWERLING: I WOULD REQUEST THAT MR. MALLOY DO THE
15 DRAWING AS TO WHERE IT WAS RATHER THAN THE SOLICITOR.

16 THE COURT: I SUSTAIN THE OBJECTION. LET THE WITNESS
17 DO IT. HE'S THE ONE WHO IS REQUIRED TO TESTIFY.

18 Q ALL RIGHT, SIR. WHAT HAPPENED THEN?

19 A RON GOT OF HIS CAR, DONALD GOT OUT OF HIS. DONALD WAS
20 WALKING TOWARD RON. RON THEN, YOU KNOW, MET UP WITH HIM FACE
21 TO FACE AND PUT HIS ARM AROUND DONALD AND WALKED BACK ON THIS
22 CORNER OF THE BUILDING. HE WAS TELLING DONALD SOMETHING.
23 WHATEVER HE WAS TELLING DONALD, DONALD WAS LOOKING AT ME
24 WHILE I WAS IN THE CAR. HE WAS STARING AT ME. AND BEFORE
25 I KNEW IT THAT'S WHEN RON PULLED THE GUN OUT AND SHOT HIM.

1 Q SHOW ME. IF I'M DONALD SUTTON, YOU BE RONALD TILLMAN. SHOW
2 ME WHAT HE DID.

3 A HE PUT HIS ARM AROUND DONALD, WALKED WITH DONALD, WAS TALKING
4 TO HIM ABOUT SOMETHING, THEN HE STOPPED.

5 Q HOW LONG DID ALL THIS TAKE?

6 A I COULDN'T ESTIMATE THE TIME.

7 Q WHAT WERE YOU DOING?

8 A I WAS SITTING IN THE CAR.

9 Q WHAT WERE YOU THINKING?

10 A I WAS JUST LIKE--I DON'T KNOW WHAT I WAS THINKING. I COULDN'T
11 REALLY TELL YOU I WAS THINKING OF ANYTHING. BUT I KNEW THIS
12 YOUNG MAN WAS GOING TO BE KILLED.

13 Q DID YOU FEEL LIKE THERE WAS ANYTHING YOU COULD DO ABOUT IT?

14 A NO.

15 Q WHY NOT?

16 A HE HAD THE GUN.

17 Q WAS THERE WAY YOU COULD HAVE PREVENTED IT?

18 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING THE
19 WITNESS.

20 Q DID YOU FEEL LIKE YOU COULD HAVE PREVENTED IT?

21 A NO.

22 Q WHY NOT?

23 MR. SWERLING: HE'S STILL LEADING HIS WITNESS. IT IS
24 NOT RELEVANT.

25 THE COURT: I SUSTAIN THE OBJECTION. HAVE HIM TESTIFY

1 AS TO WHAT HE SAW.

2 Q OKAY. CONTINUE.

3 A OKAY. WHEN RON WAS TALKING TO DONALD, RON HAD THE PISTOL IN
4 HIS RIGHT-HAND POCKET. DONALD WAS LOOKING DIRECTLY AT ME IN
5 THE CAR. BEFORE YOU KNOW IT RON PULLED THE GUN OUT, SHOT HIM
6 IN THE HEAD.

7 Q SHOW ME HOW. SHOW THE JURY HOW.

8 A WELL, RON WAS LIKE THIS AND DONALD WAS STANDING RIGHT THERE.
9 RON PULLED THE PISTOL OUT AND SHOT HIM IN THE HEAD. DONALD
10 FELL DOWN TO THE GROUND AND RON BENT OVER AND SHOT THE MAN
11 AGAIN.

12 Q OKAY. GO AHEAD AND TAKE THE STAND.

13 Q WAIT A MINUTE. ONE MORE THING. WHERE DID HE FALL?

14 A SOMEWHERE OVER BY THE AIR VENT. HE FELL BY THE AIR VENT.

15 (WITNESS RESUMES STAND)

16 Q WHEN YOU SAW RONALD TILLMAN PULL THAT GUN OUT, WHAT DID YOU
17 DO?

18 A GOT NERVOUS.

19 Q DID YOU LOOK AT WHAT WAS ABOUT TO HAPPEN?

20 A YES. I TURNED MY HEAD WHEN I SEEN HIM PUT THE, YOU KNOW, HAD
21 THE GUN TO HIS HEAD. I TURNED MY HEAD BUT I SEEN FIRE.

22 Q YOU TURNED YOUR HEAD? DID YOU TURN YOUR HEAD TOWARDS THEM
23 OR AWAY FROM THEM?

24 A AWAY.

25 Q BUT YOU SAID YOU SAW WHAT?

1 A I SAW A GLIMPSE OF THE FIRE FROM THE PISTOL.

2 Q OKAY. WHAT HAPPENED NEXT?

3 A RON CAME OVER TO GET IN THE CAR. I JUMPED OUT THE CAR AND

4 WENT OVER THERE TO SEE ABOUT DONALD. I CHECKED DONALD'S

5 PULSE AND HIS HEARTBEAT AND I DIDN'T FEEL ANYTHING.

6 Q OKAY. WHERE WAS RON?

7 A HE WAS IN HIS CAR LEAVING OUT.

8 Q OKAY. SO, HE PULLED OFF?

9 A YES.

10 Q DID YOU NOTICE HOW HE TURNED AROUND?

11 A HE BACKED OUT.

12 Q OKAY. SO, YOU SAY YOU FELT HIS PULSE?

13 A YES, I DID UP UNDER HIS NECK.

14 Q OKAY. DID YOU MOVE HIM ANYWHERE?

15 A NO.

16 Q OKAY. DID YOU TURN HIM OVER OR DO ANYTHING?

17 A NO.

18 Q OKAY. HOW DID YOU FEEL AT THAT POINT?

19 A STILL SCARED, NERVOUS. I COULDN'T EVEN HARDLY THINK.

20 Q WHAT DID YOU DO?

21 A I WALKED--I WAS TRYING TO CALM MYSELF DOWN. I WALKED OVER

22 TO A CLUB CALLED BUGGIE'S. I STAYED OUTSIDE FOR ABOUT TWENTY

23 MINUTES. I WALKED AT MY MOTHER'S HOUSE AND STOOD UP IN THE

24 YARD FOR ABOUT FIVE MINUTES.

25 Q HOW LONG DID IT TAKE YOU TO TALK TO BUGGIE'S?

1 A ABOUT THREE, FOUR MINUTES. IT'S JUST RIGHT AROUND THE CORNER
2 FROM IT.
3 Q OKAY. HOW LONG DID YOU SAY AT BUGGIE'S?
4 A ABOUT TWENTY MINUTES.
5 Q WHAT IS BUGGIE'S?
6 A IT'S A CLUB.
7 Q OKAY. DID YOU TALK TO ANYBODY THERE?
8 A NO. I DIDN'T SEE NOBODY OUTSIDE.
9 Q DID YOU SAY ANYTHING TO ANYBODY ABOUT WHAT YOU HAD JUST SEEN?
10 A NO.
11 Q WHY NOT?
12 A I DON'T KNOW.
13 Q WELL, HOW WERE YOU FEELING?
14 A SCARED, NERVOUS.
15 Q THEN WHAT DID YOU DO?
16 A I WALKED OVER TO MY MOTHER'S HOUSE. I STOOD OUT THERE, SAT
17 IN THE YARD FOR ABOUT FIVE MINUTES.
18 Q WAS YOUR MOTHER HOME?
19 A NO.
20 Q OKAY. YOU STAYED THERE FOR HOW LONG?
21 A ABOUT FIVE MINUTES.
22 Q WHAT WERE YOU DOING ALL THIS TIME?
23 A TRYING TO CALM MYSELF DOWN.
24 Q WHERE DID YOU GO THEN?
25 A I WENT UP, BACK UP SHOP ROAD AND ASKED MY GIRL FRIEND SISTER

1 WOULD SHE TAKE ME HOME.

2 Q OKAY. WHAT'S HER NAME?

3 A GWENDOLYN LOVEJOY.

4 Q WHERE DID YOU SEE HER?

5 A UP THERE TO HER MOTHER'S STORE RIGHT ACROSS THE STREET FROM

6 THE PARTY SHOP.

7 Q WHAT KIND OF STORE IS THAT?

8 A IT'S A GROCERY STORE.

9 Q OKAY. HOW LONG DID IT TAKE YOU TO WALK FROM YOUR MOTHER'S

10 TO THE GROCERY STORE?

11 A ABOUT FIVE MINUTES.

12 Q DID SHE GIVE YOU A RIDE TO YOUR GIRL FRIEND'S?

13 A YES, SHE DID.

14 Q I BELIEVE YOU SAID YOUR GIRL FRIEND LIVED ON BULL STREET, IS

15 THAT RIGHT?

16 A YES.

17 Q HOW LONG DID IT TAKE YA'LL TO RIDE FROM THAT GROCERY STORE

18 ACROSS FROM THE PARTY SHOP TO YOUR GIRL FRIEND'S ON BULL

19 STREET?

20 A ABOUT FIFTEEN MINUTES.

21 Q OKAY. ONCE YOU GOT TO YOUR GIRL FRIEND'S, HOW LONG DID YOU

22 STAY THERE?

23 A ABOUT FIVE OR TEN MINUTES.

24 Q OKAY. HOW WERE YOU FEELING AT THIS POINT? WHAT WERE YOU

25 DOING?

1 A STILL NERVOUS AND SCARED. I WAS CALLING TO THE CITY POLICE
2 DEPARTMENT.

3 Q OKAY. WHEN DID YOU DO THAT? DID YOU LEAVE YOUR GIRL
4 FRIEND'S?

5 A YES, I LEFT THERE.

6 Q WHERE DID YOU GO?

7 A I WENT UP ON NORTH MAIN BY A CHINESE RESTAURANT AND CALLED
8 THE CITY. I CALLED THERE ABOUT TWICE STANDING THERE BY THE
9 CHINESE RESTAURANT. THEN SEEM LIKE THEY WASN'T COMING. I
10 WENT UP TO THE COMFORT INN AND CALLED--THEN I HAD THE MANAGER
11 TO CALL.

12 Q HOW LONG DID YOU STAY AT THAT PHONE BOOTH WAITING ON THE
13 CITY? ABOUT HOW LONG?

14 A ABOUT TEN MINUTES.

15 Q AND APPROXIMATELY HOW LONG DID IT TAKE YOU TO WALK UP TO THE
16 COMFORT INN?

17 A ABOUT FIVE MINUTES.

18 Q OKAY. WHAT DID YOU DO WHEN YOU GOT TO THE COMFORT INN?

19 A I ASKED THEM COULD I USE THEIR TELEPHONE TO CALL THE CITY
20 POLICE.

21 Q AND WHAT DID THEY SAY?

22 A THEY LET ME USE THE TELEPHONE AND I CALLED FROM THERE. I
23 CALLED FROM THERE ABOUT TWO OR THREE TIMES. THEN I HAD THE
24 MANAGER TO CALL, THEN THEY CALLED BACK TO SEE IF I WAS STILL
25 THERE AND THE MANAGER TOLD THEM THAT I WAS. THAT'S WHEN A

1 FEW MINUTES LATER THE CITY POLICE PULLED UP.

2 Q OKAY. ABOUT HOW LONG DID IT TAKE THEM? I MEAN I KNOW YOU

3 CAN'T SAY EXACTLY BUT TELL THE JURY ABOUT HOW LONG IT TOOK

4 THE POLICE TO GET THERE AFTER YOU CALLED THEM AT THE COMFORT

5 INN?

6 A ABOUT TEN, FIFTEEN MINUTES.

7 Q OKAY. AND DID AN OFFICER RESPOND?

8 A YES.

9 Q WAS IT OFFICER O'CONNELL? DO YOU REMEMBER HIM?

10 A YES, SIR. HE HAD A LADY WITH HIM, TOO.

11 Q OKAY. OFFICER BLEVINS?

12 A YES, I BELIEVE SO.

13 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING THE

14 WITNESS.

15 THE COURT: YES, YOU ARE LEADING YOUR WITNESS, COUNSEL.

16 YOU KNOW, WHEN YOU PUT A WITNESS ON THE STAND YOU'VE GOT TO

17 ASK HIM DIRECT QUESTIONS. YOU CANNOT TESTIFY. PLEASE REFRAIN

18 FROM THAT. OKAY?

19 Q DID YOU TELL THE CITY POLICE WHAT YOU--

20 A I TOLD THEM I SEEN A BODY. THAT'S WHAT I TOLD THEM.

21 Q OKAY. DID YOU TELL THEM THAT YOU HAD ACTUALLY SEEN THE

22 MURDER?

23 A NO, I DIDN'T TELL THEM.

24 Q DID OFFICER DUNHAM COME? DID AN OFFICER FROM THE RICHLAND

25 COUNTY SHERIFF'S DEPARTMENT COME?

1 A YES.

2 Q AND DID YOU TELL HIM WHAT HAD HAPPENED?

3 A NO, I JUST TOLD 'EM I KNEW WHERE A BODY WAS.

4 Q OKAY. DID HE TAKE YOU DOWN THERE?

5 A YES.

6 Q OKAY. AND WHAT DID YOU SHOW HIM?

7 A I SHOWED HIM DONALD SUTTON'S BODY.

8 Q OKAY. YOU SAY YOU DIDN'T TELL THEM THAT YOU HAD ACTUALLY

9 SEEN THE MURDER?

10 A WELL, I REALLY DIDN'T SAY, YOU KNOW, TO HIM THAT I SEEN THE

11 MURDER. I JUST TOLD HIM THAT I KNEW WHERE A BODY WAS.

12 Q OKAY. AFTER YOU TOOK OFFICER DUNHAM DOWN TO THE SCENE, WHAT

13 HAPPENED AFTER THAT?

14 A THEY TOOK ME TO RICHLAND COUNTY.

15 Q TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

16 A RIGHT. A DEPUTY SHERIFF TOOK ME DOWN THERE.

17 Q OKAY. AND DID YOU SPEAK WITH ANY OF THE INVESTIGATORS DOWN

18 THERE?

19 A YES. I THINK IT WAS MARK AUSTIN.

20 Q OKAY. IS THAT MR. AUSTIN SITTING RIGHT HERE?

21 A YES.

22 Q OKAY. AND DID MR. AUSTIN QUESTION YOU ABOUT WHAT YOU HAD

23 SEEN, WHAT YOU HAD DONE?

24 A YES.

25 Q OKAY. YOU DIDN'T TELL HIM QUITE THE WHOLE TRUTH ON THAT DAY,

1 DID YOU?

2 A NO, I DIDN'T.

3 Q OKAY. WHAT DID YOU TELL HIM?

4 A I JUST--I MIXED UP THE STORY. WELL, FOR THEM TO GO PICK UP

5 --NO, I TOLD THEM SOMETHING DIFFERENT FROM THE ORIGINAL

6 STATEMENT. I TOLD THEM SOMETHING DIFFERENT FROM THAT.

7 Q WHAT DID YOU TELL MARK AUSTIN WHEN HE FIRST QUESTIONED YOU

8 ABOUT THIS INCIDENT?

9 A I TOLD--I FORGOT.

10 Q DID YOU TELL HIM YOU HAD SEEN THE ACTUAL MURDER?

11 A NO, I DIDN'T TELL HIM THAT.

12 Q DID YOU TELL HIM THAT YOU KNEW WHERE THE BODY WAS?

13 A I THINK I DID.

14 Q WHY DID YOU NOT TELL INVESTIGATOR AUSTIN THAT YOU HAD

15 ACTUALLY SEEN RONALD TILLMAN SHOOT DONALD SUTTON?

16 A BECAUSE I FELT I WOULD BE ARRESTED FOR ACCESSORY AFTER THE

17 FACT BUT THEN AGAIN I HAD DONE TOLD THEM BEFORE IT HAPPENED

18 SO I WAS STILL THINKING THEY COULD ARREST ME ACCESSORY AFTER

19 THE FACT.

20 Q WHY DID YOU FEEL THAT WAY?

21 A 'CAUSE I DID SEE THE MURDER.

22 Q SO, WHAT WERE YOU TRYING TO DO WHEN YOU DIDN'T TELL THEM THE

23 WHOLE TRUTH ON THAT OCCASION?

24 A SAVE MY LIFE.

25 Q OKAY. HOW DID YOU FEEL TOWARDS RONALD TILLMAN AT THAT POINT?

1 WHAT WERE YOUR FEELINGS TOWARD HIM?

2 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO HIS
3 FEELINGS. THAT WOULD BE IRRELEVANT.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 Q AFTER YOU TALKED WITH INVESTIGATOR AUSTIN, DID ANYBODY FROM
6 THE SHERIFF'S DEPARTMENT RUN ANY TESTS OF ANY KIND ON YOU?

7 A YES. THEY CHECK ME FOR POWDER FROM A PISTOL.

8 Q HOW DID THEY DO THAT?

9 A THEY TOOK ME DOWN TO THE LAB, THEY PUT SOME STUFF ON MY HANDS
10 AND WHATEVER THEY DID. THEY, YOU KNOW, TRY TO TAKE SOME KIND
11 OF POWDER OFF MY HAND, GUN POWDER.

12 Q OKAY. DO YOU KNOW WHETHER OR NOT THEY FOUND ANY POWDER ON
13 YOU?

14 A NO.

15 MR. SWERLING: OBJECTION, YOUR HONOR.

16 THE COURT: I SUSTAIN THE OBJECTION.

17 Q AFTER THAT WHAT DID YOU DO?

18 A I CAN'T REMEMBER.

19 Q DID YOU GO HOME?

20 A YES, I DID WENT HOME.

21 Q OKAY. SO, YOU WERE NOT ARRESTED AT THAT POINT?

22 A NO.

23 Q DID YOU HAVE THE OCCASION OVER THE NEXT SEVERAL DAYS TO TALK
24 WITH INVESTIGATOR AUSTIN ANY MORE?

25 A YES.

1 Q DO YOU REMEMBER WHAT YOU TOLD HIM?
2 A I TOLD HIM THAT I DID SEE THE MURDER.
3 Q OKAY. WHAT DATE WAS THAT? DO YOU REMEMBER WHAT DATE THAT
4 WAS?
5 A I THINK IT WAS JANUARY--SOMEWHERE IN JANUARY I BELIEVE.
6 Q OKAY. AND WERE YOU ARRESTED AT THAT TIME?
7 A YES.
8 Q OKAY. DID YOU SEE RONALD TILLMAN THE DAY AFTER DONALD SUTTON
9 HAD BEEN KILLED BY HIM?
10 A YES, I DID.
11 Q WHERE DID YOU SEE HIM?
12 A AT THE PARTY SHOP.
13 Q DID HE SAY ANYTHING TO YOU?
14 A HE SAID HOW YOU LIKE THAT SHIT. YOU KNOW, THAT SHIT.
15 Q MEANING WHAT?
16 A DONALD SUTTON BEING KILLED.
17 Q WHAT DID HE SAY?
18 A HOW DO YOU LIKE THAT SHIT.
19 Q WHAT DID YOU SAY?
20 A I DIDN'T SAY ANYTHING. I WALKED OUT THE PARTY SHOP.
21 MR. MORTON: I BEG THE COURT'S INDULGENCE ONE SECOND.
22 (PAUSE)
23 Q LET ME BACK UP TO A FEW OTHER POINTS. WHY DID YOU GO TO THE
24 F.B.I. ABOUT RONALD TILLMAN ON DECEMBER 21ST, FIVE DAYS
25 BEFORE THIS HAPPENED?

MR. SWERLING: YOUR HONOR, THAT'S ALREADY BEEN ASKED AND ANSWERED.

THE COURT: I SUSTAIN THE OBJECTION.

LET ME ASK YOU ABOUT THE NIGHT OF DECEMBER 26TH. YOU TESTIFIED THAT DONALD SUTTON CAME DOWN TO THE PARTY SHOP THAT NIGHT WITH VITO, IS THAT RIGHT?

NO, NOT DONALD.

RON TILLMAN.

RON, YES.

OKAY. AND THAT YOU AND RON TILLMAN THEN LEFT, IS THAT RIGHT? RIGHT.

WHAT DID VITO DO?

VITO STAYED IN THE PARTY SHOP.

OKAY.

MR. MORTON: THAT'S ALL I HAVE. ANSWER ANY QUESTIONS THAT MR. SWERLING HAS.

THE COURT: CROSS EXAMINATION.

MR. SWERLING: IF YOUR HONOR PLEASE, COULD WE APPROACH THE BENCH?

THE COURT: YES.

(COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE COURT REPORTER)

THE COURT: YA'LL STEP BACK IN THE JURY ROOM, PLEASE. WE'LL TAKE A RECESS.

(THE JURY LEAVES THE JURY BOX AT 3:15 P.M.)

1 (RECESS)

2 THE COURT: MADAM COURT REPORTER, I PUT ON YOUR DESK THE
3 EXHIBIT WHICH IS THE REDACTED COPY WHICH YOU WILL DESIGNATE
4 AS STATE'S EXHIBIT WHATEVER--

5 REPORTER: 18, YOUR HONOR.

6 THE COURT: 18.

7 (STATEMENT IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT
8 #18)

9 THE COURT: ALL RIGHT. IS THE STATE READY TO PROCEED?

10 MR. MORTON: YES, SIR.

11 THE COURT: DEFENSE READY TO PROCEED?

12 MR. SWERLING: YES, YOUR HONOR.

13 THE COURT: BRING THE JURY IN.

14 (THE JURY RETURNS TO THE JURY BOX AT 3:24 P.M.)

15 BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

16 THE COURT: THANK YOU, MR. CANNON. LET THE RECORD SO
17 REFLECT. CROSS EXAMINATION, MR. SWERLING.

18 HAYES MALLOY, AFTER BEING PREVIOUSLY SWORN BY THE CLERK,
19 TESTIFIES AS FOLLOWS:

20 CROSS EXAMINATION BY

21 MR. SWERLING:

22 Q MR. MALLOY, I'M JACK SWERLING. I WANT TO ASK YOU SOME
23 QUESTIONS. FIRST OF ALL, AS I UNDERSTAND WHAT YOUR TESTIMONY
24 IS TODAY BEFORE THE JURY IT IS THAT SOMETIME--

25 MR. MORTON: YOUR HONOR, I OBJECT TO MR. SWERLING

1 TESTIFYING. I THINK HE NEEDS TO ASK A QUESTION.

2 THE COURT: HE'S ON CROSS EXAMINATION, COUNSEL. THE
3 RULE IS A LITTLE BIT DIFFERENT. HE'S ALLOWED TO LEAD. GO
4 AHEAD.

5 Q ON DECEMBER 26TH, 1988, YOU WENT TO THE PARTY SHOP, IS THAT
6 CORRECT?

7 A EXCUSE ME?

8 Q ON DECEMBER 26TH, 1988, YOU WENT TO THE PARTY SHOP?

9 A YES.

10 Q AND YOU WENT THERE APPROXIMATELY WHAT TIME?

11 A I WAS DOWN THERE JUST ABOUT ALL DAY FROM ABOUT 12:00 TO LATER
12 ON THAT EVENING.

13 Q ABOUT 12:00 IN THE AFTERNOON?

14 A RIGHT.

15 Q OKAY. AND AT SOME POINT DURING THE DAY MR. TILLMAN OFFERED
16 YOU SOME MONEY TO KILL DONALD SUTTON. IS THAT YOUR
17 TESTIMONY?

18 A WELL, HE OFFERED ME THAT BEFORE, YOU KNOW. THAT WAS BEFORE.

19 Q WELL, DID YOU TESTIFY ON DIRECT EXAMINATION THAT HE MADE YOU
20 AN OFFER THAT DAY?

21 A THAT NIGHT. HE BOOST THE PRICE UP.

22 Q WELL, YOU SAID SOMETHING DURING YOUR DIRECT TESTIMONY, IF I'M
23 NOT MISTAKEN, THAT SOMETHING WAS MENTIONED THAT DAY THAT HIS
24 FRIEND WOULD BE THERE THAT NIGHT, IS THAT CORRECT?

25 A YES. HE DID SAY HIS FRIEND WAS COMING DOWN THERE, HIS BUDDY

1 WAS COMING DOWN THERE.

2 Q AND AT THAT POINT YOU REALIZED THAT SOMETHING WAS GOING TO
3 HAPPEN. IS THAT YOUR TESTIMONY TODAY?

4 A WELL, I WAS THINKING LIKE, YOU KNOW, BECAUSE ONE TIME DONALD
5 SUTTON USED TO COME DOWN THERE AND GET MONEY FROM RON BUT I
6 HAD THIS CERTAIN FEELING, I FELT THAT IT WAS GONNA GO DOWN
7 SO I STARTED CALLING F.B.I. AGENTS AND--

8 Q WHAT TIME OF THE DAY WAS THIS?

9 A THIS WAS LIKE--I DON'T KNOW. IT WAS EARLY IN THE DAY.

10 Q EARLY IN THE AFTERNOON?

11 A NOT TOO EARLY IN THE AFTERNOON.

12 Q 12:00, 2:00?

13 A AFTERNOON.

14 Q 1:00, 2:00?

15 A ABOUT--MAYBE ABOUT THAT TIME.

16 Q ABOUT 2:00. SO, THIS IS WHEN YOU FIRST GOT THE SUSPICION
17 ACCORDING TO YOUR TESTIMONY TODAY THAT SOMETHING WAS GOING
18 TO GO ON?

19 A IT COULD HAVE BEEN LATER THAN THAT.

20 Q NOW, SUTTON YOU SAID USED TO GO TO THE PARTY SHOP QUITE
21 OFTEN?

22 A YES. WELL, HE USED TO COME DOWN THERE, YOU KNOW, OFF AND ON
23 AND GET MONEY FROM RON.

24 Q HE AND RON WERE CLOSE ASSOCIATES?

25 A YES.

1 Q OKAY.

2 A SO CALLED.

3 Q AND LATER ON IN THE DAY, AS I UNDERSTAND IT, YOUR TESTIMONY
4 IS YOU LEFT THE SHOP, YOU CAME BACK, DONALD CAME LOOKING FOR
5 RONALD, IS THAT CORRECT?

6 A YES. I DIDN'T LEAVE THOUGH.

7 Q YOU DIDN'T LEAVE BUT RONALD LEFT?

8 A RIGHT.

9 Q AND DONALD MISSED RONALD?

10 A RIGHT.

11 Q AND THEN DONALD LEFT, IS THAT CORRECT?

12 A AFTER I TOLD HIM TILLMAN WAS GOING TO THE BLEAU, THE FOUNTAIN
13 BLEAU.

14 Q AND DURING THIS PERIOD OF TIME IN BETWEEN YOU WERE MAKING
15 PHONE CALLS TO THE SHERIFF'S DEPARTMENT, TO THE F.B.I. AND
16 NOT GETTING ANY ANSWER?

17 A RIGHT. WELL, I GOT A ANSWER DOWN AT RICHLAND COUNTY BUT THE
18 PERSON WHAT I WAS ASKING FOR WASN'T IN.

19 Q OKAY. AND SOMETIME THAT EVENING DONALD SUTTON CAME BACK BUT
20 RONALD WAS GONE? IS THAT YOUR TESTIMONY?

21 A YES.

22 Q AND YOU TOLD DONALD THAT RONALD WAS NOT THERE BUT HE WAS AT
23 THE FOUNTAIN BLEAU BECAUSE ACCORDING TO YOUR TESTIMONY YOU
24 DIDN'T WANT HIM TO GET HURT?

25 A THAT'S RIGHT.

1 Q BUT YET YOU SENT HIM OVER TO THE FOUNTAIN BLEAU?
2 A THAT'S RIGHT, 'CAUSE I KNOW RONALD WASN'T THERE.
3 Q OKAY. WHERE DID YOU THINK RON WAS AT THAT TIME?
4 A SUPPOSED TO BE OVER TO HIS MOTHER'S HOUSE.
5 Q AND DID YOU MAKE ANY FURTHER PHONE CALLS THAT NIGHT? DID YOU
6 TESTIFY TO THAT, THAT YOU KEPT MAKING PHONE CALLS?
7 A YES. I MADE THE LAST PHONE CALL JUST BEFORE I LEFT.
8 Q OKAY. AND AT SOME POINT RON CAME BACK AND YOU GOT IN THE CAR
9 WITH RON?
10 A RIGHT. THAT'S WHEN RON SHOWED ME THE PISTOL.
11 Q AND YOU WERE DRIVING OFF--
12 A RON WAS DRIVING.
13 Q RON WAS DRIVING OFF IN THIS CAR AND AS HE WAS DRIVING OFF OR
14 HE HAD DRIVEN OFF DONALD CAME UP BEHIND HIM?
15 A RIGHT.
16 Q AND SOMEBODY FLASHED THEIR LIGHTS ACCORDING TO YOU?
17 A DONALD SUTTON, HIGH BEAM AND LOW BEAM.
18 Q SO, DONALD NEVER STOPPED?
19 A STOPPED WHERE?
20 Q THE CAR. HE JUST PULLED IN BEHIND, IS THAT CORRECT?
21 A HE JUST DROVE UP. RIGHT.
22 Q THAT'S YOUR TESTIMONY TODAY?
23 A THAT'S RIGHT.
24 Q AND THEN YOU WENT DOWN TO THE CHURCH AND HE PARKED HIS CAR,
25 DONALD PARKED HIS CAR OVER HERE AND RONALD PARKED HIS CAR

1 OVER HERE?

2 A RIGHT.

3 Q YOU STAYED IN THE CAR?

4 A THAT'S RIGHT.

5 Q RONALD GOT OUT?

6 A RIGHT.

7 Q DONALD GOT OUT?

8 A RIGHT.

9 Q THEY WALKED OVER HERE?

10 A WELL, RON LED HIM OVER THERE WHEN HE HAD HIS ARM AROUND
11 DONALD AND WALKED AROUND ON THE SIDE WHERE THE VENTS ARE.
12 WHATEVER RONALD WAS TELLING DONALD, DONALD WAS LOOKING AT ME
13 IN THE CAR

14 Q DONALD WAS LOOKING AT YOU.

15 A DIRECTLY AT ME WHILE I WAS SITTING IN THAT CAR. TILLMAN
16 PULLED OUT THAT PISTOL AND SHOT DONALD SUTTON IN THE HEAD.
17 THE FIRST SHOT WENT IN THE HEAD. THE SECOND SHOT WENT IN THE
18 HEAD WHEN HE BEND OVER AND SHOT THIS MAN.

19 Q NOW, SO IN OTHER WORDS, IF DONALD WAS LOOKING AT YOU HE NEVER
20 TURNED HIS BACK TOWARDS YOU?

21 A NO. HE WAS STANDING--WELL, AFTER RON TOOK HIS ARM OFF OF HIM
22 THEY WAS STANDING SIDE BY SIDE. DONALD WAS LOOKING STRAIGHT
23 AT ME.

24 Q DONALD WAS LOOKING STRAIGHT AT YOU? WELL, IF HE WAS LOOKING
25 STRAIGHT AT YOU, HE CERTAINLY COULDN'T HAVE HAD HIS BACK

1 TOWARDS YOU, COULD HE?

2 A I NEVER SAID HE HAD HIS BACK TURNED TOWARDS ME.

3 Q SO, HOW DID THEY WALK OVER HERE? DID THEY WALK THIS WAY AND

4 HE WAS LOOKING AT YOU THE WHOLE TIME?

5 A NO, NO, NO, MR. SWERLING. THEY WALKED--OF COURSE, THEY GONNA

6 HAVE TO TURN THEIR BACKS TO ME AND TURN AROUND AND FACE WHERE

7 I'M SITTING.

8 Q BUT YOU ARE SAYING THAT DONALD WAS LOOKING AT YOU THE WHOLE

9 TIME. I'M ASKING YOU PHYSICALLY HOW COULD HE DO THAT?

10 A I SAY WHEN RONALD GOT BACK THERE BEHIND THE CHURCH WITH

11 SUTTON HE THEN PULLED THAT PISTOL OUT AND SHOT DONALD SUTTON.

12 Q THAT WASN'T MY QUESTION. MY QUESTION WAS HOW COULD THEY WALK

13 OVER HERE WITH HIM LOOKING AT YOU THE WHOLE TIME? NOW, YOU

14 DON'T HAVE TO LOOK AT THEM.

15 A NO, NO. I SAID WHEN THEY GOT BACK THERE, THAT'S WHEN HE

16 STARTED LOOKING AT ME. HE WAS LOOKING AT ME THE WHOLE TIME

17 THAT RON WAS PULLING THAT PISTOL OUT OF HIS POCKET.

18 Q OH, SO HE DIDN'T LOOK AT YOU UNTIL HE HAD GOTTEN BACK HERE,

19 IS THAT CORRECT?

20 A THAT'S RIGHT.

21 Q COULD YOU STEP DOWN ONE SECOND?

22 (WITNESS LEAVES STAND)

23 Q LET'S ASSUME FOR A MOMENT THAT THIS IS THE WALL OF THE

24 CHURCH, OKAY?

25 A OKAY.

1 Q AND THIS IS THE AIR CONDITIONING UNIT, OKAY?

2 A RIGHT.

3 Q LET'S JUST ASSUME THAT. WHERE WAS RON TILLMAN STANDING?

4 A ON THIS SIDE JUST LIKE THIS. DONALD WAS SITTING ON THIS
5 SIDE.

6 Q SO, IF I'M RON TILLMAN I WOULD HAVE BEEN OVER HERE?

7 A NO. IF YOU WAS RON TILLMAN YOU WOULD BE STANDING WHERE I'M
8 STANDING AT AND SUTTON WOULD BE RIGHT HERE.

9 Q OKAY. SO, I WOULD BE RIGHT HERE. I'LL BE RON TILLMAN AND
10 YO BE DONALD SUTTON. OKAY?

11 A OKAY.

12 Q AND THAT'S THE WALL OF THE CHURCH RIGHT THERE.

13 A AND THIS IS THE AIR VENT RIGHT HERE.

14 Q AND THAT'S THE AIR VENT. ALL RIGHT. AND I'VE GOT MY ARM
15 AROUND YOU, IS THAT CORRECT?

16 A RIGHT. TAKING IT OFF OF ME. WHATEVER HE WAS SAYING HE HAD
17 HIS--

18 (REPORTER ASKED THE WITNESS TO SPEAK UP)

19 MR. SWERLING: YOU HAVE GOT TO SPEAK A LITTLE LOUDER SO
20 THE COURT REPORTER CAN HEAR.

21 A WHATEVER HE WAS TELLING DONALD HE WAS--HE HAD DONALD
22 ATTENTION TO WATCH ME, BE LOOKING AT ME WHILE I'M SITTING IN
23 THE CAR. RON THEN PULLED THE PISTOL OUT FROM HIS RIGHT
24 POCKET AND SHOT DONALD IN THE HEAD. DONALD WENT DOWN TO THE
25 GROUND. RON BENT OVER AND SHOT THIS MAN AGAIN.

1 Q OKAY. LET'S LIMIT IT TO MY QUESTIONS AND THEN YOU CAN OFFER
2 ANY EXPLANATION YOU WANT. WOULD THAT BE A FAIR STATEMENT?
3 A SURE.
4 Q YOU ARE SAYING THAT THE CHURCH WALL IS OVER THERE.
5 A THAT'S RIGHT.
6 Q THE AIR CONDITIONER IS OVER HERE, TILLMAN IS STANDING HERE.
7 HE'S GOT HIS ARM AROUND SUTTON AND THEY ARE LOOKING AT YOU
8 OVER THERE, IS THAT CORRECT?
9 A SUTTON WAS.
10 Q SUTTON WAS LOOKING AT YOU OVER THERE?
11 A RIGHT.
12 Q OKAY. TILLMAN PULLED OUT A PISTOL AND SHOT HIM?
13 A THAT'S RIGHT.
14 Q WHERE DID HE SHOOT HIM?
15 A IN THE HEAD. THE FIRST SHOT WENT IN THE HEAD.
16 Q HOW CLOSE WAS HE?
17 A I DON'T KNOW.
18 Q WELL, YOU WERE LOOKING--
19 A HE WAS UP ON HIM. I WASN'T THERE TO MEASURE NO TAPE, WITH
20 NO TAPE.
21 Q WELL, WAS HE THAT CLOSE TO HIM?
22 A YEAH, ABOUT THAT CLOSE. I DON'T KNOW.
23 Q WITHIN A FOOT?
24 A I DON'T KNOW.
25 Q CERTAINLY AS CLOSE AS A FOOT?

1 MR. MORTON: YOUR HONOR, HE SAID HE DIDN'T KNOW HOW FAR.

2 MR. SWERLING: WELL, I'M ASKING HIM TO ESTIMATE.

3 MR. MORTON: HE'S GIVING AN APPROXIMATION.

4 THE COURT: WAIT JUST A MINUTE, GENTLEMEN. THE WITNESS
5 IS ON CROSS EXAMINATION. HE'S ENTITLED TO EXAMINE HIM ON ANY
6 RELEVANT ISSUE. THAT'S A RELEVANT ISSUE. GIVE THE WITNESS
7 A CHANCE TO ANSWER THE QUESTION.

8 MR. SWERLING: YES, SIR.

9 THE COURT: YOU ARE ENTITLED TO EXAMINE HIM SO GO AHEAD
10 AND DO IT.

11 Q HE PULLED HIS HAND OFF HIM?

12 A RIGHT.

13 Q AND DID HE PUT THE GUN TO HIS HEAD AND SHOOT?

14 A YES. HE RAISED HIS HAND UP LIKE THAT. THAT'S WHEN I TURN
15 MY HEAD. I SEEN THE GLIMPSE OF THE FIRE FROM THE PISTOL.

16 Q OKAY. NOW, SHOW THE JURY APPROXIMATELY HOW FAR FROM MY HEAD
17 THE GUN WAS WHEN THE GUN WENT OFF, AND I'LL BE SUTTON.

18 THE COURT: YOU BE SUTTON.

19 Q SO, LET'S SWITCH. OKAY. I'M SUTTON. NOW, YOU SHOW THE JURY
20 APPROXIMATELY HOW FAR--

21 A WELL, THIS WHAT IT LOOK LIKE TO ME. HE WENT JUST LIKE THIS
22 AND SHOT SUTTON IN THE HEAD.

23 Q WELL, I'M ASKING YOU TO SHOW THE JURY HOW CLOSE.

24 A THAT JUST HOW IT LOOK TO ME.

25 Q WELL, HOW CLOSE IS THAT?

1 A I DON'T KNOW.

2 THE COURT: JUST A MINUTE. MR. MORTON?

3 MR. MORTON: HE'S ASKED THE QUESTION AND IT WAS
4 ANSWERED.

5 THE COURT: IS THAT'S YOUR OBJECTION, I OVERRULE IT.

6 Q PUT YOUR HAND UP AND SHOW THE JURY HOW CLOSE THE WEAPON WAS
7 TO MR. SUTTON'S HEAD WHEN IT WAS FIRED.

8 A RON WENT LIKE THIS AND HOWEVER--I DON'T KNOW IF HE WAS THIS
9 CLOSE OR CLOSER BUT HE WAS LIKE THIS AIMING THE GUN AT THE
10 BOY HEAD.

11 Q SO, HE WAS THAT CLOSE OR CLOSER?

12 A MAY BE. I DON'T KNOW.

13 Q OKAY. AND YOU AT THAT POINT--WE'LL SWITCH AGAIN. I'LL BE
14 MR. TILLMAN, YOU BE MR. SUTTON. WHICH HAND DID HE HAVE THE
15 GUN?

16 A RIGHT HAND.

17 Q RIGHT HAND?

18 REPORTER: WAIT A MINUTE, MR. SWERLING, I DIDN'T HEAR
19 WHAT HE SAID.

20 THE COURT: YA'LL ARE GOING TO HAVE TO ASK THE QUESTION,
21 YOU'VE GOT TO ANSWER IT. YOU'VE GOT TO GIVE EACH OTHER TIME
22 TO ASK THE QUESTION AND ANSWER.

23 MR. SWERLING: YES, SIR.

24 Q WHICH HAND DID HE HAVE THE GUN IN?

25 A HE HAD IT IN HIS RIGHT HAND.

1 Q OKAY. AND WHAT DID HE TAKE IT OUT OF?
2 A RIGHT POCKET.
3 Q AND WHEN DID HE TAKE IT OUT OF HIS RIGHT POCKET?
4 A WHEN HE--WHEN DONALD WAS STANDING BESIDE HIM AND HE HAD
5 DONALD TO PAY ATTENTION TO ME IN THE CAR.
6 Q YOU SAY NOW THAT HE HAD DONALD PAY ATTENTION TO YOU IN THE
7 CAR. HOW DO YOU KNOW THAT?
8 A 'CAUSE DONALD WAS SITTING RIGHT THERE STARING AT ME.
9 Q WELL, HOW DO YOU KNOW--
10 A LIKE RON WAS TELLING HIM SOMETHING ABOUT ME. IT WAS ALMOST
11 SOMETHING LIKE THAT BUT ANYWAY SUTTON HAD HIS FOCUS ON ME.
12 Q YOU DON'T KNOW WHY?
13 A NO, I DON'T KNOW WHY.
14 Q YOU ARE JUST SPECULATING AS TO WHY, ARE YOU NOT?
15 A RIGHT.
16 Q AND WHERE WAS THE SHOT FIRED?
17 A IN THE HEAD. WELL, HE SHOT HIM SIDE THE HEAD BECAUSE WHEN
18 HE RAISED UP HE WAS--YOU KNOW, DONALD SUTTON WAS LOOKING DEAD
19 AT ME. HE HAD TO SHOOT HIM IN THE SIDE OF THE HEAD.
20 Q SO, HE SHOT HIM IN THE SIDE OF THE HEAD?
21 A RIGHT.
22 Q AND MR. SUTTON FELL DOWN?
23 A RIGHT.
24 Q FALL DOWN ON HIS BACK?
25 A YES. WHEN I WENT OVER--WELL, YEAH, YOU COULD SAY HE WAS ON

1 HIS BACK.

2 Q OKAY. AND AT THAT POINT ACCORDING TO YOUR TESTIMONY MR.

3 TILLMAN BENT OVER--

4 A BENT OVER AND SHOT HIM AGAIN.

5 Q SHOT HIM AGAIN. HOW CLOSE WAS THAT SHOT?

6 A WELL, LAY DOWN ON THE FLOOR AND I'LL SHOW YOU.

7 Q NO, JUST DO IT FACE TO FACE RIGHT HERE.

8 Q WELL, SAY YOU LAYING DOWN HE BEND OVER LIKE THIS AND SHOT HIM

9 IN THE FACE.

10 Q HOW CLOSE?

11 A I DON'T KNOW HOW CLOSE, HE JUST BEND OVER.

12 Q OKAY. SO, YOU HAVE NO IDEA WHAT THE DISTANCES WERE?

13 A NO.

14 Q OKAY. GO AHEAD AND HAVE A SEAT.

15 (WITNESS RESUMES STAND)

16 Q THAT WAS, AS FAR AS WHAT YOU ARE TELLING THE JURY TODAY,

17 APPROXIMATELY WHAT TIME?

18 A WHAT TIME THAT HAPPENED?

19 Q YES.

20 A I COULDN'T EVEN ANSWER THAT. I DIDN'T HAVE ON A WATCH, MR.

21 SWERLING.

22 Q WELL, WHAT TIME DID YOU LEAVE THE PARTY SHOP?

23 A WE LEFT ABOUT 8:30, A LITTLE AFTER 8:30. ABOUT SAY 8:35,

24 SOMETHING LIKE THAT.

25 Q SO, IT HAPPENED CERTAINLY A FEW MINUTES AFTER 8:30.

1 A THAT WAS AFTER HE DROP VITO OFF AT THE PARTY SHOP.
2 Q AFTER MR. TILLMAN DROPPED VITO. YOU LEFT AT ABOUT 8:35?
3 A NO, WE LEFT. ME AND RON.
4 Q THAT'S WHAT I'M ASKING YOU. WHEN DID YOU AND RON LEAVE THE
5 PARTY SHOP?
6 A ABOUT 8:35, 8:32, SOMETHING LIKE THAT.
7 Q AND SO WITHIN A FEW MINUTES THIS HAPPENED AT 8:30? YOU ARE
8 ONLY A HALF MILE FROM THE CHURCH?
9 A YEAH. WELL, IT DIDN'T TAKE NO MORE THAN ABOUT FIVE OR TEN
10 MINUTES.
11 Q WELL, THAT'S MY POINT, MR. MALLOY. IT ALL HAPPENED BEFORE
12 9:00, DID IT NOT?
13 A YES, IT DID.
14 Q THANK YOU. AND YOU WAITED UNTIL APPROXIMATELY 11:00, TWO
15 HOURS, TO MAKE A PHONE CALL TO THE POLICE DEPARTMENT, IS THAT
16 CORRECT?
17 A AFTER THE INCIDENT, YES.
18 Q AFTER THE INCIDENT.
19 A I WAS STILL NERVOUS AND UPSET.
20 Q ALL RIGHT. DURING THAT PERIOD OF TIME YOU WENT TO BUGGIE'S
21 GRILL?
22 A YES.
23 Q HAD A DRINK?
24 A I DIDN'T STOP OFF FOR NO DRINK. AFTER I LEFT THERE, I WENT
25 TO MY MOTHER'S AND STAYED IN THE YARD.

1 Q WENT TO YOUR MOTHER'S, STAYED IN THE YARD, WENT BACK TO THE
2 PARTY SHOP--

3 A I WENT UP TO THE STORE. MY MOTHER-IN-LAW'S STORE.

4 Q THEN YOU WENT TO THE PARTY SHOP, DIDN'T YOU?

5 A NO.

6 Q YOU NEVER WENT TO THE PARTY SHOP?

7 A NO, I DON'T THINK I WENT TO THE PARTY SHOP.

8 Q AND THEN YOU WALKED UP TO THE COMFORT INN?

9 A AFTER I LEFT MY GIRL FRIEND HOUSE AND AFTER I LEFT FROM OFF
10 OF NORTH MAIN.

11 Q OKAY. THEN YOU DROVE UP TO YOUR GIRL FRIEND'S HOUSE?

12 A NO.

13 Q HAD SOMEONE RIDE YOU UP TO YOUR GIRL FRIEND'S?

14 A RIGHT.

15 Q AND AFTER YOU LEFT YOUR GIRL FRIEND'S HOUSE THEN YOU WENT UP
16 TO NORTH MAIN?

17 A YES.

18 Q SO, YOU MADE ABOUT FIVE STOPS AFTER THIS EVENT HAPPENED? IS
19 THAT CORRECT?

20 A YES.

21 Q AT NO TIME DID YOU TELL ANYBODY ABOUT WHAT HAPPENED, IS THAT
22 CORRECT?

23 A YES.

24 Q AND AT NO TIME DID YOU CALL ANYONE IN LAW ENFORCEMENT TO TELL
25 THEM WHAT HAD HAPPENED, ISN'T THAT TRUE?

1 A WELL, I DID LATER ON
2 Q UNTIL ELEVEN O'CLOCK?
3 A RIGHT.
4 Q SO, YOU HAD APPROXIMATELY TWO HOURS OF JUST WANDERING AROUND,
5 DOING NOTHING, THINKING?
6 A WONDERING IF RON WAS GOING TO TRY AND KILL ME, TOO.
7 Q WELL, WHY DID YOU GO BACK TO THE PARTY SHOP, MR. MALLOY, IF
8 YOU WERE WONDERING OR AFRAID THAT MR. TILLMAN WAS GOING TO
9 KILL YOU?
10 A 'CAUSE I WANTED TO MAKE SURE RON HAD--
11 Q EXCUSE ME. LET ME FINISH MY QUESTION AND THEN YOU CAN
12 ANSWER.
13 A OKAY. GO AHEAD.
14 Q WHY WOULD YOU GO BACK TO THE PARTY SHOP THAT MR. TILLMAN
15 OWNED IF YOU WERE AFRAID OF MR. TILLMAN?
16 A I DIDN'T TELL YOU I WENT BACK TO THE PARTY SHOP. I TOLD YOU
17 I THINK I DID BUT I'M PRETTY SURE I DIDN'T.
18 Q ISN'T YOUR MOTHER'S STORE DIRECTLY ACROSS THE STREET FROM THE
19 PARTY SHOP?
20 A RIGHT ACROSS THE STREET. MY MOTHER WASN'T HOME. HOW ELSE
21 I WAS GONNA GET HOME?
22 Q PARDON?
23 A MY MOTHER WASN'T HOME. HOW ELSE I WAS GONNA GET HOME. THAT
24 WAS THE ONLY RIDE I COULD GET HOME.
25 Q ARE YOU SAYING YOU DID NOT GO TO THE PARTY SHOP?

1 A I DIDN'T GO IN THE PARTY SHOP.

2 Q ALL RIGHT. YOU WENT BACK THERE LOOKING FOR RON, DIDN'T YOU?

3 A NO.

4 Q ARE YOU DENYING THAT?

5 A YES.

6 Q OKAY.

7 A I SEEN RON--YOU KNOW, RON WASN'T THERE SO I FELT, YOU KNOW,

8 A LITTLE COMFORTABLE BUT I WAS STILL NERVOUS.

9 Q HOW DO YOU KNOW RON WASN'T THERE IF YOU WEREN'T LOOKING FOR

10 HIM?

11 A HIS CAR WASN'T THERE, MR. SWERLING.

12 Q SO, YOU DID GO BACK?

13 A MY MOTHER-IN-LAW STORE RIGHT ACROSS THE STREET. MY MOTHER

14 -IN-LAW STORE UP AT THE PARTY SHOP. BOTH ARE RIGHT DIRECTLY

15 IN FRONT OF EACH OTHER.

16 Q SO, MR. MALLOY, YOU ADMITTEDLY WENT BACK TO THE AREA WHERE

17 MR. TILLMAN MOST LIKELY WOULD HAVE BEEN DESPITE THE FACT THAT

18 YOU SAY YOU WERE AFRAID OF MR. TILLMAN?

19 A THAT'S RIGHT. HE WASN'T SURE IF I WAS GONNA GO BACK AND TELL

20 ANYBODY. I WASN'T TOO SURE IF HE WAS GONNA COME AND KILL ME

21 FOR KNOWING TOO MUCH.

22 Q SO, YOU WENT BACK THERE WHERE HE MOST LIKELY WOULD HAVE BEEN

23 TO SEE? THAT'S WHAT YOU ARE TELLING THE JURY?

24 A I WENT UP THERE TO GO GET ME A RIDE.

25 Q I UNDERSTAND THAT. BUT YOU WENT BACK TO THE AREA WHERE

1 TILLMAN MOST LIKELY WAS EVEN THOUGH YOU TELL THE JURY YOU
2 WERE AFRAID OF HIM?

3 A THAT'S RIGHT.

4 Q FINE. OKAY. FAIR ENOUGH. YOU WERE BARRED FROM THE PARTY
5 SHOP, WERE YOU NOT?

6 A I LOVE THAT QUESTION BUT I WASN'T. I CAN PROVE THAT 'CAUSE
7 I'M PRETTY SURE YOUR CLIENT IS STILL TRYING TO PUSH THAT
8 ISSUE SAYING I WAS BARRED BUT I WAS NEVER BARRED, MR.
9 SWERLING. I GOT PROOF OF THAT. CHECKS.

10 Q WELL, MR. MALLOY, LET ME ASK YOU THIS.

11 A UH-HUH.

12 Q BACK ON DECEMBER--I'M SORRY IF IN SOME WAY WE ARE HAVING THIS
13 EXCHANGE.

14 A OKAY.

15 Q YOU WANT TO ASK ME ANY QUESTIONS? ON DECEMBER 23RD, 1987,
16 YOU WERE CHARGED WITH ASSAULT WITH INTENT TO KILL--

17 A YES.

18 Q --WHEN YOU SHOT A RIFLE INTO THE PARTY SHOP?

19 MR. MORTON: YOUR HONOR, MAY WE APPROACH THE BENCH?

20 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
21 COURT REPORTER)

22 Q AS A RESULT OF THAT SHOOTING, WERE YOU BARRED FROM THE PARTY
23 SHOP?

24 MR. MORTON: YOUR HONOR, I OBJECT.

25 THE COURT: COUNSEL, HE'S ALREADY ASKED HIM THAT

1 QUESTION. YOU'VE OBJECTED. HE'S FOLLOWING UP THE QUESTION
2 WITH WHICH WE HAD AT THE SIDE BAR AND I'M GOING TO ALLOW HIM
3 TO ASK THE QUESTION. THE NEXT QUESTION WAS WHETHER OR NOT
4 HE WAS BARRED FROM THAT PREMISE.

5 MR. MORTON: YOUR HONOR, MAY WE APPROACH THE BENCH?

6 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
7 COURT REPORTER)

8 Q AS A RESULT OF THE SHOOTING, WERE YOU BARRED FROM THE PARTY
9 SHOP BY MR. TILLMAN OR MR. PAUL--

10 A NO.

11 Q EXCUSE ME, LET ME FINISH MY QUESTION, PLEASE. WERE YOU
12 BARRED FROM THE PARTY SHOP BY EITHER MR. TILLMAN OR MR. PAUL
13 BECAUSE OF THAT SHOOTING?

14 A NO.

15 Q DID MR. TILLMAN AGREE TO DROP THOSE CHARGES IF YOU STAYED
16 AWAY FROM THE PARTY SHOP?

17 A NO. HE ASKED ME IF I WOULD PAY FOR THE DAMAGES HE WOULD DROP
18 THE CHARGES. I PAID FOR THE DAMAGES AND HE DROPPED THE
19 CHARGES.

20 Q NOW, YOU WERE ARRESTED ON 12-28-1988, IS THAT CORRECT, AND
21 CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL?

22 A YES.

23 Q AND THAT CHARGE IS STILL PENDING IN THIS COURT?

24 A YES.

25 Q MORE THAN THIRTEEN MONTHS AGO?

1 A YES.

2 Q AND THAT AROSE OUT OF A SHOOTING INCIDENT ALSO, DID IT NOT,

3 WHERE YOU SHOT SOMEBODY?

4 A YES. I THOUGHT YOUR CLIENT SENT 'EM OUT TO COME KILL ME.

5 Q MR. MALLOY, I ASKED YOU A QUESTION.

6 A I'M ANSWERING IT.

7 Q THE QUESTION AROSE OUT OF YOUR SHOOTING YOUR AN INDIVIDUAL?

8 A THAT WAS MY REASON FOR DOING IT.

9 Q YOU STILL STAND CHARGED WITH THAT CRIME, DO YOU NOT?

10 A YES, I DO.

11 Q YOUR TESTIMONY IS--BY THE WAY, YOU WERE RELEASED ON THAT

12 CASE?

13 A THAT'S RIGHT.

14 Q ON DECEMBER 29TH, 1988, ON A PERSONAL RECOGNIZANCE BOND?

15 A RIGHT.

16 Q IS THAT CORRECT?

17 A YES.

18 Q ALL RIGHT. AND THIS CHARGE IS STILL PENDING IN THIS COURT

19 AS OF THIS TIME YOU SPEAK ON THE WITNESS STAND, IS IT NOT?

20 A RIGHT.

21 Q NOW, YOU HAVE TESTIFIED THAT NO PROMISES HAVE BEEN MADE, NO

22 DEALS HAVE BEEN MADE WITH YOU IN CONNECTION WITH THAT CHARGE,

23 IS THAT CORRECT?

24 A NO.

25 Q DO YOU KNOW IF ANYTHING HAS BEEN DISCUSSED WITH YOUR LAWYER

1 IN CONNECTION WITH THAT CHARGE?

2 A NO.

3 Q HAS THAT DISCUSSION COME UP WITH ANY OF THESE THREE

4 SOLICITORS AS TO WHAT'S GOING TO HAPPEN WITH THAT CHARGE?

5 A NO.

6 Q YOU DO, HOWEVER, HOPE THAT YOU ARE GOING TO BE TAKEN CARE OF

7 ON THAT CHARGE, DO YOU NOT?

8 A NO.

9 Q YOU HAVE NO EXPECTATIONS AND NO HOPES THAT THE SOLICITOR'S

10 OFFICE IN SOME WAY WILL HELP YOU OUT ON THE ASSAULT AND

11 BATTERY WITH INTENT TO KILL CHARGED? IS THAT WHAT YOU ARE

12 TELLING THE JURY?

13 A THAT'S RIGHT. THEY DIDN'T TELL ME ANYTHING ABOUT IT.

14 Q I DIDN'T ASK YOU--

15 A WE DIDN'T DISCUSS ANYTHING ABOUT THAT. WE DISCUSSED ABOUT

16 THE MURDER.

17 Q LISTEN TO MY QUESTION, SIR.

18 A I'M ANSWERING IT.

19 Q DO YOU HAVE ANY EXPECTATIONS--

20 A NO.

21 Q --THAT THE SOLICITOR'S OFFICE IN SOME WAY WILL ASSIST YOU

22 WITH THESE CHARGES?

23 A NO.

24 Q NOW, YOU ALSO SUBSEQUENTLY TO DECEMBER 28TH, 1988, WERE

25 ARRESTED AND CHARGED WITH THE MURDER OF DONALD SUTTON, WERE

1 YOU NOT?

2 A YES.

3 Q AND YOU WERE ARRESTED WITH A WARRANT THAT WAS SIGNED AGAINST
4 YOU ON JANUARY 4TH, 1989, ISN'T THAT CORRECT?

5 A YES.

6 Q I SHOW YOU THIS DOCUMENT AND SEE IF YOU CAN RECOGNIZE A COPY,
7 RECOGNIZE THAT?

8 A I RECOGNIZE IT.

9 Q WHAT IS IT?

10 A IT'S A DOCUMENT OF ARREST WARRANT.

11 MR. SWERLING: YOUR HONOR, I'D LIKE TO OFFER THIS INTO
12 EVIDENCE.

13 MR. MORTON: I OBJECT.

14 THE COURT: WHAT'S THE PURPOSE? HE DIDN'T DENY IT, HE
15 ADMITS IT. WHAT'S THE PURPOSE.

16 MR. SWERLING: YOUR HONOR, I'D LIKE TO PUT IN THE FACT
17 THAT THE WARRANT CHARGED HIM WITH MURDER.

18 THE COURT: HAVEN'T YOU ASKED HIM THE QUESTION?

19 MR. SWERLING: YES, SIR, BUT I'M ENTITLED TO STILL PUT
20 IN DOCUMENTARY EVIDENCE.

21 THE COURT: BUT HE DOESN'T DENY IT, DOES HE, COUNSEL?
22 DOES HE DENY IT? I MEAN WHAT'S THE PURPOSE OF THE--

23 MR. SWERLING: THE LANGUAGE THAT'S IN THE WARRANT THAT
24 WAS SERVED ON HIM.

25 THE COURT: SIMPLY TO SHOW THAT HE WAS CHARGED?

1 MR. SWERLING: BUT ALSO THE LANGUAGE THAT'S IN THE
2 WARRANT.

3 THE COURT: TELL ME WHAT THE PURPOSE IS.

4 MR. SWERLING: (AT THE BENCH) THE PURPOSE IS TO SHOW
5 AT THE TIME HE WAS CHARGED WITH THE SHOOTING OF DONALD
6 SUTTON, NOT THAT HE'S AN ACCESSORY. HE'S TESTIFIED HE COULD
7 BE AN ACCESSORY. HE WAS CHARGED WITH MURDER, WITH SHOOTING
8 DONALD SUTTON. THAT'S WHAT THE WARRANT SAYS.

9 (MR. SWERLING AND MR. MORTON APPROACH THE BENCH OUT OF
10 THE PRESENCE OF THE COURT REPORTER)

11 Q MR. MALLOY, THE WARRANT THAT WAS SERVED ON YOU ON JANUARY
12 4TH--

13 MR. MORTON: YOUR HONOR, I OBJECT. HE'S READING FROM
14 THE WARRANT. THE WARRANT IS NOT IN EVIDENCE.

15 MR. SWERLING: YOUR HONOR SAID I COULD ASK HIM ABOUT IT.

16 THE COURT: ASK HIM WAS HE CHARGED. I'M GOING TO LET
17 HIM. GO AHEAD, MR. SWERLING.

18 Q WERE YOU CHARGED IN THIS WARRANT WITH MURDER BY YOU AND MR.
19 TILLMAN--I'M SORRY. DID THIS WARRANT CHARGE YOU WITH
20 SHOOTING DONALD SUTTON?

21 A YES.

22 Q OKAY. THIS WARRANT DIDN'T SAY ANYTHING ABOUT RONALD TILLMAN,
23 DID IT?

24 A I DON'T THINK SO. I DIDN'T SEE IT.

25 Q WOULD YOU LIKE TO SEE IT TO REFRESH YOUR MEMORY? DO YOU FIND

1 ANYTHING AMUSING ABOUT THIS?

2 A NO.

3 Q DOES THIS WARRANT CHARGE MR. TILLMAN OR MAKE ANY REFERENCE
4 TO MR. TILLMAN?

5 A I DIDN'T SEE HIS NAME IN IT.

6 Q IT SAYS THAT HAYES MALLOY SHOT DONALD SUTTON, DOESN'T IT?

7 A THAT'S WHAT IT SAYS.

8 Q OKAY. AND FOR A YEAR THAT CHARGE WAS HANGING OVER YOUR HEAD,
9 WASN'T IT?

10 A YES, AND YOUR CLIENT'S, TOO.

11 Q MR. MALLOY, I ASKED YOU A QUESTION. WAS IT HANGING OVER YOUR
12 HEAD?

13 A YES, BOTH OURS.

14 Q BUT I DIDN'T ASK YOU THAT QUESTION, DID I?

15 A NO.

16 THE COURT: MR. SWERLING, IF YOU WANT SOME ASSISTANCE
17 FROM THE COURT IF HE'S NOT ANSWERING JUST TELL ME.

18 MR. SWERLING: YOUR HONOR, I'D ASK YOU--

19 THE COURT: YOU DON'T HAVE TO ARGUE WITH THE WITNESS.
20 I'LL TAKE CARE OF IT. MR. WITNESS, YOU LISTEN TO HIS
21 QUESTION AND YOU ANSWER HIS QUESTION. IF IT NEEDS EXPLAINING
22 YOU MAY ASK PERMISSION OR THE STATE'S ATTORNEY WILL COME BACK
23 ON REDIRECT AND ASK YOU QUESTIONS TO EXPLAIN IT, BUT YOU
24 ANSWER HIS QUESTION. YOU UNDERSTAND ME?

25 A YES, SIR.

1 THE COURT: ALL RIGHT, SIR. PROCEED.

2 Q MR. MALLOY, THAT CHARGE WAS DISMISSED AGAINST YOU ONLY LAST
3 FRIDAY, ISN'T THAT CORRECT?

4 A YES.

5 Q AND THAT CHARGE WAS DISMISSED AGAINST YOU IN RETURN FOR YOUR
6 TESTIMONY IN THE TRIAL OF THE CASE OF THE STATE VERSUS RONALD
7 TILLMAN? ISN'T THAT A FACT?

8 A I THINK YOU WOULD HAVE TO ASK THEM ABOUT THAT.

9 Q NO, I'M ASKING YOU.

10 A I CAN'T MAKE UP--I CAN'T SAY WHAT THEY WOULD DECIDE OR WHAT.

11 Q ISN'T IT A FACT THAT YOUR UNDERSTANDING IS THAT THE CHARGES
12 AGAINST YOU WERE DISMISSED IF YOU WOULD TESTIFY AND
13 COOPERATED IN THIS TRIAL?

14 A I WAS GOING TO TESTIFY IF I WAS CHARGED WITH IT.

15 Q YOU ARE NOT ANSWERING MY QUESTION.

16 MR. SWERLING: I WOULD ASK THE COURT DIRECT HIM TO
17 ANSWER THE QUESTION.

18 THE COURT: JUST A MINUTE. THE QUESTION WAS WAS IT PART
19 OF THE ARRANGEMENT IN ORDER TO DISMISS IT THAT YOU WOULD
20 COOPERATE AND TESTIFY IN THIS TRIAL?

21 A NO.

22 THE COURT: YOU SEE, THAT'S ALL IT TAKES IS AN ANSWER.
23 GO AHEAD.

24 Q THAT CHARGE HAS BEEN DISMISSED ON YOU RIGHT NOW, IS THAT
25 CORRECT?

1 A THAT'S RIGHT.
2 Q SO, YOU SIT HERE RIGHT NOW ON THAT WITNESS CHAIR A FREE MAN
3 ON THAT CHARGE? IS THAT CORRECT?
4 A YES.
5 Q DESPITE THE FACT THAT IT WAS HELD OVER YOU FOR A YEAR?
6 A YES.
7 Q IS THAT CORRECT?
8 A YES.
9 Q AND THAT CHARGE WAS THAT YOU SHOT DONALD SUTTON?
10 A THAT'S WHAT THE PAPER SAY.
11 Q NOW, YOU WERE RELEASED ON THAT MURDER CASE--BY THE WAY YOU
12 WERE INDICTED FOR THAT CHARGE, TOO, WEREN'T YOU?
13 A I DON'T KNOW. I THINK SO.
14 Q SEE IF YOU CAN RECOGNIZE THIS DOCUMENT.
15 A YEAH. SOMETHING LIKE THIS.
16 MR. SWERLING: YOUR HONOR, I WOULD OFFER THE INDICTMENT
17 AGAINST MR. MALLOY IN EVIDENCE.
18 MR. MORTON: I OBJECT. IT'S HEARSAY. SAME GROUNDS AS
19 THE WARRANT. HE CAN ASK HIM.
20 THE COURT: WELL, IT'S A LITTLE DIFFERENT NOW. IS THAT
21 A CERTIFIED COPY OF THE ORIGINAL?
22 MR. SWERLING: A CERTIFIED COPY, YOUR HONOR.
23 THE COURT: (MR. MORTON AND MR. SWERLING AT THE BENCH)
24 IS THERE ANY QUESTION THIS IS NOT A CERTIFIED COPY OF THE
25 ORIGINAL? THERE'S NO INFORMATION ON IT CONCERNING THE

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14 EXHIBIT #1)
15 THE COURT: THE ONLY PURPOSE IS FOR TESTING THE
16 CREDIBILITY OF THIS WITNESS HIMSELF. IT'S A CERTIFIED TRUE
17 COPY OF A RECORD MAINTAINED IN THE OFFICES OF THE CLERK OF
18 COURT FOR THIS COUNTY OF THE INDICTMENT IN THIS CASE
19 Q MR. MALLOY, WHAT DOES THAT INDICTMENT CHARGE YOU WITH?
20 A ONE COUNT MURDER.
21 Q WHAT DOES IT SAY YOU DID?
22 A WELL, IT GOT WHAT I DID BUT IT DON'T HAVE--
23 Q I DIDN'T ASK YOU THAT. I ASKED YOU WHAT IT SAID YOU DID.
24 A --IT JUST GOT SOMETHING DOWN THERE ABOUT ME SHOOTING DONALD
25 SUTTON. THAT'S WHAT IT GOT DOWN ON HERE.

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1 Q I ASKED YOU WHAT IT SAYS YOU DID?

2 A IT SAYS I DID SHOOT DONALD SUTTON. THAT'S WHAT IT SAY.

3 MR. SWERLING: MAY I PASS THIS TO THE JURY, YOUR HONOR.

4 THE COURT: NO, NO, I HASN'T BEEN MARKED YET. HAS IT
5 BEEN MARKED YET?

6 REPORTER: YES, SIR.

7 THE COURT: HAND IT UP HERE AND LET ME SEE IT. ALL
8 EXHIBITS HAVE TO BE HANDED BACK TO THE COURT, MR. SWERLING.
9 NOW IN THE RECORD OF THIS CASE OVER THE OBJECTION OF THE
10 STATE IS EXHIBIT DESIGNATED DEFENDANT'S EXHIBIT NUMBER 1.
11 IT'S A ONE PAGE EXHIBIT, CERTIFIED TRUE COPY OF INDICTMENT
12 NUMBER 89-GS40-739, STATE VS. HAYES MALLOY. YOU MAY PUBLISH
13 IT.

14 Q BY THE WAY, MR. MALLOY, DOES THAT INDICTMENT SAY NOL PROSSED
15 ON IT OR DISMISSED?

16 A NO, NOT THAT ONE.

17 Q WERE YOU PRESENT WHEN THE INDICTMENT WAS NOL PROSSED OR
18 DISMISSED?

19 A NO.

20 Q YOU WERE TOLD IT WAS THOUGH, WERE YOU NOT?

21 A YES.

22 Q BY MR. BILTON?

23 A YES.

24 Q THIS GENTLEMAN STANDING UP?

25 A YES.

1 Q HE TOLD YOU THAT LAST FRIDAY?

2 A YES.

3 Q BY THE WAY, LET ME ASK YOU SOMETHING. IN THE LAST COUPLE OF
4 WEEKS HOW MANY HOURS DO YOU THINK YOU'VE SPENT GOING OVER
5 YOUR TESTIMONY WITH THESE FOUR PEOPLE, THREE PROSECUTORS AND
6 MR. AUSTIN?

7 A I DON'T KNOW HOW MANY HOURS.

8 Q MANY, MANY, MANY HOURS?

9 A NOT MANY.

10 Q YOU WERE UP IN THEIR OFFICE MOST EVERYDAY LAST WEEK, WERE YOU
11 NOT?

12 A YES, BUT THAT DON'T MEAN I WAS TALKING TO 'EM ALL AT THAT
13 TIME.

14 Q WELL, LET ME ASK YOU TO GIVE ME AND THE JURY YOUR BEST
15 ESTIMATE OF HOW MANY HOURS YOU SPENT TALKING TO THE FOUR
16 INDIVIDUALS THERE ABOUT THIS CASE?

17 A ABOUT--I DON'T KNOW. I COULDN'T REALLY SAY. I COULDN'T
18 ESTIMATE THAT, MR. SWERLING.

19 Q WOULD YOU SAY IT WAS MORE THAN TEN HOURS OR LESS THAN TEN
20 HOURS?

21 A IT COULD HAVE BEEN MORE.

22 Q COULD IT BE MORE THAN TWENTY HOURS?

23 A IT COULD HAVE BEEN. I DON'T KNOW.

24 Q COULD IT BE MORE THAN THIRTY HOURS?

25 A NO, I DON'T THINK SO.

1 Q SOMEWHERE BETWEEN TWENTY AND THIRTY HOURS?

2 A I THINK.

3 Q AND YOU AND THEY BASICALLY KEPT GOING OVER YOUR TESTIMONY,
4 ISN'T THAT TRUE?

5 A YES. THEY WAS ASKING ME, YOU KNOW, QUESTIONS ABOUT THAT
6 NIGHT.

7 Q ALL RIGHT. AND THEY WERE ASKING YOU ABOUT WHAT YOUR
8 TESTIMONY WAS GOING TO BE IN COURT AND WHAT YOUR PRIOR
9 STATEMENTS HAVE BEEN, ISN'T THAT TRUE?

10 A THEY JUST ASKED ME--THEY DIDN'T ASK ME WHAT I WAS GONNA SAY
11 IN COURT. THEY WAS JUST ASKING ME QUESTIONS ABOUT MY
12 STATEMENT.

13 Q ABOUT YOUR STATEMENTS?

14 A RIGHT. YEAH, ABOUT MY STATEMENTS.

15 Q AND YOU IN FACT SPENT--DID YOU SPEND SOME TIME WITH THEM THIS
16 WEEKEND GOING OVER THE CASE AND PREPARING THE CASE?

17 A SUNDAY.

18 Q HOW MANY TIMES HAVE YOU PRACTICED YOUR TESTIMONY WITH THEM?

19 A I DON'T RECALL PRACTICING. ALL I REMEMBER THEY ASKED ME
20 QUESTIONS ABOUT MY STATEMENT.

21 Q DID THEY BRING YOU HERE IN THE COURTROOM AND PUT YOU ON THE
22 WITNESS STAND SO YOU'D GET A FEEL FOR IT?

23 A NO.

24 Q DID THEY ASK YOU QUESTIONS IN THEIR OFFICE CONCERNING THE
25 CASE?

1 A WELL, THEY ASKED ME, YOU KNOW, ABOUT MY STATEMENTS.

2 Q DID THEY ASK YOU QUESTIONS THAT I MIGHT BE EXPECTED TO ASK

3 TO BE PREPARED FOR THOSE?

4 A I GUESS. I DON'T KNOW. I DON'T REMEMBER.

5 Q NOW, ON DECEMBER 21ST YOU SAY YOU WENT TO THE F.B.I.

6 A RIGHT.

7 Q AND TOLD THEM SOMETHING WAS GOING TO COME DOWN?

8 A I TOLD THEM RON HAD A HIT OUT ON DONALD SUTTON.

9 Q AND YOU TOLD THAT TO MR. MONDOR?

10 A RANDY MONDOR.

11 Q AND TO --

12 A JIM DAVIS.

13 Q JIM DAVIS. IS THAT CORRECT?

14 A RIGHT.

15 Q NOW, LET ME ASK YOU THIS. ON DECEMBER 26TH WHEN YOU FOUND

16 OUT OR GOT THE FEELING THAT SOMETHING WAS GOING TO HAPPEN,

17 YOU SAID YOU TRIED TO CALL LISA MISICKA?

18 A RIGHT.

19 Q FROM THE F.B.I.?

20 A RIGHT.

21 Q BUT YOU DID NOT CALL MR. MONDOR OR MR. DAVIS EVEN THOUGH YOU

22 TALKED TO THEM ON THE 21ST?

23 A I DID NOT HAVE THEIR CARD ON ME. ONLY CARD I HAD ON ME WAS

24 LISA MISICKA'S.

25 Q DID YOU ASK TO SPEAK WITH MR. MONDOR OR MR. DAVIS WHEN YOU

1 CALLED ON THE 26TH TO THE F.B.I.?

2 A AT THAT TIME, MR. SWERLING, I WAS TALKING TO SO MANY
3 INVESTIGATORS I COULDN'T, YOU KNOW, SAY, YOU KNOW, LET ME
4 SPEAK TO THIS PERSON 'CAUSE I REALLY DIDN'T, YOU KNOW, COULD
5 REMEMBER THEIR NAMES.

6 Q SO, ON THE 26TH DURING THIS AFTERNOON PERIOD WHEN YOU SAID
7 YOU MADE PHONE CALLS TO LISA MISICKA--

8 A RIGHT.

9 Q --YOU DIDN'T EVEN ASK TO SPEAK TO ANOTHER F.B.I. AGENT, IS
10 THAT CORRECT?

11 A NO. YES, I THINK I DID. CORRECT.

12 Q THAT IS CORRECT?

13 A THAT IS CORRECT.

14 Q YOU DID NOT ASK TO SPEAK TO ANYONE?

15 A I COULDN'T REMEMBER THEIR NAMES. I DIDN'T KNOW THEIR NAMES
16 BY HEART, MR. SWERLING.

17 Q WELL, DID YOU ASK TO SPEAK WITH ANY FEDERAL OFFICER--

18 A LISA MISICKA.

19 Q --ON THE AFTERNOON OF THE 26TH OTHER THAN LISA MISICKA?

20 A NO.

21 Q DID YOU JUST SAY PUT ON THE PHONE ANY F.B.I. AGENT SO I CAN
22 TALK TO THEM AND TELL THEM WHAT'S HAPPENING?

23 A NO, I DON'T THINK I DID THAT.

24 Q OKAY. WHY NOT?

25 A I DIDN'T HAVE THE CARDS ON ME, I COULDN'T REMEMBER THEIR

1 NAMES, MR. SWERLING. ONLY CARD I HAD ON ME WAS LISA
2 MISICKA'S.

3 Q MR. MALLOY, I DON'T THINK YOU UNDERSTAND MY QUESTION. IF YOU
4 WERE CALLING THE F.B.I. ON THE 26TH TO TELL THEM THAT
5 SOMETHING WAS GOING TO HAPPEN TO DONALD SUTTON ON THAT DAY
6 AND MS. MISICKA WAS NOT THERE AND YOU COULDN'T REMEMBER THE
7 NAMES OF THE OTHER TWO AGENTS, WHY DIDN'T YOU JUST ASK FOR
8 AN AGENT ON DUTY?

9 A I WASN'T EVEN THINKING OF THAT AT THE TIME, MR. SWERLING.
10 I DON'T KNOW. I WASN'T EVEN THINKING.

11 Q DID SOMEONE ANSWER THE PHONE AT THE F.B.I.?

12 A YES.

13 Q SO, THERE WERE PEOPLE THERE?

14 A THERE WAS ONE PERSON THERE THAT I KNOW OF.

15 Q DID YOU TELL THEM WHAT WAS HAPPENING?

16 A NO, I DON'T THINK HE WAS A FEDERAL AGENT. I THINK HE WAS
17 JUST WORKING IN THAT BUILDING.

18 Q DID YOU TELL HIM THAT YOU WANTED TO SPEAK WITH A FEDERAL
19 AGENT?

20 A I TOLD HIM I WANTED TO SPEAK TO LISA MISICKA.

21 Q BUT YOU NEVER ASKED HIM FOR ANOTHER FEDERAL AGENT?

22 A YES, I DID. YES, I DID. THEY TOLD ME THEY WAS NOT IN.

23 Q THERE WERE NO AGENTS THERE?

24 A THERE WAS NO AGENTS THERE.

25 Q DID YOU LEAVE--

1 A AND I CALLED AFTER THAT.

2 Q --YOUR NAME AND NUMBER WITH THAT INDIVIDUAL?

3 A NO.

4 THE COURT: JUST A MINUTE NOW. LET HIM ANSWER THE
5 QUESTION, MR. SWERLING. LET HIM FINISH.

6 A AFTER THAT I DIALED LISA MISICKA'S BEEPER NUMBER BUT SHE
7 DIDN'T RETURN MY CALL.

8 Q DID YOU LEAVE YOUR NAME AND NUMBER WITH THAT PERSON AT THE
9 F.B.I. SO THAT YOU COULD BE CONTACTED BACK?

10 A NO, I DIDN'T. THAT WAS THE ONLY WAY I CAN GET CONTACTED BACK
11 BY USING LISA MISICKA'S BEEPER AND DIALING THE NUMBER WHERE
12 I WAS AT.

13 Q WELL, YOU WERE CALLING FROM A PHONE?

14 A RIGHT.

15 Q DID YOU LEAVE THE PHONE NUMBER OF WHERE YOU WERE AT WITH THE
16 F.B.I. SO SOMEONE COULD CALL YOU BACK?

17 A I LEFT IT AT LISA MISICKA'S BEEPER.

18 Q BUT NOT AT THE F.B.I. SO, THE ANSWER TO MY QUESTION IS YOU
19 DID NOT?

20 A NO.

21 Q NOW, YOU ALSO TESTIFIED AND TOLD THE JURY THAT YOU WERE
22 TRYING TO CALL THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

23 A THAT'S RIGHT. I ASKED--WHEN I ASKED FOR AN INVESTIGATOR, I
24 ASKED FOR THE WRONG ONE BUT HE WASN'T IN.

25 Q WHO DID YOU ASK FOR?

1 A LOTT. LT. LOTT. I THINK HE WAS A LIEUTENANT AT THAT TIME.
2 Q LT. LOTT. NOW, WHEN YOU CALLED THE RICHLAND COUNTY SHERIFF'S
3 DEPARTMENT WHEN YOU WERE CONCERNED THAT MR. SUTTON WAS GOING
4 TO BE KILLED, DID YOU LEAVE YOUR NAME AND NUMBER WITH ANYBODY
5 ELSE FOR THEM TO CALL YOU BACK?
6 A NO. I WAS IN A HURRY TRYING TO GET BACK TO LISA MISICKA.
7 KEEP ON CALLING HER.
8 Q DID YOU ASK TO SPEAK WITH ANY OTHER DETECTIVE, ONE OF THE
9 HUNDRED DETECTIVES DOWN AT THE SHERIFF'S DEPARTMENT?
10 A NO.
11 Q WHY NOT?
12 A 'CAUSE I KNOW THE F.B.I. THEY HAD A CASE GOING ON AND THEY
13 WAS--
14 Q I ASKED WHY DIDN'T YOU ASK TO SPEAK WITH ANOTHER DETECTIVE
15 AT THE SHERIFF'S DEPARTMENT WHEN YOU COULD NOT FIND LT. LOTT
16 AND YOU KNEW SOMETHING WAS GOING TO HAPPEN THAT NIGHT?
17 A I JUST HUNG UP THE PHONE, MR. SWERLING, AND TRIED TO GET BACK
18 IN CONTACT WITH LISA MISICKA AGAIN.
19 Q ON 12-26 WHEN YOU FINALLY DECIDED TO MAKE A PHONE CALL TO THE
20 POLICE DEPARTMENT AFTER SOME TWO HOURS YOU SAW INVESTIGATOR
21 DUNHAM, IS THAT CORRECT, FROM THE RICHLAND COUNTY SHERIFF'S
22 DEPARTMENT?
23 A YES, I SEEN HIM THAT NIGHT.
24 Q THAT WAS THE FIRST TIME THAT YOU HAD SPOKEN WITH ANY PERSON
25 FROM LAW ENFORCEMENT THAT DAY, ISN'T THAT TRUE?

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18 A NO.
19 Q YOU DID NOT TELL HIM THAT YOU HAD SEEN THE SHOOTING, DID YOU?
20 A NO, I DIDN'T TELL HIM. I DIDN'T EVEN TELL HIM ABOUT THE PLAN
21 ON DONALD SUTTON GETTING KILLED EITHER.
22 Q YOU DID NOT EVEN TELL HIM HOW YOU KNEW THE BODY WAS THERE,
23 DID YOU?
24 A NO.
25 Q NOW, ON DECEMBER 26TH, 1988, YOU WERE BROUGHT DOWN TO

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1 RICHLAND COUNTY SHERIFF'S DEPARTMENT AND GAVE A STATEMENT TO
2 DETECTIVE AUSTIN, DID YOU NOT?
3 A YES.
4 Q DO YOU REMEMBER THAT STATEMENT?
5 A NOT CLEARLY. I REMEMBER TELLING HIM I KNEW SOMETHING ABOUT
6 THE MURDER.
7 Q AND THAT'S MR. AUSTIN RIGHT HERE, IS THAT CORRECT?
8 A YES. RIGHT.
9 Q DO YOU KNOW WHAT IT MEANS TO TELL THE TRUTH?
10 A YES.
11 Q DO YOU KNOW WHAT IT MEANS TO TAKE AN OATH?
12 A YES.
13 Q DO YOU KNOW WHAT IT MEANS TO LIE?
14 A YES.
15 Q ON THE 26TH OF DECEMBER, 1988, DID YOU LIE OR TELL THE TRUTH
16 TO THIS GENTLEMAN?
17 A I DON'T THINK I SEEN HIM ON THE 26TH. I'M NOT SURE. I DON'T
18 THINK I SEEN HIM ON THE 26TH.
19 Q YOU JUST SAID YOU DID.
20 A WELL, I MIGHT HAVE BEEN MISTAKEN, MR. SWERLING. I THINK--
21 WELL, WHEN I WENT DOWN TO RICHLAND COUNTY--YEAH, I THINK I
22 DID SEE MR. AUSTIN THAT NIGHT. YES, I DID.
23 Q DID YOU SIT ACROSS FROM THIS MAN AND TELL HIM THAT YOU WOULD
24 GIVE HIM A STATEMENT ABOUT WHAT HAPPENED ON THE EVENING OF
25 THE 26TH?

1 A YES.

2 Q DID YOU LOOK HIM RIGHT IN THE EYE JUST LIKE YOU ARE LOOKING
3 AT THE JURY RIGHT NOW AND TELL HIM WHAT HAPPENED ON THE 26TH
4 OF DECEMBER?

5 A WELL, I WOULDN'T SAY I LOOKED HIM DIRECTLY IN THE EYE. I WAS
6 LIKE LOOKING AT HIM. WHEN HE LOOKED AT ME I WOULD KIND OF
7 LIKE TURN, WHATEVER, BUT I DID TALK TO HIM.

8 Q HOW MANY HOURS DID YOU SPEND WITH MR. AUSTIN GIVING THAT
9 EIGHT PAGE STATEMENT?

10 A I DON'T KNOW.

11 Q A COUPLE OF HOURS?

12 A COULD HAVE BEEN.

13 Q AND YOU TOLD MR. AUSTIN YOU WERE TELLING HIM THE TRUTH, THE
14 WHOLE TRUTH AND NOTHING BUT THE TRUTH, WEREN'T YOU?

15 A I--YES.

16 Q AND YOU SAT ACROSS FROM HIM AND TOLD HIM WHAT YOU WANTED HIM
17 TO BELIEVE THE TRUTH WAS, DIDN'T YOU?

18 A YES.

19 Q THAT'S WHAT YOU ARE DOING TO THE JURY TODAY, TOO, ISN'T IT?

20 A YES.

21 Q BUT YOU DIDN'T TELL MR. AUSTIN THE TRUTH, DID YOU?

22 A NO, I DIDN'T TELL HIM THE TRUTH BECAUSE I KNOW MY LIFE WAS
23 IN DANGER.

24 Q BUT NOW YOU--

25 A I KNEW TOO MUCH ABOUT IT.

1 Q YOU WANT THE JURY TO BELIEVE YOU ARE TELLING THEM THE TRUTH?

2 A MR. SWERLING, YOUR CLIENT--

3 MR. SWERLING: YOUR HONOR, WOULD YOU INSTRUCT THE
4 WITNESS TO ANSWER MY QUESTION?

5 THE COURT: ANSWER HIS QUESTION.

6 A NO, I'M NOT LYING. I'M TELLING THE TRUTH.

7 Q DID YOU TELL MR. AUSTIN THAT SAME STATEMENT THAT DAY? THAT
8 YOU WEREN'T LYING, YOU WERE TELLING THE TRUTH?

9 A CAN I EXPLAIN THAT STATEMENT?

10 MR. SWERLING: YOUR HONOR?

11 THE COURT: JUST ANSWER HIS QUESTION.

12 A WELL, I DIDN'T TELL MR. AUSTIN THE TRUTH THE FIRST TIME. I
13 DID NOT TELL HIM THE TRUTH.

14 Q BUT YOU TOLD HIM YOU WERE TELLING HIM THE TRUTH?

15 A WELL, YEAH, TO GET HIM--WELL, RIGHT.

16 Q AND YOU TOLD HIM YOU WOULD GIVE HIM A STATEMENT BUT YOU WERE
17 GOING TO REFUSE TO SIGN THE STATEMENT?

18 A THAT'S RIGHT 'CAUSE I KNOW IT WAS A LIE.

19 Q BUT--DID YOU WRITE OUT THE STATEMENT?

20 A NO, I DIDN'T.

21 Q HE WROTE OUT WHAT YOU TOLD HIM, IS THAT CORRECT?

22 A YEAH, HE WROTE DOWN WHAT I TOLD HIM.

23 Q LET ME ASK YOU SOMETHING.

24 MR. MORTON: YOUR HONOR, AT THIS TIME I WOULD MAKE A
25 MOTION THAT MY CLIENT HAS A CHANCE TO EXPLAIN HIS ANSWERS.

1 I THINK HE REQUESTED THE COURT THAT HE BE ALLOWED TO EXPLAIN
2 WHY HE SAID WHAT HE DID TO INVESTIGATOR AUSTIN. I THINK HE
3 HAS A RIGHT TO DO THAT.

4 THE COURT: I'LL LET YOU ON REDIRECT, COUNSEL, IF YOU
5 WANT TO ASK HIM. ANYTHING THAT NEEDS CLARIFYING SOMEWHAT.
6 HE DIDN'T ASK HIM A YES OR NO QUESTION, HE JUST ASKED HIM A
7 QUESTION.

8 Q NOW, LET ME ASK YOU. IN THIS STATEMENT THAT YOU GAVE TO
9 DETECTIVE AUSTIN ON THAT DAY, DID YOU TELL DETECTIVE AUSTIN
10 THAT MR. TILLMAN HAD ASKED YOU OR WAS BEGGING YOU TO KILL MR.
11 SUTTON FOR \$10,000.00?

12 A THAT'S WHAT HE TOLD ME THAT INSIDE THE CAR.

13 Q BUT DIDN'T YOU SAY IN THE STATEMENT--

14 MR. MORTON: YOUR HONOR, I THINK HE HAS A RIGHT TO LOOK
15 AT HIS STATEMENT.

16 MR. SWERLING: I'M GOING TO SHOW HIM HIS STATEMENT.

17 THE COURT: GIVE IT TO HIM. GO AHEAD.

18 MR. SWERLING: I WILL AS SOON AS I CAN FIND WHAT I'M
19 LOOKING FOR.

20 THE COURT: ADDRESS IT TO ME. I RUN THE COURTROOM, MR.
21 SWERLING.

22 MR. SWERLING: YES, SIR.

23 THE COURT: IF YOU WANT TO STOP THE QUESTIONING UNTIL
24 YOU HAND HIM A COPY, THAT'S FINE. JUST PROVIDE HIM WITH A
25 COPY.

1 Q DO YOU RECOGNIZE A COPY OF THAT STATEMENT?

2 A YES.

3 Q WHAT DOES IT SAY RIGHT THERE?

4 A THIS FIRST LINE OR THE SECOND LINE?

5 Q FIRST LINE.

6 A OKAY. TO CALL HER TO LET HER KNOW WHEN--WHAT'S THIS?

7 Q I'M SORRY.

8 THE COURT: JUST A MINUTE. YA'LL COME HERE A MINUTE.

9 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
10 COURT REPORTER)

11 Q DID YOU TELL MR. AUSTIN ON DECEMBER 26TH THAT SEVERAL DAYS
12 BEFORE MR. SUTTON WAS KILLED YOU WERE OFFERED \$10,000.00 TO
13 KILL HIM?

14 A WELL, WHEN I WAS TALKING TO MR. AUSTIN--

15 Q YES OR NO?

16 A NO. WHAT I DID--CAN I EXPLAIN THAT?

17 THE COURT: NO, WAIT A MINUTE. NOW, HE'S ASKING YOU DID
18 YOU MAKE THAT STATEMENT. ALL RIGHT? THE ANSWER IS YES OR
19 NO. IF YOU CAN'T ANSWER THE QUESTION YES OR NO, THEN YOU
20 TELL MR. SWERLING I CANNOT ANSWER THAT QUESTION YES OR NO.
21 THEN HE'S GOT TO DECIDE WHETHER OR NOT HE WANTS TO ASK IT TO
22 YOU IN THAT FASHION OR NOT. SO, CAN YOU ANSWER THE QUESTION
23 YES OR NO?

24 A NO, SIR.

25 Q ARE YOU SAYING YOU DID NOT SAY THAT?

1 A I'M SAYING I CAN'T ANSWER THAT QUESTION.

2 THE COURT: IN A FASHION OF YES OR NO.

3 A RIGHT.

4 Q OKAY. DID YOU TELL MR. AUSTIN THAT MR. TILLMAN OFFERED YOU
5 \$10,000.00 TO KILL MR. SUTTON BEFORE THE DAY OF THE KILLING?

6 A I STILL CAN'T ANSWER THAT WITH A YES OR NO.

7 Q THEN DON'T ANSWER IT WITH YES OR NO.

8 MR. MORTON: YOUR HONOR--

9 Q DID YOU TELL MR. AUSTIN THAT--

10 MR. MORTON: I OBJECT.

11 THE COURT: WHAT'S THE PROBLEM?

12 MR. MORTON: YOUR HONOR, I THINK HE WANTS TO EXPLAIN
13 WHAT HIS ANSWER IS. I THINK HE CAN EXPLAIN IT IF WE JUST
14 GIVE HIM A CHANCE TO EXPLAIN IT.

15 THE COURT: WELL, THE QUESTION IS VERY SIMPLE. DID YOU
16 MAKE THAT STATEMENT OR NOT. IF HE SAYS HE DID, THEN HE SAYS
17 YES. IF HE SAYS I DIDN'T, I DIDN'T. THAT'S NOT HARD, MR.
18 MORTON.

19 MR. MORTON: HE'S ASKING HIM IF HE MADE THAT STATEMENT
20 AND I THINK HE HAS A RIGHT TO LOOK ON THERE AND SEE IF IT HAS
21 BEEN WRITTEN DOWN.

22 MR. SWERLING: WELL, HE JUST OBJECTED TO ME SHOWING IT
23 TO HIM.

24 THE COURT: YES, YOU SURE DID. AND YOU ARE ENTITLED TO
25 IT. IT'S NOT A WRITTEN STATEMENT SIGNED BY HIM.

1 MR. MORTON: NO, SIR, I DON'T OBJECT TO HIM SHOWING HIM
2 THAT STATEMENT.

3 THE COURT: YOU WANT TO LET HIM USE THE STATEMENT?

4 MR. MORTON: I WANT HIM TO LET HIM LOOK AT THE
5 STATEMENT.

6 THE COURT: GIVE HIM THE STATEMENT IF HE WANTS TO. GIVE
7 HIM A COPY OF IT. I'LL LET YOU USE IT.

8 MR. MORTON: YOUR HONOR--

9 THE COURT: NO, SIR, YOU'VE AGREED TO IT. LET HIM GIVE
10 HIM ONE.

11 MR. MORTON: I'LL BE GLAD TO INTRODUCE THE STATEMENT IF
12 MR. SWERLING--

13 THE COURT: NO, SIR. YOU AGREED TO LET HIM REFRESH HIS
14 MEMORY OFF OF IT. LET'S DON'T CHANGE THE GUIDELINES.

15 Q DID YOU TELL MR. AUSTIN THAT MR. TILLMAN HAD OFFERED YOU
16 \$10,000 IF YOU KILLED HIM?

17 A I TOLD--WHEN I TALKED TO MR. AUSTIN, I TOLD HIM \$5,000.00.

18 Q WHAT'S WRITTEN DOWN?

19 A THAT'S WHAT'S WRITTEN DOWN, \$10,000.00. HE COULD HAVE GOTTEN
20 IT CONFUSED. OR I COULD HAVE BEEN CONFUSED BECAUSE I WAS
21 WORRIED AT THE TIME.

22 Q YOU WERE WORRIED BECAUSE YOU THOUGHT YOU WERE GOING TO BE
23 CHARGED WITH MURDER.

24 A EXECUTED JUST LIKE DONALD SUTTON.

25 Q PARDON?

1 A EXECUTED JUST LIKE DONALD SUTTON.

2 MR. SWERLING: YOUR HONOR, I ASK THAT THAT BE STRICKEN
3 FROM THE RECORD AND I'D ASK THAT THE WITNESS BE ADMONISHED
4 TO ANSWER MY QUESTIONS AND NOT MAKE SELF-SERVING STATEMENTS
5 BEFORE THE JURY.

6 THE COURT: I SUSTAIN THE OBJECTION. MR. FOREMAN AND
7 LADIES AND GENTLEMEN, DISREGARD THE LAST RESPONSE BY THE
8 WITNESS. IT WAS NOT IN RESPONSE TO A QUESTION ASKED BY THE
9 ATTORNEY AND THE ATTORNEY HAS THE RIGHT TO EXPECT HIM TO
10 ANSWER THE QUESTIONS THAT HE DIRECTS TO HIM. MR. WITNESS,
11 YOU ARE DIRECTED TO ANSWER THE QUESTIONS ASKED BY THE
12 ATTORNEY. YOU ARE NOT TO ADD ANY ADDITIONAL ANSWERS YOU MAY
13 DEEM APPROPRIATE OR GIVE UNRESPONSIVE ANSWERS. YOU ARE
14 SUPPOSED TO RESPOND TO THE QUESTION ASKED. THAT'S THE
15 GUIDELINES, THAT'S THE RULES FOR EVERYONE THAT COMES INTO
16 THIS COURTROOM AND YOU MUST COMPLY WITH THEM, TOO. DO YOU
17 UNDERSTAND?

18 A YES, SIR.

19 THE COURT: ALL RIGHT, MR. SWERLING.

20 Q NOW, DID YOU TELL MR. AUSTIN YOU HAD BEEN OFFERED \$5,000.00
21 LIKE YOU TOLD THE JURY ON DIRECT EXAMINATION OR DID YOU TELL
22 MR. AUSTIN YOU HAD BEEN OFFERED \$10,000.00--

23 A I TOLD HIM I WAS OFFERED \$10,000.00.

24 Q --LIKE YOU SAID IN THE STATEMENT?

25 A I TOLD HIM I WAS OFFERED \$10,000.00 WHEN I WAS IN THE CAR.

1 \$5,000.00 WAS EARLIER BEFORE THEN. EARLIER DURING THE WEEKS.

2 Q YOU TOLD THE JURY--DID YOU TELL MR. AUSTIN THAT YOU AGREED
3 TO DO IT?

4 A YES, I DID. I TOLD HIM THAT WHEN WE WAS--HAD A CONFERENCE
5 MEETING IN A PARKING LOT.

6 Q DID YOU TELL MR. AUSTIN ON DECEMBER 26TH THAT ON THE DAY,
7 DECEMBER 26TH, YOU WENT DOWN TO THE PARTY SHOP AT 2:45?

8 A DECEMBER WHAT?

9 Q DECEMBER 26TH.

10 A YES.

11 Q DID YOU TELL MR. AUSTIN RON TOLD YOU THE GUY WAS COMING DOWN
12 AND I SAID OKAY?

13 MR. MORTON: YOUR HONOR, I'M NOT TRYING TO BEAT A DEAD
14 HORSE. DOES HE HAVE A COPY OF THE STATEMENT MR. SWERLING IS
15 REFERRING TO?

16 THE COURT: NO. GIVE HIM ONE. YA'LL AGREED TO LET HIM
17 USE ONE. MR. SWERLING AGREED AND HE AGREED BUT NOBODY'S
18 GIVEN HIM ONE. AND IT'S NOT A WRITTEN, SIGNED STATEMENT.
19 IT'S A STATEMENT AS I UNDERSTAND IT IN THE HANDWRITING OF THE
20 DETECTIVE, MARK AUSTIN, NOT THE WRITING OF THIS PERSON.
21 BUT GIVE IT TO HIM, LEAVE IT WITH HIM FOR THE PURPOSE OF
22 EXAMINATION.

23 Q REFERRING TO PAGE 5, DID YOU TELL MR. AUSTIN IN THE SECOND
24 PARAGRAPH THAT YOU WENT DOWN TO THE PARTY SHOP AT 2:45 IN THE
25 AFTERNOON?

1 A YES.

2 Q DID YOU TELL HIM THAT YOU WENT OVER TO YOUR MOTHER-IN-LAW'S

3 HOUSE ACROSS THE STREET?

4 A THE STORE.

5 Q PARDON?

6 A THE STORE.

7 Q STORE. DID YOU TELL HIM THAT YOU TRIED TO CALL LISA ON THE

8 BEEPER BUT SHE NEVER CALLED YOU BACK?

9 A RIGHT.

10 Q DID YOU TELL HIM THAT YOU STAYED AT THE STORE UNTIL ABOUT SIX

11 O'CLOCK AND CALLED LISA AGAIN?

12 A YES.

13 Q DID YOU TELL MR. AUSTIN ON THAT DAY THAT THERE WAS NO ANSWER

14 AT THE F.B.I. OFFICE?

15 A I DON'T RECALL.

16 Q LOOK AT THAT AND SEE IF THAT REFRESHES YOUR MEMORY.

17 A WELL, MR. SWERLING, WHEN I CALLED THERE SOMEBODY ANSWERED THE

18 TELEPHONE. I WANTED TO KNOW IF SHE WASN'T THERE. THEY TOLD

19 ME SHE WAS ON VACATION, MR. SWERLING.

20 Q MY QUESTION IS, MR. MALLOY--

21 A I THINK--

22 THE COURT: JUST A MINUTE. JUST A MINUTE, GENTLEMEN.

23 YA'LL HAVE GOT TO TAKE IT ONE AT A TIME. YOU'VE GOT TO ASK

24 THE QUESTION, YOU'VE GOT TO GIVE HIM A CHANCE TO ASK THE

25 QUESTION AND THEN YOU GET A FULL OPPORTUNITY TO ANSWER. WHEN

1 YOU FINISHED ANSWERING HE CAN ASK ANOTHER QUESTION. ASK THE
2 QUESTION.

3 Q LOOK AT THE BOTTOM TWO LINES. DID YOU TELL MR. AUSTIN FACE
4 TO FACE ON THE 26TH OF DECEMBER THAT YOU CALLED THE F.B.I.
5 OFFICE AND THERE WAS NO ANSWER?

6 A I TOLD HIM THAT LISA MISICKA WASN'T IN.

7 Q DO YOU DENY WHAT HE HAS WRITTEN DOWN HERE?

8 A IT COULD HAVE BEEN A MISTAKE.

9 Q DO YOU DENY--

10 THE COURT: ISN'T THE QUESTION MORE APPROPRIATE, MR.
11 SWERLING, DO YOU DENY TELLING MR. AUSTIN THAT ON THAT DATE?

12 Q DO YOU DENY TELLING MR. AUSTIN THAT YOU CALLED THE F.B.I.-
13 -I'M ASKING YOU TO LOOK AT THE STATEMENT.

14 A I SEE IT.

15 Q DO YOU DENY TELLING MR. AUSTIN YOU CALLED THE F.B.I. OFFICE
16 AND THERE WAS NO ANSWER? NOT THAT SHE WASN'T THERE, BUT
17 THERE WAS NO ANSWER.

18 A I DON'T RECALL TELLING HIM THAT.

19 Q WELL, SEE IF THE DOCUMENT REFRESHES YOUR MEMORY.

20 A THIS IS WHAT THE DOCUMENT SAY. THIS IS WHAT I REMEMBER.

21 THE COURT: ONCE AGAIN, MR. SWERLING, AND I APOLOGIZE
22 FOR INTERRUPTING YOU. YOU ARE NOT USING THE STATEMENT THAT
23 THIS DEFENDANT MADE AND SIGNED HIMSELF. AS I UNDERSTAND IT
24 YOU HAVE GIVEN HIM A COPY. IT'S THE NOTES TAKEN BY ANOTHER
25 PERSON, THIS BEING A DETECTIVE.

1 MR. SWERLING: YES, YOUR HONOR.

2 THE COURT: I WANT TO MAKE SURE EVERYBODY UNDERSTANDS.

3 Q DID YOU TELL MR. AUSTIN ON THAT DAY, DECEMBER 26TH, LOOKING
4 AT HIM STRAIGHT IN THE EYE, THAT YOU CAME BACK ACROSS TO THE
5 PARTY SHOP AND PLAYED A FEW GAMES OF POOL AND THAT RON CAME
6 IN ABOUT FIVE TO SEVEN? DID YOU TELL MR. AUSTIN THAT?

7 A HE CAME IN ABOUT FIVE TO SEVEN. I SAID HE LEFT.

8 Q LOOK AT PAGE 6.

9 A HE LEFT ABOUT SIX OR SEVEN.

10 THE COURT: JUST ANSWER THE QUESTION. THE QUESTION IS
11 NOT WHAT IT IS. HE'S ASKING YOU ON THAT DATE AND OCCASION
12 DID YOU TELL MARK AUSTIN, THE DETECTIVE, THAT WHAT HE ASKED
13 YOU. IF YOU SAY YOU DIDN'T TELL HIM ON THAT DATE, TELL HIM
14 NO. IF YOU TELL HIM YOU DID TELL HIM, TELL HIM YES. ALL HE
15 WANTS TO KNOW IS ON THAT DATE WHAT YOU TOLD MARK AUSTIN.
16 ISN'T THAT CORRECT, COUNSEL?

17 MR. SWERLING: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: TALKING ABOUT THE DATE THAT YOU TALKED TO
19 MARK AUSTIN, NOT TALKING ABOUT TODAY, NOT TALKING ABOUT ANY
20 OTHER DAY. THEY ARE TALKING ABOUT THE DATE THAT YOU TALKED
21 TO MARK AUSTIN.

22 Q DO YOU WANT ME TO REPEAT THE QUESTION?

23 A YES.

24 Q DID YOU TELL MARK AUSTIN, THE DETECTIVE FROM THE RICHLAND
25 COUNTY SHERIFF'S DEPARTMENT, THAT RON CAME IN AND THAT WAS

1 AROUND FIVE MINUTES TO SEVEN?

2 A I COULD HAVE. I DON'T KNOW. I DOUBT IT.

3 Q SO, YOU DON'T DENY IT?

4 A I DON'T KNOW.

5 Q YOU DON'T KNOW?

6 A I DON'T KNOW.

7 Q ARE YOU SAYING IT COULD BE?

8 A IT COULD BE.

9 Q OR COULDN'T BE?

10 A COULD BE OR COULDN'T BE. I DON'T KNOW. I CAN'T REMEMBER.

11 Q DID YOU TELL MR. AUSTIN THAT RON AT THAT TIME TOLD YOU THAT

12 MY BOY IS TAKING CARE OF HIM?

13 A NO. YEAH. YES.

14 Q OKAY.

15 MR. SWERLING: EXCUSE ME ONE MINUTE, YOUR HONOR.

16 MR. MORTON: MAY WE APPROACH THE BENCH?

17 THE COURT: YES.

18 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE

19 COURT REPORTER)

20 (JURORS INDICATE AFFIRMATIVE)

21 THE COURT: ARE YA'LL OKAY? DO YOU NEED A BREAK?

22 GO AHEAD.

23 Q DID YOU TELL MR. AUSTIN AT THAT TIME THAT YOU WALKED OUTSIDE

24 AND SAW A BLACK MALE WEARING A SILVER LOOKING SWEATSUIT?

25 A YES. THAT WAS VITO.

1 Q DID YOU TELL HIM HE WAS ABOUT SIX FOOT, ONE HUNDRED NINETY
2 POUNDS AND LOOKED TWENTY-FIVE OR TWENTY-SIX YEARS OF AGE?
3 A YES.
4 Q HE HAD DARK SKIN?
5 A YES.
6 Q POINTED NOSE?
7 A YES.
8 Q CLEAN CUT?
9 A YES.
10 Q NO BEARD?
11 A YES.
12 Q AND NO MOUSTACHE?
13 A YES.
14 Q THAT YOU SAW HIM GET IN THE PASSENGER SIDE OF A BURGUNDY
15 REGAL WITH A GUY THAT RONALD WANTED KILLED?
16 A NOT THAT DAY. HE STAYED IN THE PARTY SHOP. VITO STAYED IN
17 THE PARTY SHOP WHEN ME AND RON LEFT.
18 Q I'M ASKING YOU ON THE 26TH WHEN YOU FIRST SPOKE WITH MARK
19 AUSTIN--
20 A OH, OKAY. OKAY. ALL RIGHT. THAT'S THE STATEMENT I WAS, YOU
21 KNOW, I HAD A LITTLE MIXED UP.
22 Q A LITTLE MIXED UP OR NOT TELLING THE TRUTH?
23 A RIGHT. FOR MY OWN SAFETY.
24 Q YOUR OWN SAFETY OR YOUR OWN NECK?
25 A MY OWN SAFETY. MY LIFE WAS ON THE LINE, MR. SWERLING.

1 Q DIDN'T YOU MAKE THE COMMENT ON DIRECT EXAMINATION, MR.
2 MALLOY, YOU DID NOT TELL THE WHOLE TRUTH TO SAVE YOUR LIFE?
3 A WHAT?
4 Q YOU DON'T TELL THE WHOLE TRUTH TO SAVE YOUR LIFE?
5 A WHO SAY THAT?
6 Q DID YOU SAY THAT ON DIRECT EXAMINATION?
7 A I SAID WHAT?
8 Q THAT YOU DID NOT TELL THE WHOLE TRUTH TO SAVE YOUR LIFE?
9 A I DIDN'T TELL THE WHOLE TRUTH. THAT'S WHAT I SAID.
10 Q OKAY.
11 A THAT'S WHAT I REMEMBER SAYING.
12 Q ALL RIGHT. BECAUSE YOU KNEW YOU WERE GOING TO BE CHARGED OR
13 COULD BE CHARGED WITH MURDER?
14 A RIGHT. BUT I HAD DONE WENT TO THE POLICE WAY BEFORE IT EVEN
15 HAPPENED AND TOLD 'EM RON WAS PLANNING ON HAVING THIS BOY
16 KILLED.
17 Q BUT ON THE 26TH YOU BELIEVED THAT YOU COULD BE CHARGED WITH
18 MURDER?
19 A THAT'S RIGHT 'CAUSE I WAS THERE AT THE SCENE WHEN IT
20 HAPPENED.
21 Q AND SO YOU DID NOT TELL MR. AUSTIN THE TRUTH, DID YOU?
22 A NOT THE FIRST STATEMENT.
23 Q YOU KNEW THAT IF YOU HAD BEEN CHARGED WITH MURDER YOU COULD
24 BE SENTENCED TO LIFE IN PRISON, ISN'T THAT TRUE?
25 A YES, BUT I KNOW I DIDN'T DO IT.

1 Q I DIDN'T ASK YOU THAT. YOU KNEW THAT IF YOU WERE CHARGED
2 WITH A MURDER FOR HIRE THAT YOU COULD EVEN BE LOOKING AT THE
3 ELECTRIC CHAIR, ISN'T THAT TRUE?

4 A I GUESS.

5 Q DIDN'T THE OFFICERS TELL YOU THAT?

6 A NO. I DON'T REMEMBER.

7 Q YOU DON'T REMEMBER ANYBODY TELLING YOU THAT?

8 A NO.

9 Q DO YOU REMEMBER ANYBODY TELLING YOU THAT IF YOU HAD COMMITTED
10 THAT MURDER FOR HIRE OR IF YOU HAD COMMITTED THE MURDER YOU
11 COULD, EVEN IF YOU DIDN'T GET THE ELECTRIC CHAIR, COULD SERVE
12 THIRTY YEARS IN PRISON?

13 MR. MORTON: YOUR HONOR--

14 A NO.

15 Q WITH NO PAROLE.

16 MR. MORTON: I OBJECT.

17 THE COURT: IT'S SOMEWHAT QUESTIONABLE BUT HE'S ENTITLED
18 TO QUESTION THE CREDIBILITY OF THE WITNESS, COUNSEL. HE'S
19 SAYING THEY DIDN'T TELL HIM. I'M GOING TO LET HIM GO. GO
20 AHEAD.

21 MR. MORTON: YOUR HONOR--

22 Q WASN'T THAT ALL ON YOUR MIND THAT DAY?

23 THE COURT: JUST A MINUTE, MR. SWERLING.

24 MR. MORTON: MAY WE APPROACH THE BENCH?

25 THE COURT: YES.

1 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
2 COURT REPORTER)

3 Q TELL THE JURY WHETHER OR NOT IT WAS ON YOUR MIND ON THE 26TH
4 WHEN YOU WERE SPEAKING WITH MR. AUSTIN YOU COULD BE CHARGED
5 WITH MURDER AND SUBJECT TO THE PENALTIES THAT I JUST TOLD
6 YOU?

7 A NOBODY TOLD ME NOTHING LIKE THAT.

8 Q SO, YOUR TESTIMONY IS YOU DID NOT KNOW WHAT THE PENALTIES WE

RE?

9 A NO.

10 Q DID YOU EVER FIND OUT WHAT THE PENALTIES WERE?

11 A NO.

12 Q NOBODY'S EVER TOLD YOU WHAT THE PENALTIES FOR MURDER WERE?

13 A NO.

14 Q WHEN YOU SPOKE WITH MR. AUSTIN ON DECEMBER 26TH, DID YOU TELL
15 HIM THAT DONALD SUTTON--I'M SORRY. VITO McKIE, VITO McKIE
16 GOT IN DONALD SUTTON'S CAR? I'M SORRY, NO, NOT DONALD
17 SUTTON'S CAR. DID YOU TELL HIM THAT VITO McKIE GOT IN THE
18 BUICK, THE PASSENGER SIDE OF THE CAR, WITH THE GUY THAT
19 RONALD WANTED KILLED?

20 A THIS IS THE STORY THAT I TOLD SO THEY COULD GET VITO, TOO.
21 AND THAT WAY I WILL BE HERE TODAY TO BE ABLE TO TESTIFY.

22 Q THEN YOU WOULD GET OUT OF THE MURDER YOU COMMITTED YOURSELF?

23 A NO. SO, I CAN GET OUT FROM BEING KILLED. SEE, VITO IS A
24 PARTNER OF RON'S. IF RON WOULD HAVE ASKED VITO TO COME KILL
25 ME, IT WOULDN'T HAVE HAPPEN LIKE THAT 'CAUSE I HAD DONE TOLD

1 THEM THIS STORY RIGHT HERE SO THEY CAN GET VITO, NOTICE VITO
2 AS ONE OF RON'S PARTNERS.

3 Q MR. MALLOY, THIS WAS ALL COVERUP, WASN'T IT?

4 A ALL COVERUP?

5 Q FOR YOU. TO PROTECT YOU?

6 A YES, TO PROTECT MY LIFE. VITO COULDN'T HAVE THAT CHANCE TO
7 COME AND KILL ME.

8 Q PROTECT YOU FROM THE SYSTEM?

9 A NO, TO PROTECT ME FROM BEING KILLED. YOU KNOW IT.

10 Q DID YOU TELL MR. AUSTIN THAT VITO McKIE GOT IN THE CAR WITH
11 DONALD SUTTON AND DROVE OFF WITH DONALD SUTTON?

12 A THAT'S WHY HE GOT REFUSED DOWN HERE 'CAUSE IT WAS A LIE.

13 Q I DIDN'T ASK YOU THAT. I ASKED YOU DID YOU TELL MR. AUSTIN
14 THAT VITO McKIE GOT IN THE CAR WITH DONALD SUTTON AND DROVE
15 OFF WITH DONALD SUTTON, YES OR NO?

16 A YEAH, I DID TELL HIM THAT. THAT'S IN THIS REFUSED STATEMENT.

17 Q THAT'S WHAT YOU TOLD MR. AUSTIN THE TRUTH WAS?

18 A YEAH. THAT'S TO SAVE MY LIFE, MR. SWERLING. MY LIFE WAS ON
19 THE LINE.

20 Q MR. MALLOY, WAS THAT THE TRUTH?

21 A NO, THIS WASN'T THE TRUTH.

22 Q DID YOU TELL MR. AUSTIN THAT DAY THAT VITO McKIE DROVE OFF
23 WITH DONALD SUTTON LEAVING FROM TOWN?

24 A IF IT GOT IT WRITTEN DOWN HERE, YEAH.

25 Q I ASKED YOU. MR. MALLOY, ARE WE NOT COMMUNICATING?

1 A YEAH, WE COMMUNICATING

2 MR. SWERLING: YOUR HONOR, I'D ASK YOU TO INSTRUCT THE
3 WITNESS TO ANSWER MY QUESTION.

4 THE COURT: YOU ARE GOING TO HAVE TO LISTEN. MR.
5 WITNESS, I UNDERSTAND WHAT YOU ARE TRYING TO DO BUT HIS
6 QUESTIONS ARE TO YOU DID YOU TELL MR. AUSTIN ON THE 26TH SUCH
7 AND SUCH. YOU LISTEN TO HIM.

8 A OKAY.

9 THE COURT: ALL RIGHT, SIR.

10 Q DID YOU TELL MR. AUSTIN ON THE 26TH THAT DONALD SUTTON DROVE
11 OFF IN A BURGUNDY REGAL WITH VITO McKIE IN THE PASSENGER SIDE
12 OF THE CAR GOING AWAY FROM TOWN? YES OR NO.

13 A YES, I DID.

14 Q DID YOU TELL MR. AUSTIN THAT WAS THE TRUTH?

15 A YES, I DID.

16 Q DID YOU TELL MR. AUSTIN ON THAT DAY THAT THE SAME GUY WHO HAD
17 GOTTEN IN THE CAR WITH DONALD SUTTON THIRTY MINUTES LATER
18 CAME WALKING BACK UP THE STREET?

19 A YES.

20 Q YOU SAT THERE AND TOLD THAT MAN THERE AT THE SHERIFF'S
21 DEPARTMENT, IS THAT RIGHT?

22 A YES. THAT'S RIGHT.

23 Q WAS THAT THE TRUTH?

24 A NOPE.

25 Q DID YOU TELL MR. AUSTIN THAT WHEN VITO McKIE WALKED UP FROM

1 THE AREA WHERE HE HAD DRIVEN DOWN WITH DONALD SUTTON THAT HE
2 CAME BACK UP AND SAW RON TILLMAN AND SAID LET'S GO?
3 A NO. THAT'S NOT TRUE.
4 Q DID YOU TELL HIM THAT?
5 A YES, I DID. YES, I DID.
6 Q WAS THAT THE TRUTH?
7 A NO. THIS WHOLE STATEMENT IS NOT TRUE.
8 Q THEN YOU SAW HIM GET IN A GRAY RIVIERA AND DRIVE OFF. THAT
9 WASN'T TRUE EITHER, WAS IT?
10 A NO.
11 Q THEN YOU TOLD HIM--LOOK IF YOU WOULD ON PAGE 7. DIDN'T YOU
12 TELL DETECTIVE AUSTIN THAT BEFORE RON TILLMAN LEFT, BEFORE
13 HE LEFT, HE TOLD YOU TO GO CHECK OUT THE BODY BEHIND THE
14 CHURCH IN ARTHURTOWN?
15 A YES. THAT'S ALL IN THE SAME STATEMENT. YES, IT IS.
16 Q DID YOU TELL HIM THAT?
17 A YES.
18 Q IS THAT A LIE?
19 A THAT WAS A LIE.
20 Q RONALD TILLMAN NEVER TOLD YOU THAT, DID HE?
21 A NO.
22 Q AND THEN YOU TOLD MR. AUSTIN IN THIS VERY DETAILED AND
23 LENGTHY INTERVIEW THAT YOU WALKED DOWN TO THE CHURCH?
24 A THAT'S RIGHT.
25 Q FROM THE PARTY SHOP?

1 A THAT'S RIGHT.

2 Q AND SAW THE GUY LYING DOWN ON HIS BACK BEHIND THE CHURCH?

3 A THAT'S RIGHT.

4 Q ISN'T THAT WHAT YOU TOLD MR. AUSTIN?

5 A YES, I DID.

6 Q THAT WAS A LIE, WASN'T IT?

7 A YEAH.

8 Q THEN YOU TOLD HIM YOU CHECKED HIS HEARTBEAT AND KNEW HE WAS

9 DEAD?

10 A THAT I CHECKED HIS PULSE AND HIS HEARTBEAT. THAT LITTLE BIT

11 WAS TRUE. I DID CHECK HIS HEART--

12 Q OH, YOU DID TELL SOME TRUTH IN THE STATEMENT?

13 A YEAH. JUST THAT. THAT WAS ABOUT IT. THIS WHOLE STATEMENT

14 IS COUNTERFEIT. THAT WAS FOR MY OWN PROTECTION, MR.

15 SWERLING.

16 Q THAT'S FINE, MR. MALLOY.

17 A OKAY. I'M PRETTY SURE YOU CAN UNDERSTAND THAT.

18 Q I THEN WALKED BACK DOWN TO THE PARTY SHOP AND RON WAS STILL

19 GONE. AND I JUST ASKED YOU SEVERAL MINUTES AGO IF YOU HAD

20 GONE BACK INTO THE PARTY SHOP AND YOU COULDN'T REMEMBER. DID

21 YOU TELL MR. AUSTIN ON DECEMBER 26TH THAT YOU WALKED BACK

22 DOWN TO THE PARTY SHOP AND RON WAS GONE?

23 A YEAH.

24 Q IS THAT TRUE OR IS THAT FALSE?

25 A PARTLY TRUE.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) INDICTMENT # 89-GS40-0745

STATE OF SOUTH CAROLINA,)
VS.) TRANSCRIPT OF RECORD
RONALD S. TILLMAN,) VOL. II
DEFENDANT.)
_____)

TRIAL HELD BEFORE THE HONORABLE DON S. RUSHING,
PRESIDING JUDGE, 5TH JUDICIAL CIRCUIT, AND JURY, AT THE RICHLAND
COUNTY JUDICIAL CENTER, COLUMBIA, SOUTH CAROLINA, BEGINNING ON
JANUARY 15, 1990.

APPEARANCES:

CREIGHTON B. COLEMAN, ESQUIRE
JAMES M. MORTON, ESQUIRE
WILLIAM D. BILTON, ESQUIRE
SOLICITORS FOR THE STATE

JACK B. SWERLING, ESQUIRE
JENNIFER KNEECE SHEALY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

NANCY S. ARHENS, CVR
COURT REPORTER

1 Q SO, YOU DID GO BACK TO THE PARTY SHOP TO SEE IF RON WAS
2 THERE?

3 A I WENT TO MY MOTHER-IN-LAW'S STORE.

4 Q BUT THAT'S NOT WHAT THE STATEMENT SAID, DID IT? THAT'S NOT
5 WHAT YOU TOLD MR. AUSTIN?

6 A NO. IF THAT'S WHAT HE GOT IN THIS STATEMENT, THEN I DID TELL
7 HIM THAT.

8 MR. MORTON: YOUR HONOR, MAY WE APPROACH THE BENCH?

9 (MR. BILTON AND MR. SWERLING APPROACH THE BENCH OUT OF
10 THE PRESENCE OF THE COURT REPORTER)

11 Q NOW, YOU EXPECTED THIS MAN HERE TO BELIEVE WHAT YOU TOLD HIM
12 ON DECEMBER 26TH, 1988, DID YOU NOT?

13 A HOPEFULLY BELIEVE THAT, YES. HOPEFULLY GET HIM TO BELIEVE
14 THAT.

15 Q YOU WANTED HIM TO BELIEVE THAT VITO McKIE DROVE DONALD SUTTON
16 AWAY FROM THE PARTY SHOP AND KILLED HIM. ISN'T THAT WHAT YOU
17 WANTED HIM TO BELIEVE?

18 A WELL, I DIDN'T SAY EXACT HE KILLED HIM. I JUST PUT IT IN A
19 WAY WHERE HE WOULD BE WALKING, YOU KNOW, FROM AROUND THE
20 CORNER OR SOMETHING LIKE THAT.

21 Q NOW, MR. MALLOY, ISN'T IT A FACT THAT YOU TOLD HIM ON
22 DECEMBER 26TH THAT MY BOY--THAT RON SAID MY BOY'S GOING TO
23 TAKE CARE OF IT?

24 A YES. AND THAT WAS ON THAT SAME STATEMENT. THAT WAS A LIE,
25 TOO.

1 Q AND THEN ON DECEMBER 26TH THAT VITO McKIE GOT IN THE
2 PASSENGER SIDE OF DONALD SUTTON'S CAR AND DROVE OFF WITH HIM?
3 A ALL THAT WAS A LIE, MR. SWERLING.
4 Q I UNDERSTAND THAT. AND THAT VITO McKIE CAME WALKING BACK A
5 HALF HOUR LATER. NOW, YOU TOLD MR. AUSTIN ALL THAT?
6 A YES, I DID. I HAD NO CHOICE.
7 Q AND THAT RON TILLMAN WAS STILL IN THE STORE?
8 A YES.
9 Q OKAY. WHAT YOU DID WITH MR. AUSTIN THAT DAY WAS GIVE HIM THE
10 IDEA--
11 A YEAH, THAT'S RIGHT. I GAVE HIM THE--
12 Q THAT VITO McKIE KILLED DONALD SUTTON, ISN'T THAT TRUE?
13 A GAVE HIM THE IDEA TO GO PICK UP THIS MAN 'CAUSE THEY DIDN'T
14 REALLY HAVE NO EVIDENCE THAT THIS MAN HAD KILLED HIM. OKAY?
15 THIS WAS MY OPTION. MY OPTION WAS TO GIVE HIM AND JUST BE
16 NOTICED THAT HE'S A ASSOCIATE OF RON'S AND THAT IF ANYTHING
17 HAPPENED TO ME HE WOULD BE THE FIRST PERSON THEY WOULD COME
18 TO TO INVESTIGATE. SO, I ELIMINATED THAT. THAT'S RIGHT.
19 Q MR. MALLOY, ISN'T IT A FACT THAT ON DECEMBER 26TH YOU POINTED
20 THE FINGER AT VITO McKIE AS BEING THE MURDERER OF DONALD
21 SUTTON?
22 A I DIDN'T SAY HE WAS THE MURDERER.
23 Q DIDN'T YOU GIVE THE POLICE INFORMATION LEADING THEM TO
24 BELIEVE THAT?
25 A I JUST GAVE YOU MY REASON WHY.

1 Q MY QUESTION IS DIDN'T YOU TELL THE POLICE--

2 A YES, I DID.

3 Q --AND GIVE THEM INFORMATION THAT VITO MCKIE WAS THE LAST
4 PERSON WITH DONALD SUTTON?

5 A RIGHT.

6 Q AND DROVE OFF WITH HIM AND WALKED BACK ALONE?

7 A RIGHT.

8 Q ON DECEMBER 26TH YOU TRIED TO PLACE THIS MURDER ON VITO
9 MCKIE'S BACK, ISN'T THAT TRUE?

10 A NO.

11 Q YOU ARE DENYING THAT?

12 A YES.

13 Q BUT YOU DO ADMIT THAT YOU PLACED VITO MCKIE IN THE CAR AS THE
14 LAST PERSON WITH DONALD SUTTON?

15 A YES.

16 Q THAT'S WHAT YOU DID TO MR. AUSTIN?

17 A RIGHT.

18 Q AND THAT MR. MCKIE CAME WALKING BACK ALONE?

19 A RIGHT. SO, WHEN THEY GOT HIM THAT'S WHEN I KNEW I WAS MUCH
20 SAFER. BUT RON WENT AHEAD AND TRIED TO PUT A HIT OUT ON ME,
21 TOO.

22 Q WHAT DID YOU --

23 A I WANT TO GET THAT OUT IN COURT, TOO, OKAY?

24 MR. SWERLING: YOUR HONOR, AGAIN I MOVE THAT THAT
25 BE STRICKEN FROM THE RECORD AND I MOVE THAT THE WITNESS BE

1 INSTRUCTED AND ADMONISHED NOT TO RESPOND TO THAT AGAIN. I'D
2 LIKE TO TAKE UP A MATTER OF LAW WITH THE COURT.

3 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN,
4 BEFORE I SEND YOU OUT I INSTRUCT YOU NOW TO DISREGARD THE
5 LAST RESPONSE BY THE WITNESS. IT WAS NOT RESPONSIVE TO THE
6 QUESTION. A WITNESS, NOT JUST THIS WITNESS BUT ANY WITNESS,
7 IS REQUIRED TO ANSWER THE QUESTIONS PROPOUNDED OR POSED TO
8 HIM AND THEY HAVE TO BE RESPONSIVE TO THAT QUESTION. THAT'S
9 REQUIRED. THAT WAS NOT RESPONSIVE. I INSTRUCT YOU TO
10 DISREGARD THAT ANSWER. DO NOT CONSIDER IT IN YOUR
11 DELIBERATIONS IN ANY FASHION. PLEASE AT THIS TIME STEP BACK
12 IN THE JURY ROOM.

13 (THE JURY LEAVES THE JURY BOX AT 4:44 P.M.)

14 THE COURT: THE JURY IS OUTSIDE THE PRESENCE OF THE
15 COURT. YES, SIR, MR. SWERLING.

16 MR. SWERLING: IF YOUR HONOR PLEASE, I'D LIKE TO PUT ON
17 THE RECORD A MOTION FOR A MISTRIAL BASED UPON MR. MALLOY'S
18 UNSOLICITED RESPONSE TO MY QUESTION THAT MR. TILLMAN HAS
19 TAKEN OUT A CONTRACT ON HIS LIFE. I THINK THAT INJECTS INTO
20 THIS TRIAL AN ARBITRARY FACTOR. IT'S GOING TO CAUSE THE JURY
21 TO DIVERT THEIR ATTENTION FROM THE REAL ISSUE IN THIS CASE.
22 IT PUTS MY CLIENT'S CHARACTER IN ISSUE. IT'S AN ACCUSATION
23 OF ANOTHER CRIME AND I DON'T KNOW OF ANY WAY THAT IT CAN BE
24 CURED. IT WAS AN UNSOLICITED RESPONSE. THIS WITNESS REFUSES
25 TO ANSWER MY QUESTIONS. HE KEEPS INJECTING SELF-SERVING

1 DECLARATIONS INTO HIS ANSWERS. THAT PARTICULAR RESPONSE IS
2 DEVASTATING BECAUSE NOW THE JURY IS GOING TO BELIEVE, IF THEY
3 BELIEVE MR. MALLOY, THAT MR. TILLMAN NOT ONLY KILLED MR.
4 SUTTON, BUT HAS TAKEN OUT A CONTRACT ON HIS LIFE.

5 THE COURT: ANY RESPONSE, MR. COLEMAN, MR. MORTON?

6 MR. MORTON: YOUR HONOR, THE ONLY RESPONSE I HAVE IS,
7 OF COURSE, THE JUDGE HAS GIVEN A LIMITED INSTRUCTION. MR.
8 TILLMAN HAS BEEN UNDER CROSS EXAMINATION NOW FOR ALMOST--I
9 MEAN MR. MALLOY HAS BEEN UNDER CROSS EXAMINATION NOW FOR AN
10 HOUR AND A HALF, THIRTY MINUTES OF IT ON THIS ISSUE. MR.
11 SWERLING PUSHED HIM, HE PUSHED HIM, HE PUSHED HIM, HE PUSHED
12 HIM. WE SAT THERE AND LET HIM GO. HE'S ASKED HIM PROBABLY
13 TWENTY TIMES ABOUT WHY HE LIED, WHY HE DID WHAT HE DID AND
14 HE TOLD MR. SWERLING REPEATEDLY HE WAS SCARED OF THIS MAN AND
15 OF VITO McKIE. AND HE KEPT PUSHING HIM, YOUR HONOR. HE
16 ASKED THE QUESTIONS, HE GOT THE ANSWERS.

17 MR. SWERLING: I NEVER ASKED THAT.

18 THE COURT: NO, HE DIDN'T ASK THAT QUESTION, MR. MORTON.
19 NO QUESTION THAT MR. SWERLING HAS BEEN VERY ATTACKING IN HIS
20 EXAMINATION. HE'S ON CROSS EXAMINATION.

21 MR. MORTON: I UNDERSTAND THAT.

22 THE COURT: HOWEVER, YOU KNOW, THE WITNESS HAS BEEN
23 TOTALLY UNRESPONSIVE ON AT LEAST FIVE OCCASIONS. I MEAN JUST
24 TOTALLY UNRESPONSIVE. HAS ANSWERED WHAT HE CHOSE TO ANSWER
25 IN THE CASE. NOW, SOME OF THAT IS DUE TO THE CONFUSION THAT

1 YA'LL AGREED TO LET HIM BE EXAMINED UPON THE STATEMENT THAT
2 WAS NOT A WRITTEN STATEMENT WHICH HE COULDN'T HAVE DONE. IT
3 WASN'T HIS NOTES. YOU CAN'T REFRESH YOUR MEMORY FROM
4 SOMEBODY ELSE'S NOTES. AND THAT WASN'T HIS NOTES. SO, YA'LL
5 CONFUSED THE ISSUE AND CONFUSED HIM WITH THAT ALL THE
6 MULTITUDE OF STATEMENTS THAT HE MAKES. BUT STILL HE'S BEEN
7 UNRESPONSIVE AND HE IS A CRITICAL WITNESS ON THE ISSUE. IN
8 FACT, UP TO THIS POINT HE IS THE MOST DAMAGING WITNESS THAT
9 THE STATE HAS. AND IT IS HIS CREDIBILITY THAT IS PROBABLY
10 GOING TO BE PARAMOUNT IN THE TRIAL OF THIS CASE. NOW, HE DID
11 INJECT, NO QUESTION HE'S BEEN SAYING ALL ALONG HE'S BEEN
12 AFRAID OF THE DEFENDANT. BUT AT THIS POINT THERE'S BEEN NO
13 TESTIMONY THAT--OF COURSE, HE WAS AFRAID IN ESSENCE HE WAS
14 GOING TO GET KILLED. THAT'S ONE THING. BUT NOW HE SAYS THAT
15 THIS DEFENDANT HAS PUT OUT A CONTRACT TO KILL HIM. THAT'S
16 A CRIME.

17 MR. MORTON: HE NEVER MENTIONED THE WORD CONTRACT.

18 THE COURT: ALL RIGHT. LET'S HAVE THE COURT REPORTER
19 PLAY BACK WHAT HE SAID. (REPORTER COMPLIES) THE RESPONSE
20 GIVEN BY THE WITNESS WAS NOT A CONTRACT BUT WAS RON PUT A HIT
21 OUT ON ME, TOO. ALL RIGHT. DOES ANYONE ELSE WANT TO MAKE
22 ANY COMMENTS ON THIS?

23 MR. MORTON: NO, SIR.

24 MR. SWERLING: NO, SIR.

25 THE COURT: YA'LL STEP DOWN. WE'LL TAKE A RECESS AND

1 I WILL THINK ABOUT IT.

2 (RECESS)

3 THE COURT: (AT CONCLUSION OF RECESS) ALL RIGHT,
4 GENTLEMEN, EVERYBODY IS NOW BACK PRESENT. AT THE CONCLUSION
5 OF THE BREAK TIME COUNSEL FOR THE DEFENSE HAS MADE A MOTION
6 FOR A MISTRIAL IN THIS CASE BASED UPON A STATEMENT BY THE
7 WITNESS THAT THE DEFENDANT PUT OUT A HIT ON HIM. MR.
8 SWERLING, ANYTHING FURTHER?

9 MR. SWERLING: IF YOUR HONOR PLEASE, I'VE DISCUSSED IT
10 WITH MY CLIENT. WE WITHDRAW THE MOTION. I WOULD ASK THE
11 COURT FOR A CURATIVE INSTRUCTION AND TELL THE JURY THAT THEY
12 ARE NOT TO CONSIDER THAT, THERE'S NO EVIDENCE OF THAT AND
13 ALSO TO ADMONISH THE WITNESS THAT IF HE IS UNRESPONSIVE AGAIN
14 TO MY QUESTIONS THAT THE COURT WILL HOLD HIM IN CONTEMPT.

15 THE COURT: ALL RIGHT.

16 MR. MORTON: YOUR HONOR, I'M NOT SURE IF MR. MALLOY
17 UNDERSTANDS THE RULE. I TRIED TO EXPLAIN TO MR. MALLOY THAT
18 IF THERE WAS A QUESTION THAT COULD BE ANSWERED YES OR NO THAT
19 HE HAD THE RIGHT TO ANSWER YES OR NO BUT THEN GO AHEAD AND
20 EXPLAIN HIS ANSWER.

21 THE COURT: NO, I'M NOT SURE I AGREE WITH YOU ABOUT
22 THAT, MR. MORTON. YOU KNOW, WHEN A WITNESS IS ASKED, IF HE
23 SAYS I CAN'T ANSWER THAT QUESTION YES OR NO, YOU KNOW, YOU
24 AS AN EXAMINER OR MR. SWERLING CAN AND SAY CAN YOU ANSWER
25 THIS QUESTION YES OR NO IF HE SAYS I CANNOT ANSWER IT. IF

1 HE SAYS HE CAN'T ANSWER IT YES OR NO THEN THE QUESTION
2 DOESN'T GO.

3 MR. MORTON: SO, IN OTHER WORDS, IN ORDER FOR HIM
4 TO GO AHEAD AND BE ABLE--

5 THE COURT: HE'S GOT TO POSE HIM. THAT'S RIGHT. HE'S
6 GOT TO POSE HIM.

7 MR. MORTON: I WANT TO MAKE SURE HE UNDERSTANDS. IN
8 ORDER FOR HIM TO TRY AND EXPLAIN HIS ANSWERS--

9 THE COURT: HE'S GOT TO SAY I CANNOT ANSWER THAT YES OR
10 NO WITHOUT EXPLAINING IT. AND IF MR. SWERLING WANTS TO SAY,
11 WELL, IF YOU CAN'T ANSWER IT YES OR NO WITHOUT EXPLAINING IT
12 I WON'T ASK YOU, THAT'S FINE. BUT IF HE ASKED HIM UNDER THAT
13 TERM AND HE SAY YES OR NO HE'S ENTITLED TO AN EXPLANATION.

14 MR. MORTON: YOU UNDERSTAND THAT?

15 A YES.

16 THE COURT: MR. WITNESS, NOW I'VE HAD I KNOW AT LEAST
17 THREE OCCASIONS, MAYBE MORE, TO INSTRUCT YOU TO ANSWER HIS
18 QUESTIONS. I'M GOING TO TELL YOU RIGHT NOW I'M NOT GOING TO
19 DO THAT AGAIN.

20 A YES, SIR.

21 THE COURT: THAT'S TOO MANY TIMES. YOU LISTEN TO HIS
22 QUESTION. IF YOU DON'T UNDERSTAND IT, YOU TELL HIM YOU DO
23 NOT UNDERSTAND IT, REPHRASE IT OR RESTATE IT. THEN YOU
24 ANSWER HIS QUESTION. DO NOT AD LIB, DO NOT ADD ANYTHING ELSE
25 TO IT. YOU ANSWER EXACTLY HIS QUESTIONS. DO YOU UNDERSTAND?

1 A YES, SIR.

2 THE COURT: ALL RIGHT.

3 MR. MORTON: YOUR HONOR, I WANT TO MAKE SURE THAT HE
4 DOESN'T MENTION ANYTHING THAT WE HAVE TOLD HIM NOT TO MENTION
5 ABOUT ANY OTHER CRIMES OR DEALINGS OR ANYTHING LIKE THAT.

6 THE COURT: YOU ARE SUPPOSED TO TELL HIM THAT BEFORE HE
7 GETS ON THE STAND.

8 MR. MORTON: I TOLD HIM THAT. I WANTED TO REITERATE.

9 MR. SWERLING: NOR IS HE TO REFER TO ANY KIND OF
10 THREATS.

11 THE COURT: NO, I DON'T WANT TO HEAR THAT EITHER. I'M
12 TELLING YOU. MY INCLINATION WAS TO DENY ANY MOTION FOR A
13 MISTRIAL ANYWAY AT THE TIME RESERVING MY THOUGHTS ON IT BUT
14 I'M TELLING YOU IF IT HAPPENS AGAIN IT'S GONE. IT IS
15 ABSOLUTELY GONE. YOU ARE JUST GOING TO RETRY THE CASE SOME
16 OTHER TIME. ALL RIGHT. BRING THE JURY IN.

17 (THE JURY RETURNS TO THE JURY BOX AT 5:02 P.M.)

18 BAILIFF: ALL THE JURY IS PRESENT, YOUR HONOR.

19 THE COURT: ALL RIGHT. LET THE RECORD SO REFLECT. MR.
20 FOREMAN, LADIES AND GENTLEMEN, I ONCE AGAIN INSTRUCT YOU AND
21 MUST FORCEFULLY IMPRESS UPON YOU THAT YOU ARE TO DISREGARD
22 THE LAST RESPONSE BY THAT WITNESS. IT WAS NOT RESPONSIVE TO
23 THE QUESTION, IT WAS NOT RELEVANT ON THE ISSUES BEING TRIED
24 IN THIS CASE AND YOU MAY NOT CONSIDER IT, YOU MAY NOT USE IT
25 FOR ANY PURPOSE IN THIS TRIAL. ALL RIGHT, MR. SWERLING.

1 HAYES MALLOY, AFTER BEING PREVIOUSLY SWORN BY THE CLERK,
2 TESTIFIES AS FOLLOWS:

3 CROSS EXAMINATION CONTINUED BY

4 MR. SWERLING:

5 Q MR. MALLOY, WHEN WE FINISHED UP ON THE 26TH YOU WERE GIVING
6 A STATEMENT TO MR. AUSTIN BASICALLY PUTTING MR. VITO McKIE
7 AS THE LAST PERSON IN THE CAR WITH DONALD SUTTON, THE LAST
8 PERSON TO BE SEEN WITH DONALD SUTTON?

9 A YES.

10 Q DO YOU RECALL THAT?

11 A YES.

12 Q AND YOU TOLD MR. AUSTIN ON THE 26TH THAT YOU SAW MR. McKIE
13 COME WALKING BACK UP THE STREET WITHOUT MR. SUTTON?

14 A YES.

15 Q YOU RECALL THAT?

16 A YES.

17 Q NOW, YOU ADMIT, AS I UNDERSTAND IT, THAT THAT WAS A LIE?

18 A YES.

19 Q AND AS I UNDERSTAND WHAT YOUR PURPOSE WAS YOU WERE TRYING TO
20 FOCUS ATTENTION ON MR. McKIE SO THEY WOULD GO ARREST MR.
21 McKIE?

22 A YES.

23 Q IS THAT WHAT YOUR EXPLANATION WAS?

24 A YES.

25 Q BUT YET YOU WERE ACTUALLY ACCUSING MR. McKIE OF BEING THE ONE

1 WHO WAS LAST SEEN WITH MR. SUTTON AND AS POSSIBLY BEING THE
2 PERPETRATOR OF THE MURDER?

3 A YES.

4 Q IS THAT CORRECT?

5 A YES.

6 Q NOW, TWO DAYS LATER ON THE 28TH YOU WERE ARRESTED FOR THAT
7 ASSAULT AND BATTERY WITH INTENT TO KILL?

8 A YES.

9 Q A SHOOTING?

10 A RIGHT.

11 Q DO YOU RECALL THAT?

12 A YES.

13 Q AND THAT'S THE CHARGE THAT'S STILL PENDING AGAINST YOU?

14 A RIGHT.

15 Q AND FOR THAT YOU ARE LOOKING AT WHAT, TWENTY YEARS IN THE
16 PENITENTIARY ON THAT?

17 A MAYBE.

18 Q MAYBE. IF THE SOLICITOR DOESN'T HELP YOU OUT?

19 MR. MORTON: I OBJECT TO THAT CHARACTERIZATION, YOUR
20 HONOR.

21 THE COURT: I SUSTAIN THAT OBJECTION. THE JURY IS
22 INSTRUCTED TO DISREGARD THAT QUESTION. NO EVIDENCE OF SUCH
23 IN THIS CASE. YOU MAY EXAMINE WHETHER OR NOT THERE'S BEEN
24 ANY PROMISES MADE OR YOU MAY CALL THE SOLICITOR IF YOU'D
25 LIKE.

1 Q YOU, OF COURSE, HAVE SOME EXPECTATIONS THAT YOU ARE GOING TO
2 BE HELPED ON THAT CHARGE?

3 MR. MORTON: NOW, YOUR HONOR, I OBJECT AGAIN. HE'S
4 ASKED IT AND ANSWERED IT AT LEAST TWO OR THREE TIMES.

5 THE COURT: I'M GOING TO LET HIM. HE'S ENTITLED ON
6 CROSS. YOU MAY GO.

7 Q YOU CERTAINLY HAVE SOME EXPECTATIONS THAT SOMEONE IS GOING
8 TO HELP YOU OUT ON THAT CHARGE?

9 A MY WITNESSES.

10 Q WITNESSES. OKAY. NOW, THE DAY YOU WERE ARRESTED FOR THAT
11 SHOOTING YOU GAVE MR. AUSTIN ANOTHER STATEMENT, DIDN'T YOU?

12 A YES. I BELIEVE IT WAS THAT DAY.

13 Q OKAY. AND YOU GAVE HIM ANOTHER STATEMENT IN CONNECTION WITH
14 THE SUTTON MURDER, DIDN'T YOU?

15 A YES.

16 Q NOW, YOUR REASON FOR NOT SIGNING THE STATEMENT ON THE 26TH
17 WAS BECAUSE YOU KNEW IT WAS A LIE?

18 A RIGHT.

19 Q IS THAT RIGHT?

20 A RIGHT.

21 Q BUT ON THE 28TH OF DECEMBER, 1988, YOU SIGNED THIS STATEMENT,
22 DIDN'T YOU?

23 A YES, I DID. I SIGNED THE STATEMENT ON THAT DAY.

24 Q AND THAT WAS A CONTINUATION OF A LIE, WASN'T IT?

25 A YES, I THINK. YES.

1 Q SO, WHILE YOUR SCRUPLES WOULDN'T ALLOW YOU TO SIGN THE
2 STATEMENT ON THE 28TH OF DECEMBER--

3 THE COURT: 26TH.

4 Q 26TH OF DECEMBER WHEN YOU WERE LAYING IT ON VITO MCKIE, ON
5 DECEMBER 28TH YOU CONTINUED TO PERPETRATE FRAUD ON MR. AUSTIN
6 AND DID SIGN THE STATEMENT UNDER OATH, DIDN'T YOU?

7 A YES, I DID.

8 Q WOULD YOU READ THE BOTTOM OF THE STATEMENT?

9 MR. SWERLING: YOUR HONOR, I'D LIKE TO GO AHEAD AND PUT
10 THIS IN EVIDENCE.

11 MR. MORTON: I HAVE NO OBJECTION.

12 THE COURT: YOU HAVE NO OBJECTION?

13 MR. MORTON: NO, SIR.

14 THE COURT: HAND IT TO THE COURT REPORTER AND HAVE HER
15 MARK IT. DO YOU HAVE A COPY FOR THE COURT TO USE?

16 (STATEMENT IS RECEIVED INTO EVIDENCE AS DEFENDANT'S
17 EXHIBIT #2)

18 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
19 OBJECTION EXHIBIT DESIGNATED DEFENDANT'S EXHIBIT NUMBER 2.
20 IT'S A ONE PAGE EXHIBIT, FRONT ONLY, DATED 12-28-88. IT
21 APPEARS TO BE A STATEMENT OF HAYES MALLOY. IF YOU WILL H AND
22 THAT TO THE WITNESS.

23 Q MR. MCKIE, LOOK AT THE BOTTOM OF THAT STATEMENT AND TELL THE
24 JURY--

25 THE COURT: MISTER WHO? WHAT DID YOU SAY?

1 MR. SWERLING: I'M SORRY. I KEEP CALLING HIM MR.
2 SUTTON.

3 Q MR. MALLOY, WOULD YOU LOOK AT THE BOTTOM OF THAT STATEMENT
4 AND TELL THE JURY IS THAT YOUR SIGNATURE?

5 A YES.

6 Q DID YOU SIGN THAT STATEMENT SAYING I MAKE THIS STATEMENT OF
7 MY OWN FREE WILL AND ACCORD WITHOUT REWARD OR INTIMIDATION?

8 A YES.

9 Q DID YOU SAY ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH
10 AND NOTHING BUT THE TRUTH SO HELP ME GOD?

11 A YES.

12 Q AND IT WAS SWORN TO AND SUBSCRIBED BEFORE A NOTARY PUBLIC ON
13 THE 28TH OF DECEMBER, 1988?

14 A YES.

15 Q DOES THAT ALL SOUND FAMILIAR TO YOU?

16 A YES, IT DO.

17 Q IS IT THE SAME OATH YOU TOOK THIS MORNING?

18 A YES.

19 Q WHEN YOU PUT YOUR HAND ON THE BIBLE? IT'S THE SAME OATH,
20 ISN'T IT?

21 A THAT'S RIGHT.

22 Q AND WHEN YOU SPOKE TO MR. AUSTIN ON THE 28TH OF DECEMBER YOU
23 LIED TO HIM AGAIN, DIDN'T YOU?

24 MR. MORTON: YOUR HONOR, AT THIS POINT I THINK THE
25 WITNESS HAS A RIGHT TO BE ABLE TO CAREFULLY READ THAT

1 STATEMENT BEFORE HE RESPONDS TO MR. SWERLING'S QUESTION.

2 THE COURT: ALL RIGHT. YOU NEED THE OPPORTUNITY TO LOOK
3 OVER THAT?

4 A YES, SIR.

5 THE COURT: I'LL GIVE YOU AN OPPORTUNITY. YA'LL APPROACH
6 THE BENCH A MINUTE. COME HERE.

7 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
8 COURT REPORTER)

9 THE COURT: MR. MALLOY, HAVE YOU HAD AN OPPORTUNITY TO
10 READ OVER--ARE YOU ABLE TO READ THE COPY THEY GAVE YOU?

11 A YES, SIR.

12 THE COURT: WHEN YOU HAVE HAD AN OPPORTUNITY TO READ
13 OVER IT AND YOU ARE READY TO GO FORWARD, LET ME KNOW. ALL
14 RIGHT?

15 A I'M READY.

16 THE COURT: YOU'RE READY?

17 A YES, SIR.

18 THE COURT: ALL RIGHT. CONTINUE YOUR CROSS EXAMINATION.

19 Q ON DECEMBER 28TH YOU DID NOT TELL MR. AUSTIN THAT WHAT YOU
20 HAD TOLD HIM ON THE 26TH WAS NOT TRUE, DID YOU?

21 A NOT AT THAT TIME.

22 Q YOU HAD AN OPPORTUNITY ON THE 28TH WHEN YOU WERE GIVING HIM
23 THIS STATEMENT TO EXPLAIN WHAT WAS UNTRUE ABOUT WHAT YOU HAD
24 TOLD HIM ON THE 26TH, DIDN'T YOU?

25 A I COULD HAVE.

1 Q YOU COULD HAVE. AND THIS STATEMENT WAS SIGNED UNDER OATH,
2 IS THAT CORRECT?

3 A YES.

4 Q THE SAME OATH YOU TOOK TODAY, IS THAT CORRECT?

5 A YES.

6 Q AND ON THIS STATEMENT YOU TOLD MR. AUSTIN THAT YOU WERE STILL
7 TALKING ABOUT VITO MCKIE, WEREN'T YOU?

8 A YES.

9 Q YOU WERE TALKING ABOUT HOW VITO MCKIE CAME BY THE SHOP ON THE
10 27TH AND TALKED TO RON?

11 A YES.

12 Q THAT WASN'T TRUE, WAS IT?

13 A YEAH, THAT WAS TRUE.

14 Q THAT WAS TRUE?

15 A YES, IT WAS.

16 Q AND YOU WERE STANDING ACROSS THE STREET WHEN VITO CAME DOWN
17 AND HE WAS DRIVING A BEIGE TOYOTA LOOKING CAR. HE PULLED UP
18 AND WENT INSIDE. THEN IT SAYS YOU WALKED INSIDE. DO YOU
19 REMEMBER TELLING MR. AUSTIN THAT?

20 A THAT'S RIGHT. THAT DID HAPPEN.

21 Q AND YOU SAW RON STANDING OVER BY THE JUKEBOX?

22 A NO, THERE WAS A SODA BOX. ICE BOX.

23 Q WELL, DID YOU TELL HIM IT WAS A JUKEBOX?

24 A I DON'T THINK SO.

25 Q WELL, LOOK AT YOUR STATEMENT.

1 A I MIGHT HAVE TOLD HIM THAT.

2 Q WELL, LOOK AT IT.

3 A THAT LOOK LIKE THEY COULD SAY A DRINK BOX, MR. SWERLING.

4 Q DOES IT SAY J-U-K (SPELLED)?

5 A YOU COULDN'T EVEN REALLY UNDERSTAND WHAT IT SAYS. ALL YOU

6 SEE IS A "J" AND A "K" AT THE END. IT COULD BE DRINK BOX.

7 Q THEN YOU SAID YOU SAW RON GIVE VITO A ROLL OF MONEY. YOU

8 DIDN'T KNOW HOW MUCH IT WAS BUT IT LOOKED LIKE TWO OR THREE

9 HUNDRED DOLLARS, IT COULD HAVE BEEN MORE?

10 A RIGHT.

11 Q THAT WASN'T TRUE, WAS IT?

12 A YES, THAT MUCH WAS TRUE.

13 Q THAT WAS TRUE?

14 A RIGHT.

15 Q YOU WERE STILL TRYING TO IMPLY TO MR. AUSTIN, THIS DETECTIVE

16 IN THE CASE THAT WAS TAKING DOWN EVERYTHING YOU SAID AS THE

17 TRUTH VITO McKIE WAS SOMEHOW INVOLVED IN THIS CASE, WEREN'T

18 YOU?

19 A SOMEHOW.

20 Q THEN YOU SAY IN THAT STATEMENT, YOU TOLD MR. AUSTIN UNDER

21 OATH THAT RON LATER TOLD YOU HOW DID YOU LIKE THAT HIT?

22 A YES.

23 Q THAT'S NOT TRUE, IS IT?

24 A WELL, HE MIGHT HAVE THOUGHT I SAID HIT. I SAID WHAT I

25 THOUGHT I HEARD.

1 Q I ASKED YOU DID YOU TELL MR. AUSTIN IN THAT STATEMENT AND DID
2 YOU SIGN THAT STATEMENT THAT'S WHAT YOU SAID?
3 A YES.
4 Q AND THAT WASN'T TRUE, WAS IT?
5 A YES, THIS WAS TRUE. BUT IT WAS A "S" BEFORE THAT.
6 Q WHAT? SHIT? IS THAT WHAT YOU ARE SAYING?
7 A SHIT, YEAH.
8 Q BUT YOU PUT DOWN IN HERE IN YOUR STATEMENT--
9 A I DID NOT WRITE THAT, MR. SWERLING.
10 Q YOU SIGNED THE STATEMENT, DIDN'T YOU?
11 A YES, I SIGNED IT BUT I DID NOT WRITE THIS.
12 Q DID YOU SIGN THE STATEMENT?
13 A YES, I DID.
14 Q DOES THE STATEMENT SAY HIT?
15 A NO, IT DON'T SAY HIT.
16 Q LOOK AT THE STATEMENT AND SEE IF IT SAYS HIT OR IT'S GOT AN
17 "S" IN FRONT OF IT.
18 Q JUST LIKE WHERE IT SAYS THE DRINK BOX WHERE HE WAS STANDING
19 AT. THE DRINK BOX. YOU COULDN'T EVEN UNDERSTAND IF IT WAS
20 SAYING DRINK BOX OR JUKEBOX.
21 Q MR. MALLOY, LOOK AT WHAT YOU TOLD MR. AUSTIN IN THE STATEMENT
22 YOU SIGNED AND SEE IF IT DOESN'T SAY HIT?
23 A THAT'S WHAT IT SAYS.
24 Q THAT'S NOT WHAT YOU TESTIFIED TODAY THOUGH, IS IT?
25 A NO, SIR.

1 Q YOU TESTIFIED DIFFERENT THAN THAT TODAY, DIDN'T YOU?

2 A YES, SIR.

3 Q AND THEN YOU MADE THE STATEMENT WHEN VITO CAME OUT OF THE

4 DOOR HE STARED AT ME REAL HARD AND GOT IN HIS CAR AND LEFT

5 AGAIN IMPLYING--

6 A YES, THAT'S RIGHT. HE DID LEFT.

7 Q --VITO HAD SOMETHING TO DO WITH THE KILLING OF DONALD SUTTON?

8 A THAT'S RIGHT.

9 Q AND THIS STATEMENT WAS UNDER OATH?

10 A THAT'S RIGHT.

11 Q YOU DIDN'T CORRECT ANYTHING?

12 A NOT AS I KNOW OF.

13 Q WHY DID YOU GIVE HIM THAT STATEMENT?

14 A 'CAUSE THAT'S WHAT HAPPENED. ANY TIME I CAN GET SOME

15 INFORMATION I WOULD TAKE IT TO THE POLICE.

16 Q TO FOCUS ON VITO McKIE, WEREN'T YOU?

17 A RON TILLMAN.

18 Q YOU DON'T MENTION ANYTHING IN HERE ABOUT RON TILLMAN DOING

19 ANYTHING, DO YOU?

20 A I WAS GIVING THEM INFORMATION. THAT'S WHAT I'M SAYING. I WAS

21 GIVING THEM INFORMATION ABOUT RON TILLMAN.

22 Q BUT THERE'S NOTHING IN THAT STATEMENT CONCERNING RON TILLMAN,

23 IS THERE?

24 A NO.

25 Q HAVING ANYTHING TO DO WITH THE KILLING OF DONALD SUTTON, IS

1 THERE?

2 A NO.

3 Q THERE'S NOTHING IN THE STATEMENT BEFORE ON THE 26TH HAVING
4 ANYTHING TO DO WITH RONALD TILLMAN HAVING ANYTHING TO DO WITH
5 THE KILLING OF DONALD SUTTON, IS THERE?

6 A NO.

7 Q YOU WERE PUTTING IT ON VITO McKIE, WEREN'T YOU?

8 A YES.

9 Q UNDER OATH, RIGHT?

10 A I DIDN'T SIGN IT, I REFUSED IT.

11 Q YOU SIGNED THE STATEMENT ON THE 29TH.

12 A WELL, I MIGHT HAVE.

13 Q DID YOU OR DIDN'T YOU?

14 A ON THE 29TH? I DON'T KNOW.

15 Q LOOK AT IT.

16 A THIS SAYS THE 28TH, MR. SWERLING.

17 Q WELL, THE 28TH. DID YOU OR DIDN'T YOU SIGN IT?

18 A I SIGNED IT.

19 Q UNDER OATH?

20 A YES.

21 Q HOW IS THE JURY SUPPOSED TO KNOW WHICH TIME YOU ARE FOLLOWING
22 THE OATH THAT YOU TOOK?

23 A WHENEVER I GET A BETTER CHANCE TO EXPLAIN.

24 Q WHENEVER YO GET A BETTER CHANCE TO EXPLAIN?

25 A WHENEVER I GET A CHANCE TO EXPLAIN.

1 Q YOU HAD A CHANCE ON THE 28TH. YOU TOOK AN OATH THAT DAY. YOU
2 ARE TAKING AN OATH TODAY.

3 A YES, THAT'S RIGHT.

4 Q HOW ARE THEY SUPPOSED TO DETERMINE WHICH OATH YOU TOOK AND
5 WHICH ONE IS CORRECT?

6 A MR. SWERLING, I JUST DON'T KNOW. I DON'T GET A CHANCE TO
7 EXPLAIN BUT I WANT TO EXPLAIN. YOU JUST ASK ME THE QUESTIONS
8 YOU WANT ME TO ANSWER IN YOUR WAY AND I CAN'T DO THAT.

9 Q THAT'S THE WAY THE SYSTEM WORKS.

10 A YES, I UNDERSTAND.

11 Q DO YOU REMEMBER GOING DOWN AND SEEING MR. AUSTIN AGAIN ON THE
12 29TH?

13 A I DON'T REMEMBER. I MIGHT HAVE.

14 Q DO YOU REMEMBER THAT?

15 A I MIGHT HAVE. I DON'T KNOW.

16 Q SEE IF THIS LOOKS FAMILIAR TO YOU.

17 MR. SWERLING: YOUR HONOR, I'D LIKE TO PUBLISH THIS TO
18 THE JURY.

19 THE COURT: DEFENDANT'S EXHIBIT NUMBER 2. YOU MAY
20 PUBLISH IT.

21 Q DO YOU RECOGNIZE THAT STATEMENT?

22 A YES, SIR.

23 Q DID YOU SIGN IT?

24 A YES, I DID.

25 MR. SWERLING: YOUR HONOR, I'D LIKE TO OFFER THIS ONE.

1 THE COURT: ANY OBJECTION, MR. MORTON, MR. COLEMAN?

2 MR. COLEMAN: WHAT STATEMENT IS THAT, THE THIRD ONE?

3 THE COURT: I DON'T KNOW.

4 MR. SWERLING: THE STATEMENT OF THE 29TH.

5 MR. COLEMAN: I BEG THE COURT'S INDULGENCE. (PAUSE)

6 MR. MORTON: YOUR HONOR, I DON'T HAVE ANY OBJECTION TO
7 IT.

8 THE COURT: HAND IT TO THE COURT REPORTER AND HAVE HER
9 MARK IT AND I'D LIKE TO HAVE A COPY AS WELL.

10 (STATEMENT IS RECEIVED INTO EVIDENCE AS DEFENDANT'S
11 EXHIBIT #3)

12 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
13 OBJECTION EXHIBIT WHICH WILL BE DESIGNATED AS DEFENDANT'S
14 EXHIBIT NUMBER 3. IT'S A TWO PAGE EXHIBIT, FRONT ONLY, LEGAL
15 SIZE. IT BEARS THE DATE OF 12-29-88, ENTITLED STATEMENT OF
16 HAYES MALLOY. NOW IN THE RECORD OF THIS CASE.

17 Q DID I GIVE YOU A COPY OF IT, MR. MALLOY?

18 A YES. YOU JUST TOOK IT.

19 Q LET ME SEE NOW. YOU SAID BEFORE THE REASON YOU DIDN'T SIGN
20 THE STATEMENT ON THE 26TH WAS BECAUSE IT WAS NOT TRUE AND YOU
21 DIDN'T WANT TO SIGN IT UNDER OATH?

22 A CORRECT.

23 Q BUT YOU DID SIGN THE STATEMENT ON THE 28TH UNDER OATH EVEN
24 THOUGH IT WASN'T TRUE. LET'S LOOK AT THE STATEMENT OF THE
25 29TH. DID YOU SIGN THAT STATEMENT?

1 A YES, I SIGNED IT.

2 Q WHAT DOES THE BOTTOM OF THE STATEMENT SAY?

3 A WHAT PART?

4 Q THE PART WHERE IT SAYS I MAKE THIS STATEMENT OF MY OWN FREE

5 WILL AND ACCORD WITHOUT REWARD OR INTIMIDATION, ALL OF THE

6 ABOVE IS THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH

7 SO HELP ME GOD. IS THAT YOUR SIGNATURE UNDER THERE?

8 A THAT'S MY SIGNATURE.

9 Q IS THAT THE SAME OATH YOU TOOK THIS MORNING BEFORE THIS JURY

10 WHEN YOU AGREED TO TELL THEM THE TRUTH, THE WHOLE TRUTH--

11 A YES.

12 Q --AND NOTHING BUT THE TRUTH SO HELP YOU GOD?

13 A YES.

14 Q YOU TOLD MR. AUSTIN THAT DAY, ON THE 29TH, YOU WERE GOING TO

15 TELL HIM THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH

16 SO HELP YOU GOD, DIDN'T YOU?

17 A YES.

18 Q BUT YOU DIDN'T, DID YOU?

19 A NO.

20 Q I AGAIN ASK YOU, HOW IS ONE TO DETERMINE WHEN HAYES MALLOY

21 IS TELLING THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE

22 TRUTH SO HELP ME GOD?

23 A I DON'T KNOW. I GUESS IF YOU HAVE A WAY OF EXPLAINING.

24 Q LET'S LOOK AT YOUR STATEMENT OF DECEMBER 29TH, OKAY?

25 A UH-HUH.

1 Q NOW AT THIS POINT YOU SAY--I BELIEVE YOU HAVE SAID YOU ARE
2 STILL TRYING TO FOCUS ON VITO MCKIE AS BEING THE PERPETRATOR
3 IN THIS, IS THAT RIGHT?

4 A YES. I GUESS.

5 Q EVEN THOUGH ACCORDING TO YOUR TESTIMONY TO THE JURY TODAY
6 RONALD TILLMAN DID IT? IS THAT RIGHT?

7 A THAT'S RIGHT.

8 Q WELL, LET'S LOOK AT THE STATEMENT. IT SAYS JULY 29TH--
9 DECEMBER 29TH. YOU TOLD MR. AUSTIN THAT TODAY AND I GUESS
10 THAT'S THE 29TH BECAUSE YOU HAD GOTTEN OUT OF JAIL ALREADY
11 ON THE SHOOTING CHARGE, RIGHT?

12 A YES.

13 Q YOU WERE OUT OF JAIL THE NEXT DAY?

14 A WHAT SHOOTING CHARGE?

15 Q THE ONE YOU GOT ARRESTED FOR ON THE 28TH WHEN YOU SHOT A
16 PERSON.

17 A I WASN'T NEVER PLACED IN JAIL. I WAS RELEASED THE SAME DAY.

18 Q OH, YOU NEVER EVEN GOT IN THE JAIL?

19 A NO.

20 Q HOW DID THAT HAPPEN?

21 A THE JUDGE GAVE ME A PERSONAL RE--

22 Q P.R. BOND? YOU DIDN'T EVEN HAVE TO PUT UP ANY MONEY TO GET
23 OUT OF JAIL, DID YOU?

24 A NO.

25 Q WAS SOMEBODY HELPING YOU WITH THAT BY THE WAY?

1 A A LOT OF WITNESSES.

2 Q MR. AUSTIN MAYBE?

3 A A LOT OF WITNESSES THAT WAS THERE.

4 Q WAS MR. AUSTIN HELPING YOU?

5 A NO, I COULDN'T SAY HE WAS HELPING ME.

6 Q WAS ANYBODY FROM THE SHERIFF'S DEPARTMENT HELPING YOU?

7 A HELPING ME DO WHAT, MR. SWERLING?

8 Q GET OUT OF JAIL.

9 A NO. NOT FROM THE SHERIFF DEPARTMENT.

10 Q HOW DID YOU GET A P.R. BOND ON AN ASSAULT AND BATTERY WITH

11 INTENT TO KILL?

12 A I CAN'T EVEN ANSWER THAT.

13 Q YOU WERE SURPRISED THEN, RIGHT?

14 A YES, I WAS.

15 Q AND YOU ARE SAYING NOBODY HELPED YOU?

16 A NO, I DON'T THINK THEY DID.

17 Q WHAT DOES A P.R. BOND MEAN, MR. MALLOY?

18 A YOU RELEASE ON YOUR OWN WILL I GUESS. I DON'T KNOW.

19 Q WITHOUT PUTTING UP ANY MONEY?

20 A RIGHT.

21 Q AND YOUR TESTIMONY IS NOBODY WAS HELPING YOU GET THAT?

22 A I DON'T KNOW.

23 Q ON THE 29TH DID YOU TELL MR. AUSTIN THAT TODAY, I GUESS BEING

24 THE 29TH, JOHN CORBETT AND DAVID WHALEY TOLD ME THAT THEY SAW

25 RON PICK UP A BOY ON WALCOTT STREET ON MONDAY NIGHT, THAT

1 BEING THE 26TH?

2 A THAT WAS JUST ABOUT THE SAME THING. I WAS GETTING THEM TO
3 PICK UP VITO.

4 Q DID YOU MAKE THE STATEMENT?

5 A YES, I DID.

6 Q THAT TODAY JOHN CORBETT AND DAVID WHALEY TOLD ME THEY SAW RON
7 PICK UP A BOY ON WALCOTT STREET MONDAY NIGHT AROUND 8:30 OR
8 8:40. AFTER RON PICKED HIM OFF THEY DROVE OFF.

9 A YES.

10 Q THAT WAS NOT TRUE, WAS IT?

11 A NO, THAT WAS JUST LIKE THE OTHER STATEMENT.

12 Q THIS STATEMENT WAS UNDER OATH?

13 A SO WAS THE OTHER ONE.

14 Q NO, YOU TOLD ME ON THE 26TH YOU WOULDN'T SIGN IT BECAUSE YOU
15 WOULDN'T SAY SOMETHING UNDER OATH THAT WASN'T TRUE.

16 A RIGHT. THAT'S TRUE.

17 Q NOW, YOU ARE SAYING SOMETHING UNDER OATH THAT WASN'T TRUE.

18 A BECAUSE THEY DIDN'T CATCH VITO.

19 Q NOW, ON THE 29TH YOU ALSO TOLD MR. AUSTIN THAT YOU WANTED TO
20 CORRECT SOMETHING? A LITTLE PANG OF CONSCIENCE HERE?

21 A NO.

22 Q I WANTED TO CORRECT SOMETHING IN MY STATEMENT THAT I GAVE YOU
23 ON DECEMBER 26TH. I TOLD YOU THAT VITO MET RON AT THE SHOP BUT
24 HE DIDN'T. IS THAT IN YOUR STATEMENT?

25 A YES. I GUESS IT IS.

1 Q LOOK AT IT. SECOND PARAGRAPH.

2 A YES, I SEE IT.

3 Q THAT'S NOT TRUE, IS IT?

4 A NO.

5 Q AGAIN YOU WERE TELLING AN UNTRUTH UNDER OATH?

6 A THAT'S RIGHT.

7 Q THEN YOU CONTINUED THE FRAUD WITH MR. AUSTIN--BY THE WAY YOU

8 ARE SITTING THERE TALKING TO THIS MAN HERE, THE INVESTIGATOR,

9 WEREN'T YOU?

10 A WHEN? THAT DAY?

11 Q WHEN YOU WERE GIVING HIM THE STATEMENT ON THE 29TH?

12 A YES.

13 Q YOU WERE TELLING HIM THIS WAS THE TRUTH AND THE WHOLE TRUTH

14 SO HELP YOU GOD, WEREN'T YOU?

15 A THAT'S RIGHT.

16 Q YOU TOLD HIM--THIS IS THE THIRD STATEMENT NOW YOU'VE GIVEN

17 WITH RESPECT TO THIS. THAT AFTER VITO DROVE OFF WITH SUTTON,

18 YOU ARE STILL PUTTING VITO IN THE CAR WITH SUTTON, RIGHT?

19 A THAT'S RIGHT.

20 Q RON CAME OVER TO ME AT THE SHOP AND TOLD ME HOW TO FIND THE

21 BODY BEHIND THE CHURCH?

22 A THAT'S RIGHT.

23 Q SO, YOU STILL HAD THE POLICE FOCUSING ON VITO McKIE AS BEING

24 THE KILLER IN THIS CASE, ISN'T THAT TRUE?

25 A YES.

1 Q SO, NOW YOU WILL ADMIT THAT YOU WERE TRYING TO PUT VITO AS
2 THE KILLER IN THIS CASE?

3 A YES.

4 Q FINALLY ADMITTED THAT?

5 A YES, I GUESS.

6 Q AND RON AS VITO DROVE OFF WITH SUTTON CAME OVER AND TOLD YOU
7 HOW TO FIND A BODY BEHIND THE CHURCH WHEN THE PERSON HAD NOT
8 YET EVEN BEEN KILLED? IT'S A LITTLE CURIOUS, ISN'T IT,
9 BECAUSE THEY WERE JUST DRIVING OFF? ISN'T IT, MR. MALLOY?

10 A ALL I CAN DO IS JUST SAY WHAT I SEEN, MR. SWERLING.

11 Q BUT THAT'S NOT TRUE, IS IT?

12 A NO.

13 Q COULDN'T BE TRUE, COULD IT?

14 A NO.

15 Q YOU LIED, DIDN'T YOU?

16 A AT THAT TIME. I HAD TO.

17 Q THEN YOU SAID TO MR. AUSTIN THAT RON GOT IN HIS CAR AND DROVE
18 OFF. ABOUT THIRTY MINUTES LATER I SAW VITO WALKING DOWN THE
19 STREET. YOU WERE STILL PERPETRATING THAT FRAUD, WEREN'T YOU?

20 A LIKE I SAID, YES.

21 Q THEN YOU SAID IN THE NEXT PARAGRAPH UNDER OATH I DIDN'T SEE
22 HIM GET IN THE CAR WITH RON. I GUESS YOU WERE REFERRING TO
23 VITO McKIE, ISN'T THAT TRUE?

24 A I GUESS. YES.

25 Q BUT DAVID WHALEY, HERMAN WHALEY, JOHN CORBETT AND SCOTT

1 ENGLISH DID SEE HIM GET IN THE CAR WITH RON?

2 A THAT'S WHAT I SAID.

3 Q IS THAT TRUE?

4 A NO.

5 Q YOU KNOW THAT'S NOT TRUE?

6 A YES.

7 Q YOU KNOW THAT NOW BECAUSE THOSE FOUR PEOPLE ARE PREPARED TO
8 TESTIFY THAT IT'S NOT TRUE?

9 A YES. THEY ALSO KNOW A LOT MORE THAN THAT, TOO.

10 Q AND YOU TOLD THE POLICE--

11 MR. SWERLING: YOUR HONOR, AGAIN I ASK YOU TO INSTRUCT
12 THIS WITNESS TO BE RESPONSIVE.

13 THE COURT: I SUSTAIN THE OBJECTION. MR. WITNESS, NOW
14 LISTEN YOU ANSWER THE QUESTION AND DO NOT AD LIB, THAT MEANS
15 ADD YOUR OWN COMMENTS.

16 A OKAY.

17 THE COURT: MR. FOREMAN, I ONCE AGAIN INSTRUCT YOU TO
18 DISREGARD THAT LAST RESPONSE BY THE WITNESS. IT WAS NOT A
19 PROPER RESPONSE. IT WAS NOT RESPONSIVE TO A QUESTION. IT
20 IS NOT ADMISSIBLE AND YOU MAY NOT CONSIDER SUCH RESPONSE.

21 Q YOU TOLD THIS FELLOW RIGHT HERE, MARK AUSTIN, THAT FOUR
22 PEOPLE SAW VITO GET IN THE CAR WITH RON AND THEN YOU FIGURED
23 OUT THAT IF HE HAD GONE TO TALK TO THOSE FOUR PEOPLE THEY
24 WOULDN'T VERIFY IT, ISN'T THAT TRUE?

25 A THEY COULDN'T VERIFY IT.

1 Q THEY COULDN'T?

2 A NO.

3 Q BECAUSE IT WASN'T TRUE?

4 A RIGHT.

5 Q BUT YOU WEREN'T THINKING ABOUT THAT AT THAT TIME, WERE YOU?

6 A YES, I WAS.

7 Q YOU WERE STILL TRYING TO PUT VITO MCKIE AS THE PERSON THAT
8 KILLED DONALD SUTTON, WEREN'T YOU?

9 A NOT EXACTLY. I DON'T THINK I REALLY MEANT TO POINT AND SAY
10 HE WAS THE ONE THAT SHOT HIM. I DID NOT SAY IN THIS
11 STATEMENT OR THE OTHER STATEMENTS THAT I SEEN VITO SHOOT THIS
12 MAN.

13 Q WELL, CERTAINLY, MR. MALLOY, YOU WOULD AGREE THAT'S WHAT YOU
14 WERE LEADING THE POLICE TO BELIEVE?

15 A THAT'S RIGHT. THAT'S RIGHT.

16 Q YOU CERTAINLY WEREN'T LEADING THE POLICE TO BELIEVE IN THESE
17 STATEMENTS THAT RON TILLMAN WAS THE PERSON WHO SHOT MR.
18 SUTTON, WERE YOU?

19 A NO. NOT AT THAT TIME.

20 Q THEN YOU TOLD THE POLICE THAT SCOTT ENGLISH, DAVID BYNUM AND
21 PIG KNEW THAT RON WANTED THE GUY DEAD. THAT'S WHAT YOU TOLD
22 MR. AUSTIN, ISN'T THAT TRUE?

23 A YES. ALL THAT'S--THAT'S TRUE RIGHT THERE.

24 Q THAT RON HAS PROPOSITIONED DAVID BYNUM AND PIG TO DO THE JOB
25 BUT THEY DIDN'T DO IT?

1 A RIGHT.

2 Q THAT RON HAD TOLD SCOTT ENGLISH THAT HE WANTED SUTTON KILLED,
3 IS THAT RIGHT?

4 A YES.

5 Q IS THAT TRUE OR NOT TRUE?

6 A THAT'S TRUE.

7 Q SO, YOU ARE TELLING A LITTLE BIT OF TRUTH, SOME OF IT'S NOT
8 TRUE?

9 A RIGHT.

10 Q THEN YOU SAID THAT SCOTT TOLD ME THIS ON TUESDAY WHILE YOU
11 ALL WERE DOWN AT THE STORE. SCOTT SAID RON DID THAT BECAUSE
12 HE HAD BEEN PROPOSITIONING PEOPLE WITH MONEY TO DO IT. IS
13 THAT CORRECT? IS THAT TRUE OR NOT TRUE?

14 A THAT'S PART--

15 Q I'M HAVING A HARD TIME, MR. MALLOY, WHICH PART'S TRUE AND
16 WHAT PART'S NOT TRUE.

17 A WELL, WOULD YOU LIKE FOR ME TO EXPLAIN IT THE WAY I SEEN IT
18 AND WHAT DID I DO? DO YOU WANT TO GO BACK THE WHOLE WAY FROM
19 DECEMBER 26TH--

20 Q MR. MALLOY, I'D LIKE YOU TO EXPLAIN WHAT PART IS TRUE AND
21 WHAT PART IS NOT TRUE.

22 THE COURT: I'D LIKE FOR BOTH OF YOU TO GIVE EACH OTHER
23 AN OPPORTUNITY TO ASK THE QUESTION AND ANSWER THE QUESTION.
24 BOTH OF YOU ARE TALKING AT THE SAME TIME. THE COURT
25 REPORTER, IT'S IMPOSSIBLE FOR HER TO TAKE IT DOWN WHEN YOU

1 DO THAT AND IT'S IMPOSSIBLE FOR ANYBODY TO TELL WHAT'S GOING
2 ON. QUESTION AND ANSWER.

3 Q WHAT PART IS TRUE AND WHAT PART IS NOT TRUE ABOUT THAT
4 STATEMENT?

5 A JUST SOME OF IT NOT TRUE.

6 Q WHAT PART?

7 A THE PART WHERE I KEPT TELLING HIM THAT VITO COULD HAVE BEEN
8 THE ONE THAT KILLED DONALD SUTTON.

9 Q THEN YOU TOLD MR. AUSTIN ON THE 29TH THAT JOHN CORBETT TOLD
10 ME THAT DAVID BYNUM HAD TOLD HIM THAT RON WANTED TO PAY HIM
11 SOME MONEY TO KILL THE BOY.

12 A THAT WAS TRUE.

13 Q THAT'S TRUE? AND YOU STILL SAY THAT'S TRUE?

14 A I STILL SAY THAT'S TRUE.

15 Q TODAY PIG TOLD ME THAT RON OFFERED HIM SOME MONEY TO KILL THE
16 BOY.

17 A THAT WAS TRUE, TOO.

18 Q AND YOU ARE STILL TELLING THE JURY THAT'S TRUE?

19 A PART OF THE STORY IS TRUE AND SOME OF IT IS NOT.

20 Q ABOUT PIG?

21 A THAT'S TRUE.

22 Q SO, IF THESE WITNESSES ARE CALLED INTO COURT THEY ARE GOING
23 TO TESTIFY TO WHAT YOU SAY THEY SAID?

24 A THEY CAN, YES. I'M PRETTY SURE THEY CAN.

25 Q AND THEN YOU MAKE THE STATEMENT--WHY DON'T YOU READ TO THE

1 JURY WHAT THE LAST PARAGRAPH OF YOUR STATEMENT IS ON DECEMBER
2 29TH AS TO WHY YOU WERE CHANGING YOUR STATEMENT OF DECEMBER
3 26TH? WHY DON'T YOU READ IN YOUR OWN WORDS?

4 A WHAT, ON THE FRONT OR THE BACK?

5 Q THE LAST PARAGRAPH ON THE SECOND PAGE OF THE STATEMENT. YOU
6 READ IT IN YOUR OWN WORDS.

7 THE COURT: STARTING WITH THE REASON.

8 Q THE REASON.

9 A OH, OKAY. THE REASON I HAVE CHANGED MY STATEMENT IS BECAUSE
10 I WAS A LITTLE HIGH THAT NIGHT BUT WHAT I'M TELLING YOU NOW
11 IS THE TRUTH.

12 Q THE REASON YOU WERE CHANGING THE STATEMENT ON THE 29TH FROM
13 THE ONE THAT YOU GAVE ON THE 26TH WAS NOT BECAUSE YOU WERE
14 NOW TRYING TO SHIFT THE BLAME TO RON TILLMAN OR THAT VITO
15 MCKIE DIDN'T DO IT, BUT BECAUSE YOU WERE HIGH THAT NIGHT, BUT
16 WHAT I'M TELLING YOU NOW, DECEMBER 29TH, IS THE TRUTH.

17 A THAT WAS A LIE, TOO.

18 Q THAT WAS A LIE, TOO?

19 A YES.

20 Q LET ME ASK YOU THIS. HOW HIGH WERE YOU ON THE NIGHT OF
21 DECEMBER 26TH, 1988?

22 A I WOULDN'T SAY DRUNK. I WAS, YOU KNOW, A LITTLE HIGH.

23 Q WHAT WERE YOU HIGH ON, MR. MALLOY?

24 A I WAS DRINKING THAT DAY, MR. SWERLING.

25 Q DID YOU HAVE ANYTHING ELSE IN YOUR SYSTEM?

1 A BEER AND LIQUOR.

2 Q THIS IS THE STATEMENT YOU SIGNED UNDER OATH AND AGAIN WE
3 REITERATE IN THE LAST PARAGRAPH THAT YOU WERE TELLING HIM THE
4 TRUTH NOW?

5 A YES.

6 Q AND YOU AGREE THAT'S THE THIRD TIME YOU TOLD MR. AUSTIN
7 BASICALLY THE SAME STORY, THAT VITO McKIE DROVE OFF WITH
8 DONALD SUTTON--

9 A YES.

10 Q --AND WALKED BACK BY HIMSELF?

11 A YES.

12 MR. SWERLING: YOUR HONOR, COULD WE APPROACH THE BENCH
13 A MINUTE?

14 THE COURT: YES, SIR.

15 (MR. SWERLING, MR. BILTON AND MR. COLEMAN APPROACH THE
16 BENCH OUT OF THE PRESENCE OF THE COURT REPORTER)

17 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
18 GENTLEMEN, WE ARE GOING TO STOP FOR THE EVENING. IT'S A GOOD
19 STOPPING POINT. I ONCE AGAIN REMIND YOU AND INSTRUCT YOU
20 THAT YOU ARE NOT TO DISCUSS THIS CASE AMONG YOURSELVES NOR
21 READ ANYTHING ABOUT IT IF THERE BE ANYTHING IN THE NEWS MEDIA
22 OR WATCH ANYTHING ON T.V., IF THERE BE ANY, OR LISTEN TO
23 ANYTHING ON THE RADIO. I WANT YOU BACK HERE IN THE JURY ROOM
24 AT 9:30 IN THE MORNING. EVERYBODY UNDERSTAND? SEE YOU IN
25 THE MORNING. I HOPE YOU HAVE A NICE EVENING.

1 (THE JURY LEAVES THE JURY BOX AT 5:35 P.M.)

2 THE COURT: COURT WILL BE IN RECESS UNTIL 9:30 IN THE
3 MORNING. IS THIS WITNESS IN CUSTODY OR SOMEWHERE?

4 MR. MORTON: NO, SIR.

5 THE COURT: ALL RIGHT. BE BACK IN THE MORNING AT 9:30.

6 A YES, SIR.

7 (WITNESS TO THE SIDE)

8 MR. SWERLING: YOUR HONOR, I ASK THE COURT TO INSTRUCT
9 THE WITNESS NOT TO DISCUSS THIS CASE WITH ANYONE.

10 THE COURT: SO INSTRUCTED.

11 (EVENING RECESS)

12 (COURT RESUMES JANUARY 17, 1990)

13 THE COURT: THE JURORS ARE ALL NOW PRESENT. IF YOU WILL
14 HAVE THE WITNESS RETURN TO THE WITNESS STAND. BRING THEM IN.

15 (THE JURY RETURNS TO THE JURY BOX AT 9:47 A.M.)

16 BAILIFF: ALL THE JURORS ARE PRESENT, YOUR HONOR.

17 THE COURT: WHO IS MS. STEVENSON? GIVE ME A HAND. MS.
18 STEVENSON, I UNDERSTOOD YOU MAY HAVE HAD CAR TROUBLE THIS
19 MORNING, IS THAT RIGHT?

20 MS. STEVENSON: YES, SIR.

21 THE COURT: I SHOULD HAVE TOLD YA'LL. IF YOU DO, YOU
22 KNOW, THE REST OF THIS WEEK OR ANY TIME YOU ARE SERVING, YOU
23 KNOW, WE RECOGNIZE THAT CAN HAPPEN BUT IF YOU WILL CALL INTO
24 THE CLERK'S OFFICE AND JUST LET US KNOW, ONE, HOW LONG YOU
25 THINK IT WILL BE OR IF YOU NEED SOME ASSISTANCE. I WOULD BE

1 HAPPY TO SEND SOMEONE OUT THERE TO GET YOU IN TO COURT IN THE
2 FUTURE. SO, DON'T WORRY ABOUT IT EXCEPT IF YOU'D LET US
3 KNOW, ANY OF YOU, AND WE'LL TRY TO ASSIST YOU IF WE CAN. ALL
4 RIGHT? ALSO, LADIES AND GENTLEMEN, IT'S RIGHT INTERESTING,
5 I'M NOT SURE WHETHER THEY STARTED IT YESTERDAY OR MONDAY OR
6 WHEN BUT I'VE NOTICED THAT THEY'VE IMPLEMENTED A NEW SYSTEM
7 DOWNSTAIRS ABOUT ENTERING. I GUESS IT'S THE METAL DETECTOR
8 MACHINES EVERYBODY GOES THROUGH. THAT'S PRETTY GOOD. I
9 UNDERSTAND THEY'VE GOT THAT SET UP NOW AND IT'S GOING TO BE
10 HERE FROM NOW ON. DID YA'LL GO THROUGH THAT? (AFFIRMATIVE
11 RESPONSES) THE LAST TIME I WAS HERE IT WAS ABOUT A YEAR AND
12 A HALF AGO, TOO. I WAS OVER THIS CIRCUIT FOR ABOUT SIX
13 MONTHS AND THEY SUGGESTED THEN THAT THEY DO IT. I'M GLAD TO
14 SEE THEY FINALLY DID IT. IT'S FOR EVERYBODY'S BENEFIT.
15 EVERYBODY IS COMFORTABLE AND READY TO PROCEED. MR. SWERLING,
16 THE WITNESS IS ON THE STAND. YOU MAY CONTINUE YOUR CROSS
17 EXAMINATION.

18 HAYES MALLOY, AFTER BEING PREVIOUSLY SWORN BY THE CLERK,
19 TESTIFIES AS FOLLOWS:

20 CROSS EXAMINATION CONTINUED BY

21 MR. SWERLING:

22 Q MR. MALLOY, I THINK THE LAST STATEMENT WE TALKED ABOUT WAS
23 THE ONE THAT YOU HAD GIVEN ON 12-29.

24 A YES.

25 Q WHICH ADMITTEDLY AGAIN IS NOT THE TRUTH, IS THAT CORRECT?

- 1 A SOME OF IT WAS, SOME OF IT WASN'T.
- 2 Q SOME OF IT WAS, SOME OF IT WASN'T. OKAY. NOW, AT THAT POINT
- 3 YOU WERE BROUGHT BACK DOWN TO SEE MR. AUSTIN ON THE 3RD OF
- 4 JANUARY, WERE YOU NOT?
- 5 A CORRECT.
- 6 Q OF '89. THAT WOULD BE JUST LAST YEAR, A YEAR AGO?
- 7 A RIGHT.
- 8 Q AT THAT POINT, YOU WERE TOLD YOU WOULD BE CHARGED WITH
- 9 MURDER, ISN'T THAT TRUE?
- 10 A THAT WAS AFTER I HAD TOLD THEM ABOUT THE MURDER, WHAT I
- 11 REALLY KNEW ABOUT IT.
- 12 Q ALL RIGHT. BUT YOU WERE TOLD ON THAT OCCASION THAT YOU WOULD
- 13 BE CHARGED WITH MURDER?
- 14 A AFTER, YES.
- 15 Q SO THE ANSWER TO MY QUESTION IS YES?
- 16 A YES.
- 17 Q AND YOU GAVE MR. AUSTIN A STATEMENT ON THAT DAY AGAIN?
- 18 A YES.
- 19 Q JANUARY 3RD, 1989?
- 20 A YES.
- 21 Q AND AS A RESULT OF THAT STATEMENT YOU WERE CHARGED WITH THE
- 22 MURDER OF DONALD SUTTON?
- 23 A YES.
- 24 Q THAT YOU IN FACT SHOT DONALD SUTTON?
- 25 A THAT'S WHAT THEY BELIEVED.

1 Q OKAY. AND ON JANUARY 4TH, 1989, YOU WERE RELEASED FROM THE
2 RICHLAND COUNTY DETENTION CENTER UPON POSTING--HOW MUCH MONEY
3 DID YOU SAY YOU HAD TO PUT UP?

4 A WELL, IT WAS \$7,500.00 BUT IT WAS REDUCED TO 10 PERCENT, LIKE
5 \$750.00. BUT IT WAS SOME KIND OF BOND WHERE WHEN I SHOW UP
6 TO COURT I WILL BE ABLE TO GET MY MONEY BACK.

7 Q OKAY. SO, YOU SHOULD BE ABLE TO GET YOUR MONEY BACK NOW?

8 A YES.

9 Q BECAUSE YOUR CHARGES HAVE BEEN DISMISSED?

10 A I THOUGHT IT WAS DISMISSED WAY BACK THEN. I JUST THOUGHT
11 THEY WAS CHARGING ME 'CAUSE THEY WANTED ME TO STAY IN SOUTH
12 CAROLINA TO TESTIFY. THAT'S WHAT I WAS THINKING.

13 Q SO, YOU THOUGHT WAS BACK ON JANUARY 3RD, 1989, THAT THE
14 CHARGES WERE GOING TO BE DISMISSED AND YOU WERE JUST STAYING
15 AROUND AND THEY WERE GOING TO HOLD IT OVER YOUR HEAD SO YOU
16 COULD TESTIFY IN THE CASE?

17 A THAT'S WHAT I BELIEVE.

18 Q THAT'S WHAT YOU BELIEVED. OKAY. SO, SOMEONE DID HELP YOU
19 GET OUT OF JAIL THEN FOR \$750.00?

20 A MY MOTHER.

21 Q I KNOW. BUT DID SOMEONE FROM THE SHERIFF'S DEPARTMENT OR THE
22 SOLICITOR'S OFFICE HELP YOU GET OUT OF JAIL FOR \$750.00 ON
23 A MURDER CHARGE WHERE YOU WERE ACCUSED OF SHOOTING SOMEBODY
24 IN THE HEAD?

25 A NO.

- 1 Q NO? OKAY. SO, YOU HAD NO ASSISTANCE THERE. DID ANYBODY
2 MAKE THAT RECOMMENDATION FOR BOND?
- 3 A NO, I DON'T THINK SO.
- 4 Q WHERE WAS THE BOND SET?
- 5 A RIGHT IN THE COURTROOM. I THINK THIS COURTROOM HERE.
- 6 Q WHICH SOLICITOR HANDLED THE BOND HEARING?
- 7 A I'M NOT SURE.
- 8 Q IS THAT THE KIND OF BOND THEY ASKED FOR?
- 9 A I WOULDN'T KNOW, MR. SWERLING.
- 10 Q I WASN'T THERE. DO YOU REMEMBER?
- 11 A NO.
- 12 Q SO, YOU DON'T KNOW HOW YOU GOT A \$7,500.00 BOND AND WERE
13 ALLOWED TO ONLY PUT UP \$750.00 TO GET OUT OF JAIL ON A MURDER
14 CHARGE?
- 15 A NO.
- 16 Q OKAY. BUT YOU KNEW RIGHT FROM THAT POINT ON, JANUARY 3RD,
17 1989, THERE WAS GOING TO BE SOME REWARD FOR YOU AT THE END
18 OF THIS CASE?
- 19 A NOT A REWARD. YOU KNOW, AFTER THAT BOND HEARING I WAS KIND
20 OF CONFUSED OF THAT. I WAS CHARGED WITH MURDER AND I GET A
21 LOW BOND AND GET MY MONEY BACK. THAT WAS CONFUSING ME AT
22 THE TIME.
- 23 Q IT WAS CONFUSING BECAUSE YOU HAD CONFUSED EVERYBODY ELSE?
- 24 A LIKE HOW?
- 25 Q BY TELLING THEM ALL THESE OTHER STORIES.

- 1 A WELL, I WOULDN'T SAY CONFUSING THEM.
- 2 Q WELL, YOU CERTAINLY MISLED THEM?
- 3 A YES.
- 4 Q YOU DIDN'T TELL THEM THE TRUTH?
- 5 A NO. NOT AT THE TIME.
- 6 Q ALL OF A SUDDEN MIRACULOUSLY ON JANUARY 3RD OF 1989 YOU GIVE
- 7 A STATEMENT IMPLICATING RONALD TILLMAN AS BEING THE PERSON
- 8 WHO SHOT DONALD SUTTON?
- 9 A THAT'S WHEN I STARTED FEELING SAFE, YES.
- 10 Q AND THAT'S THE FIRST TIME, JANUARY 3RD, 1989, THAT YOU TOLD
- 11 ANYBODY THAT RONALD TILLMAN WAS THE ONE THAT SHOT DONALD
- 12 SUTTON?
- 13 A YES. I THINK.
- 14 Q IT WAS ALSO THE FIRST TIME ON JANUARY 3RD, 1989, THAT YOU
- 15 ADMITTED BEING PRESENT WHEN THE SHOT WAS FIRED?
- 16 A YES, I DID.
- 17 Q YOU AGREE UP UNTIL THAT TIME YOU HAD NOT TOLD ANYBODY THAT?
- 18 A RIGHT.
- 19 Q YOU SIGNED A STATEMENT AGAIN THAT DAY UNDER OATH, DID YOU
- 20 NOT?
- 21 A YES, I DID.
- 22 Q THE SAME KIND OF OATH THAT YOU TOOK ON DECEMBER 26TH,
- 23 DECEMBER 28TH AND DECEMBER 29TH, IS THAT CORRECT?
- 24 A YES.
- 25 Q SAME KIND OF OATH YOU TOOK YESTERDAY WHEN YOU TOOK THE STAND?

1 A YES.

2 Q ALL RIGHT. THIS TIME YOU WANTED THE POLICE TO BELIEVE YOU
3 AGAIN?

4 A WELL, IT WAS THE TRUTH.

5 Q SO, THE ANSWER TO MY QUESTION IS, YES, I WANTED THE POLICE
6 TO BELIEVE ME?

7 A YES, I GUESS.

8 Q AND, YES, I WANT THE JURY TO BELIEVE ME?

9 A YES.

10 Q WELL, LET ME ASK YOU THIS AGAIN. HOW IS ANYBODY SUPPOSED TO
11 KNOW WHICH OF THE FOUR OR FIVE STATEMENTS YOU GAVE, INCLUDING
12 YOUR TESTIMONY, IS THE TRUTH SINCE YOU TAKE THE OATH AND
13 APPARENTLY IT DOESN'T MEAN ANYTHING TO YOU?

14 A I EXPLAINED THE REASON WHY I DIDN'T TELL THE TRUTH THE FIRST
15 TIME, MR. SWERLING.

16 Q BUT YOU PUT THE MURDER ON VITO McKIE, YOU DIDN'T PUT IT ON-
17 -

18 A I DID NOT SAY VITO SHOT HIM. I DID NOT SAY I SEEN VITO SHOT
19 HIM.

20 Q NO, BUT YOU SAID THAT VITO McKIE WAS THE LAST PERSON WITH HIM
21 DRIVING AWAY AND THAT VITO McKIE CAME WALKING BACK ALONE?

22 A RIGHT.

23 Q YOU WOULD AGREE THAT THAT WOULD CLEARLY INDICATE TO ANYONE
24 WHO HAD ANY INTELLIGENCE THAT VITO McKIE WAS THE LAST PERSON
25 TO BE WITH DONALD SUTTON?

1 A RIGHT.

2 Q AND THAT WAS THE MESSAGE YOU WERE TRYING TO CONVEY?

3 A WELL, THAT WAS JUST TO GET THEM TO PICK VITO MCKIE UP.

4 Q OR WAS IT DID YOU CHANGE YOUR STORY ON JANUARY 3RD, 1989,
5 BECAUSE YOU REALIZED THAT WHAT YOU HAD TOLD THE POLICE PRIOR
6 TO THAT TIME ON THE THREE OCCASIONS YOU SPOKE WITH THEM THEY
7 WERE GOING TO BE ABLE TO PROVE WAS ABSOLUTELY NOT TRUE?

8 A NOT REALLY.

9 Q BECAUSE ALL THEY HAD TO DO WAS TALK TO ANY OF THESE WITNESSES
10 THAT YOU HAD TOLD THEM WERE PRESENT ON THE 28TH AND THE 26TH
11 AND THEY WOULD REALIZE THAT YOU WERE NOT TELLING THE TRUTH,
12 ISN'T THAT TRUE?

13 A NOPE.

14 Q WELL, THE TRUTH OF THE MATTER IS THAT THEY HAD TALKED TO JOHN
15 CORBETT, HERMAN WHALEY, PIG, ANY OF THESE PEOPLE--

16 MR. MORTON: YOUR HONOR--

17 THE COURT: JUST A MINUTE.

18 MR. MORTON: I THINK HE WANTED TO EXPLAIN SOMETHING AT
19 THAT POINT. I THINK HE HAS THAT RIGHT.

20 MR. SWERLING: THE ANSWER WAS NO.

21 Q THE FACT OF THE MATTER IS THAT THE NAMES THAT YOU HAD
22 FURNISHED MR. AUSTIN, IF IN FACT THE POLICE HAD CHECKED THAT
23 OUT WOULD HAVE FOUND OUT THAT YOU WERE NOT TELLING THE TRUTH?

24 A NO. I WAS GONNA COME UP AND TELL THEM AFTER VITO WAS, YOU
25 KNOW, APPREHENDED.

1 Q WHAT I'M ASKING YOU, MR. MALLOY, BY JANUARY 3RD YOU REALIZED
2 THAT IF THEY TALKED TO VITO McKIE, JOHN CORBETT, SCOTT
3 ENGLISH, HERMAN WHALEY, DAVID WHALEY, DAVID BYNUM, ALL THESE
4 OTHER PEOPLE YOU HAD REFERRED TO IN YOUR PREVIOUS STATEMENTS,
5 THAT THEY WOULD SAY YOU WERE NOT TELLING THE TRUTH? ISN'T
6 THAT TRUE?

7 A NO. BUT WHAT THEY WOULD SAY IS WHAT THEY KNOW ABOUT THE
8 PLANNING OF THE MURDER.

9 Q THE ANSWER TO MY QUESTION THOUGH IS THEY WOULD HAVE DISPROVED
10 WHAT YOU SAID THEIR ROLE WAS IN THIS THING AND WHAT THEY SAW?

11 A YEAH. OKAY. YEAH.

12 Q YES OR NO?

13 A YES.

14 Q AND YOU HAD FIGURED THAT OUT BY JANUARY 3RD?

15 A NOT JANUARY, MR. SWERLING. WHEN I TOLD THE STORY--

16 Q THE FIRST TIME YOU TOLD THE POLICE ABOUT IT WAS JANUARY 3RD.
17 THAT'S WHEN THEY FOCUSED IN ON YOU ON THE MURDER CHARGE,
18 ISN'T THAT RIGHT?

19 A THAT'S WHEN I TOLD THEM ABOUT THE MURDER.

20 Q BUT THAT'S ALSO WHEN THEY WERE FOCUSING IN ON YOU ON THE
21 MURDER?

22 A I GUESS.

23 Q DIDN'T THEY READ YOUR RIGHTS?

24 A YES, THEY DID.

25 Q THEY TOLD YOU YOU HAD A RIGHT TO REMAIN SILENT?

1 A YES.

2 Q THEY TOLD YOU YOU HAD A RIGHT TO A LAWYER?

3 A RIGHT.

4 Q TOLD YOU ANYTHING YOU SAID COULD INCRIMINATE YOU?

5 A YES.

6 Q YOU WERE A SUSPECT IN A MURDER CASE AT THAT POINT, WERE YOU
7 NOT?

8 A I GUESS.

9 Q PRIOR TO THAT TIME, NOBODY HAD TOLD YOU YOU WERE A SUSPECT
10 IN A MURDER CASE. THEY BELIEVED THAT YOU WERE JUST SOMEONE
11 WHO WALKED BY THE CHURCH AND SAW THE BODY. THAT'S WHAT YOU
12 HAD TOLD THEM, ISN'T THAT TRUE?

13 A YES, THAT'S RIGHT.

14 Q BUT OBVIOUSLY THEY DIDN'T BELIEVE THAT SO THEY WERE COMING
15 BACK AND NOW THEY WERE SUSPECTING YOU OF BEING THE ONE THAT
16 COMMITTED THE MURDER?

17 A NOT REALLY.

18 Q SO, NOW IT BECAME IMPORTANT FOR YOU TO TOSS IT OFF ON SOMEONE
19 ELSE SINCE YOU KNEW THEY COULD PROVE THAT VITO McKIE DIDN'T
20 DO IT? ISN'T THAT TRUE?

21 A NO, I COULD HAVE STUCK TO THE STORY IF I WANTED TO.

22 Q BUT YOU KNEW THAT THEY COULD PROVE THAT THAT STORY WAS NOT
23 TRUE THAT VITO McKIE DID IT?

24 A I DOUBT IT.

25 Q SO, YOU MEAN THE POLICE COULD PROVE THAT VITO McKIE DID IT?

1 A MAYBE IF I HAD KEPT ON TO MY STORY.

2 Q SO, IN OTHER WORDS, IF YOU HAD CHOSEN TO STICK WITH YOUR

3 STORY OF VITO McKIE THERE WAS ENOUGH EVIDENCE YOU ARE SAYING

4 THAT VITO McKIE COULD HAVE BEEN CONVICTED OF THE KILLING OF

5 DONALD SUTTON AND YOU WOULD HAVE TESTIFIED TO THAT?

6 A NO, I WOULDN'T HAVE TESTIFIED TO THAT.

7 Q WELL, YOU JUST SAID YOU COULD HAVE.

8 A I COULD HAVE.

9 Q IF IT WAS IN YOUR OWN INTEREST, YOU WOULD HAVE?

10 A NO, NOT REALLY.

11 Q NOT REALLY?

12 A NO.

13 Q POSSIBLY?

14 A MAYBE.

15 Q MAYBE. JUST DEPENDING ON HOW YOU FELT AT THE MOMENT?

16 A NO. DEPENDING ON HOW SAFE I WAS.

17 Q ON JANUARY 3RD YOU TOLD MR. AUSTIN, AGAIN THIS FELLOW WHO HAD

18 TALKED TO YOU ABOUT THREE OR FOUR TIMES ALREADY, THAT THREE

19 DAYS BEFORE MR. SUTTON WAS KILLED, THREE DAYS BEFORE MR.

20 SUTTON WAS KILLED, RON APPROACHED YOU WHICH WOULD HAVE BEEN

21 ON THE 23RD OF DECEMBER AND OFFERED YOU \$5,000.00? DID YOU

22 TELL HIM THAT?

23 A YES. I WAS JUST ESTIMATING. I WAS JUST ESTIMATING AT THE

24 TIME.

25 Q BUT THAT'S WHAT YOU TOLD HIM?

1 A YEAH, THAT'S WHAT I TOLD HIM. I WAS JUST ESTIMATING.

2 Q THAT DIFFERS WITH WHAT YOU TOLD THE JURY YESTERDAY. YOU
3 AGREE WITH THAT? YES OR NO.

4 A SAY THAT AGAIN.

5 Q DO YOU AGREE THAT IS NOT THE SAME STORY YOU TOLD THE JURY
6 YESTERDAY?

7 A NO, THAT'S NOT THE SAME STORY I TOLD YESTERDAY.

8 Q THIS IS SUPPOSED TO BE THE TRUTH NOW THOUGH?

9 A THAT'S RIGHT.

10 Q SO, YOU TOLD THE JURY SOMETHING YESTERDAY AND YOU ARE TELLING
11 US THAT THE STATEMENT THAT YOU GAVE ON JANUARY 3RD IS THE
12 TRUTH--

13 MR. MORTON: YOUR HONOR, I THINK HE'S CONFUSING THE
14 WITNESS BY THAT QUESTION. I WANT HIM TO TELL HIM WHAT HE
15 TOLD THE JURY YESTERDAY AND ASK HIM DID HE TELL THEM THAT
16 YESTERDAY AND DID HE TELL THEM THAT TODAY. I'M NOT SURE HE
17 UNDERSTANDS--

18 MR. SWERLING: THE WITNESS HAS NOT SAID HE DIDN'T
19 UNDERSTAND, YOUR HONOR.

20 THE COURT: I OVERRULE THE OBJECTION. YOU MAY PROCEED.
21 Q YOU AGREE AND HAVE AGREED THAT THAT IS NOT WHAT YOU TOLD THE
22 JURY YESTERDAY, THAT YOU WERE APPROACHED THREE DAYS BEFORE
23 AND OFFERED \$5,000.00 TO KILL SUTTON.

24 A IT COULD HAVE BEEN FIVE DAYS, IT COULD HAVE BEEN THREE DAYS.
25 I WAS JUST ESTIMATING, MR. SWERLING.

1 Q BUT IN THIS STATEMENT YOU SAID THREE DAYS?

2 A I WAS ALSO ESTIMATING AT THE TIME, MR. SWERLING.

3 Q DO YOU AGREE OR DISAGREE THAT THAT IS NOT THE SAME STORY YOU
4 TOLD THE JURY YESTERDAY? THAT'S ALL I'M ASKING YOU. YES OR
5 NO.

6 A YES. I DON'T KNOW.

7 Q WELL, LET ME ASK YOU THIS. WHICH ONE OF THESE TRUTHS, THE
8 ONE ON JANUARY 3RD OR THE ONE YOU TOLD YESTERDAY, IS THE REAL
9 TRUTH?

10 A THE ONE ON JANUARY 3RD.

11 Q OKAY. SO, WHAT YOU TOLD THE JURY YESTERDAY WAS NOT TRUE?

12 A YOU WAS TALKING ABOUT DECEMBER 28TH AND 29TH YESTERDAY.

13 Q NO, I WAS TALKING ABOUT YOUR DIRECT TESTIMONY TO THE JURY
14 YESTERDAY.

15 THE COURT: WHEN HE SAYS DIRECT HE'S TALKING ABOUT WHEN
16 MR. MORTON EXAMINED YOU, WHEN HE ASKED YOU QUESTIONS. DO YOU
17 UNDERSTAND THE DIFFERENCE? HE'S ASKING YOU IS WHAT YOU TOLD
18 YESTERDAY WHEN THEY FIRST PUT YOU ON THE STAND WHEN MR.
19 MORTON WAS ASKING YOU QUESTIONS, WAS THAT CORRECT AND TRUE
20 OR WAS WHAT YOU TOLD THE LAW ENFORCEMENT PEOPLE ON JANUARY
21 3RD OR 4TH TRUE AND CORRECT.

22 A THE ONE ON JANUARY 3RD IS CORRECT.

23 Q OKAY. SO, WHAT YOU TOLD THEM YESTERDAY WAS A MISTAKE?

24 A YES, I GUESS. I DON'T KNOW.

25 MR. MORTON: YOUR HONOR, I STILL THINK--

1 MR. SWERLING: THAT'S ALL THE QUESTIONS I HAVE ON THAT.

2 MR. MORTON: YOUR HONOR, I STILL THINK HE'S CONFUSED ON
3 THAT POINT.

4 THE COURT: YOU CAN CORRECT IT, MR. MORTON. YOU CAN'T
5 DO IT THROUGH AN OBJECTION.

6 MR. MORTON: ALL RIGHT, SIR.

7 THE COURT: GO AHEAD, MR. SWERLING.

8 Q NOW, YOU TOLD MR. AUSTIN ON THAT DATE THAT YOU AGREED THREE
9 DAYS BEFORE MR. SUTTON WAS KILLED TO KILL HIM?

10 A YES, I DID.

11 Q AND YOU TOLD THE JURY YESTERDAY THAT YOU NEVER HAD ANY
12 INTENTION OF THAT.

13 A I DIDN'T HAVE ANY INTENTION OF KILLING HIM. ALL MY INTENTION
14 WAS TO GO STRAIGHT DOWN TO THE POLICE AND TELL THEM ABOUT IT
15 BEFORE IT HAPPENED.

16 Q YOU DIDN'T TELL MR. AUSTIN THAT ON JANUARY 3RD, 1989, THAT
17 YOU NEVER HAD ANY INTENTION OF CARRYING THAT OUT, DID YOU?

18 A YES, I DID. I DID TELL HIM I WASN'T GONNA CARRY THAT OUT.

19 Q IS THAT A COPY OF YOUR STATEMENT?

20 A YES, IT IS.

21 Q WHAT DOES IT SAY RIGHT THERE?

22 A HE ASKED ME TO KILL DONALD SUTTON--

23 Q SAY IT LOUDER.

24 A HE ASKED ME TO KILL DONALD SUTTON AND OFFERED ME \$5,000.00
25 TO DO IT. I TOLD HIM, YES, THAT I WOULD KILL HIM--

1 Q THANK YOU.

2 A AFTER HE TOLD ME--

3 THE COURT: WOULD YOU IDENTIFY FOR THE RECORD WHAT YOU
4 ASKED HIM TO READ, PLEASE? IS THAT AN EXHIBIT?

5 MR. SWERLING: THIS IS NOT AN EXHIBIT YET. THIS IS JUST
6 HIS STATEMENT.

7 THE COURT: WHAT DATE? GIVE US SOME INFORMATION.

8 MR. SWERLING: ON JANUARY 3RD.

9 Q YOU DID NOT TELL MR. AUSTIN THAT--

10 A I'M PRETTY SURE I DID.

11 Q --IT WAS JUST A JOKE AND YOU WERE PLAYING ALONG.

12 A I'M PRETTY SURE I DID. ANY INFORMATION I GOT FROM RON I TOOK
13 IT STRAIGHT TO THE POLICE BEFORE ANYTHING EVER HAPPENED.

14 Q DID YOU SEE IN THE STATEMENT WHERE YOU TOLD MR. AUSTIN THAT
15 YOU WERE JUST PLAYING ALONG WITH RON?

16 A NO.

17 Q THANK YOU. NOW, ON THE JANUARY 3RD STATEMENT YOU TOLD MR.
18 AUSTIN, DID YOU NOT, THAT YOU WENT TO THE PARTY SHOP AT 12:45
19 P.M.?

20 A YES. WHAT DATE? THAT WAS JANUARY 3RD, RIGHT?

21 Q NO. THIS IS THE JANUARY 3RD STATEMENT. I MEAN I KNOW YOU
22 ARE CONFUSED BECAUSE YOU GAVE SO MANY.

23 A NO.

24 Q THIS IS THE JANUARY 3RD STATEMENT.

25 A OKAY.

1 Q OKAY. THE ONE YOU SAY NOW IS THE TRUTH?

2 A RIGHT.

3 Q YOU SAID ON THAT DAY THAT THE DAY YOU TOLD MR. AUSTIN, THE
4 GENTLEMAN OVER THERE AGAIN, THE DAY THAT DON GOT KILLED I
5 WENT TO THE PARTY SHOP ABOUT 12:45.

6 A IT COULD HAVE BEEN LATER. I'M NOT SURE.

7 Q DO YOU AGREE OR DISAGREE THAT'S WHAT YOU TOLD MR. AUSTIN?

8 A YES, I DID. I ALSO TOLD HIM IT COULD HAVE BEEN LATER.

9 Q AND THEN YOU TOLD MR. AUSTIN ON THAT DAY THAT RON WAS THERE
10 AND HE TOLD ME I'LL GIVE YOU \$10,000.00 TO KILL SUTTON.

11 A NO.

12 Q DID YOU SAY THAT OR DIDN'T YOU SAY THAT?

13 A I TOLD HIM THAT--

14 Q I ASKED YOU, YES OR NO, DID YOU SAY THAT OR DIDN'T YOU SAY
15 THAT?

16 A I DON'T REMEMBER TELLING HIM LIKE THAT. I TOLD HIM IT WAS
17 IN THE CAR WHEN HE OFFERED ME THE \$10,000.00, MR. SWERLING.
18 YOU CAN'T--GO AHEAD.

19 Q DID YOU SIGN THIS STATEMENT?

20 A YES, I DID.

21 Q DID YOU SIGN IT UNDER OATH?

22 A YES, I DID.

23 Q SO HELP YOU GOD?

24 A YES, I DID.

25 Q THE TRUTH, THE WHOLE TRUTH, SO HELP YOU GOD?

1 THAT'S RIGHT.

2 Q WHAT DOES IT SAY RIGHT HERE?

3 A I STILL SAY IT WAS IN THE CAR WHEN HE ASKED ME--

4 Q DON'T ARGUE WITH ME.

5 THE COURT: JUST A MINUTE.

6 MR. SWERLING: YOUR HONOR, I'D ASK THAT THE WITNESS BE
7 INSTRUCTED NOT TO--

8 MR. MORTON: YOUR HONOR, I'D ASK HIM TO BACK OFF FROM
9 THE WITNESS.

10 THE COURT: JUST A MINUTE NOW. WAIT A MINUTE. THE
11 STATEMENT AS FAR AS I UNDERSTAND IS NOT IN EVIDENCE, IS IT?

12 MR. SWERLING: IT'S A PRIOR INCONSISTENT STATEMENT.

13 THE COURT: THAT'S ALL RIGHT. ANSWER MY QUESTION. IT'S
14 NOT.

15 MR. SWERLING: YES, SIR.

16 THE COURT: HAVE YOU PROVIDED THE WITNESS WITH A COPY
17 OF IT SO HE CAN LOOK AT IT?

18 MR. SWERLING: I WILL.

19 THE COURT: LET'S PROVIDE HIM WITH A COPY OF IT. HAVE
20 HIM IDENTIFY IT AS BEING THE STATEMENT HE GAVE ON WHATEVER
21 DATE IT WAS, THAT'S HIS SIGNATURE AND HE GOT A COPY OF IT.
22 GIVE HIM A CHANCE TO LOOK OVER IT AND THEN I'M GOING TO
23 REQUIRE HIM TO RESPOND TO YOUR QUESTIONS.

24 Q IS THAT A STATEMENT YOU GAVE MR. AUSTIN UNDER OATH ON JANUARY
25 3RD, 1989?

1 A YES.

2 Q IS THAT YOUR SIGNATURE AT THE BOTTOM OF THE PAGE?

3 A YES, IT IS.

4 Q DID YOU SWEAR TO TELL THE WHOLE TRUTH AND NOTHING BUT THE
5 TRUTH SO HELP YOU GOD?

6 A YES, I DID.

7 THE COURT: LOOK AT IT. HAVE YOU LOOKED OVER THAT
8 STATEMENT?

9 A YES, SIR.

10 THE COURT: ALL RIGHT. NOW, DIRECT HIM WHERE YOU WANT
11 HIM TO AND YOU RESPOND EXACTLY AS THAT STATEMENT IS WRITTEN
12 WHEN HE ASKS YOU A QUESTION. WHEN HE ASKS YOU ON PAGE SUCH
13 AND SUCH AND LINE SUCH AND SUCH DID YOU STATE, YOU ARE TO
14 RESPOND YES OR NO. IF YOU SAY, NO, THEN I'M GOING TO LET HIM
15 PUBLISH IN THE STATEMENT WHAT IT SAYS.

16 Q ON PAGE TWO, SECOND PARAGRAPH. YOU FOLLOW ME?

17 A YES.

18 Q DO YOU SEE WHERE YOU SAID RON TOLD AT THE PARTY SHOP AT 12:45
19 THAT I'LL GIVE YOU \$10,000.00 TO KILL SUTTON; I TOLD HIM,
20 YES, I'LL DO IT?

21 A YES, THAT'S IN HERE. I COULD HAVE TOLD HIM THAT BUT I
22 REMEMBER TELLING HIM IT WAS FIVE.

23 Q IS THAT IN THE STATEMENT?

24 A THAT'S IN THE STATEMENT. THAT'S IN THE STATEMENT.

25 Q IS THAT A STATEMENT YOU SIGNED?

1 A YES, IT IS.

2 Q THAT TESTIMONY DIFFERS FROM WHAT YOU TOLD THE JURY YESTERDAY,
3 DOES IT NOT?

4 A YES, IT'S DIFFERENT.

5 Q YOU TOLD THE JURY YESTERDAY MR. TILLMAN DIDN'T OFFER YOU
6 \$10,000.00 UNTIL YOU GOT IN THE AUTOMOBILE, ISN'T THAT TRUE?

7 A THAT IS TRUE.

8 Q WHICH IS THE TRUTH?

9 A THAT'S WHEN RON ASKED ME--HE OFFERED ME \$10,000.00 WHILE WE
10 WAS IN THE CAR.

11 Q DOES THAT STATEMENT REFER TO BEING IN THE CAR, MR. MALLOY?

12 A NO, IT DON'T. NO, IT DON'T.

13 Q THEN WHICH STATEMENT IS THE TRUTH? THE STATEMENT YOU GAVE
14 TO MR. AUSTIN ON JANUARY 3RD WHICH YOU SAY IS THE TRUTH OR
15 WHAT YOU TOLD THE JURY YESTERDAY? WHICH IS THE TRUTH?

16 Q SO, WHAT YOU TOLD THE JURY YESTERDAY WAS NOT CORRECT?

17 A ABOUT THE OTHER STATEMENTS.

18 Q ABOUT THE \$10,000.00.

19 A HE COULD HAVE MISUNDERSTOOD.

20 Q YOU SIGNED THE STATEMENT, DIDN'T YOU?

21 A YES.

22 Q THE STATEMENT SAYS YOU READ THE STATEMENT BEFORE YOU SIGNED
23 IT, DOESN'T IT?

24 A YES.

25 Q YOU SIGNED IT UNDER OATH? YOU WERE TELLING HIM THAT THAT WAS

1 THE TRUTH?

2 A YES, I DID.

3 Q OKAY. YOU SAID AT THAT TIME THAT AT THE PARTY SHOP IN THE
4 AFTERNOON RON OFFERED YOU \$10,000.00.

5 A WELL--

6 Q WHICH TIME ARE YOU NOT TELLING THE TRUTH?

7 A THIS STATEMENT RIGHT HERE IS THE TRUTH.

8 MR. MORTON: YOUR HONOR, THIS HAS BEEN ASKED AND
9 ANSWERED. MR. SWERLING IS BADGERING HIM. HE'S MADE HIS
10 POINT. I'LL ASK HIM TO MOVE ON.

11 THE COURT: YOU'RE OVERRULED. IT'S CROSS EXAMINATION,
12 MULTIPLE STATEMENTS, AND HE'S ENTITLED TO DO IT AND I'M GOING
13 TO LET HIM DO IT.

14 Q YESTERDAY YOU TOLD THE JURY THAT RON DIDN'T OFFER YOU \$10,000
15 UNTIL YOU GOT IN THE CAR THAT NIGHT.

16 A THAT'S RIGHT.

17 Q NOW, YOU'VE SAID THAT BOTH OF THESE STATEMENTS ARE TRUE, WHAT
18 YOU TESTIFIED TO YESTERDAY AND WHAT YOU PUT IN THE STATEMENT
19 ON JANUARY 3RD, BUT THEY ARE NOT RECONCILABLE WITH EACH
20 OTHER. YOU TELL THE JURY HOW THEY ARE SUPPOSED TO KNOW WHICH
21 IS THE TRUTH, AND WHICH ONE IS THE TRUTH BY THE WAY?

22 A OH, THE ONE THAT IS THE TRUTH IS THIS STATEMENT RIGHT HERE.
23 I FELT A LOT MORE SAFER.

24 Q SO, MR. TILLMAN OFFERED YOU THE \$10,000.00 AT THE PARTY SHOP
25 AT 12:45.

1 A WHEN WE WAS IN THE CAR.

2 Q BUT THAT'S NOT WHAT THE STATEMENT SAYS. THAT'S WHAT I JUST

3 ASKED YOU.

4 A OKAY. WHAT THE STATEMENT SAYS. THIS IS WHAT I MUST HAVE

5 TOLD MR. AUSTIN.

6 Q THAT'S WHAT YOU MUST HAVE TOLD MR. AUSTIN THEN?

7 A I MUST HAVE TOLD MR. AUSTIN THAT.

8 Q SO, THAT'S NOT TRUE?

9 A ABOUT THE \$10,000.00.

10 Q THAT'S NOT TRUE?

11 A IT WASN'T OFFERED TO ME UNTIL WE WAS IN THE CAR.

12 Q THE ANSWER TO MY QUESTION IS THEN IT WAS NOT TRUE?

13 A THAT COULD HAVE BEEN A MISUNDERSTANDING, MR. SWERLING.

14 Q YES OR NO, WAS IT TRUE OR NOT TRUE THAT YOU WERE OFFERED THE

15 \$10,000.00 AT 12:45?

16 A I DON'T RECALL TELLING HIM THAT IT WAS \$10,000.00.

17 Q BUT IT'S IN THE STATEMENT?

18 A IT'S IN THE STATEMENT. I'M REAL SURE I KEPT TELLING HIM IT

19 WAS FIVE.

20 Q AND IN THAT STATEMENT YOU DO NOT TELL MR. AUSTIN, IF YOU'LL

21 CONTINUE DOWN THE PARAGRAPH, THAT YOU WERE JUST PLAYING ALONG

22 WITH MR. TILLMAN, DOES IT?

23 A NO, IT DOESN'T.

24 Q BUT YOU TOLD THE JURY THAT YESTERDAY?

25 A YES, I DID. THE REASON WHY BECAUSE I WAS FEEDING, GIVING

1 MARK AUSTIN AND RANDY MONDOR PLENTY OF INFORMATION.

2 Q NOT ENOUGH THOUGH?

3 A PLENTY OF IT.

4 Q JUST HOLDING BACK A LITTLE BIT THOUGH, HUH?

5 A PLENTY OF IT.

6 MR. SWERLING: YOUR HONOR, I'D ASK THE WITNESS AGAIN BE
7 INSTRUCTED TO ANSWER THE QUESTIONS THAT I'M ASKING.

8 THE COURT: ANSWER HIS QUESTIONS. MR. WITNESS, I'VE
9 REMINDED NUMEROUS OCCASIONS. YOU ARE NOT PERMITTED TO ASK
10 QUESTIONS, YOU ARE A WITNESS. HE GETS TO ASK THE QUESTIONS.
11 THAT'S THE GUIDELINES, THAT'S THE RULES. NOW, ALL I ASK YOU
12 IF YOU DON'T UNDERSTAND HIS QUESTION JUST TELL HIM YOU DON'T,
13 BUT YOU ARE REQUIRED TO ANSWER HIS QUESTIONS, NOT THE ONE YOU
14 FEEL LIKE YOU SHOULD ANSWER. ALL RIGHT?

15 A OKAY. THANK YOU.

16 THE COURT: ALL RIGHT, MR. SWERLING.

17 Q ON JANUARY 3RD, 1989, DID YOU TELL MR. AUSTIN THAT YOU WERE
18 JUST PLAYING WITH MR. TILLMAN AND STRINGING HIM ALONG?

19 A THAT'S RIGHT.

20 Q SHOW ME IN THE STATEMENT WHERE YOU SAID THAT?

21 A IT'S NOT--I DON'T BELIEVE IT'S IN THE STATEMENT.

22 Q THEN YOU DIDN'T TELL MR. AUSTIN THAT?

23 A I'M PRETTY SURE I DID.

24 Q WELL, FIND IT IN THE STATEMENT FOR ME.

25 A DOES EVERYTHING HAVE TO BE IN THE STATEMENT AS WE TALKED?

1 MR. SWERLING: YOUR HONOR--

2 THE COURT: JUST A MINUTE. MR. FOREMAN, YA'LL GO BACK
3 IN THE JURY ROOM.

4 (THE JURY LEAVES THE JURY BOX AT 10:13 A.M.)

5 THE COURT: ALL RIGHT. THE JURY IS NOW OUTSIDE THE
6 PRESENCE OF THE COURT. MR. WITNESS, I'VE REMINDED YOU I
7 DON'T KNOW HOW MANY TIMES THAT YOU'VE GOT TO ANSWER HIS
8 QUESTION. YOU ARE NOT PERMITTED TO ASK QUESTIONS. YOU'VE
9 GOT TO ANSWER HIS QUESTIONS. AND THE QUESTION THAT HE ASKS
10 YOU IF YOU DON'T KNOW THE ANSWER TO IT THEN YOU MAY TELL HIM
11 YOU DON'T KNOW IT. THAT'S VERY SIMPLE. IF YOU KNOW THE
12 ANSWER, YOU'RE SUPPOSED TO GIVE THE ANSWER UNDER OATH. YOU
13 ARE UNDER OATH. DO YOU UNDERSTAND THAT?

14 A YES, SIR.

15 THE COURT: YOU ARE NOT TO AD LIB. IF THE STATE'S
16 ATTORNEY, MR. MORTON, FEELS LIKE IT'S NECESSARY ON REDIRECT
17 TO CLARIFY ANYTHING THAT WAS SAID OR CORRECT IT IN ANY
18 FASHION HE'S ENTITLED TO DO THAT. MR. MORTON, HE'S GIVEN
19 OVER FOUR STATEMENTS THAT I KNOW ABOUT NOW AND YOU KEEP
20 JUMPING UP OBJECTING HE'S GONE OVER IT. HE HASN'T GONE OVER
21 IT AND MR. SWERLING'S GOT EVERY RIGHT TO ATTACK THIS
22 WITNESS'S CREDIBILITY. AND HE'S ON CROSS. THIS IS THE
23 CRITICAL PURPOSE OF EXAMINING WITNESSES IN A COURTROOM. I'M
24 GOING TO TELL YOU HE'S GOING TO GET A FULL OPPORTUNITY TO DO
25 THAT.

1 MR. MORTON: YOUR HONOR, I UNDERSTAND THAT. MY ONLY
2 OBJECTION IS, YOUR HONOR, THAT IF HE ASKS SOMETHING THAT'S
3 ANSWERED, ASKED AND ANSWERED, ASKED AND ANSWERED, THAT HE NOT
4 BE ABLE TO GO ON ALL AFTERNOON ON THE SAME POINT.

5 THE COURT: MR. MORTON, I WISH YOU WOULD PLEASE EXPLAIN
6 TO ME HOW IN THE WORLD THAT'S HAPPENING BECAUSE I CAN'T TELL
7 YOU WHAT'S BEEN ASKED OR ANSWERED BY THIS WITNESS. HE HAS
8 GIVEN SO MANY ANSWERS TO SO MANY DIFFERENT QUESTIONS I DON'T
9 KNOW HOW ANYBODY CAN REACH THAT CONCLUSION. HE'S UNDER CROSS
10 EXAMINATION UNDER CRITICAL POINTS. HE'S GIVEN SWORN
11 STATEMENTS AS TO WHAT OCCURRED IN THIS CASE. NOW, I CAN'T
12 HELP THAT AND YOU CAN'T EITHER BUT HE'S ENTITLED TO GO AFTER
13 HIM ON IT IN A PROPER FORM AND HE'S DOING IT IN A PROPER FORM
14 AND THE JURY IS ENTITLED TO HAVE THIS MAN LOOKED UPON UNDER
15 CRITICAL CROSS EXAMINATION JUST LIKE YOU ARE GOING TO DO TO
16 ANY WITNESS THEY PUT UP THERE.

17 MR. MORTON: THANK YOU, YOUR HONOR.

18 THE COURT: I'M GOING TO TELL YOU YOU ARE GOING TO
19 ANSWER HIS QUESTIONS OR I'M GOING TO DO SOMETHING ELSE IN
20 THIS CASE WITH THIS WITNESS. I'VE WARNED HIM ON FOUR
21 DIFFERENT OCCASIONS. I'VE ASKED HIM AS KINDLY AS I KNOW HOW.
22 YOU ARE GOING TO ANSWER THE QUESTION THAT HE ASKS YOU. DO
23 YOU UNDERSTAND ME?

24 A YES, SIR.

25 MR. MORTON: YOUR HONOR, ALL I WANT IS THAT HE BE ABLE

1 TO UNDERSTAND WHAT QUESTIONS ARE PUT TO HIM, THAT HE NOT BE
2 CONFUSED AND THAT HE BE ABLE TO EXPLAIN HIMSELF.

3 THE COURT: MR. MORTON, FOR GOODNESS SAKE. YOU WANT TO
4 PLAY THIS GAME WITH KID GLOVES ON AND IT'S NOT A GAME. HE'S
5 ENTITLED TO--

6 MR. MORTON: NO, SIR.

7 THE COURT: WAIT A MINUTE, MR. MORTON. YOU WANT MR.
8 SWERLING TO ASK HIM THE QUESTIONS THAT YOU WANT HIM TO ASK.
9 WELL, HE DON'T HAVE TO DO THAT. HE GETS TO ASK HIM WHAT HE
10 WANTS TO ASK. YOU KNOW, HE CAN ATTACK THIS WITNESS BECAUSE
11 HE'S A CRITICAL WITNESS. HE'S GIVEN PRIOR INCONSISTENT
12 STATEMENTS. THAT IS THE PURPOSE OF CROSS EXAMINATION. THIS
13 WITNESS SHOULD KNOW THAT WHEN HE GETS ON THE STAND. MR.
14 SWERLING HAS DONE NOTHING IMPROPER IN HIS CROSS EXAMINATION.
15 IF HE WAS, I'LL STOP HIM. BRING THE JURY IN. MR. WITNESS,
16 DO YOU UNDERSTAND?

17 A YES, SIR.

18 THE COURT: I'VE ASKED YOU THAT BEFORE. I EXPECT IT
19 NOW.

20 A OKAY.

21 (THE JURY RETURNS TO THE JURY BOX AT 10:17 A.M.)

22 THE COURT: THANK YOU, MR. FOREMAN AND LADIES AND
23 GENTLEMEN. I APOLOGIZE FOR THE INCONVENIENCE. YOU MAY
24 CONTINUE YOUR EXAMINATION, MR. SWERLING.

25 MR. SWERLING: THANK YOU.

CROSS EXAMINATION CONTINUED BY

MR. SWERLING:

1 Q MR. MALLOY, I BELIEVE THAT THE LAST QUESTION WAS IF YOU'LL
2 LOOK AT YOUR STATEMENT AND POINT OUT TO ME WHERE IN THE
3 STATEMENT YOU TOLD MR. AUSTIN--

4 A IT DOESN'T SAY IT.

5 Q EXCUSE ME. COULD I FINISH MY QUESTION?

6 A OKAY.

7 Q THAT YOU WERE STRINGING MR. TILLMAN ALONG AND NEVER HAD ANY
8 INTENTION OF CARRYING OUT THE MURDER.

9 A IT DOESN'T SAY THAT.

10 Q YOU TOLD THE JURY THAT YESTERDAY ON YOUR DIRECT EXAMINATION,
11 DID YOU NOT, THAT YOU NEVER HAD ANY INTENTION OF CARRYING IT
12 OUT?

13 A THAT'S RIGHT.

14 Q NOW, YOU GAVE HIM AN OATH AND YOU TOOK AN OATH YESTERDAY.
15 YOU ARE SAYING BOTH OF THEM ARE TRUE. WHICH ONE IS?

16 A WHICH ONE IS WHAT?

17 Q THAT YOU--THE ONE YOU GAVE ON JANUARY 3RD WHERE YOU DIDN'T
18 TELL MR. AUSTIN THAT YOU STRINGING MR. TILLMAN ALONG OR THE
19 ONE THAT YOU TOLD THE JURY YESTERDAY THAT YOU WERE STRINGING
20 HIM ALONG? WHICH ONE OF THOSE TRUE STATEMENTS IS THE REAL
21 TRUTH?

22 A THIS IS THE TRUE STATEMENT. THE ONE I MADE ON JANUARY 3RD.

23 Q SO, WHAT YOU TOLD THE JURY YESTERDAY WAS A MISTAKE?

1 A NO. I'M NOT SAYING THAT.

2 Q WHAT ARE YOU SAYING?

3 A I'M JUST SAYING WHAT I SAID ABOUT THIS STATEMENT HERE IS THE

4 TRUTH.

5 Q BUT YOU AGREE THAT THAT DOES NOT CONTAIN WHAT YOU TOLD THE

6 JURY YESTERDAY?

7 A NO, IT'S NOT IN THE STATEMENT, MR. SWERLING.

8 Q THANK YOU. THE STATEMENT SAYS YOU TOLD HIM, YES, I'LL GO IT

9 PERIOD?

10 A YES.

11 Q THEN YOU WENT ON TO TELL MR. AUSTIN YOU PLAYED POOL 'TIL

12 ABOUT SIX OR SEVEN AND THEN WENT BACK ACROSS THE STREET, IS

13 THAT CORRECT?

14 A YES.

15 Q THEN YOU TOLD MR. AUSTIN YOU SAT OUTSIDE THE STORE AND DRINK

16 SOME MORE LIQUOR?

17 A YES.

18 Q YOU WERE GETTING HIGH?

19 A RIGHT.

20 Q THEN YOU TOLD MR. AUSTIN AT SOME POINT AT THAT TIME RON

21 CALLED YOU ACROSS THE STREET AND TOLD YOU THE GUY WAS COMING

22 DOWN?

23 A YES.

24 Q BUT HE HAD TO DROP OFF A FRIEND FIRST. IS THAT WHAT YOU TOLD

25 MR. AUSTIN?

1 A YES.

2 Q IS THAT WHAT YOU TOLD THE JURY YESTERDAY?

3 A I THINK I DID.

4 Q YOU ARE NOT SURE ANY MORE, ARE YOU?

5 A I'M NOT--I DON'T KNOW.

6 Q YOU ARE NOT SURE WHICH OF THE STORIES YOU ARE TELLING THE
7 JURY IS THE TRUTH OR NOT THE TRUTH ANY MORE, ARE YOU?

8 A THIS STATEMENT HERE IS TRUE, MR. SWERLING.

9 THE COURT: IDENTIFY IT, PLEASE.

10 A THE ONE ON JANUARY 3RD.

11 THE COURT: THAT'S NOT IN EVIDENCE, IS IT?

12 MR. SWERLING: NO, SIR.

13 A NO, SIR.

14 MR. MORTON: YOUR HONOR, THE STATE WOULD JUST AS SOON
15 HAVE IT IN EVIDENCE.

16 MR. SWERLING: I HAVE NOT OFFERED IT IN EVIDENCE. IT'S
17 NOT ADMISSIBLE AS EVIDENCE. IT'S A PRIOR INCONSISTENT
18 STATEMENT.

19 MR. MORTON: YOUR HONOR, IF HE'S SHOWING IT TO HIM AND
20 ASKING HIM QUESTIONS I MOVE THAT THE WHOLE STATEMENT BE PUT
21 IN EVIDENCE.

22 MR. SWERLING: YOUR HONOR, CAN WE APPROACH THE BENCH?

23 THE COURT: YES, SIR.

24 (MR. SWERLING AND MR. MORTON APPROACH THE BENCH OUT OF
25 THE PRESENCE OF THE COURT REPORTER)

1 Q NOW, ON JANUARY 3RD YOU TOLD MR. AUSTIN THAT THE GUY, I GUESS
2 YO ARE REFERRING TO MR. SUTTON, DROVE BY, IS THAT CORRECT?
3 A YES, HE DID COME DOWN.
4 Q DID YOU TELL MR. AUSTIN THAT?
5 A YES, I DID. I THINK I DID.
6 Q AND DID YOU TELL MR. AUSTIN THAT BEFORE MR. SUTTON CAME
7 RONALD LEFT?
8 A CORRECT.
9 Q AND DID YOU TELL MR. AUSTIN THAT HE WAS GOING TO TALK TO HIS
10 MOTHER?
11 A I TOLD HIM THAT HE WAS GOING TO DROP SOMEBODY OFF AND THEN
12 GO BY HIS MOTHER'S.
13 Q DID YOU TELL MR. AUSTIN THEN THAT DONALD DROVE UP AGAIN AT
14 ABOUT EIGHT O'CLOCK WHILE RONALD WAS GONE?
15 A I MIGHT HAVE BEEN MIXED UP WITH THE TIMES, MR. SWERLING.
16 Q DID YOU TELL MR. AUSTIN THAT--
17 A YES.
18 Q --ON JANUARY 3RD?
19 A YES, YES, YES, YES.
20 Q DID YOU TELL THE JURY THAT YESTERDAY?
21 A YES. I THINK I DID.
22 Q YOU THINK YOU DID?
23 A I THINK I DID.
24 Q THEN YOU TOLD OR DID YOU TELL MR. AUSTIN THAT RONALD CAME
25 BACK ABOUT THIRTY MINUTES LATER AND HAD VITO McKIE WITH HIM?

1 A YES.

2 Q DID YOU TELL HIM THAT?

3 A YES, I DID.

4 Q BUT AT THAT POINT DONALD WAS GONE?

5 A YES.

6 Q EXCUSE ME. DID YOU TELL MR. AUSTIN ON JANUARY 3RD THAT

7 DONALD DROVE UP AROUND EIGHT O'CLOCK AND THEN RONALD DROVE

8 UP THIRTY MINUTES LATER?

9 A YES. HE COULD HAVE CAME LIKE TEN, ABOUT TEN MINUTES BEFORE

10 EIGHT. IT WAS CLOSE TO EIGHT OR EIGHT O'CLOCK.

11 Q BUT YOU TOLD MR. AUSTIN--DO YOU AGREE THAT YOU TOLD MR.

12 AUSTIN ON JANUARY 3RD THAT DONALD WAS THERE WHEN RONALD DROVE

13 UP?

14 A NO.

15 Q LOOK AT YOUR STATEMENT ON PAGE THREE.

16 A WHERE IS IT LOCATED?

17 Q MIDDLE OF THE PAGE. DONALD DROVE UP.

18 A OH, THIS SAYS DONALD DROVE UP AROUND EIGHT O'CLOCK WHILE RON

19 WAS STILL GONE. RONALD CAME BACK ABOUT THIRTY MINUTES LATER

20 AND HE HAD VITO McKIE WITH HIM.

21 Q SO, ACCORDING TO THAT STATEMENT YOU GAVE ON JANUARY 3RD

22 DONALD WAS THERE WHEN RONALD CAME BACK, ISN'T THAT TRUE?

23 A DONALD WAS THERE WHEN RON CAME BACK? NO.

24 Q WITH VITO?

25 A NO, DONALD WAS NOT THERE.

1 Q THAT'S WHAT YOU TOLD MR. AUSTIN THOUGH.

2 Q THIS IS--

3 Q ISN'T THAT WHAT YOU TOLD MR. AUSTIN?

4 A IT DON'T SAY THAT IN HERE. I DON'T SEE THAT IN HERE.

5 Q DOESN'T IT SAY THAT DONALD CAME AT EIGHT O'CLOCK, RONALD WAS

6 GONE?

7 A RIGHT.

8 Q THAT RONALD DROVE UP THIRTY MINUTES LATER WITH VITO McKIE?

9 A RIGHT.

10 Q DOESN'T IT SAY THAT?

11 A YES, IT DO.

12 Q IT DOES NOT SAY THAT DONALD LEFT, DOES IT?

13 A NO.

14 Q SO, ON JANUARY 3RD YOU TOLD MR. AUSTIN THAT DONALD WAS THERE

15 WHEN RONALD CAME BACK?

16 A NO. DONALD WASN'T THERE WHEN RON CAME BACK.

17 Q WELL, LOOK AT THE NEXT PARAGRAPH. DIDN'T YOU TELL HIM THAT

18 RON TOLD YOU TO GET IN HIS CAR AND TOLD SUTTON TO GET IN HIS

19 CAR?

20 A HE COULD HAVE--I DON'T KNOW. HE COULD HAVE GOT THIS HERE

21 MIXED UP.

22 Q I'M ASKING YOU WHAT YOU TOLD MR. AUSTIN THAT DAY.

23 A WELL, YES.

24 Q YES, WHAT?

25 A YES, I TOLD HIM THIS. HE MIGHT HAVE MISUNDERSTOOD ME, MR.

1 SWERLING.

2 Q DID YOU TELL MR. AUSTIN ON THAT DAY THAT DONALD DROVE UP AT
3 EIGHT O'CLOCK, THAT RONALD CAME BACK ABOUT THIRTY MINUTES
4 LATER WITH VITO McKIE, RONALD TOLD YOU TO GET IN RONALD'S CAR
5 AND THAT DONALD TO GET IN HIS CAR? THAT'S WHAT YOU TOLD MR.
6 AUSTIN ON THAT DAY, ISN'T THAT TRUE?

7 A WELL, THAT'S WHAT HE HAVE WRITTEN DOWN HERE. I COULD HAVE
8 TOLD HIM.

9 THE COURT: THE QUESTION IS IS THAT WHAT YOU TOLD MR.
10 AUSTIN ON THAT DAY.

11 A I COULD HAVE TOLD HIM BUT I DON'T REMEMBER TELLING HIM LIKE
12 THAT.

13 THE COURT: IS THAT WHAT'S WRITTEN IN THAT STATEMENT?

14 A THAT'S WHAT'S WRITTEN DOWN IN THE STATEMENT.

15 Q THAT'S NOT WHAT YOU TOLD THE JURY YESTERDAY, IS IT?

16 A NO.

17 Q WHICH ONE OF THEM IS THE TRUTH?

18 A THE TRUTH WHEN ME AND RON GOT IN THE CAR AND HE SHOWED ME THE
19 PISTOL, TOLD ME WHAT HIS BOY, VITO, GAVE HIM; WHEN WE PULLED
20 OUT DONALD SUTTON CAME UP BEHIND US FLICKING ON HIS HIGH BEAM
21 AND LOW BEAM LIGHTS. RON THEN, YOU KNOW, FLAGGED, YOU KNOW,
22 WITH HIS TAIL LIGHTS AND HIS HAND TELLING HIM, SIGNALLING HIM
23 TO FOLLOW US.

24 Q MR. MALLOY, ISN'T THAT THE FIRST TIME YOU'VE TOLD ANYBODY
25 THAT THAT'S HOW MR. SUTTON CAME UP BEHIND YOU, FLICKED HIS

1 LIGHTS AND FOLLOWED YOU AWAY WHEN YOU TOLD THE JURY THAT
2 YESTERDAY?

3 A I DON'T BELIEVE THAT WAS THE FIRST TIME.

4 Q LOOK AT THAT STATEMENT AND TELL ME WHERE YOU TOLD THE POLICE
5 THAT.

6 A IT MIGHT NOT BE IN THAT STATEMENT, MR. SWERLING.

7 Q AS A MATTER OF FACT--

8 MR. MORTON: YOUR HONOR?

9 THE COURT: JUST A MINUTE, MR. SWERLING. YES, SIR.

10 MR. MORTON: THERE ARE TWO DIFFERENT THINGS HERE. HE
11 NEEDS TO EXPLAIN WHAT HE TOLD THE POLICE ON THAT DAY AS
12 OPPOSED TO WHAT'S ON THAT STATEMENT. NOW, IF HE'S GOING TO
13 ASK HIM WHAT'S ON THAT STATEMENT, HE NEEDS TO RESPOND WHAT'S
14 ON THAT STATEMENT BUT IF HE'S ASKING HIM WHAT HE TOLD THE
15 POLICE AND IF THERE IS ANY KIND OF DIFFERENCE AND WHY I THINK
16 HE NEEDS TO BE ABLE TO ANSWER THAT.

17 THE COURT: I DIDN'T UNDERSTAND THAT TO BE A PROBLEM.

18 MR. SWERLING: I DIDN'T EITHER.

19 THE COURT: GO AHEAD. HE'S ON CROSS EXAMINATION.

20 Q YOU AGREE THAT IN THE STATEMENT YOU SIGNED UNDER OATH ON
21 JANUARY 3RD YOU TOLD MR. AUSTIN THAT DONALD DROVE UP, RONALD
22 CAME BACK UP THIRTY MINUTES LATER AND RONALD TOLD YOU TO GET
23 IN RONALD'S CAR AND RONALD TOLD DONALD TO GET IN DONALD'S
24 CAR AND THAT THE TWO CARS DROVE OFF TOGETHER? ISN'T THAT
25 WHAT'S IN THE STATEMENT?

1 A YES, IT'S IN THE STATEMENT BUT I DON'T REMEMBER--OKAY, THIS
2 IS IN THE STATEMENT.

3 Q DID YOU TELL THE JURY YESTERDAY THAT THE WAY IT HAPPENED WAS
4 DONALD--RONALD TOLD YOU TO GET IN THE CAR AND THE TWO OF YOU
5 WERE DRIVING OFF AND DONALD CAME DRIVING UP THE STREET--

6 A THAT'S RIGHT.

7 Q --AND FLASHED HIS LIGHTS--

8 A THAT'S RIGHT.

9 Q --AND FOLLOWED RONALD?

10 A THAT'S RIGHT.

11 Q NOW, WE'VE GOT THE TWO STORIES. WHICH ONE OF THEM IS TRUE?

12 MR. MORTON: YOUR HONOR, I OBJECT TO HIM EDITORIALIZING.

13 MR. SWERLING: THEY ARE STORIES.

14 MR. MORTON: I OBJECT TO HIM EDITORIALIZING.

15 MR. SWERLING: TWO VERSIONS. EXCUSE ME.

16 THE COURT: THE OBJECTION IS SUSTAINED.

17 Q WHICH ONE OF THOSE VERSIONS IS CORRECT?

18 A WHERE VITO DROVE UP BEHIND US FLICKING ON HIS HIGH BEAM AND
19 LOW BEAMS. I DON'T RECALL TELLING ANYBODY THIS. I DON'T
20 RECALL IT.

21 Q ISN'T IT A FACT THAT THE FIRST TIME YOU EVER SAID THAT DONALD
22 DROVE UP BEHIND YOU AS YOU WERE PULLING OFF WAS YESTERDAY
23 WHEN YOU TOLD IT TO THE JURY ONE YEAR LATER?

24 A NOPE.

25 Q YOU SHOW ME SOME OTHER PLACE WHERE YOU DID THAT.

1 A WELL, THE F.B.I. MIGHT HAVE IT IN THEIR PAPERS.

2 Q YOU NEVER TOLD THIS MAN THAT, DID YOU?

3 A I COULD HAVE. I DON'T REMEMBER TELLING HIM LIKE THIS. I

4 REALLY DON'T.

5 Q YOU SIGNED THE STATEMENT THOUGH, DIDN'T YOU?

6 A YES, I DID.

7 Q AND ALL OF A SUDDEN NOW--DID YOU TELL MR. AUSTIN THAT VITO

8 McKIE STAYED AT THE PARTY SHOP?

9 A YES.

10 Q SO, FOR THE THREE PREVIOUS OCCASIONS YOU HAD TALKED TO MR.

11 AUSTIN YOU HAD TOLD HIM VITO McKIE DROVE OFF WITH DONALD

12 SUTTON. ALL OF A SUDDEN NOW YOU'VE GOT VITO McKIE STAYING

13 AT THE PARTY SHOP.

14 A I TOLD YOU ABOUT THAT STATEMENT. THAT STATEMENT WAS A LIE,

15 MR. SWERLING.

16 Q THE STATEMENT YOU GAVE UNDER OATH?

17 A THAT'S RIGHT.

18 Q DID YOU TELL MR. AUSTIN ON JANUARY 3RD THAT YOU DIDN'T KNOW

19 WHERE YOU WERE GOING?

20 A RIGHT. BUT I KNOW WHERE WE WAS SUPPOSED TO BE GOING.

21 Q DID YOU TELL HIM ON JANUARY 3RD YOU DIDN'T KNOW WHERE YOU

22 WERE GOING, YES OR NO?

23 A RIGHT, 'CAUSE WE WAS HEADING IN THE WRONG DIRECTION WHERE WE

24 WERE SUPPOSED TO BE GOING.

25 THE COURT: DOES RIGHT MEAN YES? YOU'RE SAYING RIGHT.

1 HE'S ASKING YOU TO ANSWER YES OR NO. DOES RIGHT MEAN YES?
2 WHEN YOU SAY RIGHT?

3 A I GUESS. I DON'T KNOW.

4 THE COURT: THANK YOU.

5 Q DID YOU TELL MR. AUSTIN THAT ALL OF A SUDDEN RON PULLED OUT
6 A PISTOL--

7 A THAT'S WHEN WE WAS IN THE PARKING LOT IN FRONT OF THE STORE.
8 AS WE WAS GETTING IN.

9 Q PARDON?

10 A AS WE WAS GETTING IN THE CAR WHEN WAS SEATED BEFORE WE SHUT
11 THE DOORS, THAT'S WHEN HE SHOWED ME THE PISTOL.

12 Q DIDN'T YOU TELL MR. AUSTIN THAT HE PULLED OUT THE PISTOL IN
13 THE CAR?

14 A YEAH. WE WAS STILL IN THE DRIVEWAY BEFORE WE PULLED OUT.
15 THAT'S WHEN I FIRST SEEN IT.

16 Q DIDN'T YOU TELL MR. AUSTIN THAT HE PULLED OUT THE PISTOL
17 AFTER YOU DROVE AWAY?

18 A I COULD HAVE TOLD HIM THAT. I DON'T THINK I DID THOUGH.

19 Q WELL, LOOK AT THE STATEMENT. PAGE FOUR. WHILE WE WERE
20 RIDING--

21 THE COURT: GIVE HIM A CHANCE TO LOOK AT IT.

22 MR. SWERLING: YES, SIR, I'M SORRY.

23 THE COURT: HAVE YOU GOT THE PLACE IN THE STATEMENT?

24 A NOT YET.

25 Q FIRST SENTENCE.

1 THE COURT: TELL HIM WHAT PAGE IT'S ON.
2 Q FIRST SENTENCE, PAGE FOUR.
3 A OH. YES.
4 Q YOU TOLD MR. AUSTIN THAT WHILE YOU WERE RIDING WITH RON HE
5 PULLED OUT THE PISTOL?
6 A YES.
7 Q YES. THAT'S NOT WHAT YOU TOLD THE JURY YESTERDAY, IS IT?
8 A I DON'T THINK SO.
9 Q THEN YOU TELL MR. AUSTIN FOR THE FIRST TIME ON THAT DAY,
10 JANUARY 3RD, THAT YOU DROVE INTO THE CHURCH PARKING LOT AND
11 YOU STAYED IN THE CAR?
12 A YES. THAT WAS THE FIRST TIME I TOLD HIM ABOUT THAT.
13 Q AND THAT RONALD CALLED DONALD OVER TO HIS CAR? THAT'S THE
14 FIRST TIME YOU TOLD MR. AUSTIN THAT?
15 A YES.
16 Q THEN YOU TOLD MR. AUSTIN, DID YOU NOT, THAT DONALD WALKED
17 OVER WITH RONALD AROUND THE BUILDING, THE CHURCH BUILDING?
18 A WITH HIS ARM AROUND DONALD.
19 Q AND IN THAT STATEMENT YOU JUST SAID THAT HE PUT HIS ARM
20 AROUND HIM, TOOK HIS ARM OFF OF HIM AND SHOT HIM?
21 A RIGHT.
22 Q YOU DID NOT TELL MR. AUSTIN ON JANUARY 3RD, 1989, WHEN YOU
23 WERE GIVING A TRUTHFUL STATEMENT THAT THEY WERE LOOKING AT
24 YOU OR THAT DONALD WAS LOOKING AT YOU AS YOU TOLD THE JURY
25 YESTERDAY?

1 A THAT'S RIGHT.

2 Q ISN'T THAT TRUE?

3 A YES, IT IS.

4 Q WELL, HOW DO YOU RECONCILE THAT, MR. MALLOY? YOU SAY THE
5 STATEMENT IS TRUE, YOU SAY WHAT YOU TOLD THE JURY IS TRUE BUT
6 YET THERE'S TWO DIFFERENT VERSIONS OF WHAT HAPPENED.

7 A I DON'T SEE HOW.

8 Q IN THAT STATEMENT, DO YOU SAY THAT DONALD WAS LOOKING AT YOU?

9 A YES, THAT'S RIGHT. HE WAS.

10 Q WHERE IN THE STATEMENT DOES IT SAY THAT?

11 THE COURT: YOU'RE TALKING ABOUT THE STATEMENT OF
12 JANUARY 3RD?

13 MR. SWERLING: YES, SIR.

14 A (PAUSE) WELL, IT DOESN'T SAY.

15 Q IT DOESN'T SAY?

16 A IT DOESN'T SAY.

17 Q ALL IT SAYS IS WHAT YOU TOLD MR. AUSTIN ON THAT DAY WAS THAT
18 THEY WALKED BEHIND THE CHURCH ARM IN ARM, RONALD'S ARM AROUND
19 HIM, AND HE SHOT HIM. IT DOESN'T SAY ANYTHING ABOUT LOOKING
20 AT YOU, DOES IT?

21 A NO, IT DOESN'T SAY THAT.

22 Q NOTHING ABOUT RONALD TRYING TO DIVERT HIS ATTENTION TOWARD
23 YOU?

24 A IT DOESN'T SAY THAT.

25 Q BUT THAT'S WHAT YOU TOLD THE JURY YESTERDAY?

1 A THAT'S RIGHT.

2 Q THAT DONALD THE ENTIRE TIME WAS LOOKING RIGHT AT YOU?

3 A THAT'S RIGHT.

4 Q WHICH IS THE TRUTH?

5 A WHEN DONALD WAS LOOKING DIRECTLY AT ME. WHATEVER RON WAS

6 TELLING HIM HE HAD DONALD FOCUS AT ME SITTING IN THE CAR.

7 Q BUT ON JANUARY 3RD YOU DIDN'T BOTHER TO TELL MR. AUSTIN THAT

8 VERSION OF THE EVENTS, DID YOU?

9 A I MIGHT HAVE FORGOTTEN.

10 Q FORGOTTEN?

11 A I MIGHT HAVE FORGOTTEN.

12 Q WELL, WHEN WOULD YOUR RECOLLECTION BE BETTER? SEVEN OR EIGHT

13 DAYS AFTER THIS OR THIRTEEN MONTHS LATER?

14 A I DON'T KNOW. I DON'T HAVE A VERY ACCURATE MEMORY, MR.

15 SWERLING.

16 Q YOU DID TELL MR. AUSTIN, DID YOU NOT, THAT RONALD NEVER

17 TOUCHED HIM AFTER HE SHOT HIM THE SECOND TIME?

18 A NO.

19 Q ISN'T THAT CORRECT?

20 A I DIDN'T SEE HIM TOUCH HIM AFTER HE SHOT HIM.

21 Q YOU WERE LOOKING RIGHT AT HIM?

22 A YES.

23 Q ACCORDING TO YOUR TESTIMONY, YOU COULD SEE HIM FIRE BOTH

24 SHOTS.

25 A YES.

1 Q HE NEVER DID TOUCH HIM?
2 A WHO? ME?
3 Q RON.
4 A NO, RON DIDN'T TOUCH HIM.
5 Q RONALD AFTER HE SHOT HIM JUST WALKED BACK TO THE CAR?
6 A YES, HE DID.
7 Q AND YOU ARE TELLING THE JURY THAT AT THAT POINT RONALD JUST
8 WALKED BACK TO THE CAR AND YOU GOT OUT OF THE CAR?
9 A THAT'S RIGHT. WHEN HE OPEN UP HIS DOOR, I GOT OUT THE CAR.
10 Q YOU GOT OUT OF THE CAR TO GO SEE MR. SUTTON?
11 A YES, I DID.
12 Q TO FEEL HIS PULSE?
13 A THAT'S RIGHT.
14 Q AND WHAT YOU ARE TELLING THE JURY AND WHAT YOU TOLD MR.
15 AUSTIN WAS THAT MR. TILLMAN WHO HAD JUST SHOT MR. SUTTON AND
16 THAT YOU WERE A WITNESS TO THAT SHOOTING DROVE OFF AND LEFT
17 YOU STANDING IN THE PARKING LOT?
18 A THAT'S RIGHT. RONALD KEPT--
19 Q IS THAT WHAT YOU ARE TELLING THE JURY?
20 A YES.
21 Q THAT THE MAN WHO JUST KILLED DONALD SUTTON LEFT YOU, A LIVING
22 EYE WITNESS, STANDING IN THE PARKING LOT WITH THE BODY?
23 A YES.
24 Q YOU STILL MAINTAIN THAT'S THE STORY?
25 A THAT'S IT. THAT'S JUST THE WAY IT HAPPENED.

1 Q DID YOU MOVE THE BODY?

2 A NO.

3 Q SO, NEITHER YOU NOR RON EVER MOVED THE BODY?

4 A NO.

5 Q AFTER YOU SAY THAT RON LEFT YOU IN THE PARKING LOT, THE EYE

6 WITNESS IN THIS CASE, YOU TOLD MR. AUSTIN, DID YOU NOT, THAT

7 YOU WALKED OVER TO BUGGIE'S?

8 A I STOOD OVER THERE FOR ABOUT TWENTY MINUTES.

9 Q YOU WENT TO YOUR MOTHER'S HOUSE? IS THAT WHAT YOU TOLD MR.

10 AUSTIN?

11 A YES.

12 Q AND THAT YOU STOOD IN HER YARD FOR ABOUT FIVE MINUTES?

13 A YES.

14 Q AND THEN YOU WENT TO THE PARTY SHOP?

15 A D&M SUPER MARKET ACROSS THE STREET.

16 Q LOOK AT PAGE FIVE. DO YOU DENY THAT YOU TOLD MR. AUSTIN ON

17 JANUARY 3RD THAT YOU WENT BACK TO THE PARTY SHOP? YES OR NO.

18 A YES. YES, I DID.

19 Q YESTERDAY YOU TOLD THE JURY YOU DID NOT GO BACK TO THE PARTY

20 SHOP, YOU WENT TO THE GROCERY STORE. WHICH IS THE TRUTH?

21 A WELL, I THINK I DID WALK BY THE PARTY SHOP. I THINK I DID.

22 Q DID YOU MAKE A MISTAKE YESTERDAY?

23 A WELL, I DON'T KNOW, MR. SWERLING.

24 Q DO YOU AGREE YOU TOLD THE JURY THAT YOU WENT TO THE GROCERY

25 STORE?

1 A THAT'S WHERE MY--MY MOTHER-IN-LAW OWN THAT STORE.

2 Q YOU TOLD THEM YOU DID NOT GO BACK TO THE PARTY SHOP?

3 A I DIDN'T SAY ANYTHING ABOUT GOING TO THE PARTY SHOP. I DON'T
4 RECALL.

5 Q YOU WERE ASKED DIRECTLY THAT QUESTION.

6 THE COURT: GIVE HIM A CHANCE TO ANSWER.

7 A I DON'T RECALL GOING TO THE PARTY SHOP.

8 Q YOU DON'T RECALL NOW GOING TO THE PARTY SHOP?

9 A I DIDN'T RECALL JUST NOW.

10 Q SO, RIGHT NOW, THIRTEEN MONTHS LATER, YOU DON'T RECALL GOING
11 TO THE PARTY SHOP?

12 A I DON'T RECALL. NOT AFTER THAT. I REMEMBER GOING UP SHOP
13 ROAD TOWARDS THE PARTY SHOP TO THE GROCERY STORE.

14 Q DO YOU AGREE THAT YOU TOLD MR. AUSTIN ON JANUARY 3RD
15 UNEQUIVOCALLY I WENT BACK TO THE PARTY SHOP?

16 A YES.

17 MR. MORTON: YOUR HONOR, I ASK THAT HE HAVE AN
18 OPPORTUNITY NOW TO READ THAT STATEMENT. READ THAT STATEMENT
19 AND SAY WHERE IN THERE IT SAYS HE WENT TO THE PARTY SHOP.

20 THE COURT: MR. WITNESS, DO YOU NEED TO READ THE
21 STATEMENT?

22 A YES, SIR.

23 THE COURT: TAKE A MOMENT AND READ THE STATEMENT.

24 A IT'S THE SAME PAGE FOUR?

25 Q LOOK ON PAGE FIVE, MIDDLE OF THE PAGE.

1 THE COURT: READ THE WHOLE STATEMENT WHILE YOU ARE AT
2 IT.

3 A (WITNESS COMPLIES) NO, THIS IS--

4 THE COURT: JUST A MINUTE. DON'T ANSWER. MR. SWERLING
5 WILL ASK YOU THE QUESTION.

6 Q DID YOU READ THE PORTION THAT I WAS REFERRING TO?

7 A YES, I SEE IT DOWN HERE. I COULD HAVE TOLD HIM THAT.

8 Q DID YOU SIGN THAT STATEMENT?

9 A YES, I DID.

10 Q DOES THE STATEMENT SAY I WENT TO THE PARTY SHOP AND STAYED
11 THERE TWO OR THREE MINUTES?

12 A YES, IT DO. I HAD TO WAIT 'TIL MY SISTER-IN-LAW TAKE ME OVER
13 TO MY GIRL FRIEND'S HOUSE.

14 Q DID YOU IN ANY EQUIVOCATE ABOUT IT THEN, ON JANUARY 3RD?

15 A EQUIVOCATE WHAT?

16 Q THAT YOU WERE THERE OR NOT THERE? YOU SAID YOU WERE THERE?

17 A YES. I COULD HAVE WALKED AROUND THERE IN THE AREA.

18 Q WELL, DID YOU OR DIDN'T YOU? I'M NOT ASKING IF YOU COULD
19 HAVE. DID YOU OR DIDN'T YOU GO BACK TO THE SHOP?

20 A I DIDN'T GO INSIDE. I NEVER WENT INSIDE.

21 Q DID YOU GO TO THE SHOP?

22 A I DON'T THINK SO. I'M NOT SURE.

23 Q BUT YOU TOLD MR. AUSTIN YOU DID?

24 A YES. I TOLD HIM IN THE STATEMENT, YES.

25 Q AND YOU TOLD HIM THAT RON WAS GONE?

1 A YES.

2 Q SO, YOU WENT TO BUGGIE'S GRILL, YOU WENT TO YOUR MOTHER'S,
3 YOU WENT TO THE PARTY SHOP, THEN YOU WENT TO THE GROCERY
4 STORE ACROSS THE STREET AND THEN YOU WENT TO YOUR GIRL
5 FRIEND'S HOUSE?

6 A YES. I WAS WAITING ON MY GIRL FRIEND SISTER TO TAKE ME HOME.

7 Q ON ANY OF THOSE FIVE OCCASIONS DID YOU TRY AND CALL THE
8 POLICE TO REPORT WHAT HAD HAPPENED?

9 A I WAS TOO NERVOUS, MR. SWERLING.

10 Q WERE YOU TOO NERVOUS OR WERE YOU JUST TRYING TO PUT YOUR
11 STORY TOGETHER?

12 A I THOUGHT RON WAS WATCHING ME.

13 Q RON WAS GONE?

14 A YEAH. HE COULD HAVE--THAT'S THE WAY HE PROBABLY WANTED ME
15 TO BELIEVE.

16 Q MR. MALLOY, LET ME ASK YOU THIS. IF YOU THOUGHT RON WAS
17 WATCHING YOU AND RON WAS GOING TO DO SOMETHING TO YOU, WHAT
18 DID YOU GO TO THE PARTY SHOP FOR RIGHT AFTERWARDS?

19 A I KNOW HIS CAR WASN'T THERE AND NOBODY ELSE DRIVES IT. I
20 DIDN'T GO INSIDE THE PARTY SHOP. I WALKED UP BY THE PARTY
21 SHOP TO MY MOTHER-IN-LAW'S STORE, MR. SWERLING.

22 Q SO THE ONE MAN YOU WERE AFRAID OF, THAT YOU ARE TELLING THE
23 JURY YOU KEEP BEING AFRAID OF, YOU WENT RIGHT TO HIS PLACE
24 OF BUSINESS AFTER THE SHOOTING?

25 A YOU'RE SAYING DID I GO INSIDE OR DID I GO BY THERE? DID I

1 GO INSIDE OR DID I GO BY THERE?

2 Q YOU SAID YOU WENT TO THE PARTY SHOP AND STAYED THERE TWO OR
3 THREE MINUTES. THE MOST LIKELY PLACE THAT RON TILLMAN WOULD
4 BE, THE MAN YOU SAID YOU WERE AFRAID OF.

5 A THAT'S RIGHT. THAT WAS MY ONLY RIDE HOME, MR. SWERLING. MY
6 MOTHER WASN'T HOME.

7 Q WELL, YOU HAD BEEN TO BUGGIE'S. YOU COULD HAVE CALLED
8 SOMEONE FROM BUGGIE'S, COULDN'T YOU?

9 A I DON'T THINK THEY HAVE--I THINK THEY DO HAVE A TELEPHONE BUT
10 IT'S NOT A PUBLIC TELEPHONE.

11 Q WELL, SOMEWHERE ALONG THE LINE THERE WOULD HAVE BEEN A PAY
12 PHONE SOMEWHERE, DON'T YOU THINK?

13 A RIGHT UP BY THE PARTY SHOP.

14 Q OKAY. WHEN YOU WENT TO YOUR MOTHER'S HOUSE CERTAINLY YOU
15 COULD HAVE CALLED?

16 A I DIDN'T HAVE MY KEY.

17 Q WHEN YOU WENT TO--LET ME ASK YOU SOMETHING. BETWEEN BUGGIE'S
18 AND YOUR MOTHER'S HOUSE, ARE YOU TELLING THE JURY NOW THE
19 REASON YOU DIDN'T CALL ANYBODY IS BECAUSE IT WAS NO PHONES?
20 IS THAT WHAT YOUR STORY IS?

21 A NO, THAT'S WHAT YOU THINK. NO, THAT'S NOT THAT I'M SAYING.

22 Q WELL, YOU'RE SAYING THAT YOU WENT BACK TO THE PARTY SHOP
23 BECAUSE YOU NEEDED A RIDE?

24 A THAT'S THE ONLY RIDE I HAD WAS MY SISTER-IN-LAW, MR.
25 SWERLING.

1 Q WELL, HOW DID SHE KNOW YOU WERE GOING TO BE AT THE PARTY
2 SHOP?

3 A I STOPPED BY THE STORE, MR. SWERLING, AND ASKED HER WILL SHE
4 TAKE ME HOME. SHE WAS TAKING CARE OF A CUSTOMER. I WALKED
5 BACK OUTSIDE.

6 Q BUT BEFORE YOU WENT TO THE STORE YOU WENT TO THE PARTY SHOP.

7 MR. MORTON: YOUR HONOR, HOW MANY TIMES DOES HE HAVE TO
8 ASK HIM THAT?

9 THE COURT: MR. MORTON, IS YOUR OBJECTION IS THAT HE'S
10 GONE OVER IT BEFORE--

11 MR. MORTON: YES, SIR.

12 THE COURT: --THEN I OVERRULE YOUR OBJECTION.

13 Q YOU SAY YOU WENT TO THE GROCERY STORE BECAUSE YOUR RIDE HOME
14 WAS YOUR SISTER?

15 A MY SISTER-IN-LAW.

16 Q YOUR SISTER-IN-LAW?

17 A RIGHT.

18 Q YOU HAD BEEN AT THREE OTHER PLACES WALKING AROUND IN THAT
19 AREA BUT DID NOT TRY TO CALL HER OR ANYBODY ELSE, DID YOU?

20 A NO, NOT AT THAT TIME.

21 Q NOT AT THAT TIME.

22 A BUT THERE IS NO OTHER PHONE IN THE AREA EXCEPT FOR THE ONE
23 ON SHOP ROAD. THAT'S RIGHT BESIDE THE PARTY SHOP.

24 Q HOW FAR DO YOU LIVE FROM THE PARTY SHOP?

25 A ABOUT FIVE TO SIX MILES. IT MIGHT BE MORE.

1 Q INSTEAD OF GOING DIRECTLY TO THE GROCERY STORE AND SEEING
2 YOUR SISTER-IN-LAW AND CALLING THE POLICE BECAUSE YOU WERE
3 AFRAID OF RON TILLMAN, WHY DID YOU GO TO THE PARTY SHOP FOR
4 TWO OR THREE MINUTES BEFORE YOU WENT TO SEE YOUR SISTER-IN-
5 LAW? TELL THE JURY THAT.

6 A GO TO THE PARTY SHOP? WHAT DID I MEAN? GOING INSIDE THE
7 PARTY SHOP OR GOING TO THE PARTY SHOP. WHAT IS GOING TO THE
8 PARTY SHOP? I DON'T UNDERSTAND.

9 Q MR. MALLOY, I HAVE NO IDEA. I HAVE NO IDEA. THAT'S WHY I'M
10 ASKING THE QUESTION. WHY WOULD YOU GO TO THE PARTY SHOP?

11 A MR. SWERLING, LIKE I SAY, I WENT UP TO THE STORE TO ASK MY
12 SISTER-IN-LAW WILL SHE TAKE ME TO MY GIRL FRIEND'S HOUSE.
13 SHE WAS MY GIRL FRIEND AT THAT TIME.

14 Q YOU ARE NOT ANSWERING MY QUESTION, MR. MALLOY.

15 THE COURT: LET HIM FINISH ANSWERING BEFORE YOU--I MEAN,
16 MR. SWERLING, IF YOU DON'T FEEL LIKE IT'S RESPONSIVE YOU
17 DIRECT THAT TO ME, NOT TO HIM.

18 MR. SWERLING: YES, SIR.

19 Q I ASKED YOU, MR. MALLOY, WHY DID YOU GO TO THE PARTY SHOP
20 BEFORE YOU EVER WENT TO SEE YOUR SISTER-IN-LAW AND WHY DID
21 YOU STAY AT THE PARTY SHOP FOR TWO OR THREE MINUTES?

22 A I HAD TO WAIT ON MY SISTER-IN-LAW, MR. SWERLING. SHE WAS
23 WAITING ON A CUSTOMER IN THE STORE. I WENT--

24 Q WELL, ACCORDING--

25 A I WENT THERE FIRST I BELIEVE. I KNOW I WENT THERE FIRST.

1 Q DID YOU TELL MR. AUSTIN YOU WENT THERE FIRST?

2 A I DON'T THINK SO.

3 Q YOU ARE JUST REMEMBERING THAT NOW THIRTEEN MONTHS LATER?

4 A NO, I COULD HAVE FORGOTTEN IT BACK THEN.

5 Q SO, LET'S ASSUME YOU WENT OVER THERE. YOU WERE WAITING FOR
6 YOUR SISTER-IN-LAW.

7 A YES. I WAS STANDING OUTSIDE.

8 Q THAT'S TILLMAN'S PARTY SHOP, ISN'T IT?

9 A THAT'S HIS FATHER'S.

10 Q RON WAS THERE?

11 A NO. NOT WHEN I WAS UP THERE.

12 Q RON WAS THERE MOST OF THE TIME?

13 A YEAH, WHEN HE'S WORKING THERE.

14 Q OKAY. THAT WAS WHERE RONALD AND YOU LEFT FROM WHEN YOU SAY
15 YOU WENT OVER TO THE CHURCH?

16 A THAT'S RIGHT.

17 Q AND YOU WENT BACK THERE AND WAITED THREE OR FOUR MINUTES, TWO
18 OR THREE MINUTES AT THE PARTY SHOP?

19 A YES, I GUESS.

20 Q EVEN THOUGH YOU WERE AFRAID OF RONALD TILLMAN?

21 A YES.

22 MR. SWERLING: IF THE COURT WILL INDULGE ME A MOMENT.

23 THE COURT: YES, SIR.

24 (PAUSE)

25 Q BY THE WAY, ISN'T THERE A PHONE INSIDE THE GROCERY STORE?

1 A YES, THERE IS.

2 Q DID YOU USE IT?

3 A I DIDN'T HAVE TO.

4 Q THE ANSWER TO MY QUESTION IS YOU DIDN'T USE IT?

5 A NOT AT THAT TIME WHEN I GOT BACK UP THERE.

6 Q DID YOU SEE CLEVELAND MALLOY OR JOHN CORBETT THAT NIGHT WHEN

7 YOU WENT BACK TO THE PARTY SHOP?

8 A YES.

9 Q WERE THEY THERE WHEN YOU GOT BACK TO THE PARTY SHOP?

10 A THEY WAS UP THERE BY THE PARTY SHOP, ON THE SIDE, STANDING

11 ON THE SIDE.

12 Q NOW, ON MAY 3RD, DO YOU REMEMBER TALKING TO RANDY MONDOR FROM

13 THE FEDERAL BUREAU OF INVESTIGATION?

14 A YES. MAY 3RD?

15 THE COURT: MAY 3RD, '89?

16 MR. SWERLING: '89.

17 A YES.

18 Q DID YOU TELL MR. MONDOR ON THAT DATE, MAY 3RD, 1989, FOR THE

19 FIRST TIME THAT YOU HAD TOLD ANYONE THAT WHEN MR. SUTTON CAME

20 UP TO THE PARTY SHOP THAT NIGHT THAT YOU TOLD HIM THAT RON

21 WAS AT THE FOUNTAIN BLEAU BECAUSE YOU WANTED TO HELP SAVE

22 HIM?

23 A I GUESS SO. I THINK SO. I'M NOT SURE.

24 Q YOU HAD NEVER TOLD ANYBODY THAT PRIOR TO MAY OF '89, ISN'T

25 THAT TRUE?

1 A I DON'T KNOW.

2 Q YOU CERTAINLY NEVER TOLD THIS GENTLEMAN THAT YOU TOLD DONALD
3 SUTTON THAT RON WAS AT THE FOUNTAIN BLEAU IN AN EFFORT TO TRY
4 AND SAVE HIM, DID YOU?

5 A I DON'T THINK SO. I'M PRETTY SURE I DID. IF I DIDN'T--

6 Q WELL, I ASK YOU TO LOOK AT YOUR STATEMENT OF JANUARY 3RD AND
7 SEE WHETHER OR NOT YOU MAKE ANY REFERENCE TO THE FACT THAT
8 YOU TOLD DONALD SUTTON THAT RON WAS AT THE FOUNTAIN BLEAU AND
9 THAT YOU WERE TRYING TO SAVE HIM.

10 A IT DOESN'T SAY IT, MR. SWERLING.

11 Q YOU CAME UP WITH THAT IN MAY, 1989?

12 A NO, I DIDN'T JUST COME UP WITH IT, MR. SWERLING.

13 Q WELL, YOU DIDN'T TELL MR. AUSTIN THAT, DID YOU?

14 A MR. SWERLING, ME AND MR. AUSTIN TALKED ABOUT A LOT OF THINGS
15 AND A LOT OF THINGS STILL MISSING OUT OF THIS STATEMENT.

16 Q I ASKED YOU DID YOU TELL MR. AUSTIN THAT YOU TOLD DONALD
17 SUTTON THAT RON WAS AT THE FOUNTAIN BLEAU. YES OR NO.

18 A YES, I DID. I'M PRETTY SURE I DID.

19 Q I ASK YOU TO LOOK AT THE STATEMENT TO SEE WHETHER OR NOT IT
20 IS CONTAINED IN THE STATEMENT.

21 A IT IS NOT IN THE STATEMENT, MR. SWERLING.

22 Q ON MAY 3RD, 1989, DID YOU TELL SOMEBODY FROM LAW ENFORCEMENT,
23 MR. MONDOR, FOR THE FIRST TIME THAT INSTEAD OF DONALD BEING
24 THERE WHEN RON DROVE UP THAT YOU AND RON GOT IN THE CAR
25 DRIVING OFF AND DONALD DROVE UP BEHIND YOU AND FOLLOWED YOU?

1 THAT WAS THE FIRST TIME YOU TOLD ANYBODY IN LAW ENFORCEMENT
2 THAT, ISN'T IT? SIX MONTHS AFTER THIS THING.

3 A I'M PRETTY SURE I DID TELL THEM EARLIER IN JANUARY.

4 Q WELL, YOU DO AGREE THAT THE STATEMENT OF JANUARY 3RD, 1989,
5 SAYS THAT RONALD DROVE UP AFTER DONALD WAS THERE AND THAT YOU
6 ALL GOT IN YOUR CARS AT THE SAME TIME. YOU DO AGREE THAT'S
7 WHAT YOU TOLD MR. AUSTIN IN THE STATEMENT?

8 A I DON'T THINK IT'S IN THE JANUARY 3RD STATEMENT.

9 Q LOOK BACK A MINUTE. I THOUGHT YOU HAD ESTABLISHED THAT.

10 A HE COULD HAVE BEEN MISTAKEN NOW, MR. SWERLING, BECAUSE I DO
11 REMEMBER SAYING THE SAME THING OVER AND OVER AGAIN.

12 Q MR. MALLOY, I'M NOT WORRIED ABOUT HIS BEING MISTAKEN, I'M
13 WORRIED ABOUT YOU BEING MISTAKEN.

14 A OH, NO, I'M NOT MISTAKEN.

15 Q LOOK AT PAGE THREE OF THE STATEMENT YOU GAVE MR. AUSTIN ON
16 JANUARY 3RD. LOOK DOWN AT THE BOTTOM OF THE PAGE. DOESN'T
17 YOUR STATEMENT SAY--

18 A YEAH, THAT WHAT THE STATEMENT SAYS.

19 Q --RON TOLD ME TO GET IN HIS CAR. I GOT IN RON'S CAR AND
20 SUTTON GOT INTO HIS CAR AND FOLLOW US?

21 A THAT'S WHAT THE STATEMENT SAYS, MR. SWERLING.

22 Q AND FOR THE FIRST TIME ON MAY 3RD, 1989, YOU TOLD SOMEONE
23 FROM LAW ENFORCEMENT THAT THAT'S NOT THE WAY IT HAPPENED,
24 THAT YOU AND RONALD DROVE OFF AND SUTTON DROVE UP AND JUST
25 FOLLOWED YOU?

1 A THAT'S JUST THE WAY IT HAPPENED, MR. SWERLING.
2 Q WHICH WAY?
3 A JUST THE WAY--THAT JUST THE WAY IT HAPPENED.
4 Q WELL, I'M ASKING YOU. I DON'T KNOW. WHICH WAY DID IT
5 HAPPEN?
6 A WHEN ME AND RON WAS PULLING OFF ON OUR WAY UP SHOP ROAD,
7 THAT'S WHEN DONALD SUTTON PULLED UP BEHIND US.
8 Q SO, DONALD WAS NOT AT THE SHOP WHEN RONALD CAME BACK? IS
9 THAT YOUR TESTIMONY?
10 A NO, DONALD WASN'T THERE WHEN RON GOT BACK.
11 Q AND YOU DIDN'T GET IN RONALD'S CAR AND DONALD DIDN'T GET IN
12 HIS CAR AND FOLLOW YOU? IS THAT YOUR TESTIMONY?
13 A NO. NO, HE DIDN'T.
14 Q THEN WHY IN THIS STATEMENT DID YOU SAY TO MR. AUSTIN THAT YOU
15 GAVE TO HIM WAS THE TRUTH AND THE WHOLE TRUTH DID YOU TELL
16 HIM THAT?
17 A MR. SWERLING, IT'S A LOT OF THINGS IN THIS STATEMENT THAT ARE
18 MISSING AND THERE'S A LOT OF THINGS THAT HAS, YOU KNOW, VICE
19 VERSA WHATSOEVER.
20 Q THAT'S NOT MISSING.
21 A YES, IT IS.
22 Q IT'S IN THE STATEMENT.
23 A IT'S MISSING. WE TALKED ABOUT A LOT OF THINGS, MR. SWERLING,
24 ABOUT THIS CASE. WE TALKED ABOUT A LOT OF THINGS, MR.
25 SWERLING.

1 MR. SWERLING: YOUR HONOR, I'D ASK-O-

2 THE COURT: JUST A MINUTE. JUST A MINUTE. YOU ARE
3 GOING TO BE RESPONSIVE TO HIS QUESTION AND HIS QUESTION WAS
4 DIRECTED TO THE JANUARY 3RD STATEMENT, WHETHER OR NOT THAT
5 WAS IN THERE. NOW, YOU CAN RESPOND TO THAT. AND IF YOU SAY
6 THAT YOU TOLD HIM SOMETHING DIFFERENT AND HE DIDN'T PUT THAT
7 IN THE STATEMENT THEN THAT'S DIFFERENT. BUT HE'S ASKING YOU
8 WAS IT IN THE STATEMENT OR WAS IT NOT IN THE STATEMENT THAT
9 YOU GAVE MR. AUSTIN ON JANUARY 3RD. YES, SIR, MR. MORTON.

10 MR. MORTON: YOUR HONOR, I WANT TO MAKE SURE THE WITNESS
11 UNDERSTANDS THAT I WILL HAVE A CHANCE TO CLEAR THESE THINGS
12 UP WITH HIM.

13 THE COURT: IF HE DOESN'T, MR. MORTON, I'VE SAID IT
14 THREE TIMES.

15 MR. MORTON: ALL RIGHT, SIR.

16 Q DOESN'T YOUR STATEMENT OF JANUARY 3RD SAY THAT RONALD AND YOU
17 GOT IN RONALD'S CAR AND DONALD GOT IN HIS CAR?

18 A YES, IT DOES SAY THAT.

19 Q DIDN'T YOU TELL MR. MONDOR ON MAY 3RD, 1989, FOR THE FIRST
20 TIME THAT WHEN DONALD AND RONALD WALKED TOWARD THE CHURCH
21 THAT DONALD'S BACK WAS TOWARDS THE CHURCH?

22 MR. MORTON: YOUR HONOR--

23 MR. SWERLING: I'M ASKING HIM DIDN'T HE TELL HIM.

24 MR. MORTON: I MOVE THAT THE WITNESS BE ABLE TO BE
25 FURNISHED A COPY OF THE STATEMENT THAT HE MADE TO THE F.B.I.

1 ON MAY 3RD AND THAT WE PUBLISH THE STATEMENT TO THE JURY.

2 MR. SWERLING: IT'S AN ORAL STATEMENT. I'M ASKING HIM
3 IF HE TOLD MR. MONDOR. I'M NOT ASKING IF HE GAVE A
4 STATEMENT.

5 THE COURT: JUST A MINUTE, MR. MORTON. HE'S ASKING
6 ABOUT WHAT HE UNDERSTANDS TO BE A PRIOR INCONSISTENT
7 STATEMENT. WHETHER IT IS OR NOT I DON'T KNOW. IF THE
8 WITNESS DOES NOT RECALL MAKING THE STATEMENT HE CAN SAY SO.
9 IF HE SAYS HE DIDN'T MAKE THE STATEMENT HE CAN SAY SO. IF
10 HE DID MAKE THE STATEMENT, HE'S REQUIRED TO SAY SO. MR.
11 SWERLING, IF HE HAS SOME INFORMATION DIFFERENT YOU MAY HAVE
12 TO CALL A DIFFERENT WITNESS OR USE SOMETHING ELSE BUT HE HAS
13 THAT OPTION, MR. MORTON.

14 MR. MORTON: THANK YOU, YOUR HONOR.

15 THE COURT: YOU MAY PROCEED.

16 Q DID YOU TELL MR. AUSTIN--I MEAN MR. MONDOR ON MAY 3RD FOR THE
17 FIRST TIME AND THE ONLY TIME THAT WHEN THEY WALKED BEHIND THE
18 CHURCH DONALD HAD HIS BACK TOWARD THE CHURCH?

19 A AT ONE POINT IN TIME HE DID.

20 THE COURT: THE QUESTION WAS DID YOU TELL MR. MONDOR.

21 A YES.

22 Q DID YOU TELL MR. AUSTIN THAT?

23 A I DON'T THINK SO.

24 Q DID YOU TELL THE JURY THAT?

25 A NO.

1 Q DID YOU TELL MR. MONDOR ON MAY 3RD, 1989, THAT WHEN TILLMAN
2 AND SUTTON WERE IN THIS AREA OVER HERE THAT TILLMAN MADE A
3 GESTURE TOWARD YOU SITTING IN THE CAR AND THAT'S WHEN SUTTON
4 LOOKED AT YOU AND THAT'S WHEN TILLMAN SHOT SUTTON?

5 A THAT'S RIGHT. HE HAD TO BEEN SAYING SOMETHING FOR SUTTON TO
6 BE LOOKING AT ME IN THE CAR.

7 Q DIDN'T YOU TELL MR. MONDOR THOUGH THAT MR. TILLMAN MADE A
8 GESTURE TOWARD MR. SUTTON TO LOOK AT YOU AND THAT'S WHEN HE
9 SHOT HIM?

10 A YES.

11 Q DID YOU TELL MR. AUSTIN THAT?

12 A I THINK. I'M NOT SURE.

13 Q WOULD YOU LOOK AT YOU STATEMENT AND SEE IF YOU DID?

14 A (PAUSE) I DON'T SEE IT IN HERE, MR. SWERLING.

15 Q SO, ON MAY 3RD THAT'S THE ONLY TIME YOU'VE EVER TESTIFIED--
16 --NOT TESTIFY, EXCUSE ME. STRIKE THAT. THAT'S THE ONLY TIME
17 YOU EVER TOLD ANYONE THAT RON TILLMAN MADE SOME SORT OF
18 GESTURE TO SUTTON TO GET HIM TO LOOK AT YOU BEFORE HE SHOT
19 HIM, ISN'T THAT TRUE?

20 A I DON'T KNOW. I TALKED TO SO MANY INVESTIGATORS, MR.
21 SWERLING.

22 Q WELL, DID YOU TELL MR. AUSTIN THAT?

23 THE COURT: LET HIM FINISH HIS ANSWER.

24 MR. SWERLING: YES, SIR.

25 A I DON'T KNOW.

1 Q DID YOU TELL MR. AUSTIN THAT?

2 A I COULD HAVE.

3 THE COURT: MR. SWERLING, YOU WON'T EVEN LET ME FINISH.

4 MR. SWERLING: I'M SORRY, YOUR HONOR.

5 THE COURT: LET HIM FINISH HIS ANSWER. HAVE YOU
6 FINISHED YOUR ANSWER?

7 A YES, YOUR HONOR.

8 THE COURT: GO AHEAD.

9 Q DID YOU TELL MR. AUSTIN THAT, THAT RON MADE A GESTURE?

10 A I DON'T KNOW.

11 Q IS IT IN YOUR STATEMENT?

12 A IT'S NOT IN THE STATEMENT. LIKE I SAID, A LOT OF--

13 Q DID YOU TELL THE JURY YESTERDAY THAT RON MADE A GESTURE TO
14 GET HIM TO LOOK AT YOU?

15 A I SAID WHATEVER HE WAS--NO, I DIDN'T.

16 Q LET ME ASK YOU SOMETHING, MR. MALLOY. WOULD YOU HAVE ANY
17 POSSIBLE EXPLANATION AS TO HOW, WHY, WHERE AND WHEN MR.
18 SUTTON'S BODY WAS DRAGGED AFTER HE WAS SHOT?

19 MR. MORTON: I OBJECT.

20 A YOU WOULD HAVE TO ASK--

21 THE COURT: JUST A MINUTE.

22 MR. MORTON: I OBJECT.

23 THE COURT: WHAT'S THE OBJECTION?

24 MR. MORTON: HE'S ASKING HIM FOR A CONCLUSION THAT HAS
25 NOT BEEN TESTIFIED TO. NOBODY'S SAID THAT. HE'S ASKING HIM

1 TO MAKE A CONCLUSION--

2 MR. SWERLING: YES, THERE HAS BEEN TESTIMONY.

3 THE COURT: JUST A MINUTE. ARE YOU ASKING HIM DOES HE
4 KNOW WHETHER OR NOT THE VICTIM'S BODY WAS DRAGGED?

5 MR. SWERLING: I'M ASKING HIM IF HE HAS ANY EXPLANATION
6 FOR IT.

7 THE COURT: WELL, THAT'S CALLING FOR A CONCLUSION. IF
8 YOU ARE ASKING HIM FROM PERSONAL KNOWLEDGE DOES HE KNOW, DID
9 HE SEE WHAT HAPPENED, THEN YOU ARE ALLOWED TO ASK THAT,
10 COUNSEL. I AGREE. I SUSTAIN HIS OBJECTION IF YOU ARE ASKING
11 HIM FOR HIS CONCLUSION ABOUT IT.

12 Q DID YOU SEE ANYBODY DRAG--

13 A NO.

14 Q --AFTER HE WAS SHOT MR. SUTTON'S BODY?

15 A NO.

16 Q DID YOU DO IT?

17 A ALL I SEEN WAS WHEN HE GOT SHOT. NO.

18 Q AND ACCORDING TO YOUR STATEMENTS AND TESTIMONY MR. TILLMAN
19 DIDN'T DO IT?

20 A DIDN'T DRAG HIM, NO.

21 Q DIDN'T TOUCH HIM?

22 A NO, HE DID NOT 'TIL HE SHOT HIM.

23 Q I KNOW BUT YOU ALSO SAID HE DIDN'T TOUCH HIM.

24 A IN MY STATEMENT--I'M PRETTY SURE IT'S IN MY STATEMENT THAT
25 WHEN THE WAS WALKING AROUND THAT CORNER RIGHT THERE AROUND

1 THE BACK OF THE CHURCH HIS ARM WAS AROUND HIM.

2 Q I AGREE. I'M TALKING ABOUT AFTER HE WAS SHOT. DID YOU NOT
3 AND HAVE YOU NOT ALWAYS SAID THAT RONALD TILLMAN DID NOT
4 TOUCH THE BODY BUT WALKED DIRECTLY TO THE CAR?

5 A NOT WALKED DIRECTLY TO THE CAR.

6 Q OR WALKED TO THE CAR?

7 A NO, I DON'T--NO.

8 THE COURT: NO WHAT?

9 A I DIDN'T SEE RON TOUCH THE BODY AFTER HE SHOT HIM.

10 Q MR. MALLOY, YOU HAD A CLEAR SHOT ACCORDING TO YOUR TESTIMONY
11 OF SEEING THE SHOT.

12 A THAT'S RIGHT.

13 Q YOU ALSO SAW MR. TILLMAN ACCORDING TO YOUR TESTIMONY BEND
14 OVER AND SHOOT HIM AGAIN.

15 A THAT'S RIGHT.

16 Q YOU ALSO IN YOUR STATEMENT OF JANUARY 3RD, 1989, SAID THAT
17 RON DID NOT TOUCH THE BODY.

18 A HE DIDN'T DRAG THE BODY LIKE YOU WAS IMPLYING.

19 Q WOULD YOU ANSWER MY QUESTION, PLEASE.

20 A NO.

21 Q DID YOU SAY IN YOUR STATEMENT THAT HE DID NOT TOUCH THE BODY
22 AFTER HE SHOT HIM?

23 A HE DID NOT TOUCH HIM.

24 THE COURT: DID YOU SAY THAT IN THE STATEMENT?

25 A YES.

1 Q AND YOU ARE SAYING THAT NOW?

2 A YES.

3 Q THAT YOU WERE THE ONLY PERSON WHO TOUCHED THE BODY?

4 A RIGHT. I WENT AND FELT HIS PULSE.

5 MR. SWERLING: NO FURTHER QUESTIONS.

6 THE COURT: ALL RIGHT. LET'S TAKE A SHORT RECESS AND
7 THEN WE'LL REDIRECT, COUNSEL. YA'LL MAY STEP BACK.

8 (THE JURY LEAVES THE JURY BOX AT 11:03 A.M.)

9 THE COURT: COURT WILL BE IN RECESS.

10 (RECESS)

11 THE COURT: (AT CONCLUSION OF RECESS) IF YOU WILL,
12 RETURN TO THE WITNESS STAND. ARE YA'LL READY?

13 MR. MORTON: YES, SIR.

14 THE COURT: BRING THE JURY IN, PLEASE.

15 (THE JURY RETURNS TO THE JURY BOX AT 11:24 A.M.)

16 BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

17 THE COURT: THANK YOU, SIR. LET THE RECORD SO REFLECT.
18 YOU MAY REDIRECT.

19 MR. MORTON: THANK YOU, YOUR HONOR.

20 HAYES MALLOY, AFTER BEING PREVIOUSLY SWORN BY THE CLERK,
21 TESTIFIES AS FOLLOWS:

22 REDIRECT EXAMINATION BY

23 MR. MORTON:

24 Q HAYES, I'M GOING TO TALK TO YOU AGAIN ABOUT SOME THINGS THAT
25 MR. SWERLING HAS BROUGHT UP AND I'LL TRY AND DO IT AS QUICKLY

1 AS POSSIBLE. I WANT YOU TO EXPLAIN A FEW THINGS TO THE JURY.
2 FIRST OF ALL, HAYES, MR. SWERLING SAID SOMETHING ABOUT YOU
3 NOT RESPONDING TO THE POLICE ABOUT THIS MURDER. TELL THE
4 JURY THE FIRST TIME YOU TOLD THE POLICE SOMETHING WAS GOING
5 TO HAPPEN AND THAT RON TILLMAN WAS GOING TO DO IT.

6 MR. SWERLING: YOUR HONOR, I'M GOING TO OBJECT. HE'S
7 TRYING TO BOLSTER THE WITNESS. IT'S HEARSAY. HE'S TRYING
8 TO ESTABLISH A PRIOR CONSISTENT STATEMENT. I WOULD OBJECT
9 TO IT.

10 THE COURT: STATE YOUR QUESTION AGAIN, MR. MORTON.

11 MR. MORTON: I'M SORRY?

12 THE COURT: WHAT WAS YOUR QUESTION TO HIM AGAIN?

13 MR. MORTON: MY QUESTION TO HIM WAS THAT MR. SWERLING
14 HAD MADE A POINT THAT HE DID NOT RESPOND QUICKLY ENOUGH AFTER
15 THIS INCIDENT. MY QUESTION WAS WHEN DID HE FIRST TELL THE
16 POLICE THAT RONALD TILLMAN WAS GOING TO KILL DONALD SUTTON.

17 MR. SWERLING: YOUR HONOR, THE QUESTIONS I ASKED HIM ON
18 CROSS EXAMINATION IS ABOUT AFTER THE FACT. MR. MORTON IS
19 GOING BACK INTO MATTERS THAT HE'S ALREADY COVERED ON DIRECT
20 WHICH I DID NOT COVER ON CROSS AND IT'S NOT PROPER REPLY
21 EITHER.

22 THE COURT: I'M INCLINED TO AGREE WITH YOU ON THAT
23 POINT, COUNSEL. I SUSTAIN THE OBJECTION. REDIRECT IS
24 BASICALLY FOR YOU TO COME BACK TO ANY NEW MATTER THAT HE
25 BROUGHT OUT OR TO CLARIFY ANY ISSUES. THE ISSUES HE WENT TO

1 WAS NOT TO THAT.

2 MR. MORTON: THANK YOU, YOUR HONOR.

3 Q HAYES, I WANT TO CLEAR ONE THING UP. HAS THE SOLICITOR'S
4 OFFICE OR THE POLICE EVER AT ANY TIME TOLD YOU THAT WE WOULD
5 HELP YOU IN ANY WAY WITH THE PENDING ASSAULT AND BATTERY
6 CHARGES THAT WE HAVE AGAINST YOU?

7 A NO.

8 Q HAVE WE EVER IMPLIED OR SUGGESTED THAT IN EXCHANGE FOR YOUR
9 TESTIMONY HERE TODAY THAT WE WERE GOING TO DO ANYTHING TO
10 HELP YOU?

11 A NO.

12 Q WAS THERE ANY KIND OF A DEAL CUT OF ANY KIND?

13 A NO.

14 Q OKAY. REGARDING THESE MURDER CHARGES, DID WE EVER TELL YOU
15 THAT WE WERE HOLDING THESE MURDER CHARGES OVER YOUR HEAD--

16 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING THE
17 WITNESS AND TESTIFYING.

18 THE COURT: YOU ARE LEADING THE WITNESS, COUNSEL, AND
19 SOMEWHAT TESTIFYING. ASK A DIRECT QUESTION. HE'S YOUR
20 WITNESS. ON REDIRECT YOU ARE REQUIRED TO ASK HIM DIRECT
21 QUESTIONS.

22 Q WHAT DID WE TELL YOU, IF ANYTHING, ABOUT DISMISSING THESE
23 CHARGES OR ABOUT THESE MURDER CHARGES AND YOUR TESTIMONY?

24 A YOU TOLD ME IF I GOT UP ON THE STAND AND LIED ABOUT ANYTHING
25 I WOULD BE PROSECUTED.

1 Q OKAY. AND MR. BILTON PROMISED YOU THAT, DIDN'T HE?

2 A YES, SIR.

3 Q OKAY. HAYES, DID YOU GIVE A STATEMENT TO THE POLICE ON THE
4 NIGHT AFTER THIS INCIDENT? THE NIGHT OF DECEMBER 26TH?

5 A YES.

6 Q DID YOU CALL THE POLICE THAT NIGHT AND TELL THEM ABOUT IT?

7 A YES.

8 Q OKAY. AND WHEN YOU AND MR. AUSTIN TALKED THAT NIGHT, WHERE
9 WERE YOU AND WHERE DID THIS DISCUSSION TAKE PLACE?

10 A AT HIS OFFICE AT RICHLAND COUNTY.

11 Q TELL THE JURY HOW MANY TIMES YOU'VE TALKED WITH INVESTIGATOR
12 AUSTIN OR ANY OTHER INVESTIGATORS OR ANYBODY WITH THE F.B.I.
13 CONCERNING RONALD TILLMAN?

14 MR. SWERLING: OBJECTION, YOUR HONOR. IT'S NOT
15 RELEVANT, IT IS NOT IN RESPONSE TO ANYTHING I BROUGHT OUT ON
16 CROSS EXAMINATION. IT HAS TO BE ANYTHING AFTER THE FACT.

17 MR. MORTON: YOUR HONOR--

18 THE COURT: JUST A MINUTE. I OVERRULE THE OBJECTION.
19 I THINK IT'S PROPER CROSS. THE QUESTION IS HOW MANY TIMES
20 HE DID TALK WITH THEM. I'M GOING TO LET YOU ASK THE
21 QUESTION.

22 Q ABOUT HOW MANY TIMES?

23 A MANY OCCASIONS.

24 Q OKAY. EXPLAIN TO THE JURY HOW--WHEN YOU GO AND TALK TO THE
25 POLICE, IS THAT RECORDED IN ANY WAY VERBATIM?

1 A NO, IT'S NOT.

2 Q OKAY. SO, WHEN YOU TALK TO THE POLICE DO YOU WRITE DOWN WHAT
3 YOU ARE SAYING?

4 A NO.

5 Q OKAY. WHEN YOU TALK, DOES SOMEONE ELSE WRITE DOWN WHAT YOU
6 ARE SAYING?

7 A SOMETIME.

8 Q OKAY. SO, IN OTHER WORDS, EXPLAIN TO THE JURY HOW THIS
9 PROCESS WORKS OF WHEN YOU ARE GIVING STATEMENTS AS FAR AS THE
10 TRANSCRIPTION OF THEM AND THE TRANSLATION OF IT AND SO FORTH.

11 A WELL, I TELL THEM WHAT I KNOW, WHAT I KNEW ABOUT IT AND THEY
12 WOULD JUST JOT AND WRITE IT DOWN, JOT IT DOWN.

13 Q OKAY. NOW, WHEN YOU SIGNED SOME OF THESE STATEMENTS, DID YOU
14 GO THROUGH EACH STATEMENT LINE BY LINE WITH INVESTIGATOR
15 AUSTIN OR WITH ANYBODY ELSE TO MAKE SURE THAT THEY DID NOT
16 LEAVE SOMETHING OUT OR ANYTHING LIKE THAT?

17 MR. SWERLING: OBJECTION, YOUR HONOR. NOW, HE'S LEADING
18 THE WITNESS.

19 THE COURT: YOU ARE LEADING THE WITNESS, COUNSEL. YOU
20 SEE, YOU ARE SUGGESTING THE ANSWER. YOU'VE GOT TO ASK HIM A
21 QUESTION.

22 MR. MORTON: THANK YOU, YOUR HONOR.

23 Q I WANT TO TALK ABOUT THIS FIRST STATEMENT ON THE NIGHT OF
24 DECEMBER 26TH. DID YOU TELL INVESTIGATOR AUSTIN THAT YOU
25 KNEW WHERE THE BODY WAS?

1 A NOT AUSTIN.

2 Q OKAY. WHO DID YOU TELL THAT TO?

3 A THE OFFICER THAT CAME TO PICK ME UP AT THE COMFORT INN.

4 Q OKAY. AND ONCE AGAIN, WHAT DID YOU TELL HIM?

5 A I TOLD HIM I KNEW WHERE A BODY WAS.

6 Q OKAY. DID YOU TELL HIM THAT YOU HAD BEEN THERE WHEN THE
7 SHOTS WERE FIRED?

8 A NO, I DIDN'T TELL HIM.

9 Q OKAY. AND WHY? TELL THE JURY WHY YOU TOLD HIM THAT AND DID
10 NOT TELL HIM THAT YOU WERE ACTUALLY THERE WHEN THE SHOTS WERE
11 FIRED.

12 A BECAUSE I KNEW MY LIFE WAS IN DANGER. I HAD TO MAKE UP A
13 STORY TO MAKE SURE THAT RON'S OTHER BUDDY COULDN'T COME AFTER
14 ME. AND THEREAFTER MR. AUSTIN DID PICK 'EM UP. THAT'S WHEN
15 I MAYBE A MONTH LATER I DID TELL HIM WHAT I REALLY DID SEE.

16 Q OKAY. IN OTHER WORDS, WERE YOU--

17 MR. SWERLING: OBJECTION, YOUR HONOR.

18 THE COURT: OBJECTION TO WHAT?

19 MR. SWERLING: SUMMARIZING. IN OTHER WORDS. THAT'S A
20 LEADING QUESTION.

21 THE COURT: I SUSTAIN THE OBJECTION.

22 Q WHAT DID YOU TELL HIM ABOUT VITO AND WHY?

23 A WELL, I TOLD THEM THAT VITO--I PUT IT IN A WAY THAT VITO HAD
24 SOMETHING TO DO WITH IT. SINCE VITO WAS ASSOCIATE OF RON'S,
25 RON WOULD PROBABLY TELL HIM--

1 MR. SWERLING: OBJECTION, YOUR HONOR. THAT'S SHEER
2 SPECULATION AT THIS POINT.

3 THE COURT: WELL, IT IS SPECULATION. HE'S SURMISING
4 WHAT SOMEONE'S GOING TO TELL. HE CAN TELL WHAT HE DID AND
5 THE REASON THAT HE DID IT BUT TO SPECULATE AS TO WHAT SOMEONE
6 ELSE IS GOING TO DO, THAT'S NOT PROPER.

7 MR. MORTON: I'M NOT ASKING HIM TO SPECULATE AND I WANT
8 HIM NOT TO SPECULATE.

9 THE COURT: YOU TELL HIM THAT SO HE'LL UNDERSTAND.
10 Q DO NOT SPECULATE. I WANT YOU TO TELL THE JURY WHAT YOU WERE
11 FEELING, WHAT YOU WERE THINKING AND WHY YOU TOLD THEM THE
12 THINGS THAT YOU DID ORIGINALLY.

13 A I WAS VERY SCARED AT THAT TIME. I WAS MORE WORRIED ABOUT
14 WHAT WOULD HAPPEN TO ME. AND I JUST HAD TO MAKE UP A STORY
15 TO PROTECT MYSELF.

16 Q WHAT DID YOU FEEL LIKE WOULD HAPPEN TO YOU OR COULD POSSIBLY
17 HAPPEN TO YOU IF YOU DIDN'T TELL--

18 MR. SWERLING: OBJECTION. I DON'T THINK THAT'S A PROPER
19 QUESTION. IT'S NOT RELEVANT OR PROBATIVE.

20 THE COURT: COUNSEL, IT CALLS FOR SPECULATION ON THE
21 PART OF THE WITNESS AND IT'S NOT RELEVANT ON THE ISSUE IN THE
22 CASE.

23 MR. MORTON: YOUR HONOR, I'M ASKING HIM WHAT HIS
24 FEELINGS WERE.

25 THE COURT: I UNDERSTAND WHAT YOU ARE SAYING. I'M NOT

1 GOING TO ALLOW IT. I SUSTAIN THE OBJECTION.

2 MR. MORTON: YOUR HONOR, I MOVE THE INTRODUCTION OF THE
3 STATEMENT GIVEN BY HAYES MALLOY TO THE RICHLAND COUNTY
4 SHERIFF'S DEPARTMENT ON DECEMBER THE 26TH, 1988.

5 THE COURT: I THOUGHT THAT WAS ALREADY IN.

6 MR. SWERLING: YOUR HONOR, NOW MR. MORTON KNOWS THAT
7 STATEMENT IS NOT ADMISSIBLE.

8 THE COURT: WELL, LET ME SEE.

9 MR. MORTON: I DON'T KNOW WHY IT'S NOT ADMISSIBLE.

10 THE COURT: JUST A MINUTE, GENTLEMEN. LET ME SEE WHAT
11 WE ARE TALKING ABOUT. (PAUSE) I SUSTAIN THE OBJECTION. I'M
12 NOT GOING TO ALLOW THAT STATEMENT IN, COUNSEL. I'M NOT GOING
13 TO ALLOW IT. I SUSTAIN THE OBJECTION.

14 MR. MORTON: YOUR HONOR, I MOVE THE INTRODUCTION OF--

15 MR. SWERLING: IF HE WANTS TO HAVE ARGUMENT, I'D ASK
16 THAT WE DO IT AT THE SIDE BAR.

17 THE COURT: HE'S NOT ARGUING. HE'S MOVING SOMETHING
18 ELSE AS I UNDERSTOOD IT.

19 MR. MORTON: YOUR HONOR, I MOVE TO INTRODUCE ALL OF
20 HAYES MALLOY'S STATEMENTS, NOT ONLY THE 26TH BUT EVERY
21 STATEMENT HE'S EVER GIVEN.

22 MR. SWERLING: YOUR HONOR, MR. MORTON UNDERSTANDS THE
23 REASONS WHY YOUR HONOR HAS RULED THAT WAY. I WOULD ASK THAT--

24 -

25 THE COURT: I SUSTAIN THE OBJECTION.

1 MR. MORTON: CAN I ASK FOR A CLARIFICATION, YOUR HONOR?
2 ARE ANY OF HIS STATEMENTS IN, BEEN INTRODUCED?

3 THE COURT: WITHOUT OBJECTION.

4 MR. MORTON: THE STATEMENTS THAT MR. SWERLING WANTED IN
5 ARE IN.

6 THE COURT: JUST A MINUTE. MR. FOREMAN, LADIES AND
7 GENTLEMEN, YA'LL STEP BACK TO THE JURY ROOM.

8 (THE JURY LEAVES THE JURY BOX AT 11:35 A.M.)

9 THE COURT: ALL RIGHT, MR. MORTON, WE HAVE SENT THE JURY
10 OUT. YOU KNOW, THOSE EXHIBITS WENT IN UNOBJECTED TO BY
11 YA'LL. YOU KNOW, A PRIOR INCONSISTENT STATEMENT BY A
12 WITNESS--HE'S A WITNESS, HE'S NOT A PARTY--IF YOU ARE ALLOWED
13 TO PUT IN ALL THESE STATEMENTS OF PEOPLE YOU HAVE THEIR
14 SUMMARIZED TESTIMONY PUT INTO A JURY. HIS TESTIMONY UNDER
15 OATH IS WHAT THE JURY'S CONCERNED ABOUT. THE PURPOSE OF THE
16 STATEMENTS AND THE USE OF THEM IS TO IMPEACH HIM FOR ANY
17 PRIOR INCONSISTENT STATEMENT AND YOU ARE ALLOWED TO GIVE HIM
18 A COPY OF IT AND MAKE SURE HE CAN LOOK OVER IT AND YOU CAN
19 IMPEACH HIM UPON IT AND PUBLISH ANY RELEVANT PORTIONS TO IT.
20 THE STATEMENT ITSELF DOES NOT GO IN UNLESS IT'S RELEVANT ON
21 SOME ISSUE. NOW, THIS WITNESS HAS MADE MULTIPLE STATEMENTS.
22 YOU DIDN'T OBJECT TO THE ONES THAT WERE PUT IN. I CAN'T HELP
23 THAT. NOW, YOU NOW ASK ME TO MOVE IN THE OTHER ONES THAT HE
24 MADE WHICH COUNSEL FOR THE DEFENSE DOES NOT WANT IN FOR A
25 MULTIPLE OF REASONS, ONE OF WHICH IT CONTAINS ALLEGATIONS OF

1 OTHER CRIMES AND OFFENSES; TWO, FIRST WHY SHOULD I GO IN?
2 IT'S SUMMARIZED TESTIMONY. NOW, THE ISSUE IS HIS PRIOR
3 KNOWLEDGE AND RECOLLECTION. YA'LL HAVE LET THEM GO IN, THE
4 ONES THAT ARE IN. I CAN'T DO ANYTHING ABOUT THAT, BUT THE
5 RULE IS IT WILL NOT GO IN. NOW, IF HE HAS PUBLISHED A
6 PORTION OF A STATEMENT WHICH SERVES AS A PRIOR INCONSISTENT
7 STATEMENT, YOU ARE AUTHORIZED AND ALLOWED TO HAVE THE WITNESS
8 PUBLISH ANY OR ALL OF THE REMAINING PORTION SO AS TO CLARIFY
9 IT AND MAKE SURE ANY STATEMENTS GIVEN ARE CORRECT, OKAY? BUT
10 YOU ARE NOT ALLOWED TO PUT IT IN. YOU SEE WHAT I MEAN?

11 MR. MORTON: YES, SIR.

12 THE COURT: AND THE REASON FOR IT IS AS I HAVE STATED.
13 NOW, HE IS NOT PERMITTED TO PUBLISH ANYTHING CONCERNING OTHER
14 OFFENSES. THAT'S THE REASON ONE TIME THIS WITNESS ALMOST DID
15 IT AND MR. SWERLING SAW IT COMING AND I DID AND WE STOPPED
16 IT BECAUSE YOU WILL HAVE WASTED THREE DAYS IF YOU DO. NOW,
17 ANY PORTIONS OF THOSE STATEMENTS THAT REFER TO OTHER CRIMES,
18 YOU KNOW, ARE NOT ADMISSIBLE. YOU CAN'T DO IT.

19 MR. MORTON: ALL RIGHT, SIR.

20 THE COURT: BUT ANY PORTIONS OF THE STATEMENTS--LET ME
21 HEAR FROM MR. SWERLING. MR. SWERLING, DO YOU TAKE THE
22 POSITION THAT HE CAN'T PUBLISH THEM FROM THE STAND IN ORDER
23 TO EXPLAIN? YOU'VE HAD HIM PUBLISH LIMITED PORTIONS OF IT.
24 IN MY VIEW HE'S ENTITLED--

25 MR. SWERLING: I AGREE. HE'S ENTITLED, IF THERE IS SOME

1 OTHER PORTION OF THE STATEMENT THAT HE WANTS TO EXPLAIN AND
2 CLARIFY I DON'T SEE I HAVE ANY OBJECTION TO IT EXCEPT AS TO
3 ANY OTHER CRIMES.

4 THE COURT: I'VE ALREADY SAID HE'S NOT GOING TO DO THAT.

5 MR. SWERLING: BUT I DON'T THINK THE STATEMENTS
6 THEMSELVES ARE ADMISSIBLE.

7 THE COURT: I AGREE WITH THAT. THEY ARE NOT ADMISSIBLE.
8 NOT AT THIS TIME.

9 MR. SWERLING: OF COURSE, YOUR HONOR, IF HE WANTS TO GO
10 BACK INTO THOSE THINGS THEN I WOULD ALSO HAVE THE RIGHT ON
11 RECROSS TO EXAMINE NEW MATTER.

12 THE COURT: WELL, HE'S NOT SUPPOSED TO BRING OUT NEW
13 MATTER BECAUSE YOU ARE SUPPOSED TO OBJECT TO IT.

14 MR. SWERLING: I KNOW BUT WHAT I'M SAYING, YOUR HONOR,
15 IF HE DOES BRING OUT NEW MATTER.

16 THE COURT: I'LL DETERMINE THAT BASED ON MY VIEW OF IT
17 BUT BE MINDFUL OF IT. THE PURPOSE OF REDIRECT TESTIMONY IN
18 ANY CASE, BE IT CRIMINAL OR CIVIL, IS TO GIVE THE WITNESS,
19 WHETHER IT'S STATE OR DEFENSE WHO PUT THE WITNESS ON THE
20 STAND, THE OPPORTUNITY TO RESPOND TO NEW MATTER BROUGHT OUT
21 BY THE CROSS OR TO EXPLAIN ANYTHING THAT NEEDS EXPLAINING,
22 NOT TO RETRY THE CASE.

23 MR. MORTON: YOUR HONOR, WHAT I WAS TRYING TO GET ACROSS
24 AND I FEEL LIKE HE HAS A RIGHT TO EXPLAIN WHY HE SAID SOME
25 OF THE THINGS HE DID. I'M NOT ASKING HIM TO SPECULATE ABOUT

1 WHAT ANYBODY ELSE DID OR WHAT ANYBODY ELSE WAS THINKING OR
2 ABOUT WHAT ANYBODY ELSE WAS SAYING OR WHAT HE THOUGHT THEY
3 WERE SAYING. I'M ASKING HIM TO SAY WHAT HE FELT WAS GOING
4 TO HAPPEN TO HIM AND WHY HE ACTED THE WAY HE DID.

5 THE COURT: WELL, HE HAS STATED THAT HE WAS IN FEAR FOR
6 HIS LIFE. I DON'T KNOW HOW IN ANY OTHER WAY HE CAN SAY THAT
7 HE WAS GONNA GET KILLED. I MEAN HE'S SAID THAT. BUT WHEN
8 YOU OPEN THE DOOR AS TO HOW YOU FEEL ABOUT SOMETHING YOU ARE
9 ASKING HIM TO RAMBLE.

10 MR. MORTON: YOU SEE--

11 THE COURT: THINK ABOUT IT FOR A MINUTE, MR. MORTON,
12 HOW DANGEROUS THAT TYPE OF QUESTION IS IN ANY CASE. A
13 WITNESS WHO COMES IN THE COURTROOM AND IS PUT UNDER OATH IS
14 ASKED TO TESTIFY TO RELEVANT ISSUES AND AS TO WHAT THAT
15 WITNESS SAW OR OBSERVED OR DID HIMSELF, NOT WHAT HE THOUGHT
16 UNLESS HE'S BEEN QUALIFIED FOR SOME REASON OR IT'S A
17 SITUATION WHERE A WITNESS IS AUTHORIZED TO RENDER AN OPINION
18 BASED UPON SOME ISSUE, SUCH AS WHETHER OR NOT SOMEBODY IS
19 UNDER THE INFLUENCE. YOU SEE WHAT I MEAN?

20 MR. MORTON: YES, SIR.

21 THE COURT: SO, IF YOU ALLOW A PERSON TO--IF YOU ASK
22 QUESTIONS TO WITNESSES LIKE HOW DO YOU FEEL ABOUT THAT, WHAT
23 DID YOU THINK ABOUT THAT, THAT'S NOT PROPER. YOU JUST CAN'T
24 ASK THOSE KIND OF QUESTIONS. SO, IF THAT'S WHERE YOU ARE
25 GOING, I TELL YOU NOW IF THAT'S HIS OBJECTION I SUSTAIN HIS

1 OBJECTION. BUT THE REASON WE SENT THE JURY OUT WAS THE
2 QUESTION ON THE STATEMENTS AND THE STATEMENTS ARE NOT GONG
3 TO BE ADMITTED, BUT IF YOU WANT TO PORTIONS OF IT THROUGH
4 THIS WITNESS IN ORDER TO CLARIFY WHAT HE'S EXAMINED HIM UPON
5 THEN GIVE HIM A COPY OF THE STATEMENT AND SAY IS THIS THE
6 STATEMENT WHEN MR. SWERLING ASKED YOU SUCH AND SUCH. NOW,
7 DID YOU FURTHER STATE IN THE STATEMENT. SEE, YOU CAN DO THAT
8 AND THAT'S HOW YOU DO IT.

9 MR. MORTON: ALL RIGHT, SIR.

10 THE COURT: ANY OTHER QUESTIONS?

11 MR. MORTON: NO, SIR.

12 THE COURT: MR. SWERLING?

13 MR. SWERLING: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. BRING THE JURY IN. JUST A
15 MINUTE. LET'S MAKE SURE NOW IN ANY OF THESE STATEMENTS NO
16 REFERENCES TO THESE OTHER BANK ROBBERIES. MR. WITNESS, IT
17 MAY BE IN A STATEMENT BUT DON'T YOU PUBLISH ANY PORTION ABOUT
18 ANY OF THESE ALLEGED OTHER BANK ROBBERIES IN THE CASE OR ANY
19 OTHER OFFENSES, OKAY?

20 A YES, SIR.

21 THE COURT: YOU BE CAREFUL OF THAT, MR. MORTON.

22 MR. SWERLING: OR DRUGS, TOO.

23 THE COURT: OR DRUGS. LEAVE OUT THE DRUG PART, TOO.

24 MR. SWERLING: OR ANY ARMED ROBBERIES.

25 THE COURT: BRING THE JURY IN.

1 (THE JURY RETURNS TO THE JURY BOX AT 11:42 A.M.)

2 THE COURT: MR. MORTON, YOU MAY CONTINUE YOUR
3 EXAMINATION.

4 REDIRECT EXAMINATION CONTINUED BY

5 MR. MORTON:

6 Q HAYES, ON THE NIGHT OF DECEMBER 26TH AFTER YOU SAW THIS
7 KILLING, TELL US ONE MORE TIME HOW YOU FELT AT THAT POINT.

8 A VERY NERVOUS.

9 Q HOW ELSE?

10 A I REALLY COULDN'T EVEN THINK.

11 Q OKAY. AND YOU WENT DOWN TO THE SHERIFF'S DEPARTMENT AND
12 TALKED WITH INVESTIGATOR AUSTIN, IS THAT RIGHT?

13 A YES, I DID.

14 Q OKAY. NOW, IS EVERYTHING THAT YOU EVER TOLD INVESTIGATOR
15 AUSTIN WRITTEN DOWN IN THESE STATEMENTS?

16 A NOT EVERYTHING.

17 Q OKAY. ON THIS PARTICULAR NIGHT, DECEMBER 26TH, WAS
18 EVERYTHING THAT YOU TOLD INVESTIGATOR AUSTIN THE TRUTH?

19 A NO.

20 Q OKAY. HAVE YOU GOT A COPY OF THIS STATEMENT?

21 MR. MORTON: YOUR HONOR, I NEED TO LOOK AT A COPY OF IT.

22 Q I WANT YOU TO LOOK ABOUT HALFWAY DOWN THAT PAGE.

23 MR. SWERLING: WHAT PAGE?

24 MR. MORTON: PAGE TWO.

25 MR. SWERLING: YOUR HONOR, I'D LIKE TO BE FURNISHED A

1 COPY OF THAT, TOO. I DO NOT HAVE IT.

2 THE COURT: FURNISH HIM A COPY.

3 MR. SWERLING: YOUR HONOR, IF THEY ARE GOING TO REFER
4 TO THAT I WOULD APPRECIATE IT IF THEY WOULD REFER TO THE
5 ORIGINAL STATEMENT, NOT SOME TYPED VERSION. I HAVE NOT SEEN
6 THE TYPED VERSION. I DON'T KNOW IF IT'S ACCURATE OR NOT.

7 THE COURT: USE THE ACTUAL STATEMENT IF THERE WAS A
8 STATEMENT.

9 MR. SWERLING: WAS THERE A TYPEWRITTEN STATEMENT GIVEN?

10 MR. MORTON: THIS WAS TYPED AFTER IT WAS WRITTEN IS ALL.
11 IT'S THE SAME STATEMENT.

12 MR. SWERLING: WE'VE NEVER BEEN FURNISHED THAT, YOUR
13 HONOR. I'D ASK THAT A COPY BE FURNISHED TO US UNDER THE
14 RULES.

15 THE COURT: DID YOU FURNISH HIM A COPY OF THE STATEMENT?

16 MR. COLEMAN: HE NEVER SIGNED THE TYPED ONE. HE DIDN'T
17 SIGN EITHER ONE OF THEM.

18 THE COURT: ALL RIGHT. THAT'S IN COMPLIANCE. GO AHEAD.

19 Q I WANT YOU TO LOOK AT THE BOTTOM OF PAGE FOUR WHERE IT SAYS
20 ABOUT TWO DAYS LATER RONALD BEGGED ME TO KILL THE GUY.

21 A YES.

22 Q IS THAT TRUE?

23 A YES.

24 Q OKAY. HE TOLD ME THAT HE WAS GOING TO GIVE ME \$10,000.00 IF-

25 -

1 MR. SWERLING: TELL ME WHERE YOU ARE REFERRING TO.

2 MR. MORTON: BOTTOM OF PAGE FOUR.

3 MR. SWERLING: AND PAGE FIVE?

4 MR. MORTON: CORRECT.

5 Q TOP OF PAGE FIVE. HE TOLD ME THAT HE WAS--

6 MR. SWERLING: NOW, YOUR HONOR, THE SOLICITOR CAN'T READ
7 THE STATEMENT. HE CAN ASK HIM QUESTIONS.

8 THE COURT: WAIT A MINUTE, GENTLEMEN. HERE ARE THE
9 GUIDELINES. THE PURPOSE OF REDIRECT, ONCE AGAIN, IS TO GO
10 BACK TO ANYTHING THAT WAS--TO CORRECT ANYTHING OR RESPOND TO
11 ANY NEW MATTER. NOW, IF YOU ARE USING THE STATEMENT I WOULD
12 ASSUME IT WOULD BE BASED UPON HIM HAVING EXAMINED HIM UPON
13 THAT STATEMENT. AND THE QUESTION WOULD BE YOU RECALL MR.
14 SWERLING ASKING YOU THIS QUESTION ABOUT IN THE STATEMENT.
15 FURTHER ON DID YOU RESPOND IN THE STATEMENT AND I ASK YOU TO
16 PLEASE PUBLISH THAT PORTION. THAT'S THE WAY TO HANDLE IT.
17 MR. SWERLING, HE'S ENTITLED TO DO THAT.

18 MR. SWERLING: YES, YOUR HONOR. WHAT I'M SAYING IS HE'S
19 NOT ENTITLED TO READ THE STATEMENT. THAT'S MY OBJECTION.

20 THE COURT: HAVE THE WITNESS READ IT. THAT'S WHAT YOU
21 WANT TO DO. ASK HIM TO READ WHATEVER LINE IT IS ON THE
22 STATEMENT OR RESPONSE, DID HE RESPOND IN A CERTAIN FASHION.
23 SEE, YOU CAN'T TESTIFY, MR. MORTON.

24 MR. MORTON: THANK YOU, YOUR HONOR.

25 Q MR. SWERLING ASKED YOU ABOUT WHETHER OR NOT RON TILLMAN

1 OFFERED YOU \$10,000.00 TO KILL DONALD SUTTON. DO YOU
2 REMEMBER THAT?

3 A YES.

4 Q OKAY. I WANT YOU TO LOOK AT THE TOP OF PAGE FIVE ON THAT
5 FIRST STATEMENT AND READ THAT FIRST WHOLE SENTENCE. WHAT
6 DOES THAT SAY?

7 A IT DOESN'T HAVE A PAGE FIVE. IT DOESN'T HAVE A PAGE FIVE.

8 Q RIGHT THERE.

9 A OKAY.

10 Q WHAT DOES THAT FIRST SENTENCE SAY?

11 A HE TOLD ME THAT I WAS GOING TO GIVE YOU \$10,000.00 IF YOU
12 KILL HIM.

13 Q OKAY. DID HE TELL YOU THAT?

14 A HE TOLD MR \$5,000.00 IF I RECALL.

15 Q OKAY. DID HE TELL YOU--HOW MANY TIMES DID HE OFFER YOU MONEY
16 TO KILL DONALD SUTTON?

17 A I BELIEVE ONCE.

18 Q OKAY. DO YOU REMEMBER WHETHER OR NOT IT WAS \$5,000.00 OR
19 \$10,000.00?

20 A I REMEMBER \$5,000.00 AT THAT TIME.

21 Q OKAY. DID HE EVER OFFER YOU \$10,000.00 TO DO IT?

22 A WHEN WE WAS IN THE CAR, YES.

23 Q OKAY. SO, HE OFFERED YOU \$5,000.00 ONE TIME, IS THAT RIGHT?

24 A YES.

25 Q THEN HE OFFERED YOU \$10,000.00 WHEN YOU WERE IN THE CAR?

1 A YES.

2 Q OKAY. DID--MR. SWERLING ASKED YOU IF YOU TOLD RONALD TILLMAN
3 THAT, YES, YOU WOULD DO IT?

4 A YES.

5 Q AND DID YOU TELL HIM THAT?

6 A YES, I DID.

7 Q AND DID YOU EVER HAVE ANY INTENTIONS--

8 MR. SWERLING: YOUR HONOR, THIS IS JUST GOING BACK OVER
9 THE SAME THING HE WENT OVER ON DIRECT. THAT'S NOT REDIRECT.

10 THE COURT: IT'S REALLY NOT REDIRECT. WHAT DOES IT
11 CLARIFY? DOES IT CLARIFY ANYTHING?

12 MR. MORTON: YOUR HONOR, MR. SWERLING WENT THROUGH THESE
13 STATEMENTS WITH HIM.

14 THE COURT: CERTAINLY HE DID AND YOU ARE ENTITLED TO GO
15 BACK--

16 MR. MORTON: OVER WHAT HE WENT OVER.

17 THE COURT: NO, SIR. YOU ARE ENTITLED TO GO BACK TO
18 CLARIFY SOMETHING.

19 MR. MORTON: THAT'S WHAT I'M TRYING TO DO.

20 THE COURT: YOU ARE NOT ENTITLED TO RE-TRY THE CASE.

21 MR. MORTON: I'M NOT PLANNING ON RE-TRYING THE CASE.

22 THE COURT: YOU PUT UP YOUR CASE IN DIRECT AND YOU ARE
23 ENTITLED TO RESPOND TO ANY NEW MATTER THAT HE BRINGS OUT OR
24 IF YOU NEED TO CLARIFY BUT YOU COVERED THAT IN YOUR DIRECT,
25 DIDN'T YOU, MR. MORTON? DIDN'T YOU COVER THAT IN THE DIRECT

1 TESTIMONY?

2 MR. MORTON: YES, SIR.

3 THE COURT: WELL, THEN WHY DO YOU NEED TO GO BACK OVER
4 IT?

5 MR. MORTON: I NEED TO CLARIFY SOME OF THE THINGS THAT
6 WERE BROUGHT OUT ON CROSS EXAMINATION.

7 THE COURT: WHAT IS THAT REGARD? PLEASE TELL ME IN WHAT
8 REGARD BECAUSE I DON'T RECALL THAT ISSUE BEING ANY QUESTION
9 ABOUT CLARIFICATION.

10 MR. MORTON: YES, SIR, IT WAS.

11 THE COURT: ALL RIGHT, TELL ME.

12 MR. MORTON: I MEAN WHAT I'M TRYING TO CLARIFY IS WHY
13 HE TOLD HIM THAT. MR. SWERLING SEEMED TO IMPLY THAT HE TOLD
14 ME, YES, HE WAS GOING TO DO IT. I JUST SIMPLY WANT HIM TO
15 CLARIFY THE POINT WHY HE TOLD HIM THAT. I THINK I HAVE A
16 RIGHT TO DO THAT.

17 MR. SWERLING: HE ALREADY TESTIFIED IN HIS CASE IN CHIEF
18 ABOUT THAT. I MEAN IF HE INTENDS TO GO BACK THROUGH THE
19 ENTIRE CASE IN CHIEF--

20 THE COURT: NO, SIR, I'M NOT GOING TO ALLOW THAT. I
21 SUSTAIN THE OBJECTION. CLARIFICATION OF NEW MATTER.

22 Q ON THE NIGHT OF DECEMBER 26TH, DID YOU TRY AND CALL LISA
23 MISICKA OF THE F.B.I. TO TELL HER THAT--

24 A YES. I WAS TRYING TO CALL HER TO LET HER KNOW I THINK THINGS
25 WAS GETTING READY TO HAPPEN NOW.

1 Q AND WHEN YOU CALLED HER OFFICE, WHAT KIND OF RESPONSE DID YOU
2 GET?

3 MR. SWERLING: YOUR HONOR, AGAIN THIS IS GOING BACK OVER
4 IT. IT IS NOT REDIRECT TESTIMONY.

5 MR. MORTON: YOUR HONOR, I DIDN'T GO OVER THIS DURING--
6 -

7 THE COURT: MR. MORTON, MY RECOLLECTION IS THAT YOU DID.

8 MR. MORTON: YOUR HONOR, I COULDN'T.

9 THE COURT: NOW, YOU CERTAINLY WENT OVER IT, MR.
10 SWERLING, AND, OF COURSE, IT'S BEEN SO LONG. WE'VE HEARD IT
11 BEFORE. I'M GOING TO LET HIM GO. I'M SURE WHETHER HE
12 COVERED IT OR NOT.

13 MR. SWERLING: ALL RIGHT. THE RULING IS THIS WAS NOT
14 COVERED ON RECROSS?

15 THE COURT: THE RULING IS I DON'T HAVE ANY RECOLLECTION.
16 I KNOW YOU COVERED IT AND I'M GOING TO LET HIM COVER IT.

17 Q DID YOU TRY AND CALL LISA MISICKA OF THE F.B.I. THAT DAY AND
18 TELL HER?

19 A YES.

20 Q AND WHEN YOU CALLED, WHERE DID YOU CALL?

21 A I CALLED TO THE STROM THURMOND BUILDING.

22 Q OKAY. AND AS A RESULT OF THAT CALL, WERE YOU ABLE TO GET IN
23 TOUCH WITH LISA MISICKA?

24 A NO.

25 Q OKAY. HOW MANY TIMES DID YOU TRY AND REACH LISA MISICKA THAT

1 AFTERNOON?

2 A ABOUT TWICE. ONCE OR TWICE THAT AFTERNOON.

3 Q OKAY. DID YOU CALL HER BEEPER?

4 A YES, I DID.

5 Q HOW MANY TIMES DID YOU CALL THE BEEPER?

6 A ABOUT THREE. THREE TIMES.

7 Q AND HOW MANY TIMES DID YOU CALL THE TELEPHONE NUMBER?

8 A ABOUT TWICE.

9 Q DID YOU ALSO TRY AND CALL THE RICHLAND COUNTY SHERIFF'S
10 DEPARTMENT AND TELL THEM?

11 A YES.

12 Q OKAY. THIS WAS THE DAY AFTER CHRISTMAS, IS THAT RIGHT?

13 A YES.

14 Q OKAY. WHO DID YOU ASK FOR DOWN THERE?

15 A LOTT. LT. LOTT.

16 MR. SWERLING: WELL, YOUR HONOR, NOW THIS WAS CLEARLY
17 COVERED IN THE CASE IN CHIEF ABOUT HIS EFFORTS THAT HE MADE
18 AFTER HE FOUND OUT WHAT WAS GOING TO HAPPEN, THAT SUTTON WAS
19 COMING DOWN. I NEVER EVEN WENT INTO THAT.

20 THE COURT: I SUSTAIN THE OBJECTION.

21 MR. MORTON: YOUR HONOR, I BEG THE COURT'S INDULGENCE
22 JUST ONE MINUTE.

23 THE COURT: SURE.

24 (PAUSE)

25 Q HAYES, I WANT YOU TO LOOK AT THAT PHOTOGRAPH. LOOK AT IT

1 CLOSELY AND TELL ME IF YOU CAN IDENTIFY THAT?

2 A THIS IS SHOP ROAD--

3 THE COURT: HE JUST ASKED YOU CAN YOU IDENTIFY IT? THAT
4 MEANS SAY YES OR NO.

5 Q CAN YOU IDENTIFY THAT? CAN YOU RECOGNIZE THAT?

6 A YES.

7 Q IS THAT A FAIR AND ACCURATE PORTRAYAL OF THAT SCENE AS IT WAS
8 ON DECEMBER 26TH?

9 A YES, IT IS.

10 MR. MORTON: YOUR HONOR, I MOVE THIS INTO EVIDENCE.

11 THE COURT: SHOW IT TO COUNSEL.

12 MR. SWERLING: YOUR HONOR, I FAIL TO SEE WHAT NEW MATTER
13 THIS RAISED. I WOULD HAVE TO OBJECT TO THE RELEVANCY AND
14 WHETHER OR NOT IT'S PROPER REDIRECT.

15 MR. MORTON: YOUR HONOR, WHAT I'M TRYING TO SHOW BY THIS
16 PICTURE IS WHERE MR. MALLOY'S MOTHER-IN-LAW'S STORE IS IN
17 RELATIONSHIP TO THE PARTY SHOP.

18 THE COURT: OKAY.

19 MR. SWERLING: I HAVE NO OBJECTION.

20 THE COURT: HAND IT TO THE COURT REPORTER AND LET HER
21 MARK IT.

22 (PHOTOGRAPH IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT
23 #19)

24 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
25 OBJECTION EXHIBIT WHICH WILL BE DESIGNATED STATE'S EXHIBIT

1 NUMBER 19. IT'S A COLOR PHOTOGRAPH APPROXIMATELY EIGHT BY
2 TEN IN SIZE.

3 Q HAYES, CAN YOU IDENTIFY THE PARTY SHOP IN THAT?

4 A RIGHT WHERE THE WHITE CAR IS PARKED.

5 Q OKAY. AND WHERE IS YOUR MOTHER-IN-LAW'S PLACE?

6 A THIS IS IT RIGHT HERE.

7 Q RIGHT ACROSS THE STREET RIGHT HERE?

8 A RIGHT.

9 Q THIS IS THE PARTY SHOP?

10 A RIGHT.

11 Q AND THIS IS YOUR MOTHER-IN-LAW'S?

12 A YES.

13 Q OKAY. NOW, ON THE NIGHT OF DECEMBER 26TH, DID YOU GO BACK
14 TO YOUR MOTHER-IN-LAW'S?

15 A YES, I DID.

16 Q OKAY. WHY DID YOU GO BACK THERE?

17 A TO GET A RIDE HOME.

18 Q DO YOU REMEMBER GOING IN THE PARTY SHOP?

19 A NO.

20 Q MIGHT YOU HAVE WALKED BY THE PARTY SHOP?

21 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S SUGGESTING
22 THE ANSWERS.

23 THE COURT: I SUSTAIN THE OBJECTION.

24 Q DID YOU WALK BY THE PARTY SHOP?

25 A YES.

1 Q OKAY. AND WHAT WAS YOUR PURPOSE IN GOING TO YOUR MOTHER-
2 IN-LAW'S?
3 A TO ASK MY SISTER-IN-LAW TO TAKE ME HOME.
4 Q OKAY. LET ME BACK UP EVEN FURTHER. ON THE NIGHT OF DECEMBER
5 26TH, DID YOU SEE RONALD TILLMAN COME TO THE PARTY SHOP THAT
6 NIGHT?
7 A YES.
8 Q OKAY. BEFORE HE GOT THERE, HAD YOU SEEN DONALD SUTTON?
9 A NO. YES.
10 Q OKAY. AND DID YOU TALK TO DONALD SUTTON?
11 A YES, I DID.
12 Q AND WHAT DID YOU TELL DONALD SUTTON?
13 A I TOLD HIM RON WASN'T THERE, THAT HE WAS UP TO THE FOUNTAIN
14 BLEAU.
15 Q OKAY. DO YOU EVER RECALL MENTIONING THAT--CAN YOU GIVE AN
16 EXPLANATION WHY THAT IS NOT IN YOUR STATEMENT THAT YOU GAVE
17 INVESTIGATOR AUSTIN ON JANUARY THE 4TH? JANUARY THE 3RD.
18 A I THOUGHT I SAID IT BUT IT'S NOT WRITTEN IN THERE.
19 Q OKAY. BUT DO YOU REMEMBER TESTIFYING TO THAT YESTERDAY? DID
20 YOU TESTIFY TO THAT YESTERDAY?
21 A YES.
22 Q AND ARE YOU TESTIFYING TO THAT TODAY IN FRONT OF THIS JURY?
23 A YES, I AM.
24 Q OKAY. WHAT DID YOU TELL RONALD SUTTON? OR WHAT DID YOU TELL
25 DONALD SUTTON?

1 A I TOLD HIM RON WAS UP TO THE FOUNTAIN BLEAU.

2 Q OKAY. AND WHY DID YOU TELL HIM THAT?

3 A TO GET HIM AWAY FROM THERE BEFORE--

4 MR. SWERLING: YOUR HONOR, THIS IS NOT REDIRECT. THIS
5 WAS COVERED IN THE STATE'S CASE IN CHIEF.

6 THE COURT: THE QUESTION OF WHETHER OR NOT HE TOLD
7 PREVIOUSLY ABOUT GOING TO THE FOUNTAIN BLEAU IS PROPER. THE
8 REASON WHY HAS BEEN COVERED. YOU'VE COVERED THAT ON YOUR
9 DIRECT AND THAT WAS NOT AN ISSUE. THE ISSUE WAS WHETHER OR
10 NOT HE HAD TOLD ABOUT BEING AT THE FOUNTAIN BLEAU OR GOING
11 TO THE FOUNTAIN BLEAU.

12 Q DID YOU TELL DONALD SUTTON THAT RON HAD GONE TO THE FOUNTAIN
13 BLEAU?

14 A YES.

15 Q OKAY. AND DID HE LEAVE?

16 A YES, HE DID.

17 Q OKAY. DID RONALD TILLMAN--WHERE WAS HE AT THAT TIME? WAS
18 HE THERE?

19 A NO.

20 Q OKAY. DID HE LATER COME BACK?

21 A YES.

22 Q OKAY. TELL THIS JURY WHAT HAPPENED WHEN RON TILLMAN GOT
23 BACK?

24 MR. SWERLING: YOUR HONOR, NOW THAT'S NOT TRYING TO
25 CLARIFY ANYTHING. HE'S JUST GOING BACK OVER THE WHOLE

1 TESTIMONY.

2 THE COURT: NO, NO. YOU RAISED THAT ISSUE. IT'S
3 CLARIFICATION. I'M GOING TO ALLOW IT. GO AHEAD.

4 MR. MORTON: THANK YOU, YOUR HONOR.

5 A RON PULLED UP WITH VITO McKIE--

6 Q LOOK AT THE JURY WHEN YOU TELL THEM.

7 A RON PULLED UP WITH VITO McKIE. BOTH OF THEM WENT INTO THE
8 PARTY SHOP. RON THEN CAME OUT LATER, A FEW MINUTES LATER AND
9 SAID, LET'S GO, HAYES. ME AND RON GOT INTO THE CAR, HE
10 SHOWED ME A PISTOL WHAT VITO WAS SUPPOSED TO HAVE DONE GAVE
11 HIM.

12 Q WHERE WAS DONALD SUTTON AT THIS TIME? WHEN DID HE PULL UP
13 BEHIND YOU IS WHAT I WANT TO KNOW?

14 A A LITTLE BIT AFTER WE STARTED UP THE STREET.

15 Q OKAY. AND AFTER HE PULLED IN BEHIND YOU, WHAT DID RON
16 TILLMAN DO?

17 A HE STARTED FLICKING HIS SIGNAL LIGHTS AND WAS FLAGGING
18 TELLING HIM, SIGNALING HIM TO FOLLOW US.

19 Q OKAY. AND THEN WHAT DID RON TILLMAN SAY TO YOU?

20 A YOU GONNA TAKE CARE OF HIM, I'M GONNA GIVE YOU \$5,000.00.
21 I TOLD HIM NO. HE SAID I'LL GIVE YOU TEN. I SAID, NO, RON,
22 I'M NOT GONNA DO THAT.

23 Q OKAY. DID RON TILLMAN DO ANYTHING TO GET DONALD TO FOLLOW
24 HIM?

25 A YEAH, FLAGGED HIM AND SIGNALLED WITH HIS SIGNAL LIGHTS.

1 Q AND WHERE DID YA'LL--YOU WENT TO THE CHURCH THEN?

2 A YES.

3 Q OKAY. TELL THIS JURY WHERE YOU PULLED WHEN YOU GOT TO THE

4 CHURCH?

5 A RIGHT ON THE SIDE, THE LAST PART OF THE CHURCH.

6 Q OKAY. AND TELL THIS JURY WHAT HAPPENED THEN.

7 A DONALD PARKED HIS CAR. RON WALKED OVER TOWARDS DONALD,

8 PUT HIS ARMS AROUND DONALD, WALKING BACK AROUND TO THE BACK

9 END OF THE CHURCH. HE WAS TALKING TO HIM ABOUT SOMETHING.

10 HE WAS FOCUS--DONALD WAS FOCUS AT ME WHEN RON--THAT'S WHEN

11 A FEW SECONDS LATER RON PULLED OUT THE PISTOL AND SHOT HIM.

12 Q OKAY.

13 A DONALD FELL DOWN TO THE GROUND. RON LEANED OVER AND SHOT HIM

14 AGAIN. THEN RON WAS ON HIS WAY TO HIS CAR, HE GOT TO HIS

15 DOOR OPEN, I GOT OUT. I LEFT. HE LEFT ME THERE WHEN I WENT

16 TO GO CHECK DONALD SUTTON'S PULSE AND HEARTBEAT.

17 Q AND WHERE DID YOU GO AFTER THAT?

18 A TO BUGGIE'S, MY MOTHER'S, BACK UP SHOP ROAD.

19 Q OKAY. AND WHEN DID YOU NOTIFY THE POLICE DEPARTMENT ABOUT

20 THIS, AFTER THE INCIDENT?

21 A AFTER I GOT OVER TO MY GIRL FRIEND'S HOUSE.

22 Q OKAY. NOW, DID YOU TELL INVESTIGATOR AUSTIN OF THE RICHLAND

23 COUNTY SHERIFF'S DEPARTMENT WHAT HAPPENED ON JANUARY 3RD AND

24 JANUARY 4TH ABOUT THIS INCIDENT?

25 A I TOLD HIM WHAT I KNEW ABOUT THE MURDER.

1 Q AT THAT TIME?

2 A RIGHT.

3 Q OKAY. THE OTHER THREE PREVIOUS STATEMENTS TO INVESTIGATOR
4 AUSTIN, WERE THEY THE WHOLE TRUTH?

5 A NO. PART OF IT WAS TRUE, SOME OF IT WASN'T.

6 Q OKAY. ONCE AGAIN, WHY DID YOU NOT TELL HIM THE WHOLE TRUTH
7 ORIGINALLY?

8 A 'CAUSE I WAS SCARED.

9 Q OF WHAT?

10 A WHAT MIGHT HAPPEN TO ME.

11 Q BY WHO?

12 A VITO MCKIE.

13 Q DID YOU SEE VITO MCKIE THE NIGHT OF THIS INCIDENT?

14 A YES, I DID.

15 Q WHO WAS HE WITH?

16 A RON TILLMAN.

17 MR. MORTON: I BEG THE COURT'S INDULGENCE.

18 (PAUSE)

19 Q WHEN YOU TALKED WITH INVESTIGATOR--WHEN INVESTIGATOR AUSTIN
20 CHARGED YOU WITH THIS, DID HE EVER TELL YOU THAT HE THOUGHT
21 YOU SHOT RON TILLMAN?

22 A NO.

23 Q DID HE TELL YOU THAT HE WAS CHARGING YOU BECAUSE YOU WERE
24 THERE--

25 MR. SWERLING: OBJECTION, YOUR HONOR. THAT'S JUST

1 TESTIMONY.

2 THE COURT: I SUSTAIN THE OBJECTION.

3 Q DID YOU SEE RON TILLMAN THE DAY AFTER THIS?

4 A YES, I DID.

5 Q WHAT DID HE SAY TO YOU?

6 A HOW YOU LIKE THIS SHIT. HOW YOU LIKE THAT SHIT.

7 Q AND WHAT DID YOU SAY?

8 A I TURNED AND WALKED OUT THE DOOR.

9 MR. MORTON: THAT'S ALL I HAVE.

10 MR. SWERLING: YOUR HONOR, JUST TWO THINGS I'D LIKE TO
11 ASK HIM.

12 THE COURT: LET ME HEAR THE QUESTION.

13 RECROSS EXAMINATION BY

14 MR. SWERLING:

15 Q YOU KEEP SAYING THAT YOU WERE AFRAID OF RON TILLMAN AND
16 THAT'S WHY ON THE 26TH YOU GAVE THE STATEMENT THAT MR. MORTON
17 WAS REFERRING TO?

18 A THAT'S RIGHT.

19 Q WHY YOU BASICALLY TOLD AN UNTRUTH, IS THAT RIGHT?

20 A RIGHT.

21 Q YOU WERE AFRAID OF RON TILLMAN AND VITO McKIE?

22 A THAT'S RIGHT.

23 Q WELL, VITO McKIE WAS NEVER ARRESTED, WAS HE?

24 A NO, THEY DIDN'T ARREST HIM BUT THEY BRUNG HIM DOWN.

25 Q LET ME ASK YOU THIS. IF YOU WERE SO AFRAID OF RON TILLMAN

1 AND VITO McKIE, WHY ON THE 27TH OF DECEMBER, 1988, DID YOU
2 GO INTO THE PARTY SHOP WITH RON TILLMAN AND VITO McKIE AND
3 TALK TO THEM?

4 A I WANTED TO GET MORE INFORMATION AND TAKE IT DOWN TO THE
5 POLICE, MR. SWERLING.

6 Q AND WHAT YOU TOOK DOWN TO THE POLICE ON THE 29TH AGAIN WAS
7 NOT TRUE?

8 A NO. THE MORE I COULD GET, THE MORE THEY COULD GET.

9 Q BUT YOU TOOK WHAT YOU GOT ON THE 28TH OR 27TH AND YOU TOLD
10 MR. AUSTIN, YOU GAVE HIM ANOTHER STATEMENT ON THE 29TH THAT
11 WAS NOT TRUE.

12 A THAT'S RIGHT.

13 Q BUT YOU ARE EXPECTING THIS JURY TO BELIEVE THAT YOU WERE SO
14 AFRAID OF MR. TILLMAN AND MR. McKIE THAT ON THE 27TH OF
15 DECEMBER, 1988, YOU WENT INTO THE PARTY SHOP AND SPOKE WITH
16 VITO McKIE AND RON TILLMAN AFTER ALL OF THIS HAD HAPPENED AND
17 THAT'S THE STATEMENT YOU GAVE ON THE 28TH, 1988.

18 A THAT'S RIGHT. I JUST EXPLAINED THAT JUST A SECOND AGO.

19 Q YOU DID IT TO INVESTIGATE?

20 A THAT'S RIGHT, GET MORE INFORMATION.

21 Q GET MORE INFORMATION?

22 A THAT'S RIGHT.

23 Q AND WHEN YOU GOT THAT ADDITIONAL INFORMATION, DID YOU PASS
24 THAT ON TO MR. AUSTIN?

25 A NO, NOT AT THAT TIME.

1 MR. SWERLING: THANK YOU, SIR.

2 MR. MORTON: JUST A FEW QUESTIONS, YOUR HONOR.

3 REDIRECT EXAMINATION BY

4 MR. MORTON:

5 Q WHY DID YOU WANT TO GET MORE INFORMATION ON RONALD TILLMAN?

6 HAD YOU BEEN TO THE AUTHORITIES BEFORE ABOUT RON TILLMAN?

7 A YES, I DID.

8 MR. SWERLING: OBJECTION, YOUR HONOR.

9 THE COURT: I SUSTAIN THE OBJECTION.

10 Q HAD YOU TOLD ANYBODY, ANY OF THE AUTHORITIES--

11 MR. SWERLING: OBJECTION, YOUR HONOR. SAME QUESTION.

12 MR. MORTON: NOW, YOUR HONOR--

13 THE COURT: ASK THE QUESTION AND LET ME HEAR IT FIRST.

14 Q HAD YOU BEEN TO THE F.B.I. AND RICHLAND COUNTY SHERIFF'S
15 DEPARTMENT AND TOLD THEM WHAT RONALD TILLMAN WAS GOING TO DO--

16 -

17 A YES, I DID.

18 Q --BEFORE THIS INCIDENT?

19 A YES.

20 MR. SWERLING: OBJECTION, YOUR HONOR. I MOVE IT BE
21 STRICKEN.

22 THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS
23 INSTRUCTED TO DISREGARD IT. IT'S NOT PROPER RE-REDIRECT.

24 MR. MORTON: YOUR HONOR, MR. SWERLING IS ASKING HIM WHY
25 HE WENT BACK TO THE PARTY SHOP ON THAT DAY. I THINK HE

1 SHOULD BE ABLE TO EXPLAIN WHAT HE WAS DOING IT AND WHY.

2 THE COURT: YA'LL HAVE COVERED IT AND EXPLAINED IT
3 NUMEROUS TIMES, MR. MORTON.

4 Q DID THE POLICE ASK YOU TO GO DOWN THERE AND GET SOME MORE
5 INFORMATION?

6 A YES.

7 MR. MORTON: THANK YOU.

8 RECROSS EXAMINATION BY

9 MR. SWERLING:

10 Q DID YOU GO BACK AND TELL THE POLICE THE TRUTH?

11 A WELL, NOT AT THAT TIME.

12 Q YES OR NO?

13 A NOT AT THAT TIME.

14 THE COURT: ANYTHING ELSE?

15 MR. MORTON: NO, SIR.

16 THE COURT: YOU MAY STEP DOWN.

17 (WITNESS TO THE SIDE)

18 THE COURT: CALL YOUR NEXT WITNESS.

19 MR. BILTON: YOUR HONOR, AT THIS TIME WE WOULD CALL LISA
20 MISICKA.

21 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
22 COURT REPORTER)

23 THE COURT: YA'LL STEP BACK IN THE JURY ROOM, PLEASE,
24 MR. FOREMAN.

25 (THE JURY LEAVES THE JURY BOX AT 12:10 P.M.)

1 THE COURT: LET US KNOW WHEN YOU'VE GOT YOUR WITNESS.
2 EVERYBODY CAN BE AT EASE.

3 (RECESS)

4 THE COURT: (AT CONCLUSION OF RECESS) BRING THE JURY
5 IN.

6 (THE JURY RETURNS TO THE JURY BOX AT 12:22 P.M.)

7 THE COURT: MR. COLEMAN, AS I UNDERSTAND IT THE
8 WITNESSES THAT YA'LL THOUGHT WERE STANDING ON STANDBY HAD TO
9 GO SOMEWHERE ELSE AND ARE NOT GOING TO BE AVAILABLE UNTIL
10 AFTER LUNCH.

11 MR. COLEMAN: YES, YOUR HONOR.

12 THE COURT: DO YOU THINK THEY ARE GOING TO BE READY AT
13 TWO O'CLOCK?

14 MR. COLEMAN: YES, SIR.

15 THE COURT: ALL RIGHT. MR. FOREMAN AND LADIES AND
16 GENTLEMEN, WE'VE GOT TO STOP YOU HEARD ME SAY UNTIL TWO
17 O'CLOCK. THE WITNESSES ARE NOT AVAILABLE. SO, GO AHEAD AND
18 GO TO LUNCH. BE BACK IN HERE AT TWO O'CLOCK. COURT IS IN
19 RECESS UNTIL TWO O'CLOCK.

20 (LUNCHEON RECESS)

21 (COURT RESUMES AT 2:00 P.M.)

22 THE COURT: LET THE RECORD REFLECT COUNSEL FOR THE STATE
23 IS PRESENT, COUNSEL FOR THE DEFENSE AND THE DEFENDANT. I'M
24 NOT SURE WE HAVE ALL THE JURORS. WHEN I CAME DOWN THE
25 HALLWAY, WE WERE STILL ONE OR TWO SHORT.

1 MR. SWERLING: YOUR HONOR, WE'VE GOT SOMETHING THAT WE
2 CAN TAKE UP. JUDGE, I THINK SOME PROBLEMS--

3 THE COURT: QUIET, GENTLEMEN. YOU CAN'T TALK.

4 MR. SWERLING: YOUR HONOR, AS WE DISCUSSED ON MONDAY,
5 WE WERE PROVIDED INFORMATION OVER THE WEEKEND, FRIDAY NIGHT
6 AND WE BROUGHT ALL THAT UP TO THE COURT. WE ARE JUST FINDING
7 OUT NOW THAT THERE WERE SOME ROLLED TIRE IMPRESSIONS TAKEN,
8 SOME INKED IMPRESSIONS TAKEN OF THE TIRE MARKS, OF FOUR
9 TIRES, THAT THE SHERIFF'S DEPARTMENT HAS WITHIN THEIR CUSTODY
10 AND CONTROL WHICH WE HAVE NOT BEEN ALLOWED TO EXAMINE, NOT
11 EVEN HAVE BEEN MADE AWARE OF THEIR EXISTENCE.

12 THE COURT: HOW DID YOU FIND OUT ABOUT IT IF YOU DIDN'T
13 KNOW OF THEIR EXISTENCE?

14 MR. SWERLING: WELL, I READING ONE OF THE REPORTS THEY
15 REFER TO SOME KIND OF IMPRESSION. I ASKED THE INVESTIGATOR
16 AND HE SAYS THEY ARE DOWN AT THE SHERIFF'S DEPARTMENT.
17 NOBODY HAS EVER MADE THEM AVAILABLE TO US. APPARENTLY THEY
18 TOOK SOME ROLLED IMPRESSIONS OF THESE TIRE TRACKS WHICH WE
19 HAVE NOT HAD MADE AVAILABLE TO US.

20 THE COURT: WHAT ABOUT IT, MR. MORTON?

21 MR. MORTON: YOUR HONOR, ANYTHING WE'VE GOT IS AVAILABLE
22 TO HIM. HE KNOWS THAT. HE CAN GET IT ANY TIME HE WANTS TO.
23 IF I'M NOT MISTAKEN I BELIEVE MRS. SHEALY WAS UP AT THE
24 OFFICE THE DAY THAT WE SHOWED HER ALL THE TIRE TRACKS AND
25 THINGS. I BELIEVE THAT--I THOUGHT WE SHOWED HER THESE

1 IMPRESSIONS.

2 MR. SWERLING: ALL WE'VE EVER SEEN ARE PHOTOGRAPHS. I
3 CAME OVER THERE, I WAS THERE. ALL THEY--THEY TOLD US THE
4 EXISTENCE THEY HAD PHOTOGRAPHS. THAT'S WHAT THEY TOOK TO
5 THEIR EXPERT, THAT'S WHAT WE TOOK TO OUR EXPERT. NOW,
6 THERE'S APPARENTLY SOME INKED IMPRESSIONS WHICH THEY SAY ARE
7 AVAILABLE BUT THEY'VE NEVER MADE THEM AVAILABLE. THEY'VE
8 NEVER SHOWN THEM. THEY NEVER TOLD US ABOUT THE EXISTENCE OF
9 THEM.

10 MR. MORTON: WELL, YOU KNOW THE EXISTENCE OF THEM RIGHT
11 THERE IN THE REPORT.

12 MR. SWERLING: ROLLED TIRE IMPRESSIONS TO ME COULD HAVE
13 MEANT THE PHOTOGRAPHS. THAT'S WHY I ASKED YOU WHAT DID IT
14 MEAN AND NOW I'VE BEEN TOLD WHAT THAT MEANS IS THERE WAS AN
15 INKED IMPRESSION TAKEN OF THE TIRE TRACKS. I ALWAYS THOUGHT
16 THAT--I'VE BEEN TOLD THAT WHAT THEY HAD WERE PHOTOGRAPHS.
17 WE'VE ASKED THEM REPEATEDLY OVER THE WEEKEND, FRIDAY AND OVER
18 THE WEEKEND, TO GIVE US WHAT THEY HAD WITH RESPECT TO THE
19 TIRE TRACKS SO WE COULD HAVE OUR EXPERTS LOOK AT IT. WE
20 WEREN'T EVEN TOLD ABOUT THEIR EXPERT UNTIL THURSDAY EVENING.
21 FRIDAY MORNING I WASN'T HERE. MS. KNEECE AND MR.--I'M SORRY.

22 MRS. SHEALY: TALBERT.

23 MR. SWERLING: TALBERT, MY INVESTIGATOR, SPENT THE
24 WEEKEND GETTING THESE PHOTOGRAPHS THEY SAID THEY HAD, THEY
25 MADE AVAILABLE TO US THEY SAID THEY SHOWED THEIR EXPERT, AND

1 WE SHOWED THOSE TO OUR EXPERT. NOW, APPARENTLY THE
2 IMPRESSIONS ARE NOT THE PHOTOGRAPHS BUT THEY ARE ACTUAL
3 IMPRESSIONS THAT WERE MADE BY THE SHERIFF'S DEPARTMENT. AND
4 I'D JUST LIKE TO KNOW WHY WE WERE NEVER GIVEN THOSE OR THEY
5 WERE NEVER SHOWN TO US OR MADE AVAILABLE DESPITE THE FACT
6 THAT WE FILED DISCOVERY MOTIONS BACK IN FEBRUARY OF 1989.

7 THE COURT: DID YOU SEE THE PHOTOGRAPHS?

8 MR. SWERLING: WE'VE GOT THE PHOTOGRAPHS.

9 MRS. SHEALY: SOME PHOTOGRAPHS. MAYBE PART OF THE
10 PROBLEM IS SULTON WAS NOT OVER THERE ON FRIDAY, IT WAS
11 CHRISTY. AND WHEN I SPOKE--

12 THE COURT: WHO IS SULTON?

13 MR. SWERLING: ONE OF THE INVESTIGATORS.

14 MRS. SHEALY: BOTH CHRISTY AND SULTON WERE INVOLVED IN
15 IT AND CHRISTY SHOWED ME THE PICTURES. WE WENT OVER THE
16 PICTURES OF THE TRACKS BUT NEVER ANY INKED IMPRESSIONS.

17 THE COURT: WHO IS CHRISTY?

18 MRS. SHEALY: HE AND SULTON WERE TOGETHER.

19 THE COURT: INVESTIGATORS FOR WHO?

20 MRS. SHEALY: RICHLAND COUNTY. CHRISTY IS NOW WITH
21 S.L.E.D. BUT HE WAS WITH RICHLAND COUNTY AT THE TIME.

22 THE COURT: THEY SHOWED YOU PHOTOGRAPHS OF--

23 MRS. SHEALY: THEY SHOWED US PHOTOGRAPHS OF THE TRACKS
24 TAKEN AT THE SCENE.

25 MR. SWERLING: AT THE SCENE.

1 MRS. SHEALY: AND THEY SHOWED US PHOTOGRAPHS OF THE
2 TIRES AND THEN WE THEN SPOKE WITH THEIR EXPERT WHO NEVER
3 MENTIONED SEEING ANY INKED IMPRESSIONS AND THEN, YOU KNOW,
4 TRIED TO FIND EXPERTS OF OUR OWN BASED ON THE PHOTOGRAPHS.

5 MR. SWERLING: NOW, APPARENTLY--

6 MR. MORTON: YOUR HONOR, MAY I RESPOND?

7 MR. SWERLING: --THE PHOTOGRAPHS ARE NOT THE INKED
8 IMPRESSIONS. THEY ARE SOME OTHER MATTER.

9 THE COURT: NOW, LET MR. MORTON RESPOND TO IT. ALL
10 RIGHT.

11 MR. MORTON: LAST FRIDAY MRS. SHEALY CAME TO OUR OFFICE.
12 WE HAD OUR INVESTIGATOR CHRISTY COME OVER FROM THE SHERIFF'S
13 DEPARTMENT WITH THE WHOLE FILE ABOUT THESE TIRE TRACKS
14 INCLUDING PICTURES, INCLUDING INKED IMPRESSIONS. THEY WERE
15 ALL LAID OUT RIGHT THERE. I BELIEVE SHE SAW THOSE
16 IMPRESSIONS. SHE MIGHT REMEMBER SEEING THEM, I DON'T KNOW.

17 MRS. SHEALY: I DON'T REMEMBER EVER SEEING THEM.

18 MR. MORTON: BECAUSE THEY WERE THERE LAYING ON THAT
19 TABLE. WE TRIED TO MAKE EVERYTHING AVAILABLE TO THEM FOR HER
20 TO PERUSE AND LOOK THROUGH THE WHOLE THING. WE WERE NOT
21 TRYING TO HIDE ANYTHING. THAT'S THE LAST THING WE WOULD WANT
22 TO DO IS TO HIDE ANYTHING. WE WANTED TO SHOW THEM EVERYTHING
23 WE HAD. OUR INVESTIGATOR HAD THE WHOLE FILE THERE, ALL THE
24 PHOTOGRAPHS WERE THERE, THE INKED IMPRESSION WAS THERE. AND,
25 YOUR HONOR, IN THE REPORT IT HAS WRITTEN ON THERE INKED

1 IMPRESSIONS.

2 MRS. SHEALY: IT DOES NOT SAY INKED IMPRESSIONS. IT
3 SAYS TIRE IMPRESSIONS. AND IF MR. MORTON WILL REMEMBER I WAS
4 OVER THERE FRIDAY WHEN MR. McGEE FROM THE SHERIFF'S
5 DEPARTMENT CAME OVER AND HE SHOWED ME PHOTOGRAPHS. THEN
6 AGENT CHRISTY CAME OVER AND THEY DID NOT ALLOW ME INTO THE
7 LIBRARY WHILE THEY SPOKE WITH HIM AND LATER ASKED HIM TO
8 LEAVE THE LIBRARY AND I SPOKE WITH HIM IN MR. MORTON'S
9 OFFICE. SO, I WAS NOT SHOWN EVERYTHING THAT WAS LAID ON THE
10 TABLE. MR. CHRISTY CAME INTO MR. MORTON'S OFFICE AND SPOKE
11 WITH ME IN THERE.

12 MR. MORTON: YOU WERE IN OUR OFFICE WHEN McGEE WAS IN
13 THERE?

14 MRS. SHEALY: RIGHT. AND I DON'T EVER REMEMBER SEEING
15 ANY INKED IMPRESSIONS. AND CHRISTY NEVER MENTIONED THEM
16 EITHER, NOR DID YOUR EXPERT.

17 MR. SWERLING: WE ASKED THEM TO TURN OVER--

18 MR. MORTON: WELL, IT COULD HAVE BEEN AN OVERSIGHT ON
19 OUR PART, YOUR HONOR. CERTAINLY IT WAS NOT ANYTHING
20 INTENTIONAL. IT COULD HAVE BEEN AN UNDERSIGHT ON THEIR PART.
21 IRREGARDLESS IT'S IN THE REPORT. WE HAVE AN OPEN FILE
22 POLICY.

23 MR. SWERLING: BUT WE ASKED TO SEE THE FILE. I WENT
24 OVER THERE THURSDAY AND I WAS GIVEN PHOTOGRAPHS, JUDGE.
25 THURSDAY AFTERNOON I WENT OVER THERE AND SAT DOWN WITH ALL

1 OF THESE PEOPLE AND I WAS GIVEN PHOTOGRAPHS. I WAS NEVER
2 GIVEN ANY INKED IMPRESSIONS.

3 THE COURT: WHAT'S THIS ABOUT AN EXPERT THAT YOU
4 OBTAINED THURSDAY OR FRIDAY?

5 MR. SWERLING: THEY OBTAINED AN EXPERT THURSDAY NIGHT.

6 THE COURT: THIS IS THE TIRE EXPERT?

7 MR. SWERLING: YES.

8 THE COURT: WHO IS GOING TO SAY I ASSUME THAT, IF
9 QUALIFIED, THAT THOSE INKED IMPRESSIONS MATCH A CERTAIN TIRE?

10 MR. COLEMAN: NO, SIR. WE WEREN'T EVEN GOING TO USE THE
11 INKED IMPRESSIONS. WE WERE GOING TO USE THE PHOTOGRAPHS AT
12 THE SCENE, PREPARED PHOTOGRAPHS OF THE TIRE OF THE
13 DEFENDANT'S CAR.

14 MR. SWERLING: BUT THE INKED IMPRESSIONS COULD BE
15 EXCULPATORY IF I HAD KNOWN THEY EXISTED.

16 THE COURT: THAT WAS MY NEXT QUESTION. THE QUESTION IS
17 WHETHER OR NOT THE INKED IMPRESSIONS ARE EXCULPATORY.
18 EVIDENCE YOU MAY NOT INTEND TO USE IT. THE QUESTION IS
19 WHETHER OR NOT IT'S EXCULPATORY AND THEY ARE ENTITLED TO HAVE
20 IT UNDER BRADY.

21 MR. MORTON: YOUR HONOR, WOULD IT CAUSE ANY HARM TO SHOW
22 THEM THE INKED IMPRESSIONS NOW?

23 THE COURT: NO, I WAS GOING TO GET TO THAT POINT. FIRST
24 WE'VE GOT TO RESOLVE WHETHER OR NOT THERE'S ANY PROBLEM WITH
25 IT AND, IF THERE IS, HOW CAN IT BE RESOLVED. THAT'S THE

1 SECOND PART, MR. MORTON.

2 MR. COLEMAN: JUDGE, IF I MAY ADD, OUR EXPERT HAS NOT
3 SEEN THE ROLLED IMPRESSIONS, NUMBER ONE. NUMBER TWO--

4 MR. SWERLING: THAT IS NOT THE STANDARD.

5 MR. COLEMAN: I KNOW THAT.

6 THE COURT: JUST A MINUTE. ONE AT A TIME. GO AHEAD,
7 MR. COLEMAN.

8 MR. COLEMAN: AND IT WAS EITHER CHRISTY OR SULTON, THEY
9 CAME IN THERE AND THEY SAID THAT THEY SOMEHOW ANOTHER HAD
10 SCREWED UP DOING THE ROLLED IMPRESSIONS SOMEHOW. I DON'T
11 KNOW EXACTLY WHAT HE SAID BUT HE SAID THAT THEY DID IT AND
12 IT'S LIKE THREE LAYERS AND THEY WERE SUPPOSED TO HAVE PULLED
13 OUT SOMETHING THAT HELPS--ONE OF THE CARBONS ON IT AND THEY
14 DIDN'T READ THE DIRECTIONS ON THE THING RIGHT AND IT WASN'T
15 DONE PROPERLY. SO, WE HAVEN'T EVEN LOOKED AT IT. WE WEREN'T
16 GOING TO EVEN INTRODUCE IT. I DON'T KNOW IF IT'S INCULPATORY
17 OR EXCULPATORY AND I REALIZE THEY ARE ENTITLED TO IT AND THEY
18 CAN HAVE IT.

19 THE COURT: ALL RIGHT. MAKE IT AVAILABLE TO HIM.

20 MR. COLEMAN: IT'S AVAILABLE.

21 THE COURT: GIVE IT TO HIM. IF YOU WANT TO HAVE
22 SOMEBODY LOOK AT IT--

23 MR. SWERLING: JUDGE, THAT'S WHAT WE INTEND TO DO.

24 THE COURT: TURN IT OVER TO HIM. I WANT IT TURNED OVER
25 TO HIM TODAY. YOU SAY YOU ARE NOT GOING TO USE IT. THE

1 QUESTION IS IS IT EXCULPATORY AND HE NEEDS AN OPPORTUNITY TO
2 EXAMINE IT.

3 MR. COLEMAN: ALSO, YOUR HONOR, ON ANOTHER MATTER--

4 MR. SWERLING: JUDGE, I MAY NEED SOME TIME TO HAVE MY
5 EXPERT REVIEW IT, TOO.

6 THE COURT: OH, I UNDERSTAND. YOU KNOW, IT AIN'T GONNA
7 HAPPEN TODAY SO YOU CAN HAVE--GET YOUR EXPERT AND HAVE HIM
8 LOOK AT IT THIS AFTERNOON OR FIRST THING IN THE MORNING AND
9 SEE IF THERE IS ANY PROBLEM. WE'LL HAVE TO DEAL WITH IT IF
10 IT IS A PROBLEM. WE'VE GOT TO FIND OUT IF IT IS A PROBLEM
11 FIRST.

12 MR. SWERLING: YES, SIR.

13 MR. COLEMAN: ALSO, YOUR HONOR, ON ANOTHER MATTER, I
14 HAVE RANDY MONDOR, THE F.B.I. AGENT AND I ASKED HIM ABOUT
15 RELEASING THIS FILE, THIS GARDNER FILE, TO MR. SWERLING. HE
16 SAID THAT THERE WAS NO PROBLEM. HE TALKED TO JOHN BARTON
17 OVER THERE. WITHIN THIS FILE IS THE GRAND JURY TESTIMONY OF
18 MR. GARDNER. HE SAYS THEY DO HAVE A PROBLEM RELEASING THAT
19 TO --

20 THE COURT: WELL, LET ME SEE IT. LET ME SEE THE GRAND
21 JURY TESTIMONY.

22 MR. COLEMAN: AND ALSO I THINK HE SAID PRE-SENTENCING
23 REPORT. I'M TRYING TO GET HIM IN HERE TO MAKE SURE THAT'S
24 WHAT HE SAID. I WANT TO GET THIS MATTER RESOLVED. I HAVE
25 NOT EVEN READ IT.

1 (MR. RANDY MONDOR ARRIVES)

2 THE COURT: RIGHT THERE IS FINE.

3 MR. MONDOR: YES, SIR.

4 THE COURT: ONE OF THE THINGS THAT HAS ARISEN IS
5 APPARENTLY THE FILE THAT WAS TRANSMITTED FROM THE FEDERAL
6 GOVERNMENT TO THE STATE SOLICITOR'S OFFICE UNDER THE
7 DISCOVERY REQUIREMENTS OF WHETHER OR NOT THERE'S ANY
8 EXCULPATORY INFORMATION CONTAINED IN THE FILE SPECIFICALLY
9 AS IT REGARDS TO A WITNESS KNOWN AS KENNETH GARDNER. NOW,
10 I HAVE REQUIRED THE STATE AGENCIES TO PRODUCE MEDICAL CARE
11 AND TREATMENT OF THAT WITNESS AND THOSE REPORTS ARE THERE.
12 SOME OF THOSE REPORTS AS I UNDERSTAND IT WERE CONTAINED IN
13 THIS FILE, IN ADDITION TO WHICH HAS BEEN HANDED UP--I HAVE
14 IT, I HAVEN'T LOOKED AT IT--WAS THE APPARENTLY THE GRAND JURY
15 TESTIMONY OF--THIS IS YOU YOURSELF. THIS WAS NOT HIM. SO,
16 THAT DOESN'T--THAT'S NOT--YOU ARE NOT LOOKING FOR THAT
17 ANYWAY. THAT WAS HIS GRAND JURY--YOU CAN HAVE THAT BACK.
18 WE DON'T NEED THAT. THAT'S NOT A PROBLEM. THE NEXT THING
19 WOULD BE WHETHER OR NOT THE PROBATION REPORT, PRE-SENTENCING
20 REPORT IS WHAT IT IS, SHOULD BE MADE AVAILABLE TO COUNSEL FOR
21 THE DEFENSE INSOFAR AS HIS RIGHT TO EXAMINE MR. GARDNER AS
22 TO ANYTHING THAT WOULD AFFECT MR. GARDNER'S CREDIBILITY OR
23 WOULD BE EXCULPATORY. YOU KNOW, FRANKLY I HAVEN'T LOOKED AT
24 IT SO I DON'T KNOW EITHER. THE QUESTION IS CAN YOU AUTHORIZE
25 THE STATE TO TURN IT OVER? CLEARLY IT'S STAMPED ON THE PRE-

1 SENTENCE INVESTIGATION REPORT IT'S NOT TO BE COPIED. IT'S
2 SUPPOSED TO BE RETURNED TO THE PROBATION AGENT.

3 MR. MONDOR: YOUR HONOR, I SPOKE WITH ASSISTANT U.S.
4 ATTORNEY JOHN BARTON THIS MORNING AND ASKED HIM WHAT I COULD
5 RELEASE AND WHAT I COULDN'T RELEASE AND JOHN BARTON TOLD ME
6 THAT I COULD RELEASE EVERYTHING IN THE FILE WITH THE
7 EXCEPTION OF MY GRAND JURY TESTIMONY AND THE PROBATION
8 REPORT.

9 THE COURT: YOU COME ON AND TAKE THAT THEN. I DON'T
10 WANT IT EITHER. YOU SAY THE PRE-SENTENCE INVESTIGATION
11 REPORT AS WELL?

12 MR. MONDOR: RIGHT.

13 THE COURT: THAT WAS PREPARED BY THE PROBATION AGENT I
14 GUESS FOR THE FEDERAL GOVERNMENT. BUT EVERYTHING ELSE IN THE
15 FILE YOU CAN LET THEM SEE?

16 MR. MONDOR: CORRECT. AND I TALKED WITH SUSAN HITT WHO
17 IS THE FEDERAL PUBLIC DEFENDER. SHE ALSO HAD NO PROBLEM.

18 THE COURT: ALL RIGHT. OTHER THAN THOSE TWO ITEMS.

19 MR. MONDOR: RIGHT.

20 THE COURT: THE GRAND JURY TESTIMONY YOU GAVE IS NOT
21 NECESSARY IN THIS CASE. ALL RIGHT. HERE'S THE FILE. YOU
22 WANT TO MAKE IT AVAILABLE TO COUNSELLOR.

23 MR. SWERLING: YOUR HONOR, I WOULD ASK THAT YOU REVIEW
24 THE PROBATION REPORT TO SEE WHETHER OR NOT THERE IS ANYTHING
25 IMPEACHING, MITIGATING OR EXCULPATORY IN THERE THAT I COULD

1 USE.

2 THE COURT: I WILL DO THAT RIGHT NOW.

3 MR. SWERLING: AND MAKE A COPY FOR THE RECORD.

4 THE COURT: WELL, THE PROBLEM IS THERE IS A CLEAR
5 DIRECTION NOT TO DO THAT.

6 MR. SWERLING: THE PROBLEM, YOUR HONOR, IS I THINK THIS.
7 THEY WEREN'T SUPPOSED TO RELEASE IT TO THE SOLICITOR'S
8 OFFICE. THE RULES IN SOUTH CAROLINA PROVIDE THAT WHATEVER
9 THE SOLICITOR HAS IN HIS CUSTODY AND CONTROL I'M ENTITLED TO.
10 SO, I THINK THEY'VE GOT THEMSELVES BETWEEN A ROCK AND A HARD
11 PLACE NOW. THEY'VE GOT IT IN THEIR POSSESSION AND THE RULES
12 SAY I'M ENTITLED TO IT AND THEY INTEND TO CALL HIM AS A
13 WITNESS.

14 THE COURT: YOU KNOW, HE'S RIGHT ABOUT THAT. WE ARE IN
15 A AWFUL BOX.

16 MR. SWERLING: IT SHOULD HAVE NEVER BEEN RELEASED.

17 THE COURT: IT SHOULD HAVE NEVER BEEN PUT IN THE FILE.
18 IT HADN'T BEEN PUT IN THE FILE, HE WOULDN'T BE ENTITLED TO
19 IT.

20 MR. SWERLING: I'M NOT INTERESTED IN MR. MONDOR'S
21 TESTIMONY. THAT HAS NOTHING TO DO WITH ME. I DON'T CARE
22 ABOUT IT. THAT PRE-SENTENCE REPORT I THINK IS IMPORTANT.

23 THE COURT: THE ONLY THING I CAN DO IS EXAMINE IT. IF
24 I FIND THERE IS NOTHING EXCULPATORY IN IT IS TO HAVE TO MAKE
25 A COPY AND SEAL THE RECORD HERE WITH AN ORDER THAT SAYS IT

1 CAN'T BE OPENED EXCEPT BY THE SUPREME COURT SO THAT IF THAT
2 IS AN ISSUE THEY HAVE TO LOOK AT IT, TOO. I STILL CAN'T
3 REVEAL IT TO YOU IF I FIND IT'S NOT EXCULPATORY.

4 MR. SWERLING: I UNDERSTAND THAT.

5 THE COURT: IF IT'S EXCULPATORY WE'VE STILL GOT THE
6 ADDITIONAL PROBLEM THAT--

7 MR. SWERLING: I WOULD ASK YOUR HONOR TO REVIEW IT IN
8 CAMERA TO SEE IF THERE'S ANY IMPEACHING INFORMATION IN THERE.

9 THE COURT: MR. MONDOR, I DON'T KNOW HOW TO GET AROUND
10 THAT.

11 MR. MONDOR: EXCUSE ME?

12 THE COURT: I DON'T KNOW HOW TO GET AROUND IT. IF THEY
13 DON'T PUT IT IN YOUR FILE AND TRANSMIT IT TO THEM THEN THEY
14 ARE NOT ENTITLED TO HAVE IT.

15 MR. MONDOR: MR. BETHEA WAS THE ONE WHO TURNED IT OVER.
16 I CAN TELEPHONE THE PROBATION OFFICE AND SEE WHAT THEY HAVE
17 TO SAY ABOUT IT.

18 THE COURT: WELL, I CAN'T HELP WHAT THEY'VE GOT TO SAY
19 RIGHT NOW. THEY MAY GET UPSET WITH WHOEVER CAUSED IT TO GET
20 IN THE FILE AND BECOME DISCOVERABLE BECAUSE YA'LL ARE NOT
21 SUPPOSED TO MAINTAIN IT IN THE FILE. YOU ARE SUPPOSED TO
22 REVIEW IT AND SEND IT BACK AGENT. THAT'S WHAT THE
23 REQUIREMENTS ARE. THE UNITED STATES ATTORNEY'S OFFICE IS NOT
24 EVEN SUPPOSED TO KEEP IT. THAT'S WHAT IT SAYS. COPIES OF
25 THIS REPORT SHALL NOT BE MADE. IMMEDIATELY AFTER SENTENCING

1 RETURN THE REPORT TO THE PROBATION AGENT. OKAY.

2 MR. SWERLING: YOUR HONOR, WHILE YOU ARE REVIEWING IT,
3 ONE OF THE THINGS I WANT TO POINT OUT SPECIFICALLY WE HAVE
4 NO INFORMATION CONCERNING HIS COMMITMENT AT BUTNER IN NORTH
5 CAROLINA WHICH IS A FEDERAL MENTAL HEALTH FACILITY. NONE OF
6 THE THINGS WE GOT FROM THE STATE AGENCIES REFER TO THAT.
7 THAT'S ONE OF THE PARTICULAR THINGS I WANTED TO LOOK THROUGH
8 THERE IN ADDITION TO ANY OTHER IMPEACHING INFORMATION.

9 THE COURT: I MAY BE IN THAT FILE.

10 MR. SWERLING: IT MAY BE. I HAVEN'T SEEN IT YET.

11 THE COURT: WHERE IS THE FILE? WE GAVE IT TO YOU,
12 DIDN'T WE?

13 MR. SWERLING: NOT YET.

14 THE COURT: WHERE IS THE MASTER FILE.

15 MR. COLEMAN: RIGHT HERE, YOUR HONOR.

16 THE COURT: THE MASTER FILE?

17 MR. COLEMAN: OF GARDNER?

18 THE COURT: YES.

19 MR. COLEMAN: RIGHT.

20 THE COURT: OKAY. AS I UNDERSTAND YOU CAN TURN THAT
21 OVER TO HIM.

22 MR. COLEMAN: RIGHT. YOUR HONOR, THE WAY I READ THE
23 RULES, I MEAN RULE 5D SAYS THAT UPON THE REQUEST OF THE
24 DEFENDANT THE PROSECUTION SHALL ALLOW THE DEFENDANT TO HAVE-
25 -EXPECT RESULTS OF REPORTS OF PHYSICAL AND MENTAL

1 EXAMINATIONS AND SCIENTIFIC TESTS OR EXPERIMENTS. I MEAN
2 THESE AREN'T RESULTS. THESE ARE CONCLUSIONS BY--

3 THE COURT: NOT COVERED BY THE RULE, MR. COLEMAN. THIS
4 IS UNDER BRADY VS. GIGGLIO. THE QUESTION IS WHETHER OR NOT
5 THERE IS ANY EXCULPATORY INFORMATION OR ANYTHING THAT WOULD
6 AFFECT THE CREDIBILITY OF THIS WITNESS IN THE POSSESSION OF
7 THE GOVERNMENT. OKAY? SUCH AS HIS LACK OF MENTAL CAPACITY
8 OR ABILITY TO RECALL, THAT TYPE THING. SEE, THAT'S WHY IT
9 COMES UP. IT DOESN'T COME UNDER RULE 5 DISCLOSURE. IT'S NOT
10 A WITNESS'S STATEMENT WHICH HE'S NOT ENTITLED TO HAVE UNTIL
11 THE WITNESS TESTIFIES UNLESS I ORDER OTHERWISE. THIS COMES
12 UNDER UNITED STATES SUPREME COURT DECISIONS DEALING WITH
13 DISCOVERY. THERE'S REALLY NOTHING WE CAN DO ABOUT THAT, MR.
14 SWERLING, UNLESS THE INFORMATION IS CONTAINED--OF COURSE,
15 THEY HAVE GIVEN YOU EVERYTHING EXCEPT WHAT'S RIGHT HERE.

16 MR. SWERLING: YES, SIR.

17 THE COURT: SO, YOU SHOULD HAVE IT UNLESS IT'S SOME
18 REFERENCE TO IT HERE.

19 MR. SWERLING: THE ONLY THING I'M SAYING IS WHEN YOUR
20 HONOR IS REVIEWING THAT ONE OF THE THINGS YOU MIGHT WANT TO
21 BE LOOKING AT.

22 THE COURT: I'LL LOOK AT IT. ALL RIGHT, ARE YOU READY
23 TO PROCEED?

24 MR. COLEMAN: YOUR HONOR, WE DO HAVE THESE ITEMS THAT
25 MR. SWERLING HAS ASKED FOR, THE ROLLED IMPRESSIONS.

1 THE COURT: AND YOU DO NOT PLAN ON USING THEM IN YOUR
2 CASE?

3 MR. COLEMAN: WELL, I'D LIKE TO GET AN EXPERT TO TAKE
4 A LOOK AT THEM. I HADN'T UP TO THIS POINT. WE'LL MAKE THEM
5 AVAILABLE TO HIM AT THIS TIME AND THEN, YOU KNOW, WE CAN WORK
6 AROUND HIS EXPERT'S SCHEDULE.

7 THE COURT: WELL, IF YOU WERE GOING TO USE THEM THEN THE
8 REQUIREMENT COMES BACK THAT YOU SHOULD HAVE ALREADY GIVEN TO
9 HIM. THE QUESTION IS WHETHER OR NOT IT WAS EXCULPATORY.
10 GIVE THEM TO HIM. MR. SWERLING, HAVE YOUR PEOPLE LOOK AT
11 THEM AND TELL THEM WHO YOUR EXPERT IS SO THAT IF HIS EXPERT
12 NEEDS TO CALL HIM TO GET THEM BACK OR IF YOU RETAIN IN SOME
13 FASHION THEY ARE NOT TO BE DAMAGED OR DESTROYED.

14 MR. SWERLING: THEY'LL STAY IN MY CONTROL.

15 THE COURT: NO DESTRUCTIVE TESTING OR --

16 MR. SWERLING: ALL RIGHT.

17 MR. COLEMAN: WHEN MR. SWERLING ASKED THAT THEY STAY IN
18 HIS CONTROL, WHAT DOES HE MEAN BY THAT? I WANT TO HAVE --

19 MR. SWERLING: IT MEANS THEY STAY IN MY CONTROL OR MRS.
20 KNEECE'S CONTROL.

21 MR. COLEMAN: I UNDERSTAND THAT BUT I WANT TO HAVE--

22 THE COURT: DO YA'LL HAVE PHOTOGRAPHS OF IT?

23 MR. COLEMAN: SIR?

24 THE COURT: DO YOU HAVE PHOTOGRAPHS OF IT?

25 MR. COLEMAN: YES, SIR.

1 THE COURT: AND YOUR EXPERT'S NEVER SEEN THEM?

2 MR. COLEMAN: HASN'T SEEN THIS, THE ROLLED IMPRESSIONS.

3 NO, SIR.

4 THE COURT: THE NEXT QUESTION IS WHY WORRY ABOUT IT.

5 IF YOU HAVEN'T DONE IT BY NOW, MR. COLEMAN, WHY IN THE WORLD

6 WORRY ABOUT IT? THAT'S THE KIND OF THING YOU WOULD HAVE DONE

7 BEFORE NOW. I MEAN WE ARE IN TRIAL.

8 MR. MORTON: I UNDERSTAND THAT. SHOULD WE BE PRECLUDED

9 FROM HAVING OUR EXPERT DO IT?

10 THE COURT: NO, BUT NOW YOU ARE USING IT AS A BLOCKING

11 TECHNIQUE, MR. MORTON, FOR ME TO GIVE IT TO HIM.

12 MR. MORTON: NO, SIR.

13 MR. COLEMAN: WE'LL GIVE IT TO HIM RIGHT NOW. JUST SO

14 OUR EXPERT CAN SEE IT TOMORROW MORNING THAT WILL BE FINE.

15 MR. SWERLING: WELL, I DON'T KNOW WHEN I CAN GET MY

16 PEOPLE TO LOOK AT THEM. THAT'S THE PROBLEM WITH GETTING

17 SOMETHING ON THE WEDNESDAY OF TRIAL.

18 THE COURT: JUST HAVE YOUR EXPERT LOOK AT IT. YOU

19 RETAIN IT. NO DESTRUCTIVE TESTING. IF YOU GET AN EXPERT YOU

20 WANT TO LOOK AT IT, IF YOU'LL HAVE HIM UP HERE IN THE MORNING

21 TO LOOK AT IT THEN UNLESS HIS EXPERT IS LOOKING AT IT AT THE

22 TIME WE'LL MAKE IT AVAILABLE TO YOUR EXPERT. OKAY?

23 MR. COLEMAN: THANK YOU.

24 THE COURT: ARE YA'LL READY TO PROCEED?

25 MR. BILTON: THE STATE IS READY, YOUR HONOR.

1 MR. SWERLING: YOUR HONOR, THERE IS ONE FURTHER ISSUE
2 THAT SHOULD BE RESOLVED NOW. THEY INTEND TO CALL AN
3 INDIVIDUAL BY THE NAME OF NAT RUSS WHO OWNS A PAWN SHOP HERE
4 IN COLUMBIA. AS I UNDERSTAND THE TESTIMONY THEY JUST ADVISED
5 ME OF THEY INTEND TO OFFER INTO EVIDENCE THAT HAYES MALLOY
6 ON THE 27TH, THE DAY AFTER THE KILLING, PURCHASED A .25
7 AUTOMATIC FROM MR. RUSS. I WOULD TAKE THE POSITION THAT IS
8 NOT RELEVANT, IT'S NOT PROBATIVE OF ANY ISSUE IN THIS CASE.

9 THE COURT: LET ME FIND OUT. HOW IS THE PURCHASE BY
10 NATE MALLOY--DID YOU SAY NATE MALLOY?

11 MR. SWERLING: HAYES MALLOY.

12 THE COURT: HAYES MALLOY. HAYES MALLOY OF A PISTOL
13 AFTER THE COMMISSION OF THE CRIME RELEVANT ON THE ISSUE OF
14 WHETHER OR NOT HE COMMITTED IT?

15 MR. COLEMAN: IT GOES DIRECTLY TO THE DEFENDANT'S STATE
16 OF MIND, YOUR HONOR, AS TO WHY HE WAS SCARED. HE HAS BROUGHT
17 HIS CREDIBILITY IN ISSUE, MR. SWERLING HAS. THE STATE HAS
18 A RIGHT TO REHABILITATE THAT TESTIMONY BY HIM STATING THAT
19 HE WAS SCARED, HE WAS SCARED FOR HIS LIFE; THEREFORE, HE WENT
20 AND BOUGHT A HANDGUN ON THE 27TH.

21 MR. SWERLING: THERE'S BEEN NO TESTIMONY. HE NEVER
22 TESTIFIED--

23 THE COURT: THE PROBLEM IS, SEE, YOU ARE PUTTING IN
24 EVIDENCE ABOUT SOMETHING THAT REALLY ISN'T--YOU KNOW WHAT YOU
25 ARE DOING? YOU ARE TRYING TO DEFEAT ANY DEFENSES HE MAY HAVE

1 IN ANTICIPATION OF IT. YOU KNOW, HE'S OFFERED NO EVIDENCE.
2 HE MAY HAVE INFERRED THAT BUT THERE'S NO GUNS--IT'S NOT THE
3 WEAPON THAT WAS USED IN THIS CASE, NO QUESTION ABOUT THAT,
4 IS IT?

5 MR. COLEMAN: NO, SIR. AND--GO AHEAD.

6 THE COURT: ALL RIGHT. THANK YOU. MR. COLEMAN, I DON'T
7 UNDERSTAND WHY THAT'S ADMISSIBLE. I CAN UNDERSTAND HOW YOU
8 CAN PERCEIVE THAT IT MIGHT BE. IT'S JUST NOT RELEVANT ON THE
9 ISSUE. YOU SEE, WE ARE TRYING--IF YA'LL CAN REMEMBER WHAT
10 WE ARE TRYING. WE ARE TRYING THAT HE MURDERED DONALD SUTTON,
11 AND I RECOGNIZE THAT YA'LL HAVE PERCEIVED THAT HE'S NOW
12 TRYING TO PUT IT ON YA'LL'S WITNESS, OKAY, THROUGH HIS
13 EXAMINATION. BUT, SEE, THERE ARE NO GUNS IN THE CASE, ARE
14 THERE? NO BULLETS HAVE BEEN OFFERED IN THE CASE.

15 MR. COLEMAN: NO, SIR.

16 THE COURT: NONE OF THAT. SO, WE NOW ARE GOING TO PUT
17 IN A GUN WHICH THERE'S NO TESTIMONY LINKING IT TO THIS CRIME
18 EXCEPT YOU ARGUE THAT THE REASON IT'S IMPORTANT IS TO SHOW
19 THAT HE BOUGHT A GUN AFTER THE DATE THE MAN WAS KILLED SO HE
20 WOULD HAVE A GUN, I ASSUME, TO PROTECT HIMSELF BY SHOOTING
21 THIS MAN IF HE CAME ABOUT HIM, RIGHT? I UNDERSTAND. I'M NOT
22 GOING TO ALLOW IT TO COME IN.

23 MR. COLEMAN: WELL, YOUR HONOR, MR. SWERLING ALSO MADE
24 HAY OVER THE FACT THAT THE A.B.I.K. CHARGES THAT HE HAD
25 PENDING. THAT WEAPON WAS USED IN THE A.B.I.K. CHARGE.

1 THE COURT: THAT'S ANOTHER CRIME.

2 MR. COLEMAN: MR. SWERLING BROUGHT IT UP.

3 THE COURT: WELL, THAT DOESN'T MATTER WHAT HE BRINGS UP.
4 SEE, A LOT OF THESE THINGS MAY BE RELEVANT ON ONE POINT BUT
5 NOT ON ANOTHER. THAT DOESN'T MEAN THAT WE PUT EVIDENCE INTO
6 THE RECORD, MR. COLEMAN. YOU JUST CAN'T DO THAT. YOU TRULY-
7 -YOU JUST CAN'T DO THAT. SEE, YOU ARE TRYING TOO MANY
8 THINGS. THAT'S WHAT'S WRONG WITH YOUR CASE RIGHT NOW. YA'LL
9 HAVE LET THEM BOX YOU INTO TRYING TOO MANY ISSUES. THE ISSUE
10 IS DID THIS MAN MURDER DONALD SUTTON. AND ALL YOU'VE DONE
11 IS ALLOW THEM TO PUT FOURTEEN THOUSAND RED HERRINGS OUT THERE
12 ON THE FLOOR. PUT ALL THESE OTHER STATEMENTS AND OTHER
13 THINGS THAT'S HAPPENED. IT'S UNFORTUNATE BUT IT HAS. THAT
14 DOESN'T MEAN THAT I'VE GOT TO LET YOU TRY THIS MALLOY GUY FOR
15 ASSAULT AND BATTERY WITH INTENT TO KILL BECAUSE THAT'S NOT
16 WHAT'S BEING TRIED IN THE COURTROOM. OR THAT HE BOUGHT A
17 PISTOL, WHETHER OR NOT HE HAD A RIGHT TO HAVE A PISTOL AND
18 THE PURPOSE FOR WHICH HE BOUGHT IT. OKAY? YOU JUST CAN'T
19 DO THAT. THOSE ISSUES SERVE TO BE PREJUDICIAL TO THE ISSUE
20 BEING TRIED IN THE CASE.

21 MR. COLEMAN: WELL, YOUR HONOR, THE STATE'S POSITION IS
22 OUR CASE, AND MR. SWERLING I DON'T THINK WILL CONTEST THIS,
23 THAT OUR ISSUE RESTS LARGELY ON HAYES MALLOY, HIS
24 CREDIBILITY.

25 THE COURT: OH, NO QUESTION ABOUT THAT.

1 MR. COLEMAN: MR. SWERLING HAS MADE THAT AN ISSUE.
2 THERE'S NO QUESTION ABOUT IT. IT'S IMPORTANT FOR HAYES
3 MALLOY TO EXPLAIN HIMSELF WHY HE FABRICATED THIS STORY ABOUT
4 VITO AND ABOUT EVERYTHING ELSE HE DID PRIOR TO THE STATEMENT
5 HE MADE ON JANUARY 3RD. AND --

6 THE COURT: I THINK HE HAS DONE THAT. DON'T YOU THINK
7 HE'S DONE THAT?

8 MR. COLEMAN: NOT AS GOOD AS WE WOULD LIKE.

9 THE COURT: I KNOW THAT. THAT'S OBVIOUS. BUT HOW DOES
10 PUTTING INTO THE RECORD THE FACT THAT HE BOUGHT A GUN AFTER
11 THE CRIME FURTHER BOLSTER IT, BECAUSE THAT'S WHAT IT AMOUNTS
12 TO, BOLSTER. IT'S A COLLATERAL ISSUE BOLSTERING HIS
13 TESTIMONY THAT I BOUGHT A GUN BECAUSE I'M SCARED OF THIS MAN.
14 NOW, HE'S TESTIFIED THAT HE THOUGHT THIS MAN WAS GOING TO
15 KILL HIM OR HAVE HIM KILLED. HE'S TESTIFIED TO THAT.

16 MR. COLEMAN: IT GOES--

17 THE COURT: HOW DOES THAT--WELL, WHO'S TO SAY--YOU ARE
18 TAKING THAT AS BEING ONE INFERENCE THERE. IT'S NOT THE ONLY
19 INFERENCE. IT COULD HAVE BEEN THAT HE ACTUALLY DID MURDER
20 THE MAN IN QUESTION, GOT RID OF THAT GUN AND NEEDED ANOTHER
21 GUN. THAT'S ANOTHER INFERENCE, MR. COLEMAN.

22 MR. COLEMAN: THAT'S RIGHT.

23 THE COURT: AND YOU DON'T WANT THAT INFERENCE.

24 MR. COLEMAN: WELL--

25 THE COURT: I WOULDN'T WANT THAT INFERENCE.

1 MR. COLEMAN: YOU KNOW, IF HE ALREADY HAD ONE GUN, WHY
2 WOULD HE BUY ANOTHER GUN?

3 THE COURT: BECAUSE HE GOT RID OF THE ONE HE USED TO
4 SHOOT THE MAN WITH. SEE, THAT'S ARGUMENT. BUT ONCE AGAIN
5 WE ARE TRYING--WE ARE NOT TRYING THE ISSUE IN THE CASE. THE
6 ISSUE IS WHETHER OR NOT THIS MAN MURDERED DONALD SUTTON. I'M
7 NOT GOING TO ALLOW IT. ANYTHING ELSE?

8 MR. COLEMAN: NO, SIR.

9 THE COURT: BRING THE JURY IN.

10 (THE JURY RETURNS TO THE JURY BOX AT 2:26 P.M.)

11 BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

12 THE COURT: THANK YOU, SIR. THANK YOU, MR. FOREMAN AND
13 LADIES AND GENTLEMEN, FOR YA'LL'S PATIENCE. CALL YOUR NEXT
14 WITNESS.

15 MR. BILTON: THE STATE CALLS LISA MISICKA.

16 LISA J. MISICKA, AFTER BEING DULY SWORN BY THE CLERK,
17 TESTIFIES AS FOLLOWS:

18 DIRECT EXAMINATION BY

19 MR. BILTON:

20 Q MS. MISICKA, WHERE ARE YOU EMPLOYED?

21 A I'M EMPLOYED BY THE FEDERAL BUREAU OF INVESTIGATION HERE IN
22 COLUMBIA.

23 Q AND HOW LONG HAVE YOU BEEN WITH THE F.B.I.?

24 A SINCE DECEMBER, 1987.

25 Q DO YOU KNOW HAYES MALLOY?

1 A YES, I DO.

2 Q HOW LONG HAVE YOU KNOWN MR. MALLOY?

3 MR. SWERLING: OBJECTION, YOUR HONOR. IT'S NOT RELEVANT
4 TO ANY ISSUE IN THE CASE, IT'S NOT PROBATIVE. MAY WE
5 APPROACH THE SIDE BAR?

6 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
7 COURT REPORTER)

8 THE COURT: YOU MAY PROCEED, SOLICITOR.

9 Q HOW LONG HAVE YOU KNOW MR. MALLOY?

10 A SINCE DECEMBER OF 1988.

11 Q OKAY. DID YOU HAVE AN OCCASION TO GIVE HIM YOUR BUSINESS
12 CARD?

13 A YES, I DID.

14 Q AND WHAT, IF ANYTHING, ALONG WITH THAT CARD DID YOU ALSO GIVE
15 HIM?

16 A I HAD WRITTEN--

17 MR. SWERLING: YOUR HONOR, I AGAIN OBJECT. IT'S NOT
18 RELEVANT, IT'S NOT PROBATIVE AND IT'S JUST BEYOND WHAT WE
19 JUST DISCUSSED AT SIDE BAR HE'S ALLOWED TO ASK.

20 THE COURT: NO, NO. NO, NO. THAT'S ALREADY BEEN--I'M
21 GOING TO ALLOW THAT. GO AHEAD.

22 Q AGAIN, DID YOU HAVE OCCASION TO GIVE HIM YOUR BUSINESS CARD?

23 A YES, I DID.

24 Q WHAT, IF ANYTHING, ELSE DID YOU GIVE HIM?

25 A I WROTE THE TELEPHONE NUMBER OF MY DIGITAL BEEPER ON THE BACK

1 OF THE CAR.

2 Q OKAY. WHERE WERE YOU ON THE DATE OF DECEMBER 26TH, 1988?

3 A I WAS IN NEW YORK.

4 Q WHAT WERE YOU DOING IN NEW YORK?

5 A I WAS ON VACATION FROM WORK.

6 MR. BILTON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: ANY CROSS?

8 CROSS EXAMINATION BY

9 MR. SWERLING:

10 Q MS. MISICKA, DECEMBER 26TH WOULD HAVE BEEN THE DAY AFTER
11 CHRISTMAS?

12 A YES, SIR.

13 Q YOU WERE ON VACATION?

14 A YES.

15 Q IS THERE SOMEONE AVAILABLE AT THE FEDERAL BUREAU OF
16 INVESTIGATION TWENTY-FOUR HOURS A DAY?

17 A THERE IS A NIGHT CLERK DURING THE EVENING HOURS.

18 Q SO, AT ANY TIME WHEN SOMEONE CALLS, WHETHER IT BE NIGHT, DAY
19 OR A HOLIDAY, SOMEONE IS GOING TO ANSWER THE PHONE?

20 A THAT'S CORRECT.

21 Q AND IF THERE IS AN EMERGENCY OR IF THERE IS SOME SORT OF
22 PROBLEM, THE NIGHT CLERK CAN PUT THAT PERSON THROUGH OR HAVE
23 AN AGENT CONTACT THAT PERSON?

24 A THAT'S CORRECT. THERE ARE DUTY AGENTS.

25 Q AND HOW MANY ARE ON, LET'S SAY--I DON'T KNOW IF YOU CAN

1 SPECIFICALLY RECALL DECEMBER 26TH, BUT HOW MANY DUTY AGENTS
2 ARE THERE DURING THE WORKING HOURS, 9:00 TO 5:00? LET ME
3 ASK IT ANOTHER WAY. HOW MANY AGENTS ARE IN THE COLUMBIA
4 AREA?

5 A I BELIEVE THERE'S TWENTY-SEVEN IN THE COLUMBIA OFFICE.

6 Q TWENTY-SEVEN AGENTS IN THE COLUMBIA OFFICE. AND SO THOSE
7 TWENTY-SEVEN AGENTS, ONE OF THEM OR MAYBE SOME OF THEM ARE
8 ON VACATION LIKE YOURSELF, BUT BASICALLY THERE'S TWENTY-
9 SEVEN AGENTS THAT CAN BE CALLED?

10 A THAT'S CORRECT.

11 Q IN AN EMERGENCY SITUATION?

12 A NORMALLY.

13 Q IS THAT CORRECT? AND AFTER HOURS HOW MANY PEOPLE ARE KEPT
14 ON DUTY AS DUTY AGENTS?

15 A NOBODY REALLY DURING THE WEEK. DUTY AGENTS ARE REALLY JUST
16 ASSIGNED ON THE WEEKENDS.

17 Q AND IS THAT BECAUSE AT NIGHT DURING THE WEEK THERE ARE CASE
18 AGENTS WHO WORK AROUND THE CLOCK?

19 A NO, BUT I THINK IF SOMEBODY CALLED ABOUT A PARTICULAR CASE
20 THAT PERSON WOULD BE PUT THROUGH TO THE CASE AGENT DURING
21 THE WEEK.

22 Q OKAY. IN OTHER WORDS, THERE'S ALWAYS A WAY TO REACH AN
23 AGENT?

24 A THERE CERTAINLY SHOULD BE.

25 Q IF YOU CALLED THE FEDERAL BUREAU OF INVESTIGATION?

1 A RIGHT.

2 MR. SWERLING: THANK YOU.

3 THE COURT: REDIRECT?

4 REDIRECT EXAMINATION BY

5 MR. BILTON:

6 Q MS. MISICKA, ON THE 26TH OF DECEMBER, 1988, DO YOU KNOW HOW
7 MANY AGENTS WOULD HAVE ACTUALLY BEEN ON CALL?

8 A NO, I DON'T.

9 Q WELL, LET ME ASK YOU THEN, WOULD IT HAVE BEEN A FULL STAFF?

10 A PROBABLY NOT BASED ON THE HOLIDAY LEAVE.

11 Q OKAY. ARE YOU HAYES MALLOY CASE AGENT?

12 MR. SWERLING: OBJECTION, YOUR HONOR. NOW, THAT GOES
13 BEYOND THE SCOPE OF WHAT YOUR HONOR RULED.

14 THE COURT: THERE'S NO RELEVANCE TO THAT. I SUSTAIN THE
15 OBJECTION. WHAT'S THE RELEVANCE?

16 MR. BILTON: I'LL WITHDRAW THE QUESTION, YOUR HONOR.
17 I HAVE NO FURTHER QUESTIONS OF MS. MISICKA.

18 THE COURT: YOU MAY STEP DOWN.

19 (WITNESS TO THE SIDE)

20 THE COURT: CALL YOUR NEXT WITNESS.

21 MR. BILTON: THE STATE WOULD CALL RANDY MONDOR.

22 RANDY J. MONDOR, AFTER BEING DULY SWORN BY THE CLERK,
23 TESTIFIES AS FOLLOWS:

24 DIRECT EXAMINATION BY

25 MR. BILTON:

1 Q MR. MONDOR, WHERE ARE YOU EMPLOYED, SIR?

2 A SIR, I'M EMPLOYED WITH THE FEDERAL BUREAU OF INVESTIGATION.

3 Q ARE YOU LOCATED IN RICHLAND COUNTY?

4 A YES, SIR, I'M IN THE STROM THURMOND BUILDING HERE IN
5 COLUMBIA.

6 Q HOW LONG HAVE YOU BEEN WITH THE F.B.I.?

7 A APPROXIMATELY FOUR AND A HALF YEARS.

8 Q WERE YOU WORKING ON THE DAY OF DECEMBER 21ST, 1988?

9 A YES, SIR, I WAS.

10 MR. SWERLING: IF YOUR HONOR PLEASE, ANY TESTIMONY AS
11 TO DECEMBER 21ST, 1988, FROM THIS WITNESS WOULD BE IMPROPER
12 BOLSTERING. IT'S HEARSAY AND IT'S A VIOLATION OF THE CASE
13 LAW IN D.S.S. VS. SCHLINS, STATE VS. COOPER AND IT'S TRYING
14 TO GET IN A PRIOR CONSISTENT STATEMENT.

15 MR. BILTON: YOUR HONOR, CLEARLY IT'S NOT HEARSAY. WE
16 ARE NOT OFFERING TO PROVE THE MATTER ASSERTED BUT THE FACT
17 THAT--

18 MR. SWERLING: YOUR HONOR, CAN WE APPROACH THE SIDE BAR?

19 THE COURT: YES.

20 (MR. BILTON, MR. COLEMAN AND MR. SWERLING APPROACH THE
21 BENCH OUT OF THE PRESENCE OF THE COURT REPORTER)

22 THE COURT: YOU MAY PROCEED.

23 Q AGENT MONDOR, DID YOU HAVE AN OCCASION TO MEET WITH HAYES
24 MALLOY ON DECEMBER 21ST, 1988?

25 A YES, SIR, I DID.

1 Q WAS ANYONE WITH YOU?

2 A YES, SIR. JIM DAVIS, A FELLOW F.B.I. AGENT, WAS WITH ME.

3 Q AS A RESULT OF YOUR CONVERSATION WITH MR. MALLOY, WHAT, IF
4 ANYTHING, DID YOU DO?

5 A AFTER I SPOKE WITH HAYES MALLOY AFTER DROPPING HIM OFF, I
6 DOVE IMMEDIATELY TO RICHLAND COUNTY SHERIFF'S DEPARTMENT AND
7 I INFORMED LT. BILL BROWN OF THE INFORMATION THAT HAYES
8 MALLOY PROVIDED ME AND JIM DAVIS.

9 MR. BILTON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

10 THE COURT: CROSS EXAMINATION.

11 MR. SWERLING: EXCUSE ME ONE MINUTE, YOUR HONOR, IF I
12 COULD REVIEW A DOCUMENT. (PAUSE) NO QUESTIONS, YOUR HONOR.

13 THE COURT: NO CROSS EXAMINATION. YOU MAY STEP DOWN, MR.
14 MONDOR.

15 (WITNESS TO THE SIDE)

16 MR. BILTON: THE STATE WOULD CALL CAPTAIN BILL BROWN.

17 WILLIAM HAROLD BROWN, AFTER BEING DULY SWORN BY THE
18 CLERK, TESTIFIES AS FOLLOWS:

19 DIRECT EXAMINATION BY

20 MR. BILTON:

21 Q CAPTAIN BROWN, WHERE ARE YOU EMPLOYED, SIR?

22 A EMPLOYED AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

23 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

24 A APPROXIMATELY SEVEN YEARS, SIR.

25 Q WHAT ARE YOUR GENERAL DUTIES?

1 A AT THIS POINT, I'M IN CHARGE OF THE CRIMINAL INVESTIGATIVE
2 DIVISION WITHIN THE DEPARTMENT.

3 Q WERE YOU EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S
4 DEPARTMENT ON DECEMBER 21, 1988?

5 A YES, SIR, I WAS.

6 Q AND WHAT WERE YOUR DUTIES THEN?

7 A AT THAT POINT I WAS A LIEUTENANT WITHIN THE INVESTIGATIVE
8 DIVISION AS WELL.

9 Q DO YOU RECALL A MEETING WITH AGENT RANDY MONDOR?

10 A YES, SIR, I DO.

11 Q AND AS A RESULT OF THAT MEETING, DID HE--

12 MR. SWERLING: OBJECTION, YOUR HONOR. I THOUGHT YOUR
13 HONOR WAS PRETTY CLEAR ABOUT WHAT HE--

14 MR. BILTON: I'LL REPHRASE THE QUESTION, YOUR HONOR.

15 Q DID YOU RECEIVE ANY INFORMATION FROM AGENT MONDOR?

16 MR. SWERLING: OBJECTION, YOUR HONOR. THAT WAS AGAIN
17 BEYOND WHAT YOUR HONOR HAS ALLOWED AT SIDE BAR FOR THE
18 SOLICITOR TO ASK.

19 THE COURT: WELL, THAT WAS NOT RAISED AT THE SIDE BAR.
20 GO AHEAD AND RESPOND. I'M GOING TO ALLOW THE QUESTION. NOT
21 WHAT THE INFORMATION WAS BUT DID HE RECEIVE INFORMATION.

22 Q DID YOU RECEIVE ANY INFORMATION FROM AGENT MONDOR ON THAT
23 DAY?

24 A SIR, I CAN INDICATE THAT WE DID HAVE A MEETING; HOWEVER, I
25 CANNOT CONFIRM TO YOU EXACTLY THAT THE DATE WAS DECEMBER THE

1 21ST OF 1988. I DO NOT HAVE THAT PARTICULAR DATE DOCUMENTED.

2 MR. BILTON: MAY WE APPROACH THE BENCH, YOUR HONOR?

3 THE COURT: YES, SIR.

4 (MR. BILTON AND MR. SWERLING APPROACH THE BENCH OUT OF
5 THE PRESENCE OF THE COURT REPORTER)

6 Q CAPTAIN BROWN, DO YOU RECALL THE DATE DONALD SUTTON WAS
7 KILLED?

8 A YES, SIR, THAT WAS ON OR ABOUT DECEMBER THE 26TH OF 1988.

9 Q AND DID YOU GO TO THE CRIME SCENE?

10 A YES, SIR, I DID.

11 Q YOUR MEETING WITH RANDY MONDOR, WAS THAT PRIOR TO--

12 MR. SWERLING: OBJECTION. HE'S LEADING.

13 Q DID YOU MEET WITH RANDY MONDOR PRIOR TO THE DEATH OF--

14 MR. SWERLING: HE'S LEADING HIS WITNESS.

15 THE COURT: LET ME HEAR THE FULL QUESTION. STATE YOUR
16 FULL QUESTION.

17 Q YOU JUST TESTIFIED THAT THE DATE--THAT DECEMBER 26TH WAS THE
18 DEATH OF DONALD SUTTON?

19 A YES, SIR.

20 Q WHEN DID YOU MEET WITH RANDY MONDOR?

21 A PRIOR TO THAT DATE.

22 MR. BILTON: NO FURTHER QUESTIONS.

23 MR. SWERLING: NO QUESTIONS.

24 THE COURT: YOU MAY STEP DOWN.

25 (WITNESS TO THE SIDE)

1 MR. BILTON: THE STATE WOULD CALL LT. JOHN EDWARDS.
2 JOHN EDWARDS, AFTER BEING DULY AFFIRMED BY THE CLERK,
3 TESTIFIES AS FOLLOWS:
4 DIRECT EXAMINATION BY
5 MR. BILTON:
6 Q LT. EDWARDS, WHERE ARE YOU EMPLOYED?
7 A WITH RICHLAND COUNTY SHERIFF'S DEPARTMENT.
8 Q AND HOW LONG HAVE YOU BEEN WITH THE RICHLAND COUNTY SHERIFF'S
9 DEPARTMENT?
10 A ABOUT FOURTEEN YEARS.
11 Q WHAT ARE YOUR GENERAL RESPONSIBILITIES?
12 A NOW, I'M A LIEUTENANT OVER INVESTIGATION, SUPERVISE THE
13 INVESTIGATION DIVISION.
14 Q DID YOU INVESTIGATE THE DEATH OF DONALD SUTTON?
15 A YES, I WAS A PART OF THAT INVESTIGATION.
16 Q AND AS A RESULT OF THAT INVESTIGATION, DID YOU HAVE AN
17 OPPORTUNITY TO QUESTION THE DEFENDANT IN THIS CASE, RONALD
18 TILLMAN?
19 A YES, I DID.
20 Q I SHOW YOU THIS AND ASK YOU IF YOU CAN IDENTIFY THIS, PLEASE,
21 SIR?
22 A YES, I CAN.
23 Q WHAT IS THAT?
24 A THIS IS ADVICE OF RIGHTS FORM. OUR STANDARD FORM THAT WE USE
25 AT THE SHERIFF DEPARTMENT.

1 Q WAS RONALD TILLMAN CHARGED IN THIS CASE?

2 A YES, HE WAS.

3 Q AND DID YOU TAKE ANY STATEMENTS FROM HIM?

4 A YES, I DID.

5 Q WERE THOSE STATEMENTS TAKEN PRIOR TO OR AFTER HIS BEING
6 CHARGED?

7 A THIS STATEMENT WAS TAKEN AFTER HE HAD BEEN CHARGED

8 Q OKAY. WHAT WAS HE CHARGED WITH?

9 A MURDER.

10 Q YOU HAVE IN YOUR HAND ADVICE OF RIGHTS FORM. WHAT IS THE
11 DATE ON THAT FORM?

12 A JANUARY THE 4TH OF '89, AND THE TIME WAS 1545 HOURS WHICH
13 MEANS 3:45 P.M.

14 Q IN THE AFTERNOON?

15 A IN THE AFTERNOON.

16 Q DID YOU READ RONALD TILLMAN HIS RIGHTS?

17 A YES, I DID.

18 Q AND WOULD YOU TELL THE JURY WHAT THOSE RIGHTS ARE THAT YOU
19 READ TO HIM?

20 A YES. HIS RIGHTS ARE--YOU SEE, I HAVE THE CHECK MARKS HERE
21 TO THE LEFT OF THE PAGE WHICH MEAN THAT EACH ONE OF THE
22 RIGHTS I READ AND I READ THEM AS FOLLOWS. I STATED TO RONALD
23 TILLMAN ON JANUARY 4TH, '89, I SAID I MUST ADVISE YOU OF YOUR
24 RIGHTS. I SAID BEFORE WE ASKS YOU ANY QUESTIONS YOU MUST
25 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT.

1 ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE
2 A RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASKS YOU ANY
3 QUESTIONS AND TO HAVE A LAWYER WITH YOU DURING ANY QUESTIONS.
4 IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU
5 BEFORE ANY QUESTIONS IF YOU WISH. IF YOU DECIDE TO ANSWER
6 QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE
7 THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. YOU ALSO
8 HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME UNTIL
9 YOU TALK TO A LAWYER. AND I ASKED HIM DID HE UNDERSTAND IT
10 AND HE SAID YES. AND HE SIGNED HIS SIGNATURE HERE.
11 Q DID HE SIGN IT?
12 A YES, HE DID.
13 Q LET ME ASK YOU, DID YOU HAVE AN OPPORTUNITY TO OBSERVE HIM
14 BEFORE HE GAVE THIS STATEMENT?
15 A YES, I DID.
16 Q DID HE APPEAR INTOXICATED?
17 A HE DID NOT APPEAR INTOXICATED.
18 Q OKAY.
19 A HE SEEMED THAT HE WAS WELL AWARE OF WHAT WAS GOING ON.
20 Q DID YOU THREATEN HIM IN ANY WAY TO GIVE YOU A STATEMENT?
21 A NO, I DID NOT.
22 Q DID YOU COERCE HIM IN ANY WAY TO GIVE YOU A STATEMENT?
23 A I DID NOT.
24 Q DID YOU TELL HIM THAT IF HE GAVE YOU A STATEMENT THE
25 GOVERNMENT WOULD DO SOMETHING FOR HIM?

1 A I DID NOT.

2 MR. SWERLING: YOUR HONOR, I'D JUST ASK HIM TO ASK HIM
3 WHAT HE TOLD HIM, NOT LEAD HIM.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 Q WERE ANY DEALS ELICITED?

6 A NO, SIR.

7 Q DID YOU ADVISE HIM OF WAIVER OF RIGHTS?

8 A YES, I DID.

9 Q WOULD YOU PLEASE TELL THE JURY WHAT THAT IS?

10 A I READ THE WAIVER OF RIGHTS FORM TO RONALD TILLMAN. I
11 CHECKED IT AS I WAS READING IT TO HIM. YOU SEE THE CHECK
12 MARK HERE. I HAVE READ THIS STATEMENT OF MY RIGHTS AND I
13 UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO TALK AND
14 ANSWER QUESTIONS. I UNDERSTAND AND KNOW WHAT I AM DOING. NO
15 PROMISE HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF
16 ANY KIND USED AGAINST ME. AND I ASKED HIM DID HE UNDERSTAND
17 IT AND HE SAY HE DID. AND HE SIGNED HIS NAME HERE. AND
18 AFTER READING THE WHOLE ADVICE OF RIGHTS FORM I SIGNED
19 WITNESSED IT IN BOTH PLACES HERE AND ALSO MARK AUSTIN WITNESS
20 IT.

21 Q WHO WAS PRESENT WITH YOU?

22 A MARK AUSTIN. EXCUSE ME.

23 Q DID MR. TILLMAN GIVE YOU A STATEMENT?

24 A YES, HE DID.

25 Q I SHOW YOU STATE'S EXHIBIT AND ASK IF YOU CAN IDENTIFY THIS?

1 A YES, I CAN.

2 Q WHAT IS IT?

3 A THIS IS A STATEMENT THAT RONALD TILLMAN HAD GIVEN TO ME ON
4 JANUARY THE 4TH AT 1620 HOURS.

5 Q WHAT TIME WOULD THAT BE?

6 A THAT WOULD BE 4:20 P.M. IN THE AFTERNOON. INVESTIGATOR
7 AUSTIN WAS PRESENT AND RONALD TILLMAN AND MYSELF.

8 Q DID MR. TILLMAN SIGN THIS STATEMENT?

9 A YES, HE DID.

10 MR. BILTON: YOUR HONOR, AT THIS TIME I WOULD ASK TO BE
11 ALLOWED TO PUBLISH THE STATEMENT?

12 THE COURT: HAS THE STATEMENT BEEN MARKED?

13 MR. BILTON: YES, THEY WERE MARKED EARLIER.

14 THE COURT: JUST TELL ME IF THEY'VE BEEN MARKED?

15 MR. BILTON: YES, SIR.

16 MR. SWERLING: I DON'T THINK THEY'VE BEEN ADMITTED FOR
17 THE PURPOSE--

18 THE COURT: ARE YOU OFFERING THE ADVICE OF RIGHTS FORM?

19 MR. BILTON: YES, SIR, YOUR HONOR, AT THIS TIME.

20 MR. SWERLING: I JUST WANTED TO MAKE SURE IT WAS
21 REDACTED.

22 THE COURT: ANY OBJECTION?

23 MR. SWERLING: NO, SIR.

24 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
25 OBJECTION THE EXHIBIT WHICH HAS BEEN DESIGNATED STATE'S

1 EXHIBIT NUMBER--HAND IT TO THE COURT REPORTER.

2 (ADVICE OF RIGHTS IS RECEIVED INTO EVIDENCE AS STATE'S
3 EXHIBIT #20)

4 THE COURT: STATE'S EXHIBIT NUMBER 20. IT'S A ONE PAGE
5 EXHIBIT ENTITLED ADVICE OF RIGHTS, 1-4-89, RONALD S. TILLMAN.
6 NOW IN THE RECORD OF THIS CASE WITHOUT OBJECTION. ALSO, AN
7 EXHIBIT DESIGNATED STATE'S EXHIBIT NUMBER 18, A NINE PAGE
8 EXHIBIT, LEGAL SIZE, ENTITLED STATEMENT OF RONALD S. TILLMAN,
9 DATED JANUARY 4TH, 1988. ACTUALLY IT'S '89. JANUARY 4TH,
10 1989. EACH OF THESE ARE NOW IN THE RECORD OF THIS CASE
11 WITHOUT OBJECTION. YOU MAY PUBLISH IT TO THE JURY EITHER BY
12 THE WITNESS READING IT OR GIVING IT TO THE JURY TO READ.

13 MR. BILTON: THANK YOU.

14 Q LT. EDWARDS, IF YOU WOULD, PUBLISH THE STATEMENT.

15 A HE SAY I WORK AT MY DADDY'S SHOP ON--EXCUSE ME. HE SAY I
16 WORK AT MY DADDY'S SHOP OR STORE AT 1746 SHOP ROAD. I WORK
17 THERE SIX DAYS A WEEK. DONALD SUTTON CALLED ME AROUND 3:00
18 P.M. OR 4:00. HE SAID DONALD STATED HE WOULD BE DOWN AND HE
19 WOULD GIVE--HE GAVE ME NO TIME. ABOUT 5:45 OR 6:00 P.M.
20 DONALD ARRIVE. A DEPUTY SHERIFF AND ME WAS TALKING ABOUT MY
21 ALARM GOING OFF. I GOT INTO AN ARGUMENT WITH THE DEPUTY.
22 DONALD CAME UP AND SAID TO COOL IT. HE SORT OF STEP BETWEEN
23 US. I TOLD THE OFFICER ABOUT TAKING MY TAG NUMBER DOWN ON
24 MY CAR. HE SAID SOMETHING ABOUT TAKING ME DOWNTOWN AND I
25 TOLD HIM HE COULDN'T TAKE ME DOWNTOWN. DONALD ALSO TOLD THE

1 OFFICER HE COULDN'T TAKE ME DOWNTOWN. THE OFFICER WOULDN'T
2 TELL ME WHY HE TOOK MY TAG NUMBER. I TOLD THE OFFICER THAT
3 HE DIDN'T NEED TO KNOW WHY MY ALARM GOING OFF AND I DIDN'T
4 WANT TO TALK WITH HIM ANY LONGER. AFTER THE CONVERSATION,
5 DONALD AND I WENT INTO THE LIQUOR STORE. DONALD AND ME WAS
6 TALKING ABOUT WHAT HAD HAPPEN. I STARTED COUNTING THE MONEY
7 IN THE CASH REGISTER. DONALD THEN ASKED ME FOR SOME GAS
8 MONEY. I GAVE DONALD FIVE DOLLARS FOR GAS, AND I GOT IN
9 PARENTHESIS ONE BILL. DONALD TOLD ME HE HAD TO LEAVE BUT
10 WILL BE BACK 7:00 P.M. DONALD WENT IN THE DIRECTION OF
11 WASHINGTON PARK. DONALD WAS ALONE IN THE VEHICLE. THIS WAS
12 AROUND 6:00 OR 6:15 P.M. I WAS STILL AT THE STORE. MOLLY
13 HAYES CALL AROUND 6:45 P.M. THIS WAS THE SECOND CALL FROM
14 MOLLY. MOLLY WANTED ME TO TAKE HER AND OTHER FAMILY MEMBERS
15 TO THE FOUNTAIN BLEAU. MOLLY WANTED TO HEAR HER DAUGHTER
16 SING IN THE TALENT SHOW. I AGREED TO DO THIS FOR MOLLY AND
17 IT WOULD BE AROUND 10:30 P.M. LAVETTE CALLED AFTER MOLLY
18 AROUND 6:55 P.M. AND TOLD ME SHE WOULD BE IN MEADOW LAKES AT
19 HER COUSIN HOUSE. LAVETTE WANTED US TO SEE EACH OTHER. I
20 TOLD LAVETTE TO CALL ME AT 7:20 P.M. AT MY MOTHER HOUSE.
21 DONALD CALLED ME AROUND 7:01 P.M. I SAID THAT HIM AND VITO
22 WAS ON THEIR WAY. I TOLD HIM JUST TO WAIT BECAUSE I HAD
23 SOMETHING TO DO. I ASKED WHERE HE WAS AND HE SAID
24 BRIDGETTE'S HOUSE. I LEFT THE STORE AND WENT STRAIGHT HOME.
25 I GOT THERE ABOUT 7:25 P.M. I ASKED MY MOTHER HAD LAVETTE

1 CALLED ME. MY MOTHER SAID NO. I WAS SITTING WAITING FOR
2 LAVETTE CALL AND DARLENE HAYES CALL. DARLENE SAID NOT TO
3 COME AND PICK UP HER MOTHER, AND I GOT IN PARENTHESIS MOLLY
4 AND HER. DARLENE SAY THAT SHE WASN'T GOING TO SING BECAUSE
5 HER MOTHER WASN'T RIGHT AND DIDN'T WANT PEOPLE SEEING HER
6 TOOTH MISSING. I SAID OKAY. I THEN CALLED VITO AND
7 BRIDGETTE AROUND 7:45. I ASK VITO WHERE WAS "DUCK," AND I
8 GOT IN PARENTHESIS "DUCK" AS BEING DONALD SUTTON. AND HE
9 SAID THAT "DUCK" WOULD BE BACK WITHIN THE HOUR. I TOLD VITO
10 THAT I WOULD BE OVER AS SOON AS LAVETTE CALL ME. I WAITED
11 AROUND 8:20 P.M. AND DIDN'T GET THE CALL. I CALLED VITO BACK
12 AND I TOLD HIM I'M ON MY WAY. I TOLD MY MOTHER TO TELL
13 LAVETTE I WAITED AS LONG AS I COULD. I WENT STRAIGHT TO VITO
14 GIRL FRIEND HOUSE IN WASHINGTON CARVER VILLAGE. A YOUNG LADY
15 BY THE NAME OF LISA ANSWERED THE DOOR. VITO AND BRIDGETTE
16 WAS IN THE BACK ROOM. I WENT INTO THE BEDROOM--EXCUSE ME,
17 IT SHOULD BE BACK IN THE BEDROOM. I WENT INTO THE BEDROOM
18 AND WE TALKED FOR A WHILE AND ASKED HAD "DUCK" CALLED. VITO
19 TOLD ME NO AND SAID "DUCK" CHASING SOME GIRL. I ASKED VITO
20 TO GO WITH ME TO THE SHOP ON SHOP ROAD. VITO AGREED TO GO
21 WITH ME. BRIDGETTE ASKED US TO BRING CANDY AND TWO SAUSAGE
22 BACK. LISA WANTED SOME BOONE FARM WINE AND I TOLD HER WHITE
23 PEOPLE DRINK THAT SHIT. I TOLD LISA I'LL BRING HER A SODA,
24 AND IN PARENTHESIS I GOT PEPSI, BECAUSE I KNEW I DIDN'T HAVE
25 THE WINE. VITO AND I LEFT WASHINGTON CARVER VILLAGE AND WENT

1 IN THE DIRECTION OF FARROW ROAD TO BULL, U.S.C. CAMPUS, THE
2 WAY DOWN ON ROSEWOOD DRIVE THEN TO SHOP ROAD. VITO AND I
3 ARRIVE AT THE STORE AROUND 8:45 OR 9:00 P.M. I CHECKED
4 AROUND THE STORE FIRST. VITO STAYED INSIDE NEAR THE COUNTER.
5 I WENT BACK UP FRONT AND CALLED MY MOTHER AND ASKED IF
6 LAVETTE HAD CALLED. MY MOTHER SAID SHE CALL RIGHT AFTER I
7 HAD LEFT. I WENT NEXT DOOR TO THE LIQUOR STORE AND MY FATHER
8 WAS WATCHING T.V. I SPOKE TO MY FATHER AND LEFT OUT AND WENT
9 BACK TO THE PARTY SHOP. I THEN TOLD VITO TO GET BRIDGETTE
10 STUFF. VITO WANTED TO USE THE TELEPHONE TO CALL BRIDGETTE
11 TO SEE IF "DUCK" HAD MADE IT BACK. VITO THEN CALLED A GIRL
12 DOWN THE STREET. WHEN VITO HUNG UP THE TELEPHONE, HE TOLD
13 ME THE GIRL WAS COMING TO MEET HIM AT THE SHOP. VITO AND ME
14 DECIDED TO WAIT AND ALSO I ASKED ARTHUR HAD "DUCK" CAME DOWN
15 OR CALLED. ARTHUR TOLD ME NO. WE WAITED AROUND TEN MINUTES
16 AND WENT OUTSIDE. A COUPLE OF MINUTES LATER OUTSIDE TALKING
17 WITH SOME PEOPLE ABOUT HIS SWEATSUIT. VITO DECIDED TO CALL
18 THE GIRL BACK. WHEN VITO GOT OFF THE TELEPHONE, WE LEFT THE
19 STORE. WE WENT STRAIGHT BACK TO BRIDGETTE HOUSE. WE ARRIVE
20 AROUND 7:20 P.M. AT BRIDGETTE HOUSE. AT BRIDGETTE HOUSE WE
21 HAD FORGOTTEN THE SODA, CHIPS AND SAUSAGE. VITO AND ME
22 DECIDE TO GO OUT AGAIN TO THE TEXACO STATION ON FARROW ROAD
23 TO GET THE STUFF. WE DECIDED TO GO BY FOUNTAIN BLEAU TO GET
24 OUR HAND STAMPED. AT THE FOUNTAIN BLEAU I GOT MY HAND
25 STAMPED BUT VITO COULDN'T 'CAUSE HE HAD NO I.D. VITO AND ME

1 LEFT AND RETURN TO BRIDGETTE HOUSE. WE TOOK THE STUFF IN AND
2 GAVE IT TO BRIDGETTE AND LISA. VITO TOLD BRIDGETTE SOME TYPE
3 OF STORY THAT--EXCUSE ME. VITO TOLD BRIDGETTE SOME TYPE OF
4 STORY THAT DONALD CAR WAS BROKEN DOWN AND WE NEEDED TO HELP.
5 VITO AND ME WENT BACK TO THE FOUNTAIN BLEAU. THIS WAS AROUND
6 10:45 P.M. I STAYED AT THE CLUB UNTIL 1:30 A.M. I ASKED
7 VITO WAS HE READY TO GO. VITO SAID THAT SOME GIRL COULD TAKE
8 HIM HOME. I LEFT AND MET DEAN IN THE PARKING LOT AT THE GAS
9 STATION ACROSS THE STREET. WE TALKED FOR A WHILE AND THE GUY
10 FELL OUT INSIDE OF THE STORE AT THE GAS STATION. THE
11 AMBULANCE AND THE SHERIFF WAS AT THE SCENE. I WENT INSIDE THE
12 STORE AND TOLD THE GUY WORKING INSIDE ONE OF THOSE SLIP
13 ROUTINE AGAIN. I TOLD THE GUY TO GIVE THE MAN A CASE OF BEER
14 AND HE WOULD BE ALL RIGHT. I THEN TOLD DEAN AFTER BUYING THE
15 CANDY I WOULD CATCH UP WITH HIM LATER. I WENT HOME AND GOT
16 THERE AROUND 2:00 A.M. AND I ASKED HIM QUESTION, DID YOU
17 SHOOT DONALD SUTTON? ANSWER: NO, I DIDN'T. AND DIDN'T GO
18 WITH ANYONE TO SHOOT HIM. I ASKED HIM ANOTHER QUESTION. I
19 SAID, QUESTION, DID YOU OFFER ANYONE ANY MONEY TO SHOOT
20 DONALD SUTTON? ANSWER: NO, I DID NOT. END OF STATEMENT.
21 Q INVESTIGATOR EDWARDS, YOU REFERRED TO DONALD AS "DUCK"?
22 A YES.
23 Q IS THAT SOMETHING MR. TILLMAN RELATED TO YOU?
24 A THAT'S CORRECT.
25 Q AND THERE WAS ONE PART AT THE VERY END OF THE SENTENCE THAT

1 SAID VITO TOLD BRIDGETTE SOME TYPE OF STORY THAT DONALD'S CAR
2 WAS BROKEN DOWN?

3 A THAT'S CORRECT.

4 Q AND THAT WE NEEDED TO HELP. AS I UNDERSTAND THE STATEMENT-

5 -

6 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO WHAT THE
7 SOLICITOR'S UNDERSTANDING WAS OF THE STATEMENT.

8 THE COURT: I SUSTAIN THE OBJECTION.

9 Q IS THAT WHAT MR. TILLMAN TOLD YOU?

10 A THAT'S CORRECT.

11 Q AND WHEN ASKED THE QUESTION DID YOU SHOOT DONALD SUTTON, WHAT
12 WAS HIS ANSWER?

13 A NO, I DIDN'T AND I DIDN'T GO WITH ANYONE TO SHOOT HIM.

14 Q WHAT DATE WAS THIS STATEMENT TAKEN ON?

15 A THIS WAS JANUARY THE 4TH. THE YEAR JUST CHANGED. IT SHOULD
16 HAVE BEEN '89 BUT I THINK I GOT '88 ON THE TOP OF IT. IT
17 SHOULD HAVE BEEN '89 BUT THE YEAR JUST HAD CHANGED.

18 Q AND WHAT DATE WAS THE MURDER?

19 A I'D HAVE TO LOOK, I CAN'T REMEMBER THE EXACT DATE BUT IT WAS
20 IN '88.

21 MR. BILTON: OKAY. NO FURTHER QUESTIONS.

22 THE COURT: CROSS EXAMINATION, COUNSEL.

23 MR. SWERLING: YES, SIR.

24 CROSS EXAMINATION BY

25 MR. SWERLING:

1 Q MR. EDWARDS, AT THAT TIME, OF COURSE, YOU HAD SPOKEN TO MR.
2 HAYES MALLOY ON THE 3RD BEFORE YOU TOOK MR. TILLMAN'S
3 STATEMENT, IS THAT CORRECT?

4 A IF MY MEMORY SERVES ME RIGHT, THAT'S CORRECT.

5 Q AND MR. MALLOY HAD TOLD YOU THAT HE ACCOMPANIED MR. TILLMAN
6 ALONG WITH THE SHOOTING?

7 A THAT'S CORRECT.

8 Q AND THAT RESPONSE BY MR. TILLMAN WAS AFTER YOU FOUND OUT
9 INFORMATION FROM MR. MALLOY THAT HE ACCOMPANIED HIM?

10 A WHAT RESPONSE? YOU TALKING ABOUT THE STATEMENT? THIS IS HIS
11 STATEMENT.

12 Q THE STATEMENT THAT I DIDN'T SHOOT ANYONE AND I DIDN'T GO
13 ALONG WITH ANYONE WHO DID.

14 A THIS IS WHAT HE SAID.

15 Q RIGHT. BUT THAT WAS BECAUSE MALLOY HAD ALREADY TOLD YOU THAT
16 HE HAD ACCOMPANIED TILLMAN?

17 MR. BILTON: OBJECTION, YOUR HONOR.

18 Q ISN'T THAT TRUE?

19 MR. BILTON: HE CAN'T ANSWER AS TO WHY HE SAID IT. ALL
20 HE CAN TESTIFY IS WHAT HE SAID.

21 THE COURT: I SUSTAIN THAT. WHY WOULD THAT BE
22 APPROPRIATE, COUNSEL?

23 MR. SWERLING: MAYBE I MIXED MY WORDS.

24 Q YOU HAD TALKED TO MALLOY THAT DAY?

25 A I THINK I TALKED TO HIM ON THE 3RD. I CAN'T REMEMBER WHETHER

1 IT WAS THE 4TH OR NOT BUT I TALKED TO HIM EITHER THE 3RD OR
2 THE 4TH.

3 Q THE DAY BEFORE. AND HAD CHARGED HIM WITH MURDER? HE WAS
4 CHARGED WITH MURDER, TOO?

5 A YES, HE WAS CHARGED WITH EITHER MURDER OR--I HAVEN'T LOOKED
6 AT THE FILE BUT HE WAS CHARGED, I KNOW THAT.

7 Q BUT MALLOY TOLD YOU ON THE 3RD THAT HE ACCOMPANIED TILLMAN
8 ON THE 26TH TO KILL SUTTON?

9 A YES, HE DID. HE TOLD US HE HAD ACCOMPANY TILLMAN. YES, HE
10 DID.

11 Q WHEN YOU TALKED TO TILLMAN ON THE 4TH WHEN YOU TOOK HIS
12 STATEMENT FROM HIM, YOU TOLD HIM WHAT HE WAS BEING
13 INVESTIGATED FOR, DIDN'T YOU?

14 A YES, I DID.

15 Q YOU TOLD HIM WHAT HE WAS BEING CHARGED WITH?

16 A YES, HE KNEW IT. WE SERVED A WARRANT ON HIM FOR MURDER.

17 Q AND YOU TOLD HIM THAT HE WAS BEING ACCUSED OF GOING ALONG,
18 TAKING HAYES MALLOY ALONG WITH HIM AND SHOOTING DONALD
19 SUTTON?

20 A THAT'S INCORRECT.

21 Q WHAT'S INCORRECT?

22 A YOUR STATEMENT THAT YOU JUST MADE.

23 Q WHAT'S INCORRECT ABOUT IT?

24 A I DID NOT TELL HIM THAT HE HAD ACCOMPANY--WE HAD SEVERAL
25 CONVERSATIONS. I CAN LOOK AT MY NOTES, MY FOLLOW-UP AND I

1 CAN JUST ABOUT TELL YOU WHAT THE CONVERSATION WAS.

2 Q I THINK I CAN MAKE IT A LITTLE SIMPLER. WHEN YOU SPOKE WITH
3 MR. TILLMAN, HE HAD BEEN SERVED WITH A WARRANT?

4 A THAT'S CORRECT.

5 Q IS THAT THE WARRANT?

6 A YES.

7 MR. SWERLING: YOUR HONOR, I'D LIKE TO OFFER THIS INTO
8 EVIDENCE.

9 MR. BILTON: YOUR HONOR, I WOULD OBJECT TO IT.

10 MR. SWERLING: YOUR HONOR, IT'S HIS WARRANT. IT'S MR.
11 TILLMAN'S WARRANT.

12 THE COURT: GIVE HIM A CHANCE TO SAY WHY HE OBJECTS.
13 WHAT'S THE OBJECTION? LET ME SEE IT.

14 MR. BILTON: YOUR HONOR, IT'S HEARSAY AND IT'S NOT A
15 CERTIFIED COPY.

16 MR. SWERLING: I WILL GET IT CERTIFIED. IF YOU WANT ME
17 TO GET A CERTIFIED COPY, I'LL GET A CERTIFIED COPY IF YOU
18 CONTEST THAT IT NOT IT.

19 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
20 COURT REPORTER)

21 THE COURT: YOU ARE GOING TO GET AN ORIGINAL COPY?

22 MR. BILTON: YES.

23 MR. SWERLING: YOUR HONOR, AS I UNDERSTAND IT, THE
24 SOLICITOR IS REQUIRING A CERTIFIED COPY. YOUR HONOR, I'VE
25 GOT BETTER THAN A CERTIFIED COPY, I'VE GOT THE ORIGINAL. I.

1 WILL OFFER IT IN EVIDENCE.

2 THE COURT: HAND IT TO COUNSEL. ASK HIM FIRST IF THAT'S
3 THE ONE AND THEN SHOW IT TO COUNSEL.

4 MR. BILTON: NO PROBLEM.

5 MR. SWERLING: THANK YOU.

6 THE COURT: HAVE THE COURT REPORTER MARK IT AND HAND IT
7 TO THE COURT.

8 (ARREST WARRANT IS RECEIVED INTO EVIDENCE AS DEFENDANT'S
9 EXHIBIT #4)

10 Q MR. EDWARDS, WOULD YOU PUBLISH--

11 THE COURT: JUST A MINUTE. JUST A MINUTE.

12 MR. SWERLING: I'M SORRY, YOUR HONOR.

13 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
14 OBJECTION EXHIBIT WHICH HAS BEEN DESIGNATED DEFENDANT'S
15 EXHIBIT NUMBER 4, A ONE PAGE EXHIBIT FRONT ONLY, YELLOW IN
16 COLOR. IT IS THE STANDARD ARREST WARRANT FORM. IT IS DATED
17 THE 4TH DAY OF JANUARY, 1989. IT IS A WARRANT CHARGING
18 MURDER AGAINST RONALD STANFORD TILLMAN. NOW IN THE RECORD
19 OF THIS CASE WITHOUT OBJECTION. YOU MAY PUBLISH IT.

20 Q MR. EDWARDS, WOULD YOU READ TO THE JURY WHAT WARRANT WAS
21 SERVED ON RONALD TILLMAN BEFORE HE GAVE YOU THAT STATEMENT?

22 A OKAY. THE DESCRIPTION OFFENSE IS MURDER, 16-3-20. IT
23 FURTHER STATES THEY HAVE PROBABLE CAUSE TO BELIEVE THAT THE
24 DEFENDANT NAMED ABOVE DID COMMIT THE CRIME SET FORTH AND THAT
25 PROBABLE CAUSE IS BASED ON THE FOLLOWING FACTS. THAT ON

1 DECEMBER 26TH, 1988, RONALD TILLMAN AND A CO-DEFENDANT DID
2 SHOOT ONE DONALD I. SUTTON WITH MALICE AFORETHOUGHT WITH A
3 PISTOL CAUSING THE DEATH OF DONALD I. SUTTON. THE INCIDENT
4 DID TAKE PLACE AT IN THE OLYMPIA DISTRICT
5 OF RICHLAND COUNTY. A CO-DEFENDANT HAS GIVEN A SWORN
6 STATEMENT TO THE CRIME. THE WARRANT IS SIGNED BY MARK AUSTIN
7 AND JUDGE TOKUNAGA.

8 Q SO, YOU TOLD MR. TILLMAN THROUGH THIS WARRANT THAT HE'S BEEN
9 ACCUSED ALONG WITH A CO-DEFENDANT OF KILLING DONALD SUTTON,
10 ISN'T THAT TRUE?

11 A THAT'S CORRECT.

12 Q AND HIS ANSWER TO YOU WAS I DIDN'T SHOOT HIM AND I DIDN'T GO
13 ALONG WITH ANYBODY ELSE WHO DID?

14 A HIS ANSWER WAS: NO, I DIDN'T AND I DIDN'T GO WITH ANYONE TO
15 SHOOT HIM. THAT WAS HIS ANSWER.

16 Q THAT'S CORRECT. NOW, WHEN YOU GAVE THAT STATEMENT OR WHEN MR.
17 TILLMAN GAVE YOU THAT STATEMENT HE HAD BEEN SERVED WITH THE
18 WARRANT?

19 A THAT'S CORRECT.

20 Q AND YOU HAD ADVISED HIM OF HIS RIGHTS, HAD YOU NOT?

21 A YES, SIR.

22 Q YOU TOLD HIM THAT HE HAD THE RIGHT TO REMAIN SILENT. HE
23 DIDN'T HAVE TO TALK WITH YOU. YOU TOLD HIM THAT, RIGHT?

24 A THAT'S CORRECT.

25 Q YOU TOLD HIM THAT HE COULD REMAIN SILENT AND THAT ANYTHING

1 HE SAID COULD BE USED AGAINST HIM IN COURT?

2 A THAT'S CORRECT.

3 Q OKAY. YOU TOLD HIM HE HAD A RIGHT TO TALK TO A LAWYER FOR

4 ADVICE BEFORE YOU ASKED HIM ANY QUESTIONS AND TO HAVE A

5 LAWYER PRESENT WITH HIM DURING ANY QUESTIONING.

6 A THAT'S CORRECT.

7 Q DID YOU TELL HIM THAT?

8 A YES, SIR.

9 Q DID HE WANT TO REMAIN SILENT?

10 A HE SIGNED A WAIVER AND SAID HE WANTED TO TALK ABOUT IT.

11 Q I DIDN'T ASK YOU THAT. I ASKED YOU DID HE WANT TO REMAIN

12 SILENT?

13 A AT THAT POINT, I ASKED HIM--

14 Q DID HE WANT TO REMAIN SILENT IS THE QUESTION. YES OR NO?

15 A WELL, YOU HAVE TO--WHAT YOU ASKED ME IS IN PART OF A

16 QUESTION. THAT'S A STANDARD FORM. THE WAIVER OF RIGHT GAVE

17 HIM THE RIGHT NOT TO REMAIN SILENT IF HE WANTED TO GO AHEAD

18 AND TALK AND AFTER THE WAIVER OF RIGHT HE SAY HE WANTED TO

19 GO AHEAD.

20 Q THE QUESTION I ASKED IS DID HE REMAIL SILENT OR DID HE TALK

21 TO YOU?

22 A BUT SEE YOU ASKING ME A PART OF A QUESTION AND IT SHOULD BE

23 COMPLETE QUESTION.

24 Q DID HE REMAIN SILENT OR DID HE TALK TO YOU?

25 A NO, HE DID NOT REMAIN SILENT.

1 Q HE TALKED TO YOU?

2 A YES, HE DID.

3 Q DID HE ASK FOR A LAWYER BEFORE YOU QUESTIONED HIM?

4 A NO, HE DID NOT ASK FOR A LAWYER.

5 Q SO, HE WAIVED HIS RIGHT TO HAVE A LAWYER PRESENT?

6 A THAT'S CORRECT.

7 Q AND YOU TOLD HIM IF HE COULDN'T AFFORD A LAWYER YOU'D GO

8 AHEAD AND HELP HIM GET ONE?

9 A NOT IN THAT EXACT TONE, NO.

10 Q WHAT DID YOU SAY? IF YOU CAN'T AFFORD A LAWYER, ONE WILL BE

11 APPOINTED FOR YOU BEFORE ANY QUESTIONING?

12 A THAT'S CORRECT.

13 Q DID HE SAY HE COULDN'T AFFORD A LAWYER AND WANTED YOU TO GO

14 GET HIM ONE?

15 A HE DID NOT SAY. I READ HIM HIS RIGHTS AND HE GAVE ME THE

16 AFFIRMATIVE THAT HE UNDERSTOOD IT.

17 Q HE UNDERSTOOD HIS RIGHTS BUT HE DIDN'T ASK FOR A LAWYER?

18 A NO, HE DID NOT.

19 Q YOU TOLD HIM IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT

20 A LAWYER PRESENT YOU STILL HAVE THE RIGHT TO STOP ANSWERING

21 ANY QUESTIONS AT ANY TIME; YOU ALSO HAVE THE RIGHT TO STOP

22 ANSWERING ANY TIME UNTIL YOU TALK TO A LAWYER?

23 A THAT'S CORRECT.

24 Q AND HE GAVE YOU A STATEMENT WHICH WAS HOW MANY PAGES LONG?

25 A NINE.

1 Q HE SIGNED IT?

2 A YES, SIR.

3 Q UNDER OATH?

4 A YES, SIR.

5 Q AND THEN HE SIGNED HIS WAIVER OF RIGHTS FORM, DID HE NOT?

6 A THAT'S CORRECT.

7 MR. SWERLING: MAY I PUBLISH THIS TO THE JURY?

8 THE COURT: YES, SIR.

9 Q SO, IN OTHER WORDS, HE DID NOT ASSERT THE CONSTITUTIONAL
10 RIGHTS THAT YOU TOLD HIM HE HAD? HE WAS WILLING TO TALK TO
11 YOU?

12 A HE WAS WILLING TO TALK.

13 Q AND HE GAVE YOU THAT STATEMENT?

14 A THAT'S CORRECT.

15 Q AND YOU ASKED HIM QUESTIONS?

16 A I DID.

17 Q AND YOU WROTE DOWN THE ANSWERS?

18 A THAT'S CORRECT.

19 Q AND THE PRODUCT OF THAT STATEMENT IS WHAT YOU JUST READ TO
20 THE JURY?

21 A THAT'S CORRECT.

22 Q ESSENTIALLY THIS STATEMENT SAYS THAT I DIDN'T COMMIT THE
23 CRIME, DOESN'T IT?

24 A I JUST WROTE WHAT HE SAID. I CAN'T REACH A CONCLUSION.

25 Q DOES THIS STATEMENT SAY THAT HE COMMITTED THE CRIME OR HE

1 DIDN'T COMMIT THE CRIME, LT. EDWARDS?

2 A WHAT THE STATEMENT SAID IS HERE IS WHAT HE SAID.

3 Q LET ME ASK YOU AGAIN. DOES THE STATEMENT SAY I COMMITTED THE
4 CRIME OR I DIDN'T COMMIT THE CRIME?

5 A IT DON'T SAY IT EITHER WAY.

6 Q IT DOESN'T? WHAT DID YOU JUST READ AT THE BACK? YOU ASKED
7 HIM DID YOU SHOOT DONALD SUTTON. ANSWER: NO, I DIDN'T AND
8 DIDN'T GO WITH ANYONE TO SHOOT HIM. QUESTION: DID YOU OFFER
9 ANYONE ANY MONEY TO SHOOT DONALD SUTTON? NO, I DIDN'T. NOW,
10 IS THAT AN UNEQUIVOCAL STATEMENT BY RONALD TILLMAN THAT HE
11 DID NOT COMMIT THE CRIME OR NOT?

12 A THIS IS WHAT HE SAID. THIS IN THE STATEMENT.

13 Q WELL, THAT'S MY QUESTION. DID HE ADMIT DOING THE CRIME OR
14 DID HE DENY DOING THE CRIME?

15 A EVERYTHING HE SAID IS IN HERE.

16 Q ANSWER MY QUESTION, PLEASE. DID HE ADMIT IT OR DID HE DENY
17 IT?

18 A I WROTE WHAT HE SAID IN HERE.

19 Q WELL, WHAT DOES IT SAY IN THERE?

20 A IT SAID WHATEVER--IT SAID--WHAT QUESTION YOU WANT TO KNOW?

21 THE COURT: HE WANTS TO KNOW. LISTEN TO ME. LET ME ASK
22 IT. MAYBE I CAN GET AN ANSWER. HE WANTS TO KNOW THAT
23 ACCORDING TO THE STATEMENT TAKEN FROM THE DEFENDANT IN THIS
24 CASE, MR. TILLMAN, DID HE ADMIT DOING THE CRIME, THE MURDER
25 OF DONALD SUTTON, OR DID HE DENY IT?

1 A IN THE STATEMENT HE DID NOT ADMIT TO ANYTHING.

2 Q IN FACT, HE DENIED IT, DID HE NOT?

3 A WHAT IN THE STATEMENT IS WHAT HE SAID. HE DID NOT SAY

4 ANYTHING.

5 Q NO, LT. EDWARDS, YOU ARE WRONG. HE DID SAY SOMETHING.

6 A YES, HE SAID ALL WHAT HE SAID IN HERE BUT THAT--WHAT HE SAID

7 IS WHAT HE SAID IN HERE.

8 Q HE SAID I DIDN'T DO IT. WHY ARE YOU HAVING A HARD TIME

9 TELLING THE JURY THAT THAT'S WHAT HE SAID IN THE STATEMENT?

10 A IT'S HERE HE SAID THAT. I CAN READ WHAT YOU DID. DID YOU

11 OFFER ANYONE MONEY TO SHOOT AND HE SAY, NO, I DID NOT. I

12 MEAN IT'S IN HERE. WHAT I'M SAYING IT'S IN THE STATEMENT

13 WHAT HE SAID.

14 Q SO, IN THE STATEMENT RONALD TILLMAN DENIED COMMITTING THIS

15 MURDER, DIDN'T HE?

16 A YES, SIR. BUT YOU DIDN'T ASK ME THAT AT FIRST.

17 Q AS I UNDERSTAND THE STATEMENT YOU TOOK FROM MR. TILLMAN ON

18 THE 3RD OF JANUARY OR 4TH OF JANUARY, ESSENTIALLY HE SAID HE

19 SAW DONALD AROUND 5:45 OR 6:00. THERE WAS SOME DISCUSSION

20 GOING ON WITH A SHERIFF'S DEPUTY, IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q ABOUT THE ALARM GOING OFF OR SOMETHING LIKE THAT?

23 A YES, SIR.

24 Q ALL RIGHT. AND THERE WAS SOME DISCUSSION ABOUT A TAG NUMBER.

25 THEN AFTER THAT DISCUSSION HE AND DONALD WENT INTO THE LIQUOR

1 STORE AND THEY WERE TALKING ABOUT WHAT HAPPENED?

2 A THIS IS WHAT HE SAID IN THE STATEMENT.

3 Q AND HE CAME IN AND HE TALKED ABOUT THE CASH OR HE WENT IN AND

4 STARTED COUNTING MONEY IN THE REGISTER?

5 A YES, THIS IS WHAT HE SAID IN THE STATEMENT.

6 Q AND DONALD, HIS FRIEND, ASKED HIM FOR SOME MONEY FOR GAS?

7 A THIS IS WHAT WAS SAID IN THE STATEMENT.

8 Q AND HE GAVE HIM A FIVE DOLLAR BILL, IS THAT RIGHT?

9 A THIS IS WHAT HE SAID IN THE STATEMENT.

10 Q OKAY. NOW, YOU ARE ASKING HIM QUESTIONS, OF COURSE, DURING

11 THIS WHOLE PERIOD OF TIME, RIGHT?

12 A SOME THINGS THAT I WASN'T SURE ABOUT. I WANTED TO MAKE SURE

13 I PUT IT DOWN.

14 Q DONALD TOLD HIM HE WAS GOING TO LEAVE BUT HE'D BE BACK AT

15 7:00, IS THAT CORRECT? THAT'S WHAT HE TOLD YOU?

16 A THIS IS WHAT HE SAID IN THE STATEMENT.

17 Q AND DONALD LEFT AROUND 6:00 OR 6:15?

18 A YES, SIR.

19 Q THEN HE TOLD YOU ABOUT THIS CALL BETWEEN HE AND MOLLY HAYES

20 ABOUT GOING TO THE FOUNTAIN BLEAU?

21 A THIS WHAT HE SAID--

22 Q IS THAT CORRECT?

23 A THAT'S WHAT HE SAID IN THE STATEMENT.

24 Q AND HE TOLD YOU WHY HE WANTED TO GO TO THE FOUNTAIN BLEAU?

25 A THIS IS WHAT HE SAID IN THE STATEMENT.

1 Q BECAUSE MOLLY'S DAUGHTER WAS GOING TO BE SINGING AT THE
2 FOUNTAIN BLEAU IN A TALENT SHOW THAT NIGHT, IS THAT RIGHT?
3 A THAT'S CORRECT IN THE STATEMENT.
4 Q AND THEN HE SAID THAT LAVETTE CALLED HIM AFTER MOLLY AROUND
5 6:55?
6 A THAT IS CORRECT IN THE STATEMENT.
7 Q AND SAID SHE'D BE AT MEADOW LAKES AT HER COUSIN'S AND THEY
8 WERE GOING TO SEE EACH OTHER?
9 A THAT IS CORRECT IN THE STATEMENT.
10 Q AND HE TOLD YOU IN RESPONSE TO YOUR QUESTIONS THAT HE WAS
11 GOING TO HAVE LAVETTE CALL HIM AT 7:20 AT HIS MOTHER'S HOUSE,
12 IS THAT CORRECT?
13 A YES, THAT'S CORRECT IN THE STATEMENT.
14 Q AND THEN HE TOLD YOU THAT DONALD CALLED HIM ABOUT 7:00 AND
15 SAID HE AND VITO WERE ON THE WAY?
16 A THAT'S INCORRECT.
17 Q THAT'S INCORRECT?
18 A 7:01.
19 Q EXCUSE ME. DONALD CALLED ABOUT 7:01.
20 A YES.
21 Q I WAS OFF A MINUTE. AND THAT HIM AND VITO WERE ON THEIR WAY,
22 IS THAT RIGHT?
23 A THAT'S CORRECT.
24 Q AND I TOLD HIM TO WAIT BECAUSE I HAD SOMETHING TO DO AND THEY
25 SAID THEY WERE GOING TO BRIDGETTE'S HOUSE, IS THAT RIGHT?

1 THAT'S WHAT HE TOLD YOU?

2 A THAT'S CORRECT IN THE STATEMENT.

3 Q THEN HE SAID HE LEFT THE STORE AND WENT STRAIGHT HOME AND GOT

4 THERE ABOUT 7:25?

5 A YES, THAT'S CORRECT IN THE STATEMENT.

6 Q HAD A CONVERSATION WITH HIS MOTHER, CLADDY TILLMAN, ABOUT

7 WHETHER OR NOT LAVETTE HAD CALLED?

8 A THAT'S INCORRECT. HE SAID HIS MOTHER. HE DIDN'T SAY CLADDY

9 TILLMAN.

10 Q THAT'S HIS MOTHER.

11 A I DON'T KNOW HER NAME.

12 Q MRS. TILLMAN?

13 A I KNOW MRS. TILLMAN, I JUST DON'T KNOW HER FIRST NAME.

14 Q OKAY. BUT MRS. TILLMAN IS HIS MOTHER?

15 A YES, I JUST KNOW HER AS MRS. TILLMAN.

16 Q OKAY. AND THEN DARLENE HAYES CALLED AND SAID SOMETHING ABOUT

17 HER HAVING A PROBLEM WITH HER VOICE? OR HER MOTHER WASN'T

18 RIGHT OR HER MOUTH WASN'T RIGHT OR SOMETHING, WHATEVER YOU

19 WROTE DOWN THERE. IS THAT RIGHT?

20 A THAT'S CORRECT IN THE STATEMENT.

21 Q OKAY. THEN HE SAID HE CALLED VITO AT BRIDGETTE'S WHICH IS

22 WHERE HE SAID VITO WAS GOING TO BE FROM THE EARLIER PHONE

23 CONVERSATION? IS THAT WHAT HE TOLD YOU?

24 A HE SAY I THEN CALL VITO AT BRIDGETTE HOUSE AROUND 7:45 P.M.

25 Q HE SAID THEN HE ASKED VITO WHERE "DUCK" WAS, "DUCK" BEING

1 DONALD?

2 A THAT'S CORRECT IN THE STATEMENT.

3 Q OKAY. AND THAT HE TOLD HIM THAT "DUCK" WAS GOING TO COME

4 BACK IN ABOUT AN HOUR?

5 A THAT IS CORRECT IN THE STATEMENT.

6 Q AND HE TOLD YOU THAT VITO WOULD BE OVER AS SOON AS LAVETTE

7 CALLED HIM? RIGHT?

8 A REPEAT THAT AGAIN.

9 Q THEN HE TOLD YOU THAT VITO SAID HE'D BE OVER AS SOON AS

10 LAVETTE CALLED?

11 A THAT'S CORRECT.

12 Q THEN HE TOLD YOU THAT HE WAITED AROUND UNTIL 8:20, DIDN'T GET

13 A CALL, CALLED VITO BACK AND TOLD HIM HE WAS COMING OVER

14 THERE, IS THAT RIGHT?

15 A YES, THAT'S CORRECT IN THE STATEMENT.

16 Q AND THEN HE TOLD YOU THAT HE TOLD HIS MOTHER TO TELL LAVETTE

17 THAT HE WAS GONE, THAT HE WAITED AS LONG AS HE COULD, AND HE

18 WENT OVER TO VITO'S GIRL FRIEND'S HOUSE IN WASHINGTON CARVER

19 VILLAGE BY THE NAME OF LISA, IS THAT RIGHT?

20 A THAT'S CORRECT IN THE STATEMENT.

21 Q LISA ANSWERED THE DOOR AND VITO AND BRIDGETTE WERE IN THE

22 BACK BEDROOM. REMEMBER THAT?

23 A YES, SIR.

24 Q OKAY. AND THEN THEY COME UP WITH THIS STORY ABOUT HOW THEY

25 WANT TO GET OUT OF THE HOUSE, ABOUT "DUCK'S" CAR HAD BEEN

1 BROKEN DOWN?

2 A (NO VERBAL RESPONSE)

3 Q I MEAN VITO AND BRIDGETTE WERE IN THE BACK BEDROOM, IS THAT
4 RIGHT?

5 A THAT'S CORRECT.

6 Q AND HE TOLD YOU THEY WERE TRYING TO GET OUT OF THE HOUSE?

7 A I DON'T HAVE IT DOWN THAT WAY.

8 Q WELL, THAT'S THE ESSENCE OF WHAT IT WAS?

9 A YES.

10 Q THEY CAME UP WITH A STORY SO THEY COULD GO OUT?

11 A I'M TESTIFYING TO WHAT I HAVE HERE IN THE STATEMENT.

12 Q I UNDERSTAND THAT BUT ISN'T THAT WHAT THE IMPORT OF WHAT IT
13 IS?

14 A WELL, I CAN READ WHAT I HAVE IN THE STATEMENT.

15 Q I UNDERSTAND THAT, MR. EDWARDS. I'M ASKING YOU WHAT THE
16 IMPORT OF IT WAS, WHAT DID IT MEAN TO YOU. HE WENT INTO THE
17 BEDROOM AND TALKED FOR A WHILE AND ASKED HAD "DUCK" CALLED
18 AND VITO TOLD ME, NO, AND "DUCK" WAS OUT WITH SOME GIRL AND
19 I ASKED VITO TO GO WITH ME ON SHOP ROAD. VITO AGREED TO GO.

20 MR. BILTON: YOUR HONOR, I OBJECT. MR. SWERLING IS
21 TESTIFYING. HE CAN ASK HIM--

22 MR. SWERLING: I'M READING WHAT'S IN EVIDENCE, YOUR
23 HONOR.

24 MR. BILTON: IF HE MADE THE STATEMENT AND HAVE THE
25 OFFICER YES OR NO IF HE MADE THAT STATEMENT TO HIM.

1 THE COURT: I THOUGHT THAT'S WHAT HE WAS DOING, GOING
2 THROUGH THE STATEMENT. ISN'T THAT WHAT YOU ARE DOING?

3 MR. SWERLING: YES, SIR.

4 THE COURT: DO YOU HAVE SOME QUESTION THAT HE'S NOT
5 DOING THAT? HE'S ASKING HIM DID HE SAY THAT. HE'S READING
6 A SENTENCE AND ASKING HIM DID HE SAY THAT AND HE'S SAYING
7 YES. GO AHEAD AND CONTINUE.

8 Q THEN HE GOES ON AND TELLS YOU ABOUT THEY ARE GOING OUT AND
9 GETTING SOME WINE AND SAUSAGE, IS THAT RIGHT?

10 A THIS IS IN THE STATEMENT. CORRECT.

11 Q HE GOES THROUGH A LOT OF DETAIL ABOUT WHERE THEY WERE AND
12 WHAT THEY WERE DOING, DOESN'T HE?

13 A YES, SIR.

14 Q DIFFERENT PEOPLE WHO WERE THERE AND DIFFERENT TIMES, DOESN'T
15 HE?

16 A YES, SIR. THIS IS IN THE STATEMENT.

17 Q THEN HE SAID HE AND VITO ARRIVED AT THE STORE AROUND 8:45,
18 HE CHECKED AROUND FIRST, CHECKED AROUND THE STORE FIRST AND
19 VITO STAYED INSIDE AT THE COUNTER. DID HE TELL YOU THAT?

20 A NOW, YOU'VE LOST ME THERE.

21 Q BOTTOM OF PAGE 5.

22 A YES, HE STAYED NEAR THE COUNTER. THAT'S CORRECT.

23 Q THEN HE SAID HE WENT IN AND CALLED HIS MOTHER AND ASKED HER
24 IF LAVETTE HAD CALLED, IS THAT RIGHT?

25 A THAT'S CORRECT IN THE STATEMENT.

1 Q THEN HE SAID HE WENT NEXT DOOR TO THE LIQUOR STORE, TILLMAN
2 LIQUOR STORE, AND SAW HIS DAD WATCHING T.V.?
3 A THIS IS CORRECT IN THE STATEMENT.
4 Q AND HE SAID HE LEFT THERE?
5 A THAT'S CORRECT.
6 Q THEN HE SAID LET'S GO GET BRIDGETTE HER STUFF, DIDN'T HE?
7 A THAT'S CORRECT.
8 Q AND THEN VITO WANTED TO USE THE TELEPHONE TO CALL BRIDGETTE
9 TO SEE IF "DUCK" WAS THERE?
10 A OKAY, "DUCK" HAD MADE IT BACK. THAT WOULD BE CORRECT.
11 Q OKAY. THEN HE SAID VITO THEN CALLED A GIRL DOWN THE STREET,
12 DIDN'T HE?
13 A THAT'S CORRECT.
14 Q THEN WHEN VITO HUNG UP THE TELEPHONE HE TOLD ME THE GIRL WAS
15 COMING TO MEET HIM AT THE SHOP; NOT BRIDGETTE, NOT LISA, BUT
16 ANOTHER GIRL?
17 A THIS IS WHAT HE SAID IN THE STATEMENT.
18 Q OKAY. VITO AND ME DECIDED TO GO AWAY AND I ALSO ASKED ARTHUR
19 HAD "DUCK" COME DOWN OR CALLED AND ARTHUR TOLD ME, NO. IS
20 THAT RIGHT? REMEMBER THAT?
21 A THIS IS CORRECT IN THE STATEMENT, YES.
22 Q HE SAID WE WAITED AROUND A FEW MINUTES, WENT OUTSIDE AND THEN
23 A COUPLE OF MINUTES LATER WE WERE TALKING TO SOME PEOPLE,
24 VITO DECIDED TO CALL THE GIRL BACK?
25 A THAT IS CORRECT IN THE STATEMENT.

1 Q HE GOT OFF THE PHONE AND HE LEFT THE STORE? THEY LEFT THE
2 STORE AT THAT TIME?

3 A THAT'S CORRECT.

4 Q AND THEY WENT TO BRIDGETTE'S HOUSE?

5 A THAT'S CORRECT.

6 Q THEY ARRIVED THERE AT ABOUT 9:20. YOU SAID 7:20 BUT IT WAS
7 9:20.

8 A WELL, THIS IS A COPY. IT MIGHT NOT BE AS CLEAR BUT I SAY
9 IT'S 9:20. IF I SAID 7:20 I MEANT 9:20.

10 Q IT IS 9:20?

11 A YES, IT IS.

12 Q THEY WENT BACK TO BRIDGETTE'S HOUSE?

13 A THAT'S CORRECT IN THE STATEMENT.

14 Q SAID HE HAD FORGOTTEN THE SODAS AND THE SAUSAGE?

15 A THAT'S CORRECT IN THE STATEMENT.

16 Q SO, THEY WENT OUT AGAIN TO THE TEXACO STATION ON FARROW ROAD?

17 A THAT IS CORRECT IN THE STATEMENT.

18 Q THEN THEY DECIDED TO GO TO THE FOUNTAIN BLEAU TO GET THEIR
19 HANDS STAMPED?

20 A THAT IS CORRECT IN THE STATEMENT.

21 Q AND THEY GOT THEIR HANDS STAMPED?

22 A THAT'S CORRECT IN THE STATEMENT.

23 Q BUT VITO COULDN'T BECAUSE HE DIDN'T HAVE AN I.D.?

24 A THAT'S CORRECT IN THE STATEMENT.

25 Q SO, THEY HAD TO RETURN TO BRIDGETTE'S HOUSE?

1 A THAT IS CORRECT IN THE STATEMENT.

2 Q OKAY.. AND THEY TOOK THE STUFF BACK TO BRIDGETTE AND TO LISA?

3 A THAT IS CORRECT IN THE STATEMENT.

4 Q AND THEN TO GO BACK TO THE FOUNTAIN BLEAU HE TOLD BRIDGETTE

5 SOME KIND OF STORY THAT DONALD'S CAR WAS BROKEN DOWN? THAT'S

6 WHAT HE WAS TALKING ABOUT, WASN'T IT?

7 A VITO DID, YES.

8 Q AND WE NEEDED TO HELP. VITO AND ME WENT BACK TO THE FOUNTAIN

9 BLEAU, ISN'T THAT RIGHT?

10 A THIS IS CORRECT IN THE STATEMENT.

11 Q SO, ACCORDING TO THE STATEMENT HE USED THAT STORY THAT HE

12 TOLD BRIDGETTE TO GET OUT OF THE HOUSE TO GO BACK TO THE

13 FOUNTAIN BLEAU?

14 A THIS IS WHAT HE SAID IN THE STATEMENT.

15 Q AND THEN HE WENT TO THE FOUNTAIN BLEAU AND SPENT THE REST OF

16 THE EVENING THERE UNTIL LATER ON IN THE MORNING?

17 A I THINK IT WAS ABOUT 1:30 IF MY MEMORY SERVES ME CORRECTLY.

18 Q MR. TILLMAN GAVE YOU THAT UNDER OATH?

19 A THIS IS CORRECT.

20 Q NOW, LET ME ASK YOU SOMETHING. YOU HAD OCCASION TO TALK WITH

21 HAYES MALLOY ON THE 26TH OF DECEMBER, DIDN'T YOU?

22 A I TALKED WITH HAYES MALLOY SEVERAL TIMES. I JUST CAN'T

23 REMEMBER EACH DATE BUT I TALKED WITH HIM SEVERAL TIMES, YES.

24 Q LET ME SEE IF I CAN GET YOU YOUR NOTES.

25 A IT'S PROBABLY IN THE CASE FILE ON THE PROSECUTOR'S DESK.

1 THE COURT: JUST HAND HIM THE WHOLE FILE AND LET HIM
2 LOOK AT IT.

3 Q DID YOU INTERVIEW HIM ON THE 26TH?

4 A I DON'T HAVE NOTHING IN MY NOTES THAT I TALKED TO HIM ON THE
5 26TH.

6 Q YOU TALKED TO HIM ON THE 3RD THOUGH, DIDN'T YOU?

7 A TALKED TO WHO ON THE 3RD, SIR?

8 A 3RD OF JANUARY, HAYES MALLOY.

9 A YES.

10 Q OKAY. LOOK AT YOUR NOTES. TELL THE JURY WHETHER OR NOT MR.
11 MALLOY TOLD YOU THAT THREE DAYS PRIOR TO MR. MALLOY--THREE
12 DAYS PRIOR TO MR. SUTTON BEING KILLED THAT RONALD TILLMAN
13 OFFERED HIM--THREE DAYS BEFORE NOW--THAT HE OFFERED HIM FIVE
14 THOUSAND DOLLARS TO KILL DONALD SUTTON AND HE SAID HE WOULD
15 DO IT.

16 A YOU'LL HAVE TO BEAR WITH ME, I'VE GOT SO MUCH NOTES HERE.

17 Q YOU'VE GOT A LOT OF STATEMENTS.

18 MR. BILTON: YOUR HONOR, MAY I INQUIRE A STATEMENT OR
19 WHETHER--

20 MR. SWERLING: NO, I'M GOING OVER HIS NOTES. I'M ASKING
21 HIM ABOUT HIS NOTES.

22 THE COURT: HE'S GOING INTO NEW MATTER ON CROSS
23 EXAMINATION.

24 Q LOOK AT THE FIRST PAGE OF YOUR NOTES ON 1-3-89.

25 A OKAY.

1 Q OKAY? SEE IT?

2 A YOU TALKING ABOUT DOWN TO THE BOTTOM OF THE PAGE?

3 A IT SAYS ABOUT THREE DAYS PRIOR TO SUTTON'S DEATH RONALD
4 TILLMAN CAME UP TO HAYES MALLOY AT THE PARTY SHOP AT AROUND
5 TWO O'CLOCK IN THE AFTERNOON AND HE ASKED MALLOY TO KILL
6 DONALD SUTTON FOR FIVE THOUSAND DOLLARS. YOU SEE THAT?

7 A YES, I SEE IT BUT THIS IS NOT MINE.

8 Q YOU WERE PRESENT DURING THIS INTERVIEW?

9 A I DON'T THINK I WAS PRESENT AT THIS PARTICULAR INTERVIEW.
10 LET ME MAKE SURE. YES, I WAS.

11 Q YES, YOU WERE.

12 A YES, I WAS.

13 Q ISN'T THAT CORRECT?

14 A THIS IS CORRECT.

15 Q OKAY. THREE DAYS BEFORE DONALD SUTTON'S DEATH. ABOUT THREE
16 DAYS. SO, SOMEWHERE AROUND THE 23RD HE TOLD YOU--HE TOLD YOU
17 THAT SOMEWHERE AROUND THE 23RD RONALD TILLMAN OFFERED HIM
18 FIVE THOUSAND DOLLARS TO KILL DONALD SUTTON AND HE SAID HE
19 WOULD DO IT, IS THAT CORRECT? NEXT TO THE LAST PARAGRAPH.

20 A THIS SAYS ON 12-26, MONDAY, HAYES GOES TO THE PARTY SHOP
21 AROUND--

22 Q I'M TALKING ABOUT AT THE BOTTOM OF THE PAGE.

23 A THIS IS THE BOTTOM THAT I'M READING FROM.

24 Q THE PARAGRAPH RIGHT BEFORE THAT.

25 A OH, YOU TALKING ABOUT THREE DAYS PRIOR TO THE DEATH RONALD

1 TILLMAN CAME TO HAYES MALLOY AT THE PARTY SHOP AROUND 2:00
2 OR 3:00 P.M. THAT'S WHAT YOU TALKING ABOUT?
3 Q YES. ON THAT DAY, THIS IS JANUARY 3RD, HAYES MALLOY TOLD YOU
4 THAT THREE DAYS OR ABOUT THREE DAYS BEFORE--
5 A TILLMAN ASKED MALLOY--
6 Q TILLMAN ASKED HIM TO KILL DONALD SUTTON FOR FIVE THOUSAND
7 DOLLARS AND HE SAID YES.
8 A THAT HE WOULD DO THE JOB.
9 Q RIGHT. DOES HE ANYWHERE--WHAT SPECIFIC AMOUNT DOES HE TELL
10 YOU HE WAS OFFERED?
11 A HE SAY FIVE THOUSAND DOLLARS.
12 Q AND WHO DID HE SAY HE WAS ASKED TO KILL?
13 A DONALD SUTTON.
14 Q OKAY. AND WHAT DID HE SAY HE WOULD DO ABOUT IT?
15 A WHAT DID DONALD--
16 Q WHAT DID MALLOY SAY HE WAS GOING TO DO WITH RESPECT TO THE
17 OFFER?
18 A HE SAY MALLOY STATED THAT HE WOULD DO IT. BUT--
19 Q MALLOY SAID HE SAID HE WOULD DO IT, DIDN'T HE?
20 A DO THE JOB, YES.
21 Q HE DIDN'T TELL YOU ON JANUARY 3RD OR ANY OTHER PERSON AT THE
22 RICHLAND COUNTY SHERIFF'S DEPARTMENT THAT YOU ARE AWARE OF
23 THAT HE WAS JUST GOING ALONG FOR THE RIDE AND STRINGING
24 TILLMAN ALONG, DID HE?
25 A YES, BUT YOU SEE--

1 Q HAVE YOU GOT IT IN THE NOTES?

2 A IT'S NOT IN THE NOTES BUT WHAT YOU ARE DOING YOU ARE STARTING
3 IN THE MIDDLE OF OUR INVESTIGATION. I HAVE TO GO AND GIVE
4 YOU THE WHOLE TOTALITY OF THE INVESTIGATION.

5 Q I'M ASKING YOU ABOUT JANUARY 3RD.

6 A OH, THE ANSWER TO YOUR QUESTION ABOUT JANUARY--THIS IS WHAT
7 HE SAID.

8 Q I'M TRYING TO MAKE IT VERY CLEAR WE'RE TALKING ABOUT JANUARY
9 3RD.

10 A YES, BUT I WANT TO MAKE IT UNDERSTOOD HE SAID THIS ON THIS
11 DATE BUT WE HAD SOME OTHER CONVERSATION BEFORE THIS.

12 Q ON JANUARY 3RD DID HE TELL YOU THAT HE WAS GOING ALONG, THAT
13 HE WOULD DO THE JOB?

14 A I'LL READ IT AGAIN. IT SAYS ABOUT THREE DAYS PRIOR TO
15 SUTTON'S DEATH RONALD TILLMAN CAME UP TO HAYES MALLOY AT THE
16 PARTY SHOP AT AROUND 2:00 OR 3:00 IN THE AFTERNOON. TILLMAN
17 ASKED MALLOY TO KILL DONALD SUTTON AND OFFERED MALLOY FIVE
18 THOUSAND DOLLARS TO DO IT. MALLOY STATED THAT HE WILL DO THE
19 JOB.

20 Q SO, MY ANSWER TO MY QUESTION VERY SIMPLY IS YES, THAT'S WHAT
21 MALLOY SAID.

22 A ON THIS PARTICULAR DAY. BUT THERE ARE OTHER DATES THAT--

23 Q OH, I KNOW THERE ARE PLENTY OF DATES.

24 A CAN I FINISH, PLEASE? BUT THERE ARE OTHER DATES THAT WE KNEW
25 ABOUT THINGS WAS TRANSPIRING BETWEEN MALLOY.

1 Q YOU GIVE ME ONE DATE PRIOR TO JANUARY 3RD, SHOW ME ONE NOTE,
2 THAT IS DIFFERENT THAN THAT. SHOW ME ONE STATEMENT WHERE
3 HAYES MALLOY TELLS YOU HE WAS THERE AT THE KILLING ON JANUARY
4 3RD--

5 A ARE YOU SAYING A STATEMENT OR NOTES? WHICH ONE YOU WANT?

6 Q YOU TELL ME. LET ME SEE YOUR STATEMENTS OR YOUR NOTES THAT
7 PRIOR TO JANUARY 3RD HAYES MALLOY TOLD YOU THAT HE WAS
8 PRESENT WHEN RONALD TILLMAN SHOT HIM.

9 A WHEN RONALD TILLMAN SHOT HIM?

10 Q UH-HUH (AFFIRMATIVE).

11 A WE DO HAVE A STATEMENT FROM HAYES MALLOY.

12 Q MR. EDWARDS, MY QUESTION IS VERY SIMPLE. SHOW ME A STATEMENT
13 OR A NOTE PRIOR TO JANUARY 3RD THAT HAYES MALLOY TOLD YOU HE
14 WAS PRESENT WITH RONALD TILLMAN WHEN RONALD TILLMAN SHOT HIM.
15 IF YOU'VE GOT IT, SHOW IT TO US. IF YOU DON'T, THEN TELL US
16 YOU DON'T.

17 Q WELL, I CAN'T ANSWER YOUR QUESTION. LET ME ANSWER YOUR
18 QUESTION IN TWO PARTS. FIRST OF ALL, WE HAVE A STATEMENT
19 FROM MALLOY ON SEVERAL DIFFERENT DATES ON CERTAIN DIFFERENT
20 THINGS.

21 Q YES, SIR.

22 A THIS WAS A LONG AND DRAWN OUT INVESTIGATION. IT WAS
23 DIFFERENT DATES THAT CERTAIN THINGS HAPPEN AT DIFFERENT
24 TIMES. PRIOR TO THIS DATE WE TALKED TO HAYES MALLOY SEVERAL
25 DIFFERENT TIMES AND HE TOLD US SEVERAL DIFFERENT THINGS. IF

1 YOU WILL LOOK BACK AT 12-26 YOU SEE WHERE HAYES--IF YOU WANT
2 ME TO READ IT TO YOU I CAN READ IT WHAT IT SAYS HERE.

3 Q ON 12-26 HAYES TOLD YOU VITO McKIE WAS THE ONE THAT DID IT.

4 A BUT THERE WAS OTHER CONSISTENT STUFF IN OUR NOTES WHAT
5 TRANSPIRED BETWEEN HAYES MALLOY AND MYSELF.

6 Q WELL, LET THE SOLICITOR IF HE WANTS TO TO BRING THOSE OUT.
7 I ASKED YOU A SPECIFIC QUESTION AND I'D LIKE A SPECIFIC
8 ANSWER.

9 A WELL, YOU ASKED ME PRIOR AND I'M TRYING TO GIVE YOU THE
10 ANSWER.

11 Q I WANT TO SEE WHERE--I WANT YOU TO SHOW ME, SHOW THE JURY,
12 ONE NOTE OR ONE STATEMENT BY HAYES MALLOY PRIOR TO JANUARY
13 3RD, 1989, WHERE HE SAID THAT TILLMAN SHOT DONALD SUTTON AND
14 HE WAS THERE AND THAT HE WENT ALONG AND STRUNG TILLMAN ALONG.

15 A NOT IN THAT PARTICULAR WORD. I CAN SHOW YOU--

16 Q SHOW ME.

17 A SEE, YOU ASKED ME--FIRST YOU ASKED ME--YOU SEE, YOU ASKED ME
18 TWO DIFFERENT SETS OF QUESTIONS. COULD YOU REPEAT YOUR
19 QUESTION TO ME AGAIN, PLEASE?

20 Q SHOW ME A NOTE THAT YOU HAVE OR A STATEMENT THAT MALLOY GAVE
21 PRIOR TO JANUARY 3RD, 1989, WHEREIN HE STATES THAT TILLMAN
22 ASKED MALLOY TO KILL DONALD SUTTON AND OFFERED HIM FIVE
23 THOUSAND DOLLARS TO DO IT AND MALLOY STATES HE WILL DO THE
24 JOB AND THAT TILLMAN SHOT SUTTON AND MALLOY WAS ALONG FOR THE
25 RIDE WITH HIM?

1 A WELL, I CANNOT SHOW YOU THAT EXACT WORD BUT IT WAS MORE MONEY
2 OFFERED AT A EARLIER TIME.

3 Q WE'RE GOING TO GET TO THAT LATER. SO, YOU DON'T HAVE
4 ANYTHING THAT SAYS ANYTHING DIFFERENT THAN THAT?

5 A NOTHING THAN DIFFERENT THAN THAT, NO. BUT WE HAVE OTHER
6 STATEMENT OF DIFFERENT AMOUNT. I MEAN NOT WORD FOR WORD WHAT
7 YOU ASKED ME, NO, I DO NOT. BUT I CAN POINT OUT WHERE MORE
8 MONEY WAS OFFERED TO KILL DONALD SUTTON, YES.

9 Q DO YOU HAVE ANY NOTES OR STATEMENTS PRIOR TO JANUARY 3RD THAT
10 RONALD TILLMAN WAS IN THE CAR WITH HAYES MALLOY AND RONALD
11 TILLMAN SHOT DONALD SUTTON?

12 A NO, WE DO NOT HAVE THAT. SEE, YOU ASKED ME TWO QUESTIONS.

13 Q ON JANUARY 3RD, DIDN'T HAYES MALLOY TELL YOU THAT ON THE 26TH
14 OF DECEMBER AT 12:45 HE WAS OFFERED TEN THOUSAND DOLLARS TO
15 KILL SUTTON?

16 A WE TALKED TO HIM ON THE 26TH--

17 Q I DIDN'T ASK YOU THAT.

18 MR. SWERLING: NOW, YOUR HONOR, I ASK YOU TO INSTRUCT
19 THE WITNESS TO ANSWER MY QUESTION.

20 THE COURT: MR. WITNESS, LISTEN TO WHAT HIS QUESTION IS
21 AND PLEASE ANSWER HIS QUESTION.

22 Q JANUARY 3RD, 1989, DIDN'T HAYES MALLOY TELL YOU THAT ON THE
23 26TH OF DECEMBER AT 12:45 AT THE PARTY SHOP HE WAS OFFERED
24 TEN THOUSAND DOLLARS TO KILL DONALD SUTTON?

25 A ON JANUARY 3RD HE DID.

1 Q AND DIDN'T HE TELL YOU ON JANUARY 3RD, 1989, THAT DONALD
2 DROVE UP SOMEWHERE AROUND EIGHT O'CLOCK?

3 THE COURT: I'LL TELL YOU WHAT, MR. SWERLING. I'M GOING
4 TO GIVE EVERYBODY A BREAK. WE'VE BEEN OUT HERE SINCE TWO
5 O'CLOCK. AND I'M GOING TO ASK THE WITNESS TO PLEASE READ
6 THROUGH HIS NOTES SO YOU CAN EXAMINE HIM WHEN WE COME BACK.
7 ALL RIGHT? MR. FOREMAN, IF YA'LL WILL, STEP BACK IN THE JURY
8 ROOM.

9 (THE JURY LEAVES THE JURY BOX AT 3:50 P.M.)

10 THE COURT: MR. WITNESS, I WANT YOU TO READ THROUGH YOUR
11 NOTES AND HAVE ALL YOUR NOTES INVOLVED IN THIS CASE WITH YOU
12 SUCH THAT YOU MAY BE ABLE TO RESPOND TO THE QUESTIONS BEING
13 ASKED OF YOU. YOU SHOULD HAVE DONE THAT BEFORE YOU TOOK THE
14 WITNESS STAND. COURT IS IN RECESS.

15 (RECESS)

16 MR. SWERLING: (AT CONCLUSION OF RECESS) YOUR HONOR,
17 I UNDERSTAND THE NEXT WITNESS IS GOING TO BE A FELLOW NAMED
18 GABBY WELLS. GABBY'S QUITE AN INTERESTING FELLOW. I'VE RUN
19 INTO HIM BEFORE BUT I WOULD ASK THE COURT TO MAKE SURE THAT
20 HE UNDERSTANDS THAT HE IS NOT TO INFER--I WAS JUST LOOKING
21 BACK THROUGH THE STATEMENTS--REFERENCES TO THE ARMED
22 ROBBERIES AND BANK ROBBERIES. THIS IS THE TYPE OF WITNESS
23 WHO I WOULD BE CONCERNED ABOUT BLURTING THAT KIND OF THING
24 OUT.

25 THE COURT: WHO IS GOING TO CALL HIM?

1 MR. MORTON: I AM, YOUR HONOR.

2 THE COURT: MR. MORTON, WOULD YOU IMPRESS UPON HIM THAT.

3 MR. MORTON: WE'VE ALREADY INSTRUCTED MR. WELLS ABOUT
4 THAT, YOUR HONOR. THERE IS WHILE WE ARE HERE SOME OTHER
5 ISSUES I THINK WE CAN DISCUSS ABOUT GABBY WELLS.

6 THE COURT: WELL, WE'VE GOT A WITNESS ON THE STAND.
7 WE'RE JUMPING AROUND TOO MUCH AS IT IS. LET'S BRING THE JURY
8 IN.

9 MR. COLEMAN: YOUR HONOR, I'D JUST LIKE TO SAY MR.
10 SWERLING STIPULATED TO THE CHAIN ON THE BLOOD AND THE URINE
11 FROM THE AUTOPSY TO S.L.E.D. AND ALSO THE EVIDENCE THAT WE
12 HAVE, THE VICTIM'S CLOTHES, THAT TYPE THING.

13 MR. SWERLING: CAN I GET A GOLD STAR FROM THE
14 SOLICITOR'S OFFICE?

15 REPORTER: I'M SORRY, MR. SWERLING, I DIDN'T HEAR YOU.

16 THE COURT: HE WANTS A GOLD STAR. YOU CAN GIVE HIM ONE,
17 I'M NOT. YOU MAY WANT TO WRITE IT OUT AND HAVE EVERYBODY
18 SIGN IT. BRING THE JURY IN.

19 (THE JURY RETURNS TO THE JURY BOX AT 4:05 P.M.)

20 THE COURT: ALL RIGHT, YOU MAY CONTINUE CROSS
21 EXAMINATION.

22 JOHN EDWARDS, AFTER BEING PREVIOUSLY AFFIRMED BY THE
23 CLERK, TESTIFIES AS FOLLOWS:

24 CROSS EXAMINATION CONTINUED BY

25 MR. SWERLING:

1 Q I THINK WHERE WE LEFT OFF WAS ON THE BOTTOM OF THE FIRST PAGE
2 OF YOUR INTERVIEW WHERE MALLOY TELLS YOU AND MR. AUSTIN THAT
3 ON THE 26TH OF DECEMBER AT 12:45 IN THE AFTERNOON HE WAS
4 OFFERED TEN THOUSAND DOLLARS TO KILL MR. SUTTON, IS THAT
5 CORRECT?

6 A THAT'S CORRECT.

7 Q AND HE DID TELL YOU THAT, IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND HE AGAIN TELLS YOU THAT HE WILL NOT DO IT OR THAT HE WILL
10 DO IT? HE TOLD TILLMAN THAT HE SAID HE WOULD DO IT, THAT'S
11 WHAT HE TOLD YOU?

12 A THAT'S CORRECT.

13 Q YOUR NOTES DO NOT REFLECT THAT HE TOLD YOU THAT HE WAS
14 STRINGING MR. TILLMAN ALONG AT THAT TIME, DO THEY?

15 A AT THAT TIME, NO.

16 Q NOW, LOOK DOWN AT THE MIDDLE OF THAT PAGE OF YOUR NOTES.
17 WE'RE TALKING ABOUT HE TELLS YOU AT SOME POINT THAT DONALD
18 DROVE UP IN A BURGUNDY CAR IN FRONT OF THE PARTY SHOP.

19 A YOU ARE STILL TALKING ABOUT THE 3RD, CORRECT?

20 Q JANUARY 3RD.

21 A OKAY. YOU SEE THAT PART WHERE MALLOY IS TELLING YOU NOW THAT
22 DONALD DROVE UP IN HIS CAR?

23 A YES.

24 Q AND HE SAYS THAT APPROXIMATELY THIRTY MINUTES LATER RONALD
25 CAME BACK WITH VITO McKIE WITH HIM?

1 A YES, THAT'S IN HERE.

2 Q SO, ON JANUARY 3RD HE TELLS YOU ESSENTIALLY THAT DONALD WAS
3 AT THE SHOP AND THAT RONALD WAS NOT THERE WHEN DONALD GOT
4 THERE, THAT RONALD CAME BACK ABOUT THIRTY MINUTES LATER WHEN
5 DONALD WAS THERE. ISN'T THAT WHAT HE TOLD YOU?

6 A THAT'S CORRECT.

7 Q ON JANUARY 3RD?

8 A YES.

9 Q AND ON JANUARY 3RD ALSO HE TOLD YOU THAT SOMETIME THEREAFTER
10 HE TOLD HAYES MALLOY TO GET INTO HIS CAR, RON'S CAR, IS THAT
11 CORRECT?

12 A YES.

13 Q AND HE ALSO TOLD YOU ON JANUARY 3RD THAT DONALD AT THAT TIME
14 GOT INTO HIS CAR AND FOLLOWED HAYES AND RON. IS THAT
15 CORRECT?

16 A YES.

17 Q HE DID NOT TELL YOU ON JANUARY 3RD, 1989, THAT RONALD AND
18 HAYES WERE DRIVING OFF AND THAT DONALD DROVE UP BEHIND, THAT
19 RONALD FLASHED HIS LIGHTS AND DONALD JUST CONTINUED DRIVING
20 AND FOLLOWING BEHIND HIM, DID HE?

21 A HE SAID THAT RONALD AND HAYES HE SAID DROVE OFF AND SUTTON
22 FOLLOWED THEM. AND HE SAID THAT HAYES DOESN'T KNOW WHERE
23 THEY WERE GOING.

24 Q I'M NOT TALKING ABOUT THAT POINT, MR. EDWARDS. I'M TALKING
25 ABOUT THE PART WE JUST WENT OVER. HE DID NOT TELL YOU--HE

1 TOLD YOU THAT RON AND HAYES GOT IN THEIR CAR, IN RON'S CAR,
2 AND THAT DONALD GOT IN HIS CAR AND THE TWO CARS DROVE OFF
3 TOGETHER. ISN'T THAT WHAT HE TOLD YOU ON JANUARY 3RD?

4 A WELL, HE TOLD--WHAT HE SAID, HE SAY RON AND HAYES TO COME ON
5 AND GET INTO RONALD'S CAR.

6 Q THAT'S RIGHT.

7 A YES, THAT'S WHAT HE SAID.

8 Q WHAT'S THE NEXT SENTENCE?

9 A AND THEN SUTTON TO GET IN HIS CAR BY HIMSELF AND VITO STAY
10 AT THE PARTY SHOP.

11 Q THAT'S WHAT MY QUESTION WAS. ON JANUARY 3RD HE TOLD YOU THAT
12 DONALD WAS THERE WHEN RONALD DROVE UP?

13 A YES.

14 Q THAT RONALD WHEN HE DROVE UP OR SOMETIME THEREAFTER TOLD
15 HAYES TO GET IN RONALD'S CAR, DONALD TO GET INTO HIS CAR, AND
16 THAT THE TWO CARS DROVE OFF TOGETHER.

17 A THAT'S CORRECT.

18 Q THAT'S WHAT HE TOLD YOU ON JANUARY 3RD?

19 A THAT'S CORRECT.

20 Q DID HE AT ANY TIME ON JANUARY 3RD TELL YOU THAT WHEN RONALD
21 CAME BACK DONALD WAS NOT THERE, THAT RONALD TOLD HAYES TO GET
22 IN THE CAR, THAT THEY DROVE OFF AND AS THEY WERE DRIVING OFF
23 DONALD DROVE UP AND RONALD FLASHED HIS LIGHTS AND TOLD DONALD
24 TO FOLLOW HIM? IS THAT ANYWHERE REFLECTED IN YOUR NOTES?

25 A THIS IS NOT IN MY NOTES.

1 Q THAT'S CORRECT.

2 A THAT'S CORRECT.

3 Q THE VERSION HE GAVE YOU THAT DAY WAS THAT DONALD GOT IN THE
4 CAR AT THE SAME TIME THAT HAYES AND RONALD GOT IN THEIR CAR,
5 ISN'T THAT TRUE?

6 A THIS IS WHAT HE SAID ON THE 3RD.

7 Q GO ON DOWN AND LOOK AT THE THIRD PAGE OF THOSE NOTES. DID
8 HAYES MALLOY ON JANUARY 3RD TELL YOU WHEN THEY GOT TO THE
9 CHURCH DONALD GOT OUT OF HIS CAR, RONALD GOT OUT OF HIS CAR,
10 THEY WALKED OVER BEHIND THE CHURCH, THAT RONALD HAD HIS ARM
11 AROUND, THAT HE TOOK HIS ARM OFF AND HE SHOT HIM IN THE HEAD?
12 IS THAT ESSENTIALLY WHAT HE TOLD YOU ON JANUARY 3RD AND THAT
13 HE COULD SEE THE WHOLE THING?

14 A YES, HE TOLD US THIS. YES.

15 Q DO YOUR NOTES REFLECT AT ANY POINT AT ANY TIME ON JANUARY 3RD
16 THAT HAYES MALLOY TOLD YOU THAT RONALD MADE SOME GESTURE FOR
17 DONALD TO LOOK AT HAYES MALLOY OR THAT DONALD WAS LOOKING AT
18 HAYES MALLOY DURING THE ENTIRE TIME BEFORE HE WAS SHOT?

19 A NO. HE SAID--ONLY THING THAT WAS SAID IN THAT EFFECT THAT
20 RONALD STOPPED THE CAR AND HE SAID HOLLERED FOR DONALD TO
21 COME ON WITH HIM. THAT WAS JUST THE GIST OF THAT
22 CONVERSATION.

23 Q WHAT?

24 A THE GIST OF THE CONVERSATION WHAT HE SAID THAT RONALD HAD
25 HOLLERED TO COME AND GO WITH HIM.

1 Q BUT HE NEVER SAID ANYTHING ABOUT DONALD LOOKING AT HIM OR
2 RONALD MAKING SOME GESTURE FOR DONALD TO LOOK AT HAYES MALLOY
3 PRIOR TO HIM BEING SHOT?

4 A NO.

5 Q ISN'T THAT TRUE?

6 A THAT'S CORRECT.

7 Q IN THE DECEMBER 26TH STATEMENT, DID YOU PARTICIPATE IN TAKING
8 THAT STATEMENT FROM HAYES MALLOY?

9 A I DON'T THINK I WAS THERE 'CAUSE I WAS LOOKING OVER IT AND
10 I WASN'T PRESENT WHEN THE STATEMENT WAS TAKEN.

11 MR. SWERLING: THEN I HAVE NO FURTHER QUESTIONS.

12 THE COURT: ANYTHING ELSE?

13 MR. BILTON: I HAVE JUST A FEW, YOUR HONOR.

14 REDIRECT EXAMINATION BY

15 MR. BILTON:

16 Q LT. EDWARDS, ARE YOU THE CHIEF INVESTIGATING OFFICER IN THIS
17 CASE?

18 A NO, I WASN'T. I THINK I WAS WORKING ANOTHER HOMICIDE ALSO
19 DURING THAT TIME.

20 Q WHO WAS THE CHIEF INVESTIGATING OFFICER?

21 A INVESTIGATOR AUSTIN.

22 Q THESE NOTES THAT YOU'VE BEEN READING FROM, ARE THEY YOUR
23 NOTES?

24 A THEY ARE AUSTIN'S NOTES WHERE I WAS PRESENT WHEN HE TOOK 'EM.

25 Q SO, IS IT YOUR TESTIMONY THAT YOU DIDN'T WRITE THESE NOTES?

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12 I WAS IN AND OUT.

13 Q LET ME REFER YOU BACK TO THE STATEMENT OF THE DEFENDANT,
14 RONALD TILLMAN, ON JANUARY 4TH. SPECIFICALLY ON THE LAST
15 PAGE THE QUESTION WAS ASKED DID YOU SHOOT DONALD SUTTON. WHO
16 WAS PRESENT WHEN THAT QUESTION WAS ASKED?

17 A IT WAS RONALD TILLMAN, INVESTIGATOR AUSTIN AND MYSELF.

18 Q JUST THE THREE OF YOU?

19 A YES.

20 Q AND WHAT WAS HIS RESPONSE?

21 A HE SAID, NO, I DIDN'T AND I DIDN'T DO WITH ANYONE TO SHOOT
22 HIM.

23 Q DO YOU REMEMBER WHETHER OR NOT THE ARREST WARRANT WAS SERVED
24 BEFORE OR AFTER THE TAKING OF THIS STATEMENT?

25 MR. SWERLING: IF YOUR HONOR PLEASE, HE'S ALREADY

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1 TESTIFIED HE DID.

2 THE COURT: I'M GOING TO LET HIM. YOU INTRODUCED THE
3 ARREST WARRANT IN THE CASE. I'M GOING TO LET HIM ANSWER THE
4 QUESTION. GO AHEAD.

5 Q DO YOU REMEMBER WHETHER THIS STATEMENT WAS TAKEN BEFORE OR
6 AFTER YOU SERVED HIM WITH THE ARREST WARRANT?

7 A I THINK IT WAS BEFORE IF MY MEMORY SERVES ME CORRECTLY. LIKE
8 I TOLD HIM I BELIEVE IT WAS BEFORE.

9 Q AND YOU DID SERVE THE ARREST WARRANT?

10 A I BELIEVE I DID. I CAN'T REMEMBER PRECISELY. IT'S BEEN A
11 COUPLE OF YEARS AGO. I THINK I DID SERVE THE WARRANT.

12 Q IN REFERENCE TO THE STATEMENTS THE SEVERAL OCCASIONS WHERE
13 TIME FRAMES ARE MENTIONED, IT'S MY UNDERSTANDING YOU WROTE
14 THIS STATEMENT, CORRECT?

15 A THIS IS CORRECT.

16 Q BASED ON QUESTIONS THAT YOU ASKED HIM, CORRECT?

17 A YES, THIS IS BASED ON WHAT HE TOLD ME.

18 Q NOW, THESE TIME FRAMES ARE SPECIFICALLY 7:01 P.M. DONALD
19 CALLED ME. IF I COULD REFER TO THE STATEMENT. ON PAGE 3 OF
20 THE STATEMENT, FINAL PARAGRAPH, WOULD YOU PLEASE READ THAT?

21 A IT SAYS DONALD CALLED ME AROUND 7:01 P.M. AND SAID THAT HIM
22 AND VITO WAS ON THEIR WAY. I TOLD HIM JUST TO WAIT BECAUSE
23 I HAD SOMETHING TO DO. DO YOU WANT ME TO READ ANY FURTHER?

24 Q PLEASE.

25 A I ASKED WHERE HE WAS AND HE SAID BRIDGETTE HOUSE.

1 Q DID MR. TILLMAN TELL YOU THAT DONALD SUTTON CALLED HIM AT
2 7:01?

3 A THIS IS WHAT HE SAID. HE SAID DONALD CALLED ME AROUND-
4 -THAT'S CORRECT. 7:01.

5 Q AND WHOSE HOUSE WAS HE AT?

6 A HE SAY I ASKED HIM WHERE HE WAS AND HE SAY BRIDGETTE HOUSE.

7 Q OKAY. DID MR. TILLMAN SAY THAT DONALD SUTTON, TO DONALD
8 SUTTON THAT HE AND VITO WERE ON THEIR WAY? THE LATTER PART
9 OF THE STATEMENT?

10 A YES, THIS IS PART OF THE STATEMENT.

11 Q AND WHAT TIME WAS THAT?

12 A 7:20 P.M. HE SAID I TOLD VITO--EXCUSE ME. HE SAID DONALD
13 CALLED ME AROUND 7:01 AND HE SAID THAT HIM AND VITO WAS ON
14 THEIR WAY. 7:01.

15 Q OKAY. AND THE TIME FRAME IS WHAT MR. TILLMAN TOLD YOU, IS
16 THAT CORRECT?

17 A THAT'S CORRECT.

18 Q AND YOU WROTE IT DOWN ACCORDING TO WHAT HE SAID?

19 A THAT IS CORRECT.

20 Q OKAY. DID HE EVER MENTION TO YOU THAT HE CALLED BACK TO
21 BRIDGETTE'S HOUSE AND SPOKE WITH DONALD SUTTON?

22 A I DON'T BELIEVE IT'S IN THE STATEMENT HE SAID THAT.

23 Q HAD HE WOULD YOU HAVE PUT IT IN THE STATEMENT?

24 A YES, I WOULD HAVE.

25 Q SO, YOUR ANSWER IS IT'S NOT IN THE STATEMENT?

1 A IT'S NOT IN THE STATEMENT.

2 MR. SWERLING: OBJECTION, YOUR HONOR. NOW, HE'S LEADING
3 THE WITNESS.

4 THE COURT: YOU ARE LEADING THE WITNESS, MR. BILTON.
5 ASK HIM THE QUESTIONS. HE CAN RESPOND.

6 Q DID MR. TILLMAN EVER MENTION TO YOU THAT HE CALLED BACK TO
7 BRIDGETTE'S HOUSE AND SPOKE WITH DONALD?

8 A NO, NOT WHEN I TALKED TO HIM. THAT'S NOT IN THE STATEMENT.
9 IF HE WOULD, I'D HAVE PUT IT IN HERE.

10 Q DID HE INDICATE TO YOU ON PAGE 4 OF THE STATEMENT WHAT TIME
11 HE LEFT THE STORE?

12 MR. SWERLING: YOUR HONOR, THIS IS ALL--THIS IS NOT
13 REDIRECT. I MEAN HE'S ALREADY PUBLISHED THE STATEMENT IN HIS
14 CASE IN CHIEF.

15 THE COURT: WHAT IS THE PURPOSE OF THE STATEMENT BECAUSE
16 IT HAS BEEN PUBLISHED TWICE, ONCE BY YOU AND ONCE BY COUNSEL
17 FOR THE DEFENSE?

18 MR. BILTON: YOUR HONOR, I'M JUST WANTING TO ESTABLISH
19 THAT THE TIME FRAMES WHICH HE TESTIFIED TO ARE THE EXACT TIME
20 FRAMES THAT MR. TILLMAN INDICATED TO HIM.

21 THE COURT: WELL, THAT'S WHAT YOU DID WHEN YOU SAID YOU
22 TOOK THE STATEMENT, YOU ENTERED THE STATEMENT IN THE RECORD
23 AND YOU PUBLISHED IT. HAS THERE BEEN ANY CONTRADICTION TO
24 THAT BY THE DEFENSE IN ANY FASHION.

25 MR. BILTON: OKAY, SIR.

1 ONE FINAL QUESTION, INVESTIGATOR EDWARDS. TO THE BEST OF YOUR
2 KNOWLEDGE, ARE ALL THESE TIME FRAMES CORRECT?

3 MR. SWERLING: OBJECTION, YOUR HONOR. THERE'S NO WAY
4 THAT THIS WITNESS WOULD KNOW THAT. HE TOOK THE STATEMENT.

5 MR. BILTON: BASED ON WHAT YOU WERE TOLD BY MR. TILLMAN.

6 THE COURT: I SUSTAIN THE OBJECTION. YOU ARE ASKING THE
7 WITNESS TO PASS UPON THE VERACITY OF WITNESSES. I SUSTAIN
8 THE OBJECTION. IT'S AN IMPROPER QUESTION. THE JURY IS
9 INSTRUCTED TO DISREGARD IT.

10 Q WHAT DATE WAS THE MURDER OF DONALD SUTTON?

11 A IT WAS ON--I'LL HAVE TO CHECK TO MAKE SURE OF THE CORRECT
12 DATE.

13 MR. SWERLING: WE'LL STIPULATE IT WAS THE 26TH.

14 A THAT'S CORRECT.

15 Q AND WHAT DATE WAS THIS STATEMENT?

16 A THE STATEMENT WAS ON JANUARY THE 4TH OF '89.

17 MR. BILTON: NO FURTHER QUESTIONS.

18 MR. SWERLING: CAN I GET SOME MORE CLARIFICATION, YOUR
19 HONOR?

20 RECROSS EXAMINATION BY

21 MR. SWERLING:

22 Q ON CROSS EXAMINATION YOU TESTIFIED THAT YOU SERVED THE
23 WARRANT ON HIM BEFORE YOU TOOK THE STATEMENT?

24 A I BELIEVE I DID.

25 Q YOU ARE NOT CHANGING THAT NOW, ARE YOU?

1 A OH, NO, SIR.

2 MR. SWERLING: THAT'S ALL, YOUR HONOR.

3 THE COURT: YOU MAY STEP DOWN.

4 (WITNESS TO THE SIDE)

5 MR. MORTON: YOUR HONOR, THE STATE CALLS GABBY WELLS TO
6 THE STAND.

7 THE COURT: YOU AND MR. SWERLING COME HERE A MINUTE.

8 (MR. MORTON AND MR. SWERLING APPROACH THE BENCH OUT OF
9 THE PRESENCE OF THE COURT REPORTER)

10 CLARENCE GABBY WELLS, AFTER BEING DULY SWORN BY THE
11 CLERK, TESTIFIES AS FOLLOWS:

12 DIRECT EXAMINATION BY

13 MR. MORTON:

14 Q MR. WELLS, YOU KNOW RONALD TILLMAN? DO YOU KNOW THE
15 DEFENDANT IN THIS CASE, RONALD TILLMAN?

16 A YES, SIR.

17 Q HOW LONG HAVE YOU KNOWN HIM?

18 A I'D SAY ABOUT FIVE, SIX YEARS.

19 Q HOW WELL DO YOU KNOW HIM?

20 A REAL WELL.

21 Q OKAY. DID YOU USED TO HANG OUT WITH RONALD TILLMAN SOME?

22 A YES, SIR.

23 Q DID YOU HANG AROUND DOWN AT THE PARTY SHOP WITH HIM SOME?

24 A YES, SIR.

25 Q OKAY. NOW, GABBY, YOU'VE BEEN IN SOME TROUBLE BEFORE,