

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

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

RONALD TILLMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002499

APPENDIX

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1 HAVEN'T YOU?

2 A YES, SIR.

3 Q AS A MATTER OF FACT, I BELIEVE YOU ARE IN JAIL RIGHT NOW,
4 AREN'T YOU?

5 A YES, SIR.

6 Q OKAY. GABBY, YOU WERE CONVICTED OF PETTY LARCENY IN 1983,
7 WEREN'T YOU?

8 A YES, SIR.

9 Q AND YOU WERE CONVICTED OF PETTY LARCENY IN 1984, WEREN'T YOU?

10 A YES, SIR.

11 Q AND YOU WERE CONVICTED OF SHOPLIFTING IN 1985, RIGHT?

12 A YES, SIR.

13 Q AND YOU WERE CONVICTED OF SHOPLIFTING IN 1988, IS THAT RIGHT?

14 A THAT'S RIGHT.

15 Q AND YOU ARE PRESENTLY IN JAIL ON A ROBBERY CHARGE, IS THAT
16 RIGHT?

17 A THAT'S RIGHT.

18 Q OKAY. DID YOU EVER TALK WITH INVESTIGATOR AUSTIN CONCERNING
19 THIS CASE AND MR. RONALD TILLMAN?

20 A YES, SIR.

21 Q OKAY. DID YOU EVER TELL MR. AUSTIN ANYTHING ABOUT
22 CONVERSATIONS THAT RONALD TILLMAN HAD HAD WITH YOU?

23 A YES, SIR.

24 Q OKAY. DID YOU--DID MR. AUSTIN EVER TELL YOU THAT HE WOULD
25 HELP YOU OUT FOR THAT?

1 A I TOLD HIM IF HE WOULD HELP ME I WOULD HELP HIM.

2 Q OKAY. DID YOU TELL HIM WHAT YOU HAD TO SAY BEFORE HE SAID

3 THAT HE WOULD HELP YOU?

4 A I TOLD HIM FIRST, YES, SIR.

5 Q OKAY. AND THEN WHAT DID INVESTIGATOR AUSTIN SAY? DID HE SAY

6 THAT HE WOULD HELP YOU IN RETURN?

7 A HE SAY HE WOULD TRY TO HELP ME IN RETURN.

8 Q HAVE YOU ENTERED INTO AN AGREEMENT WITH YOU AND YOUR

9 ATTORNEY, MR. WELLS?

10 A YES, SIR.

11 Q OKAY. HAVE WE AGREED TO REDUCE YOUR ARMED ROBBERY CHARGE TO

12 A ROBBERY CHARGE?

13 A YES, SIR.

14 Q HAVE WE AGREED TO RECOMMEND A SENTENCE OF FIVE YEARS FOR YOU?

15 A YES, SIR.

16 Q HAVE WE RECOMMENDED THAT THIS FIVE YEAR SENTENCE RUN

17 CONCURRENT WITH YOUR PROBATION REVOCATION TIME?

18 A YES, SIR.

19 Q AND HAVE WE AGREED TO REQUEST, JUST REQUEST, THAT PENDING

20 SHOPLIFTING CHARGES IN DORCHESTER AND LEXINGTON COUNTIES BE

21 DISMISSED AGAINST YOU?

22 A YES, SIR.

23 Q OKAY. NOW, GABBY, YOU TOLD INVESTIGATOR AUSTIN WHAT YOU ARE

24 ABOUT TO TELL THIS JURY?

25 A YES, SIR.

1 Q BEFORE WE AGREED TO THIS WITH YOU, RIGHT?

2 A THAT'S RIGHT.

3 Q OKAY. YOU SAY YOU'VE KNOWN RONALD TILLMAN FOR QUITE SOME

4 TIME, IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q DID YOU EVER, AS I SAID, TALK TO RONALD TILLMAN ABOUT THE

7 KILLING OF "DUCK" SUTTON?

8 A YES, SIR.

9 Q AND THIS WAS BEFORE "DUCK" SUTTON WAS KILLED, IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND WHAT DID RONALD TILLMAN TELL YOU ABOUT THAT?

12 A HE TOLD ME, SAY HE WAS GONNA KILL "DUCK" SUTTON.

13 Q HOW MANY TIMES DID HE TELL YOU THIS?

14 A WELL, HE TOLD ME THAT IN DECEMBER AND HE TOLD ME THAT BACK

15 IN NOVEMBER. ME AND HIM RODE SEVERAL TIMES TOGETHER AND HE

16 TOLD ME, SAY HE WAS GONNA KILL "DUCK."

17 Q ARE YOU TELLING THIS JURY THAT BECAUSE WE'VE GIVEN YOU THIS

18 DEAL OR ARE YOU TELLING US THAT BECAUSE IT'S TRUE?

19 A I'M TELLING YOU THAT BECAUSE IT'S TRUE.

20 Q WERE YOU IN JAIL WITH RONALD TILLMAN AFTER HE GOT ARRESTED

21 FOR THIS CHARGE?

22 A YES, SIR.

23 Q OKAY. WERE YA'LL IN THE SAME CELLBLOCK DOWN AT THE RICHLAND

24 COUNTY?

25 A NO, WE WAS IN DIFFERENT CELLBLOCKS. HE WAS IN CELLBLOCK TWO-

1 THREE; MYSELF, I WAS IN CELLBLOCK TWO-TWO.

2 Q OKAY. EXPLAIN TO THE JURY WHERE CELLBLOCK TWO-TWO IS AS
3 OPPOSED TO CELLBLOCK TWO-THREE?

4 A WELL, IT'S RIGHT ACROSS THE HALL. I'D SAY APPROXIMATELY ABOUT
5 FIVE YARDS ACROSS.

6 Q OKAY. IF YOU CAN LOOK AT THEM AND TALK IN THIS MICROPHONE
7 AT THE SAME TIME YOU'LL BE DOING GOOD, OKAY?

8 A OKAY.

9 Q SO, IN OTHER WORDS, YOU WERE IN ONE CELLBLOCK.

10 A RIGHT.

11 Q MR. TILLMAN WAS IN ANOTHER CELLBLOCK?

12 A THAT'S CORRECT.

13 Q DID HE EVER ASK YOU ANY QUESTIONS ABOUT HAVE YOU SEEN HAYES
14 MALLOY OR ANYTHING LIKE THAT?

15 A WELL, ONE NIGHT--IF I'M NOT MISTAKEN IT WAS ON A TUESDAY
16 NIGHT--TILLMAN CALLED ME OVER. WE GOT LITTLE HOLES WHERE THE
17 TRAYS COME IN.

18 Q HOLES IN THE DOOR?

19 A HOLES IN THE WALL, DOOR, WHATEVER.

20 Q IN OTHER WORDS, IT'S NOT ALL BARS OR ANYTHING?

21 A NO, IT'S NOT ALL BARS.

22 Q FOUR SOLID WALLS?

23 A FOUR SOLID WALLS.

24 Q OTHER THAN THAT LITTLE TRAY?

25 A THAT'S CORRECT.

1 Q OKAY. CAN YOU SEE ACROSS THE HALL WHO IS TALKING TO YOU?

2 A YOU CAN SEE AND PLUS YOU CAN HEAR REAL GOOD IF YOU CUT THE
3 T.V. DOWN.

4 Q OKAY. GO AHEAD.

5 A AND HE ASKED ME HAVE HAYES MALLOY COME IN. I SAY, NO, NOT
6 YET.

7 Q HE ASKED YOU HAD HAYES MALLOY--

8 A CAME INTO MY CELLBLOCK IN TWO-TWO. SEE, HE WAS IN TWO-THREE
9 AND I WAS IN TWO-TWO. SO, I SAID, NO, HE HAVEN'T CAME IN
10 YET. BUT WHEN HAYES CAME IN TILLMAN CALLED BACK OVER AGAIN
11 AND ASK ME AGAIN HAYES MALLOY CAME IN. I TOLD HIM YEAH. SO,
12 HE TELL ME, SAID TELL HAYES MALLOY--

13 MR. SWERLING: YOUR HONOR, NOW I HAVE TO OBJECT. CAN
14 WE APPROACH THE BENCH?

15 THE COURT: YES.

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

18 THE COURT: MR. SWERLING?

19 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
20 COURT REPORTER)

21 THE COURT: TO THE JURY ROOM.

22 (THE JURY LEAVES THE JURY BOX AT 4:32 P.M.)

23 THE COURT: ALL RIGHT, THE JURY IS NOW OUTSIDE THE
24 PRESENCE OF THE COURT. COUNSEL FOR THE DEFENSE OBJECTED TO
25 THIS WITNESS'S TESTIMONY. FIRST, AT THE SIDE BAR RAISED THE

1 QUESTION OF WHETHER OR NOT THERE'S BEEN COMPLIANCE WITH THE
2 DISCOVERY REQUEST OF ANY ALLEGED STATEMENTS, ORAL OR WRITTEN
3 OF THE DEFENDANT. IT APPEARS THAT THAT HAS BEEN RESOLVED
4 THAT THE STATE DID APPRISE COUNSEL FOR THE DEFENSE OF THE
5 ALLEGED STATEMENT MADE IN THE JAILHOUSE. THE FOLLOWING
6 OBJECTION IS WHETHER OR NOT ANY STATEMENT MADE BY THIS
7 DEFENDANT WENT TO SOME OTHER CRIME, THAT BEING THE BANK
8 ROBBERY, THE ARMED ROBBERY. I'M GOING TO FIND OUT WHAT IT
9 IS AND WHETHER OR NOT IT SHOULD BE REDACTED IN THAT FASHION.
10 ALL RIGHT, ASK THE QUESTION AND LET'S SEE WHAT IT IS.

11 Q (BY MR. MORTON) GABBY, WHEN YOU GOT HAYES UP TO THE WINDOW
12 AND RONALD TILLMAN, WHAT DID RONALD TILLMAN ASK HAYES MALLOY?

13 A HE TOLD HAYES MALLOY THAT HE WANTED HIM TO TAKE THE MURDER
14 CHARGE FOR DONALD SUTTON.

15 Q DID HE SAY WHY?

16 A YES. I CAN SAY IT?

17 Q YEAH, YOU CAN SAY IT. THE JURY'S NOT HERE.

18 A OKAY. HE SAY THAT THE FEDS HAD HIM BY THE BALLS AND HE SAY
19 HE WANT HAYES MALLOY TO TAKE THE MURDER CHARGE BECAUSE THE
20 FEDS HAD HIM BY THE BALLS.

21 MR. MORTON: YOUR HONOR, I THINK IT'S RELEVANT EVIDENCE.
22 I THINK IT CREATES A PROBLEM FOR THE STATE IF WE ARE NOT ABLE
23 TO MENTION THE FACT THAT THE FEDS HAD HIM AND I REALIZE THE
24 PREJUDICIAL NATURE OF IT AS WELL. BUT IT MAKES IT LOOKS LIKE
25 HAYES MALLOY WAS INVOLVED. I MEAN THAT WITHOUT THE PREFACE

1 THAT THE FEDS ALREADY HAVE ME, TAKE THE MURDER RAP, SEE WHAT
2 I'M SAYING?

3 THE COURT: LET ME HEAR FROM YOU, MR. SWERLING.

4 MR. SWERLING: JUDGE, I WOULD STRENUOUSLY OBJECT THE
5 WITNESS BEING ALLOWED TO TESTIFY THE FEDS HAVE ME BY THE
6 CAHONIES (ph) AND YOU TAKE THE MURDER RAP. THAT GOES RIGHT
7 BACK INTO WHAT WE'VE BEEN TRYING TO KEEP SANITIZED FOR THREE
8 DAYS AND THAT IS REFERENCE TO OTHER CRIMES.

9 THE COURT: WELL, THIS ISN'T A CRIME. HE'S SAYING FOR
10 SOME REASON, WE DON'T KNOW WHAT IT IS, BUT--

11 MR. SWERLING: WELL, IT'S SOMETHING TO ALLOW THE JURY
12 TO SPECULATE ABOUT WHAT IT IS. IT'S GOING TO ALLOW THE JURY
13 TO SPECULATE WHY HE'S DEALING WITH THE F.B.I. NOW AND THERE
14 IS SOMETHING GOING ON WITH THE FEDERAL GOVERNMENT, SOME OTHER
15 CHARGES. I THINK IT'S CLEARLY PREJUDICIAL. IT'S NOT
16 RELEVANT OR PROBATIVE TO ANYTHING IN THIS CASE. AND IF IT
17 IS CERTAINLY THE PREJUDICIAL EFFECT OF IT OUTWEIGHS ANY
18 PROBATIVE VALUE IT HAS. SECOND OF ALL, THE STATEMENT ITSELF
19 FOR MALLOY TO TAKE THE RAP IS NOT RELEVANT TO THE ISSUE OF
20 WHETHER OR NOT RONALD TILLMAN KILLED DONALD SUTTON ON
21 DECEMBER 26TH. IT'S NOT PROBATIVE OF ANY ISSUE IN THAT CASE
22 OR ANY ELEMENT OF THE CRIME.

23 THE COURT: IT'S AN ADMISSION AGAINST HIS INTEREST AND
24 THE REASON FOR IT, THAT BEING THAT HE COMMITTED THE CRIME AND
25 THAT HE WANTED SOMEBODY ELSE TO TAKE THE RAP FOR HIM BECAUSE

1 HE ALREADY HAD ENOUGH ON HIM.

2 MR. SWERLING: WELL, YOUR HONOR, HE DOESN'T SAY THAT I
3 COMMITTED THE CRIME. HE SAYS YOU TAKE THE RAP.

4 THE COURT: THAT'S PRETTY TACIT IF BELIEVED.

5 MR. SWERLING: IF BELIEVED. BUT IT'S NOT A DECLARATION
6 OF INTEREST IN THE CLASSIC SENSE THAT HE SAID I DID IT.

7 THE COURT: YOU ARE PULLING HAIRS NOW.

8 MR. SWERLING: WELL, I THINK THE STATE IS TRYING TO DO
9 IT. THEY ARE TRYING TO DO EVERYTHING BUT PROVE WHAT HAPPENED
10 ON DECEMBER 26TH. I CAN'T KEEP FIGHTING EVERY OTHER CHARGE
11 AND THAT'S WHAT WE SEEM TO BE DOING FOR THREE DAYS IS THEY
12 WANT TO THROW EVERYTHING ELSE IN --

13 THE COURT: YOU ARE DOING A PRETTY GOOD JOB OF IT.
14 NOTHING HAS GONE IN SO FAR.

15 MR. SWERLING: YEAH, BUT I'M GETTING TIRED.

16 THE COURT: THEY ARE ENTITLED TO PUT UP IF IT'S RELEVANT
17 AND IT'S ON THE ISSUES. THE OTHER THINGS WERE LYLE ISSUES
18 ABOUT PROVING ANOTHER CRIME. THIS ISN'T A CRIME. YOU ARGUE
19 IT'S SPECULATION. IT'S AN ADMISSION BY HIM AGAINST HIS PENAL
20 INTEREST AND IT'S A DECLARATION OF THAT TO A NON-LAW
21 ENFORCEMENT SO MIRANDA DOESN'T APPLY. THE ONLY QUESTION IS
22 WHETHER OR NOT IT'S NOT ADMISSIBLE FOR SOME OTHER REASON.
23 YOU ARGUE THAT IT'S NOT ADMISSIBLE BECAUSE HE ADMITS ANOTHER
24 CRIME. BY SAYING THAT THE FEDS HAVE ME BY THE BALLS, IS THAT
25 AN ADMISSION OF ANOTHER CRIME OR PROOF OF ANOTHER CRIME?

1 MR. SWERLING: I THINK IT'S AN ADMISSION OF ANOTHER
2 CRIME, IT'S PROOF OF ANOTHER CRIME AND IT PUTS HIS CHARACTER
3 IN ISSUE AND HE HASN'T TENDERED IT IN ADDITION TO THE OTHER
4 GROUNDS I'VE STATED. I MEAN I THOUGHT THE WHOLE PURPOSE IN
5 NOT GOING INTO THE BANK ROBBERY WAS BECAUSE OF THAT PROBLEM.

6 THE COURT: WELL, THAT'S A SPECIFIC CRIME.

7 MR. SWERLING: BY SAYING THAT THE FEDS HAVE ME IS GOING
8 TO ALLOW THE JURY TO SPECULATE THAT HE'S BEEN ACCUSED OF OR
9 CONVICTED OF OR CHARGED WITH SOME OTHER CRIME AND HE HAS NOT
10 YET TENDERED HIS CHARACTER.

11 THE COURT: YES, BUT THIS IS SOMETHING HE SAYS OUT OF
12 HIS OWN MOUTH, COUNSELLOR. IT'S NOT LIKE THEM COMING IN AND
13 TRYING TO PROVE A CRIME WITHOUT ANY STATEMENTS BY HIM, JUST
14 COMING IN AND PROVING A PRIOR CRIME TO SHOW THAT HE HAD THE
15 MOTIVE AND INTENT TO DO IT. IT'S A LITTLE BUT FURTHER
16 REMOVED FROM THAT. IT APPEARS TO BE THAT IT OUGHT TO BE
17 ADMISSIBLE.

18 MR. MORTON: YOUR HONOR, ON ANOTHER MATTER SINCE MR.
19 WELLS IS HERE.--

20 Q (BY MR. MORTON) MR. WELLS, DID RONALD TILLMAN EVER OFFER YOU
21 ANY MONEY WHILE YA'LL WERE IN THE JAIL?

22 A HE SHOWED ME FIVE HUNDRED DOLLARS. HE WANTED ME TO TESTIFY
23 FOR HIM IN THE CASE.

24 Q SPEAK A LITTLE SLOWER AND SPEAK UP.

25 A HE SHOWED ME FIVE HUNDRED DOLLARS THROUGH A LITTLE PEEP HOLE

1 THEY PUT THE TRAYS AT.

2 Q FIVE ONE HUNDRED DOLLAR BILLS?

3 A YEAH.

4 Q AND WHAT DID HE SAY?

5 A HE SAY IF I TESTIFY IN HIS BEHALF THAT HE WOULD TAKE CARE OF

6 ME.

7 Q OKAY. WHAT DID THAT MEAN TO YOU?

8 A IT MEAN TO ME THAT ON ANY CASE THAT HE GO UP AGAINST HE

9 WANTED ME TO BE A WITNESS.

10 MR. MORTON: I'D OFFER THAT TESTIMONY, YOUR HONOR.

11 MR. SWERLING: YOUR HONOR, I OBJECT TO THAT. MR. WELLS

12 TESTIFIED IN THE FEDERAL BANK ROBBERY TRIAL WHICH I HAVE A

13 TRANSCRIPT OF --

14 THE COURT: WHAT DO YOU SAY HE SAID IN THE FEDERAL

15 BANKRUPTCY TRIAL?

16 MR. SWERLING: FIVE HUNDRED DOLLARS WAS OFFERED TO HIM

17 TO TESTIFY THAT A FIGHT THAT THEY HAD ON THE 21ST OF DECEMBER

18 ACTUALLY TOOK PLACE ON THE 12TH OF DECEMBER WHICH WAS THE DAY

19 OF THE ROBBERY. THAT'S WHAT HE TESTIFIED TO IN FEDERAL

20 COURT, THAT THAT'S WHAT THE FIVE HUNDRED DOLLARS WAS FOR.

21 IT HAD NOTHING TO DO WITH THIS CASE WHATSOEVER AND I'VE GOT

22 A TRANSCRIPT OF IT.

23 THE COURT: I'M GOING TO LET YOU EXAMINE THE WITNESS ON

24 THAT. DO YA'LL HAVE A COPY OF THE FEDERAL TRANSCRIPT?

25 MR. MORTON: YES, SIR.

1 THE COURT: WELL, LET ME ASK HIM. DID YOU TESTIFY IN
2 THE FEDERAL CASE?

3 A YES, SIR.

4 THE COURT: AND DID YOU TESTIFY AT THAT TIME THAT THE
5 FIVE HUNDRED DOLLARS OFFERED BY THE DEFENDANT WAS FOR THAT
6 TRIAL HE WAS BEING TRIED FOR IN FEDERAL BANKRUPTCY COURT?
7 I MEAN FEDERAL COURT?

8 A WELL, HE DIDN'T SAY SPECIFICALLY WHAT COURT HE HAD WANTED ME
9 TO TESTIFY IN COURT.

10 THE COURT: WELL, WHAT DID YOU SAY IN THE FEDERAL COURT?
11 DO YOU RECALL?

12 A I THINK I SAID THE BANK ROBBERY.

13 THE COURT: YOU THINK YOU DID SAY THE BANK ROBBERY IN
14 FEDERAL COURT?

15 A BUT TO ME IT MEAN BOTH OF THE COURTS. I TOOK IT FOR BOTH OF
16 THE COURTS.

17 THE COURT: BUT YOU DIDN'T SAY THAT IN THE FEDERAL
18 TRIAL?

19 A I DON'T THINK WE WAS ALLOWED TO SAY THAT. BRING THAT UP.

20 THE COURT: WELL, LET ME SEE THE TRANSCRIPT. HANDED TO
21 ME IS WHAT APPEARS TO BE A TRANSCRIPT OF A TRIAL, UNITED
22 STATES OF AMERICA VS. RONALD TILLMAN, TOMMY LEE BYNUM. IT'S
23 GOT CR3-89-6 DONE THE 30TH DAY OF MAY, 1989. AND ON PAGE 123
24 BUT I WANTED TO FIND THE--THIS IS TESTIMONY EXCERPTS OF HAYES
25 MALLOY, GABBY WELLS, RUFUS McQUEEN. THIS IS THE TESTIMONY

1 OF GABBY WELLS, PAGE 123. (PAUSE)

2 MR. SWERLING: YOUR HONOR, I APOLOGIZE.

3 THE COURT: I DON'T SEE IT HERE.

4 MR. SWERLING: WELL, YOUR HONOR, IT'S A STATEMENT BEFORE
5 A FEDERAL GRAND JURY. IT'S IN THERE, TOO, BUT, YOUR HONOR,
6 I'LL PUBLISH THE PERTINENT PORTIONS

7 THE COURT: I DON'T SEE IT IN HERE YET.

8 MR. SWERLING: HE TALKS ABOUT THE FIVE HUNDRED DOLLARS
9 IN THERE.

10 THE COURT: ALL RIGHT. HAVE YOU GOT THE GRAND JURY
11 TESTIMONY, TOO?

12 MR. SWERLING: YES, SIR.

13 THE COURT: LET ME SEE WHAT HE SAID. (PAUSE) IT SAYS
14 HERE HE TOLD HIM HE WOULD PAY HIM IF HE TOLD THEM HE WOULDN'T
15 LEAVE THE PARTY SHOP.

16 MR. SWERLING: THIS IS REFERRING TO DECEMBER 12TH.

17 MR. MORTON: YOUR HONOR, THIS IS THE TRANSCRIPT.

18 THE COURT: TRANSCRIPT OF WHAT?

19 MR. MORTON: OF THE FEDERAL TRIAL.

20 THE COURT: OKAY. WHAT PAGE IS THAT?

21 MR. MORTON: PAGE 131.

22 THE COURT: LET ME SEE. IT'S GABBY WELLS?

23 MR. MORTON: YES, SIR.

24 THE COURT: ALL RIGHT. (PAUSE) WELL, LET ME ASK YOU
25 THIS, MR. SWERLING. YOU KNOW, WHEN A WITNESS GIVES A PRIOR

1 INCONSISTENT STATEMENT THEN YOU HAVE A RIGHT TO IMPEACH HIM
2 UPON ANY OTHER PRIOR INCONSISTENT STATEMENTS. AND, OF COURSE,
3 THE PROBLEM IS TRYING TO REFER TO WHEN IT WAS. IT SEEMS TO
4 ME THAT CAN BE CORRECTED BY SIMPLY REFERRING TO WEREN'T YOU
5 UNDER OATH AT A PRIOR TIME IN A COURT PROCEEDING AND AT THAT
6 TIME YOU WERE PLACED UNDER OATH AND DID YOU NOT MAKE A
7 STATEMENT TO THIS EFFECT.

8 MR. SWERLING: YOUR HONOR, THAT WOULD NECESSITATE--

9 THE COURT: YOU DON'T HAVE TO REFER TO THE BANK ROBBERY
10 AT ALL. THE QUESTION IS WHETHER OR NOT HE WAS UNDER OATH AND
11 WHETHER OR NOT HE GAVE A PRIOR INCONSISTENT STATEMENT.

12 MR. SWERLING: THE PRIOR INCONSISTENT STATEMENT IS THAT
13 RONALD TILLMAN WANTED HIM TO PROVIDE AN ALIBI FOR HIM FOR
14 DECEMBER 12TH, 1988, WHEN THERE WAS A BANK ROBBERY FOR WHICH
15 HE WAS CHARGED.

16 THE COURT: I UNDERSTAND.

17 MR. SWERLING: I CAN'T IMPEACH HIM WITHOUT GOING INTO
18 EXACTLY WHAT THE COURT'S KEPT OUT.

19 MR. MORTON: YOUR HONOR, I THINK THE FEDERAL COURT KEPT
20 HIM FROM SAYING ANYTHING ABOUT THE MURDER.

21 MR. SWERLING: THE GRAND JURY ALSO SAYS THE SAME THING.
22 NOW, I CAN'T--I'M OBJECTING TO THIS MAN GETTING ON THE STAND
23 AND COMMITTING WHAT APPEARS TO BE PERJURY IN LIGHT OF WHAT
24 HE'S ALREADY TESTIFIED TO ON TWO OTHER OCCASIONS UNDER OATH
25 AND THAT I CAN'T CROSS EXAMINE HIM ABOUT WITHOUT OPENING THE

1 DOOR TO A BANK ROBBERY.

2 THE COURT: I THINK YOU CAN CROSS EXAMINE HIM ABOUT IT.
3 I THINK YOU CAN HANDLE IT SUCH WITHOUT GOING INTO THE FACT
4 THAT IT WAS A BANK ROBBERY BY SIMPLY HAVING HIM ADMIT--OF
5 COURSE, IF HE DENIES IT WAS UNDER OATH THEN THAT'S A
6 DIFFERENT QUESTION. HE MAY PERJURE HIMSELF RIGHT HERE. BUT
7 IF HE ADMITS HE WAS UNDER OATH AT A PRIOR TIME IN A JUDICIAL
8 PROCEEDING AND HE ADMITS THAT AT THAT TIME HE RESTRICTED
9 HIMSELF OR HE DID NOT SAY WHAT HE'S SAYING TODAY THEN YOU
10 HAVE IT AS A PRIOR INCONSISTENT STATEMENT.

11 MR. SWERLING: BUT YOUR HONOR THE PRIOR INCONSISTENT
12 STATEMENT SAYS THAT RONALD TILLMAN OFFERED ME FIVE HUNDRED
13 DOLLARS TO BE AN ALIBI WITNESS FOR HIM FOR DECEMBER 12TH.
14 THERE'S NO WAY TO CROSS EXAMINE HIM--

15 MR. MORTON: YOUR HONOR, THAT'S NOT WHAT HE SAID.

16 THE COURT: LET HIM FINISH.

17 MR. SWERLING: THAT'S WHAT THE IMPORT OF IT IS.

18 MR. MORTON: NOT NECESSARILY.

19 MR. SWERLING: HE WANTED HIM TO BE A ALIBI WITNESS THAT
20 HE NEVER LEFT THE PARTY SHOP ON THE MORNING OF THE BANK
21 ROBBERY WHICH TOOK PLACE ON DECEMBER 12TH. THERE IS NO WAY
22 I CAN CROSS EXAMINE MR. WELLS EFFECTIVELY ABOUT THE PRIOR
23 INCONSISTENT STATEMENT UNLESS I ASK HIM WHAT IN FACT DID HE
24 TESTIFY TO ON A PRIOR OCCASION THE FIVE HUNDRED DOLLARS WAS
25 FOR.

1 MR. MORTON: WHAT'S WRONG WITH THAT, YOUR HONOR? THAT
2 COULD BE A PRELIMINARY HEARING, IT COULD BE--THEY DON'T KNOW
3 WHAT IT IS.

4 MR. SWERLING: AN ALIBI.

5 MR. MORTON: MR. SWERLING IS TRYING TO PRECLUDE US FROM
6 GETTING IN THE DEFENDANT'S OWN PROPOSITION OF MR. WELLS.

7 MR. SWERLING: THIS IS PERJURY. THAT'S WHAT WE ARE
8 TALKING ABOUT.

9 MR. MORTON: YOUR HONOR, THAT'S NOT FOR HIM TO DECIDE
10 WHETHER IT'S PERJURY OR NOT.

11 MR. SWERLING: THIS INDIVIDUAL HAS TESTIFIED BEFORE A
12 FEDERAL GRAND JURY AND A FEDERAL DISTRICT COURT THAT THE
13 MONEY WAS OFFERED FOR HIM TO BE AN ALIBI ON DECEMBER 12TH.
14 I FIND IT HARD TO BELIEVE THAT THE STATE WANTS TO CONDONE
15 THAT.

16 MR. MORTON: OH--

17 THE COURT: JUST A MINUTE. JUST A MINUTE. MR. WITNESS,
18 DID YOU TESTIFY UNDER OATH AT THE FEDERAL TRIAL THAT THE FIVE
19 HUNDRED DOLLARS WAS FOR YOU TO SAY THAT HE NEVER DID LEAVE
20 THE PARTY SHOP?

21 A YES, SIR, I DID. BUT I TOOK IT WHEN HE OFFERED ME THE FIVE
22 HUNDRED DOLLARS, HE TOLD ME SAY THAT HE WANTED ME TO TESTIFY
23 FOR HIM THAT HE NEVER DID LEAVE THE PARTY SHOP THE MORNING
24 OF THE BANK ROBBERY. BUT I TOOK IT THOUGH HE WANT ME TO
25 TESTIFY--I ALSO TOOK IT HE WANT ME TO TESTIFY FOR HIM ON ALL

1 THE CHARGES.

2 THE COURT: I UNDERSTAND.

3 MR. SWERLING: YOUR HONOR, I WOULD SAY--

4 THE COURT: I'LL TAKE CARE OF IT. THAT'S OKAY. I'M NOT
5 GOING TO LET HIM TESTIFY TO THAT. HE CLEARLY SAYS THE PARTY
6 SHOP. HE'S NOW TRYING TO TRANSFER OVER TO THAT WHAT THE MAN
7 INTENDED BY IT. NOW, HE'S TRYING TO PRESUPPOSE WHAT'S IN THE
8 MIND OF THE DECLARANT, THE PERSON SAYING IT. HE CAN CLEARLY
9 SAY IF IT WAS ADMISSIBLE WHAT THE MAN TOLD HIM BUT NOT WHAT
10 HE THOUGHT THE MAN INTENDED. THAT'S WHAT HE'S SAYING NOW.
11 I'M NOT GOING TO LET HIM SAY THAT.

12 MR. MORTON: MAY I JUST ASK HIM A CLARIFICATION?

13 THE COURT: YES, SIR.

14 MR. MORTON: CAN I ASK HIM DID HE TELL YOU THAT HE
15 WANTED YOU TO ACCEPT FIVE HUNDRED DOLLARS FROM HIM TO SAY
16 THAT HE WAS AT THE PARTY SHOP ON DECEMBER 12TH OR DID HE JUST
17 SAY I WANT TO OFFER YOU FIVE HUNDRED DOLLARS TO TESTIFY IN
18 COURT FOR ME?

19 A HE SAY, HE SHOW THE FIVE HUNDRED DOLLARS OUT THERE. HE SAY
20 IF YOU TESTIFY FOR ME YOU WILL GET THIS.

21 MR. SWERLING: WELL, THEN HE MUST HAVE LIED IN FEDERAL
22 COURT.

23 THE COURT: I AGREE. HE TESTIFIED IN FEDERAL COURT THAT
24 IT WAS FIVE HUNDRED DOLLARS FOR THE PARTY SHOP.

25 MR. MORTON: YOUR HONOR--

1 MR. SWERLING: YOUR HONOR, I'D LIKE A COPY OF THIS
2 TRANSCRIPT SENT OVER TO THE U.S. ATTORNEY.

3 THE COURT: YOU CAN GET IT ANY TIME YOU WANT IT. YOU
4 DON'T HAVE TO TELL ME NOW.

5 MR. MORTON: YOUR HONOR, IF I MAY, WHAT MR. WELLS WAS
6 DOING IN FEDERAL GRAND JURY WAS DOING EXACTLY WHAT--AS I
7 UNDERSTAND IT--

8 THE COURT: THERE'S NO REFERENCE IN THE RECORD TO THAT.

9 MR. MORTON: IF MR. TILLMAN SAID I WILL GIVE YOU FIVE
10 HUNDRED DOLLARS TO TESTIFY IN COURT FOR ME AND THEN MR. WELLS
11 GOES TO THE FEDERAL GRAND JURY AND SAYS THAT MR. TILLMAN
12 OFFERED HIM MONEY TO PROVIDE AN ALIBI FOR HIM, FIVE HUNDRED
13 DOLLARS TO PROVIDE AN ALIBI FOR HIM, I DON'T THINK THERE'S
14 ANYTHING INCONSISTENT WITH THAT.

15 THE COURT: WELL, IT IS EXCEPT I DON'T KNOW WHAT YOU ARE
16 SAYING BUT I ASKED HIM JUST A MINUTE AGO, MR. MORTON, WHAT
17 OCCURRED AND HE SAID, WELL, I FELT HE INTENDED ALL OF THEM.
18 YOU SEE, HE'S NOW TRYING TO DETERMINE WHAT WAS IN THE OTHER
19 MAN'S MIND IF HE DID SAY IT. BUT HE TESTIFIED UNDER OATH IN
20 THE FEDERAL COURT, IN THE FEDERAL BANK ROBBERY TRIAL, THAT
21 IT WAS FOR THE DECEMBER 12TH BANK ROBBERY THAT HE WAS IN THE
22 PARTY SHOP.

23 MR. MORTON: I UNDERSTAND THAT. BUT THERE'S NOTHING
24 INCONSISTENT IN WHAT HE'S SAYING. IN OTHER WORDS, HE SAID
25 I WILL PAY YOU FIVE HUNDRED DOLLARS TO TESTIFY FOR ME IN

1 COURT. NOW, IF WE HAD HAD THIS MURDER TRIAL FIRST--

2 THE COURT: WHY DIDN'T HE TESTIFY THAT WAY IN THE
3 FEDERAL BANKRUPTCY TRIAL? THERE WOULD BE NO PROBLEM WITH
4 THAT IF HE HAD SAID IN ANY COURT.

5 MR. MORTON: WELL, HE KNEW WHAT RONALD TILLMAN MEANT,
6 YOUR HONOR. BY HIM SAYING THAT IN FEDERAL COURT SHOULD NOT
7 PRECLUDE HIM FROM SAYING HE MEANT THAT--

8 THE COURT: MR. MORTON, HOW DO YOU KNOW WHAT SOMEBODY
9 HAS IN THEIR BRAIN UP THERE. YOU CAN REPEAT WHAT THEY SAID
10 BUT THEN WHEN YOU START TELLING PEOPLE WHAT THEY MEANT BY
11 WHAT THEY SAID YOU ARE INTERPRETING AND THAT'S A QUESTION FOR
12 THE JURY TO DETERMINE. THEY MAKE THE DETERMINATION AS TO
13 OPINIONS OF FACTS IN THE CASE. NO WITNESS IS ALLOWED TO DO
14 THAT.

15 MR. MORTON: I UNDERSTAND THAT.

16 MR. SWERLING: YOUR HONOR, JUST--

17 THE COURT: LET HIM FINISH.

18 MR. SWERLING: I JUST WANTED TO SHOW YOU WHAT HE ALSO
19 TOLD THE F.B.I. HE NEVER HAS REFERRED TO THE FIVE HUNDRED
20 DOLLARS IN THIS CASE.

21 THE COURT: WHAT ARE YOU HANDING ME, A 302 REPORT?

22 MR. SWERLING: A 302.

23 THE COURT: HERE IS THE 302 REPORT. HAVE YOU SEEN THIS?
24 302 REPORT ON 1-3-89, CLARENCE GABBY WELLS, TO--I CAN'T TELL.
25 SPECIAL AGENT JEFFREY BRUNING, B-R-U-N-I-N-G (SPELLED).

1 MR. MORTON: YOUR HONOR?

2 THE COURT: GO AHEAD, SIR.

3 MR. MORTON: THIS WAS EITHER THE DAY RONALD TILLMAN WAS
4 ARRESTED FOR THE MURDER I BELIEVE OR SHORTLY THEREAFTER. IT
5 WAS THE DAYS THAT HAYES MALLOY GOT PUT UP THERE. OBVIOUSLY,
6 THE MURDER WAS THE FRESHEST THING ON HIS MIND. HE SAYS OUT
7 OF HIS MOUTH I WILL OFFER YOU FIVE HUNDRED DOLLARS TO TESTIFY
8 IN COURT FOR ME. NOW, WHEN GABBY HAYES GOES TO THE FEDERAL
9 GRAND JURY AND THE FEDERAL TRIAL REGARDING FEDERAL BANK
10 ROBBERY CHARGES HE KNOWS THEY ARE TALKING ABOUT THE FEDERAL
11 BANK ROBBERY CHARGES SO THAT'S WHAT HE REFERS TO. HE TOOK IT
12 HE MEANT BOTH OF THESE THINGS. SO, WHEN THEY ASKED HIM DID
13 HE ASK YOU TO LIE FOR HIM AND TO TESTIFY IN COURT ON HIS
14 BEHALF HE SAID, YES, HE WANTED ME TO SAY SUCH AND SUCH.
15 FEDERAL COURT LET IT IN.

16 MR. SWERLING: MR. MORTON IS TELLING--

17 THE COURT: LET HIM FINISH.

18 MR. SWERLING: BUT, YOUR HONOR, HE'S TELLING THE WITNESS
19 WHAT HIS STATE OF MIND IS OR WAS. HE'S TELLING THE COURT
20 WHAT THE WITNESS'S STATE OF MIND WAS.

21 MR. MORTON: HE JUST SAID WHAT HIS STATE OF MIND WAS.

22 MR. SWERLING: BUT THAT'S NOT WHAT HE EVER TESTIFIED TO
23 OR TOLD THE F.B.I.

24 MR. MORTON: THEY WEREN'T CONCERNED WITH THAT.

25 MR. SWERLING: YOU ARE TELLING HIM NOW THAT THAT'S WHAT

1 HIS POSITION OUGHT TO BE.

2 MR. MORTON: HE JUST SAID THAT.

3 MR. SWERLING: HE HAS ALWAYS MAINTAINED IN THE PAST THE
4 FIVE HUNDRED DOLLARS WAS FOR HIM TO BE AN ALIBI ON DECEMBER
5 12TH.

6 THE COURT: THIS ALLEGEDLY OCCURRED ON JANUARY 10TH,
7 1989, SHORTLY AFTER THE MURDER, SHORTLY AFTER THE ROBBERY.
8 AND IT MAKES NO REFERENCE TO THE MURDER OR ANY OTHER THING.
9 IT MAKES REFERENCE SPECIFICALLY TO THE ROBBERY. YOU KNOW,
10 THAT'S WHAT IT REFERS TO.

11 MR. MORTON: CAN I ASK A HYPOTHETICAL OF YOU, YOUR
12 HONOR?

13 THE COURT: SURE.

14 MR. MORTON: WHY SHOULD IT COME IN THE BANK ROBBERY
15 TRIAL AND NOT HERE?

16 THE COURT: WHY SHOULD WHAT?

17 MR. MORTON: WHY SHOULD HIS STATEMENT THAT HE OFFERED
18 HIM MONEY?

19 THE COURT: BECAUSE IT AFFECTED THE BANK ROBBERY TRIAL.
20 IT WAS FOR HIM TO TELL WHERE HE WAS ON THE DATE IN QUESTION
21 OF THE BANK ROBBERY, NOT THE MURDER. THAT'S WHY, MR. MORTON.

22 MR. MORTON: COULDN'T THE OBJECTION HAVE BEEN MADE IN
23 FEDERAL COURT BY MR. SWERLING THAT THEY WERE TALKING ABOUT
24 THE MURDER AT THAT POINT?

25 MR. SWERLING: NO, BECAUSE HE NEVER WAS TALKING ABOUT

1 THE MURDER.

2 THE COURT: WELL, HIS ARGUMENT NOW--HE'S GIVEN A
3 STATEMENT THAT IT APPLIED TO THAT. IF HIS STATEMENT, MR.
4 MORTON, AS YOU ASKED FOR THE HYPOTHETICAL, HAD BEEN HE GAVE
5 ME FIVE HUNDRED DOLLARS--HE OFFERED FIVE HUNDRED DOLLARS TO
6 SAY THAT AS TO THE KILLING OF SUTTON THEN HIS ARGUMENT IS
7 GONE. AND CLEARLY THE FEDERAL COURT COULDN'T HAVE USED THAT
8 BUT THAT'S NOT WHAT HE'S TESTIFIED TO IN FEDERAL COURT,
9 THAT'S NOT WHAT HE TESTIFIED IN THE GRAND JURY AND THAT'S NOT
10 THE INFORMATION THAT HE GAVE IN THE 302 REPORT TO THE AGENT
11 ON JANUARY THE 10TH. AND THAT'S NOT WHAT HE'S TESTIFIED HERE
12 TODAY. WHAT HE SAID TODAY WAS THAT HE INTERPRETED TO WHAT THE
13 DEFENDANT SAID WAS TO ALL OF THEM. THAT'S WHAT HE SAID. HE
14 INTERPRETED WHAT WAS IN THE MAN'S MIND BUT YET HE TESTIFIED
15 DIFFERENTLY. SO, HERE I AM IN THE DILEMMA OF THIS, THAT HE'S
16 TESTIFIED BEFORE A FEDERAL GRAND JURY, BEFORE A FEDERAL JURY
17 AND JUDGE THAT THE FIVE HUNDRED DOLLARS WAS SPECIFICALLY FOR
18 A BANK ROBBERY BEING TRIED IN FEDERAL COURT. NOW, MR. MORTON
19 DON'T SHAKE YOUR HEAD AT ME BECAUSE THAT'S WHAT HE DID. I
20 MEAN I DON'T KNOW HOW YOU CAN SHAKE YOUR HEAD ABOUT THAT.
21 THAT'S WHAT HE DID UNDER OATH. NO QUESTION ABOUT IT. AND
22 THEN YOU WANT TO ARGUE THAT HE HAD GIVEN SOME STATEMENT
23 DIFFERENT. I'VE GOT THE 302 INFORMATION. YOU WANT TO ARGUE
24 THAT THEY RESTRICTED HIM IN FEDERAL COURT. YOU HAVEN'T SHOWN
25 ME A TRANSCRIPT WHERE THEY HAD A HEARING SUCH AS THIS WHICH

1 THEY WOULD HAVE BEEN ENTITLED TO SAYING THAT, OH, HE MEANT
2 ALL OF THEM, JUDGE, AND, THEREFORE, WE DON'T THINK IT OUGHT
3 TO COME IN OR ADMIT THIS. I DON'T SEE THAT. DO YOU HAVE
4 THAT?

5 MR. MORTON: NO, SIR.

6 THE COURT: AND IF YOU HAVE A TRANSCRIPT ACCORDING TO
7 THIS TRIAL YOU ARE GOING TO GET THIS.

8 MR. MORTON: NO, SIR. SHOULD I RESPOND?

9 THE COURT: SURE.

10 MR. MORTON: ON JANUARY 10TH HE HAD BEEN ARRESTED FOR
11 BANK ROBBERY, HE HAS MORE RECENTLY BEEN ARRESTED FOR MURDER.
12 HE TELLS GABBY WELLS I WANT YOU--I'LL GIVE YOU FIVE HUNDRED
13 DOLLARS TO TESTIFY FOR ME IN COURT. NOW, WE ARE BEING
14 PRECLUDED BECAUSE GABBY WELLS TESTIFIED IN FEDERAL COURT THAT
15 HE TOOK THAT TO MEAN--I DON'T THINK IT WAS ANY OTHER
16 STATEMENT BY THE DEFENDANT ABOUT WHAT HE MEANT, BUT BECAUSE
17 GABBY WELLS TESTIFIED IN FEDERAL COURT THAT HE TOOK IT TO
18 MEAN PROVIDING HIM AN ALIBI ON DECEMBER 12TH THAT WE ARE NOW
19 PRECLUDED FROM OFFERING THAT SAME STATEMENT IN COURT IN
20 REGARDS TO THE MURDER.

21 THE COURT: WELL, CERTAINLY YOU ARE GOING TO BE
22 PRECLUDED IF IT INVOLVED THE CRIME OF BANK ROBBERY IN FEDERAL
23 COURT. ONCE AGAIN, YOU ARE TRYING A DIFFERENT CRIME. IT HAS
24 TO BE RELEVANT. YOU SEE, THAT'S A COLLATERAL ISSUE AND YOU
25 HANDED UP A CASE DEALING WITH THE ISSUE AND THE QUESTION IS

1 WHETHER OR NOT IT GOES TO PROVE OR DISPROVE SOME ISSUE IN
2 THIS TRIAL.

3 MR. MORTON: YES, SIR. IT CERTAINLY GOES TO PROVE SOME
4 ISSUE IN THIS TRIAL. IT GOES TO PROVE THAT RONALD TILLMAN
5 WAS THERE, THAT HE'S TRYING TO SAY HE WASN'T THERE BY BRIBING
6 SOMEONE.

7 MR. SWERLING: ON THE 12TH. THAT'S WHAT MR. MORTON
8 DOESN'T WANT TO UNDERSTAND.

9 MR. MORTON: RONALD TILLMAN DIDN'T SAY THE 12TH.

10 MR. SWERLING: YES, HE DID. THAT'S WHAT HE'S TESTIFIED
11 TO IN FEDERAL COURT, THE GRAND JURY AND WHAT HE TOLD AGENT
12 BRUNING THAT HE ASKED HIM TO BE AN ALIBI ON THE 12TH.

13 THE COURT: HE TOLD THE AGENT IN HIS 302 REPORT AND
14 THAT'S WHAT I READ IN THE FEDERAL GRAND JURY TESTIMONY AND
15 THAT'S WHAT I READ IN THE TESTIMONY BEFORE THE FEDERAL TRIAL
16 THAT HE ASKED HIM TO BE AN ALIBI THAT TILLMAN WAS AT THE
17 PARTY SHOP THE ENTIRE MORNING OF DECEMBER 12TH, 1988. THIS
18 302 REPORT WAS TAKEN AT THE TIME--ACTUALLY, IT SAYS IT WAS
19 DONE ON 1-3-89. IT WAS TRANSCRIBED 1-10-89.

20 MR. MORTON: RIGHT AFTER THE MURDER.

21 THE COURT: I KNOW IT. WELL, THAT'S EVEN MORE REASON
22 IF HE WAS REFERRING TO THE MURDER. LET ME READ TO YOU SO YOU
23 CAN HEAR WHAT HE SAID IN THE 302 REPORT. RONALD TILLMAN HAS
24 HAD CONTACT WITH WELLS AT THE RICHLAND COUNTY DETENTION
25 CENTER. TILLMAN ASKED WELLS TO GIVE HIM A ALIBI BY

1 TESTIFYING THAT TILLMAN WAS AT THE PARTY SHOP THE ENTIRE
2 MORNING ON DECEMBER THE 12TH, 1988, WHICH WELLS SAID WAS
3 UNTRUE. ON JANUARY 3RD AT APPROXIMATELY EIGHT O'CLOCK A.M.
4 TILLMAN SHOWED WELLS FIVE ONE HUNDRED DOLLAR BILLS WHICH HE
5 HAD IN HIS POSSESSION IN HIS CELL AT THE RICHLAND COUNTY
6 DETENTION CENTER. YOU MAY TAKE IT BACK. I'M NOT GOING TO
7 ALLOW IT. ANYTHING ELSE?

8 MR. MORTON: ONE MORE CLARIFICATION. AS I UNDERSTAND
9 THE COURT'S RULING, GABBY WELLS CAN TESTIFY THAT RONALD
10 TILLMAN SAID TO HAYES MALLOY THE FEDS HAVE ME BY THE BALLS,
11 PLEASE TAKE THE RAP FOR ME ON THIS MURDER. THANK YOU, YOUR
12 HONOR.

13 MR. SWERLING: YOUR HONOR, I STATED MY OBJECTIONS. YOUR
14 HONOR, IF I COULD JUST CLARIFY FOR THE RECORD. I BELIEVE IT
15 VIOLATES STATE VS. LYLE, IT REFERS TO OTHER CRIMES.

16 THE COURT: WHAT CRIME DOES IT REFER TO?

17 MR. SWERLING: IT REFERS TO THE FEDERAL CRIME AND THE
18 STATE IS NOT OFFERING ANY CLEAR AND CONVINCING EVIDENCE OF
19 IT. THEY ARE NOT OFFERING IT FOR ANY ELEMENT, MOTIVE,
20 IDENTITY, A COMMON DESIGN OR SCHEME WHICH ARE THE EXCEPTIONS
21 UNDER LYLE. IT PUTS HIS CHARACTER IN ISSUE. FOR ALL THOSE
22 REASONS AND BECAUSE OF IT'S PREJUDICIAL EFFECT OUTWEIGHS ANY
23 PROBATIVE VALUE IT HAS, IF YOUR HONOR FINDS THAT IT DOES, -

24 -

25 THE COURT: OH, IT'S GOT PLENTY OF PROBATIVE VALUE.

1 MR. SWERLING: I WOULD SAY THE PREJUDICIAL EFFECT
2 OUTWEIGHS IT. BUT I DON'T SEE THAT AS BEING ANY EXCEPTION
3 UNDER LYLE TO ALLOW EVIDENCE OF ANOTHER CRIME IN. AND WHEN
4 YOU SAY THE FEDS HAVE ME THAT'S REFERRING TO ANOTHER CRIME.
5 THE ONLY WAY I BELIEVE THE STATE CAN GET THAT IN IS IF THEY
6 OFFER CLEAR AND CONVINCING EVIDENCE OF THAT AND YOUR HONOR
7 HAS ALREADY RULED THAT THEY COULD NOT ALLOW THAT IN. THEY
8 HAVE NOT OFFERED ANY CLEAR AND CONVINCING EVIDENCE OF THE
9 BANK ROBBERY EITHER.

10 THE COURT: WELL, SEE, THE BANK ROBBERY--YOU ARE ARGUING
11 LYLE. LYLE GOES TO PROVE ANOTHER CRIME IN ORDER TO SHOW
12 MOTIVE, INTENT, COMMON SCHEME AND PLAN. THAT ISN'T THE
13 PURPOSE FOR WHICH IT WAS OFFERED. IT'S NOT A LYLE ISSUE.
14 IT'S AN ADMISSION AGAINST HIS PENAL INTEREST IN THIS CASE.
15 THAT'S WHAT IT'S ADMITTED FOR. AND THE FACT THAT HE ADMITS
16 THAT THE FEDS HAVE HIM BY THE BALLS THEY ARE NOT TRYING TO
17 PROVE ANOTHER CRIME TO SHOW THAT HE COMMITTED THIS CRIME BUT
18 SIMPLY TO SHOW HIS STATE OF MIND AT THE TIME THE DECLARATION
19 WAS MADE AND IT WAS MADE AGAINST HIS PENAL INTEREST. THAT
20 STATEMENT. IT CLEARLY HAS PROBATIVE VALUE. AND IF THERE IS
21 ANY PREJUDICIAL EFFECT BY IT IT'S CLEARLY OUTWEIGHED BY THE
22 PROBATIVE VALUE IN THE CASE. I'M GOING TO ALLOW IT.
23 ANYTHING ELSE?

24 MR. SWERLING: YOUR HONOR, I WOULD JUST AGAIN REFER YOU
25 TO THE LINE OF CASES THAT WE TALKED ABOUT YESTERDAY WHERE

1 EVEN THOUGH A PERSON CONFESSES TO A CRIME, THE FACT THAT THEY
2 CONFESS TO OTHER CRIMES DOESN'T NECESSARILY MEAN THAT THE
3 OTHER CRIMES SHOULD COME IN.

4 THE COURT: NOT NECESSARILY. I AGREE WITH THAT. I FIND
5 THE PROBATIVE VALUE AND I FIND IT'S ADMISSIBLE. I'M GOING
6 TO ALLOW IT.

7 MR. SWERLING: I ALSO, YOUR HONOR, THINK THAT THE JURY
8 NOW WILL BE ALLOWED TO SPECULATE AS TO THE FACT THAT MR.
9 TILLMAN WAS ACCUSED OF A FEDERAL CRIME.

10 THE COURT: I UNDERSTAND. YOU ARE OVERRULED. ARE YOU
11 READY?

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

13 THE COURT: BRING THE JURY IN.

14 MR. SWERLING: WILL YOUR HONOR ALLOW MY OBJECTION TO RUN
15 CONTEMPORANEOUSLY WITH THE TIME IT'S OFFERED?

16 THE COURT: THEY ALWAYS DO ON THAT ISSUE.

17 (THE JURY RETURNS TO THE JURY BOX AT 5:03 P.M.)

18 DIRECT EXAMINATION CONTINUED BY

19 MR. MORTON:

20 Q MR. WELL, YOU REMEMBER BEING IN THE RICHLAND COUNTY DETENTION
21 CENTER SOMETIME AROUND CHRISTMAS OF 1988 I BELIEVE YOU'VE
22 TESTIFIED TO?

23 A YES, SIR.

24 Q DO YOU REMEMBER EXACTLY WHEN AROUND THAT TIME YOU HAD BEEN
25 ARRESTED?

1 A I GOT ARRESTED DECEMBER THE 24TH.

2 Q DECEMBER 24TH?

3 A 1988.

4 Q 1988. ON DECEMBER 24TH YOU WERE IN THE RICHLAND COUNTY
5 DETENTION CENTER?

6 A YES, SIR.

7 Q AND HAVE YOU BEEN OUT OF JAIL SINCE THEN?

8 A NO, SIR.

9 Q I BELIEVE YOU TESTIFIED THAT RONALD TILLMAN WAS IN A
10 CELLBLOCK ACROSS THE HALL FROM YOU?

11 A YES, SIR.

12 Q AND THAT HAYES MALLOY WAS IN THE CELLBLOCK WITH YOU?

13 A YES, SIR.

14 Q AND THAT YOU HEARD--AT RONALD TILLMAN'S REQUEST YOU GOT HAYES
15 MALLOY TO THE DOOR FOR HIM, IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q AND TELL THIS JURY WHAT YOU HEARD RONALD TILLMAN ASK HAYES
18 MALLOY?

19 A AFTER I GOT HAYES MALLOY TO THE LITTLE DOOR, I HEARD RONALD
20 TOLD HAYES MALLOY THAT HE WANT HIM TO TAKE THE MURDER CHARGE
21 FOR DONALD SUTTON 'CAUSE THE FEDS GOT HIM BY THE BALLS.
22 HAYES MALLOY--

23 MR. SWERLING: OBJECTION, YOUR HONOR.

24 THE COURT: THAT'S NOT RESPONSIVE. JUST WAIT FOR A
25 QUESTION.

1 MR. MORTON: THANK YOU. PLEASE ANSWER ANY QUESTIONS
2 THAT MR. SWERLING HAS.

3 THE COURT: CROSS EXAMINATION, PLEASE.

4 CROSS EXAMINATION BY

5 MR. SWERLING:

6 Q MR. WELLS, YOU GOT A PRETTY SWEET DEAL FOR TESTIFYING HERE
7 TODAY, DIDN'T YOU?

8 A I DON'T THINK IT WAS A SWEET DEAL, COUNSEL.

9 Q WELL, LET ME ASK YOU THIS, MR. WELLS. YOU WERE CHARGED WITH
10 ARMED ROBBERY, WERE YOU NOT?

11 A THAT'S CORRECT.

12 Q AND YOU KNOW THAT ARMED ROBBERY CARRIES A TWENTY-FIVE YEAR
13 SENTENCE, DOESN'T IT?

14 A IT ALL DEPEND. THE MAX IS TWENTY-FIVE BUT MINIMUM IS TEN.

15 Q AND DO YOU KNOW THAT ARMED ROBBERY IF YOU ARE CONVICTED OF
16 IT YOU CANNOT EVEN BE PAROLED FOR A PERIOD OF SEVEN YEARS,
17 DON'T YOU?

18 A WITH THE GOOD TIME AND STUFF YOU BE OUT IN FIVE YEARS.

19 Q THE STATE ALLOWED YOU TO PLEAD GUILTY TO STRONG ARMED
20 ROBBERY?

21 A THAT'S CORRECT.

22 Q WHICH ONLY CARRIES A MAXIMUM OF TEN YEARS?

23 A THAT'S CORRECT.

24 Q SO, THE STATE CUT YOUR EXPOSURE DOWN IN RETURN FOR YOUR
25 TESTIFYING HERE TODAY FROM TWENTY-FIVE YEARS FOR ARMED

- 1 ROBBERY, SEVEN YEARS, NO PAROLE, DOWN TO TEN YEARS COMMON LAW
2 ROBBERY OR STRONG ARMED ROBBERY, IS THAT CORRECT?
- 3 A I DISAGREE WITH THAT BECAUSE I DON'T KNOW IF I'M GONNA GET
4 TWENTY-FIVE YEARS OR NOT. I COULD HAVE GOT A MINIMUM TEN.
- 5 Q YES, SIR. THEY CUT YOUR EXPOSURE DOWN THOUGH, MR. WELLS.
6 THAT'S MY QUESTION. YES OR NO?
- 7 A I SAY I DISAGREE WITH THAT, COUNSEL.
- 8 Q YOUR EXPOSURE WAS TWENTY-FIVE YEARS. DO YOU AGREE WITH THAT?
9 A MY EXPOSURE WAS IT'S A MAXIMUM OF SEVEN YEARS.
- 10 Q YOUR EXPOSURE WAS A MAXIMUM OF TWENTY-FIVE YEARS ON ARMED
11 ROBBERY WITH SEVEN YEARS NO PAROLE.
- 12 A OKAY.
- 13 Q ISN'T THAT CORRECT?
- 14 A COULD HAVE. COULD HAVE BEEN.
- 15 Q BUT THEY ALLOWED YOU TO PLEAD--THEY DROPPED AN ARMED ROBBERY
16 CHARGE FOR YOU DOWN TO COMMON LAW OR STRONG ARMED ROBBERY
17 WHICH ONLY CARRIES A MAXIMUM OF TEN YEARS WITH NO MINIMUM FOR
18 PAROLE. IS THAT CORRECT? IS THAT WHAT THEY DID OR DIDN'T
19 DO?
- 20 A COULD HAVE.
- 21 Q DID THEY OR DIDN'T THEY? YOU ANSWERED ALL OF MR. MORTON'S
22 QUESTIONS. I WANT YOU TO ANSWER MINE.
- 23 A WELL, THEY SAY THEY WAS GONNA DROP IT DOWN TO STRONG ARMED
24 ROBBERY, COUNSELLOR.
- 25 Q AND NOT ONLY DID THEY DROP IT DOWN TO STRONG ARMED ROBBERY

1 WHICH ONLY CARRIES A MAXIMUM OF TEN YEARS, BUT THEY AGREED
2 TO GO BEFORE THE JUDGE AND RECOMMEND THAT FOR THIS ARMED
3 ROBBERY THAT YOU COMMITTED YOU'D GET NO MORE THAN FIVE YEARS?
4 A THAT'S CORRECT.
5 Q SO, YOUR EXPOSURE WAS CUT DOWN FROM A MAXIMUM OF TWENTY-FIVE
6 YEARS WITH SEVEN YEARS NO PAROLE DOWN TO FIVE YEARS IF YOU
7 WOULD COME INTO COURT AND TESTIFY AGAINST RONALD TILLMAN?
8 A I COME IN TO COURT AND TELL THE TRUTH AGAINST RON TILLMAN.
9 Q TO TELL THE TRUTH AGAINST RON TILLMAN?
10 A THAT'S RIGHT.
11 Q AND YOU SEEM TO BE SO FAMILIAR WITH GOOD TIME AND EVERYTHING
12 ELSE, I MEAN A FIVE YEAR SENTENCE DOESN'T AMOUNT TO A WHOLE
13 MUCH, DOES IT?
14 A NOT THAT MUCH.
15 Q SO, YOU CAME OUT PRETTY GOOD ON THAT PARTICULAR CHARGE,
16 DIDN'T YOU?
17 A I HAVEN'T BEEN SENTENCED YET. NO TELLIN' WHAT THEY MIGHT DO.
18 THEY MIGHT GIVE IT TO ME, THEY MIGHT NOT BUT THEY PROMISED.
19 THEY SAY THEY WOULD DO THAT.
20 Q OH, SO, WAIT A MINUTE NOW. THAT'S AN INTERESTING TWIST. YOU
21 MEAN AS OF THIS TIME THE ARMED ROBBERY CHARGE HAS NOT BEEN
22 DISPOSED OF?
23 A NOT YET. YOU TALKING ABOUT HAVE I BEEN TO COURT YET FOR IT?
24 THAT WHAT YOU SAYING?
25 Q WHEN WAS THIS ARMED ROBBERY SUPPOSED TO HAVE TAKEN PLACE?

1 A DECEMBER, 1988.

2 Q THIRTEEN MONTHS AGO?

3 A THAT'S CORRECT, COUNSELLOR.

4 Q AND THEY HAVE WITHHELD THE SENTENCE ON YOU UNTIL AFTER THIS
5 TRIAL? ISN'T THAT TRUE?

6 A THAT'S CORRECT, COUNSELLOR.

7 Q SO, WHAT HAPPENS TO YOU IN EFFECT THEY ARE HANGING OVER YOUR
8 HEAD AN ARMED ROBBERY SENTENCE OF POSSIBLY TWENTY-FIVE YEARS
9 IF YOU DON'T COOPERATE? TRUE OR NOT TRUE?

10 A THAT'S NOT SO.

11 Q WELL, YOU HAVEN'T BEEN SENTENCED YET, HAVE YOU?

12 A NO, I HAVEN'T BEEN SENTENCED YET.

13 Q DO YOU KNOW WHY YOU HAVEN'T BEEN SENTENCED YET?

14 A WELL, I AGREED--I TOLD 'EM THEY HELP ME, I HELP THEM AND
15 AFTER MR. TILLMAN GO TO COURT THEN I WILL GET SENTENCED.

16 Q THEN THEY WILL HELP YOU?

17 A THAT WAS THE AGREEMENT.

18 Q AND YOU FULLY EXPECT TO GET HELP?

19 A I MIGHT NOT. I MIGHT NOT GET NO HELP BUT I MIGHT.

20 Q YOU AND YOUR LAWYER AND THE STATE AGREED TO THAT ON JANUARY
21 18TH, 1989 DIDN'T YOU?

22 A THAT'S RIGHT. THAT'S CORRECT.

23 MR. MORTON: YOUR HONOR, MAY WE APPROACH THE BENCH?

24 (MR. SWERLING AND MR. MORTON APPROACH THE BENCH OUT OF
25 THE PRESENCE OF THE COURT REPORTER)

1 THE COURT: MR. FOREMAN, STEP BACK IN YOUR JURY ROOM.
2 SHORTLY NOW. I'M GOING TO BRING YOU RIGHT BACK I PROMISE
3 YOU.

4 (THE JURY LEAVES THE JURY BOX AT 5:12 P.M.)

5 THE COURT: THE JURY IS NOW OUTSIDE THE PRESENCE OF THE
6 COURT. COUNSEL FOR THE STATE APPROACHED THE BENCH WITH SOME
7 CONCERN AS TO WHETHER OR NOT THIS WITNESS UNDERSTANDS HE IS
8 NOT TO TESTIFY AS TO ANY OTHER PRIOR CHARGES OR OFFENSES MADE
9 AGAINST THE DEFENDANT. DO YOU WANT TO TELL HIM THAT, MR.
10 MORTON?

11 MR. MORTON: YES, SIR. ANSWER MR. SWERLING'S QUESTIONS,
12 OKAY? DON'T REFER TO ANY OTHER CHARGES, BANK ROBBERY, DOPE
13 DEALING, ARMED ROBBERIES OR ANYTHING ELSE.

14 A YES, SIR.

15 MR. MORTON: OKAY?

16 A YES, SIR.

17 MR. MORTON: DON'T REFER TO ANYTHING THAT MIGHT LEAD
18 THEM TO BELIEVE THAT, OKAY?

19 A YES, SIR.

20 MR. MORTON: OKAY. BE REAL CAREFUL ABOUT THAT. ANSWER
21 HIS QUESTIONS, OKAY?

22 A YES, SIR.

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

24 (THE JURY RETURNS TO THE JURY BOX AT 5:14 P.M.)

25 THE COURT: YOU MAY CONTINUE YOUR CROSS EXAMINATION.

1 CROSS EXAMINATION CONTINUED BY

2 MR. SWERLING:

3 Q NOW, THE STATE WENT EVEN A LITTLE BIT FURTHER THAN JUST
4 REDUCING THAT ARMED ROBBERY CHARGE DOWN TO A STRONG ARMED
5 ROBBERY CHARGE, DIDN'T THEY, IN MINIMIZING YOUR SENTENCE DOWN
6 TO JUST FIVE YEARS? DIDN'T THEY?

7 A WHAT YOU MEAN?

8 Q WELL, THEY ALSO AGREED THAT THE FIVE YEAR SENTENCE YOU GOT
9 ON AN ARMED ROBBERY CHARGE, THE MOST YOU'D GET ON THE ROBBERY
10 CHARGE WOULD BE FIVE YEARS, THAT WAS GONNA RUN CONCURRENTLY
11 WITH THE TIME THAT YOU WERE GOING TO GET FOR YOUR PROBATION
12 VIOLATION.

13 A THAT'S CORRECT.

14 Q SO, IN OTHER WORDS, YOU WEREN'T GOING TO HAVE TO SERVE ONE
15 ADDITIONAL DAY FOR AN ARMED ROBBERY THAT YOU COMMITTED IN
16 RICHLAND COUNTY BECAUSE IT WAS GOING TO RUN CONCURRENT WITH
17 YOUR PROBATION VIOLATION, ISN'T THAT TRUE?

18 MR. MORTON: OBJECT.

19 THE COURT: WHAT'S THE OBJECTION?

20 MR. MORTON: IT CALLS FOR SPECULATION.

21 THE COURT: WELL, IT'S AN EXPECTATION. HE'S ENTITLED
22 TO CROSS EXAMINE HIM ON THAT AS TO ANY PROMISES AND HE'S
23 ASKING HIM ALL THESE ARE EXPECTATIONS AND POSSIBILITIES. I'M
24 GOING TO LET HIM--

25 MR. MORTON: YOUR HONOR, MAY I BE HEARD ONE SECOND?

1 HE'S ASKING HIM HE'S NOT GOING TO GET ONE MORE DAY FOR IT.
2 THAT'S NOT NECESSARILY SO. IT DEPENDS ON HOW LONG THE
3 PROBATION REVOCATION IS GOING TO BE.

4 THE COURT: I UNDERSTAND THAT.

5 MR. MORTON: THANK YOU.

6 THE COURT: I'M GOING TO LET HIM EXAMINE HIM ON THAT.

7 Q YOU COULD THEORETICALLY NOT SERVE ONE DAY FOR THIS ARMED
8 ROBBERY THAT YOU COMMITTED IN RICHLAND COUNTY BECAUSE THE
9 STATE IS GOING TO LET YOU RUN THOSE TWO SENTENCES TOGETHER.
10 THAT'S WHAT CONCURRENTLY MEANS. ISN'T THAT TRUE?

11 A THAT'S CORRECT. BUT IT'S GOOD IN EVERY MAN, COUNSELLOR.

12 Q HAS YOUR PROBATION BEEN REVOKED?

13 A I HAVEN'T BEEN TO COURT ON THAT YET. I DID. I GOT A YEAR
14 AT C.C.I. BUT I DIDN'T GO BACK.

15 Q SO, YOU HAVEN'T BEEN TO COURT YET ON YOUR PROBATION
16 REVOCATION EITHER?

17 A WELL, THE REASON I DIDN'T GET THOSE YEARS FOR PROTECTION-
18 -EXCUSE ME. JUDGE--

19 THE COURT: I THINK HE SAYS HE DID GET THE YEAR.

20 A COUNSELLOR, THERE'S SOMETHING I GOT TO SAY.

21 THE COURT: WELL--

22 Q WELL, ANSWER THE QUESTION.

23 A WHAT WAS THE QUESTION?

24 Q YOU HAVE NOT BEEN TO COURT YET ON THE PROBATION REVOCATION.
25 IS THAT TRUE OR NOT TRUE?

1 A I WENT TO COURT ON PROBATION. THEY GAVE ME A YEAR.

2 Q THEY GAVE YOU A YEAR?

3 A THEY GAVE ME A YEAR BUT I GOT TO GO BACK. I SUPPOSED TO GO

4 BACK ON THAT.

5 Q AND SERVE THAT YEAR?

6 A NO, I SUPPOSED TO GO BACK IN FRONT OF THE COURT AGAIN ON

7 THAT.

8 Q ON THE REVOCATION?

9 A THAT'S RIGHT.

10 Q AND WHAT WERE YOU ON PROBATION FOR?

11 A ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

12 Q AND WHEN WAS THAT?

13 A THAT HAPPENED IN '88.

14 Q SO, WHEN YOU WERE ARRESTED IN DECEMBER OF 1988 FOR ARMED

15 ROBBERY, YOU WERE ON PROBATION FOR ASSAULT AND BATTERY OF A

16 HIGH AND AGGRAVATED NATURE HAVING HIT SOMEONE WITH A MACHETE,

17 ISN'T THAT TRUE?

18 MR. MORTON: YOUR HONOR, I OBJECT TO THAT.

19 THE COURT: JUST A MINUTE.

20 MR. MORTON: HE CAN'T GO INTO THAT.

21 THE COURT: WHY ARE YOU TRYING TO GO INTO THAT?

22 MR. SWERLING: CRIME OF MORAL TURPITUDE, YOUR HONOR.

23 THE COURT: YOU'RE ENTITLED TO GO INTO THE CRIME--

24 MR. SWERLING: I'M NOT GOING INTO THE FACTS.

25 THE COURT: WHY AREN'T YOU? ASSAULT AND BATTERY WITH

1 INTENT TO KILL.

2 MR. SWERLING: WELL, I WASN'T ASKING HIM ABOUT THE
3 FACTS.

4 THE COURT: WELL, YOU WERE, TOO. RESTRICT IT TO ASSAULT
5 AND BATTERY WITH INTENT TO KILL ON THAT WHETHER OR NOT HE WAS
6 CONVICTED OF IT.

7 Q THEN NOT ONLY ARE YOUR SENTENCES GOING TO RUN TOGETHER AND
8 YOU MAY NOT GET ANY OTHER DAYS FOR THIS ARMED ROBBERY, THE-

9 -

10 MR. MORTON: YOUR HONOR, I OBJECT TO HIS EDITORIALIZING
11 AGAIN. HE CAN'T COME UP HERE AND TESTIFY.

12 THE COURT: ASK HIM A QUESTION. YOU ARE DOING A LITTLE
13 TESTIFYING. JUST ASK HIM.

14 MR. SWERLING: I APOLOGIZE.

15 Q IN ADDITION TO WHAT WE'VE ALREADY COVERED, MR. WELLS, YOU
16 BARGAINED WITH THE STATE THAT RICHLAND COUNTY, THESE FELLOWS,
17 WERE GOING TO ASK DORCHESTER COUNTY AND LEXINGTON COUNTY TO
18 DISMISS SHOPLIFTING CHARGES AGAINST YOU?

19 A THAT'S CORRECT.

20 Q THAT'S A PRETTY GOOD DEAL, ISN'T IT?

21 A LIKE I SAY, COUNSELLOR, EVERY MAN DESERVE A BREAK. THERE'S
22 SOME GOOD IN SOME MENS.

23 Q EVERY MAN DESERVES A BREAK?

24 A THERE'S GOOD IN SOME MEN. YOU CAN'T KEEP DOING WRONG ALL THE
25 TIME.

1 Q DID YOU FINALLY REALIZE THAT?

2 A I FINALLY REALIZE THAT.

3 Q AND AS SOON AS YOU REALIZED THAT YOU HAD SOMETHING THAT YOU

4 COULD TRADE WITH THE STATE YOU WENT TO THEM, DIDN'T YOU?

5 A THAT'S CORRECT.

6 Q THAT AGREEMENT ALSO GOES ON TO SAY THAT THE STATE AGREED THAT

7 YOUR PROBATION REVOCATION SHOULD OCCUR AT THE NEXT TERM OF

8 COURT. NOW, THIS WAS JANUARY 18TH 1989. SO, THE NEXT TERM

9 OF COURT WOULD HAVE BEEN THE FOLLOWING WEEK. SO THAT YOU

10 WILL NOT HAVE TO WAIT IN RICHLAND COUNTY JAIL FOR AN UNDULY

11 LONG PERIOD OF TIME WAITING FOR THE TILLMAN TRIAL. ISN'T

12 THAT TRUE?

13 A THAT'S CORRECT.

14 Q THE STATE DID NOT WANT TO IMPOSE A HARDSHIP ON YOU, ISN'T

15 THAT CORRECT?

16 A WHAT YOU MEAN BY HARDSHIP?

17 MR. MORTON: YOUR HONOR--

18 Q THEY DIDN'T WANT YOU TO HAVE TO STAY AT THE COUNTY JAIL?

19 THE COURT: WHAT?

20 MR. MORTON: I ASK THAT HE BE ALLOWED TO ANSWER.

21 A CAN I ANSWER THAT?

22 THE COURT: YES, YOU CAN ANSWER THE QUESTION.

23 A I COULDN'T STAY AT THE COUNTY JAIL. MY LIFE WAS THREATENED.

24 THAT'S WHY I'M AT THE KERSHAW COUNTY DETENTION CENTER NOW

25 'CAUSE RON TILLMAN THREATEN MY LIFE.

1 MR. SWERLING: YOUR HONOR, I'D ASK THAT THAT BE STRICKEN
2 FROM THE RECORD. IT'S NOT RESPONSIVE.

3 THE COURT: THE JURY IS INSTRUCTED TO DISREGARD IT.
4 IT'S NOT RESPONSIVE TO ANY QUESTION. IT WAS A VOLUNTEERED
5 ANSWER. YOU ARE NOT TO CONSIDER IT. YOU MAY NOT WEIGH IT
6 IN YOUR DELIBERATIONS ON THE ISSUES IN THIS CASE, THAT LAST
7 RESPONSE.

8 Q MR. WELLS, YOU AND MR. TILLMAN DON'T LIKE EACH OTHER, ISN'T
9 THAT TRUE?

10 A WELL, I DON'T KNOW IF WE LIKE EACH OTHER OR NOT. WE WAS
11 FRIENDS ONE TIME.

12 Q BUT YOU DO NOT LIKE MR. TILLMAN?

13 A I DIDN'T SAY I DIDN'T LIKE HIM.

14 Q YOU AND MR. TILLMAN HAVE HAD SOME TROUBLE BEFORE, HAVEN'T
15 YOU?

16 A WE HAD A FALLOUT ONE TIME BEFORE.

17 Q AS A MATTER OF FACT, YOU WERE BARRED FROM THAT SHOP, WERE YOU
18 NOT?

19 A I WAS BARRED FROM IT BUT THEY COULDN'T KEEP ME OUT OF IT.

20 Q THEY COULDN'T KEEP YOU OUT?

21 A THEY COULDN'T KEEP ME OUT, THAT'S RIGHT. SEE, EVERY TIME
22 TILLMAN FATHER LEAVE I ALWAYS GO IN THERE AND TALK TO RON.
23 HE'LL TELL ME TO LEAVE BEFORE HIS DADDY GET BACK.

24 Q THE REASON YOU WERE BARRED FROM THE SHOP IS THAT ABOUT A
25 MONTH BEFORE MR. SUTTON GOT KILLED OR A COUPLE OF MONTHS

1 BEFORE MR. SUTTON GOT KILLED YOU AND A FELLOW NAMED MR. RUBIN
2 EUBANKS GOT IN A FIGHT.
3 A IT WASN'T NO FIGHT.
4 Q GOT INTO A DISCUSSION? AND YOU WERE GOING TO SHOOT MR.
5 EUBANKS, WEREN'T YOU?
6 A I DREWED A GUN ON HIM. I DON'T KNOW IF I WAS GONNA SHOOT HIM
7 OR NOT.
8 Q AND MR. TILLMAN, RONALD TILLMAN, TOOK THE GUN AWAY FROM YOU,
9 DIDN'T HE?
10 A NO, HE DID NOT TAKE THE GUN AWAY FROM ME. HE MADE THE GUY
11 --WE TALKED ABOUT IT AND I GAVE THE GUN BACK TO RON.
12 Q SO, YOU GAVE THE GUN BACK TO RON?
13 A THAT'S RIGHT.
14 Q BUT YOU WERE MAD AT RON BECAUSE YOU THOUGHT THAT HE HAD GIVEN
15 MR. RUBIN EUBANKS A GUN?
16 A I DIDN'T SAY THAT.
17 Q BUT ISN'T THAT WHAT YOU WERE UPSET ABOUT?
18 A NO, I WASN'T. I WASN'T UPSET WITH RON ABOUT THAT.
19 Q WEREN'T YOU UPSET WITH MR. TILLMAN THAT HE INTERCEDED IN THAT
20 ARGUMENT AND TOOK THE GUN BACK FROM YOU?
21 A I JUST SAID HE DIDN'T TOOK NO GUN FROM ME. I JUST TOLD YOU
22 THAT EARLIER. HE DID NOT TAKE A GUN FROM ME.
23 Q YOU SAID YOU GAVE IT BACK TO HIM?
24 A I SAY I GAVE IT BUT HE DIDN'T TOOK IT.
25 Q SO, YOU GAVE IT TO HIM?

1 A THAT'S RIGHT.

2 Q HE STOPPED YOU FROM SHOOTING SOMEBODY? HIS FATHER TOLD YOU
3 DON'T COME BACK IN THAT SHOP, ISN'T THAT TRUE?

4 A NO. IT WASN'T NO BULLETS IN THE GUN SO I COULDN'T HAVE SHOOT
5 HIM.

6 Q ANSWER MY QUESTION. YOU WERE TOLD TO STAY AWAY FROM THE
7 SHOP, WEREN'T YOU?

8 A HE TOLD ME TO STAY AWAY BUT I STILL WENT BACK IN THE SHOP.
9 WHEN HIS FATHER WASN'T THERE, I STILL WENT BACK IN THERE.

10 Q THAT'S BECAUSE YOU HAVE NO RESPECT FOR WHAT SOMEONE TELLS
11 YOU, ISN'T THAT TRUE?

12 A MAYBE IF I'D STAYED OUT, COUNSELLOR, I WOULDN'T HAVE HAD THE
13 ARMED ROBBERY CHARGE 'CAUSE YOUR CLIENT GAVE ME--

14 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S NOT BEING
15 RESPONSIVE TO MY QUESTIONS. I'D ASK YOUR HONOR TO INSTRUCT
16 HIM TO ANSWER THE QUESTIONS.

17 A I'M ANSWERIN' IT, JUDGE. JUDGE--

18 THE COURT: JUST A MINUTE. JUST A MINUTE.

19 A YES, SIR.

20 THE COURT: I'M GOING TO HAVE HIM RESTATE HIS QUESTION
21 AND I'M GOING TO LISTEN. YOU ARE REQUIRED TO BE RESPONSIVE
22 TO THE QUESTION THAT HE ASKED. IF YOU DO NOT UNDERSTAND HIS
23 QUESTION, JUST TELL HIM YOU DON'T UNDERSTAND HIS QUESTION AND
24 ASK HIM TO RESTATE IT. ALL RIGHT. WAIT UNTIL HE'S FINISHED
25 ASKING THE QUESTION. WHEN HE'S ASKED IT, YOU'LL HAVE A FULL

1 OPPORTUNITY TO ANSWER IT IN FULL. I WON'T LET HIM INTERRUPT
2 YOU.

3 A ALL RIGHT.

4 THE COURT: THE JURY IS INSTRUCTED TO DISREGARD THE LAST
5 QUESTION AND ANSWER. I REQUIRE COUNSEL TO RESTATE IT.

6 Q YOU WERE TOLD TO STAY OUT OF THE SHOP? DO YOU AGREE WITH
7 THAT OR DISAGREE WITH THAT?

8 A HE TOLD ME TO STAY OUT FOR A MONTH. BUT I DID NOT STAY OUT
9 THE SHOP. NOW, I DID RESPECT HIM--

10 THE COURT: JUST A MINUTE. QUIT VOLUNTEERING ANSWER,
11 OKAY? WAIT UNTIL HE ASKS YOU A QUESTION.

12 Q MR. WELL, ARE YOU AN ANGRY YOUNG MAN?

13 A NO, I'M NOT ANGRY.

14 Q WHEN THE SOLICITOR WAS ASKING YOU QUESTIONS YOU WEREN'T
15 ANSWERING HIM LIKE YOU ARE ANSWERING ME.

16 A OH, I'M NOT ANGRY, COUNSELLOR. THAT'S YOUR OPINION.

17 Q I WANT TO SEE IF MR.--LET'S SEE, YOU HAD A PETTY LARCENY
18 CONVICTION?

19 A COUNSELLOR, YOU IS A VERY SMART INDIVIDUAL. YOU HAVE IT RIGHT
20 THERE BEFORE YOU.

21 Q WELL, I'M ASKING YOU.

22 A OKAY. BUT, COUNSELLOR, SEE YOU HAVE IT--

23 Q IS THERE SOME PROBLEM BETWEEN US, MR. WELLS?

24 THE COURT: JUST A MINUTE. JUST A MINUTE. JUST ANSWER
25 THE QUESTION. HE ASKED YOU WERE YOU CONVICTED OF PETTY

1 LARCENY. WHAT YEAR? YOU HAVE TO GIVE HIM THE DATE AND THE
2 CONVICTION. WHEN WAS IT, MR. SWERLING? GIVE HIM THE DATE,
3 WAS HE CONVICTED OF PETTY LARCENY.

4 Q WERE YOU CONVICTED OF PETTY LARCENY IN FEBRUARY OF 1983?

5 THE COURT: NOW, ANSWER THAT YES OR NO.

6 A I THINK SO. I THINK I WAS.

7 Q WERE YOU CONVICTED OF ASSAULT WITH A DEADLY WEAPON IN 1987?

8 A YES, I WAS.

9 MR. MORTON: I OBJECT TO THAT. I'LL WITHDRAW THE
10 OBJECTION.

11 THE COURT: GO AHEAD.

12 Q WERE YOU CONVICTED OF ANOTHER PETTY LARCENY IN FEBRUARY OF
13 1984?

14 A I THINK I WAS, COUNSELLOR.

15 Q WERE YOU CONVICTED IN 1984 OF THAT ASSAULT AND BATTERY CHARGE
16 WE REFERRED TO A WHILE AGO?

17 MR. MORTON: OBJECT.

18 THE COURT: I SUSTAIN THE OBJECTION.

19 MR. SWERLING: YOUR HONOR, IF I COULD APPROACH THE
20 BENCH?

21 THE COURT: SURE.

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

24 THE COURT: YOU MAY CONTINUE WITH IT AND I'LL LET YOU
25 PUT WHATEVER YOU WANT ON THE RECORD. I'LL SEND THE JURY OUT,

1 I'LL HEAR IT AND THEN PROCEED. THE JURY IS INSTRUCTED TO
2 DISREGARD THAT LAST QUESTION BY THE ATTORNEY. IT WAS AN
3 IMPROPER QUESTION. I INSTRUCT YOU TO DISREGARD IT, DO NOT
4 CONSIDER IT AT THIS TIME.

5 Q WERE YOU CONVICTED IN 1985 OF RESISTING ARREST?

6 MR. COLEMAN: YOUR HONOR, I'M GOING TO HAVE TO OBJECT.
7 CAN WE HAVE AN OUT OF COURT MATTER OF LAW TO TAKE UP WITH THE
8 COURT AT THIS TIME.

9 THE COURT: I'LL TELL YOU WHAT, MR. FOREMAN. YA'LL GO
10 AHEAD AND GO HOME FOR THE EVENING, OKAY. HAVE A NICE
11 AFTERNOON. SEE YOU IN THE MORNING ABOUT 9:30.

12 (THE JURY LEAVES THE JURY BOX AT 5:28 P.M.)

13 THE COURT: ALL RIGHT. THE JURY IS NOW OUTSIDE THE
14 PRESENCE OF THE COURT. FOR THE PURPOSES OF THE RECORD, MR.
15 SWERLING ATTEMPTED TO ASK THE WITNESS A CRIME CONCERNING A
16 CONVICTION OF ASSAULT AND BATTERY OF A HIGH AGGRAVATED
17 NATURE. THE LAW OF THIS STATE IS NOT THAT ASSAULT AND
18 BATTERY OF A HIGH AND AGGRAVATED IN AND OF ITSELF IS A CRIME
19 OF MORAL TURPITUDE. THERE IS AN OLD CASE WHICH SEEMS TO
20 REFLECT THAT DEPENDING UPON THE FACTS OF IT, IF IT SHOWS SOME
21 INTENT TO KILL, THAT IT MAY BE A CRIME OF MORAL TURPITUDE.
22 IT DEPENDS UPON THE FACTS. IT IS PREJUDICIAL IN THIS COURT'S
23 VIEW FOR COUNSEL TO ASK THAT QUESTION WITHOUT HAVING HAD THE
24 COURT INQUIRE AS TO THE BACKGROUND AND FACTS OF THE CASE.
25 THIS IS THE REASON THE COURT SUSTAINED THE OBJECTION.

1 THERE'S BEEN NO PROFFER OF SUCH FOR THE COURT TO MAKE A
2 DETERMINATION UNDER THAT CASE. THE JURY IS OUTSIDE. I'LL
3 BE HAPPY TO HEAR YOU ON THAT ISSUE AND ALL ISSUES ON THIS
4 RECORD. YOU ARE ENTITLED TO IMPEACH HIM UPON CRIMES OF MORAL
5 TURPITUDE, NOT THE CRIMES THAT AREN'T. I'M FAMILIAR WITH THE
6 CASE, COUNSEL.

7 MR. SWERLING: YES, SIR. I KNOW YOU ARE.

8 THE COURT: GO AHEAD.

9 Q. (BY MR. SWERLING) WERE YOU CONVICTED ON OCTOBER 26, 1988,
10 OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE?

11 A I THINK SO.

12 Q WERE YOU INDICTED--DID YOU PLEAD GUILTY TO ASSAULT AND
13 BATTERY OF A HIGH AND AGGRAVATED NATURE?

14 A WHAT YEAR?

15 Q IN 1988?

16 MR. SWERLING: THIS, BY THE WAY, YOUR HONOR, IS ANOTHER.

17 THE COURT: YOU PROBABLY NEED TO GET THE INDICTMENTS.

18 MR. SWERLING: I'VE GOT THEM.

19 THE COURT: GIVE HIM THE INDICTMENT NUMBERS AND THINGS
20 LIKE THAT SO THE RECORD WILL BE CORRECT.

21 Q THIS IS INDICTMENT NUMBER, IT LOOK LIKE 40-GS40-4565.

22 THE COURT: WHAT YEAR, '88 OR '89?

23 MR. SWERLING: 1988. HE ENTERED A PLEA ON OCTOBER 26,
24 1988, TO ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

25 THE COURT: WHAT WAS HE INDICTED FOR ON THAT?

1 MR. SWERLING: HE WAS INDICTED FOR ASSAULT AND BATTERY
2 OF A HIGH AND AGGRAVATED NATURE.

3 THE COURT: ALL RIGHT.

4 Q DO YOU REMEMBER THAT?

5 A I COULD HAVE.

6 THE COURT: TELL HIM WHAT THE CHARGE IS IN THERE SO YOU
7 CAN REFRESH HIS MEMORY.

8 Q COUNT ONE CHARGES THAT YOU ON JULY 16TH, 1988, COMMITTED AN
9 ASSAULT AND BATTERY UPON EUGENE McKNIGHT CONSTITUTING AN
10 UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON, THE SAID
11 VICTIM, ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION, TO WIT:
12 THE DEFENDANT DID STRIKE THE VICTIM REPEATEDLY WITH A
13 MACHETE.

14 A THAT'S CORRECT.

15 MR. SWERLING: YOUR HONOR, I WOULD SUBMIT THAT UNDER
16 STATE VS. BAILEY, 272 SOUTHEAST 2d 439, A 1980 CASE, THAT THE
17 CIRCUMSTANCES SURROUNDING THIS ASSAULT AND BATTERY OF A HIGH
18 AND AGGRAVATED NATURE SHOULD BE ADMISSIBLE OR THE FACT THAT
19 HE HAS PLED GUILTY TO IT. HE WAS ORIGINALLY CHARGED, YOUR
20 HONOR, WITH ARMED ROBBERY OF EUGENE McKNIGHT WHILE ARMED WITH
21 A LONG KNIFE AND THE STATE APPARENTLY ALLOWED HIM TO PLEAD
22 GUILTY TO AGGRAVATED ASSAULT. I HAVE ALL THE NECESSARY
23 DOCUMENTS HERE TO ESTABLISH THAT I BELIEVE IT IS AN
24 IMPEACHABLE CRIME.

25 THE COURT: LET ME SEE THAT. (PAUSE) WHAT WE HAVE,

1 COUNSELLOR, IS HE WAS ARRESTED WITH A WARRANT AND THE WARRANT
2 DATED JULY 19TH, 1988, FOR ARMED ROBBERY. THE WARRANT
3 ALLEGES THAT ON JULY 16TH, 1988, THAT HE DID COMMIT THE CRIME
4 OF ARMED ROBBERY IN THAT HE DID UNLAWFULLY ROB ONE EUGENE
5 MCKNIGHT WHILE ARMED WITH A LONG KNIFE. NO ALLEGATIONS IN
6 THERE ABOUT USE OF MACHETE OR STRIKING HIM.

7 MR. SWERLING: IT SAYS A LONG KNIFE.

8 THE COURT: IT SAYS WHILE ARMED WITH A LONG KNIFE.
9 THERE IS NO ALLEGATION IN THE WARRANT THAT HE STRUCK HIM OR
10 DID ANYTHING.

11 MR. SWERLING: I UNDERSTAND.

12 THE COURT: THE NEXT THING YOU KNOW AND APPARENTLY THERE
13 WAS NO INDICTMENT FOR ARMED ROBBERY HE PLED GUILTY--LET ME
14 SEE. HE PLED IN FRONT OF JUDGE EPPES AND GOT A PROBATIONARY
15 SENTENCE.

16 MR. SWERLING: STRIKING SOMEBODY REPEATEDLY WITH A
17 MACHETE.

18 THE COURT: WELL, THAT'S WHAT THE WARRANT SAYS. THAT
19 DOESN'T MEAN THAT HE ADMITTED THOSE FACTS.

20 THE COURT: WELL, THAT'S WHAT THE GRAND JURY CHARGED.

21 THE COURT: I'M NOT SURE THEY DID, COUNSEL. THIS IS NO
22 GRAND JURY ACTION ON HERE. I BELIEVE IT WAS A WAIVER, WASN'T
23 IT?

24 MR. SWERLING: WELL, YOUR HONOR, HE PLED GUILTY TO COUNT
25 ONE OF THAT INDICTMENT.

1 THE COURT: WELL, I'LL BUY THAT BUT YOU ARE TRYING TO
2 SAY THE GRAND JURY DID SOMETHING THAT THEY DIDN'T DO.

3 MR. SWERLING: OH, I APOLOGIZE. I DIDN'T KNOW IF IT WAS
4 A TRUE BILL OR NOT BUT HE PLED GUILTY TO STRIKING SOMEONE
5 REPEATEDLY WITH A MACHETE.

6 THE COURT: JUST A MINUTE. I HAVE NO KNOWLEDGE AND YOU
7 DON'T EITHER APPARENTLY AS TO WHAT HE ACTUALLY DID. YOU
8 KNOW, WHEN YOU READ AN INDICTMENT ASSAULT AND BATTERY OF A
9 HIGH AGGRAVATED NATURE THOSE FACTS ALLEGED COULD BE
10 SUFFICIENT TO BE INTENT TO KILL WHEN YOU STRIKE SOMEBODY WITH
11 A MACHETE. I DON'T KNOW WHAT HE PLED GUILTY TO. I MEAN DID
12 HE STRIKE HIM--I KNOW HE PLED GUILTY TO ASSAULT AND BATTERY
13 OF A HIGH AND AGGRAVATED NATURE. YOU SEEM TO ARGUE THAT IT
14 WAS TO STRIKING WITH A MACHETE. I'LL TELL YOU THIS MANY
15 TIME,, COUNSELLOR, IT HAPPENS IN FRONT OF THIS COURT ALL THE
16 TIME. PEOPLE ARE CHARGED WITH SOMETHING AND WHILE THEY ADMIT
17 THE CRIME THEY DON'T ADMIT THE SPECIFIC ALLEGATIONS OF THE
18 INDICTMENT AND IT'S WHAT THEY SAY ON THE RECORD IS WHAT THEY
19 ADMITTED TO. YOU MAY SAY HE STRUCK HIM. HE MAY NOT HAVE CUT
20 HIM. I DON'T KNOW IF HE CUT HIM. DO YOU? DO YOU KNOW IF
21 HE CUT HIM, DO YOU KNOW IF THERE WAS ANY STRONG INJURIES TO
22 HIM?

23 MR. SWERLING: YOUR HONOR, IF HE APPEARED AND ENTERED
24 A GUILTY PLEA TO COUNT ONE OF THIS INDICTMENT WHICH ALLEGES
25 THAT HE STRUCK THE PERSON REPEATEDLY WITH A MACHETE I SUBMIT

1 THAT I'VE MADE A SHOWING UNDER THAT CASE.

2 THE COURT: ALL RIGHT. HAND ME THE CASE AND LET ME SEE
3 THAT.

4 MR. SWERLING: I DON'T HAVE THE CASE WITH ME. I'VE GOT
5 THE CITE?

6 THE COURT: THAT'S ALL RIGHT, I'VE GOT IT.

7 MR. COLEMAN: WELL, YOUR HONOR, IF THAT'S THE CASE THEN
8 WE OUGHT TO BE ABLE TO GET INTO OUR ROBBERIES IN DILLON. HE
9 WAS INDICTED--THE DEFENDANT WAS INDICTED IN THAT.

10 MR. SWERLING: THAT'S A DIFFERENT ISSUE. MR. COLEMAN
11 IS WAY OFF BASE--OUT IN LEFT FIELD ON THAT.

12 THE COURT: (PAUSE) JUSTICE LITTLEJOHN TRULY RESPONDED
13 TO WHAT THE DILEMMA THE SUPREME COURT LEFT US IN BY SAYING
14 I WOULD RESPECTFULLY DISSENT AND WOULD SIMPLY HOLD THAT THE
15 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS NOT
16 A CRIME OF MORAL TURPITUDE. I DO SO WELL APPRECIATING THE
17 FACT THAT OCCASIONALLY THIS OFFENSE MAY INVOLVE MATTERS OF
18 MORAL TURPITUDE BUT I WOULD NOT IMPOSE UPON THE TRIAL JUDGE
19 THE BURDEN OF DETERMINING WHICH OFFENSES OF WHICH A WITNESS
20 OR DEFENDANT HAS BEEN CONVICTED MEETS THE REQUIREMENT. IN
21 MY VIEW OF THE RULE SET FORTH IN THE MAJORITY OPINION WOULD
22 CREATE MORE PROBLEMS THAT IT SOLVES. CLEAR EXAMPLE OF WHAT
23 THEY DID.

24 MR. SWERLING: I UNDERSTAND THAT--

25 THE COURT: LET ME FINISH. THE BURDEN IS THE CRIME OF

1 ASSAULT AND BATTERY ACCORDING TO THIS OPINION, HIGH AND
2 AGGRAVATED NATURE, DOES NOT INVARIABLY CONSTITUTE A CRIME OF
3 MORAL TURPITUDE SINCE THAT DETERMINATION DEPENDS ON THE FACTS
4 OF EACH PARTICULAR CASE. THAT'S IN HEADNOTE ONE AND TWO.
5 IT SAYS IT DEPENDS UPON THE FACTS OF EACH PARTICULAR CASE
6 WHICH IS WHAT I WOULD EXPECT YOU WOULD HAVE TO DO IS MAKE
7 SOME TYPE OF INDEPENDENT INQUIRY, FIND OUT WHAT THE FACTS OF
8 THE PARTICULAR CASE WERE. LET ME GO ON FURTHER AND THEY SAY
9 IN HEADNOTE THREE AND FOUR PROOF OF THE NATURE OF THE PRIOR
10 CONVICTION MUST NECESSARILY BE CONFINED TO THE INHERENT
11 NATURE OF THE CRIME AS DEFINED BY LAW AND PARTICULARIZED BY
12 THE INDICTMENT. FURTHER PROOF OF THE UNDERLYING
13 CIRCUMSTANCES WOULD POSSIBLY REQUIRE AN EXTENSIVE HEARING ON
14 COLLATERAL MATTERS AND, THEREFORE, BE ADVERSE TO THE UNIFORM
15 AND EFFICIENT ADMINISTRATION OF THE LAW WHICH IS WHERE THEY
16 PUT IS ANYWAY. SINCE THE CRIME OF ASSAULT AND BATTERY OF A
17 HIGH AND AGGRAVATED NATURE DOES NOT NECESSARILY CONSTITUTE
18 A CRIME OF MORAL TURPITUDE AND SINCE THE INDICTMENT FOR THE
19 PRIOR CONVICTION WAS NOT PRODUCED FOR REVIEW BY THE TRIAL
20 COURT APPELLATE'S CONVICTION WAS REVERSED. YOU PRODUCED THE
21 INDICTMENT IN THIS CASE THOUGH BUT IT STILL LEAVES THE
22 DILEMMA FOR THE COURT THAT I MAKE A DETERMINATION BASED ON
23 THE INDICTMENT OF WHAT ACTUALLY OCCURRED BECAUSE I KNOW FROM
24 EXPERIENCE THAT WAIVERS OF PLEAS--IT WAS A WAIVER, IT WAS NOT
25 A GRAND JURY TRUE BILL INDICTMENT BUT HE WAIVED IT WHICH HE

1 CAN DO AS LONG AS IT'S KNOWING AND INTELLIGENT--HOW THE PLEA
2 MILLS GO WHERE THEY TAKE FIFTY, SIXTY, SEVENTY A DAY. THE
3 QUESTION OF WHETHER THE VOLUNTARINESS OF THAT PLEA WAS THERE,
4 WHETHER OR NOT HE WAS REPRESENTED BY COUNSEL. THAT ISSUE IS
5 NOT BEFORE THE COURT. AND IT WAS NOT TO A CRIME WHICH THE
6 COURT CONSIDERS TO BE A CRIME OF MORAL TURPITUDE. I DON'T
7 THINK IT'S APPROPRIATE FOR THIS COURT TO REACH THAT DECISION
8 BASED ON THE INDICTMENT WHERE HE WAS CHARGED WITH ARMED
9 ROBBERY AND APPEARS TO BE SOME TYPE OF NEGOTIATED PLEA OR
10 REFLECTS--CHARGED HIM WITH ARMED ROBBERY AND THEN THEY INDICT
11 HIM FOR ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.
12 NO MENTION IN THE ARREST WARRANT THAT HE WAS STRUCK BY A
13 MACHETE. I'M NOT GOING TO ALLOW IT. I DON'T THINK IT'S A
14 PRIMA FACIE SHOWING AND I DON'T THINK IT'S SUFFICIENT.

15 MR. SWERLING: YOUR HONOR, I'D LIKE TO OFFER THIS INTO
16 THE RECORD FOR APPELLATE REVIEW.

17 THE COURT: CERTAINLY. IS IT CERTIFIED COPIES OF ALL
18 THAT? HE HANDS UP TO THE COURT--THESE ARE THE INDICTMENTS
19 AND THE SENTENCE SHEETS AND THE WARRANTS--

20 MR. COLEMAN: JUDGE, WE COULD GO ON AND SETTLE HIS
21 RECORD WHILE--

22 THE COURT: JUST A MINUTE. JUST A MINUTE.

23 MR. SWERLING: YOUR HONOR, I MIGHT SAY--

24 THE COURT: JUST A MINUTE. (PAUSE) WHY IS IT NECESSARY
25 TO ATTACH AN ORDER OF REVOCATION OF THAT SENTENCE? HOW DOES

1 THAT GO TO THIS?

2 MR. SWERLING: BECAUSE IT REFERS TO THE SENTENCE FOR
3 WHICH--THAT I WAS REFERRING TO BEFORE.

4 THE COURT: HOW DOES IT GO TO PROVE THE ISSUE OF WHETHER
5 OR NOT ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
6 IS A CRIME OF MORAL TURPITUDE?

7 MR. SWERLING: WELL, I GUESS IT DOESN'T.

8 THE COURT: MARK THAT AS A COURT'S EXHIBIT.

9 (INDICTMENT W/ATTACHMENTS IS MARKED AS COURT'S EXHIBIT
10 #3)

11 THE COURT: ALL RIGHT.

12 MR. SWERLING: YOUR HONOR, JUST SO MY POSITION IS CLEAR.
13 I BELIEVE THAT THE CASE SAID THE JUDGE MUST LOOK AT THE
14 INDICTMENT AND NOT LOOK BEHIND. IT WOULD BE IMPOSSIBLE TO
15 LOOK BEHIND THE UNDERLYING FACTS BECAUSE IT WOULD REQUIRE AN
16 EXTENDED HEARING OF PROOF. I HAVE PRODUCED FOR THE COURT AND
17 ENTERED INTO THE CLERK OF COURT'S RECORDS RELATING TO THAT
18 CHARGE WHICH SHOWS THE ORIGINAL CHARGE WAS AN ARMED ROBBERY.
19 IT WAS APPARENTLY REDUCED BY THE STATE TO AN AGGRAVATED
20 ASSAULT. COUNT ONE THAT HE PLED GUILTY TO CHARGED HIM AND
21 HE PLED GUILTY TO HITTING SOMEONE WITH A MACHETE AND UNDER
22 NO STRETCH OF THE IMAGINATION CAN I IMAGINE THAT BEING HIT
23 WITH A MACHETE WITH--

24 THE COURT: DON'T BE ARGUMENTATIVE, JUST STATE YOUR
25 POSITION.

1 MR. SWERLING: I AM. STRIKING SOMEONE WITH A MACHETE
2 WOULD BE ANYTHING BUT MORAL TURPITUDE UNDER THE DECISIONS OF
3 THIS STATE.

4 THE COURT: AND I RULED AGAINST YOU. I DO NOT FIND THAT
5 THE CASE REQUIRED THE COURT ONLY WITH THE INDICTMENT. IT
6 SAID THE COURT'S DETERMINATION DEPENDS UPON THE FACTS AND
7 CIRCUMSTANCES OF EACH PARTICULAR CASE. I DO NOT BELIEVE THAT
8 THE SUPREME COURT INTENDED TO DO THAT AND I SO FIND. AND IF
9 I DO AND I DO NOT RELY UPON THE INDICTMENT AS BEING
10 SUFFICIENT AND I MAKE THAT FINDING.

11 MR. SWERLING: WILL YOUR HONOR ALLOW ME EXPLORE WITH MR.
12 WELLS THE CIRCUMSTANCES SURROUNDING THE EVENT?

13 THE COURT: YES, SIR.

14 Q (BY MR. SWERLING) MR. WELLS, YOU PLED GUILTY TO THAT
15 INDICTMENT, DID YOU NOT?

16 A THAT'S TRUE.

17 Q OKAY. AND DID YOU HAVE A MACHETE IN YOUR HAND?

18 A THAT'S TRUE.

19 Q OKAY. DID YOU HIT SOMEBODY WITH IT?

20 A I HIT HIM WITH THE FAT PART, NOT THE BLADE PART.

21 Q OKAY. AND DID YOU ROB THE PERSON?

22 A HE SAY I ROBBED HIM BUT I DIDN'T ROB HIM.

23 Q OKAY. HOW MANY TIMES DID YOU HIT HIM WITH THE FAT PART OF
24 THE BLADE?

25 A IT WAS ABOUT FOUR OR FIVE TIMES. MOST OF THE TIME I KICK HIM

1 IN HIS FACE.

2 Q SO, IN ADDITION TO HITTING HIM WITH THE MACHETE BLADE OR

3 MACHETE HANDLE YOU KICKED HIM IN THE FACE?

4 A I DIDN'T SAY I HIT HIM WITH NO HANDLE.

5 Q YOU JUST SAID YOU DID.

6 A I SAY I HIT HIM WITH THE FAT PART WHICH I DIDN'T HIT HIM WITH

7 THE BLADE. THE FAT PART OF THE MACHETE ABOUT THAT LONG AND

8 ABOUT THAT THICK (INDICATING). BUT I DID NOT HIT HIM WITH

9 THE BLADE.

10 Q YOU WERE HITTING THE PERSON WITH THE BLADE--

11 A BUT IT WAS THE FAT PART TURNED SIDEWAYS WHAT I'M SAYING.

12 TURNED SIDEWAYS.

13 Q YOU DID THAT ABOUT FOUR TIMES?

14 A YES. I PULLED HIS HANDS DOWN AND BEAT HIM WITH THE BUTT.

15 Q OKAY. AND HOW MANY TIMES DID YOU KICK HIM IN THE FACE?

16 A NO TELLIN'. I COULDN'T SAY.

17 Q TEN, TWENTY?

18 A I SAY I COULDN'T SAY. IT MIGHT HAVE BEEN TWO OR THREE.

19 Q DID YOU PUT HIM IN THE HOSPITAL?

20 A NO, SIR.

21 Q BUT YOU WERE CHARGED WITH ARMED ROBBERY IN THE BEGINNING OF

22 THAT CASE, IS THAT RIGHT?

23 A WELL, AT FIRST THEY DID CHARGE ME WITH ARMED ROBBERY. AFTER

24 THE INVESTIGATOR LOOK INTO IT, YOU KNOW, I RECKON.

25 Q THEN THEY NEGOTIATED A PLEA AND REDUCED IT DOWN TO ASSAULT

1 AND BATTERY OF A HIGH AND AGGRAVATED NATURE?

2 A THAT'S TRUE.

3 Q DID THE MAN RECEIVE ANY MEDICAL TREATMENT FOR IT?

4 A NOT TO MY KNOWLEDGE. I DON'T THINK HE WENT TO THE HOSPITAL.

5 Q AND YOU RECEIVED A PROBATIONARY SENTENCE FOR IT?

6 A YES, SIR.

7 Q DID YOU MAKE HIM BLEED?

8 A I DON'T KNOW. I DON'T THINK SO.

9 Q YOU DON'T REMEMBER OR YOU DON'T THINK SO?

10 A I SAY I DON'T THINK DO.

11 Q DID YOU KNOCK HIM UNCONSCIOUS?

12 A NO, I DIDN'T KNOCK HIM UNCONSCIOUS. I KNOW THAT.

13 MR. SWERLING: YOUR HONOR, I SUBMIT WHAT HE DID WAS A
14 CRIME OF MORAL TURPITUDE.

15 THE COURT: I DISAGREE WITH YOU, COUNSEL. I THINK THE
16 PURPOSE OF THAT CASE, IF ANYTHING, IS WHERE CIRCUMSTANCES ARE
17 SOMEBODY SHOOTS SOMEBODY INTENDING TO KILL THEM OR ACTUALLY
18 STABS THEM INTENDING TO KILL THEM SERIOUSLY INJURING THEM AND
19 THE STATE NEGOTIATES A PLEA DOWN TO ASSAULT AND BATTERY OF
20 A HIGH AGGRAVATED NATURE. I THINK UNDER THOSE FACTS
21 CONSTITUTE THE PURPOSE OF SUCH A DECISION. BUT ONCE AGAIN
22 I STILL THINK IT PLACES THE TRIAL COURTS IN THE DILEMMA OF
23 HAVING TO GO BEHIND IN ORDER TO MAKE AN APPROPRIATE DECISION.
24 THE FACTS OF THIS CASE DO NOT IN THIS COURT'S OPINION, AND
25 I SO FIND, CONSTITUTE THE CRIME OF MORAL TURPITUDE.

1 MR. SWERLING: I WON'T PURSUE IT ANY FURTHER.

2 THE COURT: THANK YOU.

3 MR. COLEMAN: YOUR HONOR, WE COULD GO ON AN SETTLE HIS
4 RECORD.

5 THE COURT: YES. LET'S PURSUE THIS. LET'S COMPLETE THE
6 RECORD PROBLEM. EVERYTHING ON THE RECORD. LET'S COVER THE
7 CRIMES THAT YOU ARE GOING TO ASK HIM ABOUT. ANY QUESTIONS
8 ABOUT THEM THAT ARE NOT CRIMES OF MORAL TURPITUDE. RECITE
9 FOR ME, COUNSEL, IF YOU WILL WHICH ONES YOU ARE GOING TO ASK
10 HIM. I DON'T HAVE HIS RAP SHEET SO I DON'T KNOW.

11 MR. SWERLING: ASSAULT WITH A DEADLY WEAPON FROM 1987.

12 THE COURT: YOU'VE ALREADY ASKED HIM ABOUT THAT ONE,
13 HAVEN'T YOU? WITHOUT OBJECTION. GO AHEAD.

14 MR. SWERLING: PETTY LARCENY FROM--

15 THE COURT: THAT'S MORAL TURPITUDE BY CASE LAW.

16 MR. SWERLING: YOUR HONOR, THERE'S ANOTHER ASSAULT AND
17 BATTERY IN 1984 BUT I DON'T HAVE THE FACTS OF THAT ONE.

18 THE COURT: OR THE INDICTMENT.

19 MR. SWERLING: I THOUGHT THAT WAS THE ONE THAT I HAD AND
20 I APOLOGIZE TO THE COURT. APPARENTLY THE ONE AS '88 IS NOT
21 LISTED ON THE RAP SHEET. FROM 1985 A RESISTING ARREST
22 CHARGE.

23 THE COURT: ALL RIGHT.

24 MR. SWERLING: THEN IN 1985--

25 MR. MORTON: YOUR HONOR, RESISTING ARREST HAS BEEN RULED

1 A CRIME OF MORAL TURPITUDE?

2 MR. SWERLING: YOUR HONOR, I WOULD SUBMIT THE FAILURE
3 TO YIELD TO A POLICE OFFICER HAS BEEN RULED TO BE A CRIME OF
4 MORAL TURPITUDE UNDER ADDINGTON VS. SPECIALS OF GREENVILLE
5 AND IF THE FAILURE TO YIELD RIGHT OF WAY IS A CRIME OF MORAL
6 TURPITUDE THEN CERTAINLY RESISTING ARREST OUGHT TO BE.

7 THE COURT: WELL, I'LL TELL YOU IT'S BEEN A HODGE-PODGE
8 BY CASE LAW DECISION BUT I'M INCLINED TO AGREE WITH YOU.
9 RESISTING ARREST IS. IF YOU'VE GOT A CASE ON IT, I'LL GIVE
10 YOU UNTIL IN THE MORNING, THAT SAYS RESISTING IS NOT. I
11 DON'T HAVE ONE THAT SAYS IT'S NOT. I'LL GIVE YOU UNTIL IN
12 THE MORNING.

13 MR. COLEMAN: WELL, YOUR HONOR, THE BASIC THING--

14 THE COURT: YOU DON'T HAVE TO ARGUE IT. JUST FIND ME
15 A CASE. WHAT ELSE?

16 MR. SWERLING: THAT'S IT.

17 THE COURT: IS THAT ALL THE RECORD?

18 MR. SWERLING: YES, YOUR HONOR. I WOULD LIKE--WE ARE
19 TRYING TO FIND OUT WHAT THE '85 OR '84 ASSAULT AND BATTERY
20 WAS ABOUT SINCE I WAS CONFUSED ABOUT THAT ONE BEING THE '85
21 CHARGE.

22 THE COURT: WELL, IF YOU GET THE INDICTMENT AND SOME OF
23 THE FACTS OF IT--YOU MAY WANT TO ASK HIM NOW. WERE YOU
24 CONVICTED IN 1984 OF ASSAULT AND BATTERY OF A HIGH AND
25 AGGRAVATED NATURE?

1 A YES, SIR, BUT I DONE FORGOT WHAT IT WAS NOW.

2 THE COURT: HE'S FORGOT WHAT IT WAS. THEN YOU ARE GOING
3 TO HAVE TO GET THE INDICTMENT AND SOME OTHER INFORMATION.

4 MR. SWERLING: I'M SORRY, YOUR HONOR. ASSAULT WITH A
5 DEADLY WEAPON.

6 A OH, ASSAULT WITH A DEADLY WEAPON?

7 THE COURT: WELL, UNFORTUNATELY--

8 A I KNOW THAT WAS--

9 THE COURT: JUST A MINUTE. YOU'VE ALREADY ASKED HIM,
10 HE'S ADMITTED IT UNOBJECTED TO. IT'S ALREADY IN THE RECORD.
11 WHAT ELSE?

12 MR. SWERLING: THAT'S ALL I CAN THINK OF, JUDGE.

13 THE COURT: COURT IS IN RECESS UNTIL IN THE MORNING AT
14 9:30. MR. SWERLING, JUST A MINUTE. FOR THE RECORD,
15 GENTLEMEN, THE REPORT FROM THE PROBATION OFFICE I HAVE
16 EXAMINED. THERE IS A DIRECTION. HE WAS SENT TO BUTNER, B-
17 U-T-N-E-R (SPELLED), NORTH CAROLINA FEDERAL CORRECTIONAL
18 INSTITUTE IN APRIL OF 1989 FOR THE PURPOSE OF AN EVALUATION
19 AND THERE ARE NOTES FROM THE EVALUATING PHYSICIANS OR
20 PSYCHIATRISTS WHO FOUND, OF COURSE, THAT HE WAS COMPETENT TO
21 STAND TRIAL. OF COURSE, ALSO IT HAS HIS RECORD IN HERE BUT
22 THAT DOESN'T GO TO THAT. IT ALSO HAS STATEMENTS OF HIS
23 POLYSUBSTANCE DEPENDENCE. IT MAY BE IN YOUR OTHER
24 INFORMATION. HE'S ALSO DIABETIC. HE ALSO HAS HAD SEIZURES.
25 AND STATEMENTS MADE BY THE PARENTS OF THIS BOY SAY THAT HE

1 WAS NOT COMPETENT. OF COURSE, THE DOCTORS FOUND HIM TO BE
2 COMPETENT BUT THERE ARE STATEMENTS IN HERE BY THIS
3 INDIVIDUAL, KENNETH GARDNER, BY HIS FAMILY, FATHER, BROTHERS,
4 SISTERS, SAYING THAT HE IS NOT COMPETENT AND THAT HE CAN'T--
5 --I MEAN THOSE KIND OF THINGS, HE CAN'T MANAGE HIMSELF AND HE
6 DOESN'T KNOW WHAT HE'S DOING. STATEMENTS THAT HE CANNOT
7 REMEMBER, HE DOESN'T RECALL.

8 MR. SWERLING: I THINK THAT'S GIGGILO. YOUR HONOR, I
9 BELIEVE I'D BE ENTITLED TO THAT INFORMATION. I WOULD LIKE
10 TO SUBPOENA HIS PARENTS AND I'D LIKE THE OPPORTUNITY TO
11 SUBPOENA THE PHYSICIAN FROM BUTNER.

12 THE COURT: YOU CAN DO IT. THERE'S NOTHING I CAN DO
13 ABOUT THAT. YOU HAVE A RIGHT TO SUBPOENA ANYBODY.

14 MR. SWERLING: YOUR HONOR, I'D HAVE TO HAVE AN OUT OF
15 STATE WITNESS SUBPOENA ISSUED BY THE COURT.

16 THE COURT: I'LL BE HAPPY TO GIVE YOU ANY ASSISTANCE THE
17 COURT CAN GIVE TO YOU BUT THE CASE IS GOING. I'M GOING TO
18 MAKE THIS AVAILABLE TO YOU.

19 MR. SWERLING: WELL, YOUR HONOR, SINCE I'M JUST FINDING
20 OUT ABOUT THAT I WOULD STATE IT'S WEDNESDAY AND THEY HAVE NOT
21 TURNED OVER THEIR FILE. I'D LIKE THE OPPORTUNITY--I STILL
22 DON'T HAVE THE FILE.

23 THE COURT: I'M GOING TO ASSIST YOU IN GETTING ALL THESE
24 OTHER STATE HOSPITAL REPORTS AND ALL THAT. WHAT ABOUT THE
25 FILE?

1 MR. COLEMAN: HERE IT IS RIGHT HERE.

2 THE COURT: WHY HAVEN'T YOU TURNED IT OVER TO HIM?

3 MR. COLEMAN: WELL, I TOLD HIM HE COULD HAVE IT, YOUR
4 HONOR.

5 THE COURT: WELL, GIVE IT TO HIM.

6 MR. SWERLING: YOUR HONOR, THE POINT I'M TRYING TO GET
7 AT IS THAT I HAVE NOT HAD AN OPPORTUNITY TO SUBPOENA THE
8 PSYCHIATRIST FROM BUTNER BECAUSE OF THE STATE'S POSITION IN
9 THIS MATTER UNTIL NOW. I MEAN I'D LIKE THE OPPORTUNITY,
10 WHATEVER DELAY IS NECESSARY, TO GET THE PSYCHIATRIST HERE
11 FROM BUTNER.

12 THE COURT: I'M NOT SURE THAT GUY IS GOING TO TALK TO
13 YOU.

14 MR. SWERLING: I WON'T KNOW UNTIL I SUBPOENA HIM.

15 THE COURT: SUBPOENA HIM. THAT'S THE ONLY THING I CAN
16 TELL YOU TO DO IS SUBPOENA HIM. THERE'S NOTHING I CAN DO
17 ABOUT THAT. I GAVE YOU THAT INFORMATION IN THIS COURT'S VIEW
18 THAT IT'S NOT EXCULPATORY AND IT DOES NOT SERVE THE PURPOSE
19 OF GIGGILO BUT I GAVE YOU THE INFORMATION THAT I THINK IS
20 APPROPRIATE IN THERE.

21 MR. SWERLING: WELL, YOUR HONOR, CAN I GET FROM THERE
22 THE NAMES OF HIS PARENTS AND THE PHYSICIAN FROM BUTNER?

23 THE COURT: YES. I WILL DO THAT. LEWIS GARDNER. AND
24 HIS UNCLE, HARVEY L. GARDNER. BOTH OF THEM LIVE--WELL, LEWIS
25 LIVES IN KERSHAW ACCORDING TO THIS.

1 MR. SWERLING: LIVES WHERE, YOUR HONOR?

2 THE COURT: KERSHAW COUNTY. THAT'S ALL I HAVE ON THAT.
3 HE LIVES ON LACHICOTTE, L-A-C-H-I-C-O-T-T-E (SPELLED), ROAD,
4 LUGOFF, SOUTH CAROLINA.

5 MR. SWERLING: L-A-C-H--

6 THE COURT: I-C-O-T-T-E (SPELLED) ROAD, LUGOFF, SOUTH
7 CAROLINA. ZIP CODE IS 29078. IT DOESN'T HAVE A PHONE NUMBER
8 OR I WOULD GIVE IT TO YOU. AND I DON'T HAVE AN ADDRESS FOR
9 HARVEY L. GARDNER IN HERE. IT SAYS HE'S HIS UNCLE. HE'S
10 RETIRED SO APPARENTLY HE'S UP IN AGE FROM DuPONT. YOU CAN
11 PROBABLY FIND THAT OUT FROM THE FATHER AS TO THE UNCLE.
12 THAT'S THE TWO PEOPLE IN HERE. FORENSIC EVALUATION FROM THE
13 MENTAL HEALTH DIVISION OF FEDERAL CORRECTIONAL INSTITUTE,
14 BUTNER--

15 MR. SWERLING: DOES THAT SAY WHAT DATE IT WAS, YOUR
16 HONOR?

17 THE COURT: JUNE THE 2ND, 1989. FROM GEORGE P. FOWLES,
18 F-O-W-L-E-S (SPELLED), ACTING DIRECTOR, FORENSIC SERVICES.

19 MR. SWERLING: DID YOU SAY F-A-W-L?

20 THE COURT: F-O-W-L-E-S (SPELLED). GEORGE P. FOWLES.
21 APPARENTLY HE HAS HIS DOCTORATE OF EDUCATION DEGREE BECAUSE
22 IT'S GOT Ed.D. IT'S GOT ACTING DIRECTOR, FORENSIC SERVICES.
23 THE REPORT SHOWS HE'S GOT A POLYSUBSTANCE DEPENDENCE,
24 ANTISOCIAL PERSONALITY DISORDER WITH PASSIVE-AGGRESSIVE
25 TRAITS, SEIZURE DISORDER, DIABETES INSIPIDUS.

1 MR. SWERLING: AND SYPHILIS?

2 THE COURT: INSIPIDUS. THAT'S A TYPE OF DIABETES, NOT
3 VENEREAL DISEASE. NOW, I ASSUME YOU HAVE HIS CRIMINAL RECORD
4 THAT'S IN HERE.

5 MR. SWERLING: WE DON'T HAVE HIS RECORD.

6 THE COURT: YOU DON'T HAVE HIS RECORD?

7 MR. MORTON: WE'LL GIVE IT TO HIM.

8 MR. SWERLING: KENNETH GARDNER.

9 THE COURT: HE HAS A FAIRLY SUBSTANTIAL RECORD.

10 MR. SWERLING: WELL, THAT'S ONE WE HAVE NOT GOTTEN YET.

11 MR. MORTON: I BELIEVE IT GAVE THAT TO MRS. SHEALY THIS
12 AFTERNOON. THAT WAS ONE IN THE FILE I GAVE YOU.

13 MR. SWERLING: SOME CLERK OF YOUR BROUGHT--ONE OF THEM
14 WAS NOT KENNETH GARDNER.

15 MR. MORTON: WE'LL PROVIDE IT, YOUR HONOR.

16 THE COURT: ALL RIGHT. I AM PUTTING A SEALING ORDER ON
17 THE REPORT. A COPY OF IT WILL BE PRESERVED. MR. COLEMAN,
18 I AM GOING TO GIVE YOU THAT. I SUGGEST YOU TURN IT BACK.
19 WE HAVE MADE A COPY AND WE ARE GOING TO SEAL IT WHICH I HAVE
20 DONE WITH A SEALING ORDER WHICH REFLECTS THIS IS NOT TO BE
21 OPENED EXCEPT BY ORDER OF THIS COURT OR APPELLATE COURT DATED
22 THIS DAY AND I'M GOING TO TURN IT OVER TO THE COURT REPORTER
23 FOR THE PURPOSE OF TURNING IT IN TO THE CLERK'S OFFICE.
24 JANUARY THE 17TH. ALL RIGHT. I NEED A PIECE OF TAPE TO GO
25 ACROSS THIS.

1 MR. SWERLING: I WOULD ALSO ASK YOU TO INSTRUCT THIS
2 WITNESS--HE SEEMS TO WANT TO STRIKE OUT EVERY TIME I ASK HIM
3 A QUESTION THAT HE IS NOT TO MAKE REMARKS LIKE HE MADE WITH
4 RESPECT TO MR. TILLMAN CONCERNING THREATS OR WHY HE'S IN
5 SAFEKEEPING OR ANYTHING OF THAT NATURE. THOSE ARE NOT
6 RESPONSIVE TO THE QUESTIONS. THEY ARE SOLICITOUS REMARKS.

7 THE COURT: WELL, THEY ARE. I DON'T KNOW THAT IT HELPS
8 YOU OR HURTS YOU. OF COURSE, I MUST SAY YOU BRING SOME OF
9 THE WORST OUT IN YOUR WITNESSES WHICH YOU ARE DOING A GOOD
10 JOB. I'M NOT SO SURE IT'S NOT BROUGHT ON BY YOURSELF BUT,
11 MR. WITNESS, IT'S IMPORTANT AT ALL TIMES. YOU KNOW, IF YOU
12 DO IT I'M GOING TO STOP THE TRIAL AND IT MAY ADVERSELY AFFECT
13 THIS CASE. LISTEN TO HIS QUESTIONS AND RESPOND. YOU DON'T
14 BENEFIT, NO ONE BENEFITS BY YOU BEING AGGRESSIVE BACK TO HIM.
15 JUST ANSWER HIS QUESTIONS TRUTHFULLY.

16 A ALL RIGHT.

17 THE COURT: ALL RIGHT. ANYTHING ELSE? SEE YA'LL IN THE
18 MORNING.

19 (RECESS AT 6:00 P.M.)

20 (COURT RESUMES JANUARY 18, 1990)

21 THE COURT: ALL RIGHT. COUNSEL, ARE YOU READY TO
22 PROCEED?

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

24 THE COURT: WHERE IS THE WITNESS? GENTLEMEN, AT THE
25 CLOSE OF YESTERDAY ON THE QUESTION OF RESISTING ARREST, DID

1 YOU FIND ANYTHING?

2 MR. MORTON: I'M SORRY?

3 THE COURT: YOU HAD SOME QUESTION ABOUT WHETHER OR NOT
4 RESISTING ARREST WAS A CRIME OF MORAL TURPITUDE. DID YOU
5 FIND ANYTHING?

6 MR. MORTON: MR. BILTON HAS RESEARCHED THAT ISSUE I
7 BELIEVE FOR US, JUDGE. HE STEPPED IN THE OFFICE. HE'LL BE
8 BACK IN ABOUT ONE SECOND.

9 THE COURT: DID YOU FIND ANYTHING?

10 MR. SWERLING: YOUR HONOR, I DON'T SEE WHERE IT'S BEEN
11 RULED ON BUT THE CASE I REFERRED TO YESTERDAY, ADDINGTON
12 WHERE A FAILURE TO YIELD THE RIGHT OF WAY WHERE IT HAS BEEN
13 HELD TO BE A CRIME OF MORAL TURPITUDE FOR SOME REASON--

14 THE COURT: UNFORTUNATELY THEY OUGHT TO TAKE ALL THE
15 CRIMES AND JUST GO THROUGH THEM. WE'VE GOT A HIT AND MISS
16 PROPOSITION UNDER THE THEORY OF WHAT IS MORAL TURPITUDE AND
17 WHAT IS NOT.

18 MR. SWERLING: RIGHT.

19 THE COURT: FRANKLY THE GUIDELINES IS AWFUL TO DEAL
20 WITH. HOW YOU DEAL WITH SOME DRUG OFFENSES THAT ARE MORAL
21 TURPITUDE AND THE OTHERS THAT ARE NOT, THAT'S JUST HARD TO
22 RATIONALIZE. I DON'T MIND SAYING IT. IT'S HARD FOR THE
23 BENCH, IT'S HARD FOR THE BAR TO UNDERSTAND AND INTERPRET WHEN
24 THE RULES ARE SO HIGHLY TECHNICAL LIKE THAT. IT ISN'T RIGHT.

25 MR. SWERLING: IN FEDERAL COURT IT'S PRETTY SIMPLE.

1 IT'S IF IT'S PUNISHABLE BY MORE THAN A YEAR IT'S IMPEACHABLE.

2 THE COURT: THAT'S EXACTLY RIGHT. IT OUGHT TO BE
3 SOMETHING REALISTIC OR EITHER THEY OUGHT TO SAY HERE ARE ALL
4 THE CRIMES, NOW WE ARE GOING TO GO THROUGH THEM AND TELL YOU
5 WHICH ONES THAT ARE. WHAT DID YOU FIND, MR. BILTON?

6 MR. BILTON: YOUR HONOR, OBVIOUSLY I HAVE NOT FOUND A
7 CASE ON POINT THAT SAYS THAT RESISTING ARREST IS NOT A CRIME
8 OF MORAL TURPITUDE. THE COURT REPEATEDLY HAS SAID IN ORDER
9 FOR-- A CRIME OF MORAL TURPITUDE IS AN ACT OF BASENESS,
10 VIOLENCE, DEPRAVITY, AND DEPRIVED OF SOCIAL DUTIES WHICH MAN
11 OWES TO HIS FELLOW MAN OR TO SOCIETY IN GENERAL CONTRARY TO
12 THE CUSTOMARY AND ACCEPTED RULE OF RIGHT AND DUTY BETWEEN MAN
13 AND MAN. IN PRACTICALLY EVERY CASE THEY'VE STATED THAT RULE.
14 PROFESSOR REISER HAS ENUMERATED IN HIS BOOK ON EVIDENCE AGAIN
15 THAT RULE.

16 THE COURT: LET ME ASK YOU THIS. IT MIGHT SHORTEN IT.
17 THE RESISTING ARREST OFFENSE WHICH HE WAS CONVICTED OF, WAS
18 IT UNDER THE ONE YEAR STATUTE OR TEN YEAR STATUTE OR PRIOR
19 TO THE CHANGE IN THE STATUTE?

20 MR. BILTON: YOUR HONOR, IT WAS UNDER THE ONE YEAR
21 STATUTE. IT WAS A RESISTING ARREST THAT DID NOT INVOLVE THE
22 ASSAULT OF THE POLICE OFFICER OR WAS NOT CONVICTED OF
23 ASSAULTING THE POLICE OFFICER WHILE RESISTING ARREST.

24 THE COURT: YES, BUT EVEN UNDER THE ONE YEAR STATUTE
25 IT'S A WILFUL FAILURE TO OBEY THE DIRECTION OF AN OFFICER AND

1 THE ONLY DISTINCTION DIFFERENCE IS THE ACTUAL ABUSE TO THE
2 OFFICER WAS THE GRAVAMEN OF THE OFFENSE THAT CHANGED THE
3 EFFECT OF THE PENALTY. BOTH OF THEM INVOLVE SOME WILFUL ACT
4 ON THE PART OF THE PERSON AND SOME INTENT TO HEED THE
5 DIRECTION OR INSTRUCTION OF A LAW ENFORCEMENT OFFICER. SO,
6 THE QUESTION IS WHETHER OR NOT THAT ACT IN AND OF ITSELF IS
7 ONE WHICH WOULD BE BASED--OF COURSE, IT'S NOT LARCENY OR
8 STEALING. THAT'S VERY SIMPLE AND EASY TO RESOLVE. YOU KNOW,
9 THEY SAY CERTAIN POSSESSION OF DRUG OFFENSES, YOU KNOW, IS
10 A CRIME OF MORAL TURPITUDE WHILE OTHERS AREN'T AND THEY
11 DISTINGUISH BETWEEN THE TYPES OF DRUGS, ONE BEING COCAINE AND
12 ONE BEING MARIJUANA, POSSESSION WITH INTENT. INTENT IS A
13 CRITICAL POINT TO THEM IN THE INTERPRETATION SO WILFULNESS
14 IS SOME ACT OF INTENT. WHILE ALL CRIMES HAVE SOME GENERAL
15 INTENT WE ARE TALKING ABOUT SPECIFIC INTENT. SO, POSSESSION
16 AS THEY RATIONALIZE WITH THE INTENT BEING A SPECIFIC INTENT
17 THE QUESTION WOULD BE WHETHER OR NOT RESISTING ARREST SIMPLY
18 IS SOME TYPE OF WILFULNESS WHICH IS A SPECIFIC INTENT IS THE
19 WAY I WOULD RATIONALIZE.

20 MR. BILTON: YOUR HONOR, TO RESIST ARREST WOULD BE THE
21 SLIGHTEST MOVEMENT ON THE PART OF A BODY.

22 THE COURT: I UNDERSTAND. I'M GOING TO LET THEM USE IT.
23 IT'S A CLOSE QUESTION BUT I FIND THAT IT'S ACT OF WILFULNESS
24 AND SHOULD BE ALLOWED TO BE IMPEACHED UPON. YOU ARE PROTECTED
25 ON THE RECORD. ARE YA'LL READY?

1 MR. MORTON: YES, SIR.

2 THE COURT: WE'LL PROBABLY FIND OUT IN THE FUTURE
3 WHETHER OR NOT RESISTING ARREST SIMPLY IS AN ACT OF MORAL
4 TURPITUDE. THIS IS MY NEW LAW CLERK FOR THE NEW YEAR. DOES
5 ANYBODY HAVE ANY PROBLEM WITH HER SITTING UP HERE THIS
6 MORNING WHILE SHE'S LEARNING, WORKING WITH US?

7 MR. MORTON: KEEP HER AND TELL ERIC TO LEAVE.

8 THE COURT: WELL, WE THOUGHT ABOUT THAT BUT HE NEEDS THE
9 MONEY. ALL RIGHT, BRING THE JURY IN.

10 (THE JURY RETURNS TO THE JURY BOX AT 9:45 A.M.)

11 THE COURT: GOOD MORNING, MR. FOREMAN AND LADIES AND
12 GENTLEMEN. I HOPE YOU HAD A NICE EVENING. WE ARE READY TO
13 PROCEED. THE WITNESS IS ON THE WAY. THIS IS MY LAW CLERK.
14 THEY GIVE US A LAWYER TO--THEY WORK WITH US FOR A YEAR AND
15 HE STAYS WITH ME UNTIL AUGUST. THE YOUNG LADY SITTING NEXT
16 TO HIM IS A THIRD YEAR LAW STUDENT AND IF SHE PASSES THE BAR
17 SHE'LL BE MY LAW CLERK STARTING IN AUGUST. THEY HAVE TO PASS
18 THE BAR AND THEY HAVE TO BE LAWYERS.

19 (MR. MORTON AND MR. SWERLING APPROACH THE BENCH OUT OF
20 THE PRESENCE OF THE COURT REPORTER)

21 THE COURT: YA'LL GO BACK AND SIT IN THE JURY ROOM. I
22 CAN'T HELP WHAT IS GOING ON. IF I COULD I'D DO SOMETHING
23 ABOUT IT.

24 (THE JURY LEAVES THE JURY BOX AT 9:48 A.M.)

25 THE COURT: THIS HAS BEEN A TOTAL COMEDY. EVERY MOMENT

1 I'VE HAD TO WAIT ON WITNESSES, WE'VE HAD A PROBLEM, WE'VE HAD
2 TO HAVE CONFERENCES. WE'VE SPENT MORE TIME WASTING TIME THAN
3 ANY CASE I'VE TRIED IN THE LAST TWO YEARS. I MEAN IT'S
4 AWFUL. YOU CAN'T HAVE WITNESSES LINED UP. PEOPLE WHO ARE
5 ON DIRECT EXAMINATION THE COURT SAID TO BE BACK AT 9:30 AND
6 THEY CAN'T EVEN BE HERE AT TEN MINUTES TO TEN. I MEAN THAT'S
7 AWFUL. THE JURY IS GETTING DISGUSTED AND I DON'T BLAME THEM.
8 THEY SPEND NINETY PERCENT OF THEIR TIME BOUNCING IN AND OUT
9 OF THIS COURTROOM. IT'S A POOR EXAMPLE OF JUDICIAL
10 ADMINISTRATION. POOR EXAMPLE. WHAT'S THE PROBLEM?

11 DEPUTY SHERIFF: YOUR HONOR, THE OFFICERS THEY SENT TO
12 PICK UP THE PRISONER THIS MORNING WENT TO FAIRFIELD COUNTY
13 INSTEAD OF KERSHAW COUNTY TO PICK HIM UP. THEY CALLED FROM
14 FAIRFIELD COUNTY TO SAY THAT THEY WERE IN ROUTE TO KERSHAW
15 COUNTY TO PICK HIM UP. THEY GOT THE WRONG INFORMATION ON
16 WHERE HE WAS LOCATED AT. AND I PERSONALLY CALLED DOWN THERE
17 AT 7:30 THIS MORNING TO INSURE THAT THEY DID HAVE SOMEONE TO
18 GO PICK HIM UP. SOMEWHERE DOWN THE LINE THEY DROPPED THE
19 BALL.

20 THE COURT: WELL, THERE ISN'T A THING WE CAN DO BUT SIT
21 AND WAIT ONCE AGAIN. YOU KNOW, AS I SAID, THIS CASE HAS BEEN
22 PROTRACTED NOT BECAUSE OF THE ABILITY OF THE COURT TO PROCEED
23 BUT BECAUSE OF ALL OF THESE THINGS. AND WE ARE GOING TO BE
24 HERE SATURDAY AND PROBABLY NEXT WEEK. WE ARE GOING TO HAVE
25 TO DO SOME SCHEDULE CHANGING. HOW MANY MORE WITNESSES HAVE

1 YA'LL GOT, SOLICITOR?

2 MR. MORTON: YOUR HONOR, WE HAVE POSSIBLY TWELVE.

3 THE COURT: HOW MANY DO YA'LL ANTICIPATE HAVING?

4 MR. SWERLING: JUDGE, IT REALLY DEPENDS UPON HOW IT
5 PARES DOWN. WE HAVE ALREADY ELIMINATED PROBABLY HALF OF THE
6 LIST THAT I GAVE YOU.

7 THE COURT: WELL, YA'LL BE PREPARED TO WORK SATURDAY IN
8 ADDITION TO WHICH I'M GOING TO GO GET ON THE PHONE AND CALL
9 COURT ADMINISTRATION BECAUSE THIS CASE HAS GOT TO GO ON AND
10 BE READY TO MOVE ON IT MONDAY AGAIN. BE AT EASE WHILE THEY
11 FIND THE WITNESS.

12 (RECESS)

13 THE COURT: (AT CONCLUSION OF RECESS, 11:30 A.M.)
14 GENTLEMEN, WHERE IS THE WITNESS?

15 MR. MORTON: THE WITNESS IS RIGHT HERE, YOUR HONOR.

16 THE COURT: WE NEED TO GIVE SOME LIMITED EXPLANATION TO
17 THE JURY. AS I UNDERSTAND IT THE EXAMINATION IS GOING TO
18 REVEAL THAT HE'S PRESENTLY IN CUSTODY ANYWAY.

19 MR. MORTON: YES, SIR.

20 THE COURT: I THOUGHT WHAT I'D DO IS EXPLAIN TO THE JURY
21 THAT WHAT OCCURRED WAS DIFFERENT LAW ENFORCEMENT OFFICIALS
22 WERE TO PICK HIM UP THIS MORNING IN ANOTHER FACILITY OUTSIDE
23 OF RICHLAND COUNTY. THEY WENT TO A DIFFERENT COUNTY AND DID
24 NOT REALIZE THAT UNTIL WE GOT HERE THIS MORNING AND GOT READY
25 TO START AND THEN BY THE TIME THEY FOUND OUT WHERE HE WAS AND

1 WENT TO THE OTHER FACILITY IT JUST TOOK THIS TIME. I DON'T
2 KNOW ANYTHING ELSE TO DO BUT THEY NEED TO BE TOLD. DON'T YOU
3 AGREE?

4 MR. MORTON: YES, SIR.

5 THE COURT: MR. SWERLING?

6 MR. SWERLING: THAT'S FINE WITH ME, YOUR HONOR.

7 MR. MORTON: YOUR HONOR, SINCE WE WON'T HAVE TO--TO
8 PREVENT BRINGING THEM OUT AND THEN SENDING THEM BACK I THINK
9 THERE ARE A COUPLE OF MATTERS WE CAN CLEAR UP RIGHT NOW. ONE
10 IS MR. WELLS HAS A SALE OF HEROIN ON HIS RECORD FROM 1976.
11 I WOULD OBJECT TO THAT AS BEING TOO REMOTE.

12 MR. SWERLING: YOUR HONOR, HE SERVED SIX YEARS. I WOULD
13 TAKE THE POSITION THAT IS NOT REMOTE.

14 THE COURT: WHEN DID HE GET OUT?

15 MR. MORTON: HE WAS CONVICTED IN 1976.

16 THE COURT: AND HE SERVED SIX YEARS OF THAT SENTENCE?
17 CAME OUT IN '82?

18 MR. SWERLING: HE RECEIVED A SIX YEAR SENTENCE AND FIVE
19 YEARS PROBATION ON 9-6-77. I WOULDN'T THINK THAT WOULD BE
20 REMOTE.

21 THE COURT: WHEN WAS HE RELEASED?

22 MR. SWERLING: IT DOESN'T SAY.

23 MR. COLEMAN: YOUR HONOR, I THINK HE SERVED THREE YEARS.

24 MR. SWERLING: I'M SORRY. HIS PROBATION STATED ON 10-
25 31-80, SO THAT'S--

1 THE COURT: THE QUESTION OF REMOTENESS IS NORMALLY AN
2 OFFENSE TEN YEARS OUT BUT YOU ALSO HAVE THE RIGHT TO CONSIDER
3 WHEN HE CAME OUT AS TO COMMITTED OFFENSES. IF HE WAS
4 RELEASED IN '80 IN MY VIEW THAT COMES WITHIN THE TEN YEARS
5 AND SHOULD BE. I'M GOING TO LET HIM USE IT.

6 MR. MORTON: YOUR HONOR, ONE MORE THING. MR. SWERLING
7 CROSS EXAMINED MR. WELLS YESTERDAY ABOUT THIS ARMED ROBBERY
8 AND THE DEAL, OF COURSE, THAT WE HAVE CUT WITH HIM IN
9 REDUCING THAT ARMED ROBBERY TO A SIMPLE ROBBERY. THE FACTS
10 OF THOSE CASE IS THAT HE HELD A MAN UP WITH A SCREWDRIVER,
11 A COCA COLA MAN. WALKED UP TO HIM BEHIND HIM AND HELD A
12 SCREWDRIVER AND DEMANDED HIS MONEY. I WOULD LIKE TO EXPLORE
13 THAT WITH MR. WELLS, THE FACTS, INTRODUCE THE WARRANT.

14 THE COURT: HE HASN'T PLED GUILTY TO IT YET, HAS HE?

15 MR. MORTON: NO, SIR. BUT I MEAN THAT'S--

16 THE COURT: I MEAN HE HASN'T BEEN SENTENCED ON THAT
17 PART, HAS HE?

18 MR. MORTON: NO, SIR. HE HASN'T BEEN SENTENCED ON
19 ANYTHING.

20 THE COURT: ALL RIGHT.

21 MR. MORTON: BUT IT APPEARS TO THE JURY I'M AFRAID, YOUR
22 HONOR, WHEN YOU TALK ABOUT ARMED ROBBERY--

23 THE COURT: WELL, YOU CAN COME BACK AND EXPLAIN THAT TO
24 THEM. YOU CAN EXAMINE A LITTLE BIT.

25 MR. SWERLING: I'VE GOT NO OBJECTION TO THE SOLICITOR

1 EXPLAINING THE CIRCUMSTANCES OF THE ARMED ROBBERY.

2 THE COURT: THROUGH QUESTIONING OF THIS WITNESS.

3 MR. SWERLING: THAT'S RIGHT.

4 THE COURT: ANYTHING ELSE? BRING THE JURY IN.

5 (THE JURY RETURNS TO THE JURY BOX AT 11:34 A.M.)

6 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, THERE ARE
7 A COUPLE OF THINGS I NEED TO EXPLAIN TO YOU, ONE OF WHICH IS
8 YOU SHOULD APPRISE YOUR FAMILIES THIS EVENING WHEN WE STOP
9 THAT WE WILL MORE THAN LIKELY BE WORKING SATURDAY UNLESS WE
10 IN MY DISCUSSION WITH YOU DETERMINE OTHERWISE AND POTENTIALLY
11 IT LOOKS LIKE WE ARE GOING TO BE HERE NEXT WEEK AS WELL. MY
12 TENTATIVE PLANS ARE FOR US TO WORK SATURDAY AND THEN STOP
13 WHATEVER TIME WE DEEM APPROPRIATE ON SATURDAY AND START BACK
14 MONDAY MORNING. WE WILL NOT BE HERE ON SUNDAY. THE NEXT
15 THING IS TO TELL YOU WHAT HAPPENED. I FEEL LIKE YOU DESERVE
16 AN EXPLANATION THIS MORNING. THIS WITNESS AS YOU SHOULD KNOW
17 FROM YESTERDAY IS IN CUSTODY SERVING A SENTENCE. AND HE IS
18 IN A FACILITY NOT HERE IN RICHLAND COUNTY. THIS MORNING THE
19 OFFICERS WHO WERE SENT TO PICK HIM UP AT THAT FACILITY, HE
20 HAS TO BE TRANSPORTED BACK, WERE TWO DIFFERENT OFFICERS THAN
21 HAD BEEN DOING IT. THEY WENT TO A DIFFERENT FACILITY,
22 DIFFERENT COUNTY. WE DID NOT FIND THAT OUT UNTIL 9:30 THIS
23 MORNING AND THEN THEY HAD TO GO TO THAT FACILITY TO GET HIM.
24 NOW, IN BETWEEN--HE'S BEEN HERE ABOUT THIRTY MINUTES BUT I
25 TRIED TO DO SOME OTHER BUSINESS AND WORK THAT WE COULD DO SO

1 WE WOULDN'T BE WASTING ALL THE TIME. SO, THAT'S WHAT
2 HAPPENED AND ASSURE YOU IT WAS NOTHING WE COULD DO. IT JUST
3 HAPPENED. IT DOESN'T HAPPEN OFTEN THANK GOODNESS. IF IT
4 HAPPENS AGAIN I'M GOING TO PUT SOMEBODY IN JAIL. I'M TRIED
5 OF ALL THIS TO BE HONEST WITH YOU, AND I KNOW YOU ARE, TOO,
6 AND I'M SORRY. BUT THAT'S THE EXPLANATION. AT THIS TIME,
7 WE ARE READY TO PROCEED. MR. SWERLING, YOU MAY BEGIN YOUR
8 EXAMINATION. CONTINUED CROSS EXAMINATION.

9 CLARENCE GABBY WELLS, AFTER BEING PREVIOUSLY SWORN BY
10 THE CLERK, TESTIFIES AS FOLLOWS:

11 CROSS EXAMINATION CONTINUED BY

12 MR. SWERLING:

13 Q MR. WELLS, I THINK YESTERDAY WHEN WE BROKE FOR THE AFTERNOON
14 WE WERE TALKING ABOUT YOUR PRIOR RECORD.

15 A YES, SIR.

16 Q AND ONE I'D LIKE TO ASK YOU IF YOU WERE CONVICTED OF
17 RESISTING ARREST IN 1985?

18 A YES, SIR.

19 Q AND I WOULD ALSO LIKE TO ASK YOU THIS. WERE YOU CONVICTED
20 OF SELLING HEROIN IN 1976?

21 A YES, SIR.

22 Q NOW, MR. WELLS, WE DISCUSSED THIS INCIDENT WITH RUBIN EUBANKS
23 YESTERDAY AND I DON'T WANT TO GO BACK OVER THAT, BUT ISN'T
24 IT A FACT THAT YOU AND MR. TILLMAN ALSO HAD A FIST FIGHT AT
25 SOME TIME DURING DECEMBER OF 1988?

1 A THAT'S TRUE.

2 Q SO, IT WOULD BE A FAIR STATEMENT, WOULD IT NOT, TO THE JURY
3 THAT THE TWO OF YOU WERE NOT THE BEST OF FRIENDS?

4 A I COULDN'T ANSWER THAT.

5 Q WE'VE ALREADY DISCUSSED THE SITUATION ABOUT WHETHER OR NOT
6 YOU WERE BARRED FROM THE CLUB AND I DON'T WANT TO GO BACK
7 THROUGH THAT. I APOLOGIZE IF I'M BEING REPETITIOUS WHERE WE
8 LEFT OFF YESTERDAY. LET ME ASK YOU THIS. YOU WERE ARRESTED
9 ON WHAT DAY FOR THIS ARMED ROBBERY, THIS ROBBERY?

10 A DECEMBER 24TH, 1988.

11 Q DECEMBER 24TH. OKAY. AND YOU WERE IN THE RICHLAND COUNTY
12 DETENTION CENTER?

13 A YES, SIR.

14 Q ALL RIGHT. AT THAT TIME, OF COURSE, YOU KNEW WHAT YOU WERE
15 LOOKING AT?

16 A YES, SIR.

17 Q WITH RESPECT TO THAT CHARGE?

18 A YES, SIR.

19 Q AND SOMETIME BEFORE YOU SAT DOWN AND TALKED WITH THE POLICE
20 IN CONNECTION WITH WHAT YOU TESTIFIED TO YESTERDAY YOU WERE
21 INCARCERATED WITH HAYES MALLOY, IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q HAYES MALLOY WAS PUT IN THE SAME CELL AS YOU AS I UNDERSTAND
24 YOUR TESTIMONY?

25 A YES, SIR.

1 Q AND THAT WAS--THAT OCCURRED PRIOR TO THE TIME THAT YOU
2 ACTUALLY SAT DOWN WITH MR. AUSTIN AND DISCUSSED WHAT YOU
3 TESTIFIED TO YESTERDAY, IS THAT CORRECT?
4 A NOW, SAY THAT AGAIN.
5 Q YOUR BEING INCARCERATED WITH MR. MALLOY AND THE INCIDENT YOU
6 TESTIFIED TO YESTERDAY WITH MR. MALLOY AND MR. TILLMAN, THAT
7 OCCURRED BEFORE YOU ACTUALLY WENT AND SPOKE WITH THE POLICE,
8 DID IT NOT?
9 A I'M NOT SURE.
10 Q WELL, DO YOU REMEMBER WHAT DAY THAT YOU AND MR.--DO YOU
11 REMEMBER WHAT DAY MR. MALLOY WAS BOOKED INTO THE DETENTION
12 CENTER?
13 A NO, SIR.
14 Q OKAY. DO YOU REMEMBER WHAT DAY THE INCIDENT HAPPENED?
15 A THE MURDER?
16 Q NO. THE INCIDENT WHERE YOU TESTIFIED YESTERDAY THAT TILLMAN
17 AND MALLOY HAD SOME EXCHANGE OF WORDS.
18 A I THINK IT HAPPENED ON A TUESDAY. I'M NOT SURE.
19 Q IN THE BEGINNING OF JANUARY?
20 A IT WAS IN JANUARY. I THINK IT WAS A TUESDAY. I'M NOT SURE.
21 Q OKAY. WAS IT SHORTLY AFTER THE FIRST OF THE YEAR?
22 A I THINK IT WAS, SIR.
23 Q OKAY. AND THEN MR. MALLOY WAS MOVED OUT OF YOUR CELL, IS
24 THAT CORRECT?
25 A MR. MALLOY CAME IN IF I'M NOT MISTAKEN ON A TUESDAY NIGHT.

1 HE LEFT OUT THAT WEDNESDAY MORNING, STAYED ALL DAY, THAT
2 WEDNESDAY NIGHT HE CAME BACK AND GOT HIS STUFF AND LEFT.

3 Q OKAY. AND THAT'S WHEN HE WAS--HE WAS NOT IN JAIL ANY MORE
4 OR IN THAT CELL WITH YOU?

5 A WELL, HE LEFT OUT OF THE CELLBLOCK. WHETHER HE WENT HOME OR
6 WHATEVER I DON'T KNOW.

7 Q YOU WERE IN THE SAME CELL WITH MR. MALLOY IN THE BEGINNING
8 OF JANUARY FOR AT LEAST WHAT, FORTY-EIGHT HOURS?

9 A I WOULD SAY CLOSE TO FORTY-EIGHT HOURS.

10 Q OKAY. YOU KNEW MR. MALLOY, DID YOU NOT?

11 A THAT'S CORRECT.

12 Q FROM BEING FROM THE SAME AREA?

13 A THAT'S CORRECT.

14 Q NOW, ON JANUARY 18TH YOUR LAWYER AND THE SOLICITOR'S OFFICE
15 AGREED TO THIS PARTICULAR DEAL THAT WE DISCUSSED AND WENT
16 OVER IN DETAIL YESTERDAY, IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q AND ON JANUARY 17TH, 1989, YOU GAVE A STATEMENT TO
19 INVESTIGATOR MARK AUSTIN, DID YOU NOT?

20 A THAT'S CORRECT.

21 Q OKAY. IN THAT STATEMENT YOU DID NOT TELL MR.--OR LET ME ASK
22 YOU THIS. FORGET THE STATEMENT. DID YOU TELL MR. AUSTIN ON
23 JANUARY 17TH, 1989, ABOUT THIS CONVERSATION THAT MR. TILLMAN
24 HAD WITH MR. MALLOY ACROSS THE CELLBLOCK?

25 A DID I TELL HIM I HAD A CONVERSATION?

1 Q YOU TESTIFIED THAT THERE WAS A CONVERSATION--

2 A OH, YES, SIR, I DID.

3 Q --BETWEEN MR. MALLOY AND MR. TILLMAN.

4 A THAT'S CORRECT.

5 Q AND THAT MR. TILLMAN MADE CERTAIN STATEMENTS TO MR. MALLOY?

6 A THAT'S CORRECT.

7 Q AND YOU GAVE A STATEMENT TO MR. AUSTIN, IS THAT CORRECT?

8 A I DIDN'T GIVE A STATEMENT TO MR. AUSTIN ABOUT THE
9 CONVERSATION. I GIVE HIM--YEAH, I DID.

10 THE COURT: MR. WITNESS, TAKE YOUR HANDS FROM YOUR
11 MOUTH. YOU ARE BLOCKING. GO AHEAD.

12 Q SO, YOU AGREE THAT IN THE SWORN STATEMENT THAT YOU GAVE TO
13 MR. AUSTIN WHEREIN YOU AGREED TO TELL THE TRUTH, THE WHOLE
14 TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD THAT YOU DID
15 NOT RELATE TO MR. AUSTIN THIS CONVERSATION THAT YOU NOW
16 TESTIFIED TO YESTERDAY THAT MR. TILLMAN HAD WITH MR. MALLOY?

17 A YOU ARE SAYING I DID NOT RELATE IT TO MR. AUSTIN?

18 THE COURT: YOU DID NOT TELL HIM.

19 Q YOU DID NOT TELL MR. AUSTIN THAT?

20 A I DIDN'T TOLD HIM THAT 'TIL THE OTHER DAY.

21 Q 'TIL THE OTHER DAY. AND THAT WAS--YOU ARE TALKING ABOUT LAST
22 WEEK?

23 A NO, I'M TALKING ABOUT THIS WEEK.

24 Q THIS WEEK?

25 A THAT'S RIGHT.

1 Q SO, THE FIRST TIME YOU EVER TOLD ANYBODY FROM LAW ENFORCEMENT
2 THAT TILLMAN YELLED OVER TO MALLOY THE STATEMENT YOU
3 TESTIFIED TO YESTERDAY ABOUT TAKING THE RAP WAS THIS WEEK?
4 A THAT'S RIGHT.
5 Q AND YOU GAVE A SWORN STATEMENT BACK ON JANUARY 17TH 1989, AND
6 DIDN'T MENTION IT?
7 A I DIDN'T MENTION IT THEN.
8 Q DIDN'T MENTION IT IN YOUR CONVERSATIONS WITH MR. AUSTIN?
9 A DIDN'T MENTION IT.
10 Q AND HAVE NOT MENTIONED IT TO ANYBODY FROM LAW ENFORCEMENT UP
11 UNTIL THIS TIME?
12 A THAT'S CORRECT.
13 Q DID YOU EVER TALK--WERE YOU EVER HOUSED IN A CELL WITH A
14 FELLOW BY THE NAME OF ALPHONSO SHELL?
15 A NOT TO MY KNOWLEDGE.
16 Q DO YOU KNOW WHETHER OR NOT YOU EVER TOLD HIM THAT YOU WERE
17 TESTIFYING AGAINST RON BECAUSE OF THE SHOOTING INCIDENT YOU
18 HAD WITH MR. EUBANKS?
19 MR. MORTON: YOUR HONOR.
20 MR. SWERLING: I'M JUST ASKING HIM IF HE EVER TOLD HIM.
21 THE COURT: WHAT'S THE OBJECTION?
22 MR. MORTON: HE'S PITTING AND I THINK IT'S AN IMPROPER
23 QUESTION ON CROSS EXAMINATION. HE ASKING HIM SOMETHING THAT
24 THERE'S BEEN NO TESTIMONY TO OR ANYTHING ELSE. HE IS IN
25 EFFECT PITTING WITNESSES.

1 THE COURT: WHICH WITNESS?

2 MR. MORTON: A WITNESS THAT HE IS BRINGING UP NOW
3 THROUGH MR. SWERLING'S EXAMINATION.

4 THE COURT: WHAT DO YOU SAY ABOUT IT, MR. SWERLING?

5 MR. SWERLING: I'M ASKING HIM SIMPLY IF HE'S EVER MADE
6 THAT STATEMENT TO ANYBODY.

7 THE COURT: YOU ARE ASKING HIM DID HE TELL THAT TO
8 SOMEONE ELSE?

9 MR. SWERLING: RIGHT.

10 THE COURT: WHY DO YOU PERCEIVE THAT AS BEING FITTING?

11 MR. MORTON: IT'S AN INDIRECT WAY OF FITTING, YOUR
12 HONOR, WITHOUT HAVING THAT WITNESS--I MEAN HE CAN GO THROUGH--

13 -

14 THE COURT: DOESN'T HE HAVE TO ASK HIM THAT QUESTION IN
15 ORDER TO CALL THE OTHER WITNESS IF HE'S DOING IT FOR THE
16 PURPOSES OF IMPEACHMENT? ASK THE QUESTION. DON'T ANSWER IT
17 UNTIL I HEAR THE QUESTION.

18 Q THE QUESTION IS DID YOU EVER TELL AN INDIVIDUAL BY THE NAME
19 OF ALPHONSO SHELL THAT YOU WERE GETTING BACK AT RON BECAUSE
20 OF WHAT HAPPENED WITH THE INCIDENT CONCERNING RUBIN EUBANKS?

21 THE COURT: NO, SIR, I'M GOING TO ALLOW IT. THAT'S A
22 PROPER QUESTION.

23 MR. SWERLING: PARDON ME?

24 THE COURT: PROPER QUESTION.

25 MR. MORTON: I HAVE NO OBJECTION TO IT, YOUR HONOR.

1 Q THE TESTIMONY YOU GAVE YESTERDAY CONCERNING WHAT MR. TILLMAN
2 TOLD YOU WAS ONLY DONE AFTER YOU GOT A DEAL BY THE STATE OF
3 SOUTH CAROLINA?
4 A YOU SAY ONLY DONE AFTER I GOT A DEAL?
5 Q IN OTHER WORDS, IN EXCHANGE FOR THEM GIVING YOU A DEAL YOU
6 AGREED TO GIVE A STATEMENT?
7 A SAY THAT AGAIN. EXPLAIN IT TO ME AGAIN NOW.
8 Q IN OTHER WORDS, YOU WERE ARRESTED.
9 A RIGHT.
10 Q YOU GET IN A CELL WITH MALLOY SAY A WEEK LATER OR SO AND THEN
11 AT SOME POINT IN THE MIDDLE OF JANUARY YOU DECIDE TO
12 COOPERATE WITH THE AUTHORITIES IN RETURN FOR THE PLEA
13 AGREEMENT WE DISCUSSED YESTERDAY?
14 A THAT'S CORRECT.
15 Q AND IN RETURN FOR YOUR COOPERATING THEY GAVE YOU CERTAIN
16 CONSIDERATIONS WHICH WE'VE GONE OVER?
17 A THAT'S CORRECT.
18 Q IT WAS ONLY AFTER THE STATE AGREED FOR YOU TO GET THOSE
19 CONSIDERATIONS AND FOR YOU TO GET THAT DEAL DID YOU AGREE TO
20 GIVE A STATEMENT AND TESTIFY?
21 A I DON'T THINK SO. SEE, I TOLD 'EM I KNOW ABOUT IT ALL THE
22 TIME.
23 Q YOU TALKED TO MR. AUSTIN ON JANUARY 17TH. YOU AGREE WITH
24 THAT?
25 A RIGHT.

1 Q THERE'S A LETTER MEMORIALIZING THE AGREEMENT BETWEEN YOU AND
2 THE STATE OF SOUTH CAROLINA DATED JANUARY 18TH.

3 A OKAY.

4 Q MY QUESTION IS SIMPLY THIS. YOUR AGREEMENT TO COOPERATE WITH
5 THE POLICE CAME ABOUT AS A RESULT OF THEIR AGREEMENT TO
6 COOPERATE WITH YOU?

7 A THAT'S CORRECT.

8 MR. SWERLING: I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: ANY REDIRECT?

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

11 REDIRECT EXAMINATION BY

12 MR. MORTON:

13 Q GABBY, DID YOU TELL INVESTIGATOR AUSTIN WHAT YOU ARE TELLING
14 THIS JURY HERE TODAY BEFORE OR AFTER WE TOLD YOU WE WOULD
15 REDUCE THESE CHARGES AGAINST YOU?

16 A I TOLD HIM BEFORE.

17 Q LET'S TALK ABOUT THIS CHARGE THAT WE HAVE REDUCED FOR YOU.
18 YOU WERE CHARGED WITH ARMED ROBBERY, IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q TELL THE JURY WHAT THE CIRCUMSTANCES OF THAT ARMED ROBBERY
21 WERE THAT YOU WERE CHARGED WITH?

22 A I ROBBED A COCA COLA MAN. I HAD A SCREWDRIVER AND I DIDN'T
23 INTENTION FOR HIM TO SEE IT BUT HE SEEN IT ANYWAY. IT FELL
24 OUT MY POCKET AND HE SEEN THE SCREWDRIVER AND I ROBBED HIM.

25 Q WE DID OFFER TO REDUCE YOUR SENTENCE THOUGH, DIDN'T WE?

1 A YES, SIR.

2 Q DOES THE FACT THAT WE REDUCED YOUR SENTENCE HAVE ANY EFFECT
3 ON WHAT YOU ARE TELLING US IN HERE TODAY?

4 A NO, AIN'T GOT NO EFFECT.

5 Q SO, WHAT YOU ARE TELLING US IN HERE TODAY IS THE TRUTH NO
6 MATTER WHAT?

7 MR. SWERLING: OBJECTION, YOUR HONOR'. HE'S LEADING HIS
8 WITNESS.

9 THE COURT: YOU ARE LEADING THE WITNESS, MR. MORTON.
10 YOU CAN ASK HIM QUESTIONS BUT YOU CAN'T LEAD OR TESTIFY.

11 MR. MORTON: THAT'S ALL I HAVE, YOUR HONOR.

12 THE COURT: ANYTHING ELSE?

13 MR. SWERLING: IF YOUR HONOR PLEASE, I WOULD JUST LIKE
14 TO PUT INTO THE RECORD THE AGREEMENT BETWEEN THE STATE OF
15 SOUTH CAROLINA AND THIS WITNESS. WE OFFER IT AS AN EXHIBIT.

16 MR. MORTON: IT'S CUMULATIVE, YOUR HONOR. WE'VE ALREADY
17 EXPLAINED IT TO THE JURY.

18 MR. SWERLING: IT'S A WRITTEN AGREEMENT BETWEEN THE
19 STATE AND MR. WELLS. I DON'T SEE WHERE IT'S CUMULATIVE.

20 THE COURT: HAND IT HERE. WELL, THIS IS NOT EXECUTED
21 BY HIM. IT'S BETWEEN HIS ATTORNEY AT THE TIME, ISN'T IT?

22 MR. SWERLING: YES, SIR.

23 MR. MORTON: THAT'S CORRECT, YOUR HONOR.

24 MR. SWERLING: IT'S IN THEIR FILE. IT WAS SENT TO MR.
25 BILTON.

1 THE COURT: ANY QUESTION?

2 MR. MORTON: NO, THERE'S NO QUESTION AS TO THE
3 AUTHENTICITY OF IT, YOUR HONOR.

4 THE COURT: YOU JUST THINK IT'S CUMULATIVE?

5 MR. MORTON: YES, SIR.

6 THE COURT: IF THAT'S THE ONLY OBJECTION I'M GOING TO
7 LET IT IN. IT'S NO SUMMARIZED TESTIMONY. IT'S JUST WHAT THE
8 WRITTEN AGREEMENT IS. HAVE THE COURT REPORTER MARK IT AND
9 HAND IT TO THE COURT.

10 (LETTER IS RECEIVED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
11 #5)

12 THE COURT: HAND IT HERE. MR. SWERLING, MAY I HAVE
13 THAT, PLEASE?

14 MR. SWERLING: JUDGE, I KEEP FORGETTING. I APOLOGIZE.

15 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
16 OBJECTION AN EXHIBIT WHICH HAS BEEN DESIGNATED DEFENDANT'S
17 EXHIBIT NUMBER 5. IT'S A ONE PAGE EXHIBIT, FRONT ONLY. IT'S
18 A LETTER FROM THE RICHLAND COUNTY PUBLIC DEFENDER'S OFFICE
19 SIGNED BY DAVID I. BRUCK, PUBLIC DEFENDER, TO MR. WILLIAM
20 BILTON DATED JANUARY 18TH, 1989, IN REFERENCE TO CLARENCE
21 WELLS. NOW ENTERED WITHOUT OBJECTION. YOU MAY PUBLISH IT
22 FURTHER.

23 MR. SWERLING: I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ANYTHING ELSE, GENTLEMEN?

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

1 THE COURT: YOU MAY STEP DOWN.

2 (WITNESS TO THE SIDE)

3 THE COURT: CALL YOUR NEXT WITNESS.

4 MR. MORTON: THE STATE CALLS JAMES BYNUM TO THE STAND.

5 MR. SWERLING: WHO?

6 MR. MORTON: JAMES BYNUM.

7 MR. SWERLING: YOUR HONOR, I HAVE A MATTER OF LAW TO
8 TAKE UP WITH RESPECT TO THIS WITNESS.

9 THE COURT: WHAT ABOUT THE STIPULATIONS? HAVE YA'LL
10 BEEN ABLE TO WRITE THOSE OUT?

11 MR. COLEMAN: I'M--

12 THE COURT: WORKING ON THEM RIGHT NOW? WE'RE TRYING TO
13 ENTER INTO SOME STIPULATIONS WHICH WILL REDUCE SOME OF THE
14 WITNESSES. THEY HAD THIRTY-TWO LISTED FOR THE GOVERNMENT.
15 DO YA'LL WANT TO COME UP HERE AND LET ME HEAR WHAT YOU'VE GOT
16 TO SAY.

17 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
18 COURT REPORTER)

19 THE COURT: BRING HIM IN AND LET'S GO.

20 JAMES BYNUM, AFTER BEING DULY SWORN BY THE CLERK,
21 TESTIFIES AS FOLLOWS:

22 THE COURT: MR. BYNUM, I WANT YOU TO TRY TO SPEAK UP.
23 SPEAK INTO THAT MICROPHONE. LISTEN TO THE QUESTIONS BEING
24 ASKED OF YOU AND ANSWER THE QUESTION ASKED OF YOU. DON'T AD
25 LIB ANYTHING OR DON'T ADD ANYTHING TO IT. JUST ANSWER THEIR

1 QUESTIONS. ALL RIGHT? IF YOU DON'T UNDERSTAND THE QUESTION,
2 JUST TELL THEM YOU DON'T UNDERSTAND IT AND THEY'LL REPEAT IT.
3 ALL RIGHT, MR. MORTON.

4 DIRECT EXAMINATION BY

5 MR. MORTON:

6 Q MR. BYNUM, YOU KNOW RONALD TILLMAN?

7 A YES, I DO.

8 Q HOW LONG HAVE YOU KNOWN RONALD TILLMAN?

9 A ABOUT THREE YEARS AGO, SOMETHING LIKE THAT.

10 Q WOULD YOU SAY THAT YOU KNEW HIM WELL OR WERE YA'LL FRIENDS?

11 A NO, I DON'T KNOW HIM THAT WELL. YOU KNOW, I JUST KNOW HIM.

12 Q DO YOU REMEMBER WHEN DONALD SUTTON GOT KILLED?

13 A YEAH. I HEAR ABOUT IT. I DON'T KNOW EXACTLY WHEN HE GOT
14 KILLED.

15 Q DO YOU REMEMBER WHEN IT HAPPENED?

16 A NO, NOT EXACTLY WHAT DAY.

17 Q YOU HAD SPOKEN TO RONALD TILLMAN ABOUT THAT, HADN'T YOU?

18 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING THE
19 WITNESS.

20 THE COURT: YOU ARE LEADING THE WITNESS. HE'S YOUR
21 WITNESS. YOU'VE GOT TO ASK HIM QUESTIONS.

22 Q DID YOU EVER SPEAK WITH RONALD TILLMAN ABOUT THE DEATH OF
23 "DUCK" SUTTON EITHER BEFORE OR AFTER HE WAS KILLED?

24 A YEAH, I DID.

25 Q WHAT, IF ANYTHING, DID HE TELL YOU ABOUT THE KILLING OF

1 "DUCK" SUTTON BEFORE HIS DEATH?

2 A HE TOLD ME HE DIDN'T DO IT.

3 MR. MORTON: YOUR HONOR, AT THIS TIME I THINK WE HAVE
4 A MATTER OF LAW.

5 THE COURT: ALL RIGHT. IF YOU WILL, MR. FOREMAN, IF
6 YA'LL WILL STEP OUTSIDE TO THE JURY ROOM.

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.

10 MR. MORTON: YOUR HONOR, WE SPOKE WITH MR. BYNUM LAST
11 NIGHT DOWN IN THE HOLDING CELL. AND HE IS TELLING US
12 SOMETHING OPPOSITE OF WHAT HE JUST COMMENTED ON. AT THIS
13 TIME WE WOULD ASK THE COURT TO DECLARE HIM HOSTILE. WE HAD
14 NO KNOWLEDGE OF WHAT HE TOLD US LAST NIGHT WAS GOING TO BE
15 ANY DIFFERENT THAN WHAT HE JUST TOLD US IN HERE TODAY. WE
16 HAVE BEEN SURPRISED BY IT. WE HAVE--

17 THE COURT: WAIT A MINUTE. YOU SAID THE SAME THING AND
18 I DON'T THINK YOU MEANT TO. ARE YOU SAYING THAT HE TOLD YOU
19 SOMETHING DIFFERENT LAST NIGHT THAN WHAT HE'S TELLING NOW?

20 MR. MORTON: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: AND WHAT WAS THAT?

22 MR. MORTON: HE TOLD US LAST NIGHT THAT RONALD TILLMAN
23 TOLD HIM THAT HE KILLED "DUCK" SUTTON, THAT HE OFFERED HIM
24 MONEY AND AN OUNCE OF COCAINE IF HE WOULD DO IT BEFORE HE
25 KILLED HIM, THAT HE HAS TRIED TO PAY HIM MONEY TO COME IN

1 HERE AND SAY HAYES MALLOY DID IT AND NOT TO TESTIFY AGAINST
2 HIM.

3 THE COURT: HAVE THERE BEEN ANY STATEMENTS TAKEN OFF OF
4 THIS WITNESS PRIOR TO YOUR TALKING TO HIM?

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

6 THE COURT: WHO TOOK THE STATEMENT?

7 MR. MORTON: INVESTIGATOR AUSTIN TOOK THE STATEMENT FROM
8 HIM IN JAIL AT THE SHERIFF'S DEPARTMENT SOMETIME PRIOR TO
9 AUGUST OF 1989.

10 THE COURT: WAS IT A WRITTEN STATEMENT OR AN ORAL
11 STATEMENT?

12 MR. MORTON: IT WAS AN ORAL STATEMENT THAT INVESTIGATOR
13 AUSTIN TOOK NOTES OF AND PROVIDED THE DEFENSE WITH.

14 THE COURT: ALL RIGHT. AND YOU SAY YOU INTERVIEWED HIM
15 LAST NIGHT?

16 MR. MORTON: YES, SIR.

17 THE COURT: AND AT THAT TIME HE TOLD YOU THE SAME THING
18 THAT'S BEEN THE SUMMARIZED STATEMENT FROM THE OFFICER, MR.
19 AUSTIN?

20 MR. MORTON: YOUR HONOR, SOMETIME PRIOR TO AUGUST OF
21 1989 HE TOLD INVESTIGATOR AUSTIN THAT RONALD TILLMAN HAD
22 OFFERED HIM A THOUSAND DOLLARS TO KILL DONALD SUTTON. LAST
23 NIGHT HE TOLD US THAT HE HAD BEEN OFFERED ONE THOUSAND AT ONE
24 TIME, THREE THOUSAND AFTER THAT AND AN OUNCE OF COCAINE AND
25 THAT TILLMAN SAID THAT THE DAY AFTER THE MURDER HE SAW RONALD

1 TILLMAN IN THE PARTY SHOP, THAT RONALD TILLMAN WAS ACTING
2 PRETENDING HE WAS CRYING ABOUT THE DEATH OF "DUCK" SUTTON AND
3 THAT HE HAS SINCE THEN TOLD HIM TO STICK WITH HIM, BLAME
4 HAYES MALLOY AND THAT HE HAD A LITTLE PIECE FOR HIM, HE'D
5 TAKE CARE OF HIM.

6 THE COURT: OKAY.

7 MR. COLEMAN: YOUR HONOR, HE TOLD US A LITTLE MORE LAST
8 NIGHT THAN HE HAD TOLD INVESTIGATOR AUSTIN WHEN MARK
9 INTERVIEWED HIM AT THE SHERIFF'S DEPARTMENT.

10 THE COURT: BUT IT'S DIFFERENT SUBSTANTIALLY THAN WHAT
11 HE'S SAID TODAY?

12 MR. COLEMAN: OH, YEAH. NO QUESTION ABOUT IT.

13 THE COURT: ALL RIGHT. WHAT DO YOU SAY?

14 MR. SWERLING: WELL, IF YOUR HONOR PLEASE, I'D LIKE TO
15 BE HEARD. AS SOON AS THEY ANNOUNCED HIM NAME IN COURT I'D
16 LIKE THE RECORD TO REFLECT THAT I APPROACHED THE BENCH WITH
17 THE MEMBERS OF THE SOLICITORS OFFICE. I ALERTED THE COURT
18 TO THE FACT THAT I THOUGHT THERE WAS GOING TO BE A LEGAL
19 PROBLEM INVOLVED HERE. I ALERTED THE SOLICITOR'S OFFICE THAT
20 I HAD JUST BEEN DOWN TO SPEAK WITH JAMES BYNUM AND JAMES
21 BYNUM WAS TELLING ME THAT HE KNEW NOTHING ABOUT THIS MURDER
22 AND HE DIDN'T EVEN KNOW WHY HE WAS HERE. NOW, I THINK THAT-
23 -AND THE STATE WAS THERE AT SIDEBAR WHEN I MADE THAT
24 STATEMENT. THEY CALLED HIM NOTWITHSTANDING THE FACT THAT I
25 MADE THAT REPRESENTATION TO THEM THAT I HAD JUST SPOKEN WITH

1 HIM AND HE SAID HE DIDN'T KNOW ANYTHING ABOUT THE CASE. NOW,
2 I DON'T SEE HOW THEY CAN CLAIM ACTUAL SURPRISE AND HARM
3 ESPECIALLY IN LIGHT OF THE FACT THAT THE CASE THAT CAME DOWN
4 NOT MORE THAN MAYBE TWO OR THREE WEEKS AGO WHERE I BELIEVE
5 DEFENSE COUNSEL--STATE VS. SMITH I THINK IT MAY BE--MAYBE I'M
6 WRONG.

7 THE COURT: PFIRMAN.

8 MR. SWERLING: PFIRMAN. WHERE DEFENSE COUNSEL ALERTED
9 THE SOLICITOR'S OFFICE THAT THE WITNESS WAS NOT GOING TO BE
10 TESTIFYING IN THE MANNER IN WHICH THEY THOUGHT HE WAS AND THE
11 SUPREME COURT IN THAT CASE HELD I BELIEVE THAT THE STATE DID
12 NOT MAKE THE ACTUAL SHOWING OR NECESSARY SHOWING OF SURPRISE
13 AND HARM BECAUSE THEY KNEW ABOUT IT BEFORE THEY CALLED HIM
14 TO THE STAND. I MEAN HERE AFTER I TOLD THEM THAT AT THE
15 SIDEBAR THEY CALL HIM ON THE STAND AND PROPOUNDED THE
16 QUESTION TO HIM KNOWING THAT THAT WAS NOT GOING TO BE HIS
17 RESPONSE. I DON'T THINK THEY SHOULD BE ALLOWED TO NOW
18 IMPEACH HIM BASED UPON SOME PRIOR INCONSISTENT STATEMENTS
19 WHEN I AS AN OFFICER OF THE COURT REPRESENTED THAT HE HAD
20 TOLD ME HE KNEW NOTHING ABOUT THIS CASE. I THINK THEY SHOULD
21 HAVE MADE AN INQUIRY PRIOR TO PUTTING HIM ON THE STAND.

22 MR. MORTON: YOUR HONOR, FIRST OF ALL, THE WITNESS HAD
23 BEEN CALLED, NUMBER ONE. I DON'T KNOW HOW WE CAN BE HELD TO
24 THE ACTUAL NOTICE ESPECIALLY WHEN MR. SWERLING HAD NOT BEEN
25 APPRISED OF WHAT JAMES BYNUM TOLD US LAST NIGHT. HE HAD NO

1 IDEA WHAT HE TOLD US LAST NIGHT; THEREFORE, HE COULDN'T CLAIM
2 TO KNOW WHAT WE KNEW ABOUT WHAT JAMES BYNUM WAS GOING TO
3 TESTIFY TO.

4 MR. SWERLING: JUDGE, THAT'S EXACTLY THE REASON WHY I
5 WENT DOWN TO SPEAK WITH HIM DURING THE BREAK THIS MORNING.
6 I UNDERSTOOD THAT HE WAS ON THE WITNESS LIST. I WENT DOWN
7 THERE TO SPEAK WITH HIM AS I WOULD IN ANY CASE TO SPEAK WITH
8 A WITNESS.

9 THE COURT: WERE YOU PROVIDED WHAT HIS PRIOR STATEMENT
10 WAS BEFORE TODAY?

11 MR. SWERLING: YES, SIR, WE DID HAVE IT. AND I
12 APOLOGIZE TO THE COURT. IT WAS APPARENTLY IN THE STACK OF
13 PAPERS. WE DO HAVE IT. AND I ASKED MR. BYNUM, I SAID WHAT
14 DO YOU KNOW ABOUT THIS CASE. HE SAID NOTHING. I ASKED HIM
15 WHAT DO YOU KNOW ABOUT THE MURDER. HE SAID NOTHING. I ASKED
16 HIM WHAT ARE YOU GOING TO TESTIFY TO. HE SAID NOTHING. I
17 SAID WHY ARE YOU HERE. HE SAID I DON'T KNOW.

18 MR. SWERLING: MR. MORTON, YOU CALLED THE NAME BEFORE
19 THE WITNESS CAME INTO THE COURTROOM. YA'LL ALERTED ME THERE
20 WOULD BE A PROBLEM. ONE OF YOU DID. I DON'T RECALL IT BEING
21 YOU. I THINK IT MAY HAVE BEEN MR. SWERLING. YA'LL
22 APPROACHED THE SIDEBAR HERE AND MR. SWERLING SAID EXACTLY
23 WHAT HE SAID, THAT THE WITNESS WAS NOT GOING TO TESTIFY THAT
24 HE KNEW ANYTHING ABOUT THIS CASE. YOU, OF COURSE, SHOOK YOUR
25 HEAD, NO, THAT WAS NOT CORRECT, THAT HE WAS GOING TO TESTIFY.

1 AND YOU WENT AHEAD BEFORE THE WITNESS EVEN CAME IN AND HAD
2 HIM COME ON IN. NOW, NO QUESTION THAT MR. SWERLING ALERTED
3 YOU AS AN OFFICER OF THE COURT THAT THE WITNESS WAS NOT GOING
4 TO TESTIFY IN ACCORDANCE WITH WHAT HE KNEW WAS A SUMMARIZED
5 STATEMENT.

6 MR. MORTON: THAT'S CORRECT. I HAVE NO ARGUMENT WITH
7 THAT, YOUR HONOR.

8 THE COURT: SO, NOW YOU SAY THAT ONCE BEING ALERTED TO
9 THAT YOU HAVE NO DUTY TO GO BACK TO THE WITNESS TO MAKE THAT
10 DETERMINATION BEFORE YOU PUT HIM ON THE STAND?

11 MR. MORTON: NO, SIR, I'M NOT NECESSARILY SAYING THAT.
12 MY ARGUMENT IS TWOFOLD, YOUR HONOR, AND THAT IS WHAT IS
13 SURPRISE AFTER YOU HAVE CALLED A WITNESS.

14 THE COURT: ARE YOU SAYING YOU COULDN'T SAY, JUDGE,
15 BEFORE THE WITNESS TAKES THE STAND I NEED TO SPEAK TO HIM?
16 YOU KNOW, PEOPLE DO IT ALL THE TIME. YOU CALL A WITNESS UP.
17 I SEE YOU DOING IT, I SEE EVERYBODY DOING IT. BEFORE A MAN
18 GETS ON THE STAND YOU WALK OVER TO HIM AND SAY, YOU KNOW, I'M
19 GOING TO ASK YOU THIS OR THAT OR WHATEVER. THAT'S A COMMON
20 PRACTICE, ISN'T IT? NOW, I WOULDN'T LET YOU DO IT ONCE HE
21 TOOK THE OATH AND WALKED OVER THERE UNTIL YOU FINISHED
22 EXAMINATION BUT CLEARLY YOU ARE NOT GOING TO TELL ME THAT
23 WHEN YOU CALL A WITNESS BEFORE HE TAKES THAT STAND THAT YOU
24 DON'T OFTENTIMES HAVE THEM COME TO YOU AND SPEAK TO YOU
25 BEFORE THEY GET ON THE STAND.

1 MR. SWERLING: SPOKE WITH HIM LAST NIGHT, YOUR HONOR,
2 AND I KNEW WHAT MR. SWERLING--THE SECOND PART OF MY ARGUMENT
3 IS THIS, YOUR HONOR. MR. SWERLING WAS SAYING THAT HE IS NOT
4 GOING TO TESTIFY THE WAY HE TESTIFIED IN THAT STATEMENT. MR.
5 SWERLING--I WILL NOT ASK HIM ANY OF THOSE QUESTIONS. I WILL
6 NOT TRY AND IMPEACH HIM ON WHAT HE SAID IN THAT STATEMENT.
7 I'M MERELY GOING TO ASK HIM ABOUT WHAT HE TOLD US LAST NIGHT.
8 AND IF HE DENIES IT, I INTEND TO IMPEACH HIM ON IT.

9 THE COURT: WHAT DO YOU SAY ABOUT THAT, MR. SWERLING?

10 MR. SWERLING: YOUR HONOR, AGAIN I THINK I STATED VERY
11 CLEARLY THE QUESTIONS THAT I ASKED MR. BYNUM WHEN I WENT
12 DOWNSTAIRS.

13 THE COURT: WELL, I KNOW IT BUT YOU DIDN'T TELL MR.
14 MORTON THOSE QUESTIONS. YOU SEE, THAT'S SOMETHING HE TOLD
15 YOU. YOU MAY BE ENTITLED TO EXAMINE HIM. THE QUESTION IS
16 THIS. IT STARTS WITH THE LINE OF CASES THAT I'VE MENTIONED
17 BEFORE THIS CASE BEGAN, STATE VS. RICHBURG.

18 MR. SWERLING: YES, SIR.

19 THE COURT: IN ORDER FOR MR. MORTON TO IMPEACH A WITNESS
20 UPON A STATEMENT GIVEN TO HIM, A WITNESS TAKES THE STAND
21 HAVING GIVEN A STATEMENT. IN ORDER FOR HIM TO IMPEACH HIM
22 HE MUST SHOW ACTUAL SURPRISE. IN OTHER WORDS, IF HE DOES NOT
23 KNOW THAT THAT WITNESS IS GOING TO TESTIFY DIFFERENTLY HE IS
24 SURPRISED AND THE WITNESS BECOMES HOSTILE WHEN HE DOESN'T
25 TESTIFY IN ACCORDANCE TO WHAT HE PREVIOUSLY INDICATED HE

1 WOULD. SO, THE STATE IS SURPRISED. YOU WOULD BE SURPRISED
2 BY THAT. NOW, CLEARLY NO QUESTION ABOUT THAT. BUT WHAT MR.
3 MORTON IS NOW SAYING IS NOT THE STATEMENT GIVEN THAT YOU HAVE
4 A SUMMARY OF BUT WHAT HE TOLD HIM LAST NIGHT.

5 MR. SWERLING: BUT, YOUR HONOR, FRANKLY--

6 THE COURT: AND IT MAKES MR. MORTON A WITNESS TO THAT.
7 IT MAKES HIM A WITNESS TO THE CASE BECAUSE IF THIS MAN DENIES
8 IT THEN MR. MORTON IS GOING TO HAVE TO TAKE THE STAND.

9 MR. MORTON: YOUR HONOR, I HAVE OTHER WITNESSES TO THAT
10 WITHOUT HAVING TO TAKE THE STAND MYSELF.

11 THE COURT: AND THE STATEMENT MR. AUSTIN TOOK, AND HE'S
12 SECURE BY PUTTING MR. AUSTIN UP THERE TO SAY WHETHER OR NOT
13 HE TOLD HIM THAT OR NOT AND THAT BECOMES A QUESTION FOR THE
14 JURY TO DECIDE. CRITICALLY THOUGH THE QUESTION OF USING IT
15 IS BEFORE US RIGHT NOW BUT IF YOU WERE THE ONLY PERSON THERE,
16 MR. MORTON, YOU KNOW, THAT MAKES YOU A WITNESS.

17 MR. MORTON: I UNDERSTAND THAT, YOUR HONOR.

18 MR. SWERLING: YOUR HONOR, THE REPRESENTATION I MADE TO
19 YOUR HONOR AT SIDEBAR AND TO MR. MORTON WAS THAT THIS WITNESS
20 SAID HE KNEW NOTHING ABOUT THIS CASE WHATSOEVER, HE DID NOT
21 KNOW WHY HE WAS HERE AND HE HAD NO KNOWLEDGE.

22 THE COURT: HE DID SAY THAT NOW. I MUST BE COMPLETELY
23 CANDID WITH YOU, MR. MORTON. I UNDERSTAND WHAT YOU ARE
24 SAYING BUT MR. SWERLING DID AT THE SIDEBAR--I DON'T KNOW IF
25 THE MICROPHONES PICKED IT UP OR NOT--BUT NO QUESTION ABOUT

1 THAT THAT'S WHAT HE SAID. HE SAID THAT.

2 MR. MORTON: I'M SORRY.

3 THE COURT: HE SAID THAT THE MAN SAID HE KNEW NOTHING
4 ABOUT THE CASE, HE DIDN'T KNOW WHY HE WAS HERE. MR. SWERLING
5 SAID THAT IN MY PRESENCE AND IN YOUR PRESENCE RIGHT HERE AT
6 THE SIDEBAR.

7 MR. SWERLING: AND, YOUR HONOR, I CAME TO THE SIDEBAR
8 BECAUSE I ANTICIPATED ONCE THEY ANNOUNCED HIS NAME IN COURT
9 THAT THAT WAS GOING TO BE THE PROBLEM SO I PUT THEM ON--I
10 THINK I PUT THEM ON NOTICE AND I THINK I ACTED IN GOOD FAITH
11 IN PUTTING THEM ON NOTICE.

12 MR. MORTON: YOUR HONOR, I DON'T REMEMBER HIM SAYING
13 THAT IF HE DID.

14 THE COURT: HE DID, MR. MORTON. YOU WERE STANDING HERE
15 AND MR. COLEMAN WAS STANDING HERE AS WELL, MAYBE MR. BILTON
16 BUT ALL OF YOU--AT LEAST TWO OF YOU WERE RIGHT HERE AT THE
17 SIDEBAR WHEN YOU CAME UP HERE. I TURNED MY MIKE OFF.

18 MR. MORTON: EVEN IF THAT WERE THE CASE I WOULD SUBMIT
19 THAT I WOULD STILL BE OR NOT BE PRECLUDED FROM GOING INTO HIS
20 STATEMENTS MADE TO US LAST NIGHT ABOUT THE SUBSEQUENT
21 STATEMENTS BY MR. TILLMAN THAT HE MADE TO TRY AND GET HIM TO
22 SAY HAYES MALLOY DID IT. THAT DOESN'T MEAN--I THINK THERE'S
23 A DIFFERENCE THERE. BY HIM SAYING HE DIDN'T KNOW ANYTHING
24 ABOUT THE KILLING OR ANYTHING ABOUT--

25 THE COURT: WELL, IT'S UNFORTUNATE THAT YOU DIDN'T HAVE

1 HIM DO A SWORN STATEMENT SO YOU COULD INDICT HIM. I MEAN I
2 MUST TELL YOU WITH THE REPRESENTATION AT THE SIDEBAR BEFORE
3 THE WITNESS TOOK THE STAND BY MR. SWERLING THAT HE HAD
4 CONFERRED WITH HIM THIS MORNING AND HE TOLD YOU. NOW, HAD
5 MR. SWERLING NOT DONE THAT, PUT YOU ON NOTICE, YOU KNOW,
6 THEY'VE GOT A PROBLEM. BUT MR. SWERLING DID WHAT I WOULD
7 HAVE DONE IF I WERE IN HIS SHOES. IF I HAD BEEN DOWN TO TALK
8 TO A WITNESS AND I KNEW HE HAD GIVEN A STATEMENT I'D TELL YOU
9 RIGHT NOW AND I'D TELL THE WITNESS TO TELL THE STATE WHEN
10 THEY CALL YOU BEFORE I TOOK THAT STAND. NOW, MR. SWERLING
11 IN EFFECT DID THAT AND ALL IT WOULD HAVE TAKEN BY YOU BEFORE
12 HE TOOK THE STAND WAS TO WALK OVER TO HIM AND SAY NOW YOU
13 TOLD ME LAST NIGHT, ARE YOU GOING TO TESTIFY IN ACCORDANCE
14 WITH WHAT YOU SAID LAST NIGHT; IF HE HAD SAID, YES, THEN MR.
15 SWERLING'S GOT A PROBLEM NOW.

16 MR. SWERLING: I AGREE WITH THAT.

17 MR. MORTON: YOUR HONOR, IF I UNDERSTAND IT CORRECTLY
18 MR. SWERLING AT SIDEBAR SAID THAT THIS MAN KNEW NOTHING ABOUT
19 THE KILLING OF DONALD SUTTON.

20 MR. SWERLING: CASE.

21 THE COURT: HE SAID CASE.

22 MR. MORTON: CASE OF DONALD SUTTON. THAT DOES NOT
23 PRECLUDE HIS STATEMENTS TO US LAST NIGHT ABOUT THE ATTEMPTED
24 BRIBERY.

25 THE COURT: I'M GOING TO LET YOU EXAMINE THE WITNESS

1 RIGHT NOW WITH THE JURY OUTSIDE THE PRESENCE OF THE COURT
2 FIRST AS TO WHAT WAS SAID AND WHAT THE DIFFERENCE IS. GO
3 AHEAD. WE ARE GOING TO FIND OUT. GO AHEAD, SIR. EXAMINE
4 HIM. I THINK IT BEHOOVES YOU. THIS IS IN CAMERA. I'VE MADE
5 NO DECISION. MY INCLINATION AT THIS POINT THOUGH, HOWEVER,
6 IS TO FIND UNDER THE RICHBURG CASE AND PFIRMAN. THEY DIDN'T
7 EVEN CITE THE RICHBURG CASE IN HERE BUT IN MY VIEW THAT'S THE
8 LEAD CASE ON IT. MR. COLEMAN'S FATHER PROSECUTED THAT CASE
9 IN YORK COUNTY AND IT IS THE LEAD CASE ON THE QUESTION OF
10 ACTUAL SURPRISE. THEY CITE A COUPLE OF OTHER CASES BUT THE
11 PFIRMAN CASE THEY USE IT. IT WENT UPON A COPELAND ISSUE BUT
12 IT WAS NOT THAT.

13 MR. COLEMAN: JUDGE, CAN I ASK ONE QUESTION?

14 THE COURT: SURE.

15 MR. COLEMAN: WHAT MR. BILTON SAID I THINK HAS A LOT OF
16 VALIDITY. IF MR. SWERLING DID NOT KNOW ABOUT THE STATEMENT
17 LAST NIGHT, HOW CAN HE JUST COME UP TO THE BAR AND TELL THE
18 COURT THAT HE'S GOING TO TESTIFY TO DOESN'T KNOW WHAT THE
19 CASE IS ALL ABOUT?

20 THE COURT: LET'S FIND OUT WHILE THE JURY IS OUT. I
21 DON'T KNOW EXCEPT HE DID TELL THE COURT AND MR. MORTON AND
22 YOU, TOO, I THINK WERE PRESENT--

23 MR. COLEMAN: YES, SIR.

24 THE COURT: --THAT THE MAN SAID HE KNEW NOTHING ABOUT
25 THE CASE. HE SAID THAT. MR. MORTON TOOK HIS HEAD, NO,

1 THAT'S NOT WHAT HE WAS GOING TO SAY. AND MR. SWERLING SAID
2 I TALKED TO HIM THIS MORNING, HE SAID HE WASN'T GOING TO SAY
3 THAT. LET'S FIND OUT. LET'S FIND OUT.

4 Q (BY MR. MORTON) DO YOU REMEMBER TALKING TO US LAST NIGHT?

5 A YEAH, I DID.

6 THE COURT: MR. BYNUM, I WANT TO REMIND YOU NOW YOU ARE
7 UNDER OATH AT THIS TIME. YOU UNDERSTAND THAT?

8 A SIR?

9 THE COURT: YOU UNDERSTAND THAT YOU ARE UNDER OATH?

10 A YES.

11 THE COURT: YOU ARE UNDER OATH TO TELL THE TRUTH. AND
12 THAT YOU CAN BE CHARGED AND INDICTED FOR TELLING UNTRUTHS
13 UNDER OATH, PERJURY. DO YOU UNDERSTAND THAT, SIR?

14 A YES, SIR.

15 THE COURT: ALL RIGHT. YOU UNDERSTAND WHAT PERJURY IS?
16 THAT IS FALSE SWEARING UNDER OATH. YOU UNDERSTAND THAT?

17 A YES, SIR.

18 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

19 A TENTH GRADE.

20 THE COURT: HAVE YOU EVER BEEN TREATED FOR ANY MENTAL
21 PROBLEMS OR EMOTIONAL PROBLEMS?

22 A ONCE.

23 THE COURT: WHEN?

24 A WHEN I WAS DOWN TO THE COUNTY JAIL.

25 THE COURT: CAN YOU READ AND WRITE?

1 A NO, SIR.

2 THE COURT: YOU DON'T READ AND WRITE AT ALL?

3 A NO, SIR.

4 THE COURT: HOW DID YOU GET THROUGH THE TENTH GRADE?

5 A I DON'T KNOW.

6 THE COURT: I DON'T EITHER.

7 MR. SWERLING: YOUR HONOR, I WOULD REQUEST THAT IF MR.
8 BYNUM BE PUT IN A POSITION OF HAVING TO TESTIFY THAT HE OUGHT
9 TO HAVE COUNSEL.

10 THE COURT: I'M APPRISING HIM RIGHT NOW THAT HE'S UNDER
11 DIRECTION FOR PERJURY FOR FALSE SWEARING. I'M EXPLAINING
12 THAT TO HIM, COUNSELLOR. DO YOU UNDERSTAND THE PROCEEDINGS
13 THAT ARE GOING ON IN HERE TODAY?

14 A YES, SIR, I UNDERSTAND.

15 THE COURT: YOU UNDERSTAND YOU'VE BEEN CALLED AS A
16 WITNESS AND PLACED UNDER OATH?

17 A YES, SIR.

18 THE COURT: YOU UNDERSTAND THAT WHEN A PERSON IS PLACED
19 UNDER OATH THEY ARE REQUIRED TO TELL THE TRUTH? DO YOU
20 UNDERSTAND THAT, SIR?

21 A YES, SIR, I UNDERSTAND.

22 THE COURT: UNLESS IT INVOLVES A CRIME FOR WHICH YOU
23 COULD BE CHARGED YOURSELF, IF THERE'S A CRIME FOR WHICH YOU
24 COULD BE CHARGED YOURSELF, YOU HAVE THE RIGHT TO INVOKE THE
25 PROTECTIONS AFFORDED TO YOU BY THE 5TH AMENDMENT TO THE

1 CONSTITUTION OF THE UNITED STATES AND A SIMILAR COUNTERPART
2 TO THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA. DO YOU
3 UNDERSTAND THAT?

4 A NO, SIR, I DON'T UNDERSTAND THAT.

5 THE COURT: IN OTHER WORDS, SIR, IF YOU ARE BEING ASKED
6 QUESTIONS WHICH WOULD INCRIMINATE YOU, MAKE YOU IN ESSENCE
7 BE A WITNESS AGAINST YOURSELF AS TO A CRIME, THAT YOU
8 COMMITTED A CRIME, THAT YOU HAVE THE RIGHT TO REFUSE TO
9 ANSWER, YOUR RIGHT TO REMAIN SILENT, TO NOT INCRIMINATE OR
10 TELL ON YOURSELF. DO YOU UNDERSTAND THAT? THAT'S THE 5TH
11 AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND A
12 SIMILAR COUNTERPART OF THE STATE OF SOUTH CAROLINA. DO YOU
13 UNDERSTAND THAT?

14 A YES, SIR.

15 THE COURT: SO, YOU HAVE THE RIGHT INSOFAR AS THEM
16 ASKING YOU QUESTIONS WHETHER OR NOT YOU COMMITTED A CRIME
17 YOURSELF HAVE A RIGHT TO INVOKE THE 5TH AMENDMENT TO THE
18 CONSTITUTION OF THE UNITED STATES. DO YOU UNDERSTAND THAT,
19 SIR?

20 A YES, SIR, I UNDERSTAND.

21 THE COURT: YOU ALSO HAVE THE RIGHT TO HAVE AN ATTORNEY
22 PRESENT WITH YOU IF YOU CANNOT AFFORD AN ATTORNEY TO ASSIST
23 YOU AT ALL TIMES. DO YOU UNDERSTAND THAT, SIR?

24 A YEAH.

25 THE COURT: DO YOU WORK ANYWHERE?

1 A I WAS. I'M DOING TIME NOW.

2 THE COURT: YOU ARE NOT WORKING NOW?

3 A NO, SIR.

4 THE COURT: DO YOU WANT ME TO HAVE AN ATTORNEY COME UP
5 AND STAND BY YOU WHILE THESE QUESTIONS ARE BEING ASKED OF
6 YOU?

7 A NO, SIR. I CAN HANDLE IT.

8 THE COURT: YOU UNDERSTAND WHAT WE ARE SAYING THOUGH?

9 A YEAH, I UNDERSTAND.

10 THE COURT: SO, IT'S YOUR DECISION TO NOT HAVE AN
11 ATTORNEY PRESENT WITH YOU. IS THAT WHAT YOU ARE SAYING? YOU
12 DON'T WANT ONE?

13 A NO, I DON'T WANT ONE.

14 THE COURT: DO YOU HAVE ANY QUESTION ABOUT WHAT I'VE
15 TOLD YOU?

16 A NO, SIR, I DON'T.

17 THE COURT: NOW, I KNOW YOU ARE ON THE WITNESS STAND AND
18 THAT SOMETIMES THAT MAKES PEOPLE A LITTLE BIT HESITANT OR
19 SCARED. ARE YOU SCARED AT THIS TIME?

20 A I'M NOT SCARED.

21 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY DRUGS
22 TODAY? ANY ALCOHOL?

23 A NO, SIR.

24 THE COURT: ALL RIGHT. I FIND HE HAS MADE A KNOWING AND
25 AND INTELLIGENT WAIVER OF HIS RIGHT TO HAVE COUNSEL PRESENT

1 AND I SO FIND. ALL RIGHT. PROCEED.

2 DIRECT EXAMINATION CONTINUED BY

3 MR. MORTON:

4 Q JAMES, YOU KNOW RONALD TILLMAN?

5 A YEAH, I KNOW RONALD TILLMAN.

6 Q DID YOU TELL US LAST NIGHT YOU WERE AFRAID OF RONALD TILLMAN?

7 MR. SWERLING: IF YOUR HONOR PLEASE, NOW I WOULD ASK HIM
8 NOT TO LEAD THE WITNESS.

9 THE COURT: DON'T LEAD THE WITNESS.

10 Q ARE YOU AFRAID OF RONALD TILLMAN?

11 A NO, SIR, I'M NOT AFRAID OF HIM.

12 Q DID YOU KNOW DONALD SUTTON?

13 A I DON'T KNOW HIM PERSONALLY BUT, YOU KNOW, I SEEN HIM AROUND.

14 Q DO YOU REMEMBER SEEING RONALD TILLMAN THE DAY AFTER DONALD
15 SUTTON WAS KILLED?

16 A YES, I REMEMBER SEEING HIM.

17 Q DO YOU REMEMBER SEEING HIM IN THE PARTY SHOP?

18 A YES, SIR.

19 THE COURT: WHY DON'T YOU JUST ASK HIM WHERE HE SAW HIM?

20 Q DID YOU HAVE A CONVERSATION WITH HIM?

21 A YEAH, I TALKED TO HIM, YOU KNOW. TALKED TO HIM WHEN HE WAS
22 IN THE PARTY SHOP. I TALKED TO HIM.

23 Q DID YOU ASK HIM AT THAT TIME--

24 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING HIS
25 WITNESS.

1 THE COURT: YOU ARE LADING YOUR WITNESS. I KNOW THAT
2 YOU'VE ASKED ME TO DECLARE HIM HOSTILE BUT, YOU KNOW, LET'S
3 FIND OUT WITH DIRECT QUESTIONS FIRST. IF I DETERMINE HE'S
4 HOSTILE YOU CAN LEAD HIM THEN BUT RIGHT NOW I HAVEN'T MADE
5 THAT DECISION SO YOU CAN ASK HIM DIRECT QUESTIONS. YOU KNOW,
6 WHAT DID YOU DO, WHAT DID HE SAY, WHERE WAS IT, THOSE TYPE
7 THINGS. IT ISN'T HARD TO ASK DIRECT QUESTIONS.

8 MR. MORTON: YOUR HONOR, I BELIEVE HE'S ALREADY SAID HE
9 HAD A CONVERSATION WITH MR. TILLMAN.

10 THE COURT: JUST ASK HIM DIRECT QUESTIONS.

11 Q WHAT, IF ANYTHING, DID HE SAY TO YOU?

12 A HE DIDN'T SAY NOTHING. I CAME UP TO HIM AND ASKED HIM
13 SOMETHING.

14 MR. MORTON: YOUR HONOR, I'M A LITTLE BIT CONFUSED AS
15 TO WHETHER OR NOT--AM I ALLOWED TO CROSS HIM ABOUT WHAT HE
16 TOLD US LAST NIGHT?

17 THE COURT: NOT YET. JUST GO AHEAD AND GET THE DIALOGUE
18 IN AND WE'LL GO TO THAT BECAUSE YOU HAVEN'T GONE TO THAT YET.

19 MR. MORTON: ALL RIGHT, SIR.

20 Q DID YOU TALK WITH US LAST NIGHT?

21 A YEAH, I TALKED TO YA'LL LAST NIGHT.

22 Q DID YOU TALK TO US ABOUT THIS CASE?

23 A YES, I DID.

24 MR. SWERLING: YOUR HONOR, THIS IS CROSS EXAMINATION.

25 THE COURT: I'M GOING TO ALLOW THIS. THIS IS IN CAMERA,

1 COUNSELLOR. THIS MAN IS UNDER OATH. WE'LL FIND OUT WHAT'S
2 GOING ON. GO AHEAD.

3 MR. SWERLING: IF YOUR HONOR PLEASE, CAN I MAKE AN
4 OBSERVATION?

5 THE COURT: YES, SIR.

6 MR. SWERLING: MY UNDERSTANDING WOULD BE THAT THE STATE
7 NOW HAS TO ASK HIM WHAT HIS TESTIMONY IS GOING TO BE IN LIGHT
8 OF WHAT I ADVISED THE COURT. WHAT THEY ARE DOING NOW IS
9 SAYING DIDN'T YOU SAY LAST NIGHT SOMETHING. I THINK THEY
10 HAVE TO GET NOW WHAT ARE YOU GOING TO TESTIFY--

11 THE COURT: I AGREE WITH THAT. ASK HIM THE QUESTIONS
12 THAT YOU WOULD HAVE ASKED HIM JUST TO TELL WHAT HAPPENED AND
13 THEN IF IT'S DIFFERENT THEN WE'LL HAVE TO SET HIM UP FOR IT
14 AND ASK HIM DID HE TELL YOU SOMETHING DIFFERENT. LET'S FIND
15 OUT WHAT HE HAS TO SAY FIRST BECAUSE I'VE APPRISED HIM OF
16 WHAT PERJURY IS.

17 MR. MORTON: ALL RIGHT, SIR.

18 Q DID YOU TALK WITH RONALD TILLMAN ABOUT--

19 MR. SWERLING: OBJECTION.

20 THE COURT: YOU ARE LEADING HIM.

21 Q WHAT, IF ANYTHING, DID RONALD TILLMAN TELL YOU ABOUT KILLING
22 "DUCK" SUTTON?

23 A HE DIDN'T TOLD ME NOTHING ABOUT IT, YOU KNOW. I ASKED HIM
24 ABOUT IT. I ASKED HIM DID HE DID IT, YOU KNOW, HE TOLD ME,
25 NO, HE DIDN'T.

1 Q DID HE EVER OFFER YOU ANYTHING?

2 A NEVER DID.

3 Q DID HE EVER OFFER TO TALK CARE OF YOU IF YOU DIDN'T TESTIFY
4 AGAINST HIM?

5 MR. SWERLING: OBJECTION. LEADING. SUGGESTING AN
6 ANSWER.

7 THE COURT: YOU ARE LEADING.

8 MR. MORTON: HE CAN SAY YES OR NO, YOUR HONOR. I DON'T
9 KNOW HOW ELSE TO ASK IT.

10 THE COURT: WELL, THERE'S ANOTHER WAY THAT YOU CAN ASK
11 HIM. JUST ASK HIM WHAT ALL THE DISCUSSIONS WERE, WHERE THEY
12 WERE, WHEN THEY WERE, WHAT WAS SAID SPECIFICALLY.

13 Q WHAT, IF ANY, DISCUSSIONS DID YOU HAVE WITH RONALD TILLMAN
14 PRIOR TO THE MURDER OF DONALD SUTTON?

15 A WELL, WHEN I WENT TO THE SHOP AND SEEN RON THERE HE WAS
16 CRYING, YOU KNOW, AND I ASKED HIM, MAN, WHAT'S UP, WHAT
17 HAPPENED. AND HE SAID, YOU KNOW, SOMEBODY KILLED DONALD,
18 MAN, LIKE THAT, YOU KNOW. AND I ASKED HIM DID HE DO IT AND
19 HE SAY NO. AND, YOU KNOW, I LEFT AND THAT'S WHEN THE
20 INVESTIGATOR CAME UP.

21 Q WHAT, IF ANY, CONVERSATIONS HAVE YOU HAD WITH RONALD TILLMAN
22 AFTER THE MURDER OF "DUCK" SUTTON? WHAT, IF ANYTHING, HAS
23 HE TOLD YOU ABOUT IT?

24 A HE AIN'T TOLD ME NOTHING.

25 Q WHAT, IF ANYTHING, HAS HE TOLD YOU CONCERNING YOUR TESTIMONY

1 IN THE CASE OF RONALD TILLMAN?

2 A HE DIDN'T TOLD ME NOTHING. JUST LIKE I SAY, YOU KNOW, I
3 DIDN'T EVEN TALK TO HIM AFTER THAT, YOU KNOW. WE WAS IN THE
4 CELLBLOCK TOGETHER AND THAT WAS IT, YOU KNOW. WE DIDN'T EVEN
5 TALK ABOUT IT NO MORE SINCE THEN.

6 THE COURT: ALL RIGHT. I THINK THAT'S SUFFICIENT. YOU
7 MAY ASK HIM NOW WHAT HE'S TOLD OTHER OFFICERS OR YOURSELF.

8 MR. MORTON: I CAN CROSS HIM NOW, YOUR HONOR?

9 THE COURT: I'M GOING TO LET YOU DO IT IN CAMERA RIGHT
10 NOW.

11 Q JAMES, DO YOU REMEMBER TALKING TO US LAST NIGHT?

12 A YEAH, I DID.

13 Q DO YOU REMEMBER ME AND SEVERAL OTHER GUYS DOWN THERE TALKING
14 TO YOU?

15 A YEAH.

16 Q DIDN'T YOU TELL US THAT YOU TALKED WITH RONALD TILLMAN BEFORE
17 THIS MURDER OCCURRED?

18 A NO, I DON'T REMEMBER.

19 Q YOU DIDN'T TELL US THAT?

20 A NO, I DIDN'T.

21 Q DID YOU TELL US THAT RONALD TILLMAN CAME AND OFFERED YOU AT
22 ONE POINT ONE THOUSAND DOLLARS TO KILL DONALD SUTTON?

23 A NO, I DIDN'T.

24 Q DID YOU TELL US THAT HE CAME AND OFFERED YOU THREE THOUSAND
25 DOLLARS--THAT HE THEN UPPED THE ANTE TO THREE THOUSAND

1 DOLLARS AND AN OUNCE OF CAINE AS YOU PUT IT? DID YOU TELL
2 US THAT?

3 A NO, I DIDN'T.

4 Q DID YOU TELL US THAT RONALD TILLMAN WANTED SOME NIGGER NAMED
5 DONALD SUTTON KILLED BECAUSE HE MADE SOME STATEMENTS AGAINST
6 HIM AND HE HAD TO DO IT QUICK?

7 A NO, I DIDN'T.

8 Q DIDN'T MAKE THAT STATEMENT? DID YOU TELL US THAT RONALD
9 TILLMAN HAD THROWN YOUR POSSESSIONS INTO THE HALL ONE TIME
10 AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

11 REPORTER: MR. MORTON, I'M SORRY. CAN YOU REPEAT THAT?
12 I'M SORRY.

13 Q DID RONALD TILLMAN--DID YOU TELL US THAT RONALD TILLMAN THREW
14 YOUR POSSESSIONS INTO THE HALL AT THE RICHLAND COUNTY
15 SHERIFF'S DEPARTMENT ONE DAY?

16 A NO, I DIDN'T.

17 Q DID YOU TELL US THAT YOU SAW RONALD TILLMAN AT THE PARTY SHOP
18 THE DAY AFTER "DUCK" SUTTON WAS KILLED?

19 A NO, I DIDN'T.

20 Q YOU DIDN'T TELL US THAT?

21 A I TOLD YOU--I DIDN'T EVEN TALK TO YA'LL. I TOLD YA'LL JUST
22 NOW ABOUT I WENT TO THE PARTY SHOP AND TALKED TO RON BUT I
23 DIDN'T TOLD YA'LL THAT LAST NIGHT.

24 Q YOU DIDN'T TALK TO US OR YOU DIDN'T TELL US?

25 A WELL, I TALKED TO YA'LL BUT I DIDN'T TOLD YA'LL THAT LAST

1 NIGHT.

2 Q DIDN'T TELL US THAT?

3 A NOT LAST NIGHT.

4 Q DID YOU TELL US THAT RONALD TILLMAN WAS CRYING AT THE PARTY
5 SHOP AND THAT YOU WENT UP AND SAID, HEY, MAN, WHAT'S ALL THEM
6 FAKE TEARS AS YOU PUT IT? SOMETHING LIKE THAT. DID YOU TELL
7 US THAT?

8 A WHEN, A FEW MINUTES AGO?

9 Q NO, LAST NIGHT.

10 A NO, I DIDN'T.

11 Q DID YOU TELL US THAT HE SAID HE HAD TO DO IT QUICK BECAUSE
12 DONALD SUTTON HAD ALREADY PUT ONE OF HIS FRIENDS IN JAIL?

13 A NO, I DIDN'T.

14 Q DID YOU TELL US THAT RONALD TILLMAN SAID, HEY, MAN, I'VE GOT
15 A LITTLE PIECE FOR YOU, JUST HANG IN THERE WITH ME, DON'T
16 FLIP ON ME?

17 A NO, I DIDN'T.

18 Q DID YOU TELL US THAT HE WANTED YOU TO SAY HAYES MALLOY DID
19 IT?

20 A NO, I DIDN'T.

21 MR. MORTON: THAT'S ALL I HAVE, YOUR HONOR.

22 MR. SWERLING: YOUR HONOR, I WOULD SUBMIT THAT THEY JUST
23 HAVE NOT MADE THE SHOWING REQUIRED BY RICHBURG IN LIGHT OF
24 WHAT I TOLD THE COURT AND THEM AT SIDEBAR.

25 THE COURT: GENTLEMEN, I'M INCLINED TO AGREE WITH

1 COUNSEL FOR THE DEFENSE BUT I'LL TELL YOU THIS, SOMEBODY IS
2 NOT TELLING THE TRUTH. FROM YA'LL'S PROSPECTIVE I'M NOT SO
3 SURE I WOULDN'T HAVE SOMEBODY INDICTED FOR PERJURY.

4 MR. MORTON: YOUR HONOR--

5 THE COURT: HE'S NOW TESTIFIED UNDER OATH. HE'S DENIED
6 MAKING SUCH STATEMENTS THAT YOU REPRESENT TO THE COURT WERE
7 MADE. AND HE'S MADE THOSE STATEMENTS UNDER OATH. FOR THE
8 PURPOSE OF HIM TESTIFYING AND YOU IMPEACHING HIM IT, COUNSEL
9 TOLD YOU AT THE SIDEBAR BEFORE YOU PUT HIM ON THE STAND THAT
10 HE HAD TALKED TO HIM THIS MORNING AND THAT HE WAS NOT GOING
11 TO TESTIFY THAT HE KNEW ANYTHING ABOUT THIS CASE.

12 MR. MORTON: COUNSEL--

13 THE COURT: HAD HE NOT DONE THAT I'D LET YOU IMPEACH HIM
14 BUT YOU WERE PUT ON NOTICE AND YOU FOR WHATEVER REASON,
15 BEFORE THE MAN TOOK THE OATH, DIDN'T ASK FOR AN OPPORTUNITY
16 TO SPEAK WITH HIM OR MAKE ANY EFFORT TO SPEAK WITH HIM AND
17 YOU PUT HIM UP. I'LL LET YOU TAKE HIM DOWN IF THAT'S WHAT
18 YOU WANT TO DO. YOU CAN TAKE HIM DOWN BUT FOR THE PURPOSE
19 OF YOUR IMPEACHING HIM I DO NOT FIND THAT YOU WERE SURPRISED
20 BECAUSE YOU WERE TOLD BEFORE YOU PUT HIM ON THE STAND. BY
21 THE SAME TOKEN I MUST TELL YOU I'VE TRIED TO APPRISE THIS
22 WITNESS OF HIS RIGHTS AND GIVE SOME EXPLANATION. HE SAYS HE
23 NEVER TOLD ANY OF YA'LL THAT. HE SAID THAT UNDER OATH. NOW,
24 MAYBE I DON'T KNOW WHAT PERJURY IS.

25 MR. MORTON: I UNDERSTAND THE COURT'S RULING, YOUR

1 HONOR. IF I MIGHT JUST EXPLORE WHAT I WAS ATTEMPTING TO
2 EXPLORE EARLIER IN THAT WHAT MR. SWERLING TOLD US DID NOT
3 PERTAIN TO THE STATEMENTS MADE BY MR. BYNUM LAST NIGHT
4 CONCERNING THE BRIBE.

5 THE COURT: I DON'T THINK THERE'S ANY QUESTION ABOUT IT.
6 HE SAID ANYTHING ABOUT THE CASE, MR. MORTON. HE SAID
7 ANYTHING ABOUT THE CASE. YOU KNOW, AS AN OFFICER OF THE
8 COURT YOU WERE PRESENT HERE, I'M HERE. YOU CAN MAKE ME A
9 WITNESS BUT I CAN TELL YOU NOW, YOU KNOW, I WISH IT HADN'T
10 HAPPENED BECAUSE I THINK A MISCARRIAGE OF JUSTICE HAS
11 OCCURRED BECAUSE I THINK YOU AS AN OFFICER OF THE COURT WOULD
12 NOT MAKE SUCH REPRESENTATIONS TO THE COURT. BUT IN MY VIEW
13 IT'S FAIRLY CLEAR BUT HE'S NOW PLACED HIMSELF IN THAT
14 POSITION YOU MAY IT APPEARS TO BE INDICT HIM IF WHAT YOU SAY
15 IS TRUE. ONCE AGAIN, YA'LL BECOME WITNESSES TO IT. YOU SAY
16 HE SAID IT, HE'S DENIED EVER SAYING ANY OF THOSE THINGS TO
17 YOU LAST NIGHT OR TO THE OFFICER. THAT'S WHAT HE JUST
18 TESTIFIED UNDER OATH TO.

19 MR. MORTON: WE WISH AT THIS POINT TO TAKE HIM DOWN
20 THEN, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 MR. SWERLING: NO OBJECTION.

23 THE COURT: ALL RIGHT. BRING THE WITNESS DOWN. CALL
24 YOUR NEXT WITNESS.

25 (WITNESS TO THE SIDE)

1 MR. MORTON: YOUR HONOR, CAN WE HAVE JUST ONE SECOND?

2 THE COURT: LET THE RECORD REFLECT THE COURT FINDS IN
3 THE CASE OF THE STATE VS. RICHBURG THERE WAS NO SHOWING OF
4 ACTUAL SURPRISE AND HARM. WELL, IT'S HARM BUT IT'S NO
5 SURPRISE. I WOULD VIEW THAT YOU HAVE TO PROVE BOTH. THE
6 SOLICITOR WAS TOLD THAT THE WITNESS WAS NOT GOING TO TESTIFY
7 THAT HE KNEW ANYTHING ABOUT THIS CASE. THE SOLICITOR WENT
8 AHEAD AND PUT THE WITNESS ON THE STAND WITHOUT MAKING THAT
9 INQUIRY BEFORE HE PUT HIM ON. YOU CANNOT BLINDLY DO THAT
10 ONCE YOU'VE BEEN APPRISED OF IT, SOLICITOR. YOU JUST CANNOT
11 DO THAT.

12 MR. MORTON: THANK YOU, YOUR HONOR. MR. SOLICITOR, YOU
13 KNOW, I'VE ALWAYS TAKEN THE POSITION AND THAT'S AS CLOSE AS
14 I'VE COME TO DIRECTING THAT YOU INDICT SOMEBODY FOR PERJURY
15 BECAUSE YOU ARE AN OFFICER OF THIS COURT BUT IF THAT MAN
16 DOESN'T NEED TO BE INDICTED FOR PERJURY I DON'T KNOW ANY.
17 BRING THE JURY IN.

18 (THE JURY RETURNS TO THE JURY BOX AT 12:30 P.M.)

19 THE COURT: CALL YOUR NEXT WITNESS.

20 MR. COLEMAN: YOUR HONOR, THE STATE FALLS JOHN CHRISTY
21 TO THE STAND.

22 JOHN C. CHRISTY, AFTER BEING DULY SWORN BY THE CLERK,
23 TESTIFIES AS FOLLOWS:

24 DIRECT EXAMINATION BY

25 MR. COLEMAN:

1 Q JOHN, WHERE ARE YOU EMPLOYED?

2 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
3 DIVISION.

4 Q OKAY. ON DECEMBER THE 26TH, 1988, WHERE WERE YOU EMPLOYED?

5 A WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

6 Q AND WHAT WERE YOUR DUTIES ON THE 26TH OF DECEMBER?

7 A I WAS ASSIGNED TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
8 CRIME SCENE LAB. I HAD BEEN EMPLOYED IN THAT CAPACITY FOR
9 SIX YEARS. MY JOB RESPONSIBILITY WAS PROCESSING CRIME
10 SCENES.

11 Q OKAY. WHEN YOU SAY PROCESSING CRIME SCENES, WHAT DO YOU MEAN
12 BY THAT?

13 A PHOTOGRAPHING AND COLLECTING EVIDENCE. ITEMS ASSOCIATED WITH
14 OR INVOLVED IN CRIMINAL ACTIVITY.

15 Q OKAY. ON DECEMBER 26TH, 1988, WERE YOU SUMMONED TO THE SCENE
16 AT BROWN'S A.M.E. CHAPEL LOCATED IN ARTHURTOWN?

17 A YES, I WAS. SHORTLY BEFORE MIDNIGHT.

18 Q OKAY. IF YOU WOULD, PLEASE EXPLAIN TO THE JURY WHAT TIME YOU
19 WERE SUMMONED, WHAT TIME YOU GOT THERE AND WHAT YOU DID.

20 A SURE. I RECEIVED THE CALL ON THE 26TH OF DECEMBER AT 11:31
21 P.M. AND ARRIVED AT 11:57 P.M., SHORTLY BEFORE MIDNIGHT.

22 Q LET ME STOP YOU. WHO WAS PRESENT WHEN YOU GOT THERE?

23 A WHEN I ARRIVED, SERGEANT O'NEAL OF THE SHERIFF'S DEPARTMENT,
24 INVESTIGATOR DUNHAM, DEPUTY SMITH AND LT. BROWN WERE PRESENT.

25 Q HAD THE SCENE BEEN SECURED AT THAT TIME?

1 A YES.

2 Q OKAY.

3 A UPON MY ARRIVAL, THE AREA IS A CHURCH. IT CONSISTS OF TWO
4 BUILDINGS, A SANCTUARY AND AN OUT BUILDING OR AN EDUCATIONAL
5 BUILDING I BELIEVE IT WAS REFERRED TO BY THE PLAQUE MOUNTED
6 ON THE OUTSIDE WALL OF THE BUILDING. WE LOCATED THE BODY OF
7 A BLACK MALE, LATER IDENTIFIED AS DONALD SUTTON, BESIDE THE
8 EDUCATIONAL BUILDING LYING FLAT ON HIS BACK ADJACENT TO AN
9 AIR CONDITIONER UNIT. HE HAD BEEN SHOT TWICE IN THE HEAD.
10 APPROXIMATELY FIFTY SOME FEET FROM THE BODY ON A DIRT TRAIL
11 WHICH LED DOWN TO A CEMETERY BEHIND THE EDUCATIONAL BUILDING
12 OFF THE CHURCH GROUNDS WE FOUND A SET OF TIRE TRACKS THAT
13 WERE UNUSUAL. THEY WERE UNUSUAL IN THAT THEY APPEARED TO
14 STOP IN VIEW OF THE BODY. WE PHOTOGRAPHED THESE TIRE TRACKS.

15 Q WERE THERE OTHER TIRE TRACKS IN THE AREA?

16 A YES, THERE WERE NUMEROUS TIRE TRACKS IN THE AREA WITH IT
17 BEING A CHURCH AND THE PREVIOUS DAY BEING SUNDAY. THEY DID
18 NOT APPEAR AS FRESH IN CONDITION--

19 MR. SWERLING: OBJECTION, YOUR HONOR, AS TO ANY
20 CONCLUSIONS. HE HAS NOT BEEN QUALIFIED AS ANY KIND OF A
21 WITNESS CONCERNING TIRES.

22 MR. COLEMAN: YOUR HONOR, HE CAN TESTIFY OF HIS OWN
23 KNOWLEDGE IF THE TRACKS APPEARED FRESH OR NOT.

24 THE COURT: NO, THAT'S REACHING A CONCLUSION. HE CAN
25 DESCRIBE WHAT HE SAW BUT WHETHER OR NOT THEY WERE FRESH OR

1 NOT IS A CONCLUSION ON HIS PART WITHOUT HAVING BEEN QUALIFIED
2 AS AN EXPERT IN THAT PARTICULAR FIELD. HE CAN DESCRIBE WHAT
3 IT WAS.

4 MR. COLEMAN: YES, SIR.

5 Q HOW DID THOSE TRACKS APPEAR TO YOU?

6 A THEY APPEARED FRESH.

7 MR. SWERLING: OBJECTION, YOUR HONOR. I AGAIN MOVE THAT
8 IT BE STRICKEN.

9 THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS
10 INSTRUCTED TO DISREGARD THE RESPONSE TO THE QUESTION.

11 Q HOW DID THEY COMPARE TO THE OTHER TRACKS?

12 A THEY STOPPED IN VIEW OF THE BODY.

13 Q OKAY. WERE THE MARKINGS OF THESE TRACKS--HOW DID THE
14 MARKINGS OF THOSE TRACKS APPEAR COMPARED TO THE OTHER TRACKS?

15 A I DON'T UNDERSTAND YOUR QUESTION.

16 Q OKAY.

17 THE COURT: DESCRIBE WHAT YOU SAW IN OTHER WORDS. IF
18 THERE WERE TWO SETS OF TRACKS THERE AND ONE'S DIFFERENT THAN
19 THE OTHER, WHAT WAS THE DIFFERENCE? DID THEY HAVE WATER IN
20 THEM, DID THEY HAVE DIRT FILLING IN ON THEM, WERE THE CRUST
21 OF THE TIRE MARKS PUSHED DOWN? DESCRIBE. DON'T REACH A
22 CONCLUSION. THE JURY HAS THE RIGHT TO REACH THE ULTIMATE
23 CONCLUSION, NOT YOU.

24 A YES, SIR. WOULD YOU REPEAT THE QUESTION?

25 Q HOW DID THEY APPEAR COMPARED TO THE OTHER TRACKS IN THE AREA?

1 A THEY APPEARED TO STOP IN VIEW OF THE BODY.

2 Q OKAY. WHAT DID YOU DO WITH THOSE PRINTS?

3 A THEY WERE PHOTOGRAPHED.

4 Q OKAY. HOW MANY PHOTOGRAPHS DID YOU TAKE?

5 A WE TOOK NUMEROUS PHOTOGRAPHS OF THE TRACKS.

6 MR. SWERLING: IF YOUR HONOR, CAN WE APPROACH THE
7 SIDEBAR?

8 (MR. COLEMAN AND MR. SWERLING APPROACH THE BENCH OUT OF
9 THE PRESENCE OF THE COURT REPORTER)

10 Q INVESTIGATOR CHRISTY, DID YOU TAKE NUMEROUS PICTURES OF THE
11 SCENE?

12 A YES.

13 THE COURT: YA'LL WANT TO MARK THEM FOR IDENTIFICATION?
14 CAN HE IDENTIFY THEM?

15 MR. COLEMAN: YES, SIR.

16 THE COURT: HAVE HIM IDENTIFY THEM, THE ONES HE TOOK ON
17 THAT DATE, IF THEY ACCURATELY REPRESENT THE CONDITION ON THAT
18 DATE. WE'LL MARK THEM FOR IDENTIFICATION AND THEN SHOW THEM
19 TO COUNSEL.

20 Q DO THESE PHOTOGRAPHS ACCURATELY DEPICT THE WAY THOSE TIRE
21 TRACKS WERE THAT NIGHT?

22 A YES, THAT NIGHT AND THE MORNING AFTER ALSO.

23 MR. COLEMAN: YOUR HONOR, AT THIS TIME THE STATE WOULD
24 MARK THOSE FOR IDENTIFICATION.

25 MR. SWERLING: COULD I SEE THEM?

1 THE COURT: YOU CAN GO AHEAD AND MARK THEM AND THEN SHOW
2 THEM TO HIM. LET THE COURT REPORTER MARK THEM.

3 (PHOTOGRAPHS ARE MARKED AS STATE'S IDENTIFICATION "C"
4 THROUGH "M")

5 THE COURT: "C" THROUGH "M." HEREAFTER PLEASE IDENTIFY
6 THEM IN THAT FASHION.

7 Q WHAT ELSE DID YOU DO THERE, INVESTIGATOR CHRISTY?

8 A WE EXAMINED THE VICTIM'S BODY IN THE PRESENCE OF THE CORONER
9 PRIOR TO ITS REMOVAL FROM THE SCENE TO THE MORGUE AT RICHLAND
10 MEMORIAL HOSPITAL.

11 Q OKAY. I ASK YOU IF YOU CAN IDENTIFY THIS PHOTOGRAPH?

12 MR. SWERLING: YOUR HONOR, I HAVE A DIFFERENT OBJECTION
13 TO THOSE.

14 THE COURT: WELL, HE'S IDENTIFYING IT RIGHT NOW. HE
15 HASN'T MOVED TO HAVE THEM INTRODUCED YET. LET HIM GET TO THE
16 POINT--LET HIM MAKE THE MOTION FIRST, COUNSEL. DON'T
17 ANTICIPATE HIM.

18 MR. SWERLING: I'M SORRY.

19 Q WHAT IS THAT A PICTURE OF?

20 A IT'S A PICTURE OF--

21 THE COURT: NO, SIR. NO, SIR. JUST SAY WHETHER OR NOT
22 THE PHOTOGRAPH ACCURATELY SHOWS OR REPRESENTS THE CONDITION
23 SHOWN IN THE PHOTOGRAPH. YOU CANNOT TESTIFY AS TO WHAT'S IN
24 A PHOTOGRAPH UNTIL IT'S OFFERED INTO THE RECORD AND I HAVE
25 ADMITTED IT DEPENDING UPON ITS RELEVANCY TO THE ISSUES IN THE

1 CASE.

2 Q DOES THAT PHOTOGRAPH ACCURATELY REPRESENT THE WAY--

3 THE COURT: THE CONDITION SHOWN.

4 Q THE CONDITION SHOWN IN THAT PICTURE?

5 A YES, IT DOES.

6 THE COURT: NOW, YOU MOVE TO HAVE IT INTRODUCED?

7 MR. COLEMAN: I MOVE TO HAVE IT INTRODUCED INTO EVIDENCE
8 AT THIS TIME.

9 MR. SWERLING: YOUR HONOR, WE OBJECT.

10 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
11 COURT REPORTER)

12 Q JOHN, WHEN YOU GOT THERE, DID YOU EXAMINE THE BODY?

13 THE COURT: I SUSTAIN THE OBJECTION TO THAT EXHIBIT.
14 HAND IT BACK TO THE COURT REPORTER SINCE IT'S BEEN MARKED
15 UNLESS YOU MOVE TO WITHDRAW IT. DO YOU MOVE TO WITHDRAW IT,
16 COUNSEL?

17 MR. COLEMAN: YES, SIR.

18 Q DID YOU EXAMINE THE BODY?

19 A YES.

20 Q EXPLAIN THE CONDITION OF THE BODY?

21 A THE BODY WAS LYING FLAT ON ITS BACK ADJACENT TO THE AIR
22 CONDITIONER UNIT OF THE EDUCATIONAL BUILDING. IT WAS FULLY
23 CLOTHED AND HIS ARMS WERE DOWN BY HIS SIDE AND HIS FEET
24 STRETCHED STRAIGHT OUT OR BASICALLY STRAIGHT OUT. HIS HEAD
25 WAS POSITIONED UPWARD TOWARDS THE SKY.

1 Q OKAY. WHAT SORT OF CONDITION WERE THE CLOTHES IN?

2 A THE CLOTHES WERE IN RELATIVELY GOOD CONDITION WITH THE

3 EXCEPTION OF THE BLOOD ON THE BACK AND NEAT IN APPEARANCE.

4 Q DID--WAS HIS SHIRT TAIL OUT?

5 A NO. HIS CLOTHES OR HIS POCKETS DID NOT APPEAR TO HAVE BEEN

6 GONE THROUGH. AND IN THE RIGHT FRONT JACKET POCKET A COMB

7 WAS PROTRUDING OUT.

8 Q DID YOU FIND ANY BLOOD ON THE SCENE?

9 A YES, WE DID.

10 Q WHERE?

11 A THERE WERE TWO SMALL SPATTERS ON THE SIDE OF THE AIR

12 CONDITIONER UNIT, ON THE HOUSING OF THE AIR CONDITIONER UNIT

13 AND--

14 Q WHERE WAS THAT IN RELATIONSHIP TO WHERE THE BODY WAS LAYING?

15 A SLIGHTLY TO THE RIGHT.

16 Q ABOUT HOW FAR?

17 A SIX TO EIGHT INCHES.

18 Q OKAY.

19 A AND THERE WAS A SMALL POOL OF BLOOD OFF TO THE LEFT OF THE

20 VICTIMS HEAD THAT HAD NO INTERCONNECTING TRAIL TO THE HEAD

21 AREA OR TO THE BODY. WE CHECKED THE AREA THAT THE BODY WAS

22 LYING ON WAS AN ASPHALT TYPE SURFACE THAT WAS UNKEPT. IT HAD

23 GRASS THAT WAS GROWING UP IN BETWEEN THE CRACKS OF THE

24 ASPHALT. WE CHECKED THE AREA IN ALL DIRECTIONS TO AND FROM

25 THE BODY TO DETERMINE IF THERE WAS ANY BLOOD DROPPINGS GOING

1 TO THE BODY AND WERE UNABLE TO COME UP WITH ANY. WE DID NOT
2 LOCATE ANY. WE DID THAT THAT EVENING AND ALSO THE FOLLOWING
3 MORNING DURING DAYLIGHT CONDITIONS.

4 Q OKAY. WHAT CONDITIONS--WHAT POSITIONS WERE HIS HANDS IN?
5 A HIS HANDS WERE DOWN BY HIS SIDE WITH THE THUMB PORTION OF
6 BOTH HANDS SORT OF RESTING ON THE ASPHALT.

7 Q DID YOU RECOGNIZE ANY MARKS ON HIS HANDS?
8 A YES. THERE WERE SOME SCRAPE MARKS IN THE THUMB AREA OF BOTH
9 HANDS. THIS AREA HERE (INDICATING).

10 Q WHAT ELSE DID YOU DO TO SECURE THE SCENE?
11 A WE HAD THE VICTIM'S VEHICLE WHICH WAS PARKED BESIDE OF THE
12 SANCTUARY TOWED FROM THE SCENE AND IMPOUNDED IN OUR
13 WAREHOUSE. AFTER WE EXAMINED IT, WE RECOVERED A SIXTEEN
14 OUNCE BEER CAN OUTSIDE ON THE GROUND OUTSIDE OF THE DRIVER'S
15 DOOR AND A KLEENIX TISSUE ON THE GROUND OUTSIDE OF THE FRONT
16 PASSENGER DOOR.

17 Q WHAT DID YOU DO WITH THE BEER CAN?
18 A IT WAS PROCESSED FOR PRINTS ALONG WITH THE BAG THAT IT WAS
19 CONTAINED IN AND ENTERED INTO EVIDENCE.

20 Q DID YOU PROCESS THE CAN?
21 A YES, I DID.

22 Q FOR WHAT?
23 A FOR LATENT FINGERPRINTS.

24 Q DID YOU FIND ANYTHING?
25 A NO.

1 Q DO THESE PHOTOGRAPHS ACCURATELY DEPICT THE WAY THE VEHICLE
2 APPEARED THAT NIGHT?

3 A YES, THEY DO.

4 MR. COLEMAN: YOUR HONOR, THE STATE WOULD INTRODUCE
5 THESE IN EVIDENCE AT THIS TIME.

6 THE COURT: DID YOU TAKE THOSE PHOTOGRAPHS?

7 A YES, SIR, I DID.

8 MR. SWERLING: NO OBJECTION.

9 THE COURT: HAVE THE COURT REPORTER MARK THEM AND HAND
10 THEM UP TO THE COURT.

11 (PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS STATE'S
12 EXHIBITS #21, 22 AND 23)

13 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
14 OBJECTION EXHIBITS WHICH WILL BE DESIGNATED AS STATE'S
15 EXHIBIT NUMBER 21, 22 AND 23, EACH BEING APPROXIMATELY EIGHT
16 BY TEN IN SIZE, BLACK AND WHITE PHOTOS. NOW ENTERED WITHOUT
17 OBJECTION. YOU MAY PUBLISH THEM TO THE JURY AND PROCEED.

18 Q WHEN YOU SAY YOU PROCESSED THE VEHICLE, WHAT DO YOU MEAN BY
19 THAT?

20 A THE VEHICLE WAS PROCESSED ALSO FOR LATENT PRINTS.

21 Q DID YOU FIND ANY?

22 A YES, WE LIFTED NUMEROUS LATENT LIFTS OFF THE EXTERIOR SURFACE
23 OF THE VEHICLE.

24 Q WHEREABOUTS?

25 A THE HOOD, TRUNK AND DOORS.

1 Q AND DID YOU MATCH THEM WITH ANYBODY?

2 A NO, THEY WERE NOT IDENTIFIED WITH ANYBODY.

3 Q DID YOU PROCESS THE INSIDE?

4 A YES, THE INSIDE WAS PROCESSED. DUE TO THE NATURE OF THE

5 MATERIAL INVOLVED IN THE CONSTRUCTION OR THE MAKEUP OF THE

6 INSIDE OF THE VEHICLE WE WERE UNABLE TO OBTAIN ANY LATENTS.

7 Q OKAY. TO TAKE YOU BACK TO THE SCENE, WHAT ELSE DID YOU FIND

8 AT THE SCENE, IF ANYTHING?

9 A THAT'S ALL I RECALL.

10 Q DOES THIS PHOTOGRAPH ACCURATELY DEPICT THE DRIVEWAY?

11 A YES, THAT ACCURATELY DEPICTS THE DRIVEWAY LEADING DOWN TO THE

12 CEMETERY.

13 MR. COLEMAN: YOUR HONOR, THE STATE WOULD REQUEST THAT

14 IT BE MARKED FOR IDENTIFICATION PURPOSES.

15 THE COURT: DID YOU TAKE THE PHOTOGRAPH?

16 A I WAS PRESENT WHEN IT WAS TAKEN.

17 THE COURT: DOES IT REPRESENT THE CONDITION SHOWN ON

18 THAT DATE?

19 A YES, SIR.

20 THE COURT: AND THE DATE SHORTLY AFTER THE CRIME?

21 A YES, THE MORNING AFTER.

22 THE COURT: ANY OBJECTION, MR. SWERLING?

23 MR. SWERLING: NO OBJECTION TO THAT, YOUR HONOR.

24 THE COURT: MARK IT AND HAND IT UP TO THE COURT.

25 (PHOTOGRAPH IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT

1 #24)

2 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
3 OBJECTION AN EXHIBIT WHICH WILL BE DESIGNATED STATE'S EXHIBIT
4 NUMBER 24. IT'S APPROXIMATELY ELEVEN BY FOURTEEN IN SIZE,
5 COLOR PHOTOGRAPH. DO YOU WANT TO PUBLISH IT TO THE JURY OR
6 DO IT LATER?

7 MR. COLEMAN: WE CAN JUST DO IT LATER, YOUR HONOR.

8 MR. SWERLING: HE JUST MARKED IT FOR I.D., YOUR HONOR,
9 DIDN'T HE?

10 THE COURT: NO, HE MOVED TO INTRODUCE IT AND I ASKED WAS
11 THERE ANY OBJECTION AND YOU SAID NO.

12 MR. SWERLING: I'M SORRY. I HEARD HIM SAY FOR I.D.

13 THE COURT: NO, HE MOVED TO HAVE IT INTRODUCED. THAT'S
14 WHAT HE DID AND THAT'S THE REASON I MADE HIM HAND IT TO YOU
15 AND I SAID ANY OBJECTION AND YOU SAID NO.

16 MR. SWERLING: IT'S ALL RIGHT TO COME IN ANYWAY. I
17 THOUGHT I HEARD MR. COLEMAN SAY FOR I.D. THAT'S WHY I SAID
18 NO OBJECTION.

19 THE COURT: WELL, IT DOESN'T MATTER IF YOU HAVE AN
20 OBJECTION ON I.D. BECAUSE IT'S NOT IN THE RECORD ON AN I.D.
21 IT'S ONLY WHEN IT'S MOVED TO GO INTO THE RECORD. ALL RIGHT,
22 MR. FOREMAN, WE'RE GOING TO STOP FOR LUNCH. I WANT YA'LL
23 BACK AT 2:15. REMEMBER MY INSTRUCTIONS TO YOU. MAKE SURE
24 BEFORE WE GO EVERYBODY HAS LOOKED AT THOSE PHOTOS AND HANDED
25 THEM DOWN. JUST HAND THEM TO THE BAILIFF, HE'LL TAKE THEM

1 FOR YOU. THANK YOU. ALL RIGHT, I HOPE YOU HAVE A NICE
2 LUNCH. 2:15.

3 (THE JURY LEAVES THE JURY BOX AT 12:57 P.M.)

4 THE COURT: MR. WITNESS, WE ARE GOING TO STOP FOR THE
5 LUNCH TIME PERIOD. YOU ARE TO BE BACK HERE NO LATER THAN
6 PROBABLY FIVE OR TEN AFTER TWO. OKAY?

7 A YES, SIR.

8 THE COURT: ALL RIGHT, SIR. MAKE SURE YOU DON'T HAVE
9 ANY OF THESE EXHIBITS THAT HAVE BEEN MARKED IN YOUR PAPERS
10 OR ANYTHING. ANYTHING, GENTLEMEN, BEFORE WE GO? WE'RE IN
11 RECESS.

12 (LUNCHEON RECESS)

13 (COURT RESUMES 2:25 P.M.)

14 THE COURT: LET'S HAVE THE WITNESS BACK ON THE STAND.

15 MR. COLEMAN: JUDGE, ONE OTHER ISSUE BEFORE WE GET
16 STARTED WITH JOHN. I HAVE BRUCE HALL HERE FROM GOODYEAR
17 STORE WHO HAS BEEN UP HERE SEVERAL TIMES AND I WAS UNDER THE
18 IMPRESSION THAT IF WE HAD HIM UP HERE THIS MORNING, WHICH WE
19 DID, THAT, YOU KNOW, HE COULD LOOK AT THE DOCUMENTATION I HAD
20 TURNED OVER TO MR. SWERLING AND, YOU KNOW, I TALKED TO THE
21 EXPERTS.

22 THE COURT: HAVE YOU TURNED IT BACK OVER?

23 MR. SWERLING: YES.

24 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO LOOK AT IT?

25 MR. HALL: YOU ARE TALKING ABOUT ME? YES, I'VE SEEN IT.

1 MR. COLEMAN: HE HAS. WE HAVE ATTEMPTED TO CONTACT
2 THEIR EXPERT TO SEE WHAT THEIR TESTIMONY IS GOING TO BE AND
3 HE WOULD NOT TALK TO US.

4 MR. SWERLING: OH, THAT'S NOT CORRECT, YOUR HONOR.
5 THAT'S ABSOLUTELY NOT CORRECT.

6 MR. COLEMAN: IT IS CORRECT.

7 MR. SWERLING: HE IS STILL DOING TESTS. AND WE JUST GOT
8 THE INK BLOTS LAST NIGHT. HE IS DOING SOME TESTS TODAY. I
9 TOLD MR. COLEMAN HE WAS CONTINUING TO DO TESTS AND AT ONE
10 O'CLOCK THIS AFTERNOON HE HAD A DEPOSITION THAT HAD
11 PREVIOUSLY BEEN SCHEDULED, THAT AS SOON AS HE GAVE US HIS
12 REPORT I WOULD CERTAINLY LET THEM KNOW. IN FACT, I TOLD MR.
13 COLEMAN WHAT HE IS GOING TO TESTIFY TO. NOW, MR. COLEMAN HAS
14 TOLD MS. KNEECE THAT HE WILL NOT LET MR. HALL TALK TO HER
15 UNTIL WE LET HIM TALK TO OUR EXPERT AND I DON'T THINK THAT'S
16 THE WAY THE RULES WORK. SO, I FLATLY REJECT THE POSITION
17 THAT HE TOOK.

18 MR. COLEMAN: YOUR HONOR, MR. HALL CAME HERE EARLY THIS
19 MORNING. MR. SWERLING STOOD RIGHT THERE AND TALKED TO HIM
20 FOR ABOUT TWENTY-FIVE MINUTES.

21 MR. SWERLING: WAIT A MINUTE. CREIGHTON, JENNIFER JUST
22 WENT OVER AND ASKED HIM, AS I UNDERSTAND IT, HAVE YOU REACHED
23 ANY OTHER CONCLUSIONS AFTER YOU HAVE SEEN THE INK TRACKS
24 WHICH WE JUST TURNED OVER THIS MORNING, AND AS I UNDERSTOOD
25 IT YOU SAID UNTIL YOU WERE ABLE TO SPEAK WITH WOODY POPLIN

1 YOU WEREN'T GOING TO LET HER TALK TO HIM.

2 MR. COLEMAN: THAT'S RIGHT.

3 MR. SWERLING: OKAY. SO, I MEAN THAT'S WHAT I JUST
4 SAID.

5 MR. COLEMAN: WELL, I'M NOT SAYING YOU HAVEN'T HAD AN
6 OPPORTUNITY TO TALK TO BRUCE HALL.

7 MR. SWERLING: WE HAVE NOT HAD AN OPPORTUNITY TO TALK
8 TO HIM ABOUT HIS OPINION WITH RESPECT TO THE TIRE TREAD MARKS
9 THAT WERE TURNED OVER TO US LAST NIGHT. MR. COLEMAN WOULD
10 NOT LET MS. KNEECE SPEAK WITH HIM UNTIL MR. COLEMAN HAS AN
11 OPPORTUNITY TO SPEAK WITH OUR EXPERT. OUR EXPERT IS NOT
12 AVAILABLE RIGHT NOW.

13 THE COURT: I UNDERSTAND. ARE YOU THE WITNESS? YOU TALK
14 TO MRS.--JENNIFER KNEECE, MRS. KNEECE, OKAY? WHEN SHE COMES
15 TO TALK TO YOU, YOU TALK TO HER, OKAY?

16 MR. HALL: YES, SIR.

17 THE COURT: ALL RIGHT. THAT TAKES CARE OF IT. READY?

18 MR. COLEMAN: YES, SIR.

19 THE COURT: THIS IS MRS. KNEECE RIGHT THERE. DO YOU
20 WANT TO GO TALK TO HER SO YOU CAN GO BACK TO YOUR JOB IF YOU
21 NEED TO OR WHATEVER? GO RIGHT AHEAD. MRS. KNEECE, TAKE HIM
22 OUT THERE AND TALK TO HIM. WE ARE GOING TO PROCEED.

23 MRS. SHEALY: CAN I HAVE THOSE INKED IMPRESSIONS?

24 THE COURT: IF ONE OF YA'LL WANT TO GO WITH HIM, GO WITH
25 HIM.

1 MR. MORTON: YOUR HONOR, MAY WE BE HEARD ON ONE POINT?

2 THE COURT: YES.

3 MR. MORTON: I THINK YOUR HONOR HAS RULED THAT THIS
4 PHOTOGRAPH IS INADMISSIBLE?

5 THE COURT: THERE'S BEEN NO FOUNDATION FOR THE COURT TO
6 ADMIT IT. HAND IT HERE. THEY MARKED IT AT ONE TIME, WE
7 STARTED TO, IT HASN'T BEEN MARKED. THIS IS THE ONE THAT
8 DEPICTS THE BODY. A CLOSEUP PICTURE OF THE BODY LAYING NEXT
9 TO WHAT APPEARS TO BE THE AIR CONDITIONING UNIT ON THE
10 OUTSIDE OF THE BUILDING. IT SHOWS WHAT APPEARS TO BE A SPOT
11 NEXT TO THE SHOULDER WITHIN THREE OR FOUR OR FIVE INCHES,
12 CLEARLY APPEARS TO BE BLOOD. THE MOUTH IS OPEN AND IT LOOKS
13 LIKE SOMETHING IS DRAINING OUT OF THE MOUTH. IT'S THE
14 PICTURE OF THE DECEASED AND THEY OBJECTED TO IT BECAUSE IT
15 PORTRAYS A CONDITION WHICH WOULD INFLAME THE JURY. NOW, I
16 RECOGNIZE IT DOESN'T SHOW BLOOD BUT THAT DOESN'T MEAN IT
17 WON'T INFLAME THE JURY. THE RULES SAY THIS: IF IT'S
18 NECESSARY IN ORDER TO DEPICT TO THE JURY SOME ISSUE IN THE
19 CASE THEN YOU SHOULD BE ALLOWED TO DO IT.

20 MR. MORTON: YES, SIR.

21 THE COURT: THAT CANNOT BE ADEQUATELY DESCRIBED
22 OTHERWISE. WHAT'S THE PROBLEM IN DESCRIBING THAT THERE WAS
23 A BLACK MALE WHO WAS LAYING ALMOST NEXT TO AND AGAINST THE
24 CORNER OF THE AIR CONDITIONING UNIT. MR. COLEMAN TOLD ME THE
25 PURPOSE WAS TO SHOW THAT THERE WAS BLOOD ON THE SIDE OF THE

1 THING. WELL, THE WITNESS TESTIFIED TO THAT. HE DESCRIBED
2 IT. THAT WASN'T HARD FOR THE JURY TO SEE AND DON'T NEED IT.
3 NOW, WHAT IS THE ISSUE? THEY'VE TRIED TO ARGUE--I THINK WHAT
4 HE'S TRYING TO DO IS REFUTE THIS THING ABOUT THE THUMB NAILS.
5 FOR GOSH SAKES YA'LL ARE TRYING RED HERRINGS. YOUR OWN MAN
6 HAS SAID THAT HE WAS DEAD WHEN THAT HAPPENED. WHO CARES HOW
7 HE GOT DRUG OUT. I MEAN IT COULD HAVE HAPPENED ANY NUMBER
8 OF WAYS BUT THE ISSUE IS DID THIS MAN SHOOT HIM. I MEAN WHY
9 DO YA'LL WANT TO TRY RED HERRINGS. YOU SEE THE PROBLEM, MR.
10 MORTON? YOU SEE THE PROBLEM?

11 MR. MORTON: YES, SIR. MY PERSONAL FEELING ON IT IS
12 IT'S NOT INFLAMMATORY. I DON'T SEE HOW THAT PICTURE CAN BE
13 DEPICTED AS BEING INFLAMMATORY. THERE IS TESTIMONY TO THE
14 FACT THAT THERE IS BLOOD BESIDE HIS HEAD. WE THINK THE JURY
15 HAS THE RIGHT TO SEE THAT OUR WITNESS IS CREDIBLE, THERE IS
16 BLOOD BESIDE THE HEAD, BLOOD ON THE AIR CONDITIONER RIGHT
17 WHERE THE BODY FELL.

18 THE COURT: WELL, WHO IS TO SAY YA'LL DIDN'T TAKE THE
19 BODY AND PUT IT UP THERE IF YOU QUESTION HIS CREDIBILITY?
20 IF THEY ARE NOT GOING TO BELIEVE THIS MAN THAT HE SAID HE
21 FOUND HIM, THAT PHOTOGRAPH--I CAN SAY, WELL, YOU DRUG HIM UP
22 THERE AND TOOK A PICTURE OF HIM.

23 MR. MORTON: ALL RIGHT, SIR.

24 THE COURT: THE QUESTION IS WHAT DOES THE PHOTOGRAPH GO
25 TO SHOW OR PROVE. IT DOESN'T GO TO SHOW OR PROVE A THING IN

1 THIS CASE, DOES IT?

2 MR. MORTON: IT GOES TO SHOW OR PROVE THAT HE WAS NOT
3 DRAGGED OVER THERE.

4 THE COURT: HOW DOES IT DO THAT?

5 MR. MORTON: BECAUSE THERE'S BLOOD RIGHT HERE BY HIS
6 HEAD AND ON THE--

7 THE COURT: DIDN'T HE TESTIFY THAT WHEN HE FOUND THE
8 BODY THAT THERE WAS BLOOD LAYING OUT THERE?

9 MR. MORTON: YES, SIR.

10 THE COURT: NOW, HOW DOES THAT PICTURE--ONCE AGAIN,
11 THAT'S WHAT YOU WANT TO DO. YOU WANT TO SHOW THEM THE
12 PHOTOGRAPH AND SAY LOOK HERE, HERE'S BLOOD.

13 MR. MORTON: YES, SIR.

14 THE COURT: I UNDERSTAND. MOTION DENIED. WHAT ELSE?

15 MR. COLEMAN: THAT'S IT.

16 THE COURT: BRING THE JURY IN.

17 (THE JURY RETURNS TO THE JURY BOX AT 2:30 P.M.)

18 BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

19 THE COURT: LET THE RECORD SO REFLECT AND ALL PARTIES
20 ARE PRESENT. MR. COLEMAN, YOU MAY CONTINUE YOUR EXAMINATION.

21 JOHN C. CHRISTY, AFTER BEING PREVIOUSLY SWORN BY THE
22 CLERK, TESTIFIES AS FOLLOWS:

23 DIRECT EXAMINATION CONTINUED BY

24 MR. COLEMAN:

25 Q INVESTIGATOR CHRISTY, HOW MANY DIFFERENT TIMES DID YOU GO TO

1 THE SCENE?

2 A ON TWO OCCASIONS. THE NIGHT THE VICTIM WAS FOUND AND THE
3 MORNING AFTER.

4 Q OKAY. AND DID YOU TAKE PHOTOGRAPHS BOTH TIMES?

5 A YES.

6 Q OKAY. LET'S GO BACK TO THE TIRE TRACKS. WHY DID YOU TAKE
7 PHOTOGRAPHS?

8 A THE TIRE TRACKS WERE PHOTOGRAPHED BECAUSE THEY APPEARED TO
9 STOP IN VIEW OF THE BODY. AND THAT WAS THE REASON THEY WERE
10 PHOTOGRAPHED. THEY WERE PHOTOGRAPHED TO PRESERVE THEM.

11 Q OKAY. WHY DIDN'T YA'LL USE THE PLASTER IMPRINTS?

12 A BECAUSE OUR EXPERIENCE HAS BEEN WITH THE SOFT SANDY SOIL THAT
13 FOR IDENTIFICATION PURPOSES WE WERE UNABLE TO MAKE ANY
14 IDENTIFICATIONS BASED ON UNIQUE PHYSICAL CHARACTERISTICS OF
15 THE TREAD, SUCH AS BLEMISHES, A TEAR IN THE TREAD PATTERN OR
16 SOME UNUSUAL TYPE OF WEAR. THE SANDY SOIL WILL ACT SORT OF
17 LIKE A SPONGE AND GIVE AND RELEASE.

18 Q EXPLAIN TO THE JURY WHAT THE PLASTER IMPRINTS ARE.

19 A IT'S A CAST THAT IS TAKEN BY POURING PLASTER OF PARIS INTO
20 A MOLD THAT IS FITTED AROUND THE TRACK, WHETHER IT'S A SHOE
21 OR TIRE IMPRESSION. IT'S ALLOWED TO HARDEN. WHEN IT
22 HARDENS, IT GIVES AN IMPRINT OF THE TREAD PATTERN.

23 Q DID YOU ALSO TAKE PHOTOGRAPHS OF THE DEFENDANT'S CAR?

24 MR. SWERLING: MAY WE APPROACH THE SIDEBAR, YOUR HONOR?

25 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE

1 COURT REPORTER)

2 THE COURT: TO THE JURY ROOM.

3 (THE JURY LEAVES THE JURY BOX AT 2:44 P.M.)

4 THE COURT: THE JURY IS NOW OUTSIDE THE PRESENCE OF THE
5 COURT. FOR THE RECORD PURPOSES, THE WITNESS WAS PREPARING
6 TO IDENTIFY PHOTOGRAPHS THAT HE TOOK AND COUNSEL FOR THE
7 DEFENSE APPROACHED THE SIDEBAR WITH COUNSEL FOR THE STATE AND
8 SAID, YOUR HONOR, WE WANT AN IN CAMERA HEARING BEFORE THIS
9 EVIDENCE IS OFFERED BECAUSE IT IS THEIR CONTENTION, THE
10 DEFENSE, THAT THESE PHOTOGRAPHS WERE THE RESULT OF AN ILLEGAL
11 SEARCH AND SEIZURE WITHOUT A WARRANT. IT APPEARS FROM THE
12 STATEMENTS MADE BY THE GOVERNMENT, THAT BEING SOLICITOR
13 COLEMAN, THAT THE PHOTOGRAPHS WERE IN FACT TAKEN WHEN THE
14 VEHICLE OF THIS DEFENDANT WAS IN THE CUSTODY OF THE FEDERAL
15 GOVERNMENT, NOT PURSUANT TO A WARRANT OR ARREST BY THE STATE
16 OFFICIALS. SO, MR. SWERLING NOW REQUEST THE COURT CONDUCT
17 AN IN CAMERA HEARING AS TO ANY VIOLATION OF HIS 4TH AMENDMENT
18 RIGHTS TO BE FREE FROM ANY UNREASONABLE SEARCHES AND SEIZURES
19 OF HIS PERSON OR HIS PROPERTY, THE PROPERTY BEING THE
20 PHOTOGRAPHS BEING TAKEN OF VEHICLE. SO, THE JURY IS NOW OUT.
21 NOW, AS I UNDERSTAND THEN THIS DIALOGUE THAT YA'LL ARE ABLE
22 TO ENTER INTO A STIPULATION INSOFAR AS THIS IS CONCERNED AND
23 THAT IS--MR. COLEMAN, YOU SHOULD LISTEN INSTEAD OF TALKING.
24 YA'LL TELL ME IF THIS IS YOUR STIPULATION. THE STIPULATION
25 THAT THE VEHICLE SHOWN AND DESCRIBED IN THE PHOTOGRAPHS, AND

1 SPECIFICALLY THE TIRES ON THE VEHICLE, WERE PHOTOGRAPHS TAKEN
2 BY THIS WITNESS, AN OFFICER WITH THE RICHLAND COUNTY
3 SHERIFF'S DEPARTMENT AT THE TIME--TAKEN BY SOMEBODY ELSE?
4 A YOUR HONOR, THAT'S MY HAND HOLDING THE RULER. I WAS PRESENT
5 WHEN THEY WERE TAKEN.

6 THE COURT: ALL RIGHT. WHO WERE THEY TAKEN BY?
7 A LT. SULTON OF THE SHERIFF'S DEPARTMENT.

8 THE COURT: ALL RIGHT. RICHLAND COUNTY SHERIFF'S
9 DEPARTMENT?
10 A RICHLAND COUNTY SHERIFF'S DEPARTMENT.

11 THE COURT: PHOTOGRAPHS TAKEN BY THE RICHLAND COUNTY
12 SHERIFF'S DEPARTMENT. THIS WITNESS WAS PRESENT. OF THE
13 SUBJECT VEHICLE, THE DEFENDANT'S VEHICLE, WHICH WAS IN
14 CUSTODY OF THE UNITED STATES FEDERAL GOVERNMENT. IN FACT,
15 THE F.B.I. IT HAD BEEN SEIZED BY THEM PURSUANT TO SOME
16 FEDERAL CHARGE AND WAS IN THEIR CUSTODY, STORAGE OR WHATEVER.
17 THE DEFENSE CONTENDS THAT THERE WAS NO CONSENT AND THE
18 PHOTOGRAPHS WERE TAKEN, SO THE QUESTION IS IS THAT THE
19 CORRECT STIPULATION?

20 MR. SWERLING: YES, SIR, THAT'S A FAIR ASSESSMENT, YOUR
21 HONOR.

22 THE COURT: MR. COLEMAN?

23 MR. COLEMAN: YES, YOUR HONOR.

24 THE COURT: SO, THE ISSUE IS THEN WITH THAT STIPULATION
25 OF WHAT THE FACTS ARE IN THE CASE BY THE STATE AND DEFENSE

1 WHETHER OR NOT THAT WAS AN ILLEGAL SEARCH AND SEIZURE OF THE
2 DEFENDANT'S PROPERTY. I'LL BE HAPPY TO HEAR FROM YOU, MR.
3 SWERLING.

4 MR. SWERLING: YOUR HONOR, MIGHT I ASK THE WITNESS A
5 COUPLE OF QUESTIONS?

6 THE COURT: YES, SIR. I THOUGHT THE STIPULATION WOULD
7 RESOLVE IT BUT IF YOU WANT TO OFFER ANY TESTIMONY ON IT OR
8 MR. COLEMAN--ACTUALLY WHEN IT'S A WARRANTLESS SEARCH THE
9 GOVERNMENT, THE STATE HAS THE OBLIGATION TO GO FORWARD IN
10 PROVING THE EXCEPTIONS TO ANY REQUIREMENTS FOR A SEARCH
11 WARRANT OR THAT IT WAS A PROPER SEARCH. SEE, ONCE THERE'S
12 A SEARCH WARRANT ALL YOU HAVE TO DO IS PROVE THAT IT WAS A
13 SEARCH WARRANT ISSUED AND THEN THE DEFENSE HAS THE OBLIGATION
14 OF PROVING IT.

15 MR. COLEMAN: YOUR HONOR, FROM WHAT INVESTIGATOR AUSTIN
16 JUST TOLD ME THE DEFENDANT GAVE THE FEDERAL GOVERNMENT
17 CONSENT TO SEARCH HIS HOUSE AND HIS CAR.

18 THE COURT: WELL, IF YOU WANT TO PUT THAT TESTIMONY YOU,
19 YOU NEED TO TAKE THIS WITNESS DOWN FOR THE PURPOSE OF THIS
20 IN CAMERA HEARING UNLESS MR. SWERLING WILL CONSENT THAT
21 THAT'S WHAT MR. AUSTIN WOULD SAY FOR THE PURPOSE OF THIS
22 HEARING. LET'S START THIS WAY. DO YOU WANT TO ASK THIS
23 WITNESS ANY OTHER QUESTIONS ABOUT THAT ISSUE, WHETHER OR NOT
24 THE SEARCH WAS PROPERLY CONDUCTED OR THAT IT WAS A PROPER
25 SEARCH? IF NOT, THEN I'M GOING TO OFFER HIM TO MR. SWERLING

1 TO EXAMINE HIM. THEN YOU CAN PUT UP ANYBODY ELSE ON THIS
2 ISSUE.

3 MR. COLEMAN: YES, SIR.

4 Q (BY MR. COLEMAN) HAD YOU TALKED TO THE FEDERAL GOVERNMENT
5 ABOUT THIS CASE?

6 A PERSONALLY, NO, I HAD NOT.

7 Q BUT DID YOU HAVE KNOWLEDGE OF ANY CONSENT TO SEARCH THE CAR
8 OR TO TAKE THESE PHOTOGRAPHS?

9 A I DO NOT HAVE ANY KNOWLEDGE.

10 Q OKAY.

11 THE COURT: ANY QUESTIONS, MR. SWERLING?

12 MR. SWERLING: JUST A COUPLE OF QUESTIONS, YOUR HONOR.

13 THE COURT: ON THIS ISSUE NOW.

14 MR. SWERLING: YES, SIR.

15 CROSS EXAMINATION BY

16 MR. SWERLING:

17 Q MR. CHRISTY, WHAT DATE WERE THE PHOTOGRAPHS TAKEN?

18 A OF THE CAR?

19 Q YES.

20 A ON DECEMBER THE 28TH.

21 Q SO, THEY WOULD BE STATE'S EXHIBIT NUMBER 4 WHICH IS THE
22 WARRANT CHARGING MR. TILLMAN WITH MURDER IS DATED JANUARY
23 4TH, 1989. YOU TOOK PHOTOGRAPHS OF MR. TILLMAN'S CAR PRIOR
24 TO HIS EVEN BEING ARRESTED FOR THE MURDER?

25 A ON DECEMBER 28TH.

1 Q YOU TOOK IT ON DECEMBER 28TH. AND YOU ARE NOT AWARE OF HIM
2 GIVING YOU PERMISSION--HE DID NOT GIVE YOU PERMISSION TO
3 PHOTOGRAPH IS CAR OR MAKE ANY MEASUREMENTS OFF THE TIRES?

4 A NO, SIR.

5 Q AND WHERE WAS THAT CARRIED OUT?

6 A THIS WAS AT THE COMPOUND AT THE F.B.I.'S COLUMBIA OFFICE.

7 Q DID YOU HAVE A WARRANT?

8 A NO, SIR.

9 Q DID ANYBODY APPLY FOR A WARRANT?

10 A TO MY KNOWLEDGE, NO.

11 Q BASICALLY THE PHOTOGRAPHING AND THE MEASUREMENTS YOU TOOK
12 WERE DONE THEN WITHOUT A WARRANT?

13 A YES, WITHOUT A WARRANT.

14 Q OKAY. AND YOU ALSO MADE CERTAIN TIRE--YOU ACTUALLY DROVE THE
15 VEHICLE, DID YOU NOT? AND MADE SOME TIRE TRACK MARKS ON THAT
16 THEY CALL INK THREAD MARKS?

17 A YES, I DID.

18 Q SO, NOT ONLY WAS THERE PHOTOGRAPHS TAKEN, BUT THERE WAS
19 ACTUALLY ENTRY OF THE VEHICLE AND DRIVING THE VEHICLE OVER
20 THESE INK CARBONS?

21 A THAT'S CORRECT.

22 Q FOR TIRE COMPARISON PURPOSES.

23 MR. SWERLING: I THINK THAT'S ALL THE QUESTIONS I WOULD
24 HAVE.

25 THE COURT: ANY OTHER QUESTIONS OF THIS WITNESS ON THIS

1 ISSUE?

2 MR. COLEMAN: NO, SIR, YOUR HONOR. NO QUESTIONS.

3 THE COURT: ALL RIGHT. DO YOU WANT TO OFFER ANYONE ELSE
4 ON THIS ISSUE?

5 MR. COLEMAN: NOT ON THAT PARTICULAR ISSUE, NO, SIR.

6 THE COURT: WHAT ABOUT THE SEARCH?

7 MR. COLEMAN: RIGHT. NO QUESTIONS.

8 THE COURT: NO, YOU'VE GOT TO OFFER WITNESSES. DO YOU
9 HAVE ANY ONE ELSE?

10 MR. COLEMAN: OH, YES.

11 THE COURT: WELL, HAVE THIS WITNESS STEP DOWN AND CALL
12 WHATEVER WITNESS YOU WANT.

13 MR. COLEMAN: WELL, YOUR HONOR, WE'RE GOING TO HAVE TO
14 CALL HIM. HE'S NOT HERE. HE'S BEEN HERE ALL WEEK. WE
15 THOUGHT HIS TESTIMONY WAS THROUGH, HE'S NOT HERE.

16 MR. SWERLING: YOUR HONOR, WE WOULD STIPULATE FOR THE
17 RECORD MR. TILLMAN CONSENTED FOR THE F.B.I. TO SEARCH HIS
18 VEHICLE AND HIS HOME.

19 THE COURT: CONSENT TO SEARCH IT WHEN IT WAS AT HIS
20 HOME?

21 MR. SWERLING: THE VEHICLE WAS AT HIS HOME. HE
22 CONSENTED TO A SEARCH OF THE VEHICLE TO THE F.B.I. INCIDENT
23 TO HIS ARREST FOR BANK ROBBERY.

24 THE COURT: THIS DIDN'T HAPPEN AT HIS HOME. AS I
25 UNDERSTAND IT, THE VEHICLE AS AT--THE F.B.I. ACTUALLY TOOK

1 POSSESSION OF HIS VEHICLE.

2 MR. SWERLING: FINALLY THEY IMPOUNDED THE VEHICLE.

3 THE COURT: THEY SEIZED IT?

4 MR. SWERLING: YES, SIR. SO, I WOULD STIPULATE THAT HE
5 GAVE THEM PERMISSION INCIDENT TO THE BANK ROBBERY FOR WHICH
6 HE WAS CHARGED TO SEARCH HIS CAR.

7 THE COURT: ALL RIGHT. DO YOU ACCEPT THAT STIPULATION?

8 MR. COLEMAN: THAT HE CONSENTED TO SEARCH HIS CAR AT THE
9 HOUSE?

10 THE COURT: BY THE FEDERAL GOVERNMENT.

11 MR. SWERLING: BY THE FEDERAL GOVERNMENT FOR A BANK
12 ROBBERY CHARGE. HE HAD NOT BEEN ACCUSED OF MURDER AT THAT
13 TIME.

14 MR. COLEMAN: YES, SIR.

15 THE COURT: ALL RIGHT. WHAT ELSE DO YOU WANT TO OFFER
16 ON THE ISSUE?

17 MR. COLEMAN: NOTHING AT THIS TIME, YOUR HONOR.

18 THE COURT: WHAT DO YOU MEAN NOTHING AT THIS TIME? THIS
19 IS THE TIME, MR. COLEMAN. WE ARE TRYING THE CASE. I'VE GOT
20 TO DECIDE THE ISSUE. YOU SAY NOTHING AT THIS TIME. WHEN ARE
21 YOU GOING TO OFFER IT? I MEAN AREN'T WE TRYING THE CASE?

22 MR. COLEMAN: YES, SIR.

23 THE COURT: WELL, IF YOU ARE GOING TO PRESENT ME
24 ANYTHING, DON'T YOU HAVE TO PRESENT IT TO ME NOW?

25 MR. MORTON: YOUR HONOR, THE DILEMMA WE ARE IN IF WE ARE

1 GOING TO CALL SOMEBODY FROM THE F.B.I. WE HAVE TO CALL THE
2 F.B.I. AND HAVE THEM COME ON OVER HERE.

3 THE COURT: WELL, JUST TELL ME THAT. ALL I WANT TO KNOW
4 IS WHAT ELSE HAVE YOU GOT TO OFFER. SOMEBODY OUGHT TO BE
5 CALLING THEM.

6 MR. SWERLING: I'M STIPULATING THAT THE F.B.I. HAD
7 PERMISSION TO SEARCH.

8 MR. MORTON: YOUR HONOR, OUR ARGUMENT WILL BE ON THIS
9 ISSUE THAT, NUMBER ONE, THAT MR. TILLMAN DOES NOT HAVE ANY
10 STANDING TO ARGUE ABOUT THIS CAR BECAUSE IT'S NOT HIS CAR.

11 THE COURT: WELL, PROVE THAT.

12 MR. SWERLING: HE WAS RENTING THE VEHICLE.

13 MR. MORTON: AND NUMBER TWO, YOUR HONOR, THAT THIS IS
14 NOT AN UNREASONABLE SEARCH, THIS IS NOT A VIOLATION OF THE
15 4TH AMENDMENT TO PHOTOGRAPH HIS CAR THAT WAS IN THE FEDERAL
16 COMPOUND.

17 THE COURT: WELL, MR. MORTON, I'M GOING TO LET YOU ARGUE
18 ALL YOU WANT BUT THE FIRST QUESTION ON THIS IS TO PUT UP WHAT
19 EVIDENCE YOU WANT ME TO CONSIDER, ALL RIGHT?

20 MR. MORTON: ALL RIGHT, SIR.

21 THE COURT: AND ALL I WANT TO KNOW IS WHAT EVIDENCE DO
22 YOU WANT ME TO CONSIDER. YOU'VE GOT TO PUT IT IN BEFORE I
23 CONSIDER IT AND CAN HEAR YOUR ARGUMENT. THAT'S A SIMPLE
24 PREMISE OF LAW.

25 MR. MORTON: YES, SIR.

1 THE COURT: IF YOU CAN HAVE HIM STIPULATE TO CERTAIN
2 THINGS THAT YA'LL CAN AGREE TO WITHOUT PUTTING WITNESSES UP,
3 THEN FINE. A STIPULATION IS THE SAME AS THE PERSON BEING
4 HERE.

5 MR. SWERLING: I'M STIPULATING THAT, JUDGE. THE F.B.I.
6 HAD THE AUTHORITY. I'M NOT MAKING THEM BRING IN SOMEBODY FOR
7 THAT PURPOSE.

8 THE COURT: WILL YOU ALSO STIPULATE THAT IT WAS A RENTAL
9 CAR?

10 MR. SWERLING: YES, SIR. THAT MR. TILLMAN HAD RENTED
11 IT THROUGH JANUARY 10TH.

12 THE COURT: ALL RIGHT. YA'LL AGREE THOSE WERE THE
13 FACTS, THAT IT WAS A RENTAL CAR RENTED TO THIS DEFENDANT.
14 I DON'T KNOW. SEE, YA'LL HAVE GOT TO MAKE THE DECISION, I
15 DON'T. I HAVE TO BASE MY DECISION BASED ON WHAT IS PRESENTED
16 TO ME. AND IF YOU DON'T PRESENT IT TO ME I CAN'T CONSIDER
17 IT.

18 MR. COLEMAN: WE CONSENT TO THE FACT THAT IT WAS A
19 RENTAL CAR AND AT THE TIME THEY WENT THERE IT WAS A RENTAL
20 CAR AND TOOK THOSE PHOTOGRAPHS.

21 THE COURT: BUT IT WAS RENTED TO HIM.

22 MR. SWERLING: TO RON TILLMAN.

23 THE COURT: YA'LL AGREE WITH THAT STIPULATION?

24 MR. SWERLING: YOUR HONOR, I WILL STIPULATE THAT IT WAS
25 MR. TILLMAN'S CAR. HE HAD HAD IT FOR FOUR MONTHS AND HE HAD

1 RENTED IT THROUGH JANUARY 10TH.

2 THE COURT: WELL, THEIR ARGUMENT I THINK WAS--AND IT'S
3 A GOOD POSITION--IF SOMEONE DOESN'T HAVE AN OWNERSHIP
4 INTEREST IN IT OR THE RIGHT TO IT, THEN THEY HAVE NO RIGHT
5 TO OBJECT. THEY HAVE NO STANDING. IN OTHER WORDS, IF IT
6 WASN'T HIS VEHICLE AND HE HAD NO POSSESSORY INTEREST IN IT,
7 THEN HE CANNOT RAISE THAT STANDING, HE DOES NOT HAVE THE
8 STANDING TO OBJECT. OF COURSE, WHEN YOU SAY RENTAL THAT'S
9 A DIFFERENT QUESTION. WE'RE TALKING ABOUT OWNERSHIP INTEREST
10 THEN AND WHETHER OR NOT THAT ARISES TO THE LEVEL TO CREATE
11 STANDING ON HIS PART. YOU SAY HE OWNS IT.

12 MR. SWERLING: NO. YES, SIR. WHEN YOU SAY--LET ME
13 STATE MY POSITION CLEARLY. HE HAD BEEN RENTING THE VEHICLE
14 FOR FOUR MONTHS FROM BUDGET RENT-A-CAR. HE HAD MADE PAYMENTS
15 UP THROUGH JANUARY 10TH, THAT THE CAR WAS HIS DURING THAT
16 PERIOD OF TIME. I EQUATE THAT UNDER THE LAW WITH EXPECTATION
17 OF PRIVACY AND OWNERSHIP, POSSESSORY INTEREST IN THE VEHICLE
18 AT LEAST DURING THE TIME THAT HE HAS IT IN HIS CARE, CUSTODY
19 AND CONTROL AND WHILE HE IS PAYING RENT ON IT. I MEAN IT'S
20 TANTAMOUNT TO ANY OTHER RENTAL, RENTING SOMETHING. NOW, HE
21 GAVE SPECIFIC CONSENT TO THE F.B.I. FOR AN ARREST THAT AROSE
22 ON DECEMBER 28TH TO SEARCH THE VEHICLE FOR A BANK ROBBERY
23 CHARGE. RICHLAND COUNTY SHERIFF'S DEPARTMENT GOES OUT BEFORE
24 HE'S EVEN ARRESTED FOR MURDER AND DURING AN INVESTIGATORY
25 PROCESS TAKES PHOTOGRAPHS OF HIS CAR, DRIVES HIS CAR, TAKES

1 IMPRINTS OF HIS CAR, MEASURES THE TIRE.

2 THE COURT: YOU SAY DRIVE THE CAR. WHO DROVE IT?

3 MR. SWERLING: HE JUST SAID HE DID.

4 THE COURT: YA'LL DROVE THE CAR, TOO?

5 A YES, SIR.

6 MR. SWERLING: I THINK THAT'S OUTSIDE--I THINK THAT
7 WHILE THE FEDERAL GOVERNMENT MIGHT HAVE HAD A RIGHT TO
8 EXAMINE THE CAR FOR THE PURPOSES INCIDENT TO THE BANK ROBBERY
9 THAT THE STATE HAS MADE NO SHOWING THAT THEY HAD PROBABLE
10 CAUSE TO SEARCH THE CAR OR SEIZE THE CAR, THAT THEY HAD NO
11 WARRANT, THAT THERE WERE NO EXIGENT CIRCUMSTANCES AND THAT
12 HE HAD NOT EVEN BEEN CHARGED. THEY NEVER EVEN ATTEMPTED TO
13 GET CONSENT FROM MR. TILLMAN.

14 MR. COLEMAN: YOUR HONOR, WE ARE INTRODUCING THE
15 PHOTOGRAPHS OF THE TIRE, OF THE VARIOUS TIRES. HE DIDN'T
16 HAVE TO GET INSIDE THE CAR, TO DRIVE THE CAR, TO TAKE THOSE
17 PHOTOGRAPHS.

18 THE COURT: SAY THAT AGAIN.

19 MR. COLEMAN: HE WAS THERE WHEN THE PHOTOGRAPHS WERE
20 TAKEN OF THE TIRES.

21 THE COURT: THAT'S NOT THE PROBLEM. WHETHER OR NOT HE
22 TOOK THEM, HE AGREES HE TOOK THEM. THE QUESTION IS WHETHER
23 OR NOT HE HAD A RIGHT TO TAKE THEM.

24 MR. COLEMAN: I REALIZE THAT, YOUR HONOR, BUT MR.
25 SWERLING MADE THE POINT SAYING HE GOT IN THE CAR AND DROVE

1 THE CAR. I DON'T THINK THAT'S RELEVANT. I MEAN WE ARE ONLY
2 TRYING TO INTRODUCE THE PHOTOGRAPHS OF THE TIRES THEMSELVES.
3 HE DIDN'T HAVE TO GET INTO THE CAR TO TAKE THE PHOTOGRAPHS
4 OF THE WHEELS.

5 THE COURT: WELL, IT'S NOT RELEVANT ON THE ISSUE EXCEPT
6 IF YOU ACTUALLY TAKES SOMEBODY'S PROPERTY IT'S FURTHER
7 INDICATION OF OBTAINING OR USING A PERSON'S PROPERTY
8 ILLEGALLY OR WRONGFULLY. JUST BECAUSE YOU ARE LAW
9 ENFORCEMENT DOESN'T MEAN THAT YOU'VE GOT A RIGHT TO TAKE
10 SOMEBODY'S PROPERTY OR USE IT. YOU'VE GOT TO HAVE THE RIGHT
11 TO DO THAT. SOME REASON.

12 MR. COLEMAN: YOUR HONOR, NOT ONLY THAT, I MEAN THE
13 DEFENDANT WAS ARRESTED BY THE F.B.I.

14 THE COURT: THAT STILL DOESN'T GIVE NECESSARILY A
15 DIFFERENT LAW ENFORCEMENT AGENCY UNLESS THE AGENTS ARE GOING
16 TO COME IN AND SAY THEY TURNED IT OVER TO THEM AND THEN THE
17 ARGUMENT IS CAN YOU HAVE TRANSFERRED CONSENT. HE GAVE IT TO--
18 -I DON'T THINK CONSENT IS AN ISSUE. I DON'T THINK CONSENT
19 IS AN ISSUE IN THIS CASE. THE QUESTION IS WHETHER OR NOT ONE
20 PHOTOGRAPHING SOMETHING IS A SEIZURE OF IT. IS THAT IN AND
21 OF ITSELF A SEIZURE UNDER THE 4TH AMENDMENT?

22 MR. SWERLING: AND TAKING MEASUREMENTS.

23 THE COURT: WELL, YOU KNOW, THEY DO IT ON THE OUTSIDE.
24 WHERE IS THE INTRUSION? THE QUESTION I SEE, MR. SWERLING,
25 IS WHERE IS THE INTRUSION. THE 4TH AMENDMENT PROTECTS YOU

1 AGAINST UNREASONABLE AND UNLAWFUL INTRUSIONS. YOU KNOW,
2 THERE IS NO ENTRY OF THE VEHICLE FOR THE PURPOSE OF DOING
3 THIS. IT WAS AN OUTSIDE PHOTOGRAPH. YOU KNOW, MUCH LIKE HIS
4 CAR WAS ON THE SIDE OF THE ROAD. IT'S THERE. TAKE A PICTURE
5 OF IT, YOU KNOW. THERE'S NO EXPECTATION OF PRIVACY IN THAT
6 REGARD. NOW, --

7 MR. SWERLING: I THINK WHEN YOU GO BEYOND THAT AND YOU
8 TAKE MEASUREMENTS OF IT.

9 THE COURT: ON THE OUTSIDE. YOU GO ON THE INSIDE YOU'VE
10 GOT A DIFFERENT QUESTION.

11 MR. SWERLING: BUT THEY DID THAT, TOO, WHICH I THINK
12 GOES TO THEIR INTENT THAT IT VIOLATED THE 4TH AMENDMENT.

13 THE COURT: WELL, IT MAY VIOLATE TO THE EXTENT OF WHAT
14 ELSE THEY DID ON THE INSIDE BUT FOR THE PURPOSE ON THE
15 OUTSIDE THE QUESTION I WOULD HAVE, AND IF YOU'VE GOT SOME
16 CASE LAW SHOW IT TO ME, I'M READING IT AS FAST AS I CAN UP
17 HERE RIGHT NOW MY OWN STUFF. MY QUESTION WOULD BE THE
18 EXPECTATION OF PRIVACY AND THE INTRUSION. WHERE IS THE
19 INTRUSION? IS THE PHOTOGRAPHING OF AN ITEM THAT'S OUT THERE
20 FOR THE PUBLIC TO SEE, IS NOT HOUSED IN ANYTHING, NO
21 TESTIMONY TO THAT, NO DIFFERENT THAN IT BEING OUT ON THE
22 HIGHWAY OR ON THE SIDE OF THE STREET AND SOMEBODY COME ALONG
23 AND TAKE A PHOTOGRAPH OF IT. THEY CAN DO YOUR CAR THAT WAY,
24 MR. SWERLING. IF YOU ARE PARKED OUT ON THE STREET, THEY WALK
25 UP AND TAKE A PHOTOGRAPH OF IT, TAKE UNDERNEATH IT. AS LONG

1 A THEY DON'T GO INSIDE OF IT AND IN SOME WAY INTRUDE UPON
2 WHAT WOULD HAVE AN EXPECTATION OF PRIVACY.

3 MR. SWERLING: YOUR HONOR, IN THIS CASE THOUGH I THINK
4 THEY WENT BEYOND JUST PHOTOGRAPHING THE CAR ON THE STREET.
5 THEY WENT OUT, THEY ACTUALLY TOOK MEASUREMENTS OF IT AND I
6 THINK THAT THAT'S AN INTRUSION. I THINK THAT'S A SEIZURE
7 UNDER THE LAW. I SUBMIT IT'S A SEARCH AND A SEIZURE.
8 CLEARLY THEY WEREN'T GOING OUT THERE JUST TO PHOTOGRAPH IT.
9 THEY WANTED TO TAKE MEASUREMENTS. THEY WANTED TO HAVE IT
10 PHOTOGRAPHED TO MEMORIALIZE THE TIRE. IT WAS NOT DONE ON THE
11 STREET, IT WAS DONE AFTER THE CAR HAD BEEN IMPOUNDED BY THE
12 F.B.I.

13 THE COURT: BUT IT WAS NOT IMPOUNDED AT HIS DIRECTION
14 OR HIS REQUEST. HE HAD NO EXPECTATION OF PRIVACY AT THE
15 TIME. AND, YOU KNOW, THE FACT THAT THEY DID OUTSIDE
16 MEASUREMENTS--AND ONCE AGAIN I AGREE WITH YOU ONCE THEY START
17 TO INTRUDE IN SOME FASHION WHERE HE WOULD HAVE AN EXPECTATION
18 OF PRIVACY THEN THE 4TH AMENDMENT RIGHTS BECOME TO ATTACH
19 MORE STRONGLY. THEY EITHER ATTACH OR DON'T ATTACH. I DON'T
20 MEAN TO SAY THAT BUT MY QUESTION IS WHETHER OR NOT THEY
21 ATTACH BY THE MERE PHOTOGRAPHING FROM THE OUTSIDE. CLEARLY
22 IF THEY GO INSIDE OF THE VEHICLE IN SOME WAY TO TRY TO
23 PERFORM SOME TYPE OF TEST, SCRAPING OFF OF IT, THERE'S AN
24 INTRUSION OF HIS EXPECTATION OF PRIVACY. NOW COME THE
25 QUESTION DID THEY HAVE THE RIGHT TO DO IT WITHOUT A WARRANT

1 OR DID THEY HAVE A WARRANT. CLEARLY THEY DIDN'T HAVE A
2 WARRANT AND CLEARLY THEY DIDN'T HAVE HIS CONSENT. THERE'S
3 NO TESTIMONY TO THAT UNLESS YOU WOULD ARGUE THAT BY HIS
4 GIVING CONSENT TO THE FEDERAL GOVERNMENT IN THE BANK ROBBERY
5 CASE GAVE THEM THE RIGHT TO ALLOW SOMEONE ELSE TO PERFORM
6 SEARCHES ON IT.

7 MR. SWERLING: YOUR HONOR, I UNDERSTAND YOUR POSITION.
8 I FRANKLY DO NOT THINK THAT THE RICHLAND COUNTY SHERIFF'S
9 DEPARTMENT WHILE INVESTIGATING A MURDER HAD A RIGHT TO GO OUT
10 AND PHOTOGRAPH THE CAR AND TAKE MEASUREMENTS OF THE TIRE AS
11 AN INVESTIGATORY TOOL. I THINK THE 4TH AMENDMENT PROHIBITS
12 THEM FROM DOING THAT.

13 THE COURT: DO YOU HAVE ANY CASES ON THAT?

14 MR. SWERLING: NO, SIR. I DO NOT HAVE ANY CASES ON IT.

15 THE COURT: IT'S NOT A STRICT CAROL DOCTRINE ISSUE
16 BECAUSE THEY DON'T ACTUALLY SEIZE THE VEHICLE ITSELF AND IT'S
17 NOT A--

18 MR. SWERLING: THERE'S NO EXIGENT CIRCUMSTANCES.

19 THE COURT: THAT'S RIGHT. THERE'S NO EXIGENT
20 CIRCUMSTANCES.

21 MR. SWERLING: FRANKLY, YOUR HONOR, THE THOUGHT CAME TO
22 ME NOT TOO LONG AGO, ACTUALLY THIS MORNING, THAT I THOUGHT
23 THAT THEY WERE GOING TO HAVE A 4TH AMENDMENT PROBLEM AND IT
24 WAS JUST COMING INTO MY HEAD THIS MORNING AS THIS THING HAS
25 DEVELOPED.

1 MR. MORTON: YOUR HONOR, THE CAR WAS ALREADY SEIZED BY
2 THE FEDERAL GOVERNMENT. HE HAD NO STANDING TO THE CAR AT
3 THAT POINT BECAUSE IT WAS THE POSSESSION OF THE FEDERAL
4 GOVERNMENT. WHETHER OR NOT IT'S AN EXIGENT CIRCUMSTANCE OR
5 NOT, YOUR HONOR, I DON'T THINK WE NEED TO GET TO BECAUSE--

6 THE COURT: WELL, WHAT YOU SAY MAY BE CORRECT, TOO, BUT
7 THERE'S BEEN NO CONSENT STATEMENT HERE THAT SAID THAT THE
8 FEDERAL GOVERNMENT GAVE YA'LL PERMISSION TO DO THAT.

9 MR. MORTON: ALL RIGHT, SIR. THEN I GUESS WE HAVE TO
10 OFFER THE EVIDENCE THAT THEY GAVE THE STATE PERMISSION UNLESS
11 MR. SWERLING WANTS TO CONSENT TO THAT.

12 THE COURT: THE COURT IS LIMITED BY WHAT IS PRESENTED
13 TO IT TO DETERMINE AN ISSUE. IF YOU DON'T PRESENT IT TO ME,
14 I CANNOT CONSIDER IT.

15 MR. MORTON: YES, SIR.

16 THE COURT: THE REVIEWING COURTS WON'T ALLOW ME TO DO
17 THAT.

18 MR. MORTON: YES, SIR, I UNDERSTAND THAT. I WAS ASKING
19 MR. SWERLING WILL HE CONSENT TO THE FACT--WILL HE STIPULATE
20 THAT THE FEDERAL GOVERNMENT GAVE THE RICHLAND COUNTY
21 SHERIFF'S DEPARTMENT PERMISSION TO MEASURE AND PHOTOGRAPH
22 THOSE TIRES.

23 MR. SWERLING: I DON'T KNOW THAT TO BE TRUE.

24 MR. MORTON: SO, YOU WILL NOT STIPULATE?

25 MR. SWERLING: I DON'T KNOW THAT TO BE TRUE.

1 MR. MORTON: SO, YOU WILL NOT STIPULATE?

2 MR. SWERLING: NO, BECAUSE I DON'T KNOW THAT. THAT'S
3 THE REASON WHY. I MEAN I WANT THE RECORD TO REFLECT WHY I
4 WON'T BECAUSE I DON'T KNOW THAT.

5 MR. MORTON: THEN, YOUR HONOR, WE'LL HAVE A WITNESS HERE
6 IN JUST A FEW MINUTES.

7 THE COURT: ALL RIGHT. YOU WANT TO PUT UP WHICHEVER
8 WITNESS THE FEDERAL GOVERNMENT SUPPOSEDLY GAVE THE CONSENT
9 TO DO IT?

10 MR. MORTON: YES, SIR.

11 THE COURT: ALL RIGHT. WHO IS THAT?

12 MR. MORTON: WE HAD TO CALL HIM, YOUR HONOR. WE DIDN'T
13 ANTICIPATE THIS ISSUE.

14 THE COURT: I'M TALKING ABOUT--

15 MR. MORTON: RANDY MONDOR.

16 THE COURT: HE'S THE FEDERAL GOVERNMENT WITNESS?

17 MR. MORTON: YES, SIR.

18 THE COURT: WHO IS THE STATE WITNESS, RICHLAND COUNTY,
19 WHO GOT PERMISSION FROM RANDY MONDOR TO DO THAT?

20 MR. MORTON: MR. CHRISTY.

21 MR. SWERLING: HE SAID HE DIDN'T.

22 A I DON'T UNDERSTAND. I'M SORRY.

23 MR. MORTON: CAN I ASK HIM?

24 THE COURT: SURE. ASK HIM.

25 DIRECT EXAMINATION BY

1 MR. MORTON:

2 Q DID YOU GO PHOTOGRAPH THESE TIRES?

3 A YES, I DID PHOTOGRAPH THE TIRES.

4 Q WHO GAVE YOU PERMISSION TO PHOTOGRAPH THESE TIRES?

5 A WE MET WITH RANDY MONDOR AT THE F.B.I. OFFICES. WE WERE
6 DIRECTED TO DO SO BY CAPTAIN TEMPLE OF THE SHERIFF'S
7 DEPARTMENT TO MEET RANDY MONDOR IN REFERENCE TO THE CAR.

8 Q OKAY. AFTER YOU MET WITH RANDY MONDOR OF THE F.B.I., HE TOOK
9 YOU DOWN TO WHERE THE CAR WAS?

10 A THAT'S CORRECT.

11 Q ALL RIGHT, SIR.

12 MR. MORTON: YOUR HONOR, WE HAVE BEEN IN CONTACT WITH
13 LISA MISICKA WHO WAS HERE YESTERDAY. MR. MONDOR--WE ARE
14 STILL TRYING TO GET IN TOUCH WITH. HE IS SUPPOSED TO BE
15 CALLING US BACK. AS SOON AS HE DOES, WE'LL GET IN TOUCH WITH
16 HIM.

17 THE COURT: WELL, GENTLEMEN, WE WILL HAVE TO WAIT TO
18 RESOLVE THIS ISSUE.

19 MR. COLEMAN: I THINK LISA MISICKA IS ON THE WAY, YOUR
20 HONOR.

21 THE COURT: I CAN'T CONSIDER THE QUESTION OF WHETHER OR
22 NOT CONSENT WAS NECESSARY, WHETHER OR NOT HE GAVE CONSENT.
23 I CAN'T RULE UPON THAT BECAUSE I DON'T HAVE THAT UNTIL THAT
24 HAPPENS.

25 MR. COLEMAN: YOUR HONOR, HE STATED HE MET WITH RANDY

1 MONDOR AT THE F.B.I. BUILDING. WHETHER OR NOT IT WAS IMPLIED
2 OR EXPRESSED--I MEAN CLEARLY IT WAS IMPLIED THAT HE HAD
3 PERMISSION FROM THE F.B.I.

4 THE COURT: LET ME TELL YOU SOMETHING, MR. COLEMAN, REAL
5 QUICK. ON THESE TYPE ISSUES YOU DON'T WANT ANY QUESTIONS
6 ABOUT THEM. YOU WANT THEM ON THE RECORD EITHER THEY DID OR
7 DIDN'T. REVIEWING COURTS DON'T LIKE THAT KIND OF STUFF.

8 MR. COLEMAN: YES, SIR.

9 THE COURT: ALL RIGHT, GENTLEMEN, THERE IS A LITTLE BIT
10 OF CASE LAW KIND OF CROSS OVER TYPE STUFF. THIS IS OUT OF
11 A LOUISIANA CASE BUT THE PRINCIPLE IS THE SAME. IT IN
12 ESSENCE PROVIDES THAT IF THE OBSERVATIONS ARE MADE FROM A
13 POSITION TO WHICH THE OFFICER HAS EXPRESSED IT IMPLICITLY OR
14 IMPLICITLY BEEN INVITED INTRUSION THEN WOULD NOT BE UNLAWFUL
15 BECAUSE THERE IS NO INTRUSION. THAT'S IN A CASE WHERE
16 OFFICERS VIEWED THE OUTSIDE. IT'S KIND OF LIKE A PLAIN VIEW
17 EXCEPTION SITUATION. YOU KNOW, MERE OBSERVATION--THIS IS
18 FROM AM JUR UNDER SEARCH AND SEIZURES--A VEHICLE'S EXTERIOR
19 AND MUCH OF ITS INTERIOR WITHIN THE PLAIN VIEW OF THE CASUAL
20 OR PURPOSEFUL ONLOOKER--IN OTHER WORDS, YOU CAN INTEND TO
21 LOOK WITHOUT, YOU KNOW, IT VIOLATING ANY 4TH AMENDMENT RIGHTS
22 AND THUS ARE NOT PROTECTED BY THE 4TH AMENDMENT FROM
23 SEARCHING EYES. SO, WHERE THE OFFICERS APPROACH AN
24 AUTOMOBILE TO MAKE AN ARREST OBSERVE ITEMS IN PLAIN VIEW,
25 SUCH AS IN THE PASSENGER COMPARTMENT NO SEARCH OCCURRED.

1 SEE, THIS IS LOOKING INTO THE CAR. THIS IS ON THE OUTSIDE.

2 MR. SWERLING: YOUR HONOR, WHAT I WOULD DISTINGUISH
3 THOSE CASES FROM, THE OPEN FIELD DOCTRINE AND PLAIN VIEW, IS
4 THE DIFFERENCE HERE IS IF THE OFFICERS HAD LOOKED AT THE CAR
5 AND IN PLAIN VIEW COULD SEE SOME CONTRABAND IN THE CAR OR
6 COULD SEE SOMETHING ON THE BUMPER OF THE CAR THEN THEY STILL
7 HAVE AN OBLIGATION--NUMBER ONE, THERE WAS NO EXIGENT
8 CIRCUMSTANCES HERE.

9 THE COURT: WELL, THE QUESTION IS WHETHER OR NOT THEY
10 HAD THE RIGHT TO BE PRESENT WHERE THEY WERE. THEY DID HAVE
11 THE RIGHT IF THE FEDERAL GOVERNMENT INVITED THEM THERE AND
12 TOOK THEM OUT AND SHOWED THEM. NOW, THEY MAY NOT HAVE HAD
13 THE RIGHT NECESSARILY TO HAVE GONE INTO THE VEHICLE
14 THEMSELVES. PROBABLY THE FEDERAL GOVERNMENT DID. BUT IF THE
15 F.B.I. AGENT COMES IN AND SAYS, YES, I TOOK THEM OUT THERE
16 AND SO THEY HAD A RIGHT TO BE AT THE LOCATION. THEY WEREN'T
17 WHERE THEY COULD NOT BE. AND ALL THEY DO IS TAKE PHOTOGRAPHS
18 OF THE EXTERIOR AND OF THE CAR OUTSIDE, THE TIRE, SEE,
19 THERE'S NO INTRUSION AND THERE'S NO EXPECTATION OF PRIVACY.

20 MR. SWERLING: WELL, YOUR HONOR, I THINK YOU HAVE TO
21 DISTINGUISH IT BETWEEN A SEARCH AND A SEIZURE. THE 4TH
22 AMENDMENT PROHIBITS NOT ONLY SEARCHES BUT SEIZURES. I THINK
23 TAKING A PHOTOGRAPH OF THE CAR WHILE IT MAY NOT CONSTITUTE
24 A SEARCH WOULD CONSTITUTE A SEIZURE BECAUSE THEY ARE SEIZING
25 EVIDENCE THAT THEY NOW INTEND TO USE AT THE TRIAL OF THIS

1 CASE. I MEAN CLEARLY THE PURPOSE FOR TAKING THE PICTURE WAS
2 TO SEIZE THE EVIDENCE AND TO MAKE A COMPARISON. SO, I MEAN
3 I WOULD ARGUE IT'S NOT JUST WHETHER THERE WAS A SEARCH BUT
4 WHETHER OR NOT THERE WAS A SEIZURE, TOO.

5 THE COURT: THE MERE TAKING OF A PHOTOGRAPH.

6 MR. SWERLING: AND NOW SEEKING TO USE IT IN EVIDENCE FOR
7 TESTING AND ANALYSIS PURPOSES. I MEAN I THINK THE CAR WAS
8 THERE, IT WAS IN THE F.B.I.'S CUSTODY AND CONTROL. THE
9 RICHLAND COUNTY SHERIFF'S DEPARTMENT, THEY WERE INVESTIGATING
10 A MURDER FOR WHICH THEY HAD NOT YET CHARGED MR. TILLMAN AND
11 DID NOT CHARGE HIM UNTIL JANUARY 4TH, HAD AN OBLIGATION TO
12 SECURE A WARRANT. THE CAR WASN'T GOING ANYWHERE.

13 THE COURT: WELL, THEY DIDN'T REALLY SEARCH IT. THEY
14 DID AN OUTSIDE--

15 MR. SWERLING: OR SEIZED IT. OR SEIZED PHOTOGRAPHS OF
16 IT.

17 THE COURT: YOU SAY THE PHOTOGRAPHING IS THE SEIZURE.
18 YOU MAY BE CORRECT.

19 MR. SWERLING: I THINK IT CAN BE CONSTRUED AS A SEIZURE.
20 IF NOT A SEARCH, IT COULD BE CONSTRUED AS A SEIZURE BECAUSE--

21 -
22 THE COURT: WHY WOULDN'T THE EYES PHOTOGRAPHING A
23 WITNESS COMING IN AND SAYING I SAW IT, I CAN REMEMBER IT AND
24 THERE IT IS, I'M TESTIFYING TO IT BECAUSE THAT'S ALL A
25 PHOTOGRAPH IS IS A PHOTOGRAPH RECOLLECTION?

1 MR. SWERLING: WELL, I THINK MAYBE--I'D PROBABLY NOT
2 HAVE MUCH OF AN ARGUMENT IF SOMEONE JUST CAME IN AND SAID I
3 SAW THE TIRE. BUT WHAT THEY DID IS THEY SEIZED EVIDENCE BY
4 TAKING A PHOTOGRAPH OF IT. I MEAN IF HE CAME IN AND SAID
5 THIS IS THE TIRE I'VE DESCRIBED AND THIS IS WHAT I SAW, YOU
6 KNOW, HE PROBABLY HAD A RIGHT TO BE WHERE HE COULD AND HE
7 COULD LOOK AT THE CAR JUST AS IF SOMEONE WAS STANDING IN THE
8 STREET OUTSIDE THE COURTHOUSE. I THINK BY TAKING THE
9 PHOTOGRAPH AND TRYING TO USE IT AS EVIDENCE IN THE CASE
10 AMOUNTS--IS TANTAMOUNT TO A SEIZURE. DON'T FORGET, THEY
11 DIDN'T EVEN HAVE THIS FELLOW CHARGED WITH MURDER YET. THEY
12 WERE INVESTIGATING THIS CASE.

13 THE COURT: I KNOW.

14 MR. SWERLING: AND THE CAR WAS THERE. IT WAS NOT GOING
15 ANYWHERE. MR. TILLMAN DID NOT GIVE THEM GENERAL CONSENT TO
16 SEARCH. HE DIDN'T JUST GIVE THEM WHAT AMOUNTED TO GENERAL
17 AUTHORITY TO GO AHEAD AND DO ANYTHING THEY WANTED TO THE CAR.
18 AS A MATTER OF FACT, YOUR HONOR, THE FEDERAL GOVERNMENT GOT
19 HIS CONSENT. I MEAN THEY RECOGNIZED THAT FACT.

20 THE COURT: BUT THEY WANTED TO GO INSIDE THE CAR.

21 MR. SWERLING: YES, SIR, WHICH IS WHAT THEY DID, TOO,
22 THE SHERIFF'S DEPARTMENT.

23 THE COURT: YES, BUT THEY REALLY--THERE'S BEEN NO
24 TESTIMONY WHY THEY DID THAT.

25 MR. SWERLING: TAKING PRINTS. TO MAKE THE INK PRINTS.

1 TO ROLL THE VEHICLE OVER THE IMPRINTS, AND I THINK THAT ALL-
2 -I MEAN I THINK ONCE YOU MAKE THE INTRUSION THEN EVERYTHING
3 YOU'VE DONE IN CONNECTION WITH IT NEEDS TO BE SUPPRESSED.
4 AS A MATTER OF FACT, YOUR HONOR, I THINK THE OPEN FIELDS
5 DOCTRINE, FOR EXAMPLE, DOES NOT EVEN ALLOW--WHILE IT MAY
6 ALLOW A PLANE, FOR EXAMPLE, TO SEE SOMETHING FLYING OVERHEAD
7 AND THEN TO GET A WARRANT BASED UPON WHAT THEY SEE. I DON'T
8 THINK IT ALLOWS THEM TO TAKE PHOTOGRAPHS OF WHAT THEY SAW.
9 THEY CAN GO AHEAD AND APPLY FOR A WARRANT.

10 THE COURT: IN A PLAYING FIELD?

11 MR. SWERLING: YOU KNOW, IF A PLANE IS FLYING OVER.
12 SOME OF THE CASES DEALING WITH MARIJUANA GROWING AND THINGS
13 OF THAT NATURE, WHAT THEY CALL THE OPEN FIELDS DOCTRINE.

14 THE COURT: YES.

15 MR. SWERLING: I THINK THEY HAVE TO STILL GO BACK AND
16 GET A WARRANT. THEY CAN'T USE THE PHOTOGRAPHS OF WHAT THEY
17 SAW--

18 THE COURT: I DON'T AGREE WITH THAT. I DON'T AGREE WITH
19 THAT AT ALL. I DON'T THINK THERE'S ANY QUESTION IF IT'S AN
20 OPEN FIELD, THE FACT THAT IT'S AN OPEN FIELD IT'S AN OPEN
21 FIELD. THEY CAN TAKE A PHOTOGRAPH OF IT. IT'S AN EXCEPTION.
22 THE QUESTION IS WHETHER OR NOT IT IS AN OPEN FIELD. IF IT'S
23 AN OPEN FIELD, IT'S AN OPEN FIELD. NO EXPECTATION OF
24 PRIVACY, NO INTRUSION.

25 MR. SWERLING: HERE'S WHAT I WAS ARGUING, YOUR HONOR,

1 IS THE PHOTOGRAPHS OF IT. THEY STILL HAVE TO GET A SEARCH
2 WARRANT. THE CASES IN SOUTH CAROLINA THAT HAVE DEALT WITH
3 THAT WHERE THEY'VE GONE BACK AND GOTTEN A SEARCH WARRANT
4 BASED UPON WHAT THEY SAW FROM THE AIR. THAT GAVE THEM THE
5 PROBABLE CAUSE TO GET THE WARRANT. AND I FURTHER WOULD
6 SUBMIT THAT MR. TILLMAN'S EXPECTATION OF PRIVACY DID NOT
7 EXPAND ONCE THE F.B.I. TOOK CUSTODY OF THE CAR BECAUSE HE
8 GAVE CONSENT FOR A LIMITED PURPOSE. THE INTERESTING QUESTION
9 WOULD BE IF THE F.B.I. TOOK PHOTOGRAPHS INCIDENT TO THAT.
10 IT MIGHT BE A DIFFERENT STORY, BUT THIS IS ANOTHER AGENCY,
11 ANOTHER LAW ENFORCEMENT AGENCY COMING IN ON THE BOOTSTRAP.

12 MR. MORTON: YOUR HONOR, I DON'T SEE WHERE THAT MATTERS.
13 WHAT MR. SWERLING IS SAYING IS THAT ADMITS THAT THE CAR WAS
14 SEIZED LEGALLY BY THE F.B.I. AND THE RICHLAND COUNTY
15 SHERIFF'S DEPARTMENT HAD THE PERMISSION TO GO DOWN AND
16 PHOTOGRAPH IT AND TAKE MEASUREMENTS OF THE TIRE AND THAT THIS
17 MAN HAD NOT ONLY STANDING, BUT HE HAD AN EXPECTATION OF
18 PRIVACY IN THE MEASUREMENTS AND THE PHOTOGRAPHING OF THOSE
19 TIRES AND THE PHOTOGRAPH THAT MEASURED THOSE TIRES IS A
20 VIOLATION OF HIS 4TH AMENDMENT RIGHT AGAINST UNREASONABLE
21 SEARCH AND SEIZURE. I THINK IT'S RIDICULOUS MYSELF.

22 THE COURT: WELL, LET ME GIVE YOU AN EXAMPLE, MR.
23 MORTON, SO IT WON'T BE SO PROBLEMATICAL FOR YOU. COURTS HAVE
24 HELD IN THE TAKING OF FINGERPRINTS THAT IT WAS UNREASONABLE
25 WHERE THE FINGERPRINTS WERE OBTAINED WHILE THE ACCUSED WAS

1 DETAINED AT POLICE HEADQUARTERS WITHOUT PROBABLE CAUSE FOR
2 HIS ARREST. WHAT ABOUT THAT? THAT THE DETENTION AT POLICE
3 HEADQUARTERS OF THE ACCUSED AND OTHER PERSONS OF SIMILAR
4 DESCRIPTION WAS NOT AUTHORIZED OR WHERE THE ACCUSED WAS
5 UNNECESSARILY REQUIRED TO UNDERGO TWO FINGERPRINTING SESSIONS
6 OR THE ACCUSED WAS MERELY FINGERPRINTED DURING THE FIRST OF
7 TWO SESSIONS AND WAS ALSO SUBJECTED TO AN INTERROGATION. SO,
8 YOU KNOW, FINGERPRINTS--

9 MR. MORTON: I THINK THERE'S A GOOD BIT OF DIFFERENCE.

10 THE COURT: I DON'T THINK SO.

11 MR. MORTON: SOMEBODY TAKING SOMEBODY'S FINGERPRINTS AND
12 GOING OUT AND MEASURING AND TAKING A PICTURE OF A TIRE THAT
13 HAS BEEN SEIZED BY THE FEDERAL GOVERNMENT AND IS IN THEIR
14 CUSTODY.

15 MR. SWERLING: IT'S THE SAME THING.

16 MR. COLEMAN: IT HAD THE RIGHT TO BE IN THE F.B.I.'S
17 DETENTION.

18 THE COURT: WELL, THE ONLY THING THAT SEEMS TO IMPRESS
19 ME ABOUT THE SITUATION IS WHY IT SHOULD BE ALLOWABLE IS THE
20 FACT THAT AT THE TIME IT OCCURRED HE REALLY HAD NO
21 EXPECTATION OF PRIVACY. THAT'S BECAUSE IT WAS ALREADY SEIZED
22 BY THE FEDERAL GOVERNMENT. HIS EXPECTATION OF PRIVACY WAS
23 GONE BECAUSE HE HAD LOST POSSESSION OF IT. HE MAY HAVE OWNED
24 OR HAD LEGAL POSSESSION BUT AT THE TIME HE WAS NOT IN
25 POSSESSION OF IT. IF YOU GO A LITTLE STEP FURTHER THOUGH

1 IT'S VERY PROBLEMATIC FOR ME IS THEY DO MAKE AN INTRUSION
2 INTO THE VEHICLE WHEN THEY MOVED THE VEHICLE FOR THE PURPOSE
3 OF RUNNING THESE TESTS. YOU KNOW, TO PHOTOGRAPH THE VEHICLE
4 AND PHOTOGRAPH THE TIRES IS ONE THING. THE INTRUSION, IF
5 ANY, IS SLIGHT. HOWEVER, WHEN YOU ACTUALLY START PERFORMING
6 TESTS ON IT, THAT'S LIKE I WAS SAYING GOING UP AND SCRAPING
7 SOME PAINT OFF OF IT. I DON'T THINK YOU'VE GOT A RIGHT TO
8 DO THAT NECESSARILY WITHOUT A SEARCH WARRANT.

9 MR. SWERLING: JUDGE, FRANKLY WHAT GIVES ME SOME TROUBLE
10 IN THIS CASE--

11 THE COURT: THERE'S A LOT OF TROUBLE AND PROBLEMS IN
12 THIS CASE. THIS ISN'T THE FIRST ONE.

13 MR. SWERLING: YOU HAVE ONE AGENCY WHO MAYBE HAS THE
14 RIGHT TO HAVE THE CAR BASED ON A CONSENT THAT HE GAVE, BUT
15 I FIND IT DIFFICULT TO BELIEVE THAT THAT WOULD GIVE EVERY LAW
16 ENFORCEMENT AGENCY AROUND THE RIGHT TO COME IN AND DO
17 WHATEVER THEY WANTED TO THAT VEHICLE.

18 THE COURT: OH, I THINK IT DOES, MR. SWERLING. I THINK
19 ONCE THE LAW ENFORCEMENT OFFICER TAKES--YOU KNOW, LAW
20 ENFORCEMENT HAS IT AND THEY ARE NOT RESTRICTED FROM PASSING
21 ALONG TO OTHER LAW ENFORCEMENT AGENCIES. IN OTHER WORDS,
22 THEY COULD HAVE DONE IT THEMSELVES AND LEGALLY HAVE DONE IT.
23 SEE, THEY HAD THE RIGHT TO DO IT. I THINK THEY DO HAVE THAT
24 RIGHT. I DISAGREE WITH YOU.

25 MR. SWERLING: YOUR HONOR, HE CONSENTED TO THEM

1 SEARCHING THE VEHICLE. HE DIDN'T CONSENT TO THE IMPOUNDMENT.

2 THE COURT: I KNOW THAT. I NOTICED THAT NICETY AND
3 DISTINCTION.

4 MR. SWERLING: THEY WERE LOOKING FOR EVIDENCE IN THE
5 BANK ROBBERY. FRANKLY, THEY HAD NO RIGHT TO IMPOUND--WE TOOK
6 THE POSITION THEY HAD NO RIGHT TO IMPOUND THE VEHICLE.

7 THE COURT: WELL, I DON'T KNOW. WAS THAT ISSUE RAISED
8 IN THE FEDERAL TRIAL?

9 MR. SWERLING: WELL, IT DIDN'T COME UP BECAUSE THEY
10 NEVER INTRODUCED ANY EVIDENCE FROM THE CAR.

11 THE COURT: I GOT YOU.

12 MR. SWERLING: THE CAR WAS NOT INVOLVED.

13 THE COURT: WHAT ARE YOU GOING TO DO WITH THAT THEN?

14 MR. MORTON: I'M SORRY, I MISSED IT.

15 THE COURT: THE FEDERAL GOVERNMENT HAD ACTUALLY--HE GAVE
16 A CONSENT TO SEARCH HIS CAR. HE SAYS THEY NOW RAISE THE
17 ISSUE THEY DID NOT GIVE A CONSENT TO TAKE HIS CAR, TO IMPOUND
18 IT. YOU SEE, YOU CAN'T JUST TAKE SOMEBODY'S PROPERTY. YOU
19 KNOW, YOU'VE GOT TO HAVE THE RIGHT TO DO THAT AND IF THEY
20 SEIZE IT AND IMPOUND IT WHAT WAS THE BASIS OF IT. NOW, IF
21 THEY HAD NO RIGHT TO HAVE THE IMPOUNDMENT OF IT THEN THEY CAN
22 RAISE THAT ISSUE IN THIS COURT. THE FACT THAT ONE
23 GOVERNMENTAL AGENCY DOES SOMETHING IF IT'S IMPROPER DOESN'T
24 MEAN THAT YA'LL GET TO SAY, WELL, THAT'S THEIR PROBLEM. WE
25 DIDN'T DO IT SO WE GET TO SAY IT'S OKAY. YOU DON'T GET TO

1 DO THAT.

2 MR. MORTON: I UNDERSTAND.

3 THE COURT: YOU SEE, THE FEDERAL GOVERNMENT--THAT'S
4 EXACTLY RIGHT. YOU KNOW, A LOT OF TIMES THE FEDERAL
5 GOVERNMENT COMES TO THE STATE AGENCIES TO GET SEARCH
6 WARRANTS. I'VE ISSUED SEARCH WARRANTS FOR THE FEDERAL
7 GOVERNMENT.

8 MR. SWERLING: SO, THE ARGUMENT IS THAT THE FEDERAL
9 GOVERNMENT HAD PERMISSION TO SEARCH IT BUT NOT IMPOUND IT.

10 THE COURT: THAT'S WHAT HE'S RAISING NOW. YOU KNOW, IF
11 THEY SEARCHED IT AND DIDN'T IMPOUND IT. YA'LL PHOTOGRAPHED
12 IT AND DID THESE TESTS ON IT WHEN IT WAS IMPOUNDED.

13 MR. MORTON: YOUR HONOR, I THINK THE F.B.I. AGENT IS
14 HERE.

15 THE COURT: DO YOU WANT TO ASK THIS OFFICER TO STEP
16 DOWN? DO YOU WANT TO STEP DOWN, SIR?

17 A YES, SIR.

18 THE COURT: YOU CAN JUST SIT BACK OUT THERE FOR THE TIME
19 BEING.

20 (WITNESS TO THE SIDE)

21 THE COURT: YES, SIR.

22 MR. MORTON: I THINK WE ARE PROBABLY GOING TO HAVE A
23 SERIES OF STIPULATIONS. I DON'T THINK THAT ANY TESTIMONY
24 THAT WE HAVE AVAILABLE AT THIS TIME AS TO THE ISSUES THAT WE
25 HAVE SPOKEN ABOUT--I DON'T THINK WE HAVE ANY TESTIMONY RIGHT

1 NOW CONCERNING THAT. MR. DAVIS FROM THE F.B.I. IS HERE. HE
2 WAS ASSISTANT CASE AGENT TO MR. MONDOR WHO IS OUT OF TOWN.
3 HE INFORMS ME THAT MR. TILLMAN GAVE THEM A CONSENT TO SEARCH
4 HIS CAR, THAT AT THAT TIME IT WAS DRIVEN BACK TO THE F.B.I.
5 OFFICE AND AT SOME LATER DATE--I DON'T BELIEVE IT EVER LEFT
6 THERE--IT WAS IMPOUNDED AT THAT POINT. SO, OUR POSITION HAS
7 NOT CHANGED OR ANY OF THE ISSUES THAT WE HAVE DISCUSSED AND
8 I DON'T THINK WE HAVE ANY TESTIMONY THAT'S GOING TO VERIFY
9 ANYTHING RIGHT NOW. MR. MONDOR IS IN SUMTER.

10 THE COURT: WHAT DO YOU WANT ME TO DO? YOU EITHER HAVE
11 TO WITHDRAW THE EVIDENCE--IF YOU WANT ME TO WAIT UNTIL YOU
12 CAN PUT UP THAT EVIDENCE OR YOU EITHER SAY I DON'T HAVE ANY
13 FURTHER EVIDENCE AND I HAVE TO RULE BASED ON WHAT I HAVE.
14 IT'S ONE OF THE TWO, MR. MORTON. I STOPPED TO GIVE YOU TIME
15 TO CALL THESE PEOPLE IF YOU WANTED TO.

16 MR. MORTON: YES, SIR.

17 THE COURT: IF YOU ARE NOT PREPARED FOR ME TO RULE ON
18 IT THEN YOU WITHDRAW THE OFFER AT THIS TIME I GUESS AND GO
19 SOME PLACE ELSE.

20 MR. MORTON: WE ARE PREPARED FOR YOU TO RULE, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT.

23 MR. COLEMAN: ON THE PHOTOGRAPHS, YOUR HONOR.

24 MR. SWERLING: YOUR HONOR, FOR THE PURPOSES OF THE
25 RECORD I'D LIKE TO PUT THIS IN. THIS IS A BUDGET RENT-A-

1 CAR BILL SHOWING THAT HE HAD RENTED THE CAR THROUGH JANUARY
2 10TH, 1989.

3 THE COURT: DO YA'LL AGREE?

4 MR. MORTON: I HAVE NO PROBLEM.

5 MR. SWERLING: IT SHOWS, IN FACT, YOUR HONOR, IT'S
6 PREPAID.

7 THE COURT: HAND IT TO THE COURT REPORTER AND HAVE HER
8 MARK IT FOR THE PURPOSES OF THIS HEARING. THIS IS ONLY FOR
9 THE PURPOSE OF THIS HEARING.

10 (RECEIPT IS RECEIVED INTO EVIDENCE AS DEFENDANT'S
11 IDENTIFICATION "A")

12 MR. SWERLING: YOUR HONOR, WILL YOU ACCEPT MY
13 REPRESENTATIONS THAT WHAT WE WOULD OFFER THROUGH MR. TILLMAN
14 WAS THAT HE CONSENTED TO SEARCH THE CAR AND NOT BE IMPOUNDED?

15 THE COURT: IT'S NOT UP TO ME. IT'S UP TO THEM.

16 MR. SWERLING: WILL YOU ACCEPT THAT?

17 MR. COLEMAN: WHAT'S THAT?

18 MR. SWERLING: THE REPRESENTATION IS IF HE WERE CALLED
19 TO TESTIFY HE WOULD TESTIFY THAT HE GAVE A WRITTEN CONSENT
20 TO SEARCH THE CAR AND HIS HOUSE, THAT HE DID NOT CONSENT TO
21 IMPOUND IT.

22 THE COURT: HE'S ASKING YOU TO STIPULATE TO THAT WITHOUT
23 HIM PUTTING UP TESTIMONY TO THAT.

24 MR. SWERLING: HOUSE, CAR, BRIEFCASE AND --

25 MR. MORTON: YOUR HONOR, WE WILL NOT CONSENT TO THE FACT

1 THAT MR. TILLMAN DID NOT ALLOW THE F.B.I. TO TAKE HIS CAR
2 BACK TO THE OFFICE.

3 THE COURT: ALL RIGHT.

4 MR. SWERLING: WELL, THEN THEY HAVE TO PROVE THAT THEY
5 DID. I WAS TRYING TO MAKE IT EASY FOR THEM.

6 THE COURT: DO YOU WANT TO OFFER ANY TESTIMONY ON THIS
7 ISSUE?

8 MR. SWERLING: NO, YOUR HONOR. I SUBMIT THAT--

9 THE COURT: DO YOU WANT TO OFFER ANY TESTIMONY ON THIS
10 ISSUE?

11 MR. SWERLING: NO, SIR.

12 THE COURT: ALL RIGHT. ANY FURTHER ARGUMENTS?

13 MR. MORTON: NO, SIR.

14 THE COURT: NO FURTHER ARGUMENT?

15 MR. MORTON: NO, SIR.

16 MR. SWERLING: NO, SIR.

17 THE COURT: IT IS THE DEFENSE'S VIEW THAT THE STATE HAD
18 NO RIGHT TO TAKE PHOTOGRAPHS OF THE SUBJECT VEHICLE, IS THAT
19 CORRECT, AND THE TIRES?

20 MR. SWERLING: PHOTOGRAPHS AND MEASUREMENTS BECAUSE THEY
21 TOOK MEASUREMENTS OF IT.

22 MR. SWERLING: YOUR HONOR, I'D ASK MR. CHRISTY ONE
23 QUESTION. WOULD THE COURT ALLOW ME TO DO THAT?

24 THE COURT: YES.

25 MR. SWERLING: MR. CHRISTY, IN ORDER TO TAKE THE

1 PHOTOGRAPH OF THE LEFT FRONT TIRE AS YOU DID, DID YOU HAVE
2 TO ENTER THE VEHICLE AND TURN THE LEFT FRONT TIRE TO AN ANGLE
3 WHERE YOU COULD PHOTOGRAPH IT?

4 MR. CHRISTY: YES.

5 THE COURT: HOW DID YOU DO THAT? WHO HAD THE KEYS TO
6 IT? WAS IT OPEN, UNOPEN, WHAT?

7 MR. CHRISTY: THE VEHICLE WAS LOCKED AND THE KEYS WERE
8 IN THE POSSESSION OF THE F.B.I.

9 MR. SWERLING: YOUR HONOR, I WOULD SUBMIT THEY HAVE MADE
10 AN INTRUSION. THEY DID NOT SIMPLY PHOTOGRAPH THE CAR. YOUR
11 HONOR, JUST SO THE RECORD IS CLEAR I WILL CALL MR. TILLMAN
12 SINCE THEY WON'T STIPULATE TO IT.

13 THE COURT: ALL RIGHT.

14 MR. SWERLING: FOR THIS LIMITED PURPOSE.

15 THE COURT: YES, SIR.

16 RONALD S. TILLMAN, AFTER BEING DULY SWORN BY THE CLERK,
17 TESTIFIES AS FOLLOWS:

18 DIRECT EXAMINATION BY

19 MR. SWERLING:

20 Q RONALD, ON DECEMBER 28TH, 1988, WERE YOU ARRESTED BY THE
21 FEDERAL AUTHORITIES?

22 A YES, I WAS.

23 Q DID SPECIAL AGENTS OF THE F.B.I.--WHEN THEY ARRESTED YOU, IT
24 WAS A BANK ROBBERY CHARGE?

25 A YES, IT WAS.

1 Q DID THEY ASK FOR AND OBTAIN FROM YOU A WRITTEN CONSENT TO
2 SEARCH YOUR VEHICLE?

3 A NOT AT THE TIME. WHEN THE POLICE CAME TO THE HOUSE I WAS IN
4 PROCESS OF GETTING IN THE CAR AND THEN THEY TOLD ME THEY HAD
5 A WARRANT FOR MY ARREST FOR BANK ROBBERY AND THE GENTLEMAN
6 SITTING OVER IN THE SUIT RIGHT THERE, I GAVE THEM PERMISSION--
7 --MY FATHER SAID NO AT FIRST. THEY WANTED TO SEARCH THE HOUSE
8 AND MY FATHER SAID NO. AND I TOLD MY FATHER TO LET THEM
9 SEARCH THE HOUSE BECAUSE THERE'S NOTHING IN THE HOUSE TO BE
10 FOUND AND HE SAID, WELL--THEY WAS GONNA MY BRIEFCASE. I SAID
11 DON'T TEAR MY BRIEFCASE UP. I GAVE THEM THE COMBINATION TO
12 LOOK IN THE BRIEFCASE AND THEN THEY ASKED COULD THEY SEARCH
13 THE CAR. I SAID YOU CAN SEARCH THE CAR ALSO.

14 Q SO, WHEN YOU GAVE THE AGENTS AUTHORITY, YOU GAVE THEM THE
15 EXPRESSED AUTHORITY TO SEARCH THE CAR AND THE HOUSE INCIDENT
16 TO YOUR ARREST FOR BANK ROBBERY?

17 A YES, I DID.

18 Q HAD YOU YET BEEN CHARGED WITH MURDER?

19 A NO, I HAD NOT.

20 Q ALL RIGHT. AND YOU WERE NOT IN FACT CHARGED UNTIL--

21 MR. MORTON: YOUR HONOR, HE'S LEADING.

22 MR. SWERLING: WELL, THE DOCUMENT SPEAKS FOR ITSELF.
23 JANUARY 4TH, 1989.

24 THE COURT: I SUSTAIN THE OBJECTION. DON'T LEAD YOUR
25 WITNESS.

1 Q WHAT DATE WERE YOU SERVED WITH THE WARRANT?

2 A I WAS SERVED JANUARY THE 4TH, 1989.

3 Q OKAY. DID YOU GIVE THE FEDERAL AUTHORITIES ANY PERMISSION
4 TO IMPOUND YOUR VEHICLE?

5 MR. MORTON: OBJECTION. LEADING.

6 Q WHAT, IF ANY, PERMISSION DID YOU GIVE THE FEDERAL AUTHORITIES
7 TO IMPOUND YOUR VEHICLE?

8 A ONLY TO SEARCH, NOT TO IMPOUND IT.

9 Q OKAY. NOW, WAS THIS A CAR THAT YOU HAD BEEN RENTING?

10 A YES, I HAD BEEN.

11 Q AND HOW LONG HAD YOU HAD THAT CAR?

12 A WELL, I'VE HAD SEVERAL BUT THAT ONE I HAD FOR THE LONGEST.
13 I HAD IT APPROXIMATELY ABOUT FOUR MONTHS.

14 Q IS THIS A COPY, DEFENDANT'S I.D. "A," IS THAT A COPY OF YOUR
15 LAST CONTRACT WITH THE BUDGET RENT-A-CAR?

16 A YES, IT IS.

17 Q WHAT DOES IT SHOW THE RENTAL PERIOD TO BE FROM?

18 A FROM 12-10-88 TO 1-10-89.

19 Q DID YOU PREPAY THE RENTAL?

20 A YES, I DID.

21 Q DID ANYONE FROM THE RICHLAND COUNTY SHERIFF'S DEPARTMENT AT
22 ANY TIME ASK YOUR AUTHORITY OR PERMISSION OR SEEK YOUR
23 CONSENT TO ENTER YOUR VEHICLE TO TURN THE TIRES OR TO
24 PHOTOGRAPH THE VEHICLE?

25 A NO, THEY DID NOT.

1 Q ON THE DAY UNTIL DECEMBER 10TH, 1989, DID YOU CONSIDER THAT
2 VEHICLE TO BE YOUR VEHICLE?

3 MR. MORTON: OBJECT.

4 Q WHOSE VEHICLE DID YOU CONSIDER THAT VEHICLE TO BE UNTIL
5 JANUARY 10TH?

6 A IT WAS MINE.

7 MR. SWERLING: THAT'S ALL I HAVE ON THAT VERY LIMITED
8 ISSUE.

9 MR. MORTON: A COUPLE OF QUESTIONS, YOUR HONOR.

10 CROSS EXAMINATION BY

11 MR. MORTON:

12 Q MR. TILLMAN, DID YOU TALK TO--YOU TALKED TO INVESTIGATOR
13 AUSTIN ABOUT YOUR CAR, DIDN'T YOU?

14 A NO, I DID NOT.

15 Q YOU NEVER TALKED TO INVESTIGATOR AUSTIN ABOUT YOUR CAR?

16 A I NEVER TALKED TO INVESTIGATOR AUSTIN ABOUT MY CAR UNTIL
17 JANUARY THE 4TH WHEN I WAS ARRESTED FOR MURDER.

18 Q WHEN YOU TALK WITH INVESTIGATOR AUSTIN, DID YOU EVER TELL HIM
19 HE COULD GO LOOK AT YOUR CAR OR DO ANYTHING?

20 A NO, I DID NOT.

21 Q OKAY. WHEN YOU CONSENTED TO THE F.B.I. TO SEARCH YOUR CAR
22 THAT WAS AT YOUR HOME, IS THAT RIGHT?

23 A THAT WAS PARKED IN MY YARD.

24 Q PARKED IN YOUR YARD?

25 A YES.

1 Q AND YOU TOLD THE F.B.I. THAT THEY COULD SEARCH YOUR CAR, IS
2 THAT RIGHT?

3 A YES, I DID.

4 Q AND THEN THEY GOT IN YOUR CAR AND DROVE IT AWAY, IS THAT
5 RIGHT?

6 A I WAS GONE. WHEN I GOT TO THE F.B.I., MY CAR WAS ALREADY
7 THERE. I LEFT BEFORE MY CAR LEFT. THEY WERE SEARCHING MY
8 HOUSE BECAUSE MY FATHER--WE HAD ALREADY LEFT. THEN THEY SID
9 THEY WAS GONNA GET A SEARCH WARRANT AND I TOLD THEM THEY
10 DIDN'T NEED ONE. SO, WE DROVE ALL THE WAY BACK TO THE HOUSE
11 AND THEY CALLED MY FATHER BECAUSE MY FATHER REFUSED TO LET
12 THEM IN THE HOUSE WITHOUT A SEARCH WARRANT AND I THEN CALLED
13 MY FATHER TO THE CAR WITH THIS GENTLEMAN AND ANOTHER YOUNGER
14 GENTLEMAN SITTING BESIDE ME AND ASKED ME TO CALL MY FATHER.
15 I CALLED HIM OVER AND TOLD HIM TO LET THEM SEARCH THE HOUSE
16 AND HE SAID DO YOU WANT THEM TO SEARCH THE HOUSE AND I SAID,
17 DAD, LET THEM SEARCH THE HOUSE.

18 Q BUT YOU KNEW THEY WERE TAKING YOUR CAR BACK TO THE F.B.I.
19 HEADQUARTERS, DIDN'T YOU?

20 A I DID NOT KNOW THEY WERE TAKING MY CAR BACK.

21 Q SO, YOU DENY THAT YOU KNEW THAT THEY WERE TAKING YOUR CAR
22 BACK TO THE F.B.I.?

23 A AS RIGHT NOW, YES, I DID NOT GIVE THEM PERMISSION TO TOW MY
24 CAR OR TO TAKE MY CAR.

25 Q WHAT DO YOU MEAN AS OF RIGHT NOW?

1 A BECAUSE ONLY THING I'M SAYING I KNEW THAT THEY WAS GONNA
2 SEARCH MY CAR BECAUSE THEY WERE SEARCHING MY CAR AND MY
3 BRIEFCASE BEFORE I LEFT.

4 Q AND YOU KNEW THEY WERE GOING TO TAKE IT DOWNTOWN TO DO THAT,
5 RIGHT?

6 MR. SWERLING: YOUR HONOR, HE'S ARGUMENTATIVE. HE'S
7 ALREADY TESTIFIED HE DID NOT KNOW.

8 A THEY WAS SEARCHING IN MY YARD.

9 THE COURT: JUST A MINUTE. I'M GOING TO LET HIM ANSWER
10 THE QUESTION.

11 A THEY WAS SEARCHING IN MY YARD.

12 Q SO, IT WAS NOT YOUR UNDERSTANDING THAT THE F.B.I. WAS GOING
13 TO TAKE YOUR CAR BACK TO THE F.B.I. AND SEARCH IT?

14 A NO, IT WAS NOT.

15 MR. MORTON: THAT'S ALL I HAVE, YOUR HONOR.

16 MR. COLEMAN: ONE MINUTE, YOUR HONOR. (PAUSE)

17 Q (BY MR. MORTON) RONALD DID YOU SIGN THIS? IS THAT YOUR
18 SIGNATURE ON THE BOTTOM?

19 A YES, IT IS.

20 Q OKAY.

21 MR. MORTON: YOUR HONOR, I'D LIKE TO MARK THIS AT THIS
22 TIME FOR IDENTIFICATION PURPOSES.

23 MR. SWERLING: MAY I SEE IT?

24 THE COURT: SHOW IT TO COUNSEL.

25 MR. SWERLING: NO OBJECTION.

1 (PERMISSION IS MARKED AS STATE'S IDENTIFICATION "N")
2 THE COURT: MARKED FOR THE PURPOSE OF THIS RECORD IS
3 I.D. "N." IT SAYS I, RONALD STAFFORD TILLMAN, HAVING BEEN
4 INFORMED OF MY CONSTITUTIONAL RIGHTS NOT TO HAVE A SEARCH
5 MADE OF THE PREMISES HEREINAFTER MENTIONED WITHOUT A SEARCH
6 WARRANT AND OF MY RIGHT TO REFUSE TO CONSENT TO SUCH A
7 SEARCH, HEREBY AUTHORIZE JAMES H. DAVIS, MICHAEL MARCHANT AND
8 R.D. JOHNSON, SPECIAL AGENTS OF THE FEDERAL BUREAU OF
9 INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE, TO
10 CONDUCT A COMPLETE SEARCH OF MY PREMISES LOCATED AT
11 , COLUMBIA, SOUTH CAROLINA, AND MY BRIEFCASE
12 AND MY VEHICLE, A 1988 BUICK RIVIERA. THESE AGENTS ARE
13 AUTHORIZED BY ME TO TAKE FROM MY PREMISES ANY LETTERS,
14 PAPERS, MATERIALS OR OTHER PROPERTY WHICH THEY MAY DESIRE.
15 THIS WRITTEN PERMISSION IS BEING GIVEN BY ME TO THE
16 ABOVENAMED SPECIAL AGENTS VOLUNTARILY AND WITHOUT THREATS OR
17 PROMISES OF ANY KIND. SIGNED RONALD TILLMAN. WITNESSES
18 ARE JAMES DAVIS AND MICHAEL MARCHANT. ALL RIGHT.

19 MR. MORTON: YOUR HONOR, I ASK THAT BE MOVED INTO THE
20 RECORD. I GUESS IT ALREADY IS.

21 THE COURT: FOR THE PURPOSE OF THIS HEARING.

22 MR. MORTON: YES, SIR.

23 THE COURT: WITHOUT OBJECTION.

24 MR. MORTON: I HAVE NO FURTHER QUESTIONS.

25 THE COURT: OKAY.

1 MR. SWERLING: THAT'S ALL. I HAVE NO FURTHER QUESTIONS.
2 YOU CAN COME DOWN, RONALD.

3 (WITNESS TO THE SIDE)

4 THE COURT: ANYTHING ELSE?

5 MR. SWERLING: NO, SIR.

6 THE COURT: ANY OTHER TESTIMONY BY THE STATE?

7 MR. MORTON: NO, SIR.

8 THE COURT: DO I CLEARLY UNDERSTAND THAT YOU HAVE
9 PRESENTED ALL THE TESTIMONY, BOTH THE STATE AND DEFENSE, THAT
10 YOU WANT ME TO CONSIDER ON THIS ISSUE?

11 MR. MORTON: YES, SIR.

12 MR. SWERLING: YES, SIR.

13 THE COURT: ALL RIGHT. AND YOUR ARGUMENT IS WHAT NOW,
14 MR. MORTON?

15 MR. MORTON: MY ARGUMENT IS, NUMBER ONE, THAT MR.
16 TILLMAN BY SIGNING THAT CONSENT TO SEARCH FORM ALSO ALLOWED
17 THE F.B.I. TO TAKE THAT CAR AND ANY PROPERTY THAT HE HAD FROM
18 HIS PREMISES AND TO SEARCH IT, LOOK THROUGH IT, DO WHATEVER
19 THEY WANTED TO DO. THAT THEY, THEREFORE, THEN TOOK IT TO THE
20 F.B.I. OFFICE AND THAT THAT CONSENT WAS, OF COURSE,
21 TRANSFERRED TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

22 THE COURT: WHERE IS THE TESTIMONY TO THAT?

23 MR. MORTON: I THINK MR. SWERLING STIPULATED TO THAT.

24 MR. SWERLING: STIPULATED TO WHAT?

25 MR. MORTON: I BELIEVE YOU TOLD ME THAT YOU WOULD

1 STIPULATE TO THE FACT THAT THE F.B.I. GAVE THE RICHLAND
2 COUNTY SHERIFF'S DEPARTMENT PERMISSION--

3 MR. SWERLING: I SAID I DIDN'T KNOW THAT. I TOLD YOU I
4 DIDN'T KNOW THAT TO BE A FACT. THAT'S WHAT I TOLD YOU.

5 THE COURT: THAT'S WHAT HE SAID. THAT'S WHY I ASKED
6 THAT QUESTION.

7 MR. MORTON: I WAS UNDER THE IMPRESSION--I APOLOGIZE,
8 YOUR HONOR. I HAD THE DISCUSSION RIGHT HERE WITH MR.
9 SWERLING. HE SAID HE HAD NO PROBLEM WITH THAT.

10 MR. SWERLING: NO. I SAID I DID NOT KNOW THAT. I MUST
11 HAVE SAID IT ON THE RECORD SEVEN TIMES THAT I DID NOT KNOW
12 THAT AND COULD NOT STIPULATE TO THAT.

13 THE COURT: WHAT I HEARD HIM SAY WAS EXACTLY WHAT HE'S
14 SAYING. IF HE SAID SOMETHING YOU OVER THERE, I DIDN'T HEAR
15 IT.

16 MR. MORTON: SO, AS I UNDERSTAND IT, MR. SWERLING IS NOT
17 WILLING TO STIPULATE THAT THE F.B.I. GAVE THE RICHLAND COUNTY
18 SHERIFF'S DEPARTMENT PERMISSION TO GO DOWN AND MAKE
19 MEASUREMENTS AND PHOTOGRAPH THAT TIRE.

20 MR. SWERLING: I DO NOT KNOW THAT TO BE TRUE.

21 MR. MORTON: OKAY. THAT'S FINE.

22 THE COURT: SO, HE'S NOT STIPULATING.

23 MR. MORTON: THEN WE HAVE MORE TESTIMONY.

24 THE COURT: ALL RIGHT. CALL HIM.

25 MR. MORTON: HE'S IN SUMTER.

1 MR. SWERLING: YOUR HONOR, I WOULD SUBMIT EVEN IF MR.
2 MONDOR GAVE PERMISSION THAT HE DID NOT HAVE THE RIGHT TO GIVE
3 PERMISSION.

4 THE COURT: SO, YOU'LL STIPULATE FOR THE PURPOSE OF THIS
5 HEARING AT THIS TIME THAT HE DID? FOR THE PURPOSE OF THAT
6 ARGUMENT. OTHERWISE, WE'LL HAVE TO STOP AND PUT SOMEBODY
7 ELSE OR MOVE TO ANOTHER POINT. I'M GOING TO GIVE HIM THE
8 TIME TO GET THAT OFFICER IN HERE BE IT THIS AFTERNOON,
9 TOMORROW OR WHENEVER BUT--I DON'T KNOW.

10 MR. SWERLING: CAN HE BE REACHED ON THE PHONE? IF HE
11 TELLS ME ON THE PHONE THAT HE DID--

12 THE COURT: CAN HE BE REACHED ON THE PHONE?

13 MR. MORTON: HE SHOULD BE.

14 THE COURT: ALL RIGHT. LET'S TAKE A RECESS AND SEE IF
15 WE CAN GET HIM ON THE PHONE.

16 MR. SWERLING: IF HE TELLS ME THAT ON THE PHONE, I'LL
17 STIPULATE TO IT.

18 THE COURT: ALL RIGHT. STEP BACK THERE AND SEE IF YOU
19 CAN HIM ON MY PHONE. SOLICITOR, YA'LL TAKE MR. SWERLING BACK
20 THERE WITH THE OFFICER.

21 (RECESS)

22 THE COURT: (AT CONCLUSION OF RECESS) LET'S BE SEATED.
23 ALL RIGHT. DURING THE BREAK, THE RECESS, MR. SWERLING AND
24 MR. MORTON OR MR. COLEMAN ONE SPOKE TO THE F.B.I. AGENT, MR.
25 MONDOR, WHO TESTIFIED PREVIOUSLY IN THIS CASE AND AS A RESULT

1 WITHOUT HAVING TO CALL HIM TO TESTIFY THEY HAVE ENTERED INTO
2 A STIPULATION AS TO WHAT HE WOULD TESTIFY TO IF CALLED ON
3 THIS ISSUE. IS THAT CORRECT?

4 MR. SWERLING: YES, SIR.

5 THE COURT: AND THAT IS?

6 MR. SWERLING: AS I UNDERSTAND IT, IF MR. MONDOR WERE
7 CALLED TO TESTIFY HE WOULD TESTIFY THAT HE RECEIVED A CALL
8 FROM THE RICHLAND COUNTY SHERIFF'S DEPARTMENT THAT THEY
9 WANTED TO COME AND LOOK AT THE CAR, THAT HE TOLD THEM TO COME
10 UP, THAT HE OPENED THE DOOR TO THE GARAGE, THE CAR WAS HOUSED
11 IN THE BASEMENT OF THE F.B.I. BUILDING AND HE GAVE THEM THE
12 KEY. I JUST SPOKE WITH MR. CHRISTY AGAIN AND HE SAID THAT
13 LT. SULTON TOOK THE KEY AND OPENED THE CAR DOOR AND TURNED
14 THE WHEEL.

15 THE COURT: ALL RIGHT. NOW, IS THERE ANY OTHER
16 TESTIMONY ON THESE ISSUES?

17 MR. SWERLING: WE STIPULATE TO THOSE ISSUES.

18 THE COURT: YOU STIPULATE TO THAT.

19 MR. MORTON: NO OTHER TESTIMONY FROM THE STATE, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT. ALL RIGHT, THE QUESTION BEFORE
22 THE COURT IS WHETHER OR NOT THE OFFICER, IN THIS CASE MR.
23 CHRISTY WHO TOOK THE PHOTOGRAPHS, WHETHER OR NOT THERE WAS
24 ANY INVASION IN VIOLATION OF THE DEFENDANT'S PROTECTIONS
25 AFFORDED TO HIM UNDER THE 4TH AND 14TH AMENDMENTS,

1 UNREASONABLE SEARCHES AND SEIZURES OF HIS PERSON OR HIS
2 PROPERTY. IT APPEARS TO THE COURT THAT THE DEFENDANT GAVE
3 A CONSENT TO SEARCH TO THE FEDERAL GOVERNMENT AS A RESULT OF
4 AN INVESTIGATION ON OR ABOUT DECEMBER THE 28TH OF THAT YEAR,
5 1988, INVESTIGATING A BANK ROBBERY CASE. AND HE GAVE A
6 CONSENT WHICH IS IN THE RECORD OF THIS CASE EXECUTED
7 AUTHORIZING THE F.B.I. TO IN ESSENCE TAKE POSSESSION OF THE
8 VEHICLE AND TO SEARCH THAT VEHICLE. THE F.B.I. DID TAKE
9 POSSESSION OF THE VEHICLE AND PLACED IT IN ESSENCE UNDER
10 IMPOUNDMENT IS THE ONLY REASONABLE INFERENCE AT THE F.B.I.
11 BUILDING HERE IN COLUMBIA IN, AS I UNDERSTAND IT, A
12 DOWNSTAIRS BASEMENT. THEREAFTER A TIME THAT I'M UNFAMILIAR
13 WITH AS TO HIS TESTIMONY BUT APPARENTLY IT WAS A SHORT TIME
14 THEREAFTER, A FEW DAYS OR MORE, THE RICHLAND COUNTY SHERIFF'S
15 DEPARTMENT, AND PARTICULARLY OFFICER CHRISTY WHO IS NOW WITH
16 S.L.E.D, MADE CONTACT WITH THE F.B.I. AND REQUESTED TO COME
17 OVER AND SEE THE VEHICLE. THEY DID GO OVER, THEY WERE TAKEN
18 DOWN TO THE BASEMENT, THE KEYS TO THE VEHICLE WERE TURNED
19 OVER TO THE RICHLAND COUNTY SHERIFF'S DEPARTMENT OFFICERS WHO
20 THEN EXAMINED THE EXTERIOR OF THE VEHICLE BY PHOTOGRAPHING
21 THE VEHICLE, PHOTOGRAPHING THE TIRES OF THE VEHICLE AND AS
22 DEPICTED IN THE PHOTOGRAPHS MEASURED, DID MEASUREMENTS ON IT.
23 IN ADDITION TO WHICH THEY OPENED THE VEHICLE AND AT LEAST
24 TURNED THE WHEEL IN ORDER TO PHOTOGRAPH THE WHEEL SUCH THAT
25 IT COULD DEPICT WHAT THEY WANTED IT TO DEPICT. IN ADDITION

1 TO WHICH AND IT HAS NOT BEEN PRESENTED AT THIS TIME BUT THE
2 COURT'S AWARE OF IT BY STATEMENTS BY COUNSEL TO THE COURT
3 THERE ALSO WERE IMPRESSIONS MADE, INKED IMPRESSIONS OF THAT
4 TIRE, DONE BY HAVING THE TIRE--NO ONE HAS TESTIFIED THAT THE
5 TIRE WAS MOVED. I ASSUME THAT IT WAS. IS THAT CORRECT, MR.
6 CHRISTY?

7 MR. CHRISTY: YES, SIR, YOUR HONOR.

8 THE COURT: THE CAR WAS CRANKED UP AND MOVED FOR THE
9 PURPOSE OF DOING THAT.

10 MR. SWERLING: YES, SIR, THAT'S CORRECT. THE CAR HAD
11 TO BE MOVED.

12 THE COURT: YES. I ASSUMED THAT EVEN THOUGH THERE IS NO
13 TESTIMONY. EVERYBODY WILL STIPULATE THAT. SO, THE QUESTION
14 THEN IS WHETHER OR NOT THOSE ACTS WERE VIOLATIONS OF THE
15 DEFENDANT'S CONSTITUTIONAL RIGHTS AND PROTECTIONS AFFORDED
16 TO HIM UNDER THE 4TH AMENDMENT AND THE 14TH AMENDMENT,
17 UNREASONABLE SEARCHES AND SEIZURES. IT'S THE COURT'S FINDING
18 THAT THEY WERE NOT A VIOLATION OF HIS 4TH AMENDMENT AND 14TH
19 AMENDMENT. THE PROPERTY WAS IMPOUNDED, IT WAS IN THE CUSTODY
20 OF THE F.B.I. PURSUANT TO A CONSENT AUTHORIZATION. THE
21 VEHICLE WAS THE SUBJECT OF A FEDERAL BANK ROBBERY AND THE
22 VEHICLE WAS UNDER SEIZURE BY CONSENT. IT WAS THEREAFTER
23 ALLOWED TO BE EXAMINED WITHOUT ANY IN-DEPTH SEARCH. THERE
24 WAS NO SCOPE--IT WASN'T EVEN LIKE AN INVENTORY SEARCH. THERE
25 WAS NO TEARING OR REMOVING FROM ANYTHING OF THE VEHICLE.

1 PHOTOGRAPHS WERE MADE. THE ONLY THING THAT OCCURRED WAS A
2 VERY HARMLESS CRANKING OF THE VEHICLE AND MOVING IT IN ORDER
3 TO OBTAIN INKED IMPRESSIONS AND TO PHOTOGRAPH IT, ALL OF
4 WHICH I FIND TO BE REASONABLE AND DO NOT BE INTRUSIVE AND
5 REALLY NO EXPECTATION OF PRIVACY BUT IF THERE WAS IT WAS
6 WAIVED BY HIS CONSENT TO SEARCH. ALL RIGHT. READY TO
7 PROCEED?

8 MR. MORTON: YES, SIR.

9 MR. SWERLING: YOUR HONOR, WE WOULD HAVE AN OBJECTION
10 IF THEY INTEND TO OFFER AT THIS TIME--RATHER THAN SEND THE
11 JURY OUT LATER. WE WOULD HAVE AN OBJECTION TO RELEVANCY OF
12 THE PHOTOGRAPHS THAT THEY TOOK IN THE SAND. THEY ARE I
13 SUPPOSE THROUGH MR. CHRISTY OFFER PHOTOGRAPHS OF CERTAIN TIRE
14 TRACKS THAT WERE TAKEN IN THE SAND.

15 THE COURT: HE'S ALREADY IDENTIFIED THOSE AS BEING TAKEN
16 BY HIM ON THE DAYTIME AFTER THE MURDER. IN OTHER WORDS, HE
17 WENT THERE THAT NIGHT AND THEN TOOK SOME PHOTOGRAPHS AND TOOK
18 SOME THE NEXT MORNING. HE'S IDENTIFIED THEM. AT THIS TIME
19 OTHER THAN SHOWING THAT THERE ARE TIRE MARKS THERE THEY STILL
20 ARE NOT ADMISSIBLE AS TO ANY RELEVANT ISSUE AT THIS POINT IN
21 TIME. HOWEVER, AT SOME POINT IN TIME THEY MAY BECOME
22 RELEVANT WITH APPROPRIATE TESTIMONY AND AT THAT TIME ON A
23 PROPER MOTION IF IT'S RELEVANT I'LL DETERMINE THAT ISSUE
24 THEN. IN OTHER WORD, IT MUST BE SOME TYING UP TO IT. THE
25 TIRE MARKS AT THE SCENE ARE NOT AN ISSUE IN THE CASE AT THIS

1 TIME SO AS TO MAKE THOSE PHOTOGRAPHS RELEVANT. CLEARLY I
2 UNDERSTAND THAT THEY WANT TO BE ABLE TO SAY THAT THE
3 PHOTOGRAPHS AND THE INKED IMPRESSIONS OFF OF THE TIRE MARKS
4 BY THE DEFENDANT'S VEHICLE WERE THE SAME AND WILL MATCH THOSE
5 TIRE MARKS. UNTIL SOMEBODY WHO CAN RENDER SUCH AN OPINION
6 IS PUT UP TO TESTIFY AND RENDER THAT, I WILL NOT ADMIT THEM.
7 OR AT LEAST MAKE IT A REASONABLE INFERENCE FOR ADMISSIBILITY.
8 THEY CAN IDENTIFY THEM AND MARK THEM AND SAY THAT HE TOOK THE
9 PHOTOGRAPHS AND THEY ACCURATELY SHOW AND DEPICT WHAT IS SHOWN
10 THEREIN. OTHER THAN THAT HE COULDN'T SAY ANYTHING ANYWAY.
11 AND WITH THAT CONDITION THE QUESTION IS YOUR OBJECTION TO
12 RELEVANCY, AND I SUSTAIN THAT OBJECTION FOR THE TIME BEING.
13 I THINK WE'RE ALREADY AT THAT POINT AND HAVE BEEN AT THAT
14 POINT.

15 MR. SWERLING: WE MIGHT BE, YOUR HONOR.

16 THE COURT: ALL RIGHT. ARE WE READY? ARE WE READY TO
17 BRING THE JURY BACK IN?

18 MR. COLEMAN: I'M GOING TO PUT THREE MORE OF THESE
19 DOCUMENTS AT THE SCENE.

20 THE COURT: JUST I.D. THEM AS BEING THE ONES THAT HE'S
21 TAKEN IF HE DID. I DON'T KNOW. AND THAT THEY ACCURATELY SHOW
22 THE CONDITIONS SHOWN THEREIN AND WHEN THEY WERE TAKEN, YOU
23 KNOW, WHERE THEY WERE TAKEN. DON'T DESCRIBE WHAT'S THERE BUT
24 WHEN AND WHERE. THEN THE NEXT WITNESS, WHOEVER CAN DO IT IF
25 HE CAN DO IT, CAN TESTIFY THAT THEY REPRESENT IN HIS OPINION

1 THE SAME OR SIMILAR CONDITIONS.

2 MR. COLEMAN: YES, SIR.

3 THE COURT: ALL RIGHT. YOU UNDERSTAND WHERE YOU ARE
4 GOING?

5 MR. COLEMAN: YES, SIR.

6 THE COURT: IDENTIFY THEM, SAY HE TOOK THEM, WHERE HE
7 TOOK THEM, THE DATE HE TOOK THEM, SCENE OF THE CRIME, WHAT
8 DATE, WHAT TIME. ANYTHING ELSE? BUT DON'T DESCRIBE WHAT'S
9 IN THERE.

10 MR. SWERLING: YOUR HONOR, I ALSO THINK BEFORE THEY ARE
11 ADMITTED THEY ALSO HAVE TO BE IDENTIFIED BY THE PERSON WHO
12 TOOK THEM. THAT WOULD BE LT. SULTON.

13 THE COURT: I DON'T THINK THAT'S NECESSARY, COUNSEL. THE
14 WITNESS ON THE IDENTIFICATION OF THE PHOTOGRAPH AS LONG AS
15 HE CAN SAY THE PHOTOGRAPH, WHAT'S SHOWN AND DEPICTED IN THE
16 PHOTOGRAPH ACCURATELY SHOWS OR REPRESENTS THE CONDITIONS AT
17 THE TIME IS SUFFICIENT. THE NEXT QUESTION IS RELEVANCY.
18 THERE'S PLENTY OF CASE LAW TO THAT EFFECT. ALL RIGHT, BRING
19 THE JURY IN.

20 (THE JURY RETURNS TO THE JURY BOX AT 4:21 P.M.)

21 THE COURT: YOU MAY CONTINUE YOUR EXAMINATION.

22 JOHN C. CHRISTY, AFTER BEING PREVIOUSLY SWORN BY THE
23 CLERK, TESTIFIES AS FOLLOWS:

24 DIRECT EXAMINATION CONTINUED BY

25 MR. COLEMAN:

1 . Q JOHN, CAN YOU IDENTIFY THESE DOCUMENTS, YES OR NO?
2 A YES, I CAN.
3 Q OKAY. DO THESE FAIRLY AND ACCURATELY REPRESENT THE WAY THAT
4 SITUATION WAS AT THE POINT IN TIME THAT YOU PHOTOGRAPHED OR
5 YOU WERE THERE WHEN THE AREA WAS PHOTOGRAPHED?
6 A YES, THEY DO.
7 Q OKAY.
8 THE COURT: WHAT WAS THE DATE THEY WERE TAKEN?
9 Q WHAT WAS THE DATE ON IT?
10 THE COURT: THE DATE THEY WERE TAKEN?
11 A THESE PARTICULAR ONES WERE TAKEN ON THE 27TH, THE MORNING
12 AFTER.
13 THE COURT: AND WHERE WERE THEY TAKEN?
14 A THEY WERE TAKEN AT THE CRIME SCENE.
15 Q OKAY. I ASK YOU IF YOU CAN IDENTIFY THAT DOCUMENT?
16 A YES, I CAN.
17 Q WHEN WAS THAT TAKEN?
18 A THAT WAS TAKEN THE DAY AFTER AT THE SUBSTATION OR RICHLAND
19 COUNTY IMPOUND.
20 Q DOES THAT FAIRLY AND ACCURATELY REPRESENT THE WAY THAT
21 VEHICLE WAS THAT DAY?
22 A YES, IT DOES.
23 Q OKAY. I SHOW YOU IF YOU CAN IDENTIFY THOSE PHOTOGRAPHS?
24 A YES, I CAN.
25 Q OKAY. WHEN WERE THOSE PHOTOGRAPHS TAKEN?

1 A THEY WERE TAKEN ON DECEMBER 28TH, 1988.

2 Q OKAY. DO THESE PHOTOGRAPHS ACCURATELY REPRESENT THE
3 DEPICTIONS AS IT APPEARED THAT DAY?

4 A YES, THEY DO.

5 Q DO YOU REMEMBER WHERE THIS PHOTOGRAPH WAS TAKEN?

6 A IT WAS TAKEN AT THE F.B.I. COLUMBIA OFFICE.

7 MR. COLEMAN: YOUR HONOR, AT THIS TIME THE STATE WOULD
8 LIKE TO INTRODUCE THESE FOR IDENTIFICATION PURPOSES.

9 THE COURT: YOU MEAN MARKED FOR IDENTIFICATION.

10 MR. COLEMAN: MARKED.

11 THE COURT: JUST HAND THEM TO THE COURT REPORTER. MADAM
12 COURT REPORTER, IF YOU WILL, PUBLISH IN TO THE RECORD WHAT
13 THE IDENTIFICATION MARKS ARE THAT YOU PLACE ON THEM.

14 (PHOTOGRAPHS ARE MARKED AS STATE'S IDENTIFICATION "O"
15 THROUGH "X")

16 REPORTER: JUDGE, IT'S IDENTIFICATION "O" THROUGH "X."

17 THE COURT: "O" THROUGH "X" IS THE ONES, THE PHOTOGRAPHS
18 THAT HAVE BEEN IDENTIFIED BY THIS WITNESS AT THIS TIME.

19 Q INVESTIGATOR CHRISTY, YOU STATED EARLIER THAT YOU PROCESSED
20 THE VICTIM'S VEHICLE, IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT.

23 A BY PROCESSING THE VEHICLE, THE VEHICLE WAS VISUALLY INSPECTED
24 FOR LATENT PRINTS AND IT WAS PROCESSED FOR LATENT PRINTS WITH
25 POWDER ON THE EXTERIOR SURFACE AND INTERIOR SURFACES. WE

1 WERE ABLE TO LIFT NUMEROUS LATENTS OFF THE EXTERIOR SURFACE
2 OF THE VEHICLE; HOWEVER, THE INTERIOR DID NOT YIELD ANY
3 LATENT PRINTS. THE VEHICLE WAS ALSO PHOTOGRAPHED. THIS WAS
4 ALL DONE AT THE SHERIFF'S DEPARTMENT SUBSTATION WAREHOUSE
5 WHERE WE IMPOUND VEHICLES THAT ARE INVOLVED IN CRIMES.

6 Q IS THIS A PHOTOGRAPH THAT WAS TAKEN?

7 A YES, IT IS.

8 MR. COLEMAN: YOUR HONOR, THE STATE WOULD INTRODUCE THIS
9 INTO EVIDENCE AT THIS TIME.

10 THE COURT: HOW WAS IT PREVIOUSLY MARKED FOR
11 IDENTIFICATION?

12 MR. COLEMAN: IT WAS PREVIOUSLY MARKED "U."

13 THE COURT: STATE'S EXHIBIT FOR IDENTIFICATION "U"?

14 MR. COLEMAN: YES, SIR.

15 THE COURT: NOW BEING MARKED?

16 REPORTER: 25.

17 THE COURT: STATE'S EXHIBIT NUMBER 25.

18 (PHOTOGRAPH IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT
19 #25 [FORMERLY "U"])

20 THE COURT: NOW IN THE RECORD OF THE CASE WITHOUT
21 OBJECTION EXHIBIT WHICH WAS FORMERLY MARKED STATE'S EXHIBIT
22 FOR IDENTIFICATION "U" HAS NOW BEEN MARKED STATE'S EXHIBIT
23 NUMBER 25. IT'S AN APPROXIMATELY ELEVEN BY FOURTEEN COLOR
24 PHOTOGRAPH. NOW IN THE RECORD OF THIS CASE WITHOUT
25 OBJECTION. YOU MAY PUBLISH IT.

1 Q INVESTIGATOR CHRISTY, WHO DID YOU COMPARE PRINTS TO? DO YOU
2 REMEMBER?

3 A THEY WERE COMPARED WITH MR. SUTTON, MR. TILLMAN, JAMES BYNUM
4 AND SEVERAL OTHER INDIVIDUALS THAT WERE SUBMITTED BY THE
5 INVESTIGATIVE DIVISION FOR COMPARISON.

6 Q WERE YOU ABLE TO COMPARE THOSE?

7 A YES, WE WERE ABLE TO COMPARE THEM BUT NO IDENTIFICATION WAS
8 AFFECTED.

9 Q OKAY. GOING BACK OUT TO THE CRIME SCENE, DID YOU MEASURE THE
10 TRACKS OUT THERE?

11 A YES, WE DID.

12 Q WHEN I SAY TRACKS, EXPLAIN TO THE JURY WHAT YOU DID.

13 A WE TOOK MEASUREMENTS OF THE LENGTH OF THE TRACK THAT WE FOUND
14 AT THE SCENE OR THE TRACKS. AND WE ALSO--

15 THE COURT: WHAT KIND OF TRACKS? TELL ME WHAT YOU ARE
16 TALKING ABOUT.

17 A THE TIRE TRACKS AT THE SCENE. THESE WERE THE TRACKS THAT
18 WERE ON THE ROAD THAT LED DOWN TOWARDS THE CEMETERY AND THE
19 TIRE TRACKS APPEARED TO STOP IN VIEW OF THE BODY. WE ALSO
20 MEASURED THE--

21 MR. SWERLING: YOUR HONOR, I'D HAVE TO OBJECT TO ANY
22 TESTIMONY CONCERNING ANY MEASUREMENTS. THOSE TIRE TRACKS
23 HAVE NOT BEEN CONNECTED UP TO ANYTHING IN THIS CASE. THEY
24 ARE NOT RELEVANT.

25 THE COURT: HE'S TESTIFIED WHERE HE FOUND THE BODY AND

1 THE TIRE TRACKS HAD SOME ALL THE WAY UP TO THE BODY.

2 MR. SWERLING: TO A VIEW OF THE BODY.

3 THE COURT: YES. APPEARED TO END RIGHT THERE AT THE
4 BODY. I FIND THAT CAUSALLY CONNECTED SUFFICIENT TO BE
5 TESTIFIED TO. YOU MAY GO AHEAD.

6 Q GO AHEAD.

7 A WE ALSO MEASURED THE DISTANCE BETWEEN THE TWO TRACKS.

8 Q AND WHAT WAS THE DISTANCE BETWEEN THE TRACKS?

9 A I DON'T RECALL EXACTLY.

10 MR. SWERLING: I OBJECT.

11 THE COURT: I SUSTAIN THE OBJECTION.

12 Q DO YOU KNOW THE WIDTH OF THOSE TRACKS?

13 A WE PREPARED A DIAGRAM WITH THE MEASUREMENTS OF THE DISTANCE
14 OF THE TRACKS. UNFORTUNATELY, IT HAS BEEN MISPLACED FROM THE
15 FILE AND I CANNOT RECALL THE MEASUREMENT.

16 Q OKAY. DID YOU GO AND PHOTOGRAPH THE DEFENDANT'S VEHICLE?

17 A YES, I DID.

18 Q WHERE?

19 A AT THE F.B.I.'S COLUMBIA OFFICE.

20 Q I SHOW YOU WHAT'S MARKED STATE'S IDENTIFICATION "T," "S,"
21 I.D. "R," "Q," "P," AND "O" AND ASK YOU TO IDENTIFY THOSE.

22 THE COURT: MRS. AHRENS, HASN'T HE ALREADY IDENTIFIED
23 THEM?

24 REPORTER: I'VE ALREADY MARKED THEM.

25 THE COURT: HE'S ALREADY IDENTIFIED THEM. WHY DO YOU

1 WANT HIM TO IDENTIFY THEM AGAIN?

2 MR. COLEMAN: SIR?

3 MR. SWERLING: THEY ARE NOT RELEVANT.

4 THE COURT: HE'S ALREADY IDENTIFIED THEM SO IT ISN'T A
5 QUESTION OF IDENTIFYING THEM ANY FURTHER. HE DOESN'T HAVE
6 TO IDENTIFY THEM ANY FURTHER. THEY HAVE BEEN MARKED FOR
7 IDENTIFICATION. ARE YOU MOVING THEM--

8 MR. COLEMAN: INTO EVIDENCE, YES, SIR.

9 THE COURT: WELL, SHOW THEM TO COUNSEL. WHEN ANYTHING
10 IS ADMITTED THE OTHER SIDE IS ENTITLED TO EXAMINE IT.

11 MR. SWERLING: YOUR HONOR, I SUBMIT THAT THERE'S NO
12 RELEVANCE BEEN ESTABLISHED.

13 THE COURT: MAY I SEE THEM? WHAT IS THE RELEVANCE AT
14 THIS TIME?

15 MR. COLEMAN: YOUR HONOR--

16 (MR. SWERLING AND MR. COLEMAN APPROACH THE BENCH OUT OF
17 THE PRESENCE OF THE COURT REPORTER)

18 THE COURT: I SUSTAIN THE OBJECTION. IT'S NOT RELEVANT
19 AT THIS TIME.

20 Q DID YOU ALSO GO AND TAKE SOME ROLLED IMPRESSIONS OF THE
21 TIRES?

22 A YES, WE DID.

23 Q CAN YOU IDENTIFY THOSE?

24 THE COURT: PLEASE EXPLAIN. YOU TOOK SOME ROLLED
25 IMPRESSIONS OF WHAT?

1 MR. COLEMAN: OF THE DEFENDANT'S VEHICLE.

2 A THESE ARE THE ROLLED IMPRESSIONS.

3 THE COURT: OF WHAT?

4 A OF THE TIRES ON THE DEFENDANT'S VEHICLE.

5 MR. SWERLING: THEY ARE NOT RELEVANT AT THIS TIME, YOUR
6 HONOR.

7 MR. COLEMAN: I'M NOT OFFERING TO PUT IT IN EVIDENCE.
8 I'M GOING TO MARK IT FOR I.D.

9 THE COURT: HE'S IDENTIFYING THEM NOW.

10 Q WHEN WERE THESE MADE?

11 A THESE WERE ALSO MADE ON DECEMBER 28TH.

12 MR. COLEMAN: YOUR HONOR, THE STATE WOULD OFFER THIS FOR
13 I.D. AT THIS TIME.

14 THE COURT: HAND THEM TO THE COURT REPORTER AND HAVE HER
15 MARK THEM AND PLEASE PLACE ON THE RECORD THE I.D. NUMBERS.

16 (TIRE IMPRESSIONS MARKED AS STATE'S IDENTIFICATION "Y"
17 THROUGH "Z," "AA THROUGH "CC")

18 REPORTER: JUDGE, THEY ARE "Y" THROUGH "Z" AND "AA"
19 THROUGH "CC."

20 THE COURT: "Y" THROUGH "Z" AND "AA" THROUGH "CC."
21 THANK YOU. WHEN THEY ARE ADMITTED DO THE CROSS REFERENCE ON
22 THE RECORD FOR US, TOO.

23 Q OKAY. INVESTIGATOR CHRISTY, I WANT TO TAKE YOU BACK TO THE
24 SCENE AGAIN. TALKING ABOUT THE BODY, HOW WAS HE CLOTHED, DO
25 YOU REMEMBER? I'LL ASK YOU IF YOU CAN IDENTIFY THIS?

1 A THE VICTIM'S BODY WAS CLAD IN KHAKI PANTS, YELLOW SHIRT TYPE
2 SWEATER, BEIGE COAT, BROWN SOCKS AND BROWN LOAFERS.

3 Q OKAY. CAN YOU IDENTIFY THAT?

4 MR. SWERLING: IF YOUR HONOR PLEASE, I DON'T SEE ANY
5 PURPOSE IN PUTTING--THERE'S NO RELEVANCE.

6 THE COURT: I DON'T EITHER. I DON'T UNDERSTAND THE
7 RELEVANCE OF THAT.

8 MR. COLEMAN: YOUR HONOR, THESE ARE THE CLOTHES THE DEAD
9 MAN HAD ON.

10 MR. SWERLING: WHAT DOES THAT HAVE TO DO WITH IT? HE'S
11 TRYING TO INFLAME THE JURY AGAINST MR. TILLMAN.

12 THE COURT: WHAT DOES IT GO TO SHOW OR PROVE? WHAT DOES
13 IT GO TO SHOW OR PROVE, MR. COLEMAN? IF YOU WILL, TELL ME
14 WHAT IT GOES TO SHOW OR PROVE ON THE ISSUES IN THIS CASE.

15 MR. COLEMAN: THAT'S FINE, YOUR HONOR.

16 Q OKAY. LET'S GO BACK. DID YOU HAVE AN OCCASION TO GO TO THE
17 RICHLAND MEMORIAL HOSPITAL THE DAY AFTER, ON THE 27TH?

18 A YES, SIR, I ATTENDED THE AUTOPSY.

19 Q OKAY. WHAT DID YOU OBSERVE THERE, IF ANYTHING?

20 A THE VICTIM SUSTAINED TWO GUNSHOT WOUNDS TO THE HEAD.

21 MR. SWERLING: IS HE READING--ARE YOU READING FROM
22 SOMETHING?

23 A FROM THE AUTOPSY REPORT.

24 MR. SWERLING: IS THAT THE SHERIFF'S DEPARTMENT AUTOPSY
25 REPORT?

1 A YES, SIR. I BELIEVE YOU HAVE A COPY.

2 MR. SWERLING: LET ME JUST SEE IF IT'S THE SAME. IS IT
3 CALLED THE FORENSIC SCIENCE DIVISION REPORT?

4 A YES, SIR. I HAVE A PHOTOCOPY OF IT.

5 MR. SWERLING: YOUR HONOR--YOU CAN PUT THAT IN EVIDENCE
6 AS FAR AS I'M CONCERNED.

7 Q DID YOU OBSERVE WHAT OCCURRED THERE?

8 A YES, I DID. I ATTENDED THE ENTIRE AUTOPSY.

9 Q OKAY. WHAT DID YOU DO THERE?

10 A FINGERPRINTED THE VICTIM FOR COMPARISON AND ELIMINATION
11 PURPOSES. COLLECTED TWO PROJECTILES, ONE EARRING AND A WATCH
12 AND THE VICTIM'S CLOTHING AS WELL AS SWABBED THE VICTIM'S
13 HANDS WITH NITRIC ACID.

14 Q EXPLAIN TO THE JURY WHAT THAT IS.

15 A NITRIC ACID IS A SOLUTION THAT IS USED TO DETECT GUN POWDER
16 OR GUN PRIMER RESIDUE ON THE HANDS OF AN INDIVIDUAL. IN
17 OTHER WORDS, TO DETERMINE IF THIS INDIVIDUAL COULD HAVE FIRED
18 A WEAPON. WHAT WE DO IS WE TAKE A SOLUTION OF NITRIC ACID
19 AND APPLY IT ON THE END OF A "Q" TIP AND RUN THE BACK OF THE
20 PALM OF EACH HAND WITH THE "Q" TIP AND IT'S SEALED INSIDE OF
21 A VIAL OR CONTAINER. WE TAKE ONE AND DO THE PALM SIDE OF THE
22 HAND ALSO, A TOTAL OF FOUR SWABS, ONE FOR EACH PORTION OF
23 EACH HAND. WE ALSO TAKE A CONTROLLED SWAB, ALSO. AND IT IS
24 SENT TO S.L.E.D. FOR ANALYSIS.

25 Q OKAY. WHO ELSE DID YOU SWAB THAT NIGHT? LATER ON THAT

1 NIGHT.

2 A ON THE EARLY MORNING HOURS OF THE 27TH I WAS PRESENT IN THE
3 LAB WHEN HAYES MALLOY'S HANDS WERE ALSO SWABBED FOR NITRIC
4 ACID. THIS TEST WAS PERFORMED AT ROUGHLY 2:20 IN THE MORNING
5 BY LT. SULTON.

6 Q HOW MANY PROJECTILES DID YOU RECOVER FROM THE AUTOPSY?

7 A TWO.

8 Q OKAY. WHAT DID YOU DO WITH ALL OF THE EVIDENCE THAT YOU HAD?

9 A THE PROJECTILES WERE SEALED IN CONTAINERS AND TAKEN TO
10 S.L.E.D. FOR ANALYSIS ALONG WITH THE NITRIC ACID SWABS FOR
11 ANALYSIS.

12 Q OKAY. WHO TOOK THE BULLETS AND THE NITRIC ACID OUT TO
13 S.L.E.D.?

14 A I TOOK THE PROJECTILES OUT TO S.L.E.D. I BELIEVE ON JANUARY
15 THE 5TH.

16 Q HOW ABOUT THE NITRIC ACID?

17 A I'M NOT SURE. I BELIEVE THEY MAY HAVE BEEN SENT THROUGH OUR
18 EVIDENCE CUSTODIAN.

19 Q OKAY. HOW DOES THAT WORK? EXPLAIN HOW ALL YOUR EVIDENCE IN
20 YOUR EVIDENCE ROOM WORKS.

21 A ITEMS THAT WE COLLECT AT CRIME SCENE, ITEMS OF EVIDENCE, ARE
22 SUBMITTED INTO THE EVIDENCE ROOM AT THE SHERIFF'S DEPARTMENT
23 WHEREBY THEY ARE SECURED. IF FURTHER ANALYSIS IS PENDING,
24 SAY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IS GOING TO
25 ANALYZE A BULLET OR A SWAB, THEN THEY WILL TRANSPORT IT OUT

1 THERE FOR THE ANALYSIS AND THEN WHEN THE ANALYSIS IS
2 CONDUCTED THEY WILL PICK IT UP. ON SOME OCCASIONS WE WILL
3 TRANSPORT OUR OWN EVIDENCE OUT THERE.

4 Q OKAY. WHEN YOU WENT OUT TO THE SCENE THAT NIGHT, DID YOU
5 OBSERVE ANY SPENT SHELLS?

6 A NO. WE SEARCHED THE AREA THAT NIGHT AND THE MORNING AFTER
7 VISUALLY AND WITH THE AID OF A METAL DETECTOR TO TRY TO
8 LOCATE SPENT SHELL CASINGS OR SHELL CASINGS THAT WERE EJECTED
9 FROM A WEAPON AND WE DID NOT LOCATE ANY.

10 Q OKAY. WHEN YOU ARRIVED OUT THERE THE NEXT MORNING, WAS THE
11 SCENE STILL SECURED?

12 A YES, IT WAS. DEPUTY CALDWELL WAS PRESENT UPON OUR ARRIVAL.

13 Q OKAY.

14 MR. COLEMAN: I BEG THE COURT'S INDULGENCE, YOUR HONOR.
15 (PAUSE) NO FURTHER QUESTIONS, YOUR HONOR.

16 THE COURT: CROSS EXAMINATION, MR. SWERLING. OF COURSE,
17 RESERVING YOUR OBJECTION THAT YOU MADE.

18 CROSS EXAMINATION BY

19 MR. SWERLING:

20 Q MR. CHRISTY, YOU WERE JUST READING FROM A REPORT FROM THE
21 SHERIFF'S DEPARTMENT, IS THAT CORRECT?

22 A YES.

23 Q THE AUTOPSY REPORT?

24 A YES.

25 Q CAN YOU IDENTIFY THAT DOCUMENT?

1 A YES, I CAN.

2 Q IS THIS PREPARED IN EACH AND EVERY CASE THAT YOU HANDLE?

3 A YES. WE PREPARE ONE IN ANY CASE THAT WE ATTEND AN AUTOPSY
4 WHETHER IT BE A NATURAL DEATH, SUICIDAL DEATH OR A DEATH
5 ATTRIBUTED BY HOMICIDE.

6 Q AND YOU CAN IDENTIFY THIS DOCUMENT?

7 A YES, I CAN.

8 MR. SWERLING: I'D OFFER THIS IN EVIDENCE.

9 THE COURT: ANY OBJECTION?

10 MR. COLEMAN: CAN I TAKE A LOOK AT IT? CAN WE APPROACH
11 THE BENCH, YOUR HONOR?

12 THE COURT: YES.

13 (MR. SWERLING AND MR. COLEMAN APPROACH THE BENCH OUT OF
14 THE PRESENCE OF THE COURT REPORTER)

15 THE COURT: I SUSTAIN THE OBJECTION ON THE ADMISSIBILITY
16 OF THE DOCUMENT. THERE'S NO FOUNDATION LAID FOR IT. IT HAS
17 CONCLUSIONS RENDERED THEREIN WHICH ARE NOT ADMISSIBLE AT THIS
18 TIME. I SUSTAIN IT FOR THOSE REASONS. IS THAT MARKED IN
19 ANY WAY?

20 MR. SWERLING: NO, SIR.

21 THE COURT: OKAY.

22 Q MR. CHRISTY, YOU TESTIFIED THERE WERE CERTAIN SCRAPING ON THE
23 THUMBS OF DONALD SUTTON, IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND WOULD YOU LOOK AT THIS DIAGRAM? WOULD THAT BE A FAIR AND

1 ACCURATE REPRESENTATION OF THE SCRAPE MARKS THAT YOU SAW ON
2 HIS HANDS?

3 A THE LOCATION WOULD BE A FAIR AND ACCURATE DESCRIPTION. HIS
4 HANDS WERE PHOTOGRAPHED.

5 Q THEY WERE PHOTOGRAPHED?

6 A YES, SIR. HIS HANDS WERE PHOTOGRAPHED AT THE MORGUE AT THE
7 AUTOPSY, YES, SIR.

8 Q DOES THIS FAIRLY AND ACCURATELY DEPICT THE SCRAPE MARKS THAT
9 WERE ON THE FINGERS THAT YOU OBSERVED?

10 A HE HAD TWO SCRAPE MARKS, ONE ON EACH HAND.

11 Q SO, IT DOES OR DOES NOT ACCURATELY DEPICT? WERE THERE MORE
12 SCRAPE MARKS?

13 A I BELIEVE ONE HAND--HERE AGAIN, I'M JUST TESTIFYING FROM
14 MEMORY.

15 THE COURT: WHAT HE'S ASKING YOU IS WHAT'S SHOWN ON THAT
16 DRAWING THAT'S NOT IN EVIDENCE AT THIS TIME ACCURATELY SHOWS
17 THE CONDITION OF THE VICTIM'S HANDS ON THE DATE THAT YOU SAW
18 IT AS TO SCRAPE MARKS. THAT'S THE QUESTION. IF YOU CAN
19 ANSWER THAT. IF YOU CAN'T, SAY YOU CAN OR YOU CAN'T.

20 A I REALLY CAN'T SAY. THERE WERE SCRAPE MARKS PRESENT.

21 Q DOES THIS REFRESH YOUR MEMORY?

22 A YES.

23 Q WOULD YOU COME DOWN AND DRAW ON HERE HOW YOU REMEMBER THE
24 SCRAPE MARKS TO BE NOW THAT YOUR MEMORY HAS BEEN REFRESHED.

25 THE COURT: YES, SIR. STEP DOWN.

1 (WITNESS LEAVES STAND)

2 THE COURT: PLEASE DO NOT TESTIFY. JUST DRAW WHAT HE
3 SAYS THEN HE MAY WANT YOU TO DESCRIBE FURTHER BUT DON'T DO
4 IT UNTIL YOU'VE FINISHED YOUR DRAWING. WHY DON'T YOU DRAW
5 A LINE UNDER THAT TO DISTINGUISH WHAT HE'S DRAWING VERSUS
6 WHAT'S ALREADY ON THERE.

7 MR. SWERLING: OKAY.

8 (WITNESS DRAWS DIAGRAM)

9 Q DOES THAT ACCURATELY DEPICT WHAT YOU VIEWED THAT NIGHT AS
10 BEING THE SCRAPE MARKS ON HIS HANDS?

11 A YES.

12 MR. SWERLING: YOU CAN RETURN TO YOUR SEAT. YOUR HONOR,
13 I'D LIKE TO OFFER THIS INTO EVIDENCE.

14 THE COURT: ANY OBJECTION?

15 MR. COLEMAN: NO, YOUR HONOR.

16 THE COURT: WITHOUT OBJECTION. LET'S HAVE THE COURT
17 REPORTER MARK IT.

18 (DIAGRAM IS RECEIVED INTO EVIDENCE AS DEFENDANT'S
19 EXHIBIT #6)

20 THE COURT: DEFENDANT'S EXHIBIT NUMBER 6. IT'S ON THE
21 DRAWING PAPER--TEAR IT OFF IF YOU DON'T MIND--NOW IN THE
22 RECORD OF THIS CASE WITHOUT OBJECTION EXHIBIT DESIGNATED
23 DEFENDANT'S EXHIBIT NUMBER 6. AS DESCRIBED IT IS ON DRAWING
24 PAPER APPROXIMATELY TWO FEET BY THREE FEET, TWENTY-FOUR
25 INCHES BY THIRTY-SIX. IT IS TWO DRAWINGS OF THE LEFT AND

1 RIGHT HANDS NOW IN WITHOUT OBJECTION.

2 Q MR. CHRISTY, YOU REALLY DO NOT KNOW WHERE THE BODY WAS SHOT,
3 DO YOU?

4 MR. COLEMAN: YOUR HONOR, I OBJECT. HE CAN ONLY TESTIFY
5 AS TO WHAT HE OBSERVED WHEN HE GOT THERE.

6 MR. SWERLING: THAT'S WHAT I'M ASKING HIM. DOES HE
7 KNOW--

8 Q DO YOU KNOW WHERE THE BODY WAS SHOT?

9 A I FOUND NO INDICATION AT THE SCENE THAT THE BODY WAS EITHER
10 SHOT THERE OR DRAGGED THERE. I COULDN'T RULE EITHER WAY SO
11 I DO NOT KNOW WHERE THE BODY WAS SHOT.

12 Q SO, BASED UPON YOUR EXPERIENCE YOU COULD NOT MAKE A
13 DETERMINATION EITHER WAY WHETHER THE PERSON WAS SHOT THERE
14 OR DRAGGED THERE? IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q NOW, AS I UNDERSTAND IT, YOU FOUND SOME ITEMS ON MR. SUTTON.
17 DID YOU FIND FIVE DOLLARS?

18 A IF I CAN REFER TO THE EVIDENCE SHEET. YES, WE FOUND FIVE
19 DOLLARS IN ONE DOLLAR BILLS, DENOMINATIONS.

20 Q IS THAT ALL THE MONEY YOU FOUND ON HIM?

21 A YES.

22 Q WHAT TIME DID YOU SAY YOU GOT THE CALL TO GO OUT THERE?

23 A I GOT THE CALL AT 11:31 P.M.

24 Q 11:31 P.M.

25 A ON THE 26TH.

1 Q OKAY. AND WHEN DID YOU TAKE THESE SWABS OF MR. MALLOY?

2 A HIS HANDS WERE SWABBED IN THE EARLY MORNING HOURS, 2:20 A.M.,
3 ON THE 27TH.

4 Q SO, THAT WOULD HAVE BEEN--

5 A TWO HOURS AND TWENTY MINUTES AFTER MIDNIGHT.

6 Q AFTER MIDNIGHT?

7 A YES, AFTER MIDNIGHT.

8 Q TWO HOURS AND TWENTY MINUTES AFTER YOU ARRIVED AT THE SCENE?

9 A THAT'S CORRECT.

10 Q OKAY. WHAT YOU ARE TESTING FOR WITH A NITRATE SWAB IS WHAT?

11 A GUN POWDER RESIDUE OR GUN PRIMER RESIDUE.

12 Q AND ISN'T IT A FACT THAT THAT CAN BE EASILY REMOVED FROM
13 ONE'S PERSON THROUGH BRUSHING IT ON--WIPING IT OFF WITH A
14 CLOTH OR WASHING IT? JUST NATURAL ATTRITION?

15 A THAT'S WHAT WE ARE INSTRUCTED BUT MANY TIMES WE DO IT.

16 Q I UNDERSTAND BUT I MEAN YOU DO IT BUT THE FACT--I GUESS WHAT
17 I'M ASKING YOU IS THAT NITRATE THAT IS LEFT WHEN SOMEONE
18 FIRES A GUN CAN BE TAKEN OFF OF THE HANDS FAIRLY EASY? ISN'T
19 THAT TRUE?

20 MR. COLEMAN: YOUR HONOR, I OBJECT. MR. CHRISTY IS NOT
21 AN EXPERT IN THAT FIELD. I'VE GOT ONE COMING.

22 MR. SWERLING: HE TAKES THE NITRATE SWABS, YOUR HONOR.

23 THE COURT: I KNOW THAT. THAT DOESN'T MEAN HE'S
24 QUALIFIED TO RENDER AN OPINION AS TO THOSE TYPE--HE MAY BE
25 QUALIFIED BUT HE HAS NOT BEEN QUALIFIED UP TO THIS POINT.

1 IN OTHER WORDS, HE'S RENDERING AN OPINION, MR. SWERLING, AND
2 HE HAS NOT BEEN QUALIFIED TO DO SO. I SUSTAIN THE OBJECTION.
3 THE JURY IS INSTRUCTED TO DISREGARD THE QUESTION.

4 Q DO YOU HAVE ANY EXPERIENCE, ANY TRAINING IN TAKING NITRATE
5 SWABS?

6 A I'VE BEEN SWABBING INDIVIDUALS' HANDS FOR SIX YEARS.

7 Q OKAY. AND HAVE YOU EVER DONE AN ANALYSIS ON THEM?

8 A NO, I AM NOT CERTIFIED TO CONDUCT AN ANALYSIS, A CHEMICAL
9 ANALYSIS.

10 Q HOW MANY SWABS DO YOU THINK YOU'VE DONE? THOUSANDS?

11 A TENS OF THOUSANDS, YES.

12 Q OKAY.

13 A MORE SO PROBABLY.

14 Q ON SOME HANDS YOU FIND NITRATE, ON SOME YOU DON'T?

15 A AND ON SOME YOU DON'T.

16 Q AS A RESULT OF YOUR TRAINING, DO YOU KNOW UNDER WHAT
17 CIRCUMSTANCES NITRATE CAN BE TAKEN OFF OF A HAND?

18 MR. COLEMAN: AGAIN, YOUR HONOR, HE'S ASKING FOR
19 SPECULATION.

20 MR. SWERLING: UNDER HIS TRAINING.

21 MR. COLEMAN: I'VE GOT AN EXPERT AND I'M GOING TO BRING
22 EVERYTHING OUT.

23 THE COURT: IT DOESN'T MATTER IF YOU'VE GOT ONE OR NOT.
24 THE QUESTION IS WHETHER OR NOT THIS WITNESS IS QUALIFIED TO
25 RENDER AN OPINION AS TO HAVING SWABBED SOMEONE'S HAND AND

1 TESTED THOSE SWABS AS TO THE CONTENT OF NITRATE BEING REMOVED
2 FROM THE HAND. HE HASN'T BEEN QUALIFIED TO SAY THAT. HE
3 CANNOT REACH THAT OPINION UNTIL HE'S QUALIFIED IN THAT AREA.
4 IN OTHER WORDS, BACKGROUND AND EXPERIENCE.

5 MR. SWERLING: YES, SIR.

6 THE COURT: AND I QUALIFY HIM.

7 MR. SWERLING: YES, SIR.

8 THE COURT: IF HE OBJECTS TO HIM RENDERING SUCH AN
9 OPINION, I SUSTAIN THE OBJECTION. HE'S NOT AUTHORIZED TO
10 RENDER AN OPINION AS TO HAVING SWABBED SOMEONE'S HAND,
11 THEREAFTER TESTING WHAT THE RESULT WAS, WHETHER IT HAD
12 NITRATE OR NOT, BECAUSE HE HAS NOT BEEN QUALIFIED.

13 MR. SWERLING: YOUR HONOR, WHAT I WAS TRYING TO PURSUE
14 WITH HIM WAS IN YOUR TRAINING IN CRIME SCENE PROCESSING AND
15 IN TAKING SWABS ARE YOU TRAINED AND HAVE YOU BEEN TRAINED AS
16 TO WHAT THE MEANING OF THE EXISTENCE OF NITRATES MEAN AND THE
17 NON-EXISTENCE OF NITRATES.

18 A YES, I HAVE.

19 Q HAVE YOU GONE TO CLASSES ON IT?

20 A YES, I HAVE ATTENDED CLASSES.

21 Q SEMINARS?

22 A A FEW.

23 THE COURT: DO YOU WANT HIM TO ANSWER WHAT THE EFFECT
24 OF FINDING NITRATES OR NOT?

25 MR. SWERLING: I'M TRYING TO ASK HIM ARE NITRATES EASILY

1 REMOVABLE FROM YOUR HAND?

2 MR. COLEMAN: YOUR HONOR, THE STATE WILL STIPULATE TO
3 THAT.

4 THE COURT: WELL, LET HIM ASK HIM IF YOU STIPULATE TO
5 IT. GO AHEAD AND ASK HIM.

6 Q IS IT A FAIRLY SIMPLE PROCESS TO GET NITRATE OFF OF YOUR HAND
7 IF YOU HAD SHOT A REVOLVER?

8 A YES. WE ARE INSTRUCTED THAT AN INDIVIDUAL CAN MERELY PLACE
9 HIS HANDS IN HIS POCKETS AND THAT WOULD REMOVE THE NITRATE
10 FROM THE HANDS. AN INDIVIDUAL COULD MERELY WASH HIS HANDS
11 AND THE TEST WOULD COME BACK NEGATIVE. AN HOUR'S TIME LAPSE
12 COULD GO BY AND THE TEST WOULD COME BACK NEGATIVE. BUT WE
13 DO THESE TESTS BECAUSE WE HAVE TO.

14 Q THE NON-EXISTENCE OF NITRATE DOES NOT MEAN THAT THE PERSON
15 DIDN'T FIRE A WEAPON, IS THAT CORRECT?

16 A THAT IS CORRECT.

17 Q NOW, YOU HAVE PROCESSED CRIME SCENES BEFORE, IS THAT CORRECT?

18 A YES, FOR SIX YEARS.

19 Q ALL RIGHT. AND AS PART OF YOUR TRAINING IN PROCESSING CRIME
20 SCENES DO YOU TAKE AND HAVE YOU TAKEN PLASTER TIRE CASTS?

21 A YES, I HAVE.

22 Q OKAY. ON HOW MANY OCCASIONS?

23 A I DON'T KNOW. TO BE HONEST WITH YOU I COULDN'T GIVE YOU AN
24 EXACT NUMBER.

25 Q HUNDREDS?

- 1 A YES, SIR.
- 2 Q OKAY. AND HAVE YOU BEEN TRAINED IN THAT AREA?
- 3 A YES, I HAVE.
- 4 Q HAVE YOU GONE TO SCHOOL IN THAT AREA?
- 5 A YES, I HAVE.
- 6 Q ATTENDED SEMINARS IN THAT AREA?
- 7 A YES.
- 8 Q ISN'T IT A FACT THAT THE MOST ACCURATE AND ONLY WAY TO REALLY
9 DETERMINE WHETHER OR NOT A KNOWN TIRE AND A TRACK MARK ARE
10 THE SAME OR SIMILAR IS TO HAVE A PLASTER CAST?
- 11 MR. COLEMAN: AGAIN, YOUR HONOR, HE'S ASKING FOR AN
12 OPINION. HE'S NOT QUALIFIED AS AN EXPERT IN THE FIELD OF
13 MATCHING TIRES.
- 14 THE COURT: I SUSTAIN THE OBJECTION.
- 15 Q HOW MANY HOURS OF TRAINING HAVE YOU HAD WITH RESPECT TO DOING
16 PLASTER CASTS OF TIRES?
- 17 A I'VE ATTENDED SEVERAL COURSES AT THE ACADEMY.
- 18 Q CRIMINAL JUSTICE ACADEMY?
- 19 A CRIMINAL JUSTICE ACADEMY. THESE WERE PUT ON BY THE FEDERAL
20 BUREAU OF INVESTIGATION.
- 21 Q OKAY. WITH THE SPECIFIC PURPOSE OF TIRE ANALYSIS?
22 A TIRE AND SHOE ANALYSIS.
- 23 Q AND YOU HAVE ON HOW MANY OCCASIONS HAVE DONE COMPARISONS?
24 A I'M NOT QUALIFIED AS A SHOE AND TIRE EXPERT.
- 25 Q PARDON?

1 A I AM NOT A SHOE AND TIRE IMPRESSION EXPERT.

2 Q HAVE YOU EVER DONE THE COMPARISONS?

3 A INDIVIDUALLY, YES.

4 Q SO, YOU HAVE DONE THEM?

5 A YES, I HAVE DONE COMPARISONS.

6 Q AND HOW MANY--YOU SAID YOU HAD DONE SEVERAL HUNDRED TIRE
7 CASTS?

8 A YES, SIR.

9 Q AND DO YOU KNOW THE IMPORTANCE OF A TIRE CAST?

10 A YES.

11 Q ALL RIGHT. AND DO YOU KNOW ABOUT THE IMPORTANCE OF NOT BEING
12 ABLE TO GET A TIRE CAST?

13 A YES.

14 Q ALL RIGHT. IS THAT THROUGH YOUR TRAINING AND EXPERIENCE?

15 A YES.

16 MR. SWERLING: YOUR HONOR, I'D SUBMIT THAT HE IS
17 QUALIFIED TO ANSWER THE QUESTION I ASKED HIM.

18 THE COURT: ARE YOU NOW TENDERING HIM AS AN EXPERT IN
19 WHAT FIELD?

20 MR. SWERLING: IN THE FIELD OF TAKING TIRE IMPRESSIONS.

21 THE COURT: WELL, TAKING A TIRE IMPRESSION IS DIFFERENT
22 THAN RENDERING AN OPINION AS TO THE RESULT OF THE TIRE
23 IMPRESSION.

24 MR. SWERLING: I'M NOT ASKING ABOUT THE RESULT.

25 THE COURT: ARE YOU SAY WHETHER OR NOT HE CAN TAKE THE

1 TIRE IMPRESSION? DO YOU QUESTION HIS ABILITY TO TAKE A TIRE
2 IMPRESSION?

3 MR. COLEMAN: NO, YOUR HONOR.

4 THE COURT: I DIDN'T THINK SO.

5 MR. SWERLING: NO, YOUR HONOR.

6 THE COURT: HE WAS OBJECTING AND I SUSTAINED HIS
7 OBJECTION. IF YOU ARE GOING TO ASK HIM TO NOW SAY HAVING
8 TAKEN THE TIRE IMPRESSION THAT HE HAS BEEN QUALIFIED EITHER
9 IN TRAINING, EXPERIENCE OR EDUCATION IN THE ABILITY TO
10 COMPARE ONE TIRE TRACK WITH ANOTHER TIRE TRACK AND RENDER AN
11 OPINION AS TO THEIR SIMILARITIES OR IDENTIFY THEM AS BEING
12 THE SAME OR DIFFERENT. HE HAS NOT BEEN QUALIFIED IN THAT
13 REGARD. BUT IF YOU WANT HIM TO TESTIFY THAT HE CAN AND DOES
14 TAKE TIRE IMPRESSIONS, CLEARLY A LOT OF PEOPLE--HE CAN DO
15 THAT. YOU DON'T NEED TO QUALIFY HIM. THAT'S SOMETHING HE
16 ACTUALLY DID.

17 Q DID YOU DO THAT IN THIS CASE?

18 A NO.

19 Q AND BASED UPON YOUR EXPERIENCE AND YOUR TRAINING IS THAT THE
20 ONLY RELIABLE WAY TO MAKE TIRE COMPARISONS?

21 A IN SOME CASES IT IS AND IN SOME CASES IT IS NOT BASED UPON
22 MY EXPERIENCE.

23 Q OKAY. BASED UPON YOUR EXPERIENCE WERE YOU ABLE TO MAKE
24 COMPARISONS IN THIS CASE? OR WERE YOU ABLE NOT TO REACH ANY
25 OPINION WHATSOEVER?

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
) VOL. III
 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

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
<u>BRIAN O'CONNELL</u>				
MR. COLEMAN	137			
MR. SWERLING		142		
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<u>RANDY J. MONDOR</u>				
MR. BILTON	449			
NO CROSS				
<u>WILLIAM H. BROWN</u>				
MR. BILTON	451			
NO CROSS				

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>JOHN EDWARDS</u>				
MR. BILTON	454		497	
MR. SWERLING		492		502
<u>CLARENCE GABBY WELLS</u>				
MR. MORTON	503		583	
MR. SWERLING		531		
<u>JAMES BYNUM</u>				
MR. MORTON	587			
<u>JOHN C. CHRISTY</u>				
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MR. SWERLING		634		
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<u>JAMES BYNUM</u>				
MR. MORTON	737		769	
MR. SWERLING		744		773

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
<u>BRUCE HALL</u>				
MR. COLEMAN	775		787	
MRS. SHEALY		781		790
<u>DAVID MOFFAT</u>				
MR. COLEMAN	810		814	
MRS. SHEALY		812		
<u>ANDREW CALDWELL</u>				
MR. COLEMAN	814			
NO CROSS				
<u>BRUCE HALL</u>				
MR. COLEMAN	816		861	
MRS. SHEALY		822		
THE COURT				
<u>RUFUS McQUEEN</u>				
MR. MORTON	864		874	
MR. SWERLING		870		
<u>KENNETH GARDNER</u>				
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1 MR. COLEMAN: OBJECTION, YOUR HONOR.

2 THE COURT: I SUSTAIN THE OBJECTION. YOU ARE ASKING HIM
3 AN OPINION NOW. HE HAS NOT BEEN QUALIFIED. OPINION AS TO
4 WHAT? YOU DIDN'T ASK HIM IF HE TOOK ONE, YOU ASKED HIM IF
5 HE REACHED AN OPINION AS TO ANY COMPARISON. I SUSTAIN THAT
6 OBJECTION. IF YOU WANT TO ASK HIM DID HE TAKE A TIRE
7 IMPRESSION ASK HIM THAT QUESTION.

8 Q DID YOU TAKE--YOU DIDN'T TAKE ONE?

9 A TOOK PHOTOGRAPHS OF A TIRE IMPRESSION. I DID NOT TAKE A
10 PLASTER CAST OF A TIRE IMPRESSION.

11 Q AND WHAT I'M ASKING YOU IS THAT THE MOST RELIABLE METHOD OF
12 MAKING A DETERMINATION?

13 A IN SOME CASES IT IS AND IN SOME CASES IT IS NOT BASED UPON
14 MY EXPERIENCE.

15 Q WHAT CASES WOULD IT BE AND WHAT CASES WOULD IT NOT BE?

16 A IT WOULD BE RELIABLE WHERE YOU HAVE A CLAY TYPE OF SOIL. IN
17 A SANDY TYPE OF SOIL THE SOIL ACTS AS A SPONGE. IT GIVES AND
18 RELEASES. SO, YOU DO NOT GET A TRUE WEAR OR TREAD PATTERN
19 AS FAR AS THE TIRE TRACK OR SHOE TRACK.

20 Q SO, AN IMPRESSION IN SAND IS WHAT YOU ARE SAYING IS NOT A
21 RELIABLE EXAMINATION?

22 MR. COLEMAN: YOUR HONOR, I OBJECT.

23 MR. SWERLING: I'M JUST ASKING HIM IS THAT WHAT HE SAID.
24 I'M ON CROSS EXAMINATION.

25 THE COURT: WELL, JUST A MINUTE. LET HIM STATE HIS

1 OBJECTION, MR. SWERLING. HE'S ENTITLED TO DO THAT. STATE
2 YOUR OBJECTION.

3 MR. COLEMAN: AS FAR AS PLASTER IMPRINTS THE SAND IS NOT
4 A RELIABLE COMPARISON.

5 THE COURT: WHAT'S YOUR OBJECTION?

6 MR. COLEMAN: TO BE MORE SPECIFIC WITH THE QUESTION,
7 YOUR HONOR. HE'S ASKING GENERAL QUESTIONS ABOUT WHETHER OR
8 NOT HE CAN GIVE A COMPARISON FROM THE SAND TO THE TIRE.

9 THE COURT: NO, HE'S NOT. HE ASKED HIM IS THERE ANY
10 DIFFERENCE BETWEEN TAKING AN IMPRESSION FROM SAND VERSUS CLAY
11 AND HE SAID THERE WAS.

12 Q MY UNDERSTANDING IS YOU ARE SAYING AN IMPRESSION FROM SAND
13 IS NOT AS RELIABLE AS FROM A HARD SURFACE, IS THAT CORRECT?

14 A YES. THAT ALSO DEPENDS UPON THE CONDITIONS.

15 Q I UNDERSTAND.

16 THE COURT: MR. SWERLING, HE OBJECTED TO HIM RENDERING
17 AN OPINION AS TO THE RELIABILITY OF THAT. YOU KNOW, HIS
18 CONTINUING OBJECTION. NOW, HE CAN TESTIFY AS TO WHETHER OR
19 NOT HE IS ABLE TO TAKE IMPRESSIONS. NOW, WHETHER OR NOT
20 SOMEONE WHO CAN INTERPRET THOSE IMPRESSIONS HE'S NOT BEEN
21 QUALIFIED TO DO THAT.

22 MR. SWERLING: I'M NOT ASKING HIM HIS OPINION, YOUR
23 HONOR. APPARENTLY HE'S NOT ABLE TO BE QUALIFIED IN THAT AREA
24 TO RENDER AN OPINION.

25 THE COURT: I AGREE. THAT'S WHAT I RULED.

1 MR. SWERLING: I'M JUST ASKING HIM WHICH IS MORE
2 RELIABLE. IS A SAND IMPRINT RELIABLE OR NOT.

3 THE COURT: WELL, WHEN YOU ASK HIM IS THAT RELIABLE
4 THAT'S ASKING HIM TO GIVE AN OPINION, RELIABILITY. IF YOU
5 ASK HIM IS IT EASIER TO TAKE AN IMPRESSION IN SAND VERSUS
6 ANOTHER, THEN YOU HAVE TO ASK WHO INTERPRETS THAT AS TO ITS
7 RELIABILITY BECAUSE YOU RENDER AN OPINION WHEN YOU SAY IT'S
8 RELIABLE OR IT'S NOT RELIABLE. AND I SUSTAINED THAT
9 OBJECTION. THAT'S RENDERING AN OPINION. HE'S NOT BEEN
10 QUALIFIED TO DO THAT. THIS WITNESS CAN CLEARLY SAY THAT HE
11 CAN OR CANNOT TAKE TIRE IMPRESSIONS IN THOSE TYPE SURFACES,
12 SAND VERSUS CLAY. HE CAN TESTIFY AS TO WHETHER OR NOT HE'S
13 ABLE TO TAKE THEM, IF THERE'S ANY DIFFICULTY, IS THERE'S ANY
14 DIFFERENCE, YOU KNOW, IN HOW YOU TAKE THEM. BUT THEN TO
15 REACH AN OPINION AS TO WHETHER OR NOT ONE IS RELIABLE OVER
16 THE OTHER HE HAS NOT BEEN QUALIFIED. THAT'S RENDERING AN
17 OPINION.

18 MR. SWERLING: IN YOUR TRAINING. IF I CAN PURSUE IT JUT
19 A MOMENT, YOUR HONOR.

20 THE COURT: SURE.

21 Q IN YOUR TRAINING, ARE YOU TRAINED IN THE HOURS AND COURSES
22 YOU'VE HAD OUT AT S.L.E.D AND IN YOUR EXPERIENCE IN TAKING
23 THESE HUNDREDS OF PLASTER CASTS TO MAKE THE DETERMINATION AS
24 WHICH IS MORE RELIABLE OR NOT?

25 A YES, BASED UPON THE CONDITIONS. YES, SIR.

1 MR. SWERLING: YOUR HONOR, CAN I ASK--

2 THE COURT: JUST A MINUTE. YOU WANT TO QUALIFY HIM--
3 DO YOU HAVE ANY OBJECTION TO HIM BEING QUALIFIED AS A PERSON
4 WHO IS QUALIFIED IN THE AREA OF TAKING THE IMPRESSIONS WITH
5 THE USE OF INK, PLASTER OF PARIS, ETC.? THAT'S WHAT
6 APPARENTLY HE'S TRAINED TO USE. DO YOU HAVE ANY QUESTION
7 ABOUT THAT? IF YOU DO, I'LL LET YOU ASK HIM SOME QUESTIONS
8 ABOUT HIS QUALIFICATIONS.

9 MR. COLEMAN: NO, YOUR HONOR, THAT'S FINE.

10 THE COURT: WITHOUT OBJECTION HE'S QUALIFIED IN THAT
11 AREA AND IS AUTHORIZED TO RENDER AN OPINION IN THAT AREA.

12 Q BASED UPON YOUR BEING QUALIFIED AS AN EXPERT, IS IT--ARE SAND
13 IMPRINTS LESS RELIABLE THAN HARD SURFACE IMPRINTS?

14 A HERE AGAIN THAT DEPENDS THE CONDITION OF THE SAND, WHETHER
15 IT'S DEEP SAND OR NOT. AND IN THIS CASE WE FOUND THAT IT WAS
16 NOT VERY RELIABLE.

17 Q THAT'S WHAT I WANTED TO ASK YOU. IN THIS CASE IT WAS NOT A
18 RELIABLE SAMPLE OF THE SAND, IS THAT CORRECT?

19 A THE SAMPLE IN THE SAND THAT WE ARE DEALING WITH ONLY GAVE A
20 TREAD PATTERN. IT DIDN'T SHOW ANY UNUSUAL CHARACTERISTICS
21 WHICH IN SOME CASES IS NORMAL FOR SAND. IN A LOT OF CASES.

22 Q IN A LOT OF CASES.

23 A WHICH A CLAY TYPE SOIL MAY HAVE SHOWN.

24 Q SO, WHAT YOU ARE SAYING IS--CORRECT ME IF I'M WRONG--IN ORDER
25 TO MAKE A RELIABLE COMPARISON TO SAND IT WOULD HAVE TO BE

1 SOME UNUSUAL CHARACTERISTIC ON THE TIRE WHICH WOULD BE
2 DISPLAYED ON THE SAND?

3 A TO MAKE A POSITIVE IDENTIFICATION.

4 Q TO MAKE A POSITIVE IDENTIFICATION?

5 A YES.

6 Q DID YOU FIND ANYTHING UNUSUAL?

7 MR. COLEMAN: YOUR HONOR, AGAIN HE'S ASKING HIM FOR AN
8 OPINION.

9 MR. SWERLING: YOUR HONOR, HE'S--I JUST ASKED HIM IF HE
10 FOUND ANYTHING UNUSUAL IN THE PATTERN.

11 THE COURT: HAD HE FINISHED HIS QUESTION?

12 MR. COLEMAN: HE HAS NOT BEEN QUALIFIED AS AN EXPERT IN
13 COMPARING THE TIRE PRINTS AND THE TIRE. I HAVE CONSENTED TO
14 ALLOW MR. SWERLING TO GO INTO THE FACT THAT HE'S AN EXPERT
15 IN PUTTING THE PLASTER IMPRINTS DOWN. I HAVE NO PROBLEM BUT
16 HE CAN'T COMPARE THEM. THAT'S WHAT HE'S ASKING HIM TO DO FOR
17 A CONCLUSION. HE'S NOT AN EXPERT IN THAT FIELD.

18 THE COURT: MR. SWERLING, WHY DON'T YOU RESTATE YOUR
19 QUESTION IN THE NATURE OF DID YOU FIND ANYTHING SUCH AS WOULD
20 APPEAR ANYTHING DIFFERENT THAN WHAT YOU WOULD NORMALLY SEE
21 IN A TIRE, BLEMISHES, MARKS OR ANYTHING LIKE THAT.

22 Q DID YOU FIND ANY UNUSUAL MARKINGS?

23 A NO.

24 Q NOW, LET ME SHOW YOU STATE'S EXHIBIT NUMBER 24. WOULD YOU
25 COME DOWN HERE?

1 THE COURT: IS THAT IN, MR. SWERLING?

2 MR. SWERLING: THIS IS AN EXHIBIT, YES, YOUR HONOR.

3 Q WOULD YOU COME DOWN HERE, MR. CHRISTY?

4 (WITNESS LEAVES STAND)

5 THE COURT: SPEAK UP, MR. CHRISTY. YOUR VOICE IS VERY
6 LIGHT. WE'VE GOT TO HEAR YOU BACK HERE, ALL RIGHT?

7 A YES, SIR.

8 THE COURT: NOW, YOU SPEAK UP LOUD AND CLEAR.

9 A ALL RIGHT, SIR.

10 Q THIS IS A--BY THE WAY, WHEN YOU GOT OUT THERE THAT NIGHT, WAS
11 HAYES MALLOY THERE?

12 A WHEN I ARRIVED HE WAS NOT.

13 Q DID ANYBODY SHOW YOU WHERE MR. MALLOY--WELL, LET ME ASK YOU.
14 DID MR. MALLOY SHOW YOU WHERE THE CAR WAS THAT HE SAID WAS
15 THE CAR THAT THEY DROVE UP IN?

16 A NO, NOBODY SHOWED ME WHERE THE CAR WAS.

17 Q SO, NOBODY EVER SHOWED YOU WHERE THE CAR WAS?

18 A THAT'S CORRECT. NOBODY EVER SHOWED ME.

19 Q WHAT YOU DID IS YOU WENT OUT THERE AND TWO OUT TWO PRINTS.
20 YOU TOOK A PHOTOGRAPH OF TWO TIRE PRINTS BECAUSE THEY WERE
21 TIRE PRINTS THAT WERE IN VIEW OF THE BODY?

22 A THEY STOPPED IN VIEW OF THE BODY. THEY DID NOT CONTINUE ON.

23 Q OKAY. BUT NOBODY TOLD YOU THAT'S WHERE THE CAR WAS PARKED,
24 IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND IN LOOKING AT THIS PHOTOGRAPH, WOULD YOU TELL THE JURY,
2 ARE THERE LITERALLY INNUMERABLE TIRE MARKS AND TIRE PATTERNS
3 IN THAT SAND?

4 A YES, THERE ARE. MANY ARE OVER ONE ANOTHER.

5 Q MANY OF THEM ARE OVER ONE ANOTHER. SOME ARE NOT OVER ONE
6 ANOTHER, IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q ALL RIGHT. DID YOU PHOTOGRAPH ANY OF THOSE? ANY OF THE
9 OTHERS?

10 A NO.

11 Q DID YOU DO ANY COMPARISONS ON ANY OF THESE OTHERS?

12 A NO, WE DID NOT.

13 Q SO, YOU BASICALLY RANDOMLY TOOK SOME IMPRESSIONS IN THE SAND
14 EVEN THOUGH WE HAD ALL OF THESE IN STATE'S EXHIBIT NUMBER 24
15 BECAUSE THEY WERE STOPPED NEAR THE BODY? IS THAT CORRECT?

16 A THAT'S CORRECT. BECAUSE THEY APPEARED TO STOP IN VIEW OF THE
17 BODY.

18 Q ALL RIGHT. NOW, YOU DON'T KNOW IF THAT'S WHERE THE VEHICLE
19 WAS ACCORDING TO YOUR TESTIMONY? IS THAT CORRECT?

20 A NOBODY TOLD ME THAT'S WHERE THE VEHICLE WAS THAT NIGHT.

21 (WITNESS RESUMES STAND)

22 Q I BELIEVE YOU ALSO TESTIFIED THAT THERE WAS SOME--CORRECT ME
23 IF I'M WRONG BECAUSE I WAS JOTTING DOWN NOTES--THAT YOU FOUND
24 SOME BLOOD ON THE BACK OF THE INDIVIDUAL AND ON HIS KNEE IN
25 ADDITION TO THE HEAD WOUND? DID YOU TESTIFY TO THAT OR DID

1 I JUST MISUNDERSTAND? IT SEEMS THAT WAS ALONG TIME AGO I
2 KNOW.

3 A BLOOD ON HIS KNÈE?

4 Q DID YOU TESTIFY ABOUT SOME BLOOD ON HIS KNEE OR ON HIS BACK?

5 A I TESTIFIED I BELIEVE THAT BLOOD HAD RAN DOWN THE BACK.

6 Q RUN DOWN THE BACK. OKAY.

7 A DOWN THE BACK OF HIS NECK AND WAS ON HIS COAT BUT NOTHING ON
8 HIS KNEE OR HIS PANTS.

9 MR. SWERLING: EXCUSE ME ONE SECOND, YOUR HONOR.
10 (PAUSE) I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: ANY REDIRECT?

12 MR. COLEMAN: YES, YOUR HONOR.

13 REDIRECT EXAMINATION BY

14 MR. COLEMAN:

15 Q INVESTIGATOR CHRISTY, YOU TESTIFIED ON CROSS EXAMINATION BY
16 MR. SWERLING YOU DIDN'T SEE ANY UNUSUAL MARKINGS ON THE
17 TIRES, IS THAT CORRECT?

18 A THAT'S CORRECT. BY UNUSUAL MARKINGS I'M TALKING ABOUT GOUGES
19 IN THE TREAD OR AN UNUSUAL TYPE OF WEAR PATTERN, CUTS OR
20 NICKS IN THE TREAD.

21 Q DID YOU OBSERVE A PATTERN ON THOSE TIRES?

22 MR. SWERLING: OBJECTION, YOUR HONOR. NOW, MR. COLEMAN
23 OBJECTED TO THE SAME THING. HE'S NOT BEEN QUALIFIED AS TO
24 ANY TIRE PATTERNS. HE WOULDN'T LET ME GO INTO IT BUT HE'S
25 ASKING THE SAME QUESTION.

1 THE COURT: ARE YOU ASKING HIM TO IDENTIFY CERTAIN
2 PATTERNS? YOU KNOW, HE'S BEEN QUALIFIED HE CAN TAKE THE I
3 GUESS INKED BLOTTING THAT YOU DO OR SAMPLING, THE PLASTER OF
4 PARIS MOLDING THAT HE DOES.

5 MR. COLEMAN: YES, SIR.

6 THE COURT: NOW, WHEN YOU ASK HIM ABOUT IDENTIFYING
7 PATTERNS HE HASN'T BEEN QUALIFIED IN ANY ABILITY TO
8 DISTINGUISH ONE PATTERN FROM ANOTHER. HE CAN SAY THESE ARE
9 THE ONES THAT HE TOOK AND THAT HE KNOWS HOW TO DO A PLASTER
10 OF PARIS SAMPLE I GUESS YOU CALL IT. WHAT DO YOU CALL IT,
11 A MOLDING?

12 A YES, SIR.

13 THE COURT: AND INK MOLDING. I SUSTAIN THE OBJECTION.

14 Q AND YOU TESTIFIED ALSO THAT NOBODY TOLD YOU WHERE THE
15 DEFENDANT'S CAR WAS PARKED, IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q WHAT WAS UNUSUAL ABOUT THOSE MARKS?

18 MR. SWERLING: HE SAID THERE WAS NOTHING UNUSUAL ABOUT
19 IT, YOUR HONOR.

20 THE COURT: LET'S LET HIM HEAR IT SAID.

21 Q WHAT WAS UNUSUAL ABOUT THOSE TRACKS?

22 A THEY APPEARED TO STOP IN VIEW OF WHERE THE BODY WAS.

23 Q NOBODY TOLD YOU THAT THE CAR HAD BEEN PARKED THERE, IS THAT
24 CORRECT?

25 MR. SWERLING: OBJECTION, YOUR HONOR. NOW, HE'S LEADING

1 THE WITNESS.

2 THE COURT: YOU ARE LEADING THE WITNESS AND HE'S ALREADY
3 ANSWERED--YOU'VE ALREADY ASKED HIM AND IT'S ALREADY BEEN
4 ANSWERED. MOVE ON.

5 Q EXPLAIN TO THE JURY WHY YOU FELT YOU COULDN'T USE THE PLASTER
6 MOLDING ON THE ROAD?

7 A BECAUSE THE SOFT SANDY SOIL DID NOT SHOW ANY UNUSUAL
8 CHARACTERISTIC ABOUT THE TIRE, UNUSUAL WEAR OR GOUGE IN THE
9 TREAD, SOMETHING THAT COULD BE POSITIVELY IDENTIFIED.

10 Q COULD YOU HAVE USED--DIDN'T YOU STATE EARLIER THAT THE SAND
11 WOULDN'T HOLD THE PLASTER?

12 MR. SWERLING: OBJECTION, YOUR HONOR.

13 THE COURT: YOU ARE TESTIFYING. ASK HIM THE QUESTION.
14 DON'T GIVE HIM AN ANSWER. HE'S INTELLIGENT. YOU JUST ASK
15 HIM A QUESTION. HE CAN ANSWER IT.

16 Q WILL THE SAND HOLD PLASTER MOLDING?

17 A YES, IT WILL.

18 Q WILL IT GIVE YOU AN ACCURATE READING?

19 A IN SOME CASES AND IN SOME CASES NOT. IT JUST DEPENDS UPON
20 THE CONDITIONS.

21 Q AND DID YOU FEEL THAT THAT SAND WOULD GIVE YOU AN ACCURATE
22 READING?

23 A NO.

24 MR. COLEMAN: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

25 RECROSS EXAMINATION BY

1 MR. SWERLING:

2 Q IS THAT BECAUSE THERE WERE NO UNUSUAL CHARACTERISTICS OR
3 BLEMISHES?

4 A AS FAR AS GOUGES OR BLEMISHES, YES, THAT'S CORRECT.

5 Q OKAY. THAT'S WHY?

6 A THAT'S WHY.

7 THE COURT: ANYTHING ELSE?

8 MR. COLEMAN: NO FURTHER QUESTIONS, YOUR HONOR.

9 THE COURT: YOU MAY STEP DOWN.

10 (WITNESS TO THE SIDE).

11 MR. COLEMAN: YOUR HONOR, THE STATE CALLS VELLO PAAVEL
12 TO THE STAND.

13 VELLO PAAVEL, AFTER BEING DULY SWORN BY THE CLERK,
14 TESTIFIES AS FOLLOWS:

15 DIRECT EXAMINATION BY

16 MR. COLEMAN:

17 Q MR. PAAVEL, WHERE ARE YOU EMPLOYED?

18 A I WORK FOR THE STATE LAW ENFORCEMENT DIVISION KNOWN AS
19 S.L.E.D.

20 Q AND WHAT ARE YOUR DUTIES THERE?

21 A I WORK IN THE FIREARMS LABORATORY WHERE I AM A FIREARMS AND
22 TOOL MARK EXAMINER.

23 Q WHAT DOES THAT MEAN?

24 A MY RESPONSIBILITIES ENTAIL THE EXAMINATION OF ACTUAL FIREARMS
25 THE EXAMINATION OF BULLETS OR PROJECTILES. I ALSO EXAMINE

1 TOOLS AND TOOL MARKS AND COMPARE MARKINGS FOUND ON EVIDENCE
2 AND COMPARE THEM TO TEST ITEMS TO DETERMINE THE ORIGIN OF A
3 SPECIFIC TOOL MARK OR THE ORIGIN OF A BULLET IN RELATION TO
4 A PARTICULAR TYPE OF GUN.

5 Q OKAY. HOW LONG HAVE YOU BEEN DOING THIS?

6 A I'VE BEEN EMPLOYED AT S.L.E.D. FOR APPROXIMATELY THREE YEARS.

7 MR. SWERLING: YOUR HONOR, I STIPULATE TO HIS
8 QUALIFICATIONS. I'M GLAD TO DO THOSE KIND OF THINGS.

9 THE COURT: WITHOUT OBJECTION SO QUALIFIED AS AN EXPERT
10 IN THE FIREARM AND TOOL AREA AND IS AUTHORIZED TO RENDER AN
11 OPINION IN THAT AREA.

12 MR. COLEMAN: YOUR HONOR, I REQUEST THAT YOU INSTRUCT
13 MR. SWERLING TO KEEP HIS COMMENTS TO HIMSELF.

14 MR. SWERLING: I WAS GLAD TO STIPULATE TO HIS
15 QUALIFICATIONS.

16 THE COURT: THERE'S NOTHING WRONG WITH THAT. GO AHEAD.

17 Q DID YOU HAVE AN OCCASION TO RUN SOME TESTING ON THE SITUATION
18 THAT TOOK PLACE DECEMBER 26TH, 1988?

19 A YES, SIR. WE RECEIVED SOME BULLETS IN THE FIREARMS
20 LABORATORY AT S.L.E.D. IN REFERENCE TO THE CASE HERE. WE
21 RECEIVED THESE BULLETS ON THE 5TH OF JANUARY, 1989.

22 Q WHAT KIND OF BULLETS ARE THOSE?

23 A THESE ARE .22 CALIBER BULLETS THAT WERE TAKEN FROM THE
24 VICTIM. I RECEIVED THESE TWO SEALED CONTAINERS INSIDE
25 ANOTHER SEALED CONTAINER AND INSIDE EACH SEALED CONTAINER WAS

1 A BULLET THAT APPARENTLY WAS TAKEN FROM THE VICTIM AT
2 AUTOPSY.

3 Q AND WHO WAS THAT VICTIM?

4 A THE NAME ON THIS CONTAINER IS DONALD SUTTON, S-U-T-T-O-N
5 (SPELLED).

6 Q OKAY. HOW DID YOU GO ABOUT TESTING THAT AND DETERMINING THE
7 CALIBER?

8 A IN THIS PARTICULAR CASE THE ONLY THING I HAD IS THE TWO
9 BULLETS. I DO NOT HAVE A PARTICULAR FIREARM TO COMPARE IT
10 TO. WHAT I DO IS TAKE THE BULLET OUT, WEIGH AND MEASURE THE
11 BULLET AND MEASURE AND EXAMINE THE RIFLING CHARACTERISTICS
12 THAT ARE FOUND ON THE BULLET. IN MODERN WEAPONS THE INSIDE
13 OF THE BARREL IS RIFLED WHICH IS A SPIRAL TYPE OF GROOVE.
14 THE PURPOSE OF THIS GROOVING IN HERE IS IMPART SPIN TO THE
15 BULLET TO STABILIZE IT AND MAKE IT MORE ACCURATE. WHEN A
16 BULLET IS FIRED IN A GUN AND IT PASSES DOWN THE BARREL, THE
17 RIFLING IMPRESSIONS ARE PRESSED INTO THE BULLET BECAUSE THE
18 BULLET NORMALLY IS SOFTER THAN THE BARREL MATERIAL. WHAT I
19 DO IS EXAMINE THOSE IMPRESSIONS THAT ARE LEFT ON THE BULLET
20 AND TRY TO DETERMINE WHAT TYPE OF GUN THEY MAY HAVE COME
21 FROM.

22 Q WHAT DID YOU DETERMINE THAT THOSE BULLETS CAME FROM?

23 A IN THIS PARTICULAR CASE ALL I CAN DO IS DETERMINE WHAT'S
24 KNOWN--EXAMINE WHAT'S KNOWN AS THE GENERAL RIFLING
25 CHARACTERISTICS. SINCE I DO NOT HAVE A SPECIFIC GUN TO

1 COMPARE IT TO, ALL I CAN DO IS SAY THAT THESE BULLETS ARE .22
2 CALIBER RIM-FIRE BULLETS. THEY WERE PROBABLY MADE BY
3 REMINGTON ARMS COMPANY OR A REMINGTON SUBSIDIARY AND THAT'S
4 BASED ON THE TYPE OF PLATING AND THE SHAPE OF THE BULLET AND
5 DESIGN OF THE BULLET. THESE PARTICULAR BULLETS HAVE SIX
6 LANDS AND GROOVES WITH A RIGHT-HAND TWIST AND THEY ARE OF A
7 SPECIFIC SIZE, AND BASED ON THE SIZE AND THE TWIST AND THE
8 NUMBER OF LANDS AND GROOVES I WAS ABLE TO GIVE A LIST OF
9 POSSIBLE GUNS THAT THESE BULLETS COULD HAVE BEEN FIRED FROM.
10 BUT WITHOUT HAVING A SPECIFIC GUN I CANNOT TELL YOU EXACTLY
11 WHAT TYPE OF GUN IT WAS FIRED FROM.

12 Q IT'S A TWENTY-TWO THOUGH?

13 A YES, SIR, IT IS A TWENTY-TWO.

14 MR. COLEMAN: YOUR HONOR, THE STATE WOULD INTRODUCE
15 THESE INTO EVIDENCE AT THIS TIME.

16 THE COURT: ANY OBJECTION?

17 MR. SWERLING: NO, SIR.

18 THE COURT: HAND IT TO THE COURT REPORTER AND HAVE HER
19 MARK IT AND HAND IT UP TO THE COURT.

20 (BULLETS IN CONTAINERS ARE RECEIVED INTO EVIDENCE AS
21 STATE'S EXHIBITS #26 AND 27)

22 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
23 OBJECTION EXHIBITS WHICH WILL BE DESIGNATED AS STATE'S
24 EXHIBIT NUMBER 26 AND 27. IT'S A CLEAR PLASTIC CUP LIKE
25 CONTAINERS WITH CAPS ON THEM. 26 HAS NUMBER 12 WRITTEN ON

1 TOP OF IT; NUMBER 27 HAS NUMBER 11 WRITTEN ON TOP OF IT.
2 EACH OF THESE IT SAYS IT CONTAINS A PROJECTILE INSIDE WITH
3 WHAT APPEARS TO BE A NAPKIN OR SOMETHING ON TOP OF IT. NOW
4 IN THE RECORD OF THIS CASE WITHOUT OBJECTION. YOU MAY
5 PUBLISH IT OR USE IT FURTHER.

6 Q MR. PAAVEL, YOU ALSO ARE AN EXPERT IN THE FIRING OF WEAPONS,
7 TEST PATTERNS?

8 A YES, SIR, I HAVE DONE EXTENSIVE STUDY TEST FIRING AND HAVE
9 TESTIFIED IN REFERENCE TO TEST PATTERNS.

10 Q OKAY. IF THERE WAS A PATTERN OF 1.5 CENTIMETERS AND 1.8
11 CENTIMETERS IN DIAMETER OF GUNPOWDER, CAN YOU GIVE AN OPINION
12 AS TO THE CLOSENESS OF THAT SHOT?

13 A ARE YOU ASSUMING THIS WAS FIRED WITH A .22 CALIBER?

14 Q YES, SIR.

15 A ARE YOU REFERRING TO POWDER TATTOOING OR--

16 Q FLECKS.

17 A ACTUAL FLAKES OF POWDER OR IS THIS SOOT DEPOSITED OR BURNING?

18 Q FLAKES.

19 A FLAKES OF POWDER? HOW ABOUT THE TYPE OF GUN?

20 Q A TWENTY-TWO.

21 A IN MOST CASES A TWENTY-TWO--IN THIS PARTICULAR CASE WHICH IS
22 PROBABLY A TWENTY-TWO SHORT THIS PARTICULAR CARTRIDGE DOES
23 NOT HAVE VERY MUCH POWDER IN IT SO VERY LITTLE POWDER IS
24 ACTUALLY DEPOSITED OR EXPELLED OUT OF THE END OF THE BARREL
25 WHEN IT'S FIRED. THEREFORE, IF YOU HAVE A PATTERN THAT SMALL

1 BASED ON MY OPINION AND MY PAST EXPERIENCE WITHOUT HAVING THE
2 ACTUAL GUN HERE TO TEST, WHICH IN THIS PARTICULAR CASE
3 HAPPENED, I WOULD PROBABLY SAY IT WAS LESS THAN SIX INCHES
4 AND DEFINITELY LESS THAN A FOOT AWAY IF YOU HAD A PATTERN
5 THAT SMALL.

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

7 THE COURT: CROSS EXAMINATION.

8 CROSS EXAMINATION BY

9 MR. SWERLING:

10 Q LET ME JUST ASK YOU ONE QUESTION. WHAT IF THERE WAS NO
11 FLECKS WHATSOEVER AT THE WOUND SITE, WHAT WOULD BE THE
12 POTENTIAL RANGE OF DISTANCES?

13 A MR. SWERLING, AGAIN DEPENDING ON THE TYPE OF GUN--

14 Q WELL, THE SAME SCENARIO.

15 A MOST TWENTY-TWO SHORTS, EVEN IN RIFLE, PISTOL OR REVOLVER
16 LENGTHS, DON'T DEPOSIT OR TATOO PAST APPROXIMATELY TWO FEET.

17 Q SO, IT WOULD AT LEAST BE TWO FEET AWAY BASED UPON YOUR
18 EXPERIENCE?

19 A YES, BASED ON MY EXPERIENCE, YES, SIR. NOW, THAT'S ACTUAL
20 POWDER TATTOOING. THAT'S PARTICLES OF POWDER THAT'S ACTUALLY
21 PENETRATING THE SKIN AND STICKING INTO THE SKIN.

22 Q IS THAT WHAT YOU CALL FLECKS?

23 A HE WAS REFERRING TO FLECKS. I ASSUME WE ARE TALKING ABOUT
24 THE SAME THING. YOU MAY HAVE A POWDER PARTICLE THAT JUST
25 FLIES ACROSS AND LANDS ON THE SKIN AND JUST SITS THERE

1 WITHOUT BEING DRIVEN INTO THE SKIN AND THAT MAY THREE TO FOUR
2 FEET AWAY.

3 Q LET ME JUST GET THE PROPER LANGUAGE IF I COULD. YOU'VE HEARD
4 POWDER FLECKS. HAVE YOU EVER HEARD THAT USED?

5 A I'VE HEARD THAT USED. FLAKE IS A CORRECT TERM FOR POWDER.
6 POWDER COMES IN FLAKE FORM OR BALL FORM. WHEN WE SPEAK OF
7 TATTOOING, WE'RE TALKING ABOUT UNBURNED OR BURNED PARTICLES
8 OF POWDER OR METAL FROM THE BULLET THAT ACTUALLY PENETRATE
9 THE SKIN. IN WHAT YOU ASKED, IF YOU SHOWED NO PARTICLES OF
10 POWDER ON A PARTICULAR WOUND OR AROUND A PARTICULAR WOUND,
11 VISIBLE PARTICLES, UNLESS IT'S BEEN WASHED OFF OR BLOWN OFF
12 OR ACTUALLY RUBBED OFF IN THIS PARTICULAR CASE YOU CAN SAFELY
13 SAY IT PROBABLY HAS BEEN FIRED FROM MORE THAN THREE TO FOUR
14 FEET AWAY.

15 Q IN THE ABSENCE OF FLECKS?

16 A YES, SIR, ACTUAL FLAKES OF POWDER. LET'S CALL THEM FLAKES
17 OF POWDER.

18 Q MEANING THAT THE WEAPON WAS FIRED AT LEAST THREE OR FOUR FEET
19 AWAY FROM THE SUBJECT?

20 A YES, SIR, I WOULD THINK SO UNLESS--

21 Q AND IT COULD BE--I'M SORRY. GO AHEAD. I DIDN'T MEAN TO CUT
22 YOU OFF.

23 A UNLESS THERE IS SOME UNUSUAL TYPE OF WEAPON THAT I'VE NOT
24 SEEN BUT A TWENTY-TWO SHORT AGAIN HAS VIRTUALLY NO POWDER.
25 IT HAS A GRAIN OF POWDER OR LESS IN THE CHARGE AND IT

1 DEPOSITS VERY LITTLE POWDER. SO, IF THERE IS ANY POWDER
2 RESIDUE, AND BY POWDER RESIDUE WE'RE TALKING ABOUT FLAKES OF
3 POWDER OR ACTUAL POWDER TATTOOING, OUTER PARTICLES BEING
4 DRIVEN INTO THE SKIN, THIS HAS BEEN SHOT AT A VERY CLOSE
5 RANGE.

6 Q OKAY. I GUESS WHAT I'M TRYING TO UNDERSTAND NOW IS THE
7 ABSENCE OF THOSE--THE ABSENCE OF THAT SAME POWDER INDICATES
8 THE WEAPON WAS AT LEAST THREE TO FOUR FEET AWAY FROM THE
9 SUBJECT?

10 A THREE TO FOUR FEET IS PROBABLY A SAFE RANGE WITHOUT ACTUALLY
11 TEST FIRING A PARTICULAR WEAPON. AND AGAIN I MUST GIVE YOU
12 GENERAL TERMS AND I MUST GIVE YOU BROAD TERMS BECAUSE I DO
13 NOT HAVE THE ACTUAL WEAPON.

14 Q WHAT COULD BE THE GREATEST DISTANCE?

15 A IN THIS TWENTY-TWO SHORT I WOULD HAVE TO SAY IN THE RANGE OF
16 THREE TO FOUR FEET.

17 Q OKAY. FINE.

18 MR. SWERLING: THANK YOU.

19 THE COURT: ANY REDIRECT?

20 REDIRECT EXAMINATION BY

21 MR. COLEMAN:

22 Q WHAT WOULD BE THE CLOSEST RANGE FOR A TWENTY-TWO?

23 MR. SWERLING: UNDER WHAT CIRCUMSTANCES. I DON'T THINK
24 THAT'S A PROPER QUESTION. HE DIDN'T TELL HIM, GIVE HIM A
25 HYPOTHETICAL UNDER WHAT CIRCUMSTANCES.

1 THE COURT: I SUSTAIN THE OBJECTION.

2 Q IF YOU HAVE A TWENTY-TWO AND THERE'S NO POWDER FLECKS ON THE
3 BODY, WHAT'S THE CLOSEST RANGE THAT WEAPON COULD HAVE BEEN
4 FIRED?

5 A NO POWDER FLAKES AT ALL STRIKING THE SKIN?

6 Q RIGHT.

7 A NORMALLY ON A CONTACT TYPE WOUND YOU DON'T SEE FLAKES OF
8 POWDER ON THE SKIN BECAUSE THE POWDER IS BEING DRIVEN INTO
9 THE WOUND. AS YOU COME AWAY FROM CONTACT YOU WILL BEGIN TO
10 SEE THE ACTUAL FLAKES OF POWDER OR UNBURNED PIECES OF POWDER
11 OR EVEN BURNED PIECES OF POWDER BEING DRIVEN INTO THE SKIN.
12 AND IN THIS PARTICULAR CASE ASSUMING IT'S A REVOLVER YOU WILL
13 PROBABLY SEE FLAKES, A VISIBLE, CLEAR DISTINCT PATTERN OUT
14 TO SIX TO NINE INCHES AND YOU MAY SEE INDIVIDUAL PARTICLES
15 OF POWDER OR FLAKES OF POWDER AS WE WERE TALKING POSSIBLY AS
16 FAR OUT AS THREE TO FOUR FEET. AND BEYOND FOUR FEET I WOULD
17 NOT EXPECT TO SEE ANY TYPE OF FLAKES OR POWDER IN THIS TYPE
18 OF WOUND OR ON THE SKIN ITSELF. YOU MAY HAVE A POWDER
19 PATTERN ON CLOTHING BECAUSE CLOTHING WOULD BE MORE CAPABLE
20 OF TRAPPING THE POWDER VERSUS THE SKIN WHERE IT ACTUALLY HAS
21 TO BE DRIVEN IN BEFORE IT WILL STAY THERE.

22 MR. COLEMAN: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

24 A THANK YOU.

25 (WITNESS TO THE SIDE)

1 MR. COLEMAN: YOUR HONOR, THE STATE CALLS JOE POWELL TO
2 THE STAND.

3 THE COURT: IS HE A SHORT WITNESS?

4 MR. COLEMAN: YES, SIR.

5 MR. SWERLING: I'LL STIPULATE TO HIS QUALIFICATIONS,
6 TOO, YOUR HONOR.

7 THE COURT: AS TO WHAT?

8 MR. SWERLING: HE'S A S.L.E.D. CHEMIST AS I UNDERSTAND
9 IT.

10 THE COURT: CHEMIST IN WHAT AREA?

11 MR. COLEMAN: GUNPOWDER.

12 THE COURT: GUNPOWDER RESIDUE. YOU CAN MOVE IT ON THE
13 RECORD YOU HAVE NO OBJECTIONS TO HIS QUALIFICATIONS AS AN
14 EXPERT IN THAT FIELD AND CAN RENDER AN OPINION.

15 JOSEPH D. POWELL, AFTER BEING DULY SWORN BY THE COURT,
16 TESTIFIES AS FOLLOWS:

17 DIRECT EXAMINATION BY

18 MR. COLEMAN:

19 Q MR. POWELL, WHERE ARE YOU EMPLOYED?

20 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
21 AS A FORENSIC CHEMIST.

22 Q AND WHAT ARE YOUR DUTIES THERE?

23 A MY PRINCIPAL DUTIES IS IN THE AREA OF GUN PRIMER AND
24 GUNPOWDER RESIDUE ANALYSIS. I'M RESPONSIBLE FOR THE ENTIRE
25 STATE AS FAR AS ALL THE TESTS THAT ARE NECESSARY TO DETERMINE

1 THE EXISTENCE OF GUN PRIMER RESIDUE ON SUSPECTS' HANDS AND
2 I ALSO DO THE POWDER DETERMINATIONS FOR VARIOUS TYPES OF
3 CLOTHING THAT HAVE BEEN SHOT INTO TO SEE IF THERE IS ANY KIND
4 OF POWDER RESIDUE THAT'S BEEN DEPOSITED ON THOSE CLOTHES.

5 Q EXPLAIN TO THE JURY WHAT DO YOU MEAN BY GUNPOWDER RESIDUE.

6 A WHEN YOU FIRE A WEAPON THERE IS A CLOUD OF VERY LIGHT POWDERY
7 TYPE MATERIAL WHICH IS EVOLVED FROM THAT GUN. THIS MATERIAL
8 IS FOUND--WHEN IT COMES OUT, IT WILL FALL UPON YOUR HEAD,
9 YOUR CLOTHES AND ON YOUR HANDS. WE HAVE A TECHNIQUE OR TEST
10 WHERE WE ACTUALLY REMOVE THIS MATERIAL FROM YOUR HANDS BY
11 USING COTTON SWABS. I THEN TAKE THOSE SWABS AND RUN AN
12 INSTRUMENTAL TEST ON THEM TO SEE IF I CAN FIND THESE METALS
13 THAT ARE FOUND INSIDE A CARTRIDGE CASE. IF I FIND THESE
14 MATERIALS IN THE PROPER AMOUNTS, THEN I'M ABLE TO DETERMINE
15 OR MAKE A CONCLUSION THAT SOMEONE HAS BEEN IN THE ENVIRONMENT
16 OF A WEAPON THAT HAS BEEN FIRED.

17 Q DID YOU HAVE AN OCCASION TO PERFORM SUCH A TEST ON TWO
18 INDIVIDUALS NAMED HAYES MALLOY AND DONALD I. SUTTON?

19 A YES, SIR, I DID.

20 THE COURT: JUST A MINUTE. FOR THE RECORD ONCE AGAIN,
21 THEY'VE STIPULATED THAT HE'S QUALIFIED IN THE AREA OF
22 FORENSIC CHEMIST AUTHORIZED TO RENDER AN OPINION IN THAT AREA
23 AS WELL AS IN RUNNING TESTS AND EXAMINATIONS AND RENDERING
24 AN OPINION ON GUN PRIMER AND GUNPOWDER RESIDUE. WITHOUT
25 OBJECTION SO QUALIFIED.

1 Q DO YOU HAVE THAT OPINION WITH YOU?

2 A YES, SIR.

3 Q WHAT IS YOUR OPINION?

4 A I RAN THE TEST ON BOTH SETS OF SWABS AND I FOUND THAT BOTH
5 OF THEM HAD NO GUN PRIMER RESIDUE ON THEM. THERE WAS NO TYPE
6 OF MATERIAL THAT WOULD BE FOUND ON A GUN THAT I FOUND ON
7 EITHER SETS OF SWABS FROM THE PEOPLE.

8 THE COURT: I'M SORRY I MISSED THAT. SWABS FROM WHO?

9 A THE SWABS ON THE TWO PEOPLE INVOLVED THAT I HAD THE SWABS
10 FROM. THAT WOULD BE A HAYES MALLOY AND A DONALD SUTTON.

11 MR. COLEMAN: YOUR HONOR, THE STATE MOVES TO INTRODUCE
12 THIS INTO EVIDENCE AT THIS TIME.

13 MR. SWERLING: YOUR HONOR, I THINK HIS TESTIMONY IS WHAT
14 IS ADMISSIBLE, NOT THE DOCUMENT.

15 THE COURT: I SUSTAIN THE OBJECTION.

16 Q TELL US THE EFFECTS OR THE CONDITIONS AFFECTING GUN PRIMER
17 RESIDUE.

18 A GUN PRIMER RESIDUE IS VERY FRAGILE. IT'S VERY EASILY REMOVED
19 EITHER BY PHYSICALLY REMOVING SUCH AS WORKING YOUR HANDS VERY
20 VIGOROUSLY. WASHING YOUR HANDS IS ALSO A METHOD WHICH IS
21 USED QUITE FREQUENTLY. IF SOMEONE IS ALIVE NORMAL ACTIVITY
22 CAN COME INTO PLAY AND IT'S BEEN MY EXPERIENCE THE OUTSIDE
23 LIMIT FOR RETAINING THIS MATERIAL ON YOUR HANDS IS ABOUT SIX
24 HOURS. IN MOST CASES IF YOU ARE DEALING WITH A SMALL CALIBER
25 WEAPON, A TWENTY-TWO OR A TWENTY-FIVE, THAT THIS TIME IS EVEN

1 MUCH MORE SHORTER. YOU MAY BE LOOKING AT NO MORE THAN TWO
2 HOURS THAT THIS MATERIAL CAN BE RETAINED ON THE HANDS.

3 Q HOW ABOUT IF SOMEONE FIRED A WEAPON MORE THAN ONCE?

4 A AS YOU FIRE A WEAPON CONTINUOUSLY THERE IS A BUILDUP OF THIS
5 MATERIAL ON YOUR HANDS AND THAT CAN PROLONG THIS TIME TO A
6 CERTAIN EXTENT BUT STILL WE HAVE FOUND THAT WITHIN, FOR SMALL
7 CALIBER WEAPONS, FOUR HOURS IS THE MOST I'VE BEEN ABLE TO
8 FIND THIS MATERIAL ON AFTER REPEATEDLY FIRING THIS WEAPON.
9 ANOTHER CASE THAT YOU WOULD NOT HAVE MATERIAL WOULD BE IF YOU
10 WAS NOT IN THE ENVIRONMENT OF A WEAPON. THERE IS NO PRIMER
11 TO BE FOUND BECAUSE YOU WASN'T THERE AROUND A GUN THAT WAS
12 SHOT. THAT'S ALSO A POSSIBILITY.

13 Q EXPLAIN TO THE JURY THE DIFFERENT CALIBER OF GUNS, THE IMPACT
14 OF DIFFERENT GUNS AND THE GUN PRIMER RESIDUE THEY HAVE.

15 A THE LEVELS OF GUN PRIMER RESIDUE THAT YOU PICK UP IS
16 PROPORTIONAL TO THE SIZE OF THE GUN. THE BIGGER THE BULLET,
17 THE MORE POWDER RESIDUE IS THERE SO THAT'S MORE MATERIAL
18 THAT'S ON YOUR HANDS. A TWENTY-TWO WOULD PROBABLY GIVE THE
19 LEAST AMOUNT. A FORTY-FIVE MAGNUM WILL GIVE VERY HIGH LEVELS
20 AND IN VERY GREAT QUANTITIES OF THIS MATERIAL.

21 MR. COLEMAN: NO FURTHER QUESTIONS, YOUR HONOR.

22 THE COURT: ANY CROSS?

23 CROSS EXAMINATION BY

24 MR. SWERLING:

25 Q MR. POWELL, ASSUME THAT THE WEAPON IN THIS CASE WAS A TWENTY-

1 TWO. WHAT YOUR TESTIMONY IS THEN THE GUNPOWDER RESIDUE WOULD
2 ONLY STAY ON THE HAND FOR APPROXIMATELY--THROUGH A NATURAL
3 PROCESS WOULD BE GONE FROM THE HAND AFTER A TWO HOUR PERIOD?
4 A YES, SIR, IN MOST CIRCUMSTANCES.
5 Q SO, IF SOMEBODY FIRED A SHOT AT LET'S SAY 9:00 OR 9:30 IN THE
6 EVENING IT WOULD BE GONE BY 11:30 OR 12:00 IN THE EVENING
7 JUST THROUGH A NATURAL PROCESS OF SWEAT AND JUST FALLING OF
8 YOUR HAND, IS THAT RIGHT?
9 A YES, SIR. IT'S ACTUALLY ABSORBED BY THE BODY IN THE BODY
10 FLUIDS SO WITHIN TWO, TWO AND A HALF HOURS--
11 Q IT'S GONE?
12 A IT'S GONE.
13 Q OKAY. AND, OF COURSE, IT ALSO CAN BE WASHED OFF?
14 A YES, SIR.
15 Q IT COULD BE RUBBED OFF?
16 A THAT IS CORRECT.
17 Q AS I UNDERSTAND IT, YOU COULD ALSO PUT YOUR HAND IN YOUR
18 POCKET AND IT WILL COME OFF IN YOUR POCKET?
19 A WELL, ANY TYPE OF NORMAL ACTIVITY TENDS TO--IT'S LIKE FLOUR.
20 YOU KNOW, IT'S BEING TRANSFERRED BACK AND FORTH EVERYWHERE
21 AND EACH TIME YOU TRANSFER IT IT'S BEING REMOVED.
22 Q VERY FRAGILE?
23 A YES, SIR.
24 Q THE FACT THAT SOMEONE DOES NOT HAVE GUN PRIMER RESIDUE ON
25 THEIR HAND SEVERAL HOURS AFTER AN INCIDENT WOULD NOT IN ANY

1 WAY INDICATE IN AND OF ITSELF THAT THEY DID NOT FIRE A
2 WEAPON, WOULD IT?

3 A NO, SIR. I CANNOT MAKE THE CONCLUSION THAT SOMEONE HAS NOT
4 FIRED A WEAPON JUST BECAUSE THEY CAME UP WITH A NEGATIVE ON
5 THEIR HANDS. NOW, I CAN LOOK AT OTHER FACTORS THAT'S
6 INVOLVED. I CAN LOOK AND SEE, FOR EXAMPLE, IF SOMEONE SAYS
7 THEY WERE HOLDING A WEAPON AROUND THE CYLINDER AND WHEN IT
8 FIRED IT SHOULD HAVE BURNED THEIR HAND. IF THERE WAS NO
9 BURNING OR NO SOOT OR ANYTHING LIKE THAT, THESE ARE FACTORS
10 THAT I CAN LOOK AT TO MAKE A DETERMINATION. BUT JUST BASED
11 UPON THIS TEST BECAUSE I FOUND NO PRIMER RESIDUE DOES NOT IN
12 ITSELF SAY THAT PERSON DID NOT FIRE A WEAPON.

13 MR. SWERLING: THAT'S IT. THANK YOU.

14 THE COURT: ANYTHING ELSE?

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

16 THE COURT: YOU MAY STEP DOWN.

17 (WITNESS TO THE SIDE)

18 THE COURT: OKAY, MR. FOREMAN, LET'S BE SURE ALL THE
19 EXHIBITS ARE IN. WE'LL STOP FOR THE EVENING. ONCE AGAIN,
20 DEPENDING ON WHERE WE ARE YOU SHOULD BE PREPARED TO WORK
21 SATURDAY. HAS ANYBODY GOT A REAL SUBSTANTIAL PROBLEM IN
22 WORKING SATURDAY? I MEAN I'VE GOT ONE LIKE YOURS, I DON'T
23 PARTICULARLY WANT TO BUT WE'VE GOT TO COMPLETE THE CASE AND
24 I DON'T ANTICIPATE US COMPLETING IT SATURDAY EITHER. I'M
25 LOOKING AT NEXT WEEK. SO, IT ALL DEPENDS ON TOMORROW WHERE

1 WE ARE. AFTER TOMORROW SOME REASONABLE EVALUATION--FRANKLY,
2 I EVEN HESITATE TO SAY THINGS LIKE THAT BECAUSE I HAVEN'T
3 FOUND ANYTHING REASONABLE IN THE EVALUATION OF THIS TRIAL SO
4 FAR, BUT I'LL TRY TO MAKE SOME DETERMINATION OF THAT, TOO,
5 AND GET YOUR INPUT INTO IT. DOES ANYBODY KNOW OF ANY REAL
6 PARTICULAR PROBLEM THAT WOULD CAUSE YOU AN UNDUE HARDSHIP
7 THAT WOULD CAUSE YOU BY HAVING TO BE HERE ON SATURDAY OTHER
8 THAN THE INCONVENIENCE OF BEING HERE? ANYBODY KNOW OF ANY?
9 (NO RESPONSE) I'M JUST LIKE YOU, THERE ARE A HUNDRED OTHER
10 PLACES I'D RATHER BE ON SATURDAY MORNING. WE'LL TRY TO MAKE
11 IT A REASONABLY--I WANT TO TRY TO MOVE THE CASE BUT I WON'T
12 KEEP US HERE LATE SATURDAY AFTERNOON. I PROMISE YOU THAT.
13 THEN WE'LL PLAN TO WORK SATURDAY. IF SOMETHING HAPPENS
14 TOMORROW THAT WE WON'T I'LL TELL YOU. MORE THAN LIKELY YOU
15 CAN PLAN TO BE HERE NEXT MONDAY, TUESDAY AND WEDNESDAY, TOO.
16 ALL RIGHT. REMEMBER MY INSTRUCTIONS TO YOU NOT TO DISCUSS
17 THIS CASE, READ ANYTHING AND I'LL SEE YOU TOMORROW AT 9:30.

18 (THE JURY LEAVES THE JURY BOX AT 5:37 P.M.)

19 THE COURT: ALL RIGHT. I THOUGHT YA'LL ENTERED INTO
20 SOME STIPULATIONS WITH SOME THINGS. HAVE YOU?

21 MR. SWERLING: YOUR HONOR, I SAID I'D STIPULATE TO
22 EVERYTHING THEY JUST DID.

23 THE COURT: I WOULD HOPE SO.

24 MR. COLEMAN: YOUR HONOR, MY UNDERSTANDING MR. SWERLING
25 SAID HE WOULD STIPULATE TO THE CHAIN.

1 MR. SWERLING: I SAID I WOULD STIPULATE THAT THEY WERE
2 .22 BULLETS.

3 THE COURT: LET ME TELL YOU SOMETHING. YA'LL DON'T TALK
4 VERY GOOD TO EACH OTHER, NONE OF YOU.

5 MR. SWERLING: JUDGE, WE DID IT RIGHT AT THE BENCH.

6 THE COURT: WELL, YA'LL JUST REALLY HAVE A HARD TIME
7 COMMUNICATING WITH EACH OTHER. YA'LL JUST CANNOT
8 COMMUNICATE. YA'LL REALLY DON'T. YOU, MR. SWERLING, WITH
9 THEM AND THEM WITH YOU. YA'LL REALLY DON'T COMMUNICATE. NOW,
10 I DON'T KNOW WHAT THE PROBLEM IS AND I'M NOT GOING TO SOLVE
11 IT IN THIS CASE AND I'M NOT GOING TO TRY BUT IF I RETURN SOME
12 DAY I MAY TRY TO RESOLVE IT FOR YOU. YA'LL DON'T COMMUNICATE
13 AT ALL.

14 MR. SWERLING: IT MIGHT BE THE LANGUAGE BARRIER, YOUR
15 HONOR.

16 THE COURT: I THINK IT IS A LANGUAGE BARRIER. IT'S
17 SOMETHING. YA'LL CERTAINLY CAN'T AGREE TO A THING AND YOU
18 DON'T SEEM TO COMMUNICATE REAL WELL. HOW MANY MORE WITNESSES
19 CAN WE ANTICIPATE FROM THE STATE SO I CAN PLAN?

20 MR. COLEMAN: I THINK ABOUT FOUR OR FIVE.

21 THE COURT: WELL, I ASSUME WE'VE GOT MR. GARDNER COMING
22 AND I KNOW THAT'S GOING TO BE A REAL SLUG FEST, TOO, JUST
23 LIKE TWO OTHERS. WHO ELSE DO I HAVE LIKE MR. GARDNER THAT'S
24 GOING TO BE A SLUG FEST?

25 MR. MORTON: ALSO, MR. BYNUM.

1 THE COURT: MR. BYNUM AGAIN. OH, I KNOW THAT'S GOING
2 TO BE A SLUG FEST.

3 MR. SWERLING: WHO, MR. BYNUM?

4 THE COURT: YES.

5 MR. SWERLING: YES, SIR.

6 THE COURT: I KNOW THAT.

7 MR. MORTON: MR. AUSTIN.

8 THE COURT: MR. AUSTIN HAS BEEN Eeking TO GET UP HERE.
9 I'VE SEEN HIM PAWING AT THE TABLE. ALL RIGHT. WHO ELSE?

10 MR. MORTON: THE TIRE PERSON. THOSE WOULD BE OUR--

11 THE COURT: THOSE ARE THE ONES YOU FEEL LIKE WILL TAKE
12 SOME TIME?

13 MR. MORTON: YES, SIR.

14 THE COURT: OKAY. NOW, I CAN ANTICIPATE MR. BYNUM AND
15 WHAT'S GOING TO HAPPEN THERE. MR. GARDNER--WE'VE ORDERED ALL
16 THE PSYCHOLOGICAL STUFF THAT I CAN ORDER FOR YOU. YOU'VE
17 GIVEN HIM HIS RECORD. WHAT ABOUT THE RECORDS? ANY QUESTIONS
18 ABOUT CRIMES OF MORAL TURPITUDE ON ANY OF THESE WITNESSES
19 WITH RECORDS?

20 MR. SWERLING: YOUR HONOR, I THINK THEY ARE ALL CRIMES
21 OF MORAL TURPITUDE ON MR. GARDNER.

22 THE COURT: IF YA'LL HAVE, PLEASE DESIGNATE WHICH ONES
23 YA'LL CONSIDER ARE NOT CRIMES OF MORAL TURPITUDE. SEE, WE
24 HAVE A FIGHT OVER EVERYTHING.

25 MR. SWERLING: YOUR HONOR, HOUSEBREAKING AND GRAND

1 LARCENY, '76.

2 MR. MORTON: WHICH WE WOULD ARGUE IS REMOTE.

3 THE COURT: DID HE SERVE TIME?

4 MR. SWERLING: ONE YEAR.

5 THE COURT: ONE YEAR.

6 MR. MORTON: HE GOT A ONE YEAR SENTENCE.

7 MR. SWERLING: AND FOUR YEARS PROBATION.

8 THE COURT: WAS IT REVOKED AT ANY TIME?

9 MR. SWERLING: IT WAS A MULTIPLE CHARGE. HE WAS ALSO
10 CHARGED WITH ACCESSORY TO A FELONY.

11 THE COURT: MR. SWERLING, IF YOU'LL FIND OUT WHETHER OR
12 NOT HE WAS IN PRISON WITHIN A TEN YEAR PERIOD. IF HE SERVED
13 A SENTENCE AND HE WAS OUT PAST THE TEN YEAR PERIOD I FIND
14 IT'S REMOTE. BUT IF HE WAS IN JAIL--HE MAY HAVE BEEN
15 SENTENCED IN '77 BUT IF HE GOT OUT IN '80 I DON'T THINK IT'S
16 REMOTE. I THINK THE TIME OF INCARCERATION COUNTS.

17 MR. SWERLING: YOUR HONOR, ACTUALLY IT JUST SAYS ONE
18 YEAR SUSPENDED, FOUR YEARS PROBATION. I WOULD SAY THE 1976
19 CONVICTION IS IMPEACHABLE. IT'S NOT TOO REMOTE.

20 THE COURT: WHY WOULDN'T IT BE TOO REMOTE?

21 MR. SWERLING: IT'S NOT A HARD AND FAST RULE THIRTEEN
22 YEARS.

23 THE COURT: NO, IT'S TEN YEARS. THE GENERAL RULE IS TEN
24 YEARS AND THE REASON WE SAY IT'S NOT HARD AND FAST AS I
25 RECALL THE CASE LAW, COUNSELLOR, IS WHERE SOMEONE, FOR

1 EXAMPLE, IS SENTENCED FOR MURDER IN 1975 AND HE'S PAROLED IN
2 1985 UNDER THE OLD STATUTE TEN YEARS AND THEN TO ARGUE THAT
3 THAT'S NOT IMPEACHABLE. HE GOT OUT IN '85. YOU CAN IMPEACH
4 HIM ON THAT.

5 MR. SWERLING: THAT'S ALL RIGHT. HE'S GOT ENOUGH, YOUR
6 HONOR.

7 THE COURT: OFFICERS, YA'LL KNOW YOU'VE GOT TO PLAN FOR
8 US TO BE HERE SATURDAY. WE ARE GOING TO NEED TO TALK AS FAR
9 AS EXPLAINING TO THE JURY WHERE THEY CAN GO, YOU KNOW, WHICH
10 DOORS THEY ENTER FOR SATURDAY AND ABOUT PARKING THEIR CARS,
11 TOO. YOU MAY WANT TO PARK THEM UNDERNEATH IF YOU CAN.
12 SOMEBODY MENTIONED THAT TO ME. WE JUST NEED TO TELL THEM SO
13 THEY'LL KNOW WHAT TO DO AND WHERE TO GO AND HOW TO GET IN.
14 ALL RIGHT. THEN YOU'VE GOING TO HAVE THE PROBLEM ABOUT
15 WITNESSES WHO ARE GOING TO BE HERE.

16 DEPUTY SHERIFF: WE'LL HAVE THE FRONT DOOR OPEN AND WE'LL
17 LET THE JURORS COME INTO THE BUILDING.

18 MR. SWERLING: YOUR HONOR, A RESISTING ARREST FROM 1977,
19 PETTY LARCENY FROM 1977.

20 THE COURT: WHAT WAS THE SENTENCE ON RESISTING ARREST?

21 MR. COLEMAN: EIGHTY-THREE DAYS.

22 THE COURT: WHY ISN'T THAT REMOTE?

23 MR. SWERLING: WELL, YOUR HONOR, I THINK IT'S IN YOUR
24 DISCRETION BUT I THINK I'M ENTITLED TO IMPEACH THIS WITNESS.
25 I THINK THAT ANYTHING HE'S GOT WITHIN THE LAST--I MEAN

1 ANYTHING FROM 1976 AND 1977 I SHOULD BE ABLE TO IMPEACH HIM.

2 THE COURT: WHY?

3 MR. SWERLING: BECAUSE AGAIN THERE'S NO RULE IN STATE
4 COURT THAT--

5 THE COURT: NO, BUT THE GENERAL RULE IS THAT TEN YEARS
6 IT BECOMES REMOTE ALL OTHER THINGS BEING EQUAL, DOESN'T IT?

7 MR. SWERLING: WELL, YOUR HONOR, I THINK THE PURPOSE OF
8 THAT RULE IS AND I WOULD ARGUE THAT THE PURPOSE OF THE RULE
9 IS THAT IF SOMEONE HAS REPEATED CRIMINAL CONDUCT THROUGHOUT
10 HIS LIFETIME I DON'T THINK THE REMOTENESS RULES APPLIES WHERE
11 YOU HAVE SOMEONE WHO TEN YEARS AGO COMMITTED AN OFFENSE OR
12 ELEVEN YEARS AGO COMMITTED AN OFFENSE AND THAT WAS IT AND
13 THEN HE WANTS TO GET UP ON THE STAND. HE PROBABLY SHOULDN'T
14 BE ABLE TO BE IMPEACHED. BUT HIS GUY IS A CAREER CRIMINAL.

15 THE COURT: GOOD ARGUMENT, MR. SWERLING. I THINK THAT'S
16 AN EXCELLENT ARGUMENT. JUST LOOK AND SEE IF YOU'VE GOT A
17 CASE THAT SAYS THAT. I THINK THAT'S A REASONABLE ARGUMENT.
18 I THINK IT'S A VERY GOOD AND REASONABLE ARGUMENT. IF SOMEONE
19 HAD ONE PRIOR OFFENSE THIRTEEN YEARS AGO, YOU CAN ARGUE THAT
20 IT'S REMOTE BECAUSE HE HAD NO PRIOR CRIMINAL HISTORY. WHAT
21 ABOUT SOMEBODY WHO HAS MULTIPLE OFFENSES? IT AFFECTS HIS
22 CREDIBILITY, HIS BELIEVABILITY. LOOK AND SEE IF THERE'S ANY
23 CASES ON IT.

24 MR. SWERLING: WELL, YOUR HONOR, HE'S GOT AN ARMED
25 ROBBERY FROM '78 WHICH HE SERVED TIME ON. I WOULD ARGUE

1 THAT'S CERTAINLY--

2 THE COURT: I ASSUME IF HE GOT AN ARMED ROBBERY, THE LAW
3 OF THIS STATE SAYS YOU'VE GOT TO SERVE SEVEN YEARS, DOESN'T
4 IT? IF HE GOT IT IN '78 THAT WOULD MEAN HE'S BE OUT IN '85,
5 WOULDN'T IT? UNDER MY RULING ABOUT WHEN HE GOT RELEASED IT
6 WOULD BE ADMISSIBLE. I'M GOING TO LET YOU IMPEACH HIM ON
7 THAT.

8 MR. SWERLING: HE'S GOT A GRAND LARCENY WHICH WAS TAKEN
9 TO AN ACCESSORY AFTER THE FACT OF A FELONY WHICH I WOULD
10 SUBMIT WOULD BE A CRIME OF MORAL TURPITUDE.

11 THE COURT: WHEN?

12 MR. SWERLING: 1982.

13 THE COURT: ACCESSORY AFTER THE FACT TO LARCENY?

14 MR. SWERLING: TO A FELONY WHICH I SUBMIT IS A CRIME OF
15 MORAL TURPITUDE.

16 THE COURT: WHAT FELONY?

17 MR. SWERLING: GRAND LARCENY. HE WAS CHARGED WITH
18 ENTERING AND GRAND LARCENY. THE COURT DISPOSITION WAS
19 ACCESSORY AFTER THE FACT OF A FELONY.

20 MR. COLEMAN: YOUR HONOR, MY POSITION ON THAT IS I DON'T
21 KNOW IF THAT'S A CRIME OF MORAL TURPITUDE OR NOT. I THINK
22 THE BURDEN WOULD BE ON MR. SWERLING TO PROVIDE THE INDICTMENT
23 SHOWING US--

24 MR. SWERLING: WELL, IF HE WANTS TO GIVE ME THAT BURDEN
25 I'LL BEAR THAT BURDEN.

1 THE COURT: HERE'S THE QUESTION. IS ACCESSORY AFTER THE
2 FACT TO GRAND LARCENY A CRIME OF MORAL TURPITUDE. LARCENY
3 CLEARLY IS. THAT'S THE ISSUE. YOU'VE GOT THE RAP SHEET.

4 MR. SWERLING: THEY GAVE ME THE RAP SHEET.

5 THE COURT: I KNOW IT. WHY WOULD YOU SERIOUSLY ARGUE
6 SOMETHING LIKE THAT. IF YOU CONTEND THE RAP SHEET IS WRONG,
7 THEN OKAY, BUT IF YOU DON'T WHY DO YOU WANT TO ARGUE WITH HIM
8 ABOUT THAT?

9 MR. SWERLING: THEY JUST LIKE TO ARGUE WITH ME.

10 MR. COLEMAN: I MEAN, YOU KNOW, HE WOULDN'T AGREE--HE
11 HASN'T AGREED TO ANYTHING WE'VE TRIED TO DO.

12 MR. SWERLING: I STIPULATED TO THE CHAIN OF CUSTODY.
13 10-7-82, YOUR HONOR, IS ASSAULT ON A POLICE OFFICER I WOULD
14 SUBMIT IS A CRIME OF MORAL TURPITUDE.

15 THE COURT: WHAT?

16 MR. SWERLING: ASSAULTING A POLICE OFFICER.

17 THE COURT: WHAT YEAR WAS THAT?

18 MR. SWERLING: THAT WAS IN 1982.

19 THE COURT: UNDER THE CLASSIFICATION OF RESISTING
20 ARREST, IF THEY CONTEND IT TO BE A TEN YEAR STATUTE, IT
21 SOUNDS LIKE IT WOULD BE.

22 MR. SWERLING: HE WAS CONFINED ON THAT CHARGE, TOO.

23 THE COURT: HOW MUCH TIME?

24 MR. SWERLING: FIVE--SIX MONTHS. FIVE YEARS SUSPENDED,
25 SIX MONTHS, FIVE YEARS PROBATION. THAT PROBABLY PREDATED

1 THE--

2 THE COURT: I DON'T KNOW. HAVE YOU GOT ANYTHING ON IT?

3 MR. SWERLING: I'LL LOOK. THERE'S ANOTHER RESISTING
4 ARREST THAT WAS TAKEN CARE OF ON THE SAME DATE.

5 THE COURT: WHAT DO YOU MEAN TAKEN CARE OF?

6 MR. SWERLING: HE WAS SENTENCED ON THAT ALSO WITH THE
7 ASSAULT ON A POLICE OFFICER.

8 THE COURT: 1982?

9 MR. SWERLING: YES, SIR. 1982.

10 THE COURT: WHAT DID HE GET?

11 MR. SWERLING: IT WAS SIX MONTHS CONFINEMENT.

12 THE COURT: ALL THESE IN RICHLAND COUNTY? THIS IS MR.
13 GARDNER, ISN'T IT?

14 MR. SWERLING: YES, SIR. THERE'S SOME KERSHAW COUNTY,
15 ORANGEBURG COUNTY. HE'S BEEN ALL OVER THE METROPOLITAN AREA.
16 HE ALSO HAD A HOUSEBREAKING AND GRAND LARCENY IN 1985.

17 MR. COLEMAN: THOSE ARE NON-CONVICTIONS.

18 THE COURT: YOU CAN'T USE THAT UNLESS IT'S CONVICTIONS.

19 MR. SWERLING: THAT'S TRUE. THEY WERE DISMISSED BY THE
20 SOLICITOR'S OFFICE.

21 THE COURT: WELL, IT DOESN'T MATTER. YOU ARE BEING
22 ARGUMENTATIVE NOW, MR. SWERLING.

23 MR. SWERLING: I'M JUST MAKING A LITTLE JOKE. WE'VE GOT
24 A ROBBERY IN 1987.

25 THE COURT: ROBBERY IN 1987. CONVICTED?

1 MR. SWERLING: YES, SIR.

2 THE COURT: I'LL LET YOU USE THAT. CHECK ON THOSE TWO
3 THAT WE MENTIONED AND ALSO THE THEORY OF WHETHER OR NOT--

4 MR. SWERLING: YOUR HONOR, HE ALSO HAS A BANK ROBBERY
5 WHICH HE'S AWAITING SENTENCE FOR RIGHT NOW. HE'S ENTERED A
6 GUILTY PLEA.

7 THE COURT: I'M AWARE OF THAT BY THE FEDERAL THING. I'M
8 GOING TO LET YOU USE THAT, TOO. MRS. KNEECE, I GUESS IT'S
9 GOING TO BE YOU. THE ISSUE IS WHETHER OR NOT IT'S REMOTENESS
10 OF THE RECORD OR, YOU KNOW, WHERE YOU ONLY HAVE LIKE ONE
11 CONVICTION FOR A CRIME OF MORAL TURPITUDE AND THE TEN YEAR
12 PERIOD HAS PASSED OR WOULD THE FACT THAT YOU HAVE A
13 CONVICTION OF A CRIME AND THEN HAVE OTHER CONVICTIONS WITHIN
14 THE TEN YEAR PERIOD EFFECT WHETHER ONE GREATER THAN TEN YEARS
15 IS ADMISSIBLE ON THE ISSUE OF REMOTENESS. THAT'S A GOOD
16 ARGUMENT, GOOD ISSUE. ALL RIGHT. WHAT ELSE?

17 MR. MORTON: YOUR HONOR, WE HAVE MR. BYNUM'S RECORD WE
18 COULD GO AHEAD AND SETTLE AT THIS TIME.

19 THE COURT: ALL RIGHT.

20 MR. MORTON: HAVE YOU GOT A COPY OF IT? HE'S GOT A
21 SHOPLIFTING IN '81. I DON'T THINK THERE'S ANY DISPUTE ABOUT
22 THAT. POSSESSION OF A STOLEN VEHICLE, '81. HOUSEBREAKING.

23 MR. SWERLING: I THINK THERE IS A CASE ON POSSESSION OF
24 A STOLEN MOTOR VEHICLE.

25 THE COURT: I'D LET HIM ON POSSESSION OF A STOLEN MOTOR

1 VEHICLE.

2 MR. MORTON: GRAND LARCENY IN '86. GRAND LARCENY AND
3 BREAKING INTO A MOTOR VEHICLE IN '87.

4 THE COURT: ALL THAT'S GOOD.

5 MR. SWERLING: BURGLARY?

6 MR. MORTON: NO.

7 THE COURT: NO CONVICTION ON BURGLARY?

8 MR. MORTON: NO, SIR.

9 THE COURT: CAN'T USE IT.

10 MR. MORTON: THAT'S ALL. NO, YOUR HONOR, SALE OF CRACK,
11 TWO COUNTS, THIS YEAR.

12 THE COURT: ALL THAT'S USABLE, ISN'T IT?

13 MR. MORTON: YES, SIR.

14 MR. SWERLING: HE'S BEEN CONVICTED OF THE SALE OF CRACK?
15 THAT'S WHAT HE'S IN JAIL FOR. YOUR HONOR, I'D ASK IF THERE
16 HAVE BEEN ANY PROMISES MADE TO MR. BYNUM OR ANY INDUCEMENTS
17 FOR HIM TO TESTIFY SINCE HE'S KIND OF HAVING A CHANGE OF
18 HEART SINCE THIS MORNING.

19 MR. MORTON: WE ARE DISCUSSING SOME MATTERS WIT HIM
20 RIGHT NOW, YOUR HONOR.

21 THE COURT: ANY PROMISES THAT ARE MADE TO THE WITNESS
22 PLEASE DIVULGE TO COUNSEL.

23 MR. SWERLING: AND ALSO MR. GARDNER.

24 THE COURT: THAT GOES TO ANY WITNESS THAT AFFECTS HIS
25 CREDIBILITY. THEY KNOW THAT. THEY KNOW IF THAT HAPPENS

1 THAT'S GOING TO VIOLATE THE REQUIREMENTS FOR DISCOVERY AND
2 UNITED STATES VS. GIGGLIO. YOU ARE REQUIRED TO DIVULGE IT.

3 MR. MORTON: YOUR HONOR, MAY WE ASK THIS COURT TO ASK
4 MR. TILLMAN AND HIS FAMILY TO PLEASE REFRAIN FROM CONTACTING
5 MR. BYNUM OR ANY OF HIS--

6 MR. SWERLING: THERE WILL BE NO CONTACT. NOBODY'S GOING
7 TO CONTACT HIM. NOW, YOUR HONOR, IF I WANT TO GO TALK TO
8 HIM, I DON'T THINK--ARE THEY TELLING ME I CAN'T TALK TO HIM?

9 MR. MORTON: NO, SIR.

10 THE COURT: NO, THE WITNESS CAN BE APPRISED BY THEM THAT
11 THEY DON'T HAVE TO TALK TO ANYBODY INCLUDING YOU, MR.
12 SWERLING.

13 MR. SWERLING: THAT'S FINE. BUT I MEAN NOBODY FROM THE
14 FAMILY IS GOING TO--

15 THE COURT: WELL, ANY WITNESS CAN BE APPRISED OF THAT.
16 THEY DON'T HAVE TO TALK TO ANYBODY.

17 MR. COLEMAN: OR ANY REPRESENTATIVE OF THE TILLMAN
18 FAMILY.

19 THE COURT: ALL YOU HAVE TO DO IS EXPLAIN TO HIM HE
20 DOESN'T HAVE TO TALK TO ANYBODY.

21 MR. COLEMAN: WE ARE NOT SO MUCH WORRIED ABOUT TALKING,
22 YOUR HONOR, WE ARE WORRIED ABOUT THREATS.

23 THE COURT: WELL, IF THEY THREATEN THEM, YOU KNOW,
24 THAT'S GETTING TO OBSTRUCTION OF JUSTICE AND A VIOLATION OF
25 THE LAW AND YA'LL CAN START CHARGING WITH THAT. INDICT THEM

1 AND GET A JURY TRIAL FOR THEM.

2 MR. MORTON: THANK YOU, YOUR HONOR. IS THAT ALSO
3 ADMISSIBLE ON THE EVIDENCE IN THIS TRIAL?

4 THE COURT: WELL, WE'LL RULE UPON THAT WHEN IT HAPPENS,
5 OKAY? HAVEN'T WE HAD ENOUGH RULINGS IN THIS CASE? COURT IS
6 IN RECESS UNTIL 9:30 TOMORROW.

7 (EVENING RECESS AT 5:52 P.M.)

8 (COURT RESUMES ON JANUARY 19, 1990)

9 THE COURT: ALL RIGHT, GENTLEMEN, ARE WE GOING TO BE
10 ABLE TO START ON TIME OR CLOSE TO IT TODAY CONTRARY TO THE
11 REST OF THE WEEK? BRING MY JURY IN, PLEASE.

12 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. MR.
13 SOLICITOR, YOU MAY CALL YOUR FIRST WITNESS.

14 MR. MORTON: YOUR HONOR, THE STATE CALLS JAMES BYNUM TO
15 THE STAND.

16 THE COURT: PLEASE HAVE HIM COME FORWARD AND SWORN.

17 JAMES BYNUM, AFTER BEING DULY SWORN BY THE CLERK,
18 TESTIFIES AS FOLLOWS:

19 DIRECT EXAMINATION BY

20 MR. MORTON:

21 Q JAMES, YOU ARE INCARCERATED RIGHT NOW, IS THAT CORRECT?

22 A YES, SIR.

23 Q WHERE ARE YOU INCARCERATED?

24 A B.R.C.I. BROAD RIVER.

25 Q BROAD RIVER CORRECTIONAL INSTITUTE?

1 A YES.

2 Q AND YOU WERE CHARGED SOMETIME THIS YEAR WITH TWO COUNTS OF

3 THE SALE OF CRACK COCAINE, IS THAT RIGHT?

4 A THAT'S RIGHT.

5 Q OKAY. YOU'VE ALSO BEEN IN SOME MORE TROUBLE, JAMES. WERE

6 YOU CHARGED IN 1981 WITH SHOPLIFTING?

7 A YES, SIR.

8 Q WERE YOU CHARGED IN 1981 WITH POSSESSION OF A STOLEN MOTOR

9 VEHICLE AND HOUSEBREAKING?

10 A YES, SIR.

11 Q WERE YOU CHARGED IN 1986 WITH GRAND LARCENY?

12 A GRAND LARCENY OF WHAT?

13 Q JUST GRAND LARCENY.

14 A I DON'T KNOW ABOUT THE GRAND LARCENY.

15 Q OKAY. 1987, GRAND LARCENY AND BREAKING INTO A MOTOR VEHICLE?

16 A BROKEN INTO A MOTOR VEHICLE?

17 Q BREAKING INTO A MOTOR VEHICLE?

18 A OH, OKAY. YEAH, THAT'S RIGHT.

19 Q OKAY. JAMES, YOU WERE IN HERE YESTERDAY FOR A LITTLE WHILE,

20 WEREN'T YOU?

21 A YES, SIR.

22 Q AND I ASKED YOU IF YOU KNEW RONALD TILLMAN. DO YOU KNOW

23 RONALD TILLMAN?

24 A YES, SIR.

25 Q HOW LONG HAVE YOU KNOWN RONALD TILLMAN?

1 A ABOUT THREE YEARS.

2 Q HOW WELL DO YOU KNOW HIM?

3 A I DIDN'T KNOW HIM THAT GOOD. I JUST KNOW HIM.

4 Q OKAY. JAMES, BETWEEN YESTERDAY AND TODAY HAVE WE TALKED TO

5 YOU?

6 A YEAH.

7 Q MYSELF AND INVESTIGATOR AUSTIN?

8 A YES.

9 Q LET'S SEE, I'M LOSING TRACK OF DAYS. YESTERDAY I BELIEVE WAS

10 THURSDAY, IS THAT RIGHT?

11 A YES.

12 Q OKAY. AND WE ALSO TALKED TO YOU ON WEDNESDAY NIGHT ABOUT

13 COMING IN HERE AND TESTIFYING?

14 A YES.

15 Q DID WE TELL YOU YESTERDAY, JAMES, THAT WE WOULD LOOK INTO

16 YOUR CLAIM THAT WHEN THE POLICE SAY YOU SOLD CRACK COCAINE

17 LAST YEAR THAT YOU WERE IN JAIL? DID WE PROMISE YOU WE'D DO

18 THAT FOR YOU?

19 A YES.

20 Q DO SEE IF IN FACT YOU WERE IN JAIL WHEN THEY SAY YOU WERE

21 SELLING CRACK COCAINE?

22 A YES, SIR.

23 Q OKAY. DID WE ALSO PROMISE YOU THAT WHEN YOU CAME UP FOR

24 PAROLE THAT WE WOULD TELL THE PAROLE PEOPLE THAT YOU

25 TESTIFIED FOR US HERE IN THIS CASE?

1 A YES.

2 Q AND DID WE PROMISE YOU THAT WE WOULD NOT PROSECUTE YOU FOR
3 PERJURY FOR THE THINGS THAT YOU CAME IN HERE AND SAID
4 YESTERDAY OUT OF THE PRESENCE OF THE JURY? IS THAT RIGHT?

5 A THAT'S RIGHT.

6 Q NOW, LET'S TALK ABOUT RONALD TILLMAN. DID RONALD TILLMAN
7 EVER TELL YOU ANYTHING ABOUT THE KILLING OF "DUCK" SUTTON?

8 A YES, SIR.

9 Q HE DID?

10 A YES, SIR.

11 Q AND WHEN WAS THE FIRST TIME THAT HE MENTIONED SOMETHING TO
12 YOU ABOUT THE KILLING OF "DUCK" SUTTON? BEFORE HE GOT
13 KILLED?

14 A YES, SIR.

15 Q AND WHAT DID HE TELL YOU?

16 A HE TOLD ME--I WENT DOWN BY THE PARTY SHOP AND HE TOLD ME WHEN
17 DONALD PULL UP, HE SAY, YO, CLEAN, I WANT HIM KNOCKED OUT.

18 Q HE SAID, YO, CLEAN, I WANT HIM KNOCKED OUT?

19 A YEAH.

20 Q WHAT'S YOUR NICKNAME?

21 A CLEAN.

22 Q CLEAN?

23 A YEAH.

24 Q SO, HE SAID, YO, CLEAN, I WANT HIM KNOCKED OUT?

25 A YES.

1 Q DID HE EVER OFFER YOU ANY MONEY TO DO IT?

2 A HE TOLD HE'D PAY ME A THOUSAND DOLLARS IF I DO IT. I TOLD
3 HIM I COULDN'T DO IT, YOU KNOW.

4 Q DID HE EVER SAY ANYTHING ELSE TO YOU ABOUT OFFERING YOU ANY
5 MONEY?

6 A WELL, THAT NIGHT WHEN HE CAME BY THE HOUSE AND HE ASKED ME
7 IS I'M SURE I DON'T WANT TO DO IT. I WAS PLAYIN' CARDS IN
8 THE HOUSE. AND HE CAME, HE BLOWED THE HORN. I WENT OUTSIDE,
9 HE STEP OUT THE CAR AND WE TALK. AND HE ASKED ME IF I SURE
10 I WOULDN'T DO IT OR I DON'T WANT TO DO IT. SO, THEN HE SAY
11 I GOT TO DO IT. SO, HE WENT ON AND DID WHAT HE GOT TO DO.
12 THE NEXT DAY I FIND OUT, YOU KNOW, DONALD IS DEAD.

13 Q HOW DID YOU FIND OUT DONALD WAS DEAD THE NEXT DAY?

14 A 'CAUSE I HEAR TALK THAT MORNIN'.

15 Q DID YOU SEE RONALD TILLMAN THAT DAY?

16 A I SEEN HIM WHEN I WENT DOWN TO THE SHOP. HE WAS DOWN THERE.
17 YOU KNOW, HE WAS CRYING. I ASKED HIM WHAT HAPPENED, MAN.
18 I SAY YA'LL DID THAT SHO' ENOUGH.

19 Q WHAT DID HE SAY?

20 A HE SAY, NO, HE DIDN'T DO IT.

21 Q OKAY. AND WHAT DID YOU SAY?

22 A I SAY, MAN, COME ON MAN, I KNOW YA'LL DID IT.

23 Q WHAT DID HE SAY?

24 A HE STILL DENY HE DIDN'T DO IT.

25 Q WERE THOSE REAL TEARS HE WAS CRYING OR WERE THOSE WHAT YOU'D

1 CALL CROCODILE TEARS?

2 A HE WAS SHEDDIN' SOME TEARS NOW. HE WAS CRYIN'.

3 Q JAMES, HAVE YOU TOLD US THIS BEFORE?

4 A WELL, YEAH. THAT NIGHT WHEN YA'LL CAME AND ASKED ME I TOLD
5 YA'LL.

6 Q WEDNESDAY NIGHT?

7 A OR THURSDAY.

8 Q YOU HAD A CHANGE OF HEART IN HERE YESTERDAY THOUGH, RIGHT?

9 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING THE
10 WITNESS.

11 THE COURT: I SUSTAIN THE OBJECTION.

12 Q DID YOU TESTIFY TO THIS SAME THING YESTERDAY OUT OF THE
13 PRESENCE OF THE JURY?

14 A NO, SIR.

15 Q WHY IS THAT?

16 A I WAS KIND OF LIKE SCARED, YOU KNOW, AT FIRST. THIS MY FIRST
17 TIME BEING UP, YOU KNOW, IN SOMETHIN' LIKE THIS HERE.

18 Q SCARED OF WHAT?

19 A JUST SCARED.

20 MR. SWERLING: OBJECTION, YOUR HONOR. THAT'S NOT A
21 PROPER QUESTION.

22 THE COURT: I SUSTAIN THE OBJECTION.

23 Q JAMES, DID YOU TELL INVESTIGATOR AUSTIN SOMETIME LAST SUMMER-

24 -

25 MR. SWERLING: YOUR HONOR, HE'S TRYING TO PROVE A PRIOR

1 INCONSISTENT STATEMENT.

2 THE COURT: I SUSTAIN THE OBJECTION.

3 Q WHAT, IF ANYTHING, DID YOU TELL INVESTIGATOR AUSTIN LAST
4 SUMMER?

5 MR. SWERLING: PRIOR INCONSISTENT STATEMENT.

6 THE COURT: SAME OBJECTION, SAME SUSTAINING OF THE
7 OBJECTION.

8 Q JAMES, HAVE YOU TALKED TO RONALD TILLMAN SINCE YOU'VE BEEN
9 IN JAIL?

10 A YES, SIR.

11 Q HAS HE SAID ANYTHING TO YOU ABOUT THIS TRIAL?

12 A YES, SIR. HE TOLD ME, HE SAID, CLEAN, GO AHEAD AND STICK BY
13 ME, YOU KNOW. THEN HE START TELLIN' ME ABOUT, YEAH, HE DID
14 IT BUT HE SAY WHEN I GO TO COURT, YOU KNOW, STICK BY HIM,
15 HE'LL LOOK OUT FOR ME. HE SAY, YOU KNOW, JUST SAY HAYES DID
16 IT. AND I TOLD HIM OKAY, I'LL DO THAT, YOU KNOW. BUT THAT
17 WAS IT, YOU KNOW, AFTER I TOLD AUSTIN. I CALL OVER THERE AND
18 TALK TO AUSTIN--

19 MR. SWERLING: OBJECTION, YOUR HONOR. IT'S NOT
20 RESPONSIVE TO THE QUESTION. I MOVE THAT IT BE STRICKEN.

21 THE COURT: THE LAST PART ABOUT HIM CALLING AUSTIN,
22 DETECTIVE AUSTIN, THAT PART IS NOT RESPONSIVE AND I SUSTAIN
23 THE OBJECTION ONLY AS TO THAT PART AS TO HIM CALLING OFFICER
24 AUSTIN AND WHAT HE TOLD HIM.

25 Q OKAY. REPEAT FOR US ONCE AGAIN WHAT HE TOLD YOU WHILE YOU

1 WERE IN JAIL.

2 THE COURT: WHAT WHO TOLD HIM?

3 Q WHO TOLD YOU AND WHAT HE SAID.

4 A WELL, YEAH, HE TOLD ME, HE SAY HE WOULD LOOK OUT FOR ME IF
5 I STICK WITH HIM AND JUST SAY HAYES DID IT.

6 Q BUT DID HE SAY WHO DID IT?

7 A HE MENTION HE DID IT THOUGH. BUT I WAS SUPPOSED TO KEEP THAT
8 TO MYSELF.

9 Q DID HE OFFER YOU ANY MONEY OR ANYTHING?

10 A YEAH. HE TOLD ME HE'LL LOOK OUT FOR ME WHEN HE GET OUT.

11 MR. MORTON: THANK YOU, JAMES. ANSWER ANY QUESTIONS
12 THAT MR. SWERLING--HOLD ON. YOUR HONOR, I BEG THE COURT'S
13 INDULGENCE. (PAUSE) JAMES, PLEASE ANSWER ANY QUESTIONS MR.
14 SWERLING HAS.

15 CROSS EXAMINATION BY

16 MR. SWERLING:

17 Q MR. BYNUM, YOU ARE COMING IN NOW HERE TODAY AND YOU ARE
18 TESTIFYING, AS I UNDERSTAND IT, THAT RONALD TILLMAN ON THE
19 26TH OFFERED YOU SOME MONEY TO KILL "DUCK" SUTTON?

20 A I DON'T KNOW EXACTLY WHAT DAY.

21 Q YOU DON'T KNOW WHAT DAY IT WAS?

22 A NO.

23 Q AS A MATTER OF FACT, THE REASON YOU DON'T KNOW WHAT IT WAS
24 IS BECAUSE IT NEVER HAPPENED, ISN'T THAT TRUE?

25 A OH, IT HAPPEN. I KNOW IT HAPPEN.

1 Q WELL, TELL THE JURY. GIVE THE JURY AN IDEA WHEN IT HAPPENED.

2 A I DON'T KNOW EXACTLY WHAT DAY.

3 Q GIVE US AN IDEA APPROXIMATELY WHEN IT HAPPENED.

4 A I CAN'T EVEN DO THAT.

5 Q YOU CAN'T EVEN DO THAT?

6 A NO, 'CAUSE I DIDN'T KEEP UP WITH WHAT DAY IT HAPPEN ON OR

7 NOTHING.

8 Q WHEN DID YOU GET ARRESTED?

9 A WHEN DID I GET ARRESTED?

10 Q YES.

11 A IT WAS IN MARCH.

12 Q MARCH OF 1989?

13 A YES.

14 Q YOU JUST TOLD THE JURY THAT YOU DIDN'T EVEN KNOW RONALD

15 TILLMAN VERY WELL. DID YOU JUST TELL THEM THAT?

16 A I AIN'T REALLY KNOW RON TILLMAN.

17 Q YOU REALLY DIDN'T KNOW RON?

18 A I KNOW HIM ABOUT THREE YEARS AGO. SOMETHING LIKE THREE

19 YEARS.

20 Q YOU SAID YOU DIDN'T REALLY KNOW HIM VERY WELL?

21 A NO, NOT PERSONALLY BY, YOU KNOW, DEALING OR NOTHING WITH HIM

22 LIKE THAT.

23 Q YOU WEREN'T A FRIEND OF HIS?

24 A NO, I WASN'T.

25 Q AND YOU ARE TELLING THE JURY THAT THIS PERSON WHO IS NOT A

1 FRIEND OF YOURS, NOT A CLOSE ASSOCIATE OF YOURS, CAME UP TO
2 YOU AND APPROACHED YOU AND ASKED YOU TO DO SOMETHING FOR A
3 THOUSAND DOLLARS, KILL SOMEBODY? HE TOOK YOU INTO HIS
4 CONFIDENCE? IS THAT WHAT YOU ARE TELLING THE JURY?

5 A THE REASON WHY ME AND RON GOT SO CLOSE--

6 Q I ASKED YOU A QUESTION. IS THAT WHAT YOU ARE TELLING THIS
7 JURY?

8 THE COURT: MR. SWERLING, NOW YOU'VE GOT TO GIVE HIM AN
9 OPPORTUNITY TO RESPOND. HE WAS NOT BEING TOTALLY
10 UNRESPONSIVE BECAUSE I COULDN'T TELL. GO AHEAD AND FINISH
11 YOUR ANSWER, MR. BYNUM.

12 A THE REASON WHY ME AND RON GOT SO TIGHT 'CAUSE RON KNOW I WAS
13 GETTING IN A WHOLE LOT OF TROUBLE. I WAS LIKE, YOU KNOW,
14 TROUBLEMAKIN'.

15 Q YOU WERE A TROUBLEMAKER?

16 A YEAH. I WAS LIKE A TROUBLEMAKER.

17 Q OKAY.

18 A I WAS GETTIN' IN TROUBLE EVER SINCE I WAS A JUVENILE.

19 Q SO, YOU ARE SAYING THAT THIS PERSON WHO IS UNFAMILIAR TO YOU
20 CAME UP AND APPROACHED YOU AND OFFERED YOU MONEY TO KILL
21 SOMEBODY?

22 A YEAH, HE DID.

23 Q EVEN THOUGH HE DIDN'T KNOW YOU VERY WELL?

24 A WELL, HE KNOW ME BY STREET TALK.

25 Q BUT JUST BY STREET TALK?

1 A YEAH.

2 Q AND THEN YOU ARE SAYING THAT HE MADE CERTAIN ADMISSIONS TO
3 YOU WHEN YOU WERE IN JAIL ABOUT "DUCK" SUTTON WHEN YOU STILL
4 AGAIN WERE NOT VERY GOOD FRIENDS, IS THAT CORRECT?

5 A WELL, HE THOUGHT I WAS HIS FRIEND.

6 Q BUT YOU HAVE ESTABLISHED YOURSELF THAT YOU DID NOT HAVE A
7 CLOSE RELATIONSHIP. I MEAN YOU WEREN'T HIS CONFIDANT. YOU
8 WEREN'T SOMEBODY THAT HE WOULD TALK TO ABOUT EVERYTHING, WERE
9 YOU? HE WASN'T ONE THAT YOU WOULD TALK TO ABOUT EVERYTHING,
10 WOULD YOU?

11 A NO, HE AIN'T.

12 Q NOW, YOU SAY HE OFFERED YOU A THOUSAND DOLLARS AT SOME POINT
13 AND YOU CAN'T REMEMBER WHEN AND THEN SOMETIME--WHAT'S THE
14 NEXT THING YOU SAY HE DID? YOU WENT OVER TO THE PARTY SHOP
15 THE DAY AFTER DONALD WAS KILLED AND RONALD WAS CRYING?

16 A YEAH, HE WAS CRYIN'.

17 Q AND HE SAID HE DIDN'T DO IT?

18 A YEAH, HE TOLD ME HE DIDN'T DO IT.

19 Q WHEN YOU ASKED HIM?

20 A YEAH.

21 Q OKAY. WHAT WAS THE NEXT CONVERSATION YOU HAD WITH HIM?

22 A I HAD LEFT AFTER THAT. AFTER I ASKED RON ABOUT DONALD. AND
23 I LEFT. RON SAY HE DIDN'T DO IT AND HE STILL BEEN CRYIN' WHEN
24 I LEFT.

25 Q OKAY. WHEN WAS THE NEXT TIME YOU SAW RONALD?

1 A THE NEXT TIME I SAW RONALD?

2 Q YES.

3 A NEXT TIME I SAW HIM WHEN I WAS LOCKED UP.

4 Q OKAY. SO, YOU HAD NO FURTHER CONVERSATION WITH HIM UNTIL YOU

5 WERE LOCKED UP IN MARCH?

6 A 'TIL I GOT LOCKED UP.

7 Q OKAY. AND THEN WHEN DID THIS OTHER OFFER COME TO YOU ABOUT

8 TAKING CARE OF YOU?

9 A WHEN WE WAS IN THE CELLBLOCK AND HE SAY STICK WITH HIM.

10 Q STICK WITH HIM?

11 A YEAH.

12 Q OKAY. DID HE OFFER YOU ANY MORE MONEY? DID YOU TESTIFY HE

13 OFFERED YOU SOME MORE MONEY?

14 A YEAH, HE OFFER ME SOME MORE MONEY BEFORE HE--I GUESS BEFORE

15 HE KILLED HIM.

16 Q WHEN WAS THAT?

17 A THAT WAS THAT NIGHT.

18 Q WHAT NIGHT?

19 A I TOLD YOU I CAN'T REMEMBER, MAN, WHAT NIGHT OR NOTHIN'.

20 Q WELL, I MEAN WAS IT--

21 A I CAN'T REMEMBER WHAT DATE. I CAN'T REMEMBER--

22 Q WHEN IT WAS. YOU JUST HAVE NO IDEA WHEN IT WAS. WELL, HOW

23 MUCH DID HE OFFER YOU THEN?

24 A HE OFFER ME THREE THOUSAND DOLLARS THAT NIGHT.

25 Q SO, HE OFFERED YOU ON TWO OCCASIONS MONEY?

1 A YEAH.

2 Q WHICH YOU TURNED DOWN?

3 A FIRST TIME IT WAS A THOUSAND. YEAH, I TURN IT DOWN.

4 Q OKAY. DID YOU TELL ANYBODY ABOUT IT AT THAT TIME, THAT

5 THAT'S WHAT HE WAS DOING? DID YOU GO TO THE POLICE?

6 A NO, I DIDN'T GO THE POLICE.

7 Q DID YOU TELL DONALD SUTTON?

8 A DID I TOLD DONALD? NO, 'CAUSE I DIDN'T EVEN MESS AROUND WITH

9 DONALD.

10 Q LET ME JUST GET THIS SCENARIO HERE CORRECT. YOU CAME IN HERE

11 YESTERDAY--

12 A YEAH, I DID.

13 Q --AND MADE CERTAIN TESTIMONY WHICH WE'LL GO OVER IN A MOMENT.

14 AND THEN YOU WERE REMOVED FROM THE WITNESS STAND. IS THAT

15 CORRECT?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. AND THE STATE TOLD YOU AT THAT TIME THAT THEY

18 WERE GOING TO PROSECUTE YOU FOR PERJURY.

19 MR. MORTON: OBJECT.

20 THE COURT: WHAT?

21 MR. MORTON: WE NEVER TOLD HIM THAT.

22 THE COURT: WELL, LET'S FIND OUT. WE DON'T KNOW. HE'S

23 ENTITLED TO ASK HIM.

24 Q WEREN'T YOU TOLD THAT YOU COULD BE PROSECUTED FOR PERJURY

25 BASED UPON THE ANSWERS YOU HAD GIVEN?

1 THE COURT: YOU SAID BY THE STATE? THE SOLICITOR'S
2 OFFICE?
3 Q BY THE STATE.
4 A NO, THE JUDGE TOLD ME I COULD HAVE BEEN.
5 Q THE JUDGE EXPLAINED TO YOU ABOUT PERJURY?
6 A YES, HE EXPLAIN TO ME ABOUT PERJURY.
7 Q OKAY. AND THE STATE AT THAT TIME CHOSE TO REMOVE YOU FROM
8 THE WITNESS STAND, IS THAT RIGHT?
9 A THAT'S CORRECT.
10 Q OKAY. AND YOU WENT DOWNSTAIRS AND YOU STARTED THINKING ABOUT
11 WHETHER OR NOT THE STATE WAS GONNA CHARGE YOU WITH PERJURY,
12 DIDN'T YOU?
13 A NO. WHAT MADE ME CAME BACK UP HERE BECAUSE I THOUGHT ABOUT
14 PERJURY, YOU KNOW, AND I KNOW YOU CAN GET SOME TIME FOR IT
15 'CAUSE THE JUDGE EXPLAIN IT TO ME AND I THOUGHT ABOUT IT AND
16 THAT'S--
17 Q HE EXPLAINED TO YOU WHAT IT MEANT?
18 A YEAH, WHAT IT MEANT.
19 Q THAT IF YOU PERJURE YOURSELF YOU COULD BE PROSECUTED FOR
20 THAT?
21 A YES.
22 Q OKAY. AND AT THAT POINT YOU WERE REMOVED FROM THE WITNESS
23 STAND BY THE STATE. THEY CALLED YOU DOWN, DIDN'T THEY?
24 A CALL ME DOWN FROM THE STAND, YEAH.
25 Q RIGHT. AND AFTER YOU GAVE CERTAIN TESTIMONY IN THIS COURT,

1 ISN'T THAT CORRECT?

2 A THAT'S CORRECT.

3 Q ALL RIGHT. AND THEN YOU WERE SENT DOWNSTAIRS AND YOU STARTED

4 THINKING ABOUT THE FACT THAT YOU COULD BE PROSECUTED FOR

5 PERJURY, THEY WERE GOING TO PROSECUTE YOU FOR PERJURY, ISN'T

6 THAT TRUE? YES OR NO?

7 A I THOUGHT ABOUT THEY MIGHT CAN DO THAT.

8 Q RIGHT.

9 A YEAH.

10 Q AS A MATTER OF FACT, WHEN YOU CAME BACK TO TALK WITH THEM

11 YESTERDAY AFTERNOON ONE OF THE THINGS THAT YOU NEGOTIATED

12 WITH THEM IS THEY WOULDN'T PROSECUTE YOU FOR PERJURY, ISN'T

13 THAT TRUE?

14 A THEY WOULDN'T DO WHAT NOW?

15 Q WOULDN'T PROSECUTE YOU FOR PERJURY?

16 A THEY WOULDN'T PROSECUTE ME FOR PERJURY?

17 Q RIGHT.

18 A I KNOW THEY COULDN'T DO IT, NOT THE STATE.

19 Q BUT THAT'S WHAT THEY JUST STATED IN THE RECORD WAS THE

20 AGREEMENT BETWEEN YOU AND THEM. YOU AGREED--YOU ASKED THEM

21 AND THEY AGREED NOT TO PROSECUTE YOU FOR PERJURY. ISN'T THAT

22 TRUE?

23 A WELL, ALSO TOLD ME, SAY IF I TELL THE TRUTH THEY COULDN'T

24 PROSECUTE ME FOR PERJURY.

25 Q WAIT A MINUTE, JAMES. THE SOLICITOR JUST ANNOUNCED THEY HAVE

1 AN AGREEMENT BETWEEN YOU NOT TO PROSECUTE YOU FOR PERJURY,
2 ISN'T THAT TRUE?

3 A THAT'S TRUE.

4 Q OKAY. SO, YOU CUT A DEAL WITH THEM YESTERDAY AFTERNOON, DID
5 YOU NOT?

6 A NO, IT WASN'T NO DEAL.

7 Q WELL, WHEN WAS THIS ANNOUNCED? WHEN WERE YOU TOLD THAT THAT
8 WAS GOING TO HAPPEN, THIS MORNING OR YESTERDAY AFTERNOON?

9 A YESTERDAY AFTERNOON. IF I DON'T GO IN THERE AND TELL THE
10 TRUTH THE STATEMENT I TOLD THEM.

11 Q OKAY. SO, THEY AGREED NOT TO PROSECUTE YOU FOR PERJURY?

12 A YEAH.

13 Q THEN THEY ALSO COME UP AND THEY TELL YOU THAT WHEN YOU GO UP
14 FOR PAROLE THEY ARE GOING TO GO TO THE PAROLE BOARD FOR YOU
15 AND TELL THEM WHAT A GOOD GUY YOU ARE.

16 MR. MORTON: OBJECT.

17 Q ISN'T THAT TRUE?

18 MR. MORTON: OBJECT.

19 THE COURT: JUST A MINUTE. WHAT'S THE OBJECTION?

20 MR. MORTON: I TOLD HIM WE WOULD GO TO THE PAROLE BOARD
21 AND TELL THEM THAT HE TESTIFIED TRUTHFULLY FOR US IN COURT
22 TODAY.

23 THE COURT: NOW, MR. MORTON, YOU ARE TESTIFYING NOW.

24 MR. SWERLING: I OBJECT TO THAT, YOUR HONOR.

25 THE COURT: THAT'S ALL RIGHT. I SUSTAIN THE OBJECTION

1 AND I INSTRUCT THE JURY TO DISREGARD MR. MORTON'S COMMENT.
2 IT'S NOT A PROPER COMMENT, IT'S NOT A PROPER OBJECTION. THE
3 WITNESS IS ENTITLED TO RECOUNT--HE'S ENTITLED TO EXAMINE HIM
4 ON IT. NOW, IF YOU WANT TO TESTIFY THEN CALL YOURSELF AND
5 TESTIFY, MR. MORTON. BUT YOU ARE NOW TESTIFYING AND THAT'S
6 NOT PROPER. HE HAS THE RIGHT TO EXAMINE HIM UPON ANY
7 PROMISES MADE AND THE SUBSTANCE OF IT. YOU ARE OVERRULED.
8 Q THESE FOLKS OVER HERE, THESE THREE GENTLEMEN, AND THE POLICE
9 OFFICER TOLD YOU THAT WHEN YOU WENT UP TO THE PAROLE--WHEN
10 YOU WENT UP FOR PAROLE THEY WERE GOING TO GO AHEAD AND SPEAK
11 IN YOUR BEHALF. ISN'T THAT WHAT IT AMOUNTS TO?
12 A YES.
13 Q THAT'S A PRETTY GOOD DEAL, ISN'T IT, TO HAVE THE SOLICITOR
14 COME UP AND BE AT A PAROLE HEARING?
15 A NO, IT'S NOT.
16 Q YOU DON'T THINK THAT'S A GOOD DEAL?
17 A NO.
18 Q YOU ARE TELLING THE JURY THAT'S NOT A GOOD DEAL?
19 A NO, IT'S NOT A GOOD DEAL TO ME.
20 Q OKAY. WELL, LET ME ASK YOU THIS. DO YOU THINK THE FACT THAT
21 YOU PLED GUILTY TO SELLING CRACK COCAINE IN 1989--THAT'S WHAT
22 YOU PLED GUILTY TO, ISN'T IT?
23 A THAT'S WHAT I PLED GUILTY TO.
24 Q YOU DIDN'T HAVE A TRIAL, YOU PLED GUILTY. YOU ADMITTED THAT
25 YOU SOLD CRACK COCAINE, ISN'T THAT CORRECT?

1 A BUT I DIDN'T DO IT, MAN. I WAS SCARED. THAT'S WHY I PLEAD
2 GUILTY.

3 Q OKAY. THAT'S FINE.

4 A THAT'S WHY I PLEAD GUILTY.

5 Q YOU STOOD UP IN FRONT OF A JUDGE AND ADMITTED, ADMITTED TO
6 A JUDGE THAT YOU SOLD CRACK COCAINE, DIDN'T YOU?

7 A YEAH, 'CAUSE MY LAWYER TOLD ME I COULD HAVE GOT SIXTY-FIVE
8 YEARS, MAN. THAT'S WHY I DID THAT.

9 Q OKAY. AND NOW WHAT THE STATE'S TELLING YOU TO DO--NOW, YOU
10 PLED GUILTY AND YOU GOT A SUBSTANTIAL AMOUNT OF TIME.

11 A YES, I DO.

12 Q WHAT DID YOU GET?

13 A FIFTEEN.

14 Q FIFTEEN YEARS. THAT'S HANGING OVER YOUR HEAD RIGHT NOW?

15 A THAT'S RIGHT.

16 Q OKAY. AND AS I UNDERSTAND WHAT THE STATE IS DOING IS THEY
17 ARE PROMISING TO LOOK INTO RE-OPENING THAT CASE FOR YOU.

18 MR. MORTON: OBJECT.

19 THE COURT: WHAT'S YOUR OBJECTION?

20 MR. MORTON: THAT'S NOT A CORRECT STATEMENT.

21 THE COURT: WELL, COUNSEL, HE HAS THE RIGHT TO EXAMINE
22 HIM FULLY UPON WHAT WAS THE PROMISE. YOU HAVE THE RIGHT TO
23 REDIRECT AS TO WHAT YOU SAY OR EVEN OFFER TESTIMONY.

24 MR. MORTON: I'LL WITHDRAW IT, YOUR HONOR.

25 Q THEY PROMISED YOU THEY ARE GOING TO LOOK INTO THAT CASE FOR

1 YOU, DIDN'T THEY?

2 A THEY SAY, YEAH, THEY'LL HELP ME LOOK INTO IT.

3 Q SO, YOU'VE GOT A CHANCE OF HAVING THAT THING RE-OPENED?

4 A WELL, I WAS GOING BACK FOR POST CONVICTION ANYWAY.

5 Q I DIDN'T ASK YOU THAT. I SAID YOU'VE GOT A CHANCE TO HAVE

6 IT RE-OPENED BECAUSE THE STATE HAS SAID THEY ARE GOING TO

7 LOOK BACK INTO THAT CASE THAT YOU ALREADY PLED GUILTY TO IN

8 FRONT OF A JUDGE. IS THAT RIGHT?

9 A THAT'S RIGHT.

10 Q SO, YOU GOT UP IN FRONT OF A JUDGE AND TOLD HIM YOU WERE

11 GUILTY BUT NOW YOU ARE TELLING THIS JURY THAT YOU WERE NOT

12 GUILTY?

13 A I WAS NOT GUILTY.

14 Q BUT YOU TOLD--

15 A MY LAWYER TOLD ME TO PLEAD GUILTY 'CAUSE I WAS FACING SIXTY

16 -FIVE--SHE TOLD ME I WAS FACING SIXTY-FIVE YEARS. WHEN I

17 LOOK INTO POST CONVICTION AND I GOT INTO THE LAWYER AND

18 EVERYTHING I WASN'T FACING BUT TWENTY YEARS. I WOULD HAVE

19 TOOK A JURY TRIAL.

20 Q IF YOUR LAWYER TOLD YOU TO JUMP OFF OF A BRIDGE, WOULD YOU

21 HAVE JUMPED OFF OF A BRIDGE?

22 A SAY WHAT NOW?

23 Q IF YOUR LAWYER TOLD YOU TO JUMP OFF A BRIDGE, WOULD YOU HAVE

24 JUMPED OFF OF A BRIDGE?

25 A NO, I WOULDN'T.

1 Q BUT YOU GOT IN FRONT OF A JUDGE AND YOU TOLD THAT JUDGE--
2 A 'CAUSE SHE WAS GONNA SINK ME AND I AIN'T GOT NO MONEY TO
3 AFFORD NO ATTORNEY SO THAT'S WHY, YOU KNOW, I DID WHAT SHE
4 TOLD ME.
5 Q DID YOU GO UP IN FRONT OF A JUDICIAL OFFICER AND ADMIT YOUR
6 GUILT?
7 A YES, I DID.
8 Q TO SELLING CRACK COCAINE?
9 A YEAH.
10 Q AND NOW THE STATE SAYS THEY ARE GOING TO LOOK INTO THAT FOR
11 YOU? IS THAT RIGHT?
12 A YEAH, THEY SAY THEY WAS GONNA LOOK IN IT FOR ME.
13 Q AND IF THEY LOOK INTO IT FOR YOU--
14 A THEY DIDN'T PROMISE ME NOTHIN'.
15 Q THEY SAID THEY WOULD LOOK IN TO IT FOR YOU?
16 A THEY SAY THEY WILL LOOK INTO IT BUT THEY DIDN'T PROMISE ME
17 NOTHIN' ABOUT--
18 Q AND IF THEY LOOK INTO THAT FOR YOU, YOU COULD GET OUT OF
19 THAT, COULDN'T YOU? THAT'S A POSSIBILITY?
20 A I DON'T KNOW.
21 Q IT'S A POSSIBILITY?
22 A MAYBE IT IS. I DON'T KNOW.
23 Q DO YOU KNOW ANTHONY ROGERS?
24 A ANTHONY ROGERS?
25 Q YES, SIR.

1 A NO, I DON'T.

2 Q YOU DON'T KNOW AN ANTHONY ROGERS? CELLBLOCK TWO-ONE AT THE
3 RICHLAND COUNTY DETENTION CENTER?

4 A NO, I DON'T.

5 Q DID YOU EVER TELL HIM THAT YOU WERE GOING--

6 MR. MORTON: YOUR HONOR, HE SAID HE DIDN'T EVEN KNOW
7 HIM.

8 MR. SWERLING: I'M ASKING HIM IF HE EVER MADE THE
9 STATEMENT.

10 THE COURT: ARE YOU ASKING HIM DID HE MAKE THE STATEMENT
11 OR DID HE MAKE THE STATEMENT TO SOMEONE NAMED ANTHONY ROGERS?

12 MR. SWERLING: OKAY. SINCE HE DOESN'T KNOW THE
13 INDIVIDUAL, I'LL ASK HIM DID HE EVER MAKE THE FOLLOWING
14 STATEMENT.

15 THE COURT: ALL RIGHT. NOW, I ASSUME BY THAT YOU ARE
16 PREPARED TO OFFER SOMEONE TO SAY THAT HE DID MAKE THAT
17 STATEMENT?

18 MR. SWERLING: NO QUESTION ABOUT IT.

19 THE COURT: ALL RIGHT. YOU ARE PUTTING HIM ON NOTICE
20 THAT YOU ARE GOING TO IMPEACH HIM ON THAT?

21 MR. SWERLING: I'M PUTTING HIM ON NOTICE.

22 THE COURT: ALL RIGHT, SIR.

23 Q DID YOU TELL AN INDIVIDUAL THAT YOU WOULD TESTIFY FOR RONALD
24 TILLMAN UNLESS SOMEBODY ELSE MADE YOU A DEAL OR CUT YOUR TIME
25 FROM FIFTEEN YEARS?

1 A NO, I DIDN'T.

2 Q DID YOU TELL HIM THAT YOU KNEW THAT HAYES MALLOY WAS LYING?

3 A NO, I DIDN'T.

4 Q YOU DENY THAT? THAT YOU MADE THAT STATEMENT ON THE 17TH OF
5 JANUARY, 1990, RIGHT DOWNSTAIRS?

6 A WHO IS ANTHONY ROGERS? I DON'T KNOW HIM.

7 Q I DIDN'T ASK YOU--NOW, WE'VE GONE PAST THE POINT OF WHETHER
8 YOU KNOW HIM. I'M ASKING YOU DID YOU MAKE THAT STATEMENT
9 NOW?

10 A NO, I DIDN'T.

11 THE COURT: IDENTIFY WHO HE SUPPOSEDLY MADE IT TO.

12 MR. SWERLING: ANTHONY ROGERS.

13 A NO, I DON'T KNOW ANTHONY ROGERS.

14 Q THAT WAS TWO DAYS AGO.

15 A NO--

16 Q NOT TWO DAYS AGO. THAT WOULD BE WEDNESDAY. YES, TWO DAYS
17 AGO.

18 A NO, I DIDN'T MAKE NO STATEMENT.

19 Q DO YOU KNOW AN IZELL BENNETT?

20 A IZELL BENNETT?

21 Q UH-HUH (INDICATES AFFIRMATIVE).

22 A I HEAR THAT NAME BUT I CAN'T PLACE HIM.

23 Q SO, YOU KNOW THE NAME?

24 A I HEAR THAT NAME BEFORE.

25 THE COURT: IZELL BENNETT?

1 MR. SWERLING: BENNETT, YES, SIR.

2 Q I'M PUTTING YOU ON NOTICE I INTEND TO IMPEACH YOU THAT ON
3 JANUARY 17TH WHEN YOU WERE BEING HANDCUFFED TO COME UP HERE
4 TO COURT THAT YOU WERE GOING TO TESTIFY--YOU WERE SUPPOSED
5 TO TESTIFY FOR RONALD TILLMAN, THAT YOU KNEW THAT RONALD
6 TILLMAN DID NOT KILL DONALD SUTTON BECAUSE HAYES MALLOY DID
7 IT AND THAT YOU WOULD TESTIFY FOR WHOEVER GAVE YOU THE BEST
8 DEAL?

9 A NO, I DIDN'T SAY NOTHIN' LIKE THAT.

10 Q YOU DENY THAT?

11 A YEAH, I DENY THAT 'CAUSE I DIDN'T SAY NOTHIN' LIKE THAT.

12 Q DO YOU KNOW JAMES TALBERT, MY INVESTIGATOR?

13 A YEAH.

14 Q DID YOU TELL MR. TALBERT WHEN HE CAME OUT TO SPEAK TO YOU AT
15 THE PRISON THAT YOU DIDN'T KNOW NOTHIN' ABOUT THIS CASE?

16 A I TOLD HIM I DIDN'T KNOW NOTHIN' ABOUT THE CASE BUT I KNOW
17 SOMETHIN' BUT I WASN'T GONNA TELL HIM.

18 Q WHEN I CAME TO SEE YOU WEDNESDAY, DID YOU TELL ME YOU DIDN'T
19 KNOW NOTHIN' ABOUT THE CASE?

20 A YEAH, I DID.

21 Q AND THAT WAS RIGHT DOWNSTAIRS, WASN'T IT?

22 A YES, SIR, RIGHT DOWNSTAIRS.

23 Q I CAN'T GIVE YOU ANYTHING, CAN I, MR. BYNUM?

24 A I DON'T KNOW WHAT YOU CAN GIVE ME.

25 Q I CAN'T MAKE YOU ANY DEALS WITH YOU, CAN I? I'M JUST A

1 DEFENSE LAWYER. ISN'T THAT RIGHT?

2 A THEY CAN'T GIVE ME NO DEAL NEITHER.

3 Q WELL, THEY'VE MADE YOU A DEAL. BUT I CAN'T, CAN I?

4 A WHAT, YOU WANT ME TO ANSWER THAT?

5 Q YES. IS THERE ANYTHING I CAN DO FOR YOU?

6 A I DON'T KNOW. I DON'T THINK SO.

7 Q CAN I CUT YOUR TIME?

8 A NO. THEY CAN'T CUT MY TIME.

9 Q CAN I RE-OPEN YOUR CASE?

10 A NO, I DON'T THINK YOU CAN.

11 Q CAN I GO TO THE PAROLE BOARD FOR YOU?

12 A NO, I DON'T THINK YOU CAN.

13 Q CAN I DECIDE WHETHER OR NOT YOU ARE GOING TO BE PROSECUTED

14 FOR PERJURY OR NOT?

15 A NO, YOU CAN'T.

16 Q ONLY THE STATE CAN DO THAT, ISN'T THAT RIGHT?

17 A I GUESS SO, BY MY KNOWLEDGE.

18 Q YESTERDAY DO YOU REMEMBER BEING CALLED TO TESTIFY TO THE

19 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU

20 GOD?

21 A YEAH.

22 Q DO YOU REMEMBER PUTTING YOUR HAND ON THIS BIBLE?

23 A YES.

24 Q PUT YOUR HAND ON THE BIBLE.

25 MR. MORTON: YOUR HONOR, HE'S BADGERING HIM. I'D ASK

1 HIM TO MOVE BACK. HE DOESN'T HAVE TO DO THAT.

2 THE COURT: WELL, JUST A MINUTE. JUST A MINUTE. MR.
3 SWERLING, IF YOU FIND IT NECESSARY TO APPROACH THE WITNESS
4 YOU SHOULD ALWAYS REQUEST OF THE COURT PERMISSION TO DO SO.

5 MR. SWERLING: CAN I APPROACH THE WITNESS?

6 THE COURT: YES, SIR.

7 Q PUT YOUR HAND ON THAT BIBLE.

8 A (WITNESS COMPLIES)

9 Q DID YOU DO THAT YESTERDAY, TOO?

10 A YEAH, I DID THAT YESTERDAY.

11 Q YOU DID IT THIS MORNING, TOO, DIDN'T YOU?

12 A YES.

13 Q I HAND YOU A COPY OF YOUR TESTIMONY FROM YESTERDAY THAT WAS
14 OUTSIDE THE JURY'S PRESENCE. WAS THAT UNDER OATH? DID YOU
15 TAKE THE SAME OATH THEN THAT YOU TOOK TODAY?

16 A NO, SIR.

17 Q YOU DIDN'T TAKE AN OATH?

18 A SIR? WHAT YOU MEAN BY THAT?

19 Q YOU WEREN'T SWORN?

20 A YEAH, I WAS SWORN.

21 Q LOOK AT PAGE 10.

22 MR. MORTON: YOUR HONOR, HE TESTIFIED YESTERDAY HE
23 COULDN'T READ OR WRITE.

24 A THAT'S RIGHT. I CAN'T READ OR WRITE.

25 Q LOOK AT THAT AND SEE IF YOU CAN READ OR WRITE.

1 THE COURT: HAND IT UP. HAVE YOU HANDED IT TO HIM?

2 MR. SWERLING: YES, SIR.

3 THE COURT: MR. BYNUM, --

4 A I TOLD HIM I COULDN'T READ AND WRITE SO IT'S SIMPLE AS THAT.

5 THE COURT: I UNDERSTAND. JUST A MINUTE. WHAT DID YOU
6 HAND TO HIM?

7 MR. SWERLING: I HANDED HIM A COPY OF THE PROCEEDINGS
8 FROM YESTERDAY AFTERNOON.

9 THE COURT: ALL RIGHT, SIR. MR. BYNUM, CAN YOU READ AND
10 WRITE AT ALL?

11 A NO, I CAN WRITE BUT I JUST CAN'T READ.

12 THE COURT: ALL RIGHT. SO, WHAT HE'S HANDED TO YOU YOU
13 CANNOT READ?

14 A I CANNOT READ IT.

15 THE COURT: ALL RIGHT, SIR. YOU MAY PUBLISH IT TO HIM
16 IF HE CANNOT READ IT.

17 MR. SWERLING: THANK YOU, YOUR HONOR.

18 Q DO YOU REMEMBER BEING ASKED THE FOLLOWING QUESTIONS AND YOU
19 GIVING THE FOLLOWING ANSWERS: WHAT, IF ANYTHING, DID RONALD
20 TILLMAN TELL YOU ABOUT KILLING "DUCK" SUTTON? ANSWER: HE
21 DIDN'T TELL ME NOTHIN' ABOUT IT, YOU KNOW. I ASKED HIM ABOUT
22 IT. I ASKED HIM DID HE DO IT, YOU KNOW. HE TOLD ME, NO, HE
23 DIDN'T. DO YOU REMEMBER THAT ANSWER YOU GAVE?

24 A YEAH.

25 Q DO YOU REMEMBER THIS QUESTION: DID HE EVER OFFER YOU

1 ANYTHING? DO YOU REMEMBER YOU GIVING THE FOLLOWING ANSWER:
2 HE NEVER DID.

3 A YES, SIR.

4 Q DO YOU REMEMBER THE FOLLOWING QUESTION: WHAT, IF ANY,
5 DISCUSSIONS DID YOU HAVE WITH RONALD TILLMAN--THIS IS ME
6 ASKING THE QUESTIONS, IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q OH, NO, I'M SORRY. THIS IS MR. MORTON ASKING YOU QUESTIONS.
9 THIS IS THE SOLICITOR ASKING YOU QUESTIONS, WASN'T THAT
10 RIGHT?

11 A YES. THE ONE THERE.

12 Q THE ONE RIGHT THERE?

13 A YES.

14 Q THE SOLICITOR WAS ASKING YOU THESE QUESTIONS?

15 A YES.

16 Q THE JURY WASN'T HERE BUT THE JUDGE WAS THERE, RIGHT?

17 A YES.

18 Q REMEMBER YOU WERE IN COURT AND THE ONLY THING WAS THE JURY
19 WASN'T HERE? THESE WERE THE SOLICITOR ASKING YOU THE SAME
20 QUESTIONS.

21 A YES.

22 Q DO YOU REMEMBER MR. MORTON ASKING YOU --

23 A WHO IS MR. MORTON?

24 Q THIS GENTLEMAN RIGHT HERE.

25 A OKAY.

1 Q QUESTION: WHAT, IF ANY, DISCUSSIONS DID YOU HAVE WITH RONALD
2 TILLMAN PRIOR TO THE MURDER OF DONALD SUTTON? DO YOU
3 REMEMBER THE FOLLOWING ANSWER YOU GAVE: WELL, WHEN I WENT
4 TO THE SHOP AND SAW RON THERE HE WAS CRYIN', YOU KNOW, AND
5 I ASKED HIM, MAN, WHAT'S UP, WHAT HAPPENED. AND HE SAID, YOU
6 KNOW, SOMEBODY KILLED DONALD, MAN, LIKE THAT, YOU KNOW. AND
7 I ASKED HIM DID HE DO IT AND HE SAY NO. AND, YOU KNOW, I
8 LEFT AND THAT'S WHEN THE INVESTIGATOR CAME UP. DO YOU
9 REMEMBER THAT ANSWER?

10 A YES, SIR.

11 Q REMEMBER MR. MORTON ASKING YOU: WHAT, IF ANY, CONVERSATIONS
12 HAVE YOU HAD WITH RONALD TILLMAN AFTER THE MURDER OF "DUCK"
13 SUTTON? WHAT, IF ANYTHING, HAS HE TOLD YOU ABOUT IT? AND
14 YOUR ANSWER: HE AIN'T TOLD ME NOTHIN'. DO YOU REMEMBER THAT
15 BEING YOUR ANSWER?

16 A YES.

17 Q DO YOU REMEMBER MR. MORTON ASKING YOU: WHAT, IF ANYTHING,
18 HAS HE TOLD YOU CONCERNING TESTIMONY IN THE CASE OF RONALD
19 TILLMAN? DO YOU REMEMBER THAT QUESTION THAT MR. MORTON ASKED
20 YOU?

21 A YES, SIR.

22 Q DO YOU REMEMBER YOUR ANSWER: HE DIDN'T TELL ME NOTHIN'. JUST
23 LIKE I SAY, YOU KNOW, I DIDN'T EVEN TALK TO HIM AFTER THAT,
24 YOU KNOW. WE WAS IN THE CELLBLOCK TOGETHER AND THAT WAS
25 IT, YOU KNOW. WE DIDN'T EVEN TALK ABOUT IT NO MORE SINCE

1 THEN. WAS THAT YOUR ANSWER?

2 A YES.

3 Q DO YOU REMEMBER MR. MORTON SAYING: JAMES, DO YOU REMEMBER

4 TALKING TO US LAST NIGHT?

5 A YES.

6 Q AND YOU SAID: YES, I DID.

7 A YES.

8 Q AND HE SAID: DO YOU REMEMBER ME AND SEVERAL OTHER GUYS DOWN

9 THERE TALKING TO YOU? AND YOU SAID: YEAH.

10 A YES.

11 Q AND HE SAID: DIDN'T YOU TELL US THAT YOU TALKED TO RONALD

12 TILLMAN BEFORE THIS MURDER OCCURRED? AND YOUR ANSWER WAS:

13 NO, I DON'T REMEMBER. QUESTION: YOU DIDN'T TELL US THAT?

14 ANSWER: NO, I DIDN'T. QUESTION: DID YOU TELL US THAT

15 RONALD TILLMAN CAME AND OFFERED YOU AT ONE POINT ONE THOUSAND

16 DOLLARS TO KILL DONALD SUTTON? YOUR ANSWER WAS: NO, I

17 DIDN'T. QUESTION: DID YOU TELL US THAT HE CAME AND OFFERED

18 YOU THREE THOUSAND DOLLARS AND THAT HE UPPED THE ANTE TO

19 THREE THOUSAND DOLLARS AND AN OUNCE...DID YOU TELL US THAT?

20 ANSWER: NO, I DIDN'T. DO YOU REMEMBER THAT ANSWER?

21 A YES.

22 Q DID YOU TELL US THAT RONALD TILLMAN WANTED SOMEBODY NAMED

23 DONALD SUTTON KILLED BECAUSE HE MADE SOME STATEMENTS AGAINST

24 HIM AND HE HAD TO DO IT QUICK, AND YOUR ANSWER WAS: NO, I

25 DIDN'T.

1 A YES.

2 Q QUESTION BY MR. MORTON AGAIN: DIDN'T MAKE THAT STATEMENT?
3 DID YOU TELL US THAT RONALD TILLMAN HAD THROWN YOUR
4 POSSESSIONS INTO THE HALL ONE TIME AT THE RICHLAND COUNTY
5 SHERIFF'S DEPARTMENT? YOU REMEMBER HIM ASKING THAT QUESTION?

6 A YES.

7 Q REMEMBER YOUR TESTIMONY WAS: NO, I DIDN'T.

8 A YES.

9 Q DID YOU TELL US THAT YOU SAW RONALD TILLMAN AT THE PARTY SHOP
10 THE DAY AFTER "DUCK" SUTTON WAS KILLED? AND YOUR ANSWER WAS:
11 NO, I DIDN'T. QUESTION: YOU DIDN'T TELL US THAT? ANSWER:
12 I TOLD YOU I DIDN'T EVEN TALK TO YA'LL. I TOLD YA'LL JUST
13 NOW ABOUT IT WENT TO THE PARTY SHOP AND TALKED TO RON BUT I
14 DIDN'T TOLD YA'LL THAT LAST NIGHT. QUESTION: YOU DIDN'T
15 TALK TO US OR YOU DIDN'T TELL US? ANSWER: WELL, I TALKED
16 TO YA'LL BUT I DIDN'T TOLD YA'LL THAT LAST NIGHT. QUESTION:
17 DIDN'T TELL US THAT? ANSWER: NOT LAST NIGHT. DID YOU TELL
18 US THAT RONALD TILLMAN WAS CRYING AT THE PARTY SHOP AND THAT
19 YOU WENT UP AND SAID, HEY, MAN, WHAT'S ALL THEM FAKE TEARS
20 AS YOU PUT IT? SOMETHING LIKE THAT. DID YOU TELL US THAT?
21 ANSWER: WHEN? A FEW MINUTES AGO? QUESTION: NO, LAST
22 NIGHT. ANSWER: NO, I DIDN'T. QUESTION: DID YOU TELL US
23 THAT HE HAD TO DO IT QUICK BECAUSE DONALD SUTTON HAD ALREADY
24 PUT ONE OF HIS FRIENDS IN JAIL? AND YOUR ANSWER WAS: NO,
25 I DIDN'T. QUESTION: DID YOU TELL US THAT RONALD TILLMAN

1 SAID, HEY, MAN, I'VE GOT A LITTLE PIECE FOR YOU, JUST HANG
2 IN THERE WITH ME, DON'T FLIP ON ME? ANSWER: NO, I DIDN'T.
3 QUESTION: DID YOU TELL US THAT HE WANTED YOU TO SAY HAYES
4 MALLOY DID IT? ANSWER: NO, I DIDN'T. DO YOU REMEMBER THOSE
5 QUESTIONS?
6 A YEAH, I REMEMBER.
7 Q DO YOU REMEMBER THOSE ANSWERS?
8 A YEAH.
9 Q WERE THEY UNDER THE SAME OATH THAT YOU TOOK HERE TODAY BEFORE
10 THIS JURY?
11 A NO, SIR.
12 Q WAS IT THE SAME OATH THAT YOU TOOK ON THE BIBLE?
13 A NO, SIR.
14 Q WHAT WAS DIFFERENT ABOUT THE OATH?
15 A LAST NIGHT I WAS SCARED. I MEAN THAT DAY I WAS SCARED WHEN
16 I CAME UP HERE.
17 Q I ASKED YOU WAS IT THE SAME OATH, NOT WHETHER YOU WERE SCARED
18 OR NOT.
19 A WHAT YOU TRYIN' TO SAY?
20 THE COURT: JUST A MINUTE. HE'S ASKING YOU WHEN YOU
21 CAME IN HERE IN THE COURTROOM YESTERDAY DID YOU NOT PLACE
22 YOUR HAND UPON THAT BIBLE AND TAKE THE SAME OATH YESTERDAY
23 THAT YOU TOOK THIS MORNING? DID SHE HAVE YOU PUT YOUR HAND
24 ON THE BIBLE AND GIVE YOU AN OATH?
25 A YES, SIR.

1 THE COURT: WAS IT THE SAME ONE YESTERDAY THAT YOU TOOK
2 HERE TODAY HERE IN THE COURTROOM?

3 A YES, SIR.

4 THE COURT: ALL RIGHT. THAT'S WHAT HE'S ASKING YOU.

5 Q YOU TOOK THE SAME OATH?

6 A YES.

7 Q YOU PUT YOUR HAND ON THE BIBLE, SWORE TO TELL THE TRUTH, THE
8 WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD.

9 A YES.

10 Q ONE MORE QUESTION WAS ASKED OF YOU YESTERDAY BEFORE THE JURY
11 WENT OUT. THE QUESTION WAS BY MR. MORTON: DID YOU EVER
12 SPEAK WITH RONALD TILLMAN ABOUT THE DEATH OF "DUCK" SUTTON
13 EITHER BEFORE OR AFTER HE WAS KILLED? ANSWER: YES, I DID.
14 WHAT, IF ANYTHING--THIS IS THE NEXT QUESTION--WHAT, IF
15 ANYTHING, DID HE TELL YOU ABOUT THE KILLING OF "DUCK" SUTTON
16 BEFORE HIS DEATH? ANSWER: HE TOLD ME HE DIDN'T DO IT. DO
17 YOU REMEMBER THAT?

18 A YEAH, I REMEMBER THAT.

19 Q LET ME ASK YOU SOMETHING. MR. MORTON ASKED YOU IF YOU HAD
20 BEEN CHARGED WITH SHOPLIFTING.

21 MR. MORTON: YOUR HONOR, I'LL STIPULATE THAT THOSE WERE
22 ALL CONVICTIONS.

23 THE COURT: YOU CAN ONLY ASK ABOUT CONVICTIONS. YOU
24 CANNOT ASK ABOUT CHARGES.

25 MR. SWERLING: I UNDERSTAND, YOUR HONOR. THE SOLICITOR

1 ASKED HIM HAD HE BEEN CHARGED. I WANTED TO ASK HIM IF HE HAD
2 BEEN CONVICTED OF ALL THOSE CHARGES. YOU HAVE BEEN CONVICTED
3 OF ALL THOSE CHARGES, HAVEN'T YOU?

4 A NO, SIR, NOT ALL OF 'EM.

5 Q ALL THE ONES THAT MR. MORTON READ OUT TO YOU YOU HAD BEEN?

6 A WHEN YOU MEAN CONVICTED, WHAT YOU MEAN? DOING TIME FOR 'EM?

7 THE COURT: NO, PLED GUILTY OR TRIED.

8 A YEAH, PLED GUILTY, YES.

9 Q OR TRIED.

10 A YES.

11 Q AND THE LAST ONE BEING SELLING OF CRACK COCAINE?

12 A YES, THAT'S RIGHT.

13 Q WHICH NOW YOU ARE TELLING THE JURY YOU DIDN'T DO THAT EITHER?

14 A NO, I DIDN'T.

15 MR. SWERLING: NOTHING FURTHER.

16 THE COURT: ANY REDIRECT?

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

18 REDIRECT EXAMINATION BY

19 MR. MORTON:

20 Q JAMES, TELL THIS JURY--MR. SWERLING ASKED YOU COULD HE DO
21 ANYTHING FOR YOU. WHAT CAN RONALD TILLMAN DO TO YOU?

22 MR. SWERLING: OBJECTION, YOUR HONOR. THAT IS--CAN WE
23 APPROACH THE BENCH?

24 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
25 COURT REPORTER)

1 THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS
2 INSTRUCTED TO DISREGARD THE QUESTION. IT'S AN IMPROPER
3 QUESTION.

4 (BENCH CONFERENCE CONTINUED)

5 Q JAMES WHY DID YOU COME IN HERE YESTERDAY AND ANSWER THOSE
6 QUESTIONS LIKE YOU DID?

7 A WHY I DIDN'T CAME IN YESTERDAY AND ANSWER SOME QUESTIONS?

8 Q YES. WHY DID YOU COME IN HERE AND ANSWER THOSE QUESTIONS
9 LIKE YOU DID YESTERDAY?

10 A I WAS KIND OF SCARED, MAN. THIS MY FIRST TIME, YOU KNOW,
11 BEING IN SOMETHING LIKE THIS.

12 MR. MORTON: CAN I BORROW THOSE QUESTIONS, JACK?

13 MR. SWERLING: SURE.

14 Q JAMES, YOU REMEMBER TALKING TO US WEDNESDAY NIGHT, IS THAT
15 RIGHT?

16 A YES.

17 Q DID YOU TELL US SOME THINGS ABOUT THIS CASE ON WEDNESDAY
18 NIGHT?

19 A YES, SIR, I DID.

20 Q I WANT YOU TO TELL THIS JURY, JAMES, DID RONALD TILLMAN TALK
21 TO YOU ABOUT THE KILLING OF DONALD SUTTON--

22 MR. SWERLING: THAT'S NOT REDIRECT. THAT'S ALREADY BEEN
23 COVERED IN HIS CASE IN CHIEF.

24 MR. MORTON: I'LL WITHDRAW IT, YOUR HONOR.

25 Q MR. SWERLING ASKED YOU ABOUT THE DAY HE OFFERED YOU MONEY.

1 DO YOU REMEMBER THE DAY THAT DONALD SUTTON WAS KILLED?

2 A NO, I CAN'T REMEMBER THE DAY.

3 Q I'M NOT ASKING YOU THE DATE, I'M ASKING YOU DO YOU REMEMBER

4 WHEN THAT HAPPENED?

5 A WHEN DID IT HAPPEN?

6 THE COURT: HE'S NOT ASKING YOU LIKE WHAT DAY OF THE

7 WEEK, MONDAY, TUESDAY, WEDNESDAY OR THAT IT WAS THE 1ST OR

8 2ND OR ANYTHING LIKE THAT. HE'S ASKING YOU DO YOU REMEMBER

9 WHEN IT HAPPENED?

10 A YEAH, I CAN REMEMBER THE DAY.

11 Q DO YOU KNOW WHETHER OR NOT RONALD TILLMAN OFFERED YOU MONEY

12 ON THAT SAME DAY?

13 A YES, SIR.

14 Q YES OR NO?

15 A YES.

16 Q HE DID?

17 A YES.

18 Q AND HOW MUCH MONEY DID HE OFFER YOU ON THAT DAY?

19 A THAT DAY HE OFFER ME A THOUSAND DOLLARS.

20 Q OKAY. DID HE COME BACK TO YOU LATER THAT DAY AND OFFER YOU

21 MONEY?

22 A THAT NIGHT.

23 Q WHERE WAS THAT?

24 A AT MY HOUSE.

25 Q HE CAME BY YOUR HOUSE?

1 A YES.

2 Q AND OFFERED YOU HOW MUCH?

3 A THREE THOUSAND.

4 MR. SWERLING: YOUR HONOR, THIS IS JUST GOING BACK OVER
5 THE SAME THING.

6 MR. MORTON: I'M NOT GOING BACK OVER IT, YOUR HONOR. HE
7 ASKED HIM ABOUT THAT DAY.

8 THE COURT: YOU ARE GOING BACK OVER IN THE SENSE ABOUT
9 THE MONEY BEING OFFERED BUT YOU ARE ENTITLED TO GO BACK AND
10 TRY TO CORRECT WITH HIM OR HAVE HIM RESPOND AS TO IDENTIFYING
11 THE DAY AND YOU'VE DONE THAT.

12 MR. MORTON: ALL RIGHT, SIR.

13 Q DO YOU REMEMBER TALKING TO RONALD TILLMAN AT THE PARTY SHOP
14 THE DAY AFTER THE MURDER, IS THAT RIGHT?

15 A YES, SIR.

16 Q AND YOU REMEMBER YOU SAID HE WAS CRYING ON THAT DAY?

17 A YES, HE WAS CRYIN'.

18 Q AND WHY WAS HE CRYIN'?

19 MR. SWERLING: OBJECTION, YOUR HONOR. THAT'S
20 SPECULATION.

21 THE COURT: I SUSTAIN THAT OBJECTION. HOW WOULD HE KNOW
22 WHY THIS WITNESS WAS CRYING. HOW WOULD HE KNOW WHAT WAS IN
23 THEIR HEAD OR MIND? HE CAN'T KNOW THAT.

24 Q DO YOU REMEMBER WHEN THE POLICE CAME INTO THE PARTY SHOP THAT
25 DAY?

1 A NO, I DON'T REMEMBER WHEN THE POLICE CAME BUT I KNOW THEY WAS
2 THERE.

3 Q YOU KNOW THEY WERE THERE LATER THAT DAY?

4 MR. SWERLING: YOUR HONOR, THIS IS NOT REDIRECT.

5 THE COURT: I AGREE. I SUSTAIN THE OBJECTION.

6 Q JAMES, WHY DID YOU TELL MR. TALBERT YOU DIDN'T KNOW ANYTHING
7 ABOUT THIS CASE?

8 A WHY I TOLD WHO?

9 Q THAT MAN RIGHT DOWN THERE.

10 THE COURT: POINT HIM OUT TO HIM AND IDENTIFY HIM.

11 Q MR. TALBERT, ON THE END WHO JUST TOOK HIS GLASSES OFF.

12 THE COURT: MR. SWERLING'S INVESTIGATOR.

13 A REASON WHY I TOLD HIM I DIDN'T KNOW NOTHIN' ABOUT THE CASE
14 BECAUSE, YOU KNOW, I THOUGHT IF I TELL HIM ABOUT THE CASE,
15 YOU KNOW, IT WON'T BE NO PROTECTION ON ME OR NOTHIN'. SO,
16 I FIGURE, YOU KNOW, JUST GO AHEAD AND KEEP MY MOUTH SHUT, YOU
17 KNOW, 'TIL I KNOW I PROBABLY HAVE SOME PROTECTION OR
18 SOMETHIN'. SO, THAT'S WHY, YOU KNOW, I TOLD HIM I DIDN'T
19 KNOW NOTHIN'.

20 MR. MORTON: THANK YOU, JAMES.

21 RECROSS EXAMINATION BY

22 MR. SWERLING:

23 Q YOU GOT YOUR PROTECTIONS NOW, DON'T YOU, JAMES?

24 A NO, SIR, I STILL DON'T THINK I GOT NO PROTECTION 'CAUSE I GOT
25 TO DO MINE.

1 Q THEY ARE GOING TO HELP YOU OUT, AREN'T THEY, JAMES?

2 A NO, I DON'T THINK SO. I DON'T THINK THEY IS.

3 Q EIGHTEEN PIECES OF SILVER.

4 THE COURT: ANYTHING ELSE?

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

6 THE COURT: YOU MAY STEP DOWN.

7 (WITNESS TO THE SIDE)

8 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

9 MR. MORTON: I BEG THE COURT'S INDULGENCE ONE SECOND,
10 YOUR HONOR.

11 MR. COLEMAN: YOUR HONOR, THE STATE CALLS BRUCE HALL TO
12 THE STAND.

13 MRS. SHEALY: YOUR HONOR, WE HAVE A MATTER OF LAW TO
14 TAKE UP AT THIS TIME.

15 THE COURT: GO TO THE JURY ROOM, PLEASE.

16 (THE JURY LEAVES THE JURY BOX AT 10:28 A.M.)

17 THE COURT: ALL RIGHT. THE JURY IS NOW OUTSIDE THE
18 PRESENCE OF THE COURT. COUNSEL FOR THE DEFENSE HAS REQUESTED
19 AN IN CAMERA HEARING.

20 MRS. SHEALY: YOUR HONOR, IT'S OUR UNDERSTANDING THAT
21 THEY ARE GOING TO ATTEMPT TO OFFER MR. HALL AS AN EXPERT
22 WITNESS ON MATCHING TIRE--A PICTURE OF A TIRE TO A PICTURE
23 OF A TIRE TRACK. FIRST OF ALL, YOUR HONOR, WE HAVE AN
24 OBJECTION THAT THE PROPER FOUNDATION HAS NOT BEEN LAID IN
25 THAT THE ONLY OFFICER WHO HAS TESTIFIED CONCERNING THE TRACKS

1 IS OFFICER CHRISTY WHO IDENTIFIED A PICTURE THAT SHOWED
2 HUNDREDS OF TRACKS THAT WERE OUT AT THE SCENE THAT NIGHT, WHO
3 ALSO INDICATED THAT HE COULD NOT MAKE A MATCH FROM WHAT WAS
4 PRESENT AT THE SCENE. BECAUSE OF THE CONDITIONS IN THE SAND
5 AND THE LIMITED INFORMATION HE HAD THERE HE MADE NO TYPE OF
6 CAST IMPRESSION. ADDITIONALLY, THAT ANY TESTIMONY BY MR.
7 HALL WOULD BE SPECULATIVE IN NATURE. ALSO, THERE'S BEEN
8 TESTIMONY FROM OFFICER DUNHAM THAT HE WAS THE FIRST OFFICER
9 AT THE SCENE AND SEVERAL OFFICERS CAME TO THE SCENE IN THE
10 INTERIM BETWEEN DUNHAM AND CHRISTY AND, THEREFORE, THOSE
11 TRACKS COULD HAVE COME FROM ANYONE. AND THERE HAS BEEN NO
12 TESTIMONY LINKING THE TRACKS WITH WHERE MR. MALLOY PUTS MR.
13 TILLMAN'S CAR. SO, ON THAT GROUNDS WE WOULD OBJECT TO ANY
14 TESTIMONY. ADDITIONALLY, WE WOULD ASK THAT THE STATE PROFFER
15 HIM AS AN EXPERT AND LET'S GO THROUGH THE QUALIFYING PROCESS
16 OUT OF THE JURY'S PRESENCE.

17 THE COURT: WELL, WE'VE GOT THE JURY OUT SO I'M GOING
18 TO TAKE CARE OF THAT SITUATION. WE'LL HEAR WHAT HE'S GOT TO
19 SAY AND THEN I'LL RULE ON IT. ALL RIGHT. CALL YOUR WITNESS
20 AND HAVE HIM SWORN.

21 MR. COLEMAN: BRUCE HALL TO THE STAND.

22 THE COURT: LET THE RECORD IT'S IN CAMERA.

23 BRUCE HALL, AFTER BEING DULY SWORN BY THE CLERK,

24 TESTIFIES AS FOLLOWS:

25 DIRECT EXAMINATION BY

- 1 MR. COLEMAN:
- 2 Q BRUCE, WHERE ARE YOU EMPLOYED?
- 3 A GOODYEAR TIRE AND RUBBER COMPANY HERE IN COLUMBIA ON GERVAIS
- 4 STREET.
- 5 Q AND WHAT ARE YOUR DUTIES THERE?
- 6 A I AM THE STORE MANAGER OF THE STORE TRAINING PEOPLE, HIRING,
- 7 ALL ASPECTS OF THE BUSINESS AS FAR AS CUSTOMER SATISFACTION
- 8 AND THINGS LIKE THAT AS A GENERAL MANAGER.
- 9 Q OKAY. MORE SPECIFICALLY, DO YOU ALSO SELL TIRES?
- 10 A YES, I DO.
- 11 Q IS THAT BASICALLY WHAT YOU DO IS SELL TIRES?
- 12 A THAT'S RIGHT. EVERYONE THAT IS EMPLOYED IN OUR STORE STARTED
- 13 OUT AS SALESMEN IN TRAINING WITH GOODYEAR ON KNOWLEDGE OF THE
- 14 TIRES.
- 15 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH GOODYEAR?
- 16 A SIX YEARS.
- 17 Q AND OVER THOSE SIX YEARS--HAVE YOU SOLD TIRES FOR SIX YEARS?
- 18 A YES, SIR.
- 19 Q APPROXIMATELY HOW MANY TIRES DO YOU THINK YOU AVERAGE A YEAR
- 20 SELLING?
- 21 A ME PERSONALLY OR THE STORE?
- 22 Q YOU.
- 23 A I WOULD SAY APPROXIMATELY TWELVE HUNDRED TO FOURTEEN HUNDRED
- 24 TIRES A YEAR JUST ME.
- 25 Q OKAY. HOW MANY TIRES DOES YOUR STORE SELL?

1 A LAST YEAR WE SOLD SEVEN THOUSAND TIRES. AUTO TIRES, NOT
2 LIGHT TRUCK.

3 Q THAT'S PER YEAR?

4 A THAT'S PER YEAR.

5 Q AND HOW LONG HAVE YOU BEEN DOING THAT? SELLING TIRES?

6 A SIX YEARS.

7 Q OKAY. TELL ME ABOUT YOUR EDUCATIONAL BACKGROUND. DID YOU
8 GO TO COLLEGE?

9 A YES, I DID.

10 Q WHERE DID YOU GO?

11 A UNIVERSITY OF SOUTH CAROLINA, SPARTANBURG. THE BRANCH.

12 Q WHAT DID YOU DO AFTER THAT?

13 A AFTER SCHOOL--WHILE I WAS IN SCHOOL, I WAS HIRED BY GOODYEAR
14 TIRE AND RUBBER COMPANY IN A TRAINING PROGRAM AS FAR AS A
15 MANAGER'S POSITION.

16 Q OKAY.

17 A THAT TOOK APPROXIMATELY TWO YEAR'S TRAINING AND THEN FROM
18 THERE PROGRESSED TO STORE MANAGER.

19 Q OKAY. AS PART OF YOUR EDUCATION WITH GOODYEAR, DID YOU GO
20 TO ANY SCHOOL?

21 A YES. AFTER ABOUT ONE YEAR OF ON-THE-JOB TRAINING ALL SALES
22 PEOPLE, POTENTIAL SALES PEOPLE, THAT ARE WORKING AT THAT TIME
23 ARE CLASSIFIED AND WE ARE SENT TO ANOTHER THING ABOUT PRODUCT
24 KNOWLEDGE. THAT WAS IN NOVEMBER OF '83.

25 Q WHERE DID YOU GO?

1 A I WENT TO AKRON, OHIO.

2 Q HOW LONG DID THAT SCHOOL LAST?

3 A THREE WEEKS.

4 Q WHAT IS THE TITLE OF THE SCHOOL YOU WENT TO?

5 A PRODUCT SELLING SKILLS.

6 Q TELL THE JUDGE ALL ASPECTS OF THAT COURSE, WHAT THAT

7 ENTAILED.

8 A WHAT BASICALLY THE TRAINING COURSE DOES IS IT TEACHES EACH

9 SALESMAN IN THE COURSE ALL THE ASPECTS OF HOW A TIRE IS

10 MANUFACTURED, THE BELT PACKAGE, PROBLEMS THAT ARISE FROM CARS

11 THAT BEGIN WITH NEW TIRES AND THEN WHAT CAN HAPPEN TO A TIRE

12 AFTER IT HASN'T BEEN TAKEN CARE OF, PROPERLY ROTATED OR

13 BALANCED, AND RIDE PROBLEMS ALSO ARE DISCUSSED AND WE DO OUR

14 SCHOOL ON RIDE PROBLEMS WITH CARS TO BE ABLE TO GET INTO A

15 CAR AND TELL BASICALLY WHAT'S WRONG WITH THAT CAR WHILE

16 RIDING IN THAT CAR. AND IT CAPS OFF WITH SEVERAL TESTS TO

17 SHOW OUR PROGRESS AND WE ARE GRADED ON HOW WELL WE UNDERSTAND

18 THE PRODUCT AND THE PROCEDURES THAT IT TAKES TO MANUFACTURE

19 AND SELL THE PRODUCTS FOR THE COMPANY.

20 Q WHY DO THEY SEND YOU TO SCHOOL? WHY DO YOU THINK THEY SENT

21 YOU UP TO AKRON IN THAT SCHOOL?

22 A WELL, WE ARE PRESENTED EVERYDAY WITH DIFFERENT SCENARIOS THAT

23 CAN HAPPEN TO TIRES AND YOU REALLY HAVE TO--

24 Q AT WORK?

25 A AT WORK. AND YOU REALLY HAVE TO UNDERSTAND AND BE ABLE TO

1 COMMUNICATE TO THE CUSTOMER WHAT HAPPENS TO A TIRE AND WHY.
2 A LOT OF PEOPLE DON'T UNDERSTAND WHY A TIRE WILL DO THIS ON
3 THE FRONT OF A CAR VERSUS THE REAR AND WE HAVE TO BE ABLE TO
4 EXPLAIN THAT TO THEM SO THEY CAN UNDERSTAND WHAT HAPPENS.
5 Q AND ALL THESE TIRES THAT YOU ALL STUDIED ARE GOODYEAR TIRES?
6 A THAT'S RIGHT. WE SPECIALIZE ONLY IN GOODYEAR. THIS IS A
7 COMPANY OWNED LOCATION. THAT'S ALL WE DO IS JUST GOODYEAR
8 TIRES EVERYDAY.
9 Q DO YOU ALSO STUDY THE PATTERN OF TIRES?
10 A RIGHT. WE HAVE TO LEARN TO RECOGNIZE THE DIFFERENT TYPES OF
11 TREAD PATTERNS AS TO BE ABLE TO GO TO THAT TIRE AND PICK THAT
12 TIRE OUT OF WHICH I HAVE APPROXIMATELY FOUR THOUSAND TIRES
13 IN MY STORE SO IT HELPS YOU TO IDENTIFY WHAT YOU ARE LOOKING
14 FOR AND THEN TO KNOW THE TREAD PATTERN, TO BE ABLE TO TALK
15 TO THAT BECAUSE DIFFERENT TREAD PATTERNS WORK DIFFERENT ON
16 CARS. YOU HAVE TO KNOW WHAT BEST FITS THAT CUSTOMER'S DRIVING
17 NEEDS AND THAT'S BASED ON TREAD PATTERN ALSO.
18 Q DEPENDING ON THE MAKE OF THE CAR AND--
19 A DEPENDING ON THE CAR.
20 Q --SUSPENSION OF THE CAR?
21 A SUSPENSION AND THE TYPE OF DRIVING THAT THEY ARE DOING,
22 RIGHT.
23 Q OKAY. AFTER YOU COMPLETED THAT SCHOOL, BRUCE, THE ONE UP IN
24 AKRON, HAVE YOU ATTENDED ANY OTHER SCHOOLS IN ADDITION TO
25 THAT?

1 A RIGHT. WE ALSO HAVE REFRESHER COURSES. UNTIL I REACHED THE
2 MANAGER'S POSITION ON THREE DIFFERENT OCCASIONS I WAS SENT
3 TO TWO DAY TIRE SELLING SEMINARS WHICH DOES INTRODUCE NEW
4 PRODUCTS AND THE PRODUCTS WE STILL HAVE IN LINE, IF THERE IS
5 ANY TYPE OF ENGINEERING DATA THAT HAS COME OUT ON THE TIRES.
6 WE HAVE SO MANY ORIGINAL EQUIPMENT TIRES TO DETROIT AND ALL
7 FOR CHRYSLER THAT WHENEVER THEY MAKE A NEW MODEL OF A CAR WE
8 MAY HAVE A DIFFERENT FEELING THAT HAPPENS TO THOSE TIRES SO
9 THEY KEEP US UP ON THE ENGINEERING DATA, ALSO, AT THOSE
10 SCHOOLS.

11 Q OKAY. SINCE YOU ATTENDED THE COURSE UP IN AKRON, HOW MANY
12 TIMES HAVE YOU BEEN TO SCHOOL SINCE THEN?

13 A THREE TIMES. WELL, WHICH SCHOOLS?

14 Q EXPLAIN TO THE JUDGE THE VARIOUS COURSES AND HOW LONG YOU DID
15 WITH EACH COURSE.

16 A OKAY. IN '83 WHICH WAS THE PRODUCTS SCHOOL FOR THREE WEEKS.
17 AFTER THE PRODUCTS SCHOOL, I HAVE BEEN TO AT LEAST SIX DAYS
18 OF TWO DAYS LONG FOR THE UPGRADING OF THE TIRES AND THE
19 SELLING SKILLS AND THE PRODUCT KNOWLEDGE OF THAT. AFTER
20 THOSE COURSES WITH PRODUCT KNOWLEDGE, IN MARCH OF 1985 I WENT
21 SENT TO A SIX WEEK'S COURSE WHICH WAS IN ATLANTA, GEORGIA,
22 ON THE OPERATIONS OF A STORE AND ADJUSTMENTS OF TIRES AND
23 MORE TIRE RELATED PROBLEMS AND MORE TRAINING ON THAT AND THEN
24 HOW TO OPERATE A STORE AND DO THAT, TOO. SO, IT'S BEEN, YOU
25 KNOW, FAIRLY EXTENSIVE.

1 Q ARE YOU THE STORE MANAGER?

2 A YES, I AM.

3 Q SO, YOU OVERSEE ALL THE SALES OF TIRES?

4 A RIGHT.

5 Q DO YOU ALSO HAVE KNOWLEDGE AS TO THE WEARING OF TIRES? HOW
6 THEY WEAR ON A VEHICLE?

7 A THAT'S CORRECT.

8 Q DID YOU RECEIVE TRAINING ON THAT?

9 A YES.

10 MR. COLEMAN: YOUR HONOR, AT THIS TIME, THE STATE WOULD
11 INTRODUCE HIM AS AN EXPERT WITNESS.

12 THE COURT: IN WHAT FIELD?

13 MR. COLEMAN: TIRES. OF TIRE TREADS. MORE IMPORTANTLY
14 GOODYEAR TIRE TREADS. AND THE WEAR OF TIRES.

15 THE COURT: DO YOU WISH TO CROSS EXAMINE HIM ABOUT HIS
16 QUALIFICATIONS?

17 MRS. SHEALY: YES. THANK YOU, YOUR HONOR.

18 CROSS EXAMINATION BY

19 MRS. SHEALY:

20 Q MR. HALL, HAVE YOU EVER BEEN QUALIFIED BEFORE AS AN EXPERT
21 WITNESS?

22 A NO, I HAVE NOT.

23 Q AND HAVE YOU EVER MADE IMPRESSIONS, ANY CAST IMPRESSIONS OF
24 TIRE TRACKS?

25 A NO, I HAVE NOT PERSONALLY.

1 Q HAVE YOU EVER ATTENDED ANY TYPE OF SEMINARS ON MAKING
2 IMPRESSIONS OR--

3 A YES, WE HAVE TRAINING TAPES THAT SHOW ALL SEASON CAPABILITIES
4 WHICH IS WHAT THIS TYPE OF TIRE THAT I'VE SEEN OF THE TEST
5 OF THE TIRES ON INK SPOTS HOW IT REACTS ON HARD, SOFT AND WET
6 SURFACES AS FAR AS THE TREAD PATTERN THAT WOULD HIT THE ROAD.

7 Q OKAY. BUT WHAT I WAS ASKING--YOU ARE SAYING THAT WAS SOME
8 TYPE OF TAPE YOU WATCHED?

9 A WELL, IT'S A TRAINING TAPE AND WE ALSO WATCHED, YOU KNOW, THE
10 FILM IN THE TRAINING CENTER IN AKRON WHEN WE WOULD HAVE CARS
11 THAT WOULD RIDE OVER A MIRROR AND WE WATCHED THE TREAD DESIGN
12 AS IT HITS THE--YOU KNOW, HITS THE TEST TRACK.

13 Q OKAY. BUT YOU YOURSELF, HAVE YOU EVER ATTENDED A SEMINAR
14 WHERE THEY TELL YOU HOW TO MAKE IMPRESSIONS, MAKE TIRE
15 IMPRESSIONS, CAST IMPRESSIONS? OR HOW TO COMPARE THEM WITH
16 A TIRE? HOW TO COMPARE A CAST IMPRESSION WITH A TIRE?

17 MR. COLEMAN: CAST IMPRESSIONS ISN'T RELEVANT. WE DON'T
18 HAVE THAT.

19 THE COURT: JUST LET HER ASK THE QUESTIONS. THE JURY
20 IS OUT. IT'S ON CROSS EXAMINATION. IT DEALS WITH HIS
21 QUALIFICATIONS.

22 A WE DON'T INVOLVE THE PROCEDURE OF MANUFACTURING GOODYEAR
23 TIRES ON CAST IMPRESSIONS. WE HAVE A TIRE MOLD AND I HAVE
24 GONE THROUGH AND TO THE PLANTS WHERE WE DO MANUFACTURE THE
25 TIRES AND SEE HOW THEY MANUFACTURE A TIRE MOLD AND THE RUBBER

1 COMPOUND THAT GOES INTO THAT.

2 Q OKAY. AND HOW MANY CLASSES HAVE YOU SAID THAT YOU'VE GONE
3 TO?

4 A WELL, I MEANT--

5 Q WAS THERE ONE IN AKRON OR THERE WERE SEVERAL THAT YOU WENT
6 TO IN AKRON?

7 A THERE WAS ONE THREE WEEK COURSE IN AKRON ON PRODUCT. I HAVE
8 BEEN TO TWO, THREE TWO-DAY TIRE SEMINARS ON TIRES AFTER THAT
9 COURSE AND THEN AN ADDITIONAL SIX WEEK COURSE IN ATLANTA,
10 GEORGIA, ON TIRES, NEW TIRES, SINCE THAT. ONCE EVERY QUARTER
11 I AM ALSO REQUIRED TO GO TO OUR CHARLOTTE DISTRICT
12 HEADQUARTERS AND WE HAVE A STORE MANAGERS CONFERENCE WHICH
13 INTRODUCES NEW TIRES ONCE A QUARTER. AND WE JUST GOT BACK
14 THE FIRST WEEK OF JANUARY THIS YEAR ON THE NEW TIRES THERE
15 WHICH THEY INTRODUCE NEW TIRES AND TELL US WHAT TYPE OF
16 APPLICATION THAT IT SHOULD FIT ON, THINGS LIKE THAT.

17 Q OKAY. NOW, THESE CLASSES THAT YOU'VE ATTENDED HAVE BEEN FOR
18 THE PURPOSES OF TEACHING YOU THINGS ABOUT THE TIRES SO THAT
19 YOU CAN SELL THEM TO YOUR CUSTOMERS, IS THAT RIGHT?

20 A THAT'S CORRECT.

21 Q HAVE YOU EVER ATTENDED ANY TYPE OF LAW ENFORCEMENT SEMINAR
22 OR HAD ANY TYPE OF LAW ENFORCEMENT TRAINING ON MAKING
23 COMPARISONS BETWEEN TIRES AND TREAD MARKS?

24 A NO, MA'AM.

25 Q HAVE YOU HAD ANY TYPE OF LAW ENFORCEMENT TRAINING AT ALL IN

1 MAKING ANY TYPE OF COMPARISON ON TIRES?

2 A NO, I HAVE NOT.

3 Q HAVE YOU EVER WORKED IN A MANUFACTURING PLANT? I KNOW YOU
4 SAID YOU VISITED THEM ON THESE CLASSES THAT YOU'VE TAKEN BUT
5 HAVE YOU EVER ACTUALLY WORKED IN A MANUFACTURING PLANT?

6 A OF TIRES? NO, I HAVE NOT.

7 Q ARE YOU AWARE OF HOW MANY TIRES COME OUT OF AN INDIVIDUAL
8 MOLD IN A MANUFACTURING PLANT?

9 A THOUSANDS.

10 Q DO YOU KNOW THE NUMBER THOUGH?

11 A NO. I MEAN--NO.

12 Q ARE YOU AWARE OF HOW MANY TIRES GOODYEAR MAKES A YEAR?

13 A WELL, NO, NOT--ALL WE'VE BEEN TOLD IS WE ARE THE LARGEST
14 RUBBER COMPANY IN NORTH AMERICA. WE WERE THE LARGEST RUBBER
15 COMPANY WORLDWIDE UNTIL FIRESTONE AND BRIDGESTONE MERGED
16 TOGETHER. WE STILL HAVE MORE PEOPLE RIDING ON GOODYEAR TIRES
17 IN THE UNITED STATES THAN ANY OTHER RUBBER COMPANY. WE
18 PRODUCE JUST THOUSANDS AND THOUSANDS OF TIRES, YOU KNOW, FOR
19 ORIGINAL EQUIPMENT. WE ARE THE ONLY--NOT THE ONLY SUPPLIER
20 TO DETROIT OR CHICAGO BUT WE HAVE 85 TO 95 PERCENT OF THE
21 ORIGINAL EQUIPMENT TIRES ON NEW CARS ARE GOODYEAR.

22 Q OKAY. BUT YOU YOURSELF ARE NOT AWARE OF EXACTLY HOW MANY
23 TIRES GOODYEAR HAS MANUFACTURED?

24 A NO, I COULDN'T TELL YOU EXACTLY HOW MANY. NO, IT CHANGES
25 BASED ON THE FACT OF NEW CAR SALES, ALSO.

1 Q OKAY. NOW, YOUR EXPERIENCE WITH TIRES HAS BEEN LIMITED TO
2 WHAT YOU'VE LEARNED WITH GOODYEAR, IS THAT RIGHT? THESE
3 TRAINING COURSES YOU'VE TAKEN HAVE BEEN ON BY GOODYEAR YOU
4 INDICATED?

5 A THAT'S EXACTLY CORRECT.

6 Q SO, YOU HAVE HAD NO FORMAL TRAINING WITH ANY OTHER TYPE OF
7 TIRE PRODUCT, ANY OTHER LINE OTHER THAN GOODYEAR?

8 A OTHER THAN THE FACT THAT SOME OTHER TIRE COMPANIES HAVE
9 ORIGINAL EQUIPMENT TIRES AND THEIR TREAD DESIGN MAY BE
10 PRESENTED A PARTICULAR TYPE OF PROBLEM ON THAT CAR VERSUS THE
11 WAY THE TREAD DESIGN AND TREAD PATTERN IS MANUFACTURED. WE
12 ARE AWARE OF WHY OTHER TIRE COMPANY'S TIRES DO CERTAIN THINGS
13 ON TIRES. YOU KNOW, WE DO GET PRODUCT SERVICE BULLETINS ON
14 THAT TO TELL US WHY THIS TIRE IS WEARING THIS WAY ON THIS
15 PARTICULAR AUTOMOBILE.

16 Q OKAY. BUT YOU HAVE NEVER SEEN ANY TYPE OF TAPE THAT SHOWS
17 A PARTICULAR TREAD DESIGN OR WHAT IT DOES ON ANY OTHER LINE
18 OTHER THAN GOODYEAR, IS THAT CORRECT?

19 A NO, THAT'S NOT. I CAN--YOU KNOW, I HAVE SEEN OTHER TIRES ON
20 OTHER VEHICLES THAT GOODYEAR COMES ORIGINAL EQUIPMENT WITH
21 AND LET'S SAY A B.F. GOODRICH OR SOMETHING LIKE WILL COME
22 ORIGINAL EQUIPMENT WITH AND THEY BOTH WOULD HAVE THE SAME
23 TYPE OF TREAD PATTERN OR THE SAME TYPE OF PROBLEMS AND THE
24 CAR WOULD WEAR THE TIRES THE SAME WAY. SO, I HAVE HAD SOME
25 OF THAT BUT NOT EXTENSIVE OF THAT.

1 Q OKAY. AND AGAIN WITH ANY OTHER TIRE LINE YOU'VE HAD NO TYPE
2 OF FORMAL TRAINING ON MAKING IMPRESSIONS OR EXAMINING
3 IMPRESSIONS COMPARED TO TIRES OR TO TIRE TRACKS, IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q OKAY. SO, YOUR EXPERIENCE IS LIMITED TO GOODYEAR AND WHAT
7 YOU'VE JUST TOLD US ABOUT COMING IN CONTACT WITH OTHER TIRES?

8 A RIGHT.

9 MRS. SHEALY: I BEG THE COURT'S INDULGENCE JUST A
10 MOMENT.

11 Q HAVE YOU HAD ANY SCIENTIFIC TRAINING WHATSOEVER IN MAKING
12 COMPARISONS BETWEEN TIRES AND TIRE TRACKS? DO YOU UNDERSTAND
13 MY QUESTION?

14 A MAYBE NOT. I THOUGHT YOU JUST ASKED ME THAT.

15 Q WELL, HAVE YOU HAD ANY SCIENTIFIC TRAINING WHATSOEVER? I
16 KNOW YOU'VE INDICATED THAT YOU WENT TO SPARTANBURG FOR
17 COLLEGE AND THAT YOU'VE BEEN IN THE TIRE BUSINESS FOR SIX
18 YEARS. HAVE YOU EVER HAD ANY TYPE OF SCIENTIFIC TRAINING IN
19 COMPARING TIRES TO TIRE TRACKS OR TIRES TO TIRE IMPRESSIONS
20 AT ALL?

21 A NO, I HAVE NOT.

22 Q OKAY. AND AGAIN YOUR POSITION AT GOODYEAR IS IN THE SALES
23 PART OF IT, YOU ARE THE MANAGER, IS THAT CORRECT?

24 A THAT'S CORRECT.

25 MRS. SHEALY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

1 THE COURT: ANY OTHER QUESTIONS ON HIS QUALIFICATIONS?

2 MR. COLEMAN: YES. CAN I DELVE A LITTLE BIT MORE INTO
3 IT, YOUR HONOR?

4 THE COURT: SURE. YOU HAVE THE RIGHT TO REDIRECT ON
5 QUALIFICATIONS.

6 REDIRECT EXAMINATION BY

7 MR. COLEMAN:

8 Q BRUCE, WHEN YOU TALK ABOUT--

9 MR. COLEMAN: YOUR HONOR, I'M GOING TO ASK THE COURT'S
10 PERMISSION TO GO INTO A LITTLE BIT OF THE FACTS OF THIS CASE.

11 THE COURT: LET'S JUST DEAL WITH QUALIFICATIONS FIRST.
12 THE QUESTION IS WHETHER OR NOT HE'S QUALIFIED IN A PARTICULAR
13 AREA THAT IS UNIQUE AND IS OUTSIDE OF THE REALM OF THE JURY
14 OR IT WOULD ASSIST THE JURY IN REACHING A DECISION ON THE
15 ISSUES IN THIS CASE. THAT'S THE PURPOSE OF EXPERT TESTIMONY.

16 FIRST, THAT A PERSON IS QUALIFIED IN AN AREA AND IT IS IN AN
17 AREA WHICH IT WILL ASSIST THE JURY IN UNDERSTANDING THE
18 ISSUES. SO, YOU HAVE TO STICK TO QUALIFICATIONS RIGHT NOW

19 Q BRUCE WITH A GOODYEAR TIRE, MORE SPECIFICALLY THE GOODYEAR
20 VECTOR, HOW IS IT DESIGNED AND HOW IS IT UNIQUE IN AND OF
21 ITSELF?

22 A THE GOODYEAR VECTOR WAS THE FIRST ALL SEASON TIRE THAT WE
23 MANUFACTURED THAT HAD A CRISSCROSS TREAD PATTERN. IT WAS
24 UNIQUE TO A REGULAR TIRE WHEREAS AGAIN IT WAS--

25 MRS. SHEALY: YOUR HONOR, EXCUSE ME. I'M CERTAIN THIS

1 IS NOT PROPER REDIRECT.

2 THE COURT: WELL, HE'S DESCRIBING THE TYPES--A SPECIFIC
3 TYPE TIRE. IT REALLY IS NOT ON QUALIFICATIONS. MR. WITNESS,
4 LET ME ASK YOU THIS. ARE YOU SUFFICIENTLY FAMILIAR WITH ALL
5 TYPES OF TIRES MADE BY ALL MANUFACTURERS?

6 A I CAN RECOGNIZE MOST ALL MAJOR BRAND TIRES BECAUSE A LOT OF
7 THE LARGE COMPANIES ARE ORIGINAL EQUIPMENT. WE SEE ALL--WE
8 WORK ON ANY TYPE OF CAR AT OUR STORE. WE DON'T SPECIALIZE
9 JUST ON ONE CAR, JUST ON A GENERAL MOTORS CAR. WE SPECIALIZE
10 ON THEM ALL. AND THE TREAD PATTERNS ON THE TIRES, I MEAN
11 I'VE BEEN IN THE BUSINESS LONG ENOUGH WHEN I'M RIDING DOWN
12 THE ROAD I'M A TIRE MAN. I LOOK AT TIRES ON CARS. IT'S EASY
13 FOR ME TO SEE A TREAD DESIGN AND KNOW WHAT COMPANY MADE THAT
14 BECAUSE I RECOGNIZE THEIR TREAD PATTERNS.

15 THE COURT: ARE THEY OVERLAPPING? IN OTHER WORDS, DOES
16 A TREAD DESIGN MANUFACTURED BY GOODYEAR, IS THAT THE ONLY
17 TREAD DESIGN MANUFACTURED? IN OTHER WORDS, TO THE EXCLUSION
18 OF ALL OTHER MANUFACTURERS? IN OTHER WORDS, THEY ARE NOT
19 SIMILAR AT ALL?

20 A THERE ARE SOME TIRES THAT ARE SIMILAR IN LOOKS TO A PERSON
21 THAT DOESN'T KNOW ANYTHING ABOUT TIRES, YES. THERE ARE SOME
22 SIMILARITIES.

23 THE COURT: WELL, THE QUESTION IS CAN YOU DISTINGUISH
24 THE DIFFERENCE BETWEEN ONE TIRE VERSUS ANOTHER TIRE,
25 PARTICULARLY A GOODYEAR FROM ALL OTHER TIRES?

1 A YES, I CAN.

2 THE COURT: AND THAT IS BASED UPON YOUR BACKGROUND AND
3 EXPERIENCE IN THIS AREA?

4 A YES.

5 THE COURT: SO, YOU CAN LOOK AT A TIRE PATTERN WITHOUT
6 LOOKING AT THE NAME OF THE TIRE, YOU CAN LOOK AT THE TREAD-
7 -

8 A RIGHT.

9 THE COURT: --AND YOU CAN TELL WHETHER OR NOT THAT TREAD
10 IS FROM A GOODYEAR OR NOT A GOODYEAR TIRE?

11 A IT DEPENDS ON HOW GOOD THE PICTURE IS BUT, YES, I CAN--

12 THE COURT: WELL, IF IT'S SUFFICIENT TREAD THERE FOR YOU
13 TO LOOK AT?

14 A YES.

15 THE COURT: AND IT'S YOUR OPINION BASED ON YOUR
16 BACKGROUND AND EXPERIENCE THAT YOU CAN RENDER AN OPINION IF
17 YOU LOOKED AT THOSE TWO?

18 A YES, I CAN.

19 THE COURT: AND YOU CAN DO THAT WITH A SUFFICIENTLY
20 REASONABLE DEGREE OF CERTAINTY IN THE TIRE MANUFACTURING OF
21 TREAD DESIGN FIELD?

22 A YES, I CAN.

23 THE COURT: ALL RIGHT.

24 MR. COLEMAN: AND, YOUR HONOR, IF I MAY TAKE IT ONE STEP
25 FURTHER IF YOU'D LIKE.

1 THE COURT: WELL, YOU WANT TO GO TO A SPECIFIC TIRE.

2 MR. COLEMAN: RIGHT.

3 MRS. SHEALY: YOUR HONOR, COULD I ASK HIM A FEW
4 QUESTIONS JUST TO FOLLOW UP WITH THAT?

5 THE COURT: YES, MA'AM.

6 CROSS EXAMINATION BY

7 MRS. SHEALY:

8 Q YOU'VE INDICATED THOUGH THAT THE ONLY FORMAL TRAINING YOU'VE
9 HAD IN TREAD DESIGNS IS WITH GOODYEAR, IS THAT CORRECT?

10 A THE ONLY FORMAL TRAINING, YES.

11 Q OKAY. AND YOU ARE TELLING YOUR HONOR THAT WHEN YOU SEE A
12 TIRE YOU CAN TELL WHETHER OR NOT THAT'S A GOODYEAR TIRE?

13 A YES.

14 Q BECAUSE OF THE TREAD DESIGN?

15 A YES, I CAN.

16 Q BUT THEN AGAIN YOU HAVE HAD NO FORMAL TRAINING TO TEACH YOU
17 WHETHER OR NOT AN IMPRESSION IS A GOODYEAR TIRE IMPRESSION
18 OR ANOTHER CAR'S IMPRESSION, IS THAT CORRECT?

19 A THAT'S CORRECT.

20 THE COURT: WHEN YOU SAY IMPRESSION, YOU ARE TALKING
21 ABOUT THE TIRE TREAD, RIGHT?

22 A RIGHT.

23 MRS. SHEALY: HE'S TALKING ABOUT LIKE ON THE SAND.

24 THE COURT: I KNOW THAT. SHE'S TALKING ABOUT IN THE
25 SAND. I UNDERSTAND THAT. BUT YOU ARE TELLING ME THAT YA'LL

1 DEAL WITH EVERY TYPE OF CAR--MANUFACTURER OF A TIRE IN YOUR
2 LAST SIX YEARS?

3 A I SEE ANY TYPE OF TIRE THAT CAN BE PUT ON A CAR IN MY STORE.
4 WE SEE EVERY KIND THAT'S BEING RUN.

5 THE COURT: AND BASED UPON THAT EXPERIENCE AND
6 EXAMINATION OF THOSE YOU CAN TELL THE DIFFERENCE BETWEEN THE
7 TREAD PATTERN OF EVERY OTHER TYPE TIRE VERSUS A GOODYEAR?

8 A YES, I CAN.

9 THE COURT: TREAD PATTERN.

10 A RIGHT. SOME OF THOSE TIRE PATTERNS ARE SIMILAR BUT THEY ARE
11 NOT EXACTLY LIKE A GOODYEAR TIRE.

12 THE COURT: AND THERE ARE ENOUGH DISSIMILARITIES THAT
13 YOU CAN DISTINGUISH THEM?

14 A THAT I CAN TELL THE DIFFERENCE. A NORMAL PERSON PROBABLY
15 WOULDN'T BE ABLE TO DO THAT. BUT ANYONE IN MY STORE COULD,
16 NOT JUST MYSELF. ANY ONE OF MY SALES PEOPLE COULD, TOO.

17 THE COURT: I UNDERSTAND.

18 MRS. SHEALY: MAY I FOLLOW UP WITH THAT, YOUR HONOR.

19 THE COURT: YES, MA'AM

20 Q (BY MRS. SHEALY) MR. HALL, HOW ARE YOU ABLE TO SAY THAT YOU
21 HAVE SEEN EVERY TYPE OF TIRE IN YOUR STORE IF YOU'RE NOT
22 FAMILIAR WITH OTHER TIRES, MANUFACTURING PRACTICES--

23 A WELL, MAYBE THAT'S TOO BROAD TO SAY THAT I'VE SEEN EVERY TIRE
24 BUT WE SEE A GREAT MANY OTHER TIRE COMPANIES.

25 Q AND AGAIN YOUR EXPERIENCE WITH TREAD PATTERNS IS LIMITED TO

1 SEEING THE TIRE ITSELF, IS THAT CORRECT? NOT A PATTERN IN
2 SAND AND NOT THE PATTERN IN CLAY? I MEAN YOU HAVE NO
3 EXPERIENCE WITH THAT, IS THAT CORRECT?

4 A WELL, ON OTHER TIRE COMPANIES, YES, BUT I MEAN WE STUDY
5 INKED, YOU KNOW, TESTING WITH GOODYEAR IN THE SCHOOLS, YES.

6 Q OKAY. AND ALSO HAVE YOU EVER BEEN ASKED BEFORE TO MAKE A
7 COMPARISON BETWEEN A TIRE AND AN IMPRESSION?

8 A NO, I HAVE NOT.

9 Q AND ALSO ONE FURTHER QUESTION. YOU HAVE INDICATED THAT SOME
10 TREAD DESIGNS ARE SIMILAR BUT NOT EXACT?

11 A THEY ARE NOT EXACT.

12 Q FOR EXAMPLE, KELLY SPRINGFIELD HAS A SIMILAR TIRE TO SOME OF
13 THE GOODYEAR TIRES, IS THAT CORRECT?

14 A RIGHT.

15 THE COURT: ASK HIM CAN HE DISTINGUISH THE DIFFERENCE
16 BETWEEN THE KELLY SPRINGFIELD TIRE TREAD AND A GOODYEAR TIRE
17 TREAD. EVEN THOUGH THEY ARE SIMILAR, CAN YOU DISTINGUISH THE
18 DIFFERENCE?

19 A YES, SIR, I CAN.

20 Q (BY MRS. SHEALY) MR. HALL, IS THAT LIMITED TO SEEING THE
21 TIRES YOU CAN DISTINGUISH IT? IF YOU HAD A KELLY SPRINGFIELD
22 AND YOU HAD A GOODYEAR TIRE YOU'RE SAYING YOU COULD
23 DISTINGUISH BETWEEN THE TWO, IS THAT CORRECT?

24 A YES, I BELIEVE I CAN.

25 Q BUT YOU'VE HAD NO EXPERIENCE IN DETERMINING WHETHER OR NOT

1 AN IMPRESSION OF A KELLY SPRINGFIELD AND AN IMPRESSION OF A
2 GOODYEAR TIRE ARE THE SAME, IS THAT CORRECT?

3 A NO, I HAVE NOT.

4 THE COURT: WAIT A MINUTE. WHEN SHE SAYS IMPRESSION,
5 IN OTHER WORDS, IF SOMEBODY SHOWED YOU THE TIRE PATTERN,
6 TREAD PATTERN--

7 A I HAVE NO EXPERIENCE IN THAT BUT I STILL COULD DETERMINE
8 WHICH ONE WAS A VECTOR AND WHICH ONE WAS A KELLY SPRINGFIELD.

9 THE COURT: THE QUESTION IS IF SOMEONE SHOWED YOU A
10 PHOTOGRAPH, NOT SEEING THE NAME OF THE TIRE BUT ONLY SHOWED
11 YOU THE TREAD PATTERN OF THOSE TWO TIRES AND BOTH OF THE
12 TREAD PATTERNS WERE SUFFICIENT FOR YOU TO IDENTIFY, YOU KNOW,
13 IF YOU HAD ENOUGH TREAD PATTERN, WOULD YOU BE ABLE TO
14 DISTINGUISH THE DIFFERENCE BETWEEN A GOODYEAR AND THE ONE SHE
15 REFERRED TO, A KELLY OR ANY OTHER FROM A GOODYEAR?

16 A YES, I COULD.

17 Q (BY MRS. SHEALY) BUT AGAIN, MR. HALL, YOU'VE HAD NO FORMAL
18 TRAINING TO KNOW WHETHER OR NOT THE IMPRESSIONS MADE WOULD
19 BE EXACTLY THE SAME AS WHAT YOU'VE SEEN ON THE TIRE, IS THAT
20 CORRECT?

21 A I DON'T FULLY UNDERSTAND THAT QUESTION.

22 Q IN OTHER WORDS, I UNDERSTAND THAT YOU ARE SAYING THAT YOU CAN
23 SEE TWO TIRES AND DISTINGUISH BETWEEN THE TWO OF THEM.

24 A THAT'S TRUE.

25 Q BUT WHAT I'M ASKING IS THIS. YOU HAVE NEVER BEEN TRAINED IN

1 LOOKING AT AN IMPRESSION AND BEING ABLE TO DETERMINE WHETHER
2 OR NOT THAT IMPRESSION CAME FROM A CERTAIN TIRE, IS THAT
3 CORRECT?

4 A THAT'S CORRECT.

5 MRS. SHEALY: I HAVE NOTHING FURTHER ON THAT LINE.

6 THE COURT: ANYTHING ELSE?

7 MR. COLEMAN: NO, SIR.

8 MRS. SHEALY: I WOULD HAVE AN ARGUMENT THOUGH, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT.

11 MRS. SHEALY: YOUR HONOR, IF I COULD, I'D LIKE TO HAND
12 UP THREE CASES ON QUALIFYING EXPERT WITNESSES.

13 THE COURT: ALL RIGHT.

14 MRS. SHEALY: YOUR HONOR, COULD WE HAVE THE WITNESS
15 EXCUSED DURING THIS ARGUMENT?

16 THE COURT: SURE. WHY DON'T YOU DO THIS, MR. HALL, STEP
17 BACK THERE IN THE HALLWAY AND JUST REMAIN OUT THERE. WHY
18 DON'T YA'LL GO AHEAD AND TAKE A LITTLE SHORT RECESS AND I'LL
19 READ THE CASES AND THEN YOU CAN MAKE YOUR ARGUMENT. IT WILL
20 PROBABLY MAKE MORE SENSE TO ME. DO YOU HAVE ANY CASES,
21 SOLICITOR, THAT YOU WANT ME TO LOOK AT?

22 MR. COLEMAN: NO, YOUR HONOR.

23 (WITNESS LEAVES THE COURTROOM)

24 (RECESS)

25 THE COURT: (AT CONCLUSION OF RECESS) ALL RIGHT.

1 MRS. SHEALY: YOUR HONOR, IT'S MY UNDERSTANDING THAT
2 THE STATE IS ATTEMPTING TO QUALIFY MR. HALL AS AN EXPERT IN
3 MAKING TIRE COMPARISONS. IS THAT CORRECT?

4 THE COURT: WELL, I THINK HE'S QUALIFYING HIM ON HIS
5 ABILITY TO IDENTIFY TIRE TREAD PATTERNS AND DISTINGUISHING
6 THEM FROM ANY OTHER TYPE OF TREAD PATTERN. ALL RIGHT.
7 THAT'S WHAT HE SAID THAT HE DOES. HE SAYS THAT HE CAN LOOK
8 AT A TREAD PATTERN AND HE CAN DISTINGUISH THAT TREAD PATTERN
9 SPECIFICALLY A GOODYEAR TREAD PATTERN FROM ANY OTHER TREAD
10 PATTERN MADE BY ANY OTHER MANUFACTURER.

11 MRS. SHEALY: IT'S MY UNDERSTANDING HE SAID HE COULD DO
12 THAT WHEN HE SAW TIRES BUT THAT HE HAD HAD NO EXPERIENCE, NOR
13 ANY TRAINING IN DOING IT ON AN IMPRESSION OF THE TIRES.

14 THE COURT: WELL, HE SAID HE HAD NOT HAD ANY ACTUAL
15 OTHER THAN WHAT YOU CALL INKING. HE SAID HE HAD HAD INKING.

16 MRS. SHEALY: ON THE GOODYEAR TIRES.

17 THE COURT: ON THE GOODYEAR TIRES, YES. BUT HE SAID AS
18 LONG AS WHAT WAS PRESENTED TO HIM HAD A SUFFICIENT TREAD
19 PATTERN. IN OTHER WORDS, IF HE DOESN'T HAVE SUFFICIENT TREAD
20 PATTERN HE COULD NOT DO IT, BUT HE SAID IF HE HAD A
21 SUFFICIENT TREAD PATTERN, BE IT ON SAND OR ANYTHING, AS LONG
22 AS HE HAD A SUFFICIENT TREAD PATTERN HE COULD MAKE THAT
23 DISTINCTION. HE SAID THAT.

24 MRS. SHEALY: YOUR HONOR, THE THREE CASES THAT I HANDED
25 UP, THE MOST RECENT CASE BEING THE CHILDS CASE. IF YOU'LL

1 LOOK ON PAGE 9 UNDER SECTION 3 CONCERNING THE ADMISSIBILITY
2 OF THE BLOODHOUND TESTIMONY THE COURT IN DETERMINING WHETHER
3 OR NOT THE TRIAL JUDGE HAD ABUSED HIS DISCRETION IN
4 QUALIFYING THE SHERIFF'S DEPARTMENT OFFICER AS AN EXPERT
5 NOTED THAT HE HAD BETWEEN TEN TO FIFTEEN TIMES IN PRIOR COURT
6 PROCEEDINGS BEEN QUALIFIED AS AN EXPERT IN THAT FIELD AND
7 ADDITIONALLY THAT HE HAD BEEN RUNNING THE BLOODHOUNDS FOR
8 GREENVILLE COUNTY FOR ELEVEN TO TWELVE YEARS. SO, IN THAT
9 CASE IT WAS A LAW ENFORCEMENT OFFICER WHO HAD PARTICIPATED
10 IN DOING THE VERY THING THAT HE TESTIFIED TO FOR TEN TO--
11 ELEVEN TO TWELVE YEARS AND HAD BEEN QUALIFIED TEN TO FIFTEEN
12 TIMES IN PRIOR COURT PROCEEDINGS. I WOULD SUBMIT UNDER THESE
13 LINES THAT, NUMBER ONE, MR. HALL HAS NEVER BEEN QUALIFIED AS
14 AN EXPERT WITNESS BEFORE; NUMBER TWO, HE IS BEING ASKED TO
15 TESTIFY ON SOMETHING THAT HE DOES NOT HAVE EXPERIENCE WITH.
16 HE HAS NO FORMAL TRAINING, HE HAS NO LAW ENFORCEMENT TRAINING
17 AND HE IN FACT SAID HE HAS NEVER BEFORE MADE A COMPARISON.
18 SO, UNDER THOSE LINES UNDER CHILDS WE WOULD SUBMIT THAT IT
19 IS NOT PROPER. ADDITIONALLY, UNDER THE JONES CASE; YOUR
20 HONOR, ON PAGE 125--

21 THE COURT: OKAY.

22 MRS. SHEALY: THIS COURT IN DETERMINING WHETHER OR NOT
23 THE EXPERT TESTIMONY WAS PROPER, AND IF YOU'LL LOOK AT THE
24 INDENTION WHERE THEY ARE QUOTING FROM THE MARKS CASE, THEY
25 SAY FURTHER IN MAKING THEIR PAINSTAKING COMPARISONS AND

1 REACHING THEIR CONCLUSIONS THE EXPERTS DID NOT RELY ON
2 UNTESTED METHODS, UNPROVEN HYPOTHESES, INTUITION OR
3 REVELATION. AND I WOULD SUBMIT, YOUR HONOR, THAT MR. HALL'S
4 TESTIMONY DOES RELY ON UNTESTED METHODS, ON UNPROVEN
5 HYPOTHESES AND ON INTUITION OR REVELATION. HE HAS OFFERED
6 NO TESTIMONY THAT HE HAS EVER PERFORMED ANY TYPE OF TESTS ON
7 A TIRE OR ANY TYPE OF IMPRESSIONS BEING MADE. AND
8 ADDITIONALLY THAT HE IS JUST DOING IT FROM INTUITION OR
9 REVELATION BY EXAMINING A TIRE AND BY EXAMINING AN
10 IMPRESSION, BUT, YOUR HONOR, ACTUALLY HE'S NOT EVEN DOING
11 EITHER OF THOSE TWO THINGS. HE IS ONLY BEING PROVIDED WITH
12 A PHOTOGRAPH WITH A PARTIAL PART OF A TIRE AND THE PHOTOGRAPH
13 OF A PARTIAL PART OF A TRACK AND IS NOW BEING ASKED TO MAKE
14 A COMPARISON WHICH HE HAS NEVER IN THE PAST DONE. AND ALSO,
15 YOUR HONOR, IN THE CASE OF PRINCE VS. ASSOCIATED PETROLEUM
16 CARRIERS ON PAGE 579 IT INDICATES AT THE TOP OF THE PAGE THAT
17 IT HAS BEEN HELD THAT AN EXPERT MAY PROPERLY EXPRESS HIS
18 OPINION WHEN THE FACTS ON WHICH IT IS BASED ARE WITHIN HIS
19 OWN KNOWLEDGE. WE WOULD SUBMIT THAT IN THAT HIS ONLY
20 TRAINING IS WITH GOODYEAR TIRES THAT HE DOES NOT HAVE
21 SUFFICIENT FACTS WITHIN HIS KNOWLEDGE TO MAKE COMPARISONS
22 WITH OTHER TIRE MANUFACTURERS, TIRES OR OTHER IMPRESSIONS
23 THAT COULD HAVE POTENTIALLY BEEN MADE FROM OTHER TYPES OF
24 TIRES. HE HAS ONLY TESTIFIED THAT HIS EXPERIENCE AND HIS
25 TRAINING IS WITH GOODYEAR TIRES AND THAT HE HAS HAD NO

1 TRAINING AND HAD NO EXPERIENCE WITH MAKING COMPARISONS WITH
2 ANY OTHER TIRES. HE HAS MERELY SAID THAT THROUGH HIS SALES
3 POSITION AT GOODYEAR HE HAS COME INTO CONTACT WITH DIFFERENT
4 TYPES OF TIRES. ALSO, YOUR HONOR, IF YOU WILL REMEMBER
5 YESTERDAY MR. SWERLING WAS ATTEMPTING TO QUALIFY AGENT
6 CHRISTY AS AN EXPERT IN DISTINGUISHING BETWEEN TIRES AND TIRE
7 IMPRESSIONS AND THE SOLICITOR'S OFFICE OBJECTED TO SUCH
8 TESTIMONY BECAUSE HE HAD NEVER MADE COMPARISONS BEFORE. BUT
9 MR. CHRISTY, UNLIKE MR. HALL, HAS HAD LAW ENFORCEMENT
10 TRAINING ON MAKING IMPRESSIONS, TAKING IMPRESSIONS AND,
11 THEREFORE, WOULD KNOW THE DIFFERENCE BETWEEN WHAT TYPE OF
12 THINGS HAPPEN IN SAND THAT HAPPEN IN CLAY. MR. HALL DOES
13 NOT KNOW THOSE THINGS. HE DOES NOT KNOW THE EFFECT ON A TIRE
14 ROLLING OVER SAND. HE'S HAD NO TRAINING ALONG THOSE LINES.
15 SO, TO NOW ALLOW HIM TO TESTIFY AS TO WHETHER OR NOT THIS
16 TREAD PATTERN MATCHES A PICTURE OF A TIRE TREAD PATTERN SEEMS
17 UNREASONABLE BECAUSE HE HAS NO IDEA OF WHAT THE DIFFERENT
18 FACTORS COULD COME INTO PLAY BECAUSE OF THE SURFACE INVOLVED.
19 AND AS A REMINDER, MR. CHRISTY'S BEEN QUALIFIED AS AN EXPERT
20 MANY TIMES IN COURT AND THE SOLICITOR'S OFFICE OBJECTED TO
21 HIS TESTIFYING ABOUT MAKING COMPARISONS. ALSO, YOUR HONOR,
22 MR. HALL HAS NOT MADE ANY TYPE OF SCIENTIFIC TEST IN THIS
23 CASE. HE HAS MERELY LOOKED AT THE PHOTOGRAPH AND LOOKED AT
24 A TRACK. THERE'S NO TESTIMONY THAT HE DID ANY TYPE OF
25 TESTING HIMSELF. THERE'S BEEN NO TESTIMONY THAT HE EVER SAW

1 THE CAR, EVER WENT OUT AND SAW THE TRACKS, SAW THE TIRES.

2 THE COURT: MRS. KNEECE, AS I RECALL THERE WAS AN
3 OBJECTION BUT I DON'T THINK THE STATE WOULD HAVE MINDED THAT
4 WITNESS TESTIFYING OR GIVING HIS OPINION. I THINK THAT'S
5 PROBABLY THE REASON THEY WENT AND TRIED TO FIND THIS TIRE
6 PERSON.

7 MRS. SHEALY: YOUR HONOR, FROM WHAT I RECALL YESTERDAY--
8 -

9 THE COURT: THEY OBJECTED. YOU KNOW, THERE'S BEEN A
10 LITTLE BIT OF, YOU KNOW, PUNCH AND JAB GOING ON IN THIS CASE.
11 IF YOU WON'T AGREE WITH ME, I'M NOT GOING TO AGREE WITH YOU.

12 MRS. SHEALY: I REMEMBER, YOUR HONOR, SPECIFICALLY THAT
13 HE ASKED--HE SAID THAT MR. CHRISTY HAD NOT--WAS NOT AN EXPERT
14 IN MAKING COMPARISONS, THAT HE WAS AN EXPERT IN TAKING
15 IMPRESSIONS AND THAT HE, THEREFORE, WOULD NOT QUALIFY HIM.
16 AND WHAT I'M ASSERTING HERE, YOUR HONOR, IS THAT--

17 THE COURT: HE OBJECTED TO HIM GIVING AN OPINION UNTIL
18 HE HAD BEEN QUALIFIED. DID YOU TRY TO QUALIFY HIM AS AN
19 EXPERT?

20 MR. SWERLING: YES, SIR, THEY KEPT OBJECTING AND YOU
21 WOULDN'T ALLOW HIM TO TESTIFY.

22 THE COURT: I MEAN DID YOU ATTEMPT TO QUALIFY HIM IN
23 THAT AREA?

24 MR. SWERLING: YES, SIR. I KEPT TRYING TO QUALIFY HIM
25 TO GIVE AN OPINION AS TO WHETHER OR NOT YOU COULD GIVE AN

1 OPINION BASED UPON SOMETHING, AN IMPRESSION IN THE SAND AND
2 A PICTURE OF A TIRE.

3 THE COURT: WELL, HE ALSO SAID HE COULDN'T. DIDN'T HE
4 ALSO SAY THAT HE DIDN'T HAVE THE ABILITY TO DO THAT?

5 MR. SWERLING: NO, YOUR HONOR, HE DID NOT SAY THAT. HE
6 SAID THAT HE HAS DONE IN THE PAST TIRE COMPARISONS BUT THEY
7 OBJECTED TO IT AND YOUR HONOR SAID THAT HE COULD NOT RENDER
8 AN OPINION.

9 THE COURT: I DON'T REMEMBER IT EXACTLY LIKE THAT. DO
10 YA'LL REMEMBER IT THAT WAY?

11 MR. COLEMAN: NO, SIR.

12 MR. SWERLING: I TRIED SEVERAL TIMES AND MR. COLEMAN
13 KEPT OBJECTING.

14 THE COURT: I REMEMBER AN OBJECTION BUT YOU STARTED OUT
15 ASKING HIM ABOUT HIS OPINION IN A CERTAIN WAY. YOU DIDN'T SAY
16 IS IT YOUR OPINION, YOU ASKED HIM THE QUESTION SUCH THAT HE
17 WOULD BE RENDERING AN OPINION AND THEY OBJECTED THAT HE WOULD
18 BE GIVING AN OPINION AND I SAID I AGREE WITH THAT, YOU'VE GOT
19 TO QUALIFY HIM IN ORDER TO GET HIM TO RENDER AN OPINION.

20 MR. SWERLING: YES, SIR, AND I ATTEMPTED TO QUALIFY HIM
21 BUT THEY KEPT OBJECTING THAT HE WAS NOT QUALIFIED TO GIVE AN
22 OPINION. IT WAS LIKE THREE OR FOUR TIMES WHERE I STOPPED AND
23 I STOPPED AND I SAID, ALL RIGHT, I'D LIKE TO ASK HIM A
24 QUESTION NOW. AND THEY SAID, NO, HE'S NOT QUALIFIED TO GIVE
25 AN OPINION. AND THERE IS A GUY WHO'S DONE HUNDREDS AND

1 HUNDREDS OF TIRE CAST IMPRESSIONS.

2 THE COURT: WELL, I REALLY DON'T RECALL IT LIKE THAT,
3 COUNSELLOR. I SWEAR I DON'T. YA'LL KEPT TRYING--HE WAS
4 QUALIFIED. WHAT HE DID IS HE WAS TRAINED IN GOING IN AND
5 MAKING PLASTER MOLDINGS THAT THEY DO TO OBTAIN OR PRESERVE
6 EVIDENCE, BE IN TIRE MARKINGS OR INDENTATIONS IN A SURFACE
7 THAT THEY CAN DO IT. HE'S TRAINED IN THAT. AND THEN WHETHER
8 OR NOT HE WAS TRAINED IN INTERPRETING THAT AND COMPARING THAT
9 WITH ANOTHER ONE. I DON'T EVER RECALL HIM BEING QUALIFIED
10 AT ALL AND IN FACT MY RECOLLECTION WAS THAT HE SAID THAT HE
11 HAD NEVER DONE THAT AND HE COULD NOT DO THAT.

12 MR. SWERLING: HE SAID HE HAD DONE COMPARISONS BUT THAT
13 HE HAD NOT DONE A COMPARISON IN THIS CASE AND COULD NOT MAKE
14 A COMPARISON IN THIS CASE.

15 MRS. SHEALY: BECAUSE OF THE CONDITION OF THE SAND.

16 MR. SWERLING: BECAUSE OF THE CONDITION OF THE SAND.

17 MRS. SHEALY: SEE, IT'S OUR POSITION, YOUR HONOR, THAT
18 HERE HE IS A TRAINED PERSON IN TAKING IMPRESSIONS AND
19 RECOGNIZED THAT THE CONDITIONS WERE NOT PROPER THAT NIGHT TO
20 BE ABLE TO MAKE A MATCH. AND HERE THEY ARE ATTEMPTING TO PUT
21 UP SOMEONE WHO HAS NONE OF THAT FOUNDATION, WHO DOES NOT KNOW
22 WHAT EFFECT THE SAND WOULD HAVE ON MAKING AN IMPRESSION, WHO
23 HAS HAD NO TRAINING, WHO HAS NEVER TESTIFIED BEFORE. AND
24 THEY ARE ESSENTIALLY BRINGING IN A LAY SALES PERSON FROM A
25 TIRE COMPANY WHO SAYS HE CAN RECOGNIZE BY LOOKING AT

1 SOMETHING AND NOW IS ATTEMPTING TO SAY HE CAN TELL WHAT MADE
2 THAT IMPRESSION. IT WOULD BE ALMOST AS IF A MANICURIST WHO
3 DEALS WITH HANDS COULD SEE THE PRINT OF SOMEONE'S HAND AND
4 ATTEMPT TO MAKE A FINGERPRINT ANALYSIS. I MEAN THEY DON'T
5 HAVE THE PROPER TRAINING IN OUR POSITION.

6 THE COURT: WHAT ABOUT CUTICLE OR THE NAIL PART? I
7 DON'T KNOW THAT THEY DO FINGERPRINTING?

8 MRS. SHEALY: BUT IT'S OUR POSITION THIS IS A TECHNICAL
9 FIELD. YOUR HONOR, ADDITIONALLY I DO WANT TO REITERATE THAT
10 HIS TRAINING AND HIS EXPERIENCE IS LIMITED TO GOODYEAR. AND
11 TO HAVE HIM COME IN NOW AND ALLOW HIM TO TESTIFY THAT THIS
12 IMPRESSION CAME FROM A GOODYEAR TIRE WHEN HE HAS SEEN NO TAPE
13 OF THE IMPRESSIONS MADE BY OTHER TYPE OF TIRES, AND HE
14 TESTIFIED THAT THERE ARE OTHER MANUFACTURERS WHO HAVE SIMILAR
15 TREAD PATTERN TIRES. NOW, TO ALLOW HIM TO COME IN HERE TODAY
16 AND ASSERT THAT HE IS AN EXPERT IN THIS FIELD WITH NO
17 TRAINING WHATSOEVER, WITH NEVER HAVING DONE A COMPARISON
18 BEFORE, IT JUST DOESN'T SEEM LIKE HE HAS THE PROPER
19 QUALIFICATIONS AS AN EXPERT. HE HAS NO LAW ENFORCEMENT
20 TRAINING. ALL THE SEMINARS THAT HE HAS ATTENDED HAVE BEEN
21 CATERED TO SELLING TIRES, TO HAVE ENOUGH INFORMATION THAT YOU
22 CAN SELL A PRODUCT TO A CUSTOMER. AND THAT'S WHAT HE
23 TESTIFIED TO TODAY, THAT YOU NEED TO KNOW ABOUT THE TREAD
24 PATTERNS TO THE EXTENT TO BE ABLE TO INFORM A CUSTOMER OF
25 WHAT THE BEST TIRE WOULD BE FOR HIS CAR.

1 THE COURT: ANYTHING ELSE?

2 MRS. SHEALY: I HAVE NOTHING FURTHER.

3 THE COURT: ANYTHING?

4 MR. COLEMAN: YOUR HONOR, I THINK THERE'S NO QUESTION
5 THAT IT'S WITHIN THE SOUND DISCRETION OF A JUDGE. I MEAN
6 HERE YOU HAVE A FELLOW WHO'S BEEN WORKING FOR GOODYEAR FOR
7 SIX YEARS. HE'S TESTIFIED THE STORE THAT HE WORKED AT SOLD
8 OVER SEVEN THOUSAND TIRES LAST YEAR, THAT HE SOLD ABOUT
9 TWELVE HUNDRED TIRES HIMSELF LAST YEAR, THAT HE HAD BEEN
10 WORKING THERE FOR SIX YEARS SO THAT'S AROUND WHAT, ABOUT
11 EIGHT THOUSAND TIRES THAT HE HAS SOLD IN HIS LIFETIME. HE'S
12 TESTIFIED THAT HE'S WORKED THERE. PEOPLE BRING THEIR CARS
13 IN WITH VARIOUS KIND OF TIRES ON THOSE CARS. HE LOOKS AT
14 THOSE TIRES, LOOKS AT THE WEAR PATTERNS OF THOSE TIRES AND
15 DETERMINES WHAT THE PROBLEM WITH THOSE TIRES AND WHAT THE
16 PROBLEM IS WITH THAT CAR. THEN HE GOES AND LOOKS AT A
17 GOODYEAR TIRE AND DETERMINES WHICH TIRE WILL BEST SUIT THAT
18 CAR FOR THE DIFFERENT PROBLEMS THAT THE CAR HAS CREATED FOR
19 THE TIRE. I DON'T THINK THERE'S ANY QUESTION HE'S TESTIFIED
20 THAT AT WORK HE GOES IN, HE CAN LOOK AT A TREAD PATTERN ON
21 A TIRE AND PICK THAT TIRE OUT BY THE TREAD PATTERN. HE SAYS
22 THAT SOME PEOPLE MIGHT BE, YOU KNOW, GOING DOWN THE ROAD
23 LOOKING AT WOMEN BUT HE GOES DOWN THE ROAD LOOKING AT TIRES.
24 HE SAID HE'S A TIRE MAN. I DON'T THINK THERE'S ANY QUESTION
25 HE'S QUALIFIED.

1 MRS. SHEALY: YOUR HONOR, IF I COULD JUST RESPOND
2 BRIEFLY TO MR. COLEMAN'S COMMENTS. AGAIN, I THINK IT'S VERY
3 IMPORTANT THAT HE'S NEVER HAD ANY TYPE OF TRAINING CONCERNING
4 IMPRESSIONS. I RECOGNIZE THAT HE HAS SOME TRAINING IN
5 GOODYEAR TIRES, BUT THAT'S NOT THE TOTAL SPHERE OF WHAT HE'S
6 BEING ASKED TO DO TODAY. HE'S BEING ASKED TO MATCH AN
7 IMPRESSION OF A TIRE WITH A PICTURE OF A TIRE AND THERE'S
8 BEEN NOTHING ESTABLISHED THAT HE'S EVER DONE THAT BEFORE,
9 KNOWS HOW TO DO THAT AND CAN DO IT TODAY. AND THE THINGS
10 THAT HE'S EXAMINED CARS THAT COME INTO HIS SHOP HAVE BEEN FOR
11 A DIFFERENT PURPOSE.

12 THE COURT: WAIT JUST A MINUTE. YOU ARE REACHING AN
13 EXTRA CONCLUSION HERE. THE QUESTION BEFORE THE COURT IS
14 WHETHER OR NOT HE'S QUALIFIED AS AN EXPERT IN A CERTAIN FIELD
15 OR CAN BE QUALIFIED. THEN THE NEXT STEP DOES TO WHETHER OR
16 NOT BASED UPON WHAT IS PRESENTED TO HIM CAN HE DO THAT. THAT
17 DOESN'T GO TO HIS QUALIFICATIONS AS AN EXPERT.

18 MRS. SHEALY: OKAY. WELL, YOUR HONOR, JUST ALONG THE
19 LINES OF HIS QUALIFICATIONS THEN HE HAS NO EXPERIENCE. I MEAN
20 HE HAS NO EXPERIENCE IN DOING THAT.

21 THE COURT: MRS. SHEALY, HOW DO YOU THINK PEOPLE BECOME
22 EXPERTS? YOU KNOW, THE FACT THAT HE'S NEVER BEEN QUALIFIED
23 BEFORE IN COURT DOESN'T MEAN--SOMEBODY'S GOT TO QUALIFY HIM
24 SOMETIME. I MEAN HE'S GOT TO HAVE IT DONE ONE TIME. HE'S
25 GOT TO START SOMEWHERE.

1 MRS. SHEALY: IT WOULD BE DIFFERENT IF THEY HAD A PERSON
2 UP HERE WHO HAS ATTENDED LAW ENFORCEMENT SEMINARS OR OTHER
3 SEMINARS THAT DISCUSS WHAT TYPE OF IMPRESSIONS A TIRE MAKES.
4 HE SAYS HE HAS SEEN A TAPE ABOUT THE INKED TREAD PATTERN OF
5 A GOODYEAR TIRE. HE'S NEVER SEEN ANY OTHER COMPANY'S TIRES.

6 THE COURT: WHAT IS THIS DEALT WITH AN AUTOMOBILE
7 ENGINE? DO YOU THINK A MECHANIC HAS GOT TO GO TO LAW
8 ENFORCEMENT TRAINING BEFORE HE CAN COME IN HERE AND GIVE AN
9 OPINION ABOUT THE FUNCTIONING OF THAT MOTOR? YOU KNOW, SHADE
10 TREE MECHANICS EVERYDAY COME INTO THE COURTROOM AND THEY ARE
11 QUALIFIED BECAUSE OF THEIR EXPERIENCE. SOME OF THEM HAVEN'T
12 EVEN GOTTEN OUT OF THE FIRST GRADE BUT THEY CAN TEAR DOWN A
13 MOTOR AND PUT IT BACK TOGETHER BETTER THAN ROCKET SCIENTISTS.
14 AND IT'S BASED ON THEIR TRAINING AND EXPERIENCE. THE
15 QUESTION IS EDUCATIONAL TRAINING, ON JOB TRAINING, PRACTICAL
16 EXPERIENCE SUCH AS THAT GIVES THEM SOME UNIQUE ABILITY BASED
17 UPON THAT TO REACH AN OPINION OR TO RENDER AN OPINION THAT
18 IS OUTSIDE OF WHAT IS KNOWN AS COMMON KNOWLEDGE AND WILL
19 ASSIST THE JURY. THAT'S THE PURPOSE OF EXPERTS. YOU KNOW,
20 AN EXPERT'S TESTIMONY SIMPLY COMES IN FOR THE BENEFIT THAT
21 IT ASSISTS THE JURY IN DETERMINING THE ISSUES TO BE DECIDED
22 AND IT'S NOT TO BE OUTWEIGHED BY ANY OTHER WITNESS'S
23 TESTIMONY. BUT THE PURPOSE ONCE AGAIN IS WHETHER OR NOT
24 SOMEBODY HAS SOME PECULIAR, SPECIAL KNOWLEDGE, TRAINING,
25 EXPERIENCE IN AN AREA AND IT IS SUCH THAT HE CAN THEN ASSIST

1 IN THE ISSUES TO BE DECIDED. NOW, WHETHER OR NOT HE CAN COME
2 IN AND SAY, ONCE QUALIFIED IN THE AREA, THAT I HAVE THE
3 ABILITY--IN OTHER WORDS, WHEN YOU ASK A WITNESS CAN YOU
4 LOOKING AT A PHOTOGRAPH OR AN INK BLOT WHAT WOULD ALLEGED TO
5 BE A TIRE PATTERN, NEVER HAVING DONE THAT BEFORE, CAN YOU
6 LOOK AT THAT AND COMPARE IT WITH THE ACTUAL TIRE PATTERN OF
7 A CAR AND DISTINGUISH OR COMPARE THE TWO SO AS TO EXCLUDE OR
8 RENDER AN OPINION WITHIN A REASONABLE DEGREE OF CERTAINTY IN
9 THAT FIELD WHETHER OR NOT THEY ARE SIMILAR OR DIFFERENCE.
10 IF HE SAYS, NO, I CANNOT DO THAT, I HAVE NO TRAINING, THEN
11 HE CAN'T GIVE AN OPINION. BUT THAT DOESN'T MEAN HE COULDN'T
12 BE QUALIFIED AS AN EXPERT IN A FIELD. YOU SEE, THE QUESTION
13 IS FOUNDATION AND THE OTHER QUESTION IS QUALIFICATION. YOU
14 CAN QUALIFY--I QUALIFY EXPERTS ALL DAY IF THEY ARE PROPERLY
15 QUALIFIED. WHETHER OR NOT THEY THEREAFTER CAN RENDER AN
16 OPINION OR HAVE AN OPINION IS A DIFFERENT QUESTIONS BECAUSE
17 OFTENTIMES YOU ASK AN EXPERT DO YOU HAVE AN OPINION--NO, I
18 DON'T. WELL, HE'S STILL AN EXPERT. THAT DOESN'T MEAN HE'S
19 NOT AN EXPERT.

20 MRS. SHEALY: YES, SIR.

21 THE COURT: THE FIRST QUESTION ALWAYS TO AN EXPERT IS
22 WHETHER OR NOT YOU CAN RENDER AN OPINION. YES, I CAN. IF
23 HE SAYS, YES, I CAN, THEN THE NEXT QUESTION IS DO YOU HAVE
24 AN OPINION AND IF HE SAYS YES THEN WE GET TO HEAR HIS
25 OPINION. EVERYBODY WANTS TO JUMP TWO HURDLES. THEY DON'T

1 WANT TO GO THROUGH THOSE STEPS AND NOBODY EVER SEEMS TO
2 FIGURE THAT OUT. THOSE ARE BASIC. UNLESS THEY ARE ABLE TO
3 DO THAT YOU ARE REALLY NOT SUPPOSED TO QUALIFY THEM. OR
4 TESTIFY, NOT QUALIFY.

5 I FIND THIS WITNESS BASED UPON HIS BACKGROUND, HIS
6 EXPERIENCE--HE HAS EDUCATION. HE DOES HAVE SOME FORMAL
7 EDUCATION SO HE HAS THE ABILITY TO UNDERSTAND ACADEMIC
8 TRAINING. HE'S BEEN TO AKRON, OHIO, THE HOME OFFICE OF THE
9 PRINCIPAL MANUFACTURER, GOODYEAR TIRES, WHICH IS THE LARGEST
10 MANUFACTURER OF TIRES UP UNTIL BRIDGESTONE MERGED WITH
11 FIRESTONE. HE SELLS TWELVE HUNDRED TIRES A YEAR AND HE'S
12 BEEN DOING IT FOR SIX YEARS. HE SAYS THAT HE CAN RIDE DOWN
13 THE ROAD AND TELL THE DIFFERENCE BETWEEN A TIRE SIMPLY BY
14 LOOKING AT THE TREAD, HE DOESN'T NEED TO SEE THE NAME ON IT.
15 AND NOT JUST GOODYEAR TIRES, HE SAID EVERY OTHER TYPE OF TIRE
16 PEOPLE COME TO HIS STORE AND HE HAS THE ABILITY TO LOOK AT
17 THAT TIRE AND TELL WHETHER THE TIRE PATTERN IS PROPER FOR
18 THAT CAR. NOW, CLEARLY IN MY VIEW HE'S QUALIFIED AS AN
19 EXPERT BASED UPON HIS BACKGROUND, HIS TRAINING AND EXPERIENCE
20 IN BEING ABLE TO DETERMINE AND DISTINGUISH THE DIFFERENCE
21 BETWEEN TIRE PATTERNS. NOW, WHETHER OR NOT HE CAN RENDER AN
22 OPINION, YOU KNOW, BASED UPON THAT TRAINING AND EXPERIENCE
23 HAVING A PHOTOGRAPH OR AN INKING OF A TIRE AND COMPARING IT
24 TO A PHOTOGRAPH WITH WHAT IS IN SAND HE MAY NOT BE ABLE TO
25 DO BECAUSE HE MAY NOT BE ABLE TO SAY--BECAUSE AS YOU HEARD

1 HIM SAY IF I HAVE A SUFFICIENT TIRE PATTERN. WELL, THAT'S
2 TRUE IF YOU TOOK SOMEBODY AND TRAINED THEM FOREVER IN LAW
3 ENFORCEMENT IN TAKING THESE CASTINGS AND COMPARING THEM, IF
4 ALL THEY DID WAS SIT THERE AND COMPARE THEM--THAT'S HOW THEY
5 QUALIFY EXPERTS--IF HE SAYS I CAN'T GET A SUFFICIENT CASTING
6 TO RENDER AN OPINION HE CAN'T RENDER AN OPINION. IT'S LIKE
7 TAKING A FINGERPRINT. IF HE CAN'T GET A SUFFICIENT
8 FINGERPRINT, HE CAN'T RENDER AN OPINION. THAT DOESN'T MEAN
9 HE'S NOT AN EXPERT. THAT'S THE QUESTIONS, MRS. KNEECE. I
10 QUALIFY HIM.

11 MRS. SHEALY: YOUR HONOR, WE WOULD THEN THAT THEY
12 PROFFER HIS TESTIMONY.

13 THE COURT: I DON'T THINK THAT'S NECESSARY.

14 MRS. SHEALY: FOR THE SECOND PART OF THE QUALIFICATION.

15 THE COURT: I DON'T THINK ALL THAT'S NECESSARY. I DON'T
16 THINK IT'S NECESSARY TO DO WHAT WE DID IN CAMERA. IT'S NOT
17 NECESSARY.

18 MRS. SHEALY: YOUR HONOR, IT'S OUR UNDERSTANDING FROM
19 TALKING WITH MR. HALL THAT HE SAYS HE CANNOT REACH AN OPINION
20 UNLESS HE WERE TO SEE THE CAR AND HE HAS NOT SEEN THE CAR.
21 WE DON'T WANT ALL THE OTHER INFORMATION TO GET OUT IN FRONT
22 OF THE JURY AND THE COME TO THAT CONCLUSION.

23 THE COURT: WELL, IF HE SAYS THAT, THEN FOR GOD'S SAKE
24 HE CAN'T RENDER AN OPINION. WHERE DO YOU GO FROM THERE? I
25 MEAN THEY ARE DEAD IN THE WATER IF HE SAYS THAT. I DON'T

1 KNOW HOW YOU ARE GOING TO GO ANY FURTHER. I DON'T KNOW WHAT
2 HE'S GOING TO SAY. BUT, YOU KNOW, WE CAN'T TRY THIS CASE IN
3 CAMERA AND THAT'S WHAT YA'LL HAVE DONE. YA'LL HAVE TRIED TO
4 MAKE THIS CASE BE TRIED IN CAMERA. THE PURPOSE OF AN IN
5 CAMERA HEARING IS WHERE THE TESTIMONY, IF ADMITTED, WOULD BE
6 SO PREJUDICIAL AS TO DENY EITHER THE STATE OR DEFENSE A FAIR
7 TRIAL. WELL, FRANKLY, YA'LL WANT TO TRY THE CASE HERE BEFORE
8 WE GET OVER THERE. YOU KNOW, YOU CAN OBJECT. I MEAN THERE'S
9 NO PROBLEM WITH THAT. I HAVEN'T GOT TO RULE ON EVERYTHING
10 BEFORE WE HEAR IT. IT'S ONLY WHEN YOU ARE SO CONCERNED ABOUT
11 THE PREJUDICIAL EFFECT OF IT. FRANKLY, IF HE SAYS WHAT YOU
12 SAY HE'S GOING TO SAY IT SOUNDS LIKE ANOTHER LITTLE BLOCK OF
13 ICE OVER THERE ON YA'LL TABLE TO ME. YOU'VE GOT ENOUGH NOW.
14 LET'S GO. BRING THE JURY IN. BRING THE WITNESS IN. LET THE
15 RECORD REFLECT THAT THE COURT HAS FOUND BASED UPON THE
16 TESTIMONY PRESENTED TO THE COURT IN CAMERA THAT THIS WITNESS,
17 BRUCE HALL, IS QUALIFIED. IT'S IN THE COURT'S DISCRETION AND
18 THE COURT IS MINDFUL THAT IT CANNOT ABUSE ITS DISCRETION.
19 HOWEVER, THE COURT IS MINDFUL THAT THIS IS AN ISSUE FOR WHICH
20 ORDINARILY A PERSON OF COMMON OF KNOWLEDGE--IT'S JUST NOT
21 WITHIN THE COMMON KNOWLEDGE AND IT COULD SERVE TO ASSIST THE
22 JURY IN REACHING THE CONCLUSION AND DECISION IN THIS CASE.
23 HE HAS EXTENSIVE ON JOB TRAINING AND EXPERIENCE. HE'S BEEN
24 TO THE MANUFACTURER. THIS COURT IS SATISFIED THAT THE
25 WITNESS IS SUFFICIENTLY QUALIFIED THROUGH TRAINING AND

1 EXPERIENCE TO BE ABLE TO DISTINGUISH THE DIFFERENCE IN TIRE
2 PATTERNS OF ALL TYPES AND MAKES OF TIRES PRODUCED IN THE
3 UNITED STATES AND HE'S SO QUALIFIED IN THAT AREA. NOW,
4 GENTLEMEN, BEAR IN MIND THE LIMITATIONS. JUST BECAUSE I'VE
5 QUALIFIED HIM ONCE AGAIN DOES NOT MEAN HE'S AUTHORIZED AND
6 CAN RENDER AN OPINION. IT'S BASED UPON LAYING THE PROPER
7 FOUNDATION TO HIM AND HIM SAYING THAT HE CAN RENDER AN
8 OPINION BASED UPON THOSE THINGS. IF HE SAYS HE CAN'T, THEN
9 HE CAN'T AND THAT'S IT UNFORTUNATELY. ALL RIGHT. LET'S
10 PROCEED. BRING THE JURY IN.

11 MR. MORTON: ONE QUICK THING.

12 THE COURT: WHAT?

13 (MR. SWERLING AND MR. MORTON CONFER OFF THE RECORD.)

14 THE COURT: ARE YA'LL READY?

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

16 THE COURT: BRING THE JURY IN.

17 (THE JURY RETURNS TO THE JURY BOX AT 11:37 A.M.)

18 THE COURT: CALL YOUR WITNESS.

19 MR. COLEMAN: YOUR HONOR, THE STATE CALLS DAVID MOFFAT
20 TO THE STAND.

21 DAVID MOFFAT, AFTER BEING DULY SWORN BY THE CLERK,
22 TESTIFIES AS FOLLOWS:

23 DIRECT EXAMINATION BY

24 MR. COLEMAN:

25 Q DEPUTY MOFFAT, WHERE ARE YOU EMPLOYED?

1 A RICHLAND COUNTY SHERIFF'S DEPARTMENT.

2 Q AND WHAT ARE YOUR DUTIES?

3 A I'M A LINE OFFICER AND ANSWER EMERGENCY CALLS FROM CITIZENS

4 OF THE COUNTY AND WHATEVER DUTIES THAT ARE ASSIGNED TO ME.

5 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

6 A FOUR AND A HALF YEARS.

7 Q OKAY. WERE YOU WORKING ON DECEMBER 26TH, 1988?

8 A I WAS.

9 Q DID YOU HAVE AN OCCASION TO GO TO BROWN'S A.M.E. CHAPEL

10 LOCATED IN ARTHURTOWN?

11 A I DID.

12 Q WHAT TIME DID YOU RECEIVE THE CALL TO RESPOND AND WHAT TIME

13 DID YOU GET THERE?

14 A ALMOST IMMEDIATELY AFTER I CAME ON DUTY AT MIDNIGHT, WITHIN

15 TEN TO FIFTEEN MINUTES AFTER COMING ON DUTY AND VERY SHORTLY

16 THEREAFTER I ARRIVED ON THE SCENE.

17 Q OKAY. WHO WAS PRESENT?

18 A THE FORENSICS LAB PERSONNEL, SPECIFICALLY LT. SULTON.

19 Q OKAY. WAS THE SCENE SECURED AT THAT TIME?

20 A AT THAT TIME, THEY WERE JUST FINISHING PUTTING BARRIER TAPE,

21 A YELLOW TAPE, AROUND THE CRIME SCENE AS A BOUNDARY TO KEEP

22 PEOPLE OUT.

23 Q OKAY. AND HOW LONG DID YOU STAY THERE?

24 A I WAS THERE FROM THE TIME THAT I ARRIVED SHORTLY AFTER

25 MIDNIGHT UNTIL APPROXIMATELY 8:30 THAT MORNING.

1 Q AND WHO RELIEVED YOU?

2 A OFFICER CALDWELL.

3 Q DID ANYBODY DURING THAT TIME COME WITHIN THE CONFINES OF THE
4 TAPE?

5 A NO ONE. NO ONE APPROACHED IT, NO ONE CAME NEAR IT.

6 Q BESIDES A DEPUTY?

7 A NO ONE WENT INSIDE THE BARRIER WHATSOEVER. AS A MATTER OF
8 FACT, NO ONE CAME EVEN CLOSE TO IT WHILE IT WAS THERE.

9 Q OKAY.

10 MR. COLEMAN: NO FURTHER QUESTIONS.

11 THE COURT: CROSS EXAMINATION.

12 CROSS EXAMINATION BY

13 MRS. SHEALY:

14 Q DEPUTY MOFFAT, I APOLOGIZE. YOU ARRIVED AT THE SCENE AFTER
15 WHICH OFFICER WAS ALREADY THERE?

16 A THE FORENSICS TEAM WAS STILL THERE PUTTING UP THE BARRIER
17 TAPE AROUND--WAS JUST FINISHING PUTTING UP THE BARRIER TAPE
18 AROUND THE CRIME SCENE.

19 Q AND WHERE WAS THE BARRIER TAPE RUNNING, DO YOU RECALL?

20 A APPROXIMATELY--WELL, IT ENCOMPASSED AN AREA TO THE BEST OF
21 MY RECOLLECTION OF APPROXIMATELY TWO FOOTBALL FIELDS THAT
22 WENT AROUND THE CHURCH, AROUND ANOTHER BUILDING AND THEN
23 THROUGH THE WOODS SURROUNDING THE AREA AND THEN BACK TO THE
24 CHURCH.

25 Q DO YOU RECALL SEEING ANY TIRE TRACKS THAT EVENING?

1 A NOT SPECIFICALLY, NO.

2 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
3 24 AND ASK YOU IF YOU RECOGNIZE THAT?

4 A THAT'S THE ROAD LEADING INTO THE CRIME SCENE AREA.

5 Q AND DO YOU RECALL SEEING THE TIRE TRACKS AS DISPLAYED IN THAT
6 PICTURE?

7 A NOT SPECIFICALLY BUT AS I SAY I GOT THERE AFTER MIDNIGHT AND
8 IT WAS--I JUST STAYED AWAY FROM ANYTHING THAT I MIGHT
9 POSSIBLY MESS UP.

10 Q OKAY. HOW MANY VEHICLES WERE OUT THERE WHEN YOU ARRIVED AT
11 THE SCENE?

12 A I BELIEVE THERE WERE TWO OR THERE MIGHT EVEN HAVE BEEN THREE.
13 THAT IS POLICE VEHICLES.

14 Q AND THEY WERE ALL IN THE AREA OF THE CRIME SCENE?

15 A THAT'S CORRECT. THEY WERE OUTSIDE THE TAPE AREA HOWEVER.

16 MRS. SHEALY: I BEG THE COURT'S INDULGENCE. (PAUSE)

17 Q DO YOU KNOW HOW MANY VEHICLES HAD BEEN AT THE SCENE PRIOR TO
18 YOUR GETTING THERE?

19 A NO IDEA.

20 Q ARE YOU AWARE OF HOW MANY OTHER LAW ENFORCEMENT OFFICERS HAD
21 BEEN THERE?

22 A NO IDEA.

23 Q AND ARE YOU AWARE OF WHAT TYPE OF TIRES ARE ON LAW
24 ENFORCEMENT VEHICLES?

25 A NORMALLY G.T. EAGLES.

1 MRS. SHEALY: I HAVE NO FURTHER QUESTIONS. THANK YOU.

2 REDIRECT EXAMINATION BY

3 MR. COLEMAN:

4 Q ARE YOU AWARE OF WHO ASSISTED THE FORENSIC TEAM THAT NIGHT?

5 A SPECIFICALLY, NO. I HAD JUST COME ON DUTY AND I HAD NO IDEA

6 WHO WAS ON THE TEAM THAT NIGHT.

7 Q DO YOU KNOW NOW WHO CONSISTED OF THAT FORENSIC TEAM?

8 A SPECIFICALLY, NO, I DON'T.

9 MR. COLEMAN: OKAY. NO FURTHER QUESTIONS.

10 THE COURT: YOU MAY STEP DOWN.

11 (WITNESS TO THE SIDE)

12 THE COURT: CALL YOUR NEXT WITNESS.

13 MR. COLEMAN: YOUR HONOR, THE STATE CALLS ANDREW
14 CALDWELL.

15 ANDREW CALDWELL, AFTER BEING DULY SWORN BY THE CLERK,
16 TESTIFIES AS FOLLOWS:

17 DIRECT EXAMINATION BY

18 MR. COLEMAN:

19 Q DEPUTY CALDWELL, WHERE ARE YOU EMPLOYED?

20 A RICHLAND COUNTY SHERIFF'S DEPARTMENT.

21 Q AND WHAT ARE YOUR DUTIES?

22 A I'M A DEPUTY WITH THE SHERIFF'S DEPARTMENT.

23 Q HOW LONG HAVE YOU BEEN THERE?

24 A APPROXIMATELY FOURTEEN MONTHS.

25 Q DID YOU HAVE AN OCCASION ON DECEMBER 26TH, 1988, TO GO TO

1 BROWN'S A.M.E. CHAPEL LOCATED IN ARTHURTOWN?

2 A YES, SIR, I DID.

3 Q WHAT TIME DID YOU GO THERE?

4 A IT WAS APPROXIMATELY 8:30 A.M.

5 Q WHO DID YOU RELIEVE?

6 A I RELIEVED DEPUTY MOFFAT.

7 Q HAD THAT CRIME SCENE BEEN POSTED SO TO SPEAK?

8 A YES, SIR, WITH A YELLOW CRIME TAPE RIBBON THAT WE USE. CRIME

9 SCENE, DO NOT CROSS.

10 Q FROM THE TIME THAT YOU GOT THERE UNTIL THE TIME--DID THE

11 FORENSIC TEAM COME TO THE SCENE?

12 A YES, SIR. THEY RELIEVED ME.

13 Q EXCUSE ME?

14 A THEY RELIEVED ME FROM THE CRIME SCENE.

15 Q WHO DID THAT CONSIST OF?

16 A I BELIEVE IT WOULD HAVE BEEN LT. SULTON I BELIEVE.

17 Q DID ANYBODY COME WITHIN THE CONFINES OF THAT SCENE WHEN YOU

18 WERE THERE?

19 A NO, SIR, THEY DID NOT.

20 MR. COLEMAN: OKAY. NO FURTHER QUESTIONS.

21 THE COURT: CROSS EXAMINATION?

22 MRS. SHEALY: WE HAVE NO QUESTIONS.

23 THE COURT: YOU MAY STEP DOWN.

24 (WITNESS TO THE SIDE)

25 MR. COLEMAN: YOUR HONOR, THE STATE CALLS BRUCE HALL.

1 BRUCE HALL, AFTER BEING DULY SWORN BY THE CLERK,
2 TESTIFIES AS FOLLOWS:

3 DIRECT EXAMINATION BY

4 MR. COLEMAN:

5 Q MR. HALL, WHERE ARE YOU EMPLOYED?

6 A GOODYEAR TIRE AND RUBBER COMPANY HERE IN COLUMBIA ON GERVAIS
7 STREET.

8 Q AND WHAT ARE YOUR DUTIES THERE?

9 A I'M THE STORE MANAGER OF THAT LOCATION.

10 Q WHICH CONSISTS OF WHAT?

11 A WHICH CONSISTS OF HIRING AND TRAINING MY EMPLOYEES, THE
12 IMPLEMENTATION OF GOODYEAR PRODUCTS AND SERVICES TO THE
13 CONSUMERS HERE IN THE MARKET. ORDERING TIRES FOR MY
14 PARTICULAR STORE AND THE OTHER LOCATIONS HERE IN COLUMBIA.

15 Q OKAY. AND HOW LONG HAVE YOU BEEN EMPLOYED AT THAT PARTICULAR
16 STORE?

17 A SIX YEARS.

18 Q AND WHAT HAVE YOU DONE OVER THOSE SIX YEARS? WHAT HAVE YOUR
19 DUTIES BEEN?

20 A OH, YOU SAID AT THIS STORE?

21 Q RIGHT.

22 A I'VE BEEN AT THIS STORE FOR THREE, TWO AND A HALF, ALMOST
23 THREE YEARS. I'VE BEEN WITH GOODYEAR SIX.

24 Q OKAY.

25 A AT THAT STORE, I HAVE SOLD TIRES, HOLD TRAINING MEETINGS ON

1 HOW TO SELL TIRES WITH MY EMPLOYEES AND JUST THE FUNCTION,
2 YOU KNOW, OF EVERYDAY BUSINESS THERE AT THE STORE WITH THE
3 CONSUMERS THAT COME IN THE STORE.

4 Q AND HOW MANY TIRES DO YOU SAY YOU AVERAGE A YEAR SELLING?
5 A MYSELF PERSONALLY?
6 Q YES.
7 A I WOULD ASSUME SOMEWHERE AROUND TWELVE TO FOURTEEN HUNDRED.
8 Q AND HOW MANY TIRES DOES YOUR STORE SELL?
9 A LAST YEAR WE SOLD APPROXIMATELY A LITTLE OVER SEVEN THOUSAND
10 AUTO TIRES.
11 Q AND THEY ARE ALL GOODYEAR TIRES?
12 A ALL GOODYEAR.
13 Q DO YOU OVERSEE THE SALES OF ALL TIRES IN YOUR STORE?
14 A I DON'T OVERSEE EVERY INDIVIDUAL SALE BUT I AM AWARE OF HOW
15 MANY TIRES WE DO SELL IN THAT DAY, YES.
16 Q OKAY. TELL US ABOUT YOUR EDUCATIONAL BACKGROUND. DID YOU
17 GO TO COLLEGE?
18 A YES, I DID.
19 Q WHERE DID YOU GO?
20 A UNIVERSITY OF SOUTH CAROLINA, SPARTANBURG.
21 Q AND WHAT DID YOU GET YOUR DEGREE IN?
22 A BUSINESS MANAGEMENT.
23 Q WHAT DID YOU DO WHILE YOU WERE IN COLLEGE?
24 A TOWARD THE LATTER PART OF MY COLLEGE CAREER I WAS EMPLOYED
25 WITH GOODYEAR TIRE AND RUBBER COMPANY AND STILL GOING TO

1 COLLEGE. ONCE GETTING IN WITH THE COMPANY AND UNDERSTANDING
2 THE BASIC ASPECTS OF HOW THEY DO THEIR BUSINESS, I WAS SENT
3 TO SCHOOL WITH GOODYEAR TIRE AND RUBBER COMPANY ON PRODUCT
4 KNOWLEDGE.

5 Q WHERE DID YOU GO TO SCHOOL?

6 A AKRON, OHIO.

7 Q AND HOW LONG DID THAT SCHOOL LAST?

8 A THE FIRST SCHOOL WAS FOR THREE WEEKS.

9 Q AND WHAT IS THE TITLE OF THE SCHOOL YOU WENT TO?

10 A PRODUCT SELLING SKILLS.

11 Q AND WHAT YEAR WAS THAT? DO YOU REMEMBER?

12 A I THINK IT WAS 1983.

13 Q TELL THE JURY WHAT THAT SCHOOL ENCOMPASSED.

14 A THIS SCHOOL THAT GOODYEAR PROVIDES FOR ITS EMPLOYEES AND
15 SALES EMPLOYEES IS THE KNOWLEDGE OF GOODYEAR TIRES, HOW TIRES
16 ARE MANUFACTURED, THE TYPES OF TIRES THAT APPLY TO CERTAIN
17 TYPES OF VEHICLES THAT GIVES THE CUSTOMER A CHOICE FOR US TO
18 BE ABLE TO DETERMINE IF A TIRE BEST SUITS THEIR DRIVING
19 NEEDS; PROBLEMS THAT ARISE FROM DIFFERENT TYPES OF TIRES AND
20 WEAR PATTERNS ON TIRES, WHY THAT TIRE IS WORN THAT WAY AND
21 JUST THE GENERAL OVERALL CONSTRUCTION OF TIRES AND HOW THEY
22 ARE MANUFACTURED AGAIN. AND THEN THE SKILLS ON HOW TO SELL
23 A TIRE TO THE CONSUMER, TO BE ABLE TO ANSWER THEIR QUESTIONS
24 AS TO WHAT THEY NEED TO KNOW FOR THEMSELVES.

25 Q DO YOU ONLY DEAL IN GOODYEAR TIRES?

1 A ONLY GOODYEAR.

2 Q YOU ONLY SELL GOODYEAR?

3 A ONLY SELL GOODYEAR TIRES, RIGHT.

4 Q BUT YOU ARE INTERREACTING WITH OTHER KINDS OF TIRES?

5 A OH, YES, WE DO SEE OTHER TIRE PROBLEMS. WE DO HAVE SEVERAL

6 OF THE OTHER COMPANIES HERE IN TOWN THAT MIGHT WANT OUR

7 OPINION. A CUSTOMER MIGHT WANT A SECOND OPINION ON THEIR

8 PARTICULAR TYPE OF TIRE, ALSO. WE SEE OTHER TYPES OF RUBBER

9 COMPANIES' TIRES.

10 Q DO OTHER PEOPLE WITH OTHER KIND OF TIRES COME INTO YOUR STORE

11 WITH PROBLEMS?

12 A YES, THEY DO.

13 Q AND THEN WHAT DO YOU DO THEN?

14 A WELL, WE TRY TO SHOW THEM WHAT TYPE OF PROBLEM THEY ARE

15 HAVING, DETERMINE IF MAYBE THAT RUBBER COMPANY--WE UNDERSTAND

16 THE WARRANTIES OF THE OTHER RUBBER COMPANIES AND IF WE CAN'T

17 HELP THEM, IF IT'S JUST A FLAT REPAIR OR SOMETHING LIKE THAT

18 OR IF IT'S SOMETHING MORE MAJOR AND WE FEEL LIKE THEY NEED

19 TO GO TO THAT OTHER RUBBER COMPANY, IF WE FEEL LIKE IT COULD

20 BE UNDER A WARRANTY CONDITION, THEN WE INSTRUCT THEM TO GO

21 TO WHEREVER THE TIRE DEALER IS THAT CARRIES THAT BRAND.

22 Q WHEN YOU GIVE YOUR OPINION AS TO THE TYPE TIRE, WHAT DO YOU

23 BASE YOUR OPINION ON? THE TYPE TIRE THAT BEST SUITS THAT

24 VEHICLE.

25 A WELL, WE ASK THE CONSUMER SEVERAL QUESTIONS. WHAT TYPE OF

1 DRIVING THAT THEY DO, IN TOWN OR CITY. WHAT TYPE OF CAR THEY
2 HAVE, WHAT TYPE OF MILEAGE THAT THEY HAVE GOTTEN OFF OF THEIR
3 PREVIOUS SET OF TIRES. THERE ARE SEVERAL DIFFERENT THINGS
4 THAT, YOU KNOW, THAT WE DO TO DETERMINE THAT CUSTOMER'S
5 DRIVING NEEDS WHICH BEST SUITS THEM. WE WOULD LIKE TO BE
6 ABLE TO OFFER THEM A GOODYEAR TIRE THAT WOULD BEST FIT THEIR
7 POCKETBOOK THAT WOULD ALSO GIVE THEM THE BEST SERVICE TO THEM
8 BECAUSE IF THEY ARE HAPPY WITH THAT TIRE THEN THEY TEND TO
9 COME BACK AND BUY AGAIN FROM US. JUST TO SATISFY THE
10 CUSTOMER.

11 Q DO YOU ALSO CONSIDER THE SUSPENSION IN THE VEHICLE AND THINGS
12 LIKE THAT?

13 A YOU HAVE TO CONSIDER THE TYPE OF SUSPENSION THAT'S ON THE
14 PARTICULAR TYPES OF VEHICLES VERSUS THE TYPE OF TIRE THAT YOU
15 PUT ON THERE. SOME TREAD PATTERNS, THE WAY A TREAD PATTERN
16 IS DESIGNED ON A CAR, MAY GIVE A PERSON MORE OF A PROBLEM
17 VERSUS A DIFFERENT TYPE OF TREAD PATTERN. FOR EXAMPLE, IF
18 A CONSUMER DOES NOT TAKE CARE OF THEIR TIRES, IF THEY DON'T
19 ROTATE THEIR TIRES MORE OFTEN AN ALL SEASON TREAD DESIGN WILL
20 TEND TO GIVE THE CONSUMER MORE OF A PROBLEM THAN A BASIC
21 NATURAL RIB TYPE TREAD.

22 Q ARE YOU FAMILIAR WITH TREAD PATTERNS?

23 A YES, I AM.

24 Q HOW DID YOU BECOME FAMILIAR WITH TREAD PATTERNS?

25 A WELL, THROUGH THE SCHOOLS THAT GOODYEAR PROVIDED, PLUS, YOU

1 KNOW, THE ON-HANDS EXPERIENCE OF SEEING A LOT OF DIFFERENT
2 TYPES OF TIRES, A LOT OF DIFFERENT TYPES OF TIRES FROM OTHER
3 RUBBER COMPANIES, ALSO. I MEAN IT'S OUR JOB. WE HAVE TO
4 KNOW, YOU KNOW, WHAT WE ARE LOOKING AT. WHEN YOU ARE TALKING
5 WITH A CONSUMER, THEN YOU WANT TO BE ABLE TO TELL THEM
6 EXACTLY WHAT'S GOING ON. IT'S NO FALSE PRETENSES.

7 Q OKAY. GOING BACK TO THE SCHOOL, AFTER YOU COMPLETED THE
8 THREE WEEK PROGRAM IN AKRON, HAVE YOU ATTENDED ANY SCHOOLS
9 OR SEMINARS SINCE THEN?

10 A I'VE HAD OTHER TRAINING ON GOODYEAR TIRES AFTER THE FIRST
11 INTRODUCTION SCHOOL BASED ON NEW TYPES OF TIRES THAT GOODYEAR
12 WOULD COME OUT WITH. ALSO, JUST REFRESHER COURSES ON THE
13 TYPES OF TIRES THAT GOODYEAR DOES HAVE IN LINE AND NEW CAR
14 MANUFACTURERS COMING OUT WITH DIFFERENT TYPES OF CARS, THIS
15 PARTICULAR GOODYEAR TIRE IS HAVING THIS PARTICULAR TYPE OF
16 PROBLEM WITH THIS CAR AND THINGS LIKE THAT. SO, AFTER THE
17 INITIAL COURSE AT LEAST THREE ADDITIONAL SCHOOLS ON TIRES
18 WITH THAT.

19 Q AND HOW LONG DID THESE SCHOOLS LAST?

20 A THESE SCHOOLS LAST FOR TWO DAYS AT A TIME ON PRODUCT AGAIN.
21 THAT WAS ON THREE DIFFERENT OCCASIONS.

22 MR. COLEMAN: YOUR HONOR, AT THIS TIME THE STATE WOULD
23 OFFER BRUCE HALL AS AN EXPERT IN TIRES AND TIRE PATTERNS.

24 THE COURT: DO YOU WISH TO EXAMINE THE WITNESS ON HIS
25 QUALIFICATIONS?

1 MRS. SHEALY: YES, YOUR HONOR. THANK YOU.

2 THE COURT: YOU MAY DO SO.

3 CROSS EXAMINATION BY

4 MRS. SHEALY:

5 Q MR. HALL, AGAIN YOU WORK AT GOODYEAR TIRE, IS THAT RIGHT?

6 A YES, I DO.

7 Q OKAY. AND ALL YOUR EXPERIENCE, ALL YOUR FORMAL TRAINING
8 CONCERNING TIRES HAS BEEN WITH GOODYEAR, IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q OKAY. NOW, AGAIN YOU SAID YOU ATTENDED SOME CLASSES THAT
11 WERE DESIGNED FOR TEACHING YOU ABOUT THE SELLING OF TIRES,
12 IS THAT CORRECT?

13 A THAT'S RIGHT.

14 Q HAVE YOU EVER ATTENDED ANY TYPE OF SEMINAR, ANY TYPE OF CLASS
15 THAT TAUGHT YOU HOW TO MAKE COMPARISONS BETWEEN TIRES AND
16 IMPRESSIONS?

17 A NO, I HAVE NOT.

18 Q OKAY. AND HAVE YOU EVER IN THE PAST MADE A COMPARISON
19 BETWEEN A TIRE AND AN IMPRESSION?

20 A NO, NOT IN A FORMAL TYPE MEETING, NO.

21 Q OKAY.

22 THE COURT: WAIT JUST A MINUTE. SHE DIDN'T ASK YOU IN
23 A FORMAL TYPE MEETING. SHE ASKED YOU HAD YOU EVER DONE IT.

24 A WE HAVE SHOWN IN TRAINING AND OUR EMPLOYEES, YOU KNOW, IN MY
25 STORE OTHER TYPES OF TIRES AND TREAD PATTERNS AND COMPARED

1 THAT TO A GOODYEAR TIRE BUT NEVER IN A SCHOOL WITH GOODYEAR
2 WAS I TAUGHT, YOU KNOW, HOW--YOU KNOW, IN THE SCHOOLS THAT
3 THEY PROVIDED WE DID NOT COVER THAT IN THOSE SCHOOLS, NO.
4 Q NOW, THE COMPARISON THAT YOU ARE TALKING ABOUT THAT YOU DID
5 IN YOUR STORE, THAT'S BETWEEN TIRES?
6 A THAT'S RIGHT.
7 Q NOT BETWEEN IMPRESSIONS OF TIRES?
8 A THAT'S RIGHT.
9 Q OKAY. SO, YOU'VE HAD NO EXPERIENCE IN COMPARING TIRES WITH
10 IMPRESSIONS?
11 A THAT'S CORRECT.
12 Q AND NO TRAINING IN COMPARING TIRES WITH IMPRESSIONS?
13 A THAT'S CORRECT.
14 Q IS THAT RIGHT. AND YOU'VE ATTENDED NO LAW ENFORCEMENT
15 SEMINARS WHICH WOULD TEACH YOU ANYTHING ABOUT MAKING THE
16 COMPARISONS?
17 A THAT'S CORRECT.
18 Q AND NO OTHER TYPES OF SEMINARS OUTSIDE OF THE GOODYEAR ONES
19 THAT YOU'VE GONE TO?
20 A THAT'S CORRECT.
21 Q OKAY. NOW, IN YOUR PAST YOU'VE NEVER SOLD ANY OTHER TYPE OF
22 TIRES OTHER THAN GOODYEAR, IS THAT RIGHT?
23 A NOT SINCE I'VE BEEN WITH GOODYEAR. I HAVE SOLD OTHER TIRES.
24 SINCE I'VE BEEN WITH GOODYEAR TIRE AND RUBBER COMPANY I CAN
25 ONLY--BEING A COMPANY OWNED LOCATION--CAN ONLY SELL GOODYEAR

1 TIRES.

2 Q OKAY. AND ALL YOUR TRAINING, YOU'VE HAD NO TRAINING IN OTHER

3 TYPE OF TIRE MANUFACTURERS' TIRES AT ALL, RIGHT? IT'S ONLY

4 BEEN GOODYEAR?

5 A THAT'S CORRECT.

6 Q OKAY. HAVE YOU EVER WORKED IN ANY TYPE OF MANUFACTURING

7 PLANT FOR TIRES?

8 A NO, I HAVE NOT.

9 Q ARE YOU AWARE OF HOW MANY TIRES, FOR EXAMPLE, GOODYEAR MAKES

10 A YEAR?

11 A THOUSANDS OF TIRES A YEAR. THAT'S ALL THAT I KNOW.

12 Q AND IN FACT YOU SAID YOUR STORE SOLD APPROXIMATELY SEVEN

13 THOUSAND TIRES?

14 A APPROXIMATELY SEVEN THOUSAND AUTO TIRES.

15 Q OKAY. BUT AS FAR AS YOUR OWN KNOWLEDGE, YOU'RE NOT AWARE OF

16 HOW MANY TIRES, FOR EXAMPLE, COME OUT OF A CERTAIN MOLD IN

17 A MANUFACTURING PLANT, IS THAT CORRECT?

18 A WELL, WHEN YOU SAY A CERTAIN MOLD, TO ME DO YOU MEAN A

19 P1957514 MOLD FOR THAT PARTICULAR TIRE OR JUST HOW MANY MOLDS

20 GOODYEAR HAS TO MAKE ALL THE DIFFERENT TYPE SIZES.

21 Q WELL, I GUESS I'M ASKING BOTH QUESTIONS. DO YOU HAVE ANY

22 KNOWLEDGE AS TO HOW MANY TIRES ARE MADE FROM INDIVIDUAL MOLDS

23 OR HOW MANY MOLDS THEY HAVE IN A CERTAIN MANUFACTURING PLANT?

24 A WE DON'T HAVE THAT PARTICULAR STAT IN OUR STORE FOR THAT

25 REASON. GOODYEAR DOES MANUFACTURE MORE TIRES BECAUSE WE DO

1 PROVIDE A FULL LINE OF TIRES FROM THE SMALLEST TIRE
2 MANUFACTURED FOR A CAR TO THE LARGEST. SO, WE DO MANUFACTURE
3 MORE TIRES THAN ANY OTHER COMPANY BUT HOW MANY THAT COULD BE
4 I HAVE NO IDEA.

5 Q OKAY. SO, YOU'VE HAD NO TRAINING IN THE NUMBER, THE ACTUAL
6 NUMBERS THAT COME OUT OF GOODYEAR?

7 A IT'S NOT RELEVANT TO WHAT I HAVE TO DO.

8 Q OKAY. AND WHAT YOU HAVE TO DO IS SELL THE TIRES, IS THAT
9 RIGHT?

10 A THAT'S EXACTLY CORRECT.

11 Q OKAY. AND AGAIN YOU SAID THAT YOU ARE THE LARGEST TIRE
12 MANUFACTURER?

13 A THAT'S CORRECT.

14 Q SO, CAN YOU GIVE ME ANY TYPE OF ESTIMATE AS TO HOW MANY TIRES
15 ARE MADE A YEAR OR YOU JUST HAVE NO IDEA?

16 A IT DEPENDS ON NEW CAR SALES, TOO. THE DEMAND FOR THE TIRES.
17 WHEN WE HAVE A PARTICULAR CAR MANUFACTURER WOULD COME TO
18 GOODYEAR AND SAY BUILD THIS TIRE FOR THIS PARTICULAR CAR AND
19 THAT'S WHAT GOODYEAR DOES AND IT JUST DEPENDS ON NEW CAR
20 SALES, ORIGINAL EQUIPMENT SALES, AND REPLACEMENT MARKET.
21 IT'S HARD TO SAY. IT COULD BE HUNDREDS OF THOUSANDS, EVEN
22 A MILLION TIRES A YEAR, YOU KNOW, WORLDWIDE.

23 Q OKAY. ARE YOU AWARE OF WHAT PERCENTAGE GOODYEAR FURNISHES
24 TO NEW CARS, NEW AUTOMOBILES?

25 A I'M SORRY, I DIDN'T HEAR THAT.

1 Q ARE YOU AWARE OF WHAT PERCENTAGE GOODYEAR FURNISHES TO NEW
2 CARS OUT IN THE MARKET?

3 A YES, I AM.

4 Q AND WHAT IS THAT PERCENTAGE?

5 A ON THE RADIAL TIRES RIGHT NOW, NON HIGH PERFORMANCE TIRES,
6 IT'S IN THE NEIGHBORHOOD OF AROUND 90 PERCENT. HIGH
7 PERFORMANCE TIRES FOR ORIGINAL EQUIPMENT TIRE MARKET IS
8 ALMOST 95 PERCENT OF ORIGINAL EQUIPMENT TIRES ARE GOODYEARS.

9 Q AND AGAIN LET ME JUST ASK YOU ONE FURTHER QUESTION. YOU'VE
10 NEVER ACTUALLY MADE ANY TIRE IMPRESSIONS, IS THAT RIGHT? ANY
11 CASTING OF IMPRESSIONS OR PARTICIPATED IN THE MAKING OF AN
12 IMPRESSION?

13 A NO. THE IMPRESSIONS THAT I HAVE SEEN IN THE TRAINING SCHOOLS
14 ARE SIMILAR TO YOUR INK TEST THAT YOU HAVE WHERE WE HAVE SEEN
15 THE TIRES ROLLING OVER AN IMPRESSION PLATE TO SHOW THE TREAD
16 PATTERN ON A SURFACE. BUT I DID NOT PERSONALLY DO THAT. IT
17 WAS ALL PERFORMED BY OUR ENGINEERS.

18 MRS. SHEALY: I BEG THE COURT'S INDULGENCE. (PAUSE)

19 Q MR. HALL, LET ME ASK YOU ONE FURTHER QUESTION. DO YOU
20 CONSIDER YOURSELF AN EXPERT IN MAKING A COMPARISON WHEN YOU
21 HAVE NOT SEEN THE ACTUAL AUTOMOBILE?

22 A I WOULD TEND TO THINK THAT THE KNOWLEDGE THAT I HAVE AND
23 EXPERIENCE THAT I HAVE THAT I COULD DETERMINE WHAT TYPE OF
24 TIRE--IT IS A GOODYEAR TIRE. IF I HAVE AN IMPRESSION OF ONE
25 TIRE WHICH IS GOODYEAR VERSUS ANOTHER TIRE, I COULD TELL YOU

1 THAT THAT IS A GOODYEAR TIRE IMPRESSION VERSUS THAT OTHER
2 TIRE. I MAY NOT BE ABLE TO LOOK AT A PICTURE OF ANOTHER TIRE
3 COMPANY'S TIRE THAT IS SIMILAR TO A GOODYEAR AND TELL YOU
4 WHAT COMPANY'S TIRE THAT IS, BUT I COULD TELL YOU IF THAT IS
5 A GOODYEAR TIRE IMPRESSION OR NOT.

6 Q OKAY. WHAT I'M ASKING THOUGH IS IF YOU HAVE NOT ACTUALLY HAD
7 THE AUTOMOBILE TO LOOK AT ARE YOU ABLE TO SAY THAT A CERTAIN
8 TIRE TREAD MADE A CERTAIN IMPRESSION WITHOUT SEEING THE CAR?

9 A YES.

10 MRS. SHEALY: I HAVE NOTHING FURTHER.

11 MR. COLEMAN: YOUR HONOR, AT THIS TIME THE STATE WOULD
12 MOVE TO HAVE MR. HALL DECLARED AN EXPERT.

13 THE COURT: MR. WITNESS, LET ME ASK YOU THIS.

14 A YES, SIR.

15 THE COURT: AS I UNDERSTAND IT, DO DIFFERENT TIRES EVEN
16 WITHIN THE GOODYEAR MANUFACTURE OF DIFFERENT TIRES HAVE
17 DIFFERENT PATTERNS, THAT BEING THE TREAD PATTERN ON IT?

18 A YES, THEY HAVE DIFFERENT.

19 THE COURT: AND ARE THOSE TREAD PATTERNS DISTINCT ENOUGH
20 FOR AN INDIVIDUAL WHO HAS KNOWLEDGE, TRAINING AND EXPERIENCE
21 IN DEALING WITH THAT TIRE THE ABILITY TO DISTINGUISH ONE FROM
22 THE OTHER?

23 A YES.

24 THE COURT: AND IF THERE IS A BLEMISH ON A TIRE, FOR
25 EXAMPLE, A BLEMISH COMING FROM THE MANUFACTURER AND THAT

1 BEING COMING FROM THE MOLD, WOULD YOU BE ABLE TO DISTINGUISH
2 IF THERE WAS A BLEMISH, FOR EXAMPLE, AND THAT IT CAME OFF OF
3 A CERTAIN--IF IT WAS A GOODYEAR TIRE OR NOT?

4 A WELL, AS FAR AS BLEMISHED TIRES GO WITH OUR COMPANY, OUR
5 TIRES ARE TESTED. WE HAVE NO BLEMISHED TIRES THAT HIT THE
6 PUBLIC FOR ORIGINAL EQUIPMENT TIRE SALES OR REPLACEMENT
7 MARKET. WE HAVE NONE THAT ARE CONSIDERED A BLEMISHED TIRE.
8 THEY ARE ALL TOP LINE FIRST QUALITY. WE USED TO BE ABLE TO
9 SELL BLEMISHED TIRES IN OUR MARKETS THROUGHOUT BUT GOODYEAR
10 STOPPED THAT.

11 THE COURT: WHEN?

12 A IT SEEMS TO ME LIKE THAT SHOULD HAVE BEEN AROUND 1986.

13 THE COURT: EXPLAIN WHAT A BLEMISH IS.

14 A A BLEMISH IN CERTAIN TYPES OF TIRES COULD BE ONLY COSMETIC.
15 A BLEMISH DOESN'T MEAN THAT THE CONSTRUCTION OF THE TIRE IS
16 HAZARDOUS TO A PERSON THAT'S DRIVING THE TIRE. IF A TIRE IS
17 A BLEMISHED TIRE AND IT DOES COME FROM A TIRE MANUFACTURER
18 THEN THE FEDERAL GOVERNMENT REGULATES THAT TIRE HAS TO BE
19 BRANDED ON THE SIDEWALL OF THE TIRE IN PLAIN VIEW THAT IT IS
20 A BLEMISHED TIRE. SO, IT'S NOT SOMETHING THAT ANY TIRE AND
21 RUBBER COMPANY WOULD PUT OUT AND ANY LARGE COMPANY--F.G.
22 GOODRICH, FIRESTONE, MICHELIN, UNIROYAL--ANY OF THE LARGE
23 COMPANIES WOULD PUT A BLEMISHED TIRE TO THE MARKET FOR A
24 CONSUMER TO BUY THAT WOULD CAUSE A PROBLEM OR CAUSE AN
25 ACCIDENT OR DEATH OR ANYTHING LIKE THAT. SO--

1 THE COURT: MR. WITNESS, LET ME INTERRUPT YOU AND I
2 APOLOGIZE. EXPLAIN THEM TO SPECIFICALLY WHAT A BLEMISH
3 MEANS. IS IT SOME MARK ON THE TIRE, IS IT--WHAT DO YOU MEAN
4 BY A BLEMISH?

5 A IT COULD BE A FACT THAT A WHITEWALL TIRE MAY NOT HAVE ENOUGH
6 NON-YELLOWING COMPOUND IN THE TIRE AND THE WHITEWALL MAY TURN
7 YELLOW.

8 THE COURT: WHAT ABOUT IN TIRE PATTERNS?

9 A TIRE PATTERN WOULD NOT BE A BLEMISH THAT I HAVE SEEN THAT YOU
10 COULD ACTUALLY SEE SOMETHING WRONG WITH THE PATTERN OF THE
11 TIRE. IF THAT WERE THE CASE I WOULD THINK THAT THAT COMPANY
12 THAT MADE THAT TIRE WOULD CUT IT UP AND SEND IT BACK TO
13 SCRAP.

14 THE COURT: THEN BASED UPON YOUR TRAINING AND EXPERIENCE
15 IS IT YOUR VIEW OR OPINION YOURSELF THAT YOU ARE ABLE TO LOOK
16 AT A TIRE PATTERN WITHOUT LOOKING AT THE NAME OF THE TIRE OR
17 EVEN SEEING THE TIRE ITSELF AND BY LOOKING AT THE TIRE
18 PATTERN BE ABLE TO DISTINGUISH ONE TIRE PATTERN FROM ANOTHER
19 TIRE PATTERN AND SPECIFICALLY WHETHER OR NOT IT WAS A
20 GOODYEAR TIRE OR NOT?

21 A THAT'S TRUE.

22 THE COURT: AND WOULD THAT DEPEND UPON WHETHER OR NOT
23 THE IMPRESSION THAT YOU HAVE--

24 A GAVE ENOUGH EVIDENCE AS TO BE ABLE TO SUPPORT MY OPINION.

25 THE COURT: SO THAT IF YOU WERE SHOWN AN IMPRESSION AND

1 IT WASN'T SUFFICIENT YOU WOULD SAY THAT IT WASN'T A GOOD
2 ENOUGH IMPRESSION FOR YOU--

3 A THAT'S TRUE. THAT'S RIGHT.

4 THE COURT: AND YOU CAN TELL THAT EVEN IF IT WAS DONE
5 BY INKING OF A PHOTOGRAPH OR WHATEVER?

6 A YES.

7 THE COURT: AND CAN YOU RENDER AN OPINION IN THAT
8 PARTICULAR AREA WITHIN A REASONABLE DEGREE OF CERTAINTY AS
9 TO TIRE PATTERNS AND TREADS?

10 A YES.

11 THE COURT: ALL RIGHT. I FIND HE'S QUALIFIED AS AN
12 EXPERT IN THAT FIELD AND IS AUTHORIZED TO RENDER AN OPINION
13 AND PARTICULARLY AS TO EXAMINING TIRE TREADS, TIRE PATTERNS
14 AND CAN RENDER AN OPINION IN THAT PARTICULAR AREA.

15 MR. COLEMAN: THANK YOU, YOUR HONOR.

16 THE COURT: GENTLEMEN, I JUMPED SHIP ON YOU A LITTLE BIT
17 AND I APOLOGIZE TO YOU. I SHOULD HAVE EXTENDED TO YOU THE
18 OPPORTUNITY TO MAKE ANY ARGUMENT ABOUT HIS QUALIFICATIONS AND
19 I APOLOGIZE TO YOU.

20 MRS. SHEALY: OUR ARGUMENT IS ALREADY IN THE RECORD,
21 YOUR HONOR.

22 THE COURT: IT BEING THE SAME ARGUMENT I FIND THAT HE'S
23 QUALIFIED. THE QUALIFICATION OF A WITNESS AS AN EXPERT IS
24 ADDRESSED TO THE SOUND DISCRETION OF THE JUDGE AND THE COURT.
25 IN MY DISCRETION I FIND THAT HE'S QUALIFIED AND I'LL GIVE THE

1 JURY AN INSTRUCTION UPON THE USE OF EXPERT TESTIMONY IN A
2 PARTICULAR CASE AT THE CONCLUSION OF THE TRIAL. YOU MAY
3 PROCEED.

4 MR. COLEMAN: THANK YOU, YOUR HONOR.

5 DIRECT EXAMINATION CONTINUED BY

6 MR. COLEMAN:

7 Q MR. HALL, I'M GOING TO SHOW YOU WHAT'S MARKED FOR
8 IDENTIFICATION "F," "M," "L," AND "I." HAVE YOU SEEN THOSE
9 BEFORE?

10 A YES, I HAVE.

11 THE COURT: GIVE ME THOSE NUMBERS AGAIN, PLEASE.
12 STATE'S EXHIBIT FOR IDENTIFICATION WHAT?

13 MR. COLEMAN: "F," YOUR HONOR, "I," "L," AND "M."

14 THE COURT: OKAY.

15 Q I SHOW YOU WHAT'S MARKED STATE'S IDENTIFICATION "Q," "R,"
16 "S," AND "T." HAVE YOU SEEN THOSE BEFORE?

17 A YES, I HAVE.

18 Q I SHOW YOU WHAT'S MARKED AS STATE'S IDENTIFICATION "G," "K,"
19 "J," "H," "E," "D," "C," "B," "W," "X," "O," AND "P" AND ASK
20 YOU IF YOU'VE SEEN THOSE BEFORE?

21 A I CAN RECALL SEEING POSSIBLY ALL OF THEM BUT ONE.

22 THE COURT: WHICH ONE IS THAT?

23 A THAT'S "D." I DON'T RECALL THAT ONE.

24 Q I SHOW YOU WHAT'S MARKED STATE'S I.D. "CC," "BB," "AA," "Z,"
25 AND "Y."

1 A I'VE SEEN THOSE, TOO.

2 Q I SHOW YOU WHAT'S MARKED STATE'S EXHIBIT NUMBER 23, 22 AND
3 21 AND ASK IF YOU'VE SEEN THOSE BEFORE?

4 THE COURT: 23 AND 24?

5 A 23, 22 AND 21. YES, I HAVE.

6 Q AND WHAT DO THOSE VARIOUS DOCUMENTS DEPICT?

7 A WELL, THEY SHOW DIFFERENT TREAD DESIGNS. WELL, THEY SHOW THE
8 SAME TREAD DESIGN IN THE SAND AND THE SIMILAR TREAD DESIGN
9 ON A INK TEST THAT WAS TAKEN BY SOMEONE'S OFFICE.

10 Q OKAY. WHAT DO THESE PICTURES SHOW?

11 A THIS SHOWS A TYPE OF CAR--

12 THE COURT: YOU'VE GOT TO IDENTIFY WHAT YOU ARE TALKING
13 ABOUT.

14 A OKAY. THIS DOCUMENT IS "S."

15 THE COURT: STATE'S I.D. "S"?

16 A I.D. "S." AND STATE'S EXHIBIT I.D. "T" SHOWS THE TYPE OF
17 TIRE AND THE CAR THAT'S IN QUESTION.

18 Q CAN YOU RENDER AN OPINION AS TO THE TREAD DESIGN ON THE
19 TRACKS IN THE SAND AND THE TIRES ON THE VEHICLE THAT YOU JUST
20 IDENTIFIED?

21 MRS. SHEALY: YOUR HONOR, I'D OBJECT AT THIS TIME. I
22 DON'T BELIEVE HE'S LAID THE PROPER FOUNDATION. IT WOULD BE
23 OUR POSITION HE HAS NOT LAID THE PROPER FOUNDATION FOR HIM
24 TO RENDER AN OPINION.

25 THE COURT: AS TO WHAT?

1 MRS. SHEALY: AS TO THE QUESTION MR. COLEMAN JUST ASKED
2 HIM.

3 THE COURT: WHAT LACK OF FOUNDATION? BEAR IN MIND THE
4 WITNESS IS TESTIFYING TO WHAT HE'S PHYSICALLY OBSERVED. HE'S
5 NOT TESTIFYING BASED UPON ASSUMPTIONS OR ACCEPTING THOSE
6 THINGS SO HE'S NOT RENDERING TO A HYPOTHETICAL. HE'S BASING
7 IT UPON WHAT HE'S SEEN AND OBSERVED SHOWN IN THOSE
8 DEPICTIONS. OKAY?

9 MRS. SHEALY: IT'S OUR POSITION, YOUR HONOR, THAT HE'S
10 AHEAD OF HIMSELF. THERE'S BEEN NO ESTABLISHMENT AS TO WHAT
11 TIRE HE'S TALKING ABOUT OR ANYTHING ABOUT THE SAND OR
12 ANYTHING AT THIS POINT. THEY HAVE MERELY SHOWN HIM SOME
13 PHOTOGRAPHS AND ASKED HIM WHETHER OR NOT HE'S RENDERED AN
14 OPINION.

15 THE COURT: BUT HE'S IDENTIFIED THE PHOTOGRAPHS THAT
16 HAVE ALREADY BEEN MARKED FOR IDENTIFICATION AND BEEN
17 IDENTIFIED BY A PREVIOUS WITNESS. AND AT THIS TIME HE'S
18 IDENTIFIED THOSE HAVING SAID THAT I RECOGNIZE THEM, I'VE SEEN
19 THEM AND HE'S ASKED WHAT THEY WERE AND HE'S SAID WHAT THEY
20 WERE. ONE WAS A TIRE WITH A CAR ON IT, THE OTHERS WERE TIRE
21 PATTERNS IN SAND AND INK PATTERNS. THAT'S WHAT HE SAID.
22 NOW, HE'S ASKED HIM IS HE ABLE TO RENDER AN OPINION BASED
23 UPON WHAT IS SHOWN AND DEPICTED IN THOSE AS TO ANY COMPARISON
24 OR IDENTIFICATION OF THEM. ISN'T THAT WHAT HE'S ASKING?

25 MR. SWERLING: YOUR HONOR, COULD WE APPROACH THE

1 SIDEBAR?

2 THE COURT: YES. IF YOU ARE ASKING HIM WHETHER NOT--
3 HE HASN'T ASKED HIM WITHIN A REASONABLE DEGREE OF CERTAINTY
4 FIELD. HE HAS NOT ASKED THAT BUT THAT'S NOT FOUNDATION, IS
5 IT? IS THAT WHAT YOU ARE SAYING?

6 (MR. SWERLING, MRS. SHEALY AND MR. COLEMAN APPROACH THE
7 BENCH OUT OF THE PRESENCE OF THE COURT REPORTER)

8 THE COURT: OBJECTION IS MADE AS TO WHETHER OR NOT THIS
9 WITNESS IS QUALIFIED IN AN AREA SUCH AS TO RENDER AN OPINION
10 AS TO WHETHER OR NOT LOOKING AT THESE IN COMPARISON HE CAN
11 SAY THAT THE TWO--COMPARING A TIRE TRACK TO A TIRE THAT THEY
12 ARE ONE IN THE SAME. HE IS NOT QUALIFIED TO DO THAT AND I
13 SO RULE.

14 Q MR. HALL, I SHOW YOU WHAT'S MARKED AS I.D. "Y," "Z," "CC,"
15 "AA," AND "BB." HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THOSE
16 PRIOR TO COMING INTO COURT?

17 A YES, I HAVE.

18 Q WHERE WAS THAT?

19 A THAT WAS IN THE OFFICE OF AN ENGINEER HERE IN WEST COLUMBIA
20 AT HIS OFFICE AND MY OFFICE, ALSO.

21 Q CAN YOU RENDER AN OPINION AS TO THE TYPE OF TIRE THIS IS?

22 A IT'S A GOODYEAR VECTOR TIRE.

23 Q JUST ANSWER YES OR NO.

24 A YES.

25 Q YOU CAN. YOU CAN OFFER AN OPINION?

1 A YES.

2 THE COURT: WHICH EXHIBIT IS HE SAYING THAT AS TO? ALL
3 OF THEM?

4 MR. COLEMAN: NO, SIR. I'M GOING TO GO THROUGH THEM
5 SEPARATELY, YOUR HONOR. THIS IS THE ROLLED INK PRINT.

6 THE COURT: I'M SORRY. I DIDN'T MEAN TO GET AHEAD OF
7 YOU.

8 MR. COLEMAN: LET ME DIVIDE THESE UP, YOUR HONOR.

9 Q OKAY. I'M GOING TO SHOW YOU WHAT'S MARKS STATE'S EXHIBIT
10 NUMBER 21, 22, 23. YOU HAVE OBSERVED THOSE BEFORE?

11 A YES, I HAVE.

12 Q WHERE WAS THAT?

13 A IN MY OFFICE.

14 Q OKAY. CAN YOU RENDER AN OPINION AS TO THE TYPE OF TIRE--

15 MR. SWERLING: YOUR HONOR, CAN WE SEE THOSE THAT HE'S
16 TALKING ABOUT?

17 THE COURT: SURE. I THINK YOU ALREADY HAVE. THEY ARE
18 ALREADY IN EVIDENCE.

19 MR. SWERLING: I'M GETTING CONFUSED AS TO WHICH SET IS
20 WHICH.

21 THE COURT: HAND THEM TO MR. SWERLING. THEY ARE IN
22 EVIDENCE.

23 MR. SWERLING: THAT'S FINE.

24 Q CAN YOU RENDER AN OPINION AS TO THE TYPE OF TIRE THAT IS?

25 THE COURT: THE QUESTION IS DO YOU HAVE AN OPINION BASED

1 UPON A REASONABLE DEGREE OF CERTAINTY IN THE FIELD IN WHICH
2 HE'S BEEN QUALIFIED AND THAT'S IN TIRE PATTERNS AND TREADS.
3 AND IF HE CAN--CAN YOU RENDER SUCH AN OPINION WITHIN A
4 REASONABLE DEGREE OF CERTAINTY?

5 A REASONABLE DEGREE OF CERTAINTY I MIGHT COULD NARROW THIS DOWN
6 TO TWO TYPES OF TIRES. I DON'T KNOW IF THAT HELPS YOU.

7 THE COURT: I SUSTAIN THE OBJECTION. YOU MUST MAKE IT
8 WITHIN A REASONABLE DEGREE OF CERTAINTY IN THE FIELD OF TIRE
9 PATTERNS AND INTERPRETING AND SEEING THE TIRE TREAD OR TIRE
10 PATTERN AND DISTINGUISHING THAT TIRE PATTERN ONE FROM
11 ANOTHER.

12 A THIS IS NOT A GOODYEAR TIRE. THAT'S ALL I CAN SAY. I DON'T
13 HAVE ENOUGH--

14 THE COURT: YOU CAN SAY THAT TO A REASONABLE DEGREE OF
15 CERTAINTY?

16 A IT IS NOT A GOODYEAR TIRE THAT'S ON THIS EXHIBIT.

17 THE COURT: ALL RIGHT. WHICH EXHIBIT?

18 MR. COLEMAN: YOUR HONOR, THIS IS EXHIBIT NUMBER 23, 22
19 AND 21, THE VICTIM'S CAR.

20 THE COURT: THOSE THREE?

21 MR. COLEMAN: YES, SIR.

22 Q I SHOW YOU WHAT'S MARKED FOR I.D. "G," "X," "Y," "V," "C,"
23 "E," "H," "J," "K," "I," "M," "L," AND "F." HAVE YOU
24 OBSERVED THESE PHOTOGRAPHS BEFORE?

25 A YES, I HAVE.

1 Q WHERE WERE THOSE?

2 A IN MY OFFICE.

3 Q CAN YOU RENDER AN OPINION AS TO THE TYPES OF TIRE THAT IS?

4 MR. SWERLING: YOUR HONOR, AT THIS POINT, WE'D LIKE TO
5 APPROACH THE SIDEBAR ON THAT ISSUE.

6 (MR. SWERLING, MRS. SHEALY AND MR. COLEMAN APPROACH THE
7 BENCH OUT OF THE PRESENCE OF THE COURT REPORTER)

8 THE COURT: YOU MAY PROCEED.

9 Q DID YOU HAVE AN OCCASION TO LOOK AT THESE VARIOUS PHOTOGRAPHS
10 I THINK THAT I HAD ALREADY STATED THE NUMBERS TO THE COURT?
11 HAVE YOU LOOKED AT THEM BEFORE?

12 A YES, I HAVE.

13 Q OKAY. WHERE DID YOU LOOK AT THEM AT?

14 A IN MY OFFICE ON GERVAIS STREET.

15 Q OKAY. DO YOU HAVE AN OPINION AS TO THE TYPE OF TIRE THAT
16 MADE THAT TRACK?

17 A YES, I DO.

18 Q WHAT IS THAT OPINION?

19 A THAT OPINION IS THAT THIS IS A GOODYEAR TREAD MARK IN THE
20 SAND.

21 THE COURT: THIS IS A WHAT?

22 A IT'S A GOODYEAR TREAD DESIGN PATTERN IN THE SAND.

23 Q MORE SPECIFICALLY, WHAT KIND OF GOODYEAR?

24 A A GOODYEAR VECTOR.

25 Q OKAY. I WANT YOU TO GET DOWN OFF THE WITNESS STAND AND GET

1 A COUPLE OF THOSE, MAYBE GET THE BIG ONES, AND SIT HERE AND
2 I WANT YOU TO SHOW THE JURY WHAT YOU BASE THAT ON AND WHY YO
3 SAY THAT.

4 THE COURT: JUST A MINUTE. THESE ARE ALL MARKED FOR
5 IDENTIFICATION.

6 MR. COLEMAN: I OFFER THEM INTO EVIDENCE. I'M SORRY,
7 YOUR HONOR.

8 MR. SWERLING: SUBJECT TO THE ARGUMENT MADE AT SIDEBAR.

9 THE COURT: YES, SIR. I'LL LET YOU PLACE THAT ON THE
10 RECORD. IF YOU WILL NOW MARK THOSE EXHIBITS AND HAND THEM
11 UP TO THE COURT. THEY'VE MOVED TO INTRODUCE THEM INTO THE
12 RECORD.

13 MR. COLEMAN: YOUR HONOR, I WOULD REQUEST THAT THE I.D.
14 THAT I HAD JUST TALKED ABOUT THAT HE HAD IDENTIFIED, I MOVE
15 THOSE IN EVIDENCE AT THIS TIME ALSO.

16 THE COURT: SAME OBJECTIONS MADE. I'M GOING TO LET HIM
17 PLACE HIS OBJECTION ON THE RECORD. WHAT HE SAID WAS ALL
18 THOSE THAT HE'S IDENTIFIED HE'S MOVED AND THE SAME OBJECTION.
19 I'M GOING TO LET YOU PLACE IT ON THE RECORD.

20 MR. SWERLING: I UNDERSTAND.

21 (PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS STATE'S
22 EXHIBITS #28 [FORMERLY "F"], #29 [FORMERLY "L"], #30
23 [FORMERLY "M"], #31 [FORMERLY "I"]; TIRE PRINTOUTS ARE
24 RECEIVED INTO EVIDENCE AS STATE'S EXHIBITS #32 [FORMERLY
25 "BB"], #33 [FORMERLY "AA"], #34 [FORMERLY "CC"], #35

1 [FORMERLY "Z"], #36 [FORMERLY "Y"]; PHOTOGRAPHS ARE RECEIVED
2 INTO EVIDENCE AS STATE'S EXHIBITS #37 [FORMERLY "J"], #38
3 [FORMERLY "K"], #39 [FORMERLY "H"], #40 [FORMERLY "G"], #41
4 [FORMERLY "X"], #42 [FORMERLY "W"], #43 [FORMERLY "V"], #44
5 [FORMERLY "C"], #45 [FORMERLY "E"], #46 [FORMERLY "P"], #47
6 [FORMERLY "O"], #48 [FORMERLY "T"], #49 [FORMERLY "R"], #50
7 [FORMERLY "S"], #51 [FORMERLY "Q"])

8 THE COURT: NOW IN THE RECORD OF THIS CASE OVER THE
9 OBJECTION OF THE DEFENDANT AS THE EVIDENCE BEING SPECULATIVE ✓
10 AND I'LL LET HIM PUT IT ALL ON THE RECORD AN EXHIBIT WHICH
11 WAS MARKED FOR I.D. AS STATE'S EXHIBIT FOR I.D. NUMBER "P"
12 NOW ENTERED AS STATE'S EXHIBIT NUMBER 46. IT'S A BLACK AND
13 WHITE PHOTOGRAPH APPROXIMATELY EIGHT BY TEN IN SIZE. EXHIBIT
14 DESIGNATED STATE'S EXHIBIT NUMBER 51, FORMERLY MARKED AS
15 STATE'S I.D. "Q," AN EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH.
16 EXHIBIT DESIGNATED STATE'S EXHIBIT NUMBER 50, FORMERLY MARKED
17 FOR I.D. AS STATE'S EXHIBIT I.D. "S," AN EIGHT BY TEN BLACK
18 AN WHITE PHOTOGRAPH. EXHIBIT DESIGNATED STATE'S EXHIBIT
19 NUMBER 49, FORMERLY MARKED STATE'S EXHIBIT FOR I.D. "R," AN
20 EIGHT BY TEN BLACK AND WHITE PHOTOGRAPH. EXHIBIT NOW
21 DESIGNATED STATE'S EXHIBIT NUMBER 48, FORMERLY MARKED STATE'S
22 I.D. "T," AN EIGHT BY TEN BLACK AND WHITE PHOTO. EXHIBIT NOW
23 MARKED STATE'S EXHIBIT NUMBER 47, FORMERLY MARKED STATE'S
24 I.D. "O," AN EIGHT BY TEN BLACK AND WHITE PHOTO. EXHIBIT NOW
25 DESIGNATED STATE'S EXHIBIT NUMBER 31, FORMERLY MARKED STATE'S

1 I.D. "I," APPROXIMATELY ELEVEN BY FOURTEEN IN SIZE, BLACK AND
2 WHITE PHOTO. EXHIBIT NOW DESIGNATED STATE'S EXHIBIT NUMBER
3 30, FORMERLY MARKED STATE'S I.D. "M," ELEVEN BY FOURTEEN
4 BLACK AND WHITE PHOTO. STATE'S EXHIBIT NUMBER 29, FORMERLY
5 MARKED STATE'S I.D. "L," ELEVEN BY FOURTEEN BLACK AND WHITE
6 PHOTO. EXHIBIT NOW DESIGNATED STATE'S EXHIBIT NUMBER 28,
7 FORMERLY MARKED STATE'S EXHIBIT FOR I.D. "F," ELEVEN BY
8 FOURTEEN BLACK AND WHITE PHOTO. EXHIBIT NOW DESIGNATED
9 STATE'S EXHIBIT NUMBER 45, FORMERLY MARKED STATE'S EXHIBIT
10 FOR I.D. "E," AN EIGHT BY TEN BLACK AND WHITE PHOTO. EXHIBIT
11 DESIGNATED STATE'S EXHIBIT NUMBER 44, FORMERLY MARKED STATE'S
12 I.D. "C," AN EIGHT BY TEN BLACK AND WHITE PHOTO. EXHIBIT
13 DESIGNATED STATE'S EXHIBIT NUMBER 43, FORMERLY MARKED STATE'S
14 I.D. "V," AN EIGHT BY TEN BLACK AND WHITE PHOTO. EXHIBIT NOW
15 DESIGNATED STATE'S EXHIBIT NUMBER 42, FORMERLY MARKED STATE'S
16 I.D. "W," EIGHT BY TEN BLACK AND WHITE PHOTO. EXHIBIT NOW
17 DESIGNATED STATE'S EXHIBIT NUMBER 41, FORMERLY MARKED AS
18 STATE'S I.D. "X," EIGHT BY TEN BLACK AND WHITE PHOTO.
19 EXHIBIT NOW DESIGNATED STATE'S EXHIBIT NUMBER 40, FORMERLY
20 MARKED STATE'S I.D. "G," EIGHT BY TEN BLACK AND WHITE PHOTO.
21 EXHIBIT NOW MARKED STATE'S EXHIBIT NUMBER 39, FORMERLY MARKED
22 STATE'S I.D. "H," EIGHT BY TEN BLACK AND WHITE PHOTO.
23 EXHIBIT NOW DESIGNATED NUMBER 38, FORMERLY MARKED STATE'S
24 EXHIBIT FOR I.D. "K," EIGHT BY TEN BLACK AND WHITE PHOTO.
25 EXHIBIT NOW MARKED STATE'S EXHIBIT NUMBER 37, FORMERLY MARKED

1 STATE'S I.D. "J," EIGHT BY TEN BLACK AND WHITE PHOTO.
2 EXHIBIT NOW MARKED STATE'S EXHIBIT NUMBER 36, FORMERLY MARKED
3 STATE'S I.D. "Y," IT'S A MULTI PART. IT'S ENTITLED TIRE
4 PRINTOUT. IT'S APPROXIMATELY, I'M ESTIMATING, ELEVEN BY
5 EIGHTEEN. SAME TYPE EXHIBIT NOW MARKED STATE'S EXHIBIT
6 NUMBER 35, FORMERLY STATE'S I.D. "Z." SAME TYPE EXHIBIT NOW
7 MARKED STATE'S EXHIBIT NUMBER 34, FORMERLY MARKED STATE'S
8 I.D. "CC." SAME SIZE. NOW MARKED STATE'S EXHIBIT NUMBER 33,
9 FORMERLY STATE'S I.D. "AA," SAME SIZE, SAME TYPE OF EXHIBIT.
10 EXHIBIT NOW DESIGNATED STATE'S EXHIBIT NUMBER 32, FORMERLY
11 MARKED STATE'S I.D. "BB," SAME TYPE, SIZE EXHIBIT. ALL THESE
12 ARE NOW ENTERED INTO THE RECORD OF THIS CASE OVER THE
13 OBJECTION OF COUNSEL FOR THE DEFENSE. THEY ARE SO MARKED.
14 YOU MAY PUBLISH THEM TO THE JURY OR HAVE THE WITNESS FURTHER
15 DESCRIBE THEM.

16 (WITNESS LEAVES STAND)

17 Q MR. HALL, I'M GOING TO ASK YOU TO IDENTIFY THESE VARIOUS
18 DOCUMENTS. BE SURE YOU SAY STATE'S EXHIBIT NUMBER 28 OR
19 WHICHEVER IT IS AND EXPLAIN TO THEM WHAT IT IS, WHAT'S YOUR
20 OPINION AND WHY YOU BASE THAT OPINION.

21 MR. SWERLING: YOUR HONOR, HIS OPINION ABOUT WHAT?

22 MR. COLEMAN: THE TYPE OF TIRE.

23 THE COURT: LIMIT IT TO THAT. GO AHEAD.

24 A STATE'S EXHIBIT NUMBER 28 IS A PICTURE OF A TIRE PRINT IN THE
25 SAND. NOW, THIS IS THE WAY THE PICTURE WAS PRESENTED TO ME

1 AT MY OFFICE. THIS TIRE PRINT IN THE SAND IS IN MY OPINION
2 OF A GOODYEAR VECTOR BASED ON THE CRISSCROSS TREAD PATTERNS
3 OF THE TIRE WHICH IS THIS POINT STARTING FROM HERE AND COMING
4 ACROSS. LET ME SHOW THAT TO YOU AGAIN. THIS LINE HERE IS
5 CALLED A CRISSCROSS TREAD PATTERN. IT RUNS FROM ONE SIDE OF
6 THE TREAD TO THE OTHER SIDE OF THE TREAD AND IT IS UNIQUE
7 THROUGHOUT THE TIRE IN ALL GOODYEAR VECTORS IN EVERY SIZE
8 THAT WE MAKE AND THIS SIZE, ALSO. ALSO, THE LITTLE SQUARE
9 LUGS IF YOU CAN SEE BETWEEN THESE--

10 Q EXPLAIN WHAT A LUG IS NOW.

11 A OKAY. A LUG IS BETWEEN THE GROOVES OF THIS TIRE. IT'S LUG
12 DESIGN IN THE TIRE TO HELP THE TIRE CONTROL THE CAR ON THE
13 ROAD AND GIVE IT BODY AND TRACTION EDGES.

14 Q WHEN YOU SAY BETWEEN THE EDGES YOU MEAN THE BIG EDGES?

15 A RIGHT, THE BIG PARTS. THAT'S A LUG. IT'S A DIAMOND SHAPE.
16 THE DIAMOND SHAPE IS A TRADEMARK OF GOODYEAR TIRE AND RUBBER
17 COMPANY. AND A POINT HERE AND HERE AND HERE AND HERE FORMS
18 THE DIAMOND. INSIDE THIS LUG IS A VERY, VERY TINY MARK
19 CALLED THE SITE. THAT SITE ALSO OPENS AND CLOSES IN THE
20 DIRECTION THAT THE TIRE IS TRAVELING TO GET ADDED TRACTION
21 IN ANY TIME OF ADVERSE WEATHER CONDITIONS, THIS BEING AN ALL
22 SEASON TREAD DESIGN WHICH GIVES GOOD TRACTION ON DRY ROADS,
23 WET ROAD, MUDDY ROAD AND SNOW. IT ALSO HAD A LABELING ON THE
24 SIDE OF THE TIRE TO IDENTIFY IT AS A MUD AND SNOW TIRE WITH
25 THIS TYPE OF TREAD DESIGN. THAT'S MY OPINION OF WHY THIS IS

1 A GOODYEAR VECTOR.

2 Q HOW ABOUT THE HARMONIC TREAD DESIGN?

3 A HARMONIC TREAD DESIGN IN THIS TIRE, IF YOU CAN SEE THE LUGS
4 ON THE LUGS ON THE SIDE WHERE THE LINE COMES ACROSS, YOU SEE
5 THESE DARK LINES ON THE EDGE, THAT'S THE EDGE OF THE TIRE.
6 AND ONE LUG HERE CAN BE SMALLER OR LARGER THAN THE NEXT LUG
7 THAT IS CLOSE TO IT. THAT'S CALLED A HARMONIC TREAD DESIGN.
8 IT WAS DESIGN FIRST BY GOODYEAR TIRE AND RUBBER COMPANY.
9 WHAT THAT HARMONIC TREAD DESIGN DOES ON A TIRE IS PROVIDE THE
10 CAR WITH A QUIET RIDE. IF YOU'VE EVER NOTICED MAYBE A CAT
11 WALKING ACROSS A BRIDGE AND IT GETS IN A CADENCE WITH ITSELF
12 AND THAT BRIDGE CAN ROCK BACK AND FORTH. IF THIS LUG ON THIS
13 TIRE WAS THE SAME SIZE UNIQUE ALL THE WAY ACROSS, WHENEVER
14 THAT TIRE ROLLED IT WOULD START A PITCH AND IT WOULD JUST
15 KEEP HITTING THE ROAD AT THE SAME ANGLE ALL THE TIME AND IT
16 MAKES A NOISE. GOODYEAR DESIGNED THIS TO BREAK THAT UP SO
17 YOU DON'T GET A NOISE OFF THE TIRE. AND THEN ONE OTHER THING
18 THAT CAUSED THEM TO GO DO THIS WAS LIGHTER CARS. A LIGHTER
19 CAR, THE MORE NOISE IT MAKES AND THAT'S WHY WE WERE THE FIRST
20 COMPANY TO GO TO A HARMONIC TREAD DESIGN.

21 Q DO OTHER TIRE COMPANIES HAVE DIFFERENT SIZE PATTERNS?

22 A IN SOME OF THE LARGE--THE MOST ADVANCED TIRE COMPANIES NOW
23 THEY ARE MAKING A HARMONIC TREAD DESIGN ON THEIR TIRES, ALSO.
24 THIS IS NOT UNIQUE ANY MORE. WHEN THE VECTOR AND THE FIRST
25 REGULAR TIRE CAME OUT IT WAS BUT NOW OTHER COMPANIES HAVE

1 TECHNOLOGIES THAT HAVE CHANGED FOR THEM ALSO IN THEIR TESTING
2 AND THEY HAVE PROVEN A HARMONIC DESIGN DOES CUT DOWN ROAD
3 NOISE SO OTHER COMPANIES DO MANUFACTURE A HARMONIC TREAD
4 DESIGN.

5 Q OKAY. I SHOW YOU WHAT'S MARKED STATE'S EXHIBIT NUMBER 28,
6 31, 30, AND 29. IS THAT IN YOUR OPINION THOSE ARE GOODYEAR
7 VECTOR TIRES?

8 A THESE ARE GOODYEAR VECTOR TIRES.

9 Q OKAY. I WANT TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
10 NUMBER 49. SEE IF YOU CAN IDENTIFY THAT, THE CAR, THE YEAR,
11 THE MAKE AND THE TIRE.

12 THE COURT: WHY DON'T YOU COME, MR. MORTON, AND HOLD THE
13 PHOTOGRAPH UP SO EVERYBODY CAN SEE. STEP BACK. JUST HOLD IT
14 UP LIKE THAT.

15 A OKAY. THIS IS A PICTURE OF A 1988 BUICK RIVIERA. THIS IS
16 A GENERAL MOTORS CAR. GOODYEAR SUPPLIES GENERAL MOTORS
17 GOODYEAR VECTORS AS ORIGINAL EQUIPMENT ON THIS PARTICULAR
18 MODEL CAR AND PROBABLY EVERY ONE THEY MADE. THE FRONT
19 PICTURE YOU CANNOT SEE THE BRAND ON THE. I CAN SEE A PICTURE
20 OF THE TREAD DESIGN IN MY EYES. ON THE REAR TIRE HERE ON THE
21 SIDE YOU CAN MAKE OUT THE NAME GOODYEAR. YOU CANNOT MAKE OUT
22 THE TYPE OF TIRE, VECTOR, IT WOULD BE WRITTEN THERE EASILY,
23 BUT MY EYES SHOW ME THE TREAD DESIGN AND THAT IS A GOODYEAR
24 VECTOR TIRE UNDER A 1988 BUICK RIVIERA.

25 Q OKAY. I SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 48.

1 A OKAY. LET'S HOLD IT UP LIKE THIS. THIS TIRE HERE HAS THE
2 SAME CRISSCROSS TREAD PATTERN. YOU CANNOT SEE THE SIDE BUT
3 THIS TREAD PATTERN IS CONSISTENT WITH THE MANUFACTURE OF A
4 GOODYEAR VECTOR. THIS IS WHAT THIS IS. THIS IS A FRONT END
5 OF I CAN'T TELL WHAT TYPE OF CAR--

6 MR. SWERLING: WELL, THEN, YOUR HONOR, I MOVE THE
7 TESTIMONY BE STRICKEN. HE'S SAYS IT'S CONSISTENT. IT'S GOT
8 TO BE WITH A DEGREE OF CERTAINTY, MOST PROBABLY. I MOVE THE
9 TESTIMONY BE STRICKEN AND NOT ALLOWED.

10 MR. COLEMAN: HE SAID, YOUR HONOR, THAT THAT WAS A
11 GOODYEAR--

12 A THIS IS A GOODYEAR VECTOR.

13 MR. SWERLING: HE SAID IT'S CONSISTENT.

14 THE COURT: WHAT DID HE SAY ABOUT CONSISTENT?

15 A I SAID THIS TREAD PATTERN HERE IS CONSISTENT WITH THE TREAD
16 PATTERNS IN THE SAND AS BEING A GOODYEAR VECTOR.

17 MR. SWERLING: THAT WAS NOT WHAT I UNDERSTOOD HIM TO
18 SAY. I APOLOGIZE.

19 THE COURT: GO AHEAD.

20 A IT IS A GOODYEAR VECTOR TIRE ON THIS PICTURE.

21 Q OKAY. I SHOW YOU WHAT'S MARKED STATE'S EXHIBIT NUMBER 46.
22 THIS ALSO IS A PICTURE OF ANOTHER GOODYEAR VECTOR ON THE
23 FRONT END OF THIS CAR. THE REASON I'M BASING THIS IS THE
24 FRONT END IS I CAN SEE DOWN AT THE BOTTOM HERE THIS LITTLE
25 SHINY CHROME PIECE WHICH IS THE FRONT OF THE CAR AND THEN THE

1 FENDER WELL IN THE BACK, THE DOOR BEING BACK HERE. THIS IS
2 ANOTHER PICTURE OF A GOODYEAR VECTOR.

3 Q ALL RIGHT. MR. HALL, I SHOW YOU WHAT'S MARKED STATE'S 36,
4 35, 34, 33, AND NUMBER 32. GET ONE OF THOSE THAT BEST SHOWS
5 HOW YOU MAKE YOUR DETERMINATION.

6 A OKAY. THIS IS THE INK TESTING THAT I WAS SHOWN. THIS INK
7 TESTING SHOWS ME A DIFFERENT TYPE--IT SHOWS ME A GOODYEAR
8 VECTOR. IT SHOWS ME A DIFFERENT TREAD PATTERN. ONE REASON
9 WHY IT SHOWS A DIFFERENT TREAD PATTERN IS BECAUSE THIS IS
10 TAKEN OFF OF A HARD SURFACE AND--

11 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S NOT BEEN ✓
12 QUALIFIED TO RENDER THAT TYPE OF OPINION.

13 MR. COLEMAN: YOUR HONOR, MAY I BE HEARD?

14 MR. SWERLING: HE CAN EITHER TESTIFY IT IS A GOODYEAR
15 VECTOR OR NOT.

16 THE COURT: JUST A MINUTE NOW. HE DID SAY THAT HE HAD
17 BEEN TRAINED IN THAT, AS I RECALL. HAVE YOU HAD AN
18 OPPORTUNITY TO--

19 A I HAVE SEEN INK SPOTS OF GOODYEAR VECTOR TIRES THAT SHOWED
20 THE TYPE OF WEAR PATTERN THAT OCCURS ON CARS.

21 THE COURT: IS THIS WHEN YOU WERE REFERRING TO WHEN YOU
22 WENT TO AKRON?

23 A RIGHT. ESPECIALLY WITH THE TYPE OF SUSPENSION THIS CAR HAS
24 ON IT.

25 THE COURT: JUST TESTIFY--IF YOU ARE FAMILIAR WITH THOSE

1 TESTINGS I'M GOING TO LET YOU GO AHEAD. I OVERRULE YOUR
2 OBJECTION. JUST TAKE ONE EXHIBIT, YOU CAN PROBABLY DO THEM
3 IN ORDER, AND JUST DEPICT WHATEVER HE'S GOING TO TESTIFY AS
4 TO EACH ONE.

5 Q OKAY. IDENTIFY WHICHEVER ONE YOU USED SO THEY'LL KNOW WHICH
6 ONE YOU ARE TALKING ABOUT.

7 THE COURT: MR. MORTON, HOLD IT UP FOR HIM.

8 MR. MORTON: I WAS WAITING ON HIM TO PICK ONE , YOUR
9 HONOR.

10 A OKAY. HERE WE HAVE A PICTURE--

11 THE COURT: WHAT IS THE NUMBER ON THAT?

12 MR. MORTON: 34.

13 THE COURT: STATE'S EXHIBIT NUMBER 34.

14 A HERE WE HAVE A PICTURE OF A GOODYEAR VECTOR TIRE PRINT AND
15 YOU CAN SEE THE RED MARKINGS--I DID NOT DO THIS--OF THE
16 CRISSCROSS TREAD DESIGN.

17 MR. SWERLING: YOUR HONOR, THOSE RED MARKINGS WERE NOT
18 ON ANYTHING THAT I SAW.

19 MR. COLEMAN: THOSE MARKINGS HAVE BEEN ON THERE.

20 THE COURT: THEY WERE ON THERE WHEN THEY WERE HANDED UP
21 TO BE INTRODUCED.

22 MR. SWERLING: YOUR HONOR, WITHOUT KNOWING WHO MADE
23 THOSE I WOULD OBJECT TO THAT DOCUMENT BEING IN EVIDENCE. AN
24 ADDITIONAL OBJECTION.

25 THE COURT: WELL, IT'S ALREADY IN EVIDENCE, MR.

1 SWERLING. THEY WERE HANDED TO YOU TO BE EXAMINED BEFORE THEY
2 CAME IN EVIDENCE.

3 MR. SWERLING: I APOLOGIZE, YOUR HONOR. I SAW ONE THAT
4 DID NOT HAVE ANY WRITTEN MARKINGS ON IT.

5 THE COURT: THEY HAD RED MARKINGS WHEN THEY WERE HANDED
6 TO ME. THEY ARE ALREADY IN EVIDENCE. YOU MAY PROCEED.

7 A THIS PARTICULAR INK SPOT IS OF A GOODYEAR VECTOR WITH THE
8 CRISSCROSS TREAD DESIGN. THIS INK SPOT IS ALSO OF A FRONT
9 TIRE. I WOULD NOT BE ABLE TO DETERMINE IF IT WAS A RIGHT OR
10 LEFT FRONT TIRE BUT I CAN TELL THIS IS A FRONT TIRE BECAUSE
11 OF THE PICTURES ON THE CAR AND THE EDGE WEAR AND THE WAY THIS
12 PARTICULAR ALIGNMENT OF THIS CAR AND--

13 MR. SWERLING: YOUR HONOR, NOW AGAIN HE'S GOING BEYOND
14 THE SCOPE OF WHAT YOU QUALIFIED HIM TO DO. HE CAN EITHER
15 TESTIFY IT'S A GOODYEAR VECTOR OR--

16 THE COURT: JUST TESTIFY AS TO WHAT'S SHOWN BY THAT
17 INKING, WHAT TYPE OF TIRE.

18 A IT'S A GOODYEAR VECTOR.

19 Q WHAT DO YOU BASE THAT ON?

20 A I BASE IT ON THE CRISSCROSS TREAD PATTERN OF THE TIRE, THE
21 HARMONIC TREAD DESIGN AND THE EDGE WEAR ON THE PICTURES THAT
22 I SAW OF THE FRONT OF THE CAR.

23 Q IS THE EDGE WEAR ON THAT CAR CONSISTENT WITH THAT--

24 MR. SWERLING: OBJECTION, YOUR HONOR. THAT IS NOT WHAT
25 YOUR HONOR QUALIFIED HIM TO DO. HE'S ALLOWED TO TESTIFY AS

1 TO A GOODYEAR VECTOR TIRE IN THE PHOTOGRAPHS, NOT TO MAKE
2 COMPARISONS.

3 MR. COLEMAN: YOUR HONOR, I HAVE ASKED HIM WHAT HE BASED
4 THAT OPINION ON. IF THAT IS CONSISTENT WEAR WITH A GOODYEAR
5 VECTOR TIRE, HOW IT WEARS ON THAT PARTICULAR CAR, HE CAN USE
6 THAT IN HIS ANALYSIS TO DETERMINE IF THAT IS A GOODYEAR
7 VECTOR INKED PRINT.

8 MR. SWERLING: HE SAID FROM THE CAR. HE'S NOT SAYING
9 FROM THAT--

10 THE COURT: HE HAS NOT BEEN QUALIFIED AND HE'S INDICATED
11 IN HIS TESTIMONY TO ME THAT HE COULD NOT SAY THAT THIS TIRE
12 PRINT MATCHED THAT TIRE. HE CAN SAY THAT THEY ARE GOODYEARS.
13 ISN'T THAT CORRECT, SIR?

14 A I CAN SAY THAT THE TYPE OF CAR THAT THIS IS WEARS THE
15 GOODYEAR VECTOR TIRES THIS WAY BECAUSE OF THE SUSPENSION THAT
16 THE CAR WAS MANUFACTURED WITH.

17 MR. SWERLING: WELL, YOUR HONOR--
18 A ON THAT MODEL CAR, NOT THAT PARTICULAR CAR BUT THAT MODEL CAR
19 OR ANY CAR, ANY GENERAL MOTORS CAR THAT IS A FRONT WHEEL
20 DRIVE CAR WITH A REAR ADJUSTABLE SUSPENSION WEARS RADIAL TIRE
21 THIS WAY.

22 MR. SWERLING: ANY CAR, ANY GENERAL MOTORS CAR? YOUR
23 HONOR, IT'S SHEER SPECULATION.

24 THE COURT: I HAVEN'T QUALIFIED HIM TO THAT. JUST
25 TESTIFY BASED ON WHAT YOU FOUND AND WHETHER OR NOT THOSE ARE

1 GOODYEAR VECTOR TIRES.

2 A THE FIRST PICTURE WAS A PICTURE OF A GOODYEAR TIRE ON THE
3 FRONT. THE SECOND PICTURE THAT WAS INTRODUCED, STATE'S
4 EVIDENCE MARKED 33, IS A PICTURE OF A GOODYEAR VECTOR OF A
5 REAR TIRE.

6 Q OKAY. ALL OF THESE IMPRESSIONS ARE OF GOODYEAR VECTORS?

7 A ARE GOODYEAR VECTORS.

8 Q AND DOES THE DESIGN ON THIS INK PRINT VARY ACCORDING TO THE
9 SURFACE THAT IT WAS TAKEN ON?

10 A YES, IT DOES.

11 Q OKAY. WHY IS THAT?

12 MR. SWERLING: YOUR HONOR, HE HAS NOT BEEN QUALIFIED TO
13 TESTIFY TO THAT.

14 MR. COLEMAN: JUDGE, HE'S BEEN QUALIFIED AS AN EXPERT
15 IN TIRES TO THE DESIGN, THE TREAD DESIGN AND IT JUST GOES TO
16 REASON THAT THE IMPRINTS ARE GOING TO CHANGE ACCORDING TO THE
17 SURFACE THAT THE IMPRINTS ARE TAKEN OFF.

18 MR. SWERLING: HE'S NOT BEEN QUALIFIED TO THAT.

19 THE COURT: HE DIDN'T TESTIFY OR QUALIFY THAT HE HAS
20 TAKEN IMPRINTS THOUGH, MR. COLEMAN, OR EVER EXAMINED SUCH
21 IMPRESSIONS. IN FACT, TO THE CONTRARY. THE ONLY THING HE
22 SAID IN THAT REGARD IS THAT WHEN HE WENT TO AKRON THAT THEY
23 ACTUALLY HAD TIRE IMPRESSIONS AND I THINK HE SAID THEY USED
24 A GLASS WHERE THEY RAN OVER THEM AND YOU LOOKED AT THEM AND
25 THEY DISTINGUISHED THEM BUT NOT TAKING IMPRESSIONS.

1 A I--

2 MR. SWERLING: IF YOUR HONOR PLEASE, IF THE WITNESS IS
3 GOING TO RESPOND TO THE COURT I'D APPRECIATE IT IF--

4 THE COURT: ALL RIGHT. TAKE THE WITNESS STAND.

5 (WITNESS RESUMES STAND)

6 THE COURT: DO YOU WANT TO ATTEMPT TO QUALIFY HIM IN
7 THAT REGARD?

8 MR. COLEMAN: NO, SIR, THAT'S FINE.

9 Q I SHOW YOU WHAT'S MARKED AS STATE'S EXHIBITS NUMBER 34, 32,
10 33, 35 AND 36. ARE THOSE GOODYEAR VECTOR TIRES?

11 A YES, THEY ARE.

12 Q I SHOW YOU WHAT'S MARKED STATE'S EXHIBIT 48, 46, 49, 51, 50,
13 47. WHAT DO THOSE DEPICT?

14 MR. SWERLING: YOUR HONOR, HE'S ALREADY TESTIFIED TO
15 THAT.

16 THE COURT: I'M GOING TO LET HIM TIE THEM UP. GO AHEAD.

17 A YOU WANT ME TO ANSWER THAT?

18 THE COURT: YES, SIR.

19 A AS BEING A GOODYEAR VECTOR.

20 Q WHAT VEHICLE ARE THEY ON?

21 A 1988 BUICK RIVIERA.

22 Q OKAY. I SHOW YOU WHAT'S MARKED STATE'S EXHIBIT NUMBER 23,
23 22 AND 21. WHAT DO THOSE DEPICT? WHAT KIND OF CAR?

24 A IT'S A CHEVROLET MONTE CARLO WHICH IS NOT DRIVING GOODYEAR
25 VECTORS OR GOODYEAR TIRES.

1 Q OKAY. AND STATE'S EXHIBIT NUMBER 29, 30, 31, AND 28. WHAT
2 DO THOSE DEPICT? WHAT IS IT AND WHAT DOES IT DEPICT?

3 A IT'S A PICTURE OF A GOODYEAR VECTOR IN THE SAND AS BEING A
4 GOODYEAR VECTOR TIRE PRINT.

5 Q DO YOU KNOW HOW MANY GOODYEAR VECTORS ARE MADE BY GOODYEAR?

6 A ONLY THOUSANDS THAT I CAN ANSWER. THAT'S ALL I KNOW.

7 Q OF YOUR SALES AT YOUR STORE ON GERVAIS, WHAT PERCENTAGE DO
8 GOODYEAR VECTORS MAKE UP?

9 A THE FIGURE THAT I HAD IN MY OFFICE AT THAT TIME IT WAS AROUND
10 2 PERCENT OF THE TIRES SOLD JUST OUT OF MY LOCATION WERE
11 GOODYEAR VECTORS.

12 MR. COLEMAN: I BEG THE COURT'S INDULGENCE.

13 THE COURT: ARE YOU THE ONLY GOODYEAR STORE IN COLUMBIA?

14 A NO, SIR. WE HAVE SEVEN COMPANY OWNED LOCATIONS HERE IN THIS
15 MARKET. THERE ARE ALSO AN INDEPENDENT, ONE INDEPENDENT OUT
16 ON TWO NOTCH ROAD THAT JUST OPENED UP AT THE LAST OF LAST
17 YEAR. THERE'S ALSO THREE OTHER FRANCHISES IN THIS TOWN, TOO.

18 THE COURT: THAT FIGURE YOU GAVE OF 2 PERCENT, WAS THAT
19 JUST FOR YOUR STORE?

20 A THAT'S JUST FOR MY STORE.

21 Q WHEN YOU SAY 2 PERCENT, WHAT FIGURE IS THAT?

22 MR. SWERLING: YOUR HONOR, WHAT HIS STORE DOES IS NOT
23 RELEVANT. WHAT THE MARKET DOES, WHAT GOODYEAR DOES IS
24 RELEVANT.

25 MR. COLEMAN: HE DOESN'T KNOW WHAT THE MARKET DOES. I'M

1 TRYING TO ESTABLISH--

2 MR. SWERLING: WELL, THEN--

3 THE COURT: IF HE DOESN'T KNOW WHAT THE MARKET IS HE
4 CAN'T TESTIFY TO IT. I SUSTAIN THE OBJECTION. YOU CAN'T
5 TESTIFY TO SOMETHING YOU DON'T KNOW.

6 Q WHAT PERCENTAGE OF TIRES--HOW MANY TIRES DO YOU SELL OUT OF
7 YOUR STORE?

8 A WE'VE APPROXIMATELY SOLD SEVEN THOUSAND.

9 Q AND HOW MANY GOODYEAR VECTORS?

10 A IN NOVEMBER WHENEVER--THE STATISTICAL SECTION I HAD IN MY
11 STORE IN NOVEMBER WAS AROUND 246. NOW, I DO NOT HAVE THE
12 FIGURES FOR THE END OF DECEMBER 31ST AND WE DID SELL SOME
13 VECTORS IN DECEMBER.

14 MR. SWERLING: OF WHAT YEAR?

15 A OF 1989.

16 MR. SWERLING: WHAT'S THE RELEVANCE?

17 THE COURT: THAT IS IRRELEVANT. I SUSTAIN THAT
18 OBJECTION. THE RESPECTIVE YEAR HERE IS 1988.

19 Q IS THE GOODYEAR VECTOR CONSIDERED TOP OF THE LINE TIRE?

20 A YES, IT IS.

21 MR. COLEMAN: NO FURTHER QUESTIONS.

22 THE COURT: LET'S STOP. IT'S ONE O'CLOCK. YOU CAN
23 DO IT AFTER LUNCH, OKAY? MR. WITNESS, 2:15. MR. FOREMAN,
24 IF YA'LL WILL, GO HAVE LUNCH AND I'LL SEE YOU BACK AT 2:15.

25 (THE JURY LEAVES THE JURY BOX AT 12:55 P.M.)

1 THE COURT: JUST A MINUTE. MR. HALL, I WANT YOU BACK
2 AT 2:15, ALL RIGHT?

3 A YES, SIR.

4 (WITNESS TO THE SIDE)

5 THE COURT: ALL RIGHT, MR. SWERLING, I'LL LET YOU NOW
6 AT THIS TIME--AT THE SIDEBAR BEFORE THE EXHIBITS WERE
7 ADMITTED YOU APPROACHED THE BENCH AND MADE AN OBJECTION THAT
8 YOU WANTED TO PUT ON THE RECORD AND IT WAS BASED ON THAT THE
9 EVIDENCE WAS SPECULATIVE. I'LL LET YOU FORMALLY NOW PLACE
10 IT ON THE RECORD AS TO YOUR OBJECTION THAT THAT EVIDENCE IS
11 SPECULATIVE IN NATURE AND SHOULD NOT BE ADMITTED.

12 MR. SWERLING: IF I COULD JUST PICK THEM OUT, YOUR
13 HONOR, SO THEY CAN BE CLEARLY IDENTIFIED IN THE RECORD.

14 THE COURT: I CAN TELL YOU WHICH ONES THEY WERE. THEY
15 WERE 28, 29, 30, 31--

16 MR. SWERLING: ACTUALLY ALL THE SAND PRINTS.

17 THE COURT: 51, 49, 50, 48, 40, 38, 37, 39, 45, 44, 42,
18 41, 47, 46, 34, 32, 33, 35, 36.

19 MR. SWERLING: YOUR HONOR, WITH RESPECT TO THE PHOTOS
20 OF THE IMPRINTS IN THE SAND OUR POSITION IS THIS. LT.
21 CHRISTY TESTIFIED THAT HAYES MALLOY DID NOT SHOW HIM WHERE
22 THE VEHICLE SUPPOSEDLY OUT THERE WAS, THAT HE WENT OUT THERE
23 AND ARBITRARILY TOOK A SET OF PRINTS OR IMPRESSIONS IN THE
24 SAND, PHOTOS OF PRINTS IN THE SAND, WHERE HE THOUGHT THE CAR
25 WAS THAT WAS INVOLVED IN THIS INCIDENT ALTHOUGH NOBODY HAD

1 TOLD HIM WHERE IT WAS.

2 THE COURT: HE SAID THEY ARE AT THE LOCATION WHERE THE
3 BODY WAS.

4 MR. SWERLING: UP TO THE VIEW OF THE BODY. YOUR HONOR,
5 EXAMINATION OF STATE'S EXHIBIT NUMBER 24 SHOWS THAT THERE ARE
6 LITERALLY HUNDREDS OF TIRE PRINTS IN THE SAND AND MR. CHRISTY
7 WAS NOT GIVEN ANY DIRECTION BY ANYONE AS TO WHERE THE TILLMAN
8 VEHICLE SUPPOSEDLY WAS SITUATED WHEN IT MADE A TIRE PRINT.
9 SO, WE SUBMIT THAT IT'S NOT RELEVANT. THOSE PHOTOGRAPHS WERE
10 NOT RELEVANT OR PROBATIVE OF ANY ISSUE IN THE CASE BECAUSE
11 OF THAT FACT. IN ADDITION, YOUR HONOR, WE SUBMIT THAT THE
12 TESTIMONY CONCERNING THOSE IS SHEER SPECULATION AT THIS POINT
13 WITH RESPECT TO THE IMPRINTS IN THE SAND BECAUSE THROUGH THE
14 WITNESS'S OWN TESTIMONY THERE ARE LITERALLY THOUSANDS OR
15 HUNDREDS OF THOUSANDS OF GOODYEAR VECTOR TIRES ON THE ROAD.
16 THEY ARE THE LARGEST SUPPLIER TO GENERAL MOTORS. THEY
17 LITERALLY HAVE--GOODYEAR IS THE LARGEST TIRE MANUFACTURER IN
18 NORTH AMERICA. AND ALLOWING HIM TO TESTIFY HIM TO TESTIFY
19 THAT THOSE IMPRINTS WHICH WERE TAKEN BY LT. CHRISTY WITH NO
20 FACTUAL KNOWLEDGE THAT THEY WERE THE CAR IN QUESTION ALLOWS
21 THE JURY TO SPECULATE THAT NOW BECAUSE MR. TILLMAN'S CAR HAS
22 GOODYEAR VECTORS AND BECAUSE THESE PRINTS WERE GOODYEAR
23 VECTORS THAT THEY WERE ONE IN THE SAME CAR. AND EVEN THOUGH
24 THE TESTIMONY, IF IT WAS RELEVANT, IT'S STILL SPECULATIVE TO
25 THE EXTENT THAT IT ALLOWS THE JURY TO SPECULATE THAT THE CARS

1 WERE ONE IN THE SAME. AND I THINK IF THE STATE HAD
2 ESTABLISHED THAT THIS IS WHERE HAYES MALLOY SAID THE CAR WAS,
3 THIS IS THE SPOT WHERE IT WAS, THIS IS WHERE THE SPOT HE
4 DROVE TO WAS THEN I WOULD NOT BE ABLE TO HAVE THAT ARGUMENT.
5 OR THAT THEY WERE ABLE TO TESTIFY THAT THERE WAS SOME UNIQUE
6 CHARACTERISTICS IN THESE TIRES. BUT THE STATE HAS NOT EVEN
7 BEEN ABLE TO SHOW THAT OTHER--IF THEY HAD TAKEN OTHER
8 PHOTOGRAPHS AND OTHER IMPRESSIONS YOU WOULD PROBABLY HAVE
9 MANY DIFFERENT TIRE MANUFACTURING MARKINGS IN THIS SAND. SO,
10 I THINK IT'S CAUSING THE JURY AN UNDUE SPECULATION AND
11 ALLOWING THEM TO SPECULATE AS TO WHETHER OR NOT MR. TILLMAN'S
12 CAR WAS THE CAR THAT MADE THOSE PRINTS OR NOT. FOR THAT
13 REASON WE OBJECT AS TO NO PROBATIVE VALUE AND IF THERE IS ANY
14 PROBATIVE VALUE IT'S OUTWEIGHED BY ITS PREJUDICIAL EFFECT.

15 THE COURT: THE COURT FINDS THERE IS A PROBATIVE VALUE,
16 MR. SWERLING. THE TESTIMONY BY MR. MALLOY WAS THAT THE
17 DEFENDANT DROVE HIM OUT THERE IN THAT VEHICLE WHICH IS IN
18 ESSENCE CORROBORATION OF WHAT HAYES MALLOY SAYS AND ALSO
19 WOULD DEFEAT ANY EVIDENCE OF AN ALIBI OF THIS DEFENDANT. THE
20 STATE HAS A RIGHT AND IS REQUIRED TO PROVE THAT HE WAS
21 PRESENT AT THE SCENE OF THE CRIME. THERE'S DIRECT TESTIMONY
22 THAT THE DEFENDANT WAS IN THAT VEHICLE DRIVING THAT CAR AND
23 THERE ARE TIRE PRINTS WHICH ARE SHOWN IN THE SAND WHICH ARE
24 THE SAME TYPE OF TIRE PRINT AS THE VEHICLE. IT GOES TO
25 SUPPORT THAT TESTIMONY. THAT'S A REASONABLE INFERENCE. NO

1 WITNESS AT THIS POINT HAS TESTIFIED THAT THAT IS THE TIRE
2 PRINT WHICH MATCHED THAT TIRE. NO QUESTION ABOUT IT BUT THEY
3 HAVE SAID THAT THAT TIRE PRINT WAS A VECTOR TIRE. HE DROVE
4 A VECTOR CAR OUT THERE. SO, THOSE TWO CONNECTED TOGETHER ARE
5 SUFFICIENT FOR THE COURT TO RULE OUT ANY SPECULATIVE NATURE
6 IN THE CASE AND IT IS PROBATIVE ON THE ISSUE, IF BELIEVED.
7 ALWAYS IF BELIEVED.

8 MR. SWERLING: OF COURSE, YOUR HONOR, THE FACT THAT THEY
9 ARE UNCONNECTED WITH EACH OTHER ALSO AND IT HAS NOT BEEN TIED
10 UP BY THE STATE IS THE ADDITIONAL GROUNDS FOR ALLOWING THAT
11 SPECULATIVE EVIDENCE, TO ALLOW THE JURY TO JUST SPECULATE
12 THAT IT WAS TILLMAN'S CAR.

13 THE COURT: THANK YOU, SIR. 2:15.

14 (LUNCHEON RECESS AT 1:00 P.M.)

15 (COURT RESUMES AT 2:15 P.M.)

16 MR. COLEMAN: IF WE COULD PUT ON THE RECORD I THINK MR.
17 SWERLING HAS STIPULATED TO THE TOXICOLOGY REPORT OF THE
18 VICTIM FOR NEGATIVE ALCOHOL AND DRUG SCREEN ON THE VICTIM.

19 MR. SWERLING: THAT'S CORRECT.

20 MR. COLEMAN: I THINK THAT'S IT, YOUR HONOR.

21 THE COURT: AS SOON AS THIS WITNESS HAS COMPLETED HIS
22 TESTIMONY ON CROSS AND REDIRECT THEN WHY DON'T YOU PUT THAT
23 STIPULATION IN THE RECORD. WE CAN JUST PUBLISH IT. SAY,
24 YOUR HONOR, WE'VE ENTERED INTO A STIPULATION WITH THE STATE
25 THAT THE TOXICOLOGIST AND GIVE HIS NAME, IF CALLED, WOULD

1 TESTIFY TO THE FOLLOWING. ALL RIGHT. LET'S BRING THE JURY
2 IN.

3 MR. COLEMAN: ALSO, YOUR HONOR, I THINK MR. SWERLING
4 JUST STIPULATED THAT THE INTRODUCTION TO THE RENTAL AGREEMENT
5 THAT THE DEFENDANT DID RENT THE VEHICLE.

6 MR. SWERLING: WHAT THEY WANT TO DO, JUDGE, IS GO AHEAD
7 AND SUBPOENA THE ORIGINAL. I DON'T HAVE ANY PROBLEM WITH THE
8 ORIGINAL. MY INVESTIGATOR HAS SEEN IT. THAT COPY IS AN
9 ACCURATE COPY SO I DO NOT REQUIRE THEM TO CALL THE CUSTODIAN
10 OF THE RECORDS JUST FOR THAT PURPOSE.

11 THE COURT: ALL RIGHT. YOU WANT TO JUST BY AGREEMENT
12 ENTER THAT INTO THE RECORD. IT'S BEEN MARKED IN THE PREVIOUS
13 HEARING. WHEN YOU DO THAT STIPULATION, MR. COLEMAN, GET THE
14 ONE THAT'S IN THE RECORD AND WE'LL JUST MARK IT WITH A NEW
15 NUMBER AND JUST SAY BY STIPULATION WITH COUNSEL FOR THE
16 DEFENSE THAT THIS EXHIBIT IS NOW ENTERED INTO THE RECORD AS
17 BEING A COPY OF THE ORIGINAL IN THE OFFICE OF WHEREVER IT IS.
18 OKAY? DO BOTH OF THOSE AFTER YOU FINISH THIS WITNESS.

19 MR. COLEMAN: YES, SIR.

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

21 (THE JURY RETURNS TO THE JURY BOX AT 2:20 P.M.)

22 THE COURT: YOU MAY NOW CROSS EXAMINE THE WITNESS, MRS.
23 KNEECE.

24 BRUCE HALL, AFTER BEING PREVIOUSLY SWORN BY THE CLERK,
25 TESTIFIES AS FOLLOWS:

1 CROSS EXAMINATION BY

2 MRS. SHEALY:3 Q MR. HALL, HOW LONG HAS GOODYEAR BEEN THE LEADING TIRE
4 MANUFACTURER?5 A WELL, SINCE I'VE BEEN WITH GOODYEAR THEY'VE HAD A CLAIM THAT
6 THEY ARE THE NUMBER ONE TIRE COMPANY.

7 Q THAT'S BEEN SIX YEARS SINCE YOU'VE BEEN WITH THEM?

8 A YES, SINCE I'VE BEEN WITH THEM. IT'S BEEN LONGER THAN THAT
9 BUT AS TO HOW LONG I DON'T KNOW.

10 Q OKAY. AND ARE YOU AWARE OF HOW MANY GOODYEAR TIRES ARE MADE?

11 A THOUSANDS IS ALL I CAN SAY.

12 Q OKAY. AND ALSO YOU INDICATED THAT--ARE THERE MORE THAN ONE
13 GOODYEAR TIRE STORES IN COLUMBIA OR IS YOUR STORE THE ONLY
14 GOODYEAR?15 A THERE ARE MORE THAN ONE COMPANY OWNED LOCATIONS IN COLUMBIA,
16 SOUTH CAROLINA.

17 Q DO YOU KNOW HOW MANY?

18 A YES.

19 Q OKAY. HOW MANY ARE THERE?

20 A THERE ARE SEVEN TOTAL. THOSE INCLUDE MY STORE AS A COMPANY
21 OWNED STORE

22 Q THAT'S IN COLUMBIA?

23 A THAT'S RIGHT.

24 Q OKAY. IN ADDITION TO THE GOODYEAR TIRE STORES, OTHER TIRE
25 STORES SELL GOODYEAR TIRES, IS THAT RIGHT?

- 1 A YES, THEY DO.
- 2 Q DO YOU HAVE INFORMATION AS TO HOW MANY STORES IN THE COLUMBIA
3 AREA SELL GOODYEAR TIRES?
- 4 A THERE'S AT LEAST FIVE MORE IN THIS AREA, IN THE COLUMBIA
5 MARKET.
- 6 Q ARE YOU AWARE OF HOW MANY STORES IN SOUTH CAROLINA SELL GOOD-
7 YEAR TIRES?
- 8 A I'M AWARE OF HOW MANY COMPANY OWNED STORES IN SOUTH CAROLINA.
- 9 Q OKAY. HOW MANY IS THAT?
- 10 A OKAY. THERE ARE FOUR IN GREENVILLE, SOUTH CAROLINA; THREE
11 IN SPARTANBURG; AND THERE ARE SEVEN COMPANY OWNED IN
12 COLUMBIA.
- 13 Q AND AGAIN IN ADDITION TO THOSE THERE ARE OTHER TIRE STORES
14 THAT SELL GOODYEAR--
- 15 A THERE ARE OTHER FRANCHISES EVEN IN THE SPARTANBURG MARKET,
16 ALSO. I'M NOT AWARE OF ANY IN THE GREENVILLE MARKET BUT I
17 THINK THERE ARE.
- 18 Q AND WOULD YOU TELL THE JURY AGAIN WHAT PERCENTAGE OF GOODYEAR
19 TIRES APPEAR AS THE ORIGINAL EQUIPMENT ON TIRES?
- 20 A WELL, OF AUTO TIRES IT'S ALMOST 90 PERCENT. OF HIGH
21 PERFORMANCE TIRES THE FIGURES I'VE BEEN TOLD FOR 1990 OR 1989
22 OR IN THAT AREA IS AROUND 95 PERCENT OF HIGH PERFORMANCE
23 TIRES.
- 24 Q ARE YOU AWARE OF THE PERCENTAGE OF TIRES THAT ARE PUT ON CARS
25 WHEN PEOPLE REPLACE THEIR TIRES WHEN THEY REPLACE THEM AND

1 THEN PUT GOODYEAR TIRES ON?

2 A MOST OF THE TIME WHEN A TIRE COMES ORIGINAL EQUIPMENT ON A
3 CAR MOST OF THE PEOPLE WHEN THEY HAVE TO BUY A REPLACEMENT
4 TIRE DO GO BACK WITH THE SAME ORIGINAL EQUIPMENT TIRE. IF
5 A CAR COMES WITH THAT TIRE, THEY DO TEND TO REPLACE IT WITH
6 THAT TIRE.

7 Q OKAY. AND YOU EXPLAINED TO THE JURY THE CRISSCROSS DESIGN
8 ON THE GOODYEAR VECTOR TIRE. DOES GOODYEAR TIRE SELL A
9 SIMILAR CRISSCROSS PATTERN TO ANOTHER TIRE MANUFACTURER? FOR
10 EXAMPLE, KELLY SPRINGFIELD, THEY HAVE A CRISSCROSS DESIGN ON
11 THEIR TIRES AS WELL, IS THAT CORRECT?

12 A YES, THEY DO. IT'S SIMILAR.

13 MRS. SHEALY: I BEG THE COURT'S INDULGENCE. (PAUSE)

14 Q MR. HALL, GOODYEAR TIRES CAN BE BOUGHT IN OTHER TIRE STORES
15 THAT ARE NOT FRANCHISES OF GOODYEAR BUT JUST TIRE STORES IN
16 GENERAL, IS THAT CORRECT?

17 A THAT'S TRUE.

18 MRS. SHEALY: I HAVE NO FURTHER QUESTIONS. THANK YOU.

19 THE COURT: ANY REDIRECT?

20 MR. COLEMAN: JUST A FEW QUESTIONS, YOUR HONOR.

21 REDIRECT EXAMINATION BY

22 MR. COLEMAN:

23 Q MR. HALL, THESE DOCUMENTS THAT YOU IDENTIFIED AND THAT YOU
24 DISCUSSED EARLIER, ARE THESE PHOTOGRAPHS OF KELLY
25 SPRINGFIELDS?

1 A NO, SIR, THEY AREN'T.

2 Q WHAT ARE THEY OF?

3 A GOODYEAR VECTOR.

4 MR. COLEMAN: NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN.

6 (WITNESS TO THE SIDE)

7 THE COURT: THIS WITNESS CAN BE EXCUSED. CALL YOUR NEXT
8 WITNESS.

9 MR. COLEMAN: YOUR HONOR, AT THIS TIME, THE STATE WOULD
10 LIKE TO PUT INTO THE RECORD A STIPULATION THAT THE STATE AND
11 DEFENSE COUNSEL HAVE ENTERED INTO AT THIS TIME.

12 THE COURT: IS THAT CORRECT, MR. SWERLING?

13 MR. SWERLING: YES, SIR.

14 THE COURT: YA'LL HAVE ENTERED INTO STIPULATIONS?

15 MR. SWERLING: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, IT
17 APPEARS THAT COUNSEL FOR THE STATE AND COUNSEL FOR THE
18 DEFENSE HAVE ENTERED INTO A STIPULATION AND A STIPULATION IS
19 AN AGREEMENT BETWEEN THE COUNSEL FOR THE STATE AND THE
20 DEFENSE, AND THE DEFENDANT HIMSELF AS WELL, AS TO WHAT A
21 WITNESS WOULD TESTIFY TO IF CALLED AS A WITNESS IN THIS CASE
22 AND YOU MAY ACCEPT THAT TESTIMONY AS BEING WHAT THAT WITNESS
23 WOULD TESTIFY TO IF CALLED TO TESTIFY UNDER OATH AND ASSIGN
24 TO IT SUCH WEIGHT AS YOU DEEM IS APPROPRIATE IN THIS CASE.
25 ALL RIGHT, SIR. PUBLISH THE STIPULATION.

1 MR. COLEMAN: MAY IT PLEASE THE COURT, YOUR HONOR, A
2 REPORT BY ROBERT M. SEARS DATED AUGUST 23RD, 1989. HE IS A
3 TOXICOLOGIST AT S.L.E.D., CHEMICAL ANALYSIS, THAT HE WOULD
4 HAVE TESTIFIED THAT NEGATIVE BLOOD ALCOHOL AN NEGATIVE DRUG
5 SCREENING ON DONALD SUTTON, THE VICTIM IN THIS CASE. ALSO,
6 THE DEFENSE HAS STIPULATION FOR THE INTRODUCTION OF A
7 DOCUMENT ENTITLED BUDGET CAR AND TRUCK RENTAL, THE NUMBER
8 BEING 0037320 WHERE THE DEFENDANT, RONALD TILLMAN, RENTED A
9 VEHICLE FROM 408 BLOSSOM STREET HERE IN RICHLAND COUNTY.
10 THE DUE BACK DATE WAS JANUARY 7TH, 1989. AND THE MODEL CAR
11 WAS A TWO DOOR GRAY RIVIERA.

12 THE COURT: YA'LL HAVE AGREED TO INTRODUCE THIS WITHOUT
13 OBJECTION?

14 MR. SWERLING: YOUR HONOR, WHAT WE AGREED IS THE COPY-
15 -I MEAN THE ORIGINAL WOULD NOT BE NECESSARY.

16 THE COURT: AND YOU'VE AGREED TO ENTER THIS COPY?

17 MR. SWERLING: YES, SIR.

18 THE COURT: HAND IT UP TO THE COURT REPORTER AND HAVE
19 HER MARK IT AND THEN HAND IT TO ME, PLEASE.

20 (BUDGET RENT-A-CAR AGREEMENT IS RECEIVED INTO EVIDENCE
21 AS STATE'S EXHIBIT #52 [FORMERLY DEF. I.D. "A"])

22 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
23 OBJECTION AN EXHIBIT WHICH WILL BE DESIGNATED AS STATE'S
24 EXHIBIT NUMBER 52. IT'S A TWO PAGE EXHIBIT FROM THE--IT'S
25 A BUDGET CAR AND TRUCK RENTAL AGREEMENT, BUDGET CAR AND TRUCK

1 RENTAL OF COLUMBIA. IT SHOWS THE DATE OUT DECEMBER 10TH,
2 1988, AND DATE BACK IN TO BE JANUARY 7TH, 1989, BETWEEN
3 RONALD TILLMAN AND BUDGET CAR AND TRUCK RENTAL. NOW IN THE
4 RECORD OF THIS CASE WITHOUT OBJECTION. YOU MAY PUBLISH IT
5 TO THE JURY.

6 THE COURT: CALL YOUR NEXT WITNESS.

7 MR. MORTON: THE STATE CALLS RUFUS McQUEEN TO THE STAND.

8 MR. SWERLING: YOUR HONOR, WE'D HAVE A MATTER AT THE
9 SIDEBAR.

10 THE COURT: ALL RIGHT.

11 (MR. SWERLING, MR. MORTON AND MR. COLEMAN APPROACH THE
12 BENCH OUT OF THE PRESENCE OF THE COURT REPORTER)

13 THE COURT: DO YA'LL WANT TO RETURN TO THE JURY ROOM?

14 (THE JURY LEAVES THE JURY BOX AT 2:34 P.M.)

15 THE COURT: ALL RIGHT. HAS THE WITNESS BEEN SWORN?

16 CLERK OF COURT: NO, SIR.

17 THE COURT: SWEAR THE WITNESS.

18 RUFUS McQUEEN, AFTER BEING DULY SWORN BY THE CLERK,
19 TESTIFIES AS FOLLOWS:

20 DIRECT EXAMINATION BY

21 MR. MORTON:

22 Q MR. McQUEEN, DO YOU REMEMBER HAVING A DISCUSSION WITH RONALD
23 TILLMAN IN THE RICHLAND COUNTY DETENTION CENTER, LET'S SEE,
24 SOMETIME IN FEBRUARY OF 1989?

25 A YES, I DO.

1 Q AND YOU WERE IN JAIL ON WHAT CHARGE?

2 A POSSESSION.

3 Q POSSESSION OF WHAT?

4 A COCAINE.

5 Q HAD YOU BEEN TO COURT ON THAT OR HAS THAT BEEN--

6 A I THINK IT'S NONE PROCESS.

7 Q NOL PROSSED? WERE YOU IN THE SAME CELLBLOCK AS RONALD

8 TILLMAN?

9 A THAT'S RIGHT.

10 Q DID YOU EVER HAVE THE OCCASION TO TALK TO RONALD TILLMAN

11 ABOUT VARIOUS THINGS?

12 A YES, I DID.

13 Q DID HE EVER TALK TO YOU ABOUT THIS CASE, THAT BEING THE

14 MURDER OF DONALD SUTTON, ANY?

15 A VERY LITTLE.

16 Q OKAY. TELL US WHAT HE TOLD YOU BACK IN FEBRUARY OF 1989.

17 TELL THE JUDGE.

18 A WELL, WHEN I GOT DOWN IN THE CELLBLOCK IT WAS ABOUT THREE

19 DAYS LATER HIM AND I GOT TO TALKIN' ABOUT PEOPLE THAT WE KNEW

20 HERE IN COLUMBIA AND HE TOLD ME, SAID HE HAD SOMETHING HE

21 WANTED ME TO TAKE CARE OF OR WANTED SOMEBODY TO TAKE CARE OF

22 SO HE CAN GET OUT ON BOND. AND HE SAID THE ONLY WAY THAT HE

23 COULD GET OUT ON BOND IS HAVE THIS WITNESS TOOKEN CARE OF.

24 SO, I ASKED HIM WHO WAS THE WITNESS.

25 Q LET ME INTERRUPT FIRST. YOU KNOW, I CAUTIONED YOU EARLIER,

1 RUFUS, ABOUT NOT SAYING ANYTHING ABOUT THE BANK ROBBERY OR
2 THAT OTHER WITNESS. YOU CAN GO AHEAD SINCE THE JURY ISN'T
3 HERE AND TELL THE JUDGE EVERYTHING, OKAY?

4 A ALL RIGHT. SO, WE GOT TO TALKIN' ABOUT PEOPLE WE KNEW IN THE
5 NEIGHBORHOOD AND HE SAID THAT HE KNEW SOME OF THE PEOPLE THAT
6 I KNEW. AND THEN THE CONVERSATION WENT ON TO ME BEING IN THE
7 SERVICE AND WHATNOT. AND THEN HE OFFERED ME A DEAL FOR
8 TAKIN' CARE OF HAYES MALLOY SO THAT HE COULD GET OUT ON BOND.
9 SO, WE TALKED ABOUT IT FOR ABOUT A HOUR OR SO AND WE CAME TO
10 THE CONCLUSION THAT HE WAS GONNA PAY ME FIVE THOUSAND DOLLARS
11 TO TAKE CARE OF HAYES MALLOY AND HE WAS GONNA GIVE ME FIVE
12 HUNDRED DOLLARS IN ADVANCE ONCE I GOT OUT SO I CAN SET THIS
13 JOB UP FOR HIM. I WAS SUPPOSED TO MEET HAYES MALLOY DOWN
14 THERE AT THE PARTY SHOP THERE ON SHOP ROAD. IN ORDER FOR ME
15 TO GET DOWN THERE IT WAS ARRANGED FOR HIS MOTHER, MRS.
16 TILLMAN, TO PICK ME UP AND CARRY ME DOWN TO THE PARTY SHOP
17 AND FROM THERE I WAS SUPPOSED TO SEE HAYES MALLOY, SEE WHAT
18 HE LOOK LIKE AND THEN PURSUE ON FROM THERE AS FAR AS TAKING
19 CARE OF THE SITUATION.

20 Q SO, WHAT DID YOU DO? WHAT DID YOU TELL HIM?

21 A YEAH, I TOLD HIM I'D GO AHEAD ON.

22 Q WHY DID YOU TELL HIM THAT?

23 A WELL, 'CAUSE I WAS INTERESTED IN WHO HE WANTED KILLED AND A
24 LOT OF PEOPLE DOWN ON SHOP ROAD I DO KNOW. AND I WASN'T SURE
25 THAT I KNOWED A HAYES MALLOY OR NOT SO I PLAYED ALONG WITH

1 THE PROGRAM.

2 Q OKAY. WHAT ELSE DID HE TELL YOU? DID HE TELL YOU ANYTHING

3 ABOUT ANY FEDERAL COURT CASES? ANY WITNESSES IN THERE?

4 A YES, HE TOLD ME ABOUT MS. SHELIA RAMSEY, SAID HE WANTED HER

5 TOOKEN CARE OF BUT HE GO AHEAD ON AND DO IT HIMSELF. BUT I

6 TALKED TO HIM LATER AFTER HE SAID HE WAS GONNA DO IT AND TELL

7 HIM I TAKE THE CONTRACT.

8 Q OKAY. HOW MUCH LATER AFTER THIS CONVERSATION DID YOU GET OUT

9 OF JAIL?

10 A OH, ABOUT THREE DAYS LATER.

11 Q OKAY. WHAT DID YOU DO WHEN YOU GOT OUT OF JAIL?

12 A WELL, I GOT OF JAIL AND MRS. TILLMAN PICKED ME UP AT THE

13 SHERIFF DEPARTMENT--

14 Q WHAT DID YOU DO BEFORE THAT?

15 A WELL, I WENT OVER TO THE SHERIFF OFFICE AFTER I HAD DONE

16 CONTACT MR. POOLE CONCERNING THE INCIDENT.

17 Q WHO IS MR. POOLE?

18 A HE'S A NARCOTIC AGENT.

19 Q WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

20 A THAT'S RIGHT.

21 Q ALL RIGHT.

22 A AND IN TURN HE TURN IT OVER TO THE F.B.I. WE GOT TO TALKIN'

23 ABOUT IT AND THEY WIRED ME UP TO GO DOWN ON SHOP ROAD TO SEE

24 WHAT WE COULD LEARN ABOUT THE CASE.

25 Q AND AFTER YOU WERE WIRED, WHAT HAPPENED NEXT?

1 A MRS. TILLMAN TOOK ME ON SHOP ROAD AND ON THE WAY DOWN THERE
2 SHE ASKED ME DID I KNEW WHAT WAS GOING ON AND VERBALLY I TOLD
3 HER, YEAH, I KNEW WHAT WAS GOING ON. THEN I ASKED HER ABOUT
4 HAYES MALLOY AND AT FIRST SHE ACTED THOUGH SHE DIDN'T KNOW
5 WHO HAYES MALLOY WAS BUT LATER ON IN THE CONVERSATION SHE
6 CAME OUT WITH HIS NAME AND SHE SAID ARTHUR WILL SHOW YOU WHO
7 HAYES MALLOY IS. ARTHUR IS THE GUY THAT RUNS THE PARTY SHOP
8 ON SHOP ROAD. SO, AFTER I GOT DOWN THERE I MET ARTHUR. HE
9 TOLD ME HAYES MALLOY WAS ACROSS THE STREET IF I WANTED TO GET
10 A PRETTY GOOD DESCRIPTION OF WHAT HE LOOK LIKE. SO, I GOT
11 WITH ANOTHER GUY THAT I KNEW FROM HIGH SCHOOL AND WE WENT
12 ACROSS THE STREET AND I WAS CASING THE PLACE TO FIND HAYES
13 MALLOY BUT I NEVER DID SEE HIM. FROM WHAT I UNDERSTOOD HIS
14 WIFE AND HIS BABY WAS IN THE STORE AT THE TIME. SO, I
15 PURCHASE A PACK OF CIGARETTES AND WENT ON BACK ACROSS THE
16 STREET. AT THAT TIME, THE PHONE RANG AND IT WAS RONALD
17 TILLMAN ON THE PHONE. HE WAS TRYING TO EXPLAIN TO ARTHUR
18 THAT IT WAS A POSSIBILITY THAT THE AUTHORITIES KNEW ABOUT
19 WHAT WAS HAPPENING. SO, BY THE TIME ARTHUR GOT THROUGH
20 TALKIN' WITH HIM, MAYBE ABOUT TEN OR FIFTEEN MINUTES, MRS.
21 TILLMAN PULL UP. AND SO SHE TALKED TO TILLMAN ON THE PHONE
22 BEHIND THE COUNTER. SO, AT THAT TIME I WALKED OUTSIDE. I
23 WASN'T AWARE OF WHAT WAS HAPPENIN' OR WHAT HE WAS SAYIN' TO
24 HER BUT LATER ON I FOUND OUT THAT HE KNEW THAT I HAD BEEN TO
25 AUTHORITIES ABOUT KILLIN' HAYES MALLOY.

1 Q SO, WHAT HAPPENED NEXT?

2 A OKAY. I WENT ONE BLOCK--ABOUT TWO BLOCKS DOWN FROM THE PARTY
3 SHOP AND MRS. TILLMAN PICK ME UP AND TOOK ME TO THE FOREST
4 MOTEL ON TWO NOTCH ROAD WHERE WE ORIGINALLY PLAN TO GO BUT
5 I WAS SUPPOSED TO GET FIVE HUNDRED DOLLARS IN ADVANCE AND
6 AFTER TILLMAN GOT OUT ON BOND I WAS SUPPOSED TO GET ANOTHER
7 FIVE THOUSAND. BUT THE PLANS DIDN'T WORK OUT THAT WAY. FROM
8 WHAT I UNDERSTOOD AFTER HE LEARNED WHAT WAS HAPPENING SHE
9 ONLY GAVE ME EIGHTY DOLLARS, FOUR TWENTY DOLLAR BILLS, AND
10 I RENT THE ROOM FOR TWO NIGHTS AT THE FOREST MOTEL AND THERE
11 I WAS SUPPOSED TO WAIT UNTIL MRS. TILLMAN CALL ME TO EXPLAIN
12 WHERE I WAS TO GET THE REST OF THE MONEY AND THE WEAPON.

13 Q OKAY. NOW, DID RONALD TILLMAN TELL YOU THAT HE NEEDED YOUR
14 HELP IN FEDERAL COURT AND I STATE COURT?

15 A YES, HE DID. HE SAID HE ALSO WANTED MS. SHELIA RAMSEY TOOKEN
16 CARE OF. THAT WAS THE BANK TELLER AT THE BANK. THAT'S 'CAUSE
17 HE WAS AFRAID THAT SHE COULD RECOGNIZE HIM.

18 Q ALL RIGHT, SIR. WHAT ELSE DID HE TELL YOU ABOUT HAYES
19 MALLOY? ANYTHING?

20 A HE SAID HE HAD TO HAVE HIM TOOKEN CARE OF, SAID HE LIVED ON
21 SUMTER STREET I THINK AND I WAS SUPPOSED TO GO DOWN THERE AND
22 CASE THE PLACE AND FIND OUT WHAT TIME HE CATCH THE BUS AND
23 THEN TAKE CARE OF HIM RIGHT AFTER HE GOT OFF THE BUS AT THE
24 BUS STOP.

25 MR. MORTON: PLEASE ANSWER ANY QUESTIONS MR. SWERLING

1 S.

2 THE COURT: MR. SWERLING.

3 CROSS EXAMINATION BY

4 MR. SWERLING:

5 Q MR. McQUEEN, WHEN MR. TILLMAN TALKED TO YOU ABOUT HAYES
6 MALLOY YOU WENT TO THE AUTHORITIES, DID YOU NOT?

7 A THAT'S RIGHT.

8 Q AND THEY ENCOURAGED YOU TO CONTINUE THIS SCENARIO THAT YOU
9 WERE HAVING WITH MR. MALLOY, IS THAT CORRECT?

10 A RIGHT. THEY ASKED ME.

11 Q PARDON?

12 A I SAY THEY ASKED ME, YEAH.

13 Q IN OTHER WORDS, THEY SAID GO ALONG WITH HIM.

14 A TO SEE HOW FAR HE WAS GOIN' WITH IT, RIGHT.

15 Q AND YOU WOULD REPORT TO THEM ANYTHING THAT HAPPENED?

16 A THAT'S RIGHT.

17 Q SO, BASICALLY YOU WERE ACTING FROM YOUR OWN TESTIMONY IN AN
18 UNDERCOVER SORT OF WAY WITH POLICE ENCOURAGEMENT?

19 A BASICALLY, YES.

20 Q NOW, WHEN RONALD TILLMAN APPROACHED YOU ABOUT THIS SITUATION
21 ABOUT HAYES MALLOY, ISN'T IT A FACT THAT HE TOLD YOU THAT HE,
22 ACCORDING TO OTHER INFORMATION I HAVE, THAT HE APPROACHED YOU
23 WITH THE IDEA OF GETTING HAYES MALLOY OUT OF THE WAY SO HE
24 COULD NOT TESTIFY AGAINST HIM IN A BANK ROBBERY TRIAL?

25 A YES, THAT'S RIGHT.

1 Q OKAY. HE NEVER MENTIONED DONALD SUTTON TO YOU OR ANY KIND
2 OF MURDER CASE IN STATE COURT WHEN HE TALKED TO YOU ABOUT
3 THESE THINGS, ISN'T THAT TRUE?

4 A WELL, HE SAID HE HAVE ONE FELLOW TOOKEN CARE OF AND HE NEEDED
5 ANOTHER ONE TOOKEN CARE OF SO HE COULD GET OUT.

6 Q BUT HE NEVER MENTIONED TO YOU THE CASE OF STATE VS. DONALD
7 SUTTON, DID HE? CASE OF STATE VS. RONALD TILLMAN IN STATE
8 COURT?

9 A I REMEMBER SOMETHIN' CAME UP 'CAUSE HE SHOW ME HIS AFFIDAVIT.

10 Q I'M TALKING ABOUT WHEN HE WAS TALKING TO YOU ABOUT HAYES
11 MALLOY, HE WAS TALKING TO YOU ABOUT HAYES MALLOY WITH RESPECT
12 TO THE BANK ROBBERY, ISN'T THAT TRUE?

13 A WELL, HE DIDN'T SAY SPECIFICALLY WHICH CASE.

14 Q ARE YOU SURE ABOUT THAT?

15 A I'M POSITIVE.

16 Q DO YOU REMEMBER TESTIFYING UNDER OATH ON TUESDAY, APRIL 4TH,
17 1989, I FRONT OF THE GRAND JURY?

18 A THAT'S RIGHT.

19 Q DO YOU REMEMBER BEING ASKED THE FOLLOWING QUESTION: ALL
20 RIGHT. NOW, TELL THE GRAND JURY THEN WHAT OCCURRED AT THAT
21 TIME. DO YOU REMEMBER THAT QUESTION?

22 A RIGHT.

23 Q DO YOU REMEMBER THE FOLLOWING ANSWER YOU GAVE: AFTER THAT
24 HE SAID HE HAD A FELLOW HE WANTED TAKEN CARE OF DOWN ON SHOP
25 ROAD AT HIS PARTY SHOP AND SAID HIS NAME WAS HAYES MALLOY AND

1 HE STATED THAT HE WOULD GIVE ME FIVE HUNDRED DOLLARS ONCE I
2 GOT OUT OF JAIL TO TAKE CARE OF HAYES MALLOY, AND AFTER I
3 TAKE CARE OF HAYES MALLOY HE WOULD KNOW ABOUT IT EITHER
4 THROUGH TELEPHONE OR THE PAPER OR WHATEVER AND THEN HE SAID
5 WHEN HE GOT OUT HE WOULD GIVE ME AN ADDITIONAL FIVE THOUSAND
6 DOLLARS FOR TAKING CARE OF HIM. QUESTION: WHAT DID HE MEAN
7 BY TAKE CARE OF HIM? ANSWER: KILL HIM. HE SAID HE WANTED
8 HIM OUT OF THE WAY BECAUSE HE COULD TESTIFY AGAINST HIM IN
9 THE BANK ROBBERY. DO YOU REMEMBER THAT BEING YOUR ANSWER IN
10 THAT CASE?

11 A YEAH.

12 Q YOU DIDN'T TESTIFY--YOU DIDN'T TELL ANYBODY ABOUT ANY MURDER
13 CASE, THAT HE WANTED HAYES MALLOY OUT OF THE WAY BECAUSE OF
14 SOME MURDER CASE. YOU TESTIFIED BECAUSE OF A BANK ROBBERY,
15 ISN'T THAT TRUE?

16 A HE HAD BASICALLY TOLD ME THAT HE HAD ALREADY TOOK CARE OF THE
17 SUTTON GUY.

18 Q I UNDERSTAND THAT. I'M ASKING YOU WITH RESPECT TO MR.
19 TILLMAN'S REQUEST TO GET RID OF HAYES MALLOY WAS REGARDING
20 THE BANK ROBBERY, ISN'T THAT CORRECT?

21 A HE MADE A STATEMENT THAT HE WANTED ME TO TAKE CARE OF HAYES
22 MALLOY, PLUS TAKE CARE OF MS. RAMSEY WHICH--

23 Q BECAUSE OF THE BANK ROBBERY?

24 A BECAUSE OF THE BANK ROBBERY WITH MS. RAMSEY.

25 Q BUT YOU TESTIFIED THAT HE WANTED HIM KILLED BECAUSE HE COULD

1 TESTIFY AGAINST HIM IN THE BANK ROBBERY TRIAL.

2 A THAT'S RIGHT.

3 Q WAS THAT TESTIMONY TRUE WHEN YOU SAID IT?

4 A YES, IT WAS.

5 Q IS IT TRUE NOW?

6 A THAT'S RIGHT.

7 Q LET ME ASK YOU ONE OTHER SITUATION. DO YOU REMEMBER
8 TESTIFYING ON THAT SAME DATE UNDER OATH: I WASN'T REALLY
9 INTERESTED IN THE BEGINNING UNTIL HE STARTED CALLING THE GUY
10 HAYES MALLOY'S NAME OUT AND I WASN'T SURE WHETHER I KNEW THE
11 GUY. I JUST WANTED TO SEE WHO HE WAS AND CAME TO FIND OUT
12 HE WAS SERIOUS ABOUT IT. HE DEFINITELY PROMISED ME THAT I
13 WOULD GET THE FIVE THOUSAND DOLLARS ONCE HE GOT OUT ON BOND.
14 HIS PURPOSE IN KILLING MS. RAMSEY AND HAYES MALLOY WAS THAT
15 THEY WERE WITNESSES AGAINST HIM IN THE BANK ROBBERY.

16 A HE DIDN'T--

17 MR. MORTON: YOUR HONOR, OBJECTION.

18 Q --ONCE HE GOT PEOPLE OUT OF THE WAY HE WOULD BE ABLE TO MAKE
19 BOND.

20 MR. SWERLING: I WAS JUST FINISHING THE RESPONSE THE
21 WITNESS GAVE.

22 MR. MORTON: YOUR HONOR, IF HE COULD ADDRESS ONE
23 SENTENCE AT TIME HE COULD RESPOND.

24 THE COURT: IT WAS JUST ONE SENTENCE.

25 MR. SWERLING: IT WAS ONE SENTENCE.

1 MR. MORTON: OH, OKAY.

2 Q DID YOU MAKE THAT STATEMENT UNDER OATH BEFORE A FEDERAL GRAND
3 JURY?

4 A THAT'S RIGHT.

5 Q THE ANSWER TO MY QUESTION AGAIN IS WHEN HE APPROACHED YOU
6 ABOUT HAYES MALLOY AND MS. RAMSEY HE WAS REFERRING TO YOU
7 ABOUT THEM BEING WITNESSES IN A BANK ROBBERY TRIAL. IS THAT
8 A FAIR STATEMENT OR NOT?

9 A AT THAT TIME, WHEN I TESTIFIED TO THE GRAND JURY MR. SUTTON
10 NAME DID NOT COME UP. I WAS ANSWERING SPECIFIC QUESTIONS
11 THAT THEY WAS ASKIN' ME. I WAS ANSWERIN' 'EM.

12 Q AND MR. TILLMAN WHEN HE WAS TALKING TO YOU ABOUT MR. MALLOY
13 AND MS. RAMSEY WAS IN CONNECTION WITH A BANK ROBBERY, ISN'T
14 THAT TRUE?

15 A THAT'S RIGHT.

16 THE COURT: ANYTHING ELSE, MR. SWERLING?

17 MR. SWERLING: THAT'S ALL I HAVE.

18 THE COURT: ANYTHING, MR. MORTON, IN THIS REGARD?

19 MR. MORTON: YES, SIR.

20 REDIRECT EXAMINATION BY

21 MR. MORTON:

22 Q MR. McQUEEN, DID YOU TALK TO INVESTIGATOR AUSTIN ABOUT THIS
23 SITUATION?

24 A YES, I DID.

25 MR. SWERLING: NOW, YOUR HONOR, HE'S TRYING TO OFFER

1 SOME PRIOR CONSISTENT STATEMENT.

2 THE COURT: WELL, LET'S HEAR IT.

3 Q AND DID YOU TALK TO HIM ABOUT HIM TRYING TO HIRE YOU TO KILL
4 HAYES MALLOY?

5 A THAT'S RIGHT.

6 Q AND DID YOU GIVE HIM A STATEMENT IN THAT REGARD?

7 A I SURE DID.

8 Q AND DID YOU TALK TO MR. AUSTIN BEFORE YOU WENT AND TALKED TO
9 THE FEDERAL GRAND JURY IN FEDERAL COURT?

10 A THAT'S RIGHT.

11 Q AND DID YOU SIGN THAT STATEMENT AND SWEAR TO IT?

12 A YES, I DID.

13 MR. MORTON: YOUR HONOR, FOR THE PURPOSES OF THIS
14 HEARING I'D LIKE TO INTRODUCE THIS INTO THE RECORD.

15 MR. SWERLING: YOUR HONOR, THE STATEMENT DOES NOT REFER
16 TO THE CASE--TO THIS MURDER CASE.

17 THE COURT: WELL, LET ME SEE IT. THE PURPOSE IS FOR ME
18 TO DETERMINE WHETHER OR NOT THE EVIDENCE IS ADMISSIBLE.
19 (PAUSE) ALL RIGHT.

20 Q (BY MR. MORTON) MR. McQUEEN, YOU MENTIONED SOMETHING ABOUT
21 HIM SHOWING YOU THE AFFIDAVIT. WHAT AFFIDAVIT ARE YOU
22 TALKING ABOUT?

23 A THIS EVIDENTLY IS A STATEMENT THAT THE FEDERAL LAW
24 ENFORCEMENT OFFICERS MAKE UP DURING THE TIME OF HIS
25 INVESTIGATION I BELIEVE.

1 Q OKAY. WHAT ELSE DID HE SHOW YOU IN THE JAIL CELL?

2 A THAT WAS ABOUT IT OTHER THAN A RING I THINK HE HAD ON HIS
3 FINGER DURING THAT TIME.

4 MR. MORTON: THAT'S ALL I HAVE.

5 MR. SWERLING: THAT'S ALL I HAVE.

6 THE COURT: ALL RIGHT.

7 MR. MORTON: YOUR HONOR, OF COURSE, TWO THINGS ON THIS
8 STATEMENT ARE SIGNIFICANT, ONE OF WHICH IS MR. TILLMAN'S
9 STATEMENT THAT HE NEEDED TO GET RID OF HAYES MALLOY AND HE
10 GOES ON TO SAY HE'S THE ONLY KEY WITNESS, ONLY KEY EVIDENCE
11 IN MY CASE IN FEDERAL COURT AND IN STATE COURT. OBVIOUSLY,
12 THE STATE COURT IS SIGNIFICANT BUT I THINK THE OTHER THING
13 THAT'S SIGNIFICANT IS THAT HE SAID HE IS THE ONLY KEY
14 EVIDENCE TO MY CASE IN STATE COURT. THAT WAS NOT THE
15 SITUATION IN FEDERAL COURT. OBVIOUSLY, HE WAS TALKING ABOUT
16 THE STATE COURT CASE BECAUSE HAYES MALLOY WAS IN FACT THE
17 ONLY EYE WITNESS IN THAT CASE. YOUR HONOR, THE SAME ARGUMENT
18 I THINK APPLIES THAT WE MADE EARLIER IN THIS CASE IN THAT
19 WHEN MR. McQUEEN TESTIFIED TO THE FEDERAL GRAND JURY, OF
20 COURSE, THAT --

21 MR. SWERLING: YOUR HONOR, COULD WE HAVE THE WITNESS
22 TAKEN OUT OF THE COURTROOM WHILE WE ARE DOING THIS.

23 THE COURT: HE'S ALREADY SAID WHAT HE WAS GOING TO SAY.
24 I DON'T THINK THAT CHANGES IT.

25 MR. MORTON: THE ASSISTANT U.S. ATTORNEY WHO WAS

1 QUESTIONING HIM WAS ONLY INTERESTED IN THE BANK ROBBERY.
2 THAT'S WHY THE REFERENCE TO HAYES MALLOY IS HIS RELATION TO
3 THE BANK ROBBERY.

4 MR. SWERLING: THAT'S NOT WHAT THE QUESTIONS WERE
5 THOUGH, YOUR HONOR.

6 THE COURT: LET HIM FINISH.

7 MR. MORTON: OBVIOUSLY, IN THAT SETTING THEY ARE
8 INTERESTED IN THE BANK ROBBERY. THAT'S WHY HIS TESTIMONY IS
9 THERE. THEY GOT TO HIM BEFORE WE GOT TO THIS TRIAL. AND,
10 YOUR HONOR, I WOULD SUBMIT THAT IT IS RELEVANT BECAUSE IT
11 SHOWS THE DEFENDANT'S CONSCIOUSNESS OF GUILT, A THREAT,
12 ASSAULT, JUST AS FLIGHT OR A BRIBE WOULD AND I DEEM--I THINK
13 IT WOULD BE ADMISSIBLE. OF COURSE, YOUR HONOR, I WOULD
14 SUBMIT THAT IF THERE ARE SOME SIDE PROBLEMS WHICH I'M NOT
15 ADMITTING TO NOW BUT IF THE COURT DEEMS THERE ARE WE COULD,
16 OF COURSE, REDACT THAT AND ANY REFERENCE TO THE FEDERAL COURT
17 CASE.

18 MR. SWERLING: THAT'S NOT A SIDE PROBLEM.

19 MR. MORTON: WELL, THE SIDE PROBLEM IS HIM GETTING WIRED
20 AND SO FORTH AS I UNDERSTAND IT.

21 MR. MORTON: THE SIDE PROBLEM IS HIS GOING TO LAW
22 ENFORCEMENT AND SAYING YOU CONTINUE THIS OPERATION.

23 MR. MORTON: I UNDERSTAND WHAT THE SIDE PROBLEM IS.

24 THE COURT: WELL, LET ME HEAR YOUR ARGUMENT.

25 MR. SWERLING: IF YOUR HONOR PLEASE, I GUESS WHAT IT

1 COMES DOWN TO IS THIS. THIS GENTLEMAN HAS TESTIFIED ON A
2 PREVIOUS OCCASION, AND HE TESTIFIED HERE TODAY, THAT MR.
3 TILLMAN APPROACHED HIM ABOUT GETTING RID OF MR. MALLOY AND
4 MS. RAMSEY BECAUSE OF THE BANK ROBBERY CASE. THE STATEMENT
5 THAT HE GAVE DOES NOT REFER TO THIS MURDER CASE. IT'S SHEER
6 SPECULATION FOR THE STATE TO ARGUE BECAUSE HE HAD SEVERAL
7 CASES PENDING AT THAT TIME. HE HAD SEVERAL ARMED ROBBERIES
8 PENDING AT THAT TIME, ALSO. THAT IS NO DIRECT REFERENCE IN
9 THAT STATEMENT THAT HE WANTED HAYES MALLOY OUT OF THE WAY
10 BECAUSE OF HIS TESTIMONY IN THIS CASE. IT'S SPECULATIVE ON
11 THEIR PART AT THE VERY LEAST. SECOND OF ALL, IT'S SO
12 PREJUDICIAL TO ALLOW THAT SORT OF TESTIMONY INTO THIS TRIAL.
13 IT'S COLLATERAL TO THE ISSUES, IT'S NOT RELEVANT TO PROVE ANY
14 ELEMENT OF THE CRIME THAT THEY ARE TRYING TO PROVE AND AGAIN
15 WE ARE GOING BACK IN WHERE THE STATE IS TRYING TO PROVE
16 EVERYTHING ELSE BUT THE FACT THAT TILLMAN KILLED DONALD
17 SUTTON AND THEY ARE TRYING TO BRING IN ALL THESE OTHER ISSUES
18 WHICH ARE JUST NOT RELEVANT OR ARE PREJUDICIAL TO THE OUTCOME
19 OF THIS PARTICULAR CASE HAVING THE JURY TO DECIDE IN THIS
20 CASE WHETHER TILLMAN KILLED DONALD SUTTON OR NOT. THIS
21 WITNESS BY HIS OWN ADMISSION SAYS THAT TILLMAN TOLD HIM HE
22 WANTED HIM OUT OF THE WAY BECAUSE OF A BANK ROBBERY TRIAL.
23 AND THAT OBVIOUSLY HAS ALREADY BEEN DECIDED NOT TO COME IN.
24 TO ALLOW IT IN NOW I THINK WOULD BE TO OPEN UP THAT ENTIRE
25 DOOR. IT WOULD LIMIT ME IN MY CROSS EXAMINATION OF THIS

1 WITNESS IF YOU ALLOW IN PART OF IT. I COULD NOT EXAMINE HIM
2 AS TO HIS CREDIBILITY ON PRIOR INCONSISTENT STATEMENTS
3 WITHOUT OPENING THE DOOR TO THE BANK ROBBERY TRIAL WHICH
4 GIVES ME A 6TH AMENDMENT PROBLEM. IN ADDITION, YOUR HONOR-
5 -WELL, THERE WAS ONE OTHER POINT I WANTED TO MAKE BUT IT
6 SEEMS TO HAVE SLIPPED MY MIND. I THINK THAT'S PROBABLY THE
7 SUM AND SUBSTANCE OF IT, YOUR HONOR. IT'S JUST NOT--AGAIN,
8 OF COURSE, YOU'VE GOT THE SIDE PROBLEM THAT HE WAS WORKING
9 FOR LAW ENFORCEMENT AT THE TIME.

10 THE COURT: WELL, THAT'S ONLY IF YOU ALLOW THE TESTIMONY
11 IN FOR THE POINT THAT HE BEGAN WORKING WITH THEM. YOU KNOW,
12 THAT'S A REAL PROBLEM AND IT REALLY IS ANOTHER CRIME AND NOT
13 WHAT HE SAID. THE ISSUE IN MY VIEW OF WHETHER OR NOT ANY
14 TESTIMONY OR EVIDENCE COMES IN IS WHAT WAS SAID AT THE TIME
15 HE WAS IN THE JAIL AND THAT'S THE OFFER TO KILL ANOTHER
16 WITNESS IN A CASE. THAT HAS NO SIDE PROBLEMS TO IT.

17 MR. SWERLING: THAT DOESN'T, YOUR HONOR. BUT THAT
18 STATEMENT--THE WITNESS HAS ADMITTED TILLMAN WAS TALKING TO
19 HIM ABOUT THE BANK ROBBERY CASE. THE WITNESS--I ASKED HIM
20 SEVERAL TIMES IN SEVERAL DIFFERENT WAYS AND HE NEVER SAID
21 THAT TILLMAN REFERRED TO KILLING MALLOY BECAUSE OF THIS
22 MURDER CASE.

23 THE COURT: I KNOW IT.

24 MR. SWERLING: SO, THERE'S NO PROBATIVE VALUE IN THAT
25 TESTIMONY.

1 THE COURT: I UNDERSTAND WHAT YOUR ARGUMENT IS.

2 MR. SWERLING: OKAY.

3 THE COURT: ANYTHING FURTHER? MR. MORTON, THE WITNESS
4 TESTIFIED UNDER OATH BEFORE THE FEDERAL GRAND JURY AND
5 CLEARLY THE QUESTION WAS--IT WENT TO THE FEDERAL BANK
6 ROBBERY. THE PROBLEM IS THIS AND IT'S CLEAR. THERE ARE
7 SIDE PROBLEMS ALL OVER THIS CASE. THE ONLY QUESTION TO ME
8 IS WHETHER OR NOT THE STATEMENT HE OFFERED HIM MONEY TO KILL
9 MALLOY APPLIED TO THE ISSUES IN THIS CASE. THE WITNESS
10 TESTIFIED BEFORE THE FEDERAL GRAND JURY, CLEAR QUESTIONING
11 WHAT WAS IT ABOUT, AND IT WAS ABOUT THE FEDERAL BANK ROBBERY--
12 -DON'T ARGUE WITH ME, MR. MORTON. I GAVE YOU AN OPPORTUNITY
13 TO ARGUE. I'M RULING. I'M RULING THE TESTIMONY IS NOT
14 ADMISSIBLE. IT DENIES HIM THE RIGHT TO EFFECTIVELY CROSS
15 EXAMINE THAT WITNESS UPON THAT STATEMENT BECAUSE HE'S GOT TO
16 BRING OUT THE FEDERAL CHARGE BECAUSE HE'S GOT HIM UNDER OATH
17 AND HE SAID THAT CLEARLY UNDER OATH BEFORE A FEDERAL GRAND
18 JURY. THERE WAS NO RESTRICTION ON THE QUESTION OR THE
19 ANSWER. I'M NOT GOING TO ALLOW IT. IT'S PREJUDICIAL. NOT
20 ADMISSIBLE. ANYTHING ELSE? BRING THE WITNESS DOWN.

21 (WITNESS TO THE SIDE)

22 THE COURT: ALL RIGHT. ARE YOU READY FOR THE JURY TO
23 COME BACK IN? DO YOU HAVE ANOTHER WITNESS LIKE THIS?

24 MR. MORTON: YOUR HONOR, WE HAVE ANOTHER WITNESS, MR.
25 KENNETH GARDNER.

1 THE COURT: ALL RIGHT. DO WE HAVE ANY PROBLEMS WITH MR.
2 GARDNER?

3 MR. SWERLING: WE ARE LOOKING FORWARD TO SEEING MR.
4 GARDNER.

5 THE COURT: BRING THE JURY IN.

6 MR. SWERLING: I THINK THAT HE--WELL, EXCUSE ME.

7 THE COURT: JUST A MINUTE.

8 MR. SWERLING: WELL, YOUR HONOR, I APOLOGIZE.
9 APPARENTLY HIS STATEMENT IS REFERRING TO THE BANK ROBBERY
10 ALSO. I HAD TO SHIFT GEARS. HE SAYS HERE WE TALKED ABOUT
11 A LOT OF THINGS. HE WAS CHARGED WITH BANK ROBBERY.

12 THE COURT: WHAT'S HE SUPPOSED TO SAY?

13 MR. MORTON: YOUR HONOR, MR. GARDNER HAS GIVEN A
14 STATEMENT ON 1-13 OF THIS YEAR THAT HE WAS IN THE RICHLAND
15 COUNTY JAIL SINCE AROUND THE FIRST OF JUNE. HE MET RONALD
16 TILLMAN SOMETIME AROUND DECEMBER WHEN THEY MOVED HIM TO TWO
17 LEFT SECURITY. WE TALKED ABOUT A LOT OF THINGS BECAUSE HE
18 WAS CHARGED WITH BANK ROBBERY JUST LIKE I WAS. I PLED GUILTY
19 BUT HE SAID THAT HE GOT FOUND GUILTY. OF COURSE, I HAVE
20 INSTRUCTED MR. GARDNER TO LEAVE ANY REFERENCES TO THE BANK
21 ROBBERY IN FEDERAL COURT OUT. WE HAVE BOTH NOT BEEN
22 SENTENCED YET. SOMETIME AROUND CHRISTMAS HE TOLD ME THAT HE
23 WAS ALSO CHARGED WITH MURDER. HE SAID THAT HE WOULD BEAT THE
24 MURDER CHARGE BECAUSE THE GUY WHO WROTE THE STATEMENTS
25 AGAINST HIM IN THE BANK ROBBERY ALSO WROTE STATEMENTS AGAINST

1 HIM IN THE MURDER. HE SAID THE GUY'S NAME--HE SAID THE GUY'S
2 MADE ABOUT FIVE DIFFERENT STATEMENTS BUT KEPT CHANGING THEM.
3 HE SAID THAT HE HAD ABOUT SEVENTY WITNESSES THAT WERE GOING
4 TO TESTIFY FOR HIM. AROUND THE FIRST OF THE YEAR HE TOLD ME
5 THAT EVEN THOUGH HE HAD KILLED THE GUY--I THINK HE SAID HIS
6 NAME WAS DONALD--THE POLICE COULDN'T PROVE IT WITH WHAT JACK
7 SWERLING AND HIS PRIVATE INVESTIGATOR HAD TOLD HIM. HE ALSO
8 SAID THAT WE HAD SOME TIRE TRACKS FROM THE CHURCH WHERE THE
9 GUY WAS FOUND BUT WE COULDN'T PROVE THEY WERE IS BECAUSE
10 THERE ARE SO MANY CARS THAT HAVE THESE KINDS OF TIRES ON
11 THEM. HE ALSO MENTIONED THAT A WITNESS FOR THE STATE IS
12 LOCKED UP IN THE SICK WING OF THE COUNTY. HE SAID THAT HIS
13 BROTHERS ARE GOING TO TAKE CARE OF HIM. HE SAID THE GUY WAS
14 FIFTY-FOUR YEARS OLD BUT I DON'T KNOW WHO HE IS TALKING
15 ABOUT. RONALD TALKS A LOT LIKE HE'S THE BOSS. PEOPLE WHO
16 HE IS IN JAIL WITH THAT HAVE GOTTEN SUBPOENAS TO TESTIFY FOR
17 HIM HE BUYS DRINKS AND THINGS FOR THEM FROM THE CANTEEN.
18 EVEN THE GUARDS, OR SOME OF THEM, LOOK AFTER HIM. THEY BRING
19 HIM RADIOS AT NIGHT. THURSDAY NIGHT THEY EVEN MOVED HIM
20 WHERE ONE OF HIS FRIENDS ARE. HE HAS ADMITTED TO ME ON MANY
21 TIMES THAT HE KILLED THE BOY BECAUSE THE GUY KNEW ABOUT SOME
22 CRIMES THAT THEY HAD DONE BEFORE AND HE HAD TO KILL HIM TO
23 KEEP THE INFORMATION FROM GETTING OUT. HE DIDN'T SAY WHAT
24 THEY HAD DONE BUT HE JUST TOLD ME THAT HE HAD TO KILL HIM.
25 HE DID SAY THAT THE POLICE HAD THE GUN THAT WAS USED BUT HAD

1 LOST IT. HE SAID THE POLICE NEVER SEARCHED HIS HOUSE FOR A
2 WEAPON. HE ALSO SAID THAT HE SPIT ON ONE OF THE OTHER
3 WITNESSES IN FEDERAL COURT.

4 MR. SWERLING: YOUR HONOR, THIS STATEMENT IS REplete
5 WITH REFERENCES TO THE BANK ROBBERY. IT ALSO NEVER MENTIONS-

6

7 THE COURT: HE'S JUST GOING TO HAVE TO INSTRUCT HIS
8 WITNESS, I HOPE YOU HAVE, ABOUT THAT.

9 MR. MORTON: I HAVE, YOUR HONOR.

10 THE COURT: WHY DON'T YOU GIVE ME A COPY OF THAT
11 STATEMENT AND LET'S LOOK AT IT. YOU GOT AN EXTRA COPY?

12 MR. SWERLING: I'VE GOT ONE.

13 (PAUSE)

14 THE COURT: NOW THIS IS A COPY I CAN MARK ON?

15 MR. MORTON: YES, SIR.

16 THE COURT: ALL RIGHT. LET ME READ TO YOU WHAT APPEARS
17 TO ME TO BE RELEVANT ON THE ISSUES AS FAR--OF COURSE, IF IT'S
18 ALL AGAIN TO BE BELIEVABLE. I'VE BEEN IN RICHLAND COUNTY
19 JAIL SINCE AROUND THE FIRST OF JUNE. I MET RONALD TILLMAN
20 SOMETIME AROUND DECEMBER WHEN THEY MOVED HIM TO TWO LEFT
21 SECURITY. WE TALKED ABOUT A LOT OF THINGS. RIGHT THERE YOU
22 PUT A PERIOD AND STOP. STRIKE FROM BECAUSE ALL THE WAY TO
23 THE END OF THAT PARAGRAPH. PICKING BACK UP WHAT IS
24 ALLOWABLE, SOMETIME AROUND CHRISTMAS HE ALSO TOLD ME--AND I
25 WOULD STRIKE OUT "ALSO." HE TOLD ME THAT HE WAS CHARGED WITH

1 MURDER. HE SAID THAT HE WOULD BEAT THE MURDER CHARGE BECAUSE
2 THE GUY WHO WROTE THE STATEMENTS, AND THEN YOU'VE GOT TO
3 STRIKE OUT START WITH "AGAINST" AND STRIKE ALL THIS OUT:
4 AGAINST HIM IN THE BANK ROBBERY ALSO WROTE STATEMENTS AGAINST
5 HIM IN THE MURDER. HE SAID THE GUY AND WHAT YOU ARE GOING
6 TO HAVE TO DO IS EXPLAIN TO HIM HE CAN SAY THIS MUCH. IN
7 OTHER WORDS, PICKING IT BACK UP FROM WHERE I STARTED. HE
8 SAID THAT HE WOULD BEAT THE MURDER CHARGE BECAUSE THE GUY WHO
9 WROTE THE STATEMENTS MADE ABOUT FIVE DIFFERENT STATEMENTS BUT
10 KEPT CHANGING THEM, SO IT MAKES SENSE. THAT'S IN ESSENCE
11 WHAT HE SAYS. AND YOU ALSO ELIMINATE THE THING ABOUT THE
12 BANK ROBBERY. HE SAID THAT HE HAD ABOUT SEVENTY WITNESSES
13 THAT WERE GOING TO TESTIFY FOR HIM. AROUND THE FIRST OF THE
14 YEAR--ALL THIS IS IN--AROUND THE FIRST OF THE YEAR HE TOLD
15 ME THAT EVEN THOUGH HE HAD KILLED THE GUY, I THINK HE SAID
16 HIS NAME WAS DONALD, THE POLICE COULDN'T PROVE IT FROM WHAT
17 JACK SWERLING AND HIS PRIVATE INVESTIGATOR TOLD HIM. HE ALSO
18 SAID THAT WE HAD SOME TIRE TRACKS FROM THE CHURCH WHERE THE
19 GUY WAS FOUND BUT WE COULDN'T PROVE THAT THEY WERE HIS
20 BECAUSE THERE WERE SO MANY CARS THAT HAVE THESE KIND OF TIRES
21 ON THEM. HE ALSO MENTIONED THE WITNESS FOR THE STATE IS
22 LOCKED UP IN THE C.W. SICK WING OF THE COUNTY. HE SAID HIS
23 BROTHERS WERE GONNA TAKE CARE OF HIM. HE SAID THE GUY WAS
24 FIFTY-FOUR YEARS OLD BUT DIDN'T KNOW WHO HE WAS TALKING
25 ABOUT. NOW, STARTING WITH RONALD TALKS, THAT WHOLE PARAGRAPH

1 GOES OUT. IT'S NOT RELEVANT IS THE REASON IT'S OUT. THEN
2 THE NEXT PARAGRAPH STARTING ON THURSDAY NIGHT, THAT'S OUT,
3 TOO. THAT'S NOT RELEVANT. YOU PICK UP HE ADMITTED TO ME ON
4 MANY TIMES THAT HE HAD KILLED THE BOY, AND I'D STOP IT RIGHT
5 THERE AND STRIKE OUT BECAUSE THE GUY KNEW ABOUT SOME CRIMES
6 THAT THEY HAD DONE BEFORE. THEN I PICK BACK UP WHICH WOULD
7 BE ADMISSIBLE, AND HE HAD TO KILL HIM TO KEEP THE INFORMATION
8 FROM GETTING OUT. SO, THAT SENTENCE WOULD READ HE HAD
9 ADMITTED TO ME ON MANY TIMES HE KILLED THE BOY AND HE HAD TO
10 KILL HIM TO KEEP THE INFORMATION FROM GETTING OUT. HE DIDN'T
11 SAY WHAT THEY HAD DONE BUT HE JUST TOLD ME THAT HE HAD TO
12 KILL HIM. HE DID SAY THE POLICE HAD THE GUN THAT WAS USED
13 BUT HAD LOST IT. HE SAID THE POLICE NEVER SEARCHED HIS HOUSE
14 FOR THE WEAPON. HE ALSO SAID HE SPIT ON--WELL, THAT WOULD
15 COME OUT. HE ALSO SAID HE SPIT ON A WITNESS IN FEDERAL
16 COURT. THAT'S OUT. ALL RIGHT. IT SEEMS TO ME THAT
17 REDACTING IN THAT FASHION AND EXPLAINING TO HIM THAT THAT'S
18 WHAT WILL BE ADMISSIBLE CURES ALL THOSE OTHER PROBLEMS.

19 MR. SWERLING: YOUR HONOR, COULD I JUST MAKE A COUPLE
20 OF OBSERVATIONS?

21 THE COURT: YES. YOU WANT SWERLING OUT, DON'T YOU?

22 MR. SWERLING: YES, SIR. I THINK THAT PUTS ME IN A
23 POSITION OF MY CREDIBILITY--THERE'S SOMETHING WRONG ABOUT IT
24 THAT THE JURY SHOULD BE TOLD THAT I TOLD MR. TILLMAN THAT.

25 THE COURT: I KNOW IT. LET ME LOOK AT. I THOUGHT ABOUT

1 IT, MR. SWERLING. I JUST WANTED TO SEE WHAT YOU THOUGHT
2 ABOUT IT. AROUND THE FIRST OF THE YEAR HE TOLD ME THAT EVEN
3 THOUGH HE HAD KILLED THE GUY, I THINK HE SAID HIS NAME WAS
4 DONALD, THE POLICE COULDN'T PROVE IT, AND PROBABLY STOP RIGHT
5 THERE STRIKING WHAT JACK SWERLING'S PRIVATE INVESTIGATOR TOLD
6 ME. JUST TAKE ALL THAT OUT.

7 MR. MORTON: YOUR HONOR?

8 THE COURT: LET ME SEE WHAT ELSE MR. SWERLING HAS A
9 DISAGREEMENT ABOUT.

10 MR. SWERLING: THE POLICE COULDN'T PROVE IT IS IN THEN?
11 IS THAT WHAT YOU ARE SAYING? HE CAN TESTIFY TO THAT?

12 THE COURT: YES. WHY COULDN'T HE?

13 MR. SWERLING: THE OTHER PART, YOUR HONOR, IS IN THE
14 LAST PARAGRAPH.

15 THE COURT: THE LAST PARAGRAPH ON THE SECOND PAGE?

16 MR. SWERLING: ON THE SECOND PAGE.

17 THE COURT: ALL RIGHT.

18 MR. SWERLING: I GUESS--IT'S KIND OF HARD TO SAY WHETHER
19 IT'S THE LAST PARAGRAPH. IT STARTS WITH HE'S ADMITTED TO ME
20 ON MANY OCCASIONS HE KILLED THE BOY, AND THEN YOU STRUCK OUT
21 BECAUSE THE GUY KNEW ABOUT SOME CRIMES THEY HAD DONE BEFORE
22 AND HE HAD HAD TO KILL HIM. BUT HE HAD TO KILL HIM TO KEEP
23 THE INFORMATION FROM GETTING OUT.

24 THE COURT: YES.

25 MR. SWERLING: THE JURY IS GOING TO SPECULATE AS TO WHAT

1 INFORMATION HE'S TALKING ABOUT.

2 THE COURT: WELL, THEY ARE JUST GOING TO HAVE TO
3 SPECULATE, MR. SWERLING. IT COULD BE ANYTHING. TESTIFYING
4 AGAINST HIM AS TO THE MURDER OR WHAT?

5 MR. SWERLING: HE'S TALKING ABOUT SUTTON. HE HAD TO
6 KILL SUTTON TO KEEP THE INFORMATION FROM GETTING OUT. THE
7 THEORY OF THE STATE IS HE KILLED SUTTON BECAUSE OF AN ARMED
8 ROBBERY. IT MAKES SENSE TO KEEP THAT OUT.

9 THE COURT: WHAT DO YOU SAY ABOUT THAT? I WAS READING
10 IT TO MEAN MALLOY. OF COURSE, ACCORDING TO THE STATE'S
11 EVIDENCE THE DEFENDANT IN THIS CASE HAS THREATENED TO KILL
12 EVERYBODY.

13 MR. MORTON: YOUR HONOR, I SAY IT'S NOT PREJUDICIAL.
14 I MEAN IF IT'S PREJUDICIAL THE PROBATIVE VALUE CERTAINLY
15 OUTWEIGHS THE PREJUDICIAL EFFECT. IT DOESN'T HARM MR.
16 SWERLING'S CLIENT IN ANY WAY EXCEPT, YOU KNOW, THEY CAN LIKE
17 YOU SAY SPECULATE ABOUT ANYTHING. ALL THIS IS IS TO KEEP THE
18 INFORMATION FROM GETTING OUT. THERE'S NO CRIME CHARGED
19 THERE.

20 MR. SWERLING: WELL, THEN IT SAYS THEY DIDN'T SAY WHAT
21 THEY HAD DONE BUT HE JUST TOLD ME THEY HAD TO KILL HIM. I
22 MEAN THAT INDICATES THAT THERE WAS A CRIME.

23 THE COURT: IT DOESN'T HELP HIM OR HURT IT EITHER WAY.
24 IT'S JUST RIDICULOUS TO EVEN USE IT. I'M GOING TO TAKE IT
25 OUT. HE HAS ADMITTED TO ME ON MANY TIMES THAT HE'S KILLED

1 THE BOY AND HE HAD TO KILL HIM. THAT'S SUFFICIENT. I MEAN
2 THAT'S SUFFICIENT. AND YOU CAN GO ON AND SAY HE DIDN'T SAY
3 WHAT THEY HAD DONE BUT HE JUST TOLD ME HE HAD TO KILL HIM.
4 SEE, THAT MAKES SENSE.

5 MR. SWERLING: WHAT THEY HAD DONE?

6 THE COURT: HE DIDN'T SAY WHAT THEY HAD DONE BUT HE JUST
7 TOLD ME THAT HE HAD TO KILL HIM.

8 MR. SWERLING: WELL, YOUR HONOR, WHAT THEY HAD DONE
9 INDICATES THAT HE AND SUTTON HAD DONE SOMETHING.

10 THE COURT: I'M GOING TO LET THAT STAY.

11 MR. MORTON: YOUR HONOR, WE ARE BEING PRECLUDED FROM
12 PROVING ANY KIND OF MOTIVE HERE IRRESPECTIVE OF THE FACT THAT
13 IT MENTIONS ANY CRIME OR WHETHER IT DOES NOT MENTION ANY
14 CRIME. I THINK WE HAVE THE RIGHT TO BE ABLE TO PUT UP
15 WITNESSES WHO ARE GOING TO SAY THAT THE DEFENDANT FROM HIS
16 OWN MOUTH SAID THINGS THAT DON'T MENTION A CRIME. WE'VE GOT
17 TO PROVE MOTIVE.

18 THE COURT: THANK YOU, MR. MORTON. I'VE GIVEN YOU MY
19 INSTRUCTION. INSTRUCT YOUR WITNESS. ANYTHING ELSE YOU'D
20 LIKE TO SAY?

21 MR. MORTON: YOUR HONOR, IF YOU COULD, COULD WE BLACK
22 OUT THE PART THAT YOU WANT OUT SO I CAN INSTRUCT MY WITNESS
23 ABOUT WHAT NOT TO SAY.

24 THE COURT: I JUST WENT THROUGH IT WITH YOU. I'LL BE
25 HAPPY TO GIVE IT TO YOU. HAND ME YOUR COPY UP HERE IF YOU

1 WANT ME TO MARK IT.

2 MR. MORTON: I TRIED TO MARK IT, YOUR HONOR.

3 THE COURT: ALL RIGHT. COME GETS YOURS, MR. MORTON.

4 MR. SWERLING, DO YOU WANT YOURS CONFORMED? HAND IT TO ME AND
5 I'LL CONFORM IT WITH MINE. ARE YOU GOING TO NEED SOME TIME
6 TO TALK WITH HIM?

7 MR. MORTON: I'VE ALREADY TALKED WITH HIM ABOUT MOST OF
8 IT, YOUR HONOR. IT'LL JUST TAKE ME A MINUTE TO LET HIM READ
9 OVER IT.

10 THE COURT: ARE YOU READY?

11 MR. MORTON: I THINK WE NEED TO QUICKLY SETTLE THIS
12 RECORD THAT WE HAVEN'T QUITE GOTTEN TO. MR. GARDNER HAS A
13 3-14-76 CONVICTION FOR HOUSEBREAKING AND LARCENY.

14 THE COURT: WHAT SENTENCE DID HE GET?

15 MR. MORTON: HE GOT FOUR YEARS PROBATION ON THAT.
16 ONE YEAR SUSPENDED ON FOUR YEARS PROBATION SO WE WOULD ARGUE
17 THAT'S TOO REMOTE, YOUR HONOR.

18 MR. SWERLING: 10-1-77 IS RESISTING ARREST AND PETTY
19 LARCENY. WE'VE AGREED ON EVERYTHING ELSE, YOUR HONOR. THOSE
20 ARE THE ONLY ONES THAT ARE ISSUE.

21 THE COURT: WHAT DID HE GET ON THAT?

22 MR. MORTON: EIGHTY-THREE DAYS.

23 MR. SWERLING: EIGHTY-THREE DAYS. YOUR HONOR, OUR
24 POSITION WOULD BE AS OUTLINED IN THE CASES WE SUBMITTED TO
25 YOU THIS MORNING. WE ARE NOT TALKING ABOUT AN INDIVIDUAL WHO

1 TEN YEARS AGO HAD A BRUSH WITH THE LAW AND HAS BEEN FREE FROM
2 CRIMINAL CONDUCT SINCE THAT TIME. HIS CHARACTER IS DIRECTLY
3 IN ISSUE AT THIS TIME IN THE TRIAL. HIS CHARACTER HAS BEEN
4 ONE OF ISSUE THROUGHOUT HIS LIFE. HE HAS A REPEATED HISTORY
5 OF CRIMINAL CONDUCT DATING BACK TO 1977. I THINK THE RULE
6 FOR REMOTENESS WAS ESTABLISHED TO THE PEOPLE WHO AFTER A
7 PERIOD OF TEN YEARS OR ELEVEN YEARS WHEN IT'S TOO REMOTE IN
8 TIME SHOULD NOT BE ABLE TO BE IMPEACHED ABOUT SOMETHING LIKE
9 THAT, BUT WHERE SOMEONE HAS CONTINUOUSLY ENGAGED IN A COURSE
10 OF CRIMINAL CONDUCT WITHOUT INTERRUPTION UP UNTIL THE DATE
11 OF THIS TRIAL, AND HE'S JUST ENTERED A PLEA GO BANK ROBBERY
12 WITHIN THE LAST COUPLE OF MONTHS, I SUBMIT THE ISSUE OF
13 REMOTENESS IS NOT ONE BUT THE ISSUE IS WHETHER IT'S A CRIME
14 OF MORAL TURPITUDE.

15 THE COURT: ON THE--

16 MR. SWERLING: ON THE HOUSEBREAKING AND GRAND LARCENY
17 AND THE RESISTING ARREST AND PETTY LARCENY EVEN THOUGH THEY
18 ARE FROM 1976 AND '77. I SUBMIT IT'S NOT AN ISSUE OF
19 REMOTENESS ANY MORE BECAUSE OF HIS CONTINUED HISTORY OF
20 CRIMINAL CONDUCT. IT'S A QUESTION OF WHETHER OR NOT THEY ARE
21 CRIMES OF MORAL TURPITUDE.

22 THE COURT: ALL RIGHT.

23 MR. SWERLING: I BELIEVE WE SUBMITTED SOME CASES. I
24 BELIEVE THE ONE THAT'S MOST DIRECTLY REFERRED TO IS THE
25 GEORGIA CASE. WE COULD NOT FIND A SOUTH CAROLINA CASE ON

1 POINT.

2 THE COURT: HE'S REFERRING TO KRASNER VS. LESTER, CITED
3 AT 202 SOUTHEASTERN 2d 603. WELL, YOU KNOW, THAT WAS A CIVIL
4 CASE AND I'VE LOOKED AT IT. THE RULE IN SOUTH CAROLINA,
5 THERE ARE PLENTY OF CASES ON IT, I'VE HAD MY LAW CLERK
6 WORKING ON IT, AND THE CASES AND THEY START WITH STATE VS.
7 HILL AT 234 SOUTHEASTERN 2d 219, STATE VS. JOHNSON, 248
8 SOUTHEASTERN 2d 313, STATE VS. JONES, 247 SOUTHEASTERN 2d 43.
9 ALL SET UP THE PREMISE OR THE PRINCIPLE OF THE USE OF RECORDS
10 FOR IMPEACHMENT OF CRIMES OF MORAL TURPITUDE. THESE CASES
11 SAY THAT THERE REALLY IS NO MAGIC TO THE TEN YEARS. IF FACT,
12 IT SAYS THERE IS NO TIME PERIOD. THE COURT MUST MAKE SOME
13 DETERMINATION AS TO WHETHER OR NOT A CRIME IS REMOTE. IT'S
14 NOT FIXED. OF COURSE, THERE ARE SOME CASES BUT NONE OF THESE
15 SAY IT. IT'S ALWAYS BEEN THE PRACTICE THAT WHEN IT GOT
16 BEYOND TEN YEARS IT WAS A STRONG QUESTION OR ISSUE THAT THE
17 CRIME HAD BECOME TOO REMOTE IN THE CHAIN TO REALLY HAVE ANY
18 VALUE FOR ITS USE. BUT THESE LINE OF CASES DON'T SUPPORT
19 THAT. IN ADDITION TO WHICH ON YESTERDAY I MENTIONED TO YA'LL
20 AND STATE VS. JONES CLEARLY SAYS IT, YOU KNOW, YOU LOOK AT
21 THE TIME A PERSON GOT OUT OF PRISON, NOT THE DATE OF THE
22 CONVICTION. STATE VS. JONES A PERSON WAS CONVICTED IN '66
23 BUT HE DIDN'T GET OUT UNTIL SOMETIME IN 1974 AND COMMITTED
24 A CRIME IN '73, WAS PAROLED IN '73 AND COMMITTED A CRIME IN
25 '76 AND THEY TRIED TO ARGUE THE REMOTENESS AND THE COURT SAID

1 ALTHOUGH THE '66 CONVICTION WAS MORE THAN TEN YEARS OLD AT
2 THE TIME OF HIS TRIAL WHICH GIVES A LITTLE LIP SERVICE TO THE
3 TEN YEAR PROPOSITION THAT AT THE TIME OF HIS TRIAL MAY OF '77
4 ONLY FOUR YEARS HAD ELAPSED SINCE THE APPELLATE'S RELEASE
5 FROM CONFINEMENT IMPOSED FOR THE '66 ASSAULT WITH INTENT TO
6 RAPE. UNDER THOSE CIRCUMSTANCES APPELLATE'S PRIOR CONVICTION
7 WAS NOT TOO REMOTE TO POSSESS THE REQUISITE PROBATIVE VALUE.
8 SO, YOU KNOW, WHEN IT OCCURS HAS SOME IMPORTANCE. IN THE
9 STATE VS. JOHNSON CASE WHICH WAS AT 248 SOUTHEASTERN 2d 313
10 WHICH IS A 1978 DECISION OUR COURT SAID THERE IS NO RULE IN
11 THIS STATE SPECIFYING ANY NUMERICAL TIME LIMITATION BEYOND
12 WHICH A PRIOR CONVICTION IS INADMISSIBLE FOR IMPEACHMENT
13 PURPOSES. THE RULE APPLIED IS THAT THE DETERMINATION OF THE
14 POINT WHICH A PRIOR CONVICTION BECOMES ADMISSIBLE FOR SUCH
15 PURPOSES BECAUSE IT'S TOO REMOTE IN TIME IS WITHIN THE
16 DISCRETION OF THE TRIAL JUDGE AND IN THE EXERCISE OF SUCH
17 DISCRETION WILL NOT BE DISTURBED EXCEPT IN CASES OF MANIFEST
18 ABUSE OR INJUSTICE. SO, REALLY THE TEN YEARS HAS JUST BEEN
19 SOMETHING THAT'S BEEN USED. IT DOESN'T NECESSARILY MEAN
20 THAT'S IT, THE TIME PERIOD. MY VIEW OF THE CRIMES IS THE
21 REMOTENESS IS NOT AN ISSUE AND I THINK THE ISSUE SHOULD BE
22 WHETHER OR NOT THEY ARE CRIMES OF MORAL TURPITUDE. AND THAT
23 IS THE RESISTING ARREST. YA'LL GOT ANYTHING ON THAT?

24 MR. MORTON: YOUR HONOR, MY ARGUMENT ON THE RESISTING
25 ARREST, I'VE HARDLY EVER SEEN A DRUNK AND DISORDERLY THAT

1 DIDN'T GET CHARGED WITH A RESISTING ARREST AS WELL. HE GOT
2 EIGHTY-THREE DAYS FOR THAT THIRTEEN YEARS AGO.

3 THE COURT: AT THE TIME RESISTING ARREST WAS A COMMON
4 LAW OFFENSE, WASN'T IT, THAT CARRIED TEN YEARS? THAT'S WHAT
5 IT USED TO BE BEFORE THEY RE-CODIFIED IT AND CODIFIED THE
6 COMMON LAW AND ACTUALLY MADE TWO DEGREES OF RESISTING. WHAT
7 WAS THE OTHER CRIME?

8 MR. SWERLING: PETTY LARCENY AND HOUSEBREAKING.

9 THE COURT: PETTY LARCENY IS CLEARLY A CRIME OF MORAL
10 TURPITUDE. THE ONLY QUESTION ABOUT THE HOUSEBREAKING IS
11 CLEARLY A CRIME OF MORAL TURPITUDE. WHY DO YO FEEL THAT THE
12 OLD RESISTING ARREST--WELL, I WAS TRYING TO REMEMBER WHAT WE
13 USE TO DEFINE IN THE OLD COMMON LAW OF RESISTING ARREST. IT
14 USUALLY INVOLVES SOME WILFUL, INTENTIONAL ACT ON THE PART THE
15 PERSON TO SUBMIT TO A LAWFUL ARREST. IT DIDN'T REQUIRE
16 INJURY AT THE TIME.

17 MR. SWERLING: YOUR HONOR, IF WE USE THE SAME ANALOGY
18 ABOUT THE ADDINGTON CASE WHERE A FAILURE TO YIELD TO A POLICE
19 OFFICER FOR SOME REASON OR ANOTHER IS A CRIME OF MORAL
20 TURPITUDE I WOULD SUBMIT THAT IF THE FAILURE TO YIELD TO A
21 POLICE OFFICER IS A CRIME SO IS RESISTING ARREST.

22 THE COURT: I'M INCLINED TO AGREE. I'M GOING TO LET HIM
23 USE IT.

24 MR. SWERLING: YOUR HONOR, ONE OTHER POINT. YOUR HONOR,
25 THE REFERENCE TO SOMEBODY ELSE--HE ALSO MENTIONED THAT A

1 WITNESS FOR THE STATE IS LOCKED UP IN THE C.W. SICK WING OF
2 THE COUNTY AND HIS BROTHERS ARE GOING TO TAKE CARE OF HIM.
3 I WOULD ASK THAT THAT BE STRICKEN, TOO. THAT IS--THIS WOULD
4 BE REFERENCE TO--WE DON'T EVEN KNOW WHAT IT'S RELATIVE TO OR
5 RELEVANT TO.

6 THE COURT: WHAT DO YOU SAY ABOUT THAT? WHAT'S THE
7 RELEVANCE ON THIS ISSUE IN THAT ONE. HE'S SAYING THAT HIS
8 BROTHER SAYS HE'S GOING TO KILL SOMEBODY ELSE.

9 MR. MORTON: SAME RELEVANCE I FELT, YOUR HONOR, ALL
10 ALONG. IT'S WORDS OUT OF THE DEFENDANT'S OWN MOUTH. HE
11 ASSUMES THE RISK WHEN HE TALKS LIKE THAT. HE TALKS ABOUT
12 BRIBING PEOPLE.

13 THE COURT: BUT DOESN'T IT HAVE TO BE RELEVANT ON SOME
14 ISSUE IN THE TRIAL WE'RE TRYING?

15 MR. MORTON: YES, SIR.

16 THE COURT: HOW IS IT RELEVANT?

17 MR. MORTON: THE ISSUE IS HIS CONSCIOUSNESS OF GUILT.
18 HIS CONSCIOUSNESS OF GUILT JUST LIKE FLIGHT, JUST LIKE
19 THREATS, JUST LIKE BAIL JUMPING. I THINK IT'S ADMISSIBLE.

20 THE COURT: ALL RIGHT. SO, THE STATEMENT--HE ALSO
21 MENTIONS THAT A WITNESS FOR THE STATE IS LOCKED UP IN THE
22 C.W. SIDE, SICK WING OF THE COUNTY. AND HE SAYS HIS BROTHER
23 IS GOING TO TAKE CARE OF HIM. WHO ARE WE TALKING ABOUT HERE,
24 DO WE KNOW?

25 MR. SWERLING: I THINK THAT'S WHAT THE PROBLEM IS. WE

1 DON'T EVEN KNOW WHO HE'S TALKING ABOUT.

2 THE COURT: WHO ARE WE TALKING ABOUT? WELL, LET ME FIND
3 OUT.

4 MR. MORTON: HE SAID HE ADMITTED--I THINK THE WITNESS
5 SAID HE DIDN'T KNOW WHO HE WAS TALKING ABOUT SO I DON'T KNOW
6 WHO HE WAS TALKING ABOUT.

7 THE COURT: WELL, I'M GOING TO TAKE IT OUT. STRIKE THAT
8 PART. HE ALSO MENTIONED THAT A WITNESS FOR THE STATE IS
9 LOCKED IN THE C.W. SIDE, C.W. SICK WING OF THE COUNTY; HE
10 SAID HIS BROTHER IS GOING TO TAKE CARE OF THE GUY; HE SAID
11 HE WAS FIFTY-FOUR YEARS OLD AND I DON'T KNOW WHAT HE'S
12 TALKING ABOUT.

13 MR. MORTON: YOUR HONOR, DOES THE WITNESS HAVE TO KNOW
14 WHO HE'S TALKING ABOUT? I MEAN THE DEFENDANT IS THE ONE
15 SAYING IT, NOT THE WITNESS.

16 THE COURT: WELL, ONCE AGAIN, MR. MORTON, YOU SEE,
17 STATEMENTS HAVE TO BE ADMISSIBLE. YOU CAN'T PROVE THAT HE
18 WANTS TO KILL EVERYBODY IN THE WORLD WHEN YOU ARE TRYING HIM
19 FOR KILLING DONALD SUTTON. IF HE WAS KILLING WITNESSES AND
20 THINGS LIKE THAT, SOME IMAGINARY WITNESS. YOU'VE ALSO GOT
21 TO DEAL WITH THE FACT THAT I KNOW THAT THIS WITNESS HAS A
22 HISTORY OF PSYCHOLOGICAL PROBLEMS.

23 MR. MORTON: I UNDERSTAND THAT, YOUR HONOR.

24 THE COURT: SO, I HAVE TO TAKE THAT INTO CONSIDERATION
25 AS TO THE ADMISSIBILITY. HE DOESN'T KNOW WHO HE'S TALKING

1 ABOUT.

2 MR. MORTON: YOUR HONOR, BUT THE REFERENCE CLEARLY IS
3 HE'S GOING TO TAKE CARE OF SOMEBODY IN REGARDS TO THIS CASE.

4 THE COURT: IT'S ALL--IT DOESN'T GO TO THE QUESTION OF
5 WHETHER HE KILLED DONALD SUTTON AND IT'S JUST PREJUDICIAL
6 AGAIN. YA'LL BEEN TRYING TO THROW MORE MESS IN THIS CASE,
7 MR. MORTON. IT'S JUST BEEN UNBELIEVABLE. IT'S JUST BEEN A
8 CONTINUAL FIGHT FROM DAY ONE WHEN WE STARTED OUT. I'M NOT
9 GOING TO LET IT IN. DO YOU UNDERSTAND?

10 MR. MORTON: YES, SIR.

11 THE COURT: TELL HIM.

12 MR. MORTON: LET ME EXPLAIN THAT TO HIM FURTHER.

13 THE COURT: I'M GOING TO GIVE YOU PLENTY OF TIME. I
14 JUST GOT THE CALL THAT I'VE GOT TO GO MEET THE GRAND JURY,
15 DO THE GRAND JURY THING OVER IN WINNSBORO SO WE'LL BE BACK
16 HERE IN THE MORNING. THAT WILL GIVE YOU PLENTY OF TIME, MR.
17 MORTON, TO SPEND THIS AFTERNOON WITH HIM AND MAKE SURE HE
18 UNDERSTANDS AND YOU GO THROUGH IT WITH HIM SO HE WON'T MESS
19 IT UP.

20 MR. MORTON: YOUR HONOR, ARE WE GOING TO DECIDE NOW
21 WHETHER WE ARE GOING TO BE BACK IN THE MORNING?

22 THE COURT: OH, I'VE ALREADY DECIDED. WE ARE.

23 MR. SWERLING: YOUR HONOR, JUST FOR YOUR INFORMATION AS
24 I UNDERSTAND IT HE AND MARK AUSTIN ARE THE LAST WITNESSES FOR
25 THE STATE.

1 THE COURT: I DON'T KNOW. IS THAT RIGHT, MR. MORTON?

2 MR. MORTON: THAT'S PROBABLY RIGHT, YOUR HONOR, UNLESS
3 WE FIND SOMEBODY ELSE.

4 THE COURT: LISTEN, I TAKE THAT REAL SERIOUS. YA'LL
5 BEEN FINDING WITNESSES SINCE YOU THOUGHT THIS CASE WAS GOING
6 TO COME UP TWO WEEKS AGO. I MEAN IT'S BEEN A CONTINUAL
7 DIALOGUE OF NEW STUFF AND OLD STUFF AND REHASHING. YOUR
8 PROBLEM IN THIS CASE IS THE WITNESSES YOU HAD CAN'T SHOOT
9 STRAIGHT. BRING THE JURY IN.

10 (THE JURY RETURNS TO THE JURY BOX AT 3:30 P.M.)

11 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, WE HAVE
12 COMPLETED WHERE WE NEEDED TO BE, THE REASON I SENT YOU OUT.
13 WE ARE ACTUALLY READY TO PROCEED IN FURTHER TESTIMONY OF THIS
14 CASE BUT WE CAN'T PROCEED. I HAVE TO GO TO WINNSBORO TO TAKE
15 THE GRAND JURY REPORT OVER THERE. IT WILL TAKE ME FORTY-
16 FIVE MINUTES TO GET OVER THERE AND THEN IT'LL TAKE ME A HOUR
17 AND A HALF TO RECEIVE THE REPORT. SEE, I'M THE
18 ADMINISTRATIVE JUDGE FOR THE 6TH JUDICIAL CIRCUIT. I'M
19 SUPPOSED TO NOT BE HERE TODAY. I WAS SUPPOSED TO BE THERE
20 BUT BECAUSE OF THE LENGTH OF THIS TRIAL AS YOU KNOW THAT DID
21 NOT HAPPEN. WE'VE HAD TO SWITCH JUDGES AND PEOPLE AROUND AND
22 NOBODY ELSE IS AVAILABLE BUT ME. I WANT YOU BACK HERE IN THE
23 MORNING QUARTER TO TEN, OKAY? WHEN YOU COME BACK IN THE
24 MORNING WHAT I WANT YOU TO DO IS YOU CAN COME IN THROUGH THE
25 GARAGE AND PARK DOWN ON THE FIRST LEVEL THEY SAID. TELL THEM

1 YOU ARE A JUROR AND YOU CAN COME INSIDE. YOU WON'T HAVE TO
2 PARK OUT ON THE STREET OR ANYTHING LIKE THAT. YOU KNOW WHERE
3 THE GARAGE ENTRANCE IS? WHAT'S THE NAME OF THAT STREET?
4 BLANDING. THERE WILL BE OFFICERS DOWN THERE AND THEY'LL SHOW
5 YOU WHERE TO PARK AND ASK THEM WHERE TO GET ON THE ELEVATORS
6 AND THEY'LL SHOW YOU AND BRING YOU RIGHT UP. IN PLANNING FOR
7 TOMORROW THEY TELL ME THE STATE ANTICIPATE THEY HAVE THREE
8 WITNESSES. THERE MAY BE MORE BUT RIGHT NOW THAT'S WHAT THEY
9 ANTICIPATE REMAINING IN THE STATE'S CASE SO WE ANTICIPATE AT
10 LEAST COMPLETING THE STATE'S CASE TOMORROW BEFORE WE STOP.
11 OKAY? AND THEN WE'LL STOP SOMETIME TOMORROW AFTERNOON AND
12 THEN COMMENCE AGAIN ON MONDAY MORNING. AND TOMORROW I'LL
13 GIVE YOU SOME INSTRUCTIONS ABOUT MONDAY. WE WILL NOT BE IN
14 THIS COURTROOM ON MONDAY MORNING. WE ARE GOING TO HAVE TO
15 MOVE TO ANOTHER COURTROOM ON MONDAY MORNING BUT TOMORROW
16 WE'LL BE BACK HERE. OKAY? EVERYBODY UNDERSTAND? YOU
17 UNDERSTAND MY INSTRUCTION ABOUT NOT READING ANYTHING AND THIS
18 GOES UNTIL I GIVE YOU THE CASE. DON'T TALK TO ANYBODY ABOUT
19 IT. ALL RIGHT. I'M SORRY. I'LL SEE YOU TOMORROW MORNING.

20 (THE JURY LEAVES THE JURY BOX AT 3:32 P.M.)

21 THE COURT: YA'LL LOOK ON YOUR TABLE AND MAKE SURE NO
22 ONE HAS AN EXHIBIT EITHER. SHE WANTS TO CHECK THE EXHIBITS
23 BEFORE WE LEAVE. MR. SWERLING, I DON'T BELIEVE WE'LL
24 COMPLETE THREE PEOPLE TOMORROW, NOT THE WAY THINGS ARE
25 HAPPENING BUT ASSUMING THEY DO, IF THEY HAPPEN TO COMPLETE

1 IT BEFORE LUNCH TIME, YOU SHOULD BE PREPARED TO GO FORWARD
2 WITH AT LEAST A COUPLE OF YOUR WITNESSES. ALL RIGHT? I'D
3 LIKE TO WORK TOMORROW AT LEAST TO FOUR O'CLOCK. AT LEAST
4 THAT WHEN WE BRING THESE PEOPLE IN. I DON'T WANT TO WORK
5 PAST THAT BUT I WANT TO GIVE THEM SOME TIME OUT FOR SATURDAY.

6 MR. SWERLING: WELL, YOUR HONOR, THEN WE WOULD NEED
7 EVERYBODY WE SUBPOENAED FROM THE JAILS.

8 THE COURT: YOU SAID EVERYBODY. HOW MANY WITNESSES ARE
9 YOU GOING TO HAVE?

10 MR. SWERLING: THEY ARE SHORT WITNESSES BUT THEY ARE--
11 --HE ASKED ME--

12 THE COURT: YOU DON'T HAVE ANY PEOPLE NOT IN JAIL?
13 DON'T TELL ME YOU'RE LIKE THE STATE, EVERYBODY YOU KNOW IS
14 IN JAIL.

15 MR. SWERLING: UNFORTUNATELY, A LOT OF THEM ARE.

16 MR. MORTON: YOUR HONOR, WE WOULD ASK ALSO TO BE
17 FURNISHED WITH THEIR BIRTH DATES AND SOCIAL SECURITY NUMBERS
18 IF THE DEFENSE HAS THEM SO THAT WE CAN CHECK THEIR
19 CREDIBILITY PROBLEMS AS WELL.

20 MR. SWERLING: I DON'T EVEN KNOW HALF THEIR NAMES.

21 THE COURT: YOU HAVE THE LIST. I READ THEM ALL.

22 MR. MORTON: I HAVE THE LIST, YES, SIR. I HAVE THE
23 LIST.

24 THE COURT: I DON'T KNOW IF THEY ARE REQUIRED TO DO THAT
25 FOR YOU, ARE THEY? FRANKLY, I THINK THEY OUGHT TO BE

1 REQUIRED, MR. MORTON. I'LL TELL YOU THAT BUT THE BIGGEST
2 PROBLEM IN THIS STATE IS THERE'S NO DISCOVERY IN A CRIMINAL
3 CASE FOR THE STATE OR DEFENSE. AND THAT'S NOT MY FAULT, IT'S
4 NOT YOUR FAULT BUT THE RULES DON'T ALLOW IT. IT'S
5 RIDICULOUS. NO REAL DISCOVERY. YOU TAKE THE NAMES AND THEN
6 RUN THEM AND WHEN A WITNESS TESTIFIES, YOU NOW, VERIFY IT
7 AGAINST THEIR SOCIAL SECURITY NUMBER. THAT'S WHAT WE DID,
8 MR. MORTON, WHEN I PROSECUTED. YA'LL GOT MORE MECHANISM
9 TODAY THAN WE HAD.

10 MR. SWERLING: YOUR HONOR WANTS TO RUN UNTIL ABOUT FOUR?

11 THE COURT: YOU DON'T HAVE ANY PEOPLE WHO ARE NOT IN
12 JAIL, MR. SWERLING, IS WHAT I'M ASKING THAT YOU CAN PUT UP?

13 MR. SWERLING: WE COULD PROBABLY PUT UP HALF OF OUR
14 WITNESSES.

15 THE COURT: WHO DON'T HAVE RECORDS. I MEAN WHO ARE NOT
16 IN JAIL.

17 MR. SWERLING: WHO ARE NOT IN JAIL.

18 THE COURT: YES, LET'S DO THAT INSTEAD OF HAVING TO DEAL
19 WITH THAT PROBLEM ON SATURDAY. IT WILL CREATE A REAL PROBLEM
20 FOR THESE PEOPLE ON SATURDAY BUT IF YOU'LL HAVE THE NON-JAIL
21 PEOPLE AND LET'S PUT THEM UP AND HAVE THEM READY TO GO IF WE
22 CAN REACH THEM, OKAY?

23 MR. SWERLING: YOUR HONOR, THE ONLY OTHER PROBLEM I
24 WOULD HAVE WITH RESPECT TO MR. GARDNER ARE DOCTORS. IF WE
25 COULD BRING THEM IN MONDAY MORNING ALSO OR ANY PHYSICIANS.

1 THE COURT: I DON'T CARE. BRING IN WHOEVER YOU WANT TO
2 BRING IN.

3 MR. SWERLING: INSTEAD OF REQUIRING THEM TO COME IN ON
4 SATURDAY AS A WITNESS.

5 THE COURT: WELL, SOME OF THESE DOCTORS MIGHT PREFER TO
6 COME IN ON SATURDAY INSTEAD OF COMING UP HERE ON MONDAY. YOU
7 MIGHT WANT TO CHECK WITH THEM ON THAT. THAT MIGHT BE BETTER
8 FOR THEM. IT MIGHT BE EASIER TO GET THEM. LET'S DON'T DO
9 THE JAIL PEOPLE. IT'S JUST GOING TO CAUSE A PROBLEM FOR THE
10 JAIL AUTHORITIES AND TRANSPORTING THESE PEOPLE AND SECURITY
11 IS WEAKER THAN ANY TIME. THEY'VE GOT ENOUGH PROBLEMS ON THEM
12 AS IT IS. ALL RIGHT, TOMORROW MORNING. SEE YA'LL TOMORROW.

13 (RECESS AT 3:45 P.M.)

14 (COURT RESUMES JANUARY 20, 1990)

15 THE COURT: MADAM COURT REPORTER, LET THE RECORD REFLECT
16 EVERYONE IS PRESENT, COUNSEL FOR THE STATE, COUNSEL FOR THE
17 DEFENDANT AND THE DEFENDANT. ALL JURORS NOW ARE ACCOUNTED
18 FOR. WOULD YOU PLEASE BRING THE JURY IN.

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

20 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

21 MR. MORTON: YOUR HONOR, THE STATE CALLS KENNETH GARDNER
22 TO THE STAND.

23 KENNETH L. GARDNER, AFTER BEING DULY SWORN BY THE CLERK,
24 TESTIFIES AS FOLLOWS:

25 DIRECT EXAMINATION BY

1 MR. MORTON:

2 Q KENNETH, DO YOU NEED SOME WATER OR ANYTHING?

3 A NO.

4 Q TAKE YOUR HANDS DOWN FOR ME AND LOOK AT THE JURY WHEN YOU

5 TALK IF YOU DON'T MIND. KEN, HOW OLD ARE YOU?

6 A THIRTY-SIX.

7 Q WHERE ARE YOU FROM?

8 A KERSHAW COUNTY.

9 Q OKAY. WHEREABOUTS IN KERSHAW COUNTY?

10 A LUGOFF.

11 Q AND YOU SAY YOU ARE THIRTY-SIX YEARS OLD?

12 A THIRTY-SIX.

13 Q AND YOU WERE BORN WHAT DAY?

14 A

15 Q OKAY. YOU LIVED IN LUGOFF MOST OF YOUR LIFE?

16 A ALL MY LIFE.

17 Q OKAY. YOU ARE IN JAIL NOW, IS THAT RIGHT?

18 A RIGHT.

19 Q KEN, YOU WERE IN A CAR ACCIDENT?

20 A RIGHT.

21 Q WHEN WAS THAT?

22 A 1973.

23 Q WHEN DID YOU GRADUATE FROM HIGH SCHOOL?

24 A 1972.

25 Q WHAT KIND OF CAR ACCIDENT WERE YOU IN? WHAT HAPPENED?

1 A GOING PRETTY FAST AND WENT 'ROUND A CURVE THAT HAD SAND
2 WASHED ALL OVER THE ROAD.
3 Q AND WHAT HAPPENED?
4 A LOST CONTROL OF THE CAR.
5 Q WHAT KIND OF INJURIES DID YOU HAVE?
6 A WELL, HER CAR GOT AIRBORNE AND HIT A BRICK COLUMN AND BRICKS
7 COME ALL THROUGH THE CAR AND IT TURNED SIDEWAYS AND TWO TREES
8 WENT THROUGH THE CAR.
9 Q WHAT KIND OF INJURIES DID YOU SUSTAIN?
10 A I GOT HIT OVER MY RIGHT EYE WITH A BRICK.
11 Q WITH A BRICK? IT WENT THROUGH THE WINDSHIELD OR SOMETHING?
12 A THAT'S WHAT THEY SAID.
13 Q DID IT HURT YOUR VISION IN ANY WAY?
14 A MY VISION?
15 Q RIGHT.
16 A I LOST MY PERIPHERAL VISION.
17 Q OKAY. SINCE THAT TIME, KEN, YOU'VE BEEN IN SOME TROUBLE,
18 HAVEN'T YOU?
19 A YES, SIR.
20 Q YOU'VE ALSO HAD SOME PROBLEMS WITH DRINKING AND DRUGS,
21 HAVEN'T YOU?
22 A YES, SIR.
23 Q SIR?
24 A YES, SIR.
25 Q OKAY. KEN, YOU'VE GOT A CONVICTION HERE FOR HOUSEBREAKING

1 IN 1976, IS THAT RIGHT?

2 A RIGHT.

3 Q YOU'VE GOT A RESISTING ARREST IN 1977.

4 A RIGHT.

5 Q AND A PETTY LARCENY AT THE SAME TIME?

6 A RIGHT.

7 Q YOU HAD A CHARGE OF ARMED ROBBERY IN 1978 AND ACCESSORY AFTER
8 THE FACT OF A FELONY IN 1982, RIGHT?

9 A RIGHT.

10 Q YOU'VE GOT A CHARGE OF ASSAULTING A POLICE OFFICER AND
11 RESISTING ARREST IN 1982, RIGHT?

12 A RIGHT.

13 Q AND ACCESSORY TO FELONY, BREAKING AND ENTERING, RIGHT?

14 A RIGHT.

15 Q YOU'VE GOT A ROBBERY CHARGE IN 1987, RIGHT?

16 A RIGHT.

17 Q AND NOW YOU'RE AWAITING SENTENCING IN FEDERAL COURT FOR A
18 BANK ROBBERY CHARGE, IS THAT RIGHT?

19 A RIGHT.

20 Q OKAY. KEN, WHERE HAVE YOU BEEN INCARCERATED FOR THE LAST FEW
21 MONTHS?

22 A RICHLAND COUNTY DETENTION CENTER.

23 Q OKAY. AND WHERE IN RICHLAND COUNTY DETENTION CENTER WERE YOU
24 EXACTLY? WHICH CELL?

25 A ON THE SECOND FLOOR, LEFT SECURITY.

1 Q LEFT SECURITY. NOW, DO YOU KNOW OR DID YOU MEET DOWN THERE
2 THE DEFENDANT, MR. RONALD TILLMAN?

3 A I DID.

4 Q AND HOW DID YOU MEET HIM?

5 A BY TALKING BACK AND FORTH.

6 Q OKAY. EXPLAIN TO THE JURY WHERE HIS CELL WAS IN RELATIONSHIP
7 TO YOUR CELL.

8 A SIDE BY SIDE.

9 Q OKAY. EXPLAIN TO THE JURY HOW THE CELL IS BUILT A LITTLE
10 BIT. WAS IT BUILT IN SUCH A WAY THAT IT ALLOWED YA'LL TO
11 TALK?

12 A YES.

13 Q EXPLAIN TO THE JURY HOW THAT WAS.

14 A WELL, --

15 Q PULL UP A LITTLE BIT AND LET'S TALK A LITTLE BIT LOUDER IN
16 THAT MICROPHONE SO EVERYBODY CAN HEAR YOU. OKAY?

17 A OKAY. IT WAS TWO CELLS. THEY ARE APPROXIMATELY FIVE AND A
18 HALF FEET WIDE, EIGHT FEET LONG. THE WHOLE FRONT WAS BARS
19 WITH A SLIDING DOOR THAT SLID BACK AND FORTH THAT LOCKED.
20 AND THEY HAD A BUNK AGAINST THE WALL. AT EITHER END OF THE
21 BUNK IT WOULD BE AGAINST THE WALL ON ONE END OR THE BARS ON
22 THE OTHER END. AND THEN I WAS IN THE MIDDLE CELL AND TO THE
23 RIGHT THERE WAS ANOTHER CELL BUT IT WAS A CLOSED IN STEEL
24 CELL. ON THE LEFT SIDE THERE WAS ANOTHER CELL IDENTICAL TO
25 MINE WITH BARS ON THE FRONT, FIVE FEET-- APPROXIMATELY FIVE

1 AND A HALF FEET WIDE, EIGHT FEET LONG.

2 Q WHICH ONE OF THESE OTHER TWO WAS RON TILLMAN IN?

3 A THE ONE ON THE LEFT WITH THE BARS IN THE FRONT.

4 Q OKAY. SO, YOU WERE IN THE MIDDLE CELL?

5 A RIGHT.

6 Q AND THERE WERE SOME PEOPLE ON ONE SIDE AND PEOPLE ON THE

7 OTHER OR JUST ONE PERSON ON EACH SIDE?

8 A ONE ON EACH SIDE.

9 Q OKAY. AND RON TILLMAN WAS ON YOUR LEFT SIDE?

10 A RIGHT.

11 Q WHAT SEPARATED THE TWO CELLS?

12 A JUST A SHEET OF STEEL BETWEEN THE TWO.

13 Q OKAY. HOW COULD YOU AND HE TALK?

14 A JUST BY BEING DOWN BY THE BARS AND TALK BACK AND FORTH.

15 Q OKAY. HOW LONG HAVE YOU BEEN IN THAT SECURITY CELL? HOW

16 LONG WERE YOU DOWN THERE WITH RONALD TILLMAN?

17 A SINCE HE WAS PUT IN THE CELL I GUESS AROUND THE FIRST OF

18 DECEMBER OR THE LAST OF NOVEMBER.

19 Q OKAY. AND DID YOU TALK WITH HIM A GOOD BIT?

20 A YEAH.

21 Q TELL THE JURY WHAT YOU DID DURING THE DAY AND DURING THE

22 NIGHT AND SO FORTH. WHAT DID YOU DO TO OCCUPY YOUR TIME?

23 A READ. I HAD THE NEWSPAPER DELIVERED EVERYDAY. READ THE

24 NEWSPAPER AND HAD BOOKS BROUGHT TO ME. I ALREADY HAD SOME

25 BOOKS THAT I WOULD READ AND SOMETIMES LAY AROUND AND TALK.

1 Q DID YOU TALK WITH RONALD TILLMAN?

2 A YES, SIR.

3 Q DID HE TALK TO YOU ABOUT HIMSELF AND ABOUT THE KILLING OF

4 DONALD SUTTON?

5 A YES.

6 Q DID HE TELL YOU WHERE HE WORKED, WHAT HE DID AND THAT KIND

7 OF THING?

8 A YES.

9 Q WHAT DID HE TELL YOU?

10 A HE OWNED A LIQUOR STORE AND A PARTY SHOP.

11 Q OKAY. HOW LONG HAD YOU KNOWN RONALD TILLMAN BEFORE HE

12 STARTED TALKING TO YOU ABOUT DONALD SUTTON?

13 A A COUPLE OF WEEKS I GUESS.

14 Q WOULD YA'LL TALK AT DAYTIME OR NIGHTTIME OR WHAT? OR BOTH?

15 A BOTH BUT MAINLY AT NIGHT 'CAUSE IT WASN'T AS MUCH NOISE.

16 Q OKAY. WHAT DID HE TELL YOU, KENNETH, ABOUT DONALD SUTTON?

17 A THAT THEY WOULD BE TOGETHER A LOT ON THE STREETS AND THAT

18 THEY HAD CHARGED HIM WITH KILLING HIM.

19 Q OKAY. WHAT DID HE SAY ABOUT THE DEATH OF DONALD SUTTON?

20 A HE SAID THAT HE WAS CHARGED WITH KILLING HIM BUT THAT THEY

21 WOULDN'T BE ABLE TO PROVE IT EVEN THOUGH HE DID COMMIT THE

22 CRIME OF KILLING HIM THAT HE WOULD NOT BE ABLE TO--THE STATE

23 WOULD NOT BE ABLE TO PROVE IT.

24 Q DID HE SAY WHERE HE HAD KILLED HIM?

25 A AT A CHURCH SOMEWHERE ON BLUFF ROAD OR OFF BLUFF ROAD

1 SOMEWHERE.

2 Q DID HE SAY ANYTHING ABOUT WHY THEY WOULDN'T BE ABLE TO PROVE
3 IT? DID HE TELL YOU THAT HE HAD ANY WITNESSES OR ANYTHING?

4 A HE SAID HE HAD ABOUT SEVENTY PEOPLE THAT WAS WITNESSES FOR
5 HIM THAT WERE GONNA TESTIFY FOR HIM IN COURT.

6 Q DID HE SAY ANYTHING ABOUT THE MAIN WITNESS AGAINST HIM?

7 A YEAH. HE SAID THAT THAT GUY HAD WRITTEN ABOUT FIVE DIFFERENT
8 STATEMENTS BUT THEY WERE ALL DIFFERENT STATEMENTS, HE KEPT
9 CHANGING IT.

10 Q UH-HUH. DID HE SAY ANYTHING ABOUT ANY TIRE TRACKS?

11 A YES. HE SAID THEY HAD SOME TIRE TRACKS FROM THE CHURCH BUT
12 THEY WOULDN'T BE ABLE TO USE THOSE BECAUSE THERE WAS TOO MANY
13 TIRES WITH THAT, YOU KNOW, LIKE THAT ON THE STREETS.

14 Q DID YOU KNOW DONALD SUTTON?

15 A I DIDN'T KNOW HIM.

16 Q DID YOU KNOW HAYES MALLOY?

17 A I DIDN'T KNOW HIM.

18 Q DID YOU KNOW RONALD TILLMAN?

19 A NOT UNTIL I WAS LOCKED UP.

20 Q OKAY. TELL THE JURY ONE MORE TIME WHAT HE TOLD YOU ABOUT
21 WHETHER OR NOT HE HAD KILLED DONALD SUTTON.

22 A HE JUST SAID HE HAD TO.

23 MR. MORTON: THAT'S ALL I HAVE, KENNETH. PLEASE ANSWER
24 ANY QUESTIONS MR. SWERLING MIGHT HAVE.

25 MR. SWERLING: MAY WE APPROACH THE BENCH?

1 THE COURT: YES.

2 (MR. SWERLING AND MR. MORTON APPROACH THE BENCH OUT OF
3 THE PRESENCE OF THE COURT REPORTER)

4 THE COURT: GO AHEAD.

5 CROSS EXAMINATION BY

6 MR. SWERLING:

7 Q MR. GARDNER, YOU ARE NOT UP HERE TODAY FOR HUMANITARIAN
8 REASONS, ARE YOU?

9 A NO.

10 Q YOU ARE UP HERE BECAUSE THE STATE HAS MADE A COMMITMENT TO
11 YOU, HAVEN'T THEY?

12 A NO.

13 Q HAVE THEY NOT TOLD YOU THAT THEY ARE GOING TO ADVISE THE
14 FEDERAL PROSECUTOR IN YOUR BANK ROBBERY TRIAL THAT YOU
15 COOPERATED WITH THEM?

16 A WELL, THEY SAID--I ASKED THEM WOULD THEY ASK THE PROSECUTOR
17 AND TELL 'EM THAT I GIVE THE EVIDENCE THAT I HAD IN THE CASE
18 TO MAYBE EASE MY SENTENCING SOME. BUT THAT'S THE ONLY--

19 Q TO DO WHAT NOW?

20 A THAT IT MAY LIGHTEN MY SENTENCE SOME. THAT MAYBE THE JUDGE
21 WOULD BUT SO FAR AS IT STANDS NOW I'M GOING TO GET THE--

22 Q THESE GENTLEMEN OVER HERE TOLD YOU THAT THEY ARE GOING TO GO
23 TO THE FEDERAL PROSECUTOR'S OFFICE AND TELL THEM THAT YOU
24 COOPERATED WITH THEM AND CAME IN HERE AND TESTIFIED IN COURT
25 AND YOU ARE HOPING THAT IT'S GOING TO HELP YOUR BANK ROBBERY

1 SENTENCE, ISN'T THAT TRUE? THAT'S YOUR ANTICIPATION.

2 A BUT THAT'S NOT WHY I COME HERE.

3 Q I DIDN'T ASK YOU THAT. ARE YOU ANTICIPATING GETTING SOME
4 BREAK ON YOUR FEDERAL BANK ROBBERY SENTENCE FOR WHICH YOU
5 HAVE NOT YET BEEN SENTENCED?

6 A WELL, I NORMALLY GET FOURTEEN YEARS. THAT'S THE MINIMUM ON
7 MY SENTENCE.

8 Q I'M GOING TO ASK YOU AGAIN. DID YOU JUST TESTIFY THAT YOU
9 BELIEVED, THAT YOU HOPE, THAT THEY ARE GOING TO GO TO THE
10 FEDERAL PROSECUTOR AND THAT THE SENTENCING JUDGE WILL TAKE
11 THAT INTO CONSIDERATION WHEN THE FEDERAL PROSECUTOR MAKES IT
12 KNOWN TO HIM THAT YOU HAVE COOPERATED IN THIS CASE?

13 A YES.

14 Q THANK YOU. NOW, WHEN DID THIS CONVERSATION TAKE PLACE
15 BETWEEN YOU AND MR. TILLMAN?

16 A WHICH ONE?

17 Q THE CONVERSATION YOU HAD ABOUT WHERE HE SAID THAT HE KILLED
18 MR. SUTTON?

19 A MORE THAN ONE TIME.

20 Q GIVE ME THE FIRST TIME.

21 A AROUND CHRISTMAS.

22 Q AROUND CHRISTMAS? CAN YOU GIVE ME A DATE?

23 A I DON'T KNOW WHAT THE DATE OF THE MONTH WOULD BE BUT IT WOULD
24 BE SOMEWHERE AROUND THE 25TH.

25 Q SOMEWHERE AROUND THE 25TH. AND WHAT YOU ARE TELLING THE JURY

1 IS THAT--NOW, YOU DID NOT KNOW RONALD TILLMAN FROM A HOUSE
2 CAT UNTIL THE TIME THAT YOU GOT TOGETHER IN THE SAME CELL OR
3 IN CLOSE PROXIMITY TO HIM IN DECEMBER? IS THAT CORRECT?

4 A RIGHT.

5 Q YOU DIDN'T KNOW ANY OF THE CHARACTERS IN THIS CASE, IS THAT
6 CORRECT?

7 A NO.

8 Q AND YOU ARE COMING IN HERE SAYING THAT MR. TILLMAN GAVE YOU
9 A JAILHOUSE CONFESSION IN THIS CASE TO SOMEONE HE DIDN'T EVEN
10 KNOW? IS THAT WHAT YOU ARE TELLING THE JURY?

11 A YEP.

12 Q AND FOR THAT YOU ARE TRYING TO TURN THAT INTO SOME BENEFIT
13 FOR YOU NOW? TRUE OR NOT TRUE?

14 A WELL, YEAH, TRUE.

15 Q LET'S SEE. DID YOU GO TO THE POLICE RIGHT AFTER MR. TILLMAN
16 TOLD YOU THAT?

17 A YES. I CALLED THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

18 Q YOU CALLED THEM RIGHT AFTER THAT?

19 A UH-HUH (INDICATES AFFIRMATIVE).

20 Q AND WHO DID YOU SPEAK WITH?

21 A I DON'T KNOW HER NAME BUT THE SECRETARY UP THERE.

22 Q THE SECRETARY OVER THERE? YOU DON'T KNOW WHO IT WAS?

23 A I DON'T REMEMBER THE NAME.

24 Q ISN'T IT A FACT THAT THE FIRST TIME YOU SPOKE WITH ANY
25 INVESTIGATOR FROM THE SHERIFF'S DEPARTMENT WAS THIS GENTLEMAN

1 RIGHT HERE?

2 A NO.

3 Q THAT'S NOT THE FIRST TIME?

4 A NO.

5 Q ON THIS CASE?

6 A ON THIS CASE?

7 Q WELL, THIS CASE. THIS IS WHAT WE ARE HERE FOR TODAY.

8 A NO.

9 Q WHO DID YOU SPEAK WITH--WHAT INVESTIGATOR DID YOU SPEAK WITH
10 BEFORE THIS GENTLEMAN RIGHT HERE?

11 A EDWARDS.

12 Q EDWARDS. DO YOU REMEMBER WHAT DATE THAT WAS?

13 A I THINK IT WAS THE 12TH OF THIS MONTH.

14 Q THE 12TH OF THIS MONTH. LET'S SEE, TODAY IS WHAT, THE 19TH?
15 IS THAT RIGHT? THE TRIAL STARTED ON MONDAY, THE 15TH, IS
16 THAT CORRECT?

17 A CORRECT.

18 Q SO, THE FIRST TIME YOU SPOKE WITH ANY INVESTIGATING OFFICER
19 IN THIS CASE WAS THE THURSDAY BEFORE THIS TRIAL STARTED?
20 WOULD THAT BE CORRECT?

21 A NO, ON FRIDAY.

22 Q FRIDAY?

23 A I THINK IT WAS ON FRIDAY.

24 Q YES, THAT'S RIGHT. IT WOULD HAVE BEEN FRIDAY. SO, THE
25 FRIDAY BEFORE THIS TRIAL STARTED YOU COME FORTH WITH THIS

1 MIRACULOUS CONFESSION THAT MR. TILLMAN MADE IN THE JAILHOUSE?
2 IS THAT CORRECT? IS THAT TRUE OR NOT TRUE?
3 A THAT'S TRUE TO THE FACT THAT THAT WAS THE FIRST TIME I WAS
4 ABLE TO GET IN TOUCH WITH ANYBODY.
5 Q THAT WAS THE FIRST TIME YOU WERE ABLE TO GET IN TOUCH WITH
6 ANYBODY. ON THE 12TH?
7 A UH-HUH (INDICATES AFFIRMATIVE).
8 Q AND NOW THE 13TH IS THE DAY YOU GAVE MR. AUSTIN A STATEMENT
9 WHICH WOULD HAVE BEEN THE SATURDAY BEFORE THIS TRIAL STARTED,
10 ISN'T THAT TRUE?
11 A RIGHT.
12 Q SO, TWO DAYS BEFORE THE TRIAL STARTED YOU COME FORWARD AND
13 SIGN A STATEMENT THAT MR. TILLMAN MIRACULOUSLY GAVE YOU A
14 JAILHOUSE CONFESSION, ISN'T THAT CORRECT?
15 A CORRECT.
16 Q OKAY. BUT THAT WAS ONLY AFTER YOU AND THE STATE WERE ABLE
17 TO ENTER INTO SOME SORT OF LITTLE AGREEMENT, TOO, ABOUT HOW
18 THEY WERE GOING TO TRY AND HELP YOU?
19 A WELL, THEY DIDN'T SAY THEY COULD HELP ME.
20 Q THEY SAID THEY WOULD TRY, ISN'T THAT RIGHT? MR. GARDNER, YOU
21 ARE A CAREER CRIMINAL.
22 A I REALIZE THAT.
23 Q YOU HAVE BEEN IN AND OUT OF JAIL SINCE 1976?
24 A YES.
25 Q YOU KNOW THE INS AND OUTS OF THE PRISON SYSTEM, DON'T YOU?

1 A UH-HUH (INDICATES AFFIRMATIVE).

2 Q YOU KNOW THE INS AND OUTS OF THE JUDICIAL SYSTEM, TOO, DON'T

3 YOU?

4 A SOME.

5 Q AND YOU KNOW THAT IT'S A VERY SIGNIFICANT FACT FOR A

6 PROSECUTOR TO COME FORWARD AND RECOMMEND OR TELL THE JUDGE

7 WHEN SOMEONE COOPERATED WITH THEM? YOU KNOW THAT FOR A FACT,

8 DON'T YOU?

9 A YES.

10 Q THIS STATEMENT YOU GAVE LAST SATURDAY, WHICH IS A WEEK AGO

11 TODAY, FOR THE FIRST TIME REFERS TO SOME CONVERSATION YOU HAD

12 IN DECEMBER, A DATE YOU HAVE NO RECOLLECTION OF, IS THAT

13 CORRECT?

14 A APPROXIMATELY. I KNOW APPROXIMATELY WHEN IT WAS.

15 Q APPROXIMATELY AROUND CHRISTMASTIME?

16 A YEAH.

17 Q YOU MADE NO NOTES ABOUT IT, YOU HAVE NO RECORD OF ANY PHONE

18 CALL TO ANYBODY ABOUT IT BUT YOU SPOKE TO MR. EDWARDS AND MR.

19 AUSTIN LAST WEEK?

20 A UH-HUH (INDICATES AFFIRMATIVE).

21 Q WHY DID YOU WAIT THREE OR FOUR WEEKS?

22 A I COULDN'T GET IN TOUCH WITH THE INVESTIGATOR I HAD TALKED

23 TO AT THE SHERIFF'S DEPARTMENT.

24 Q WELL, LET ME SEE. WOULD YOU AGREE IT'S OVER A HUNDRED, MAYBE

25 A HUNDRED AND FIFTY, INVESTIGATORS AT THE SHERIFF'S

1 DEPARTMENT?

2 A UH-HUH (INDICATES AFFIRMATIVE).

3 Q YOU COULDN'T GET IN TOUCH WITH ANYBODY AT THE SHERIFF'S

4 DEPARTMENT?

5 A WELL, THERE'S ONE I TRIED TO GET IN TOUCH WITH IN PARTICULAR.

6 Q DID YOU TRY AND GET IN TOUCH WITH ANYBODY ELSE?

7 A NO.

8 Q DIDN'T YOU THINK IT WAS IMPORTANT ENOUGH TO PASS ON TO

9 SOMEBODY AT THE SHERIFF'S DEPARTMENT?

10 A YEAH. I LEFT A NOTE ONE TIME TO TELL THEM THAT I HAD CALLED

11 TO LEAVE IT FOR THAT INVESTIGATOR.

12 Q WHEN DID YOU DO THAT? RIGHT THAT DAY THAT YOU HEARD FROM-

13 -MR. TILLMAN TOLD YOU ABOUT THIS?

14 A THAT WAS ABOUT A WEEK LATER.

15 Q ABOUT A WEEK LATER. SO, YOU WAITED A WEEK TO PASS ON THE

16 INFORMATION, THEN YOU WAITED ANOTHER COUPLE OF WEEKS BEFORE

17 YOU TRIED TO GET IN TOUCH WITH MR. EDWARDS AND MR. AUSTIN

18 AGAIN?

19 A I HAD TO GET TO A PHONE BY MYSELF 'CAUSE MOST OF THE TIME

20 WHEN WE WENT TO THE PHONE WE WERE TOGETHER.

21 Q WELL, YOU HAD CONVERSATIONS WITH YOUR LAWYER IN BETWEEN. YOU

22 ARE WAITING FOR SENTENCING IN A BANK ROBBERY CASE. DID YOU

23 PASS IT ON TO ANYBODY ELSE?

24 A NO.

25 Q DID YOU EVER TELL ANYBODY IN THE JAIL, ANY OF THE

1 CORRECTIONAL OFFICERS OR THE WARDEN OR ANYBODY ELSE THAT YOU
2 HAD SOMETHING YOU NEEDED TO DISCUSS WITH THE POLICE IN
3 PRIVATE?

4 A NO.

5 Q DID YOU TELL THE POLICE IN THAT STATEMENT THAT MR. TILLMAN
6 TOLD YOU THAT THE POLICE HAD THE GUN IN THE CASE?

7 A YES, SIR.

8 Q YOU DID TELL THEM THAT? THAT MR. TILLMAN TOLD YOU THE POLICE
9 HAD THE GUN?

10 A BUT HAD LOST IT.

11 Q BUT THE POLICE HAD LOST IT? YOU MADE THAT STATEMENT?

12 A H-HUH (INDICATES AFFIRMATIVE).

13 Q YOU AGREE WITH THAT?

14 A UH-HUH (INDICATES AFFIRMATIVE).

15 Q AND YOU TOLD THEM THAT HE'S ADMITTED TO YOU ON MANY TIMES,
16 AN INDIVIDUAL HE DOES NOT KNOW, THAT HE HAD KILLED THIS BOY?

17 A UH-HUH (INDICATES AFFIRMATIVE).

18 Q HOW MANY OTHER PEOPLE ARE IN THAT CELLBLOCK?

19 A ONE.

20 Q IN THE CELLBLOCK?

21 A WELL, WE WERE IN SEPARATE CELLS. THERE ARE ONLY THREE CELLS
22 THERE.

23 Q THERE ARE ONLY THREE CELLS BUT THERE'S A CELLBLOCK THERE,
24 ISN'T IT?

25 A YEAH, A FEW FEET DOWN.

1 Q AND HOW MANY PEOPLE WERE THERE?

2 A APPROXIMATELY THIRTY.

3 Q MR. MORTON WENT OVER YOUR RECORD WITH YOU AND HE SAID THAT
4 YOU WERE CHARGED WITH THESE OFFENSES.

5 MR. MORTON: NO, SIR, INCORRECT.

6 Q YOU WERE CONVICTED OF ALL THESE OFFENSES, WEREN'T YOU?

7 THE COURT: I SUSTAIN IT. USE CORRECT TERMS.
8 CONVICTIONS.

9 Q THESE WERE ALL CONVICTIONS, WEREN'T THEY?

10 A TRUE.

11 Q EITHER THROUGH A PLEA OR SOME OTHER METHOD?

12 MR. MORTON: YOUR HONOR, THAT'S AN INCORRECT CROSS
13 EXAMINATION AND HE KNOWS IT. HE CAN ASK HIM IF HE'S GOT
14 CONVICTIONS JUST LIKE I DID AND LET HIM RESPOND.

15 MR. SWERLING: I DID. I AM LETTING HIM RESPOND.

16 Q THIS WAS THROUGH SOME OTHER PLEA OR SOME OTHER DISPOSITION,
17 IS THAT--

18 MR. SWERLING: CAN I ASK THAT QUESTION, YOUR HONOR?

19 THE COURT: WELL, THE PROPER THING, COUNSEL, AS YOU
20 KNOW, IS TO ASK HIM WHETHER OR NOT HE WAS CONVICTED OF A
21 SPECIFIC CRIME, THAT BEING A CRIME OF MORAL TURPITUDE.

22 Q WERE YOU CONVICTED OF ALL OF THESE CRIMES OF MORAL TURPITUDE
23 THAT MR. MORTON ASKED YOU ABOUT?

24 A YES, SIR.

25 Q THAT STARTED BACK IN 1976, MARCH 14TH, 1976, AND ENDED WITH

1 YOUR GUILTY PLEA TO BANK ROBBERY ON AUGUST 1ST, 1989, ISN'T
2 THAT CORRECT?

3 A TRUE.

4 Q SO, LET'S SEE, THAT'S ABOUT A THIRTEEN YEAR PERIOD? YOU HAD
5 ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN--

6 MR. MORTON: I OBJECT TO THIS.

7 THE COURT: I SUSTAIN THE OBJECTION.

8 Q IN ADDITION TO YOUR CONVICTION FOR HOUSEBREAKING AND LARCENY
9 ON MARCH 14TH, 1976, YOU WERE ALSO CONVICTED OF CONSPIRACY
10 TO BE AN ACCESSORY TO A FELONY, WEREN'T YOU?

11 A WHAT YEAR WAS THAT?

12 Q '76.

13 A CONSPIRACY TO A FELONY?

14 THE COURT: TELL HIM WHAT FELONY SO HE MAY KNOW.

15 Q HOUSEBREAKING AND GRAND LARCENY.

16 A YES.

17 Q NOW, IN ADDITION TO YOUR BRUSHES WITH THE LAW YOU ALSO HAD
18 SEVERAL COMMITMENTS TO MENTAL INSTITUTIONS, HAVEN'T YOU?

19 A YES.

20 Q THE STATE DIDN'T GO INTO THAT ON YOUR DIRECT EXAMINATION WITH
21 YOU, DID THEY?

22 A NO.

23 Q AS A MATTER OF FACT, YOU HAVE A LONGSTANDING HISTORY OF
24 MENTAL PROBLEMS, DO YOU NOT?

25 A I WOULDN'T SAY LONG.

1 Q WELL, WOULD YOU SAY THAT--DO YOU REMEMBER GOING TO BRYAN
2 PSYCHIATRIC HOSPITAL IN 1978 PURSUANT TO A COURT ORDER?

3 A YEAH.

4 Q OKAY. AND AT THAT TIME WASN'T THAT YOUR LIKE THIRD OR FOURTH
5 ADMISSION TO A MENTAL INSTITUTION?

6 A SECOND I BELIEVE.

7 Q SECOND? A LOT OF YOUR PROBLEMS CAME ABOUT AS A RESULT OF
8 YOUR HEAD INJURY?

9 A NO.

10 Q YOUR HEAD INJURY HAD NOTHING TO DO WITH YOUR PROBLEMS?

11 A NO.

12 Q WELL, DON'T YOU HAVE MEMORY LOSS SOMETIMES? HAVEN'T YOU
13 REPORTED TO THE PHYSICIANS THAT YOU HAVE MEMORY LOSS FOR LONG
14 PERIODS OF TIME?

15 A NO.

16 Q YOU NEVER REPORTED THAT TO A PHYSICIAN?

17 A I HAD MEMORY LOSS WHEN I WAS UNCONSCIOUS FOR A WHILE IN THE
18 CAR ACCIDENT.

19 Q I'M TALKING ABOUT SINCE THE CAR ACCIDENT HAVEN'T YOU HAD
20 PERIODS OF BLACKOUTS THAT YOU'VE REPORTED TO PHYSICIANS?

21 A WELL, THAT'S FROM SOMETHING ELSE.

22 Q WELL, WE ARE GOING TO GET INTO THAT IN A MINUTE.

23 A OKAY.

24 Q YOU WENT TO BRYAN PSYCHIATRIC HOSPITAL THE FIRST TIME OR
25 MAYBE THE SECOND TIME, DO YOU REMEMBER THAT ADMISSION FROM

1 MAY 7TH, 1978, TO MAY 26TH, 1978?

2 A YES.

3 Q DO YOU REMEMBER DR. WISE?

4 A YEAH.

5 Q OKAY. DO YOU REMEMBER THEY DIAGNOSED YOU AS BEING

6 SOCIOPATHIC?

7 A NO.

8 Q YOU DON'T RECALL THAT?

9 A HUH-UH (INDICATES NEGATIVE).

10 Q DO YOU REMEMBER THEY DIAGNOSED YOU AS BEING A DRUG ABUSER?

11 A YES.

12 Q AT THAT TIME YOU WERE WHAT, TAKING TWENTY-FIVE VALIUMS AT A

13 TIME, THREE TUINOLS (ph) AND BEER AND THAT WAS YOUR DOSAGE?

14 DO YOU REMEMBER REPORTING THAT TO DR. WISE?

15 A IN WHAT PERIOD OF TIME TAKING THAT?

16 Q I'M TALKING ABOUT YOUR ADMISSION TO BRYAN MAY 7TH, 1978.

17 A THAT'S WHEN THEY CARRIED ME THERE. THAT'S PROBABLY WHAT I HAD

18 TAKEN.

19 Q OR YOU TOOK TWENTY-FIVE VALIUM, THREE TUINOL (ph) AND SEVERAL

20 BEERS AND THAT'S HOW YOU GOT IN THE HOSPITAL?

21 A YEAH.

22 Q AND THEY HAD TO DETOX YOU FROM VALIUM, DIDN'T THEY?

23 A UH-HUH (INDICATES AFFIRMATIVE). YEP.

24 Q AND DIDN'T YOU TELL DR. WISE AT THAT TIME THAT TWO OR THREE

25 TIMES A MONTH YOU THINK OF SUICIDE, YOU HAVE SUICIDAL

1 IDEATIONS?

2 A NO.

3 Q YOU DENY TELLING HER THAT?

4 A I DON'T REMEMBER TELLING HER THAT.

5 Q WELL, YOU DO HAVE SOME MEMORY PROBLEMS, DON'T YOU?

6 A NO.

7 THE COURT: MR. SWERLING, MAKE SURE WITH YOUR TERMS THAT
8 HE UNDERSTANDS IDEATIONS. EXPLAIN THAT TO HIM.

9 Q DO YOU HAVE IDEAS OF SUICIDE? DID YOU EVER THINK ABOUT
10 SUICIDE?

11 A HAVE I EVER THOUGHT ABOUT IT?

12 Q YES.

13 A YES.

14 Q AND AT ONE TIME IN YOUR LIFE IT WAS A FREQUENT THOUGHT?

15 A NO.

16 Q OKAY. HOW OFTEN WOULD YOU THINK ABOUT SUICIDE?

17 A MAYBE A COUPLE OF TIMES.

18 Q COUPLE OF TIMES. AND THIS ACCIDENT YOU HAD, DIDN'T THAT
19 RESULT IN SOME BRAIN SURGERY?

20 A YEAH. WELL, NOT BRAIN SURGERY.

21 Q WELL, I ASKED YOU IF IT WAS BRAIN SURGERY AND YOU SAID YES
22 AND NOW YOU ARE SAYING NO. I MEAN I DON'T UNDERSTAND.

23 THE COURT: WELL, LET HIM EXPLAIN IT. EXPLAIN WHAT YOU
24 MEAN.

25 A WHAT I MEAN IS I DID NOT HAVE--MY BRAIN WAS NOT OPERATED ON.

1 THE SURGERY WAS DUE TO SOMETHING--THE COVER OF YOUR BRAIN.
2 Q YOUR BRAIN WAS NOT OPERATING, IS THAT WHAT YOU SAID?
3 A THAT THEY DID NOT OPERATE ON MY BRAIN.
4 Q OH. DID YOU DESCRIBE IN YOUR ADMISSION TO THAT HOSPITAL YOU
5 HEARD VOICES SOMETIMES WHEN YOU WERE IN YOUR ROOM? TELL US
6 ABOUT THE VOICES YOU HEAR OR HEARD.
7 A I DON'T.
8 Q YOU DID. TELL THE JURY ABOUT THE VOICES YOU HEARD.
9 A I DIDN'T HEAR ANY.
10 Q YOU DENY DESCRIBING THAT?
11 THE COURT: TELL HIM TO WHO.
12 Q TO DR. WISE?
13 A I DON'T REMEMBER TELLING THEM THAT.
14 Q WOULD YOU DENY IT?
15 A I SAID I DON'T REMEMBER TELLING HER THAT.
16 Q YOU WERE REFERRED TO MENTAL HEALTH BY BRYAN PSYCHIATRIC
17 HOSPITAL AFTER YOU WERE DISCHARGED. DID YOU GO AHEAD AND DO
18 THAT? DID YOU EVER FOLLOW THEIR RECOMMENDATION?
19 A FOR A SHORT PERIOD OF TIME.
20 Q SO, YOU WENT FOR A SHORT PERIOD OF TIME AND THEN QUIT?
21 A UH-HUH (INDICATES AFFIRMATIVE).
22 Q SO, YOU FOUND YOURSELF BACK AT BRYAN, DIDN'T YOU, BACK IN
23 JUNE OF 1978?
24 A YEAH.
25 Q BRYAN IS A PSYCHIATRIC HOSPITAL, IS IT NOT, RIGHT HERE IN

1 COLUMBIA?

2 A UH-HUH (INDICATES AFFIRMATIVE).

3 Q AND YOU WERE ADMITTED FOR PSYCHIATRIC PURPOSES, CORRECT?

4 A NO.

5 Q WELL, WHAT WERE YOU DOING IN A PSYCHIATRIC HOSPITAL?

6 A FOR DRINKING AND DRUGS.

7 Q YOU WERE ADMITTED FOR THAT ON JUNE 22ND ON AN EMERGENCY

8 BASIS, WEREN'T YOU?

9 A I THINK SO.

10 Q AND YOU WERE THERE FROM JUNE 22ND, 1978, TO JULY 10TH, 1988,

11 DO YOU REMEMBER THAT?

12 A UH-HUH (INDICATES AFFIRMATIVE).

13 MR. MORTON: YOUR HONOR, WAIT A MINUTE. I'M NOT SURE

14 HE PHRASED HIS QUESTION RIGHT. FROM WHAT DATE TO WHAT DATE?

15 MR. SWERLING: JUNE 22ND, 1978, TO JULY 10TH, 1978.

16 MR. MORTON: '78. THANK YOU.

17 Q THAT'S BECAUSE YOU HAD O.D.'d ON SOME DRUGS, OVERDOSED, ISN'T

18 THAT RIGHT?

19 A YEAH.

20 Q YOU WERE TAKING DILANTIN?

21 A YEAH.

22 Q TYLENOL?

23 A UH-HUH (INDICATES AFFIRMATIVE).

24 Q AND ALCOHOL?

25 A UH-HUH (INDICATES AFFIRMATIVE).

1 Q AND YOU REPORTED THAT TIME, DID YOU NOT, THAT YOU HAD HAD
2 NUMEROUS HOSPITALIZATIONS PRIOR TO THAT TIME OR OTHER
3 HOSPITALIZATIONS AND OTHER OVERDOSE ATTEMPTS? TRUE OR NOT
4 TRUE?
5 A SAY THAT ONE MORE TIME.
6 Q YOU REPORTED TO BRYAN WHEN YOU GOT DOWN THERE ON JUNE 22ND
7 THAT YOU HAD HAD OTHER HOSPITALIZATIONS AND YOU HAD ALSO
8 ATTEMPTED OVERDOSE ON OTHER OCCASIONS OR HAD O.D.'d ON OTHER
9 OCCASIONS?
10 A HAD O.D.'d, YEAH.
11 Q AND YOU ALSO REPORTED AT THAT TIME YOU WERE ADDICTED TO
12 VALIUM, WEREN'T YOU?
13 A YEAH.
14 Q AND THEY TOLD YOU THAT YOU WERE A DRUG ABUSER AT THAT POINT,
15 DID THEY NOT?
16 A UH-HUH (INDICATES AFFIRMATIVE).
17 Q AND YOU WERE ALSO DEPRESSED AND SUICIDAL, HAD SUICIDAL
18 TENDENCIES, ISN'T THAT TRUE?
19 A I DON'T REMEMBER TELLING THEM THAT.
20 Q DO YOU DENY YOU HAD SOME SUICIDAL OR YOU ALREADY ADMITTED YOU
21 DID? THAT'S NOT AN ISSUE, RIGHT? YOU AGREE WITH THAT?
22 A UH-HUH (INDICATES AFFIRMATIVE).
23 Q AND THEY RECOMMENDED TO YOU LONG TERM CARE. DO YOU REMEMBER
24 THAT?
25 A YEAH.

1 Q DO YOU REMEMBER WALKING OUT OF THE HOSPITAL ON ONE OCCASION?
2 A YEAH.
3 Q AND YOU WEREN'T SUPPOSED TO?
4 A UH-HUH (INDICATES AFFIRMATIVE).
5 Q AND YOU REMEMBER TRYING TO CUT YOURSELF ONCE IN THE HOSPITAL?
6 ON JULY 1ST, 1978, TRYING TO COMMIT SUICIDE?
7 A NO.
8 Q YOU DON'T REMEMBER CUTTING YOURSELF?
9 A HUH-UH (INDICATES NEGATIVE).
10 Q DO YOU REMEMBER A SUICIDE ATTEMPT THAT YOU DESCRIBED TO THEM,
11 I GUESS IT MIGHT BE THE ONE THAT THEY WERE REFERRING TO BEFORE
12 WHERE YOU TOOK TWENTY-FIVE VALIUM, THREE TYLENOL AND EIGHT
13 BEERS? IS THAT THE ONE THAT GOT YOU IN THERE IN MAY?
14 A YEAH.
15 Q DID YOU FOLLOW THEIR ADVICE AND GET LONG TERM MEDICAL CARE,
16 PSYCHIATRIC CARE?
17 A NO.
18 Q YOU PRETTY MUCH DID WHAT YOU WANTED TO DO, DIDN'T YOU?
19 A YEAH.
20 Q YOU PRETTY MUCH DO WHAT YOU WANT TO DO, DON'T YOU?
21 A UH-HUH (INDICATES AFFIRMATIVE).
22 Q PARDON?
23 A YEAH.
24 Q YOUR NEXT BRUSH WITH A MENTAL INSTITUTION WAS WHEN YOU WENT
25 TO MORRIS VILLAGE. DO YOU REMEMBER THAT IN 1981?

- 1 A YEAH.
- 2 Q AND THAT WAS BY A COURT ORDER, WASN'T IT?
- 3 A YEAH.
- 4 Q AND AT THAT POINT YOU WERE HEAVILY DEPENDENT ON BARBITURATES,
5 WEREN'T YOU?
- 6 A YEAH.
- 7 Q AND YOU WERE IN THERE FROM OCTOBER 30TH, 1981, TO THE END OF
8 DECEMBER, 1981. DO YOU REMEMBER THAT?
- 9 A YEAH.
- 10 Q DO YOU REMEMBER YOUR DEPENDENCE BEING ABOUT A DAILY
11 CONSUMPTION OF TWELVE TO EIGHTEEN BEERS, SIX TO EIGHT JOINTS
12 OF MARIJUANA AND THREE TO FOUR VALIUM AND NEMBUTAL?
- 13 A YEAH.
- 14 Q TELL THE JURY WHAT THE COMBINATION OF THAT OF STUFF DOES T
15 YOU.
- 16 A IT'S A DOWNER, DEPRESSANT.
- 17 Q ALL OF THAT TOGETHER, I MEAN WHAT DOES IT ACCOMPLISH?
- 18 A A RELAXANT. LIKE I SAID, A DOWNER.
- 19 Q THAT JUST RELAXED YOU OR PUT YOU OUT?
- 20 A WELL, IF YOU BEEN USING IT LONG ENOUGH IT WON'T PUT YOU OUT.
21 SIX TO EIGHT JOINTS AND THREE TO FOUR VALIUMS AT A TIME? YOU
22 THINK THAT DOES ANY KIND OF LONG TERM DAMAGE, LONG TERM
23 EFFECT ON YOU?
- 24 A NO.
- 25 Q YOU DON'T BELIEVE IT HAS?

1 A HUH-UH (INDICATES NEGATIVE).

2 Q NOW, DO YOU REMEMBER THAT YOU REPORTED USING CHEMICAL
3 SUBSTANCES IN JAIL?

4 MR. MORTON: HE HAS TO ASK HIM WHEN HE'S TALKING ABOUT.
5 Q I'M TALKING ABOUT DURING THIS PERIOD OF TIME.

6 THE COURT: I SUSTAIN THE OBJECTION. GIVE HIM THE TIME
7 PERIOD.

8 Q BETWEEN OCTOBER 30TH, 1981, AND DECEMBER 30TH, 1981.

9 MR. MORTON: 1981.

10 A OF DOING WHAT NOW?

11 Q TAKING CHEMICAL SUBSTANCES IN JAIL.

12 A DRINKING.

13 Q DRINKING? IS THAT WHAT YOU WERE REFERRING TO WHEN YOU SAID
14 THAT?

15 A UN-HUH (INDICATES AFFIRMATIVE).

16 THE COURT: SPEAK UP.

17 A YES.

18 Q DO YOU REMEMBER REPORTING TO THE PEOPLE AT MORRIS VILLAGE AND
19 DURING THAT PERIOD OF TIME THAT YOU HAD BLACKOUTS, THAT YOU
20 HAD MEMORY LOSS, THAT YOU HAD PERIODS OF OVERDOSING AND THAT
21 YOU HAD EPISODES OF VIOLENCE THAT YOU COULDN'T CONTROL?

22 A I SAID THAT I HAD PASSED OUT FROM DRINKING.

23 Q PASSED OUT FROM DRINKING?

24 A AND DOIN' DRUGS.

25 Q AND DOING DRUGS. WELL, THOSE ARE BLACKOUTS, RIGHT?

1 A WELL, YOU GO UNCONSCIOUS, YEAH.

2 Q OKAY. AND AS A RESULT SOMETIMES YOU'D COME BACK AND HAVE

3 MEMORY LOSS OF WHAT HAPPENED?

4 A WHILE I WAS UNCONSCIOUS.

5 Q ALL RIGHT. AND YOU ALSO DESCRIBED TO THEM THAT YOU HAD

6 SOMETIMES UNCONTROLLABLE EPISODES OF VIOLENCE, DIDN'T YOU,

7 THAT YOU WANTED TO GET TAKEN CARE OF?

8 A YEAH.

9 Q AND THEY REFERRED YOU FOR AFTERCARE?

10 A YEAH.

11 Q DID YOU GO?

12 A FOR A SHORT PERIOD.

13 Q HOW LONG? I MEAN WHAT'S A SHORT PERIOD BECAUSE SO FAR YOU

14 KEEP SAYING A SHORT PERIOD? LIKE ONE VISIT, TWO VISITS?

15 A PROBABLY FOUR VISITS.

16 Q FOUR VISITS AND THEN YOU JUST STOPPED ON YOUR OWN AGAIN?

17 A YEAH.

18 Q IT DIDN'T STOP THE PROBLEM THOUGH, DID IT?

19 A NO.

20 Q ACTUALLY, WHEN YOU WENT TO MORRIS VILLAGE YOU HAD NO CHOICE

21 ABOUT WHETHER YOU'D GO TO MORRIS VILLAGE OR NOT, DID YOU?

22 A NO.

23 Q YOU WERE ON--THAT WAS AFTER YOU HAD PLED GUILTY TO THAT ARMED

24 ROBBERY THAT WE REFERRED TO. YOU REMEMBER THAT? AND THEY

25 WERE GOING TO REVOKE YOUR PROBATION, THEY GAVE YOU A CHOICE?

1 MR. MORTON: YOUR HONOR, I OBJECT.

2 MR. SWERLING: IT GOES TOWARD HIS CREDIBILITY.

3 MR. MORTON: MR. SWERLING KNOWS HOW TO QUESTION A CLIENT
4 ON HIS PRIOR CONVICTIONS.

5 MR. SWERLING: I'M NOT QUESTIONING HIM ON HIS PRIOR
6 CONVICTIONS. I'M ASKING HIM--

7 MR. MORTON: HE KNOWS WHAT HE'S DOING AND I OBJECT TO
8 IT.

9 MR. SWERLING: IF YOUR HONOR PLEASE, I'M ASKING HIM WHY
10 HE WAS AT MORRIS VILLAGE.

11 THE COURT: I'M GOING TO LET HIM GO AHEAD AND CONTINUE.
12 IT DOESN'T GO THE QUESTION OF IMPEACHING ON A PRIOR
13 CONVICTION.

14 Q WEREN'T YOU GIVEN AN OPTION OF POSSIBLE PAROLE REVOCATION OR
15 GOING TO MORRIS VILLAGE?

16 A THEY GIVE ME--RECOMMENDED THAT I GO THERE. TOLD ME TO GO
17 THERE.

18 Q SO, YOU TOOK THE CHOICE OF GOING THERE?

19 A YEAH.

20 Q RATHER THAN FACE PAROLE REVOCATION?

21 A RIGHT.

22 Q YOU TOOK THE EASY WAY OUT?

23 A YEAH. TO GO TO MORRIS VILLAGE.

24 Q YOU'D RATHER DO THAT THAN GO TO JAIL?

25 A YEAH.

1 Q BUT YOU DIDN'T FOLLOW THEIR ADVICE EITHER. YOU DIDN'T GO FOR
2 THE LONG TERM CARE THEY SUGGESTED, DID YOU?

3 A NO.

4 THE COURT: MR. SWERLING, LET'S BE MORE RELEVANT ON THAT
5 ISSUE THAN WHAT WE ARE BEING RIGHT NOW. YOU ARE ENTITLED TO
6 EXAMINE HIM ABOUT ANY CARE OR TREATMENT FOR PSYCHOLOGICAL OR
7 MENTAL OR WHATEVER.

8 MR. SWERLING: YES, SIR.

9 Q DO YOU REMEMBER GOING TO THE STATE HOSPITAL ON A COURT ORDER
10 AND FINALLY YOU WOUND UP IN THE SOUTH CAROLINA STATE HOSPITAL
11 ON FEBRUARY 6TH, 1982?

12 A YEAH.

13 Q AND YOU STAYED THERE UNTIL FEBRUARY 20TH, 1982?

14 A YEAH.

15 Q WAS THERE SOMETHING ABOUT YOUR TRYING TO HANG YOURSELF WHEN
16 YOU WERE IN JAIL?

17 A YEAH.

18 Q THAT'S THE REASON THEY SENT YOU OVER THERE, ISN'T IT?

19 A YEAH.

20 Q AND WHEN YOU WERE AT THE STATE HOSPITAL--NOW, THIS IS THE
21 SOUTH CAROLINA STATE HOSPITAL ON BULL STREET, ISN'T IT?

22 A YEAH.

23 Q TELL THE JURY WHAT DRUGS YOU WERE ON DURING THAT PERIOD OF
24 TIME THAT YOU RELATED TO THEM. DO YOU REMEMBER?

25 A WHAT DRUGS I WAS DOIN' AT THE TIME?

1 Q AND HAD BEEN DOING, YES, SIR. DO YOU REMEMBER?

2 A I BEEN TAKIN' VALIUM AND SOME TYLENOLS AT THE TIME. I THINK

3 THE SAME TIME I DONE SOME L.S.D.

4 Q L.S.D. TELL THE JURY ABOUT L.S.D. HOW DOES IT AFFECT YOUR

5 MIND?

6 A WELL, IT'S A HALLUCINOGENIC DRUG.

7 Q WHAT DOES IT DO TO YOU?

8 A IT LAST ABOUT TWELVE HOURS. KEEPS YOU AWAKE. EVERYTHING IS

9 A LITTLE BIT DIFFERENT. IT'S LIKE A DIFFERENT WORLD.

10 Q IS THAT A GOOD WORLD? YOU ENJOYED IT OBVIOUSLY.

11 A WELL, I DIDN'T DO NO MORE FOR A WHILE.

12 Q BUT YOU KNOW FOR A FACT, DON'T YOU, THAT L.S.D. HAS LONG TERM

13 EFFECTS AND CAN HAVE LONG TERM EFFECTS ON PEOPLE?

14 MR. MORTON: YOUR HONOR, I OBJECT TO THAT.

15 MR. SWERLING: I'M ASKING HIM IF HE KNOWS.

16 MR. MORTON: I'M OBJECTING TO IT.

17 THE COURT: STATE YOUR OBJECTION.

18 MR. MORTON: IT CALLS FOR A CONCLUSION AND HE KNOWS IT.

19 HE'S NOT A DOCTOR AND NEITHER IS HE.

20 MR. SWERLING: I JUST ASKED HIM IF HE KNOWS.

21 THE COURT: WELL, IT WOULD ALSO INVOLVE HIS ABILITY TO

22 KNOW THAT, WOULDN'T IT?

23 MR. SWERLING: WELL, YOUR HONOR, I'M JUST ASKING THAT

24 AS AN L.D.C. USER DOES HE KNOW WHETHER OR NOT IT CAN HAVE-

25 -

1 THE COURT: YOU ARE ASKING HIM HAS IT AFFECTED HIM?

2 MR. SWERLING: YES.

3 MR. MORTON: HE DIDN'T ASK HIM THAT.

4 Q HAS IT AFFECTED YOU?

5 A NO.

6 Q WOULD YOU ADMIT IT IF IT DID?

7 A IF IT WOULD HAVE, YEAH. IF I KNEW ABOUT IT, YEAH.

8 Q IF YOU KNEW ABOUT IT, YOU WOULD?

9 A UH-HUH (INDICATES AFFIRMATIVE).

10 Q SO, IT COULD HAVE AN EFFECT ON YOU AND YOU DON'T KNOW ABOUT
11 IT?

12 A NO.

13 Q WHAT OTHER DRUGS WERE YOU ON?

14 A MARIJUANA. VALIUM.

15 Q HOW ABOUT P.C.P.? HAVE YOU EVER HEARD OF THAT DRUG?

16 A UH-HUH (INDICATES AFFIRMATIVE).

17 Q YOU LEFT THAT ONE OUT. TELL THE JURY ABOUT YOUR ABUSE OF
18 P.C.P.

19 A YEAH, I'VE TAKEN THAT.

20 Q WHAT DOES THAT DO?

21 A IT'S A TRANQUILIZER.

22 Q A PRETTY HEAVY ONE, ISN'T IT?

23 A WELL, IF YOU WANT IT THAT WAY.

24 Q HOW DID YOU WANT IT?

25 A WELL, YOU DIDN'T WANT TO TAKE A LOT OF IT.

1 Q PARDON?

2 A YOU DIDN'T WANT TO TAKE A LOT OF IT.

3 Q HOW HAS THAT AFFECTED YOU?

4 A IT HASN'T.

5 Q NONE OF THESE DRUGS HAVE OBVIOUSLY HAD ANY EFFECT ON YOU EVEN

6 THOUGH THIS IS YOUR FOURTH OR FIFTY ADMISSION TO THE

7 HOSPITAL, IS THAT RIGHT?

8 A NO, IT'S BECAUSE I WENT BACK AND STARTED TAKING THEM AGAIN

9 AND DRINKING AGAIN.

10 Q THAT'S WHAT I'M SAYING. I MEAN THE FACT OF THE MATTER IS,

11 MR. GARDNER, THEY HAVE HAD AN EFFECT ON YOU BECAUSE SINCE

12 1976 YOU'VE BEEN AN ABUSER OF THESE DRUGS. ISN'T THAT TRUE?

13 A YEAH.

14 Q YOU THINK THEY'VE FRIED YOUR BRAIN A LITTLE BIT?

15 A NO.

16 Q DID YOU EVER TAKE MORPHINE?

17 A YEAH.

18 Q TELL THE JURY ABOUT THAT. HOW DID YOU GET MORPHINE?

19 MR. MORTON: YOUR HONOR, THAT'S NOT A PROPER QUESTION.

20 THE COURT: HOW IS THAT PROPER HOW HE GOT IT? I SUSTAIN

21 THE OBJECTION.

22 Q YOU TAKE MORPHINE?

23 A YEAH.

24 Q WHAT DO YOU TAKE IT INTRAVENOUSLY?

25 A YOU CAN.

- 1 Q HOW LONG DID YOU TAKE MORPHINE FOR?
- 2 A NOT LONG.
- 3 Q DID IT AFFECT YOU? DOES IT STILL HAVE AN EFFECT ON YOU?
- 4 A NO.
- 5 Q YOU DENY THAT IT HAS ANY PERMANENT EFFECT ON YOU?
- 6 A NO, IT DOESN'T HAVE ANY EFFECT.
- 7 Q WHAT ABOUT--LET'S SEE, YOU DIDN'T TELL THE JURY ABOUT THE
- 8 FACT YOU TOOK QUAALUDES, DID YOU?
- 9 A YEAH, I'VE TAKEN THEM.
- 10 Q YOU'VE TAKEN THEM, TOO?
- 11 A UH-HUH (INDICATES AFFIRMATIVE).
- 12 Q AND WHAT DOES THAT DO TO YOU?
- 13 A IT'S A DOWNER, SUPPRESSANT DRUG.
- 14 Q HAVE THOSE HAD ANY EFFECT ON YOU?
- 15 A NO.
- 16 Q DO YOU KNOW IF THEY'VE HAD ANY EFFECT ON YOU?
- 17 A NO.
- 18 Q DO YOU REMEMBER WHEN YOU WENT INTO THE HOSPITAL THAT TIME YOU
- 19 TOLD THE PHYSICIAN, THE ADMITTING PHYSICIAN, THAT WHILE YOU
- 20 WERE HAVING THESE EPISODES WHERE YOU WERE TAKING THESE DRUGS
- 21 YOU HAD BAD NIGHTMARES AND BUGS WERE ATTACKING YOU?
- 22 A NO.
- 23 Q DO YOU RECALL THAT OR DO YOU DENY THAT?
- 24 A I DON'T RECALL IT.
- 25 Q DON'T RECALL IT. WOULD YOU DENY THAT YOU DID?

1 A NO.

2 Q YOU WERE PLACED ON A SUICIDE PRECAUTION WHEN YOU WERE PUT
3 INTO THE STATE HOSPITAL, WEREN'T YOU?

4 A WHEN?

5 Q 1982. I KNOW THERE WERE SO MANY OF THEN. WHEN? 1982.

6 MR. MORTON: I OBJECT TO HIS EDITORIALIZING.

7 THE COURT: I SUSTAIN THE OBJECTION. MR. SWERLING, YOU
8 ARE NOT ENTITLED TO TESTIFY OR COMMENT. YOU ARE ENTITLED TO
9 QUESTION HIM. PLEASE DO NOT MAKE THOSE COMMENTS. THE JURY
10 IS INSTRUCTED TO DISREGARD IT.

11 Q DO YOU REMEMBER BEING DIAGNOSED AGAIN AS HAVING A SUBSTANCE
12 DEPENDENCE AND HAVING AN ANTISOCIAL PERSONALITY?

13 A YEAH.

14 Q WHAT DOES AN ANTISOCIAL PERSONALITY MEAN TO YOU?

15 A JUST I'D RATHER NOT BE AROUND LARGE CROWDS OF PEOPLE.

16 Q YOU DON'T LIKE PEOPLE, DO YOU?

17 A YEAH, I LIKE PEOPLE.

18 Q YOU HAVE TROUBLE SOCIALIZING WITH PEOPLE, DON'T YOU?

19 A NO.

20 Q YOU DON'T?

21 A HUH-UH (INDICATES NEGATIVE).

22 Q DO YOU REMEMBER BEING DIAGNOSED AT THAT TIME WITH A SEVERE
23 MEMORY IMPAIRMENT? AND A PASSIVE-AGGRESSIVE PERSONALITY?

24 A HUH-UH (INDICATES NEGATIVE).

25 Q YOU DON'T RECALL THAT?

- 1 A HUH-UH (INDICATES NEGATIVE).
- 2 Q WOULD YOU DENY IT?
- 3 A NO.
- 4 Q YOU WERE ABLE TO STAY OUT OF THE HOSPITAL FOR FOUR YEARS,
5 WEREN'T YOU?
- 6 A YEAH.
- 7 Q YOU WENT BACK INTO THE SOUTH CAROLINA STATE HOSPITAL ON
8 AUGUST 9TH, 1986, DIDN'T YOU?
- 9 A YEAH.
- 10 Q PURSUANT TO ANOTHER COURT TELLING YOU TO GO INTO THE
11 HOSPITAL?
- 12 A YEAH.
- 13 Q AND ON THAT ADMISSION YOU WERE DIAGNOSED OR YOU HAD TOLD THEM
14 YOU WERE EXTREMELY VIOLENT AND YOU HAD TAKEN VALIUMS AND
15 L.S.D.? YOU REMEMBER THAT?
- 16 A THAT I HAD TAKEN THEM ONCE BEFORE. I MEAN PREVIOUS TO THAT.
- 17 Q SO, YOU STILL WEREN'T TAKING THEM AT THAT TIME?
- 18 A NO.
- 19 Q WELL, WHAT WERE YOU DOING IN THE HOSPITAL?
- 20 A AN EVALUATION.
- 21 Q FOR SOME CHARGES?
- 22 A YEAH.
- 23 Q DO YOU REMEMBER THEM RECOMMENDING TO YOU THAT YOU BE
24 TRANSFERRED TO A PRIVATE FACILITY?
- 25 A YEAH.

1 Q DID YOU GO?

2 A YEAH.

3 Q DID YOU GET TREATMENT?

4 A YEAH.

5 Q HOW LONG?

6 A A COUPLE OF MONTHS.

7 Q DID YOU CONTINUE WITH YOUR TREATMENT?

8 A FOR A COUPLE OF MONTHS.

9 Q DID YOU ADMIT TO THE DOCTORS THERE THAT YOU ATTEMPTED TO HANG
10 YOURSELF?

11 A YEAH, I TOLD THEM ABOUT THAT.

12 Q DID YOU ALSO TELL THEM WHEN YOU WERE UNDER DRUGS YOUR MEMORY
13 GOT IMPAIRED?

14 A NO.

15 Q WHEN YOU ARE UNDER DRUGS, YOU HAVE INTACT MEMORY?

16 A IF I PASS OUT.

17 Q WELL, I'M ASKING YOU WHEN YOU ARE TAKING P.C.P OR L.S.D. OR
18 MORPHINE, IS YOUR MEMORY INTACT?

19 MR. MORTON: YOUR HONOR, THAT'S IRRELEVANT. THAT'S
20 IRRELEVANT TO WHAT HAPPENED ON DECEMBER OF THIS LAST YEAR,
21 FROM DECEMBER TO JANUARY.

22 THE COURT: HE'S TESTING THE WITNESS'S ABILITY TO RECALL
23 AND DEFECTS IN HIS ABILITY TO RECALL.

24 MR. MORTON: I WITHDRAW THE OBJECTION, YOUR HONOR.

25 THE COURT: IT'S OVERRULED.

1 Q WHEN YOU ARE TAKING THOSE DRUGS, IS YOUR MEMORY IMPAIRED?
2 A IF I'VE TAKEN ENOUGH TO PASS OUT.
3 Q OKAY. WHEN YOU TAKE THOSE DRUGS, SOMETIMES YOU DON'T KNOW
4 WHAT'S HAPPENING, DO YOU?
5 A IF I'M UNCONSCIOUS I DON'T.
6 Q NO, BUT EVEN IF YOU ARE CONSCIOUS WHEN YOU ARE UNDER THE
7 INFLUENCE OF THOSE KIND OF DRUGS YOU DON'T HAVE A WHOLE LOT
8 OF CONTROL OVER YOURSELF, DO YOU, OR YOUR THOUGHTS?
9 A YEAH.
10 Q YOU CAN CONTROL YOUR THOUGHTS WHEN YOU ARE ON L.S.D.? OR
11 P.C.P.?
12 A WHILE ON P.C.P. YOU CAN.
13 Q ALL RIGHT. P.C.P. YOU CAN. WHAT ABOUT L.S.D.?
14 A NO.
15 Q WHAT ABOUT MORPHINE?
16 A YEAH.
17 Q SO, AT LEAST L.S.D. YOU ADMIT THAT YOU CAN'T CONTROL YOUR
18 THOUGHTS?
19 A SOME OF THEM YOU CAN'T.
20 Q YOU COULDN'T, COULD YOU?
21 A NOT SOME OF THEM. THAT'S WHY AFTER I STOPPED TAKING IT I
22 DIDN'T TAKE IT ANY MORE.
23 THE COURT: MR. SWERLING, IT'S CLEARLY RELEVANT ON THE
24 ISSUE OF WHETHER OR NOT HE HAS HISTORY OF USE OF DRUGS AND
25 ANY EFFECT THEY MAY HAD UPON HIM. THE CRITICAL QUESTION IS

1 DID IT HAVE AN EFFECT AND WAS HE ON SUCH DRUGS OR HAD THERE
2 BEEN ANY DAMAGING EFFECT AT THE TIME IN QUESTION. LET'S BE
3 RELEVANT IN THAT REGARD.

4 MR. SWERLING: YES, SIR. I'M COMING FORWARD WITH THAT,
5 YOUR HONOR.

6 THE COURT: WELL, LET'S GET RELEVANT.

7 Q YOU WERE ADMITTED AGAIN TO THE WILLIAM S. HALL INSTITUTE IN
8 1987, WEREN'T YOU?

9 A YEAH.

10 Q AND THAT WAS BY--A COURT ORDERED YOU TO GO THERE AGAIN?

11 A YEAH.

12 Q ISN'T THAT RIGHT?

13 A YEAH.

14 Q YOU WERE HAVING SOME HOMICIDAL THOUGHTS AT THAT TIME?

15 A YEAH.

16 Q ABOUT THE PERSON WHO HAD ARRESTED YOU. YOU REMEMBER THAT?

17 A UH-HUH (INDICATES AFFIRMATIVE).

18 Q THAT'S WHY THEY SENT YOU TO THE HOSPITAL?

19 A YEAH. IT WAS FOR AN EVALUATION BEFORE COURT, ALSO.

20 Q RIGHT. BUT YOU WERE AGAIN DIAGNOSED AS STILL BEING A
21 SUBSTANCE ABUSER, ISN'T THAT RIGHT?

22 A YEAH.

23 Q SO, YOU WERE STILL TAKING DRUGS? THIS IS IN 1987.

24 A I WAS DRINKING AT THE TIME OF THAT.

25 Q WERE YOU TAKING DRUGS ALSO AT THIS PERIOD OF TIME IN 1987?

1 A YEAH, SOME.

2 Q WHAT KIND OF DRUGS?

3 A VALIUM AND MARIJUANA.

4 Q DO YOU REMEMBER TELLING DR. MCKEE THERE AT WILLIAM S. HALL
5 THAT YOU HAD SOME SIX TO EIGHT BLACKOUTS LASTING A WEEK AT
6 A TIME?

7 A I REMEMBER TELLING THEM ABOUT TAKING SOME STUFF AND DRINKING
8 AND PASSING OUT FROM IT.

9 Q HAVING BLACKOUTS THAT LASTED--

10 A PASSING OUT. IF YOU WANT TO CALL IT BLACKOUT.

11 Q WELL, YOU CALL IT PASSING OUT BUT YOU ADMIT THAT.

12 A YEAH, TAKING ENOUGH TO DRINK AND DRUGS THAT YOU PASS OUT.

13 Q DO YOU REMEMBER THEM TELLING YOU YOU HAD A PERSONALITY
14 DISORDER AT THAT TIME?

15 A YEAH.

16 Q ON APRIL 5TH, 1989, AFTER YOU WERE CHARGED WITH BANK ROBBERY
17 YOU WERE SENT TO BUTNER, NORTH CAROLINA, WEREN'T YOU?

18 A YEAH.

19 Q WHAT WAS THAT FOR?

20 A AN EVALUATION.

21 Q THE COURT ORDERED YOU TO GO THERE AGAIN?

22 A YEAH.

23 Q AND DID YOU DESCRIBE TO THEM THAT YOU HAD--YOU TOLD THEM
24 YOU'D HAD NO PROBLEM WITH DRUGS EITHER, TOO, DIDN'T YOU?

25 A UH-HUH (INDICATES AFFIRMATIVE).

1 THE COURT: IS THAT A YES?

2 A YES.

3 Q YOU TOLD THEM YOU HAD NO PROBLEM EITHER BUT YOU DID DESCRIBE
4 THAT YOU TOOK THE FOLLOWING DRUGS, DIDN'T YOU? AMPHETAMINES,
5 L.S.D., P.C.P., COKE, MARIJUANA TOGETHER WITH FORMALDEHYDE,
6 BARBITURATES, TUINOL (ph) INTRAVENOUSLY, XANAX, VALIUM AND
7 NEMBUTAL.

8 A THAT I HAD TAKEN THOSE.

9 Q AND WERE TAKING THEM AT DIFFERENT TIMES IN YOUR LIFE?

10 A YEAH, THAT I HAD TAKEN THEM IN MY LIFE BEFORE.

11 Q YOU TOLD THEM ALSO--YOU DENIED A PRIOR HISTORY OF SUICIDE.
12 WHY DID YOU DO THAT? WHY DIDN'T YOU TELL THEM THE TRUTH
13 ABOUT THAT?

14 A ABOUT WHAT NOW?

15 Q ABOUT YOUR PRIOR EFFORTS AT SUICIDE. WHEN THEY ASKED YOU
16 ABOUT IF YOU HAD EVER HAD A SUICIDAL TENDENCY.

17 A WELL, THAT WAS ONLY ONCE.

18 Q BUT YOU TOLD THEM YOU DIDN'T DO THAT. YOU NEVER TOLD THEM
19 ABOUT THAT, DID YOU?

20 A NO.

21 Q AND DID YOU TELL THEM THAT EVIL SPIRITS SOMETIMES POSSESSED
22 YOU?

23 A NO.

24 Q YOU NEVER TOLD THEM THAT?

25 A HUH-UH (INDICATES NEGATIVE).

1 Q DO YOU NOT RECALL OR YOU DON'T REMEMBER OR YOU DENY IT?
2 A DON'T RECALL IT.
3 Q DID YOU EVER TELL THEM YOU WERE AFRAID OF LOSING YOUR MIND
4 AT TIMES?
5 A NO.
6 Q DO YOU DENY YOU SAID THAT?
7 A NO.
8 Q DIDN'T YOU TELL THEM YOU DENIED DOING THE BANK ROBBERY?
9 A DID I TELL THEM WHAT?
10 Q YOU DENIED THE BANK ROBBERY.
11 A NO.
12 Q TO THE DOCTORS UP THERE?
13 A HUH-UH (INDICATES NEGATIVE).
14 Q YOU DID NOT DENY PARTICIPATING IN IT?
15 A NO, I TOLD 'EM, YOU KNOW, I COMMITTED THE BANK ROBBERY.
16 Q YOU TOLD THE DOCTORS AT BUTNER THAT YOU COMMITTED THE BANK
17 ROBBERY?
18 A YEAH.
19 Q SINCE YOU'VE BEEN IN THE JAIL, SINCE WHAT, SINCE JUNE?
20 A YEAH.
21 Q YOU ARE STILL TAKING DRUGS DOWN THERE, AREN'T YOU?
22 A I HAVE PRESCRIPTION MEDICINE FROM THE DOCTOR.
23 Q YOU TAKE PHENOBARBITAL?
24 A YEAH.
25 Q YOU TAKE PHENOTAL (ph)?

1 A PHENOBARBITAL.

2 Q FOLIC ACID?

3 A YEAH.

4 Q MOTRIN? DILANTIN?

5 A YEAH.

6 Q DALMANE?

7 A DALMANE?

8 Q YOU ARE ON DRUGS ON ALMOST A DAILY BASIS.

9 THE COURT: LET ME ANSWER THE QUESTION. YOU ASKED HIM

10 WAS HE ON DALMANE.

11 A DALMANE? NO.

12 Q OKAY. YOU TAKE DRUGS DOWN THERE ON ALMOST A DAILY BASIS,

13 DON'T YOU?

14 A PRESCRIPTION MEDICINE I HAVE TO TAKE.

15 Q DO YOU TAKE THEM ALL EVERYDAY OR DO YOU STORE THEM UP

16 SOMETIMES AND TAKE THEM MORE THAN ONE AT A TIME?

17 A I TAKE THEM EVERYDAY WHEN I'M SUPPOSED TO.

18 Q YOU NEVER STORE THEM UP?

19 A NO.

20 MR. SWERLING: I DON'T HAVE ANYTHING ELSE.

21 THE COURT: ANY REDIRECT?

22 REDIRECT EXAMINATION BY

23 MR. MORTON:

24 Q KENNETH, YOUR MAIN PROBLEMS HAVE BEEN WITH DRUGS.

25 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S LEADING THE

1 WITNESS.

2 THE COURT: YOU CAN'T LEAD YOUR WITNESS.

3 Q WHAT HAS YOUR MAIN PROBLEM--TELL THE JURY WHAT YOUR MAIN
4 PROBLEM HAS BEEN?

5 A DRUGS AND DRINKING.

6 Q OKAY. KENNETH, HAVE YOU EVER BEEN DIAGNOSED AS BEING INSANE?

7 A NO.

8 Q EVER BEEN DIAGNOSED AS HAVING ANY KIND OF MENTAL DISEASE OR
9 DEFECT?

10 A NO.

11 Q HAVE THESE DRUGS THAT YOU'VE DONE THROUGHOUT YOUR LIFE
12 PREVENTED YOU FROM HAVING THE ABILITY TO REASON OR TO RECALL?

13 A NO.

14 Q OKAY. HOW LONG HAD IT BEEN BEFORE DECEMBER OF THIS LAST YEAR
15 THAT YOU HAD DONE ANY OF THESE DRUGS?

16 A ABOUT EIGHT OR NINE MONTHS.

17 Q AT THE TIME THAT RONALD TILLMAN TOLD YOU THESE THINGS, WERE
18 THESE HAVING ANY EFFECT ON YOUR ABILITY TO LISTEN?

19 A NO.

20 Q HAVE ANY EFFECT ON YOUR ABILITY TO RELATE TO THE JURY WHAT
21 YOU HEARD?

22 A NO.

23 Q WERE YOU HEARING LITTLE VOICES DOWN IN THE CELL THAT NIGHT,
24 KEN?

25 A NO.

1 Q WHOSE VOICE WERE YOU HEARING?

2 A RON'S.

3 Q RON'S VOICE. AND DID YOU TRY AND GET IN TOUCH WITH THE

4 POLICE SOON AFTER YOU HEARD IT?

5 A YEAH.

6 Q AND WHY DIDN'T YOU TELL ANY OF THE CORRECTIONS OFFICERS AND

7 STUFF DOWN THERE ABOUT WHAT YOU HEARD IMMEDIATELY?

8 A BECAUSE HE KNEW A LOT OF THEM REAL WELL.

9 Q WHO? RON DID?

10 A YEAH.

11 Q HE KNEW SOME OF THE CORRECTIONS OFFICERS, RIGHT?

12 A YEAH.

13 Q DID THEY EVER DO ANY FAVORS FOR HIM OR ANYTHING DOWN THERE?

14 A YEAH.

15 Q SUCH AS?

16 A LET HIM HAVE A RADIO ALL NIGHT OR LET HIM HAVE A CELL OR

17 SOMETHING.

18 Q OKAY. NOW, AFTER RON TOLD YOU THESE THINGS YOU DID TRY TO

19 GET IN TOUCH WITH SOMEBODY, IS THAT RIGHT?

20 A YEAH.

21 Q DO YOU REMEMBER WHAT THE INVESTIGATOR'S NAME THAT YOU TALKED

22 TO OR TRIED TO TALK TO?

23 A STEWART.

24 Q INVESTIGATOR STEWART. LT. JIMMY STEWART WITH THE RICHLAND

25 COUNTY SHERIFF'S DEPARTMENT, IS THAT RIGHT?

1 A RIGHT.

2 Q WHAT DID YOU TELL INVESTIGATOR JIMMY STEWART?

3 A I TOLD HIM WHAT I WAS TOLD AND HE SAID HE WOULD GET IN TOUCH
4 WITH INVESTIGATOR AUSTIN AND HAVE HIM CONTACT ME.

5 Q NOW, KENNETH, DID WE CONTACT YOU FIRST OR DID YOU CONTACT US
6 FIRST WITH THIS INFORMATION THAT YOU HAD?

7 A I CONTACTED YA'LL.

8 Q AND YOU TOLD US ABOUT IT, RIGHT?

9 A RIGHT.

10 Q NOW, BEFORE YOU TOLD US ABOUT IT--

11 MR. SWERLING: YOUR HONOR, HE'S LEADING HIS WITNESS.

12 THE COURT: YOU ARE LEADING THE WITNESS, MR. MORTON.

13 YOU'VE GOT TO ASK QUESTIONS. YOU'VE GOT TO QUIT LEADING.

14 Q NOW, DID WE ENTER INTO ANY KIND OF DEAL WITH YOU BEFORE YOU
15 TOLD US THIS?

16 A NO.

17 Q AND AFTER YOU TOLD US THIS, WHAT DID WE TELL YOU THAT WE
18 WOULD DO?

19 A YOU WOULD JUST TELL THE PROSECUTOR IN MY CASE WHAT, YOU KNOW--

20 -

21 Q WHAT YOU HAD TOLD US?

22 A THAT I HAD TOLD YOU.

23 Q DOES THAT IN ANY WAY HAVE ANY EFFECT ON WHAT YOU ARE TELLING
24 US IN HERE TODAY, WHAT YOU ARE TELLING THIS JURY?

25 A NO.

1 Q WHY ARE YOU TELLING US THIS?

2 A WELL, A MAN LOST HIS LIFE FOR NO REASON. AND RON SEEMED TO
3 BE HAPPY ABOUT IT, YOU KNOW, DIDN'T CARE MUCH ABOUT THE WAY
4 HE TALKED ABOUT IT.

5 MR. SWERLING: YOUR HONOR, HE'S NOT RESPONSIVE.

6 MR. MORTON: DON'T INTERRUPT.

7 MR. SWERLING: HE'S NOT RESPONDING TO THE QUESTION.

8 MR. MORTON: I ASKED HIM WHY HE TOLD US.

9 THE COURT: HE WAS RESPONDING.

10 MR. SWERLING: WELL, I OBJECT TO HIS ANSWER.

11 THE COURT: I SUSTAIN THAT PART OF THE OBJECTION.

12 MR. MORTON: CAN HE FINISH, YOUR HONOR?

13 THE COURT: NO, SIR, HE SURE CAN'T. HE'S TESTIFYING
14 WHAT'S IN ANOTHER PERSON'S MIND. HOW CAN A WITNESS DO THAT,
15 MR. MORTON? NO WITNESS CAN DO THAT. YOU CAN DESCRIBE WHAT
16 A PERSON DOES.

17 Q HOW WAS HE ACTING DOWN THERE?

18 MR. SWERLING: THAT'S NOT PROPER REDIRECT.

19 THE COURT: I'M SORRY, I COULD NOT HEAR THE QUESTION.
20 SAY IT AGAIN, MR. MORTON.

21 MR. MORTON: I WAS ASKING HIM HOW RON WAS ACTING DOWN
22 THERE.

23 MR. SWERLING: I NEVER WENT INTO THAT ON CROSS
24 EXAMINATION.

25 THE COURT: DO YOU RECALL HIM GOING INTO THAT, MR.

1 MORTON?

2 MR. MORTON: YOUR HONOR, HE WAS ASKING HIM A WHOLE LOT
3 OF THINGS.

4 MR. SWERLING: I DIDN'T ASK HIM ANY OF THAT.

5 THE COURT: I DON'T REMEMBER ANY OF THAT EITHER.

6 MR. MORTON: THANK YOU, KENNETH.

7 THE COURT: ANYTHING ELSE?

8 MR. SWERLING: NO, SIR.

9 THE COURT: YOU MAY STEP DOWN.

10 (WITNESS TO THE SIDE)

11 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, I DON'T
12 KNOW IF THE BAILIFFS TOLD YOU BUT WE'VE MADE ARRANGEMENTS FOR
13 LUNCH FOR YOU TODAY WHEN WE STOP. SO, WHEN WE TAKE THE BREAK
14 THIS MORNING IF ANY OF YOU NEED TO CALL OR MAKE ANY
15 ARRANGEMENTS WE ARE GOING TO TAKE YOU TO LUNCH. OKAY? WE
16 DID WANT TO TRY TO DO SOMETHING REASONABLY NICE FOR YOU
17 TODAY. ALL RIGHT, CALL YOUR NEXT WITNESS.

18 MR. MORTON: YOUR HONOR, THE STATE CALL INVESTIGATOR
19 MARK AUSTIN TO THE STAND.

20 MARK AUSTIN, AFTER BEING DULY SWORN BY THE CLERK,
21 TESTIFIES AS FOLLOWS:

22 DIRECT EXAMINATION BY

23 MR. MORTON:

24 Q MR. AUSTIN, WHERE ARE YOU EMPLOYED?

25 A I'M EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

1 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?
2 A SIX AND A HALF YEARS.
3 Q WHAT DID YOU DO BEFORE YOU WERE WITH THE SHERIFF'S
4 DEPARTMENT?
5 A I WENT TO THE UNIVERSITY OF SOUTH CAROLINA.
6 Q DID YOU PLAY FOOTBALL THERE?
7 A PLAYED FOOTBALL THERE.
8 Q HOW MANY YEARS DID YOU PLAY FOOTBALL?
9 A FOUR YEARS.
10 Q DID YOU START?
11 A YES.
12 Q WHAT ARE YOUR DUTIES AT THE RICHLAND COUNTY SHERIFF'S
13 DEPARTMENT?
14 A PRESENTLY I'M ASSIGNED TO THE INVESTIGATIVE DIVISION WHICH
15 I HANDLE ALL THE ARMED ROBBERIES IN RICHLAND COUNTY.
16 Q OKAY. WERE YOU WORKING ON THE NIGHT OF DECEMBER 26TH OF
17 1988?
18 A YES, I WAS.
19 Q WHAT SHIFT WERE YOU ON THAT NIGHT?
20 A EVENING SHIFT.
21 Q WHICH IS WHAT TIME TO WHAT TIME?
22 A FROM 4:00 IN THE AFTERNOON TO 12:00 MIDNIGHT.
23 Q THAT WAS ON THE DAY AFTER CHRISTMAS, RIGHT?
24 A THAT'S CORRECT.
25 Q OKAY. WERE YOU ASSIGNED TO BE THE CHIEF INVESTIGATING

1 OFFICER ON THE DEATH OF DONALD SUTTON?

2 A YES, I WAS.

3 Q TELL US WHAT YOU WERE DOING THAT NIGHT AND WHAT HAPPENED.

4 A IT WAS ABOUT TIME TO GET OFF AND I RECEIVED A CALL THEY WERE
5 SENDING A POSSIBLE SUSPECT DOWN TO THE RICHLAND COUNTY
6 SHERIFF'S DEPARTMENT FOR ME TO TAKE A STATEMENT FROM. THEY
7 HAD A BODY THEY HAD FOUND OFF OF BARNES STREET AND THEY
8 WANTED ME TO TALK TO THIS SUBJECT.

9 Q OKAY. AND THIS PERSON THAT YOU TALKED TO, WHAT WAS HIS NAME?

10 A HIS NAME WAS HAYES MALLOY.

11 Q AND DID YOU TALK TO HIM ON THAT NIGHT?

12 A THAT'S CORRECT.

13 Q ABOUT WHAT TIME WAS THAT?

14 A HE CAME DOWN APPROXIMATELY TWENTY MINUTES, FIFTEEN MINUTES
15 'TIL TWELVE.

16 Q HOW WAS HAYES MALLOY ACTING?

17 A HAYES MALLOY WAS EXTREMELY--

18 MR. SWERLING: YOUR HONOR, I WOULD OBJECT. HE CAN
19 DESCRIBED THE WAY HE APPEARED.

20 THE COURT: I SUSTAIN THAT OBJECTION.

21 MR. MORTON: I'M SORRY, I DIDN'T UNDERSTAND.

22 THE COURT: HE OBJECTS TO YOUR QUESTION. HE'S CLEARLY
23 CORRECT THAT YOU CAN HAVE HIM DESCRIBE THE WAY HE APPEARED.

24 Q DESCRIBE THE WAY MR. MALLOY APPEARED TO YOU, MR. AUSTIN.

25 A HE APPEARED TO ME TO BE EXTREMELY EXCITED. HE APPEARED TO

1 BE TO RAMBLE ON AND JUST TALKING ABOUT THINGS THAT I WAS NOT
2 AWARE OF, PEOPLE AND PLACES AND I HAD TO TELL HIM TO SLOW
3 DOWN, SLOW DOWN, YOU KNOW, LET ME GET ALL THIS DOWN. AND HE
4 WAS EXTREMELY EXCITED.

5 Q WHAT DID HE TELL YOU?

6 A HE GAVE ME A STATEMENT.

7 MR. SWERLING: OBJECTION, YOUR HONOR. NOW, THAT--

8 THE COURT: I SUSTAIN THAT OBJECTION.

9 MR. MORTON: YOUR HONOR, I THINK IT'S AN EXCITED
10 UTTERANCE.

11 MR. SWERLING: THERE'S NO SHOWING IT'S AN EXCITED
12 UTTERANCE.

13 THE COURT: THERE'S BEEN NO SHOWING OF THAT AT THIS
14 TIME. IT'S HEARSAY TESTIMONY UNLESS IT COMES IN FOR SOME
15 OTHER REASON AND THERE'S BEEN NO FOUNDATION SHOWING THAT.

16 Q MR. AUSTIN, OF YOUR OWN PERSONAL KNOWLEDGE, DID YOU KNOW THAT
17 THEY HAD JUST FOUND A BODY THAT NIGHT?

18 A YES.

19 Q OKAY. AND MR. MALLOY, HE CAME IN TO TELL YOU ABOUT THAT, IS
20 THAT RIGHT?

21 A THAT'S CORRECT.

22 MR. MORTON: YOUR HONOR, I SUGGEST IT'S AN EXCITED
23 UTTERANCE.

24 MR. SWERLING: THAT'S NOT A PROPER FOUNDATION.

25 THE COURT: I SUSTAIN THE OBJECTION.

1 Q BUT ANYWAY HOW DID HE APPEAR TO YOU, INVESTIGATOR AUSTIN?
2 MR. SWERLING: WE'VE ALREADY GONE OVER AND ANSWERED,
3 YOUR HONOR. THE THIRD TIME.
4 THE COURT: WHAT'S THE HARM? GO AHEAD.
5 MR. MORTON: THANK YOU.
6 Q HOW DID HE APPEAR?
7 A LIKE I STATED, HE APPEARED TO BE EXCITED, HE RAMBLED ON ABOUT
8 EVENTS, PEOPLE'S NAMES AND I HAD TO MAKE SURE AND TELL HIM
9 TO SLOW DOWN, I HAD TO UNDERSTAND WHAT WAS GOING ON WHICH I
10 DID NOT UNDERSTAND WHAT WAS GOING ON.
11 Q DID YOU TAKE A STATEMENT FROM HIM?
12 A YES, I DID.
13 Q TELL THE JURY ABOUT HOW THIS PROCESS WORKS IN THIS KIND OF
14 SITUATION, ABOUT HOW YOU TAKE STATEMENTS FROM PEOPLE. WHO
15 DOES THE TALKING AND WHO DOES THE WRITING AND THAT KIND OF
16 THING.
17 A AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT WE DO NOT TAPE
18 STATEMENTS GIVEN BY WITNESSES OR SUSPECTS. A SUSPECT TELLS
19 US WHAT HAPPENS OR WHATEVER AND WE WRITE WHAT THEY TELL US
20 OR TRY TO WRITE WHAT THEY TELL US WHICH IS IN THIS CASE. HE
21 WAS GOING ON AND ON AND ON ABOUT THINGS AND I HAD TO
22 REPEATEDLY TELL HIM TO SLOW DOWN, I CANNOT KEEP UP WITH HIM,
23 YOU KNOW, I'M NOT A TYPEWRITER; PLEASE, YOU KNOW, SLOW DOWN.
24 HE WAS A SUSPECT IN THIS CASE AT FIRST. HE WAS READ HIS
25 RIGHTS. HE REFUSED TO SIGN THOSE RIGHTS WHEN HE GAVE A

1 STATEMENT.

2 Q HE GAVE ALL IN ALL ABOUT FOUR STATEMENTS, IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q THE FIRST STATEMENT, DID HE REFUSE TO SIGN IT?

5 A YES, HE DID.

6 Q AND HOW ABOUT THE TWO IN-BETWEEN STATEMENTS, THE SECOND AND
7 THIRD ONE?

8 A HE DID NOT WANT TO SIGN THOSE STATEMENTS EITHER BUT WE TOLD
9 HIM, YOU KNOW, IF HE WANTED US TO BELIEVE WHAT HE WAS TELLING
10 US HE WAS GOING TO HAVE TO, YOU KNOW, YOU BETTER SIGN IT AND
11 SWEAR TO IT WHICH HE DID.

12 Q BUT HE WAS RELUCTANT?

13 MR. SWERLING: OBJECTION, YOUR HONOR.

14 THE COURT: MR. PROSECUTOR, YOU HAVE GOT TO QUIT
15 LEADING. THE REQUIREMENTS ARE THAT YOU ASK DIRECT QUESTIONS.
16 YOU CANNOT TESTIFY, YOU CANNOT SUGGEST ANSWERS. THESE ARE
17 THE RULES THAT HAVE ALWAYS BEEN IN PLACE.

18 MR. MORTON: THANK YOU, YOUR HONOR.

19 Q HOW LONG DID YOU TALK TO HAYES MALLOY ON THAT NIGHT, MR.
20 AUSTIN?

21 A WHEN HE CAME IN APPROXIMATELY A LITTLE BIT BEFORE TWELVE,
22 TOOK THE STATEMENT, TOOK HIM TO THE LAB FOR THE SWAB TEST.

23 Q WHAT KIND OF SWAB TEST WAS THAT?

24 A THE NITRIC ACID SWAB TEST. FINGERPRINTS AND THEN AS SOON AS
25 WE GOT THROUGH WITH THAT WE WENT BACK DOWNSTAIRS IN THE

1 INVESTIGATIVE DEPARTMENT AND TALKED.

2 Q DID HE CONSENT TO ALL THAT?

3 A YES.

4 Q OKAY. GO AHEAD.

5 A TALKED WITH LT. BROWN AND WENT OVER THE STATEMENT.

6 Q WHO IS LT. BROWN NOW?

7 A LT. BROWN IS NOW THE CAPTAIN OF THE INVESTIGATIVE DIVISION.

8 Q OKAY.

9 A HE WAS A LIEUTENANT AT THE TIME.

10 Q OKAY. DID HE MENTION TO YOU ANYTHING ABOUT THE F.B.I. AT

11 THAT TIME?

12 MR. SWERLING: OBJECTION, YOUR HONOR.

13 THE COURT: YES, SIR, I SUSTAIN THE OBJECTION.

14 MR. MORTON: YOUR HONOR, I SUBMIT THAT'S NOT BEING

15 OFFERED FOR THE TRUTH OF THE MATTER ASSERTED, JUST THAT IT

16 WAS REPORTED.

17 THE COURT: I UNDERSTAND WHAT YOU SUBMIT IT FOR. I

18 OVERRULE--I MEAN I SUSTAIN HIS OBJECTION.

19 Q AS A RESULT OF THINGS THAT HE TOLD YOU THAT NIGHT, WHAT ALL

20 DID YOU DO? TELL THE JURY WHAT YOU DID.

21 A WELL, AFTER I TOOK THE STATEMENT, AFTER WE TALKED WITH HIM

22 WITH LT. BROWN, MYSELF AND LT. BROWN DISCUSSED THE SITUATION

23 AND WE LET HIM GO HOME THAT NIGHT. WE DID NOT CHARGE HIM.

24 I WENT HOME MYSELF AROUND FIVE O'CLOCK AND THEN THAT NEXT

25 MORNING I WAS CALLED TO--I WAS ASSIGNED THE CASE--TO COME

1 BACK IN WHICH WAS AROUND NINE O'CLOCK OR SO.

2 Q DID YOU GO DOWN TO THE SCENE?

3 A YES.

4 Q WHAT DID YOU DO DOWN THERE?

5 A MYSELF AND INVESTIGATOR EDWARDS WENT DOWN--

6 Q WHEN I SAY THE SCENE, I'M TALKING ABOUT--

7 A BARNES STREET.

8 Q RIGHT.

9 A MYSELF AND INVESTIGATOR EDWARDS WHO WAS ASSIGNED TO HELP ME
10 OUT ON THE CASE AND WORK WITH ME, WE WENT AND MET UP WITH OUT
11 LAB UNITS AND OTHER LAW ENFORCEMENT PERSONNEL AT THE SCENE
12 AT THE CHURCH.

13 Q DID YOU EVER GO VIEW ANY CARS OR ANYTHING ANYWHERE?

14 A NO, I DID NOT. AFTER WE LEFT--YOU ARE TALKING ABOUT CARS--

15 -

16 Q ANY CARS INVOLVED.

17 A YES. AFTER WE GOT THROUGH AT THE SCENE WHERE THE LAB TOOK
18 PHOTOGRAPHS OF THE SCENE AND THE TIRE TRACKS, WE WENT TO
19 TILLMAN'S PARTY SHOP ON SHOP ROAD. AND RONALD TILLMAN'S CAR
20 WAS PARKED OUTSIDE AND I VIEWED THE TIRES ON HIS CAR.

21 Q WHAT KIND OF TIRES WERE THEY?

22 A GOODYEAR VECTOR.

23 Q DID YOU NOTICE THAT AT THAT TIME?

24 A YES.

25 Q OKAY. THAT WAS ON THE DAY AFTER THE MURDER WHICH WOULD HAVE

1 BEEN THE 27TH?

2 A THAT'S CORRECT. 12-27-88.

3 Q DID YOU SEE RONALD TILLMAN AT THAT TIME?

4 A YES, I DID.

5 Q AND HOW DID HE APPEAR TO YOU?

6 A MYSELF--

7 MR. SWERLING: OBJECTION, YOUR HONOR. HOW DID HE APPEAR
8 TO HIM? HOW DID MR. TILLMAN APPEAR? I OBJECT TO THAT.

9 THE COURT: WHAT'S THE OBJECTION?

10 MR. SWERLING: HE'S DRAWING SOME CONCLUSION ABOUT HOW
11 HE APPEARED THEN.

12 THE COURT: I GUESS HE'S JUST GOING TO DESCRIBE WHAT HE
13 APPEARED--I DON'T SEE ANY PROBLEM WITH THAT. WHY CAN'T A
14 WITNESS DESCRIBE AN APPEARANCE? GO AHEAD.

15 MR. MORTON: THANK YOU, YOUR HONOR.

16 Q DESCRIBE HIS APPEARANCE.

17 A MYSELF AND LT. EDWARDS WENT INTO THE SHOP ALONG WITH SOME
18 OTHER LAW ENFORCEMENT PERSONNEL. TILLMAN WAS BEHIND THE
19 COUNTER. LT. EDWARDS ASKED HIM DID HE KNOW DONALD SUTTON.

20 MR. SWERLING: YOUR HONOR, I THINK THAT--

21 THE COURT: JUST A MINUTE. COME HERE.

22 MR. SWERLING: MAY WE APPROACH THE SIDEBAR?

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 JUST DESCRIBE HIS APPEARANCE FOR US, MR. AUSTIN.

2 MR. SWERLING: HE JUST SAID YOU COULDN'T DO IT.

3 MR. MORTON: I'LL WITHDRAW THE QUESTION. THAT'S FINE.

4 Q WHAT HAPPENED IN BETWEEN THE 27TH AND SAY JANUARY 3RD? DID
5 YOU TALK TO HAYES MALLOY ON A COUPLE MORE OCCASIONS?

6 A THAT'S CORRECT. OUR INVESTIGATION WAS--

7 MR. SWERLING: IF YOUR HONOR PLEASE, I'D ASK THAT THE
8 WITNESS RESPOND TO THE QUESTION AS FAR AS MR. MALLOY.

9 THE COURT: MR. WITNESS, JUST LISTEN TO HIS QUESTION,
10 MR. WITNESS, AND ANSWER THAT QUESTION.

11 A REPEAT THE QUESTION.

12 Q DID YOU TALK WITH HAYES MALLOY ON A COUPLE OF OCCASIONS AFTER
13 THAT?

14 A THAT'S CORRECT.

15 Q TELL US ABOUT YOUR INVESTIGATION AT THAT POINT?

16 MR. SWERLING: YOUR HONOR, I'M GOING TO OBJECT. THAT'S
17 TOO BROAD OF A QUESTION, TELL US ABOUT YOUR INVESTIGATION.

18 MR. MORTON: YOUR HONOR, HE'S THE CHIEF INVESTIGATING
19 OFFICER ON THIS CASE.

20 MR. SWERLING: HE CAN'T GO INTO EVERY ASPECT OF HIS
21 INVESTIGATION.

22 THE COURT: I SUSTAIN THE OBJECTION. I SUSTAIN THE
23 OBJECTION.

24 Q TELL US DID YOU TALK WITH HAYES MALLOY ON A COUPLE OF
25 OCCASIONS?

1 A YES, I DID.

2 Q AND DID YOU TAKE SOME STATEMENTS FROM HAYES MALLOY?

3 A YES, I DID.

4 Q TELL US ABOUT THE NATURE--NOT ABOUT THE NATURE OF THEM BUT
5 HOW YOU TOOK THOSE STATEMENTS. WERE THEY TAKEN THE SAME WAY
6 THAT YOU DESCRIBED TO THE JURY THAT YOU TOOK THESE OTHER
7 STATEMENTS?

8 A THAT'S CORRECT.

9 Q OKAY. AND AFTER YOU TOOK THE THIRD STATEMENT FROM MR.
10 MALLOY, WHAT DID YOU DO?

11 A MYSELF AND LT. EDWARDS AND--WELL, HE WAS INVESTIGATOR EDWARDS
12 AT THE TIME--AND LT. BROWN DISCUSSED THE CASE.

13 MR. SWERLING: IF YOUR HONOR PLEASE, NOW AGAIN THAT'S
14 NOT RESPONSIVE TO THE QUESTION. HE'S NOT BEING RESPONSIVE
15 TO THE QUESTION AND THEY ARE GOING INTO HIS INVESTIGATIVE,
16 WHAT'S GOING ON IN THE INVESTIGATOR'S MIND OR INVESTIGATORS'
17 MINDS AND I DON'T THINK THAT'S PROPER.

18 THE COURT: MR. FOREMAN, YA'LL GO AHEAD AND TAKE A
19 BREAK, OKAY? IF YA'LL NEED TO MAKE A CALL IF YOU ARE GOING
20 TO GO TO LUNCH WITH THEM, GO AHEAD AND DO THAT. THEY'LL LET
21 YOU USE THE PHONE, OKAY?

22 (THE JURY LEAVES THE JURY BOX AT 11:25 A.M.)

23 THE COURT: ALL RIGHT, THE JURY IS OUTSIDE THE PRESENCE
24 OF THE COURT. MR. MORTON, PLEASE WHILE WE ARE ON THIS BREAK
25 EVALUATE WHAT IS THE PURPOSE OR USE OF THIS WITNESS AND BE

1 MINDFUL OF YOU TEETERED VERY CLOSELY A COUPLE OF TIMES ON
2 JACKSON VS. DENNO PROBLEMS AND, YOU KNOW, GOING TO THINGS.
3 DETERMINE WHAT YOU NEED OUT OF THIS WITNESS AND MAKE SURE
4 IT'S RELEVANT ON THE ISSUE WE ARE TRYING AND THAT THIS
5 WITNESS CAN TESTIFY TO IT, OKAY, WHILE WE ARE ON THE BREAK
6 AND THEN LET'S MOVE ON. COURT IS IN RECESS.

7 (RECESS)

8 THE COURT: (AT CONCLUSION OF RECESS) BRING THE JURY
9 IN.

10 (THE JURY RETURNS TO THE JURY BOX AT 11:48 A.M.)

11 THE COURT: ALL RIGHT, MR. MORTON, YOU MAY CONTINUE YOUR
12 EXAMINATION.

13 MARK AUSTIN, AFTER BEING PREVIOUSLY SWORN BY THE CLERK,
14 TESTIFIES AS FOLLOWS:

15 DIRECT EXAMINATION BY

16 MR. MORTON:

17 Q MR. AUSTIN, HOW MANY STATEMENTS DID YOU TAKE FROM HAYES
18 MALLOY?

19 A I TOOK FOUR STATEMENTS.

20 Q AND WHAT DID YOU DO TO INVESTIGATE WHAT HE HAD TOLD YOU?

21 MR. SWERLING: YOUR HONOR, I'D OBJECT TO THAT. WHAT MR.
22 AUSTIN DID TO INVESTIGATE THE CASE IS NOT RELEVANT TO THE
23 ISSUE IN THIS CASE. HE'S GOT TO PRESENT TESTIMONY OF
24 ACTUALLY THE INVESTIGATION REVEALED AND NOT WHAT HE DID IN
25 HIS INVESTIGATION. THAT WOULD BE HEARSAY AND NOT RELEVANT.

1 THE COURT: I AGREE WITH HIM, COUNSEL. YOU KNOW, THE
2 PURPOSE OF AN INVESTIGATOR IS TO GO OUT AND GATHER EVIDENCE
3 AND THEN TELL YOU SO YOU CAN PUT THEM ON THE WITNESS STAND.
4 IT ISN'T WHAT THEY TELL HIM, IT'S WHAT THEY TELL THE COURT.
5 SO, THAT'S WHAT THE PURPOSE IS.

6 Q DID YOU INVESTIGATE WHAT HE TOLD YOU?

7 A YES, I DID.

8 Q OKAY. DID YOU ARREST RONALD TILLMAN ON THESE CHARGES?

9 A YES, I DID.

10 Q WERE YOU THERE WHEN A STATEMENT WAS TAKEN FROM HIM?

11 A YES, I WAS.

12 Q DO YOU REMEMBER WHETHER OR NOT, INVESTIGATOR AUSTIN, THAT THE
13 STATEMENT WAS TAKEN BEFORE OR AFTER HE WAS SERVED WITH THAT
14 WARRANT?

15 MR. SWERLING: YOUR HONOR, CAN WE APPROACH THE BENCH?

16 THE COURT: YES, SIR.

17 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE
18 COURT REPORTER)

19 Q THE STATEMENT THAT MR. EDWARDS--YOU WERE THERE WHEN THAT
20 STATEMENT WAS TAKEN, RIGHT?

21 A THAT'S CORRECT.

22 Q DO YOU REMEMBER WHETHER OR NOT HE GAVE THAT STATEMENT BEFORE
23 OR AFTER HE WAS SERVED WITH THE WARRANT?

24 MR. SWERLING: OBJECTION, YOUR HONOR. HE'S FITTING ONE
25 WITNESS AGAINST THE OTHER.

1 MR. MORTON: I'M JUST ASKING HIM WHAT HE REMEMBERS.

2 MR. SWERLING: MR. EDWARDS HAS ALREADY TESTIFIED THAT
3 HE SERVED THE WARRANT ON HIM BEFORE HE GAVE THE STATEMENT.
4 HE'S SEEKING--

5 MR. MORTON: I BELIEVE HE SAID BOTH.

6 THE COURT: HE'S SEEKING TO PIT ONE WITNESS AGAINST THE
7 OTHER.

8 THE COURT: I DON'T SEE THAT AS FITTING. I'M GOING TO
9 ALLOW THAT.

10 A THE STATEMENT WAS TAKEN BEFORE THE WARRANT WAS SERVED.

11 Q YOU ARE SURE ABOUT THAT?

12 A YES.

13 Q OKAY. MR. AUSTIN, DID YOU ARREST HAYES MALLOY AND CHARGE
14 HIM?

15 MR. SWERLING: YOUR HONOR, THAT IS PITTING. THAT I
16 THINK IS PITTING THE WITNESS. I MOVE IT BE STRUCK.

17 THE COURT: DID HE ARREST HAYES MALLOY?

18 MR. SWERLING: NO, THE FACT THAT MR. AUSTIN SAID THE
19 STATEMENT WAS TAKEN BEFORE THE WARRANT WAS SERVED AND LT.
20 EDWARDS HAS ALREADY SAID IT WAS THE REVERSE.

21 MR. MORTON: I BELIEVE MR. EDWARDS SAID BOTH.

22 THE COURT: HE DID SAY BOTH IF I RECALL. OF COURSE, THE
23 JURY CAN REMEMBER BEST. IT'S NOT PITTING ON THAT ISSUE. I'M
24 NOT GOING TO ALLOW THAT. GO AHEAD.

25 Q MR. AUSTIN, DID YOU ARREST HAYES MALLOY?

1 A YES, I DID.

2 Q WHY DID YOU ARREST HAYES MALLOY?

3 MR. SWERLING: OBJECTION, YOUR HONOR. I OBJECT TO THAT
4 AS AGAIN AS A RESULT OF HIS INVESTIGATION.

5 THE COURT: WHAT IS THE PURPOSE OF THE TESTIMONY ON THE
6 ISSUE IN THIS CASE AS TO WHETHER OR NOT HE ARRESTED HAYES
7 MALLOY OR NOT?

8 MR. MORTON: WELL, I THINK IT'S REAL IMPORTANT FOR HIM
9 TO EXPLAIN--

10 THE COURT: HE HASN'T GOT TO EXPLAIN ANYTHING, YOU KNOW,
11 IN THE SENSE YOU GO BEFORE A MAGISTRATE AND APPLY FOR
12 PROBABLE CAUSE AND IF THEY FEEL LIKE IT'S PROBABLE CAUSE THEY
13 ISSUE THE WARRANT. THAT DOESN'T HAVE A THING TO DO WITH THE
14 CRIME.

15 MR. MORTON: THAT'S FINE, YOUR HONOR.

16 Q DO YOU KNOW WHY HAYES MALLOY GOT A LOW BOND?

17 A YES, I KNOW.

18 Q WHY?

19 A A NUMBER OF REASONS.

20 Q OKAY. DID YOU HELP HIM GET A LOW BOND?

21 A YES, I WENT TO SOLICITOR BILTON.

22 Q OKAY. AND DO YOU KNOW HOW LONG THESE CHARGES REMAINED ON
23 HAYES MALLOY?

24 A YES, I DO.

25 Q HOW LONG?

1 A UNTIL LAST WEEK.

2 Q OKAY. MR. AUSTIN, LET ME ASK YOU IF YOU CAN IDENTIFY THIS
3 FOR US.

4 A YES, I CAN.

5 Q DOES THAT FAIRLY AND ACCURATELY PORTRAY THAT PIECE OF
6 PROPERTY AS IT APPEARED THE DAY OF THE MURDER?

7 A YES, IT DOES.

8 MR. MORTON: YOUR HONOR, AT THIS TIME I MOVE TO
9 INTRODUCE THIS.

10 MR. SWERLING: NO OBJECTION.

11 THE COURT: HAVE THE COURT REPORTER MARK IT.

12 (PHOTOGRAPH IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT
13 #53)

14 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
15 OBJECTION EXHIBIT WHICH IS DESIGNATED STATE'S EXHIBIT NUMBER
16 53 AND IT'S A COLOR PHOTOGRAPH APPROXIMATELY EIGHT BY TEN IN
17 SIZE. NOW IN EVIDENCE.

18 Q MR. AUSTIN, DID YOU EVER GO OUT AND MEASURE THE DISTANCE
19 BETWEEN THE PARTY SHOP AND THE CHURCH?

20 A YES, I DID.

21 Q SHOW US ON THIS PICTURE--

22 THE COURT: STATE'S EXHIBIT 53?

23 MR. MORTON: STATE'S EXHIBIT 53.

24 Q SHOW THE JURY IF YOU CAN, GET IT AS CLOSE TO THEM AS YOU CAN,
25 KIND OF HOLD IT OUT--WHY DON'T YOU GET DOWN AND SHOW THEM.

1 LET'S JUST DO THAT.

2 (WITNESS LEAVES STAND)

3 A THIS IS AN AERIAL PHOTOGRAPH THAT WAS TAKEN BY THE RICHLAND
4 COUNTY SHERIFF'S DEPARTMENT LAST WEEK IN OUR AIRPLANE. YOU
5 HAVE TO REALLY SQUINT TO SEE BUT THIS IS THE CHURCH, THIS IS
6 THE SCENE, BROWN'S A.M.E. CHAPEL, RIGHT HERE. A RED BRICK
7 BUILDING, TWO BUILDINGS. AND HERE IS THE PARTY SHOP. YOU'LL
8 SEE A LITTLE WHITE BUILDING HERE RIGHT BESIDE A BIG LARGE
9 WAREHOUSE TYPE BUILDING AND YOU'LL SEE RIGHT THERE IS THE
10 PARTY SHOP. YOU CAN SEE THE DIRECT RELATION BETWEEN THE TWO
11 IN PROXIMITY.

12 THE COURT: TURN TO YOUR LEFT. THEY COULDN'T SEE.

13 A OH, I'M SORRY. THIS IS THE CHURCH, TWO BUILDINGS. RED BRICK
14 CHURCH HERE. AND OVER HERE IS THE PARTY SHOP. IT'S RIGHT
15 BESIDE A WAREHOUSE TYPE RED BRICK BUILDING. YOU SEE A BIG
16 BUILDING HERE AND THERE'S THE PARTY SHOP RIGHT BESIDE IT.

17 Q I DON'T KNOW IF YOU CAN CIRCLE ON THERE THE CHURCH AND THE
18 PARTY SHOP. IF YOU CAN, DO THAT FOR US.

19 THE COURT: YOU ARE DOING IT IN WHAT COLOR, BLACK?

20 MR. MORTON: YES, SIR.

21 A (WITNESS COMPLIES)

22 Q THANK YOU. WHILE YOU ARE DOWN HERE, SHOW US--YOU SAY YOU
23 WENT OUT YOURSELF AND MEASURED THE DIFFERENCE?

24 A UH-HUH (INDICATES AFFIRMATIVE).

25 Q SHOW THE JURY ON--SHOW THE JURY AGAIN ON THE MAP WHERE THE

1 PARTY SHOP IS?

2 A THIS IS SHOP ROAD RIGHT HERE. THIS ROAD. THIS IS SAND
3 STREET. THE PARTY SHOP IS LOCATED RIGHT HERE ON THE CORNER
4 OF SAND STREET AND SHOP ROAD.

5 Q WHERE IS THE CHURCH?

6 A THE CHURCH--THIS IS BARNES STREET DOWN HERE. IT RUNS OFF OF
7 ZION ROAD AND THIS IS BLUFF ROAD. ZION COMES AROUND LIKE
8 THIS. THIS IS BARNES AND THE CHURCH IS RIGHT HERE.

9 Q OKAY. WHEN YOU MEASURED THE DISTANCE BETWEEN THE TWO, SHOW
10 US THE ROUTE YOU TOOK TO GET FROM THE PARTY SHOP TO THE
11 CHURCH.

12 A GOING UP SHOP ROAD TOWARDS COLUMBIA, TAKING A LEFT ON ABBOTT
13 ROAD, CROSSING OVER BLUFF ROAD ALL THE WAY TO ZION ROAD,
14 TAKING A LEFT ON ZION AND THEN TAKING A RIGHT ON BARNES.

15 Q OKAY.

16 A THAT WAS NINE TENTHS OF A MILE.

17 Q NINE TENTHS OF A MILE?

18 A THAT'S CORRECT.

19 Q WHEN YOU MEASURED THIS DISTANCE, DID YOU ALSO MEASURE THE
20 TIME IT TOOK YOU TO GET THERE AND BACK?

21 A GOING BACK THE SAME WAY OR GOING BACK TO JOE LOUIS?

22 Q EITHER WAY. TELL US ABOUT MEASURING THE TIME, WHAT YOU DID.

23 A THE TIME--

24 Q WHEN DID YOU START THE CLOCK?

25 A I DON'T REMEMBER I JUST TIMED HOW LONG IT TOOK ME TO GO FROM

1 ONE.

2 Q LEAVING FROM WHERE?

3 A THE PARTY SHOP.

4 Q AND GOING TO WHERE?

5 A TO THE CHURCH.

6 Q OKAY. WHAT DID YOU DO WHEN YOU GOT TO THE CHURCH?

7 A I RE-ENACTED THE SCENE AS WE KNEW IT.

8 Q OKAY.

9 A AND THEN LEFT AND TOOK A RIGHT ON ZION, INSTEAD OF GOING BACK
10 THE SAME WAY, COMING UP BLAIR AND BACK.

11 Q AND BACK TO THE PARTY SHOP.

12 Q OKAY. HOW LONG DID ALL THAT TAKE YOU?

13 A THAT TOOK ME FIVE AND A HALF MINUTES.

14 THE COURT: WHAT'S THAT EXHIBIT NUMBER. THAT'S NOT BEEN
15 MARKED HAS IT?

16 MR. MORTON: YOUR HONOR, AT THIS TIME I WOULD MOVE TO
17 ENTER IT.

18 THE COURT: ANY OBJECTION?

19 MR. SWERLING: I HAVE NO OBJECTION.

20 (MAP IS RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT #54)

21 THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT
22 OBJECTION AN EXHIBIT WHICH IS DESIGNATED AS STATE'S EXHIBIT
23 54. IT'S APPROXIMATELY TWO FEET BY THREE FEET. IT'S A MAP OF
24 THE ROADS IN THE AREA OF COLUMBIA, RICHLAND COUNTY, NEAR THE
25 STATE FAIRGROUNDS. NOW ENTERED.

1 MR. MORTON: YOUR HONOR, THAT'S ALL I HAVE OF MR.
2 AUSTIN. ANSWER ANY QUESTIONS MR. SWERLING HAS.

3 THE COURT: CROSS EXAMINATION.

4 CROSS EXAMINATION BY

5 MR. SWERLING:

6 Q MR. AUSTIN, DID YOU EVER RECEIVE OR OBTAIN OR THROUGH ANY
7 KIND OF SEARCH OR OTHERWISE A PISTOL IN THIS CASE?

8 A NO, I DID NOT.

9 Q SO, YOU NEVER GOT A PISTOL AND LOST IT?

10 A NO.

11 MR. SWERLING: THAT'S ALL I HAVE.

12 THE COURT: YOU MAY STEP DOWN.

13 MR. SWERLING: ONE OTHER QUESTION IF I CAN, YOUR HONOR.

14 Q DID YOU EVER TAKE AND SEIZE ANY CLOTHES FROM MR. TILLMAN OR
15 ANYTHING OF THAT NATURE?

16 A WE DID NOT.

17 Q YOU DID NOT.

18 THE COURT: ANY OTHER QUESTIONS?

19 MR. MORTON: NO, SIR.

20 THE COURT: YOU MAY STEP DOWN, MR. AUSTIN.

21 A ON THAT LAST QUESTION THAT I CAN RECALL.

22 Q (BY MR. SWERLING) MR. AUSTIN, DID YOU SAY NOT THAT YOU CAN
23 RECALL?

24 A WE DID NOT THAT I RECALL.

25 Q DID YOU TAKE HIS SHOES IN EVIDENCE?

1 A IT'S POSSIBLE. I CAN'T REMEMBER.

2 Q CAN YOU CHECK YOUR FILE TO SEE IF YOU DID TO RUN TESTS ON
3 THEM?

4 A I DON'T RECALL BECAUSE IT DOESN'T STICK OUT IN MY MIND THAT
5 WE DID.

6 Q YOU COULD HAVE?

7 A COULD HAVE.

8 Q IF YOU DID, YOU DON'T KNOW WHAT HAPPENED TO THEM?

9 A THEY WOULD BE IN EVIDENCE IF WE TOOK HIS SHOES.

10 MR. COLEMAN: YOUR HONOR, I'M GOING TO OBJECT AT THIS
11 TIME.

12 THE COURT: WHY? WHAT'S THE OBJECTION?

13 MR. MORTON: WHAT WAS THE QUESTION, YOUR HONOR? I'M
14 SORRY.

15 THE COURT: HE'S ASKING WHETHER OR NOT HE TOOK THE SHOES
16 OFF OF THE DEFENDANT AS I RECALL AND SOME OTHER CLOTHING,
17 PARAPHERNALIA AND SUCH THINGS AND THE WITNESS HAS SAID HE
18 DIDN'T RECALL.

19 Q IF YOU HAD TAKEN THEM, WHERE WOULD THEY BE?

20 MR. MORTON: I OBJECT.

21 A IF WE HAD TAKEN THEM THEY WOULD BE IN EVIDENCE.

22 THE COURT: WHEN AN OBJECTION IS MADE YOU NEED TO STOP.

23 A OH, I'M SORRY.

24 MR. MORTON: I WITHDRAW THE OBJECTION.

25 THE COURT: NOW, ANSWER THE QUESTION.

1 A IF WE HAD TAKEN THE SHOES, THEY WOULD BE IN EVIDENCE.

2 Q CAN YOU CHECK AND FIND OUT IF YOU DID TAKE THE SHOES INTO
3 EVIDENCE? IS THERE ANYTHING THAT WOULD REFLECT ON YOUR
4 REPORT THAT YOU TOOK HIS SHOES?

5 A THERE'S NOTHING THAT REFLECTS THAT WE TOOK HIS SHOES THAT I
6 KNOW OF. I'M GOING TO HAVE TO GO OVER IT.

7 THE COURT: WELL, GO OVER IT. IF YOU WANT TO DO IT NOW
8 WHILE YOU ARE ON THE STAND OR IF THAT'S THE ONLY QUESTION
9 YOU'VE GOT I'LL LET YOU GO OVER THERE AND SIT DOWN IF YOU
10 HAVE ANOTHER WITNESS YOU WANT TO CALL. IF YOU DETERMINE IT'S
11 IN THERE WE CAN PUT YOU BACK ON THE STAND AND I'LL LET HIM
12 ANSWER THE QUESTION.

13 MR. SWERLING: YOUR HONOR, IT'S ALL RIGHT WITH ME. HE
14 CAN LOOK LATER AND IF NEED BE WE CAN RECALL HIM TO THE STAND.

15 THE COURT: I WILL RECALL HIM AS A COURT'S WITNESS AND
16 LET YOU CROSS. YOU MAY STEP DOWN.

17 (WITNESS TO THE SIDE)

18 THE COURT: MR. AUSTIN, IF YOU WILL, LOOK THROUGH YOUR
19 FILES AND YOUR NOTES. IF YOU FIND ANY NOTE OR MEMORANDUM THAT
20 SUCH ITEMS WERE TAKEN, I WANT YOU TO TELL THE COURT AND I
21 WILL PUT YOU BACK ON THE WITNESS STAND FOR FURTHER
22 EXAMINATION, ALL RIGHT?

23 MR. AUSTIN: YES, SIR.

24 THE COURT: THANK YOU.

25 MR. COLEMAN: YOUR HONOR, THE STATE CALLS JIMMY STEWART

1 TO THE STAND.

2 JAMES T. STEWART, AFTER BEING DULY SWORN BY THE CLERK,
3 TESTIFIES AS FOLLOWS:

4 DIRECT EXAMINATION BY

5 MR. COLEMAN:

6 Q LT. STEWART, WHERE ARE YOU EMPLOYED?

7 A THE RICHLAND COUNTY SHERIFF'S OFFICE.

8 Q WHAT ARE YOUR DUTIES?

9 A I'M A SUPERVISOR IN THE INVESTIGATIVE DIVISION.

10 Q WHICH MEANS WHAT?

11 A I READ REPORTS AS THEY COME IN AND ASSIGN THEM TO
12 INVESTIGATORS TO WORK ON AND HELP THEM WITH THEIR CASE LOAD.

13 Q AND WHERE WERE YOU WHEN WE BEEPED YOU THIS MORNING?

14 A I WAS AT HOME.

15 Q OKAY. DID YOU HAVE AN OCCASION TO TALK WITH KENNETH GARDNER?

16 A YES, I HAVE.

17 Q OKAY. WHEN WAS THE FIRST TIME YOU TALKED TO MR. GARDNER?

18 MR. SWERLING: YOUR HONOR, I OBJECT. THIS GOES TO SOME
19 PRIOR CONSISTENT STATEMENT. THERE'S NO ISSUE IN EVIDENCE
20 THAT HE TALKED TO HIM.

21 THE COURT: WHAT'S THE RELEVANCY, COUNSEL? YOU CAN'T
22 PROVE PRIOR CONSISTENT STATEMENTS. YOU JUST CAN'T DO IT.

23 MR. COLEMAN: HE ISN'T GOING TO SAY WHAT HE SAID. I AM
24 GOING TO SAY DID HE CONTACT YOU. I WANT TO PROVE THAT MR.
25 GARDNER DID CONTACT INVESTIGATOR STEWART.

1 MR. SWERLING: THAT'S NOT AN ISSUE. IT'S NOT AN ISSUE.

2 MR. MORTON: YOUR HONOR, HE MADE IT AN ISSUE.

3 MR. SWERLING: HE SAID HE DIDN'T.

4 THE COURT: I'LL LET YOU DETERMINE WHETHER OR NOT THIS
5 WITNESS DID TALK TO HIM AND WHAT DATE, NOT WHAT WAS SAID.

6 Q WHEN DID YOU FIRST TALK WITH MR. GARDNER?

7 A SOMETIME BEFORE CHRISTMAS OF 1989. THIS PAST CHRISTMAS.

8 Q OKAY. AND AS A RESULT OF YOUR CONVERSATION, WHAT DID YOU DO?

9 A I CALLED SOME POLICE DEPARTMENTS.

10 Q WHICH ONES?

11 A THE CITY OF COLUMBIA, LEXINGTON COUNTY SHERIFF'S OFFICE.

12 Q AND WHAT DID YOU DO? WHAT WERE YOU INQUIRING?

13 MR. SWERLING: OBJECTION, YOUR HONOR. ABSOLUTELY NO
14 RELEVANCE.

15 THE COURT: I SUSTAIN THE OBJECTION.

16 Q DID YOU AGAIN HAVE AN OCCASION TO GET IN TOUCH WITH MR.
17 GARDNER?

18 A YES, I DID. WELL, HE CALLED ME ONE OTHER TIME. THE WEEK
19 BEFORE THIS TRIAL STARTED.

20 Q IN REFERENCE TO WHAT INDIVIDUAL?

21 A THE DEFENDANT, MR. TILLMAN.

22 Q OKAY. WHAT DID YOU DO WITH THAT INFORMATION?

23 A I PASSED IT ALONG TO INVESTIGATOR AUSTIN.

24 Q OKAY. GOING BACK TO THE FIRST CONVERSATION YOU HAD WITH MR.
25 GARDNER, DID YOU KNOW WHO IT WAS IN REFERENCE TO, THE

1 INFORMATION HE HAD?

2 A NO, I DIDN'T.

3 Q OKAY.

4 MR. COLEMAN: NO FURTHER QUESTIONS, YOUR HONOR.

5 MR. SWERLING: NO QUESTIONS.

6 THE COURT: YOU MAY STEP DOWN.

7 (WITNESS TO THE SIDE)

8 MR. MORTON: YOUR HONOR, THE STATE RESTS.

9 (STATE RESTS)

10 THE COURT: ALL RIGHT. THAT CONCLUDES THE TESTIMONY AND
11 EVIDENCE ON BEHALF OF THE STATE AT THIS TIME. ARE YOU READY
12 TO PROCEED?

13 MR. SWERLING: WE HAVE SOME MATTERS TO TAKE UP.

14 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
15 GENTLEMEN, YA'LL STEP IN THE JURY ROOM FOR ME, PLEASE.

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

17 THE COURT: ARE YOU GOING TO BE READY TO GO FORWARD
18 ASSUMING WE DO GO FORWARD AS SOON AS THE MOTIONS ARE HEARD?

19 MR. SWERLING: YES, YOUR HONOR. I'D LIKE A LITTLE BREAK
20 TO GET EVERYTHING ORGANIZED.

21 THE COURT: WHAT I WAS GOING TO ASK WHETHER OR NOT THEY
22 CAN GO AHEAD AND CALL OVER TO THE RESTAURANT AND SEE IF THEY
23 COULD TAKE THEM, YOU KNOW, NOW. THAT WOULD GIVE US THE TIME
24 AND GET THEM BACK EARLIER AND START BACK AT 1:30 BECAUSE I'D
25 LIKE TO GET THE JURY AND ALL OF US OUT OF HERE AND GIVE US

1 SOME TYPE OF SATURDAY AFTERNOON ABOUT THREE OR FOUR O'CLOCK
2 TODAY IF WE COULD.

3 MR. SWERLING: I DON'T THINK THERE WILL BE ANY PROBLEM
4 WITH THAT, JUDGE. AS I TOLD YOU, I THINK WE HAVE MAYBE FIVE
5 OR SIX PEOPLE.

6 THE COURT: ALL RIGHT. YOU WANT TO CHECK ON THAT FOR
7 US. ASK IF THEY CAN TAKE THEM, YOU KNOW, IN THE NEXT TEN
8 MINUTES AND WE'LL SEND THE JURY ON OVER. IF WE CAN, WE'LL
9 GO AHEAD. THE ONES THAT YA'LL WANT TO TAKE OVER, JUST GO
10 AHEAD AND TAKE THEM OVER. IF THEY DO, JUST GO AHEAD AND TAKE
11 THEM TO LUNCH BUT DON'T BRING THEM THROUGH HERE. WE ARE
12 GOING TO BE DOING SOME WORK HERE. IF YOU DO, WE'LL WANT TO
13 START BACK AT 1:30 IF WE CAN.

14 CLERK OF COURT: OKAY.

15 THE COURT: GO AHEAD.

16 MR. SWERLING: YOUR HONOR, WE WOULD MOVE FOR A DIRECTED
17 VERDICT OF ACQUITTAL AS TO THE CHARGE OF MURDER. TAKING ALL
18 THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE WE
19 SUBMIT THE STATE HAS FAILED TO MAKE OUT A SHOWING MORE THAN
20 SPECULATION OR CONJECTURE THAT RONALD TILLMAN KILLED DONALD
21 SUTTON WITH MALICE AFORETHOUGHT AS ALLEGED IN THE INDICTMENT.

22 THE COURT: COUNSEL, YOU KNOW, THE EVIDENCE IN THIS CASE
23 IS A QUESTION OF FACT FOR THE JURY. THERE'S BEEN TESTIMONY,
24 IF BELIEVED, THAT THE DEFENDANT HIMSELF ADMITTED THAT HE DID
25 THE KILLING AND THERE IS SUFFICIENT CIRCUMSTANTIAL EVIDENCE

1 IN THE CASE AS WELL WHICH TIES OR LINKS THIS DEFENDANT TO THE
2 CRIME CHARGED. THE COURT IS NOT CONCERNED WITH THE WEIGHT
3 OF THE EVIDENCE OR THE SUFFICIENCY OF THE EVIDENCE, ONLY IF
4 THERE IS EVIDENCE IN THE RECORD OF THE CASE. AND, OF COURSE,
5 OUR COURT HAS REJECTED THE STANDARD THAT THEY HAVE TO PROVE
6 BEYOND A REASONABLE DOUBT ON A MOTION FOR A DIRECTED VERDICT.
7 HOWEVER, I HAVE ALWAYS SUBSCRIBED THAT THAT OUGHT TO BE THE
8 RULE AND IF THAT IS THE RULE I ALSO FIND THE EVIDENCE IS
9 SUFFICIENT TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT, IF
10 BELIEVED.

11 MR. SWERLING: YOUR HONOR, IF WE COULD AT THIS TIME SEE
12 IF WE CAN--WHILE WE ARE WAITING--SEE IF WE CAN GO OVER AND
13 ESTABLISH WHAT THE DEFENDANT'S RECORD WOULD BE SHOULD HE
14 TESTIFY.

15 THE COURT: I THINK THIS IS A GOOD OPPORTUNITY TO DO
16 THAT NOW. WILL SOMEBODY HAND ME A COPY?

17 MR. SWERLING: MY COPY IS NOT VERY CLEAR FRANKLY.

18 THE COURT: IF YOU HAVE AN EXTRA, IF YOU DON'T I'LL JUST
19 PLAY IT BLIND.

20 MR. BILTON: WE HAVE CERTIFIED INDICTMENTS.

21 THE COURT: HAVE YOU GOT CERTIFIED INDICTMENTS? THAT
22 MAKES IT A LOT EASIER.

23 MR. SWERLING: YOU WANT US JUST TO APPROACH THE SIDEBAR?

24 THE COURT: YA'LL CAN HAND THEM UP AND TALK OUT LOUD.

25 (COUNSEL APPROACH THE BENCH OUT OF THE PRESENCE OF THE

1 COURT REPORTER)

2 THE COURT: ALL RIGHT. THEY CAN TAKE CARE OF THEM RIGHT
3 NOW?

4 CLERK OF COURT: YES, SIR.

5 THE COURT: ALL RIGHT. THAT'S GOOD. TELL THEM WE ARE
6 GOING TO TRY TO START BACK AROUND 1:30 P.M.

7 (JURY OUT FOR LUNCH AT 12:15 P.M.)

8 (BENCH CONFERENCE CONTINUED)

9 THE COURT: ALL RIGHT, THEY HAVE HANDED UP TO THE COURT
10 THE INDICTMENTS WHICH THE STATE WOULD CONTEND OR THE EVIDENCE
11 WHICH THE STATE WOULD CONTEND IS AS TO A PRIOR RECORD, CRIMES
12 OF MORAL TURPITUDE, WHICH HAS PUT COUNSEL FOR THE DEFENDANT
13 UPON NOTICE THAT THEY WOULD USE FOR THE PURPOSE OF
14 IMPEACHMENT IF THE OPPORTUNITY PRESENTS ITSELF. ONE IS THE
15 ORIGINAL, CERTIFIED ORIGINAL COPY OF THE INDICTMENT FROM THE
16 UNITED STATES DISTRICT COURT SHOWING A FOUR COUNT INDICTMENT
17 FOR BANK ROBBERY, ARMED BANK ROBBERY. ACTUALLY, HE'S ONLY
18 BEEN CONVICTED ON THE BANK ROBBERY COUNT, ISN'T THAT CORRECT?

19 MR. SWERLING: BANK ROBBERY COUNT. I THINK THERE'S
20 WEAPON COUNT THERE, YOUR HONOR. POSSESSION OF A WEAPON.

21 THE COURT: SAWED OFF SHOTGUN?

22 MR. SWERLING: YES, SIR.

23 THE COURT: COUNT TWO.

24 MR. SWERLING: COURT FOUR I THINK THE OBSTRUCTION CHARGE
25 WAS--ACTUALLY, IT'S NOW BEEN DISMISSED.

1 THE COURT: COUNT FOUR. THAT WAS THE THREATS OR ATTEMPT
2 TO KILL HAYES MALLOY.

3 MR. SWERLING: COUNT THREE I THINK IMPLIED TO BYNUM,
4 TOMMY LEE BYNUM.

5 THE COURT: NO, COUNT THREE WAS RONALD TILLMAN. THAT
6 WAS THE FIREARM.

7 MR. SWERLING: FIREARM. OKAY.

8 THE COURT: COUNT TWO WAS TILLMAN AND TOMMY LEE BYNUM.
9 THAT ONE DOES NOT APPLY. SO, IT'S COUNT ONE AND COUNT THREE
10 THAT HE'S CONVICTED OF. HE HAS NOT BEEN SENTENCED AT THIS
11 TIME.

12 MR. SWERLING: THAT'S CORRECT, YOUR HONOR. HE WAS
13 CONVICTED IN JUNE OF THIS YEAR OF THOSE COUNTS. THE
14 SENTENCING IS SCHEDULED, I THINK THE SOLICITOR CAN CONFIRM
15 THIS JUST FOR THE RECORD, IT'S SCHEDULED FOR FEBRUARY 14TH,
16 ST. VALENTINE'S DAY, IT SEEMS APPROPRIATE, AND THERE ARE
17 PENDING MOTIONS AS IS THE PRACTICE IN FEDERAL COURT TO FILE
18 POST TRIAL MOTIONS. THEY ARE USUALLY NOT HEARD UNTIL THE
19 SENTENCING DAY. IT WOULD BE OUR POSITION THAT SINCE IT'S NOT
20 A FINAL ADJUDICATION THAT IT SHOULD NOT BE USED FOR
21 IMPEACHMENT PURPOSES. THAT'S WITH RESPECT TO THE BANK
22 ROBBERY OF DECEMBER 12TH.

23 THE COURT: MR. SWERLING, IN THE COURT'S VIEW THEY ARE
24 CONVICTIONS. AS I UNDERSTAND IT, THERE'S NO QUESTION ABOUT
25 THAT, THEY ARE CONVICTIONS. HE JUST HAS NOT BEEN SENTENCED.

1 HOWEVER, I WOULD BE HESITANT--I'M NOT RELUCTANT TO TELL YOU
2 THAT IF FOR SOME REASON THESE CONVICTIONS WERE SET ASIDE IT
3 WOULD REALLY CREATE A PROBLEM AND THE EFFECT OF ANYTHING THAT
4 WOULD HAPPEN IN THIS TRIAL. IN OTHER WORDS, IF THEY USE IT
5 AND HE'S CONVICTED THEY ARE CERTAINLY PREJUDICIAL EVEN THOUGH
6 I INSTRUCT THE JURY, AND THEY WOULD NOT BE ALLOWED TO BE USED
7 UNLESS THEY ARE CONVICTIONS, SO IF THE CONVICTIONS ARE
8 REMOVED THERE WOULD BE A STRONG ARGUMENT THAT THE CASE SHOULD
9 BE SET ASIDE BUT THEY ARE CONVICTIONS AND UNDER THE RULES AS
10 I PERCEIVE IT THEY ARE ENTITLED TO USE THEM AND I'M GOING TO
11 LET THEM USE.

12 MR. SWERLING: YOUR HONOR, JUST SO THERE'S NO--YA'LL
13 CONFIRMED THAT WITH MR. BETHEA IN THE U.S. ATTORNEY'S OFFICE
14 AND CAN WE STIPULATE THAT AS THE SITUATION AT THIS TIME?

15 MR. BILTON: WE CONFIRMED THAT HE'S BEEN CONVICTED, YOUR
16 HONOR.

17 MR. SWERLING: AND NOT SENTENCED?

18 MR. BILTON: AND NOT SENTENCED. NOW, I DON'T KNOW
19 ANYTHING ABOUT THERE BEING PENDING MOTIONS.

20 MR. SWERLING: THAT'S FINE.

21 THE COURT: THE OTHER INDICTMENT IS A CERTIFIED TRUE
22 COPY OF AN INDICTMENT 77-GS40-187 WHEN HE WAS INDICTED ALONG
23 WITH ANOTHER PERSON, JOHNNY MARKS, FOR HOUSEBREAKING IN WHICH
24 HE ENTERED A PLEA ON APRIL 4TH, 1977. HE GOT A THREE YEAR
25 SENTENCE SUSPENDED, ONE YEAR PROBATION. THE NEXT INDICTMENT

1 WAS 78-GS40-1997, IT ALSO HAS ANOTHER NUMBER ON IT, TOO,
2 481112, STATE VS. RONALD TILLMAN, INDICTED FOR ARMED ROBBERY,
3 ENTERED A PLEA TO THAT AND ON APRIL 19TH, 1978, AND WAS
4 SENTENCED UNDER THE Y.O.A. ACT TO SIX YEARS SUSPENDED UPON
5 THE SERVICE OF THREE YEARS. AND INDICTMENT NUMBER 78-GS40-
6 1996, IT HAS 48100 WRITTEN ON THERE, STATE VS. RONALD
7 TILLMAN, INDICTMENT FOR HOUSEBREAKING AND GRAND LARCENY. HE
8 ENTERED A PLEA OF GUILTY ON OCTOBER 19TH, 1978, RECEIVED NOT
9 MORE THAN SIX YEARS UNDER THE Y.O.A. ACT CONCURRENT WITH HIS
10 ARMED ROBBERY SENTENCE. IT SAYS CONCURRENT WITH SENTENCE
11 THIS COURT THIS DATE SUSPENDED UPON THE SERVICE OF THREE
12 YEARS, SO I GUESS HE GOT THREE YEARS ON THAT AS WELL. AND
13 INDICTMENT 82-GS39-800, STATE VS. RONALD STAFFORD TILLMAN,
14 INDICTMENT FOR HOUSEBREAKING AND LARCENY. HE WAS TRIED AND
15 FOUND GUILTY OF HOUSEBREAKING AND LARCENY ON DECEMBER 14TH,
16 1982, AND WAS SENTENCED BY JUDGE MCGOWAN TO TWELVE YEARS.
17 ALL RIGHT. ALL OF THOSE CRIMES ARE CRIMES OF MORAL TURPITUDE
18 AND ARE THE SUBJECT OF USE FOR IMPEACHMENT PURPOSES UNDER
19 THE LAW OF THIS STATE. THE COURT ALSO FINDS THAT THERE MAY
20 BE SOME QUESTION AS TO REMOTENESS AND, ONCE AGAIN, THE TIME
21 PERIOD OF TEN YEARS IS NOT MAGICAL. THIS IS A CLEAR HISTORY
22 OF PRIOR CRIMINAL ACTS AND A CONTINUATION OF THOSE IN MY
23 PREVIOUS RULINGS AND CONSISTENT WITH THEM. I FIND THAT THEY
24 ARE ADMISSIBLE INASMUCH AS--AS WELL, ALL BUT ONE OF THEM HE
25 GOT A PROBATION. CLEARLY THAT SHOULD HAVE BEEN A REVOCATION,

1 SHOULD BE SOME EVIDENCE OF IT, BUT I DON'T HAVE IT SO I WON'T
2 SAY THAT. BUT THE TIME THAT HE SERVED, BY THE TIME HE GOT
3 OUT, IT WOULD HAVE BEEN WITHIN THE TEN YEAR PERIOD AND SO
4 USING THE PREVIOUS CASE LAW OF THIS STATE THAT YOU HAVE THE
5 RIGHT TO USE THE TIME THAT HE WAS RELEASED IF IT WERE MAGICAL
6 AS TO TEN YEARS BUT I DON'T FIND IT MAGICAL. FOR THAT
7 REASON--

8 MR. SWERLING: YOUR HONOR, THAT WOULD HAVE BEEN MY
9 OBJECTION, IT WAS TOO REMOTE. THE '77 AND '78 CHARGES.

10 THE COURT: ALL RIGHT, SIR. ANYTHING ELSE?

11 MR. BILTON: YOUR HONOR, MAY I INQUIRE? REGARDING THE
12 FIREARMS CHARGE IN THE FEDERAL COURT, THAT IS A CRIME OF
13 MORAL TURPITUDE?

14 THE COURT: POSSESSION OF A FIREARM IN STATE COURT IS.

15 MR. BILTON: YOUR HONOR, IN LIGHT OF THAT, IN 1977 MR.
16 TILLMAN WAS CONVICTED OF CARRYING A PISTOL AS WELL.

17 MR. SWERLING: I DON'T THINK AN UNLAWFUL WEAPON,
18 CARRYING A PISTOL IS A CRIME OF MORAL TURPITUDE.

19 THE COURT: I DON'T BELIEVE IT IS EITHER. LET ME CHECK
20 AND SEE WHAT I'VE GOT. THE CASE THAT I'VE GOT IS TAYLOR VS.
21 STATE, 188 SOUTHEASTERN 2d 850, 1972. IT SAYS AN UNLAWFUL
22 WEAPON, ESCAPE AND MANSLAUGHTER ARE NOT CRIMES OF MORAL
23 TURPITUDE.

24 MR. SWERLING: THAT'S CORRECT. TAYLOR VS. STATE. I
25 WOULD SUBMIT THE FEDERAL SHOULDN'T BE EITHER.

1 THE COURT: I AGREE. WHERE THEY SAY UNLAWFUL WEAPON,
2 POSSESSION OF A SAWED OFF SHOTGUN IS A DIFFERENT THING. SEE,
3 UNDER STATE LAW OF SOUTH CAROLINA THAT CARRIES TEN YEARS.
4 THAT'S NOT LIKE AN UNLAWFUL WEAPON. THAT'S A ONE YEAR
5 STATUTE. SO, THE QUESTION IS WHETHER OR NOT THE POSSESSION
6 OF A SAWED OFF SHOTGUN IS A CRIME OF MORAL TURPITUDE VERSUS
7 AN UNLAWFUL WEAPON. I'LL LOOK AND SEE IF I HAVE ANYTHING ON
8 THAT. I DON'T HAVE IT IN MY LIST OF CASES WHERE THEY'VE
9 DEALT WITH AND RULED ON IT, COUNSELLOR. I'LL LET YOU LOOK
10 AT IT OVER A TIME PERIOD UNLESS YOU FIND A CASE DIRECTLY ON
11 POINT. IT ISN'T IMPORTANT ENOUGH TO SCREW UP A CASE.

12 MR. BILTON: YES, YOUR HONOR, I WILL CONCEDE THAT IT WAS
13 A THIRTY DAY OR HUNDRED DOLLAR FINE ON THAT.

14 THE COURT: THAT WAS A THIRTY DAY--YOU MEAN ON THE
15 FEDERAL OFFENSE?

16 MR. BILTON: NO, SIR, CARRYING A PISTOL.

17 THE COURT: OH, YES, I'M NOT GOING TO LET YOU USE IT.

18 MR. BILTON: I DON'T KNOW WHAT THE FEDERAL CRIME
19 CARRIES.

20 MR. SWERLING: IT'S ON THE INDICTMENT.

21 THE COURT: IF IT'S LIKE OURS, IT'S PRETTY SEVERE. LET
22 ME LOOK. THIS IS TEN YEARS, SAME AS WE'VE GOT.

23 MR. SWERLING: OUR SUPREME COURT HAS NEVER RULED THAT
24 POSSESSION OF ANY KIND OF WEAPON IS A CRIME OF MORAL
25 TURPITUDE APPARENTLY.

1 THE COURT: WELL, THEY'VE RULED AN UNLAWFUL WEAPON, THAT
2 BEING A PISTOL AND A KNIFE IS NOT BUT I DON'T KNOW ABOUT
3 SAWED OFF SHOTGUNS AND THINGS. YOU ARE TALKING ABOUT A LOT
4 OF DIFFERENCE IN PENALTIES. ONE IS ONE YEAR AND ONE IS TEN
5 YEARS. THE GRAVAMEN OF THE OFFENSES ARE DIFFERENT. BUT,
6 ONCE AGAIN, THERE NOT BEING ANY CASE HISTORY TO FOLLOW I'LL
7 JUST ASK THE STATE IF THEY ARE INTERESTED ENOUGH IN GETTING
8 THAT TYPE OF CONVICTION ON THE RECORD IF HE TESTIFIES. I'D
9 BE INCLINED TO SAY NO TO YOU UNLESS YOU FOUND SOMETHING
10 BECAUSE I DON'T THINK IT'S WORTH THAT. USING THESE RECORDS
11 FOR IMPEACHMENT PURPOSES AND IF THEY ARE NOT GOOD IS AS GOOD
12 A REASON AS I KNOW TO REVERSE A CASE SO UNLESS YOU'VE GOT A
13 CASE THAT TELLS ME I'M NOT GOING TO LET YOU USE IT. ALL
14 RIGHT. ANYTHING ELSE?

15 MR. MORTON: YOUR HONOR, OF COURSE, IF THE DEFENDANT
16 TESTIFIES WE WILL BE ABLE TO EXPLORE HIS TRUTHFULNESS AND
17 VERACITY IN THE SENSE THAT HE HAS POSSIBLY TRIED TO BRIBE
18 WITNESSES TO NOT COME TO COURT, THREATENED WITNESSES AND SO
19 FORTH.

20 THE COURT: WHY DO YOU WANT ALL THESE RULINGS IN
21 ADVANCE?

22 MR. MORTON: BECAUSE I DON'T WANT A MISTRIAL AT THIS
23 POINT, YOUR HONOR.

24 THE COURT: OKAY. WELL, YOU WAIT TO SEE IF THAT OCCURS.

25 MR. MORTON: THANK YOU, YOUR HONOR.

1 THE COURT: ANYTHING ELSE? COURT IS IN RECESS. 1:30.

2 (LUNCHEON RECESS)

3 (COURT RESUMES 1:35 P.M.)

4 THE COURT: IS THE STATE READY TO PROCEED?

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

6 THE COURT: THE DEFENSE READY TO PROCEED?

7 MR. SWERLING: YES, SIR.

8 THE COURT: BRING THE JURY IN, PLEASE.

9 MR. SWERLING: MRS. KNEECE IS GOING TO BE DOING MOST OF
10 THE WORK THIS AFTERNOON.

11 THE COURT: ALL RIGHT. GOOD.

12 (THE JURY RETURNS TO THE JURY BOX AT 1:35 P.M.)

13 THE COURT: I HOPE YOU HAD A NICE LUNCH. YOU MAY CALL
14 YOUR FIRST WITNESS, COUNSEL.

15 MRS. SHEALY: WE CALL DARLENE HAYES.

16 DARLENE HAYES, AFTER BEING DULY SWORN BY THE CLERK,
17 TESTIFIES AS FOLLOWS:

18 DIRECT EXAMINATION BY

19 MRS. SHEALY:

20 Q MS. HAYES, TELL THE JURY, PLEASE, HOW OLD YOU ARE AND WHERE
21 YOU LIVE?

22 A I'M TWENTY-THREE YEARS OLD. I LIVE IN THE COLUMBIA AREA.

23 Q OKAY. DO YOU KNOW RONALD TILLMAN?

24 A YE, I DO.

25 Q DO YOU SEE HIM HERE IN THE COURTROOM?

1 A YES.

2 Q COULD YOU IDENTIFY HIM, PLEASE?

3 A YES.

4 Q JUST POINT HIM OUT.

5 A SITTING BESIDE JIM AND BETWEEN...

6 Q LET ME ASK YOU THIS. WHAT, IF ANYTHING, DO YOU REMEMBER

7 ABOUT DECEMBER 16TH, 1988?

8 A DECEMBER 26TH WHICH WAS ON A MONDAY NIGHT ME AND RON HAD MADE

9 PLANS TO GO TO THE FOUNTAIN BLEAU. MY MOTHER HAD CALLED HIM

10 TWICE EARLIER THAT DAY WHILE HE WAS AT THE SHOP WORKING.

11 MR. MORTON: OBJECTION.

12 A AND WE HAD--

13 THE COURT: JUST A MINUTE.

14 MR. MORTON: I OBJECT.

15 MRS. SHEALY: SHE HAS NOT SAID WHAT HER MOTHER SAID.

16 SHE JUST SAID SHE PLACED A PHONE CALL.

17 THE COURT: JUST INSTRUCT THE WITNESS NOT TO MAKE ANY

18 STATEMENTS AS TO WHAT SOMEONE ELSE TOLD HER. HAVE HER

19 TESTIFY AS TO WHAT SHE DID HERSELF. ALL RIGHT.

20 Q DARLENE, JUST TESTIFY WHAT YOU DID THAT DAY AND NOT WHAT

21 ANYBODY ELSE SAID. OKAY?

22 A I ALSO TALKED TO RON AFTER HE HAD MADE IT HOME FROM THE PARTY

23 SHOP.

24 Q LET ME INTERRUPT YOU THERE. DO YOU KNOW WHAT TIME RONALD

25 LEFT THE PARTY SHOP OF YOUR KNOWLEDGE?

1 A AT 7:00 WHEN IT CLOSE. HE ALWAYS LEAVE AT SEVEN O'CLOCK.

2 Q OKAY. DO YOU KNOW WHAT TIME YOU SPOKE WITH HIM?

3 A I DON'T KNOW THE EXACT TIME BUT I DID SPOKE WITH HIM AFTER

4 HE AFTER HE LEFT THE JOB AND BY THE TIME HE MADE IT HOME I

5 GAVE HIM A CALL.

6 Q OKAY. YOU CALLED HIM WHERE?

7 A AT HIS HOUSE.

8 Q OKAY. GO AHEAD. I'M SORRY.

9 A AND I TOLD HIM THAT I DECIDED NOT TO GO BECAUSE OF MY

10 PERSONAL APPEARANCE AT THE TIME. I WAS MISSING MY FRONT

11 TOOTH AND I TOLD HIM I DIDN'T WANT TO SING THAT NIGHT.

12 Q OKAY. AND WHY IS IT THAT YOU REMEMBER THIS AT ALL?

13 A BECAUSE THAT WAS THE NIGHT THAT DONALD HAD GOT KILLED.

14 MRS. SHEALY: I HAVE NOTHING FURTHER. ANSWER ANY

15 QUESTIONS THAT THE SOLICITOR MAY HAVE.

16 THE COURT: CROSS EXAMINATION.

17 MR. MORTON: JUST A COUPLE OF QUESTIONS.

18 CROSS EXAMINATION BY

19 MR. MORTON:

20 Q MS. HAYES, YOU DON'T KNOW WHERE RONALD TILLMAN WAS THAT WHOLE

21 NIGHT, DO YOU? YOU DON'T KNOW WHERE HE WAS EVERY FIVE AND

22 A HALF MINUTES THAT WHOLE NIGHT, DO YOU?

23 A WELL, HE WAS AT THE PARTY SHOP UNTIL HE LEFT THERE AND THE

24 LAST TIME I TALKED TO RON HE WAS AT THE HOUSE. WHEN I TALKED

25 TO HIM, HE WAS HOME.

1 Q YOU DON'T KNOW WHERE HE WAS THAT WHOLE NIGHT, DO YOU?

2 A HE WENT TO THE BLEAU. THAT'S WHERE HE WAS.

3 Q JUST ANSWER MY QUESTION.

4 A I DON'T KNOW WHAT HE DID AFTER HE LEFT THE BLEAU.

5 THE COURT: JUST A MINUTE, MS. HAYES. MS. HAYES,
6 LISTEN. WHEN SOMEBODY ASKS YOU DO YOU KNOW, THAT MEANS THAT
7 YOU SAW THEM DURING THAT TIME PERIOD. WHAT HE'S ASKING YOU
8 WERE YOU WITH HIM AT ALL TIMES DURING THAT NIGHT.

9 A NO, I WASN'T.

10 THE COURT: OKAY.

11 Q HAVE YOU TALKED TO RONALD TILLMAN ABOUT YOUR TESTIMONY HERE
12 TODAY?

13 A NO, I HAVEN'T.

14 Q YOU HAVEN'T EVEN TALKED WITH HIM ABOUT IT?

15 A NO, I HAVEN'T.

16 Q WHEN IS THE LAST TIME YOU TALKED TO HIM?

17 A I REALLY DON'T KNOW.

18 Q OKAY.

19 MR. MORTON: THAT'S ALL I HAVE, YOUR HONOR.

20 THE COURT: ANY REDIRECT?

21 MRS. SHEALY: NO. WE'D ASK THAT SHE BE EXCUSED.

22 THE COURT: YOU MAY STEP DOWN.

23 (WITNESS TO THE SIDE)

24 MRS. SHEALY: LISA BRISBY.

25 LISA BRISBY, AFTER BEING DULY SWORN BY THE CLERK,

1 TESTIFIES AS FOLLOWS:

2 DIRECT EXAMINATION BY

3 MRS. SHEALY:

4 Q LISA, STATE YOUR FULL NAME AND WHERE YOU LIVE, PLEASE.

5 A DORIS LISA BRISBY. I LIVE IN COLUMBIA.

6 THE COURT: SPELL YOUR LAST NAME. SPELL YOUR LAST NAME
7 AND PULL UP AND SPEAK INTO THAT MICROPHONE.

8 A B-R-I-S-B-Y (SPELLED).

9 Q HOW OLD ARE YOU?

10 A TWENTY-THREE.

11 Q DO YOU KNOW RONALD TILLMAN?

12 A YES.

13 Q WHEN, IF EVER, DID YOU SEE HIM ON DECEMBER 26TH, 1988?

14 A EIGHT O'CLOCK.

15 Q OKAY. TELL THE JURY WHERE YOU WERE AND WHAT TIME HE GOT
16 THERE AND WHAT YOU RECALL, PLEASE.

17 A I WAS OVER TO MY NIECE, BRIDGETTE, HOUSE AND RONALD CAME OVER
18 THERE.

19 Q WHAT TIME WAS THAT AGAIN?

20 A EIGHT O'CLOCK. EIGHT O'CLOCK OR A LITTLE AFTER.

21 Q DO YOU RECALL WHO WENT TO THE DOOR WHEN HE GOT THERE?

22 A I ANSWERED THE DOOR.

23 Q DO YOU RECALL WHERE BRIDGETTE WAS WHEN HE GOT TO THE
24 APARTMENT?

25 A VITO AND BRIDGETTE WAS IN THE BACK.

1 Q OKAY. TELL THE JURY WHO ALL WAS AT THE APARTMENT THAT NIGHT.
2 A IT WAS BRIDGETTE, VITO, THEIR SON AND MYSELF.
3 Q AND WHAT HAPPENED ONCE RONALD GOT TO THE APARTMENT?
4 A RON CAME IN. "B" AND VITO CAME OUT THE BEDROOM WITH THE
5 BABY. THEY CAME OUT THE BEDROOM AND BRIDGETTE START TEASING
6 HIM ABOUT HIS WARMUP AND STUFF AND THEY WAS STANDING IN THE
7 DOOR--
8 Q LISA, LET ME CAUTION YOU. YOU CAN'T SAY WHAT ANYBODY ELSE
9 TOLD YOU OR SAID, OKAY?
10 A OH. AND WE WAS JUST IN THERE TALKIN' AND I CAN'T SAY LIKE
11 WHAT WAS SAID IN THE HOUSE OR NOTHING?
12 Q YOU CAN JUST SAY WHAT HAPPENED NEXT.
13 A OH, OKAY. RON TOLD VITO THAT DONALD NEVER CAME TO THE SHOP.
14 HE WANTED HIM TO GO WITH HIM TO LOOK FOR HIM. AND THEN VITO
15 AND RONALD, WE WANTED THEM TO GO TO THE STORE FOR US SO
16 BRIDGETTE ASKED RONALD GO TO THE STORE AND GET US SOME STUFF
17 FROM THE STORE. THEY WENT TO THE STORE, ME AND BRIDGETTE
18 STAYED HOME.
19 Q LET ME INTERRUPT YOU JUST A SECOND. DO YOU RECALL WHAT TIME
20 THEY LEFT TO GO TO THE STORE?
21 A YEAH. IT WAS LIKE 8:30 WHEN THEY LEFT TO GO TO THE STORE.
22 ABOUT 8:15, 8:30.
23 Q AND WHEN THEY LEFT TO GO TO THE STORE, HOW LONG WERE THEY
24 GONE?
25 A WELL, NOT LONG. IT WAS LIKE TWENTY MINUTES, TWENTY-FIVE

1 MINUTES. THIRTY MINUTES AT THE MOST.

2 Q AND WHEN THEY GOT BACK WHAT HAPPENED THEN?

3 A THEY DIDN'T HAVE THE STUFF WE WANTED FROM THE STORE.

4 Q DO YOU RECALL WHAT YA'LL WANTED FROM THE STORE?

5 A YES. BRIDGETTE WANTED A PEPSI. I ASKED FOR SOME WINE AND

6 WE WANTED SOME POTATO CHIPS AND CANDY. THEN THEY WENT BACK

7 TO THE STORE AND IT WAS LIKE MUST BE FIVE OR TEN MINUTES.

8 THEY MUST HAVE WENT TO TEXACO, IT'S CLOSE BY, 'CAUSE THEY

9 DIDN'T TAKE THAT LONG AND THEY CAME BACK BUT THEY DIDN'T HAVE

10 THE WINE, THEY HAD SOME SODA AND POTATO CHIPS.

11 Q LET ME INTERRUPT YOU THERE. ARE YOU SAYING THEY LEFT TWICE

12 NOW OR JUST ONE TIME?

13 A NO, THEY LEFT TWICE. THEY WENT TO THE STORE AND CAME BACK

14 AND THEN THEY LEFT AGAIN BECAUSE THEY DIDN'T HAVE THE STUFF

15 WE WANTED WHEN THEY CAME BACK THE FIRST TIME FROM THE STORE.

16 THEY DIDN'T HAVE THE STUFF SO THEY WENT BACK TO THE STORE AND

17 GOT WHAT WE ASKED FOR.

18 Q DO YOU RECALL WHAT RONALD TILLMAN HAD ON THAT NIGHT?

19 A UH-HUH (INDICATES AFFIRMATIVE). HE HAD ON A WHITE AND BLACK

20 "B.K." WARMUP. BRITISH KNIGHT WARMUP.

21 Q OKAY. WHEN THEY GOT BACK FROM THE SECOND TRIP TO THE STORE,

22 WHAT HAPPENED THEN?

23 A THAT'S WHEN WE WAS IN THERE TALKIN' AND RON AND THEM SAY THEY

24 WAS GOIN' TO LOOK FOR DONALD. VITO. WE TALKED FOR A LITTLE

25 WHILE AND THEN THEY LEFT.

1 Q DO YOU RECALL WHAT TIME THEY LEFT THAT TIME?

2 A YEAH. IT WAS ABOUT 9:00 OR A LITTLE AFTER 9:00 WHEN THEY
3 LEFT THE LAST TIME.

4 Q AND WHAT, IF ANYTHING, WAS SAID ABOUT MEETING UP WITH DONALD
5 BECAUSE HIS CAR WAS BROKEN?

6 A OH, YEAH. VITO HAD SAID THEY WAS GONNA MEET WITH DONALD
7 'CAUSE HIS CAR WAS BROKE. HIS CAR PROBABLY HAD BROKEN DOWN,
8 THAT'S WHAT HE SAID.

9 MRS. SHEALY: I BEG THE COURT'S INDULGENCE. (PAUSE)

10 Q LISA, CAN YOU IDENTIFY THIS AS BEING THE SWEATSUIT THAT
11 RONALD TILLMAN HAD ON THAT EVENING?

12 A THAT WAS IT.

13 MRS. SHEALY: YOUR HONOR, CAN I HAVE THIS MARKED FOR
14 IDENTIFICATION?

15 THE COURT: SURE.

16 (SWEATSUIT IS MARKED AS DEFENDANT'S IDENTIFICATION "B")

17 THE COURT: IT'S NOT IN. JUST LAY IT DOWN. YOU CAN'T
18 USE IT. IT'S NOT IN.

19 Q LISA, COULD YOU IDENTIFY THE SNEAKERS HE HAD ON THAT NIGHT?

20 A IT WAS--THEY WERE WHITE AND BLACK "B.K.," BRITISH KNIGHT,
21 TENNIS SHOES.

22 Q CAN YOU IDENTIFY THESE AS BEING THE SNEAKERS THAT HE HAD ON?

23 A YEAH.

24 MRS. SHEALY: I'D LIKE TO HAVE THESE MARKED ALSO FOR
25 IDENTIFICATION.

1 (TENNIS SHOES ARE MARKED AS DEFENDANT'S IDENTIFICATION
2 "C")

3 MRS. SHEALY: WE HAVE NOTHING FURTHER.

4 THE COURT: CROSS EXAMINATION.

5 CROSS EXAMINATION BY

6 MR. BILTON:

7 Q MS. BRISBY, DID YOU SEE DONALD SUTTON THAT NIGHT?

8 A YES.

9 Q WHAT TIME DID YOU SEE DONALD SUTTON?

10 A AT SIX O'CLOCK.

11 Q AND WHERE WAS HE?

12 A HE WAS AT BRIDGETTE AND VITO HOUSE.

13 Q HE WAS AT--

14 THE COURT: SPEAK INTO THAT MICROPHONE, PLEASE, MA'AM.

15 I CANNOT HEAR YOU.

16 A HE WAS AT BRIDGETTE AND VITO HOUSE.

17 Q YOU SAY IT WAS SIX O'CLOCK?

18 A YES.

19 Q DID DONALD SUTTON TAKE YOU ANYWHERE THAT NIGHT?

20 A YES. HE TOOK ME OVER TO MY MOTHER'S HOUSE.

21 Q AND WHAT TIME WAS THAT?

22 A IT WAS AROUND 6:15.

23 Q DID DONALD TELL YOU ANYTHING THAT NIGHT?

24 A YES.

25 MRS. SHEALY: YOUR HONOR, I WOULD OBJECT TO THAT. IT'S

1 CLEARLY HEARSAY.

2 THE COURT: I SUSTAIN THE OBJECTION, COUNSEL. ISN'T
3 THAT HEARSAY?

4 Q WHERE DID YOU GO AFTER 6:15?

5 A IT TOOK ME A FEW MINUTES IN THE HOUSE AND THEN ME AND DONALD
6 WENT BACK TO BRIDGETTE'S HOUSE.

7 Q DONALD TOOK YOU BACK TO BRIDGETTE'S?

8 A UH-HUH (INDICATES AFFIRMATIVE).

9 Q WHAT TIME DID YOU GET BACK THERE?

10 A IT WAS LIKE 6:30, SOMETHING TO 7:00.

11 Q DID DONALD MAKE ANY PHONE CALLS THAT NIGHT?

12 A YES.

13 Q DO YOU KNOW WHO HE CALLED?

14 MRS. SHEALY: YOUR HONOR, I AGAIN OBJECT. IT CALLS FOR
15 HEARSAY.

16 MR. BILTON: I JUST ASKED HER IF SHE KNEW.

17 MRS. SHEALY: WELL, SIMILARLY THEY OBJECTED TO OUR
18 QUESTION. I MEAN ON THE SAME GROUNDS REGARDING PHONE CALLS
19 BEING MADE.

20 THE COURT: WELL, THE QUESTION IS WHETHER OR NOT HE CAN
21 IDENTIFY THE PERSON THE PHONE CALL WAS MADE TO. I DON'T
22 KNOW. YOU'LL HAVE TO LAY SOME FOUNDATION FOR ESTABLISHING
23 THE ABILITY OF THE WITNESS TO KNOW WHAT THEY SAY THEY KNOW.
24 SHE CANNOT REPEAT WHAT SOMEONE ELSE SAID. THAT IS HEARSAY.
25 HOWEVER, ONCE AGAIN, AS FAR AS IF SHE TALKED TO THE PERSON

1 ON THE PHONE SHE MAY BE ABLE TO IDENTIFY THAT PERSON'S VOICE.
2 I DON'T KNOW. BUT IF YOUR OBJECTION IS AT THIS TIME THAT SHE
3 CANNOT TESTIFY WITHOUT LAYING A PROPER FOUNDATION, I SUSTAIN
4 IT IN THAT REGARD.

5 MRS. SHEALY: THAT IS MY OBJECTION.

6 THE COURT: THANK YOU.

7 Q WHEN DONALD WAS AT BRIDGETTE'S HOUSE, WERE YOU PRESENT WHEN
8 HE MADE ANY PHONE CALLS?

9 A YES, I WAS.

10 Q WERE YOU IN THE SAME ROOM WITH HIM?

11 A UH-HUH (INDICATES AFFIRMATIVE). NOT THE WHOLE ENTIRE TIME
12 THOUGH. WHEN HE GOT OFF THE PHONE, HE WENT INTO THE BACK.

13 Q BUT YOU WERE PRESENT WHEN HE MADE THE PHONE CALL?

14 A UH-HUH (INDICATES AFFIRMATIVE).

15 Q DO YOU KNOW WHO HE CALLED?

16 THE COURT: DON'T TELL WHO. HE'S ASKING YOU DO YOU
17 KNOW.

18 A OH. DO I KNOW NOW? YES.

19 Q YOU DO KNOW?

20 A YES.

21 Q WHO WAS THAT?

22 A RONALD.

23 Q RONALD TILLMAN?

24 A YES.

25 Q OKAY. DID THEY HAVE A CONVERSATION?

1 A YES.

2 Q HOW LONG DID IT LAST?

3 A IT WAS NOT LONG. A FEW MINUTES. IT WASN'T LIKE TEN MINUTES.

4 Q WHAT TIME WAS THIS CONVERSATION?

5 A EXCUSE ME?

6 Q WHAT TIME WAS THIS CONVERSATION?

7 A IT HAD TO BE AROUND 7:00 OR A FEW MINUTES BEFORE 7:00 'CAUSE

8 WE DIDN'T GET BACK FROM MY MOTHER'S HOUSE 'TIL SOMETHING TO

9 7:00.

10 Q SO, IT WAS RIGHT AFTER YOU GOT BACK, CORRECT?

11 A YEAH, IT WAS AFTER WE GOT BACK.

12 Q OKAY. AND YOU TESTIFIED THAT YOU WERE WITH DONALD SUTTON.

13 DID HE RECEIVE ANY PHONE CALLS?

14 A YES.

15 Q AND WERE YOU PRESENT IN THE ROOM WHEN HE RECEIVED A PHONE

16 CALL?

17 A YES.

18 Q AND DO YOU KNOW WHO CALLED HIM?

19 A YES.

20 Q AND WHO WAS THAT?

21 A RONALD TILLMAN.

22 Q AFTER THAT CONVERSATION, WHAT, IF ANYTHING, DID DONALD DO?

23 A DONALD WAS--HE TALKED TO VITO IN THE ROOM, THEN HE CAME OUT

24 AND HE JOKED AROUND WITH ME AND BRIDGETTE.

25 Q WERE YOU PRESENT WHEN HE TALKED TO VITO IN THE ROOM?

1 A NO, I WASN'T.

2 Q BUT YOU DO KNOW THAT HE TALKED TO VITO?

3 A YES.

4 Q OKAY. WHAT HAPPENED NEXT, IF ANYTHING?

5 A THEN DONALD TOLD US THAT HE WAS GOING SOMEWHERE, HE'LL BE

6 BACK IN A HOUR.

7 Q HE WOULD BE BACK IN AN HOUR?

8 A UH-HUH (INDICATES AFFIRMATIVE).

9 Q AND DID HE LEAVE?

10 A YES.

11 Q WHAT TIME WAS THIS?

12 A DONALD LEFT ABOUT 7:15 OR 7:30.

13 Q BY HIMSELF?

14 A YES.

15 Q AND DO YOU KNOW WHAT MODE OF TRANSPORTATION HE WAS IN?

16 A HE WAS IN HIS CAR.

17 Q OKAY. SO, ABOUT 7:15 HE LEFT IN HIS CAR BY HIMSELF?

18 A YES.

19 Q DID HE INDICATE TO YOU WHERE HE WAS GOING?

20 A YES.

21 MRS. SHEALY: YOUR HONOR, I OBJECT TO THAT QUESTION AS

22 WELL. IT CALLS FOR HEARSAY.

23 THE COURT: WELL, THERE'S NO QUESTION THAT IT CALLS FOR

24 HEARSAY BUT IT ISN'T HEARSAY UNTIL HE SAYS IT. HE INDICATED

25 WHERE HE WAS GOING BUT HE HASN'T SAID WHERE HE WAS GOING.

1 I'M GOING TO LET IT GO. DON'T REPEAT WHAT A WITNESS TOLD,
2 YOU, MA'AM. WHEN THEY ARE ASKING YOU DO YOU KNOW SOMETHING,
3 THEY ARE ASKING YOU--

4 MR. BILTON: MR. SUTTON IS NOT A WITNESS.

5 THE COURT: I'LL EXPLAIN IT SO YOU CAN UNDERSTAND IT,
6 TOO. DON'T REPEAT WHAT ANYONE TOLD YOU, OKAY?

7 A OKAY.

8 Q DID HE LEAVE THE HOUSE?

9 A YES.

10 Q AND WAS HE ALONE?

11 A YES.

12 Q OKAY. AND I BELIEVE YOU TESTIFIED THAT--WHAT TIME WAS THIS
13 THAT HE LEFT?

14 A IT WAS AROUND 7:15 OR 7:30.

15 Q DID YOU SEE RONALD TILLMAN THAT NIGHT?

16 A YES.

17 Q WHAT TIME DID YOU SEE RONALD TILLMAN?

18 A RONALD GOT TO BRIDGETTE HOUSE AROUND 8:00.

19 Q EIGHT O'CLOCK?

20 A YES.

21 Q WHO WAS WITH HIM?

22 A NO ONE.

23 Q AND HOW WAS HE DRESSED?

24 A IN A WHITE AND BLACK BRITISH KNIGHT WARMUP WITH SNEAKERS.

25 Q DID DONALD SUTTON EVER SHOW UP?

1 A DID HE RETURN? NO.

2 Q DO YOU KNOW WHERE HE WAS GOING?

3 A YES.

4 MRS. SHEALY: YOUR HONOR, I'M GOING TO OBJECT IF HER
5 KNOWLEDGE OF IT IS BASED ON HEARSAY.

6 THE COURT: WELL, SHE HASN'T TESTIFIED AS TO WHERE HE
7 DID GO AT THIS POINT. IF YOU ARE OBJECTING IN THE FUTURE I
8 GUESS--MA'AM, WHEN THEY ASKS YOU A QUESTION ONCE AGAIN THEY
9 ARE ASKING YOU, YOU KNOW, HOW DO YOU KNOW SOMETHING? THAT
10 MEANS YOU SAW IT, RIGHT? YOU SAW SOMEONE DO IT, OKAY? IF
11 SOMEONE ELSE TELLS YOU THAT SOMEONE WENT SOME PLACE YOU DON'T
12 REALLY KNOW THAT THEY WENT THERE BECAUSE YOU DIDN'T SEE THEM
13 GO THERE, DID YOU?

14 A RIGHT.

15 THE COURT: SO, WHEN THEY ARE ASKING YOU THESE QUESTIONS
16 THEY ARE ASKING YOU ABOUT YOUR PRESENT KNOWLEDGE WHICH YOU
17 SAW AND DID, OKAY? ALL RIGHT.

18 Q WAS VITO SUPPOSED TO GO WITH DONALD? ORIGINALLY?

19 A DO YOU MEAN DO I KNOW THEIR PLANS PERSONALLY? WHAT THEY PLAN
20 TO DO?

21 Q MY QUESTION IS DO YOU KNOW WHETHER VITO WAS TO GO WITH
22 DONALD?

23 A NO.

24 Q YOU DON'T. YOU SAY RON CAME BY AT EIGHT O'CLOCK, CORRECT?

25 A YES.

1 Q PRIOR TO HIM COMING BY AT EIGHT O'CLOCK THAT NIGHT, WHEN WAS
2 THE LAST TIME YOU SAW RONALD TILLMAN?
3 A THE LAST TIME? BEFORE THEN?
4 Q BEFORE THEN.
5 A I DIDN'T.
6 Q I MEAN--LET ME REPHRASE THE QUESTION. PRIOR TO RONALD
7 APPEARING AT BRIDGETTE'S HOUSE THAT NIGHT, WHEN WAS THE LAST
8 TIME YOU HAD SEEN HIM EARLIER?
9 A I DIDN'T SEE HIM. I MET RONALD THAT NIGHT.
10 Q OH, YOU MET RONALD THAT NIGHT?
11 A YES.
12 Q SO, YOU DIDN'T KNOW RONALD TILLMAN?
13 A NO, NOT PERSONALLY.
14 Q OKAY. HOW LONG DID RONALD TILLMAN STAY THERE?
15 A LIKE I SAID BEFORE, THEY WENT TO THE STORE FOR US TWICE.
16 Q WAIT A MINUTE. LET'S BACK UP.
17 A YOU WANT TO KNOW HOW LONG A PERIOD OF TIME THEY STAYED AT THE
18 HOUSE? YOU WANT ME TO SAY LIKE FROM WHAT TIME TO WHAT TIME?
19 Q YES, MA'AM.
20 A WELL, HE ARRIVED AT EIGHT O'CLOCK AND THE LAST TIME HE WAS
21 AT BRIDGETTE'S HOUSE WAS NINE O'CLOCK OR A LITTLE AFTER NINE.
22 Q LET ME ASK YOU THE QUESTION. YOU SAY HE ARRIVED AT EIGHT
23 O'CLOCK?
24 A YES.
25 Q HOW LONG DID HE STAY THERE THE FIRST TIME?

1 A FIRST TIME HE STAYED THERE WAS LIKE TEN MINUTES.
2 Q SO, HE LEFT AT 8:10? AND HOW LONG WAS HE GONE?
3 A THEY WERE GONE LIKE TWENTY MINUTES.
4 Q AND WHO WENT WITH HIM?
5 A VITO WENT WITH HIM.
6 Q AND WHERE WERE THEY GOING, DO YOU KNOW?
7 A YES. THEY WERE GOING TO THE STORE FOR US.
8 Q BUT YOU DON'T KNOW WHETHER THEY WENT TO THE STORE, DO YOU?
9 A NO.
10 Q AND YOU TESTIFIED EARLIER THAT THEY CAME BACK EMPTY HANDED,
11 DIDN'T THEY?
12 A YES.
13 Q DID THEY TELL YOU WHERE THEY HAD BEEN?
14 A YES.
15 Q WHERE HAD THEY BEEN?
16 A TO THE STORE. TO RON'S STORE.
17 Q DID YOU FIND THAT A BIT CURIOUS THAT THEY'D GO TO THE STORE,
18 STAY TWENTY MINUTES AND COME BACK EMPTY HANDED?
19 A NO.
20 Q YOU DIDN'T FIND THAT--OKAY. SO, WHAT, IF ANYTHING, DID
21 RONALD TILLMAN SAY WHEN HE GOT THERE?
22 A WHEN THEY RETURN FROM THE STORE THE FIRST TIME?
23 Q YES, MA'AM.
24 A HE SAY THAT THEY HAD LEFT THE STUFF ON THE COUNTER AT THE
25 STORE AND THEY WAS GONNA GO BACK TO THE STORE FOR US BUT THEY