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VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

ORIGINAL

MORRIS ANTONIO SULLIVAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

THE STATE,)

VERSUS)

MORRIS ANTONIO SULLIVAN,)

DEFENDANT.)

98-GS-23-4313

05-GS-23-9999

TRANSCRIPT OF RECORD

VOLUME 1 - 1/17/06

JANUARY 17-20, 2006

GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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DAWN V. KOFFSKEY
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1 (.40 CALIBER PISTOL AND MAGAZINE MARKED AS STATE'S EXHIBIT
2 NUMBER 1 FOR PURPOSES OF IDENTIFICATION ONLY)

3 (BULLET FROM VICTIM MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
4 PURPOSES OF IDENTIFICATION ONLY)

5 (.40 CALIBER SPENT ROUND MARKED AS STATE'S EXHIBIT NUMBER 3
6 FOR PURPOSES OF IDENTIFICATION ONLY)

7 (BULLET FRAGMENT MARKED AS STATE'S EXHIBIT NUMBER 4 FOR
8 PURPOSES OF IDENTIFICATION ONLY)

9 (BULLET FROM HANDGUN MARKED AS STATE'S EXHIBIT NUMBER 5 FOR
10 PURPOSES OF IDENTIFICATION ONLY)

11 (BEDSHEET FROM BED MARKED AS STATE'S EXHIBIT NUMBER 6 FOR
12 PURPOSES OF IDENTIFICATION ONLY)

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14 PURPOSES OF IDENTIFICATION ONLY)

15 (BIG DOG T-SHIRT MARKED AS STATE'S EXHIBIT NUMBER 8 FOR
16 PURPOSES OF IDENTIFICATION ONLY)

17 (GSR KIT - DEFENDANT MARKED AS STATE'S EXHIBIT NUMBER 9 FOR
18 PURPOSES OF IDENTIFICATION ONLY)

19 (.40 CALIBER SPENT ROUND MARKED AS STATE'S EXHIBIT NUMBER 10
20 FOR PURPOSES OF IDENTIFICATION ONLY)

21 (.40 CALIBER SPENT ROUND MARKED AS STATE'S EXHIBIT NUMBER 11
22 FOR PURPOSES OF IDENTIFICATION ONLY)

23 (911 AUDITAPE MARKED AS STATE'S EXHIBIT NUMBER 12 FOR
24 PURPOSES OF IDENTIFICATION ONLY)

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1 PURPOSES OF IDENTIFICATION ONLY)

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3 16 FOR PURPOSES OF IDENTIFICATION ONLY)

4 (ASHTRAY MARKED AS STATE' EXHIBIT NUMBER 17 FOR PURPOSES OF
5 IDENTIFICATION ONLY)

6 (BOX OF SANDWICH BAGS MARKED AS STATE'S EXHIBIT NUMBER 18
7 FOR PURPOSES OF IDENTIFICATION ONLY)

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9 19 FOR PURPOSES OF IDENTIFICATION ONLY)

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11 NUMBER 20 FOR PURPOSES OF IDENTIFICATION ONLY)

12 (VICTIM'S SHIRT MARKED AS STATE'S EXHIBIT NUMBER 21 FOR
13 PURPOSES OF IDENTIFICATION ONLY)

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15 22 FOR PURPOSES OF IDENTIFICATION ONLY)

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23 PURPOSES OF IDENTIFICATION ONLY)

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25 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 82 FOR PURPOSES

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16 (CHIEF MORTON'S NOTES MARKED AS STATE'S EXHIBIT NUMBER 83
17 FOR PURPOSES OF IDENTIFICATION ONLY)

18 **THE COURT:** DO Y'ALL HAVE ANY WITNESS LISTS OR VOIR DIRE
19 YOU...

20 **MS. MONTS:** YES, SIR.

21 **MR. SUMNER:** NONE FROM THE DEFENSE, YOUR HONOR. STANDARD
22 VOIR DIRE SHOULD SUFFICE.

23 **THE COURT:** OKAY.

24 (COUNSEL OFF RECORD)

25 **THE COURT:** LET'S SEE. LET ME SEE Y'ALL UP HERE ONE

MATTERS AND MOTIONS

1 SECOND.

2 MR. SUMNER: SURE.

3 (BENCH CONFERENCE OFF RECORD)

4 (JURY PANEL ENTERS COURTROOM AT 11:23 A.M.)

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, GOOD MORNING.
6 I'M SORRY THERE HAS BEEN A DELAY IN HAVING YOU BROUGHT IN HERE,
7 BUT SOMETIMES THAT HAPPENS, AND I APPRECIATE YOUR UNDERSTANDING.
8 MY NAME IS GARY HILL. I'M ONE OF THE CIRCUIT JUDGES HERE IN THE
9 13TH CIRCUIT. I LIVE HERE IN GREENVILLE, AND I'M GLAD TO BE HOME
10 THIS WEEK.

11 WE ARE ABOUT TO BEGIN THE TRIAL OF THE CASE OF THE STATE OF
12 SOUTH CAROLINA VERSUS MORRIS ANTONIO SULLIVAN. I'M GOING TO TELL
13 YOU THAT MR. SULLIVAN HAS BEEN CHARGED IN THREE INDICTMENTS. AND
14 I WILL TELL YOU FIRST OF ALL THAT AN INDICTMENT IS NOT PROOF OF
15 ANYTHING. IT DOESN'T CONSTITUTE EVIDENCE OF ANYTHING, AND IT IS
16 SIMPLY THE VEHICLE BY WHICH THE CHARGE IS BROUGHT BEFORE THE
17 COURT AND IS IN A SENSE THE TICKET THE STATE HAS TO HAVE IN ORDER
18 TO GET INTO THE COURTROOM. SO THE INDICTMENT IS NOT EVIDENCE.
19 MR. SULLIVAN HAS PLED NOT GUILTY TO THESE CHARGES, AND THAT
20 PLACES THE BURDEN OF PROOF ON THE STATE. AND MR. SULLIVAN IS
21 PRESUMED INNOCENT AND HE WILL REMAIN PRESUMED INNOCENT THROUGHOUT
22 THIS TRIAL, AND THAT PRESUMPTION CAN ONLY BE REMOVED IF AND ONLY
23 IF THE STATE PROVES EACH ELEMENT OF EACH ONE OF THESE CRIMES
24 BEYOND A REASONABLE DOUBT, AND THEN AND ONLY THEN COULD A JURY
25 FIND HIM GUILTY.

VOIR DIRE

1 SO HE HAS PLED NOT GUILTY. HE IS PRESUMED INNOCENT AND
2 PRESUMED NOT GUILTY AT THIS STAGE. AND AGAIN, THE INDICTMENTS DO
3 NOT CONSTITUTE EVIDENCE. THEY DO NOT EVEN CONSTITUTE A SUSPICION
4 OF GUILT. BUT I HAVE TO READ THE INDICTMENTS TO YOU. HE IS
5 CHARGED IN ONE COUNT THAT ON OR ABOUT THE 16TH OF JANUARY 1998 MR.
6 SULLIVAN FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT
7 MURDERED ONE JERVIS ANTRON POWERS TO WIT, AND DID CAUSE THE DEATH
8 OF THE VICTIM BY SHOOTING HIM WITH A HANDGUN AND THAT JERVIS
9 ANTRON POWERS DID DIE IN GREENVILLE COUNTY AS A PROXIMATE RESULT.
10 HE IS ALSO CHARGED IN ANOTHER COUNT ON THE SAME DAY WITH
11 POSSESSING OR VISIBLY DISPLAYING A .40 CALIBER SEMI-AUTOMATIC
12 HANDGUN DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A
13 VIOLENT CRIME, THE VIOLENT CRIME BEING MURDER, WHICH HAS
14 PREVIOUSLY BEEN CHARGED. AND THEN THE FINAL CHARGE ALLEGES THAT
15 ON THE 16TH OF JANUARY 1998 WHILE AT [REDACTED] IN
16 FOUNTAIN INN, SOUTH CAROLINA, MORRIS ANTONIO SULLIVAN WILLFULLY
17 AND UNLAWFULLY HAD IN HIS POSSESSION AND UNDER HIS CONTROL A
18 PISTOL AND THAT AT THE TIME THE DEFENDANT WAS UNDER THE AGE OF 21
19 IN VIOLATION OF SECTION 16-23-30 OF THE SOUTH CAROLINA CODE OF
20 LAWS.

21 SO THOSE ARE THE CHARGES, AND AGAIN, MR. SULLIVAN HAS PLED
22 NOT GUILTY AND HE IS PRESUMED INNOCENT. HE IS PRESUMED NOT
23 GUILTY OF THESE CHARGES. I'M GOING TO GO OVER WITH YOU THESE
24 CONCEPTS OF THE PRESUMPTION OF INNOCENCE AND ALSO THE CONCEPT OF
25 THE STATE'S BURDEN OF PROOF, AND THEY HAVE TO PROVE GUILT BEYOND

VOIR DIRE

1 A REASONABLE DOUBT. AND IF YOU ARE SEATED AS A JUROR ON THIS
2 CASE, YOUR JOB WILL BE TO DETERMINE WHETHER THE STATE HAS MET ITS
3 BURDEN. AND THAT IS WHY WE NEED A JURY, BECAUSE THERE IS A
4 DISPUTE ABOUT THE FACTS IN THIS CASE, AND YOU WILL BE ASKED TO
5 RESOLVE THAT DISPUTE.

6 NOW, LADIES AND GENTLEMEN, I HAVE TO INSURE AND THE PARTIES
7 HAVE TO INSURE THAT WE HAVE A JURY THAT IS FAIR AND IMPARTIAL,
8 AND SO WE'RE GOING TO SPEND SOME TIME DETERMINING THAT YOU CAN BE
9 FAIR AND IMPARTIAL, AND IT IS IMPERATIVE THAT WE HAVE TRUTHFUL
10 AND COMPLETE ANSWER FROM EVERYONE. SO IF YOU HAVE A QUESTION
11 ABOUT WHETHER YOU NEED TO RESPOND, PLEASE ERR ON THE SIDE OF
12 RESPONDING INSTEAD OF NOT RESPONDING, BECAUSE THIS IS AN
13 IMPORTANT CASE FOR MR. SULLIVAN, OBVIOUSLY, AND FOR THE STATE,
14 AND THIS IS THEIR DAY IN COURT.

15 NOW, THE FIRST THING I NEED TO KNOW IS IF ANY OF YOU ARE
16 RELATED BY BLOOD OR MARRIAGE TO EITHER MORRIS ANTONIO SULLIVAN OR
17 JERVIS ANTRON POWERS. IF SO, PLEASE STAND. (PAUSE) (NO
18 RESPONSE)

19 DO ANY OF YOU HAVE A PERSONAL, BUSINESS OR SOCIAL
20 RELATIONSHIP WITH MR. SULLIVAN OR ANY MEMBER OF HIS FAMILY? IF
21 SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

22 DO ANY OF YOU HAVE A PERSONAL OR SOCIAL OR BUSINESS
23 RELATIONSHIP WITH THE VICTIM IN THE CASE, MR. POWERS, OR HIS
24 FAMILY? IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

25 I'M GOING TO ASK THE ATTORNEYS AT THIS TIME TO INTRODUCE

VOIR DIRE

1 THEMSELVES AND THE PEOPLE WHO ARE SITTING WITH THEM. YES, MA'AM,
2 MS. MONTS.

3 MS. MONTS: MAY IT PLEASE THE COURT, YOUR HONOR.

4 THE COURT: YES, MA'AM.

5 MS. MONTS: LADIES AND GENTLEMEN, MY NAME IS JOYCE MONTS.

6 I'M WITH THE 13TH CIRCUIT SOLICITOR'S OFFICE. SEATED NEXT TO ME
7 IS MONTY DESAI. HE'S ALSO A PROSECUTOR WITH THE SOLICITOR'S
8 OFFICE. AND SEATED NEXT TO HIM IS MS. ALLMOND, AND SHE'S AN
9 INVESTIGATOR WITH TO SOLICITOR'S OFFICE.

10 THE COURT: ALL RIGHT. THANK YOU, MS. MONTS.

11 YES, SIR, MR. SUMNER.

12 MR. SUMNER: GOOD MORNING. MY NAME IS STEVE SUMNER, AND I
13 PRACTICE LAW HERE IN GREENVILLE.

14 STAND UP, IF YOU WOULD, MORRIS (DEFENDANT COMPLIES).

15 AND SEATED NEXT TO ME, TO MY LEFT, IS MORRIS SULLIVAN, MY
16 CLIENT IN THIS CASE. THANK YOU.

17 THE COURT: ALL RIGHT. THANK YOU, GENTLEMEN.

18 NOW, IS ANYONE RELATED BY BLOOD OR MARRIAGE OR KIN TO IN ANY
19 WAY ANY OF THE PEOPLE WHO JUST STOOD UP OR WHO WERE INTRODUCED?

20 IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

21 HAVE ANY OF YOU EVER BEEN EMPLOYED BY THE 13TH CIRCUIT
22 SOLICITOR'S OFFICE? THE SOLICITOR IS BOB ARIAIL. AND AS YOU
23 PROBABLY KNOW, THE SOLICITOR IS THE DISTRICT ATTORNEY, ANOTHER
24 WAY OF SAYING IT, BUT IT'S THE ENTITY THAT PROSECUTES CRIMES IN
25 THIS CIRCUIT. HAS ANYONE EVER BEEN EMPLOYED BY THE 13TH CIRCUIT

VOIR DIRE

1 SOLICITOR'S OFFICE? IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

2 HAS ANYONE EVER BEEN REPRESENTED BY ANY OF THE ATTORNEYS IN
3 THIS CASE OR HAS ANYBODY BEEN INVOLVED IN A DISPUTE WHERE THE
4 OTHER SIDE WAS EITHER REPRESENTED BY ANY OF THE ATTORNEYS IN THIS
5 CASE, THAT IS, MS. MONTS, MR. DESAI OR MS. SUMNER? IF SO, PLEASE
6 STAND. (PAUSE) (NO RESPONSE)

7 DO ANY OF YOU HAVE A PERSONAL, SOCIAL OR BUSINESS
8 RELATIONSHIP WITH ANY OF THE PEOPLE WHO WERE JUST INTRODUCED? IF
9 SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

10 I'M GOING TO READ TO YOU A LIST OF PEOPLE WHO MAY TESTIFY IN
11 THIS CASE.

12 OKAY. YES, MA'AM. IF YOU WOULD, TELL ME YOUR NAME.

13 JUROR NUMBER 22: BEVERLY BROWN.

14 THE COURT: OKAY, MS. BROWN.

15 JUROR NUMBER 22: I KNOW SHIRLEY. I KNOW SHIRLEY.. WE GO
16 TO CHURCH TOGETHER.

17 THE COURT: OH, OKAY. ALL RIGHT. AND THE FACT THAT YOU
18 KNOW HER -- HOW LONG HAVE YOU KNOWN HER, MA'AM?

19 JUROR NUMBER 22: OH, 20, 25 YEARS.

20 THE COURT: ALL RIGHT. AND THE FACT THAT YOU KNOW HER AND
21 THE FACT THAT SHE IS THE INVESTIGATOR FOR THE PROSECUTOR IN THIS
22 CASE DO YOU BELIEVE -- IF YOU WERE SELECTED AS A JUROR IN THIS
23 CASE KNOWING THAT SHE HAD WORKED ON THE CASE AS THE INVESTIGATOR
24 DO YOU BELIEVE YOU COULD BE FAIR AND IMPARTIAL TO MR. SULLIVAN
25 AND TO THE STATE?

VOIR DIRE

1 **JUROR NUMBER 22:** YES, I DO.

2 **THE COURT:** YOU BELIEVE YOU COULD PUT YOUR RELATIONSHIP
3 WITH HER TO ASIDE AND DECIDE THIS CASE SOLELY ON THE LAW AND THE
4 EVIDENCE?

5 **JUROR NUMBER 22:** YES.

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

7 OKAY. THE PEOPLE WHO MAY TESTIFY IN THIS CASE INCLUDE
8 OCTAVIOUS BARKSDALE, FRANK ANDRE GOLDEN, RONNIE COOK, TIMOTHY L.
9 TUCKER, CEDRICK B. EVANS, RONICA BUTLER, NICOLE R. LADSON, JASON
10 POWERS, CHRISTINE TODD, CHARLES MCCALL, SCOTT MACKEY, CHRIS
11 ANTHONY, A GENTLEMAN NAMED MORTON, WHO WAS WITH THE FOUNTAIN INN
12 POLICE DEPARTMENT AT ONE TIME OR MAY BE STILL, WADE MEETZE, JOHN
13 RUMFELT, MICHAEL HAMILTON, CAROLYN REGAN, RONNIE REID, RAY ALLEN,
14 JOHN GARRETT, ED HENЕК, THAT'S H-E-N-E-K, WILLIAM MONTY STUBBS,
15 KIMBERLY BLACK, KENNETH WHITLER, JAMES GOWAN, MICHAEL WARD AND
16 SEAN COLLINS. NOW, THOSE ARE THE PEOPLE WHO MAY TESTIFY IN THIS
17 CASE, AND I NEED TO KNOW IF ANY OF YOU HAVE ANY PERSONAL OR
18 SOCIAL OR BUSINESS RELATIONSHIP WITH ANY OF THOSE PEOPLE I MUST
19 MENTIONED. IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

20 ALL RIGHT. ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE TO
21 ANY OF THE PEOPLE I JUST LISTED? IF SO, PLEASE STAND. (PAUSE)
22 (NO RESPONSE)

23 NOW, DO ANY OF YOU HAVE ANY KNOWLEDGE ABOUT THIS CASE OTHER
24 THAN WHAT YOU'VE HEARD HERE TODAY? IF SO, PLEASE STAND. (PAUSE)
25 (NO RESPONSE)

VOIR DIRE

1 HAS ANYBODY FORMED ANY KIND OF OPINION ABOUT THE CASE OR
2 EXPRESSED ANY OPINION ABOUT IT? YES, MA'AM. DO YOU WANT TO COME
3 UP HERE AND TALK WITH ME? (JUROR INDICATES AFFIRMATIVE RESPONSE)

4 (THE FOLLOWING DISCUSSION TAKES PLACE AT THE COURT
5 REPORTER'S DESK OUTSIDE EARSHOT OF THE JURY PANEL)

6 THE COURT: LET'S SEE. MA'AM, JUST STEP RIGHT HERE. SHE'S
7 GOT TO BE ABLE TO TAKE EVERYTHING DOWN. IF YOU WOULD, JUST STAND
8 RIGHT HERE SO SHE CAN TAKE IT DOWN.

9 TELL ME YOUR NAME.

10 JUROR NUMBER 96: ELAINE LANDRETH.

11 THE COURT: OKAY.

12 JUROR NUMBER 96: I THINK I MIGHT HAVE TAUGHT HIM IN
13 SCHOOL. I'M NOT CERTAIN YET. AND I READ NEWSPAPER ARTICLES AND
14 I FELT THAT HE WAS GUILTY.

15 THE COURT: OKAY. ALL RIGHT. I'M GOING TO EXCUSE YOU IN
16 THIS CASE. JUST GO ON BACK DOWNSTAIRS. THANK YOU.

17 (DISCUSSION AT COURT REPORTER'S DESK ENDS)

18 THE COURT: OKAY. SO JUROR NUMBER 27 HAS BEEN EXCUSED.
19 I'M REFERRING TO THE STRIKE SHEET NUMBER.

20 OKAY. HAS -- AND LISTEN VERY CAREFULLY TO THIS QUESTION.
21 IF YOU NEED TO RESPOND, YOU CAN COME DOWN. WE CAN DO IT DOWN
22 HERE. EVERYTHING NEEDS TO BE ON RECORD IN CIRCUIT COURT SO WE
23 HAVE TO HAVE A RECORD MADE OF WHAT IS SAID. BUT IF YOU NEED TO
24 RESPOND TO THIS QUESTION AND YOU WANT TO DO SO UP HERE AND NOT IN
25 FRONT OF EVERYONE ELSE, PLEASE AVAIL YOURSELF OF THAT

VOIR DIRE

1 OPPORTUNITY.

2 THE QUESTION IS: HAVE ANY OF YOU OR ANY MEMBERS OF YOUR
3 IMMEDIATE FAMILY OR ANY CLOSE PERSONAL FRIEND OF YOURS EVER BEEN
4 THE VICTIM OF OR CHARGED WITH A VIOLENT CRIME? IF YOU NEED TO
5 RESPOND TO THAT QUESTION, YOU CAN COME DOWN HERE AND WE CAN TALK
6 TO YOU UP FRONT. LET ME REPEAT THE QUESTION. HAS ANYONE HERE
7 TODAY OR A MEMBER OF THEIR IMMEDIATE FAMILY OR CLOSE PERSONAL
8 FRIEND EVER BEEN CHARGED WITH OR BEEN THE VICTIM OF A VIOLENT
9 CRIME? IF SO, PLEASE STAND. (PAUSE) OKAY.

10 (THE FOLLOWING DISCUSSION TAKES PLACE AT THE COURT
11 REPORTER'S DESK OUTSIDE EARSHOT OF THE JURY PANEL)

12 THE COURT: TELL ME YOUR NAME.

13 JUROR NUMBER 130: BARBARA PRINCE. WHEN I LIVED IN FLORIDA
14 A CRIMINAL BROKE IN OUR HOUSE. MY DAUGHTER WAS THERE.

15 THE COURT: DID YOU SAY YOUR DAUGHTER WAS THERE?

16 JUROR NUMBER 130: (INDICATES AFFIRMATIVE RESPONSE) SHE'S
17 OKAY, BUT IT DID HAPPEN. HE GOT CAUGHT.

18 MR. SUMNER: HE DID.

19 JUROR NUMBER 130: YEAH, HE WAS JUST RELEASED.

20 MR. SUMNER: MA'AM?

21 JUROR NUMBER 130: HE WAS JUST RELEASED FROM PRISON. THEY
22 BROKE IN OUR HOUSE. THAT'S ALL.

23 MR. SUMNER: CAN I VOIR DIRE THIS---

24 THE COURT: GO AHEAD.

25 MR. SUMNER: MS. PRINCE, DO YOU THINK DUE TO THAT

VOIR DIRE

1 EXPERIENCE THAT YOU WOULD FEEL UNCOMFORTABLE SERVING ON A JURY
2 WHERE THE CHARGE IS MURDER AGAINST SOMEBODY? DO YOU THINK YOU
3 COULD PUT IT ASIDE AND BE FAIR?

4 JUROR NUMBER 130: YEAH, I CAN.

5 MR. SUMNER: ANY QUESTION IN YOUR MIND ABOUT WHETHER YOU
6 CAN BE FAIR AND FOLLOW THE LAW THAT JUDGE HILL GIVES YOU?

7 JUROR NUMBER 130: I THINK I CAN. BUT I JUST---

8 MR. SUMNER: I DIDN'T ASK YOU IF YOU THINK YOU CAN. I
9 DON'T MEAN TO BE SMART WHEN I SAID THAT. I'M NOT TRYING TO BE
10 SMART. BUT ARE YOU POSITIVELY SURE THAT YOU CAN GIVE A FAIR AND
11 IMPARTIAL TRIAL TO BOTH THE STATE AND THE DEFENSE?

12 JUROR NUMBER 130: YES.

13 MR. SUMNER: NOTHING FURTHER. (JUROR RETURNS TO SEAT)

14 THE COURT: WHAT IS YOUR NAME?

15 JUROR NUMBER 143: STEVEN SEBASTIAN. ONLY THING THAT
16 HAPPENED, THIS IS LIKE 15 YEARS AGO. MY WIFE WAS A VICTIM OF A
17 MUGGING IN DALLAS, TEXAS. YOU KNOW, IT'S JUST -- SHE DIDN'T GET
18 BEAT UP OR ANYTHING PER SE, SHE WAS JUST -- HAD SOMEBODY HIT HER
19 AND KNOCK HER DOWN AND TAKE HER PURSE, THINGS LIKE THAT.

20 THE COURT: DO YOU THINK YOU CAN BE FAIR AND IMPARTIAL IN
21 THIS CASE?

22 JUROR NUMBER 143: SURE. I DON'T KNOW ANYTHING ABOUT IT.

23 THE COURT: YOUR WIFE WAS A VICTIM OF A VIOLENT CRIME.
24 COULD YOU PUT THAT ASIDE AND DECIDE THIS CASE ON THE LAW AND
25 EVIDENCE AND BE FAIR TO MR. SULLIVAN AND TO THE STATE?

VOIR DIRE

1 JUROR NUMBER 143: YES, SIR.

2 THE COURT: OKAY. DO YOU HAVE ANY OTHER QUESTIONS?

3 MR. SUMNER: (INDICATES NEGATIVE RESPONSE)

4 JUROR NUMBER 143: (RETURNS TO SEAT)

5 THE COURT: WHAT IS YOUR NAME, SIR?

6 JUROR NUMBER 85: MIKE JOHNSON.

7 THE COURT: OKAY. MR. JOHNSON.

8 JUROR NUMBER 85: MY STEPSON IS IN JAIL NOW FOR WEAPONS

9 VIOLATIONS AND DRUG CHARGES. I TALKED TO THE JUDGE DOWNSTAIRS.

10 HE SAID IF I CAME UP TO MAKE SURE I TOLD YOU ALL THAT.

11 THE COURT: OKAY. JUDGE, WELL, GIVEN THAT YOUR STEPSON'S
12 STATUS, COULD YOU STILL BE FAIR AND IMPARTIAL TO BOTH SIDES IN
13 THIS CASE?

14 JUROR NUMBER 85: I THINK I CAN, YES.

15 THE COURT: YOU CAN PUT THAT ASIDE AND BASE YOUR DECISION
16 SOLELY ON THE LAW AND EVIDENCE?

17 JUROR NUMBER 85: YES, SIR.

18 THE COURT: THANK YOU, SIR.

19 MR. HALEY.

20 JUROR NUMBER 64: IN '72, I WAS BEATEN AND LEFT FOR DEAD IN
21 ATLANTA, GEORGIA. I DON'T HAVE A BIAS PROBLEM. I DON'T HAVE
22 PREJUDICE. AND IT WASN'T A BLACK MAN THAT DID IT.

23 THE COURT: THIS IS A CASE WHERE THIS IS AN ISSUE OF
24 VIOLENT CRIME AND GUN CHARGES. AND THE FACT YOU HAVE BEEN A
25 VICTIM OF A VIOLENT CRIME, DO YOU THINK YOU COULD COMFORTABLY SIT

VOIR DIRE

1 ON THE JURY AND FAIRLY DETERMINE WHETHER THE STATE HAD PROVED HIM
2 GUILTY BEYOND A REASONABLE DOUBT IN THIS CASE?

3 JUROR NUMBER 64: YEAH, I COULD.

4 THE COURT: YOU'RE COMPLETELY PAST THE EXPERIENCE BEHIND
5 YOU?

6 JUROR NUMBER 64: YEAH. I WORK AT A LARGE FOOD BANK. I
7 FEED ONE OF THE MEN THAT DID IT.

8 THE COURT: THAT DID IT TO YOU?

9 JUROR NUMBER 64: YEAH.

10 MR. SUMNER: WHAT DID HE SAY? I COULDN'T HEAR.

11 THE COURT: HE RUNS A FOOD BANK AND HE FEEDS---

12 JUROR NUMBER 64: I ACTUALLY FEED ONE OF THE MEN THAT BEAT
13 ME UP.

14 MR. SUMNER: OKAY. YOU'RE THE ONE THAT DOES THE MINISTRY.
15 YOU'VE GOT THE OUTREACH MINISTRY?

16 JUROR NUMBER 64: YEAH.

17 THE COURT: ANY FURTHER VOIR DIRE?

18 MR. SUMNER: NO, SIR.

19 (END OF DISCUSSION AT COURT REPORTER'S STATION)

20 MR. SUMNER: YOUR HONOR, COULD WE APPROACH?

21 THE COURT: SURE.

22 (BENCH CONFERENCE OFF RECORD)

23 THE COURT: ALL RIGHT. (PAUSE) IS THERE ANYONE WHO IS A
24 MEMBER OF OR WHO CONTRIBUTES TO, WHETHER IT'S MONEY OR VOLUNTEERS
25 ON SOME OTHER BASIS, GROUPS WHOSE PRIMARY CONCERN IS THE

VOIR DIRE

1 PROMOTION OF LAW ENFORCEMENT OR VICTIM'S RIGHTS? IF SO, PLEASE
2 STAND. (PAUSE) (NO RESPONSE)

3 AND I DON'T KNOW ANYTHING ABOUT THIS CASE, BUT IS THERE
4 ANYONE WHO HAS READ ANY KIND OF NEWSPAPER ARTICLE OR ANY OTHER
5 INFORMATION ABOUT THE CASE BEFORE TODAY? I DON'T KNOW IF THERE'S
6 BEEN ANYTHING IN THE PAPER OR NOT, BUT I'M OBLIGATED TO ASK THAT
7 QUESTION. IF SO, PLEASE STAND. (PAUSE) (NO RESPONSE)

8 ALL RIGHT. NOW, DOES ANYONE KNOW OF ANY REASON WHATSOEVER
9 WHY YOU COULD NOT SERVE AS A JUROR IN THIS CASE AND BE FAIR AND
10 IMPARTIAL BOTH TO MR. SULLIVAN AND TO THE STATE? AND I'M ASKING
11 YOU IF YOU THINK YOUR ABILITY TO BE FAIR AND IMPARTIAL IS IN ANY
12 WAY COMPROMISED IN THIS CASE FOR ANY REASON. (PAUSE) (NO
13 RESPONSE)

14 ALL RIGHT. IS THERE ANY FURTHER VOIR FROM THE STATE?

15 **MS. MONTS:** NO, YOUR HONOR.

16 **THE COURT:** ALL RIGHT. THANK YOU.
17 FROM THE DEFENDANT?

18 **MR. SUMNER:** NO, SIR. NONE, YOUR HONOR.

19 **THE COURT:** OKAY. ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
20 GOING TO PROCEED WITH THE SELECTION OF THE JURY. WHEN YOUR NAME
21 IS CALLED, YOU CAN JUST STAND WHERE YOU ARE AND THE ATTORNEYS CAN
22 TURN AROUND AND LOOK. EACH SIDE HAS A NUMBER OF WHAT ARE CALLED
23 STRIKES, AND THEY CAN CHOOSE A JURY USING THOSE STRIKES. THE
24 PROCESS WILL TAKE A FEW MINUTES, SO WE APPRECIATE YOUR PATIENCE.

25 YES, MA'AM, GO AHEAD.

JURY SELECTION

1 **MADAME CLERK:** NUMBER 32, CATHERINE CHAPMAN (BLACK FEMALE).

2 (PAUSE) WHAT SAYS THE STATE?

3 **MS. MONTS:** PLEASE PRESENT THE JUROR.

4 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

5 **MR. SUMNER:** PLEASE SWEAR MS. CHAPMAN.

6 **MADAME CLERK:** YOU CAN HAVE A SEAT IN THE JUROR'S BOX.

7 130, BARBARA PRINCE (WHITE FEMALE). (PAUSE) WHAT SAYS THE
8 STATE?

9 **MS. MONTS:** PLEASE PRESENT THE JUROR.

10 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

11 **MR. SUMNER:** YOUR HONOR, PLEASE EXCUSE MS. PRINCE FROM THE
12 TRIAL OF THIS CASE.

13 **MADAME CLERK:** YOU'RE EXCUSED FROM THIS CASE.

14 193, KRISTEN ZELLNER (WHITE FEMALE). (PAUSE) WHAT SAYS THE
15 STATE?

16 **MS. MONTS:** PLEASE PRESENT THE JUROR.

17 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

18 **MR. SUMNER:** PLEASE SWEAR MS. ZELLNER.

19 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

20 196, JACQUELINE LAMBERT (BLACK FEMALE). (PAUSE) WHAT SAYS
21 THE STATE?

22 **MS. MONTS:** PLEASE PRESENT THE JUROR.

23 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

24 **MR. SUMNER:** PLEASE SWEAR THE MS. LAMBERT.

25 **THE COURT:** YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

JURY SELECTION

1 152, SHARON SMITH (WHITE FEMALE). (PAUSE) WHAT SAYS THE
2 STATE?

3 **MS. MONTES:** PLEASE PRESENT THE JUROR.

4 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

5 **MR. SUMNER:** (PAUSE) PLEASE EXCUSE MS. SMITH FROM THE
6 TRIAL OF THIS CASE.

7 **MADAME CLERK:** YOU'RE EXCUSED FROM THIS CASE.

8 148, JON SINGER, JUNIOR (WHITE MALE). (PAUSE) WHAT SAYS
9 THE STATE?

10 **MS. MONTES:** PLEASE PRESENT THE JUROR.

11 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

12 **MR. SUMNER:** PLEASE SWEAR MR. SINGER, YOUR HONOR.

13 **MADAME CLERK:** YOU CAN HAVE A SEAT IN THE JUROR'S BOX.

14 108, DOROTHY MCCLINTOCK (WHITE FEMALE). (PAUSE) WHAT SAYS
15 THE STATE?

16 **MS. MONTES:** PLEASE PRESENT THE JUROR.

17 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

18 **MR. SUMNER:** PLEASE EXCUSE MS. MCCLINTOCK FROM THE TRIAL OF
19 THIS CASE.

20 **MADAME CLERK:** YOU'RE EXCUSED FROM THIS CASE.

21 NUMBER 70, STEPHANIE HAZEL (WHITE FEMALE). (PAUSE) WHAT
22 SAYS THE STATE?

23 **MS. MONTES:** PLEASE PRESENT THE JUROR.

24 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

25 **MR. SUMNER:** (PAUSE) PLEASE SWEAR MS. HAZEL, YOUR HONOR.

JURY SELECTION

1 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

2 58, MICHELLE GONZALEZ (WHITE FEMALE). (PAUSE) WHAT SAYS
3 THE STATE?

4 **MS. MONTS:** PLEASE PRESENT THE JUROR.

5 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

6 **MR. SUMNER:** (PAUSE) PLEASE EXCUSE MS. GONZALEZ FROM THE
7 TRIAL OF THIS CASE.

8 **MADAME CLERK:** YOU'RE EXCUSED FROM THIS CASE.

9 182, PATRICIA WEST (WHITE FEMALE). (PAUSE) WHAT SAYS THE
10 STATE?

11 **MS. MONTS:** PLEASE PRESENT THE JUROR.

12 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

13 **MR. SUMNER:** PLEASE SWEAR MS. WEST.

14 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

15 89, MICHAEL KELLETT (WHITE MALE). (PAUSE) WHAT SAYS THE
16 STATE?

17 **MS. MONTS:** PLEASE PRESENT THE JUROR.

18 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

19 **MR. SUMNER:** PLEASE SWEAR MR. KELLETT.

20 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JURY BOX.

21 27, AMANDA BUTLER (WHITE FEMALE). (PAUSE) WHAT SAYS THE
22 STATE?

23 **MS. MONTS:** PLEASE PRESENT THE JUROR.

24 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

25 **MR. SUMNER:** PLEASE EXCUSE MS. BUTLER FROM THE TRIAL OF

JURY SELECTION

1 THIS CASE.

2 MADAME CLERK: YOU ARE EXCUSED FROM THIS CASE.

3 74, TAMMY SAUCIER (WHITE FEMALE). (PAUSE) WHAT SAYS THE
4 STATE?

5 MS. MONTS: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: WHAT SAYS THE DEFENDANT?

7 MR. SUMNER: PLEASE SWEAR MS. SAUCIER.

8 MADAME CLERK: YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

9 109, JOHN MCCOLLUM (WHITE MALE). (PAUSE) WHAT SAYS THE
10 STATE?

11 MS. MONTS: PLEASE PRESENT THE JUROR.

12 MADAME CLERK: WHAT SAYS THE DEFENDANT?

13 MR. SUMNER: PLEASE SWEAR MR. MCCOLLUM.

14 MADAME CLERK: YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

15 64, LAWRENCE HALEY (WHITE MALE). (PAUSE) WHAT SAYS THE
16 STATE?

17 MS. MONTS: (PAUSE) PLEASE EXCUSE THE JUROR FROM THIS
18 TRIAL.

19 MADAME CLERK: YOU ARE EXCUSED FROM THIS CASE.

20 91, MICHELLE KILGORE (BLACK FEMALE). (PAUSE) WHAT SAYS THE
21 STATE?

22 MS. MONTS: PLEASE PRESENT THE JUROR.

23 MADAME CLERK: WHAT SAYS THE DEFENDANT?

24 MR. SUMNER: (PAUSE) PLEASE SWEAR MS. KILGORE, YOUR HONOR.

25 MADAME CLERK: YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

JURY SELECTION

1 51, MICHAEL FITZSIMMONS (WHITE MALE). (PAUSE) WHAT SAYS
2 THE STATE?

3 **MS. MONTS:** PLEASE PRESENT THE JUROR.

4 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

5 **MR. SUMNER:** PLEASE SWEAR MR. FITZSIMMONS.

6 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

7 143, STEVEN SEBASTIAN (WHITE MALE). (PAUSE) WHAT SAYS THE
8 STATE?

9 **MS. MONTS:** PLEASE PRESENT THE JUROR.

10 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

11 **MR. SUMNER:** (PAUSE) PLEASE EXCUSE MR. SEBASTIAN FROM THE
12 TRIAL OF THIS CASE.

13 **MADAME CLERK:** YOU ARE EXCUSED FROM THIS CASE.

14 18, PATRICIA BOWERS (WHITE FEMALE). (PAUSE) WHAT SAYS THE
15 STATE?

16 **MS. MONTS:** PLEASE PRESENT THE JUROR.

17 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

18 **MR. SUMNER:** YOUR HONOR, PLEASE EXCUSE MS. BOWERS FROM THE
19 TRIAL OF THIS CASE.

20 **MADAME CLERK:** YOU ARE EXCUSED FROM THIS CASE.

21 120, KATHY ONDROVIC (WHITE FEMALE). (PAUSE) WHAT SAYS THE
22 STATE?

23 **MS. MONTS:** (PAUSE) PLEASE PRESENT THE JUROR.

24 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

25 **MR. SUMNER:** (PAUSE) WHAT JUROR NUMBER WAS IT, MA'AM?

JURY SELECTION

1 MADAME CLERK: 120, NUMBER 120

2 MR. SUMNER: THANK YOU. PLEASE SEAT MS. ONDROVIC.

3 MADAME CLERK: YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

4 THE COURT: LET'S SEE. LET'S GO WITH TWO ALTERNATES.

5 MR. SUMNER: YES, SIR. WHAT ARE THE STRIKES ON THOSE, YOUR
6 HONOR?

7 THE COURT: IT WILL BE ONE AND TWO, I BELIEVE.

8 MR. SUMNER: THAT'S TWO PER ALTERNATE OR IN TOTAL?

9 THE COURT: YES, SIR. LET ME---

10 MR. SUMNER: PER ALTERNATE?

11 THE COURT: RIGHT.

12 MADAME CLERK: (OFF RECORD WITH THE COURT)

13 THE COURT: YEAH, LET'S JUST KEEP GOING.

14 MADAME CLERK: THREE AND THEN THREE?

15 THE COURT: RIGHT.

16 MADAME CLERK: NUMBER 4, TERRY ANDERSON (WHITE MALE).

17 (PAUSE) WHAT SAYS THE STATE?

18 MS. MONTS: (PAUSE) PLEASE PRESENT THE JUROR.

19 MADAME CLERK: WHAT SAYS THE DEFENDANT?

20 MR. SUMNER: PLEASE EXCUSE MR. ANDERSON FROM THE TRIAL OF
21 THIS CASE.

22 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE.

23 84, JONATHAN JENKINS (WHITE MALE). (PAUSE) WHAT SAYS THE
24 STATE?

25 MS. MONTS: (PAUSE) PLEASE EXCUSE THE JUROR.

JURY SELECTION

1 **MADAME CLERK:** YOU'RE EXCUSED FROM THIS CASE.

2 NUMBER 2, SONJI ADAMS (BLACK FEMALE). (PAUSE) WHAT SAYS
3 THE STATE?

4 **MS. MONTS:** PLEASE PRESENT THE JUROR.

5 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

6 **MR. SUMNER:** PLEASE SWEAR MS. ADAMS.

7 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JUROR' BOX.

8 THIS IS FOR THE SECOND ALTERNATE. NUMBER 34, PAULA COLLINS
9 (WHITE FEMALE). (PAUSE) WHAT SAYS THE STATE?

10 **MS. MONTS:** PLEASE PRESENT THE JUROR.

11 **MADAME CLERK:** WHAT SAYS THE DEFENDANT?

12 **MR. SUMNER:** (PAUSE) PLEASE SWEAR MS. COLLINS, YOUR HONOR.

13 **MADAME CLERK:** YOU MAY HAVE A SEAT IN THE JUROR'S BOX.

14 **THE COURT:** ALL RIGHT. IS THERE ANY OBJECTION TO THE
15 SELECTION PROCESS OR THE COMPOSITION OF THE JURY FROM THE STATE?

16 **MS. MONTS:** NO, YOUR HONOR.

17 **THE COURT:** FROM THE DEFENSE?

18 **MR. SUMNER:** NO, SIR.

19 **THE COURT:** OKAY. I FIND THE SELECTION PROCESS COMPLIED
20 WITH ALL STATUTORY REQUIREMENTS IN J.E.B VERSUS ALABAMA AND
21 BATSON VERSUS KENTUCKY.

22 ALL RIGHT. LADIES AND GENTLEMEN, YOU'VE BEEN SELECTED TO BE
23 THE JURY IN THIS CASE. I'M GOING TO ASK YOU IF YOU WOULD GO BACK
24 IN THE JURY ROOM. MR. CANNON IS GOING TO SHOW YOU WHERE THAT IS.
25 IT'S JUST RIGHT ACROSS THE HALL THERE. I SUPPOSE. ISN'T THAT

MATTERS AND MOTIONS

1 WHERE IT IS TODAY?

2 **BAILIFF:** (INDICATES AFFIRMATIVE RESPONSE)

3 **THE COURT:** OKAY. AND WE'LL BE BACK WITH YOU IN JUST ONE
4 MINUTE. PLEASE DON'T DISCUSS ANYTHING ABOUT THIS CASE BECAUSE
5 THE CASE HASN'T STARTED YET. AND I WILL TELL YOU WHEN YOU CAN
6 DISCUSS IT, WHICH WILL BE AT THE END OF THE CASE. SO DON'T
7 DISCUSS THE CASE AND WE'LL BE RIGHT BACK WITH YOU. THANK YOU
8 VERY MUCH.

9 (JURY EXITS COURTROOM AT 11:58 A.M.)

10 **THE COURT:** OKAY. LADIES AND GENTLEMEN, THOSE OF YOU WHO
11 WERE NOT CHOSEN, THANK YOU FOR YOUR PATIENCE WITH US AND YOUR
12 COOPERATION. I'VE BEEN TOLD THAT YOU NEED TO GO BACK DOWNSTAIRS
13 TO THE JURY ASSEMBLY ROOM AND THEY WILL GIVE YOU FURTHER
14 INSTRUCTIONS DOWN THERE. THANK YOU VERY MUCH.

15 (BALANCE OF PANEL EXCUSED AT 11:59 A.M.)

16 **THE COURT:** ALL RIGHT. IT'S NOW NOON, SO Y'ALL INDICATED
17 YOU NEEDED SOME TIME TO WORK THROUGH SOME EVIDENTIARY MATTERS,
18 AND I CAN CERTAINLY GIVE YOU WHATEVER TIME YOU NEED. WE'RE IN NO
19 RUSH. SO WHAT DO YOU NEED?

20 **MR. SUMNER:** YOUR HONOR, I THINK WE'RE PRETTY MUCH READY TO
21 PROCEED. IF YOU COULD -- I MEAN, IF WE COULD JUST TAKE MAYBE
22 JUST FIVE OR TEN MINUTES TO BRING THE STUFF FROM THE CONFERENCE
23 ROOM IN HERE AND GET IT KIND OF ORGANIZED. I DON'T KNOW HOW MS.
24 MONTS FEELS ABOUT GOING AHEAD, BUT I THINK WE COULD GO AHEAD AND
25 PUT SOME THINGS ON THE RECORD AND PUT SOME THINGS UP FOR THE

MATTERS AND MOTIONS

1 COURT TO RULE UPON.

2 THE COURT: ALL RIGHT. I'VE GOT TO BE SOMEWHERE AT 12:30.
3 SO WHAT ABOUT THE JURY, WHEN DO YOU WANT ME TO TELL THEM TO COME
4 BACK TO START THE CASE?

5 MR. SUMNER: I WOULD NOT SAY -- AND I'LL, OF COURSE, DEFER
6 TO, YOU KNOW, MS. MONTS. I WOULD CERTAINLY NOT SAY BEFORE 2:30.

7 THE COURT: OKAY.

8 MR. SUMNER: AND, YOU KNOW, MAYBE EVEN THREE O'CLOCK.
9 THERE IS CERTAINLY A PRETRIAL HEARING THAT'S GOT TO TAKE PLACE, A
10 DENNO HEARING AS TO MY CLIENT.

11 THE COURT: OKAY.

12 MR. SUMNER: SO I WOULD SAY IF YOU -- YOU KNOW, IF THE
13 COURT GOT BACK IN HERE AND WE RECONVENE IN FRONT OF YOU AT, SAY,
14 TWO O'CLOCK, I WOULD SAY -- I'M JUST GOING TO SAY 3:00.

15 THE COURT: OKAY.

16 MR. SUMNER: WHAT DO YOU THINK, MS. MONTS?

17 MS. MONTS: I WOULD THINK WITH A DENNO HEARING WE MIGHT
18 NEED THAT MUCH TIME.

19 MR. SUMNER: DON'T WANT THEM BACK THERE SITTING, YOU KNOW.

20 THE COURT: THAT SOUNDS REASONABLE. OKAY. TELL THEM TO
21 COME ON BACK IN AND I'LL TELL THEM TO COME BACK AT 3:00.

22 AND WHILE WE'RE WAITING ON THAT, I HAVE THESE GUIDELINES FOR
23 THE FIREARM PROTOCOL, AND I'M GOING TO PASS THOSE OUT TO
24 EVERYBODY. IT MAKES -- THE COURT REPORTER IS THE PERSON WHO
25 KEEPS CUSTODY OF THE FIREARM DURING THE TRIAL. AND IT TALKS

MATTERS AND MOTIONS

1 ABOUT THE -- HOLD ON ONE SECOND. MR. SUMNER, YOU ASKED ABOUT
2 DEMONSTRATIONS WITH THE FIREARM, AND IT DOES COVER THAT. IF
3 YOU'RE PLANNING TO DO THAT AT ANY TIME, JUST LET ME KNOW AHEAD OF
4 TIME.

5 MR. SUMNER: YES, SIR.

6 THE COURT: THIS DOES MANDATE THAT ALL THE HANDLING OF THE
7 FIREARM BE DONE BY THE BARREL AND NOT BE POINTED ANYWHERE. BUT
8 Y'ALL CAN GO THROUGH THAT AND LET ME KNOW IF YOU HAVE ANY
9 QUESTIONS ABOUT IT.

10 MR. SUMNER: YES, SIR.

11 THE COURT: ALL RIGHT. YES, SIR, MR. FORD.

12 (JURY REENTERS COURTROOM AT 12:03 P.M.)

13 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING
14 TO HAVE A LUNCH BREAK RIGHT NOW, AND THERE ARE ALSO SOME MATTERS
15 THAT I NEED TO RESOLVE AND IT'S GOING TO TAKE A WHILE TO DO THAT.
16 SO WHAT I'M GOING TO ASK YOU TO DO IS GO AHEAD AND TAKE YOUR
17 LUNCH BREAK AND JUST REPORT BACK TO THE JURY ROOM AT THREE
18 O'CLOCK, BECAUSE THAT'S ABOUT HOW LONG IT'S GOING TO TAKE ME TO
19 DO WHAT I NEED TO DO. AND PLEASE DON'T DISCUSS THIS CASE. DON'T
20 TRY TO DO ANY KIND OF OUTSIDE RESEARCH OR GET ON THE INTERNET OR
21 ANYTHING LIKE THAT BECAUSE YOU HAVE TO DECIDE THIS CASE BASED ON
22 WHAT YOU HEAR IN THIS COURTROOM WHILE COURT IS IN SESSION AND THE
23 EVIDENCE THAT IS ENTERED INTO THE CASE, AND I'M GOING TO GO OVER
24 THAT WITH YOU REPEATEDLY AND AD NAUSEAM WITH YOU. BUT PLEASE
25 DON'T DISCUSS THE CASE. DON'T TALK TO YOURSELF -- OR YOUR FELLOW

MATTERS AND MOTIONS

1 JURORS, EXCUSE ME, OR ANY THIRD PARTY ABOUT THE CASE. DON'T TRY
2 TO DO ANY KIND OF OUTSIDE INVESTIGATION. AND WE'LL BE BACK AT
3 THREE O'CLOCK AND HOPEFULLY WE'LL BE ABLE TO START RIGHT AT 3:00.

4 BUT I'M GOING TO TELL YOU, IF YOU HAVEN'T ALREADY BEEN TOLD
5 THIS MORNING, WE TRY TO DO THINGS AS EFFICIENTLY AS WE CAN UP
6 HERE AND WE TRY TO RESPECT YOUR TIME AS MUCH AS WE CAN, BECAUSE
7 WE KNOW IT'S AN INCONVENIENCE FOR YOU TO BE UP HERE TODAY, AND WE
8 THANK YOU FOR YOUR SERVICE. BUT THE JUSTICE SYSTEM IS NOT A
9 BUSINESS. IT DOESN'T RUN EFFICIENTLY AS PRIVATE BUSINESS DOES,
10 AND JUSTICE TAKES TIME. IT ALWAYS DOES. SO PLEASE BEAR WITH US
11 IF WE HAVE TO HAVE YOU OUTSIDE OF THE COURTROOM AT VARIOUS
12 INTERVALS, AND I KNOW YOU WILL BE PATIENT WITH US. SO THANK YOU
13 AND WE'LL SEE YOU BACK AT THREE O'CLOCK.

14 (JURY EXITS COURTROOM AT 12:05 P.M.)

15 **THE COURT:** ALL RIGHT. WHILE I'M THINKING ABOUT THE
16 FIREARM, MR. MCCALL, WOULD YOU MIND CHECKING THE FIREARM THAT'S
17 GOING TO BE ENTERED INTO EVIDENCE.

18 **DEPUTY:** WE'VE ALREADY CHECKED IT. IT'S SECURED.

19 **THE COURT:** OKAY. YES, SIR. THANK YOU. IS THERE SOME
20 KIND OF CHAMBER LOCK ON IT OR...

21 **DEPUTY:** YEAH.

22 **THE COURT:** OKAY. THANK YOU, SIR.

23 DO YOU WANT TO GO AHEAD AND -- YOU SAY YOU NEED SOME TIME TO
24 GET YOUR STUFF TOGETHER. DO YOU WANT TO DO THAT AT 2:00 OR DO
25 YOU WANT TO GO AHEAD AND DO IT NOW?

MATTERS AND MOTIONS

1 **MR. SUMNER:** I'M COMFORTABLE AT TWO O'CLOCK. WHATEVER THE
2 COURT'S PLEASURE IS. I MEAN, WE DON'T REALLY HAVE THAT MUCH
3 TIME. IT'S ALREADY FIVE AFTER 12:00 NOW.

4 **THE COURT:** WE CAN GET INTO AND STOP OR WHATEVER WHEN -- IF
5 IT SUITS YOU.

6 **MR. SUMNER:** IF YOU WANT TO DO THAT, THAT'S FINE. YOU
7 DON'T EVEN NEED TO LEAVE THE BENCH FOR MY PURPOSE. I JUST NEED
8 TO BE EXCUSED.

9 **THE COURT:** OKAY. ALL RIGHT. LET'S GO AHEAD AND DO THAT.

10 (COUNSEL OFF RECORD)

11 **MR. SUMNER:** WE'RE GOING TO TRY TO DO EVERYTHING EXCEPT THE
12 JACKSON V. DENNO HEARING.

13 **THE COURT:** ALL RIGHT.

14 **MR. SUMNER:** SO, BE RIGHT BACK.

15 (AT EASE FROM 12:07 TO 12:11 P.M.)

16 **MR. SUMNER:** YOUR HONOR, MAY IT PLEASE THE COURT.

17 **THE COURT:** YES, SIR. LET ME JUST, WHILE I'M THINKING
18 ABOUT IT, PUT A COUPLE THINGS ON THE RECORD BEFORE I FORGET ABOUT
19 THEM. FIRST, THIS, OF COURSE, IS A RETRIAL AND THERE WAS
20 EVIDENCE OBVIOUSLY ADMITTED IN THE FIRST TRIAL THAT HAS STICKERS
21 ON IT WITH THE PREVIOUS COURT REPORTER INITIALS. AND UNLESS
22 EITHER PARTY OBJECTS, WHAT MS. KOFFSKEY PROPOSES TO DO IS SIMPLY
23 USE THOSE SAME STICKERS AND PUT THE DATE OF TODAY AND TOMORROW
24 AND HOWEVER LONG THE TRIAL LASTS ON THE STICKERS SO THAT THE JURY
25 DOESN'T SPECULATE ABOUT WHY THERE ARE SO MANY STICKERS ON THERE.

MATTERS AND MOTIONS

1 **MR. SUMNER:** NO OBJECTION FROM THE DEFENSE TO THAT
2 PROTOCOL, YOUR HONOR.

3 **THE COURT:** OKAY.

4 **MS. MONTS:** THAT'S FINE, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. AND AGAIN, ON THE FIREARMS, AGAIN,
6 I JUST ASK YOU TO READ THE PROTOCOL AGAIN. BUT REMEMBER, IT
7 SAYS, FOR INSTANCE, IN PARAGRAPH 4, NOT TO DISPLAY THE FIREARM TO
8 THE JURY UNLESS IT'S NECESSARY TO SHOW IT TO A WITNESS TO
9 ESTABLISH FOUNDATION. AND IF YOU WANT TO REFER TO THE FIREARM,
10 USE A PHOTOGRAPH TO SHOW IT TO THE JURY RATHER THAN THE FIREARM
11 ITSELF. AND IT GOES ON AND TALKS ABOUT THE OTHER PROCEDURES.

12 BUT ONE THING I WANTED TO ASK IS ONE OF THE REASONS OTHER
13 THAN, OF COURSE, THE SAFETY, WHY THIS PROTOCOL WAS IMPLEMENTED
14 WAS BECAUSE JURORS WEREN'T PAYING ATTENTION TO THE TESTIMONY
15 BECAUSE THERE WAS GUNS ALL OVER THE PLACE DURING TRIAL. SO AT
16 WHAT POINT DO YOU WANT ME TO INSTRUCT THE JURY ON THE FACT THAT
17 THE FIREARM IS UNLOADED AND WE'VE TAKEN PRECAUTIONS AND THEY
18 DON'T NEED TO CONCERN THEMSELVES ABOUT IT?

19 **MR. SUMNER:** I WOULD SAY WHEN IT'S ENTERED INTO EVIDENCE.

20 **THE COURT:** OKAY.

21 **MS. MONTS:** THAT'S FINE, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. THAT SUITS ME.

23 OKAY. YES, SIR, MR. SUMNER.

24 **MR. SUMNER:** THANK YOU, YOUR HONOR. MAY IT PLEASE THE
25 COURT. FIRST OF ALL, AS TO THE PRETRIAL MOTIONS FOR THE

MATTERS AND MOTIONS

1 DEFENDANT, MORRIS SULLIVAN, I WOULD ASK THAT ALL WITNESSES BE
2 SEQUESTERED UP UNTIL THE TIME OF THEIR TESTIMONY AND THAT ALL
3 WITNESSES BE INSTRUCTED NOT TO DISCUSS THEIR TESTIMONY AT THE
4 CONCLUSION OF IT IN THE HALL OR WITH ANY OTHER PERSON. THERE IS
5 A LONG LIST OF WITNESSES, AND I THINK THE COURT UNDERSTANDS WHAT
6 I'M TRYING TO ELIMINATE IS SOMEBODY TESTIFYING, GOING OUTSIDE AND
7 DISCUSSING IT WITH SOMEONE ELSE.

8 **THE COURT:** ALL RIGHT. MS. MONTS.

9 **MS. MONTS:** YOUR HONOR, WE WOULD OBJECT TO THAT. THIS HAS
10 ALREADY BEEN TRIED AND THERE IS A TRANSCRIPT FROM THE ORIGINAL
11 TRIAL, I BELIEVE. WHATEVER IS GOING TO BE SAID HAS PRETTY MUCH
12 ALREADY BEEN SAID. THAT'S THE STATE'S POSITION.

13 **THE COURT:** OKAY. ALL RIGHT. WELL, I UNDERSTAND THE
14 STATE'S POSITION, BUT I BELIEVE MR. SUMNER'S OBJECTION IS WELL
15 GROUNDED, SO I'M GOING TO -- EXCUSE ME, HIS MOTION IS WELL
16 GROUNDED. I'M GOING TO GRANT HIS MOTION. AND I DON'T KNOW WHO
17 THE WITNESSES ARE, SO Y'ALL ARE GOING TO HAVE TO POLICE THAT THE
18 BEST YOU CAN. AND IF SOMEONE DOES COME IN THE COURTROOM AND
19 HEARS TESTIMONY WHO SHOULD HAVE BEEN SEQUESTERED, OF COURSE, THAT
20 COULD CAUSE PROBLEMS AND COULD MERIT A MISTRIAL OR AT LEAST
21 STRIKING OF THAT WITNESS' TESTIMONY. SO PLEASE ADVISE ALL THE
22 WITNESSES THAT THEY NEED TO BE OUTSIDE THE COURTROOM ONCE THE
23 TRIAL BEGINS, THAT IS, THE OPENING STATEMENTS BEGIN, AND THAT
24 THEY ARE NOT TO DISCUSS THEIR TESTIMONY AFTER THEY FINISH
25 TESTIFYING WITH ANYONE ELSE.

MATTERS AND MOTIONS

1 **MS. MONTS:** YOUR HONOR, WE'D ASK THAT THE -- AND SHE'S NOT
2 IN HERE RIGHT NOW -- BUT THE VICTIM'S MOTHER, SHE IS ON THE
3 WITNESS LIST, BUT I WOULD ASK THAT SHE BE ALLOWED TO REMAIN IN
4 THE COURTROOM AS WELL AS THE CHIEF INVESTIGATING OFFICER.

5 **THE COURT:** OKAY. DO YOU HAVE ANY OBJECTION TO THAT, MR.
6 SUMNER? I THINK SHE'S ENTITLED TO BE HERE UNDER THE VICTIM
7 WITNESS ACT.

8 **MR. SUMNER:** NO OBJECTION.

9 **THE COURT:** OKAY. ALL RIGHT. THANK YOU.

10 **MR. SUMNER:** YOUR HONOR, SECONDLY, I SIGNED OFF ON A
11 STIPULATION WITH THE PROSECUTOR'S OFFICE WITH MS. MONTS THAT THE
12 TRANSCRIPT THAT IS AN ACTUAL CERTIFIED COPY OF THE TRANSCRIPT
13 FROM THE INITIAL TRIAL, I'M NOT SURE WHERE THE ORIGINAL IS, BUT I
14 HAVE AGREED THAT A COPY OF WHICH I HAVE BEEN SUPPLIED SHALL BE
15 DEEMED AN ORIGINAL FOR COURT'S PURPOSES. IS THAT CORRECT, MS.
16 MONTS?

17 **MS. MONTS:** THAT IS CORRECT, YOUR HONOR. I DO HAVE WHAT
18 MR. SUMNER IS REFERRING TO. I DON'T KNOW THAT IT WILL EVER
19 BECOME NECESSARY, AS MR. SUMNER AND I BOTH HAVE A COPY. BUT IF
20 YOUR HONOR WISHES TO HAVE IT OR NEEDS IT, I'VE GOT A COPY FOR
21 YOU.

22 **THE COURT:** OKAY. ALL RIGHT. THANK YOU.

23 **MR. SUMNER:** YOUR HONOR, THE TERMS OF -- AS THE COURT HAS
24 ALREADY DOCUMENTED ON THE RECORD, THIS IS A RETRIAL OF AN EARLIER
25 TRIAL. I DON'T KNOW HOW THE COURT WISHES FOR ME AS DEFENSE

MATTERS AND MOTIONS

1 COUNSEL TO HANDLE PRIOR SWORN TESTIMONY SHOULD A WITNESS NEED TO
2 BE IMPEACHED. WHAT I WAS GOING TO DO IS NOT MENTION TO THE JURY
3 THE FACT THAT THERE HAS ALREADY BEEN A TRIAL, BECAUSE IN MY PAST
4 EXPERIENCE JURORS START LOOKING AT EACH OTHER AND "HAS THERE
5 ALREADY BEEN A TRIAL?" SO I WAS JUST GOING TO REFER TO IT --
6 SHOULD THE NEED TO IMPEACH A WITNESS WITH PRIOR SWORN TESTIMONY
7 FROM THE TRANSCRIPT ARISE, I WAS JUST SIMPLY GOING TO REFER TO IT
8 AS THERE HAS BEEN A PREVIOUS HEARING IN THIS MATTER AND SWORN
9 TESTIMONY WAS PROVIDED. I WAS GOING TO NOT USE THE WORDS TO THE
10 JURY IN THEIR PRESENCE. WELL, AND I WASN'T GOING TO SAY IN
11 OPENING STATEMENT -- I'M NOT GOING TO SAY, "THERE'S ALREADY BEEN
12 ONE TRIAL IN THIS CASE." I WAS JUST NOT GOING TO DO THAT. AND I
13 JUST WANTED TO GET CLARIFICATION FROM THE COURT AS TO HOW YOU
14 WOULD LIKE FOR THE ATTORNEYS TO HANDLE THAT.

15 THE COURT: WELL, THAT'S SUITABLE TO ME.

16 MR. SUMNER: ALL RIGHT.

17 THE COURT: PREVIOUS TESTIMONY UNDER OATH, SOMETHING LIKE
18 THAT.

19 MR. SUMNER: OKAY.

20 THE COURT: I THINK YOUR PHRASING IS PROBABLY BETTER.

21 MR. SUMNER: I JUST MIGHT SAY, WITNESS "A," AS YOU KNOW,
22 THERE HAS BEEN PRIOR TESTIMONY OR A PRIOR HEARING IN THIS CASE
23 AND YOU TESTIFIED, AND THIS TYPE THING.

24 THE COURT: RIGHT.

25 MR. SUMNER: OKAY. YOUR HONOR, AT THIS POINT I WOULD LIKE

MATTERS AND MOTIONS

1 TO HAND UP THE WITNESS -- THE DEFENDANT'S PROPOSED JURY
2 CHARGES---

3 THE COURT: OKAY, SIR.

4 MR. SUMNER: ---WHICH HAVE BEEN PROVIDED TO THE
5 PROSECUTOR'S OFFICE OR TO MS. MONTS THIS MORNING. I HAVE THE
6 CASES BEHIND. THERE ARE FIVE REQUESTS TO CHARGE, AND I HAVE THE
7 CASES, SIR, BEHIND THE REQUEST TO CHARGES. I WOULD LIKE YOU TO
8 LOOK AT THOSE. AS YOU WILL RECALL FROM A BENCH CONFERENCE WHICH
9 WE HAD EARLIER, A CONFERENCE WITH THE COURT, THE ACTUAL OPINION
10 FROM THE SUPREME COURT REFERRED TO THOSE JURY CHARGES IN AND OF
11 THEMSELVES. I WENT AHEAD AND DREW THEM UP, ONE THROUGH FIVE, AND
12 I HAVE THE CASE LAW BEHIND THAT.

13 YOUR HONOR, YESTERDAY ANOTHER MATTER CAME UP IN REQUEST FOR
14 JURY CHARGES, AND I WOULD LIKE TO HAND THE COURT -- IT'S NOT
15 INCLUDED IN MY PACKAGE.

16 THE COURT: OKAY, SIR.

17 MR. SUMNER: I WOULD LIKE TO HAND THE COURT UP THIS CASE,
18 AND I'M CITING NOW, *STATE VERSUS MEKLER*, M-E-K-L-E-R. THIS IS A
19 VERY RECENT COURT OF APPEALS OPINION. I WOULD LIKE TO HAND IT
20 UP. I BELIEVE I HAVE PROVIDED A COPY TO MS. MONTS OF THIS
21 OPINION.

22 ACTUALLY, WHILE PUTTING TOGETHER MY JURY CHARGES YESTERDAY I
23 CAME ACROSS THIS CASE, AND IT'S BRAND NEW. IT ACTUALLY, I
24 BELIEVE, YOUR HONOR, WAS IN THE DECEMBER ADVANCE SHEETS. AND IT
25 BASICALLY TALKED ABOUT THE CHARGE TO THE JURY OF INVOLUNTARY

MATTERS AND MOTIONS

1 MANSLAUGHTER, WHICH WAS NOT CHARGED, AND IT IS ADDRESSED ON PAGE
2 6 OF 7, YOUR HONOR, IN THE OPINION.

3 **THE COURT:** OKAY, SIR.

4 **MR. SUMNER:** I'M GOING TO GO AHEAD AND INFORMALLY REQUEST
5 AN INVOLUNTARY MANSLAUGHTER CHARGE IN THIS TRIAL. I DO NOT HAVE
6 A SUGGESTED INSTRUCTION FOR THAT, BUT I AM USING THE MEKLER
7 OPINION AS MY BASIS FOR IT. I BELIEVE THAT OPINION REFERS TO
8 WHEN TRIAL COUNSEL IN ANOTHER CASE ON A MURDER CHARGE DID NOT
9 REQUEST AN INVOLUNTARY MANSLAUGHTER CHARGE THAT IT WAS GROUNDS
10 FOR POST-CONVICTION RELIEF IN THE PETITIONER'S FAVOR. WHEN I
11 LOOK DOWN THERE, AND PARTICULARLY ON PAGE 6 OF 7, FAILURE TO
12 CHARGE THE JURY ON THE LAW OF INVOLUNTARY MANSLAUGHTER, I BELIEVE
13 THAT I ASK THE COURT TO PLEASE CONSIDER THAT PORTION OF THIS
14 OPINION AS IT RELATES TO THE TESTIMONY AND EVIDENCE WHICH WILL BE
15 OFFERED, AND I JUST WANT TO GO AHEAD AND PUT THE COURT ON NOTICE
16 AS TO THAT. I WILL NOT ADDRESS THAT, YOUR HONOR, IN MY OPENING
17 STATEMENT TO THE JURY, BUT I AM GOING TO ASK THE COURT TO PLEASE
18 CHARGE INVOLUNTARY MANSLAUGHTER PURSUANT TO THE DIRECTIVE BY THE
19 MEKLER DECISION.

20 **THE COURT:** OKAY, SIR.

21 **MS. MONTS:** YOUR HONOR, IF I MAY JUST INTERJECT, AND MR.
22 SUMNER DID JUST GIVE ME THIS CASE AND, OF COURSE, WE ALL KNOW
23 THAT WAS NOT THE LAW IN THE PAST, BUT I DO WANT TO TAKE AN
24 OPPORTUNITY BEFORE YOU DECIDE ON A RULING TO TAKE A LOOK AT THAT
25 ISSUE.

MATTERS AND MOTIONS

1 **THE COURT:** OH, ABSOLUTELY. WE'LL JUST HAVE TO SEE WHAT
2 THE EVIDENCE SHOWS, AND THEN I'LL GIVE YOU FULL OPPORTUNITY TO
3 ARGUE ABOUT IT, EITHER SIDE.

4 **MR. SUMNER:** YES, SIR.

5 YOUR HONOR, I WOULD ASK WHAT THE COURT'S DEFINITION OF
6 REASONABLE DOUBT IS THAT WOULD BE CHARGED TO THE JURY. I
7 GENERALLY DO REFER TO THAT IN MY OPENING STATEMENT.

8 **THE COURT:** OKAY. TYPICALLY, I JUST GIVE THE CHARGE, I
9 BELIEVE IT'S FROM THE *STATE VERSUS MANNING* CASE, ABOUT REASONABLE
10 DOUBT IS DEFINED AS A DOUBT THAT WOULD CAUSE AN ORDINARY,
11 REASONABLE PERSON TO HESITATE TO ACT IN A MATTER THAT IS
12 IMPORTANT TO THEIR AFFAIRS. AND I ALSO CHARGE THE *VICTOR VERSUS*
13 *NEBRASKA*, I BELIEVE IT IS, ABOUT THE FIRMLY CONVINCED OF GUILT.
14 SO I GIVE THEM BOTH.

15 **MR. SUMNER:** THANK YOU. I JUST DIDN'T WANT TO MISSPEAK TO
16 THE JURY IN OPENING STATEMENT.

17 YOUR HONOR, AT THIS POINT THE PREVIOUS TRIAL TRANSCRIPT
18 REFERS TO STATE'S EXHIBITS 1 THROUGH 92. YOUR HONOR, UNLESS I
19 RAISE A QUESTION ABOUT A PARTICULAR EXHIBIT, WHICH I'M ABOUT TO
20 DO NOW, I WILL ALLOW THE EXHIBITS TO COME IN WITHOUT OBJECTION
21 FROM THE DEFENSE.

22 **THE COURT:** OKAY, SIR.

23 **MR. SUMNER:** THAT BEING STATED, THE FIRST THING THAT I
24 WOULD LIKE TO BRING TO THE COURT'S ATTENTION ARE EXHIBITS -- AND
25 I'LL MOVE OVER HERE SO THAT MS. MONTS CAN JOIN ME HERE IN LOOKING

MATTERS AND MOTIONS

1 AT THE INDEX -- YOUR HONOR, STATE'S EXHIBITS 14 AND 15 ARE AS
2 FOLLOWS: IT IS ONE NINE MILLIMETER ROUND. EXHIBIT 15 IS TWO
3 NINE MILLIMETER ROUNDS. MY UNDERSTANDING IS THAT THESE ROUNDS OF
4 AMMUNITION, WHICH WERE LIVE AMMUNITION, WERE FOUND AT THE
5 DEFENDANT'S RESIDENCE PURSUANT TO A SEARCH WARRANT. I WOULD
6 OBJECT TO THEIR ADMISSIBILITY IN THIS TRIAL ON THE GROUNDS OF
7 RELEVANCE. IT WILL COME OUT THAT IT WAS A .40 CALIBER WEAPON
8 WHICH THE DEFENDANT USED TO SHOOT THE VICTIM -- OR TO SHOOT MR.
9 POWERS. I DON'T KNOW WHAT RELEVANCE UNFIRED NINE MILLIMETER
10 BULLETS WOULD HAVE TO THIS TRIAL. I DON'T BELIEVE THEY GO TO ANY
11 FACT OR MAKE ANY FACT OF IMPORTANCE IN THIS CASE MORE OR LESS
12 RELEVANT OR PROBATIVE.

13 SO BASED ON THAT, I WOULD ASK THAT THE ROUNDS THEMSELVES,
14 EXHIBITS 14 AND 15, AND ALSO THE PHOTOGRAPHS OF THE ROUNDS, WHICH
15 I BELIEVE MS. MONT'S HAS -- DO YOU HAVE THOSE MS. MONT'S? SHE
16 MIGHT HAVE ALREADY PROVIDED THEM TO THE CLERK.

17 MS. MONT'S: I THINK I HANDED THEM TO YOU, STEVE.

18 MR. SUMNER: OH, THANK YOU. I'M SORRY. THANK YOU. THERE
19 ARE THREE PHOTOGRAPHS LIKEWISE, YOUR HONOR, AND THEY ARE MARKED
20 AS STATE'S EXHIBITS 45, 49 AND 76. I WOULD SIMPLY ASK THAT THESE
21 NOT BE REFERRED TO IN ANY MANNER, NOT BE ADMITTED INTO EVIDENCE,
22 NOBODY TESTIFY REGARDING THE NINE MILLIMETER BULLETS, AND I'LL
23 HAND THE PHOTOGRAPH TO THE CLERK. THANK YOU.

24 THE COURT: THANK YOU. YES, MA'AM, MS. MONT'S.

25 MS. MONT'S: YOUR HONOR, THE STATE'S POSITION IS THAT THESE

MATTERS AND MOTIONS

1 WERE ITEMS THAT WERE FOUND DURING A SEARCH WARRANT. OFFICERS
2 DIDN'T KNOW WHAT THEY WERE LOOKING FOR WHEN THEY FIRST WENT IN
3 THERE. THEY WERE LOOKING FOR EVIDENCE OF A CRIME OR THAT WOULD
4 HELP SHOW LINKS TO THE CRIME. AT THAT TIME THEY TOOK ANY BULLETS
5 THAT THEY FOUND. THE WEAPON ACTUALLY USED WAS A .40 CALIBER, BUT
6 WE FEEL THAT THE JURY SHOULD BE ALLOWED TO SEE EVERYTHING AS IT
7 WAS FOUND ON THAT DATE. EVERY PIECE OF EVIDENCE THAT THE
8 OFFICERS FOUND THAT DAY SHOWS WHAT'S GOING ON IN THIS HOUSEHOLD
9 AND WHAT THE PEOPLE THERE KNEW ABOUT, YOUR HONOR.

10 AND I'LL THROW THIS IN AS AN ASIDE, THERE MAY BE AT SOME
11 POINT -- IF YOUR RULING IS TO KEEP IT OUT, THERE MAY BE SOME
12 TESTIMONY AT SOME TIME WHICH MAY MAKE IT MORE RELEVANT. BUT AT
13 THIS POINT I'M NOT GOING TO GO THAT FAR OUT ON A LIMB. BUT AS
14 FAR AS MY GENERAL ARGUMENT JUST THAT IT'S PART OF THE RES GESTAE
15 AND THE JURY SHOULD BE ALLOWED TO SEE EVERYTHING THAT'S TAKING
16 PLACE.

17 **THE COURT:** ALL RIGHT. I UNDERSTAND YOUR ARGUMENTS. I'LL
18 JUST HAVE TO RULE ON THAT WHEN I COME BACK AT TWO O'CLOCK. I
19 PROBABLY NEED TO GO NOW, IF THAT'S OKAY.

20 **MR. SUMNER:** SURE, YES, SIR. YES, SIR.

21 **THE COURT:** AND WE'LL SEE YOU BACK AT 2:00

22 **MR. SUMNER:** OKAY.

23 **THE COURT:** THANK YOU VERY MUCH.

24 (A LUNCH RECESS WAS TAKEN FROM 12:25 TO 2:11 P.M.)

25 **THE COURT:** GOOD AFTERNOON. SORRY I'M RUNNING A BIT LATE.

MATTERS AND MOTIONS

1 OKAY. YOUR NEXT MOTION, MR. SUMNER. YES, SIR.

2 **MR. SUMNER:** YOUR HONOR, I DON'T KNOW IF THE COURT HAS HAD
3 AN OPPORTUNITY TO CONSIDER THE PHOTOGRAPHS OF THE NINE MILLIMETER
4 BULLETS ALONG WITH THE ACTUAL BULLETS THEMSELVES, BUT I THINK I
5 PUT MY---

6 **THE COURT:** YEAH.

7 **MR. SUMNER:** ---GROUNDS FORWARD AS RELATES TO THOSE BEING
8 SUPPRESSED IN THIS TRIAL.

9 **THE COURT:** OKAY.

10 **MR. SUMNER:** YOUR HONOR, DOES THE COURT WISH TO RULE NOW OR
11 WOULD YOU RATHER ME---

12 **THE COURT:** I'LL GO AHEAD AND RULE ON IT. OF COURSE, THIS
13 IS IN LIMINE AND I DON'T KNOW WHAT THE TESTIMONY IS GOING TO
14 SHOW. I THINK THERE WAS SOME STATEMENT MADE ABOUT TESTIMONY
15 POSSIBLY LINKING UP THE RELEVANCE OF THIS MORE. BUT AS IT STANDS
16 NOW, I'D BE INCLINED TO EXCLUDE IT BASED ON RULE 403. OKAY?

17 **MR. SUMNER:** THANK YOU, YOUR HONOR.

18 YOUR HONOR, ALSO, THERE WERE PHOTOGRAPHS TAKEN -- DO YOU
19 HAVE THOSE, MS. MONTS? -- PHOTOGRAPHS TAKEN OF MARIJUANA SCALES.
20 I THINK THERE WAS ACTUALLY SOME AMOUNT OF MARIJUANA -- IS THAT
21 CORRECT, MS. MONTS? -- THAT WAS RECOVERED FROM THE DEFENDANT'S
22 BEDROOM. SCALES WERE BACK THERE. THERE ARE PHOTOGRAPHS OF THOSE
23 AND THERE ARE ALSO THE MARIJUANA ITSELF. AS THE COURT IS AWARE,
24 MR. SULLIVAN WAS ORIGINALLY TRIED SIX, SEVEN YEARS AGO, AND ONE
25 OF THE CHARGES THAT HE WENT TO TRIAL ON, SIR, WAS POSSESSION WITH

MATTERS AND MOTIONS

1 INTENT TO DISTRIBUTE MARIJUANA. I UNDERSTAND HE IS NOT BEING
2 RETRIED FOR THAT TODAY. I THINK THE COURT KNOWS HE HAS BEEN
3 INCARCERATED FOR SOME EIGHTY --

4 **DEFENDANT:** EIGHTY-FOUR MONTHS.

5 **MR. SUMNER:** HE HAS BEEN INCARCERATED FOR 84 MONTHS. THE
6 STATE IS NOT PROCEEDING ON THE MARIJUANA CHARGES TODAY, AND SO I
7 WOULD REQUEST THAT BECAUSE THEY ARE NOT PROCEEDING ON THAT AND
8 CONSIDERING THE AMOUNT OF TIME THAT HE HAS SPENT INCARCERATED --
9 AND AGAIN QUESTIONING THE RELEVANCE OF IT TO THE CHARGE TODAY --
10 I WOULD ASK THAT THE MARIJUANA THAT WAS RECOVERED AND THE
11 PHOTOGRAPHS OF THE MARIJUANA ALONG WITH THE SCALES BE SUPPRESSED
12 AS WELL, FOR THE SAME REASON, BASICALLY, AS MY NINE MILLIMETER
13 ARGUMENT. THANK YOU.

14 **THE COURT:** OKAY, SIR.

15 YES, MA'AM.

16 **MS. MONTS:** YOUR HONOR, THE STATE'S ARGUMENT AS FAR AS
17 GETTING IT IN IS THAT THERE IS TESTIMONY THAT CAME IN THE FIRST
18 TIME THAT EVERYBODY WAS SMOKING MARIJUANA. PEOPLE WERE SMOKING
19 MARIJUANA IN THE HOUSE, AND THEN THOSE THAT CAME SUBSEQUENTLY
20 WERE ALSO SMOKING MARIJUANA. THERE IS ALSO TESTIMONY THAT SOME
21 OF THE PEOPLE COMING TO THE HOUSE WERE COMING TO PURCHASE
22 MARIJUANA. THERE WAS TESTIMONY FROM AN INDIVIDUAL INSIDE THE
23 HOUSE THAT THAT'S WHAT THE VICTIM SAID WHEN HE CAME TO THE DOOR
24 WAS THAT HE WANTED TO PURCHASE SOME MARIJUANA. SO I THINK THIS
25 GOES TO CORROBORATE WHAT WAS TAKING PLACE, YOUR HONOR.

MATTERS AND MOTIONS

1 **THE COURT:** ALL RIGHT. ANY FURTHER ARGUMENT ON THAT?

2 **MR. SUMNER:** NO, SIR. AND I WASN'T TRYING TO SUPPRESS ANY
3 AND ALL REFERENCE TO MARIJUANA. YOU WILL HEAR REFERENCES TO
4 MARIJUANA, YOUR HONOR, THROUGHOUT THIS TRIAL. I WAS SIMPLY
5 TALKING ABOUT PHOTOGRAPHS OF THE MARIJUANA ITSELF IN THE BEDROOM
6 AND ALSO AS RELATES TO THAT. BUT I WASN'T TRYING TO SUPPRESS ANY
7 REFERENCE TO MARIJUANA.

8 **THE COURT:** OKAY. I THINK IT WOULD BE ADMISSIBLE UNDER RES
9 GESTAE.

10 **MR. SUMNER:** THANK YOU.

11 **THE COURT:** AND AGAIN, THE NINE MILLIMETER EVIDENCE, IT MAY
12 BE TOO. I DON'T KNOW WHAT THE EVIDENCE IS GOING TO SHOW, BUT I'M
13 JUST TELLING YOU, THAT COULD CHANGE AS WELL, MR. SUMNER, AS YOU
14 WELL KNOW.

15 **MR. SUMNER:** YES, SIR. I DO REALIZE ALL THESE MOTIONS ARE
16 IN LIMINE. I WOULD ASK THAT THE SOLICITOR ADVISE THE COURT AND
17 MYSELF IF SHE SEEKS TO GO INTO THE NINE MILLIMETER. I WOULD FEEL
18 LIKE -- JUST A LITTLE ADVANCE NOTICE THERE AT THAT POINT.

19 **THE COURT:** YES, SIR, I AGREE WITH THAT.

20 **MR. SUMNER:** THANK YOU.

21 YOUR HONOR, THE LAST MOTION THAT THE DEFENSE HAS REGARDING
22 SUPPRESSION OF EVIDENCE WOULD BE A 911 TAPE. IT'S MY
23 UNDERSTANDING THAT THERE IS A TAPE RECORDING OF A 911 PHONE CALL
24 THAT WAS PLACED FROM THE DEFENDANT'S RESIDENCE BY SOMEONE TO THE
25 911 EMERGENCY OPERATOR, AND I BELIEVE THE STATE INTENDS TO PLAY

MATTERS AND MOTIONS

1 THE TAPE. I WOULD SAY THAT IT CERTAINLY WOULD BE HEARSAY. THAT
2 WOULD BE MY BASIS TO SUPPRESS THE TAPE. I HAVE HEARD THE TAPE.
3 IT'S UNCLEAR -- THERE ARE VOICES ON THE TAPE, BUT I DON'T KNOW
4 WHOSE VOICES THEY ARE. IT WOULD CERTAINLY BE AN OUT OF COURT
5 STATEMENT. I DON'T KNOW WHAT IT WOULD BE OFFERED TO PROVE THE
6 TRUTH OF OR WHAT MATTER IT WOULD BE TRYING TO PROVE THE TRUTH OF.

7 ON THIS POINT I'M NOT TRYING TO ARGUE THAT A 911 CALL WAS
8 PLACED, AND I DON'T HAVE ANY OBJECTION TO A WITNESS SAYING THAT
9 AS A RESULT OF A 911 PHONE CALL, FOR INSTANCE, THE FOUNTAIN INN
10 POLICE DEPARTMENT, WE WENT TO THE RESIDENCE, YOU KNOW, AS A
11 RESULT OF A 911 PHONE CALL. BUT I THINK THE CONTENTS OF THE 911
12 PHONE CALL SHOULD NOT BE ADMITTED IN THIS TRIAL. THANK YOU.

13 THE COURT: ALL RIGHT. SO WHO CALLED THEM?

14 MS. MONTS: YOUR HONOR, ONE OF THE PEOPLE AT THE SCENE WHEN
15 THE SHOOTING TOOK PLACE CALLED 911. NOTHING WAS SAID TO THE 911
16 OPERATOR. THE PHONE WAS JUST DROPPED. SO THERE IS TALK AND THE
17 911 OPERATOR HEARS PEOPLE TALKING, SAYING, "HE'S NOT DEAD. GET
18 HIM OUT OF HERE. HE'S NOT DEAD. GET HIM OUT OF HERE." AND
19 THAT'S WHY THE POLICE WENT TO THE SCENE, BASED ON THIS 911 CALL
20 AND WHAT THE DISPATCHER HEARD. IN FACT THE CHIEF WAS IN THE
21 POLICE DEPARTMENT AT THAT TIME. HE WENT DOWN THERE AND LISTENED
22 TO THE TAPE, WHICH IS WHY THE OFFICERS WERE SENT DOWN THERE. IF
23 THEY HAVE A 911 CALL, WHICH THEY'RE GOING TO CHECK ON ANYWAY, BUT
24 SPECIFICALLY WHAT WAS SAID, WAS NOT SAID -- IT'S NOT HEARSAY. IT
25 WAS NOT SAID IN FURTHERANCE OF PREPARING FOR TRIAL AND IT WASN'T

MATTERS AND MOTIONS

1 SAID TO THE OPERATOR. YOU JUST HEAR WHAT IS TAKING PLACE, WHICH
2 IS THE REASON LAW ENFORCEMENT GOES DOWN THERE. YOUR HONOR, THERE
3 IS ALSO CASE LAW STATING THAT 911 CALLS ARE NOT HEARSAY.

4 THE COURT: WELL, OKAY. BUT YOU'RE GOING TO PUT IT IN TO
5 DEMONSTRATE THAT THERE WAS A CALL MADE TO 911 AND THAT'S WHY THE
6 POLICE WENT THERE?

7 MS. MONTES: AND WHAT THEY HEARD ON THAT TAPE, YES, IS WHAT
8 LED LAW ENFORCEMENT TO BE ESPECIALLY CAREFUL. IN FACT, IT'S WHAT
9 LED THEM TO CALLING THE HOSPITAL TO FIND OUT IF THERE WAS A
10 GUNSHOT VICTIM THERE.

11 THE COURT: OKAY. NOW, SEE, I DON'T KNOW ANYTHING ABOUT
12 THE CASE. WAS THERE SOME QUESTION ABOUT THE VICTIM'S
13 WHEREABOUTS?

14 MS. MONTES: WELL, YOUR HONOR, AT THIS POINT THE POLICE KNOW
15 NOTHING EXCEPT THERE IS A 911 CALL. AND ONCE THEY HEAR -- ONCE
16 THE CHIEF HEARS OVER THE 911 CALL TAPE THAT, YOU KNOW, "HE'S NOT
17 DEAD. GET HIM OUT OF HERE," THEY DECIDE THAT ONE OF THEIR
18 COURSES OF ACTION IS TO CALL THE HOSPITAL AND FIND OUT WHAT'S
19 GOING ON, IF THERE'S ANY VICTIMS THERE.

20 THE COURT: WELL, I'M -- WAS THE VICTIM NOT AT THE HOUSE?
21 I DON'T---

22 MS. MONTES: I'M SORRY. NO, YOUR HONOR. WHEN THE POLICE
23 GET THERE, THE VICTIM IS ALREADY AT THE HOSPITAL DECEASED.

24 THE COURT: OH, OKAY. ALL RIGHT. I DIDN'T KNOW THAT.

25 MS. MONTES: I APOLOGIZE.

MATTERS AND MOTIONS

1 **THE COURT:** THAT'S OKAY. ALL RIGHT. WELL, OKAY, MR.
2 SUMNER.

3 **MR. SUMNER:** WELL, YOUR HONOR, THERE'S NO -- I MEAN, THERE
4 IS NO -- NOBODY IDENTIFIES HIMSELF ON THIS CALL. I DO AGREE WITH
5 MS. MONTH. I THINK SHE HAS ACCURATELY STATED WHAT THE CALL
6 CONTAINS. SOMEBODY IN A RESIDENCE DIALS 911. THE PHONE IS
7 APPARENTLY LEFT -- I DON'T KNOW -- ON A CABINET OR SOMETHING.
8 IT'S LEFT -- THE RECEIVER IS LEFT OFF THE HOOK AND YOU CAN HEAR A
9 LOT OF MUFFLED SOUNDS, AND YOU CAN HEAR SOMETHING ABOUT -- YOU
10 CAN HEAR SOMEBODY SAY, "GET HIM OUT OF HERE." YOU CAN HEAR THAT
11 ONCE OR TWICE. THERE IS NO REFERENCE TO WHO IS SAYING THAT.
12 IT'S JUST STATEMENTS. AND MY POINT WAS IT'S CERTAINLY HEARSAY
13 THAT I CAN'T CROSS EXAMINE BECAUSE I DON'T EVEN KNOW WHO IT IS.

14 **THE COURT:** RIGHT.

15 **MR. SUMNER:** I DON'T EVEN KNOW WHAT IT IS. AND I'M NOT
16 CONTESTING AND I'M NOT STATING THAT THE PURPOSE OF IT IS TO SHOW
17 WHY THE POLICE WENT THERE. I DON'T HAVE ANY PROBLEM WITH THE
18 TESTIMONY, WE GOT A 911 CALL AND WE WERE DISPATCHED -- WE WENT TO
19 THE RESIDENCE. BUT I THINK THE TAPE ITSELF, I DON'T BELIEVE
20 SHOULD COME IN, YOUR HONOR. THANK YOU.

21 **THE COURT:** THANK YOU. SO WE DON'T KNOW WHO IS SAYING
22 THESE STATEMENTS?

23 **MS. MONTHS:** YOUR HONOR, I MEAN, I DO INTEND LATER ON IN THE
24 TRIAL TO BRING THAT OUT. BUT I THINK AT THIS POINT I DON'T SEE
25 ANY REASON NOT TO LET THIS TAPE IN. IT'S NOT OFFERED FOR THE

MATTERS AND MOTIONS

1 TRUTH OF THE MATTER, AND WHAT'S SAID IS NOT OFFERED FOR THE TRUTH
2 OF THE MATTER BUT FOR WHY THE POLICE RESPOND TO THIS SCENE IN
3 SUCH A HECTIC, FRENZIED, LET'S GET THERE AND FIND OUT WHAT'S
4 GOING ON KIND OF WAY.

5 **THE COURT:** WELL, DO WE NEED TO RULE --- DO YOU NEED A
6 RULING ON THAT BEFORE OPENING STATEMENTS? BECAUSE I KNOW THERE
7 ARE CASES REGARDING THE EXACT THEORY THAT MS. MONTS IS TALKING
8 ABOUT, AND I'D HAVE TO GO BACK AND LOOK AT THOSE CASES TO SEE
9 WHAT PARAMETERS THERE ARE FOR---

10 **MR. SUMNER:** I'M NOT GOING TO REFERENCE IT IN MY OPENING
11 STATEMENT.

12 **MS. MONTS:** I CAN REFRAIN FROM THAT, YOUR HONOR.

13 **THE COURT:** OKAY. ALL RIGHT. WHAT'S THE NEXT MOTION?

14 **MR. SUMNER:** YOUR HONOR, THE NEXT MOTION -- AND THESE CAN
15 BE BROUGHT FORTH BY THE STATE OR BY MYSELF. I JUST NEED A *DENNO*
16 HEARING, YOUR HONOR, A HEARING PURSUANT TO *JACKSON v. DENNO*
17 REGARDING MY CLIENT'S VERBAL STATEMENTS AND ANY VERBAL STATEMENTS
18 HE MADE DURING THE COURSE OF THIS INVESTIGATION. I HAVE BEEN
19 PROVIDED THE WRITTEN STATEMENT BY MS. MONTS THROUGH THE DISCOVERY
20 PROCESS. I AM NOT OBJECTING TO THAT STATEMENT. THE TRANSCRIPT,
21 YOUR HONOR, IS PRETTY CLEAR. THE WAIVER OF RIGHTS IS PRESENT IN
22 THE FILE. SO I REALLY DON'T NEED FOR WRITTEN STATEMENT -- I'D
23 JUST LIKE TO BE APPRISED OF WHAT VERBAL STATEMENTS, IF ANY, THE
24 STATE INTENDS TO OFFER.

25 **THE COURT:** ALL RIGHT.

MATTERS AND MOTIONS

1 **MS. MONTS:** AND UNFORTUNATELY, YOUR HONOR, I BELIEVE THAT
2 THE RULES WOULD REQUIRE US TO HAVE A JACKSON V. DENNO HEARING ON
3 THE WRITTEN STATEMENT.

4 **MR. SUMNER:** THAT'S FINE. THAT'S FINE.

5 **THE COURT:** ALL RIGHT.

6 **MR. SUMNER:** AND I WOULD JUST ASK THAT THE STATE PROFFER
7 ANY WITNESS THAT IS GOING TO TESTIFY AS TO ALLEGED VERBAL
8 STATEMENTS MADE BY MY CLIENT.

9 **THE COURT:** ALL RIGHT.

10 **MS. MONTS:** IS THAT ALL---

11 **MR. SUMNER:** YEAH, AS RELATES TO THAT, IT IS. SO WHOEVER
12 TOOK A VERBAL STATEMENT, I WOULD LIKE TO GO AHEAD AND CALL THEM.

13 **MS. MONTS:** OKAY. I HAVE ONE MORE MOTION THOUGH.

14 **MR. SUMNER:** OKAY.

15 **THE COURT:** YES, MA'AM.

16 **MS. MONTS:** YOUR HONOR, ANOTHER ISSUE THAT'S GOING TO COME
17 UP IS THERE WAS A SHOOTING INTO VICTIM'S HOUSE THE MORNING OF
18 THIS DEATH. EVERYBODY -- JUST ABOUT EVERYBODY INVOLVED IN THIS
19 KNOWS OF IT, HAS EITHER FIRSTHAND OR SECONDHAND INFORMATION,
20 WHICH, OF COURSE, WOULDN'T BE ALLOWED. BUT THAT IS GOING TO COME
21 UP AND I JUST WANTED TO MAKE YOU APPRISED OF THAT.

22 AND THE BALLISTICS ON THE SHOOTING INTO THE VICTIM'S BEDROOM
23 WINDOW THAT MORNING DID MATCH THE BALLISTICS THAT WERE SHOT INTO
24 THE VICTIM LATER IN THE DAY AND KILLED HIM, YOUR HONOR.

25 **THE COURT:** OKAY. SO THAT'S A MOTION TO DO WHAT NOW?

MATTERS AND MOTIONS

1 **MR. SUMNER:** I THINK WHAT SHE WAS SAYING, YOUR HONOR, IS
2 THAT REALLY -- THOSE TWO ISSUES ARE THE ONLY TWO ISSUES LEFT. I
3 WAS GOING TO GO AHEAD AND TACKLE THE DENNO HEARING FIRST.

4 **THE COURT:** OKAY.

5 **MR. SUMNER:** AND THEN COME BACK AND ARGUE AGAINST WHAT SHE
6 JUST MENTIONED. AND THAT WOULD CONCLUDE THE PRETRIAL MOTIONS, AS
7 I KNOW IT.

8 **THE COURT:** ALL RIGHT. OKAY. I UNDERSTAND. ALL RIGHT.

9 (COUNSEL OFF RECORD)

10 **ANTHONY K. MORTON,** HAVING BEEN DULY
11 SWORN, TESTIFIED AS FOLLOWS:

12 **MR. SUMNER:** MAY IT PLEASE THE COURT, YOUR HONOR.

13 **THE COURT:** YES, SIR.

14 **MR. SUMNER:** MR. MORTON, YOU ARE THE CHIEF OF---

15 **THE COURT:** LET'S SEE. LET HER GO.

16 **MR. SUMNER:** OKAY. I'M SORRY. FORGIVE ME. I GOT OUT OF
17 LINE THERE..

18 **DIRECT EXAMINATION BY MS. MONTS:**

19 **Q** CHIEF, PLEASE, FOR THE COURT, PLEASE TELL HIM WHERE YOU ARE
20 EMPLOYED.

21 **A** CITY OF FOUNTAIN INN, THE FOUNTAIN INN POLICE DEPARTMENT.

22 **Q** AND HOW LONG HAVE YOU BEEN THERE?

23 **A** I'M IN MY FOURTEENTH YEAR.

24 **Q** AND HAVE YOU BEEN CHIEF THE ENTIRE TIME?

25 **A** YES, MA'AM.

1 Q AND WE DON'T -- THIS IS JUST A HEARING ON THE STATEMENTS
2 THAT YOU TOOK, SO I'M GOING TO SKIP A FEW THINGS THAT YOU MIGHT
3 CONSIDER IMPORTANT.

4 A OKAY.

5 Q BUT ON JANUARY 16TH OF 1998 WERE YOU WORKING IN THIS
6 CAPACITY?

7 A YES, MA'AM.

8 Q AND DID YOU HAVE THE OCCASION TO GO TO [REDACTED] IN
9 FOUNTAIN INN IN GREENVILLE COUNTY ON THAT DAY?

10 A YES.

11 Q AND WHY DID YOU GO TO THAT RESIDENCE ON THAT DAY?

12 A IT WAS RELEVANT TO A 911 CALL THAT WE HAD RECEIVED WHERE
13 NOBODY WAS TALKING ON THE PHONE BUT A GOOD BIT OF BACKGROUND
14 DISTURBANCE AND CONVERSATIONS COULD BE HEARD, AND WE WERE
15 RESPONDING AS A RESULT OF THAT.

16 Q AND WHEN YOU GOT TO THE SCENE, WHO ELSE WAS THERE?

17 A I KNOW -- I BELIEVE IT WAS SERGEANT MCCALL AND SERGEANT
18 MACKEY WERE AT THE SCENE. I SPENT SOME TIME IN DISPATCH
19 REWINDING THE 911 TAPE, TRYING TO FIGURE OUT EXACTLY WHAT WAS
20 BEING SAID SO WE WOULD KNOW WHAT WE WERE RESPONDING TO. SO WHEN
21 I GOT THERE, THEY WERE THERE.

22 Q OKAY. AND THIS IS IN REGARDS TO ORAL STATEMENTS OF THE
23 DEFENDANT. AT THE SCENE WAS THE DOOR ALREADY OPEN WHEN YOU GOT
24 THERE?

25 A NO, THE DOOR WAS CLOSED WHEN WE GOT THERE.

1 Q AND HAD THERE BEEN ANY CONTACT WITH THE DEFENDANT AT THIS
2 TIME?

3 A NO, JUST KNOCKING AT THE DOOR TRYING TO GET SOMEONE TO THE
4 DOOR.

5 Q AND AT THIS POINT WHAT INFORMATION DO YOU HAVE?

6 A WELL, THE INFORMATION WE HAD WAS APPARENTLY THERE WAS A
7 CONVERSATION ON THE PHONE AND IT SOUNDED LIKE, "HE'S NOT DEAD
8 YET. GET HIM UP. GET HIM UP." AND WE RESPONDED THERE. WE
9 NOTICED THAT THERE WAS A SPENT .40 CALIBER SHELL CASING ON THE
10 FRONT PORCH. THERE WAS ALSO WHAT APPEARED TO BE BLOOD ON THE
11 FRONT PORCH.

12 AND SHORTLY THEREAFTER -- SINCE WE COULDN'T GET ANYBODY TO
13 THE DOOR, WE DIDN'T KNOW IF ANYBODY WAS THERE OR NOT, BUT WE
14 SUSPECTED SOMETHING CERTAINLY HAD GONE ON THERE, AND SUBSEQUENTLY
15 WE WERE MADE AWARE THAT A VICTIM HAD BEEN DRIVEN TO THE HILLCREST
16 EMERGENCY ROOM THAT HAD ALLEGEDLY BEEN SHOT AT THAT ADDRESS.

17 Q SO WHEN YOU'RE KNOCKING ON THE DOOR YOU HAVE ALL THAT
18 INFORMATION?

19 A WE WERE GETTING THAT INFORMATION.

20 Q GETTING THE INFORMATION.

21 A WE HAD THE INFORMATION OBVIOUSLY ABOUT THE PHONE CALL. WE
22 SAW THE SPENT SHELL CASING, SAW THE BLOOD.

23 Q OKAY. AND WHAT HAPPENS WHEN YOU ARRIVE AND KNOCK ON THE
24 DOOR?

25 A I KNOCKED ON THE DOOR, AND I HAD MET MORRIS BEFORE AND TOLD

1 HIM, YOU KNOW, IF HE WAS IN FACT THERE TO COME TO THE DOOR AND
2 LET US IN. WE JUST WANTED TO MAKE SURE EVERYBODY WAS OKAY.

3 Q AND WHAT HAPPENED -- WHO CAME TO THE DOOR?

4 A MR. SULLIVAN CAME TO THE DOOR AND OPENED THE DOOR.

5 Q AND WHO WAS STANDING AT THE FRONT DOOR WHEN YOU ARRIVED?

6 A I BELIEVE IT WAS SERGEANT MACKEY AND SERGEANT MCCALL.

7 Q AND WHAT DID YOU SAY TO MR. SULLIVAN?

8 A I ASKED HIM WHEN I WALKED IN THE DOOR WHAT WAS GOING ON, AND
9 HE SAID, "NOTHING."

10 Q AND DID YOU TELL HIM THE INFORMATION YOU HAD AND WHAT YOU
11 SAW?

12 A AFTER HE RESPONDED WITH "NOTHING," I TOLD HIM -- I SAID,
13 WELL -- YOU KNOW, WE TOLD HIM THE INFORMATION WE HAD LEARNED UP
14 TO THAT POINT AND TOLD HIM THAT WE WERE GOING TO MAKE SURE THAT
15 THERE WAS NOBODY ELSE IN THE HOUSE AND THAT THERE WAS NO OTHER
16 VICTIMS, YOU KNOW, OR POTENTIAL VICTIMS IN THE HOUSE.

17 Q AND WHAT WAS HIS RESPONSE? DID HE SAY ANYTHING TO YOU?

18 A HE SAID OKAY.

19 Q BUT WHEN YOU SAID WHAT'S GOING ON? HE SAID, "NOTHING"?

20 A "NOTHING." THAT WAS HIS INITIAL RESPONSE.

21 Q OKAY. OKAY.. SKIPPING DOWN THE ROAD A LITTLE BIT, A LITTLE
22 BIT LATER DID YOU GET A SEARCH WARRANT?

23 A YES.

24 Q THIS SAME DAY?

25 A YES.

1 Q DID YOU COME BACK TO EXECUTE THAT SEARCH WARRANT?

2 A YES.

3 Q AND AT THAT TIME DID YOU SPEAK TO THE DEFENDANT?

4 A YES, I DID.

5 Q AND WERE YOU TOLD WHETHER OR NOT HE HAD BEEN MIRANDIZED AT
6 THAT POINT?

7 A THEY TOLD ME THAT -- I BELIEVE SERGEANT MACKEY HAD
8 MIRANDIZED HIM.

9 Q AND DID YOU SPEAK TO HIM WHEN YOU CAME BACK WITH THE SEARCH
10 WARRANT?

11 A YES, I DID.

12 Q AND WHAT DID YOU SAY TO HIM AND WHAT DID HE SAY TO YOU?

13 A I TOLD HIM AT THAT TIME WE HAD CONFIRMED WHO THE VICTIM WAS,
14 THAT THE INCIDENT HAD OCCURRED AT MR. SULLIVAN'S RESIDENCE, THAT
15 HE HAD DIED SUBSEQUENT TO THE INJURIES, THE GUNSHOT WOUND TO THE
16 ABDOMEN, AND I TOLD HIM WE WERE THERE TO SEARCH TO TRY TO FIND
17 THE GUN AND ANY OTHER RELATIVE INFORMATION, AND HE TOLD ME THEN
18 WHERE IT WAS.

19 Q OKAY. WHAT DID HE SAY TO YOU?

20 A HE SAID THE GUN IS IN THE CLOSET IN THE BEDROOM UP IN THE
21 ATTIC AREA.

22 Q AND DID HE SHOW YOU WHERE THAT WAS?

23 A NO. WE ALREADY KNEW.

24 Q OKAY. BUT HIS RESPONSE TO WHERE IS THE GUN WAS WHAT?

25 A HE SAID, "IT'S IN THE BEDROOM," AND HE POINTED TOWARD THE

- 1 BEDROOM. AND HE SAID, "IT'S IN THE CLOSET UP IN THE ATTIC AREA."
2 IT WAS LIKE A LITTLE CRAWLSPACE THAT WENT UP INTO THE ATTIC.
- 3 Q OKAY. DID YOU ASK HIM ANYTHING ELSE?
- 4 A NOT AT THAT TIME.
- 5 Q OKAY. LATER ON DID YOU SPEAK TO HIM AT THE FOUNTAIN INN
6 POLICE DEPARTMENT?
- 7 A YES.
- 8 Q WHO WAS AT -- HOW DID THE DEFENDANT GET TO THE FOUNTAIN INN
9 POLICE DEPARTMENT, IF YOU KNOW?
- 10 A SUBSEQUENT TO THE EXECUTION OF THE SEARCH WARRANT WE FOUND
11 SOME DRUG PARAPHERNALIA AND SOME DRUGS, AND HE WAS TAKEN INTO
12 CUSTODY FOR THAT AND TAKEN TO THE POLICE DEPARTMENT HANDCUFFED
13 UNTIL HE GOT TO MY OFFICE.
- 14 Q AND WAS THERE ANY OTHER POLICE OFFICERS PRESENT?
- 15 A DURING THE INTERVIEW?
- 16 Q YES, SIR.
- 17 A YES. DETECTIVE MEETZE SAT IN ON THE INTERVIEW.
- 18 Q OKAY. PLEASE DESCRIBE WHEN YOU BROUGHT HIM INTO THE
19 FOUNTAIN INN POLICE DEPARTMENT WHAT -- WHERE DID YOU TAKE HIM?
- 20 A TOOK HIM TO MY OFFICE.
- 21 Q AND DESCRIBE YOUR OFFICE PLEASE, HOW DID THE FURNITURE---
- 22 A IT'S COMFORTABLE TO ME. ABOUT -- NOW ABOUT 30-PLUS YEARS OF
23 VARIOUS AND SUNDRY MEMORABILIA, AND ANYWHERE FROM GOLF TROPHIES
24 TO JUST PLAQUES AND AWARDS, THINGS LIKE THAT. IT'S A TYPICAL
25 OFFICE.

ANTHONY MORTON -- BY MS. MONT'S

1 Q AND ARE THERE CHAIRS AND A DESK?

2 A YES.

3 Q AND DO YOU KNOW IF THE DEFENDANT WAS HANDCUFFED OR NOT AT
4 THIS POINT?

5 A I BELIEVE HE WAS HANDCUFFED WHEN THEY BROUGHT HIM IN, BUT I
6 TOLD THEM TO TAKE THEM OFF ONCE HE CAME IN MY OFFICE. SO DURING
7 THE INTERVIEW HE WAS NOT HANDCUFFED.

8 Q DID HE APPEAR UNDER THE INFLUENCE OF ANYTHING AT THIS TIME?

9 A NO.

10 Q WAS HE STANDING OR WAS HE SEATED?

11 A HE WAS SEATING -- SEATED IN A CHAIR DIRECTLY ACROSS FROM MY
12 DESK.

13 Q AND AT THIS TIME DID YOU READ HIM HIS RIGHTS?

14 A YES.

15 Q OR WHAT WAS YOUR PROCEDURE AT THAT TIME?

16 A YES. I READ HIM HIS MIRANDA RIGHTS FROM A FORM.

17 MR. SUMNER: I'VE SEEN IT, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 MR. SUMNER: THE MIRANDA FORM.

20 THE COURT: NO OBJECTION TO IT?

21 MR. SUMNER: NO, SIR, NONE.

22 Q CHIEF, I'M GOING TO HAND YOU STATE'S EXHIBIT 25 FOR
23 IDENTIFICATION. CAN YOU DESCRIBE THIS FORM?

24 A YES, MA'AM, THIS IS A WAIVER OF RIGHTS OR A RIGHTS FORM WITH
25 A WAIVER ATTACHED THAT WAS -- THAT'S USED BY MY DEPARTMENT BEFORE

ANTHONY MORTON -- BY MS. MONT'S

1 WE INTERVIEW SOMEONE WHO MAY BE A SUSPECT IN A CRIMINAL MATTER.

2 Q AND DID YOU GO OVER THIS FORM WITH MR. SULLIVAN?

3 A YES, I DID.

4 Q AND WAS THAT IN THE PRESENCE OF OFFICER MEETZE?

5 A YES.

6 Q AND PLEASE DESCRIBE WHAT YOU DO WHEN YOU GO OVER THIS FORM?

7 A AS A MATTER OF PRACTICE, JUST FROM 30 PLUS YEARS, 31 YEARS
8 IN ABOUT FOUR MONTHS, I DEVELOP KIND OF A SYSTEM, AND AS I READ
9 EACH LINE TO THE DEFENDANT OR TO THE ACCUSED I CHECK OFF EACH
10 LINE AFTER I ASK THEM, DO YOU UNDERSTAND? SO I READ EACH LINE,
11 ASKED HIM IF HE UNDERSTOOD. HE SAID THAT HE DID. I READ HIM THE
12 RIGHTS WAIVER, ASKED HIM IF HE UNDERSTOOD. HE SAID THAT HE DID.
13 I CHECKED THAT. HE SIGNED IT, AND I SIGNED IT.

14 Q AND AT THE TOP WHERE -- WHO PUT THE INFORMATION UP AT THE
15 TOP WHERE IT SAYS -- CAN YOU DESCRIBE THAT INFORMATION AND WHO
16 FILLS THAT OUT?

17 A YES, SIR. IT'S THE INTERVIEWEE, THE DATE OF BIRTH, THE
18 ADDRESS OF THE INTERVIEWEE, THE INTERVIEWEE'S SOCIAL SECURITY
19 NUMBER, PHONE NUMBER, HEIGHT AND WEIGHT, HAIR AND EYE
20 DESCRIPTION. AND I WRITE THAT IN.

21 Q AND PLEASE GO AHEAD AND READ THE RIGHTS THAT YOU READ TO
22 HIM.

23 A I'D LIKE TO ADD, ALSO AT THE TOP YOU'LL SEE THE TIME, 1540.
24 THAT WAS THE TIME THAT I BEGAN READING THIS TIME MR. SULLIVAN.
25 AND WHAT I READ TO HIM IS: "BEFORE WE ASK YOU ANY QUESTIONS YOU

ANTHONY MORTON -- BY MS. MONTS

1 MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN
2 SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU
3 HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
4 ANY QUESTIONS AND TO HAVE A LAWYER WITH YOU DURING QUESTIONING.
5 IF YOU DO NOT HAVE THE MONEY TO PAY A LAWYER'S FEE, THE COURT
6 WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST, IF YOU WISH. IF
7 YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU
8 STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO
9 HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A
10 LAWYER."

11 AND THEN I CONTINUE BY SAYING, "THIS WAIVER SAYS THAT I HAVE
12 READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS
13 ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I
14 DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I
15 AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO
16 PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME." AND
17 THEN HIS SIGNATURE IS ATTACHED AND MINE AS A WITNESS.

18 Q AND DID YOU OBSERVE HIM SIGN THIS FORM?

19 A YES.

20 Q AND DID HE LET YOU KNOW THAT HE UNDERSTOOD THESE RIGHTS?

21 A YES, MA'AM. I ASKED HIM AFTER EVERY LINE.

22 Q AND WHO PUT THE DATE ON THERE, YOU OR HE, IF YOU REMEMBER?

23 A I DID.

24 Q OKAY. PLEASE CONTINUE. WHAT DO YOU DO AFTER YOU READ HIM
25 HIS RIGHTS?

1 A MY PROCEDURE IS JUST TO TAKE HANDWRITTEN NOTES AND JUST SAY,
2 YOU KNOW, JUST TELL ME WHAT HAPPENED. TELL ME WHAT YOU KNOW
3 ABOUT THE INCIDENT THAT TOOK PLACE. AND THEN I JUST LET THEM
4 GIVE IN NARRATIVE FORM WITHOUT INTERRUPTING THEM. I JUST MAKE
5 SOME NOTES AND SYMBOLS THAT I RECOGNIZE FROM MY NOTES AND WRITE
6 DOWN IN LONGHAND AND SHORTHAND AS MUCH AS I CAN TO KEEP UP WITH
7 WHAT THEY WERE SAYING. AFTER THAT I GET THE PERTINENT
8 INFORMATION, THEN I WILL HAND THEM A STATEMENT FORM THAT MAKES
9 LIKE THREE OR FOUR COPIES. IT'S CARBON, YOU KNOW, IT HAS CARBON
10 IN THE PAPER. AND I HAVE THEM WRITE OUT AGAIN WHAT THEIR
11 STATEMENT IS, WHAT THEIR VERSION OF THE INCIDENT IS, ANYTHING
12 THAT THEY BELIEVE IS IMPORTANT.

13 Q AND DID YOU OR HE PUT YOUR NAME AT THE TOP OF THAT FORM?

14 A I GENERALLY WRITE THAT IN ALSO.

15 MR. SUMNER: THAT'S JUST HIS STATEMENT, ISN'T IT?

16 MS. MONTS: YES.

17 MR. SUMNER: MS. MONTS, IS THAT JUST THE DEFENDANT'S
18 STATEMENT?

19 MS. MONTS: YES.

20 MR. SUMNER: NO OBJECTION, YOUR HONOR. IT'S BEEN PROVIDED
21 ALREADY IN DISCOVERY.

22 Q CHIEF, I'M HANDING YOU STATE'S EXHIBIT 26 FOR
23 IDENTIFICATION.

24 A YES.

25 Q CAN YOU IDENTIFY THIS FORM?

ANTHONY MORTON -- BY MS. MONTIS

1 A YES, MA'AM. THIS IS A STATEMENT THAT DETECTIVE MEETZE AND I
2 TOOK FROM MORRIS SULLIVAN ON THE 16TH OF JANUARY, 1998.

3 Q AND WHICH POLICE OFFICER NAMES ARE AT THE TOP OF THAT FORM?

4 A MY NAME AS WELL AS WADE MEETZE, WHO WAS AN INVESTIGATOR WITH
5 THE FOUNTAIN INN POLICE DEPARTMENT AT THE TIME.

6 Q IS THAT YOUR HANDWRITING OR THE DEFENDANT'S HANDWRITING?

7 A AT THE VERY TOP?

8 Q YES, SIR.

9 A IT'S MY HANDWRITING, THE CASE NUMBER, THE DEFENDANT'S NAME,
10 MY NAME AND THE INVESTIGATOR'S NAME: THEN THE REST OF IT IS
11 WRITTEN BY MR. SULLIVAN, EXCEPT FOR MR. MEETZE'S SIGNATURE AND MY
12 NOTARIZATION OF THE SIGNATURES.

13 Q AND YOUR SIGNATURE IS ON HERE AS NOTARY; IS THAT CORRECT?

14 A YES, MA'AM.

15 Q AND DID YOU WATCH THE DEFENDANT WHILE HE WROTE THIS
16 STATEMENT?

17 A I SURE DID.

18 Q AND HOW MANY PAGES IS IT?

19 A JUST ABOUT TWO.

20 Q IT'S DEFINITELY TWO PAGES?

21 A YES.

22 Q AND DID YOU SIGN BOTH PAGES?

23 A YES, MA'AM. AND SO DID THE DEFENDANT AND SO DID MR. MEETZE.

24 Q AND DID YOU ADVISE THE DEFENDANT OF THE RIGHTS THAT ARE
25 TYPEWRITTEN ON THE TOP OF THIS FORM?

1 A YES, MA'AM.

2 Q AND WHAT ARE THOSE RIGHTS?

3 A IT JUST SAYS -- IT'S A FILL-IN-THE-BLANK TYPE FORM. AND IT
4 SAYS, "I" THEN IT HAS A SPACE, WHICH THE DEFENDANT'S NAME IS
5 WRITTEN IN. IT SAYS, "DO HEREBY GIVE FREELY AND VOLUNTARILY THIS
6 STATEMENT TO," AND THEN IT HAS A BLANK FOR TWO NAMES, IN THIS
7 CASE IT'S MY NAME AND MR. MEETZE'S. AND IT CONTINUES AND SAYS,
8 "WHO HAVE IDENTIFIED THEMSELVES TO ME TO BE POLICEMEN OF THE CITY
9 OF FOUNTAIN INN, FOUNTAIN INN, SOUTH CAROLINA. I'VE BEEN ADVISED
10 I DO NOT HAVE TO MAKE THIS OR ANY OTHER STATEMENT AND THAT WHAT I
11 SAY CAN BE USED AGAINST ME IN A COURT OF LAW. I HAVE BEEN
12 ADVISED THAT I HAVE THE RIGHT TO COUNSEL WITH AN ATTORNEY OF MY
13 CHOICE AND THAT IF I AM FINANCIALLY UNABLE TO OBTAIN AN ATTORNEY
14 THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT ME. I HAVE NOT
15 BE THREATENED OR PROMISED ANY REWARD TO MAKE THIS STATEMENT."

16 Q AND DID THE DEFENDANT HIMSELF WRITE THIS TWO-PAGE STATEMENT?

17 A YES, MA'AM.

18 Q IS IT IN HIS HANDWRITING?

19 A YES, MA'AM.

20 Q AND DID YOU OR OFFICER MEETZE IN ANY WAY THREATEN OR COERCE
21 THE DEFENDANT INTO WRITING WHAT HE WROTE?

22 A NO.

23 Q DID YOU SUGGEST TO HIM WHAT TO WRITE?

24 A NO. OTHER THAN, TELL ME WHAT HAPPENED.

25 Q AND DID YOU MAKE ANY PROMISES TO HIM IF HE MADE A WRITTEN

ANTHONY MORTON -- BY MS. MONTS

1 STATEMENT?

2 A NO.

3 Q AND, CHIEF, GOING BACK TO WHAT YOU SAID ABOUT MAKING NOTES,
4 DID YOU BRING YOUR FILE WITH YOU?

5 A YES, MA'AM. IT'S IN THE LITTLE WAITING AREA OUT THERE.

6 Q YOU SAID YOU TOOK NOTES. DO YOU STILL HAVE THOSE NOTES THAT
7 YOU TOOK?

8 A YES, MA'AM. I'M SORT OF A PACK RAT.

9 Q AND DID YOU WRITE THESE IN KIND OF A SHORTHAND, SHORTHAND
10 WAY?

11 A WELL, MY SECRETARY CALLS IT -- IT'S SOMETIMES DIFFICULT TO
12 DECIPHER, BUT I CAN READ IT.

13 Q AND THIS IS -- DESCRIBE HOW YOU'RE -- WHAT IS BEING DONE
14 WHILE YOU'RE TAKING THESE NOTES?

15 A THE DEFENDANT IS TELLING HIS STORY. IF THEY GET TOO FAR
16 AHEAD OF ME, I MIGHT TELL THEM TO HOLD ON RIGHT THERE. HOLD THAT
17 THOUGHT FOR A MINUTE UNTIL I CAN GET CAUGHT UP.

18 Q CHIEF, I'M HANDING YOU A PIECE OF PAPER. CAN YOU PLEASE
19 DESCRIBE THIS FOR THE COURT?

20 A YES. THAT'S THE NOTES THAT I TOOK WHEN I WAS INTERVIEWING
21 MR. SULLIVAN ON THE 16TH OF JANUARY, 1998.

22 MS. MONTS: YOUR HONOR, CAN I HAVE THIS MARKED FOR
23 IDENTIFICATION, PLEASE?

24 THE COURT: CERTAINLY.

25 (CHIEF MORTON'S HANDWRITTEN NOTES MARKED AS STATE'S EXHIBIT

1 NUMBER 93 FOR PURPOSES OF IDENTIFICATION ONLY)

2 Q CHIEF, I'M HANDING YOU THE PAPER BACK NOW IDENTIFIED AS
3 STATE'S EXHIBIT 93 FOR IDENTIFICATION. CAN YOU PLEASE TELL US
4 WHAT THE DEFENDANT SAID TO YOU THAT YOU MADE NOTES OF?

5 A I MEAN, DO YOU WANT ME TO JUST GO BACK OVER WHAT I WROTE
6 DOWN?

7 Q YES, SIR.

8 A OKAY. THE FIRST THING I DID WAS WRITE HIS NAME AT THE TOP.
9 THE CASE NUMBER WAS ADDED LATER. I DID NOT ADD THAT. THAT WAS
10 ADDED BY, I THINK, MIKE HAMILTON, WHEN I MADE THIS PART OF THE
11 CASE FILE, THE ORIGINAL CASE FILE. AND I STARTED OUT BY ASKING
12 HIM WHO ALL WAS THERE, AND HE TOLD ME TAVIS BARKSDALE, FRANK
13 GOLDEN AND A GIRL NAMED RONICA BUTLER. AND I ASKED WHERE SHE
14 LIVED. HE TOLD ME. HE GAVE ME AN ADDRESS AND GAVE ME A PHONE
15 NUMBER. HE SAID THAT A FRIEND BROUGHT R.B. THERE ALONG WITH
16 TAVIS AND FRANK AND KNOCKED ON THE DOOR. THEN HE LET THEM IN.

17 Q WHO WOULD R.B. BE?

18 A I THINK THAT'S R.---

19 Q WOULD THAT BE RONICA BUTLER?

20 A I THINK SO. THAT WOULD BE MY SHORTHAND FOR RONICA BUTLER.

21 Q OKAY.

22 A THEN THE DEFENDANT TOLD ME THAT TIM TUCKER, R.J. COOK,
23 JERVIS POWERS, CEDRICK EVANS AND FRANK GOLDEN -- STATES THAT THE
24 WORD ON THE -- "THE WORD IS YOU BEEN SHOOTING AT MY HOUSE." THIS
25 IS WHAT JERVIS WAS SAYING THROUGH THE DEFENDANT. I ASKED HIM

ANTHONY MORTON -- BY MS. MONTS

1 WHERE IT WAS. HE SAID IT WAS NEAR BRYSON ON [REDACTED]
2 WHICH IS JUST OUTSIDE THE CITY OF FOUNTAIN INN. HE SAID THAT THE
3 VICTIM -- HE TOLD THE VICTIM THAT HE HAD NEVER SHOT AT HIS HOUSE,
4 THAT HE WOULD NEVER DISRESPECT HIM. AND THEN THE DEFENDANT SAID
5 HE ASKED THE VICTIM TO COME TO THE BACK ROOM MANO Y MANO AND THAT
6 -- COME BACK TO THE DEFENDANT'S BEDROOM. HE SAID THAT THE VICTIM
7 PUSHED HIM, THAT HE HAD A GUN ON THE TOP OF THE CLOSET SHELF, AND
8 HE GRABBED IT AND ASKED HIM TO PLEASE LEAVE SEVERAL TIMES. THE
9 VICTIM TOLD HIM, "I'M NOT AFRAID TO DIE." HE SAID THE VICTIM WAS
10 WALKING TOWARD HIM AND THE DEFENDANT -- THAT THE DEFENDANT HAD
11 THE GUN IN HIS HAND AND HE SHOT IT IN THE FLOOR TO SCARE THE
12 VICTIM. HE SAID HE REMEMBERS SHOOTING THREE TIMES AND THAT THE
13 DEFENDANT STATED HE HAD TO PUT THE VICTIM -- HE HAD TO PUT THE
14 VICTIM IN THE CAR BECAUSE EVERYONE ELSE RAN OUT. HE SAID CEDRICK
15 HELPED HIM PUT THE VICTIM IN A BROWN CROWN VICTORIA. THE VICTIM
16 NEVER SAID ANYTHING BUT WAS BREATHING. AND "TIM, CEDRICK AND
17 R.J. TOOK OFF AND I TOLD THEM TO TAKE THE VICTIM TO THE HOSPITAL.
18 I TOLD TRAVIS TO TAKE RONICA HOME, AND I PANICKED AND I HID THE
19 GUN IN THE ATTIC PART OF THE CLOSET AND WIPED UP SOME BLOOD WITH
20 A GREEN TOWEL AND TOOK OFF MY DARK BLUE BIG DOG SHIRT." HE SAID
21 THAT'S ABOUT IT.

22 SO AFTER I WROTE THAT DOWN, THEN I HANDED HIM THESE PAPERS
23 AND SAID, "WHAT I WANT YOU TO DO IS JUST WRITE DOWN YOUR VERSION
24 OF WHAT OCCURRED THAT YOU -- EVERYTHING THAT YOU THINK IS
25 IMPORTANT, WRITE DOWN YOUR VERSION OF WHAT OCCURRED AT THE HOUSE

ANTHONY MORTON -- BY MR. SUMNER

1 TODAY."

2 Q AND AS FAR AS YOU KNOW THE VICTIM -- EXCUSE ME, THE
3 DEFENDANT HAD BEEN MIRANDIZED AT THE SCENE PRIOR TO YOUR
4 MIRANDIZING HIM AT THE FOUNTAIN INN POLICE DEPARTMENT?

5 A HE WAS MIRANDIZED AT THE SCENE. HE SIGNED A RIGHTS WAIVER,
6 AND THEN THERE'S ALSO A DISCLAIMER ON THE STATEMENT FORM.

7 MS. MONTIS: THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: CROSS EXAMINATION, MR. SUMNER.

9 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
10 COURT.

11 CROSS EXAMINATION BY MR. SUMNER:

12 Q CHIEF, I JUST WANT TO GO BACK OVER SOME THINGS AND MAKE SURE
13 THAT I UNDERSTAND THE SUBSTANCE OF THE STATEMENTS MADE TO YOU BY
14 MORRIS THAT DAY. I BELIEVE YOU SAID EARLIER IN DIRECT TESTIMONY
15 THAT YOU WENT TO THE DOOR OF MORRIS -- YOU WENT TO MORRIS' HOME;
16 IS THAT CORRECT?

17 A UH-HUH (AFFIRMATIVE).

18 Q AND THAT HE CAME TO THE DOOR. I BELIEVE YOU SAID THERE WAS
19 ANOTHER DETECTIVE WITH YOU?

20 A WELL, THERE WERE ALREADY OFFICERS THERE.

21 Q SIR?

22 A THERE WERE ALREADY OFFICERS THERE, YEAH.

23 Q OKAY. AND YOU AT THAT POINT ASKED HIM OR MADE A STATEMENT
24 TO HIM THAT THERE WAS A 911 CALL, THERE'S BEEN SHOTS FIRED, THIS
25 TYPE THING, AND WHAT'S GOING ON HERE? AND HE SAID, "NOTHING"; IS

ANTHONY MORTON -- BY MR. SUMNER

1 THAT WHAT HE SAID TO YOU AT THAT POINT?

2 A THAT'S AFTER WE GAINED ACCESS INTO THE HOUSE, YES, SIR.

3 Q OKAY. AFTER YOU GAINED -- SO YOU WENT INTO THE HOME AT THAT
4 POINT, CHIEF, AND HE SAID BASICALLY, TO YOU, HE SAID, NOTHING'S
5 GOING ON HERE?

6 A UH-HUH (AFFIRMATIVE).

7 Q OKAY.

8 A I JUST -- I'VE KNOWN MORRIS. I MET HIM AT THE GYM.

9 Q OKAY.

10 A AND I JUST TOLD HIM TO COME TO THE DOOR, YOU KNOW, IF HE WAS
11 THERE. WE DIDN'T KNOW IF ANYBODY WAS THERE OR NOT. AND HE DID.

12 Q THANK YOU. LATER ON IN YOUR PRESENCE MORRIS STATED TO YOU,
13 "THE GUN IS IN THE CLOSET IN THE BEDROOM"; IS THAT RIGHT?

14 A IT WAS WHEN I CAME BACK WITH THE SEARCH WARRANT HE TOLD ME.
15 INITIALLY HE SAID, NOTHING IS GOING ON.

16 Q OKAY.

17 A WE DID A PROTECTIVE SWEEP OF THE HOUSE, LEFT, WENT AND GOT
18 THE SEARCH WARRANT BASED ON ALL THE INFORMATION WE HAD UP TO THAT
19 POINT AND THEN SERVED THE SEARCH WARRANT. WHEN I CAME BACK WITH
20 THE SEARCH WARRANT, THAT'S WHEN HE TOLD ME THAT.

21 Q THAT'S WHEN HE MADE THAT STATEMENT TO YOU?

22 A YES, SIR.

23 Q AT THE HOME THE TWO THINGS THAT YOU'VE TESTIFIED TO HERE
24 JUST NOW, THOSE ARE ALL THE STATEMENTS THAT MORRIS MADE TO YOU?

25 A WHAT THINGS?

ANTHONY MORTON -- BY MR. SUMNER

1 Q YOU TALKED ABOUT THE COMMENT ABOUT "NOTHING'S GOING ON," AND
2 THEN YOU LEFT AND CAME BACK AND THEN HIS RESPONSE TO YOU THAT
3 "THE GUN IS IN THE CLOSET IN THE BEDROOM." THE PURPOSE OF THIS
4 HEARING IS TO DETERMINE EVERYTHING THAT YOU WOULD TESTIFY TO TO
5 THE JURY.

6 A RIGHT.

7 Q DOES THAT COMPRISE ALL OF THE VERBAL STATEMENTS HE MADE AT
8 THE SCENE?

9 A YEAH, PRETTY MUCH.

10 Q AT THE SCENE.

11 A YEAH, PRETTY MUCH. YEAH.

12 Q OKAY. IS THERE ANYTHING ELSE THAT YOU'RE PLANNING ON, I
13 GUESS, TESTIFYING TO---

14 A NO. NO, SIR.

15 Q ALL RIGHT. NOW, YOU ALSO MADE NOTES AND YOU'RE LOOKING AT
16 YOUR HANDWRITTEN NOTES FROM THE INTERVIEW; IS THAT RIGHT?

17 A YES, SIR.

18 Q WOULD YOU PLEASE GO BACK TO THAT PORTION OF THE NOTES WHERE
19 THE WORDS "MANO Y MANO" WERE MENTIONED ON DIRECT EXAMINATION?

20 A UH-HUH (AFFIRMATIVE).

21 Q AND WOULD YOU PLEASE STATE THAT AGAIN?

22 A OKAY. YOU WANT ME TO JUST START RIGHT THERE OR?

23 Q NO -- YES, SIR. I'M NOT TRYING TO GO ALL OVER IT BUT I JUST
24 DIDN'T QUITE UNDERSTAND THE "MANO Y MANO," WHAT VERBAL STATEMENT
25 HE MADE TO YOU?

ANTHONY MORTON -- BY MR. SUMNER

1 A HE SAID THAT TIM TUCKER, R.J., JERVIS, CEDRICK AND FRANK
2 GOLDEN AND -- FRANK GOLDEN TOO CAME INTO HIS -- KNOCKED ON THE
3 DOOR, CAME INTO HIS HOUSE AND SAID, "THE WORD IS YOU BEEN
4 SHOOTING AT MY HOUSE," WHICH WAS JERVIS' HOUSE.

5 Q JERVIS POWERS?

6 A RIGHT. SOMEBODY HAD SHOT INTO HIS HOUSE.

7 Q RIGHT.

8 A AND I SAID, "WHERE IS THAT?" AND HE SAID, "NEAR BRYSON." I
9 HAD HEARD OF JERVIS AND I KNEW A COUPLE OF THESE OTHER KIDS, BUT
10 I DIDN'T KNOW THEM AS WELL AS I KNEW MORRIS JUST FROM SEEING HIM
11 IN THE COMMUNITY.

12 Q I UNDERSTAND.

13 A ANYWAY, HE SAID, "NEAR BRYSON ON [REDACTED]" HE TOLD
14 THE VICTIM, WHICH WAS JERVIS, HE TOLD HIM THAT HE NEVER SHOT AT
15 HIS HOUSE AND HE DIDN'T RESPECT HIM -- DIDN'T DISRESPECT HIM.
16 AND THEN HE, THE DEFENDANT, ASKED THE VICTIM TO COME TO THE BACK
17 ROOM MANO Y MANO, AND HE SAID COME BACK TO MY BEDROOM. AND HE
18 SAID -- AS THEY WALKED BACK THERE, HE SAID THE VICTIM PUSHED HIM
19 AND HE REACHED ON THE TOP OF THE CLOSET SHELF WHERE HE HAD A GUN,
20 AND HE TOOK THE GUN DOWN AND ASKED HIM TO PLEASE LEAVE SEVERAL
21 TIMES.

22 Q OKAY. I KNOW THE REST OF IT. I JUST WAS A LITTLE BIT
23 CONFUSED ABOUT THE MANO Y MANO STATEMENT, ABOUT WHO MADE IT.

24 A EVIDENTLY HE WAS JUST SAYING, YOU COME BACK HERE AND WE'LL
25 SETTLE THIS ONE ON ONE BECAUSE HE BROUGHT A WHOLE BUNCH OF PEOPLE

1 WITH HIM.

2 Q OKAY. AND THE TESTIMONY THAT YOU PROVIDED TO THE COURT AND
3 TO JUDGE HILL IN THIS PRETRIAL SETTING IS WHAT -- THAT WOULD BE
4 ALL INCLUSIVE OF THE VERBAL STATEMENTS MADE BY MORRIS SULLIVAN TO
5 YOU; IS THAT CORRECT?

6 A YES.

7 Q DID MORRIS APPEAR TO UNDERSTAND HIS RIGHTS TO YOU?

8 A YES.

9 Q OKAY. YOU ALREADY TESTIFIED ABOUT READING THE WAIVER FORM
10 AND YOUR PARTICULAR PROCEDURE THAT YOU FOLLOW.

11 A YES.

12 Q DID YOU EVER HAVE ANY QUESTION AS TO WHETHER OR NOT HE
13 UNDERSTOOD HIS RIGHTS?

14 A NO. IF HAD HAVE, I WOULD HAVE STOPPED.

15 Q AND DO YOU FEEL THAT HIS STATEMENTS TO YOU, THE WITNESS
16 STATEMENT, WAS GIVEN FREELY AND VOLUNTARILY?

17 A ABSOLUTELY.

18 Q DO YOU FEEL THE VERBAL STATEMENTS HE GAVE TO YOU WERE GIVEN
19 FREELY AND VOLUNTARILY?

20 A YES.

21 Q WAS THERE ANY DURESS OR COERCION OF ANY TYPE OR NATURE
22 WHATSOEVER IN YOUR PRESENCE PLACED UPON MORRIS SULLIVAN TO SPEAK?

23 A NO, NOT AT ALL. WOULDN'T ALLOW IT.

24 Q AND THAT ANSWER WOULD SUFFICE AS TO BOTH THE WRITTEN
25 STATEMENT HE MADE AND TO THE VERBAL STATEMENTS?

ANTHONY MORTON -- BY MR. SUMNER

1 A ANY STATEMENT I'VE EVER TAKEN, AND CERTAINLY TO THIS ONE AS
2 WELL.

3 MR. SUMNER: OKAY. THANK YOU. I DON'T HAVE ANY OTHER
4 QUESTIONS, YOUR HONOR, FOR THIS WITNESS. THANK YOU.

5 THE COURT: REDIRECT.

6 MS. MONTES: YOUR HONOR, NOTHING FURTHER OF THIS WITNESS,
7 AND THAT WOULD BE ALL THE TESTIMONY I PUT FORWARD AS FAR AS THE
8 WRITTEN STATEMENT AT THE FOUNTAIN INN POLICE DEPARTMENT.

9 THE COURT: YOU HAVE OTHER WITNESSES AS TO VERBAL
10 STATEMENTS?

11 MS. MONTES: I HAVE OTHER WITNESSES REGARDING OTHER VERBAL
12 STATEMENTS.

13 THE COURT: ALL RIGHT, MA'AM. OKAY. CHIEF, THANK YOU VERY
14 MUCH.

15 (WITNESS STEPS DOWN AT 2:51 P.M.)

16 MS. MONTES: THE STATE CALLS SCOTT MACKEY.

17 SAMUEL SCOTT MACKEY, HAVING BEEN
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. MONTES:

20 Q MR. MACKEY, PLEASE TELL THE COURT, WERE YOU PREVIOUSLY
21 EMPLOYED WITH THE FOUNTAIN INN POLICE DEPARTMENT?

22 A YES, MA'AM.

23 Q HOW LONG WERE YOU EMPLOYED WITH THEM?

24 A I WAS EMPLOYED WITH THEM ON TWO SEPARATE OCCASIONS. THE
25 FIRST TIME ABOUT FOUR YEARS, THE SECOND TIME ABOUT A YEAR AND A

1 HALF.

2 Q AND WERE YOU EMPLOYED WITH THE FOUNTAIN INN POLICE
3 DEPARTMENT ON JANUARY 16TH OF 1998?

4 A YES, MA'AM.

5 Q AND WHAT WERE YOUR DUTIES AT THAT TIME?

6 A I WAS A PATROL OFFICER. MY RESPONSIBILITIES WERE ANSWERING
7 CALLS FOR SERVICE, THAT SORT OF THING.

8 Q AND DO YOU RECALL IF YOU RESPONDED TO THE RESIDENCE AT [REDACTED]
9 [REDACTED] ON THAT AFTERNOON?

10 A YES, MA'AM, I DID.

11 Q AND WHAT MADE YOU GO TO THAT CALL?

12 A WE HAD A 911 HANG UP CALL, AND THAT'S WHY I WAS CALLED TO
13 RESPOND.

14 Q WHO ELSE RESPONDED WITH YOU?

15 A SERGEANT CHUCK MCCALL.

16 Q AND WHEN YOU GOT THERE WAS THERE ANYBODY OUTSIDE?

17 A OUTSIDE, NO, MA'AM.

18 Q DID ANYONE ANSWER THE DOOR?

19 A NO, MA'AM, NOT INITIALLY.

20 Q AND WHAT DID YOU DO WHILE YOU WERE THERE?

21 A WHEN WE FIRST GOT TO THE RESIDENCE I WENT TO THE LEFT SIDE
22 OF THE HOUSE, KNOCKED ON THE DOOR. THERE WAS A DOOR ON THE LEFT
23 SIDE OF THE HOUSE. SERGEANT MCCALL WENT TO THE RIGHT. WE CAME
24 BACK TOGETHER AT THE MIDDLE OF THE RESIDENCE. WE WERE BOTH
25 LISTENING. WHEN I WAS ON THE LEFT SIDE OF THE HOUSE I HEARD

SCOTT MACKEY -- BY MS. MONTS

1 MOVEMENT INSIDE THE HOUSE. AT THAT POINT I TOLD SERGEANT MCCALL
2 WHAT I HAD HEARD, AND THEN WE TOOK COVER BEHIND AN OLDER CAR THAT
3 WAS ABOUT 10 OR 15 FEET FROM THE HOUSE.

4 Q AND DID THE CHIEF EVENTUALLY COME?

5 A YES, MA'AM.

6 Q AND WHAT DID YOU AND MCCALL DO WHEN THE CHIEF ARRIVED?

7 A WELL, CHIEF KNOCKED ON THE DOOR. WE EVENTUALLY -- WE
8 KNOCKED ON THE DOOR AND THEN THE SUSPECT LET US IN.

9 Q AND DID YOU OR THE CHIEF OR MCCALL ASK THE DEFENDANT
10 ANYTHING OR SAY ANYTHING TO HIM?

11 A INITIALLY I DID NOT. DUE TO THE FACT THAT THERE WAS -- THE
12 FLOOR WAS WET AND THE CIRCUMSTANCES SURROUNDING WHY WE WERE
13 THERE, HE WAS PLACED IN INVESTIGATIVE DETENTION WHILE CHIEF
14 MORTON---

15 Q OKAY. LET ME GO BACK.

16 A OKAY.

17 Q PRIOR TO THAT, GO BACK TO WHEN THE CHIEF KNOCKS ON THE DOOR.

18 A OKAY.

19 Q DOES THE CHIEF KNOCK ON THE DOOR?

20 A YES, MA'AM.

21 Q OKAY. AND THEN WHO OPENS THE DOOR?

22 A MORRIS ANTONIO SULLIVAN DID.

23 Q AND DOES THE CHIEF TELL HIM WHY YOU ARE THERE?

24 A IT WAS LIKE, HE'S LIKE, YOU KNOW, WHAT'S GOING ON HERE? AND
25 HE KIND OF ACTED LIKE, I DON'T KNOW, YOU KNOW, WHAT ARE YOU

1 TALKING ABOUT? I DON'T RECALL HIS EXACT WORDS, BUT THAT WAS KIND
2 OF HIS ATTITUDE. AT THAT POINT HE WAS PLACED---

3 Q SO HE SAID SOMETHING TO THE EFFECT OF "I DON'T KNOW WHAT
4 YOU'RE TALKING ABOUT"?

5 A IT WAS SOMETHING LIKE THAT, YES, MA'AM.

6 Q OKAY. PLEASE CONTINUE WITH WHAT TOOK PLACE.

7 A SERGEANT MCCALL AND I ACTUALLY PLACED HIM IN HANDCUFFS IN
8 INVESTIGATIVE DETENTION WHILE CHIEF AND I CLEARED THE REST OF THE
9 HOUSE.

10 Q AND BASED ON WHAT YOU FOUND WHEN YOU CLEARED THE HOUSE -- OR
11 WHAT DID YOU FIND AS FAR AS PEOPLE?

12 A FOUND NO OTHER PEOPLE INSIDE THE HOUSE.

13 Q PLEASE CONTINUE. DID YOU FIND ANYTHING ELSE THAT ALERTED
14 YOU?

15 A I PERSONALLY DID NOT. CHIEF WENT INTO -- WHEN YOU FIRST
16 TAKE A LEFT -- WHEN YOU FIRST ENTER THE HOUSE THERE WAS, LIKE, A
17 LIVING ROOM. WE TOOK A LEFT INTO THE KITCHEN, CLEARED THE
18 KITCHEN. THEN WE WENT THROUGH THE HOUSE. CHIEF WENT TO THE
19 LEFT, WHICH WAS A BEDROOM, WHICH WAS LATER DETERMINED TO BE
20 MORRIS' BEDROOM. I WENT TO ANOTHER BEDROOM WHICH WAS FURTHER
21 DOWN THE HALLWAY AND CLEARED THAT.

22 Q AND WHEN YOU CAME BACK OUT TO WHERE THE DEFENDANT WAS, WHAT
23 HAPPENED?

24 A AT THAT POINT CHIEF TOLD US TO SECURE THE SUSPECT AT THAT
25 POINT WHILE HE LEFT TO GET A -- WHILE HE LEFT TO GET A SEARCH

1 WARRANT.

2 Q AND WHILE THE CHIEF WAS GONE GETTING THE SEARCH WARRANT, WHO
3 WAS THERE BESIDES YOU AND MCCALL AND THE DEFENDANT?

4 A INSIDE THE HOUSE? NO ONE.

5 Q AND WERE THERE OTHER OFFICERS OUTSIDE?

6 A YES, MA'AM.

7 Q WHO WAS OUTSIDE?

8 A CHRIS ANTHONY WAS OUTSIDE.

9 Q OKAY. AND DID YOU AND MCCALL SPEAK WITH THE DEFENDANT OR
10 DID HE SPEAK WITH YOU WHILE THE CHIEF WAS GONE?

11 A HE SPOKE WITH US.

12 Q AND WHAT WAS SAID TO HIM? DID YOU EVER READ HIM HIS RIGHTS?

13 A I DID. YES, MA'AM.

14 Q OKAY. DESCRIBE THAT.

15 A ACTUALLY WHAT I SAID OR..

16 Q YEAH, HOW DID IT START AND WHAT DID YOU SAY TO HIM?

17 A ONCE WE GOT -- ONCE CHIEF AND I FINISHED CLEARING THE HOUSE
18 I GOT BACK AND I WENT AHEAD AND READ HIM HIS RIGHTS AT THAT
19 POINT.

20 Q AND HOW DID YOU READ THEM? DID YOU HAVE THEM WRITTEN DOWN
21 OR MEMORIZED?

22 A AT THE TIME, I HAD A CARD. YES, MA'AM.

23 Q AND WAS THAT A STANDARD POLICE OFFICER CARD?

24 A IT WASN'T NECESSARILY STANDARDIZED, BUT IT WAS SOMETHING
25 THAT I KEPT.

1 Q CAN YOU -- WAS IT ISSUED TO YOU BY THE FOUNTAIN INN POLICE
2 DEPARTMENT?

3 A I DON'T RECALL IT BEING ISSUED BY THEM. IT WAS SOMETHING
4 THAT I KEPT WHEN THEY GAVE IT AWAY AT THE POLICE ACADEMY WHEN I
5 WENT TO THE ACADEMY.

6 Q AND WHAT WERE THE BASIC RIGHTS THAT WERE ON THERE?

7 A I TOLD HIM THAT HE HAD THE RIGHT TO REMAIN SILENT, ANYTHING
8 THAT HE SAID COULD BE USED AGAINST HIM IN COURT. HE HAD THE
9 RIGHT TO HAVE AN ATTORNEY PRESENT WITH HIM DURING ANY
10 QUESTIONING. IF HE COULD NOT AFFORD ONE, ONE WOULD BE APPOINTED
11 TO HIM BY THE COURT. AND IF HE CHOSE TO ANSWER ANY QUESTIONS, HE
12 DID HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME.

13 Q DID THE DEFENDANT APPEAR TO UNDERSTAND THOSE OR DID HE SAY
14 ANYTHING ONCE YOU SAID THAT TO HIM?

15 A HE APPEARED TO UNDERSTAND, YES, MA'AM.

16 Q DID YOU OR MCCALL ASK HIM ANY QUESTIONS AT THAT POINT?

17 A I DIDN'T, NO, MA'AM.

18 Q DID MCCALL ASK HIM A QUESTION?

19 A NO, MA'AM.

20 Q DID THE DEFENDANT JUST BLURT OUT SOMETHING ABOUT WHAT
21 HAPPENED? WAS HE TRYING TO EXPLAIN WHAT HAPPENED?

22 A YES, MA'AM, HE WAS TRYING TO EXPLAIN WHAT HAD HAPPENED THAT
23 DAY.

24 Q AND WHAT DID HE SAY?

25 A HE TOLD ME THAT JERVIS HAD COME TO THE HOUSE DISRESPECTING

1 HIM AND THAT HE HAD TO PUT HIM IN THE CAR.

2 Q DID HE SAY ANYTHING ABOUT OTHER PEOPLE COMING WITH JERVIS?

3 A I DON'T RECALL ANYTHING ELSE, I MEAN, ABOUT OTHER PEOPLE.

4 Q DID HE SAY JERVIS CAME ALONE OR DID HE SAY A GROUP OF PEOPLE
5 OR...

6 A HE SAID JERVIS TO ME.

7 Q (PAUSE) WHAT WAS THE DEFENDANT'S DEemeanOR DURING THIS TIME?

8 A HE APPEARED THE BE NERVOUS.

9 Q AND, MR. MACKEY, I'M GOING TO HAND YOU A PREVIOUS
10 TRANSCRIPT, PAGE 379, WHERE YOU TESTIFIED UNDER OATH. AT THAT
11 POINT YOU STATED WHAT THE DEFENDANT SAID TO YOU. CAN YOU PLEASE
12 STATE THE ANSWER YOU PREVIOUSLY GAVE AND SAY IF THAT'S CORRECT?

13 A DO YOU WANT ME TO QUOTE THIS HERE?

14 Q YES. I JUST NEED YOUR QUOTING WHAT SOMEONE ELSE SAID.

15 A OKAY. IT SAYS, "YES, MA'AM. HE STATED THAT -- HIS WORDS
16 WERE FOUR NIGGERS CAME TO THE DOOR. EVERYTHING WAS COOL. THAT
17 JERVIS WAS DISRESPECTING HIM IN HIS HOUSE SO HE HAD TO PUT HIM IN
18 THE CAR."

19 Q DO YOU RECALL THAT BEING SAID TO YOU?

20 A YES, MA'AM.

21 Q AND WAS OFFICER MCCALL PRESENT WHEN THAT STATEMENT WAS GIVEN
22 BY THE DEFENDANT?

23 A YES, MA'AM, HE WAS.

24 MS. MONT'S: THANK YOU. NO FURTHER QUESTIONS. THE DEFENSE
25 MAY HAVE SOME.

SCOTT MACKEY -- BY MR. SUMNER

1 THE COURT: YES, SIR. CROSS EXAMINATION BY, MR. SUMNER.

2 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
3 COURT.

4 THE COURT: YES, SIR.

5 CROSS EXAMINATION BY MR. SUMNER:

6 Q MR. MACKEY---

7 A YES, SIR.

8 Q IT'S SCOTT MACKEY; IS THAT CORRECT?

9 A YES, SIR.

10 Q I BELIEVE YOU TESTIFIED INITIALLY THAT WHEN YOU FIRST
11 ARRIVED AT THE RESIDENCE YOU ENCOUNTERED MORRIS SULLIVAN; IS THAT
12 CORRECT?

13 A WHEN WE FIRST ARRIVED?

14 Q YES, SIR. OR AT SOME POINT EARLY ON AFTER GETTING THERE?

15 A WELL, YES, SIR, AFTER WE HAD BEEN THERE FOR ABOUT 20 MINUTES
16 OR SO.

17 Q AND YOU ASKED HIM WORDS TO THE EFFECT OF WHAT'S HAPPENED
18 HERE AND HE SAID TO YOU, I DON'T KNOW WHAT YOU'RE TALKING ABOUT?

19 A YOU'RE ASKING IF HE ASKED ME A QUESTION?

20 Q WHAT -- DID HE EVER MAKE A STATEMENT TO YOU, "I DON'T KNOW
21 WHAT YOU'RE TALKING ABOUT"?

22 A I DON'T RECALL THAT, SIR. NO, SIR.

23 Q ALL RIGHT. DID HE SAY ANYTHING TO YOU VERBALLY THAT YOU CAN
24 RECALL THAT YOU WOULD TESTIFY TO AT THIS TRIAL PRIOR TO HIM BEING
25 PLACED IN HANDCUFFS?

SCOTT MACKEY -- BY MR. SUMNER

1 A NO, SIR.

2 Q YOU DID STATE FOR THE COURT THAT HE WAS PLACED INTO
3 INVESTIGATIVE DETENTION, WHICH WOULD BE HANDCUFFS; IS THAT RIGHT?

4 A YES, SIR.

5 Q WHILE A SWEEP WAS DONE OF THE RESIDENCE?

6 A YES, SIR.

7 Q YOU THEN ADVISED THE COURT THAT YOU READ HIM HIS MIRANDA
8 RIGHTS; IS THAT CORRECT?

9 A YES, SIR.

10 Q DID HE APPEAR TO UNDERSTAND HIS RIGHTS TO YOU?

11 A YES, SIR, HE DID.

12 Q OKAY. DID YOU USE ANY TYPE OF DURESS OR COERCION TO GET HIM
13 TO ANSWER ANY OF YOUR QUESTIONS?

14 A ABSOLUTELY NOT.

15 Q DID HE APPEAR TO YOU TO BE SPEAKING FREELY AND VOLUNTARILY
16 TO YOU?

17 A YES, SIR.

18 Q AND I BELIEVE THAT HE SAID TO YOU THAT JERVIS HAD COME TO
19 THE HOUSE DISRESPECTING HIM AND HE HAD TO PUT HIM IN THE CAR?

20 A YES, SIR.

21 Q OKAY. WHEN YOU GAVE THAT INITIAL TESTIMONY, BASICALLY, WERE
22 YOU GOING FROM MEMORY AND NOW YOUR MEMORY HAS BEEN REFRESHED WITH
23 PAGE 379 OF THE TRANSCRIPT?

24 A I REMEMBER HIM SAYING -- I STILL REMEMBER HIM SAYING THAT.

25 Q OKAY. ALL RIGHT. I GUESS I'M TRYING TO FIGURE OUT, ARE

SCOTT MACKEY -- BY MR. SUMNER

1 THERE TWO SEPARATE STATEMENTS OR DID HE BASICALLY -- AND I'LL
2 HAND YOU THE TRANSCRIPT AGAIN SO THAT YOU CAN SEE IT. I'M JUST
3 TRYING TO FIGURE OUT IF HE SAID THAT TO YOU TWICE OR IF BASICALLY
4 THIS WAS HIS -- THIS WAS HIS RESPONSE?

5 A I RECALL HIM SAYING IT ONCE---

6 Q OKAY.

7 A ---IF THAT HELPS YOU.

8 Q OKAY. ALL RIGHT. SO THIS STATEMENT WOULD BE "FOUR NIGGERS
9 CAME TO THE DOOR. EVERYTHING WAS COOL. THAT JERVIS WAS
10 DISRESPECTING HIM IN HIS HOUSE, SO HE HAD TO PUT HIM IN THE CAR"?

11 A YES, SIR, SOMETHING TO THAT EFFECT. YEAH.

12 Q OKAY. ALL RIGHT. THAT MIGHT NOT BE A DIRECT QUOTE BUT THAT
13 WOULD BE WHAT YOU WOULD TESTIFY TO?

14 A YES, SIR.

15 Q ANY OTHER TESTIMONY -- I MEAN, ANY OTHER -- DID HE GIVE YOU
16 ANY OTHER STATEMENTS THAT YOU WOULD TESTIFY TODAY?

17 A NOTHING I CAN RECALL, NO, SIR.

18 MR. SUMNER: THANK YOU.

19 MS. MONTES: I'VE GOT ONE QUESTION FOR HIM.

20 THE COURT: SURE

21 REDIRECT EXAMINATION BY MS. MONTES:

22 Q MR. MACKEY, I WANT TO CLARIFY. WHEN YOU FIRST CAME TO THE
23 DOOR WITH THE CHIEF AND THE CHIEF -- AND THE DEFENDANT OPENED THE
24 DOOR FOR THE CHIEF AND THE CHIEF SAID, YOU KNOW, WE NEED TO FIND
25 OUT WHAT'S GOING ON, DID YOU HEAR THE DEFENDANT SAY SOMETHING,

SCOTT MACKEY -- BY MS. MONT'S

1 WHAT HE SAID WHEN THE CHIEF ASKED HIM WHAT'S GOING ON HERE? DID
2 THE DEFENDANT SAY ANYTHING?

3 A I DON'T RECALL HIS EXACT WORDS, BUT HE LOOKED PUZZLED, LIKE
4 WHAT ARE YOU TALKING ABOUT? THAT'S WHAT I WAS DESCRIBING BEFORE.

5 Q DID HE SAY SOMETHING?

6 A I DON'T RECALL EXACTLY WHAT HE SAID. BUT, I MEAN, HE
7 APPEARED TO BE PUZZLED, AS IF, LIKE, WHY ARE YOU HERE? THAT SORT
8 OF THING.

9 MS. MONT'S: THANK YOU. NO FURTHER QUESTIONS, YOUR HONOR.

10 MR. SUMNER: NOTHING ON RECROSS.

11 THE COURT: THANK YOU, SIR.

12 (WITNESS STEPS DOWN AT 3:03 P.M.)

13 MS. MONT'S: YOUR HONOR, THE STATE CALLS CHUCK MCCALL.

14 CHARLES MCCALL, HAVING BEEN DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MS. MONT'S:

17 Q MR. MCCALL, PLEASE TELL THE COURT WHERE YOU ARE EMPLOYED.

18 A I'M EMPLOYED WITH CRYOVAC IN SIMPSONVILLE.

19 Q AND HAVE YOU EVER BEEN EMPLOYED WITH THE FOUNTAIN INN POLICE
20 DEPARTMENT?

21 A YES, MA'AM.

22 Q AND WHEN WERE YOU EMPLOYED THERE AND FOR HOW LONG?

23 A I STARTED WORKING THERE BACK IN 1993, AND I LEFT IN 2000.

24 Q SO WERE YOU EMPLOYED THERE IN JANUARY OF 1998?

25 A YES, MA'AM.

1 Q AND WHAT WERE YOUR DUTIES AT THAT TIME?

2 A I WAS A POLICE SERGEANT.

3 Q AND WHAT -- DID YOU TAKE CALLS?

4 A YES, MA'AM, I JUST ANSWERED CALLS FOR SERVICE AND
5 INVESTIGATED CRIMES.

6 Q AND DO YOU RECALL GETTING A DISPATCH OR SOMETHING THAT GOT
7 YOU TO [REDACTED] IN FOUNTAIN INN?

8 A YES. THE DISPATCHER -- I GOT A CALL ON A RADIO TO RESPOND
9 TO THAT LOCATION. IT WAS A -- ALL I WAS TOLD BY THE DISPATCHER
10 WAS IT WAS A 911 CALL, AND SHE COULD GIVE ME NO FURTHER
11 INFORMATION.

12 Q AND WERE YOU THE FIRST ONE TO GET TO THAT SCENE?

13 A YES, MA'AM.

14 Q WHAT DID YOU OBSERVE WHEN YOU GOT THERE?

15 A OKAY. WHEN I GOT TO THE RESIDENCE AT 104 WOODLAND DRIVE,
16 WHICH IS LOCATED IN THE CITY LIMITS OF FOUNTAIN INN, LIKE I
17 STATED EARLIER, I GOT A 911 -- THERE WAS A 911 CALL AT THE HOUSE
18 AND WE DIDN'T REALLY KNOW WHAT WAS GOING ON. I BELIEVE THE
19 DISPATCHER MIGHT HAVE SAID ON THE RADIO THERE WAS SOME KIND OF
20 DISTURBANCE THERE. WHEN I GOT TO THE SCENE THERE WAS NOBODY IN
21 THE YARD. IT WAS APPROXIMATELY 1:12 IN THE AFTERNOON. THERE WAS
22 NOBODY IN THE YARD. THERE WAS A FOUR-DOOR BUICK, BROWN IN COLOR
23 PARKED TO THE LEFT OF THE LEFT SIDE OF THE DOOR TO THE HOUSE. I
24 BELIEVE I WENT TO THE FRONT DOOR AND OFFICER MACKEY WENT TO THE
25 LEFT OF THE HOUSE. I WENT TO THE FRONT DOOR AND KNOCKED ON THE

CHARLES MCCALL -- BY MS. MONTIS

1 DOOR AND ANNOUNCED POLICE, YOU KNOW, POLICE.

2 Q AND DID ANYONE COME TO THE DOOR?

3 A NOT INITIALLY. BUT I DID HEAR WHAT I THOUGHT TO BE NOISES
4 INSIDE THE HOUSE AS IF THERE WERE SOMEONE IN THERE, BUT NO ONE
5 WAS COMING TO THE DOOR.

6 Q AND DID THE CHIEF SUBSEQUENTLY ARRIVE?

7 A YES. JUST A FEW MINUTES LATER THE CHIEF ARRIVED.

8 Q AND WHAT HAPPENED ONCE HE ARRIVED? DID YOU GO TO THE FRONT
9 DOOR AGAIN?

10 A YES. WELL, WHAT HAD HAPPENED WAS WHEN THE CHIEF GOT THERE
11 HE SAID -- WE TOLD HIM WHAT WAS GOING ON, THAT, YOU KNOW, IT
12 SOUNDS LIKE SOMEONE -- I TOLD HIM THAT IT SOUNDS LIKE SOMETHING
13 -- SOMEONE IS IN THERE, BUT NOBODY IS COMING TO THE DOOR. AND SO
14 THE CHIEF DECIDED TO GO AND KNOCK ON THE DOOR, AND THE CHIEF
15 ANNOUNCED, YOU KNOW, "MORRIS, IF YOU'RE IN THERE, LET US IN" OR
16 WHATEVER.

17 Q AND DID THE DEFENDANT OPEN THE DOOR?

18 A YES.

19 Q AND WHAT WAS SAID TO HIM BY WHOM AT THAT TIME?

20 A WHEN WE WALKED IN THE FIRST THING THE CHIEF ASKED HIM WAS,
21 YOU KNOW, "WHAT'S GOING ON HERE? WHAT HAPPENED?"

22 Q AND WHAT WAS HIS RESPONSE?

23 A HE JUST SEEMED LIKE -- I GUESS HE SEEMED LIKE HE DIDN'T --
24 HE WANTED TO ACT LIKE HE DIDN'T REALLY KNOW WHAT WAS GOING ON OR
25 WHY WE WERE THERE.

1 Q WELL, DID HE SAY SOMETHING OR SHRUG HIS SHOULDERS OR WHAT
2 TOOK PLACE?

3 A HE JUST SAID, YOU KNOW, JUST KIND OF SHRUGGED HIS SHOULDERS
4 AND SAID -- I CAN'T EXACTLY REMEMBER VERBATIM HIS EXACT WORDS.
5 BUT HE WAS LIKE, WHAT ARE YOU GUYS DOING HERE? WHAT'S GOING ON?
6 WHAT'S HAPPENING? WHY ARE YOU HERE?

7 Q SO HE SAID SOMETHING TO THAT EFFECT?

8 A SOMETHING TO THAT EFFECT OF BASICALLY HE DIDN'T REALLY KNOW
9 WHAT WAS GOING ON OR WHY THE POLICE WERE THERE AT HIS HOUSE
10 KNOCKING ON HIS FRONT DOOR.

11 Q OKAY. AND BOUNCING ON AHEAD A LITTLE BIT, DOES THE CHIEF
12 LEAVE TO GET A SEARCH WARRANT?

13 A YES.

14 Q AND WHO IS LEFT IN THE HOUSE BESIDES THE DEFENDANT?

15 A ME AND SCOTT MACKEY WERE THERE WITH MORRIS SULLIVAN.

16 Q AND DO YOU HEAR SCOTT MACKEY TALK TO THE DEFENDANT?

17 A JUST -- I DON'T REMEMBER EXACTLY WHAT WAS SAID, BUT---

18 Q DID HE READ HIS RIGHTS?

19 A YES.

20 Q OKAY. DESCRIBE HOW THAT TOOK PLACE.

21 A WELL, BASICALLY I WAS WANTING TO LET THE DEFENDANT JUST
22 SPEAK FREELY AND JUST -- MAYBE JUST WITHOUT ASKING HIM ANY
23 QUESTIONS AND MAYBE THAT WOULD -- I DIDN'T WANT TO ASK HIM ANY
24 QUESTIONS, YOU KNOW, THAT WOULD ELICIT AN INCRIMINATING RESPONSE
25 OR ANYTHING LIKE THAT BECAUSE THAT WOULD BE A VIOLATION OF

CHARLES MCCALL -- BY MS. MONTIS

1 MIRANDA RIGHTS. BUT I JUST WANTED TO BASICALLY JUST -- WE JUST
2 ASKED HIM, WHAT'S GOING ON? WHAT HAPPENED? YOU KNOW, BECAUSE WE
3 HAD ALREADY EXPLAINED TO HIM -- THE CHIEF HAD ALREADY EXPLAINED
4 TO HIM ABOUT THERE WAS A -- YOU KNOW, THERE'S A SPENT SHELL
5 CASING ON THE FRONT PORCH. THERE WAS A SPOT OF BLOOD OR WHAT
6 APPEARED TO BE BLOOD ON THE OUTSIDE OF THE FRONT DOOR WHERE YOU
7 WALK INSIDE AND, YOU KNOW, IT LOOKS LIKE THERE MIGHT HAVE BEEN
8 WHAT APPEARED TO BE BLOOD AND WE JUST WANTED TO KNOW BASICALLY
9 WHAT WAS GOING ON. SO WE DIDN'T REALLY WANT TO INTERROGATE HIM
10 AT THAT POINT, JUST LET HIM SPEAK FREELY.

11 Q AND DID MR. MACKEY READ HIM HIS RIGHTS?

12 A YES. YES, HE DID.

13 Q AND WHAT DID HE SAY WHEN HE READ HIM HIS RIGHTS, IF YOU
14 RECALL?

15 A JUST THE STANDARD MIRANDA RIGHTS THAT WE ARE TRAINED TO READ
16 AT THE POLICE ACADEMY THAT, YOU KNOW, I'M SURE EVERYONE IS
17 FAMILIAR WITH FROM WATCHING IT ON TV AND POLICE SHOWS AND THINGS
18 LIKE THAT.

19 Q AND YOU HEARD MR. MACKEY'S TESTIMONY A MOMENT AGO?

20 A YES.

21 Q IS THAT WHAT YOU REMEMBER?

22 A YES.

23 Q AND PLEASE CONTINUE. WHAT DID THE DEFENDANT SAY, IF
24 ANYTHING?

25 A I HAVE IN MY REPORT HERE, "WHILE WAITING FOR THE CHIEF TO

CHARLES MCCALL -- BY MS. MONTS

1 RETURN THE SUSPECT BEGAN TO TALK ABOUT WHAT HAPPENED, AND THE
2 REPORTING OFFICERS," WHICH WAS ME AND MACKEY. WE TRIED NOT TO
3 INTERRUPT HIM OR QUESTION HIM BUT JUST LET HIM SPEAK FREELY. THE
4 SUSPECT WAS VERY NERVOUS -- SEEMED TO BE VERY NERVOUS AND ON THE
5 VERGE OF TEARS. HE JUST SEEMED VERY UPSET. AND SO I JUST STOOD
6 THERE AND LISTENED TO HIM, AND HE STATED, "FOUR NIGGERS CAME TO
7 THE DOOR" OR SOMETHING SIMILAR TO THAT, AND HE LET THEM IN
8 BECAUSE EVERYTHING WAS COOL. AND HE AND JERVIS STARTED ARGUING
9 AND HE PUT HIM IN THE CAR. HE SAID HE DID NOT MEAN TO BUT JERVIS
10 WAS DISRESPECTING HIM IN HIS HOUSE.

11 Q AND THAT IS WHEN MR. MACKEY WAS STANDING THERE AS WELL?

12 A YES, MA'AM.

13 Q DO YOU RECALL THE DEFENDANT MAKING ANY OTHER STATEMENTS TO
14 YOU?

15 A I DON'T RECALL HIM MAKING ANY OTHER STATEMENTS. IF HE DID,
16 I WOULD HAVE PUT THEM IN MY NARRATIVE REPORT.

17 MS. MONTS: THANK YOU. NO FURTHER QUESTIONS.

18 THE COURT: YES, SIR. CROSS EXAMINATION, MR. SUMNER.

19 MR. SUMNER: THANK YOU.

20 CROSS EXAMINATION BY MR. SUMNER:

21 Q THE STATEMENT THAT YOU JUST ARTICULATED TO THE COURT WHERE
22 MR. SULLIVAN MADE THE STATEMENT ABOUT "FOUR NIGGERS CAME TO THE
23 HOUSE" AND "JERVIS WAS DISRESPECTING ME AND I HAD TO PUT HIM IN
24 THE CAR," WAS HE IN HANDCUFFS AT THAT TIME, MR. MCCALL?

25 A YES, HE WAS.

1 Q BUT HE HAD BEEN MIRANDIZED, IS THAT RIGHT OR DO YOU KNOW?

2 A NOT ONLY HAD HE BEEN MIRANDIZED BUT IT'S ALSO STANDARD
3 PROCEDURE WHEN WE PLACE -- WHEN WE ENTER THE RESIDENCE AND PLACE
4 CUFFS ON HIM, AT THAT PARTICULAR MOMENT HE WAS NOT IN -- IT WAS
5 NOT A CUSTODIAL ARREST IN OUR MINDS AND WE TRIED TO ARTICULATE
6 THAT TO HIM LIKE -- I'VE DONE THIS TO SO MANY DIFFERENT PEOPLE
7 I'VE PUT IN HANDCUFFS. JUST, LOOK, YOU'RE NOT UNDER ARREST RIGHT
8 NOW. WE'RE JUST GOING TO PUT THESE ON FOR YOUR SAFETY, MY
9 SAFETY. BASICALLY WE JUST DO THAT TO KEEP PEOPLE CALM SO THEY
10 DON'T TRY TO STRUGGLE WITH US OR WHATEVER OR TRY TO RESIST. JUST
11 PUT THE HANDCUFFS ON SO WE CAN WATCH YOU, PAT YOU DOWN, MAKE SURE
12 YOU DON'T HURT US, MAKE SURE, YOU KNOW -- WE'VE GOT TO CHECK THE
13 RESIDENCE, MAKE SURE THERE IS NOBODY ELSE IN HERE THAT'S INJURED
14 OR HURT.

15 Q JUST TO MAINTAIN CONTROL---

16 A JUST TO MAINTAIN CONTROL OF HIM FOR OUR SAFETY AND HIS
17 SAFETY.

18 Q OKAY. ALL RIGHT.

19 A SO AT THAT PARTICULAR MOMENT HE WAS JUST IN INVESTIGATIVE
20 DETENTION. THEN THE MIRANDA RIGHTS CAME SOON THEREAFTER.

21 Q OKAY. AND YOU READ THOSE TO HIM?

22 A NO. OFFICER MACKEY READ THOSE TO HIM. WHAT I WAS WANTING
23 TO DO WAS JUST LET HIM SPEAK FREELY. I DIDN'T WANT TO ASK HIM
24 ANY INCRIMINATING QUESTIONS OR ANYTHING AT THAT POINT BECAUSE I
25 KNEW THAT THEY WOULD BE EXCLUDED.

CHARLES MCCALL -- BY MR. SUMNER

1 Q OKAY. BUT HE WAS IN YOUR PRESENCE MIRANDIZED?

2 A YES.

3 Q DID MR. SULLIVAN APPEAR TO UNDERSTAND HIS RIGHTS?

4 A HE APPEARED TO. HE DIDN'T ASK ANY QUESTIONS ABOUT ANY
5 CLARIFICATION OR ANYTHING LIKE THAT.

6 Q THE STATEMENT THAT YOU JUST TESTIFIED TO -- AND I DIDN'T
7 MEAN TO INTERRUPT YOU, IF I DID.

8 A YES, SIR. THAT'S FINE.

9 Q THE STATEMENT YOU JUST TESTIFIED TO FOR THE COURT, THAT WAS,
10 FROM YOUR TESTIMONY, JUST A SPONTANEOUS UTTERANCE BY MR.
11 SULLIVAN?

12 A THAT WAS WHAT -- THAT WAS MY UNDERSTANDING. THAT'S THE WAY
13 I INTERPRETED IT, JUST A---

14 Q WAS IT IN RESPONSE TO ANY QUESTION?

15 A WHAT HAPPENED?

16 Q OKAY.

17 A JUST, WHAT HAPPENED?

18 Q DID IT APPEAR TO YOU TO BE A FREE AND VOLUNTARY STATEMENT BY
19 MR. SULLIVAN?

20 A YES, IT DID.

21 Q ANY TYPE OF FORCE, DURESS OR COERCION---

22 A NO, SIR.

23 Q ---PLACED UPON HIM WHATSOEVER?

24 A NO, SIR.

25 Q AND WHEN THE CASE IS TRIED TO THE JURY THAT STATEMENT RIGHT

CHARLES MCCALL -- BY MS. MONT'S

1 THERE THAT I'VE JUST ARTICULATED IS THE ONLY VERBAL STATEMENT
2 THAT YOU WOULD TESTIFY TO; IS THAT CORRECT?

3 A THAT'S CORRECT.

4 MR. SUMNER: THANK YOU.

5 MS. MONT'S: YOUR HONOR, BRIEF REDIRECT, PLEASE.

6 THE COURT: ALL RIGHT. SURE.

7 REDIRECT EXAMINATION BY MS. MONT'S:

8 Q MR. MCCALL, IN PREVIOUS SWORN TESTIMONY THE QUESTION WAS
9 GIVEN TO YOU, "WAS THE DEFENDANT ADVISED OF HIS RIGHTS?" AND THE
10 QUESTION WAS GIVEN TO YOU, "WHO GAVE HIM HIS RIGHTS?" YOU SAID,
11 "SERGEANT MACKEY." QUESTION: "WHAT DID HE ADVISE HIM OF?" LET'S
12 SEE. THE QUESTION IS: "WHAT WAS THE NEXT THING THAT HAPPENED
13 AFTER HE WAS ADVISED OF HIS RIGHTS? I UNDERSTAND HE HAD BEEN IN
14 INVESTIGATIVE DETENTION AT THIS TIME." CAN YOU RESPOND WITH THE
15 ANSWER THAT YOU GAVE?

16 A LINE 19, ANSWER?

17 Q YES.

18 A "ACTUALLY, HE WAS ADVISED OF HIS RIGHTS AFTER THE PROTECTIVE
19 SWEEP AND A PROTECTIVE SWEEP REVEALED SOME EVIDENCE OF SOME
20 MARIJUANA IN PLAIN VIEW. AND THAT'S THE REASON WHY HE MIRANDIZED
21 HIM AFTER THE DISCOVERY OF THE MARIJUANA OR THE SUSPECTED
22 MARIJUANA."

23 Q AND WOULD THAT HAVE BEEN PRIOR TO THE CHIEF LEAVING?

24 A YES.

25 Q AND THAT WOULD HAVE BEEN PRIOR TO THIS DISCUSSION THAT WE

1 JUST HAD?

2 A RIGHT.

3 Q SO HIS MIRANDA RIGHTS WOULD HAVE BEEN READ PRIOR TO THAT
4 STATEMENT BEING GIVEN; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 MS. MONT'S: THANK YOU.

7 MR. SUMNER: NOTHING ON RECROSS, YOUR HONOR.

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

9 (WITNESS STEPS DOWN AT 3:15 P.M.)

10 THE COURT: ALL RIGHT.

11 MS. MONT'S: YOUR HONOR, THAT'S THE STATE'S SHOWING ON THIS
12 ISSUE, JACKSON V. DENNO.

13 THE COURT: OKAY, MR. SUMNER.

14 MR. SUMNER: YOUR HONOR, YOU'VE HEARD THE TESTIMONY. I
15 BELIEVE IT'S IN YOUR DISCRETION WHAT IS ADMISSIBLE AND WHAT IS
16 NOT. I THINK YOU KNOW THE LAW CERTAINLY BETTER THAN I DO ON THAT
17 POINT. I THINK WE'VE HAVE FLESHED OUT WHAT HAPPENED AND WHAT WAS
18 SAID, AND I WILL RESPECT YOUR RULING IN TERMS OF THE
19 ADMISSIBILITY OF THE WRITTEN STATEMENT AND IN TERMS OF THE
20 ADMISSIBILITY OF THE VERBAL STATEMENTS THAT HAVE BEEN TESTIFIED
21 TO HERE IN THIS HEARING.

22 THE COURT: OKAY, SIR.

23 YES, MA'AM.

24 MS. MONT'S: YOUR HONOR, THE STATE BELIEVES THAT THESE
25 STATEMENTS THAT WERE TESTIFIED TO WERE GIVEN FREELY AND

MATTERS AND MOTIONS

1 VOLUNTARILY. THE ONLY ONE THAT WAS NOT GIVEN AFTER MIRANDA WAS
2 THE ONE AT THE FRONT DOOR. THE DEFENDANT WAS NOT IN HANDCUFFS AT
3 THAT TIME. THAT ONE WAS JUST BASICALLY, HE DIDN'T KNOW WHAT WAS
4 GOING ON OR ASKING "WHY ARE YOU HERE?" SO THAT'S -- RIGHT WHEN
5 THE POLICE FIRST GOT THERE WAS THE ONLY ONE. EVERYTHING ELSE,
6 THE ONE AT THE STATION AND THE ONE LATER AT THE DEFENDANT'S
7 HOUSE, WERE BOTH AFTER MIRANDA, AND WE BELIEVE THEY SHOULD BE
8 ADMITTED.

9 THE COURT: ALL RIGHT. WELL, I FIND AS TO THE FIRST
10 STATEMENT, THAT I BELIEVE WAS OVERHEARD BY CHIEF MORTON, IT WAS A
11 VOLUNTARY STATEMENT AND HE WAS NOT IN CUSTODY AT THAT TIME.
12 THEREFORE, IT WOULD BE ADMISSIBLE.

13 THE OTHER STATEMENTS, INCLUDING THE WRITTEN STATEMENT, THE
14 RECORD REFLECTS THAT MR. SULLIVAN WAS GIVEN HIS MIRANDA RIGHTS.
15 HE WAS IN CUSTODY AT THE TIME. I THINK CLEARLY IT WAS A
16 CUSTODIAL INTERROGATION AND HE WAS GIVEN HIS MIRANDA RIGHTS, AS
17 I'VE SAID, AND HE VOLUNTARILY AND INTELLIGENTLY AND KNOWINGLY
18 WAIVED HIS RIGHTS AND MADE THE STATEMENT KNOWING WHAT HE WAS
19 DOING. THEREFORE, THEY WOULD BE ADMISSIBLE AS WELL. THERE IS
20 CLEAR AND CONVINCING EVIDENCE OF THAT, AND THERE WAS NO EVIDENCE
21 OF ANY KIND OF COERCION, OF ANY TYPE OF INCAPACITY OR
22 INTOXICATION OR ANYTHING OF THAT NATURE. AND THEREFORE, I
23 BELIEVE THE STATE HAS MET ITS BURDEN, AND I WOULD RULE THE
24 STATEMENTS ARE ADMISSIBLE.

25 MR. SUMNER: YOUR HONOR, THE LAST PRETRIAL MATTER WOULD BE

MATTERS AND MOTIONS

1 ANTICIPATED EFFORTS ON THE PART OF THE STATE TO PRESENT TO THE
2 JURY THAT THE WEAPON THAT MR. SULLIVAN USED DURING THE SHOOTING
3 WAS BALLISTICALLY MATCHED TO THE BULLETS THAT WERE RECOVERED FROM
4 THE VICTIM'S HOME, OR JERVIS POWERS' HOME, EARLIER THAT DAY IN AN
5 APPARENT DRIVE-BY SHOOTING, FOR LACK OF A BETTER TERM. SHOTS
6 WERE FIRED INTO THE WOOD PANELING OF THE HOME OR SOMETHING ALONG
7 THOSE LINES.

8 THE COURT: RIGHT.

9 MR. SUMNER: AND I WOULD SEEK A RULING AT THIS POINT THAT
10 THAT BE SUPPRESSED FROM THE JURY, AND THE RATIONALE OF THAT IS
11 SIMPLE. HE WAS NOT CHARGED WITH THAT SHOOTING. THERE IS NOT
12 CLEAR AND CONVINCING EVIDENCE THAT ANY EVIDENCE THAT TIED MR.
13 SULLIVAN TO THAT SHOOTING OTHER THAN THE FACT IT WAS THE SAME
14 GUN. I THINK THE CASE LAW IS CLEAR UNDER *LYLE* AND ITS PROGENY
15 THAT IT DOESN'T MEET THE BURDEN IN THIS CASE OF GOING IN FRONT OF
16 A JURY. AND I'M GOING TO ASK THAT THE SOLICITOR BE SUPPRESSED
17 FROM REFERENCING THAT DURING THE COURSE OF THIS TRIAL. THANK
18 YOU.

19 THE COURT: ALL RIGHT. THANK YOU, MR. SUMNER.

20 YES, MA'AM, MS. MONTS.

21 MS. MONTS: YOUR HONOR, I BELIEVE AT THIS JUNCTURE WE WOULD
22 NOT MENTION IT. BUT I BELIEVE THAT THE DOOR MAY BE OPENED -- AND
23 THERE MAY BE SEVERAL WAYS FOR THAT TO HAPPEN -- AND I WILL FOLLOW
24 YOUR INSTRUCTIONS ON HOW TO HANDLE THAT. WE CAN APPROACH WHEN
25 THAT HAPPENS AND I FEEL THAT WE WOULD THEN BE ALLOWED TO GET INTO

MATTERS AND MOTIONS

1 THAT OR HOWEVER YOU SEE TO DIRECT ME, YOUR HONOR.

2 THE COURT: OKAY. I APPRECIATE THAT. JUST LET ME KNOW
3 BEFORE ANY ALLUSION IS MADE TO IT.

4 MR. SUMNER: I JUST WANT TO STATE SOMETHING FOR THE RECORD.
5 I'M NOT EVEN GOING TO ALLUDE TO IT. I MEAN, I DON'T KNOW IF
6 SHE'S REFERENCING ANY KIND OF OPENING DOOR THAT I CAN -- I'M
7 GOING TO STAY AS FAR AWAY FROM THAT AS I CAN. SO THERE IS NOT
8 GOING TO BE ANYTHING THAT I AM GOING TO DO THAT CONCEIVABLY WOULD
9 OPEN THE DOOR TO THAT. I'M NOT EVEN GOING TO ADDRESS IT.

10 THE COURT: I UNDERSTAND.

11 MS. MONTS: YOUR HONOR, AND JUST TO ABSOLUTELY CLARIFY
12 THIS, THERE WAS A LOT OF TALK BY ALL THE WITNESSES ABOUT A
13 SHOOTING INTO JERVIS POWERS' BEDROOM WINDOW THAT MORNING, AND
14 PEOPLE ARE TALKING ABOUT IT. THAT COMES IN THROUGHOUT THE
15 TESTIMONY. I BELIEVE -- AND IN FACT THAT'S WHAT IS SAID THAT THE
16 VICTIM IS SAYING TO THE DEFENDANT AT THE DEFENDANT'S HOME LATER
17 THAT DAY. SO THERE IS A LOT OF REFERENCE TO A SHOOTING INTO
18 VICTIM'S WINDOW THAT MORNING. THE ONLY PART I WOULD AGREE AT
19 THIS POINT NOT TO BRING UP IS THE FACT THAT THE GUN WAS THE SAME
20 ONE USED THAT KILLED THE VICTIM LATER THAT DAY.

21 MR. SUMNER: COMPLETE AGREEMENT. EVERY WITNESS IS GOING TO
22 TALK ABOUT THAT. THERE IS NO QUESTION ABOUT IT. EVERYBODY CAME
23 IN THERE AT THE DEFENDANT'S HOME AND REFERENCED THIS. I'M NOT
24 TRYING TO ELIMINATE THAT WHATSOEVER. I'M JUST WILLING TO STOP
25 RIGHT THERE. I'M NOT GOING TO GET INVOLVED WITH -- I DON'T --

MATTERS AND MOTIONS

1 THE BALLISTICS OF THE GUN TO COME IN. EVERYTHING ELSE, THE
2 TESTIMONY PREVIOUSLY OFFERED -- I THINK THAT IS WHAT THE
3 SOLICITOR IS REFERRING TO -- I DON'T HAVE ANY OBJECTION TO.

4 THE COURT: OKAY.

5 MS. MONTS: AND, YOUR HONOR, IF SOME MORE EVIDENCE COMES
6 FORWARD THROUGH THE TRIAL THAT WOULD LEAD ME TO BELIEVE THAT WE
7 WOULD HAVE A BETTER ARGUMENT TO GET THAT IN, I WOULD BRING IT UP
8 AGAIN AT THAT TIME, YOUR HONOR.

9 THE COURT: CERTAINLY. I'M NOT PRECLUDING THAT. AT THIS
10 POINT IT'S NOT GOING TO BE BROUGHT OUT. SO JUST LET ME KNOW IF
11 YOU PLAN TO AND WE'LL TAKE IT UP AT THAT TIME.

12 ALL RIGHT. ANYTHING FURTHER?

13 MR. SUMNER: NOTHING FROM THE DEFENSE, YOUR HONOR.

14 THE COURT: OKAY. LET'S TAKE ABOUT -- LET'S COME BACK AT
15 3:30. WE'LL BE READY FOR THE JURY AT THAT TIME.

16 (A RECESS WAS TAKEN FROM 3:21 TO 3:35 P.M.)

17 THE COURT: OKAY.

18 MR. SUMNER: YOUR HONOR, IMMEDIATELY PRIOR---

19 THE COURT: WE BETTER WAIT UNTIL MR. SULLIVAN GETS OUT
20 HERE.

21 MR. SUMNER: YES, SIR.

22 THE COURT: (PAUSE) YES, SIR.

23 MR. SUMNER: YES, SIR, YOUR HONOR. YOU'LL RECALL BEFORE
24 LUNCH I DID HAND UP SOME PROPOSED JURY CHARGES. I DON'T KNOW IF
25 YOU'VE HAD A CHANCE TO LOOK AT THOSE OR NOT. WOULD YOU PREFER

MATTERS AND MOTIONS

1 THAT I NOT GET INTO THAT IN MY OPENING STATEMENT OR...

2 THE COURT: YEAH. I DON'T KNOW IF IT WOULD BE PROPER, AND
3 YOU'D HAVE TO TAKE THE RISK, I SUPPOSE. THE INVOLUNTARY
4 MANSLAUGHTER PARTICULARLY, I THINK, WOULD BE---

5 MR. SUMNER: RISKY.

6 THE COURT: ---PREMATURE. YEAH. THE OTHER ONES OBVIOUSLY
7 THERE'S PROBABLY NOT MUCH RISK ON THAT.

8 MR. SUMNER: WELL, I DON'T THINK THERE ARE. I JUST DIDN'T
9 HAVE ANY -- THE SUPREME COURT ON THE REVERSAL SAID HABITATION,
10 NECESSITY AND SELF-DEFENSE SHOULD HAVE BEEN CHARGED---

11 THE COURT: YES, SIR.

12 MR. SUMNER: I PROBABLY WILL ADDRESS THOSE---

13 THE COURT: THAT'S FINE.

14 MR. SUMNER: ---IN THE MANNER IN WHICH I SUBMITTED THEM TO
15 YOU.

16 THE COURT: RIGHT. I MEAN, BUT -- OF COURSE, I DON'T HAVE
17 TO TELL YOU THIS BUT, YOU KNOW, THE CHARGE HAS TO BE BASED ON THE
18 EVIDENCE.

19 MR. SUMNER: YES, SIR.

20 THE COURT: BUT THAT'S A STRATEGIC DECISION FOR YOU.

21 OKAY. ANYTHING ELSE BEFORE WE BRING THE JURY IN?

22 MR. SUMNER: NOTHING FROM THE DEFENDANT.

23 THE COURT: SOME -- LET'S SEE. MR. FORD, I THINK, ASKED MY
24 LAW CLERK, APPARENTLY ONE OF THE JURORS HAD ASKED IF THEY COULD
25 TAKE NOTES. SO I'M GOING TO ADDRESS THAT IN MY OPENING. I'M

MATTERS AND MOTIONS

1 GOING TO LET THEM TAKE NOTES.

2 MR. SUMNER: OKAY. YES, SIR.

3 ONE OTHER THING PRIOR TO THE JURY COMING IN. I'VE SPOKEN TO
4 MS. MONTS AND I'VE SPOKEN TO MY CLIENT. I AM NOT GOING TO
5 REQUIRE THE STATE TO PROVIDE A CHAIN OF CUSTODY ON THE -- ON THE
6 EXHIBITS THAT WERE RECEIVED BY THE COURT IN THE FIRST TRIAL.

7 THE COURT: OKAY.

8 MR. SUMNER: I'VE ALREADY DISCUSSED WITH MY CLIENT THEY'RE
9 HERE. TONIGHT SHE IS GOING TO COME UP WITH THE WITNESSES THAT
10 SHE'S ARTICULATED TO THE COURT THAT WOULD BE CHAIN OF CUSTODY
11 WITNESSES. I'VE SEEN THEM. I'VE SPOKEN IN THEIR PRESENCE. SO
12 SHE'S GOING TO GET WITH THE COURT ON THAT IN THE MORNING. BUT I
13 JUST WANTED TO MENTION THAT TO YOU.

14 THE COURT: OKAY, SIR. NOW, I'M NOT GOING TO MAKE ANY
15 PROMISES TO THE JURY ABOUT HOW LONG THE CASE IS GOING TO LAST,
16 BUT DO WE HAVE ANY BALLPARK FIGURE?

17 MR. SUMNER: I WOULD SAY TWO TO THREE DAYS.

18 THE COURT: OKAY. ALL RIGHT. I'LL JUST SAY IT'S GOING TO
19 LAST SEVERAL DAYS.

20 OKAY. ANYTHING FURTHER BEFORE WE BRING THE JURY IN?

21 MR. SUMNER: NONE FROM ME.

22 MS. MONTS: NO, YOUR HONOR.

23 THE COURT: YES, SIR. THEY CAN GO AHEAD AND BE READY.

24 OH, AS TO THE 911 CALL, I DO THINK IT WOULD BE A NON-HEARSAY
25 STATEMENT. IT COULD BE OFFERED FOR THE PURPOSE SOLELY OF

PRELIMINARY INSTRUCTION BY THE COURT

1 EXPLAINING WHY THE OFFICERS UNDERTOOK AN INVESTIGATION UNDER
2 *STATE VERSUS BROWN*, 317 S.C. 55 AND *STATE VERSUS THOMPSON*, 352
3 S.C. 552. IT WOULD BE RELEVANT FOR THE JURY.

4 (JURY ENTERS COURTROOM AT 3:39 P.M.)

5 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, FIRST OF ALL
6 LET ME THANK YOU FOR YOUR PATIENCE WITH US. WE'RE GETTING
7 UNDERWAY A LITTLE BIT LATER THAN WE THOUGHT BUT, AGAIN, WE HAVE
8 CERTAIN THINGS WE HAVE TO COVER OUT HERE. WE HAVEN'T BEEN
9 TWIDDLING OUR THUMBS OUT HERE. WE'VE BEEN WORKING HARD TRYING TO
10 MAKE THE CASE READY FOR YOU TO HEAR, AND WE'VE REACHED THAT POINT
11 NOW, AND I HAVE TO GIVE YOU AN OPENING INSTRUCTION REGARDING SOME
12 OF YOUR DUTIES.

13 THE FIRST THING I'M GOING TO DO IS GO OVER WITH YOU SOME OF
14 THE PEOPLE IN THE COURTROOM AND TELL YOU WHAT THEIR ROLES ARE,
15 AND THEN I'M GOING TO TELL YOU WHAT MY ROLE IS, AND THEN I'M
16 GOING TO TELL YOU WHAT YOUR ROLE IS AND WHAT YOUR JOB WILL BE
17 DURING THIS CASE.

18 FIRST OF ALL, I WANT TO THANK YOU FOR YOUR SERVICE. YOU
19 PROBABLY GROANED WHEN YOU GOT THE SUMMONS TO COME UP HERE TODAY,
20 BUT JURY SERVICE IS AN IMPORTANT RIGHT, AND THE RIGHT TO A JURY
21 TRIAL IS AN IMPORTANT RIGHT. IT'S MENTIONED NOT ONLY IN THE
22 CONSTITUTION ITSELF BUT IN THREE OF THE FIRST TEN AMENDMENTS OF
23 THE CONSTITUTION. SO IT'S SOMETHING THE FOUNDERS OF OUR COUNTRY
24 HELD VERY DEARLY, AND I KNOW YOU DO TOO BECAUSE OTHERWISE YOU
25 WOULDN'T BE HERE TODAY. AND THE RIGHT TO A JURY TRIAL, THAT IS,

PRELIMINARY INSTRUCTION BY THE COURT

1 A RIGHT TO A TRIAL BY ONE'S PEERS, IS A VALUABLE AND IMPORTANT
2 RIGHT ENSHRINED IN OUR LAW AND WE APPRECIATE YOU MAKING THAT
3 RIGHT -- MAKING IT POSSIBLE FOR THAT RIGHT TO BE EXERCISED HERE
4 TODAY.

5 NOW, YOU'VE MET SOME OF THE PEOPLE ALREADY, OBVIOUSLY, THE
6 BAILIFFS, MR. CANNON AND MR. FORD ARE HERE FOR YOUR ASSISTANCE.
7 IF YOU NEED ANYTHING DURING THE COURSE OF THIS TRIAL, THEY WILL
8 BE HAPPY TO TRY TO PROVIDE IT FOR YOU. AND THE OTHER PEOPLE IN
9 THE COURTROOM WHO YOU PROBABLY HAVEN'T MET, I'M GOING TO START
10 RIGHT IN FRONT OF ME WITH THE COURT REPORTER, DAWN KOFFSKEY.
11 SHE'S AN OFFICIAL COURT REPORTER FOR CIRCUIT COURT. SHE TAKES
12 DOWN EVERYTHING THAT IS BEING SAID, AND SHE DOES AN EXCELLENT JOB
13 AND WE'RE FORTUNATE TO HAVE HER. AND THEN TO HER RIGHT IS
14 SHIRLEY KLEIN, WHO IS ONE OF THE DEPUTY CLERKS OF COURT HERE IN
15 THE THIRTEENTH CIRCUIT IN THE GREENVILLE COUNTY COURTHOUSE. SHE
16 KEEPS UP WITH THE PAPERWORK AND OTHER THINGS RELATED TO THE
17 TRIAL. AND TO MY RIGHT, AMBER BAGBY IS A LAW CLERK FOR ME. SHE
18 IS A RECENT GRADUATE OF THE UNIVERSITY OF SOUTH CAROLINA SCHOOL
19 OF LAW, AND SHE IS WITH ME TO ASSIST IN RESEARCH AND OTHER THINGS
20 OF THAT NATURE.

21 NOW, YOU MAY BE WONDERING WHY YOU WERE CHOSEN TO BE ON THIS
22 JURY, AND YOU PROBABLY KNOW YOU WERE CHOSEN TO COME TO COURT
23 TODAY TO SERVE ON JURY DUTY BECAUSE YOU EITHER HAVE A DRIVER'S
24 LICENSE OR YOU HAVE SOME KIND OF IDENTIFICATION CARD ISSUED BY
25 THE DEPARTMENT OF MOTOR VEHICLES OR YOU ARE REGISTERED TO VOTE.

PRELIMINARY INSTRUCTION BY THE COURT

1 AND YOU MAY BE WONDERING WHY YOU WERE ACTUALLY CHOSEN TO SIT
2 ON THIS CASE. AND THE REASON YOU WERE CHOSEN IS BECAUSE BOTH
3 SIDES, THAT IS, THE STATE OF SOUTH CAROLINA AND MR. MORRIS
4 SULLIVAN BELIEVE YOU CAN BE FAIR AND IMPARTIAL AND YOU CAN DECIDE
5 THIS CASE WITHOUT ANY KIND OF BIAS OR PREJUDICE OF ANY KIND. AND
6 THAT MEANS YOU CAN DECIDE THE CASE BASED ON THE EVIDENCE AND THE
7 LAW AND FOR NO OTHER REASON. SO THAT'S WHY YOU WERE CHOSEN AND
8 THAT'S WHY WE WENT TO SOME TROUBLE TODAY, AND YOU DID TOO, TO
9 MAKE SURE YOU COULD BE FAIR AND IMPARTIAL.

10 I'M GOING TO ASK MS. KLEIN TO NOW ADMINISTER THE OATH TO
11 YOU, AND LISTEN TO THE OATH VERY CAREFULLY BECAUSE IT'S A TIME
12 HONORED OATH AND IT WILL TELL YOU IN A NUTSHELL WHAT YOU NEED TO
13 KNOW TO BE A JUROR.

14 YES, MA'AM.

15 **MADAME CLERK:** PLEASE RISE. RAISE YOUR RIGHT HAND FOR THE
16 OATH IN THIS CASE. YOU SHALL WELL AND TRULY TRY THE CASE 1998-
17 GS-23-4313, THE STATE VERSUS MORRIS ANTONIO SULLIVAN -- HE IS
18 INDICTED FOR MURDER AND POSSESSION OF A WEAPON DURING THE
19 COMMISSION OF OR THE ATTEMPT TO COMMIT A VIOLENT CRIME --
20 INDICTMENT 2005-GS-9999 FOR POSSESSION OF A GUN UNDER 21 YEARS OF
21 AGE AND A TRUE VERDICT RENDER ACCORDING TO THE LAWS AND THE
22 EVIDENCE SO HELP YOU GOD? I WILL? (ALL JURORS RESPOND)

23 THANK YOU. YOU MAY BE SEATED.

24 **THE COURT:** ALL RIGHT. THANK YOU, LADIES AND GENTLEMEN.
25 NOW THIS IS A CRIMINAL CASE AND IT IS ONE OF THE CORNERSTONES OF

PRELIMINARY INSTRUCTION BY THE COURT

1 OUR LAW IN THIS COUNTRY THAT A PERSON CHARGED WITH A CRIME IS
2 PRESUMED TO BE INNOCENT OF THAT CHARGE. YOU MAY HAVE HEARD THE
3 PHRASE INNOCENT UNTIL PROVEN GUILTY, AND THAT'S ESSENTIALLY THE
4 SAME THING I'M TALKING ABOUT. ANYONE WHO IS CHARGED WITH A CRIME
5 IS PRESUMED TO BE INNOCENT OF THAT CHARGE, AND HE IS NEVER
6 REQUIRED TO PROVE HIMSELF INNOCENT OR OFFER ANY EVIDENCE OR
7 EXPLANATION WHATSOEVER. IT IS AN IMPORTANT RULE OF LAW THAT THE
8 DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF
9 THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED INNOCENT OF THAT
10 CHARGE FOR WHICH THE INDICTMENT WAS ISSUED UNLESS AND UNTIL GUILT
11 HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF GUILT BEYOND A
12 REASONABLE DOUBT.

13 AND I'M GOING TO TELL YOU AT THE END OF THE TRIAL MORE ABOUT
14 THIS IDEA OF BEYOND A REASONABLE DOUBT. BUT I WANT TO EMPHASIZE
15 TO YOU THE PRESUMPTION OF INNOCENCE THAT MR. SULLIVAN, LIKE ANY
16 OTHER CITIZEN, ENJOYS AND HE WILL ENJOY THROUGHOUT THIS TRIAL
17 UNLESS AND UNTIL YOU DETERMINE THE STATE HAS PROVEN HIS GUILT
18 BEYOND A REASONABLE DOUBT.

19 NOW, AS YOU KNOW, THERE ARE THREE CHARGES THAT MR. SULLIVAN
20 HAS BEEN INDICTED FOR, AND I WILL REMIND YOU AGAIN AND EMPHASIZE
21 TO YOU AGAIN AND INSTRUCT YOU THAT THE MERE FACT OF AN INDICTMENT
22 DOES NOT CONSTITUTE EVIDENCE OF GUILT. THE INDICTMENT IS SIMPLY
23 A PIECE OF PAPER, AND IT IS THE WAY THE STATE GETS INTO THE
24 COURTROOM TO BRING THE CASE, AND IT NOTIFIES SOMEONE CHARGED WITH
25 A CRIME EXACTLY WHAT THEY ARE CHARGED WITH. BUT IN AND OF ITSELF

PRELIMINARY INSTRUCTION BY THE COURT

1 IT DOESN'T CONSTITUTE EVIDENCE OF GUILT OR EVEN A SUSPICION OF
2 GUILT.

3 BECAUSE MR. SULLIVAN HAS PLED NOT GUILTY THE STATE HAS THE
4 BURDEN OF PROVING EACH AND EVERY ONE OF THE ELEMENTS OF THE
5 INDICTMENTS BEYOND A REASONABLE DOUBT, AND IT WILL BE YOUR DUTY,
6 LADIES AND GENTLEMEN, TO DETERMINE WHETHER THE STATE HAS MET
7 THEIR BURDEN. THE DEFENDANT DOES NOT HAVE TO PROVE ANYTHING TO
8 YOU. THE BURDEN OF PROOF IS ENTIRELY ON THE STATE AND YOU MUST
9 CONSIDER EACH COUNT SEPARATELY.

10 IN THIS CASE THERE ARE THREE COUNTS. THERE IS A COUNT OF
11 MURDER. THERE IS A COUNT OF POSSESSION OF A WEAPON DURING THE
12 COMMISSION OF A VIOLENT CRIME, AND THERE IS A COUNT OF POSSESSION
13 OF A FIREARM BY SOMEONE UNDER 21 YEARS OF AGE. NOW, AT THE END
14 OF THE CASE I WILL TELL YOU WHAT THE ELEMENTS OF EACH ONE OF
15 THOSE THREE CHARGES IS, AND THEN YOU WILL DETERMINE WHETHER THE
16 STATE HAS MET ITS BURDEN OF PROVING EACH AND EVERY ONE OF THOSE
17 ELEMENTS BEYOND A REASONABLE DOUBT.

18 NOW, LADIES AND GENTLEMEN, I TOLD YOU WHAT SOME OF THE OTHER
19 PEOPLE IN THE COURTROOM, WHO YOU HAVEN'T MET BEFORE, WHAT THEIR
20 JOBS ARE. LET ME TELL YOU WHAT MY JOB IS. MY JOB IS VERY SIMPLE
21 COMPARED TO YOURS. I HAVE TO TRY TO RUN THE TRIAL AS EFFICIENTLY
22 AS I CAN. THAT'S MY FIRST JOB. THE SECOND JOB IS I HAVE TO RULE
23 ON WHETHER EVIDENCE IS ADMISSIBLE. IF SOMEONE MAKES AN OBJECTION
24 TO EVIDENCE, I HAVE TO DETERMINE WHETHER THAT OBJECTION IS WELL
25 FOUNDED OR WHETHER IT IS NOT. AND THE THIRD THING I DO IS I

PRELIMINARY INSTRUCTION BY THE COURT

1 INSTRUCT YOU ON WHAT THE LAW IS OF THE CASE. I'M REFERRED TO AS
2 THE JUDGE OF THE LAW. THAT'S MY JOB.

3 YOU ARE ALSO JUDGES. AND IN FACT YOUR BADGE MIGHT AS WELL
4 SAY JUDGE INSTEAD OF JUROR, BECAUSE YOU ARE THE JUDGES OF THE
5 FACTS. UNDER OUR SYSTEM, YOU AND YOU ALONE DETERMINE WHAT THE
6 FACTS ARE. I CAN'T MAKE ANY COMMENT ON WHAT I THINK THE FACTS
7 ARE OR GIVE YOU ANY SUGGESTION OR HINT OF WHAT I THINK YOUR
8 VERDICT OUGHT TO BE. THAT'S ENTIRELY FOR YOU UNDER OUR SYSTEM OF
9 JUSTICE. AND THE REASON WE NEED A JURY IN THIS CASE IS BECAUSE
10 THERE IS SOME DISPUTE ABOUT THE FACTS. AND AS I'VE TOLD YOU,
11 YOUR JOB IS TO DETERMINE WHETHER THE STATE HAS MET ITS BURDEN OF
12 PROOF AS TO EACH AND EVERY ELEMENT OF EACH OF THE CRIMES MR.
13 SULLIVAN IS CHARGED WITH.

14 NOW, HOW DO YOU DETERMINE WHAT THE FACTS ARE AND WHETHER THE
15 STATE HAS MET ITS BURDEN? YOU DO THAT BY CONSIDERING THE
16 EVIDENCE IN THIS CASE, BECAUSE YOU MUST BASE YOUR VERDICT SOLELY
17 ON THE EVIDENCE AND THE LAW AS I GIVE IT TO YOU.

18 LET ME TELL YOU A LITTLE BIT ABOUT WHAT EVIDENCE IS AND
19 ABOUT WHAT IT IS NOT. THERE ARE TWO PRIMARY SOURCES OF EVIDENCE.
20 THE FIRST SOURCE IS WITNESS TESTIMONY, WHICH IS PROBABLY THE
21 SOURCE YOU ARE MOST FAMILIAR WITH. A WITNESS WILL COME IN WHO
22 WILL TESTIFY UNDER OATH AS TO SOMETHING THEY SAW OR HEARD OR
23 OBSERVED OR HAVE SOME KNOWLEDGE OF, AND THAT IS EVIDENCE YOU CAN
24 BASE YOUR DECISION ON. THE SECOND SOURCE OF EVIDENCE THAT WE'LL
25 LIKELY SEE IN THIS CASE IS BY WAY OF AN EXHIBIT. AN EXHIBIT IS

PRELIMINARY INSTRUCTION BY THE COURT

1 SOME OBJECT, MAYBE A PIECE OF PAPER, MAYBE A PHOTOGRAPH, SOME
2 PHYSICAL OR TANGIBLE THING. AND YOU WILL KNOW IT'S EVIDENCE AND
3 SOMETHING YOU CAN BASE YOUR DECISION ON BECAUSE IT WILL BE BACK
4 IN THE JURY ROOM WITH YOU AT THE END OF THE CASE. IT WILL HAVE A
5 LITTLE STICKER ON IT THAT WILL SAY EVIDENCE SO AND SO.

6 SO THOSE ARE THE TWO PRIMARY SOURCES OF EVIDENCE, BUT YOU
7 CAN ONLY BASE YOUR DECISION AS TO WHAT THE FACTS ARE AND WHETHER
8 THE STATE HAS MET ITS BURDEN ON EVIDENCE. YOU CAN'T BASE IT ON
9 THINGS THAT ARE NOT EVIDENCE. AND LET ME TELL YOU SOME THINGS
10 THAT ARE NOT EVIDENCE.

11 WHAT THE LAWYERS SAY IS NOT EVIDENCE BECAUSE THEY ARE NOT
12 WITNESSES. THEIR JOB IS TO ASSIST YOU IN INTERPRETING THE
13 EVIDENCE. BUT WHAT THEY SAY THEMSELVES IS NOT EVIDENCE.
14 LIKEWISE, WHAT I SAY IS NOT EVIDENCE, BECAUSE, AGAIN, I'M NOT A
15 WITNESS AND I CAN'T HAVE AN OPINION ON THE FACTS OF THE CASE, AND
16 MY ROLE ESSENTIALLY WILL BE LIMITED TO RULING ON WHETHER EVIDENCE
17 IS ADMISSIBLE. THINGS YOU SEE AND HEAR WHEN COURT IS NOT IN
18 SESSION IS NOT EVIDENCE. AND THERE ARE MANY OTHER THINGS WHICH
19 ARE NOT EVIDENCE, AND I WILL GO OVER THOSE WITH YOU AT THE END OF
20 THE CASE. BUT THOSE ARE SOME THINGS TO KEEP IN MIND.

21 LET ME JUST TELL YOU THIS, THAT AS THE JUDGES OF THE FACTS
22 YOU WILL HAVE TO NECESSARILY DETERMINE THE CREDIBILITY OR
23 BELIEVABILITY OF THE EVIDENCE YOU SEE AND HEAR. AND AS JUDGES OF
24 THE FACTS YOU WILL DETERMINE THE BELIEVABILITY AND CREDIBILITY OF
25 EACH WITNESS WHO TESTIFIED AND OF EACH EXHIBIT THAT IS ENTERED

PRELIMINARY INSTRUCTION BY THE COURT

1 INTO EVIDENCE. AND IN DECIDING WHETHER TO BELIEVE A WITNESS OR A
2 PIECE OF EVIDENCE, YOU CAN TAKE MANY THINGS INTO ACCOUNT.

3 YOU HAVE A RIGHT TO CONSIDER WHETHER THE WITNESS HAS AN
4 INTEREST IN THE RESULT OF THIS TRIAL OR THE OUTCOME OF THE TRIAL,
5 WHETHER THE WITNESS IS BIASED OR PREJUDICED TOWARDS EITHER SIDE,
6 HAS SOMETHING TO GAIN BY HIS OR HER TESTIMONY, AND YOU MAY ALSO
7 CONSIDER THE OPPORTUNITY THE WITNESS HAD TO OBSERVE OR SEE OR
8 HEAR THE THINGS HE OR SHE IS TESTIFYING ABOUT. AND YOU CAN ALSO
9 CONSIDER THE WAY THE WITNESS ACTS ON THE WITNESS STAND, THAT IS,
10 THEIR DEMEANOR. AND, LADIES AND GENTLEMEN, YOU CAN ALSO CONSIDER
11 ANYTHING THAT YOU USE IN YOUR DAY-TO-DAY LIVES TO DETERMINE
12 WHETHER SOMEONE IS BELIEVABLE OR TRUTHFUL, BECAUSE YOU DON'T
13 CHECK YOUR COMMON SENSE AT THE COURTHOUSE DOOR WHEN YOU REPORT
14 FOR JURY SERVICE. YOU HAVE THE RIGHT TO CONSIDER ANYTHING THAT
15 IS IN THE RECORD THAT WILL HELP YOU EVALUATE THE TESTIMONY OF THE
16 WITNESSES AND THE OTHER EVIDENCE.

17 BUT LET ME IMPRESS UPON YOU THAT YOU DON'T DECIDE THIS
18 MATTER OF CREDIBILITY OR BELIEVABILITY LIGHTLY, BECAUSE THIS IS
19 AN IMPORTANT CASE FOR BOTH SIDES, AND YOU CERTAINLY WOULDN'T
20 DECIDE CREDIBILITY ON SOMETHING THAT WASN'T A SOUND AND GOOD
21 REASON.

22 NOW, LET ME ALSO IMPRESS UPON YOU SOMETHING ELSE ABOUT THE
23 DUTY YOU HAVE TO DETERMINE THE FACTS. UNDER OUR SYSTEM OF
24 JUSTICE YOU MAY SEE WHERE CASES ARE REVERSED OR WHATNOT FOR
25 VARIOUS REASONS IN THE NEWSPAPER. BUT UNDER OUR SYSTEM OF

PRELIMINARY INSTRUCTION BY THE COURT

1 JUSTICE THE FINDING OF FACT BY A JURY IS ALMOST ALWAYS FINAL AND
2 CONCLUSIVE. IF I MAKE A MISTAKE AS TO WHAT THE LAW IS, IT CAN
3 EASILY BE CORRECTED ON AN APPEAL. BUT IF YOU MAKE A MISTAKE AS
4 TO WHAT THE FACTS ARE, IT CAN ALMOST NEVER BE CORRECTED. SO WITH
5 THAT IN MIND, IT IS YOUR DUTY TO CONSCIENTIOUSLY DETERMINE THE
6 FACTS IN THIS CASE AND IN THAT REGARD I WOULD URGE YOU TO TRY TO
7 PAY AS CLOSE ATTENTION AS YOU CAN.

8 I KNOW IT'S HARD TO SIT THERE FOR LONG PERIODS OF TIME AND
9 LISTEN TO TESTIMONY AND LISTEN TO ARGUMENTS, BUT KEEP IN MIND
10 YOUR DUTY. AND IT'S USUALLY THE TIME WHEN YOU LET YOUR MIND
11 WANDER WHEN SOMETHING IMPORTANT HAPPENS. SO PLEASE TRY TO PAY AS
12 CLOSE ATTENTION AS YOU CAN, AND I KNOW YOU WILL.

13 NOW, LADIES AND GENTLEMEN, I WILL JUST TELL YOU AGAIN THAT
14 YOU ARE THE SOLE JUDGES OF THE FACTS. ONCE I DETERMINE THE
15 EVIDENCE IS ADMISSIBLE, WHAT YOU DO WITH IT IS ENTIRELY UP TO
16 YOU. SO THAT IS YOUR OBLIGATION IN THIS TRIAL.

17 NOW LET ME TELL YOU A LITTLE BIT ABOUT THE STRUCTURE OF A
18 CRIMINAL TRIAL. AGAIN, THE STATE HAS THE BURDEN OF PROOF. I'VE
19 TOLD YOU THAT. THAT MEANS THEY WILL GO FIRST. THEY WILL GIVE
20 YOU THEIR OPENING STATEMENT IN JUST A MOMENT. AT THAT TIME,
21 AFTER THE STATE COMPLETES THEIR OPENING STATEMENT, THE DEFENSE,
22 MR. SULLIVAN, WILL HAVE THE OPPORTUNITY BUT DOES NOT HAVE THE
23 OBLIGATION TO GIVE AN OPENING STATEMENT AS WELL. AGAIN, MR.
24 SULLIVAN DOESN'T HAVE TO PROVE ANYTHING. HE DOESN'T HAVE TO SAY
25 ANYTHING THROUGHOUT THIS TRIAL BECAUSE THE BURDEN OF PROOF IS ON

PRELIMINARY INSTRUCTION BY THE COURT

1 THE STATE. BUT AFTER THE OPENING STATEMENTS, THE STATE WILL THEN
2 PRESENT ANY EVIDENCE IT WISHES TO, AND THEN THE DEFENSE WILL HAVE
3 THE OPPORTUNITY BUT AGAIN NOT THE OBLIGATION TO PRESENT ANY
4 EVIDENCE IT CHOOSES TO. AFTER YOU'VE HEARD ALL THE EVIDENCE IN
5 THIS CASE, WE WILL THEN HAVE THE CLOSING ARGUMENTS OF THE
6 ATTORNEYS. AFTER THE CLOSING ARGUMENTS, I WILL GIVE YOU THE
7 INSTRUCTION ON THE LAW THAT YOU MUST APPLY IN THIS CASE. AND
8 AFTER THAT THE CASE WILL BE IN YOUR HANDS FOR A VERDICT.

9 I DON'T KNOW HOW LONG THIS CASE IS GOING TO LAST. I
10 ANTICIPATE IT WILL LAST SEVERAL DAYS. BUT LET ME TELL YOU
11 SEVERAL THINGS IN REGARD TO WHAT YOU SHOULD DO BETWEEN NOW AND
12 THE TIME YOU GET THE CASE FOR A DECISION, OTHER THAN PAY
13 ATTENTION CLOSELY. THERE WAS AN INQUIRY MADE EARLIER ABOUT
14 WHETHER YOU MAY TAKE NOTES, AND I CERTAINLY WILL ALLOW YOU TO
15 TAKE NOTES IF YOU WANT TO. WE HAVE PADS THAT WILL BE AVAILABLE
16 FOR YOU, IF YOU DON'T HAVE ONE TO USE, AND PENS. BUT LET ME TELL
17 YOU A LITTLE BIT ABOUT TAKING NOTES AND SOME THINGS YOU MIGHT
18 WANT TO KEEP IN MIND WHILE YOU DO THAT.

19 THE FIRST THING IS, AS I TOLD YOU, ONE OF YOUR MAIN JOBS IS
20 TO DETERMINE THE FACTS OF THIS CASE, AND YOU HAVE TO DETERMINE
21 THE CREDIBILITY OF THE WITNESSES. IF YOU'RE TAKING NOTES AND YOU
22 GET ABSORBED IN DOING THAT, YOU MAY NOT SEE HOW A WITNESS ACTS ON
23 THE WITNESS STAND. SO KEEP THAT IN MIND IF YOU'RE TAKING NOTES,
24 TO MAKE SURE YOU OBSERVE THE DEMEANOR OF THE WITNESS AND LISTEN
25 CAREFULLY TO THEIR TESTIMONY.

PRELIMINARY INSTRUCTION BY THE COURT

1 LIKEWISE, YOUR NOTES, IF YOU TAKE THEM, DON'T HAVE ANY
2 GREATER WEIGHT THAN ANYBODY ELSE'S MEMORY ON THE JURY AS TO WHAT
3 THE TESTIMONY WAS. SOME PEOPLE ARE BETTER NOTE TAKERS THAN
4 OTHERS. AND IF YOU DO TAKE THE NOTES AND USE THEM, AT THE END OF
5 THE CASE WE WILL COLLECT THEM AND HAVE THEM DESTROYED. BUT YOU
6 CERTAINLY ARE ALLOWED TO USE THEM, BUT THEY DON'T HAVE ANY
7 GREATER WEIGHT THAN INDIVIDUAL JUROR'S MEMORY.

8 NOW, SECONDLY, IT IS VERY IMPORTANT IN THIS CASE THAT YOU
9 NOT DISCUSS THE CASE UNTIL I TELL YOU CAN, AND THAT WILL BE AT
10 THE END OF THE CASE AFTER YOU'VE HEARD ALL OF THE TESTIMONY,
11 AFTER YOU'VE HEARD ALL THE ARGUMENTS OF THE LAWYERS, AND AFTER
12 I'VE GIVEN YOU THE INSTRUCTION ON THE LAW THAT APPLIES IN THIS
13 CASE. FOR THEN AND ONLY THEN WILL YOU HAVE THE TOOLS YOU NEED TO
14 DO YOUR JOB.

15 WE SPENT A LOT OF TIME THIS MORNING, SO DID YOU, TO MAKE
16 SURE THAT WE HAD A JURY THAT CAN KEEP AN OPEN MIND, AND WE WANT
17 TO KEEP IT THAT WAY. SO PLEASE DON'T BEGIN DISCUSSING THE CASE
18 UNTIL I TELL YOU MAY, WHICH WILL BE AT THE END OF THE CASE AFTER
19 YOU HAVE HEARD EVERYTHING YOU NEED TO.

20 A TRIAL IS OFTEN LIKE A PUZZLE AND THE PARTIES MUST PRESENT
21 IT ONE PIECE AT A TIME. AND IF YOU BEGAN DISCUSSING THE CASE
22 THIS AFTERNOON DURING A BREAK, YOU ARE GOING TO BEGIN DRAWING
23 CONCLUSIONS ABOUT THE CASE, AND THAT WOULD BE IN VIOLATION OF
24 YOUR OATH.

25 AS I'VE TOLD YOU BEFORE AND I'LL TELL YOU AGAIN -- AND YOU

PRELIMINARY INSTRUCTION BY THE COURT

1 WILL GET SICK OF ME TELLING YOU -- DON'T DO ANY KIND OF OUTSIDE
2 INVESTIGATION. DON'T TALK TO ANYBODY ABOUT THIS CASE. DON'T
3 TALK TO YOUR SPOUSE OR FRIEND OR ANYTHING ABOUT THE CASE, BECAUSE
4 YOU MUST DECIDE THE CASE SOLELY ON THE EVIDENCE YOU HEAR DURING
5 THIS TRIAL.

6 NOW, YOU ARE GOING TO HEAR EXCELLENT ATTORNEYS IN THIS CASE,
7 AND THEY ARE ADVOCATES AND THEY ARE GOING TO REPRESENT THEIR
8 CLIENTS TO THE BEST OF THEIR ABILITIES. YOU AND I ARE NOT
9 ADVOCATES. WE HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH.
10 OUR JOB IS TO REMAIN NEUTRAL. AND YOUR DUTY AS A JURY LIES
11 ESSENTIALLY IN THE OATH YOU JUST TOOK TO DETERMINE THE FACTS IN
12 THIS CASE AND TO BE FAIR AND IMPARTIAL AND TO DECIDE THE CASE
13 ACCORDING TO THE EVIDENCE AND THE LAW.

14 NOW, LADIES AND GENTLEMEN, I KNOW YOU'RE GOING TO GIVE THE
15 ATTORNEYS THE SAME KEEN ATTENTION YOU HAVE GIVEN ME DURING THESE
16 OPENING INSTRUCTIONS. SO AT THIS TIME WE'RE GOING TO HAVE, IN
17 JUST A SECOND, THE OPENING STATEMENTS.

18 BUT LET ME JUST BEAR REPEATING AGAIN TO YOU THAT THIS CASE
19 IS IMPORTANT. IT'S IMPORTANT TO THE STATE. IT'S IMPORTANT TO
20 MR. SULLIVAN. EACH PARTY IS ENTITLED TO A FAIR TRIAL AT YOUR
21 HANDS AND AN IMPARTIAL TRIAL AT YOUR HANDS.

22 SO AT THIS TIME, YES, MA'AM, MS. MONTS.

23 MS. MONTS: MAY IT PLEASE THE COURT, YOUR HONOR.

24 THE COURT: YES, MA'AM.

25 MS. MONTS: LADIES AND GENTLEMEN OF THE JURY, THE CASE YOU

OPENING STATEMENTS -- BY MS. MONTS

1 ARE GOING TO HEAR OCCURRED JANUARY 16TH OF 1998. THE VICTIM IN
2 THIS CASE WAS JERVIS POWERS. HE WAS KILLED BY THE DEFENDANT IN
3 THIS CASE, MORRIS SULLIVAN, WITH A .40 CALIBER HANDGUN. THIS
4 OCCURRED AT THE DEFENDANT'S RESIDENCE ON [REDACTED] IN
5 FOUNTAIN INN HERE IN GREENVILLE COUNTY. THE DEFENDANT IS CHARGED
6 WITH MURDER.

7 WHY ARE YOU HERE? YOU ARE HERE BECAUSE AS HIS HONOR TOLD
8 YOU, YOU ARE THE FINDERS OF THE FACTS. YOU ARE TO DECIDE WHETHER
9 OR NOT THE DEFENDANT IS GUILTY OF THE CHARGES THAT THE STATE HAS
10 BROUGHT AGAINST HIM. THOSE CHARGES ARE MURDER, POSSESSION OF A
11 WEAPON BY A PERSON COMMITTING A VIOLENT CRIME AND POSSESSION OF A
12 PISTOL BY A PERSON UNDER THE AGE OF 21.

13 WHAT IS THE DIFFERENCE BETWEEN MURDER AND KILLING SOMEONE?
14 THE DIFFERENCE IS THAT THE DEFINITION OF MURDER IS THE KILLING OF
15 ONE PERSON BY ANOTHER WITH MALICE AFORETHOUGHT. AND HIS HONOR
16 WILL INSTRUCT YOU ON THE LAW AT THE END, AND I WILL GO INTO THE
17 LAW MORE AT THE CLOSING AS WELL.

18 MALICE MEANS INTENTIONAL, WITH HATRED, WITH HEAT. WHAT IS
19 AFORETHOUGHT? PRIOR TO. IT'S ONE WORD, AFORETHOUGHT. WHO COMES
20 UP WITH THESE THINGS? BUT ANYWAY, AFORETHOUGHT MEANS PRIOR TO
21 THE ACT OCCURRING. IT COULD BE A SPLIT SECOND BEFOREHAND, BUT
22 THE MALICE OR EVILNESS MUST OCCUR PRIOR TO THE GUN GOING OFF.

23 THE STATE IS HERE BECAUSE WE BELIEVE WE WILL PROVE TO YOU
24 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED WITH MALICE
25 AFORETHOUGHT WHEN HE PULLED THE TRIGGER AND KILLED JERVIS POWERS.

OPENING STATEMENTS -- BY MS. MONTS

1 WHAT ELSE ARE WE GOING TO PROVE TO YOU? THAT THE DEFENDANT
2 WAS UNDER 21 YEARS OF AGE AND THAT HE POSSESSED THE PISTOL.

3 AND THIRDLY, THAT WHILE THE DEFENDANT WAS COMMITTING THE
4 VIOLENT CRIME, BEING THE MURDER, HE POSSESSED A WEAPON. IN THIS
5 CASE, IT WILL BE A FORTY CALIBER HANDGUN.

6 NOW, WE'RE HERE, THE STATE AND THE DEFENSE, BECAUSE THERE
7 ARE DISPUTES AS TO WHAT ACTUALLY HAPPENED ON JANUARY 16TH OF 1998.
8 IF WE BOTH AGREED, WE WOULDN'T NEED A TRIAL. THAT'S WHERE YOU
9 COME IN. YOU ARE TO DECIDE WHAT REALLY HAPPENED.

10 WHOSE FACTS DO YOU BELIEVE? AND HOW DO YOU DECIDE THAT?
11 FROM THE WITNESS STAND, TESTIMONY FROM THIS WITNESS STAND. YOU
12 WILL HEAR FROM OFFICERS WHO ARRIVED ON THE SCENE AFTER THE
13 KILLING OCCURRED. YOU WILL HEAR FROM PEOPLE WHO WERE EITHER IN
14 THE HOUSE OR OUTSIDE THE HOUSE WHEN THE KILLING OCCURRED, AND YOU
15 WILL HEAR WHAT HAPPENED PRIOR TO THE KILLING. AND YOU DECIDE
16 WHAT YOU BELIEVE REALLY HAPPENED AND WHETHER OR NOT THE DEFENDANT
17 IS GUILTY OF MURDER, POSSESSION OF A WEAPON BY A PERSON UNDER THE
18 AGE OF 21 AND POSSESSION OF A PISTOL DURING THE COMMISSION OF A
19 VIOLENT CRIME.

20 WE KNOW YOU ARE GOING TO GIVE BOTH SIDES A FAIR CHANCE AT
21 THIS. PLEASE LISTEN CAREFULLY. WE BELIEVE WHEN YOU RENDER YOUR
22 VERDICT AT THE END OF THIS TRIAL YOU WILL UPHOLD THE SWORN DUTY
23 YOU JUST SWORE TO UPHOLD AND RENDER THE TRUTHFUL VERDICT, WHICH
24 WILL BE GUILTY ON ALL THREE COUNTS. THANK YOU.

25 **THE COURT:** ALL RIGHT. THANK YOU, MS. MONTS.

OPENING STATEMENTS -- BY MR. SUMNER

1 YES, SIR, MR. SUMNER.

2 **MR. SUMNER:** YES, SIR.

3 GOOD AFTERNOON. HELLO. MY NAME IS STEVE SUMNER AND I
4 PRACTICE LAW HERE IN GREENVILLE, AND IT IS A PLEASURE FOR ME TO
5 BE WITH YOU THIS MORNING WITH JUDGE FEW WHEN EVERYBODY WAS
6 QUALIFIED, THIS AFTERNOON AND OVER THE NEXT SEVERAL DAYS. IT IS
7 ALSO MY PLEASURE TO BE REPRESENTING MORRIS SULLIVAN. MORRIS IS
8 SEATED AT COUNSEL TABLE TO MY LEFT.

9 I WANT TO JOIN JUDGE FEW AND JUDGE HILL IN TELLING YOU ALL
10 HOW MUCH I APPRECIATE YOU BEING HERE, AND I HOPE YOU HAVE A
11 WONDERFUL WEEK OF JURY SERVICE.

12 IT HAS OFTEN BEEN SAID THAT IN A FREE SOCIETY LIKE WE LIVE
13 IN IN A FREE COUNTRY THAT THE MOST IMPORTANT THING THAT YOU CAN
14 DO FOR A CITIZEN FOR YOUR COUNTRY IS TO GO FIGHT IN A WAR. THE
15 SECOND MOST IMPORTANT THING OR SERVICE THAT YOU CAN PROVIDE IS
16 JURY SERVICE. AND YOU PROBABLY DIDN'T THINK ABOUT IT THIS
17 MORNING WHEN YOU CAME IN AND YOU CHECKED IN. YOU PROBABLY DID
18 NOT FEEL LIKE OR HAVE ANY INCLINATION THE YOU WOULD BE SITTING AS
19 A JUROR IN A MURDER TRIAL. BUT YOU ARE. AND I WOULD SUBMIT TO
20 YOU THAT THERE WILL NEVER BE ANOTHER CASE LIKE THIS IN YOUR LIFE
21 WHERE YOU ARE CALLED UPON IN CRIMINAL COURT TO SIT IN JUDGMENT OF
22 SOMEBODY CHARGED WITH MURDER.

23 WE ARE NOT HERE BECAUSE OF A CASE OF FRAUD OR ASSAULT OR
24 LARCENY OR ANYTHING ELSE. NOW THOSE ARE IMPORTANT. OBVIOUSLY
25 THOSE ARE CRIMES, AND THEY ARE IMPORTANT. BUT WE'RE NOT HERE

OPENING STATEMENTS -- BY MR. SUMNER

1 OVER SOMETHING LIKE THAT. THIS IS A MURDER CASE. AND IT'S ONE
2 OF THE MOST IMPORTANT DECISIONS IF NOT THE MOST IMPORTANT
3 DECISION THAT YOU WILL EVER MAKE.

4 HIS HONOR, JUDGE HILL, HAS TALKED ABOUT SOME OF THE GROUND
5 RULES THAT ARE GOING TO BE IN EFFECT DURING THE COURSE OF THIS
6 TRIAL. BECAUSE IT IS A CRIMINAL CASE, LADIES AND GENTLEMEN, AND
7 NOT A CIVIL CASE -- A CIVIL CASE MIGHT BE A CONTRACTUAL DISPUTE
8 OR THINGS LIKE THAT. BECAUSE IT'S A CRIMINAL CASE THERE ARE
9 SEVERAL IMPORTANT GROUND RULES. GROUND RULE NUMBER ONE IS MORRIS
10 SULLIVAN IS INNOCENT. LET ME SAY THAT TO YOU AGAIN. MORRIS
11 SULLIVAN IS INNOCENT. AND HE'S NOT INNOCENT BECAUSE I SAY SO.
12 HE'S INNOCENT BECAUSE JUDGE HILL HAS ALREADY TOLD YOU THAT. HE
13 TALKED ABOUT THE PRESUMPTION OF INNOCENCE

14 LADIES AND GENTLEMEN, ANYBODY WHO COMES INTO COURT IN
15 CRIMINAL COURT CHARGED WITH A CRIME IS PRESUMED TO BE INNOCENT,
16 AND THEY REMAIN INNOCENT IN YOUR MINDS UNLESS AND UNTIL AFTER YOU
17 HAVE HEARD EVERYTHING YOU GO BACK AS A JURY AND YOU DELIBERATE
18 AND YOU FIND THEY ARE GUILTY. BUT UP UNTIL THAT TIME, ANYBODY
19 WHO SITS AT THAT TABLE IS PRESUMED INNOCENT. AND THOSE ARE NOT
20 MERELY WORDS; THEY ARE A CARDINAL PART OF OUR LAW. AND JUDGE
21 HILL HAS ALREADY POINTED THAT OUT. THAT'S GROUND RULE NUMBER
22 ONE.

23 NUMBER TWO, THE BURDEN OF PROOF IS ON THE STATE. THE BURDEN
24 OF PROOF NEVER LEAVES THIS TABLE RIGHT HERE. MORRIS SULLIVAN
25 DOES NOT HAVE TO PROVE HIS INNOCENCE TO YOU TODAY OR THROUGH THE

OPENING STATEMENTS -- BY MR. SUMNER

1 COURSE OF THIS TRIAL. HE DOESN'T HAVE TO DO ANY OF THAT. THE
2 BURDEN OF PROOF REMAINS ENTIRELY UPON THE STATE OF SOUTH
3 CAROLINA, AND THEIR BURDEN IS TO PROVE EVERY ELEMENT OF A
4 CRIMINAL CHARGE TO YOU BEFORE YOU COULD CONSIDER RENDERING A
5 VERDICT OF GUILTY.

6 GROUND RULE NUMBER THREE IS THAT YOUR VERDICT MUST BE
7 UNANIMOUS. THERE ARE 12 OF YOU AND TWO ALTERNATES. IT IS NOT
8 ENOUGH FOR THE STATE OF SOUTH CAROLINA TO PROVE THIS TO EIGHT OF
9 YOU OR TO TEN OF YOU OR ELEVEN OF YOU. THE STATE MUST PROVE ANY
10 CRIMINAL CHARGE TO YOU, AND YOUR VERDICT MUST BE AND HAS TO BE
11 UNANIMOUS.

12 GROUND RULE NUMBER FOUR, AND IT'S THE LAST ONE THAT I'M
13 GOING TO MENTION. HOW MUST THE STATE PROVE IT? HIS HONOR, JUDGE
14 HILL, HAS ALREADY STATED TO YOU ALL THE CONCEPT OF THE TERM OF
15 BEYOND A REASONABLE DOUBT. AND WHAT DOES THAT MEAN? IN SOUTH
16 CAROLINA OUR SUPREME COURT HAS DEFINED REASONABLE DOUBT, AND THEY
17 HAVE SAID A REASONABLE DOUBT IS A DOUBT WHICH WOULD CAUSE A
18 REASONABLE PERSON TO HESITATE TO ACT IN A MATTER OF AN IMPORTANT
19 AFFAIR. AND WHAT THAT MEANS IS THAT AT THE CONCLUSION OF THIS
20 CASE IF YOU HESITATE TO ACT, IF YOU HESITATE TO FIND MORRIS
21 SULLIVAN GUILTY, THEN YOUR VERDICT SHOULD BE AND MUST BE NOT
22 GUILTY. AND JUDGE HILL WILL TELL YOU THAT AT THE CONCLUSION OF
23 THE TRIAL.

24 LADIES AND GENTLEMEN, I BELIEVE THAT THE EVIDENCE IN THIS
25 TRIAL WILL PRESENT THE FOLLOWING. ON JANUARY 16TH OF 1998, WHICH

OPENING STATEMENTS -- BY MR. SUMNER

1 IS THE DAY OF THE SHOOTING, MORRIS SULLIVAN WAS AT HIS HOME
2 AROUND LUNCHTIME. PRESENT AT HIS HOME WAS A FRIEND, OCTAVIOUS
3 BARKSDALE. YOU MAY HEAR HIM REFERRED TO DURING THE COURSE OF
4 THIS TRIAL AS TAVIS. AND THERE WAS ALSO A FEMALE THERE, A YOUNG
5 LADY, A TEENAGER BY THE NAME OF RONICA BUTLER. I BELIEVE THAT
6 YOU WILL HEAR FROM HER.

7 A LITTLE WHILE LATER A GROUP OF INDIVIDUALS CAME OVER TO
8 MORRIS' HOME. MORRIS LET THE GROUP INTO HIS HOME. THIS GROUP
9 INCLUDED THE DECEASED, A YOUNG MAN BY THE NAME OF JERVIS POWERS.
10 I BELIEVE THE EVIDENCE WILL SHOW THAT JERVIS POWERS BECAME ANGRY
11 AND CONFRONTED MORRIS SULLIVAN BECAUSE HE BELIEVED THAT MORRIS
12 HAD BEEN INVOLVED IN A RECENT SHOOTING AT HIS HOME. YOU MAY HEAR
13 THIS REFERRED TO AS A DRIVE-BY SHOOTING, BUT A SHOOTING WHERE
14 MORRIS HAD A ROLE OF SOME WAY IN FIRING BULLETS INTO THE HOME OF
15 JERVIS POWERS. THE EVIDENCE WILL SHOW THAT JERVIS POWERS, AFTER
16 GOING INTO MORRIS' HOME WITH A GROUP OF OTHER INDIVIDUALS, THAT
17 JERVIS POWERS REMOVED HIS JACKET AND ACTED AS IF HE INTENDED TO
18 FIGHT MORRIS. MORRIS THEN RETREATS AND GOES BACK INTO A BACK
19 BEDROOM OF THE HOME. JERVIS POWERS FOLLOWS HIM INTO THE BEDROOM.
20 A STRUGGLE THEN ENSUES OVER A HANDGUN WITH MORRIS SULLIVAN
21 GAINING CONTROL. I BELIEVE THE EVIDENCE AND TESTIMONY WILL
22 FURTHER SHOW THAT MORRIS THEN WALKS BACKWARDS INTO THE LIVING
23 ROOM AREA OF THE HOME WITH THE GUN IN HIS HAND. WHILE MORRIS IS
24 WALKING BACKWARDS YOU WILL HEAR TESTIMONY THAT JERVIS POWERS IS
25 ADVANCING TOWARD HIM AND TAUNTING HIM OR DARING HIM TO SHOOT HIM.

OPENING STATEMENTS -- BY MR. SUMNER

1 THE EVIDENCE WILL FURTHER SHOW THAT MORRIS THEN FIRED A WARNING
2 SHOT, AS HE IS WALKING BACKWARDS, INTO THE FLOOR. THE EVIDENCE
3 WILL THEN SHOW THAT JERVIS POWERS CONTINUED TO ADVANCE TOWARD
4 MORRIS SULLIVAN AND THAT MORRIS THEN FIRED TWO MORE SHOTS, WITH
5 ONE OF THE BULLETS UNFORTUNATELY KILLING JERVIS POWERS.

6 NOW, I HOPE THAT YOU ALL WILL PLEASE UNDERSTAND AND KNOW
7 THAT THIS CERTAINLY WAS A TRAGEDY, AND I HOPE THAT I DON'T SAY
8 ANYTHING AS MORRIS' ATTORNEY THAT MAKES YOU THINK THAT I FEEL ANY
9 OTHER WAY. BECAUSE IT WAS A TRAGEDY, AND I CERTAINLY FEEL SORRY
10 FOR JERVIS' FAMILY THAT THIS HAPPENED.

11 AND DURING THE COURSE OF THE TRIAL I HOPE THAT -- I WILL BE
12 QUESTIONING WITNESSES AGGRESSIVELY, AND I HOPE THAT YOU ALL DON'T
13 THINK THAT I DON'T KNOW AND DON'T REALIZE THAT THIS WAS A
14 TRAGEDY. THERE'S NO QUESTION THAT IT WAS.

15 NOW, MS. MONTS, THE PROSECUTOR, HAS TALKED A LITTLE BIT
16 ABOUT MURDER, AND SHE TOLD YOU THAT MURDER REQUIRES MALICE
17 AFORETHOUGHT. AND WHAT IS THAT? AND I AGREE WITH HER ON THIS
18 POINT. IT'S COMMONLY BEEN REFERRED TO AS THE PRESENCE OF ILL
19 WILL, MEANNESS, HATRED, A HARD HEART. AND THE STATE MUST PROVE
20 THAT MORRIS SULLIVAN HAD THAT IN HIS HEART AND IN HIS HEAD WHEN
21 THESE SHOTS WERE FIRED.

22 JUDGE HILL HAS TOLD YOU THAT YOU ALL ARE THE JUDGES OF THE
23 FACTS. WHAT DOES THAT MEAN? THERE'S TWO JUDGES HERE IN THE
24 COURTROOM. THERE'S THIS JUDGE AND THERE'S THAT JUDGE. YOU ALL
25 ARE THE SOLE JUDGES OF THE FACTS. YOU ALL DECIDE WHETHER OR NOT

OPENING STATEMENTS -- BY MR. SUMNER

1 THE STATE HAS PROVEN THEIR CASE AND THEIR SEVERAL CHARGES BEYOND
2 A REASONABLE DOUBT. JUDGE HILL DOESN'T MAKE THAT DECISION. BUT
3 JUDGE HILL IS THE JUDGE OF THE LAW, AND WHEN HE INSTRUCTS YOU OR
4 ADVISES YOU WHAT THE LAW IS, YOU MUST TAKE THAT BECAUSE THAT IS
5 HIS -- THIS IS HIS PURVIEW AND PROVINCE DURING THE COURSE OF THIS
6 TRIAL.

7 I BELIEVE THAT HE WILL TALK WITH YOU ABOUT SEVERAL THINGS AT
8 THE CONCLUSION OF THE CASE. HE WILL CHARGE YOU, I BELIEVE, ON
9 THE LAW OF SELF-DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE. I
10 WILL ASK THAT YOU PLEASE LISTEN TO JUDGE HILL, AS I KNOW THAT YOU
11 WILL, AT THE CONCLUSION OF THE CASE, BECAUSE HE IS GOING TO TALK
12 WITH YOU ABOUT SELF-DEFENSE. REMEMBER NOW, THIS HAPPENED IN
13 MORRIS' HOME. HE IS GOING TO TALK WITH YOU ABOUT SELF-DEFENSE.
14 HE'S GOING TO TALK WITH YOU ABOUT DEFENSE OF HABITATION, I.E.,
15 DEFENSE OF ONE'S HOME, WHAT SOMEBODY HAS THE LEGAL RIGHT TO DO AT
16 THAT POINT WHEN SOMEBODY IS IN YOUR HOME. HE IS GOING TO TALK
17 WITH YOU ALSO ABOUT THE DEFENSE OF NECESSITY, AND THAT IS IF
18 SOMEBODY FEELS CERTAIN THINGS THAT A REASONABLE PERSON WOULD FEEL
19 AND THEY CAN ACT NECESSARILY TO PROTECT THEMSELVES. AND I'LL LET
20 JUDGE HILL DEFINE THAT. HE MAY TALK WITH YOU ABOUT SOME OTHER
21 THINGS AT THE CONCLUSION OF THE TRIAL. BUT PLEASE LISTEN
22 CLOSELY, AS I KNOW THAT YOU WILL, TO HIS JURY CHARGES.

23 IN CLOSING, DON'T BE SURPRISED ABOUT BAD LANGUAGE THAT YOU
24 MAY HEAR DURING THE COURSE OF THIS TRIAL. OKAY.

25 FOR A MURDER CASE THIS WILL BE A SHORT TRIAL. IT SHOULD NOT

OPENING STATEMENTS -- BY MR. SUMNER

1 LAST MORE THAN SEVERAL DAYS AT THE OUTSIDE. I WILL ASK YOU, AS
2 JUDGE HILL HAS ALREADY COMMENTED, TO PLEASE LISTEN CAREFULLY TO
3 ALL THE WITNESSES. I'LL DO MY VERY BEST TO ONLY ASK THEM
4 RELEVANT AND IMPORTANT QUESTIONS SO THAT WE CAN MOVE QUICKLY. I
5 KNOW THAT THERE IS NO TIME LIMIT. I KNOW THERE IS NO RUSH. BUT
6 THIS CASE IS NOT GOING TO LAST FOR SEVERAL WEEKS. I MEAN, WE'RE
7 GOING TO WRAP THIS CASE UP WITHIN THE NEXT SEVERAL DAYS.

8 PLEASE LISTEN CAREFULLY TO ALL OF THE WITNESSES. DON'T JUST
9 LISTEN TO ONE PART AND THEN ANOTHER. PLEASE LISTEN TO ALL THE
10 QUESTIONS. PLEASE LISTEN TO ALL THE TESTIMONY. AND AS I
11 MENTIONED EARLIER, KEEP AN OPEN MIND. WAIT UNTIL IT IS TIME TO
12 DELIBERATE AS A JURY BEFORE YOU START THINKING ABOUT MAKING YOUR
13 MIND UP ONE WAY OR THE OTHER, BECAUSE IT'S KIND OF LIKE A
14 BALLGAME. YOU KNOW, THERE'S GOING TO BE SOME THINGS THAT MAY
15 MAKE YOU WANT TO THINK ONE WAY, AND THEN YOU'RE GOING TO HEAR
16 MAYBE FROM ANOTHER WITNESS OR ANOTHER ANSWER TO ANOTHER QUESTION
17 AND YOU'RE GOING TO KIND OF RETHINK. JUST WAIT TILL THE END,
18 PLEASE, BEFORE YOU THINK ABOUT MAKING UP YOUR MIND.

19 AND THE LAST THING, THE ONLY THING THAT I CAN ASK YOU TO DO
20 AND THE ONLY THING THAT MORRIS SULLIVAN WILL ASK YOU TO DO IS TO
21 SIMPLY FOLLOW YOUR OATH THAT YOU RAISED YOUR HAND AND TOOK TO
22 WELL AND TRULY TRY AND A TRUE VERDICT RENDER BASED ON THE LAW AND
23 EVIDENCE. YOU DON'T HAVE ANY FRIENDS TO REWARD. YOU DON'T HAVE
24 ANY ENEMIES TO PUNISH. JUST CALL IT LIKE YOU SEE IT. THANK YOU.

25 THE COURT: THANK YOU, MR. SUMNER.

CAROLYN REGAN -- DIRECT BY MS. MONTS

1 YES, MA'AM. YOU CAN CALL YOUR FIRST WITNESS.

2 **MS. MONTS:** YOUR HONOR, THE STATE CALLS CAROLYN REGAN.

3 **CAROLYN REGAN,** HAVING BEEN DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 **DIRECT EXAMINATION BY MS. MONTS:**

6 **Q** MS. REGAN, PLEASE TELL THE JURY WHERE YOU ARE CURRENTLY
7 EMPLOYED.

8 **A** FOUNTAIN INN POLICE DEPARTMENT.

9 **Q** AND HOW LONG HAVE YOU WORKED WITH THE FOUNTAIN INN POLICE
10 DEPARTMENT?

11 **A** ABOUT 14 YEARS.

12 **Q** AND WHAT ARE YOUR DUTIES THERE?

13 **A** TO DISPATCH CALLS, ANSWER BUSINESS LINES AND 911 CALLS.

14 **Q** AND HAS THAT BEEN YOUR JOB FOR THE ENTIRE TIME YOU'VE BEEN
15 THERE?

16 **A** YES.

17 **Q** AND WAS THIS YOUR JOB ON JANUARY 16TH OF 1998?

18 **A** YES.

19 **Q** AND ON THAT DAY WERE YOU DISPATCHING POLICE AND TAKING 911
20 CALLS?

21 **A** YES.

22 **Q** DESCRIBE WHAT YOUR PROCEDURE IS WHEN YOU RECEIVE A 911 CALL.
23 WHAT DO YOU DO?

24 **A** WE HAVE A SCREEN THAT SHOWS THE ADDRESS AND PHONE NUMBER AND
25 THE RESIDENCE NAME, AND WE ANSWER THE CALL AND DETERMINE WHAT IT

CAROLYN REGAN -- DIRECT BY MS. MONTS

1 IS, IF IT'S A HANG-UP CALL OR IF THERE IS NOISE OR SOMETHING THAT
2 MAKES US FEEL WE SHOULD SEND AN OFFICER, THEN AN OFFICER GOES OUT
3 ON THE CALL.

4 Q AND DO YOU -- AS LONG AS THE LINE STAYS OPEN DO YOU STAY
5 LISTENING OR DO YOU HANG UP ON THEM?

6 A WE STAY LISTENING.

7 Q AND DO YOU RECALL RECEIVING A 911 CALL A LITTLE AFTER ONE
8 O'CLOCK IN THE AFTERNOON ON JANUARY 16TH OF 1998?

9 A YES.

10 Q AND DESCRIBE WHAT TOOK PLACE. WHAT DID YOU SEE AND DO?

11 A I HEARD SHUFFLING NOISES. THERE WAS AN OPEN LINE. I HEARD
12 SHUFFLING NOISES---

13 Q SO WHEN YOU ANSWERED THE PHONE WAS THERE ANYBODY SPEAKING TO
14 YOU?

15 A NO.

16 Q OKAY. PLEASE CONTINUE. WHAT DID YOU HEAR?

17 A IT JUST SOUNDED LIKE SOMEBODY SHUFFLING, SOMEBODY WALKING
18 AROUND. AND THERE WAS -- I HEARD A VOICE SAYING, "STAND HIM UP.
19 HE AIN'T DEAD YET." AND I HEARD THAT REPEATED TWO OR THREE
20 TIMES.

21 Q AND DID YOU CALL ANYBODY ELSE OR DID ANY OTHER LAW
22 ENFORCEMENT COME OVER TO WHERE YOU WERE?

23 A NO. I DISPATCHED THE CALLS TO THE OFFICER AND I LET THEM
24 KNOW ABOUT THE NOISES I HAD HEARD ON THE PHONE.

25 Q AND COULD YOU TELL WHAT RESIDENCE THIS WAS COMING FROM?

1 A YES. THE---

2 Q WHAT RESIDENCE WAS IT COMING FROM?

3 A I DON'T REMEMBER THE ADDRESS.

4 Q WAS IT THE HOME OF MORRIS SULLIVAN?

5 A YES.

6 Q AND PLEASE CONTINUE. WHAT DID YOU SAY TO LAW ENFORCEMENT?

7 A I ADVISED THEM THAT THERE WAS STILL AN OPEN LINE, THAT -- OF
8 THE STATEMENT THAT I HEARD AND THAT THERE WAS STILL SOMEONE IN
9 THE RESIDENCE. I COULD HEAR MOVEMENT.

10 Q AND DID CHIEF MORTON EVER COME OVER AND LISTEN TO THIS TAPE
11 WITH YOU?

12 A NOT AT THAT TIME.

13 Q AT WHAT TIME?

14 A NOT WHILE I WAS ON THE PHONE, AT THAT TIME, NO.

15 Q OKAY. BUT SOMETIME PRIOR -- SOMETIME SHORTLY THEREAFTER?

16 A UH-HUH (AFFIRMATIVE).

17 Q OKAY. AND WHAT DID YOU DO -- DID THE PHONE EVER HANG UP?
18 OR WHAT TRANSPIRED?

19 A THE PHONE DISCONNECTED. I TRIED CALLING BACK AND THE LINE
20 WAS BUSY. I TRIED AGAIN A FEW MINUTES LATER, AND -- OR JUST A
21 SHORT TIME LATER AND IT RANG AND THERE WAS NO ANSWER.

22 Q AND DID YOU CALL LAW ENFORCEMENT BACK TO TELL THEM ANYTHING
23 ELSE OR ONCE YOU DISPATCHED THEM IS THAT THE END OF YOUR---

24 A NO, I STAYED ON THE RADIO WITH THEM. I STAYED IN CONTACT
25 WITH THEM TO LET THEM KNOW WHAT WAS GOING ON WITH THE PHONE.

CAROLYN REGAN -- DIRECT BY MS. MONT'S

1 Q AND DO YOU MAKE A RECORDING OF WHAT YOU HEAR OVER THE
2 TELEPHONE LINE?

3 A THERE'S 24 HOUR RECORDINGS.

4 Q MS. REGAN, I'M GOING TO HAND YOU WHAT HAS BEEN MARKED FOR
5 IDENTIFICATION AS STATE'S EXHIBIT 12. CAN YOU PLEASE TELL THE
6 JURY IF YOU CAN IDENTIFY THIS?

7 A YES, I INITIALED IT.

8 Q AND IS THIS A COPY OF THE 911 TAPE FROM THAT DAY?

9 A YES.

10 MS. MONT'S: YOUR HONOR, I WOULD MOVE THIS INTO EVIDENCE AT
11 THIS TIME.

12 MR. SUMNER: NO OBJECTION.

13 THE COURT: OKAY. IT'S IN EVIDENCE.

14 (STATE'S EXHIBIT NUMBER 12, 911 TAPE, MOVED INTO EVIDENCE)

15 MS. MONT'S: (PAUSE) YOUR HONOR, I'D LIKE TO PUBLISH IT TO
16 THE JURY AT THIS TIME.

17 THE COURT: ALL RIGHT. YES, MA'AM.

18 (STATE'S EXHIBIT NUMBER 12, AUDIOTAPE, PLAY BEGINS IN OPEN
19 COURT AT 4:17 P.M.)

20 (PLAY STOPS AT 4:18 P.M.)

21 Q WAS THAT THE END OF THE RECORDING AS FAR AS YOU REMEMBER?

22 A YES.

23 Q AND SO THEN DOES THE RECORDING EQUIPMENT AT THE FOUNTAIN INN
24 POLICE DEPARTMENT JUST STOP ONCE YOU PRESS THE START THERE?

25 A ON THAT PARTICULAR LINE IT DOES.

CAROLYN REGAN -- DIRECT BY MS. MONT'S

1 MS. MONT'S: THANK YOU VERY MUCH. I HAVE NO FURTHER
2 QUESTIONS.

3 MR. SUMNER: WE HAVE NO QUESTIONS OF THIS WITNESS, YOUR
4 HONOR.

5 THE COURT: THANK YOU, MS. REGAN, FOR YOUR TIME.

6 MS. MONT'S: YOUR HONOR, WE ASK THAT THIS WITNESS BE
7 EXCUSED.

8 MR. SUMNER: WITHOUT OBJECTION.

9 THE COURT: OKAY. SHE'S EXCUSED.

10 YES, MA'AM. YOU CAN CALL YOUR NEXT WITNESS.

11 MS. MONT'S: YOUR HONOR, THE STATE CALLS NICOLE LADSON.

12 NICOLE LADSON, HAVING BEEN DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MS. MONT'S:

15 Q NICOLE, PLEASE TELL THE JURY, WHAT PART OF TOWN DO YOU LIVE
16 IN RIGHT NOW?

17 A MAULDIN.

18 Q AND IN JANUARY OF 1998 WHAT PART OF TOWN DID YOU LIVE IN?

19 A SIMPSONVILLE.

20 Q AND WHAT WAS YOUR ADDRESS AT THAT TIME?

21 A [REDACTED]

22 Q AND WHO DID YOU LIVE NEXT DOOR TO?

23 A MY AUNT.

24 Q AND DID YOU LIVE NEXT DOOR TO JERVIS POWERS?

25 A YES, MA'AM.

1 Q AND PLEASE DESCRIBE, WHAT IS YOUR RELATIONSHIP TO HIM?

2 A WELL, HE'S MY FIRST COUSIN, AND WE WAS REAL CLOSE, LIKE
3 BROTHERS AND SISTERS.

4 Q AND YOU LIVED NEXT DOOR TO HIM; IS THAT CORRECT?

5 A UH-HUH (AFFIRMATIVE).

6 Q AND HOW OFTEN WOULD YOU SEE HIM?

7 A LIKE, EVERY DAY.

8 Q AND DID HE HAVE ANY OTHER BROTHERS OR SISTERS THAT LIVED
9 THERE?

10 A YEAH.

11 Q WHO LIVED THERE WITH HIM?

12 A HIS BROTHER JASON, HIS TWIN BROTHER, AND HIS SISTER CAMILLE.

13 Q AND DID HIS MOM LIVE THERE?

14 A YES, MA'AM.

15 Q AND HER HUSBAND?

16 A YEAH.

17 Q AND WHO DID YOU LIVE WITH NEXT DOOR?

18 A MY MOM.

19 Q AND DESCRIBE THE RELATIONSHIP BETWEEN YOUR MOM AND JERVIS.

20 A THAT WAS LIKE HIS GRANDMA, BUT IT WAS REALLY HIS AUNT.

21 Q BY "LIKE HIS GRANDMA" ARE YOU TALKING ABOUT THEY WERE CLOSE?

22 A YEAH, HE WOULD CALL HER GRAMS.

23 Q AND HOW OFTEN WOULD THEY SEE EACH OTHER?

24 A ALMOST EVERY DAY.

25 Q AND HOW LONG DID YOU LIVE NEXT DOOR TO HIM?

NICOLE LADSON -- DIRECT BY MS. MONTS.

1 A ABOUT 20 YEARS.

2 Q OKAY. SO FROM THE DAY EACH OF YOU WAS BORN YOU LIVED NEXT
3 DOOR TO EACH OTHER UNTIL JANUARY OF 1998. AND HOW OLD WAS HE
4 THEN IN JANUARY OF 1998?

5 A SEVENTEEN.

6 Q AND HOW OLD WERE YOU?

7 A TWENTY.

8 Q AND DESCRIBE WHEN YOU SAW HIM -- WOULD YOU SEE HIM IN THE
9 MORNINGS?

10 A YEAH.

11 Q AND WHAT WOULD YOU DO IN THE MORNINGS?

12 A I WOULD COOK BREAKFAST FOR HIM.

13 Q WAS THAT JUST SOMETHING YOU DID EVERY DAY?

14 A ALMOST, YEAH.

15 Q AND HE WOULD COME OVER AND EAT WITH YOU?

16 A UH-HUH (AFFIRMATIVE).

17 Q AND WHAT WOULD YOU DO WHEN YOU WERE EATING?

18 A TALK.

19 Q DO YOU RECALL IF YOU SAW HIM ON THE MORNING -- JERVIS -- ON
20 THE MORNING OF JANUARY 16TH OF 1998?

21 A YEAH, WE ATE -- WELL, WE WAS ABOUT TO EAT BREAKFAST
22 TOGETHER.

23 Q OKAY. DESCRIBE WHAT -- WHAT WAS HE DOING WHEN HE FIRST CAME
24 IN YOUR DOOR? WAS HE DOING SOMETHING WITH YOUR MOM?

25 A YEAH. HE WAS TAKING GROCERIES OUT THE CAR.

NICOLE LADSON -- DIRECT BY MS. MONTS

1 Q OUT OF YOUR MOTHER'S CAR?

2 A UH-HUH (AFFIRMATIVE).

3 Q AND THEN WHEN DID YOU FIRST TALK TO HIM?

4 A WHEN HE GOT THROUGH TAKING THE GROCERIES OUT THE CAR HE CAME
5 BACK IN AND ASKED ME WAS I GOING TO COOK BREAKFAST, AND I SAID
6 YEAH.

7 MR. SUMNER: YOUR HONOR, AT THIS POINT, I'M GOING TO
8 OBJECT. I DON'T KNOW WHAT THE RELEVANCE OF THIS QUESTIONING IS,
9 AND I CERTAINLY WOULD OBJECT TO ANY HEARSAY THE SOLICITOR MIGHT
10 BE SEEKING. I JUST DON'T KNOW WHAT THIS HAS TO DO WITH WHY WE
11 ARE HERE.

12 THE COURT: ALL RIGHT. LET ME SEE Y'ALL UP HERE REAL
13 QUICK.

14 (BENCH CONFERENCE OFF RECORD FROM AT 4:24 P.M.)

15 THE COURT: ALL RIGHT. GO AHEAD.

16 Q OKAY. NICOLE -- (PAUSE)

17 MS. MONTS: EXCUSE ME ONE SECOND. (OFF RECORD WITH MR.
18 SUMNER) YOUR HONOR, MAY WE APPROACH?

19 THE COURT: SURE.

20 (BENCH CONFERENCE OFF RECORD)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING
22 TO TAKE A SHORT RECESS. I'VE GOT TAKE UP A MATTER. AS I TOLD
23 YOU, I HAVE TO DETERMINE WHETHER EVIDENCE IS ADMISSIBLE. USUALLY
24 I CAN DO THAT RIGHT ON THE SPOT. SOMETIMES IT'S A LITTLE MORE
25 COMPLICATED. AND WE DON'T WANT TO INCONVENIENCE YOU ANYMORE THAN

NICOLE LADSON -- DIRECT BY MS. MONTS

1 WE HAVE TO, SO IT WILL BE MORE EFFICIENT IF WE ASK YOU TO GO TO
2 YOUR JURY ROOM. REMEMBER NOT TO DISCUSS THE CASE AND CONTINUE TO
3 KEEP AN OPEN MIND. WE'LL BE RIGHT BACK WITH YOU AS SOON AS WE
4 CAN.

5 (JURY EXITS COURTROOM AT 4:25 P.M.)

6 **THE COURT:** OKAY. LET ME JUST SAY FOR THE RECORD, THE
7 BENCH CONFERENCES WE HAD WERE RELATED TO THIS LINE OF QUESTIONING
8 ABOUT THE HOUSE AND THE BACKGROUND. MR. SUMNER OBJECTED AND I
9 WAS TRYING TO ASCERTAIN HOW MUCH MORE MS. MONTS WAS GOING TO GO
10 INTO THAT, AND THEN THE ISSUE CAME UP REGARDING AN INVESTIGATION
11 INTO A SHOOTING INTO THE HOME OF THE VICTIM, AND THAT'S WHEN WE
12 SENT THE JURY OUT BECAUSE WE FIGURED IT WOULD TAKE LONGER THAN IT
13 USUALLY DOES TO DO SOMETHING BRIEFLY.

14 SO GO AHEAD, MR. SUMNER. YOUR OBJECTION IS WHAT?

15 **MR. SUMNER:** YES, SIR, YOUR HONOR. I JUST WANTED TO STATE
16 MY OBJECTION IN OPEN COURT TO HEARSAY AS TO ANYTHING THAT MS.
17 LADSON MIGHT REPEAT THAT WAS SAID TO HER. AND NUMBER TWO, MY
18 OBJECTION ALONG THE LINES OF RELEVANCE TO WHAT SHE SAW THAT
19 MORNING AT JERVIS POWERS' HOME, I DON'T THINK IT HAS ANY
20 RELEVANCE TO THE CASE IN TERMS OF THE FACTS THAT TRANSPIRED.
21 WHETHER OR NOT MY CLIENT COMMITTED MURDER OR NOT IN HIS HOME
22 AGAINST JERVIS POWERS, I DON'T KNOW HOW THAT'S RELEVANT, WHAT
23 HAPPENED EARLIER THAT DAY AT JERVIS POWERS' HOME ALLEGEDLY OR
24 SUPPOSEDLY. THANK YOU.

25 **THE COURT:** THANK YOU, SIR.

NICOLE LADSON -- DIRECT BY MS. MONT'S

1 YES, MA'AM, MS. MONT'S.

2 **MS. MONT'S:** YOUR HONOR, THIS CORROBORATES WHAT THE VICTIM
3 SAYS LATER AND WHAT OTHER PEOPLE SAY THAT WHAT THE VICTIM SAYS
4 ABOUT HIS HOUSE BEING SHOT INTO THAT MORNING, AND THIS HELPS
5 PROVE THAT THERE WAS A SHOOTING INTO THE VICTIM'S HOUSE THAT
6 MORNING AS FAR AS WHAT HE'S GOING OVER AND WHAT SUPPOSEDLY LED TO
7 THE DISAGREEMENT OVER AT THE DEFENDANT'S HOUSE LATER THAT DAY AND
8 SUBSEQUENTLY ENDING UP CAUSING HIS DEATH.

9 **THE COURT:** SO WHAT ARE YOU GOING TO ASK HER? I'M NOT SURE
10 EXACTLY WHAT YOU'RE TRYING TO ELICIT FROM HER?

11 **MS. MONT'S:** ABOUT THE POLICE BEING AT JERVIS' HOUSE THAT
12 MORNING DOING AN INVESTIGATION ABOUT A SHOOTING INTO HIS WINDOW.

13 **THE COURT:** ALL RIGHT. AND, MR. SUMNER, YOUR OBJECTION IS
14 IT'S NOT RELEVANT?

15 **MR. SUMNER:** YEAH, MY OBJECTION WOULD BE THAT IT'S NOT
16 RELEVANT. I DON'T THINK TO THIS CASE IT IS.

17 **THE COURT:** SO YOU'RE -- EXPOUND ON WHY YOU THINK IT'S
18 RELEVANT, MS. MONT'S. IS THIS SOME -- YOU ALLUDED EARLIER TO THE
19 LYLE ARGUMENT. IS THAT WHAT YOU'RE MAKING NOW?

20 **MS. MONT'S:** NO, YOUR HONOR. NO, BECAUSE WE ARE NOT SAYING
21 THAT THE DEFENDANT WAS THE ONE THAT SHOT INTO HIS HOUSE.

22 **THE COURT:** OKAY.

23 **MS. MONT'S:** WE'RE NOT BRINGING THAT UP AT THIS POINT. WE
24 ARE JUST GOING TO MENTION THAT HIS HOUSE WAS SHOT INTO THAT
25 MORNING, THAT THE POLICE WERE THERE DOING AN INVESTIGATION.

1 **THE COURT:** ALL RIGHT. I'M GOING TO OVERRULE THE
2 OBJECTION. OKAY.

3 **MR. SUMNER:** I NEED TO SAY ALSO JUST -- MAYBE SHE CAN JUST
4 TIGHTEN IT UP AND GET THERE. I MEAN, I DIDN'T OBJECT TO, YOU
5 KNOW, ABOUT HER FAMILIAL RELATIONSHIP WITH JERVIS POWERS. BUT, I
6 MEAN, I THINK, CLEARLY THAT'S NOT RELEVANT. WHAT SHE SAW THAT
7 MORNING, THAT'S FINE. BUT, I MEAN...

8 **THE COURT:** WELL---

9 **MR. SUMNER:** AND CONVERSATION, I WOULD OBJECT TO
10 CONVERSATION. IF SHE HAD ASKED HER, WHAT DID YOU SEE? I SAW THE
11 POLICE INVESTIGATION. BUT, I MEAN, CONVERSATION BETWEEN MS.
12 LADSON AND SOMEBODY ELSE, WHICH IS TO ME CLEARLY WOULD BE HEARSAY
13 AT THIS POINT. IF SHE'S TALKING ABOUT WHAT SHE OBSERVED HERSELF...

14 **THE COURT:** WELL, THAT'S KIND OF WHAT I WAS ASKING MS.
15 MONTS. I'M NOT SURE EXACTLY WHAT --- YOU'RE JUST GOING TO ASK HER
16 WHAT SHE SAW OR WHAT SHE WAS TOLD?

17 **MS. MONTS:** YOUR HONOR, I WAS -- I MEAN, MOSTLY WHAT SHE
18 WAS -- WHAT SHE SAW. BUT I WAS GOING TO ASK HER IF THAT WAS PART
19 OF THEIR CONVERSATION.

20 **THE COURT:** CONVERSATION BETWEEN HER AND WHO?

21 **MS. MONTS:** THE VICTIM.

22 **THE COURT:** OH, OKAY.

23 **MS. MONTS:** BUT ALSO WHAT SHE SAW OVER THERE, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. OKAY. WELL, I WOULD OVERRULE THE
25 OBJECTION. I THINK IT'S RELEVANT AND IT ALSO COMES IN UNDER RES

NICOLE LADSON -- DIRECT BY MS. MONTS

1 GESTAE FROM WHAT I UNDERSTAND ABOUT THE FULL CONTEXT OF THE
2 EVENTS.

3 YES, SIR.

4 MR. SUMNER: I WAS JUST GOING TO SAY, WHILE THE JURY IS
5 TAKING A BREAK, COULD YOU JUST -- HOW LONG DO YOU THINK YOU WANT
6 TO GO TODAY, YOUR HONOR?

7 THE COURT: WELL, NOT PROBABLY ABOUT -- I WAS THINKING
8 PROBABLY AROUND 5:15.

9 MR. SUMNER: OKAY.

10 THE COURT: DOES THAT SUIT EVERYBODY?

11 MR. SUMNER: IT SUITS ME FINE. I'VE JUST GOT---

12 THE COURT: DOES THAT WORK OUT?

13 MS. MONTS: YES, YOUR HONOR.

14 THE COURT: OKAY. EVERYBODY OKAY RIGHT NOW?

15 MR. SUMNER: YES, SIR.

16 THE COURT: DO YOU NEED TO TAKE A BREAK?

17 MR. SUMNER: I'M READY TO GO STRAIGHT THROUGH.

18 THE COURT: ALL RIGHT. LET'S GO.

19 YES, SIR, BRING THEM ON IN, MR. FORD.

20 (JURY REENTERS COURTROOM AT 4:31 P.M.)

21 THE COURT: OKAY. YES, MA'AM, YOU MAY PROCEED.

22 DIRECT EXAMINATION OF MS. LADSON BY MS. MONTS CONTINUES:

23 Q MS. LADSON, WHILE YOU WERE SPEAKING WITH YOUR COUSIN, JERVIS
24 POWERS, DID YOU SUBSEQUENTLY COME TO FIND OUT OR DID YOU KNOW
25 ABOUT THE SHOOTING THAT OCCURRED INTO HIS BEDROOM WINDOW THAT

1 MORNING? DID YOU FIND OUT ABOUT IT?

2 A WHEN WE TALKED ABOUT IT?

3 Q YES, MA'AM.

4 A UH-HUH (AFFIRMATIVE).

5 Q AND WHAT WAS HIS DEMEANOR OR HOW WAS HE ACTING ABOUT THAT
6 SITUATION?

7 A HE WAS CALM. HE WAS JUST LIKE, YOU KNOW, HE WAS -- HE
8 WASN'T UPSET OR NOTHING. HE WAS CALM. I KNOW HIM AND I KNEW
9 HIM, YOU KNOW WHAT I'M SAYING? WE WAS JUST TALKING ABOUT IT, YOU
10 KNOW, WHAT HAD HAPPENED AND STUFF LIKE THAT.

11 Q AND DID YOU GET TO HAVE BREAKFAST WITH HIM THAT MORNING?

12 A NO.

13 Q PLEASE -- WHAT HAPPENED TO KEEP YOU FROM EATING BREAKFAST
14 THAT MORNING? DID SOMEONE COME TO THE DOOR?

15 A WELL---

16 MR. SUMNER: YOUR HONOR, I WOULD OBJECT TO THE LEADING OF
17 THE WITNESS.

18 THE COURT: ALL RIGHT. SUSTAINED.

19 A YEAH.

20 Q OKAY. HOW LONG HAD JERVIS BEEN AT YOUR HOUSE BEFORE SOMEONE
21 CAME TO THE DOOR?

22 A WELL, I HAD JUST FIXED HIS PLATE. SO HE GOT READY TO SIT
23 DOWN AND HE TOOK LIKE A BITE OUT OF HIS PANCAKE AND SOMEBODY
24 KNOCKED AT THE DOOR.

25 Q AND DID YOU KNOW WHO IT WAS? WHO ANSWERED THE DOOR?

1 A ME.

2 Q AND WHO WAS AT THE DOOR?

3 A TIMOTHY. IT WAS -- THEY CAME -- THE GUYS -- IT WAS A LOT OF
4 GUYS OUT THERE ON THE PORCH ASKING ME WAS JERVIS OVER HERE.

5 Q AND WHO -- IF YOU RECALL, WHO SPECIFICALLY WAS THERE?

6 A IT WAS TIMOTHY, FRANK, WOLF AND R.J.

7 Q WHO IS WOLF?

8 A I GUESS THEY CALL HIM CEDRICK.

9 Q OKAY. AND DID YOU KNEW THESE FOUR YOUNG MEN?

10 A I DIDN'T KNOW -- I KNEW THEM BECAUSE I WENT TO SCHOOL WITH
11 THEM, YOU KNOW, WITH SOME OF THEM, BUT I DIDN'T KNOW THEM, YOU
12 KNOW, LIKE JUST HANGING OUT WITH THEM OR WHATEVER.

13 Q BUT YOU KNEW WHO THEY WERE?

14 A YEAH.

15 Q AND DID YOU THEN BRING JERVIS TO THE DOOR OR WHAT DID YOU
16 DO?

17 A I CLOSED THE DOOR AND TOLD HIM THAT SOME GUYS WANTED HIM ON
18 THE PORCH, AND HE WENT OUT THERE ON THE PORCH, AND THEN I CLOSED
19 THE DOOR.

20 Q WHAT WAS THE WEATHER OUTSIDE?

21 A IT WAS ABOUT TO RAIN.

22 Q AND IS YOUR PORCH COVERED?

23 A YEAH.

24 Q OKAY. SO NOW YOU ARE INSIDE THE HOUSE; IS THAT CORRECT?

25 A UH-HUH (AFFIRMATIVE).

1 Q AND WHAT TAKES PLACE?

2 A I CAME BACK TO THE DOOR AND I TOLD JERVIS TO COME IN THE
3 HOUSE AND FINISH EATING, AND THEY WAS LIKE THEY WAS GOING TO RIDE
4 TO THE STORE, AND HE CAME BACK IN THE HOUSE AND GOT HIS COAT.

5 Q NOW, YOU SAID YOU KNEW JERVIS FOR THE WHOLE 18 YEARS OF HIS
6 LIFE AND YOU KNEW THESE FOUR MEN THAT CAME TO THE DOOR, YOU KNEW
7 WHO THEY WERE. HAD YOU SEEN JERVIS EVER HANG OUT WITH THEM?

8 A NO, NOT REALLY. I MEAN, THEY WOULD PROBABLY COME NEXT DOOR.
9 I REMEMBER TIMOTHY COMING OVER AND TALKING TO JERVIS AND..

10 Q SO HOW WOULD YOU DESCRIBE HIS RELATIONSHIP WITH THOSE FOUR
11 PEOPLE? JUST, I MEAN, WITHOUT ME PUTTING WORDS IN YOUR MOUTH,
12 HOW OFTEN WOULD HE SEE THEM?

13 A I DON'T KNOW.

14 Q WOULD YOU SAY THEY WERE FRIENDS?

15 A YEAH, BUT---

16 Q OR ACQUAINTANCES---

17 A ASSOCIATES, YOU KNOW.

18 Q NOT LIKE BEST BUDDIES?

19 A UH-HUH (AFFIRMATIVE).

20 Q WERE YOU SURPRISED THAT THEY CAME TO YOUR HOUSE?

21 A I WAS WONDERING WHAT THEY WANTED WITH HIM.

22 Q AND DID JERVIS LEAVE WITH THEM?

23 A UH-HUH (AFFIRMATIVE).

24 Q DO YOU KNOW WHOSE CAR THEY WERE IN?

25 A R.J. WAS DRIVING.

NICOLE LADSON -- CROSS BY MR. SUMNER

1 Q AND DID JERVIS EVER COME BACK?

2 A UH-UH (NEGATIVE).

3 MS. MONTS: THANK YOU. NOTHING FURTHER.

4 THE COURT: YES, SIR, MR. SUMNER, CROSS EXAMINATION.

5 MR. SUMNER: BRIEFLY, YOUR HONOR.

6 CROSS EXAMINATION BY MR. SUMNER:

7 Q MS. LADSON, I BELIEVE YOU TESTIFIED EARLIER FOR THE JURY
8 THAT JERVIS WAS VERY CALM AFTER THIS SHOOTING INCIDENT; IS THAT
9 RIGHT?

10 A WELL, WHEN HE WAS TALKING TO ME. WE WAS TALKING SO -- HE
11 DIDN'T SEEM---

12 Q LEAN UP A LITTLE BIT CLOSER TO THE MICROPHONE.

13 A HE DIDN'T SEEM LIKE HE WAS ALL UPSET, YOU KNOW, LIKE HE WAS
14 GOING TO -- LIKE HE WAS UPSET.

15 Q I BELIEVE YOU MENTIONED THAT YOU ALL WERE PLANNING ON EATING
16 BREAKFAST WHEN, I BELIEVE YOU SAID, TIMOTHY, FRANK AND WOLF AND
17 R.J. CAME OVER; IS THAT RIGHT?

18 A (NO RESPONSE)

19 Q AND THEN AFTER YOU ANSWERED THE DOOR JERVIS WENT OUT ON THE
20 PORCH WITH THEM; IS THAT CORRECT?

21 A (INDICATES AFFIRMATIVE RESPONSE)

22 Q HOW LONG WAS IT BEFORE HE CAME BACK INSIDE, TO YOUR
23 RECOLLECTION?

24 A WITHIN I'D SAY ABOUT A GOOD SEVEN OR EIGHT MINUTES, TEN
25 MINUTES ALMOST.

1 Q OKAY. SO LONG ENOUGH FOR THEM TO HAVE A CONVERSATION, WOULD
2 THAT BE RIGHT?

3 A UH-HUH (AFFIRMATIVE).

4 Q DID YOU ACTUALLY GO OUT TO THE PORCH AND ASK JERVIS TO COME
5 ON BACK IN AND EAT THE BREAKFAST? IS THAT HOW IT ENDED RIGHT
6 THERE AT THAT POINT?

7 A I WENT TO THE -- I WAS STANDING IN THE DOOR AND I TOLD HIM
8 TO COME IN AND EAT.

9 Q OKAY. SO WERE YOU STANDING AT THE DOOR THE WHOLE TIME THE
10 CONVERSATION TOOK PLACE?

11 A NO.

12 Q YOU WENT BACK IN AND YOU WERE FIXING THE BREAKFAST AND THEN
13 YOU CAME BACK AND GOT---

14 A UH-HUH (AFFIRMATIVE). YEAH.

15 Q AND THEN HE ATE BREAKFAST WITH YOU; IS THAT RIGHT?

16 A NO. HE DIDN'T GET TO EAT BREAKFAST.

17 Q HE DID NOT?

18 A UH-UH (NEGATIVE).

19 Q THE GROUP OF BOYS CAME BACK PRETTY QUICKLY, DIDN'T THEY?

20 A UH-HUH (AFFIRMATIVE).

21 Q AND THEN HE CAME IN AND GOT HIS COAT -- OR HE GOT HIS COAT
22 FROM THE HOME?

23 A UH-HUH (AFFIRMATIVE).

24 Q AND THEN WENT OUT AND GOT IN THE CAR. IS THAT THE LAST TIME
25 THAT YOU SAW HIM?

NICOLE LADSON -- CROSS BY MR. SUMNER

1 A UH-HUH (AFFIRMATIVE).

2 MR. SUMNER: OKAY. THANK YOU.

3 THE COURT: ANY REDIRECT?

4 MS. MONTES: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

6 MS. MONTES: YOUR HONOR, WE ASK THIS WITNESS BE EXCUSED.

7 MR. SUMNER: NO OBJECTION.

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

9 YOU.

10 (WITNESS EXCUSED AT 4:38 P.M.)

11 MS. MONTES: YOUR HONOR, THE STATE CALLS TAVIS BARKSDALE.

12 OCTAVIOUS BARKSDALE, HAVING BEEN

13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MS. MONTES:

15 Q OCTAVIOUS, TALK REAL LOUD FOR THE JURY AND TELL US WHAT DO

16 MOST PEOPLE CALL YOU, WHAT FIRST NAME DO YOU GO BY?

17 A TAVIS.

18 Q TAVIS. AND WHAT AREA OF TOWN ARE YOU LIVING IN NOW?

19 A NOW?

20 Q YEAH.

21 A PIEDMONT.

22 Q AND BACK IN JANUARY OF 1998 WHERE WERE YOU LIVING?

23 A [REDACTED] [REDACTED] [REDACTED].

24 Q I'M SORRY. YOU'VE GOT TO SPEAK UP.

25 A FOUNTAIN INN.

1 Q FOUNTAIN INN. OKAY. AND WERE YOU WORKING BACK THEN?

2 A YEAH, I WAS WORKING AT BMW.

3 Q AND WHAT KIND OF HOURS WERE YOU WORKING BACK THEN? WHAT
4 SHIFT?

5 A IT WAS PARTLY SECOND AND PARTLY THIRD.

6 Q PARTLY SECOND AND PARTLY THIRD? OKAY. AND DID YOU KNOW
7 MORRIS SULLIVAN?

8 A YES.

9 Q AND HOW LONG HAD YOU KNOWN MORRIS SULLIVAN BACK IN JANUARY
10 OF 1998?

11 A ABOUT FIVE OR SIX YEARS, PROBABLY.

12 Q AND HOW DID YOU KNOW HIM?

13 A WE WERE FROM THE SAME AREA.

14 Q AND WOULD YOU HANG OUT TOGETHER?

15 A YES.

16 Q AND HOW MANY TIMES A WEEK WOULD YOU SEE HIM?

17 A I DON'T KNOW. THREE. THREE OR FOUR TIMES A WEEK.

18 Q THREE OR FOUR TIMES A WEEK FOR THAT WHOLE FIVE OR SIX YEARS?
19 OFF AND ON. WE'RE DOING A GUESS HERE. SO YOU---

20 A I DON'T KNOW.

21 Q OKAY. SOMETIMES YOU'D SEE HIM MORE, SOMETIMES YOU'D SEE HIM
22 LESS?

23 A YES.

24 Q BUT YOU'D SEE HIM ABOUT EVERY WEEK FOR THIS TIME -- FOR THE
25 AMOUNT OF TIME THAT YOU KNEW HIM?

1 A YES.

2 Q SO YOU KNEW HIM PRETTY WELL?

3 A YES.

4 Q OKAY. WOULD YOU EVER GO TO HIS HOUSE ON [REDACTED]?

5 A YES.

6 Q HOW OFTEN -- IF YOU SAW HIM THREE OR FOUR TIMES A WEEK HOW
7 MANY OF THOSE TIMES WOULD BE AT HIS HOUSE? ALL OF THEM OR SOME
8 OF THEM?

9 A MOSTLY ALL OF THEM.

10 Q AND WHAT WOULD YOU DO WHEN YOU WENT TO HANG OUT WITH HIM?

11 A HANG OUT AND TALK.

12 Q AND DID YOU EVER WATCH TV?

13 A YEAH, WE JUST DO NORMAL GUY THINGS.

14 Q WOULD YOU EVER SMOKE MARIJUANA?

15 A YES.

16 Q ABOUT HOW MANY TIMES WOULD YOU SMOKE MARIJUANA WHEN YOU WENT
17 OVER THERE?

18 A PROBABLY EVERY TIME WE WENT..

19 Q AND COULD YOU -- I MEAN, DID YOU KNOW HIM WELL ENOUGH YOU
20 COULD JUST DROP IN OR WOULD YOU NEED TO CALL BEFORE YOU CAME?

21 A JUST GO BY.

22 Q YOU COULD JUST GO BY. AND JUST ABOUT EVERY TIME YOU WOULD
23 SMOKE MARIJUANA; IS THAT CORRECT?

24 A MAYBE, YEAH.

25 Q NOW, WERE YOU AND MORRIS THE SAME AGE OR WERE YOU OLDER?

1 A I'M OLDER.

2 Q HOW MUCH OLDER ARE YOU THAN HIM, COUPLE YEARS?

3 A YEAH, I KNEW VERY WELL. I THINK HE'S AROUND 25, 26.

4 Q AND HOW MUCH OLDER WERE YOU THAN HIM?

5 A AT THAT TIME?

6 Q YES, SIR.

7 A I THINK HE WAS 19 AND I WAS 20 -- ABOUT 23.

8 Q SO YOU WERE ABOUT FOUR OR FIVE YEARS OLDER THAN HIM. OKAY.

9 AND DID YOU KNOW JERVIS POWERS?

10 A YES.

11 Q AND HOW DID YOU KNOW HIM?

12 A PRETTY MUCH THE SAME WAY. I WENT TO SCHOOL WITH HIS SISTER.

13 Q WITH HIS SISTER. DID YOU GO TO SCHOOL WITH HIM?

14 A NO.

15 Q DID YOU KNOW WHERE HE LIVED?

16 A YES.

17 Q HAD YOU EVER BEEN TO HIS HOUSE?

18 A IN THE AREA.

19 Q YOU'D BEEN IN THE AREA?

20 A IT'S LIKE NEXT DOOR IN THE NEIGHBORHOOD.

21 Q DID YOU EVER HANG OUT WITH HIM?

22 A ON OCCASIONS MAYBE.

23 Q (GESTURE)

24 A ON OCCASIONS MAYBE.

25 Q OKAY. ON OCCASION. BUT HOW MANY YEARS HAD YOU KNOWN HIM?

OCTAVIOUS BARKSDALE -- DIRECT BY MS. MONTS

1 AND WAS THIS -- LET ME GO BACK. WAS THIS THROUGH HIS SISTER THAT
2 YOU KNEW HIM?

3 A OH, I KNEW ALL OF THEM. THEY PRETTY MUCH ALL FROM THE SAME
4 AREA.

5 Q OKAY. AND ON JANUARY 16TH OF 1998 -- DO YOU REMEMBER THAT
6 DATE?

7 A (NO RESPONSE)

8 Q DO YOU REMEMBER GOING TO MORRIS' HOUSE ON THAT DATE?

9 A YES.

10 Q AND DO YOU RECALL WHAT TIME YOU WENT TO MORRIS' HOUSE
11 APPROXIMATELY?

12 A I THINK IT WAS AROUND 12:00.

13 Q AND DO YOU KNOW IF YOU HAD JUST GOTTEN OFF WORK OR HAD YOU
14 NOT GONE TO WORK YET OR HOW...

15 A IT WAS RIGHT -- I WAS ALREADY OFF WORK.

16 Q OKAY. SO IT'S FRIDAY ABOUT NOON. AND WHEN YOU GOT -- WHY
17 DID YOU GO OVER THERE?

18 A TO GET SOME WEED.

19 Q I'M SORRY?

20 A JUST TO GO HANG OUT.

21 Q DID YOU SAY TO GET SOME WEED?

22 A YES.

23 Q OKAY. AND WHEN YOU GOT THERE WAS ANYBODY THERE?

24 A JUST ME AND HIM. I THINK HIS UNCLE WAS IN THE BACK.

25 Q I'M SORRY?

- 1 A I THINK HIS UNCLE WAS IN THE BACK.
- 2 Q OKAY. WHEN YOU GOT THERE WERE YOU IN THE LIVING ROOM?
- 3 A YES.
- 4 Q OKAY. SO IN THE LIVING ROOM AREA IT WAS JUST YOU AND
- 5 MORRIS?
- 6 A AT FIRST, YES.
- 7 Q OKAY. AND WERE YOU SMOKING MARIJUANA THEN WHEN IT WAS JUST
- 8 THE TWO OF YOU?
- 9 A I THINK WE WERE JUST CONVERSATING.
- 10 Q OKAY. AND WHO ARRIVED AFTER THAT?
- 11 A A FEMALE.
- 12 Q DID YOU KNOW WHO SHE WAS?
- 13 A NO.
- 14 Q DID MORRIS KNOW WHO SHE WAS?
- 15 A WELL, HE KNEW HER, BUT IT WAS HIS FIRST TIME MEETING HER.
- 16 Q AND WHAT DID SHE DO WHEN SHE GOT THERE?
- 17 A SHE JUST SAT DOWN AND WE ALL STARTED TALKING.
- 18 Q AND WAS SHE YOUNGER THAN YOU?
- 19 A YES.
- 20 Q AND WERE YOU PLAYING PLAYSTATION THAT DAY?
- 21 A I DON'T REMEMBER.
- 22 Q WAS THAT SOMETHING YOU WOULD DO SOMETIMES OVER THERE?
- 23 A YES.
- 24 Q DO YOU KNOW WHY SHE CAME OVER TO THE HOUSE?
- 25 A TO MEET MORRIS.

1 Q AND HOW LONG -- WELL, DID ANYONE ELSE ARRIVE?

2 A SHORTLY LATER TIMMY TUCKER, R.J., FRANK, CEDRICK AND JERVIS.
3 THEY ALL -- THEY CAME -- THEY ARRIVED ABOUT 30 OR 40 MINUTES
4 LATER.

5 Q THEY CAME ABOUT 30 TO 40 MINUTES AFTER THE GIRL OR AFTER
6 YOU?

7 A PROBABLY AFTER ME.

8 Q AND HOW LONG AFTER YOU WERE THERE TILL THE GIRL CAME?

9 A NO MORE THAN ABOUT 10, 15 MINUTES.

10 Q SO 30 TO 40 MINUTES AFTER YOU GOT THERE -- AND YOU GOT THERE
11 AROUND NOON; IS THAT RIGHT?

12 A (INDICATES AFFIRMATIVE RESPONSE)

13 Q OKAY. DO YOU KNOW R.J., FRANK, CEDRICK, TIMOTHY AND JERVIS?

14 A YES.

15 Q HOW DO YOU KNOW THEM?

16 A GREW UP WITH THEM.

17 Q AND TO YOUR KNOWLEDGE DID THEY KNOW MORRIS?

18 A YES.

19 Q AND HAD YOU EVER SEEN THEM OVER AT MORRIS' HOUSE?

20 A ON OCCASIONS, YES.

21 Q WHEN THEY CAME DID THEY KNOCK ON THE DOOR? OR HOW DID THEY
22 COME INSIDE? DESCRIBE WHAT HAPPENED.

23 A I REALLY DON'T REMEMBER.

24 Q HOW -- DID ANYONE LET THEM IN THE DOOR?

25 A YES.

1 Q WHO LET THEM IN THE DOOR?

2 A IT WAS EITHER ME OR MORRIS.

3 Q EITHER YOU OR MORRIS?

4 A (INDICATES AFFIRMATIVE RESPONSE)

5 Q OKAY. DID THEY COME INTO THE LIVING ROOM?

6 A YES.

7 Q AND DID THEY SIT DOWN?

8 A SOME OF THEM DID.

9 Q SOME OF THEM SAT DOWN AND SOME OF THEM STOOD?

10 A YES.

11 Q HOW MANY PLACES TO SIT, IF YOU RECALL? WAS THERE ENOUGH
12 SEATING ROOM FOR EVERYBODY?

13 A I THINK IT WAS ONE COUCH AND TWO CHAIRS.

14 Q OKAY. SO PEOPLE PRETTY MUCH TOOK THE SEATS THAT WERE
15 AVAILABLE?

16 A (INDICATES AFFIRMATIVE RESPONSE).

17 Q OKAY. AND WHAT DID PEOPLE START DOING? WHAT WAS EVERYONE
18 -- WERE THEY TALKING OR WHAT WAS---

19 A MOSTLY JUST TALKING.

20 Q DID MORRIS SAY HELLO TO THEM WHEN THEY CAME IN?

21 A NOT THAT I CAN REMEMBER.

22 Q DID YOU SAY HELLO TO THEM WHEN THEY CAME IN?

23 A I PROBABLY DID SPEAK. I DON'T REMEMBER.

24 Q OKAY. WHEN THEY CAME IN, WHO WERE THEY TALKING TO?

25 A WELL, JERVIS AND MORRIS STARTED TALKING. PRETTY MUCH THEY

1 DID THE MOST CONVERSATION.

2 Q OKAY. WHAT WAS EVERYBODY ELSE DOING?

3 A JUST LIKE LAYING AROUND, TALKING.

4 Q SO EVERYBODY WAS HANGING AROUND AND TALKING?

5 A (INDICATES AFFIRMATIVE RESPONSE)

6 Q AND WHEN MORRIS AND JERVIS WERE TALKING WAS ANYBODY INVOLVED
7 IN THAT CONVERSATION?

8 A JUST THEM TWO.

9 Q JUST THOSE TWO. AND WAS THAT RIGHT AWAY OR DID EVERYONE
10 COME IN AND GET SEATED BEFORE THAT TOOK PLACE?

11 A IT WAS KIND OF RIGHT SOON AS HE CAME THROUGH THE DOOR.

12 Q AND WHAT WERE THEY TALKING ABOUT?

13 A HE ASKED HIM SOMETHING ABOUT SHOOTING AT HIS HOUSE.

14 Q I'M SORRY. SAY THAT AGAIN.

15 A HE ASKED HIM SOMETHING ABOUT SHOOTING AT HIS HOUSE.

16 Q JERVIS ASKED MORRIS?

17 A YES.

18 Q AND WHAT DID MORRIS SAY, IF YOU KNOW?

19 A HE REPLIED HE DIDN'T SHOOT HIS HOUSE.

20 Q AND DID HE SAY SOMETHING AFTER -- DID MORRIS SAY SOMETHING
21 AFTER HE SAID HE DIDN'T SHOOT INTO HIS HOUSE?

22 A FAR AS I REMEMBER. THEY JUST GOT TO ARGUING FROM THAT
23 POINT.

24 Q AND COULD HE POSSIBLY HAVE MUMBLED SOMETHING THAT YOU DIDN'T
25 HEAR?

1 A MAYBE.

2 Q WHAT DID MORRIS AND JERVIS DO AFTER THEY WERE HAVING THIS
3 DISCUSSION?

4 A THEY WALKED TO THE BACK FOR A MINUTE.

5 Q DID YOU HEAR MORRIS SAY SOMETHING TO JERVIS BEFORE THEY
6 WALKED TO THE BACK?

7 A I COULD HEAR THEM ARGUING.

8 Q OKAY. BEFORE THEY WALKED TO THE BACK DID YOU---

9 A AFTER THEY WENT TO THE BACK THEY STILL WERE ARGUING.

10 Q OKAY. BEFORE THEY WALKED TO THE BACK DID YOU HEAR WHAT
11 MORRIS SAID TO JERVIS?

12 A I DON'T REMEMBER.

13 Q HOW LONG WERE THEY IN THE BACK?

14 A PROBABLY THREE TO FOUR MINUTES.

15 Q AND WHEN THEY CAME BACK OUT WHO DID YOU SEE FIRST?

16 A MORRIS.

17 Q AND DID HE HAVE ANYTHING IN HIS HAND?

18 A HE HAD A GUN.

19 Q AND DO YOU KNOW WHERE HE GOT THE GUN?

20 A NO.

21 Q HAVE YOU SEEN THE GUN IN HIS HOUSE PRIOR TO THAT DAY?

22 A I KNEW HE HAD ONE.

23 Q AND DID YOU KNOW WHERE HE KEPT IT?

24 A NO.

25 Q OKAY. BUT WE CAN SAY IT WASN'T IN THE LIVING ROOM. CAN WE

1 SAY THAT MUCH?

2 A I DON'T GUESS HE HAD IT ON HIM. I DON'T KNOW.

3 Q OKAY. BUT HE CAME FROM THE BACK AND HE HAD A HANDGUN?

4 A YES.

5 Q HAD YOU EVER BEEN IN HIS BEDROOM?

6 A YES.

7 Q WHAT TYPE OF BED DOES HE HAVE IN THERE?

8 A I DON'T REMEMBER. I THINK IT WAS BUNK BEDS.

9 Q IT WAS BUNK BEDS?

10 A I THINK.

11 Q OKAY. AND WHY WOULD YOU HAVE BEEN IN HIS BEDROOM IN THE
12 PAST?

13 A I'M SAYING, WE WERE FRIENDS AND---

14 Q WOULD YOU PLAY LIKE PLAYSTATION OR SOMETHING IN HIS ROOM?

15 A NO. PLAYSTATION WAS IN THE FRONT ROOM.

16 Q OKAY. WHAT DID YOU DO WHEN YOU SAW MORRIS COMING OUT WITH
17 THE PISTOL IN HIS HAND?

18 A I STOOD UP AND STARTED TO THE FRONT DOOR.

19 Q WHAT DID EVERYBODY ELSE DO?

20 A I THINK THEY KIND OF JUST STAYED IN THE SAME SPOT.

21 Q WERE THEY KIND OF IN SHOCK OR DID PEOPLE JUST KEEP TALKING
22 AND IGNORE THEM?

23 MR. SUMNER: YOUR HONOR, I HATE TO OBJECT AGAIN, BUT THERE
24 IS SO MUCH LEADING GOING ON.

25 THE COURT: YES. OKAY. SUSTAINED.

1 Q WHERE DID MORRIS POINT THE GUN?

2 A WHEN I WALKED OUT THE DOOR IT WAS KIND OF POINTED AT THE
3 FLOOR.

4 Q AND DID YOU EVER SEE A PHYSICAL ALTERCATION, I MEAN, ANY
5 PUNCHING OR HITTING, ANYTHING LIKE THAT?

6 A NO.

7 Q WAS THERE ALWAYS A DISTANCE BETWEEN THE TWO OF THEM?

8 A IT WAS AT FIRST.

9 Q ONCE YOU GOT UP WHERE DID YOU -- ONCE YOU SAW THE GUN AND
10 YOU GOT UP, WHERE DID YOU GO?

11 A TO THE FRONT DOOR.

12 Q IS THAT THE SAME DOOR THAT THE GIRL CAME IN?

13 A YES.

14 Q AND THE SAME DOOR THAT THE FIVE YOUNG MEN CAME IN?

15 A YES.

16 Q OKAY. DID ANYBODY EVER USE THE SIDE DOOR?

17 A NOT TO MY KNOWLEDGE. I DON'T KNOW.

18 Q DID YOU EVER GO OUT THE DOOR?

19 A OUT THE FRONT DOOR?

20 Q YES, SIR.

21 A YES.

22 Q AT WHAT POINT DID YOU DO THAT?

23 A PROBABLY ABOUT RIGHT ABOUT THE SAME TIME THE FIRST SHOT WAS
24 FIRED.

25 Q DID YOU SEE THE FIRST SHOT FIRED?

1 A NO.

2 Q ONCE YOU WERE OUTSIDE DID YOU HEAR ANYTHING?

3 A EVERYBODY ELSE JUST RAN OUTSIDE.

4 Q AND DID YOU HEAR -- YOU SAID YOU WENT OUTSIDE ABOUT THE TIME
5 THE FIRST SHOT WAS FIRED. DID YOU HEAR MORE THAN ONE SHOT?

6 A I THINK IT WAS TWO OR THREE.

7 Q IF YOUR PRIOR TESTIMONY WAS THREE OR FOUR AND AT LEAST THREE
8 WOULD YOU DISPUTE THAT?

9 A I STILL SAY IT WAS THREE. THREE SHOTS, I GUESS.

10 Q OKAY. DESCRIBE WHERE EVERYBODY ELSE WENT. YOU SAID YOU
11 WENT OUT THE DOOR.

12 A EVERYBODY JUST RAN OUTSIDE.

13 Q OKAY. BUT YOU WERE THE FIRST ONE OUT; IS THAT RIGHT?

14 A YES.

15 Q DID THE GIRL COME OUTSIDE?

16 A SHE WAS---

17 Q PARDON?

18 A AFTER THE FOUR GUYS RAN OUT, SHE WAS THE NEXT TO COME OUT.

19 Q OKAY. WAS MORRIS STILL INSIDE?

20 A YES.

21 Q WHEN DID MORRIS -- OR DID MORRIS COME OUT?

22 A SOON AFTER SHE CAME OUT.

23 Q PARDON ME?

24 A YEAH, HE CAME OUT SOON AFTER SHE DID.

25 Q WAS HE THE LAST ONE OUT?

1 A YES.

2 Q DID JERVIS EVER COME OUT?

3 A (NO RESPONSE)

4 Q ON HIS OWN?

5 A NO.

6 Q DID YOU GO BACK INSIDE THE HOUSE?

7 A NO.

8 Q WHEN MORRIS CAME OUTSIDE DID HE SAY ANYTHING?

9 A I DON'T REMEMBER.

10 Q DID YOU TALK TO HIM ABOUT WHY HE SHOT THE GUN?

11 A NO.

12 Q IF YOU PREVIOUSLY TESTIFIED TO SAYING: QUESTION, "WHEN HE
13 CAME OUTSIDE WHAT DID HE DO?" AND YOUR ANSWER WAS, "HE ASKED ME,
14 'WHAT WAS I SUPPOSED TO DO?'" DO YOU RECALL THAT?

15 A YES.

16 Q DO YOU REMEMBER HIM SAYING TO YOU, "WHAT WAS I SUPPOSED TO
17 DO?"

18 A YES.

19 Q WHAT WAS HIS -- WHAT WAS HIS DEemeanOR AT THAT TIME? HOW WAS
20 HE ACTING?

21 A I DON'T KNOW. CONFUSED, I GUESS. I DON'T KNOW.

22 Q DID YOU DRIVE A CAR TO MORRIS' HOUSE?

23 A YES.

24 Q DID YOU EVER SEE JERVIS' BODY BEING CARRIED OUT THE DOOR?

25 A YES.

1 Q DO YOU RECALL, IF YOU DO, WHO WAS CARRYING IT?

2 A I DON'T REMEMBER. I KNOW IT WAS TWO OF THEM.

3 Q TWO PEOPLE WERE CARRYING JERVIS' BODY. DID YOU GO WITH
4 ANYBODY TO THE HOSPITAL?

5 A NO.

6 Q WHAT DID YOU DO?

7 A I TOOK THE GIRL BACK TO MAULDIN HIGH SCHOOL.

8 Q AND DID ANY OTHER MALES GO WITH YOU?

9 A FRANK GOLDEN.

10 Q SO IT WAS FRANK, YOU AND THE GIRL THAT HAD JUST COME THERE,
11 THE THREE OF YOU LEFT IN YOUR VEHICLE?

12 A YES.

13 Q AND DID YOU EVER GO TO THE POLICE STATION?

14 A YES.

15 Q WAS IT LATER -- WHEN DID YOU GO?

16 A IT WAS LATER ON THAT NIGHT.

17 Q AND DID YOU GIVE A STATEMENT TO THE POLICE?

18 A YES.

19 Q (PAUSE) WHO DID YOU MEET AT THE POLICE STATION?

20 A I DON'T REMEMBER.

21 MR. SUMNER: YOUR HONOR, COULD WE APPROACH A MINUTE FOR A
22 SECOND, PLEASE?

23 THE COURT: SURE.

24 (BENCH CONFERENCE OFF RECORD FROM 4:57 TO 4:58 P.M.)

25 MS. MONTS: (PAUSE) YOUR HONOR, MAY WE APPROACH?

1 **THE COURT:** CERTAINLY.

2 (BENCH CONFERENCE OFF RECORD FROM 4:58 TO 5:02)

3 **THE COURT:** OKAY. YES, MA'AM.

4 **Q** MR. BARKSDALE, ISN'T IT TRUE THAT JERVIS CAME TO MORRIS'
5 HOUSE TO BUY MARIJUANA THAT DAY?

6 **A** SOMEONE ASKED -- WHOEVER KNOCKED ON THE DOOR, THAT'S WHAT
7 THEY ASKED, TO BUY A BAG OF WEED.

8 **Q** TO BUY A BAG OF WEED?

9 **A** YES.

10 **MS. MONTS:** THANK YOU. NO FURTHER QUESTIONS.

11 **THE COURT:** OKAY. YES, SIR, MR. SUMNER, CROSS EXAMINATION.

12 **MR. SUMNER:** YOUR HONOR, MAY IT PLEASE THE COURT.

13 **CROSS EXAMINATION BY MR. SUMNER:**

14 **Q** TAVIS?

15 **A** YES.

16 **Q** YOU HEARD JERVIS CONFRONT MORRIS ABOUT THE SHOTS AT THE
17 HOUSE, RIGHT?

18 **A** YES.

19 **Q** YOU HEARD MORRIS TELL HIM, "NO, I DIDN'T DO IT"?

20 **A** YES.

21 **Q** AT THAT POINT JERVIS AND MORRIS BEGAN TO ARGUE SOME IN THE
22 LIVING ROOM; IS THAT RIGHT?

23 **A** YES.

24 **Q** AT THAT POINT ALSO RIGHT AROUND THAT ARGUMENT WAS WHEN
25 JERVIS TOOK OFF HIS COAT, DIDN'T HE?

1 A YES.

2 Q AND IN FACT I GUESS YOU WOULD AGREE WITH ME THAT WHEN JERVIS
3 TOOK HIS COAT OFF HE TOOK IT OFF IN A MANNER THAT LED YOU TO
4 BELIEVE HE WANTED TO FIGHT MORRIS?

5 A YES.

6 Q SO AFTER THEY ARGUED MORRIS GOES TO THE BACK ROOM, THE BACK
7 BEDROOM, RIGHT?

8 A YES.

9 Q AND THAT'S WHEN JERVIS TAKES OFF HIS COAT AND APPEARS TO YOU
10 LIKE HE WANTS TO FIGHT MORRIS; IS THAT RIGHT?

11 A YES.

12 Q OKAY. JERVIS ACTUALLY THEN, AFTER THAT, HE FOLLOWED MORRIS
13 BACK INTO THE BACK BEDROOM, DIDN'T HE?

14 A YES.

15 Q YOU HEARD SOME ARGUING TAKE PLACE IN THE BACK BEDROOM?

16 A YES.

17 Q BETWEEN MORRIS AND JERVIS?

18 A YES.

19 Q YOU SEE MORRIS -- THE NEXT THING YOU SEE, TAVIS, IS MORRIS
20 BACKS INTO THE LIVING ROOM WITH THE PISTOL?

21 A YES.

22 Q IS THAT RIGHT?

23 A YES.

24 Q NOW LET ME ASK YOU A LITTLE BIT -- YOU'VE TOLD THE JURY
25 ABOUT HOW YOU'VE BEEN FRIENDS WITH MORRIS FOR A LONG TIME; IS

1 THAT CORRECT?

2 A YES.

3 Q AND YOU HAD BEEN TO HIS HOUSE NUMEROUS TIMES?

4 YES.

5 Q ISN'T IT TRUE, TAVIS, THAT TO GET FROM THE LIVING ROOM TO
6 MORRIS' BEDROOM YOU HAD TO GO THROUGH THE KITCHEN; ISN'T THAT
7 CORRECT?

8 A YES.

9 Q OKAY. AND ISN'T IT ALSO CORRECT THAT THERE IN THE KITCHEN
10 THERE IS A BACK DOOR THAT LEAVES THE HOUSE?

11 A YES.

12 Q SO IN OTHER WORDS, WHEN JERVIS CAME BACK AROUND AND MORRIS
13 AND JERVIS WENT -- THEY WOULD HAVE TO GO THROUGH THE KITCHEN TO
14 GET TO THE LIVING ROOM?

15 A YES.

16 Q AND JERVIS WOULD HAVE HAD TO PASS THE BACK DOOR THAT WOULD
17 HAVE TAKEN HIM OUT OF THE HOME BEFORE HE COULD COME IN THE LIVING
18 ROOM, WOULDN'T HE?

19 A YES.

20 Q YOU HEARD JERVIS SAY TO MORRIS IN THE LIVING ROOM, "I DON'T
21 GIVE A FUCK ABOUT THAT GUN," DIDN'T YOU?

22 A YES.

23 MS. MONTS: OBJECTION, YOUR HONOR.

24 THE COURT: ALL RIGHT. OVERRULED.

25 Q YOU WERE THE FIRST ONE TO LEAVE THE HOUSE; IS THAT RIGHT?

1 A YES.

2 Q SIR?

3 A YES.

4 Q PRIOR TO LEAVING YOU SAW MORRIS WITH THE GUN POINTED TOWARD
5 THE GROUND; IS THAT RIGHT?

6 A YES.

7 Q AND THAT'S WHEN JERVIS MADE THE STATEMENT -- I'M NOT GOING
8 TO SAY IT AGAIN -- I DON'T GIVE AN "F" ABOUT THAT GUN?

9 A YES.

10 Q AND MORRIS HAD THE GUN POINTED AT THE GROUND?

11 A YES.

12 Q WOULD YOU AGREE WITH ME, TAVIS, THAT JERVIS WAS ANGRY WITH
13 MORRIS EVEN WHEN HE CAME BACK IN AND MORRIS HAD THE GUN POINTED
14 AT THE GROUND? WAS JERVIS MAD AT MORRIS?

15 A HE WAS ANGRY.

16 Q HE WAS ANGRY, WASN'T HE?

17 A (NO RESPONSE)

18 Q YOU TESTIFIED EARLIER RONICA BUTLER, THE FEMALE, SHE WAS THE
19 LAST PERSON TO LEAVE THE HOUSE OTHER THAN MORRIS; IS THAT
20 CORRECT?

21 A YES.

22 Q SHE WAS THE LAST ONE OUT?

23 A YES.

24 Q AND MY LAST QUESTION FOR YOU, TAVIS, MORRIS DID SAY TO YOU
25 IN THE YARD, "WHAT WAS I SUPPOSED TO DO?" DIDN'T HE?

1 A YES.

2 MR. SUMNER: THANK YOU. I DON'T HAVE ANY OTHER QUESTIONS.

3 THE COURT: YES, MA'AM.

4 REDIRECT EXAMINATION BY MS. MONTS:

5 Q TAVIS, THAT DAY IN THE HOUSE DID YOU EVER SEE JERVIS WITH A
6 GUN OR A WEAPON OF ANY KIND?

7 A NO.

8 MS. MONTS: NOTHING FURTHER, YOUR HONOR.

9 MR. SUMNER: NOTHING ON RECROSS, YOUR HONOR, AS TO THAT.

10 THE COURT: OKAY. ALL RIGHT. MR. BARKSDALE---

11 MS. MONTS: AND, YOUR HONOR, WE ASK THAT THIS WITNESS BE
12 EXCUSED.

13 MR. SUMNER: WITHOUT OBJECTION.

14 THE COURT: ALL RIGHT. YOU ARE EXCUSED, SIR. THANK YOU
15 FOR YOUR TIME.

16 (WITNESS EXCUSED AT 5:08 P.M.)

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS IS A
18 GOOD TIME TO BREAK FOR THE EVENING. I'M GOING TO ASK THAT YOU BE
19 BACK IN THE JURY ROOM AT 9:30. WE'LL TRY TO BEGIN THE CASE
20 PROMPTLY AT THAT TIME. REMEMBER TO KEEP AN OPEN MIND. YOU
21 HAVEN'T HEARD THE WHOLE CASE. YOU HAVEN'T HEARD THE ARGUMENTS OF
22 THE LAWYERS AND YOU HAVEN'T HEARD THE LAW THAT APPLIES TO THIS
23 CASE. AND DON'T DO ANY KIND OF OUTSIDE RESEARCH AND HAVE A GOOD
24 EVENING. THANK YOU VERY MUCH.

25 (BENCH CONFERENCE OFF RECORD FROM 5:08 TO 5:09 P.M.)

1 **THE COURT:** YES. THANK YOU, MR. SUMNER.

2 YOU MAY HAVE NOTICED, LADIES AND GENTLEMEN, THERE WAS A
3 PHOTOGRAPHER HERE EARLIER. FIRST OF ALL, THE PHOTOGRAPHERS ARE
4 SPECIFICALLY PROHIBITED FROM TAKING ANY PICTURES OF THE JURORS.
5 BUT IN ADDITION TO THAT, IF THERE IS SOME NEWS COVERAGE OF THIS
6 CASE, YOU ARE PROHIBITED FROM SEEING THAT. SO DON'T READ THE
7 PAPER IN THE MORNING. DON'T WATCH THE NEWS TONIGHT. AND YOU
8 HAVE TO DECIDE THIS CASE BASED SOLELY ON THE EVIDENCE YOU HEAR IN
9 THIS COURTROOM AND NOT FROM ANY OTHER SOURCE, WHETHER IT BE A
10 NEWSPAPER OR ANY OTHER SOURCE. SO I'M GOING TO ASK YOU IN THE
11 MORNING WHETHER YOU'VE LOOKED AT A NEWSPAPER OR HAD ANY EXPOSURE
12 TO ANY KIND OF MEDIA COVERAGE OF THIS CASE, AND I HOPE YOU WILL
13 BE ABLE TO ANSWER TRUTHFULLY THAT YOU HAVE NOT, BECAUSE THAT
14 WOULD BE A VIOLATION OF YOUR OATH IF YOU DID THAT.

15 SO PLEASE REFRAIN FROM DOING THAT, AND AGAIN, DON'T DISCUSS
16 THE CASE WITH ANYONE, INCLUDING SPOUSES OR FRIENDS, OR IF ANYONE
17 ASKS YOU WHAT YOU'RE DOING TONIGHT, JUST SAY YOU'RE ON JURY DUTY.
18 WE DON'T SEQUESTER JURIES IN THIS CASE AND WE RELY ON YOU TO KEEP
19 YOUR PROMISE THAT YOU GAVE US THIS MORNING THAT YOU ARE GOING TO
20 DECIDE THE CASE SOLELY ON THE EVIDENCE. SO PLEASE DO THAT AND
21 WE'LL SEE YOU IN THE MORNING.

22 (JURY EXITS COURTROOM FOR THE DAY AT 5:10 P.M.)

23 **THE COURT:** OKAY. JUST FOR THE RECORD, EARLIER WHEN I
24 RULED THAT THE 911 TAPE WAS ADMISSIBLE, LET ME FURTHER FIND THAT
25 STATEMENT WAS NOT TESTIMONIAL, SO THERE WAS NO CONFRONTATION

1 RIGHT THAT ATTACHED. IT WAS SIMPLY A RECORDING OF THE 911 CALL
2 AND IN FACT IT WASN'T EVEN THE RECORDING OF THE PERSON WHO CALLED
3 BECAUSE APPARENTLY THE RECEIVER ON THE PHONE WAS DROPPED AND THEY
4 WERE JUST PICKING UP BACKGROUND NOISE, SO IT CERTAINLY COULDN'T
5 BE CONSIDERED TESTIMONIAL EVIDENCE, AND IT CERTAINLY WASN'T
6 OFFERED FOR THE TRUTH OF THE MATTER. IT WAS OFFERED FOR WHY THE
7 POLICE WENT TO THE LOCATION. AND I RULE IT WAS ADMISSIBLE ON
8 THAT BASIS.

9 NOW, THE LAST BENCH CONFERENCE WE HAD CONCERNED AN OBJECTION
10 BY MR. SUMNER REGARDING A REFERENCE TO A PREVIOUS STATEMENT THAT
11 THIS LAST WITNESS, MR. BARKSDALE, HAD GIVEN TO THE POLICE, AND
12 THERE WAS SOME OBJECTION MADE ON THE GROUND THAT IT WAS PRIOR
13 CONSISTENT STATEMENT. AND RULE 801 COVERS PRIOR CONSISTENT AND
14 PRIOR INCONSISTENT STATEMENTS AND I WASN'T COMPLETELY SURE
15 EXACTLY WHAT MS. MONT'S WAS TRYING TO ELICIT FROM THE WITNESS, BUT
16 NEVERTHELESS EVIDENTLY IT WAS THAT HE HAD GIVEN THE STATEMENT
17 REGARDING THAT THE VICTIM HAD GONE TO THE HOUSE TO BUY MARIJUANA.
18 IS THAT RIGHT?

19 MS. MONT'S: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: OKAY. SO I DON'T THINK THERE HAD EVER BEEN A
21 QUESTION ASKING MR. BARKSDALE TO ADMIT OR DENY THAT HE HAD SAID
22 THAT, AND YOU ASKED HIM AND HE BASICALLY SAID THAT'S WHAT THEY
23 WERE DOING. IS THAT -- IF I RECALL, IS THAT RIGHT?

24 MR. SUMNER: HE DID. HIS ANSWER REFERENCED---

25 MS. MONT'S: HE SAID, "WHOEVER KNOCKED ON THE DOOR."

1 **THE COURT:** RIGHT.

2 **MS. MONT'S:** BUT IN HIS STATEMENT HE SAID JERVIS ASKED, AND
3 I THINK THAT'S QUITE DIFFERENT, YOUR HONOR.

4 **THE COURT:** RIGHT. WELL, OKAY. AND I WAS -- WHEN WE WERE
5 UP HERE DISCUSSING IT, WHAT I THOUGHT YOU WERE GOING TO DO IS TRY
6 TO PUT THE STATEMENT IN THAT CONTAINED MR. BARKSDALE'S STATEMENTS
7 TO POLICE THAT WERE CONSISTENT WITH WHAT HE HAD ALREADY
8 TESTIFIED. THAT'S WHERE I WAS GETTING CONFUSED. BUT YOU WERE
9 ASKING HIM ABOUT SOMETHING THAT HE HAD NOT BEEN ASKED ABOUT. BUT
10 THEN YOU ASKED HIM WHETHER SOMEONE ASKED FOR MARIJUANA WHEN THEY
11 ARRIVED AT THE HOME OF THE DEFENDANT. OKAY.

12 **MS. MONT'S:** YES, YOUR HONOR.

13 **THE COURT:** IS THAT WHAT HAPPENED?

14 **MS. MONT'S:** YES, YOUR HONOR. BUT I STILL THINK I WOULD
15 LIKE IT TO BE ADMITTED BECAUSE I THINK IT'S QUITE DIFFERENT TO
16 SAY "WHOEVER KNOCKED ON THE DOOR" AND IN HIS STATEMENT THE DAY IT
17 HAPPENED TO SPECIFICALLY SAY "JERVIS POWERS CAME TO THE DOOR AND
18 ASKED FOR MARIJUANA." BECAUSE THIS WHOLE THING IS WHY WAS JERVIS
19 POWERS THERE?

20 **THE COURT:** ALL RIGHT. WELL, YOU KNOW, I DON'T -- I GUESS
21 WHAT I'M GETTING AT -- AND I DIDN'T WANT TO MISLEAD YOU, BUT
22 THAT'S A DIFFERENT KETTLE OF FISH THAN WHAT I THINK MR. SUMNER'S
23 OBJECTION WAS.

24 **MR. SUMNER:** WELL, YEAH. MY OBJECTION WAS THAT IN MY
25 OPINION MS. MONT'S WOULD NEED TO ASK A QUESTION AND THEY NEED TO

OCTAVIOUS BARKSDALE -- REDIRECT BY MS. MONT'S

1 GIVE AN INCONSISTENT ANSWER WITH THE PREVIOUS WRITTEN
2 STATEMENT---

3 THE COURT: RIGHT.

4 MR. SUMNER: ---AND MS. MONT'S IN MY OPINION DOESN'T NEED TO
5 JUST -- AND I DON'T MEAN THIS AS PERSONAL CRITICISM -- JUST KIND
6 OF SUMMARILY THROW OUT FOR THE JURY, "NOW, YOU REMEMBER WHEN YOU
7 WENT TO THE POLICE STATION AND YOU GAVE THIS WRITTEN STATEMENT?"

8 THE COURT: RIGHT.

9 MR. SUMNER: THAT DOESN'T NEED TO HAPPEN. I SAY THAT
10 RESPECTFULLY AND HUMBL Y.

11 THE COURT: NO, I UNDERSTAND. YOU WERE SAYING THAT WAS
12 IMPROPER BOLSTERING AND---

13 MR. SUMNER: YEAH. YES, SIR.

14 THE COURT: OKAY. AND THAT'S WHAT GOT ME ON THE TRACK OF
15 THINKING ABOUT RULE 801 AND---

16 MS. MONT'S: AND, YOUR HONOR, MY THINKING WAS HIS STATEMENT
17 WAS DIFFERENT FROM WHAT HE WAS SAYING ON THE WITNESS STAND.

18 THE COURT: OKAY.

19 MS. MONT'S: SO I WOULD STILL ASK THAT THIS WITNESS -- THAT
20 HIS STATEMENT BE ADMITTED BASED ON THE FACT THAT IT'S DIFFERENT
21 THAN HOW HE TESTIFIED.

22 THE COURT: WELL, I'M NOT GOING TO LET THE STATEMENT IN. I
23 DON'T THINK HE WAS EVER ASKED THOUGH, POINT BLANK, "DID JERVIS
24 SAY HE WENT THERE TO BUY MARIJUANA?"

25 MS. MONT'S: YES, YOUR HONOR. THAT WAS THE QUESTION I

1 ASKED. I SAID, "DID JERVIS AT THE DOOR ASK TO BUY MARIJUANA?"
2 AND HIS ANSWER WAS WHOEVER WAS AT THE DOOR ASKED FOR MARIJUANA.
3 BUT IN HIS WRITTEN STATEMENT ON THAT DAY HE SAID THE PERSON WAS
4 JERVIS POWERS ASKING TO BUY MARIJUANA---

5 THE COURT: OKAY.

6 MS. MONTS: ---AND THAT'S WHAT THE WHOLE -- YOU KNOW, OUR
7 WHOLE ISSUE ABOUT PROVING WHY HE WAS THERE, THAT HE WAS THERE TO
8 BUY MARIJUANA. I THINK IT'S VERY, VERY CRITICAL TO THE STATE'S
9 CASE.

10 THE COURT: WELL, BUT -- YEAH, YOU -- I MEAN, LOOK AT
11 613(b) AND I JUST DON'T SEE HOW IT'S -- THE STATEMENT ITSELF IS
12 ADMISSIBLE. YOU KNOW, IF YOU WANT TO TRY TO RECALL HIM, THAT'S
13 UP TO YOU TO ASK HIM. BUT I DON'T THINK THE STATEMENT COMES IN
14 ON ITS OWN AS THE RECORD STANDS NOW.

15 THE COURT: OKAY. ANYTHING FURTHER?

16 MR. SUMNER: NO, SIR, NOT FROM THE DEFENSE.

17 THE COURT: OKAY. THANK YOU BOTH. Y'ALL HAVE A GOOD
18 EVENING. SEE YOU IN THE MORNING AT 9:30.

19 (STIPULATION MARKED AS COURT'S EXHIBIT NUMBER 1)

20 -----END OF REQUESTED TRANSCRIPT OF RECORD[al]-----

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 17TH DAY OF JANUARY 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 20, 2006



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE,)
)
 . VERSUS)
)
 MORRIS ANTONIO SULLIVAN,)
)
 DEFENDANT.)

98-GS-23-4313
05-GS-23-9999
TRANSCRIPT OF RECORD
VOLUME 2- 1/18/06

JANUARY 17-20, 2006
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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

JOYCE K. MONTS, Esquire
Assistant Solicitor

STEVE SUMNER, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
COURT REPORTER

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MATTERS AND MOTIONS

(TRIAL RESUMED AT 9:32 A.M. ON 1/18/06)

THE COURT: ARE Y'ALL READY FOR THE JURY?

MR. SUMNER: YES, SIR. WE ARE.

YOUR HONOR, I WOULD LIKE TO PUT SOMETHING ON THE RECORD PRIOR TO THE JURY COMING IN.

THE COURT: OKAY.

MR. SUMNER: I BELIEVE I MENTIONED TO THE COURT YESTERDAY THAT WE DID NOT -- THAT THE DEFENSE WOULD NOT REQUIRE A CHAIN ON CUSTODY OF THE MAJORITY OF ITEMS THAT WERE GOING TO BE ENTERED. THEY WERE ADMITTED THE FIRST TIME. I'M GOING TO GIVE YOU MY BASIS FOR THAT. SECONDLY, MY CLIENT CONSENTS. THIRD, THE CHAIN REALLY GENERALLY INVOLVES JUST ONE OR TWO PEOPLE THAT ARE ALREADY HERE. I KNOW THAT. SO FOR EASE OF THE TRIAL, I'M NOT GOING TO REQUIRE THAT.

I DO WANT TO MAKE SURE, THOUGH, THAT THE COURT IS AWARE THAT I DID OBJECT TO THE NINE MILLIMETER PHOTOGRAPHS, THE NINE MILLIMETER BULLETS AND ANY REFERENCE TO THE NINE MILLIMETERS THAT WERE FOUND IN THE DEFENDANT'S BEDROOM PURSUANT TO THE SEARCH. I BELIEVE I ARTICULATED THAT YESTERDAY. AND THERE ARE SOME PHOTOGRAPHS IN.

BUT OTHER THAN THAT, I'M NOT GOING TO REQUIRE A CHAIN IS I GUESS WHAT I'M TRYING TO SAY. THEY CAME IN IN THE FIRST TRIAL AND I JUST WANT TO MAKE SURE THEY DON'T JUST COME IN THIS TIME PERFUNCTORY. YOU KNOW, I DID OBJECT YESTERDAY TO THOSE PRETRIAL, AND I BELIEVE THE COURT'S RULING WAS THAT UNDER RULE 403 THEY

MATTERS AND MOTIONS

1 WOULD NOT BE ADMISSIBLE IN THIS CASE PROVIDED SOMETHING DIDN'T
2 CHANGE DOWN THE LINE.

3 THE COURT: YES, SIR. THAT'S CORRECT.

4 MR. SUMNER: SO I JUST DIDN'T WANT TO WAIVE THAT,
5 CERTAINLY, BUT---

6 THE COURT: YES, SIR, I UNDERSTAND.

7 MR. SUMNER: OKAY.

8 THE COURT: OKAY.

9 MS. MONTS: AND, YOUR HONOR, IF I COULD HAVE JUST A MINUTE
10 TO SPEAK WITH THE SERGEANT ON DUTY HERE IN THE COURTHOUSE.

11 THE COURT: OKAY.

12 (PAUSE)

13 (AT EASE FROM 9:35 TO 9:36 A.M.)

14 MS. MONTS: YOUR HONOR, COULD WE HOLD THE JURY ONE MINUTE?

15 THE COURT: OKAY.

16 MS. MONTS: WE DO HAVE MR. BARKSDALE AND DO INTEND TO
17 RECALL HIM BASED ON YESTERDAY.

18 THE COURT: OKAY.

19 MR. SUMNER: ARE YOU GOING TO START WITH HIM?

20 MS. MONTS: YES.

21 MR. SUMNER: OKAY.

22 MS. MONTS: THAT'S ALL FOR THE STATE.

23 THE COURT: ALL RIGHT. YOU CAN BRING THEM IN.

24 (JURY ENTERS COURTROOM AT 9:37 A.M.)

25 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WE'RE

MATTERS AND MOTIONS

1 GOING TO RESUME THE TESTIMONY IN THIS CASE.

2 YES, MA'AM, MS. MONTS.

3 MS. MONTS: YOUR HONOR, THE STATE CALLS OCTAVIOUS
4 BARKSDALE. (PAUSE) YOUR HONOR, HE'S OUTSIDE. IT'S JUST GOING
5 TO TAKE A MINUTE. (PAUSE)

6 THE COURT: MR. BARKSDALE, YOU ARE STILL UNDER OATH, SIR.
7 JUST HAVE A SEAT. THANK YOU.

8 OCTAVIOUS BARKSDALE, HAVING BEEN
9 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

10 REDIRECT EXAMINATION BY MS. MONTS:

11 Q MR. BARKSDALE, DID YOU GIVE A STATEMENT TO THE POLICE AT
12 FOUNTAIN INN POLICE DEPARTMENT ON JANUARY 16TH OF 1998?

13 A YES.

14 Q SIR, I'M GOING TO HAND YOU WHAT HAS BEEN MARKED FOR
15 IDENTIFICATION AS STATE'S EXHIBIT 31. CAN YOU IDENTIFY THIS?

16 A YES.

17 Q WHAT IS THAT?

18 A A STATEMENT.

19 Q AND DID YOU GIVE THOSE STATEMENTS TO LAW ENFORCEMENT?

20 A YES.

21 Q AND DID YOU GIVE IT TO LAW ENFORCEMENT ON THE DAY OF THE
22 SHOOTING AT MORRIS SULLIVAN'S HOUSE? DID YOU GIVE THEM THE
23 STATEMENT THAT SAME DAY?

24 A YES.

25 Q AND DID YOU SIGN THE STATEMENT AT THE BOTTOM?

1 A YES.

2 Q AND DID YOU GIVE THIS STATEMENT TO ASSISTANT CHIEF, AT THE
3 TIME, MIKE HAMILTON?

4 A I THINK MCCALL WROTE THE STATEMENT.

5 Q AND WAS MIKE HAMILTON IN THERE?

6 A I BELIEVE SO.

7 Q OKAY.

8 MS. MONTS: YOUR HONOR, WE'D MOVE THE STATEMENT INTO
9 EVIDENCE AT THIS TIME.

10 MR. SUMNER: YOUR HONOR, I THINK THE CORRECT PROCEDURE HERE
11 WOULD BE FOR HER TO ASK ABOUT THAT PARTICULAR POINT THAT SHE'S
12 TRYING TO CROSS EXAMINE HIM ON.

13 THE COURT: ALL RIGHT. SUSTAINED.

14 MR. SUMNER: IF HE AGREES THAT HIS STATEMENT WAS DIFFERENT
15 THAN THE TESTIMONY---

16 THE COURT: ALL RIGHT. I SUSTAIN THE OBJECTION.

17 MS. MONTS: OKAY.

18 Q MR. BARKSDALE, THE STATEMENT THAT YOU GAVE BACK IN JANUARY
19 16TH OF 1998, THE DAY OF THIS SHOOTING, IN THIS STATEMENT YOU
20 SAID, QUOTE, "THEY KNOCKED ON THE DOOR AND MORRIS LET THEM IN THE
21 HOUSE." THAT'S A SENTENCE IN THE MIDDLE OF THE PARAGRAPH. "THEY
22 KNOCKED ON THE DOOR AND MORRIS LET THEM IN THE HOUSE." YESTERDAY
23 YOU STATED YOU "WEREN'T SURE WHO LET THEM IN, IT WAS EITHER ME OR
24 MORRIS."

25 A IT'S BEEN OVER SEVEN YEARS AGO.

1 Q OKAY. AND YESTERDAY WHEN YOU WERE TALKING ABOUT AND
2 TESTIFYING YOU WERE TALKING THE DEFENDANT, MR. MORRIS, AND JERVIS
3 GOING IN THE BACK ROOM YOU TESTIFIED THAT THEY WERE ARGUING. BUT
4 IN YOUR STATEMENT YOU STATED, "I COULD HEAR THEM TALKING BUT I
5 DON'T KNOW WHAT WAS SAID." AND YOU DON'T MENTION ANYTHING ABOUT
6 ARGUING. IS THAT CORRECT?

7 A YES.

8 Q THIRDLY, WHEN ASKED YESTERDAY ABOUT WHO WAS AT THE DOOR, WHO
9 CAME TO THE DOOR? WHAT WERE THEY ASKING? YOU SAID, "SOMEBODY
10 ASKED TO BUY MARIJUANA." SOMEBODY ASKED TO BUY MARIJUANA. BUT
11 IN YOUR STATEMENT YOU SAY, "THEY KNOCKED ON THE DOOR AND MORRIS
12 LET THEM IN THE HOUSE. EVERYBODY WAS IN THE LIVING ROOM AND
13 JERVIS ASKED MORRIS ABOUT BUYING SOME WEED. ACTUALLY, JERVIS
14 ASKED MORRIS IF HE HAD SOME WEED BEFORE THEY CAME IN. THEN
15 MORRIS LET THEM IN," WHICH IS DIFFERENT FROM WHAT YOU SAID
16 YESTERDAY.

17 SIXTHLY, YOUR STATEMENT FROM JANUARY 16TH OF 1998 REGARDING
18 THE DEFENDANT AND JERVIS, THE VICTIM, WALKING INTO THE BACK, YOU
19 STATED, "MORRIS TOLD JERVIS HE DID NOT SHOOT INTO HIS HOUSE AND
20 MUMBLED SOMETHING ELSE." SO SOMETHING ELSE WAS SAID. YESTERDAY
21 YOU SAID YOU DIDN'T RECALL. ACTUALLY, YOU SAID YOU DON'T KNOW.
22 BUT ON THE 16TH OF -- JANUARY 16TH OF 1998 YOU KNEW.

23 FOURTH POINT---

24 MR. SUMNER: YOUR HONOR, I'M -- ARE THESE QUESTIONS OR -- I
25 MEAN---

1 **THE COURT:** WELL, YOU NEED TO ASK QUESTIONS, MS. MONTIS.

2 **Q** YESTERDAY WHEN YOU WERE ASKED, "WHERE WAS THE GUN POINTED
3 WHEN MORRIS WAS POINTING THE GUN?" DO YOU RECALL WHAT YOUR
4 RESPONSE WAS?

5 **A** I THINK I SAID HE HAD IT AIMED TOWARDS THE FLOOR.

6 **Q** AND WHAT DID YOUR STATEMENT SAY WHERE MORRIS HAD THE GUN
7 POINTED? (PAUSE) IF YOU WOULD READ STARTING THERE.

8 **A** (READING) "I SAW MORRIS TURN TO FACE JERVIS AND MORRIS
9 POINTED THE GUN AT JERVIS. I SAW JERVIS START WALKING TOWARDS
10 MORRIS"---

11 **Q** OKAY. THAT'S THE QUESTION I'M ASKING. THANK YOU. SO THAT
12 STATEMENT IS DIFFERENT; IS THAT CORRECT? WHAT YOU TESTIFIED TO
13 YESTERDAY WAS DIFFERENT FROM WHAT YOU STATED IN JANUARY 16TH ABOUT
14 THE GUN BEING POINTED AT THE FLOOR OR THE GUN BEING POINTED AT
15 THE VICTIM?

16 **A** AS I WALKED OUT THE DOOR HE WAS POINTING -- THE GUN WASN'T
17 POINTED AT HIM.

18 **Q** BUT YOUR STATEMENT SAYS THAT IT WAS; IS THAT CORRECT?

19 **A** WELL, MCCALL WROTE THE STATEMENT IN HIS OWN WORDS. I
20 EXPLAINED IT TO HIM AND HE WROTE IT DOWN IN HIS OWN WORDS.

21 **Q** DIDN'T YOU SIGN THIS STATEMENT AT THE BOTTOM, "I HAVE READ
22 AND RECEIVED A COPY OF THIS---"

23 **A** YES, I SIGNED IT.

24 **MS. MONTIS:** YOUR HONOR, I WOULD MOVE THIS STATEMENT INTO
25 EVIDENCE.

1 **MR. SUMNER:** YOUR HONOR, I OBJECT. SHE HAS CROSS EXAMINED
2 HIM ON THE STATEMENT. I MEAN, SHE'S BROUGHT IT OUT. THERE'S NO
3 NEED TO PUT IT INTO EVIDENCE. IT'S NOT ADMISSIBLE.

4 **THE COURT:** ALL RIGHT. SUSTAINED.

5 **Q** BUT YOU DO RECALL SPECIFICALLY READING THE STATEMENT THAT
6 YOU SIGNED YOUR NAME TO THE BOTTOM OF IT STATING THE GUN WAS
7 POINTED AT JERVIS? YOU DID SIGN THAT STATEMENT?

8 **A** YEAH.

9 **Q** AND YOU DID SIGN THIS STATEMENT WHICH SAID, "THEY KNOCKED ON
10 THE DOOR AND MORRIS LET THEM IN"?

11 **A** YES.

12 **Q** AND YOU DID SIGN THIS STATEMENT THAT SAID, "JERVIS ASKED
13 MORRIS IF HE COULD BUY SOME WEED FROM HIM"?

14 **A** YES.

15 **MR. SUMNER:** YOUR HONOR, I HATE TO OBJECT, BUT IT'S ASKED
16 AND ANSWERED. I MEAN---

17 **THE COURT:** ALL RIGHT. OVERRULED. OVERRULED, GO AHEAD.

18 **Q** AND YOU DID SIGN A STATEMENT STATING, "MORRIS MUMBLED
19 SOMETHING BEFORE THEY WENT IN THE BACK ROOM"?

20 **A** YES.

21 **MS. MONTS:** THANK YOU. NO FURTHER QUESTIONS.

22 **THE COURT:** CROSS EXAMINATION, MR. SUMNER.

23 **MR. SUMNER:** THANK YOU, YOUR HONOR.

24 **RECROSS EXAMINATION BY MR. SUMNER:**

25 **Q** GOOD MORNING, MR. BARKSDALE.

1 A GOOD MORNING.

2 Q JUST A FEW FOLLOW-UP QUESTIONS. YOU ALREADY TESTIFIED TO
3 THE JURY HERE JUST A FEW SECONDS AGO. THE STATEMENT THAT MS.
4 MONTS IS REFERENCING, YOU DIDN'T WRITE THAT STATEMENT, DID YOU?

5 A NO.

6 Q IT WAS WRITTEN BY SOMEBODY TAKING IT DOWN; IS THAT CORRECT?

7 A YES.

8 Q NOW, THERE HAS BEEN PREVIOUS SWORN TESTIMONY GIVEN IN THIS
9 CASE BY YOURSELF. ISN'T IT CORRECT THAT IN THE PREVIOUS SWORN
10 TESTIMONY THAT YOU HAVE GIVEN YOU SAID THAT AS MORRIS WALKED
11 BACKWARDS INTO THE LIVING ROOM THAT THE GUN WAS POINTED AT THE
12 FLOOR?

13 A YES.

14 Q AND THAT IS YOUR SWORN TESTIMONY?

15 A YES.

16 Q AND THAT'S WHAT YOU STATED YESTERDAY AND THAT'S WHAT YOU
17 STATE TODAY; IS THAT CORRECT?

18 A YES.

19 Q (PAUSE) ON YOUR REDIRECT EXAMINATION THIS MORNING I BELIEVE
20 YOU SAID -- OR YOUR TESTIMONY WAS JERVIS ACTUALLY, JERVIS POWERS,
21 WHEN HE WAS WITH THIS GROUP OF YOUNG MEN, CAME TO MORRIS
22 SULLIVAN'S HOME; IS THAT CORRECT?

23 A YES.

24 Q OKAY. AND ACTUALLY BEFORE JERVIS POWERS WAS LET INTO THE
25 HOME BY MORRIS HE STATED, "I'M HERE TO BUY SOME MARIJUANA" OR

OCTAVIOUS BARKSDALE -- RECROSS BY MR. SUMNER

1 "I'M HERE TO GET SOME WEED." IS THAT RIGHT?

2 A YES.

3 Q JERVIS SAID THAT?

4 A (NO RESPONSE)

5 Q I'M SORRY?

6 A I DON'T REMEMBER.

7 Q OKAY. YOU DON'T REMEMBER. OKAY.

8 MR. SUMNER: ONE SECOND, PLEASE, YOUR HONOR.

9 THE COURT: YES, SIR.

10 MR. SUMNER: (OFF RECORD WITH DEFENDANT) THANK YOU. I
11 DON'T HAVE ANY OTHER QUESTIONS.

12 MS. MONTS: NO FURTHER QUESTIONS, YOUR HONOR.

13 THE COURT: ALL RIGHT. OKAY. YES, SIR. THANK YOU.

14 (WITNESS STEPS DOWN AT 9:50 A.M.)

15 MS. MONTS: YOUR HONOR, THE STATE CALLS RONICA BUTLER.

16 RONICA BUTLER, HAVING BEEN DULY
17 SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MS. MONTS:

19 Q MS. BUTLER, HOW OLD ARE YOU?

20 A TWENTY-SIX.

21 Q AND WHAT PART OF TOWN DO YOU LIVE IN?

22 A GREENVILLE.

23 Q AND IN 1998 DID YOU LIVE IN THE SAME PLACE OR DO YOU LIVE
24 SOMEWHERE ELSE NOW?

25 A I LIVE SOMEWHERE ELSE NOW.

1 Q AND IN JANUARY OF 1998 WERE YOU GOING TO SCHOOL OR WERE YOU
2 WORKING?

3 A I WAS GOING TO SCHOOL.

4 Q AND WHAT SCHOOL WERE YOU GOING TO?

5 A MAULDIN.

6 Q MAULDIN WHAT?

7 A HIGH.

8 Q HIGH SCHOOL. OKAY. AND DID YOU KNOW MORRIS SULLIVAN IN
9 JANUARY OF 1998?

10 A NO. WELL, I MET HIM FOR THE FIRST TIME THAT DAY.

11 Q OKAY. AND WHEN WAS THE FIRST DAY THAT YOU MET MORRIS
12 SULLIVAN?

13 A I THINK IT WAS THE 16TH OF JANUARY.

14 Q WAS IT THE DATE OF THE SHOOTING?

15 A YEAH, THE DAY OF THE SHOOTING.

16 Q OKAY. AND DID YOU TALK TO MORRIS SULLIVAN PRIOR TO---

17 A THE DAY BEFORE THE SHOOTING.

18 Q OKAY. HOW DID YOU GET TO KNOW MR. SULLIVAN?

19 A THROUGH A MUTUAL FRIEND.

20 Q AND HOW DID YOU TALK TO HIM, IN PERSON OR ON THE PHONE?

21 A ON THE PHONE.

22 Q AND WHAT DID THAT CONVERSATION CONSIST OF?

23 A JUST THAT WE NEED TO MEET EACH OTHER AND I WOULD COME DOWN
24 THERE WHEN MY FRIEND WAS GOING TO GO DOWN AND MEET HER FRIEND
25 GUY.

1 Q YOU WERE GOING TO GO DOWN TO HIS HOUSE?

2 A YES, MA'AM.

3 Q AND DID YOU KNOW AT THAT TIME WHERE HE LIVED?

4 A NO.

5 Q WHY DID MORRIS SAY THAT YOU NEEDED TO COME AND MEET HIM?

6 A BECAUSE I NEEDED TO KNOW WHO I WAS TALKING TO ON THE PHONE.

7 Q WHAT ELSE DID HE SAY?

8 A BECAUSE I -- HE SAID, "YOU NEED TO COME DOWN HERE AND SEE
9 WHO YOU'RE TALKING TO, BECAUSE YOU NEVER KNOW, YOU MIGHT BE
10 TALKING TO A MURDERER."

11 Q AND DID YOU GO MEET WITH HIM THE NEXT DAY?

12 A YES.

13 Q AND WHO TOOK YOU DOWN THERE?

14 A KEISHA JOHNSON.

15 Q DID YOU HAVE A CAR AT THAT TIME?

16 A NO.

17 Q AND DID SHE STAY OR DID SHE LEAVE YOU?

18 A SHE LEFT.

19 Q AND WAS SHE GOING TO PICK YOU UP LATER?

20 A YES.

21 Q AND WHO WAS THERE WHEN YOU WENT TO MORRIS' HOUSE?

22 A IT WAS ME, MORRIS AND TAVIS.

23 Q AND SO YOU WERE THE THIRD ONE THERE; IS THAT CORRECT?

24 A YES, MA'AM.

25 Q AND WHAT WERE MORRIS AND TAVIS DOING?

RONICA BUTLER -- DIRECT BY MS. MONTS

1 A WATCHING TV.

2 Q AND WHEN YOU WENT IN THERE WHAT -- WERE THEY DOING ANYTHING
3 ELSE?

4 A SMOKING WEED.

5 Q SMOKING WEED?

6 A YES, MA'AM.

7 Q AND WHAT DID YOU DO WHEN YOU GOT IN THERE? DID YOU -- WHAT
8 DID YOU?

9 A I SAT DOWN ON THE COUCH AND WE TALKED FOR A LITTLE BIT AND
10 WATCHED TV.

11 Q AND APPROXIMATELY WHAT TIME DID YOU GET THERE?

12 A IT MIGHT HAVE BEEN AROUND NOONTIME. I WAS SUPPOSED TO BE
13 GOING BACK TO THE HIGH SCHOOL FROM GOLDEN STRIP, AND INSTEAD OF
14 GOING BACK TO MY HIGH SCHOOL, I WENT DOWN HIS HOUSE.

15 Q AND WHAT IS GOLDEN STRIP?

16 A IT'S A VOCATIONAL SCHOOL.

17 Q SO YOU WENT -- PART OF THE DAY IS VOCATIONAL---

18 A PART OF THE DAY, RIGHT.

19 Q OKAY. SO INSTEAD OF GOING BACK TO SCHOOL YOU WENT OVER
20 THERE. SO YOU WERE KIND OF CUTTING SCHOOL?

21 A RIGHT.

22 Q SO YOU THOUGHT IT WAS ABOUT NOON?

23 A RIGHT.

24 Q AND HOW LONG WERE YOU THERE TALKING? DO YOU KNOW HOW LONG
25 YOU WERE THERE?

- 1 A NOT EXACTLY, BUT IT FELT MAYBE LIKE AN HOUR OR SO.
- 2 Q AROUND AN HOUR?
- 3 A UH-HUH (AFFIRMATIVE).
- 4 Q AND DID SOMEONE ELSE COME AT THAT TIME?
- 5 A IT WAS A WHOLE GROUP OF BOYS JUST STARTED COMING INTO THE
- 6 YARD, AND I TOLD HIM THAT HE HAD A WHOLE BUNCH OF PEOPLE COMING
- 7 TO HIS YARD, SO HE GOT UP AND WENT TO THE DOOR TO SEE.
- 8 Q MORRIS GOT UP?
- 9 A YES.
- 10 Q WHAT DID TAVIS DO?
- 11 A NOTHING.
- 12 Q AND WHEN MORRIS GOT TO THE DOOR, WHAT DID HE DO?
- 13 A HE ANSWERED THE DOOR AND THEY JUST STARTED TALKING.
- 14 Q DID ANYBODY COME IN?
- 15 A YEAH, IT WAS A FEW OF THEM CAME IN THE DOORWAY.
- 16 Q AND WAS THERE A SCREEN DOOR OR A SOLID DOOR, IF YOU RECALL?
- 17 IF YOU DON'T...
- 18 A I BELIEVE IT WAS A SCREEN DOOR.
- 19 Q AND DID EVERYONE EVENTUALLY COME INSIDE?
- 20 A IT WAS SO MANY I DIDN'T PAY IT NO MIND. IT WAS---
- 21 Q OKAY. DID HE--
- 22 A IT WAS -- IT WAS A GOOD BIT AT THE DOORWAY. I DON'T KNOW IF
- 23 THAT WAS EVERYBODY THAT CAME THAT WAS IN THERE THOUGH.
- 24 Q DID PEOPLE EVENTUALLY COME IN AND SIT DOWN?
- 25 A NO. DIDN'T NOBODY SIT DOWN.

RONICA BUTLER -- DIRECT BY MS. MONT'S

1 Q EVERYBODY STAYED STANDING?

2 A UH-HUH (AFFIRMATIVE).

3 Q DID YOU KNOW ANY OF THOSE PEOPLE?

4 A NO. I -- THE VICTIM. I WAS STARING AT HIM BECAUSE HE
5 LOOKED FAMILIAR TO ME AND I REALIZED THAT WE HAD WENT TO NIGHT
6 SCHOOL TOGETHER. SO---

7 Q BUT YOU DIDN'T---

8 A BUT I DIDN'T KNOW HIM PERSONALLY.

9 Q DID YOU KNOW TAVIS?

10 A NO.

11 Q AND THIS WAS THE FIRST DAY YOU WERE MEETING MORRIS?

12 A YES, MA'AM.

13 Q DID MORRIS APPEAR TO KNOW THOSE PEOPLE?

14 A YES, MA'AM.

15 Q DID TAVIS APPEAR TO KNOW THEM OR IF YOU KNOW?

16 A I DON'T EVEN KNOW.

17 Q OKAY. WHAT -- YOU SAY NOBODY CAME IN THE DOOR. THEY JUST
18 STOOD IN THE DOORWAY AREA?

19 A RIGHT.

20 Q COULD YOU HEAR ANY CONVERSATION?

21 A THE VICTIM ASKED MORRIS IF HE HAD BEEN SHOOTING UP AROUND
22 HIS HOUSE THAT MORNING.

23 Q AND WHAT DID MORRIS SAY?

24 A NO.

25 Q WAS THERE ANY FIST FIGHTING OR -- OR WHAT WAS THE TONE?

1 A IT WAS -- SEEMED ALL RIGHT TO ME, YOU KNOW. IT WASN'T
2 NOTHING CRAZY. WASN'T NOBODY YELLING OR ANYTHING LIKE THAT.

3 Q AND SO MORRIS SAID, NO, I DIDN'T SHOOT UP AT YOUR HOUSE THIS
4 MORNING?

5 A RIGHT.

6 Q BUT THERE WAS NO YELLING?

7 A RIGHT.

8 Q AND WHAT TOOK PLACE NEXT?

9 A THEY WENT TO THE BACK OF THE HOUSE. I DON'T KNOW WHAT WENT
10 OUT BACK THERE. BUT THEY LEFT FROM THE FRONT AND WENT TO THE
11 BACK OF THE HOUSE.

12 Q HOW MANY PEOPLE WENT TO THE BACK?

13 A JUST MORRIS AND JERVIS.

14 Q AND WHAT DID EVERYBODY ELSE DO?

15 A I DIDN'T PAY IT NO MIND. I JUST -- I BELIEVE THEY WALKED
16 OUT THE HOUSE.

17 Q OKAY. YOU'RE NOT SURE WHAT THEY DID?

18 A NO.

19 Q BUT YOU WERE -- WHERE WERE YOU?

20 A I WAS STILL SITTING ON THE COUCH.

21 Q YOU WERE SITTING ON THE COUCH?

22 A YES, MA'AM.

23 Q AND WHAT WAS TAVIS DOING?

24 A HE WAS SITTING ON THE COUCH TOO.

25 Q WHEN JERVIS CAME IN DID YOU SEE ANY WEAPON?

RONICA BUTLER -- DIRECT BY MS. MONTS

1 A NO, MA'AM.

2 Q DID YOU SEE ANY OF THOSE BOYS THAT CAME IN WITH ANY KIND OF
3 WEAPON?

4 A NO, MA'AM.

5 Q HOW LONG WAS JERVIS AND MORRIS IN THE BACK?

6 A NOT LONG.

7 Q MINUTES OR...

8 A YEAH, MINUTES. IT DIDN'T SEEM LIKE A LONG TIME.

9 Q AND WHAT'S THE NEXT THING THAT HAPPENED?

10 A THEY STARTED COMING BACK DOWN THE HALL AND I HEARD A GUN
11 COCK, BUT I DIDN'T KNOW WHO HAD IT UNTIL THEY CAME FURTHER OUT
12 INTO THE LIVING ROOM.

13 Q SO THEY CAME OUT INTO THE LIVING ROOM?

14 A YES, MA'AM.

15 Q AND WHO HAD THE GUN?

16 A MORRIS.

17 Q AND HOW WAS HE HOLDING THE GUN OR WAS HE POINTING IT?

18 A HE HAD IT POINTED TO HIM.

19 Q POINTED?

20 A TO JERVIS.

21 Q POINTED AT JERVIS?

22 A UH-HUH (AFFIRMATIVE).

23 Q DID HE SAY ANYTHING?

24 A NO.

25 Q WHAT WERE THE OTHER BOYS DOING AT THIS TIME -- OR YOUNG MEN?

- 1 A I BELIEVE THEY WERE OUT THE HOUSE THEN.
- 2 Q AND WHAT WAS JERVIS DOING, IF ANYTHING?
- 3 A HE HAD TOLD HIM IF HE HAD THE GUN OUT HE BETTER USE IT.
- 4 Q AND THEN WHAT HAPPENED?
- 5 A MORRIS SHOT AT THE GROUND.
- 6 Q AND WHAT DID YOU DO AT THAT TIME?
- 7 A I JUST KIND OF FROZE. I STARTED SAYING, NO, AND CRYING.
- 8 Q I IMAGINE YOU WERE PRETTY SHOCKED AT THIS?
- 9 A YES.
- 10 Q WHAT DID TAVIS DO?
- 11 A I DON'T THINK HE WAS IN THE HOUSE AT ALL EITHER. WASN'T
- 12 NOBODY WHEN HE STARTED SHOOTING WAS IN THE HOUSE BUT ME AND THOSE
- 13 TWO.
- 14 Q AND DESCRIBE HOW UPSET YOU WERE?
- 15 A I WAS JUST -- I WAS SCARED. I DIDN'T KNOW WHAT WAS GOING TO
- 16 HAPPEN, SO I JUST REALLY KIND OF FROZE AND WAS CRYING.
- 17 Q I'M SORRY, YOU DID---
- 18 A I WAS CRYING.
- 19 Q OKAY. YOU WERE SCARED AND YOU FROZE AND YOU WERE CRYING?
- 20 A UH-HUH (AFFIRMATIVE).
- 21 Q WHAT HAPPENED AFTER MORRIS SHOT INTO THE GROUND?
- 22 A JERVIS KEPT WALKING TOWARD HIM, SO HE SHOT AGAIN.
- 23 Q AND WHERE DID THAT BULLET GO? COULD YOU -- IF YOU COULD
- 24 TELL.
- 25 A IN HIS LEG.

1 Q AND HOW CLOSE IS JERVIS TO YOU AT THIS TIME?

2 A I DON'T KNOW.

3 Q LIKE COULD YOU HAVE REACHED OUT AND TOUCHED HIM OR..

4 A YEAH.

5 Q OKAY. SO -- WAS THERE A COFFEE TABLE IN THE ROOM?

6 A I DON'T REMEMBER.

7 Q OKAY. WHAT DID JERVIS DO WHEN HE WAS SHOT? DID HE DO
8 ANYTHING?

9 A HE CONTINUED TO WALK TOWARD HIM.

10 Q TOWARD?

11 A MORRIS.

12 Q WHO WAS FURTHER IN THE LIVING ROOM?

13 A JERVIS.

14 Q AND DID HE SAY OUCH OR ANYTHING?

15 A I DIDN'T HEAR HIM SAY ANYTHING.

16 Q OKAY. AND DID MORRIS SAY ANYTHING?

17 A NO.

18 Q AND THEN WHAT HAPPENED AFTER JERVIS WAS SHOT IN THE LEG?

19 A IT WAS ANOTHER SHOT.

20 Q DO YOU KNOW THE AMOUNT OF TIME BETWEEN?

21 A IT HAPPENED QUICK. IT WASN'T A WHOLE BUNCH OF TIME IN
22 BETWEEN.

23 Q AND DO YOU KNOW WHERE THE THIRD SHOT WENT?

24 A IN HIS CHEST, I BELIEVE.

25 Q AND COULD YOU TELL OR COULD YOU TELL AT THAT TIME WHERE---

1 A IT HAPPENED SO QUICK THAT WHEN THE THIRD SHOT HAPPENED HE
2 RAN OUT THE HOUSE AND---

3 Q WHO RAN OUT?

4 A MORRIS.

5 Q AND WHERE WERE YOU?

6 A STILL IN THE HOUSE.

7 Q SO IT WAS JUST YOU AND JERVIS THEN?

8 A RIGHT.

9 Q AND WHERE DID -- WAS JERVIS STILL STANDING?

10 A NO, HE WAS LAYING ON THE FLOOR.

11 Q HOW CLOSE WAS HE TO YOU AT THIS TIME?

12 A HE WAS CLOSE THEN. I COULD LOOK DOWN AND SEE HIM.

13 Q SO HE WAS RIGHT NEXT TO YOU?

14 A YEAH.

15 Q AND COULD YOU SEE BLOOD?

16 A NO, I DIDN'T NOTICE AT THE TIME. JUST WHEN HE FELL I JUST
17 JUMPED UP AND RAN OUT.

18 Q OKAY. SO THEN YOU GOT UP AND RAN OUT?

19 A UH-HUH (AFFIRMATIVE).

20 Q DID YOU SAY ANYTHING TO ANYBODY?

21 A NO.

22 Q WHAT DID YOU DO WHEN YOU RAN OUT THE DOOR?

23 A I FELT SICK AND MORRIS STARTED SAYING, YOU KNOW, "GET HER
24 OUT OF HERE."

25 Q WHAT WAS MORRIS DOING AT THIS TIME?

1 A HE WAS JUST OUTSIDE.

2 Q WAS HE TALKING?

3 A WELL, WHEN I CAME OUT THERE, LIKE I SAID, HE JUST YELLED,
4 "GET HER OUT OF HERE." SO FRANK AND TAVIS TOOK ME BACK TO THE
5 SCHOOL.

6 Q DESCRIBE HIS DEMEANOR. I MEAN, WAS HE CALM? WAS HE LEANING
7 AGAINST THE HOUSE? WAS HE PACING? WHAT WAS HE DOING?

8 A HE SEEMED A LITTLE, I GUESS, NERVOUS OR SCARED, YOU KNOW,
9 ABOUT WHAT JUST HAPPENED. I DON'T REALLY KNOW.

10 Q DID YOU KNOW IF ANYBODY CALLED THE POLICE OF 911 OR
11 EMERGENCY?

12 A NO, I DON'T KNOW.

13 Q DID YOU EVER GO BACK IN THE HOUSE?

14 A NO.

15 Q I THINK AT ONE TIME YOU SAID SOMETHING ABOUT GOING BACK TO
16 GET A COAT. DO YOU RECALL ANYTHING ABOUT THAT?

17 A I CAN'T REMEMBER GOING BACK INTO THE HOUSE.

18 Q OKAY. AND WHERE DID YOU GO ONCE TAVIS -- WHO WAS DRIVING?

19 A TAVIS.

20 Q AND WHO ELSE WAS IN THE CAR?

21 A FRANK.

22 Q AND WHERE DID THEY TAKE YOU?

23 A THEY WERE GOING TO TAKE ME HOME BUT I HAD THEM TAKE ME BACK
24 TO MY SCHOOL.

25 Q AND WAS SCHOOL OVER BY THEN OR DID YOU---

RONICA BUTLER -- DIRECT BY MS. MONTS

1 A NO, SCHOOL WAS STILL ON. IT WAS AT THE END OF THE DAY BUT
2 IT WAS GOING.

3 Q DID YOU GO BACK TO CLASS OR..

4 A NO, I GOT IN A CAR WITH ANOTHER FRIEND OF MINE AND WENT BACK
5 TO HER HOUSE FOR A LITTLE WHILE.

6 Q DID YOU SEE WHAT MORRIS DID WITH THE GUN AFTER HE FIRED THE
7 THREE SHOTS?

8 A HE PUT IT -- IT WAS A LIKE A LITTLE AREA KIND OF LIKE THIS
9 BY THE DOOR AND HE PUT IT RIGHT THERE.

10 Q SO HE SET THE GUN DOWN?

11 A YES, MA'AM.

12 Q WHAT WAS EVERYBODY DOING OUTSIDE?

13 A JUST STANDING AROUND.

14 Q DID YOU TALK TO MORRIS AFTER THE SHOOTING?

15 A YES, HE CALLED RIGHT AFTERWARDS.

16 Q DID YOU EVER SEE HIM AGAIN AFTER THE INCIDENT?

17 A NO.

18 Q AND IS MORRIS SULLIVAN IN THE COURTROOM TODAY?

19 A YES, MA'AM.

20 Q WHERE IS HE SEATED?

21 A RIGHT OVER THERE (INDICATING).

22 MS. MONTS: LET THE RECORD REFLECT SHE IS POINTING TO THE
23 DEFENDANT. THANK YOU. I HAVE NO FURTHER QUESTIONS. THE DEFENSE
24 WILL ASK YOU QUESTIONS.

25 THE COURT: YES, SIR, MR. SUMNER. CROSS EXAMINATION.

RONICA BUTLER -- DIRECT BY MS. MONTS

1 **MR. SUMNER:** YOUR HONOR, MAY IT PLEASE THE COURT.

2 **CROSS EXAMINATION BY MR. SUMNER:**

3 **Q** GOOD MORNING, MS. BUTLER.

4 **A** GOOD MORNING.

5 **Q** JUST A FEW FOLLOW-UP QUESTIONS, IF I COULD, PLEASE, MA'AM.

6 YOU HAVE ALREADY TESTIFIED THAT YOU WERE PRESENT WHEN THE
7 GROUP OF BOYS CAME OVER AND YOU HEARD JERVIS POWERS CONFRONT
8 MORRIS ABOUT THESE SHOTS AT HIS HOME; IS THAT RIGHT?

9 **A** YES, SIR.

10 **Q** OKAY. MORRIS DENIED THAT, CORRECT?

11 **A** WHAT?

12 **Q** MORRIS DENIED THAT? HE TOLD HIM, NO, I DIDN'T DO IT?

13 **A** YES.

14 **Q** MORRIS GOES INTO THE BACK BEDROOM; IS THAT CORRECT?

15 **A** YES.

16 **Q** AFTER THAT JERVIS POWERS GOES INTO THE BACK BEDROOM, DOESN'T
17 HE?

18 **A** YES.

19 **Q** LEAN UP A LITTLE BIT, IF YOU WOULD. INTO THAT MICROPHONE,
20 AND SPEAK UP A LITTLE BIT.

21 **A** (COMPLIES)

22 **Q** JERVIS POWERS GOES INTO THE BACK BEDROOM BEHIND MORRIS,
23 DOESN'T HE?

24 **A** YES, SIR.

25 **Q** AND THE NEXT THING THAT YOU SEE THAT MORNING OR THAT EARLY

RONICA BUTLER -- CROSS BY MR. SUMNER

1 AFTERNOON, RONICA, IS MORRIS SULLIVAN BACKING INTO THE LIVING
2 ROOM WITH THE GUN; IS THAT RIGHT?

3 A YES, SIR.

4 Q ALL RIGHT. AND THE GUN WAS POINTED AT THE FLOOR OR WAS IT
5 POINTED AT JERVIS?

6 A IT WAS POINTED AT HIM WHEN THEY WERE COMING FROM THE HALL.

7 Q IT WAS?

8 A (INDICATES AFFIRMATIVE RESPONSE)

9 Q OKAY. ALL RIGHT. AT THIS POINT IN TIME YOU SEE JERVIS AND
10 HE CONTINUES TO ADVANCE TOWARD MORRIS; IS THAT CORRECT?

11 A YES, SIR.

12 Q DID HE HAVE HIS HANDS UP? DID JERVIS HAVE HIS HANDS UP?

13 A NO, SIR.

14 Q DID HE SAY, "I'M LEAVING"?

15 A NO.

16 Q DID HE TRY TO GO OUT A DOOR? DID HE TRY TO DO ANYTHING?

17 A NO.

18 Q HE JUST KEPT COMING TOWARD MORRIS; IS THAT CORRECT?

19 A YES, SIR.

20 Q OKAY. NOW, AT SOME POINT AFTER THAT JERVIS TELLS MORRIS,
21 "IF YOU GOT IT OUT, YOU BETTER USE IT"?

22 A YES, SIR.

23 Q BUT THEN AFTER THAT MORRIS CONTINUES TO WALK BACKWARDS; IS
24 THAT NOT CORRECT?

25 A YES, SIR.

RONICA BUTLER -- CROSS BY MR. SUMNER

1 Q HE CONTINUES EVEN AFTER THIS STATEMENT FROM JERVIS POWERS HE
2 CONTINUES TO WALK BACKWARDS. HE POINTS THE GUN AT THE FLOOR; IS
3 THAT RIGHT?

4 A YES, SIR.

5 Q AND HE FIRES A SHOT INTO THE FLOOR; IS THAT RIGHT?

6 A YES, SIR.

7 Q YOU'RE IN THE LIVING ROOM, SO UNFORTUNATELY YOU'RE RIGHT
8 THERE, AREN'T YOU, RONICA?

9 A YES, SIR.

10 Q AND AT THAT POINT JERVIS POWERS CONTINUES TO ADVANCE TOWARD
11 MORRIS; IS THAT RIGHT?

12 A YES, SIR.

13 Q EVEN AFTER MORRIS HAS FIRED THE GUN INTO THE GROUND OR INTO
14 THE FLOOR AND IS CONTINUING TO WALK BACKWARDS IN HIS OWN HOME; IS
15 THAT RIGHT?

16 A YES, SIR.

17 Q OKAY. THEN THE SECOND SHOT IS FIRED; IS THAT RIGHT?

18 A YES, SIR.

19 Q NOW, YOU STAYED IN THE LIVING ROOM AREA OF THE HOME LONGER
20 THAN ANYBODY ELSE DID; ISN'T THAT RIGHT?

21 A YES, SIR.

22 Q YOU STAYED THERE WHILE EVERYBODY ELSE HIT THE DOOR OR WAS
23 GOING TOWARD THE DOOR?

24 A YES.

25 Q OKAY. AND THEN YOU SEE THE SECOND SHOT FIRED; IS THAT

1 RIGHT?

2 A YES, SIR.

3 Q AND THAT ALSO IS FIRED DOWN, ISN'T IT?

4 A YES.

5 Q AND ACTUALLY, IF YOU CAN LOOK AT ME HERE, IT HITS JERVIS
6 POWERS SOMEWHERE IN THIS AREA, ISN'T THAT RIGHT?

7 A YES.

8 Q OKAY. SO THAT'S THE SECOND SHOT DOWN. AND THEN
9 UNFORTUNATELY THE THIRD SHOT IS FIRED; IS THAT CORRECT?

10 A RIGHT.

11 Q BUT EVEN AFTER THE SECOND SHOT JERVIS -- WHERE JERVIS POWERS
12 HAD BEEN SHOT IN THE LOWER LEG AREA ISN'T IT TRUE THAT HE
13 CONTINUED TO ADVANCE TOWARD MORRIS?

14 A YES.

15 Q AND AT NO TIME DURING THIS ENTIRE ENCOUNTER DID JERVIS
16 POWERS EVER DO ANYTHING MORE THAN CONTINUE TOWARD MORRIS; ISN'T
17 THAT CORRECT?

18 A RIGHT.

19 Q AND ALSO WITH THE STATEMENT OF "IF YOU'VE GOT IT OUT, YOU
20 BETTER USE IT"?

21 A RIGHT.

22 MR. SUMNER: (OFF RECORD WITH DEFENDANT) THANK YOU. I
23 DON'T HAVE ANY OTHER QUESTIONS.

24 THE COURT: ALL RIGHT. REDIRECT?

25 MS. MONTS: NO FURTHER QUESTIONS, YOUR HONOR.

RONICA BUTLER -- CROSS BY MR. SUMNER

1 **THE COURT:** OKAY. THANK YOU, MA'AM. YOU MAY STEP DOWN.

2 **MS. MONTS:** YOUR HONOR, WE ASK THIS WITNESS BE EXCUSED.

3 **MR. SUMNER:** WITHOUT OBJECTION.

4 **THE COURT:** ALL RIGHT. YES, MA'AM, YOU'RE EXCUSED, MS.
5 BUTLER.

6 (WITNESS EXCUSED AT 10:09 A.M.)

7 **MS. MONTS:** YOUR HONOR, THE STATE CALLS RONNIE COOK.

8 **RONNIE COOK,** HAVING BEEN DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 **DIRECT EXAMINATION BY MS. MONTS:**

11 **Q** MR. COOK, YOUR FIRST NAME IS RONNIE?

12 **A** YES, MA'AM.

13 **Q** WHAT DO MOST PEOPLE CALL YOU?

14 **A** R.J.

15 **Q** R.J.? HOW OLD ARE YOU R.J.?

16 **A** TWENTY-FOUR.

17 **MR. SUMNER:** IF THE WITNESS COULD JUST LEAN FORWARD TO THE
18 MICROPHONE. I'M JUST HAVING TROUBLE HEARING EVERYTHING.

19 **Q** AND WHAT AREA OF TOWN DO YOU LIVE IN?

20 **A** FOUNTAIN INN.

21 **Q** AND HOW LONG HAVE YOU LIVED IN FOUNTAIN INN?

22 **A** ALL MY LIFE.

23 **Q** AND IN JANUARY OF 1998 WERE YOU IN SCHOOL OR WERE YOU
24 WORKING AT THAT TIME?

25 **A** NEITHER.

- 1 Q OKAY. AND DID YOU DRIVE BACK THEN?
- 2 A YES, MA'AM.
- 3 Q AND DID YOU HAVE A CAR?
- 4 A YES, MA'AM.
- 5 Q WHAT KIND OF CAR WAS IT?
- 6 A A CROWN VICTORIA.
- 7 Q AND DID YOU KNOW MORRIS SULLIVAN?
- 8 A YES, MA'AM.
- 9 Q HOW LONG HAD YOU KNOWN HIM?
- 10 A ALL MY LIFE.
- 11 Q ALL YOUR LIFE. SO AT THAT TIME YOU WERE HOW OLD IN JANUARY
- 12 OF '98?
- 13 A SIXTEEN.
- 14 Q YOU WERE SIXTEEN AND YOU HAD KNOWN MORRIS FOR 16 YEARS?
- 15 A YEAH.
- 16 Q AND HOW OFTEN DID YOU SEE HIM?
- 17 A JUST AROUND, ALL THE TIME.
- 18 Q WOULD YOU SEE HIM EVERY WEEK OR A COUPLE TIMES A WEEK?
- 19 A PROBABLY A COUPLE TIMES A WEEK.
- 20 Q A COUPLE TIMES A WEEK. AND HAD YOU EVER BEEN TO HIS HOUSE?
- 21 A YES, MA'AM.
- 22 Q HOW OFTEN WOULD YOU GO BY HIS HOUSE?
- 23 A PROBABLY COUPLE TIMES A WEEK.
- 24 Q SO WHENEVER YOU SAW HIM YOU KIND OF WENT BY HIS HOUSE?
- 25 A YEAH.

- 1 Q AND DO YOU KNOW WHAT STREET THAT HOUSE WAS ON?
- 2 A [REDACTED]
- 3 Q AND THAT'S IN FOUNTAIN INN?
- 4 A YES, MA'AM.
- 5 Q AND WHAT WOULD YOU DO WHEN YOU GOT TOGETHER WITH HIM?
- 6 A JUST CHILL, HANG OUT. WE'D HANG OUT AND WHATEVER.
- 7 Q DID YOU EVER SMOKE WEED?
- 8 A YES, MA'AM.
- 9 Q AND WHO ELSE WOULD YOU HANG OUT WITH THERE AT MORRIS'?
- 10 A WHOEVER THERE.
- 11 Q OKAY. SO THERE MIGHT BE A LOT OF PEOPLE THERE?
- 12 A YES, MA'AM.
- 13 Q WOULD YOU EVER HAVE PEOPLE WITH YOU WHEN YOU WENT OVER
- 14 THERE?
- 15 A YES, MA'AM, SOMETIMES.
- 16 Q DID YOU KNOW JERVIS POWERS?
- 17 A YES, MA'AM.
- 18 Q HOW LONG HAD YOU KNOWN HIM?
- 19 A ALL MY LIFE.
- 20 Q AND HOW OFTEN WOULD YOU SEE HIM?
- 21 A PROBABLY EVERY WEEK, COUPLE TIMES A WEEK.
- 22 Q WHO WOULD YOU SEE MORE?
- 23 A I'D SEE THEM ABOUT THE SAME.
- 24 Q AND WHAT WOULD YOU DO -- WHERE WOULD YOU SEE JERVIS WHEN YOU
- 25 SAW HIM?

RONNIE COOK -- DIRECT BY MS. MONTS

- 1 A PROBABLY AT HIS HOUSE, AROUND HIS NEIGHBORHOOD.
- 2 Q (GESTURE).
- 3 A AROUND HIS NEIGHBORHOOD.
- 4 Q AROUND HIS NEIGHBORHOOD?
- 5 A YEAH.
- 6 Q AND ON JANUARY 16TH OF 1998 WERE YOU IN SCHOOL THAT MORNING?
- 7 A NO, MA'AM.
- 8 Q SHOULD YOU HAVE BEEN IN SCHOOL THAT MORNING?
- 9 A YES, MA'AM.
- 10 Q SO YOU WERE SKIPPING SCHOOL?
- 11 A YES, MA'AM.
- 12 Q PARDON?
- 13 A YES, MA'AM.
- 14 Q OKAY. SO THAT MORNING DO YOU RECALL WHAT TIME YOU GOT UP
- 15 AND WHAT YOU DID?
- 16 A NO, MA'AM.
- 17 Q OKAY. WHEN YOU FIRST GOT UP DID YOU -- OKAY. LET'S GO
- 18 BEYOND THAT THEN. DID YOU GO DRIVE SOMEWHERE?
- 19 A YES, MA'AM.
- 20 Q WHAT TIME WOULD IT HAVE BEEN?
- 21 A IT WAS IN THE MORNING.
- 22 Q LIKE GIVE ME A TIME AROUND?
- 23 A LIKE 8:00. 9:00.
- 24 Q OKAY. AND DO YOU RECALL GOING -- WHERE YOU WENT WHEN YOU
- 25 GOT UP AND GOT IN YOUR CAR?

1 A I'M REALLY NOT SURE.

2 Q DID YOU PICK UP ANYBODY?

3 A WOLF AND TIM, I THINK, AND FRANK,

4 Q OKAY. DID YOU PICK UP TIM FIRST?

5 A PROBABLY.

6 Q AND HOW CLOSE ARE YOU AND TIM?

7 A WE COOL, YOU KNOW WHAT I'M SAYING.

8 Q OKAY. AND WHAT'S TIM'S LAST NAME, IF YOU KNOW?

9 A TUCKER.

10 Q OKAY. AND YOU'RE GOOD FRIENDS WITH TIM?

11 A YES, MA'AM.

12 Q AND HOW OFTEN WOULD YOU SEE TIM?

13 A ABOUT EVERY DAY.

14 Q EVERY DAY. AND WHAT WERE YOU AND TIM GOING TO DO THAT DAY
15 WHEN YOU GOT IN YOUR CAR?

16 A RIDE AND SMOKE WEED, WHATEVER.

17 Q OKAY. AND DID YOU RIDE AND SMOKE WEED?

18 A YES, MA'AM.

19 Q AND WHO ELSE DID YOU PICK UP AFTER YOU PICKED UP TIM?

20 A CEDRICK AND FRANK.

21 Q WHAT'S CEDRICK'S LAST NAME?

22 A EVANS.

23 Q OKAY. AND WHO ELSE?

24 A FRANK.

25 Q FRANK. WHAT'S FRANK'S LAST NAME?

- 1 A GOLDEN.
- 2 Q AND WHAT WERE THE FOUR OF YOU BOYS DOING THAT MORNING?
- 3 A RIDING AND SMOKING WEED.
- 4 Q SO ALL FOUR OF YOU WERE?
- 5 A YES, MA'AM.
- 6 Q AND DID YOU EVENTUALLY GO TO JERVIS' HOUSE?
- 7 A YES, MA'AM.
- 8 Q AND DID YOU GET OUT OF THE CAR THERE?
- 9 A YES, MA'AM.
- 10 Q AND DID YOU GO TO JERVIS' HOUSE OR THE HOUSE NEXT DOOR?
- 11 A BOTH OF THEM.
- 12 Q OKAY. SO WHAT HAPPENED WHEN YOU WENT TO JERVIS' HOUSE?
- 13 A I THINK SOMEBODY SAID HE WAS NEXT DOOR. HE DIDN'T COME TO
- 14 THE DOOR.
- 15 Q OKAY. SO DID YOU GO NEXT DOOR?
- 16 A YES, MA'AM.
- 17 Q AND DID YOU SEE NICOLE?
- 18 A YES, MA'AM.
- 19 Q DID YOU KNOW NICOLE LADSON?
- 20 A YES, MA'AM.
- 21 Q OKAY. AND WHAT DID YOU SAY TO HER?
- 22 A I DON'T REMEMBER.
- 23 Q DID YOU ASK IF JERVIS WAS THERE?
- 24 A OH, YES, MA'AM.
- 25 Q OKAY. AND DID YOU---

1 **MR. SUMNER:** YOUR HONOR, I HATE TO KEEP OBJECTING ON
2 LEADING QUESTIONS, BUT IF SHE WOULD JUST LET HIM ANSWER THE
3 QUESTION.

4 **THE COURT:** OKAY. ALL RIGHT. SUSTAINED.

5 **Q** DID YOU SEE JERVIS?

6 **A** YES, MA'AM.

7 **Q** OKAY. AND WHAT DID YOU SAY TO HIM?

8 **A** PROBABLY ASKED HIM IF HE WANTED TO SMOKE OR WHATEVER.

9 **Q** AND HOW LONG HAD YOU AND TIMOTHY AND CEDRICK AND FRANK BEEN
10 RIDING AROUND?

11 **A** NOT LONG.

12 **Q** LIKE GIVE ME, I MEAN, A ROUGH BALLPARK ESTIMATE.

13 **A** PROBABLY ABOUT FIVE, TEN MINUTES, LONG ENOUGH TO GET OVER
14 THERE.

15 **Q** OKAY. SO YOU KIND OF WENT AND PICKED EVERYBODY UP AND THEN
16 WENT OVER THERE?

17 **A** YES, MA'AM.

18 **Q** HOW MANY PEOPLE CAN YOU FIT IN YOUR CAR?

19 **A** FIVE.

20 **Q** SO IT'S AROUND NINE O'CLOCK AT THIS TIME?

21 **A** YES, MA'AM.

22 **Q** AND WHAT DID YOU DO -- DID JERVIS COME WITH YOU?

23 **A** YES, MA'AM.

24 **Q** AND WHAT DID YOU DO AFTER JERVIS WAS IN THE CAR?

25 **A** WENT AND GOT A CIGAR AND RIDE AND SMOKED.

- 1 Q OKAY. YOU GOT A CIGAR?
- 2 A UH-HUH (AFFIRMATIVE).
- 3 Q AND SOME PEOPLE DON'T KNOW WHAT THAT MEANS. IF YOU GET A
- 4 CIGAR, WHAT ARE YOU DOING?
- 5 A ROLLING WEED.
- 6 Q AND HOW LONG DID THE FIVE OF YOU DO THIS?
- 7 A JUST LONG ENOUGH TO SMOKE IT, YOU KNOW WHAT I' SAYING. I'M
- 8 NOT SURE. PROBABLY 10, 15 MINUTES.
- 9 Q OKAY. WELL, WHAT DID YOU DO UNTIL ABOUT NOON?
- 10 A TILL -- I'M NOT SURE, MISS.
- 11 Q OKAY. DID YOU EVENTUALLY GO TO MORRIS SULLIVAN'S HOUSE?
- 12 A YES, MA'AM.
- 13 Q AND DO YOU KNOW WHY YOU WENT TO MORRIS SULLIVAN'S HOUSE?
- 14 A YES, MA'AM.
- 15 Q AND DO YOU KNOW WHY YOU WENT TO MORRIS SULLIVAN'S HOUSE?
- 16 A TO GET SOME MORE WEED.
- 17 Q AND DID -- WHEN YOU GOT -- WHAT HAPPENED ONCE YOU GOT TO
- 18 MORRIS' HOUSE?
- 19 A WE GOT OUT AND WENT IN.
- 20 Q DID EVERYBODY GET OUT AND GO IN?
- 21 A YES, MA'AM.
- 22 Q WHO OPENED THE DOOR?
- 23 A MORRIS.
- 24 Q AND DID HE LET YOU IN?
- 25 A YES, MA'AM.

- 1 Q AND DID HE KNOW ALL FIVE OF YOU?
- 2 A YES, MA'AM.
- 3 Q WAS HE GLAD TO SEE YOU?
- 4 A I DON'T REMEMBER HOW IT WENT BUT---
- 5 Q WAS HE MAD?
- 6 A NO.
- 7 Q DID HE INVITE YOU IN?
- 8 A YES, MA'AM.
- 9 Q AND WHAT DID YOU DO WHEN YOU GOT INSIDE?
- 10 A I STARTED PLAYING A GAME AND SMOKED.
- 11 Q WHAT KIND OF GAME?
- 12 A PLAYSTATION.
- 13 Q SO YOU WERE DOING THE PLAYSTATION AND SMOKING WEED?
- 14 A YES, MA'AM.
- 15 Q WHAT WAS EVERYBODY ELSE DOING?
- 16 A SITTING AROUND.
- 17 Q DO YOU RECALL WHO WAS ALREADY INSIDE?
- 18 A I THINK MORRIS, TAVIS AND RONICA.
- 19 Q DID YOU KNOW TAVIS AND RONICA?
- 20 A WELL, I KNEW TAVIS.
- 21 Q HOW LONG HAD YOU KNOWN TAVIS?
- 22 A ALL MY LIFE.
- 23 Q SO YOU WERE -- WHAT WAS FRANK AND CEDRICK -- YEAH, FRANK AND
- 24 CEDRICK AND TIMOTHY DOING AT THIS TIME?
- 25 A SITTING AROUND.

- 1 Q AND WHAT WAS JERVIS DOING?
- 2 A STANDING IN THE FLOOR.
- 3 Q AND WAS HE HAVING A CONVERSATION WITH ANYBODY?
- 4 A WELL, HIM AND MORRIS. HIM AND MORRIS.
- 5 Q WERE TALKING?
- 6 A YES, MA'AM.
- 7 Q COULD YOU TELL WHAT THEY WERE TALKING ABOUT?
- 8 A NO, MA'AM.
- 9 Q WERE YOU PAYING ANY ATTENTION TO WHAT THEY WERE TALKING
- 10 ABOUT?
- 11 A NOT REALLY.
- 12 Q DID YOU HEAR JERVIS SAY ANYTHING TO MORRIS?
- 13 A NO -- NOT -- NO, MA'AM. NOT THAT---
- 14 Q DID HE ASK HIM ABOUT A SHOOTING?
- 15 A OH, YES, MA'AM.
- 16 Q IF YOU RECALL, WHAT DO YOU RECALL?
- 17 A HE SAID SOMEBODY SHOT AT MY HOUSE. DO YOU KNOW WHAT
- 18 HAPPENED?
- 19 Q AND MORRIS SAID WHAT?
- 20 A HE SAID NO.
- 21 Q WHAT WAS THE CONVERSATIONAL TONE? WHAT WAS IT? WAS IT JUST
- 22 REGULAR TALKING? OR WAS IT HEATED OR...
- 23 A NO, IT WASN'T HEATED.
- 24 Q JUST REGULAR TALKING?
- 25 A YES, MA'AM.

RONNIE COOK -- DIRECT BY MS. MONTS

1 Q SO WHAT HAPPENED AFTER YOU NOTICED THEY WERE TALKING? DID
2 THEY EVER COME INTO THE LIVING ROOM?

3 A NO. THEY WENT DOWN THE HALL.

4 Q AND YOU -- YOU SAW THEM WALK DOWN THE HALL?

5 A YES, MA'AM.

6 Q WAS IT JUST THE TWO OF THEM?

7 A YES, MA'AM.

8 Q HOW LONG WERE THEY GONE?

9 A ABOUT FIVE MINUTES.

10 Q DID YOU KNOW WHAT THEY WERE DOING IN THE BACK?

11 A NO, MA'AM.

12 Q COULD YOU HEAR WHAT WAS GOING ON IN THE BACK?

13 A NO, MA'AM.

14 Q WHAT WERE YOU PEOPLE IN THE LIVING ROOM DOING?

15 A PLAYING THE GAME. PLAYING THE PLAYSTATION.

16 Q NOW, YOU KNEW MORRIS AND JERVIS, YOU KNEW BOTH OF THEM THEIR
17 WHOLE LIFE. WHAT WAS THEIR SIZE? WHO WAS BIGGER OR WERE THEY
18 VERY CLOSE?

19 A WELL, REALLY, I THINK MORRIS MIGHT HAVE BEEN A LITTLE
20 BIGGER.

21 Q A LITTLE -- MORRIS WAS A LITTLE BIGGER?

22 A YES, MA'AM.

23 Q WHEN THEY CAME BACK WHAT DID YOU NOTICE?

24 A MORRIS HAD HIS GUN OUT.

25 Q IM' SORRY. HE WHAT?

RONNIE COOK -- DIRECT BY MS. MONTIS

1 A MORRIS HAD HIS GUN OUT.

2 Q AND WHAT WAS HE DOING WITH IT?

3 A HE WAS WALKING IN THE FRONT ROOM.

4 Q WAS HE POINTING IT SOMEWHERE?

5 A I THINK HE JUST HAD IT OUT IN HIS HAND AT THE TIME.

6 Q AND WHAT DID YOU DO ONCE YOU SAW MORRIS HAD A GUN IN HIS
7 HAND?

8 A I WENT TOWARDS THE DOOR.

9 Q AND WHAT DID EVERYBODY ELSE DO? YOU SAY TOWARDS THE DOOR?

10 A YES, MA'AM.

11 Q DOES THAT MEAN YOU WENT OUTSIDE OR YOU STOOD INSIDE -- IN BY
12 THE DOOR?

13 A I STOOD FOR A MINUTE. BUT BY THE TIME I GOT THERE, YOU KNOW
14 WHAT I'M SAYING, YEAH, I WAS GOING OUT THE DOOR.

15 Q WHAT HAPPENED BEFORE YOU GOT OUT THE DOOR?

16 A I HEARD -- HE SHOT IN THE FLOOR, I THINK. I HEARD A SHOT.

17 Q SO WHILE YOU WERE INSIDE YOU HEARD A GUNSHOT?

18 A YEAH. ON MY WAY OUT THE DOOR I HEARD A GUNSHOT.

19 Q WHERE WAS EVERYBODY ELSE?

20 A COMING ON OUT THE DOOR TOO.

21 Q WERE YOU THE FIRST ONE?

22 A REALLY, I CAN'T RECALL.

23 Q OKAY. WERE YOU PUSHING PEOPLE OUT OF YOUR WAY TO GET OUT
24 THE DOOR OR...

25 A I CAN'T RECALL.

RONNIE COOK -- DIRECT BY MS. MONTS

1 Q WERE THERE PEOPLE BEHIND YOU?

2 A I REALLY DON'T -- I DON'T KNOW.

3 Q DID YOU SEE -- DID JERVIS HAVE A WEAPON?

4 A NO, MA'AM.

5 Q WHEN HE WAS IN THE CAR WITH YOU DID HE HAVE A WEAPON?

6 A NO, MA'AM.

7 Q DID JERVIS EVER -- THIS WHOLE TIME YOU WERE IN MORRIS' HOUSE

8 DID HE EVER TRY TO PUNCH OR KICK MORRIS OR ANYTHING?

9 A NOT THAT I SEEN.

10 Q DID YOU SEE WHERE THE GUNSHOT HIT? YOU SAY YOU HEARD A

11 GUNSHOT.

12 A UH-HUH (AFFIRMATIVE).

13 Q DID YOU SEE WHERE IT HIT?

14 A NO, MA'AM.

15 Q DID YOU HEAR ANYTHING ELSE ONCE YOU GOT OUTSIDE?

16 A I HEARD A COUPLE MORE SHOTS.

17 Q (GESTURE)

18 A A COUPLE MORE SHOTS.

19 Q YOU HEARD A COUPLE MORE SHOTS?

20 A YES, MA'AM.

21 Q WHAT DID EVERYBODY ELSE DO?

22 A THEY RAN OUT. THEY RAN OUT TOO.

23 Q WHAT IS THE NEXT THING YOU SAW?

24 A UH...

25 Q DID TAVIS AND THE GIRL AND MORRIS COME OUT?

- 1 A I'M NOT SURE. I THINK..
- 2 Q YOU THINK SO?
- 3 A YES, MA'AM.
- 4 Q DO YOU RECALL MORRIS COMING OUT OF THE HOUSE?
- 5 A I THINK. I'M NOT SURE, MISS.
- 6 Q DID YOU GO BACK IN THE HOUSE?
- 7 A YES, MA'AM.
- 8 Q AND WHAT DID YOU DO AND WHAT DID YOU SEE WHEN YOU WENT BACK
- 9 IN THE HOUSE?
- 10 A I THINK ME AND MORRIS WERE PUTTING HIM IN THE CAR.
- 11 Q OKAY. WHEN YOU WALKED BACK IN THAT HOUSE, WHAT DO YOU SEE?
- 12 A JERVIS LAYING ON THE FLOOR.
- 13 Q DID YOU SEE ANY BLOOD?
- 14 A NO, MA'AM.
- 15 Q DID HE TALK TO YOU?
- 16 A NO, MA'AM.
- 17 Q DID YOU TALK TO HIM?
- 18 A JUST THE USUAL, WHAT YOU WOULD SAY, JUST TRYING TO WAKE HIM
- 19 UP OR WHATEVER, YOU KNOW.
- 20 Q BUT HE DIDN'T TALK TO YOU?
- 21 A NO, MA'AM.
- 22 Q COULD YOU TELL IF HE WAS BREATHING?
- 23 A NO, MA'AM.
- 24 Q COULD YOU SEE ANY -- COULD YOU SEE ANY BULLETS?
- 25 A NO, MA'AM.

RONNIE COOK -- DIRECT BY MS. MONTS

1 Q AT SOME POINT DID YOU CALL 911?

2 A YES, MA'AM.

3 Q WAS THAT -- AT WHAT POINT DID YOU DO THAT?

4 A IT WAS AFTER HE SHOT HIM.

5 Q AND DID YOU -- HAD YOU SEEN -- WAS IT AFTER YOU SAW JERVIS
6 LYING ON THE FLOOR?

7 A YES, MA'AM.

8 Q AND DID YOU SPEAK TO ANYONE WHEN YOU CALLED 911?

9 A NO, MA'AM, I DON'T THINK SO.

10 Q DO YOU RECALL WHAT YOU DID WITH THE RECEIVER?

11 A I THINK I LAID IT DOWN.

12 Q OKAY. SO YOU DIDN'T ASK ANYBODY TO SEND AN AMBULANCE OR
13 ANYTHING?

14 A NO, MA'AM. WE PUT HIM IN THE CAR.

15 Q OKAY. YOU AND SOMEBODY ELSE PICKED HIM UP?

16 A YES, MA'AM.

17 Q DID ANYBODY ELSE, IF YOU KNOW, COME BACK IN THE HOUSE?

18 A NOT THAT I KNOW OF.

19 Q IS IT POSSIBLE THAT SOME OF THE OTHERS CAME BACK IN THE
20 HOUSE?

21 A I DON'T KNOW.

22 Q WHAT WAS YOUR DEMEANOR AT THIS TIME? I MEAN, THIS ISN'T AN
23 EVERYDAY OCCURRENCE. I KNOW YOU'RE REAL CALM TODAY. BUT ON THIS
24 DAY HOW WERE YOU?

25 A I WAS SCARED.

RONNIE COOK -- DIRECT BY MS. MONTS

1 Q WERE YOU IN -- WERE YOU SURPRISED THAT THIS HAPPENED?

2 A YES, MA'AM.

3 Q I MEAN, THIS ISN'T SOMETHING YOU SEE EVERY DAY?

4 A NO, MA'AM.

5 MR. SUMNER: YOUR HONOR, I WOULD OBJECT TO THE RELEVANCE.
6 AND I DON'T KNOW WHERE THIS IS GOING.

7 THE COURT: WELL, ALL RIGHT. GO AHEAD. I'M GOING TO
8 OVERRULE THE OBJECTION, BUT LET'S MOVE ON.

9 Q PLEASE CONTINUE. WHAT DID YOU DO? YOU SAID YOU AND
10 SOMEBODY PICKED UP JERVIS. WHERE DID YOU TAKE HIM?

11 A HILLCREST HOSPITAL.

12 Q AND WHERE DID YOU PUT HIM TO GET HIM THERE?

13 A IN THE BACK SEAT.

14 Q OF WHOSE CAR?

15 A MY CAR.

16 Q WHO WENT WITH YOU?

17 A CEDRICK AND TIM.

18 Q WHERE DID FRANK -- DIDN'T FRANK RIDE OVER THERE WITH YOU?

19 A YES, MA'AM.

20 Q HE DIDN'T LEAVE WITH YOU?

21 A NO, MA'AM.

22 Q WHO DID HE GO WITH, IF YOU KNOW?

23 A I THINK TAVIS.

24 Q WHAT WAS MORRIS SAYING AFTER HE SHOT JERVIS AND CAME
25 OUTSIDE?

RONNIE COOK -- DIRECT BY MS. MONT'S

1 A I DON'T REMEMBER.

2 Q WHAT WAS HE DOING?

3 A I DON'T REMEMBER.

4 Q I MEAN, DID HE JUST COME OUTSIDE AND SIT DOWN OR DID HE DO
5 SOMETHING?

6 A WELL, HE WAS HELPING ME PUT HIM IN THE CAR.

7 Q OKAY. WHEN YOU GOT TO THE HOSPITAL WHERE DID YOU GO? DID
8 YOU GO TO THE EMERGENCY ROOM?

9 A YES, MA'AM.

10 Q DESCRIBE WHAT HAPPENED. DID PERSONNEL COME OUT?

11 A YES, MA'AM.

12 Q AND WHAT DID THEY DO?

13 A THEY TOOK HIM -- TOOK HIM OUT THE CAR AND RUSHED HIM INSIDE.

14 Q DID THEY START DOING -- IF YOU KNOW, DID THEY START DOING
15 ANY KIND OF MEDICAL TREATMENT ON HIM?

16 A I DON'T KNOW.

17 Q WHEN THEY WERE GETTING HIM OUT OF THE CAR DO YOU KNOW IF
18 THEY TOOK HIS T-SHIRT OFF?

19 A I DON'T KNOW.

20 Q DO YOU KNOW IF THERE WAS BLOOD ON HIS SHIRT?

21 A NO, MA'AM.

22 Q WHEN -- HOW LONG DID YOU STAY AT THE HOSPITAL?

23 A IT WAS A COUPLE OF HOURS.

24 Q DID JERVIS' FAMILY COME UP THERE?

25 A YES, MA'AM.

1 Q AT SOME POINT DID SOMEONE COME AND TELL YOU THAT JERVIS HAD
2 DIED?

3 A I THINK THEY TOLD THE FAMILY.

4 Q DID THE POLICE ASK TO SPEAK TO YOU?

5 A YES, MA'AM.

6 Q DID THEY ASK TO SEARCH YOUR CAR?

7 A YES, MA'AM.

8 Q AND DID THEY SEARCH YOUR CAR?

9 A YES, MA'AM.

10 Q AND -- SO -- I'M SORRY. YOU SAID THE POLICE DID GET A SHIRT
11 OUT OF YOUR CAR?

12 A YES, MA'AM.

13 Q THAT WAS A SHIRT FROM THE BACKSEAT OF YOUR CAR?

14 A YES, MA'AM.

15 Q NOW, YOU SAID THAT YOU AND THE FOUR MEN YOU WERE WITH WERE
16 ALL FRIENDS OF MORRIS'?

17 A YES, MA'AM.

18 Q AND YOU HAD ALL PRETTY MUCH KNOWN EACH OTHER ALL YOUR LIVES?

19 A YES, MA'AM

20 Q AND YOU WERE IN THE HOUSE AND YOU SAW MORRIS WITH THE GUN?

21 A YES, MA'AM.

22 Q AND YOU KNEW HIM REALLY WELL?

23 A YES, MA'AM.

24 MR. SUMNER: YOUR HONOR, I'M GOING TO OBJECT. I DON'T KNOW
25 WHERE THIS IS GOING. IT SOUNDS LIKE A HYPOTHETICAL, KIND OF A

RONNIE COOK -- DIRECT BY MS. MONTIS

1 SPECULATION -- I DON'T---

2 THE COURT: ALL RIGHT. SUSTAINED.

3 Q IS THERE SOME REASON YOU DIDN'T STOP MORRIS FROM SHOOTING
4 JERVIS?

5 MR. SUMNER: YOUR HONOR, AGAIN, I WOULD OBJECT. I DON'T
6 THINK THAT'S A RELEVANT QUESTION. HYPOTHETICAL OF WHAT HE MIGHT
7 HAVE DONE OR -- I MEAN, THAT'S JUST NOW WHY WE'RE HERE.

8 THE COURT: SUSTAINED.

9 Q WHO WAS AT THE HOSPITAL WITH YOU?

10 A TIM AND CEDRICK.

11 Q AND DID THEY STAY AS LONG AS YOU DID?

12 A YES, MA'AM.

13 Q ONE MORE THING. WHEN MORRIS CAME OUT AND YOU SAID YOU AND
14 YOU THOUGHT IT WAS MORRIS CARRIED JERVIS OUT OF THE HOUSE --
15 EXCUSE ME -- YEAH, CARRIED JERVIS OUT OF THE HOUSE, WHAT WAS
16 MORRIS SAYING?

17 A I'M NOT SURE.

18 Q OKAY. I'M GOING TO SHOW YOU PRIOR SWORN TESTIMONY. LET'S
19 SEE. OKAY. YOU'RE ASKED, "WHAT DID YOU DO?" YOU SAID YOU
20 DROPPED THE PHONE. AND THEN YOU'RE ASKED, "WHAT WAS MORRIS
21 SAYING?" AND WHAT WAS YOUR ANSWER?

22 A "GET HIM OUT OF HERE."

23 Q DO YOU RECALL HIM SAYING THAT, "GET HIM OUT OF HERE"?

24 A WELL, NOT REALLY, YOU KNOW WHAT I'M SAYING. I MIGHT HAVE
25 DID THEN, BUT NOT NOW I DON'T.

RONNIE COOK -- DIRECT BY MS. MONTIS

1 Q OKAY. BUT AT THE TIME WAS IT -- I'M TRYING TO GET YOU TO
2 DESCRIBE THE SITUATION. WAS IT HECTIC OR FRENZIED OR---

3 A YES, MA'AM, IT WAS FRENZIED.

4 Q AND YOU PREVIOUSLY SAID THAT MORRIS SULLIVAN SAID, "GET HIM
5 OUT OF HERE"?

6 A YES, MA'AM.

7 MS. MONTIS: THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: CROSS EXAMINATION, MR. SUMNER.

9 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
10 COURT.

11 CROSS EXAMINATION BY MR. SUMNER:

12 Q YOU GO BY R.J.; IS THAT RIGHT?

13 A YES, SIR.

14 Q OKAY. GOOD MORNING, R.J. YOU WERE THE DRIVER OF THE CAR
15 THAT HAD THE GROUP OF YOUNG MEN IN IT?

16 A YES, SIR.

17 Q YOU HAD PICKED UP SOME OTHER PEOPLE. THE LAST PERSON YOU
18 PICKED UP THAT MORNING WAS JERVIS POWERS; IS THAT RIGHT?

19 A YES, SIR.

20 Q OKAY. AND YOU ALL TALKED WITH JERVIS PRIOR TO HIM GETTING
21 INTO YOUR CAR, DIDN'T YOU?

22 A YES, SIR.

23 Q YOU'VE ALREADY TALKED ABOUT Y'ALL RIDING AROUND SMOKING
24 MARIJUANA. NO QUESTION ABOUT THAT?

25 A NO, SIR.

RONNIE COOK -- CROSS BY MR. SUMNER

1 Q YOU ALL GET TO MORRIS' HOUSE?

2 A YES, SIR.

3 Q AND YOU HEAR JERVIS CONFRONT MORRIS ABOUT THE SHOTS IN THE
4 HOUSE?

5 A YES, SIR.

6 Q AND THEN YOU HEARD MORRIS SAY TO JERVIS SOMETHING TO THE
7 EFFECT OF "GET OUT OF MY FACE," IS THAT RIGHT?

8 A YES, SIR.

9 Q THEN MORRIS LEAVES THE LIVING ROOM, GOES THROUGH THE
10 KITCHEN; IS THAT RIGHT?

11 A YES, SIR.

12 Q BECAUSE YOU HAD TO GO THAT WAY IN MORRIS' HOME TO GET TO THE
13 BEDROOM; ISN'T THAT RIGHT?

14 A YES, SIR.

15 Q OKAY. AND THAT'S WHAT HAPPENS?

16 A YES, SIR.

17 Q OKAY. BUT THEN AFTER MORRIS SAYS THAT TO JERVIS, FOR HIM TO
18 GET OUT OF HIS FACE, YOU SEE JERVIS TAKE HIS COAT OFF, ISN'T THAT
19 RIGHT?

20 A YES, SIR.

21 Q OKAY. AND IT'S CORRECT -- ISN'T IT, R.J.? -- THAT YOUR
22 IMPRESSION OF JERVIS WHEN HE TOOK HIS COAT OFF WAS THAT HE WAS
23 READY TO FIGHT MORRIS?

24 A YES, SIR.

25 Q THAT'S THE WAY IT APPEARED TO YOU, ISN'T IT?

1 A YES, SIR.

2 Q JERVIS, AFTER TAKING HIS COAT OFF, R.J., HE FOLLOWS THE SAME
3 PATH THAT MORRIS TOOK AND GOES TO THE BACK?

4 A YES, SIR.

5 Q TO MORRIS' BEDROOM?

6 A YES, SIR.

7 Q YOU DIDN'T HEAR MORRIS INVITE JERVIS TO GO BACK THERE, DID
8 HE?

9 A NO, SIR.

10 Q AND IN FACT JERVIS WENT BACK THERE AFTER MORRIS' BACK WAS
11 TURNED AND HE ALREADY HAD GONE; IS THAT CORRECT?

12 A YES, SIR.

13 Q NOW, R.J., YOU WERE IN THE LIVING ROOM WHEN MORRIS BACKED
14 INTO THE LIVING ROOM FROM THE KITCHEN WITH THE GUN IN HIS HAND;
15 IS THAT RIGHT?

16 A YES, SIR.

17 Q AND ISN'T IT CORRECT THAT YOU HEARD MORRIS SULLIVAN TELL
18 JERVIS POWERS, "GET OUT OF HERE"?

19 A I GUESS.

20 Q I'M SORRY. DID YOU?

21 A I GUESS. I'M REALLY NOT SURE WHAT ALL WAS SAID.

22 Q WOULD YOU LIKE FOR ME TO REFRESH YOUR MEMORY AS TO PRIOR
23 TESTIMONY THAT YOU HAVE GIVEN?

24 A YES, SIR.

25 Q OKAY. I'LL BE HAPPY TO. (PAUSE) I'M GOING TO ASK YOU TO

RONNIE COOK -- CROSS BY MR. SUMNER

1 LOOK WITH ME. OKAY?

2 A OKAY.

3 Q TAKE YOUR TIME. THE QUESTION -- THE ANSWER IS -- LET ME
4 JUST TRY TO CLUE YOU IN TO THIS TRANSCRIPT. YOU'RE DESCRIBING
5 IN PREVIOUS TESTIMONY ABOUT MORRIS COMING OUT WITH A PISTOL. AND
6 THE QUESTION HERE IS: "WAS HE SAYING ANYTHING?" AND YOUR ANSWER
7 WAS: "GET ON OUT OF HERE AND STUFF LIKE THAT." IS THAT RIGHT?

8 A YES, SIR.

9 Q OKAY. AND THAT'S WHAT YOU TESTIFIED TO BEFORE, RIGHT?

10 A YES, SIR.

11 Q AND IN FACT, MORRIS, WHEN HE SAID, "GET ON OUT OF HERE" TO
12 JERVIS POWERS, HE HAD THE GUN POINTED AT THE GROUND, DIDN'T HE?

13 A YES, SIR.

14 Q MORRIS HAD THE GUN POINTED DOWN WHEN HE SAID THAT, TOWARDS
15 THE FLOOR; ISN'T THAT CORRECT?

16 A YES, SIR.

17 Q YOU SAID EARLIER THAT AFTER THE SHOOTING MORRIS ALONG WITH
18 ONE OR TWO OTHER PEOPLE HELPED GET JERVIS INTO YOUR CAR; IS THAT
19 RIGHT?

20 A YES, SIR.

21 Q THEN YOU DROVE HIM TO THE HOSPITAL, AS YOU'VE ALREADY
22 TESTIFIED?

23 A YES, SIR.

24 Q NOW, ARE YOU PRETTY FAMILIAR WITH MORRIS' HOME?

25 A YES, SIR.

RONNIE COOK -- CROSS BY MR. SUMNER.

1 Q YOU HAD BEEN OVER THERE NUMEROUS TIMES; IS THAT RIGHT, R.J.?

2 A YES, SIR.

3 Q OKAY. WOULD YOU AGREE WITH ME THAT THE ONLY WAY TO GET FROM
4 THE LIVING ROOM TO MORRIS' BEDROOM WAS TO GO THROUGH THE KITCHEN?

5 A YES, SIR.

6 Q ISN'T THAT RIGHT?

7 A YES.

8 Q THERE WAS NO -- THERE WAS A WALL THERE AND YOU HAD TO GO
9 AROUND THAT WAY; YOU COULDN'T GO STRAIGHT THROUGH?

10 A YES, SIR.

11 Q OKAY. AND IN THAT KITCHEN THERE IS A BACK DOOR THAT LEADS
12 OUT INTO THE BACK YARD; ISN'T THAT RIGHT?

13 A YES, SIR.

14 Q OKAY.

15 MR. SUMNER: ONE SECOND, PLEASE, YOUR HONOR.

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

17 MR. SUMNER: (OFF RECORD WITH DEFENDANT) THANK YOU. I
18 DON'T HAVE ANY OTHER QUESTIONS.

19 THE COURT: REDIRECT?

20 MS. MONTS: NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN.

22 MS. MONTS: WE ASK THIS WITNESS BE EXCUSED.

23 THE COURT: ALL RIGHT.

24 MR. SUMNER: NO OBJECTION, YOUR HONOR.

25 THE COURT: OKAY. HE'S EXCUSED.

(WITNESS EXCUSED AT 10:35 A.M.)

MS. MONTS: YOUR HONOR, THE STATE CALLS CEDRICK EVANS.

CEDRICK EVANS, HAVING BEEN DULY SWORN,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. MONTS:

Q CEDRICK, HOW OLD ARE YOU?

A TWENTY-SIX.

Q SPEAK UP REAL LOUD.

A OKAY. TWENTY-SIX.

Q TALK RIGHT INTO THERE. AND WHAT AREA OF TOWN DO YOU LIVE
IN?

A GREENVILLE.

Q AND DID YOU EVER LIVE IN FOUNTAIN INN?

A YES, MA'AM.

Q HOW LONG DID YOU LIVE IN FOUNTAIN INN?

A BASICALLY ALL MY LIFE.

Q AND IN JANUARY OF 1998 HOW OLD WERE YOU?

A AROUND 18.

Q AND DID YOU KNOW MORRIS SULLIVAN?

A YES, MA'AM.

Q HOW LONG HAD YOU -- WHEN YOU WERE 18, HOW LONG HAD YOU KNOWN
HIM?

A I WOULD SAY FOR ABOUT THREE YEARS.

Q I'M SORRY?

A I SAID PROBABLY ABOUT THREE YEARS.

- 1 Q HOW WELL DID YOU KNOW HIM? HOW OFTEN WOULD YOU SEE HIM?
- 2 A WE STAYED IN THE SAME NEIGHBORHOOD AT ONE TIME. BUT---
- 3 Q (GESTURE)
- 4 A I SAID WE STAYED IN THE SAME NEIGHBORHOOD AT ONE TIME.
- 5 Q SO HOW OFTEN WOULD YOU SEE HIM AT THAT TIME? WOULD YOU SEE
- 6 HIM EVERY DAY OR ONCE A WEEK OR...
- 7 A BASICALLY ABOUT EVERY DAY.
- 8 Q AND HOW LONG WAS THAT, FOR MONTHS OR A YEAR OR HOW LONG
- 9 WOULD YOU HAVE SEEN HIM EVERY DAY?
- 10 A PROBABLY SOME YEARS.
- 11 Q FOR ABOUT A YEAR?
- 12 A YES, MA'AM.
- 13 Q DID YOU EVER GO TO HIS HOUSE?
- 14 A YES, MA'AM.
- 15 Q HOW OFTEN WOULD YOU HAVE GONE TO HIS HOUSE?
- 16 A PROBABLY ABOUT ONCE OR TWICE A WEEK.
- 17 Q AND WHAT WOULD YOU DO AT HIS HOUSE?
- 18 A PLAY NINTENDO.
- 19 Q AND WOULD YOU EVER SMOKE MARIJUANA OVER THERE?
- 20 A I WASN'T SMOKING THEN.
- 21 Q OKAY. NOT AT THAT TIME?
- 22 A NOT AT THAT TIME.
- 23 Q OKAY. DID YOU KNOW JERVIS POWERS?
- 24 A YES, MA'AM.
- 25 Q HOW LONG DID YOU KNOW HIM?

1 A I'M GOING TO SAY ABOUT TWO YEARS.

2 Q AND HOW OFTEN WOULD YOU SEE HIM?

3 A AT SCHOOL.

4 Q SO EVERY DAY AT SCHOOL?

5 A YES, MA'AM.

6 Q AND DID YOU KNOW TIMOTHY TUCKER?

7 A YES, MA'AM.

8 Q HOW DO YOU KNOW HIM?

9 A SCHOOL.

10 Q AND WOULD YOU SEE -- HOW OFTEN WOULD YOU SEE HIM?

11 A NOT ALL THE TIME.

12 Q WAS HE A GOOD FRIEND OF YOURS?

13 A YES, MA'AM.

14 Q HOW ABOUT R.J. COOK?

15 A THAT'S MY COUSIN.

16 Q THAT'S YOUR COUSIN?

17 A YES, MA'AM.

18 Q HOW OFTEN WOULD YOU SEE HIM?

19 A BASICALLY LIKE EVERY WEEKEND OR SO.

20 Q OKAY. AND HOW ABOUT FRANK GOLDEN? HOW DID YOU KNOW HIM?

21 OR DID YOU KNOW HIM?

22 A YEAH, I KNOW HIM.

23 Q AND HOW OFTEN WOULD YOU SEE HIM?

24 A NOT TOO MUCH.

25 Q BUT WAS HE A FRIEND OF YOURS?

1 A YES.

2 Q BUT YOU DIDN'T SEE HIM AS MUCH AS THE OTHERS, AS MUCH AS YOU
3 SAW THE OTHER PEOPLE?

4 A YEAH, THAT'S RIGHT.

5 Q ON THE MORNING OF JANUARY 16TH, 1998, WERE YOU AT WORK OR
6 SCHOOL OR WHERE WERE YOU?

7 A I WAS AT HOME.

8 Q WERE YOU SUPPOSED TO BE SOMEWHERE?

9 A I WAS SUPPOSED TO BE IN SCHOOL.

10 Q BUT YOU WERE SKIPPING SCHOOL THAT DAY?

11 A YES, MA'AM.

12 Q AND WHAT DID YOU DECIDE TO DO THAT MORNING?

13 A JUST HANG OUT AROUND THE HOUSE.

14 Q AND DID YOU EVENTUALLY SEE R.J.?

15 A YES, MA'AM, HE CAME BY THE HOUSE.

16 Q AND WAS ANYBODY WITH HIM?

17 A TIMOTHY.

18 Q AND WHAT -- DID HE HAVE A CAR OR HOW DID HE GET THERE?

19 A HE WAS DRIVING HIS CAR.

20 Q AND DO YOU KNOW WHAT TIME THAT WAS APPROXIMATELY?

21 A AROUND 8:00.

22 Q SO WHAT DID YOU DO ONCE R.J. AND TIMOTHY CAME OVER?

23 A WELL, I GOT IN THE CAR WITH THEM.

24 Q AND WHAT WAS -- WAS THERE ANY PLAN OR WHAT WERE YOU DOING?

25 A THERE WASN'T NO PLANS.

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 Q WHAT DID YOU DO?

2 A I JUST GOT IN THE CAR AND WE JUST RODE AROUND AND WE STOPPED
3 OVER FRANK HOUSE AND PICKED HIM UP.

4 Q OKAY.

5 A AND THEN WE RODE AROUND. WE STOPPED BY THE STORE TO GET
6 SOME CIGARS.

7 Q GET SOME WHAT?

8 A WE STOPPED BY THE STORE TO GET SOME CIGARS.

9 Q AND WHAT DID YOU DO WITH THE CIGARS?

10 A WE SMOKED THEM.

11 Q SMOKING WHAT?

12 A REEFER.

13 Q REEFER?

14 A YES, MA'AM.

15 Q AND SO YOU WERE SMOKING MARIJUANA WITH YOU, TIMOTHY, FRANK
16 -- WHO AM I LEAVING OUT? -- R.J.

17 A YES, MA'AM.

18 Q THE FOUR OF YOU WERE RIDING AROUND SMOKING MARIJUANA?

19 A YES, MA'AM.

20 Q OKAY. AND WHAT -- DO YOU KNOW HOW LONG YOU DID THAT?

21 A NOT APPROXIMATE, I DON'T KNOW.

22 Q LIKE MINUTES OR AN HOUR? IF YOU KNOW, JUST...

23 A I'M GOING TO SAY IT WAS LIKE 45 MINUTES OR SO.

24 Q OKAY. AROUND 45 MINUTES. AND THEN DID YOU EVER GO TO
25 JERVIS' HOUSE?

1 A YES, MA'AM.

2 Q AND DID HE -- PLEASE DESCRIBE WHEN YOU GOT THERE HOW -- DID
3 HE GET IN THE CAR WITH YOU OR WHAT HAPPENED?

4 A WELL, FRANK, R.J. AND TIMOTHY HAD GOT OUT AND I STAYED IN
5 THE CAR BECAUSE IT WAS RAINING.

6 Q AND THEY -- AND DO YOU KNOW -- DID THEY GO UP TO THE DOOR?

7 A YES, MA'AM.

8 Q AND THEN WHAT HAPPENED?

9 A THEN THEY CAME BACK AND GOT IN THE CAR, AND THEN WE LEFT.

10 Q WERE THEY UP THERE FOR A FEW MINUTES OR HOW LONG WERE THEY
11 AT THE DOOR?

12 A IT WASN'T THAT LONG. I'M GOING TO SAY PROBABLY ABOUT FIVE
13 OR TEN MINUTES.

14 Q OKAY. AND THEN DID JERVIS COME WITH THEM?

15 A YES, MA'AM.

16 Q AND WHAT DID THE FIVE OF YOU GENTLEMEN DO?

17 A JUST RODE AROUND.

18 Q AND DID YOU CONTINUE TO SMOKE MARIJUANA?

19 A YES, MA'AM.

20 Q AND DID YOU EVENTUALLY GO TO MORRIS' HOUSE?

21 A YES, MA'AM.

22 Q DO YOU KNOW WHAT TIME IT WAS AROUND THEN?

23 A NO, MA'AM.

24 Q WHAT HAPPENED WHEN YOU GOT TO MORRIS' HOUSE? DID -- WHO GOT
25 OUT OF THE CAR?

1 A FRANK HAD GOT OUT FIRST.

2 Q FRANK GOT OUT FIRST?

3 A YES, MA'AM.

4 Q AND DID EVERYBODY ELSE GET OUT?

5 A YES, MA'AM.

6 Q OKAY. DID YOU ALL GO TO THE DOOR?

7 A YES, MA'AM.

8 Q AND DID -- WHO OPENED THE DOOR?

9 A MORRIS.

10 Q DO YOU REMEMBER IF IT WAS A SIDE DOOR OR SCREEN DOOR?

11 A IT WAS A SCREEN DOOR.

12 Q AND WHAT DID MORRIS SAY, IF ANYTHING, TO YOU OR ANYBODY?

13 A HE JUST SPOKE.

14 Q LIKE...

15 A WHAT'S UP?

16 Q WHAT'S UP?

17 A YEAH.

18 Q SO HE WAS IN A RELATIVELY GOOD MOOD?

19 A YES, MA'AM.

20 Q HE WASN'T MAD AT YOU?

21 A NO, MA'AM.

22 Q DID HE SPEAK TO EVERYBODY?

23 A FAR AS I KNOW OF.

24 Q AND WHAT DID EVERYBODY DO WHEN THEY CAME IN?

25 A SOME OF THEM SAT DOWN AND SOME OF THEM STANDING UP.

1 Q WAS THERE ANYBODY INSIDE THE HOUSE ALREADY?

2 A TAVIS AND THE OTHER GIRL.

3 Q DID YOU KNOW TAVIS?

4 A YES, MA'AM.

5 Q HAD YOU KNOWN HIM A WHILE?

6 A YES, MA'AM.

7 Q AND DID YOU KNOW WHO THE GIRL WAS?

8 A NO, MA'AM.

9 Q WHAT WERE THEY DOING, IF YOU KNOW?

10 A SITTING THERE PLAYING A GAME.

11 Q PLAYING WHAT KIND OF GAME?

12 A PLAYING PLAYSTATION.

13 Q PLAYSTATION? DO YOU KNOW IF THEY WERE SMOKING MARIJUANA?

14 A NO, MA'AM.

15 Q WHEN EVERYBODY WENT IN YOU SAID SOME PEOPLE WERE SITTING
16 DOWN IN THE LIVING ROOM?

17 A YES, MA'AM.

18 Q YOU SAID SOME PEOPLE WERE SITTING AND SOME WERE STANDING?

19 A YES, MA'AM.

20 Q I'M GOING TO SHOW YOU --

21 MS. MONTS: (OFF RECORD WITH DEFENSE COUNSEL)

22 MR. SUMNER: NO OBJECTION, YOUR HONOR.

23 Q -- WHAT'S BEEN MARKED FOR IDENTIFICATION STATE'S EXHIBITS 50
24 AND 75. CAN YOU IDENTIFY THESE TWO PHOTOS?

25 A YES, MA'AM.

1 Q WHAT ARE THESE PHOTOS OF?

2 A HIS LIVING ROOM.

3 Q MORRIS' LIVING ROOM?

4 A YES, MA'AM.

5 Q AND DO THEY ACCURATELY SHOW HOW THE ROOM LOOKED ON THAT DAY?

6 A YES, MA'AM.

7 MS. MONTIS: YOUR HONOR, I MOVE THESE PHOTOS INTO EVIDENCE.

8 MR. SUMNER: AGAIN, WITHOUT OBJECTION, YOUR HONOR.

9 THE COURT: ALL RIGHT. THEY'RE IN EVIDENCE.

10 (STATE'S EXHIBIT NUMBER 50, PHOTOGRAPH, MOVED INTO EVIDENCE)

11 (STATE'S EXHIBIT NUMBER 75, PHOTOGRAPH, MOVED INTO EVIDENCE)

12 Q SO WHERE THE CHAIRS ARE AND THE COUCHES THAT'S HOW IT WAS ON
13 JANUARY THE 16TH OF '98?

14 A YES, MA'AM.

15 Q NOW, WERE -- WERE THERE ENOUGH SEATS FOR EVERYBODY THERE,
16 COUNTING THE CHAIRS AND THE COUCH?

17 A NO, MA'AM.

18 Q SO THERE WASN'T ENOUGH ROOM FOR EVERYBODY TO SIT DOWN?

19 A NO, MA'AM.

20 Q YOU SAID -- TELL ME, WHEN YOU WENT IN, DID YOU SAY YOU SAT
21 DOWN SOMEWHERE?

22 A YEAH, I SAT DOWN ON---

23 Q WHERE -- IF YOU RECALL, WHERE DID YOU SIT?

24 A ON THE CORNER OF THE CHAIR BY THE DOOR.

25 Q OKAY. AND DO YOU RECALL WHAT TOOK PLACE NEXT? WHAT DID YOU

1 START DOING?

2 A I WAS JUST SITTING THERE. I WAS JUST SITTING THERE.

3 Q WAS SOMEBODY STILL PLAYING PLAYSTATION?

4 A YES, MA'AM, THEY WERE STILL PLAYING.

5 Q PARDON?

6 A YES, MA'AM, THEY WERE STILL PLAYING.

7 Q AND WHAT WAS EVERYBODY DOING, JUST KIND OF CHILLING OR WHAT?

8 A JUST CHILLING.

9 Q AND WHAT HAPPENED NEXT?

10 A JERVIS HAD ASKED HIM DID HE SHOOT UP HIS HOUSE, AND MORRIS
11 TOLD HIM NO. AND THEN THEY WAS ARGUING, AND THEN THEY WALKED TO
12 THE BACK. WHATEVER WENT ON IN THE BACK, I DON'T KNOW, BUT MORRIS
13 CAME OUT WITH THE GUN.

14 Q HOW LONG WERE THEY IN THE BACK?

15 A I'D SAY PROBABLY ABOUT TWO OR THREE MINUTES AT THE MOST.

16 Q AND WHAT WAS EVERYBODY DOING WHILE THEY WENT IN THE BACK?

17 A JUST -- JUST CHILLING.

18 Q SO NOBODY WAS UPSET?

19 A NOT UP FRONT.

20 Q BUT EVERYBODY IN THE LIVING ROOM WAS CALM?

21 A YEAH.

22 Q AND WHAT HAPPENED WHEN MORRIS AND JERVIS CAME BACK OUT?

23 A MORRIS HAD -- MORRIS WAS WALKING BACK TOWARDS THE FRONT AND
24 JERVIS WAS IN FRONT OF HIM, AND JERVIS STARTED WALKING TOWARDS
25 HIM AND HE TOLD HIM THAT HE DON'T WANT TO DO THIS. SO JERVIS

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 STARTED MOVING TOWARDS HIM AND MORRIS GAVE A WARNING SHOT. HE
2 SHOT IN THE FLOOR. AND THEN HE -- AND THEN HE KEPT ON WALKING
3 TOWARDS HIM.

4 Q WHAT DID EVERYBODY DO WHEN THERE WAS A SHOT INTO THE FLOOR?

5 A EVERYBODY STOOD UP. THE ONES THAT WAS SITTING DOWN STOOD
6 UP.

7 Q OKAY. WHAT ABOUT THE PEOPLE THAT WERE ALREADY STANDING?

8 A THEY WAS JUST -- THEY WAS JUST STANDING STILL.

9 Q SO EVERYBODY WAS -- I MEAN, WAS IT A SHOCK OR WAS IT...

10 A IT WAS A SHOCK TO ME.

11 Q WERE YOU EXPECTING THIS?

12 A NO, MA'AM.

13 Q SO YOU STOOD UP. THEN WHAT HAPPENED AFTER THERE'S A SHOT
14 INTO THE GROUND? DO YOU KNOW WHERE IN THE GROUND THE SHOT WENT?

15 A NO, MA'AM.

16 Q WHERE WAS MORRIS STANDING WHEN THE SHOT WENT INTO THE
17 GROUND?

18 A IN FRONT OF THE -- IN FRONT OF THE LITTLE BAR STOOL THING.
19 AS YOU COME IN THE DOOR YOU GOT A LITTLE PLACE RIGHT HERE, THIS
20 LITTLE PIECE RIGHT HERE. RIGHT THERE.

21 MR. SUMNER: YOUR HONOR, NO OBJECTION TO THOSE PHOTOGRAPHS
22 BEING RECEIVED INTO EVIDENCE.

23 Q I'M SHOWING YOU STATE'S EXHIBITS 55 AND 85. CAN YOU TELL US
24 WHAT THESE ARE PHOTOS OF? LET'S LOOK AT EXHIBIT 55.

25 A THAT'S HIS FRONT DOOR.

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 Q MORRIS' FRONT DOOR?

2 A UH-HUH (AFFIRMATIVE).

3 Q AND HOW ABOUT EXHIBIT 85?

4 A HIS FRONT DOOR.

5 Q AND DOES 85 SHOW THE BAR THAT YOU'RE TALKING ABOUT?

6 A YES, MA'AM.

7 Q IS IT KIND OF A ROOM DIVIDER OR IT'S---

8 A YOU COULD SAY THAT, YES, MA'AM.

9 Q OKAY. AND IN RELATION TO THAT BAR WHERE WAS MORRIS
10 STANDING?

11 A IN FRONT OF IT UP TOWARDS THE CORNER OF IT.

12 Q AND WHERE WAS JERVIS?

13 A IN FRONT OF HIM.

14 Q FURTHER INTO THE LIVING ROOM?

15 A YES, MA'AM.

16 Q AND JERVIS IS CLOSER TO THE DOOR? I'M SORRY. JERVIS IS
17 FURTHER IN THE LIVING ROOM AND MORRIS CLOSER TO THE DOOR?

18 A YES, MA'AM.

19 THE COURT: ARE YOU MOVING 55 AND 85 IN?

20 MS. MONTS: YES, SIR, PLEASE.

21 THE COURT: OKAY. THEY'RE IN.

22 MS. MONTS: THANK YOU, YOUR HONOR.

23 (STATE'S EXHIBIT NUMBER 55, PHOTOGRAPH, MOVED INTO EVIDENCE)

24 (STATE'S EXHIBIT NUMBER 85, PHOTOGRAPH, MOVED INTO EVIDENCE)

25 THE COURT: WHAT WERE THE PREVIOUS NUMBERS?

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 MS. MONTS: 75 AND 50.

2 THE COURT: OKAY. THANK YOU.

3 Q (PAUSE) OKAY. CEDRICK, WE'RE LOOKING AT STATE'S EXHIBIT 50
4 AND I'M GOING TO -- AND IT'S A LITTLE BIT DARK ON THE SCREEN.
5 BUT IF YOU PUSH THIS RED BUTTON, IT WILL SHOW---

6 MS. MONTS: YOUR HONOR, MAY I HAVE THE WITNESS STEP DOWN,
7 PLEASE?

8 THE COURT: SURE.

9 A (LEAVES WITNESS STAND)

10 Q OKAY. IF YOU JUST PUSH ON THIS RED BUTTON, IT WILL SHOW A
11 RED LIGHT UP THERE. AND IF YOU CAN, SHOW US WHERE PEOPLE WERE
12 STANDING, PLEASE. AS LONG AS YOU ARE HOLDING THE BUTTON DOWN,
13 THE RED LIGHT WILL STAY ON.

14 A OKAY.

15 Q SO WHEN THE SHOT WENT INTO THE GROUND WHERE WAS MORRIS
16 STANDING?

17 A RIGHT AROUND HERE.

18 Q AND WHERE WAS JERVIS STANDING?

19 A RIGHT HERE.

20 Q SO HE WAS FURTHER INTO THE LIVING ROOM?

21 A YES, MA'AM.

22 Q IS THERE ANY WAY OUT OR ARE WE LOOKING AT THE LIVING ROOM
23 AND THERE'S NO WAY -- THERE'S NO OTHER EXITS THERE?

24 A NOT IN THE LIVING ROOM.

25 Q I'M SORRY. SPEAK UP.

- 1 A NOT IN THE LIVING ROOM.
- 2 Q OKAY. AND WHERE WAS EVERYBODY ELSE?
- 3 A RIGHT IN THIS AREA OVER HERE.
- 4 Q NOW -- AND SHOW US WHERE -- WE'LL SEE ANOTHER PICTURE IN A
- 5 SECOND BUT SHOW US WHERE THE FRONT DOOR IS.
- 6 A OVER ON THIS SIDE OVER HERE.
- 7 Q OKAY. SO WHEN YOU COME IN THAT BAR IS ON YOUR RIGHT; IS
- 8 THAT CORRECT?
- 9 A YES, MA'AM.
- 10 Q OKAY. SO WHAT DOES JERVIS DO WHEN THAT SHOT GOES INTO THE
- 11 GROUND? AND SHOW US AGAIN WHERE JERVIS IS STANDING.
- 12 A RIGHT AROUND IN HERE.
- 13 Q OKAY. AND WHAT DOES HE DO?
- 14 A HE JUST -- HE JUST WALKED UP ON HIM. HE WALKED UP ON HIM,
- 15 AND MORRIS JUST GAVE A WARNING SHOT. AND AFTER HE GAVE A WARNING
- 16 SHOT HE WAS WALKING UP AND HE SHOT HIM IN THE LEG AND HE FELL.
- 17 HE FELL DOWN---
- 18 Q OKAY. SHOW -- TALK REAL SLOW SO WE CAN FOLLOW YOUR STORY
- 19 HERE. WHERE -- WHEN JERVIS WAS HIT IN THE LEG WHERE WAS HE
- 20 STANDING AND WHERE DID HE FALL?
- 21 A HE WAS STANDING RIGHT AROUND IN HERE. AND HE FELL OVER IN
- 22 HERE.
- 23 Q NOW -- AND WE'LL SEE ANOTHER PICTURE IN A MINUTE, BUT IS
- 24 THERE ANOTHER CHAIR IN THAT LEFT CORNER BACK THERE?
- 25 A OVER HERE?

1 Q YES.

2 A OVER HERE ON THIS SIDE. OVER HERE.

3 Q AND WHERE IS THE GIRL SITTING?

4 A SHE WAS SITTING IN THAT CHAIR OVER THERE.

5 Q THAT ONE IN THE LEFT CORNER?

6 A YES, MA'AM.

7 Q OKAY. AND SHOW US AGAIN WHERE JERVIS IS NOW FALLING DOWN.

8 A OVER HERE.

9 Q AND THEN WHAT HAPPENS? TELL ME WHAT THE PEOPLE ARE DOING.

10 IS EVERYONE SCARED OR WHAT ARE THEY DOING?

11 A LIKE WHEN HE SHOT, I RAN OUT THE DOOR. WHEN I CAME BACK IN
12 HE WAS FALLING. AND WHILE HE WAS FALLING, MORRIS SHOT HIM AGAIN.

13 THAT'S WHEN HE FELL. THAT'S WHEN HE FELL RIGHT HERE.

14 Q SO WHEN HE WAS SHOT THE SECOND TIME THAT'S THE ONE THAT WENT
15 IN THE CHEST?

16 A YES, MA'AM.

17 Q AND WAS HE ALREADY FALLING WHEN THAT THIRD SHOT, THE ONE
18 INTO THE CHEST, WAS FIRED?

19 A YES, MA'AM.

20 Q OKAY. AND WHEN YOU GET BEHIND THE MIKE, I'LL HAVE YOU
21 DESCRIBE BETTER. BUT IF YOU WILL, SHOW US WITH THE POINTER WHERE
22 DID THE BODY FINALLY LIE.

23 A OVER IN HERE.

24 Q WAS IT PARTIALLY ON THE COUCH OR WAS IT COMPLETELY ON THE
25 FLOOR?

CEDRICK EVANS -- DIRECT BY MS. MONT'S

1 A YES, MA'AM. HIS HEAD WAS ON THE COUCH AND HIS BODY WAS ON
2 THE FLOOR.

3 Q HIS HEAD WAS ON THE COUCH AND HIS BODY WAS ON THE FLOOR?

4 A YES, MA'AM.

5 Q AND AT THIS POINT WAS RONICA STILL IN THIS ROOM?

6 A YES, MA'AM, SHE WAS OVER HERE. OVER HERE CRYING.

7 Q SHE WAS CRYING?

8 A YES, MA'AM.

9 Q CEDRICK, I'M GOING TO SHOW YOU STATE'S EXHIBIT 75. CAN YOU
10 SHOW US WITH A POINTER ONE MORE TIME WHERE -- WHERE -- WHERE WAS
11 JERVIS FROM THIS ANGLE WHEN THE SHOT -- FIRST SHOT WAS FIRED?

12 A RIGHT BY THE RUG. RIGHT HERE IN FRONT OF THE TV AND THE
13 RUG, RIGHT AROUND IN HERE. THIS AREA HERE.

14 Q AND WHERE WAS HE STANDING WHEN THE --

15 MS. MONT'S: LET THE RECORD REFLECT HE IS REFERRING BETWEEN
16 THE BAR AND THE COFFEE TABLE.

17 Q AND NOW WHEN HE WAS SHOT IN THE LEG WHERE WAS JERVIS
18 STANDING?

19 A RIGHT AROUND IN HERE. HE WAS FALLING RIGHT AROUND OVER
20 HERE.

21 MS. MONT'S: LET THE RECORD REFLECT AT THE SECOND SHOT HE IS
22 AT THE FAR END OF THE COFFEE TABLE NEAR THE FAR WALL.

23 MR. SUMNER: YOUR HONOR, I WOULD OBJECT TO MS. MONT'S'
24 CHARACTERIZATION ABOUT WHERE THINGS ARE. THE JURY CAN SEE WHERE
25 HE IS POINTING.

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 **THE COURT:** OKAY. I SUSTAIN THE OBJECTION.

2 **MS. MONTS:** YOUR HONOR, I BELIEVE FOR THE RECORD I NEED TO
3 BE ABLE TO LET---

4 **THE COURT:** NO. I SUSTAIN THE OBJECTION. MOVE ON TO
5 SOMETHING ELSE.

6 **Q** AND WHEN THE THIRD SHOT HIT, SHOW US FROM THIS ANGLE WHERE
7 THE BODY WAS.

8 **A** OVER IN HERE. RIGHT HERE IN FRONT OF THE RADIO.

9 **Q** THANK YOU VERY MUCH. YOU CAN HAVE A SEAT.

10 **A** (COMPLIES)

11 **Q** WHEN THE FIRST SHOT INTO JERVIS -- THE ONE IN THE LEG -- IF
12 YOU WOULD PLEASE STAND UP AND --

13 **MS. MONTS:** YOUR HONOR, MAY THE WITNESS STEP DOWN?

14 **THE COURT:** SURE.

15 **Q** IF YOU WOULD, PLEASE COME DOWN AND SHOW US WHEN JERVIS WAS
16 SHOT IN THE LEG WHAT DID HE DO? DID HE SAY ANYTHING? DID HE
17 MOVE? WHAT DID HE DO?

18 **A** HE JUST GRABBED HIS LEG. JUST GRABBED HIS LEG.

19 **Q** HE GRABBED HIS LEG?

20 **A** YES, MA'AM.

21 **Q** AND KIND OF OVER TO THE SIDE GRABBING HIS LEG?

22 **A** YES, MA'AM.

23 **Q** AND HOW LONG WAS IT TILL THE THIRD SHOT WAS FIRED? IF YOU
24 CAN.

25 **A** I WOULD SAY PROBABLY CLOSE TO A MINUTE.

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 Q WHAT WAS TAKING PLACE DURING THAT TIME?

2 A I WAS COMING BACK IN THE DOOR.

3 Q AND WHAT -- THEN YOU SAID THE -- WHAT DID JERVIS DO WHEN THE
4 THIRD SHOT HIT -- THIRD SHOT MADE BUT THE SECOND SHOT TO HIS
5 BODY? WHAT DID HE DO?

6 A HE WAS KIND OF LIKE FALLING. HE WAS FALLING HOLDING HIS --
7 HE WAS FALLING HOLDING HIS LEG.

8 Q SO WAS HE STILL BENT OVER WHEN THAT SHOT HIT HIM?

9 A YES, MA'AM.

10 Q OKAY. THANK YOU. PLEASE HAVE A SEAT.

11 A (COMPLIES).

12 Q NOW, I REALLY WANT TO CLARIFY THIS. YOU SAID AT ONE POINT
13 YOU RAN OUT THE DOOR?

14 A YES, MA'AM.

15 Q WHEN DID THAT TAKE PLACE?

16 A WHEN HE SHOT.

17 Q IN---

18 A WHEN HE SHOT HIM IN THE LEG.

19 Q AND AT WHAT POINT DO YOU COME BACK IN THE DOOR?

20 A WHEN HE WAS -- WHEN HE WAS FALLING OVER HOLDING HIS -- WHEN
21 HE WAS FALLING OVER HOLDING HIS LEG.

22 Q SO YOU KNOW WHERE HE WAS STANDING BECAUSE YOU SAW HIM -- IS
23 IT CORRECT YOU SAW HIM HOLDING HIS LEG---

24 A YES, MA'AM.

25 Q ---AND SO THAT'S WHY YOU KNOW WHERE HE WAS STANDING WHEN

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 THAT SHOT WAS MADE?

2 A YES, MA'AM.

3 Q AND WERE YOU IN THE ROOM WHEN THE THIRD SHOT, THE SECOND ONE
4 TO HIS BODY, WAS MADE?

5 A YES, MA'AM.

6 Q WHERE WAS EVERYBODY ELSE?

7 A THEY WAS OUTSIDE.

8 Q WAS ANYBODY BEHIND YOU COMING BACK IN OR NOT?

9 A YEAH, MY COUSIN.

10 Q WHICH ONE WAS THAT?

11 A R.J.

12 Q WERE YOU -- HOW FAR IN THE DOORWAY WERE YOU? WERE YOU
13 STANDING IN THE DOORWAY OR FURTHER IN?

14 A I WAS IN BY THE LITTLE DIVIDER, ON THE SIDE OF THE DIVIDER
15 ON THE LITTLE THING WHEN YOU COME IN, THE LITTLE ARM REST OR THE
16 LITTLE COUNTER, WHATEVER THAT THING IS..

17 Q THE ONE THAT'S ABOUT -- THE THING WE SAW IN THE PICTURE---

18 A YES, MA'AM.

19 Q ---ABOUT WAIST HIGH, THE DIVIDER, YOU WERE STANDING BY THAT?

20 A YES, MA'AM.

21 Q WAS ANYBODY LOOKING AT YOU?

22 A NO, MA'AM.

23 Q WHO WAS IN THE ROOM?

24 A ME, MORRIS, JERVIS AND THE GIRL.

25 Q AND WAS MORRIS OR JERVIS OR THE GIRL LOOKING AT YOU?

1 A NO, MA'AM.

2 Q DID THEY EVEN KNOW YOU WERE THERE?

3 A I DON'T THINK SO.

4 Q WHY DID YOU COME BACK IN?

5 A BECAUSE I COULDN'T BELIEVE IT. I COULDN'T BELIEVE THAT HE
6 HAD SHOT HIM.

7 Q YOU COULDN'T BELIEVE THAT WHO?

8 A MORRIS HAD SHOT HIM.

9 Q DID YOU WANT TO HELP OR WHY WERE YOU COMING BACK?

10 A NO. SINCE HE ALREADY HAD SHOT HIM I JUST WANTED TO TRY TO
11 GET HIM TO THE HOSPITAL TO SEE IF HE COULD BE SAVED. THAT'S WHY
12 I -- THAT WAS THE FIRST THAT CAME -- THAT WAS THE FIRST THING
13 CAME TO MY MIND.

14 Q DO YOU KNOW IF ANYBODY CALLED 911?

15 A NO, MA'AM.

16 Q YOU DIDN'T CALL 911?

17 A NO, MA'AM.

18 Q WERE YOU IN THE ROOM WHILE JERVIS' BODY WAS BEING TAKEN OUT?

19 A YES, MA'AM.

20 Q HOW DID THAT TAKE PLACE?

21 A HE TOLD US TO GET THIS PIECE OF TRASH OUT OF HERE.

22 Q NOW, WHO IS HE?

23 A MORRIS.

24 Q NOW -- OKAY. YOU CAN QUOTE SOMEONE IF YOU QUOTE THE
25 SPECIFIC WORDS THAT WERE SAID.

1 A "GET THIS PIECE OF SHIT OUT OF HERE."

2 Q AND WHO SAID THAT?

3 A MORRIS.

4 Q NOW, WAS MORRIS OUTSIDE AT SOME POINT?

5 A YES, HE HAD CAME OUTSIDE.

6 Q AND WAS HE OUTSIDE WHEN HE SAID THAT?

7 A NO, MA'AM.

8 Q AND WAS HE SAYING STUFF INSIDE TOO ABOUT MOVING? WAS HE
9 SAYING ANYTHING ABOUT MOVING JERVIS?

10 A JUST GO ON, GET HIM OUT OF HERE.

11 Q DID EVERYBODY COME BACK IN OR WHO OR NOBODY?

12 A NOBODY BUT ME AND R.J.

13 Q AND WHAT DID YOU AND R.J. DO?

14 A WE PICKED HIM UP AND TOOK HIM AND PUT HIM IN THE BACK SEAT
15 AND TOOK HIM TO THE HOSPITAL.

16 Q WHEN -- IF YOU WOULD, PLEASE STAND WHERE YOU ARE AND
17 DEMONSTRATE POINTING IN MY DIRECTION WITH YOUR FINGER HOW WAS
18 MORRIS HOLDING THE GUN ON THE SHOT THAT YOU SPECIFICALLY SAW THAT
19 WENT TO THE VICTIM'S CHEST? HOW WAS MORRIS HOLDING THE GUN?

20 A JUST LIKE THAT RIGHT THERE.

21 Q OKAY. SO YOU'RE -- HOW WOULD A STRAIGHT SHOT -- DEMONSTRATE
22 HOW IF IT WAS A STRAIGHT SHOT HOW WOULD IT HAVE BEEN. WHERE THE
23 GUN WAS HELD NORMALLY.

24 A LIKE THAT.

25 Q OKAY. BUT NOW YOU'RE TURNING YOUR HAND UPSIDE DOWN---

1 A LIKE THAT.

2 Q IS THERE ANY WORD FOR HOLDING A GUN THAT WAY?

3 A NO. IT WASN'T NO -- NO, MA'AM.

4 Q OKAY. IT'S JUST HOLDING THE GUN --- THE GUN IS BEING HELD
5 SIDEWAYS?

6 A YES, MA'AM.

7 Q OKAY. THANK YOU. YOU CAN HAVE A SEAT.

8 A (COMPLIES).

9 Q HOW FAR WAS MORRIS FROM JERVIS WHEN HE FIRED THAT LAST SHOT?

10 A HE WAS LIKE---

11 Q DISTANCEWISE---

12 A HE WAS LIKE OVER HIM BUT HE JUST WASN'T OVER HIM.

13 Q WHAT DO YOU MEAN BY THAT?

14 A I SAY PROBABLY LIKE THAT.

15 Q SO YOU'RE DOING A HAND'S -- YOU'RE PUTTING YOUR HANDS ABOUT
16 20 INCHES APART?

17 A YES, MA'AM.

18 Q AND HE WAS KIND OF STANDING OVER HIM?

19 A YES, MA'AM.

20 Q AT THAT POINT WAS JERVIS DOWN FROM THE SHOT IN HIS LEG?

21 A YES, MA'AM.

22 Q MORRIS, I'M GOING TO PLAY WHAT'S BEEN MARKED -- PUT INTO
23 EVIDENCE STATE'S EXHIBIT 12. YOU SAID YOU WERE IN THE ROOM AT
24 THIS TIME. I'D LIKE YOU TO IDENTIFY THESE VOICES.

25 (STATE'S EXHIBIT 12, AUDIOTAPE, PLAYS FROM 11:02 A.M. TO

1 11:03 A.M.)

2 Q FROM BEING THERE, WHOSE VOICES DO YOU RECOGNIZE SAYING WHAT?

3 A FRANK, R.J. AND MORRIS'.

4 Q WHAT IS THE -- WHAT IS EACH OF THEM SAYING?

5 A WHICH ONE?

6 Q WHAT IS FRANK SAYING?

7 A "GODDAMN."

8 Q WHAT DID MORRIS SAY?

9 A "PICK HIM UP AND GET HIM ON OUT OF HERE."

10 Q AND WHAT DID R.J. SAY?

11 A "I'M TRYING."

12 Q SO DESCRIBE WHAT'S GOING ON. IS THIS A HECTIC SITUATION?

13 A YES, MA'AM.

14 Q AND WHAT ARE YOU DOING?

15 A I'M JUST -- BASICALLY I'M JUST STANDING THERE BECAUSE I'M

16 SHOCKED. IT'S MY FIRST TIME ME SEEING SOMETHING LIKE THIS. I

17 DIDN'T KNOW THIS WAS GOING TO HAPPEN. I WASN'T EXPECTING THAT.

18 Q SO YOU WERE SURPRISED THAT THIS HAPPENED?

19 A YES, MA'AM.

20 Q WHO -- DESCRIBE, DID YOU HELP PICK UP JERVIS?

21 A YES, MA'AM.

22 Q DID YOU PICK UP THE HEAD END OR THE FEET END?

23 A THE FEET END.

24 Q AND WHO PICKED UP THE UPPER BODY?

25 A R.J.

1 Q SO WAS -- THEN WHAT DID YOU AND R.J. DO?

2 A WE TOOK HIM AND PUT HIM ON THE BACK SEAT AND TOOK HIM TO THE
3 HOSPITAL.

4 Q AND WHAT WAS MORRIS DOING WHILE YOU TWO WERE PICKING JERVIS
5 UP TO GET HIM HELP?

6 A I WASN'T PAYING NO ATTENTION TO HIM.

7 Q OKAY. YOU WERE CONCERNED ABOUT WHAT?

8 A JERVIS.

9 Q DID YOU GET ANY BLOOD ON YOU WHEN YOU WERE DOING THIS, IF
10 YOU RECALL?

11 A NOT AS I KNOW OF.

12 Q WHAT HAPPENED WHEN YOU GOT TO THE HOSPITAL? WHERE DID YOU
13 GO? WAS IT THE EMERGENCY ROOM?

14 A YES, MA'AM, HILLCREST.

15 Q AND HOW FAR IS HILLCREST HOSPITAL FROM MORRIS' HOUSE?
16 MINUTES OR MILES.

17 A PROBABLY -- WELL, AS FAST AS WE GOT THERE I'M GOING TO SAY
18 IT TOOK US PROBABLY ABOUT FIVE MINUTES TO GET THERE.

19 Q AND YOU WERE GOING FAST?

20 A YES, MA'AM.

21 Q AND DID EMERGENCY PERSONNEL COME OUT WHEN YOU GOT THERE?

22 A YES, MA'AM.

23 Q WHAT DID THEY DO?

24 A TIM WENT IN THERE AND TOLD THEM THAT THEY NEED TO COME OUT
25 BECAUSE WE HAD SOMEBODY THAT HAD BEEN SHOT, AND THEY BROUGHT THE

CEDRICK EVANS -- DIRECT BY MS. MONTS

1 HOSPITAL BED OUT THERE.

2 Q AND DID -- AFTER THEY TOOK JERVIS AWAY DID YOU AND TIMOTHY
3 AND R.J. STAY AT THE HOSPITAL?

4 A YES, MA'AM.

5 Q AND DID JERVIS' FAMILY COME UP THERE?

6 A YES, MA'AM.

7 Q DO YOU KNOW CALLED THEM?

8 A TIMOTHY.

9 MS. MONTS: THANK YOU. I HAVE NO FURTHER QUESTIONS.

10 THE COURT: CROSS EXAMINATION.

11 MR. SUMNER: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION BY MR. SUMNER

13 Q CEDRICK?

14 A YES, SIR.

15 Q GOOD MORNING.

16 A GOOD MORNING.

17 Q ON THE MORNING OF THE SHOOTING YOU WERE PICKED UP BY R.J.?

18 A YES, SIR.

19 Q HE WAS DRIVING. YOU WERE PICKED UP AT YOUR HOME?

20 A YES, SIR.

21 Q THEN FRANK GOLDEN WAS PICKED UP, RIGHT?

22 A YES, SIR.

23 Q THEN THE GROUP ALL IN R.J.'S CAR WENT OVER TO JERVIS' HOME?

24 A YES, SIR.

25 Q AND YOU TALKED ALREADY ABOUT THERE WAS A HOME HERE AND THEN

1 I THINK A RELATIVE LIVED NEXT DOOR; ISN'T THAT CORRECT?

2 A YES, SIR.

3 Q OKAY. NOW, ISN'T IT CORRECT THAT AT JERVIS' HOME FRANK,
4 TIMMY TUCKER AND R.J. GOT OUT OF THE CAR?

5 A YES, SIR.

6 Q AND THEY WENT UP ON THE FRONT PORCH AND THEY TALKED TO
7 JERVIS---

8 A YES, SIR.

9 Q ---IS THAT CORRECT?

10 A YES, SIR.

11 Q AND, CEDRICK, YOU WEREN'T A PART OF THAT CONVERSATION, WERE
12 YOU?

13 A IT WAS RAINING. I DIDN'T HAVE NO COAT, SO I STAYED IN THE
14 CAR.

15 Q RIGHT. OKAY. AND THEY ALL WENT UP ON THE PORCH AND THEY
16 WERE TALKING TO JERVIS, RIGHT?

17 A YES, SIR.

18 Q OKAY. NOW, TODAY YOU'VE TESTIFIED TO THE JURY THAT THAT
19 CONVERSATION TOOK PLACE FIVE TO TEN MINUTES; IS THAT RIGHT?

20 A YES, SIR.

21 Q NOW, WOULD YOU AGREE WITH ME THAT IN PREVIOUS TESTIMONY THAT
22 YOU PROVIDED IN THIS CASE THAT YOU SAID IT WAS 15 MINUTES?

23 A NO, I DIDN'T SAY 15 MINUTES.

24 Q YOU DID NOT?

25 A NO, SIR.

CEDRICK EVANS -- CROSS BY MR. SUMNER

1 Q OKAY. YOU'RE SURE ABOUT THAT?

2 A YES, SIR.

3 Q OKAY. I'M GOING TO SHOW YOU -- AND I KNOW IT'S BEEN SOME
4 TIME, OKAY, SINCE YOU'VE GIVEN THE PRIOR TESTIMONY, BUT I'M GOING
5 TO SHOW YOU THAT TRANSCRIPT. I WANT YOU TO LOOK OVER HERE WITH
6 ME, CEDRICK.

7 A OKAY.

8 Q OKAY. ALL RIGHT. AND I'M GOING TO ASK YOU, THE QUESTION
9 WAS: "OKAY. HOW LONG DID THEY STAND ON THE PORCH?" IS THAT
10 RIGHT?

11 A YES, SIR.

12 Q AND WHAT IS YOUR ANSWER THERE?

13 A "FOR ABOUT 15 MINUTES."

14 Q WHY DON'T YOU -- IF YOU WILL SPEAK IN THE MICROPHONE.

15 A "FOR ABOUT 15 MINUTES."

16 Q FOR ABOUT 15 MINUTES, OKAY. ALL RIGHT. SO YOU HAVE SAID
17 THAT BEFORE, RIGHT?

18 A YES, SIR.

19 Q OKAY. ALL RIGHT. AND I'M NOT TRYING TO -- I'M NOT TRYING
20 TO EMBARRASS YOU. I'M JUST SAYING IT WAS NOT A BRIEF MEETING. I
21 MEAN, THEY WERE ON THE PORCH AND THEY WERE TALKING FOR QUITE SOME
22 TIME, WEREN'T THEY?

23 A YES, SIR.

24 Q OKAY.

25 A AND WHAT THEY WAS TALKING ABOUT, I DON'T KNOW.

1 Q RIGHT. AND I'M NOT EVEN GOING TO ASK YOU ABOUT THAT.

2 A OKAY.

3 Q THAT'S OKAY. (PAUSE) I'M GOING TO SKIP FORWARD A LITTLE
4 BIT. WE KNOW THAT YOU ALL WENT OVER TO MORRIS' HOME, THAT THERE
5 WAS AN ARGUMENT BETWEEN JERVIS AND MORRIS; ISN'T THAT RIGHT?

6 A YES, SIR.

7 Q YOU'VE ALREADY TESTIFIED ABOUT THAT. AND MORRIS WENT TO THE
8 BACK BEDROOM, HIS BEDROOM; IS THAT RIGHT?

9 A I GUESS.

10 Q WELL, HE WENT TO THE BACK OF THE HOME AND JERVIS FOLLOWED
11 HIM?

12 A YES, SIR.

13 Q AND THEN YOU WERE THERE WHEN THEY CAME BACK OUT INTO THE
14 LIVING ROOM AND MORRIS HAD A GUN AT THAT POINT, DIDN'T HE?

15 A YES, SIR.

16 Q OKAY. NOW, IT'S YOUR TESTIMONY, ISN'T IT, CEDRICK, THAT
17 JERVIS CONTINUED TO WALK TOWARD MORRIS EVEN THOUGH MORRIS HAD THE
18 GUN EITHER POINTED DOWN OR POINTED AT HIM?

19 A YES, SIR.

20 Q THERE'S NO QUESTION ABOUT THAT, IS THERE, CEDRICK?

21 A YES, SIR.

22 Q OKAY. DID YOU EVER SEE JERVIS WITH HIS HANDS UP?

23 A NO, SIR.

24 Q OKAY. YOU NEVER HEARD JERVIS SAY ANYTHING TO MORRIS OR
25 ANYBODY ELSE, "I'M LEAVING" OR "I'M JUST GOING TO WALK OUT THIS

1 WAY"? I MEAN, HE DIDN'T DO ANYTHING OTHER THAN CONTINUE TOWARD
2 HIM, DID HE?

3 A YES, HE DID.

4 Q YOU HEARD MORRIS AND YOU'VE ALREADY -- I WANT TO MAKE SURE
5 THAT YOU TESTIFIED THIS, CEDRICK, TO THE JURY TODAY, THIS
6 MORNING, YOU HEARD MORRIS SAY TO JERVIS POWERS, "I DON'T WANT TO
7 DO THIS," DIDN'T YOU?

8 A YES, SIR.

9 Q AND HE SAID THAT TO JERVIS AS HE WAS BACKING UP; ISN'T THAT
10 RIGHT?

11 A YES, SIR.

12 Q AND THERE WERE NO SHOTS THAT HAD BEEN FIRED AT THIS POINT,
13 HAVE THERE?

14 A NO, SIR.

15 Q OKAY. BUT YOU HEARD MORRIS SAY THAT TO JERVIS?

16 A YES, SIR.

17 Q AND JERVIS CONTINUED TO WALK TOWARD MORRIS, DIDN'T HE?

18 A YES, SIR.

19 Q OKAY. THE NEXT THING THAT HAPPENS, ACCORDING TO YOUR
20 TESTIMONY IS A WARNING SHOT WAS FIRED INTO THE FLOOR BY MORRIS?

21 A YES, SIR.

22 Q AND JERVIS CONTINUES TO GO TOWARD MORRIS; ISN'T THAT RIGHT?

23 A YES, SIR.

24 Q OKAY. THEN TWO OTHER SHOTS WERE FIRED; ISN'T THAT RIGHT?

25 A YES, SIR.

1 Q OKAY. NOW, TODAY YOU SAID TO THE JURY, AND AGAIN I'M NOT
2 TRYING TO EMBARRASS YOU, YOU SAID TO THE JURY THAT IT WAS ABOUT
3 ONE MINUTE BETWEEN THE SECOND AND THIRD SHOTS; IS THAT RIGHT,
4 CEDRICK?

5 A I SAID CLOSE TO A MINUTE.

6 Q OKAY. I'M SORRY. MAYBE I DIDN'T HEAR YOUR WHOLE ANSWER.
7 YOU SAID CLOSE TO A MINUTE?

8 A YES, SIR.

9 Q OKAY. HAVE YOU TESTIFIED PREVIOUSLY THAT SHOTS TWO AND
10 THREE WERE BASICALLY INSTANTANEOUS? I MEAN, JUST POP, POP, JUST
11 LIKE THAT (SNAPPING FINGERS)? I MEAN, HAVE YOU TESTIFIED THAT
12 WAY BEFORE THAT THEY WERE JUST BAM, BAM (CLAPPING HANDS), BAM,
13 BAM (CLAPPING HANDS)?

14 A NO, IT WASN'T LIKE THAT.

15 Q SO ARE YOU -- I'M GOING TO GIVE YOU AN OPPORTUNITY BEFORE I
16 SHOW YOU THAT BOOK.

17 A OKAY.

18 Q OKAY. I'M GOING TO ASK YOU AGAIN. HAVE YOU TESTIFIED
19 PREVIOUSLY THAT SHOTS TWO AND THREE (CLAPS HANDS) WERE JUST
20 INSTANTANEOUS, JUST LIKE THAT?

21 A YES.

22 Q I'M SORRY?

23 A YES.

24 Q OKAY. TODAY YOU SAID CLOSE TO A MINUTE. IN FACT,
25 PREVIOUSLY IN SWORN TESTIMONY YOU HAVE SWORN TO TELL THE TRUTH;

CEDRICK EVANS -- CROSS BY MR. SUMNER

1 IS THAT CORRECT?

2 A YES.

3 Q AND THAT TESTIMONY WAS GIVEN A LOT CLOSER TO WHEN THIS
4 HAPPENED THAN TODAY, WASN'T IT?

5 A YES.

6 Q OKAY. AND AT THAT HEARING WHEN YOU GAVE THAT TESTIMONY YOU
7 TESTIFIED THAT SHOTS TWO AND THREE WERE JUST INSTANTANEOUS, BAM
8 BAM (CLAPS HANDS), BAM, BAM, (CLAPS HANDS), JUST LIKE THAT?

9 A YES.

10 Q (PAUSE) YOU SAW THE SECOND SHOT. IT -- THE FIRST SHOT IS
11 THE ONE SHOT IN THE FLOOR, RIGHT, CEDRICK?

12 A YES, SIR.

13 Q AND THE SECOND SHOT WAS ALSO POINTED DOWN; IT WAS TO THIS
14 AREA OF THE LEG, RIGHT?

15 A YES, SIR.

16 Q OKAY.

17 MR. SUMNER: ONE SECOND, PLEASE, YOUR HONOR.

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

19 MR. SUMNER: (OFF RECORD WITH DEFENDANT) THANK YOU, MR.
20 EVANS. I DON'T HAVE ANY OTHER QUESTIONS.

21 WITNESS: ALL RIGHT.

22 MS. MONTS: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN. THANK YOU.

24 (WITNESS STEPS DOWN AT 11:14 A.M.)

25 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A RECESS, ABOUT

CEDRICK EVANS -- CROSS BY MR. SUMNER

1 15 MINUTES. LADIES AND GENTLEMEN, IF YOU WOULD, JUST PLEASE GO
2 BACK TO YOUR JURY ROOM AND WE'RE GOING TO TRY TO START BACK UP
3 AROUND 11:30, AND I WOULD ASK YOU TO -- IN ADDITION TO NOT
4 TALKING ABOUT THE CASE AS YOU CONTINUE TO KEEP AN OPEN MIND, IF
5 YOU WOULD JUST SELECT A FOREPERSON FROM THE 12 REGULAR JURORS.
6 AND WHEN YOU HAVE SELECTED THE FOREPERSON, JUST WRITE THAT
7 PERSON'S NAME DOWN ON A PIECE OF PAPER AND GIVE IT TO MR. CANNON
8 OR MR. FORD AND THEY'LL GIVE IT TO ME. AND IF ANY OF YOU NEED
9 PADS -- DOES ANYBODY NEED PADS TO WRITE ANYTHING DOWN? THEY'LL
10 PROVIDE THAT TO YOU. JUST ASK THEM IF YOU NEED IT. I KNOW YOU
11 ASKED ABOUT THAT YESTERDAY.

12 OKAY. HAVE A GOOD BREAK. WE'LL SEE YOU BACK IN ABOUT 15
13 MINUTES.

14 MS. MONTS: YOUR HONOR, MAY THE WITNESS BE EXCUSED.

15 MR. SUMNER: NO OBJECTION.

16 THE COURT: SURE.

17 (JURY EXITS COURTROOM AT 11:15 A.M.)

18 THE COURT: OKAY. WE'LL SEE YOU IN ABOUT 15 MINUTES.

19 (A RECESS WAS TAKEN FROM 11:15 TO 11:35 A.M.)

20 MR. SUMNER: YOUR HONOR?

21 THE COURT: YES, SIR.

22 MR. SUMNER: BEFORE THE JURY COMES IN I'D LIKE TO ADDRESS
23 ONE THING. I THINK THERE ARE SOME WITNESSES HERE THAT ARE UNDER
24 SUBPOENA FROM THE STATE, AND I WOULD JUST ASK THE PROSECUTOR IF
25 FRANK GOLDEN AND TIM TUCKER ARE HERE? ARE THEY HERE?

MATTERS AND MOTIONS

1 **MS. MONTS:** UH-HUH (AFFIRMATIVE). YES.

2 **MR. SUMNER:** AND ARE THEY HERE UNDER SUBPOENA?

3 **MS. MONTS:** YES.

4 **MR. SUMNER:** THEY ARE? OKAY. ARE YOU PLANNING ON CALLING
5 THEM OR ARE YOU---

6 **MS. MONTS:** NO.

7 **MR. SUMNER:** YOU'RE NOT? I WOULD ASK THAT THEY BE REQUIRED
8 TO REMAIN UNDER SUBPOENA UNTIL I CAN TALK TO MY CLIENT A LITTLE
9 BIT FURTHER ABOUT WHETHER OR NOT WE WOULD WANT TO PUT THEM UP,
10 YOUR HONOR.

11 **THE COURT:** OKAY. I DON'T HAVE ANY PROBLEM WITH THAT.

12 **MR. SUMNER:** OKAY. I MEAN, I THINK I MENTIONED THAT TO MS.
13 ALLMOND. I JUST WANTED TO BRING IT TO THE COURT'S ATTENTION.

14 **THE COURT:** YES, SIR.

15 **MR. SUMNER:** I'M ASKING THOSE TWO TO REMAIN UNTIL I CAN
16 MAKE A DECISION ABOUT WHETHER TO CALL THEM IN MY CASE.

17 **THE COURT:** OKAY. THAT'S FINE.

18 **MR. SUMNER:** OKAY.

19 **MS. MONTS:** AND I'LL LET THEM KNOW, JUDGE.

20 **MR. SUMNER:** THAT'D BE GREAT. THANK YOU.

21 **MS. MONTS:** YOUR HONOR, I WANTED TO CLARIFY. I THOUGHT
22 THAT OCTAVIOUS BARKSDALE'S STATEMENT WENT INTO EVIDENCE.

23 **THE COURT:** NO, MA'AM. I BELIEVE THERE WAS AN OBJECTION TO
24 IT AND I SUSTAINED THE OBJECTION.

25 **MS. MONTS:** IS THAT YOUR RECOLLECTION?

MATTERS AND MOTIONS

1 **MR. SUMNER:** YEAH.

2 **MS. MONTS:** OKAY. OKAY. I APOLOGIZE.

3 **THE COURT:** THAT'S OKAY. ALL RIGHT. ARE Y'ALL READY FOR
4 THE JURY?

5 **MR. SUMNER:** YES, SIR, I AM.

6 **MS. MONTS:** I'LL JUST STEP OUT AND TELL THOSE TWO
7 WITNESSES, YOUR HONOR.

8 **MR. SUMNER:** THAT'D BE GREAT.

9 **MS. MONTS:** I'LL JUST GO TELL THOSE TWO.

10 **THE COURT:** OKAY. (PAUSE) OKAY. YES, SIR.

11 **MS. MONTS:** YOUR HONOR, I'M TRYING TO DECIDE HOW MANY MORE
12 WITNESSES TO CALL UP.

13 **THE COURT:** OKAY.

14 **MS. MONTS:** DO YOU KNOW WHAT TIME WE'LL BREAK FOR LUNCH?

15 **THE COURT:** HOPEFULLY ABOUT 12:30.

16 **MS. MONTS:** OKAY.

17 (JURY REENTERS COURTROOM AT 11:36 A.M.)

18 **THE COURT:** OKAY. LADIES AND GENTLEMEN, I RECEIVED A NOTE
19 THAT HAD MR. SINGER'S NAME ON IT. YOU'VE BEEN SELECTED AS THE
20 FOREMAN AND YOU WILL JUST BE THE LIAISON BETWEEN THE COURT AND
21 THE JURY IF THERE NEEDS TO BE ANY COMMUNICATION. I CAN ONLY
22 RESPOND TO ANY COMMUNICATION IF IT IS IN WRITING TO ME, AND I
23 HAVE TO RESPOND BACK TO YOU EITHER IN OPEN COURT OR BY WRITING AS
24 WELL. SO PLEASE UNDERSTAND THAT. AND YOU WILL BE THE PERSON WHO
25 PRESIDES OVER THE DELIBERATIONS, BUT, OF COURSE, YOUR VOTE

MATTERS AND MOTIONS

1 DOESN'T COUNT MORE THAN ANYBODY ELSE'S AND YOU DON'T GET PAID
2 MORE THAN ANYBODY ELSE.

3 ALL RIGHT. YES, MA'AM, GO AHEAD.

4 MS. MONT'S: YOUR HONOR, THE STATE CALLS SCOTT MACKEY.

5 SCOTT MACKEY, HAVING BEEN DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MS. MONT'S:

8 Q MR. MACKEY, WHERE ARE YOU CURRENTLY EMPLOYED?

9 A I'M CURRENTLY EMPLOYED WITH UNITED SAMSCO.

10 Q AND WERE YOU PREVIOUSLY EMPLOYED WITH THE FOUNTAIN INN
11 POLICE DEPARTMENT?

12 A YES, MA'AM.

13 Q HOW LONG DID YOU WORK WITH THEM?

14 A ABOUT FIVE AND A HALF YEARS.

15 Q AND DID YOU RECEIVE TRAINING IN LAW ENFORCEMENT PRIOR TO
16 HAVING TO TAKE THAT JOB?

17 A YES, MA'AM.

18 Q WHAT WAS YOUR EXPERIENCE, PLEASE?

19 A THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY.

20 Q AND WERE YOU CERTIFIED AS A LAW ENFORCEMENT OFFICER?

21 A YES, MA'AM, I WAS.

22 Q AND IN JANUARY OF 1998 WHAT WERE YOUR DUTIES AT FOUNTAIN INN
23 POLICE DEPARTMENT?

24 A I WAS A PATROL OFFICER. I WAS RESPONSIBLE FOR ANSWERING
25 CALLS FOR SERVICE, RESPONDING TO VARIOUS CALLS, STUFF LIKE THAT.

SCOTT MACKEY -- DIRECT BY MS. MONTS

1 Q WOULD THIS INCLUDE 911 CALLS?

2 A YES, MA'AM.

3 Q DO YOU RECALL IF YOU RECEIVED A DISPATCH ORDER TO GO TO [REDACTED]
[REDACTED]?

5 A YES, MA'AM, I DID.

6 Q DESCRIBE HOW THAT TOOK PLACE, HOW DID YOU RECEIVE THAT?

7 A I RECEIVED A CALL VIA OUR CAR RADIO AT WHICH POINT I
8 RESPONDED TO THE INCIDENT LOCATION YOU DESCRIBED.

9 Q DO YOU KNOW WHOSE RESIDENCE THAT WAS?

10 A MORRIS ANTONIO SULLIVAN.

11 Q AND IS THIS RESIDENCE IN GREENVILLE COUNTY?

12 A YES, MA'AM.

13 Q AND WERE OTHER OFFICERS DISPATCHED AS WELL?

14 A YES, MA'AM, THEY WERE.

15 Q AND WHEN YOU ARRIVED AT THAT RESIDENCE WERE ANY OTHER
16 OFFICERS ALREADY THERE?

17 A SERGEANT CHUCK MCCALL. WE GOT THERE ABOUT THE SAME TIME.

18 Q YOU WERE IN SEPARATE CARS?

19 A YES, MA'AM.

20 Q AND DESCRIBE WHAT DID YOU SEE WAS -- DESCRIBE PEOPLE,
21 OBJECTS. WHAT DID YOU SEE WHEN YOU ARRIVED?

22 A WHEN I FIRST ARRIVED TO THE HOUSE THERE'S A CHAIN LINK FENCE
23 IN FRONT OF THE HOUSE, IF I REMEMBER CORRECTLY. WE BOTH
24 APPROACHED THE HOUSE, KNOCKED ON THE DOOR, ANNOUNCED OUR
25 PRESENCE, DIDN'T GET A RESPONSE. AT THAT POINT SERGEANT MCCALL

SCOTT MACKEY -- DIRECT BY MS. MONTS

1 WENT TO THE RIGHT OF THE HOUSE, IF YOU'RE LOOKING STRAIGHT ON. I
2 WENT TO THE LEFT OF THE HOUSE. I APPROACHED A DOOR. IT APPEARED
3 TO BE LIKE A KITCHEN DOOR TO THE LEFT OF THE HOUSE, AND IT HAD A
4 WINDOW, A NINE-LIGHT WINDOW IN THE DOOR, AND I LOOKED THROUGH IT
5 TO SEE IF I COULD SEE ANY MOVEMENT OR HEAR ANYTHING.

6 Q AND DID YOU SEE ANYTHING OR HEAR ANYTHING?

7 A I DID NOT SEE ANYTHING, BUT I DID HEAR NOISES COMING FROM
8 INSIDE THE HOUSE.

9 Q DO YOU HAVE ANY IDEA WHAT THEY WERE?

10 A WELL, NO, AT THE TIME I DID NOT. I MEAN, IT SOUNDED LIKE
11 SOMEBODY OR SOMETHING WAS MAKING NOISES INSIDE THE HOUSE.

12 Q AND WHERE WAS SERGEANT MCCALL AT THAT TIME?

13 A WHEN I HAD LEFT HIM HE WAS HEADED TOWARDS THE RIGHT SIDE OF
14 THE HOUSE.

15 Q AND DID YOU GO BACK TO WHERE HE WAS?

16 A WELL, WE ACTUALLY MET BACK AT THE CENTER OF THE HOUSE.
17 THERE'S A -- THERE WAS LIKE A DOORSTEP AT THE VERY MIDDLE OF THE
18 HOUSE, AND WE MET BACK UP THERE---

19 Q IS THAT THE FRONT DOOR?

20 A YES, MA'AM.

21 Q AND WHAT, IF ANYTHING, DID YOU OBSERVE AT THE FRONT DOOR?

22 A WELL, OFFICER MCCALL AND I TALKED ABOUT WHAT HE HAD HEARD OR
23 SAW AT THE RIGHT SIDE OF THE HOUSE, AND I DESCRIBED THE SAME TO
24 HIM. AND AT THAT POINT WE BOTH DECIDED TO MOVE BACK BEHIND A
25 TREE, AND THERE WAS ALSO A CAR ABOUT 15 FEET OR SO AWAY TO

SCOTT MACKEY -- DIRECT BY MS. MONTIS

1 DISCUSS INSTEAD OF -- YOU, TAKING A SAFER POSITION OTHER THAN
2 STANDING AT THE FRONT DOOR TALKING ABOUT WHAT WAS GOING ON.

3 Q AND WHY WOULD THAT BE A SMART THING TO DO?

4 A TACTICALLY IT WOULD BE A SMART THING TO DO. WE DIDN'T KNOW
5 WHAT WE HAD AT THAT POINT. I MEAN, WHEN WE ARRIVED IT WAS A 911
6 HANG-UP CALL. WE DIDN'T KNOW, YOU KNOW. I HEARD NOISES AND WE
7 WERE GOING TO DISCUSS IT BEFORE WE CHOSE TO GO FORWARD.

8 Q DID YOU OBSERVE ANY EVIDENCE AT THE FRONT DOOR THAT YOU
9 NOTICED?

10 A IF I RECALL, SERGEANT MCCALL HAD TOLD ME THAT HE HAD SEEN A
11 SPENT SHELL CASING AT THE FRONT DOOR AND OBSERVED BLOOD.

12 Q AND HOW LONG -- WHAT WAS YOUR NEXT -- WHAT DID YOU DO NEXT?
13 DID ANYONE ELSE COME?

14 A WELL, WE WERE BEHIND THE CAR, TAKING COVER BEHIND THE CAR.
15 SERGEANT MCCALL THEN CALLED OUR DISPATCHER AND TOLD THEM, YOU
16 KNOW, WHAT WAS GOING ON, CALLED FOR HELP SO WE COULD SET UP A
17 PERIMETER AROUND THE HOUSE.

18 Q DID YOU RECEIVE ANY OTHER INFORMATION FROM DISPATCH?

19 A AT THAT POINT, NO. WE WERE BASICALLY WAITING FOR THE
20 PERIMETER.

21 Q AND DID OTHERS ARRIVE?

22 A YES, MA'AM.

23 Q WHO ELSE ARRIVED?

24 A ANOTHER OFFICER, CHRIS ANTHONY, ARRIVED SOON AFTER THE CALL.

25 Q AND SOMETIME AFTER THAT DID THE CHIEF ARRIVE?

1 A YES, MA'AM.

2 Q DID YOU EVER APPROACH THE DOOR AGAIN UNTIL THE CHIEF
3 ARRIVED?

4 A AT LEAST NOT UNTIL CHRIS ARRIVED. HE WENT TO THE BACK OF
5 THE HOUSE.

6 Q CHRIS WENT TO THE BACK?

7 A YES, MA'AM.

8 Q OKAY. AND WHAT DID YOU DO?

9 A WE WAITED FOR OTHER PEOPLE LIKE THE CHIEF TO ARRIVE BEFORE
10 WE APPROACHED THE FRONT DOOR, YES, MA'AM.

11 Q AND WHO WENT TO THE FRONT DOOR?

12 A ALL THREE OF US. ME, CHUCK MCCALL AND THE CHIEF.

13 Q AND WHAT HAPPENED AT THE FRONT DOOR?

14 A WE KNOCKED ON THE FRONT DOOR AND ANNOUNCED WHO WE WERE.

15 Q DID THE CHIEF DO THAT?

16 A YES, MA'AM.

17 Q AND WHAT HAPPENED NEXT?

18 A WE CONTINUED ANNOUNCING WHO WE WERE AND EVENTUALLY THE DOOR
19 OPENED.

20 Q DID YOU PREVIOUSLY ANNOUNCE YOURSELVES WHEN YOU WERE
21 KNOCKING?

22 A WHEN CHUCK AND I FIRST GOT THERE?

23 Q YES, SIR.

24 A YES, MA'AM.

25 Q HOW LOUD WERE YOU?

SCOTT MACKEY -- DIRECT BY MS. MONTS

1 A WE WERENT YELLING BUT WE WERE, YOU KNOW, ANNOUNCING
2 OURSELVES. WE WERENT---

3 Q AND WERE YOU KNOCKING?

4 A YES, MA'AM.

5 Q AND WHAT WOULD YOU HAVE SAID?

6 A FOUNTAIN INN POLICE DEPARTMENT, AT THE TIME.

7 Q AND HOW LONG WAS IT APPROXIMATELY UNTIL -- IF YOU KNOW --
8 UNTIL CHRIS ANTHONY CAME?

9 A I'M GUESSING FIVE TO TEN MINUTES OR SO.

10 Q AND HOW LONG POSSIBLY UNTIL THE CHIEF ARRIVED?

11 A ABOUT THE SAME.

12 Q SO FIVE OR TEN MORE MINUTES?

13 A YES, MA'AM.

14 Q OKAY. AND DID SOMEONE OPEN THE DOOR?

15 A YES, MA'AM.

16 Q WHO OPENED THE DOOR?

17 A MORRIS ANTONIO SULLIVAN.

18 Q AND WHAT DID YOU NOTICE WHEN HE OPENED THE DOOR?

19 A ON HIS PERSON OR IN THE HOUSE OR..

20 Q BOTH. LET'S START WITH HIS PERSON.

21 A HE APPEARED TO BE NERVOUS.

22 Q OKAY. WHAT ABOUT IN THE HOUSE?

23 A STUFF WAS KNOCKED ALL OVER THE PLACE. THE FLOOR WAS
24 DISTURBED. IT APPEARED TO BE WET.

25 Q HOW ABOUT AN ODOR?

SCOTT MACKEY -- DIRECT BY MS. MONTS

1 A I DID SMELL THE ODOR OF MARIJUANA ONCE WE ENTERED THE HOUSE.

2 Q WHAT DID YOU OR THE CHIEF SAY? WHAT DID YOU OR THE CHIEF
3 SAY TO THE DEFENDANT?

4 A AT THAT POINT?

5 Q YES, SIR.

6 A AT THAT POINT I SAID NOTHING. WE PLACED HIM IN PROTECTIVE
7 CUSTODY.

8 Q DID THE CHIEF EXPLAIN WHY YOU WERE THERE?

9 A WELL, WHEN WE FIRST GOT THERE---

10 Q I MEAN THE VERY FIRST THING.

11 A HE SAID, YOU KNOW, HE KIND OF SAID, LIKE, "WHAT'S GOING ON
12 HERE?"

13 Q WHO SAID THAT?

14 A CHIEF.

15 Q WHO SAID WHAT'S GOING ON HERE?

16 A HE SAID, KIND OF LIKE, WHAT'S GOING ON? AND MORRIS KIND OF
17 ACTED LIKE HE DIDN'T KNOW WHAT HE WAS TALKING ABOUT.

18 Q AND SO THEN DID YOU GO INSIDE?

19 A YES, MA'AM.

20 Q AND GO AHEAD. YOU SAID YOU PLACED HIM IN...

21 A IN PROTECTIVE CUSTODY. ACTUALLY, WE DIDN'T KNOW WHAT WAS
22 INSIDE THE HOUSE, SO CHUCK---

23 Q HAD YOU OR SOMEONE ELSE ALREADY CALLED HILLCREST HOSPITAL?

24 A PERSONALLY, I DID NOT, NO, MA'AM.

25 Q DID YOU RECEIVE INFORMATION FROM DISPATCH?

SCOTT MACKEY -- DIRECT BY MS. MONTS

1 A YES, MA'AM, LATER.

2 Q OKAY. PLEASE CONTINUE.

3 A OKAY. CHIEF AND I WERE GOING TO CLEAR THE REST OF THE
4 HOUSE. WHEN YOU FIRST ENTER THE HOUSE THERE IS A LIVING ROOM
5 AREA. IF YOU TURN TO THE LEFT, THERE IS A KITCHEN. CHIEF WENT
6 FIRST. HE ENTERED THE KITCHEN, THEN I ENTERED THE KITCHEN. THEN
7 WE TOOK A RIGHT TURN. AFTER WE TOOK THE RIGHT TURN, THERE IS A
8 BEDROOM, WHICH WAS LATER DISCOVERED TO BE MORRIS' BEDROOM, TO THE
9 LEFT. CHIEF WENT INTO THAT. I WENT FURTHER DOWN THE HALL INTO A
10 BEDROOM AT THE END OF THE HALL AND CLEARED THE HOUSE.

11 Q AND WAS ANYBODY ELSE IN THERE?

12 A NO, MA'AM.

13 Q AND WHERE WAS SERGEANT MCCALL WHILE YOU AND CHIEF DID THAT?

14 A HE WAS WITH MORRIS.

15 Q AND WHAT HAPPENED AFTER YOU CLEARED THE HOUSE? WHAT DID YOU
16 DO?

17 A WE WENT BACK OUT AND I ASSISTED CHUCK IN GUARDING MORRIS.

18 Q AND WHAT DID CHIEF DO?

19 A HE LEFT TO GET A SEARCH WARRANT.

20 Q AND DID YOU READ THE DEFENDANT HIS RIGHTS?

21 A YES, MA'AM, I DID WHEN I RETURNED.

22 Q SO WHO WAS THERE WHEN YOU READ HIM HIS RIGHTS?

23 A SERGEANT CHUCK MCCALL.

24 Q AND AT THE TIME DID YOU HAVE IT MEMORIZED OR DID YOU HAVE A
25 POLICE CARD?

1 A WELL, I HAD A CARD, BUT I HAD THEM MEMORIZED AND STILL
2 MEMORIZED TO TODAY.

3 Q IF YOU WOULD, TELL US, WHAT KIND OF RIGHTS DID YOU READ HIM?

4 A I DON'T KNOW IF THESE WERE MY EXACT WORDS, BUT I TOLD HIM HE
5 DID HAVE THE RIGHT TO REMAIN SILENT, ANYTHING HE SAID COULD BE
6 USED AGAINST HIM IN COURT. HE HAD THE RIGHT TO AN ATTORNEY. IF
7 HE COULD NOT AFFORD AN ATTORNEY ONE WOULD BE PRESENTED FOR HIM.
8 IF HE CHOSE TO ANSWER OUR QUESTIONS, HE DID HAVE THE RIGHT TO
9 STOP ANSWERING AT ANY TIME.

10 Q AND AT THAT TIME DID HE SAY ANYTHING ABOUT WHAT HAPPENED?

11 A HE DID. YES, MA'AM, HE DID.

12 Q OKAY. AND IF YOU CAN QUOTE HIM AS FAR AS YOU REMEMBER OR IF
13 YOU---

14 A I DON'T KNOW IF IT'S VERBATIM WHAT HIS QUOTE WAS, BUT HE
15 SAID THAT THEY CAME TO THE HOUSE DISRESPECTING HIM AND HE HAD TO
16 PUT THEM IN THE CAR.

17 Q NOW, AS FAR AS THE WORD "DISRESPECTING," I MEAN, ARE YOU
18 SURE ABOUT THAT WORD?

19 A YES, MA'AM, I AM.

20 Q AND HE HAD TO DO WHAT?

21 A PUT THEM -- PUT HIM IN THE CAR.

22 Q DID YOU KNOW WHAT HE WAS TALKING ABOUT?

23 A NO, MA'AM.

24 Q DID YOU LATER TRANSPORT MORRIS TO THE FOUNTAIN INN POLICE
25 DEPARTMENT?

SCOTT MACKEY -- DIRECT BY MS. MONT'S

1 A I DID, YES, MA'AM.

2 Q AND WHAT DID YOU SAY TO HIM AT THAT POINT?

3 A WHEN I PUT HIM -- IT WAS CUSTOMARY FOR ME PERSONALLY WHEN I
4 ARREST SOMEBODY AND PUT THEM IN MY CAR THAT I WOULD READ THEM
5 THEIR RIGHTS. I GUESS IT WAS JUST A HABIT THAT I HAD GOT INTO.

6 Q SO YOU READ HIM HIS RIGHTS AGAIN?

7 A YES, MA'AM.

8 Q DID YOU HAVE ANY FURTHER INVOLVEMENT WITH THE CASE AFTER
9 THAT POINT?

10 A I TRANSPORTED HIM BACK TO OUR LAW ENFORCEMENT CENTER. THAT
11 WAS IT.

12 MS. MONT'S: THANK YOU. NO FURTHER QUESTIONS.

13 THE COURT: CROSS EXAMINATION, MR. SUMNER.

14 MR. SUMNER: BRIEFLY. THANK YOU, YOUR HONOR.

15 CROSS EXAMINATION BY MR. SUMNER:

16 Q SCOTT, YOU TESTIFIED THAT -- TO THE JURY TODAY THAT MORRIS
17 APPEARED NERVOUS TO YOU WHEN YOU ALL GOT TO HIS HOME; IS THAT
18 RIGHT?

19 A YES, SIR.

20 Q NOW, IT IS CORRECT THAT MORRIS WAS 18 YEARS OLD AT THE TIME,
21 WOULD THAT BE RIGHT?

22 A IF I RECALL CORRECTLY.

23 Q WOULD YOU DISAGREE WITH THAT? I MEAN, HE WAS LESS THAN 20.

24 I MEAN, HE WAS A TEENAGER?

25 A SURE. YES, SIR.

SCOTT MACKEY -- CROSS BY MR. SUMNER

1 Q OKAY. AND I GUESS YOU WOULD AGREE WITH ME THAT IN
2 CIRCUMSTANCES SUCH AS THESE THERE IS NO QUESTION THERE HAD BEEN A
3 SHOOTING AT THE HOME. I MEAN, IT'S NOT UNUSUAL AT ALL FOR
4 SOMEBODY TO BE NERVOUS IN THAT SITUATION, IS IT?

5 A THAT IS CORRECT.

6 Q WELL, IT'S NOT, IS IT?

7 A RIGHT, IT'S NOT. IT'S NOT.

8 MR. SUMNER: OKAY. THANK YOU. I DON'T HAVE ANY OTHER
9 QUESTIONS.

10 MS. MONTES: NO REDIRECT, YOUR HONOR.

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

12 MS. MONTES: YOUR HONOR, WE ASK THIS WITNESS BE EXCUSED.

13 MR. SUMNER: WITHOUT OBJECTION, YOUR HONOR.

14 THE COURT: ALL RIGHT, SIR. YOU ARE EXCUSED, MR. MACKEY.

15 (WITNESS EXCUSED AT 11:50 A.M.)

16 MS. MONTES: YOUR HONOR, THE STATE CALLS CHUCK MCCALL.

17 CHARLES MCCALL, HAVING BEEN DULY SWORN,

18 TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. MONTES:

20 Q OFFICER MCCALL, WHAT IS YOUR CURRENT EMPLOYMENT?

21 A I WORK FOR CRYOVAC CORPORATION IN SIMPSONVILLE, SOUTH
22 CAROLINA.

23 Q AND DID YOU PREVIOUSLY WORK FOR FOUNTAIN INN POLICE
24 DEPARTMENT?

25 A YES, MA'AM.

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 Q HOW LONG DID YOU WORK FOR THEM?

2 A SEVEN OR EIGHT YEARS.

3 Q AND WHAT WAS -- IN JANUARY OF '98 WHAT WAS YOUR RANK AT THAT
4 TIME?

5 A SERGEANT.

6 Q AND WHAT WERE YOUR DUTIES AT THAT TIME?

7 A I WAS A PATROL SERGEANT, BASICALLY JUST ANSWERED CALLS FOR
8 SERVICE, 911 CALLS, INVESTIGATED CRIMES, INVESTIGATED TRAFFIC
9 ACCIDENTS.

10 Q AND DID YOU RESPOND TO A CALL AT [REDACTED] IN
11 FOUNTAIN INN ON THAT DAY, ON JANUARY 16TH OF 1998?

12 A YES, MA'AM.

13 Q AND DO YOU RECALL WHAT TIME IT WAS?

14 A IT WAS A LITTLE AFTER LUNCH. I GUESS IT WAS 1:10, 1:12 IN
15 THE AFTERNOON.

16 Q AND WHY DID YOU GO TO THAT RESIDENCE?

17 A I RECEIVED A CALL ON MY RADIO FROM OUR DISPATCHER, CAROLINE
18 REAGAN. SHE STATED THAT SHE HAD RECEIVED A 911 CALL THAT CAME
19 INTO THE POLICE DEPARTMENT THERE ON HER PANEL AND THAT IT WAS A
20 911 CALL AND SHE DIDN'T REALLY GET A CHANCE TO TALK TO ANYONE OR
21 NO ONE WAS REALLY SPEAKING, BUT IT JUST SOUNDED LIKE THERE WAS
22 SOME KIND OF DISTURBANCE GOING ON INSIDE THE HOUSE AT THE TIME.

23 Q AND WHEN YOU -- HOW LONG -- WHERE WERE YOU WHEN YOU GOT TO
24 THE RESIDENCE? HOW FAR AWAY?

25 A I MUST -- I THINK I WAS ON HELLAMS STREET, WHICH IS RIGHT

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 NEAR THE POLICE DEPARTMENT, SO I WAS MAYBE A MINUTE AWAY.

2 Q A MINUTE AWAY? AND HOW FAR IS [REDACTED] FROM THE
3 POLICE DEPARTMENT? A MINUTE?

4 A AS THE CROW FLIES PROBABLY HALF A MILE, MAYBE LESS.

5 Q OKAY. AND IF YOU HAD TO DRIVE AROUND THE BLOCK HOW FAR
6 WOULD IT...

7 A MAYBE ALMOST THREE-FOURTHS OF A MILE.

8 Q OKAY. SO IT WAS LESS THAN A MILE FROM THE POLICE
9 DEPARTMENT?

10 A UH-HUH (AFFIRMATIVE).

11 Q AND WHAT -- YOUR REGULAR ROUTINE ON THAT DAY, WERE YOU
12 WORKING THAT AREA OF [REDACTED]

13 A I WAS WORKING THE WHOLE CITY, JUST PATROLLING THE ENTIRE
14 CITY IN MY PATROL CAR.

15 Q AND HOW -- WERE OTHER PEOPLE -- DID OTHER PEOPLE HAVE THE
16 SAME DUTIES YOU DID ON THAT DAY?

17 A YES, MA'AM. I WAS WORKING WITH OFFICER MACKEY.

18 Q AND HOW OFTEN WOULD SOMEBODY DRIVE AROUND [REDACTED]?

19 A ANY GIVEN DAY, MAYBE ONCE OR TWICE DURING AN EIGHT-HOUR
20 SHIFT.

21 Q BUT YOU WOULD BE -- BUT WITHIN FOUNTAIN INN IT'S STILL NEVER
22 GOING TO BE TOO FAR AWAY, IS IT?

23 A NOWHERE IN FOUNTAIN INN IS TOO FAR AWAY. IT'S A SMALL TOWN.

24 Q WHO WAS AT THE SCENE WHEN YOU ARRIVED AT [REDACTED] [REDACTED] [REDACTED]?

25 A I BELIEVE IT WAS -- I WAS PROBABLY THE FIRST ONE ON THE

1 SCENE. OFFICER SCOTT MACKEY, HE GOT THERE LIKE EITHER RIGHT
2 AFTER ME OR BASICALLY ABOUT THE SAME TIME.

3 Q AND IS THAT LOCATION IN GREENVILLE COUNTY?

4 A YES, MA'AM. IT'S ALSO LOCATED WITHIN THE CITY LIMITS OF
5 FOUNTAIN INN IN GREENVILLE COUNTY.

6 Q AND WHAT DID YOU SEE WHEN YOU ARRIVED?

7 A JUST THERE WAS NOBODY THERE. IT WAS JUST THE HOUSE AT [REDACTED]
8 [REDACTED] THERE WAS -- I NOTICED THE FRONT DOOR WAS
9 CLOSED. THERE WAS AN OLD, LIKE A FOUR-DOOR, BROWN BUICK THAT WAS
10 TO THE LEFT OF THE YARD, TO THE LEFT OF A BIG OAK TREE THERE IN
11 FRONT OF THE HOUSE. AND THAT'S BASICALLY ALL THAT WAS GOING ON
12 THERE. THERE WAS NO OTHER CARS THERE AND THERE WAS NO OTHER
13 PEOPLE THERE.

14 Q AND AT THIS POINT WHAT INFORMATION DID YOU HAVE?

15 A JUST THE 911 CALL. THE DISPATCHER WAS RELAYING OVER THE
16 RADIO THAT IT WAS AN OPEN LINE, WHICH MEANT ALL SHE COULD HEAR --
17 LIKE THE PHONE WAS OFF THE HOOK, BUT THE PHONE -- YOU COULD STILL
18 HEAR WHAT WAS GOING ON INSIDE THE RESIDENCE, SOME KIND OF NOISES
19 OR DISTURBANCE AT THAT POINT.

20 Q AND WHAT DID YOU DO WHEN YOU GOT OUT OF YOUR VEHICLE?

21 A I APPROACHED THE FRONT DOOR AND KNOCKED ON THE DOOR AND
22 ANNOUNCED MY PRESENCE, "FOUNTAIN INN POLICE. COME TO THE DOOR.
23 WE GOT A 911 CALL." I BELIEVE OFFICER MACKEY WENT TO THE LEFT
24 SIDE OF THE HOUSE AND THERE WAS A DOOR, LIKE A DOOR ON THE LEFT
25 SIDE OF THE HOUSE THAT LED TO THE SIDE YARD.

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 Q AND WHAT DID YOU OBSERVE WHEN YOU WENT TO THE FRONT DOOR?

2 A AFTER I ANNOUNCED MY PRESENCE AND KNOCKED ON THE DOOR---

3 Q AND DESCRIBE THAT. YOU SAY "ANNOUNCE" YOUR PRESENCE. WHAT
4 DO YOU DO?

5 A JUST "POLICE. COME TO THE DOOR. FOUNTAIN INN POLICE."

6 KNOCK ON THE DOOR REALLY LOUD. HOPEFULLY IF THERE WAS SOMEONE
7 INSIDE THE HOUSE THAT THEY WOULD BE ABLE TO HEAR AND COME TO THE
8 DOOR.

9 Q DID YOU HEAR A TV OR A RADIO OR ANYTHING THAT WOULD HAVE
10 COVERED YOU UP?

11 A NO. NO. ALL I HEARD WAS JUST -- I HEARD SOME KIND OF
12 MOVEMENT INSIDE THE HOUSE, DIDN'T KNOW WHAT IT WAS, BUT I COULD
13 TELL THERE WAS SOMETHING MOVING AROUND INSIDE THERE. DIDN'T KNOW
14 WHO IT WAS OR WHAT IT WAS.

15 Q AND WHERE DID SCOTT MACKEY GO AND WHAT DID HE DO?

16 A HE WAS -- I BELIEVE HE WAS STILL ON THE LEFT SIDE OF THE
17 HOUSE, KIND OF JUST TO THE SIDE. WE WERE, LIKE, KIND OF UP
18 AGAINST THE SIDE OF THE HOUSE. WE'RE TRAINED TACTICALLY TO LIKE
19 AT LEAST TRY TO TAKE SOME KIND OF COVER. SO WE'RE LIKE UP --
20 LIKE STANDING TO THE SIDE -- I WAS STANDING TO THE LEFT SIDE OF
21 THE DOOR. I WASN'T DIRECTLY IN FRONT OF THE DOOR, BUT I WAS JUST
22 KNOCKING ON THE DOOR FROM THE SIDE.

23 Q AND WHEN NO ONE RESPONDED TO THE DOOR, WHAT DID YOU NOTICE
24 ABOUT THE FRONT DOOR?

25 A I LOOKED DOWN AT MY FEET AND I SAW -- I'M GOING TO DESCRIBE

1 IT. IT WOULD BE ABOUT THIS BIG. I WENT AHEAD AND PICKED IT UP.
2 IT WAS A SHINY, EMPTY SHELL CASING, AND IT SAID .40 CALIBER ON
3 THE TOP OF IT, AND IT LOOKED NEW AND SHINY. IT WAS SILVER IN
4 COLOR AND LOOKED BRAND NEW. AND I SMELLED IT, AND IT SMELLED
5 LIKE IT HAD BEEN FIRED. IT WAS FRESH GUNPOWDER, SMELLED BURNED.
6 AND---

7 Q I'M GOING TO HAND YOU STATE'S EXHIBIT 55. CAN YOU IDENTIFY
8 THAT FOR THE JURY?

9 A THIS IS THE FRONT OF THE ADDRESS IN QUESTION, [REDACTED]
[REDACTED] IN FOUNTAIN INN. THAT'S THE LOCATION WHERE WE WERE AT, WE
11 WERE DISPATCHED TO. AND YOU COULD SEE THE SPENT SHELL CASING
12 THERE ON THE FRONT PORCH ON THE CARPET AND ALSO WHAT LOOKED --
13 APPEARED TO BE BLOOD ON THE LOWER PART OF THE DOOR, A LITTLE SPOT
14 OF BLOOD.

15 Q DESCRIBE ON THE PICTURE WHERE THAT SPOT OF BLOOD IS.

16 A LOOKS LIKE IT'S RIGHT THERE AT THE BOTTOM ON THE LEFT-HAND
17 SIDE BOTTOM OF THE DOOR.

18 Q OKAY. PLEASE CONTINUE. YOU NOTICED THOSE TWO THINGS. DID
19 YOU TELL SERGEANT -- OR SCOTT MACKEY THAT?

20 A YES. AND HE SAW IT.

21 Q AND WHAT DID YOU DO?

22 A I STARTED TO GET CONCERNED AT THAT POINT. I WAS THINKING,
23 WELL, HERE'S A SPENT SHELL CASING. THERE'S PROBABLY -- THERE'S
24 BEEN SOME GUNSHOTS FIRED HERE OR SOMEONE SHOT A GUN BECAUSE
25 THERE'S A SPENT SHELL CASING LOOKS BRAND NEW. IT DIDN'T LOOK

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 LIKE IT HAD BEEN THERE A LONG TIME BECAUSE THERE'S NO DUST OR
2 DIRT ON IT. IT DIDN'T HAVE ANY RUST ON IT. IT HAD BEEN RAINING
3 THAT DAY, SO THERE WAS A LITTLE -- THERE WAS RAIN ON IT. IT WAS
4 WET.

5 THEN WE STARTED GETTING INFORMATION FROM THE RADIO. WELL,
6 WHAT I DID NEXT WAS I TOLD MY DISPATCHER ON MY POLICE RADIO WHAT
7 WE HAD, WHAT I JUST DESCRIBED TO EVERYBODY IN THE COURTROOM,
8 ABOUT THE SHELL CASING AND THE BLOOD, PLUS WE HAD THE 911 CALL
9 WHERE WE DIDN'T REALLY KNOW WHAT WAS GOING ON. THEN THE
10 DISPATCHER STATED THAT SOME MEMBER OF OUR POLICE DEPARTMENT -- I
11 DON'T KNOW EXACTLY WHO -- SOME OFFICER HAD CALLED HILLCREST E.R.
12 TO SEE IF ANYONE WAS COMPLAINING OF A GUNSHOT WOUND, AND DISPATCH
13 DID ADVISE ME AND SCOTT MACKEY, WHO WERE AT THE SCENE, THAT
14 HILLCREST EMERGENCY ROOM, WHICH IS RIGHT UP THE ROAD, HAD A
15 VICTIM THERE WITH A GUNSHOT WOUND AND THAT THEY HAD IN FACT COME
16 FROM THAT RESIDENCE WE WERE JUST AT. AND THAT'S WHEN WE STARTED
17 BACKING UP AND GETTING BEHIND COVER, BEHIND A TREE, BEHIND THE
18 CAR, BECAUSE THEN WE -- I WAS CONCERNED AT THAT POINT.

19 Q AND AT WHAT POINT DID ANYBODY ELSE COME?

20 A AFTER WE -- I GOT ON THE RADIO AND ADVISED OUR DISPATCHER OF
21 WHAT WE HAD AND THE SITUATION, THE CHIEF OF POLICE AND LIEUTENANT
22 RUMFELT STATED THAT THEY WERE GOING TO COME TO THE RESIDENCE
23 THERE TO BASICALLY BACK US UP AND TO SEE WHAT WAS GOING ON THERE.

24 Q AT SOME POINT DID CHRIS ANTHONY COME?

25 A CHRIS ANTHONY CAME PROBABLY MAYBE FOUR OR FIVE MINUTES AFTER

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 MYSELF AND OFFICER MACKEY ARRIVED AND HE -- I THINK HE WENT
2 AROUND TO THE BACK OF THE HOUSE TO COVER THE BACK OF THE HOUSE,
3 AND HE -- I THINK HE WAS HIDING BEHIND A TREE BACK THERE TO TAKE
4 COVER BEHIND A TREE AND TO WATCH THE BACK OF THE HOUSE, BECAUSE
5 IT'S JUST US THREE OFFICERS AT THAT POINT WATCHING THE HOUSE.

6 Q WHEN YOU WERE WATCHING THE FRONT OF THE HOUSE DID HE EVER
7 COME BACK OR DID HE STAY BACK THERE UNTIL MORE ASSISTANCE CAME?

8 A HE STAYED BACK THERE.

9 Q AND WHAT DID THE CHIEF DO WHEN HE ARRIVED?

10 A HE WAS ON HIS CELL PHONE AND HE WAS TALKING TO THE
11 SOLICITOR'S OFFICE TO SEE IF WE COULD GO ON IN WITHOUT A SEARCH
12 WARRANT AT THAT POINT BASED ON OUR EXIGENT CIRCUMSTANCES AND WHAT
13 WAS GOING ON AT THE SCENE, I GUESS. THE CHIEF TOLD ME THAT WE
14 COULD GO AHEAD AND GO ON IN THE HOUSE.

15 Q AND---

16 A IF WE HAD TO.

17 Q OKAY. AND WHAT HAPPENED WHEN THE CHIEF ARRIVED, WHAT DID
18 THE THREE OF YOU DO?

19 A RIGHT. WE APPROACHED THE FRONT DOOR AGAIN CAUTIOUSLY AND
20 KNOCKED ON THE DOOR AND THE CHIEF ANNOUNCED THAT "IF YOU'RE IN
21 THERE, COME ON OUT OR WE'RE COMING IN." SO WE REALLY DIDN'T HAVE
22 TO -- WE DIDN'T HAVE TO BREAK THE DOOR DOWN OR ANYTHING. THE
23 DOOR OPENED AND MORRIS SULLIVAN OPENED THE DOOR AND LET US IN.

24 Q AND WHAT WAS SAID TO MORRIS WHEN HE OPENED THE DOOR?

25 A CHIEF JUST STARTED EXPLAINING TO HIM THE SITUATION, WHAT WE

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 HAD, LOOK, THERE'S SOMEBODY DEAD AT THE HOSPITAL OR THERE'S A
2 VICTIM AT THE HOSPITAL THAT ALLEGEDLY JUST CAME FROM YOUR HOUSE
3 RIGHT HERE AT THIS LOCATION. HE'S BEEN SHOT. WE'VE GOT A SHELL
4 CASING ON THE PORCH. WE'VE GOT BLOOD. NOW WE WANT TO -- YOU
5 KNOW, WE'RE HERE TO INVESTIGATE TO FIND OUT WHAT'S GOING ON.

6 Q AND WHAT DID MORRIS SULLIVAN SAY?

7 A HE DIDN'T REALLY SAY TOO MUCH. HE JUST SAID, BASICALLY --
8 I'M NOT GOING TO QUOTE HIM, HIS EXACT WORDS VERBATIM, BUT
9 SOMETHING TO THE EFFECT OF, I'M NOT -- I DON'T KNOW WHAT'S GOING
10 ON OR -- HE WAS ACTING LIKE, WHY ARE YOU GUYS HERE? I DON'T
11 UNDERSTAND WHY YOU'RE HERE. WHY ARE YOU IN MY HOUSE? I DON'T
12 KNOW WHAT'S GOING ON. AND HE JUST KIND OF ACTED LIKE HE DIDN'T
13 KNOW WHAT WAS GOING ON.

14 Q AND DID YOU GO ON IN THE HOUSE?

15 A YES, MA'AM.

16 Q AND WHAT TOOK PLACE THEN?

17 A FIRST THING I DID WAS PUT HANDCUFFS ON MR. SULLIVAN. IT'S
18 CALLED, BASICALLY, INVESTIGATIVE DETENTION AT THAT POINT. AND
19 ALL THAT IS IS WE JUST PUT HANDCUFFS ON THEM JUST TO MAKE SURE
20 THAT HE'S NOT GOING TO HURT US AND ALSO TO PAT HIM DOWN FOR ANY
21 WEAPONS, MAKE SURE THERE'S NO WEAPONS ON HIM. AND I STOOD BY
22 WITH HIM WHILE THE CHIEF AND OFFICER MACKEY DID WHAT WE CALL A
23 PROTECTIVE SWEEP THROUGH THE HOUSE BASICALLY JUST TO LOOK FOR ANY
24 MORE VICTIMS. WE ALREADY KNEW WE HAD ONE VICTIM. SEE IF THERE
25 WAS ANY OTHER SUSPECTS IN THE HOUSE THAT COULD BE A DANGER TO US.

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 BASICALLY IT'S CALLED A SEARCH, BUT IT'S BASICALLY JUST A SEARCH
2 FOR A VICTIM OR ANOTHER SUSPECT, NOT A SEARCH FOR EVIDENCE OR
3 ANYTHING AT THAT POINT.

4 Q AT THAT POINT DO YOU KNOW IF ANYONE ELSE IS IN THERE?

5 A I DIDN'T KNOW IF ANYBODY ELSE WAS IN THERE.

6 Q AND GOING BACK JUST A LITTLE BIT, FROM THE TIME YOU ARRIVED
7 UNTIL THE TIME CHIEF ARRIVED HOW MUCH TIME WENT PAST? HOW MUCH
8 TIME TRANSPIRED?

9 A I'M GOING TO GUESS MAYBE FIVE OR TEN MINUTES, SOMETHING LIKE
10 THAT.

11 Q NOW, DIDN'T IT TAKE A WHILE FOR CHRIS ANTHONY TO GET THERE?

12 A JUST -- NO, NOT REALLY, JUST A FEW MINUTES. LIKE I SAID,
13 FOUNTAIN INN IS A VERY SMALL TOWN. YOU CAN GET ANYWHERE IN
14 FOUNTAIN INN VERY QUICKLY.

15 Q OKAY. PLEASE CONTINUE. WHAT DID YOU -- WHAT DID YOU DO
16 AFTER THE SEARCH OF THE HOUSE WAS DONE?

17 A OKAY. I FORGOT TO MENTION, WHEN WE FIRST WALKED IN I DID
18 SMELL WHAT -- SOMETHING IN THE AIR THAT SMELLED LIKE MARIJUANA,
19 AND THE CHIEF AND SCOTT MACKEY WENT BACK TO THE BACK OF THE
20 HOUSE, WHICH THEY WOULD HAVE WALKED THROUGH A KITCHEN FIRST AND
21 THEN TO A SMALL HALLWAY, AND THERE WAS A BATHROOM THERE AND THE
22 DEFENDANT'S BEDROOM, WHICH WE DIDN'T KNOW AT THE TIME, AND THEN
23 ANOTHER BEDROOM. THEY CAME BACK AND I THINK EITHER THE CHIEF OR
24 SCOTT MENTIONED TO ME THEY SAW WHAT THEY BELIEVED TO BE MARIJUANA
25 IN PLAIN VIEW ON A DRESSER IN THE HOUSE, WHICH WAS LATER

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 DETERMINED TO BE THE DEFENDANT'S BEDROOM. AND THAT'S WHEN THE
2 CHIEF SAID, BASICALLY, TO MORRIS THAT HE'S GOING TO JUST GO GET A
3 SEARCH WARRANT BASED ON WHAT HE SAW, WHAT WE SAW, WHAT'S -- THE
4 INFORMATION WE HAD AVAILABLE AT THAT TIME, ALL THE EVIDENCE
5 AVAILABLE AT THAT TIME, AND TOLD -- INSTRUCTED ME AND SCOTT
6 MACKEY TO JUST STAND BY WITH THE DEFENDANT, WHO WAS STILL IN
7 HANDCUFFS AT THAT TIME, AND JUST STAY WITH THE RESIDENCE AND
8 SECURE THE CRIME SCENE UNTIL HE COULD COME BACK WITH A SEARCH
9 WARRANT AND THEN WE COULD SEARCH THE HOUSE THOROUGHLY FOR
10 EVIDENCE.

11 Q AND DID THE CHIEF THEN LEAVE?

12 A YES, MA'AM.

13 Q AND WHAT DID YOU AND MACKEY DO?

14 A WE JUST STOOD THERE WITH THE DEFENDANT AND DID WHAT OUR BOSS
15 TOLD US TO DO, MAKE SURE THE DEFENDANT DIDN'T GO ANYWHERE, MAKE
16 SURE NOBODY CAME INTO THE HOUSE. AND CHRIS ANTHONY WAS OUTSIDE
17 AND HE MADE SURE THAT -- HE WENT AHEAD AND PUT UP SOME CRIME
18 SCENE TAPE AROUND THE FRONT OF THE RESIDENCE TO MAKE SURE NOBODY
19 WOULD CROSS THAT LINE AND, YOU KNOW, INTERFERE WITH OUR
20 INVESTIGATION OR DESTROY ANY EVIDENCE OR ANYTHING LIKE THAT.

21 Q DID YOU HEAR SCOTT MACKEY READ THE DEFENDANT'S HIS RIGHTS?
22 WERE YOU PRESENT?

23 A YES, MA'AM.

24 Q AND WHAT DID -- DID THE DEFENDANT SEEM TO UNDERSTAND THOSE
25 RIGHTS?

1 A YES, MA'AM.

2 Q AND WAS HE ASKED ANY QUESTIONS?

3 A NO, MA'AM.

4 Q WELL, DID HE SAY ANYTHING?

5 A THE ONLY -- WE DIDN'T WANT TO ASK HIM ANY QUESTIONS THAT
6 WOULD, YOU KNOW, MAKE HIM INCRIMINATE HIMSELF. WE DIDN'T WANT TO
7 VIOLATE HIS RIGHTS. BUT BASICALLY JUST, WHAT HAPPENED? WHAT'S
8 GOING ON? WHAT HAPPENED IN HERE? AND I WROTE DOWN -- I REMEMBER
9 SPECIFICALLY THAT HE QUOTED -- LET'S SEE. HE WAS VERY NERVOUS.
10 HE WAS ON THE VERGE OF TEARS. HE SEEMED VERY UPSET. HE STATED,
11 FOUR NIGGERS CAME TO THE DOOR AND HE LET THEM IN BECAUSE
12 EVERYTHING WAS COOL. AND THEN HE AND JERVIS STARTED ARGUING AND
13 HE, AND I QUOTE, "PUT HIM IN THE CAR." HE SAID HE DID NOT MEAN
14 TO BUT JERVIS WAS DISRESPECTING HIM IN HIS HOUSE.

15 Q WAS ANYTHING ELSE SAID?

16 A NO, MA'AM.

17 Q DO YOU KNOW AT WHAT TIME GREENVILLE COUNTY FORENSICS
18 ARRIVED?

19 A YES, MA'AM, I HAVE IT IN MY REPORT.

20 Q WHAT TIME DID THEY ARRIVE?

21 A GREENVILLE COUNTY I.D. OFFICERS GARRETT AND ALLEN ARRIVED ON
22 SCENE AT 1419 HOURS, WHICH WOULD HAVE BEEN 2:19 IN THE AFTERNOON.

23 Q AND HOW ABOUT WHAT TIME DID THE CHIEF RETURN?

24 A I HAVE CHIEF MORTON ARRIVED BACK SHORTLY -- SHORTLY
25 THEREAFTER, RIGHT AFTER THE I.D. UNITS, WITH THE SEARCH WARRANT.

1 Q AND WHAT DID YOU DO ONCE THE CHIEF RETURNED?

2 A THE CHIEF SPOKE TO THE SUSPECT'S MOTHER AND EXPLAINED TO HER
3 THE ENTIRE SITUATION OR WHAT WE KNEW AT THAT POINT.

4 Q SHE OBVIOUSLY HAD ARRIVED AT THIS TIME?

5 A YES, MA'AM. I DON'T KNOW WHEN SHE ARRIVED.

6 Q OKAY. WHAT DID YOU DO ONCE THE CHIEF CAME BACK? WHAT WAS
7 YOUR DUTY?

8 A I OBSERVED THE CHIEF BASICALLY JUST READ THE SEARCH WARRANT
9 OR EXPLAIN THE SEARCH WARRANT TO THE OWNER/OCCUPANT, WHICH WOULD
10 HAVE BEEN IDA MAE SULLIVAN. CHIEF MORTON AND THEN LIEUTENANT
11 RUMFELT AND THE GREENVILLE I.D. FORENSIC OFFICERS, THEY ENTERED
12 THE CRIME SCENE AT THAT POINT, REENTERED THE CRIME SCENE, AND THE
13 CHIEF ASKED THE SUBJECT -- THE SUSPECT WHERE THE GUN WAS, AND MR.
14 SULLIVAN TOLD HIM THAT IT WAS UP IN THE ATTIC OF HIS BEDROOM. HE
15 HAD PLACED THE GUN UP THERE.

16 Q AND DID ANYONE ACTUALLY SEARCH THE HOUSE THEN?

17 A YES, MA'AM. THE CHIEF SEARCHED THE HOUSE AND LIEUTENANT
18 RUMFELT AND THE GREENVILLE FORENSICS OFFICERS.

19 Q AND WHAT WAS YOUR DUTY? WHAT WAS YOUR ASSIGNMENT?

20 A BASICALLY I STAYED THERE AND OBSERVED WHAT THEY DID.

21 Q WERE YOU THE SCRIBE ON THE SEARCH WARRANT?

22 A YES.

23 Q OKAY. DESCRIBE THOSE DUTIES.

24 A AS THE CHIEF AND LIEUTENANT RUMFELT AND THE I.D. OFFICERS --
25 THE I.D. OFFICERS WERE TAKING PICTURES, AND THE CHIEF AND

CHUCK MCCALL -- DIRECT BY MS. MONTIS

1 LIEUTENANT RUMFELT AS THEY PICKED UP DIFFERENT ITEMS OF EVIDENCE
2 OR WHAT THEY THOUGHT TO BE EVIDENCE, AS THEY PICKED UP THE ITEMS,
3 I WOULD WRITE IT DOWN JUST TO TAKE NOTES OF, LIKE, FOR EXAMPLE,
4 IF THEY PICKED UP A SPENT SHELL CASING OR WHATEVER, I WOULD WRITE
5 DOWN SPENT -- IT WAS A SPENT SHELL CASING AND EXACTLY WHERE IT
6 WAS AND WHO IS THE PERSON THAT PICKED IT UP.

7 Q AND DID YOU TAKE CUSTODY OF EVERYTHING THAT WAS SEIZED AT
8 THE HOUSE?

9 A YES, MA'AM. THEY TURNED ALL THE ITEMS OF EVIDENCE OVER TO
10 ME SO I COULD PLACE THEM INTO OUR PROPERTY AND EVIDENCE ROOM
11 WHERE THEY WOULD BE LOCKED AWAY FOR SAFEKEEPING UNTIL THEY COULD
12 BE EXAMINED.

13 Q OKAY. I'M GOING TO HAND YOU SOME PHOTOS THAT HAVE BEEN
14 MARKED FOR IDENTIFICATION AND READ OFF THE NUMBERS TO YOU. IF
15 YOU CAN PLEASE IDENTIFY THESE FOR THE JURY AND THEN WE'LL PUBLISH
16 THEM TO THE JURY. HERE IS STATE'S EXHIBIT 52.

17 (COUNSEL OFF RECORD)

18 MR. SUMNER: YOUR HONOR, I'VE LOOKED AT THE PHOTOGRAPHS
19 ALREADY. I DON'T HAVE ANY OBJECTION TO ANY OF THE PICTURES.

20 THE COURT: OKAY.

21 MR. SUMNER: SO, THEY CAN GO AHEAD AND BE ADMITTED AS FAR
22 AS I'M CONCERNED.

23 MS. MONTIS: OKAY. I'LL GO AHEAD AND READ THE NUMBERS FOR
24 THE COURT REPORTER.

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

1 **MS. MONTS:** IT'S 52, 61, 57, 65, 80, 74, 86, 82, 87, 88,
2 38, 40, 70, 71, 90, 91 AND 92.

3 **THE COURT:** OKAY. THEY'RE IN EVIDENCE.

4 **MS. MONTS:** THANK YOU, YOUR HONOR.

5 (STATE'S EXHIBIT 52, PHOTOGRAPH, MOVED INTO EVIDENCE)

6 (STATE'S EXHIBIT 61, PHOTOGRAPH, MOVED INTO EVIDENCE)

7 (STATE'S EXHIBIT 57, PHOTOGRAPH, MOVED INTO EVIDENCE)

8 (STATE'S EXHIBIT 65, PHOTOGRAPH, MOVED INTO EVIDENCE)

9 (STATE'S EXHIBIT 80, PHOTOGRAPH, MOVED INTO EVIDENCE)

10 (STATE'S EXHIBIT 74, PHOTOGRAPH, MOVED INTO EVIDENCE)

11 (STATE'S EXHIBIT 86, PHOTOGRAPH, MOVED INTO EVIDENCE)

12 (STATE'S EXHIBIT 82, PHOTOGRAPH, MOVED INTO EVIDENCE)

13 (STATE'S EXHIBIT 87, PHOTOGRAPH, MOVED INTO EVIDENCE)

14 (STATE'S EXHIBIT 88, PHOTOGRAPH, MOVED INTO EVIDENCE)

15 (STATE'S EXHIBIT 38, PHOTOGRAPH, MOVED INTO EVIDENCE)

16 (STATE'S EXHIBIT 40, PHOTOGRAPH, MOVED INTO EVIDENCE)

17 (STATE'S EXHIBIT 70, PHOTOGRAPH, MOVED INTO EVIDENCE)

18 (STATE'S EXHIBIT 71, PHOTOGRAPH, MOVED INTO EVIDENCE)

19 (STATE'S EXHIBIT 90, PHOTOGRAPH, MOVED INTO EVIDENCE)

20 (STATE'S EXHIBIT 91, PHOTOGRAPH, MOVED INTO EVIDENCE)

21 (STATE'S EXHIBIT 92, PHOTOGRAPH, MOVED INTO EVIDENCE)

22 **Q** MR. MCCALL, I'M GOING TO PUT THESE ON THE SCREEN. IF YOU
23 CAN, DESCRIBE WHAT THESE ARE TO THE JURY, PLEASE.

24 **A** YES, MA'AM.

25 **Q** (PAUSE) THIS IS STATE'S EXHIBIT 85. CAN YOU DESCRIBE WHAT

1 THIS IS?

2 THE COURT: DO YOU NEED TO---

3 WITNESS: CAN I STAND?

4 THE COURT: SURE.

5 WITNESS: THANK YOU, YOUR HONOR.

6 Q WHY DON'T YOU COME OVER HERE SO WE CAN STEP OUT OF THE WAY.

7 A (COMPLIES)

8 Q CAN YOU DESCRIBE WHAT THAT IS?

9 A THIS IS THE -- WHAT YOU'RE SEEING HERE IS JUST THE FRONT
10 DOOR TO THE HOUSE AT [REDACTED]. THAT'S THE SCENE AS IT
11 LOOKED LIKE AS WE ENTERED THE HOUSE.

12 Q HERE IS EXHIBIT 55. (PAUSE) WHAT IS THIS?

13 A THE FRONT DOOR OF [REDACTED], LOCATED IN THE CITY OF
14 FOUNTAIN INN. THIS IS THE LOCATION WE ARRIVED ON THE DATE IN
15 QUESTION. YOU CAN SEE -- THIS IS WHAT I SAW WHEN I WAS STANDING
16 ON THE FRONT PORCH. AND THAT'S WHAT I PICKED UP EXAMINED.
17 THAT'S A SPENT .40 CALIBER SHELL CASING. YOU CAN BARELY SEE --
18 IT MIGHT LOOK LIKE A SCREW OR A NAIL RIGHT THERE, BUT THAT IS A
19 SPOT OF WHAT I THOUGHT TO BE BLOOD.

20 Q OKAY. THIS IS EXHIBIT 74. WHAT IS THAT PHOTOGRAPH? IF YOU
21 COULD, JUST TELL US WHAT IT IS.

22 A OKAY. THIS IS JUST ANOTHER VIEW OF THE FRONT OF THE
23 DEFENDANT'S HOUSE, WHAT I SAW WHEN I ARRIVED THERE, THE FOUR-DOOR
24 BROWN BUICK, THE OAK TREE, THE FRONT DOOR. NOW, YOU CAN'T SEE
25 THIS BUT ON THE OTHER SIDE OF THE LEFT OF THE HOUSE AROUND THAT

1 CORNER THERE IS ALSO A SIDE DOOR THAT LEADS INTO THE KITCHEN.

2 Q NUMBER 50?

3 A LIVING ROOM OF THE HOUSE, LITTLE DIVIDER OR PARTITION THERE.

4 AS YOU WALK IN THE FRONT DOOR, THIS WOULD BE DIRECTLY TO YOUR
5 RIGHT.

6 Q NUMBER 75?

7 A THIS IS ANOTHER PICTURE OF THE SAME LIVING ROOM AREA.

8 Q NEXT WILL BE NUMBER 80?

9 A TURN THAT A LITTLE. THERE YOU GO. OKAY. THIS IS WHAT
10 LOOKS TO ME LIKE BLOOD OR A SMEAR OR A REDDISH SUBSTANCE THAT I
11 BELIEVED TO BE BLOOD. THIS IS THE SAME SPOT TO THE LEFT OF THE
12 FRONT DOOR DOWN AT THE BOTTOM THAT I SHOWED YOU IN A PREVIOUS
13 PHOTOGRAPH, AND THAT IS JUST THERE FOR SCALE AS A MEASUREMENT,
14 JUST TO SEE HOW BIG THAT SPOT IS.

15 Q NEXT IS NUMBER 82?

16 A WALKING THROUGH THE FRONT DOOR AS YOU OPEN IT INTO THE FRONT
17 LITTLE WALKWAY THERE, THERE IS A SPOT OF WHAT LOOKS TO BE BLOOD
18 THERE. I'M NOT REALLY SURE WHAT THAT IS. IT COULD BE BLOOD OR
19 -- I DON'T KNOW WHAT IT IS.

20 Q NEXT IS NUMBER 57?

21 A THIS IS MR. SULLIVAN'S BEDROOM, AND THIS IS WHERE -- THIS IS
22 IN THE BEDROOM CLOSET, AND THERE IS THE ATTIC SPACE ENTRANCE
23 WHERE HE TOLD US THAT HE PLACED THE GUN.

24 Q NEXT IS NUMBER 70.

25 A CHIEF OF POLICE TOOK THIS CHAIR AND STOOD IT UP IN THE

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 CLOSET THERE AND STOOD UP AND OPENED THE ATTIC DOOR, AND HE
2 PULLED OUT -- IT'S LIKE A WHITE OR OFF WHITE BED SHEET AND INSIDE
3 THE BED SHEET THERE WAS THIS PISTOL.

4 Q NEXT IS NUMBER 38.

5 A THAT WAS THE BED SHEET THAT THE PISTOL WAS WRAPPED UP IN. I
6 THINK IT HAD SOME -- YOU PROBABLY CAN'T SEE IT.

7 Q HAD SOME WHAT?

8 A I RECALL IT MIGHT HAVE HAD SOME BLOOD SPOTS ON IT, BUT I
9 THINK THE JURY CAN SEE IT FROM THIS PHOTOGRAPH.

10 Q NEXT IS EXHIBIT 40.

11 A OKAY. WE'RE STILL IN THE BEDROOM, THE DEFENDANT'S BEDROOM,
12 AND THIS IS THE BUNK BED. AS YOU WALK INTO HIS BEDROOM, THE BUNK
13 BEDS WERE UP AGAINST THE WALL DIRECTLY TO YOUR RIGHT, AND THIS
14 WAS A T-SHIRT THAT THE DEFENDANT HAD BEEN WEARING THAT HAS SOME
15 BLOOD ON IT, WHAT WE THOUGHT WAS BLOOD ON IT. IT'S DRAPED OVER
16 THE BUNK BED IN THE DEFENDANT'S BEDROOM.

17 Q NEXT IS EXHIBIT 88.

18 A AS I DESCRIBED EARLIER, THE CHIEF AND OFFICER MACKEY HAD
19 MADE JUST A QUICK SEARCH OF THE HOUSE AND THIS WAS IN PLAIN VIEW
20 IN THE DEFENDANT'S BEDROOM ON TOP OF THIS -- WE'RE STILL IN THE
21 BEDROOM -- ON TOP OF A DRESSER IN THE DEFENDANT'S BEDROOM. THERE
22 WERE SOME SCALES THERE, WHAT WE CALL A GREEN LEAFY PLANTLIKE
23 MATERIAL, BELIEVED TO BE MARIJUANA, BECAUSE WE DIDN'T KNOW IT WAS
24 MARIJUANA AT THE TIME, AND AN ASHTRAY.

25 Q NEXT IS 65.

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 A OKAY. THAT APPEARS TO BE A SHELL CASING. DO YOU HAVE A
2 DESCRIPTION OF WHERE THAT WAS? (OFF RECORD WITH MS. MONT'S)

3 Q WAS THAT A -- WAS THAT RECOVERED AT THE SCENE?

4 A YES, MA'AM.

5 Q WOULD YOU HAVE IN YOUR REPORT WHERE THIS PARTICULAR ONE WAS
6 RECOVERED?

7 A I HOPE SO. I DIDN'T TAKE ANY OF THESE PHOTOGRAPHS MYSELF.
8 THIS WOULD HAVE BEEN PICTURES TAKEN OF THE CRIME SCENE OF
9 ANYTHING THAT'S INSIDE THE HOUSE BY THE FORENSICS OFFICERS AS IT
10 -- WHAT THEY DO IS THEY TAKE PICTURES OF EVIDENCE AS IT SITS
11 BEFORE WE ACTUALLY PHYSICALLY PICK IT UP---

12 Q AND WHAT PIECE OF FURNITURE IS THIS LYING ON?

13 A IT LOOKS LIKE IT COULD BE THE FLOOR OF THE LIVING ROOM. IT
14 COULD BE THE TABLE IN THE LIVING ROOM. I DON'T HAVE ANY NOTES ON
15 THE PHOTOGRAPHS.

16 Q OKAY. BUT THAT'S -- THOSE WERE THE LOCATIONS THAT SHELLS
17 WERE RECOVERED?

18 A THIS PHOTOGRAPH IS TOO CLOSE FOR ME TO TELL WHERE THAT IS.

19 Q OKAY. AND NEXT IS EXHIBIT 61.

20 A OKAY. CHIEF MORTON AND LIEUTENANT RUMFELT---

21 Q AND SPEAK REAL LOUD SO ALL THE JURORS CAN HEAR YOU.

22 A CHIEF AND LIEUTENANT RUMFELT HAD TO PHYSICALLY DIG THIS
23 PIECE OF BULLET OR PIECE OF ROUND OUT OF THE HARDWOOD FLOOR.
24 THIS WAS IN THE FOYER AREA AS YOU WALK INTO THE FRONT DOOR OF THE
25 HOUSE. THERE'S HARDWOOD FLOORS IN THE LIVING ROOM THERE, AND SO

1 THE BULLET HAD TO BE DUG OUT.

2 Q OKAY. AND NUMBER 52.

3 A THAT'S ANOTHER SPENT SHELL CASING, JUST LIKE YOU SAW ON THE
4 RUG.

5 Q HERE IS EXHIBIT 86.

6 A THIS IS THE DEFENDANT AFTER WE -- I BELIEVE AFTER WE
7 ARRESTED HIM. AND THIS IS THE CLOTHES THAT HE WAS WEARING AT THE
8 TIME.

9 Q AND WHAT DID YOU NOTICE ABOUT HIS CLOTHING?

10 A YOU CAN'T SEE IN THIS PHOTOGRAPH BUT DOWN AT THE BOTTOM ON
11 HIS PANTS LEG IT LOOKS TO BE WHAT APPEAR TO BE BLOOD DROPLETS ON
12 THE DENIM, THE BLUE JEANS DOWN THE CUFF NEAR HIS BOOTS.

13 Q WHAT ABOUT HIS -- WHAT ABOUT HIS -- WHAT ABOUT HIS SHIRT?

14 A THE SHIRT LOOKED LIKE IT WAS TURNED IN -- WELL, IT WAS
15 TURNED INSIDE OUT, LIKE HE WAS PUTTING IT ON IN A HURRY.

16 Q STATE'S EXHIBIT 87.

17 A CAN YOU DARKEN THAT THE A LITTLE BIT?

18 Q (COMPLIES).

19 A OKAY. RIGHT THERE. IT LOOKS -- THAT'S STILL A PICTURE OF
20 THE DEFENDANT IN THE CLOTHES THAT HE WAS WEARING WHEN WE MET HIM
21 AND IT LOOKED TO BE -- APPEARED TO BE SOME SMALL BLOOD DROPLETS
22 ON HIS PANTS RIGHT THERE.

23 Q AND EXHIBIT 71.

24 A YOU CAN SEE -- YOU CAN SEE A LOT BETTER THERE, RIGHT THERE,
25 WHAT APPEAR TO BE BLOOD, REDDISH IN COLOR SUBSTANCE.

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 Q AND, MR. MCCALL, DID YOU ALSO ATTEND THE AUTOPSY OF JERVIS
2 POWERS?

3 A YES, MA'AM.

4 Q AND WERE YOU THERE WHEN PHOTOGRAPHS WERE TAKEN?

5 A YES, MA'AM.

6 Q LET ME SHOW YOU STATE'S EXHIBIT 92 AND SEE IF YOU CAN
7 IDENTIFY THIS FROM BEING AT THE AUTOPSY.

8 A THIS IS A PICTURE OF THE VICTIM'S LEG. IT LOOKS LIKE HIS
9 LEFT LEG OR HIS LEFT KNEE. AND IT LOOKS LIKE SOME SORT OF BULLET
10 WOUND THERE.

11 Q ALSO EXHIBIT 91.

12 A IT LOOKS LIKE THE SAME PICTURE OF THE LOWER LEFT KNEE AREA,
13 APPARENT ENTRY AND EXIT WOUND.

14 Q AND EXHIBIT 90.

15 A THIS WOULD HAVE BEEN THE VICTIM'S CHEST AREA, AND RIGHT
16 THERE IS WHERE THE BULLET WOULD HAVE ENTERED IN THE CHEST.

17 Q THANK YOU VERY MUCH. YOU CAN HAVE A SEAT.

18 A (COMPLIES).

19 MS. MONT'S: YOUR HONOR, MAY WE APPROACH?

20 THE COURT: YES, MA'AM

21 (BENCH CONFERENCE OFF RECORD FROM 12:25 TO 12:26 P.M.)

22 Q MR. MCCALL, I'M HANDING YOU WHAT'S BEEN MARKED FOR
23 IDENTIFICATION AS STATE'S EXHIBIT 1. CAN YOU IDENTIFY THIS?

24 A YES, MA'AM.

25 Q I THINK THERE ARE TWO PIECES TO IT.

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 **A** OKAY. FIRST OF ALL, FOR SAFETY, I SEE THAT THERE IS NO
2 BULLET OR ROUND IN THE CHAMBER. THERE IS NO MAGAZINE OR CLIP IN
3 THE HANDLE, AND THE SLIDE HAS BEEN JACKED TO THE REAR AND IS
4 SECURED WITH, LOOKS LIKE, A CABLE TIE. SO THE GUN IS EMPTY AND
5 IT IS SAFE.

6 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, WE HAVE VERY
7 STRICT PROTOCOL AS TO THE FIREARMS THAT ARE IN EVIDENCE, AND THIS
8 FIREARM HAS BEEN CHECKED REPEATEDLY, SO IT IS SAFE, UNLOADED AND
9 WILL REMAIN THAT WAY THROUGHOUT THE TRIAL. AND IF IT IS ADMITTED
10 INTO EVIDENCE IF YOU WANT IT BACK IN THE JURY ROOM, WE WILL MAKE
11 IT AVAILABLE TO YOU. OTHERWISE IT WILL STAY OUT HERE. AND WE
12 HAVE OTHER PROTOCOLS THAT WE ADHERE TO AND HOPE THAT LESSENS ANY
13 ANXIETY YOU HAVE ABOUT THAT, BUT IT'S BEEN CHECKED REPEATEDLY BY
14 LAW ENFORCEMENT AND IT IS SAFE.

15 YES, SIR. IF YOU WOULD, JUST HANDLE THAT BY THE BARREL.
16 THANK YOU VERY MUCH.

17 **WITNESS:** YES, SIR.

18 **Q** IF YOU CAN DESCRIBE THIS WEAPON -- WELL, FIRST OF ALL,
19 IDENTIFY THIS WEAPON.

20 **A** THIS IS A EAA BRAND, WHICH STANDS FOR EUROPEAN AMERICAN
21 ASSOCIATION, WITNESS MODEL. IT IS A .40 CALIBER SEMI-AUTOMATIC
22 HANDGUN.

23 **Q** AND DESCRIBE THE OTHER IN THE BAG THERE THAT CAME WITH IT.
24 WHAT IS THE OTHER ITEM?

25 **A** OKAY. THIS IS THE MAGAZINE, OR SOME PEOPLE CALL IT A CLIP,

CHUCK MCCALL -- DIRECT BY MS. MONTES

1 THAT WAS INSIDE THE HANDLE OF THE WEAPON WHEN IT WAS -- WHEN THE
2 CHIEF RETRIEVED IT FROM THE ATTIC OF THE DEFENDANT'S BEDROOM.
3 INSIDE THE WEAPON WAS A MAGAZINE IN THE HANDLE. THE BULLETS OR
4 ROUNDS WOULD GO INSIDE THE MAGAZINE CLIP IN HERE.

5 Q AND DID YOU TAKE CUSTODY OF THIS WEAPON ON JANUARY 16TH OF
6 1998?

7 A THE CHIEF DID, AND THEN I TOOK IT FROM THE CHIEF AFTER HE
8 RECOVERED IT.

9 MS. MONTES: YOUR HONOR, I MOVE THIS EVIDENCE INTO -- THIS
10 EXHIBIT INTO EVIDENCE.

11 THE COURT: OKAY.

12 MR. SUMNER: NO OBJECTION.

13 THE COURT: ALL RIGHT.

14 MR. SUMNER: TO EITHER THE MAGAZINE OR THE PISTOL.

15 THE COURT: OKAY. THEY'RE IN EVIDENCE.

16 (STATE'S EXHIBIT NUMBER 1, MAGAZINE AND .40 CALIBER HANDGUN,
17 MOVED INTO EVIDENCE)

18 Q MR. MCCALL, I'M GOING TO HAND YOU STATE'S EXHIBITS 3, 4, AND
19 5 FOR IDENTIFICATION. CAN YOU TELL THE JURY WHAT THESE ARE?

20 A YES, MA'AM. THE FIRST ENVELOPE -- AND THIS IS IN MY
21 HANDWRITING AND MY INITIALS -- A ROUND EJECTED FROM THE .40
22 CALIBER WITNESS PISTOL BY AKM, WHICH THAT IS ANTHONY KEITH
23 MORTON, THE CHIEF OF POLICE. THE PISTOL WAS FOUND IN THE BEDROOM
24 CLOSET ATTIC. AND INSIDE HERE WOULD HAVE BEEN THE -- THIS WAS
25 THE ACTUAL -- THERE WAS A ROUND OR A BULLET IN THE CHAMBER, WHICH

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1 MEANS IT WAS LOCKED AND LOADED AND READY TO FIRE. THIS WAS THE
2 BULLET THAT CAME OUT OF THE GUN AS THE CHIEF UNLOADED IT. THIS
3 BULLET, THIS ROUND, WAS ACTUALLY IN THE BARREL OF THE GUN.

4 Q LET ME HAND YOU STATE'S EXHIBIT --

5 MS. MONTS: OH, YOUR HONOR, I MOVE THESE EXHIBITS INTO
6 EVIDENCE AT THIS TIME.

7 THE COURT: OKAY. NOW, WHAT NUMBERS ARE THESE?

8 MS. MONTS: 3, 4, 5.

9 MR. SUMNER: I THINK THEY'RE JUST IDENTIFYING 4 AND 5 FOR
10 THE JURY. I DON'T OBJECT TO EXHIBIT 3, AND I DON'T ANTICIPATE
11 OBJECTING TO 4 AND 5, BUT I THINK MAYBE IF MR. MCCALL COULD JUST
12 IDENTIFY THEM.

13 A SURE. I TALKED ABOUT STATE'S EXHIBIT 5, WHICH WAS THE ROUND
14 EJECTED FROM THE GUN ITSELF. STATE'S EXHIBIT 3 IS A SPENT .40
15 CALIBER SHELL CASING FOUND ON THE COFFEE TABLE IN THE LIVING
16 ROOM. STATE'S EXHIBIT---

17 MR. SUMNER: NO OBJECTION TO THAT, YOUR HONOR.

18 THE COURT: OKAY. IT'S IN EVIDENCE.

19 (STATE'S EXHIBIT 5, ROUND EJECTED FROM .40 CALIBER HANDGUN,
20 MOVED INTO EVIDENCE)

21 (STATE'S EXHIBIT NUMBER 3, SPENT .40 CALIBER SHELL CASING
22 FOUND ON COFFEE TABLE, MOVED INTO EVIDENCE)

23 A ALL RIGHT. STATE'S EXHIBIT 4 IS A FRAGMENT FOUND IN THE
24 FRONT WALKWAY OR THE HALLWAY, LET'S SEE, ON THE RIGHT. AND I'VE
25 GOT ONE FOOT OUT FROM THE FLOOR. THIS WAS THE FRAGMENT OR THE

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 PIECE THAT WAS DUG OUT OF THE HARDWOOD FLOOR THERE IN THE LIVING
2 ROOM.

3 MR. SUMNER: NO OBJECTION.

4 THE COURT: OKAY. IT'S IN EVIDENCE.

5 (STATE'S EXHIBIT 4, FRAGMENT FROM FLOOR, MOVED INTO
6 EVIDENCE)

7 Q DID YOU DESCRIBE ALL OF THEM?

8 A YES, MA'AM.

9 Q I'M GOING TO HAND YOU STATE'S EXHIBIT 6 FOR IDENTIFICATION.
10 WILL YOU DESCRIBE WHAT THIS IS? WILL YOU DESCRIBE WHAT THIS IS?

11 A IT'S A SHEET FROM THE TOP MATTRESS OF THE BUNK BED IN THE
12 DEFENDANT'S ROOM, A BED SHEET.

13 (OFF RECORD DISCUSSION)

14 MR. SUMNER: NO OBJECTION.

15 THE COURT: THAT'S WHAT NUMBER NOW?

16 WITNESS: STATE'S EXHIBIT NUMBER -- YEAH -- C -- SORRY,
17 SIX.

18 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

19 (STATE'S EXHIBIT NUMBER 6, BED SHEET FROM BED, MOVED INTO
20 EVIDENCE.

21 A DO YOU WANT ME TO TAKE THIS OUT?

22 Q YES, PLEASE, AND SHOW IT TO THE JURY OR JUST LET THEM SEE
23 IT. YOU DON'T HAVE TO PULL IT ALL THE WAY OUT. JUST SHOW THEM
24 IT'S A SHEET.

25 A ANYBODY HAVE ANY GLOVES? (PAUSE) STATE'S EXHIBIT 7.

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 **MR. SUMNER:** NO OBJECTION TO 7, YOUR HONOR.

2 (STATE'S EXHIBIT NUMBER 7, SHEET FROM ATTIC, MOVED INTO
3 EVIDENCE)

4 **A** OKAY. STATE'S EXHIBIT 7 IS THE SHEET FROM THE ATTIC THAT
5 THE GUN WAS WRAPPED IN AND THERE IS BLOOD STAINS ON THERE
6 SOMEWHERE. THIS IS A SHEET THAT -- STATE'S EXHIBIT 6, THAT I
7 MENTIONED EARLIER, THAT WAS DRAPED ACROSS THE DEFENDANT'S BUNK
8 BED.

9 **Q** I'M HANDING YOU STATE'S EXHIBIT 8 FOR IDENTIFICATION. CAN
10 YOU IDENTIFY THIS?

11 **A** YES, MA'AM, THIS IS THE DEFENDANT'S T-SHIRT THAT HE WAS
12 WEARING DURING THE TIME OF THE COMMISSION OF THE CRIME WHICH YOU
13 SAW IN THE PHOTOGRAPH EARLIER OF THE DEFENDANT'S BEDROOM THAT WAS
14 DRAPED ACROSS.

15 **Q** WAS THERE SOME SUBSTANCE ON THAT?

16 **A** YES, MA'AM, WHAT WE THOUGHT WAS BLOOD AT THE TIME.

17 **MS. MONT'S:** YOUR HONOR, WE'D MOVE THIS INTO EVIDENCE AT
18 THIS TIME.

19 **MR. SUMNER:** NO OBJECTION.

20 **THE COURT:** ALL RIGHT. IT'S IN EVIDENCE.

21 (STATE'S EXHIBIT NUMBER 8, T-SHIRT, MOVED INTO EVIDENCE)

22 **Q** YOU CAN HAVE A SEAT. I'VE GOT SOME SMALL ITEMS HERE.
23 STATE'S EXHIBIT 2, FOR IDENTIFICATION, CAN YOU TELL US WHAT THIS
24 IS?

25 **A** IT'S A BULLET AND A FRAGMENT REMOVED FROM THE VERTEBRAL

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 COLUMN OF THE VICTIM.

2 Q WAS THAT TAKEN FROM THE AUTOPSY?

3 A YES, MA'AM.

4 MR. SUMNER: NO OBJECTION.

5 MS. MONTS: YOUR HONOR, WE'D MOVE IT INTO EVIDENCE.

6 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

7 (STATE'S EXHIBIT NUMBER 2, BULLET AND FRAGMENT FROM AUTOPSY,
8 MOVED INTO EVIDENCE)

9 Q IS THAT IT? ARE THEY IN HERE?

10 A YEAH.

11 Q (PAUSE) YOU IDENTIFIED IT, RIGHT?

12 A YES, MA'AM.

13 Q HERE IS STATE'S EXHIBIT 9. CAN YOU IDENTIFY THIS, PLEASE?

14 A IT'S AN ENVELOPE FROM S.L.E.D. IT SAYS ATOMIC ABSORPTION
15 ANALYSIS KIT.

16 Q AND WERE YOU PRESENT WHEN THAT WAS TAKEN AT---

17 A NO, MA'AM. I WASN'T PRESENT AT THIS. THIS IS JUST
18 BASICALLY WHEN YOU SWAB SOMEONE'S HAND.

19 Q WAS IT AT THE FOUNTAIN INN POLICE DEPARTMENT AFTER THE
20 DEFENDANT WAS TAKEN THERE AFTER BEING ARRESTED?

21 A IT STATES, INVESTIGATOR OFFICER RUMFELT ON THERE AND THE
22 COLLECTION OFFICER GARRETT. IT HAS A DATE, WHICH IS JANUARY 16TH,
23 '98, WHICH IS THE DATE IN QUESTION. AND THE TIME COLLECTED IS
24 1454 HOURS, WHICH WOULD HAVE BEEN 2:54 IN THE AFTERNOON..

25 Q AND WHAT TIME WAS THE DEFENDANT TAKEN DOWN THERE?

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 A SHORTLY THEREAFTER. I'M NOT SURE OF THE EXACT TIME. I DID
2 NOT TRANSPORT HIM TO THE POLICE DEPARTMENT. I STAYED AT THE
3 CRIME SCENE.

4 Q (OFF RECORD WITH WITNESS) WHERE DID THIS COME FROM?

5 A IT WAS IN THERE.

6 Q OKAY. YOU CAN JUST PUT IT BACK THE WAY IT WAS.

7 A (COMPLIES)

8 MS. MONT'S: YOUR HONOR, WE'D MOVE THIS INTO EVIDENCE AT
9 THIS TIME.

10 MR. SUMNER: NO OBJECTION.

11 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

12 (STATE'S EXHIBIT NUMBER 9, ATOMIC ABSORPTION KIT FROM
13 DEFENDANT, MOVED INTO EVIDENCE)

14 Q I'M HANDING YOU STATE'S EXHIBIT 10 FOR IDENTIFICATION. CAN
15 YOU TELL US WHAT THIS IS?

16 A OKAY. THIS IS A .40 CALIBER SPENT SHELL THAT WAS FOUND IN
17 THE DEFENDANT'S PANTS POCKET BY UNIT 928, WHICH WOULD HAVE BEEN
18 THE FORENSIC OFFICER, JOHN GARRETT.

19 Q WHAT DO YOU MEAN BY "SPENT SHELL"?

20 A IT'S NOT A FIRED -- OR IT IS ACTUALLY A FIRED BULLET. IT
21 WOULD HAVE BEEN JUST AN EMPTY SHELL CASING -- EMPTY CARTRIDGE
22 CASING WITH NO BULLET IN IT.

23 MS. MONT'S: AND, YOUR HONOR, WE'D MOVE THIS INTO EVIDENCE
24 AT THIS TIME.

25 MR. SUMNER: WITHOUT OBJECTION.

1 **THE COURT:** OKAY. IT'S IN EVIDENCE.

2 (STATE'S EXHIBIT NUMBER 10, SPENT SHELL CASING FROM
3 DEFENDANT'S POCKET, MOVED INTO EVIDENCE)

4 **Q** I'M HANDING YOU STATE'S EXHIBIT 11 FOR IDENTIFICATION. CAN
5 YOU TELL US WHAT THIS IS?

6 **A** THIS IS JUST THE FIRED BULLET FRAGMENT OR ROUND THAT THE
7 CHIEF DUG OUT OF THE HARDWOOD FLOOR OF THE HOUSE.

8 **MR. SUMNER:** NO OBJECTION, YOUR HONOR.

9 **MS. MONTS:** YOUR HONOR, WE MOVE IT INTO EVIDENCE.

10 **THE COURT:** ALL RIGHT. IT'S IN EVIDENCE.

11 (STATE'S EXHIBIT NUMBER 11, FIRED .40 CALIBER ROUND REMOVED
12 FROM HARDWOOD FLOOR, MOVED INTO EVIDENCE)

13 **Q** I'M HANDING YOU --

14 (COUNSEL OFF RECORD)

15 **MR. SUMNER:** NO OBJECTION TO 13 FROM THE DEFENSE, YOUR
16 HONOR.

17 **Q** CAN YOU IDENTIFY STATE'S EXHIBIT 13, PLEASE?

18 **A** THIS IS ANOTHER ATOMIC ABSORPTION ANALYSIS KIT, AND THIS WAS
19 FROM THE VICTIM. DO YOU WANT ME TO DESCRIBE WHAT AN ATOMIC
20 ABSORPTION KIT---

21 **Q** SURE, PLEASE DO.

22 **A** BASICALLY, ALL IT IS IS YOU SWAB SOMEONE'S HAND WITH SOME
23 CHEMICALS JUST TO SEE IF THERE IS ANY RESIDUE ON THE HAND, THE
24 BACK OF THE HAND OR THE FRONT OF THE HAND, FOR ANY KIND OF
25 GUNSHOT RESIDUE, GUNPOWDER AND CERTAIN TYPES OF CHEMICALS THAT

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 WOULD BE PRESENT WHEN A GUN WAS FIRED.

2 MS. MONTS: YOUR HONOR, IF I DIDN'T ALREADY, I MOVE EXHIBIT
3 13 INTO EVIDENCE.

4 THE COURT: OKAY. ANY OBJECTION?

5 MR. SUMNER: NO OBJECTION. I BELIEVE SHE ALREADY HAS.
6 THAT'S FINE.

7 (STATE'S EXHIBIT NUMBER 13, ATOMIC ABSORPTION KIT OF VICTIM,
8 MOVED INTO EVIDENCE)

9 Q I'M HANDING YOU STATE'S EXHIBIT 16 FOR IDENTIFICATION. CAN
10 YOU TELL US WHAT THAT IS?

11 A THESE ARE REFERRED TO AS POSTAL SCALES. YOU CAN BUY THEM IN
12 JUST ABOUT ANY CONVENIENCE STORE ANYWHERE. THERE'S FIVE OF THEM
13 HERE. THEY'RE JUST USED TO WEIGH THINGS.

14 MR. SUMNER: NO OBJECTION.

15 MS. MONTS: YOUR HONOR, I MOVE EXHIBIT 16 INTO EVIDENCE.

16 THE COURT: THEY'RE IN EVIDENCE.

17 (STATE'S EXHIBIT NUMBER 16, 5 SETS OF POSTAL SCALES, MOVED
18 INTO EVIDENCE)

19 A AND THESE WERE FOUND ON -- THEY WERE FOUND ON THE
20 DEFENDANT'S BEDROOM DRESSER.

21 Q AND EXHIBIT 17 FOR IDENTIFICATION, CAN YOU TELL US WHAT THAT
22 IS?

23 A THIS IS JUST AN ASHTRAY. IT WAS FOUND ON THE SAME DRESSER
24 IN THE DEFENDANT'S BEDROOM.

25 MR. SUMNER: NO OBJECTION.

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 (STATE'S EXHIBIT NUMBER 17, ASHTRAY, MOVED INTO EVIDENCE)

2 Q I'M GOING TO HAND YOU STATE'S EXHIBITS 18 AND 19 FOR
3 IDENTIFICATION. CAN YOU IDENTIFY THESE, PLEASE?

4 A YES, MA'AM. THIS IS JUST AN EMPTY BOX. IT CONTAINED
5 SANDWICH BAGS. IT'S EMPTY NOW. LITTLE BAGGIES. THIS WAS IN THE
6 SECOND DRAWER ON THE LEFT SIDE OF THE BEDROOM, FIRST BEDROOM,
7 WHICH WOULD HAVE BEEN THE DEFENDANT'S BEDROOM. AND THIS IS
8 ANOTHER BOX OF SANDWICH BAGS FOUND IN THE DEFENDANT'S -- THESE
9 BAGGIES WERE FOUND IN THE DEFENDANT'S DRESSER DRAWER IN HIS
10 BEDROOM, ACTUALLY FOUND ON THE DRESSER IN HIS BEDROOM.

11 MR. SUMNER: NO OBJECTION.

12 MS. MONT'S: YOUR HONOR, WE MOVE 18 AND 19 INTO EVIDENCE.

13 THE COURT: OKAY. THEY'RE IN EVIDENCE.

14 (STATE'S EXHIBIT NUMBER 18, EMPTY SANDWICH BAG BOX, MOVED
15 INTO EVIDENCE)

16 (STATE'S EXHIBIT NUMBER 19, BOX OF SANDWICH BAGS, MOVED INTO
17 EVIDENCE)

18 Q LET ME SHOW YOU WHAT IS MARKED FOR IDENTIFICATION AS STATE'S
19 EXHIBIT 20. CAN YOU IDENTIFY THIS, PLEASE?

20 A YES, MA'AM. THIS IS A -- WHAT'S CALLED A BESTPAK, WHICH IS
21 FROM S.L.E.D., BEST EVIDENCE SAMPLE TESTING PACKET, AND ANY TIME
22 ANY SUSPECTED DRUGS ARE FOUND ON SOMEONE'S PERSON OR -- ANYTIME
23 WE, I GUESS, SEIZE ANY KIND OF A THING THAT WE SUSPECT IS DRUGS
24 OR IS EVIDENCE WE SEND -- ALWAYS PACKAGE IT UP AND SEND IT TO
25 S.L.E.D. SO IT'S DESCRIBED AS A GREEN, LEAFY PLANTLIKE VEGETABLE

CHUCK MCCALL -- DIRECT BY MS. MONT'S

1 MATERIAL. I BELIEVE IT WAS APPROXIMATELY 2.31 GRAMS. IT WAS
2 ACTUALLY TESTED AT THE -- I HAVE THE CRIME LAB REPORT THAT'S
3 INSIDE THE ENVELOPE. DO YOU WANT ME TO READ THE RESULTS?

4 Q WE'LL JUST PUT IT INTO EVIDENCE.

5 A OKAY.

6 MS. MONT'S: YOUR HONOR, WE MOVE EXHIBIT 20 INTO EVIDENCE.

7 MR. SUMNER: NO OBJECTION.

8 MR. SUMNER: IT'S IN EVIDENCE.

9 (STATE'S EXHIBIT NUMBER 20, BESTPAK CONTAINING MARIJUANA,
10 MOVED INTO EVIDENCE)

11 Q I'M GOING TO HAND YOU STATE'S EXHIBIT 21 FOR IDENTIFICATION.
12 CAN YOU TELL US WHAT THAT IS, PLEASE?

13 A YES, MA'AM. THIS IS THE VICTIM'S -- THE SHIRT THAT THE
14 VICTIM WAS WEARING WHEN HE WAS TAKEN TO THE HOSPITAL, AND YOU CAN
15 SEE VERY CLEARLY THERE'S A HOLE IN THE FRONT OF THE SHIRT.

16 MS. MONT'S: YOUR HONOR, WE MOVE THIS INTO EVIDENCE, EXHIBIT
17 21.

18 MR. SUMNER: WITHOUT OBJECTION.

19 (STATE'S EXHIBIT NUMBER 21, VICTIM'S SHIRT, MOVED INTO
20 EVIDENCE)

21 Q MR. MCCALL, I'M HANDING YOU STATE'S EXHIBIT 22 FOR
22 IDENTIFICATION. CAN YOU DESCRIBE THIS?

23 A YES, MA'AM. THIS WAS THE EMPTY CARTRIDGE OR THE SPENT SHELL
24 CASING THAT I OBSERVED AT THE FRONT PORCH OF THE RESIDENCE WHEN I
25 FIRST ARRIVED ON SCENE. IT'S INSIDE HERE.

CHUCK MCCALL -- DIRECT BY MS. MONTS

1 Q AND BY SPENT DOES THAT MEAN THAT BULLET HAD BEEN FIRED?

2 A YES, MA'AM. IT WAS AN EMPTY CARTRIDGE. THERE WAS NO BULLET
3 IN IT. IT WAS JUST AN EMPTY SHELL OR AN EMPTY CASING.

4 MS. MONTS: YOUR HONOR, THAT'S ALL THE QUESTIONS I HAVE OF
5 THIS WITNESS.

6 MR. SUMNER: YOUR HONOR, WE COULD BREAK FOR LUNCH OR I
7 COULD CROSS EXAMINE MR. MCCALL NOW.

8 THE COURT: LET'S JUST GO AHEAD AND BREAK. LADIES AND
9 GENTLEMEN, JUST BE BACK IN YOUR JURY ROOM AT -- I DON'T THINK
10 WE'RE GOING TO BE ABLE TO FINISH THIS CASE TODAY ANYWAY, SO LET'S
11 JUST GIVE YOU A LITTLE TIME DURING LUNCH AND BE BACK IN THE JURY
12 ROOM AT 2:30 AND WE WILL RESUME THE CASE AT THAT TIME.

13 DON'T DISCUSS THE CASE WITH ANYONE. CONTINUE TO KEEP AN
14 OPEN MIND. AND WE'LL SEE YOU BACK AT 2:30.

15 (JURY EXITS COURTROOM AT 12:48 P.M.)

16 THE COURT: OKAY.

17 MR. SUMNER: I DON'T HAVE ANYTHING TO BRING TO THE COURT'S
18 ATTENTION, YOUR HONOR.

19 THE COURT: ALL RIGHT. WHAT ARE Y'ALL LOOKING AT AS FAR AS
20 THE TIME?

21 MR. SUMNER: HOW MANY MORE WITNESSES HAVE YOU GOT?

22 THE COURT: I'M NOT TRYING TO PUSH ANYBODY. I'M JUST
23 CURIOUS.

24 MR. SUMNER: YEAH. I AM TOO.

25 THE COURT: YOU CAN STEP DOWN, SIR.

1 **WITNESS:** THANK YOU.

2 **MS. MONTS:** YOUR HONOR, I HAVE THE TWO FROM COLUMBIA THAT I
3 WAS EXPECTING TO CALL TOMORROW, AND I'VE GOT -- (PAUSE) -- THE
4 PATHOLOGIST AND THE -- PROBABLY ABOUT FOUR OR FIVE MORE. I CAN
5 EITHER GET THE PATHOLOGIST UP HERE TODAY OR HAVE THE TWO COME
6 FROM COLUMBIA, AND THEN I'VE GOT MAYBE THE CHEMIST AND THE CHIEF
7 AND ONE OTHER OFFICER AND THAT'S IT.

8 **MR. SUMNER:** I CERTAINLY WOULDN'T SAY WHAT TO DO, BUT, I
9 MEAN, IF YOU WANTED TO, WE COULD JUST DO EVERYBODY THIS AFTERNOON
10 OTHER THAN THE TWO COLUMBIA WITNESSES. YOU KNOW, THEY COULD COME
11 UP HERE IN THE MORNING.

12 **THE COURT:** YEAH, THAT'S FINE.

13 **MR. SUMNER:** I THINK WE COULD -- I DON'T ANTICIPATE A
14 LENGTHY CROSS EXAMINATION, YOUR HONOR, ON ANY OF THE WITNESSES.
15 THESE ARE NOT FACT WITNESSES. SO I THINK YOU KNOW WHERE I'M
16 GOING HERE. I WOULDN'T ANTICIPATE MORE THAN A FIVE- OR TEN-
17 MINUTE CROSS EXAMINATION ON ANY OF THE WITNESSES THIS AFTERNOON.

18 **THE COURT:** OKAY. ALL RIGHT. WE'LL SEE YOU BACK AT 2:30.

19 **MR. SUMNER:** OKAY.

20 **THE COURT:** THANK YOU. OKAY. LET'S SEE. HOLD ON MR.
21 SUMNER. WHAT WAS THAT LAST EXHIBIT, 20?

22 **MR. SUMNER:** TWENTY-ONE, I BELIEVE.

23 **MS. MONTS:** TWENTY-TWO.

24 **THE COURT:** IT'S IN EVIDENCE. 22? DO YOU HAVE ANY
25 OBJECTION TO 22?

MATTERS AND MOTIONS

1 **MR. SUMNER:** WHAT WAS 22?

2 **MS. MONTS:** THE SHELL CASING.

3 **MR. SUMNER:** NO. NO OBJECTION, YOUR HONOR. THAT WAS A
4 SHELL CASING, I BELIEVE, FOUND ON THE FRONT PORCH AREA. THAT'S
5 FINE.

6 (STATE'S EXHIBIT NUMBER 22, EMPTY SHELL CASING FROM FRONT
7 PORCH, MOVED INTO EVIDENCE)

8 (A LUNCH RECESS WAS TAKEN FROM 12:51 TO 2:35 P.M.)

9 **THE COURT:** GOOD AFTERNOON. ARE Y'ALL READY FOR THE JURY?

10 **MR. SUMNER:** YES, SIR.

11 **THE COURT:** OKAY. YES, SIR. YOU CAN BRING THE JURY IN.
12 MR. SULLIVAN IS PRESENT.

13 (JURY REENTERS COURTROOM AT 2:37 P.M.)

14 **THE COURT:** OKAY. YES, MA'AM. YES, MA'AM. YOU CAN CALL
15 YOUR NEXT WITNESS. OR, ACTUALLY---

16 **MR. SUMNER:** HAS SHE CONCLUDED HER DIRECT EXAMINATION?

17 **THE COURT:** YEAH, I BELIEVE SHE DID.

18 **MS. MONTS:** YES, YOUR HONOR.

19 **THE COURT:** SO, MR.---

20 **MR. SUMNER:** I ASK THAT HE BE RECALLED TO THE STAND.

21 **THE COURT:** YES, SIR, I'M SORRY.

22 **CROSS EXAMINATION OF CHARLES MCCALL BY MR. SUMNER:**

23 **Q** GOOD AFTERNOON, MR. MCCALL.

24 **A** GOOD AFTERNOON.

25 **Q** I HAVE JUST A FEW QUESTIONS RELATIVE TO YOUR TESTIMONY THAT

MATTERS AND MOTIONS

1 YOU PROVIDED TO THE JURY PRIOR TO LUNCH. I BELIEVE YOU SAID THAT
2 WHEN YOU FIRST ENCOUNTERED MORRIS THAT DAY THAT HE APPEARED TO
3 YOU TO BE NERVOUS, UPSET AND PROBABLY ON THE VERGE OF TEARS; IS
4 THE CORRECT?

5 A THAT'S CORRECT.

6 Q AND I GUESS IN TERMS OF BEING NERVOUS, CONSIDERING THE
7 CIRCUMSTANCES OF WHAT HAD OCCURRED AT HIS HOME, THAT WOULD NOT BE
8 UNUSUAL IN YOUR OPINION, WOULD IT?

9 A NO.

10 Q NOW, I BELIEVE YOU ALSO TESTIFIED THAT WHEN CHIEF MORTON GOT
11 THERE THAT MORRIS TOLD THE CHIEF EXACTLY WHERE THE GUN WAS AND
12 HOW TO GET UP IN THE ATTIC; IS THAT CORRECT?

13 A YES, SIR.

14 Q HE DID?

15 A YES, SIR.

16 Q NOW, WHEN SOME PHOTOGRAPHS WERE FLASHED UP -- AND I KNOW
17 THAT'S NOT SET UP RIGHT NOW -- YOU, I BELIEVE, TESTIFIED AS TO A
18 PHOTOGRAPH OF THE FRONT OF THE HOME. THERE WERE SEVERAL PICTURES
19 JUST OF THE FRONT OF THE HOME?

20 A YES, SIR.

21 Q IF YOU CAN RECALL. AND I BELIEVE YOU USED THE POINTER AND
22 SAID THAT IN THE KITCHEN THERE WAS A DOOR FROM THE KITCHEN THAT
23 SPILLED OUT INTO THE YARD ON THE OTHER SIDE OF THE HOME; IS THAT
24 RIGHT?

25 A YES, I BELIEVE THE SIDE DOOR ON THE LEFT WOULD HAVE LED

CHUCK MCCALL -- CROSS BY MR. SUMNER

1 INTO---

2 Q YES, SIR.

3 A ---THE KITCHEN AREA.

4 Q AS IF YOU WERE -- IF I'M THE JURY IF WE WERE LOOKING AT THE
5 HOME FROM THIS DIRECTION AND WE SAW THE FRONT DOOR -- AND I
6 BELIEVE YOU TOOK THE POINTER AND SAID AROUND THIS SIDE TO THE
7 LEFT IS A KITCHEN DOOR THAT GOES OUT INTO THAT YARD AREA?

8 A YES, SIR.

9 Q OKAY. ONE OF THE PIECES OF EVIDENCE -- AND I'M NOT GOING TO
10 ATTEMPT TO FIGURE OUT WHICH NUMBER THAT IT IS AT THIS POINT --
11 WAS THE ACTUAL WARNING SHOT OR THE BULLET THAT WAS FIRED INTO THE
12 FLOOR OF THE LIVING ROOM; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND THERE IS A BULLET FRAGMENT THERE THAT ACTUALLY -- WE SAW
15 THE PHOTOGRAPH OF THE WOOD FLOOR WHERE IT WAS DUG OUT BY YOU AND
16 THE CHIEF AND RECOVERED; IS THAT CORRECT?

17 A YES, SIR.

18 Q NOW, AT THE CONCLUSION OF THE PHOTOGRAPHIC PRESENTATION OR
19 OF ALL THE PHOTOGRAPHS THAT WERE SHOWN THERE WAS A PICTURE OF --
20 THERE WERE SEVERAL AUTOPSY PICTURES OF MR. POWERS; IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q AND TWO OF THE PHOTOGRAPHS SHOWED HIS LEFT LEG. DO YOU
23 RECALL THAT, MR. MCCALL?

24 A YES, SIR.

25 Q AND YOU CORRECT ME IF I'M WRONG -- AND I WANT TO MAKE SURE

CHUCK MCCALL -- CROSS BY MR. SUMNER

1 THE JURY CAN SEE ME HERE -- THAT SHOWED AN ENTRY AND EXIT WOUND
2 FROM A BULLET; IS THAT RIGHT?

3 A YES, SIR.

4 Q AND THERE IS NO QUESTION THAT IT WAS VIRTUALLY POINTED
5 STRAIGHT DOWN, THAT WAS THE TRAJECTORY OF THE BULLET; WOULD THAT
6 BE CORRECT?

7 A THAT'S CORRECT.

8 Q I MEAN, JUST LIKE THAT RIGHT THERE?

9 A YES, SIR.

10 Q OKAY. THERE WERE SEVERAL .40 CALIBER CASINGS THAT WERE
11 FOUND AT THE SCENE?

12 A YES, SIR.

13 Q AND AGAIN, FOR THE JURY, THESE ARE THE SHELLS THAT THE
14 BULLET IS IN AND THEY ARE EJECTED FROM A PISTOL SUCH AS THAT WHEN
15 THE BULLET IS FIRED?

16 A YES, SIR.

17 Q I GUESS YOU WOULD AGREE WITH ME THAT THE LOCATION OF THE
18 CASINGS WOULD NOT INDICATE IN ANY WAY WHERE THE GUN WAS FIRED;
19 WOULD THAT BE RIGHT?

20 A RIGHT.

21 Q I MEAN, CONSIDERING ALL OF THE PEOPLE THAT WERE IN THERE AND
22 THEY TALKED ABOUT LEAVING---

23 A RIGHT.

24 Q ---IMMEDIATELY WHEN THE GUN CAME OUT. I MEAN, CLEARLY, I
25 THINK ONE WAS FOUND NEAR THE FRONT DOOR OF THE HOME. BUT THERE

CHUCK MCCALL -- CROSS BY MR. SUMNER

1 WAS SO MUCH FOOT TRAFFIC THAT I GUESS YOU WOULD AGREE WITH ME
2 THEY COULD HAVE BEEN KICKED AROUND OR KNOCKED AROUND; IS THAT
3 RIGHT?

4 A IT'S CERTAINLY A POSSIBILITY, YES, SIR.

5 Q OKAY. AND ONE LAST THING. YOU TESTIFIED ON DIRECT
6 EXAMINATION THAT WHEN THE WEAPON, THE PISTOL, WAS RETRIEVED BY
7 YOURSELF AND THE CHIEF THAT IT ACTUALLY HAD A ROUND IN THE
8 MAGAZINE, IN THE CHAMBER THAT WOULD HAVE SIMPLY BEEN FIRED BY
9 PULLING THE TRIGGER?

10 A YES, SIR. THAT'S CORRECT.

11 MR. SUMNER: ONE SECOND, PLEASE, YOUR HONOR.

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

13 MR. SUMNER: (OFF RECORD WITH DEFENDANT) THANK YOU, MR.
14 MCCALL. I DON'T HAVE ANY OTHER QUESTIONS.

15 WITNESS: THANK YOU.

16 MS. MONTS: NO REDIRECT, YOUR HONOR.

17 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

18 WITNESS: MAY I BE EXCUSED?

19 THE COURT: YES, SIR, IF YOU NEED TO BE.

20 MR. SUMNER: I HAVE NO OBJECTION TO THE WITNESS BEING
21 EXCUSED.

22 THE COURT: OKAY.

23 (WITNESS EXCUSED AT 2:43 P.M.)

24 MS. MONTS: YOUR HONOR, THE STATE CALLS CHRIS ANTHONY.

25 CHRIS ANTHONY, HAVING BEEN DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MS. MONTS:

3 Q MR. ANTHONY, PLEASE TELL THE JURY WHERE YOU ARE EMPLOYED.

4 A I'M WITH THE CITY OF FOUNTAIN INN IN THE POLICE DEPARTMENT.

5 Q HOW LONG HAVE YOU WORKED WITH THEM?

6 A WITH THE FOUNTAIN INN POLICE DEPARTMENT, EIGHT YEARS.

7 Q DO YOU HAVE ANY PRIOR LAW ENFORCEMENT EXPERIENCE?

8 A YES, I DO.

9 Q WHO IS THAT WITH?

10 A GREER POLICE DEPARTMENT, MAULDIN POLICE DEPARTMENT.

11 Q AND IN JANUARY OF 1998 WERE YOU EMPLOYED WITH THE FOUNTAIN
12 INN POLICE DEPARTMENT?

13 A I WAS.

14 Q AND IN JANUARY OF 1998 WHAT WERE YOUR DUTIES WITH THE
15 FOUNTAIN INN POLICE DEPARTMENT?

16 A I WAS A PATROL OFFICER ASSIGNED TO HANDLE COMPLAINTS,
17 ROUTINE SERVICE CALLS, DISTURBANCES, TAKE REPORTS, INVESTIGATE
18 PETTY CRIMES, SO FORTH.

19 Q AND WAS ONE OF YOUR DUTIES RESPONDING TO DISPATCH OR 911
20 CALLS?

21 A YES, IT WOULD BE.

22 Q AT APPROXIMATELY 1:10 THAT AFTERNOON DID YOU RECEIVE A
23 DISPATCH CALL?

24 A YES, I DID.

25 Q AND DO YOU KNOW THE LOCATION YOU WENT TO?

- 1 A IT WAS ON [REDACTED]. I'M NOT QUITE SURE OF THE NUMBER.
- 2 Q DO YOU KNOW WHOSE HOUSE IT WAS?
- 3 A I LATER LEARNED IT WAS THE SULLIVAN HOUSE.
- 4 Q AND WHEN YOU ARRIVED -- HOW LONG DID IT TAKE YOU TO GET
- 5 THERE ONCE YOU RECEIVED THE CALL?
- 6 A I THINK IT TOOK US JUST A COUPLE OF MINUTES.
- 7 Q AND WHEN YOU ARRIVED WHO WAS THERE, ANY OTHER OFFICERS?
- 8 A WELL, MYSELF AND SERGEANT MCCALL ARRIVED THERE ALMOST -- I
- 9 CAN'T RECALL EXACTLY. PROBABLY CLOSE TO SIMULTANEOUSLY, I
- 10 SUPPOSE.
- 11 Q HOW ABOUT OFFICER MACKEY, HOW LONG TILL HE -- IF YOU RECALL?
- 12 A I CAN'T RECALL THE EXACT SEQUENCE OF ARRIVAL.
- 13 Q SO -- BUT THERE WERE -- AT SOME POINT THE THREE OF YOU GOT
- 14 THERE PRETTY CLOSE IN TIME?
- 15 A YES. YES.
- 16 Q OKAY. AND WHAT WAS YOUR DUTY WHEN YOU ARRIVED THERE?
- 17 A MYSELF AND SERGEANT MCCALL KNOCKED ON THE DOOR TO TRY TO
- 18 OBTAIN -- TO TRY TO GET SOMEONE TO COME TO THE DOOR. WE COULDN'T
- 19 GET A RESPONSE AT THAT TIME. THE DISPATCHER WAS STILL TELLING US
- 20 THAT SHE HAD AN OPEN LINE ON THE HOUSE AND COULD HEAR SOMEBODY IN
- 21 THERE AND HEAR SOME TALKING IN THERE. I THINK SHE TOLD US THAT
- 22 WHEN WE WERE ON OUR WAY THERE. BUT WE HAD GOOD REASON TO BELIEVE
- 23 THAT SOMEBODY WAS STILL INSIDE THE HOUSE AND WE TRIED TO GET A
- 24 RESPONSE FROM SOMEBODY IN THE HOUSE. WE WERE THERE BASICALLY TO
- 25 CHECK FOR SAFETY.

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1 Q AND WHAT DID YOU DO AFTER NO ONE ANSWERED THE DOOR?

2 A WE CONTINUED TO TRY TO MAKE CONTACT AND SPOKE WITH THE
3 DISPATCHER TO EXCHANGE INFORMATION, TRY TO GATHER UP -- TRY TO
4 GET INTELLIGENCE AS TO WHAT WAS GOING ON IN THE HOUSE.

5 Q AND DID YOU GO TO ANY LOCATION BESIDES THE FRONT DOOR?

6 A WELL, ONCE SERGEANT MCCALL DETERMINED THAT THERE MAY BE SOME
7 SAFETY ISSUES INVOLVED IN THIS SITUATION---

8 Q DID YOU NOTICE ANYTHING AT THE FRONT DOOR?

9 A WE DID. SERGEANT MCCALL, I BELIEVE -- I BELIEVE SERGEANT
10 MCCALL NOTICED A DROPLET OF BLOOD OR -- I THINK IT WAS A DROPLET
11 OF BLOOD AT THE THRESHOLD OF THE DOOR. AND AT THAT TIME HE MADE
12 THE CALL THAT THERE MIGHT BE A SAFETY ISSUE INVOLVED HERE. SO I
13 WAS DIRECTED TO TAKE UP A POSITION BEHIND THE RESIDENCE.

14 Q AND WHERE DID YOU GO?

15 A WELL, I WENT TO THE BACK OF THE HOUSE NEXT TO A LARGE TREE.

16 Q WERE THERE ANY WINDOWS ON THE BACK SIDE OF THE HOUSE?

17 A YES.

18 Q AND COULD YOU SEE THROUGH THOSE WINDOWS?

19 A I COULD SEE THROUGH ONE PARTICULAR WINDOW.

20 Q AND DID YOU LATER DETERMINE WHOSE WINDOW THAT WAS?

21 A I DON'T KNOW WHOSE ROOM IT BELONGED TO BUT---

22 Q WHAT DID -- GO AHEAD.

23 A IT WAS A WINDOW WITH A LIGHT ON INSIDE THE ROOM. IT WAS
24 DARK OUTSIDE BECAUSE IT WAS RAINING, AND SO THE ROOM WAS
25 ILLUMINATED. IT HAD LIGHTS ON. I COULD SEE INSIDE THE ROOM FROM

1 OUTSIDE.

2 Q AND WHAT COULD YOU SEE INSIDE THE ROOM?

3 A WELL, I ADVISED MY SERGEANT THAT I SAW MOVEMENT IN THE ROOM,
4 SAW A PERSON STAND UP ONTO A SUPPORTED ITEM, SUCH AS MAYBE A
5 CHAIR OR A SMALL STEPLADDER OR SOMETHING. I DON'T KNOW WHAT
6 EXACTLY WHAT IT WAS. BUT SOMEBODY STOOD UP ON SOMETHING, A
7 FIGURE, AND WAS PUTTING SOMETHING IN THE TOP OF WHAT LOOKED LIKE
8 A CLOSET OR ANOTHER DOOR INSIDE OF A DOOR LIKE A CLOSET.

9 Q AND DID YOU SEE ANYTHING ELSE AT YOUR VANTAGE POINT?

10 A THAT'S ABOUT ALL I COULD SEE.

11 Q AND WHAT WERE YOUR DUTIES -- DID OTHER OFFICERS ARRIVE?

12 A YES. OFFICER MACKAY, I DON'T REMEMBER EXACTLY WHAT POINT HE
13 ARRIVED AT DURING THIS, BUT WE WANTED TO ESTABLISH A PERIMETER
14 BECAUSE WE DIDN'T EXACTLY KNOW WHAT WAS GOING ON AT THAT TIME.
15 SO FOR SAFETY REASONS WE WANTED TO ESTABLISH A PERIMETER. WE
16 CONTACTED, I BELIEVE, OUR DETECTIVES AND THE CHIEF OF POLICE. I
17 THINK SOMEONE CALLED THE -- EITHER SOMEONE CALLED THE HOSPITAL OR
18 THE HOSPITAL CALLED US OR SOMETHING ABOUT SOMEONE, A POSSIBLE
19 GUNSHOT VICTIM CAME IN OR SOMETHING LIKE THAT, AND SERGEANT
20 MCCALL MADE THE CONNECTION THAT MAYBE THIS WAS -- THIS HAD
21 SOMETHING TO DO WITH THAT. THAT'S WHY WE TOOK THOSE MEASURES.

22 Q OKAY. AND AFTER -- WHEN YOU LEFT YOUR POST IN THE BACK
23 YARD, WHERE DID YOU GO?

24 A WE WENT INSIDE THE HOUSE TO DO A SUPERFICIAL CLEARING OF THE
25 HOUSE, IN OTHER WORDS, TO SEE IF THERE WAS ANY OTHER POSSIBLE

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1 VICTIMS IN THERE OR ANY VICTIMS IN THERE, AND I DON'T THINK WE
2 FOUND ANYONE. I THINK -- I DON'T THINK WE FOUND ANY OTHER
3 VICTIMS IN THERE. SO I WAS DIRECTED TO SET UP A PERIMETER -- OR
4 ESTABLISH A BARRICADE FOR THE CRIME SCENE AND CONDUCT ACCESS
5 CONTROL.

6 Q AND BY THAT, WHAT DO YOU MEAN BY ACCESS CONTROL?

7 A WELL, WHEN YOU HAVE A CRIME SCENE YOU ESTABLISH A PERIMETER
8 AND THAT NO ONE COMES INSIDE THERE UNLESS IT IS CERTAIN
9 AUTHORIZED OFFICIALS, SUCH AS THE CORONER, A DETECTIVE, PERSONS
10 LIKE THAT. OTHER PERSONS THAT HAVE NO OTHER INVOLVEMENT IN THE
11 SCENE OR NO LAW ENFORCEMENT INVOLVEMENT IN IT OR E.M.S. ARE
12 PROHIBITED FROM COMING IN.

13 Q DID YOU HAVE ANY FURTHER DUTIES INSIDE THE HOUSE?

14 A NO, MA'AM.

15 MS. MONT'S: THANK YOU. NO FURTHER QUESTIONS.

16 MR. SUMNER: NO QUESTIONS.

17 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP DOWN.

18 MS. MONT'S: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

19 MR. SUMNER: NO OBJECTION.

20 THE COURT: ALL RIGHT. YES, SIR. YOU ARE EXCUSED. THANK
21 YOU, SIR, FOR YOUR TIME.

22 (WITNESS EXCUSED AT 2:50 P. M.)

23 MS. MONT'S: YOUR HONOR, THE STATE CALLS CHIEF MORTON.

24 ANTHONY KEITH MORTON, HAVING BEEN DULY
25 SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MS. MONT'S:

2 Q CHIEF, WILL YOU PLEASE TELL THE JURY WHERE YOU ARE EMPLOYED?

3 A FOR THE CITY OF FOUNTAIN INN, THE FOUNTAIN INN POLICE
4 DEPARTMENT.

5 Q AND WHAT IS YOUR TITLE THERE?

6 A CHIEF OF POLICE.

7 Q AND HOW LONG HAVE YOU BEEN CHIEF OF POLICE?

8 A I'M IN MY FOURTEENTH YEAR.

9 Q AND DID YOU HAVE ANY PRIOR LAW ENFORCEMENT EXPERIENCE PRIOR
10 TO THAT?

11 A YES, MA'AM.

12 Q AND WAS THAT, PLEASE?

13 A I BEGAN MY CAREER WITH THE POLICE DEPARTMENT HERE IN
14 GREENVILLE IN 1974. I WAS ACTUALLY TOO YOUNG TO CARRY A GUN AT
15 THAT TIME AND THEY PUT ME IN THE RECORDS DIVISION UNTIL EARLY
16 '75, AND I WAS IN UNIFORM PATROL FOR 23 MONTHS, AND AFTER THAT
17 THE REST OF MY CAREER, FROM LIKE '77 UNTIL '92, WAS IN
18 INVESTIGATIONS.

19 Q AND IN JANUARY OF 1998 AFTER YOU HAD BEEN THERE A FEW YEARS,
20 WHAT WERE YOUR DUTIES AT THAT TIME?

21 A THE DAY-TO-DAY OPERATIONS OF THE POLICE DEPARTMENT, YOU
22 KNOW, PERSONNEL ISSUES, ASSISTING IN INVESTIGATIONS IF IT WAS
23 NEEDED, JUST WHATEVER NEEDED TO BE DONE.

24 Q AND SPECIFICALLY ON JANUARY 16TH OF 1998 DID YOU RESPOND TO A
25 CALL AT APPROXIMATELY 1:30 THAT AFTERNOON?

1 A YES.

2 Q AND WHERE DID YOU GO AND WHY DID YOU GO THERE?

3 A YOU WANT ME TO DESCRIBE THE CIRCUMSTANCES LEADING UP TO---

4 Q YES, PLEASE. YES, PLEASE.

5 A OKAY. I WAS ACTUALLY IN MY OFFICE WHICH IS WHERE I ENDED UP
6 GETTING PINNED FROM TIME TO TIME, AND I WAS WALKING IN TO CHECK
7 MY MAIL, WHICH IS ADJACENT TO THE DISPATCH CENTER WHERE THEY
8 DISPATCH ALL THE CALLS FOR SERVICE FOR THE FIRE DEPARTMENT AND
9 THE POLICE DEPARTMENT AND ALSO ANSWER OR FORWARD ANY 911 CALLS IS
10 ALL DONE AT THAT DISPATCH CONSOLE, AND I OVERHEARD THEM REPLAYING
11 WHAT APPEARED TO BE A 911 TAPE TRYING TO ASCERTAIN WHAT EXACTLY
12 WAS SAID. SO I WALKED IN AND ASKED THE DISPATCHER, YOU KNOW,
13 WHAT WAS GOING ON, AND SHE SAID THEY HAD HAD A 911 CALL AND THAT
14 IT WAS AN OPEN LINE BUT NOBODY WAS SAYING ANYTHING INTO THE PHONE
15 BUT THEY COULD OVERHEAR CONVERSATIONS THAT WAS TAKING PLACE FROM
16 THE RESIDENCE.

17 NOW, WHEN A 911 CALL COMES IN, IT IDENTIFIES THE EXACT
18 ADDRESS FROM WHERE THE CALL ORIGINATED, WHETHER IT'S A PAY PHONE
19 OR COMMERCIAL PHONE OR A PHONE AT A RESIDENCE. SO THEY
20 IDENTIFIED THE ADDRESS ON [REDACTED]. AND IT WAS A LOT OF
21 NOISE IN THE BACKGROUND OF THIS PARTICULAR CONVERSATION. IT WAS
22 VERY DIFFICULT TO UNDERSTAND EXACTLY WHAT WAS BEING SAID, SO WE
23 REPLAYED IT AND PLAYED IT A NUMBER OF TIMES AND DETERMINED THAT
24 SOMETHING TO THE EFFECT OF "GET HIM UP. HE'S NOT DEAD YET. GET
25 HIM UP." SO AT THAT POINT WE SENT A COUPLE OF OFFICERS DOWN TO

1 THE SCENE, AND I WENT DOWN THERE TO ASSIST ANY WAY I COULD. SO
2 THAT'S THE WAY I WOUND UP ON [REDACTED] THAT DAY.

3 Q AND WHO WAS THERE PRIOR TO YOUR ARRIVING THERE?

4 A TWO OF MY SERGEANTS WERE THERE, SERGEANT MCCALL AND SERGEANT
5 MACKEY.

6 Q EXCUSE ME ONE SECOND.

7 A I BELIEVE CHRIS ANTHONY WAS ALSO THERE. I'M NOT SURE.

8 Q (PAUSE) AND WHAT DID YOU OBSERVE WHEN YOU ARRIVED? WHERE
9 WERE YOUR OFFICERS?

10 A SERGEANT MCCALL WAS AT THE FRONT, I BELIEVE. OFFICER
11 ANTHONY WAS AT THE BACK. AND MATTHEW WAS AT THE FRONT AS WELL.
12 AND THEY POINTED OUT SOME THINGS THAT HAD CAUSED THEM SOME
13 CONCERN BASED ON THE CONVERSATIONS WE HAD HEARD ON THE 911 TAPE
14 AND THE EVIDENCE THAT WAS PRESENT ON THE PORCH.

15 Q AND WHAT DID THEY POINT OUT TO YOU ON THE PORCH?

16 A THEY POINTED OUT TO ME A SPENT SHELL CASING, WHICH WAS .40
17 CALIBER, AND SOME SPOTS THAT APPEARED TO BE BLOOD.

18 Q AND DID YOU KNOW WHO LIVED AT THAT RESIDENCE PRIOR TO YOUR
19 GETTING THERE?

20 A I KNEW THAT THE SULLIVANS LIVED THERE. I KNEW THAT MORRIS
21 LIVED THERE.

22 Q AND WHAT DID YOU DO ONCE YOU ARRIVED?

23 A WELL, THE FIRST THING I DID WAS WE WERE CONCERNED THAT THERE
24 COULD POTENTIALLY BE A VICTIM INSIDE OR THERE COULD BE SUSPECTS
25 INSIDE. WE REALLY DIDN'T KNOW EXACTLY WHAT HAD HAPPENED AT THAT

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1 TIME. SO ONE OF THE FIRST THINGS I DID WAS CALL ONE OF THE
2 DEPUTY SOLICITORS HERE AT THE SOLICITOR'S OFFICE AND ASK, YOU
3 KNOW, IF WE HAD TO FORCE OUR WAY INTO THE HOUSE TO MAKE SURE
4 EVERYBODY WAS OKAY WOULD WE BE ALL RIGHT DOING THAT BECAUSE WE
5 DIDN'T HAVE ENOUGH TO GET A SEARCH WARRANT AT THAT POINT. AND
6 FORTUNATELY -- THAT CALL WAS ACTUALLY MADE IN ROUTE AND SHORTLY
7 AFTER I ARRIVED FROM A CELL PHONE, AND ONCE I WAS THERE I KNOCKED
8 ON THE DOOR AND TRIED TO GET SOMEBODY TO LET US IN.

9 Q AND HOW LONG WAS IT FROM WHEN YOU WERE AT THE LAW
10 ENFORCEMENT CENTER -- I MEAN, THE POLICE DEPARTMENT AND YOU WERE
11 LISTENING TO THE TAPE WHEN YOU ACTUALLY WENT TO THE RESIDENCE?

12 A WELL, IT'S ONLY A COUPLE BLOCKS FROM THE POLICE DEPARTMENT
13 -- AND IT IS A LAW ENFORCEMENT CENTER -- BUT IT'S ONLY A COUPLE
14 BLOCKS FROM THERE, SO JUST A COUPLE MINUTES.

15 Q BUT YOUR OTHER OFFICERS HAD BEEN THERE FOR A WHILE PRIOR TO
16 YOUR GETTING THERE?

17 A YES. WELL, I DIDN'T KNOW THAT THIS WAS GOING ON AT THAT
18 TIME UNTIL I WALKED OUT AND HEARD THEM TRYING TO REPLAY THE 911
19 TAPE. I WAS---

20 Q SO YOU WEREN'T LISTENING TO IT LIVE; YOU WERE LISTENING TO
21 IT BEING REPLAYED?

22 A THAT'S RIGHT.

23 Q OKAY. AND WHEN YOU GOT THERE, PLEASE CONTINUE, WHAT
24 HAPPENED WHEN YOU WENT TO THE DOOR?

25 A I WENT TO THE DOOR -- THEY POINTED OUT THE EVIDENCE I

1 MENTIONED -- AND KNOCKED ON THE DOOR AND JUST SAID, "HEY, LET US
2 IN. WE JUST WANT TO MAKE SURE EVERYTHING IS OKAY." AND MR.
3 SULLIVAN CAME TO THE DOOR AND OPENED THE DOOR THEN, AFTER I GOT
4 THERE.

5 Q AND WHEN YOU KNOCKED ON THE DOOR DID ANYONE ANSWER?

6 A YES, MR. SULLIVAN OPENED THE DOOR.

7 Q AND WHAT WAS YOUR IMMEDIATE -- WHAT DID YOU IMMEDIATELY SAY
8 TO HIM?

9 A I SAID, "IS EVERYTHING" -- "WHAT'S GOING ON?" YOU KNOW, "IS
10 EVERYTHING OKAY? WHAT'S GOING ON?"

11 Q AND WHAT DID HE SAY?

12 A HE SAID, "NOTHING, NOTHING'S GOING ON." THAT WAS HIS
13 INITIAL RESPONSE.

14 Q AND DID YOU AND THE OTHER OFFICERS GO INSIDE?

15 A YES, WE DID.

16 Q AND WHAT DID YOU OBSERVE ABOUT THE HOUSE?

17 A WELL ONE OF THE THINGS I NOTICED WAS KIND OF BETWEEN, I
18 GUESS, WHAT WOULD BE THE LIVING ROOM AND LIKE THE KITCHEN AREA
19 WAS THE FLOOR APPEARED TO BE DAMP. I TOLD MR. SULLIVAN WE WANTED
20 TO MAKE SURE THAT NOBODY WAS HURT IN THE HOUSE, THAT THERE WAS NO
21 OTHER PERSON THAT WERE THERE THAT MIGHT BE INJURED BECAUSE
22 SHORTLY -- I DON'T REMEMBER EVERYTHING IN CHRONOLOGY BUT ABOUT
23 THIS SAME TIME WE HAD GOTTEN A CALL BECAUSE WE SAW BLOOD, WE
24 HEARD THE CONVERSATION, WE SAW SHELL CASINGS, THAT WE CALLED OUR
25 LOCAL HOSPITAL TO SEE IF ANYBODY, YOU KNOW, HAD BEEN TAKEN TO THE

1 HOSPITAL, AND WE SUBSEQUENTLY FOUND OUT THAT IN FACT SOMEBODY HAD
2 AND THEY HAD COME FROM AN ADDRESS ON [REDACTED] SO WE
3 WANTED TO MAKE SURE THAT NOBODY ELSE WAS IN THE HOUSE OR MIGHT BE
4 HURT, AND SO THAT'S WHAT WE DID. WE DID A PROTECTIVE SWEEP OF
5 THE HOUSE TO MAKE SURE THERE WERE NO OTHER VICTIMS OR ANYBODY
6 ELSE THAT NEEDED OUR ASSISTANCE.

7 Q AND WHO DID THE PROTECTIVE SWEEP?

8 A I PARTICIPATED IN THERE AS WELL AS -- I CAN'T REMEMBER IF IT
9 WAS SERGEANT MACKEY OR SERGEANT MCCALL, BUT ONE OF THEM STAYED
10 WITH MR. SULLIVAN SO WE COULD WATCH HIM WHILE WE CHECKED THE REST
11 OF THE HOUSE.

12 Q AND DID YOU FIND ANYONE ELSE?

13 A WE FOUND AN ELDERLY GENTLEMAN IN THE BED THAT WAS ASLEEP WHO
14 HAS PASSED AWAY SINCE THEN.

15 Q AND WHAT WAS YOUR NEXT DUTY AFTER YOU DID THE PROTECTIVE
16 SWEEP?

17 A AFTER WE DID A PROTECTIVE SWEEP, SUBSEQUENT TO SOME OF THE
18 THINGS THAT WE OBSERVED IN THE HOUSE, I LEFT THEM -- I LEFT
19 SERGEANT MCCALL THERE AND MACKEY THERE AT THE SCENE AND I GOT
20 BACK ON THE PHONE WITH THE SOLICITOR'S OFFICE, EXPLAINED WHAT WE
21 HAD SEEN, WHAT HAD TAKEN PLACE, AND I WENT AND MADE APPLICATION
22 FOR A SEARCH WARRANT.

23 Q AND DID YOU SPEAK TO THE DEFENDANT AT ALL PRIOR TO YOUR
24 LEAVING?

25 A NOTHING OTHER THAN I WAS GOING TO GET A SEARCH WARRANT.

1 Q OKAY. SO YOU DIDN'T ASK HIM ANY SPECIFIC QUESTIONS?

2 A NO. THERE WAS NO NEED FOR ME TO.

3 Q OKAY. AND HOW LONG WERE YOU GONE APPROXIMATELY GETTING THE
4 SEARCH WARRANT?

5 A WELL, I DON'T TYPE REAL FAST AND I HAD TO TYPE IT MYSELF,
6 SO, YOU KNOW, JUST -- I DON'T KNOW, HALF HOUR MAYBE, SOMETHING
7 LIKE THAT.

8 Q AND YOU HAD TO GET IT SIGNED BY A MAGISTRATE?

9 A YES.

10 Q AND WHEN YOU CAME BACK TO THE SCENE WHAT WERE YOUR DUTIES?

11 A WHEN I CAME BACK TO THE SCENE BY THAT TIME MR. SULLIVAN'S
12 MOM, WHO I THINK WAS THE OWNER OR OCCUPANT -- THE HOUSE WAS
13 LISTED IN HER NAME. AND I DON'T RECALL WHETHER THEY WERE RENTING
14 OR BUYING. BUT I GAVE HER A COPY OF THE WARRANT AND TOLD HER
15 WHAT WE WERE GOING IN TO LOOK FOR. AND ON THE PART OF THE
16 WARRANT THAT'S CALLED A RETURN WE LIST EVERYTHING THAT WAS TAKEN
17 FROM THE RESIDENCE THAT WE THOUGHT HAD EVIDENTIARY VALUE. AS A
18 MATTER OF FACT, I'M KIND OF METICULOUS ABOUT THAT BECAUSE THE
19 BULK OF MY CAREER BEING SPENT IN INVESTIGATIONS. SO WE ACTUALLY
20 NOTE ON THAT RETURN WHAT THE ITEM WAS, WHO FOUND IT AND WHERE IT
21 WAS FOUND.

22 Q AND WHEN YOU FIRST CAME BACK TO THE SCENE DID YOU TALK TO
23 THE DEFENDANT AT ALL?

24 A YES, I DID.

25 Q OKAY. AND GO TO THAT PART. WHAT DID YOU SAY TO HIM?

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1 A I WENT BACK---

2 Q THIS IS AFTER YOU GOT THE SEARCH WARRANT?

3 A YES, MA'AM.

4 Q OKAY.

5 A WE FELT LIKE DUE TO THE RELATIVELY SHORT PERIOD OF TIME FROM
6 THE TIME OF THE 911 CALL CAME IN WE WERE STILL TRYING TO FIND OUT
7 EXACTLY WHAT HAPPENED, BUT OFFICERS WERE SENT TO THE SCENE
8 BECAUSE WE KNEW WE HAD SOME KIND OF CIRCUMSTANCE THERE. SO THEY
9 WERE THERE -- LIKE I SAY, IT'S ONLY A COUPLE BLOCKS FROM THE
10 POLICE DEPARTMENT. I CAME IN AND TOLD THEM WE HAD A PRETTY GOOD
11 IDEA OF MAYBE THE WEAPON THAT WAS USED TO SHOOT THIS YOUNG MAN
12 WAS STILL IN THE HOUSE AND WE WERE LOOKING FOR IT. AND MR.
13 SULLIVAN TOLD ME IT WAS IN THE BACK ROOM BEDROOM, OR HIS BEDROOM,
14 IN A CLOSET UP IN LIKE AN ATTIC-TYPE CRAWLSPACE.

15 Q AND DID YOU GO TO THIS LOCATION?

16 A YES, MA'AM, I DID.

17 Q AND WHAT DID YOU DO?

18 A WELL, I GOT ME A CHAIR AND PUSHED THAT LITTLE BOARD -- IT'S
19 ONE OF THOSE -- IT'S AN OLDER HOUSE AND THEY HAVE THOSE LITTLE
20 SQUARES CUT OUT WHERE YOU CAN REMOVE A BOARD. AND SO I HAD TO
21 MOVE THE BOARD UP OUT OF THE WAY AND KIND OF FELT AROUND UP IN
22 THERE BECAUSE I WAS TOO BIG TO GET UP IN THERE, AND FELT WHAT I
23 -- I FELT SOMETHING UP THERE THAT SHOULDN'T HAVE BEEN THERE, AND
24 IT WAS A SHEET AND IT HAD A .40 CALIBER PISTOL INSIDE.

25 Q I'M GOING TO HAND YOU WHAT'S BEEN ENTERED INTO EVIDENCE,

1 STATE'S EXHIBIT 1. CAN YOU TELL THE JURY IF YOU CAN IDENTIFY
2 THAT?

3 A YES, THIS IS A -- THIS IS THE .40 CALIBER PISTOL THAT I
4 RETRIEVED FROM THE ATTIC AND THE BAG THAT WE SUBSEQUENTLY PUT IT
5 IN FOR STORAGE FOR EVIDENCE.

6 Q AND DID YOU -- WHEN YOU TOOK THAT OUT OF THE ATTIC DID YOU
7 UNLOAD IT?

8 A YES.

9 Q AND DID YOU MAKE IT SAFE? IS THAT WHAT YOU CALL IT?

10 A YES, MA'AM.

11 Q DID YOU THEN TURN THAT OVER TO SERGEANT MCCALL?

12 A YES. AND TO UNLOAD THESE YOU HAVE TO DROP THE MAGAZINE AND
13 THEN -- I TRIED TO GRAB ANYWHERE WE COULD GRAB THAT WOULDN'T HAVE
14 FINGERPRINTS TO MAKE IT SAFE SO WE COULD HAVE IT PROCESSED.

15 Q AND WHAT WERE YOUR DUTIES AFTER YOU FOUND THE GUN? DID YOU
16 CONTINUE SEARCHING THE HOUSE?

17 A YES, I ASSISTED IN THE SEARCH.

18 Q AND WERE ALL THE ITEMS YOU FOUND TURNED OVER TO SERGEANT
19 MCCALL?

20 A ABSOLUTELY. HE WAS THE RETURN OFFICER.

21 Q AND DID YOU SPEAK WITH THE DEFENDANT AT THE SCENE ANY MORE
22 AT THE HOUSE?

23 A NO, MA'AM.

24 Q AND WAS THE DEFENDANT EVENTUALLY TAKEN TO THE FOUNTAIN INN
25 LAW ENFORCEMENT CENTER?

1 A YES, HE WAS.

2 Q AND WERE YOU THERE ALSO?

3 A YES.

4 Q AND DESCRIBE ANY INTERACTION YOU HAD WITH HIM AT THE LAW
5 ENFORCEMENT CENTER.

6 A OF COURSE HE WAS TAKEN UP THERE AS A SUSPECT IN THIS -- IN
7 THIS MURDER. AND WHEN WE GOT HIM UP THERE -- OF COURSE, HE WAS
8 TRANSPORTED IN THE BACK OF THE CAR AND HANDCUFFED. BUT WHEN HE
9 ARRIVED AT THE POLICE DEPARTMENT I ASKED THEM TO BRING HIM INTO
10 MY OFFICE AND REMOVE THE HANDCUFFS AND -- SO I COULD TALK WITH
11 HIM.

12 Q AND WAS ANY OTHER OFFICER PRESENT?

13 A YES, OFFICER MEETZE WAS THERE WHILE I DID THE INTERVIEW.

14 Q OKAY. AND DESCRIBE YOUR OFFICE. ARE THERE CHAIRS IN THERE,
15 DESKS, WHAT'S IN YOUR OFFICE?

16 A ABOUT 31 YEARS OF STUFF THAT I'VE ACCUMULATED. VARIOUS
17 PLAQUES AND ANYTHING FROM NASCAR MEMORABILIA TO AUGUSTA, YOU
18 KNOW, GOLF PRINTS, THINGS LIKE THAT. A COUPLE -- THERE'S THREE
19 CHAIRS IN THERE, NOT COUNTING MY CHAIR. SO THERE'S ACTUALLY FOUR
20 TOTAL CHAIRS.

21 Q AND I'M GOING TO HAND YOU WHAT'S BEEN MARKED FOR
22 IDENTIFICATION STATE'S EXHIBIT 25. CAN YOU IDENTIFY THIS FORM?

23 A YES, THIS IS THE RIGHTS FORM THAT I READ TO MR. SULLIVAN AND
24 ALSO ATTACHED TO THE RIGHTS FORM IS A WAIVER OF THOSE RIGHTS.

25 Q AND DID YOU -- PLEASE TELL THE JURY THE INFORMATION THAT'S

1 PUT AT THE TOP OF THE FORM.

2 A WELL, AT THE VERY TOP OF THE FORM IT JUST IDENTIFIES THAT
3 IT'S ONE OF OUR FORMS, FOUNTAIN INN POLICE DEPARTMENT. IT'S GOT
4 OUR ADDRESS. AT THE TOP OF IT IN BIG LETTERS IS "YOUR RIGHTS."
5 RIGHT UNDERNEATH THAT IS A NAME -- A BLANK PLACE FOR THE NAME OF
6 THE PERSON YOU ARE GOING TO INTERVIEW AS WELL AS THEIR DATE OF
7 BIRTH, THEIR ADDRESS, THEIR SOCIAL SECURITY NUMBER, THEIR PHONE
8 NUMBER, HEIGHT AND WEIGHT AND THEIR HAIR AND EYE DESCRIPTION.

9 Q AND WHAT WAS THE DATE OF BIRTH ON THIS FORM?

10 A

11 Q AND SO HOW OLD WAS THE DEFENDANT AT THIS TIME?

12 A I THINK HE WAS 18.

13 Q AND PLEASE CONTINUE. DO YOU -- DID YOU GO OVER THESE LINES
14 WITH THE DEFENDANT STATING HIS RIGHTS?

15 A YES, I DID. LIKE I SAY, DURING THE 31 PLUS YEARS I'VE BEEN
16 DOING THIS I'VE KIND OF DEVELOPED MY OWN METHODOLOGY. AND WHAT I
17 LIKE TO DO IS READ EACH LINE TO THE PERSON I'M GOING TO INTERVIEW
18 AND THEN ASK THEM IF THEY UNDERSTAND THAT LINE. AND IF THEY DO,
19 I PUT A CHECKMARK BY IT.

20 Q AND DID YOU IN FACT PUT A CHECKMARK BY EVERY LINE?

21 A YES, MA'AM, I DID.

22 Q AND DESCRIBE THE BOTTOM SECTION, WHAT IS THAT PART OF THE
23 FORM?

24 A THE BOTTOM SECTION, ALSO IN BOLD TYPE, IS A WAIVER OF
25 RIGHTS. THAT'S EXACTLY WHAT IT IS. WHOEVER YOU'RE TALKING TO,

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1 FIRST OF ALL YOU'RE GOING TO MAKE SURE THAT THEY UNDERSTAND WHAT
2 THEIR RIGHTS ARE, AND THEN YOU WANT TO MAKE SURE THAT THEY
3 UNDERSTAND THAT THEY CAN WAIVE THOSE RIGHTS AND TALK TO YOU OR
4 ANSWER YOUR QUESTIONS. AND I'D BE GLAD TO PUBLISH THAT IF---

5 Q THAT'S FINE. GO AHEAD AND DO THAT, PLEASE.

6 A THE ENTIRE RIGHTS WAIVER OR---

7 Q THAT'S FINE.

8 A ---JUST THE WAIVER?

9 Q THE ENTIRE FORM?

10 A OKAY. AGAIN, AFTER I READ EACH ONE OF THESE LINES IN THE
11 RIGHTS SECTION I ASKED THE INTERVIEWEE -- I ALWAYS ASK, WHOEVER
12 IT IS, NOT JUST MR. SULLIVAN, ANYBODY IF THEY UNDERSTAND THOSE
13 LINES. AND THOSE LINES -- THE RIGHTS LINES ARE: "BEFORE WE ASK
14 YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE
15 RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU
16 IN COURT. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE
17 BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE A LAWYER WITH YOU
18 DURING QUESTIONING. IF YOU DO NOT HAVE MONEY TO PAY A LAWYER'S
19 FEE, THE COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST, IF
20 YOU WISH. IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
21 PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY
22 TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME
23 UNTIL YOU TALK WITH A LAWYER." AND I ASKED MR. SULLIVAN, AFTER
24 EVERY ONE OF THOSE LINES, "DO YOU UNDERSTAND THAT?"

25 AND THEN I WENT ON TO THE WAIVER OF RIGHTS AND I SAID, NOW

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1 LET ME READ THIS LAST PART TO YOU. THIS SAYS THAT, "I HAVE READ
2 THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I
3 AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT
4 WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM
5 DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO
6 PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME."

7 I ASKED HIM IF HE UNDERSTOOD THAT. HE SAID THAT HE DID. I ASKED
8 HIM TO SIGN HIS NAME, AND HE SIGNED IT, AND THEN I WITNESSED IT.

9 Q AND YOU OBSERVED HIM SIGN THIS FORM?

10 A YES.

11 Q AND DID YOU PUT THE TIME ON HERE WHEN THIS STARTED?

12 A I PUT A NOTE AT THE TOP RIGHT THAT IT STARTED AT 1540, WHICH
13 IS 3:40 IN THE AFTERNOON, AND CONCLUDED AT 3:42.

14 MS. MONTS: YOUR HONOR, I MOVE THIS EXHIBIT INTO EVIDENCE
15 AT THIS TIME.

16 MR. SUMNER: CAN I SEE IT JUST ONE SECOND?

17 THE COURT: YES, SIR.

18 MR. SUMNER: OKAY. YEAH. NO OBJECTION.

19 THE COURT: ALL RIGHT. IT'S IN EVIDENCE.

20 (STATE'S EXHIBIT NUMBER 25, WAIVER OF RIGHTS FORM, MOVED
21 INTO EVIDENCE)

22 Q CHIEF, I'M GOING TO HAND YOU WHAT'S BEEN MARKED FOR
23 IDENTIFICATION AS STATE'S EXHIBIT 26. IT'S TWO PAGES. CAN YOU
24 PLEASE TELL THE JURY WHAT THIS FORM IS?

25 A YES. THIS IS A STATEMENT FORM. THESE PARTICULAR STATEMENTS

ANTHONY KEITH MORTON -- DIRECT BY MS. MONTS

1 ARE FORMS THAT WE USE TO TAKE STATEMENTS FROM WITNESSES OR
2 SUSPECTS IN CASES AND IT'S A RELATIVELY STANDARD FORM FOR LAW
3 ENFORCEMENT. BUT IT MAKES SEVERAL COPIES SO YOU CAN GIVE ONE TO
4 THE DEFENDANT. YOU CAN HAVE ONE IN THE CASE FILE, AND YOU CAN
5 HAVE AN ORIGINAL. SO THIS IS THE STATEMENT THAT I TOOK FROM
6 MORRIS SULLIVAN ON THE 16TH OF JANUARY 1998.

7 Q AND WHOSE HANDWRITING IS THE ACTUAL STATEMENT IN?

8 A THE STATEMENT IS IN THE DEFENDANT'S HANDWRITING.

9 Q AND WHO WROTE YOUR NAME AND WADE MEETZE'S NAME AT THE TOP?

10 A I WROTE THAT.

11 Q AND WHERE DOES MR. SULLIVAN'S HANDWRITING START?

12 A THE TOP PART OF THIS FORM. AGAIN, THIS IS A STANDARD FORM
13 THAT WE USE SIMILAR TO THE RIGHTS WAIVER EXCEPT THIS ONE IS JUST
14 FOR ACTUALLY TAKING THE STATEMENT ITSELF. IT'S GOT A PLACE UP AT
15 THE VERY TOP FOR THE CASE NUMBER. THEN IT HAS "I" AND A BLANK
16 FOR WHOEVER THE PERSON IS THAT YOU'RE INTERVIEWING. YOU PUT
17 THEIR NAME IN THERE AND THAT THEY'VE GIVEN A -- "THEY DO HEREBY
18 GIVE FREELY AND VOLUNTARILY THIS STATEMENT TO" -- THEN THERE'S
19 TWO BLANKS FOR OFFICERS OR AGENTS THAT WE PUT THEIR NAMES IN
20 THERE. AND IT CONTINUES TO SAY THAT "THESE TWO PEOPLE HAVE
21 IDENTIFIED THEMSELVES TO BE POLICEMEN WITH THE CITY OF FOUNTAIN
22 INN, FOUNTAIN INN, SOUTH CAROLINA. I HAVE BEEN ADVISED THAT I DO
23 NOT HAVE TO MAKE THIS OR ANY OTHER STATEMENT AND THE WHAT I SAY
24 CAN BE USED AGAINST ME IN A COURT OF LAW." I THEN ADVISE THAT,
25 "I HAVE THE RIGHT TO COUNSEL WITH AN ATTORNEY OF MY CHOICE AND

1 THAT IF I AM FINANCIALLY UNABLE TO OBTAIN AN ATTORNEY THE COURT
2 WILL APPOINT AN ATTORNEY TO REPRESENT ME. I HAVE NOT BEEN
3 THREATENED OR PROMISED ANY REWARD TO MAKE THIS STATEMENT." THEN
4 MR. SULLIVAN FILLED IN HIS NAME, HIS PERTINENT DATA, HIS AGE,
5 ADDRESS, AND THEN WROTE HIS VERSION OF WHAT OCCURRED.

6 BAILIFF: JUDGE HILL? (APPROACHES THE COURT)

7 THE COURT: OKAY. WE'RE GOING TO TAKE A SHORT RECESS AND
8 WE'LL BE BACK SHORTLY. WE ALSO HAVE SOME EQUIPMENT THAT NEEDS TO
9 BE SET UP IN HERE, I'VE BEEN INFORMED. SO IT MIGHT BE A WHILE
10 BEFORE WE GET THAT SET UP. BUT TAKE A BREAK AND DON'T DISCUSS
11 THE CASE. CONTINUE TO KEEP AN OPEN MIND. THANK YOU.

12 (JURY EXITS COURTROOM AT 3:12 P.M.)

13 THE COURT: ONE OF THE JURORS REQUESTED A BREAK. I DIDN'T
14 NOTICE THAT. THANK YOU FOR DOING THAT.

15 AND ALSO APPARENTLY THERE IS SOME EQUIPMENT. Y'ALL NEED
16 SOME TIME TO SET THAT UP?

17 MS. MONTS: YES, YOUR HONOR. WE'LL GET THAT. SOMEONE TOOK
18 IT DURING THE LUNCH BREAK, SO WE HAVE TO GET IT BACK IN HERE.

19 THE COURT: OKAY. AND THEY SAID THE JUDGE UP THERE WAS
20 CHARGING THE JURY SO THEY---

21 MS. MONTS: OH. OKAY.

22 THE COURT: IT MIGHT BE A LITTLE BIT. BUT WE'LL JUST TAKE
23 A RECESS.

24 SIR, YOU CAN STEP DOWN, CHIEF. THANK YOU.

25 WITNESS: THANK YOU, YOUR HONOR.

1 **MR. SUMNER:** TEN OR FIFTEEN MINUTES, JUDGE, OR HOWEVER
2 LONG---

3 **THE COURT:** YEAH. RIGHT. IT'S GOING BE AT LEAST---

4 **MR. SUMNER:** THEY'RE JUST GOING TO GET THE STUFF AND BRING
5 IT DOWN?

6 **THE COURT:** YEAH. WE'RE NOT GOING TO COME BACK BEFORE
7 3:30, I WOULDN'T THINK.

8 **MR. SUMNER:** OKAY.

9 (A RECESS WAS TAKEN FROM 3:14 TO 3:39 P.M.)

10 **MS. MONT'S:** MAY THE WITNESS TAKE THE STAND?

11 **THE COURT:** YES, SIR. OKAY. YES, SIR.

12 (JURY REENTERS COURTROOM AT 3:40 P.M.)

13 **THE COURT:** ALL RIGHT. YES, MA'AM. YOU CAN CONTINUE WITH
14 THE DIRECT EXAMINATION.

15 **DIRECT EXAMINATION OF KEITH MORTON CONTINUES BY MS. MONT'S:**

16 **Q** CHIEF MORTON, WE'RE TALKING ABOUT STATE'S EXHIBIT 26. AND I
17 KNOW I ASKED YOU -- I MAY REPEAT MYSELF, BUT WHOSE HANDWRITING IS
18 THIS STATEMENT IN?

19 **A** THE STATEMENT ITSELF, THE BODY OF THE WRITING, IS IN THE
20 DEFENDANT'S HANDWRITING.

21 **Q** AND WAS THIS DONE IMMEDIATELY AFTER THE WAIVER OF RIGHTS
22 FORM WAS COMPLETED?

23 **A** WELL, ACTUALLY, AGAIN, MY METHODOLOGY, I ASK THEM TO TELL ME
24 WHAT HAPPENED AND I WILL TAKE NOTES JUST SO THEY CAN TELL ME
25 UNINTERRUPTED WHAT THEIR VERSION OF THE FACTS ARE OF WHAT

ANTHONY KEITH MORTON -- DIRECT BY MS. MONT'S

1 HAPPENED AT THE SCENE. SO I ACTUALLY MADE NOTES IN MY OWN
2 PARTICULAR BRAND OF SHORTHAND AND WROTE THAT DOWN. ONCE I GOT
3 THOSE IN MY MIND WHAT HE SAID HAPPENED, THEN I GAVE HIM THE
4 STATEMENT FORM. SO IT WOULDN'T HAVE BEEN IMMEDIATELY AFTER IT,
5 BUT IT WOULD HAVE BEEN RELATIVELY SHORTLY AFTER.

6 Q THERE WOULD HAVE BEEN NO -- YOU WOULDN'T HAVE GOTTEN UP AND
7 LEFT THE ROOM OR...

8 A OH, NO. NO. IT'S JUST I TAKE MY NOTES OF IT AND THE
9 VERSION OF IT, AND THEN I ASK THEM TO WRITE IN THEIR OWN WORDS
10 WHAT HAPPENED.

11 Q AND AT THE BOTTOM OF THIS FORM DID THE DEFENDANT SIGN IT?

12 A YES, HE SIGNED IT. DETECTIVE MEETZE WITNESSES IT AND I
13 NOTARIZED THE STATEMENT.

14 Q AND WAS DETECTIVE MEETZE IN THE OFFICE WITH YOU WHILE
15 DEFENDANT SIGNED THIS FORM?

16 A YES.

17 MS. MONT'S: YOUR HONOR, I'VE MOVE THIS EXHIBIT INTO
18 EVIDENCE AT THIS TIME.

19 MR. SUMNER: WITHOUT OBJECTION.

20 THE COURT: WHAT'S THAT, 26; IS THAT RIGHT?

21 MS. MONT'S: 26, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU. IT'S IN EVIDENCE.

23 (STATE'S EXHIBIT NUMBER 26, DEFENDANT'S STATEMENT, MOVED
24 INTO EVIDENCE)

25 Q AND, CHIEF, IF YOU WOULD, PLEASE PUBLISH THIS TO THE JURY.

1 A OKAY. AFTER THE ADDITIONAL WAIVER OF RIGHTS AT THE TOP THE
2 NARRATIVE OF THE STATEMENT IN THE DEFENDANT'S HANDWRITING BEGINS
3 THAT "I, MORRIS A. SULLIVAN, AM 18 YEARS OLD AND I LIVE AT [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED]" AND HE WRITES, "TODAY, JANUARY 16TH, FRIDAY,
6 I WAS AT MY HOUSE WITH CONICA (PHONETIC) AND TAVIS." MAYBE
7 THAT'S RONICA AND TAVIS. "AND THERE WAS A KNOCK AT THE DOOR. IT
8 WAS TIM TUCKER, R. J. COOK, CEDRICK EVANS, FRANK GOLDEN AND
9 JERVIS POWERS, AND JERVIS SAID THAT HE HEARD THAT I SHOT AT HIS
10 HOUSE, AND I SAID THAT WAS NOT ME AND I HAVE NEVER DISRESPECT YOU
11 LIKE THAT. HE SAID HE BELIEVE THAT IT WAS ME, SO I WENT TO THE
12 BACK ROOM AND HE FOLLOWED ME BACK THERE IN MY ROOM ALONE. AND I
13 TOLD HIM THAT I HAVE NEVER CAME AT HIM LIKE THAT. I HAVE NEVER
14 HAVE DISRESPECT YOU LIKE THAT. AND THEN WE BOTH GRABBED FOR THE
15 GUN, BUT I GOT IT AND WENT BACK TOWARD THE FRONT, AND WE WAS ALL
16 IN THE FRONT AND I KEPT ASKING HIM TO LEAVE. AND THEN HE REPLIED
17 THAT HE ISN'T SCARED TO DIE, AND THEN I SHOT HIM -- I SHOT DOWN
18 ONCE AND THEN I SHOT TWO MORE TIMES. THEN I SEEN HIM FALL. THEN
19 I PUT HIM IN R.J. FOUR-DOOR CROWN VICTORIA WITH THE HELP OF
20 CEDRICK EVANS."

21 Q AND, CHIEF, YOU SPOKE A MOMENT AGO ABOUT NOTES THAT YOU
22 TOOK?

23 A YES.

24 Q CAN YOU PLEASE -- DO YOU HAVE A COPY OF THOSE?

25 A NOT IN FRONT OF ME.

1 Q OKAY. I'M HANDING YOU WHAT'S BEEN MARKED FOR IDENTIFICATION
2 STATE'S EXHIBIT 93. CAN YOU IDENTIFY THIS FOR THE JURY?

3 A YES, THESE ARE THE NOTES I TOOK WHILE I WAS DOING THE
4 INTERVIEW BEFORE HE WROTE THIS STATEMENT.

5 Q OKAY. AND CAN YOU PLEASE TELL THE JURY WHAT NOTES YOU TOOK
6 WHILE YOU WERE SITTING THERE TALKING AT THE DEFENDANT?

7 A YES. I WROTE THE DEFENDANT'S NAME AT THE TOP OF THE
8 NOTEPAPER AND I PUT THE DATE, 1/16/98. THEN I WROTE DOWN,
9 "RONICA BUTLER," WHO WAS A YOUNG LADY WHO WAS THERE WHEN THIS
10 TRANSPIRED. I ALSO WROTE DOWN THE NAMES OF TAVIS BARKSDALE AND
11 FRANK GOLDEN.

12 Q AND LET ME INTERRUPT YOU. SO THIS ISN'T SENTENCES YOU ARE
13 WRITING OUT? THIS IS JUST SOMETHING YOU'VE JOTTED DOWN AS YOU
14 ARE LISTENING?

15 A EXACTLY.

16 Q OKAY.

17 A I TRY NOT TO INTERRUPT THEM, YOU KNOW, BECAUSE TYPICALLY
18 THEY WILL GIVE MORE DETAIL TO YOU THAN THEY WILL IN WRITING.

19 Q OKAY.

20 A SO I WROTE DOWN THE NOTES OF EVERYTHING THAT HE SAID. THEN
21 I ASKED HIM TO WRITE HIS VERSION.

22 Q OKAY. PLEASE CONTINUE.

23 A OKAY. LIKE I SAY, I ASKED HIM, "TELL ME WHAT HAPPENED."
24 AND HE TOLD ME. AGAIN, I WROTE DOWN, "TIM TUCKER, R.J. COOK,
25 JERVIS POWERS, CEDRICK EVANS, FRANK GOLDEN, TAVIS BARKSDALE." HE

1 SAID THAT JERVIS POWERS, WHO I INDICATE IS J.P. STATES, "THE WORD
2 IS YOU'VE BEEN SHOOTING AT MY HOME NEAR BRYSON ON [REDACTED]
3 [REDACTED]." HE TOLD THE VICTIM THAT HE HAD NEVER SHOT AT HIS HOUSE.
4 HE HAD NEVER DISRESPECTED HIM LIKE THAT. THE DEFENDANT ASKED THE
5 VICTIM TO COME TO THE BACK ROOM AND THEY WOULD SETTLE THEIR
6 DISPUTE MANO Y MANO.

7 Q WHAT DID HE MEAN BY THAT AS HE WAS SAYING IT TO YOU?

8 A MAN TO MAN. THAT -- THE FEELING I GOT FROM INTERVIEWING MR.
9 SULLIVAN WAS THAT ALL THESE GUYS CAME TO HIS HOUSE AND HE WANTED
10 TO SETTLE IT WITH JERVIS -- IF THERE WAS A PROBLEM, THEY WOULD
11 SETTLE IT ONE ON ONE.

12 Q OKAY. PLEASE CONTINUE.

13 A LET'S SEE. HE ASKED THE VICTIM TO COME TO THE BACK ROOM
14 MANO Y MANO IN THE DEFENDANT'S BEDROOM. THE VICTIM PUSHED THE
15 DEFENDANT. HE SAID HE REACHED ON TOP OF THE CLOSET SHELF.

16 Q AND BY "HE," WHO DO YOU MEAN?

17 A THE DEFENDANT. THE DEFENDANT REACHED TO THE TOP OF THE
18 CLOSET SHELF AND ASKED HIM TO PLEASE LEAVE SEVERAL TIMES.

19 Q WHAT WAS ON TOP OF THE CLOSET SHELF?

20 A THAT'S WHERE THE PISTOL WAS.

21 Q OKAY.

22 A VICTIM STATES, "I'M NOT AFRAID TO DIE." THE VICTIM WAS
23 WALKING TOWARD THE DEFENDANT. THE DEFENDANT HAD THE GUN IN HIS
24 HAND. DEFENDANT SHOT IN THE FLOOR TO SCARE THE VICTIM AND
25 REMEMBERS SHOOTING THREE TIMES. DEFENDANT SAID HE HAD TO PUT THE

ANTHONY KEITH MORTON -- DIRECT BY MS. MONTS

1 VICTIM IN THE CAR BECAUSE EVERYONE RAN OUT. CEDRICK HELPED THE
2 DEFENDANT PUT THE VICTIM IN A BROWN VICTORIA. VICTIM NEVER SAID
3 ANYTHING BUT WAS BREATHING. AND "TIM, CEDRICK AND R.J. TOOK OFF,
4 AND I TOLD THEM TO TAKE THE VICTIM TO THE HOSPITAL. I TOLD TAVIS
5 TO TAKE RONICA HOME AND I PANICKED AND I HID THE GUN IN THE ATTIC
6 PART OF THE CLOSET AND WIPED UP SOME BLOOD WITH THE GREEN TOWEL
7 AND THEN TOOK OFF MY DARK BLUE BIG DOG SHIRT."

8 Q AFTER YOU TOOK THESE NOTES AND THE DEFENDANT WROTE HIS
9 STATEMENT WHAT HAPPENED NEXT? WHAT'S PROCEDURE?

10 A WELL, HE WAS CHARGED WITH THE CRIME OF MURDER AND WARRANTS
11 WERE SERVED ON HIM AND HE WAS PLACED IN THE DETENTION CENTER, AND
12 THEN WE WENT ABOUT GETTING THE AUTOPSY SCHEDULED FOR THE VICTIM
13 AND GOING OVER ANY OF THE OTHER EVIDENCE THAT NEEDED TO BE
14 CATALOGUED AND PUT INTO THE EVIDENCE ROOM.

15 MS. MONTS: THANK YOU. NO FURTHER QUESTIONS.

16 THE COURT: CROSS EXAMINATION.

17 MR. SUMNER: YES, SIR.

18 CROSS EXAMINATION BY MR. SUMNER:

19 Q GOOD AFTERNOON, CHIEF.

20 A HI.

21 Q THE LAST THING YOU STATED TO THE JURY WAS THAT AT THE
22 CONCLUSION OF THE STATEMENT THAT YOU TOOK FROM MORRIS THAT HE WAS
23 PLACED IN DETENTION AND A WARRANT FOR MURDER WAS SOUGHT; IS THAT
24 CORRECT?

25 A YES, SIR, THAT'S CORRECT.

1 Q AND YOU WOULD AGREE WITH ME TO THE JURY THAT A WARRANT IS
2 NOT EVIDENCE OF ANYTHING, IS IT?

3 A IT'S JUST FORMALLY CHARGING THEM WITH AN OFFENSE, A CRIME
4 AGAINST THE STATE.

5 Q RIGHT. IT'S JUST LIKE AN INDICTMENT IS JUST A CHARGING
6 PAPER. IT'S NOT EVIDENCE OF ANYTHING AGAINST ANYBODY, IS IT?

7 A IT'S JUST THE PROCEDURE WE HAVE TO FOLLOW.

8 Q RIGHT. NOW, CHIEF, EARLIER AT THE BEGINNING OF YOUR
9 TESTIMONY YOU TOLD THE JURY THAT YOU HAD MET MORRIS SULLIVAN
10 BEFORE THIS INCIDENT; IS THAT CORRECT?

11 A YES, SIR. THAT'S RIGHT.

12 Q OKAY. AND TELL THE JURY HOW YOU FIRST MET MORRIS.

13 A WELL, IT'S A RELATIVELY SMALL TOWN AND ONE OF MY DAILY
14 RITUALS OR AT LEAST SEVERAL TIMES A WEEK, PARTICULARLY AT THAT
15 TIME, WAS TO GO TO THE GYM AND LIFT WEIGHTS, AND I MET MORRIS --
16 HE AND SOME OF HIS FRIENDS WERE IN SHOOTING BASKETBALL, WHICH IS
17 ADJACENT TO THE WEIGHT ROOM, AND I ACTUALLY WENT IN THERE AND WAS
18 SHOOTING SOME BASKETBALL BY MYSELF ONE DAY AND HE CHALLENGED ME
19 TO A GAME OF ONE ON ONE.

20 Q AND THAT'S HOW YOU FIRST MET MORRIS?

21 A THAT'S HOW I FIRST MET HIM.

22 Q WHEN YOU WENT BACK TO THE RESIDENCE AFTER FIRST BEING THERE
23 INITIALLY FOR THE PROTECTIVE SWEEP AND JUST TRYING TO GET A
24 HANDLE ON THE SCENE, YOU TOLD THE JURY YOU WENT BACK AND GOT A
25 WARRANT -- YOU APPLIED TO HAVE A WARRANT ISSUED, A MAGISTRATE

1 ISSUED ONE AND YOU RETURNED TO THE RESIDENCE; IS THAT CORRECT?

2 A YES, SIR, THAT'S CORRECT.

3 Q OKAY. AND WHEN YOU GOT THERE, CHIEF, MORRIS SULLIVAN TOLD
4 YOU WHERE THAT PISTOL WAS, DIDN'T HE?

5 A HE DID THE SECOND TIME, BUT WE ALREADY KNEW WHERE IT WAS.

6 Q OKAY. BUT, I MEAN, HE TOLD YOU, HERE'S WHERE IT IS. HERE'S
7 HOW TO GET UP THERE. HERE'S HOW TO FIND IT. IS THAT RIGHT?

8 A THE SECOND TIME I WENT BACK WITH A WARRANT, YES, HE DID TELL
9 ME WHERE I WAS.

10 Q OKAY. NOW, IN THE NOTES THAT YOU TOOK AS TO HIS STATEMENT
11 THAT HE GAVE TO YOU AND THAT STATEMENT WAS GIVEN THAT DAY, RIGHT?

12 A YES, SIR.

13 Q OKAY. NOT ONLY DID HE GIVE YOU A WRITTEN STATEMENT THAT YOU
14 READ TO THE JURY HE ALSO GAVE YOU A VERBAL STATEMENT; IS THAT
15 CORRECT?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. HE TOLD -- OR YOUR NOTES REFLECT THAT HE TOLD
18 YOU ABOUT THESE FIVE GENTLEMEN COMING TO HIS HOME; IS THAT RIGHT?

19 A YES.

20 Q OKAY. THE JURY HAS ALREADY HEARD ABOUT THE CONFRONTATION
21 BETWEEN -- INITIATED BY JERVIS POWERS ABOUT GUNSHOTS BEING FIRED;
22 IS THAT RIGHT?

23 A I DON'T KNOW WHAT THE ---

24 Q NO. I MEAN, THAT'S WHAT YOUR NOTES REFLECT?

25 A YES. MY NOTES REFLECT THAT THEY CAME TO HIS HOUSE AND THERE

ANTHONY KEITH MORTON -- CROSS BY MR. SUMNER

1 WAS AN ALTERCATION BETWEEN THE TWO OF THEM.

2 Q RIGHT. OKAY. AND YOUR NOTES ALSO REFLECT THAT -- AND
3 YOU'RE JUST TAKING THESE DOWN AS HE'S TALKING WITH YOU, RIGHT?

4 A THAT'S CORRECT.

5 Q SO I MEAN THESE ARE SHORTHAND. THIS IS NOT EVEN ONE FULL
6 PAGE; IS THAT RIGHT?

7 A NO, SIR, ABOUT A PAGE.

8 Q YEAH... BUT, I MEAN, YOU DIDN'T TAKE DOWN EVERYTHING HE SAID
9 VERBATIM IS WHAT I'M TRYING TO SAY?

10 A NO, I CAN'T WRITE THAT FAST.

11 Q NO. I MEAN, YOU WERE JUST SCRIBBLING SOME NOTES---

12 A I WAS GETTING THE PERTINENT FACTS.

13 Q SIR?

14 A I WAS GETTING THE PERTINENT FACTS.

15 Q AND WHEN I LOOK HERE YOU HAVE THE WORD -- WHEN MORRIS SAYS,
16 "AND I ASKED HIM TO PLEASE LEAVE"; IS THAT RIGHT? DO YOU SEE
17 THAT ABOUT MIDWAY DOWN, CHIEF?

18 A YES.

19 Q AND ABOVE THAT YOU HAVE THE WORD "SEVERAL" TIMES WRITTEN; IS
20 THAT CORRECT?

21 A YES.

22 Q OKAY. DO YOU HAVE ANY OTHER WORDS UNDERLINED IN YOUR NOTES
23 OTHER THAN THE WORD "PLEASE"?

24 A NOT IN THAT NARRATIVE, NO.

25 Q OTHER -- ANYTHING IN THE ENTIRE PAGE THAT'S UNDERLINED OTHER

1 THAN THAT?

2 A NO, SIR.

3 Q OKAY. WERE YOU TRYING TO EMPHASIZE TO YOURSELF POTENTIALLY
4 THAT -- WHY DID YOU UNDERLINE THE WORD "PLEASE," THAT HE HAD
5 ASKED HIM TO "PLEASE LEAVE"? WHY DID YOU UNDERLINE THAT, DO YOU
6 RECALL?

7 A YES, SIR, I'LL BE GLAD TO EXPLAIN.

8 Q SURE.

9 A AS I SAY, AS THEY'RE TALKING SOMETIMES I HAVE TO STOP THEM,
10 YOU KNOW, BECAUSE THEY TALK A LOT FASTER THAN I CAN WRITE, AND MY
11 WRITING IS BAD ENOUGH THAT WHEN IT GETS COLD I HAVE TO LOOK AT IT
12 FOR A MINUTE TO DECIPHER IT ANYWAY. SO WHEN I GOT TO THAT POINT
13 I REMEMBER HIM BEING ADAMANT ABOUT "I ASKED HIM TO PLEASE LEAVE,"
14 AND HE EMPHASIZED THAT, SO THAT'S WHY I UNDERLINED IT. AND I
15 TOLD HIM TO STOP RIGHT THERE SO I COULD CATCH UP WITH HIM, AND
16 THEN HE SAID -- I STARTED TO WRITE, "VICTIM STATES THAT HE WAS
17 NOT AFRAID TO DIE," AND HE SAID, "WELL, I ASKED HIM TO PLEASE
18 LEAVE SEVERAL TIMES." SO THAT'S WHY THAT'S ADDED AT THE TOP.

19 Q SURE. AND THAT WAS EMPHASIZED BECAUSE HE EMPHASIZED IT TO
20 YOU?

21 A THAT -- THAT'S CORRECT.

22 Q OKAY. ALL RIGHT. HE TOLD YOU ABOUT FIRING THE SHOT INTO
23 THE FLOOR; IS THAT CORRECT?

24 A YES.

25 Q HE TOLD YOU THAT HE REMEMBERED SHOOTING THREE TIMES?

1 A THAT'S WHAT HE TOLD ME.

2 Q AND AT THE CONCLUSION OF HIS STATEMENT TO YOU, CHIEF, HE
3 TOLD YOU THAT HE HAD PANICKED, DIDN'T HE?

4 A YES, SIR.

5 Q HE TOLD---

6 A THAT'S WHAT HE SAID.

7 Q I'M SORRY?

8 A THAT'S WHAT HE SAID.

9 Q HE SAID, "I PANICKED." AND HE TOLD YOU, "I HID THE GUN,"
10 CORRECT?

11 A UH-HUH (AFFIRMATIVE). AND CLEANED UP THE SCENE.

12 Q CLEANED UP THE SCENE AND TOOK OFF A SHIRT "THAT I HAD ON"?

13 A THAT'S CORRECT.

14 Q AND AGAIN, AT THE TIME, NO QUESTION, MORRIS WAS 18 YEARS
15 OLD; IS THAT RIGHT?

16 A I'M SORRY. I COULDN'T---

17 Q I SAID, NO QUESTION THAT AT THE TIME THAT THIS OCCURRED HE
18 WAS 18 YEARS OF AGE?

19 A BEST OF MY KNOWLEDGE HE WAS 18, YES. THAT'S WHAT HE TOLD
20 ME.

21 MR. SUMNER: (PAUSE) THANK YOU, CHIEF.

22 THE COURT: REDIRECT?

23 MS. MONTS: NO FURTHER QUESTIONS, YOUR HONOR.

24 THE COURT: OKAY. THANK YOU, SIR.

25 WITNESS: THANK YOU, YOUR HONOR.

1 **MS. MONTES:** YOUR HONOR, WE ASK THIS WITNESS BE EXCUSED.

2 **MR. SUMNER:** WITHOUT OBJECTION.

3 **THE COURT:** ALL RIGHT. YES, SIR YOU'RE EXCUSED.

4 (WITNESS EXCUSED AT 3:55 P.M.)

5 **MS. MONTES:** YOUR HONOR, THE STATE CALLS SEAN COLLINS.

6 **SEAN COLLINS,** HAVING BEEN DULY SWORN,

7 TESTIFIED AS FOLLOWS:

8 **DIRECT EXAMINATION BY MS. MONTES:**

9 **Q** MR. COLLINS, WHERE ARE YOU EMPLOYED?

10 **A** I'M EMPLOYED BY THE GREENVILLE COUNTY CRIME LABORATORY.

11 **Q** AND HOW LONG HAVE YOU WORKED THERE?

12 **A** JUST OVER 14 YEARS NOW.

13 **Q** AND WHAT TYPES OF DEGREES DID YOU HAVE TO EARN IN ORDER TO
14 HAVE THIS POSITION?

15 **A** I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY FROM
16 CLEMSON UNIVERSITY. I HAVE ATTENDED THE DRUG ENFORCEMENT
17 ADMINISTRATION FORENSIC CHEMIST SEMINAR. I'VE COMPLETED SEVERAL
18 INSTRUMENTAL SCHOOLS FOR THE EQUIPMENT I USE IN MY ANALYSIS.
19 I'VE ALSO RECEIVED OVER 700 HOURS OF SPECIALIZED TRAINING SINCE
20 BEING WITH THE LABORATORY. AND I HAVE TESTIFIED 136 TIMES AS AN
21 EXPERT WITNESS IN THE AREA OF DRUG IDENTIFICATION.

22 **MS. MONTES:** YOUR HONOR, I WOULD MOVE MR. COLLINS AS AN
23 EXPERT IN THE FIELD OF DRUG ANALYSIS.

24 **MR. SUMNER:** SO STIPULATED.

25 **THE COURT:** ALL RIGHT. HE IS QUALIFIED.

SEAN COLLINS -- DIRECT BY MS. MONT'S

1 LADIES AND GENTLEMEN, TYPICALLY, UNDER THE RULES OF EVIDENCE
2 WITNESSES CAN ONLY TESTIFY AS TO FACTS THEY HAVE OBSERVED OR
3 OTHER THINGS THAT THEY HAVE SENSED. THERE IS AN EXCEPTION UNDER
4 THE LAW FOR PEOPLE WHO BY TRAINING, EDUCATION OR EXPERIENCE HAVE
5 SOME PARTICULAR KNOWLEDGE THAT WOULD BE USEFUL AND THEREFORE THEY
6 ARE ALLOWED UNDER THE LAW TO TESTIFY AS TO THEIR OPINIONS. AND
7 IF YOU ARE QUALIFIED AS AN EXPERT, YOU CAN GIVE YOUR OPINION.
8 BUT AN EXPERT WITNESS IS JUST LIKE ANY OTHER WITNESS AND THAT
9 MEANS THAT THE BELIEVABILITY OR CREDIBILITY OF THEIR TESTIMONY IS
10 ENTIRELY UP TO YOU AND YOU CAN GIVE WHATEVER WEIGHT YOU WISH TO
11 GIVE TO THEIR TESTIMONY.

12 THANK YOU VERY MUCH. GO AHEAD.

13 Q MR. COLLINS, I'M GOING TO HAND YOU WHAT HAS BEEN ENTERED
14 INTO EVIDENCE, STATE'S EXHIBIT 20. CAN YOU PLEASE LOOK INSIDE
15 HERE, TELL THE JURY IF YOU ANALYZED THIS SUBSTANCE AND ALSO WHAT
16 YOUR RESULTS WERE IF YOU DID A REPORT?

17 A YES, MA'AM, I DID ANALYZE THIS SUBSTANCE, AND I FOUND THE
18 CONTENTS OF THE MANILA ENVELOPE INSIDE HERE TO BE MARIJUANA WITH
19 A WEIGHT OF 2.31 GRAMS.

20 MS. MONT'S: NO FURTHER QUESTIONS. THANK YOU, MR. COLLINS.

21 MR. SUMNER: ONE QUESTION.

22 CROSS EXAMINATION BY MR. SUMNER:

23 Q TWENTY-EIGHT GRAMS TO AN OUNCE; IS THAT RIGHT?

24 A YES, SIR, APPROXIMATELY.

25 Q SO THIS WOULD HAVE BEEN?

SEAN COLLINS -- DIRECT BY MS. MONT'S

1 A LESS THAN A TENTH OF AN OUNCE.

2 MR. SUMNER: THANK YOU. NO FURTHER QUESTIONS.

3 MS. MONT'S: NO FURTHER QUESTIONS. WE'D ASK THIS WITNESS BE
4 EXCUSED.

5 MR. SUMNER: WITHOUT OBJECTION.

6 THE COURT: THANK YOU, SIR. YOU'RE EXCUSED.

7 (WITNESS EXCUSED AT 3:58 P.M.)

8 MS. MONT'S: YOUR HONOR, THE STATE CALLS DR. WARD.

9 MICHAEL WARD, M.D., HAVING BEEN

10 DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MS. MONT'S:

12 Q DR. WARD, WILL YOU PLEASE TELL THE JURY WHERE YOU ARE
13 EMPLOYED?

14 A I'M EMPLOYED HERE IN GREENVILLE BY PATHOLOGY ASSOCIATES OF
15 GREENVILLE AS WELL AS BY GREENVILLE COUNTY AS THE CHIEF MEDICAL
16 EXAMINER.

17 Q AND HOW LONG HAVE YOU WORKED IN THIS CAPACITY?

18 A FOURTEEN YEARS.

19 Q AND CAN YOU DESCRIBE YOUR EDUCATION AND TRAINING IN THIS
20 FIELD?

21 A I HAVE A BACHELOR'S DEGREE IN BIOLOGY FROM THE UNIVERSITY OF
22 ALABAMA. I RECEIVED MY MASTER'S DEGREE IN FORENSIC SCIENCE FROM
23 THE UNIVERSITY OF ALABAMA IN BIRMINGHAM. I RECEIVED MY MEDICAL
24 DEGREE FROM THE UNIVERSITY OF SOUTH ALABAMA AND DID A FOUR-YEAR
25 ANATOMIC PATHOLOGY RESIDENCY AT THE MEDICAL UNIVERSITY OF SOUTH

MICHAEL WARD, M.D. -- DIRECT BY MS. MONTS

1 CAROLINA IN CHARLESTON. I DID A ONE-YEAR FELLOWSHIP IN FORENSIC
2 PATHOLOGY AT THE UNIVERSITY OF NEW MEXICO IN ALBUQUERQUE. I'M
3 BOARD CERTIFIED BY THE AMERICAN BOARD OF PATHOLOGY IN BOTH
4 ANATOMIC AND FORENSIC PATHOLOGY.

5 Q AND, DR. WARD, HAVE YOU EVER TESTIFIED IN STATE OR FEDERAL
6 COURTS AS AN EXPERT IN THIS AREA?

7 A YES, I HAVE.

8 Q HOW MANY TIMES?

9 A AT LEAST A HUNDRED TIMES.

10 MS. MONTS: YOUR HONOR, I WOULD OFFER DR. WARD AS AN EXPERT
11 IN ANATOMIC AND FORENSIC PATHOLOGY.

12 MR. SUMNER: SO STIPULATED.

13 THE COURT: OKAY. HE IS CERTAINLY QUALIFIED. GO AHEAD.

14 Q DR. WARD, DID YOU HOLD YOUR CURRENT POSITION ON JANUARY 16TH
15 AND 17TH OF 1998?

16 A YES, MA'AM, I DID.

17 Q CAN YOU EXPLAIN FOR US, WHAT ARE THE FIELDS OF PATHOLOGY AND
18 FORENSICS?

19 A YOU MEAN WHAT -- OKAY. YES, MA'AM. PATHOLOGY IS THE STUDY
20 OF DISEASE AND HOW THAT DISEASE PROCESS AFFECTS MAN. FORENSICS
21 TAKES THAT ONE STEP FURTHER IN HOW DISEASE AND INJURIES CAUSE US
22 TO DIE DETERMINING CAUSE AND MANNER OF DEATH AND THE PRESENTATION
23 OF THAT INFORMATION IN THE JUDICIAL PROCESS.

24 Q DOCTOR, CAN YOU TELL US, WHAT IS AN AUTOPSY AND WHAT DOES
25 THAT SHOW YOU?

1 A AN AUTOPSY IS A DETAILED PHYSICAL EXAMINATION PERFORMED ON A
2 PERSON AFTER THAT PERSON HAS DIED. THE EXAMINATION IS PERFORMED
3 TO DETERMINE CAUSE AND MANNER OF DEATH. INITIALLY WE BEGIN WITH
4 AN EXAMINATION OF THE EXTERNAL SURFACE OF THE BODY. IF THE
5 PERSON IS CLOTHED, WE LOOK AT THE CLOTHING. OR IF THE CLOTHING
6 ACCOMPANIES THE BODY, WE EXAMINE THE CLOTHING. WE THEN LOOK AT
7 THE OUTSIDE OF THE BODY FOR ANY EVIDENCE OF NATURAL DISEASE OR
8 TRAUMA OR INJURY THAT MAY BE PRESENT. WE THEN PROCEED WITH AN
9 INTERNAL EXAMINATION, LOOKING AT THE INTERNAL ORGANS OF THE BODY,
10 AGAIN, FOR ANY NATURAL DISEASE THAT MAY BE PRESENT OR FOR ANY
11 CONTINUATION OF INJURIES THAT BEGAN ON THE OUTSIDE OF THE BODY
12 AND CONTINUED TO THE INSIDE OF THE BODY.

13 Q DR. WARD, SPECIFICALLY, DID YOU PERFORM AN AUTOPSY ON JERVIS
14 POWERS ON JANUARY 17TH OF 1998?

15 A YES, I DID.

16 Q WHAT DID YOU DETERMINE TO BE THE CAUSE OF DEATH?

17 A MR. POWERS DIED AS A RESULT OF A GUNSHOT WOUND OF THE CHEST.

18 Q I'M GOING TO SHOW YOU A -- LET ME ASK YOU A QUESTION FIRST.
19 WERE THERE ANY OTHER WOUNDS THAT YOU NOTICED ON MR. POWERS?

20 A YES, THERE WERE TWO GUNSHOT WOUNDS TO MR. POWERS. THERE WAS
21 A GUNSHOT WOUND TO THE LEFT LEG WHICH ENTERED JUST ABOVE THE LEFT
22 KNEE PASSED THROUGH THE SKIN AND SUPERFICIAL UNDERLYING FATTY
23 TISSUE BENEATH THE SKIN AND EXITED THE BACK OF THE LEFT LEG JUST
24 ABOVE THE KNEE. THIS WOUND DID NOT STRIKE ANY BONES OR ANY MAJOR
25 VESSELS AND WOULD HAVE BEEN CONSIDERED A SUPERFICIAL GUNSHOT

1 WOUND.

2 Q DOCTOR, I'M GOING TO SHOW YOU STATE'S EXHIBIT 91. IS THIS
3 THE WOUND YOU WERE JUST DESCRIBING?

4 A YES, IT IS.

5 Q AND IS THERE ANYTHING FROM WHAT WE CAN TELL IN THIS PHOTO
6 THAT YOU CAN EXPLAIN?

7 A MAY I STEP---

8 MS. MONT'S: YEAH, I'M SORRY. PLEASE STEP DOWN.

9 A THIS DEFECT HERE IS THE ENTRANCE GUNSHOT WOUND. THE BULLET
10 STRIKES THE SKIN HERE, TRAVELING SOMEWHAT TANGENTIALLY, IF YOU
11 WILL, TO THE SKIN'S SURFACE. INSTEAD OF BEING PERPENDICULAR IT'S
12 STRIKING THE SKIN AT AN ANGLE, MOVING THIS WAY, CREATING THIS
13 OVAL-SHAPED ABRASION COLLAR. IT THEN CREATES A -- PUNCHES
14 THROUGH OR CREATES A HOLE IN THE SKIN HERE, PASSES BENEATH THE
15 SKIN THROUGH THE SUBCUTANEOUS TISSUE, THEN EXITS THE SKIN HERE.

16 Q IS THERE ANY WAY TO DETERMINE THE ANGLE THAT THE BULLET
17 ENTERED THE LEG? WHETHER IT WAS HIGHER OR LOWER OR EQUAL? WHAT
18 ARE SOME OF THE FACTORS THAT ARE TO BE CONSIDERED?

19 A IF YOU PLACE THE DECEDENT IN WHAT WE CALL THE ANATOMIC
20 POSITION, WHICH IS IN THIS POSITION HERE, THEN THE BULLET IS
21 STRIKING MR. POWERS ON HIS LEFT SIDE OF HIS LEG PASSING BACKWARD
22 AND DOWNWARD AND TO THE RIGHT. HOWEVER, WE CANNOT ASSUME THAT
23 MR. POWERS WAS STANDING IN THE ANATOMICAL POSITION. HIS LEG
24 COULD HAVE BEEN IN ANY -- VIRTUALLY ANY POSITION. AND SO I CAN
25 ONLY SAY HOW THE BULLET PASSED THROUGH MR. POWERS' LEG NOT HOW

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1 HIS LEG WAS ORIENTED AT THE TIME WHEN HE WAS SHOT.

2 Q AND YOU SAID THIS INJURY WOULD NOT HAVE BEEN LIFE
3 THREATENING?

4 A THAT'S CORRECT. IT WOULD NOT HAVE BEEN.

5 Q ALL RIGHT. CAN YOU DESCRIBE, WHAT WOULD A PERSON WHO WAS
6 HIT LIKE THIS WHAT WOULD THE REACTION -- WHAT ARE THE
7 POSSIBILITIES?

8 A WELL, I CERTAINLY THINK THAT ANY TYPE OF GUNSHOT WOUND IS
9 GOING TO BE VERY PAINFUL. A GUNSHOT---

10 MR. SUMNER: YOUR HONOR, I WOULD OBJECT HERE. I THINK HE'S
11 BEEN QUALIFIED IN FORENSIC PATHOLOGY, BUT I THINK THIS GOES
12 BEYOND WHAT HE'S REALLY QUALIFIED TO TESTIFY TO.

13 MS. MONT'S: YOUR HONOR, I BELIEVE THAT THE DOCTOR CAN
14 TESTIFY TO WHAT HE KNOWS A STRIKE TO A HUMAN BODY -- WHAT THE
15 REFLEXES ARE AND WHAT THEY ARE GOING TO BE DOING BASED ON THIS.

16 MR. SUMNER: WELL, IF I COULD RESPOND TO THAT. HE'S
17 ALREADY SAID HE CAN'T DETERMINE REALLY ANYTHING FROM THE PHOTO.
18 HE COULDN'T SAY WHAT ANGLE. I MEAN, TO SAY HOW SOMEBODY'S BODY
19 WOULD REACT IF THEY WERE -- THAT'S JUST BEYOND ANYBODY'S
20 EXPERTISE.

21 THE COURT: WELL, I'M GOING TO SUSTAIN THE OBJECTION. GO
22 AHEAD.

23 A A GUNSHOT WOUND TO THE LEG IN THE REGION OF THE KNEE COULD
24 CERTAINLY NOT ONLY BE VERY PAINFUL AND MOST LIKELY---

25 MR. SUMNER: WELL, I'M SORRY, BUT I THINK THE OBJECTION WAS

1 SUSTAINED.

2 THE COURT: IT IS. YES, JUST ASK HIM ANOTHER QUESTION.

3 WITNESS: OH, I'M SORRY. I MISUNDERSTOOD.

4 THE COURT: THAT'S OKAY.

5 Q LET'S GO ON TO THE OTHER WOUND THAT YOU DETERMINED. I'M
6 SHOWING YOU STATE'S EXHIBIT 90. AND IF YOU COULD, PLEASE
7 DESCRIBE WHAT THIS SHOWS.

8 A STATE'S EXHIBIT NUMBER 90 IS A PHOTOGRAPH OF THE ANTERIOR
9 CHEST OF MR. POWERS. FOR ORIENTATION, THIS IS THE REGION OF THE
10 UPPER CHEST AND THE NECK. THIS IS AN ENDOTRACHEAL TUBE WHICH IS
11 PRESENT IN THE ORAL CAVITY. HERE IS THE RIGHT NIPPLE. HERE JUST
12 AT THE -- THIS IS THE STERNAL NOTCH. JUST BELOW THE STERNAL
13 NOTCH IS A CIRCULAR GUNSHOT WOUND OF ENTRY THAT IS ROUND. IT HAS
14 AT THE UPPER MARGIN AN ABRASION COLLAR. AND ON THE OTHER ONE WE
15 SAW AN ABRASION COLLAR THAT WAS ELONGATE, OVAL-SHAPED. THIS ONE
16 IS NEARLY CIRCUMFERENTIAL AND ROUND, JUST A LITTLE BIT THICKER ON
17 THE UPPER PORTION THAN ON THE LOWER PORTION, MEANING THAT THE
18 BULLET STRUCK THE SKIN NOT IN A PERPENDICULAR FASHION BUT VERY
19 SLIGHTLY OFFLINE, STRIKING THE TOP OF THE SKIN SLIGHTLY BEFORE
20 STRIKING THE BOTTOM OF THE SKIN. THIS GUNSHOT WOUND THEN PASSES
21 THROUGH THE SKIN OF THE CHEST, THROUGH THE MUSCULATURE OF THE
22 RIGHT CHEST BETWEEN THE FIRST AND SECOND RIB, PASSING DOWNWARD
23 THROUGH THE HILUM OF THE LUNG, WHERE THE LUNG ATTACH TO THE
24 HEART, LACERATING ONE OF THE VESSELS THAT RETURNS BLOOD FROM THE
25 LUNGS TO THE RIGHT SIDE OF THE HEART, ENTERING THE SAC, THE

1 PERICARDIAL SAC, AROUND THE HEART AND LACERATING THE AORTA, WHICH
2 IS THE LARGE VESSEL THAT TAKES BLOOD FROM THE HEART TO THE REST
3 OF THE BODY. IT THEN TRAVELED DOWNWARD AND BACKWARD, STRIKING
4 AND IMPACTING ITSELF INTO THE BONE OF THE EIGHTH THORACIC
5 VERTEBRAE, AND FROM THERE I RECOVERED JACKET AND LEAD CORE FROM
6 THE BONE OF THE EIGHTH THORACIC VERTEBRAE. WHEN WE OPENED MR.
7 POWERS CHEST HE HAD 1,900 MILLILITERS OF BLOOD IN HIS RIGHT
8 CHEST, A GREAT DEAL OF BLOOD IN HIS RIGHT CHEST, AND A SMALLER
9 AMOUNT OF BLOOD IN THE LEFT CHEST.

10 Q SO IN THIS CASE WERE YOU ABLE TO DETERMINE A TRAJECTORY OR
11 THE WAY THAT THE GUNSHOT WENT INTO THE BODY?

12 A THE -- THIS GUNSHOT WOUND TRAVELS THROUGH MR. POWERS' BODY
13 FROM HIS FRONT TO HIS BACK AND FROM ABOVE DOWNWARD WITHOUT
14 SIGNIFICANT DEVIATION EITHER TO THE RIGHT OR TO THE LEFT. SO
15 FROM FRONT TO BACK AND DOWNWARD.

16 Q THANK YOU. IF YOU WOULD, HAVE A SEAT.

17 A (COMPLIES)

18 Q AND, DR. WARD, IN YOUR NORMAL PROCEDURES WITH AN AUTOPSY DO
19 YOU DO A DIAGRAM?

20 A YES, MA'AM, I DO.

21 Q AND IN THIS CASE DID YOU PRODUCE ONE?

22 A I DID.

23 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
24 IDENTIFICATION, STATE'S EXHIBIT 27. AND IF YOU WOULD, IF YOU
25 WOULD STEP DOWN TO THE EASEL AND SHOW US WHAT THIS DIAGRAM THAT

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1 YOU DREW SHOWS.

2 A (COMPLIES) THIS IS AN ENLARGEMENT OF THE STANDARD BODY
3 DIAGRAM THAT WE USE AT THE TIME OF AUTOPSY SHOWING A FRONT AND
4 BACK PORTIONS OF THE DECEDENT. LISTED AS GUNSHOT WOUND NUMBER
5 ONE IS HERE, THE GUNSHOT WOUND TO THE CHEST, WHICH PASSED
6 BACKWARD AND DOWNWARD AND WAS RECOVERED FROM THE REGION OF THE
7 EIGHTH THORACIC VERTEBRAE. GUNSHOT WOUND NUMBER TWO, LISTED AS
8 GUNSHOT WOUND NUMBER TWO, IS JUST ABOVE THE LEFT KNEE. IT ENTERS
9 THIS WAY, PASSING DOWNWARD AND BACKWARD TO EXIT THE BACK OF THE
10 LEFT LEG.

11 Q IS THERE ANY SIGNIFICANCE TO YOUR NUMBERING OF THESE
12 GUNSHOTS?

13 A NO, MA'AM, THEY ARE NUMBERED ARBITRARILY, MEANING THAT THE
14 ONES I COME TO ON THE FRONT OF THE BODY I DO FIRST, AND I MOVE
15 FROM HEAD TO TOE. SO WE GOT TO GUNSHOT WOUND NUMBER ONE -- THIS
16 ONE WAS LABELED AS NUMBER ONE AND THIS ONE LABELED AS NUMBER TWO.

17 Q THANK YOU. IF YOU WOULD, HAVE A SEAT.

18 MS. MONT'S: YOUR HONOR, I'D MOVE THIS INTO EVIDENCE AT THIS
19 TIME.

20 MR. SUMNER: NO OBJECTION.

21 THE COURT: OKAY. IT'S IN EVIDENCE.

22 (STATE'S EXHIBIT NUMBER 27, AUTOPSY DIAGRAM, MOVED INTO
23 EVIDENCE)

24 Q DOCTOR, WHEN YOU RETRIEVED THE BULLET FROM JERVIS POWERS'
25 VERTEBRA --- OR -- IS THAT -- AM I STATING THAT CORRECTLY?

1 A YES, YOU ARE.

2 Q WHAT WOULD YOU HAVE DONE WITH THAT? WOULD YOU HAVE TURNED
3 THAT OVER TO SOMEONE?

4 A YES, MA'AM. THE RECOVERED BULLET AND BULLET FRAGMENTS WERE
5 RECEIPTED TO OFFICER MICHAEL HAMILTON OF THE FOUNTAIN INN POLICE
6 DEPARTMENT.

7 MS. MONTS: THANK YOU. I HAVE NO FURTHER QUESTIONS.

8 THE COURT: CROSS EXAMINATION?

9 MR. SUMNER: NO QUESTIONS. THANK YOU.

10 THE COURT: ALL RIGHT. THANK YOU, DR. WARD, FOR YOUR TIME.

11 WITNESS: THANK YOU.

12 MR. SUMNER: HE CAN BE EXCUSED AS FAR AS I'M CONCERNED.

13 THE COURT: OKAY. YES, SIR.

14 (WITNESS EXCUSED AT 4:11 P.M.)

15 THE COURT: OKAY. YES, MA'AM.

16 MS. MONTS: YOUR HONOR, THAT WOULD BE THE STATE'S WITNESSES
17 FOR THIS, YOUR HONOR.

18 THE COURT: ALL RIGHT. LET ME SEE Y'ALL UP HERE REAL
19 QUICK, IF I COULD.

20 (BENCH CONFERENCE OFF RECORD FROM 4:12 TO 4:13 P.M.)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE HAVE SOME
22 MORE TESTIMONY THE STATE INTENDS TO PRESENT AND THEY'RE GOING TO
23 DO THAT IN THE MORNING. AND WE -- I WAS JUST CONFIRMING WITH THE
24 ATTORNEYS ABOUT THE LOGISTICS AND THE SCHEDULING, AND IT IS
25 ESTIMATED -- AND AGAIN, IT'S ONLY AN ESTIMATE, BECAUSE WE CAN'T

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1 MAKE ANY GUARANTEES ABOUT THIS -- BUT THE PLAN IS TO CONCLUDE THE
2 EVIDENCE PORTION OF THE TRIAL IN THE MORNING AND THEN HOPEFULLY
3 HAVE THE FINAL ARGUMENTS AND THE INSTRUCTION ON THE LAW IN THE
4 EARLY AFTERNOON. THEN YOU WILL HAVE THE CASE FOR A VERDICT.

5 AND WITH THAT, I'M GOING TO ASK THAT YOU JUST BE EXCUSED FOR
6 THE REST OF THE DAY AND JUST COME BACK AT NINE O'CLOCK IN THE
7 MORNING. WE'LL TRY TO GET STARTED A LITTLE BIT EARLIER. BUT
8 WE'RE STILL ON TRACK WITH EVERYTHING, AND I THINK WE WILL
9 PROBABLY HAVE MENUS AVAILABLE FOR YOU DURING THE MORNING BREAK SO
10 YOU CAN ORDER LUNCH. WE'LL HAVE LUNCH BROUGHT IN SO WE CAN CUT
11 DOWN ON SOME OF THE LUNCHTIME AND GIVE YOU A FREE MEAL OUT OF IT.

12 ALL RIGHT. SO HAVE A GOOD EVENING AND DON'T DISCUSS THE
13 CASE WITH ANYONE. DON'T DO ANY OUTSIDE RESEARCH. REMEMBER THERE
14 HAVE BEEN REPORTS IN THE MEDIA ABOUT THIS CASE AND DON'T READ THE
15 NEWSPAPER. DON'T WATCH TV NEWS OR ANYTHING OF THAT NATURE
16 BECAUSE YOU HAVE TO DECIDE THIS CASE SOLELY ON THE EVIDENCE YOU
17 HEAR WHILE COURT IS IN SESSION, AND THAT'S THE OATH YOU TOOK.

18 SO WE'LL SEE BACK YOU IN THE MORNING. HAVE A GOOD EVENING.
19 NINE O'CLOCK.

20 (JURY EXITS COURTROOM AT 4:15 P.M.)

21 THE COURT: OKAY. ANYTHING ELSE ON THE RECORD NOW?

22 MR. SUMNER: YES, SIR. I WOULD LIKE TO BE HEARD -- AND I
23 DON'T KNOW IF YOU FEEL COMFORTABLE, JUDGE HILL, AT THIS JUNCTURE,
24 OR NOT WITH DISCUSSING ANTICIPATED JURY CHARGES. I KNOW THAT
25 TOMORROW YOU MIGHT WANT TO MOVE FAIRLY QUICKLY AT THE CONCLUSION

MATTERS AND MOTIONS

1 OF THE TESTIMONY, AND I WOULD LIKE TO PRESENT MY POSITION AS TO
2 THAT, IF YOU'LL ENTERTAIN THAT AT THIS POINT.

3 **THE COURT:** ABSOLUTELY. THAT SUITS -- IT SUITS---

4 **MS. MONTS:** AND, YOUR HONOR, I'LL HAND UP MY PROPOSED.

5 **MR. SUMNER:** YOUR HONOR, I'LL GO AHEAD AND ADDRESS THE
6 PACKAGE THAT I SENT THAT I HANDED TO YOU.

7 **THE COURT:** RIGHT.

8 **MR. SUMNER:** I'LL GIVE MS. MONTS A MOMENT TO FIND THAT
9 PACKAGE IF SHE NEEDS IT. DO YOU HAVE IT?

10 **MS. MONTS:** HOLD ON ONE SECOND.

11 **THE COURT:** AND I'LL MAKE THIS PART OF THE RECORD, MR.
12 SUMNER, YOUR HONOR CHARGES.

13 **MR. SUMNER:** YES, SIR.

14 **THE COURT:** CASE NUMBER -- EXCUSE ME. CHARGES ONE THROUGH
15 FIVE THAT YOU MADE ON BEHALF OF MR. SULLIVAN. THEN YOU HANDED UP
16 THE CASES OF *BATTLE VERSUS STATE*, *STATE V. LEE* 293, F.S.C. 536,
17 *STATE V. DAVIS* 282 S.C. 45, *STATE V. BROWN*, 321 S.C. 184. I'M
18 NOT GOING TO MAKE THOSE CASES PART OF THE RECORD, BUT I WILL MAKE
19 THE CHARGES PART OF THE RECORD.

20 **MR. SUMNER:** OKAY. SO, YOUR HONOR, AM I TO UNDERSTAND FROM
21 THE COURT RULING THAT DEFENDANT'S REQUESTS TO CHARGE ONE THROUGH
22 FIVE WILL BE CHARGED TO THE JURY AS IS?

23 **THE COURT:** WELL, NO, I DIDN'T SAY THAT.

24 **MR. SUMNER:** I'M SORRY.

25 **THE COURT:** NO. THAT'S OKAY. MY -- I'LL LET Y'ALL ARGUE

MATTERS AND MOTIONS

1 WHATEVER YOU WANT TO. I'LL TELL YOU WHAT MY IS INCLINATION AT
2 THIS POINT, AND I'M NOT WEDDED TO IT IN ANY WAY.

3 **MR. SUMNER:** OKAY.

4 **THE COURT:** I BELIEVE THE STANDARD CHARGE I HAVE WOULD
5 ENCOMPASS YOUR CHARGES ONE AND TWO.

6 **MR. SUMNER:** OKAY.

7 **THE COURT:** AND LIKEWISE, THE NECESSITY CHARGE, NUMBER
8 FOUR.

9 **MR. SUMNER:** SO ONE AND TWO ARE IN. AND FOUR?

10 **THE COURT:** FOUR IS IN.

11 **MR. SUMNER:** OKAY.

12 **THE COURT:** FIVE IS IN. AND THREE IS IN BECAUSE I HAVE IT
13 ALREADY IN MY STACK, AND I CAN'T REMEMBER EXACTLY WHAT THAT IS.
14 WHAT IS NUMBER THREE? I DON'T HAVE IT RIGHT HERE IN FRONT OF ME.

15 **MR. SUMNER:** A PERSON IS ENTITLED TO DEFEND HIMSELF IN THE
16 EVENT OF AN ATTACK FROM ANOTHER ON HIS OWN PREMISES PROVIDED THAT
17 THE PERSON HAS A REASONABLE BELIEF THAT HE IS IN IMMINENT DANGER
18 OF AN ATTACK.

19 **THE COURT:** OH. YES, SIR. OKAY. THAT'S *STATE VERSUS LEE*
20 AND *STATE VERSUS SULLIVAN*.

21 **MR. SUMNER:** YES, SIR.

22 **THE COURT:** YES, SIR. I HAVE THAT IN MY CHARGE STACK
23 ALREADY.

24 **MR. SUMNER:** OKAY. SO ONE THROUGH FIVE THAT I SUBMITTED
25 ARE IN; IS THAT CORRECT?

MATTERS AND MOTIONS

1 **THE COURT:** WELL, THAT'S MY INCLINATION.

2 **MR. SUMNER:** WELL, I MEAN, THAT YOU'RE INCLINED.

3 **THE COURT:** AND I'LL BE GLAD TO HEAR, MS. MONTS, IF YOU
4 HAVE ANY OBJECTION TO THOSE CHARGES.

5 **MS. MONTS:** YOUR HONOR, ARE YOU SAYING THEY WERE IN YOUR
6 ORDINARY CHARGE AS IT WAS? BECAUSE I THOUGHT SOME OF THEM WERE A
7 LITTLE REPETITIVE. SO I JUST -- IF THEY WERE HOW YOU PUT IT IN
8 YOUR STANDARD CHARGE, I WOULD CERTAINLY ACQUIESCE, BUT I THOUGHT
9 SOME OF THEM WERE A LITTLE REPETITIVE.

10 **THE COURT:** OKAY. WHICH ONES ARE YOU TALKING ABOUT NOW
11 SPECIFICALLY?

12 **MS. MONTS:** YOUR HONOR, TWO AND THREE SPECIFICALLY.

13 **THE COURT:** UM...

14 **MS. MONTS:** JUST THAT THE FIRST LINE IS ABOUT THE SAME. I
15 KNOW THAT THE ENDING IS DIFFERENT, BUT I DON'T THINK YOU NEED TO
16 REPEAT THE FIRST LINE ON BOTH OF THESE IF IT'S JUST ONE
17 CONTINUOUS CHARGE.

18 **THE COURT:** NUMBER TWO?

19 **MS. MONTS:** YES, YOUR HONOR.

20 **THE COURT:** OKAY. (PAUSE) WELL, I WASN'T -- AT THIS POINT
21 I'M INCLINED TO CHARGE THEM -- THE LANGUAGE I HAD WAS, IF THE
22 DEFENDANT WAS ON HIS OWN PREMISES, THE DEFENDANT HAD NO DUTY TO
23 RETREAT BEFORE ACTING IN SELF-DEFENSE, WHICH I THINK IS THE SAME
24 THING AS NUMBER TWO.

25 **MR. SUMNER:** PRETTY SIMILAR THERE, YES, SIR. I DON'T SEE

MATTERS AND MOTIONS

1 MUCH DIFFERENCE THERE AT ALL. AS LONG AS YOU'RE TELLING ME THAT
2 YOU'LL COVER ONE THROUGH FIVE, I MEAN, I CERTAINLY---

3 THE COURT: YEAH.

4 MR. SUMNER: I'M NOT GOING TO ASK YOU TO BE REPETITIVE. IF
5 YOU FEEL LIKE ONE IS MELDED INTO ANOTHER, THEN -- YOU KNOW WHAT
6 I'M SAYING.

7 THE COURT: WELL, OKAY. ALL RIGHT. YES, MA'AM, ANY OTHER
8 OBJECTIONS?

9 MS. MONTES: NO, YOUR HONOR.

10 THE COURT: OKAY.

11 MS. MONTES: I DID WANT TO STATE, OF THE THREE I TURNED UP,
12 ONE OF THEM QUOTES *STATE V. PLEMMONS* AND I DO UNDERSTAND THAT
13 THAT WAS OVERTURNED BUT IT WAS ON OTHER ISSUES NOT ON THE ISSUE
14 THAT I'M STATING IT FOR.

15 THE COURT: LET ME SEE AND LOOK AT WHAT I'VE GOT AND I'LL
16 TELL YOU. (PAUSE) "WORDS ALONE HOWEVER VULGAR OR INSULTING ARE
17 NOT ENOUGH TO BE LEGAL PROVOCATION." DOES THAT COVER PRETTY MUCH
18 WHAT YOU NEED?

19 MS. MONTES: WELL, SPECIFICALLY MINE SAYS, IF THE KILLING IS
20 CAUSED BY A DEADLY WEAPON. BUT, YOUR HONOR, THE WAY YOU STATED
21 IT COVERS THAT.

22 THE COURT: OKAY. OH, I'M SORRY. AND THEN I WOULD GO ON
23 TO SAY, "WHERE DEATH IS CAUSED BY USE OF A DEADLY WEAPON, THE
24 WORDS MUST BE ACCOMPANIED BY SOME OVERT, THREATENING ACT THAT
25 COULD HAVE PRODUCED THE HEAT OF PASSION."

MATTERS AND MOTIONS

1 **MS. MONTES:** AND YOUR HONOR, DO YOU -- ONE OF THE OTHER --
2 THE SECOND ONE IS SERIOUS BODILY INJURY. DO YOU DEFINE THAT IN
3 YOUR STANDARD CHARGE OR WOULD YOU BE USING---

4 **THE COURT:** NOW, IS THAT RELATED TO WHAT NOW? TO WHICH...

5 **MS. MONTES:** TO THE SELF-DEFENSE, YOUR HONOR.

6 **THE COURT:** OH, OKAY. ALL RIGHT. LET ME SEE WHAT I'VE GOT
7 THERE. (PAUSE) I DON'T SEE IT IN THERE, BUT I WILL CHARGE THAT.
8 I THINK THAT'S FAIR. IT WOULD BE CORRECT STATEMENT---

9 **MR. SUMNER:** I THINK IT'S A FAIR STATEMENT.

10 **THE COURT:** AND I WILL -- LET'S SEE. THE MALICE CHARGE YOU
11 PRESENTED.

12 **MS. MONTES:** YOUR HONOR, IF YOU COULD JUST TELL US WHAT YOUR
13 MALICE CHARGE IS, IT MIGHT BE THE SAME.

14 **THE COURT:** WELL, I'LL TELL YOU WHAT I'M GOING TO DO. I'M
15 GOING TO MAKE TWO COPIES OF THE CHARGE I'VE GOT RIGHT NOW AND
16 GIVE Y'ALL A COPY AND YOU CAN LOOK IT OVER TONIGHT AND TELL ME IF
17 YOU WANT ME TO ADD OR SUBTRACT ANYTHING.

18 **MS. MONTES:** THANK YOU, YOUR HONOR.

19 **THE COURT:** HOW ABOUT THAT?

20 **MR. SUMNER:** YES, SIR. YOUR HONOR, ONE LAST REQUEST FROM
21 THE DEFENSE, AND I APPRECIATE YOUR RULING, UNDERSTANDING YOU'RE
22 NOT WED TO YOUR RULING AT THIS POINT, BUT GUIDELINES REGARDING
23 DEFENSE REQUESTS TO CHARGE ONE THROUGH FIVE AND ALSO, I GUESS,
24 STATE'S REQUEST TO CHARGE ONE THROUGH THREE. YOUR HONOR, I'M
25 GOING TO REITERATE THIS POINT PURSUANT TO *THE STATE V. MECKLER*

MATTERS AND MOTIONS

1 DECISION THAT I HANDED UP TO THE COURT AT THE BEGINNING OF THE
2 CASE FOR A CHARGE ON INVOLUNTARY MANSLAUGHTER. AND I'LL BE GLAD
3 TO BE HEARD ON THAT IF YOU WOULD LIKE FOR ME TO.

4 THE COURT: YES, SIR. I MEAN---

5 MR. SUMNER: YOUR HONOR, IF YOU LOOK AT THE MECKLER OPINION
6 -- AND I HAVE SEVERAL COPIES OF IT IF YOU NEED ME TO GIVE IT BACK
7 TO YOU AGAIN, I CAN.

8 THE COURT: NO, I'VE GOT IT UP HERE.

9 MR. SUMNER: OKAY. BASICALLY -- AND I'VE HANDED IT TO,
10 ALSO, TO THE SOLICITOR. DO YOU NEED ANOTHER COPY, MS. MONT'S?

11 MS. MONT'S: THANK YOU.

12 MR. SUMNER: SURE.

13 BASICALLY, YOUR HONOR, IN MECKLER THE COURT OF APPEALS
14 OVERTURNED AND SET ASIDE A MURDER CONVICTION, REMANDING THE CASE
15 TO THE CIRCUIT COURT. ONE OF THE BASES IN THAT WAS FOR -- AND
16 I'M QUOTING FROM THE OPINION NOW -- "REFUSING TO INSTRUCT THE
17 JURY ON THE LAW OF INVOLUNTARY MANSLAUGHTER BECAUSE APPELLANT
18 ASSERTED A SELF-DEFENSE THEORY WHERE THERE WAS EVIDENCE THE
19 APPELLANT ARMED HERSELF IN SELF-DEFENSE BUT DISCHARGED THE GUN
20 DUE TO HER RECKLESS HANDLING OF THE WEAPON. WE REVERSE AND
21 REMAND FOR A NEW TRIAL."

22 NOW, I WANT TO TAKE THAT OPINION, YOUR HONOR, AND GO AHEAD
23 AND GO TO THAT PORTION OF IT WHICH DIRECTLY ADDRESSED THE FAILURE
24 OF THE COURT, TRIAL COURT, TO CHARGE THE JURY ON THE LAW OF
25 INVOLUNTARY MANSLAUGHTER. I'M QUOTING FROM THE OPINION NOW, YOUR

MATTERS AND MOTIONS

1 HONOR, ON PAGE SIX OF SEVEN. "THE LAW TO BE CHARGED MU
2 DETERMINED FROM THE EVIDENCE PRESENTED AT TRIAL. A TRI
3 SHOULD REFUSE TO CHARGE A LESSER INCLUDED OFFENSE ONLY
4 IS NO EVIDENCE THE DEFENDANT COMMITTED THE LESSER RATHER THAN THE
5 GREATER OFFENSE. TO STATE IT ANOTHER WAY, IF THERE IS ANY
6 EVIDENCE FROM WHICH THE JURY COULD INFER THE DEFENDANT COMMITTED
7 A LESSER RATHER THAN A GREATER OFFENSE, THE TRIAL JUDGE, THE
8 TRIAL COURT, MUST CHARGE THE LESSER INCLUDED OFFENSE." YOUR
9 HONOR, THE COURT GOES ON TO DEFINE INVOLUNTARY MANSLAUGHTER. I'M
10 NOT GOING TO READ THAT DEFINITION. YOU CERTAINLY CAN SEE IT
11 THERE AND YOU KNOW IT.

12 UNDERNEATH THAT, CITING *STATE V. BURRISS*, THE COURT OF
13 APPEALS STATED, "A PERSON CAN BE ACTING LAWFULLY EVEN IF HE IS IN
14 UNLAWFUL POSSESSION OF A WEAPON IF HE WAS ENTITLED TO ARM HIMSELF
15 IN SELF-DEFENSE AT THE TIME OF THE SHOOTING."

16 NOW, WHEN YOU LOOK AT REQUESTS TO CHARGE ONE THROUGH FIVE,
17 CLEARLY, THE EVIDENCE THAT'S COME FORWARD IN THIS TRIAL TODAY AND
18 YESTERDAY IS MORRIS SULLIVAN WAS IN HIS OWN HOME. THAT'S
19 UNDISPUTED. IT'S UNDISPUTED THAT JERVIS POWERS CAME TO HIS HOME.
20 IT'S UNDISPUTED THAT JERVIS POWERS WENT BACK TO THE BACK BEDROOM
21 AFTER MORRIS SULLIVAN DID. THERE IS EVIDENCE GONE BEFORE THE
22 JURY THAT A STRUGGLE ENSUED OVER A GUN. NO QUESTION ABOUT THAT.

23 **THE COURT:** WHERE IS THE EVIDENCE OF THE STRUGGLE?

24 **MR. SUMNER:** IN THE STATEMENT THAT -- THE VERBAL STATEMENT
25 GIVEN TO CHIEF MORTON, IN HIS NOTES HE SAID THAT MORRIS SULLIVAN

TERS AND MOTIONS

TOLD HIM THERE WAS A STRUGGLE OVER THE GUN. OKAY.

2 NOWHERE -- NO QUESTION HE BACKED INTO THE LIVING ROOM, THAT
3 HE FIRED A GUN, FIRED A PISTOL INTO THE FLOOR. AND THEN, YOUR
4 HONOR, ACCORDING TO MORRIS SULLIVAN'S OWN WRITTEN STATEMENT AND
5 TO THE VERBAL STATEMENT WHICH WAS TESTIFIED TO TODAY HE SAID,
6 THREE SHOTS WERE FIRED. HE DIDN'T SAY, "I INTENDED TO SHOOT
7 HIM." HE DIDN'T SAY, "I INTENDED TO KILL HIM." HE JUST SAID,
8 "THREE SHOTS WERE FIRED."

9 THE TWO LAY WITNESSES THAT TESTIFIED, BOTH YESTERDAY AND
10 THIS MORNING, STATED THAT SHOTS WERE FIRED. NOBODY EVER SAID
11 THAT IT WAS CLEAR TO ME AND THAT IT WAS INTENTIONAL. THEY JUST
12 SAID SHOTS WERE FIRED.

13 NOW, WHEN WE THINK BACK ABOUT RONICA BUTLER'S TESTIMONY, SHE
14 SAID THAT EVEN AFTER THE SECOND SHOT THAT JERVIS POWERS CONTINUED
15 TOWARD MY CLIENT, AND YOU WILL RECALL THAT.

16 I THINK WHEN YOU COMBINE ALL OF THAT TOGETHER, YOUR HONOR, A
17 JURY COULD INFER, BASED ON THE EVIDENCE, THAT JUST QUOTING THIS
18 CASE, MECKLER, THAT THE KILLING MIGHT FIT THE DEFINITION OF
19 INVOLUNTARY MANSLAUGHTER. I'M NOT SAYING THEY WILL FIND THAT, OF
20 COURSE. BUT, I MEAN, I THINK THE MECKLER OPINION IS PRETTY CLEAR
21 THAT IF THERE IS ANY EVIDENCE FROM WHICH A JURY COULD INFER THAT
22 THE DEFENDANT IS GUILTY OF THE LESSER CHARGE, THEN THE LESSER
23 CHARGE SHOULD BE CHARGED TO THE JURY. AND I THINK MECKLER IS ON
24 ALL FOURS HERE BECAUSE AS THE COURT KNOWS, MY CLIENT WAS UNDER 21
25 YEARS OF AGE. MECKLER EVEN SAYS, "A PERSON CAN BE ACTING

MATTERS AND MOTIONS

1 LAWFULLY EVEN IF HE IS IN UNLAWFUL POSSESSION OF A WEAPON IF HE
2 WAS ENTITLED TO ARM HIMSELF IN SELF-DEFENSE AT THE TIME OF THE
3 SHOOTING." THE SUPREME COURT ALREADY RETURNED THIS CASE BECAUSE
4 IT SAID SELF-DEFENSE SHOULD HAVE BEEN CHARGED ON EVERY CHARGE.
5 SO BASED ON THAT, I'M GOING TO ASK THE COURT TO CHARGE
6 INVOLUNTARY MANSLAUGHTER.

7 **THE COURT:** OKAY. THANK YOU FOR YOUR ARGUMENT, MR. SUMNER.
8 YES, MA'AM, MS. MONTS.

9 **MS. MONTS:** YOUR HONOR, I THINK THE MECKLER CASE IS EASILY
10 DISTINGUISHABLE FROM THE CASE AT HAND. THE FACTS AT HAND DO NOT
11 FIT THAT WHATSOEVER. THE MECKLER CASE REQUIRES SHOWING OF
12 NEGLIGENT HANDLING OF THE GUN IN ORDER TO FIND THE INVOLUNTARY.
13 THERE IS SUBSTANTIAL EVIDENCE OF THAT IN THE MECKLER CASE ABOUT
14 THE WITNESS -- THAT THE WITNESS TESTIFIES ABOUT RECKLESS HANDLING
15 OF THE WEAPON. THERE IS NO EVIDENCE WHATSOEVER IN OUR CASE THAT
16 THERE WAS ANY KIND OF RECKLESS HANDLING OF THE WEAPON.

17 **THE COURT:** WELL, YEAH. WHERE IS THE EVIDENCE OF THE
18 RECKLESSNESS, MR. SUMNER? THAT IS SOMETHING I WAS WONDERING
19 ABOUT EARLIER.

20 **MR. SUMNER:** WELL, YOUR HONOR, THE JURY COULD INFER THAT MY
21 CLIENT WAS ACTING RECKLESSLY WHEN THE GUN WAS DISCHARGED. I
22 MEAN, IT'S NOT -- I MEAN, HE HAS THE WEAPON AND HE IS RETREATING
23 BACK INTO HIS LIVING ROOM. HE CAN ARM HIMSELF FOR SELF-DEFENSE.
24 I THINK THAT'S WHAT THE SUPREME COURT SAID WHEN THE INITIAL
25 APPEAL OCCURRED, THAT HE CAN AVAIL HIMSELF OF THE DEFENSE OF

MATTERS AND MOTIONS

1 SELF-DEFENSE. NO QUESTION THAT PURSUANT TO THE LAW HE WAS IN
2 UNLAWFUL POSSESSION OF A PISTOL BECAUSE HE WAS UNDER 21.
3 HOWEVER, THE JURY COULD INFER BASED ON RONICA BUTLER'S TESTIMONY
4 THAT WHEN JERVIS POWERS CONTINUED TO PROCEED TOWARD MY CLIENT
5 THAT THE GUN COULD HAVE DISCHARGED, BEEN DISCHARGED RECKLESSLY.
6 THERE IS -- MY CLIENT DIDN'T SAY IN HIS STATEMENT, "I INTENDED TO
7 SHOOT HIM." HE SAID, "THREE SHOTS WERE FIRED." HE DIDN'T SAY,
8 "I ACCIDENTALLY DISCHARGED THE WEAPON THREE TIMES." HE DIDN'T
9 SAY, "I INTENTIONALLY DISCHARGED THE WEAPON," ANYTHING OTHER THAN
10 FIRING A GUN INTO THE FLOOR. AND THE JURY COULD SAY, HEY, BASED
11 ON WHAT WE'RE HEARING, HE WAS RECKLESS. HE SHOULD HAVE PROTECTED
12 THAT WEAPON MORE. AND WHEN JERVIS POWERS CAME AT HIM AND
13 CONTINUED TO PROCEED TOWARD HIM, MY CLIENT SHOULD HAVE EITHER
14 HOLSTERED THE WEAPON, MY CLIENT SHOULD HAVE TAKEN BETTER CARE FOR
15 THE WEAPON NOT TO BE FIRED.

16 **THE COURT:** OKAY. YES, MA'AM, MS. MONTS.

17 **MS. MONTS:** YOUR HONOR, I JUST THINK THE EVIDENCE IS
18 OVERWHELMING AS TO THE INTENT OF THE DEFENDANT, AND THERE IS NO
19 EVIDENCE WHATSOEVER OF RECKLESSNESS. IN FACT, CEDRICK EVANS
20 TESTIFIED THAT THE DEFENDANT WAS STANDING OVER HIM. THE EVIDENCE
21 SHOWS THAT THE VICTIM WAS DOWN AFTER THE SECOND SHOT, AFTER HE
22 WAS SHOT IN THE LEG, THAT HE WAS EITHER DOWN OR CLUTCHING HIS
23 LEG. AND AS THE DOCTOR JUST TESTIFIED, THAT ANGLE OF THE THIRD
24 SHOT WAS DOWNWARD, WHICH CORROBORATES THE WITNESS' TESTIMONY THAT
25 THE VICTIM WAS DOWN AND BENT OVER AT THAT TIME. SO THERE IS NO

MATTERS AND MOTIONS

1 REASON AND NO EVIDENCE TO SHOW ANY RECKLESSNESS. AND AS -- AND
2 ALSO WHAT CEDRICK SHOWED WAS THAT THE VICTIM WAS IN THE BACK OF
3 THE ROOM. HE WAS NOT -- HE WAS THE ONE THAT WAS CORNERED, NOT
4 THE DEFENDANT.

5 MR. SUMNER: VERY BRIEFLY, IF I COULD RESPOND TO THAT, YOUR
6 HONOR. EXTREMELY BRIEFLY. I WILL SAY THAT I AGREE WITH MS.
7 MONTS, IF THE JURY BELIEVES CEDRICK EVANS COMPLETELY. BUT THERE
8 HAS BEEN OTHER TESTIMONY. THERE'S BEEN TESTIMONY OF RONICA
9 BUTLER, WHICH SHE SAID THAT BASICALLY JERVIS POWERS CONTINUED
10 TOWARD MY CLIENT AFTER THE SECOND SHOT WAS FIRED. AND THE
11 MECKLER DECISION MAKES IT CLEAR AS THEY QUOTE *STATE V. WHITE*, "IF
12 THERE IS ANY EVIDENCE FROM WHICH THE JURY COULD INFER THE
13 DEFENDANT COMMITTED A LESSER RATHER THAN A GREATER OFFENSE, THE
14 TRIAL JUDGE MUST CHARGE THE LESSER INCLUDED OFFENSE." SO I'M
15 SAYING THERE IS EVIDENCE VIEWED IN A PARTICULAR LIGHT FROM THE
16 JURY WHERE IT COULD BE INFERRED THAT MY CLIENT WAS RECKLESS IN
17 THE WAY HE HANDLED THE WEAPON AND THE WEAPON SHOULD NOT HAVE BEEN
18 DISCHARGED. THANK YOU. I CAN'T ADD ANYTHING ELSE. THANK YOU.

19 MS. MONTS: YOUR HONOR, IF YOU ALLOW, I'D LIKE SOME TIME,
20 EITHER TIME NOW OR TIME OVERNIGHT, TO SEE IF I HAVE ANYTHING---

21 THE COURT: SURE. I'D LIKE TO HEAR MORE ON THIS AND I HAVE
22 BEEN LOOKING AT IT AS WELL. BUT, OF COURSE, I'M NOT UNDER THE
23 SAME DEMANDS THAT Y'ALL ARE IN TRYING TO TRY A CASE AS THE
24 ATTORNEYS. BUT I FOUND TWO CASES AND ONE THAT I RECALL, I
25 BELIEVE IT'S *STATE V. WILLIE LEE*, WHICH I HAD UP HERE

MATTERS AND MOTIONS

1 MOMENTARILY. BUT IT'S AN INTERESTING CASE ON INVOLUNTARY
2 MANSLAUGHTER. IT REVERSED THE TRIAL COURT FOR NOT CHARGING IT,
3 AND THE SUPREME COURT JUST GRANTED CERT ON IT BACK IN OCTOBER.
4 AND THE OTHER ONE IS THE *STATE V. LIGHT*, WHICH IS 363 S.C. 325,
5 WHICH TALKS ABOUT WHAT MS. MONTS IS TALKING ABOUT, WHICH I THINK
6 IS THE FOCUS OF THE ANALYSIS WHICH IS THE RECKLESSNESS. AND
7 THERE IS A STRUGGLE OVER THE GUN BUT ONCE MR. SULLIVAN HAD THE
8 GUN I DON'T RECALL ANY EVIDENCE BEING THAT THERE WAS A STRUGGLE
9 BETWEEN THE TIME HE GOT THE GUN AND THE TIME THAT HE BEGAN
10 WARNING THE VICTIM, IS THERE?

11 **MR. SUMNER:** NO, SIR, NOT TO MY KNOWLEDGE.

12 **THE COURT:** OKAY.

13 **MR. SUMNER:** I DON'T RECALL THERE BEING ANY TESTIMONY OF A
14 STRUGGLE OTHER THAN IN THE BEDROOM, OTHER THAN MS. BUTLER DID
15 STATE THAT MR. POWERS CONTINUED TO GO FORWARD EVEN AFTER THE
16 SECOND SHOT. BUT I DIDN'T HEAR ANY TESTIMONY ABOUT A STRUGGLE AT
17 THAT POINT. I BELIEVE SHE LEFT---

18 **THE COURT:** RIGHT. WELL, I APPRECIATE YOUR REQUEST, SIR,
19 AND I WOULD LIKE -- IF Y'ALL HAVE TIME TO LOOK AT THAT CASE
20 DURING THE EVENING BREAK, AND WE'LL REVISIT IT IN THE MORNING.

21 **MS. MONTS:** THANK YOU, YOUR HONOR.

22 **MR. SUMNER:** THANK YOU, YOUR HONOR.

23 **THE COURT:** THANK YOU.

24 **MR. SUMNER:** NINE O'CLOCK?

25 **THE COURT:** APPRECIATE YOUR ARGUMENTS.

MATTERS AND MOTIONS

1 MR. SUMNER: NINE O'CLOCK?

2 THE COURT: YES.

3 MR. SUMNER: OKAY.

4 THE COURT: AND WE'RE WORKING ON THE VERDICT FORM TOO. AND
5 LET ME MAKE A COPY OF THESE CHARGES SO Y'ALL CAN HAVE THEM TOO.

6 MS. MONTS: YOUR HONOR, DO YOU HAVE THAT FIRST CASE THAT
7 YOU SAID WILLIE?

8 THE COURT: WILLIE LEE. I HAD IT UP HERE. (PAUSE) I'M
9 SORRY. I MISSPOKE. IT'S WILLIE EARL REESE, AND IT'S 359 S.C.
10 260. IT WAS DECIDED IN MAY OF 2004, AND THEY GRANTED CERT ON IT
11 OCTOBER 6TH, 2005.

12 MR. SUMNER: REESE? IS THAT R-E-E-S-E-?

13 THE COURT: YES, SIR.

14 MR. SUMNER: OKAY. AND SECOND ONE WAS STATE V. LIGHT?

15 THE COURT: YES, SIR. STATE VERSUS LIGHT.

16 MR. SUMNER: L-I-G-H-T?

17 THE COURT: RIGHT. I DON'T --

18 MR. SUMNER: AND WHAT IS THAT CITE, JUDGE, IF YOU DON'T
19 MIND? JOYCE HAS IT. I'VE GOT IT, JUDGE. THANK YOU.

20 THE COURT: YEAH. IT'S 363 S.C. 325.

21 MR. SUMNER: THANK YOU.

22 THE COURT: AND IF Y'ALL WANT TO COME BACK, I'LL GIVE YOU
23 THESE CHARGES.

24 MR. SUMNER: OKAY. ARE WE GOING TO STEP BACK TO YOUR
25 CHAMBERS, YOUR HONOR?

MATTERS AND MOTIONS

1 **THE COURT:** YES, SIR.

2 (DEFENDANT'S REQUESTS TO CHARGE MARKED AS COURT'S EXHIBIT
3 NUMBER 2)

4 (STATE'S REQUESTS TO CHARGE MARKED AS COURT'S EXHIBIT NUMBER
5 3)

6 (RECESS FOR THE DAY AT 4:38 P.M[ai].)

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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 18TH DAY OF JANUARY 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 30, 2006



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE,)
)
VERSUS)
)
MORRIS ANTONIO SULLIVAN,)
)
DEFENDANT.)

98-GS-23-4313
05-GS-23-9999
TRANSCRIPT OF RECORD
VOLUME 3- 1/19-20/06

JANUARY 17-20, 2006
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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

JOYCE K. MONTS, Esquire
Assistant Solicitor

STEVE SUMNER, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
COURT REPORTER

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MATTERS AND MOTIONS

(TRIAL RESUMES AT 9:17 A.M. ON 1/19/06)

THE COURT: OKAY. BRING THEM ON IN.

MS. MONTIS: YOUR HONOR, ONE THING BEFORE THE JURY COMES IN. I MENTIONED TO MR. SUMNER THAT THE BALLISTICS EXPERT IS HERE FROM S.L.E.D. AND HE AND THE TRACE EVIDENCE PERSON RODE TOGETHER. WE'VE GOT THE BULLETS THAT WERE SHOT INTO THE VICTIM'S HOUSE EARLIER IN THE MORNING OF THIS MURDER, AND WE JUST WANTED TO FIGURE OUT HOW WE COULD HANDLE THAT AS FAR AS IF WE HAVE TO HAVE HIM COME BACK AND TESTIFY OR IF WE COULD...

MR. SUMNER: IF I COULD BE HEARD ON THAT POINT, YOUR HONOR? THIS WAS---

THE COURT: OKAY. YEAH. WELL, HOLD THE JURY OUT THERE.

MR. SUMNER: I'M SORRY. THIS WAS THE POINT THAT MS. MONTIS BROUGHT UP EARLIER---

THE COURT: RIGHT.

MR. SUMNER: ---WHEN I SAID -- AND YOU INITIALLY SAID THAT YOU -- AT THAT POINT UNDER RULE 403 YOU DIDN'T THINK IT WOULD COME IN, THAT IS, THE SHOTS EARLIER AT JERVIS POWERS' HOME, AND I SAID IT'S NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE MY CLIENT -- YOU SAID, WELL, PENDING FURTHER---

THE COURT: RIGHT.

MR. SUMNER: ---SOMETHING TO THAT -- I'M NOT GOING TO GO NEAR IT. I'M JUST GOING TO TELL YOU, I'M NOT GOING NEAR IT. I BELIEVE WHAT MS. MONTIS SAID WAS ONE OF THESE WITNESSES WOULD BE THE ONE TO TIE THAT IN. I WILL RENEW MY POSITION THAT IT

MATTERS AND MOTIONS

1 SHOULDN'T COME IN. IN TERMS OF ANY SHOTS FIRED AT HIS HOME,
2 THERE IS NOTHING SHOWING MY CLIENT WAS EVEN CONNECTED TO IT.

3 **THE COURT:** OKAY. MS. MONTS?

4 **MS. MONTS:** WELL, YOUR HONOR, AS I SAID, I THINK, YOU KNOW,
5 SOMETHING ELSE NEEDS TO COME IN. BUT I THINK IT'S VERY POSSIBLE
6 THAT IT WILL COME IN AND AT THAT TIME I TAKE IT UP WITH YOU. I
7 GUESS I WILL JUST HAVE TO ASK THE BALLISTICS EXPERT TO COME BACK
8 AT THAT TIME UNLESS -- I WAS GOING TO SAY UNLESS WE COULD GO
9 AHEAD AND HAVE HIM TESTIFY ABOUT IT, WHICH WOULD BE A ONE-MINUTE
10 QUESTION AND -- WELL---

11 **MR. SUMNER:** HOWEVER YOU WANT TO DO IT.

12 **MS. MONTS:** AND THEN JUST PUT IN HIS, YOU KNOW, TRANSCRIPT
13 INSTEAD OF HAVING HIM COME BACK. BUT I CAN ASK HIM TO COME BACK
14 IF YOU THINK THAT'S THE WAY TO HANDLE IT.

15 **THE COURT:** I'M NOT SURE EXACTLY WHAT YOU'RE ASKING ME NOW.
16 ARE YOU ASKING ME TO ADMIT THAT EVIDENCE NOW?

17 **MS. MONTS:** NO, SIR.

18 **THE COURT:** OKAY.

19 **MS. MONTS:** NO, SIR.

20 **THE COURT:** OKAY. I'M SORRY. YOU'RE SAYING IF MR. SUMNER
21 OPENED THE DOOR YOU'D HAVE HIM COME BACK?

22 **MS. MONTS:** YES, SIR. OR SINCE HE'S GOING TO BE HERE
23 TESTIFYING, I CAN JUST ASK HIM A COUPLE MORE QUESTIONS -- WELL,
24 THAT WOULD HAVE TO BE OUTSIDE THE PRESENCE OF THE JURY, JUST
25 SHOWING THAT THOSE BULLETS CAME FROM THE SAME GUN.

MATTERS AND MOTIONS

1 **THE COURT:** OH, OKAY.

2 **MS. MONTS:** AND WE COULD PUT THAT IN A TRANSCRIPT OUT OF
3 THE PRESENCE OF THE JURY. AND THEN IF IT IS ALLOWED IN, JUST
4 HAVE THAT READ TO THE JURY TO SAVE HIM FROM HAVING TO COME BACK.

5 **THE COURT:** ALL RIGHT. WELL, I DON'T KNOW HOW---

6 **MS. MONTS:** SINCE MR. SUMNER WOULD HAVE AN OPPORTUNITY TO
7 CROSS EXAMINE HIM AND EVERYTHING.

8 **THE COURT:** OKAY. WELL, I MEAN, IF YOU DON'T WANT HIM HERE
9 LIVE, IF HE IS SOME KIND OF REPLY WITNESS OR WHAT HAVE YOU, IF
10 IT'S SHORT TESTIMONY, YOU KNOW, MS. KOFFSKEY CAN PRINT THE
11 TRANSCRIPT FAIRLY QUICKLY, BUT IF IT'S EXTENDED, IT'S GOING TO BE
12 A HUGE BURDEN. SO YOU MAY JUST WANT TO KEEP HIM HERE OR GET HIM
13 TO COME BACK OR, YOU KNOW, YOU CAN PLAY THE TAPE OF THE TESTIMONY
14 BACK TO THE JURY. BUT THAT'S YOUR PREFERENCE. I DON'T KNOW
15 WHAT---

16 **MS. MONTS:** WELL, HE -- I CAN DO THE OTHER WITNESS FIRST
17 AND THEN DO HIM LAST, WHICH WOULD BE THE END OF OUR CASE. SO WE
18 CAN---

19 **THE COURT:** OH, OKAY.

20 **MS. MONTS:** ---MAYBE DECIDE AND LET THE JURY OUT AND MAKE A
21 DECISION AT THAT TIME.

22 **THE COURT:** OKAY. WELL, IS HE IN HERE NOW?

23 **MS. MONTS:** WELL, HE'S OUTSIDE.

24 **THE COURT:** OH, OKAY. SO DO YOU WANT ME TO -- IF IT WILL
25 HELP YOU, I'LL TELL HIM TO STAY UNTIL A CERTAIN AMOUNT OF TIME.

MATTERS AND MOTIONS

1 THAT MIGHT TAKE THE PRESSURE OFF YOU.

2 MR. SUMNER: I THINK THAT MIGHT BE EASIEST. I MEAN, IF
3 HE'S THE LAST WITNESS PUT UP, THIS IS NOT SOMETHING THAT'S NOT
4 GOING TO TAKE A LOT OF TESTIMONY. HE CAN JUST GO BACK OUT WHILE
5 WE ARGUE THE POINT. AND THEN IF YOU ALLOW IT, BRING THE JURY IN
6 AND LET THEM TAKE FIVE MINUTES AND LET THEM HEAR IT.

7 THE COURT: OKAY.

8 MS. MONTS: BUT, I MEAN, THAT WOULD BE AFTER THE DEFENSE --
9 IF THE DEFENSE PUTS UP A CASE, IT WOULD BE AFTER---

10 MR. SUMNER: RIGHT. RIGHT. YEAH.

11 MS. MONTS: ---DEFENSE CASE, WHICH MIGHT BE SOME TIME.

12 MR. SUMNER: WELL, I'LL SAY AT THE OUTSIDE IT WOULD BE
13 THREE TO FOUR HOURS. SO, I MEAN, HE WOULD JUST NEED TO EAT LUNCH
14 HERE AND ENJOY GREENVILLE.

15 THE COURT: ALL RIGHT. HOWEVER YOU WANT TO HANDLE IT, MS.
16 MONTS.

17 MS. MONTS: IF I COULD JUST TALK WITH HIM FOR A SECOND?

18 THE COURT: OKAY.

19 (AT EASE FROM 9:23 TO 9:25 A.M.)

20 MS. MONTS: YOUR HONOR, ONE OTHER SUGGESTION, AND THIS IS
21 UP TO MR. SUMNER, IS IF THE DEFENSE STIPULATES THAT THAT BULLET
22 AND THOSE TWO CASINGS CAME FROM THAT GUN. WE'VE GOT THE -- THAT
23 WAY WE WOULDN'T NEED ANY TESTIMONY, JUST THAT STIPULATION. THE
24 DEFENSE HAS SEEN THE EVIDENCE AS TO THAT.

25 THE COURT: I DON'T KNOW.

MATTERS AND MOTIONS

1 **MR. SUMNER:** YOUR HONOR, I'LL -- IN ORDER TO EXERCISE ALL
2 DUE CAUTION, AGAIN, I'M NOT GOING TO STIPULATE TO THAT BUT I WANT
3 TO EMPHASIZE TO THE COURT AGAIN, THE COURT'S PRIOR IN LIMINE
4 RULING ON THIS AND THE FACT THAT I DO NOT INTEND TO OPEN THE DOOR
5 ON THIS AT ALL AND I JUST DON'T BELIEVE IT NEEDS TO COME IN TO
6 THE JURY. SO I JUST FEEL LIKE THE WITNESS WILL NEED TO JUST STAY
7 AVAILABLE SHOULD THAT OCCUR.

8 **MS. MONTS:** WELL, YOUR HONOR, IF THAT'S THE CASE, MY
9 PREFERENCE WOULD BE JUST TO ASK HIM A FEW QUESTIONS OUTSIDE THE
10 PRESENCE OF THE JURY JUST CONNECTING THOSE BULLETS WITH THAT GUN.
11 AND THEN IF IT IS ALLOWED IN LATER, I'D HAVE TO BRING A COUPLE
12 CHAIN PEOPLE UP HERE BUT -- IN REPLY, IF NEED BE.

13 **THE COURT:** OKAY. WELL, YOU WANT TO GO AHEAD AND DO THAT
14 NOW OR DO YOU WANT TO WAIT UNTIL RIGHT BEFORE THE BREAK OR AFTER
15 WE EXCUSE THE JURY FOR THE BREAK AT 10:30 OR IS THERE...

16 **MS. MONTS:** YEAH, HE'LL BE THE LAST WITNESS. SO WE COULD
17 JUST DO IT AT THAT TIME.

18 **THE COURT:** OKAY. ALL RIGHT. OKAY.

19 **MS. MONTS:** AND, YOUR HONOR. BOTH S.L.E.D. AGENTS ARE IN
20 HERE. I WAS JUST GOING TO SAVE -- I JUST HAD THEM COME IN
21 BECAUSE MR. SUMNER SAID HE DIDN'T MIND SINCE THEY WEREN'T FACT
22 WITNESSES IF THEY WERE BOTH IN HERE.

23 **MR. SUMNER:** YEAH, THAT'S FINE.

24 **THE COURT:** OKAY.

25 (JURY ENTERS COURTROOM AT 9:26 A.M.)

KIMBERLY BLACK -- DIRECT BY MS. MONTS

1 **THE COURT:** ALL RIGHT. GOOD MORNING, LADIES AND GENTLEMEN.
2 WE'RE GOING TO RESUME THE STATE'S CASE AT THIS TIME, I BELIEVE.
3 IS THAT RIGHT, MS. MONTS?

4 **MS. MONTS:** YES, YOUR HONOR

5 **THE COURT:** OKAY. GO AHEAD, MA'AM.

6 **MS. MONTS:** THE STATE CALLS KIMBERLY BLACK.

7 **KIMBERLY BLACK, HAVING BEEN DULY SWORN,**
8 TESTIFIED AS FOLLOWS:

9 **DIRECT EXAMINATION BY MS. MONTS:**

10 **Q** MS. BLACK, WERE YOU PREVIOUSLY EMPLOYED BY S.L.E.D.?

11 **A** YES, MA'AM.

12 **Q** HOW LONG DID YOU WORK FOR S.L.E.D.?

13 **A** I WORKED A LITTLE OVER 12 YEARS.

14 **Q** AND WHAT DIVISION WERE YOU IN WITH THEM?

15 **A** WHEN I ORIGINALLY STARTED WITH THEM I SPENT THE FIRST THREE
16 AND A HALF YEARS IN THE DRUG ANALYSIS DEPARTMENT. IN 1995 I
17 TRANSFERRED TO THE TRACE EVIDENCE DEPARTMENT WHERE I WAS EMPLOYED
18 UNTIL AUGUST OF 2004.

19 **Q** AND CAN YOU DESCRIBE YOUR TRAINING AND EDUCATION THAT YOU
20 HAD PRIOR TO TAKING THAT JOB?

21 **A** YES. I RECEIVED A BACHELOR'S OF SCIENCE DEGREE FROM FRANCIS
22 MARION COLLEGE -- A BACHELOR'S OF SCIENCE DEGREE IN CHEMISTRY
23 FROM FRANCIS MARION COLLEGE IN 1989. I TAUGHT UNDERGRADUATE
24 ORGANIC CHEMISTRY LABORATORY AT THE UNIVERSITY OF SOUTH CAROLINA
25 IN COLUMBIA FOR A YEAR. I WORKED FOR A PRIVATE COMPANY FOR A

KIMBERLY BLACK -- DIRECT BY MS. MONT'S

1 YEAR AND A HALF IN AN ORGANIC ANALYTICAL LABORATORY. I WAS HIRED
2 BY S.L.E.D. IN 1992, AS I MENTIONED EARLIER, AT THAT TIME
3 ASSIGNED TO THE DRUG ANALYSIS UNIT. I TRANSFERRED TO THE TRACE
4 EVIDENCE DEPARTMENT IN 1995. I WORKED IN THAT UNIT UNTIL 2004
5 AND THROUGHOUT MY CAREER AT S.L.E.D. I CONTINUED TO ATTEND
6 WORKSHOP SEMINARS AND TRAINING BOTH IN THE AREAS OF ANALYTICAL
7 CHEMISTRY AND INSTRUMENTATION AS WELL AS FORENSIC CHEMISTRY.

8 Q AND HAVE YOU TESTIFIED IN THE COURTS OF SOUTH CAROLINA AS AN
9 EXPERT IN THESE AREAS?

10 A YES, MA'AM, I HAVE.

11 Q DO YOU KNOW HOW MANY TIMES?

12 A FORTY-SEVEN TIMES.

13 Q HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN TRACE EVIDENCE?

14 A FORTY-SEVEN TIMES, YES, MA'AM.

15 MS. MONT'S: YOUR HONOR, WE'D OFFER KIMBERLY BLACK AS AN
16 EXPERT IN TRACE EVIDENCE EXAMINATION.

17 MR. SUMNER: SO STIPULATED.

18 THE COURT: OKAY. SHE'S QUALIFIED.

19 Q MS. BLACK, DID YOU RECEIVE SEVERAL ITEMS REGARDING THE CASE
20 OF STATE OF SOUTH CAROLINA VERSUS MORRIS SULLIVAN? THAT WOULD BE
21 STATE'S EXHIBIT 21, WHICH WOULD HAVE BEEN YOUR ITEM 2, STATE'S
22 EXHIBIT 13, WHICH WOULD HAVE BEEN YOUR ITEM 16, AND STATE'S
23 EXHIBIT 9, WHICH WOULD HAVE BEEN YOUR ITEM 18?

24 A YES, MA'AM, I RECEIVED THOSE ITEMS.

25 Q AND CAN YOU TELL THE JURY HOW YOU BECAME INVOLVED IN A CASE?

1 WHAT DO YOU RECEIVE?

2 A EVIDENCE IS BROUGHT TO THE S.L.E.D. LABORATORY BY LOCAL LAW
3 ENFORCEMENT AGENTS INTO THE LOG-IN DEPARTMENT, WHICH IS BASICALLY
4 JUST AN EVIDENCE INTAKE DEPARTMENT. ALL THREE OF THESE ITEMS
5 WERE BROUGHT INTO THAT DEPARTMENT AND THEN PLACED INTO SPECIFIC
6 EVIDENCE VAULTS OR EVIDENCE BOXES THAT ARE DESIGNATED FOR ME AND
7 THE TRACE EVIDENCE DEPARTMENT. ITEMS -- MY ITEMS 16 AND 18 WERE
8 ACTUALLY BROUGHT INTO THE TRACE EVIDENCE DEPARTMENT ITSELF INTO
9 OUR EVIDENCE ROOM, WHICH IS LOCATED ON THE THIRD FLOOR. I WOULD
10 HAVE RETRIEVED THOSE FROM THE EVIDENCE BOXES THERE. ITEM NUMBER
11 2, WHICH IS A SHIRT, A BLOODY SHIRT THAT WAS RECEIVED, WOULD HAVE
12 BEEN PLACED INTO ANOTHER EVIDENCE VAULT THAT'S HOUSED ON THE
13 FIRST FLOOR, WHICH IS ALSO USED FOR TRACE EVIDENCE AS WELL AS
14 OTHER DNA EVIDENCE AND PROCESSING EVIDENCE. ALL OF THESE ITEMS
15 WERE BROUGHT TO THOSE PARTICULAR BINS BY THE LOG-IN TECHNICIAN.
16 THEY ARE LOGGED IN THE CASE. AND THEN AT A SEPARATE TIME I WOULD
17 THEN TAKE THOSE ITEMS INTO MY CUSTODY, AND THAT IS WHAT I DID IN
18 THE CASE OF THESE THREE ITEMS.

19 Q AND REGARDING EXHIBITS 13 AND 9, CAN YOU TELL THE JURY WHAT
20 THOSE ARE?

21 A STATE'S EXHIBIT 9 AND STATE'S EXHIBIT 13, BOTH OF THESE
22 ITEMS ARE GUNSHOT RESIDUE KITS.

23 Q AND CAN YOU EXPLAIN, WHAT IS A GUNSHOT RESIDUE KIT AND WHAT
24 DOES THAT SHOW YOU?

25 A A GUNSHOT RESIDUE KIT IS BASICALLY A KIT THAT IS USED TO

KIMBERLY BLACK -- DIRECT BY MS. MONTS

1 COLLECT SAMPLES FROM A PERSON'S HANDS TO DETERMINE IF THAT PERSON
2 MAY HAVE FIRED A GUN OR COME INTO CONTACT WITH THE FIRED GUN OR
3 EVEN HANDLED A GUN. BASICALLY, IT JUST GIVES US AN IDEA IF THAT
4 PERSON COULD HAVE BEEN EXPOSED TO THE GUNSHOT RESIDUE MATERIAL
5 THAT YOU TYPICALLY FIND WHEN A GUN IS FIRED. THE KIT ITSELF, IN
6 THIS PARTICULAR CASE, BOTH KITS CONTAIN COTTON SWABS. THE
7 COLLECTION TECHNIQUE IS VERY SIMPLE. THE COTTON SWABS ARE
8 SATURATED WITH A NITRIC ACID SOLUTION AND THEN THE COTTON SWABS
9 ARE RUBBED ACROSS THE SURFACE OF THE SKIN ON THE HANDS. WE
10 RECOMMEND THAT FOUR SAMPLES BE COLLECTED, THAT ONE SAMPLE BE
11 COLLECTED FROM THE PALM OF EACH HAND AND ONE SAMPLE BE COLLECTED
12 FROM THE BACK OF EACH HAND. WE ALSO RECOMMEND THAT AN ADDITIONAL
13 SAMPLE BE COLLECTED AS A CONTROL SAMPLE THAT I CAN USE TO GIVE ME
14 AN IDEA OF HOW MUCH MATERIAL A PERSON WOULD NORMALLY HAVE ON
15 THEIR SKIN. THE REASON FOR THAT, THE METALS THAT I AM LOOKING
16 FOR ARE METALS THAT NATURALLY OCCUR IN OUR WATER AND SOME OF THE
17 PRODUCTS THAT WE USE, SO THERE IS A CERTAIN THRESHOLD LEVEL THAT
18 EVERYONE WOULD HAVE OF THESE TYPE OF MATERIALS ON THEIR SKIN.
19 THAT CONTROL SAMPLE ALLOWS ME TO SUBTRACT THOSE NUMBERS FROM THE
20 SAMPLES THAT ARE ANALYZED FROM THE HANDS SO THAT I WILL GET A
21 MORE TRUE VALUE FOR WHAT MAY HAVE BEEN FOREIGN OR DEPOSITED ON
22 THE PERSON'S HANDS.

23 Q AND DID YOU IN FACT DO EXAMINATION ON STATE'S EXHIBIT 13?

24 A YES, I DID.

25 Q AND WHO WAS THAT DONE ON AND WHAT WERE YOUR RESULTS?

1 A STATE'S EXHIBIT 13 CORRESPONDS TO MY ITEM NUMBER 16, WHICH
2 WAS A GUNSHOT RESIDUE SUBMITTED FROM A J. POWERS.

3 Q AND WHAT WERE YOUR RESULTS ON THAT?

4 A WHEN I ANALYZED THESE PARTICULAR SAMPLES THE QUANTITIES OF
5 METALS THAT I FOUND DID NOT INDICATE THE PRESENCE OF GUNSHOT
6 RESIDUE.

7 Q AND WHAT DOES THAT TELL YOU?

8 A IT JUST SIMPLY MEANS THAT I DID NOT HAVE ELEVATED LEVELS OF
9 THESE TYPES OF MATERIALS THAT I AM LOOKING FOR THAT WOULD
10 INDICATE THIS PERSON'S HANDS WERE WITHIN THAT GUNSHOT RESIDUE
11 CLOUD THAT YOU HAVE WHEN A GUN IS FIRED.

12 Q SO YOU ARE SAYING THAT YOUR RESULTS ARE CONSISTENT WITH
13 JERVIS POWERS NOT HANDLING A GUN?

14 A THAT IS CORRECT.

15 Q AND HOW ABOUT STATE'S EXHIBIT 9, CAN YOU PLEASE TELL US WHO
16 THAT IS ON AND WHAT YOUR RESULTS WERE?

17 A YES. STATE'S EXHIBIT 9 CORRESPONDS TO MY ITEM NUMBER 18,
18 WHICH WAS A GUNSHOT RESIDUE SUBMITTED FROM M. SULLIVAN. IN THAT
19 PARTICULAR CASE I FOUND METALS CONSISTENT WITH GUNSHOT RESIDUE ON
20 THE LEFT PALM AND THE QUANTITIES OF METALS THAT I FOUND ON THE
21 RIGHT PALM MAY BE ASSOCIATED WITH GUNSHOT RESIDUE.

22 Q AND WHAT DOES THAT TELL YOU?

23 A BASICALLY IT MEANS THAT HE DID HAVE LEVELS THAT WERE WITHIN
24 OUR THRESHOLD TO INDICATE HE MAY HAVE BEEN EXPOSED TO A GUNSHOT
25 RESIDUE CLOUD.

1 Q IS THAT CONSISTENT WITH MORRIS SULLIVAN HAVING FIRED A GUN?

2 A IT COULD BE CONSISTENT WITH THAT SCENARIO. I WOULD NOT BE
3 ABLE TO EXCLUDE THE POSSIBILITY OF HIM HANDLING A GUN OR BEING
4 NEAR THE GUN WHEN THE GUN WAS FIRED. BUT I DID HAVE AN
5 INDICATION THAT HE MAY HAVE BEEN EXPOSED TO THAT GUNSHOT RESIDUE
6 CLOUD.

7 Q AND WOULD THAT BE THE WAY YOU WOULD DESCRIBE ANY CASE WITH
8 THIS -- WITH THESE FINDINGS?

9 A YES, MA'AM. WE'RE NOT ABLE TO SAY THAT SOMEONE -- THAT THE
10 RESULTS ARE CONSISTENT WITH FIRING A GUN AS TO THE EXCLUSION OF
11 OTHER POSSIBILITIES. THIS TEST IS MERELY USED TO LOOK FOR THE
12 PRESENCE OR ABSENCE OF MATERIALS THAT COULD HAVE COME FROM A
13 GUNSHOT RESIDUE CLOUD.

14 Q AND LOOKING AT STATE'S EXHIBIT 21, WHAT TYPES OF TESTS DO
15 YOU DO ON THIS ITEM AND WHAT IS IT, PLEASE?

16 A STATE'S EXHIBIT 21 WHICH CORRESPONDS TO MY ITEM NUMBER 2 IS
17 A MULTI-COLORED SHORT SLEEVE SHIRT. THIS ITEM WAS SUBMITTED TO
18 ME FOR A GUNPOWDER TEST. I ROUTINELY RECEIVED CLOTHING FROM
19 GUNSHOT VICTIMS WITH A GUNPOWDER REQUEST WHEN I WAS EMPLOYED WITH
20 THE TRACE EVIDENCE DEPARTMENT TO LOOK AT THE CLOTHING TO SEE IF
21 THERE WERE ANY HOLES PRESENT THAT WERE CONSISTENT WITH BULLET
22 HOLES AND TO LOOK AT THE RESIDUE AROUND THOSE HOLES TO DETERMINE
23 WHEN POSSIBLE HOW FAR THE GARMENT MAY HAVE BEEN FROM THE END OF
24 THE GUN WHEN THE GUN WAS FIRED.

25 Q AND DID YOU DO AN EXAMINATION ON THIS ITEM?

1 A YES, MA'AM, I DID.

2 Q AND WHAT WERE YOUR RESULTS?

3 A THE AREA AROUND THE HOLE THAT I FOUND IN THE RIGHT CHEST
4 REGION OF THE SHIRT I EXAMINED FOR THE PRESENCE OF LEAD AND
5 GUNPOWDER RESIDUE PATTERN, WHICH IS WHAT I'M ALWAYS LOOKING FOR
6 ANY TIME I ANALYZE A SHIRT FOR GUNPOWDER. I'M LOOKING FOR BOTH
7 THE LEAD RESIDUE AND THE GUNPOWDER. AFTER EXAMINING THE PHYSICAL
8 CHARACTERISTICS OF THE HOLE AND THE AREA AROUND THE HOLE AND ALSO
9 PERFORMING CHEMICAL TESTS ON THEM, THE GARMENT ITSELF, I
10 DETERMINED THAT THE RESIDUE AND PHYSICAL CHARACTERISTICS AROUND
11 THE HOLE ARE CONSISTENT WITH A CONTACT SHOT.

12 Q AND PLEASE EXPLAIN, WHAT DOES THAT MEAN?

13 A THAT SIMPLY MEANS THAT THE CHARACTERISTICS THAT I FOUND ARE
14 CONSISTENT WITH THE GUN BEING RIGHT NEXT TO THE FABRIC OR IN
15 CONTACT WITH THE FABRIC WHEN THE GUN WAS FIRED.

16 Q AND WHAT CHARACTERISTICS BROUGHT YOU TO THAT CONCLUSION?

17 A THE FIRST CHARACTERISTIC THAT I NOTICED WAS SIMPLY THE SIZE
18 OF THE HOLE. IT WAS SIGNIFICANTLY LARGER THAN A HOLE THAT I
19 WOULD EXPECT TO FIND WITH THIS PARTICULAR CALIBER OF HANDGUN.
20 THE ONLY -- THE ONLY WAY TO PRODUCE THAT HOLE WOULD BE TO HAVE
21 SOMETHING GOING ON OTHER THAN THE PASSAGE OF THE BULLET. IF THE
22 GUN IS IN CONTACT WITH THE FABRIC WHEN THE GUN IS FIRED, YOU NOT
23 ONLY HAVE THE BULLET ITSELF PRODUCING THE HOLE BUT YOU HAVE THE
24 PRESSURE AND THE GASES THAT ARE BEHIND THE BULLET PROPELLING THE
25 BULLET DOWN THE BARREL ALSO CONTRIBUTING TO THE HOLE ITSELF. I

KIMBERLY BLACK -- CROSS BY MR. SUMNER

1 ALSO FOUND A FEW SATELLITE HOLES, VERY SMALL HOLES AROUND THE
2 LARGER HOLE, AND THIS IS ALSO CONSISTENT WITH WHAT YOU FIND WHEN
3 THE GUN IS IN CONTACT WITH THE FABRIC. IT'S SIMPLY, ONCE AGAIN,
4 PRODUCED BY THE INTENSE PRESSURE BEHIND THE BULLET THAT IS JUST
5 PRODUCED BECAUSE OF THE CLOSE CONTACT. I LOOKED AT THE FIBERS
6 THEMSELVES TO ELIMINATE THE POSSIBILITY OF THIS BEING A
7 PREEXISTING HOLE. AND AFTER LOOKING AT THEM MICROSCOPICALLY I
8 DID NOT FIND ANYTHING THAT SUPPORTED THAT IT WAS A HOLE THAT WAS
9 PREEXISTING. SO I DID FIND SOME GUNPOWDER PARTICLES ON THE FRONT
10 OF THE SHIRT, WHICH ALSO HELPED TO SUPPORT THE FACT THAT IT WAS A
11 BULLET HOLE. TAKING THAT ALL INTO CONSIDERATION, I DETERMINED
12 THAT IT WAS CONSISTENT WITH A BULLET HOLE AND BECAUSE --
13 PRIMARILY BECAUSE OF THE SIZE OF THE HOLE, I DETERMINED THAT IT
14 WAS A CONTACT SHOT.

15 MS. MONTS: THANK YOU. NO FURTHER QUESTIONS.

16 THE COURT: CROSS EXAMINATION, MR. SUMNER.

17 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
18 COURT.

19 THE COURT: YES, SIR.

20 CROSS EXAMINATION BY MR. SUMNER:

21 Q MS. BLACK, YOU JUST TESTIFIED FOR THE JURY THAT BASED ON
22 YOUR EXPERTISE AND TRAINING AND THE TESTS THAT YOU RAN ON THE
23 SHIRT THAT THE VICTIM -- OR THAT JERVIS POWERS WAS WEARING THAT
24 IT WAS A CONTACT SHOT; IS THAT CORRECT?

25 A YES, THAT THE FABRIC WAS IN CONTACT WITH THE GUN, YES, SIR.

KIMBERLY BLACK -- CROSS BY MR. SUMNER

1 Q OKAY. ALL RIGHT. I'M GOING TO ASK YOU TO STEP DOWN HERE
2 WITH ME JUST FOR ONE SECOND, PLEASE.

3 A (COMPLIES)

4 Q THANK YOU. BASICALLY YOU CAN SEE HERE FROM THIS EXHIBIT
5 THAT'S ALREADY BEEN PLACED INTO EVIDENCE THAT THERE WAS A GUNSHOT
6 WOUND RIGHT THERE IN THAT GENERAL AREA TO MR. POWERS.

7 A YES, SIR.

8 Q OKAY. ALL RIGHT. DO YOU SEE THAT?

9 A YES, SIR.

10 Q SO IN YOUR TESTIMONY TODAY TO THE JURY WOULD IT BE CORRECT
11 TO SAY THAT THE MUZZLE END OF THE BARREL WAS BASICALLY RIGHT
12 THERE? I MEAN, IT WAS IN CONTACT WITH THE FABRIC WHEN THE SHOT
13 WAS FIRED?

14 A YES, SIR. HOWEVER, THE HOLE THAT I DID FIND IN THE SHIRT
15 WAS NOT IN THIS EXACT LOCATION. IT WAS A LITTLE TO THE RIGHT.

16 Q OKAY.

17 A SO OBVIOUSLY IT'S DIFFICULT TO POSITION THE SHIRT ON THE
18 PERSON.

19 Q ALL RIGHT. YES, MA'AM. AND I'M JUST MEANING IN THIS
20 GENERAL AREA HERE IN THE UPPER CHEST REGION?

21 A YES. YES, SIR.

22 Q OKAY. ALL RIGHT. AND AGAIN, THE GUN ITSELF -- AND I'M NOT
23 GOING TO POINT AGAIN. I'LL JUST POINT TO MYSELF. THE GUN ITSELF
24 WAS ACTUALLY IN CONTACT WITH THE SHIRT THAT JERVIS WAS WEARING
25 WHEN THE SHOT WAS FIRED?

KENNETH WHITLER -- DIRECT BY MS. MONT'S

1 A YES, SIR. BASED ON WHAT I FOUND, THAT WOULD BE MY
2 CONCLUSION.

3 MR. SUMNER: OKAY. THANK YOU. MS. BLACK, I DON'T HAVE ANY
4 OTHER QUESTIONS. THANK YOU.

5 MS. MONT'S: NO FURTHER QUESTIONS, YOUR HONOR. WE'D ASK
6 THAT THIS WITNESS BE EXCUSED.

7 MR. SUMNER: WITHOUT OBJECTION.

8 THE COURT: OKAY. THANK YOU FOR YOUR TIME, MA'AM.

9 (WITNESS EXCUSED AT 9:40 A.M.)

10 MS. MONT'S: YOUR HONOR, THE STATE CALLS KENNETH WHITLER.

11 KENNETH WHITLER, HAVING BEEN DULY
12 SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MS. MONT'S:

14 Q MR. WHITLER, PLEASE TELL THE JURY WHERE YOU ARE EMPLOYED.

15 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.
16 THAT'S ALSO KNOWN AS S.L.E.D. I'M IN THE FORENSIC LAB IN TO
17 FIREARMS DEPARTMENT.

18 Q AND HOW LONG HAVE YOU WORKED WITH S.L.E.D.?

19 A SINCE 1997.

20 Q AND DID YOU HAVE ANY PRIOR LAW ENFORCEMENT OR TRAINING IN
21 THIS AREA?

22 A YES, MA'AM. I RETIRED FROM THE F.B.I. IN 1997, AND AT THAT
23 TIME I WAS A QUALIFIED FIREARMS TOOL MARK EXAMINER IN THE F.B.I.
24 LABORATORY.

25 Q CAN YOU DESCRIBE SOME OF YOUR TRAINING AND EDUCATION IN THAT

1 AREA?

2 A THERE'S NO SCHOOL THAT YOU GO TO TO GET A DEGREE IN FIREARMS
3 IDENTIFICATION. YOU HAVE TO LEARN IT ON THE JOB. AND AT THE
4 F.B.I. THAT'S ABOUT A TWO-YEAR PROCESS WHERE YOU WORK WITH
5 QUALIFIED EXAMINERS WORKING ON REAL CASES PLUS CASES THAT THEY
6 MAKE UP FOR YOU. AND IN ADDITION, YOU HAVE TO DO YOUR OWN SELF-
7 STUDIES. BUT DURING THIS PERIOD YOU LITERALLY SHOOT THOUSANDS OF
8 CARTRIDGE CASES AND BULLETS AND LOOK AT LOTS OF GUNS AND MAKING
9 THOUSANDS OF COMPARISONS. AT THE END OF THE TRAINING PERIOD YOU
10 ARE GIVEN A SERIES OF TEST CASES TO WORK AND YOU HAVE TO GET THE
11 RIGHT ANSWER, OF COURSE. IF YOU DO, THEN YOU ARE QUALIFIED TO BE
12 A FIREARMS TOOL MARK EXAMINER. I SUCCESSFULLY COMPLETED ALL THE
13 TRAINING AND THE TESTS AND WAS CERTIFIED BY THE F.B.I. AS A
14 FIREARMS TOOL MARK EXAMINER FOR THEIR LABORATORY.

15 Q AND HAVE YOU DONE THE SAME TYPE JOB WHILE YOU'VE BEEN AT
16 S.L.E.D.?

17 A YES, MA'AM. I BASICALLY DO THE SAME THING AT S.L.E.D. AS I
18 DID AT THE F.B.I. EXCEPT I DON'T HAVE QUITE AS LONG A COMMUTE.

19 Q AND HAVE YOU EVER TESTIFIED IN THE STATE COURTS OF SOUTH
20 CAROLINA?

21 A YES, MA'AM.

22 Q AS AN EXPERT IN THE FIELD OF FIREARMS IDENTIFICATION?

23 A YES, MA'AM

24 Q HOW MANY TIMES?

25 A I'VE TESTIFIED IN TOTAL APPROXIMATELY 150 TIMES IN VARIOUS,

KENNETH WHITLER -- DIRECT BY MS. MONTES

1 STATE, FEDERAL AND TERRITORIAL COURTS.

2 MS. MONTES: YOUR HONOR, WE'D MOVE MR. WHITLER AS AN EXPERT
3 IN FIREARMS IDENTIFICATION.

4 MR. SUMNER: SO STIPULATED.

5 THE COURT: OKAY. HE'S QUALIFIED. YES, MA'AM.

6 Q MR. WHITLER, IN FRONT OF YOU IS STATE'S EXHIBIT 1. CAN YOU
7 IDENTIFY THIS AND TELL THE JURY WHAT YOUR EXPERTISE TELLS YOU
8 ABOUT THIS GUN?

9 A I CAN IDENTIFY THIS GUN AS ONE THAT I PREVIOUSLY EXAMINED.
10 IT WAS REPORTED IN MY REPORT AS ITEM 6.

11 Q AND CAN YOU TELL US, WHAT TYPE OF GUN IS THIS AND HOW DOES
12 IT WORK?

13 A IT IS A TANFOGLIO OR E.A.A. WITNESS SEMI-AUTOMATIC PISTOL.
14 IT OPERATES -- BASICALLY YOU LOAD THE MAGAZINE WITH CARTRIDGES.
15 YOU INSERT THE MAGAZINE INTO THE MAGAZINE WELL WHICH IS IN THE
16 GRIP OF THE PISTOL. THE SLIDE RIGHT NOW IS IN THE REAR POSITION.
17 YOU PULL IT BACK. AND AS YOU LET IT GO FORWARD IT WILL TAKE AN
18 UNFIRED CARTRIDGE OF THE TOP OF THE MAGAZINE AND INSERT IT INTO
19 THE CHAMBER AREA OF THE BARREL. WHEN IT CLOSSES, THE PISTOL IS
20 READY TO FIRE.

21 THIS PISTOL HAS TWO WAYS OF FIRING. ONE IS CALLED DOUBLE
22 ACTION, WHICH MEANS THAT WHEN THE SLIDE GOES FORWARD THE HAMMER
23 WOULD BE IN THE FORWARD POSITION AND TO FIRE YOU PULL THE
24 TRIGGER. AND AS YOU PULL THE TRIGGER, THE HAMMER WOULD GO TO THE
25 REAR UNTIL A CERTAIN POINT. THEN IT RELEASES, GOES FORWARD AND

KENNETH WHITLER -- DIRECT BY MS. MONTS

1 FIRES THE CARTRIDGE. AFTER THAT HAPPENS YOU -- WHEN THE SLIDE
2 COMES TO THE REAR LIKE IT IS NOW, YOU'LL SEE THE HAMMER IS IN A
3 COCKED POSITION. WHEN THE SLIDE GOES FORWARD IT WILL REMAIN IN
4 THE COCKED POSITION AND THEN YOU FIRE IT IN WHAT IS CALLED SINGLE
5 ACTION, WHICH MEANS YOU JUST PULL THE TRIGGER AND IT WILL AGAIN
6 RELEASE THE HAMMER. IT TAKES LESS PRESSURE OR YOU DON'T HAVE TO
7 PULL THE TRIGGER AS FAR TO RELEASE IT IN SINGLE ACTION AS YOU DO
8 IN DOUBLE ACTION.

9 Q CAN YOU EXPLAIN WHAT THE TRIGGER PULL IS ON THE FIRST PULL
10 AS WELL AS SUBSEQUENT?

11 A IF YOU CARRY AS IT'S DESIGNED -- AND THE WAY IT'S DESIGNED
12 IS THAT ONCE YOU LOAD IT YOU LOWER THE HAMMER SO THAT IT IS IN --
13 THE HAMMER IS IN A RESTING POSITION SO THAT YOU HAVE TO PULL
14 DOUBLE ACTION. THAT PULL IS APPROXIMATELY TEN AND A QUARTER
15 POUNDS, I BELIEVE.

16 Q AND IS THAT THE AMOUNT OF PRESSURE NEEDED TO APPLY TO THE
17 TRIGGER?

18 A THAT'S CORRECT. IT MEANS YOU'VE GOT TO PUT OVER TEN POUNDS
19 OF PRESSURE ON THIS TRIGGER IN ORDER TO MOVE THE HAMMER TO THE
20 REAR AND PULL ENOUGH ON IT SO THAT IT WILL RELEASE FIRE. ONCE --
21 LIKE I SAID, ONCE THE GUN IS FIRED AND THE SLIDE COMES TO THE
22 REAR AND RE-COCKS THE HAMMER THEN IT ONLY TAKES FOUR AND THREE-
23 QUARTERS POUND OF PRESSURE TO PULL THE TRIGGER. SO IT WOULD TAKE
24 -- IT'S A LIGHTER PULL ON THE SINGLE ACTION THAN IT IS ON THE
25 DOUBLE.

1 Q CAN YOU EXPLAIN TO US HOW YOU CONDUCT A FIREARMS
2 IDENTIFICATION?

3 A BASICALLY, IF BULLETS ARE -- FIRED BULLETS OR CARTRIDGE
4 CASES ARE SUBMITTED TO ME FOR EXAMINATION IN COMPARISON TO A
5 FIREARM, I TEST FIRE THE PISTOL OR THE FIREARM THAT IS SUBMITTED
6 IN ORDER TO GET TEST SAMPLES THAT I KNOW WHERE THE SAMPLE CAME
7 FROM. THERE IS NO QUESTION THAT -- I'M NOT RELYING ON SOMEONE
8 ELSE TO TELL ME. I KNOW I FIRED THE GUN. I RECOVERED THE
9 BULLET. I KNOW THIS BULLET WAS FIRED BY THIS GUN. NO QUESTION.
10 I PUT THAT ON A MICROSCOPE THAT HAS TWO STAGES, WHICH BASICALLY
11 ALLOWS ME TO LOOK AT TWO OBJECTS AT THE SAME TIME. I PUT MY TEST
12 FIRED BULLET ON ONE STAGE. I TAKE THE SUBMITTED BULLET OR
13 CARTRIDGE CASE, WHICHEVER I'M COMPARING, PUT IT ON THE OTHER
14 STAGE AND MICROSCOPICALLY, BY LOOKING IN THERE, I CAN COMPARE THE
15 TWO TO SEE IF THE STRIATIONS CAUSED BY FIRING MATCH UP. IF THE
16 STRIATIONS OR MARKS ON THE SUBMITTED BULLET OR CARTRIDGE CASE ARE
17 IN SUFFICIENT QUANTITY AND AGREEMENT WITH THE TEST FIRED BULLET
18 THAT I KNOW CAME FROM THE PISTOL OR WHATEVER THE FIREARM IS, THEN
19 I CAN SAY THAT THAT BULLET OR CARTRIDGE CASE WAS FIRED BY THAT
20 FIREARM. IF THE MATCH -- IF THE -- IF THERE AREN'T SUFFICIENT
21 AGREEMENT OF THE MARKS, THEN I CAN EITHER IN SOME CASES IF THEY
22 DON'T HAVE THE RIGHT CLASS CHARACTERISTICS MEANING THAT -- THEN
23 IT MEANS THAT THAT PARTICULAR BULLET OR CARTRIDGE CASE COULDN'T
24 HAVE BEEN FIRED BY THE GUN. IN SOME CASES WE HAVE -- YOU JUST
25 DON'T HAVE ENOUGH OF AGREEMENT OF THE MARKS BUT THEY HAVE THE

1 RIGHT CLASS CHARACTERISTICS. AND IN THAT CASE YOU WOULD SAY IT
2 WAS AN INCONCLUSIVE -- IT'S INCONCLUSIVE BECAUSE YOU CAN'T SAY
3 WITH CERTAINTY THAT IT CAME FROM THAT PISTOL AND NOT ANOTHER
4 PISTOL WITH SIMILAR RIFLING CHARACTERISTICS.

5 Q I'M GOING TO HAND YOU SOME ITEMS THAT ARE IN EVIDENCE,
6 STATE'S EXHIBITS 10 AND 11, STATE'S EXHIBIT 22, STATE'S EXHIBITS
7 2, 3, 4 AND 5. IF YOU CAN, PLEASE, INDIVIDUALLY SEE IF YOU CAN
8 IDENTIFY THEM AND TELL US IF YOU HAD A CHANCE TO ANALYZE THESE.

9 A STATE'S EXHIBIT 4, WHICH I DID EXAMINE THIS AND IT WAS
10 REPORTED IN MY REPORT AS ITEM 9, IS A SMALL LEAD FRAGMENT.

11 Q COULD YOU DO ANY TESTS ON THAT ITEM?

12 A NO, THERE WERENT ANY MARKS OF VALUE ON IT. IT'S UNSUITABLE
13 FOR ANY IDENTIFICATION PURPOSES. IT'S JUST A LEAD FRAGMENT.

14 Q OKAY.

15 A STATE'S EXHIBIT 2 CONTAINS ITEMS 11 AND -- WHICH WERE
16 REPORTED IN MY REPORT AS ITEMS 11 AND 12. THEY CONSIST OF --
17 ITEM 11 IS A FIRED BULLET AND 12 IS A BULLET JACKET FRAGMENT, AND
18 THAT'S IN STATE'S EXHIBIT 2.

19 Q CAN YOU TELL US, IS THAT ANY SPECIAL TYPE OF BULLET OR DOES
20 IT HAVE ANY KIND OF NAME OR..

21 A IT'S A JACKETED BULLET. I MEAN, IT'S, YOU KNOW -- I CAN'T
22 TELL YOU IF IT'S A CERTAIN MANUFACTURER OR NOT.

23 Q AND DID YOU DO A TEST ON THAT BULLET?

24 A YES, I DID.

25 Q AND WHAT WERE YOUR RESULTS FROM THAT TEST?

KENNETH WHITLER -- DIRECT BY MS. MONTS

1 A THE RESULTS WERE THAT THE BULLET JACKET FRAGMENT WAS
2 INCONCLUSIVE. IT COULD HAVE BEEN FIRED BY THE STATE'S EXHIBIT 1
3 PISTOL OR ANOTHER GUN WITH SIMILAR RIFLING CHARACTERISTICS. THE
4 ITEM 11 BULLET WAS FIRED BY THE GUN -- OR THE PISTOL.

5 STATE'S EXHIBIT 3 WAS MENTIONED IN MY REPORT AS ITEM 10 AND
6 IT IS A FIRED .40 CALIBER -- .40 S AND W CALIBER CARTRIDGE CASE.
7 AND I IDENTIFIED THIS CARTRIDGE CASE AS BEING FIRED BY THE
8 STATE'S EXHIBIT 1 PISTOL.

9 STATE'S EXHIBIT 22 IS REPORTED IN MY REPORT AS ITEM 7. IT
10 IS ALSO A FIRED .40 S AND W CALIBER CARTRIDGE CASE, AND I ALSO
11 IDENTIFIED THIS CARTRIDGE CASE AS BEING FIRED BY THE STATE'S
12 EXHIBIT 1 PISTOL.

13 STATE'S EXHIBIT 5 IS REPORTED IN MY REPORT AS ITEM 8 AND IT
14 IS AN UNFIRED .40 S AND W CALIBER CARTRIDGE.

15 Q IS IT SUITABLE FOR SHOOTING FROM THIS GUN?

16 A YES, IT'S THE CORRECT AMMUNITION FOR THIS PARTICULAR
17 FIREARM.

18 STATE'S EXHIBIT 11 I HAVE SEEN BEFORE, AND IT WAS -- IT'S
19 REPORTED IN MY REPORT AS ITEM 20. AND THIS IS A FIRED BULLET.

20 STATE'S EXHIBIT 10---

21 Q I'M SORRY. THE LAST ONE, COULD YOU TELL IF IT CAME FROM
22 THIS GUN?

23 A YES, MA'AM. STATE'S EXHIBIT 11 WAS MY ITEM -- WAS LISTED IN
24 MY REPORT AS ITEM 20, AND IT WAS IDENTIFIED AS BEING FIRED BY
25 THIS PISTOL.

KENNETH WHITLER -- DIRECT BY MS. MONTS

1 STATE'S EXHIBIT 10 IS LISTED IN MY REPORT AS ITEM 19. IT'S
2 A FIRED .40 S AND W CARTRIDGE CASE, AND IT WAS ALSO IDENTIFIED AS
3 BEING FIRED BY THE EXHIBIT 1 PISTOL.

4 Q WHEN YOU RECEIVED ITEM 1, THE GUN IN THIS CASE, WAS IT IN
5 PROPER WORKING ORDER?

6 A YES, IT WAS.

7 Q AND YOU PERFORMED TESTS ON THIS GUN TO COMPARE IT WITH THESE
8 BULLETS; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 MS. MONTS: THANK YOU. NO FURTHER QUESTIONS.

11 THE COURT: CROSS EXAMINATION.

12 MR. SUMNER: NO QUESTIONS. THANK YOU.

13 THE COURT: ALL RIGHT. THANK YOU, MR. WHITLER.

14 (WITNESS STEPS DOWN AT 9:54 A.M.)

15 MS. MONTS: YOUR HONOR, THAT WOULD BE THE STATE'S SHOWING
16 AT THIS TIME.

17 THE COURT: ALL RIGHT. OKAY. LADIES AND GENTLEMEN, I HAVE
18 TAKE UP SOME LEGAL MATTERS AT THIS TIME, SO IF YOU WOULD JUST GO
19 BACK TO YOUR JURY ROOM AND WE'LL BE BACK WITH YOU AS SOON AS WE
20 CAN. I TALKED TO MR. BOND ABOUT SOME MENUS.

21 BAILIFF: I HAVE THEM.

22 THE COURT: OKAY. GOOD. ALL RIGHT. THEY'LL HAVE THE
23 MENUS BACK THERE FOR YOU.

24 DON'T TALK ABOUT THE CASE. CONTINUE TO KEEP AN OPEN MIND.

25 (JURY EXITS COURTROOM AT 9:55 A.M.)

MATTERS AND MOTIONS

1 **MS. MONTS:** YOUR HONOR, CAN I GO AHEAD AND...

2 **THE COURT:** SURE.

3 **MS. MONTS:** OKAY.

4 **THE COURT:** GO AHEAD AND PROFFER THAT TESTIMONY.

5 **MR. SUMNER:** THIS IS A PROFFER, YOUR HONOR, AT THIS POINT?

6 **THE COURT:** YES, SIR.

7 **MR. SUMNER:** I JUST WANT TO MAKE SURE. I FELT LIKE IT WAS.

8 I JUST WANTED TO MAKE SURE I WAS CORRECT.

9 **MS. MONTS:** WELL, THIS -- MY PLAN WAS TO HAVE A TRANSCRIPT
10 AND TIME FOR YOU TO CROSS EXAMINE THE WITNESS SO THAT WE WOULD
11 NOT NEED HIM TO STAY AROUND FOR REBUTTAL OR REPLY ONCE THE
12 DEFENSE, IF THEY PUT UP A CASE, PUTS UP A CASE. I WAS JUST GOING
13 TO ASK HIM A COUPLE QUESTIONS. IT WOULDN'T BE LONG. SO WE CAN
14 EITHER PLAY IT BACK FOR THE JURY LATER OR HAVE IT TRANSCRIBED
15 LATER.

16 **THE COURT:** OKAY. MR. SUMNER?

17 **MR. SUMNER:** AGAIN, I'M GOING TO LET THE COURT RULE ON
18 THAT. I MEAN, I DON'T KNOW IF THIS IS A PROFFER OR NOT.

19 **THE COURT:** OKAY.

20 **MR. SUMNER:** SO...

21 **THE COURT:** WELL, I THINK I UNDERSTAND WHERE MR. SUMNER IS
22 COMING FROM AT THIS POINT. I MEAN, I'M SORRY THAT IT MIGHT
23 INCONVENIENCE YOU, SIR, BUT I THINK YOU'RE GOING TO HAVE TO STICK
24 AROUND UNTIL WE KNOW THE NEED FOR YOUR TESTIMONY IN REPLY. ALL
25 RIGHT? THANK YOU.

MATTERS AND MOTIONS

1 OKAY. ARE THERE ANY MOTIONS OR OTHER MATTERS WE NEED TO
2 TAKE UP AT THIS TIME?

3 **MR. SUMNER:** YES, SIR, YOUR HONOR. I UNDERSTAND THAT
4 CONCLUDES THE STATE'S CASE. IS THAT CORRECT, MS. MONTS?

5 **MS. MONTS:** THAT'S CORRECT, YOUR HONOR.

6 **MR. SUMNER:** OKAY. FIRST OF ALL, I WOULD MAKE A MOTION FOR
7 DIRECTED VERDICT AT THIS TIME. I THINK WITH THE EVIDENCE AND
8 TESTIMONY EVEN WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE STATE
9 THAT THE DEFENDANT IS ENTITLED TO A DIRECTED VERDICT OF NOT
10 GUILTY ON THE CHARGE OF MURDER. I WILL ALSO MAKE MY -- I WILL
11 CERTAINLY GIVE YOU ARGUMENT ON THAT POINT, JUDGE, IF YOU NEED IT.

12 I KNOW YOU HAVE BEEN HERE FOR THE ENTIRE TRIAL, OBVIOUSLY,
13 AND I DON'T FEEL THE NEED TO REITERATE THE TESTIMONY UNLESS YOU
14 WOULD LIKE FOR ME TO. BUT I WOULD INCORPORATE BY REFERENCE ALL
15 THE TESTIMONY FROM THE WITNESSES, ALL THE EXHIBITS RECEIVED, AND
16 I WOULD AT THIS TIME MOVE FOR A DIRECTED VERDICT OF ACQUITTAL AS
17 TO THE CHARGE OF MURDER.

18 THE COURT IS VERY FAMILIAR WITH THE ELEMENTS OF MURDER THAT
19 THE STATE IS REQUIRED TO PROVE BEYOND A REASONABLE DOUBT. AND NO
20 REASONABLE JURY -- AT THIS JUNCTURE, YOUR HONOR, NO REASONABLE
21 JURY COULD CONVICT MY CLIENT OF MURDER BASED ON WHAT'S BEEN
22 PRESENTED. SO, THEREFORE, I WOULD -- IF YOU WOULD LIKE ARGUMENT
23 ON THAT POINT, I'LL BE HAPPY TO GIVE IT TO YOU.

24 **THE COURT:** NO, SIR. I BELIEVE I UNDERSTAND YOUR ARGUMENT.
25 BUT BASED ON VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO

MATTERS AND MOTIONS

1 THE STATE, I BELIEVE THERE IS ADEQUATE EVIDENCE FOR IT TO GO TO
2 THE JURY UNDER RULE 19, AND THEREFORE I AM GOING TO RESPECTFULLY
3 DENY YOUR MOTION.

4 MR. SUMNER: I WOULD RENEW THE SAME MOTIONS, YOUR HONOR, AS
5 TO THE OTHER CHARGES, POSSESSION OF A PISTOL BY A PERSON UNDER
6 21, UNLAWFUL POSSESSION, ALSO POSSESSION OF A WEAPON DURING THE
7 COMMISSION OF A VIOLENT CRIME. AND I WON'T ARGUE THOSE IF YOU
8 DON'T NEED ARGUMENT, BUT I JUST WANT TO FOR THE RECORD SAY AS IT
9 RELATES TO THOSE TWO CHARGES AS WELL.

10 THE COURT: OKAY. WELL, FOR THE SAME REASONS I WOULD
11 RESPECTFULLY DENY THOSE MOTIONS AS WELL. I THINK THERE IS ENOUGH
12 EVIDENCE IN THERE, VIEWING IT IN A LIGHT MOST FAVORABLE TO THE
13 STATE, WHERE THE JURY COULD REASONABLY RETURN A VERDICT OF GUILT
14 ON ALL THOSE CHARGES.

15 OKAY.

16 MR. SUMNER: YOUR HONOR, AT THIS POINT I WOULD LIKE TO
17 CONSULT WITH MY CLIENT REGARDING HIS RIGHTS TO TESTIFY.

18 THE COURT: OKAY.

19 MR. SUMNER: AND HIS RIGHTS TO PRESENT A DEFENSE. I WOULD
20 LIKE A FEW MINUTES FOR THAT, PLEASE, SIR.

21 THE COURT: OKAY.

22 MR. SUMNER: AND I WOULD ASK THAT AT THE CONCLUSION OF THE
23 DEFENSE'S CASE AND ANY STATE'S CASE IN REPLY THAT WE BE ALLOWED
24 TO ARGUE AGAIN TO THE COURT. I BELIEVE THAT WE HAVE FLUSHED OUT
25 THE JURY CHARGES FOR THE MOST PART.

MORRIS SULLIVAN -- BY THE COURT

1 **THE COURT:** YES, SIR.

2 **MR. SUMNER:** WITH THE EXCEPTION OF THE DEFENSE REQUEST FOR
3 AN INVOLUNTARY MANSLAUGHTER CHARGE.

4 **THE COURT:** OKAY.

5 **MR. SUMNER:** SO AT THIS TIME I WOULD REQUEST A BRIEF
6 RECESS.

7 **THE COURT:** OKAY. ALL RIGHT. WE'LL TAKE A BREAK. JUST
8 LET ME KNOW WHEN YOU'RE READY, MR. SUMNER.

9 **MR. SUMNER:** YES, SIR.

10 (A RECESS WAS TAKEN FROM 10:00 TO 10:43 A.M.)

11 **THE COURT:** MR. SUMNER, HAS YOUR CLIENT MADE A DECISION
12 ABOUT WHETHER OR NOT HE'S GOING TO TESTIFY?

13 **MR. SUMNER:** HE HAS, YOUR HONOR. HE INDICATES TO ME THAT
14 HE DOES NOT WISH TO BUT HE'S READY FOR THE VOIR DIRE FROM THE
15 COURT.

16 **THE COURT:** OKAY. LET ME -- MR. SULLIVAN, IF YOU WOULD
17 JUST STAND UP, SIR, AND WE'LL PLACE YOU UNDER OATH AND I'M GOING
18 TO ASK YOU SOME QUESTIONS ABOUT YOUR RIGHT TO TESTIFY OR NOT TO
19 TESTIFY, OKAY?

20 **MORRIS A. SULLIVAN,** HAVING BEEN DULY
21 SWORN, TESTIFIED AS FOLLOWS:

22 **BY THE COURT:**

23 **Q** MR. SULLIVAN, I'M GOING TO EXPLAIN TO YOU CERTAIN OF YOUR
24 RIGHTS, AND IF YOU DON'T UNDERSTAND ANYTHING I SAY OR IF YOU NEED
25 ME TO REPEAT ANYTHING OR IF IT'S UNCLEAR TO YOU IN ANY WAY OR IF

MORRIS SULLIVAN -- BY THE COURT

1 YOU NEED TO TALK TO MR. SUMNER MORE, JUST LET ME KNOW, OKAY, SIR?

2 A YES, SIR.

3 Q ALL RIGHT. AND IF YOU WANT ME TO EXPLAIN ANYTHING IN MORE
4 DETAIL, JUST LET ME KNOW THAT.

5 AS YOU KNOW AND AS YOUR LAWYER HAS TOLD YOU, THE STATE HAS
6 RESTED. SO WE'VE REACHED THE POINT IN THE TRIAL WHERE YOU CAN
7 PRESENT A DEFENSE. AND YOU HAVE THE RIGHT TO CLAIM THE
8 PROTECTIONS GIVEN TO YOU BY THE CONSTITUTION, THE FIFTH AMENDMENT
9 OF THE CONSTITUTION AND ARTICLE I SECTION 12 OF THE SOUTH
10 CAROLINA CONSTITUTION BOTH GIVE YOU THE RIGHT TO NOT INCRIMINATE
11 YOURSELF, SIR. AND YOU CAN'T BE FORCED TO BE A WITNESS. NOBODY
12 CAN FORCE YOU TO TESTIFY. DO YOU UNDERSTAND THAT, SIR?

13 A YES, SIR.

14 Q AND YOU CAN'T BE REQUIRED TO TESTIFY IN THIS CASE, AND YOU
15 HAVE THE RIGHT TO TESTIFY ON YOUR OWN BEHALF IF YOU CHOOSE TO.
16 BUT THAT'S A PERSONAL DECISION YOU HAVE TO MAKE, MR. SULLIVAN.
17 NOBODY CAN MAKE IT FOR YOU. YOU JUST HAVE TO GET THE BEST ADVICE
18 YOU CAN, WHICH I'M SURE YOU'VE GOTTEN FROM MR. SUMNER, AS TO
19 WHAT'S IN YOUR BEST INTEREST TO DO FROM A STRATEGIC STANDPOINT.
20 BUT WHETHER YOU WANT TO TESTIFY IS A PERSONAL RIGHT AND NO ONE
21 CAN GIVE THAT RIGHT UP EXCEPT YOU. ALL RIGHT, SIR?

22 A YES, SIR.

23 Q NOW, IF YOU DECIDE TO TESTIFY, MR. SULLIVAN, YOU WILL BE
24 SUBJECT TO THE SAME RULES THAT GOVERN OTHER WITNESSES AND YOU MAY
25 BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN THIS

MORRIS SULLIVAN -- BY THE COURT

1 CASE. IN ADDITION, IF YOU HAVE ANY CONVICTIONS THAT INVOLVE
2 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES THAT WERE PUNISHABLE
3 BY MORE THAN ONE YEAR IN PRISON AND THE COURT DETERMINES THAT THE
4 PROBATIVE VALUE OF THOSE CONVICTIONS OUTWEIGHED ITS PREJUDICIAL
5 EFFECT TO YOU, MS. MONTIS, THE SOLICITOR, WOULD BE ABLE TO
6 INTRODUCE YOUR RECORD TO ATTACK YOUR CREDIBILITY IF YOU CHOSE TO
7 TESTIFY. DO YOU UNDERSTAND THAT, SIR?

8 A YES, SIR.

9 Q NOW, IF YOU DECIDE TO TESTIFY, THE DECISION YOU MAKE MUST BE
10 FREELY AND VOLUNTARILY MADE AND YOU MUST MAKE IT WITH KNOWLEDGE
11 OF THE PROTECTIONS GIVEN TO YOU BY THE CONSTITUTION AND THE
12 CONSEQUENCES OF YOUR DECISION TO TESTIFY. IF YOU DECIDE NOT TO
13 TESTIFY, MR. SULLIVAN, I WILL TELL THE JURY IN THE INSTRUCTIONS I
14 GIVE THEM THAT THEY ARE INSTRUCTED NOT TO HOLD THAT AGAINST YOU
15 IN ANY WAY AND THAT THERE SHOULD BE ABSOLUTELY NO PREJUDICE TO
16 YOU BECAUSE YOU DID NOT TESTIFY. AND I WILL TELL THEM, OF
17 COURSE, THAT YOU ARE PRESUMED INNOCENT AND YOU DON'T HAVE TO
18 PROVE ANYTHING IN THIS CASE. THE BURDEN OF PROOF IS ON THE
19 STATE. YOU DON'T HAVE TO SAY ANYTHING. YOU DON'T HAVE TO
20 EXPLAIN YOURSELF. AND IF YOU CHOSE NOT TO TESTIFY OR PRODUCE ANY
21 EVIDENCE THAT THEY COULDN'T USE THAT AGAINST YOU AND THEY
22 COULDN'T EVEN TAKE IT INTO ACCOUNT WHEN DECIDING WHETHER YOU WERE
23 GUILTY OR NOT GUILTY. AND THEY COULDN'T EVEN DISCUSS THE FACT
24 THAT YOU HADN'T TESTIFIED DURING THEIR DELIBERATIONS. DO YOU
25 UNDERSTAND THAT?

1 A YES, SIR.

2 Q OKAY. NOW, IF YOU DID TESTIFY, SIR, YOU WOULD BE PUTTING UP
3 EVIDENCE. OR IF YOU PUT UP ANY OTHER EVIDENCE, YOU UNDERSTAND
4 YOU WOULD GIVE UP THE RIGHT TO THE FINAL ARGUMENT, THAT IS, IF
5 YOU CHOSE NOT TO PUT UP EVIDENCE AND NOT TESTIFY YOUR LAWYER
6 WOULD HAVE THE FINAL WORD TO THE JURY SO TO SPEAK. DO YOU
7 UNDERSTAND THAT?

8 A YES, SIR.

9 Q AND HAVE YOU TALKED TO MR. SUMNER ABOUT THE STRATEGY OF
10 THAT, SIR?

11 A YES, SIR.

12 Q OKAY. HAVE YOU HAD ENOUGH TIME TO TALK TO MR. SUMNER ABOUT
13 YOUR RIGHT TO TESTIFY OR NOT TO TESTIFY AND THE CONSEQUENCES OF
14 DOING SO?

15 A YES, SIR.

16 Q OKAY. HAVE YOU FULLY UNDERSTOOD ALL OF YOUR DISCUSSIONS
17 WITH MR. SUMNER?

18 A YES, SIR.

19 Q DO YOU NEED ANY MORE TIME TO TALK WITH HIM?

20 A NO.

21 Q DO YOU NEED ANY MORE TIME TO TALK WITH ANYONE ELSE, LIKE
22 FAMILY MEMBERS OR FRIENDS, REGARDING YOUR RIGHT TO TESTIFY OR NOT
23 TESTIFY?

24 A NO.

25 Q OKAY. AND HAVE YOU UNDERSTOOD EVERYTHING I HAVE EXPLAINED

MORRIS SULLIVAN -- BY THE COURT

1 TO YOU, MR. SULLIVAN?

2 A YES, SIR.

3 Q OKAY. DO YOU HAVE ANY QUESTIONS ABOUT WHAT I HAVE GONE OVER
4 WITH YOU?

5 A NO, SIR.

6 Q OKAY, SIR. DO YOU WISH TO TESTIFY IN THIS CASE, MR.
7 SULLIVAN?

8 A NO, SIR.

9 THE COURT: OKAY. ALL RIGHT. THANK YOU, SIR.
10 OKAY. YES, SIR.

11 MR. SUMNER: YOUR HONOR, TO RETURN TO A POINT THAT WE HAD
12 DISCUSSED A GOOD DEAL IN THIS CASE, AND THAT IS THE DEFENDANT'S
13 REQUEST FOR A CHARGE OF INVOLUNTARY MANSLAUGHTER.

14 THE COURT: YES, SIR.

15 MR. SUMNER: I WOULD LIKE TO SUPPLEMENT MY ARGUMENT FROM
16 YESTERDAY -- AND AGAIN CITING THE MECKLER CASE AND THE LANGUAGE
17 CONTAINED THEREIN -- WITH THE TESTIMONY THAT WE HEARD THIS
18 MORNING, AGENT KIMBERLY -- OR FORMER AGENT KIMBERLY BLACK
19 TESTIFIED THAT IT WAS IN HER OPINION, EXPERT OPINION, IT WAS A
20 CONTACT SHOT THAT KILLED MR. POWERS. AND I SAID, DID THAT MEAN
21 THE MUZZLE OF THE GUN WAS LAYING RIGHT UP AGAINST HIS CHEST? AND
22 SHE SAID, YES, IN MY OPINION. I THINK THAT FURTHER GIVES REASON
23 TO THE COURT TO CHARGE INVOLUNTARY MANSLAUGHTER BECAUSE PURSUANT
24 TO THE TESTIMONY THAT WE HEARD FROM RONICA BUTLER ON TUESDAY SHE
25 SAID THAT MR. POWERS CONTINUED TO PROCEED TOWARD MR. SULLIVAN

MATTERS AND MOTIONS

1 DESPITE THE FACT THAT THE FIRST WARNING SHOT AND THE SECOND SHOT,
2 WHICH WENT THROUGH HIS LEG. NOW, INTERESTINGLY, ALL THREE SHOTS
3 WERE SHOT DOWNWARD. THE FIRST ONE WAS IN THE FLOOR. THE SECOND
4 ONE, THE COURT HAS SEEN THE PICTURES. THE BULLET IS ALMOST
5 PERPENDICULAR TO THE FLOOR. AND YOU ALSO RECALL DR. WARD'S
6 TESTIMONY WHERE HE SAID THAT THE ANGLE OF THE SHOT THAT WENT INTO
7 HIM WAS DOWNWARD. I THINK A JURY COULD EASILY INFER, BASED ON
8 THE EVIDENCE, THAT ALL THREE SHOTS WERE INTENDED TO BE FIRED
9 DOWNWARD. AND THAT WOULD CERTAINLY BE RECKLESS. BUT THE JURY
10 COULD FEEL THAT ALTHOUGH MR. SULLIVAN WAS LAWFULLY ARMED IN SELF-
11 DEFENSE THAT HIS DISCHARGING OF THE WEAPON WAS RECKLESS. THAT
12 COULD CERTAINLY BE INFERRED FROM THE EVIDENCE.

13 THERE HAS BEEN NO EVIDENCE OR TESTIMONY TO MY KNOWLEDGE COME
14 FORWARD TO SAY ANY OF THESE SHOTS WERE INTENTIONAL. HIS
15 STATEMENT SAID SHOTS WERE FIRED. HE DIDN'T SAY, "I INTENDED TO
16 SHOOT HIM." HE DIDN'T SAY, "I ACCIDENTALLY." HE JUST SAID,
17 "SHOTS WERE FIRED." HE DID NOT SAY IT WAS AN INTENTIONAL FIRING
18 OF THE WEAPON.

19 NOW, I WOULD AGREE THAT THE WARNING SHOT, I DON'T THINK
20 THERE IS ANY QUESTION THAT WAS CERTAINLY AN INTENTIONAL
21 DISCHARGE. BUT BASED UPON THE EVIDENCE PRESENTED TO THIS POINT
22 AND PURSUANT TO THE MECKLER DECISION, I THINK A JURY COULD INFER
23 THAT IT WAS A RECKLESS DISCHARGING OF A WEAPON AND THAT HE WAS
24 LAWFULLY ARMED IN SELF-DEFENSE. I THINK MS. BLACK'S TESTIMONY
25 FURTHERS THAT ARGUMENT FROM THE DEFENSE, WHAT YOU HEARD THIS

MATTERS AND MOTIONS

1 MORNING ABOUT IT BEING A CONTACT SHOT, AND ALSO DR. WARD IN HIS
2 TESTIMONY YESTERDAY, WHO SAID IT WAS AT A DOWNWARD ANGLE. MY
3 UNDERSTANDING OF THE MECKLER DECISION IS IF THERE IS ANY EVIDENCE
4 FROM WHICH A JURY COULD POSSIBLY INFER A DEFENDANT SHOULD BE
5 CONVICTED OF THE LESSER INCLUDED OFFENSE OF INVOLUNTARY
6 MANSLAUGHTER, IT HAS TO BE CHARGED BY THE TRIAL COURT.

7 SO BASICALLY THAT -- I'M GOING TO REINCORPORATE MY
8 STATEMENTS TO YOU FROM YESTERDAY CERTAINLY AND TODAY THERE HAS
9 BEEN FURTHER REASON FOR IT TO BE CHARGED. THANK YOU.

10 THE COURT: THANK YOU, MR. SUMNER.

11 YES, MA'AM, MS. MONTS.

12 MS. MONTS: MAY IT PLEASE THE COURT, YOUR HONOR.

13 THE COURT: YES, MA'AM.

14 MS. MONTS: YOUR HONOR, I BELIEVE THAT OUR CASE IS SO FAR
15 DISTINGUISHED FROM THE MECKLER DECISION AND THAT MS. BLACK'S
16 TESTIMONY THIS MORNING FURTHER CORROBORATES THE EVIDENCE AS SHOWN
17 THAT EVERYTHING THE DEFENDANT DID IN THIS CASE WAS INTENTIONAL
18 AND SHOWED NO RECKLESSNESS. THE INTENTIONAL SHOT INTO THE
19 GROUND, THE INTENTIONAL SHOT INTO THE VICTIM'S LEG, AND THEN
20 FURTHER, ONCE THE VICTIM IS FALLING DOWN PER EYEWITNESS TESTIMONY
21 AND THE DOCTOR'S TESTIMONY ABOUT THE TRAJECTORY OF THE GUNSHOT
22 INTO THE CHEST BEING DOWNWARD, YOUR HONOR, AND THE TESTIMONY
23 TODAY ABOUT THE CONTACT SHOT, TESTIMONY FROM CEDRICK EVANS THAT
24 THE DEFENDANT TURNED THE GUN SIDEWAYS IN A GANGSTER-STYLE FASHION
25 HOLDING THE GUN AS HE'S FIRING THE THIRD SHOT GOING INTO THE

MATTERS AND MOTIONS

1 VICTIM'S CHEST, EVERYTHING IS DELIBERATE, INTENTIONAL AND NO
2 RECKLESSNESS IS SHOWN. AND WITHOUT THAT, YOUR HONOR, I DON'T
3 BELIEVE INVOLUNTARY CAN BE CHARGED.

4 **THE COURT:** OKAY. WHERE IS THE EVIDENCE OF IT NOT BEING
5 INTENTIONAL? I UNDERSTAND WHAT YOU TOLD ME EARLIER ABOUT WHAT
6 THE STATEMENT SAID AND THE DOWNWARD PATH OF THE BULLET---

7 **MR. SUMNER:** YES, SIR.

8 **THE COURT:** ---EVIDENCE ON THAT, BUT THERE IS NO EVIDENCE
9 THAT IT WAS AN ACCIDENT, IS THERE?

10 **MR. SUMNER:** WELL, YES, SIR. AND I AGREE WITH MS. MONT'S
11 THAT THAT IS ONE WAY THE JURY COULD VIEW IT. NOW, WE DO KNOW
12 THAT CEDRICK EVANS TESTIFIED ABOUT THE PISTOL BEING TURNED TO THE
13 SIDE. OF COURSE, WE ALSO KNOW THAT CEDRICK EVANS SAID THAT MY
14 CLIENT WAS 18 TO 20 INCHES AWAY, THAT THE GUN WAS 18 TO 20 INCHES
15 AWAY, WHICH, OF COURSE, NOW WE KNOW IS NOT CORRECT. BUT BE THAT
16 AS IT MAY, WHAT THE STATE SAYS, THAT IS A VERSION. THERE IS NO
17 QUESTION. THAT IS A VERSION.

18 BUT ANOTHER VERSION THAT THE JURY COULD INFER WOULD BE THAT
19 THE WARNING SHOT IS FIRED DOWN AND THE OTHER TWO SHOTS ARE FIRED
20 DOWN, BUT WHEN YOU COMBINE IT WITH RONICA BUTLER'S TESTIMONY THAT
21 JERVIS POWERS CONTINUED TO COME TOWARD MY CLIENT, OKAY, IT COULD
22 EASILY BE INFERRED THAT MY CLIENT IS CONTINUING TO FIRE WARNING
23 SHOTS INTO THE FLOOR. OKAY? BUT JERVIS POWERS COMES TOWARD HIM.
24 HE SHOOTS DOWN, AS WE KNOW FROM THE SECOND SHOT, FROM THE
25 PHOTOGRAPH. IT WAS JUST RIGHT DOWN THROUGH THE LEG. AND HE

MATTERS AND MOTIONS

1 FIRES AGAIN, AND THAT UNFORTUNATELY IS THE THIRD BULLET THAT GOES
2 INTO HIS CHEST CAVITY, WHICH IS DEMONSTRATED HERE IN STATE'S
3 EXHIBIT NUMBER 27. SO A JURY COULD INFER THAT IT WAS RECKLESS TO
4 CONTINUE DISCHARGING THE WEAPON IN ANY MANNER WHATSOEVER BUT THAT
5 HE DIDN'T INTEND TO DO IT. HE DIDN'T INTEND TO KILL HIM. HE
6 COULD HAVE INTENDED TO CONTINUE WITH WARNING SHOTS. WE ALSO KNOW
7 FROM CEDRICK EVANS' TESTIMONY THAT THE SECOND AND THIRD SHOTS
8 WERE INSTANTANEOUS. HE SAID THAT FROM THE PRIOR TRIAL. HE SAID,
9 YES, (CLAPS HANDS) BAM.

10 I MEAN, WHEN YOU COMBINE ALL THAT TOGETHER, I'M NOT SAYING
11 THAT THE JURY IS NOT GOING TO GO WITH WHAT MS. MONT'S SAYS.
12 THAT'S CERTAINLY HER THEORY OF THE CASE. BUT THERE IS ANOTHER --
13 THEY COULD INFER IT HAPPENED THE WAY I SAID OR SOMETHING SIMILAR
14 TO WHAT I SAID. AND MY UNDERSTANDING OF THE CASE LAW IS IF THERE
15 IS ANY WAY THE JURY COULD INFER THAT, THEN IT NEEDS TO BE
16 CHARGED.

17 THE COURT: WELL, I'M JUST HAVING A HARD TIME MAKING THE
18 LEAP FROM THE FACT THAT THERE WAS TESTIMONY THAT THERE WERE THREE
19 SHOTS AND THAT THE VICTIM KEPT COMING AT THE DEFENDANT AFTER THE
20 FIRST AND SECOND SHOTS. IN ORDER TO BUY INTO YOUR THEORY, MR.
21 SUMNER, WOULDN'T -- ARE YOU SAYING THAT THERE IS EVIDENCE THAT
22 THE VICTIM MAY HAVE FALLEN OR GOTTEN IN THE PATH OF THE BULLETS
23 AS HE WAS TRYING TO SHOOT AT THE FLOOR? ISN'T THAT WHAT YOU JUST
24 TOLD ME?

25 MR. SUMNER: YES, SIR. I THINK THAT COULD BE INFERRED FROM

MATTERS AND MOTIONS

1 THE EVIDENCE.

2 THE COURT: THAT HE FELL DOWN OR HE---

3 MR. SUMNER: THAT HE WAS CHARGING, BECAUSE RONICA BUTLER
4 SAID HE KEPT COMING. THAT'S WHAT SHE SAID. SHE SAID, "I WAS IN
5 THERE AND JERVIS KEPT COMING." AND I SAID, "EVEN AFTER THE
6 SECOND SHOT?" AND SHE SAID, "YES. HE KEPT ON COMING." OKAY.
7 WELL, I THINK A JURY COULD INFER THAT MY CLIENT FIRES THE GUN,
8 THE WARNING SHOT INTO THE FLOOR, THAT MR. POWERS PURSUANT TO MS.
9 BUTLER'S TESTIMONY JUST CONTINUES TO COME TOWARD MY CLIENT LIKE
10 MAYBE IN A TACKLING MODE -- I DON'T KNOW, YOU KNOW, JUST
11 CONTINUES TO COME TOWARD HIM -- AND THAT MY CLIENT CONTINUES TO
12 FIRE THE WEAPON AND FIRES IT THE SECOND TIME AND IT GOES INTO HIS
13 LEG, AND THE THIRD TIME, WHICH WAS AN INSTANTANEOUS SHOT -- I
14 MEAN, I'M TRYING TO VISUALIZE HERE WHEN HE COMES TOWARD HIM AND,
15 BAM, HE GETS ONE AND, BAM, HE GETS ANOTHER ONE, AND HE FALLS AND
16 HE'S DEAD OR HE SUBSEQUENTLY UNFORTUNATELY DIES PURSUANT TO THE
17 SHOTS. BUT I THINK A JURY COULD FIND OR COULD BELIEVE THAT MY
18 CLIENT RECKLESSLY DISCHARGED THE WEAPON AND THAT HE SHOULD NOT
19 HAVE CONTINUED TO FIRE IN A DOWNWARD FASHION, THAT HE FIRED ONE
20 WARNING SHOT AND THAT HE SHOULDN'T HAVE FIRED THE SECOND AND
21 THIRD SHOT. OKAY? BUT THAT WHEN MR. POWERS CAME TOWARD HIM THAT
22 HE IN A RECKLESS MANNER -- IT WAS RECKLESS DISREGARD FOR THE
23 SAFETY OF MR. POWERS -- CONTINUED TO FIRE THE BULLETS AT THAT
24 POINT OR IT COULD EVEN FIND, YOU KNOW, THAT IS WAS ACCIDENTAL.
25 AGAIN, THERE'S BEEN NO TESTIMONY. THERE'S BEEN NO EVIDENCE SHOWN

MATTERS AND MOTIONS

1 THAT FROM ANYBODY'S PERSPECTIVE OTHER THAN THE ACT ITSELF THAT IT
2 WAS AN INTENTIONAL FIRING OF A WEAPON BY MY CLIENT. IT JUST
3 HASN'T COME IN.

4 THE COURT: WELL, YOU KNOW ALL THESE CASES, MECKLER AND THE
5 REESE CASE AND I THINK THE WRIGHT CASE, THEY ALL INVOLVE
6 SITUATIONS WHERE THE DEFENDANT SAID, "I DON'T REMEMBER WHAT
7 HAPPENED. I DON'T REMEMBER PULLING THE TRIGGER. I DIDN'T MEAN
8 TO DO THAT." WHERE IS THE EVIDENCE ALONG THOSE LINES IN THIS
9 CASE, MR. SUMNER?

10 MR. SUMNER: IT'S NOT THERE. I MEAN, IT'S NOT THERE BUT
11 THEN AGAIN IT'S NOT NOT THERE, AND I KNOW THAT DOESN'T MAKE SENSE
12 TO YOU.

13 THE COURT: NO, I FOLLOW YOU.

14 MR. SUMNER: IN A DOUBLE NEGATIVE -- IN A DOUBLE NEGATIVE
15 SENSE, YOUR HONOR, I AGREE, AND I THINK I SAID YESTERDAY TO THE
16 COURT THAT THIS CASE DOES NOT FIT IDEALLY WITHIN AN INVOLUNTARY
17 MANSLAUGHTER SCENARIO THAT OUR CASE LAW OVER SEVERAL HUNDRED
18 YEARS HAS BEEN BUILT AROUND. AND I CONCEDE THAT POINT. BUT WHEN
19 WE LOOK AT -- AGAIN, I'M A BROKEN RECORD HERE. WHEN WE LOOK AT
20 THE MECKLER DECISION AND WHEN THEY QUOTE STATE V. WHITE, A 2004
21 CASE, AND I WOULD SUBMIT TO YOU, YOUR HONOR, THAT WE'VE SEEN A
22 SHIFT IN THIS MILLENNIUM, IN THIS DECADE FROM THE CASES BECAUSE
23 IT APPEARS TO BE A SHIFTING AWAY FROM THE MORE TRADITIONAL
24 ANALYSIS AND AN EXPANSIVE VIEW HAS BEEN TAKEN BY OUR APPELLATE
25 COURTS. I DON'T KNOW IF THE COURT WOULD AGREE WITH THAT

MATTERS AND MOTIONS

1 STATEMENT OR NOT. BUT WHEN YOU LOOK AT THE MECKLER DECISION ON
2 PAGE 6 OF 7 -- AND I'M GOING JUST TO THE PART OF THE OPINION THAT
3 ADDRESSES INVOLUNTARY MANSLAUGHTER -- IT SAYS, "STATED ANOTHER
4 WAY, IF THERE IS ANY EVIDENCE FROM WHICH THE JURY COULD INFER THE
5 DEFENDANT COMMITTED A LESSER RATHER THAN A GREATER OFFENSE, THE
6 TRIAL JUDGE MUST CHARGE THE LESSER INCLUDED OFFENSE," AND THEY
7 QUOTE *STATE V. WHITE*, A 2004 OPINION. AGAIN, VERY RECENT,
8 PARTICULARLY IN THE EYES OF THE LAW, EXTREMELY RECENT. FURTHER
9 UP IN THAT PARAGRAPH, ALL -- IF YOU LOOK AT ALL THE OPINIONS,
10 YOUR HONOR, THAT THEY CITE THERE, I MEAN, THEY'RE '03, THEY'RE
11 1999. I MEAN, THIS IS A RECENT SHIFT HERE THAT WE SEE AT THE
12 BENCH AND BAR AS IT RELATES TO CHARGING OF INVOLUNTARY
13 MANSLAUGHTER.

14 THE BURRISS DECISION, WHEN I QUOTED THAT YESTERDAY, THE
15 BURRISS DECISION, "A PERSON CAN BE ACTING LAWFULLY EVEN IF HE IN
16 AN UNLAWFUL POSSESSION OF A WEAPON" -- OF COURSE, WE KNOW THAT IS
17 A CHARGE ACTUALLY GOING TO THE JURY IN THIS CASE -- "IF HE WAS
18 ENTITLED TO ARM HIMSELF IN SELF-DEFENSE AT THE TIME OF THE
19 SHOOTING." THAT'S ON ALL FOURS IN THIS CASE, THAT STATEMENT
20 RIGHT THERE. AND I'LL DRAW THE COURT'S ATTENTION TO IT. IT
21 WOULD BE ABOUT MIDWAY THROUGH THE THIRD PARAGRAPH DOWN UNDER
22 ROMAN NUMERAL THREE. I WANT TO REPEAT IT. "A PERSON CAN BE
23 ACTING LAWFULLY EVEN IF HE IS IN UNLAWFUL POSSESSION OF A WEAPON
24 IF HE WAS ENTITLED TO ARM HIMSELF IN SELF-DEFENSE AT THE TIME OF
25 THE SHOOTING," QUOTES BURRISS, AGAIN, A 1999 OPINION. THE COURT

MATTERS AND MOTIONS

1 GOES ON TO QUOTE BURRISS, "THE NEGLIGENT HANDLING OF A GUN CAN
2 SUPPORT A FINDING OF INVOLUNTARY MANSLAUGHTER."

3 I DON'T THINK I CAN ADD ANYTHING ELSE TO IT. IT'S --
4 CLEARLY IT'S THE COURT'S CALL TO MAKE, BUT WE'RE REQUESTING THAT
5 CHARGE, YOUR HONOR.

6 **THE COURT:** OKAY. I APPRECIATE YOUR ARGUMENT. YOU MAKE A
7 FINE ARGUMENT. AND THERE ARE RECENT CASES THAT -- AND I'VE
8 ALREADY MENTIONED THE REESE CASE, WHICH HAS HAD CERTIORARI
9 GRANTED IN THE SOUTH CAROLINA SUPREME COURT. AND I CAN'T WEIGH
10 THE EVIDENCE AT THIS POINT. THAT'S NOT MY FUNCTION. NOR IS THE
11 FACT THAT HIS -- THE THEORY MR. SULLIVAN HAS IS SOMEWHAT
12 CONTRADICTORY, BUT HE'S ENTITLED TO DO THAT.

13 IN THE REESE CASE THE DEFENDANT GAVE A STATEMENT. HE HAD
14 SHOT HIS WIFE IN BROAD DAYLIGHT. HE GAVE A STATEMENT TO THE
15 POLICE, HE SAYS, "I PULLED THE GUN OUT AND TOLD HER I WAS GOING
16 TO KILL MYSELF. SHE WAS TRYING TO TELL ME NOT TO KILL MYSELF. I
17 KEPT ASKING" ET CETERA. "I WAS MOVING THE GUN BACK AND FORTH AS
18 A REACTION. I DON'T KNOW WHY THE GUN WENT OFF. I THOUGHT BOTH
19 SAFETIES WERE ON." AND THE TRIAL COURT DIDN'T CHARGE INVOLUNTARY
20 MANSLAUGHTER, AND THAT'S WHAT WAS REVERSED BECAUSE THE COURT
21 FOUND THERE WAS EVIDENCE IN THAT STATEMENT THAT WOULD ENTITLE HIM
22 TO A CHARGE ON INVOLUNTARY MANSLAUGHTER. AND THEY QUOTE FROM THE
23 2003 SUPREME COURT CASE *STATE VERSUS CROSBY*, WHICH IN THAT CASE
24 CROSBY STATED, "I CLOSED MY EYES AND PULLED THE TRIGGER. I
25 DIDN'T EVEN KNOW I PULLED THE TRIGGER. I WAS SCARED. I SEEN MY

MATTERS AND MOTIONS

1 LIFE IN DANGER. I DIDN'T KNOW HOW TO REACT." AND THE COURT IN
2 CROSBY REVERSED THE TRIAL COURT FOR NOT CHARGING INVOLUNTARY
3 MANSLAUGHTER BASED ON THAT. AND THE SUPREME COURT SAID, "IN OUR
4 VIEW, THE ONLY EVIDENCE WHICH APPEARS TO DIRECTLY SUPPORT THE
5 COURT OF APPEALS RULING, WHICH HAD UPHELD THE TRIAL REFUSAL TO
6 CHARGE INVOLUNTARY MANSLAUGHTER, IS CROSBY'S STATEMENT TO POLICE
7 IN WHICH HE SAID THAT HE CLOSED HIS EYES AND PULLED THE TRIGGER.
8 HOWEVER, THIS IGNORES THE FACT THAT CROSBY IMMEDIATELY ADDED HE
9 DIDN'T KNOW HE HAD PULLED THE TRIGGER. HE DIDN'T EVEN KNOW HE
10 PULLED THE TRIGGER. THE EFFECT OF THE COURT OF APPEALS HOLDING
11 IS THAT IF THERE IS ANY EVIDENCE A SHOOTING WAS INTENTIONAL ALL
12 EVIDENCE FROM WHICH ANY OTHER INFERENCES MAY BE DRAWN IS NEGATED.
13 THAT IS NOT THE LAW OF THIS STATE."

14 SO LOOKING AT THE ENTIRE RECORD IT APPEARS THAT ALMOST ALL
15 THE EVIDENCE IS THE SHOOTING WAS INTENTIONAL. AND BE THAT AS IT
16 MAY AND THE FACT THAT WE HAVE TO GO ON WHAT THE RECORD SHOWS AS
17 TO ANY EVIDENCE, I BELIEVE THERE IS SUFFICIENT EVIDENCE FOR THE
18 JURY TO DETERMINE WHETHER IT'S MURDER, MANSLAUGHTER OR
19 INVOLUNTARY MANSLAUGHTER. SO I WILL CHARGE IT. IS THERE
20 ANYTHING FURTHER ON THIS POINT AT THIS TIME?

21 MR. SUMNER: NO, SIR, NOT FROM THE DEFENDANT.. THANK YOU.

22 THE COURT: OKAY. ALL RIGHT. LET ME -- I'M GOING TO HAVE
23 TO CHANGE THE VERDICT FORM A BIT, BUT LET ME LET Y'ALL -- LET'S
24 SEE. DO WE HAVE A VERDICT FORM UP HERE? (PAUSE) OKAY. LET ME
25 LET Y'ALL LOOK AT THE VERDICT FORM REAL QUICK AND I CAN TELL YOU

MATTERS AND MOTIONS

1 WHAT WE'LL CHANGE. WE'LL JUST HAVE TO ADD A 2C.

2 (COUNSEL REVIEW VERDICT FORM)

3 MR. SUMNER: YES, SIR. THAT'S FINE WITH ME. JUST ADD THAT
4 IN. YES, SIR.

5 THE COURT: OKAY. ALL RIGHT. THANK YOU.
6 OKAY. ANYTHING FURTHER?

7 MR. SUMNER: NOT FROM THE DEFENSE, YOUR HONOR.

8 MS. MONTS: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. ARE Y'ALL READY TO ARGUE?

10 MR. SUMNER: YES, SIR.

11 THE COURT: OKAY. YOU CAN BRING THE JURY IN. THANK YOU
12 VERY MUCH.

13 LET ME JUST SAY BEFORE THE JURY COMES IN, I APPRECIATE THE
14 FINE JOB THAT BOTH OF Y'ALL HAVE DONE, AND YOU'VE DONE AN
15 EXCELLENT JOB FOR YOUR RESPECTIVE CLIENTS IN THE HIGHEST
16 TRADITIONS OF THE BAR, AND IT IS CERTAINLY A PLEASURE TO BE
17 WORKING WITH YOU.

18 MR. SUMNER: THANK YOU, YOUR HONOR, LIKEWISE.

19 MS. MONTS: THANK YOU, YOUR HONOR.

20 (JURY REENTERS COURTROOM AT 11:07 A.M.)

21 THE COURT: OKAY. LADIES AND GENTLEMEN, I APPRECIATE YOUR
22 PATIENCE WITH US. THE STATE HAS RESTED THEIR CASE. THAT MEANS
23 THEY'VE COMPLETED THEIR PRESENTATION OF THE EVIDENCE.

24 YES, SIR, MR. SUMNER. FROM THE DEFENSE, THE DEFENSE---

25 MR. SUMNER: YOUR HONOR, THE DEFENSE RESTS.

CLOSING ARGUMENTS -- BY MS. MONT'S

1 **THE COURT:** OKAY. ALL RIGHT.

2 **MR. SUMNER:** WE'RE READY FOR CLOSING ARGUMENTS.

3 **THE COURT:** OKAY. THAT MEANS WE'VE HEARD ALL THE EVIDENCE
4 WE'RE GOING TO HEAR IN THIS CASE AND IT'S NOW TIME FOR THE
5 ATTORNEYS TO GIVE YOU THEIR CLOSING ARGUMENTS. AND, MS. MONT'S,
6 YES, MA'AM.

7 **MS. MONT'S:** MAY IT PLEASE THE COURT, YOUR HONOR.

8 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, "JERVIS
9 DISRESPECTED ME SO I PUT HIM IN THE CAR." THOSE ARE THE WORDS
10 FROM MORRIS SULLIVAN ON JANUARY 16TH, 1998, IN EXPLAINING WHY
11 JERVIS POWERS LOST HIS LIFE AT THE END OF A .40 CALIBER HANDGUN
12 BEING HELD BY HIM WHEN JERVIS POWERS WAS UNARMED, WAS SMALLER,
13 YOUNGER AND NOT CAUSING HIM A HARM. DISRESPECTING ME, SO I PUT
14 HIM IN THE CAR. THAT'S WHAT I WOULD LIKE FOR YOU THE REMEMBER
15 ABOUT THIS CASE.

16 I'M GOING TO GO THROUGH THE CHARGES THAT YOU'RE GOING TO
17 HEAR FROM HIS HONOR. IF ANYTHING I SAY IS DIFFERENT FROM WHAT HE
18 SAYS, PLEASE LISTEN TO HIM. HE IS THE JUDGE OF THE LAW. YOU ARE
19 THE JUDGES OF THE FACTS, OF WHAT HAPPENED ON JANUARY 16TH, OF
20 1998. I'M JUST HERE GIVING YOU THE STATE'S POINT OF VIEW, WHAT
21 WE BELIEVE WE HAVE PROVEN TO YOU. AND MR. SUMNER WILL HAVE THE
22 OPPORTUNITY TO TALK TO YOU AND TELL YOU WHAT HE BELIEVES. BUT
23 AGAIN, WHAT I SAY AND WHAT MR. SUMNER SAYS ARE NOT THE LAW. I'M
24 GOING TO POINT OUT THINGS TO YOU AND YOU CAN DECIDE IF YOU
25 BELIEVE THEM OR DON'T BELIEVE THEM.

CLOSING ARGUMENTS -- BY MS. MONTS

1 FIRST OF ALL, I'M GOING TO TALK TO YOU ABOUT WHAT CHARGES
2 THE JUDGE IS GOING TO GIVE YOU. THE ONE, FIRST, MURDER. WHAT
3 DID WE TALK ABOUT IN OPENING STATEMENTS? THAT INVOLVES A
4 KILLING. THERE IS NO DISPUTE. AND THERE WILL BE MANY FACTS IN
5 THIS TRIAL THAT ARE NOT DISPUTED. THE FACT THAT JERVIS POWERS
6 WAS KILLED ON JANUARY 16TH, 1998, BY THIS .40 CALIBER HANDGUN
7 WHICH WAS SHOT BY MORRIS SULLIVAN WILL NOT BE DISPUTED.

8 WHAT DO WE KNOW ABOUT MURDER OR WHAT DO WE HEAR ABOUT
9 MURDER? IT MUST INCLUDE MALICE, M-A-L-I-C-E. IT MUST INCLUDE
10 MALICE. MALICE, HIS HONOR WILL INSTRUCT YOU, IS HOSTILITY, ILL
11 WILL, MEANNESS, DEPRAVITY OF HEART. THE ONLY WAY TO KNOW THAT IS
12 IF YOU ARE IN SOMEONE'S HEAD.

13 WE CANNOT GET IN SOMEONE ELSE'S HEAD. SO HOW DO WE DECIDE
14 THAT? BASED ON FACTS WE CAN SEE. SOME OF THE FACTS THAT THE LAW
15 ALLOWS YOU TO DECIDE DID THE DEFENDANT HAVE MALICE IN HIS HEART
16 IS WHETHER A DEADLY WEAPON WAS USED. WHAT DO WE KNOW? A .40
17 CALIBER HANDGUN WILL CAUSE DEATH. THAT IS ENOUGH TO SHOW THAT
18 MALICE WAS IN HIS HEART.

19 WHAT OTHER WAYS CAN SHOW IT? BRUTAL OR EXCESSIVE FORCE AND
20 AN ATTEMPT TO MISLEAD POLICE. WHAT DO WE KNOW ABOUT THIS CASE?
21 WHAT HAPPENED? AND YOU HEARD SEVERAL WITNESSES ON THE STAND.
22 OFFICERS WENT TO THE SCENE. THEY WERE OUTSIDE. THEY KNOCKED ON
23 THE DOOR. THEY SAID, "POLICE." THEY HEARD SOME MOVEMENT INSIDE.
24 NOT UNTIL APPROXIMATELY 20 MINUTES LATER, WHEN THE CHIEF AND
25 OTHER OFFICERS ARRIVED, DID MORRIS OPEN THE DOOR. HOW WAS HE

CLOSING ARGUMENTS -- BY MS. MONTS

1 ATTEMPTING TO MISLEAD THE POLICE? WHAT WAS HE DOING DURING THAT
2 TIME INSIDE? WHAT DO WE KNOW? HE WIPED UP THE FLOOR. HE SAID
3 THAT. HE WIPED UP THE FLOOR WITH A GREEN TOWEL. IT'S EITHER IN
4 HIS STATEMENT OR THE CHIEF'S NOTES. WHAT ELSE DO WE KNOW? HE
5 CHANGED HIS CLOTHES. THERE IS A PICTURE OF HIM IN HERE. HE'S
6 GOT THE SAME PANTS ON BECAUSE THEY STILL HAVE THE BLOOD DROPLETS
7 ON HIS ANKLES. AND YOU WILL HAVE THESE PICTURES BACK WITH YOU TO
8 LOOK AT. WHAT ELSE DO WE KNOW? THERE IS A PICTURE OF MORRIS AND
9 HE'S GOT HIS SHIRT ON INSIDE OUT. HE TOOK THE BIG DOG T-SHIRT
10 OFF, THREW IT ON HIS BED, THAT HAD THE BLOOD ON IT, GRABBED
11 ANOTHER SHIRT REAL QUICK AND THREW IT ON.

12 WHAT ELSE DO WE KNOW? HE PICKED UP THE CASINGS. AT THE LAW
13 ENFORCEMENT CENTER AT FOUNTAIN INN HE HAD ONE OF THE CASINGS IN
14 HIS POCKET, SO HE WAS TRYING TO PICK THEM UP. BUT THERE WERE
15 STILL SOME FOUND THERE. THERE WAS ONE ON THE FRONT PORCH THAT
16 EITHER GOT KICKED OUT THERE OR OUT THERE WHILE THEY WERE TRYING
17 TO DRAG JERVIS' BODY OUTSIDE. THERE WAS ONE FOUND ON THE COFFEE
18 TABLE, AND THERE WAS ONE FOUND ON THE FLOOR. THAT'S FOUR SHELLS.

19 I'LL THROW THIS POINT IN SINCE I HAPPENED TO MENTION THAT.
20 THERE WERE FOUR SHELL CASINGS. THERE COULD HAVE BEEN MORE THAN
21 THREE SHOTS. WE DON'T KNOW. A LOT OF THE WITNESSES TESTIFIED
22 THEY HEARD THREE OR FOUR SHOTS. THERE COULD HAVE BEEN MORE THAN
23 FOUR. I'M ONLY GOING TO TELL YOU ABOUT THREE, BUT ~~SOME~~ ~~CASINGS~~
24 WERE FOUND AND THERE COULD HAVE BEEN MORE SHOTS FIRED THAN JUST
25 THE THREE.

CLOSING ARGUMENTS -- BY MS. MONTS

1 ANOTHER CHARGE HIS HONOR IS GOING -- THE DEFENDANT IS
2 CHARGED WITH IS POSSESSION OF A WEAPON DURING THE COMMISSION OF A
3 VIOLENT CRIME. THAT ONE WON'T TAKE LONG FOR ME TO TALK TO YOU
4 ABOUT BECAUSE THE DEFENDANT WAS IN POSSESSION OF A WEAPON, BEING
5 THE GUN, DURING A VIOLENT CRIME, WHICH WAS MURDER.

6 THE THIRD CHARGE, POSSESSION OF A PISTOL BY A PERSON UNDER
7 THE AGE OF 21. DEFENDANT WAS IN POSSESSION OF A PISTOL. HE WAS
8 18 YEARS OLD. HE'S LESS THAN 21.

9 I'M GOING TO CONTINUE ON TALKING ABOUT MURDER. MALICE MUST
10 BE AFORETHOUGHT. AND AFORETHOUGHT, IT CAN BE A SPLIT SECOND.
11 HIS HONOR WILL INSTRUCT YOU THERE IS NO AMOUNT OF TIME BUT JUST
12 THE FACT THAT THE MALICE MUST BE IN THE DEFENDANT PRIOR TO THE
13 TRIGGER BEING PULLED.

14 HIS HONOR IS GOING TO INSTRUCT YOU ON WHAT'S CALLED LESSER
15 INCLUDED OFFENSES. THIS MURDER, POSSESSION OF A WEAPON DURING A
16 VIOLENT CRIME AND POSSESSION OF A PISTOL BY THE PERSON UNDER THE
17 AGE OF 21 ARE WHAT THE DEFENDANT IS CHARGED WITH AND WHAT THE
18 STATE BELIEVES WE HAVE PROVEN TO YOU BEYOND A REASONABLE DOUBT.
19 SINCE HIS HONOR IS GOING TO CHARGE YOU ON LESSER INCLUDED
20 CHARGES, I'M GOING TO GO AHEAD AND DISCUSS THOSE WITH YOU SO YOU
21 HAVE THE STATE'S OPINION AS TO WHAT THESE ARE.

22 THERE IS VOLUNTARY MANSLAUGHTER. THIS IS A LESSER INCLUDED
23 OFFENSE OF MURDER. IT IS A KILLING, WHICH WE HAVE. HERE IT IS
24 WITHOUT MALICE, WHICH WE DON'T HAVE BECAUSE THE STATE HAS PROVEN
25 TO YOU THAT THERE WAS MALICE. IT MUST BE IN THE SUDDEN HEAT OF

CLOSING ARGUMENTS -- BY MS. MONTS

1 PASSION -- AND HIS HONOR WILL INSTRUCT YOU ON WHAT THAT MEANS,
2 SUDDEN HEAT OF PASSION -- AND THERE MUST BE SUFFICIENT LEGAL
3 PROVOCATION. LEGAL PROVOCATION DOES NOT MEAN WORDS. IT DOES NOT
4 MEAN I CAN SAY, "DID YOU SHOOT INTO MY HOUSE THIS MORNING? I
5 THINK YOU DID," AND THAT IS ENOUGH TO MAKE YOU MAD ENOUGH TO KILL
6 ME. LADIES AND GENTLEMEN, THERE IS NO VOLUNTARY MANSLAUGHTER.

7 FURTHER ON DOWN, INVOLUNTARY MANSLAUGHTER. WHAT DOES THAT
8 TAKE? THAT IS A KILLING BUT THIS TIME IT'S WITHOUT MALICE, SAME
9 AS UP HERE. ONE MORE THING, WITH NEGLIGENCE. WAS THE DEFENDANT
10 ACTING WITH INTENT AND PURPOSEFUL OR WAS HE JUST BEING NEGLIGENT?
11 LADIES AND GENTLEMEN, THERE WERE THREE SHOTS FIRED. THE
12 DEFENDANT KNEW EXACTLY WHAT HE WAS DOING. HE PLUGS ONE INTO THE
13 GROUND, WHICH THE OFFICERS LATER DIG OUT. HE SHOOTS ONE INTO THE
14 VICTIM'S LEG AND, THIRDLY, SHOOTS ONE INTO THE VICTIM'S CHEST.
15 THREE SHOTS. THREE PURPOSEFUL, INTENTIONAL SHOTS. THERE IS NO
16 INVOLUNTARY MANSLAUGHTER IN THIS CASE.

17 NOW, THERE ARE SEVERAL DEFENSES THAT I NEEDED TO DISCUSS TO
18 YOU ABOUT WHICH HIS HONOR WILL CHARGE YOU. THERE IS GOING TO BE
19 SELF-DEFENSE. LADIES AND GENTLEMEN, THIS IS NOT A CASE OF SELF-
20 DEFENSE. YOU HEARD THE TESTIMONY. YOU KNOW THE FACTS. YOU KNOW
21 WHAT WAS HAPPENING.

22 IN ORDER TO BE SELF-DEFENSE, THERE ARE FOUR REQUIREMENTS.
23 THE DEFENDANT WAS WITHOUT FAULT IN BRINGING ON THE DIFFICULTY.
24 WHERE DID THE GUN COME FROM? THE GUN THAT THIS 18-YEAR-OLD HAD
25 WAS FROM HIS BEDROOM CLOSET. IF HE HADN'T GONE BACK INTO HIS

CLOSING ARGUMENTS -- BY MS. MONTS

1 BEDROOM AND GOTTEN THE GUN FROM HIS CLOSET, THIS WOULDN'T HAVE
2 HAPPENED. NO TESTIMONY THAT JERVIS HAD ANY WEAPON WHATSOEVER,
3 GUN, KNIFE, TOOTHPICK, NOTHING. UNARMED.

4 DEFENDANT MUST BELIEVE HE WAS IN IMMINENT DANGER OF LOSING
5 HIS LIFE. WAS MORRIS SULLIVAN EVER ON JANUARY 16TH, 1998, WITH
6 FIVE OF HIS FRIENDS, SOME OF THEM WERE QUITE TALL, FIVE OF HIS
7 FRIENDS SITTING THERE IN HIS LIVING ROOM, WAS HE EVER IN DANGER
8 OF LOSING HIS LIFE? WAS HE EVER IN DANGER OF OR SUSTAINING
9 SERIOUS BODILY INJURY? AND HIS HONOR WILL CHARGE YOU ON SERIOUS
10 BODILY INJURY. SERIOUS BODILY INJURY IS A SUBSTANTIAL RISK OF
11 DEATH, PERMANENT DISFIGUREMENT OR LOSS OF A BODILY FUNCTION. SO
12 I'M GOING TO ABBREVIATE THAT BY RISK OF DEATH. IT'S CLOSE TO
13 DEATH. PERMANENT DISFIGUREMENT. MORRIS SULLIVAN WAS NEVER IN
14 DANGER OF ANY OF THOSE THINGS.

15 THIRDLY, HE HAD NO MEANS TO AVOID. MORRIS SULLIVAN HAD NO
16 WAY TO AVOID THE DANGER. LADIES AND GENTLEMEN, HE HAD -- HE HAD
17 FIVE FRIENDS IN THE LIVING ROOM. SOME OF THEM HAD SEEN HIM EVERY
18 DAY, HAD SOME OVER TO HIS HOUSE EVERY DAY FOR YEARS. TAVIS WAS
19 VERY CLOSE TO HIM, AND HE WAS VERY TALL. HE COULD HAVE HELPED
20 MORRIS OUT IF MORRIS WERE REALLY IN DANGER OF DEATH OR RECEIVING
21 SERIOUS BODILY INJURY. FIVE FRIENDS SITTING RIGHT THERE IN THE
22 LIVING ROOM. HE COULD HAVE ASKED ANY OF THEM, "HEY, TAKE HIM
23 HOME." JERVIS DIDN'T HAVE A WAY HOME. HE HAD RIDDEN OVER THERE
24 WITH R.J. I THINK HE SAID ONE TIME -- I THINK THERE IS ONE TIME
25 IN THERE HE'S -- MORRIS SAYS HE WANTS HIM OUT OF THERE. THAT'S

CLOSING ARGUMENTS -- BY MS. MONTS

1 NOT ASKING, ONE, TWO, THREE, FOUR OR FIVE OF YOUR FRIENDS SITTING
2 IN THAT LIVING ROOM, HEY, I'M GOING TO KILL HIM. I AM THAT MAD.
3 GET HIM OUT OF HERE. NEVER DID THAT. COULD HAVE LEFT THE GUN IN
4 THE CLOSET. IF THERE'S NO GUN, JERVIS WOULDN'T BE DEAD. HOW
5 ABOUT CALLING THE POLICE? OR HOW ABOUT TELLING ONE OF YOUR FIVE
6 FRIENDS, "HEY, CALL THE POLICE." THE POLICE STATION IS LESS THAN
7 A MILE FROM THE HOUSE. HOW ABOUT USING FORCE OTHER THAN DEADLY
8 FORCE? HOW ABOUT A FIST FIGHT? SOMEBODY WANTS TO FIGHT? LET'S
9 HAVE A FIST FIGHT. LET'S NOT GO GET A .40 CALIBER WEAPON AND
10 SHOOT THREE TIMES. THERE ARE ALTERNATIVES TO HAVING KILLED
11 JERVIS POWERS ON THAT DAY.

12 BESIDES SELF-DEFENSE YOU'RE GOING TO HEAR ABOUT DEFENSE OF
13 HABITATION, AND THE SAME ELEMENTS APPLY. YOU ARE ALLOWED TO USE
14 FORCE NECESSARY TO PROTECT YOURSELF FROM DEATH OR SERIOUS BODILY
15 INJURY. AGAIN, YOU MUST HAVE A THREAT OF RECEIVING -- AN
16 IMMINENT THREAT OF RECEIVING DEATH OR SERIOUS BODILY INJURY,
17 WHICH THIS CASE IS NOT EVEN CLOSE. VICTIM WAS UNARMED.

18 THERE IS GOING TO BE A CHARGE TO YOU ON NECESSITY. THERE
19 MUST BE A PRESENT EMERGENCY. YOU MUST BRING ON NO FAULT OF YOUR
20 OWN. YOU MUST BE, AGAIN, IN THREAT OF IMMINENT DANGER FROM DEATH
21 OR SERIOUS BODILY INJURY AND AGAIN THERE MUST BE NO ALTERNATIVE.
22 THERE WERE PLENTY OF ALTERNATIVES.

23 THERE IS NO SELF-DEFENSE. THERE IS NO DEFENSE OF HABITAT.
24 THERE IS NO DEFENSE OF NECESSITY.

25 TALKING AT THE BEGINNING ABOUT WAYS MORRIS SHOWED GUILTY

CLOSING ARGUMENTS -- BY MS. MONTS

1 KNOWLEDGE. HOW DID HE COVER THIS UP? I MENTIONED EARLIER, HE
2 DIDN'T LET THE POLICE IN FOR 20 MINUTES. THAT GAVE HIM TIME TO
3 CLEAN UP THE FLOOR, CHANGES HIS CLOTHES, TRY TO GRAB THE SHELL
4 CASINGS. WHAT DID HE DO? TOOK THE GUN, WRAPPED IT UP IN A
5 SHEET, CRAWLED UP IN HIS ATTIC IN HIS BEDROOM AND HID THE GUN.
6 HE IS HIDING THE MURDER WEAPON.

7 WHAT DID HE SAY WHEN THE POLICE CAME TO THE DOOR? THEY
8 RECEIVED A 911 CALL. THEY HEAR ON THE TAPE, WHICH YOU WILL HAVE
9 BACK THERE WITH YOU -- YOU WILL HEAR HOW LOUD, INTENSE, HORRIFIC
10 THIS EXPERIENCE IS. THE POLICE KNOW SOMETHING SERIOUS HAS GONE
11 ON HERE. MORRIS HAS CLEANED UP THE HOUSE, TRIED TO CLEAN HIMSELF
12 UP, FINALLY OPENS THE DOOR ONCE THE CHIEF GETS THERE, WHO HE
13 KNOWS. THEY OPEN THE DOOR. THE POLICE TELLS HIM WHAT WE'RE
14 INVESTIGATING. HE SAYS, WHAT'S GOING ON? WHAT ARE YOU DOING
15 HERE? IT'S NOT UNTIL THE CHIEF LEAVES TO GET THE SEARCH WARRANT,
16 HE'S MIRANDIZED BY OFFICER MACKAY, OFFICER MCCALL IS THERE, THEY
17 SAY WHAT HAPPENED? HE SAYS, WELL, JERVIS CAME INTO MY HOUSE AND
18 WAS DISRESPECTING ME, SO I HAD TO PUT HIM IN THE CAR. HE WAS
19 DISRESPECTED, SO HE PUT HIM IN THE CAR. DID HE SAY I WAS AFRAID?
20 DID HE SAY MORRIS CAME AT ME WITH A GUN? DID HE SAY EVERYBODY
21 RAN BECAUSE JERVIS HAD A GUN? NO.

22 WHAT ELSE DO WE KNOW? AFTER THE SHOOTING MOST OF THE PEOPLE
23 WERE OUTSIDE. MORRIS COMES OUTSIDE. HE'S YELLING. YOU HEAR
24 SOME OF THE YELLING INSIDE ONCE R.J. DIALS 911 AND DROPS THE
25 PHONE. WHAT DOES THE DEFENDANT SAY? THE DEFENDANT SAYS, "GET

CLOSING ARGUMENTS -- BY MS. MONTS

1 THIS PIECE OF 'BLANK' OUT OF HERE." THAT DOESN'T SOUND LIKE
2 SOMEBODY WHO JUST NEGLIGENTLY PULLED A TRIGGER, A TRIGGER THAT
3 REQUIRES NINE POUNDS OF PRESSURE ON THE FIRST PULL AND OVER FOUR
4 POUNDS ON THE SECOND AND SUBSEQUENT PULLS. THAT TAKES INTENT.

5 WHAT DO WE KNOW ABOUT THE WOUNDS? JERVIS HAD TWO WOUNDS,
6 AND DR. WARD TOLD YOU THAT THE WAY HE NUMBERED THEM IS JUST FROM
7 HEAD TO TOE, NOT THE ORDER THAT THE WOUNDS WERE INFLICTED ON THE
8 VICTIM. WE KNOW THAT THERE WAS A SHOT INTO THE GROUND. WHAT
9 DOES EVERYBODY DO WHEN MORRIS SHOOTS INTO THE GROUND? WHAT DID
10 CEDRICK TELL YOU? HE WASN'T EXPECTING THAT. HERE'S FIVE GUYS
11 AND RONICA, A NEW GIRL -- SHE HAD JUST MET MORRIS THAT DAY --
12 FIVE PEOPLE AND RONICA IN THE LIVING ROOM. MORRIS COMES OUT WITH
13 THE GUN AND KILLS SOMEONE. AND CEDRICK SAYS, "WE WERENT
14 EXPECTING THAT." THEY'RE SITTING AROUND, PLAYING, SMOKING POT,
15 AND SOMEONE IS KILLED. WASN'T EXPECTING THAT BECAUSE THERE WAS
16 NO NEED FOR IT.

17 A SHOT GOES INTO THE GROUND. EVERYBODY SCATTERS. RONICA IS
18 STILL SITTING IN THAT CHAIR IN THE CORNER. YOU CAN LOOK IN THE
19 PICTURE OF THE DIAGRAM OF THE LIVING ROOM. SHE'S STILL SEATED IN
20 THE CORNER. EVERYBODY ELSE RUNS OUT. WHAT DOES CEDRICK SAY?
21 EVERYBODY RUNS OUT AFTER THAT FIRST SHOT. HE COMES BACK IN AS
22 THE SECOND SHOT IS BEING FIRED. HE DOESN'T SEE MORRIS PULL THAT
23 TRIGGER, BUT HE SEES JERVIS FALLING, FALLING BECAUSE HE'S HIT IN
24 THE LEG.

25 THREE THINGS TO SAY ABOUT THAT. WHAT WOULD SOMEONE DO IF

1 THEY'RE HIT IN THE LEG? COMMON SENSE TELLS YOU THEY'RE GOING TO
2 GRAB THEIR LEG. THEY'RE GOING TO FALL DOWN. WHAT ELSE TELLS YOU
3 THAT? CEDRICK TOLD YOU THE VICTIM WAS FALLING AFTER THAT SHOT IN
4 HIS LEG. AND WHAT THIRD THING TELLS YOU THAT? THE DOCTOR.
5 BECAUSE AFTER THE WOUND IN THE LEG THE DOCTOR TELLS US ABOUT THE
6 SHOT INTO THE CHEST. THAT SHOT INTO THE CHEST -- AND THIS IS
7 SUPER IMPORTANT -- WAS A DOWNWARD TRAJECTORY, DOWNWARD. THAT
8 MEANS JERVIS WAS DOWN. HE WAS BELOW MORRIS. HE HAD FALLEN. HE
9 WAS DISABLED AFTER THAT FIRST SHOT. HE WAS IN NO WAY TO BE A
10 THREAT.

11 ANOTHER THING ABOUT THE ALTERNATIVES. WHAT ELSE? HE COULD
12 HAVE STOPPED AFTER THAT SHOT ENTERED THE LEG. WHAT WAS THE
13 NECESSITY OF THE THIRD SHOT? THERE WASN'T ONE.

14 AND WHAT WAS THE TESTIMONY ABOUT THAT THIRD SHOT FROM
15 CEDRICK? AND HIS HONOR WILL TELL YOU, AS FAR AS THE WITNESSES
16 ARE CONCERNED, YOU LOOK AT THEIR CREDIBILITY AND THEIR
17 BELIEVABILITY. WHAT DID THEY HAVE TO GAIN? WHAT WAS THEIR
18 Demeanor ON THE STAND? AND DECIDE HOW MUCH OF EACH WITNESS'
19 TESTIMONY YOU BELIEVE. HE TOLD YOU THAT HE SAW JERVIS FALLING
20 AFTER THAT SHOT IN THE LEG. AND WE CAN USE OUR COMMON
21 EXPERIENCES, COMMON SENSE AND WHAT THE DOCTOR SAID ABOUT THE
22 SECOND SHOT BEING A DOWNWARD TRAJECTORY TO CORROBORATE CEDRICK'S
23 TESTIMONY THAT JERVIS WAS FALLING ON HIS WAY DOWN.

24 AND YOU WILL HAVE PICTURES OF THE LIVING ROOM, AND THIS
25 COUCH OVER HERE IN THE CORNER IS WHERE JERVIS SAID HE FELL PARTLY

CLOSING ARGUMENTS -- BY MS. MONTS

1 ON THE COUCH AND PARTLY ON THE FLOOR. AND THIS CHAIR IS WHERE
2 RONICA WAS SITTING, AND SHE SAID CEDRICK'S BODY FELL OVER HERE,
3 WHICH BRINGS US TO A SUPER IMPORTANT PART. CEDRICK IS UP INTO
4 THIS LIVING ROOM WAY BACK HERE. HE HAS GONE THAT FAR BACK. THE
5 DOOR -- AND THERE'S A PICTURE. THE DOOR IS RIGHT HERE. HE HAS
6 NO WAY TO GET TO THAT DOOR. THERE WAS A SHOT IN THE FLOOR.
7 EVERYBODY RUNS OUT, JUMPS AROUND THIS THING, GETS OUT THE DOOR.
8 HE IS INSIDE THIS LIVING ROOM. HE HAS NO WAY OUT.

9 WHAT ABOUT WHEN HE WAS IN THE KITCHEN? I THINK THERE WAS A
10 COMMENT ABOUT HIM GOING OUT THE KITCHEN DOOR? LISTEN TO THE
11 TESTIMONY AT THAT TIME. THE GUN WAS POINTED AT HIM AT THAT
12 POINT. WAS HE GOING TO TURN HIS BACK TO MORRIS WHO IS STANDING
13 THERE WITH A LOADED .40 CALIBER PISTOL POINTED AT HIM AND PUT HIS
14 BACK TO HIM? THAT IS NOT REASONABLE.

15 WHAT ABOUT RONICA'S TESTIMONY? RONICA SAID -- FIRST OF ALL,
16 LET'S THINK OF HER STATE OF MIND. THIS IS THE FIRST DAY SHE'S
17 EVER MET MORRIS. SHE'S IN HIS HOUSE. SHE'S SKIPPING SCHOOL.
18 AND HERE IS A MURDER OCCURRED IN FRONT OF HER. I DON'T KNOW IF
19 SHE'S EVER SEEN GUNS BEFORE. I DON'T KNOW IF SHE'S EVER SEEN
20 ANYONE KILLED BEFORE. I DON'T BELIEVE SHE HAS. SHE WAS UPSET.
21 SHE WAS SHOCKED. SHE WAS CRYING. SHE WAS HORRIFIED. AND SHE'S
22 STUCK IN THAT CORNER BECAUSE THEY'RE APPROACHING HER. SHE, IF
23 YOU WILL RECALL, WAS THE LAST ONE OUT OF THE HOUSE. MORRIS EVEN
24 GOES OUT OF THE HOUSE BEFORE SHE DOES. SHE'S GOT TO JUMP OVER
25 THE PERSON WHO IS SHOT, LYING BLEEDING ON THE FLOOR THERE NEXT TO

CLOSING ARGUMENTS -- BY MS. MONTS

1 HER AND GET OUT THE DOOR. SHE SAYS, "JERVIS WAS APPROACHING
2 MORRIS." SHE SAID, "AFTER THE SECOND SHOT HE WAS APPROACHING
3 MORRIS." WHAT DO WE KNOW HAPPENS FROM COMMON SENSE THE WAY THE
4 THIRD SHOT WENT AND FROM CEDRICK'S TESTIMONY? AFTER THE SECOND
5 SHOT, THE VICTIM WAS FALLING. HE WAS FALLING. HE WAS GRABBING
6 HIS LEFT LEG AND FALLING. SHE MAY HAVE MISTOOK HIS FALLING OR
7 GRABBING HIS LEG FOR TRYING TO APPROACH MORRIS. WHAT IS HE GOING
8 TO DO TO MORRIS IF HE WERE TRYING TO APPROACH HIM? HE IS SHOT IN
9 THE LEG. COMMON SENSE TELLS YOU THAT'S PAINFUL. ARE YOU GOING
10 TO TRY TO BEAT SOMEONE UP OR PUNCH SOMEBODY WHEN YOU'VE JUST BEEN
11 SHOT IN THE LEG? NO.

12 CEDRICK'S STATEMENT, HE "WASN'T EXPECTING THAT." THEY'RE
13 PLAYING PLAYSTATION, SMOKING DOPE, TALKING. SIX PEOPLE ARE IN
14 THE LIVING ROOM. HERE COMES JERVIS AND MORRIS. WHAT DO WE KNOW?
15 JERVIS IS UNARMED. JERVIS HAS NO WEAPON. DEFENDANT MAKES THREE
16 INTENTIONAL SHOTS: ONE INTO THE FLOOR, ONE INTO THE LEG, ONE
17 INTO THE CHEST. AND THAT'S MOVING THE ARM ON UP. HE
18 SPECIFICALLY -- CEDRICK SPECIFICALLY TELLS YOU ABOUT THAT THIRD
19 SHOT. AND HERE IS SERIOUS INTENT, LADIES AND GENTLEMEN. HE
20 TELLS YOU -- CEDRICK TELLS YOU THE DEFENDANT DOESN'T HOLD THE GUN
21 STRAIGHT. HE TURNS IT, I SAY, GANGSTER STYLE. I HEAR THAT IN
22 THE MOVIES. I'M GOING TO SAY GANGSTER STYLE. HE TURNS THE GUN
23 GANGSTER STYLE. AND WHAT DOES THE EXPERT TODAY TELL YOU?
24 CONTACT SHOT. AND REMEMBER, SHE SAID CONTACT WITH THE SHIRT NOT
25 WITH THE BODY. ALL SHE HAD WAS THE SHIRT WITH THE BULLET HOLE TO

CLOSING ARGUMENTS -- BY MS. MONT'S

1 TEST. SHE SAID CONTACT WITH THE SHIRT. AND THE SHIRT WAS A
2 LITTLE BIT SIDEWAYS. IT WASN'T -- THE BULLET HOLE, SHE SAID, IS
3 NOT RIGHT IN THE MIDDLE AS THE BULLET HOLE ON HIS BODY WAS. THE
4 BULLET HOLE IN THE SHIRT IS A LITTLE BIT TO THE SIDE, WHICH WOULD
5 AGAIN CORROBORATE THE FACT THAT HE HAD FALLEN A LITTLE BIT AND
6 THE SHIRT WAS DISHEVELED FROM THAT. CEDRICK SAYS THE GUN IS
7 POINTED SIDEWAYS, HE'S STANDING OVER HIM AND SHOOTS INTO HIS
8 CHEST.

9 WHAT THREAT, WHAT IMMINENT DANGER IS MORRIS SULLIVAN IN
10 APPREHENSION OF FROM JERVIS POWERS, WHO IS DOWN ON THE FLOOR,
11 GUNSHOT IN HIS WOUND -- IN HIS LEG, UNARMED? LADIES AND
12 GENTLEMEN, THAT IS AN EXECUTION. THAT IS A MURDER. THERE IS NO
13 FEAR ON THE PART OF MORRIS SULLIVAN. HE TELLS THE POLICE HE WAS
14 DISRESPECTED SO, IN MY WORDS, HE TOOK CARE OF IT. HE WASN'T
15 GOING TO BE DISRESPECTED IN FRONT OF HIS FIVE FRIENDS. HE WASN'T
16 GOING TO BE DISRESPECTED IN FRONT OF A NEW GIRL HE WANTED TO
17 IMPRESS. AND HE TOOK CARE OF IT.

18 HE COMMITTED MURDER. HE COMMITTED POSSESSION OF A PISTOL
19 WITH A VIOLENT CRIME. HE COMMITTED POSSESSION OF A PISTOL BY A
20 PERSON UNDER THE AGE OF 21.

21 CEDRICK WASN'T EXPECTING THAT, AND NEITHER DID THE VICTIM.
22 THANK YOU.

23 THE COURT: THANK YOU, MS. MONT'S.

24 YES, SIR, MR. SUMNER.

25 MR. SUMNER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE

CLOSING ARGUMENTS -- BY MR. SUMNER

1 COURT.

2 GOOD MORNING. FIRST OF ALL, I WANT TO SAY THAT IT IS MY --
3 MY -- MY TONGUE GOT TIED THERE -- THAT IT HAS BEEN MY PLEASURE TO
4 BE HERE WITH YOU ALL THIS WEEK. I KNOW THAT THIS IS JURY
5 SERVICE. I'VE NEVER BEEN ABLE TO SERVE ON A JURY, BUT I KNOW
6 THAT IT'S NOT SOMETHING PROBABLY WHEN YOU GET NOTIFIED THAT YOU
7 JUMP UP AND DOWN ABOUT AND YOU'RE REAL EXCITED ABOUT COMING UP
8 HERE AND BEING A JUROR. BUT IT'S BEEN MY PLEASURE THIS WEEK AND
9 IT'S BEEN MY PLEASURE TO REPRESENT MORRIS SULLIVAN.

10 FIRST OF ALL I WANT TO SAY WHAT I SAID IN OPENING STATEMENT,
11 AND THAT IS THERE IS NO QUESTION THAT THIS WAS A TRAGEDY, AND I
12 HOPE THAT I'VE NOT SAID ANYTHING DURING THIS TRIAL OR DONE
13 ANYTHING TO MAKE YOU THINK THAT I DON'T FEEL THAT WAY, BECAUSE
14 THERE IS NO QUESTION THAT WHAT HAPPENED WAS A TRAGEDY.

15 I TRIED TO KEEP MY WORD TO YOU THAT I TALKED ABOUT ON
16 TUESDAY THAT I WOULD MOVE QUICKLY WITH THE WITNESSES, ONLY ASK
17 THEM RELEVANT QUESTIONS ABOUT WHY WE ARE HERE THIS WEEK AND THAT
18 IT WOULD BE A FAIRLY SHORT TRIAL, AND I THINK THAT YOU ALL WOULD
19 HAVE TO AGREE THAT FOR A MURDER TRIAL WE MOVED PRETTY QUICKLY AND
20 IT HAS BEEN SHORT. I KNOW THERE ARE MANY -- I'VE BEEN INVOLVED
21 IN MURDER TRIALS BEFORE WHICH HAVE GONE MUCH LONGER THAN THIS.
22 SO, AGAIN, I WANTED TO LET YOU KNOW I'VE TRIED TO DELIVER ON THAT
23 POINT. AS ATTORNEYS, MS. MONTS AND I, OUR WORK IS JUST ABOUT
24 COMPLETED AND YOUR WORK WILL CONTINUE THIS AFTERNOON.

25 I WANTED TO MAKE A STATEMENT TOO REGARDING JUDGE HILL.

CLOSING ARGUMENTS -- BY MR. SUMNER

1 EARLY ON I TOLD YOU IN THE OPENING STATEMENT THAT THIS WOULD BE
2 ONE OF THE MOST IMPORTANT DECISIONS OF YOUR LIVES, AND I HOPE
3 THAT NOTHING HAS HAPPENED IN THE LAST FEW DAYS TO CAUSE YOU TO
4 QUESTION THAT. JURY SERVICE, MR. FOREMAN AND LADIES AND
5 GENTLEMEN, IS AN INCREDIBLY HIGH DUTY. AND TO SIT IN JUDGMENT OF
6 SOMEBODY ACCUSED OF MURDER, ONE OF OUR MOST DIFFICULT CRIMES OR
7 ONE OF THE WORST CRIMES WE HAVE, OBVIOUSLY, TAKES IT TO THE VERY
8 HIGHEST LEVEL. AND YOU PROBABLY DID NOT THINK THAT COMING IN ON
9 MONDAY, THAT YOU MAY -- OR COMING IN TUESDAY MORNING -- FORGIVE
10 ME. MONDAY WAS A HOLIDAY. -- THAT YOU WOULD BE IN THIS
11 POSITION. AND I STRESSED TO YOU ABOUT HOW IMPORTANT THIS WEEK
12 WOULD BE. JUDGE HILL ALSO STRESSED IT TO YOU EARLY ON WHEN HE
13 TOLD YOU THAT IN AN APPELLATE PROCESS ERRORS OF LAW CAN BE
14 REMEDIED BY AN APPELLATE COURT. DO YOU REMEMBER WHEN HE SAID
15 THAT? HE SAID -- AT THE VERY BEGINNING HE SAID, IF I MAKE A
16 MISTAKE IT CAN BE CORRECTED, BUT FINDINGS OF FACT BY A JURY, JURY
17 DECISIONS, NOT GUILTY VERSUS GUILTY, THOSE AREN'T CHANGED.

18 AND WHAT I WANT TO SAY TO YOU IS THAT YOU'RE GOING TO BE
19 WRITING WITH A PEN TODAY AND NOT A PENCIL, AND YOU WILL NOT BE
20 ABLE TO GO HOME AND REFLECT AND THINK, YOU KNOW, I'M NOT SURE IF
21 I -- THE MORE I THINK ABOUT IT THE MORE I THINK MAYBE SOMETHING
22 ELSE WAS THERE. I'M NOT SURE. YOU WON'T BE ABLE TO DO THAT.
23 YOU HAVE TO BE COMPLETELY SURE AND SOLVENT IN YOUR HEART WHEN YOU
24 SIGN THAT VERDICT FORM.

25 AS HIS HONOR HAS ALREADY MENTIONED TO YOU, THERE ARE THREE

CLOSING ARGUMENTS -- BY MR. SUMNER

1 CHARGES THAT MR. SULLIVAN, THAT MORRIS FACES. THE BULK OF THE
2 TRIAL HAS BEEN ABOUT THE MURDER CHARGE. BUT THERE IS ALSO THE
3 POSSESSION OF A PISTOL DURING THE COMMISSION OF A VIOLENT CRIME
4 AND ALSO THE UNLAWFUL POSSESSION OF A PISTOL BY A PERSON UNDER
5 THE AGE OF 21. HIS HONOR WILL TELL YOU THAT YOU CAN FIND MORRIS
6 SULLIVAN NOT GUILTY OF ONE, TWO OR THREE, AND YOU COULD FIND HIM
7 GUILTY OF ONE, TWO OR THREE. YOU DO NOT HAVE TO -- ALL I'M
8 SAYING IS YOU DO NOT HAVE TO FIND HIM -- JUST BECAUSE YOU FIND
9 HIM GUILTY OF ONE PARTICULAR CHARGE, THAT HAS NO BEARING ON ANY
10 OF THE OTHER CHARGES. YOUR VERDICTS CAN BE DIFFERENT AS TO THE
11 DIFFERENT CHARGES.

12 MORRIS SULLIVAN IS INNOCENT. HE IS INNOCENT, AGAIN, BECAUSE
13 OF THE PRESUMPTION OF INNOCENCE. AND JUDGE HILL WILL STRESS THAT
14 AGAIN TO YOU TODAY. REMEMBER, LADIES AND GENTLEMEN, THIS IS
15 CRIMINAL COURT AND NOT CIVIL COURT AND THE PRESUMPTION OF
16 INNOCENCE IS NOT MERELY WORDS. IT'S NOT A LEGAL FICTION. HE
17 WILL TELL YOU IT'S REAL, AND IT'S REAL TODAY. AND WHEN YOU GO
18 INTO THAT JURY ROOM YOUR FIRST NOTION, IF YOU'RE GOING TO FOLLOW
19 THE LAW, IS HE IS NOT GUILTY OF ANY AND EVERY CHARGE UNTIL THE
20 STATE CAN PUT ENOUGH EVIDENCE IN FRONT OF ME TO ERASE ANY AND ALL
21 DOUBT THAT I MAY HAVE OF HIS GUILT ON EVERY SINGLE ELEMENT.

22 LET'S START WITH MURDER. MS. MONTS, MY COLLEAGUE, MENTIONED
23 TO YOU MURDER. SHE TALKED ABOUT BASICALLY THE ELEMENTS THAT
24 JUDGE HILL WILL TELL YOU. AND, PLEASE, FOLLOW JUDGE HILL AS TO
25 ANY STATEMENT HE MAKES TO YOU. HE IS THE JUDGE OF THE LAW.

CLOSING ARGUMENTS -- BY MR. SUMNER

1 MURDER IS BASICALLY AN INTENTIONAL KILLING. IT'S PURPOSEFUL. IT
2 IS SOMETHING DONE WITH MALICE, AND MS. MONTS MENTIONED THAT, AND
3 JUDGE HILL HAS MENTIONED THAT. AND THOSE WORDS SIMPLY -- WHAT
4 DOES MALICE MEAN? IT'S KIND OF HARD TO DEFINE, BUT WORDS YOU'LL
5 HEAR MAY BE ILL WILL OR HATRED, MEANNESS, A HARD HEART. YOU'LL
6 ALSO HEAR THE WORDS THAT MURDER INVOLVES A TOTAL AND COMPLETE
7 DISREGARD FOR HUMAN LIFE.

8 LADIES AND GENTLEMEN, DURING THE COURSE OF THIS TRIAL IT'S
9 BECOME CLEAR TO ME THAT THIS IS NOT A MURDER CASE. I'LL TALK
10 ABOUT THAT MORE IN JUST A FEW MINUTES. BUT THE ELEMENTS OF
11 MURDER SIMPLY DO NOT FIT WITH WHAT OCCURRED OVER THERE IN
12 FOUNTAIN INN. AS YOU WORK YOUR WAY DOWN THE JURY FORM -- AND I
13 WANT TO COME BACK TO MURDER IN A MINUTE BECAUSE I'M GOING TO TALK
14 ABOUT WHY IT DIDN'T FIT IN MY OPINION.

15 AS YOU WORK YOUR WAY DOWN THE VERDICT FORM, THE SECOND
16 OPTION THERE WILL BE VOLUNTARY MANSLAUGHTER, AND I WANT TO TALK
17 ABOUT THAT FOR A SECOND. VOLUNTARY MANSLAUGHTER, LADIES AND
18 GENTLEMEN, IS PRIMARILY TWO ELEMENTS. IT'S TWO THINGS. IT IS AN
19 UNLAWFUL KILLING IN THE SUDDEN HEAT OF PASSION UPON SUFFICIENT
20 LEGAL PROVOCATION. NOW, THOSE ARE FANCY WORDS AND I WANT TO TALK
21 ABOUT THEM JUST FOR A SECOND.

22 A COMMON EXAMPLE OF VOLUNTARY MANSLAUGHTER WOULD BE WHEN A
23 SPOUSE COMES HOME -- THIS IS AN OLD EXAMPLE. Y'ALL PROBABLY KNOW
24 WHERE I'M GOING WITH THIS. A SPOUSE COMES HOME FROM WORK AND
25 THEY FIND THEIR SPOUSE INTIMATELY INVOLVED WITH SOMEBODY ELSE AND

CLOSING ARGUMENTS -- BY MR. SUMNER

1 THEY GET A GUN AND THEY SHOOT ONE OF THEM. OKAY? THAT'S THE
2 OLDEST EXAMPLE OF VOLUNTARY MANSLAUGHTER. BECAUSE IF YOU THINK
3 ABOUT IT, IT'S HEAT OF PASSION. THIS PERSON IS COMING HOME FROM
4 WORK, DOESN'T THINK ANYTHING IS WRONG, WALKS THROUGH THE HOUSE,
5 GOES INTO THE BEDROOM AND UNFORTUNATELY SEES A SCENE SUCH AS
6 THAT, AND IT'S HEAT OF PASSION. IT'S JUST UNH (PHONETIC). RIGHT
7 THERE. UNCONTROLLABLE ANGER. THAT'S THE FIRST ELEMENT OF
8 VOLUNTARY MANSLAUGHTER.

9 THE SECOND ELEMENT IS WHAT WE CALL SUFFICIENT LEGAL
10 PROVOCATION, WHICH MEANS IN OUR SOCIETY WE WOULD SAY THAT THE
11 AVERAGE PERSON WOULD LOSE CONTROL RIGHT THERE. THE AVERAGE
12 PERSON WOULD LOSE CONTROL AND UNFORTUNATELY MAYBE RESORT TO THAT.
13 THEY SHOULDN'T HAVE DONE IT, BUT WE UNDERSTAND THAT THAT MIGHT
14 HAPPEN WHEN SOMEBODY WITNESSES SOMETHING LIKE THAT. THAT'S AN
15 EXAMPLE. THAT'S THE MOST CLASSIC EXAMPLE I CAN GIVE YOU OF
16 VOLUNTARY MANSLAUGHTER.

17 BASED ON THE EVIDENCE, IT'S NOT HERE. WHY? WELL, FIRST OF
18 ALL -- AND I'LL TALK ABOUT THIS IN A SECOND -- THERE IS AMPLE
19 EVIDENCE THAT THERE WAS NO SUDDEN HEAT OF PASSION ON THE PART OF
20 MORRIS SULLIVAN, BECAUSE WE'VE HEARD ABOUT ALL THE STEPS HE TOOK
21 TO NOT FIRE THE GUN, AND THEN WE ALSO KNOW ABOUT HIM FIRING THE
22 WARNING SHOT IN THE FLOOR. SO WE CLEARLY KNOW THAT HE WAS NOT
23 ACTING IN SUDDEN HEAT OF PASSION, LADIES AND GENTLEMEN. AND WE
24 CLEARLY KNOW, BASED ON THE EVIDENCE THAT'S COME FORWARD, MR.
25 FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, THAT HE WAS NOT IN

CLOSING ARGUMENTS -- BY MR. SUMNER

1 AN UNCONTROLLABLE STATE, AND I'M GOING TO TALK ABOUT THAT WITH
2 YOU MORE IN JUST A SECOND AS IT RELATES TO SELF-DEFENSE.

3 BUT VOLUNTARY MANSLAUGHTER, THE ELEMENTS OF THAT, AS JUDGE
4 HILL WILL CHARGE YOU, ARE NOT HERE. HIS HONOR WILL TELL YOU THAT
5 THE STATE OF SOUTH CAROLINA MUST PROVE THE ELEMENTS OF WHAT HE IS
6 CHARGED WITH, EACH AND EVERY ELEMENT, BEYOND A REASONABLE DOUBT.
7 AND HE WILL TELL YOU THAT IF YOU HAVE A HESITATION WHEN YOU GO
8 BACK IN THAT JURY ROOM, IF YOU HAVE A HESITATION IN YOUR HEART
9 ABOUT WHETHER OR NOT EVERY SINGLE ELEMENT IS PROVEN, THEN YOUR
10 VERDICT SHOULD BE AND MUST BE NOT GUILTY. HE WILL -- PLEASE
11 LISTEN TO JUDGE HILL ON THAT POINT. HE WILL TELL YOU THAT. HE
12 WILL TELL YOU THAT A REASONABLE DOUBT IS A DOUBT WHICH WOULD
13 CAUSE A REASONABLE PERSON TO HESITATE TO ACT IN A MANNER OF THE
14 THEIR DAILY AFFAIRS.

15 NOW, I WANT TO TAKE A FEW SECONDS AND TALK ABOUT -- WELL,
16 MORE THAN A FEW SECONDS. I'M GOING TO TAKE A FEW MINUTES AND
17 TALK ABOUT SELF-DEFENSE. THESE ARE JUST MY NOTES. I'M GOING TO
18 LAY THEM OVER HERE. OBVIOUSLY THEY'RE NOT EVIDENCE.

19 LADIES AND GENTLEMEN, SELF-DEFENSE IS A COMPLETE DEFENSE.
20 IF IT APPLIES, YOU MUST FIND THE DEFENDANT NOT GUILTY. JUDGE
21 HILL WILL TELL YOU THESE WORDS. HE WILL TELL YOU THAT THE STATE
22 HAS THE BURDEN OF DISPROVING SELF-DEFENSE. NOW, THIS IS A LITTLE
23 BIT CONFUSING. MORRIS SULLIVAN DOES NOT HAVE TO PROVE SELF-
24 DEFENSE TO YOU BEYOND A REASONABLE DOUBT. THE BURDEN IS ON THE
25 STATE TO DISPROVE SELF-DEFENSE AS THEY PROVE OTHER CHARGES TO

CLOSING ARGUMENTS -- BY MR. SUMNER

1 YOU.

2 LET'S TALK ABOUT THESE ELEMENTS, AND I WILL USE MS. MONTS'
3 -- I'M GOING TO TRY NOT TO HURT THAT. I KNOW THAT'S AN EXHIBIT.
4 BUT LET'S TALK ABOUT IT FOR JUST A SECOND, IF WE CAN, THE
5 ELEMENTS OF SELF-DEFENSE. BUT PLEASE REMEMBER THAT THE BURDEN IS
6 NOT ON MORRIS, OR THE DEFENDANT, TO PROVE THIS TO YOU. THIS IS
7 SIMPLY SOMETHING FOR YOU TO CONSIDER DURING THE COURSE OF THIS
8 TRIAL AS YOU RELATE TO YOUR VERDICT.

9 NUMBER ONE -- AND I'M GOING TO STAND OVER HERE -- THERE ARE
10 FOUR ELEMENTS. FIRST OF ALL, WAS MORRIS WITHOUT FAULT IN
11 BRINGING ON THE DIFFICULTY? OKAY. WELL, LET'S TAKE A LOOK AT
12 THAT. FIRST OF ALL, WHAT DO WE KNOW? MORRIS IS IN HIS OWN HOME.
13 MORRIS IS IN HIS OWN HOME. HIS HONOR WILL INSTRUCT YOU ABOUT
14 SPECIAL PROTECTIONS GIVEN TO PEOPLE THAT ARE INSIDE THEIR OWN
15 HOME, AND I'M NOT GOING TO DISCUSS THOSE RIGHT NOW. BUT LET'S
16 REMEMBER, FIRST OF ALL, HE'S IN HIS OWN HOME. ONLY AS IT RELATES
17 TO BRINGING ON THE DIFFICULTY.

18 NUMBER TWO, A GROUP OF YOUNG MEN COME OVER. WE KNOW THAT.
19 JERVIS POWERS IS WITH THEM. THEY'RE UNINVITED. THERE IS NO
20 TESTIMONY. THERE IS NO EVIDENCE OF ANY TYPE OF INVITATION OR
21 REQUEST THAT MORRIS SULLIVAN MADE FOR THEM TO COME OVER. AND IN
22 FACT, I BELIEVE THE TESTIMONY WAS THAT MS. MONTS QUOTED THAT THE
23 LAY WITNESSES SAID KIND OF SURPRISED, YOU KNOW. I BELIEVE THAT
24 TAVIS BARKSDALE AND I BELIEVE RONICA BUTLER SAID NOBODY KNEW
25 ANYBODY WAS COMING OVER. OKAY? ALL RIGHT.

CLOSING ARGUMENTS -- BY MR. SUMNER

1 NUMBER THREE, WHEN WE TALK ABOUT BRINGING ON THE DIFFICULTY,
2 I ASKED THIS QUESTION OF A COUPLE WITNESSES AND I'D LIKE TO CLEAR
3 UP NOW WHY I DID ASK IT. IF YOU WILL RECALL, THERE WAS TESTIMONY
4 THAT WHEN THE GROUP -- WHEN R.J. COOK, THE DRIVER, WENT TO JERVIS
5 POWERS' HOME, OR IT MIGHT HAVE BEEN HIS RELATIVE'S HOME NEXT
6 DOOR, IF YOU'LL RECALL, ONE OF THE WITNESSES -- AND I CAN'T
7 RECALL HIS NAME RIGHT NOW -- SAID, "I DIDN'T GET OUT OF THE CAR."
8 I BELIEVE IT WAS CEDRICK EVANS. "I STAYED IN THE CAR." BUT YOU
9 REMEMBER WHAT THEY TALKED ABOUT, AND THAT WAS THE MEETING ON THE
10 PORCH. FIFTEEN MINUTES. WE DON'T KNOW WHAT WAS SAID, OKAY? BUT
11 THAT GROUP GOES TO JERVIS POWERS' HOME, FIND HIM, AND THEN TALK
12 WITH HIM FOR 15 MINUTES.

13 FROM THE EVIDENCE IT WOULD BE EASY TO INFER THAT THEY TOLD
14 HIM, YOU'RE GETTING IN THIS CAR AND WE'RE GOING TO ADDRESS THIS
15 SITUATION. WE DON'T KNOW THAT BECAUSE NONE OF US WERE HERE. BUT
16 WE DO KNOW THAT THAT MEETING TOOK PLACE.

17 ALL TESTIMONY IS CONSISTENT THAT, AGAIN, I'M ON ELEMENT
18 NUMBER ONE, THAT JERVIS POWERS CONFRONTS MORRIS SULLIVAN IN HIS
19 HOME. WE ALL HEARD THAT FROM EVERY WITNESS. HE CAME IN AND
20 TALKED ABOUT, I'M HERE AND THE WORD IS YOU SHOT INTO MY HOME, OR
21 DID YOU SHOOT INTO MY HOME? OR SOMETHING ALONG THOSE LINES.

22 WHAT ELSE DO WE KNOW? JERVIS TOOK HIS COAT OFF. ALL THE
23 WITNESSES WERE CONSISTENT. IT WAS IN A THREATENING, FIGHTING
24 MANNER. HE, JERVIS POWERS, IS THE AGGRESSOR.

25 WHAT ELSE DO WE KNOW? HE PURSUES MORRIS TO THE BEDROOM. WE

CLOSING ARGUMENTS -- BY MR. SUMNER

1 KNOW THAT. NO QUESTION ABOUT THAT. EVERYBODY AGREED THAT MORRIS
2 WENT BACK TO THE BEDROOM FIRST AND THAT JERVIS POWERS WENT BACK
3 TO THE BEDROOM AFTERWARDS.

4 OKAY. WHAT ELSE DO WE KNOW? HE CONTINUED TO PURSUE MORRIS
5 RIGHT UP THROUGH ALL OF THE SHOTS THAT WERE FIRED. RONICA BUTLER
6 TOLD US THAT. SHE SAID THE WARNING SHOT -- AND SHE WAS ONE.
7 REMEMBER? SHE WAS THE ONE. SHE STAYED IN THERE. THE GENTLEMEN
8 WERE IN THE PROCESS OF LEAVING, BUT SHE SAID, "I WAS THERE. I
9 WAS THE LAST ONE OUT." SHE SAID UNEQUIVOCALLY THAT JERVIS POWERS
10 -- AND I'LL TALK ABOUT HIS STATEMENTS IN A MINUTE -- BUT THAT
11 JERVIS POWERS CONTINUED TO PURSUE MORRIS. MORRIS IS WALKING
12 BACKWARDS, AS WE KNOW, WHEN HE FIRES ONE SHOT INTO THE GROUND,
13 AND HE FIRES A SECOND SHOT. I'LL TALK ABOUT THAT IN A SECOND.
14 ALL THREE SHOTS WERE DOWNWARD. OKAY? ALL THREE SHOTS -- WE'LL
15 TALK ABOUT THAT IN A SECOND -- DOWN. AND THEN THE THIRD ONE.
16 AND SHE SAID, ALL HE DID WAS HE KEPT PURSUING. HE KEPT PURSUING.
17 HE KEPT COMING.

18 SO AS IT RELATES TO ELEMENT NUMBER ONE, WAS MORRIS SULLIVAN
19 WITHOUT FAULT IN BRINGING ON THE DIFFICULTY? YES, HE DIDN'T
20 INVITE HIM OVER THERE. AND ALL THE THINGS THAT I JUST TALKED
21 ABOUT SHOW THAT HE WAS WITHOUT FAULT IN BRINGING ON THE
22 DIFFICULTY.

23 ELEMENT NUMBER TWO, MORRIS MUST HAVE BELIEVED THAT HE WAS IN
24 IMMINENT DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY
25 INJURY. THE EVIDENCE THAT YOU HEARD THROUGHOUT THE TRIAL,

CLOSING ARGUMENTS -- BY MR. SUMNER

1 PARTICULARLY FROM CHIEF MORTON, INDICATES THAT THERE WAS A
2 SCUFFLE OR STRUGGLE OVER THE PISTOL IN THE BEDROOM. REMEMBER?
3 BECAUSE MORRIS MENTIONED IT IN HIS STATEMENT, AND I BELIEVE ONE
4 OF THE OTHER WITNESSES SAID, "I COULD HEAR SOMETHING GOING NO
5 BACK THERE." THEY SAID, "THEY WASN'T BACK THERE BUT THREE OR
6 FOUR MINUTES BUT I COULD HEAR SOMETHING GOING ON BACK THERE." SO
7 WE KNOW OR WE COULD LOGICALLY BELIEVE THAT THERE WAS STRUGGLE FOR
8 THE GUN. OKAY? THERE'S A STRUGGLE FOR THE PISTOL. SO WOULD
9 MORRIS BELIEVE THAT HE WAS IN IMMINENT DANGER OF LOSING HIS LIFE
10 OR SUSTAINING SERIOUS BODILY INJURY? WELL, UNFORTUNATELY JERVIS
11 IS TRYING TO GET THE PISTOL. THERE IS NO QUESTION ABOUT THAT.
12 OKAY.

13 NUMBER TWO, AND SOME OF THESE OVERLAP A LITTLE BIT, NUMBER
14 TWO IS THAT HE CONTINUED, THAT MORRIS FIRED THE WARNING SHOT.
15 NOW, WHY WOULD HE FIRE -- I THINK I MADE A MISTAKE HERE. WHY
16 WOULD HE FIRE A WARNING SHOT IF HE DIDN'T FEEL LIKE THAT HE WAS
17 IN IMMINENT DANGER? AND WHAT ARE YOU TRYING TO COMMUNICATE WITH
18 A WARNING SHOT? WHAT ARE YOU SAYING? GET OUT. BAM, RIGHT IN
19 THE GROUND. GET OUT. WHAT IS A COMMON -- WHAT IS A PERSON OF
20 ORDINARY, I GUESS, SENSIBILITIES AT THAT POINT THINKING? WHAT
21 ARE YOU GOING TO DO IF SOMEBODY HAS A WEAPON POINTED AT THE
22 GROUND AND SAYS, "I'M TELLING YOU TO LEAVE" AND FIRES A SHOT?
23 YOU'RE GOING TO LEAVE. YOU'RE GOING TO GO. MORRIS CLEARLY FELT
24 HE WAS IN IMMINENT DANGER BECAUSE HE FIRED THE WARNING SHOT.

25 NOW, WE ALSO KNOW -- EASY TO STATE -- THAT HE PROBABLY FIRED

CLOSING ARGUMENTS -- BY MR. SUMNER

1 TWO WARNING SHOTS AND MAYBE EVEN THREE BECAUSE OF THIS RIGHT
2 HERE. YOU ALL SAW THE PICTURE. NOW, I DON'T HAVE A DEVICE LIKE
3 THEY HAVE TO SHOW THESE PICTURES. BUT YOU ALL KNOW WHAT I'M
4 TALKING ABOUT. REMEMBER I ASKED, I BELIEVE IT WAS, CHUCK MCCALL,
5 I ASKED HIM, I SAID, "WHAT ABOUT THE SECOND SHOT?" AND HE SAID
6 JUST ALMOST -- I'M GOING TO HOLD IT LIKE THIS. I THINK THIS IS
7 BETTER. -- ALMOST PERPENDICULAR TO THE FLOOR. WHAT DID THAT
8 MEAN? WHAT DOES IT SHOW? IT SHOWS THAT THE SECOND SHOT IS
9 ALMOST -- OR POINTED VIRTUALLY STRAIGHT DOWN. AND THAT MATCHES
10 UP WITH WHAT RONICA BUTLER SAID. REMEMBER, SHE SAID HE KEPT ON
11 COMING. SHE SAID JERVIS POWERS KEPT ON COMING. REMEMBER, FROM
12 CEDRICK EVANS, HE SAID INITIALLY -- AND I'LL TALK ABOUT CEDRICK
13 IN A SECOND. HE SAID INITIALLY THAT THERE WAS AT LEAST A MINUTE.
14 REMEMBER THAT? HE SAID THERE WAS AT LEAST A MINUTE BETWEEN THE
15 SECOND AND THIRD SHOTS. THEN I REMINDED HIM ABOUT HIS PRIOR
16 SWORN TESTIMONY GIVEN UNDER OATH WHERE HE SAID THAT THEY WERE
17 VIRTUALLY INSTANTANEOUS (CLAPS HANDS TWICE). BAM. JUST LIKE
18 THAT (CLAPS HANDS TWICE). AND WHY THAT'S IMPORTANT IS IT REALLY
19 MATCHES UP WITH WHAT RONICA BUTLER SAYS, WHO WAS RIGHT THERE,
20 BECAUSE THE THIRD SHOT, AS WE KNOW, WAS FIRED FROM A DOWNWARD
21 ANGLE. AND IT'S EASY -- IT'S LOGICAL FOR -- NONE OF US WERE
22 THERE. WE -- NONE OF WERE THERE. -- FOR YOU AS YOU THINK ABOUT
23 RONICA BUTLER'S TESTIMONY, HE JUST KEEPS ON CHARGING. HE JUST
24 KEEPS ON CHARGING. AND AS IT RELATES TO ELEMENT NUMBER TWO,
25 CERTAINLY MORRIS WOULD BELIEVE HE WAS IN IMMINENT DANGER BECAUSE

CLOSING ARGUMENTS -- BY MR. SUMNER

1 OF WHAT WAS SAID AND BECAUSE OF THE ACTIONS.

2 ALSO REMEMBER -- AND I'LL TALK ABOUT IT MORE IN A SECOND --
3 MORRIS, AS WE KNOW, WAS BACKING UP. HE'S GOT THE GUN POINTED
4 DOWN, AT LEAST MOST OF THE TIME. THERE WAS TESTIMONY IT WAS
5 POINTED UP AT SOME POINT. WE ALSO KNOW THAT HE GOES RIGHT
6 THROUGH THE KITCHEN. WHAT DO WE KNOW JERVIS CAN DO AT THAT
7 POINT? HE CAN JUST GET RIGHT OUT OF THE KITCHEN. HE CAN JUST GO
8 RIGHT OUT THE DOOR. MS. MONTS SAID, WELL, THERE WAS NO WAY FOR
9 HIM TO LEAVE. SURE THERE WAS. HE PASSED BY A DOOR BEFORE HE
10 EVEN GOT IN THE LIVING ROOM. AND CHUCK MCCALL SAID THAT. HE
11 SAID -- REMEMBER THAT WITH THE POINTER? HE SAID THEY'RE OVER
12 HERE. RIGHT IN THIS SIDE AREA THERE'S A KITCHEN DOOR. EVERY
13 WITNESS TESTIFIED, THAT HAD BEEN IN MORRIS' HOME, THEY SAID,
14 THERE IS A KITCHEN DOOR RIGHT THERE. SO, I MEAN, AGAIN, AS IT
15 RELATES TO ELEMENT TWO, I MEAN, HE'S JUST GONE PAST A DOOR.

16 ELEMENT THREE, A REASONABLE PERSON WOULD HAVE FELT THE SAME
17 WAY -- AND THESE ARE SIMILAR. A REASONABLE PERSON WOULD HAVE
18 FELT THE SAME WAY. REMEMBER WHAT -- AND SOME OF WHAT I'M
19 MENTIONING KIND OF TIE INTO ALL OF THE ELEMENTS, AND I HOPE Y'ALL
20 WILL FORGIVE ME FOR THAT. REMEMBER WHAT CHIEF MORTON SAID
21 YESTERDAY. HE TOOK HIS NOTES FROM THE INTERVIEW. Y'ALL REMEMBER
22 THAT. AND HE READ THEM. AND I SAID -- HE SAID, THERE WAS ONE
23 WORD UNDERLINED IN MY ENTIRE PAGE OF NOTES AND THAT WAS THE WORD
24 "PLEASE." REMEMBER THAT? WHEN MORRIS SULLIVAN SAID, "I ASKED HIM
25 PLEASE LEAVE SEVERAL TIMES." "PLEASE LEAVE." THAT SPEAKS

CLOSING ARGUMENTS -- BY MR. SUMNER

1 VOLUMES TO ME.

2 AS IT RELATES TO ELEMENT NUMBER THREE, AGAIN, WE KNOW THAT
3 JERVIS CONFRONTED MORRIS INITIALLY, THAT HE TOOK THE COAT OFF AND
4 ALL OF THE OTHER THINGS. I MENTIONED ABOUT THE STRUGGLE OVER THE
5 HANDGUN THAT OCCURRED IN THE BACK. I HAVE MENTIONED ABOUT HIM
6 PASSING THE KITCHEN DOOR. I'VE TALKED ABOUT HOW JERVIS KEEPS ON
7 COMING, EVEN WHEN THE GUN IS OUT.

8 WE ALSO KNOW THAT JERVIS SAID SEVERAL THINGS, AND WE KNOW
9 MORRIS SAID A FEW THINGS TOO. WE KNOW THAT JERVIS SAID, "I DON'T
10 GIVE A 'F' ABOUT THAT PISTOL." NOW, IN OUR COMMON SENSE AND
11 EXPERIENCE, WHAT DOES THAT MEAN WHEN SOMEBODY'S COMING TOWARDS
12 YOU? "I DON'T GIVE A 'F' ABOUT THAT PISTOL." HE SAYS, "I'M NOT
13 AFRAID TO DIE." I MEAN, WHAT WOULD THAT MEAN?

14 WE KNOW FROM WHAT CEDRICK EVANS SAID THAT MORRIS SAID, "I
15 DON'T WANT TO DO THIS." REMEMBER? "I DON'T WANT TO DO THIS," AS
16 HE IS BACKING UP. AND CEDRICK EVANS SAID THAT HAPPENED BEFORE
17 ANY SHOTS WERE FIRED, THAT MORRIS SULLIVAN SAID, "I DON'T WANT TO
18 DO THIS."

19 AND WHEN YOU LOOK AT THESE, WHEN YOU LOOK AT EVERYTHING THAT
20 OCCURRED THAT MORNING, TAKE IT ALL INTO ACCOUNT WHEN YOU LOOK AT
21 ALL OF THE DIFFERENT ELEMENTS, OF WHAT HE MENTIONED THAT,
22 REMEMBER, ALL THREE SHOTS WERE FIRED DOWNWARD. R.J. COOK SAID
23 THAT MORRIS SAID, "GET OUT OF HERE" OR WORDS TO THAT EFFECT,
24 AGAIN, BEFORE ANY SHOTS WERE FIRED. "GET OUT OF HERE." HE'S
25 TELLING HIM THAT. OKAY? WE ALL KNOW ABOUT THE WARNING SHOT.

CLOSING ARGUMENTS -- BY MR. SUMNER

1 AND I ASK THIS, TOO, DID JERVIS EVER PUT HIS HANDS UP? NO.
2 DID JERVIS EVER SAY, "I'M LEAVING"? NO. DID JERVIS EVER SAY,
3 "JUST PUT THE GUN DOWN. I'M GOING TO GO"? NO. JERVIS NEVER
4 SAID ANY OF THOSE THINGS. HE JUST CONTINUED TO COME AND ADVANCE
5 TOWARD MORRIS IN MORRIS' OWN HOME.

6 THE FOURTH ELEMENT IS, AS WE LOOK THERE, THAT A REASONABLY
7 PRUDENT PERSON OF ORDINARY COURAGE WOULD HAVE ENTERTAINED THE
8 SAME BELIEF. I'VE PROBABLY ADDRESSED THAT ALREADY. THE ELEMENTS
9 WOULD FIT IN THERE AGAIN WITH WHAT I'VE ALREADY TALKED ABOUT.

10 NUMBER THREE, HE HAD NO MEANS OF AVOIDING THE DANGER OR ANY
11 OTHER MEANS OF AVOIDING THE DANGER. WELL, ONE THING ELSE --
12 ANOTHER THING THAT I'D LIKE TO BRING TO YOUR ATTENTION IS THE
13 EVIDENCE UNCONTRADICTED SHOWS THAT MORRIS CONTINUED TO RETREAT
14 THROUGHOUT THE ENTIRE EVENT. FROM THE BEDROOM HE RETREATS -- AND
15 I'M JUST GOING TO -- THROUGH THE HALLWAY, THEN KIND OF COMES
16 THROUGH THE KITCHEN, OKAY, THEN OUT INTO THE LIVING ROOM. HE IS
17 CONSISTENTLY AND CONSTANTLY RETREATING. AND AGAIN, I TALKED
18 ABOUT THE FACT THAT MORRIS -- OR THAT JERVIS NEVER SAID -- NEVER
19 PUTS HIS HANDS UP, NEVER GIVES ANY INDICATION TO ANYBODY THAT HE
20 IS GOING TO DO ANYTHING OTHER THAN TAKE THAT GUN AWAY. THEY'VE
21 ALREADY STRUGGLED FOR IT IN THE BACK BEDROOM. HE'S CONTINUING
22 TOWARD HIM DESPITE THE WARNING SHOT, DESPITE MORRIS' STATEMENTS.
23 ALL HE SAYS IS, "I'M COMING." OKAY? HE NEVER DOES A SINGLE
24 THING TO INDICATE HE IS GOING TO DO ANYTHING OTHER THAN THAT.
25 OKAY? I HADN'T HEARD IT IF IT'S -- YOU KNOW, IF IT'S HAPPENED, I

CLOSING ARGUMENTS -- BY MR. SUMNER

1 HAVEN'T HEARD IT.

2 TODAY SOME IMPORTANT TESTIMONY CAME OUT, AND THAT WAS FROM
3 MS. BLACK, AND SHE SAID THAT IT WAS A CONTACT SHOT, IF YOU WILL
4 REMEMBER. SHE SAID IT'S A CONTACT SHOT. THE MUZZLE OR THE END
5 OF THE BARREL, WHICH WOULD BE THIS END HERE, WAS ACTUALLY ON
6 JERVIS POWERS. OKAY? WHEN YOU COMBINE THAT WITH RONICA BUTLER'S
7 TESTIMONY, IT IS CERTAINLY LOGICAL TO BELIEVE THAT JERVIS POWERS
8 JUST CONTINUED TO COME TOWARD -- AND IT'S POSSIBLE, IT'S
9 POSSIBLE, BECAUSE ALL OF THE SHOTS WERE POINTED DOWNWARD, IT'S
10 POSSIBLE THAT MORRIS WAS JUST CONTINUING TO FIRE A SECOND AND
11 THIRD WARNING SHOT, VERY POSSIBLE, BECAUSE WE KNOW THAT'S THE
12 BULLET -- THAT'S THE ANGLE OF THE BULLETS. WE KNOW THAT. OKAY?
13 WE ALSO KNOW FROM CEDRICK THAT THEY WERE INSTANTANEOUS. WHAT
14 ELSE DO WE KNOW? WE KNOW THAT HE DIDN'T WAIT A MINUTE TO SHOOT
15 THE THIRD TIME BECAUSE CEDRICK SAID THAT BACK IN THE FIRST
16 HEARING WHEN THINGS WERE A LOT FRESHER IN HIS MIND. AND WHAT
17 ELSE DO WE KNOW? WE KNOW THAT HE WASN'T 20 INCHES FROM HIM.
18 REMEMBER THAT? CEDRICK SAID HE WAS ABOUT 18 TO 20 INCHES AWAY,
19 MORRIS WAS WHEN HE FIRED THE THIRD SHOT. AND WE KNOW THAT'S NOT
20 CORRECT BASED ON WHAT THE S.L.E.D. LADY SAID TODAY. SHE SAID
21 THERE'S NO WAY. IT WAS A CONTACT SHOT. SO IT'S VERY LOGICAL
22 THAT JERVIS IS COMING TOWARD HIM SO MUCH THAT THERE'S CONTACT AT
23 THAT POINT RIGHT THERE.

24 JUDGE HILL WILL TELL YOU THAT AS IT RELATES TO SELF-DEFENSE,
25 LADIES AND GENTLEMEN -- AND IF YOU WILL, GIVE ME JUST ONE SECOND.

CLOSING ARGUMENTS -- BY MR. SUMNER

1 (PAUSE) JUDGE HILL WILL TELL YOU THAT A DEFENDANT OR A PERSON
2 HAS THE RIGHT TO ACT ON APPEARANCES AND THAT THE DEFENDANT DOES
3 NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER, THAT A DEFENDANT
4 HAS A RIGHT TO ACT ON APPEARANCES OF WHAT HE SEES, WHAT HE
5 PERCEIVES FROM ANOTHER PERSON. JUDGE HILL WILL ALSO TELL YOU
6 THAT WORDS ACCOMPANIED BY HOSTILE ACTS -- AND THESE ARE THE LAW
7 -- THIS IS THE LAW -- WORDS ACCOMPANIED BY HOSTILE ACTS CAN,
8 DEPENDING ON THE CIRCUMSTANCES, COMPLETELY ESTABLISH SELF-
9 DEFENSE. COMPLETELY. WORDS. WE KNOW WHAT JERVIS SAID WHEN HE
10 CAME OVER.. HOSTILE ACTS, CONTINUING TO GO TOWARD HIM AND MAKING
11 THE STATEMENTS THAT HE MADE ABOUT, "I DON'T GIVE A 'F' ABOUT THE
12 PISTOL," AND OTHER THINGS LIKE THAT. HIS HONOR WILL ALSO TELL
13 YOU THAT YOU CAN CONSIDER PRIOR DIFFICULTIES BETWEEN THE PEOPLE.
14 CONSIDERING WHETHER OR NOT MORRIS HAD REASON TO BELIEVE THAT A
15 THREAT EXISTED, THINK ABOUT IT IN THIS CASE. OF COURSE HE DID.
16 I MEAN, THEY COME OVER TO HIS HOUSE AND HE'S TAKING HIS COAT OFF
17 AND HE'S CONFRONTING HIM. THEN HE'S GONE BACK TO HIS BEDROOM.
18 OF COURSE HE DOES.

19 HE WILL ALSO TELL YOU THAT THREATS BY A VICTIM CAN BE
20 CONSIDERED BY YOU IN DETERMINING WHETHER OR NOT SELF-DEFENSE MAY
21 APPLY IN THIS CASE. AND AGAIN, I'M NOT GOING TO GO BACK THROUGH
22 THE STATEMENTS. I'VE STATED THEM TO YOU ALREADY.

23 HIS HONOR WILL TELL YOU THAT WHEN A PERSON IS ON THEIR OWN
24 PREMISES OR IN THEIR OWN HOME THERE IS NO DUTY TO RETREAT, NOT
25 ONE SINGLE RETREAT STEP DO YOU HAVE TO TAKE WHEN YOU ARE IN YOUR

CLOSING ARGUMENTS -- BY MR. SUMNER

1 OWN HOME. BUT WHAT DO WE KNOW? WE KNOW MORRIS SULLIVAN DID A
2 LOT OF RETREATING THAT DAY. WE KNOW THAT HE WENT THROUGH THE
3 HALLWAY, THROUGH THE KITCHEN, AND THEN BACK INTO THE LIVING ROOM
4 AND FIRED THE WARNING SHOT. HIS HONOR WILL TELL YOU HE DIDN'T
5 EVEN NEED TO DO THAT. THAT'S THE LAW IN SOUTH CAROLINA. BUT HE
6 DID.

7 HIS HONOR WILL TELL YOU THAT A PERSON IS NOT REQUIRED TO
8 MAKE AN EXACT CALCULATION OF HOW MUCH FORCE THEY NEED TO REPEL AN
9 INTRUDER OR A TRESPASSER, THAT THEY CAN SIMPLY ACT REASONABLY,
10 AND THAT A DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS IT
11 WOULD APPEAR AT THAT POINT THAT THEY WOULD NEED TO USE.

12 HE WILL ALSO TELL YOU THAT A PERSON CAN CONTINUE FIRING
13 AFTER THE FIRST SHOT. THEY CAN CONTINUE TO FIRE UNTIL THREAT OF
14 HARM HAS BEEN REMOVED.

15 LADIES AND GENTLEMEN, CLEARLY, I BELIEVE THE EVIDENCE
16 ESTABLISHES SELF-DEFENSE. I'VE TALKED ABOUT THE FACT THAT ALL
17 THREE SHOTS WERE DOWNWARD. BUT AGAIN, THE KEY POINT HERE IS THE
18 BURDEN OF PROOF IS NOT ON MORRIS SULLIVAN TO PROVE SELF-DEFENSE;
19 THE BURDEN OF PROOF IS ON THE STATE TO DISPROVE IT. AND IF THE
20 EVIDENCE OF SELF-DEFENSE THAT HAS BEEN PUT FORWARD IN THIS TRIAL
21 CAUSES YOU TO HESITATE TO ACT ABOUT WHETHER OR NOT THE STATE HAS
22 PROVEN THE CHARGE OF MURDER OR VOLUNTARY MANSLAUGHTER, THEN YOUR
23 VERDICT SHOULD BE AND MUST BE NOT GUILTY.

24 I WOULD LIKE TO MENTION ONE OTHER POINT, SOMETHING THAT'S
25 NOT BEEN TOUCHED UPON, AND THAT IS IT WAS TESTIFIED TO THAT THERE

CLOSING ARGUMENTS -- BY MR. SUMNER

1 WAS ANOTHER LIVE ROUND IN THIS WEAPON. DO YOU ALL REMEMBER THAT?
2 THEY SAID THAT WHEN THEY FOUND THE GUN THAT THERE WAS ANOTHER
3 LIVE ROUND CHAMBERED, AND THE ONLY THING THAT WOULD NEED TO
4 HAPPEN WOULD BE THE TRIGGER WOULD NEED TO BE PULLED, MR. FOREMAN
5 AND LADIES AND GENTLEMEN, TO FIRE IT. AND THE QUESTION IS, IF
6 MORRIS SULLIVAN INTENDED TO MURDER HIM, WHY WOULD THERE BE
7 ANOTHER BULLET IN THE GUN? WHY WOULD THERE BE ANOTHER BULLET IN
8 THE GUN? THERE WOULDN'T BE.

9 HIS HONOR WILL TELL YOU THAT IF SOMEBODY IS IN THEIR OWN
10 HOME THEY HAVE THE RIGHT TO USE WHATEVER FORCE IS NECESSARY TO
11 REPEL A TRESPASSER. WHAT DO WE KNOW AGAIN? JERVIS CAME OVER
12 THERE. HE WASN'T INVITED. WHAT ELSE DO WE KNOW? HE WAS ASKED
13 TO LEAVE SEVERAL TIMES BY MORRIS. IT'S UNCONTRADICTED THAT
14 MORRIS SULLIVAN TOLD HIM IN THE BEDROOM AS HE WAS WALKING TOWARD
15 THE KITCHEN BACKWARDS, I SAID, "PLEASE LEAVE. PLEASE LEAVE."
16 CHIEF MORTON, WHO TOOK NOTES, SAT RIGHT THERE AND TOLD YOU THAT
17 WAS THE ONE THAT WAS UNDERLINED. I SAID, "WHY?" HE SAID, "I
18 EMPHASIZED IT BECAUSE MORRIS EMPHASIZED IT TO ME THAT DAY."
19 "PLEASE LEAVE. PLEASE LEAVE. PLEASE LEAVE." WE KNOW FROM
20 CEDRICK, WE KNOW FROM RONICA, WE KNOW FROM R.J., WE KNOW FROM
21 EVERYBODY THAT MORRIS SULLIVAN MADE THE STATEMENTS OF "GET OUT OF
22 HERE. I DON'T WANT TO DO THIS," ALL THOSE THINGS BEFORE ANY
23 SHOTS WERE FIRED. AND THAT IS THE DEFENSE OF HABITATION OR THE
24 DEFENSE OF HOME, AND IT'S A SPECIAL DEFENSE. AND IT IS SIMILAR
25 TO SELF-DEFENSE, LADIES AND GENTLEMEN, BUT IT DOES APPLY IN THIS

CLOSING ARGUMENTS -- BY MR. SUMNER

1 CASE.

2 HIS HONOR WILL TELL YOU ALSO ABOUT THE DEFENSE OF NECESSITY.
3 AND I'M CONCLUDING IN JUST A FEW MOMENTS. I KNOW THAT YOU ALL
4 ARE PATIENT WITH ME BECAUSE THIS TRIAL IS SO SERIOUS AND SO
5 IMPORTANT. AND THANK YOU. THE DEFENSE OF NECESSITY IS TALKING
6 ABOUT THE GUN. OKAY? WE'RE TALKING ABOUT THE WEAPONS CHARGE
7 NOW, POSSESSION OF A WEAPON DURING A VIOLENT CRIME AND THE
8 UNLAWFUL POSSESSION OF A WEAPON UNDER THE AGE OF 21. THERE'S NO
9 QUESTION THAT MORRIS WAS UNDER 21. HE WAS 18. OKAY? THE
10 DEFENSE OF NECESSITY IS -- BASICALLY, IT'S VERY SIMILAR, MR..
11 FOREMAN AND LADIES AND GENTLEMEN, TO SELF-DEFENSE. WHAT IT SAYS
12 IS, IF YOU HAVE TO ACT -- IF YOU HAVE TO COMMIT A CRIME IN ORDER
13 TO SAVE YOURSELF IN A TOUGH SITUATION, YOU CAN DO IT. OKAY?
14 THAT'S WHAT IT TALKS ABOUT WITH NECESSITY. AND THAT CHARGE,
15 LADIES AND GENTLEMEN, IS IMPORTANT AS IT RELATES TO THOSE TWO
16 WEAPONS CHARGES. OKAY? PLEASE LISTEN CLOSELY TO JUDGE HILL, AS
17 I KNOW THAT YOU WILL. HE WILL TALK WITH YOU ABOUT THE WEAPONS
18 CHARGES AND THE DEFENSE OF NECESSITY. AND THAT'S WHERE THEY COME
19 IN. THEY DON'T REALLY APPLY, LADIES AND GENTLEMEN, THAT MUCH TO
20 THE MURDER OR MANSLAUGHTER CHARGE. OKAY? THEY'RE MORE RELATED
21 TO THE GUN.

22 MORRIS SULLIVAN GAVE A WRITTEN STATEMENT AND A VERBAL
23 STATEMENT THAT DAY. HIS HONOR WILL TELL YOU AT THE CONCLUSION
24 THAT A DEFENDANT DOES NOT HAVE TO TESTIFY IN A CRIMINAL TRIAL.
25 IT CANNOT EVEN BE DISCUSSED BY YOU ALL IN THE JURY ROOM, AND I

CLOSING ARGUMENTS -- BY MR. SUMNER

1 KNOW THAT IT WON'T BE BECAUSE THAT'S WHAT THE JUDGE IS TELLING
2 YOU, THAT IT CANNOT BE CONSIDERED BY YOU IN ANY WAY, SHAPE OR
3 FORM WHATSOEVER. THERE WAS NO REAL NEED FOR HIM TO TESTIFY. I
4 MEAN, HE GAVE A WRITTEN STATEMENT. YOU'VE GOT THAT. YOU HEARD
5 WHAT CHIEF MORTON SAID ABOUT THE VERBAL STATEMENT. CHIEF MORTON
6 TOOK NOTES AND RECOUNTED THAT. SO YOU HAVE HIS VERSION OF WHAT
7 OCCURRED. SOMETHING ELSE THAT CHIEF MORTON SAID THAT I THINK IS
8 KIND OF IMPORTANT, AND MS. MONTS ALLUDED TO THIS, HE SAID, IF YOU
9 WILL REMEMBER, MORRIS SAID, "I PANICKED." REMEMBER THAT? HE
10 SAID, "I PANICKED. I HID THE GUN. I'LL SHOW YOU WHERE THE GUN
11 IS. I TOOK OFF MY SHIRT. I MOPPED UP. I USED A GREEN TOWEL," I
12 BELIEVE HE SAID, "TO SOAK UP SOME BLOOD THAT WAS ON THE FLOOR."
13 AND HE SAID HE PANICKED. AND SHOULD HE HAVE DONE THAT? NO. HE
14 SHOULDN'T HAVE. BUT I'M 41 YEARS OLD AND IT'S HARD FOR ME TO
15 REMEMBER BACK TO WHEN I WAS 18, BUT WHEN YOU'RE 18 YEARS OLD IN A
16 SITUATION LIKE THAT YOU DON'T ALWAYS DO THE RIGHT THING. AND I
17 KNOW THAT IN ALL OF OUR LIFE EXPERIENCES THAT WE HAVE IN THE HEAT
18 OF THE MOMENT SAID OR DONE SOMETHING THAT WE WISH WE HADN'T HAVE,
19 AND I KNOW YOU CAN ALL UNDERSTAND WHAT I'M SAYING. I KNOW I'VE
20 DONE IT, AND I'M SURE THAT ALL OF YOU ALL HAVE DONE IT. AND
21 MORRIS SAID, LOOK, "I PANICKED." HE SHOWED THE CHIEF WHERE THE
22 GUN WAS. HE SHOULDN'T HAVE DONE THAT. BUT PLEASE REMEMBER WHEN
23 YOU GO BACK THERE THAT HE WAS 18 YEARS OLD AND HAD JUST BEEN
24 THROUGH A VERY, VERY, VERY HARD SITUATION.

25 HIS HONOR IS GOING TO CHARGE YOU ALSO THAT YOU CAN RENDER A

CLOSING ARGUMENTS -- BY MR. SUMNER

1 VERDICT OF GUILTY OR NOT GUILTY ON INVOLUNTARY MANSLAUGHTER.
2 BASICALLY, INVOLUNTARY MANSLAUGHTER IS THE UNINTENTIONAL KILLING
3 OF ANOTHER PERSON WITHOUT MALICE. OKAY? AND WE KNOW THAT MORRIS
4 SULLIVAN DID NOT HAVE THIS TOTAL DISREGARD FOR HIS LIFE -- HE
5 DIDN'T HAVE THIS ILL WILL IN HIS HEART. HE DIDN'T HAVE THOSE
6 THINGS BECAUSE HE WARNED HIM SO MUCH, AND HE FIRED THE WARNING
7 SHOT, AND HE DID ALL THOSE THINGS. AND I'M NOT GOING TO GO
8 THROUGH THEM AGAIN. I KNOW YOU ARE TIRED OF ME TALKING. BUT IT
9 IS THE UNINTENTIONAL KILLING OF ANOTHER WITHOUT MALICE WHILE
10 ACTING RECKLESSLY OR IN RECKLESS DISREGARD OF ANOTHER PERSON.
11 HIS HONOR WILL TELL YOU THAT THAT IS THE LAW OF INVOLUNTARY
12 MANSLAUGHTER, AND I'M NOT GOING TO TALK ABOUT THAT ANY MORE. YOU
13 CAN MAKE A DECISION ABOUT THAT AND WHETHER OR NOT YOU FEEL LIKE
14 THAT THAT FITS. I DON'T THINK IT DOES, BUT IT WOULD BE THE ONLY
15 GUILTY VERDICT OF UNINTENTIONAL KILLING WITHOUT MALICE. IT WOULD
16 BE THE ONLY GUILTY VERDICT WHERE THERE WOULD BE NO REQUIREMENT
17 THAT THE STATE PROVE MALICE, AND THERE IS NO QUESTION THAT THERE
18 IS NO MALICE IN THIS SITUATION.

19 I WOULD LOVE TO GO BACK OVER IT AGAIN. I WOULD LOVE TO
20 STAND HERE AND TALK ABOUT IT, BUT I'M NOT. BUT YOU KNOW THERE IS
21 25 REASONS WHY THERE WASN'T ANY MALICE IN THIS CASE.

22 WHEN YOU ALL GO BACK TO THE JURY ROOM, IF YOU HAVE A
23 HESITATION IN YOUR HEART OR YOU ARE NOT FIRMLY OR COMPLETELY
24 CONVINCED AS TO THE CHARGE AGAINST MORRIS SULLIVAN, PLEASE MAKE
25 YOUR VOICE HEARD AND TELL YOUR FELLOW JURORS WHY YOU ARE VOTING

CLOSING ARGUMENTS -- BY MR. SUMNER

1 NOT GUILTY. I WOULD ASK YOU TO PLEASE DO THAT. IF YOU HAVE A
2 HESITATION, IF YOU DO NOT FEEL THE STATE HAS PROVEN EVERY ELEMENT
3 ON ANY CHARGE, TELL YOUR FELLOW JURORS WHY YOUR VOTE IS NOT
4 GUILTY.

5 LADIES AND GENTLEMEN, JUDGE HILL WILL GIVE YOU A VERDICT
6 FORM, AND I WANT TO TELL YOU THAT THE WORDS SELF-DEFENSE ARE NOT
7 ON THIS VERDICT FORM. OKAY? BUT WHAT YOU DO IS YOU START WITH
8 THE CHARGE OF MURDER AND THEN YOU GO TO THE -- IF YOU FIND HIM
9 NOT GUILTY, YOU WORK YOUR WAY DOWN. OKAY? SO YOU DO NOT SEE THE
10 WORDS SELF-DEFENSE ON THIS. OKAY? ALL RIGHT. IT GOES FROM
11 MURDER TO VOLUNTARY MANSLAUGHTER TO INVOLUNTARY MANSLAUGHTER, MR.
12 FOREMAN, AND THEN DOWN TO THE WEAPONS CHARGES. YOU WILL NOT SEE
13 SELF-DEFENSE ON THIS. YOU WILL NOT SEE DEFENSE OF HOME, AND
14 YOU'LL NOT SEE DEFENSE OF NECESSITY. BUT YOU USE THEM AS YOU
15 FILL IN THE GUILTY OR NOT GUILTY PORTION OF THE VERDICT FORM. I
16 JUST WANTED TO MENTION THAT.

17 THANK YOU, YOUR HONOR.

18 THERE IS NO TIME LIMIT ON YOUR DELIBERATIONS, AS I'M SURE
19 YOU KNOW. AND I WILL ONLY CLOSE BY FIRST OF ALL THANKING YOU FOR
20 YOUR ATTENTION TO ME. I KNOW THIS HAS BEEN LONG, AND I'M SORRY
21 BUT I HAD TO COVER EVERYTHING. I JUST FELT -- AND I'M SURE I
22 LEFT SOME THINGS OUT AND WHEN I SIT DOWN I'LL WANT TO GET UP, BUT
23 I CAN'T.

24 I APPRECIATE YOUR PATIENCE THIS WEEK VERY MUCH. PLEASE KNOW
25 THAT. I KNOW MORRIS SULLIVAN DOES.

JURY CHARGE

1 AND THE WAY THAT I'M GOING TO END THIS STATEMENT TO YOU IS
2 THE WAY THAT I BEGAN THE OPENING STATEMENT, AND THAT IS, THE ONLY
3 THING THAT I CAN ASK YOU TO DO IS TO FOLLOW YOUR OATH, AND THAT
4 OATH IS TO WELL AND TRULY TRY AND TRUE VERDICT RENDER BASED ON
5 THE LAW AND EVIDENCE SO HELP ME. I'VE HEARD IT THREE OR FOUR
6 HUNDRED TIMES AS AN ATTORNEY. AND THAT'S THE ONLY THING THAT I
7 CAN ASK YOU TO DO, AND THE ONLY THING MORRIS SULLIVAN CAN ASK YOU
8 TO DO IS CONSIDER THE EVIDENCE, WHAT'S THERE AND CONSIDER WHAT'S
9 NOT THERE, FOLLOW THE LAW AS JUDGE HILL GIVES IT TO YOU, AND JUST
10 RENDER THE VERDICT UNANIMOUSLY. THANK YOU VERY MUCH.

11 THE COURT: ALL RIGHT. THANK YOU, MR. SUMNER.

12 ALL RIGHT. LADIES AND GENTLEMEN, I STILL HAVE TO CHARGE YOU
13 ON THE LAW THAT APPLIES, AND THAT IS GOING TO TAKE ABOUT 25
14 MINUTES. SO IF YOU WANT TO BREAK NOW OR IF YOU WANT TO JUST GO
15 FORWARD, IS THERE ANY CONSENSUS ON THAT? IF ANYBODY WANTS A
16 BREAK, LET ME KNOW RIGHT NOW OR FOREVER HOLD YOUR PEACE, AS THEY
17 SAY. (PAUSE) OKAY. WHY DON'T WE JUST -- EVERYBODY CAN KIND OF
18 STRETCH A LITTLE BIT. JUST STAND UP AND STRETCH A LITTLE.
19 SOMETIMES THAT HELPS. IN THE MEANTIME, IF THERE IS ANYBODY WHO
20 WANTS TO LEAVE, YOU CAN GO AHEAD AND LEAVE RIGHT NOW.

21 (PAUSE)

22 THE COURT: ALL RIGHT. ANYBODY ELSE NEED TO LEAVE? OKAY.
23 ALL RIGHT.

24 OKAY. LADIES AND GENTLEMEN, IT'S NOW MY DUTY TO INSTRUCT
25 YOU ON THE LAW THAT APPLIES TO THIS CASE, AND YOU'VE HEARD ALL

JURY CHARGE

1 THE EVIDENCE, AND YOU'VE HEARD THE ARGUMENTS, AND THE LAST THING
2 WE HAVE TO DO IS TO GIVE YOU THE INSTRUCTION ON THE LAW THAT YOU
3 MUST USE IN DETERMINING YOUR VERDICT.

4 NOW, LADIES AND GENTLEMEN, IT IS YOUR DUTY TO FIND THE FACTS
5 FROM ALL OF THE EVIDENCE YOU HAVE HEARD DURING THIS TRIAL, AND TO
6 THOSE FACTS YOU MUST APPLY THE LAW AS I GIVE IT TO YOU, AND YOU
7 MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU AGREE WITH IT
8 OR NOT. YOU SHOULD NOT BE CONCERNED WITH WHAT THE LAW SHOULD BE
9 BUT WITH WHAT IT IS. AND JUST AS YOU ARE THE SOLE AND EXCLUSIVE
10 JUDGES OF THE FACTS, THE COURT IS THE SOLE AND EXCLUSIVE JUDGE OF
11 THE LAW, AND I'M NOT GOING TO INVAD E YOUR PROVINCE ON FINDING
12 FACTS, AND I KNOW YOU WOULDN'T INVAD E MY PREROGATIVE ON TELLING
13 YOU WHAT THE LAW IS. SO YOU MUST NOT BE INFLUENCED BY ANY
14 PERSONAL LIKES OR DISLIKES OR OPINIONS OR PREJUDICES OR
15 SYMPATHIES. THAT MEANS YOU MUST DECIDE THIS CASE SOLELY ON THE
16 EVIDENCE BEFORE YOU AND ACCORDING TO THE LAW. AND YOU WILL
17 RECALL, YOU TOOK AN OATH TO DO JUST THAT AT THE BEGINNING OF THIS
18 TRIAL. AND IN FOLLOWING MY INSTRUCTIONS YOU MUST FOLLOW THEM ALL
19 AND NOT SINGLE SOME OUT AND IGNORE OTHERS BECAUSE THEY ARE ALL
20 EQUALLY IMPORTANT. AND YOU MUST NOT READ INTO THESE INSTRUCTIONS
21 OR INTO ANYTHING I MAY HAVE SAID OR DONE DURING THIS TRIAL AS ANY
22 SUGGESTION AS TO WHAT VERDICT YOU SHOULD RETURN OR ANY HINT AS TO
23 WHAT I THINK THE FACTS ARE, BECAUSE THAT IS A MATTER ENTIRELY FOR
24 YOU TO DECIDE UNDER OUR CONSTITUTION. AND I AM NOT ALLOWED TO
25 HAVE AN OPINION, EVEN IF I DID HAVE ONE, AS TO THE FACTS OF THIS

JURY CHARGE

1 CASE. YOU AND YOU ALONE ARE THE JUDGES OF THE FACTS.

2 NOW, YOU DECIDE WHAT THE FACTS ARE BY EVALUATING OR WEIGHING
3 THE EVIDENCE YOU HAVE HEARD DURING THIS TRIAL. THERE IS NO WAY
4 FOR YOU TO WEIGH EVIDENCE IN THE LITERAL OR PHYSICAL SENSE. I
5 CAN'T GIVE YOU A SET OF SCALES TO TAKE BACK IN THE JURY ROOM TO
6 WEIGH THE EVIDENCE. THAT CERTAINLY WOULDN'T BE PRACTICAL. BUT
7 WEIGHING EVIDENCE IS, INSTEAD, ENTIRELY A MENTAL PROCESS, AND YOU
8 WEIGH AND EVALUATE EVIDENCE BY SIMPLY USING YOUR GOOD COMMON
9 SENSE AND SOUND JUDGMENT AND APPLYING THAT TO WHAT YOU'VE HEARD
10 DURING THESE SEVERAL DAYS IN THE FORM OF TESTIMONY AND EVIDENCE.

11 NOW, AT THE BEGINNING OF THE CASE I TOLD YOU THE STATE HAS
12 THE BURDEN OF PROOF, AND YOUR DUTY IS TO DETERMINE WHETHER THE
13 STATE HAS MET THAT BURDEN OF PROOF. AND I'M GOING TO INSTRUCT
14 YOU FURTHER ON THE IDEA OF THE PROOF BEYOND A REASONABLE DOUBT
15 CONCEPT, AND I WILL GET TO THAT IN JUST A MINUTE. BUT I WANT TO
16 ALSO GO OVER WITH YOU AGAIN WHAT SOURCES YOU CAN USE TO DETERMINE
17 THE FACTS. AND I TOLD YOU YOU HAVE TO DETERMINE THE FACTS FROM
18 THE EVIDENCE. AND IF YOU WILL REMEMBER, I TOLD YOU THAT EVIDENCE
19 CONSISTS OF THE SWORN TESTIMONY OF WITNESSES BOTH ON DIRECT AND
20 CROSS EXAMINATION, AND THE EXHIBITS THAT HAVE BEEN RECEIVED INTO
21 EVIDENCE AND THAT YOU WILL HAVE BACK THERE IN THE JURY ROOM WITH
22 YOU, AND ANY FACTS TO WHICH THE PARTIES MAY HAVE AGREED OR
23 STIPULATED TO DURING THIS TRIAL.

24 THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE, AND I HAVE
25 TALKED A LITTLE BIT ABOUT THAT EARLIER, THE ARGUMENTS AND

JURY CHARGE

1 STATEMENTS BY THE LAWYERS ARE NOT EVIDENCE BECAUSE THEY ARE NOT
2 WITNESSES. WHAT THEY HAVE SAID IN THEIR OPENING ARGUMENTS AND
3 CLOSING ARGUMENTS AND AT OTHER TIMES IS INTENDED TO HELP YOU
4 INTERPRET THE EVIDENCE BUT IT IS NOT EVIDENCE IN ITSELF. IF THE
5 FACTS AS YOU REMEMBER THEM DIFFER FROM WHAT THE LAWYERS HAVE TOLD
6 YOU OR STATED, YOUR MEMORY CONTROLS. LIKEWISE, QUESTIONS AND
7 OBJECTIONS BY LAWYERS ARE NOT EVIDENCE. ATTORNEYS HAVE A DUTY TO
8 THEIR CLIENTS TO OBJECT TO EVIDENCE WHEN THEY THINK IT IS
9 IMPROPER, AND YOU SHOULD NOT BE INFLUENCED BY THE FACT THAT THEY
10 ARE DOING THEIR JOB IN OBJECTING OR HOLD THAT AGAINST THEM IN ANY
11 WAY. AND ANYTHING YOU MAY HAVE SEEN WHEN THE COURT WAS NOT IN
12 SESSION IS NOT EVIDENCE. YOU HAVE TO DECIDE THIS CASE SOLELY ON
13 THE EVIDENCE RECEIVED DURING THE TRIAL AS I'VE TOLD YOU.

14 NOW, LADIES AND GENTLEMEN, I WANT TO GO OVER WITH YOU AS
15 WELL THE CONCEPT OF DIRECT AND CIRCUMSTANTIAL EVIDENCE. THERE
16 ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY PRESENTED DURING A
17 TRIAL, DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE, AND LET ME
18 DEFINE THOSE TERMS FOR YOU. DIRECT EVIDENCE IS THE TESTIMONY OF
19 A PERSON WHO CLAIMS TO HAVE ACTUAL AND DIRECT KNOWLEDGE OF A
20 FACT, SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE, ON THE
21 OTHER HAND, IS INDIRECT EVIDENCE OR, PUT ANOTHER WAY,
22 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND
23 CIRCUMSTANCES FROM WHICH YOU COULD FIND ANOTHER FACT EXISTS, EVEN
24 THOUGH IT HAS NOT BEEN PROVEN DIRECTLY. THE LAW MAKES ABSOLUTELY
25 NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER

JURY CHARGE

1 DIRECT OR CIRCUMSTANTIAL EVIDENCE -- YOU ARE ENTITLED TO CONSIDER
2 BOTH KINDS OF EVIDENCE -- AND NOR IS A GREATER DEGREE OF
3 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT
4 EVIDENCE. YOU SHOULD WEIGH AND CONSIDER ALL THE EVIDENCE YOU
5 HAVE HEARD DURING THIS CASE IN LIGHT OF REASON, COMMON SENSE AND
6 EXPERIENCE.

7 NOW, LADIES AND GENTLEMEN, IN DECIDING WHAT THE FACTS ARE --
8 I TOLD YOU A LITTLE BIT IN THE OPENING INSTRUCTIONS -- YOU HAVE
9 TO NECESSARILY DETERMINE THE CREDIBILITY OR BELIEVABILITY OF THE
10 EVIDENCE, AND I LISTED SOME OF THE FACTORS YOU COULD USE IN
11 MAKING THAT DETERMINATION. YOU MAY BELIEVE ALL OR ANY PART OF
12 ANY WITNESS' TESTIMONY. YOU MAY DISBELIEVE ALL OR ANY PART OF
13 ANY WITNESS' TESTIMONY. IN MAKING THAT DECISION YOU MAY TAKE
14 INTO ACCOUNT A NUMBER OF FACTORS, INCLUDING, WAS THE WITNESS ABLE
15 TO SEE OR HEAR OR KNOW THE THINGS ABOUT WHICH THAT WITNESS
16 TESTIFIED? HOW WELL WAS THE WITNESS ABLE TO RECALL AND DESCRIBE
17 THOSE THINGS? WHAT WAS THE WITNESS' MANNER OR DEMEANOR WHILE
18 TESTIFYING? DID THE WITNESS HAVE AN INTEREST IN THE OUTCOME OF
19 THE CASE OR ANY BIAS OR PREJUDICE CONCERNING ANY PARTY OR ANY
20 MATTER INVOLVED IN THE CASE? HOW REASONABLE WAS THE WITNESS'
21 TESTIMONY CONSIDERED IN LIGHT OF ALL THE EVIDENCE? AND WAS THE
22 WITNESS' TESTIMONY CONTRADICTED BY WHAT THE WITNESS HAD SAID OR
23 DONE AT ANOTHER TIME OR BY THE TESTIMONY OF OTHER WITNESSES OR BY
24 OTHER EVIDENCE? THOSE ARE SOME OF THE FACTORS YOU CAN USE, AND I
25 ALSO TOLD YOU YOU COULD USE YOUR COMMON SENSE AND THE THINGS THAT

JURY CHARGE

1 YOU USE EVERY DAY TO DETERMINE WHETHER SOMEONE IS BELIEVABLE OR
2 WHETHER SOMETHING IS CREDIBLE.

3 AND I WILL TELL YOU FURTHER THAT IN DECIDING CREDIBILITY OR
4 BELIEVABILITY YOU MAY BELIEVE ALL OR PART OR NONE OF A WITNESS'
5 TESTIMONY OR YOU MAY BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL
6 OVER ONE.

7 NOW, LADIES AND GENTLEMEN, YOU'VE HEARD TESTIMONY IN THIS
8 CASE FROM PERSONS WHO WERE DESCRIBED AS EXPERTS AND QUALIFIED AS
9 EXPERTS. I GAVE YOU INSTRUCTION ON THAT AS WELL, AND I DEFINED
10 FOR YOU WHAT EXPERT TESTIMONY IS AND WHO EXPERTS ARE IN THE EYES
11 OF THE LAW. EXPERT OPINION TESTIMONY, HOWEVER, SHOULD BE JUDGED
12 JUST AS ANY OTHER TESTIMONY.. YOU MAY ACCEPT IT OR REJECT IT AND
13 GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES CONSIDERING THE
14 WITNESS' EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE
15 OPINION AND ALL THE OTHER EVIDENCE IN THE CASE.

16 NOW, LADIES AND GENTLEMEN, I'M GOING TO GO OVER WITH YOU NOW
17 THE LAW THAT RELATES TO THE ACTUAL CRIMES THAT HAVE BEEN CHARGED
18 AND THE DEFENSES THAT HAVE BEEN RAISED, AND I'M ALSO GOING TO GO
19 OVER WITH YOU SOME OF THE LESSER INCLUDED OFFENSES OF MURDER, AND
20 THAT IS, VOLUNTARY MANSLAUGHTER AND INVOLUNTARY MANSLAUGHTER.

21 NOW, AS YOU HEARD AT THE BEGINNING OF THIS CASE, THE VERY
22 BEGINNING, THIS CASE INVOLVES THREE INDICTMENTS AGAINST MR.
23 SULLIVAN THAT ALLEGE DIFFERENT OFFENSES. THE FIRST INDICTMENT
24 ALLEGES MURDER. THE SECOND INDICTMENT ALLEGES THE POSSESSION OF
25 A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AND THE

JURY CHARGE

1 THIRD INDICTMENT ALLEGES THE POSSESSION OF A HANDGUN BY A PERSON
2 UNDER THE AGE OF 21. EACH INDICTMENT CHARGES A SEPARATE AND
3 DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON
4 THE EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR
5 DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE
6 CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED, AND
7 YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT
8 GUILTY FOR EACH OF THE THREE INDICTMENTS.

9 NOW, LADIES AND GENTLEMEN, AS I TOLD YOU AT THE OUTSET OF
10 THE TRIAL, INDICTMENTS ARE NOT EVIDENCE. THEY DON'T CONSTITUTE
11 PROOF OF ANYTHING. THEY DON'T EVEN RAISE A SUSPICION OF GUILT.
12 THE FACT THAT A DEFENDANT WAS CHARGED AND INDICTED IS NOT
13 EVIDENCE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT,
14 NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF SUSPICION OF
15 GUILT. THE DOCUMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT
16 WHICH CONTAINS THE CHARGES MADE AGAINST THE DEFENDANT AND IS THE
17 MEANS BY WHICH THE CASE IS BROUGHT INTO COURT. THAT'S ALL AN
18 INDICTMENT IS AND NOTHING MORE.

19 MR. SULLIVAN HAS PLED NOT GUILTY TO THE INDICTMENTS AND THAT
20 PLEA PUT THE BURDEN OF PROOF ON THE STATE TO PROVE HIM GUILTY. A
21 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IS NEVER
22 REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU THAT IT IS AN
23 IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL TRIAL, NO
24 MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE
25 PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS

JURY CHARGE

1 ISSUED UNLESS AND UNTIL GUILT HAS BEEN PROVEN BY EVIDENCE
2 SATISFYING YOU OF GUILT BEYOND A REASONABLE DOUBT. THIS
3 PRESUMPTION OF INNOCENCE, LADIES AND GENTLEMEN, DOES NOT END WHEN
4 YOU BEGIN YOUR DELIBERATIONS BUT IT ACCOMPANIES THE DEFENDANT
5 THROUGHOUT THE TRIAL UNLESS AND UNTIL YOU REACH A VERDICT OF
6 GUILTY BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
7 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE HAS BEEN LIKENED
8 TO A ROBE OF RIGHTEOUSNESS THAT IS PLACED ABOUT THE SHOULDERS OF
9 A DEFENDANT THAT REMAINS WITH HIM UNTIL IT HAS BEEN STRIPPED BY
10 EVIDENCE SATISFYING YOU OF GUILT BEYOND A REASONABLE DOUBT.

11 THIS PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY OR
12 TECHNICALITY. IT IS A FUNDAMENTAL PRINCIPLE OF OUR LAW. IT IS
13 NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL AND IMPORTANT RIGHT
14 TO WHICH EVERY PERSON CHARGED WITH A CRIME IS ENTITLED UNLESS
15 YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF GUILT BEYOND A
16 REASONABLE DOUBT.

17 NOW, I WILL TELL YOU FURTHER THAT MR. SULLIVAN IS NOT ONLY
18 PRESUMED INNOCENT -- AND I'VE TOLD YOU ABOUT THE STATE'S BURDEN
19 OF PROOF AND I'M GOING TO GO OVER THE CONCEPT OF PROOF BEYOND A
20 REASONABLE DOUBT SHORTLY. -- MR. SULLIVAN DOESN'T HAVE TO PROVE
21 ANYTHING, HE DOESN'T HAVE TO SAY ANYTHING, BECAUSE THE BURDEN OF
22 PROOF IS ENTIRELY ON THE STATE. AND I WILL INSTRUCT YOU AND
23 EMPHASIZE TO YOU THAT THE FACT THAT MR. SULLIVAN DID NOT TESTIFY
24 IN THIS CASE IS NOT A FACTOR YOU MAY CONSIDER IN ANY WAY IN YOUR
25 DELIBERATIONS OR IN YOUR CONSIDERATION ON THE QUESTION OF THE

JURY CHARGE

1 GUILT OR INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED
2 BY YOU IN ANY MANNER WHATSOEVER. ANYONE CHARGED WITH A CRIME HAS
3 THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND CLAIMING THAT
4 RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. AND I
5 WILL REPEAT TO YOU, UNDER THE OATH THAT YOU TOOK YOU ARE TO DRAW
6 NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS
7 CASE DID NOT TESTIFY. THE FACT THAT HE DID NOT TESTIFY SHOULD
8 NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS
9 I HAVE TOLD YOU REPEATEDLY, IS ON THE STATE. THE DEFENDANT IS
10 NOT REQUIRED TO PROVE HIS INNOCENCE OR OFFER ANY EXPLANATION
11 WHATSOEVER, AND THE BURDEN REMAINS ON THE STATE TO PROVE GUILT
12 BEYOND A REASONABLE DOUBT.

13 NOW, LADIES AND GENTLEMEN, WHAT IS A REASONABLE DOUBT? HOW
14 IS THAT DEFINED IN THE LAW? A REASONABLE DOUBT IS DEFINED AS THE
15 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE, SINCERE, HONEST AND
16 CONSCIENTIOUS PERSON TO HESITATE TO ACT IN AN IMPORTANT MATTER IN
17 THEIR OWN AFFAIRS. THE STATE HAS THE BURDEN OF PROVING A
18 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

19 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE
20 YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS
21 MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OF
22 THE EVIDENCE. IN CRIMINAL CASES, HOWEVER, THE STATE'S PROOF MUST
23 BE MUCH MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE
24 DOUBT.

25 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU

JURY CHARGE

1 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. AND THERE ARE VERY
2 FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY,
3 AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
4 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION
5 OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS
6 GUILTY OF THE CRIMES CHARGED, YOU MUST FIND THE DEFENDANT GUILTY.
7 IF ON THE OTHER HAND YOU THINK THERE IS A REAL POSSIBILITY THAT
8 THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE
9 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

10 I FURTHER INSTRUCT YOU THAT A DEFENDANT IS ENTITLED TO EVERY
11 REASONABLE DOUBT THAT MAY ARISE IN THE CASE. WHAT THAT MEANS IS
12 SIMPLY THIS, IF UPON ANY ISSUE OF FACT THAT IS ESSENTIAL TO A
13 CONVICTION AND A VERDICT OF GUILTY IF YOU HAVE ANY REASONABLE
14 DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED, IT IS YOUR DUTY TO
15 RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT, MR. SULLIVAN.

16 NOW, LADIES AND GENTLEMEN, MR. SULLIVAN HAS BEEN CHARGED IN
17 ONE INDICTMENT WITH MURDER AND I'M GOING TO GO OVER WITH YOU A
18 DEFINITION OF MURDER AND THE ELEMENTS THAT THE STATE HAS TO PROVE
19 TO CONVICT MR. SULLIVAN OF MURDER. THEN I'M GOING TO GO OVER
20 WITH YOU THE TWO LESSER INCLUDED OFFENSES OF MURDER, THAT IS,
21 VOLUNTARY MANSLAUGHTER AND INVOLUNTARY MANSLAUGHTER. AND IF YOU
22 DETERMINE THE STATE HAS NOT MET ITS BURDEN OF PROOF AS TO MURDER,
23 YOU COULD THEN CONSIDER WHETHER THE STATE HAS MET ITS BURDEN OF
24 PROOF AS TO VOLUNTARY MANSLAUGHTER. IF YOU DIDN'T FIND THAT THE
25 STATE HAD MET ITS BURDEN OF PROOF AS TO VOLUNTARY MANSLAUGHTER,

JURY CHARGE

1 YOU WOULD THEN GO TO DETERMINE WHETHER THE STATE HAS BURDEN OF
2 PROOF AS TO INVOLUNTARY MANSLAUGHTER.

3 AND OF COURSE, THE DEFENDANT HAS RAISED SEVERAL DEFENSES,
4 INCLUDING THE DEFENSE OF SELF-DEFENSE, AND NECESSITY AND
5 HABITATION. I'M GOING TO GO OVER THOSE DEFENSES WITH YOU AS
6 WELL.

7 BUT JUST TO GIVE YOU SOME KIND OF FRAMEWORK AS TO WHERE
8 WE'RE GOING, I'M FIRST GOING TO DEFINE FOR YOU THE LAW OF MURDER.

9 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT IN ORDER TO
10 CONVICT MR. SULLIVAN OF MURDER THAT HE KILLED ANOTHER PERSON WITH
11 MALICE AFORETHOUGHT. MALICE IS DEFINED AS HATRED, ILL WILL OR
12 HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF
13 A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO
14 INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER
15 AN EVIL INTENT. PUT ANOTHER WAY, MALICE IS A FORMED PURPOSE AND
16 DESIGN TO DO A WRONGFUL ACT UNDER CIRCUMSTANCES THAT EXCLUDE ANY
17 LEGAL RIGHT TO DO IT. MALICE AFORETHOUGHT DOES NOT REQUIRE THAT
18 MALICE EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED.
19 BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE
20 AND AT THE TIME THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A
21 COMBINATION OF A PREVIOUS EVIL INTENT AND THE ACT.

22 MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. AND THESE
23 TERMS, EXPRESS AND INFERRED, DO NOT MEAN DIFFERENT KINDS OF
24 MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO
25 EXIST, THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM

JURY CHARGE

1 THE FACTS AND CIRCUMSTANCES THAT ARE PROVED. EXPRESS MALICE IS
2 SHOWN AND DEMONSTRATED WHEN A PERSON SPEAKS WORDS THAT EXPRESS
3 HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED
4 BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED. FOR
5 EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACT OF
6 PREPARATION THAT SHOWS THAT THE DEED WAS WITHIN THE DEFENDANT'S
7 MIND, THAT WOULD BE EXPRESS MALICE. MALICE ALSO MAY BE INFERRED.
8 MALICE MAY BE INFERRED FROM CONDUCT THAT SHOWS A TOTAL DISREGARD
9 FOR HUMAN LIFE. INFERRED MALICE MAY ARISE WHEN THE DEED IS DONE
10 WITH A DEADLY WEAPON.

11 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR SUBSTANCE THAT
12 IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN
13 INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS
14 AND CIRCUMSTANCES OF EACH CASE. THE FOLLOWING ARE EXAMPLES OF
15 INSTRUMENTS THAT MAY BE A DEADLY WEAPON: A PISTOL, A SHOTGUN, A
16 RIFLE, A DAGGER, A KNIFE, A SLINGSHOT, METAL KNUCKLES, A RAZOR, A
17 FIRE BOMB, GASOLINE OR LIGHTER FLUID, AND A MOLOTOV COCKTAIL.
18 THOSE ARE DEFINED AS DEADLY WEAPONS UNDER THE LAW. A GUN MAY BE
19 A DEADLY WEAPON EVEN IF IT IS NOT OPERATING. MALICE MAY ALSO BE
20 INFERRED OR IMPLIED FROM THE USE OF BRUTAL CONDUCT OR EXCESSIVE
21 FORCE.

22 NOW, LADIES AND GENTLEMEN, THAT'S THE LAW OF MURDER. IT IS,
23 AGAIN, THE KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.

24 THE LESSER INCLUDED OFFENSE OF MURDER. THE FIRST ONE I'M
25 GOING TO TELL YOU ABOUT, IS VOLUNTARY MANSLAUGHTER. IF YOU FIND

JURY CHARGE

1 THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE
2 DEFENDANT COMMITTED MURDER, YOU MAY CONSIDER WHETHER THE STATE
3 HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED
4 VOLUNTARY MANSLAUGHTER. TO PROVE VOLUNTARY MANSLAUGHTER THE
5 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
6 TOOK THE LIFE OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON
7 SUFFICIENT LEGAL PROVOCATION. BOTH HEAT OF PASSION AND
8 SUFFICIENT LEGAL PROVOCATION MUST BE PRESENT AT THE TIME OF THE
9 KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER.

10 SUDDEN HEAT OF PASSION/MAY FOR A TIME AFFECT A PERSON'S
11 SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S REASON. THE
12 SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT WOULD MAKE AN
13 ORDINARY PERSON UNABLE TO COOLLY REFLECT ON HIS ACTIONS AND WOULD
14 PRODUCE AN UNCONTROLLABLE IMPULSE TO DO VIOLENCE.

15 SUFFICIENT LEGAL PROVOCATION/MUST BE THE TYPE THAT WOULD
16 MAKE A PERSON OF ORDINARY REASON AND CAUTION TO BECOME ENRAGED
17 AND TO LOSE CONTROL TEMPORARILY. THE PROVOCATION NEEDED FOR
18 VOLUNTARY MANSLAUGHTER MUST COME FROM SOME ACT OF THE VICTIM OR
19 RELATED TO THE VICTIM. WORDS ALONE, HOWEVER VULGAR OR INSULTING,
20 ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH IS CAUSED BY
21 THE USE OF A DEADLY WEAPON THE WORDS MUST BE ACCOMPANIED BY SOME
22 OVERT, THREATENING ACT THAT COULD HAVE PRODUCED THE HEAT OF
23 PASSION. ~~THE EXERCISE OF A LEGAL RIGHT, NO MATTER HOW OFFENSIVE~~
24 ~~IT IS TO ANOTHER, IS NEVER SUFFICIENT LEGAL PROVOCATION FOR~~
25 VOLUNTARY MANSLAUGHTER. IF THE HEAT OF PASSION HAD COOLED OR IF

JURY CHARGE

1 THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION, IF ANY, AND THE
2 KILLING FOR THE PASSION OF THE REASONABLE PERSON TO COOL, THE
3 KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER.

4 IN DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD
5 ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE
6 CIRCUMSTANCES. YOU MAY CONSIDER THE NATURE OF THE PROVOCATION,
7 IF ANY, THE DEFENDANT'S MENTAL AND PHYSICAL STATE AND THE
8 CIRCUMSTANCES AND RELATIONSHIP BETWEEN THE PARTIES.

9 THE LAW DOES NOT REDUCE MURDER TO MANSLAUGHTER IN EVERY
10 HOMICIDE THAT IS COMMITTED IN THE HEAT OF PASSION. IT MUST BE
11 PASSION JUSTLY EXCITED BY LEGAL PROVOCATION. IF AN ADEQUATE
12 LEGAL PROVOCATION DOES NOT EXIST, THE KILLING, EVEN IN THE HEAT
13 OF PASSION, IS MURDER AND NOT MANSLAUGHTER. HEAT OF PASSION
14 ALONE WILL NOT SUFFICE TO REDUCE MURDER TO VOLUNTARY
15 MANSLAUGHTER. IF, HOWEVER, YOU HAVE A REASONABLE DOUBT AS TO
16 WHETHER THE DEFENDANT IS GUILTY OF MURDER OR VOLUNTARY
17 MANSLAUGHTER, THEN YOU MUST RESOLVE THAT DOUBT IN FAVOR OF THE
18 DEFENDANT AND FIND HIM GUILTY OF THE LESSER INCLUDED OFFENSE OF
19 VOLUNTARY MANSLAUGHTER.

20 NOW, ANOTHER LESSER INCLUDED OFFENSE OF MURDER IS
21 INVOLUNTARY MANSLAUGHTER AND IF YOU FIND THE STATE HAS FAILED TO
22 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED
23 EITHER MURDER OR VOLUNTARY MANSLAUGHTER, YOU MAY MOVE ON TO
24 CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT
25 THAT THE DEFENDANT COMMITTED INVOLUNTARY MANSLAUGHTER. TO PROVE

JURY CHARGE

1 INVOLUNTARY MANSLAUGHTER THE STATE MUST PROVE BEYOND A REASONABLE
2 DOUBT THAT THE DEFENDANT UNINTENTIONALLY KILLED THE VICTIM
3 WITHOUT MALICE BUT WHILE ENGAGED IN AN UNLAWFUL ACTIVITY NOT
4 NATURALLY TENDING TO CAUSE DEATH OR GREAT BODILY HARM OR THE
5 DEFENDANT UNINTENTIONALLY KILLED THE VICTIM WITHOUT MALICE WHILE
6 ENGAGED IN A LAWFUL ACTIVITY WITH THE RECKLESS DISREGARD FOR THE
7 SAFETY OF OTHERS. UNINTENTIONAL MEANS THE DEFENDANT DID NOT
8 INTEND FOR ANYONE TO BE KILLED OR SERIOUSLY INJURED. RECKLESS
9 DISREGARD FOR THE SAFETY OF OTHERS IS MORE THAN MERE NEGLIGENCE
10 OR CARELESSNESS. MERE NEGLIGENCE OR CARELESSNESS IS DEFINED AS
11 THE FAILURE TO USE THE CARE AN ORDINARY PERSON WOULD USE UNDER
12 THE SAME CIRCUMSTANCES. RECKLESSNESS IS A CONSCIOUS FAILURE TO
13 USE ORDINARY CARE. RECKLESS DISREGARD FOR THE SAFETY OF OTHERS
14 MEANS YOU ARE NOT INTERESTED IN THE CONSEQUENCES OF YOUR ACTS OR
15 THE RIGHTS AND SAFETY OF OTHERS. IF A PERSON WHO KNOWS OR SHOULD
16 KNOW THAT ORDINARY CARE REQUIRES CERTAIN PRECAUTIONS TO BE TAKEN
17 FOR THE SAFETY OF OTHERS WHEN USING A DANGEROUS INSTRUMENTALITY
18 SUCH AS A GUN OR A CAR BUT THAT PERSON FAILS TO USE THOSE
19 PRECAUTIONS WITHOUT CONCERN, THE PERSON'S ACTIONS ARE CONSIDERED
20 RECKLESS. THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT
21 THAT THE DEFENDANT'S ACT WAS THE PROXIMATE CAUSE OF DEATH.

22 NOW, LADIES AND GENTLEMEN. ~~THE SECOND INDICTMENT~~ CHARGES THE
23 DEFENDANT, MR. SULLIVAN, WITH POSSESSION OF A WEAPON DURING THE
24 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME. AND IF YOU
25 WERE TO FIND MR. SULLIVAN GUILTY OF EITHER MURDER OR VOLUNTARY

JURY CHARGE

1 MANSLAUGHTER, YOU WOULD CONSIDER THIS INDICTMENT AS WELL, AND I'M
2 GOING TO EXPLAIN THAT TO YOU ON THE VERDICT FORM AT THE END OF MY
3 INSTRUCTIONS. BUT BEAR THAT IN MIND.

4 THE DEFENDANT IS CHARGED WITH POSSESSION OF A WEAPON DURING
5 THE COMMISSION OR ATTEMPT TO COMMIT A VIOLENT CRIME. THE STATE
6 MUST PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT WAS IN
7 POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE
8 A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. A FIREARM
9 MEANS ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL OR ANY
10 WEAPON WHICH WILL OR IS DESIGNED TO OR MAY BE READILY CONVERTED
11 TO EXPEL A PROJECTILE.

12 IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF A
13 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST
14 FIND THE DEFENDANT GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR
15 ATTEMPTING THE COMMISSION OF A VIOLENT CRIME. MURDER IS DEFINED
16 AS A VIOLENT CRIME. VOLUNTARY MANSLAUGHTER IS DEFINED AS A
17 VIOLENT CRIME UNDER THE LAW.

18 NOW, LADIES AND GENTLEMEN, THE THIRD INDICTMENT ~~AND THE~~
19 FINAL INDICTMENT CHARGES MORRIS SULLIVAN WITH POSSESSION OF A
20 HANDGUN BY A PERSON UNDER THE AGE OF 21 IN VIOLATION OF SECTION
21 16-23-30 OF OUR CODES OF LAWS, AND I WILL JUST TELL YOU THAT IT
22 IS UNLAWFUL FOR A PERSON UNDER THE AGE OF 21 TO POSSESS OR
23 ACQUIRE A HANDGUN WITHIN THIS STATE. AND IN ORDER TO CONVICT MR.
24 SULLIVAN OF THAT, THE STATE WOULD HAVE TO PROVE THAT HE POSSESSED
25 A HANDGUN WITHIN THIS STATE AND HE WAS UNDER THE AGE OF 21 AT THE

JURY CHARGE

1 TIME, AND THEY MUST PROVE BOTH THOSE THINGS UNDER THE -- BY A
2 REASONABLE DOUBT -- BEYOND A REASONABLE DOUBT.

3 NOW, LADIES AND GENTLEMEN, AS I TOLD YOU, MR. SULLIVAN HAS
4 RAISED VARIOUS DEFENSES TO THESE INDICTMENTS, AND I'M GOING TO GO
5 OVER THESE DEFENSES WITH YOU NOW. THE FIRST DEFENSE HE HAS
6 RAISED IS SELF-DEFENSE, AND SELF-DEFENSE UNDER THE LAW IS A
7 COMPLETE DEFENSE. IF IT IS ESTABLISHED, YOU MUST FIND MR.
8 SULLIVAN NOT GUILTY. AND I WILL NOW CHARGE YOU ON THE LAW OF
9 SELF-DEFENSE, AND PLEASE REMEMBER THAT SELF-DEFENSE IN NO WAY
10 PLACES ANY BURDEN ON MR. SULLIVAN. THE BURDEN REMAINS ON THE
11 STATE AT ALL TIMES TO PROVE GUILT BEYOND A REASONABLE DOUBT.

12 ~~IN CONNECTION WITH SELF-DEFENSE,~~ THE BURDEN IS ON THE STATE
13 TO EXCLUDE AT LEAST ONE OF THE ELEMENTS OF SELF-DEFENSE. IF THE
14 STATE EXCLUDES ONE OF THE ELEMENTS, THEN SELF-DEFENSE DOES NOT
15 APPLY. SELF-DEFENSE IS A COMPLETE DEFENSE, AND IF IT APPLIES
16 BECAUSE THE STATE HAS NOT EXCLUDED AT LEAST ONE OF ITS ELEMENTS,
17 YOU MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE BURDEN
18 OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT.
19 AND IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER
20 CONSIDERING ALL OF THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-
21 DEFENSE, YOU MUST FIND THE DEFENDANT NOT GUILTY. ON THE OTHER
22 HAND, IF YOU HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT
23 AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF
24 SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY.

25 THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH SELF-

JURY CHARGE

1 DEFENSE.

2 THE FIRST ELEMENT IS THE DEFENDANT MUST BE WITHOUT FAULT IN
3 BRINGING ON THE DIFFICULTY. IF A DEFENDANT'S CONDUCT WAS THE
4 TYPE THAT WAS REASONABLY CALCULATED TO AND DID PROVOKE A DEADLY
5 ASSAULT, A DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE
6 DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON
7 SELF-DEFENSE.

8 THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT WAS
9 ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR
10 THE DEFENDANT ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF
11 DEATH OF SERIOUS BODILY INJURY. THE TERM SERIOUS BODILY INJURY
12 MEANS BODILY INJURY THAT CREATES A SUBSTANTIAL RISK OF DEATH OR
13 WHICH CAUSES SERIOUS PERMANENT DISFIGUREMENT OR PROTRACTED LOSS
14 OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR ORGAN. IF
15 A DEFENDANT WAS ACTUALLY IN IMMINENT DANGER IT MUST BE SHOWN THE
16 CIRCUMSTANCES WOULD HAVE WARRANTED A PERSON OF ORDINARY FIRMNESS
17 AND COURAGE TO STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS
18 BODILY INJURY. IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT
19 DANGER OF DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A
20 REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD
21 HAVE HAD THE SAME BELIEF. IN DECIDING WHETHER A DEFENDANT
22 ACTUALLY WAS OR BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR
23 SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND
24 CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL
25 CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND OF THE VICTIM.

JURY CHARGE

1 A DEFENDANT DOES NOT HAVE TO SHOW, HOWEVER, THAT HE WAS ACTUALLY
2 IN DANGER. IT IS ENOUGH IF THE DEFENDANT BELIEVED HE WAS IN
3 IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY
4 FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF. THE
5 DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE
6 DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. IT IS FOR YOU,
7 LADIES AND GENTLEMEN, TO DECIDE WHETHER THE DEFENDANT'S FEAR OF
8 IMMEDIATE DANGER OR DEATH -- OF DEATH OR SERIOUS BODILY INJURY
9 WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN
10 THE SAME SITUATION.

11 WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE
12 CIRCUMSTANCES, ESTABLISH SELF-DEFENSE. EVIDENCE OF PRIOR
13 DIFFICULTIES BETWEEN THE DEFENDANT AND THE VICTIM MAY BE
14 CONSIDERED IN DECIDING WHETHER A THREAT EXISTED, WHETHER THE
15 DEFENDANT HAD A REASON TO BELIEVE A THREAT EXISTED AND HOW
16 SERIOUS THAT THREAT WAS.

17 THE RELATIVE SIZES, AGES AND WEIGHTS OF THE DEFENDANT AND
18 THE VICTIM MAY BE CONSIDERED IN DECIDING THE APPARENT OR ACTUAL
19 NEED FOR FORCE IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

20 THREATS MADE BY THE VICTIM MAY BE CONSIDERED IN DETERMINING
21 WHETHER THE DEFENDANT ACTUALLY WAS OR BELIEVED HE WAS IN IMMINENT
22 DANGER.

23 AND THE THIRD AND FINAL ELEMENT THAT A DEFENDANT -- THAT
24 RELATES TO THE DEFENSE OF SELF-DEFENSE IS THAT THE DEFENDANT HAD
25 NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS

JURY CHARGE

1 BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR
2 INSTANCE.

3 IF THE DEFENDANT WAS ON HIS OWN PREMISES, THE DEFENDANT HAD
4 NO DUTY TO RETREAT BEFORE ACTING IN SELF-DEFENSE. THE DEFENDANT
5 HAD NO DUTY TO RETREAT IF BY DOING SO THE DANGER OF BEING KILLED
6 OR SUFFERING SERIOUS BODILY INJURY WOULD INCREASE.

7 A PERSON CAN BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO
8 THE DEGREE OR AMOUNT OF FORCE THAT MAY BE NEEDED TO AVOID DEATH
9 OR SERIOUS BODILY HARM. THEREFORE, IN SELF-DEFENSE THE DEFENDANT
10 HAS THE RIGHT TO USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS
11 BODILY HARM. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE
12 LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE
13 DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE
14 NECESSARY FOR COMPLETE SELF-PROTECTION AND WHICH A PERSON OF
15 ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO
16 PREVENT DEATH OR SERIOUS BODILY HARM. IF THE DEFENDANT IS
17 JUSTIFIED IN DEFENDING HIMSELF AND IN FIRING THE FIRST SHOT, THE
18 DEFENDANT IS ALSO JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS
19 APPARENT THAT THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS
20 COMPLETELY ENDED.

21 IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S GUILT
22 AFTER CONSIDERING ALL OF THE EVIDENCE OF SELF-DEFENSE, THEN YOU
23 MUST FIND THE DEFENDANT NOT GUILTY. IF YOU FIND, HOWEVER, THE
24 STATE HAS PROVEN EACH ELEMENT OF THE OFFENSE BEYOND A REASONABLE
25 DOUBT AND FURTHER THE STATE HAS EXCLUDED AT LEAST ONE OF THE

JURY CHARGE

1 ELEMENTS OF SELF-DEFENSE, THEN YOUR VERDICT WOULD BE GUILTY.
2 NOW, LADIES AND GENTLEMEN, I'M GOING TO ALSO TALK TO YOU
3 ABOUT THE DEFENSE OF HABITATION AND DEFINE THAT FOR YOU RIGHT
4 NOW. IF A DEFENDANT IS ATTACKED IN THE DEFENDANT'S OWN HOME, THE
5 DEFENDANT MAY USE THE FORCE THAT APPEARS TO BE NEEDED TO PROTECT
6 HIMSELF OR HIS HOUSEHOLD FROM DEATH -- OR MEMBERS OF HIS
7 HOUSEHOLD FROM DEATH OR SERIOUS BODILY INJURY. IF A TRESPASSER
8 REFUSES TO LEAVE THE HOME WHEN ASKED TO LEAVE, A DEFENDANT MAY
9 USE THE NECESSARY FORCE TO EJECT THE TRESPASSER. IF IN THE
10 EFFORT TO EJECT THE TRESPASSER THE LIFE OR SAFETY OF THE
11 DEFENDANT OR MEMBER OF HIS HOUSEHOLD IS JEOPARDIZED, THE
12 DEFENDANT MAY TAKE THE LIFE OF THE TRESPASSER. THE KIND AND
13 DEGREE OF FORCE WHICH IS JUSTIFIED DEPENDS ON THE CONDUCT OF THE
14 TRESPASSER. IF A PERSON ENTERED THE DWELLING AT THE INVITATION
15 OF A MEMBER OF A HOUSEHOLD, THE PERSON BECOMES A TRESPASSER IF
16 THE PERSON REFUSES TO LEAVE WHEN ASKED. IF WHILE LEGITIMATELY
17 EXERCISING IN GOOD FAITH THE RIGHT TO EJECT A TRESPASSER THE
18 DEFENDANT IS ASSAULTED BY THE TRESPASSER AND FEARS DEATH OR
19 SERIOUS BODILY HARM, THE DEFENDANT WILL BE WITHOUT FAULT IN
20 BRINGING ON THE DIFFICULTY. WHETHER THE DEFENDANT WAS ACTING IN
21 GOOD FAITH IN ATTEMPTING TO EJECT THE VICTIM AND WAS ASSAULTED IN
22 THE PROCESS IS A QUESTION FOR YOU TO DETERMINE. A PERSON IS
23 ENTITLED TO DEFEND HIMSELF FROM IMMINENT ATTACK FROM ANOTHER ON
24 HIS OWN PREMISES, PROVIDED THAT THE PERSON HAS A REASONABLE
25 BELIEF THAT HE IS IN IMMINENT DANGER OR ATTACK. AS WITH SELF-

JURY CHARGE

1 DEFENSE, THE DEFENDANT'S SUBJECTIVE BELIEF OF IMMINENT DANGER
2 MUST BE REASONABLE.

3 THE DEFENDANT, MR. SULLIVAN, HAS ALSO RAISED THE DEFENSE OF
4 NECESSITY, AND I WANT TO TELL YOU THE ELEMENTS OF THAT DEFENSE.
5 IN ORDER TO EXCUSE THE CRIME ON THE GROUND OF NECESSITY A
6 DEFENDANT MUST SHOW BY THE GREATER WEIGHT OF THE EVIDENCE, THAT
7 IS, HE MUST SHOW THAT THE PROOF IS SUCH AS TO MAKE IT MORE LIKELY
8 THAT IT IS TRUE THAN NOT TRUE, THREE THINGS: ONE, THAT THERE WAS
9 A PRESENT AND AN IMMINENT EMERGENCY THAT AROSE WITHOUT FAULT ON
10 THE PART OF THE DEFENDANT; SECOND, THE EMERGENCY WAS OF THE TYPE
11 THAT WOULD CAUSE A WELL-GROUNDED FEAR OF DEATH OR SERIOUS BODILY
12 HARM IF THE ACT WAS NOT DONE; AND THIRD, THERE WAS NO OTHER
13 REASONABLE ALTERNATIVE OTHER THAN COMMITTING THE CRIME TO AVOID
14 THE THREAT OF HARM. IF YOU FIND THE DEFENDANT HAS PROVED THE
15 DEFENSE OF NECESSITY BY THE GREATER WEIGHT OF THE EVIDENCE, YOU
16 MUST FIND THE DEFENDANT NOT GUILTY.

17 NOW, LADIES AND GENTLEMEN, ~~IN ORDER~~ TO ESTABLISH CRIMINAL
18 LIABILITY UNDER OUR STATE LAW, (CRIMINAL INTENT IS) REQUIRED.
19 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
20 DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
21 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE
22 SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
23 CERTAINTY. WE CAN'T DISSECT SOMEONE'S BRAIN AND DETERMINE WHAT
24 THEY HAD IN MIND AT THE TIME. SO THE LAW SAYS THAT CRIMINAL
25 INTENT MAY BE INFERRED OR IMPLIED FROM THE CIRCUMSTANCES. THIS

JURY CHARGE

1 IS HOW YOU MAKE YOUR DETERMINATION OF WHETHER THE ELEMENT
2 REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY FOR THE STATE
3 TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT
4 MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT
5 BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE
6 FACTS AND CIRCUMSTANCES OF THE CASE. CRIMINAL INTENT IS A MENTAL
7 STATE OF CONSCIOUS WRONGDOING AND IT IS FOR YOU TO DETERMINE WHAT
8 THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES.

9 NOW, IN THIS CASE YOU HAVE HEARD TESTIMONY AND EVIDENCE
10 ABOUT STATEMENTS THAT WERE MADE BY MR. SULLIVAN, ALLEGEDLY MADE
11 BY MR. SULLIVAN. YOU WILL HAVE TO DETERMINE SEVERAL THINGS
12 BEFORE YOU CAN DETERMINE WHETHER THOSE STATEMENTS CONSTITUTE
13 EVIDENCE FROM WHICH YOU CAN DETERMINE THE FACTS. IF MR. SULLIVAN
14 WAS NOT IN CUSTODY AT THE TIME THE STATEMENT WAS MADE, YOU
15 CONSIDER TWO QUESTIONS. IF HE WAS IN CUSTODY, YOU HAVE TO ANSWER
16 FOUR QUESTIONS. AND I'M GOING TO EXPLAIN TO YOU WHAT IN CUSTODY
17 MEANS IN JUST A SECOND.

18 BUT THE STATE MUST HAVE PROVEN BEYOND A REASONABLE DOUBT
19 THAT THE ANSWER IS YES TO EACH OF THE APPLICABLE QUESTIONS BEFORE
20 YOU MAY CONSIDER THE STATEMENT AS EVIDENCE. IF THE ANSWER TO ANY
21 ONE OF THE QUESTIONS IS NO, THEN YOU MAY NOT CONSIDER THE ALLEGED
22 STATEMENT FOR ANY PURPOSE WHATSOEVER.

23 THE QUESTIONS ARE: (1) DID THE DEFENDANT MAKE THE
24 STATEMENT? (2) WAS THE STATEMENT MADE VOLUNTARILY? (3) WAS THE
25 DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS? (4) DID THE

JURY CHARGE

1 DEFENDANT KNOWINGLY AND INTELLIGENTLY ~~WAIVER~~ ~~THOSE~~ RIGHTS?

2 THE FIRST QUESTION IS WHETHER THE DEFENDANT MADE THE
3 STATEMENT. YOU MAY CONSIDER THE STATEMENT ONLY IF YOU FIND THE
4 STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID
5 MAKE THE STATEMENT.

6 THE SECOND QUESTION IS: DID THE DEFENDANT GIVE THE
7 STATEMENT VOLUNTARILY? VOLUNTARILY SIMPLY MEANS THE PERSON
8 FREELY CHOSE TO MAKE THE STATEMENT AND IT WAS NOT INDUCED BY
9 PRESSURE, FORCE OR INTIMIDATION OR COERCED IN ANY WAY. IF IT WAS
10 VOLUNTARILY GIVEN, A STATEMENT MAY BE USED AGAINST THE DEFENDANT.
11 IF IT IS NOT VOLUNTARILY GIVEN, IT CANNOT BE USED AGAINST A
12 DEFENDANT. IN DETERMINING WHETHER A STATEMENT WAS VOLUNTARY YOU
13 MAY CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE
14 STATEMENT.

15 NOW, IF YOU FIND THE DEFENDANT WAS IN CUSTODY AT THE TIME
16 THE STATEMENT WAS MADE, THEN YOU MUST ALSO CONSIDER THE THIRD AND
17 FOURTH QUESTIONS. A PERSON IS IN CUSTODY UNDER THE LAW WHEN HE
18 IS DEPRIVED OF HIS FREEDOM OF ACTION IN ANY SIGNIFICANT WAY BY A
19 POLICE OR LAW ENFORCEMENT OFFICER. CONSIDERING ALL THE
20 CIRCUMSTANCES SURROUNDING THE ENCOUNTER, A PERSON IS IN CUSTODY
21 WHEN HE WOULD HAVE BELIEVED HE WAS NOT FREE TO LEAVE AND HIS
22 BELIEF WAS REASONABLE.

23 THE THIRD QUESTION IS: WAS THE DEFENDANT WARNED OF HIS
24 CONSTITUTIONAL RIGHTS? WHEN AN INDIVIDUAL IS TAKEN INTO CUSTODY
25 HE MUST BE WARNED OF HIS CONSTITUTIONAL RIGHTS, COMMONLY REFERRED

JURY CHARGE

1 TO AS MIRANDA RIGHTS, BEFORE HE CAN BE QUESTIONED. THOSE RIGHTS
2 ARE THAT HE HAS THE RIGHT TO REMAIN SILENT, THAT ANY STATEMENT HE
3 MAKES CAN AND WILL BE USED AGAINST HIM IN A COURT OF LAW, THAT HE
4 HAS A RIGHT TO CONSULT A LAWYER BEFORE QUESTIONING, AND A LAWYER
5 CAN BE APPOINTED FOR HIM IF HE CANNOT AFFORD ONE, THAT HE HAS THE
6 RIGHT TO EXERCISE THESE RIGHTS AT ANY TIME AND TERMINATE THE
7 QUESTIONING OR NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENT.
8 YOU MAY CONSIDER A STATEMENT GIVEN WHILE THE DEFENDANT WAS IN
9 CUSTODY ONLY IF YOU FIND THE STATE HAS PROVEN BEYOND A REASONABLE
10 DOUBT THAT THE DEFENDANT WAS WARNED OF HIS CONSTITUTIONAL RIGHTS.

11 THE FOURTH AND FINAL QUESTION IS: DID THE DEFENDANT
12 INTELLIGENTLY, KNOWINGLY AND VOLUNTARILY WAIVE HIS CONSTITUTIONAL
13 RIGHTS? INTELLIGENTLY MEANS THAT HE UNDERSTOOD HIS
14 CONSTITUTIONAL RIGHTS. KNOWINGLY MEANS HE KNEW HE WAS GIVING
15 THOSE RIGHTS UP AT THE TIME HE ANSWERED THE QUESTION. AND
16 VOLUNTARILY MEANS HE FREELY CHOSE TO DO THAT AND THAT HE WAS NOT
17 FORCED TO GIVE THE RIGHTS UP OR INDUCED TO GIVE THEM UP BY
18 PRESSURE, FORCE OR INTIMIDATION.

19 YOU MAY CONSIDER A STATEMENT GIVEN WHILE THE DEFENDANT WAS
20 IN CUSTODY ONLY IF YOU FIND THE STATE HAS PROVEN BEYOND A
21 REASONABLE DOUBT THE DEFENDANT INTELLIGENTLY, KNOWINGLY AND
22 VOLUNTARILY WAIVED HIS RIGHTS UNDER THE CONSTITUTION.

23 NOW, I'VE GONE OVER WITH YOU ALL THE SUBSTANTIVE LAW THAT
24 APPLIES TO THIS CASE. THE LAST THING I HAVE TO GO OVER WITH YOU
25 IS SOMETHING ABOUT YOUR DELIBERATIONS.

JURY CHARGE

1 YOU WEREN'T ASKED TO SERVE AS A JUROR IN THIS CASE TO BE A
2 PARTISAN OR AN ADVOCATE FOR EITHER SIDE. YOU WERE CHOSEN BECAUSE
3 BOTH SIDES, THAT IS, THE STATE AND MR. MORRIS SULLIVAN, BELIEVED
4 YOU COULD BE FAIR AND IMPARTIAL AND DECIDE THIS CASE SOLELY ON
5 THE EVIDENCE AND WITHOUT BIAS OR PREJUDICE OR UNDUE SYMPATHY.
6 THAT MEANS YOU ARE TO USE YOUR EXPERIENCES IN LIFE, YOUR GOOD
7 COMMON SENSE AND YOUR SENSE OF LOGIC AND REASON. YOU BRING THOSE
8 THINGS TO BEAR ON WHAT YOU'VE HEARD DURING THIS TRIAL IN THIS
9 COURTROOM. AND ONCE YOU DO THAT, YOU WILL BE ABLE TO DETERMINE
10 WHAT THE FACTS ARE IN THIS CASE. AND ONCE YOU'VE DECIDED THE
11 FACTS, YOU TAKE THE FACTS AND APPLY THE LAW I'VE JUST GIVEN YOU,
12 AND WHEN YOU'VE DONE THAT YOU WILL BE ABLE TO REACH A VERDICT.

13 NOW LET ME TELL YOU A FEW THINGS ABOUT YOUR DELIBERATIONS.
14 IF YOU WENT TO A DICTIONARY AND LOOKED UP THE WORD DELIBERATION,
15 YOU WOULD SEE IT IS DEFINED AS CAREFUL CONSIDERATION, WEIGHING UP
16 WITH A VIEW TO A DECISION. NOW, I'VE TALKED TO YOU ABOUT THIS
17 IDEA OF WEIGHING THE EVIDENCE. THE GENIUS OF OUR JURY SYSTEM IS
18 IT ALLOWS 12 PEOPLE FROM 12 DIFFERENT BACKGROUNDS, LIFE
19 EXPERIENCES AND PERSPECTIVES TO CONSIDER THE EVIDENCE, TO TALK
20 ABOUT IT AND ULTIMATELY REACH A VERDICT.

21 WE CALL THEM DELIBERATIONS FOR A REASON. YOU ARE TO
22 CONSIDER THE EVIDENCE IN THIS CASE CAREFULLY AND DELIBERATELY AND
23 DISCUSS IT IN A CALM, THOROUGH AND COURTEOUS MANNER. REMEMBER,
24 YOU ARE NOT PARTISANS OR ADVOCATES FOR ONE SIDE OR THE OTHER.
25 YOU ARE JUDGES, JUDGES OF THE FACTS. LISTEN TO THE VIEWS OF ALL

JURY CHARGE

1 YOUR FELLOW JURORS. CONSIDER OTHER PEOPLE'S POINTS AND POINTS OF
2 VIEW AND TALK THROUGH AND DISCUSS THE EVIDENCE. AND REMEMBER, IF
3 YOU ARE DOING SOMETHING DELIBERATELY, YOU ARE NOT IN A BIG HURRY,
4 AND YOU SHOULDN'T BE IN A HURRY HERE. THIS CASE IS VERY
5 IMPORTANT TO BOTH SIDES, AND THIS IS THEIR ONLY DAY IN COURT.

6 NOW, EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF AND THE
7 VERDICT MUST REFLECT THE CONSIDERED JUDGMENT OF ALL 12 OF YOU.
8 BUT YOU SHOULD DECIDE THE CASE ONLY AFTER YOU HAVE IMPARTIALLY
9 CONSIDERED ALL THE EVIDENCE, DISCUSSED IT FULLY WITH YOUR FELLOW
10 JURORS AND LISTENED TO THEIR VIEWS.

11 IT IS IMPORTANT FOR YOU TO ATTEMPT TO REACH A UNANIMOUS
12 VERDICT BUT, OF COURSE, ONLY IF EACH OF YOU CAN DO SO AFTER
13 HAVING MADE YOUR OWN CONSCIENTIOUS DECISION. DO NOT CHANGE AN
14 HONEST BELIEF ABOUT THE WEIGHT AND EFFECT OF THE EVIDENCE SIMPLY
15 TO REACH A VERDICT. IN OTHER WORDS, DON'T CHANGE YOUR OPINION
16 SOLELY FOR THE SAKE OF REACHING A UNANIMOUS VERDICT.

17 MR. FOREMAN, I'M GOING TO GO OVER WITH YOU NOW THE VERDICT
18 FORM AND ASK MR. CANNON TO HAND THAT TO YOU. (PAUSE) THANK YOU,
19 SIR.

20 OF COURSE, SIR, YOU ARE ONLY AUTHORIZED TO FILL OUT THIS
21 FORM IF THE VERDICT IS UNANIMOUS, AND YOU HAVE TO CONSIDER EACH
22 CHARGE SEPARATELY. LET ME JUST EXPLAIN THE FORM TO YOU. IT ASKS
23 A NUMBER OF QUESTIONS.

24 THE FIRST QUESTION, NUMBER 1A, "AS TO THE CHARGE OF MURDER,
25 WE, THE JURY, UNANIMOUSLY FIND MORRIS ANTONIO SULLIVAN" AND IT

JURY CHARGE

1 GIVES YOU THE TWO OPTIONS. DON'T ATTACH ANY SIGNIFICANCE AS TO
2 WHICH OPTION I PUT FIRST. I HAVE TO PUT ONE OF THEM FIRST. IT
3 DOESN'T HAVE ANY MEANING WHATSOEVER. IF YOU FIND MR. SULLIVAN
4 NOT GUILTY OF MURDER, FOR INSTANCE, YOU WOULD THEN GO TO QUESTION
5 1B, WHICH IS THE LESSER INCLUDED OFFENSE OF VOLUNTARY
6 MANSLAUGHTER AND DETERMINE GUILTY OR NOT GUILTY THERE.

7 IF YOU FOUND AND IF YOU FIND MR. SULLIVAN GUILTY OF EITHER
8 MURDER OR VOLUNTARY MANSLAUGHTER, YOU WOULD THEN GO TO QUESTION
9 2, WHICH IS THE POSSESSION OF A FIREARM DURING THE COMMISSION OF
10 A VIOLENT CRIME AND ANSWER THAT QUESTION.

11 AND THEN YOU WOULD ALSO ANSWER QUESTION 3, WHICH IS THE
12 FIREARM UNDER THE AGE OF 21 CHARGE.

13 BUT IF YOU FOUND MR. SULLIVAN NOT GUILTY OF MURDER AND
14 VOLUNTARY MANSLAUGHTER, THEN YOU WOULD GO TO THE THIRD LESSER
15 INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER. AND IF YOU -- YOU
16 WOULD ANSWER THE QUESTION THERE, WHICH IS QUESTION 1C. BUT IF
17 YOU ANSWER QUESTION 1C, YOU DON'T HAVE TO ANSWER QUESTION 2. BUT
18 YOU ALWAYS HAVE TO ANSWER QUESTION 3 REGARDLESS OF WHAT YOUR
19 VERDICT IS ON QUESTION 1A, B OR C.

20 IT'S A LITTLE BIT CONVOLUTED, BUT I THINK IT'S SELF-
21 EXPLANATORY. AND IF YOU HAVE ANY QUESTION OR IF ANYTHING COMES
22 UP IN THE JURY ROOM THAT YOU NEED TO TALK TO ME ABOUT, AGAIN, YOU
23 HAVE TO DO IT BY WRITING. DON'T TELL ME HOW THE JURY STANDS
24 NUMERICALLY OR OTHERWISE AT ANY TIME UNTIL AFTER THE VERDICT HAS
25 BEEN RETURNED.

JURY CHARGE

1 YOU'VE HEARD ALL THE EVIDENCE YOU'RE GOING TO HEAR IN THIS
2 CASE. THE RECORD IS CLOSED. THERE ARE NOT GOING TO BE ANYMORE
3 WITNESSES. THERE ARE NOT GOING TO BE ANYMORE EXHIBITS. THE CASE
4 IS OVER AS FAR AS TESTIMONY IS CONCERNED. AND REMEMBER, YOU HAVE
5 TO CONSIDER EACH COUNT SEPARATELY.

6 I'M GOING TO ASK YOU TO RETIRE TO YOUR JURY ROOM NOW. DON'T
7 BEGIN DISCUSSING THE CASE BECAUSE I HAVE TO GO OVER WITH THE
8 LAWYERS WHAT I'VE JUST TOLD YOU, AND THEY'LL BE QUICK TO TELL ME
9 IF I'VE LEFT SOMETHING OUT OR MISSTATED SOMETHING. BUT YOU WILL
10 KNOW THAT YOU CAN BEGIN DELIBERATION WHEN YOU RECEIVE ALL THE
11 EXHIBITS, EXCEPT FOR THE GUN. WE'RE NOT GOING TO SEND THE GUN OR
12 THE AMMUNITION BACK THERE UNLESS YOU REQUEST IT. OKAY? BUT ONCE
13 YOU RECEIVE ALL THE OTHER EXHIBITS AND THE VERDICT FORM, THAT
14 WILL BE YOUR SIGNAL YOU CAN BEGIN TO DELIBERATE.

15 THANK YOU FOR YOUR ATTENTION. I APPRECIATE YOUR PATIENCE.
16 OKAY. YES, SIR, JUST GET THE VERDICT FORM BACK. LADIES, IF YOU
17 COULD JUST STAY WHERE YOU ARE, THE OTHER 12 OF YOU CAN GO ON BACK
18 TO THE JURY ROOM, AND DON'T BEGIN DELIBERATING UNTIL YOU GET THE
19 SIGNAL.

20 (JURY EXITS COURTROOM AT 12:57 P.M.)

21 **THE COURT:** WOULD YOU PLEASE TAKE MS. ADAMS AND MS. COLLINS
22 JUST RIGHT OUTSIDE THE DOOR WHILE I TAKE SOMETHING UP WITH THE
23 ATTORNEYS? DON'T GO IN THE JURY ROOM, JUST RIGHT OUTSIDE THE
24 DOOR.

25 (BAILIFF EXITS COURTROOM WITH ALTERNATES)

MATTERS AND MOTIONS

1 **THE COURT:** ALL RIGHT. IS THERE ANY OBJECTION OR EXCEPTION
2 TO THE CHARGE FROM THE STATE?

3 **MS. MONTS:** NO, YOUR HONOR. I JUST WANTED TO MAKE SURE
4 THAT THE WAY YOU CHARGED THE SELF-DEFENSE, DEFENSE OF HABITATION
5 AND NECESSITY THAT THAT IS -- WAS ON ALL THE CHARGES.

6 **THE COURT:** WELL, I THINK---

7 **MR. SUMNER:** /I THOUGHT I TOOK IT TO BE -- I TOOK IT TO BE
8 APPLICABLE TO ALL CHARGES.

9 **THE COURT:** OKAY.

10 **MS. MONTS:** I HAVE NO OBJECTION. I JUST WANT TO MAKE SURE
11 EVERYBODY---

12 **MR. SUMNER:** WELL, I TOOK IT TO BE THAT.

13 **THE COURT:** I UNDERSTAND YOUR CONCERN FOR THAT. BUT IF YOU
14 WANT ME TO RECHARGE THEM ON THAT I WILL. BUT...

15 **MR. SUMNER:** ONE SECOND, PLEASE, YOUR HONOR. (OFF RECORD
16 WITH DEFENDANT) I THOUGHT THE RECORD WAS CLEAR.

17 **THE COURT:** OKAY. BRING THEM BACK IN HERE. ~~I'LL DO IT ONE~~
18 MORE TIME JUST TO BE CAUTIOUS ABOUT IT. (I DIDN'T DISTINGUISH IT,)
19 BUT I---

20 **MR. SUMNER:** YOUR HONOR, COULD I JUST SUGGEST -- I'M SORRY.
21 COULD I JUST SUGGEST THAT COULD YOU JUST MAKE A STATEMENT TO THE
22 JURY THAT ALL THE DEFENSE OF A, B, AND C APPLY TO ALL CHARGES? I
23 MEAN, COULDN'T YOU JUST---

24 **THE COURT:** YES. THAT'S ALL I'M GOING TO TELL THEM.

25 **MR. SUMNER:** OKAY. ALL RIGHT. OKAY.

MATTERS AND MOTIONS

1 **THE COURT:** I'LL TELL THEM THE DEFENSE OF HABITATION,
2 NECESSITY AND SELF-DEFENSE APPLY TO ALL THREE CHARGES.

3 **MR. SUMNER:** ALL RIGHT.

4 **MR. SUMNER:** IS THERE LUNCH HERE?

5 **THE COURT:** YEAH. I THINK IT'S PROBABLY COLD AT THIS POINT,
6 BUT THAT'S MY FAULT.

7 **MR. SUMNER:** ARE THEY GOING TO EAT FIRST BEFORE THEY
8 DELIBERATE. OR DO WE --

9 **THE COURT:** I'M JUST GOING TO GIVE THEM THE WHOLE THING.
10 THEY CAN DO WHATEVER THEY WANT TO.

11 **MR. SUMNER:** I'M GETTING A LITTLE HUNGRY. THAT'S WHY I WAS
12 ASKING.

13 YOUR HONOR, WERE YOU PLANNING ON KEEPING THE ALTERNATES HERE
14 FOR THE DELIBERATION?

15 **THE COURT:** NO, SIR.

16 **MR. SUMNER:** OKAY.

17 **THE COURT:** I MIGHT GET THEM TO STAY ABOUT 10 OR 15
18 MINUTES, AND THEN I'M GOING TO -- THEY MAY HAVE LUNCH ORDERED AS
19 WELL, SO THEY CAN JUST EAT THEIR LUNCH IN A DIFFERENT ROOM.

20 **MR. SUMNER:** OKAY. I WAS JUST THINKING, IT'S HAPPENED
21 BEFORE I'VE BEEN INVOLVED IN A CASE WHERE A JUROR ACTUALLY
22 DROPPED OUT DURING DELIBERATION AND THE ALTERNATE WENT IN.

23 **THE COURT:** WELL...

24 **MR. SUMNER:** I THINK IT WAS A DEATH PENALTY CASE, THOUGH, I
25 BELIEVE.

JURY CHARGE

1 **THE COURT:** IS THE JURY COMING IN HERE?

2 **BAILIFF:** SIR?

3 **THE COURT:** CAN YOU BRING THEM ON BACK IN? THE JURY, NOT
4 THE ALTERNATES.

5 **BAILIFF:** NOT THE ALTERNATES?

6 **THE COURT:** WELL, ALL OF THEM ACTUALLY. SORRY.

7 **BAILIFF:** OKAY. YOU WANT THE ALTERNATES AND THE JURY BACK
8 IN HERE?

9 **THE COURT:** ALL 14 OF THEM. I MAKE KEEP THE ALTERNATES
10 HERE A LITTLE BIT LONGER JUST...

11 **MR. SUMNER:** YOUR HONOR, I -- ONLY BECAUSE OF THE NATURE OF
12 THE CHARGE----

13 **THE COURT:** YEAH. RIGHT.

14 **MR. SUMNER:** ---AND THE LENGTH OF THE TRIAL, I WOULD LIKE
15 TO ASK YOU JUST TO KEEP AT LEAST ONE OF THEM.

16 **THE COURT:** OKAY.

17 (JURY REENTERS COURTROOM AT 1:00 P.M.)

18 **THE COURT:** OKAY. LET ME JUST CLARIFY TO YOU AGAIN AND
19 MAKE CLEAR TO YOU THAT THE DEFENDANT, MR. SULLIVAN, HAS RAISED
20 SEVERAL DEFENSES, AND I WENT OVER THOSE DEFENSES WITH YOU, SELF-
21 DEFENSE, NECESSITY AND THE DEFENSE OF HABITATION. THOSE DEFENSES
22 APPLY TO ALL OF THE CHARGES, THAT IS, THE MURDER CHARGE, AND IF
23 YOU DETERMINED, AGAIN, THE MURDER INDICTMENT AND LESSER INCLUDED
24 OFFENSES OF MURDER AS WELL AS THE FIREARM CHARGE, WHICH IS NUMBER
25 2 ON THE VERDICT FORM AND THE FIREARM CHARGE OF POSSESSION OF A

JURY CHARGE

1 FIREARM BY A PERSON UNDER THE AGE OF 21, WHICH IS THE THIRD
2 QUESTION ON THE VERDICT FORM. SO I JUST WANT TO MAKE SURE
3 EVERYBODY UNDERSTANDS THAT THOSE DEFENSES APPLY TO ALL OF THE
4 CRIMES AND DEFENSES THAT I HAVE DEFINED FOR YOU. AND WITH THAT,
5 I'M GOING TO ASK YOU TO GO BACK TO YOUR JURY ROOM. AGAIN, JUST
6 HANG ON ONE SECOND BEFORE YOU BEGIN TO DELIBERATE. WHEN YOU GET
7 ALL THE EXHIBITS BACK THERE AND THE VERDICT FORM, THAT WILL BE
8 YOUR SIGNAL.

9 SO THANK YOU FOR YOUR PATIENCE AGAIN, AND WE'LL BE RIGHT
10 BACK WITH YOU. YOU CAN GO AHEAD AND START YOUR LUNCH, TOO, IF
11 YOU WANT TO. I KNOW YOU MIGHT WANT TO DO THAT. OKAY.

12 Y'ALL JUST STAY RIGHT THERE (TO THE ALTERNATES)

13 (JURY EXITS COURTROOM AT 1:02 P.M.)

14 **THE COURT:** OKAY. ANY FURTHER OBJECTION OR EXCEPTION?

15 **MS. MONTS:** NOTHING FROM THE STATE, YOUR HONOR.

16 **MR. SUMNER:** NO, SIR. THAT COVERED IT.

17 **THE COURT:** OKAY. Y'ALL ARE THE ALTERNATES. BY LAW YOU
18 CAN'T BE IN THE JURY ROOM WHEN THEY ARE DELIBERATING, BUT THIS IS
19 AN IMPORTANT CASE AND SO FAR EVERYBODY HAS BEEN HEALTHY BUT I
20 DON'T KNOW HOW LONG THESE DELIBERATIONS ARE GOING TO LAST -- AND
21 I THINK YOU'VE ALREADY ORDERED YOU LUNCH ANYWAY, HAVEN'T YOU?
22 (ALTERNATES RESPOND AFFIRMATIVELY) SO IT'S OUT THERE. I'M GOING
23 TO ASK YOU JUST TO STAY WITH US UNTIL WE KNOW MORE. BUT I
24 APPRECIATE YOUR UNDERSTANDING OF THAT AND APPRECIATE YOUR
25 SERVICE.

MATTERS AND MOTIONS

1 IF YOU WOULD JUST PUT MS. ADAMS AND MS. COLLINS IN A
2 SEPARATE ROOM, MAYBE DOWN THE HALL RIGHT BESIDE JUDGE MILLER'S.
3 I DON'T WANT THEM IN A ROOM NEXT TO THESE JURORS. I WANT THEM
4 DOWN THE HALL. ALL RIGHT? THANK YOU.. OKAY.

5 (ALTERNATES EXIT COURTROOM AT 1:04 P.M.)

6 MR. SUMNER: THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. SUMNER: WE'LL EXAMINE THE EXHIBITS QUICKLY. I THINK
9 WE CAN DO THAT WITH THE CLERK.

10 THE COURT: YEAH.

11 MR. SUMNER: AFTER THAT CAN WE GO EAT LUNCH?

12 THE COURT: YEAH. JUST LET THEM HAVE A CELL NUMBER OR
13 SOMETHING.

14 MR. SUMNER: YES, SIR. I'M JUST GOING TO GO AND EAT AND
15 JUST COME ON BACK. I SHOULDN'T BE GONE MORE THAN 45 MINUTES OR
16 SO, IF THAT'S ALL RIGHT.

17 THE COURT: OKAY.

18 (AT EAST FROM 1:10 TO 2:09 P.M.)

19 (DELIBERATIONS BEGIN AT 1:10 P.M.)

20 (TAPE RECORDER SENT BACK TO JURY AT 2:09 P.M.)

21 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 4)

22 THE COURT: OKAY. EVERYBODY IS HERE. MR. WILLIAMS IS
23 PRESENT AND -- EXCUSE ME, MR. SULLIVAN---

24 MR. SUMNER: YES, HE'S HERE.

25 THE COURT: ---IS PRESENT. I -- THERE IS A GENTLEMAN IN

MATTERS AND MOTIONS

1 TOWN NAMED MORRIS WILLIAMS. I DON'T KNOW WHY THAT POPPED IN MY
2 MIND. BUT ANYWAY, WE'VE GOT A SECOND NOTE FROM THE JURY. FOR
3 THE RECORD, THE FIRST NOTE, WHICH I'VE MADE A COURT'S EXHIBIT
4 ASKED IF THEY COULD HAVE A TAPE RECORDER TO PLAY THE 911 TAPE. I
5 CONSULTED WITH BOTH THE ATTORNEYS. BOTH AGREED THEY COULD HAVE
6 THE TAPE RECORDER AND SO I SENT IT BACK.

7 IS THAT RIGHT?

8 **MS. MONTS:** YES, YOUR HONOR.

9 **MR. SUMNER:** YES, SIR. YES, SIR, ABSOLUTELY.

10 **THE COURT:** OKAY. SO NEXT NOTE THAT WE JUST RECEIVED,
11 WHICH I'LL MAKE ANOTHER COURT'S EXHIBIT AND I'LL LET YOU BOTH
12 INSPECT IT, BUT I'LL READ IT, IT SAYS: "(1) MAY WE HAVE A
13 LISTING OF THE FOUR DEFINITIONS OR CONDITIONS THAT MUST BE
14 PRESENT TO USE DEADLY FORCE AS SELF-DEFENSE. THERE WAS A SHEET
15 ON THE BOARD WITH THESE FOUR." AND IT IS SIGNED BY THE FOREMAN.
16 I COULDN'T SEE THE BOARD, SO I DON'T KNOW WHAT HE'S TALKING
17 ABOUT.

18 **MS. MONTS:** YOUR HONOR, I HAVE IT. IT'S THE FOUR -- I
19 STILL HAVE THE BOARD IF YOU WANT TO SEE IT. IT'S IN MY OFFICE.
20 BUT IT'S THAT THE DEFENDANT MUST NOT HAVE BEEN AT FAULT BRINGING
21 IT ON -- THE FOUR THINGS THAT -- THEY'RE WHAT YOU CHARGED AS FAR
22 AS---

23 **MR. SUMNER:** YOUR HONOR, IT IS THE ELEMENTS THAT YOU
24 CHARGED UNDER SELF-DEFENSE, ALMOST TO A "T," I BELIEVE. IS THAT
25 RIGHT?

MATTERS AND MOTIONS

1 **MS. MONTS:** I BELIEVE SO, YES, YOUR HONOR.

2 **MR. SUMNER:** I THINK YOUR CHARGE MIGHT HAVE MERGED IT TO
3 THREE ELEMENTS, YOUR HONOR. BUT IT WAS JUST THE ELEMENTS OF
4 SELF-DEFENSE.

5 **THE COURT:** WELL, I CAN EITHER BRING THEM IN AND RECHARGE
6 THEM OR I CAN GIVE THEM THE -- WHATEVER I CHARGED THEM.

7 **MR. SUMNER:** YOUR HONOR, I WOULD ASK THAT THE COURT
8 RECHARGE SELF-DEFENSE IN ITS ENTIRETY, BEGINNING WITH THE WORDS,
9 SELF-DEFENSE IS A COMPLETE DEFENSE AND THEN GOING ALL THE WAY
10 THROUGH.

11 **THE COURT:** OKAY.

12 **MR. SUMNER:** I DON'T -- IF YOU'LL HEAR ME ON THIS POINT,
13 YOUR HONOR, I DON'T THINK WHAT WAS -- WHILE THE SHEET WAS, I
14 THINK, VERY CLOSE TO WHAT YOU CHARGED, I DON'T THINK IT WAS
15 EXACTLY THE SAME WORDING BECAUSE FOR ONE THING THE SHEET HAD FOUR
16 ELEMENTS, AND I BELIEVE YOUR CHARGE HAS IT AS THREE.

17 **MS. MONTS:** IT DID, YOUR HONOR, BUT IT WAS -- IT'S -- YOU
18 HAD TWO OF THEM COMBINED INTO ONE OF YOUR NUMBERS.

19 **MR. SUMNER:** RIGHT. YEAH.

20 **MS. MONTS:** YOUR HONOR, IF YOU'D LIKE ME TO RUN AND GET THE
21 CHART IT WILL JUST TAKE A SECOND.

22 **THE COURT:** THAT'S OKAY. SO YOUR PREFERENCE WOULD BE FOR
23 ME TO RECHARGE THEM THE WHOLE SELF-DEFENSE CHARGE INSTEAD OF
24 GIVING THEM A COPY OF THE CHARGE?

25 **MR. SUMNER:** WELL, IF YOU GIVE THEM A COPY OF YOUR CHARGE...

MATTERS AND MOTIONS

1 **THE COURT:** THAT'S WHAT I'M SAYING.

2 **MR. SUMNER:** NO, THAT'D BE FINE.

3 **MS. MONTS:** THAT'S FINE WE ME, YOUR HONOR.

4 **THE COURT:** OKAY.

5 **MR. SUMNER:** I MEAN, IF -- AND I THINK YOUR CHARGE, YOUR
6 HONOR, JUDGE HILL, I BELIEVE AGAIN WAS SELF-DEFENSE IS A COMPLETE
7 DEFENSE. IT THEN WENT ON TO TALK ABOUT THAT IT'S NOT THE
8 DEFENDANT'S BURDEN TO -- THE BURDEN OF PROOF TO PROVE SELF-
9 DEFENSE, IT'S THE STATE'S BURDEN TO DISPROVE SELF-DEFENSE.

10 **THE COURT:** WELL, THE ONLY PROBLEM WITH ME GIVING THEM WHAT
11 I READ TO THEM, WHICH THAT'S SPECIFICALLY WHAT THEY'RE ASKING
12 FOR. THEY WANT A LISTING OF THE DEFINITION. THEY ASKED TO BE
13 RETOLD THE DEFINITION, WHICH I DON'T BLAME THEM. BUT THEY WANT
14 THE TOOL, SO THE ONLY PROBLEM WITH DOING THAT IS MINE IS KIND OF
15 MARKED UP. IT'S GOING TO TAKE ME A LITTLE BIT OF TIME TO -- AND
16 I'VE GOT TO INCORPORATE THE DEFINITION OF SERIOUS BODILY INJURY
17 THAT MS. MONTS SUBMITTED, WHICH I DON'T MIND DOING, BUT IT'S JUST
18 GOING TO TAKE A LITTLE WHILE TO DO OR I CAN BRING THEM IN HERE
19 AND---

20 **MR. SUMNER:** WHY DON'T WE JUST RECHARGE THEM? AND I
21 CERTAINLY DON'T OBJECT TO MS. MONTS' DEFINITION OF SERIOUS BODILY
22 INJURY. THAT WAS PART OF IT AS WELL.

23 **THE COURT:** OR I CAN GIVE THEM THE CHARGE WITH, YOU KNOW,
24 THE PARTS THAT ARE MARKED OUT, BUT IT'S NOT QUITE CLEAN.

25 **MR. SUMNER:** MY VOTE WOULD JUST BE A RECHARGING OF THE JURY

MATTERS AND MOTIONS

1 ON THE ENTIRE LAW OF SELF-DEFENSE.

2 **THE COURT:** RATHER THAN GIVING THEM THE ACTUAL CHARGE TO
3 HAVE BACK THERE?

4 **MR. SUMNER:** I JUST DIDN'T KNOW HOW LONG IT WOULD TAKE YOU
5 TO CLEAN IT UP AND REVISE IT.

6 **THE COURT:** OKAY. THAT'S PROBABLY THE SAFEST THING TO DO.
7 LET ME -- AND, YOU KNOW, THERE WAS A CASE THAT CAME OUT THIS WEEK
8 WHERE ONE OF THE COURT OF APPEALS JUDGES SAID IT WAS NOT PROPER
9 TO GIVE THE JURY A COPY OF THE CHARGE IN DISSENT, BUT
10 NEVERTHELESS -- BRING THEM BACK IN AND WE'LL JUST RECHARGE THEM,
11 IF THEY'RE ALL HERE, BECAUSE ONE OF THEM WENT OUT TO USE THE
12 PHONE WITH MR. CANNON.

13 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 5)

14 **THE COURT:** (PAUSE) IT MAY BE JUST A MINUTE.

15 **MR. SUMNER:** JUST A MINUTE. OKAY.

16 **THE COURT:** I WOULD JUST SAY EVERYBODY STAY HERE.

17 **MR. SUMNER:** OKAY.

18 (PAUSE)

19 **THE COURT:** ARE Y'ALL READY FOR THE JURY?

20 **MR. SUMNER:** YES, SIR.

21 **THE COURT:** OKAY. BRING THEM IN, MR. CANNON.

22 (JURY REENTERS COURTROOM AT 3:44 P.M.)

23 **THE COURT:** OKAY. MR. FOREMAN, I GOT YOUR NOTE.

24 UNFORTUNATELY I CAN'T GIVE YOU A LIST THAT YOU CAN TAKE BACK
25 THERE WITH YOU FOR VARIOUS REASONS, BUT WHAT I'M GOING TO DO IS

RECHARGE

1 JUST GIVE THE INSTRUCTION ON SELF-DEFENSE ONE MORE TIME.

2 THE DEFENDANT IN THIS CASE HAS RAISED THE DEFENSE OF SELF-
3 DEFENSE. SELF-DEFENSE UNDER THE LAW IS A COMPLETE DEFENSE, AND
4 IF IT IS ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. I
5 WILL NOW CHARGE YOU ON THE LAW OF SELF-DEFENSE, AND PLEASE
6 REMEMBER THAT SELF-DEFENSE IN NO WAY PUTS ANY BURDEN ON THE
7 DEFENDANT. THE BURDEN REMAINS ON THE STATE AT ALL TIMES TO PROVE
8 GUILTY BEYOND A REASONABLE DOUBT.

9 IN CONNECTION WITH SELF-DEFENSE THE BURDEN IS ON THE STATE
10 TO EXCLUDE AT LEAST ONE OF THE ELEMENTS OF SELF-DEFENSE. IF THE
11 STATE EXCLUDES ONE OF THE ELEMENTS OF SELF-DEFENSE, THEN SELF-
12 DEFENSE DOES NOT APPLY. SELF-DEFENSE IS A COMPLETE DEFENSE AND
13 IF IT APPLIES BECAUSE THE STATE HAS NOT EXCLUDED AT LEAST ONE OF
14 ITS ELEMENTS, YOU MUST FIND THE DEFENDANT NOT GUILTY. THE STATE
15 HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A
16 REASONABLE DOUBT, AND IF YOU HAVE A REASONABLE DOUBT OF THE
17 DEFENDANT'S GUILT AFTER CONSIDERING ALL OF THE EVIDENCE,
18 INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE
19 DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU FIND -- IF YOU
20 HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER
21 CONSIDERING ALL OF THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-
22 DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY. AND I EARLIER
23 TOLD YOU ABOUT THE DEFINITION OF REASONABLE DOUBT.

24 THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH SELF-
25 DEFENSE.

RECHARGE

1 NUMBER ONE, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING
2 ON THE DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE THAT
3 WAS REASONABLY CALCULATED TO AND DID PROVOKE A DEADLY ASSAULT,
4 THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND
5 WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON SELF-DEFENSE.

6 SECOND -- AND THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE
7 DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS
8 BODILY INJURY OR THAT THE DEFENDANT ACTUALLY BELIEVED HE WAS IN
9 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY. SERIOUS
10 BODILY INJURY IS DEFINED AS BODILY INJURY THAT CREATES A
11 SUBSTANTIAL RISK OF DEATH -- (INTERRUPTION)

12 OKAY. WHY DON'T YOU -- IF YOU COULD JUST GO AHEAD AND GO ON
13 OUTSIDE. THANK YOU. (PAUSE)

14 SERIOUS BODILY INJURY MEANS BODILY INJURY THAT CREATES A
15 SUBSTANTIAL RISK OF DEATH OR WHICH CAUSES SERIOUS PERMANENT
16 DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF
17 ANY BODILY MEMBER OR ORGAN. IF THE DEFENDANT WAS ACTUALLY IN
18 IMMINENT DANGER, IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD
19 HAVE WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO
20 STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY INJURY.
21 IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR
22 SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A REASONABLY PRUDENT
23 PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME
24 BELIEF. IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS OR
25 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY

RECHARGE

1 INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES
2 SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND
3 CHARACTERISTICS OF BOTH THE DEFENDANT AND THE VICTIM.

4 THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN
5 DANGER. IT IS ENOUGH IF THE DEFENDANT BELIEVED HE WAS IN
6 IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY
7 FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF. THE
8 DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES, EVEN THOUGH THE
9 DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. IT IS FOR YOU TO
10 DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH
11 OR SERIOUS BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT
12 BY AN ORDINARY PERSON IN THE SAME SITUATION.

13 WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE
14 CIRCUMSTANCES, ESTABLISH SELF-DEFENSE. EVIDENCE OF PRIOR
15 DIFFICULTIES BETWEEN THE DEFENDANT AND THE VICTIM MAY BE
16 CONSIDERED IN DECIDING WHETHER THE THREAT EXISTED, WHETHER THE
17 DEFENDANT HAD A REASON TO BELIEVE THE THREAT EXISTED AND HOW
18 SERIOUS THAT THREAT WAS.

19 THE RELATIVES SIZES, AGES AND WEIGHTS OF THE VICTIM AND THE
20 DEFENDANT MAY BE CONSIDERED BY YOU IN DECIDING THE APPARENT OR
21 ACTUAL NEED FOR FORCE AND SELF-DEFENSE AND THE AMOUNT OF FORCE
22 NEEDED.

23 THREATS MADE BY THE VICTIM MAY BE CONSIDERED IN DETERMINING
24 WHETHER THE DEFENDANT ACTUALLY WAS OR BELIEVED HE WAS IN IMMINENT
25 DANGER.

RECHARGE

1 THE FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT HAD
2 NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS
3 BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR
4 INSTANCE.

5 IF THE DEFENDANT WAS ON HIS OWN PREMISES, THE DEFENDANT HAD
6 NO DUTY TO RETREAT BEFORE ACTING IN SELF-DEFENSE. THE DEFENDANT
7 HAD NO DUTY TO RETREAT IF BY DOING SO THE DANGER OF BEING KILLED
8 OR SUFFERING SERIOUS BODILY INJURY WOULD INCREASE.

9 A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS
10 TO THE DEGREE OR AMOUNT OF FORCE THAT MAY BE NEEDED TO AVOID
11 DEATH OR SERIOUS BODILY HARM. THEREFORE, UNDER THE LAW OF SELF-
12 DEFENSE THE DEFENDANT HAS THE RIGHT TO USE THE FORCE NEEDED TO
13 AVOID DEATH OR SERIOUS BODILY HARM. THE FORCE USED IN SELF-
14 DEFENSE DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR THE AMOUNT
15 OF FORCE USED BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE
16 SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-
17 PROTECTION AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS
18 WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS
19 BODILY HARM. IF THE DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF
20 OR OTHERS AND IN FIRING THE FIRST SHOT, THEN THE DEFENDANT IS
21 ALSO JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS APPARENT THAT
22 THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS COMPLETELY
23 ENDED.

24 SO THOSE ARE THE ELEMENTS OF SELF-DEFENSE. AND JUST TO
25 RECAP, THEY ARE: FIRST, THAT THE DEFENDANT MUST BE WITHOUT FAULT

RECHARGE

1 IN BRINGING ON THE DIFFICULTY; AND SECOND, THAT THE DEFENDANT WAS
2 ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR
3 THAT HE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR
4 SERIOUS BODILY INJURY; AND THIRD AND FINALLY THAT THE DEFENDANT
5 HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS
6 BODILY INJURY THAN TO ACT AS HE DID IN THIS PARTICULAR INSTANCE.

7 SO THAT'S THE LAW OF SELF-DEFENSE, AND IF YOU NEED ANYTHING
8 FURTHER, MR. FOREMAN, JUST PLEASE LET ME KNOW BY WAY OF THE NOTE.
9 OTHERWISE, I JUST ASK YOU TO RETURN TO YOUR DELIBERATIONS. THANK
10 YOU.

11 (JURY EXITS COURTROOM AT 3:51 P.M.)

12 **THE COURT:** OKAY. ARE THERE ANY OBJECTIONS OR EXCEPTIONS
13 TO THE CHARGE ON SELF-DEFENSE FROM THE STATE?

14 **MS. MONTS:** NO, YOUR HONOR.

15 **THE COURT:** FROM THE DEFENSE?

16 **MR. SUMNER:** NO, SIR.

17 **THE COURT:** OKAY. THANK YOU BOTH, AND WE'LL BE IN RECESS
18 UNTIL WE HEAR SOMETHING FURTHER.

19 (DELIBERATIONS RESUME AT 3:51 P.M.)

20 (AT EASE FROM 3:51 TO 5:07 P.M.)

21 **THE COURT:** OKAY. WE'VE GOT ANOTHER NOTE FROM THE JURY
22 WHICH WE'LL MAKE A COURT'S EXHIBIT. I'LL LET YOU INSPECT IT.
23 BUT THE NOTE SAYS, NUMBER ONE, MAY WE HAVE THE LEGAL DEFINITION,
24 AGAIN, OF THE DIFFERENCE BETWEEN VOLUNTARY MANSLAUGHTER AND
25 INVOLUNTARY MANSLAUGHTER? AND MAY WE TAKE NOTES IN THE COURTROOM

MATTERS AND MOTIONS

1 AS THE DEFINITION IS BEING SUMMARIZED?

2 THAT'S THE REQUEST. SO LET ME CHECK MY CHARGE HERE AND...

3 (PAUSE) I CAN BRING THEM BACK IN AND RECHARGE THEM WHICH -- OR I
4 CAN GIVE THEM -- I'LL HAVE TO AGAIN TO A LITTLE EDITING, BUT I
5 THINK I COULD -- EASIER THAN I COULD WITH THE SELF-DEFENSE CHARGE
6 COULD GIVE THEM THE WRITTEN CHARGE OR I CAN DO BOTH OR I CAN LET
7 TAKE NOTES WHILE -- I MEAN, DOES ANYBODY HAVE A PREFERENCE?

8 MS. MONTS: I WOULD SAY, YOUR HONOR, JUST TO GIVE THEM A
9 COPY.

10 MR. SUMNER: THE ONLY THING THAT I DO NOT LIKE WOULD BE
11 THEM TAKING NOTES BECAUSE YOU SAY IMPORTANT THINGS THROUGH THE
12 COURSE OF YOUR CHARGE AND I WOULD PROBABLY OPPOSE A JUROR TRYING
13 TO WRITE SOMETHING DOWN WHEN YOU'RE GOING THROUGH SOME VERY
14 IMPORTANT COMPONENTS OF THE CHARGES THEMSELVES. SO I WOULD
15 EITHER VOTE FOR RECHARGING THE JURY WITHOUT NOTES OR YOU SENDING
16 THE CHARGE SHEET IN.

17 THE COURT: ALL RIGHT.

18 MR. SUMNER: DO YOU SEE WHAT I'M SAYING REGARDING THE
19 JURORS TAKING NOTES? I MEAN, WHILE YOU'RE TALKING THAT'S, YOU
20 KNOW -- I THINK DURING THE COURSE OF A TRIAL WHEN ONE WITNESS
21 GETS UP AND SITS DOWN I THINK THERE'S TIME WHEN A JUROR COULD
22 WRITE SOMETHING DOWN. BUT DURING THE COURSE OF THE JURY CHARGE I
23 DON'T KNOW, I PROBABLY WOULD NOT---

24 THE COURT: ALL RIGHT. WELL, I'M GOING TO PREPARE THE
25 CHARGE ON VOLUNTARY MANSLAUGHTER AND INVOLUNTARY MANSLAUGHTER.

MATTERS AND MOTIONS

1 I'M GOING TO LET YOU BOTH REVIEW IT, AND UNLESS THERE IS AN
2 OBJECTION, I'LL JUST SEND IT BACK TO THEM RATHER THAN BRING THEM
3 OUT HERE AND RECHARGING THEM.

4 **MS. MONTS:** THAT'S FINE, YOUR HONOR.

5 **MR. SUMNER:** YES, SIR.

6 **THE COURT:** OKAY. WE'LL JUST MAKE THE CHANGE. IT MIGHT
7 TAKE TEN MINUTES OR SO. JUST BE AT EASE TILL WE DO THAT.

8 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 6)

9 (AT EASE FROM 5:12 TO 5:20 P.M.)

10 **THE COURT:** OKAY. WE'VE GOT THEM IF Y'ALL WANT TO COME LOOK
11 AT THEM AND MAKE SURE EVERYTHING IS CORRECT. WE'LL MAKE THEM A
12 COURT'S EXHIBIT, OF COURSE.

13 (BENCH CONFERENCE OFF RECORD FROM 5:20 TO 5:24 P.M.)

14 **THE COURT:** OKAY. DOES ANYONE HAVE ANY OBJECTION TO THE
15 WRITTEN CHARGE OR SENDING THE WRITTEN CHARGE ON VOLUNTARY
16 MANSLAUGHTER AND INVOLUNTARY MANSLAUGHTER BACK TO THE JURY FROM
17 THE STATE?

18 **MS. MONTS:** NO, YOUR HONOR.

19 **MR. SUMNER:** YOUR HONOR, FROM THE DEFENSE, I'VE EXAMINED
20 THE CHARGES. THEY ARE ACCURATE AND I HAVE NO OBJECTION TO THE
21 JURY BEING RECHARGED ON THAT AND ALSO TO THE ACTUAL CHARGES GOING
22 BACK TO THE JURY.

23 **THE COURT:** I WAS JUST PLANNING ON SENDING THIS BACK.

24 **MR. SUMNER:** NO. I WAS JUST SAYING THAT PURSUANT TO THE
25 NOTE THEY WANTED MORE INFORMATION, I HAVE NO PROBLEM WITH THE

MATTERS AND MOTIONS

1 INFORMATION, (A), AND (B) IT GOING BACK IN WRITTEN FORM. I'M
2 FINE.

3 THE COURT: OKAY.

4 MR. SUMNER: YES, SIR.

5 THE COURT: YOU DON'T WANT ME TO ORALLY CHARGE THEM?

6 MR. SUMNER: NO, SIR.

7 THE COURT: OKAY. ALL RIGHT.

8 MR. SUMNER: NO, SIR.

9 THE COURT: THANK YOU BOTH. AND WE'LL HAVE THIS MARKED AS
10 COURT'S EXHIBIT NUMBER 4?

11 COURT REPORTER: SEVEN.

12 THE COURT: SEVEN. OKAY. AND THEN---

13 (COURT'S CHARGE ON VOLUNTARY AND INVOLUNTARY MANSLAUGHTER
14 MARKED AS COURT'S EXHIBIT NUMBER 7)

15 MR. SUMNER: I'VE GOT MY CELL PHONE WITH ME.

16 THE COURT: YEAH, YOU CAN GO.

17 TAKE THAT BACK TO THE JURY. THANK YOU, SIR.

18 (DELIBERATIONS CONTINUE AT 5:24 P.M.)

19 THE COURT: (OFF RECORD WITH MADAME CLERK)

20 MR. SUMNER?

21 MR. SUMNER: YES, SIR.

22 THE COURT: AND MS. MONTS. MR. SULLIVAN IS STILL HERE IN
23 THE COURTROOM. THE ALTERNATES ARE STILL BACK THERE. ONE OF THEM
24 HAS TO PICK UP HER CHILD OR SOMETHING -- (OFF RECORD WITH MADAME
25 CLERK) -- SOMETHING AT SIX O'CLOCK.

MATTERS AND MOTIONS

1 **MR. SUMNER:** YOUR HONOR, I DON'T HAVE AN OBJECTION TO BOTH
2 ALTERNATES BEING RELEASED. MY EXPERIENCE THAT I WAS A LITTLE BIT
3 CAUTIONARY ABOUT WAS A DEATH PENALTY CASE WHERE ACTUALLY TWO
4 JURORS DID -- YOU KNOW, THAT MAY BE DIFFERENT. THEY DECIDED
5 DURING THE COURSE OF THE DELIBERATION THEY JUST COULDN'T HANDLE
6 THAT RESPONSIBILITY, IF YOU KNOW WHAT I MEAN.

7 **THE COURT:** RIGHT.

8 **MR. SUMNER:** AND SO WE HAD TO DO THAT. THAT WAS MY
9 REASONING, BECAUSE IT IS A MURDER CASE. BUT I THINK CLEARLY THE
10 JURY CAN DELIBERATE UPON THE MATTER. I HAVE NO OBJECTION TO BOTH
11 ALTERNATES BEING RELEASED.

12 **THE COURT:** WELL, SHE JUST WANTS TO MAKE ARRANGEMENTS,
13 RIGHT?

14 **MADAME CLERK:** YES.

15 **THE COURT:** WELL, JUST LET HER MAKE A PHONE CALL.

16 **MADAME CLERK:** OKAY.

17 **THE COURT:** SHE'S BEEN HERE THIS LONG.

18 **MR. SUMNER:** YEAH. WELL... THIS WILL BE OFF THE RECORD.

19 (OFF RECORD DISCUSSION)

20 (AT EASE FROM 5:26 TO 6:01 P.M.)

21 **THE COURT:** OKAY. EVERYBODY IS PRESENT. MR. SULLIVAN IS
22 PRESENT. I RECEIVED A NUMBER NOTE FROM THE JURY, WHICH WE WILL
23 MAKE AS A COURT'S EXHIBIT. IT SAYS, "IT IS 6:00 P.M. AND WE HAVE
24 NOT REACHED A VERDICT. WE ARE NOT SURE IT WILL BE RESOLVED IN A
25 REASONABLE TIME PERIOD TONIGHT. MAY WE BE DISMISSED UNTIL AN

MATTERS AND MOTIONS

1 EXACT" -- EXCUSE ME -- "UNTIL AN EARLY TIME IN THE MORNING?" I
2 BELIEVE THAT'S WHAT THAT SAYS. "WEAKNESS IS STARTING TO SET IN
3 AND WE FEEL WE ARE LOSING 'QUALITY' DISCUSSION." SIGNED BY THE
4 FOREMAN.

5 MR. SUMNER: WHAT ARE YOUR THOUGHTS, JUDGE?

6 THE COURT: WELL, IN OLDEN DAYS, YOU KNOW, THEY WERE GIVEN
7 BREAD AND WATER AND TOLD NOT TO COME OUT UNTIL THEY HAD A VERDICT
8 (LAUGHTER IN THE COURTROOM).

9 MR. SUMNER: SOME THINGS SHOULD STAY THE WAY THEY USED TO
10 BE. (LAUGHTER IN THE COURTROOM)

11 THE COURT: THAT'S NOT THE RULE ANYMORE, AND I CERTAINLY
12 HAVE THE DISCRETION TO DISMISS THEM AND LET THEM COME BACK IN THE
13 MORNING. AND USUALLY THAT'S A SMART THING TO DO.

14 MR. SUMNER: YEAH.

15 THE COURT: BUT I WELCOME ANYBODY ELSE'S INPUT.

16 MR. SUMNER: I'LL DEFER TO THE STATE FIRST, THEN I'LL
17 RESPOND.

18 MS. MONTS: YOUR HONOR, THAT'S FINE WITH THE STATE.

19 MR. SUMNER: THAT NOTE'S PRETTY CLEAR.

20 THE COURT: OKAY. BRING THEM ON BACK IN, MR. CANNON.

21 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 8)

22 MR. SUMNER: BUT ALSO I WOULD CAUTION YOU WITH THE MEDIA
23 COVERAGE, YOUR HONOR, TO CONTINUE TO STRESS THAT TO THEM.

24 (JURY REENTERS COURTROOM AT 6:04 P.M.)

25 THE COURT: OKAY. MR. FOREMAN, I RECEIVED YOUR NOTE, AND

MATTERS AND MOTIONS

1 Y'ALL HAVE BEEN DELIBERATING ABOUT FIVE HOURS AND TEN MINUTES BY
2 MY COUNT, AND I'M GOING TO GO AHEAD AND LET YOU GO FOR THE
3 EVENING. JUST BE BACK IN THE JURY ROOM AT NINE O'CLOCK IN THE
4 MORNING AND YOU CAN RESUME YOUR DELIBERATIONS AT THAT TIME.
5 DON'T RESUME YOUR DELIBERATIONS UNTIL YOU ARE NOTIFIED TO IN THE
6 MORNING. MAKE SURE WE HAVE EVERYBODY HERE AND EVERYBODY
7 CONNECTED WITH THE CASE HAS BEEN NOTIFIED OF THAT.

8 BUT LET ME STRESS TO YOU AND EMPHASIZE TO YOU THE IMPORTANCE
9 OF NOT TALKING TO ANYONE ABOUT THIS CASE. I HAVE REPEATEDLY TOLD
10 YOU THAT. I TOLD YOU YOU WERE GOING TO GET SICK OF ME TELLING
11 YOU THAT, BUT IT IS VITAL AND IT IS IMPERATIVE THAT YOU NOT
12 DISCUSS THIS CASE WITH ANYONE, FRIENDS, SPOUSES, ANY THIRD PARTY,
13 AND THAT YOU NOT TALK TO ANY OF YOUR FELLOW JURORS OVER THE
14 EVENING BECAUSE YOU ARE ONLY TO DISCUSS THE CASE WHEN YOU ARE
15 COLLECTIVELY DELIBERATING TOGETHER AS A JURY, WHEN ALL 12 OF YOU
16 ARE IN THE ROOM TALKING ABOUT IT. THEN AND ONLY THEN CAN YOU
17 TALK ABOUT THE CASE. DO NOT DO ANY OUTSIDE RESEARCH OR
18 INVESTIGATION. AND DO NOT READ THE NEWSPAPER BECAUSE THERE HAVE
19 BEEN STORIES IN THE NEWSPAPER ABOUT THIS CASE, AND AS I HAVE
20 STRESSED TO YOU REPEATEDLY, YOU HAVE TO DECIDE THIS CASE ON THE
21 EVIDENCE THAT YOU'VE HEARD DURING THIS TRIAL AND NOT WHILE COURT
22 IS NOT IN SESSION OR THINGS YOU'VE HEARD OR SEEN WHILE COURT IS
23 NOT IN SESSION. AND IT WOULD BE A VIOLATION OF YOUR OATH IF YOU
24 DID ANY OF THOSE THINGS. WE DON'T SEQUESTER YOU. WE RELY ON YOU
25 TO KEEP YOUR PROMISE, AND I KNOW YOU WILL.

MATTERS AND MOTIONS

1 SO WITH THAT, UNLESS THERE IS ANYTHING FURTHER FROM THE
2 STATE OR THE DEFENSE, WE'LL SEE YOU IN THE MORNING.

3 ANYTHING FURTHER FROM THE STATE?

4 MS. MONTS: NO, YOUR HONOR.

5 THE COURT: FROM THE DEFENSE?

6 MR. SUMNER: NO, SIR.

7 THE COURT: OKAY. THANK YOU, LADIES AND GENTLEMEN. WE'LL
8 SEE YOU BACK IN THE MORNING AT NINE O'CLOCK..

9 (JURY EXITS COURTROOM FOR THE DAY AT 6:06 P.M.)

10 THE COURT: OKAY. ANYTHING FURTHER FOR THE RECORD AT THIS
11 TIME?

12 MS. MONTS: NOT FROM THE STATE, YOUR HONOR.

13 MR. SUMNER: LIKEWISE.

14 THE COURT: OKAY. Y'ALL HAVE A GOOD EVENING.

15 (TRIAL RECESSED FOR THE DAY AT 6:07 P.M.)

16 (DELIBERATIONS RESUMED AT 9:05 A.M. ON 1/20/06)

17 THE COURT: OKAY. LADIES AND GENTLEMEN, WE HAVE A VERDICT,
18 I UNDERSTAND. OBVIOUSLY I DON'T KNOW WHAT THE VERDICT IS, BUT
19 I'VE NOTICED DURING THE TRIAL -- ALTHOUGH THERE AREN'T AS MANY
20 PEOPLE IN HERE TODAY AS THERE HAVE BEEN -- EVERYBODY'S BEEN ON
21 GOOD BEHAVIOR, AND I ALSO AM KEENLY AWARE THAT EMOTIONS RUN HIGH
22 AND THAT THIS CASE HAS BEEN GOING ON A LONG TIME. SO IF THERE IS
23 ANYONE IN THE COURTROOM THAT DOESN'T THINK THEY CAN REMAIN ON
24 GOOD BEHAVIOR WHEN THEY HEAR THE VERDICT, NOW IS THE TIME TO
25 LEAVE, OTHERWISE IT'S SOMETHING I'M GOING TO HAVE TO TAKE CARE OF

VERDICT

1 AND I WILL TAKE CARE OF IT IF ANYBODY MAKES ANY KIND OF REACTION
2 TO THE VERDICT. SO IF ANYBODY DOESN'T BELIEVE THEY CAN CONTAIN
3 THEIR EMOTIONS WHEN THE VERDICT IS READ, NOW IS THE TIME TO
4 LEAVE. (PAUSE) ALL RIGHT.

5 IS EVERYONE READY FOR THE JURY?

6 MS. MONTS: YES, YOUR HONOR.

7 MR. SUMNER: YES, SIR.

8 THE COURT: OKAY. YOU CAN BRING THEM IN.

9 (JURY ENTERS COURTROOM AT 2:20 P.M.)

10 THE COURT: ALL RIGHT. MR. FOREMAN, HAS THE JURY REACHED A
11 UNANIMOUS VERDICT, SIR?

12 MR. FOREMAN: WE HAVE.

13 THE COURT: OKAY. IF YOU WOULD HAND THAT VERDICT TO THE
14 BAILIFF, WE WILL RECEIVE IT AND PUBLISH IT.

15 MR. FOREMAN: (COMPLIES)

16 THE COURT: ALL RIGHT. YES, MA'AM.

17 MADAME CLERK: YOUR HONOR, THIS IS THE STATE VERSUS MORRIS
18 ANTHONY SULLIVAN. AS TO THE CHARGE OF MURDER, WE, THE JURY,
19 UNANIMOUSLY FIND MORRIS ANTONIO SULLIVAN NOT GUILTY.

20 AS TO THE LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER,
21 WE, THE JURY, UNANIMOUSLY FIND MORRIS ANTONIO SULLIVAN GUILTY.

22 AS TO THE CHARGE OF POSSESSION OF A FIREARM DURING THE
23 COMMISSION OF A VIOLENT CRIME, WE, THE JURY, UNANIMOUSLY FIND
24 MORRIS ANTONIO SULLIVAN GUILTY.

25 AS TO THE CHARGE OF POSSESSION OF A FIREARM BY A PERSON

VERDICT

1 UNDER THE AGE OF 21, WE, THE JURY, UNANIMOUSLY FIND MORRIS
2 ANTONIO SULLIVAN GUILTY.

3 ALL ARE SIGNED BY JOHN SINGER, THE FOREPERSON.

4 THIS IS YOUR VERDICT SO SAY YOU ALL? IF THIS IS YOUR
5 VERDICT UNANIMOUSLY, PLEASE INDICATE BY RAISING YOUR RIGHT HAND.
6 (ALL JURORS RESPOND BY RAISING THEIR RIGHT HANDS). THANK YOU.

7 THE COURT: OKAY. ANYTHING THAT EITHER SIDE NEEDS TO TAKE
8 UP BEFORE THE JURY IS DISCHARGED, IN THE FORM OF MOTIONS OR ANY
9 OTHER MATTERS? FROM THE STATE?

10 MS. MONTS: NO, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. SUMNER: YOUR HONOR, I DO HAVE SOME MOTIONS I WOULD
13 LIKE TO PUT ON THE RECORD. I DON'T THINK THE JURY NEEDS TO BE
14 PRESENT FOR THOSE.

15 THE COURT: OKAY. DO YOU WANT THE JURY POLLED, SIR?

16 MR. SUMNER: YES, SIR.

17 THE COURT: OKAY. IF YOU WOULD POLL THE JURY, DO THAT AND
18 THEN...

19 MADAME CLERK: LADIES AND GENTLEMEN, THE VERDICT JUST
20 PUBLISHED WAS THE VERDICT REACHED IN YOUR JURY ROOM. I ASK YOU,
21 WAS IT YOUR VERDICT THEN AND IS IT YOUR VERDICT NOW? AS I CALL
22 YOUR NAME, PLEASE ANSWER YES OR NO.

23 CATHERINE CHAPMAN?

24 JUROR NUMBER 32: YES.

25 MADAME CLERK: KRISTEN ZELLNER?

VERDICT

1 JUROR NUMBER 193: YES.

2 MADAME CLERK: JACQUELINE LAMBERT?

3 JUROR NUMBER 196: YES.

4 MADAME CLERK: JOHN SINGER?

5 JUROR NUMBER 148: YES.

6 MADAME CLERK: STEPHANIE HAZEL?

7 JUROR NUMBER 70: YES.

8 MADAME CLERK: PATRICIA WEST?

9 JUROR NUMBER 182: YES.

10 MADAME CLERK: MICHAEL KELLETT?

11 JUROR NUMBER 89: YES.

12 MADAME CLERK: TAMMY SAUCIER?

13 JUROR NUMBER 74: YES.

14 MADAME CLERK: JOHN MCCOLLUM?

15 JUROR NUMBER 109: YES.

16 MADAME CLERK: MICHELLE KILGORE?

17 JUROR NUMBER 91: YES.

18 MADAME CLERK: MICHAEL FITZSIMMONS?

19 JUROR NUMBER 51: YES.

20 MADAME CLERK: KATHY ONDROVIC?

21 JUROR NUMBER 120: YES.

22 MADAME CLERK: THANK YOU.

23 THE COURT: ANYTHING FURTHER FROM---

24 MR. SUMNER: NO, SIR, NOT FROM THE JURY, YOUR HONOR, FOR
25 THE DEFENDANT.

VERDICT

1 **THE COURT:** YES.

2 **MS. MONTS:** NOT FROM THE STATE, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, THE ONLY
4 COMMENT I EVER MAKE ON A VERDICT IS TO THANK YOU FOR YOUR SERVICE
5 AND FOR YOUR HARD WORK IN THIS PARTICULAR CASE AND THIS WEEK.
6 IT'S NOT EASY TO SIT IN JUDGMENT. I FULLY UNDERSTAND THAT. AND
7 I CAN SYMPATHIZE WITH THAT, AS YOU MIGHT IMAGINE. WE DON'T HAVE
8 PROFESSIONAL JURORS IN THIS COUNTRY, THANK GOODNESS, AND INSTEAD
9 WE HAVE TO RELY ON GOOD CITIZENS LIKE YOU TO COME IN AND MAKE
10 SURE THAT EVERYONE'S RIGHTS ARE PROTECTED AND THAT THE RIGHT TO
11 THE JURY TRIAL CAN BE MAINTAINED. AND IN ORDER TO DO THAT WE
12 HAVE TO TAKE YOU AWAY FROM YOUR WORK AND YOUR FAMILIES AND PUT
13 YOU IN THE ROOM FOR LONG PERIODS OF TIME, AND IT'S NOT VERY
14 PLEASANT. I KNOW THAT. AND IT'S NOT VERY PLEASANT TO LISTEN TO
15 SOME OF THE THINGS YOU HAVE TO LISTEN TO WHILE YOU'RE ON A JURY.
16 I CERTAINLY HOPE YOU NEVER HAVE TO COME INTO COURT AND SIT AT ONE
17 OF THESE TABLES. BUT IF YOU EVER DID, IF YOU, A CLOSE FRIEND OR
18 FAMILY MEMBER WERE OVER AT ONE OF THESE TABLES, I KNOW THAT IF
19 YOU LOOKED ACROSS AND INTO THE JURY BOX THE LAST THING YOU WOULD
20 WANT TO FIND WOULD BE 12 PEOPLE WHO DIDN'T HAVE ANYTHING BETTER
21 TO DO. YOU WOULD WANT TO FIND 12 PEOPLE JUST LIKE YOU, THAT IS,
22 PRODUCTIVE CITIZENS WHO HAVE FAMILIES AND WHO HAVE JOBS AND WHO
23 TAKE THEIR CITIZENSHIP AND CIVIL RIGHTS SERIOUSLY. SO WE
24 APPRECIATE YOU GUARANTEEING THOSE RIGHTS BY BEING HERE AND BY THE
25 FAITHFUL SERVICE THAT YOU HAVE GIVEN YOUR COMMUNITY.

MATTERS AND MOTIONS

1 YOU'RE GOING TO GET A CHECK, I GUESS, NEXT WEEK FOR YOUR
2 JURY DUTY. BUT YOU'RE THROUGH FOR THIS WEEK AND ONCE AGAIN I
3 THANK YOU FOR MAKING THE SYSTEM WORK AS IT DOES.

4 NOW, YOU DON'T HAVE TO TALK TO ANYBODY ABOUT THIS CASE. IF
5 SOMEONE CONTACTS YOU ABOUT IT, YOU CAN STOP THE CONVERSATION AT
6 ANY TIME. ON THE OTHER HAND, SOMETIMES THE ATTORNEYS DO WANT TO
7 TALK TO JURORS JUST SO THEY CAN GET SOME HELP WITH THEIR FUTURE
8 CASES AND WHATNOT, AND YOU'RE FREE TO TALK TO THEM IF YOU WANT
9 TO, BUT YOU DON'T HAVE TO AND YOU CAN STOP THE CONVERSATION AT
10 ANY TIME. AND IF IT BECOMES HARASSING OR IF IT ANYONE CONTACTS
11 YOU IMPROPERLY, OF COURSE, YOU CAN NOTIFY ME OR THE CLERK OF
12 COURT.

13 SO WITH THAT, THANK YOU AGAIN, AND HAVE A GOOD WEEKEND. WE
14 STILL HAVE ALTERNATES OUT THERE, DON'T WE?

15 **MADAME CLERK:** YES.

16 **THE COURT:** THEY CAN COME IN IN JUST A SECOND, BUT THESE
17 FINE PEOPLE CAN GO RIGHT NOW IF THEY WANT TO. THANK YOU.

18 (JURY EXITS COURTROOM AT 2:26 P.M.)

19 (OFF RECORD DISCUSSION -- MADAME CLERK AND THE COURT)

20 **THE COURT:** BRING THE ALTERNATES IN. (PAUSE)

21 ALL RIGHT. ANY MOTIONS?

22 **MR. SUMNER:** YOUR HONOR, I WOULD RENEW PREVIOUSLY HEARD
23 MOTIONS BY THE COURT FOR DIRECTED VERDICT OF NOT GUILTY. I WOULD
24 ASK THAT THE VERDICT BE SET ASIDE IN THIS CASE AS AGAINST THE
25 WEIGHT OF THE EVIDENCE AND NO REASONABLE JURY COULD RENDER A

MATTERS AND MOTIONS

1 VERDICT OF GUILTY AS TO THE VOLUNTARY MANSLAUGHTER CHARGE, AS TO
2 THE POSSESSION OF A PISTOL DURING THE COURSE OF A VIOLENT CRIME
3 AND ALSO AS TO THE UNLAWFUL POSSESSION OF A PISTOL. I WILL BE
4 HAPPY TO PROVIDE ARGUMENT TO THE COURT SHOULD YOU DESIRE TO HEAR
5 IT, BUT I JUST WOULD LIKE THAT ON THE RECORD, SIR, MOTION FROM
6 THE DEFENSE.

7 (ALTERNATES ENTER COURTROOM AT 2:27 P.M.)

8 **THE COURT:** OKAY, SIR. WELL, LET ME JUST -- IF Y'ALL CAN
9 JUST STEP OUT IN THE HALL FOR ONE SECOND, I'M TAKING CARE OF ONE
10 THING AND WE'RE GOING TO LET YOU GO. THANK YOU. SORRY ABOUT
11 THAT. (TO BAILIFF AND ALTERNATES) (ALTERNATES EXIT COURTROOM)

12 OKAY. MR. SUMNER, OBVIOUSLY THE JURY WAS STRUGGLING WITH
13 ISSUES IN THIS CASE AND CIRCUMSTANCES OF IT, AND YOU DID AN
14 EXCELLENT JOB REPRESENTING MR. SULLIVAN. THE EVIDENCE WAS SUCH,
15 THOUGH, THAT IT WAS A JURY ISSUE AS TO ALL THE CHARGES AND THE
16 DEFENSES THAT YOU ARGUED SO WELL. BUT I DON'T SEE ANY BASIS FOR
17 THE VERDICT BEING SET ASIDE OR FOR THE GRANTING OF A NEW TRIAL,
18 AND THEREFORE I RESPECTFULLY DENY YOUR MOTIONS.

19 **MR. SUMNER:** THANK YOU, YOUR HONOR. IS THE COURT READY FOR
20 SENTENCING?

21 **THE COURT:** LET ME DISCHARGE THE ALTERNATES FIRST. (PAUSE)
22 OKAY. YOU CAN BRING THE ALTERNATES IN.

23 **MADAME CLERK:** THE ALTERNATES WOULD LIKE TO BE HERE FOR THE
24 SENTENCING TOO, IF IT'S OKAY.

25 **THE COURT:** OKAY. THAT'S FINE.

MATTERS AND MOTIONS

(ALTERNATES ENTER COURTROOM AT 2:29 P.M.)

THE COURT: OKAY. LADIES, THANK YOU VERY MUCH FOR YOUR PATIENCE. I KNOW YOU DIDN'T GET TO DELIBERATE IN THE CASE, AND I DON'T WANT YOU TO THINK WE WERE WASTING YOUR TIME. I'M SURE IT FELT LIKE THAT BACK THERE. BUT YOU PERFORMED A VALUABLE FUNCTION FOR US, AND THAT IS YOU GAVE US THE PEACE OF MIND KNOWING WE COULD FINISH THIS CASE. IF SOMETHING WOULD HAPPEN TO SOMEONE AND GIVEN THE SERIOUS NATURE OF THIS CASE IF WE HAD LESS THAN 12 JURORS, WE'D HAVE TO DECLARE A MISTRIAL IN ALL LIKELIHOOD. SO YOU HELPED US A GREAT DEAL. I KNOW IT WAS PROBABLY LONELY BACK THERE, BUT I APPRECIATE YOUR UNDERSTANDING. AND YOU ARE CERTAINLY FREE TO STAY FOR THE REST OF THE PROCEEDINGS, BUT YOU DON'T HAVE ANY MORE JURY DUTY THIS WEEK. THANK YOU AGAIN.

(JURORS EXCUSED AT 2:30 P.M.)

(OFF RECORD DISCUSSION)

(JURY REENTERS COURTROOM AT 2:31 P.M.)

THE COURT: OKAY. YES, MA'AM, MS. MONTS.

MS. MONTS: YOUR HONOR, AS FAR AS FACTS, YOU'VE SEEN AND HEARD EVERYTHING THAT THE STATE WOULD HAVE TO PRESENT.

AS FAR AS PRIOR RECORD, YOUR HONOR, REMEMBERING THAT THE DEFENDANT WAS ONLY 18 AT THE TIME, HE HAD ALREADY ACCUMULATED A RECORD.

THE COURT: I BELIEVE HE HAD A MARIJUANA CONVICTION?

MS. MONTS: YES, YOUR HONOR. POSSESSION OF MARIJUANA IN '97, POSSESSION OF BEER BY A MINOR IN '97, ASSAULT AND BATTERY IN

SENTENCING

1 '97, TRESPASS IN '97, AND POSSESSION WITH INTENT TO DISTRIBUTE
2 MARIJUANA IN '99 THAT OCCURRED THE SAME DATE AS THIS INCIDENCE.
3 HE ALSO ACCUMULATED A RECORD WHILE HE WAS IN THE DEPARTMENT OF
4 CORRECTIONS, YOUR HONOR, WHILE HE WAS IN ON CHARGES. AND, YOUR
5 HONOR, THOSE WERE NOT GENERAL SESSIONS CHARGES, BUT I WANTED YOU
6 TO SEE HIS ACTIONS WHILE HE WAS IN THE DEPARTMENT OF CORRECTIONS,
7 YOUR HONOR. HE DID RECEIVE A POSSESSION OF DRUG CHARGE WHILE HE
8 WAS IN THE DEPARTMENT OF CORRECTIONS. AND THIS IS THROUGH THEIR
9 SYSTEM; IT'S NOT THROUGH THE STATE'S CRIMINAL SYSTEM.

10 **THE COURT:** YES, MA'AM.

11 **MS. MONT'S:** HE ALSO RECEIVED A USE OF OBSCENE AND VULGAR
12 PROFANITY. HE ALSO RECEIVED AN INCITING AND CREATING
13 DISTURBANCE. HE RECEIVED ANOTHER USE OF OBSCENE AND VULGAR
14 PROFANITY. HE RECEIVED ANOTHER REFUSING TO OBEY ORDERS AND
15 ANOTHER OUT OF PLACE CONVICTION.

16 YOUR HONOR, I ALSO WANTED YOU TO KNOW THAT WHEN HE WAS OUT
17 ON BOND ON THESE CHARGES ORIGINALLY, EIGHT MONTHS LATER HE WAS
18 ARRESTED WITH ANOTHER HANDGUN AND DRUGS, YOUR HONOR. THOSE
19 CHARGES WERE NEVER RESOLVED BECAUSE THESE CHARGES HAD BEEN
20 RESOLVED AT THAT TIME. BUT I WANTED YOU TO KNOW HIS ACTIONS,
21 YOUR HONOR.

22 **THE COURT:** ALL RIGHT. THANK YOU, MS. MONT'S.

23 YES, SIR, MR. SUMNER.

24 **MR. SUMNER:** YOUR HONOR, MAY IT PLEASE THE COURT.

25 WE HAVE A FAIRLY LARGE NUMBER OF THE JURORS WHO HAVE

SENTENCING

1 REMAINED FOR SENTENCING. AND YOU HEARD EVERYTHING THAT OCCURRED.
2 IT WAS A TRAGEDY. I SAID IT IN MY OPENING COMMENTS TO THE JURY,
3 AND I REITERATED IT IN MY CLOSING COMMENTS, AND I'VE ALSO SPOKEN
4 TO THE DECEASED'S MOTHER DURING THE COURSE OF THE TRIAL AND TOLD
5 HER HOW, CERTAINLY, UNFORTUNATE THIS WAS AND I WAS SORRY TO BE
6 MEETING HER IN THIS CONTEXT.

7 THIS IS A UNIQUE CASE, AND I THINK -- I KNOW YOU HEARD
8 EVERYTHING THAT WAS PUT FORWARD. YOU DO KNOW THAT HE HAS SERVED
9 SEVEN YEARS SINCE THIS OCCURRED, THAT THE CASE WAS REMANDED FOR A
10 NEW TRIAL. I THINK THAT THE ORIGINAL SENTENCING WAS --

11 WHEN WAS IT, MORRIS, THE ORIGINAL SENTENCING? (OFF RECORD
12 WITH DEFENDANT)

13 -- WAS IN FEBRUARY OF 1999. THE JURY MIGHT HAVE BEEN
14 PUZZLED WHY THE CASE WAS BACK AFTER SUCH A LONG PERIOD OF TIME,
15 AND YOU KNOW THAT THERE WAS AN ERROR OF LAW THAT OCCURRED IN THAT
16 TRIAL AND THE CASE WAS REMANDED, AND THAT'S WHY WE ARE HERE TODAY
17 FOR THIS TRIAL THIS WEEK.

18 HE HAS SERVED SEVEN YEARS. THIS WAS -- I CAN'T REALLY ADD
19 ANYTHING OTHER THAN THE FACT HE DOES -- HE DID GET HIS G.E.D.
20 WHILE HE WAS IN PRISON. HE'S TOLD ME THAT. HIS FAMILY SUPPORTS
21 HIM VERY MUCH. THEY ARE HERE. THEY HAVE STOOD BESIDE HIM. I'VE
22 HAD PLEASANT DEALINGS WITH HIM THROUGHOUT MY ENTIRE -- AS THE
23 COURT KNOWS, I AM APPOINTED TO REPRESENT HIM, AND I'VE HAD
24 NOTHING BUT PLEASANT DEALINGS WITH HIM. I'VE ENJOYED THE
25 OPPORTUNITY. I TOLD THE JURY THAT IT WAS MY PLEASURE TO BE HERE

SENTENCING

1 THIS WEEK, AND I KNOW YOU KNOW THAT IT'S BEEN MY PLEASURE TO BE
2 HERE IN FRONT OF YOU.

3 YOUR HONOR, I WOULD LIKE YOU JUST TO TAKE INTO ACCOUNT
4 EVERYTHING THAT I STATED IN MY OPENING AND CLOSING STATEMENT,
5 THAT IT WAS -- THE JURY CLEARLY FOUND THERE WAS NO MALICE
6 PRESENT. THEY DID BELIEVE THAT IT WAS UNDER THE LAW VOLUNTARY
7 MANSLAUGHTER, THAT THERE WAS HEAT OF PASSION UPON SUFFICIENT
8 LEGAL PROVOCATION. I ASKED FOR AN INVOLUNTARY MANSLAUGHTER
9 CHARGE. THE JURY ASKED TO BE RECHARGED THAT LATE YESTERDAY
10 AFTERNOON. CLEARLY THERE WAS A LOT OF THOUGHT IN THE JURY ROOM
11 ABOUT WHICH OF THOSE TWO CHARGES WOULD HAVE BEEN THE PROPER
12 CHARGE FOR A VERDICT. CLEARLY, I THINK, THEY DELIBERATED 11
13 HOURS BY MY COUNT, AND THAT MAY BE OFF A LITTLE BIT ONE WAY OR
14 THE OTHER. BUT IT WAS SOMETHING THE JURY OBVIOUSLY PUT A LOT OF
15 THOUGHT INTO AND STRUGGLED WITH A GREAT DEAL. I THINK THAT THERE
16 WAS A VALID SELF-DEFENSE ARGUMENT THAT WAS MADE.

17 THIS WAS JUST SUCH A UNIQUE CASE. I DON'T THINK IN MY
18 CAREER THAT I'VE EVER SEEN A CASE QUITE LIKE THIS WHERE -- I HAVE
19 SEEN CASES WHERE WARNING SHOTS WERE FIRED. I KNOW IN YOUR CAREER
20 IN PRIVATE PRACTICE THAT YOU WERE CERTAINLY INVOLVED IN CASES
21 WHERE -- OR WE READ ABOUT A CASE WHERE A WARNING SHOT WAS FIRED.
22 BUT NOT ONLY WAS A WARNING SHOT FIRED BUT HE ALSO RETREATED IN
23 HIS OWN HOME THROUGH A HALLWAY, THROUGH THE KITCHEN, BACK INTO
24 THE LIVING ROOM. THE EVIDENCE COULD CERTAINLY -- THE SECOND SHOT
25 WAS CERTAINLY POINTED VIRTUALLY STRAIGHT DOWNWARD, AS I MENTIONED

SENTENCING

1 TO THE JURY. THE THIRD SHOT, UNFORTUNATELY, THE FATAL SHOT, WAS
2 ALSO DELIVERED IN A DOWNWARD ANGLE.

3 I DON'T THINK ANYBODY KNOWS EXACTLY WHAT HAPPENED IN THOSE
4 LAST FEW SECONDS TO SECOND AND A HALF, WHETHER OR NOT JERVIS
5 POWERS CONTINUED TO ADVANCE TOWARD MORRIS SULLIVAN. THERE WAS
6 CONFLICTING TESTIMONY ON THAT POINT. RONICA BUTLER SAID HE
7 CONTINUED TO ADVANCE AFTER THE SECOND SHOT. I BELIEVE IT WAS
8 CEDRICK EVANS WHO SAID THAT THERE WAS TIME IN BETWEEN THE SECOND
9 AND THIRD SHOT. WE KNOW IT WAS A CONTACT WOUND FROM WHAT
10 S.L.E.D. TOLD US.

11 AND, YOUR HONOR, IT WAS JUST A -- IT WAS A BAD -- IT WAS A
12 BAD DECISION, CERTAINLY, BY MORRIS. I'M NOT GOING TO SAY THAT IT
13 WAS -- IT WAS A BAD DECISION TO EVEN HAVE A GUN, AND THEN FOR THE
14 GUN TO BECOME A PART OF WHAT HAPPENED BETWEEN HE AND JERVIS.

15 BUT I WOULD LIKE THE COURT TO REMEMBER THAT HE DIDN'T GO OUT
16 AND TRY TO FIND JERVIS. THIS DID NOT TAKE PLACE IN A PARK. IT
17 DIDN'T TAKE PLACE IN A PARKING LOT, BEHIND A SCHOOL OR BEHIND A
18 GROCERY STORE, IN AN ALLEY. HE WAS IN HIS OWN HOME. HE DID NOT
19 INVITE THIS ALTERCATION. THIS ALTERCATION CAME TO HIM, AND HE
20 REACTED. AND CLEARLY, HE REACTED IN A WAY I'M SURE NOW THAT HE
21 WISHES HE HAD NOT. BUT HE DIDN'T JUST MALICIOUSLY WITH MALICE
22 TAKE OUT A WEAPON AND SHOOT JERVIS POWERS. HE DID RETREAT FROM
23 HIM CONSISTENTLY. HE DID FIRE A SHOT INTO THE GROUND. HE FIRED
24 THE SECOND SHOT AT A DOWNWARD ANGLE. AND CERTAINLY A BAD
25 DECISION, A HORRIBLE -- I'M NOT GOING TO SAY -- WE HEAR THAT ALL

SENTENCING

1 THE TIME IN LIFE, "WELL, I MADE A BAD DECISION" OR A BAD DECISION
2 TOOK PLACE.

3 I MEAN, I'M NOT TRYING TO MINIMIZE. A HORRIBLE DECISION WAS
4 MADE BY MORRIS. BUT I'D LIKE YOU TO TAKE ALL THE CIRCUMSTANCES
5 INTO ACCOUNT. ALSO TAKE INTO ACCOUNT HIS AGE. HE WAS 18 YEARS
6 OLD. I DID NOT STRESS THAT A TREMENDOUS AMOUNT TO THE JURY. I
7 THINK JERVIS WAS 17.

8 AM I RIGHT, MS. MONTS?

9 MS. MONTS: THAT'S CORRECT.

10 MR. SUMNER: JERVIS WAS 17. AND, BOY, YOUR HEART BREAKS
11 WHEN YOUNG PEOPLE -- I'M NOT GOING TO SAY KIDS, BECAUSE THAT'S
12 PROBABLY A PHRASE I SHOULDN'T USE. BUT WHEN YOUNG PEOPLE OF THAT
13 AGE PUT THEMSELVES IN THOSE SITUATIONS, YOUR HEART BREAKS. IT
14 DOES, FOR ANY YOUNG PERSON, MALE OR FEMALE, THAT WOULD GET
15 INVOLVED IN THAT, AND BE AROUND GUNS AND HAVE THIS EVEN
16 POTENTIALLY HAPPEN, AND UNFORTUNATELY IT DID HAPPEN. AND I JUST
17 WOULD ASK YOU TO CONSIDER ALL THOSE THINGS WHEN YOU TAKE IT INTO
18 ACCOUNT, AND JUST BE AS MERCIFUL ON HIM AS YOU CAN BE CONSIDERING
19 THE THINGS THAT HE DID TO TRY TO AVOID WHAT HAPPENED.

20 HE MIGHT HAVE MADE -- THE JURY FEELS THAT HE MADE -- IT WAS
21 AN UNLAWFUL KILLING WHEN IT OCCURRED, AND I RESPECT THE JURY'S
22 VERDICT, AND I KNOW YOU DO. WE DO. I RESPECT THE JURY'S
23 VERDICT. I MAY DISAGREE WITH IT, BUT I RESPECT IT. AND THEY
24 CERTAINLY PUT A LOT OF TIME AND EFFORT INTO ARRIVING AT THEIR
25 VERDICT. BUT I WOULD ASK YOU TO PLEASE TAKE INTO ACCOUNT ALL OF

SENTENCING

1 THE THINGS THAT HAVE COME OUT DURING THE COURSE OF THE TRIAL
2 ABOUT WHAT HAPPENED THAT DAY. AND THAT WOULD CONCLUDE MY
3 REMARKS.

4 THE COURT: OKAY.

5 MR. SUMNER: THANK YOU.

6 MS. MONTS: YOUR HONOR, AND I DO WANT TO SPEAK ON BEHALF OF
7 THE VICTIMS AT THE APPROPRIATE TIME.

8 THE COURT: YES, MA'AM. GO AHEAD.

9 MS. MONTS: THANK YOU, YOUR HONOR. THE VICTIMS DO NOT WISH
10 TO BE HEARD.

11 THE COURT: OKAY.

12 MS. MONTS: BUT THEY DO WANT YOU TO KNOW THAT THEY ARE
13 ASKING FOR THE MAXIMUM SENTENCE IN THIS CASE THAT HE WAS
14 SENTENCED PREVIOUSLY, AND THEY DO NOT FEEL LIKE HE SHOULD RECEIVE
15 ANY BREAK BECAUSE HE HAD THIS OPPORTUNITY DUE TO A LEGAL DECISION
16 PRIOR, YOUR HONOR.

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

18 MR. SULLIVAN, IS THERE ANYTHING YOU WANT TO TELL ME, SIR.

19 DEFENDANT: YES, SIR. I HATE THIS INCIDENT EVEN OCCURRED.

20 THE COURT: WELL, JUST DIRECT YOUR COMMENTS TO ME, SIR.
21 THANK YOU.

22 DEFENDANT: WELL, I MEAN, I WANT THE FAMILY -- THE FAMILY
23 IS OVER THERE. I'M SORRY THIS HAPPENED.

24 THE COURT: YES, SIR.

25 DEFENDANT: I DID NOT INVITE HIM IN MY HOME, AND, YOU KNOW,

SENTENCING

1 THE SOLICITOR SAY THEY MY FRIENDS AND THEY SUPPOSED TO BE HIS
2 FRIENDS. THEY WASN'T ANY ONE OF OUR FRIENDS. THEY KNOW THEY WAS
3 COMING TO CONFRONT ME. THEY WERE DRIVING, COULD HAVE WENT
4 SOMEWHERE ELSE OR, MAN, I'M NOT TAKING YOU OVER THERE. THEY CAME
5 OVER MY HOUSE. I HAVE CAME OVER THEY HOUSE. I DIDN'T HAVE NO
6 IDEA THEY WAS COMING LIKE THAT RIGHT THERE. I SWEAR, YOUR HONOR.
7 I HAVE NO DOUBT IN MY MIND I TRIED EVERYTHING I COULD DO. I TOLD
8 THEM I DIDN'T DO IT. I WENT TO THE BEDROOM. HE FOLLOWED ME BACK
9 THERE. WE HAD A FIGHT BACK THERE. I GAINED CONTROL. I'M
10 BACKING UP IN MY OWN HOUSE, BACKWARDS, "JERVIS, PLEASE LEAVE. I
11 DO NOT WANT TO DO THIS." HE SAID, "FUCK THAT GUN." I'M SCARED.
12 BECAUSE IF IT WAS MY FRIENDS, WHY THEY DIDN'T STOP HIM? NOBODY
13 SAID -- NEVER SAID, GET OUT THE HOUSE. THEY DIDN'T PULL HIM OUT
14 THE HOUSE. I FIRED INTO THE FLOOR. HE KEPT CONTINUING TO
15 ADVANCE. I FIRED AGAIN, AND HE KEPT COMING. I'M SCARED BECAUSE
16 I DON'T KNOW WHAT THEY -- THE PEOPLE CAME WITH HIM. THEY DIDN'T
17 -- I MEAN, I DIDN'T KNOW WHAT WAS GOING ON. I'M VERY SORRY THIS
18 HAPPENED. I'M SORRY I PUT HIS FAMILY THROUGH THIS AND MY FAMILY.
19 I HAD NO -- I FELT CORNERED IN THAT HE CAME WITH FIVE OTHER GUYS.
20 THEY COULDN'T BE MY FRIENDS. THEY WEREN'T NEITHER ONE OF OUR
21 FRIENDS. I KNOW NOW AS I DONE GOT OLDER THEY WEREN'T NONE OF OUR
22 FRIENDS. THEY JUST WANTED TO SEE SOMETHING. THEY WAS JUST
23 INSTIGATING. THEY WAS INSTIGATING SOMETHING AND I GOT SCARED.
24 IT'S NOT LIE. I DIDN'T -- I DON'T HAVE NO MALICE IN MY HEART
25 AGAINST NOBODY. I MEAN, YOU KNOW. I'M SORRY. I MEAN, THERE'S

SENTENCING

1 NOTHING ELSE I CAN SAY. I MEAN, WE ALL GOING TO GO ONE DAY.
2 SOME PEOPLE GET KILLED WITH A GUN. SOME PEOPLE GET KILLED IN A
3 CAR WRECK. YOU KNOW, I'M SORRY. I MEAN, I WAS SCARED. I FEARED
4 FOR MY LIFE. REALLY, I TRULY DID.

5 THE COURT: OKAY.

6 DEFENDANT: I'M VERY REMORSEFUL FOR THIS.

7 THE COURT: THANK YOU.

8 DEFENDANT: AND I WANT THE FAMILY TO KNOW IT. I'M SORRY.
9 I TRULY AM.

10 THE COURT: YES, SIR. THANK YOU.

11 MR. SUMNER: AND I JUST WANT TO SAY ONE OTHER THING---

12 THE COURT: THANK YOU, MR. SULLIVAN.

13 MR. SUMNER: ---TO MS. MONTS, AND I THINK MONTE DESAI WAS A
14 PART OF THE TEAM HERE THAT PRESENTED THE CASE, DID A GREAT JOB.
15 CERTAINLY THE PROSECUTOR'S OFFICE WAS VERY WELL PREPARED. I'VE
16 KNOWN MS. MONTS FOR A LONG TIME AND I JUST WANTED TO MAKE SURE
17 THAT SHE WAS A PLEASURE TO TRY THIS CASE WITH. YOU'RE A PLEASURE
18 TO TRY IT WITH AS ALWAYS. AND I CERTAINLY CONGRATULATE HER ON
19 THE PREPAREDNESS THAT SHE HAD AND HOW PROFESSIONAL SHE IS. THANK
20 YOU.

21 THE COURT: WELL, IT WAS A WELL-TRIED CASE ON BOTH SIDES,
22 AND I THOUGHT BOTH ATTORNEYS DID AN OUTSTANDING JOB IN MANAGING
23 THE PRESENTATION AS THEY DID AND MAKING THE CASE EFFICIENT AND
24 UNDERSTANDABLE AND PROTECTING THEIR CLIENT'S RIGHTS.

25 IS THERE ANYTHING FURTHER FROM EITHER THE STATE OR THE

SENTENCING

1 DEFENSE?

2 MR. SUMNER: NOT FROM THE DEFENSE.

3 MS. MONTS: NOT FROM THE STATE, YOUR HONOR.

4 THE COURT: ALL RIGHT. DID WE DETERMINE ABOUT THE 85
5 PERCENT?

6 MS. MONTS: I BELIEVE IT IS.

7 THE COURT: OKAY. ALL RIGHT.

8 MR. SUMNER: IT IS AS OF THE CURRENT STATE, I BELIEVE. I
9 THINK THAT'S WHAT SHE WAS TRYING TO SAY.

10 THE COURT: OKAY. RIGHT. (PAUSE)

11 OKAY. MR. SULLIVAN, I JUST WANT YOU TO KNOW, SIR, YOU ARE
12 FORTUNATE TO HAVE THE BENEFIT OF AN EXCELLENT LAWYER IN THIS
13 TRIAL, AND I THINK THAT HAS A LARGE PART TO DO WITH THE VERDICT
14 THAT CAME BACK. I'M CONFIDENT OF THAT. I THINK THIS CASE JUST
15 ILLUSTRATES THE MISERY THAT IS WROUGHT BY THE ILLEGAL USE OF
16 GUNS, AND THERE IS MISERY TO BE SPREAD AROUND THIS WHOLE
17 COURTROOM ON BOTH SIDES OF THE AISLE. I APPRECIATE YOUR COMMENTS
18 THAT YOU MADE, SIR, ABOUT YOUR REMORSE. I'M TAKING THAT INTO
19 ACCOUNT. I'M TAKING INTO ACCOUNT ALL THE CIRCUMSTANCES OF WHAT
20 HAPPENED THAT DAY.

21 AND THE SENTENCE OF THE COURT IS ON THE VOLUNTARY
22 MANSLAUGHTER THAT YOU BE COMMITTED TO THE DEPARTMENT OF
23 CORRECTIONS FOR A PERIOD OF 18 YEARS. AND THEN ON THE FIREARM,
24 POSSESSION OF A WEAPON DURING A VIOLENT CRIME, IT'S A FIVE-YEAR
25 SENTENCE CONCURRENT. AND OTHER POSSESSION IS -- I BELIEVE

SENTENCING

1 THAT'S---

2 MR. SUMNER: IT'S FIVE, YOUR HONOR.

3 THE COURT: IS THAT A FIVE TOO?

4 DEFENDANT: IT'S ONE YEAR.

5 MR. SUMNER: NO, IT'S ONE YEAR. I'M SORRY. IT'S ONE YEAR.

6 THE COURT: OKAY. IT'S ONE YEAR CONCURRENT. GOOD LUCK TO
7 YOU, SIR.

8 MS. MONTS: YOUR HONOR, WERE YOU ASKING ABOUT THE MAXIMUM
9 SENTENCE? I BELIEVE THEY ARE BOTH FIVE YEARS, YOUR HONOR.

10 DEFENDANT: NO, IT'S ONE YEAR.

11 THE COURT: WELL, IT'S ALL RIGHT. ONE YEAR CONCURRENT.

12 MR. SUMNER: THANK YOU, YOUR HONOR.

13 THE COURT: THANK YOU.

14 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 9)

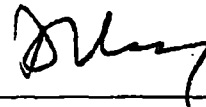
15 -----END OF REQUESTED TRANSCRIPT OF RECORD[a1]-----
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 19TH AND 20TH DAYS OF JANUARY 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 30, 2006



DAWN V. KOFFSKEY
COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA

County of GREENVILLEMORRIS A. SULLIVAN #256260

Full name and prison number (if any) of Applicant

v.

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS

2009-CP-23-

0711

APPLICATION FOR

POST-CONVICTION RELIEF

JUN 28 PM 5:52

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention KERSHAW CORRECTIONAL INST.
2. Name and location of Court which imposed sentence GREENVILLE
COUNTY GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 98-GS-23-4313 (MURDER) 18 YRS.
 - (b) 98-GS-23-4314 UNLAWFUL POSS. OF F/A 1-YR.
(CONCURRENT) to 5 YRS. (OVER)

- (c) POSS. DURING COMMISSION OF VIOLENT CRIME.
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JAN. 20, 2006 18 YRS. Voluntary M/S
- (b) 5 YRS. POSS. OF DURING COMMISSION OF
- (c) VIOLENT CRIME, 1-yr UNPAID POSS 4/21
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 11, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO PRECEDENTIAL VALUE
- ii. DECIDED ABSENT ORAL ARGUMENT
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INeffective Asst. OF Counsel
- (b) COURTS FAILURE DURING Instructions
- (c) MISCARRAGE OF JUSTICE
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED
- (b) " "
- (c) " "
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. APPEAL (4-5-2001) REVERSED And Remanded
- ii. (CERTIORARI (2-16-2005) Dismissed As
- iii. IMPROVIDENTLY GRANTED (File 2-28-05)
- iv. PCR Filed Feb. 15, 2000 - VACATED
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. " " " " "
- iii. GREENVILLE County Court OF Common Pleas
- iv. 2nd Appeal AFTER 2nd Trial/- 8-1-08 Dismissed

(c) the disposition thereof:

- i. REVERSED AND REMANDED
- ii. DISMISSED AS IMPROVIDENTLY GRANTED
- iii. VACATION OF SENTENCE
- iv. DISMISSED (Filed Aug. 11, 2008)

(d) the date of each such disposition:

- i. APRIL 5, 2001
- ii. FEB. 28, 2005
- iii. OCT. 2, 2002
- iv. AUG. 11, 2008

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. SEC. 16-23-30 (E) § 16-23-30 (C) SC Code of Law 1976
- ii. As stated in 13(C)(ii) of PCR
- iii. " " IN 13(C)(iii) of PCR
- iv. " " IN 13(C)(iv) of PCR

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES (STATE COURT(S))

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Ineffective Assistance
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. All Court(s) mentioned herein
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ☒
 (b) your trial, if any? ☒
 (c) your sentencing? ☒
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ☒
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
☒

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Dwight C. Moore, Sumter Bar APPEAL
Dwight C. Moore, (PCR)
 ii. Robert N. Dudek, Indigent Defense
Eleanor Duffy Cleary, App. Court
 iii. STEVEN W. SUMNER, LLC, 2nd TRIAL
Richard H. WARDER
 (b) the proceedings at which each such attorney represented you:
 i. PCR
APPEAL
 ii. 2nd APPEAL
1st APPEAL
 iii. 1st TRIAL
2nd TRIAL

19. State clearly the relief you seek in filing this application:

VACATION OF SENTENCE AND CONVICTION
NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, MORRIS A. SULLIVAN #256760, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Morris A. Sullivan

SWORN to and subscribed before me this 21st
 day of January, 2009.

Catharine A. Omersy (L.S.)
 Notary Public

My Commission Expires: December 22, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, MORRIS A. SULLIVAN # 256260, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Morris A. Sullivan
Applicant

SWORN or affirmed to and subscribed before me this
21st day of January, 2009.

Cynthia A. Amador
Notary Public

My Commission Expires: December 22, 2011