

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Lee S. Alford, Circuit Court Judge

ISAIAS DIAZ GUTIERREZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001080

APPENDIX

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S.C. SUPREME COURT

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	:	
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	:	2007-GS-46-01263
VERSUS	)	2007-GS-46-01264
	:	2007-GS-46-01265
ISAIAS DIAZ GUTIERREZ,	)	2007-GS-46-01266
	:	
DEFENDANT.	)	

VOLUME I
DECEMBER 10, 2007

BEFORE:

THE HONORABLE J. DERHAM COLE, JUDGE, AND A JURY

APPEARANCES:

FOR THE STATE:
WALTER W. THOMPSON, ESQ., DEPUTY SOLICITOR
LISA J. COLLINS, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:
DEREK CHIARENZA, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

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1 **MONDAY, DECEMBER 10, 2007 - COURT IN SESSION**

2 THE COURT: SOLICITOR.

3 MS. COLLINS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.
4 WE HAVE AN INTERPRETER WHO WILL BE ASSISTING IN THE CASE THAT WE
5 WILL BE CALLING AGAINST ISAIAS GUTIERREZ, AND WE WOULD LIKE TO
6 HAVE HER SWORN AT THIS TIME.

7 THE COURT: ALL RIGHT. COME AROUND, PLEASE MA'AM.

8 (WHEREUPON INTERPRETER STANDS BEFORE THE BAR AND IS PLACED
9 UNDER OATH BY THE CLERK OF COURT)

10 THE COURT: MA'AM, DO YOU HAVE A CARD OR SOMETHING
11 INDICATING YOUR NAME AND CERTIFICATION?

12 MS. GUIDRY: I THINK I HAVE-- I DON'T HAVE ANY CARDS WITH ME. I
13 DIDN'T BRING ANY. I CAN WRITE IT DOWN FOR YOU. I CAN BRING A CARD
14 TOMORROW.

15 THE COURT: WELL, WRITE IT DOWN ON A PIECE OF PAPER FOR ME,
16 PLEASE MA'AM.

17 MS. GUIDRY: OKAY.

18 (WHEREUPON INTERPRETER WROTE DOWN NAME AND PASSED IT TO
19 THE COURT)

20 MR. THOMPSON: YOUR HONOR, AT THIS TIME WE WOULD LIKE TO
21 ENTER THE ARRAIGNMENT OF ISAIAS DIAZ GUTIERREZ, ON INDICTMENT 2007-
22 46-GS-01266, FOR BURGLARY, FIRST DEGREE, WHICH WAS A DIRECT
23 INDICTMENT TRUE-BILLED BY THE GRAND JURY ON APRIL 12 OF 2007. THE
24 DEFENSE WAS GIVEN ADEQUATE NOTICE OF THIS MONTHS AGO, AND WE

1 AGREED WE DID NOT HAVE TO ARRAIGN HIM BEFORE THIS DATE. I WILL
2 HAND OVER A COPY OF THE INDICTMENT TO THE DEFENSE AT THIS TIME.

3 THE COURT: MS. GUIDRY, IF YOU WILL COME FORWARD AT THIS TIME.
4 JUST STAND RIGHT THERE. YOU ARE BARBARA GUIDRY?

5 MS. GUIDRY: YES SIR.

6 THE COURT: YOU ARE EIGHTEEN YEARS OF AGE OR OLDER?

7 MS. GUIDRY: YES SIR.

8 THE COURT: ARE YOU A FAMILY MEMBER OR A PARTY OF A WITNESS
9 IN THIS CASE?

10 MS. GUIDRY: NO.

11 THE COURT: OR ARE YOU A FAMILY MEMBER TO THE DEFENDANT?

12 MS. GUIDRY: NO SIR.

13 THE COURT: ARE YOU AN INSTRUCTOR OF A FOREIGN LANGUAGE AT
14 ANY INSTITUTION OF EDUCATION?

15 MS. GUIDRY: NO.

16 THE COURT: DO YOU HAVE SPECIAL EDUCATIONAL TRAINING OR
17 EXPERIENCE THAT ENABLES TO SPEAK FLUENTLY THE LANGUAGE OF THE
18 DEFENDANT?

19 MS. GUIDRY: YES SIR.

20 THE COURT: WHAT IS YOUR TRAINING?

21 MS. GUIDRY: LIVING OVERSEAS FOR TWENTY-TWO YEARS, AND
22 STUDYING SPANISH.

23 THE COURT: DO YOU SPEAK SPANISH FLUENTLY?

24 MS. GUIDRY: YES SIR.

1 THE COURT: HAVE YOU EVER BEEN CERTIFIED IN COURT BEFORE TO
2 INTERPRET?

3 MS. GUIDRY: QUALIFIED, AND AM IN THE PROCESS OF BECOMING
4 CERTIFIED WITH THE STATE OF SOUTH CAROLINA.

5 THE COURT: BUT YOU PREVIOUSLY HAVE BEEN QUALIFIED TO ACT AS
6 AN INTERPRETER---

7 MS. GUIDRY: YES SIR.

8 THE COURT: ---IN THE CIRCUIT COURT OF SOUTH CAROLINA? WHAT
9 COURT?

10 MS. GUIDRY: WELL, I WORK IN THE ROCK HILL MUNICIPAL COURT
11 UNDER JUDGE MODLA, JANE MODLA. AND I ASSIST IN OTHER COURTS
12 AROUND THE COUNTY.

13 THE COURT: HAVE YOU EVER BEEN QUALIFIED IN CIRCUIT COURT
14 BEFORE?

15 MS. GUIDRY: NO, I HAVEN'T.

16 THE COURT: YOU CAN HAVE A SEAT. MR. CHIARENZA, DOES THE
17 DEFENDANT REQUIRE THE SERVICES OF AN INTERPRETER, OR IS THE
18 INTERPRETER PRESENT JUST FOR, IN THE EVENT THAT SOMETHING MIGHT
19 ARISE DURING THE TRIAL? IN OTHER WORDS, DOES THE DEFENDANT SPEAK
20 ENGLISH OR NOT?

21 MR. CHIARENZA: YOUR HONOR, HE DOES SPEAK ENGLISH. SO, MS.
22 GUIDRY IS HERE TO MAKE SURE NOTHING GETS LOST IN THE TRANSLATION.

23 THE COURT: ALL RIGHT. I'M GOING TO ARRAIGN THE DEFENDANT ON
24 THE CHARGE OF BURGLARY IN THE FIRST DEGREE.

25 YOU ARE ISAIAS DIAZ GUTIERREZ?

1 (NO RESPONSE)

2 THE COURT: ARE YOU ISAIAS DIAZ GUTIERREZ?

3 MR. GUTIERREZ: YES.

4 THE COURT: DO YOU UNDERSTAND, MR. GUTIERREZ, THAT YOU ARE
5 CHARGED IN INDICTMENT 2007-1266, WITH THE CRIME OF BURGLARY IN THE
6 FIRST DEGREE?

7 MR. GUTIERREZ: YES.

8 THE COURT: THE STATE ALLEGES ON OR ABOUT DECEMBER 29, OF
9 2002, THAT YOU DID WILLFULLY AND UNLAWFULLY ENTER A DWELLING
10 BELONGING TO CLARENCE CUBLEY. THE STATE ALLEGES THAT YOU
11 ENTERED THAT DWELLING WITHOUT HIS CONSENT AND WITH THE INTENT
12 TO COMMIT A CRIME THEREIN. THEY FURTHER ALLEGE YOU ENTERED THE
13 DWELLING IN THE NIGHTTIME; THAT YOU CAUSED PHYSICAL INJURY TO
14 CLARENCE CUBLEY; AND THAT YOU WERE ARMED WITH A DEADLY WEAPON.

15 IF PROVEN, THOSE ACTS WOULD CONSTITUTE BURGLARY IN THE FIRST
16 DEGREE, FOR WHICH YOU COULD RECEIVE A SENTENCE OF LIFE
17 IMPRISONMENT. DO YOU UNDERSTAND THE CHARGE?

18 MR. GUTIERREZ: YES.

19 THE COURT: DO YOU UNDERSTAND THE POTENTIAL SENTENCE?

20 MR. GUTIERREZ: YES.

21 THE COURT: MR. CHIARENZA, DOES YOUR CLIENT WISH TO ENTER A
22 PLEA OF NOT GUILTY?

23 MR. CHIARENZA: YES, YOUR HONOR. HE'S PLEADING NOT GUILTY TO
24 THIS AND THE OTHER INDICTMENTS PREVIOUSLY SERVED.

25 THE COURT: OKAY. BRING IN THE JURY.

1 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM)

2 GOOD MORNING, LADIES AND GENTLEMEN. I'M GOING TO BE ASKING
3 YOU SOME QUESTIONS ABOUT THE FIRST CASE THAT'S GOING TO BE CALLED
4 FOR TRIAL BEFORE WE SELECT A JURY IN THE CASE.

5 THE TITLE OF THE CASE IS THE STATE OF SOUTH CAROLINA VERSUS
6 ISAIAS DIAZ GUTIERREZ. IN OTHER WORDS, HE'S THE DEFENDANT; HE'S THE
7 PERSON THAT HAS BEEN CHARGED WITH A CRIME. IN THIS PARTICULAR
8 CASE, IT'S SIX SEPARATE AND DISTINCT OFFENSES. BUT THEY ARE ALLEGED
9 TO HAVE ARISEN OUT OF ONE EVENT OR SOME COURSE OF EVENTS WHICH
10 THE STATE ALLEGES OCCURRED BACK ON DECEMBER 29, OF 2002.

11 NOW, BY WAY OF THE INDICTMENTS, THE STATE IS ALLEGING THAT HE
12 COMMITTED SIX SEPARATE OFFENSES. THOSE CRIMINAL OFFENSES INCLUDE
13 BURGLARY IN THE FIRST DEGREE, ARMED ROBBERY, MURDER, AND THREE
14 SEPARATE COUNTS OF FORGERY. AND WITH THE EXCEPTION OF ONE OF THE
15 COUNTS OF FORGERY, THE STATE ALLEGES THAT EACH OF THESE CRIMES
16 OCCURRED ON DECEMBER 29 OF 2002.

17 BY WAY OF THE INDICTMENTS, THEY ALLEGE THAT HE DID ON THAT
18 DATE WILLFULLY AND UNLAWFULLY ENTER A DWELLING THAT BELONGED
19 TO CLARENCE CUBLEY, LOCATED ON HIGHWAY 21 IN FORT MILL, SOUTH
20 CAROLINA. THEY ALLEGE THAT HE ENTERED THAT DWELLING WITHOUT
21 THE CONSENT OF THE OWNER AND WITH THE INTENT TO COMMIT A CRIME
22 THEREIN. THEY FURTHER ALLEGE THAT THIS BURGLARY OCCURRED IN THE
23 NIGHTTIME; AND FURTHER THAT THE DEFENDANT CAUSED PHYSICAL
24 INJURY TO MR. CUBLEY; AND FURTHER THAT THE DEFENDANT WAS ARMED

1 WITH A DEADLY WEAPON AT THE TIME THAT THE BURGLARY WAS
2 COMMITTED.

3 BY WAY OF A SECOND INDICTMENT, THEY ALLEGE THAT MR.
4 GUTIERREZ DID WILLFULLY AND UNLAWFULLY COMMIT AN ARMED
5 ROBBERY OF MR. CUBLEY. THEY ALLEGE THAT HE DID TAKE, STEAL AND
6 CARRY AWAY FROM MR. CUBLEY, A SAFE, A CHECKBOOK, A WALLET, AND
7 OTHER PERSONAL ITEMS BY THE USE OF FORCE AND/OR INTIMIDATION
8 WHILE HE WAS ARMED WITH A DEADLY WEAPON. AND AGAIN, THEY
9 ALLEGE THAT THAT ARMED ROBBERY OCCURRED AT MR. CUBLEY'S
10 RESIDENCE.

11 BY WAY OF A THIRD INDICTMENT THEY ALLEGE THAT HE DID
12 WILLFULLY AND WITH MALICE AFORETHOUGHT KILL CLARENCE CUBLEY BY
13 BEATING HIM WITH A PIECE OF A CEMENT BLOCK, AND THAT MR. CUBLEY
14 DIED AS A PROXIMATE RESULT OF THOSE ACTS. THEY ALLEGE THAT THAT
15 OCCURRED AT MR. CUBLEY'S RESIDENCE.

16 THEY ALSO ALLEGE ON DECEMBER 29, OF 2002, THAT MR. GUTIERREZ
17 COMMITTED TWO SEPARATE COUNTS OF FORGERY. THEY ALLEGE THAT HE
18 DID FORGE OR FALSELY MAKE OR UTTER AND PUBLISH AS TRUE CERTAIN
19 INSTRUMENTS OF WRITING, ONE BEING A CHECK NUMBERED 1651, AND
20 DRAWN ON THE ACCOUNT OF MAUDE CUBLEY IN THE AMOUNT OF \$500. AND
21 THAT HE PUBLISHED THAT FORGED CHECK AS TRUE AT BANK OF AMERICA
22 IN ROCK HILL.

23 THEY ALSO ALLEGE HE DID SIMILAR ACTS INVOLVING A CHECK
24 NUMBERED 1655, IN THE AMOUNT OF \$775, DRAWN ON THE SAME ACCOUNT

1 AS PREVIOUSLY INDICATED AND PRESENTED AT BANK OF AMERICA AS
2 BEING TRUE AND VALID.

3 AND THE LAST INDICTMENT THE STATE ALLEGES THAT MR.
4 GUTIERREZ COMMITTED THE CRIME OF FORGERY ON DECEMBER 30 OF 2002.
5 AND THAT HE DID FALSELY MAKE, FORGE, COUNTERFEIT, OR UTTER AND
6 PUBLISH AS TRUE AN INSTRUMENT OF WRITING, BEING CHECK NUMBER 1652,
7 DRAWN ON THE ACCOUNT OF MAUDE CUBLEY IN THE SUM OF \$600,
8 PUBLISHED AS TRUE AT BANK OF AMERICA IN FORT MILL, SOUTH CAROLINA.

9 NOW, THOSE ARE THE ALLEGATIONS AND THOSE ARE THE CHARGES
10 THAT HAVE BEEN BROUGHT AGAINST THE DEFENDANT. AS TO EACH OF
11 THOSE ALLEGATIONS AND AS TO EACH OF THOSE CHARGES HE HAS ENTERED
12 A PLEA OF NOT GUILTY. AND THAT PLEA OF NOT GUILTY THEREFORE
13 PLACES UPON THE STATE THE BURDEN OF PROVING THE ALLEGATIONS THAT
14 THEY HAVE BROUGHT AGAINST THE DEFENDANT, PROVING EACH OF THE
15 ESSENTIAL ELEMENTS OF THE CRIME AS ALLEGED AGAINST THE
16 DEFENDANT, AND THEREFORE, THE BURDEN IS ON THE STATE TO PROVE THE
17 DEFENDANT GUILTY OF EACH OF THESE CHARGES BEYOND A REASONABLE
18 DOUBT BEFORE ANY VERDICT OF GUILTY COULD BE RETURNED.

19 SO, WE'RE GOING TO BE SELECTING FOURTEEN OF YOU TO
20 PARTICIPATE IN THE TRIAL OF THIS CASE. AND BY WAY OF YOUR
21 PARTICIPATION YOU ARE GOING TO BE CALLED UPON TO LISTEN TO THE
22 TESTIMONY, TO CONSIDER THE EVIDENCE IN THE CASE. WHEN YOU GO BACK
23 TO DELIBERATE AT THE TRIAL'S CONCLUSION, YOU'LL CONSIDER ALL THAT
24 EVIDENCE. FROM THAT EVIDENCE YOU'LL DECIDE THE FACTS AS YOU
25 DETERMINE WHAT, IF ANYTHING, YOU BELIEVE OCCURRED BACK ON

1 DECEMBER 29 TO DECEMBER 30, AS IT RELATES TO THESE PARTICULAR
2 ALLEGATIONS. AND THEN ONCE YOU DECIDE THOSE FACTS, YOU'LL APPLY
3 THE LAW THAT I WILL HAVE PROVIDED YOU AND YOU WILL DETERMINE
4 WHETHER OR NOT THE DEFENDANT HAS BEEN PROVEN GUILTY BEYOND A
5 REASONABLE DOUBT.

6 NOW, BEFORE WE BEGIN WITH THAT SELECTION, I'VE GOT SOME
7 QUESTIONS, AS I'VE TOLD YOU, TO ASK YOU. AND THE PURPOSE OF THE
8 QUESTIONS IS TO FIND OUT IF THERE'S ANY REASON WHY ANY ONE OF YOU
9 SHOULD NOT BE SELECTED TO SERVE IN THE CASE.

10 FIRST OF ALL, WE'RE GOING TO IDENTIFY THE DEFENDANT FOR YOU.
11 THE DEFENDANT IS ISAIAS DIAZ GUTIERREZ. MR. GUTIERREZ, IF YOU WILL
12 PLEASE STAND AND FACE THE JURY PANEL.

13 (WHEREUPON DEFENDANT STANDS)

14 TURN AND FACE THE JURY PANEL. THANK YOU, BE SEATED.

15 SEATED WITH THE DEFENDANT IS MR. DEREK CHIARENZA, HIS
16 LAWYER. HE WILL BE ASSISTING HIM IN THE TRIAL OF THE CASE.

17 (WHEREUPON MR. CHIARENZA STANDS)

18 THE PERSON ALLEGED TO HAVE BEEN THE VICTIM OF THE BURGLARY
19 AND THE ARMED ROBBERY AND THE MURDER IS CLARENCE CUBLEY. ARE
20 ANY OF MR. CUBLEY'S RELATIVES IN THE COURTROOM?

21 COURT BAILIFF: THEY'RE OUTSIDE.

22 THE COURT: ALL RIGHT. WELL, THE VICTIM IN THOSE CASES IS
23 CLARENCE CUBLEY, C-U-B-L-E-Y. WITH REGARD TO THE FORGERY
24 INDICTMENTS, THE VICTIM IS ALLEGED TO HAVE BEEN MAUDE CUBLEY,
25 C-U-B-L-E-Y. IS SHE HERE?

1 MS. COLLINS: SHE'S DECEASED, YOUR HONOR.

2 THE COURT: MAUDE CUBLEY'S ALSO DECEASED?

3 MS. COLLINS: YES, YOUR HONOR.

4 THE COURT: OKAY. PRESENTING THE CASE ON BEHALF OF THE CASE
5 ARE WILLY THOMPSON AND LISA COLLINS, BOTH ASSISTANT CIRCUIT
6 SOLICITORS FOR THE SIXTEENTH JUDICIAL CIRCUIT.

7 (WHEREUPON SOLICITORS STAND)

8 I'M GOING TO RECITE A LIST OF WITNESSES FOR YOUR BENEFIT. THE
9 REASON I'M RECITING THIS LIST IS BECAUSE WHEN I'M THROUGH I'M GOING
10 TO ASK IF ANY JUROR IS CONNECTED IN ANY WAY; THAT IS, DO YOU HAVE A
11 BLOOD RELATIONSHIP; DO YOU HAVE A FAMILIAL RELATIONSHIP; ARE YOU
12 RELATED TO SOMEONE THROUGH MARRIAGE; DO YOU HAVE A BUSINESS
13 CONNECTION; A SOCIAL CONNECTION; OR ANY TYPE OF FRIENDSHIP. OR DO
14 YOU JUST KNOW THESE PEOPLE IN SOME FASHION FROM SOME PARTICULAR
15 CIRCUMSTANCE.

16 SO, AS I RECITE A LIST OF THESE WITNESSES, IF YOU KNOW ANYBODY
17 WHO'S BEEN IDENTIFIED IN THE CASE, I'M GOING TO ASK THAT YOU PLEASE
18 STAND AND I'LL ADDRESS THOSE RELATIONSHIPS WITH YOU. OF COURSE,
19 I'VE ALREADY IDENTIFIED THE DEFENDANT. I'VE IDENTIFIED THE DECEASED,
20 CLARENCE CUBLEY, AND THE OTHER VICTIM, MAUDE CUBLEY. I'VE
21 IDENTIFIED THE LAWYERS FOR YOU.

22 AND THE FOLLOWING PERSONS ARE POTENTIAL WITNESSES TO
23 TESTIFY IN THE CASE: THEY INCLUDE, NOVA ACKERMAN FROM BANK OF
24 AMERICA; JIMMY ALEXANDER-- AND AS I CALL THESE NAMES-- AND
25 THEY'RE NOT IN THE COURTROOM. SO, IF YOU THINK YOU KNOW SOMEBODY

1 BY THAT NAME, BUT YOU'RE NOT SURE IT'S THE SAME ONE, YOU GO AHEAD
2 AND STAND AND I'LL TRY TO GET SOMEBODY TO IDENTIFY THESE PEOPLE
3 FOR YOU, OR PERHAPS WE'LL BRING THEM IN SO YOU CAN SEE WHO THEY
4 ARE, IF THAT SHOULD BECOME AN ISSUE.

5 WE ALSO HAVE OFFICER ALVARADO WITH THE YORK COUNTY
6 SHERIFF'S DEPARTMENT; BRYAN BAGWELL OF THE FORENSIC SERVICES
7 UNIT; PETE BAIRD; MIKE BAKER, YORK COUNTY SHERIFF'S OFFICE; LYNN
8 BENFIELD, A MAGISTRATE; DANA GASTON BLACKMON; SAM BLANKENSHIP,
9 FORT MILL RESCUE SQUAD; JIM BOHELER; VONDA FAYE BOHELER; MAUREEN
10 BOTRELL WITH THE FEDERAL BUREAU OF INVESTIGATION; SHIRLEY BROOM;
11 HELEN FOWLER BROWN, YORK COUNTY DETENTION CENTER; JUSTIN BURNS,
12 PHYSICIAN WITH CAROLINAS MEDICAL CENTER; SHARON BURNS; JUNIOR
13 FERNANDEZ LUIS TEMPOS; D. H. CLEVINGER WITH THE YORK COUNTY
14 SHERIFF'S OFFICE; BOBBY CUBLEY; TERESA CUBLEY; ANITA CULP; MATT
15 CULP; SHERRY DANIEL; ROBERT DAVENPORT, HE'S A MAGISTRATE; JAMES
16 DEVOS, FORT MILL RESCUE SQUAD; MICHAEL ENNIS, FEDERAL BUREAU OF
17 INVESTIGATION; BEN FLOYD; TODD GARDNER, FORENSIC SERVICES UNIT;
18 DANNY LEE GASTON; JANE GASTON; RON GUINN OF THE BRANSON POLICE
19 DEPARTMENT; LIEUTENANT GREGORY, YORK COUNTY SHERIFF'S OFFICE;
20 CONCEPCION GUADALUPE GUTIERREZ; FRANK GUTIERREZ; ROBERT
21 GUSMAN; TIM HAGER, YORK COUNTY SHERIFF'S OFFICE; JENNIFER HANNAH,
22 PHYSICIAN, CAROLINAS MEDICAL CENTER; EARL JENKINS, PHYSICIAN; PAUL
23 KING, FORT MILL RESCUE SQUAD; DEPUTY LIMERICK, YORK COUNTY
24 SHERIFF'S OFFICE; ERIC LINK, IMMIGRATION AND CUSTOMS ENFORCEMENT;
25 GREG MAGGART, FORMERLY WITH THE YORK COUNTY SHERIFF'S OFFICE;

1 RICHIE MARTIN; AND ROBERT MARTIN; AND RALPH MISLE, WITH THE YORK
2 COUNTY DETENTION CENTER; KAREN McCLURE, YORK COUNTY SHERIFF'S
3 OFFICE; MAE McCOY, BANK OF AMERICA; DEBORAH McCULLOUGH; DOUG
4 McKOWN; WILLIAM R. MONTROSE; ROGER NEELY, YORK COUNTY SHERIFF'S
5 OFFICE; ED NIVENS; M. E. O'BRIEN, FORENSIC SERVICES UNIT; BARBARA
6 PETTIT AND SHARON PIKE WITH THE BANK OF AMERICA; WENDY PLEMMONS,
7 YORK COUNTY DETENTION CENTER; RICHARD RAYFIELD; SARAH ROBBINS,
8 YORK POLICE DEPARTMENT; WAYNE SMITH, YORK COUNTY SHERIFF'S
9 OFFICE, LEE STONEBURNER, YORK COUNTY SHERIFF'S OFFICE; EDDIE STRAIT,
10 YORK COUNTY SHERIFF'S OFFICE; JOHN STRAIT, YORK COUNTY DETENTION
11 CENTER; T. B. SULLIVAN, YORK COUNTY SHERIFF'S OFFICE; LINDA TAYLOR;
12 ROBIN TAYLOR, STATE LAW ENFORCEMENT DIVISION; M. H. THOMASSON,
13 PHYSICIAN, CAROLINAS MEDICAL CENTER; GUINE TRAN, BANK OF AMERICA;
14 MARIO VARGAS; BELCAR A/K/A VICTOR VELASQUEZ; LONNIE VINESETT,
15 YORK COUNTY SHERIFF'S OFFICE; MILDRED WALLACE; MARCUS WHITENER;
16 KENNETH WHITLER, STATE LAW ENFORCEMENT DIVISION; GLENN WILLIAMS,
17 YORK COUNTY SHERIFF'S OFFICE; MIKE WILLIAMS, FORENSIC SERVICES UNIT;
18 SANDRA WILLIAMS; TERESA WILSON; OFFICER WOOTEN, YORK COUNTY
19 SHERIFF'S OFFICE; LEON YARD, MAGISTRATE; RUSS YEAGER, YORK COUNTY
20 SHERIFF'S OFFICE; AND PAUL ZINKANN, WITH BANK OF AMERICA.

21 ARE THERE ANY OTHER POTENTIAL WITNESSES ON BEHALF OF THE
22 STATE?

23 MS. COLLINS: NO OTHER WITNESSES, BUT MS. BARBARA GUIDRY WILL
24 BE INTERPRETING. I DIDN'T KNOW IF YOU WANTED TO INTRODUCE MS.
25 GUIDRY AT THIS TIME.

1 THE COURT: OKAY. ANY OTHER WITNESSES ON BEHALF OF THE
2 DEFENDANT?

3 MR. CHIARENZA: NO, YOUR HONOR.

4 THE COURT: OKAY. MS. BARBARA GUIDRY IS THE INTERPRETER FOR
5 THE BENEFIT OF THE DEFENDANT.

6 I NEED ALL JURORS TO STAND WHO NEED TO RESPOND TO HAVING
7 ANY KNOWLEDGE OF ANY PERSON WHO'S BEEN IDENTIFIED, AND THAT
8 INCLUDES THE LAWYERS.

9 MR. CHIARENZA: YOUR HONOR, WE HAVE SCOTT BERNARD, WHO IS A
10 POTENTIAL WITNESS.

11 THE COURT: ALL RIGHT. SCOTT BERNARD. I'M GOING TO START OVER
12 HERE ON MY LEFT AND I'LL WORK BACK AND ACROSS. IF YOU WILL GIVE ME
13 AND YOUR JUROR NUMBER, PLEASE, AND THEN TELL ME HOW THE QUESTION
14 RELATES TO YOU. YOU, SIR.

15 JUROR: EDWARD SMITH, 207. I'M RELATED TO LYNN BENFIELD, THE
16 MAGISTRATE.

17 THE COURT: HOW ARE YOU RELATED?

18 JUROR: FIRST COUSINS.

19 THE COURT: WOULD THAT HAVE ANY BEARING ON YOUR DECISION IN
20 THE CASE?

21 JUROR: NO SIR.

22 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

23 JUROR: MY NAME IS CYNTHIA CLINTON, 42. JIM AND FAYE BOHELER
24 ARE MEMBERS OF MY CHURCH.

25 THE COURT: WHAT WERE THE WITNESSES' LAST NAMES?

1 JUROR: JIM AND FAYE BOHELER.

2 THE COURT: BOHELER, OKAY. IS THERE ANYTHING ABOUT THOSE
3 CONNECTIONS THAT WOULD AFFECT YOUR JUDGMENT IN THIS CASE?

4 JUROR: NO.

5 THE COURT: THANK YOU, BE SEATED. YES MA'AM.

6 JUROR: LINDA VAUGHT, 229. GLENN WILLIAMS AND RENEE' WILLIAMS
7 ARE FRIENDS.

8 THE COURT: WOULD THAT HAVE ANY BEARING UPON YOUR DECISION
9 IN THE CASE?

10 JUROR: NO SIR.

11 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

12 JUROR: TERESA PECK, JUROR 173. I HAVE CHILDREN IN SCHOOL WITH
13 THE BOHELER CHILDREN.

14 THE COURT: WOULD THAT HAVE ANY BEARING UPON YOUR DECISION
15 IN THE CASE?

16 JUROR: NO SIR.

17 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

18 JUROR: SAMANTHA BARNETT, JUROR 12. I KNOW ROBIN NEELY. I
19 ALSO KNOW ROBERT DAVENPORT.

20 THE COURT: WOULD EITHER OF THOSE CONNECTIONS HAVE ANY
21 BEARING UPON YOUR DECISION IN THE CASE?

22 JUROR: NO SIR.

23 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

24 JUROR: ROSEMOND DAVIS, JUROR 56. I USED TO GO TO WORK WITH
25 ANITA CULP.

1 THE COURT: WOULD YOU REPEAT THAT?

2 JUROR: I USED TO GO TO CHURCH WITH HER?

3 THE COURT: WITH MS. CULP?

4 JUROR: YES SIR.

5 THE COURT: WOULD THAT HAVE ANY BEARING UPON YOUR DECISION
6 IN THE CASE?

7 JUROR: NO SIR.

8 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

9 JUROR: I'M REBECCA FORRESTER, JUROR 74. I KNOW LYNN BENFIELD
10 DOUG McKOWN AND MIKE BAKER.

11 THE COURT: YOU KNOW BENFIELD, McKOWN AND WHO?

12 JUROR: MIKE BAKER.

13 THE COURT: HOW DO YOU KNOW THEM?

14 JUROR: I WAS A WAITRESS FOR A NUMBER OF YEARS AND I WAS
15 ASSOCIATED WITH THE COUNTY. I MET HER WHEN I WAS ON CALL.

16 THE COURT: WOULD ANY OF THOSE FACTS HAVE ANY BEARING UPON
17 YOUR DECISION IN THE CASE?

18 JUROR: NO SIR.

19 THE COURT: THANK YOU, BE SEATED. DOES ANYONE ELSE NEED TO
20 RESPOND TO THE QUESTION OF HAVING SOME CONNECTION OR KNOWLEDGE
21 OF ANY POTENTIAL WITNESS OR LAWYER OR VICTIM OR DEFENDANT OR
22 ANY OTHER PERSON WHO'S BEEN IDENTIFIED? IF SO, PLEASE STATE.

23 (NO RESPONSE)

24 THE COURT: AS I TOLD YOU, THESE ARE INCIDENTS THAT THE STATE
25 ALLEGES OCCURRED BACK IN DECEMBER OF 2002, AT THE RESIDENCE OF

1 CLARENCE CUBLEY, LOCATED ON HIGHWAY 21 IN FORT MILL. IS THERE ANY
2 MEMBER OF THE JURY PANEL WHO BELIEVES THAT YOU HAVE HEARD
3 SOMETHING ABOUT THIS CASE, OR SEEN SOMETHING ABOUT THIS CASE,
4 PERHAPS IN THE MEDIA? OR READ SOMETHING ABOUT THE CASE IN THE
5 NEWSPAPER? OR YOU KNOW SOMETHING ABOUT THE FACTS THAT MIGHT
6 RELATE TO THIS CASE BECAUSE YOU HAVE RECEIVED SOME INFORMATION
7 ABOUT THE CASE FROM ANY SOURCE WHATSOEVER?

8 IS THERE ANY JUROR WHO BELIEVES YOU KNOW SOMETHING, OR
9 YOU'VE READ, HEARD, SEEN SOMETHING ABOUT THIS CASE? IF SO, PLEASE
10 STAND.

11 (WHEREUPON JURORS STAND)

12 THE COURT: AND YOUR NAME, AGAIN, WAS?

13 JUROR: TERESA PECK, 173. I REMEMBER READING ABOUT IT IN THE
14 PAPERS.

15 THE COURT: ABOUT HOW LONG AGO WAS THAT?

16 JUROR: RIGHT AT THE TIME IT HAPPENED.

17 THE COURT: IS THERE ANYTHING ABOUT WHAT YOU READ IN THE
18 PAPER THAT WOULD HAVE ANY IMPACT UPON YOUR DECISION IN THIS CASE?

19 JUROR: NO SIR.

20 THE COURT: DO YOU REMEMBER-- I'M NOT GOING TO ASK YOU TO
21 TELL ME WHAT YOU READ, BUT DO YOU REMEMBER WHAT YOU READ?

22 JUROR: I JUST REMEMBER THE REPORT OF THE ACCOUNT WHEN IT
23 HAPPENED, AND THE IMPACT ON THE COMMUNITY.

24 THE COURT: AS I SAY, I'M NOT GOING TO ASK YOU WHAT YOU READ,
25 BUT I'M ASKING YOU IF YOU REMEMBER WHAT YOU READ?

1 JUROR: I REMEMBER VAGUELY.

2 THE COURT: IS THERE ANYTHING ABOUT WHAT YOU READ THAT
3 WOULD AFFECT YOUR JUDGMENT IN ANY WAY?

4 JUROR: NO.

5 THE COURT: WOULD YOU BE ABLE TO PUT IT ASIDE? EVEN IF YOU
6 RECALLED IT LATER, COULD YOU PUT IT ASIDE AND NOT ALLOW IT TO
7 INFLUENCE YOUR JUDGMENT AND BASE YOUR DECISION SOLELY UPON THE
8 EVIDENCE PRESENTED AND RECEIVED DURING THE TRIAL OF THIS CASE?

9 JUROR: YES.

10 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

11 JUROR: ROSEMOND DAVIS, JUROR 56. I ALSO READ ABOUT IT WHEN IT
12 OCCURRED.

13 THE COURT: WOULD YOU BE ABLE TO PUT ASIDE ANYTHING YOU
14 READ ABOUT THE CASE AND NOT ALLOW IT TO INFLUENCE YOUR DECISION?

15 JUROR: YES SIR.

16 THE COURT: COULD YOU BASE YOUR VERDICT SOLELY UPON THE
17 EVIDENCE RECEIVED DURING THE TRIAL OF THIS CASE?

18 JUROR: YES SIR.

19 THE COURT: THANK YOU, BE SEATED. DOES ANYONE ELSE NEED TO
20 RESPOND TO THAT QUESTION?

21 (NO RESPONSE)

22 IS THERE ANYTHING ABOUT THE NATURE OF THE CASE; THAT IS, WHAT
23 THE ALLEGATIONS ARE, WHAT THE DEFENDANT IS ACCUSED OF HAVING
24 DONE? IS THERE ANYTHING ABOUT THE NATURE OF THE CASE THAT WOULD

1 PREVENT ANY JUROR FROM BEING ABLE TO BE FAIR AND IMPARTIAL IF YOU
2 WERE SELECTED AS A JUROR IN THE CASE? IF SO, PLEASE STAND.

3 (NO RESPONSE)

4 IS THERE ANY MEMBER OF THE JURY PANEL, WHETHER IT BE YOU OR
5 SOME MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS EVER BEEN
6 ACCUSED OF, OR EVER BEEN THE VICTIM OF ANY TYPE OF VIOLENT CRIME,
7 WHICH WOULD INCLUDE MURDER, BURGLARY, ARMED ROBBERY, CRIMINAL
8 DOMESTIC VIOLENCE, RAPE, ANY OFFENSE THAT MIGHT BE CLASSIFIED AS A
9 VIOLENT OFFENSE? I NEED TO KNOW IF YOU OR A FAMILY MEMBER HAS
10 EVER BEEN ACCUSED OF COMMITTING SUCH A CRIME, OR YOU'VE EVER
11 BEEN THE VICTIM OF ANY SUCH CRIME. IF SO, PLEASE STAND.

12 (WHEREUPON JURORS STAND)

13 I HAVE A NUMBER OF JURORS STANDING AND I'M GOING TO DISCUSS
14 YOUR CIRCUMSTANCES WITH YOU INDIVIDUALLY. IF YOU DON'T WANT TO
15 RESPOND TO THE QUESTION FROM WHERE YOU ARE, YOU CAN COME DOWN
16 HERE AND I'LL DISCUSS IT WITH YOU PRIVATELY. IF YOU DON'T HAVE ANY
17 PROBLEM WITH DISCUSSING IT WHERE YOU ARE, JUST STAND WHERE YOU
18 ARE AND RESPOND TO THE QUESTION. SO, I'LL LIVE THAT UP TO YOU: STAY
19 WHERE YOU ARE OR COME DOWN HERE.

20 I'LL START ON MY LEFT-HAND SIDE, THE GENTLEMAN IN THE STRIPED
21 SHIRT ON THE SECOND ROW. I'LL WORK MY WAY BACK AND THEN I'LL COME
22 ACROSS. I NEED YOUR NAME AND JUROR NUMBER, PLEASE.

23 JUROR: CAN I COME THERE?

24 THE COURT: YES SIR.

1 (WHEREUPON JUROR CAME FORWARD FOR IN-CAMERA INQUIRY, WITH
2 COURT AND COUNSEL)

3 THE COURT: IF THERE'S ANYBODY ELSE THAT WANTS TO COME DOWN
4 HERE, LET'S DO ALL THOSE AT ONCE, PLEASE.

5 COURT REPORTER: YOUR HONOR, MAY I HAVE THE NUMBER OF THE
6 FIRST JUROR WHO CAME FORWARD?

7 THE COURT: NUMBER 170.

8 (WHEREUPON JURORS LINED UP TO COME FORWARD FOR IN-CAMERA
9 INQUIRY WITH COURT AND COUNSEL)

10 THE COURT: JUROR 64. NEXT.

11 (IN-CAMERA INQUIRY)

12 THE COURT: 224. NEXT.

13 (IN-CAMERA INQUIRY)

14 THE COURT: JUROR 18. NEXT.

15 (IN-CAMERA INQUIRY)

16 THE COURT: JUROR 18 IS EXCUSED FROM SERVICE IN THE CASE. NEXT.

17 (IN-CAMERA INQUIRY)

18 THE COURT: 74. NEXT.

19 (IN-CAMERA INQUIRY)

20 THE COURT: JUROR 63. NEXT.

21 (IN-CAMERA INQUIRY)

22 THE COURT: JUROR 54. NEXT.

23 (IN-CAMERA INQUIRY)

24 THE COURT: JUROR 62. NEXT.

25 (IN-CAMERA INQUIRY)

1 THE COURT: JUROR 45. NEXT

2 (IN-CAMERA INQUIRY)

3 JUROR 187. NEXT.

4 (IN-CAMERA INQUIRY)

5 JUROR 127. NEXT.

6 (IN-CAMERA INQUIRY)

7 JUROR 174. NEXT.

8 (IN-CAMERA INQUIRY)

9 JUROR 71. ANY OTHER JURORS NEED TO RESPOND TO THE QUESTION,
10 YOU OR A FAMILY MEMBER HAVING BEEN ACCUSED OF OR BEEN THE VICTIM
11 OF A VIOLENT CRIME? IF SO, PLEASE STAND.

12 (NO RESPONSE)

13 IF YOU'RE ALREADY STANDING BECAUSE YOU DON'T HAVE A SEAT,
14 YOU'RE GOING TO HAVE TO RAISE YOUR HAND, I GUESS, TO LET ME KNOW
15 THAT YOU NEED TO RESPOND TO A QUESTION.

16 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED TO BY
17 BLOOD OR MARRIAGE TO ANY TYPE OF LAW ENFORCEMENT OFFICER? AND,
18 OF COURSE, I NEED TO KNOW IF YOU, YOURSELF, ARE NOW OR HAVE EVER
19 BEEN EMPLOYED AS A LAW ENFORCEMENT OFFICER. BUT I ALSO WANT TO
20 KNOW IF YOU ARE RELATED BY BLOOD OR MARRIAGE TO ANY LAW
21 ENFORCEMENT OFFICER. AND THAT WOULD INCLUDE PERSONS EMPLOYED
22 BY A SHERIFF'S DEPARTMENT, A CITY, TOWN, OR MUNICIPAL LAW
23 ENFORCEMENT AGENCY, THE STATE LAW ENFORCEMENT DIVISION, THE FBI,
24 ANY MILITARY POLICE, A DETENTION FACILITY, A CORRECTIONS FACILITY, A

1 PROBATION OFFICER, ANY TYPE OF LAW ENFORCEMENT OFFICER. IF SO,
2 PLEASE STAND.

3 (WHEREUPON JURORS STAND)

4 THAT WOULD INCLUDE CUSTOMS ENFORCEMENT, TOO. ANY
5 PROSECUTOR'S OFFICE. I'M GOING TO START TO MY LEFT AND WORK BACK,
6 AND THEN TO THE RIGHT. IF YOU WILL GIVE ME YOUR NAME AND JUROR
7 NUMBER, AND TELL ME HOW THE QUESTION RELATES TO YOU.

8 JUROR: VERLE McGAHA, 251. I'M RELATED TO SHAWN THOMPSON,
9 YORK COUNTY SHERIFF, AND JOHN McGAHA, FBI.

10 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

11 JUROR: SHEILA SEXTON, JUROR 199. MY HUSBAND'S COUSIN, JOE
12 STEELE, HAS WORKED FOR THE SHERIFF'S DEPARTMENT.

13 THE COURT: YORK COUNTY?

14 JUROR: YES SIR.

15 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

16 JUROR: MONICA GEORGE, NUMBER 79. I WAS MARRIED TO MACK
17 GEORGE, WHO WAS A POLICE OFFICER FOR YORK. HE'S A RETIRED POLICE
18 OFFICER.

19 THE COURT: THANK YOU, BE SEATED. NEXT.

20 JUROR: RICKY HARPER, NUMBER 92. I HAVE TWO COUSINS WHO WORK
21 FOR THE SHERIFF'S DEPARTMENT.

22 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

23 JUROR: CYNTHIA CLINTON, NUMBER 42. I HAVE A BROTHER-IN-LAW,
24 RANDY CLINTON, WHO WORKS FOR LAW ENFORCEMENT.

25 THE COURT: WHERE IS HE EMPLOYED?

1 JUROR: I DON'T KNOW WHERE HE'S EMPLOYED, BUT I KNOW HE'S WITH
2 LAW ENFORCEMENT.

3 SOLICITOR THOMPSON: HE'S WITH THE SHERIFF'S DEPARTMENT, YOUR
4 HONOR.

5 THE COURT: THIS IS YOUR COUSIN?

6 JUROR: NO, BROTHER-IN-LAW.

7 THE COURT: YOUR BROTHER-IN-LAW?

8 JUROR: MY HUSBAND'S BROTHER.

9 THE COURT: AND HE WORKS FOR THE SHERIFF'S DEPARTMENT?

10 JUROR: UH-HUH.

11 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

12 JUROR: VIRGINIA LAWRENCE, NUMBER 127. MY HUSBAND'S COUSIN'S
13 DAUGHTER IS A STATE TROOPER IN KENTUCKY.

14 THE COURT: THANK YOU, BE SEATED. IS THAT EVERYBODY ON THAT
15 SIDE? OKAY. NEXT.

16 JUROR: ALAN RYMAN, 193. MY SISTER IS A DEPUTY SHERIFF IN
17 WASHAU COUNTY, NEW HAMPSHIRE.

18 THE COURT: THANK YOU, BE SEATED. YES SIR.

19 JUROR: HAROLD BRADY, NUMBER 26. MY NIECE IS MARRIED TO A
20 DEPUTY FOR YORK COUNTY.

21 THE COURT: WHO IS THAT?

22 JUROR: ASHLEY WALLACE.

23 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

24 JUROR: I'M HATTIE MATHIS, JUROR 140. MY BROTHER-IN-LAW IS A
25 DEPUTY SHERIFF IN MECKLENBURG COUNTY.

1 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

2 JUROR: I'M YVONNE TODD, JUROR NUMBER 224. MY BROTHER IS A
3 DEPUTY SHERIFF IN THE STATE OF ARKANSAS. AND MY BROTHER-IN-LAW IS
4 AN MP WITH THE AIR NATIONAL GUARD.

5 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

6 JUROR: MY NAME IS COLLEEN CASSIDY, NUMBER 34. I WAS AN MP FOR
7 ABOUT SIX YEARS, TWENTY YEARS AGO.

8 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

9 JUROR: CINDY HUMPHREY, NUMBER 108. MY HUSBAND'S UNCLE IS A
10 RETIRED OFFICER.

11 THE COURT: THANK YOU, BE SEATED. YES SIR?

12 JUROR: DAVID WHITE, NUMBER 237. MY SISTER WORKS FOR THE U. S.
13 MARSHALL SERVICE.

14 THE COURT: THANK YOU, BE SEATED. YES SIR?

15 JUROR: I'M JUROR 238, THOMAS WHITE. MY UNCLE IS A POLICE
16 OFFICER FOR THE STATE OF NEW HAMPSHIRE.

17 THE COURT: THANK YOU, BE SEATED. YES SIR?

18 JUROR: JAMES BEAVER, 15. I WORKED WITH THE DEPARTMENT OF
19 CORRECTIONS IN NEW JERSEY.

20 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

21 JUROR: 172, RHONDA PAYNE. MY SISTER-IN-LAW IS AN ASSISTANT
22 SOLICITOR FOR YORK COUNTY.

23 THE COURT: THANK YOU, BE SEATED. DOES ANY MEMBER OF THE
24 JURY PANEL BELONG TO OR CONTRIBUTE TIME OR MONEY TO ANY
25 ORGANIZATIONS WHICH MIGHT BE PUT IN THE CATEGORY OF LAW

1 ENFORCEMENT SUPPORT TYPES OF ORGANIZATIONS? THEY INCLUDE
2 MOTHERS AGAINST DRUNK DRIVERS, STUDENTS AGAINST DRUNK DRIVERS,
3 CITIZENS AGAINST VIOLENT CRIME, THE HONORARY SHERIFFS'
4 ASSOCIATION, HONORARY TROOPERS' ASSOCIATION, NEIGHBORHOOD
5 WATCH, ANY KIND OF ORGANIZATION THAT MIGHT BE CLASSIFIED AS A LAW
6 ENFORCEMENT SUPPORT TYPE OF ORGANIZATION; ANY VICTIMS' RIGHTS
7 ORGANIZATION?

8 I NEED TO KNOW IF YOU BELONG TO ANY SUCH ORGANIZATIONS OR
9 YOU CONTRIBUTE TIME OR YOU CONTRIBUTE MONEY TO THOSE
10 ORGANIZATIONS. IF SO, PLEASE STAND.

11 (WHEREUPON JURORS STAND)

12 THE COURT: YES MA'AM?

13 JUROR: SHEILA SEXTON, JUROR NUMBER 199. I CONTRIBUTE TO
14 MOTHERS AGAINST DRUNK DRIVERS.

15 THE COURT: THANK YOU, BE SEATED. YES SIR?

16 JUROR: DONALD CHASTAIN, JUROR 37. I CONTRIBUTE TO THE SOUTH
17 CAROLINA TROOPERS' ASSOCIATION.

18 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

19 JUROR: VIRGINIA LAWRENCE, 127. I CONTRIBUTE TO STUDENTS
20 AGAINST DRUNK DRIVERS.

21 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

22 JUROR: KATHLEEN SCHMUGGE, JUROR 252. I CONTRIBUTE TO THE
23 SOUTH CAROLINA SHERIFFS' ASSOCIATION.

24 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

1 JUROR: KATHY DEARMAN, JUROR 57. I'M ON THE NEIGHBORHOOD
2 ALERT FOR COLE CREEK.

3 THE COURT: THANK YOU, BE SEATED. YES SIR?

4 JUROR: HAROLD BRADY, NUMBER 26. I CONTRIBUTE TO THE SOUTH
5 CAROLINA TROOPERS' ASSOCIATION.

6 THE COURT: THANK YOU, BE SEATED. YES MA'AM?

7 JUROR: DIANE DASHER, 54. I'M A CONTRIBUTOR TO THE TROOPERS'
8 ASSOCIATION.

9 THE COURT: THANK YOU. YES SIR?

10 JUROR: THOMAS WHITE, NUMBER 238. I'M A CONTRIBUTOR TO THE
11 TROOPERS' ASSOCIATION.

12 THE COURT: THANK YOU. ANYONE ELSE?

13 (NO RESPONSE)

14 IS THERE ANY MEMBER OF THE JURY PANEL THAT KNOWS OF ANY
15 REASON WHATSOEVER WHY YOU THINK YOU COULD NOT BE FAIR AND
16 IMPARTIAL AS A JUROR IF SELECTED TO SERVE IN THIS PARTICULAR CASE?
17 IF SO, PLEASE STAND.

18 (WHEREUPON JUROR STANDS)

19 YES SIR, YOUR NUMBER, PLEASE.

20 JUROR: NUMBER 13. MY NAME IS ROBERT BARR. I---

21 THE COURT: JUST A MINUTE. YOU HAVE A REASON WHY YOU THINK
22 YOU COULD NOT BE FAIR IN THIS CASE?

23 JUROR: YES SIR.

24 THE COURT: ALL RIGHT, SIR. WE'LL EXCUSE YOU FROM SERVICE IN
25 THIS CASE. THAT'S JUROR NUMBER 13. ANYONE ELSE?

1 (NO RESPONSE)

2 ANY OTHER QUESTIONS REQUESTED BY THE STATE?

3 MS. COLLINS: NO, YOUR HONOR.

4 THE COURT: BY THE DEFENDANT?

5 MR. CHIARENZA: NO SIR.

6 THE COURT: LADIES AND GENTLEMEN, AS YOUR NAME IS CALLED,
7 YOU'RE GOING TO BE ASKED TO COME FORWARD. COME THROUGH THE
8 DOORS THERE, WHERE THE BAILIFF'S STANDING, AND COME UP HERE AND
9 STAND RIGHT HERE IN FRONT OF WHERE THE CLERK IS SEATED AND LOOK
10 BACK TOWARDS YOUR FELLOW JURORS. EACH SIDE WILL HAVE AN
11 OPPORTUNITY TO HAVE YOU SEATED FOR SERVICE IN THE CASE, OR HAVE
12 YOU EXCUSED FROM SERVICE IN THE CASE.

13 IF EITHER SIDE ASKS TO HAVE YOU EXCUSED, YOU CAN JUST GO BACK
14 AND HAVE A SEAT WHERE YOU ARE NOW. IF BOTH AGREE TO HAVE YOU
15 SEATED, YOU'LL BE HAVING A SEAT IN THE JURY BOX TO MY LEFT. PLEASE
16 COME FORWARD AS YOUR NAME IS CALLED, AND YOU'LL BE INSTRUCTED IF
17 YOU ARE TO BE SEATED FOR SERVICE IN THE CASE, OR EXCUSED FROM
18 SERVICE IN THE CASE.

19 CLERK OF COURT: NUMBER 157, SCOTT MULLINAX. WHAT SAY THE
20 STATE?

21 MR. THOMPSON: PLEASE PRESENT THE JUROR.

22 CLERK OF COURT: AND THE DEFENSE?

23 MR. CHIARENZA: PLEASE SWEAR THE JUROR.

24 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. NUMBER 225,
25 RENA TRUESDALE. WHAT SAY THE STATE?

1 MR. THOMPSON: PLEASE EXCUSE MS. TRUESDALE.

2 CLERK OF COURT: YOU ARE EXCUSED. JUROR 63, ETHEL E. DOSS.

3 WHAT SAY THE STATE?

4 MR. THOMPSON: PLEASE PRESENT MS. DOSS.

5 CLERK OF COURT: AND THE DEFENSE?

6 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

7 CLERK OF COURT: YOU ARE EXCUSED. NUMBER 211, RICHARD D.

8 SORROW. WHAT SAY THE STATE?

9 MR. THOMPSON: PLEASE PRESENT THE JUROR.

10 CLERK OF COURT: AND THE DEFENSE?

11 MR. CHIARENZA: PLEASE SEAT THE JUROR.

12 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 34,

13 COLLEEN CASSIDY. WHAT SAY THE STATE?

14 MR. THOMPSON: PLEASE PRESENT MS. CASSIDY.

15 CLERK OF COURT: AND THE DEFENSE?

16 MR. CHIARENZA: PLEASE SEAT THE JUROR.

17 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 196,

18 CARLA G. SAYLOR. WHAT SAY THE STATE?

19 MR. THOMPSON: PLEASE PRESENT MS. SAYLOR

20 CLERK OF COURT: AND THE DEFENSE?

21 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

22 CLERK OF COURT: YOU ARE EXCUSED FROM THE CASE. NUMBER 12,

23 SAMANTHA K. BARNETTE. WHAT SAY THE STATE?

24 MR. THOMPSON: PLEASE PRESENT MS. BARNETTE.

25 CLERK OF COURT: AND THE DEFENSE?

1 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

2 CLERK OF COURT: YOU ARE EXCUSED FROM THE CASE. NUMBER 237

3 DAVID M. WHITE. WHAT SAY THE STATE?

4 MR. THOMPSON: PLEASE PRESENT MR. WHITE.

5 CLERK OF COURT: AND THE DEFENSE?

6 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

7 CLERK OF COURT: YOU ARE EXCUSED. NUMBER 182, KAREN B. RAWLS.

8 WHAT SAY THE STATE?

9 MR. THOMPSON: PLEASE PRESENT MS. RAWLS.

10 CLERK OF COURT: AND THE DEFENSE?

11 MR. CHIARENZA: PLEASE SEAT THE JUROR.

12 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. NUMBER 207,

13 EDWARD T. SMITH. WHAT SAY THE STATE?

14 MR. THOMPSON: PLEASE PRESENT MR. SMITH.

15 CLERK OF COURT: AND THE DEFENSE?

16 MR. CHIARENZA: PLEASE SEAT MR. SMITH.

17 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. NUMBER 108,

18 CYNTHIA P. HUMPHREY. WHAT SAY THE STATE?

19 MR. THOMPSON: PLEASE PRESENT MS HUMPHREY.

20 CLERK OF COURT: AND THE DEFENSE?

21 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

22 CLERK OF COURT: YOU'RE EXCUSED FROM THIS CASE. NUMBER 65,

23 TANIA A. DUNPHY. WHAT SAY THE STATE?

24 MR. THOMPSON: PLEASE EXCUSE MS. DUNPHY.

1 CLERK OF COURT: YOU'RE EXCUSED FROM THIS CASE. NUMBER 176,
2 LISA M. PICKETT. WHAT SAY THE STATE?

3 MR. THOMPSON: PLEASE PRESENT MS. PICKETT.

4 CLERK OF COURT: AND THE DEFENSE?

5 MR. CHIARENZA: PLEASE SEAT MS. PICKETT.

6 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 37,
7 DONALD J. CHASTAIN. WHAT SAY THE STATE?

8 MR. THOMPSON: PLEASE PRESENT MR. CHASTAIN.

9 CLERK OF COURT: AND THE DEFENSE?

10 MR. CHIARENZA: PLEASE SEAT MR. CHASTAIN.

11 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 1, LISA G.
12 ADAMS. WHAT SAY THE STATE?

13 MR. THOMPSON: PLEASE PRESENT MS. ADAMS.

14 CLERK OF COURT: AND THE DEFENSE?

15 MR. CHIARENZA: PLEASE SEAT MS. ADAMS.

16 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 98,

17 RAYMOND C. HESS. SAY THE STATE?

18 MR. THOMPSON: PLEASE PRESENT MR. HESS.

19 CLERK OF COURT: AND THE DEFENSE?

20 MR. CHIARENZA: PLEASE SEAT MR. HESS.

21 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 224,

22 YVONNE D. TODD. WHAT SAY THE STATE?

23 MR. THOMPSON: PLEASE PRESENT MS. TODD

24 CLERK OF COURT: AND THE DEFENSE?

25 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

1 CLERK OF COURT: YOU'RE EXCUSED FROM THE CASE. NUMBER 134,
2 HATTIE B. MATHIS. WHAT SAY THE STATE?

3 MR. THOMPSON: PLEASE PRESENT MS. MATHIS.

4 CLERK OF COURT: AND THE DEFENSE?

5 MR. CHIARENZA: PLEASE SEAT MS. MATHIS.

6 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 84, JILL S.
7 GRASTY. WHAT SAY THE STATE?

8 MR. THOMPSON: PLEASE PRESENT MS. GRASTY.

9 CLERK OF COURT: AND THE DEFENSE?

10 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

11 CLERK OF COURT: YOU'RE EXCUSED. NUMBER 55, DORIS U. DAVIS:
12 WHAT SAY THE STATE?

13 MR. THOMPSON: PLEASE PRESENT MS. DAVIS.

14 CLERK OF COURT: AND THE DEFENSE?

15 MR. CHIARENZA: SEAT THE JUROR.

16 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 5, SCOTT
17 M. ALLAN. WHAT SAY THE STATE?

18 MR. THOMPSON: PLEASE PRESENT MR. ALLAN.

19 CLERK OF COURT: AND THE DEFENSE?

20 MR. CHIARENZA: PLEASE SEAT THE JUROR.

21 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. THIS WILL BE
22 FOR THE ALTERNATE. NUMBER 226, APRIL J. TUCKER. WHAT SAY THE
23 STATE?

24 MR. THOMPSON: PLEASE PRESENT MS. TUCKER.

25 CLERK OF COURT: AND THE DEFENSE?

1 MR. CHIARENZA: PLEASE SEAT MS. TUCKER.

2 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 154,

3 WESLEY L. MOOREFIELD, JR. WHAT SAY THE STATE?

4 MR. THOMPSON: PLEASE PRESENT MR. MOOREFIELD.

5 CLERK OF COURT: AND THE DEFENSE?

6 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

7 CLERK OF COURT: YOU'RE EXCUSED. NUMBER 187, SHANNON A.

8 RICHARDSON. WHAT SAY THE STATE?

9 MR. THOMPSON: PLEASE PRESENT MR. RICHARDSON.

10 CLERK OF COURT: AND THE DEFENSE?

11 MR. CHIARENZA: PLEASE EXCUSE THE JUROR.

12 CLERK OF COURT: YOU'RE EXCUSED. NUMBER 200 , NITIN K. SHAH.

13 WHAT SAY THE STATE?

14 MR. THOMPSON: PLEASE PRESENT MR. SHAH.

15 CLERK OF COURT: AND THE DEFENSE?

16 MR. CHIARENZA: PLEASE SEAT THE JUROR.

17 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX.

18 THE COURT: THOSE OF YOU WHO HAVE BEEN SELECTED, I WILL ASK

19 YOU TO GO TO THE JURY ROOM AT THIS TIME.

20 (WHEREUPON THE SELECTED JURY EXITED THE COURTROOM)

21 ARE THERE ANY MATTERS THAT NEED TO BE ADDRESSED REGARDING

22 THE JURY SELECTION BY THE STATE?

23 MS. COLLINS: NO, YOUR HONOR.

24 THE COURT: BY THE DEFENSE?

25 MR. CHIARENZA: NO, YOUR HONOR.

1 THE COURT: THOSE WHO WERE NOT SELECTED, YOU WILL BE
2 EXCUSED FOR THE BALANCE OF TODAY. I ASK THAT YOU CALL BACK TO
3 THE NUMBER THAT YOU HAVE AFTER SIX O'CLOCK THIS EVENING TO
4 RECEIVE FURTHER REPORTING INSTRUCTIONS. CALL BACK AFTER SIX
5 O'CLOCK THIS EVENING TO RECEIVE FURTHER REPORTING INSTRUCTIONS.
6 HAVE A GOOD AFTERNOON. THANK YOU FOR YOUR PARTICIPATION.

7 (WHEREUPON THE REMAINDER OF THE JURY PANEL EXITED THE
8 COURTROOM)

9 LET'S BRING THE PANEL BACK IN.

10 (WHEREUPON THE SELECTED JURY PANEL ENTERED THE COURTROOM)

11 LADIES AND GENTLEMEN, IT'S TIME FOR LUNCH, AND IT MIGHT BE
12 PAST TIME FOR LUNCH. NEVERTHELESS, WE ARE GOING TO BREAK NOW.
13 WE'LL COME BACK AT 2:30 TO BEGIN WITH THE TRIAL OF THE CASE.

14 NOW, AS YOU LEAVE, LET ME CAUTION YOU: YOU ARE NOT UNDER
15 ANY CIRCUMSTANCES TO DISCUSS THIS CASE WITH ANYBODY WHATSOEVER
16 IN ANY FASHION WHATSOEVER. THAT INCLUDES YOUR FELLOW JURORS.
17 YOU ARE ONLY PERMITTED TO TALK ABOUT THE CASE DURING THE JURY
18 DELIBERATIONS. AND THAT WON'T BE UNTIL THE CASE HAS BEEN
19 CONCLUDED AND ALL THE EVIDENCE HAS BEEN PRESENTED.

20 SO, DURING THE LUNCH RECESS DO NOT DISCUSS THE CASE WITH ANY
21 PERSON WHATSOEVER IN ANY FASHION WHATSOEVER.

22 ALSO, DURING THE TRIAL OF THE CASE, DO NOT PERMIT YOURSELVES
23 TO BE EXPOSED TO ANY TYPE OF MEDIA COVERAGE THAT MIGHT RELATE TO
24 THE CASE. I DON'T KNOW THAT THERE WILL BE ANY; BUT IT DOESN'T
25 MATTER. IF THERE IS, YOU CANNOT ALLOW YOURSELVES TO BE EXPOSED TO

1 IT. NO TELEVISION, NO RADIO, NO NEWSPAPER, NO NOTHING, NO COMPUTER,
2 NO INTERNET, NO INFORMATION ABOUT THE CASE.

3 ALSO, YOU CANNOT CONDUCT YOUR OWN RESEARCH OR DO YOUR
4 OWN INVESTIGATION INTO ANY ISSUE THAT MIGHT ARISE DURING THE
5 TRIAL OF THE CASE. IN ANY CASE THAT THE JURY DECIDES, YOUR VERDICT
6 HAS TO BE BASED SOLELY ON THE EVIDENCE RECEIVED DURING THE TRIAL
7 OF THE CASE. YOU ARE NEVER TO PERMIT YOURSELVES TO BE INFLUENCED
8 BY ANY OUTSIDE CONSIDERATION. THAT'S WHY THERE'S NO DISCUSSIONS,
9 NO MEDIA COVERAGE, NO INDEPENDENT INVESTIGATION OR RESEARCH.

10 DO HAVE A GOOD LUNCH, HOWEVER, AND PLEASE REPORT BACK TO
11 YOUR JURY ROOM AT 2:30 THIS AFTERNOON. THE BAILIFF WILL SHOW YOU
12 HOW TO GET BACK HERE. MAKE SURE YOU UNDERSTAND THAT BEFORE YOU
13 LEAVE. 2:30 THIS AFTERNOON.

14 (WHEREUPON THE SELECTED JURY PANEL EXITED THE COURTROOM
15 AT 1:12 P.M.

16 COURT IS IN RECESS UNTIL 2:30.

17 COURT IN SESSION - 2:35 P.M.

18 THE COURT: MR. THOMPSON.

19 MR. THOMPSON: YES SIR. WE HAVE A MATTER AS TO INDICTMENT
20 2007-GS-46-1263 FOR FORGERY, WE WOULD AMEND THAT INDICTMENT. THAT
21 WAS ACTUALLY PRESENTED AT THE BANK OF AMERICA IN ROCK HILL. I
22 BELIEVE IT SAYS BANK OF AMERICA-- I'M SORRY. WE MEANT IT TO READ
23 BANK OF AMERICA, FORT MILL, AND I BELIEVE IT READS BANK OF AMERICA
24 OF ROCK HILL RIGHT NOW. AND ALSO, CONVERSELY, INDICTMENT 2007-GS-
25 46-1261, IT READS BANK OF AMERICA, FORT MILL. THAT SHOULD READ BANK

1 OF AMERICA, ROCK HILL. OTHER THAN THAT, THE AMOUNTS ARE CORRECT.
2 THE NUMBERS ON THE CHECKS ARE CORRECT.

3 THE COURT: ANY OBJECTION, MR. CHIARENZA?

4 MR. CHIARENZA: NO, YOUR HONOR. AND JUST FOR THE RECORD, THE
5 DEFENDANT IS ON NOTICE OF THE LOCATIONS, AND THE CHARGES ON THE
6 INDICTMENTS. THEY JUST SIMPLY FLIPPED-FLOPPED THE CHECK NUMBERS
7 AND THE AMOUNTS. SO, I DON'T THINK THERE'S ANY PREJUDICE IN
8 ALLOWING THOSE INDICTMENTS TO CONFORM TO THE EVIDENCE.

9 THE COURT: OKAY. ANYTHING ELSE?

10 MS. COLLINS: YOUR HONOR, AS WE NOTED IN CHAMBERS, WE WILL
11 PUT OFF THE JACKSON V. DENNO HEARING UNTIL LATER. OBVIOUSLY,
12 THERE IS A STATEMENT THAT WAS GIVEN BY DETECTIVE HAGER TO THE
13 MEDIA. WE UNDERSTAND THE DEFENSE HAS TO APPROVE THE MATTER. WE
14 WANTED TO PUT THAT ON THE RECORD PRIOR TO SWEARING THE JURY AND
15 PROCEEDING.

16 MR. CHIARENZA: THAT'S CORRECT, YOUR HONOR. IF IT PLEASE THE
17 COURT. PART OF MY PRE-TRIAL MOTIONS THAT WE REVIEWED IN CHAMBERS
18 AND THAT I RENEW NOW FOR THE RECORD: IT APPEARS THAT EARLY ON IN
19 THE INVESTIGATION OF THIS MATTER, ONE OF THE LEAD DETECTIVES,
20 DETECTIVE HAGER, DID AN INTERVIEW WITH THE NEWSPAPER WHEREIN HE
21 INDICATED THAT THEY HAD SOME INFORMATION THAT SOME UNKNOWN
22 INDIVIDUAL HAD CONTACT WITH THE VICTIM ON MONDAY. AND
23 THEREFORE, IT WAS THEIR BELIEF THAT THE ALLEGED ATTACK AND
24 BURGLARY OCCURRED SOME TIME AFTER THAT, PRESUMABLY MONDAY
25 AFTERNOON OR MONDAY EVENING.

1 ALL OF THE OTHER ALLEGATIONS, AND IT'S OUR POSITION THAT THE
2 STATE'S ENTIRE CASE WILL ALLEGE AND TAKE THE POSITION THAT THE
3 ATTACK ACTUALLY OCCURRED ON SUNDAY. SO, CLEARLY, IF THERE IS
4 SOME INFORMATION ABOUT AN INDIVIDUAL VISITING THE VICTIM ON
5 MONDAY, ONE: THAT HASN'T BEEN TURNED OVER TO US, OR PROBABLY HAS
6 NOT BEEN TURNED OVER TO THE SOLICITOR'S OFFICE. TWO: WE WOULD
7 VIEW THAT AS EXCULPATORY AND IT WOULD PUT A SERIOUS DENT IN THE
8 STATE'S CASE, IF THEY'VE SHAPED THEIR CASE INDICATING THAT ALL THIS
9 OCCURRED ON SUNDAY AND IF IT TURNED OUT THAT THAT INDIVIDUAL
10 DIDN'T VISIT. THEN I WOULD HAVE SOME FOLLOW-UP MOTIONS, YOUR
11 HONOR.

12 SO, I GUESS WE JUST NEED TO ASK THAT WHY IS IT APPARENTLY
13 DETECTIVE HAGER HAD INDICATED EARLY ON THEY HAD SOME
14 INFORMATION HAD HAD CONTACT WITH THE VICTIM ON MONDAY.

15 THE COURT: WELL, I DON'T KNOW ABOUT SUNDAY AND MONDAY, BUT
16 THESE INCIDENTS ARE ALLEGED TO HAVE OCCURRED IN 2002.

17 MR. CHIARENZA: YES, YOUR HONOR. I'M TALKING ABOUT SUNDAY
18 AND MONDAY AS THE DAYS OF THE WEEK; NOT LIKE THIS PAST SUNDAY
19 AND MONDAY. I'M JUST SAYING THAT THE ALLEGED INCIDENT IN THE
20 INDICTMENT, APPARENTLY THEY'RE ALLEGING HAPPENED ON DECEMBER 29,
21 2002.

22 THE COURT: AND SOMETHING ELSE HAPPENED ON DECEMBER 30.

23 MR. CHIARENZA: I BELIEVE ONE OF THE CHECKS, THE FORGERY.

24 THE COURT: ALL RIGHT.

1 MR. CHIARENZA: THE CONCERN HERE IS THE BREAKING INTO THE
2 HOME AND THE ASSAULT OF THE VICTIM, MR. CUBLEY.

3 THE COURT: ALL RIGHT.

4 MR. CHIARENZA: A COUPLE OF DAYS SUBSEQUENT TO THAT, I THINK
5 MAYBE JANUARY 3, INFORMATION WAS GIVEN TO THE NEWSPAPER AND
6 PRINTED THAT ACCORDING TO LAW ENFORCEMENT AUTHORITIES THAT
7 THEY HAD INFORMATION THAT SOMEONE CONTACTED THE VICTIM ON
8 MONDAY. AND SO THEY WERE DRAWING THE CONCLUSION VIS-À-VIS THESE
9 ARTICLES THAT THIS ASSAULT THEREFORE TOOK PLACE SOMETIME AFTER
10 MONDAY.

11 EVERYTHING ELSE THEY HAVE PROVIDED ME IS CONTRARY TO THAT.
12 THEIR ENTIRE CASE - I DON'T WANT TO SPEAK FOR THE SOLICITOR. BUT I
13 PRESUME THEIR CASE IS GOING TO ALLEGE THAT THESE ACTS OCCURRED ON
14 SUNDAY. SO, IF SOMEBODY SAW THIS VICTIM ON MONDAY, I NEED TO KNOW
15 ABOUT IT.

16 THE COURT: WELL, I UNDERSTAND THAT. I WAS JUST CONFUSED
17 BECAUSE YOUR MOTION'S GOT 2007. YOU'RE TALKING ABOUT DECEMBER,
18 2002. OKAY.

19 MR. CHIARENZA: I APOLOGIZE, YOUR HONOR. THAT'S A MISPRINT ON
20 MY MOTION.

21 THE COURT: DOES THE STATE HAVE ANY INFORMATION THAT EITHER
22 VICTIM IN THESE CASES WAS-- WELL, WHEN DID MAUDE CUBLEY DIE?

23 MR. THOMPSON: SHE DIED APPROXIMATELY THREE WEEKS BEFORE
24 THIS, OR TWO WEEKS BEFORE THIS OCCURRED.

25 THE COURT: EARLIER THAN THE PLAINTIFF?

1 MR. THOMPSON: RIGHT, EARLIER IN DECEMBER, 2002.

2 THE COURT: WELL, YOU CONTEND CLARENCE DIED ON DECEMBER 29?

3 MR. THOMPSON: WELL, ACTUALLY, HE DIED SEVERAL DAYS LATER.
4 HE WAS ASSAULTED ON THE 29TH, WHICH RESULTED IN HIS DEATH SEVERAL
5 DAYS LATER. HE WASN'T DISCOVERED UNTIL TUESDAY AFTERWARDS,
6 WHICH WOULD BE THE 31ST OF DECEMBER.

7 THE COURT: WELL, IF I UNDERSTAND CORRECTLY, MR. CHIARENZA'S
8 INTERESTED IN KNOWING WHETHER OR NOT THERE IS ANY INDIVIDUAL WHO
9 CAN PROVIDE US INFORMATION THAT MR. CUBLEY WAS SEEN ON MONDAY,
10 DECEMBER 30, OF 2002.

11 MR. THOMPSON: THERE IS NONE, YOUR HONOR. DETECTIVE HAGER,
12 OR, LIEUTENANT HAGER IS HERE TO ADDRESS THAT IF THE COURT WISHES
13 TO. THERE WAS A FOLLOW-UP INCIDENT REPORT WHERE THEY TALKED TO
14 A FAMILY MEMBER WHO HAD BEEN WITH HIM ON SUNDAY AFTERNOON.
15 AND I DON'T KNOW HOW IT JUST GOT LOST IN TRANSLATION WITH THE
16 PAPER, BUT THERE WAS A MISUNDERSTANDING. THE LAST CONTACT WAS
17 ON SUNDAY AFTERNOON.

18 THE COURT: OKAY. MR. CHIARENZA, THE SOLICITOR IS
19 REPRESENTING TO THE COURT THAT THAT INFORMATION IS NOT TRUE; THAT
20 NOBODY SAW MR. CUBLEY ALIVE AFTER DECEMBER 29, AT LEAST NOT AT
21 HIS RESIDENCE.

22 MR. CHIARENZA: YOUR HONOR, I APPRECIATE THAT REPRESENTATION
23 BY MR. THOMPSON, BUT I JUST DON'T IF THAT'S GOING TO CUT IT FOR THE
24 RECORD. I THINK THAT---

1 THE COURT: WELL, HAVE YOU GOT SOME EVIDENCE TO THE
2 CONTRARY?

3 MR. CHIARENZA: WELL, JUST THE STATEMENT BY THE LIEUTENANT.

4 THE COURT: YOU WANT TO CALL HIM AND EXAMINE HIM?

5 MR. CHIARENZA: YES SIR.

6 THE COURT: WELL, CALL HIM.

7 MR. CHIARENZA: I CALL LIEUTENANT HAGER.

8 TIM HAGER, DULY SWORN, TESTIFIED AS

9 FOLLOWS:

10 DIRECT EXAMINATION BY MR. CHIARENZA:

11 Q GOOD AFTERNOON, LIEUTENANT. YOU'RE TIM HAGER WITH THE
12 YORK COUNTY SHERIFF'S DEPARTMENT?

13 A YES SIR.

14 Q AND YOU WERE INVOLVED IN THE INVESTIGATION OF THIS CASE
15 BEFORE THE COURT?

16 A YES SIR, I WAS.

17 Q AND YOU HEARD WHAT WE'VE BEEN DISCUSSING WITH THE
18 COURT, SO YOU'RE FAMILIAR WITH THE NEWSPAPER INTERVIEW?

19 A YES SIR.

20 Q DO YOU NEED TO LOOK AT IT, OR DID YOU REVIEW THIS WITH
21 THE SOLICITOR'S OFFICE?

22 A IF YOU'VE GOT A COPY OF IT, I'D LIKE TO BE ABLE TO PERUSE IT
23 IF THERE'S SPECIFIC QUESTIONS I CAN GO OVER.

24 Q I'M JUST GOING TO HAND YOU WHAT THE SOLICITOR'S OFFICE
25 HAS MARKED AS PAGE 369 IN THEIR DISCOVERY. WE'VE MADE A

1 LITTLE NOTATION THERE INDICATING THE SENTENCE. IF YOU COULD
2 READ THAT SENTENCE, PLEASE.

3 A IT SAYS, "THE INJURY OCCURRED AFTER MONDAY MORNING,
4 THE LAST TIME AUTHORITIES SAY CUBLEY HAD CONTACT WITH AN
5 UNKNOWN PERSON."

6 Q WOULD IT BE YOUR TESTIMONY, THEN, TODAY, THAT THAT
7 SOMEHOW JUST WAS IN ERROR?

8 A THAT'S NOT TRUE.

9 Q THAT'S NOT TRUE?

10 A NO.

11 Q YOU SAY THAT YOU HAVE NO INFORMATION THAT ANYONE
12 HAD CONTACT WITH MR. CUBLEY?

13 A NO SIR, NOT ON MONDAY. THE ONLY CONTACT INFORMATION
14 THAT WE HAD WAS SOMETIME SUNDAY AFTERNOON.

15 Q DO YOU HAVE ANY EXPLANATION AS TO HOW IT ENDED UP
16 SAYING MONDAY IN THE PAPER?

17 A I DID SAY THAT THERE WAS AN INDIVIDUAL WHO TRIED TO GET
18 IN TOUCH WITH HIM ON MONDAY, WHICH WOULD BE WOODROW CULP.

19 Q OKAY.

20 A THAT WOULD BE THE ONLY THING THAT I COULD EVEN
21 CONSTRUE THAT WOULD EVEN COME CLOSE TO THIS.

22 Q AND THEN, AGAIN, WE'VE JUST GOT SIMILAR LANGUAGE IN A
23 FOLLOW-UP ARTICLE, SAME SITUATION. WOULD YOUR TESTIMONY BE
24 THE SAME?

25 A I THINK IT'S THE SAME ARTICLE, IF I'M NOT MISTAKEN.

1 Q I THINK, ACTUALLY, THERE'S A FOLLOW-UP ARTICLE, BECAUSE
2 THE INITIAL ARTICLE, IF YOU RECALL, ONCE DISCUSSING WITH THEM
3 IT WAS A MYSTERIOUS ASSAULT, AND THEN AGAIN DISCUSSING THAT
4 Y'ALL HAD COME TO THE CONCLUSION THAT IN FACT IT WAS AN
5 ASSAULT.

6 A YES.

7 Q WE'RE JUST TRYING TO CLARIFY AND MAKE SURE THERE'S NO...

8 A I UNDERSTAND.

9 Q AND YOU HAVE NO NOTES, AND TO YOUR KNOWLEDGE, LAW
10 ENFORCEMENT HAS NO INFORMATION ABOUT A WITNESS WHO HAD
11 ANY CONTACT WITH MR. CUBLEY ON DECEMBER 30, A MONDAY?

12 A NO. THERE AGAIN, THE ONLY THING THAT I COULD SAY THAT
13 WOULD EVEN COME CLOSE WAS THERE WAS THIS INDIVIDUAL TRYING
14 TO GET IN TOUCH WITH HIM AND THAT WOULD BE WOODROW CULP.

15 Q THANK YOU.

16 MR. CHIARENZA: YOUR HONOR, THAT'S ALL I HAVE.

17 THE COURT: YOU MAY STEP DOWN. ANY OTHER WITNESSES
18 YOU WANT TO CALL?

19 MR. CHIARENZA: YOUR HONOR, WE DON'T HAVE ANY OTHER
20 WITNESSES ON THIS ISSUE.

21 THE COURT: SO, I GUESS THE STATE'S POSITION IS STILL THE
22 SAME AS IT WAS BEFORE WE DID THAT, IS THAT THERE IS NO OTHER
23 EVIDENCE ON THE POINT THAT MR. CHIARENZA'S RAISED?

24 MR. THOMPSON: THAT'S CORRECT, YOUR HONOR. AND I WOULD
25 POINT OUT THAT THEY DON'T ACTUALLY QUOTE DETECTIVE HAGER

1 AS TO THOSE FACTS. THEY WROTE THAT IN, QUOTING THE SAME
2 THING, BUT NOT ANY DIRECT QUOTE FROM THE FIRST ONE.

3 THE COURT: MR. CHIARENZA, HAVE YOU TALKED TO THE
4 PERSON WHO WROTE THAT ARTICLE TO SEE WHAT THEIR
5 RECOLLECTION IS AS TO WHAT WAS TOLD TO THEM?

6 MR. CHIARENZA: NO, I DID NOT, YOUR HONOR.

7 THE COURT: DO YOU FEEL LIKE YOU NEED TO GET THEM AND
8 BRING THEM TO COURT SO WE CAN GET THAT TESTIMONY FOR THE
9 RECORD?

10 MR. CHIARENZA: NO, YOUR HONOR. I BELIEVE THAT ANY
11 INFORMATION THEY GOT THEY WOULD HAVE GOTTEN FROM EITHER
12 DETECTIVE HAGER OR SOMEONE HE WORKS WITH. AND I AM
13 CONFIDENT THAT IF IT WAS SOMEONE HE WORKS WITH, THAT THAT IS
14 INFORMATION THAT DETECTIVE HAGER WOULD BE AWARE OF.

15 THE COURT: WELL, MAYBE OR MAYBE NOT. BUT DETECTIVE
16 HAGER SAID HE DIDN'T GIVE THAT INFORMATION, THEY PUT IT IN
17 THERE. BUT I'LL LEAVE THAT TO YOU, SINCE YOU'RE MAKING THE
18 MATTER AN ISSUE.

19 MR. CHIARENZA: YOUR HONOR, I'M SATISFIED WITH DETECTIVE
20 HAGER'S TESTIMONY.

21 THE COURT: YOU WEREN'T SATISFIED WITH MR. THOMPSON'S
22 REPRESENTATION EARLIER?

23 MR. CHIARENZA: YOUR HONOR, I DON'T KNOW IF I WOULD HAVE
24 BEEN PROTECTED ON THE RECORD WITH MR. THOMPSON'S

1 REPRESENTATION. HE'S NOT A SWORN WITNESS AND HE CAN'T
2 TESTIFY.

3 THE COURT: WELL, I UNDERSTAND. BUT HE'S AN OFFICER OF
4 THE COURT. HE CAN'T MAKE FALSE REPRESENTATIONS TO THE
5 COURT. SINCE HE'S TALKED TO MR. HAGER, HE CAN'T TELL ME THAT
6 MR. HAGER'S GOING TO SAY SOMETHING HE'S NOT GONNA SAY.

7 MR. CHIARENZA: I APPRECIATE THAT, YOUR HONOR.

8 THE COURT: OKAY. WELL, YOU'RE AN OFFICER OF THE COURT,
9 TOO. YOU UNDERSTAND WHEN YOU MAKE REPRESENTATIONS TO THE
10 COURT, THEY'RE DEEMED TO BE ACCURATE AND TRUTHFUL.
11 OTHERWISE, YOU CAN GET IN A LOT OF TROUBLE ABOUT THAT, AND
12 YOU KNOW THAT.

13 MR. CHIARENZA: I UNDERSTAND THAT, YOUR HONOR. I JUST
14 THINK SOMETIMES WHEN THERE'S AN ISSUE ON POTENTIALLY CROSS-
15 EXAMINING OR GETTING FURTHER CLARIFICATION, THEN THAT
16 SHOULD COME FROM THE WITNESS, NOT FROM THE SOLICITOR.

17 THE COURT: WELL, MAYBE WE NEED TO GET THAT REPORTER
18 DOWN HERE, BECAUSE THEY MIGHT HAVE A DIFFERENT
19 RECOLLECTION THAN DETECTIVE HAGER HAD.

20 MR. CHIARENZA: THAT'S POSSIBLE, YOUR HONOR, AND I MAY
21 DO THAT AT SOME POINT.

22 THE COURT: WELL, YOU GET A SUBPOENA AND I'LL BE GLAD TO
23 SEE THAT THEY GET HERE.

24 ANYTHING ELSE WE NEED TO DO BEFORE WE SWEAR THIS JURY?

1 MR. CHIARENZA: YOUR HONOR, I DO HAVE A COUPLE OF OTHER
2 MINOR ISSUES. YOUR HONOR, I DON'T KNOW IF AGENT BOTTRELL
3 WOULD, BUT UNLESS THE SOLICITOR CAN MAKE A SHOWING, THAT MY
4 CLIENT NOT BE REFERRED TO DURING THE COURSE OF THE TRIAL AS
5 AN ILLEGAL ALIEN OR AN ILLEGAL IMMIGRANT, ANYTHING OF THAT
6 NATURE. HE IS A FOREIGN NATIONAL. THERE ARE ALLEGATIONS IN
7 THE FILE THAT DURING THE COURSE OF THIS ACTIVITY THAT HE WAS
8 HERE ILLEGALLY. AGAIN, I THINK THAT'S UNDULY PREJUDICIAL TO
9 USE THE WORD, "ILLEGAL" AND ASSOCIATE THAT WITH HIM. AND
10 AGAIN, IT'S NOT IN ANY WAY RELEVANT TO THE ALLEGATIONS OF
11 THIS CASE.

12 THE COURT: I'LL HEAR FROM THE STATE.

13 MR. THOMPSON: WE WON'T ADDRESS HIM AS AN ILLEGAL ALIEN
14 AT THIS POINT IN TIME, BUT HE'S NOT AN AMERICAN CITIZEN.

15 THE COURT: OKAY. WHAT ELSE?

16 MR. CHIARENZA: YOUR HONOR, IT'S MY UNDERSTANDING THAT
17 WE ARE GOING TO ADDRESS THE DENNO ISSUE AT A LATER TIME. SO,
18 AT THIS TIME I WOULD NOT HAVE ANY OTHER MATTERS FOR PRE-
19 TRIAL.

20 THE COURT: ALL RIGHT. BRING THE JURY IN. ASK MR. SORROW
21 TO TAKE THE FOREPERSON'S SEAT, PLEASE.

22 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM)

23 THE COURT: YOU'RE MR. SORROW, AREN'T YOU?

24 MR. SORROW: YES SIR.

1 THE COURT: LADIES AND GENTLEMEN, WE ARE READY TO
2 BEGIN THE TRIAL OF THE CASE FOR WHICH YOU WERE SELECTED. MR.
3 SORROW, I'M GOING TO ASK YOU TO SERVE AS THE FOREPERSON OF
4 THE JURY. AS THE FOREPERSON, YOU ARE GOING TO HAVE SOME
5 DUTIES THAT NONE OF THE OTHER JURORS WILL HAVE.

6 NUMBER ONE: YOU WILL BE ASKED TO SERVE AS A
7 SPOKESPERSON FOR THE JURY. SO, IF DURING THE TRIAL SOMETHING
8 ARISES THAT NEEDS TO BE BROUGHT TO MY ATTENTION, IF YOU WILL
9 LET THE BAILIFF KNOW, AND IF YOU WILL LET ME KNOW HERE IN THE
10 COURTROOM, THEN I'LL ADDRESS ANY DIFFICULTY THAT YOU HAVE
11 OR ANSWER ANY QUESTIONS.

12 SECOND: YOU WILL PRESIDE OVER THE DELIBERATIONS IN THE
13 JURY ROOM WHEN THAT TIME COMES; THAT IS, AFTER THE EVIDENCE
14 HAS BEEN RECEIVED AND I HAVE INSTRUCTED YOU ON THE LAW.
15 WHEN YOU AND YOUR FELLOW JURORS GO BACK TO BEGIN
16 DELIBERATIONS, YOU WILL PRESIDE OVER THAT PROCESS IN THE JURY
17 ROOM SIMPLY TO INSURE THAT THOSE DELIBERATIONS ARE CARRIED
18 OUT IN SOME ORDERLY FASHION.

19 AND, THIRDLY: YOU'LL BE CALLED UPON TO ACTUALLY WRITE
20 THE VERDICTS, OR THE DECISIONS OF THE JURY. YOU WILL DO THAT
21 ON THE VERDICT FORM THAT I WILL PROVIDE YOU WHEN YOU GO
22 BACK TO DELIBERATE ON WHICH YOU WILL INDICATE THE JURY'S
23 UNANIMOUS DECISION AS TO EACH OF THE SEPARATE CHARGES THAT
24 HAVE BEEN BROUGHT AGAINST THIS DEFENDANT.

1 NOW, THE FOREPERSON HAS THOSE SPECIFIC DUTIES, AS I JUST
2 INDICATED, BUT THAT DOESN'T MEAN HE'S ANY MORE IMPORTANT
3 THAN ANY OF YOU OTHER JURORS, BECAUSE ANY DECISION THAT A
4 JURY MAKES MUST BE UNANIMOUS. ALL TWELVE OF YOU MUST BE IN
5 AGREEMENT. SOMEONE SIMPLY HAS TO BE DELEGATED THOSE
6 RESPONSIBILITIES THAT I HAVE JUST INDICATED. AND I HAVE
7 DELEGATED THOSE TO MR. SORROW IN APPOINTING HIM AS THE
8 FOREPERSON, BUT ALL OF YOU JURORS ARE EQUALLY IMPORTANT SO
9 FAR AS THE ULTIMATE DECISIONS IN THIS CASE ARE CONCERNED
10 BECAUSE, AS I HAVE STATED, THE VERDICTS HAVE TO BE UNANIMOUS.
11 ALL TWELVE OF YOU MUST BE IN AGREEMENT.

12 NOW, MS. TUCKER AND MR. SHAH, EACH OF YOU HAVE BEEN
13 SELECTED AS ALTERNATE JURORS. THE FUNCTION OF AN ALTERNATE
14 JUROR IS TO TAKE THE PLACE OF ONE OF THE ORIGINAL TWELVE IF,
15 DURING THE TRIAL, ONE OF THESE ORIGINAL TWELVE CANNOT
16 CONTINUE TO SERVE FOR SOME REASON. THEN ONE OR BOTH OF YOU
17 WILL BE CALLED UPON TO TAKE THAT PERSON OR THOSE PERSON'S
18 PLACES.

19 IN THAT EVENT, YOU MAY BECOME THE TWELFTH JUROR. IF
20 THAT'S THE CASE, THEN YOU'LL PARTICIPATE IN DELIBERATIONS
21 WHEN THE TIME COMES. IF WHEN THE TIME DOES COME FOR
22 DELIBERATIONS, THE ORIGINAL TWELVE ARE ABLE TO PARTICIPATE,
23 THEN YOUR SERVICE AS AN ALTERNATE WOULD END AND YOU
24 WOULD NOT PARTICIPATE ANY FURTHER BECAUSE THE DECISION OF A
25 JURY IS THAT OF TWELVE, NO MORE THAN TWELVE ARE PERMITTED

1 TO ENGAGE IN THE DELIBERATION PROCESS. BUT IT IS IMPORTANT
2 THAT YOU PAY JUST AS CAREFUL ATTENTION AS WE ASK OF ALL THE
3 JURORS IN THE CASE BECAUSE IT DOES OCCUR FROM TIME, FOR ONE
4 REASON OR ANOTHER, ONE OF THE ORIGINAL TWELVE MAY BE
5 CALLED AWAY. AND IN THAT EVENT, ONE OR BOTH OF YOU MAY BE
6 CALLED UPON TO SERVE AS THE TWELFTH JUROR.

7 SO, WE DO APPRECIATE YOUR PARTICIPATION AS ALTERNATE
8 JURORS, JUST AS WE APPRECIATE THE PARTICIPATION OF ALL OF YOU
9 JURORS WHO HAVE BEEN SELECTED FOR THE PURPOSE OF DECIDING
10 THE VERDICTS IN THIS PARTICULAR CASE.

11 YOU MAY SWEAR THE PANEL.

12 (WHEREUPON THE JURY WAS PLACED UNDER OATH BY THE CLERK OF
13 COURT)

14 LADIES AND GENTLEMEN, AS YOU KNOW, YOU HAVE BEEN
15 SELECTED TO DECIDE THE VERDICTS IN THE CASE OF THE STATE
16 VERSUS ISAIAS DIAZ GUTIERREZ. AND HE HAS BEEN CHARGED IN SIX
17 SEPARATE INDICTMENTS WITH SIX SEPARATE AND DISTINCT
18 OFFENSES, FOR WHICH YOU WILL BE CALLED ON TO RENDER SIX
19 SEPARATE AND DISTINCT VERDICTS.

20 THE CHARGES THAT HAVE BEEN BROUGHT AGAINST THE
21 DEFENDANT ARE CONTAINED IN DOCUMENTS CALLED INDICTMENTS.
22 THE INDICTMENTS ARE NOT EVIDENCE OF ANYTHING. THEY'RE NOT
23 PROOF OF ANYTHING. THEY SIMPLY SET FORTH THE CHARGE THAT
24 HAS BEEN BROUGHT AGAINST A DEFENDANT. AND IN THIS
25 PARTICULAR CASE THE STATE IS ALLEGING THAT THE DEFENDANT DID

1 COMMIT THE CRIMES OF BURGLARY IN THE FIRST DEGREE. AND I'M
2 GOING TO READ THESE INDICTMENTS TO YOU.

3 THEY ARE ALLEGING HE COMMITTED THE CRIMES OF
4 BURGLARY IN THE FIRST DEGREE ARMED ROBBERY, MURDER AND
5 THREE SEPARATE COUNTS OF FORGERY. SO, YOU ARE GOING TO BE
6 CALLED UPON TO MAKE DECISIONS ON THOSE SIX SEPARATE
7 CHARGES. YOUR DECISIONS MAY BE THE SAME OR THEY MAY BE
8 DIFFERENT. THAT WILL DEPEND UPON YOUR DETERMINATION OF THE
9 FACTS IN THIS CASE, AND THEN YOUR APPLICATION OF THE LAW AS I
10 WILL HAVE PROVIDED IT TO YOU AT THE TRIAL'S CONCLUSION
11 BEFORE YOU GO BACK TO BEGIN YOUR DELIBERATIONS.

12 AS YOU ARE ALSO AWARE, AS TO EACH OF THE CHARGES, EACH
13 OF THE INDICTMENTS AND THE ALLEGATIONS CONTAINED IN THE
14 INDICTMENTS, THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY.
15 THEREFORE, THAT PLEA OF NOT GUILTY PLACES UPON THE STATE
16 THROUGH THE PROSECUTOR THE BURDEN OF PROVING THE
17 ALLEGATIONS THEY'VE MADE, THE BURDEN OF PROVING EACH OF
18 THESE ESSENTIAL ELEMENTS THAT MAKE UP THE CRIMES OF
19 BURGLARY, ARMED ROBBERY, MURDER AND FORGERY.

20 THEREFORE, THE BURDEN IS UPON THE STATE TO ESTABLISH
21 THE DEFENDANT'S GUILT TO THE SATISFACTION OF YOU TWELVE
22 JURORS BEYOND A REASONABLE DOUBT BEFORE A VERDICT OF
23 GUILTY COULD BE RETURNED AS TO ANY OF THE INDICTMENTS.

24 EVERY PERSON WHO IS ACCUSED OF A CRIME IS ALWAYS UNDER
25 THE LAW PRESUMED TO BE INNOCENT. AND THAT PRESUMPTION OF

1 INNOCENCE REMAINS WITH ANY DEFENDANT, AS IT DOES WITH THIS
2 DEFENDANT FROM THE TIME HE IS PLACED UNDER ARREST, AND
3 THROUGHOUT THE COURSE OF THE CRIMINAL PROCESS, AND EVEN
4 THROUGHOUT THE COURSE OF THE ACTUAL TRIAL OF THE CASE.

5 NOW, THAT PRESUMPTION OF INNOCENCE WILL BE WITH MR.
6 GUTIERREZ EVEN AT THE TIME THAT YOU GO BACK INTO YOUR JURY
7 ROOM TO BEGIN YOUR DELIBERATIONS AT THIS TRIAL'S CONCLUSION.
8 AND THAT PRESUMPTION OF INNOCENCE WILL BE WITH HIM IN THAT
9 JURY ROOM AND IT WILL BE WITH HIM FOREVER, UNLESS YOU AS
10 TWELVE JURORS DETERMINE THAT HE IS NO LONGER ENTITLED TO
11 THAT PRESUMPTION OF INNOCENCE.

12 THAT IS, AFTER YOU HAVE CAREFULLY CONSIDERED ALL THE
13 EVIDENCE IN THE CASE AND FROM THAT EVIDENCE YOU'VE DECIDED
14 THE FACTS. AND AFTER HAVING DECIDED THOSE FACTS, YOU APPLY
15 THE LAW, IF YOU DETERMINE THAT HIS GUILT HAS BEEN PROVEN
16 BEYOND A REASONABLE DOUBT AS TO A PARTICULAR CHARGE, THEN
17 HE WOULD NO LONGER BE ENTITLED TO THAT PRESUMPTION OF
18 INNOCENCE AS TO THAT PARTICULAR CHARGE.

19 BUT, AGAIN, ONLY IF, AND UNLESS AND UNTIL YOU TWELVE
20 JURORS ARE SATISFIED OF HIS GUILT BEYOND A REASONABLE DOUBT
21 THAT THE PRESUMPTION OF INNOCENCE IS NO LONGER APPLICABLE.

22 NOW, THE WAY WILL PROCEED IS IN A MOMENT THE LAWYERS
23 ARE GOING TO ADDRESS YOU WITH WHAT WE CALL OPENING
24 STATEMENTS. THERE ARE TWO OCCASIONS WHEN THE LAWYERS ARE
25 PERMITTED TO ADDRESS A JURY IN A TRIAL OF A CASE AND THAT IS

1 AT THE BEGINNING OF THE TRIAL BEFORE ANY EVIDENCE IS
2 INTRODUCED, AND THEN AGAIN, AT THE END OF THE TRIAL AFTER ALL
3 OF THE EVIDENCE HAS BEEN RECEIVED.

4 NOW, KEEP IN MIND, I'M TALKING ABOUT THE EVIDENCE
5 BETWEEN THAT. THE LAWYERS' STATEMENTS ARE NOT EVIDENCE IN
6 THE CASE. YOU ARE NOT PERMITTED TO CONSIDER THE LAWYERS'
7 STATEMENTS AS BEING ANY EVIDENCE UPON WHICH YOU WILL BASE
8 A DECISION. THAT'S BECAUSE THE LAWYERS AREN'T WITNESSES TO
9 ANYTHING. THEY'RE NOT GOING TO BE TELLING YOU ANYTHING THEY
10 KNOW ABOUT THIS CASE OF THEIR OWN PERSONAL KNOWLEDGE, LIKE
11 WITNESSES WILL. THEY'RE NOT GOING TO TESTIFY FROM THE
12 WITNESS STAND. THEY'RE NOT GOING TO BE PLACED UNDER OATH.
13 THEY'RE NOT GOING TO BE SUBJECTED TO DIRECT AND CROSS
14 EXAMINATION, AS EACH WITNESS WILL BE.

15 AND SO, WHAT THE LAWYERS TELL YOU IN THOSE STATEMENTS
16 IS NOT TO BE CONSIDERED BY YOU AS EVIDENCE. BUT, BE SURE TO
17 LISTEN TO WHAT THEY HAVE TO SAY BECAUSE THE STATEMENTS DO
18 SERVE A PURPOSE. THE OPENING STATEMENTS WILL SERVE TO
19 PROVIDE YOU WITH A BASIC UNDERSTANDING AS TO WHAT THIS CASE
20 IS ABOUT SO THAT YOU WILL HAVE SOME CONTEXT IN WHICH TO
21 PLACE THE EVIDENCE THAT WE WILL BE RECEIVING SHORTLY
22 THEREAFTER.

23 AFTER ALL THE EVIDENCE HAS BEEN RECEIVED, THE LAWYERS
24 WILL AGAIN ADDRESS YOU IN WHAT ARE CALLED FINAL ARGUMENTS
25 OR FINAL SUMMATIONS. AND AGAIN, THOSE STATEMENTS AREN'T

1 EVIDENCE, BUT IT DOES AFFORD THE LAWYERS AN OPPORTUNITY TO
2 DISCUSS WITH YOU THE EVIDENCE THAT YOU HAVE SEEN AND HEARD
3 DURING THE TRIAL OF THE CASE. AND THROUGH THAT DISCUSSION
4 EACH WILL HAVE AN OPPORTUNITY TO TRY TO PERSUADE YOU OR TO
5 CONVINCE YOU THAT THAT EVIDENCE DOES OR DOES NOT SUPPORT A
6 PARTICULAR DECISION.

7 AND, AS I'VE STATED, THE EVIDENCE COMES IN BETWEEN THOSE
8 OPENING AND CLOSING STATEMENTS. THE STATE HAS THE BURDEN
9 OF PROOF. THEY'VE GOT TO PROVE THE DEFENDANT GUILTY BEYOND
10 A REASONABLE DOUBT. SO, THEY GO FORWARD FIRST IN THEIR
11 PRESENTATION OF EVIDENCE.

12 A DEFENDANT HAS THE SAME OPPORTUNITY TO TESTIFY OR
13 PRESENT EVIDENCE IF HE WISHES TO, BUT HE DOESN'T HAVE TO. HE'S
14 UNDER NO OBLIGATION TO BECAUSE THE DEFENDANT DOESN'T HAVE
15 TO PROVE THAT HE'S NOT GUILTY BECAUSE IN MANY CASES THAT
16 WOULDN'T BE POSSIBLE.

17 THE STATE HAS THE BURDEN OF PROOF AND, THEREFORE, THEY
18 HAVE TO PRESENT EVIDENCE BECAUSE THEY HAVE TO ESTABLISH HIS
19 GUILT BEYOND A REASONABLE DOUBT. A DEFENDANT DOESN'T HAVE
20 TO PROVE ANYTHING, SO HE DOESN'T HAVE TO TESTIFY AND DOESN'T
21 HAVE TO CALL ANY WITNESSES. BUT HE IS PROVIDED THAT
22 OPPORTUNITY IF HE WISHES TO DO SO.

23 AFTER ALL THE EVIDENCE HAS BEEN RECEIVED AND YOU'VE
24 HEARD FROM THE LAWYERS AND THEIR FINAL SUMMATIONS, I WILL
25 THEN INSTRUCT YOU FULLY ON THE LAW THAT'S APPLICABLE IN

1 THESE CASES. THEN YOU WILL BE ASKED TO GO BACK IN THE JURY
2 ROOM AND BEGIN WITH YOUR DELIBERATIONS. AND THROUGH THAT
3 PROCESS YOU WILL CALLED UPON TO CAREFULLY EXAMINE ALL THE
4 EVIDENCE, EVALUATE THE CREDIBILITY OF THE WITNESSES'
5 TESTIMONY, FROM THE EVIDENCE DECIDE WHAT YOU BELIEVE TO BE
6 THE TRUE FACTS AS THEY RELATE TO THESE ALLEGATIONS. AND
7 ONCE YOU DETERMINE THE FACTS, YOU APPLY THE LAW AND YOU
8 WILL THEN SIMPLY ARRIVE AT A FAIR AND JUST DECISION.

9 IF THE STATE HAS PROVEN THE DEFENDANT GUILTY OF SOME
10 CRIME BEYOND A REASONABLE DOUBT, THEN YOUR VERDICT AS TO
11 THAT CRIME WOULD BE GUILTY. IF THE STATE HAS FAILED TO
12 SATISFY YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
13 IS GUILTY OF SOME PARTICULAR CRIME, THEN, AS TO THAT CRIME,
14 YOUR VERDICT WILL BE NOT GUILTY.

15 SO, ALL WE'RE GOING TO ASK FOR YOU TO DO IS TO PAY
16 CAREFUL ATTENTION THROUGHOUT THE COURSE OF THE TRIAL. GIVE
17 EVERY WITNESS THE SAME DEGREE OF ATTENTION AS THEY TESTIFY
18 BECAUSE, AS I STATED, THAT'S ONE OF YOUR DUTIES AND
19 PREROGATIVES IS TO ASSESS AND EVALUATE THE CREDIBILITY OF
20 WITNESS TESTIMONY. AND YOU CAN ACCEPT IT, YOU CAN REJECT IT.
21 THAT WILL DEPEND UPON YOUR VIEW OF IT, IN LIGHT OF NOT JUST
22 THAT WITNESS' TESTIMONY, BUT IN LIGHT OF ALL THE EVIDENCE AND
23 ALL THE TESTIMONY RECEIVED DURING THE TRIAL OF THE CASE.

24 IT'S ALSO IMPORTANT THAT YOU KEEP AN OPEN MIND
25 THROUGHOUT THE COURSE OF THE TRIAL. BY THAT I SIMPLY MEAN

1 THAT YOU ARE NOT TO BEGIN MAKING UP YOUR MINDS OR
2 FORMULATING YOUR OPINIONS AS TO WHAT YOU THINK THE
3 ULTIMATE DECISIONS IN THIS CASE OUGHT TO BE UNTIL ALL OF THE
4 EVIDENCE HAS BEEN RECEIVED, UNTIL I'VE INSTRUCTED YOU ON THE
5 LAW, AND UNTIL YOU'VE BEEN ASKED TO GO BACK AND BEGIN YOUR
6 DELIBERATIONS IN THE CASE.

7 THAT IS THE PROCESS THAT IS DESIGNED FOR YOU TWELVE
8 JURORS TO ARRIVE AT A FAIR AND JUST DECISION IN THE CASE. I DO
9 WANT TO THANK YOU IN ADVANCE FOR YOUR PARTICIPATION, AS
10 WELL AS YOUR CAREFUL ATTENTION. I WOULD ASK THAT YOU
11 PLEASE GIVE THE LAWYERS YOUR ATTENTION NOW AS THEY GIVE
12 YOU THEIR OPENING STATEMENTS. MS. COLLINS.

13 MS. COLLINS: MAY IT PLEASE THE COURT. MR. FOREMAN,
14 LADIES AND GENTLEMEN OF THE JURY. THE VICTIM IN THIS CASE WAS
15 CLARENCE CUBLEY, KNOWN AS POP CUBLEY, TO MANY OF HIS FAMILY
16 AND FRIENDS, OF WHOM HE HAD MANY. YOU MAY HEAR HIM
17 REFERRED TO AS POP CUBLEY DURING THE COURSE OF THIS TRIAL.

18 HE WAS EIGHTY-ONE YEARS OF AGE AT THE TIME OF HIS DEATH.
19 THE EVIDENCE WILL SHOW THAT AT THAT POINT IN HIS LIFE POP
20 CUBLEY COLLECTED RENT MONEY FOR A TRAILER PARK ON HIGHWAY
21 21 BY-PASS IN FORT MILL. HOWEVER, THAT TRAILER PARK WAS IN THE
22 PROCESS OF CLOSING DOWN.

23 THE EVIDENCE WILL SHOW THAT IN THE EARLY EVENING HOURS
24 OF DECEMBER 29, 2002, THAT THE DEFENDANT, ISAIAS DIAZ
25 GUTIERREZ, AND HIS GIRLFRIEND AT THE TIME, DANA BLACKMON,

1 DROVE IN THEIR CAR, HAVING DISCUSSED THIS EARLIER, TO THE
2 HOME OF POP CUBLEY. THE DEFENDANT WAS FAMILIAR WITH HIM,
3 KNEW THAT HE COLLECTED RENT. THAT WHEN THEY GOT THERE THE
4 DEFENDANT, WEARING A GLOVE AND BLACK SKI MASK, WENT UP TO
5 THE PORCH OF THE HOME. THAT HE PICKED UP A CEMENT BLOCK.
6 THAT HE KNOCKED ON THE DOOR AND ONCE THE DOOR WAS OPENED,
7 HE RUSHED INSIDE AND ENTERED, EITHER THROUGH FORCE OR
8 THROUGH TRICKERY, BOTH OF WHICH AMOUNT TO BURGLARY IN
9 SOUTH CAROLINA.

10 THE EVIDENCE WILL SHOW THAT AT THAT TIME THE
11 DEFENDANT, ISAIAS GUTIERREZ, TOOK THAT CEMENT BLOCK AND
12 SLAMMED IT INTO THE HEAD OF THE VICTIM, POP CUBLEY, CAUSING
13 HIM TO BE DISABLED, AND THAT HE HIT HIM ANYWHERE FROM ONE TO
14 FOUR TIMES. AND THAT HE ALSO MAY HAVE KICKED HIM IN THE
15 COURSE OF THAT ASSAULT.

16 THE EVIDENCE WILL SHOW THAT THE DEFENDANT THEN CUT
17 THE PHONE CORD AND TOOK A SAFE OUT OF THE VICTIM'S HOME.
18 AND, AS HE WAS STRUGGLING TO GET IT OUT OF THE DOOR, DANA
19 BLACKMON, THE CO-DEFENDANT, GOT OUT OF THE CAR AND ASSISTED
20 HIM. IN THE COURSE OF THAT, SHE SAW THE VICTIM LYING IN A POOL
21 OF BLOOD WITHIN HIS HOME.

22 THE EVIDENCE WILL SHOW THAT THE DEFENDANT AND DANA
23 BLACKMON TOOK THAT SAFE BACK TO THEIR HOME, WHICH WAS A
24 TRAILER ON TWIN LAKES ROAD. THAT THEY TOOK THE SAFE IN; THAT
25 THEY PRIED IT OPEN. AND EVENTUALLY THEY FOUND THAT THEY DID

1 NOT HAVE WHAT THEY THOUGHT WOULD BE THE FRUITS OF THEIR
2 CRIME. THEY DID NOT HAVE AN AMOUNT OF RENT MONEY. INSTEAD
3 THEY HAD A CHECKBOOK AND IN THE WALLET THAT WAS TAKEN OFF
4 THE VICTIM, A DISCOVER CARD.

5 THE EVIDENCE WILL SHOW THAT THE DEFENDANT DUMPED THE
6 SAFE OFF A NEARBY BRIDGE WITHIN ONE-HALF MILE, FOUR-TENTHS
7 OF A MILE FROM THE HOME OF THE DEFENDANT AND HIS GIRLFRIEND
8 ON TWIN LAKES ROAD.

9 THE EVIDENCE WILL THEN SHOW THAT A CALL WAS MADE
10 FROM THAT HOME TO THE DISCOVER CARD COMPANY BY DANA
11 BLACKMON TWICE ASKING FOR PIN NUMBERS. AND ULTIMATELY
12 THAT CALL WAS TERMINATED WAS DANA WHEN SHE REALIZED SHE
13 WAS NOT GOING TO GET THAT INFORMATION.

14 THE EVIDENCE WILL THEN SHOW THAT THE DEFENDANT
15 FORGED THREE CHECKS. HE PRESENTED THOSE CHECKS TO TWO
16 SEPARATE BANKS OF AMERICA, ON DECEMBER 30, 2002, AND
17 OBTAINED MONEY. ONCE FOR \$500 AND FOR THE SECOND TIME, \$600.

18 THAT THEY INQUIRED ABOUT BUYING A CAR. DIDN'T BUY A CAR
19 THAT NIGHT. AND THE NEXT DAY, ON 12/31, THE DEFENDANT GOES TO
20 A DIFFERENT BANK OF AMERICA, THIS ONE THE MAIN BRANCH IN
21 ROCK HILL, AND PRESENTED A THIRD FORGED CHECK FOR \$775.

22 THESE THREE CHECKS WERE ON THE ACCOUNT OF MAUDE
23 CUBLEY. AND WHILE CLARENCE CUBLEY ALSO HAD THE ABILITY TO
24 WRITE THOSE CHECKS, THE DEFENDANT WROTE THE NAME OF MAUDE
25 CUBLEY. NOW, THIS IS IMPORTANT BECAUSE MAUDE CUBLEY DIED

1 TWO TO THREE WEEKS BEFORE HER HUSBAND, CLARENCE "POP"
2 CUBLEY. AND THE DATES ON THOSE CHECKS AS PRESENTED BY THE
3 DEFENDANT WERE DECEMBER 28, WELL PAST MAUDE CUBLEY'S
4 DEATH.

5 AT THE THIRD BANK OF AMERICA, THE TELLERS WERE AWARE
6 OF MAUDE CUBLEY'S DEATH; THAT SHE COULD NOT HAVE WRITTEN
7 THESE CHECKS ON 12/28. AND THEREFORE, THEY BEGAN TALKING
8 AMONGST THEMSELVES. THE EVIDENCE WILL THAT AT THAT TIME
9 THE DEFENDANT FLED. HE LEFT THE BANK, LEAVING TWO FORMS OF
10 HIS IDENTIFICATION.

11 ON THE CHECK THAT HAD BEEN FORGED AND PRESENTED, HIS
12 FINGERPRINT WAS USED AS A FORM OF IDENTIFICATION AS WELL.
13 AND ULTIMATELY, YOU WILL HEAR FROM A FORENSIC EXPERT
14 COMPARING THE FINGERPRINT ON THE FORGED CHECK TO THE PRINT
15 OF THE DEFENDANT.

16 THE EVIDENCE WILL SHOW THAT ON 12/31/2002, AFTER THE
17 DEFENDANT FLED THE BANK OF AMERICA, THAT HE AND DANA
18 BLACKMON WENT TO ANOTHER CAR DEALERSHIP, A USED CAR
19 SALESPERSON, SHARON BURNS, AND THAT SHE SOLD THEM A CAR.
20 AND THAT THEY PAID HER IN \$100 BILLS. THAT THE DEFENDANT,
21 HIMSELF, PAID HER IN \$100 BILLS.

22 THE EVIDENCE WILL SHOW ON JANUARY 2, THE DAY AFTER NEW
23 YEAR'S, 2002, THAT THE DEFENDANT WAS TAKEN TO HIS JOB IN THE
24 FORT MILL AREA BY DANA BLACKMON AND THAT HE NEVER
25 RETURNED HOME. THAT HE CALLED HER LATER, WHEN THE POLICE

1 WERE THERE, BUT THAT HE LEFT. HE FLED AND HE DIDN'T RETURN
2 THAT NIGHT AND HE DIDN'T RETURN THE NEXT WEEK AND HE DIDN'T
3 RETURN THE NEXT MONTH. HE WAS NOT APPREHENDED UNTIL FOUR
4 YEARS LATER, UNTIL NOVEMBER, 2006, IN MISSOURI.

5 AT THAT TIME, AND BACK IN JANUARY OF '02, LAW
6 ENFORCEMENT ENTERED HIM AS WANTED ON THESE CHARGES AND
7 ULTIMATELY HE WAS APPREHENDED AND BROUGHT BACK, WHERE HE
8 STANDS TRIAL BEFORE YOU.

9 IN THE MEANTIME, OTHER THINGS HAVE HAPPENED IN THIS
10 CASE. IN THE MEANTIME, SINCE THE DEFENDANT FLED, AND UP UNTIL
11 THE TIME HE WAS APPREHENDED, UNFORTUNATELY, CLARENCE "POP"
12 CUBLEY PASSED AWAY. HE PASSED AWAY AS A DIRECT RESULT OF
13 THE INJURIES HE SUSTAINED TO HIS HEAD DURING THE ASSAULT. AND
14 YOU WILL HEAR TESTIMONY FROM THE EMS PEOPLE WHO RESPONDED
15 TO THE SCENE. YOU WILL HEAR TESTIMONY FROM DOCTOR EARL
16 JENKINS, WHO IS THE PATHOLOGIST AT THE PIEDMONT MEDICAL
17 CENTER MORGUE, WHO DID THE AUTOPSY ON MR. CUBLEY, LINKING
18 HIS DEATH TO THIS ASSAULT.

19 ANOTHER THING THAT HAS HAPPENED IN THIS CASE SINCE THE
20 DEFENDANT FLED IS THAT DANA BLACKMON HAS STOOD IN THIS
21 COURTROOM AND TAKEN ACCOUNT FOR HER ACTIONS. DANA
22 BLACKMON HAS ENTERED A PLEA OF GUILTY TO THE CHARGE OF
23 ARMED ROBBERY. YOU WILL HEAR HER TESTIFY AGAINST THE CO-
24 DEFENDANT, AGAINST HER CO-DEFENDANT, ISAIAS GUTIERREZ. YOU
25 WILL HEAR HER TESTIFY ABOUT THE NATURE OF THEIR

1 RELATIONSHIP; THAT THEY HAD A BABY TOGETHER; WHY SHE FELT
2 THAT SHE COULD NOT SAY NO TO HIM; WHY SHE COOPERATED IN THIS
3 SCHEME; AND ULTIMATELY WHY SHE PLEAD GUILTY TO HER PART IN
4 THIS.

5 YOU WILL HEAR THAT THE STATE OFFERED HER A PLEA DEAL
6 THAT WE WOULD RECOMMEND A SENTENCE OF BETWEEN TEN TO
7 TWENTY YEARS IN EXCHANGE FOR HER TESTIMONY AND THAT, IN
8 FACT, JUDGE HAYES IN THIS COURTROOM SENTENCED HER TO TEN
9 YEARS WITHOUT PAROLE, AND THAT SHE IS SERVING THAT TIME.

10 SHE WILL TESTIFY ABOUT HER PART IN THIS CASE AND SHE
11 WILL TESTIFY TO THE DEFENDANT'S ACTIONS IN THIS CASE.

12 YOU WILL HEAR FROM FAMILY MEMBERS OF MR. CUBLEY
13 REGARDING THE LAST TIME THAT THEY SAW HIM BEFORE THE
14 ASSAULT. YOU WILL HEAR FROM LAW ENFORCEMENT THAT
15 INVESTIGATED THIS CASE. YOU WILL HEAR FROM BANK PERSONNEL,
16 THE CAR SALESMAN, LAW ENFORCEMENT AND FORENSIC EXPERTS,
17 ONE OF WHOM IS FROM THE FBI. YOU WILL HEAR HER TESTIMONY
18 REGARDING MATCHING THE DUST AND ROCK PARTICLES FOUND IN
19 THE DEFENDANT'S HOME TO THAT OF THE SAFE STOLEN FROM THE
20 VICTIM'S HOME AND ULTIMATELY RECOVERED WITHIN A HALF MILE
21 OF DEFENDANT'S HOME.

22 LADIES AND GENTLEMEN, SOMETIMES IT'S AS SIMPLE AND
23 STRAIGHTFORWARD AS CONNECTING THE DOTS. AND WE
24 RESPECTFULLY SUBMIT THAT THE EVIDENCE WILL SHOW THAT THE
25 CONNECTIONS OF THIS DEFENDANT, ISAIAS GUTIERREZ AND THESE

1 CRIMES INCLUDE THAT THE DEFENDANT LIVED IN THE SAME TRAILER
2 PARK OF THE VICTIM; THAT HE KNEW HIM; THAT HE KNEW THAT HE
3 COLLECTED RENT MONEY. THAT HE THEN LIVED WITH HIS CO-
4 DEFENDANT, DANA BLACKMON, WHO, AS WE'VE SAID, HAS ALREADY
5 PLEAD TO ARMED ROBBERY, AND THAT WAS IN A TRAILER ON TWIN
6 LAKES ROAD.

7 AND THE LINK BETWEEN THESE AND THE LINK TO THIS
8 DEFENDANT, THE CONNECTIONS WOULD INCLUDE THE SAFE TAKEN
9 FROM THE VICTIM'S HOME, THE DUST THAT WAS FOUND IN THE
10 DEFENDANT'S HOME FROM HIM PRYING OPEN THE SAFE, THE FORGED
11 CHECKS SIGNED BY THIS DEFENDANT, THE PRINTS ON THEM, HIS
12 IDENTIFICATION LEFT AT THE SCENE, HIS PICTURE ON THE BANK
13 VIDEO, THE DISCOVERY CALL MADE FROM THE DEFENDANT'S HOME IN
14 AN EFFORT TO GET THE PIN NUMBER, THE BLACK SKI MASK THAT WAS
15 FOUND IN DEFENDANT'S HOME TO CORROBORATE DANA BLACKMON'S
16 STATEMENT REGARDING THE DEFENDANT WEARING A BLACK SKI
17 MASK THAT NIGHT. AND ULTIMATELY THE TESTIMONY OF DANA
18 BLACKMON REGARDING WHAT HAPPENED.

19 AND ULTIMATELY, YOU CAN ALSO CONSIDER THE DEFENDANT'S
20 FLIGHT. THAT THE DEFENDANT FLED AND DIDN'T RETURN. HE LEFT
21 HIS JOB, HE LEFT HIS HOME, HE LEFT HIS GIRLFRIEND, AND HE LEFT A
22 BABY THAT WAS LESS THAN A YEAR OLD, WITHOUT RETURNING TO
23 EVEN PACK A BAG. THAT HE LEFT AND FLED AND WAS GONE FOR
24 FOUR YEARS.

1 WE EXPECT THE DEFENSE ATTORNEY MAY ADDRESS ISSUES
2 LIKE THE BURDEN OF PROOF BEING ON THE STATE. OF COURSE IT IS.
3 THAT'S WHAT OUR CONSTITUTION PROVIDES FOR. AND THEY WILL
4 ADDRESS, AS THE JUDGE HAS, THAT THE DEFENDANT IS PRESUMED
5 INNOCENT. OF COURSE HE IS. THAT'S WHAT OUR CONSTITUTION
6 PROVIDES. AND THAT PROOF SHOULD BE BEYOND ANY REASONABLE
7 DOUBT. NOT BEYOND ANY AND ALL DOUBT, BUT BEYOND ANY
8 REASONABLE DOUBT.

9 AND JUDGE COLE AT THE CONCLUSION OF THIS CASE WILL
10 INSTRUCT YOU AS TO THE DEFINITION OF REASONABLE DOUBT IN
11 SOUTH CAROLINA.

12 WE RESPECTFULLY SUBMIT THAT AT THE CONCLUSION OF THIS
13 TRIAL, AT THE CONCLUSION OF THE EVIDENCE, ONCE YOU EXAMINE
14 ALL THOSE CONNECTIONS, CONNECT ALL THOSE DOTS, WE
15 RESPECTFULLY SUBMIT THAT YOU WILL SEE A VERY CLEAR PICTURE
16 AND THAT THAT PICTURE WILL CLEARLY SHOW THAT THE
17 DEFENDANT, ISAIAS DIAZ GUTIERREZ, IS GUILTY OF BURGLARY IN
18 THE FIRST DEGREE; HE IS GUILTY OF THE MURDER OF CLARENCE "POP"
19 CUBLEY; HE IS GUILTY OF ARMED ROBBERY; AND THAT HE IS GUILTY
20 OF THREE COUNTS OF FORGERY.

21 AT THE CONCLUSION OF THIS TRIAL WE WILL ASK FOR YOU TO
22 RETURN A VERDICT FINDING HIM SUCH ON EACH AND EVERY CHARGE
23 BEFORE YOU. THANK YOU.

24 THE COURT: MR. CHIARENZA.

1 MR. CHIARENZA: THANK YOU, YOUR HONOR. IT ALL SOUNDS
2 PRETTY STRAIGHTFORWARD, DOESN'T IT? I SUBMIT TO YOU IT'S NOT.
3 WHAT YOU'RE GONNA HEAR IN THIS CASE, NOT THAT THE EVIDENCE
4 WILL SHOW THAT MY CLIENT BROKE INTO MR. CUBLEY'S HOUSE. OR
5 THAT THE EVIDENCE WILL SHOW THAT MY CLIENT TOOK A SAFE FROM
6 MR. CUBLEY'S HOUSE. OR THAT THE EVIDENCE WILL SHOW THAT MY
7 CLIENT ASSAULTED MR. CUBLEY.

8 WHAT YOU'RE GONNA HEAR IS THAT DANA BLACKMON SAID IT
9 HAPPENED THAT WAY, SO IT MUST HAVE. WHAT YOU'RE GONNA HEAR
10 IS THAT DANA BLACKMON HAS A HISTORY OF VIOLENCE. WHAT
11 YOU'RE GONNA HEAR IS THAT DANA BLACKMON WAS LOOKING AT
12 LIFE IN PRISON FOR MURDER. WHAT YOU'RE GONNA HERE IS THAT
13 DANA BLACKMON IS GONNA BE OUT OF PRISON IN A COUPLE OF
14 YEARS. SHE GOT SENTENCED TO TEN YEARS.

15 YOU'LL GET TO HEAR ABOUT THE RELATIONSHIP BETWEEN
16 DANA BLACKMON AND MY CLIENT. AND YOU'LL GET TO SIZE HER UP
17 ON THE WITNESS STAND. I SUBMIT TO YOU THAT THE EVIDENCE IN
18 THIS CASE IS ALL DANA BLACKMON'S, AND THAT THERE IS NO OTHER
19 COMPETENT EVIDENCE THAT WILL CONNECT THE DOTS BETWEEN MY
20 CLIENT AND THE ALLEGATIONS IN THIS CASE.

21 NOW, HAVING SAID THAT, I DON'T WANT TO INSULT YOUR
22 INTELLIGENCE. YOU'RE GONNA SEE PICTURES OF MY CLIENT IN THE
23 BANK CASHING THESE CHECKS, CHECKS THAT WERE ALLEGEDLY
24 STOLEN FROM THE VICTIM. THERE'S NO DENYING THAT. HOWEVER,
25 YOU'RE GONNA BE CHARGED ON THE LAW OF FORGERY. AND YOU'RE

1 GONNA HEAR THAT IT TAKES MORE THAN JUST CARRYING A CHECK
2 INTO A BANK TO BE GUILTY OF FORGERY.

3 SO, I SUBMIT TO YOU THAT YES, WHILE MY CLIENT CASHED
4 THESE CHECKS, THAT IS THE ONLY EVIDENCE THAT ANY OF THESE
5 CRIMES THAT HE'S CHARGED WITH, OUTSIDE OF DANA BLACKMON
6 SAID IT HAPPENED THIS WAY, THAT'S WHY IT MUST HAVE HAPPENED.

7 I DON'T KNOW IF Y'ALL WANT TO BE HERE OR NOT, BUT YOU'RE
8 HERE FOR A REASON. YOU'RE HERE BECAUSE WE WANT YOU TO BE
9 HERE. THEY WANT YOU HERE AND I WANT YOU HERE. WE HAD A
10 CHOICE OF JURORS IN THIS CASE. YOU ARE THE ONES WHO WERE
11 SELECTED. AND I WOULD SUBMIT TO YOU THAT THE REASONS YOU
12 WERE SELECTED ARE THE SAME FOR THE STATE AS THEY ARE FOR THE
13 DEFENSE. BECAUSE WE SAW SOMETHING IN YOUR EMPLOYMENT
14 HISTORY, IN YOUR WORK HISTORY, IN YOUR EDUCATION, IN YOUR
15 GENERAL DEMEANOR THAT TOLD US YOU WILL HELP US FIND THE
16 TRUTH IN THIS CASE. AND THAT'S ALL EITHER ONE OF US WANTS.

17 NOBODY WANTS A MURDERER TO GO FREE. AND I SHOULD HOPE
18 THAT NOBODY WANTS AN INNOCENT MAN TO BE CONVICTED. SO,
19 YOU'RE HERE TODAY TO FIND THE TRUTH IN THIS CASE. AND IF THE
20 TRUTH IN THIS CASE IS JUST WHATEVER DANA BLACKMON SAYS,
21 THEN THAT'S A TRAVESTY; THAT'S A TRAVESTY OF OUR SYSTEM OF
22 JUSTICE. IT SHOULD TAKE MORE THAN WHAT DANA BLACKMON SAYS
23 TO CONVICT A MAN OF MURDER.

24 I'LL SUBMIT TO YOU THAT WHEN YOU GO BACK TO THE JURY
25 ROOM AND YOU'RE DELIBERATING ABOUT THIS CASE, I'LL MAKE YOU

1 A PROMISE, NOT ONE OF YOU WILL BE ABLE TO HOLD A SINGLE PIECE
2 OF PHYSICAL EVIDENCE IN YOUR HANDS THAT CONNECTS MY CLIENT
3 TO THE COMMISSION OF THE CRIMES CHARGED TO THE EXCLUSION OF
4 EVERYONE ELSE.

5 WHAT DO I MEAN BY THAT? THEY SAY HE WAS BEATEN WITH A
6 BRICK. WELL, YOU MAY HAVE THAT BRICK BACK THERE, BUT THERE'S
7 NOT ANY EVIDENCE ON THAT BRICK THAT SAYS MY CLIENT EVER
8 TOUCHED IT, EVER USED IT. THERE'S NO HAIR FIBER ON THAT BRICK.
9 THERE ARE NO BLOOD SAMPLES ON THAT BRICK. THERE'S NO DNA ON
10 THAT BRICK. THERE'S NO FINGERPRINTS ON THAT BRICK. THERE'S
11 NOTHING ON THIS BRICK THAT INDICATES THAT MY CLIENT USED IT
12 TO HIT MR. CUBLEY.

13 IN FACT, THERE ISN'T EVEN ANY EVIDENCE IN THIS CASE, OTHER
14 THAN WHAT DANA BLACKMON SAID, THAT MR. CUBLEY WAS HIT WITH
15 A BRICK. NOW, THERE WILL BE MEDICAL TESTIMONY THAT IT
16 APPEARS THAT MR. CUBLEY WAS BEATEN WITH SOME SORT OF
17 OBJECT. YOU'LL GET TO HEAR THE DOCTORS AND YOU'LL GET TO
18 DETERMINE WHETHER OR NOT THEY CAN TELL YOU CONCLUSIVELY
19 WHAT THAT OBJECT WAS.

20 DON'T TAKE MY WORD FOR IT; YOU LISTEN TO THE WITNESSES. I
21 SUBMIT TO YOU THAT THE ONLY PERSON WHO GIVES ANY INDICATION
22 THAT MY CLIENT EVER TOUCHED THIS BRICK IS DANA BLACKMON,
23 THE ONE WHO'S CHARGED WITH MURDER, AND THE ONE WHO GOT A
24 TEN-YEAR SENTENCE.

1 THE SAME GOES FOR THIS ALLEGED PHONE, CUT PHONE CORD IN
2 THE VICTIM'S HOUSE. THE ONLY EVIDENCE I SUBMIT TO YOU IS NOT
3 COMPETENT BECAUSE AGAIN, IT COMES FROM DANA BLACKMON.
4 YOU ARE NOT GOING TO HAVE ANY EVIDENCE IN THAT WITNESS
5 ROOM THAT PROVES TO YOU THAT MY CLIENT CUT THIS PHONE CORD.
6 IN FACT, YOU'RE NOT GONNA HAVE ANY EVIDENCE THAT CAN PROVE
7 TO YOU THAT MY CLIENT WAS EVEN IN THE TRAILER WHEN MR.
8 CUBLEY WAS ASSAULTED. NOTHING. ZERO. ABSOLUTELY NOTHING.
9 OTHER THAN THE WORD OF THE LYING DANA BLACKMON.

10 NOT A FINGERPRINT IN THE WHOLE TRAILER BELONGING TO MY
11 CLIENT. NOT A FOOTPRINT IN THE WHOLE TRAILER BELONGING TO MY
12 CLIENT. NOT A BLOODY TIRE TRACK ANYWHERE OUTSIDE THE
13 TRAILER THAT THEY CAN MATCH TO MY CLIENT'S VEHICLE.

14 NOW, IF THEY'VE GOTTEN THIS STUFF, I HAVEN'T SEEN IT, AND
15 THEY HAVE AN OBLIGATION TO SHOW IT TO ME. SO, I'M TELLING YOU
16 THAT IT'S JUST NOT THERE. THERE IS NOTHING THAT LINKS MY
17 CLIENT TO THE CRIME SCENE OR TO THE VICTIM IN THIS CASE OTHER
18 THAN DANA BLACKMON.

19 YET, WAS MY CLIENT IN POSSESSION OF THOSE CHECKS? HE
20 CERTAINLY WAS. BUT TO SAY HE'S GUILTY OF MURDER BECAUSE HE
21 WAS IN POSSESSION OF THOSE CHECKS IS AKIN TO ME SAYING IF I GO
22 STEAL SOMETHING FROM MY INVESTIGATOR AND THEN I GIVE TO
23 YOU, YOU'RE EQUALLY AS GUILTY AS I AM. IF YOU DON'T KNOW I
24 STOLE IT, YOU DON'T KNOW WHERE IT CAME FROM, THEY'VE GOT TO

1 PROVE IT. THEY'VE GOT TO PROVE THAT CONNECTION. I SUBMIT TO
2 YOU THEY CAN'T UNLESS YOU BELIEVE DANA BLACKMON.

3 THIS IS A BLOODY CRIME SCENE. YET, THERE IS NO INDICATION
4 OF ANY OF THE VICTIM'S BLOOD ON ANYTHING THAT CAN BE TRACED
5 TO MY CLIENT. AND THERE'S NO INDICATION OF ANYTHING FROM MY
6 CLIENT THAT CAN BE MATCHED UP TO THE CRIME SCENE. HAIR,
7 FINGERPRINTS, DNA, ANYTHING.

8 DID THEY GET A SKI MASK OUT OF HIS HOUSE? YEAH, THEY DID.
9 THEY COULD GET ONE OUT OF MY HOUSE, TOO, IF THEY WANTED TO. I
10 BET THEY COULD GET ONE OUT OF SOME OF YOURS.

11 THERE'S SOME TESTIMONY ABOUT GLOVES. THOSE WERE
12 NEVER FOUND. A LOT OF THINGS DANA BLACKMON TOLD THEM
13 TURNED OUT NOT TO PAN OUT. SO, THEY'LL TELL YOU WHAT THEY
14 WANT TO TELL YOU ABOUT OR WHAT THEY THINK IS TRUE. BUT THEN
15 THERE ARE OTHER THINGS THAT DANA BLACKMON SAID THAT SIMPLY
16 ARE NOT TRUE. AND YOU'LL HEAR ABOUT HER PREVIOUS LIES AND
17 YOU'LL CONSIDER WHY SHE IS SAYING WHAT SHE'S SAYING.

18 SO, YOU'RE HERE FOR A REASON. YOU'RE HERE BECAUSE WE
19 WANT YOU HERE, BECAUSE WE WANT YOU TO LISTEN TO THE
20 EVIDENCE IN THIS CASE AND TO THE LAW, AND TO RENDER A JUST
21 AND TRUE VERDICT.

22 I REPRESENT PEOPLE THAT ARE CHARGED WITH CRIMES, BUT I
23 DON'T REPRESENT PEOPLE WHO DON'T TELL THE TRUTH. THEY
24 PROSECUTE PEOPLE WHO HAVE BEEN CHARGED WITH CRIMES, AND
25 THEY DON'T WANT INNOCENT PEOPLE TO BE CONVICTED. THE ONLY

1 PEOPLE STANDING IN BETWEEN ONE OF THOSE THINGS HAPPENING IS
2 YOU. SO, YOU NEED TO DETERMINE IF THE STATE HAS CARRIED ITS
3 BURDEN BEYOND A REASONABLE DOUBT IN THIS CASE.

4 JUST BECAUSE DANA BLACKMON SAID SO DOES NOT SATISFY
5 THE BURDEN BEYOND A REASONABLE DOUBT. AND I PROMISE YOU,
6 I'LL MAKE A DEAL WITH YOU, YOU GO BACK IN THAT JURY ROOM, AND
7 IF I'M WRONG, IF YOU CAN HOLD SOMETHING IN YOUR HANDS THAT
8 SAYS THIS PROVES TO ME THAT ISAIAS GUTIERREZ WAS IN THAT
9 TRAILER, AS OPPOSED TO ANY OTHER PERSON BEING IN THAT
10 TRAILER, AND ANY OTHER PERSON COMMITTING THIS CRIME, THIS
11 PIECE OF EVIDENCE HERE SAYS IT COULD ONLY HAVE BEEN ISAIAS
12 GUTIERREZ.

13 IF YOU'VE GOT THAT PIECE OF EVIDENCE IN THE JURY ROOM
14 OTHER THAN BECAUSE DANA BLACKMON'S SAID SO, THEN YOU GO
15 AHEAD AND FIND HIM GUILTY. I HAVEN'T SEEN THAT PIECE OF
16 EVIDENCE. I SUBMIT TO YOU THE STATE CANNOT PRESENT IT TO YOU
17 IN THIS CASE.

18 THANK YOU IN ADVANCE FOR YOUR SERVICES AND I TRUST
19 THAT YOU'LL DO THE RIGHT THING IN THIS CASE AND RENDER A
20 VERDICT OF NOT GUILTY BEYOND A REASONABLE DOUBT. THANK
21 YOU.

22 THE COURT: SOLICITOR.

23 MR. THOMPSON: YOUR HONOR, THE STATE WILL CALL AS ITS
24 FIRST WITNESS MILDRED WALLACE.

25

1 MILDRED MAY WALLACE, DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. THOMPSON:

4 Q MS. WALLACE, CAN YOU STATE YOUR FULL NAME FOR THE
5 COURT, PLEASE?

6 A MILDRED MAY WALLACE.

7 Q AND MS. WALLACE, I KNOW IT'S PROBABLY NOT PROPER TO ASK
8 THIS, BUT HOW OLD ARE YOU?

9 A SEVENTY-SIX.

10 Q DID YOU KNOW CLARENCE CUBLEY?

11 A YES, I DID.

12 Q HOW DID YOU KNOW HIM?

13 A HE MARRIED MY SISTER.

14 Q WHAT WAS YOUR SISTER'S NAME?

15 A MAUDE WALLACE CUBLEY.

16 Q DID YOU USED TO SPEND TIME WITH CLARENCE AND MAUDE?

17 A THEY SPENT THE NIGHT WITH ME.

18 Q HAVE YOU SPENT A LOT OF TIME OVER AT THEIR PLACE AS
19 WELL?

20 A YES, I HAVE.

21 Q CAN YOU TELL ME, HOW LONG DO YOU THINK THAT THEY LIVED
22 BACK AT 1890 HIGHWAY 21 IN FORT MILL?

23 A I WOULD SAY TWENTY YEARS.

24 Q CAN YOU TELL ME, DID YOU VISIT THEM OFTEN AT THAT
25 TRAILER?

- 1 A HUH?
- 2 Q DID YOU VISIT THEM OFTEN AT THAT TRAILER?
- 3 A YES, I DID. JUST ABOUT EVERY WEEKEND AND ESPECIALLY AT
- 4 CHRISTMAS AND THANKSGIVING.
- 5 Q NOW, IT'S MY UNDERSTANDING THAT MAUDE PASSED AWAY. IS
- 6 THAT CORRECT?
- 7 A YES SIR.
- 8 Q WHEN DID SHE PASS AWAY?
- 9 A THE TWELFTH, THIRTEENTH OF '02.
- 10 Q WHICH MONTH, DECEMBER?
- 11 A DECEMBER 13, '02.
- 12 Q OKAY. DID YOU STILL HAVE CONTACT WITH CLARENCE AFTER
- 13 SHE PASSED AWAY?
- 14 A YES SIR.
- 15 Q WHAT TYPE OF CONTACT DID YOU HAVE WITH HIM?
- 16 A HE WOULD COME OVER AT MY PLACE AND HE WOULD HAVE ME
- 17 OVER THERE BEFORE HE GOT HURT.
- 18 Q NOW, CAN YOU TELL ME, DID CLARENCE HAVE A SAFE IN HIS
- 19 HOUSE?
- 20 A YES, HE DID.
- 21 Q DID YOU HAVE AN OPPORTUNITY TO SEE THAT SAFE BEFORE?
- 22 A YES, I DID.
- 23 Q CAN YOU TELL ME, WHAT OPPORTUNITY YOU HAD TO SEE THAT
- 24 SAFE?

1 A I SAW HIM WHEN HE CARRIED IT DOWN. HE HAD A OUT
2 BUILDING AND HE CARRIED IT FROM THE OUT BUILDING INTO THE
3 SMALL MOBILE HOME THAT THEY WERE LIVING IN, AND PUT IT IN THE
4 BEDROOM UNDER THE TABLE.

5 Q DID HE HAVE SOMEONE HELP HIM WITH THAT?

6 A YES, HE DID.

7 Q WHO WAS THAT?

8 A JAMES ALEXANDER.

9 Q HOW LONG WAS THAT BEFORE THIS DATE IN DECEMBER OF 2002?
10 DO YOU REMEMBER WHEN IT WAS IN RELATION TO THAT?

11 A NO, I DON'T.

12 Q WAS IT WITHIN THE SAME YEAR OR WAS IT PRIOR TO THAT?

13 A IT WAS IN THE SAME YEAR.

14 Q BEFORE THE TIME THAT MAUDE DIED?

15 A YES. SHE WAS LIVING WHEN THIS HAPPENED.

16 Q AND SO, DID YOU GET A GOOD CHANCE TO LOOK AT THE SAFE
17 AT THAT TIME WHEN IT WAS MOVED?

18 A YES, I DID.

19 Q AND AS A MATTER OF FACT, I BELIEVE THE POLICE ASKED YOU
20 TO IDENTIFY THAT SAFE, DID THEY NOT?

21 A YES.

22 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER ONE. CAN YOU TELL
23 ME WHAT THAT APPEARS TO BE?

24 A THAT LOOKS LIKE THE SAFE THAT WAS IN HIS BEDROOM.

25 Q IS THAT THE SAFE THE POLICE SHOWED YOU---

- 1 A YES.
- 2 Q ---THIS INCIDENT OCCURRED?
- 3 A YES.
- 4 Q CAN YOU TELL ME, WHEN WAS THE LAST TIME THAT YOU SAW
- 5 CLARENCE ALIVE, AS WELL?
- 6 A HE CAME OVER TO MY HOUSE ON FRIDAY AND SATURDAY.
- 7 AFTER THE FRIDAY AND SATURDAY HE WAS SUPPOSED TO BE MOVING
- 8 OUT OF THAT TRAILER PARK. AND WE WAITED AND WAITED AND
- 9 WAITED AND HE NEVER DID COME. AND SO, MR. CULP WENT LOOKING
- 10 FOR HIM AND HE FOUND HIM IN THE FLOOR, HURT. AND HE WAS
- 11 MOANING AND GOING ON.
- 12 Q WAS THAT ON DECEMBER 31, THAT HE FOUND HIM ON THE
- 13 FLOOR?
- 14 A YES.
- 15 Q THAT WAS DECEMBER 31?
- 16 A YES.
- 17 Q HOW DID YOU KNOW WOODROW CULP?
- 18 A I KNEW HIM THROUGH MAUDE AND CLARENCE.
- 19 Q DID MAUDE AND CLARENCE GO BY OTHER NAMES? DID PEOPLE
- 20 CALL THEM BY OTHER NAMES?
- 21 A MOM AND POP.
- 22 Q DID A LOT OF PEOPLE CALL THEM BY THOSE NAMES?
- 23 A YES, THEY DID.
- 24 Q DID YOU ACTUALLY REFER TO THEM THAT WAY YOURSELF
- 25 SOMETIMES?

1 A HUH-UH.

2 Q CAN YOU TELL US JUST BRIEFLY, WHEN CLARENCE WAS THERE
3 AT THE TRAILER PARK, WHAT WERE SOME OF HIS DUTIES WHEN THAT
4 TRAILER PARK WAS ACTIVE?

5 A WELL, HE CUT GRASS AND WOULD TAKE CARE OF THE WATER.
6 HE WOULD TAKE CARE OF EVERYTHING THERE. AND SHE WOULD
7 MOSTLY GO AROUND AND COLLECT THE RENT.

8 Q YOU SAID THAT WHILE HE WAS AT THE TRAILER THAT HE
9 WOULD TAKE CARE OF SOME OF THOSE THINGS, BUT HE WAS ABOUT
10 TO MOVE. WAS THERE ANYONE ELSE STILL LIVING IN THAT TRAILER
11 PARK AT THAT TIME?

12 A NO SIR.

13 Q SO, HE WAS THE ONLY ONE THERE AT THAT TIME?

14 A THE ONLY ONE THERE.

15 Q CAN YOU TELL ME IF YOU HAD THE OPPORTUNITY TO VISIT
16 CLARENCE IN THE HOSPITAL?

17 A YES, I DID.

18 Q CAN YOU TELL ME, DID HE EVER REGAIN CONSCIOUSNESS AFTER
19 THE ASSAULT ON HIM?

20 A NO.

21 Q WAS ANYONE EVER ABLE TO TALK TO HIM BEFORE HIS DEATH
22 AFTER HE WAS ASSAULTED?

23 A NOT TO MY KNOWLEDGE.

24 Q THANK YOU.

25 MR. THOMPSON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

1 MR. CHIARENZA: I HAVE NO QUESTIONS, YOUR HONOR.

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

3 MR. THOMPSON: MAY MS. WALLACE BE RELEASED, YOUR
4 HONOR?

5 MR. CHIARENZA: NO OBJECTION.

6 THE COURT: THANK YOU FOR COMING, MA'AM.

7 MR. THOMPSON: MAY WE APPROACH, YOUR HONOR?

8 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

9 LADIES AND GENTLEMEN, THE COURT HAS SOME MATTERS
10 THAT WERE PREVIOUSLY SCHEDULED FOR THIS AFTERNOON. SO,
11 WE'RE NOT GOING TO BE ABLE TO CONTINUE THE TRIAL THIS
12 AFTERNOON. WE WILL START BACK IN THE MORNING AT 9:30, AT 9:30
13 IN THE MORNING. YOU'RE GOING TO BE EXCUSED FOR THE BALANCE
14 OF THIS AFTERNOON. YOU'RE GOING TO BE ASKED TO REPORT TO
15 YOUR JURY ROOM NOT LATER THAN 9:30 IN THE MORNING.

16 IN THE MEANTIME, CONTINUE TO FOLLOW MY INSTRUCTIONS,
17 THE CAUTION I GAVE YOU BEFORE LUNCH. YOU CAN'T TALK ABOUT
18 THE CASE WITH ANYBODY AT HOME OR ANYONE ELSE, AND THAT
19 INCLUDES YOUR FELLOW JURORS. DO NOT PERMIT YOURSELF TO BE
20 EXPOSED TO ANY TYPE OF MEDIA COVERAGE THAT MIGHT RELATE TO
21 THE CASE. DO NOT CONDUCT ANY RESEARCH OR DO YOUR OWN
22 INVESTIGATION INTO ANY ISSUE.

23 WITH THAT, DO HAVE A GOOD AFTERNOON AND I'LL SEE YOU IN
24 THE MORNING AT 9:30, NOT LATER THAN 9:30 TO YOUR JURY ROOM.

25 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:35 P.M.)

1 THE COURT: THIS CASE WILL BE IN RECESS UNTIL 9:30 IN THE
2 MORNING.

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK	)	
STATE OF SOUTH CAROLINA,	)	TRANSCRIPT OF RECORD
	:	2007-GS-46-01261
PLAINTIFF,	)	2007-GS-46-01262
	:	2007-GS-46-01263
VERSUS	)	2007-GS-46-01264
	:	2007-GS-46-01265
ISAIAS DIAZ GUTIERREZ,	)	2007-GS-46-01266
	:	
DEFENDANT.	)	
		VOLUME II
		DECEMBER 11, 2007

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE, AND A JURY

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

FOR THE STATE:

WALTER W. THOMPSON, ESQ., DEPUTY SOLICITOR
LISA J. COLLINS, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:

DEREK CHIARENZA, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1 **TUESDAY, DECEMBER 11, 2007 - COURT IN SESSION - 9:30 A.M.**

2 THE COURT: YES, SOLICITOR?

3 MS. COLLINS: YES, YOUR HONOR. WE HAVE A WITNESS WHO
4 RECEIVED A CALL FROM HER FATHER ABOUT THE DEFENDANT, AND
5 HER FATHER HAS SINCE DECEASED. MR. CHIARENZA HAS OBJECTED
6 TO THAT WITNESS, AND WE WOULD LIKE TO PROFFER THAT AT THIS
7 TIME.

8 THE COURT: OKAY.

9 **ANITA CULP, DULY SWORN, TESTIFIED AS**
10 FOLLOWS:

11 **DIRECT EXAMINATION BY MS. COLLINS:**

12 Q WOULD YOU PLEASE STATE YOUR NAME?

13 A ANITA CULP.

14 Q MS. CULP, WHO WAS YOUR FATHER?

15 A MY FATHER IS WESLEY WIGGINS. MY FATHER-IN-LAW WAS
16 WOODROW CULP.

17 Q DID MR. WOODROW CULP PASS AWAY?

18 A YES, HE PASSED AWAY NOVEMBER 29.

19 Q OF THIS YEAR?

20 A THIS YEAR.

21 Q DO YOU RECALL IN DECEMBER OF 2002, RECEIVING A PHONE
22 CALL FROM YOUR SON, MATTHEW?

23 A I RECEIVED A NEXTEL PAGE FROM MY SON, MATTHEW.

24 Q BY A PAGE, DO YOU MEAN DID IT JUST ALERT AND GO OFF?

25 A YES MA'AM.

1 Q DID YOU SPEAK TO MATTHEW?

2 A YES. HE AND PAW-PAW WENT TO SEE MR. CUBLEY THAT
3 MORNING BECAUSE MR. CUBLEY WAS SUPPOSED TO BE AT THE HOUSE
4 FOR MOVING REASONS. WHEN THEY WENT TO GO CHECK ON HIM
5 THEY FOUND-- PAW-PAW WENT INSIDE; MATTHEW DID NOT. PAW-PAW
6 FOUND HIM ON THE FLOOR UNCONSCIOUS AND HAD MATT TO CALL
7 ME.

8 Q DOES MATTHEW HAVE SOME SPECIAL NEEDS?

9 A MATTHEW HAS SPECIAL NEEDS. HE IS A DD, ADD AND HE HAS
10 SPECIAL NEEDS THAT CANNOT HANDLE ANYTHING THAT'S OUT OF HIS
11 NORMAL.

12 Q DID HE APPEAR TO BE UPSET WHEN YOU TALKED TO HIM?

13 A YES, HE WAS.

14 Q BUT YOU DIDN'T SPEAK TO PAW-PAW, WOODROW?

15 A I COULD HEAR HIM IN THE BACKGROUND. I DID NOT SPEAK TO
16 HIM BUT I COULD HEAR HIM IN THE BACKGROUND, TELLING MR.
17 CUBLEY WAS UNCONSCIOUS AND THAT HE NEEDED AN AMBULANCE.

18 Q DID PAW-PAW, WOODROW CULP, APPEAR TO BE UPSET?

19 A YES MA'AM.

20 Q THEY HAD JUST FOUND HIM WAS YOUR UNDERSTANDING?

21 A YES MA'AM.

22 Q THEREFORE, AT THAT TIME, DID YOU MAKE A CALL TO 911?

23 A I DID.

24 Q HAVE YOU HAD A CHANCE TO LISTEN TO STATE'S EXHIBIT
25 THREE THIS MORNING?

- 1 A YES MA'AM.
- 2 Q WAS THAT A FAIR AND ACCURATE DEPICTION---
- 3 A YES MA'AM, IT IS.
- 4 Q ---OF YOUR 911 CALL?
- 5 A IT IS.
- 6 MS. COLLINS: YOUR HONOR, AT THIS TIME, I WOULD PLAY THE
- 7 911 TAPE.
- 8 (WHEREUPON THE 911 TAPE WAS PLAYED FOR THE COURT)
- 9 Q MS. CULP, HOW FAR DID YOU LIVE FROM WHERE MR. CUBLEY
- 10 LIVED?
- 11 A PROBABLY ABOUT A HALF A MILE, THREE QUARTERS OF A MILE.
- 12 Q AND DID YOU LEAVE RIGHT THEN TO GO TO MR. CUBLEY'S
- 13 HOME?
- 14 A YES MA'AM.
- 15 Q AND WHEN YOU GOT TO MR. CUBLEY'S HOME WERE THE
- 16 SHERIFF'S DEPUTIES THERE YET?
- 17 A THEY WERE THERE. THE AMBULANCE WAS THERE. THEY WERE
- 18 INSIDE WORKING WITH MR. CUBLEY.
- 19 Q ALL RIGHT.
- 20 A PAW-PAW WAS STILL INSIDE ALSO.
- 21 Q DID YOU SEE MR. CUBLEY? COULD YOU SEE INSIDE?
- 22 A I SAW HIM WHEN THEY BROUGHT HIM OUT OF THE HOUSE.
- 23 Q WAS HE ABLE TO SAY ANYTHING WHEN YOU SAW HIM?
- 24 A NO.
- 25 Q DID HE APPEAR TO BE CONSCIOUS TO YOU?

1 A NO.

2 MS. COLLINS: THAT WOULD BE THE STATE'S PROFFER, YOUR
3 HONOR.

4 THE COURT: YOU OBJECT TO THAT, MR. CHIARENZA?

5 MR. CHIARENZA: YES, I DO, YOUR HONOR.

6 THE COURT: ON WHAT GROUNDS?

7 MR. CHIARENZA: WHAT I OBJECT TO, YOUR HONOR, IS THE
8 STATEMENT CONTAINED IN THE 911 TAPE. MS. CULP SAYS, "PAW-PAW
9 SAYS IT LOOKS LIKE SOMEBODY HAD BROKEN IN." HER TESTIMONY
10 WAS THAT SHE ACTUALLY SPOKE TO A YOUNG MAN WHO WAS
11 RELAYING INFORMATION THAT HE GOT FROM HER DAD.

12 SO, WE HAVE HER DAD MAKING A STATEMENT, TELLING
13 SOMETHING TO THE YOUNG MAN IN THE MIDDLE; THE YOUNG MAN IN
14 THE MIDDLE TELLING SOMETHING TO MS. CULP. NOW, MS. CULP'S GOT
15 A THREE-DEEP LEVEL OF HEARSAY STATEMENT BEING OFFERED IN
16 THE 911 CALL.

17 I DON'T HAVE ANY OBJECTION TO ANYTHING ELSE IN THE TAPE.
18 IF THEY WANT TO REDACT THIS CONCLUSION BEING MADE THREE
19 LEVELS DOWN BY AN INDIVIDUAL I CAN'T CROSS EXAMINE, THAT IT
20 APPEARS THAT SOMEONE BROKE IN. WE DON'T KNOW HOW THEY
21 CAME TO THAT CONCLUSION, DIDN'T GIVE ANY DETAILS.

22 THAT'S MY OBJECTION, YOUR HONOR. I BELIEVE THAT IS
23 HEARSAY THAT MY WITNESS CAN'T CONFRONT.

24 MS. COLLINS: YOUR HONOR, AT THIS TIME WE WOULD SUBMIT
25 THAT WE WILL JUST ELICIT THAT TESTIMONY FROM MS. CULP, NOT AS

1 TO THE ASSUMPTION OR CONCLUSION THAT SOMEONE HAD BROKEN
2 IN. WE WOULD SUBMIT THAT WOODROW CULP THAT SHE COULD HEAR
3 OVER THE NEXTEL THAT THE VICTIM WAS UNCONSCIOUS AND
4 APPEARED TO HAVE BEEN ASSAULTED, I BELIEVE SHE TESTIFIED. SHE
5 SHOULD BE ABLE TO TESTIFY TO THAT. AS FAR AS ACTUALLY
6 PLAYING THE TAPE, WE WILL NOT DO THAT.

7 MR. CHIARENZA: I DON'T BELIEVE THERE'S ANY TESTIMONY
8 THAT HE APPEARS TO BE ASSAULTED AND I WOULD OBJECT TO THAT,
9 IF THERE IS. I DON'T BELIEVE THERE IS. I TOOK NOTES. I BELIEVE
10 WHAT SHE SAID SHE HEARD WAS HE'S UNCONSCIOUS, HE'S ON THE
11 FLOOR, HE NEEDS AN AMBULANCE.

12 MS. COLLINS: THAT'S WHAT I'M TALKING ABOUT.

13 MR. CHIARENZA: I DON'T HAVE AN OBJECTION TO THAT
14 BECAUSE HE OBVIOUSLY-- THERE ARE NUMEROUS WITNESSES THAT
15 COULD TESTIFY WHEN HE GOT THERE THAT HE WAS UNCONSCIOUS, HE
16 WAS ON THE FLOOR. HE APPARENTLY DID GET A RIDE IN AN
17 AMBULANCE.

18 BUT JUST TO ELEMENTS OF THE CRIMES THAT ARE ALLEGED,
19 THAT'S WHAT I OBJECT TO. AN ASSAULT OR A BREAK-IN OR ANYTHING
20 OF THAT NATURE.

21 MS. COLLINS: MR. CHIARENZA IS CORRECT, THAT HE WAS
22 UNCONSCIOUS AND THAT HE NEEDED AN AMBULANCE.

23 THE COURT: SO, NOW, THAT'S ALL YOU'RE GOING TO OFFER
24 FROM THIS WITNESS?

25 MS. COLLINS: YES SIR.

1 THE COURT: THAT'S FINE. YOU CAN STEP DOWN. ARE WE
2 READY FOR THE JURY NOW? BRING IN THE JURY, PLEASE.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM)

4 GOOD MORNING, LADIES AND GENTLEMEN. AS YOU KNOW
5 WHEN WE RECESSED YESTERDAY THE STATE HAD BEGUN WITH THEIR
6 PRESENTATION OF THE EVIDENCE, SO WE WILL CONTINUE WITH THAT
7 PRESENTATION THIS MORNING. MS. COLLINS.

8 MS. COLLINS: THANK YOU, YOUR HONOR. THE STATE CALLS
9 ANITA CULP.

10 ANITA CULP, DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 DIRECT EXAMINATION BY MS. COLLINS:

13 Q WOULD YOU PLEASE STATE YOUR NAME?

14 A ANITA CULP.

15 Q MS. CULP, DID YOU KNOW CLARENCE "POP" CUBLEY?

16 A YES MA'AM.

17 Q HOW DID YOU KNOW HIM?

18 A HE IS A FRIEND OF MY IN-LAW'S, WOODROW AND KATHERINE
19 CULP.

20 Q ALL RIGHT.

21 A AND I WOULD SEE HIM REGULARLY.

22 Q DID YOU KNOW HIM IN DECEMBER OF 2002?

23 A YES MA'AM.

24 Q YOU SAID HE WAS A FRIEND OF YOUR IN-LAW'S. WAS YOUR
25 FATHER-IN-LAW, AS YOU STATED, WOODROW CULP?

- 1 A YES MA'AM.
- 2 Q IS WOODROW STILL ALIVE?
- 3 A NO MA'AM. HE PASSED AWAY NOVEMBER 29.
- 4 Q OF THIS YEAR?
- 5 A THIS YEAR.
- 6 Q I WANT TO TAKE YOUR ATTENTION BACK TO DECEMBER 29, OF
- 7 2002. DO YOU RECALL THAT DAY?
- 8 A YES MA'AM.
- 9 Q DID YOU MAKE A 911 CALL THAT DAY?
- 10 A YES, I DID.
- 11 Q WHAT CAUSED YOU TO MAKE THE 911 CALL?
- 12 A MY SON, MATTHEW, CALLED ME ON A NEXTEL TWO-WAY.
- 13 Q IF YOU WOULD, DON'T SAY ANYTHING THAT MATTHEW SAID.
- 14 COULD YOU HEAR WOODROW CULP IN THE BACKGROUND?
- 15 A I COULD HEAR HIM IN THE BACKGROUND TELLING MATTHEW TO
- 16 LET ME KNOW TO CALL 911; THAT MR. CUBLEY HAD BEEN BEATEN---
- 17 MR. CHIARENZA: OBJECTION, YOUR HONOR.
- 18 THE COURT: SUSTAINED.
- 19 Q HE SAID FOR YOU TO CALL 911?
- 20 A TO CALL 911, THAT MR. CUBLEY WAS LAYING ON THE FLOOR,
- 21 UNCONSCIOUS.
- 22 Q AND THAT HE NEEDED AN AMBULANCE?
- 23 A THAT HE NEEDED AN AMBULANCE.
- 24 Q AND, OF COURSE, WOODROW BEING YOUR FATHER-IN-LAW, YOU
- 25 WERE FAMILIAR WITH HIS TONE OF VOICE?

- 1 A YES.
- 2 Q DID HE BE EXCITED OR UNDER STRESS TO YOU?
- 3 A YES.
- 4 Q AND HAD YOU SEEN MATT WHEN HE LEFT THAT MORNING WITH
- 5 YOUR FATHER-IN-LAW TO GO TO MR. CUBLEY'S?
- 6 A YES.
- 7 Q DO YOU KNOW TIME MATTHEW AND MR. CULP LEFT?
- 8 A I DON'T REMEMBER.
- 9 Q AFTER YOU RECEIVED THAT CALL, OR HEARD MR. WOODROW-- I
- 10 BELIEVE YOU CALL HIM PAW-PAW. IS THAT RIGHT?
- 11 A YES.
- 12 Q YOUR FATHER-IN-LAW IN THE BACKGROUND SAYING HE WAS
- 13 UNCONSCIOUS AND HE NEEDED AN AMBULANCE?
- 14 A YES.
- 15 Q DID YOU THEN PLACE A CALL TO 911?
- 16 A I DID.
- 17 Q AND YOUR SON, MATTHEW, WHY DIDN'T HE CALL? DOES HE
- 18 HAVE SPECIAL CIRCUMSTANCES?
- 19 A MATTHEW HAS SPECIAL NEEDS AND HE'S ADD. HE'S VERY UPSET
- 20 WHEN ANYTHING OUT OF THE NORM HAPPENS.
- 21 Q ALL RIGHT.
- 22 A HIS TWO-WAY IS ONLY FOR TWO-WAY PURPOSES; IT WAS NOT
- 23 FOR TELEPHONE PURPOSES.
- 24 Q ALL RIGHT. HOW FAR DID YOU LEAVE FROM MR. CUBLEY'S
- 25 RESIDENCE?

- 1 A ABOUT A HALF MILE TO THREE QUARTERS OF A MILE.
- 2 Q AGAIN, WHEN YOU RECEIVED THE NEXTEL FROM MATTHEW
- 3 AND YOU COULD HEAR WOODROW IN THE BACKGROUND, YOU
- 4 PLACED A 911 CALL?
- 5 A YES, I DID.
- 6 Q DID YOU TELL THEM WHAT HAD BEEN SHARED WITH YOU
- 7 ABOUT MR. CUBLEY BEING UNCONSCIOUS?
- 8 A YES, I DID.
- 9 Q AND THAT HE NEEDED AN AMBULANCE?
- 10 A YES MA'AM.
- 11 Q AND DID THEY INDICATE THAT THEY WOULD SEND AN
- 12 AMBULANCE?
- 13 A YES MA'AM.
- 14 Q DID YOU INDICATE TO THEM THAT YOU WOULD THEN BE GOING
- 15 TO MR. CUBLEY'S HOUSE?
- 16 A YES, I DID.
- 17 Q IS THAT WHAT YOU DID IMMEDIATELY AFTER THAT CALL?
- 18 A YES MA'AM.
- 19 Q WHEN YOU ARRIVED AT THE CUBLEY HOME WAS THE SHERIFF'S
- 20 DEPARTMENT THERE YET?
- 21 A YES MA'AM.
- 22 Q WAS EMS THERE AT THAT TIME?
- 23 A YES MA'AM.
- 24 Q DID YOU SEE MR. CUBLEY?
- 25 A I SAW HIM WHEN THEY BROUGHT HIM OUT OF THE HOUSE.

1 Q OKAY.

2 A PUT HIM IN THE AMBULANCE.

3 Q ALL RIGHT. AND DID HE APPEAR TO YOU TO BE CONSCIOUS AT
4 THAT TIME?

5 A NO MA'AM.

6 Q AS HE ABLE TO SAY ANYTHING AT THAT TIME?

7 A NO MA'AM.

8 Q THANK YOU, MS. CULP. PLEASE ANSWER ANY QUESTIONS FOR
9 MR. CHIARENZA.

10 **CROSS EXAMINATION BY MR. CHIARENZA:**

11 Q MS. CULP, YOU WERE NEVER IN THE TRAILER THAT DAY.
12 CORRECT?

13 A SIR?

14 Q YOU WERE NEVER ACTUALLY IN THE TRAILER?

15 A NO SIR.

16 Q AND YOU HAVE NO FIRSTHAND KNOWLEDGE OF WHAT MAY
17 HAVE OCCURRED TO MR. CUBLEY. CORRECT?

18 A NO SIR, JUST WHAT PAW-PAW HAD SAID.

19 Q SO, YOU RECEIVED A PHONE CALL AND YOU GOT SOME
20 INFORMATION THAT HE NEEDED AN AMBULANCE?

21 A YES SIR.

22 Q BUT YOU DIDN'T COME TO THAT CONCLUSION ON YOUR OWN BY
23 YOURSELF?

24 A NO SIR.

25 Q AND YOU DIDN'T ATTEMPT TO SPEAK TO MR. CUBLEY, DID YOU?

1 A NO.

2 Q IN FACT, BY THE TIME YOU GOT THERE THE POLICE PROBABLY
3 HAD THE CRIME SCENE TAPE UP, OR AT THE VERY LEAST, WERE
4 KEEPING PEOPLE AWAY FROM THE SCENE?

5 A YES SIR.

6 Q SO, AT THAT POINT, AT BEST, YOU WERE AN OBSERVER AT SOME
7 DISTANCE. CORRECT?

8 A I WAS RIGHT THERE IN THE YARD.

9 Q BUT YOU WERE NOT IN THE TRAILER?

10 A NO SIR.

11 Q YOU DON'T HAVE ANY PERSONAL INFORMATION AS TO WHO, IF
12 ANYONE, MAY HAVE DONE SOMETHING THAT YOU FELT MAY HAVE
13 HAPPENED?

14 A NO SIR.

15 Q AND MY CLIENT'S ON TRIAL FOR HAVING SOME INVOLVEMENT.
16 YOU DON'T KNOW ANYTHING ABOUT MR. GUTIERREZ, DO YOU?

17 A NO SIR, NEVER MET HIM.

18 Q THANK YOU.

19 MR. CHIARENZA: THAT'S ALL I HAVE.

20 MS. COLLINS: NOTHING FURTHER.

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

22 MS. COLLINS: YOUR HONOR, WE WOULD ASK THAT THIS
23 WITNESS BE EXCUSED.

24 MR. CHIARENZA: NO OBJECTION.

25 THE COURT: SHE MAY BE EXCUSED.

1 MR. THOMPSON: THE STATE WOULD CALL MARCUS WHITENER.

2 ANDREW MARCUS WHITENER, JR., DULY

3 SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. THOMPSON:

5 Q GOOD MORNING, MARCUS.

6 A GOOD MORNING.

7 Q CAN YOU STATE YOUR FULL NAME FOR THE COURT, PLEASE?

8 A ANDREW MARCUS WHITENER, JR.

9 Q WHERE DO YOU LIVE?

10 A IN CLOVER.

11 Q HOW LONG HAVE YOU LIVED IN CLOVER?

12 A ALL MY LIFE.

13 Q DID YOU KNOW CLARENCE CUBLEY?

14 A HE WAS MY GRANDFATHER.

15 Q WERE YOU CLOSE WITH CLARENCE?

16 A YES, I WAS.

17 Q CAN YOU TELL ME, DID YOU GO TO SEE CLARENCE THE DAY HE

18 WAS INJURED?

19 A YES.

20 Q CAN YOU TELL ME, WHEN WAS THE LAST TIME YOU HAD SEEN

21 CLARENCE BEFORE HE WAS INJURED?

22 A IT WAS ON THE 29TH.

23 Q ON THE 29TH OF DECEMBER?

24 A DECEMBER.

25 Q WAS THAT 2002?

- 1 A YES SIR.
- 2 Q ON THAT DAY, DO YOU REMEMBER WHAT TIME THAT YOU SAW
- 3 HIM?
- 4 A IT WAS-- I GOT THERE ABOUT TWO AND I STAYED TILL ABOUT
- 5 4:30.
- 6 Q WAS THAT AT HIS PLACE?
- 7 A YES.
- 8 Q WAS THAT THE ONE UP IN FORT MILL ON THE 21 BY-PASS?
- 9 A YES.
- 10 Q CAN YOU TELL ME, IS THAT HERE IN YORK COUNTY?
- 11 A YES, IT IS.
- 12 Q WHEN YOU VISITED WITH HIM, HOW WERE THE THINGS IN HIS
- 13 TRAILER AT THAT POINT? HOW WAS THE CONDITION OF THE TRAILER?
- 14 A IT WAS IN GOOD SHAPE. IT WAS CLEANED UP. WASN'T NOTHING
- 15 OUT OF PLACE.
- 16 Q ALL RIGHT. I BELIEVE WE'VE HEARD THIS HIS WIFE HAD DIED
- 17 RECENTLY. IS THAT CORRECT?
- 18 A YEAH, ABOUT THREE WEEKS BEFORE.
- 19 Q HAD YOU DONE ANYTHING FOR HIM SINCE THE TIME OF HIS
- 20 WIFE'S DEATH?
- 21 A YES. I USED TO GO THERE AND HELP HIM CLEAN UP AROUND
- 22 THE TRAILER PARK.
- 23 Q DID Y'ALL HAVE PLANS ON WHAT WAS GOING TO HAPPEN AT
- 24 THAT POINT?

1 A YES. HE WAS GONNA MOVE, BUT I WAS GONNA HELP HIM CLEAN
2 THE TRAILER PARK UP BEFORE HE MOVED.

3 Q WAS THERE ANYBODY ELSE LIVING AT THE TRAILER PARK AT
4 THAT TIME?

5 A NO.

6 Q SO, IT WAS JUST HIM IN THAT TRAILER?

7 A YES.

8 Q NOW, DID HE HAVE ANY PETS?

9 A HE HAD A LITTLE PUPPY THAT I GAVE HIM.

10 Q YOU GAVE HIM THAT PUPPY. WHEN DID YOU GIVE HIM THAT
11 PUPPY?

12 A IT WAS AFTER MY GRANDMOTHER DIED.

13 Q SO, JUST IN THAT MONTH OF DECEMBER, 2002?

14 A YES.

15 Q AND DID HE HAVE THAT PUPPY THERE ON THE DAY THAT HE
16 WAS ASSAULTED?

17 A YES.

18 Q CAN YOU TELL ME, WHAT HAPPENED WITH THAT PUPPY?

19 A I GOT IT BACK AFTER HE PASSED.

20 Q CAN YOU TELL ME WHAT KIND OF PUPPY IT WAS, HOW BIG IT
21 WAS, THAT SORT OF THING?

22 A IT WAS A LITTLE, SMALL, HOUSE DOG.

23 Q CAN YOU TELL ME, WHAT WAS THE NAME OF THE PUPPY?

24 A IT WAS BABY GIRL.

25 Q BABY GIRL?

1 A YES SIR.

2 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER TWO. I'M GOING
3 TO ASK YOU IF YOU CAN IDENTIFY THIS FOR ME AND TELL ME WHAT IT
4 IS.

5 A THAT'S A PICTURE OF MY GRANDFATHER.

6 Q OF CLARENCE CUBLEY?

7 A YES SIR.

8 Q IS THAT HOW HE LOOKED? DOES THAT FAIRLY AND
9 ACCURATELY DEPICT HOW HE LOOKED BEFORE HIS DEATH?

10 A YES.

11 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER THAT
12 INTO EVIDENCE AT THAT TIME.

13 MR. CHIARENZA: OBJECTION TO RELEVANCE, YOUR HONOR.

14 THE COURT: OVERRULED.

15 (WHEREUPON STATE'S EXHIBIT NUMBER TWO WAS ADMITTED INTO
16 EVIDENCE OVER OBJECTION)

17 MR. THOMPSON: I WOULD ASK PERMISSION TO PUBLISH TO JURY
18 AT THIS TIME.

19 THE COURT: ALL RIGHT.

20 (WHEREUPON STATE'S EXHIBIT NUMBER TWO WAS PUBLISHED TO THE
21 JURY BY WAY OF OVERHEAD PROJECTOR.)

22 Q NOW, IF YOU COULD, TELL ME HOW YOU FOUND OUT ABOUT
23 WHAT HAD HAPPENED TO YOUR GRANDFATHER.

24 A MR. CULP CALLED ME.

25 Q MR. CULP DID?

1 A YES.

2 Q THAT'S WOODROW CULP?

3 A YES SIR.

4 Q WHEN HE CALLED YOU, WHAT DID YOU DO AS A RESULT OF
5 THAT?

6 A I WENT AND GOT MY MOTHER AND WE WENT STRAIGHT TO THE
7 HOSPITAL.

8 Q WHERE DID YOU HAVE TO GO TO THE HOSPITAL TO SEE HIM?

9 A CAROLINAS MEDICAL.

10 Q WERE YOU ABLE TO SEE HIM THAT DAY?

11 A YES.

12 Q WAS THIS THE DAY HE WAS FOUND?

13 A YES.

14 Q HOW DID HE APPEAR WHEN YOU SAW HIM AT THAT TIME?

15 A YOU COULD TELL HE HAD BEEN BEAT. HIS FACE WAS ALL
16 SWOLLEN---

17 MR. CHIARENZA: OBJECTION, YOUR HONOR. THAT'S CALLING
18 FOR A MEDICAL CONCLUSION.

19 THE COURT: OVERRULED.

20 Q I'M SORRY. HIS FACE WAS ALL SWOLLEN?

21 A YES.

22 Q CAN YOU DESCRIBE HOW IT WAS SWOLLEN WHEN YOU SAW IT?

23 A THE WHOLE SIDE OF HIS FACE, BOTH SIDES OF HIS FACE WAS
24 SWOLLEN, AROUND HIS EARS, HIS EYES. HIS LIP HAD A CUT ON IT.

25 Q AS FAR AS SWOLLEN, CAN YOU DESCRIBE HOW SWOLLEN?

ANDREW WHITENER - DIRECT EXAMINATION BY MR. THOMPSON

1 A HE WAS JUST SWOLLEN. IT'S HARD TO DESCRIBE. YOU
2 COULDN'T HARDLY RECOGNIZE HIM, HE WAS SWOLLEN SO BAD.

3 Q DID HE EVER REGAIN CONSCIOUSNESS WHEN YOU WERE WITH
4 HIM IN THE HOSPITAL?

5 A NO.

6 Q DID Y'ALL TRY TO OBTAIN THE ITEMS HE HAD ON HIS PERSON
7 WHEN HE WAS BROUGHT TO THE HOSPITAL?

8 A YES.

9 Q WERE YOU ABLE TO OBTAIN HIS WALLET?

10 A NO.

11 Q SO, THAT WAS NOT ON HIM WHEN HE WAS TAKEN TO THE
12 HOSPITAL?

13 A NO.

14 Q HOW ABOUT WHEN YOU WENT TO THE HOME, DID Y'ALL
15 ULTIMATELY GO BACK TO HELP CLEAN UP THE HOME AFTER
16 EVERYBODY WAS DONE?

17 A YES.

18 Q DID YOU LOOK THROUGH THE HOME FOR THE WALLET?

19 A YES SIR.

20 Q WERE Y'ALL EVER ABLE TO FIND HIS WALLET?

21 A NO SIR.

22 Q DO YOU KNOW THAT HE CARRIED A WALLET?

23 A YES SIR.

24 Q HOW DO YOU KNOW THAT?

1 A YOU COULD SEE IT. IT WAS ONE OF THE LONG WALLETS WITH A
2 CHAIN ON IT.

3 Q SO, IT WAS A WALLET WITH A CHAIN HANGING OFF IT?

4 A YES.

5 Q CAN YOU TELL ME A LITTLE BIT ABOUT CLARENCE? WAS HE
6 DOING ANYTHING FOR A LIVING AT THIS POINT IN TIME OR WAS HE
7 PRETTY MUCH RETIRED?

8 A HE WAS PRETTY MUCH RETIRED.

9 Q WHAT HAD HE DONE BEFORE THAT?

10 A HE RUN THE TRAILER PARK FOR YEARS.

11 Q OKAY.

12 A AND HE WAS A TRUCK DRIVER BEFORE THAT.

13 Q HAD HE SERVED IN THE MILITARY?

14 A YEAH, HE WAS A WORLD WAR II VETERAN.

15 Q WE'VE ALREADY ADDRESSED THAT YOU WERE GOING TO HELP
16 HIM MOVE OUT OF THE TRAILER. WAS THERE A TIME THAT YOU HAD
17 SET UP TO HELP HIM MOVE?

18 A WE WEREN'T FOR SURE WHEN HE WAS GONNA MOVE, BUT HE
19 WANTED TO CLEAN UP THE TRAILER PARK FIRST.

20 Q OKAY.

21 A I WAS SUPPOSED TO GO ON DOWN ON NEW YEAR'S DAY AND
22 HELP HIM START TEARING THE TRAILERS DOWN.

23 Q DID HE ALREADY HAVE A PLACE IN MIND WHERE HE WAS GOING
24 TO MOVE TO?

1 A YES, HE WAS GONNA MOVE IN THE TRAILER PARK HIS SISTER-IN-
2 LAW OWNED.

3 Q WAS HIS SISTER-IN-LAW, MILDRED DUFF?

4 A MILDRED WALLACE.

5 Q MILDRED WALLACE. OKAY. ONE OF THE THINGS-- DID YOU
6 KNOW IF YOUR GRANDFATHER HAD-- DID HE WEAR DENTURES?

7 A YES.

8 Q DID HE ALSO WEAR A HEARING AID?

9 A YES.

10 Q THANK YOU.

11 MR. THOMPSON: I HAVE NO FURTHER QUESTIONS.

12 **CROSS EXAMINATION BY MR. CHIARENZA:**

13 Q MR. WHITENER, I'M SORRY FOR YOUR LOSS. I JUST HAVE A FEW
14 QUESTIONS TO ASK YOU. YOU TESTIFIED YOU WERE THERE FOR
15 ABOUT TWO, TWO AND A HALF HOURS ON THAT DAY. CORRECT?

16 A YES.

17 Q AND YOUR TESTIMONY IS YOU WERE THERE ON SUNDAY, THE
18 29TH?

19 A YES.

20 Q WHAT SORT OF THINGS DID Y'ALL DO FOR THAT TWO AND A
21 HALF HOURS?

22 A SAT AROUND AND TALKED AND PLAYED WITH THE PUPPY AND
23 WALKED AROUND OUTSIDE LOOKING AT WHAT WE WAS GONNA DO
24 ON JANUARY 1.

25 Q DID YOU DRIVE THERE?

- 1 A YES.
- 2 Q MR. CUBLEY OWNED A BIG, RED, DODGE RAM PICK-UP TRUCK.
- 3 CORRECT?
- 4 A YES.
- 5 Q WAS THAT THERE WHEN YOU WERE THERE?
- 6 A YES.
- 7 Q WHERE DID YOU PARK IN RELATION TO WHERE THAT TRUCK
- 8 WAS?
- 9 A I PARKED RIGHT IN FRONT OF HIS TRAILER.
- 10 Q OKAY. SO, PULLING IN OFF OF HIGHWAY 21, THE TRAILER RUNS
- 11 THE SAME WAY AS THE ROAD. RIGHT?
- 12 A YES.
- 13 Q AND THEN HIS TRUCK WAS PARKED LIKE THIS. RIGHT?
- 14 A NO. HIS WAS PARKED LIKE THIS WAY, AND I PARKED THIS WAY.
- 15 Q OKAY. SO, YOU WERE PULLING IN TOWARDS THE TRAILER OR
- 16 SIDEWAYS WITH THE TRAILER?
- 17 A I WAS WITH THE TRAILER.
- 18 Q IN THE FRONT OF IT?
- 19 A YES.
- 20 Q AND YOU ENTERED THE TRAILER FROM THAT POINT, THE
- 21 FRONT?
- 22 A YES.
- 23 Q DID Y'ALL EAT OR DRINK OR HAVE SOME LUNCH WHILE YOU
- 24 WERE THERE?
- 25 A NO.

1 Q YOU TESTIFIED THAT THE TRAILER WAS NEAT AND CLEAN AND
2 NOTHING WAS OUT OF ORDER. CORRECT?

3 A YES.

4 Q BUT, IN FACT, IT REALLY WASN'T ALL THAT NEAT WAS IT? I
5 MEAN, THERE WAS AN OPEN CAN OF DOG FOOD ON THE COUNTER,
6 WASN'T THERE?

7 A I DON'T REMEMBER IF IT WAS OR NOT.

8 Q OKAY. THERE WERE SOME DISHES IN THE SINK? DO YOU
9 RECALL THAT?

10 A YES, I THINK SO.

11 Q THERE WERE SOME GROCERIES OUT, AN OPEN BAG OF CHIPS OR
12 CRACKERS OR SOMETHING LIKE THAT, LAYING ABOUT?

13 A I DON'T REMEMBER.

14 Q DO YOU RECALL WHETHER OR NOT THE BED WAS UNMADE,
15 THERE WERE CLOTHES?

16 A I DIDN'T GO BACK INTO THE BEDROOM.

17 Q SO, YOU DIDN'T SEE THAT. HOW ABOUT, DO YOU RECALL
18 WHETHER THERE WAS ANY COFFEE OUT, OR BEVERAGES, OR
19 ANYTHING ABOUT THE PLACE?

20 A NOT AS I KNOW OF.

21 Q DID Y'ALL DRINK COFFEE?

22 A NO.

23 Q DO YOU DRINK COFFEE?

24 A I DON'T DRINK COFFEE.

- 1 Q AND THERE WERE OTHER VARIOUS ITEMS AROUND. HE HADN'T
2 MOVED OUT OF THE TRAILER YET?
- 3 A NO, HE HADN'T MOVED YET.
- 4 Q AND SO, YOU LEFT AT ABOUT 4:30?
- 5 A ABOUT 4:30.
- 6 Q AND YOU DIDN'T SEE HIM AFTER THAT TIME UNTIL YOU SAW
7 HIM IN THE HOSPITAL?
- 8 A YES SIR.
- 9 Q NOW, YOU TESTIFIED THAT IT APPEARED TO YOU THAT HE HAD
10 BEEN BEATEN. CORRECT?
- 11 A YES.
- 12 Q BUT YOU DON'T KNOW FOR CERTAIN MAY HAVE HAPPENED TO
13 MR. CUBLEY?
- 14 A NO.
- 15 Q AND YOU UNDERSTAND THAT MY CLIENT, MR. GUTIERREZ, IS ON
16 TRIAL FOR HAVING DONE SOME OF THESE THINGS TO MR. CUBLEY.
17 CORRECT?
- 18 A YES.
- 19 Q YOU DON'T HAVE ANY PERSONAL INFORMATION ABOUT MR.
20 GUTIERREZ, DO YOU?
- 21 A NO.
- 22 Q THERE'S NOTHING YOU CAN TELL US THAT YOU KNOW THAT
23 WOULD TEND TO PROVE THAT HE ACTUALLY DID IT?
- 24 A NO SIR.
- 25 Q THANK YOU.

1 MR. CHIARENZA: THAT'S ALL I HAVE OF THIS WITNESS.

2 RE-DIRECT EXAMINATION BY MR. THOMPSON:

3 Q DID MR. CUBLEY EVER REGAIN CONSCIOUSNESS?

4 A NO, HE DIDN'T.

5 Q SO, YOU WERE NEVER ABLE TO TALK TO HIM ANYMORE?

6 A NO.

7 Q THANK YOU.

8 MR. THOMPSON: NO FURTHER QUESTIONS.

9 THE COURT: YOU MAY STEP DOWN.

10 MR. THOMPSON: THE STATE WOULD CALL DEPUTY LEE

11 STONEBURNER.

12 LYMAN LEE STONEBURNER, JR., DULY

13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. THOMPSON:

15 Q DEPUTY STONEBURNER, WOULD YOU STATE YOUR FULL NAME
16 FOR THE COURT, PLEASE?

17 A MY NAME IS LYMAN LEE STONEBURNER, JR.

18 Q OBVIOUSLY, YOU WORK WITH THE SHERIFF'S DEPARTMENT?

19 A YES SIR.

20 Q HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S DEPARTMENT?

21 A I'VE BEEN WITH THE SHERIFF'S OFFICE SINCE OCTOBER OF 1998.

22 Q WHAT'S YOUR RANK THERE?

23 A AS OF NOW, I'M A SERGEANT.

1 Q SERGEANT STONEBURNER, CAN YOU TELL ME, WERE YOU
2 WORKING FOR THE SHERIFF'S DEPARTMENT, WERE YOU WORKING THE
3 AFTERNOON OF DECEMBER 31, OF 2002?

4 A YES, I WAS.

5 Q WHAT WERE YOU DOING THAT AFTERNOON?

6 A I WAS PATROLLING THE FORT MILL DISTRICT, WHICH IS
7 DISTRICT FOUR OF YORK COUNTY.

8 Q AND WAS THAT WHERE YOU WERE NORMALLY PATROLLING AT
9 THAT TIME?

10 A THAT WAS MY ASSIGNED DISTRICT, YES SIR.

11 Q DID YOU HAVE AN UNUSUAL CALL AT THAT TIME?

12 A YES SIR. THAT AFTERNOON THERE WAS ONE CALL THAT WAS
13 OUT OF WHAT WOULD BE AN ORDINARY CALL.

14 Q CAN YOU TELL ME ABOUT IT?

15 A IT WAS DECEMBER 31, ABOUT 1:40, 1:43, I REMEMBER IT TO BE. I
16 GOT A CALL TO GO TO AN ADDRESS ON HIGHWAY 21 IN REGARDS TO A
17 WELL-BEING CHECK ON A SUBJECT, AND I RESPONDED TO THAT CALL.
18 MY ARRIVAL TIME, I THINK, WAS ABOUT FOUR MINUTES, AROUND 1:47
19 IS WHEN I ARRIVED.

20 Q WAS THAT IN THE AFTERNOON?

21 A YES SIR.

22 Q OKAY.

23 A 1:47 P.M.

24 Q ALL RIGHT.

1 A I ARRIVED, MET WITH A GENTLEMAN WHO WAS STANDING
2 THERE, MR. WOODROW CULP, WHO WAS EXPLAINING HE HAD BEEN
3 TRYING TO REACH THE SUBJECT, HAD COME DOWN TO---

4 MR. CHIARENZA: YOUR HONOR, I'M GOING TO OBJECT TO
5 ANYTHING MR. CULP SAID.

6 Q BEFORE WE GET INTO THAT, AS YOU WERE COMING, DID YOU
7 HAVE AN AMBULANCE WITH YOU AT THAT POINT?

8 A THE AMBULANCE-- ACTUALLY, WHEN I RECEIVED THE CALL, I
9 WAS ON HIGHWAY 160, NEAR I-77, WHICH IS FAIRLY CLOSE TO
10 HIGHWAY 21. AS I PROCEEDED, BASICALLY GOING TOWARDS THE CITY
11 LIMITS OF FORT MILL, THERE'S A TRAFFIC LIGHT AT 160 AND 21. AND
12 ACTUALLY THE AMBULANCE WAS COMING DOWN THE HILL FROM
13 FORT MILL AS I WAS COMING DOWN FROM THE INTERSTATE, AND I
14 MADE A LEFT IN FRONT OF THE AMBULANCE, AND IT ACTUALLY WAS
15 BEHIND ME.

16 Q DID IT FOLLOW YOU TO THE ADDRESS?

17 A IT DID.

18 Q THE PLACE THAT YOU GOT TO, WAS THAT [REDACTED] BY-
19 PASS IN FORT MILL?

20 A YES.

21 Q WAS THAT THE RESIDENCE OF CLARENCE CUBLEY?

22 A YES, THAT'S CORRECT.

23 Q DID YOU KNOW WHO MR. CUBLEY WAS?

24 A YES, I'VE KNOWN MR. CUBLEY JUST FROM WORKING THAT
25 DISTRICT. HE WAS THE OWNER, I GUESS, OF THE MOBILE HOME PARK

1 THERE. YES, I'VE KNOWN HIM FOR THE FOUR YEARS, I THINK, AT THAT
2 POINT THAT I HAD POLICED THERE.

3 Q WHAT NAME DID YOU KNOW HIM BY?

4 A WE REFERRED TO HIM AS POP.

5 Q CAN YOU TELL ME, THAT TRAILER PARK, WAS IT STILL PRETTY
6 MUCH IN EXISTENCE ON THIS DATE?

7 A ACTUALLY, IT HAD BEEN PRETTY MUCH, WAS IN THE STAGES OF
8 EVERYTHING BEING CLEANED OUT AND REMOVED. SO, THERE WAS
9 BASICALLY NOBODY LIVING THERE OTHER THAN HIM.

10 Q SO, HE WAS THE ONLY ONE LIVING IN THAT TRAILER PARK AT
11 THAT TIME?

12 A THAT'S CORRECT.

13 Q WHEN YOU ARRIVED AND MET WITH MR. CULP, WHAT WAS MR.
14 CULP'S DEMEANOR AT THAT TIME?

15 A HE SEEMED VERY UNNERVED, A LITTLE DISTRAUGHT. YOU
16 COULD TELL HE WAS CONCERNED. IT WAS ONE OF THOSE, THAT AS I
17 STARTED TALKING TO HIM, YOU KNOW, YOU COULD IMMEDIATELY
18 TELL SOMETHING THAT WAS WRONG. THERE WAS SOMETHING THERE
19 THAT WAS NOT RIGHT; HE WAS UPSET.

20 Q WHAT, IF ANYTHING, DID HE TRY TO RELATE TO YOU AT THAT
21 TIME?

22 A THAT TIME IS WHEN HE STARTED RELAYING THAT HE HAD COME
23 DOWN TO CHECK ON MR. CUBLEY---

24 MR. CHIARENZA: OBJECTION TO HEARSAY.

1 MR. THOMPSON: THAT WOULD QUALIFY AS AN EXCITED
2 UTTERANCE, YOUR HONOR. OBVIOUSLY, HE WAS IN DISTRESS. THE
3 OFFICER HAS TESTIFIED THAT HE WAS UNNERVED WHEN HE ARRIVED
4 ON THE SCENE.

5 THE COURT: COUNSEL APPROACH.
6 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

7 Q AS A RESULT OF SPEAKING WITH MR. CULP, WHAT DID YOU DO?

8 A I THEN WENT UP TO THE DOOR AND ENTERED INTO THE
9 RESIDENCE, WHICH THE DOOR WAS PARTIALLY OPEN. AND I WENT
10 INTO THE RESIDENCE.

11 Q DID MR. CULP INDICATE TO YOU HOW LONG HE HAD BEEN
12 THERE PRIOR TO YOUR ARRIVAL?

13 A HE HAD NOT BEEN THERE BUT JUST A FEW MINUTES, IS MY
14 UNDERSTANDING.

15 Q IN THAT TIME, DID HE TELL YOU WHETHER HE HAD GONE INSIDE
16 THE TRAILER?

17 A HE HAD TOLD ME THAT HE HAD WENT, THAT HE HAD SAW THAT
18 THE DOOR WAS PARTIALLY OPEN AND THAT HE HAD WENT UP TO THE
19 DOOR AND I GUESS, PUSHED IT OPEN. BUT AT ANY RATE, HAD CALLED
20 FOR MR. CUBLEY. HE SAID THAT HE CALLED HIM, HE DIDN'T ANSWER,
21 BUT HE COULD SEE HIM, AND HE COULD HEAR WHAT HE THOUGHT
22 WAS HIM BREATHING. AND THAT'S WHEN I BELIEVE HE CALLED FOR
23 SOMEBODY ELSE TO CALL 911.

24 Q DID HE SAY WHETHER HE WENT IN ANY FARTHER INTO THE
25 HOUSE?

1 A IF I REMEMBER CORRECTLY, HE HAD TOLD ME THAT HE HAD
2 NOT WENT ALL THE WAY INTO THE RESIDENCE.

3 Q WHEN YOU ARRIVED THERE AND YOU LOOKED INTO THE
4 RESIDENCE, WHAT DID YOU SEE?

5 A AS I ENTERED THE RESIDENCE, WHICH WAS VERY SMALL, TO
6 THE RIGHT, MR. CUBLEY WAS LAYING ON THE FLOOR. BUT, AS I
7 ENTERED, ON THE LEFT-HAND SIDE WAS A TELEPHONE, AND THAT
8 TELEPHONE CORD WAS CUT. I SAW THAT AS SOON AS I WENT IN THE
9 DOORWAY. IT STOOD OUT; IT WAS JUST KIND OF RIGHT THERE ON THE
10 LEFT-HAND SIDE.

11 MR. CUBLEY WAS LAYING ON THE FLOOR ON THE RIGHT-HAND
12 SIDE. THERE WAS SOME DRIED BLOOD AROUND HIS HEAD AREA. HE
13 WAS GARGLING. YOU COULD HEAR THE FLUIDS AND THINGS IN HIS
14 THROAT, OR LUNGS, WHEREVER IT WOULD BE. HE HAD A MASS OF
15 DRIED BLOOD ON HIS MOUTH.

16 SO, HE WAS BREATHING. YOU COULD HEAR THE GARGLING. ON
17 THE RIGHT-HAND SIDE WAS A CHAIR LAYING OVER WITH A BELT NEXT
18 TO IT. AND, OF COURSE, AT THAT TIME, ONCE I DID A SCAN JUST TO
19 MAKE SURE I DIDN'T SEE ANYBODY ELSE, FOR EMS' SAFETY AND THAT
20 SORT OF THING, I, OF COURSE, LET EMS GO IN AND CONTEND WITH MR.
21 CUBLEY.

22 Q AND WHEN YOU LET EMS IN DID YOU STAY THERE TO WATCH AS
23 THEY HELPED MR. CUBLEY?

24 A I STAYED AT THE BACK, BUT I WAS BASICALLY AT THE
25 DOORWAY. AND, OF COURSE, AGAIN, THERE WAS VERY LITTLE ROOM

1 TO WORK. THEY WENT IN WITH WHAT I WOULD CONSIDER MINIMAL
2 EQUIPMENT AND REMOVED MR. CUBLEY FROM THE RESIDENCE. BUT,
3 YES, I STOOD THERE.

4 Q DID YOU DISTURB ANY OF THE ITEMS IN THE RESIDENCE AT THE
5 TIME?

6 A NO, I DID NOT.

7 Q AND DID YOU WATCH TO SEE IF EMS DISTURBED ANY ITEMS?

8 A I DID AND I DID NOT SEE EMS DISTURB ANY ITEMS.

9 Q WHEN EMS WORKED ON HIM, HOW DID THEY TAKE HIM OUT OF
10 THE RESIDENCE?

11 A IF I REMEMBER RIGHT, THEY DID IT ON A BODY BOARD, A BACK
12 BOARD, BECAUSE I DON'T THINK A STRETCHER WOULD HAVE FIT
13 INSIDE THE RESIDENCE.

14 Q CAN YOU TELL ME, AFTER THEY LEFT OR DURING THE TIME
15 THEY WERE THERE, DID YOU DO ANYTHING ELSE? DID YOU GO FIND
16 ANY OTHER LAW ENFORCEMENT?

17 A YES. AS SOON AS THEY WERE COMING OUT I WENT AHEAD AND
18 NOTIFIED MY SUPERVISOR. THROUGH MY SUPERVISOR I NOTIFIED
19 THAT I NEEDED MY SUPERVISOR AND WE NEEDED TO GO AHEAD AND
20 GET FORENSICS AND THE DETECTIVE DIVISION NOTIFIED TO COME
21 OUT.

22 Q WHY DID YOU NOTIFY THAT YOU NEEDED THE FORENSIC UNIT
23 AND THE DETECTIVE TO COME OUT?

24 A JUST WITH THE CIRCUMSTANCES FROM WHAT I SAW BEING OUT
25 OF THE ORDINARY. THE PHONE CORD WAS CUT, THE AMOUNT OF

1 BLOOD THAT WAS ON THE FLOOR, THE CHAIR FLIPPED OVER, THE BELT
2 LAYING THERE. AS I STOOD THERE, ACTUALLY WATCHING EMS, YOU
3 COULD ALSO SEE THAT UNDERNEATH THE CHAIR, NEAR THE CHAIR
4 WAS A CONCRETE BLOCK. SO I FELT LIKE ALL OF THAT TOGETHER
5 WAS SOMETHING THAT WE NEEDED FORENSICS AND CID TO
6 DEFINITELY COME OUT AND DO THEIR JOB.

7 Q WHAT DID YOU DO AS FAR AS SECURING THE SCENE AT THAT
8 TIME?

9 A AT THAT TIME, AGAIN, THERE WAS NOBODY ELSE LIVING AT THE
10 PARK. I STARTED A CRIME SCENE LOG AND THEN JUST MONITORED
11 WHO WENT IN AND OUT.

12 Q CAN YOU TELL ME, DID YOU GO WITH THEM, WITH MR. CUBLEY'S
13 EMS OR DID YOU STAY AT THE CRIME SCENE?

14 A I STAYED AT THE CRIME SCENE.

15 Q HOW LONG DO YOU RECALL STAYING AT THE SCENE THAT DAY?

16 A IT WAS NEAR THE END OF THE SHIFT. I CAN'T REMEMBER IF IT
17 WAS FOUR-- IT WAS EITHER A QUARTER TO FIVE, OR A QUARTER TO
18 SIX. AND I CAN'T REMEMBER WHICH ONE, BUT IT WAS LATE IN THE
19 DAY, NEAR THE END OF THE SHIFT.

20 Q WERE YOU ABLE TO CONTACT FAMILY MEMBERS REGARDING
21 THE LAST TIME THEY HAD SEEN MR. CUBLEY DURING THAT PERIOD OF
22 TIME?

23 A I HAD ACTUALLY TALKED TO MR. CULP, AND THEN THROUGH
24 THE INVESTIGATION MY SUPERVISOR, ALSO, WE HAD CONTACT, HAD
25 WORD FROM ONE FAMILY MEMBER THAT THEY HAD SAW---

1 MR. CHIARENZA: OBJECTION.

2 THE COURT: SUSTAINED.

3 Q NOT GOING INTO WHAT WAS SAID, BUT DID YOU HAVE AN
4 OPPORTUNITY AT THAT TIME TO OBTAIN CONTACT WITH FAMILY
5 MEMBERS WHO HAD LAST SEEN MR. CUBLEY?

6 A YES, WE DID.

7 Q IF YOU COULD, DEPUTY STONEBURNER, TAKE A LOOK AT THIS
8 DIAGRAM, STATE'S EXHIBIT 4-A. ARE YOU FAMILIAR WITH THAT
9 DIAGRAM?

10 A YES SIR.

11 Q IS THAT A DIAGRAM OF THE VICTIM'S RESIDENCE?

12 A YES, IT IS.

13 Q IF YOU WOULD WITH THE RED PEN, IF YOU WOULD MARK ON
14 THAT DIAGRAM WHERE YOU SAW THE VICTIM'S BODY, CLARENCE
15 CUBLEY, WHEN YOU ARRIVED.

16 (WHEREUPON WITNESS DELINEATED DIAGRAM, STATE'S EXHIBIT
17 NUMBER 4-A)

18 AND IF YOU WOULD JUST DESCRIBE WHERE THAT WAS WHEN
19 YOU CAME IN.

20 A WHEN YOU ENTERED IN THE FRONT DOOR, YOU TURNED TO THE
21 RIGHT. THERE'S A SMALL KITCHEN AREA, VERY SMALL. AND THEN
22 THERE WAS A DOOR THAT WENT INTO ANOTHER ROOM. AND HE WAS
23 LAYING ON THE FLOOR JUST BEFORE THE DOORWAY, WITH A CHAIR
24 LAYING TO RIGHT, RIGHT NEXT TO HIM.

1 Q WAS HIS HEAD FACING TOWARDS THE DOORWAY, THE
2 ENTRANCE DOORWAY OR AWAY FROM IT?

3 A HIS HEAD WOULD HAVE BEEN NEAR THE DOOR AND HIS FEET
4 WOULD HAVE BEEN ACTUALLY BACK TOWARDS THE FRONT. SO, HIS
5 HEAD WAS NEAR THE SMALL DOOR.

6 Q CAN YOU TELL ME, WHEN YOU SAW HIM, HOW WAS HE LAYING?
7 WAS HE ON HIS BACK, WAS HIS ON HIS SIDE? CAN YOU RECALL?

8 A I CAN'T RECALL THE EXACT POSITION, BUT IT WAS EITHER ON
9 HIS FACE. HE WAS EITHER FACE-DOWN OR SOMEWHAT ON HIS BACK.
10 BUT I CAN'T REMEMBER WHICH OF THOSE TWO. BUT IT WASN'T ON HIS
11 BACK, BUT IT WAS ON HIS, YOU KNOW, EITHER ON HIS SIDE OR LAYING
12 ON HIS STOMACH.

13 Q NOW, IT WASN'T ENOUGH ON HIS FACE THAT YOU COULDN'T SEE
14 IT WHEN YOU CAME IN. CORRECT?

15 A CORRECT.

16 Q THANK YOU.

17 MR. THOMPSON: NO FURTHER QUESTIONS.

18 **CROSS EXAMINATION BY MR. CHIARENZA:**

19 Q DEPUTY, DID YOU REVIEW ANY NOTES PRIOR TO YOUR
20 TESTIMONY TODAY?

21 A YES, I LOOKED OVER MY INCIDENT REPORT.

22 Q AND YOU PROVIDED THAT TO THE SOLICITOR'S OFFICE?

23 A YES.

24 Q DID YOU HAVE ANY OTHER HANDWRITTEN NOTES?

25 A NO.

- 1 Q THIS EVENT OCCURRED NEARLY FIVE YEARS AGO. CORRECT?
- 2 A YES.
- 3 Q TO YOUR KNOWLEDGE, WERE ANY PHOTOGRAPHS TAKEN OF
- 4 MR. CUBLEY PRIOR TO HIM BEING TAKEN TO THE HOSPITAL?
- 5 A I DID NOT TAKE ANY PHOTOGRAPHS, NO SIR.
- 6 Q DID YOU MAKE ANY SKETCHES OF THE SCENE?
- 7 A NO SIR, I DID NOT.
- 8 Q THIS IS ALMOST A CLICHÉ AT THIS POINT, BUT TO YOUR
- 9 KNOWLEDGE, WAS ANY SORT OF A CHALK LINE DRIVEN---
- 10 A NO SIR, THERE WAS NOT.
- 11 Q ---TO INDICATE HIS POSITIONING ON THE FLOOR?
- 12 A NO SIR.
- 13 Q SO, YOU ARRIVED AT, BY YOUR ESTIMATION, WAS A CRIME
- 14 SCENE AND THE VICTIM WAS ALLOWED TO BE REMOVED WITHOUT
- 15 THERE BEING ANY MEMORIALIZATION OF HOW HE WAS POSITIONED
- 16 OR WHERE HE WAS FOUND AT THE TIME?
- 17 A THAT'S CORRECT.
- 18 Q YOU TESTIFIED TO SOME OF YOUR IMPRESSIONS THERE THAT
- 19 DAY AND WHAT YOU SAW. DID YOU SEE ANYTHING THAT WILL HELP
- 20 THIS JURY DETERMINE WHETHER OR NOT MR. GUTIERREZ WAS THE
- 21 PERPETRATOR OF ANY ASSAULT THAT MAY HAVE HAPPENED TO MR.
- 22 CUBLEY?
- 23 A DUE TO THE SHORT TIME THAT I WAS IN THERE, I DIDN'T REVIEW
- 24 ANY OF THE EVIDENCE OR ANYTHING OF THAT NATURE.

1 Q SO, THE ANSWER IS NO, YOU DIDN'T SEE ANYTHING THAT
2 WOULD INDICATE THAT MR. GUTIERREZ WAS EVEN IN THAT TRAILER
3 THAT DAY?

4 A THAT'S CORRECT.

5 Q AND IN THE FIVE YEARS SINCE THAT TIME HAVE YOU
6 UNCOVERED ANY EVIDENCE THAT WOULD TEND TO INDICATE THAT
7 MR. GUTIERREZ WAS THE PERPETRATOR OF ANYTHING THAT MAY
8 HAVE HAPPENED TO MR. CUBLEY ON THAT DAY?

9 A NO, I HAVE NOT.

10 Q THANK YOU, OFFICER.

11 MR. CHIARENZA: I HAVE NOTHING FURTHER.

12 **RE-DIRECT EXAMINATION BY MR. THOMPSON:**

13 Q CAN YOU TELL ME, DEPUTY STONEBURNER, CONSIDERING THE
14 CONDITION THAT MR. CUBLEY WAS IN WHEN YOU SAW HIM, WHAT
15 WAS THE NUMBER ONE PRIORITY THAT YOU'RE SUPPOSED TO DO IN
16 THAT SITUATION?

17 A OUR NUMBER ONE PRIORITY AT THAT TIME WAS BASICALLY
18 THE LIFE SAVING.

19 Q ALL RIGHT. DO Y'ALL EVER DRAW CHALK LINES AROUND LIVE
20 PEOPLE?

21 A NO SIR.

22 Q THANK YOU.

23 THE COURT: YOU MAY STEP DOWN.

24 MR. THOMPSON: WE WOULD ASK THAT DEPUTY STONEBURNER
25 BE EXCUSED AT THIS TIME.

1 MR. CHIARENZA: NO OBJECTION.

2 THE COURT: YOU ARE EXCUSED.

3 MS. COLLINS: YOUR HONOR, THE STATE'S NEXT WITNESS WILL
4 BE PAUL KING.

5 PAUL STEVEN KING, DULY SWORN, TESTIFIED
6 AS FOLLOWS:

7 DIRECT EXAMINATION BY MS. COLLINS:

8 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE
9 RECORD?

10 A PAUL STEVEN KING.

11 Q PAUL, ARE YOU EMPLOYED WITH, OR DO YOU VOLUNTEER WITH
12 THE FORT MILL RESCUE SQUAD?

13 A I VOLUNTEER.

14 Q IS THAT AN ALL-VOLUNTEER UNIT?

15 A NO MA'AM, WE'RE A COMBINATION.

16 Q WHEN YOU'RE NOT VOLUNTEERING WITH THE FORT MILL
17 RESCUE SQUAD, WHAT DO YOU DO, PAUL?

18 A I'M A FULL-TIME CHIROPRACTOR IN CHARLOTTE, AND A PART-
19 TIME PARAMEDIC IN CHESTER COUNTY.

20 Q HOW LONG HAVE YOU VOLUNTEERED WITH THE FORT MILL
21 RESCUE SQUAD?

22 A JUST ABOUT ELEVEN YEARS.

23 Q AND IN ORDER TO DO THAT, DO YOU HAVE TO UNDERGO
24 MEDICAL TRAINING?

- 1 A YES MA'AM. I STARTED AS AN EMT OVER THIRTEEN YEARS AGO,
2 AND BECAME A PARAMEDIC IN 2000.
- 3 Q AN EMT BEING EMERGENCY MEDICAL TECHNICIAN?
- 4 A YES MA'AM.
- 5 Q DOES SOUTH CAROLINA REQUIRE CERTIFICATION TO BE AN
6 EMT?
- 7 A YES MA'AM.
- 8 Q AND YOU HAVE RECEIVED THAT CERTIFICATION?
- 9 A YES MA'AM.
- 10 Q DID YOU STATE AFTER BECOMING A EMT, YOU DID WHAT?
- 11 A I CONTINUED IN MY EMT TRAINING. THERE'S SEVERAL
12 DIFFERENT LEVELS. I'M CURRENTLY AT THE HIGHEST LEVEL, WHICH
13 IS PARAMEDIC.
- 14 Q YOU'RE CURRENTLY AT THE HIGHEST LEVEL, PARAMEDIC?
- 15 A YES MA'AM.
- 16 Q IN DECEMBER OF 2002, DO YOU RECALL, PAUL, WHAT LEVEL YOU
17 WERE AT?
- 18 A I WAS A PARAMEDIC.
- 19 Q OKAY. DO YOU HAVE TO GET ADDITIONAL CERTIFICATION TO
20 BECOME A PARAMEDIC?
- 21 A YES MA'AM.
- 22 Q AND YOU RECEIVED THAT?
- 23 A YES MA'AM.
- 24 Q AND YOU HAD RECEIVED THAT IN 2002, AS WELL?
- 25 A YES MA'AM.

1 Q I WANT TO DIRECT YOUR ATTENTION TO DECEMBER 31, 2002, IF I
2 COULD. DID YOU RESPOND TO A CALL IN YOUR CAPACITY AS A
3 VOLUNTEER WITH THE FORT MILL RESCUE SQUAD TO HIGHWAY 21 BY-
4 PASS IN FORT MILL?

5 A YES MA'AM, I DID.

6 Q AND THAT WAS THE HOME OF CLARENCE CUBLEY?

7 A YES MA'AM.

8 Q HAD YOU EVER MET MR. CUBLEY BEFORE?

9 A NOT TO MY RECOLLECTION.

10 Q AND WHEN YOU ARRIVED ON THE SCENE DO YOU RECALL WHO
11 WAS RIDING IN THE AMBULANCE WITH YOU?

12 A MY REPORT INDICATES I HAD SAM BLANKENSHIP, AND JAMES
13 DEBUS, WHO AT THE TIME WAS A NON-CERTIFIED MEMBER.

14 Q AND Y'ALL WERE RESPONDING TO A CALL RECEIVED FROM
15 DISPATCH?

16 A YES MA'AM.

17 Q WHEN YOU ARRIVED ON THE SCENE, COULD YOU TELL US WHAT
18 YOU OBSERVED? WAS LAW ENFORCEMENT ALREADY THERE?

19 A YES MA'AM.

20 Q DID THEY CLEAR THE SCENE TO ALLOW YOU TO GO INTO THE
21 HOME?

22 A YES MA'AM.

23 Q IS THAT STANDARD PROCEDURE? IS THAT FOR THE SAFETY OF
24 THE EMERGENCY TECHNICIANS?

25 A YES MA'AM.

1 Q SO, DEPUTY STONEBURNER, DO YOU KNOW DEPUTY
2 STONEBURNER?

3 A YES MA'AM.

4 Q SO, DID DEPUTY STONEBURNER THEN ALLOW Y'ALL TO GO INTO
5 THE TRAILER?

6 A YES MA'AM.

7 Q WHEN YOU ENTERED THE TRAILER, TELL THE JURY WHAT YOU
8 OBSERVED.

9 A I OBSERVED AN ELDERLY WHITE MALE ON THE FLOOR OF THE
10 TRAILER, UNCONSCIOUS, AND WITH AGILE RESPIRATIONS, WHICH
11 MEANS EITHER SLOW OR SHALLOW OR INADEQUATE RESPIRATIONS AT
12 THE TIME.

13 Q I FORGOT TO ASK YOU, PAUL. WHAT TIME DID YOU ARRIVE
14 THERE?

15 A 1:47 IN THE AFTERNOON.

16 Q YOU STARTED DESCRIBING THE CONDITION OF THE VICTIM.

17 A YES MA'AM.

18 Q WOULD YOU CONTINUE? HOW WAS HE LYING? YOU SAID HE
19 WAS ON THE FLOOR. HOW WAS HE LYING ON THE FLOOR?

20 A SUPINE, WHICH WOULD MEAN HE WAS LAYING ON HIS BACK.

21 Q NOW, YOU'VE GOT A COPY OF YOUR REPORT THERE JUST TO
22 REFRESH YOUR MEMORY?

23 A YES MA'AM.

24 Q WHEN YOU ARRIVED AT THE SCENE, I SEE THERE'S A BLOCK FOR
25 PATIENT STATUS AT THE SCENE. URGENT, IS THAT CORRECT?

- 1 A YES MA'AM.
- 2 Q AND OF COURSE, THAT WOULD BE THE HIGHEST---
- 3 A YES MA'AM.
- 4 Q ---RESPONSE?
- 5 A UH-HUH.
- 6 Q WHEN HE WAS TRANSPORTED FROM THE SCENE DID HE REMAIN
- 7 IN URGENT CONDITION?
- 8 A YES MA'AM. IT ALSO INDICATES CODE THREE WHICH IS
- 9 EMERGENT, LIGHTS AND SIREN, RETURN TO THE HOSPITAL.
- 10 Q PAUL, YOU INDICATED THAT HE HAD SHALLOW RESPIRATION.
- 11 A UH-HUH.
- 12 Q INADEQUATE RESPIRATION.
- 13 A YES MA'AM.
- 14 Q DO YOU RECALL, WAS HE UNCONSCIOUS, OR WAS HE ABLE TO
- 15 SPEAK TO YOU?
- 16 A HE WAS UNCONSCIOUS.
- 17 Q DURING THE WHOLE TIME THAT YOU DEALT WITH HIM FROM
- 18 THE TRAILER UP UNTIL THE POINT YOU CAME TO THE HOSPITAL,
- 19 WHICH WE'LL COVER IN A MINUTE, WAS HE EVER ABLE TO SPEAK TO
- 20 YOU?
- 21 A NO MA'AM, HE WAS UNCONSCIOUS THE WHOLE TIME.
- 22 Q PAUL, DO YOU RECALL WHETHER OR NOT HE HAD DENTURES IN
- 23 AT THAT TIME?
- 24 A I DO NOT RECALL.

1 Q DO YOU RECALL WHETHER OR NOT HE WAS WEARING HIS
2 GLASSES?

3 A NO MA'AM, I DON'T.

4 Q DO YOU RECALL WHETHER OR NOT HE WAS WEARING A
5 HEARING AID?

6 A NO MA'AM.

7 Q OBVIOUSLY, YOU WERE THERE TO WORK ON HIM FOR HIS
8 HEALTH.

9 A YES MA'AM.

10 Q TELL THE JURY WHAT ACTIONS YOU TOOK AT THAT TIME AS A
11 PARAMEDIC FOR MR. CUBLEY.

12 A IMMEDIATELY, OUR PRIORITIES ARE AIRWAY BREATHING AND
13 CIRCULATION, AND WE START WITH THE AIRWAY. BEING AS HE HAD
14 SLOW AND INADEQUATE BREATHING, WE IMMEDIATELY OPENED THE
15 AIRWAY AND I PLACED A DEVICE CALL A NPA, OR A NASAL
16 PHARYNGEAL AIRWAY, WHICH IS A DEVICE WHICH HOLDS THE
17 TONGUE OFF THE BACK OF THE THROAT, INTO MR. CUBLEY.

18 HE AT THAT POINT BEGAN SOME MORE ADEQUATE
19 RESPIRATIONS TO THE RATE OF ABOUT SIXTEEN A MINUTE. WE
20 PLACED HIM ON OXYGEN. WE PUT A C-COLLAR AROUND HIS NECK TO
21 PROTECT HIS NECK, BECAUSE AT THAT POINT WE DID NOT KNOW THE
22 MECHANISM OF INJURY. WE DID NOT KNOW HOW HE HAD BEEN
23 INJURED, BECAUSE THERE WAS SOME BLOOD ABOUT HIS FACE AND
24 HIS MOUTH AND HIS EARS.

1 SO, WE PUT A C-COLLAR ON HIM. WE PUT HIM ON A BACK
2 BOARD AND WE SECURED HIM TO THE BACK BOARD AND CARRIED
3 HIM OUT TO THE AMBULANCE.

4 Q WHEN YOU GOT HIM OUT TO THE AMBULANCE, DID HIS
5 CONDITION CHANGE ENROUTE TO THE HOSPITAL?

6 A HIS RESPIRATORY CONDITION STAYED THE SAME ONCE WE
7 OPENED THE AIRWAY. WE DIDN'T HAVE TO DO ANYTHING MORE
8 AGGRESSIVE. WE DID PLACE HIM ON OXYGEN, USING A NON-
9 BREATHING MASK, BUT HE BREATHED SPONTANEOUSLY THE ENTIRE
10 ROUTE TO THE HOSPITAL.

11 Q WAS HE MOVING AT ALL?

12 A HE WAS WHAT I WOULD CALL NON-PURPOSEFUL
13 COMBATIVENESS. HE DIDN'T KNOW WHAT HE WAS DOING AS HE WAS
14 UNCONSCIOUS, BUT HE WAS FLAILING AND WHAT ONE WOULD CALL
15 COMBATIVENESS IF THEY WERE CONSCIOUS. SO, YES, THERE WAS
16 MOVEMENT.

17 Q DID Y'ALL HAVE TO RESTRAIN HIM?

18 A YES MA'AM, FOR OUR PROTECTION.

19 Q WHERE DID YOU TAKE HIM?

20 A CAROLINAS MEDICAL CENTER IN CHARLOTTE, THE TRAUMA
21 CENTER.

22 Q AND YOU HAVE REPORTED HERE ON YOUR OWN REPORT WHEN
23 HE WAS TURNED OVER TO THE CARE OF THE PROFESSIONALS AT
24 CAROLINAS MEDICAL CENTER.

25 A AT 2:24 IN THE AFTERNOON.

1 Q I BELIEVE YOU HAVE ALREADY TESTIFIED THAT DURING THAT
2 TIME HIS CONDITION DID NOT CHANGE?

3 A THAT IS CORRECT.

4 Q I KNOW THAT ON THE REPORT YOU HAVE A PLACE TO PUT VITAL
5 SIGNS. RIGHT ABOVE THAT IS THE TRAUMA SCORE.

6 A YES MA'AM.

7 Q WHAT IS THAT?

8 A TRAUMA SCORE IS A SCORE THAT WE USE TO INDICATE BASED
9 ON A PATIENT'S RESPONSE TO A SITUATION, IT'S KIND OF A SCORE
10 THAT WE CAN USE TO GAUGE WHETHER HE'S GETTING BETTER OR
11 WORSE DURING THE TREATMENT. AND OUR INITIAL TRAUMA SCORE
12 WAS THREE.

13 Q I'M SORRY, I DIDN'T HEAR.

14 A IT WAS THREE.

15 Q THREE?

16 A YES MA'AM.

17 Q AND AT THAT TIME WITH AN INITIAL TRAUMA SCORE OF THREE,
18 WOULD THAT BE HIGH TRAUMA, INTENSIVE TRAUMA OR LOW
19 TRAUMA?

20 A THAT WOULD BE-- I'M NOT SURE WHAT YOU'RE ASKING ABOUT
21 AS FAR AS TRAUMA.

22 Q WHAT WOULD THAT REFLECT, THAT NUMBER THREE?

23 A IT'S A LOW SCORE.

24 Q OKAY.

25 A IT'S A LOW SCORE, A LOW TRAUMA SCORE.

1 Q SO, WHAT I'M ASKING YOU, DOES THAT INDICATE LOW TRAUMA?

2 A THE TRAUMA-- WE USE THE TRAUMA SCORE FOR A PERSON
3 THAT'S BEEN INJURED IN SOME KIND OF TRAUMATIC EVENT TO
4 MEASURE, FOR EXAMPLE, THE RESPONSE OF THEIR EYES.

5 Q OKAY.

6 A DO THEY LOOK AT YOU WHEN YOU WALK IN THE ROOM OR
7 THERE'S NO MOVEMENT AT ALL.

8 Q OKAY.

9 A HE HAD NO MOVEMENT AT ALL.

10 Q OKAY.

11 A WE ALSO VERBAL. WHEN WE SAY SOMETHING TO THEM, IS
12 THERE ANY RESPONSE, AND THERE WAS NONE. AND THEN MOTOR. DO
13 THEY MOVE PURPOSEFULLY WHEN WE TOLD THEM TO MOVE,
14 RESPONDING TO STIMULI. AND INITIALLY THERE WAS NONE.

15 Q SO, HE HAD LOW RESPONSE AT THAT POINT. IS THAT CORRECT?

16 A YES MA'AM.

17 Q YOU'VE GOT ONE LISTED BY EYES, ONE BY VERBAL, ONE BY
18 MOTOR FOR A TOTAL OF THREE.

19 A YES MA'AM.

20 Q IS THAT CORRECT?

21 A YES MA'AM.

22 Q IS THERE ANYTHING LOWER THAN ONE AND STILL BE ALIVE?

23 A NO MA'AM.

24 MS. COLLINS: ONE MOMENT, PLEASE.

25 (PAUSE)

1 Q PAUL, THANK YOU FOR COMING TODAY. PLEASE ANSWER ANY
2 QUESTIONS MR. CHIARENZA MAY HAVE FOR YOU.

3 **CROSS EXAMINATION BY MR. CHIARENZA:**

4 Q MR. KING, I WANT TO THANK YOU FOR YOUR SERVICE. IT
5 SOUNDS LIKE THE CITIZENS OF YORK COUNTY OUGHT TO BE
6 THANKFUL TO YOU, AS WELL.

7 JUST A COUPLE OF QUICK QUESTIONS ON CLARIFYING THE
8 TRAUMA SCORE, BECAUSE I'M NOT FAMILIAR WITH THAT.

9 A UH-HUH.

10 Q WHAT IS THE SCALE? ONE'S THE LOWEST. WHAT'S THE
11 HIGHEST?

12 A IT DEPENDS ON THE RATING, FOUR, FIVE AND SIX. THE HIGHEST
13 FOR EYES IS FOUR. THE HIGHEST FOR VERBAL IS FIVE. AND THE
14 HIGHEST FOR MOTOR IS SIX.

15 Q SO, FOR INSTANCE, IF YOU FOUND SOMEBODY WAS IN A MILD
16 FENDER-BENDER AND WAS COMPLAINING OF SOME MILD PAIN, THEIR
17 SCORE, THEN, WOULD BE HIGHER THAN, FOR INSTANCE, SOMEBODY
18 WHO WAS---

19 A THEY WOULD SCORE FIFTEEN.

20 Q SO, THEY WOULD GET A FIVE ON ALL THREE?

21 A I'M SORRY. I CAN'T DO THE MATH. FOUR, FIVE AND SIX.

22 Q SO, FOUR, FIVE AND SIX TOTALS FIFTEEN?

23 A YES SIR.

24 Q SO, IT'S CUSTOMARY, THEN, TO TOTAL THOSE THREE
25 CATEGORIES AND COME UP WITH A TOTAL SCORE?

1 A YES.

2 Q SO, ESSENTIALLY, WHAT WE HAVE TO TAKE FROM YOUR
3 REPORT HERE IS THAT AT THE TIME YOU TRANSPORTED MR. CUBLEY,
4 HE WAS PRETTY WELL OFF, PRETTY UNRESPONSIVE?

5 A YES SIR.

6 Q AND YOUR TESTIMONY HERE TODAY IS ESSENTIALLY LIMITED
7 TO THE CALL THAT YOU RESPONDED TO AND THE SERVICES YOU
8 PROVIDED AND YOUR OBSERVATIONS OF MR. CUBLEY. CORRECT?

9 A YES SIR.

10 Q YOU HAVE NO INFORMATION ABOUT MY CLIENT, MR.
11 GUTIERREZ?

12 A I'VE NEVER SEEN THE GENTLEMAN BEFORE, NO SIR.

13 Q AND NO INFORMATION THAT-- I MEAN, YOU HAVE NO
14 INFORMATION ABOUT HIM WHATSOEVER?

15 A ABOUT WHAT---

16 Q ABOUT MR. GUTIERREZ?

17 A NO SIR.

18 Q AND YOU DIDN'T SEE HIM ANYWHERE THAT DAY WHEN YOU
19 RESPONDED TO THE CALL?

20 A NO SIR. THERE WAS NOBODY IN THE RESIDENCE APART FROM
21 THE VICTIM.

22 Q THANK YOU VERY MUCH, SIR.

23 MR. CHIARENZA: NOTHING FURTHER.

24 MS. COLLINS: WE WOULD ASK THAT THIS VICTIM BE EXCUSED.

25 THE COURT: YOU MAY STEP DOWN.

1 MR. THOMPSON: THE STATE WOULD CALL PAUL ZINKANN TO
2 THE STAND.

3 PAUL JOSEPH ZINKANN, JR., DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MR. THOMPSON:

6 Q GOOD MORNING, MR. ZINKANN. IF YOU WOULD, TELL US YOUR
7 FULL NAME FOR THE COURT, PLEASE, FOR THE RECORD.

8 A PAUL JOSEPH ZINKANN, JR.

9 Q I'M PRONOUNCING IT WRONG. I APOLOGIZE. MR. ZINKANN, CAN
10 YOU TELL ME, WHERE DO YOU WORK?

11 A BANK OF AMERICA.

12 Q HOW LONG HAVE YOU WORKED THERE?

13 A SINCE 2002, JANUARY, OF 2002.

14 Q CAN YOU TELL ME, WHAT ARE SOME OF YOUR RESPONSIBILITIES
15 AT BANK OF AMERICA?

16 A I'M IN A GROUP CALLED INVESTIGATIVE SERVICES, AND THAT
17 TEAM INVESTIGATES ANY WRONGDOING. WE'RE TWOFOLD; WE
18 INVESTIGATE ANY WRONGDOING OF OUR ASSOCIATES THAT ARE
19 INVOLVED IN ANYTHING. WE INVESTIGATE THAT.

20 Q SO, BANK EMPLOYEES?

21 A YES SIR.

22 Q OKAY.

23 A AND WE ALSO COORDINATE FRAUD ACTIVITY, ANYTHING OF
24 VALUE, \$5000, ABOVE. WE PUT TOGETHER ALL THE FRAUDULENT
25 INFORMATION AND SEND IT TO STATE, LOCAL, FEDERAL AGENCIES.

1 AND WE ALSO WORK CLOSELY WITH THESE AGENCIES AND PROVIDE
2 THEM ANY INFORMATION THAT THEY MAY NEED IN LAW
3 ENFORCEMENT MATTERS.

4 Q WHAT WAS YOUR BACKGROUND BEFORE YOU WENT TO WORK
5 WITH BANK OF AMERICA?

6 A I RETIRED WITH THIRTY-FIVE YEARS OF LAW ENFORCEMENT.

7 Q WHO DID YOU WORK FOR IN LAW ENFORCEMENT?

8 A CHARLOTTE MECKLENBURG POLICE DEPARTMENT AND THE
9 CHARLESTON COUNTY POLICE DEPARTMENT. I STARTED WITH
10 CHARLESTON COUNTY AND THEN CAME UP HERE AND WAS HIRED
11 AFTER TEN YEARS.

12 Q OKAY. SO, KIND OF NATURAL PROGRESSING TO RETIREMENT,
13 AND THEN GOING BACK TO WORK WITH BANK OF AMERICA?

14 A YES.

15 Q CAN YOU TELL ME, PART OF WHAT YOU DO FOR BANK OF
16 AMERICA, YOU MENTIONED INVESTIGATING FRAUD. DO YOU ALSO
17 INVESTIGATE FORGERIES?

18 A YES SIR. FRAUD COVERS A WIDE SPECTRUM. AND FORGERY,
19 ANY FRAUDULENT ACTIVITY AGAINST ONE OF OUR BANK CUSTOMERS
20 OR THE BANK, ITSELF, COMES UNDER OUR UMBRELLA.

21 Q CAN YOU TELL ME, DID YOU HAVE AN OCCASION BACK AT THE
22 END OF 2002, THE BEGINNING OF 2003, AS PART OF YOUR DUTIES AT
23 THE BANK, TO INVESTIGATE ISAIAS GUTIERREZ?

24 A YES SIR.

1 Q CAN YOU TELL ME, HOW DID THAT BEGIN, HOW DID THAT
2 START?

3 A I WAS CONTACTED BY DETECTIVE STRAIT. I'VE KNOWN
4 DETECTIVE STRAIT FOR A PERIOD OF TIME AS MOST OF THE LAW
5 ENFORCEMENT OFFICERS IN THIS REGION. AND HE CONTACTED ME
6 REQUESTING OUR ASSISTANCE IN AN INVESTIGATION.

7 Q CAN YOU TELL ME, WHAT KIND OF THINGS DID YOU THEN LOOK
8 FOR WITHIN THE BANK OF AMERICA FOR MR. STRAIT?

9 A HE MADE US, MADE ME AWARE THAT ONE OF OUR CUSTOMERS
10 WHO HAD ITEMS NEGOTIATED AGAINST THEIR ACCOUNT WITH BANK
11 OF AMERICA AND REQUESTED COPIES OF THE ITEMS, AND ALSO
12 REQUESTED TO SEE IF WE HAD ANY VIDEO SURVEILLANCE FILM
13 AVAILABLE TO THAT HE WOULD ALSO BE ABLE TO OBTAIN.

14 Q DID THOSE ITEMS INCLUDE CHECKS?

15 A YES SIR.

16 Q CAN YOU TELL ME, AS PART OF WORKING FOR BANK OF
17 AMERICA, ARE YOU MADE FAMILIAR WITH WHAT THEY KEEP IN THEIR
18 NORMAL COURSE OF BUSINESS TO HELP YOU WITH YOUR
19 INVESTIGATION?

20 A YES SIR.

21 Q DO THEY MAINTAIN THE ACTUAL CHECKS THAT PEOPLE CASH
22 AND USE, AS PART OF THE NORMAL COURSE OF BUSINESS?

23 A SOME ARE RETAINED, IF THE CUSTOMERS REQUEST THEM TO BE,
24 TO DO SO. THEY'RE CHARGED AN ADDITIONAL AMOUNT FOR THAT
25 AMOUNT. BUT MOST OF THEM ARE PUT ON A SYSTEM CALLED IMAGE

1 VIEW WHERE WE HAVE ACCESS TO THIS VIDEO RETRIEVAL SYSTEM TO
2 PULL ACTUAL COPIES OF THE CHECK.

3 IF WE'RE NOTIFIED RATHER QUICKLY WHILE THE CHECKS ARE
4 STILL GOING THROUGH THE PROGRESSION TO BE VIDEOED, TO GO
5 THROUGH, YOU KNOW, TO DEDUCT THE AMOUNTS FROM THE
6 CUSTOMERS AND THEY'RE GOING THROUGH THAT PROCESS, IF WE'RE
7 NOTIFIED BY LAW ENFORCEMENT, SAYING WE NEED THE ORIGINAL
8 CHECKS, WE CAN REACH OUT TO THAT GROUP THAT'S PROCESSING
9 THOSE CHECKS AND ACTUALLY GET THE ORIGINALS.

10 Q SO, THE ORIGINALS ARE KEPT AS PART OF THE NORMAL COURSE
11 FOR A PERIOD OF TIME?

12 A YES SIR.

13 Q AND YOU HAVE COPIES OF EVERY CHECK THAT PASSES
14 THROUGH?

15 A THAT'S CORRECT.

16 Q NOW, WERE YOU ABLE TO ACTUALLY, IN YOUR INVESTIGATION
17 IN THIS CASE, WERE YOU ABLE TO ACTUALLY GET THE ACTUAL
18 CHECKS?

19 A YES SIR.

20 Q DID YOU COLLECT THOSE AS SOMETHING THAT BANK OF
21 AMERICA KEEPS IN THEIR NORMAL COURSE OF BUSINESS?

22 A YES SIR.

23 Q NOW, I'M GOING TO SHOW YOU STATE'S EXHIBITS NUMBERS FIVE
24 AND SIX. CAN YOU IDENTIFY FOR ME-- EACH IS IN AN ENVELOPE. CAN

1 YOU IDENTIFY EACH OF THOSE FOR ME, STATE'S EXHIBITS FIVE AND
2 SIX.

3 A YES SIR. EXHIBIT NUMBER SIX IS CHECK NUMBER 1652, DRAWN
4 ON THE ACCOUNT OF MAUDE LEE CUBLEY.

5 Q IS THAT ONE OF THE ORIGINAL CHECKS THAT YOU WERE ABLE
6 TO RECOVER AND PROVIDE TO LAW ENFORCEMENT HERE IN YORK
7 COUNTY?

8 A YES SIR.

9 Q HAS IT BEEN ALTERED OR CHANGED IN ANY WAY FROM THE
10 TIME THAT YOU RECOVERED IT, THAT YOU CAN TELL?

11 A NO SIR, I DON'T NOTICE ANY CHANGES OR ALTERATIONS.

12 Q YOU WERE ABLE TO REVIEW YOUR RECORDS BEFORE YOU
13 TESTIFIED, AS WELL. CORRECT?

14 A YES SIR. I HAVE AN IMAGE VIEW COPY OF THE ACTUAL ITEM
15 FROM OUR DATA BASE.

16 Q AND YOU KNOW FROM THAT WHAT THE IMAGE SHOULD LOOK
17 LIKE NOW?

18 A YES SIR.

19 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO PUT THAT INTO
20 EVIDENCE AT THIS TIME, STATE'S EXHIBIT NUMBER SIX.

21 MR. CHIARENZA: NO OBJECTION.

22 THE COURT: IT'S ADMITTED.

23 (WHEREUPON STATE'S EXHIBIT NUMBER SIX WAS ADMITTED
24 INTO EVIDENCE WITHOUT OBJECTION)

1 Q I WOULD ASK YOU TO LOOK AT STATE'S EXHIBIT NUMBER FIVE
2 AS WELL, AND IF YOU COULD IDENTIFY THAT FOR ME.

3 A IT'S CHECK NUMBER 1651, ALSO FROM THE ACCOUNT OF MAUDE
4 CUBLEY.

5 Q CAN YOU TELL ME, LOOKING AT THAT PARTICULAR CHECK, HAS
6 IT BEEN ALTERED OR CHANGED FROM THE TIME THAT YOU
7 ORIGINALLY OBTAINED IT?

8 A NO SIR. IT'S IDENTICAL TO THE IMAGE THAT I JUST RECENTLY
9 REVIEWED PRIOR TO COURT.

10 Q SO, EACH OF THOSE CHECKS WOULD BE THE CHECKS THAT YOU
11 ACTUALLY RECOVERED AS PART OF YOUR NORMAL COURSE OF
12 BUSINESS AND INVESTIGATION AND THEN TURNED OVER TO OUR
13 SHERIFF'S DEPARTMENT?

14 A THAT'S WHAT I SENT TO DETECTIVE STRAIT.

15 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER INTO
16 EVIDENCE AT THIS TIME STATE'S EXHIBIT NUMBER FIVE.

17 MR. CHIARENZA: NO OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 (WHEREUPON STATE'S EXHIBIT NUMBER FIVE WAS ADMITTED
20 INTO EVIDENCE WITHOUT OBJECTION)

21 Q LOOKING AT THOSE TWO CHECKS,-- WELL, BEFORE WE GET TO
22 THAT, WAS THERE ANY OTHER CHECK THAT YOU RECOVERED AS PART
23 OF YOUR INVESTIGATION AT THIS TIME?

24 A CHECK NUMBER 1646.

25 Q WAS THAT ALSO ON THE ACCOUNT OF MAUDE CUBLEY?

1 A I'M SORRY. IT'S CHECK NUMBER 1655.

2 Q CHECK NUMBER 1655. WAS THAT ALSO ON THE ACCOUNT OF
3 MAUDE CUBLEY?

4 A YES SIR, IT IS.

5 Q I'LL SHOW YOU STATE'S EXHIBITS NUMBER SEVEN, EIGHT AND
6 NINE. BEFORE WE GET INTO THOSE, IF YOU WOULD LOOK BACK AT
7 THE FIRST TWO CHECKS. FROM YOUR INVESTIGATION OF THE FIRST
8 TWO CHECKS WERE THEY ACTUALLY CASHED AT BANK OF AMERICA
9 BRANCHES?

10 A YES SIR, THEY WERE.

11 Q AND CAN YOU TELL ME, THE FIRST CHECK, EXHIBIT FIVE, WHAT
12 BRANCH WAS THAT CASHED AT? WHAT BANK OF AMERICA BRANCH
13 WAS THAT CASHED AT?

14 A FORT MILL.

15 Q DO YOU HAVE THE DATE THAT THAT WAS CASHED, ACCORDING
16 TO YOUR RECORDS?

17 A YES SIR. IT WAS DECEMBER 30, AT THE FORT MILL BRANCH.

18 Q DID IT HAVE A TIME AS WELL THAT IT WOULD HAVE BEEN
19 PROCESSED AT THE FORT MILL BRANCH?

20 A AT 15:10 HOURS, 3:10 P.M.

21 Q DID BANK OF AMERICA ACTUALLY PAY OUT ON THAT CHECK?

22 A YES SIR. \$500 WAS WITHDRAWN FROM CUBLEY'S ACCOUNT
23 THAT WAS ESTABLISHED WITH BANK OF AMERICA AND PAID TO THE
24 PAYEE ON THE CHECK.

25 Q WHO WAS THE PAYEE ON THE CHECK?

- 1 A I'LL PROBABLY MURDER THE NAME. JUST A MINUTE. ISAIAS
2 GUTIERREZ.
- 3 Q GUTIERREZ?
- 4 A GUTIERREZ. I'M SORRY, I DIDN'T PRONOUNCE IT CORRECTLY.
- 5 Q THAT'S ALL RIGHT. AND THE SECOND CHECK, STATE'S EXHIBIT
6 NUMBER SIX. WAS THAT CHECK ALSO CASHED?
- 7 A YES SIR. THAT WAS CASHED AT HECKLE AND HERLONG.
- 8 Q WAS THAT THE BANK OF AMERICA ON HECKLE AND HERLONG?
- 9 A YES SIR.
- 10 Q WHEN WAS THE DAY AND TIME OF THAT CASHING?
- 11 A DECEMBER 30, AT 16:50 P.M. OR 4:50 THAT AFTERNOON, AND \$600
12 WAS PAID OUT OF THE CUBLEY'S ACCOUNT TO THE PAYEE ON THE
13 CHECK.
- 14 Q AND THE PAYEE IS?
- 15 A MR. GUTIERREZ.
- 16 Q WAS IT THE SAME PAYEE ON EACH CHECK?
- 17 A YES SIR.
- 18 Q AND THIS WAS ON THE SAME DAY, JUST WITHIN A COUPLE OF
19 HOURS OF EACH OTHER?
- 20 A AN HOUR OR SO APART, YES SIR.
- 21 Q THE HECKLE AND HERLONG BRANCH, THAT'S THE ONE IN ROCK
22 HILL. CORRECT?
- 23 A YES SIR.
- 24 Q SO, ALL THESE SO FAR ARE IN YORK COUNTY?
- 25 A YES SIR.

1 Q NOW, GOING INTO THE NEXT CHECK THAT YOU RECOVERED,
2 CAN YOU TELL ME, WAS THIS ALSO A CHECK THAT YOU RECOVERED
3 IN THE NORMAL COURSE OF BUSINESS?

4 A ARE YOU REFERRING TO EXHIBIT NUMBER SEVEN?

5 Q YES, EXHIBIT NUMBER SEVEN.

6 A YES SIR. THIS ITEM WAS ACTUALLY SENT TO ME BY NOVA
7 ACKERMAN, WHO WAS THE MANAGER AT THAT TIME OF THE BANKING
8 CENTER.

9 Q AND THAT'S THE BANKING CENTER WHERE?

10 A THE ROCK HILL MAIN.

11 Q SO, THE BANK OF AMERICA ON MAIN STREET IN ROCK HILL?

12 A YES SIR.

13 Q WAS THAT THE MAIN BANK OF AMERICA IN ROCK HILL?

14 A YES SIR.

15 Q AND WAS THAT SOMETHING THAT THE BANK OF AMERICA
16 MAINTAINED AS A NORMAL COURSE OF BUSINESS THAT PARTICULAR
17 DAY?

18 A BECAUSE OF THE EVENTS WHEN THE PAYEE WAS ATTEMPTING
19 TO NEGOTIATE THIS CHECK, AND THE MANAGER WAS TRYING TO
20 VERIFY THE IDENTIFICATION AND VERIFY THE CHECK, THE INTERIM IN
21 THERE, AFTER IT WAS PRESENTED TO THE TELLER, AND GIVEN TO MS.
22 ACKERMAN, THE PAYEE RAN OUT OF THE BANK.

23 SO, WHEN THAT HAPPENS, THE BANKING CENTERS ARE
24 REQUIRED TO COMPLETE A SUSPICIOUS ACTIVITY REPORT, AND IT'S
25 SENT TO OUR GROUP SO WE COULD SEE WHAT WAS GOING ON.

1 Q SO, BASICALLY, AS PART OF BANK OF AMERICA'S BUSINESS IN A
2 SITUATION LIKE THAT, YOU WOULD KEEP THE CHECK AT THAT POINT,
3 AS A SUSPICIOUS CHECK?

4 A ANYTHING LEFT BEHIND.

5 Q DID YOU COLLECT OTHER THINGS LEFT BEHIND AT THAT
6 BRANCH?

7 A YES SIR. THERE WAS THE IDENTIFICATION OF THE PAYEE WAS
8 ALSO LEFT AT THE BANKING CENTER.

9 Q AND THAT WAS LEFT WITH THE CHECK. WAS THERE MORE THAN
10 ONE FORM OF ID LEFT?

11 A YES SIR. THERE WERE TWO FORMS.

12 Q IF YOU WOULD LOOK AT STATE'S EXHIBITS EIGHT AND NINE.
13 ARE THOSE THE TWO FORMS OF ID THAT WERE LEFT?

14 A YES SIR. THEY'RE IDENTICAL TO THE XEROX COPY THAT I KEPT.

15 Q OF THE THREE ITEMS, ITEMS SEVEN, EIGHT AND NINE, WERE
16 THOSE IDENTICAL TO THE COPIES THAT YOU RETAINED? ARE THEY
17 THE ONES THAT YOU RECOVERED, IN OTHER WORDS?

18 A THEY ARE. EXHIBIT SEVEN, THOUGH, APPEARS TO HAVE BEEN
19 RAN THROUGH SOME TYPE OF SOLUTION. IT'S DISCOLORED FROM THE
20 ORIGINAL.

21 Q HAS ANY OF THE ACTUAL WRITING BEEN CHANGED OR ALTERED
22 IN ANY WAY?

23 A NO SIR.

24 Q IT STILL SAYS THE SAME THING?

1 A IT STILL SAYS THE SAME THING. IT'S JUST LIGHTER, BUT IT'S
2 STILL IDENTICAL TO THE ITEM THAT I KEPT A COPY OF AND SENT TO
3 THE DETECTIVE.

4 MR. THOMPSON: YOUR HONOR, I WOULD MOVE TO ENTER THOSE
5 INTO EVIDENCE AT THIS TIME, STATE'S EXHIBITS SEVEN, EIGHT AND
6 NINE, THE CHECK AND THE TWO FORMS OF ID.

7 MR. CHIARENZA: YOUR HONOR, I DON'T THINK I HAVE AN
8 OBJECTION. I JUST WANT TO TAKE-- I'VE NEVER HAD-- I'VE NEVER
9 SEEN THE TWO FORMS OF ID. I'VE SEE COPIES. I JUST WANT TO TAKE A
10 LOOK.

11 THE COURT: ALL RIGHT.
12 (WHEREUPON DEFENSE COUNSEL VIEWED STATE'S EXHIBITS SEVEN,
13 EIGHT AND NINE)

14 MR. CHIARENZA: AT THIS POINT, YOUR HONOR, I DON'T HAVE
15 ANY OBJECTION.

16 THE COURT: THEY'RE ADMITTED..
17 (WHEREUPON STATE'S EXHIBIT NUMBER SEVEN, EIGHT AND NINE
18 WERE ADMITTED INTO EVIDENCE WITHOUT OBJECTION)

19 Q NOW, THIS PARTICULAR CHECK, STATE'S EXHIBIT NUMBER
20 SEVEN, WHAT IS THE AMOUNT THAT CHECK IS FILLED OUT FOR?

21 A \$775.

22 Q WHO IS THE PAYEE ON THAT CHECK?

23 A ISAIAS GUTIERREZ.

24 Q THE SAME PAYEE AS THE PRIOR TWO CHECKS?

25 A THAT'S CORRECT.

1 Q AND ONCE AGAIN, IT IS ON THE ACCOUNT OF MAUDE CUBLEY?

2 A YES SIR.

3 Q NOW, YOU HAD SAID THERE WAS SOME ACTIVITY ON THAT
4 CHECK. FROM YOUR INVESTIGATION WHAT DID IT REVEAL FROM THE
5 REGULARLY KEPT BUSINESS RECORDS OF THE BANK OF AMERICA
6 THAT HAPPENED WITH THAT CHECK?

7 A I'M NOT SURE I UNDERSTAND THE QUESTION.

8 Q IN YOUR INVESTIGATION, WHAT DID THE BANK RECORDS
9 REVEAL HAD HAPPENED WITH THIS PARTICULAR CHECK?

10 A FROM THE INCIDENT REPORT COMPLETED BY MS. ACKERMAN, IT
11 INDICATED THAT---

12 MR. CHIARENZA: YOUR HONOR, I'M GOING TO OBJECT.

13 THE COURT: SUSTAINED.

14 Q IF YOU WOULD, YOU SAID THERE HAD BEEN-- I GUESS I'M
15 TRYING TO FIND OUT FROM YOUR INVESTIGATION WHAT YOU WERE
16 ABLE TO DISCERN FROM THESE PARTICULAR CHECKS AS WELL, WHY
17 WERE THEY SUSPICIOUS? WHY WERE YOU LOOKING AT THEM?

18 A I WAS ABLE TO DETERMINE THAT THE PAYEE FLED THE
19 BANKING CENTER AFTER---

20 MR. CHIARENZA: YOUR HONOR, I GOING TO OBJECT AGAIN. HE
21 APPARENTLY RECEIVED THIS INFORMATION FROM A STATEMENT OF
22 ANOTHER WITNESS WHO WAS NOT PRESENT.

23 MR. THOMPSON: HE HAS TESTIFIED, YOUR HONOR, THAT THEY
24 KEEP THAT IN THE NORMAL COURSE OF THEIR BUSINESS, WHENEVER
25 THAT HAPPENS.

1 MR. CHIARENZA: I DON'T KNOW THAT THEY KEEP THAT
2 STATEMENT IN THE NORMAL COURSE OF BUSINESS.

3 THE COURT: I SUSTAIN THE OBJECTION.

4 MR. CHIARENZA: THANK YOU, YOUR HONOR.

5 Q IF YOU WOULD, WERE YOU ULTIMATELY ABLE TO-- LET'S DO
6 THIS: THE CHECK THAT YOU HAVE IN FRONT OF YOU RIGHT NOW, THE
7 ONE THAT IS FOR \$775, WAS THAT ACTUALLY CASHED?

8 A NO SIR, IT WASN'T.

9 Q AND CAN YOU TELL ME, LOOKING AT THAT PARTICULAR CHECK,
10 IS THERE ANY IDENTIFYING MARKS ON THAT CHECK? IN OTHER
11 WORDS, OBVIOUSLY, THE CHECK IS MADE OUT TO ISAIAS GUTIERREZ.
12 DID HE ALSO SIGN THE CHECK?

13 A YES SIR.

14 Q AND ON THE BACK, IS THERE ANYTHING THAT WOULD HAVE
15 BEEN RECORDED BY THE REGULAR COURSE OF BUSINESS FOR BANK
16 OF AMERICA TO IDENTIFY THE PERSON WHO HAD CASHED THE CHECK?

17 A NOT OTHER THAN THE SIGNATURE OF THE ENDORSEMENT.

18 Q DID THEY WRITE ANY OTHER INFORMATION ON THE CHECK
19 ITSELF?

20 A NOT ON THIS CHECK, NO.

21 Q NOT ON THIS PARTICULAR CHECK, NO. NOW, THE TWO FORMS
22 OF ID THAT YOU WERE ABLE TO OBTAIN THAT WERE PRESENTED WITH
23 THAT CHECK, CAN YOU TELL ME WHO IS THE PERSON THAT IS LISTED
24 ON THOSE TWO FORMS OF ID?

25 A EXHIBIT NUMBER EIGHT IS ISAIAS GUTIERREZ.

1 Q ALL RIGHT.

2 A AND EXHIBIT NUMBER NINE IS THE SAME.

3 Q THE SAME, ISAIAS GUTIERREZ?

4 A YES SIR.

5 Q NOW, GOING BACK TO EXHIBIT NUMBER FIVE, IF YOU WOULD

6 LOOK AT THAT CHECK AS WELL, WHILE YOU HAVE THOSE

7 IDENTIFICATION CARDS IN FRONT OF YOU?

8 A YES SIR.

9 Q IS THERE ANY IDENTIFYING INFORMATION IN ADDITION TO--

10 WELL, OBVIOUSLY, YOU SAID THEY WERE MADE OUT TO ISAIAS

11 GUTIERREZ. DID HE ALSO SIGN THEM ISAIAS GUTIERREZ?

12 A YES SIR.

13 Q AND, AS WELL, DID THE PERSON AT THE, IS THE TELLER, IN THE

14 NORMAL COURSE OF BUSINESS OF THE BANK REQUIRED TO RECORD

15 ANY IDENTIFYING INFORMATION ABOUT ISAIAS GUTIERREZ?

16 A YES SIR.

17 Q AND WHAT DID THAT TELLER RECORD?

18 A IT RECORDED THE RESIDENT ALIEN CARD OF MR. GUTIERREZ ON

19 THE BACK OF THE CHECK.

20 Q AND DOES THAT INDICATE BY NUMBER THAT RESIDENT ALIEN

21 CARD?

22 A YES SIR, IT DOES.

23 Q WAS THE SAME NUMBER ON THE BACK OF THAT CHECK THAT

24 YOU SEE ON THE ACTUAL RESIDENT ALIEN CARD THAT YOU HAVE IN

25 FRONT OF YOU?

1 A YES SIR, IT IS.

2 Q IS THAT THE SAME AS ON EXHIBIT NUMBER SIX?

3 A IT RECORDS ON-- ON EXHIBIT NUMBER SIX IT DOES RECORD THE
4 SAME RESIDENT ALIEN OF MR. GUTIERREZ AND THE SAME NUMBER
5 THAT'S ON THE CARD IS ALSO ON THE BACK OF THE CHECK.

6 Q AND THAT'S SOMETHING THAT THE TELLER WOULD DO IN THE
7 NORMAL COURSE OF HER BUSINESS AT THE BANK OF AMERICA?

8 A YES SIR.

9 Q NOW, I ALSO NOTICED ON THOSE TWO CHECKS, STATE'S
10 EXHIBITS FIVE AND SIX, THERE APPEAR TO BE FINGERPRINTS IN THE
11 CENTER OF THE TOP OF THE CHECKS. CAN YOU DESCRIBE WHAT THE
12 POLICY IS AS FAR AS THAT GOES?

13 A ANYONE WHO COMES TO THE BANK TO NEGOTIATE A CHECK
14 THAT DOES NOT HAVE AN ACCOUNT WITH BANK OF AMERICA IS
15 REQUIRED TO GIVE A THUMBPRINT.

16 Q WOULD THAT BE THE THUMBPRINT OF THE PAYEE? IN OTHER
17 WORDS, OF ISAIAS GUTIERREZ ON THE TOP OF THOSE CHECKS?

18 A YES, IT IS.

19 Q AND EACH OF THOSE CHECKS, EXHIBITS FIVE AND SIX, HAVE
20 THOSE THUMBPRINTS ON THEM?

21 A YES SIR, IT GOES.

22 Q NOW, AS PART OF YOUR INVESTIGATION, DID YOU ALSO-- YOU
23 CAN PUT THOSE DOWN FOR NOW. DID YOU ALSO LOOK TO SEE WHAT
24 IF ANY CHECKS IN THE SERIES OF CHECKS WERE CASHED DURING THIS
25 PERIOD OF TIME, OR ATTEMPTED TO BE CASHED?

- 1 A YES SIR, I DID.
- 2 Q DID YOU HAVE A REPORT? OR, DID THE BANK OF AMERICA
- 3 MAKE A REPORT ON CHECKING ACCOUNTS ON WHAT GOES THROUGH?
- 4 A YES, WE HAVE A STATEMENT THAT'S SENT TO THE CUSTOMER.
- 5 Q AND DO YOU HAVE THE STATEMENT THAT BANK OF AMERICA
- 6 WOULD HAVE GENERATED FOR MAUDE CUBLEY?
- 7 A YES SIR, I DO.
- 8 Q CAN YOU TELL ME, WHAT CHECKS ACTUALLY WENT THROUGH
- 9 THE CHECKING ACCOUNT AT THAT TIME?
- 10 A THERE WERE THREE CHECKS NEGOTIATED AGAINST THE
- 11 ACCOUNT, POSTING TO THE ACCOUNT. FIRST WAS CHECK NUMBER
- 12 1646, ON DECEMBER 27; 1651, ON DECEMBER 31; AND 1652 ON
- 13 DECEMBER 31.
- 14 Q AND 1651, I BELIEVE YOU SAID IS STATE'S EXHIBIT NUMBER FIVE.
- 15 CORRECT?
- 16 A YES SIR.
- 17 Q AND THAT WAS THE ONE MADE OUT IN THE AMOUNT OF \$500?
- 18 A YES SIR.
- 19 Q AND 1652 IS STATE'S EXHIBIT NUMBER SIX, I BELIEVE. IS THAT
- 20 CORRECT?
- 21 A YES SIR.
- 22 Q AND THAT'S MADE OUT IN THE AMOUNT OF \$600?
- 23 A YES SIR.
- 24 Q NOW, YOU MENTIONED ONE OTHER CHECK IN THAT SUMMARY,
- 25 CHECK NUMBER 1646.

1 A YES SIR.

2 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 11. IS THAT THE
3 COPY OF THAT CHECK THAT YOU PROVIDED?

4 A YES, IT IS.

5 Q AND DOES THAT ACCURATELY DEPICT HOW THAT CHECK
6 LOOKED?

7 A YES SIR, IT DOES.

8 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER THAT
9 INTO EVIDENCE AT THIS TIME, STATE'S EXHIBIT NUMBER ELEVEN.

10 MR. CHIARENZA: I'M GOING TO OBJECT ON THE GROUNDS OF
11 RELEVANCE, YOUR HONOR. THE CHECK WAS NEGOTIATED AT LEAST
12 ONE DAY PRIOR, TWO DAYS PRIOR TO THE ALLEGED INCIDENT.

13 MR. THOMPSON: YOUR HONOR, IT GOES TO SHOW THAT THE
14 ACCOUNT WAS ACTING NORMALLY.

15 MR. CHIARENZA: YOUR HONOR, THIS WITNESS HAS TESTIFIED
16 THAT---

17 THE COURT: LET ME SEE YOU UP HERE FOR JUST A MINUTE.

18 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

19 (WHEREUPON STATE'S EXHIBIT NUMBER ELEVEN WAS ADMITTED INTO
20 EVIDENCE OVER OBJECTION)

21 Q STATE'S EXHIBIT NUMBER ELEVEN, I BELIEVE THAT WAS
22 ACTUALLY-- CAN YOU TELL ME WHAT THAT CHECK WAS FILLED OUT
23 FOR?

24 A IT'S FILLED OUT FOR \$80 AND THE PAYEE IS PHILIPS 66
25 COMPANY.

1 Q WHO SIGNED THAT CHECK?

2 A C. A. CUBLEY.

3 Q WHAT IS THE DATE OF THAT CHECK?

4 A DECEMBER 20.

5 Q IS THAT THE ONLY OTHER CHECK THAT SHOWS UP WITHIN THAT
6 STATEMENT?

7 A YES SIR.

8 Q CAN YOU TELL ME, FROM YOUR INVESTIGATION, TOO, DID YOU
9 OBTAIN A STATEMENT SHOWING WHO HAD AUTHORIZATION TO SIGN
10 THE CHECKS ON THIS ACCOUNT?

11 A YES SIR, I DID.

12 Q DO YOU HAVE THAT WITH YOU?

13 A YES SIR, I DO.

14 Q WHO ARE THE PEOPLE AUTHORIZED TO SIGN CHECKS ON THIS
15 ACCOUNT?

16 A MAUDE AND CLARENCE CUBLEY.

17 Q DO YOU HAVE THEIR SIGNATURES AS WOULD BE REQUIRED
18 WHEN SETTING UP THE ACCOUNT?

19 A YES SIR. WHEN THE ACCOUNT WAS OPENED AT THE FORT MILL
20 MAIN OFFICE ON JULY 12, 2002, THE ASSOCIATE WHO OPENED THE
21 ACCOUNT IS REQUIRED TO HAVE BOTH THEIR SIGNATURES, OR THE
22 SIGNATURES OF THE PEOPLE WHO ARE GOING TO USE THE ACCOUNT.
23 THE FORM ALSO SHOWS THE ACCOUNT NUMBER THAT'S BEEN
24 ASSIGNED. AND THEY ALSO HAVE TO VERIFY THE IDENTIFICATION OF
25 THE INDIVIDUALS WHO ARE OPENING THE ACCOUNT.

1 Q DO YOU HAVE A GOOD COPY OF THE PAGE ON WHICH THE
2 SIGNATURES WERE OBTAINED ON THAT PARTICULAR ACCOUNT?

3 A YES SIR, I DO.

4 Q IF I COULD LOOK AT THAT FOR A MOMENT. THANK YOU.

5 (PAUSE)

6 MR. THOMPSON: I'D LIKE TO MARK THE SIGNATURE PAGE THAT
7 YOU HAVE THERE AS EVIDENCE.

8 MR. CHIARENZA: NO OBJECTION.

9 THE COURT: WHAT NUMBER IS THAT?

10 MR. THOMPSON: NUMBER 76, YOUR HONOR.

11 Q STATE'S EXHIBIT 76, THAT WOULD BE THE ACTUAL SIGNATURE
12 PAGE?

13 A YES SIR.

14 Q AND IT WOULD HAVE THE SIGNATURE OF BOTH MAUDE CUBLEY
15 AND CLARENCE CUBLEY ON IT?

16 A YES SIR, IT DOES.

17 MR. THOMPSON: YOUR HONOR, I'D LIKE TO ENTER THAT INTO
18 EVIDENCE AT THIS TIME.

19 MR. CHIARENZA: NO OBJECTION.

20 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

21 (WHEREUPON STATE'S EXHIBIT 76 WAS ADMITTED INTO EVIDENCE
22 WITHOUT OBJECTION)

23 Q ALSO, AS PART OF YOUR DUTIES WITH BANK OF AMERICA, DID
24 YOU HAVE AN OPPORTUNITY-- OR, WOULD THE BANK ACTUALLY
25 KEEP THOSE SORT OF RECORDINGS, VIDEO OR PICTURE RECORDINGS

1 ON PEOPLE WHO COME IN TO CASH CHECKS OR MAKE TRANSACTIONS
2 IN THE BANK?

3 A YES SIR, WE DO.

4 Q DID YOU CHECK INTO EACH OF THE BANKS THAT YOU
5 MENTIONED HERE? I THINK YOU MENTIONED THE BANK OF AMERICA
6 IN FORT MILL AND THE ONE IN ROCK HILL, ONE ON HERLONG AND THE
7 MAIN STREET BRANCH IN ROCK HILL. DID YOU CHECK WITH EACH OF
8 THOSE BRANCHES TO SEE WHAT THEY NORMALLY KEEP IN THE
9 COURSE OF THEIR BUSINESS---

10 A YES SIR, I DID.

11 Q --AS FAR AS VIDEO OR PICTURES?

12 A YES SIR, I DID.

13 Q WERE YOU ABLE TO COLLECT ITEMS FROM EACH OF THOSE
14 BANKS?

15 A YES SIR, I WAS.

16 Q LET'S TALK FIRST ABOUT THE FORT MILL BANK. DID THEY
17 ACTUALLY HAVE A VIDEO OR WERE PICTURES TAKEN THAT DAY?

18 A THEY HAVE A PICTURE SYSTEM.

19 Q WERE YOU ABLE TO RECOVER ANY PHOTOGRAPHS FROM THAT?

20 A YES SIR, I WAS.

21 Q I'M SHOWING YOU EXHIBIT 10-A, IF I COULD. ARE THOSE THE
22 PHOTOGRAPHS YOU WERE ABLE TO OBTAIN FROM THE FORT MILL
23 BANK?

24 A YES SIR, THEY ARE.

1 Q YOU'VE ALREADY MENTIONED THE TIME OF THE TRANSACTION,
2 I BELIEVE, IN FORT MILL. CAN YOU TELL ME, DOES THAT TIME MATCH
3 WITH THE TIMES THAT ARE ON THE PHOTOGRAPHS, THAT ARE
4 STAMPED ON THE PHOTOGRAPHS FROM THE FORT MILL BANK?

5 A YES SIR, THEY ARE.

6 Q SO, THE INDIVIDUAL BASICALLY CASHING THAT FIRST CHECK
7 FOR \$500 IN FORT MILL IS SHOWN ON THAT PICTURE OR THAT VIDEO
8 AT THE TELLER WINDOW AT THAT POINT?

9 A YES SIR.

10 Q ARE THOSE THE ACTUAL PRINTED OUT PHOTOGRAPHS THAT
11 YOU GAVE TO THE SHERIFF'S DEPARTMENT AS PART OF THE CASE?

12 A YES SIR, IT IS.

13 MR. THOMPSON: I WOULD LIKE TO ENTER STATE'S 10-A INTO
14 EVIDENCE AT THIS TIME, YOUR HONOR.

15 MR. CHIARENZA: NO OBJECTION.

16 THE COURT: IT'S ADMITTED.

17 (WHEREUPON STATE'S EXHIBIT NUMBER 10-A WAS ADMITTED
18 INTO EVIDENCE WITHOUT OBJECTION)

19 MR. THOMPSON: THAT WOULD BE EXHIBIT 10-A. I WOULD ASK
20 TO PUBLISH THAT TO THE JURY AT THIS TIME.

21 (WHEREUPON STATE'S EXHIBIT 10-A WAS PUBLISHED TO THE JURY BY
22 WAY OF THE OVERHEAD PROJECTOR.)

23 Q NOW, AS TO THE SECOND CHECK, WHICH I BELIEVE HAS BEEN
24 ADMITTED AS EXHIBIT NUMBER SIX, YOU MENTIONED THAT WAS
25 CASHED AT THE ROCK HILL BANK AT HECKLE AND HERLONG. WERE

1 YOU ABLE TO DETERMINE AS PART OF YOUR INVESTIGATION
2 WHETHER A VIDEO OR PICTURES WERE TAKEN AT THAT PARTICULAR
3 BANK?

4 A CHECK 1652?

5 Q I'M SORRY. CHECK NUMBER 1652, STATE'S EXHIBIT NUMBER SIX,
6 THAT'S RIGHT.

7 A YES SIR.

8 Q AND WERE THERE PICTURES OR WAS THERE AN ACTUAL VIDEO
9 TAKEN?

10 A THEY HAVE A SYSTEM CALLED SECURE VISION, WHICH IS A
11 VIDEO.

12 Q NOW, THE VIDEO, DOES IT STREAM STRAIGHT THROUGH OR
13 DOES IT KIND OF JUMP THROUGH FRAMES?

14 A IT JUMPS SECONDS APART. IT'S NOT A CLEAR, LIKE YOU WOULD
15 CONSIDER A MOTION PICTURE, BUT IT STAYS ON SIGHT ON THE
16 INDIVIDUAL WHO'S STANDING IN FRONT OF THE TELLER WINDOW.

17 Q WERE YOU ABLE TO OBTAIN THAT PARTICULAR VIDEO?

18 A YES SIR.

19 Q HAVE YOU HAD AN OPPORTUNITY TO OBSERVE THAT VIDEO AS
20 WELL?

21 A YES SIR.

22 Q IN ADDITION TO THAT, I BELIEVE YOU GAVE A COPY OF THAT
23 VIDEO TO THE SHERIFF'S DEPARTMENT?

24 A TO DETECTIVE STRAIT.

1 Q TO DETECTIVE STRAIT. AND ON THAT DID YOU ALSO INCLUDE
2 ANOTHER VIDEO THAT YOU HAD RECOVERED AS PART OF THE TAPE?

3 A THEY WERE ON THE SAME. THERE WAS TWO. DIFFERENT
4 BANKING CENTERS WERE PUT ON THE SAME CD.

5 Q AND YOU WERE ABLE TO OBTAIN THEM AND PUT THEM ON THE
6 SAME CD?

7 A YES SIR.

8 Q FROM THE OTHER BANK, WAS THAT THE MAIN STREET BANK IN
9 ROCK HILL?

10 A YES SIR. THAT'S THE ROCK HILL MAIN WHERE THE PAYEE, MR.
11 GUTIERREZ, FLED THE BANKING CENTER.

12 Q OKAY. AND WERE YOU ABLE TO ALSO LOOK AT THE TIME AS
13 FAR AS WHEN THAT CHECK WAS PRESENTED? ALTHOUGH IT WAS NOT
14 CASHED, WERE YOU ABLE TO LOOK AT THE TIME THAT CHECK WAS
15 PRESENTED AND MATCH THAT WITH THE TIMES ON THE TAPE, AS
16 WELL?

17 A YES SIR.

18 Q DID THAT INDICATE THE PERSON WHO, ONE ISAIAS GUTIERREZ,
19 AS CASHING THAT CHECK?

20 A THAT'S CORRECT.

21 MR. THOMPSON: MAY WE APPROACH THE BENCH, YOUR HONOR?
22 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

23 THE COURT: LADIES AND GENTLEMEN, BEFORE WE GO ANY
24 FURTHER WITH THIS WITNESS, I WILL ASK YOU TO GO TO THE JURY
25 ROOM FOR JUST A MINUTE. DO NOT DISCUSS THE CASE.

1 (WHEREUPON THE JURY EXITED THE COURTROOM)

2 THE COURT: WE'RE GOING TO TAKE FIFTEEN MINUTES. YOU
3 CAN STEP DOWN FROM THE WITNESS STAND, BUT YOU CANNOT
4 DISCUSS YOUR TESTIMONY DURING THE BREAK WITH ANYBODY.

5 A YES SIR.

6 (WHEREUPON THE COURT WAS IN RECESS AT 11:09 A.M.)

7 COURT IN SESSION - 11:30 A.M.

8 THE COURT: ANYTHING BEFORE WE BRING IN THE JURY?

9 MR. THOMPSON: THE STATE IS READY, YOUR HONOR.

10 MR. CHIARENZA: THE DEFENSE IS READY.

11 THE COURT: BRING IN THE JURY.

12 (WHEREUPON THE JURY ENTERED THE COURTROOM)

13 Q MR. ZINKANN, WE WERE TALKING ABOUT THE VIDEOS THAT
14 YOU OBTAINED, TWO OF THEM PUT ON ONE DISK.

15 MR. THOMPSON: YOUR HONOR, THAT'S STATE'S EXHIBIT
16 NUMBER 10. WE WOULD LIKE TO ENTER THAT INTO EVIDENCE AT THIS
17 TIME.

18 MR. CHIARENZA: NO OBJECTION.

19 THE COURT: IT'S ADMITTED.

20 (WHEREUPON STATE'S EXHIBIT NUMBER 10 WAS ADMITTED INTO
21 EVIDENCE WITHOUT OBJECTION)

22 MR. THOMPSON: IF YOU WOULD, MADAM CLERK, LOWER THE
23 LIGHTS SO I CAN SHOW STATE'S EXHIBIT NUMBER 10.

24 (WHEREUPON STATE'S EXHIBIT WAS PUBLISHED FOR THE JURY BY
25 WAY OF OVERHEAD PROJECTOR.)

1 Q MR. ZINKANN, IF YOU CAN TELL US JUST BRIEFLY THE
2 INFORMATION CONTAINED ON STATE'S EXHIBIT 10. WHAT DOES IT
3 MEAN AS FAR AS WHAT'S SHOWING ON THE SCREEN?

4 A IT'LL GIVE THE DATE AND TIME THAT THE TELLER WINDOW IS
5 BEING FILMED.

6 Q DOWN THERE AT THE BOTTOM, IT SHOWS 12/30/02 AND THE TIME
7 IS 4:48 AND 46 SECONDS?

8 A YES SIR.

9 Q AND IT GIVES THE LOCATION OF THE BANK. IS THAT CORRECT?
10 HECKLE BOULEVARD?

11 A YES SIR.

12 Q AND THIS WOULD BE THE ONE FROM THE CHECK FOR \$600, IF I'M
13 NOT MISTAKEN. CORRECT?

14 A YES SIR, CHECK 1652.

15 Q I THINK AS YOU TESTIFIED EARLIER, THIS WOULD BE, YOU WERE
16 ABLE TO VERIFY THE TIME SHOWN ON THE VIDEO AS THE TIME THAT
17 PARTICULAR CHECK WAS THE ONE THAT WAS CASHED AT THAT
18 LOCATION?

19 A THAT'S CORRECT.

20 Q SO, THE PERSON ON THE VIDEO WOULD BE THE PERSON
21 PURPORTED TO BE ISAIAS GUTIERREZ?

22 A THAT'S CORRECT.

23 Q NOW, GOING TO THE NEXT VIDEO INCLUDED ON THAT TAPE,
24 THIS IS RUNNING, AND ONCE AGAIN, IT HAS THE DATE AND TIME
25 STAMPED ON THE BOTTOM LEFT-HAND CORNER. IS THAT CORRECT?

1 A YES SIR.

2 Q AND THIS WOULD BE AT THE ROCK HILL MAIN OFFICE,
3 ACCORDING TO THE TOP OF THE VIDEO ITSELF?

4 A YES SIR.

5 Q AND THE TIME BEING ABOUT 10:41 IN THE MORNING?

6 A THAT'S CORRECT.

7 Q THROUGH YOUR INVESTIGATION, WERE YOU ABLE TO
8 DETERMINE THE TELLER AT THAT LOCATION AT THAT TIME?

9 A YES SIR, I WAS.

10 Q WHO WAS THE TELLER ASSISTING MR. GUTIERREZ AT THAT
11 TIME?

12 A SHARON PIKE.

13 Q YOU ACTUALLY WROTE A LETTER THAT DETAILED SOME OF
14 THAT. IS THAT CORRECT?

15 A YES SIR, I DID.

16 Q WAS SHARON PIKE THE SUPERVISOR OF THE TELLERS?

17 A NO. SHARON PIKE-- MAY McCOY ORIGINALLY IS THE TELLER.

18 Q OKAY.

19 A MAY McCOY REQUESTED SHARON PIKE'S ASSISTANCE.

20 Q ALL RIGHT. I BELIEVE THIS ACTUALLY RECORDS FOR SOME
21 PERIOD OF TIME, DOES IT NOT?

22 A YES SIR, IT DOES.

23 Q AND WHERE IT STARTS, HE WAS ACTUALLY ALREADY AT THE
24 TELLER'S WINDOW AT THAT POINT.

25 A THAT'S CORRECT.

1 Q DO YOU KNOW ABOUT HOW LONG APPROXIMATELY HE WAS IN
2 HIS CLIP OF VIDEO?

3 A NO SIR, I DON'T.

4 MR. THOMPSON: PERMISSION TO FAST FORWARD THE VIDEO,
5 YOUR HONOR.

6 MR. CHIARENZA: IF WE COULD JUST MAKE A NOTE, WHEN HE
7 STARTS FAST FORWARDING, WHAT TIME HE STARTS AND STOPS.

8 MR. THOMPSON: I'M STARTING AT 10:23, AND WILL STOP IT AT
9 10:49.

10 Q IT'S AT 10:49 NOW. IS HE STANDING BACK AWAY FROM THE
11 TELLER, BUT STILL THERE IN THE BUILDING?

12 A THAT'S CORRECT.

13 Q AND I BELIEVE THE TELLER WAS HELPING ANOTHER CUSTOMER
14 AT THIS POINT?

15 A YES SIR.

16 Q ALL RIGHT. IT'S 10:50, AND THAT'S THE POINT AT WHICH HE
17 LEAVES THE BRANCH, ACCORDING TO THIS VIDEO?

18 A YES SIR.

19 Q AND AT THAT POINT, ACCORDING TO YOUR RECORDS, THE
20 TRANSACTION HAD NOT BEEN COMPLETED. IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q HE PRESENTED THE CHECK, HOWEVER, TO OBTAIN FUNDS FOR
23 IT?

24 A THAT'S CORRECT.

1 Q AND, AS YOU SAID, YOU WERE ABLE TO OBTAIN BOTH THE
2 CHECK AND THE TWO PIECES OF ID WHICH WE NOW HAVE IN
3 EVIDENCE?

4 A YES SIR.

5 Q THANK YOU, SIR. IF YOU WOULD, ANSWER ANY QUESTIONS THE
6 DEFENSE HAS FOR YOU.

7 A YES SIR.

8 **CROSS EXAMINATION BY MR. CHIARENZA:**

9 Q MR. ZINKANN, IS IT?

10 A YES SIR.

11 Q MR. ZINKANN, YOU TESTIFIED THAT PRIOR TO WORKING WITH
12 BANK OF AMERICA, YOU WERE IN LAW ENFORCEMENT?

13 A YES SIR.

14 Q THIRTY-FIVE YEARS?

15 A YES SIR.

16 Q IN WHAT CAPACITY?

17 A I SERVED ON PATROL. I ALSO SERVED IN INVESTIGATIONS,
18 INVESTIGATING-- AT THAT TIME WE WEREN'T SPECIALIZED. WE
19 HANDLED ALL DIFFERENT TYPES OF CRIMES, FROM MURDER, SUICIDE,
20 FRAUD, WORTHLESS CHECKS, FRAUDULENT CHECKS, ANY TYPE.

21 THEN WHEN I CAME HERE TO-- AND I WAS ALSO A PERIOD IN
22 DRUG ENFORCEMENT. WHEN I CAME HERE I STARTED BACK OUT IN
23 PATROL, BACK UP TO INVESTIGATIONS AND THE LAST NINE YEARS I
24 WAS WITH WHAT'S CALLED AN INTERNAL AFFAIRS GROUP THAT
25 INVESTIGATES LAW ENFORCEMENT OFFICERS.

- 1 Q SO, DURING THE COURSE OF ALL THAT, YOU CLEARLY HAD THE
2 OPPORTUNITY AND YOU WOULD COMPARE ALL SORTS OF EVIDENCE.
3 WOULD THAT BE A FAIR STATEMENT?
- 4 A YES SIR.
- 5 Q FOOTPRINTS, GUNSHOT WOUNDS, FINGERPRINTS, THINGS OF
6 THAT NATURE?
- 7 YES SIR.
- 8 Q CRIME SCENES, TIRE TRACKS, THINGS THAT HAVE BEEN BROKEN
9 INTO, ITEMS THAT HAVE BEEN STOLEN, THINGS OF THAT NATURE?
- 10 A YES SIR.
- 11 Q COMPARING DOCUMENTS, PARTICULARLY, I GUESS, IN FORGERY
12 AND IN BANKING, COMPARING SIGNATURES?
- 13 A YES SIR.
- 14 Q NOW, YOU WEREN'T PERSONALLY PRESENT WHEN ANY OF
15 THESE VIDEOS WERE MADE OR WHEN MY CLIENT PRESENTED THESE
16 CHECKS, WERE YOU?
- 17 A NO SIR.
- 18 Q AND CLEARLY, WHAT YOU'VE TESTIFIED TO HERE TODAY IS
19 THAT, I THINK IT CAN BE ARGUED THAT MR. GUTIERREZ WALKED
20 INTO, ON THREE OCCASIONS WALKED INTO THREE OF YOUR BANK
21 BRANCHES AND PRESENTED A CHECK FROM THE ACCOUNT OF MS.
22 CUBLEY.
- 23 A THAT'S CORRECT.
- 24 Q YOU'RE NOT USING THOSE EXACT WORDS, BUT THAT'S WHAT
25 YOU'RE TELLING US HERE?

1 A YES SIR.

2 Q ON ONE OCCASION HE WENT INTO THE FORT MILL BRANCH AND
3 PRESENTED A CHECK FOR \$500 AND WAS ACTUALLY, THEY GAVE HIM
4 THE \$500?

5 A THAT'S CORRECT.

6 Q THE SAME DAY, HECKLE BOULEVARD, PRESENTED A CHECK FOR
7 4600 AND HE DID RECEIVE 4600?

8 A THAT'S CORRECT.

9 Q AND YOUR TESTIMONY IS ON BOTH OF THOSE OCCASIONS IT
10 APPEARS NOTATED (SIC) THAT THE TELLER WROTE DOWN AN
11 IDENTIFICATION NUMBER.

12 A THAT'S CORRECT.

13 Q AND THAT IDENTIFICATION NUMBER, YOU WOULD TESTIFY,
14 MATCHES WITH AT ;LEAST ONE OF THE ID'S THAT HE ULTIMATELY
15 LEFT AT THE THIRD BANK. IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q SO, THEN, IT WOULD APPEAR THAT HE PRESENTED THE SAME ID
18 THAT HE LEFT AT A THIRD BANK WITH THE ID THAT HE PRESENTED
19 WHEN HE ACTUALLY DID CASH THE FIRST TWO CHECKS?

20 A THE FIRST TWO CHECKS HE CASHED. THE THIRD CHECK IS
21 WHERE THE IDENTIFICATION WAS LEFT.

22 Q WAS LEFT. SO, MY QUESTION TO YOU IS DOES IT APPEAR THAT
23 WHEN HE CASHED THE FIRST TWO CHECKS AND DID PRESENT SIMILAR
24 ID'S THAT THEY WOULDN'T HAVE CASHED THE CHECKS FOR HIM?

25 A THAT'S CORRECT.

1 Q NOW, POINTING YOUR ATTENTION TO THE THIRD CHECK, THE
2 ONE THAT HE WALKED OUT OF THE BANK ON. THAT'S WHERE HE-- IT'S
3 IN EVIDENCE, TWO OF HIS ID CARDS AND A CHECK FOR \$775.

4 YOU TESTIFIED THAT HE PRESENTED THOSE TO THE TELLER AND
5 THEN LEFT THEM IN THE BANK. CORRECT?

6 A YES SIR.

7 Q I BELIEVE ALSO DURING YOUR TESTIMONY AND, AGAIN, I CAN
8 APPRECIATE THAT YOU WERE NOT THERE TO WITNESS THIS, BUT FOR
9 SOME REASON - I THINK TWICE - YOU TESTIFIED THAT HE RAN OUT OF
10 THE BANK ON MAIN STREET. DO YOU RECALL TESTIFYING TO THAT?

11 A YES SIR, THAT'S PROBABLY THE TERMINOLOGY I USED.

12 Q SIR, I WOULD ASK YOU NOW, UNLESS YOU WANT TO MODIFY
13 THAT, IF YOU CAN SHOW US ON THAT VIDEO WHERE MR. GUTIERREZ IS
14 RUNNING OUT OF THE BANK ON MAIN STREET?

15 A THE TERMINOLOGY, "RUN OUT", IS JUST A TERMINOLOGY THAT
16 BANK INVESTIGATORS USE. I DID NOT-- AND I PROBABLY IMPLIED BY
17 USING THAT TERMINOLOGY, "RUN", THAT HE RAN FROM THE BANK. IT
18 IS CLEARLY EVIDENT THAT THE VIDEO SHOWS HE DID NOT RUN.

19 Q WELL, YOU WOULD AGREE THAT IN A TRIAL WHERE SOMEONE IS
20 ACCUSED OF DOING SOMETHING OF A CRIMINAL NATURE, IT'S
21 IMPORTANT THAT WE DON'T USE A TERM THAT MAYBE CAN BE
22 MISCONSTRUED?

23 A I AGREE.

1 Q SO, IN THE NORMAL COURSE, WHEN I USE THE WORD, RUNNING,
2 OR YOU, OR DESCRIBING KIDS ON A SOCCER FIELD, THAT'S NOT WHAT
3 WE'RE SAYING MR. GUTIERREZ DID ON THAT DAY?

4 A CLEARLY, IT'S NOT.

5 Q IN FACT, IT WOULD APPEAR AT SOME POINT HE WAS-- I THINK
6 YOUR TESTIMONY WAS THAT THERE WAS SOMETHING THAT CAME UP
7 WITH THESE CHECKS. AND SO, THEY WERE LOOKING INTO THEM AND
8 ASKED HIM TO CHECK BACK, THEY HAD TO CHECK ON SOMETHING,
9 APPARENTLY?

10 A I DON'T KNOW IF THEY ASKED HIM TO STEP BACK OR HE DID SO
11 ON HIS OWN.

12 Q OKAY. WELL, WHAT WOULD THE PROTOCOL BE, KNOWING
13 WHAT YOU KNOW, AND WHAT YOU TESTIFIED TO IN THIS CASE, THAT
14 MR. GUTIERREZ IS CLEARLY PRESENTING A CHECK THAT, LET'S JUST
15 SAY, IT SEEMS SUSPICIOUS TO BANKING EMPLOYEES. OKAY? WHAT
16 WOULD THE PROTOCOL BE IN THAT CIRCUMSTANCE?

17 A TO CONTINUE TO ASSIST THE CUSTOMERS BEHIND HIM AND ASK
18 THE CUSTOMER THAT WAS HAVING THE DIFFICULTY TO STEP ASIDE SO
19 THAT THEY COULD CONTINUE TO PROCESS OTHER CUSTOMERS.

20 Q SO, FROM WHAT YOU'VE SEEN, IS THERE ANY REASON TO
21 BELIEVE THAT THEY DEVIATED FROM THAT PROTOCOL ON THAT
22 TAPE?

23 A NO.

1 Q WOULD YOU AGREE WITH ME THAT IT APPEARS THAT FOR AT
2 LEAST A SOLID TWO MINUTES, MR. GUTIERREZ IS JUST STANDING
3 THERE IN THE MIDDLE OF THE LOBBY OF THE BANK?

4 A THAT'S CORRECT.

5 Q AND THEN, JUST MAYBE A FRAME OR TWO BEFORE THE DVD
6 ENDS, HE'S SEEN WALKING OFF SCREEN?

7 A THAT'S CORRECT.

8 Q BUT, AGAIN, AND I DON'T MEAN TO BELABOR THE POINT, BUT
9 IT'S IMPORTANT. YOUR TESTIMONY WOULDN'T BE THAT HE LEFT THE
10 TELLER WINDOW, TURNED AROUND AND IMMEDIATELY EXITED THE
11 BANK?

12 A RUNNING OUT OF THE BANK, NO SIR.

13 Q OKAY. AND ON ALL THREE OF THESE OCCASIONS-- WELL,
14 CERTAINLY AT LEAST ON THE LAST OCCASION YOU PRESENTED TWO
15 FORMS OF ID?

16 A THAT'S CORRECT.

17 Q AND THOSE REMAINED WITH THE TELLER AND THEY'RE IN
18 EVIDENCE TODAY?

19 A THAT'S CORRECT.

20 Q AND ALSO THE PROTOCOL IS THAT HE'S GOT TO GIVE A
21 THUMBPRINT AND HE DID SO ON THESE CHECKS THAT ARE IN
22 EVIDENCE TODAY?

23 A THE TWO THAT WERE NEGOTIATED.

24 Q THE THIRD ONE NEVER GOT TO THAT POINT?

25 A THAT'S CORRECT.

1 Q WE HAVE NO REASON TO BELIEVE THAT ON THE TWO THAT
2 WERE ACTUALLY NEGOTIATED, THAT HE WOULDN'T ALSO HAVE TO
3 HAVE PROVIDED SOME PICTURE IDENTIFICATION FOR THOSE, AS
4 WELL?

5 A THAT'S CORRECT.

6 Q AND IN FACT, THERE'S A NOTATION ON THE BACK OF THOSE
7 CHECKS FROM THE TELLER THAT WOULD LEAD US TO BELIEVE THAT
8 HE DID PROVIDE SOME FORM OF IDENTIFICATION?

9 A YES SIR.

10 Q AND THIS JUST ISN'T FOR MR. GUTIERREZ. I CAN'T WALK INTO
11 YOUR BANK IF I DON'T HAVE AN ACCOUNT THERE AND CASH A CHECK
12 UNLESS I PRESENT SOME IDENTIFICATION. IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND ALSO PUT A THUMBPRINT ON THE CHECK?

15 A THAT'S CORRECT.

16 Q THIS MIGHT SOUND LIKE A STUPID QUESTION, BUT WHAT'S THE
17 REASON FOR THAT?

18 A FOR IDENTIFICATION PURPOSES. BECAUSE, IF A CUSTOMER
19 COMES IN THAT'S A BANK OF AMERICA CUSTOMER, THE TELLER
20 COULD GO INTO THE DATABASE AND ASK THE CUSTOMER A KEY
21 QUESTION, DATE OF BIRTH, SOCIAL, OR ANYTHING TO VERIFY THAT
22 THAT'S THE TRUE CUSTOMER STANDING BEFORE US.

23 WITH A NON-CUSTOMER, WE DON'T HAVE ACCESS, OTHER THAN
24 THE INFORMATION THEY'RE GIVING US. WE HAVE NO WAY OF

1 KNOWING IF THAT'S VALID. SO, WE GET A THUMBPRINT THAT WE CAN
2 HAVE THE INDIVIDUAL LATER IDENTIFIED.

3 Q OKAY. SO, CLEARLY, AND YOU'RE FROM LAW ENFORCEMENT. I
4 DON'T WANT TO ASSUME THE JURY'S KNOWLEDGE OF ANYTHING
5 HERE. BUT THUMBPRINTS ARE ONE OF A KIND. CORRECT?

6 A YES SIR.

7 Q SO, IF A PERSON GIVES YOU A THUMBPRINT, YOU'VE GOT
8 VIRTUALLY A HUNDRED PERCENT TOOL THERE OF POSITIVELY
9 IDENTIFYING THAT PERSON. IF YOU GET THE PERSON LATER ON, YOU
10 CAN MATCH THAT UP WITH A THUMBPRINT?

11 A SO, WE'RE TOLD, YES.

12 Q AND YOU'VE GOT EXPERIENCE IN THAT, HAVEN'T YOU?

13 A YES SIR.

14 Q WITH LAW ENFORCEMENT. A THUMBPRINT IS A PRETTY
15 RELIABLE FORM OF IDENTIFICATION?

16 A YES SIR.

17 Q IN ADDITION TO THAT, HE PRESENTED TWO PHOTO ID'S.
18 CORRECT?

19 A YES SIR.

20 Q AND THOSE ID'S, LOOKING AT THEM IF YOU NEED TO, THEY'RE
21 MUCH LIKE A DRIVER'S LICENSE THAT YOU AND I WOULD CARRY.
22 THEY'VE GOT A PHOTOGRAPH AND A SIGNATURE ON THEM?

23 A YES SIR.

24 Q WOULD IT ALSO BE BANK POLICY TO MATCH THAT SIGNATURE
25 WITH THE ENDORSEMENT ON THE BACK OF THE CHECK?

1 A YES SIR.

2 Q IN FACT, I WANT TO ASK YOU TO DO THAT NOW, IF YOU WOULD.
3 IF YOU'LL TAKE A LOOK AT HIS, BOTH FORMS OF ID, AND BOTH
4 CASHED CHECKS, WHICH I BELIEVE ARE ADMITTED. FIVE AND SIX ON
5 THE CHECKS AND MAYBE EIGHT AND NINE ON THE ID'S.

6 A YOU'RE ASKING ME TO COMPARE THESE TO THE CHECKS?

7 Q I'M ASKING YOU TO COMPARE, YES SIR. BASED ON YOUR
8 EXPERIENCE OF THIRTY-FIVE YEARS IN LAW ENFORCEMENT, AND AS A
9 BANK INVESTIGATOR, DOES IT APPEAR THAT THE SIGNATURE ON THE
10 ID MATCHES THE ENDORSEMENT WHEN HE WENT TO CASH THE
11 CHECK?

12 A THERE ARE SIMILARITIES.

13 Q WOULD YOU DESCRIBE THEM ON A SCALE OF ONE TO TEN, HOW
14 SIMILAR WOULD YOU SAY THEY ARE?

15 A ABOUT SIX.

16 Q IF YOU WERE AT THE BANK, WOULD YOU ACCEPT THAT AS A
17 VALID FORM OF IDENTIFICATION BASED ON THE SIGNATURE?

18 A YES SIR.

19 Q SO, YOU WOULD BE SATISFIED WITH THE SIGNATURE? YOU
20 WOULD CASH THAT CHECK?

21 A YES SIR. NOT ONLY FROM THE IDENTIFICATION OF THE
22 SIGNATURE, BUT THE PICTURE, ITSELF.

23 Q OKAY. NOW, MR. ZINKANN, I'M GOING TO ASK YOU TO COMPARE
24 THE SIGNATURES ON MR. GUTIERREZ'S IDENTIFICATION CARDS WITH
25 THE PART OF THE CHECK WITH THE PAY TO PART OF THE CHECK.

1 MR. THOMPSON: YOUR HONOR, I OBJECT TO THAT. THIS
2 WITNESS IS NOT AN EXPERT IN HANDWRITING ANALYSIS.

3 MR. CHIARENZA: I'M NOT ASKING FOR AN EXPERT'S OPINION.

4 THE COURT: WELL, IF YOU CAN, YOU CAN DO IT. BUT IF YOU
5 FEEL LIKE IT'S PROPER, THEN JUST LET ME KNOW.

6 A WELL, IT TAKES SOME TIME TO DO IT, BUT IT'S TWO DIFFERENT
7 TYPES OF WRITING. ONE IS CURSIVE AND ONE IS NOT.

8 Q OKAY. IS THE PAY TO PART OF THE CHECK MORE OR LESS
9 SIMILAR TO HIS ID THAN THE ENDORSEMENT PART OF THE CHECK?

10 A THE PAY TO IS MORE IDENTICAL TO THE ENDORSEMENT ON THE
11 BACK, WHICH WOULD INDICATE TO ME THE PERSON THAT'S MAKING
12 THIS CHECK PAY TO WAS THE SAME PERSON WHO ENDORSED THE
13 BACK OF THE CHECK. THEREFORE, IT COULD NOT BE MAUDE CUBLEY.

14 Q OH, I'M NOT SAYING-- MAYBE YOU MISUNDERSTOOD ME, SIR.
15 YOU JUST TESTIFIED THERE ARE DIFFERENT TYPES OF---

16 A I'M SAYING THE SIGNATURES ON THE TWO IDENTIFICATION
17 CARDS IN QUESTION, ON EXHIBIT, THEY'RE PRINTED, RATHER THAN
18 BEING CURSIVE HANDWRITING THAT'S THE PAYEE TO. BUT IN
19 LOOKING AT THE PAYEE AND COMPARING THAT TO THE
20 ENDORSEMENT OF MR. GUTIERREZ, THOSE TWO ARE MORE IDENTICAL
21 THAN THE SIGNATURE ON THE ALIEN CARDS.

22 Q TELL ME HOW YOU COME TO THAT CONCLUSION, SIR.

23 A WELL, YOU CAN SEE BY THE R'S AND THE WAY THE S'S. THERE'S
24 MORE SIMILARITIES TO THE SIGNATURE ON GUTIERREZ BEING
25 CURSIVE AS IT IS ON THE PAYEE, RATHER THAN PRINTED, AS HE DID

1 ON THE TWO FORMS OF IDENTIFICATION. SO, HERE HE'S WRITING
2 CURSIVE. AND HERE, THIS PERSON IS WRITING CURSIVE.

3 Q YOU AND I ARE NOT LOOKING AT THE SAME THING, SIR.

4 A YOU ASKED ME BASED ON MY EXPERIENCE, AND THAT'S WHAT
5 I'M GIVING YOU.

6 Q SO, YOU'RE-- OKAY. WELL, THIS IS IN EVIDENCE. YOUR
7 TESTIMONY THEN IS THAT THE WRITING ON THE IDENTIFICATION
8 CARD---

9 THE COURT: REFER TO THE EXHIBIT, PLEASE.

10 Q ON EXHIBIT--

11 A I'M NOT SURE WHICH ONE.

12 Q THE WRITING ON HIS DRIVER'S LICENSE, WHICH IS EXHIBIT
13 EIGHT, HIS SIGNATURE ON EXHIBIT EIGHT, IT'S YOUR TESTIMONY THAT
14 THAT IS MORE SIMILAR TO THE PAYEE PART OF THE CHECK? WHERE
15 THE PAYEE PART OF THE CHECK-- I'M ASKING IF YOU AGREE WITH ME.

16 THE PAYEE PART OF THE CHECK, YOU CALL THIS CURSIVE OR
17 SCRIPT. CORRECT?

18 A YES SIR.

19 Q THAT'S THE SECOND THING YOU LEARN AFTER YOU'RE IN GRADE
20 SCHOOL. YOU MASTER PRINTING FIRST. RIGHT? AND THEN YOU GO
21 TO THE SWIRLY-CURLY STUFF. RIGHT? OKAY.

22 THE PAYEE PART OF THE CHECK, WOULD YOU NOT AGREE WITH
23 ME, IT IS IN CURSIVE.

24 A CORRECT.

25 Q ALL THE LETTERS ARE CONNECTED WITH EACH OTHER.

- 1 A CORRECT.
- 2 Q OKAY. HOW WOULD YOU CHARACTERIZE THE SIGNATURE ON
- 3 THE IDENTIFICATION CARD?
- 4 A CURSIVE.
- 5 Q CURSIVE OR PRINT?
- 6 A PRINT. I'M SORRY.
- 7 Q OKAY.
- 8 A THE---
- 9 Q LET ME.
- 10 A YES.
- 11 Q SO, THE PAYEE PART ON THE FRONT OF THE CHECK WHICH
- 12 TYPICALLY IN A LEGAL TRANSACTION, THE CHECK OWNER WRITES
- 13 THAT.
- 14 A YES SIR.
- 15 Q CORRECT. BUT NOT ALWAYS. IF SOMEBODY WRITES ME A
- 16 CHECK AND LEAVES IT BLANK BECAUSE THEY CAN'T SPELL MY NAME,
- 17 I COULD PUT THAT IN THERE, TOO.
- 18 A YES SIR.
- 19 Q SO, THERE'S NO REQUIREMENT LEGALLY AS TO WHO HAS TO
- 20 WRITE IN THE PAY TO PART OF THE CHECK?
- 21 A THAT'S CORRECT.
- 22 Q BUT THE FLIP SIDE, THE ENDORSEMENT, THAT IS SUPPOSED TO
- 23 BE THE PERSON WHO IS GETTING THE MONEY. RIGHT?
- 24 A YES SIR.

1 Q SO, WHEN YOUR TELLER GOES TO PROVE SOMETHING, THEY
2 WANT TO MATCH UP SOME IDENTIFICATION WITH THAT I'M GETTING
3 THE MONEY PART OF THE CHECK. RIGHT?

4 A YES SIR.

5 Q SO, WHAT I'M ASKING YOU HERE: YOUR TELLERS CASHED BOTH
6 OF THESE CHECKS.

7 A YES SIR.

8 Q BASED ON THESE TWO PIECES OF IDENTIFICATION. AND
9 THEY'RE TOLD TO MATCH THEM UP TO THE I'M GETTING THE MONEY
10 PART OF THE CHECK. SO, WHAT I'M ASKING YOU IS: TAKE A LOOK AT
11 THIS I.

12 A UH-HUH.

13 Q ON THE IDENTIFICATION, ON EXHIBIT NUMBER EIGHT, THE
14 DRIVER'S LICENSE. TAKE A LOOK AT THE I ON EXHIBIT NUMBER FIVE,
15 CHECK NUMBER 651, THE ENDORSEMENT PORTION. ARE THEY
16 SIMILAR?

17 A ON THE ENDORSEMENT PORTION?

18 Q ON THE ENDORSEMENT PORTION.

19 A YES SIR.

20 Q IN FACT, WOULD YOU CHARACTERIZE THE ENTIRE FIRST NAME,
21 ISAIAS, AS BEING EXTREMELY SIMILAR?

22 A SIMILAR, YES SIR.

23 Q NOW, LET'S COMPARE THE ISAIAS THAT'S ON THE, ON HIS
24 IDENTIFICATION TO THE PAYEE PART. MORE OR LESS SIMILAR THAN
25 THE ENDORSEMENT PART?

1 A LESS SIMILAR.

2 Q BECAUSE, IN FACT, IT'S IN CURSIVE. CORRECT?

3 A THAT'S CORRECT.

4 Q OKAY. LET'S GO TO GUTIERREZ. NOW, THE JURY WILL
5 ULTIMATELY DETERMINE THIS, BUT YOU HAD CHARACTERIZED THE
6 GUTIERREZ ON THE ENDORSEMENT PART OF CHECK 1651 AS BEING IN
7 CURSIVE. AND I'M GOING TO ASK YOU TO LOOK AT THAT AGAIN, SIR,
8 AND SEE IF YOU'RE ABSOLUTELY CERTAIN THAT YOU WOULD CALL
9 THAT CURSIVE WRITING ON THE ENDORSEMENT PART.

10 A ON GUTIERREZ, THE GUTIERREZ PART OF THE ENDORSEMENT,
11 AND ON THE PAYEE, IT IS NOT PRINTED.

12 Q YOU THINK THOSE TWO GUTIERREZ LOOK SIMILAR? LOOK AT
13 THE G. ARE THEY SAME OR DIFFERENT?

14 A WELL, THE G IS DIFFERENT. THE E-R IS DIFFERENT. BUT THE
15 FACT THAT THE T, TO ME, IS, AND THE LETTER BEFORE THE T, IS MORE
16 SIMILAR THAN NOT BEING SIMILAR.

17 Q OKAY. SO, YOU-- I'LL JUST ASK YOU ONE LAST TIME ON THESE
18 ITEMS. YOUR TESTIMONY IS THIS ID CARD MATCHES UP BETTER WITH
19 THE PAY TO PART OR THE ENDORSEMENT PART?

20 A BOTH THESE IDENTIFICATIONS THAT ARE IN EXHIBITS, BOTH OF
21 THEM ARE PRINTED; NEITHER ONE ARE CURSIVE. WHICH WOULD
22 RAISE SPECULATION OF WHY MR. GUTIERREZ WOULD DEVIATE FROM
23 PRINTED TO CURSIVE ON THAT ITEM.

24 Q YOU'RE CHARACTERIZING THAT AS CURSIVE. CAN I SEE EXHIBIT
25 NUMBER SIX, CHECK 1652, PLEASE.

- 1 A WHICH DO YOU WANT, THE ORIGINAL OR THAT COPY?
- 2 Q THE ORIGINAL.
- 3 A THAT'S EXHIBIT NUMBER....
- 4 Q GO ON.
- 5 A OKAY.
- 6 Q THIS IS CHECK NUMBER 1652. AGAIN, YOUR TELLERS CASHED
- 7 THIS CHECK AFTER COMPARING IT TO HIS IDENTIFICATION CARD.
- 8 CORRECT?
- 9 A YES SIR.
- 10 Q AGAIN, WOULD YOU HAVE CASHED THIS CHECK AFTER
- 11 COMPARING IT TO THAT IDENTIFICATION CARD? ARE THOSE SIMILAR?
- 12 A YES. IN THE COMBINATION OF NOT ONLY THE ENDORSEMENT
- 13 BUT THE IDENTIFICATION THAT WAS PRESENTED WOULD LEAD ME TO
- 14 BELIEVE THAT THE PAYEE AND THE ENDORSED PERSON IS ONE AND
- 15 THE SAME. I WOULD HAVE NEGOTIATED THE CHECK.
- 16 Q OKAY. SO, IT SEEMED LIKE A GOOD CHECK. IT SEEMED LIKE
- 17 SOMEBODY WROTE A CHECK TO ISAIAS GUTIERREZ.
- 18 A YES.
- 19 Q TO ASK A DIFFERENT QUESTION, THEN. DOES IT LOOK LIKE THE
- 20 SAME PERSON WROTE THE FRONT OF THE CHECK AS THE BACK OF THE
- 21 CHECK? YOU WILL TESTIFY, YOU WILL AGREE THAT THERE'S A
- 22 DIFFERENCE BETWEEN THE ENDORSEMENT ON THE BACK OF THE
- 23 CHECK AND THE PAYEE ON THE FRONT OF THE CHECK. CORRECT?

1 A NO. THE NAME, THE GUTIERREZ - IF I'M PRONOUNCING THE
2 NAME CORRECTLY - THERE ARE SIMILARITIES THAT WOULD LEAD TO
3 BELIEVE THAT THE PAYEE AND THE ENDORSER WROTE THIS CHECK.

4 Q OKAY.

5 A AND---

6 Q I WANT YOU TO, PLEASE-- BECAUSE I'M LOOKING FOR THE SAME
7 THING YOU ARE; I'M NOT SEEING IT. EXPLAIN TO ME WHAT
8 SIMILARITIES YOU'RE SEEING BETWEEN THE PAYEE PORTION AND THE
9 ENDORSEMENT PORTION?

10 A THEY'RE TOTALLY DIFFERENT FROM THE PRINTED SIGNATURE
11 ON THE TWO CHECKS.

12 Q I DIDN'T ASK YOU THAT. TELL ME HOW THEY'RE SIMILAR.

13 A I WAS GETTING TO THE EXPLANATION. AND ALSO, THE
14 ENDORSER WROTE CURSIVE IN THE BACK. AND THE E AND T IN THE
15 GUTIERREZ SIGNATURE, TO ME, IS SIMILAR. I DIDN'T SAY IT WAS
16 IDENTICAL. BUT BOTH THOSE ARE WRITTEN CURSIVE.

17 Q OKAY. THEY ARE NOT THE SAME-- TO CHARACTERIZE THEM AS
18 SIGNATURES, THEY ARE NOT WRITTEN THE SAME, THOUGH, ARE THEY?
19 WHAT'S WRITTEN ON THE FRONT OF THE CHECK IS WRITTEN
20 DIFFERENTLY THAN WHAT'S WRITTEN ON THE BACK OF THE CHECK.

21 SO, MY QUESTION: WOULD YOU CHARACTERIZE THOSE TWO
22 THINGS, THE ISAIAS GUTIERREZ NAME ON THE FRONT AS BEING THE
23 SAME AS THE ISAIAS GUTIERREZ NAME ON THE BACK?

24 A WELL, THE ISAIAS IS PRINTED ON THE ENDORSEMENT.

25 Q SO, THE ANSWER IS---

1 A SO, THAT WOULD BE DIFFERENT.

2 Q ---NO, THEY'RE DIFFERENT.

3 A ON THE ISAIAS, YES SIR.

4 Q AND EVEN THOUGH YOU'RE CALLING THE GUTIERREZ SCRIPT ON
5 BOTH, LOOK AT THEM, ARE THEY THE SAME? ARE THEY THE SAME?

6 A MY ANSWER WAS THEY'RE SIMILAR.

7 Q OKAY. THANK YOU, SIR.

8 A OKAY.

9 Q ALL RIGHT, MR. ZINKANN. WHAT WE'VE SEEN VISUALLY ON THE
10 FORT MILL TRANSACTION APPEARS, JUST FROM LOOKING AT IT, TO BE
11 A NORMAL BANKING TRANSACTION. IS THAT CORRECT?

12 A YES SIR.

13 Q A CHECK IS PRESENTED, IDENTIFICATION IS PRESENTED. I THINK
14 MR. GUTIERREZ TAKES A LOLLIPOP, OR A PIECE OF CANDY OR
15 SOMETHING. HE IS GIVEN HIS MONEY AND HE WALKS OUT OF THE
16 BANK?

17 A YES SIR.

18 Q THERE WAS NO VIDEO FROM THE OTHER CASHED CHECK. BUT
19 DO YOU HAVE ANYTHING THAT WOULD INDICATE THAT IT WOULD
20 DIFFER FROM THE FORT MILL TRANSACTION, AS FAR AS FROM THE
21 OUTSET LOOKING TO BE A NORMAL TRANSACTION?

22 A THE VIDEO FROM HECKLE AND HERLONG?

23 Q I DON'T KNOW IF WE HAVE-- I MAY HAVE MIXED THEM UP. I
24 KNOW WE HAVE VIDEO ON ONE, NOT ON THE OTHER. OKAY? AGAIN,
25 PUTTING ASIDE FOR THE MOMENT THAT THE ALLEGATION IS THESE

1 CHECKS WERE STOLEN AND FORGED, OTHERWISE, IT WAS A
2 TRANSACTION WHERE A PERSON WALKS INTO A BANK, PRESENTS A
3 CHECK, PRESENTS ID, GIVES THEIR FINGERPRINT, GETS MONEY AND
4 THEN GOES ON THEIR WAY?

5 A AT THE FORT MILL MAIN, HECKLE AND HERLONG, YES SIR.

6 Q AND THEN THE THIRD CHECK, THE NEXT DAY, THE ROCK HILL,
7 WHICH THE JURY'S GOTTEN THE VIDEO TO, HE COMES IN. YOU
8 TESTIFIED BANK PROTOCOL WAS IF THEY IDENTIFIED SOME PROBLEM
9 WITH THIS TRANSACTION, BANK PROTOCOL WOULD BE TO ASK MR.
10 GUTIERREZ TO HOLD ON OR STEP ASIDE; THEY WOULD CONTINUE TO
11 SERVICE OTHER CUSTOMERS WHILE THEY ADDRESSED THEIR
12 CONCERNS.

13 A YES SIR.

14 Q DOES IT APPEAR THAT THAT'S WHAT HAPPENED IN THAT CASE?

15 A THAT THE TELL ASKED HIM TO STEP ASIDE, YES SIR.

16 Q DID IT ALSO APPEAR THAT AT LEAST FOR SOME PERIOD OF TIME,
17 APPROXIMATELY TWO MINUTES, WHILE THEY WERE LOOKING INTO
18 THEIR CONCERNS, MR. GUTIERREZ STOOD IN THE CENTER OF THE
19 LOBBY OF THE BANK?

20 A YES SIR.

21 Q AND THEN AT SOME POINT, EXITED THE BANK?

22 A YES SIR.

23 Q AND THAT'S WHY WE HAVE THIS ID HERE TODAY, THE TWO ID'S,
24 WAS THEY WERE STILL WITH THE PEOPLE CHECKING INTO THINGS AT
25 THE BANK?

1 A THAT'S WHAT MADE IT SUSPICIOUS.

2 Q WELL, NO. THAT'S FINE. THANK YOU VERY MUCH.

3 A YES SIR.

4 MR. THOMPSON: JUST BRIEFLY, YOUR HONOR. I WANT TO ASK
5 ABOUT ONE MORE THING.

6 RE-DIRECT EXAMINATION BY MR. THOMPSON:

7 Q MR. CHIARENZA WAS TALKING ABOUT THIS LOOKING LIKE A
8 NORMAL TRANSACTION. WITH YOUR EXPERIENCE AT LOOKING AT
9 THIS AS A WHOLE, I BELIEVE WERE NOT ALL THE CHECKS DATED
10 DECEMBER 28, OF 2002?

11 A I WOULD HAVE TO LOOK, SIR.

12 Q ALL RIGHT.

13 A THE CHECK AT THE FORT MILL MAIN WAS NEGOTIATED ON
14 DECEMBER 30, AND THAT CHECK---

15 Q I'M SORRY. I'M NOT ASKING THE DATE THEY WERE NEGOTIATED.
16 THE DATE THAT WAS WRITTEN ON THE CHECKS, WHATEVER DATE
17 THAT WAS?

18 A DECEMBER 28, SIR.

19 Q AND ALL THE CHECKS WERE WRITTEN OUT DECEMBER 28?

20 A YES SIR.

21 Q SO, AS AN INVESTIGATOR FOR BANK OF AMERICA IN THE FRAUD
22 SECTION, WOULD IT SEEM LIKE A TRANSACTION TO YOU, OR WOULD IT
23 BE A NORMAL TRANSACTION TO HAVE THE SAME PERSON ON THE
24 SAME ACCOUNT, NOT THEIR OWN, CASH THREE SEPARATE CHECKS;
25 ONE IN FORT MILL, AND ABOUT AN HOUR OR SO, A LITTLE OVER AN

1 HOUR LATER, GO TO THE BANK OF AMERICA IN ROCK HILL TO CASH A
2 CHECK FOR \$600. AT THAT POINT THEY'VE GOT \$1100. AND THEN THE
3 NEXT MORNING TO GO TO A DIFFERENT BANK, YET AGAIN, ON MAIN
4 STREET, AND TRY TO CASH A CHECK FOR \$775. WOULD THAT TO YOU
5 BE A NORMAL TRANSACTION?

6 A NO SIR.

7 Q THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: YOU MAY STEP DOWN.

9 MR. THOMPSON: THE STATE WOULD CALL MAY McCOY.

10 ROSE M. McCOY, DULY SWORN, TESTIFIED AS

11 FOLLOWS:

12 **DIRECT EXAMINATION BY MR. THOMPSON:**

13 Q MS. McCOY, WOULD YOU STATE YOUR NAME FOR THE COURT,
14 PLEASE?

15 A ROSE M. McCOY.

16 Q I'VE BEEN REFERRING TO YOU AS MAY. DO YOU GO BY THE
17 NAME OF ROSE?

18 A YES SIR.

19 Q MS. McCOY, COULD YOU TELL ME, ON DECEMBER 31, OF 2002,
20 WHERE WERE YOU WORKING?

21 A AT BANK OF AMERICA, DOWNTOWN ROCK HILL.

22 Q AND WHAT WERE YOUR DUTIES AT BANK OF AMERICA AT THAT
23 TIME?

24 A I'M A TELLER.

1 Q HOW LONG HAD YOU BEEN A TELLER AT THE BANK OF AMERICA
2 BACK THEN?

3 A ABOUT FIVE YEARS.

4 Q ABOUT FIVE YEARS?

5 A YES.

6 Q ON THAT PARTICULAR DAY, DID A PERSON PURPORTING TO BE
7 ISAIAS GUTIERREZ COME IN AND ATTEMPT TO CASH A CHECK WITH
8 YOU?

9 A YES SIR.

10 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER SEVEN. IF
11 YOU COULD LOOK AT THIS. DOES THAT APPEAR TO BE THE CHECK
12 THAT WAS PRESENTED TO YOU THAT DAY?

13 A YES SIR.

14 Q WHAT IS THE AMOUNT ON THAT CHECK?

15 A \$775.

16 Q DID YOU ACTUALLY CASH THAT CHECK THAT DAY?

17 A NO.

18 Q WHO WAS THE PERSON THAT THE CHECK-- WHO WAS THE
19 PAYEE ON THE CHECK? IN OTHER WORDS, WHO WAS IT WRITTEN OUT
20 TO?

21 A ISAIAS GUTIERREZ.

22 Q WHEN THE PERSON PRESENTED THE CHECK TO BE CASHED, DID
23 THEY PRESENT FORMS OF ID WITH IT, AS WELL?

24 A YES.

1 Q I'M SHOWING YOU STATE'S EXHIBITS EIGHT AND NINE. I WOULD
2 ASK YOU TO LOOK AT BOTH OF THOSE. ARE THOSE THE TWO FORMS
3 OF ID HE PRESENTED TO YOU THAT DAY?

4 A YES SIR.

5 Q AS A TELLER AT THAT TIME, DID YOU FIND ANYTHING
6 SUSPICIOUS ABOUT CASHING THE CHECKS AT THAT TIME?

7 A YES SIR.

8 Q WHAT WAS THAT?

9 A THERE WAS A ODD WRITING ON THE CHECK. WHEN I NOTICED
10 IT, I TOOK IT OVER IMMEDIATELY TO MY MANAGER.

11 Q WHO WAS YOUR MANAGER?

12 A AT THE TIME IT WAS NOVA ACKERMAN.

13 Q YOU TOOK IT TO YOUR MANAGER. WHAT DID YOU DO THEN?

14 A WELL, SHE WAS LOOKING OVER IT, WAS MAKING A PHONE CALL.
15 AT THIS TIME WE LOOKED UP, HE HAD EXITED FROM THE BANK.

16 Q WHILE YOU WERE CHECKING ON THE CHECK ITSELF AND THE
17 FORMS OF ID?

18 A YES SIR.

19 Q HE LEFT THE BANK?

20 A YES SIR. LEAVING BEHIND THIS INFORMATION.

21 Q SO, DID YOU KEEP THAT INFORMATION AFTER YOU LEFT?

22 A YES.

23 Q WHEN THAT HAPPENS TO YOU, WHAT ARE YOU REQUIRED TO DO
24 AS A TELLER AT THAT TIME?

25 A WE HAVE A SUSPICIOUS REPORT TO FILL OUT.

1 Q AND SO, DID YOUR BANK DO THAT AT THAT POINT?

2 A YES.

3 Q AND WHAT HE LEFT, DID YOU MAINTAIN THOSE, THEN, AT THAT
4 POINT?

5 A YES.

6 Q DID YOU KNOW CLARENCE CUBLEY?

7 A YES, FROM COMING IN.

8 Q HE USED TO COME INTO THE BANK?

9 A YES SIR.

10 Q AND YOU'D DEALT WITH HIM AS A TELLER BEFORE ON THAT
11 ACCOUNT?

12 A VERY RARELY.

13 Q WAS THAT ONE OF THE THINGS THAT LED YOU TO BELIEVE
14 THAT THIS MAY BE A SUSPICIOUS CHECK?

15 A YES SIR.

16 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS THAT MR.
17 CHIARENZA MAY HAVE.

18 **CROSS EXAMINATION BY MR. CHIARENZA:**

19 Q MA'AM, WHEN YOU-- YOU HAD SOME SUSPICIONS ABOUT THE
20 CHECK AND YOU CALLED A SUPERVISOR. IS THAT CORRECT?

21 A MANAGER.

22 Q MANAGER, OKAY. YOU PROVIDED HER WITH THE CHECK AND
23 THE TWO FORMS OF IDENTIFICATION AT THAT POINT?

24 A YES.

- 1 Q WHERE DID SHE-- DID SHE GO IN THE BANK SOMEWHERE OR AN
2 OFFICE?
- 3 A SHE WAS IN A OFFICE.
- 4 Q SO, OUT OF THE GENERAL VIEW OF FOLKS IN THE BANK?
- 5 A RIGHT. AND HIM.
- 6 Q AND AT THAT TIME SHE HAD THE CHECK AND THE
7 IDENTIFICATION?
- 8 A YES.
- 9 Q YOU WERE FAMILIAR WITH THE ACCOUNT HOLDER, MRS.
10 MAUDE CUBLEY, AS WELL, WERE YOU NOT?
- 11 A RIGHT.
- 12 Q WAS IT THE FACT THAT MRS. MAUDE CUBLEY'S CHECK WAS
13 SIGNED SUPPOSEDLY BY MRS. MAUDE CUBLEY, BUT YOU KNEW HER
14 TO HAVE BEEN DECEASED?
- 15 A YES.
- 16 Q SO, IT WASN'T SO MUCH JUST THE HANDWRITING ON THE CHECK;
17 IT WAS SOMEBODY WAS BRINGING A CHECK TO YOU FROM A WOMAN
18 THAT YOU KNOW HAD PASSED?
- 19 A RIGHT.
- 20 Q AND THAT WAS THE REASON YOU KNEW SOMETHING WAS FISHY
21 AT THAT POINT?
- 22 A RIGHT.
- 23 Q THANK YOU VERY MUCH.
- 24 MR. CHIARENZA: NOTHING FURTHER.

1 MR. THOMPSON: WE HAVE NOTHING FURTHER. MAY THIS
2 WITNESS BE EXCUSED?

3 MR. CHIARENZA: NO OBJECTION.

4 THE COURT: COME DOWN.

5 MR. THOMPSON: YOUR HONOR, THE STATE CALLS TODD
6 GARDNER.

7 WILLIAM TODD GARDNER, DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. THOMPSON:

10 Q OFFICER GARDNER, IF YOU WOULD GIVE YOUR FULL NAME TO
11 THE COURT, PLEASE.

12 A MY NAME IS WILLIAM TODD GARDNER.

13 Q WHERE DO YOU WORK?

14 A I AM EMPLOYED BY THE CITY OF ROCK HILL, ROCK HILL POLICE
15 DEPARTMENT, AND ASSIGNED TO THE YORK COUNTY FORENSIC
16 SERVICES UNIT.

17 Q WHAT TYPE OF THINGS DO YOU DO IN THE FORENSIC SERVICES
18 UNIT?

19 A JUST ANYTHING DEALING WITH CRIME SCENES, PROCESS CRIME
20 SCENES FOR LATENT FINGERPRINTS, COLLECTION OF EVIDENCE. I
21 GUESS, FOR LACK OF BETTER WORDS, CRIME SCENE INVESTIGATION.
22 THAT'S WHAT WE DO. TRUST ME, IT'S NOTHING LIKE THE SHOW, CSI;
23 IT'S THE REAL DEAL.

24 Q AND YOUR UNIT IS ACTUALLY KNOWN AS FSU. CORRECT?

1 A RIGHT. WE CHANGED IT. WHEN I FIRST STARTED, IT WAS CSU,
2 CRIME SCENE UNIT. THAT WAS A LITTLE TOO CLOSE TO CSI. AND
3 WHEN WE COME OVER HERE, WE CHANGED IT TO FORENSIC SERVICES
4 UNIT.

5 Q HOW LONG HAVE YOU BEEN WITH THE FORENSIC SERVICES
6 UNIT?

7 A SINCE ITS INCEPTION. I ACTUALLY STARTED MY CAREER IN
8 FORENSICS IN 1992 AT THE ROCK HILL POLICE DEPARTMENT, ASSIGNED
9 TO THEIR UNIT. AND THEN IN 2002, WE FORMED THIS UNIT, AND ALL
10 THE PEOPLE THAT WAS WORKING WITH ROCK HILL PD MOVED OVER
11 TO THE FORENSIC SERVICES UNIT.

12 Q AND WHEN THIS CASE OCCURRED AT THE END OF 2002, YOU HAD
13 ALREADY FORMED THE FORENSIC SERVICES UNIT. CORRECT?

14 A YES, IT WAS APRIL 2002, WHEN WE FIRST FORMED IT.

15 Q SPECIFICALLY, OFFICER GARDNER, IF YOU COULD, EXPLAIN
16 YOUR QUALIFICATIONS AS IT RELATES TO FINGERPRINTS, BOTH
17 LIFTING FINGERPRINTS AND MATCHING THEM. WHAT KIND OF
18 TRAINING DO YOU HAVE IN THAT AREA?

19 A I'M A GRADUATE OF THE SOUTH CAROLINA CRIMINAL JUSTICE
20 ACADEMY. IT WAS NINE WEEKS LONG. IT WAS BRIEFLY TOUCHED ON
21 DURING OUR NINE WEEKS THERE. BUT AFTER I GRADUATED FROM
22 THE ACADEMY I'VE HAD THE OPPORTUNITY TO GO TO BASIC
23 FINGERPRINTS AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
24 AGAIN. I WENT TO AN ADVANCED FINGERPRINTS SCHOOL, WHICH THE

1 ROCK HILL POLICE DEPARTMENT HOSTED THAT SCHOOL. THE FBI
2 ACTUALLY TAUGHT THAT CLASS.

3 I WENT TO THE NORTH CAROLINA CRIMINAL JUSTICE ACADEMY
4 FOR DEMYSTIFYING PALM PRINTS. I'VE BEEN TO THE INSTITUTE OF
5 POLICE TECHNOLOGY AND MANAGEMENT AT THE UNIVERSITY OF
6 NORTH FLORIDA FOR A CRIME SCENE PROCESSING SCHOOL WHERE WE
7 PROCESSED EVERYTHING FROM-- WELL, WE PROCESSED CRIME
8 SCENES, COLLECTION OF EVIDENCE, PROCESS OF LATENT PRINTS AND
9 LIFTING OF LATENT PRINTS.

10 AND ALSO, I'VE BEEN TO A ADVANCED HOMICIDE SCHOOL AT
11 THE UNIVERSITY OF LOUISVILLE. IT WAS TWO WEEKS' LONG, WHERE
12 FINGERPRINTS PAID A BIG PART IN THE CASE STUDIES THAT WE WENT
13 OVER AND WORKED. FINGERPRINTS WAS PART OF THOSE CASE
14 STUDIES.

15 CRIME SCENE INVESTIGATION SCHOOL AT THE UNIVERSITY. I
16 MEAN, AT THE UNIVERSITY OF NORTH FLORIDA, AGAIN. WE USED A
17 LOT OF CHEMICALS TO PROCESS LATENT PRINTS. I ALSO ATTENDED
18 ONE AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY WHERE IT
19 WAS NOTHING BUT CHEMICAL PROCESSING FOR LATENT PRINTS.

20 Q SO, IN YOUR EXPERIENCE, HAVE YOU DONE A LOT OF
21 COLLECTION OF PRINTS AND MATCHING PRINTS?

22 A I ABSOLUTELY HAVE. I WOULD PROBABLY SAY WELL IN THE
23 THOUSANDS.

24 Q HAVE YOU TESTIFIED BEFORE AS WELL AS AN EXPERT IN THAT
25 AREA?

1 A YES, I HAVE. I'VE TESTIFIED TEN TIMES AS AN EXPERT WITNESS
2 AND FIVE OF THOSE HAVE BEEN IN LATENT PRINT CASES.

3 MR. THOMPSON: YOUR HONOR, AT THIS TIME, THE STATE
4 WOULD OFFER OFFICER GARDNER AS AN EXPERT IN THE FIELD OF
5 LIFTING AND MATCHING FINGERPRINTS.

6 MR. CHIARENZA: NO OBJECTION.

7 THE COURT: HE IS SO QUALIFIED.

8 Q OFFICER GARDNER, AS IT RELATES TO THIS CASE, HAVE YOU
9 HAD A LOOK AT THE PRINTS THAT HAVE BEEN COLLECTED IN THIS
10 CASE AND TRIED TO MATCH THEM?

11 A YES, I HAVE.

12 Q IN PARTICULAR, DID YOU HAVE A CHANCE TO-- IF YOU WOULD,
13 LOOK AT STATE'S EXHIBITS FIVE AND SIX WHICH I BELIEVE ARE IN
14 FRONT OF YOU THERE. HAVE YOU BEEN ABLE TO-- WHICH EXHIBIT DO
15 YOU HAVE IN FRONT OF YOU RIGHT NOW?

16 A STATE'S EXHIBIT NUMBER FIVE.

17 Q AND I BELIEVE THAT'S A CHECK IN THE AMOUNT OF \$500 MADE
18 OUT TO ISAIAS GUTIERREZ?

19 A YES SIR.

20 Q IS THERE A THUMBPRINT AT THE TOP OF THAT CHECK?

21 A THAT'S CORRECT. THERE'S A THUMBPRINT RIGHT IN THE
22 MIDDLE AT THE TOP OF IT.

23 Q DID YOU HAVE OCCASION TO OBTAIN THAT THUMBPRINT?

24 A YES, I DID.

1 Q IN ADDITION, THE OTHER EXHIBIT, EXHIBIT NUMBER SIX, IS
2 THAT A CHECK IN THE AMOUNT OF \$600 MADE OUT TO ISAIAS
3 GUTIERREZ?

4 A THAT'S CORRECT. STATE'S EXHIBIT NUMBER SIX IS A CHECK FOR
5 \$600 WHICH ALSO CONTAINS THAT INKED THUMBPRINT.

6 Q DID YOU HAVE OCCASION TO OBTAIN THAT THUMBPRINT, AS
7 WELL?

8 A YES, I DID.

9 Q NOW, I BELIEVE YOU CREATED A POWERPOINT, OFFICER
10 GARDNER?

11 A YES, I DID.

12 Q WOULD IT ASSIST YOU IN TESTIFYING REGARDING YOUR
13 FINDINGS DIRECTLY USING YOUR POWERPOINT?

14 A YES; IT WOULD.

15 Q I'LL HAND YOU THIS LASER POINTER. WOULD YOU LIKE TO STEP
16 DOWN?

17 A PLEASE.

18 Q ALL RIGHT. COME DOWN AND STAND OVER HERE BY THE JURY
19 BOX.

20 (WHEREUPON THE WITNESS EXITED THE WITNESS STAND FOR
21 DEMONSTRATION WITH POWERPOINT)

22 NOW, IF YOU COULD, DESCRIBE FOR ME WHAT THIS IS, OFFICER
23 GARDNER.

24 A THIS IS WHAT WE CALLED AN INKED, TEN-PRINT CARD. THIS
25 CARD, OUR AGENCY RECEIVES THESE AFTER A PERSON HAS BEEN

1 ARRESTED AND THEY-- YOU'VE HEARD OF PEOPLE GETTING
2 FINGERPRINTED AT THE POLICE DEPARTMENT. THIS IS WHAT IS DONE.
3 THE CARD CONTAINS ALL TEN FINGERPRINTS.

4 Q THIS PARTICULAR TEN-PRINT CARD, IS THIS THE CARD THAT
5 YOU USED IN ORDER TO HELP MATCH THE FINGERPRINTS OF ISAIAS
6 GUTIERREZ?

7 A YES SIR.

8 Q AND THIS CARD, I BELIEVE, IS DATED JUNE OF 2001. IS THAT
9 CARD?

10 A THAT'S CORRECT.

11 Q DESCRIBE WHAT THAT IS.

12 A THIS IS THE BACK OF THE CARD. IT SHOWS RIGHT HERE THAT
13 OFFICER JOHN STRAIT IS THE EMPLOYEE THAT ACTUALLY ROLLED
14 THE FINGERPRINTS.

15 Q GOING FROM THERE, HOW DO YOU ACTUALLY USE THAT CARD
16 TO HELP YOU?

17 A WHAT I DO, IS ONCE I EXAMINED THE LATENT PRINT ON THIS
18 PARTICULAR CASE ON THE CHECK, I TRIED TO DETERMINE WHAT IT IS.
19 AND, KNOWING THAT MOST OF THE TIME AN INKED FINGERPRINT IS
20 PLACED ON A CHECK AS WOULD GENERALLY BE DONE. OR,
21 SOMETIMES IT'S THE INDEX FINGERPRINT. SO, LOOKING AT THAT, I
22 JUST KIND OF LOOK AT THE PATTERN ON THE LATENT PRINT THAT I
23 HAVE ON THE CHECK. AND JUST KIND OF LOOK AND FIND THE PRINT
24 THAT ACTUALLY MATCHES CLOSEST TO IT, AND STUDY IT FULL MORE
25 IN DEPTH.

1 IN THIS CASE HERE, IT WAS THE NUMBER ONE, RIGHT THUMB.
2 WE NUMBER OUR FINGERS, STARTING WITH THE RIGHT THUMB AS
3 NUMBER ONE, ALL THE WAY THROUGH FIVE. THE LEFT THUMB
4 STARTS WITH SIX, ALL THE WAY TO NUMBER TEN SO, IT'S NUMBER
5 ONE, RIGHT THUMB.

6 Q IS THAT A CLOSE-UP OF THE RIGHT THUMB?

7 A THIS IS A CLOSE-UP OF THE RIGHT THUMB.

8 Q LOOKING AT THIS CLOSE-UP, CAN YOU TELL US WHAT IT IS THAT
9 YOU LOOK FOR WHEN INITIALLY TRYING TO MATCH IT WITH ANOTHER
10 PRINT?

11 A ONE OF THE FIRST THINGS-- OF COURSE, THERE'S LOOPS AND
12 WHORLS AND ARCHES. I IDENTIFIED THE PRINT ON THE CHECK AS
13 BEING A WHORL. SO, I COULD DISCOUNT ALL OF THE ARCHES AND
14 THE LOOPS.

15 Q LET ME ASK YOU, AN ARCH BEING SOMETHING GOES UP AND
16 DOWN?

17 A AS FAR AS ONE SIDE OF THE FINGER, IT GOES THROUGH AND
18 GOES RIGHT BACK OUT THE OTHER SIDE. THERE'S NO CURVE. IT
19 DOESN'T REALLY GO TO FORM A PATTERN. IT'S JUST STRAIGHT LINES
20 WHERE YOU CAN MAKE OUT A HUMP IN THEM THAT GOES ACROSS
21 FROM ONE SIDE OF THE OTHER.

22 Q ALL RIGHT. AND THE CURVE BEING THE PLACE DOWN, GOING
23 INTO THE SURFACE?

1 A THE WHORL - AND THIS IS A GOOD EXAMPLE - IT KIND OF JUST
2 SPIRALS OUT, LIKE, YOU KNOW, LIKE IN A TIME WARP TYPE THING.
3 THAT'S THE WHORL.

4 Q ALL RIGHT. AND WHAT WAS THE FIRST CHECK THAT YOU
5 COMPARED IT TO?

6 A CHECK NUMBER 1651 IS THE CHECK FOR \$500. I ALSO WANTED
7 TO MAKE SURE THAT THE PERSON'S NAME THAT'S ON THIS CHECK
8 HERE WAS THE SAME AS THE TEN-PRINT CARD I WAS CHECKING ON,
9 AND IT WAS.

10 Q THIS BEING THE CHECK, THE FINGERPRINT THAT'S ON IT, THAT'S
11 THE ONE YOU'RE NOW LOOKING AT?

12 A THE ONE THAT'S IN THE SQUARE HERE IS THE ONE THAT I
13 ACTUALLY-- IN JUST A COUPLE OF MORE SLIDES, I'LL SHOW YOU
14 ANOTHER VIEW OF IT.

15 Q WHAT ELSE DID YOU OBTAIN ON THE CHECK?

16 A THE NAME, ALIEN ID NUMBER. THE MAIN THING I
17 CONCENTRATED ON WAS THE NAME AND THE ALIEN ID NUMBER.

18 Q ALL RIGHT. WHAT DID YOU NOTICE ABOUT THAT ALIEN ID
19 NUMBER?

20 A WELL, IT MATCHED THE RESIDENT ALIEN CARD THAT WE HAD,
21 INDICATING ISAIAS DIAZ GUTIERREZ. AND THAT NUMBER THERE IS
22 IDENTICAL TO THE ONE ON THE CHECK.

23 Q IS THAT NUMBER THERE THE ALIEN NUMBER?

24 A RIGHT. THE ALIEN NUMBER, 809631227.

25 Q DID THAT MATCH THE NUMBER THAT WAS ON THE CHECK?

1 A YES. I ACTUALLY HAVE THE SIDE-BY-SIDE VIEW OF IT.

2 Q OKAY.

3 A THOSE TWO NUMBERS MATCH.

4 Q AND WAS THERE ALSO AN EXPIRATION DATE ON THERE, AS
5 WELL?

6 A THERE IS. THE EXPIRATION DATE IS 2/14/05, AND THERE IS THE
7 2/14/05, THE EXPIRATION DATE THERE.

8 Q NOW, GOING BACK TO THE FINGERPRINT, IS THIS THE ONE OFF
9 THE CHECK?

10 A THIS IS THE INKED PRINT FROM THE CHECK NUMBER 1651.

11 Q NOW, WHEN YOU SAY INKED PRINT, WHAT DO YOU MEAN BY
12 INKED PRINT?

13 A WELL, THE DIFFERENCE BETWEEN AN INKED PRINT AND A
14 LATENT PRINT. A LATENT PRINT THAT CAN BE VISIBLE, NOT
15 NECESSARILY BE THE COLOR BLACK, BUT IT CAN BE VISIBLE. AND WE
16 HAVE TO ACTUALLY ENHANCE OR DEVELOP IT WITH SOME, WITH A
17 POWDER, AND ACTUALLY TURN THAT INKED PRINT A DIFFERENT
18 COLOR WHERE WE CAN LIFT IT UP AND PUT IT ON A WHITE
19 BACKGROUND.

20 WITH AN INKED PRINT, IT'S ACTUALLY-- MOST BANKS AND
21 SOME OF YOUR BIGGER STORES, THEY HAVE AN ACTUAL INK PAD
22 THAT YOU PUT YOUR THUMB ON AND ACTUALLY PUT YOUR
23 THUMBPRINT ON THE CHECK. ACTUALLY, IT'S THE SAME WAY AS ON
24 THIS INKED PRINT HERE AS THE INKED TEN-PRINT CARDS. THE
25 TECHNOLOGY HAS ADVANCED NOW THAT THERE ARE LIVE SCANS, OR

1 DIGITAL SCANS NOW. BUT, WHEN I FIRST STARTED THAT WAS THE
2 ONLY WAY YOU COULD GET SOMEONE'S INKED PRINT CARD WAS TO
3 ACTUALLY ROLL THEIR FINGERS WITH INK.

4 Q AND YOU ACTUALLY PUT THESE SIDE BY SIDE TO IDENTIFY
5 THEM?

6 A I PUT THEM SIDE BY SIDE.

7 Q AND THAT WOULD BE DONE BY PUTTING THEM SIDE BY SIDE?

8 A YES SIR. ON THIS SIDE HERE IS THE INKED, OR LIVE SCAN
9 IMPRINT FROM THE TEN-PRINT CARD, AND ON THIS SIDE IS THE PRINT
10 FROM THE ACTUAL CHECK.

11 Q WHAT THINGS DO YOU NOW LOOK FOR?

12 A AGAIN, I'M LOOKING TO MAKE SURE THAT THE FLOW OF THE
13 RIDGES ARE THE SAME, AND THAT EVERYTHING REALLY LOOKS GOOD
14 RIGHT NOW. BUT NOW, I'LL START USING A MAGNIFYING GLASS AND
15 START PICKING OUT INDIVIDUAL CHARACTERISTICS OF THE
16 FINGERPRINTS AND TRY TO MATCH THEM WITH THE INKED TEN-PRINT
17 CARD.

18 Q THE INK THAT'S ON THE SKIN, DOES THAT AFFECT HOW THE
19 PRINTING IS DONE?

20 A ABSOLUTELY. YOU CAN HAVE TORQUE WHERE SOMEONE MAY
21 PUT THEIR HAND DOWN, OR PRINT DOWN ON A SURFACE, AND BEFORE
22 THEY LIFT IT UP, THEY TURN IT A LITTLE BIT AND THAT AFFECTS THE
23 PRINT. AND YOU WILL NOTICE ON THIS PRINT HERE, IT'S NOT REAL
24 CLEAR IN A COUPLE OF AREAS. WE GENERALLY DESCRIBE THAT AS A
25 SMUDGE WHERE A PRINT WAS MADE. THEY PUT THEIR FINGER DOWN

1 AND BEFORE LIFTING STRAIGHT UP LIKE YOU'RE SUPPOSED TO, IT WAS
2 JUST KIND OF SLID, JUST A LITTLE BIT, MAKING A SMUDGE.

3 Q WOULD THAT AFFECT YOUR BEING ABLE TO IDENTIFY IT?

4 A NO, NOT AT ALL. I WAS ABLE TO IDENTIFY THE PRINT.

5 Q WHAT WAS ONE OF THE FIRST POINTS OF IDENTIFICATION YOU
6 LOOKED AT?

7 A SINCE THE CORE OF THE PRINT ON BOTH OF THEM WAS FAIRLY
8 WELL, I WAS ABLE TO IDENTIFY CERTAIN PINOTS INSIDE THE CORE,
9 THE FIRST ONE BEING HERE AND IT MATCHED HERE.

10 THEN, I JUST KIND OF STARTED WORKING MY WAY OUT AND
11 FOUND THE DIFFERENT POINTS OF INTEREST. CAN WE GO TO THE
12 NEXT ONE?

13 AGAIN, STAYING INSIDE THE CORE, I HAVE AN ENDING RIDGE,
14 WHERE ACTUALLY IT LOOKS LIKE MAYBE THE RIDGE SPLIT. IT'S HARD
15 TO TELL IF IT'S AN ENDING RIDGE OR NOT, BUT THE CHARACTER
16 RIDGES WERE IDENTICAL TO THE TEN-PRINT CARD VERSUS THE
17 LATENT PRINT.

18 THEN, LIKE I SAID, I JUST STARTED WORKING MY WAY OUT
19 LOOKING FOR STUFF THAT MATCHED THE PRINT. AND I DID. I FOUND
20 ANOTHER POINT OF INTEREST HERE AND HERE.

21 Q BY POINT OF INTEREST, WHAT DO YOU MEAN?

22 A IT COULD BE AN ENDING RIDGE. TRUTHFULLY, I WOULD HAVE
23 TO LOOK CLOSER. IT COULD BE AN ENDING RIDGE OR A BIFURCATION.
24 I'LL TELL YOU WHAT AN ENDING RIDGE IS. IT'S A RIDGE THAT FORMS

1 SOMEWHERE ON THE PRINT, MAKES ITS PATH AND STOPS. IT DOESN'T
2 GO ANYWHERE. IT JUST STOPS IN THE MIDDLE OF TWO OTHER RIDGES.

3 A BIFURCATION IS A RIDGE THAT ALSO FORMS FROM ONE POINT
4 OF THE PRINT AND COMES AROUND AND ACTUALLY INTERSECTS AND
5 COMES INTO ANOTHER RIDGE AND BIFURCATES IT, GOES FROM ONE TO
6 TWO.

7 IT APPEARS THAT THE ONE THAT'S ON THE SCREEN NOW WAS A
8 BIFURCATION WHEREIN THE RIDGE COME AROUND AND INTERSECTS
9 WITH ANOTHER RIDGE.

10 Q DID YOU IDENTIFY MORE POINTS?

11 A YES, I DID. ANOTHER ONE I FOUND WAS A BIFURCATION, RIGHT
12 TO LEFT OF THE CORE. AND AGAIN, THIS THE CORE OF THE PRINT; THIS
13 IS THE DELTA. SO, I MOVED OUT FROM THE CORE AND I FOUND IT IN
14 AN IDENTICAL PLACE IN THE INKED PRINT.

15 Q AFTER DOING THIS YOURSELF, DID YOU THEN DO A
16 MAGNIFICATION AND LOOK AT THESE?

17 A YES. I ACTUALLY HAVE TWO SMALL MAGNIFIERS THAT ARE
18 SITTING UP ON PEDESTALS. THEY ARE PROBABLY FOUR TO SIX INCHES
19 TALL. AND YOU JUST LOOK STRAIGHT DOWN THROUGH THEM. AND
20 I'M LOOKING AT BOTH OF THEM SIDE BY SIDE. I'M USUALLY
21 ACTUALLY A STAINLESS STEEL POINTER TO MARK MY SPOT.

22 Q AND DO YOU DO ANY MORE COMPARISONS?

23 A YES, I DID. I STARTED WORKING MY WAY AROUND, JUST
24 FINDING SEVERAL POINTS HERE. THIS LOOKS LIKE A BIFURCATION
25 ALSO. AND I FOUND THE SAME SPOT ON THE INKED PRINT AS THE ONE

1 ON THE-- I MEAN, THE INKED PRINT ON THE CHECK AS I DID ON THE
2 TEN-PRINT CARD.

3 Q SO, YOU MENTIONED THAT YOU START IN THE CENTER AND
4 WORK OUT. IS THAT SO THAT YOU CAN BASICALLY COUNT RIDGES AS
5 YOU GO OUT?

6 A THAT'S CORRECT. WE ALWAYS COUNT RIDGES TO MAKE SURE
7 THEY MATCH UP WITH THE PRINT THAT WE'RE COMPARING IT TO. IF IT
8 DOESN'T MATCH UP, IT'S NOT A MATCH AND WE STOP. IF WE DO EIGHT
9 OR TEN POINTS ON A CHECK AND THERE'S THAT ELEVENTH POINT
10 THAT'S NOT THERE, IT'S NOT A MATCH.

11 Q NOW, IF YOU COULD TELL ME, WHAT FURTHER DID YOU FIND?

12 A I JUST CONTINUED GOING. AND RIGHT BELOW IT, THERE IS A
13 BIFURCATION THERE. IT SHOWS UP REAL WELL HERE, AND IT'S THERE.
14 AND NOW, I'M LOOKING AT THE PATTERN THAT I'M MAKING ON BOTH
15 PRINTS WITH MY DOTS. THE PATTERN ALMOST VIRTUALLY LINES UP
16 ON BOTH SIDES.

17 Q I'LL PUT UP SOME OTHER ONES.

18 A RIGHT. THE RED ONE, THAT'S WHERE I SAW, MADE MY DECISION
19 THAT THIS WAS A MATCH. BUT I WANTED TO KNOW THAT I COULD
20 HAVE WENT, CONTINUED ON AND MATCHED MORE. AND IT WAS
21 MARKED IN YELLOW, THE ADDITIONAL POINTS THAT I ADDED.

22 Q DID YOU MAKE THREE OTHER POINTS?

23 A YES.

24 Q COULD YOU HAVE JUST GONE ON AND ON THROUGHOUT THE
25 FINGERPRINT AND FOUND MORE?

1 A I COULD HAVE FOUND NUMEROUS MORE, BUT I JUST STOPPED
2 AT THAT POINT.

3 Q BUT UNDER YOUR TRAINING AND EXPERTISE, WAS THAT
4 SUFFICIENT FOR A MATCH AT THAT POINT?

5 A THERE WAS NO DOUBT IN MY MIND. I WAS A HUNDRED
6 PERCENT POSITIVE THAT WAS A CONFIRMED MATCH THERE.

7 Q SO, IN YOUR OPINION AS AN EXPERT, THE MATCHES WERE THIS
8 PRINT ON THIS CHECK, WHICH IS STATE'S EXHIBIT NUMBER FIVE,
9 WHICH MATCHES THE TEN-PRINT CARD THAT YOU USED TO MATCH
10 THE NUMBER ONE THUMBPRINT OF ISAIAS GUTIERREZ?

11 A I AM ONE HUNDRED PERCENT SURE THAT THIS IS A POSITIVE
12 MATCH TO THE NUMBER ONE, RIGHT THUMBPRINT OF ISAIAS
13 GUTIERREZ.

14 Q GOING FROM THAT, AND BACK AGAIN TO THE TEN-PRINT
15 CARD,---

16 MR. CHIARENZA: YOUR HONOR, I OBJECT. WE NEED TO
17 APPROACH.

18 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

19 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

20 MR. THOMPSON: YOUR HONOR, AT THIS TIME, THE DEFENSE
21 WISHES TO ENTER INTO THE STIPULATION THAT THEY AGREE THAT
22 THE THUMBPRINT THAT IS ON STATE'S EXHIBIT FIVE, THAT THE
23 THUMBPRINT ON THIS CHECK MATCHES THE THUMBPRINT OF ISAIAS
24 GUTIERREZ. SO, THEREFORE, THERE IS NO NEED TO GO FURTHER WITH
25 THIS LINE OF TESTIMONY REGARDING THE MATCHING OF PRINTS.

1 MR. CHIARENZA: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: OKAY.

3 Q NOW, OFFICER GARDNER, IF YOU COULD, GO TO STATE'S
4 EXHIBITS EIGHT AND NINE, THE TWO FORMS OF ID.

5 A IN THE ENVELOPES, OKAY.

6 Q IF YOU COULD LOOK AT THOSE TWO FORMS OF ID FOR ME.

7 A OKAY.

8 Q STARTING WITH THE RESIDENT ALIEN CARD, WHICH ONE IS
9 THAT NUMBERED?

10 A THE RESIDENT ALIEN CARD IS STATE'S EXHIBIT NUMBER NINE.

11 Q OKAY. STARTING WITH STATE'S EXHIBIT NUMBER NINE, THE
12 ALIEN RESIDENT CARD, IS THERE A PRINT ON THAT PARTICULAR
13 CARD?

14 A YES SIR, THERE IS.

15 Q DID YOU ALSO LOOK AT THE PRINT THAT WAS ON THAT CARD?

16 A YES, I DID.

17 Q WHEN YOU WERE LOOKING AT IT, WHAT, IF ANYTHING, DID YOU
18 DETERMINE FROM THE PRINT THAT IS ON THAT RESIDENT ALIEN CARD
19 OF ISAIAS GUTIERREZ?

20 A THERE'S NO DOUBT SOME FORM OF LATENT PRINT ON THIS
21 ALIEN RESIDENT CARD. IT APPEARS TO BE THE TIP OF A FINGER. AND
22 CLOSER INSPECTION OF IT SHOWS, IT LOOKS LIKE THERE'S MORE THAN
23 ONE. IT ACTUALLY LOOKS LIKE THERE'S THREE DIFFERENT PRINTS ON
24 TOP OF EACH OTHER. THERE'S REALLY NOTHING I COULD TELL FROM
25 THIS PRINT ON THIS RESIDENT ALIEN CARD.

1 Q SO, IN OTHER WORDS, IT LOOKS LIKE AN OVERLAPPING KIND OF
2 PRINT?

3 A SO, THAT'S CORRECT. AND WHAT'S EVEN HARDER FOR US TO
4 EXAMINE IS, ANYTHING OUTSIDE ABOVE THE CORE, WAY ABOVE THE
5 CORE, WHICH WE CONSIDER FINGERTIPS, AND THAT'S WHAT IT LOOKS
6 LIKE. IT LOOKS LIKE THERE'S BEEN THREE DIFFERENT SETS OF
7 FINGERTIPS PLACED ON THIS CARD.

8 Q ALL RIGHT. AND SO, WERE YOU ACTUALLY ABLE TO READ
9 ANYTHING ON THAT CARD AS TO WHETHER THAT'S AN IDENTIFIABLE
10 PRINT?

11 A THIS IS NOT AN IDENTIFIABLE PRINT.

12 Q LET'S GO TO STATE'S EXHIBIT NUMBER EIGHT.

13 A YES SIR, I HAVE IT.

14 Q ON STATE'S EXHIBIT NUMBER EIGHT, DOES IT ALSO HAVE A
15 PRINT SOMEWHERE ON THAT CARD?

16 A YES SIR, THERE IS A INKED PRINT ON THE BACK OF THE CARD.

17 Q WHAT DOES THAT APPEAR TO BE, IN YOUR OPINION?

18 A THIS IS A-- IT APPEARS TO BE A LOOP. AND THE DIFFERENCE,
19 THE WHORLS CIRCLE AROUND, THE ARCH COMES IN FROM ONE SIDE
20 AND EXITS THE OTHER. THE LOOP STARTS FROM ONE SIDE, GOES UP
21 AND DOES A RE-CURVE AND GOES BACK OUT THE SAME SIDE IT
22 STARTED ON. AND THIS IS WHAT THIS IS.

23 Q AND THAT CARD ALSO PURPORTS TO BE ISAIAS GUTIERREZ. IS
24 THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND WERE YOU ABLE TO MATCH THAT AGAINST THE TEN-PRINT
2 CARD YOU HAD THAT YOU MATCHED THE CHECK WITH?

3 A NO, I WAS NOT ABLE TO. IT DOES NOT MATCH ANYTHING ON
4 THE TEN-PRINT CARD THAT I HAVE FOR MR. GUTIERREZ.

5 Q IS THERE SUFFICIENT DETAIL ON THAT PRINT THAT YOU COULD
6 MATCH IT IF YOU HAD THE PROPER PRINT TO MATCH IT TO?

7 A YES SIR, I BELIEVE SO.

8 Q SO, LOOKING AT THAT AND THEN LOOKING AT THE PRINTS ON
9 THAT TEN-PRINT CARD, DOES IT MATCH ANY OF ISAIAS GUTIERREZ'S
10 PRINTS?

11 A NOT ANY AT ALL. THERE'S NOTHING ON THE TEN-PRINT CARD
12 OF MR. GUTIERREZ THAT MATCHES THE PRINT THAT'S ON THIS
13 DRIVER'S LICENSE.

14 Q SO, THEN, IS IT YOUR OPINION THAT THE FINGERPRINT ON THAT
15 PARTICULAR CARD, STATE'S EXHIBIT NUMBER EIGHT, WHILE IT
16 PURPORTS TO BE ISAIAS GUTIERREZ'S, IS NOT ISAIAS GUTIERREZ'S?

17 A THAT'S CORRECT. THIS PRINT ON THIS IDENTIFICATION CARD,
18 DRIVER'S LICENSE, DOES NOT MATCH ANYTHING OF MR. GUTIERREZ.

19 Q THANK YOU, OFFICER GARDNER. PLEASE ANSWER ANY
20 QUESTIONS MR. CHIARENZA HAS.

21 **CROSS EXAMINATION BY MR. CHIARENZA:**

22 Q OFFICER, WAS YOUR INVOLVEMENT IN THIS CASE JUST LIMITED
23 TO FINGERPRINT COMPARISON?

24 A NO SIR. I DID GO TO THE SCENE, THE INITIAL SCENE, THE FIRST
25 DAY. I ASSISTED INVESTIGATOR WILLIAMS WITH PHOTOGRAPHS.

1 Q THEN YOU WERE PART OF THE PROCESSING OF THE SCENE?

2 A I PHOTOGRAPHED THE SCENE.

3 Q SO, YOU DIDN'T TAKE ANY FINGERPRINTS AT THE SCENE?

4 A NO SIR, I DID NOT.

5 Q ARE YOU AWARE OF-- DID ANYONE ELSE IN LAW

6 ENFORCEMENT, TO YOUR KNOWLEDGE, TAKE FINGERPRINTS OF THE
7 SCENE?

8 A I DON'T RECALL. I WANT TO SAY THAT WE - AND I SAY WE,

9 BECAUSE I INCLUDE MYSELF WHEN I TALK ABOUT MY UNIT - MAY

10 HAVE PROCESSED THE PHONE. BUT I'M NOT A HUNDRED PERCENT

11 SURE.

12 Q THAT'S FINE. HOW ABOUT ANY BLOOD SAMPLES? WERE YOU

13 AWARE IF ANY BLOOD WAS PROCESSED FROM THE SCENE?

14 A NO SIR, I'M NOT AWARE IF THERE WAS OR NOT.

15 Q ARE YOU AWARE OF ANY HAIR, HUMAN HAIR THAT WAS

16 RECOVERED AND PROCESSED FROM THE SCENE?

17 A NO SIR. I MEAN, I WAS THERE TO PHOTOGRAPH THE SCENE. AND

18 I WOULD ASSIST, IF I WAS ASKED TO WHATEVER. BUT I WAS NOT

19 ASKED TO DO THAT.

20 Q OKAY. SO, YOU-- AND I DON'T WANT TO BELABOR THE POINT.

21 SO, YOU SIMPLY PHOTOGRAPHED THAT SCENE?

22 A THAT'S PRETTY MUCH ALL I DID, WAS PHOTOGRAPH THAT

23 SCENE.

24 Q YOU WEREN'T ASKED TO COLLECT ANY ITEMS OF EVIDENCE?

25 A I DID NOT COLLECT ANY EVIDENCE.

1 Q YOU HAVE COLLECTED EVIDENCE IN OTHER CASES, THOUGH.

2 CORRECT?

3 A ON---

4 Q HUNDREDS, PROBABLY?

5 A THOUSANDS, PROBABLY.

6 Q THIS SCENE POTENTIALLY COULD HAVE LENT ITSELF-- IT
7 WOULD NOT HAVE BEEN OUT OF THE ORDINARY FOR SOMEONE TO
8 ASK YOU TO SEE IF YOU COULD COLLECT SOME FIBER EVIDENCE
9 SOMEWHERE AT THE SCENE?

10 A THAT'S CORRECT.

11 Q YOU WOULDN'T HAVE LOOKED AT THEM LIKE THEY WERE
12 CRAZY?

13 A NO, I WOULDN'T HAVE.

14 Q IT WOULDN'T HAVE BEEN OUT OF THE ORDINARY FOR
15 SOMEBODY TO TELL YOU TO TRY AND SWAB SOMETHING THAT
16 APPEARED TO BE BLOOD OR BODILY FLUIDS FROM THE SCENE?

17 A AND I'M NOT A HUNDRED PERCENT SURE WE DIDN'T COLLECT A
18 SAMPLE OF BLOOD FROM THE SCENE.

19 Q NO ONE ASKED YOU TO DO IT?

20 A I DID NOT DO IT.

21 Q AND IT WOULDN'T HAVE BEEN OUT OF THE ORDINARY FOR
22 SOMEBODY TO ASK YOU TO DUST FOR FINGERPRINTS AT THE SCENE?

23 A THAT'S CORRECT.

24 Q BUT YOU DIDN'T DO THAT?

1 A IF I MAY, WE HAVE-- THERE ARE CERTAIN OFFICERS THAT ARE
2 ASSIGNED TO A CASE, AS CASE AGENT FOR OUR UNIT, AND WE ROTATE
3 IT. THIS PARTICULAR CASE, INVESTIGATOR MIKE WILLIAMS WAS THE
4 CASE AGENT. HE WAS IN CHARGE. HE PRETTY MUCH DID EVERYTHING
5 THAT I KNOW OF.

6 Q AND WHEN HE TESTIFIES WE'LL ASK HIM. BUT I'M JUST ASKING
7 YOU, OFFICER, NO ONE ASKED YOU TO DO THESE THINGS.

8 A THAT'S CORRECT. I WAS NOT ASKED TO DO THAT.

9 Q SO, THEN, LIKEWISE, YOU DIDN'T LOOK FOR EVIDENCE OF A
10 FORCED ENTRY OR PROCESS ANY EVIDENCE RELATED TO THAT?

11 A I DIDN'T PROCESS ANYTHING, BUT WHEN I'M DOING MY
12 PHOTOGRAPHY WORK, I'M TAKING DETAILED PHOTOGRAPHS. I MEAN,
13 I PHOTOGRAPH AN OVERALL. THEN I'LL PHOTOGRAPH IT AGAIN, WITH
14 CLOSER-IN, DETAILED IMAGES. THEN, THEY'LL BE PROCESSED AGAIN
15 WITH NUMBER CONES.

16 Q BUT, AGAIN, YOUR ROLE IS LIMITED TO PHOTOGRAPHY?

17 A ON THIS GENERAL CASE, IT WAS JUST NOTHING BUT
18 PHOTOGRAPHY.

19 Q OKAY. SO, WE'RE LIMITING YOUR INVOLVEMENT HERE TO THE
20 FINGERPRINTS ON THE CHECKS, WHICH ARE CLEARLY MR.
21 GUTIERREZ'S PRINTS, BY YOUR TESTIMONY, AND BY THE STIPULATION.
22 HE PUT HIS FINGERPRINT ON THOSE CHECKS. AND THEN THERE'S--
23 YOU PHOTOGRAPHED THE SCENE AT THE TRAILER.

24 ARE THERE ANYTHING IN THOSE PHOTOGRAPHS THAT CAN
25 CONCLUSIVELY BE, IN THE PHOTOGRAPHS, THAT CONCLUSIVELY

1 IDENTIFY MR. GUTIERREZ AS THE PERPETRATOR OF ANY OF THE
2 CRIMES ALLEGED IN THIS CASE?

3 A NOT THAT I KNOW OF.

4 Q THANK YOU.

5 MR. CHIARENZA: THAT'S ALL I HAVE.

6 MR. THOMPSON: NO FURTHER QUESTIONS.

7 THE COURT: YOU MAY STEP DOWN.

8 MR. THOMPSON: YOUR HONOR, THE NEXT WITNESS WILL BE
9 LENGTHY. I THINK IT WOULD BE A GOOD TIME TO BREAK.

10 THE COURT: LADIES AND GENTLEMEN, WE'LL BREAK FOR
11 LUNCH NOW. WE'LL RESUME AT 2:15 THIS AFTERNOON. KEEP IN MIND
12 THE INSTRUCTIONS YOU'VE ALREADY RECEIVED. DON'T DISCUSS THE
13 CASE. DON'T READ ANY NEWSPAPER ARTICLES. DON'T LISTEN TO
14 ANYTHING ON THE RADIO ABOUT IT. DON'T WATCH ANYTHING ON TV.
15 DON'T CONDUCT YOUR OWN RESEARCH OR DO YOUR OWN
16 INVESTIGATION.

17 HAVE A GOOD LUNCH. WE'LL SEE YOU AT 2:15 THIS AFTERNOON.

18 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:45 P.M.)

19 WE'LL BE IN RECESS UNTIL 2:15.

20 COURT IN SESSION - 2:15 P.M.

21 THE COURT: MS. COLLINS.

22 MS. COLLINS: YES, YOUR HONOR. THE NEXT WITNESS FOR THE
23 STATE IS DANA BLACKMON. THERE ARE, I BELIEVE, THREE ISSUES
24 REGARDING THIS WITNESS WE SHOULD COVER BEFORE THE JURY
25 COMES IN. MS. BLACKMON FAILED A POLYGRAPH EXAM

1 ADMINISTERED BY THE SHERIFF'S DEPARTMENT ON JANUARY 6, 2003.
2 AND THEN SHE GAVE A STATEMENT-- SHE GAVE AN EARLIER
3 STATEMENT. SHE GAVE ANOTHER STATEMENT AFTER THAT. I
4 DISCUSSED THAT WITH MR. CHIARENZA, THE FACT THAT SHE FAILED
5 THAT TEST. MR. CHIARENZA HAS AGREED THAT, WHILE HE WILL
6 REFER TO HER CONVERSATION WITH LAW ENFORCEMENT, HE WILL
7 NOT OPEN UP THAT ISSUE OF THE POLYGRAPH FAILURE.

8 MR. CHIARENZA: THAT'S CORRECT, YOUR HONOR. ANY
9 QUESTIONS I ASK ABOUT THAT I WILL JUST COUCH IN TERMS OF AN
10 INTERVIEW, ONE OF SEVERAL INTERVIEWS SHE HAD WITH LAW
11 ENFORCEMENT. I WON'T INDICATE THAT THERE WAS IN FACT A
12 POLYGRAPH INTERVIEW THAT SHE HAD.

13 THE COURT: YOU'RE NOT GOING TO REFERENCE THE
14 POLYGRAPH?

15 MR. CHIARENZA: NO, I'M NOT; THAT'S CORRECT.

16 THE COURT: YOUR HONOR, THE NEXT ISSUE IS MS. BLACKMON'S
17 TESTIMONY. I WILL BE ASKING HER ABOUT THE STATE'S EXHIBIT
18 WHICH HAS BEEN PREMARKED 78, WHICH IS A KNIFE THAT SHE WOULD
19 TESTIFY WAS THE DEFENDANT'S THAT WAS GIVEN TO HIM BY A
20 RELATIVE AND THAT HE CARRIED IT ON HIM AT ALL TIMES.

21 IT'S MY UNDERSTANDING THAT MR. CHIARENZA WILL OBJECT
22 TO THAT. THE STATE WOULD CONTEND IT'S RELEVANT IN THAT HE--
23 AGAIN, SHE WILL TESTIFY THAT WHEN HE EXITED THE BUILDING
24 THAT, THE VICTIM'S BUILDING, THAT HE INDICATED HE DID CUT THE
25 PHONE CORD.

1 ALTHOUGH WE DO NOT HAVE A FORENSIC TEST THAT
2 ACTUALLY MATCHES THIS KNIFE TO THE CUTTING OF THE PHONE
3 CORD, I THINK THE TEST JUST REFLECTED THAT IT HAD BEEN CUT BY A
4 SHARP OBJECT, WE BELIEVE THAT IT WOULD BE RELEVANT THAT HE
5 HAD A KNIFE ON HIM, AND THAT HE HAD, IN FACT, THE ABILITY IN
6 THAT HE CARRIED THAT KNIFE AT ALL TIMES. IT WAS ULTIMATELY
7 LOCATED AT DANA BLACKMON'S, AND HIS, THE DEFENDANT'S
8 RESIDENCE.

9 MR. CHIARENZA: YOUR HONOR, AGAIN, I WOULD OBJECT TO
10 THAT BECAUSE NO COMPETENT EVIDENCE LEADING TO THIS
11 PARTICULAR KNIFE. SO, A KNIFE, JUST ON ITS OWN, THE EXISTENCE OF
12 A KNIFE IS MORE PREJUDICIAL THAN PROBATIVE IN THIS CASE.
13 THERE'S NO ALLEGATION THE KNIFE WAS USED IN THE ASSAULT.

14 THERE ARE SEVERAL TOOLS THAT ARE GOING TO BE
15 INTRODUCED THAT THERE IS SOME CORROBORATING EVIDENCE THAT
16 THESE, THROUGH FBI TESTING, THAT PERHAPS THESE TOOLS WERE
17 USED TO BREAK OPEN THE SAFE. SO, NO OBJECTION AS TO THOSE
18 ITEMS.

19 BUT, THERE WAS A CUT PHONE CORD, AND IT COULD HAVE BEEN
20 KNIFE IN THE WORLD, WHICH UNLESS THEY TESTED THIS KNIFE
21 AGAINST THE PHONE CORD, THERE'S NO CONCLUSIVE MATCH. SO,
22 WE'RE JUST OBJECTING TO THE KNIFE. IT'S NOT LINKED TO ANYTHING.
23 IT WOULD PREJUDICIAL TO INTRODUCE IT. I DON'T KNOW WHAT
24 RELEVANCE IT HAS TO THE VICTIM, TO THE ELEMENTS OF THIS CASE
25 THAT ARE ALLEGED.

1 THE COURT: MS. BLACKMON'S GOING TO TESTIFY THAT THE
2 DEFENDANT HAD THAT KNIFE ON THE DAY THIS HAPPENED?

3 MS. COLLINS: SHE'S GOING TO TESTIFY HE CARRIED THAT KNIFE
4 WITH HIM, IT'S MY UNDERSTANDING, AT ALL TIMES. I DON'T KNOW
5 THAT SHE PERSONALLY SAW IT AT THAT POINT RIGHT BEFORE HE
6 WENT IN TO THE TRAILER OF THE VICTIM.

7 THE COURT: BUT HER TESTIMONY IS THAT HE ALWAYS CARRIED
8 IT?

9 MS. COLLINS: YES SIR.

10 THE COURT: WELL, WHAT KIND OF KNIFE IS IT? LET ME SEE IT.

11 MS. COLLINS: IT IS A POCKET KNIFE WITH A WOLF EMBLEM ON
12 THE TOP.

13 THE COURT: OKAY. I OVERRULE THE OBJECTION.

14 MR. CHIARENZA: THANK YOU, YOUR HONOR. I WOULD ASK
15 THAT THAT OBJECTION BE ONGOING WHEN IT IS INTRODUCED SO I
16 WILL BE PROTECTED FOR THE RECORD WITHOUT HAVING TO OBJECT
17 AGAIN. IF THE COURT'S OKAY WITH THAT, I'LL ABIDE BY THE RULING,
18 OF COURSE, BUT I WANT TO CONTINUE MY OBJECTION.

19 THE COURT: I'M SATISFIED WITH IT. I DON'T KNOW WHAT SOME
20 APPELLATE COURT MIGHT THINK OF IT. I'M SATISFIED ONE YOU
21 OBJECT, YOU'VE OBJECTED.

22 MR. CHIARENZA: WHAT I AM ASKING IS THE COURT CONSIDER
23 MY OBJECTION TO BE ONGOING, SO THAT I WILL NOT HAVE TO GET UP
24 AND OBJECT AGAIN.

25 THE COURT: I'LL CONSIDER THAT OBJECTION TO BE ONGOING.

1 MR. CHIARENZA: THANK YOU.

2 MS. COLLINS: THE THIRD ISSUE, AND THE LAST ISSUE THAT I
3 THINK WE NEED TO TAKE UP OUTSIDE THE PRESENCE OF THE JURY IN
4 REGARD TO MS. BLACKMON'S TESTIMONY IS THAT SHE WILL BE
5 TESTIFYING IN RESPONSE TO MY QUESTIONS REGARDING THE NATURE
6 OF HER RELATIONSHIP WITH THE DEFENDANT, IN THAT IT WAS A
7 RELATIONSHIP SHE DESCRIBED AS ROCKY, AND IN TERMS OF WHY SHE
8 FELT COMPELLED THAT SHE NEEDED TO DO THIS, WHY SHE FELT
9 AFRAID NOT TO DO IT.

10 THE COURT: YOU SAY DO THIS AND DO THIS. WHAT ARE YOU
11 TALKING ABOUT?

12 MS. COLLINS: TO TAKE PART IN THIS ACTION, THE GOING OVER
13 TO ROB THE VICTIM.

14 THE COURT: THE CRIME.

15 MS. COLLINS: THANK YOU. AND THAT SHE, THAT THERE HAD
16 BEEN SOME PHYSICAL ABUSE BY THE DEFENDANT TO HER, AND THE
17 NATURE OF THEIR RELATIONSHIP, INCLUDING, AT ONE POINT, WHEN
18 SHE WAS PREGNANT WHERE SHE AGAIN FELT COMPELLED TO GO
19 ALONG WITH THE, BE INVOLVED IN THE DEFENDANT'S ACTIONS.

20 MR. CHIARENZA: MY CONCERN THERE, YOUR HONOR, WOULD
21 BE I JUST DON'T KNOW HOW DETAILED THEY WANT TO GET WITH THE
22 EVENTS THAT OCCURRED IN THIS RELATIONSHIP. MY CONCERN HERE
23 IS FOR THE INTRODUCTION OF PRIOR BAD ACTS THAT ARE NOT
24 NECESSARILY RELEVANT THAT THE JURY COULD UNFAIRLY HOLD
25 THOSE THINGS AGAINST HIM IN DECIDING THE MERITS OF THE CASE

1 THAT'S BEFORE THEM. SO, CLEARLY, THERE IS A PRIOR DOMESTIC
2 VIOLENCE CONVICTION THAT I THINK OTHERWISE WOULD NOT BE
3 ADMISSIBLE.

4 NOW, IT MAY WORK OUT THAT IT ULTIMATELY COMES IN, IN
5 ONE SHAPE OR FORM. BUT THERE ARE ALSO OTHER ALLEGATIONS OF
6 DOMESTIC VIOLENCE THAT DID NOT LEAD TO CHARGES OR
7 CONVICTIONS. SO, I JUST DON'T WANT THIS WITNESS TO GO INTO A
8 WHOLE HISTORY OF SOME SORT OF PARTICULAR BEHAVIOR ON THE
9 PART OF MY CLIENT REGARDING THESE PRIOR BAD ACTS.

10 IT ALMOST SOUNDS LIKE WHAT THEY'RE TRYING TO PUT HERE IS
11 THE-- SHE'S NOT A DEFENDANT, BUT BATTERED SPOUSE SYNDROME
12 SORT OF SITUATION. UNLESS THEY'RE PREPARED TO PRESENT AN
13 EXPERT ON THAT, I JUST DON'T KNOW THAT WE CAN GET INTO WHY
14 SHE COMMITTED THIS CRIME. YOU KNOW, IF IT'S I WAS SUBJECTED TO
15 HIS CONSTANT BEATINGS AND TORTURES, AND HE JUST MANIPULATED
16 ME AND I HAD NO WAY OF SAYING NO TO HIM. I'M JUST LOOKING FOR
17 SOME LINE TO BE DRAWN THERE. I UNDERSTAND IF IT'S, WELL, OUR
18 RELATIONSHIP WASN'T TOO GOOD, THAT'S ONE THING. BUT ALL THESE
19 SPECIFICS THAT I THINK WE'VE GOT SOME PROBLEMS WITH.

20 THE COURT: HOW FAR ARE YOU PLANNING ON GOING WITH
21 THAT? WHY CAN'T IT JUST BE LEFT AT THE POINT THAT THEY HAD A
22 RELATIONSHIP, THEY HAD SOME DIFFICULTIES. AND IF HER
23 TESTIMONY IS THE REASON SHE WENT ALONG WITH IT IS BECAUSE
24 SHE WAS AFRAID OF HIM, WE CAN LEAVE IT AT THAT. IT MIGHT BE
25 DURING CROSS EXAMINATION A LOT MORE INFORMATION COMES OUT.

1 BUT, SO FAR AS DIRECT GOES, I DON'T SEE WHY YOU NEED TO GO INTO
2 THE DOMESTIC VIOLENCE ISSUE.

3 MS. COLLINS: I HAD NOT PLANNED TO GO INTO IT IN ANY
4 DETAIL. AND IF THE DEFENSE ATTORNEY, HIMSELF, IS GOING TO
5 CHARACTERIZE HER AS A LIAR, AND PUTTING ON THE JURY THAT
6 SHE'S GOING TO COME IN AND LIE, WE CAN SAY THAT IF SHE GAVE,
7 WHICH SHE DID, ANY STATEMENT INITIALLY TO THE POLICE AS TO
8 WHY SHE WOULD HAVE DONE THAT, BUT---

9 THE COURT: WELL, THAT COMES IN IN REPLY, DOESN'T IT? I
10 MEAN, YOU DON'T KNOW WHAT HE'S GOING TO ASK HER YET.

11 MS. COLLINS: I AGREE, THAT WOULD BE CORRECT, YOUR
12 HONOR.

13 THE COURT: OKAY.

14 MS. COLLINS: BUT I'LL JUST ELICIT IT AS A ROCKY
15 RELATIONSHIP, THAT THERE WERE TIMES SHE WAS AFRAID OF HIM.

16 THE COURT: OKAY.

17 MS. COLLINS: I THINK THAT TAKES CARE OF THE ISSUES.

18 THE COURT: OKAY. BRING IN THE JURY, PLEASE.

19 (WHEREUPON THE JURY ENTERED THE COURTROOM)

20 GOOD AFTERNOON, LADIES AND GENTLEMEN. AS YOU KNOW,
21 WHEN WE RECESSED, THE STATE WAS STILL IN THE MIDST OF THEIR
22 PRESENTATION, SO WE'LL CONTINUE WITH THAT NOW. MS. COLLINS.

23 MS. COLLINS: THANK YOU, YOUR HONOR. THE STATE'S NEXT
24 WITNESS IS DANA BLACKMON. OFFICER, IF YOU WOULD BRING MS.
25 BLACKMON FROM THE HOLDING CELL. THANK YOU.

1 YOUR HONOR, THIS WITNESS WILL BE HANDLING A NUMBER OF
2 EXHIBITS, AND TO THAT END I WOULD RESPECTFULLY REQUEST THAT
3 THE OFFICER REMOVE HER HANDCUFFS.

4 THE COURT: THAT'S FINE. REMOVE THE HANDCUFFS, PLEASE.

5 DANA BLACKMON, DULY SWORN, TESTIFIED

6 AS FOLLOWS:

7 DIRECT EXAMINATION BY MS. COLLINS:

8 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE JURY?

9 A DANA BLACKMON.

10 Q DANA, SOMETIMES YOU HAVE A SOFT VOICE, AND YOU NEED TO
11 SPEAK UP SO EVERYONE CAN HEAR YOU.

12 A OKAY.

13 Q HOW OLD ARE YOU?

14 A TWENTY-EIGHT.

15 Q WHERE WERE YOU BORN?

16 A IN CHESTER COUNTY.

17 Q WHERE DID YOU GROW UP?

18 A IN RICHBURG, SOUTH CAROLINA.

19 Q IS THAT IN CHESTER COUNTY?

20 A YES MA'AM.

21 Q WHERE DID YOU ATTEND SCHOOL?

22 A LEWISVILLE HIGH SCHOOL.

23 Q DID YOU GRADUATE?

24 A NO MA'AM.

25 Q HOW FAR HAVE YOU GONE IN SCHOOL?

1 A TO THE TWELFTH.

2 Q HAVE YOU SUBSEQUENTLY OBTAINED YOUR GED?

3 A YES MA'AM.

4 Q WHEN DID YOU OBTAIN THAT?

5 A IN 2004, IN AUGUST.

6 Q I SEE THAT YOU'RE DRESSED IN PRISON GARB. CORRECT?

7 A YES MA'AM.

8 Q IN FACT, FOR THE PURPOSES OF THE RECORD, YOUR ANKLES

9 ARE SHACKLED. CORRECT?

10 A YES MA'AM.

11 Q AND YOU'RE CURRENTLY IN THE CUSTODY RIGHT NOW OF LAW

12 ENFORCEMENT, BUT YOU'RE ACTUALLY HOUSED IN THE SOUTH

13 CAROLINA DEPARTMENT OF CORRECTIONS. RIGHT?

14 A YES MA'AM.

15 Q AND YOU'VE BEEN IN THE DEPARTMENT OF CORRECTIONS SINCE

16 AUGUST OF 2003. IS THAT RIGHT?

17 A YES MA'AM.

18 Q BUT YOU'VE BEEN IN THE CUSTODY OF LAW ENFORCEMENT

19 SINCE JANUARY 3, 2003. CORRECT?

20 A YES MA'AM.

21 Q WE'LL GET BACK TO THAT IN A MOMENT. DANA, DO YOU KNOW

22 THE DEFENDANT, ISAIAS DIAZ GUTIERREZ, WHO IS SEATED OVER HERE

23 AT THE DEFENSE TABLE?

24 A YES MA'AM.

25 Q HOW DO YOU KNOW HIM?

- 1 A HE IS MY EX-BOYFRIEND, AND HE IS DESIREE'S DADDY, MY
2 YOUNGEST DAUGHTER'S DADDY.
- 3 Q YOU HAVE A CHILD WITH THE DEFENDANT NAMED DESIREE?
- 4 A YES MA'AM.
- 5 Q WHEN WAS DESIREE BORN?
- 6 A MARCH 29, 2003.
- 7 Q 2003?
- 8 A OR, '04. YEAH, 2003, UH-HUH.
- 9 Q WAS SHE BORN BEFORE OR AFTER THE INCIDENT INVOLVING
10 MR. CUBLEY'S DEATH?
- 11 A AFTER. SHE WAS EIGHT MONTHS OLD WHEN IT HAPPENED.
- 12 Q SO, SHE WAS BORN BEFORE MR. CUBLEY'S DEATH. IS THAT
13 RIGHT?
- 14 A YES MA'AM.
- 15 Q SHE WAS EIGHT MONTHS OLD IN DECEMBER OF 2002?
- 16 A YES MA'AM.
- 17 Q SO, THEREFORE, IS IT YOUR TESTIMONY THAT SHE WAS BORN IN
18 MARCH OF 2002?
- 19 A YES MA'AM.
- 20 Q YOU STATED THAT THE DEFENDANT WAS YOUR BOYFRIEND.
21 DID YOU CALL HIM ISAIAS, OR WHAT NAME DID YOU KNOW HIM BY?
- 22 A CHARRO.
- 23 Q DID YOU KNOW HIS FORMAL NAME WAS ISAIAS GUTIERREZ?
- 24 A YES MA'AM.
- 25 Q BUT YOU CALLED HIM CHARRO?

- 1 A YES MA'AM.
- 2 Q DID OTHERS CALL HIM CHARRO IN YOUR PRESENCE?
- 3 A YES MA'AM.
- 4 Q WHEN DID YOU FIRST MEET THE DEFENDANT?
- 5 A I MET HIM IN JANUARY OF 2001.
- 6 Q WHERE DID Y'ALL MEET?
- 7 A IN FORT MILL, THROUGH A FRIEND NAMED MISSY.
- 8 Q DID Y'ALL BEGIN SEEING EACH OTHER AT THAT TIME?
- 9 A YES MA'AM.
- 10 Q DID YOU BEGIN DATING?
- 11 A YES MA'AM.
- 12 Q AT WHAT POINT DID YOU BEGIN LIVING WITH THE DEFENDANT?
- 13 A WE STARTED LIVING TOGETHER FULL-TERM, LIKE, IN 2002.
- 14 Q NOW, YOU MENTIONED DESIREE. DO YOU HAVE ANOTHER
- 15 CHILD?
- 16 A YES MA'AM.
- 17 Q IS THAT A BOY OR A GIRL?
- 18 A A GIRL.
- 19 Q WHAT'S HER NAME?
- 20 A ASHLEY.
- 21 Q HOW OLD IS ASHLEY?
- 22 A ASHLEY'S NINE YEARS OLD.
- 23 Q DID YOU HAVE ASHLEY BY A PRIOR MARRIAGE?
- 24 A YES MA'AM.
- 25 Q BUT ULTIMATELY THAT RESULTED IN A DIVORCE?

1 A YES MA'AM.

2 Q AGAIN, - AND I'M SORRY I GOT OFF ON THE WRONG TRACK -
3 WHEN DID YOU START LIVING WITH THE DEFENDANT?

4 A IT WAS APPROXIMATELY 2002, FULL-TERM.

5 Q SO, YOU HAD DESIREE IN MARCH OF 2002. IS THAT RIGHT?

6 A YES MA'AM.

7 Q WHERE DID YOU FIRST BEGIN LIVING WITH THE DEFENDANT
8 FULL-TIME?

9 A FULL-TIME WAS ON TWIN LAKES ROAD IN ROCK HILL.

10 Q ALL RIGHT.

11 A FULL-TIME.

12 Q ALL RIGHT. WAS THAT BEFORE OR AFTER DESIREE'S BIRTH?

13 A THAT WAS AFTER DESIREE'S BIRTH.

14 Q DO YOU RECALL THAT SPECIFIC ADDRESS ON TWIN LAKES
15 ROAD?

16 A IT WAS, I THINK IT WAS EIGHTEEN-SOMETHING TWIN LAKES
17 ROAD. I'M NOT SURE OF THE ADDRESS.

18 Q COULD IT HAVE BEEN 1601? DO YOU RECALL?

19 A I THINK SO.

20 Q WHAT TYPE OF RESIDENCE WAS THAT?

21 A IT WAS A TRAILER PARK.

22 Q DO YOU REMEMBER WHICH LOT YOUR TRAILER WAS ON?

23 A NOT THE EXACT NUMBER, NO MA'AM.

24 Q WHO LIVED WITH YOU IN THAT TRAILER?

25 A ME, AND CHARRO, AND THE BABY, DESIREE.

1 Q NO ONE ELSE LIVED IN THAT TRAILER?

2 A NO MA'AM.

3 Q IS THAT WHERE YOU WERE LIVING WHEN LAW ENFORCEMENT,
4 DETECTIVE EDDIE STRAIT, CAME TO SPEAK TO YOU ABOUT THIS
5 INCIDENT IN JANUARY OF '03?

6 A YES MA'AM.

7 Q THAT'S WHERE YOU WERE LIVING WITH THE DEFENDANT IN
8 LATE DECEMBER, '02?

9 A YES MA'AM.

10 Q DANA, DID YOU WORK ANYWHERE IN DECEMBER OF '02?

11 A NO MA'AM.

12 Q WHEN WAS THE LAST TIME YOU HAD WORKED?

13 A I THINK IT WAS IN 2000, RIGHT BEFORE I GOT PREGNANT.

14 Q SO, AT THIS TIME YOU WERE A FULL-TIME MOTHER?

15 A YES MA'AM.

16 Q WAS ASHLEY LIVING WITH YOU?

17 A NO MA'AM.

18 Q BUT YOU HAD DESIREE THEN?

19 A YES MA'AM.

20 Q AND YOU SAID SHE WAS ABOUT EIGHT MONTHS?

21 A YES MA'AM.

22 Q WAS CHARRO WORKING THEN?

23 A YES MA'AM.

24 Q WHERE DID CHARRO WORK AT THAT TIME?

25 A HE WORKED AT FORT MILL FOR A GUY NAMED TERRY.

- 1 Q DID YOU EVER TAKE HIM TO WORK?
- 2 A YES MA'AM.
- 3 Q DID YOU EVER PICK HIM UP FROM WORK?
- 4 A YES MA'AM.
- 5 Q DID CHARRO, DID HE EVER DRIVE A CAR? WAS HE ABLE TO DO
- 6 THAT?
- 7 A YES MA'AM.
- 8 Q BUT YOU DROVE HIM?
- 9 A YES MA'AM.
- 10 Q DO YOU KNOW OR YOUR KNOWLEDGE WHAT DAYS OF THE
- 11 WEEK HE WORKED?
- 12 A MONDAY THROUGH FRIDAY, SOMETIMES ON SATURDAY.
- 13 Q WOULD IT BE EVERY SATURDAY?
- 14 A NO. LIKE, EVERY OTHER SATURDAY.
- 15 Q EVERY OTHER SATURDAY?
- 16 A UH-HUH.
- 17 Q WHAT TIME WOULD YOU DROP HIM OFF AT FORT MILL FOR THAT
- 18 JOB?
- 19 A AROUND EIGHT O'CLOCK IN THE MORNING.
- 20 Q WHAT TIME WOULD YOU PICK HIM UP?
- 21 A PROBABLY, SOMETIMES FOUR, FIVE O'CLOCK IN THE
- 22 AFTERNOON.
- 23 Q DURING THE COURSE OF YOUR RELATIONSHIP WITH THE
- 24 DEFENDANT, DID YOU MEET MEMBERS OF HIS FAMILY?
- 25 A YES, I DID.

1 Q WHAT MEMBERS OF HIS FAMILY DID YOU MEET?

2 A HIS BROTHER, RUEBEN; HIS BROTHER, AVAL; RUEBEN'S WIFE,
3 EDDIE; HYDA, HIS COUSIN; ALIA, HIS COUSIN.

4 Q WAS THERE ANOTHER MEMBER OF THE FAMILY NAMED
5 AMELIA?

6 A YES MA'AM, THAT'S HIS AUNT.

7 Q DID ANY MEMBERS OF THE FAMILY OF THE DEFENDANT, DID
8 THEY SOMETIMES KEEP THE BABY FOR YOU?

9 A SOMETIMES, AMELIA.

10 Q WHERE DID AMELIA LIVE?

11 A SHE LIVED ON CELANESE ROAD AT McGUIRE'S TRAILER PARK
12 BEHIND THE GREYHOUND STATION IN ROCK HILL.

13 Q NOW, DANA, YOU GREW UP SPEAKING ENGLISH. IS THAT
14 CORRECT?

15 A YES MA'AM.

16 Q IN THE COURSE OF YOUR RELATIONSHIP WITH THE DEFENDANT,
17 HOW DID YOU COMMUNICATE WITH CHARRO?

18 A SPEAKING ENGLISH.

19 Q DID YOU HAVE TO SPEAK SPANISH TO COMMUNICATE WITH
20 HIM?

21 A NO MA'AM.

22 Q DID YOU DURING THE COURSE OF THE RELATIONSHIP PICK UP
23 SOME SPANISH WORDS?

24 A YES MA'AM.

1 Q BUT, WOULD YOU CHARACTERIZE YOURSELF AS FLUENT IN
2 SPANISH?

3 A NO MA'AM.

4 Q AND SO, DID THE DEFENDANT SPEAK ENGLISH TO YOU?

5 A YES MA'AM, HE DID.

6 Q DO YOU KNOW OF YOUR OWN KNOWLEDGE WHETHER OR NOT
7 THE DEFENDANT COULD READ ENGLISH?

8 A YES MA'AM.

9 Q HAD YOU EVER OBSERVED HIM READING ENGLISH?

10 A YES MA'AM.

11 Q TELL THE JURY ABOUT THAT.

12 A HE COULD READ BOOKS. LIKE, NEWSPAPERS AND STUFF, HE
13 READ IN ENGLISH. HE COULD READ ENGLISH.

14 Q DID YOU OBSERVE THE DEFENDANT, CHARRO, WRITE ENGLISH?

15 A YES MA'AM.

16 Q TELL THE JURY ABOUT THAT?

17 A HE WROTE LETTERS AND STUFF AND HE ALSO WROTE ON THE
18 CHECKS IN ENGLISH.

19 Q DO YOU RECALL WHETHER OR NOT THE DEFENDANT IS RIGHT-
20 HANDED OR LEFT-HANDED?

21 A I BELIEVE HE'S RIGHT-HANDED.

22 Q WERE THERE TIMES WHEN HE DID THINGS WITH HIS LEFT HAND?

23 A SOMETIMES, YES MA'AM.

24 Q BUT YOU RECALL HIM AS BEING PREDOMINANTLY RIGHT-
25 HANDED?

1 A YES MA'AM.

2 Q NOW, DANA, HOW LONG WOULD YOU SAY-- HOW LONG DID YOU
3 ACTUALLY HAVE A RELATIONSHIP WITH THE DEFENDANT? YOU SAID
4 YOU FIRST MET HIM WHEN?

5 A JANUARY, 2001.

6 Q AND I BELIEVE YOU LAST SAW HIM IN EARLY JANUARY, 2003?

7 A YES MA'AM.

8 Q DURING THE TWO YEARS THAT YOU HAD THIS RELATIONSHIP
9 WITH THE DEFENDANT, DID YOU HAVE OCCASION TO EVER SEE HIM IN
10 POSSESSION OF ANY IDENTIFICATION FORMS?

11 A YES MA'AM.

12 Q I'D LIKE TO SHOW YOU WHAT'S ALREADY BEEN MARKED AS
13 STATE'S EXHIBIT FOR IDENTIFICATION AS STATE'S EXHIBIT EIGHT. IT'S
14 IN EVIDENCE AT THIS TIME. I'LL ASK YOU DO YOU RECOGNIZE THAT?

15 A YES MA'AM, I DO.

16 Q WHAT IS THAT?

17 A I REMEMBER THIS ID. I THINK IT'S JUST, LIKE, HIS LICENSE,
18 MEXICAN LICENSE.

19 Q IF YOU WILL SPEAK UP JUST A LITTLE BIT.

20 A OKAY.

21 Q DID YOU EVER SEE THE DEFENDANT, CHARRO, IN POSSESSION OF
22 THAT ID?

23 A YES MA'AM, I DID.

24 Q I'M GOING TO SHOW YOU ALSO WHAT'S IN EVIDENCE AS STATE'S
25 EXHIBIT NINE AND ASK YOU IF YOU RECOGNIZE THAT OBJECT.

1 A YES MA'AM.

2 Q WHAT IS THAT?

3 A THIS IS, LIKE, AN ID, A REGULAR ID, FOR WORK. AN ID, LIKE, FOR
4 WORK.

5 Q IS THAT YOUR ID?

6 A NO MA'AM.

7 Q WHOSE ID IS THAT?

8 A CHARRO'S ID.

9 Q DID YOU EVER SEE THE DEFENDANT IN POSSESSION OF THAT ID?

10 A YES MA'AM, I DID.

11 Q DO YOU HAVE ANY PARTICULAR KNOWLEDGE AS TO THAT
12 PARTICULAR ID, HOW IT WAS MADE?

13 A YES MA'AM. THIS ID IN PARTICULAR WAS MADE AT OUR HOUSE
14 IN THE BATHROOM. BECAUSE, WE HAVE A WHITE WALL, AND HE HAD
15 GO IN THERE AND GOT HIM. MOONDOG CAME OVER AND TOOK HIS
16 PICTURE IN THE BATHROOM OF OUR HOUSE. SO, THAT'S HOW THIS ID
17 WAS MADE.

18 Q AND ON THAT IDENTIFICATION, IT SAYS RESIDENT ALIEN. IS
19 THAT CORRECT?

20 A YES MA'AM.

21 Q DO YOU RECOGNIZE THE SHIRT THAT CHARRO WAS WEARING IN
22 THAT IDENTIFICATION PICTURE?

23 A YES MA'AM, I DO.

24 Q HOW DO YOU RECOGNIZE THAT SHIRT?

1 A BECAUSE THIS IS ONE OF THE SHIRTS I PICKED OUT FOR HIM AND
2 I GOT HIM.

3 Q HAD YOU BOUGHT THAT FOR HIM RECENTLY?

4 A YES MA'AM.

5 Q SO, HAD THE ID BEEN MADE RECENTLY?

6 A YES MA'AM.

7 Q DANA, AT THIS TIME, I WOULD LIKE TO SHOW YOU STATE'S
8 EXHIBIT NUMBER 71. I DON'T BELIEVE THAT'S IN EVIDENCE YET. DO
9 YOU RECOGNIZE THE ITEMS IN THAT PICTURE?

10 A YES MA'AM, I DO.

11 Q WHAT IS THAT A PICTURE OF?

12 A THIS IS A PICTURE OF THE BEDROOM WITH OUT CLOTHES IN IT,
13 ME AND CHARRO'S CLOTHES.

14 Q IS THAT A FAIR AND ACCURATE DEPICTION OF YOUR CLOTHING
15 AND THE DEFENDANT'S CLOTHING IN YOUR BEDROOM?

16 A YES MA'AM, IT IS.

17 Q DO YOU SEE IN THAT PICTURE, THE SHIRT THAT'S REFERENCED
18 THAT MR. CHARRO IS WEARING IN THE PICTURE HE HAD TAKEN IN
19 YOUR BATHROOM, THE RESIDENT ALIEN ID HE MADE?

20 A YES MA'AM, I DO.

21 MS. COLLINS: YOUR HONOR, AT THIS TIME I WOULD MOVE THAT
22 INTO EVIDENCE.

23 MR. CHIARENZA: NO OBJECTION.

24 THE COURT: IT'S ADMITTED.

25 MS. COLLINS: AND THAT WOULD BE STATE'S EXHIBIT 71.

1 (WHEREUPON STATE'S EXHIBIT NUMBER 71 WAS ADMITTED INTO
2 EVIDENCE WITHOUT OBJECTION)

3 MS. COLLINS: I WOULD ASK TO PUBLISH THAT TO THE JURY AT
4 THIS TIME.

5 (WHEREUPON STATE'S EXHIBIT 71 WAS PUBLISHED TO THE JURY
6 ON THE OVERHEAD PROJECTOR)

7 Q DANA, I REALIZE YOU'RE SHACKLED. I'M NOT GOING TO ASK
8 YOU TO STEP DOWN. BUT, IF YOU COULD-- CAN YOU SEE THE PICTURE
9 FROM WHERE YOU ARE?

10 A YES MA'AM.

11 Q NOW, THE SHIRT THAT YOU'VE IDENTIFIED THE DEFENDANT IS
12 WEARING IN THE RESIDENT ALIEN ID PICTURE MADE IN YOUR
13 BATHROOM, IS THAT TO THE RIGHT OR THE LEFT OF THE FILE?

14 A IT'S THE RIGHT.

15 Q AND WHAT COLOR IS IT?

16 A BLACK.

17 Q IS IT MORE THAN ONE COLOR?

18 A YES MA'AM. IT'S BLACK AND IT'S GOT THE WHITE STRIPES ON
19 THE SHOULDERS, BUT IT'S INSIDE-OUTWARDS.

20 Q WHERE IS IT IN RELATION TO THE PINK BLANKET TO THE RIGHT
21 OF THE FILE, OR THE PINK ITEM TO THE RIGHT OF FILE?

22 A IT'S, LIKE, UNDER THE BLANKET.

23 Q WHERE IS IT IN RELATION TO THE BLACK ITEM WITH RED?

1 A OKAY. IT'S RIGHT WHERE THE BLUE BASKET'S AT, AND THE PINK
2 BLANKET, AND THE GRAY SHIRT WITH THE RED ON IT. IT'S RIGHT IN
3 BETWEEN THOSE TWO ITEMS

4 Q ALL RIGHT.

5 A THE GRAY SHIRT WITH THE RED AND THE PINK BLANKET. THE
6 BLACK SHIRT IN BETWEEN THOSE TWO ITEMS.

7 Q DANA, JUST SO WE'RE CLEAR, AND I'M CERTAINLY NOT THE
8 WITNESS; YOU ARE. I APOLOGIZE. I AM GOING TO ASK YOU TO STEP
9 DOWN AND SHOW THE JURY WHAT YOU'RE REFERRING TO. WATCH
10 YOUR STEP.

11 (WHEREUPON THE WITNESS EXITED THE WITNESS STAND FOR
12 DEMONSTRATION WITH THE OVERHEARD PROJECTOR.)

13 CAN YOU JUST SHOW THE JURY SO THEY CAN SEE. PRESS THAT
14 AND SHOW WITH THE LITTLE, RED LIGHT.

15 A THIS IS THE SHIRT I'M TALKING ABOUT RIGHT HERE. IT'S INSIDE-
16 OUT.

17 Q ALL RIGHT. AND YOU SAY IT'S INSIDE-OUT?

18 A YES MA'AM.

19 Q THANK YOU. YOU CAN TAKE YOUR SEAT.

20 (WHEREUPON THE WITNESS RETURNED TO THE WITNESS STAND)

21 DANA, WHAT TYPE OF CAR DID YOU AND CHARRO HAVE PRIOR
22 TO THE INCIDENT INVOLVING MR. CUBLEY?

23 A IT WAS A BLUE PONTIAC 6000.

1 Q I'D LIKE TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS
2 STATE'S EXHIBIT 61 FOR IDENTIFICATION PURPOSES, AND ASK YOU IF
3 YOU RECOGNIZE THAT ITEM IN THAT PICTURE?

4 A YES MA'AM.

5 Q WHAT IS THAT?

6 A THAT'S THE BLUE PONTIAC 6000 CAR THAT WE OWNED.

7 Q WE BEING YOU AND THE DEFENDANT?

8 A YES MA'AM.

9 Q AND THAT WAS IN DECEMBER OF 2002?

10 A YES MA'AM.

11 Q BEFORE MR. CUBLEY'S DEATH?

12 A YES MA'AM.

13 Q IS THAT A FAIR AND ACCURATE DEPICTION OF THAT VEHICLE?

14 A YES MA'AM, IT IS.

15 MS. COLLINS: YOUR HONOR, I WOULD MOVE TO PUT THAT INTO
16 EVIDENCE AT THIS TIME, STATE'S EXHIBIT NUMBER 61.

17 MR. CHIARENZA: NO OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 (WHEREUPON STATE'S EXHIBIT NUMBER 61 WAS ADMITTED INTO
20 EVIDENCE WITHOUT OBJECTION)

21 MS. COLLINS: I WOULD ASK THAT BE PUBLISHED FOR THE JURY.

22 THE COURT: YOU MAY.

23 (WHEREUPON STATE'S EXHIBIT 61 WAS PUBLISHED FOR THE
24 JURY ON THE OVERHEAD PROJECTOR)

25 Q WHAT WAS THE CONDITION OF THAT CAR?

1 A IT WAS OFF AND ON IN RUNNING CONDITION. IT WASN'T IN THAT
2 GREAT A SHAPE AS FAR AS THE MOTOR'S CONSIDERED.

3 Q WAS THAT THE CAR Y'ALL TOOK OVER TO MR. CUBLEY'S HOUSE
4 ON DECEMBER 29, 2002?

5 A YES MA'AM.

6 Q IS THAT THE ONLY CAR Y'ALL HAD AT THAT TIME?

7 A YES MA'AM.

8 Q DANA, TELL US, IN DECEMBER OF 2002, WHAT WAS THE MONEY
9 SITUATION AT HOME WITH YOU AND CHARRO AND THE BABY.

10 A IT WASN'T THAT GREAT. IT WAS, LIKE, PAYCHECK TO
11 PAYCHECK, BECAUSE CHARRO WAS THE ONLY ONE WORKING AT THE
12 TIME.

13 Q AND CHARRO HAD BEEN THE ONLY ONE WORKING FOR A WHILE.

14 A YES MA'AM.

15 Q IS THAT RIGHT?

16 A YES MA'AM.

17 Q SO, HAD ANYTHING CHANGED RECENTLY ABOUT THE MONEY
18 SITUATION, OR HAD IT BEEN DIFFICULT FOR A WHILE?

19 A IT HAD BEEN DIFFICULT FOR A WHILE.

20 Q WHAT WAS THE RENT ON THAT TRAILER?

21 A I WOULD SAY \$75 TO \$100 A WEEK. I CAN'T REMEMBER THE
22 EXACT AMOUNT THAT IT WAS.

23 Q WAS THE CAR PAID FOR?

24 A YES MA'AM.

1 Q IN DECEMBER OF 2002, DID YOU HAVE AN OCCASION TO HAVE A
2 DISCUSSION WITH CHARRO REGARDING WHAT Y'ALL WERE GONNA DO
3 ABOUT MONEY?

4 A YES MA'AM.

5 Q WHO STARTED THAT CONVERSATION?

6 A CHARRO.

7 Q WHAT DID CHARRO SAY?

8 A CHARRO TOLD ME ABOUT A MAN WHO LIVED IN FORT MILL
9 NAMED CLARENCE CUBLEY WHO HAD HIS MONEY IN A SAFE. AND HE
10 SAID THAT, ABOUT GOING AND ROBBING HIM AND GETTING MONEY
11 AND GETTING THE SAFE FROM HIS HOUSE.

12 Q DID HE SAY WHERE IN FORT MILL MR. CUBLEY LIVED?

13 A HE JUST TOLD ME FORT MILL. I THINK IT WAS ON HIGHWAY 21.

14 Q HAD YOU EVER BEEN OVER THERE BEFORE?

15 A WHEN CHARRO USED TO LIVE THERE AND HE RENTED TRAILERS
16 FROM THERE, I USED TO STAY THERE SOMETIMES, BUT I DIDN'T LIVE
17 THERE FOR A RESIDENCE, NO MA'AM.

18 Q AND WHEN YOU STAYED THERE SOMETIMES, DID YOU STAY
19 THERE WITH CHARRO?

20 A YES MA'AM.

21 Q AND THAT WAS AT MR. CUBLEY'S TRAILER PARK ON THE 21 BY-
22 PASS IN FORT MILL?

23 A YES MA'AM.

24 Q HAD YOU MET MR. CUBLEY IN THAT CAPACITY?

1 A NOT ONE ON ONE. I SEEN HIM, BUT I NEVER MET HIM ONE ON
2 ONE.

3 Q HAD YOU EVER SEEN CHARRO INTERACT WITH MR. CUBLEY?

4 A I'VE SEEN HIM TALK, BUT, LIKE I SAY, I WASN'T THERE WITH HIM
5 AT THE TIME. I'VE SEEN HIM INTERACT AND TALK.

6 Q YOU SAID THAT CHARRO INDICATED THAT THIS MAN WOULD
7 HAVE MONEY. DID HE SAY HOW HE KNEW HE WOULD HAVE MONEY?

8 A HE JUST KNEW HE HAD MONEY IN THE SAFE BECAUSE HE
9 RENTED TRAILERS AND HAD MONEY, TO MY KNOWLEDGE.

10 Q WHEN CHARRO FIRST TOLD YOU ABOUT HIS IDEA OF GOING TO
11 ROB MR. CUBLEY, WHAT WAS YOUR REACTION TO IT? WHAT DID YOU
12 SAY?

13 A I TOLD HIM I DIDN'T WANT TO DO THAT, I WAS SCARED. I WAS
14 NOT GONNA DO THAT.

15 Q WHAT, IF ANY, STATEMENT DID HE MAKE ABOUT WHAT YOUR
16 PARTICIPATION WOULD BE?

17 A HE JUST SAID I HAD TO DO THAT BECAUSE, YOU KNOW, HE WAS
18 CONTROLLING. HE JUST SAID THAT I HAD TO DO THAT, AND I HAD TO
19 BE THE DRIVER TO DO IT.

20 Q NOW, YOU GREW UP AROUND HERE. RIGHT?

21 A YES MA'AM.

22 Q DOES YOUR FAMILY STILL LIVE AROUND HERE?

23 A YES MA'AM.

1 Q YOU SAID HE WAS CONTROLLING. WHAT DO YOU MEAN BY
2 THAT? THAT CHARRO WAS CONTROLLING, WHAT DO YOU MEAN BY
3 THAT?

4 A I MEAN THAT HE JUST TOLD ME WHAT TO DO ALL THE TIME AND
5 TIME ME WHERE I WENT, AND TOLD ME I HAD SUCH AND SUCH TIME
6 TO BE BACK AND WHAT TO DO. AND JUST A VERY CONTROLLING
7 RELATIONSHIP.

8 Q DANA, THIS IS THE YEAR, 2002. WHY DID YOU PUT UP WITH THAT
9 AS A WOMAN?

10 A BECAUSE I LOVED CHARRO.

11 Q DO YOU STILL LOVE HIM?

12 A I CAN'T SAY. IT'S JUST BECAUSE I HAVE A BABY WITH HIM, YOU
13 KNOW.

14 Q THAT KIND OF LOVE?

15 A YES MA'AM, IT IS.

16 Q AND HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP WITH
17 HIM, THEN, IN 2002?

18 A IT WAS A ROCKY, UP AND DOWN, BECAUSE OF CONTROL IN THE
19 RELATIONSHIP.

20 Q WERE THERE TIMES THAT YOU WERE AFRAID OF HIM?

21 A YES MA'AM, IT WAS.

22 Q SO, AFTER HE SAID, YES, YOU WOULD THAT, DID, IN FACT, THE
23 DAY COME THAT HE INDICATED TO YOU, TODAY'S THE DAY?

24 A YES MA'AM.

1 Q WAS THERE ANY REASON FOR THAT PARTICULAR DAY,
2 DECEMBER 29, 2002?

3 A NO MA'AM, NOT ANY REASON.

4 Q HOW MANY DAYS PRIOR TO THAT HAD Y'ALL BEEN DISCUSSING
5 IT?

6 A LIKE, FRIDAY EVENING OR SATURDAY, THE DAY BEFORE.

7 Q HAD CHARRO INDICATED WHETHER OR NOT HE EXPECTED
8 ANYONE TO BE THERE AT MR. CUBLEY'S HOME?

9 A HE SAID THERE WAS A POSSIBLE CHANCE. HE WASN'T SURE, BUT
10 THERE WAS A CHANCE THAT A MAN COULD BE THERE.

11 Q WHAT, IF ANYTHING, DID CHARRO SAY HE WOULD HAVE TO DO
12 IF SOMEONE WAS THERE?

13 A HE SAID THAT IF SOMEBODY HAPPENED TO BE THERE, THAT HE
14 WOULD DO WHAT HE HAD TO DO; HE WOULD EITHER HIT THEM OR
15 KNOCK THEM OUT OR DO WHAT HE WOULD HAVE TO DO.

16 Q AND DID YOU EXPRESS ANY OBJECTION OR CONCERN ABOUT
17 THAT COURSE OF ACTION?

18 A YES MA'AM.

19 Q WHAT DID HE SAY?

20 A HE JUST TOLD ME I HAD TO BE THE DRIVER. IT WAS THE SAME
21 STORY. I HAD TO BE THE DRIVER AND DO WHAT I HAD TO DO.

22 Q CHARRO HAD JUST DESCRIBED TO YOU ROBBING SOMEONE AND
23 POSSIBLY ASSAULTING THEM TO DO SO, WHY DIDN'T HE JUST DRIVE
24 HIMSELF?

25 A I GUESS HE JUST WANTED ME TO DO IT, JUST TO BE PART OF IT.

1 Q AND SO, DECEMBER 29, 2002, DID YOU DRIVE THE DEFENDANT,
2 ISAIAS GUTIERREZ, OTHERWISE KNOWN AS CHARRO GUTIERREZ, OVER
3 TO MR. CUBLEY'S RESIDENCE IN FORT MILL?

4 A YES MA'AM.

5 Q DANA, WHAT DID Y'ALL DO WITH THE BABY?

6 A WE TOOK HER TO EDDIE'S HOUSE, WHICH IS HIS BROTHER,
7 RUEBEN'S HOUSE, EDDIE AND AMELIA'S HOUSE IN ROCK HILL.

8 Q DID THEY KEEP THE BABY THERE?

9 A YES MA'AM.

10 Q WHAT DID Y'ALL TELL THEM ABOUT WHAT Y'ALL PLANNED TO
11 DO WHILE THEY WERE KEEPING THE BABY?

12 A WE DIDN'T-- WE JUST TOLD THEM WE WERE GOING OUT FOR A
13 LITTLE WHILE. WE DIDN'T TELL THEM EXACTLY WHAT WE WAS
14 DOING.

15 Q DID YOU GO UP TO THE DOOR AND HAND THE BABY OVER TO
16 THEM YOURSELF?

17 A CHARRO DID.

18 Q YOU WERE DRIVING THE CAR?

19 A YES MA'AM.

20 Q WHERE'D Y'ALL GO FROM THERE?

21 A WE WENT-- WE WAS ON THE WAY. AFTER WE DROPPED THE
22 BABY OFF IN FORT MILL, WE WENT FROM FORT MILL. WE WENT TO
23 MR. CLARENCE CUBLEY'S HOUSE.

24 Q AGAIN, THIS WAS ON THE HIGHWAY 21 BY-PASS IN FORT MILL?

25 A YES MA'AM.

1 Q CAN YOU TELL THE JURY, WHAT AT THAT TIME WAS CHARRO
2 WEARING?

3 A CHARRO HAD ON A BLACK SKI MASK, AND JEANS AND A
4 SWEATSHIRT, AND NIKE SHOES.

5 Q HAD YOU SEEN CHARRO IN THAT BLACK SKI MASK BEFORE?

6 A YES MA'AM, LIKE, IF IT WAS COULD OR SOMETHING. HE OWNED
7 A BLACK SKI MASK.

8 Q DANA, THIS HAS BEEN SEALED. I THINK YOU CAN JUST OPEN IT
9 WITH YOUR HANDS. I'M GOING TO ASK YOU TO OPEN THAT. IT'S BEEN
10 PREVIOUSLY MARKED AS STATE'S EXHIBIT 77. I WILL ASK YOU TO
11 LOOK AT THAT ITEM AND TELL ME IF YOU RECOGNIZE THAT ITEM.

12 A YES MA'AM.

13 Q WHAT IS THAT ITEM?

14 A THIS IS THE BLACK SKI MASK THAT WAS USED, THAT CHARRO
15 USED IN THE ROBBERY.

16 MS. COLLINS: YOUR HONOR, I WOULD MOVE STATE'S EXHIBIT
17 NUMBER 77 INTO EVIDENCE.

18 MR. CHIARENZA: NO OBJECTION.

19 THE COURT: IT'S ADMITTED.

20 (WHEREUPON STATE'S EXHIBIT NUMBER 77 WAS ADMITTED INTO
21 EVIDENCE WITHOUT OBJECTION)

22 Q NOW, WAS THIS SKI MASK KEPT IN ANY PARTICULAR LOCATION
23 IN YOUR TRAILER THAT YOU RESIDED IN WITH CHARRO?

24 A SOMETIMES HE WOULD KEEP IT IN THE DRAWER. SOMETIMES HE
25 WOULD LAY IT ON TOP OF THE DRESSER, DIFFERENT PLACES.

1 Q I'M GOING TO SHOW YOU NOW WHAT'S BEEN MARKED STATE'S
2 EXHIBIT 67 FOR THE PURPOSES OF IDENTIFICATION, AND ASK YOU CAN
3 YOU IDENTIFY WHAT'S IN THAT PICTURE?

4 A YES MA'AM. IT'S THE BLACK SKI MASK.

5 Q AND WAS THAT TAKEN IN A DRAWER IN YOUR HOME THAT YOU
6 SHARED WITH THE DEFENDANT ON TWIN LAKES ROAD IN ROCK HILL?

7 A YES MA'AM, IT'S IN A DRAWER.

8 MS. COLLINS: YOUR HONOR, I WOULD MOVE STATE'S EXHIBIT
9 NUMBER 67 INTO EVIDENCE.

10 MR. CHIARENZA: NO OBJECTION.

11 THE COURT: IT'S ADMITTED.

12 (WHEREUPON STATE'S EXHIBIT NUMBER 67 WAS ADMITTED INTO
13 EVIDENCE WITHOUT OBJECTION)

14 MS. COLLINS: I WOULD ASK THAT BE PUBLISHED FOR THE JURY.

15 THE COURT: YOU MAY.

16 (WHEREUPON STATE'S EXHIBIT 67 WAS PUBLISHED FOR THE
17 JURY ON THE OVERHEAD PROJECTOR)

18 Q THAT BLACK, ROUND ITEM TO THE RIGHT OF THE NUMBER
19 THREE, THAT IS THE SKI MASK THAT YOU IDENTIFIED AS STATE'S
20 EXHIBIT 67. IS THAT RIGHT?

21 A YES MA'AM.

22 Q AND THAT WAS CONTAINED IN A DRAWER IN YOUR HOME?

23 A YES MA'AM.

24 Q WHERE WAS THAT PIECE OF FURNITURE, WHAT ROOM?

25 A I BELIEVE THAT WAS THE BEDROOM.

- 1 Q I SEE THERE'S A CHILD'S TOY?
- 2 A YES MA'AM.
- 3 Q WAS THAT DESIREE'S?
- 4 A UH-HUH.
- 5 Q NOW, YOU'VE DESCRIBED THAT THE DEFENDANT WAS WEARING
- 6 THAT SKI MASK. AT WHAT POINT DID HE PUT ON THE SKI MASK?
- 7 A ON THE WAY UP THERE HE PUT IT ON, ON THE WAY TO THE
- 8 ROBBERY.
- 9 Q SO, AFTER HE LEFT AMELIA'S?
- 10 A YES MA'AM.
- 11 Q ON THE WAY TO THE ROBBERY?
- 12 A YES MA'AM.
- 13 Q DID HE GO AHEAD AT THAT POINT AND PULL IT ALL THE WAY
- 14 OVER HIS FACE, OR DID HE JUST LEAVE IT ON, LIKE A CAP?
- 15 A NO, HE HAD IT ON HIS FACE.
- 16 Q HOW FAR APPROXIMATELY DID AMELIA, WHERE YOU LEFT THE
- 17 BABY, LIVE FROM MR. CUBLEY'S HOUSE?
- 18 A APPROXIMATELY, MAYBE FIFTEEN, TWENTY MINUTES.
- 19 Q BY THIS TIME WAS IT DARK?
- 20 A YES MA'AM.
- 21 Q YOU DESCRIBED AGAIN, AND I KNOW I ASKED YOU THIS
- 22 SEVERAL TIMES, WHAT THE DEFENDANT WAS WEARING. WHAT, IF
- 23 ANYTHING, WAS HE WEARING ON HIS HANDS?
- 24 A HE HAD ON GLOVES.
- 25 Q WHAT TYPE OF GLOVES?

- 1 A TO MY KNOWLEDGE, THEY WERE, LIKE, GRAY GLOVES, MAYBE
2 RUBBER, GRAY GLOVES.
- 3 Q HAD YOU EVER SEEN THOSE GLOVES BEFORE THIS NIGHT?
- 4 A NO MA'AM.
- 5 Q DO YOU KNOW WHAT HAPPENED TO THOSE GLOVES AFTER THIS
6 INCIDENT?
- 7 A I REMEMBER FROM MY KNOWLEDGE, I REMEMBER THEY WAS
8 TOSSED OUT THE WINDOW.
- 9 Q THEY WERE TOSSED OUT THE WINDOW. WHO TOSSED THEM OUT
10 THE WINDOW?
- 11 A CHARRO DID.
- 12 Q WHAT WINDOW?
- 13 A ON THE PASSENGER'S SIDE.
- 14 Q OF THE CAR?
- 15 A YES MA'AM.
- 16 Q AND THAT WAS WHEN, IN RELATION TO MR. CUBLEY'S BEING
17 ASSAULTED?
- 18 A ON THE WAY BACK, WHEN WE LEFT.
- 19 Q BEFORE YOU PICKED UP THE BABY?
- 20 A YES MA'AM.
- 21 Q BEFORE YOU GOT HOME?
- 22 A YES MA'AM.
- 23 Q WHEN DID CHARRO PUT ON THE GLOVES?
- 24 A HE PUT ON THE GLOVES RIGHT BEFORE WE GOT THERE.
- 25 Q RIGHT BEFORE YOU GOT TO MR. CUBLEY'S?

1 A YES MA'AM.

2 Q YOU'VE INDICATED IT WAS NIGHTTIME BY THIS TIME? DO YOU
3 KNOW APPROXIMATELY WHAT TIME IT WAS?

4 A IT WAS LATE, PROBABLY AROUND EIGHT, NINE O'CLOCK AT
5 NIGHT.

6 Q AND, OF COURSE, I ASSUME THE HEADLIGHTS OF YOUR VEHICLE
7 WERE ON?

8 A YES MA'AM, UNTIL I GOT THERE.

9 Q WHEN YOU GOT THERE WHAT DID YOU DO?

10 A I PULLED IN AND I CUT THE HEADLIGHTS OFF.

11 Q WHERE WAS YOUR CAR IN RELATION TO MR. CUBLEY'S
12 TRAILER?

13 A IT WAS, LIKE, THERE'S A LITTLE OUTBUILDING, AND IT WAS,
14 LIKE, RIGHT IN FRONT OF THE STEPS, WHERE THE LITTLE PORCH, LIKE,
15 WAS AT. THAT WAS WHERE MY CAR WAS STATIONED, AT THE STEPS
16 TO THE FRONT DOOR.

17 Q WERE THERE ANY LIGHTS ON IN MR. CUBLEY'S RESIDENCE?

18 A I DIDN'T SEE REALLY SEE LIGHTS ON, BUT THERE WAS A PORCH
19 LIGHT ON.

20 Q THE PORCH LIGHT WAS ON?

21 A YES MA'AM.

22 Q COULD YOU SEE THE DOOR OF HIS TRAILER FROM THE LIGHT ON
23 THE PORCH?

24 A YES MA'AM.

1 Q WHAT DID CHARRO DO WHEN Y'ALL GOT TO MR. CUBLEY'S
2 RESIDENCE?

3 A HE GOT OUT AND IT WAS, LIKE, HE KNOCKED ON THE DOOR, AND
4 THEN THE DOOR OPENED AND HE RUSHED INSIDE. BUT RIGHT BEFORE
5 HE WENT IN HE PICKED, LIKE, A PIECE OF BLOCK UP, LIKE, A CEMENT
6 BLOCK WHEN HE RUSHED INSIDE THE HOUSE.

7 Q WHEN HE GOT OUT OF THE CAR DID HE GIVE YOU ANY FURTHER
8 INSTRUCTION AT THAT POINT?

9 A JUST TO STAY IN, STAY IN THE CAR.

10 Q IS THAT WHAT YOU DID AT THAT TIME?

11 A AT THAT TIME.

12 Q YOU SAID YOU'D NEVER MET MR. CUBLEY ONE ON ONE, BUT
13 YOU'D SEEN HIM AT THAT TRAILER PARK?

14 A YES MA'AM.

15 Q YOU KNEW HE WAS AN OLDER GENTLEMAN?

16 A YES MA'AM.

17 Q WHEN CHARRO TOLD YOU TO STAY IN THE CAR AND YOU WERE
18 SITTING IN THE CAR WITH THE KEYS, DID YOU GIVE SOME THOUGHT
19 AT THAT POINT TO JUST DRIVING OFF?

20 A YES MA'AM, I DID. BUT I WOULD THINK ABOUT THE
21 CONSEQUENCES AFTER.

22 Q WHAT CONSEQUENCES WERE THEY?

23 A THAT IF I LEFT HIM THERE THEY HE WOULD COME HOME AND
24 POSSIBLY HURT ME OR HURT SOMEBODY IN MY FAMILY. I WAS

1 SCARED FOR MYSELF AT THAT TIME. I HAD WENT TOO FAR. I
2 COULDN'T TURN BACK.

3 Q YOU SAID THAT CHARRO WENT UP THE STEPS OF THE TRAILER?

4 A YES MA'AM.

5 Q YOU SAID HE PICKED UP SOMETHING THAT LOOKED LIKE A
6 BLOCK. WHERE DID HE PUT THAT UP IN RELATION TO THE FRONT
7 PORCH?

8 A ON THE PORCH RIGHT OUTSIDE THE DOOR.

9 Q COULD YOU TELL WHICH HAND HE PICKED THAT UP IN?

10 A HE WAS BENT OVER THIS WAY, SO I'M ASSUMING IT WAS HIS
11 RIGHT HAND.

12 Q HE DIDN'T NEED TWO HANDS TO LIFT IT?

13 A NO MA'AM. IT WAS, LIKE, A SMALLER PIECE.

14 Q DID CHARRO KNOCK ON THE DOOR?

15 A YES MA'AM.

16 Q WHAT DID YOU OBSERVE WHEN HE KNOCKED ON THE DOOR?

17 A THE ONLY THING I OBSERVED, LIKE I SAY, I DIDN'T SEE
18 ANYBODY AND WHEN THE DOOR CAME OPEN HE RUSHED INSIDE. HE
19 JUST RAN INSIDE THE DOOR.

20 Q HOW LONG WAS IT UNTIL YOU SAW CHARRO COME BACK OUT
21 THAT DOOR?

22 A PROBABLY ABOUT TWENTY, THIRTY MINUTES.

23 Q NOW, THIS WAS IN DECEMBER. DID YOU HAVE YOUR CAR
24 WINDOWS UP OR DOWN?

1 A MINE WAS CRACKED A LITTLE BIT AND THE PASSENGER'S SIDE
2 WAS DOWN A LITTLE BIT, ON THE PASSENGER'S SIDE.

3 Q COULD YOU HEAR ANY NOISES COMING FROM THE TRAILER?

4 A SOME, BUT I COULDN'T REALLY HEAR, YOU KNOW, LIKE, A LOTS
5 OF NOISES, BUT I COULD HEAR SOME NOISES.

6 Q COULD YOU HEAR THEM ENOUGH TO DESCRIBE THEM?

7 A LIKE, MAYBE SOME BANGING, BUT I COULDN'T REALLY, YOU
8 KNOW, HEAR A LOT OF NOISE, BUT I HEARD SOME BANGING.

9 Q NOW, WHEN Y'ALL WENT OVER THERE TO SEE MR. CUBLEY,
10 Y'ALL WEREN'T GOING ON A SOCIAL VISIT. RIGHT?

11 A NO MA'AM.

12 Q YOU HAD NO REASON TO GO OVER THERE. RIGHT?

13 A NO MA'AM.

14 Q TO YOUR KNOWLEDGE, CHARRO HAD NO REASON, LEGITIMATE
15 REASON TO GO OVER THERE. RIGHT?

16 A RIGHT.

17 Q THE PURPOSE OF GOING OVER THERE AND GOING UP TO THAT
18 DOOR WAS TO ENTER AND ROB MR. CUBLEY. RIGHT?

19 A YES MA'AM.

20 Q AND IT WAS NECESSARY TO EFFECT THAT ROBBERY. RIGHT?

21 A YES MA'AM.

22 Q WHEN THE DOOR OPENED, YOU SAW HIM BUST INSIDE?

23 A YES MA'AM.

24 Q DID YOU SEE MR. CUBLEY AT ALL AS CHARRO RUSHED INSIDE?

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

1 Q YOU SAID IT WAS ABOUT HOW LONG, ABOUT TWENTY MINUTES?

2 A TWENTY, THIRTY MINUTES HE WAS IN THERE.

3 Q WHEN YOU SAW CHARRO COMING BACK OUT, WHAT DID YOU
4 SEE?

5 A HE HAD A SAFE. HE WAS CARRYING A SAFE WHEN HE COME
6 BACK OUT.

7 Q AND HOW WAS HE CARRYING THAT SAFE?

8 A HE WAS TOTING IT IN HIS ARMS, LIKE THIS. BUT HE WAS
9 NERVOUS AND STUFF.

10 Q DID HE APPEAR TO BE ABLE TO HANDLE IT?

11 A NO, HE DIDN'T.

12 Q WHAT DID YOU DO?

13 A I GOT OUT OF THE CAR AND I WENT ON THE PORCH AND I
14 HELPED HIM HOLD THE DOOR OPEN AND GET THE SAFE.

15 Q WHEN YOU HELD THE DOOR OPEN, WAS HE THEN ABLE TO
16 CARRY IT DOWN?

17 A YES MA'AM.

18 Q DID YOU SEE AT THAT TIME OR ANY TIME SUBSEQUENT
19 WHETHER OR NOT CHARRO HAD ANY BLOOD OR ANYTHING
20 ANYWHERE ON HIS BODY?

21 A AT THE TIME, LIKE I SAID, WHEN I FIRST WENT TO THE DOOR, I
22 DIDN'T PAY ATTENTION WHEN I WENT TO THE DOOR.

23 Q WAS THERE A LATER TIME THAT YOU NOTICED THAT?

24 A YES MA'AM.

25 Q TELL THE JURY WHEN THAT WAS.

- 1 A I SAW BLOOD ON HIS GLOVE WHEN HE GOT BACK IN THE CAR.
- 2 Q WHICH GLOVE DID YOU SEE IT ON?
- 3 A I BELIEVE IT WAS HIS RIGHT HAND.
- 4 Q DID YOU SEE BLOOD ANYWHERE ELSE ON CHARRO AT THAT
- 5 TIME?
- 6 A I BELIEVE IT WAS ON HIS SHOES. HE HAD A PAIR OF WHITE, NIKE
- 7 SHOES, AND I BELIEVE THERE WAS BLOOD ON HIS SHOES.
- 8 Q AND WHEN HE GOT BACK IN THE CAR, WHERE DID HE PUT THE
- 9 SAFE?
- 10 A HE PUT IT IN THE PASSENGER'S SEAT IN THE BACK.
- 11 Q WHAT, IF ANY INSTRUCTION DID HE GIVE YOU AT THAT TIME?
- 12 A HE TOLD ME JUST TO DRIVE AND GO BACK AND GET THE BABY.
- 13 Q DID HE DESCRIBE WHAT HAD HAPPENED INSIDE MR. CUBLEY'S
- 14 RESIDENCE?
- 15 A HE WAS-- I WAS SCARED. I WAS FREAKIN' OUT BECAUSE I SAW
- 16 BLOOD AND I DIDN'T KNOW WHAT WAS GOING ON, AND HE JUST TOLD
- 17 ME THAT HE HAD HIT-- THE MAN WENT FOR A GUN. HE THOUGHT THE
- 18 MAN HAD A GUN AND HE HAD TO DEFEND HIMSELF, SO HE FIGHTED
- 19 (SIC) HIM. AND WHEN HE FIGHTED HIM HE BEAT HIM.
- 20 Q AND DID HE SAY HOW HE FOUGHT HIM?
- 21 A HE SAID HIT HIM WITH THE BLOCK AND HE HIT HIM WITH HIS
- 22 FISTS AND KICKED HIM, HE TOLD ME.
- 23 Q THAT HE HIT HIM WITH THE BLOCK, HE HIT HIM WITH HIS FISTS
- 24 AND KICKED HIM?
- 25 A YES MA'AM.

- 1 Q PRIOR TO Y'ALL GOING OVER THERE DID HE MENTION THAT MR.
2 CUBLEY MIGHT HAVE A WEAPON?
- 3 A YES MA'AM.
- 4 Q AND I BELIEVE YOU INDICATED THAT HE THOUGHT THAT HE
5 WOULD HAVE MONEY?
- 6 A YES MA'AM.
- 7 Q AND THAT HE INDICATED THAT HE HAD A SAFE?
- 8 A YES MA'AM.
- 9 Q SO, WHEN CHARRO GOT IN, PUT THE SAFE IN THE BACK SEAT
10 AND TOLD YOU TO DRIVE, DID YOU DRIVE?
- 11 A YES MA'AM, I DID.
- 12 Q WHERE'D YOU GO?
- 13 A I WENT TO PICK UP THE BABY AT EDDIE'S AND AMELIA'S HOUSE.
- 14 Q AND AS Y'ALL DROVE TO EDDIE AND AMELIA'S HOUSE WHAT, IF
15 ANYTHING, DID CHARRO DO REGARDING HIS GLOVES AT THAT TIME?
- 16 A HE THREW THEM OUT THE WINDOW, PUT THEM IN A PLASTIC
17 BAG AND TOSSED THEM OUT THE WINDOW ON THE WAY BACK.
- 18 Q WHEN YOU GOT TO EDDIE AND AMELIA'S HOUSE, WHO GOT OUT
19 OF THE CAR TO GET DESIREE?
- 20 A CHARRO DID.
- 21 Q DID THEY COME OUT TO THE CAR?
- 22 A NO MA'AM.
- 23 Q DID EITHER OF THEM SEE THE SAFE IN THE CAR?
- 24 A NO MA'AM.

1 Q WHEN HE BROUGHT DESIREE OUT DID HE PUT HER IN THE BACK
2 SEAT?

3 A YES MA'AM.

4 Q BY THE SAFE?

5 A YES MA'AM.

6 Q THEN WHERE DID YOU GO?

7 A WE WENT HOME ON TWIN LAKES ROAD.

8 Q WHEN YOU GOT HOME TO TWIN LAKES ROAD, WHAT DID Y'ALL
9 DO?

10 A I GOT THE BABY OUT AND I WENT INTO THE HOUSE AND
11 CHARRO GOT THE SAFE IN AND WENT INTO THE HOUSE.

12 Q AT ANY TIME DID CHARRO SAY ANYTHING ABOUT THE VICTIM'S
13 TELEPHONE?

14 A YES MA'AM.

15 Q WHAT DID HE SAY?

16 A HE SAID THAT HE WOULD CUT THE CORD SO THAT HE COULDN'T,
17 THE MAN COULDN'T CALL THE POLICE.

18 Q HE SAID THAT PRIOR TO GOING OVER THERE?

19 A YES MA'AM.

20 Q DID HE SAY ANYTHING AFTER THE INCIDENT ABOUT HAVING
21 DONE THAT?

22 A TO MY KNOWLEDGE, I THINK HE MENTIONED IT AGAIN. I CAN'T
23 REMEMBER.

1 Q OKAY. NOW, DO YOU KNOW OF YOUR OWN KNOWLEDGE,
2 WHETHER CHARRO WOULD HAVE HAD SOMETHING ON HIM TO CUT
3 THE CORD?

4 A YES MA'AM. HE WOULD HAVE HAD A WOLF KNIFE THAT WAS
5 GAVEN (SIC) TO HIM BY MY MOTHER AT CHRISTMAS OF 2002.

6 Q I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT 78 FOR IDENTIFICATION. IT'S A CLEAR BAG. YOU CAN SEE THE
8 ITEM IN THERE WITHOUT TAKING IT OUT.

9 A YES MA'AM.

10 Q DO YOU RECOGNIZE THAT ITEM?

11 A YES MA'AM, I DO.

12 Q WHAT IS IT?

13 A THIS IS THE KNIFE THAT WAS GIVEN TO HIM BY MY MOTHER IN
14 2002, AT CHRISTMASTIME.

15 Q GIVEN TO WHO?

16 A TO CHARRO.

17 Q AND THAT WAS WHAT YEAR?

18 A 2002, CHRISTMAS.

19 Q SO, IT WAS JUST GIVEN TO HIM A FEW DAYS BEFORE Y'ALL WENT
20 OVER TO MR. CUBLEY'S HOUSE?

21 A YES MA'AM.

22 Q AND ONCE IT WAS GIVEN TO HIM, IS YOUR TESTIMONY HE
23 WOULD CARRY IT ON HIM?

24 A YES MA'AM.

1 MS. COLLINS: YOUR HONOR, I MOVE STATE'S EXHIBIT 78,
2 EVIDENCE AT THIS TIME.

3 MR. CHIARENZA: SUBJECT TO OBJECTION.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON STATE'S EXHIBIT NUMBER 78 WAS ADMITTED INTO
6 EVIDENCE SUBJECT TO OBJECTION)

7 Q DANA, I'M GOING TO SHOW YOU STATE'S EXHIBIT 66, NOW AND
8 ASK IF YOU RECOGNIZE THE ITEM IN THAT PHOTOGRAPH.

9 A YES MA'AM.

10 Q WHAT IS THAT?

11 A THIS IS THE KNIFE THAT MY MOTHER GAVE HIM IN 2002 AT
12 CHRISTMASTIME.

13 Q WHERE IS THAT KNIFE LOCATED IN THAT PICTURE?

14 A I BELIEVE THIS IS IN A DRAWER IN EITHER THE LIVING ROOM OR
15 THE BEDROOM.

16 Q OF WHAT HOME?

17 A OF ME AND CHARRO'S HOUSE ON TWIN LAKES ROAD, THE
18 TRAILER.

19 Q IS THAT A FAIR AND ACCURATE DEPICTION OF THE KNIFE AS
20 YOU KNOW IT?

21 A YES MA'AM.

22 MS. COLLINS: YOUR HONOR, I MOVE STATE'S EXHIBIT 66 INTO
23 EVIDENCE AT THIS TIME.

24 MR. CHIARENZA: BEING THAT IT'S A PHOTO, I WOULD HAVE THE
25 SAME OBJECTION.

1 THE COURT: IT'S ADMITTED OVER OBJECTION.

2 (WHEREUPON STATE'S EXHIBIT NUMBER 66 WAS ADMITTED INTO
3 EVIDENCE SUBJECT TO OBJECTION)

4 MS. COLLINS: I WOULD ASK TO PUBLISH THAT TO THE JURY AT
5 THE TIME.

6 THE COURT: YOU MAY.

7 (WHEREUPON STATE'S EXHIBIT 66 WAS PUBLISHED TO JURY BY
8 WAY OF OVERHEAD PROJECTOR.)

9 Q THAT'S A PICTURE OF THE ITEM THAT YOU HAVE IDENTIFIED?

10 A YES MA'AM.

11 Q AND THAT'S IN A DRAWER IN YOUR HOME?

12 A YES MA'AM.

13 Q RETURNING TO Y'ALL HAD GOTTEN HOME, AND YOU WENT
14 INSIDE WITH THE BABY. CORRECT?

15 A YES MA'AM.

16 Q DO YOU KNOW ABOUT WHAT TIME IT WAS WHEN Y'ALL GOT
17 BACK TO YOUR HOME ON TWIN LAKES ROAD?

18 A APPROXIMATELY, MAYBE TEN, SOMETHING TO ELEVEN O'CLOCK
19 AT NIGHT.

20 Q DID CHARRO CARRY THE SAFE INSIDE AT THAT TIME?

21 A YES MA'AM.

22 Q DID HE HAVE ANY TROUBLE AT THAT TIME GETTING THE SAFE
23 INSIDE BY HIMSELF?

24 A NO MA'AM.

25 Q WHEN HE BROUGHT THE SAFE IN, WHERE DID HE PUT IT?

- 1 A HE PUT IT IN THE LIVING ROOM AREA.
- 2 Q WHAT DID HE DO WITH IT?
- 3 A HE SET IT DOWN. HE WENT TO GET A CROWBAR AND A HAMMER
- 4 TO PRY IT OPEN.
- 5 Q WHERE DID YOU PUT THE BABY?
- 6 A I SET HER ON THE SOFA IN THE LIVING ROOM.
- 7 Q WHERE DID THE BABY NORMALLY SLEEP?
- 8 A SHE HAD A BASSINET IN OUR BEDROOM.
- 9 Q YOU DIDN'T PUT HER IN THE BASSINET?
- 10 A NO MA'AM.
- 11 Q YOU PUT HER ON THE SOFA IN THE LIVING ROOM?
- 12 A YES MA'AM.
- 13 Q AND YOU SAID CHARRO WENT TO GET A CROW BAR?
- 14 A YES MA'AM.
- 15 Q DID HE GET ANY OTHER TOOLS?
- 16 A A HAMMER, ALSO.
- 17 Q WHAT DID HE DO WITH THOSE TOOLS?
- 18 A HE USED THE PRY BAR, OR THE CROW BAR, AND THE HAMMER,
- 19 AND HE OPENED UP THE SAFE.
- 20 Q WERE YOU IN THE ROOM AT THAT TIME?
- 21 A YES MA'AM.
- 22 Q DID YOU AT ANY TIME DURING THIS DAY-- HOW WAS MR.
- 23 CUBLEY WHEN YOU LEFT HIM, DID YOU ASK HIM ABOUT THAT?

1 A YES MA'AM. LIKE I SAID, HE TOLD ME THAT HE HAD BEAT HIM
2 AND HIT HIM WITH THE BLOCK, YOU KNOW, AND I WAS SCARED TO
3 ASK OR DO ANYTHING. I WAS SCARED.

4 Q BUT Y'ALL DID HAVE A PHONE IN YOUR HOME?

5 A YES MA'AM.

6 Q YOU DID HAVE A TELEPHONE?

7 A YES MA'AM.

8 Q YOU DIDN'T HAVE A CELL PHONE IN YOUR CAR?

9 A NO MA'AM.

10 Q WHAT WAS IN THE SAFE WHEN CHARRO MANAGED TO OPEN IT?

11 A I REMEMBER, LIKE, A TITLE TO A DODGE TRUCK, A WALLET,
12 LIKE, A CREDIT CARD, A PHILLIPS CARD. AND MAYBE SOME MONEY
13 AND SOME PICTURES WAS IN THE SAFE.

14 Q DO YOU KNOW WHETHER OR NOT THERE WAS ANY MONEY IN
15 THE WALLET?

16 A YES MA'AM.

17 Q HOW MUCH?

18 A POSSIBLY, MAYBE \$50, \$55 IN THE WALLET.

19 Q IS THIS THE AMOUNT OF MONEY THAT YOU AND CHARRO
20 THOUGHT YOU WOULD GET OUT OF ALL THIS?

21 A NO MA'AM.

22 Q WHAT DID CHARRO SAY WHEN HE SAW THAT WAS ALL THAT
23 WAS IN THE SAFE?

24 A HE SAID THAT WASN'T NOTHING IN THERE, SO HE DID IT FOR
25 NOTHING.

1 Q YOU MENTIONED A PHILLIPS CARD. WAS THERE ANOTHER TYPE
2 OF CARD THERE?

3 A YES MA'AM. IT WAS, LIKE, A DISCOVER CARD, SOME KIND OF
4 CREDIT CARD THAT WAS IN THERE.

5 Q AND YOU MENTIONED A CHECKBOOK. IS THAT RIGHT?

6 A YES MA'AM.

7 Q DID YOU LOOK AT THE CHECKBOOK YOURSELF?

8 A I THINK I GLANCED A LITTLE BIT. I DIDN'T REALLY READ IT.

9 Q WOULD YOU DESCRIBE THE WALLET FOR THE JURY, HOW IT
10 LOOKED?

11 A IT WAS, LIKE, A REGULAR SIZE WALLET. IT MIGHT HAVE HAD A
12 CHAIN OR SOMETHING ON IT, BUT IT WAS, LIKE, A REGULAR SIZE
13 WALLET, BLACK.

14 Q DANA, I'M GOING TO SHOW YOU THIS, IT'S STATE'S EXHIBIT ONE,
15 AND IT'S NOT IN EVIDENCE. DO YOU RECOGNIZE WHAT THAT'S A
16 PICTURE OF?

17 A YES MA'AM.

18 Q WHAT IS THAT A PICTURE OF?

19 A THIS IS A PICTURE OF THE SAFE THAT WAS IN MR. CUBLEY'S
20 HOUSE.

21 Q IS THAT THE SAFE THAT CHARRO TOOK TO YOUR HOME?

22 A YES MA'AM, IT IS.

23 Q IS THAT THE SAFE THAT CHARRO PRIED OPEN IN FRONT OF YOU?

24 A YES MA'AM.

1 Q IS THAT A FAIR AND ACCURATE DEPICTION OF THE SAFE AFTER
2 CHARRO PRIED IT OPEN.

3 MS. COLLINS: YOUR HONOR, I WOULD ASK TO ENTER THIS INTO
4 EVIDENCE AT THAT TIME.

5 MR. CHIARENZA: I'M GOING TO OBJECT, YOUR HONOR. THERE'S
6 NO TESTIMONY OF WHERE IT WAS TAKEN AND BY WHOM. I THINK IT
7 WILL COME EVENTUALLY, BUT NOT THROUGH THIS WITNESS.

8 THE COURT: OVERRULED.

9 (WHEREUPON STATE'S EXHIBIT NUMBER ONE WAS ADMITTED INTO
10 EVIDENCE OVER OBJECTION)

11 MS. COLLINS: I WOULD ASK PERMISSION TO PUBLISH TO JURY
12 AT THIS TIME.

13 THE COURT: ALL RIGHT.

14 (WHEREUPON STATE'S EXHIBIT NUMBER ONE WAS PUBLISHED TO THE
15 JURY BY WAY OF OVERHEAD PROJECTOR.)

16 Q IS THAT HOW THAT SAFE LOOKED WHEN YOU LAST SAW IT?

17 A YES MA'AM.

18 Q AFTER CHARRO OPENED IT UP AND FOUND THE ITEMS THAT
19 YOU'VE DESCRIBED, WHAT, IF ANYTHING, DID HE DO WITH THAT SAFE?

20 A HE TOOK IT TO THE BRIDGE BELOW OUR HOUSE AND THREW IT
21 OUT.

22 Q DID HE ASK YOU TO GO WITH HIM?

23 A YES MA'AM.

24 Q DID YOU GO WITH HIM?

25 A NO MA'AM.

1 Q WHAT DID YOU DO AT THAT TIME?

2 A I STAYED WITH THE BABY.

3 Q DID HE TELL YOU THAT'S WHERE HE WAS GOING TO TAKE IT?

4 A YES MA'AM.

5 Q AFTER HE TOOK IT, DID HE TELL YOU THAT'S WHERE HE TOOK
6 IT?

7 A YES MA'AM.

8 Q HOW FAR IS THAT BRIDGE FROM YOUR HOME APPROXIMATELY?

9 A MAYBE, FIVE, SIX, SEVEN MINUTES BELOW OUR HOUSE.

10 Q WHEN DID HE TAKE THE SAFE THERE?

11 A AS SOON AS HE PRIED IT OPEN AND GOT EVERYTHING OUT OF IT,
12 HE TOOK IT DOWN AND THREW IT OFF THE BRIDGE BELOW OUR
13 HOUSE.

14 Q DID HE PUT ANYTHING IN IT WHEN HE TOOK IT TO THROW OVER
15 THE BRIDGE?

16 A I THINK HE TRIED TO STUFF HIS NIKE SHOES IN IT. AND HE
17 PROBABLY THREW, LIKE, THE WALLET OR SOMETHING BACK IN IT.
18 AND HE LEFT EVERYTHING ELSE IN AND HE KEPT THE CHECKBOOK
19 AND THE CREDIT CARD.

20 Q HE KEPT THE ENTIRE CHECKBOOK AND THE CREDIT CARD?

21 A YES MA'AM.

22 Q AND THESE WERE THE SHOES HE WAS WEARING AT THE TIME
23 HE ASSAULTED MR. CUBLEY?

24 A YES MA'AM.

25 Q THE SHOES YOU THOUGHT HAD SOME BLOOD ON THEM?

1 A YES MA'AM.

2 Q DID YOU EVER SEE THOSE SHOES AGAIN?

3 A NOT AFTER THAT NIGHT, NO MA'AM.

4 Q DANA, YOU TESTIFIED THAT CHARRO USED CERTAIN TOOLS. I
5 WANT TO SHOW YOU SOME ITEMS RELATING TO THAT. FIRST I WANT
6 TO SHOW YOU STATE'S EXHIBIT 79, WHICH HAS BEEN MARKED FOR
7 IDENTIFICATION. I WOULD ASK YOU TO OPEN THAT AND LOOK AT
8 THAT AND SEE IF YOU RECOGNIZE IT.

9 A YES MA'AM, I DO.

10 Q WHAT IS THAT?

11 A IT'S THE HAMMER THAT HE USED WITH THE CROW BAR ON THE
12 SAFE.

13 MS. COLLINS: YOUR HONOR, I'D MOVE THAT INTO EVIDENCE AT
14 THIS TIME.

15 MR. CHIARENZA: NO OBJECTION.

16 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

17 (WHEREUPON STATE'S EXHIBIT 79 WAS ADMITTED INTO EVIDENCE
18 WITHOUT OBJECTION)

19 Q DANA, NOW, I'M GOING TO SHOW YOU WHAT'S BEEN
20 PREVIOUSLY MARKED AS STATE'S EXHIBIT 72, WHICH I'VE SHOWN TO
21 DEFENSE COUNSEL, AND ASK DO YOU RECOGNIZE THE OBJECT IN
22 THAT PICTURE?

23 A YES MA'AM, I DO.

24 Q WHAT IS THAT?

1 A THIS IS THE HAMMER THAT HE USED TO OPEN THE SAFE WITH,
2 WITH THE PRY BAR.

3 Q BY HE, DO YOU MEAN CHARRO?

4 A YES MA'AM.

5 Q AND WHERE WAS THAT HAMMER LOCATED AS SHOWN IN THE
6 PICTURE?

7 A THIS WAS IN THE BEDROOM OF THE TRAILER.

8 Q WHERE?

9 A IN OUR BEDROOM IN THE TRAILER ON TWIN LAKES ROAD.

10 Q ON TWIN LAKES ROAD?

11 A YES MA'AM.

12 Q DOES THAT PICTURE FAIRLY AND ACCURATELY DEPICT THAT
13 HAMMER IN YOUR BEDROOM THE LAST TIME YOU SAW IT?

14 A YES MA'AM.

15 MS. COLLINS: YOUR HONOR, I'D MOVE STATE'S EXHIBIT 72 INTO
16 EVIDENCE AT THIS TIME.

17 MR. CHIARENZA: NO OBJECTION.

18 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

19 (WHEREUPON STATE'S EXHIBIT 72 WAS ADMITTED INTO EVIDENCE WITHOUT
20 OBJECTION)

21 MS. COLLINS: I WOULD ASK TO PUBLISH IT TO THE JURY.

22 (WHEREUPON STATE'S EXHIBIT 72 WAS PUBLISHED TO THE JURY BY WAY OF
23 THE OVERHEAD PROJECTOR)

24 Q SO, IMMEDIATELY ABOVE NUMBER FIVE IS THE HAMMER THAT
25 WE JUST SAW. IS THAT RIGHT?

1 A YES MA'AM.

2 Q NOW, THERE APPEARS TO BE SOME CLOTHES THAT WE'VE SEEN
3 BEFORE. IS THIS THE SAME CLOTHING THAT WAS OUT OF THE BASKET
4 THAT YOU ID'D EARLIER?

5 A YES MA'AM.

6 Q I BELIEVE THAT'S THE PINK BLANKET UNDERNEATH FIVE?

7 A YES MA'AM.

8 Q DANA, YOU ALSO MENTIONED SOME OTHER TOOLS. I'M GOING
9 TO SHOW YOU STATE'S EXHIBIT 80. I'LL HAVE YOU OPEN THAT AND
10 LOOK AT THAT AND SEE IF YOU CAN IDENTIFY THAT, PLEASE.

11 A YES MA'AM.

12 Q WHAT IS THAT?

13 A IT'S A SCREWDRIVER.

14 Q IT'S THE SCREWDRIVER THAT WHAT? WHOSE SCREWDRIVER?

15 A THIS IS CHARRO'S SCREWDRIVER.

16 Q WHAT DID YOU SEE HIM DO WITH THAT THE LAST TIME YOU
17 SAW IT USED?

18 A I SAW HIM USE IT WITH THE SAFE.

19 MS. COLLINS: YOUR HONOR, I'D MOVE STATE'S EXHIBIT 80 INTO
20 EVIDENCE AT THIS TIME.

21 MR. CHIARENZA: NO OBJECTION.

22 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

23 (WHEREUPON STATE'S EXHIBIT 80 WAS ADMITTED INTO EVIDENCE WITHOUT
24 OBJECTION)

25 MS. COLLINS: WE WILL PUBLISH AT THIS TIME.

1 (WHEREUPON STATE'S EXHIBIT 80 WAS PUBLISHED TO THE JURY BY WAY OF
2 THE OVERHEAD PROJECTOR.

3 Q TELL THE JURY HOW YOU SAW CHARRO USE THIS
4 SCREWDRIVER.

5 A WITH THE HAMMER AND THE PRY BAR. HE WAS JUST TAKING
6 THE HAMMER AND BEATING IT DOWN INSIDE, MAKING A HOLE IN
7 THE SAFE.

8 Q I'LL SHOW YOU STATE'S EXHIBIT 81, AND ASK YOU TO OPEN
9 THAT AND LOOK AT THAT. TELL THE JURY IF YOU RECOGNIZE THAT.

10 A YES MA'AM.

11 Q WHAT IS THAT?

12 A THIS IS THE PRY BAR THAT CHARRO USED TO OPEN THE SAFE
13 WITH ALSO.

14 Q YOU CALL THAT A PRY BAR?

15 A YES MA'AM.

16 MS. COLLINS: YOUR HONOR, I'D MOVE STATE'S EXHIBIT 81 INTO
17 EVIDENCE AT THIS TIME.

18 MR. CHIARENZA: NO OBJECTION.

19 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

20 (WHEREUPON STATE'S EXHIBIT 81 WAS ADMITTED INTO EVIDENCE WITHOUT
21 OBJECTION)

22 MS. COLLINS: I WOULD ASK TO PUBLISH IT TO THE JURY.

23 (WHEREUPON STATE'S EXHIBIT 81 WAS PUBLISHED TO THE JURY)

24 Q DANA, AT THIS TIME, I'M GOING TO SHOW YOU TWO PICTURES
25 MARKED STATE'S EXHIBIT 68 AND 69, AND ASK YOU, DO YOU

1 RECOGNIZE WHAT THESE ARE PICTURES OF?

2 A YES MA'AM.

3 Q WHAT ARE THEY PICTURES OF?

4 A NUMBER 69 LOOKS LIKE IT COULD BE THE PIECE OF THE
5 CROWBAR THAT HE USED ON THE SAFE. AND I THINK NUMBER 68 IS
6 THE OTHER PART OF IT.

7 Q DO THOSE FAIRLY AND ACCURATELY DEPICT THE CROWBAR
8 THAT YOU'VE IDENTIFIED IN STATE'S EXHIBIT 81?

9 A YES MA'AM.

10 Q WHERE ARE THEY LOCATED? WHERE IS THAT ITEM
11 LOCATED IN THOSE TWO PICTURES?

12 A THIS IS IN THE BATHROOM IN THE TRAILER ON TWIN LAKES
13 ROAD.

14 Q THE RESIDENCE YOU SHARED WITH THE DEFENDANT?

15 A YES MA'AM.

16 MS. COLLINS: YOUR HONOR, I'D MOVE STATE'S EXHIBITS 69 AND
17 68 INTO EVIDENCE AT THIS TIME.

18 MR. CHIARENZA: NO OBJECTION.

19 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

20 (WHEREUPON STATE'S EXHIBITS 69 AND 68 WERE ADMITTED INTO EVIDENCE
21 WITHOUT OBJECTION)

22 MS. COLLINS: I WOULD ASK TO PUBLISH IT TO THE JURY.

23 (WHEREUPON STATE'S EXHIBIT 69 AND 68 WAS PUBLISHED TO THE JURY BY
24 WAY OF THE OVERHEAD PROJECTOR)

1 Q SO, THAT CURVED HANDLE UP THERE-- DANA, IS THE ITEM
2 YOU'RE TALKING ABOUT, OR IS THE ONE YOU JUST SHOWED?

3 A THE ONE ON THE LEFT SIDE.

4 Q THE ONE ON THE LEFT SIDE?

5 A YES MA'AM.

6 Q AND THAT'S THE ITEM THAT YOU JUST IDENTIFIED AS STATE'S
7 EXHIBIT 81, THE CROWBAR?

8 A YES MA'AM.

9 Q AND THAT'S A PICTURE OF IT LOCATED IN YOUR HOME THAT
10 YOU SHARED WITH THE DEFENDANT ON TWIN LAKES ROAD?

11 A YES MA'AM.

12 Q DANA, WHEN CHARRO WAS TRYING TO PRY OPEN AND DID PRY
13 OPEN THIS SAFE, WAS THE SAFE STILL IN THE LIVING ROOM?

14 A YES MA'AM.

15 Q AND DID ANY PARTICLES---

16 MR. CHIARENZA: OBJECT TO LEADING.

17 THE COURT: NO LEADING.

18 MS. COLLINS: I'M SORRY. ONE MOMENT, PLEASE.

19 (PAUSE)

20 Q WHAT, IF ANYTHING, DID YOU OBSERVE IN TERMS OF THE
21 CONDITION OF THE SAFE IN THE FLOOR OF YOUR RESIDENCE?

22 A COULD YOU REPEAT THE QUESTION, PLEASE?

23 Q WHAT, IF ANYTHING, DID YOU OBSERVE ABOUT THE CONDITION
24 OF THE SAFE AFTER CHARRO PRIED IT OPEN IN YOUR LIVING ROOM?

25 A IT WAS BUSTED OPEN AND PIECES FELL OUT OF IT.

1 Q WERE THOSE PIECES LARGE OR SMALL?

2 A LIKE, SMALL PARTICLES.

3 Q I'M SHOW YOU NOW WHAT'S BEEN MARKED AS STATE'S EXHIBIT
4 82, AND ASK YOU IF YOU RECOGNIZE WHAT THAT'S A PICTURE OF?

5 A YES MA'AM. IT'S THE LIVING ROOM ON TWIN LAKES ROAD. AND
6 THE PARTICLES IN FRONT OF THE TABLE ARE THE PARTICLES FROM
7 THE SAFE.

8 Q THE PARTICLES WHERE?

9 A IN FRONT OF THIS TABLE RIGHT HERE ARE THE PARTICLES FROM
10 THE SAFE.

11 Q DOES THAT FAIRLY AND ACCURATELY DEPICT YOUR LIVING
12 ROOM AFTER THE DEFENDANT PRIED OPEN THE SAFE?

13 A YES MA'AM.

14 MS. COLLINS: YOUR HONOR, I'D MOVE STATE'S EXHIBIT 82 INTO
15 EVIDENCE AT THIS TIME.

16 MR. CHIARENZA: NO OBJECTION.

17 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

18 (WHEREUPON STATE'S EXHIBIT 82 WAS ADMITTED INTO EVIDENCE WITHOUT
19 OBJECTION)

20 MS. COLLINS: I WOULD ASK TO PUBLISH IT TO THE JURY.

21 (WHEREUPON STATE'S EXHIBIT 82 WAS PUBLISHED TO THE JURY BY WAY OF
22 THE OVERHEAD PROJECTOR)

23 Q YOU SAID THE PARTICLES IN FRONT OF THE TABLE?

24 A YES MA'AM.

- 1 Q ARE THEY IN FRONT OF THE TABLE? WHERE ARE THEY
2 SPECIFICALLY IN RELATION TO THE TABLE?
- 3 A IT'S ON THE LEFT-HAND SIDE IN THE TOP CORNER.
- 4 Q RIGHT HERE?
- 5 A YES MA'AM.
- 6 Q THOSE PARTICLES WERE NOT THERE BEFORE THE DEFENDANT
7 PRIED OPEN THE SAFE?
- 8 A NO MA'AM.
- 9 Q IS THAT IN FACT WHERE THE SAFE WAS WHEN HE WAS PRYING
10 IT OPEN?
- 11 A YES MA'AM.
- 12 Q DANA, THERE'S A PRESCRIPTION BOTTLE THERE. DO YOU SEE
13 THAT?
- 14 A YES MA'AM.
- 15 Q DO YOU KNOW WHAT THAT PRESCRIPTION BOTTLE IS FOR?
- 16 A TO MY KNOWLEDGE, TO MY REMEMBRANCE, IT WAS
17 SOMETHING CHARRO WAS TAKING, MEDICATION.
- 18 Q DO YOU KNOW WHAT KIND?
- 19 A I THINK IT WAS SOMETHING FOR, LIKE, HEARTBURN, OR
20 SOMETHING.
- 21 Q DO YOU KNOW THE NAME OF IT?
- 22 A IT COULD HAVE BEEN MAYBE PREVOSSET (SIC) OR SOMETHING
23 FOR HEARTBURN.
- 24 Q DANA, I'M GOING TO SHOW YOU NOW STATE'S EXHIBIT 65.
- 25 A YES MA'AM.

1 Q DO YOU RECOGNIZE THAT?

2 A THIS IS THE LIVING ROOM AREA IN THE TRAILER ON TWIN LAKES
3 ROAD.

4 Q IS THAT, IN FACT, JUST ANOTHER ANGLE OF THAT SAME PICTURE
5 WE JUST SAW?

6 A YES MA'AM.

7 Q DOES IT FAIRLY AND ACCURATELY DEPICT THAT PRESCRIPTION
8 BOTTLE?

9 A YES MA'AM.

10 MS. COLLINS: YOUR HONOR, I'D MOVE STATE'S EXHIBIT 65 INTO
11 EVIDENCE AT THIS TIME.

12 MR. CHIARENZA: NO OBJECTION.

13 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

14 (WHEREUPON STATE'S EXHIBIT 65 WAS ADMITTED INTO EVIDENCE WITHOUT
15 OBJECTION)

16 MS. COLLINS: I WOULD ASK TO PUBLISH IT TO THE JURY.

17 (WHEREUPON STATE'S EXHIBIT 65 WAS PUBLISHED TO THE JURY BY WAY OF
18 THE OVERHEAD PROJECTOR)

19 Q IT'S JUST A BETTER PICTURE OF THE PRESCRIPTION BOTTLE. IS
20 THAT RIGHT?

21 A YES MA'AM.

22 Q SO, BEING A PRESCRIPTION BOTTLE, IS THAT SOMETHING
23 CHARRO WOULD HAVE TO GET ON A MONTHLY BASIS?

24 A HE HAD HAD SOME PROBLEMS WITH HIS STOMACH AND I
25 REMEMBER WHEN HE WENT TO THE EMERGENCY ROOM AND THEY

1 TOLD HIM HE NEEDED TO TAKE THE MEDS FOR HEARTBURN. I THINK
2 HE GOT IT AT, LIKE, WALGREEN'S OR SOMEWHERE, JUST THAT
3 PRESCRIPTION.

4 Q HOW OFTEN DID HE TAKE THAT MEDICINE?

5 A TO MY KNOWLEDGE, THAT WAS THE FIRST TIME HE STARTED
6 TAKING IT.

7 Q WHEN WAS THAT?

8 A THAT WAS IN, LIKE, LATER, 2002. LIKE, PROBABLY, NOVEMBER
9 OR DECEMBER OF 2002.

10 Q NOVEMBER OR DECEMBER OF 2002?

11 A YES MA'AM.

12 Q ALL OF THESE ACTIVITIES THAT YOU HAVE DESCRIBED, DANA,
13 IN TERMS OF GOING TO MR. CUBLEY'S HOUSE WITH THE DEFENDANT,
14 SITTING IN THE CAR WHILE THE DEFENDANT WENT IN AND CAME
15 BACK OUT WITH THE SAFE, AND THEN GOING BACK TO YOUR HOME
16 WITH THE SAFE AND THE DEFENDANT, DID THEY ALL OCCUR ON
17 DECEMBER 29, 2002?

18 A YES MA'AM.

19 Q DO YOU KNOW ABOUT WHAT TIME IT WAS WHEN Y'ALL FINALLY
20 FINISHED WITH THE SAFE, AND CHARRO HAD TAKEN THE SAFE AND
21 CAME BACK TO THE HOUSE?

22 A PROBABLY AROUND ELEVEN, ELEVEN-THIRTY AT NIGHT.

23 Q WHEN CHARRO, YOU WERE TALKING ABOUT HIM PUTTING THE
24 TENNIS SHOES IN THE SAFE, WERE THEY ABLE TO GO ALL THE WAY IN
25 THE SAFE?

1 A NO. JUST, LIKE, A SMALL HOLE AT THE TOP, I REMEMBER. AND
2 HE WAS TRYING TO STUFF THE SHOES IN THE HOLE. HALF OF THEM
3 WAS STICKING OUT OF THE HOLE.

4 Q WHEN CHARRO CAME BACK FROM DISPOSING OF THE SAFE, DID
5 Y'ALL HAVE A DISCUSSION THEN REGARDING, AS YOU HAVE STATED
6 PREVIOUSLY, ALL THIS FOR NOTHING?

7 A YES MA'AM.

8 Q AND WHAT, IF ANYTHING, DID CHARRO SAY AT THAT TIME
9 REGARDING WHAT FURTHER STEPS YOU SHOULD TAKE AS A COUPLE?

10 A HE SAID, YOU KNOW, SINCE THERE WASN'T ANY MONEY OR
11 ANYTHING, EXCEPT FOR THE FIFTY-SOMETHING DOLLARS THAT WAS
12 IN THE WALLET, THAT HE WAS GONNA FILL OUT SOME CHECKS AND
13 HAVE SOME CHECKS CASHED TO GET SOME MONEY.

14 Q HOW MANY CHECKS DO YOU RECALL Y'ALL USING UP TO DO
15 THAT?

16 A HE FILLED OUT THREE CHECKS.

17 Q BY HE, DO YOU MEAN CHARRO?

18 A YES MA'AM.

19 Q DID HE DO THAT RIGHT THEN?

20 A YES MA'AM.

21 Q WHY NOT ALL OF THEM?

22 A HE JUST SAID HE WAS GONNA TRY THREE.

23 Q WHAT DID HE DO WITH THE REST OF THE CHECKS?

24 A I THINK HE GOT RID OF THEM AFTER THAT. TO MY KNOWLEDGE,
25 WHAT I REMEMBER, HE DISCARDED IT.

- 1 Q DO YOU KNOW WHERE HE DISCARDED IT?
- 2 A I THINK IT WAS IN A BAG WITH THE TWO CARDS, YES MA'AM.
- 3 Q IN A BAG WITH THE TWO CARDS?
- 4 A YES MA'AM.
- 5 Q THE DISCOVER CARD?
- 6 A YES MA'AM.
- 7 Q AND WHEN DID HE DISCARD IT?
- 8 A THE FOLLOWING DAY. I THINK HE THREW IT OUTSIDE OUR
- 9 HOUSE.
- 10 Q WAS THAT BEFORE OR AFTER GOING TO THE BANK?
- 11 A I THINK IT WAS BEFORE.
- 12 Q DID YOU MAKE A PHONE CALL IN REGARDS TO THE DISCOVER
- 13 CARD?
- 14 A YES MA'AM, I DID.
- 15 Q TELL THE JURY ABOUT THAT.
- 16 A I HAD CALLED THE DISCOVER CARD TO TRY TO GET THE PIN
- 17 NUMBER. AND WHEN I CALLED THE LADY CAME ON THE PHONE AND
- 18 SHE WAS WANTING, LIKE, THE MAIDEN NAME, AND YOU KNOW. SHE
- 19 WANTED INFORMATION THAT I WOULDN'T KNOW. SO, SHE PUT ME ON
- 20 HOLD AND I HUNG UP THE PHONE.
- 21 Q YOU HUNG UP THE PHONE?
- 22 A YES MA'AM.
- 23 Q YOU CALLED FROM YOUR NUMBER AT THE RESIDENCE?
- 24 A YES MA'AM.
- 25 Q WAS THAT PHONE WAS LISTED IN YOUR NAME?

DANA BLACKMON -DIRECT EXAMINATION BY MS. COLLINS

1 A YES MA'AM.

2 Q WHY DIDN'T Y'ALL JUST USE THE CREDIT CARD WITHOUT
3 HAVING TO KNOW THE PIN?

4 A BECAUSE, LIKE I SAID, I NEVER HAD A CREDIT CARD OR
5 ANYTHING, SO I FIGURED YOU WOULD HAVE TO HAVE A PIN NUMBER.
6 THAT'S WHY I CALLED.

7 Q WHOSE IDEA WAS IT TO CALL?

8 A CHARRO'S.

9 Q NOW, YOU SAID THAT THE DEFENDANT, I BELIEVE YOU
10 TESTIFIED, FILLED OUT THESE CHECKS?

11 A YES MA'AM.

12 Q DID HE FILL THEM OUT THAT NIGHT BEFORE Y'ALL WENT TO
13 BED?

14 A YES MA'AM.

15 Q DID YOU LOOK OVER THE CHECKS AFTER HE FILLED THEM OUT?

16 A I THINK I GLANCED AT THEM, YES MA'AM.

17 Q I'M GOING TO SHOW YOU WHAT'S ALREADY IN EVIDENCE AS
18 STATE'S EXHIBITS FIVE AND SIX. ARE THOSE THE CHECKS YOU
19 LOOKED AT THAT THE DEFENDANT FILLED OUT FROM THE
20 CHECKBOOK STOLEN FROM THE CUBLEY RESIDENCE?

21 A YES MA'AM.

22 Q YOU SAW THE DEFENDANT FILL THOSE CHECKS OUT?

23 A YES MA'AM.

24 MS. COLLINS: I BELIEVE THOSE ITEMS ARE IN EVIDENCE. CAN
25 WE SEE STATE'S EXHIBIT FIVE, PLEASE?

1 (WHEREUPON STATE'S EXHIBIT FIVE WAS SHOWN BY WAY OF
2 THE OVERHEAD PROJECTOR)

3 Q YOU'VE IDENTIFIED THAT THESE WERE THE TWO CHECKS THAT
4 YOU SAW THE DEFENDANT FILL OUT. IS THAT CORRECT?

5 A YES MA'AM.

6 Q STATE'S EXHIBIT FIVE HAS, ON THE PAY TO THE ORDER OF
7 ISAIAS GUTIERREZ. IS THAT RIGHT?

8 A YES MA'AM.

9 Q WHO FILLED THAT OUT?

10 A CHARRO.

11 Q DID HE FILL THAT OUT IN YOUR PRESENCE?

12 A YES MA'AM.

13 Q WHO PUT THE DATE, DECEMBER 28, '02?

14 A CHARRO.

15 Q WHO MADE THE DECISION TO PUT THAT DATE ON?

16 A CHARRO.

17 Q WHAT AMOUNT IS THAT FOR?

18 A \$500.

19 Q WHO FILLED OUT THE NUMBER, \$500?

20 A CHARRO.

21 Q WHO FILLED OUT THE WRITTEN \$500?

22 A CHARRO.

23 Q WHO SIGNED MAUDE CUBLEY'S NAME TO THAT?

24 A CHARRO.

25 Q HE DID THAT ALL IN YOUR PRESENCE?

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- 1 A YES MA'AM.
- 2 Q HE DID THAT DURING THE EVENING, THE LATE EVENING OF
- 3 DECEMBER 29, 2002?
- 4 A YES MA'AM.
- 5 Q DURING THE EARLY MORNING OF DECEMBER 30, 2002? IS THAT
- 6 RIGHT?
- 7 A YES MA'AM.
- 8 Q I'LL ASK YOU THE SAME QUESTION FOR STATE'S EXHIBIT SIX.
- 9 DID THE DEFENDANT ALSO FILL CHECK 1652 OUT IN YOUR PRESENCE?
- 10 (WHEREUPON STATE'S EXHIBIT SIX WAS SHOWN BY WAY OF THE
- 11 OVERHEAD PROJECTOR
- 12 A YES MA'AM.
- 13 Q THAT WAS IN YOUR HOME IN TWIN LAKES ROAD?
- 14 A YES MA'AM.
- 15 Q DID HE PUT PAY TO THE ORDER OF ISAIAS GUTIERREZ?
- 16 A YES MA'AM.
- 17 Q DID HE FILL OUT THE NUMBER, \$600?
- 18 A YES MA'AM.
- 19 Q DID HE WRITE THAT OUT, \$600?
- 20 A YES MA'AM.
- 21 Q DID HE SIGN MAUDE CUBLEY'S NAME?
- 22 A YES MA'AM.
- 23 Q AND DID HE PICK THE DATE, DECEMBER 28, 2002?
- 24 A YES MA'AM.
- 25 Q DID Y'ALL DISCUSS HOW MUCH MONEY YOU NEEDED?

1 A NO MA'AM. HE SAID HE WAS JUST GONNA DO IT FOR THAT
2 AMOUNT BECAUSE HE DIDN'T WANT TO GO TO A BIGGER AMOUNT, TO
3 SEE IF THAT WORKED.

4 Q DID YOU CONSIDER \$500 A BIG AMOUNT?

5 A I DO, YES MA'AM.

6 Q HOW ABOUT \$600?

7 A YES MA'AM.

8 Q DID Y'ALL AT THAT TIME KNOW WHAT YOU WERE PLANNING ON
9 USING THE MONEY FOR?

10 A LIKE I SAID, HE SAID THAT HE HAD OWED SOME PEOPLE FROM
11 MEXICO. AND, LIKE I SAID, WE WAS PLANNING ON GETTING ANOTHER
12 CAR. SO, THAT'S WHAT THE MONEY WAS FOR.

13 Q THERE WAS A THIRD CHECK, CHECK 1655, STATE'S EXHIBIT
14 SEVEN. LET ME SHOW YOU THAT. DO YOU RECOGNIZE THAT?

15 A YES MA'AM.

16 (WHEREUPON STATE'S EXHIBIT SEVEN WAS SHOWN BY WAY OF THE
17 OVERHEAD PROJECTOR

18 Q DID ISAIAS GUTIERREZ FILL THAT OUT IN YOUR PRESENCE?

19 A YES MA'AM.

20 Q DID HE DO THAT AT YOUR HOME ON TWIN LAKES ROAD?

21 A YES MA'AM.

22 Q AT THE SAME TIME AS THE OTHER CHECKS?

23 A YES MA'AM.

24 Q DID HE PUT THE SAME DATE, DECEMBER 28, 2002?

25 A YES MA'AM.

- 1 Q DID HE PUT HIS NAME AS THE PAYEE?
- 2 A YES MA'AM.
- 3 Q DID HE SIGN MAUDE CUBLEY'S NAME?
- 4 A YES MA'AM.
- 5 Q DID HE PUT THE AMOUNT OF \$775?
- 6 A YES MA'AM.
- 7 Q HE WROTE THE NUMBERS AND THE WORDS?
- 8 A YES MA'AM.
- 9 Q HE DID THAT IN YOUR PRESENCE?
- 10 A YES MA'AM.
- 11 Q DID YOU HELP HIM DO THAT IN ANY WAY?
- 12 A NO MA'AM.
- 13 Q DID Y'ALL HAVE A DISCUSSION ABOUT WHO SHOULD TAKE THIS
- 14 CHECK TO THE BANK?
- 15 A HE SAID HE WAS.
- 16 Q DID Y'ALL DISCUSS THAT DECISION?
- 17 A NO MA'AM. HE JUST SAID HE WAS GONNA TAKE THEM AND
- 18 CASH THEM.
- 19 Q NOW, YOU KNEW HE HAD AN ID?
- 20 A YES MA'AM.
- 21 Q IN FACT, YOU KNEW HE HAD TWO ID'S?
- 22 A YES MA'AM.
- 23 Q DID YOU HAVE AN ID?
- 24 A YES MA'AM.

1 Q DID Y'ALL DISCUSS AT ALL THAT PERHAPS YOU SHOULD BE THE
2 ONE TO TAKE THOSE CHECKS TO THE BANK?

3 A YES MA'AM. BUT, LIKE I SAID, HE WAS THE ONE THAT WAS
4 GONNA DO AND HE DID IT.

5 Q WHO MADE THAT DECISION?

6 A CHARRO.

7 Q THE NEXT DAY, DECEMBER 30, 2002, DID Y'ALL GO TO A BANK?

8 A YES MA'AM.

9 Q WAS THAT IN THE AFTERNOON?

10 A I THINK IT WAS EARLIER IN THE MORNING, THAT MORNING.

11 Q DO YOU RECALL WHICH BANK YOU WENT TO FIRST, IF YOU
12 REMEMBER?

13 A YES MA'AM. I THINK IT WAS THE ONE IN FORT MILL.

14 Q HOW DID Y'ALL GET THERE?

15 A HIS BROTHER, RUEBEN, CAME AND PICKED US UP ON TWIN
16 LAKES ROAD AND GIVE US A RIDE.

17 Q WHY DIDN'T YOU DRIVE THE CAR?

18 A BECAUSE CHARRO SAID HE WANTED TO LAY LOW BECAUSE THE
19 POLICE MIGHT BE LOOKING FOR A BLUE CAR.

20 Q WHY DID HE GO AT ALL? WHY DIDN'T HE LET RUEBEN?

21 A BECAUSE, LIKE I SAID, AS FAR AS I KNOW, RUEBEN DIDN'T KNOW
22 ANYTHING ABOUT IT. SO, HE CASHED THE CHECK FOR HIS NAME, TO
23 CASH THE CHECK.

24 Q DID YOU GO WITH THEM?

25 A YES MA'AM.

1 Q DANA, WHY DID YOU GO WITH THEM?

2 A BECAUSE I JUST-- I WAS ALREADY-- I FEEL LIKE I HAD TO
3 SATISFY HIM IN EVERYTHING, JUST BE WITH HIM, LIKE, I WAS
4 ALREADY PART OF IT.

5 Q WHERE WAS THE BABY AT THIS TIME?

6 A SHE WAS WITH US.

7 Q WHEN Y'ALL WENT TO THE BANK IN FORT MILL, WHO GOT OUT
8 OF THE CAR?

9 A CHARRO.

10 Q DID EITHER YOU OR RUEBEN GO IN WITH HIM?

11 A NO MA'AM.

12 Q DID HE TAKE THE BABY IN?

13 A NO MA'AM.

14 Q HOW LONG WAS HE IN THE BANK?

15 A MAYBE TEN, FIFTEEN MINUTES.

16 Q WHEN CHARRO CAME OUT OF THE BANK IN FORT MILL, DID HE
17 SHOW YOU WHETHER OR NOT HE HAD OBTAINED ANYTHING FROM
18 THAT BANK?

19 A YEAH. HE SHOWED ME HE HAD THE MONEY.

20 Q HE SHOWED THE MONEY TO YOU?

21 A YES MA'AM. IT WAS IN HIS WALLET.

22 Q DID HE SAY ANYTHING AT THAT TIME?

23 A NO MA'AM.

24 Q DID HE GIVE YOU ANY OF THE MONEY?

25 A NO MA'AM.

1 Q YOU MENTIONED EARLIER THAT CHARRO WAS THE ONLY ONE
2 THAT WORKED. CORRECT?

3 A YES MA'AM.

4 Q YOU ALSO MENTIONED THAT HE WAS A CONTROLLING PERSON.
5 RIGHT?

6 A YES MA'AM.

7 Q DID HE EVER GIVE YOU ANY AMOUNT OF MONEY TO SPEND AS A
8 WOMAN AND A MOTHER?

9 A YES MA'AM.

10 Q HOW MUCH WOULD HE GIVE YOU AT ANY GIVEN TIME?

11 A POSSIBLY, TWENTY OR THIRTY DOLLARS, MAYBE, A WEEK.

12 Q DID HE EVER GIVE YOU MORE THAN THAT?

13 A I MEAN, ONLY, LIKE, MAYBE A BIRTHDAY OR SOMETHING LIKE
14 THAT. BUT THAT'S ALL HE GIVE ME DURING THE WEEK.

15 Q AFTER CHARRO CAME OUT AND SHOWED YOU HE'D GOTTEN THE
16 MONEY, WHAT DID Y'ALL DO THEN?

17 A WE WENT-- I THINK WE WENT TO, LIKE, THE CHINESE STORE OR
18 MEXICAN STORE, AND GOT GAS, GOT GAS IN THE CAR. RUEBEN DID
19 BECAUSE RUEBEN WAS DRIVING.

20 Q WHO PAID FOR THAT GAS?

21 A RUEBEN.

22 Q CHARRO WAS HAVING RUEBEN DRIVE HIM AROUND AND HE
23 DIDN'T PAY FOR THE GAS?

24 A NO MA'AM.

25 Q WHERE'D Y'ALL GO THEN?

1 A I THINK WE WENT BACK. I THINK AT THAT TIME WE WENT
2 HOME.

3 Q DID YOU GO BACK OUT THAT DAY?

4 A YES MA'AM.

5 Q DID YOU GO TO ANOTHER BANK?

6 A I DON'T THINK IT WAS THAT DAY; I THINK IT WAS THE NEXT DAY
7 WE WENT TO THE BANK.

8 Q HOW MANY BANKS DID Y'ALL GO TO IN ALL?

9 A WE WENT TO FOUR BECAUSE THE THIRD ONE WAS CLOSED ON, I
10 THINK IT WAS CHERRY ROAD. THAT ONE HAD BEEN CLOSED.

11 Q AND THAT WAS IN THE COURSE OF THE NEXT DAY OR TWO?

12 A YES MA'AM.

13 Q WHO WENT WITH YOU THE NEXT TIME?

14 A RUEBEN.

15 Q AGAIN?

16 A YES MA'AM.

17 Q DROVE HIS CAR?

18 A YES MA'AM.

19 Q WAS IT A VAN?

20 A IT WAS A CAR.

21 Q A CAR. DID THE BABY COME ALONG, TOO?

22 A YES MA'AM.

23 Q DANA, AT ANY TIME DURING THE MINUTES AND HOURS AFTER
24 Y'ALL WENT TO THE CUBLEY'S, DID YOU EVER STOP AND THINK,
25 WONDER HOW MR. CUBLEY'S DOING?

- 1 A YES MA'AM.
- 2 Q DID YOU EVER STOP AND THINK, I WONDER IF MR. CUBLEY'S
- 3 STILL ALIVE?
- 4 A YES MA'AM, I DID.
- 5 Q DID YOU STOP AND THINK, IF HE'S STILL ALIVE, THAT MAYBE I
- 6 CAN MAKE A CALL RIGHT NOW THAT WOULD MAKE A DIFFERENCE?
- 7 A YES MA'AM. AND I WANTED TO, I REALLY DID. BUT, LIKE I SAID,
- 8 I WAS IN FEAR FOR MY LIFE ALSO. THAT IF I CALLED THE POLICE HE
- 9 COULD HAVE HURT ME OR SOME OF MY FAMILY. BECAUSE HE DID
- 10 THAT, HE WAS VIOLENT AND HE HURT ME AND I WAS SCARED.
- 11 Q HE BEING THE DEFENDANT?
- 12 A YES MA'AM.
- 13 Q AFTER THE SECOND BANK, DO YOU RECALL THAT CHARRO
- 14 CAME BACK OUT WITH THE MONEY?
- 15 A YES MA'AM.
- 16 Q YOU SAID YOU WENT TO A THIRD BANK AND IT WAS CLOSED?
- 17 A YES MA'AM. I THINK THAT WAS ON CHERRY ROAD.
- 18 Q AND THEN THE LAST BANK YOU WENT TO, WAS THAT ALSO IN
- 19 ROCK HILL?
- 20 A YES MA'AM. I THINK THAT WAS ON MAIN STREET.
- 21 Q WAS RUEBEN WITH Y'ALL AGAIN?
- 22 A YES MA'AM.
- 23 Q AGAIN, DID CHARRO GO INSIDE?
- 24 A YES MA'AM.
- 25 Q HOW LONG WAS HE IN THE BANK THAT LAST TIME?

- 1 A MAYBE ABOUT TWENTY MINUTES.
- 2 Q WHEN HE CAME OUT THAT TIME, WAS HE WALKING?
- 3 A NO, HE WAS RUNNING.
- 4 Q WHERE WAS HE RUNNING?
- 5 A HE WAS RUNNING TO THE CAR.
- 6 Q WHEN HE WAS RUNNING TO THE CAR, WHAT DID HE DO?
- 7 A HE WAS, JUST, LIKE-- HE WAS SAYING, LET'S GO, LET'S GO. AND
- 8 HE WAS TELLING HIS BROTHER SOMETHING, I GUESS IN SPANISH, LIKE,
- 9 LET'S GO.
- 10 Q DID RUEBEN PUT THE CAR IN GEAR AND DID Y'ALL GO?
- 11 A YES MA'AM.
- 12 Q DID CHARRO SHOW YOU-- DID HE HAVE ANY MONEY FROM
- 13 THAT BANK?
- 14 A HE DID. BUT, LIKE I SAID, AT THAT TIME HE DIDN'T SHOW ME, AT
- 15 THAT TIME.
- 16 Q DID HE SAY ANYTHING LIKE, NO MONEY, OR ANYTHING?
- 17 A NO MA'AM.
- 18 Q DID HE---
- 19 A HE JUST SAID THAT-- WHEN HE CAME BACK OUT AND WE GOT
- 20 THERE, HE SAID THAT THE LADY AT THE BANK HAD CALLED THE
- 21 POLICE AND HE WAS SCARED, HE JUST RAN OUT OF THE BANK.
- 22 Q DANA, AT ANY TIME DID YOU TELL CHARRO THAT YOU HAD
- 23 GOTTEN THESE CHECKS FROM YOUR GRANDFATHER?
- 24 A NO MA'AM.
- 25 Q WHO IS YOUR GRANDFATHER?

- 1 A I HAVE TWO DECEASED GRANDFATHERS.
- 2 Q WHEN DID THEY DIE?
- 3 A ONE DIED WHEN I WAS FIVE YEARS OLD. AND ONE DIED WHEN I
- 4 WAS THIRTEEN YEARS OLD.
- 5 Q DID YOU EVER TALK ABOUT THAT WITH THE DEFENDANT, THAT
- 6 YOUR GRANDFATHERS WERE DEAD?
- 7 A WELL, HE KNEW MY FAMILY, LIKE I SAID, BECAUSE HE'S BEEN IN
- 8 MY FAMILY'S HOUSE BEFORE FOR DINNERS AND CHRISTMASES AND
- 9 STUFF.
- 10 Q SO, OBVIOUSLY, THEN, YOU WOULD NEVER HAVE INTRODUCED
- 11 HIM TO ANYONE AS YOUR GRANDFATHER?
- 12 A NO MA'AM.
- 13 Q YOU SAID THAT THE DEFENDANT SPOKE ENGLISH TO YOU, BUT
- 14 HE SPOKE SPANISH TO RUEBEN. CORRECT?
- 15 A YES MA'AM.
- 16 Q AND YOU DON'T KNOW WHAT HE SAID?
- 17 A NOT IN SPANISH.
- 18 Q BUT HE SAID TO YOU IN ENGLISH THAT THE LADY HAD CALLED
- 19 THE POLICE?
- 20 A YES MA'AM.
- 21 Q DID HE SAY ANYTHING ABOUT LEAVING HIS ID'S?
- 22 A I THINK HE MENTIONED ABOUT LEAVING AN ID BEHIND.
- 23 Q TO THE BEST OF YOUR MEMORY, WAS THIS ON NEW YEAR'S EVE,
- 24 2002?
- 25 A I THINK SO.

1 Q WHERE DID Y'ALL GO THEN? DID YOU DRIVE OUT OF TOWN?

2 A NO MA'AM. WE WENT TO THE CAR LOT ON ANDERSON ROAD IN
3 ROCK HILL.

4 Q WHAT DID Y'ALL DO THERE?

5 A WE WENT IN-- WE WAS GONNA LOOK FOR A CAR. I REMEMBER
6 THAT WE STOPPED AND THERE WAS A GUY. I THINK HIS NAME'S, LIKE,
7 MIKE, AND HE HAD, LIKE, BLOND HAIR. AND WE STOPPED AND
8 TALKED. AND CHARRO TALKED TO SOME SPANISH GUY. AND WE
9 LOOKED AROUND AT CARS.

10 Q DID Y'ALL BUY A CAR THEN?

11 A NO MA'AM.

12 Q WHY NOT?

13 A BECAUSE WE DIDN'T HAVE FULL COVERAGE INSURANCE.

14 Q WHERE'D YOU GO AFTER THAT?

15 A WHEN WE LEFT THERE I THINK WE WENT-- WE WENT AND
16 DROVE AROUND. WE WENT TO THE CHINESE STORE. AND THEN LATER
17 ON THAT AFTERNOON WE WENT, RUEBEN TOOK US TO SHARON'S
18 HOUSE, A LADY IN ROCK HILL, TO LOOK AT A CAR.

19 Q YOU'RE REFERRING TO THE CHINESE STORE. IS THAT SOME KIND
20 OF GROCERY STORE?

21 A YES MA'AM. IT'S LIKE A LITTLE CONVENIENCE STORE, LIKE, A
22 CHINESE AND MEXICAN STORE TOGETHER.

23 Q WHAT'D Y'ALL GET AT THE CHINESE STORE?

1 A RUEBEN WENT IN. RUEBEN WENT AND GOT SOME THINGS. I
2 THINK RUEBEN WENT IN AND GOT SOME JUICE, LIKE, SOME SPANISH
3 JUICE AND CAKE.

4 Q AND LATER, DID YOU SAY Y'ALL WENT TO ANOTHER CAR
5 PLACE?

6 A WE WENT TO A LADY NAME SHARON'S HOUSE IN ROCK HILL.

7 Q DID Y'ALL BUY A CAR FROM HER?

8 A YES MA'AM.

9 Q WHO TEST DROVE THAT CAR?

10 A I DID.

11 Q WITH WHO?

12 A WITH CHARRO.

13 Q WAS THE BABY WITH Y'ALL THEN?

14 A SHE STAYED WITH RUEBEN AT THE LADY'S HOUSE, SHARON'S
15 HOUSE.

16 Q DID Y'ALL BUY THAT CAR?

17 A YES MA'AM.

18 Q WHAT KIND OF CAR WAS THAT?

19 A IT WAS ALSO A PONTIAC 6000.

20 Q WHAT COLOR WAS IT?

21 A IT WAS WHITE.

22 Q DID THAT ONE RUN OKAY?

23 A YES MA'AM.

24 Q WHOSE NAME WAS THAT CAR PLACED IN?

1 A FROM WHAT I REMEMBER, I BELIEVE CHARRO SIGNED THE
2 TITLE.

3 Q IN Y'ALL'S DISCUSSIONS ABOUT THESE CHECKS WHOSE IDEA
4 WAS IT TO GO AROUND TO DIFFERENT BANKS TO CASH THE CHECKS,
5 RATHER THAN, YOU KNOW, ALL OR NOTHING, DO THEM ALL AT ONE
6 TIME?

7 A IT WAS CHARRO'S.

8 Q DID HE SAY WHY HE THOUGHT THAT WAS A GOOD IDEA?

9 A HE DIDN'T REALLY SAY. HE JUST SAID TAKE THEM TO
10 DIFFERENT BANKS. HE DIDN'T REALLY SAY WHY.

11 Q YOU NEVER ASKED HIM TO DO THAT?

12 A NO MA'AM.

13 Q DID HE SAY WHY HE THOUGHT IT WAS A GOOD IDEA FOR HIM TO
14 GO IN AND DO IT AS OPPOSED TO YOU?

15 A NO, HE JUST-- I GUESS BECAUSE HE WANTED TO DO IT, HE DID IT.
16 I'M NOT SURE WHY.

17 Q WHEN YOU PAID-- WHEN Y'ALL PAID SHARON FOR THE CAR, THE
18 WHITE PONTIAC 6000, WHO PAID HER?

19 A CHARRO DID.

20 Q DO YOU KNOW HOW MUCH?

21 A I THINK IT WAS \$1000.

22 Q THAT WAS NEW YEAR'S DAY, 2002?

23 A TO MY KNOWLEDGE, YES MA'AM.

24 Q DANA, DO YOU REMEMBER WHAT Y'ALL DID-- I SAID NEW
25 YEAR'S DAY. WAS THAT NEW YEAR'S EVE, 2002?

1 A YES MA'AM.

2 Q DO YOU REMEMBER WHAT Y'ALL DID ON NEW YEAR'S DAY, 2002?

3 A I THINK WE PRETTY MUCH STAYED AROUND THE HOUSE. I

4 THINK, MAYBE, WE WENT TO THE CIRCLE K, MAYBE, AND THAT WAS

5 ABOUT IT.

6 Q WHAT'D Y'ALL GET THERE?

7 A I THINK, ABOUT, LIKE, A LOTTERY TICKET AND MAYBE SOME

8 CIGARETTES OR SOMETHING.

9 Q BUT YOU STAYED IN TOWN?

10 A YES MA'AM.

11 Q AND CHARRO STAYED IN TOWN?

12 A YES MA'AM.

13 Q AND, ON JANUARY 2, 2002, WHERE, IF ANYTHING DID YOU TAKE

14 ISAIAS GUTIERREZ?

15 A I TOOK CHARRO TO WORK THAT NEXT DAY.

16 Q ABOUT WHAT TIME?

17 A AROUND EIGHT O'CLOCK IN THE MORNING.

18 Q WAS THE BABY WITH Y'ALL?

19 A YES MA'AM.

20 Q DID YOU DRIVE THE NEW CAR?

21 A NO MA'AM.

22 Q YOU TOOK THE BLUE CAR?

23 A YES MA'AM.

24 Q WHY IS THAT? IF Y'ALL WERE TRYING TO LAY LOW FROM THE

25 BLUE CAR, WHY DID YOU DRIVE THE WHITE ONE?

1 A BECAUSE WE GOT TO GET INSURANCE AND STUFF ON THE WHITE
2 ONE.

3 Q AND YOU HADN'T DONE THAT?

4 A NO MA'AM.

5 Q AND WHEN YOU TOOK HIM TO WORK, YOU SAID THAT WAS IN
6 FORT MILL?

7 A YES MA'AM.

8 Q DID YOU DRIVE ANYBODY ELSE TO WORK?

9 A YES MA'AM.

10 Q WHO?

11 A HIS BROTHER, CHONG.

12 Q AND WHEN YOU LET CHARRO OUT, WHAT TIME WAS THAT,
13 EIGHT-THIRTY?

14 A AROUND EIGHT, ABOUT EIGHT, A LITTLE AFTER EIGHT.

15 Q DID YOU EXPECT TO SEE HIM LATER THAT DAY?

16 A YES MA'AM.

17 Q IN FACT, WERE YOU SUPPOSED TO PICK HIM UP LATER THAT
18 DAY?

19 A YES MA'AM, I WAS.

20 Q WHAT TIME?

21 A AROUND FOUR OR FIVE O'CLOCK.

22 Q AND DID YOU RETURN AROUND FOUR OR FIVE O'CLOCK TO PICK
23 CHARRO UP THAT DAY, JANUARY 2, 2003?

24 A YES MA'AM.

25 Q WHERE WAS HE?

1 A HE WASN'T THERE.

2 Q WERE YOU SURPRISED AT THAT?

3 A YES MA'AM.

4 Q WHAT DID YOU DO AT THAT TIME?

5 A LIKE I SAID, A GUY HAD TOLD ME THAT HIS BROTHER GOT A
6 RIDE. AND HE TOLD ME THAT CHARRO WENT TO VICTOR'S HOUSE. SO,
7 I DROVE TO VICTOR'S HOUSE TO LOOK FOR CHARRO AND CHARRO
8 WASN'T THERE. SO, I DROVE BACK TO McGUIRE'S TRAILER'S PARK,
9 AND I ASKED GEE-GEE WHERE CHARRO WAS. CHARRO WAS NOT
10 THERE. AND I ASKED, I JUST ASKED AROUND AND HE WASN'T THERE.
11 SO, I DROVE BACK HOME TO TWIN LAKES ROAD.

12 Q WHAT WERE YOUR THOUGHTS AND FEELINGS AT THIS TIME?

13 A I WAS SCARED.

14 Q WHY WAS THAT?

15 A BECAUSE I JUST FIGURED THAT HE'D DONE THIS, HE COMMITTED
16 THIS CRIME AND THEN JUST LEFT ME.

17 Q SO, AT THIS POINT DID YOU THINK ABOUT GETTING ON THE
18 PHONE AND CALLING THE POLICE AND TELLING THEM WHAT YOU
19 KNEW?

20 A I DID, BUT, LIKE I SAID, I WAS SCARED.

21 Q WHEN DID YOU NEXT HEAR FROM CHARRO GUTIERREZ?

22 A LATER THAT NIGHT WHEN DETECTIVES WERE AT MY HOUSE,
23 THEY CAME BY MY HOUSE. AND CHARRO CALLED ON THE PHONE
24 WHILE THE POLICE WAS AT MY HOUSE.

1 Q DETECTIVE EDDIE STRAIT, SITTING HERE BEHIND MR.

2 THOMPSON, CAME?

3 A YES MA'AM.

4 Q AND WAS AT YOUR HOUSE TALKING TO YOU?

5 A YES MA'AM.

6 Q CHARRO CALLED YOU ON THE PHONE?

7 A YES MA'AM.

8 Q DID YOU TELL CHARRO THAT THE POLICE WERE THERE?

9 A NOT AT THAT TIME, NO MA'AM.

10 Q DID YOU TELL THE POLICE THAT IT WAS CHARRO ON THE

11 PHONE?

12 A YES MA'AM.

13 Q WHAT, IF ANYTHING, DID CHARRO SAY TO YOU THEN ABOUT

14 COMING HOME?

15 A HE TOLD ME HE WAS ABOUT THREE HOURS AWAY, LIKE, IN
16 RALEIGH OR SOMEWHERE. AND HE SAID THAT, YOU KNOW, HE WAS
17 GONNA HAVE TO GO TO MEXICO, BECAUSE WHAT HE DID, HE WAS
18 SCARED. HE WAS GOING TO MEXICO. AND I TOLD HIM I WAS SCARED
19 AND EVERYTHING. AND I TOLD HIM WE WOULD BOTH GO TO JAIL FOR
20 A LONG TIME. AND HE SAID THAT-- I TOLD HIM ABOUT COMING TO
21 SEE THE BABY AND HE SAID HE WOULD TRY TO COME SEE HER.

22 Q DID HE SAY WHEN HE WOULD COME BACK AND SEE THE BABY?

23 A I THINK HE SAID, LIKE, THAT WEEKEND, LIKE, IN TWO OR THREE
24 OR THE MORNING, HE WAS GONNA SNEAK DOWN.

1 Q NOW, UP TO THIS TIME HAD CHARRO BEEN PRETTY INVOLVED IN
2 DESIREE'S LIFE?

3 A YES MA'AM.

4 Q HE HADN'T BEEN INDIFFERENT TO HER?

5 A NO MA'AM.

6 Q DID HE EVER COME BACK TO SEE DESIREE?

7 A NOT AFTER THAT NIGHT, NO MA'AM.

8 Q DID HE INDICATE TO YOU THAT HE WOULD COME BACK AFTER
9 THAT NIGHT AT TWO OR THREE?

10 A YES MA'AM.

11 Q SO, HE DID NOT?

12 A NO MA'AM.

13 Q HAVE YOU PERSONALLY HAD ANY CONTACT WITH THE
14 DEFENDANT SINCE THEN?

15 A NO MA'AM.

16 Q DID YOU RUN?

17 A NO MA'AM.

18 Q DID YOU LEAVE?

19 A NO MA'AM.

20 Q DID THE POLICE CALL YOU TO COME TALK WITH THEM THE
21 NEXT DAY?

22 A YES MA'AM.

23 Q DID YOU DRIVE YOURSELF UP THERE?

24 A YES MA'AM.

25 Q DID YOU BRING THE BABY WITH YOU?

DANA BLACKMON -DIRECT EXAMINATION BY MS. COLLINS

- 1 A NOT THE FIRST TIME.
- 2 Q DID YOU SPEAK WITH THE POLICE AT THAT TIME?
- 3 A YES MA'AM.
- 4 Q DID YOU GO BACK TO THE HOUSE?
- 5 A THE FIRST TIME.
- 6 Q AND LATER, DID YOU COME BACK TO TALK TO THE POLICE?
- 7 A YES MA'AM.
- 8 Q DID THEY CALL YOU TO COME BACK?
- 9 A THEY TOLD ME TO COME IN FOR QUESTIONING AND THEY CAME
- 10 AND THEY FOLLOWED ME UP HERE, YES MA'AM.
- 11 Q WAS THAT LATER THE SAME DAY?
- 12 A YES MA'AM. NO, I THINK IT WAS-- I DON'T THINK IT WAS THE
- 13 SAME DAY. IT WAS A COUPLE OF DAYS LATER OR SOMETHING, FROM
- 14 WHAT I REMEMBER.
- 15 Q FROM WHAT YOU REMEMBER?
- 16 A YES MA'AM.
- 17 Q ARE YOU SURE, OR YOU DON'T KNOW?
- 18 A I'M NOT SURE.
- 19 Q BUT, IN BETWEEN THAT FIRST STATEMENT AND THEN COMING
- 20 TO TALK TO YOUR FURTHER AND ESCORTING YOU BACK, YOU DIDN'T
- 21 RUN?
- 22 A NO MA'AM.
- 23 Q DID YOU HAVE ANY OF THE MONEY LEFT OVER FROM THESE
- 24 TRANSACTIONS FROM THE BANK?
- 25 A NO MA'AM.

- 1 Q HAD CHARRO EVER GIVEN YOU ANY OF IT?
- 2 A NOT THAT MONEY, NO MA'AM.
- 3 Q BUT YOU HAD THE CAR?
- 4 A YES MA'AM.
- 5 Q IN FACT, YOU HAD TWO CARS?
- 6 A YES MA'AM.
- 7 Q AND YOU DIDN'T LEAVE TOWN?
- 8 A NO MA'AM.
- 9 Q WHEN THE POLICE CAME TO TALK TO YOU THE SECOND TIME
- 10 DID YOU SPEAK WITH THEM AGAIN?
- 11 A YES MA'AM.
- 12 Q YOU WAIVED YOUR MIRANDA RIGHTS?
- 13 A YES MA'AM.
- 14 Q AGREED TO TALK TO THEM?
- 15 A YES MA'AM.
- 16 Q YOU DIDN'T ASK FOR A LAWYER?
- 17 A NO MA'AM.
- 18 Q DID YOU IN FACT A FEW DAYS LATER TALK TO THEM A THIRD
- 19 TIME, GIVE A THIRD STATEMENT?
- 20 A YES MA'AM. I THINK THAT WAS THE TIME I CAME IN FOR THE
- 21 QUESTIONING. I GUESS THAT WAS THE LAST TIME I TALKED TO THEM.
- 22 Q ALL RIGHT.
- 23 A THAT'S WHEN I HAD THE BABY WITH ME.
- 24 Q WHEN YOU HAD THE BABY WITH YOU, AT THAT TIME YOU WERE
- 25 ARRESTED. RIGHT?

1 A YES MA'AM.

2 Q AND AT THAT TIME YOU WERE CHARGED WITH ACCESSORY TO A
3 FELONY, AFTER THE FACT OF A FELONY?

4 A YES MA'AM.

5 Q WERE YOU CHARGED WITH GIVING FALSE INFORMATION TO THE
6 POLICE AT THAT TIME?

7 A YES MA'AM.

8 Q BECAUSE YOU HADN'T TOLD THEM THE FULLY STORY YET.
9 RIGHT?

10 A NO MA'AM.

11 Q BUT THE SECOND TIME WHEN THEY ARRESTED YOU, DID YOU
12 TELL THEM THE FULL STORY?

13 A NO MA'AM.

14 Q DID YOU---

15 A I BELIEVE I TOLD THEM A PARTIAL. I TOLD THEM AFTER THE LIE
16 DETECTOR TEST WAS TAKEN, THE FULL, TRUE STATEMENT.

17 Q BUT YOU ALWAYS TOLD THEM ABOUT CHARRO. IS THAT RIGHT?

18 A YES MA'AM.

19 Q YOU JUST DIDN'T TELL THEM WHAT YOU DID?

20 A YES MA'AM.

21 Q AFTER YOU WERE ARRESTED, TO YOUR KNOWLEDGE, DID A
22 FAMILY MEMBER GET DESIREE?

23 A YES MA'AM.

24 Q AND ULTIMATELY, YOU TOLD THEM EXACTLY WHAT YOU DID.
25 RIGHT?

- 1 A YES MA'AM.
- 2 Q AND ULTIMATELY, YOU TOLD THE POLICE EXACTLY WHAT
- 3 EVERYONE DID, INCLUDING CHARRO?
- 4 A YES MA'AM.
- 5 Q AT THAT POINT WERE YOU SAFE FROM HIM?
- 6 A I FELT SAFE, YES MA'AM.
- 7 Q WAS THE BABY SAFE FROM HIM AT THAT POINT?
- 8 A YES MA'AM.
- 9 Q AND AT THAT POINT WHEN YOU TALKED WITH THEM YOU
- 10 DIDN'T HAVE A LAWYER?
- 11 A NO MA'AM.
- 12 Q AND AT THAT POINT THAT YOU TALKED TO THE LAW
- 13 ENFORCEMENT AND GAVE THEM YOUR COMPLETE, FINAL STATEMENT,
- 14 YOU DIDN'T HAVE ANY PLEA BARGAIN WITH THE STATE. IS THAT
- 15 RIGHT?
- 16 A NO MA'AM.
- 17 Q YOU NEVER MET ME?
- 18 A NO MA'AM.
- 19 Q DIDN'T MEET MR. THOMPSON?
- 20 A NO MA'AM.
- 21 Q AND EVERYTHING YOU TOLD THEM IN THAT FINAL STATEMENT
- 22 WAS TRUE?
- 23 A YES MA'AM.
- 24 Q AND EVERYTHING YOU TOLD THEM IN THAT FINAL STATEMENT
- 25 IS WHAT YOU TOLD THIS JURY TODAY?

1 A YES MA'AM.

2 Q NOW, SEVERAL MONTHS LATER, IN AUGUST OF 2003, YOU DID
3 HAVE A LAWYER. RIGHT?

4 A YES MA'AM.

5 Q AND THAT LAWYER WAS HARRY DEST OF THE PUBLIC
6 DEFENDER'S OFFICE. RIGHT?

7 A YES MA'AM.

8 Q AT THAT TIME YOU STOOD IN THIS COURTROOM?

9 A YES MA'AM.

10 Q AND THE JUDGE ON THE BENCH AT THAT TIME WAS JUDGE JOHN
11 C. HAYES III?

12 A YES MA'AM.

13 Q AT THAT TIME YOU ENTERED A PLEA, YOU PLEAD GUILTY.
14 CORRECT?

15 A YES MA'AM.

16 Q AND YOU PLEAD GUILTY TO ARMED ROBBERY?

17 A YES MA'AM.

18 Q AND THAT WAS UNDER THE PREMISE, THE HAND OF ONE IS THE
19 HAND OF ALL?

20 A YES MA'AM.

21 Q BECAUSE YOU DIDN'T GO IN THAT TRAILER?

22 A NO MA'AM.

23 Q BUT YOU KNEW WHAT CHARRO WAS DOING IN THAT TRAILER?
24 RIGHT?

25 A YES MA'AM.

1 Q AND YOU KNEW HE WAS THERE TO ROB MR. CUBLEY. IS THAT
2 RIGHT?

3 A YES MA'AM.

4 Q AND YOU KNEW HE WOULD DO WHAT HE HAD TO, TO ROB MR.
5 CUBLEY?

6 A YES MA'AM.

7 Q AND YOU HELPED TAKE THE SAFE OUT?

8 A YES MA'AM.

9 Q AND IN EXCHANGE FOR THAT PLEA, THE SOLICITOR'S OFFICE
10 RECOMMENDED A TEN-YEAR, NO PAROLE SENTENCE, AND A
11 MAXIMUM TWENTY-YEAR, NO PAROLE SENTENCE. IS THAT RIGHT?

12 A YES MA'AM.

13 Q AND YOU DIDN'T KNOW AT THAT POINT WHEN YOU ENTERED
14 THAT PLEA WHAT SENTENCE YOU WERE GOING TO GET. IS THAT
15 RIGHT?

16 A NO MA'AM.

17 Q AND YOUR LAWYER TALKED TO THE JUDGE ABOUT YOUR
18 BACKGROUND?

19 A YES MA'AM.

20 Q AND AT THE END OF THAT PLEA, JUDGE HAYES SENTENCED YOU
21 TO TEN YEARS WITHOUT PAROLE?

22 A YES MA'AM.

23 Q IS THAT RIGHT?

24 A YES MA'AM.

1 Q AND A FEW DAYS LATER YOU WERE TRANSFERRED TO THE
2 DEPARTMENT OF CORRECTIONS?

3 A YES MA'AM.

4 Q HAD YOU EVER BEEN IN PRISON BEFORE THAT?

5 A NO MA'AM.

6 Q IN FACT, BEFORE THAT, YOU WERE ONLY CHARGED WITH A
7 CRIMINAL DOMESTIC VIOLENCE. IS THAT RIGHT?

8 A YES MA'AM.

9 Q FOR AN ARGUMENT WITH YOUR MOTHER?

10 A YES MA'AM.

11 Q WAS THAT PHYSICAL AT ALL?

12 A NO MA'AM.

13 Q WAS THAT YOUR ONLY CHARGE BEFORE THAT?

14 A THAT, AND, LIKE I SAID, I HAD A SUSPENDED LICENSE. I PAID A
15 \$400 FINE AND THAT'S IT.

16 Q A SUSPENDED LICENSE?

17 A YES MA'AM.

18 Q SO, RIDING IN THE CAR, FOR DRIVING THE CAR, CARRYING THE
19 SAFE OUT, NOT CALLING LAW ENFORCEMENT, NOT CALLING 911,
20 CALLING THE DISCOVER COMPANY, BEING WITH HIM ON THE
21 FORGERY, YOU'RE SERVING A TEN-YEAR, NO PAROLE SENTENCE. IS
22 THAT RIGHT?

23 A YES MA'AM.

24 Q AND THAT'S TEN YEARS YOU CAN NEVER GET BACK?

25 A NEVER GET BACK.

1 Q NOT ONLY TEN YEARS OUT OF YOUR LIFE, TEN YEARS OUT OF
2 DESIREE'S LIFE. RIGHT?

3 A YES MA'AM.

4 Q YOU MISSED HER FIRST BIRTHDAY?

5 A YES MA'AM.

6 Q YOU'RE GOING TO MISS HER FIRST DAY IN FIRST GRADE?

7 A YES MA'AM.

8 Q NOW, THE STATE, THE SOLICITOR'S OFFICE ALSO AGREED TO
9 DISMISS THE CHARGE OR MURDER IF YOU AGREED TO TESTIFY
10 TRUTHFULLY AGAINST MR. GUTIERREZ IN HIS TRIAL. CORRECT?

11 A YES MA'AM.

12 Q AND YOU'VE BEEN CHARGED WITH THAT UNDER THE HAND OF
13 ONE IS THE HAND OF ALL ALSO?

14 A YES MA'AM.

15 Q BECAUSE YOU DIDN'T ASSAULT MR. CUBLEY, DID YOU?

16 A NO MA'AM.

17 Q THE STATE DIDN'T ASK YOU TO SAY ANYTHING DIFFERENT
18 FROM WHAT YOU SAID IN YOUR LAST STATEMENT TO LAW
19 ENFORCEMENT. CORRECT?

20 A CORRECT.

21 Q THEY ASKED YOU TO TESTIFY SPECIFICALLY TO THAT.
22 CORRECT?

23 A YES MA'AM.

24 Q AND IS THAT WHAT YOU'VE DONE TODAY?

25 A YES MA'AM.

1 Q YOU PUT YOUR HAND ON THIS BIBLE?

2 A YES MA'AM.

3 Q YOU SWORE TO TELL THE TRUTH?

4 A YES MA'AM.

5 Q DO YOU BELIEVE THAT?

6 A YES MA'AM.

7 Q HAS EVERYTHING YOU'VE SAID TODAY BEEN TRUE?

8 A YES MA'AM.

9 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS FOR THE
10 DEFENSE ATTORNEY.

11 THE COURT: WE'RE GOING TO TAKE A SHORT BREAK BEFORE WE
12 DO THAT. I'LL ASK THE JURY TO GO TO THE JURY ROOM. DON'T TALK
13 ABOUT THE CASE. I'LL BRING YOU BACK IN A FEW MINUTES.

14 (WHEREUPON THE JURY EXITED THE COURTROOM) AT 3:51 P.M.)

15 MS. BLACKMON, DURING THE BREAK, YOU CAN'T DISCUSS YOUR
16 TESTIMONY WITH ANYONE.

17 A YES SIR.

18 THE COURT: WE'LL BE IN RECESS FOR FIFTEEN MINUTES.

19 (WHEREUPON COURT WAS IN RECESS)

20 COURT IN SESSION - 4:12 P.M.

21 THE COURT: BRING IN THE JURY.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM)

23 THE COURT: MR. CHIARENZA.

24 MR. CHIARENZA: THANK YOU, YOUR HONOR.

25

1 CROSS EXAMINATION BY MR. CHIARENZA

2 Q MS. BLACKMON, I THINK THE LAST THING THAT MS. COLLINS
3 ASKED YOU WAS, HAS EVERYTHING YOU'VE TOLD HERE TODAY BEEN
4 THE TRUTH. CORRECT?

5 A YES.

6 Q AND YOUR ANSWER TO THAT WAS YES. CORRECT?

7 A YES.

8 Q CAN YOU PLEASE SPEAK UP?

9 A YEAH.

10 Q BUT THIS ISN'T THE FIRST TIME THAT YOU'VE TALKED TO
11 SOMEBODY ABOUT WHAT HAPPENED ON THAT DAY. CORRECT?

12 A CORRECT.

13 Q IN FACT, YOU'VE GIVEN FIVE, SIX DIFFERENT ACCOUNTS AT
14 DIFFERENT TIMES TO LAW ENFORCEMENT. CORRECT?

15 A I MADE THREE STATEMENTS.

16 Q AND THEY ALSO SPOKE TO YOU AT YOUR TRAILER TWICE?

17 A CORRECT.

18 Q SO, THAT'S IN ADDITION TO THE THREE STATEMENTS. THAT'S
19 FIVE TIMES YOU'VE SPOKEN TO LAW ENFORCEMENT?

20 A YES.

21 Q THEN YOU DID AN ADDITIONAL INTERVIEW WITH A DETECTIVE
22 NEELY AT THE DETENTION CENTER. SO, SIX TIMES YOU SPOKE TO LAW
23 ENFORCEMENT.

24 A YES.

1 Q AND ALL THOSE TIMES YOU TOLD THEM YOU WERE TELLING
2 THE TRUTH?

3 A YES.

4 Q AND YOU'RE TELLING THE TRUTH TODAY?

5 A YES.

6 Q BUT A NUMBER OF THOSE PREVIOUS SIX STATEMENTS WERE
7 NOT THE TRUTH. CORRECT?

8 A CORRECT.

9 Q IN FACT, THE FIRST TIME THAT---

10 THE COURT: EXCUSE ME, MR. CHIARENZA. MS. BLACKMON,
11 WOULD YOU PLEASE GET A LITTLE BIT CLOSER TO THAT
12 MICROPHONE? PUT YOUR HAND DOWN SO WE CAN HEAR.

13 A OKAY.

14 THE COURT: YOU'RE GETTING QUIETER INSTEAD OF LOUDER.

15 A YES SIR.

16 Q THE FIRST TIME OFFICERS CAME TO YOUR HOUSE YOU DENIED
17 ANY KNOWLEDGE OF ANY INCIDENT INVOLVING CHECKS. THEY WERE
18 QUESTIONING YOU ABOUT THE CHECKS. IS THAT RIGHT?

19 A THEY WERE ASKING ABOUT, ACTUALLY ABOUT CHARRO AND
20 ASKING ME QUESTIONS ABOUT THE INCIDENT. I DON'T KNOW IF IT WAS
21 JUST FOR CHECKS. I DON'T REMEMBER.

22 Q OKAY. BUT REGARDLESS OF WHETHER THEY WERE ASKING YOU
23 ABOUT THE CHECKS OR MR. CUBLEY, THE ASSAULT ON MR. CUBLEY,
24 YOU DENIED ANY KNOWLEDGE?

25 A RIGHT.

- 1 Q ANYTHING ABOUT THE ASSAULT.
- 2 A CORRECT.
- 3 Q AND THEY ASKED YOU IF YOU KNEW WHERE MR. GUTIERREZ
- 4 WAS AND YOU DENIED ANY KNOWLEDGE OF KNOWING WHERE HE
- 5 WAS. IS THAT CORRECT?
- 6 A CORRECT.
- 7 Q BUT AT THAT TIME, CERTAINLY, WHAT YOU TOLD THEM THEN
- 8 DOESN'T MATCH UP WITH WHAT YOU'RE TELLING US TODAY. RIGHT?
- 9 A CORRECT.
- 10 Q THEN THEY CAME OUT. I'M NOT SURE IF IT WAS DETECTIVE
- 11 STRAIT EACH TIME. BUT THEY CAME OUT TO THE HOUSE MAYBE A
- 12 DAY OR TWO LATER.
- 13 A CORRECT.
- 14 Q THIS TIME THEY HAD BEEN NOTIFIED BY DISCOVER, I BELIEVE.
- 15 SO, THEY WERE QUESTIONING YOU ABOUT THE DISCOVER CARD.
- 16 A CORRECT.
- 17 Q AND YOU WEREN'T COMPLETELY TRUTHFUL WITH THEM AT
- 18 THAT POINT EITHER, WERE YOU?
- 19 A CORRECT.
- 20 Q THEN, AT SOME POINT LATER YOU WENT TO THE YORK COUNTY
- 21 SHERIFF'S OFFICE TO MEET WITH DETECTIVES AND GIVE THEM A
- 22 STATEMENT. RIGHT?
- 23 A CORRECT.
- 24 Q AND BEFORE WE GET INTO THOSE, THIS ALL HAPPENED FIVE
- 25 YEARS AGO. RIGHT?

1 A THAT'S CORRECT.

2 Q AND YOU'RE TESTIFYING TODAY WITH THE ASSISTANCE OF
3 HAVING REVIEWED SOME OF THESE MATTERS WITH THE SOLICITOR'S
4 OFFICE. RIGHT?

5 A CORRECT.

6 Q SO, YOU'VE GONE OVER YOUR PREVIOUS STATEMENTS.
7 CORRECT?

8 A CORRECT.

9 Q SO, YOU'VE MET WITH THE SOLICITOR'S OFFICE ON MORE THAN
10 ONE OCCASION REVIEWING WHAT YOUR TESTIMONY WOULD BE HERE
11 TODAY.

12 A CORRECT.

13 Q SO, YOU'VE HAD A CHANCE TO GO THROUGH ALL THESE
14 VARIOUS STATEMENTS PRIOR TO COMING INTO COURT AND
15 TESTIFYING.

16 A CORRECT.

17 Q IN THE FIRST STATEMENT THAT YOU GAVE TO LAW
18 ENFORCEMENT, YOU KNOW, IT'S REAL HARD TO READ. BUT I'M GOING
19 TO TRY AND GIVE YOU THE GIST OF IT. AND I'LL BE HAPPY TO HAND IT
20 TO YOU IF YOU NEED TO REFRESH YOUR MEMORY ON ANYTHING THAT
21 IT SAYS.

22 BUT, BASICALLY, WHAT YOU TOLD THEM WAS YOU WERE AT
23 HOME ON SUNDAY AND MY CLIENT WENT OUT TO PLAY SOCCER AND
24 HE CAME BACK AND HE WAS DIRTY AND HE CHANGED HIS CLOTHES.
25 YOU KNOW, THAT'S PRETTY MUCH WHAT HAPPENED ON SUNDAY, THE

1 DAY OF THIS, THE DAY THAT MR. CUBLEY WAS ASSAULTED. IS THAT
2 CORRECT?

3 A CORRECT.

4 MS. COLLINS: YOUR HONOR, I WOULD ASK THAT IF HE'S GOING
5 TO REFER TO ANY STATEMENT THAT HE GIVE THE WITNESS A COPY OF
6 IT, ESPECIALLY SINCE THERE HAVE BEEN MORE THAN ONE
7 STATEMENT, AND SHE'LL HAVE A COPY OF WHAT STATEMENT HE'S
8 REFERRING TO.

9 MR. CHIARENZA: I'LL BE HAPPY TO DO THAT, YOUR HONOR. AT
10 THIS POINT, I'M REALLY JUST SORT OF SUMMARIZING.

11 THE COURT: ALL RIGHT. GO AHEAD. JUST UNDERSTAND, MS.
12 BLACKMON, IF AT ANY TIME YOU NEED TO LOOK AT A STATEMENT
13 THAT'S PREVIOUSLY BEEN GIVEN TO ASSIST YOU IN ANSWERING YOUR
14 QUESTIONS, LET MR. CHIARENZA KNOW, AND HE WILL PROVIDE YOU
15 WITH IT.

16 A YES SIR.

17 MR. CHIARENZA: THANK YOU, YOUR HONOR.

18 Q AND SO, THAT INITIAL STATEMENT WAS GIVEN ON JANUARY 3,
19 IN THE MORNING, AT THE SHERIFF'S DEPARTMENT. DO YOU RECALL
20 THAT BEING THE CASE?

21 A WHICH STATEMENT ARE YOU TALKING ABOUT?

22 Q THE FIRST ONE THAT YOU GAVE DOWNSTAIRS AT THE SHERIFF'S
23 DEPARTMENT.

24 A I'D LIKE TO SEE THAT, PLEASE.

25 (STATEMENT IS HANDED TO WITNESS)

1 A YES, THAT'S CORRECT.

2 Q AND, AGAIN, THE BASIC GIST OF THIS ONE WAS, I WAS AT HOME.
3 CHARRO WAS PLAYING SOCCER. I DON'T KNOW ANYTHING ABOUT
4 ANYTHING BAD THAT HAPPENED. IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q WE'LL MOVE TO STATEMENT NUMBER TWO THAT YOU ALSO
7 INDICATED WAS THE TRUTH, JUST LIKE YOU DID WITH STATEMENT
8 ONE. AND THAT WAS GIVEN THE SAME DAY BUT IN THE AFTERNOON.
9 FIVE-THIRTY IS THE TIME THAT IS INDICATED ON THE BOTTOM. DOES
10 THAT APPEAR TO BE WHEN YOU GAVE THAT STATEMENT?

11 A THIS IS THE SECOND STATEMENT?

12 Q YES.

13 A OKAY. AND THE TIME IT SAID IS WHAT? WHAT TIME IS THIS?

14 Q THAT'S 17:30, WHICH MEANS 5:30.

15 A THAT'S CORRECT.

16 Q IN THE REAL WORLD. AND THIS ONE SAID THAT, "ON
17 DECEMBER 29, CHARRO CAME HOME ABOUT SIX AND TOLD ME ABOUT
18 A MAN IN FORT MILL WHO HAD LOTS OF MONEY KEPT IN A SAFE, AND
19 HE KNEW HIM BECAUSE HE USED TO LIVE AT THE TRAILERS THAT THE
20 MAN RENTED."

21 THE VERSION THAT YOU GIVE HERE INDICATES THAT YOU
22 STAYED AT HOME, MR. GUTIERREZ WENT, LEFT YOUR HOME AT SIX-
23 THIRTY, CAME BACK ABOUT NINE O'CLOCK IN THE BLUE CAR. IS THAT,
24 MORE OR LESS, WHAT THIS ONE SAYS? ANY OF THOSE HIGHLIGHTED
25 PORTIONS WHICH ARE INDICATED.

1 A THAT'S CORRECT.

2 Q SO, IN THIS STATEMENT YOU'RE NOT ADMITTING TO ANY
3 INVOLVEMENT AS FAR AS GOING OUT THERE?

4 A I WASN'T. NOT ON MY PART, I WASN'T.

5 Q RIGHT. YOU TOLD THEM IN THIS STATEMENT, AND I THINK THIS
6 IS SOMETHING'S THAT PROBABLY CONSISTENT THROUGHOUT ALL
7 YOUR STATEMENTS AND PERHAPS EVEN TODAY, IS THAT THIS CAME
8 ABOUT BECAUSE MR. GUTIERREZ KNEW ABOUT MR. CUBLEY AND THIS
9 RESIDENCE.

10 A RIGHT.

11 Q BUT, IN REALITY, YOU LIVED AT THE SAME TRAILER PARK
12 WHERE MR. CUBLEY LIVED.

13 A NO, I DID NOT LIVE THERE. I STAYED THERE SOMETIMES, BUT I
14 DID NOT LEAVE THERE.

15 Q OKAY. I THINK ONE OF THE FIRST QUESTIONS MS. COLLINS
16 ASKED YOU WAS IF YOU KNEW THE HOUSE NUMBER AND ADDRESS,
17 AND YOU ORIGINALLY GAVE EIGHTEEN-SOMETHING, TWIN LAKES
18 ROAD. I LOOKED AT TWIN LAKES ROAD AND IT'S 1601.

19 A RIGHT.

20 Q ARE YOU AWARE THAT THE ADDRESS OVER THERE, THE
21 TRAILER PARK WHERE MR. GUTIERREZ LIVED, WHERE MR. CUBLEY
22 LIVED, WAS EIGHTEEN-SOMETHING?

23 A NO SIR.

24 Q SO, IT'S JUST A COINCIDENCE THAT YOU GAVE THAT AS WHAT
25 YOU THOUGHT YOUR ADDRESS WAS?

1 A CORRECT.

2 Q AND IT'S YOUR SWORN TESTIMONY TODAY THAT IT WAS NEVER
3 YOUR RESIDENCE OVER THERE ON HIGHWAY 21 IN FORT MILL AT THE
4 TRAILER PARK WHERE MR. CUBLEY LIVED?

5 A LIKE I SAID, I DID NOT LIVE THERE FULL-TIME, NO SIR, I DIDN'T.

6 Q SO, YOU WOULD HAVE NEVER HAD ANY REASON TO GIVE THAT
7 LOCATION AS A RESIDENCE TO SOMEBODY?

8 A I MIGHT HAVE. I DON'T REMEMBER. LIKE I SAID, I WASN'T
9 THERE FULL-TIME.

10 Q SO, NOT LIVING THERE, YOU REALLY DIDN'T KNOW ANYTHING
11 ABOUT MR. CUBLEY OR WHAT HE DID OR WHERE HE WAS?

12 A I KNOW HE RENTED TRAILERS. LIKE I SAID, I SEEN HIM BEFORE,
13 BUT I NEVER MET HIM, ONE ON ONE, AS A PERSON.

14 Q OKAY. THEN, ULTIMATELY,-- WELL, AFTER YOUR SECOND
15 STATEMENT, YOU SPOKE WITH DETECTIVE NEELY. CORRECT? AND I'M
16 GOING TO ASK YOU TO LOOK AT SOMETHING AND NOT SAY A WORD
17 ABOUT THIS. ALL RIGHT?

18 A OKAY.

19 Q I WANT TO ASK YOU TO LOOK AT IT. DON'T SAY ANYTHING.

20 A OKAY.

21 Q SO, YOU REMEMBER THIS CONVERSATION NOW?

22 A CORRECT.

23 Q AND WHEN YOU SPOKE TO DETECTIVE NEELY HE ASKED YOU IF
24 YOU WERE PRESENT WHEN CHARRO BEAT MR. CUBLEY, AND YOUR
25 ANSWER WAS NO.

- 1 A CORRECT.
- 2 Q BUT TODAY YOU'RE TESTIFYING THAT YOU WERE?
- 3 A CORRECT.
- 4 Q AND DETECTIVE NEELY ALSO ASKED YOU IF YOU DROVE
- 5 CHARRO TO THE TRAILER ON THAT NIGHT, AND THE ANSWER THAT
- 6 YOU GAVE HIM THEN WAS NO.
- 7 A CORRECT.
- 8 Q BUT YOUR TESTIMONY HERE TODAY WAS THAT YOU DID DRIVE
- 9 HIM THERE.
- 10 A CORRECT.
- 11 Q THEN AFTER THAT CONVERSATION WITH DETECTIVE NEELY,
- 12 THAT LED TO A THIRD WRITTEN STATEMENT DOWN AT THE SHERIFF'S
- 13 DEPARTMENT. DO YOU REMEMBER THAT ONE?
- 14 A I'D LIKE TO SEE THAT ONE, PLEASE.
- 15 Q OKAY.
- 16 A YEAH, THIS IS MY FINAL STATEMENT.
- 17 Q THIS ONE IS WHEN YOU WERE GETTING IT ALL STRAIGHT WITH
- 18 THEM. RIGHT?
- 19 A CORRECT.
- 20 Q THIS IS THE ONE WHERE YOU WERE DONE LYING; YOU WANTED
- 21 TO SET IT STRAIGHT..
- 22 A YEAH. I TOLD THEM WHAT MY INVOLVEMENT WAS AT THAT
- 23 TIME.

1 Q SO, THIS STATEMENT GIVES THE SORT OF DETAILS WHAT YOU
2 TESTIFIED TO ABOUT TODAY ABOUT DRIVING TO MR. CUBLEY'S HOUSE
3 WITH MR. GUTIERREZ. RIGHT?

4 A COULD YOU REPEAT THE QUESTION?

5 Q THIS STATEMENT GIVES THE SAME SORT OF DETAILS YOU GAVE
6 TODAY.

7 A CORRECT.

8 Q ONE OF THOSE IS THAT YOU SAY YOU DROVE THERE WITH MR.
9 GUTIERREZ TO MR. CUBLEY'S HOUSE.

10 A CORRECT.

11 Q ONE OF THE DETAILS YOU GIVE IN THIS STATEMENT AND
12 TESTIFIED TO TODAY WAS ABOUT THE SKI MASK. RIGHT?

13 A CORRECT.

14 Q NOW, MR. GUTIERREZ, HE DID LANDSCAPING FOR A LIVING AND
15 CONSTRUCTION?

16 A YES.

17 Q WORKED OUTSIDE A GREAT DEAL?

18 A YES.

19 Q THIS SKI MASK, IT CAN BE WORN AS A HAT OR YOU CAN PULL IT
20 OVER YOUR FACE. RIGHT?

21 A EITHER ONE. CORRECT.

22 Q AND YOU CAN PRETTY BUY THEM AT ANY WAL-MART OR K-
23 MART?

24 A CORRECT.

25 Q AND IT WAS SOMETHING THAT HE WORE TO WORK?

- 1 A I THINK HE WORE IT ON A COUPLE OF OCCASIONS.
- 2 Q ALL RIGHT.
- 3 A THAT I REMEMBER.
- 4 Q ALL RIGHT. AND ULTIMATELY, THIS ITEM WAS LOCATED IN
- 5 YOUR HOME---
- 6 A CORRECT.
- 7 Q ---WHEN THE POLICE SEARCHED YOUR HOUSE. RIGHT?
- 8 A CORRECT.
- 9 Q NOW, I WANT TO ASK YOU JUST TO READ THE FIRST TWO
- 10 SENTENCES OF THIS PAGE OF THE LAST STATEMENT, WHICH IS THE
- 11 ONE THAT'S GETTING IT ALL RIGHT.
- 12 A THE FIRST TWO SENTENCES?
- 13 Q YES MA'AM.
- 14 A IT SAYS, "CHARRO WALKED UP ON THE PORCH OF THE CAMPER
- 15 AND BENT DOWN AND PICKED SOMETHING UP. I REALLY COULDN'T
- 16 TELL, BUT I AM SURE IT WAS A CONCRETE BLOCK."
- 17 Q OKAY. SO, THIS SAYS YOU REALLY COULDN'T TELL WHAT IT
- 18 WAS, BUT YOU SAW HIM BEND DOWN.
- 19 A I MEAN, WHY I REMEMBER THAT, IT WAS A CONCRETE BLOCK.
- 20 Q WELL, THAT'S NOT WHAT THIS SAYS. I MEAN, IT SAYS YOU'RE
- 21 SURE IT WAS A CONCRETE BLOCK, BUT IT ALSO SAYS YOU REALLY
- 22 COULDN'T TELL.
- 23 A CORRECT.
- 24 Q WELL, REALLY COULDN'T TELL AND I'M SURE ARE TWO
- 25 DIFFERENT THINGS, AREN'T THEY, MS. BLACKMON?

1 A CORRECT.

2 Q I'M MEAN, I'M PRETTY SURE THIS IS A TELEPHONE. RIGHT? AND
3 SO ARE YOU. RIGHT?

4 A (NO RESPONSE)

5 Q BUT IF YOU REALLY COULDN'T SEE IT ALL THAT WELL AND
6 HADN'T SEEN IT BEFORE YOU WOULDN'T BE ABSOLUTELY SURE.
7 RIGHT?

8 A CORRECT.

9 Q SO, YOU WERE ASSUMING WHAT HE PICKED UP WAS A
10 CONCRETE BLOCK.

11 A CORRECT.

12 Q DID ANYBODY EVER TELL YOU THAT IT WAS IMPORTANT THAT
13 YOU SEE A CONCRETE BLOCK?

14 A NO.

15 Q NOW, I THINK CONSISTENTLY WITH THIS LAST STATEMENT YOU
16 TESTIFIED THAT WHEN Y'ALL GOT BACK YOU HAD TAKEN THE SAFE,
17 AND YOU NEEDED TO HELP HIM CARRY THE SAFE OUT OF THE
18 TRAILER.

19 A CORRECT.

20 Q HE COULDN'T MANAGE IT ON HIS OWN. RIGHT?

21 A CORRECT.

22 Q BUT THEN YOU TESTIFIED THAT HE CARRIED THE SAFE INTO
23 YOUR HOME ALL BY HIMSELF. YOU DIDN'T HELP HIM DO THAT.
24 RIGHT?

25 A CORRECT.

1 Q AND JUST AS FAR AS THE SAFE GOES, YOU TESTIFIED THAT YOU
2 SAW HIM BEATING IT OPEN WITH THIS SCREWDRIVER AND THIS
3 HAMMER THAT'S IN EVIDENCE. RIGHT?

4 A CORRECT.

5 Q AND WHILE YOU WERE SITTING THERE WATCHING HIM BEAT
6 OPEN THIS SAFE, YOU ALSO NOTICED SOME LITTLE PARTICLES FLAKE
7 OUT ON THE GROUND.

8 A CORRECT.

9 Q WHEN DID THIS SUPPOSEDLY HAPPEN, BEATING OPEN THE
10 TRAILER (SIC), THE SAME DAY IT WAS STOLEN?

11 A THAT NIGHT WHEN WE COME BACK.

12 Q SUNDAY THE 29TH?

13 A CORRECT.

14 Q ALL RIGHT. WHEN WERE OFFICERS IN YOUR HOUSE TAKING
15 PICTURES, ABOUT A WEEK LATER?

16 A I'M NOT SURE OF THAT. I DON'T KNOW.

17 Q WELL, YOU KNOW THAT-- YOU'RE SAYING THAT THIS
18 OCCURRED ON A SUNDAY?

19 A UH-HUH.

20 Q AND ON A MONDAY, Y'ALL CASHED SOME CHECKS?

21 A UH-HUH.

22 Q AND ON TUESDAY, YOU CASHED SOME CHECKS, NEW YEAR'S
23 EVE. AND ON NEW YEAR'S DAY, Y'ALL LAID AROUND THE HOUSE AND
24 DIDN'T DO MUCH. RIGHT?

25 A CORRECT.

- 1 Q AND ON THE DAY AFTER NEW YEAR'S - WE'RE UP TO THE
2 SECOND, NOW - YOU TOOK CHARRO WHERE HE DIDN'T COME BACK.
3 RIGHT?
- 4 A CORRECT.
- 5 Q AND YOU STILL HAVEN'T SEEN A POLICE OFFICER UP TO THIS
6 POINT. RIGHT?
- 7 A NO.
- 8 Q THEN YOU SEE EDDIE STRAIT ONCE OR TWICE AT YOUR HOUSE.
9 RIGHT?
- 10 A CORRECT.
- 11 Q HE'S NOT TAKING ANY PICTURES?
- 12 A NO.
- 13 Q AND THEN THEY COME IN WITH A SEARCH WARRANT AND
14 START TAKING PICTURES. RIGHT?
- 15 A CORRECT.
- 16 Q SO, THIS IS-- WOULD YOU DISAGREE THAT IT WOULD APPEAR
17 THAT SOME SEVEN DAYS LATER THEY WERE IN YOUR HOME TAKING
18 PHOTOGRAPHS?
- 19 A TO MY KNOWLEDGE, I BELIEVE IT WAS EARLIER THAN THAT.
- 20 Q MAYBE FIVE?
- 21 A PROBABLY WITHIN A COUPLE OF DAYS.
- 22 Q WELL, LET'S DO IT AGAIN.
- 23 A OKAY.
- 24 Q HE'S BEATING THE SAFE OPEN ON SUNDAY, THE 29TH.
- 25 A CORRECT.

- 1 Q ON MONDAY, THE 30TH, Y'ALL ARE CASHING CHECKS.
- 2 A CORRECT.
- 3 Q TUESDAY, THE 31ST, YOU TRY TO CASH A CHECK; DOESN'T
- 4 WORK.
- 5 A CORRECT.
- 6 Q NEW YEAR'S DAY, YOU'RE HANGING OUT, BUYING LOTTERY
- 7 TICKETS AND CIGARETTES.
- 8 A CORRECT.
- 9 Q THE DAY AFTER NEW YEAR'S YOU TAKE CHARRO TO WORK.
- 10 A CORRECT.
- 11 Q YOU STILL HAVE NOT SEEN A POLICE OFFICER UP TO THIS POINT.
- 12 RIGHT?
- 13 A NOT IN THE MORNING WHEN I TOOK HIM TO WORK, NO.
- 14 Q OKAY.
- 15 A IT WAS THAT NIGHT.
- 16 Q SO, THE NIGHT OF DAY FIVE---
- 17 A RIGHT.
- 18 Q ---EDDIE STRAIT COMES TO TALK TO YOU.
- 19 A CORRECT.
- 20 Q BUT DOES NOT TAKE A PHOTOGRAPH?
- 21 A NOT TO MY REMEMBRANCE.
- 22 Q OKAY. THOSE PHOTOGRAPHS WHERE GUYS WHO WERE PUTTING
- 23 THOSE YELLOW NUMBERS AROUND, AND THEY HAD THE SEARCH
- 24 WARRANT. RIGHT?
- 25 A CORRECT.

1 Q THAT WAS A WHOLE DIFFERENT CREW THAN EDDIE STRAIT.
2 RIGHT?

3 A I'M NOT SURE.

4 Q WELL, A DIFFERENT EVENT. THEY WEREN'T THERE THE FIRST
5 NIGHT EDDIE TALKED TO YOU.

6 A THEY WASN'T THERE, NO.

7 Q SO, WE'RE LOOKING AT AT LEAST FIVE DAYS BEFORE YOU EVER
8 SAW THE GUYS WITH THE CAMERAS. RIGHT?

9 A CORRECT.

10 Q AND IT'S YOUR TESTIMONY-- WELL, ONE OF THOSE PICTURES
11 SHOWS THAT THERE'S SOME CRUMBS THAT CAME OFF THE SAFE.

12 A CORRECT.

13 Q FIVE DAYS LATER, ON THE FLOOR IN THE LIVING ROOM. RIGHT?

14 A CORRECT.

15 Q OKAY. NOW, IT WAS YOUR TESTIMONY YOU DIDN'T DRIVE
16 DOWN TO THE CREEK TO THROW THE SAFE OUT WITH HIM?

17 A CORRECT.

18 Q WHY NOT?

19 A I THINK THE BABY.

20 Q WELL, IT SOUNDS LIKE STAYING WITH THE BABY MIGHT HAVE
21 BEEN A GOOD IDEA WHEN HE WENT AND BEAT THIS MAN OVER THE
22 HEAD WITH A BRICK AND ROBBED HIM AND TOOK THE SAFE,
23 WOULDN'T IT?

24 A CORRECT.

1 Q WELL, WHY DID YOU STAY WITH THE BABY FOR THE
2 RELATIVELY SIMPLE TASK OF GOING A COUPLE HUNDRED YARDS
3 DOWN THE ROAD AND THROWING OUT THE SAFE, BUT YOU DECIDED
4 TO RIDE WITH HIM ON THIS SUPPOSED PLAN TO BEAT THIS MAN AND
5 ROB HIM?

6 A BECAUSE, LIKE I SAID, THE INCIDENT WAS ALREADY DONE, AND
7 HE WAS, LIKE, FIVE MINUTES DOWN THE ROAD. SO, I STAYED WITH
8 THE BABY. IN THIS INCIDENT, HE WAS MAYBE IN THE CAR FOR FIVE
9 MINUTES.

10 Q BUT YOU'VE PREVIOUSLY TESTIFIED THAT YOU DO EVERYTHING
11 CHARRO TELLS YOU BECAUSE YOU'RE SCARED.

12 A CORRECT.

13 Q EXCEPT FOR THIS, THIS YOU WEREN'T TOO WORRIED ABOUT?

14 A WELL, HE DIDN'T REALLY FORCE ME ON THAT.

15 Q SO, IT WAS EASIER TO GET YOU TO GET IN THE CAR AND GO ROB
16 AND BEAT A MAN THAN IT WAS TO GET YOU TO GET IN THE CAR AND
17 GO HALF A MILE DOWN THE ROAD?

18 A CORRECT.

19 Q NOW, ONE OF THE THINGS Y'ALL SUPPOSEDLY DID WITH THE
20 MONEY THAT YOU GOT FROM CASHING THE CHECKS WAS TO BUY A
21 CAR.

22 A CORRECT.

23 Q YOU LOOKED AT ONE CAR AND THEY WOULDN'T SELL IT TO YOU
24 BECAUSE YOU DIDN'T HAVE INSURANCE. IS THAT CORRECT, OR
25 SOMETHING LIKE THAT?

1 A WE LOOKED AT SEVERAL CARS AND, LIKE I SAID, IN THE END
2 THEY SAID THAT WE DIDN'T HAVE FULL COVERAGE INSURANCE
3 PURCHASING THE CAR AT THE LOT.

4 Q IN FACT, WHEN YOU SPOKE TO YOUR DAD, HE HELPED YOU FIND
5 A CAR TO BUY. RIGHT?

6 A I SEEN THE ADVERTISEMENT IN THE PAPER OF THE CAR THAT
7 WE ACTUALLY BOUGHT.

8 Q DID HE MAKE YOU AWARE OF THAT AD? YOU DID SPEAK TO HIM
9 ABOUT BUYING THE CAR?

10 A WELL, YEAH, BUT I ALREADY KNEW ABOUT THAT BEFOREHAND.

11 Q BUT YOU AND YOUR DAD HAD A CONVERSATION ABOUT
12 BUYING A CAR?

13 A I TOLD-- NO, NOT EXACTLY, NO.

14 Q NOT EXACTLY?

15 A NO.

16 Q WELL, WHAT'S NOT EXACTLY?

17 A I TOLD HIM THAT I HAD, YOU KNOW, I KNEW ABOUT A CAR AND
18 WE WAS GONNA GO LOOK AT IT, AND WE HAD WON SOME MONEY ON
19 LOTTERY TICKETS. SO, YEAH.

20 Q YOU TOLD YOUR DAD THAT YOU WON A THOUSAND DOLLARS
21 ON LOTTO---

22 A CORRECT.

23 Q ---AND YOU WERE GONNA USE THAT MONEY TO BUY A CAR.

24 A CORRECT.

25 Q THAT WASN'T THE TRUTH, WAS IT?

1 A NO, IT WASN'T.

2 Q YOUR TESTIMONY TODAY WAS YOU'VE GONE THROUGH THE
3 TWELFTH GRADE AT SCHOOL. CORRECT?

4 A CORRECT.

5 Q AND DID YOU ACTUALLY GO TO SCHOOL UP UNTIL TWELFTH
6 GRADE, OR IS THAT WHAT YOU'VE COMPLETED NOW AT THE
7 DEPARTMENT OF CORRECTIONS?

8 A I WENT TO SCHOOL, BUT I GOT MY GED AT THE DEPARTMENT OF
9 CORRECTIONS. I DID NOT GRADUATE HIGH SCHOOL, NO.

10 Q AND I'M NOT SAYING THAT TO EMBARRASS YOU. I'M JUST
11 TRYING TO GET SOMETHING STRAIGHT.

12 A RIGHT.

13 Q WERE YOU IN SCHOOL UP UNTIL TWELFTH GRADE AND JUST
14 DIDN'T GRADUATE?

15 A I JUST DIDN'T GRADUATE, NO.

16 Q BUT YOU WERE THERE UNTIL TWELFTH GRADE?

17 A CORRECT.

18 Q DO YOU RECALL DURING YOUR GUILTY PLEA IN THIS COURT
19 WHERE YOU SWORE TO TELL THE TRUTH, THAT YOU ADVISED THE
20 COURT THAT YOU ONLY HAD A TENTH GRADE EDUCATION?

21 A CORRECT.

22 Q SO, ONE OF THOSE IS NOT THE TRUTH. RIGHT?

23 A CORRECT.

24 Q AND AT THE TIME OF YOUR GUILTY PLEA, YOU DIDN'T KNOW
25 EXACTLY WHAT SENTENCE YOU WERE GONNA GET. RIGHT?

1 A CAN YOU REPEAT THAT QUESTION, PLEASE?

2 Q LET ME REPHRASE IT. WHAT DID YOUR LAWYER TELL YOU
3 THAT YOU MIGHT BE SENTENCED TO THAT DAY?

4 A I HAD A PLEA FROM TEN TO TWENTY YEARS.

5 Q TEN TO TWENTY?

6 A YES.

7 Q AND HE EXPLAINED YOU COULD GET TEN OR ELEVEN OR
8 TWELVE, ALL THE WAY UP TO TWENTY. RIGHT?

9 A CORRECT.

10 Q SO, Y'ALL TALKED ABOUT PART OF HIS JOB-- AND YOU'RE
11 LUCKY YOU HAD AN OUTSTANDING LAWYER. PART OF HIS JOB IS TO
12 CONVINCE THE JUDGE THAT THERE ARE REASONS TO GIVE YOU THE
13 LOWER RANGE OF THAT. RIGHT?

14 A CORRECT.

15 Q AND SO, YOU WANTED TO APPEAR AS SYMPATHETIC TO THE
16 JUDGE AS POSSIBLE, DIDN'T YOU?

17 A I JUST TOLD THE TRUTH.

18 Q BUT THE PART ABOUT ONLY HAVING A TENTH GRADE
19 EDUCATION WASN'T TRUE?

20 A NO SIR.

21 Q NOW, LET'S STAY ON THE GUILTY PLEA FOR A MOMENT. YOUR
22 LAWYER ALSO ADVISED YOU THAT THE MURDER CHARGE THAT
23 YOU'RE ORIGINALLY FACING CARRIES A MINIMUM THIRTY YEAR
24 SENTENCE. RIGHT?

25 A CORRECT.

- 1 Q ALL THE WAY UP TO LIFE IN PRISON. RIGHT?
- 2 A CORRECT.
- 3 Q AND HE EXPLAINED TO YOU THAT THAT MEANT THAT YOU
- 4 MIGHT NEVER, EVER GET OUT OF PRISON. RIGHT?
- 5 A CORRECT.
- 6 Q SO, WHILE YOU'VE TOLD MS. COLLINS THAT YOU'VE BEEN
- 7 SENTENCED TO TEN YEARS YOU'LL NEVER GET BACK. RIGHT?
- 8 A CORRECT.
- 9 Q AND YOU MISSED SOME BIRTHDAYS WITH YOUR DAUGHTER?
- 10 A CORRECT.
- 11 Q BUT IF YOU'D BEEN SENTENCED TO LIFE IN PRISON, YOU'D HAVE
- 12 NEVER SEEN YOUR DAUGHTER AGAIN. RIGHT? AT LEAST NOT
- 13 OUTSIDE THE PRISON.
- 14 A THAT'S CORRECT.
- 15 Q SO, TEN YEARS IS A WHOLE LOT BETTER THAN THIRTY, ISN'T IT?
- 16 A CORRECT.
- 17 Q AND TEN YEARS IS A WHOLE LOT BETTER THAN LIFE, ISN'T IT?
- 18 A CORRECT.
- 19 Q AND YOU DON'T GET-- THAT MURDER CHARGE, IT'S NOT GONE
- 20 FOR GOOD. RIGHT?
- 21 A CORRECT.
- 22 Q DID HE EXPLAIN THAT TO YOU?
- 23 A CORRECT.
- 24 Q IT'S STILL OUT THERE HANGING AROUND. RIGHT?
- 25 A CORRECT.

1 Q AND THE ONLY WAY YOU MAKE IT GO AWAY FOR GOOD IS TO
2 COME IN HERE AND SAY WHAT YOU SAID BEFORE IN VERSION NUMBER
3 THREE OF THE WRITTEN STATEMENT AND SIX OF YOUR OVERALL
4 STATEMENTS. RIGHT?

5 A CORRECT.

6 Q AND THAT'S WHAT YOU'VE TO SAY HERE TODAY OR YOU'RE
7 LOOKING BACK AT THE MURDER CHARGE. RIGHT?

8 A I JUST TELL THE TRUTH.

9 Q LIKE YOU DID BEFORE AT THE PLEA?

10 A CORRECT.

11 Q IN THIS SAME VERY COURTROOM?

12 A CORRECT.

13 Q AND YOU'VE BEEN IN THE DEPARTMENT OF CORRECTIONS FOR
14 ABOUT FOUR YEARS NOW?

15 A FIVE YEARS.

16 Q FIVE YEARS. I'M SORRY. IT'S NOT PLEASANT, IS IT?

17 A NO.

18 Q YOU'RE NOT ENJOYING IT, ARE YOU?

19 A NO.

20 Q YOU WANT TO GET OUT, DON'T YOU?

21 A ONE DAY.

22 Q AS SOON AS POSSIBLE?

23 A WELL, I'VE ACCEPTED MY RESPONSIBILITY. I'M WILLING TO DO
24 THE TIME I HAVE TO DO.

25 Q BUT YOU DON'T WANT TO DO ANOTHER THIRTY, DO YOU?

1 A NO, I DON'T.

2 Q NOW, YOU TESTIFIED EARLIER THAT YOU BELIEVE YOU SAW,
3 WHEN MR. GUTIERREZ LEFT WITH THE SAFE, HIS BLOODY SNEAKERS,
4 HE HAD JAMMED INTO THAT HOLE IN THE SAFE. RIGHT?

5 A AT HOME, YEAH.

6 Q WELL, YOU NEVER SAW THE SAFE AGAIN AFTER HE TOOK IT
7 DOWN THE ROAD. RIGHT?

8 A NO.

9 Q BUT THE LAST YOU SAW OF IT WAS SAFE, SNEAKERS, AND OUT
10 THE DOOR?

11 A CORRECT.

12 Q WITH THE SNEAKERS STICKING OUT OF THE HOLE?

13 A CORRECT.

14 Q NOW, PURSUANT TO YOUR GUILTY PLEA, ALL YOU PLEAD
15 GUILTY TO WAS THE ARMED ROBBERY. RIGHT?

16 A CORRECT.

17 Q BUT THEY'VE DISMISSED THE PART WHERE THEY CHARGE YOU
18 WITH GIVING FALSE INFORMATION TO THE POLICE?

19 A CORRECT.

20 Q AND THEY DISCUSSED THE MURDER AND EVERYTHING ELSE
21 YOU WERE CHARGED WITH. RIGHT?

22 A CORRECT.

23 Q AND THE MURDER, LIKE WE TALKED ABOUT, IT'S NOT TOTALLY
24 GONE FOR GOOD YET?

25 A CORRECT.

1 Q AND YOU UNDERSTAND THAT?

2 A CORRECT.

3 Q NOW, YOU REMEMBER IN YOUR FIRST STATEMENT, AND THIS IS
4 THE ONE THAT'S REALLY HARD FOR ME TO READ. IN THAT ONE, DIDN'T
5 YOU TELL THEM SOMETHING ABOUT A FRIEND WITH BLOND HAIR AND
6 ONE EYE? A FRIEND OF CHARRO'S WITH A BAD EYE, OR SOMETHING
7 ABOUT AN EYE? I CAN'T MAKE IT OUT.

8 A WHAT LINE ARE YOU REFERRING TO, SIR?

9 Q I'LL LET YOU LOOK AT IT AGAIN. THIS GUY WITH BLOND HAIR
10 AND SOMETHING ABOUT AN EYE.

11 A CORRECT.

12 Q WHAT DOES IT SAY?

13 A IT SAYS A GUY WITH BLOND HAIR AND-- IT SAYS, A GUY WITH
14 BLOND HAIR AND SOMETHING ABOUT DARK EYES OR SOMETHING.

15 Q IT'S NOT ONE EYE?

16 A NO.

17 Q WELL, IN THE FINAL VERSION OF THINGS, THIS GUY, HE DOESN'T
18 EXIST?

19 A NO, HE DOESN'T.

20 Q NOW, YOU TESTIFIED WHEN MS. COLLINS WAS SPEAKING TO
21 YOU THAT YOU STARTED LIVING FULL-TIME WITH MR. GUTIERREZ IN
22 2002?

23 A CORRECT.

24 Q SO, YOU WERE LIVING FULL-TIME TOGETHER WHEN THE BABY
25 WAS BORN?

- 1 A CORRECT.
- 2 Q AND THE BABY WAS BORN IN MARCH, 2002?
- 3 A CORRECT.
- 4 Q YOU WERE LIVING THERE FOR HOW LONG BEFORE THE BABY
- 5 WAS BORN WITH HIM?
- 6 A A COUPLE MONTHS. LIKE I SAY, I DON'T KNOW EXACTLY HOW
- 7 LONG.
- 8 Q HE DOES SPEAK ENGLISH. RIGHT?
- 9 A YES, HE DOES.
- 10 Q BUT HIS FIRST LANGUAGE IS SPANISH?
- 11 A CORRECT.
- 12 Q HE COMMUNICATES WITH HIS FAMILY IN SPANISH?
- 13 A CORRECT.
- 14 Q YOU'VE CERTAINLY SEEN HIM SPEAK SPANISH?
- 15 A CORRECT.
- 16 Q HE READS SPANISH?
- 17 A CORRECT.
- 18 Q AND WRITES SPANISH?
- 19 A BECAUSE THAT'S HIS LANGUAGE.
- 20 Q THAT'S THE POINT I'M MAKING, IS THAT ANY ENGLISH HE
- 21 SPEAKS IS A SECOND LANGUAGE FOR HIM.
- 22 A CORRECT.
- 23 Q NOW, YOU TESTIFIED THAT AFTER HE CAME OUT OF THE
- 24 TRAILER AND YOU HELPED HIM INTO THE CAR, THAT HE HAD BLOODY
- 25 GLOVES ON AND HIS SHOES WERE BLOODY?

- 1 A I SAID I SAW BLOOD ON ONE OF HIS GLOVES, YES, I DID.
- 2 Q BLOOD ON ONE OF THE GLOVES?
- 3 A RIGHT.
- 4 Q AND ON HIS SHOES?
- 5 A CORRECT.
- 6 Q NOW, YOU TESTIFIED THAT AT SOME POINT ON THE DRIVE--
- 7 WELL, LET ME STEP BACK A MOMENT. YOU TESTIFIED THAT YOU
- 8 WENT FROM MR. CUBLEY'S BACK DOWN 21 TOWARDS ROCK HILL TO
- 9 McGUIRE'S, WAS THE FIRST STOP; THAT'S WHERE THE BABY WAS?
- 10 RIGHT?
- 11 A CORRECT.
- 12 Q WHAT'S THAT, A FIVE, TEN MINUTE DRIVE?
- 13 A ABOUT FIFTEEN MINUTES.
- 14 Q SO, THIS WHOLE TIME HE IS IN THE CAR WITH HIS BLOODY
- 15 SNEAKERS AND THE BLOODY GLOVES. RIGHT?
- 16 A HE TOSSED THE GLOVES OUT OF THE WINDOW.
- 17 Q BUT NOT YET.
- 18 A NOT YET.
- 19 Q WHEN YOU GOT TO McGUIRE'S YOU STILL HAD THE BLOODY
- 20 GLOVES. RIGHT?
- 21 A I DON'T THINK SO. I DON'T REMEMBER.
- 22 Q I THINK YOU TESTIFIED HE TOSSED THEM OUT SOME POINT
- 23 LATER ON CELANESE ROAD. OKAY? WHICH IS THE WAY YOU WOULD
- 24 HAVE TO GO TO GET BACK TO YOUR PLACE ON TWIN LAKES. RIGHT?
- 25 A CORRECT.

1 Q SO, YOU REMEMBER IT NOW? THE GLOVES GOT THROWN OUT
2 AFTER McGUIRES?

3 A CORRECT.

4 Q AND YOUR TESTIMONY WAS THAT HE WENT AND GOT THE
5 BABY. RIGHT?

6 A CORRECT.

7 Q THIS WAS HIS BROTHER'S PLACE OR HIS SISTER'S PLACE, OR
8 SOMETHING?

9 A HIS BROTHER, RUEBEN; HIS WIFE, EDDIE; AND AMELIA, HIS
10 AUNT.

11 Q SO, EDDIE, AMELIA AND RUEBEN ARE ALL IN THE PLACE WHERE
12 YOU LEFT THE BABY?

13 A I'M NOT SURE IF RUEBEN WAS THERE, BUT I KNOW EDDIE AND
14 AMELIA WAS THERE.

15 Q WELL, HE DIDN'T GO IN THERE WITH THE GLOVES ON, DID HE, TO
16 GET THE BABY?

17 A NO.

18 Q YOU DIDN'T THROW THEM OUT UNTIL AFTER HE LEFT. SO THE
19 GLOVES WERE STILL IN THE CAR. RIGHT?

20 A CORRECT.

21 Q BUT HE DID WALK IN THERE WITH THE SNEAKERS. HE DIDN'T
22 TAKE HIS SNEAKERS OFF, DID HE?

23 A NO.

1 Q AND THOSE FOLKS, THEY NEVER ASKED WHAT YOU WERE
2 DOING THAT NIGHT? YOU JUST LEFT THE BABY AND YOU DIDN'T TELL
3 THEM--

4 A WE DIDN'T TELL THEM.

5 Q ---ANYTHING ABOUT WHERE YOU WERE GOING?

6 A NO. WE JUST TOLD THEM WE WAS GOING OUT FOR A LITTLE
7 WHILE.

8 Q NOW, WHEN YOU WANTED TO TELL THE TRUTH IN THE FINAL
9 STATEMENT - AND IT'S PROBABLY IMPORTANT THAT YOU TAKE A
10 LOOK AT IT. YOU TESTIFIED HERE TODAY THAT TO YOUR
11 RECOLLECTION MR. GUTIERREZ GOT RID OF THE CHECKBOOK, TOO;
12 PUT IT IN THE BAG WITH THE CREDIT CARDS.

13 A UH-HUH.

14 Q NOW, THAT'S NOT ANYWHERE IN THAT FINAL STATEMENT, IS IT?
15 YOU CAN TAKE A MOMENT TO LOOK AT IT.

16 A (PAUSE TO PERUSE STATEMENT) OKAY. WHAT WAS YOUR
17 QUESTION AGAIN?

18 Q DOES IT MENTION ANYWHERE IN THAT THAT MR. GUTIERREZ
19 GOT RID OF THE CHECK BOOK?

20 A NO.

21 Q BUT IT DOES MENTION, YOU DO SAY HE THREW THE TWO CREDIT
22 CARDS, RIGHT, IN A BAG OVER THE FENCE AT YOUR TRAILER. IS THAT
23 RIGHT?

24 A CORRECT.

25 Q BUT NO MENTION OF THE CHECKBOOK, THOUGH?

- 1 A NO.
- 2 Q PRIOR TO PREPARING FOR TRIAL WHO SPOKE TO YOU ABOUT
- 3 THE CHECKBOOK? BEFORE TODAY, WHO TALKED TO YOU ABOUT THE
- 4 CHECKBOOK?
- 5 A YOU'RE TALKING ABOUT WHEN?
- 6 Q GETTING READY TO GO TO TRIAL, SPEAKING WITH PEOPLE
- 7 ABOUT YOUR TESTIMONY. WHO TALKED TO YOU ABOUT THE
- 8 CHECKBOOK?
- 9 A THE NIGHT BEFORE TODAY?
- 10 Q YES.
- 11 A LIKE, THE LAST COUPLE OF DAYS?
- 12 Q YES.
- 13 A SOLICITORS.
- 14 Q THE SOLICITOR BROUGHT UP THE CHECKBOOK. SO, NOW, FIVE
- 15 YEARS LATER WHEN WE NEED TO KNOW WHAT HAPPENED TO THE
- 16 CHECKBOOK YOU REMEMBER THAT IT WAS IN THE BAG THROWN
- 17 OVER THE FENCE. RIGHT?
- 18 A CORRECT.
- 19 Q BUT THREE DAYS, OR FOUR DAYS AFTER IT HAPPENED, WHEN
- 20 YOU'RE GIVING YOUR TRUTHFUL STATEMENT, YOU DIDN'T TELL
- 21 ANYBODY THAT THAT'S WAS WHERE THE CHECKBOOK WAS? IS THAT
- 22 RIGHT?
- 23 A ARE YOU TALKING ABOUT THE TIME OF THE STATEMENT?
- 24 Q YES. THAT ONE RIGHT THERE.
- 25 A CORRECT.

1 Q SO, THERE'S NOTHING ABOUT THE CHECKBOOK?

2 A NO.

3 Q LAST WEEK YOU TALKED TO THE SOLICITOR AND HERE WE ARE
4 IN COURT AND NOW WE KNOW THE CHECKBOOK WENT OVER THE
5 FENCE. RIGHT?

6 A CORRECT.

7 Q SHOW ME IF YOU CAN ANYWHERE IN THAT FINAL STATEMENT
8 WHERE YOU MENTIONED ANYTHING ABOUT HEARING BANGING
9 NOISES IN THE TRAILER, WHILE YOU'RE SITTING IN THE CAR.

10 A IT DOESN'T SAY.

11 Q DOESN'T SAY?

12 A NO.

13 Q THAT'S SOMETHING Y'ALL TALKED ABOUT GETTING READY FOR
14 TRIAL?

15 A NO. LIKE I SAID, IT'S BEEN FIVE YEARS SINCE THESE
16 STATEMENTS WERE MADE. AND, LIKE I SAID, I WAS JUST SCARED. I
17 WAS JUST NERVOUS AT THE TIME. BUT, LIKE I SAID, I TOLD THE TRUTH
18 TODAY.

19 Q SO, YOU'RE REMEMBERING THINGS BETTER FIVE YEARS LATER
20 THAN YOU DID FOUR DAYS AFTER IT HAPPENED. IS THAT WHAT
21 YOU'RE TELLING ME?

22 A SOME PARTS.

23 Q NOW, THE GLOVES THAT SUPPOSEDLY WENT OUT THE WINDOW
24 OF THE CAR ON CELANESE ROAD, YOU SAID THAT THOSE WERE PUT IN
25 A PLASTIC BAG. RIGHT?

- 1 A CORRECT.
- 2 Q ALL RIGHT. AND WRAPPED UP IN THE BAG AND TOSSED OUT
- 3 THE WINDOW?
- 4 A CORRECT.
- 5 Q WAS THE CAR MOVING AT THE TIME, STOPPED AT A RED LIGHT?
- 6 WHAT?
- 7 A IT WAS MOVING.
- 8 Q STILL ON THE ROAD?
- 9 A CORRECT.
- 10 Q SO, Y'ALL HADN'T DRIVEN OFF THE ROAD INTO A PARKING LOT
- 11 OR ANYTHING?
- 12 A NO.
- 13 Q AND THAT HAPPENED SUNDAY WHEN Y'ALL WERE LEAVING THE
- 14 TRAILER?
- 15 A CORRECT.
- 16 Q WHAT'S THE DATE ON THAT?
- 17 A ON THE STATEMENT?
- 18 Q YEAH.
- 19 A IT SAYS THE 28TH, ON LINE ONE.
- 20 Q THE DATE YOU GAVE THE STATEMENT. AND I DON'T MEAN TO
- 21 CONFUSE YOU, BUT I THINK IT'S AT THE BOTTOM OF THE FRONT PAGE.
- 22 A JANUARY 5.
- 23 Q SO, THAT'S JUST, MAYBE EIGHT, NINE DAYS LATER.
- 24 A CORRECT.

1 Q NOW, BACK TO-- YOU DIDN'T GO WITH HIM TO GET RID OF THE
2 SAFE BECAUSE YOU WANTED TO STAY WITH THE BABY. IS THAT
3 RIGHT?

4 A CORRECT.

5 Q IS THAT WHAT YOU WERE THINKING?

6 A UH-HUH.

7 Q WELL, AGAIN, I'VE GOT TO GO BACK TO THIS SUNDAY. YOU HAD
8 THE BABY THAT NIGHT. AND YOUR TESTIMONY WAS BECAUSE HE
9 WANTED YOU TO DRIVE, YOU DROPPED THE BABY OFF AT RELATIVES'
10 AND WENT WITH HIM TO MR. CUBLEY'S TRAILER?

11 A CORRECT.

12 Q NOW, THIS POCKET KNIFE, YOUR MOM GAVE THAT TO HIM ON
13 CHRISTMAS?

14 A CORRECT.

15 Q CHRISTMAS, LIKE, A COUPLE OF DAYS BEFORE ALL THIS
16 SUPPOSEDLY HAPPENED?

17 A YES.

18 Q SO, WAS IT YOUR TESTIMONY THAT FROM CHRISTMAS DAY
19 UNTIL THE 29TH OR WHENEVER THEY FOUND THIS, THAT HE USED TO
20 KEEP IT ON HIM AT ALL TIMES?

21 A YEAH. HE CARRIED IT WITH HIM AT ALL TIMES.

22 Q OKAY.

23 A MOST TIMES, YEAH.

24 Q SO, JUST A COUPLE DAYS FROM CHRISTMAS TO THE 29TH IS
25 LONG ENOUGH TO SAY SOMEONE DOES SOMETHING ALL THE TIME?

1 A I MEANT FROM THE TIME HE RECEIVED THE KNIFE AS A GIFT,
2 YES.

3 Q OKAY. WELL, WHEN THEY FOUND THE KNIFE IT WAS ACTUALLY
4 AT YOUR PLACE IN A COFFEE TABLE DRAWER?

5 A CORRECT.

6 Q IT WASN'T ON HIM THEN. RIGHT?

7 A NO.

8 Q MS. COLLINS ASKED YOU A COUPLE OF TIMES DURING THE
9 COURSE OF THIS YOU HAD THE OPPORTUNITY TO THINK ABOUT MR.
10 CUBLEY, AND YOU SAID THAT YOU DID. RIGHT?

11 A CORRECT.

12 Q BUT YOU NEVER CALLED ANYONE?

13 A NO.

14 Q AND YOU TESTIFIED WAS THE REASON YOU WERE AFRAID OF
15 WHAT MY CLIENT MIGHT DO?

16 A CORRECT.

17 Q YOU KNOW YOU COULD HAVE MADE AN ANONYMOUS CALL.
18 RIGHT?

19 A I COULD HAVE. BUT, LIKE I SAID, I WAS SCARED.

20 Q WHAT'S THERE TO BE AFRAID OF BY JUST MAKING A CALL AND
21 NOT GIVING YOUR NAME? CALLING FROM A PHONE SOMEWHERE?

22 A LIKE I SAID, HE WAS WITH ME AT THE TIME AFTER THE
23 INCIDENT. SO, I WAS JUST SCARED.

24 Q WELL, YOU WERE CERTAINLY ALONE WHEN YOU DROPPED HIM
25 OFF AT WORK FOR A WHOLE DAY, WASN'T HE?

1 A CORRECT.

2 Q AND BY YOUR OWN TESTIMONY, HE WAS ALONE WHEN HE WENT
3 AND GOT RID OF THE SAFE. RIGHT?

4 A RIGHT. BUT, PLUS, LIKE I SAID, HE WAS THE BREADWINNER, AND
5 I DID LOVE HIM AND I WAS SCARED FOR ME AND HIM.

6 Q OKAY. SO, YOU WERE SCARED FOR HIM, TOO?

7 A UH-HUH.

8 Q SO, IT WASN'T SO MUCH A QUESTION OF YOU BEING SCARED, IT
9 WAS THINGS WOULDN'T BE GOOD FOR Y'ALL-- YOU WERE SCARED OF
10 GETTING CAUGHT; YOU WEREN'T SCARED OF HIM?

11 A I WAS SCARED OF HIM, YES, I WAS.

12 Q BUT YOU JUST SAID HE WAS THE BREADWINNER.

13 A YES, HE WAS.

14 Q SO, IF HE GETS CAUGHT, THEN, NO MORE BREAD. RIGHT?

15 A CORRECT.

16 Q SO, IT WAS OKAY TO LET MR. CUBLEY LAY THERE INJURED,
17 POSSIBLY DYING, AS LONG AS MR. GUTIERREZ COULD KEEP BRINGING
18 HOME A PAYCHECK?

19 A I WASN'T THINKING THAT AT THE TIME, NO.

20 Q BUT YOU DID KNOW THE LAST YOU SAW HIM HE WAS LAYING
21 THERE?

22 A CORRECT.

23 Q ACCORDING TO YOUR TESTIMONY.

24 A CORRECT.

1 Q AND THEN EVEN IF JUST A LITTLE PART OF YOU WAS AFRAID OF
2 GETTING CAUGHT, YOU WERE AFRAID OF GETTING CAUGHT, WEREN'T
3 YOU?

4 A YES. BUT, LIKE I SAID, I WAS MORE SCARED OF CHARRO THAN
5 ANYTHING.

6 Q OKAY. SO, THAT'S WHY YOU DIDN'T TELL THE POLICE THE
7 TRUTH THE FIRST FOUR TIMES, FIVE TIMES YOU SPOKE TO THEM?

8 A THE REASON I DIDN'T TELL THE POLICE THE TRUTH WAS, LIKE I
9 SAID, BECAUSE I DIDN'T WANT, YOU KNOW, TO BE IN TROUBLE, AND I
10 WAS SCARED FOR MY LIFE.

11 Q RIGHT. BEING IN TROUBLE WITH THE LAW.

12 A CORRECT.

13 Q AND THAT'S THE SAME AS NOT WANTING TO GET CAUGHT, ISN'T
14 IT?

15 A CORRECT.

16 Q NOW, YOU TESTIFIED YOU'VE NEVER HAD A CREDIT CARD
17 BEFORE?

18 A NEVER HAVE, NO.

19 Q SO, YOU'RE NOT FAMILIAR WITH HOW THEY WORK?

20 A CORRECT.

21 Q MAYBE YOU'VE HAD A BANK CARD, ATM, OR SOMEONE YOU
22 KNOW HAS AN ATM CARD?

23 A I DIDN'T PERSONALLY OWN A BANK CARD, NO.

24 Q WELL, WHERE DID YOU GET THIS NOTION OF A PIN NUMBER
25 FROM?

- 1 A CHARRO TOLD ME TO CALL AND SEE IF THERE WAS A PIN
2 NUMBER ON IT, SO THAT'S WHAT I DID.
- 3 Q I BELIEVE YOUR TESTIMONY WAS THAT YOU NEVER HAD A
4 CARD, SO YOU FIGURED YOU USED A PIN NUMBER.
- 5 A CORRECT. BUT CHARRO TOLD ME TO CALL.
- 6 Q HE MAY HAVE TOLD YOU TO CALL AND USE THE CARD, BUT YOU
7 THOUGHT YOU NEEDED A PIN NUMBER. RIGHT?
- 8 A CORRECT.
- 9 Q BUT NOW YOU SAID I'VE NEVER HAD A CREDIT CARD BEFORE.
- 10 A RIGHT. I KNOW ABOUT CREDIT CARDS. I NEVER PERSONALLY
11 OWNED ONE, THOUGH.
- 12 Q I'M SORRY?
- 13 A I KNOW ABOUT CREDIT CARDS, BUT I NEVER PERSONALLY
14 OWNED ONE.
- 15 Q SO, FOR ALL YOU KNEW, CREDIT CARD AND PIN NUMBER, THOSE
16 TWO THINGS GO HAND IN HAND.
- 17 A FROM WHAT I KNEW.
- 18 Q AND WHEN YOU ASKED, WHEN YOU CALLED THE NUMBER AND
19 ASKED FOR A PIN NUMBER THEY STARTED ASKING YOU ALL SORTS OF
20 QUESTIONS. RIGHT?
- 21 A CORRECT.
- 22 Q PERSONAL FAMILY MEMBER INFORMATION.
- 23 A NOT ME.
- 24 Q NOT YOU, BUT MR. CUBLEY'S AND MRS. CUBLEY'S
25 INFORMATION.

- 1 A CORRECT.
- 2 Q BECAUSE IT WAS THEIR CARD.
- 3 A CORRECT.
- 4 Q AND AT THAT POINT YOU GOT NERVOUS AND HUNG UP.
- 5 CORRECT?
- 6 A CORRECT.
- 7 Q DID YOU HANG UP BECAUSE YOU WERE SCARED OF CHARRO, OR
- 8 DID YOU HANG UP BECAUSE YOU WERE SCARED OF THE PEOPLE ON
- 9 THE OTHER END OF THE LINE?
- 10 A AT THAT TIME, I WAS SCARED BECAUSE I DIDN'T HAVE THE
- 11 INFORMATION FOR THE CARD.
- 12 Q RIGHT. AND THEY WERE SENSING SOMETHING WAS WRONG,
- 13 AND MAYBE YOU WERE GOING TO GET CAUGHT AGAIN.
- 14 A CORRECT.
- 15 Q NOW, IT'S YOUR TESTIMONY THAT MR. GUTIERREZ IS THE ONE
- 16 WHO INSISTED ON FILLING OUT THE CHECKS AND TAKING THEM INTO
- 17 THE BANK?
- 18 A CORRECT.
- 19 Q ALTHOUGH, DESPITE THE FACT THAT HE APPARENTLY CAN
- 20 ORDER YOU AROUND AND GET YOU TO DO ANYTHING HE TELLS YOU
- 21 TO, THIS WAS SOMETHING HE WANTED TO DO ON HIS OWN. RIGHT?
- 22 A YEAH. BECAUSE HE SAID HE DONE IT AND HE DIDN'T WANT TO
- 23 THINK IT WAS FOR NOTHING, THE ROBBERY, THAT THEY WASN'T ANY
- 24 MONEY.

1 Q RIGHT. SO, LET'S MAKE SOMETHING OUT OF THIS AND GO CASH
2 THESE CHECKS.

3 A CORRECT.

4 Q RIGHT. BUT BEYOND HIM JUST HAVING THIS BRILLIANT IDEA TO
5 CASH THESE CHECKS, HE WANTED TO BE THE ONE TO GO IN THE BANK.
6 THAT'S WHAT YOU TESTIFIED TO.

7 A CORRECT.

8 Q AND HE CAN MAKE YOU DO OTHER THINGS, BUT THIS THING HE
9 WANTED TO DO.

10 A CORRECT.

11 Q RIGHT. ALL THREE TIMES YOU HAD THE BABY WITH YOU AND
12 CHARRO'S BROTHER, IN CHARRO'S CAR?

13 A CORRECT.

14 Q AT THE BANK, I MEAN.

15 A CORRECT.

16 Q THIS LAST TIME AT THE BANK, YOUR TESTIMONY IS HE CAME
17 RUNNING OUT, YELLING SOMETHING IN SPANISH, AND HE TOLD YOU
18 THAT THE LADY CALLED THE POLICE?

19 A CORRECT.

20 Q CHECK THAT LAST STATEMENT FOR ME, IF YOU WOULD, AND
21 SEE IF ANY OF THAT'S IN THERE.

22 A (PAUSE TO PERUSE STATEMENT) NO, NOT IN MY FINAL
23 STATEMENT, NO.

24 Q IS IT IN ANY? IS THERE ONE THAT IT'S IN? I'M NOT AWARE OF IT.

25 A I DON'T KNOW. I THINK IT'S IN THE SECOND STATEMENT.

1 Q THE ONE THAT'S NOT COMPLETELY TRUE?

2 A NO, JUST THE SECOND HALF IS TRUE. BECAUSE THIS
3 STATEMENT WAS MADE WHEN I CONVINCED MYSELF ON THE
4 THURSDAY. ALL THE STATEMENTS I HAVE THAT CHARRO IS DOING IT,
5 BEING INVOLVED IN THE ROBBERY.

6 Q YOU'RE RIGHT. IF YOU WOULD JUST READ THAT. IF YOU WILL
7 START WITH THIS, START WITH "ON TUESDAY", AND JUST GO TO RIGHT
8 THERE.

9 A WHERE DO I START?

10 Q WHERE IT SAYS, "ON TUESDAY", THE FIRST PARAGRAPH OF THE
11 BOTTOM, THERE AT THE BOTTOM.

12 A OKAY. IT SAYS, "ON TUESDAY, THE 31ST, RUEBEN CAME BY TO
13 PICK US UP ABOUT 10:30. WE WENT TO THE BANK IN ROCK HILL ON
14 MAIN STREET TO CASH ANOTHER CHECK. CHARRO WENT IN THE BANK
15 AND WAS IN THERE ABOUT TWENTY MINUTES, WHEN HE CAME
16 RUNNING OUT AND SAID, LET'S GO, LET'S GO."

17 Q THERE'S NOTHING IN THERE ABOUT THE LADY CALLING THE
18 POLICE. RIGHT?

19 A ACTUALLY, YES, ON LINE SIX.

20 Q WHAT'S THAT SAY?

21 A IT SAYS, "THE TELLER CALLED THE MANAGER"... OKAY. IT
22 STARTS AT LINE FIVE. "...THEN CHARRO TOLD ME ABOUT WHAT WENT
23 ON AT THE BANK. THE TELLER CALLED THE MANAGER OVER AND SHE
24 SAID TO CALL THE POLICE. SO HE RAN OUT."

1 Q OKAY. WELL, THAT'S GOOD. I APOLOGIZE. I MISSED THAT.
2 THERE'S NOTHING IN THERE ABOUT SPEAKING SPANISH. RIGHT?

3 A NO.

4 Q AND THAT WAS NOT THE FINAL STATEMENT?

5 A NO.

6 Q AND THIS IS THE STATEMENT WHERE YOU TOLD LAW
7 ENFORCEMENT THAT CHARRO WENT WITHOUT YOU?

8 A CORRECT.

9 Q HE CAME BACK AT NINE O'CLOCK IN THE CAR?

10 A OKAY. THAT'S THE SECOND STATEMENT. RIGHT?

11 Q YES.

12 A CORRECT.

13 Q SO, THIS ONE STARTS OFF WITH YOU NOT HAVING ANYTHING TO
14 DO WITH IT?

15 A CORRECT.

16 Q THEN YOU FINISH UP WITH HIM COMING OUT OF THE BANK,
17 YELLING, LET'S GO, LET'S GO?

18 A CORRECT.

19 Q SO, YOUR TESTIMONY IN THIS ONE WAS HALFWAY TRUE, BUT AS
20 FAR AS FINISHING UP, IT TURNED OUT TO BE TRUE.

21 A CORRECT.

22 Q THIS PART ABOUT HIM RUNNING OUT OF THE BANK.

23 A CORRECT.

24 MR. CHIARENZA: THAT'S ALL, YOUR HONOR.

25 THE COURT: RE-DIRECT.

1 MS. COLLINS: THANK YOU, YOUR HONOR.

2 RE-DIRECT EXAMINATION BY MS. COLLINS:

3 Q DANA, I'M GOING TO ASK YOU ABOUT THE SECOND STATEMENT
4 YOU GAVE LAW ENFORCEMENT ON JANUARY 1, 2003, AT 5:30 IN THE
5 AFTERNOON.

6 A OKAY.

7 Q THAT'S A SIX-PAGE STATEMENT. RIGHT?

8 A CORRECT.

9 Q YOU SIGNED THE BOTTOM OF EACH OF THOSE PAGES. RIGHT?

10 A CORRECT.

11 Q THAT WAS THE SECOND ONE YOU SIGNED. RIGHT?

12 A CORRECT.

13 Q MR. CHIARENZA HAS ASKED YOU ABOUT SOME PORTIONS OF IT.
14 RIGHT?

15 A CORRECT.

16 Q I'D LIKE YOU TO READ THAT ENTIRE STATEMENT TO THE JURY
17 AT THIS TIME.

18 A ALL SIX PAGES?

19 Q YES.

20 A OKAY. IT SAYS, "ON SUNDAY, DECEMBER 29, CHARRO, WHO IS
21 ISAIAS DIAZ GUTIERREZ, CAME HOME ABOUT SIX O'CLOCK P.M., AND
22 TOLD ME HE HAD HEARD ABOUT A MAN IN FORT MILL WHO HAD LOTS
23 OF MONEY HE KEPT IN A SAFE. CHARRO KNEW HIM BECAUSE HE USED
24 TO LIVE AT THE TRAILERS THE MAN RENTED. HE SAID HE WANTED TO
25 GO AND GET THE MONEY FROM HIM AND HE SAID HE WOULD BREAK

1 IN OR WHATEVER HE HAD TO DO. CHARRO LEFT AT ABOUT SIX-
2 THIRTY IN OUR OLD, BLUE CAR, WHICH WAS A PONTIAC 6000. HE CAME
3 BACK AT ABOUT NINE O'CLOCK IN THE BLUE CAR. HE HAD THE SAFE,
4 A CHECKBOOK, AND A WALLET WITH HIM.

5 HE SAID WHEN HE GOT THERE HE PUT ON A SKI MASK AND
6 KNOCKED ON THE DOOR AND WHEN THE MAN ANSWERED HE WENT
7 INSIDE. CHARRO SAID HE HIT HIM WITH A CONCRETE BLOCK AND
8 KNOCKED HIM DOWN AND KICKED HIS TEETH OUT. HE WANTED TO
9 KNOCK HIM OUT SO HE COULD NOT GET TO A GUN THAT HE KNEW HE
10 HAD. WHEN CHARRO WAS LEAVING HE SAID HE CUT THE PHONE CORD
11 WITH HIS POCKET KNIFE SO HE COULD NOT CALL THE POLICE.

12 CHARRO BEAT THE SAFE OPEN, USING A HAMMER AND A PRY
13 BAR UNTIL HE COULD REACH INSIDE AND PULL THE PAPERS OUT.
14 THERE WAS NO MONEY INSIDE THE SAFE, ONLY PAPERS, LIKE, A TITLE
15 TO A DODGE TRUCK, AND SOME PICTURES. CHARRO THEN PUT
16 EVERYTHING BACK INSIDE THE SAFE.

17 HE THEN WENT THROUGH THE WALLET AND GOT A PHILLIPS 66
18 GAS CARD AND A DISCOVER CREDIT CARD. HE ALSO GOT \$56 IN CASH.
19 HE THEN LEFT ABOUT ELEVEN O'CLOCK. HE TOOK THE SAFE AND THE
20 WALLET WITH HIM. HE TOLD ME HE THREW THEM OUT AT THE BRIDGE
21 ON TWIN LAKES ROAD ABOVE OUR HOUSE.

22 CHARRO THEN HAD ME CALL THE 1-800 NUMBER ON THE BACK
23 OF THE DISCOVER CARD TO SEE IF I COULD GET A PIN NUMBER TO USE
24 IT. THE OPERATOR ASKED ME SEVERAL QUESTIONS, LIKE MY
25 MOTHER'S MAIDEN NAME, THE DATE OF BIRTH AND SOCIAL SECURITY

1 NUMBER. AND WHEN THEY PUT ME ON HOLD I HUNG THE PHONE UP. I
2 TOLD HIM WHAT THEY WERE ASKING ME AND THAT WE COULD NOT
3 USE THE CARD. HE THEN PUT THE TWO CARDS IN A PLASTIC BAG AND
4 THREW IT OVER THE FENCE BESIDE OUR TRAILER.

5 HE TOLD ME NOT TO CALL THE POLICE, AND IF I DID, HE HAS
6 FAMILY THAT COULD HURT ME. HE SAID IF THE POLICE COME
7 LOOKING FOR HIM, HE WOULD LEAVE AND NOT COME BACK.

8 ON MONDAY, THE 30TH, WHEN WE GOT UP, HE SAID HE WANTED
9 TO TRY TO CASH SOME CHECKS BECAUSE THERE WAS NOT ANY
10 MONEY IN THE SAFE. HE CALLED IN SICK TO WORK AND THEN FILLED
11 OUT THE CHECKS AND HE SAID HE DID NOT WANT THEM TO LOOK
12 FUNNY, SO HE WOULD NOT MAKE THEM OUT FOR A LARGE AMOUNT.
13 HE DID ONE FOR \$500, ONE FOR \$600 AND THEN ONE FOR \$700.
14 HIS BROTHER, RUEBEN, WAS GOING TO TAKE US TO THE BANK
15 BECAUSE CHARRO THOUGHT THE POLICE MAY BE LOOKING FOR THE
16 BLUE CAR. HIS BROTHER PICKED US UP ABOUT ELEVEN O'CLOCK AND
17 WE WENT TO THE BANK IN FORT MILL BESIDE HARDEE'S. CHARRO
18 WENT INSIDE BY HIMSELF AND CASHED THE CHECK. AND WE LEFT
19 THAT BANK AND WENT TO THE CHINESE STORE IN FORT MILL TO GET
20 GAS.

21 WE THEN WENT TO THE MEXICAN STORE ON CHERRY ROAD AT
22 McGUIRE'S AND RUEBEN WENT INSIDE FOR A WHILE AND ME AND
23 CHARRO STAYED IN THE CAR. RUEBEN HAD TO TAKE HIS WIFE TO
24 WORK, SO HE TOOK US BACK HOME. SHE HAD TO BE AT WORK AT
25 GENERAL TIRE AT THREE O'CLOCK. HEIDL, CHARRO'S COUSIN, CAME

1 AND PICKED US ABOUT 4:30, AND TOOK US TO THE BANK IN ROCK HILL
2 ON HERLONG. CHARRO WENT INSIDE THE BANK AND CASHED
3 ANOTHER CHECK. WE THEN WENT TO THE DRIVE-THROUGH BANK ON
4 CHERRY ROAD, BUT IT WAS CLOSED WHEN WE GOT THERE, HE TOOK
5 US BACK HOME. WE STAYED THERE THE REST OF THE NIGHT.

6 AND ON TUESDAY, THE 31ST, RUEBEN CAME BY TO PICK US UP
7 ABOUT TEN-THIRTY. WE WENT TO THE BANK IN ROCK HILL ON MAIN
8 STREET TO CASH ANOTHER CHECK. CHARRO WENT IN THE BANK AND
9 WAS IN THERE FOR ABOUT TWENTY MINUTES WHEN HE CAME
10 RUNNING OUT AND SAID, LET'S GO, LET'S GO.

11 WE THEN WENT TO A CAR LOT ON ANDERSON ROAD FOR ABOUT
12 TWO HOURS LOOKING AT CARS TO BUY. WE TALKED TO A WHITE
13 MALE NAMED MIKE, WITH BLOND HAIR. AND WE COULD NOT BUY A
14 CAR THERE BECAUSE WE DID NOT HAVE FULL COVERAGE INSURANCE.
15 RUEBEN HAD TO TAKE HIS WIFE TO WORK AGAIN, SO HE TOOK US
16 HOME.

17 THEN CHARRO TOLD ME ABOUT WHAT WENT ON AT THE BANK.
18 THE TELLER CALLED THE MANAGER OVER AND SHE SAID TO CALL THE
19 POLICE, SO HE RAN OUT. RUEBEN PICKED US BACK UP ABOUT 3:45 TO
20 GO TO A WOMAN NAMED SHERRY'S HOUSE TO LOOK AT A CAR WE SAW
21 IN THE PAPER. SHE LIVED IN AN APARTMENT BEHIND THE YMCA OFF
22 OF CHARLOTTE AVENUE IN ROCK HILL, APARTMENT 114.

23 I TEST DROVE THE CAR AROUND THE BLOCK AND CAME BACK. I
24 TOLD HER WE WOULD BUY THE CAR AND CHARRO SIGNED THE TITLE
25 AND PAID HER \$1000 IN CASH. WE THEN DROVE THE WHITE CAR HOME

1 AND RUEBEN TO HIS HOUSE. WE WERE THERE ALL NIGHT AND HEIDL
2 AND SCORPION CAME OVER FOR NEW YEAR'S. WE JUST ATE AND
3 WATCHED MOVIES ALL NIGHT.

4 ON WEDNESDAY, THE FIRST, CHARRO WAS OFF WORK, SO WE
5 WERE AT THE HOUSE ALL DAY EXCEPT GOING TO THE CIRCLE K ON
6 CELANESE TO BUY A POWER BALL TICKET.

7 ON THURSDAY, THE SECOND, I TOOK CHARRO TO WORK, ALONG
8 WITH HIS BROTHER, CHONG, WHO WE PICKED UP AT McGUIRE'S. I
9 DROPPED THEM OFF AT BENTON'S IN FORT MILL AROUND EIGHT
10 O'CLOCK. I SPENT THE DAY AT HOME AND WENT TO PICK THEM UP AT
11 5:30. THEY WERE NOT THERE AND I ASKED JIMMY WHERE THEY WERE.
12 HE SAID CHONG HAD GOTTEN A RIDE AND CHARRO HAD ASKED HIM
13 TO DROP HIM OFF AT VICTOR'S BECAUSE THE POLICE WERE LOOKING
14 FOR HIM.

15 I WENT TO VICTOR'S TRAILER, BUT THEY SAID HE WAS NOT
16 THERE AT ABOUT 4:45. I LEFT THERE AND WENT TO HEIDL'S TRAILER,
17 AND HE WAS NOT THERE EITHER. I WENT THERE FOR A WHILE, THEN
18 WENT TO GEE-GEE'S AT McGUIRE'S AND SHE SAID THE POLICE HAVEN'T
19 BEEN THERE LOOKING FOR CHARRO. I THEN WENT HOME AND THE
20 POLICE CAME TO MY HOUSE A SHORT TIME LATER.

21 CHARRO CALLED WHILE THE POLICE THERE AND TOLD ME HE
22 WAS THREE HOURS AWAY. HE SAID HE HAD LEFT AND WAS NOT
23 COMING BACK, HE WOULD GO BACK TO MEXICO. HE ASKED HAD THE
24 POLICE BEEN THERE AND I TOLD HIM NO. WE GOT OFF THE PHONE
25 AND HE SAID HE WOULD CALL ME BACK IN TWENTY MINUTES BUT HE

1 NEVER CALLED BACK WHILE THE POLICE WERE STILL THERE. HE DID
2 CALL BACK AROUND MIDNIGHT AND TOLD ME HE WAS IN RALEIGH,
3 NORTH CAROLINA. AND I TOLD HIM THE POLICE HAD BEEN THERE
4 AND HE TOLD ME TO TELL THEM VICTOR HAD DONE IT TO THROW
5 THEM OFF.

6 I ASKED HIM IF HE WAS COMING BACK TO SEE THE BABY AND
7 HE SAID HE WOULD COME AROUND TWO OR THREE IN THE MORNING
8 ON SATURDAY. HE SAID HE WOULD GET A MAN FROM RALEIGH TO
9 BRING HIM DOWN. I TOLD HIM I WOULD SEE HIM THEN AND WE HUNG
10 UP."

11 Q AND THAT'S THE STATEMENT YOU GAVE TO LAW ENFORCEMENT
12 ON JANUARY 3, 2003, AT 3:15 IN THE AFTERNOON?

13 A YES MA'AM.

14 Q AT 5:30. I'M SORRY.

15 A YES MA'AM.

16 Q ALL RIGHT. AND YOU GAVE ANOTHER STATEMENT, YOUR LAST
17 SIGNED STATEMENT ON JANUARY 6, 2003. CORRECT?

18 A CORRECT.

19 Q I'LL SHOW YOU THAT THREE-PAGE STATEMENT. IS THAT THE
20 STATEMENT YOU GAVE ON JANUARY 6, 2003?

21 A YES MA'AM.

22 Q DID YOU SIGN THE BOTTOM OF EACH OF THOSE PAGES?

23 A YES MA'AM.

1 Q NOW, THE STATEMENT THAT YOU JUST READ THAT I PUT BACK,
2 IT DIDN'T MENTION ANY OF YOUR INVOLVEMENT AT MR. CUBLEY'S
3 TRAILER. RIGHT?

4 A CORRECT.

5 Q BUT IT MENTIONED YOU CALLING THE PIN NUMBER, FOR THE
6 PIN NUMBER?

7 A CORRECT.

8 Q IT MENTIONED YOU GOING WITH THEM ON THE FORGERIES.
9 RIGHT?

10 A CORRECT.

11 Q APART FROM LEAVING OUT YOUR PART AT MR. CUBLEY'S
12 RESIDENCE, WAS EVERYTHING ELSE IN THAT SECOND STATEMENT
13 THAT YOU JUST READ TRUE?

14 A CORRECT.

15 Q I'D LIKE YOU TO READ THAT THIRD STATEMENT THAT MR.
16 CHIARENZA ASKED YOU ABOUT IN PART. I'D LIKE THE JURY TO HEAR
17 THE ENTIRE STATEMENT. IF YOU WOULD, READ THAT THREE PAGES.

18 A YES MA'AM. "AS CHARRO HAD MENTIONED, ON SATURDAY,
19 DECEMBER 28, '02, THAT HE KNEW AN OLD MAN THAT HAD A SAFE IN
20 HIS HOUSE AND IT HAD A LOT OF MONEY IN IT. ON SUNDAY,
21 DECEMBER 29, 2002, WE TALKED ALL DAY ABOUT HOW WE WERE
22 GOING TO GO UP TO FORT MILL AND ROB THE OLD MAN. CHARRO HAD
23 SAID THAT HE WOULD HAVE TO HIT THE OLD MAN WHEN HE OPENED
24 THE DOOR BECAUSE THE OLD MAN HAD A GUN AND HE WAS CRAZY.

1 ON SUNDAY NIGHT AT 6:00 P.M., CHARRO AND MYSELF AND THE
2 BABY LOADED UP IN THE CAR AND WE TOOK THE BABY TO AUNT
3 EDDIE'S. SHE'S CHARRO'S BROTHER'S, RUEBEN'S WIFE. SHE LIVES ON
4 HAPPY STREET IN McGUIRE'S MOBILE HOME PARK. ON SUNDAY SHE
5 WAS AT HER MOTHER'S TRAILER INSIDE THE PARK AND I DON'T KNOW
6 THAT ADDRESS.

7 ME AND CHARRO THEN LEFT AND DROVE TO THE PEACH STAND
8 IN FORT MILL. THERE CHARRO GOES IN THE STORE AND BUYS A PAIR
9 OF GRAY, WORK TYPE GLOVES AND SOME CIGARETTES. HE WAS
10 GOING TO USE THE GLOVES TO ROB THE OLD MAN. CHARRO BROUGHT
11 A SKI MASK WITH HIM TO USE.

12 WE THEN DROVE TO THE OLD MAN'S CAMPER OFF HIGHWAY 21. I
13 PULLED THE CAR AND TURNED OFF THE HEADLIGHTS. I PARKED OVER
14 NEXT TO THIS LITTLE OUTBUILDING AND I COULD SEE THE DOOR OF
15 THE CAMPER. CHARRO GOT OUT AND WALKED UP TO THE CAMPER.
16 CHARRO WALKED UP ON THE PORCH OF THE CAMPER AND BENT DOWN
17 AND PICKED SOMETHING UP. I REALLY COULDN'T TELL, BUT I AM
18 SURE IT WAS A CONCRETE BLOCK.

19 CHARRO THEN KNOCKED ON THE DOOR OF THE CAMPER AND
20 WHEN IT OPENED, CHARRO RUSHED INSIDE. I SAT IN THE CAR WHILE
21 CHARRO WAS IN THE CAMPER, ABOUT THIRTY MINUTES. THE CAMPER
22 DOOR OPENED AND CHARRO WAS HOLDING A SAFE AND WAS
23 STRUGGLING TO GET OUT THE DOOR BECAUSE OF THE WEIGHT OF THE
24 SAFE. I GOT OUT OF THE CAR AND WENT OVER TO HELP HIM.

1 I OPENED THE DOOR AND I COULD SEE THE OLD MAN LYING ON
2 THE FLOOR. I COULD SEE BLOOD AROUND HIS HEAD. IT ALSO LOOKED
3 LIKE HIS TEETH WERE LYING ON THE FLOOR BESIDE HIM. THE MAN
4 NEVER MADE A SOUND. HE WAS JUST BREATHING HEAVY AND I KNEW
5 HE WAS ALIVE.

6 CHARRO LOADED THE SAFE INTO THE BACK PASSENGER'S SEAT
7 AND I GOT IN AND STARTED THE CAR. AND WE DROVE STRAIGHT
8 BACK TO McGUIRE'S AND PICKED UP THE BABY. AND CHARRO GOT
9 OUT AND WENT UP AND GOT HER. HE CAME BACK AND PUT HER IN
10 THE CAR. WE DROVE HOME FROM THERE.

11 ON THE WAY, CHARRO GOT A WHITE, PLASTIC CITGO BAG OUT
12 OF THE BACK SEAT AND PUT THE GLOVES INTO IT AND I COULD SEE
13 THAT THE GLOVES HAD BLOOD ON THEM. CHARRO THREW THE BAG
14 WITH THE GLOVES OUT THE WINDOW OF THE CAR SOMEWHERE ON
15 CELANESE ROAD. THIS WAS SOMEWHERE BETWEEN RIVERVIEW ROAD
16 AND MT. GALLANT ROAD AND WE CONTINUED ON UNTIL WE GOT
17 HOME.

18 WE PULLED UP AT THE HOUSE AND CHARRO GOT OUT THE SAFE
19 AND I GOT OUT THE BABY AND WE ALL WENT INSIDE. CHARRO THEN
20 BEAT OPEN THE SAFE WITH A HAMMER AND CROW BAR. WHEN HE
21 WAS DONE HE TOOK OUT WHAT HE WANTED TO KEEP, THE
22 CHECKBOOK, A DISCOVER CARD, AND A PHILLIPS 66 CARD.

23 CHARRO THEN TRIED TO STUFF HIS NIKE TENNIS SHOES INTO
24 THE HOLE IN THE SAFE. HE DID IT BECAUSE THEY HAD BLOOD ON

1 THEM. CHARRO GOT IN THE CAR AND TOOK THE SAFE DOWN TO THE
2 CREEK AND THREW IT IN AND I STAYED WITH THE BABY.

3 LATER THAT NIGHT I CALLED DISCOVER TO TRY TO GET A PIN
4 NUMBER FOR THE CARD. I COULDN'T GET THE NUMBER, SO I HUNG UP,
5 AND CHARRO PUT BOTH CARDS IN A BLUE BAG AND THREW THEM
6 OVER THE FENCE OUTSIDE OUR HOUSE.

7 I KNEW OF THIS ROBBERY BEFORE IT OCCURRED AND HAD
8 DISCUSSED IT WITH CHARRO AT LEAST BEFORE WE WENT TO FORT
9 MILL."

10 Q AND YOU GAVE THEM THAT STATEMENT ON JANUARY 6, 2003?

11 A YES MA'AM.

12 Q AND YOU WERE IN CUSTODY AT THAT TIME?

13 A YES MA'AM.

14 Q YOU HAD BEEN ARRESTED AT THAT POINT?

15 A YES MA'AM.

16 Q YOU HAD BEEN ARRESTED IN FACT ON THE THIRD. RIGHT?

17 A CORRECT.

18 Q YOU DIDN'T HAVE A LAWYER AT THAT POINT. RIGHT?

19 A NO MA'AM.

20 Q AND YOU DIDN'T HAVE A DEAL AT THAT POINT. RIGHT?

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

22 Q THAT STATEMENT WAS GIVEN ON JANUARY 6. DID YOU KNOW
23 WHEN YOU GAVE THAT STATEMENT ON JANUARY 6, THAT MR. CUBLEY
24 HAD PASSED AWAY ON JANUARY 5?

25 A NO MA'AM.

1 Q MR. CHIARENZA ASKED YOU ABOUT MEETING WITH THE
2 SOLICITORS IN PREPARATION FOR THIS TRIAL. WHAT, IF ANY,
3 INSTRUCTIONS WERE YOU GIVEN BY OUR OFFICE, WHETHER MYSELF
4 OR MR. THOMPSON OR ANYONE, REGARDING YOUR TESTIMONY
5 TODAY?

6 A I WAS TOLD TO TELL THE TRUTH.

7 Q WERE YOU TOLD IN ANY OTHER WAY ABOUT HOW TO ANSWER A
8 QUESTION?

9 A NO MA'AM.

10 Q DID ANYONE EVER ASK YOU ABOUT WHAT Y'ALL DID WITH THE
11 CHECKBOOK, THE REST OF THE CHECKBOOK, BEFORE I DID?

12 A NOT THAT I REMEMBER.

13 Q DID YOU TELL LAW ENFORCEMENT EVERYTHING THAT YOU DID
14 ON JANUARY 3, 2003?

15 A FROM WHAT I REMEMBER, YES MA'AM.

16 Q THANK YOU.

17 MR. CHIARENZA: NOTHING FURTHER.

18 THE COURT: YOU MAY STEP DOWN. LADIES AND GENTLEMEN,
19 WE'RE GOING TO RECESS FOR THE AFTERNOON. KEEP IN MIND THE
20 CAUTIONS, NO DISCUSSION, NO MEDIA EXPOSURE, NO RESEARCH.
21 HAVE A GOOD EVENING AND PLEASE REPORT TO YOUR JURY ROOM AT
22 9:30 IN THE MORNING, 9:30 IN THE MORNING.

23 (WHEREUPON THE JURY EXITED THE COURTROOM AT 5:14 P.M.)

24 THE COURT: ANY MATTERS TO ADDRESS BEFORE WE RECESS?

25 MS. COLLINS: NO, YOUR HONOR.

1 MR. CHIARENZA: NO, YOUR HONOR.

2 THE COURT: COURT IS IN RECESS UNTIL 9:30 IN THE MORNING.

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK	)	

STATE OF SOUTH CAROLINA,	)	TRANSCRIPT OF RECORD
	:	2007-GS-46-01261
PLAINTIFF,	)	2007-GS-46-01262
	:	2007-GS-46-01263
VERSUS	)	2007-GS-46-01264
	:	2007-GS-46-01265
ISAIAS DIAZ GUTIERREZ,	)	2007-GS-46-01266
	:	
DEFENDANT.	)	

VOLUME III
DECEMBER 12, 2007

BEFORE:

THE HONORABLE J. DERHAM COLE, JUDGE, AND A JURY

APPEARANCES:

FOR THE STATE:
WALTER W. THOMPSON, ESQ., DEPUTY SOLICITOR
LISA J. COLLINS, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:
DEREK CHIARENZA, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1 **WEDNESDAY, DECEMBER 13, 2007 - COURT IN SESSION 9:30 A.M.**

2 THE COURT: ANYTHING FROM THE STATE BEFORE WE GET
3 STARTED?

4 MS. COLLINS: NO, YOUR HONOR.

5 THE COURT: FROM THE DEFENSE?

6 MR. CHIARENZA: NO, YOUR HONOR.

7 THE COURT: BRING IN THE JURY.

8 (WHEREUPON THE JURY ENTERED THE COURTROOM)

9 GOOD MORNING, LADIES AND GENTLEMEN. WE ARE GOING TO
10 CONTINUE WITH THE STATE'S PRESENTATION. MS. COLLINS.

11 MS. COLLINS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
12 COURT. THE STATE'S NEXT WITNESS IS MARIO VARGAS.

13 **MARIO VARGAS, DULY SWORN, TESTIFIED AS**
14 FOLLOWS:

15 **DIRECT EXAMINATION BY MS. COLLINS:**

16 Q PLEASE STATE YOUR FULL NAME FOR THE JURY.

17 A MARIO VARGAS.

18 Q MR. VARGAS, IF YOU KEEP YOUR VOICE UP SO EVERYONE CAN
19 HEAR YOU. WHAT IS YOUR OCCUPATION?

20 A I'M DISABLED RIGHT NOW.

21 Q YOU'RE DISABLED?

22 A UH-HUH.

23 Q AND PRIOR TO BECOMING DISABLED, WHAT WAS YOUR
24 OCCUPATION?

1 A I USED TO BE A SUPERINTENDENT AND I USED TO BE A CAR
2 SALESMAN.

3 Q IN DECEMBER OF 2002, WERE YOU A CAR SALESMAN AT THAT
4 TIME?

5 A I'M SORRY?

6 Q IN DECEMBER OF 2002, WERE YOU A CAR SALESMAN?

7 A YES.

8 Q WHAT BUSINESS DID YOU WORK WITH IN DECEMBER OF 2002?

9 A BRAND NEW AUTO SALES.

10 Q WHERE WAS THAT LOCATED?

11 A ANDERSON ROAD.

12 Q THAT IS IN ROCK HILL, SOUTH CAROLINA?

13 A YES.

14 Q IN DECEMBER, LATE DECEMBER OF 2002, ON THE 30TH OR THE
15 31ST, DID YOU COME INTO CONTACT WITH ISAIAS GUTIERREZ?

16 A YES, I DID.

17 Q DID YOU KNOW MR. GUTIERREZ?

18 A YES, I DID.

19 Q DID YOU KNOW HIM AT THAT TIME BY ANY OTHER NAME?

20 A NO.

21 Q DID YOU CALL HIM ISAIAS WHEN YOU DEALT WITH HIM?

22 A NO. HE'S GOT A NICKNAME BETWEEN SPANISH TRANSLATING.

23 ALL OF THEM CALL ME WHEN THEY DON'T UNDERSTAND BECAUSE I

24 WAS THE TRANSLATOR FOR THE DEALERSHIP. AND THAT'S WHERE I

25 MET HIM AND HE USED TO WORK WHERE I USED TO LIVE AT.

1 Q YOU ARE FLUENT IN SPANISH?

2 A YES.

3 Q AND YOU SAY MR. GUTIERREZ USED TO WORK WHERE YOU
4 USED TO LIVE?

5 A UH-HUH.

6 Q WHERE WAS THAT?

7 A THAT'S WHEN THEY WERE BUILDING THE STONE POINT
8 APARTMENTS AND HE USED TO WORK WITH THE CONTRACTOR, AND I
9 LIVED IN THOSE APARTMENTS.

10 Q GOING BACK TO YOUR WORK WITH THE DEALERSHIP ON
11 ANDERSON ROAD, ON DECEMBER 30, 2002, YOU STATED YOU HAD
12 CONTACT WITH MR. GUTIERREZ. IS THAT CORRECT?

13 A YES.

14 Q THAT WAS THERE AT THE DEALERSHIP?

15 A YES.

16 Q YOU STATED YOU WERE THE SPANISH TRANSLATOR?

17 A YES.

18 Q DID YOU SPEAK SPANISH TO MR. GUTIERREZ?

19 A YES.

20 Q DID HE SPEAK SPANISH TO YOU?

21 A UH-HUH.

22 Q BECAUSE OF YOUR FLUENCY IN THAT LANGUAGE, DID YOU
23 EVEN MAKE AN EFFORT TO SPEAK TO HIM IN ENGLISH?

24 A NO.

25 Q DO YOU RECALL WHO WAS WITH MR. GUTIERREZ AT THAT TIME?

1 A A YOUNG LADY. HE TOLD ME IT WAS HIS GIRLFRIEND OR HIS
2 WIFE.

3 Q HAD YOU EVER MET HER BEFORE?

4 A NO, THAT WAS THE FIRST TIME I EVER MET HER.

5 Q WHAT TRANSACTION OR WHAT BUSINESS AGREEMENT DID YOU
6 DISCUSS ENTERING INTO WITH MR. GUTIERREZ AT THAT TIME?

7 A WHEN I GOT THERE TO THE DEALERSHIP HE WAS ALREADY
8 THERE, AND THEN I HELPED HIM. I THINK IT WAS A VAN THAT THEY
9 WERE TEST DRIVING. SHE DROVE THE VAN AND THEN HE WENT WITH
10 HER. WHEN THEY CAME BACK THEY WANTED TO BUY THE VEHICLE.
11 AND THEN WE NEEDED, LIKE, \$1500 OR \$1800 DOWN, AND I THINK HE
12 ONLY HAD, LIKE \$600 OR \$800 IN CASH. AND THEN HE SAID THAT HE
13 NEEDED TO GO THE BANK AND CASH A CHECK AND HE'LL BE BACK.

14 SO, ME KNOWING HIM AT THE DEALERSHIP, WE'RE WAITING ON
15 HIM. WE TRIED TO FIND THE PAPERWORK AND COULDN'T. SO, HE
16 WENT AND LEFT FOR THE BANK AND NEVER SHOWED UP. SO I WAS
17 WAITING FOR HIM ALL DAY AT THE DEALERSHIP AND HE NEVER CAME
18 BACK.

19 Q HE NEVER RETURNED?

20 A NO.

21 Q YOU SAID \$1500 TO \$1800 DOWN. DO YOU REMEMBER THE FULL
22 PURCHASE PRICE?

23 A I THINK IT WAS \$4995 OR \$5995 AT THE BACK END, YOU KNOW. IT
24 WAS, LIKE \$4995 OR \$5995, AND IT WAS, LIKE \$65 OR \$70 EVERY WEEK.

1 Q YOU SAID THAT MR. GUTIERREZ HAD SOME MONEY.

2 APPROXIMATELY HOW MUCH MONEY DO YOU RECALL THE

3 DEFENDANT HAVING?

4 A IF I'M NOT MISTAKEN, I THINK IT WAS BETWEEN \$600 AND \$800 IN

5 CASH.

6 Q DID YOU SEE THE CASH?

7 A YEAH, BECAUSE THEY WERE GONNA LEAVE IT AT THE

8 DEALERSHIP. BUT THEN HIS GIRLFRIEND SAID, LET ME TAKE THE

9 CASH AND WE'LL BRING IT ALL WHEN WE COME FROM THE BANK.

10 Q WHEN YOU SAW THE CASH INITIALLY, WHO HAD IT, MR.

11 GUTIERREZ?

12 A NO, THE GIRLFRIEND.

13 Q AND DO YOU REMEMBER WHAT DENOMINATIONS IT WAS IN,

14 WHAT VALUES WERE THE BILLS?

15 A THERE WAS A COUPLE HUNDREDS AND FIFTIES AND THAT.

16 Q IT WAS BETWEEN \$600 TO \$800?

17 A YES.

18 Q IN THE COURSE OF THAT BUSINESS BACK THEN, DID Y'ALL ALSO

19 SELL VEHICLES TO THE HISPANIC POPULATION?

20 A YEAH. WE WERE, LIKE, NUMBER ONE DEALERSHIP IN ROCK HILL

21 FOR ALL THE SPANISH POPULATION.

22 Q HAD YOU EVER DEALT SOCIALLY WITH MR. GUTIERREZ?

23 A WELL, EVERY TIME I SAW HIM WE USED TO SPEAK, YOU KNOW,

24 SAY HI, HOW YOU DOING, AND THAT; THAT WAS IT.

25 Q YOU NEVER VISITED AT HIS HOME, HE NEVER---

1 A NO, NEVER.

2 Q ---VISITED AT YOUR HOME?

3 A NO, NEVER.

4 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS FOR DEFENSE
5 COUNSEL.

6 MR. CHIARENZA: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN.

8 MS. COLLINS: WE WOULD REQUEST THAT THIS WITNESS BE
9 EXCUSED.

10 THE COURT: YOU MAY.

11 MS. COLLINS: YOUR HONOR, THE STATE'S NEXT WITNESS IS
12 SHARON BURNS.

13 SHARON BURNS, DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MS. COLLINS:

16 Q WOULD YOU PLEASE STATE YOUR NAME FOR THE JURY?

17 A SHARON BURNS.

18 Q MS. BURNS, YOU HAVE A SOFT VOICE. IF YOU COULD, JUST
19 SPEAK UP.

20 A SHARON BURNS.

21 Q VERY GOOD, THANK YOU. YOU CAN LEAN INTO THE
22 MICROPHONE. MS. BURNS, WHAT IS YOUR OCCUPATION AT THIS TIME?

23 A I WORK AT A RESTAURANT.

1 Q IN DECEMBER OF 2002, DO YOU REMEMBER HAVING AN
2 INVOLVEMENT WITH THE DEFENDANT, ISAIAS GUTIERREZ, REGARDING
3 A CAR THAT YOU HAD TO SELL?

4 A YES, I DO.

5 Q WERE YOU IN THE CAR DEALERSHIP BUSINESS?

6 A MY FATHER WAS A CAR DEALERSHIP.

7 Q ALL RIGHT.

8 A I WORKED FOR HIM.

9 Q YOU WORKED FOR HIM. ALL RIGHT. DO YOU REMEMBER IF MR.
10 GUTIERREZ CAME TO THE DEALERSHIP, OR IF HE CAME TO YOUR
11 HOME?

12 A HE CAME TO MY HOME.

13 Q WHY WAS THAT?

14 A BECAUSE I HAD BROUGHT THE CAR DOWN TO SELL TO ANOTHER
15 PERSON, AND THEY, THE DEAL DIDN'T GO THROUGH. AND I HAD THE
16 CAR AT MY HOUSE AND I PUT AN AD IN THE PAPER, SO I DIDN'T HAVE
17 TO DRIVE IT BACK TO CHARLOTTE.

18 Q DO YOU RECALL WHAT DAY IN DECEMBER OF 2002 THAT YOU
19 DEALT WITH MR. GUTIERREZ?

20 A I BELIEVE IT WAS THE 31ST.

21 Q DO YOU RECALL IF IT WAS IN THE MORNING OR THE AFTERNOON
22 OF THE 31ST?

23 A IT WAS THE AFTERNOON, EARLY AFTERNOON.

24 Q WAS THE DEALERSHIP OPEN ON THAT DAY?

25 A NO.

1 Q DID YOU IN FACT SELL A CAR TO MR. GUTIERREZ?

2 A YES, I DID.

3 Q WHAT KIND OF CAR WAS THAT?

4 A A BLUE, IT WAS A PONTIAC 6000.

5 Q WAS THERE SOMETHING ABOUT THAT TRANSACTION THAT

6 CAUSES IT TO BE MEMORABLE TO YOU?

7 A THERE WERE SEVERAL THINGS. HE CAME WITH A GIRL, WITH A
8 YOUNG CHILD, AND ANOTHER GENTLEMAN. THE BABY, I REMEMBER,
9 HAD SOILED ITSELF. AND MY DAUGHTER AND I, WHO WAS THERE AT
10 THE TIME WITH ME, WE WONDERED HOW A PARENT CAME OUT
11 WITHOUT A DIAPER BAG, WITHOUT MORE CLOTHES FOR A BABY THAT
12 AGE. THAT'S SOMETHING THAT HAPPENS, YOU KNOW; BABIES DO
13 THAT.

14 AND THE MONEY THAT HE GAVE ME WAS ROLLED INTO, LIKE,
15 LITTLE, TINY-- I MEAN, I HAD TO TAKE THE MONEY, LITERALLY, AND
16 PULL IT OUT AND MY DAUGHTER HAD TO SNAP IT IN ONE OF HER
17 SCHOOLBOOKS TO FLATTEN THE MONEY OUT. AND THAT'S THE TWO
18 THINGS THAT STAND OUT THE MOST.

19 Q GOING BACK TO THE BABY, THE YOUNG LADY THAT WAS WITH
20 HIM WITH THE BABY, WAS SHE HISPANIC, AS WELL?

21 A NO, SHE WASN'T.

22 Q WAS SHE A CAUCASIAN OR AFRICAN-AMERICAN?

23 A SHE WAS A CAUCASIAN.

24 Q DID THEY INDICATE TO YOU WHAT THEIR RELATIONSHIP WAS?

25 A THAT HE WAS THE FATHER OF BABY. SO, I...

1 Q WHO WENT TO TEST DRIVE THE CAR?

2 A THEY DID, HER AND THE GENTLEMAN.

3 Q WHERE WAS THE BABY THEN?

4 A WITH US, WITH MY DAUGHTER AND I.

5 Q IS THAT HOW YOU BECAME AWARE THAT THE BABY'S DIAPER
6 WAS SOILED?

7 A NO. THE BABY, WE NOTICED THAT RIGHT OFF.

8 Q AND THEY DIDN'T LEAVE A DIAPER WITH YOU?

9 A NO. I DON'T REMEMBER IF WE EVEN ASKED FOR A DIAPER. I'M
10 NOT BIG ON CHANGING DIAPERS. BUT I JUST-- THAT'S JUST
11 SOMETHING THAT STICKS OUT IN MY HEAD. I DON'T BELIEVE THEY
12 HAD A DIAPER WITH THEM, NO. I DON'T BELIEVE SO.

13 Q YOU STATED THAT THERE WAS ANOTHER GENTLEMAN WITH
14 THEM. WAS HE ALSO HISPANIC?

15 A YES, HE WAS.

16 Q DID HE SPEAK ANY ENGLISH TO YOU AT ALL?

17 A I NEVER HEARD HIM SAY A WORD.

18 Q DID HE STAY BEHIND WITH THE BABY, AS WELL?

19 A HE DID, BUT HE-- WE HAD THE BABY BEFORE THEY LEFT TO
20 DRIVE THE CAR. SO, I MEAN, WE WERE PLAYING WITH THE BABY, AND
21 HAVING A GOOD TIME WITH HER. HE JUST KIND OF STOOD OVER AND
22 WATCHED. WE PLAYED WITH THE BABY. THE BABY WAS PRECIOUS, A
23 LITTLE, CHUNKY BABY.

1 Q I MAY HAVE ALREADY ASKED YOU THIS. I APOLOGIZE IF I
2 REPEAT MYSELF. DO YOU RECALL THE PURCHASE PRICE OF THE
3 VEHICLE?

4 A \$600 OR \$800. I'M NOT SURE. I TRIED TO GO BACK AND FIND THE
5 PAPERWORK AFTER LIEUTENANT HAGER CAME AND SPOKE WITH ME
6 THE FIRST TIME, BUT I BELIEVE IT WAS \$600 OR \$800, AROUND IN
7 THERE.

8 MR. COLLINS: I'M GOING TO ASK THAT THESE NEXT FOUR
9 EXHIBITS BE MARKED AS STATE'S EXHIBITS, STARTING WITH STATE'S
10 83.
11 (WHEREUPON STATE'S EXHIBITS 83, 84, 85, AND 86, WERE MARKED FOR
12 IDENTIFICATION)

13 Q MS. BURNS, AT THIS TIME I AM SHOWING YOU WHAT'S BEEN
14 MARKED AS STATE'S EXHIBITS 83 THROUGH 87. IF YOU WOULD TAKE
15 JUST A MINUTE AND LOOK AT THOSE ITEMS AND THEN WE'LL GO
16 THROUGH THEM ONE BY ONE.

17 A (PAUSE TO PERUSE EXHIBITS) UH-HUH.

18 Q DO YOU RECOGNIZE STATE'S EXHIBIT 83?

19 A YES, I DID.

20 Q WHAT IS THAT?

21 A THAT'S THE BILL OF SALE WHICH I FILED.

22 Q IS THAT THE ORIGINAL?

23 A YES, IT IS.

24 Q WHAT IS STATE'S EXHIBIT 84?

- 1 A THAT IS THE DAMAGE DISCLOSURE THAT SAYS THAT IT HASN'T
- 2 BEEN IN A FIRE, OR FLOODED OR ANYTHING.
- 3 Q IS THAT ONE OF THE DOCUMENTS YOU HAVE---
- 4 A YES, IT IS.
- 5 Q ---REGARDING THIS TRANSACTION?
- 6 A YES, IT IS.
- 7 Q STATE'S EXHIBIT 85?
- 8 A YES, THAT IS THE SALVAGE TITLE.
- 9 Q FOR THE SAME VEHICLE?
- 10 A YES MA'AM.
- 11 Q THE VEHICLE THAT WAS ULTIMATELY PURCHASED BY THE
- 12 DEFENDANT?
- 13 A YES.
- 14 Q IN DECEMBER OF 2002?
- 15 A YES MA'AM.
- 16 Q AND STATE'S EXHIBIT 86?
- 17 A THE ASSESSMENT FORM.
- 18 Q AND THAT'S ALSO A FORM THAT YOU FILLED OUT?
- 19 A YES MA'AM.
- 20 Q AND GAVE TO THE DEFENDANT?
- 21 A YES MA'AM.
- 22 Q OR HAVE IN THE FILE AT THE DEALERSHIP?
- 23 A IT WOULD HAVE BEEN FILED AT THE DMV.
- 24 Q I SEE.

1 MS. COLLINS: YOUR HONOR, AT THIS TIME, I WOULD MOVE
2 STATE'S EXHIBITS 83 THROUGH 86 INTO EVIDENCE.

3 MR. CHIARENZA: NO OBJECTION.

4 THE COURT: THEY'RE ADMITTED.

5 (WHEREUPON STATE'S EXHIBITS STATE'S EXHIBITS 83, 84, 85, AND 86
6 WERE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.)

7 Q MS. BURNS, REFERRING TO THE BILL OF SALE, DOES IT REFRESH
8 YOUR MEMORY REGARDING THE AMOUNT---

9 A YES.

10 Q ---OF THE PURCHASE PRICE OF THE CAR?

11 A YES.

12 Q AND WHAT WAS IT?

13 A \$1000.

14 Q YOU'VE MENTIONED ALREADY THE CONDITION OF THE BILLS,
15 HOW THEY WERE ROLLED UP TIGHT AND HOW YOU HAD TO UNFOLD
16 THEM.

17 A UH-HUH.

18 Q JUST TO BE CLEAR, WHO GAVE YOU THAT MONEY?

19 A HE DID.

20 Q HE BEING THE DEFENDANT, ISAIAS GUTIERREZ?

21 A YES MA'AM.

22 Q DID YOU AT ANY TIME SEE THE FEMALE THAT WAS WITH HIM,
23 WHO HAD THE BABY, DID YOU AT ANY TIME SEE HER HANDLE ANY OF
24 THE MONEY?

1 A NO, I DIDN'T. I DON'T-- I CANNOT BE ONE HUNDRED PERCENT
2 SURE, BUT NO. SHE WAS-- HE WAS DOING ALL THIS, YOU KNOW. SHE
3 HAD TO MAYBE INTERPRET A LITTLE BIT FOR HIM, BUT HE WAS THE
4 ONE DOING THE DEAL.

5 Q ALL RIGHT. DID THE DEFENDANT SIGN THE PAPERWORK
6 HIMSELF?

7 A YES, HE DID.

8 Q IN YOUR PRESENCE?

9 A YES, HE DID, ON THE HOOD OF THE CAR.

10 Q PARDON?

11 A ON THE HOOD OF THE CAR.

12 Q ON THE HOOD OF THE CAR, THE CAR THAT THEY BOUGHT?

13 A UH-HUH.

14 Q DID YOU EXPRESS ANY CONCERNS TO THE DEFENDANT WHILE
15 HE WAS THERE?

16 A I DID BECAUSE HE SHOWED ME A MEXICAN OR SOME FORM OF
17 FOREIGN ID, AND I TOLD HIM THAT I DIDN'T THINK THAT THAT WAS
18 GOING TO FLY AT THE DMV. I DIDN'T THINK THAT THEY WERE GOING
19 TO REGISTER A CAR WITH THAT. AND I URGED HIM TO PUT IT IN HER
20 NAME. HE SAID, NO, THAT IT WAS HIS CAR, IT WAS GOING IN HIS
21 NAME. I ASKED HIM, WELL, I HAVE TO FILL OUT THE PAPERWORK FOR
22 YOU TO TAKE THE CAR AWAY. I HAVE TO HAVE SOME FORM THAT I
23 SOLD IT TO YOU. SO, WE FILLED OUT THE BILL OF SALE. HE DIDN'T
24 HAVE AN ADDRESS AT THE TIME.

1 AND I TOLD HIM, I SAID, WHY DON'T YOU DO THIS: WHY DON'T
2 YOU TAKE THIS TO THE DMV AND IF THE DMV WON'T LET YOU PUT IT
3 IN YOUR NAME, COME BACK AND WE'LL DO THE ASSESSMENT IN HER
4 NAME. I REMEMBER SAYING THAT, BECAUSE THEY WERE NOT GOING
5 TO DO THE CAR. I WAS TRYING TO BE NICE, YOU KNOW, AND NOT BE
6 BOSSY, BECAUSE-- BUT I EXPLAINED TO HIM THAT THAT WASN'T
7 GONNA FLY AT THE DMV.

8 Q HE DID NOT PROVIDE YOU WITH AN ADDRESS?

9 A NO, HE DID NOT.

10 Q DID YOU ASK HIM FOR ONE?

11 A YES, I DID, SEVERAL TIMES.

12 Q DID HE INDICATE HE DIDN'T HAVE ONE?

13 A I DON'T RECALL THAT.

14 Q DID MR. GUTIERREZ EVER RETURN BACK TO YOU TO DO ANY
15 FURTHER PAPERWORK?

16 A NO. THE ONLY TIME I EVER HEARD BACK WAS FROM THE GIRL'S
17 FATHER. HE WAS ASKING IF I COULD CHANGE---

18 MR. CHIARENZA: OBJECTION.

19 Q DON'T SAY WHAT THE FATHER SAID.

20 A OH, I'M SORRY.

21 Q BUT YOU NEVER SAW MR. GUTIERREZ AGAIN?

22 A NO MA'AM.

23 Q THANK YOU, MS. BURNS. PLEASE ANSWER ANY QUESTIONS FOR
24 MR. CHIARENZA.

1 CROSS EXAMINATION BY MR. CHIARENZA:

2 Q MS. BURNS, YOU TESTIFIED THAT THE SALE TOOK PLACE IN
3 DECEMBER OF '02. CORRECT?

4 A YES.

5 Q SO, THAT WAS FIVE YEARS AGO?

6 A YES.

7 Q AND YOU'VE GOT A PRETTY GOOD RECOLLECTION OF THIS
8 TRANSACTION THAT TOOK PLACE FIVE YEARS AGO?

9 A YEAH, I DO.

10 Q YOU RECALL WHO YOU SPOKE TO, THE BABY, WHO DROVE THE
11 CAR, AND ALL THOSE THINGS?

12 A YES, I DO.

13 Q YOU'VE TALKED TO LAW ENFORCEMENT ABOUT THIS A COUPLE
14 OF TIMES?

15 A YES SIR.

16 Q IN FACT, IN OCTOBER DID YOU GIVE A WRITTEN STATEMENT TO
17 DETECTIVE EDDIE STRAIT FROM THE SHERIFF'S DEPARTMENT?

18 A YES, I DID.

19 Q I'M GOING TO ASK YOU TO TAKE A LOOK AT THIS. IS THAT YOUR
20 STATEMENT THAT YOU GAVE TO EDDIE STRAIT A MONTH AND A HALF
21 AGO?

22 A (PAUSE TO PERUSE STATEMENT) YES, IT IS.

23 Q A MONTH AND A HALF AGO, NOT FIVE YEARS AGO, BUT A
24 MONTH AND A HALF AGO YOU TOLD EDDIE STRAIT YOU PAID \$1000
25 FOR THE CAR, TEN ONE HUNDRED DOLLARS BILLS?

1 A CORRECT.

2 Q BUT, TODAY, YOU COULDN'T REMEMBER HOW MUCH THEY PAID
3 FOR THE CAR?

4 A CAN I EXPLAIN THAT?

5 Q DO YOU REMEMBER WHEN LISA COLLINS FIRST ASKED YOU
6 WHAT YOU PAID, WAS NOT YOUR TESTIMONY, I'M NOT SURE, I DON'T
7 REMEMBER, IT WAS \$600 OR \$800?

8 A I THOUGHT IT WAS \$600 OR \$800 BECAUSE WE FOUND A PONTIAC
9 6000 RECEIPT IN THE PAPERWORK WHEN I WENT THROUGH IT. IT WAS
10 MY FATHER'S. THAT WAS FOR \$800. WE ALSO FOUND ONE THAT WAS
11 \$600. I DIDN'T REMEMBER THE VIN NUMBER ON THE CAR AND I DIDN'T
12 REMEMBER HIS NAME.

13 MY FATHER SELLS A LOT OF CARS TO HISPANICS. THAT WAS
14 ONE OF THE CARS THAT WE FOUND IN THE PAPERWORK. I HAD NO
15 PAPERWORK TO LOOK BACK TO SEE.

16 Q OKAY. DID YOU EVER TRY AND-- SO, YOU'VE GOT PAPERWORK
17 NOW, HAVEN'T YOU?

18 A YES, FOR THE \$1000, WHICH I THOUGHT, BUT I WASN'T GOING TO
19 SAY \$1000 UNDER OATH IF I DIDN'T KNOW IT WAS \$1000. BUT, YEAH,
20 WHEN I WAS WRITING THE STATEMENT, GOING TO WRITE THE
21 STATEMENT, HE SAID JUST WHATEVER YOU REMEMBER. I THOUGHT IT
22 WAS \$1000, BUT I WASN'T GOING TO SAY UNDER OATH THAT IT WAS
23 \$1000 IF I WASN'T ONE HUNDRED PERCENT SURE. HE TOLD ME TO
24 WRITE THE STATEMENT TO THE BEST OF MY KNOWLEDGE.

1 Q SO, DID YOU EVER CONTACT THE PROSECUTOR'S OFFICE OR
2 DETECTIVE STRAIT WHEN YOU FOUND THIS OTHER DOCUMENTATION
3 AND SAY, YOU KNOW, I MIGHT HAVE GIVEN YOU THE WRONG
4 INFORMATION THAT DAY, BECAUSE NOW I'M NOT SURE HOW MUCH
5 THEY PAID FOR THE CAR?

6 A NO, I REALLY DIDN'T THINK IT WOULD MATTER. THEY BOUGHT
7 A CAR WITH ME AND THEY PAID WITH \$100 BILLS. I MEAN, I DIDN'T
8 KNOW THE PRICE OF THE CAR WOULD MAKE IT AN ISSUE. I'M SORRY.

9 Q THANK YOU.

10 MR. CHIARENZA: I HAVE NOTHING FURTHER FOR THIS WITNESS.

11 THE COURT: ANYTHING FURTHER?

12 MS. COLLINS: YES, YOUR HONOR.

13 RE-DIRECT EXAMINATION BY MS. COLLINS:

14 Q MS. BURNS, EVEN THOUGH YOU SIGNED YOUR STATEMENT TO
15 DETECTIVE STRAIT IN OCTOBER OF 2007, YOU DID SPEAK TO LAW
16 ENFORCEMENT CLOSER TO THIS INCIDENT IN JANUARY OF '03 OR
17 DECEMBER OF '02. IS THAT RIGHT?

18 A YES, I DID.

19 Q AND YOU'VE MENTIONED ABOUT THE BABY HAVING A SOILED
20 DIAPER, AND YOU'VE MENTIONED ABOUT THE TIGHTLY WADDED
21 BILLS. WAS THERE ANYTHING ELSE THAT CAUSED YOU TO REMEMBER
22 THIS TRANSACTION THEN?

23 A NO, JUST THE BABY AND THE WAY THE MONEY WAS. I DIDN'T
24 REMEMBER EXACTLY HOW MUCH MONEY. I THOUGHT IT WAS \$1000,
25 BUT I WASN'T GOING TO SAY UNDER OATH. I JUST SWORE UNDER

1 OATH. I WOULDN'T WANT TO SAY \$1000, AND THAT'S WHY I SAID \$600
2 TO \$800 BECAUSE WE FOUND DOCUMENTS OF OTHER 6000'S, PONTIAC
3 6000'S. I'M NOT GOING TO SWEAR ON SOMETHING THAT I DON'T KNOW
4 FOR SURE. BUT I THOUGHT IT WAS \$1000.

5 Q IS THE VIN NUMBER THERE ON THE BILL OF SALE OR THE TITLE?

6 A IT'S ON EVERYTHING. IT'S ON ALL OF THEM.

7 Q ALL RIGHT. AND DO YOU RECALL, AGAIN, GOING BACK TO
8 YOUR RECOLLECTION, IF YOU RECALL, DO YOU RECALL WHETHER OR
9 NOT YOU SAW ANYTHING REGARDING THE INCIDENT BEFORE THE
10 COURT IN THE PAPER AFTER THIS TRANSACTION WAS DONE?

11 A MY DAUGHTER AND I WERE WATCHING TV, LIKE, TWO DAYS
12 AFTERWARDS, AND WE SAW THE PICTURE OF HER. I DON'T KNOW IF
13 HIS PICTURE WAS THERE, BUT I REMEMBER SEEING HER, BECAUSE MY
14 DAUGHTER SAID, ISN'T THAT WHO YOU SOLD THE CAR TO?

15 Q AND YOU RECOGNIZED THAT AS BEING THE FEMALE THAT WAS
16 WITH THE DEFENDANT WHEN YOU SOLD THE CAR?

17 A UH-HUH.

18 Q THANK YOU.

19 THE COURT: YOU MAY STEP DOWN.

20 MS. COLLINS: WE WOULD ASK THAT THIS WITNESS BE EXCUSED.

21 THE COURT: SHE MAY. THANK YOU.

22 MR. THOMPSON: YOUR HONOR, IF I MAY. THE NEXT TWO

23 WITNESSES WILL BE GOING OVER A NUMBER OF ITEMS OF EVIDENCE.

24 WE WOULD ASK FOR A FEW MINUTES FOR US TO GET IT ALL

1 COORDINATED SO WE DON'T TAKE TOO MUCH TIME DURING THE
2 TESTIMONY.

3 THE COURT: OKAY.

4 MR. THOMPSON: IF WE COULD TAKE JUST A SHORT BREAK JUST
5 TO HAVE THESE NUMBERED.

6 THE COURT: YOU WANT TO SEND THE JURY OUT?

7 MR. THOMPSON: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IF YOU WILL,
9 PLEASE GO TO YOUR JURY ROOM, WE'LL GET EVERYTHING READY TO
10 GO AND THEN WE'LL BRING YOU BACK.

11 (WHEREUPON THE JURY EXITED THE COURTROOM AT 9:55 A.M.)

12 WHY DIDN'T Y'ALL DO THAT BEFORE 9:30?

13 MR. THOMPSON: I WAS ATTEMPTING TO DO THAT, YOUR HONOR.
14 HOWEVER THINGS WERE SPREAD OUT. THE CLERK'S OFFICE HAD SOME
15 THINGS; THE SHERIFF'S DEPARTMENT HAD SOME THINGS. IT WAS JUST
16 SUCH A LARGE AMOUNT THAT IT WAS JUST TOO MUCH TO GET IT ALL
17 ORGANIZED.

18 THE COURT: ALL RIGHT. WE'LL BE IN RECESS TO LET YOU DO
19 THAT.

20 (WHEREUPON THE COURT WAS IN RECESS AT 9:58 A.M.)

21 COURT IN SESSION - 10:15 A.M.

22 THE COURT: IS THE STATE READY TO PROCEED?

23 MR. THOMPSON: YES, YOUR HONOR.

24 THE COURT: BRING THE JURY IN.

25 (WHEREUPON THE JURY ENTERED THE COURTROOM)

1 THE STATE MAY CALL ITS NEXT WITNESS.

2 MR. THOMPSON: THANK YOU, YOUR HONOR. THE STATE CALLS
3 MICHAEL WILLIAMS.

4 MICHAEL LEE WILLIAMS, DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. THOMPSON:

7 Q MR. WILLIAMS, WOULD YOU GIVE YOUR FULL NAME FOR THE
8 COURT, PLEASE?

9 A MICHAEL LEE WILLIAMS.

10 Q WHERE DO YOU WORK?

11 A I'M CURRENTLY EMPLOYED WITH THE ROCK HILL POLICE
12 DEPARTMENT.

13 Q WHAT ARE YOUR DUTIES WITH THE ROCK HILL POLICE
14 DEPARTMENT?

15 A I'M ASSIGNED TO THE MULTI-JURISDICTIONAL FORENSIC
16 SERVICES UNIT.

17 Q THAT GOES BY FSU?

18 A YES SIR.

19 Q HOW LONG HAVE YOU BEEN WITH THE FORENSIC UNIT?

20 A ROCK HILL STARTED A FORENSIC UNIT IN 1992. I VOLUNTEERED
21 FOR THAT UNIT AND HAVE BEEN IN IT EVER SINCE. IN 2002, THE
22 COUNTIES AND THE CITIES CONSOLIDATED AND MADE A MULTI-
23 JURISDICTIONAL UNIT WITH INDIVIDUALS FROM EACH AGENCY TO
24 PROCESS ALL CRIMES THROUGHOUT THE COUNTY. IN 2002, I CAME TO
25 THIS LOCATION.

1 Q SO, IS IT CORRECT THAT YOU HAVE BEEN PROCESSING CRIME
2 SCENES SINCE 1992?

3 A AS A FORENSIC OFFICER, I HAVE BEEN PROCESSING SCENES
4 SINCE 1992. I HAVE ACTUALLY BEEN PROCESSING SCENES SINCE 1980.

5 Q IN YOUR EXPERIENCE IN PROCESSING CRIME SCENES, WHAT
6 KIND OF TRAINING HAVE YOU HAD IN THAT?

7 A I'VE ATTENDED-- IN 1980, I WAS HIRED BY THE ROCK HILL
8 POLICE DEPARTMENT. I ATTENDED THE SOUTH CAROLINA CRIMINAL
9 JUSTICE ACADEMY IN COLUMBIA AND BECAME A CERTIFIED LAW
10 ENFORCEMENT OFFICER.

11 I RETURNED TO THE ACADEMY AND RECEIVED ADVANCED
12 CLASSES AND COURSES DEALING IN FINGERPRINT CLASSIFICATION,
13 LATENT FINGERPRINT TECHNICIAN COURSES, HOMICIDE
14 INVESTIGATION COURSES AT THE ACADEMY, BASIC LAW
15 ENFORCEMENT PHOTOGRAPHY COURSES AT THE POLICE ACADEMY,
16 ARSON INVESTIGATOR AT THE POLICE ACADEMY.

17 I'VE ALSO ATTENDED IPTM, WHICH THE INSTITUTE OF POLICE
18 MANAGEMENT AND TECHNOLOGY, AT THE UNIVERSITY OF NORTH
19 FLORIDA.

20 ON SEVERAL OCCASIONS I HAVE RECEIVED TRAINING IN CRIME
21 SCENE TECHNICIAN, IN PROCESSING COURSES. AND ALSO SURFACE
22 SKELETON AND BURIED BODY RECOVERY PROCESSING.

23 I'VE ATTENDED THE SOUTHERN POLICE INSTITUTE, WHICH IS AT
24 THE UNIVERSITY OF LOUISVILLE IN LOUISVILLE, KENTUCKY, WHERE
25 I'VE RECEIVED TRAINING IN HOMICIDE INVESTIGATION COURSES.

1 I'VE ATTENDED COURSES TAUGHT, SPONSORED BY THE
2 UNIVERSITY OF TENNESSEE IN DIGITAL PHOTOGRAPHY
3 DOCUMENTATION. THE CHARLOTTE POLICE ACADEMY IN DIGITAL
4 PHOTOGRAPHY COURSES.

5 I'VE ATTENDED NUMEROUS SEMINARS THROUGHOUT SOUTH
6 CAROLINA DEALING WITH CRIME SCENE PROCESSING AND EVIDENCE
7 RECOVERY.

8 I'M ALSO A CURRENT AND ACTIVE MEMBER OF THE SOUTH
9 CAROLINA INTERNATIONAL ASSOCIATION FOR IDENTIFICATION,
10 WHICH DEALS WITH OFFICERS THROUGHOUT SOUTH CAROLINA THAT
11 MEET AND DISCUSS CASES THEY'VE BEEN INVOLVED IN. I'VE ALSO
12 RECEIVED ADVANCED TRAINING FROM INDIVIDUALS THAT COME IN
13 TO SPEAK.

14 I'M ALSO AN ACTIVE MEMBER IN THE INTERNATIONAL
15 ASSOCIATION OF IDENTIFICATION, WHICH IS A WORLDWIDE
16 MEMBERSHIP, WHERE BI-MONTHLY WE RECEIVE A PAPERBACK
17 JOURNAL DEALING WITH CASES THROUGHOUT THE WORLD AND THE
18 PROCESSING TECHNIQUES THAT WERE USED TO PROCESS SCENES, TO
19 ENHANCE AND TO LEARN NEW TECHNIQUES.

20 Q COULD YOU TELL ME, SINCE 1992, WHEN YOU WERE FIRST
21 QUALIFIED TO PROCESS CRIMES SCENES, THE PROCESSING OF CRIME
22 SCENES, IS THAT WHAT YOU DO? IS THAT WHAT YOUR JOB IS IN THE
23 SHERIFF'S DEPARTMENT, AND BEFORE THEN THE IN ROCK HILL POLICE
24 DEPARTMENT?

1 A YES. ONCE THE UNITS WERE FORMED IT BASICALLY TOOK
2 AWAY FROM RESPONDING TO THE FIRST OUT CALL OF THE OFFICER
3 ARRIVING TO THE SCENE, GETTING THE INITIAL REPORT.

4 THEY SIZE UP THE SCENE THAT THEY HAVE AND THEY WOULD
5 REQUEST US AND WE WOULD SOLELY GO OUT AND PROCESS CRIME
6 SCENES.

7 Q HOW MANY CRIME SCENES WOULD YOU SAY YOU'VE
8 PROCESSED?

9 A I WOULD SAY WELL OVER A THOUSAND IN MY TWENTY-SEVEN
10 YEARS.

11 Q CAN YOU TELL ME IF YOU'VE BEEN QUALIFIED AS AN EXPERT
12 BEFORE IN CRIME SCENE INVESTIGATION?

13 A YES, I HAVE.

14 MR. THOMPSON: YOUR HONOR, I WOULD AT THIS TIME TENDER
15 OFFICER WILLIAMS AS AN EXPERT IN CRIME SCENE EVALUATION.

16 MR. CHIARENZA: NO OBJECTION, YOUR HONOR. HE IS
17 CERTAINLY QUALIFIED.

18 THE COURT: HE IS SO QUALIFIED.

19 Q CAN YOU TELL ME, OFFICER WILLIAMS, DID YOU HAVE A
20 CHANCE TO WORK ON THE CRIME IN THIS CASE ON DECEMBER 31, OF
21 2002?

22 A YES, I DID.

23 Q HOW DID YOU BECOME INVOLVED IN THAT PARTICULAR CASE?

1 A WE WERE SUMMONSED BY THE SHERIFF'S DEPARTMENT TO
2 RESPOND TO THAT LOCATION IN REFERENCE TO AN INCIDENT THAT
3 HAD TAKEN PLACE.

4 Q WAS THAT AT 1890 21 BY-PASS IN FORT MILL?

5 A YES, IT WAS.

6 Q IS THAT HERE IN YORK COUNTY?

7 A YES, IT IS.

8 Q WHEN YOU WENT OUT TO THAT SCENE, WHAT DID YOU
9 OBSERVE AT THAT TIME?

10 A UPON INITIAL ARRIVAL I OBSERVED-- I KNEW THE LOCATION
11 DUE TO BEING A NATIVE OF YORK COUNTY, AS BEING A OLD, WHAT I
12 CALL A MOBILE HOME PARK, WHERE INDIVIDUAL TRAILERS ARE
13 PLACED ON ROWS AND PEOPLE EITHER RENT OR OWN THE MOBILE
14 HOMES THAT ARE JUST IN LINE WITH EACH OTHER.

15 THERE IS A CAMPER. UPON MY ARRIVAL I REMEMBER A
16 CAMPER BEING THERE, BEING THE VICTIM'S RESIDENCE, WHICH IS A
17 PULL-BEHIND CAMPER THAT YOU COULD BEHIND YOUR VEHICLE,
18 TRAVEL, STAY IN AT NIGHT, AND SET UP AT DIFFERENT LOCATIONS.

19 Q DID ANYONE ASSIST YOU WITH THE CRIME SCENE?

20 A YES. MYSELF AND INVESTIGATOR GARDNER RESPONDED TO
21 THAT LOCATION.

22 Q WHAT, IF ANYTHING, DID YOU HAVE INVESTIGATOR GARDNER
23 DO AT THE SCENE?

1 A INVESTIGATOR GARDNER INITIALLY STARTED OUT AND
2 PHOTOGRAPHED THE LOCATION INSIDE AND OUT TO DOCUMENT
3 WHAT WE SAW THAT DAY.

4 Q DO YOU RECALL HIM DOING ANYTHING OTHER THAN THE
5 PHOTOGRAPHING THAT DAY?

6 A NOT TO MY KNOWLEDGE. I HAD HIM BASICALLY JUST DO ALL
7 THE PHOTOGRAPHY WORK.

8 Q AND AS PART OF RUNNING THAT CRIME SCENE, WOULD YOU
9 HAVE REVIEWED HIS PHOTOGRAPHS?

10 A YES, I DID.

11 Q WERE THEY ALL TAKEN WHILE YOU WERE THERE?

12 A YES, THEY WERE.

13 Q I'LL SHOW YOU STATE'S EXHIBITS NUMBER 12 THROUGH 38,
14 WHICH ARE THE PICTURES, I BELIEVE, FROM THAT SCENE. IF YOU
15 COULD, TELL ME, HAVE YOU HAD AN OPPORTUNITY TO EXAMINE
16 THOSE BEFORE YOU CAME IN TO TESTIFY TODAY?

17 A YES, I HAVE.

18 Q DO THEY FAIRLY AND ACCURATELY DEPICT THE CRIME SCENE
19 AS IT WAS THAT DAY WHEN YOU WERE THERE?

20 A YES, THEY DO.

21 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER THOSE
22 INTO EVIDENCE AT THIS TIME.

23 MR. CHIARENZA: NO OBJECTION.

24 THE COURT: THEY'RE ADMITTED.

1 (WHEREUPON STATE'S EXHIBITS 12 THROUGH 38 WERE ADMITTED INTO
2 EVIDENCE WITHOUT OBJECTION AND WERE THEREAFTER PUBLISHED
3 TO THE JURY BY WAY OF THE OVERHEAD PROJECTOR)

4 Q LET'S KEEP THOSE THERE BECAUSE WE WILL BE REFERRING TO
5 THEM. STATE'S EXHIBIT NUMBER 12, IF YOU CAN, LOOK AT THAT AND
6 TELL ME WHAT THAT IS.

7 A THIS IS A PHOTOGRAPH THAT WAS TAKEN FROM THE-- IF
8 YOU'RE STANDING TOWARD THE OPPOSITE SIDE, YOU WOULD BE
9 LOOKING AT THIS SIDE DOOR, THE FRONT DOOR OF THE RESIDENCE.
10 THIS WOULD BE TAKEN FROM THE LEFT, REAR CORNER OF THE
11 LOCATION, SHOWING THE VICTIM'S MOBILE HOME.

12 Q IF WE COULD, I JUST WANT TO GO THROUGH THESE QUICKLY.
13 LOOK AT THE FIRST EXHIBIT ON THERE AGAIN.

14 A NUMBER 12.

15 Q NUMBER 12, STATE'S EXHIBIT NUMBER 12, IS THAT THE MOBILE
16 HOME THAT YOU RESPONDED TO?

17 A YES.

18 Q AND I BELIEVE, AS WE GO ON THROUGH THEM AND WE LOOK AT
19 STATE'S EXHIBIT 13.

20 A THIS WOULD BE, I BELIEVE, THE VICTIM'S PICKUP TRUCK THAT
21 WAS PARKED TO THE LEFT OF THE CAMPER.

22 Q STATE'S EXHIBIT 14.

23 A THIS WOULD BE A PHOTOGRAPH SHOWING THE BACK OF THE
24 TRUCK AND THE LEFT SIDE OF THE CAMPER.

1 Q THERE ON THE LEFT SIDE OF THE CAMPER, IS THAT ACTUALLY
2 WHERE THE FRONT DOOR WAS?

3 A YES.

4 Q WHERE THOSE BENT RAILS ARE, RIGHT IN THIS AREA, IS THAT
5 THE FRONT DOOR AREA?

6 A YES.

7 Q STATE'S EXHIBIT 15. AGAIN, THIS IS PANNING AROUND THE
8 TRAILER. IS THAT WHAT Y'ALL WERE DOING AT THAT TIME?

9 A YES. WHAT WE DO, ONE THING WE WOULD DO IS WE WOULD
10 PHOTOGRAPH, DO A 360 AROUND THE RESIDENCE, AND BASICALLY
11 JUST PHOTOGRAPH THE ENTIRE LOCATION IN A CIRCLE, AND THEN
12 MOVE OUR WAY INWARD AS WE PROGRESS THROUGH PROCESSING
13 THE SCENE.

14 Q STATE'S EXHIBIT NUMBER 16.

15 A THIS WOULD BE A PHOTOGRAPH OF THE RIGHT, FRONT CORNER,
16 BASICALLY DOING THE CIRCLE AROUND THE RESIDENCE, TO
17 PHOTOGRAPH ALL SIDES.

18 Q NOW, IF WE COULD, GOING TO THE FIRST GROUP OF
19 PHOTOGRAPHS THAT ACTUALLY GO INSIDE THE TRAILER, CAN YOU
20 LOOK AT THAT AND TELL ME WHICH EXHIBIT YOU'RE LOOKING AT?

21 A 23.

22 Q STATE'S EXHIBIT 23, AS YOU'RE GOING IN THE TRAILER, I SEE AT
23 SOME POINT YOU'VE STARTED MARKING THINGS AND PUTTING DOWN
24 CONES. IF YOU WOULD, DESCRIBE TO ME A LITTLE BIT WHAT THE
25 TRAILER LOOKED LIKE WHEN YOU FIRST CAME INSIDE.

1 A IT'S A OLDER MODEL CAMPER. IT'S IN VERY ROUGH CONDITION,
2 NOT MAINTAINED AND KEPT IN VERY CLEAN CONDITION.

3 Q WHEN YOU WERE OBSERVING THIS AREA, IF YOU CAN, DESCRIBE
4 WHAT YOU SEE IN ITEM NUMBER ONE, WHAT THAT WAS.

5 A YES. COMING INTO THE LOCATION OF, ON THE FLOOR, THERE
6 WAS A RED, OR A WHITE TOWEL, WITH RED STAINS, WHICH APPEAR TO
7 BE BLOOD, ON THE FLOOR.

8 Q DID YOU COLLECT THAT? THAT'S NUMBERED WITH CONE
9 NUMBER ONE. DID YOU COLLECT THAT, AS WELL?

10 A YES.

11 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 94. THAT WOULD
12 BE MARKED AND COLLECTED AND PUT THAT RAG IN?

13 A YES. THIS IS THE EVIDENCE ENVELOPE THAT I USED THAT DAY
14 TO RECOVER, WHICH IS NAMED, RAG WITH RED STAINS, THAT WAS
15 DOCUMENTED AS NUMBER ONE IN THE PHOTOGRAPH. I COLLECTED IT
16 AND PLACED IT INTO EVIDENCE IN THIS ENVELOPE AT THE SCENE.

17 Q WITH THAT PARTICULAR ITEM, DID YOU NOTE THE TIME THAT
18 YOU COLLECTED IT?

19 A YES, IT WAS COLLECTED ON THE 31ST OF DECEMBER, 2002, AT
20 4:15 P.M., BY MYSELF.

21 Q NOW, I NOTICE THERE ARE SOME ITEMS THERE ON THE FLOOR
22 THAT DON'T APPEAR TO HAVE NUMBERS BY THEM. CAN YOU EXPLAIN
23 TO ME WHY THESE ITEMS DO NOT HAVE NUMBERS BY THEM?

24 A YES. THERE'S A BOWL; LOOKS LIKE SOCKS; TENNIS SHOE; AND
25 SOME TOYS ON THE FLOOR. I LEARNED THROUGH THE INVESTIGATION

1 THAT THE VICTIM HAD A PET DOG. THE TOYS APPEAR TO BE THAT OF
2 THE DOG. THE BOWL WAS A FOOD BOWL, I BELIEVE. AND THE SHOE
3 DIDN'T HAVE ANYTHING AS FAR AS STAINS OR ANYTHING RELEVANT
4 THAT WE COULD USE OR DETERMINE WOULD BE NEEDED IN THIS
5 INVESTIGATION.

6 Q SO, THESE THINGS, YOU DON'T KNOW IF THE DOG KIND OF
7 DRAGGED AROUND, OR WHAT HAPPENED WITH THEM, BUT THEY WERE
8 DOWN ON THE FLOOR?

9 A YES.

10 Q WOULD YOU LOOK AT ITEM NUMBER TWO AND TELL ME WHAT
11 THIS IS?

12 A ITEM NUMBER TWO APPEARS TO BE A PAIR OF GLASSES,
13 HEARING AID, AND I BELIEVE, UNDERWEAR.

14 Q DID YOU COLLECT THOSE ITEMS?

15 A YES, I DID.

16 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 95, AND IF YOU
17 COULD, TELL ME ARE THOSE THE ITEMS THAT YOU COLLECTED THAT
18 DAY?

19 A YES. A PAIR OF GLASSES, UNDERWEAR AND HEARING AID.
20 THESE WERE FOUND ON THE LIVING ROOM FLOOR AT 4:16 P.M., ON THE
21 31ST OF DECEMBER, 2002, AND THEY WERE COLLECTED BY ME AND
22 PLACED INTO EVIDENCE.

23 Q IF YOU WOULD, COULD YOU OPEN THOSE ITEMS?

24 A (WHEREUPON EVIDENCE BAG IS OPENED AND ITEMS REMOVED.)

1 Q IF YOU WILL, JUST LOOK AT THEM AND IDENTIFY THEM AS THE
2 ITEMS YOU RECOVERED.

3 A YES. THIS IS THE GLASSES, THE UNDERWEAR AND BROKEN
4 HEARING AID.

5 Q DO THEY FAIRLY AND ACCURATELY DEPICT THE CONDITION
6 THEY WERE IN WHEN YOU DISCOVERED THEM THAT DAY?

7 MR. THOMPSON: YOUR HONOR, I WOULD MOVE TO ENTER THESE
8 INTO EVIDENCE AT THIS TIME.

9 MR. CHIARENZA: NO OBJECTION.

10 THE COURT: WHAT NUMBER IS THAT?

11 A NUMBER 95.

12 (WHEREUPON STATE'S EXHIBIT NUMBER 95 WAS ADMITTED INTO
13 EVIDENCE WITHOUT OBJECTION.)

14 Q IF YOU WOULD, TAKE OUT THE HEARING AID. IS IT ALL IN ONE
15 PIECE, OR IS IT IN MORE THAN ONE PIECE?

16 A IT'S MORE THAN ONE PIECE.

17 Q DOES IT APPEAR TO BE IN GOOD SHAPE, OR, HOW DOES IT
18 APPEAR TO BE?

19 A IT'S BEEN DAMAGED AND IT'S BROKEN.

20 Q WAS IT BROKEN WHEN YOU RECOVERED IT?

21 A YES. THIS IS THE WAY I FOUND IT.

22 Q IF YOU WOULD, GO THEN TO STATE'S EXHIBIT NUMBER 24 AND
23 LOOK AT THAT PHOTOGRAPH, AND WE'LL GO TO CONE NUMBER
24 THREE. TELL ME WHAT THAT IS.

1 A THIS IS A PHOTOGRAPH OF THE TELEPHONE THAT WAS FOUND IN
2 THE VICTIM'S RESIDENCE, AND THE PHONE RECEIVER WAS OFF THE
3 HOOK. AND ALSO THAT THE PHONE CORD HAD BEEN CUT TO THE
4 TELEPHONE.

5 Q HAD YOU TAKEN A PHOTOGRAPH OF IT BEFORE YOU PLACED
6 THE CONE THERE?

7 A YES.

8 Q GO TO STATE'S EXHIBIT 25. IS THAT THE PHONE ON THE FLOOR
9 BEFORE THE CONE WAS PLACED THERE?

10 A YES. THIS IS A PHOTOGRAPH OF THE TELEPHONE AS WE FOUND
11 IT.

12 Q DID IT APPEAR TO YOU THAT THE PHONE WAS OBVIOUSLY NOT
13 ON THE RECEIVER AT THAT TIME WHEN YOU ARRIVED?

14 A YES.

15 Q AND THE CORD ALSO BEING CUT?

16 A THAT'S CORRECT.

17 Q WITH THAT PARTICULAR PHONE, DID YOU HAVE AN
18 OPPORTUNITY TO TRY TO EXAMINE THAT PHONE FURTHER?

19 A YES, I DID.

20 Q I'LL SHOW YOU STATE'S EXHIBIT 89. IF YOU COULD, LOOK AT
21 THAT FOR ME, AND TELL ME WHAT THAT IS. GO AHEAD AND OPEN IT
22 UP.

23 A YES. THIS IS THE EVIDENCE BAG THAT I FILLED OUT ON THE
24 DAY, ON THE 31ST AND THE PHONE. THAT WAS COLLECTED BY MYSELF

1 AT 4:17 P.M., AND THIS CONTAINS THE WHITE TELEPHONE THAT WAS
2 FOUND AND MARKED AS ITEM NUMBER THREE IN THE PHOTOGRAPHS.

3 Q ALL RIGHT.

4 A THE TWO PLASTIC BAGGINGS (SIC) ARE THE CORD THAT WAS
5 RECOVERED FROM THE TELEPHONE, AND FROM THE PHONE RECEIVER.

6 Q CAN YOU TELL ME WHAT TIME YOU RECOVERED THAT PHONE?

7 A THIS PHONE WAS RECOVERED ON THE 31ST AT 4:17 P.M.

8 Q YOU SAID YOU ALSO HAD SOME WORK THAT YOU DID WITH THE
9 PHONE AFTER THAT. WHAT DID YOU DO WITH THE PHONE?

10 A ONCE WE DOCUMENTED THE TELEPHONE AND PHOTOGRAPHY
11 AND WITH A SKETCH OF THE LOCATION OF WHERE IT WAS LOCATED
12 BY US IN THE RESIDENCE, I THEN PROCESSED THE TELEPHONE FOR
13 LATENT FINGERPRINTS.

14 Q CAN YOU TELL ME WHAT PROCESS YOU WENT THROUGH TO DO
15 THAT?

16 A YES. WE USED A BLACK GRAPHITE POWDER AND A BRUSH AND
17 WE APPLIED THE POWDER TO THE BRUSH AND THEN WE LIGHTLY
18 DUST OVER THE OBJECT THAT WE'RE TRYING TO RECOVER LATENT
19 FINGERPRINTS FROM. AND THE POWDER WILL ADHERE TO THE
20 MOISTURE AND THE OILS THAT ARE LEFT BEHIND BY THE INDIVIDUAL;
21 HANDS, PALMS, FEET, SURFACES OF AN INDIVIDUAL.

22 Q WHAT, IF ANYTHING, WERE YOU ABLE TO DISCOVER WHEN YOU
23 DID THAT?

1 A UPON PROCESSING THE TELEPHONE AND THE PHONE RECEIVER,
2 NO RIDGE DETAIL WAS DEVELOPED THAT COULD BE IDENTIFIED TO
3 ANYONE.

4 Q CAN YOU EXPLAIN WHAT YOU MEAN BY THAT?

5 A BASICALLY MEANING THAT THE OBJECT-- WHEN TOUCHED
6 YOU'LL LEAVE, SOMETIMES YOU WILL LEAVE FINGERPRINT
7 IMPRESSIONS. BASICALLY, THE FINGERPRINTS ARE RIDGES THAT
8 HAVE PORES THAT RUN ALONG THE TOP OF THE RIDGES, AND THEY
9 SECRETE PERSPIRATION, OIL.

10 DURING THE WINTER MONTHS YOU CAN TELL THAT YOUR
11 HANDS ARE VERY DRY WHERE YOU'RE EXUDING ANY PERSPIRATION.
12 BUT IF YOU RUB YOUR FOREHEAD AND YOUR NOSE, YOU CAN FEEL
13 THE OILY BASE GET ONTO YOUR FINGERS.

14 ONCE YOU TAKE YOU HAND AND PLACE IT ONTO AN OBJECT, IF
15 THERE IS PERSPIRATION THERE, YOU STAND A CHANCE OF LEAVING A
16 LATENT OF YOUR FINGERPRINT AT THAT LOCATION.

17 WHEN PROCESSING ITEMS-- AND WE DO NOT RECOVER LATENT
18 PRINTS FROM OBJECTS THAT ARE SMOOTH AND VERY GOOD
19 SURFACES. TO PROCESS IT, SEVERAL THINGS HAPPEN. EITHER NO ONE
20 WAS PERSPIRING TO LEAVE ENOUGH BASE OF OILS AND WATER THERE
21 FOR THE PRINT TO ADHERE TO THE OBJECT. THE OBJECT COULD BE
22 DUSTY. WHEN AN INDIVIDUAL TOUCHES THE OBJECT, WHAT YOU
23 WOULD DO, INSTEAD OF LEAVING A PRINT, YOU WILL LEAVE AN
24 OUTLINE OF A FINGER, AND YOU WILL ACTUALLY REMOVE THE DUST
25 WITH YOUR FINGER. IT LEAVES NO IDENTIFYING RIDGE

1 CHARACTERISTICS. OR, IF YOU'RE WEARING GLOVES OR HAVE YOUR
2 HANDS COVERED WITH ANY TYPE OF OBJECT.

3 Q SO, THERE JUST WASN'T ANYTHING ON THE PHONE TO
4 ACTUALLY COMPARE TO ANYTHING ELSE?

5 A NO, THERE WAS NO DETAIL ENOUGH TO DO ANY COMPARISON.

6 MR. THOMPSON: YOUR HONOR, I WOULD ASK THAT THE PHONE
7 BE ENTERED INTO EVIDENCE AT THIS TIME.

8 MR. CHIARENZA: NO OBJECTION.

9 (WHEREUPON STATE'S EXHIBIT NUMBER 89 WAS ADMITTED INTO EVIDENCE
10 WITHOUT OBJECTION.)

11 Q WHAT'S THE STATE'S EXHIBIT NUMBER ON THAT?

12 A 89.

13 Q THANK YOU. GOING BACK TO STATE'S EXHIBIT 94, IF YOU
14 WOULD, EXAMINE THAT AND MAKE SURE THAT THAT'S WHAT YOU
15 RECOVERED.

16 A I'M SORRY.

17 Q THE BAG THAT HAD THE RED-STAINED RAG IN IT.

18 A (WHEREUPON STATE'S EXHIBIT 94 WAS REMOVED FROM THE
19 EVIDENCE BAG)

20 Q IS THAT STATE'S EXHIBIT 94?

21 A YES.

22 Q DOES THAT EVIDENCE CORRECTLY DEPICT THE CLOTH THAT
23 YOU RECOVERED THAT DAY?

1 A YES. THIS IS LABELED A RAG WITH RED STAIN. AND THIS WAS
2 RECOVERED ON THE 31ST OF DECEMBER, 2002, AT 4:15 P.M., BY MYSELF
3 AND PLACED INTO EVIDENCE.

4 MR. THOMPSON: YOUR HONOR, AT THIS TIME, I WOULD MOVE
5 TO ENTER STATE'S EXHIBIT 94 INTO EVIDENCE.

6 MR. CHIARENZA: OBJECTION TO RELEVANCE.

7 THE COURT: WHAT IS THE RELEVANCE?

8 MR. THOMPSON: IT IS A RAG THAT WAS RECOVERED AT THE
9 SCENE, YOUR HONOR.

10 THE COURT: I SUSTAIN THE OBJECTION.

11 MR. CHIARENZA: THANK YOU.

12 Q IF YOU COULD, GOING TO CONE NUMBER FOUR. I BELIEVE WE
13 HAVE THAT PHOTOGRAPH, STATE'S EXHIBIT NUMBER 23.
14 IF YOU COULD, TELL ME, BASICALLY, THE ITEMS THAT WERE
15 RECOVERED OFF OF CONE NUMBER FOUR.

16 A CONE NUMBER FOUR APPEARS TO BE A RED STAIN THAT WAS
17 FOUND ON THE LINOLEUM OR VINYL FLOOR IN THE RESIDENCE.

18 Q WHAT DID YOU DO WITH THAT RED STAIN? HOW DID YOU
19 PROCESS THAT?

20 A IT WAS PHOTOGRAPHED WITHOUT A NUMBER CONE BASICALLY
21 SHOWING WHAT WE FOUND WHEN WE GOT THERE. THEN WE PLACED
22 A NUMBER CONE THERE FOR REFERENCE POINTS AND
23 IDENTIFICATION. WE THEN SWABBED THE RED STAIN AND SECURED A
24 STANDARD FOR THAT AREA.

1 Q NOW, CONE NUMBER FIVE, IF WE COULD GO TO THAT. I BELIEVE
2 ON THE EXHIBIT, STATE'S EXHIBIT 28. WHAT WAS THAT THAT YOU
3 DISCOVERED IN THE RESIDENCE AT THAT TIME?

4 A IN THE KITCHEN AREA THERE WAS A CHAIR TURNED OVER, A
5 RED STAIN AND A PIECE OF CONCRETE CINDERBLOCK LYING
6 UNDERNEATH THE CHAIR. TO THE TOP OF THAT IS A BELT.

7 Q IS THAT ALSO THE AREA THAT YOU IDENTIFIED WITH CONE
8 NUMBER FIVE?

9 A YES, IT IS.

10 Q IN THAT PARTICULAR AREA, CAN YOU TELL ME WHAT, IF
11 ANYTHING, YOU RECOVERED?

12 A I BELIEVE WE CUT A SWAB, AND ALSO THE CONCRETE BLOCK
13 THAT WAS UNDERNEATH THE CHAIR.

14 Q LOOKING AT STATE'S EXHIBIT NUMBER 90, CAN YOU TELL WHAT
15 THAT IS?

16 A THIS IS THE SECTION OF THE CONCRETE BLOCK THAT WAS
17 UNDERNEATH THE CHAIR THAT WAS RECOVERED BY MYSELF ON THE
18 31ST OF DECEMBER, 2002, AT 4:19 P.M.

19 Q IS THAT WHAT IS SHOWN IN THE PHOTOGRAPH MARKED AS
20 STATE'S EXHIBIT 28?

21 A YES.

22 MR. THOMPSON: YOUR HONOR, I WOULD MOVE TO ENTER
23 STATE'S EXHIBIT 90 INTO EVIDENCE AT THIS TIME.

24 MR. CHIARENZA: OBJECTION, YOUR HONOR. THERE'S BEEN NO
25 TESTIMONY ABOUT THE CINDERBLOCK.

1 MR. THOMPSON: THERE HAS BEEN TESTIMONY THAT IT WAS
2 USED IN THE ASSAULT.

3 THE COURT: I OVERRULE THE OBJECTION.
4 (WHEREUPON STATE'S EXHIBIT NUMBER 90 WAS ADMITTED INTO
5 EVIDENCE OVER OBJECTION.)

6 Q NOW, IF YOU COULD, TELL ME, WAS THE CHAIR WHEN YOU
7 CAME IN, WAS IT KNOCKED OVER LIKE THAT?

8 A YES, THAT'S THE WAY WE FOUND THE CHAIR.

9 Q SO, YOU DID NOT ALTER OR CHANGE ANYTHING BEFORE IT IS
10 PHOTOGRAPHED?

11 A WE DO NOT.

12 Q GOING TO ITEM NUMBER SIX, SHOWN IN STATE'S EXHIBIT
13 NUMBER 30. AT THAT POINT, HAD YOU LIFTED UP A CHAIR IN THAT
14 PHOTOGRAPH TO RECOVER THAT BLOCK?

15 A NO, WE HAD NOT.

16 Q LOOKING AT PHOTOGRAPH WHICH IS STATE'S EXHIBIT NUMBER
17 30.

18 A I'M SORRY. I'M ON 29. OKAY. STATE'S EXHIBIT 30, THE CHAIR
19 HAD BEEN MOVED, AND THE BLOCK HAD BEEN COLLECTED.

20 Q OKAY. AND LOOKING AT CONE NUMBER SIX, WHAT DOES THAT
21 SHOW?

22 A EVERYTHING THAT WAS FOUND ON THE FLOOR. THE BLOCK IS
23 NUMBER SIX IN THAT PHOTO.

24 Q DID YOU COLLECT THAT?

25 A YES, I DID.

1 Q AND IS THAT HOW IT WAS FOUND, I BELIEVE IN STATE'S EXHIBIT
2 NUMBER 28?

3 A YES.

4 Q WAS THE VICTIM STILL THERE?

5 A NO. AT THE TIME WE ARRIVED, THE VICTIM HAD ALREADY BEEN
6 TRANSPORTED AWAY FROM THE SCENE.

7 Q LOOKING AT STATE'S EXHIBIT 31, WHAT, IF ANYTHING, DID YOU
8 MARK WITH THAT CONE NUMBER SEVEN?

9 A A BLACK COAT THAT WAS ON THE FLOOR.

10 Q DID YOU COLLECT THAT?

11 A YES, I DID.

12 Q LOOKING AT STATE'S EXHIBIT NUMBER 32. THIS IS CONE
13 NUMBER EIGHT. CAN YOU TELL US WHAT THAT SHOWS?

14 A THIS WAS BE A COAT THAT WAS FOUND ALSO ON THE FLOOR
15 NEAR THE BEDROOM DOOR.

16 Q CAN YOU TELL ME, IF YOU WOULD, THE LOCATION OF THAT
17 BEDROOM DOOR, IS THAT FROM THE BACK, LEADING TO THE BACK OF
18 THE TRAILER?

19 A YES, THIS WOULD LEAD TO-- ONCE YOU WENT INTO THE
20 TRAILER, YOU WOULD IMMEDIATELY GO INTO THE KITCHEN AREA,
21 AND IF YOU CONTINUED ALL THE WAY THROUGH THE CAMPER, YOU
22 WOULD END UP IN THE BEDROOM.

23 Q AND YOU MARKED THAT JACKET WITH A CONE MARKED
24 NUMBER EIGHT?

25 A YES, I DID.

1 Q IN ADDITION TO HAVING A NUMBER OF THESE ITEMS
2 COLLECTED, DID YOU DO ANYTHING ELSE TO HELP IDENTIFY THE
3 CRIME SCENE?

4 A YES SIR. I MADE A SKETCH OF THE ADDRESS, AND MEASURED
5 DIFFERENT AREAS WITHIN THE ADDRESS TO PLACE THE ITEMS THAT
6 WE COLLECTED, WHERE THEY WERE LOCATED WITHIN THE
7 RESIDENCE.

8 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 99. IS THAT
9 A FAIR AND ACCURATE COPY OF THE SKETCH THAT YOU CREATED?

10 A YES. THIS IS A COMPUTER GENERATED SKETCH THAT I
11 COMPLETED MYSELF OF THE INCIDENT LOCATION.

12 Q AND THAT SHOWS BASICALLY WHERE EVERYTHING WAS
13 WITHIN THE RESIDENCE?

14 A THAT'S CORRECT.

15 Q AND I BELIEVE YOU HAVE ON THE SIDE THE ITEMS THAT YOU
16 NUMBERED AND COLLECTED?

17 A YES.

18 Q DOES THAT FAIRLY AND ACCURATELY DEPICT THE CRIME
19 SCENE AND YOU OBSERVED IT AT THAT TIME?

20 A YES, IT DOES.

21 MR. THOMPSON: YOUR HONOR, I WOULD MOVE TO ENTER WHAT
22 HAD BEEN MARKED AS STATE'S EXHIBIT 99 INTO EVIDENCE AT THIS
23 TIME.

24 MR. CHIARENZA: NO OBJECTION.

25 THE COURT: IT'S ADMITTED.

1 (WHEREUPON STATE'S EXHIBIT NUMBER 99 WAS ADMITTED INTO
2 EVIDENCE WITHOUT OBJECTION.)

3 MR. THOMPSON: AND I WOULD ASK TO PUBLISH THAT FOR THE
4 JURY AT THIS TIME AS WELL.

5 THE COURT: GO AHEAD.

6 (WHEREUPON STATE'S EXHIBIT NUMBER 99 WAS GIVEN TO THE JURY)

7 Q NOW, AS THE JURY LOOKS AT THAT, IF WE COULD ALSO GO
8 OVER SOME OF THE PHOTOS OF THE TRAILER, ITSELF, JUST KIND OF
9 THE LAYOUT AS YOU COME IN THE FRONT DOOR, OR, THE LAYOUT AS
10 YOU LOOK AROUND THE TRAILER.

11 STARTING WITH STATE'S EXHIBIT NUMBER 33. WOULD YOU
12 DESCRIBE THAT AREA FOR US?

13 A THIS WOULD BE STANDING AT THE, WE CALL THE FRONT DOOR
14 OF THE RESIDENCE, LOOKING INTO THE LIVING ROOM, KITCHEN AREA
15 OF THE MOBILE HOME, OR THE CAMPER.

16 Q SO, THE FIRST CONES THAT WE LOOKED AT, I BELIEVE, WOULD
17 HAVE BEEN IN THIS AREA JUST UNDERNEATH THIS PHOTOGRAPH.
18 CORRECT?

19 A YES SIR.

20 Q AND THEN, I BELIEVE, IS THAT THE STAIN THAT YOU HAD
21 MARKED AS ITEM NUMBER FOUR?

22 A YES.

23 Q AS YOU GO THROUGH-- I WANT TO POINT OUT A COUPLE OF
24 THESE. IT'S HARD TO SEE WITH THE LIGHT GLARE. THIS ITEM RIGHT
25 HERE UNDERNEATH---

1 MR. CHIARENZA: YOUR HONOR, I'M GOING TO ASK-- THESE ARE
2 LEADING AS MR. THOMPSON POINTS TO AN ITEM, AND HE ASKS WHERE
3 DID YOU FIND SOMETHING. HE'S LEADING WHEN HE POINTS OUT
4 SOMETHING SPECIFICALLY AND STARTS BASICALLY TESTIFYING AT
5 TO WHAT IT IS. IT'S ASKING FOR A YES OR NO QUESTION.

6 THE COURT: SUSTAINED.

7 Q CAN YOU TELL ME, YOU MENTIONED THAT YOU HAD
8 RECOVERED A JACKET, NOT THE ONE IN THE BEDROOM, BUT AT
9 ANOTHER LOCATION. BUT IS THAT IN PHOTOGRAPH WHICH IS EXHIBIT
10 NUMBER 33?

11 A YES. THE JACKET IS UNDERNEATH THE LITTLE DESK NEAR THE
12 CLOCK ON THE FLOOR.

13 Q OKAY. JUST UNDERNEATH THE LITTLE DESK NEAR THE CLOCK.
14 ALL RIGHT. NOW, WE GO TO STATE'S EXHIBIT NUMBER 33. WOULD
15 YOU DESCRIBE THE VIEW THAT WE HAVE THERE?

16 A THIS IS A PHOTOGRAPH THAT WAS TAKEN FROM THE HALLWAY
17 IN THE MIDDLE OF THE RESIDENCE LOOKING BACK TOWARD WHAT WE
18 CONSIDERED THE ENTRY POINT, OR THE FRONT DOOR, WHICH WOULD
19 BE TO THE LEFT CORNER, SHOWING THE KITCHEN, THE ITEMS ON THE
20 FLOOR, THE GLASSES, UNDERWEAR, HEARING AID, AND THE
21 TELEPHONE, THE COUNTER WITH THE CUT PHONE CORD.

22 Q SO, IS THAT BASICALLY AN OPPOSITE VIEW OF THE KITCHEN
23 WHICH WE JUST SAW?

24 A YES, IT IS.

1 Q NOW, I NOTICE IN THAT PHOTOGRAPH, THERE'S ALSO SEEN IN
2 STATE'S EXHIBIT NUMBER 26, SOMETHING THAT YOU CAME IN A LOT
3 CLOSER ON. CAN YOU TELL ME WHAT THE SIGNIFICANCE OF THAT?

4 A YES. THE PHOTO OF STATE'S EXHIBIT 35, IN THE LEFT CORNER,
5 OR LEFT, UPPER AREA, IS A CALENDAR THAT WAS MOUNTED ON THE
6 WALL NEAR THE FRONT DOOR.

7 THE CALENDAR HAS CHECK MARKS ON IT. IT APPEARS THAT
8 THE VICTIM WOULD CHECK OFF THE DAYS AS THEY PASSED.

9 MR. CHIARENZA: OBJECTION, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 Q NOT WHAT THE VICTIM DID, BUT IS SOMETHING ELSE CHECKED
12 OFF?

13 A YES.

14 Q WHAT IS THAT?

15 A THE CALENDAR HAD CHECK MARKS ON IT THAT THE LAST DATE
16 THAT IT WAS CHECKED WAS ON THE 29TH.

17 Q AS WELL, I BELIEVE YOU PHOTOGRAPHED SOME IN THE
18 BEDROOM. IS THAT CORRECT?

19 A YES.

20 Q NOW, AS YOU LOOK AT STATE'S EXHIBIT NUMBER 35, DOES THAT
21 LEAD BACK INTO THE BEDROOM?

22 A YES. THIS PHOTOGRAPH WOULD HAVE BEEN TAKEN OVER BY
23 THE TELEPHONE THAT WAS ON THE COUNTER, LOOKING BACK
24 THROUGH THE KITCHEN, LIVING ROOM, AND THE SMALL SHORT
25 HALLWAY THAT LEADS INTO THE BEDROOM.

1 Q STATE'S EXHIBIT NUMBER 36.

2 A THIS WOULD BE STANDING IN THE HALLWAY AT THE DOOR

3 THAT WOULD LEAD INTO THE BEDROOM OF THE CAMPER.

4 Q NOW, AS YOU ENTER THE BEDROOM ON STATE'S EXHIBIT

5 NUMBER 37.

6 A 37, UPON ENTERING THE BEDROOM, WE NOTICED A SHOTGUN

7 THAT WAS ON THE OPPOSITE SIDE OF THE ROOM, NEAR A DRESSER,

8 THAT WAS LEANING AGAINST THE WINDOW IN THE BEDROOM.

9 Q LOOKING AT THAT, I BELIEVE THERE IS A NIGHTSTAND NEXT TO

10 IT?

11 A YES.

12 Q WAS THERE ANY OTHER NIGHTSTAND IN THE ROOM?

13 A TO MY KNOWLEDGE, I WOULD HAVE TO LOOK AT ALL THE

14 PHOTOGRAPHS, BUT I DON'T BELIEVE SO.

15 Q NOW, DID YOU DO ANYTHING WITH THE SHOTGUN THAT YOU

16 SAW THERE AT THAT POINT?

17 A YES. WE CHECKED THE SHOTGUN, THEN SECURED IT TO SEE IF IT

18 WAS LOADED.

19 Q WAS IT IN FACT LOADED?

20 A YES. ACTUALLY, GOT THE SHOTGUN, BREACHED THE CHAMBER

21 ON THE SHOTGUN AND PHOTOGRAPHED IT.

22 Q WOULD THAT BE STATE'S EXHIBIT NUMBER 38?

23 A YES. THIS IS A PHOTOGRAPH OF THE SHOTGUN THAT WE HAD

24 JUST LOOKED AT WITH THE BARREL BREACHED, OR OPEN.

1 Q SO, LOOKING AT THE RESIDENCE, THOSE ARE THE-- WE'VE
2 TALKED ABOUT THE ITEMS YOU RECOVERED. WHAT TYPE OF THINGS
3 DID YOU LOOK FOR SPECIFICALLY WITHIN THE TRAILER AT THAT
4 TIME, OTHER THAN THE ITEMS THAT YOU NUMBERED? IS THERE
5 ANYTHING THAT YOU LOOKED FOR BUT COULD NOT FIND?

6 A YES. ONE THING WE DID WAS WE CHECKED-- WHAT WE DO IN
7 PROCESSING A CRIME SCENE IS, WE LOOK FOR FINGERPRINTS, ANY
8 KIND OF KNOWN STANDARD, WHICH COULD BE BLOOD, SEMEN,
9 THINGS OF THAT NATURE, IF THAT TYPE OF CRIME HAS BEEN
10 COMMITTED, AND ALSO TRACE EVIDENCE, WHICH COULD BE HAIR
11 FOLLICLES OR FIBERS THAT ARE LEFT AT A SCENE.

12 ON THIS SCENE I WAS ABLE TO TAKE MY FLASHLIGHT AND
13 WHAT YOU CAN DO WITH A FLASHLIGHT IS YOU HOLD IT OFF, IF THIS
14 IS THE AREA THAT YOU WANT TO SEARCH FOR TRACE EVIDENCE,
15 WHICH CONSISTS OF HAIRS. OR IF THERE'S DUST AND THERE'S
16 DISTURBANCE OF THE DUST, YOU HOLD YOUR FLASHLIGHT DOWN
17 LEVEL WITH THE ITEM THAT YOU'RE PANNING ACROSS. AND WHAT IT
18 WILL DO IS, IT WILL-- YOU WILL BE ABLE TO SEE OR INDICATE IF
19 THERE'S A HAIR IN DIFFERENT LOCATIONS, JUST BY PANNING IT WITH
20 A LIGHT OFF TO THE SIDE OF THE OBJECT THAT YOU'RE ACTUALLY
21 LOOKING AT.

22 I PERFORMED THIS TASK IN THE FLOOR OF THE KITCHEN, THE
23 BED, ON THE BEDROOM, IN THE BEDROOM, THE HALLWAY, THE
24 FLOORS, THE COUCH. AND BASICALLY WITH THE TYPE OF DOG THAT
25 WAS THERE, AND THE DIRTINESS OF THE HOUSE, THERE WAS NO HAIR

1 THAT WAS INCONSISTENT WITH THE DOG, WHAT APPEARED TO BE THE
2 DOG'S CONDITION AND THE DOG HAIR THAT WAS THERE. THERE WAS
3 NOTHING THAT STOOD OUT THAT I COLLECTED.

4 Q OKAY. NOW, DID YOU PROCESS THAT DAY FOR PRINTS, OTHER
5 THAN THE PHONE?

6 A NO, I DID NOT.

7 Q NOW, WAS THERE A TIME THAT YOU DID GO AND PROCESS THE
8 SCENE FOR PRINTS AFTER THAT?

9 A YES. WE WERE REQUESTED TO RETURN TO THE LOCATION ON
10 THE SECOND, I BELIEVE, OF JANUARY, TO PROCESS THE RESIDENCE
11 FOR LATENT FINGERPRINTS. WE DID NOT PROCESS IT THE DAY WE
12 WERE THERE DUE TO THE FACT AND THE CONDITION OF IT, AND THE
13 LOCATION, THE DIRTINESS. AND WHERE I HAD TALKED IN THE PAST
14 ABOUT TRANSFERRING DUST OR DIRT TO YOUR HANDS FROM AN
15 OBJECT WHEN YOU'RE TOUCHING IT, IF IT'S IN POOR CONDITION.

16 BUT WE WENT BACK AT THE REQUEST OF THE DETECTIVE
17 DIVISION TO ATTEMPT TO PROCESS THE LOCATION FOR PRINTS. AND
18 WE PROCESSED THE LOCATION, THE CHAIR, AND WERE UNABLE TO
19 RECOVER ANY FINGERPRINTS.

20 Q HAD THE SCENE BEEN CHANGED AT ALL OR ALTERED SINCE THE
21 TIME YOU HAD BEEN IN ORIGINALLY, WHEN YOU WENT BACK?

22 A NO. IT APPEARED TO BE IN THE SAME CONDITION AS IT WAS
23 WHEN WE LEFT.

24 Q AND WHEN WAS IT THAT YOU WENT BACK?

25 A I BELIEVE IT WAS ON THE SECOND OF JANUARY.

1 Q DURING THAT TIME WHEN YOU WENT BACK, DID YOU COLLECT
2 ANYTHING ELSE FROM THE RESIDENCE?

3 A YES. I WAS REQUESTED TO RECOVER A LOG BOOK THAT WAS AT
4 THE LOCATION.

5 Q DID YOU DO THAT?

6 A YES, I DID.

7 Q LET ME SHOW YOU STATE'S EXHIBIT 96. IS THAT THE LOG BOOK
8 THAT YOU WERE ABLE TO RECOVER?

9 A YES. THIS IS DESCRIBED AS A NOTEBOOK THAT WAS ON THE
10 TABLE ON THE FRONT PORCH THAT WAS RECOVERED ON JANUARY 2,
11 AT 14:05 HOURS BY MYSELF AND THEN PLACED INTO EVIDENCE BY
12 MYSELF.

13 Q IF YOU WILL LOOK AT THE PHOTOGRAPH, STATE'S EXHIBIT 21,
14 DOES THAT SHOW THE PLACE WHERE THE NOTEBOOK WAS LOCATED?

15 A YES. THIS IS STANDING ONLY STEPS THAT WOULD BE WHAT WE
16 CONSIDERED THE FRONT DOOR. ONCE AGAIN, GOING INTO THE
17 RESIDENCE, LOOKING TO THE RIGHT, THERE'S A COVERED AREA, A
18 PORCH THAT IS ADDED TO THE LOCATION. AND THEN ON THE BOX ON
19 THE TABLE IS WHERE THE LOG BOOK WAS LOCATED. AND THIS IS A
20 PHOTOGRAPH SHOWING WHERE IT'S AT.

21 Q IF YOU COULD TELL ME, THEN, IF YOU HAD A CHANCE TO-- IS
22 THAT ALL YOU DID AT THIS PARTICULAR SCENE, THIS PARTICULAR
23 TRAILER?

24 A WAS PROCESS IT FOR LATENTS AND RECOVER THE BOOK.

1 Q NOW, ON THE THIRD OF JANUARY, DID YOU BECOME INVOLVED
2 WITH THIS CASE IN ANY OTHER WAY?

3 A YES, I DID.

4 Q CAN YOU TELL ME HOW YOU BECAME INVOLVED THAT DAY?

5 A ON THE THIRD OF JANUARY, I WAS SUMMONSED BY THE
6 DETECTIVES TO MEET WITH THEM ON TWIN LAKES ROAD OFF OF
7 CELANESE ROAD, AT THE DUTCHMAN CREEK BRIDGE.

8 Q WHEN YOU ARRIVED AT THAT LOCATION, DID YOU TAKE
9 PHOTOGRAPHS OF WHAT YOU HAD FOUND THERE?

10 A YES. UPON ARRIVAL ON THE BRIDGE, I WAS INSTRUCTED THAT
11 THERE WAS A SAFE THAT HAD BEEN FOUND IN THE CREEK OFF THE
12 SIDE OF THE BRIDGE.

13 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER ONE. IS THAT A
14 PHOTOGRAPH THAT YOU HAD TAKEN?

15 A YES. THIS IS THE ACTUAL SAFE THAT WE RECOVERED FROM THE
16 CREEK ON TWIN LAKES ROAD.

17 Q I'LL ALSO SHOW YOU STATE'S EXHIBITS 39 THROUGH 46. IF YOU
18 WOULD LOOK AT THOSE WITHOUT SHOWING THEM TO THE JURY.
19 HAVE THE HAD THE OPPORTUNITY TO REVIEW THOSE PICTURES
20 BEFORE YOUR TESTIMONY TODAY?

21 A YES, I HAVE.

22 Q DO THOSE FAIRLY AND ACCURATELY DEPICT THE SCENE WHERE
23 YOU FOUND THE SAFE?

24 A YES, IT IS.

1 MR. THOMPSON: YOUR HONOR, I WOULD MOVE TO ENTER THESE
2 INTO EVIDENCE AT THIS TIME.

3 MR. CHIARENZA: NO OBJECTION.

4 THE COURT: THEY'RE ADMITTED.

5 (WHEREUPON STATE'S EXHIBITS NUMBER 39 THROUGH 46 WERE
6 ADMITTED INTO EVIDENCE WITHOUT OBJECTION AND PUBLISHED TO THE
7 JURY BY WAY OF THE OVERHEAD PROJECTOR.)

8 Q USING SOME OF THOSE PHOTOGRAPHS, ONCE AGAIN, WHERE
9 EXACTLY WAS THIS SAFE LOCATED?

10 A THE SAFE WAS LOCATED ON, IN THE WATER OF THE CREEK OF
11 WHAT WE CALL DUTCHMAN CREEK ON TWIN LAKES ROAD.

12 Q IF YOU WOULD, LOOK AT STATE'S EXHIBIT 39. IS THAT A
13 PHOTOGRAPH THAT DEPICTS WHERE THAT SAFE WAS IN THE CREEK?

14 A YES. THIS WAS A PHOTOGRAPH FROM THE BANK, LOOKING
15 OVER THE BRIDGE RAILING. IN THE CENTER OF THE WATER YOU WILL
16 SEE THE BOX, WHICH IS THE SAFE ITSELF.

17 Q I'LL SHOW YOU STATE'S EXHIBIT 40.

18 A THIS IS A PHOTOGRAPH TAKEN, LOOKING DOWN OVER THE SIDE
19 OF THE BRIDGE, DOWN TOWARD THE SAFE THAT WAS IN THE WATER.

20 Q DID THEN ATTEMPT TO RECOVER THE SAFE?

21 A YES.

22 Q WERE PHOTOGRAPHS TAKEN DURING THE TIME THAT YOU
23 RECOVERED THE SAFE AS WELL?

24 A YES, THEY WERE.

25 Q I'LL SHOW YOU STATE'S EXHIBIT 45.

1 A EXHIBIT 45 IS A PHOTOGRAPH OF MYSELF AND INVESTIGATOR
2 BAGWELL RECOVERING THE SAFE FROM THE WATER. WE USED A
3 LADDER AND PIPE POLE, WHICH IS A TWELVE-FOOT POLE THAT HAS A
4 HOOK ON IT. WE CONTACTED THE VOLUNTEER FIRE DEPARTMENT IN
5 THAT AREA TO RESPOND AND LET US BORROW THE LADDER AND PIPE
6 POLE FROM THEIR TRUCK.

7 Q STATE'S EXHIBIT 46.

8 A THIS IS A PHOTOGRAPH OF THE PIPE POLE AND INVESTIGATOR
9 BAGWELL AND MYSELF PULLING THE SAFE UP ON THE LADDER TO GET
10 IT OUT OF THE WATER.

11 Q AND DID YOU TAKE SOME PICTURES THAT SHOWS WHERE WE
12 ARE FROM TWIN LAKES ROAD?

13 A YES, I DID.

14 Q IF YOU COULD GO THROUGH THOSE WITH US, STATE'S EXHIBIT
15 42.

16 A EXHIBIT 42, THIS IS A PHOTOGRAPH STANDING ON THE BRIDGE.
17 THE VEHICLE IN THE PHOTOGRAPH, THE DURANGO, IS THE VEHICLE
18 THAT I DRIVE. TO THE LEFT OF ME WOULD BE THE AREA WHERE THE
19 SAFE WAS IN THE WATER OVER THE RAILING. THIS IS A DIRECTIONAL
20 PICTURE FROM THE BRIDGE LOOKING TOWARDS THE 1600 BLOCK OF
21 TWIN LAKES ROAD.

22 Q IS THAT THE RESIDENCE OF WHAT YOU UNDERSTOOD TO BE THE
23 DEFENDANT AT THAT TIME?

24 A YES.

25 Q STATE'S EXHIBIT 43.

1 A THIS IS A PHOTOGRAPH IN THE OPPOSITE DIRECTION. THE SAFE
2 WOULD NOW BE OVER THE RAILING ON THE RIGHT SIDE OF THE
3 BRIDGE. THE PHOTOGRAPH LOOKING BACK UP TWIN LAKES ROAD
4 TOWARDS MELROSE DRIVE.

5 Q STATE'S EXHIBIT 44.

6 A THIS IS A PHOTOGRAPH WHERE THE SAFE WOULD BE IN THE
7 WATER BEYOND, BEHIND THIS PHOTOGRAPH OF THE RAILING BEHIND
8 ME. THIS IS A PHOTOGRAPH OF ACROSS THE ROAD SHOWING THE
9 DIRECTION OF THE CREEK.

10 Q STATE'S EXHIBIT 41.

11 A THIS PHOTOGRAPH IS TAKEN, STANDING ON THE BRIDGE AND
12 LOOKING STRAIGHT DOWN. YOU WOULD ACTUALLY SEE THE SAFE
13 AND THIS IS SHOWING THE CREEK DIRECTION BEYOND THE SAFE AND
14 THE RAILING.

15 Q IF YOU STOOD AT THE BRIDGE AT THAT POINT AND LOOKED
16 STRAIGHT OUT, THIS IS WHAT YOU WOULD SEE?

17 A YES.

18 Q IF YOU LOOKED DOWN?

19 A YOU'D SEE THE SAFE.

20 Q NOW, GOING BACK AGAIN TO STATE'S EXHIBIT 46, WHEN YOU
21 WERE RETRIEVING THE SAFE. I NOTICE WHERE THE HOOK IS THERE,
22 YOU WERE DESCRIBING, WAS THE SAFE ALREADY LIKE THAT WHEN
23 YOU WERE TRYING TO LOOK DOWN?

1 A NO. THE SAFE HAD BEEN CUT OPEN AND APPEARED TO BE
2 RIPPED OPEN, CUT OPEN. THE DAMAGE DONE TO THE SAFE WAS PRIOR
3 TO US RETRIEVING IT FROM THE WATER.

4 Q I'LL SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT 98.
5 WITH THE COURT'S PERMISSION, I'LL ASK YOU TO STEP DOWN.

6 (WHEREUPON WITNESS EXITED THE WITNESS STAND.)

7 IF YOU WOULD, LOOK INSIDE THERE FOR ME.

8 A THIS IS THE SAFE I RECOVERED FROM THE CREEK ON TWIN
9 LAKES ROAD.

10 Q DOES IT FAIRLY AND ACCURATELY DEPICT HOW IT WAS WHEN
11 YOU RECOVERED IT?

12 A OTHER THAN BEING WET, IT DOES.

13 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER THIS
14 INTO EVIDENCE AT THIS TIME.

15 MR. CHIARENZA: NO OBJECTION.

16 MR. THOMPSON: NUMBER 98, YOUR HONOR.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON STATE'S EXHIBIT NUMBER 98 WAS ADMITTED INTO
19 EVIDENCE WITHOUT OBJECTION.)

20 Q IS THAT THE DAMAGE YOU OBSERVED IN THE PHOTOGRAPH
21 NUMBERED STATE'S EXHIBIT NUMBER 12? THIS IS THE ACTUALLY THE
22 BOTTOM OF THE SAFE. IS THAT CORRECT?

23 A CORRECT.

24 Q DID YOU HAVE AN OPPORTUNITY-- IF YOU COULD RETAKE
25 YOUR SEAT.

1 (WHEREUPON WITNESS RETURNED TO THE WITNESS STAND)

2 DID YOU HAVE AN OPPORTUNITY TO DO A DIAGRAM AS WELL OF
3 THIS LOCATION?

4 A YES. I COMPLETED A SKETCH WITH MEASUREMENTS SHOWING
5 THE LOCATION OF THE BRIDGE AND WHERE THE SAFE WAS IN THE
6 WATER.

7 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 101. CAN YOU TELL
8 ME WHAT THAT IS?

9 A THIS IS A COMPUTERIZED SKETCH, DRAWING OF THE SKETCH
10 THAT I COMPLETED OF THE LOCATION OF WHERE WE RECOVERED THE
11 SAFE.

12 Q I BELIEVE THAT INDICATES WHERE THE SAFE IS?

13 A YES. THE SAFE IS INDICATED IN THE DUTCHMAN CREEK AREA IS
14 THE LOCATION WHERE IT WAS FOUND.

15 Q WHAT ELSE IS INDICATED ON THIS DIAGRAM?

16 A I INDICATED SEVERAL THINGS IN THE DIAGRAM. ONE WOULD
17 BE THE PHOTOGRAPH THAT WAS TAKEN SHOWING THE DIRECTION OF
18 HOW YOU'RE GOING TOWARD MELROSE DRIVE ON THE BRIDGE.

19 THE OTHER WOULD BE A PHOTOGRAPH THAT WAS TAKEN
20 SHOWING THE DIRECTION YOU COULD GO BACK TO THE DEFENDANT'S
21 RESIDENCE AT 1601 TWIN LAKES ROAD.

22 THE ROAD OF THE DEFENDANT WOULD BE TO THE LEFT AFTER
23 YOU CROSS THE BRIDGE. YOU TURN TO THE LEFT AND THE LOCATION
24 SHOWING THE RESIDENCE OF THE DEFENDANT'S LOT ON THE RIGHT ON
25 TWIN LAKES ROAD.

1 Q DOES THE DIAGRAM FAIRLY AND ACCURATELY DEPICT THE
2 SCENE AS IT WAS THAT DAY?

3 A YES. I ACTUALLY MEASURED THE DISTANCE FROM THE
4 DEFENDANT'S RESIDENCE TO THE SAFE ON TWIN LAKES ROAD.

5 Q HOW FAR WAS THE DISTANCE FROM THE DEFENDANT'S ROAD,
6 APPROXIMATELY, FROM 1601 TWIN LAKES ROAD TO WHERE THE SAFE
7 WAS RECOVERED?

8 A FOUR-TENTHS OF A MILE.

9 Q IS THAT ALSO NOTED ON THAT DIAGRAM?

10 A YES.

11 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER INTO
12 EVIDENCE AT THIS TIME STATE'S EXHIBIT NUMBER 101.

13 MR. CHIARENZA: NO OBJECTION.

14 THE COURT: IT'S ADMITTED.

15 (WHEREUPON STATE'S EXHIBIT NUMBER 101 WAS ADMITTED INTO
16 EVIDENCE WITHOUT OBJECTION)

17 MR. THOMPSON: I ASK PERMISSION TO PUBLISH THAT TO THE
18 JURY AS WELL.

19 THE COURT: ALL RIGHT.

20 (WHEREUPON STATE'S EXHIBIT 101 WAS GIVEN TO THE JURY)

21 Q NOW, DO YOU RECALL THE TIME YOU RECOVERED THE SAFE?

22 A I WOULD HAVE TO LOOK AT THE EVIDENCE TAG THAT I PLACED
23 ON THE SAFE.

24 Q ALL RIGHT. IF YOU WOULD.

25 (WHEREUPON THE WITNESS EXITED THE WITNESS STAND)

1 A THE SAFE WAS RECOVERED BY MYSELF ON JANUARY 3, '03, AT
2 3:50 P.M. AT THE LOCATION WE'VE ADDRESSED.

3 Q NOW, AFTER RECOVERING THE SAFE, WHAT IF ANYTHING DID
4 YOU DO THAT DAY?

5 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

6 A AFTER THE SAFE WAS RECOVERED I FOLLOWED THE
7 DETECTIVES TO LOT NUMBER EIGHT AT 1601 TWIN LAKES ROAD.

8 Q WHEN YOU ARRIVED THERE WHAT WAS YOUR DUTY WHEN YOU
9 WERE THERE?

10 A I LEARNED THAT THIS WAS THE ADDRESS OF THE SUSPECT, THE
11 DEFENDANT. I THEN PROCESSED THAT CRIME SCENE.

12 Q ONCE AGAIN, AS PART OF PROCESSING THAT CRIME SCENE, DID
13 YOU TAKE PHOTOGRAPHS OF THE CRIME SCENE, ITSELF?

14 A YES, I DID.

15 Q I'LL SHOW YOU STATE'S EXHIBITS 47 THROUGH 75. HAVE YOU
16 HAD A CHANCE TO LOOK AT THOSE BEFORE YOU CAME IN TO TESTIFY
17 TODAY?

18 A YES, I HAVE.

19 Q ARE THOSE THE PHOTOGRAPHS THAT WERE TAKEN WHEN YOU
20 WERE THERE INVESTIGATING THE CRIME SCENE THAT DAY, OR,
21 INVESTIGATING THE DEFENDANT'S TRAILER THAT DAY?

22 A YES. THESE WERE THE ONES THAT WERE TAKEN AT THAT
23 LOCATION.

24 Q AND DO THEY FAIRLY AND ACCURATELY DEPICT THE SCENE AS
25 YOU SAW IT THAT DAY?

1 A YES, THEY DO.

2 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER THOSE
3 INTO EVIDENCE AT THIS TIME.

4 MR. CHIARENZA: NO OBJECTION.

5 THE COURT: THESE THE PHOTOS OF WHERE?

6 MR. THOMPSON: THE DEFENDANT'S TRAILER AT 1601 TWIN
7 LAKES ROAD.

8 THE COURT: THE DEFENDANT'S TRAILER.

9 MR. THOMPSON: STATE'S 47 THROUGH 75.

10 THE COURT: THEY'RE ADMITTED.

11 (WHEREUPON STATE'S EXHIBITS 47 THROUGH 75 WERE ADMITTED INTO
12 EVIDENCE WITHOUT OBJECTION AND PUBLISHED TO THE JURY BY WAY OF
13 THE OVERHEAD PROJECTOR)

14 Q IF YOU WOULD GO TO STATE'S EXHIBIT 47 AND DESCRIBE FOR
15 ME WHAT YOU SEE THERE.

16 A THIS IS A PHOTOGRAPH OF THE DEFENDANT'S RESIDENCE,
17 COMING FROM TWIN LAKES ROAD, DOWN THE DIRT ROAD INTO THIS
18 MOBILE HOME PARK.

19 Q AND AS YOU WENT INTO THE RESIDENCE, WOULD YOU JUST
20 WALK US THROUGH THE PHOTOGRAPHS AS TO WHERE WE ARE? WE'LL
21 GO TO STATE'S EXHIBIT 48 NEXT.

22 A THIS IS A PHOTOGRAPH OF THE LIVING ROOM LOOKING TOWARD
23 THE FRONT DOOR OF THE MOBILE HOME AND THE KITCHEN TO THE
24 LEFT, DINING ROOM-KITCHEN AREA TO THE LEFT IN THE
25 PHOTOGRAPH.

1 Q THE DOOR OPEN, IS THAT THE FRONT DOOR?

2 A YES.

3 Q STATE'S EXHIBIT 49.

4 A THIS WOULD BE A PHOTOGRAPH OF THE BAR, LOOKING OVER
5 FROM THE LIVING ROOM INTO THE DINING ROOM AREA OF THE
6 LOCATION.

7 Q STATE'S EXHIBIT 50.

8 A THIS WOULD BE A PHOTOGRAPH FROM THE KITCHEN LOOKING
9 BACK TOWARD THE FRONT DOOR OF THE RESIDENCE. YOU NOTICE TH
10 BAR TO THE RIGHT AND THE DINING ROOM AREA TO THE LEFT.

11 Q STATE'S EXHIBIT 51.

12 A THIS IS A PHOTOGRAPH FROM THE FRONT DOOR LOOKING INTO
13 THE LIVING ROOM, ACROSS THE LIVING ROOM, SHOWING A TV, THE
14 STAND, THE CHAIR, BABY ROCKER, AND THE COFFEE TABLE.

15 Q STATE'S EXHIBIT 52.

16 A THIS IS A CLOSER PHOTOGRAPH OF THE TV, THE TABLE, AND THE
17 CHAIR IN THE LIVING ROOM.

18 Q STATE'S EXHIBIT 53.

19 A THIS IS A PHOTOGRAPH OF A BEDROOM THAT IS USED FOR
20 STORAGE IN THE RESIDENCE.

21 Q STATE'S EXHIBIT 54.

22 A THIS IS A PHOTOGRAPH OF THE SAME BEDROOM FROM THE
23 OPPOSITE DIRECTION SHOWING THE BEDROOM ITSELF.

24 Q STATE'S EXHIBIT 55.

1 A THIS IS THE SAME BEDROOM, SHOWING THE CONTENTS OF THAT
2 BEDROOM.

3 Q FROM A DIFFERENT ANGLE?

4 A YES.

5 Q STATE'S EXHIBIT 56.

6 A THIS IS A PHOTOGRAPH OF THE MASTER BEDROOM IN THE
7 RESIDENCE.

8 Q IN THAT MASTER BEDROOM-- WELL, WE'LL GO BACK TO THAT.
9 LOOKING AT STATE'S EXHIBIT 57.

10 A THIS IS A PHOTOGRAPH OF THE COFFEE TABLE IN THE LIVING
11 ROOM.

12 Q NOW, IF YOU COULD TELL ME, WHAT, IF ANYTHING, DID YOU
13 NOTICE ON THE FLOOR AROUND THE COFFEE TABLE?

14 A AFTER WE HAD RECOVERED THE SAFE, AND NOTICING THE
15 DAMAGE TO THE SAFE, ONCE I ENTERED THIS RESIDENCE, I NOTICED
16 THERE WERE A LOT OF WHITE PARTICLES ON THE CARPET IN THE
17 LIVING ROOM AROUND THE COFFEE TABLE.

18 Q IF YOU WOULD, COULD YOU STEP DOWN FOR JUST A MOMENT
19 AND SHOW US ON THE LARGER SCREEN HERE.

20 (WHEREUPON WITNESS EXITED THE WITNESS STAND)

21 IF YOU WOULD, POINT OUT THE WHITE PARTICLES THAT YOU'RE
22 TALKING ABOUT IN THE PHOTOGRAPH.

23 A YOU CAN SEE ALL THESE LITTLE PARTICLES RIGHT HERE ON THE
24 FLOOR THAT WAS ON THE CARPET. HERE'S ONE RIGHT THERE, AND

1 THERE, AND THERE. ALL THIS AREA, YOU CAN SEE THE WHITE SPECKS
2 THAT WERE FOUND ON THE CARPET.

3 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 60 WHILE YOU'RE
4 THERE. IS THAT A CLOSER VIEW OF SOME OF THE CARPET IN THAT
5 LIVING ROOM AREA?

6 A YEAH. THIS WAS THE LIVING ROOM FLOOR, AND IT'S BASICALLY
7 A CLOSE-UP SHOWING ALL THESE WHITE SPOTS WHICH WAS FOUND ON
8 THE CARPET.

9 Q WHAT, IF ANYTHING, DID THAT HAVE TO DO, AS THE CRIME
10 SCENE INVESTIGATOR AT THAT POINT?

11 A IT APPEARED TO ME TO BE DUST, ROCKS, ROCK-TYPE
12 SUBSTANCE. WHAT WE DID, IS I PHOTOGRAPHED THESE ITEMS AND I
13 ACTUALLY TOOK A FORENSIC VACUUM AND VACUUMED THOSE
14 CONTENTS UP.

15 Q WERE THERE OTHER SPOTS IN THE HOUSE THAT YOU COULD SEE
16 THAT AS WELL?

17 A YES, THERE WAS.

18 Q LET'S SHOW STATE'S EXHIBIT 58. TELL US WHERE WE ARE IN
19 THAT HOUSE THERE.

20 A THIS IS THE LIVING ROOM. THIS DIRECTION WOULD BE TOWARD
21 THE BEDROOM OF THE RESIDENCE. THIS IS THE BACK DOOR TO THE
22 RESIDENCE. YOU CAN SEE THE WHITE SPECKS ON THE FLOOR HERE
23 AND WHITE SPECKS ON THE FLOOR AT THE BACK DOOR OF THE
24 RESIDENCE.

25 Q LOOKING A LITTLE CLOSER, STATE'S EXHIBIT 59.

1 A THIS IS A CLOSE-UP PHOTOGRAPH OF THE BACK DOOR, LEADING
2 OUT OF THE RESIDENCE, SHOWING THE SPECKS THAT WERE FOUND ON
3 THE FLOOR IN THIS AREA.

4 Q YOU CAN GO AHEAD AND HAVE A SEAT NOW.

5 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

6 NOW, YOU MENTIONED A FORENSIC VACUUM. CAN YOU TELL
7 ME WHAT YOU MEAN BY THAT?

8 A WE USE A VACUUM THAT BASICALLY-- THE SIMPLEST WAY TO
9 SAY IS LIKE A SHOP VAC TYPE VACUUM. WHAT WE HAVE IS A
10 STANDARD VACUUM THAT HAS ATTACHMENTS THAT ATTACH TO THE
11 END FOR THE WIDE SUCTION, SMALL SUCTION. BUT WHAT WE HAVE IS
12 WE HAVE CANISTERS THAT ARE SEALED AND HOLD A METAL GRATE.
13 THEN OVER THE METAL GRADE, WE WOULD PLACE A FELT-TYPE
14 PAPER.

15 WE PLACE THAT ON THE HOSE. THEN WE WOULD PLACE OUR
16 ATTACHMENT ON THE OPPOSITE END OF THIS FILTER. SO, WHEN
17 YOU'RE VACUUMING THE CONTENTS, WHEN IT SUCKS IT UP, IT
18 COLLECTS EVERYTHING INTO THIS STERILE FILTER, AND DOESN'T LET
19 IT PASS THROUGH THE HOSE INTO THE VACUUM ITSELF.

20 ONCE WE VACUUM, WE WOULD TAKE OFF THE ATTACHMENT,
21 TAKE OFF THE CONNECTOR, OR THE FILTER, AND PLACE THAT FILTER
22 INTO EVIDENCE. SO, BASICALLY, WHEN YOU ARE VACUUMING IT, IT
23 WOULD SUCK IT UP INSTEAD OF GOING INTO THE BAG OF THE
24 VACUUM; IT WOULD ACTUALLY SUCK UP INTO A CANISTER. IT WOULD
25 BE CAUGHT AND TRAPPED INTO THAT CANISTER. AND THEN WE

1 WOULD SECURE THAT CANISTER FROM THE HOSE AND FROM THE
2 ATTACHMENT AND TURN IT IN.

3 Q YOU DID THAT IN THIS PARTICULAR CASE?

4 A YES, I DID.

5 Q WHAT WERE THE AREAS THAT YOU VACUUMED?

6 A I VACUUMED THE LIVING ROOM, AROUND THE COFFEE TABLE.

7 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 93 AND ASK YOU IF
8 YOU CAN TELL ME WHAT THAT IS.

9 A THIS IS A SEALED ENVELOPE WITH THE FILTER AND THE
10 CONTENTS THAT WERE VACUUMED UP BY MYSELF AT THE LOT
11 NUMBER EIGHT IN THE LIVING ROOM.

12 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER INTO
13 EVIDENCE AT THIS TIME STATE'S EXHIBIT NUMBER 93.

14 MR. CHIARENZA: NO OBJECTION.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON STATE'S EXHIBIT NUMBER 93 WAS ADMITTED INTO
17 EVIDENCE WITHOUT OBJECTION)

18 Q NOW, AS YOU THEN LOOKED THROUGH THE HOUSE AFTER THE,
19 AFTER YOU INITIALLY LOOKED THROUGH, DID YOU GO BACK OUTSIDE
20 TO LOOK FOR ANYTHING AT THAT POINT?

21 A YES. I WENT OUTSIDE. THERE WAS A VEHICLE PARKED IN THE
22 DRIVEWAY. I DID AN INITIAL SEARCH OF THE VEHICLE. AND, ALSO,
23 WE SEARCHED THE IMMEDIATE AREA AROUND THE MOBILE HOME.

1 Q GOING OUTSIDE THE MOBILE HOME, IF YOU'LL LOOK AGAIN TO
2 STATE'S EXHIBIT 61, IS THAT THE VEHICLE YOU WERE JUST TELLING US
3 ABOUT?

4 A YES. THIS IS THE VEHICLE THAT WAS PARKED IN THE
5 DRIVEWAY OF LOT NUMBER EIGHT.

6 Q DO YOU RECALL WHAT TYPE OF VEHICLE THAT IS?

7 A PONTIAC.

8 Q DID YOU HAVE AN OPPORTUNITY AT THAT TIME TO LOOK
9 THROUGH THAT VEHICLE?

10 A YES. I CHECKED THE VEHICLE, MAINLY LOOKING FOR ANY
11 SIGNS OF BLOOD THAT MAY HAVE BEEN LEFT IN THE VEHICLE, OR
12 TRANSFERRED TO THE VEHICLE. I DIDN'T SEE ANY INDICATIONS OF
13 ANY BLOOD BEING FOUND, OR, I DID NOT RECOVER OR LOCATE ANY
14 BLOOD WITHIN THE VEHICLE.

15 Q SO, NOTHING WAS RECOVERED FROM THAT VEHICLE THEN?

16 A NO.

17 Q DID YOU ACTUALLY LOOK AT THAT VEHICLE AGAIN AT A LATER
18 DATE?

19 A YES, I DID.

20 Q DO YOU RECALL WHEN THAT WAS?

21 A I'D HAVE TO LOOK AT THE REPORT. IT WAS A COUPLE OF DAYS
22 AGO. I DON'T WANT TO SAY A DATE THAT MIGHT NOT BE CORRECT.
23 BUT IT WAS A FEW DAYS AGO.

24 Q WHEN YOU LOOKED AT IT THEN, ONCE AGAIN, WERE YOU ABLE
25 TO FIND ANYTHING?

1 A THE VEHICLE HAD BEEN IN THE IMPOUND LOT OF THE SHERIFF'S
2 DEPARTMENT EVER SINCE THIS INCIDENT HAD TAKEN PLACE, BACK IN
3 2002. THE VEHICLE WAS IN THE IMPOUND LOT. I WENT BACK TO THE
4 VEHICLE AND RE-EXAMINED THE VEHICLE, TRIED TO COLLECT
5 FINGERPRINTS OFF THE VEHICLE; COLLECTED SWABS FROM THE DOOR
6 HANDLES, THE SHIFTER KNOB, AND THE STEERING WHEEL. AND
7 COLLECTED TWO TIES FROM THE VEHICLE.

8 Q DID YOU GAIN ANYTHING OF VALUE FROM THAT RE-
9 EXAMINATION, THAT YOU WERE ABLE TO USE FROM THAT?

10 A NO. NOT THAT COULD BE USED OR IDENTIFIED THAT COULD BE
11 USED, NO.

12 Q GOING BACK TO THE RESIDENCE, STATE'S EXHIBIT NUMBER 62,
13 WHILE YOU WERE STILL OUTSIDE, YOU MARKED WITH CONE ONE.
14 WHAT IS THAT?

15 A THIS IS A LOCATION ACROSS THE STREET FROM THE RESIDENCE.
16 IF YOU GO INTO THIS MOBILE HOME PARK, ALL THE MOBILE HOMES
17 ARE LINED UP ON THE LEFT SIDE BESIDE EACH OTHER. ACROSS THE
18 STREET IS VACANT WOODS, NO HOMES. ACROSS FROM THIS
19 LOCATION, AT LOT NUMBER EIGHT, I MARKED IN THE PHOTOGRAPH AS
20 NUMBER ONE AND THAT WAS A SET OF KEYS THAT WE FOUND ACROSS
21 THE STREET, AWAY FROM THE RESIDENCE.

22 Q DO YOU KNOW OF ANY VALUE OF THOSE KEYS?

23 A NO, I DO NOT.

24 Q YOU JUST COLLECTED THEM BECAUSE THEY WERE THERE,
25 BASICALLY?

1 A YES.

2 Q STATE'S EXHIBIT 63. ARE THOSE THE KEYS THAT YOU SAW
3 THERE?

4 A YES. THIS IS THE KEYS THAT WERE PHOTOGRAPHED AT CONE
5 NUMBER ONE THAT WERE LOCATED ACROSS IN THIS FIELD BY MYSELF
6 AND COLLECTED.

7 Q STATE'S EXHIBIT 64. YOU MENTIONED IT WAS JUST ACROSS THE
8 STREET. IS THAT---

9 A THIS IS THE-- THIS REPRESENTS THE PHOTOGRAPH. IF YOU
10 LOOK JUST BEYOND THE BUSH, YOU'LL SEE THE CONE NUMBER ONE.
11 AND THIS IS A PHOTOGRAPH SHOWING YOU THE RELATIONSHIP
12 BETWEEN WHERE THE KEYS WERE LOCATED AND THE SUSPECT'S
13 RESIDENCE.

14 Q STATE'S EXHIBIT NUMBER 65. I BELIEVE YOU CAN SEE THE
15 CONES IN THAT PHOTOGRAPH. IN THIS EXHIBIT, IF YOU'LL LOOK AT
16 CONE NUMBER TWO AND TELL ME WHAT, IF ANYTHING, THAT
17 PARTICULAR CONE REPRESENTS?

18 A THIS CONE WAS PLACED HERE WITH THE DRAWER OPENED TO
19 THE COFFEE TABLE.

20 Q ON STATE'S EXHIBIT NUMBER 66, IS THAT DRAWER OPEN?

21 A THIS IS A PHOTOGRAPH OF THE COFFEE TABLE DRAWER THAT
22 HAD BEEN OPENED BY US.

23 Q IS THAT WHAT YOU WERE MARKING WITH CONE NUMBER TWO?

24 A THAT IS.

1 Q CAN YOU TELL ME, WITH THAT, DID YOU COLLECT ANYTHING
2 OUT OF THAT DRAWER?

3 A YES, I DID. I COLLECTED THE BLACK AND YELLOW-HANDLED
4 SCREWDRIVER THAT IS BESIDE THE CASSETTE TAPE, AND THE KNIFE
5 THAT IS IN THE DRAWER.

6 Q IF YOU WOULD JUST FOR A MOMENT, WITH THE COURT'S
7 PERMISSION, AND SHOW US WHERE THAT IS IN THE PHOTOGRAPH.

8 (WHEREUPON WITNESS EXITED WITNESS STAND)

9 A THIS IS THE SCREWDRIVER. IT'S COVERED UP WITH SOME PAPER,
10 BUT YOU CAN SEE THE BLACK AND YELLOW PART OF THE HANDLE OF
11 THE SCREWDRIVER, AND THE KNIFE THAT WAS FOUND IN THE
12 DRAWER. AND THIS IS NOT IN THE PHOTOGRAPH, THAT WOULD BE
13 CONE NUMBER TWO BESIDE THE COFFEE TABLE.

14 Q AND, LOOKING AT THE SCREWDRIVER YOU JUST POINTED OUT,
15 DID YOU NOTICE ANYTHING ON THE SCREWDRIVER AS YOU LOOKED
16 AT IT?

17 A ON THE END OF THE SCREWDRIVER IT HAD WHAT APPEARED TO
18 BE LIKE A WHITE SUBSTANCE, POWDERED SUBSTANCE.

19 Q SO, WERE YOU CAREFUL NOT TO DISTURB THAT AS YOU TOOK IT
20 IN?

21 A YES.

22 Q WHAT TYPE OF METHOD DID YOU USE TO COLLECT THIS
23 EVIDENCE? WE'VE HEARD YOU'VE COLLECTED THEM, BUT ARE YOU
24 DOING ANYTHING SPECIAL WHEN YOU COLLECT EVIDENCE?

1 A EVERYTHING WE COLLECT, WE PUT ON GLOVES. WE COLLECT
2 EVERYTHING WEARING GLOVES. WE ALSO THEN CAREFULLY
3 COLLECT THE ITEM BY MOVING THOSE ITEMS AROUND IT TO PICK IT
4 UP. AND THEN WE PACKAGE THAT ITEM AT THAT TIME.

5 WE DON'T PICK IT UP AND LAY IT OVER TO THE SIDE AND COME
6 BACK AND PUT IT IN AN EVIDENCE BAG. AS SOON AS WE PICK IT UP,
7 WE PLACE IT INTO AN EVIDENCE ENVELOPE. AND, PRIOR TO PICKING
8 UP THE ITEM, WHAT I DO, IS I WILL FILL OUT ALL THE INFORMATION
9 ON THE FRONT OF THE ENVELOPE, WHAT I'M PICKING UP, THE TIME I'M
10 COLLECTED IT, WHERE I COLLECTED IT. AND THEN AFTER I'VE
11 COMPLETED THAT, THEN I'LL PLACE THE ITEM IN THE ENVELOPE AND
12 SEAL IT.

13 Q I KNOW THAT YOU HAVE ALREADY TESTIFIED THAT YOU
14 COLLECTED A SAFE EARLIER. WERE YOU STILL WEARING THE SAME
15 GLOVES THAT YOU HAD ON, AND USED WHEN YOU WERE COLLECTING
16 THE SAFE?

17 A NO, I WAS NOT.

18 Q DO YOU SWITCH OUT THE GLOVES ON A REGULAR BASIS?

19 A YES, WE DO.

20 Q YOU CAN GO AHEAD AND HAVE A SEAT.

21 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

22 I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 78, WHICH I
23 BELIEVE IS ALREADY IN EVIDENCE. CAN YOU TELL, IS THAT THE
24 KNIFE IN THAT PHOTOGRAPH THAT YOU COLLECTED?

1 A YES. THIS IS THE KNIFE THAT WAS COLLECTED FROM THE
2 COFFEE TABLE BY MYSELF ON JANUARY 3, AT 16:45 HOURS.

3 Q AND ALSO STATE'S EXHIBIT NUMBER 80, WHICH I BELIEVE IS
4 ALSO IN EVIDENCE, WOULD YOU TAKE A LOOK AT THAT AND TELL US
5 IS THAT SOMETHING YOU COLLECTED AS WELL?

6 A THIS IS THE BLACK AND YELLOW-HANDLED SCREWDRIVER
7 THAT WAS FOUND IN THE SAME DRAWER BY THE KNIFE, COLLECTED
8 BY MYSELF.

9 THE COURT: EXCUSE ME. DID YOU SAY THAT WAS NUMBER 80?

10 MR. THOMPSON: YES SIR.

11 THE COURT: I UNDERSTOOD EARLIER THAT 47 THROUGH 82
12 WERE PHOTOGRAPHS OF THE DEFENDANT'S RESIDENCE.

13 MR. THOMPSON: YOUR HONOR, THESE ITEMS WERE ENTERED
14 YESTERDAY INTO EVIDENCE: 77, 78, 79, 80, 81, 82. WE NOW HAVE 82-A.
15 BUT THE OTHER ONE, 81 WAS THE TIRE TOOL; 80 WAS THE
16 SCREWDRIVER, 80-A; 79 WAS THE HAMMER; 78 IS THE KNIFE; AND 77
17 WAS THE SKI CAP.

18 I THINK THERE MIGHT HAVE BEEN A MISSTATEMENT ON THE
19 PICTURES. IT APPEARS THAT THEY JUMP, SO THAT 76 THROUGH 81 ARE
20 NOT ACTUALLY PHOTOGRAPHS. BUT APPARENTLY 80 WAS
21 DUPLICATED AT ONE TIME.

22 IF WE COULD, JUDGE, I'D LIKE TO GO AHEAD AND SOLVE THIS
23 BEFORE ANYTHING ELSE HAPPENS, AND LOOK THROUGH AND MAKE
24 SURE THERE'S NO OTHER DOUBLE-NUMBERED ITEMS.

1 THE COURT: ALL RIGHT. LET ME ASK THE JURY TO GO TO YOUR
2 JURY ROOM. WE'LL BRING YOU BACK SHORTLY.

3 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:25 A.M.)

4 MR. THOMPSON: ACTUALLY, JUDGE, THERE APPEARS TO BE NO
5 DOUBLE-NUMBERED ITEMS. THE PHOTOGRAPH THAT WAS
6 APPARENTLY MISTAKEN WAS PUT IN THE BACK OF THESE
7 PHOTOGRAPHS, 47 TO 75. AND THERE'S A GAP WHERE THE TOOLS ARE
8 LISTED AND NUMBERED IN. AND THEN 82 IS THE LAST PHOTOGRAPH.

9 SO, THE GAP BETWEEN-- THERE'S A PHOTOGRAPH HERE, 75, AND
10 THEN 76 THROUGH 81, I BELIEVE ARE THESE TOOLS AND THE MASK
11 AND THE KNIFE. AND 82 STARTS A SEPARATE PHOTOGRAPH.

12 THE COURT: ALL RIGHT. SO, THE PHOTOGRAPHS ARE 47
13 THROUGH 76.

14 MR. THOMPSON: THROUGH 75.

15 THE COURT: THOSE ARE THE NUMBERS. AND 82?

16 MR. THOMPSON: AND 82.

17 THE COURT: THOSE ARE ALL PHOTOGRAPHS OF THE
18 DEFENDANT'S RESIDENCE?

19 MR. THOMPSON: YES, THEY ARE.

20 THE COURT: ALL RIGHT.

21 MR. THOMPSON: AND SO, APPARENTLY, THERE ARE NO DOUBLE-
22 NUMBERED THINGS. SO, ITEM NUMBER 80 THAT WE DISCUSSED
23 WOULD NOT HAVE TO BE 80-A.

24 THE COURT: EXHIBIT NUMBER 80 IS THE BLACK-HANDLED
25 SCREWDRIVER FOUND IN THE DRAWER?

1 MR. THOMPSON: RIGHT. THE BLACK AND YELLOW-HANDLED
2 SCREWDRIVER.

3 THE COURT: ALL RIGHT.

4 MR. THOMPSON: 76 IS THE BANK ACCOUNT SIGNATURE CARD
5 AND 77 WOULD BE---

6 THE COURT: SKI MASK.

7 MR. THOMPSON: THE SKI MASK. 78 IS THE KNIFE WITH THE
8 WOLF ON IT. 79 IS THE HAMMER. NUMBER 80 IS THE ONE WE JUST
9 DISCUSSED, THE SCREWDRIVER.

10 THE COURT: I THOUGHT 80'S ALREADY BEEN INTRODUCED.

11 MR. THOMPSON: IT HAS. AND 81, THE TIRE TOOL. SO, THAT
12 DOES CORRECT IT.

13 THE COURT: OKAY. BRING THE JURY BACK IN, PLEASE.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:31 A.M.)

15 Q ALL RIGHT, INVESTIGATOR WILLIAMS. GOING BACK TO THAT
16 SCENE, LET'S LOOK AT STATE'S EXHIBIT NUMBER 65.

17 A OKAY.

18 Q YOU HAVE THAT MARKED AS NUMBER THREE. CAN YOU TELL
19 ME, WHERE IN THE HOUSE IS THAT?

20 A THIS IS NEAR THE FRONT DOOR, LOOKING ACROSS THE LIVING
21 ROOM TO THE OPPOSITE SIDE OF THE ROOM, AND THE TABLE BESIDE
22 THE TV WITH THE DRAWER OPEN, AND THE NUMBER CONE, NUMBER
23 THREE, WHERE IT WAS PLACED INSIDE THE DRAWER TO INDICATE THE
24 ITEM THAT WE LOCATED WITHIN THE DRAWER.

1 Q LET'S GO TO STATE'S EXHIBIT 67. LOOK AT THAT. IS THAT THE
2 ITEM YOU CAN SEE IN THAT PHOTOGRAPH?

3 A YES. IT'S A NEWSPAPER WITH A TOBOGGAN ON TOP OF THE
4 NEWSPAPER, OR, A MASK ON TOP OF THE NEWSPAPER.

5 Q DID YOU COLLECT THAT PARTICULAR ITEM?

6 A YES, I DID.

7 Q I BELIEVE THIS IS ALREADY IN EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 77. LOOK AT THAT AND TELL ME IS THAT WHAT YOU
9 COLLECTED?

10 A YES, IT IS. IT'S LISTED AS A BLACK SKI CAP THAT WAS
11 RECOVERED BY MYSELF ON JANUARY 3 OF 2003, AT 16:50 HOURS AT
12 THIS RESIDENCE.

13 Q IS THAT DEPICTED IN THE PICTURE MARKED AS STATE'S EXHIBIT
14 67?

15 A YES.

16 Q GOING TO CONE NUMBER FOUR, LET'S LOOK AT STATE'S EXHIBIT
17 68. WHERE ARE YOU IN THE HOUSE WHEN YOU TOOK THIS
18 PHOTOGRAPH?

19 A THIS IS STANDING IN THE HALLWAY, LOOKING INTO THE
20 BATHROOM OF THE RESIDENCE, WITH THE CABINET DOORS OPENED
21 UNDERNEATH THE SINK AREA. AND THE CONE WAS PLACED ON THE
22 FLOOR. AND IF YOU LOOK JUST ABOVE THE CONE, YOU WILL SEE A
23 END OF A TIRE TOOL UNDERNEATH THE SINK ON A BLUE PLASTIC BAG.

24 Q LOOKING A LITTLE CLOSER ON STATE'S NUMBER 69, DOES THAT
25 SHOW A CLOSER UP LOOK AT THAT?

1 A YES. THIS IS A PHOTOGRAPH TAKEN OF THE TIRE TOOL THAT
2 WAS LOCATED UNDERNEATH THE SINK IN THE BATHROOM.

3 Q SO, YOU COLLECTED THAT TIRE TOOL AS WELL?

4 A YES, I DID.

5 Q STATE'S EXHIBIT NUMBER 81, ALREADY IN EVIDENCE, WOULD
6 YOU LOOK AT THAT AND TELL US IS THAT THE TIRE TOOL YOU
7 COLLECTED?

8 A YES. THIS IS MARKED AS TIRE TOOL RECOVERED BY MYSELF
9 JANUARY 3, AT 16:40 HOURS FROM UNDERNEATH THE BATHROOM
10 SINK AND THE CABINET.

11 Q CAN YOU TELL ME, AS WELL, AFTER GOING THROUGH THAT, IF
12 YOU WILL LOOK AT WHERE YOU MARKED CONE NUMBER FIVE IN
13 STATE'S EXHIBIT 70.

14 A THIS IS A PHOTOGRAPH OF THE BEDROOM, STANDING AT THE
15 DOOR THAT LEADS INTO THE BEDROOM, THE MASTER BEDROOM OF
16 THE RESIDENCE.

17 Q WE'LL GO TO STATE'S EXHIBIT 72. WHAT IS THE CONE MARKED
18 FIVE DENOTING?

19 A THE MARKER WAS PLACED TO SHOW THE LOCATION OF THE
20 HAMMER THAT WAS RECOVERED IN THE BEDROOM.

21 Q DID YOU COLLECT THAT HAMMER?

22 A YES, I DID.

23 Q I'LL SHOW YOU STATE'S EXHIBIT 79. CAN YOU TELL ME WHAT
24 THAT IS?

1 A IT'S A BROWN-HANDLED HAMMER THAT I COLLECTED AT 16:56
2 HOURS ON THE THIRD FROM THE LEFT, REAR BEDROOM ON THE
3 FLOOR.

4 Q WHEN YOU HANDLED THESE ITEMS, THE ONE THAT WE'VE
5 TALKED ABOUT THUS FAR, DO YOU TRY TO PREVENT RUBBING
6 ANYTHING OFF OR ADDING ANYTHING TO THEM?

7 A YES.

8 Q HOW DO YOU DO THAT?

9 A WHEN THE ITEM, EACH ITEM IS COLLECTED, I CHANGE OUT
10 GLOVES FOR EVERY ITEM THAT I PICK UP. FOR EXAMPLE, I PICK UP
11 THE KNIFE. I TAKE THOSE GLOVES OFF, PUT ON A NEW PAIR OF
12 GLOVES; PICK UP THE SCREWDRIVER, TAKE THOSE GLOVES OFF; PICK
13 UP THE TIRE TOOL.

14 EVERY TIME WE PICK UP SOMETHING WE CHANGE OUR GLOVES
15 OUR FOR EVERY INDIVIDUAL ITEM SO WE DON'T CROSS-
16 CONTAMINATE. IF SOMETHING WOULD HAVE BEEN ON THE KNIFE AND
17 I GO TO THE BEDROOM AND PICK UP THE HAMMER, THEN I WOULD BE
18 POSSIBLY CARRYING SOMETHING FROM THE KNIFE TO THE HAMMER
19 AND TRANSFERRING IT TO THE HAMMER ONCE I PICK IT UP.

20 Q SO, YOU CHANGE YOUR GLOVES IN BETWEEN EACH TIME OF A
21 COLLECTION?

22 A YES.

23 Q NOW, IF WE COULD GO TO THE NEXT CONE MARKED SIX. THIS
24 WOULD BE STATE'S EXHIBIT 73.

1 A THIS IS A PHOTOGRAPH OF THE REAR OF THE RESIDENCE, ALL
2 THE WAY TO THE LEFT CORNER. IF YOU LOOK BEYOND THE AIR
3 CONDITIONER FROM THE CORNER OF THE MOBILE HOME, THAT
4 WOULD BE THE ROADWAY THAT LEADS ITO THE PARK. THIS WOULD
5 BE TO THE LEFT REAR OF THE RESIDENCE. THIS IS A PHOTOGRAPH
6 INDICATING THE BACK STEPS AND THE REAR DOOR. I PLACED TWO
7 NUMBERED CONES, NUMBER SIX AND NUMBER SEVEN ON THE STEPS
8 OF THE BACK STEPS.

9 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 74.

10 A 74 IS A PHOTOGRAPH POINTING TO THE SAME KIND OF ROCK-
11 TYPE SUBSTANCE THAT I FOUND IN THE LIVING ROOM ON THE FLOOR
12 THAT WAS VACUUMED UP EARLIER. THIS IS A LARGER CHUNK OF
13 WHAT APPEARED TO BE THE SAME TYPE OF ITEM.

14 Q AND YOU COLLECTED THAT?

15 A YES, I DID.

16 Q SHOWING YOU STATE'S EXHIBIT NUMBER 92. LOOK AT THAT
17 AND TELL ME WHAT IT IS.

18 A THIS IS A FIELD CANISTER THAT CONTAINED THE ROCK
19 SUBSTANCE THAT WAS FOUND ON THE BACK STEPS THAT WAS
20 COLLECTED BY MYSELF ON THE 3RD AND MARKED AS NUMBER SIX ON
21 THE 3RD.

22 Q YOU PLACED THAT INTO A CANISTER?

23 A YES, I DID.

24 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER INTO
25 EVIDENCE AT THIS TIME STATE'S EXHIBIT NUMBER 92.

1 MR. CHIARENZA: NO OBJECTION.

2 THE COURT: IT'S ADMITTED.

3 (WHEREUPON STATE'S EXHIBIT NUMBER 92 WAS ADMITTED INTO
4 EVIDENCE WITHOUT OBJECTION)

5 Q CONE NUMBER SEVEN SHOW IN STATE'S EXHIBIT 75, WHERE WAS
6 THAT, AGAIN?

7 A THIS WAS THE REAR STEPS OF THE RESIDENCE AND THEN THE
8 OVERALL PHOTOGRAPH, EXHIBIT 73, WOULD BE ON THE SECOND STEP
9 FROM THE BOTTOM. THIS IS A CLOSER SHOT SHOWING THE ROCK-
10 TYPE SUBSTANCE THAT WAS LOCATED AND MARKED AS NUMBER
11 SEVEN. THIS WAS ALSO COLLECTED BY MYSELF.

12 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 91. TELL ME WHAT
13 THAT IS.

14 A THIS IS THE EVIDENCE ENVELOPE THAT CONTAINS THE ROCK IN
15 THE PHOTOGRAPH LABELED AS NUMBER SEVEN WITH THE PHOTO
16 CONE THAT WAS COLLECTED BY MYSELF ON THE BACK STEP AND
17 TURNED INTO EVIDENCE.

18 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER INTO
19 EVIDENCE AT THIS TIME STATE'S EXHIBIT NUMBER 91.

20 MR. CHIARENZA: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON STATE'S EXHIBIT NUMBER 91 WAS ADMITTED INTO
23 EVIDENCE WITHOUT OBJECTION)

24 Q AFTER EXAMINING THIS PARTICULAR SCENE, DID YOU ALSO DO
25 A DIAGRAM OF IT?

1 A YES. A DIAGRAM WAS DRAWN OF THIS AREA AND ALSO
2 DEPICTING THE LOCATIONS AND MEASUREMENTS OF THE ITEMS THAT
3 WERE RECOVERED WITHIN THE LOCATION ON THE DIAGRAM.

4 Q I'LL SHOW YOU STATE'S EXHIBIT NUMBER 100. IS THAT THE
5 DIAGRAM THAT YOU DID OF THE DEFENDANT'S RESIDENCE?

6 A YES. THIS IS A COMPUTER-GENERATED DIAGRAM THAT I
7 COMPLETED OF THE VICTIM'S, EXCUSE ME, THE SUSPECT'S RESIDENCE
8 AND THE RECOVERY OF THE ITEMS MENTIONED PREVIOUSLY.

9 Q I BELIEVE YOU LIST THE ITEMS, ALL EXCEPT FOR THE KEYS, ON
10 THIS PARTICULAR DIAGRAM?

11 A YES. THIS IS JUST THE DIAGRAM OF THE RESIDENCE ITSELF.

12 Q IT DIDN'T INCLUDE THE YARD OUTSIDE?

13 A NO.

14 Q DOES IT FAIRLY AND ACCURATELY DEPICT THE SCENE YOU SAW
15 THAT DAY, YOUR DIAGRAM?

16 A YES.

17 MR. THOMPSON: YOUR HONOR, I WOULD ASK TO ENTER INTO
18 EVIDENCE AT THIS TIME STATE'S EXHIBIT NUMBER 100.

19 MR. CHIARENZA: NO OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON STATE'S EXHIBIT NUMBER 100 WAS ADMITTED INTO
22 EVIDENCE WITHOUT OBJECTION)

23 Q AS PART OF THE WORK THAT YOU DID ON THIS, DID YOU HAVE
24 OCCASION TO TAKE SOME OF THESE ITEMS TO THE FBI TO BE TESTED?

25 A YES, I DID.

1 Q CAN YOU TELL US WHAT ITEMS YOU TOOK TO THE FBI TO BE
2 TESTED?

3 A THE SAFE WAS TAKEN TO THE FBI; THE HAMMER, TIRE TOOL,
4 SCREWDRIVER. AND I BELIEVE-- I'LL HAVE TO CHECK A LIST OF THE
5 INVENTORIED ITEMS TO MAKE SURE EXACTLY WHAT ALL WAS TAKEN
6 TO THE FBI.

7 Q LET'S GO AHEAD AND DO THAT. I BELIEVE YOU HAD A
8 SUBMISSION FORM THAT YOU USED?

9 A YES.

10 Q YOU CAN USE THAT TO REFRESH YOUR MEMORY. IS THAT THE
11 FORM THAT YOU USED WHEN YOU TURNED THOSE ITEMS IN?

12 A YES. THIS FORM WAS COMPLETED AND TAKEN WITH THE
13 EVIDENCE TO THE FBI LABORATORY IN QUANTICO, VIRGINIA.

14 Q DID YOU ACTUALLY TAKE THOSE ITEMS YOURSELF?

15 A YES. I WENT TO THE EVIDENCE ROOM, RETRIEVED THESE ITEMS
16 THAT WERE STILL SEALED. MYSELF AND DETECTIVE STRAIT THEN
17 TRANSPORTED THOSE ITEMS TO QUANTICO WHERE THEY WERE
18 SIGNED OVER AND PLACED INTO FBI CUSTODY.

19 Q IF YOU WOULD TELL ME SPECIFICALLY WHICH ITEMS YOU TOOK
20 WITH YOU.

21 A THE ROCKS THAT WERE LABELED AS-- THEY'RE LABELED BY
22 BAR CODE, BUT IT'S ACTUALLY THE ROCK SUBSTANCE THAT WAS
23 VACUUMED UP OUT OF THE LIVING ROOM OF THE SUSPECT'S
24 RESIDENCE. THE TWO ROCKS THAT WERE FOUND ON THE BACK STEPS.
25 THE SILVER-HANDLED POCKET KNIFE THAT WAS FOUND IN THE LIVING

1 ROOM. THE BLACK AND YELLOW-HANDLED SCREWDRIVER THAT WE
2 RECOVERED. THE TIRE TOOL FROM THE BATHROOM, AND THE
3 HAMMER THAT WAS RECOVERED FROM THE BEDROOM. THE SAFE
4 THAT WAS RECOVERED FROM THE CREEK WERE TAKEN TO FBI.

5 Q SO, THIS SAFE THAT WE HAVE IN FRONT OF US, WHICH IS STATE'S
6 EXHIBIT 98, YOU TOOK TO THE FBI. IS THAT CORRECT?

7 A YES, I DID.

8 Q AND I BELIEVE YOU ALSO MENTIONED THE HAMMER, WHICH IS
9 STATE'S EXHIBIT 79, YOU ALSO TOOK THAT IN?

10 A YES.

11 Q AND THE TWO ROCK SUBSTANCES THAT YOU FOUND ON THE
12 STEPS OUTSIDE THE RESIDENCE, 91 AND 92, STATE'S EXHIBITS, YOU
13 DELIVERED THOSE AS WELL TO THE FBI?

14 A YES, I DID.

15 Q AND STATE'S EXHIBIT NUMBER 81, THE CROW BAR, YOU
16 DELIVERED THAT?

17 A THE TIRE TOOL WAS TAKEN.

18 Q THE TIRE TOOL. AND I BELIEVE ALSO STATE'S EXHIBIT NUMBER
19 80.

20 A THE BLACK AND YELLOW-HANDLED SCREWDRIVER.

21 Q THAT WAS TAKEN?

22 A YES.

23 Q STATE'S EXHIBIT 93.

1 A THIS WOULD BE THE VACUUMED CONTENTS OF THE ROCK
2 SUBSTANCE THAT WAS FOUND ON THE LIVING ROOM FLOOR THAT
3 WAS TAKEN.

4 Q THAT WAS TAKEN AS WELL. OKAY. AND I BELIEVE, STATE'S
5 EXHIBIT NUMBER 78?

6 A YES. THE POCKET KNIFE WAS TAKEN BY MYSELF, ALONG WITH
7 THESE OTHER ITEMS TO THE FBI IN QUANTICO, VIRGINIA.

8 Q DO YOU HAVE A DATE THAT WAS LISTED ON THE REPORT THAT
9 YOU DID?

10 A YES. I COMPLETED A REPORT OF THE DATE WHEN WE
11 ACTUALLY TOOK THE ITEMS TO QUANTICO.

12 Q AT THE TIME THAT YOU SUBMITTED THOSE ITEMS TO THE FBI
13 LAB IN QUANTICO, HAD ANY OF THE ITEMS BEEN ALTERED, THE BAGS
14 OPENED OR ANYTHING LIKE THAT?

15 A NO. THEY WERE ACTUALLY SEALED BY MYSELF WITH
16 EVIDENCE TAPE ON THE BACK OF THE ENVELOPE ONCE THEY HAD
17 BEEN PACKAGED AND PLACED INTO EVIDENCE AD THEY HAD
18 NOTHING TAMPERED WITH.

19 Q WHEN YOU DELIVERED THEM TO THE FBI, WHAT WAS THE
20 PROCEDURE OF YOU DROPPING THEM OFF THERE?

21 A WE ARRIVED AT QUANTICO, VIRGINIA, AT THE FBI ACADEMY.
22 WE ACTUALLY ENTERED THE EVIDENCE INTAKE AREA WHERE THESE
23 ITEMS WERE SIGNED OVER TO EVIDENCE INTAKE AT QUANTICO,
24 VIRGINIA.

1 Q WOULD THIS BE A COPY OF THE REPORT THAT YOU WROTE ON
2 THE DATE THAT YOU TOOK THEM UP THERE?

3 A YES. THE ITEMS WERE TRANSPORTED-- NO, THIS IS NOT THE
4 ONE.

5 Q NOT THE ONE?

6 A NO.

7 Q OKAY. IF YOU WILL LOOK ON ONE OF THE EVIDENCE BAGS, IF
8 IT'S MARKED ON ONE OF THOSE.

9 Q I WENT TO THE EVIDENCE ROOM AT THE SHERIFF'S OFFICE AND I
10 RETRIEVED THE ITEMS FROM EVIDENCE INTAKE ON THE 14TH OF
11 AUGUST OF '07 TO TRANSPORT THEM TO-- NO, I'M SORRY. EXCUSE ME.
12 THE LINE ABOVE IT, IT WAS RECEIVED FROM EVIDENCE INTAKE
13 BY MYSELF ON 1/30/07 AT 3:11 IN THE AFTERNOON.

14 Q SO, YOU WOULD HAVE TAKEN THEM UP AT THAT TIME TO THE
15 FBI LAB?

16 A THEY WERE ACTUALLY SECURED IN MY CRIME SCENE VEHICLE
17 AND TAKEN THE FOLLOWING MORNING.

18 Q OKAY.

19 A MY VEHICLE IS A DODGE PICKUP TRUCK WITH A CAMPER SHELL
20 AND HAS A ALARM SYSTEM ON THE VEHICLE, WHICH I SET THAT
21 NIGHT AT MY RESIDENCE, AND IT WAS NOT ACTIVATED DURING THE
22 NIGHT AND MY VEHICLE WAS NOT ENTERED THAT NIGHT.

23 Q AND THE DAY THAT YOU TOOK IT TO THE FBI LAB?

24 A IT WOULD BE THE FOLLOWING MORNING, THE 31ST OF JANUARY
25 OF '07.

1 Q I BELIEVE THAT WILL BE ALL. ANSWER ANY QUESTIONS MR.
2 CHIARENZA HAS FOR YOU.

3 THE COURT: CROSS EXAMINATION.

4 MR. CHIARENZA: MAY IT PLEASE THE COURT.

5 **CROSS EXAMINATION BY MR. CHIARENZA:**

6 Q OFFICER WILLIAMS, YOU'VE BEEN BASICALLY DOING WHAT
7 YOU'RE DOING NOW SINCE 1980. CORRECT?

8 A SPECIFICALLY DOING WHAT I'M DOING NOW SINCE '92.

9 Q OKAY. BUT PROCESSING CRIME SCENES SINCE 1980?

10 A YES, BASICALLY PROCESSING CRIME SCENES.

11 Q AND YOU'VE BEEN QUALIFIED AS AN EXPERT IN THIS. IS THAT
12 CORRECT?

13 A YES SIR.

14 Q ONE OF THE THINGS YOU CAN PROCESS A CRIME SCENE FOR IS
15 RECOVERING BLOOD. CORRECT?

16 A IF THE BLOOD IS THERE.

17 Q IN A HOMICIDE, BLOOD WOULD BE ONE OF THE PIECES OF
18 EVIDENCE THAT YOU MIGHT CONSIDER TO BE RELATED TO A
19 HOMICIDE. YOU MIGHT FIND SOME BLOOD EVIDENCE. IS THAT
20 CORRECT?

21 A IF AN INJURY OCCURRED THAT BLOOD LETTING WOULD START.

22 Q ALL RIGHT. AND YOU CAN LOOK FOR BLOOD SPLATTER
23 EVIDENCE. IF THERE IS BLOOD YOU CAN LOOK AT THE WAY THE
24 BLOOD LANDS ON AN ITEM, OR THE WALL OR SOMETHING LIKE THAT.
25 CORRECT?

1 A THAT'S CORRECT.

2 Q AND TO POINT IT OUT WOULD BE TO DETERMINE MAYBE THE
3 RELATIVE POSITION OF THE VICTIM AND THE ASSAILANT, SOMETHING
4 ALONG THOSE LINES?

5 A THAT WOULD BE PART OF IT.

6 Q WHAT ELSE MIGHT YOU EXAMINE BLOOD SPLATTER EVIDENCE
7 FOR?

8 A IT COULD BE BLOOD SPLATTER OF AN INJURED PERSON
9 WALKING THROUGH THE RESIDENCE, DROPLETS. OR IF THE
10 INDIVIDUAL FELL AND GOT UP AND WALKED AGAIN. ALSO, IT WOULD
11 DETERMINE THE-- BLOOD SPLATTER COULD DETERMINE THE IMPACT
12 OF AN OBJECT AGAINST AN INDIVIDUAL TO MAKE THE BLOOD EXUDE
13 FROM THE BODY.

14 Q WE'VE ALREADY HEARD A GREAT DEAL ABOUT FINGERPRINTS,
15 BUT YOU CAN CLEARLY PROCESS A CRIME SCENE FOR FINGERPRINTS.
16 CORRECT?

17 A THAT IS CORRECT.

18 Q AND YOU CAN ALSO PROCESS ITEMS REMOVED FROM THE
19 CRIME SCENE AT A LATER DATE FOR FINGERPRINTS. CORRECT?

20 A YES.

21 Q IN FACT, YOU CAN PROCESS AN ITEM THAT AT LEAST HAS A
22 LIKELIHOOD OF GIVING SOME PRINTS. YOU CAN PROCESS ANY ITEM
23 FOR FINGERPRINTS. CORRECT?

1 A YOU CAN DO THAT. IT DEPENDS ON WHAT YOU'RE PICKING, OR
2 RECOVERING THE ITEM; WHAT YOUR INTENTIONS ARE WITH THAT
3 ITEM OR WHAT KIND OF TESTING YOU WANT DONE WITH THAT ITEM.

4 Q YOU TESTIFIED THAT LOOKED FOR HAIR AT MR. CUBLEY'S
5 RESIDENCE?

6 A YES.

7 Q AND IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, WHAT
8 YOU FOUND WAS A GREAT DEAL OF DOG HAIR. I HAVE DOGS MYSELF,
9 SO I CAN APPRECIATE THAT.

10 A HAIR THAT WAS CONSISTENT WITH AN ANIMAL OR A DOG. I'M
11 NOT AN EXPERT IN HAIR AS FAR AS TELL YOU THAT WAS DOG HAIR.
12 BUT BY LOOKING AT THE DOG AND LOOKING AT WHAT I FOUND IT
13 APPEARED TO ME TO BE THAT TYPE OF HAIR.

14 Q SO, YOU DIDN'T COLLECT ANY HAIR FROM THE VICTIM'S
15 RESIDENCE?

16 A NO.

17 Q AND NOBODY ELSE DID IN THIS CASE?

18 A NO SIR, NOT TO MY KNOWLEDGE.

19 Q YOU CAN ALSO EXAMINE FIBERS?

20 A YES.

21 Q FOR INSTANCE, AND HYPOTHETICALLY, IF YOU WANTED TO
22 PROVE THE PERSON WERE IN A PARTICULAR AREA-- I THINK WE HAD A
23 CASE UP HERE RECENTLY, A KIDNAPPING CASE. IF YOU WANT TO
24 PROVE A VICTIM WAS IN THE TRUNK OF SOMEONE'S CAR, PERHAPS
25 YOU CAN GET THAT PERSON'S SWEATER AND SEE IF ANY FIBERS FROM

1 THAT SWEATER ARE LATER LOCATED IN THE DEFENDANT'S CAR.

2 CORRECT?

3 A YES.

4 Q AND YOU DIDN'T PROCESS MR. CUBLEY'S RESIDENCE FOR ANY
5 FIBER EVIDENCE, DID YOU?

6 A NO MORE THAN JUST A VISUAL EXAMINATION FOR FIBERS.

7 Q YOU CAN ALSO EXAMINE TIRE TRACKS THAT ARE LEFT BY A
8 VEHICLE. CORRECT?

9 A WE CAN DOCUMENT IT, YES SIR.

10 Q AND YOU DO THAT BY POSSIBLY PHOTOGRAPHING A TIRE
11 TRACK?

12 A YES. WE WOULD TAKE PHOTOGRAPHS OF TIRE IMPRESSIONS
13 THAT WERE LOCATED AT A CRIME SCENE.

14 Q IN FACT, IN THIS CASE, I THINK THERE'S ONE OR TWO TIRE
15 TRACK PHOTOGRAPHS IN THIS CASE, AREN'T THERE?

16 A YES. THERE WAS TWO PHOTOGRAPHS TAKEN OF TIRE
17 IMPRESSIONS THAT WERE TO THE LEFT REAR OF MR. CUBLEY'S RED
18 PICKUP TRUCK, WHICH I LEARNED THROUGH THE INVESTIGATION WAS
19 WHERE PATROL CARS HAD BEEN PARKED PRIOR TO MY ARRIVAL.

20 Q ALL RIGHT. SO, YOU SURMISED THAT THOSE TRACKS WERE
21 LEFT BY POLICE OFFICERS' VEHICLES?

22 A BASED ON INFORMATION THAT WAS RELATED TO ME.

23 Q SO, IT WOULD HAVE BEEN FRUITLESS TO GO ANY FURTHER WITH
24 THOSE. ALL YOU WOULD HAVE DONE IS PROVE THAT THERE WAS A
25 POLICE VEHICLE IN THE DRIVEWAY?

1 A CORRECT.

2 Q SO, NO OTHER EFFORT WAS MADE TO FIND ANY OTHER TIRE
3 TRACKS AROUND MR. CUBLEY'S TRAILER. IS THAT CORRECT?

4 A YES SIR. ONCE WE DID THE INITIAL SIZE-UP AND
5 DOCUMENTATION OF PHOTOGRAPHS, LOOKING AROUND WE DID NOT
6 SEE ANY OTHER TIRE IMPRESSIONS OTHER THAN WHAT WAS
7 PHOTOGRAPHED.

8 Q OKAY. SO, NONE OF THAT EVIDENCE WAS COLLECTED OR EVER
9 COMPARED TO THE BLUE PONTIAC?

10 A NO.

11 Q YOU CAN DO THE SAME THING WITH FOOTPRINTS. RIGHT?
12 ASSUMING YOU'VE GOT THE GROUND THAT WOULD LEND ITSELF TO
13 THAT, MUDDY GROUND, OR SNOWY GROUND?

14 A YES. WE CAN ACTUALLY-- FOOTWEAR AND TIRE WEAR
15 IMPRESSIONS, WE CAN DOCUMENT BY PHOTOGRAPHY. WE CAN ALSO
16 THEN TAKE THOSE IMPRESSIONS AND COMPARE THOSE TO KNOWN
17 STANDARDS, SAYING YOUR SHOES, AND HAVING THOSE SENT OUT. WE
18 CANNOT IN-HOUSE TELL YOU THAT'S THE PAIR OF SHOES THAT WAS
19 WORN OR USED.

20 IT HAS TO BE DONE WITHIN A REASONABLE TIME, BECAUSE
21 ONCE YOU MAKE AN IMPRESSION IN SHOES OR IN TIRES, AND YOU
22 DRIVE AWAY, YOU CAN RUN OVER A ROCK OR RUN OVER SOMETHING
23 ON A ROADWAY, OR EVEN THE WEAR OF THE CAR TIRE OR A SHOE
24 WILL ALTER THAT IMPRESSION AS SOON AS YOU LEAVE.

1 SO, IF YOU GET A TIRE IMPRESSION, AND THE VEHICLE LEAVES,
2 IT'S GOING TO ALTER SOMEWHAT OF A IMPRESSION THAT WAS
3 RECOVERED OR A PHOTOGRAPH AT THE SCENE. JUST AS IN SHOES,
4 WALKING AND SCUFFING YOUR FEET AS YOU WALK. OR IF SOMEONE
5 DRAGS THEIR FEET WHILE THEY'RE WALKING, THEY'RE GOING TO
6 ALTER THAT IMPRESSION EVERY TIME THEY TAKE A STEP.

7 Q SO, IT MAY NOT LEAVE A PERFECT IMPRESSION BUT CERTAINLY
8 YOU WOULD BE ABLE TO DIFFERENTIATE A PAIR OF WINGTIPS FROM A
9 PAIR OF HIGH HEELS?

10 A DEFINITELY.

11 Q AND EVEN GOING FURTHER, A PARTICULAR BRAND OF
12 SNEAKERS FROM ANOTHER BRAND OF SNEAKERS?

13 A YES.

14 Q BECAUSE THEY HAVE INDIVIDUAL SOLE PATTERNS?

15 A THAT'S CORRECT.

16 Q SO, WHILE THEY MAY BE SOME QUESTION IN COURT AS TO
17 WHETHER OR NOT IT'S THE EXACT IMPRESSION, IF YOU'VE GOT A NIKE
18 SNEAKER AND A SUSPECT HAS A NIKE SNEAKER YOU WOULD AT
19 LEAST BE ABLE TO SAY THE TYPES OF SNEAKERS, THE IMPRESSION
20 AND THE TYPE OF SNEAKER WE FOUND, THEY WERE BOTH NIKES?

21 A IT WOULD BE CONSISTENT WITH BEING A NIKE.

22 Q NO FOOTPRINT OR SHOE PRINT EVIDENCE WAS COLLECTED IN
23 THIS CASE, WAS THERE?

24 A NONE WAS LOCATED AT THE RESIDENCE, NO.

1 Q AND THAT'S AT MR. CUBLEY'S RESIDENCE WHERE THERE WAS
2 SOME TESTIMONY OF SOME SORT OF STAINS ABOUT THE RESIDENCE.
3 CORRECT?

4 A THAT'S CORRECT.

5 Q AND THIS RESIDENCE, IN GENERAL, WOULD YOU CHARACTERIZE
6 IT AS BEING RUNDOWN?

7 A YES. IT WAS NOT MAINTAINED. YES, IT WAS RUNDOWN.

8 Q AND IN FACT, WOULD YOU CHARACTERIZE SOME OF THE THINGS
9 THAT YOU OBSERVED THERE AS HAVING BEEN THE ACCUMULATED
10 DIRT AND SOIL OF OVER A PERIOD OF TIME AS OPPOSED TO
11 SOMETHING THAT WAS LIKELY TO HAPPEN ON JUST THE DAY OF THE
12 ALLEGED INCIDENT?

13 A YES. THE LOCATION APPEARED TO BE NOT MAINTAINED ON A
14 DAILY BASIS AS FAR AS CLEANING OR TAKING CARE OF THE
15 LOCATION.

16 Q FOR INSTANCE, CARPETED MATERIAL WAS DISCOVERED AND
17 SOILED, WAS IT NOT?

18 A YES, BADLY.

19 Q AS WELL AS THE FURNITURE?

20 A YES.

21 Q AND ALSO, THERE HAD BEEN A PUPPY RUNNING AROUND. AND
22 CLEARLY, DOGS ARE CAPABLE OF CHEWING THINGS AND DRAGGING
23 THINGS AROUND. WAS IT APPARENT THAT THAT SORT OF---

24 A THAT'S WHAT IT APPEARED TO ME.

25 Q ---ACTIVITY HAD DONE ON?

- 1 A YES.
- 2 Q THERE'S BEEN TESTIMONY THAT A SKI CAP, YOU KNOW, WOOL,
3 ACRYLIC, SOME SORT OF TOBOGGAN WAS COLLECTED IN THIS CASE.
4 CORRECT?
- 5 A YES.
- 6 Q AND THAT ITEM WAS COLLECTED AT THE RESIDENCE OF MY
7 CLIENT AND DANA BLACKMON, WHERE THEY ALLEGEDLY LIVED.
8 CORRECT?
- 9 A YES SIR.
- 10 Q WAS THAT ITEM PROCESSED FOR BLOOD?
- 11 A NO, IT WAS NOT.
- 12 Q WAS THAT ITEM PROCESSED FOR HAIR?
- 13 A NO. NO TEST WAS DONE ON THE TOBOGGAN OTHER THAN
14 COLLECTING AND RECOVERING IT.
- 15 Q SO, THERE WERE NO FIBER SAMPLES THAT WERE TAKEN FROM
16 THAT ITEM?
- 17 A NO.
- 18 Q WHICH COULD HAVE POTENTIALLY BEEN MATCHED UP WITH
19 SOME FIBER SAMPLES ON THE VICTIM, OR AT THE VICTIM'S
20 RESIDENCE?
- 21 A NO TEST WAS COMPLETED. NO TEST WAS DONE, NO.
- 22 Q AND THEN THERE WAS NO OTHER ADDITIONAL DNA MATERIAL
23 SOUGHT OR TESTED FROM THAT ITEM?
- 24 A NO.

1 Q THERE WERE A NUMBER OF TOOLS COLLECTED FROM THE
2 RESIDENCE OF MS. BLACKMON. THERE WAS A HAMMER THAT'S IN
3 EVIDENCE. WAS THAT ITEM EVER TESTED TO SEE IF IT CONTAINED
4 ANY BLOOD?

5 A NO. IT WAS BASICALLY COLLECTED AND TESTED MORE FOR
6 RESIDUE OF DUST.

7 Q WAS IT EVER FINGERPRINTED?

8 A NO.

9 Q OKAY.

10 A THE REASON WHY NOT FINGERPRINTING THE ITEMS OUT OF THE
11 SUSPECT'S RESIDENCE IS IF I GET THE SUSPECT'S FINGERPRINTS AND
12 THEY SHOULD BE ON THE ITEM.

13 Q BUT WE DON'T HAVE THAT, DO WE?

14 A NO.

15 Q THERE'S NO WAY OF TELLING WHETHER HIS FINGERPRINTS ARE
16 ON THIS ITEM?

17 A NO. BUT BEING FROM HIS RESIDENCE, YOU WOULD HAVE A
18 CONCLUSION THAT---

19 MR. CHIARENZA: I OBJECT TO THAT, YOUR HONOR. I'M ASKING
20 FOR THIS ITEM.

21 THE COURT: HE SAID IT WAS NOT.

22 MR. CHIARENZA: OKAY.

23 Q HOW ABOUT THE SCREWDRIVER, WAS THAT TESTED?

24 A ONLY TESTED FOR RESIDUE FROM THE SAFE DUST.

25 Q IT WASN'T TESTED FOR FINGERPRINTS?

- 1 A NO.
- 2 Q AND YOU'RE AWARE THAT MORE THAN ONE PERSON LIVED IN
- 3 THE TRAILER WHERE YOU FOUND THOSE ITEMS?
- 4 A YES.
- 5 Q THE TIRE TOOL, WAS THAT TESTED FOR FINGERPRINTS?
- 6 A NO.
- 7 Q HOW ABOUT THE CAR? YOU TESTIFIED, I THINK, TWICE MADE
- 8 SOME VARIOUS PROCESS WHERE YOU PROCESSED THE CAR ON TWO
- 9 OCCASIONS. YOU WERE LOOKING FOR BLOOD ON ONE OCCASION?
- 10 A YES.
- 11 Q DESCRIBE TO ME WHAT THE PROCESS IS WHEN YOU'RE LOOKING
- 12 FOR BLOOD.
- 13 A WE USE A FLASHLIGHT AND, BASICALLY, WITH THE NAKED EYE
- 14 WE CAN ACTUALLY EXAMINE THE VEHICLE LOOKING FOR ANY SMALL
- 15 DROPLETS OF BLOOD, WHICH IS HOW WE DID IT THAT DAY.
- 16 Q AND YOU PROCESSED THE DOOR HANDLES?
- 17 A YES.
- 18 Q AND RECOVERED NO BLOOD?
- 19 A NO. AND NO LATENT PRINTS FROM THE VEHICLE. TO RECOVER
- 20 FINGERPRINTS FROM OBJECTS, A LOT OF THINGS HAVE TO GO INTO
- 21 PLAY. I THINK I'VE ALREADY TALKED ABOUT PERSPIRATION.
- 22 Q I'M JUST ASKING ABOUT BLOOD.
- 23 A NO BLOOD.

- 1 Q DID YOU EVER-- I MEAN, THIS THING HERE-- WELL, WE'LL GET
- 2 TO THE SAFE IN A MOMENT. DID YOU RECOVER ANY USEABLE
- 3 EVIDENCE OF ANY KIND FROM THE VEHICLE?
- 4 A NO, I DID NOT.
- 5 Q HOW ABOUT THE POCKETKNIFE, WAS THAT EVER
- 6 FINGERPRINTED?
- 7 A NO, TESTED JUST FOR THE POWDER.
- 8 Q THE KNIFE WAS TESTED FOR THE SAFE DUST STUFF, TOO?
- 9 A YES.
- 10 Q AND NEVER TESTED FOR BLOOD?
- 11 A NO, IT WAS NOT.
- 12 Q THE PIECE OF CONCRETE, CINDERBLOCK THAT'S ALLEGED TO
- 13 HAVE BEEN USED TO ASSAULT MR. CUBLEY, WAS THAT EVER TESTED
- 14 FOR BLOOD?
- 15 A IT WAS ACTUALLY LAYING IN THE BLOOD IN THE LIVING ROOM,
- 16 OR, IN THE CAMPER.
- 17 Q WAS IT TESTED FOR BLOOD?
- 18 A IT WAS NOT.
- 19 Q WAS IT EVER TESTED FOR FIBERS?
- 20 A IT WAS NOT.
- 21 Q WAS IT EVER TESTED FOR ANY OTHER DNA MATERIAL?
- 22 A NO.
- 23 Q WAS IT EVER TESTED-- YOU'VE GOT SOME SORT OF
- 24 COMPARISON BETWEEN ITS MAKEUP AND THE MAKEUP OF ANYTHING
- 25 ELSE?

1 A (NO RESPONSE)

2 Q FOR INSTANCE, TO SAY, TESTED PART OF THE SAFE, AND THE
3 CRUMBS THAT CAME OFF?

4 A OH, NO. IT WAS NOT.

5 Q WOULD IT BE CORRECT AND AN ACCURATE STATEMENT TO SAY,
6 THEN, THAT AS FAR AS BOTH THESE TRAILERS ARE CONCERNED, THE
7 ONE WHERE THE VICTIM WAS FOUND, AND THE ONE WHERE MY
8 CLIENT AND MS. BLACKMON RESIDED, THE ONLY SORT OF
9 MICROSCOPIC OR TRACE EVIDENCE THAT WAS EVEN TESTED FOR IN
10 EITHER PLACE IS YOU DUSTED FOR FINGERPRINTS AT MR. CUBLEY'S,
11 AND THIS DUST STUFF OVER AT THE DEFENDANT'S PLACE?

12 A YES. THROUGH THE INVESTIGATION WE LEARNED THAT THE
13 SAFE HAD BEEN STOLEN FROM THE VICTIM. WE TRIED TO LINK THE
14 SUSPECT'S RESIDENCE BACK TO THE SAFE THAT BELONGED TO THE
15 VICTIM BY SENDING THOSE ITEMS TO THE FBI TO COMPARE THE DUST
16 AGAINST THE SAFE.

17 Q AND SO, BY YOUR INVESTIGATION, WHAT YOU WANT TO SHOW
18 IS THAT PART OF THE SAFE WAS RECOVERED BACK IN THE TRAILER
19 AND THAT WOULD TEND TO SHOW THAT THE SAFE WAS IN THE
20 TRAILER AT SOME POINT?

21 A YES.

22 Q AND THAT'S WHAT I WAS GONNA GET TO. IN FACT, THIS THING
23 IS LEAVING CRUMBS ALL OVER THE FLOOR, IS IT NOT?

24 A THAT'S CORRECT.

1 Q WE COULD CARRY THE SAFE OUT HERE AND THE FBI PERSON
2 COULD COME AND TEST THOSE CRUMBS AND SAY, LOOKS LIKE AT
3 SOME POINT THE SAFE WAS IN THE COURTROOM; AT LEAST THOSE
4 CRUMBS MATCH UP WITH THE SAFE.

5 A WE WOULD HAVE TO LET HER TESTIFY, OR HE TESTIFY TO THAT.

6 Q NOW, THERE'S A PHOTOGRAPH IN EVIDENCE, OR, A NUMBER OF
7 PHOTOGRAPHS IN EVIDENCE SHOWING THIS STUFF IN NUMEROUS
8 LOCATIONS IN DEFENDANT'S TRAILER. CORRECT?

9 A YES. BY THE BACK DOOR AND THE LIVING ROOM.

10 Q AND, IN FACT, IN THE LIVING ROOM, THERE'S, LIKE, A WIDE SHOT
11 AND THEN A CLOSER SHOT, BECAUSE IT COVERS A LARGE AREA,
12 SURFACE AREA OF FLOOR IN THE LIVING ROOM?

13 A YES.

14 Q AND WHEN YOU WERE THERE COLLECTING THESE LITTLE ROCK
15 PIECES AND PHOTOGRAPHING THESE PIECES, THIS WAS SOME SEVERAL
16 DAYS AFTER THE 29TH, WHICH IS THE DAY THE SAFE WAS ALLEGED TO
17 HAVE BEEN TAKEN FROM MR. CUBLEY. CORRECT?

18 A YES.

19 Q OKAY.

20 A THE THIRD OF THE FOLLOWING MONTH.

21 Q OKAY. SO, MAYBE FIVE, SIX DAYS AFTER. AND YOU ALSO
22 FOUND SOME OF THESE PIECES ON THE BACK STEPS?

23 A YES.

24 Q THERE ARE SOME BLURRY PHOTOS, BUT THAT'S SHOWN?

25 A YES.

1 Q CORRECT ME IF I'M WRONG. I'M PRETTY SURE THAT YOU
2 TESTIFIED THAT WHEN YOU RECOVERED THE SAFE YOU OBSERVED
3 THAT IT APPEARED TO HAVE BEEN CUT OPEN. THOSE WERE YOUR
4 WORDS. CORRECT?

5 A VISUALLY LOOKING AT IT, IT LOOKS LIKE IT'S BEEN OPENED UP,
6 CUT OPEN, PRIED OPEN. THE FRONT DOOR'S BENT OUTWARD. IT'S
7 STILL LOCKED.

8 Q AND IN FACT, NOT ONLY WERE PARTS OF THE SAFE AND THE
9 CRUMBS SENT TO THE FBI, BUT YOU ALSO SENT THE SCREWDRIVER,
10 HAMMER AND TIRE TOOL TO THE FBI?

11 A YES. I SAID WHAT ITEMS WE COLLECTED FROM THE
12 DEFENDANT'S RESIDENCE THAT MIGHT HAVE BEEN USED TO OPEN THE
13 SAFE.

14 Q AND YOU WERE THE - AND I DON'T MEAN ANY DISRESPECT BY
15 THIS TERM - GO-BETWEEN. BUT YOU WERE THE PERSON WHO
16 BROUGHT THE STUFF FROM HERE, BROUGHT IT TO FBI
17 HEADQUARTERS. CORRECT?

18 A YES. MYSELF AND DETECTIVE STRAIT PERSONALLY
19 TRANSPORTED IT TO QUANTICO.

20 Q AND WHEN THEY WERE DONE WITH THEIR REPORT, OR THEIR
21 EXAMINATION, THEY RETURNED THE ITEMS TO YOU AND SUBMITTED
22 A REPORT WITH THEIR CONCLUSIONS TO YOU?

23 A I BELIEVE IT WAS TO MYSELF AND DETECTIVE STRAIT, BUT, YES
24 SIR.

1 Q AND YOU'RE AWARE THAT THE-- I DON'T HAVE A PRINTED-OUT
2 COPY, BUT I NEED FOR YOU TO SEE IF YOU'RE AWARE OF THIS REPORT
3 THAT YOU RECEIVED ADDRESSED TO YOU, TO MIKE WILLIAMS,
4 LIEUTENANT, FBI LABORATORY REPORT EXAMINATION. THIS SHOULD
5 BE IN YOUR FILE. PAGE 249 OF THE PROSECUTION'S PACKAGE.

6 IT INDICATES THAT THEY ARE---

7 MR. THOMPSON: YOUR HONOR, I WOULD OBJECT TO THIS. I'D
8 LIKE TO KNOW EXACTLY WHERE HE'S GOING WITH THIS.

9 THE COURT: DO YOU WANT TO ASK THIS WITNESS WHAT THE
10 FBI DETERMINED?

11 MR. CHIARENZA: YES, YOUR HONOR.

12 THE COURT: I SUSTAIN THE OBJECTION.

13 MR. CHIARENZA: YOUR HONOR, IF I MAY. THIS IS THE REPORT
14 IN THEIR FILE THAT IS DONE BY A PARTY OPPONENT THAT IS A REPORT
15 THAT THEY HAVE MANIFESTED. IF IT'S A HEARSAY, I THINK I'VE GOT
16 AN EXCEPTION. THIS IS THEIR OWN-- THIS IS THE FBI REPORT AND
17 THAT THEY TELLING THAT THEY DON'T BELIEVE WHAT THE FBI'S
18 CONCLUSIONS WERE.

19 THE COURT: I DON'T KNOW, BUT I'VE ALREADY SUSTAINED THE
20 OBJECTION.

21 MR. THOMPSON: YOUR HONOR, TO INFORM THE COURT, I HAD
22 ASKED THAT THESE BE STIPULATED TO AND COME IN BEFORE THE
23 TRIAL AND THE DEFENSE SAID NO. I DON'T WANT IT TO COME IN
24 PIECEMEAL. I WANT IT TO COME IN ALL AT ONCE.

1 MR. CHIARENZA: I'LL STIPULATE TO IT AT THIS TIME. I DON'T
2 HAVE THE HARD COPY AND THE OFFICER.

3 THE COURT: LET ME MAKE SURE I UNDERSTAND. Y'ALL WOULD
4 NOT AGREE FOR IT TO COME IN, BUT NOW YOU AGREE FOR IT TO COME
5 IN?

6 MR. THOMPSON: I DON'T WANT IT COME IN PIECEMEAL; I WANT
7 IT COME IN ALL AT ONCE. I WANT THE COURT TO BE AWARE THAT I
8 REQUESTED TO COME IN PRIOR TO TRIAL.

9 THE COURT: BOTH OF Y'ALL ARE AGREEING THAT THE REPORT
10 COMES IN?

11 MR. CHIARENZA: I AM IF HE IS.

12 MR. THOMPSON: THAT IS WHAT I AM REQUESTING OF THE
13 COURT.

14 THE COURT: IT'S ADMITTED THEN, AS DEFENSE'S EXHIBIT ONE.

15 MR. CHIARENZA: WELL, YOUR HONOR, I'M NOT-- I'M ASKING---

16 THE COURT: YOU DON'T WANT TO INTRODUCE IT?

17 MR. CHIARENZA: I WANT TO QUESTION HIM ABOUT IT. HE
18 WANTS TO PUT IT IN. HE SAID HE WANTS IT ALL TO COME IN AT ONCE.
19 I AM STIPULATING, THEN, IF HE WANTS IT IN, THAT HE---

20 THE COURT: WELL, IT'S NOT HIS TURN. HE'S NOT EXAMINING
21 THE WITNESS; YOU ARE. HE OBJECTED TO IT AND I SUSTAINED THE
22 OBJECTION.

23 MR. CHIARENZA: I'M NOT OFFERING IT INTO EVIDENCE AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: THEN YOU CAN'T ASK HIM ABOUT IT.

1 MR. CHIARENZA: OKAY.

2 Q YOUR TESTIMONY, SIR, WAS THAT THE SAFE APPEARED TO HAVE
3 BEEN CUT OPEN. CORRECT?

4 A YES.

5 Q NOW, YOU'VE TESTIFIED THAT YOU WERE AT THE LOCATION OF
6 THE TRAILER, THE VICTIM'S TRAILER.

7 A YES.

8 Q CAN YOU JUST TELL ME HOW, HOW IS THAT TRAILER ORIENTED
9 IN REGARD TO THE WAY THE ROAD RUNS?

10 A THE VICTIM'S HOME?

11 Q YES.

12 A I'LL TRY TO DESCRIBE IT. IF THIS IS THE ROADWAY THAT
13 WOULD RUN ALONG HIS PROPERTY, THERE IS A ROAD, DRIVEWAY
14 THAT COMES IN. AND IT GOES AROUND AND IT COMES BACK OUT ON
15 THE OPPOSITE END, OR THE LOWER END OF THE SAME ROAD. THERE
16 WERE MOBILE HOMES AT ONE TIME THAT WERE PLACED ON BOTH
17 SIDES OF THIS LOOP, WHICH WAS THE MOBILE HOME PARK.

18 THE VICTIM'S RESIDENCE WOULD BE UP HERE IN THE CURVE,
19 ONCE YOU COME INTO THE ROADWAY, OR THE DRIVEWAY AT THAT
20 LOCATION ON THE RIGHT SIDE. AND BEYOND THAT WOULD BE WHERE
21 ALL THE MOBILE HOMES USED TO BE.

22 Q WAS HIS TRAILER PARALLEL TO HIGHWAY 21?

23 A IT WAS MORE PARALLEL THAN NOT.

24 Q IF YOU WERE STANDING ON THE FRONT PORCH LOOKING
25 STRAIGHT OUT, WOULD YOU SEE HIGHWAY 21?

1 A YES. YOU WOULD BE ABLE TO SEE THE ROADWAY.

2 Q AND ABOUT WHAT SORT OF DISTANCE WOULD THE HIGHWAY BE
3 FROM THE TRAILER, JUST A STRAIGHT LINE DISTANCE?

4 A I DON'T KNOW. I WOULD HATE TO GUESS ON THAT. I DON'T
5 KNOW.

6 Q WOULD IT HAVE TAKEN YOU MORE THAN A MINUTE TO WALK
7 FROM THE TRAILER TO THE ROAD?

8 A NO.

9 Q THE EYEGLASSES THAT WERE COLLECTED IN THIS CASE--
10 YOU'VE TESTIFIED THAT THE HEARING AID WAS BROKEN. THE
11 EYEGLASSES DID NOT APPEAR TO BE BROKEN, DID THEY?

12 A THEY DID NOT.

13 Q YOU DIDN'T COLLECT ANY TEETH, ANY REAL OR FALSE TEETH,
14 DID YOU, FROM THE SCENE?

15 A NO, I DID NOT.

16 Q DID YOU OBSERVE ANY ANYWHERE, SEE ANY TEETH?

17 A I DID NOT SEE ANY.

18 Q THE LOG BOOK THAT YOU COLLECTED, DO YOU HAVE ANY
19 RECOLLECTION OF WHAT WAS IN THAT BOOK?

20 A NO. WHEN I RETURNED TO THE RESIDENCE, I WAS REQUESTED
21 TO COLLECT THE LOG BOOK. AT THAT TIME IT WAS PLACED IN AN
22 ENVELOPE AND I TURNED IT INTO EVIDENCE. I DIDN'T PHYSICALLY
23 OPEN IT UP, GO THROUGH IT, OR LOOK AT ANYTHING INSIDE THE
24 BOOK, OTHER THAN JUST COLLECTING IT AND JUST PLACING IT IN AN
25 ENVELOPE.

1 Q AT THE TIME YOU ARRIVED AT THE VICTIM'S RESIDENCE, THE
2 EMS HAD ALREADY BEEN THERE AND HAD REMOVED THE VICTIM.
3 CORRECT?

4 A YES. HE HAD ALREADY BEEN REMOVED FROM THE LOCATION
5 PRIOR TO OUR ARRIVAL.

6 Q AND I BELIEVE IN ONE OF THE PHOTOGRAPHS IT SHOWS AT
7 LEAST THREE OTHER OFFICERS OUTSIDE THE RESIDENCE. I'LL ASK
8 YOU IF YOU ARE FAMILIAR WITH THAT PHOTOGRAPH.

9 A YES. I'D HAVE TO LOOK AT IT TO TELL YOU THE NAMES, OR
10 WHO THEY WERE. BUT THEY WOULD BE STANDING BY OUTSIDE THE
11 RESIDENCE FOR US TO ARRIVE, BASICALLY WATCHING THE SCENE,
12 SECURING IT, KEEPING EVERYBODY OUT OF THE MOBILE HOME, OR
13 THE CAMPER.

14 Q THEY WERE THERE BEFORE YOU GOT THERE?

15 A YES SIR.

16 Q AND THAT WAS ON THE SAME DAY THAT EMS HAD BEEN THERE
17 AS WELL?

18 A YES SIR.

19 Q YOU MAY NOT KNOW THIS, BECAUSE I KNOW THAT YOUR JOB IS
20 TO PROCESS THE SCENE. BUT, ARE YOU AWARE THAT PRIOR TO EMS
21 THERE WERE SOME INDIVIDUALS AT THE TRAILER ON THE DAY OF THE
22 ASSAULT?

23 A NO, I WAS NOT AWARE OF THAT.

24 Q YOU HAVE NO KNOWLEDGE THAT SOME OTHER PEOPLE SAW MR.
25 CUBLEY AND CALLED EMS?

1 A NO.

2 MR. CHIARENZA: BEG THE COURT'S INDULGENCE.

3 (PAUSE)

4 Q ONE OF THE THINGS THAT YOU MENTIONED DURING YOUR
5 TESTIMONY WAS THAT IF YOU HANDLE ONE ITEM OF EVIDENCE, YOU
6 WILL THEN CHANGE THOSE GLOVES, PUT ON ANOTHER PAIR OF
7 GLOVES, SO THAT YOU DON'T TOUCH ANOTHER ITEM OF EVIDENCE. IS
8 THAT A CORRECT REPRESENTATION OF YOUR TESTIMONY?

9 A YES.

10 Q AND THE REASON FOR DOING SO IS-- TELL ME AGAIN WHAT THE
11 REASON FOR DOING THAT IS.

12 A CROSS-CONTAMINATION.

13 Q OKAY. CROSS-CONTAMINATION MEANS-- AGAIN, CORRECT ME
14 IF I'M WRONG. BUT HYPOTHETICALLY, IF YOU WERE TO BE HANDLING
15 THE SAFE THAT CLEARLY SHEDS ALL THIS MATERIAL, THEN YOU
16 WOULDN'T WANT TO GO PICK UP ANOTHER ITEM AND POTENTIALLY
17 TRANSFER SOME OF THIS SAFE CRUMBLINGS TO THAT ITEM THAT
18 WEREN'T THERE ORIGINALLY. CORRECT?

19 A YES.

20 Q AND THAT'S A GENUINE CONCERN?

21 A YES. ANYTIME EVIDENCE IS COLLECTED BY US IT'S A MAJOR
22 CONCERN, CROSS-CONTAMINATION.

23 Q SUCH A CONCERN THAT YOU GO TO THE LENGTH OF ACTUALLY
24 CHANGING THE GLOVES THAT YOU TOUCHED THIS ONE WITH BEFORE
25 YOU TOUCH ANOTHER ONE?

1 A YES, CORRECT.

2 MR. CHIARENZA: NOTHING FURTHER, YOUR HONOR.

3 MR. THOMPSON: JUST BRIEFLY.

4 RE-DIRECT EXAMINATION BY MR. THOMPSON:

5 Q IN YOUR EXPERIENCE, INVESTIGATOR WILLIAMS, IN PROCESSING
6 A CRIME SCENE, DO YOU NORMALLY FIND FINGERPRINTS?

7 A NO. EVERY CRIME WE RESPOND TO, WE DO NOT FIND
8 FINGERPRINTS. WE PROCESS FOR PRINTS BUT WE DO NOT FIND THEM
9 ON EVERY SINGLE CRIME SCENE.

10 Q AND, AS A MATTER OF FACT, IS THAT THE SAME TRUE WITH
11 FIBERS AND HAIRS?

12 A YES.

13 Q AND, AS A MATTER OF FACT, CAN YOU TELL ME AN IDEA OF THE
14 PERCENTAGE OF CASES THAT YOU ACTUALLY FIND FIBERS AND HAIR?

15 MR. CHIARENZA: OBJECTION TO RELEVANCE. THAT IS OF NO
16 CONCERN TO THE EVIDENCE IN THIS CASE.

17 THE COURT: SUSTAINED.

18 Q DID YOU LOOK FOR PRINTS OUTSIDE THE HOUSE?

19 A YES.

20 Q AS FAR AS THE ITEMS THAT YOU PICKED UP, MR. CHIARENZA
21 WAS ASKING YOU IF YOU NOTICED ANY FIBERS OR HAIRS CLINGING TO
22 THE SURFACE, AND WHY YOU HAVEN'T TESTED FOR THOSE THINGS.

23 WHEN YOU PICK THEM UP, DO YOU ACTUALLY SCAN THEM AND
24 SEE IF YOU CAN SEE ANY OF THOSE THINGS?

25 A YES.

1 Q SO, THE ONES THAT YOU DID SEND FOR TESTING, DID YOU
2 NOTICE ANY FIBERS OR BLOOD ON THOSE ITEMS?

3 A NO, I DID NOT.

4 Q NOW, THE TOOLS THAT YOU FOUND-- LET'S TALK ABOUT THE
5 SAFE SPECIFICALLY, WHERE WAS THE SAFE RECOVERED, AGAIN?

6 A IT WAS IN THE WATER.

7 Q WHAT, IF ANY, EFFECT WOULD THAT HAVE ON ANYTHING THAT
8 WOULD BE ON THE SAFE?

9 A IT BASICALLY WOULD WASH OFF ANY DNA OR PRINTS THAT
10 WOULD BE ON THE SAFE.

11 Q AS FAR AS THE TOOLS, THEMSELVES, WHAT KIND OF CHOICE
12 ARE YOU FACING WHEN YOU ARE DECIDING TO SEND THOSE TOOLS TO
13 EITHER THE FBI, OR YOU TEST YOURSELF FOR ANY DUST THAT MAY BE
14 ON THEM, AS COMPARED TO PRINTING THOSE TOOLS?

15 A IF I WOULD HAVE PROCESSED THOSE ITEMS FOR FINGERPRINTS,
16 LIKE I EXPLAINED EARLIER, WHERE WE WOULD ACTUALLY TAKE A
17 BRUSH AND DIP THE FEATHER DUSTER INTO THE POWDER AND IT
18 WOULD, WE WOULD BRUSH IT ONTO THE OBJECT. WHEN I WOULD
19 BRUSH IT ON THESE ITEMS, IT ACTUALLY WOULD HAVE BRUSHED OFF
20 THE DUST THAT MAY HAVE BEEN ON THE ITEMS.

21 Q SO, YOU MAY HAVE LOST SOME EVIDENCE IF YOU TRIED TO DO
22 THAT. IS THAT WHAT YOU'RE SAYING?

23 A YES.

24 Q WOULD IT POSSIBLY HAVE CONTAMINATED THESE ITEMS?

25 A YES. IT WOULD HAVE ALTERED THE DUST OR THE POWDER.

1 Q WHEN YOU RECOVERED EACH ONE OF THE TOOLS, DID YOU
2 LOOK AT THEM TO SEE IF YOU COULD SEE ANYTHING, LIKE BLOOD OR
3 FIBERS?

4 A YES.

5 Q DID YOU SEE ANYTHING VISIBLY THAT APPEARED TO BE BLOOD
6 OR FIBERS?

7 A NO MORE THAN JUST THE POWDER.

8 Q WHEN YOU SENT THOSE TO THE FBI, WERE THEY ALL PACKAGED
9 UP?

10 A YES, THEY WERE ALL IN THEIR ORIGINAL PACKAGE OR
11 ENVELOPES OR THE BOX THAT I PLACED THEM IN WHEN I PUT THEM
12 INTO EVIDENCE.

13 Q AFTER THE FBI, DID YOU PROCESS THEM TO TRY TO LOOK FOR
14 PRINTS OTHER THAN WHAT THEY FOUND?

15 A NO.

16 Q THANK YOU.

17 MR. THOMPSON: NO FURTHER QUESTIONS.

18 **RE-CROSS EXAMINATION BY MR. CHIARENZA:**

19 Q YOU TESTIFIED THAT WATER MIGHT WASH THE PRINTS OFF THE
20 SAFE, BUT IN THE PHOTOGRAPH, ISN'T THE TOP OF THE SAFE CLEARLY
21 OUTSIDE AND ABOVE THE WATER?

22 A AT THE TIME OF THE RECOVERY, YES.

23 Q DO YOU HAVE ANY KNOWLEDGE THAT AT SOME POINT PRIOR TO
24 THAT, IT WAS ACTUALLY SUBMERGED?

25 A NOT BEING SUBMERGED COMPLETELY, BUT IT HAD RAINED.

- 1 Q DID YOU NOTATE (SIC) THAT ANYWHERE IN YOUR REPORT?
- 2 A NO.
- 3 Q SO, THIS HAS NEVER BEEN TESTED FOR FINGERPRINTS?
- 4 A NO, IT HAS NOT.
- 5 Q THE SUM TOTAL OF EVERYTHING THAT'S BEEN RECOVERED AND
- 6 TESTED AND SENT TO VIRGINIA AND FINGERPRINTED AND LOOKED AT
- 7 UNDER MAGNIFYING GLASSES AND SUCH, DOES ANY OF THAT
- 8 EVIDENCE GENETICALLY, FIBER-WISE, BLOOD-WISE, OR FINGERPRINT-
- 9 WISE CONCLUSIVELY POINT TO MR. GUTIERREZ, WHO'S ON TRIAL
- 10 HERE?
- 11 A THAT DOES NOT, BUT THERE ARE OTHER MEANS THAT CAN DO
- 12 THAT.
- 13 Q BUT THERE'S NO GENETIC EVIDENCE THAT MATCHES UP WITH
- 14 MR. GUTIERREZ'S DNA, IS THERE?
- 15 A NO SIR.
- 16 Q THERE'S NO BLOOD RECOVERED FROM ANY OF THIS THAT'S MR.
- 17 GUTIERREZ'S BLOOD?
- 18 A NO.
- 19 Q THERE'S NO FINGERPRINTS RECOVERED FROM ANY OF THIS
- 20 THAT'S MR. GUTIERREZ'S FINGERPRINTS?
- 21 A NO.
- 22 Q THERE ARE NO SHOE PRINTS THAT ARE MR. GUTIERREZ'S SHOES?
- 23 A THAT'S CORRECT.
- 24 Q THERE ARE NO FIBERS THAT MATCH MR. GUTIERREZ'S HAT OR
- 25 TO ANY OTHER CLOTHING THAT WE KNOW WAS HIS?

1 A THAT'S CORRECT.

2 Q AND THERE WAS NONE OF THAT IN THE HOME OF THE VICTIM?

3 A THAT'S CORRECT.

4 Q AND THERE WAS NONE OF THAT IN THE VEHICLE THAT WAS
5 ALLEGED TO HAVE CARRIED MR. GUTIERREZ FROM THE CRIME SCENE
6 BACK TO HIS HOME?

7 A WELL, I REALLY DIDN'T SEARCH IT FOR THAT PURPOSE OF
8 FINDING ANYTHING OF HIM IN THE VEHICLE, DUE TO IT BEING HIS
9 VEHICLE.

10 Q OKAY.

11 A I WAS LOOKING MORE FOR A GUN OR SOMETHING THAT MAY
12 HAVE BEEN CARRIED FROM THE VICTIM'S RESIDENCE INTO THE CAR.

13 Q DID YOU FIND ANY OF THAT?

14 A NO, I DID NOT.

15 Q DID YOU FIND ANY OF THE SAFE STUFF IN THE VEHICLE?

16 A NO, I DID NOT.

17 MR. CHIARENZA: NOTHING FURTHER.

18 MR. THOMPSON: NOTHING FURTHER FROM THE STATE.

19 THE COURT: YOU CAN STEP DOWN.

20 MR. THOMPSON: YOUR HONOR, MAY THIS WITNESS BE
21 EXCUSED?

22 THE COURT: YES. THANK YOU FOR COMING. YOU ARE
23 EXCUSED.

24 MR. THOMPSON: THE STATE CALLS MAUREEN BOTTRELL.

25

1 MAUREEN B. BOTTRELL, DULY SWORN,

2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. THOMPSON:

4 Q WOULD YOU GIVE US YOUR NAME, PLEASE?

5 A MAUREEN B. BOTTRELL.

6 Q WHERE ARE YOU EMPLOYED?

7 A I AM EMPLOYED AS A GEOLOGIST FORENSIC EXAMINER AT THE

8 FBI LABORATORY IN QUANTICO, VIRGINIA.

9 Q HOW LONG HAVE YOU BEEN THERE?

10 A I'VE BEEN AT THE FBI LAB FOR ALMOST THIRTEEN YEARS.

11 Q WHAT KIND OF THINGS DO YOU TEST IN GEOLOGY FORENSICS,

12 AS A GEOLOGIST?

13 A AS A GEOLOGIST, MY DUTIES ARE THE EXAMINATION OF

14 GEOLOGICAL MATERIALS, SUCH AS SOILS, MINERALS, ROCKS,

15 GEMSTONES, AND THOSE THINGS THAT ARE MADE FROM THEM AND

16 WHICH ARE LIKE ARTIFICIAL ROCKS AND THINGS LIKE BUILDING

17 MATERIALS, CEMENT.

18 Q HAVE YOU BEEN DOING THAT THE ENTIRE THIRTEEN YEARS

19 YOU'VE BEEN WITH THE FBI?

20 A I HAVE.

21 MR. THOMPSON: I BELIEVE, YOUR HONOR, WE HAVE REACHED A

22 STIPULATION AS TO HER QUALIFICATIONS AS AN EXPERT AND THE

23 STATE WOULD BE PROFFERING HER AS AN EXPERT IN GEOLOGIST

24 FORENSIC EXAMINATION.

25 MR. CHIARENZA: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: SHE IS SO QUALIFIED.

2 Q NOW, DID YOU HAVE AN OPPORTUNITY TO REVIEW ITEMS IN
3 THIS PARTICULAR CASE?

4 A YES, I DID.

5 Q TELL ME WHICH ITEMS YOU ACTUALLY RECEIVED THAT YOU
6 WERE ABLE TO REVIEW.

7 A I EXAMINED A SAFE. AND ALSO, THERE WERE SOME SAMPLES OF
8 MATERIALS THAT WERE COLLECTED OFF OF A CARPET IN THE
9 RESIDENCE OF MR. GUTIERREZ. AND A NUMBER OF TOOLS, I
10 EXAMINED THOSE AS WELL.

11 Q I'M GOING TO HAVE YOU, IF YOU WOULD, IDENTIFY THOSE
12 ITEMS NOW, SO THAT YOU CAN TESTIFY TO THE RESULTS.

13 THIS SAFE THAT WE HAVE HERE IN FRONT OF YOU IS STATE'S
14 EXHIBIT NUMBER 98, WHICH IS IN EVIDENCE AT THIS TIME. DID YOU
15 MAKE AN IDENTIFYING MARK ON THE SAFE?

16 A I DID.

17 Q IF YOU WOULD, PLEASE STEP DOWN AND EXAMINE THAT SAFE,
18 AND TELL ME IF THAT IS THE SAFE THAT YOU EXAMINED.

19 (WHEREUPON WITNESS EXITED THE WITNESS STAND)

20 A THIS IS THE SAFE I EXAMINED.

21 Q THANK YOU.

22 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

23 THERE ARE SEVERAL OTHER ITEMS THAT I WANT YOU TO LOOK
24 AT, STATE'S EXHIBIT 81, WHICH IS A TIRE TOOL, AND LOOK AT THAT

1 AND TELL ME IF THAT IS ONE OF THE ITEMS THAT YOU EXAMINED AS
2 WELL.

3 A YES SIR, THIS IS ONE OF THE ITEMS I EXAMINED.

4 Q ALL RIGHT. LET'S LOOK AT STATE'S EXHIBIT NUMBER 79, WHICH
5 I BELIEVE IS A HAMMER. TELL ME IF THAT IS ONE OF THE ITEMS THAT
6 YOU EXAMINED.

7 A YES SIR, IT IS.

8 Q STATE'S EXHIBIT NUMBER 78, IN EVIDENCE, A POCKET KNIFE.
9 TELL ME IF THAT IS ONE OF THE ITEMS YOU EXAMINED.

10 A YES, IT IS.

11 Q NOW, BOTH STATE'S EXHIBIT 91 AND 92, THOSE ARE ROCK
12 SUBSTANCE RECOVERED FROM DEFENDANT'S RESIDENCE. WERE YOU
13 ABLE TO EXAMINE THOSE ITEMS AS WELL?

14 A YES, I WAS.

15 Q STATE'S EXHIBIT NUMBER 93, WHICH IS THE CONTENTS OF THE
16 FORENSIC VACUUM FROM THAT RESIDENCE. TELL ME IF YOU
17 EXAMINED THOSE?

18 A YES SIR.

19 Q AND I BELIEVE ONE OTHER THING HERE, STATE'S EXHIBIT
20 NUMBER 80, THE BLACK AND YELLOW-HANDLED SCREWDRIVER. IS
21 THAT SOMETHING YOU ALSO EXAMINED?

22 A YES, IT IS.

23 Q DID THESE ITEMS COME PACKAGED TO YOU SEPARATELY WHEN
24 THEY ARRIVED AT YOUR OFFICE?

25 A YES SIR, THEY WERE.

1 Q NOW, CAN YOU TELL ME, WHAT IS YOUR FIRST STEP? WHAT DO
2 YOU FIRST DO TO TRY TO EXAMINE THESE ITEMS WHEN THEY COME
3 IN?

4 A WELL, THE FIRST THING THAT WE, WITH THIS EXAMINATION IS
5 THAT THERE HAS TO BE AN IDENTIFICATION AND COMPARISON. WE
6 HAD TO LOOK AT THE SAMPLES OF DEBRIS THAT WERE COLLECTED
7 FROM THE RESIDENCE, AND ALSO THE TOOLS, TO SEE WHETHER OR
8 NOT THEY HAD ANY SUBSTANCES EITHER ON THEM OR IN THEM
9 WHICH WERE A WHITE INSULATION WITHIN THE SAFE.

10 Q CAN YOU TELL ME, WAS THERE ANYTHING SPECIAL ABOUT THE
11 INSULATION WITHIN THE SAFE?

12 A A SAFE IS TYPICALLY HOUSED IN INSULATING MATERIAL
13 WEDGED BETWEEN SEVERAL LAYERS OF METAL. AND THAT
14 INSULATION IS THERE TYPICALLY TO PROVIDE A FIRE RESISTANT
15 LAYER FOR THE SAFE.

16 THE INSULATING MATERIAL IS DIFFERENT FROM SAFE
17 MANUFACTURER TO SAFE MANUFACTURER, AND ALSO BETWEEN
18 MODELS OF SAFE, AS THEY HAVE DIFFERENT FIRE RATINGS AND SUCH
19 AS THAT.

20 THE TYPE OF MATERIAL IS ALSO QUITE CHARACTERISTIC OF THE
21 SAFE ITSELF. THERE ARE OTHER TYPES OF MATERIALS THAT USE
22 THESE SAME COMPONENTS, BUT NOT PUT TOGETHER IN THE SAME
23 WAY THAT THEY ARE FOR SAFE INSULATION. SAFE INSULATION IS
24 TYPICALLY COMPOSED OF A PORTLAND CEMENT MATERIAL AND
25 USUALLY WITH OTHER THINGS IN DIFFERENT FORMS.

1 Q WERE YOU ABLE TO EXAMINE THE INTERIOR BETWEEN THE
2 METAL AND TELL WHAT THAT WAS MADE OF?

3 A YES SIR, I WAS.

4 Q WHAT WAS THE INSULATION IN THIS SAFE MADE OF?

5 A THE INSULATION IN THIS SAFE IS PORTLAND CEMENT AND IT
6 HAS BEEN FOAMED, SO IT HAS SOME AIR POCKETS IN THERE THAT
7 MAKES IT LIGHTER. IT ALSO IMPROVES ITS INSULATING ABILITY.
8 THERE IS A VERY SMALL AMOUNT, TRACE AMOUNT OF SOME OTHER
9 MINERAL COMPONENTS IN IT.

10 Q WOULD THIS BE SOMEWHAT DIFFERENT FROM, SAY, THE
11 INSULATION YOU HAVE IN YOUR HOUSE?

12 A YES SIR.

13 Q DIFFERENT FROM THE INSULATION THAT YOU WOULD HAVE
14 AROUND YOUR PIPES IN YOUR HOUSE OR SOMETHING OF THAT
15 NATURE?

16 A THAT'S CORRECT.

17 Q YOU SAID THERE ARE VARIED PARTICULARS OF SAFES. WHAT
18 DOES THAT TELL US AS FAR AS THOSE OTHER THINGS? CAN YOU TELL
19 MORE ABOUT THE MATERIAL THAT IS IN A SAFE THAN, SAY,-- JUST BY
20 THE MATERIALS THAT ARE IN THE SAFE, WOULD YOU FIND THAT IN
21 ANY OTHER AREAS OR THINGS THAT YOU'RE AWARE OF, OTHER THAN
22 THAT SAFE INSULATION.

23 A I WOULD NOT EXPECT TO FIND THIS TYPE OF MATERIAL PUT
24 TOGETHER IN THIS WAY IN ANYTHING.

25 Q SO, IT'S USED EXCLUSIVELY FOR SAFES?

1 A IT IS.

2 Q IN YOUR EXAMINATION OF THIS SAFE, AFTER YOU WERE ABLE
3 TO DETERMINE WHAT IT WAS COMPOSED OF, WERE YOU THEN ABLE
4 TO LOOK AT THE TOOLS AND SEE WHAT THEY WERE COMPOSED OF?

5 A I LOOK AT THE TOOLS TO SEE IF THEY HAD ANY OF THIS TYPE OF
6 MATERIAL ON THEM.

7 Q HOW DO YOU DRAW THAT OFF? WHAT DO YOU DO TO GET
8 THOSE MATERIALS OFF?

9 A WELL, THE TOOLS THEMSELVES WE'RE LOOKING AT UNDER A
10 LOW-POWER MAGNIFICATION. WE'RE USING A VERY SMALL TOOL,
11 VERY MUCH LIKE THE TYPE OF PICKS THAT DENTISTS USE WHEN
12 THEY'RE EXAMINING YOUR TEETH, LITTLE METAL SCRAPERS, THINGS
13 LIKE THAT, TRYING TO REMOVE ANY OF THE FINE MATERIAL FROM
14 THAT TOOL.

15 Q WERE YOU ABLE TO REMOVE ANY MATERIALS FROM ANY OF
16 THE TOOLS THAT YOU COULD THEN EXAMINE?

17 A YES SIR, I WAS.

18 Q WHICH TOOLS WERE YOU ABLE TO REMOVE ITEMS FROM?

19 A THERE WAS SOME MATERIAL CLINGING TO THE TIRE IRON, AND
20 ALSO TO THE SCREWDRIVER.

21 Q WHEN YOU LOOKED AT THOSE, DO YOU LOOK AT THOSE
22 MICROSCOPICALLY WHEN YOU BRING OFF THAT MATERIAL?

23 A THAT IS ONE OF THE TESTS THAT WE DO.

24 Q WHAT OTHER TYPES OF TESTS DID YOU DO?

1 A THE FIRST THING THAT WE DO IS WE LOOK AT IT. WE LOOK AT
2 IT AT ARM'S LENGTH. SO, THE FIRST THING I'M GOING TO LOOK AT, IS
3 THE COLOR CONSISTENT BETWEEN THE MATERIAL THAT I'M SCRAPING
4 OFF AND THE MATERIAL THAT'S IN THE SAFE. IF THOSE AGREE, THEN I
5 START LOOKING AT SOME OF THE MORE FINER DETAILS.

6 THE NEXT THING THAT WE TYPICALLY DO IS WE'LL LOOK AT
7 THIS UNDER A HIGH-POWER MAGNIFICATION. THERE'S A SPECIAL
8 TYPE OF MICROSCOPE CALLED A PETROGRAPHIC MICROSCOPE,
9 SPECIFICALLY DESIGNED FOR THE ANALYSIS OF MINERALS AND
10 MINERAL MATERIALS.

11 THIS WILL ALLOW US TO IDENTIFY SOME OF THE COMPONENTS
12 OF THE MATERIALS THAT WE'RE EXAMINING. IF THOSE ALL AGREE,
13 THEN WE GO ON TO FURTHER TESTING. IN THIS CASE, X-RAY POWER
14 DEFROTOMETRY. WITH THAT WE ARE ACTUALLY MEASURING THE
15 SPACE BETWEEN THE ATOM AND THE MOLECULES OF THE MATERIALS
16 THAT WE'RE LOOKING AT, AND THAT WILL ABSOLUTELY IDENTIFY
17 THE COMPONENTS OF THE MATERIAL.

18 Q CAN YOU TELL ME, WHEN YOU'RE LOOKING AT THE TOOLS AND
19 ESTABLISHING THE COMPONENTS, WHAT CHARACTERISTICS WERE
20 YOU ABLE TO DETERMINE FROM THE DUST OR THE AMOUNT OF
21 THINGS THAT WAS ON THE TOOLS?

22 A WELL, THE MATERIAL ON THE TOOLS IS CONSISTENT IN COLOR
23 WITH THE MATERIAL FROM THE SAFE. AND ALSO, IT'S PRINCIPALLY
24 COMPOSED OF PORTLAND CEMENT, AS IS THE INSULATION ON THE
25 SAFE. BECAUSE THERE WAS SUCH A FINE AMOUNT OF MATERIAL, I

1 WAS NOT ALLOWED TO LOOK AT SOME OF THE TEXTURAL FEATURES
2 THAT WE MIGHT EXPECT TO SEE.

3 IF YOU'LL RECALL, I TOLD YOU THAT THE MATERIAL FROM THE
4 SAFE IN THIS CASE WAS FOAMED; IT HAD AIR POCKETS IN IT. THAT
5 WAS NOT PRESERVED IN THE FINE MATERIAL THAT WAS FOUND ON
6 THE TOOLS.

7 Q SO, WAS IT BASICALLY LEFT IN A DUST?

8 A THAT'S CORRECT.

9 Q IT DOESN'T HAVE SOME OF THE SAME CHARACTERISTICS, SAY, IF
10 WE REACHED OVER HERE AND PULLED OUT ONE OF THOSE LITTLE
11 FROM INSIDE THE SAFE, WHICH WOULD BE LIKE A LITTLE, ROCK-LIKE
12 PIECE?

13 A THAT CORRECT.

14 Q NOW, YOU MENTIONED THAT WHAT YOU LOOKED AT COLOR-
15 WISE MATCHED THE COLOR OF THE INSULATION IN THE SAFE. ONCE
16 AGAIN, IS THAT SOMETHING THAT WAS DETERMINED WITH - AND I
17 HEARD OF THE NAME OF IT - THE SPECTROMETRY. IS THAT
18 SOMETHING THAT YOU USED WITH A SPECIAL LIGHT TO DETERMINE?

19 A NO. IN THIS CASE, IT WOULD BE SPECTOTOMETRY, THE
20 INSTRUMENTAL TECHNIQUE THAT YOU'RE TALKING ABOUT. IN THIS
21 CASE SPECTOTROTOMETRY WOULD NOT BE APPROPRIATE BECAUSE
22 YOU'RE LOOKING AT A VERY SMALL AMOUNT OF MATERIAL.

23 Q WHAT DID YOU USE AS FAR AS MATCHING THE COLOR? HOW
24 DID YOU DETERMINE THAT?

1 A I EXAMINED IT IN A LIGHT BOX, USING A SIDE BY SIDE
2 COMPARISON OF THE MATERIAL.

3 Q AS FAR AS THE PORTLAND CEMENT, CAN YOU TELL ME WHAT, IF
4 ANY SIGNIFICANCE THAT HAD?

5 A THE PORTLAND CEMENT, THE MATERIAL IN THE SAFE IS
6 PRINCIPALLY COMPOSED OF PORTLAND CEMENT. THE FACT THAT
7 THIS IS ALSO WHAT WE'RE FINDING ON THE TOOLS IS AN AREA WHERE
8 THEY ARE CONSISTENT WITH ONE ANOTHER. THE PORTLAND CEMENT
9 DOES OCCUR IN OTHER THINGS, BUT THE OTHER THINGS THAT ARE
10 USUALLY MADE WITH PORTLAND CEMENT CONTAIN A LOT OF OTHER
11 MATERIALS THAT I HAVE NOT SEEN IN THIS CASE ON THE TOOLS. AND
12 I WOULD EXPECT TO SEE SOME OF THE OTHER MATERIALS MIXED IN IF
13 THEY WERE SOME OTHER APPLICATION OF PORTLAND CEMENT.

14 Q SO, IN OTHER WORDS, IF THAT PORTLAND CEMENT WAS USED IN
15 SOMETHING OTHER THAN THE SAFE, YOU WOULD EXPECT TO FIND
16 SOME OTHER CHEMICALS OR OTHER MATERIALS WITHIN THAT
17 PORTLAND CEMENT?

18 A THAT'S CORRECT.

19 Q AND NONE OF THOSE WERE PRESENT?

20 A THAT'S CORRECT.

21 Q AND NONE OF THOSE OTHER THINGS WERE PRESENT WITHIN THE
22 PORTLAND CEMENT IN THE SAFE?

23 A THAT'S RIGHT.

24 Q NOW, CAN YOU DESCRIBE, WHEN A BATCH OF CEMENT IS MADE--

1 DID YOU EXAMINE ANYTHING THAT WOULD BE CONSISTENT WITH THE
2 WAY A BATCH IS MADE AS FAR AS ONE BATCH BEING MADE AND
3 ANOTHER BATCH MICROSCOPICALLY, LOOKING AT THE TOOLS?

4 THAT MIGHT NOT BE A GOOD WAY TO ASK THAT. I HOPE YOU
5 UNDERSTAND WHAT I'M TRYING TO GET AT. WHEN ONE BATCH IS
6 MADE AND A CERTAIN RECIPE IS USED TO MAKE THAT BATCH. WITH
7 THE SECOND BATCH, EVEN THOSE THEY USE THE SAME RECIPE FOR
8 THAT BATCH---

9 MR. CHIARENZA: YOUR HONOR, I OBJECT. HE'S LEADING AND
10 HE'S TESTIFYING.

11 THE COURT: DON'T LEAD.

12 MR. THOMPSON: AS AN EXPERT, I'M TRYING TO ASK HER
13 OPINION.

14 THE COURT: WELL, LET'S SEE. APPROACH.

15 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

16 Q WHAT, IF ANYTHING, DID YOU FIND THAT WOULD BE
17 CONSISTENT WITH THE ITEMS FROM THE SAME BATCH?

18 A WELL, THEN, WHEN A CEMENT IS MADE, WHEN YOU MAKE THE
19 CEMENT, YOU HYDRATE IT. YOU ACTUALLY TAKE THE RAW CEMENT
20 MATERIAL AND YOU PUT WATER INTO IT. THE MATERIALS THAT FORM
21 AS A RESULT OF THAT ARE DIFFERENT BECAUSE OF THE WAY THE
22 CEMENT IS THEN CURED OR HARDENED.

23 SO, IF IT'S MORE HUMID ONE DAY THAN IT IS ANOTHER YOU'LL
24 GET SLIGHTLY MORE MOISTURE IN THE SYSTEM AND IT WILL, YOU
25 WILL GET A DIFFERENT MATERIAL.

1 IF YOU STIR IT UP DIFFERENTLY, AGAIN, IT WILL HYDRATE
2 DIFFERENTLY AND YOU WILL GET A DIFFERENT MATERIAL. IF IT'S
3 PARTICULARLY HOT THAT DAY IT MAY HARDENED FASTER AND,
4 AGAIN, YOU END UP WITH A DIFFERENT MATERIAL.

5 SO, WHAT WE SEE FROM LOOKING AT BATCH TO BATCH OF
6 MATERIAL MADE WITH PORTLAND CEMENT IS THAT EACH BATCH IS
7 DIFFERENT.

8 Q WERE YOU ABLE TO SEE ANYTHING THAT MADE THE ITEMS, THE
9 STUFF THAT YOU RECOVERED FROM THE TOOLS COMPARED TO THE
10 SAFE, WAS THERE ANYTHING THAT MADE IT APPEAR THAT IT WAS
11 MADE FROM A DIFFERENT BATCH?

12 A NO, THERE WAS NOTHING.

13 Q IN OTHER WORDS, IN YOUR OPINION, WAS IT CONSISTENT WITH
14 BEING FROM THE SAME BATCH AS THE SAFE?

15 A YES, IT WAS.

16 Q WERE YOU ABLE TO FORM AN OPINION AS TO THE STUFF THAT
17 WAS RECOVERED OFF THOSE TOOLS AS COMPARED TO THE SAFE?

18 A I CAN'T ELIMINATE THE SAFE AS BEING THE SOURCE OF
19 MATERIAL THAT WAS FOUND ON THE TOOLS.

20 Q SO, IN OTHER WORDS, THE MATERIALS FOUND ON THE TOOLS
21 AND THE SAFE, ARE THEY CONSISTENT WITH THAT MATERIAL WHICH
22 IS INSIDE THE SAFE, THE INSULATION IN THE SAFE?

23 A YES, IT IS.

24 Q NOW, I BELIEVE YOU ALSO TESTED SOME OF THE ITEMS IN THE
25 VACUUM AND THE ROCKS THAT THEY FOUND?

1 A THAT'S CORRECT.

2 Q CAN YOU TELL ME WHAT, IF ANYTHING, YOU WERE ABLE TO
3 DETERMINE FROM THOSE ITEMS?

4 A WITH THESE ITEMS RECOVERED OUT OF THE DEBRIS FROM THE
5 HOUSE, THEY WERE ACTUALLY LARGER IN SIZE. SO I COULD LOOK AT
6 SOME OF THE TEXTURAL FEATURES THAT I WAS NOT SEEING ON THE
7 MATERIAL ON THE TOOLS.

8 THE CEMENT THAT WAS PRESENT IN THE DEBRIS IS CONSISTENT
9 IN COLOR AND TEXTURE AND COMPOSITION WITH THE MATERIAL
10 THAT WAS IN THE SAFE.

11 Q AND, CAN YOU TELL ME, IN WHAT WAS IT WAS CONSISTENT
12 WITH THE COLOR AND THE TEXTURE AND THE COMPOSITION OF THE
13 MATERIAL IN THE SAFE?

14 A WE DID A SIDE BY SIDE COLOR COMPARISON BETWEEN THE
15 SAME COLORS, BETWEEN THE TWO OF THEM. THE MATERIALS, BOTH
16 CONTAINED THE SAME FOAMED TYPE OF CEMENT, LITTLE VOID
17 SPACES IN THEM.

18 THEY ALSO WERE COMPOSED OF THE SAME MATERIAL THAT I'VE
19 SEEN IN THE PORTLAND CEMENT AND I'M SEEING SOME OF THE THINGS
20 THAT ARE FORMED AFTER THE PORTLAND CEMENT IS HYDRATED.
21 THINGS LIKE CALCITES, THINGS LIKE THAT.

22 Q SO, LOOKING AT THOSE ITEMS, THE DEBRIS, THOSE LITTLE ROCK
23 SUBSTANCES, WHAT WAS IN THE VACUUM, ARE YOU ABLE TO SAY
24 THAT THOSE ITEMS ACTUALLY CAME FROM THE INSULATION IN THE
25 SAFE; THAT THEY ARE SAFE INSULATION?

1 A YES SIR, THEY ARE SAFE INSULATION.

2 Q SO, IN YOUR EXPERT OPINION, THOSE ITEMS RECOVERED, THE
3 DEBRIS FROM THE VACUUM, WERE SAFE INSULATION?

4 A YES.

5 Q IN YOUR EXPERT OPINION, THOSE MATERIALS CAME FROM THE
6 SAFE?

7 A YES.

8 Q AND DID YOU FIND ANYTHING INTERESTING ABOUT THOSE
9 MATERIALS BEING FROM THE SAFE?

10 A NO, I DIDN'T.

11 Q THANK YOU.

12 MR. THOMPSON: I HAVE NO FURTHER QUESTIONS.

13 THE COURT: CROSS EXAMINATION.

14 **CROSS EXAMINATION BY MR. CHIARENZA:**

15 Q I JUST WANT TO SUMMARIZE, BRIEFLY, MS. BOTTRELL. IT SEEMS
16 LIKE YOU HAD TWO LEVELS OF CONCLUSIONS HERE. ONE THAT
17 APPLIES TO THE DEBRIS, AND ONE THAT APPLIES TO THE TOOLS. IS
18 THAT AN ACCURATE REPRESENTATION?

19 A YES, IT IS.

20 Q AS FAR AS THE DEBRIS, WHAT I THINK I UNDERSTOOD YOU TO
21 SAY IS THAT THE DEBRIS PIECES ARE CONSISTENT AND IN ALL
22 LIKELIHOOD CAME RIGHT OUT OF THE SAFE. CORRECT?

23 A THERE ARE PIECES THAT HAD ORIGINATED FROM THAT SAFE,
24 YES.

1 Q AS FAR AS THE TOOLS, I THINK YOUR CONCLUSION WAS-- AND
2 I'M GOING TO PUT THIS IN LAYMAN'S TERMS, AND YOU PLEASE
3 EXPLAIN IT IN A WAY THAT YOU'RE COMFORTABLE. BUT I WOULD
4 CHARACTERIZE THE CONCLUSION AS FAR AS THE TOOLS GO AS BEING
5 IT SURE LOOKS LIKE THE STUFF ON THE TOOLS CAME FROM THE SAFE;
6 I CAN'T SAY THEY DIDN'T COME FROM THE SAFE.

7 I THINK YOUR REPORT SAID THE SAFE CAN'T BE ELIMINATED AS
8 THE SOURCE OF THE DUST ON THE TOOLS. CORRECT?

9 A THAT'S CORRECT.

10 Q I MEAN, FOR INSTANCE, IF YOU HAD FOUND TOOTHPASTE ON
11 THE TOOLS, YOU WOULD HAVE SAID THEY DIDN'T COME FROM THE
12 SAFE; THE SAFE WAS NOT FULL OF TOOTHPASTE.

13 A THAT'S RIGHT.

14 Q YOU'RE NOT SAYING THAT. YOU'RE SAYING I CAN'T ELIMINATE
15 THE SAFE AS THE OBJECT THAT CONTRIBUTED TO THIS STUFF THAT'S
16 ON THE TOOLS.

17 A THAT'S CORRECT.

18 MR. CHIARENZA: THAT'S ALL I'VE GOT.

19 MR. THOMPSON: NOTHING FURTHER, YOUR HONOR.

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

21 MR. THOMPSON: WE ASK THAT THIS WITNESS BE EXCUSED.

22 THE COURT: SHE MAY BE.

23 MS. COLLINS: YOUR HONOR, MAY WE APPROACH?

24 THE COURT: YES.

25 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

1 THE COURT: LADIES AND GENTLEMEN, WE WILL RECESS FOR
2 LUNCH. WHEN WE COME BACK, I'VE GOT SOME MATTERS I NEED TO
3 ADDRESS THAT WON'T INVOLVE YOU. WE'RE GOING TO ASK YOU TO
4 COME BACK A LITTLE BIT LATER. I'LL ASK YOU TO COME BACK AT 2:45
5 THIS AFTERNOON, AND WE'LL BE READY TO CONTINUE WITH THE
6 TRIAL OF THE CASE.

7 YOU'RE EXCUSED NOW. PLEASE REPORT BACK TO YOUR JURY
8 ROOM AT 2:45.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:45 P.M.)
10 COURT'S IN RECESS FOR THE REST OF US UNTIL 2:15.

11 COURT IN SESSION - 2:10 P.M.

12 THE COURT: MR. THOMPSON.

13 MR. THOMPSON: THE STATE WOULD CALL EDDIE STRAIT TO THE
14 STAND, YOUR HONOR.

15 WILLIAM EDWARD STRAIT, JR., DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. THOMPSON:

18 Q WOULD YOU STATE YOUR FULL NAME FOR THE COURT, PLEASE?

19 A WILLIAM EDWARD STRAIT, JR.

20 Q YOU WORK FOR THE SHERIFF'S DEPARTMENT?

21 A I DO.

22 Q DO YOU WORK AS A DETECTIVE FOR THE SHERIFF'S
23 DEPARTMENT?

24 A YES SIR.

1 Q CAN YOU TELL ME DETECTIVE STRAIT, WERE YOU WORKING IN
2 THIS CAPACITY BACK WHEN THIS CRIME OCCURRED AT THE END OF
3 2002?

4 A YES, I WAS.

5 Q AS A MATTER OF FACT, I BELIEVE YOU BECAME THE CASE
6 AGENT ON THE CASE?

7 A THAT'S CORRECT.

8 Q WHEN THE DEFENDANT WAS ULTIMATELY APPREHENDED IN
9 DECEMBER OF LAST YEAR, DID YOU HAVE ANY CONTACT WITH HIM
10 AFTER HIS ARREST?

11 A YES, I DID.

12 Q WOULD YOU DESCRIBE FOR ME HOW YOU HAD THAT CONTACT
13 WITH HIM?

14 A I THINK HE ARRIVED ON A SATURDAY EVENING TO OUR
15 FACILITIES. MYSELF AND DETECTIVE YEAGER WENT IN ON SUNDAY
16 TO INTERVIEW HIM.

17 Q YOU SAID THAT DETECTIVE YEAGER WENT WITH YOU TO
18 INTERVIEW HIM?

19 A THAT'S CORRECT.

20 Q THAT'S RUSS YEAGER?

21 A YES.

22 Q AND ON THAT SUNDAY THAT YOU WENT TO INTERVIEW HIM,
23 WHAT WAS YOUR UNDERSTANDING OF WHETHER OR NOT HE COULD
24 SPEAK ENGLISH?

1 A FROM MY INITIAL CONTACT WITH DANA, BACK AT THE TIME OF
2 THE INCIDENT, AND THEN FROM THE REPORTS FROM THE MISSOURI
3 POLICE, IT WAS MY UNDERSTANDING THAT HE COULD SPEAK AND
4 UNDERSTAND ENGLISH.

5 Q SO, WHEN YOU WENT AND TALKED WITH HIM AT THE
6 DETENTION CENTER, DID YOU GO AND SPEAK ENGLISH WITH HIM AT
7 THAT TIME?

8 A YES, I DID.

9 Q WHEN YOU TALKED TO HIM,-- DO YOU HAVE A COPY OF THE
10 FORM THAT YOU HAD HIM SIGN AT THE TIME YOU WERE SPEAKING
11 WITH HIM?

12 A NOT WITH ME.

13 MR. THOMPSON: I WOULD MAKE THIS A COURT'S EXHIBIT FOR
14 THE PURPOSE OF THIS HEARING.

15 (WHEREUPON EXHIBIT WAS MARKED AS COURT'S EXHIBIT ONE)

16 Q DETECTIVE, WHEN YOU WERE TALKING WITH THE DEFENDANT,
17 YOU WERE LOCATED IN THE DETENTION CENTER. IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q WHERE DID YOU GO IN THE DETENTION CENTER TO SPEAK WITH
20 HIM?

21 A WE HAVE AN INTERVIEW ROOM SEPARATE FROM THE BOOKING
22 AREA.

23 Q DID YOU TALK WITH HIM ACTUALLY BEFORE YOU STARTED
24 READING HIM HIS RIGHTS AT THAT POINT?

EDDIE STRAIT - DIRECT EXAMINATION BY MR. THOMPSON

- 1 A NORMALLY, JUST GENERAL CONVERSATION. I INTRODUCED
2 MYSELF AND DETECTIVE YEAGER.
- 3 Q DID HE SAY ANYTHING TO YOU AT THAT TIME?
- 4 A NO SIR.
- 5 Q DID HE---
- 6 A I MEAN, HE JUST ACKNOWLEDGED THE INTRODUCTIONS.
- 7 Q THEN DID YOU GO OVER THIS RIGHTS FORM WITH HIM AT THAT
8 TIME?
- 9 A I DID.
- 10 Q HOW DID YOU GO OVER THE RIGHTS FORM WITH HIM?
- 11 A IT'S A STANDARD SHERIFF'S OFFICE RIGHTS FORM. I READ HIM
12 THE FIRST FIVE LINES.
- 13 Q WOULD YOU READ THAT OUT NOW AS YOU READ IT TO HIM
14 THAT DAY?
- 15 A IT SAYS, "BEFORE I ASK YOU ANY QUESTIONS, I WANT TO
16 ADVISE YOU OF YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN
17 SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN
18 A COURT OF LAW. YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY
19 AND HAVE HIM OR HER PRESENT WITH YOU WHILE YOU ARE BEING
20 QUESTIONED. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, ONE
21 WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONS, IF
22 YOU WISH. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE
23 RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY
24 STATEMENTS. DO YOU UNDERSTAND EACH OF THESE RIGHTS THAT I
25 HAVE EXPLAINED TO YOU?"

1 Q DID HE APPEAR TO UNDERSTAND THOSE AT THAT TIME?

2 A YES. I ASKED HIM IF HE UNDERSTOOD IT AND HE ACTUALLY
3 NODDED. AND I ASKED HIM AGAIN, AND, YOU KNOW, TO STATE IF HE
4 UNDERSTOOD IT, AND HE SAID YES. SO, I MARKED WHERE I NEEDED
5 HIM TO INITIAL IT AND SIGN HIS NAME ON IT.

6 Q NOW, AS YOU STARTED WITH THIS PROCESS, DID YOU ASK HIM
7 IF HE COULD READ AND WRITE ENGLISH?

8 A I DID NOT BECAUSE IT'S COVERED AT THE BOTTOM OF THIS.

9 Q I SEE. DID---

10 A I KNEW WE WOULD EVENTUALLY GET TO IT.

11 Q AND SO, DID HE SIGN THIS PORTION OF IT ON THE FRONT, THE
12 FIRST PART OF THAT FORM, I GUESS, IN THE MIDDLE OF THE PAGE?

13 A THAT'S CORRECT.

14 Q AND HE INITIALED IT AS WELL, THAT HE UNDERSTOOD?

15 A THAT'S CORRECT. AND I DATED IT.

16 Q WHAT WAS THE NEXT PART OF THE RIGHTS FORM? DID YOU
17 READ THAT TO HIM AS WELL?

18 A I DID.

19 Q WOULD YOU READ IT TO US LIKE YOU READ IT TO HIM AT THAT
20 DAY?

21 A IT SAYS, "I AM WILLING TO TALK TO POLICE AND ANSWER
22 QUESTIONS. I DO NOT WANT AN ATTORNEY AT THIS TIME. I
23 UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR
24 THREATS HAVE BEEN MADE TO ME. AND NO PRESSURE OF ANY KIND
25 HAS BEEN PLACED UPON ME."

1 Q DID HE UNDERSTAND THAT?

2 A YES. I ASKED HIM IF HE UNDERSTOOD THAT AND AGREED WITH
3 IT, IF HE WOULD SIGN THIS PORTION OF THE FORM.

4 Q DID HE TELL YOU THAT HE UNDERSTOOD IT?

5 A HE DID.

6 Q AND DID HE SIGN THAT PORTION OF THE FORM?

7 A HE DID.

8 Q AND I BELIEVE, THE DATE IS ON IT. DID YOU DATE IT?

9 A YES, I DID.

10 Q NOW, TO THE NEXT PART OF THE FORM WHERE IT TALKS ABOUT
11 THE INTERVIEW, WOULD YOU EXPLAIN HOW YOU PRESENTED THAT TO
12 HIM AT THAT TIME?

13 A WE NORMALLY-- WE ASK A FEW QUESTIONS. IF WE DON'T
14 KNOW THEM, WHICH I KNEW THE NAME AND THE DATE OF BIRTH. I
15 ASKED HIM HIS EDUCATIONAL LEVEL AND HE TOLD ME NINTH GRADE.
16 I ASKED HIM COULD HE READ. HE SAID HE COULD. I ASKED HIM
17 COULD HE WRITE AND HE SAID SPANISH ONLY. SO, WHILE I CIRCLED
18 YES, I ALSO NOTED THAT IT WAS SPANISH ONLY FOR WRITING.

19 Q SO, YOU PUT ON THERE-- AS FAR AS THE EDUCATIONAL LEVEL,
20 HOW DID YOU ASK HIM THAT? DID YOU ASK HIM WITH THE WORDS,
21 WHAT IS YOUR EDUCATION LEVEL?

22 A NO. I ASKED HIM HOW FAR DID HE GO IN SCHOOL.

23 Q AND HE SAID NINTH?

24 A YES.

25 Q SO, DID HE APPEAR TO UNDERSTAND ALL THAT PART?

1 A YES.

2 Q NOW, IN THE ACTUAL INTERVIEW, IT SAYS YOU INTERVIEWED
3 HIM HERE IN THE DETENTION CENTER?

4 A THAT'S CORRECT.

5 Q THE DATE AND THE TIME, DID YOU ENTER THAT IN?

6 A DID I DO IT? YES.

7 Q YOU MARKED THE DATE AND TIME. AFTER YOU WENT OVER HIS
8 RIGHTS WITH HIM, WHAT ELSE DID YOU DO?

9 A AT THAT POINT WE BEGAN TO TALK TO HIM ABOUT THE
10 INCIDENT, THE ORIGINAL CRIME THAT WE WERE INTERESTED IN
11 FINDING OUT MORE ABOUT. I WAS CONDUCTING THE INTERVIEW AS
12 FAR AS TALKING TO HIM. DETECTIVE YEAGER WAS TAKING THE
13 NOTES. I BASICALLY ASKED HIM ABOUT CLARENCE CUBLEY AND
14 DANA BLACKMON.

15 Q DESCRIBE FOR ME HOW THAT WENT, WHERE YOU WERE ASKING
16 HIM ABOUT THOSE THINGS.

17 A BASICALLY, I WOULD ASK QUESTIONS; HE WOULD ANSWER
18 WHETHER OR NOT HE KNEW CLARENCE CUBLEY, WHETHER OR NOT HE
19 KNEW DANA BLACKMON. BASICALLY, I GOT TO THE POINT THAT WE
20 WERE INVESTIGATING THE MURDER OF CLARENCE CUBLEY.

21 Q DURING THE TIME THAT YOU WERE TALKING TO HIM, DID HE
22 UNDERSTAND WHAT YOU WERE SAYING?

23 A YES, HE DID.

24 Q DID HE RESPOND APPROPRIATELY TO THE QUESTIONS THAT YOU
25 ASKED?

1 A YES.

2 Q AT ANY TIME DID HE LOOK PUZZLED AND UNABLE TO
3 UNDERSTAND WHAT YOU WERE ASKING?

4 A MAYBE ONCE OR TWICE DURING THE INTERVIEW I WOULD HAVE
5 REWORD SOMETHING, AS FAR AS A PHRASE, PROBABLY MY USE OF
6 SLANG OR WHATEVER HE DIDN'T UNDERSTAND.

7 Q DID HE SEEM TO HAVE ANY PROBLEMS COMMUNICATING WITH
8 YOU OR TELLING YOU HIS WISHES?

9 A NO, HE DID NOT.

10 Q IF YOU WOULD, TELL ME WHAT HE TOLD YOU REGARDING THE
11 CRIME IN THIS CASE.

12 A HE SAID HE DIDN'T KNOW ANYTHING ABOUT MR. CUBLEY'S
13 DEATH UNTIL HE WAS IN CUSTODY IN THIS AREA AND A GUY IN THE
14 JAIL AREA SHOWED HIM A NEWSPAPER ARTICLE. AND THAT WAS
15 AFTER HE HAD ALREADY BEEN IN CUSTODY AND THROUGH
16 DIFFERENT ORGANIZATIONS BEEN IDENTIFIED AS THE PERSON WE
17 WERE LOOKING FOR.

18 Q DID HE SAY ANYTHING ABOUT THE FORGERIES AND THAT SORT
19 OF THING?

20 A I'LL HAVE TO READ EXACTLY WHAT HE SAID. BUT I'M PRETTY
21 SURE HE-- HE SAID HE WENT INTO THE BANK WITH DANA, THAT SHE
22 HAD GOT THE CHECKS FROM SOMEWHERE AND GAVE HIM TO CASH.
23 HE SAID THAT SHE GOT THEM FROM HER GRANDFATHER.

24 Q HE SAID THAT SHE HAD GOTTEN THE CHECKS FROM HER
25 GRANDFATHER AND HAD GIVEN THEM TO HIM?

1 A RIGHT. AND HE SAID THAT HE DID GO IN AND CASHED THE
2 CHECKS.

3 Q DID YOU SHOW HIM ANY PHOTOGRAPHS FROM THE BANK AT
4 THAT TIME?

5 A YES. WE HAD TWO STILLS AND COPIES OF ALL THREE CHECKS, I
6 BELIEVE, THAT I SHOWED HIM.

7 Q DID HE CONFIRM WHETHER THAT WAS HIM IN THE STILLS, IN
8 THE VIDEO?

9 A YES, HE DID.

10 Q DID HE CONFIRM WHETHER THOSE SIGNATURES ON THE CHECKS
11 WERE HIS?

12 A YES.

13 Q BY SAYING YES, ARE YOU SAYING, YES, THAT HE CONFIRMED
14 THOSE WERE HIS SIGNATURES?

15 A YES, THOSE WERE HIS SIGNATURES, AND THAT WAS HIM IN THE
16 STILL PICTURES.

17 Q NOW, DID YOU EVER TALK TO HIM INITIALLY ABOUT THE
18 MEXICAN CONSULATE?

19 A YES. WE HAD A FORM TO FILL OUT AND FAX TO THE MEXICAN
20 CONSULATE ONCE HE WAS IN CUSTODY HERE, THAT WE NEEDED TO
21 NOTIFY THEM. AND IT WAS IN SPANISH AND ENGLISH. WE LET HIM
22 READ THE SPANISH VERSION WHILE WE READ THE ENGLISH VERSION
23 OUT LOUD TO HIM. I THINK HE HAD TO SIGN THAT, BUT I'M NOT SURE.
24 I WOULD HAVE TO LOOK AT IT AGAIN.

1 Q WHAT DID THAT FORM ADVISE HIM? DO YOU HAVE THAT WITH
2 YOU?

3 A I DO NOT HAVE IT.

4 MR. THOMPSON: I HAVE A COPY. WE'LL MAKE THAT PART OF
5 THE COURT'S EXHIBIT NUMBER ONE.

6 Q WHAT DID THAT FORM SAY, THE ENGLISH VERSION OF IT?

7 A IT SAYS, "SUGGESTED STATEMENT TO ARRESTED OR DETAINED
8 FOREIGN NATIONAL." THIS IS THE ENGLISH COPY. STATEMENT ONE:
9 "WHEN CALLED IT IS THE FOREIGN NATIONAL'S OPTION AS A NON-US
10 CITIZEN WHO HAS BEEN ARRESTED OR DETAINED, YOU ARE ENTITLED
11 TO HAVE US NOTIFY YOUR COUNTRY CONSULATE REPRESENTATIVE
12 HERE IN THE UNITED STATES. DO YOU WANT US TO NOTIFY YOUR
13 COUNTRY'S CONSULATE OFFICIALS? PLEASE CIRCLE YES OR NO."

14 LIKE I SAID, HE HAD THE SPANISH VERSION AND HE CIRCLED
15 YES AND SIGNED IT.

16 Q DID YOU ULTIMATELY NOTIFY THE MEXICAN CONSULATE THAT
17 YOU HAD HIM IN CUSTODY?

18 A YES. I FAXED A COPY TO-- WE HAD A LIST OF OFFICES AND I
19 THINK RALEIGH WAS THE CLOSEST ONE. I'M NOT SURE.

20 Q WAS THAT SENT OUT THAT SAME DAY?

21 A YES.

22 Q NOW, GOING BACK TO THE INTERVIEW THAT WAS DONE, WAS
23 THE STATEMENT CREATED FROM WHAT HE HAD TOLD YOU AT THAT
24 POINT IN TIME, THE WRITTEN STATEMENT? IN OTHER WORDS, WAS IT

1 CREATED FROM WHAT HE HAD TOLD YOU AT THE TIME YOU WERE
2 INTERVIEWING HIM?

3 A YES. DETECTIVE YEAGER TYPED IT UP FROM HIS NOTES.

4 Q NOW, DID YOU TYPE IT UP WHILE YOU WERE THERE, OR DID
5 Y'ALL STEP OUT AND COME BACK?

6 A WE WENT BACK UPSTAIRS TO OUR OFFICE.

7 Q WHEN YOU CAME BACK DID YOU GO OVER THAT STATEMENT
8 WITH HIM?

9 A HE WAS BACK IN THE CELL AT THE TIME. WE HAD THEM BRING
10 HIM BACK OUT INTO THE COMMON AREA, THE BOOKING AREA. WE
11 GOT A JAILER THAT WE USE THAT SPOKE SPANISH THERE TO READ IT
12 TO HIM.

13 Q WAS THAT IN CASE HE COULDN'T READ ENGLISH?

14 A THAT'S RIGHT.

15 Q AND THE JAILER THAT YOU HAD READ THAT, WHAT WAS HIS
16 NAME?

17 A ROBERT GUZMAN.

18 Q DID HE GO OVER THAT STATEMENT WITH THE DEFENDANT AT
19 THAT POINT IN TIME?

20 A LET ME BACK UP. HE ACTUALLY NEVER INDICATED HE
21 COULDN'T READ ENGLISH; HE COULDN'T WRITE ENGLISH.

22 Q ALL RIGHT. OTHER THAN WRITING HIS NAME?

23 A RIGHT.

24 Q DID MR. GUZMAN GO OVER THAT STATEMENT WITH THE
25 DEFENDANT AT THAT TIME IN SPANISH?

EDDIE STRAIT - DIRECT EXAMINATION BY MR. THOMPSON

1 A YES.

2 Q DID THE DEFENDANT AGREE THAT THAT WAS HIS STATEMENT?

3 A YES, HE DID.

4 Q HE SIGNED THE STATEMENT AT THAT POINT?

5 A YES, HE DID.

6 Q WHO SIGNED AS WITNESSES ON THAT STATEMENT?

7 A I DID.

8 Q DID YOU SIGN THE TIME AS WELL?

9 A YES.

10 Q WHAT TIME WAS IT?

11 A 12:41.

12 Q IF YOU WOULD, READ THE STATEMENT TO THE COURT AT THIS
13 TIME.

14 A "I WAS ASKED ABOUT THE DEATH OF CLARENCE CUBLEY BY
15 TWO DETECTIVES FROM THE YORK COUNTY SHERIFF'S OFFICE. I TOLD
16 THEM I DIDN'T KNOW ANYTHING ABOUT MR. CUBLEY'S DEATH UNTIL I
17 WAS IN CUSTODY IN MISSOURI AND A WHITE BOY SHOWED ME A
18 NEWSPAPER ARTICLE. I NEVER WENT TO MR. CUBLEY'S TRAILER TO
19 ROB HIM OR ASSAULT HIM. I DID KNOW MR. CUBLEY BECAUSE WE
20 LIVED IN THE TRAILER PARK IN FORT MILL FOR ABOUT TWO YEARS. I
21 WAS TOLD DANA MADE A STATEMENT SAYING THAT I WAS THE ONE
22 WHO KILLED MR. CUBLEY. I THINK DANA MADE THESE STATEMENTS
23 BECAUSE SHE WAS MAD AT ME. I LEFT ROCK HILL ABOUT THIS TIME
24 BECAUSE THE POLICE WERE COMING BY MY TRAILER LOOKING FOR
25 ME. I KNEW THEY HAD WARRANTS ON ME BECAUSE I DIDN'T SHOW UP

1 FOR COURT ON A CRIMINAL DOMESTIC VIOLENCE CHARGE. I DID NOT
2 HIT DANA, BUT SHE TOLD THE POLICE THAT I DID. I LEFT TOWN TO
3 GET AWAY FROM DANA AND SO I WOULDN'T GO TO JAIL.

4 BEFORE I LEFT TOWN DANA GAVE ME SOME CHECKS THAT SHE
5 SAID HER GRANDFATHER GAVE HER. SHE WANTED ME TO CASH THE
6 CHECKS SO SHE COULD BUY A CAR. I DID CASH THESE CHECKS. I WAS
7 SHOWN PICTURES FROM THE BANK AND I TOLD DETECTIVES THAT
8 THAT WAS ME IN THE PICTURE. THE DETECTIVE SHOWED ME COPIES
9 OF THE CHECKS FROM THE BANK AND I TOLD HIM THAT WAS THE
10 CHECKS THAT I CASHED AND THAT WAS MY SIGNATURE ON THE BACK
11 OF THE CHECKS.

12 WHEN I LEFT TOWN, I GOT A TAXI FROM THE BP ON HIGHWAY 21
13 AND WENT TO THE GREYHOUND BUS STATION IN CHARLOTTE. I WENT
14 TO KENTUCKY WHERE I STAYED FOR ABOUT A YEAR. THEN I WENT TO
15 FLORIDA FOR ALMOST TWO YEARS. I WAS DOING ROOFING WORK AND
16 THAT'S WHERE THE JOBS WERE. I WENT TO TEXAS, KANSAS, AND
17 MISSOURI, WHERE I WAS ARRESTED.

18 THIS STATEMENT WAS WRITTEN FOR ME BY DETECTIVE
19 YEAGER. I HAVE READ IT AND IT IS MY TRUE AND ACCURATE
20 STATEMENT."

21 Q AND HE SIGNED IT AT THE BOTTOM?

22 A YES.

23 Q NOW, WHEN YOU HAD OFFICER GUZMAN COME IN, WAS THAT
24 THE FIRST TIME HE HAD HAD CONTACT WITH THE DEFENDANT, OR DID

1 YOU USE HIM AT ALL DURING THE PROCESS OF GETTING THE
2 STATEMENT?

3 A DURING THE INITIAL INTERVIEW, ABOUT A HALF AN HOUR IN,
4 WHEN WE GOT TO ASKING WHERE HE HAD BEEN FOR THE LAST
5 SEVERAL YEARS, WHEN HE LEFT HERE, WHERE'D HE GO, AND SO ON.

6 Q SO, THE LAST STATEMENT, THE LAST PARAGRAPH OF THIS
7 STATEMENT WHERE HE TALKS ABOUT WHEN HE LEFT TOWN AND
8 WENT THE TO THE BP STATION, IS THAT WHAT YOU'RE TALKING
9 ABOUT?

10 A YES. HE JUST ASKED ME IF HE HAD SOMEBODY THAT HE COULD
11 SPEAK TO IN SPANISH, HE COULD EXPLAIN IT BETTER.

12 Q DID HE SAY WHY HE WOULD PREFER TO SPEAK TO SOMEONE IN
13 SPANISH AT THAT POINT?

14 A NO, HE DIDN'T.

15 Q DID HE HAVING ANY PROBLEM RELAYING THAT TO YOU?

16 A NO.

17 Q HAD HE HAD ANY PROBLEM RELAYING ANY OTHER
18 INFORMATION TO YOU PRIOR TO THAT?

19 A NO, HE HAD NOT.

20 Q BUT HE WAS ABLE TO RELAY THAT TO YOU, THE FIRST TWO
21 PARAGRAPHS OF THIS STATEMENTS, WHICH WAS WHAT HE GAVE TO
22 YOU WITHOUT THE HELP OF ANY INTERPRETER OR ANY OTHER HELD
23 AT THAT TIME?

24 A THAT'S RIGHT.

1 Q NOW, DID HE SAY THAT HE WANTED SOMEONE TO SPEAK TO HIM
2 IN SPANISH OR DID HE SAY HE WANTED TO SPEAK TO SOMEONE IN
3 SPANISH?

4 A IF I REMEMBER CORRECTLY, HE SAID THAT HE COULD EXPLAIN
5 IT BETTER IF HE COULD SPEAK TO SOMEONE IN SPANISH.

6 Q DID HE INDICATE THAT HE WAS HAVING TROUBLE
7 UNDERSTANDING YOU AT ALL, OR WAS HE SAYING HE WAS HAVING
8 TROUBLE COMMUNICATING, OR TELLING YOU WHAT HE WANTED TO
9 TELL YOU?

10 A I THINK HE WAS HAVING TROUBLE TELLING ME WHAT HE
11 WANTED TO TELL ME.

12 Q IS THAT WHEN YOU ASKED OFFICER GUZMAN TO COME IN?

13 A IT IS.

14 Q AND WHEN OFFICER GUZMAN COMES IN, DID YOU GO OVER
15 EVERYTHING AGAIN WITH THE DEFENDANT AT THAT TIME, AS FAR AS
16 THE STATEMENT GOES?

17 A JUST THE STATEMENT PART?

18 Q YES, THE STATEMENT PART.

19 A WE HAD TO TELL OFFICER GUZMAN BASICALLY WHAT THE
20 INTERVIEW WAS ABOUT AND WHAT HE HAD TOLD US.

21 Q OKAY.

22 A AND THEN HE WOULD REFER TO HIM BACK AND FORTH IN
23 SPANISH AND THEN, LIKE I SAID, ALL THAT HE REALLY ADDED WAS
24 THE LAST PART OF WHERE HE HAD BEEN THE LAST FEW YEARS.

1 Q DID YOU THREATEN THE DEFENDANT IN ANY WAY FOR HIM TO
2 TALK TO YOU AT THAT TIME?

3 A NO, I DID NOT.

4 Q DID YOU USE ANY OTHER FORCE ON HIM OR THREATS OR
5 INTIMIDATION?

6 A NO SIR.

7 Q WAS HE COERCED BY YOU IN ANY WAY BY YOU OR DETECTIVE
8 YEAGER OR OFFICER GUZMAN?

9 A NO SIR, HE WAS NOT.

10 Q AT ANY TIME DID HE ASK TO HAVE AN ATTORNEY OR TO LEAVE?

11 A NO, HE DID NOT.

12 Q IS THERE ANY POINT WHERE HE INDICATED THAT HE WAS NOT
13 WILLING TO TALK TO YOU AT THAT POINT?

14 A NO.

15 Q GOING BACK TO THE POINT AT WHICH YOU GOT OFFICER
16 GUZMAN BECAUSE HE WISHED TO SPEAK SPANISH TO SOMEONE, HAD
17 HE ACTED AS IF HE DIDN'T UNDERSTAND WHAT WAS GOING ON
18 BEFORE OR AT THAT POINT IN ANY WAY?

19 A NO, HE HAD NOT.

20 Q THANK YOU.

21 MR. THOMPSON: NO FURTHER QUESTIONS.

22 **CROSS EXAMINATION BY MR. CHIARENZA:**

23 Q SO, DETECTIVE, AT SOME POINTS DURING THE INTERVIEW THERE
24 WERE SOME DIFFICULTIES IN COMMUNICATION. IS THAT CORRECT?

1 A I'D SAY PROBABLY A COUPLE OF TIMES, JUST WORDS OR
2 PHRASES.

3 Q SO, IN FACT, OFFICER GUZMAN WAS BROUGHT IN BECAUSE HE
4 SPEAKS SPANISH?

5 A THAT'S CORRECT.

6 Q AND SO, YOU TESTIFIED THE REASON FOR THAT WAS BECAUSE
7 MY CLIENT WANTED TO EXPLAIN SOME THINGS IN SPANISH?

8 A THAT'S RIGHT.

9 Q SO, ARE YOU SAYING, HE WASN'T QUESTIONED IN SPANISH?

10 A NO. HE WOULD TELL US AND SOME THINGS HE WOULD SAY, WE
11 WOULD ASK OFFICER GUZMAN QUESTIONS TO ASK HIM.

12 Q AND THEN THAT REPORT ULTIMATELY IS THE SUM TOTAL OF
13 WHATEVER YOU GOT FROM MR. GUTIERREZ, EITHER IN SPANISH OR IN
14 ENGLISH?

15 A THAT'S CORRECT.

16 Q AND THERE'S NOTHING ELSE OUT THERE THAT YOU'RE AWARE
17 OF THAT HE MIGHT HAVE SAID?

18 A NOT THAT I'M AWARE OF.

19 Q THAT FORM THAT GIVES HIM THE RIGHT TO HAVE THE
20 CONSULATE CONTACTED, HE SIGNED THE SPANISH TRANSLATION OF
21 THAT?

22 A I DID NOT.

23 Q NO, NO. HE DID?

24 A HE DID, YES SIR.

25 Q MR. GUTIERREZ?

1 A THAT'S CORRECT.

2 Q AND HE ADVISED YOU HE DID WANT HIS CONSULATE NOTIFIED?

3 A THAT'S CORRECT.

4 Q AND Y'ALL DID NOTIFY THE CONSULATE, BUT AFTER YOU HAD
5 COMPLETED THE INTERVIEW WITH MR. GUTIERREZ?

6 A THAT'S CORRECT.

7 Q ARE YOU AWARE AT THE TIME YOU WERE INTERVIEWING HIM
8 AN INDIVIDUAL NAMED MR. MONTROSE FROM THE MEXICAN
9 CONSULATE HAD SENT A LETTER TO THE SOLICITOR'S OFFICE AND TO
10 THE SHERIFF'S OFFICE ASKING THAT HE NOT BE QUESTIONED OUTSIDE
11 THE PRESENCE OF COUNSEL?

12 A I'D SEEN A COPY OF THAT LETTER, YES.

13 Q THERE WAS NO COUNSEL PRESENT AT THE TIME YOU WERE
14 QUESTIONING MR. GUTIERREZ, WAS THERE?

15 A NO, THERE WAS NOT.

16 Q AND, AGAIN, ONE OF THE REASONS THAT HE ASKED FOR MR.
17 GUZMAN, DEPUTY GUZMAN WAS BROUGHT IN WAS MY CLIENT SAID I
18 CAN EXPLAIN THINGS BETTER TO YOU IF I CAN STATE IT IN SPANISH?

19 A CORRECT.

20 Q BUT THAT REALLY RELATES TO THE FINAL PORTION,
21 APPARENTLY, BECAUSE WHAT HE GOT TO EXPLAIN IN SPANISH
22 RELATES TO WHERE HE HAD BEEN OVER THE PAST FIVE YEARS.
23 RIGHT?

24 A RIGHT.

1 Q THE STUFF PRIOR TO THAT YOU GOT OUT OF HIM SPEAKING IN
2 ENGLISH?

3 A THAT'S CORRECT.

4 Q AND OFFICER GUZMAN NEVER MIRANDIZED HIM IN SPANISH,
5 DID HE?

6 A NOT THAT I'M AWARE OF. I DIDN'T UNDERSTAND WHAT HE WAS
7 SAYING.

8 Q NOT IN YOUR PRESENCE. OKAY. BUT, I MEAN, YOU NEVER
9 ASKED HIM TO READ HIM HIS RIGHTS IN SPANISH?

10 A NO.

11 Q AND YOU WERE THERE THE ENTIRE TIME THAT YOU WERE
12 UTILIZING THE ASSISTANCE OF OFFICER GUZMAN.

13 MR. CHIARENZA: YOUR HONOR, THAT'S ALL I HAVE. I WOULD
14 JUST WOULD STATE MY OBJECTION TO THE STATE WOULD BE
15 WHETHER OR NOT MY CLIENT MADE A KNOWING AND INTELLIGENT
16 WAIVER OF HIS RIGHT. ALSO, THAT THE RIGHT WAS ASSERTED,
17 ALBEIT BY A THIRD PARTY, BUT THAT WAS SOMEBODY WHO
18 PURPORTED TO REPRESENT MR. GUTIERREZ AT THE TIME.

19 THE COURT: DO YOU HAVE ANY RE-DIRECT?

20 MR. THOMPSON: NOTHING ON RE-DIRECT, YOUR HONOR. THAT'S
21 OUR PROFFER.

22 THE COURT: YOU MAY STEP DOWN.

23 MR. THOMPSON: THE STATE CALLS DETECTIVE RUSS YEAGER.

24

1 Q WHEN YOU WENT TO TALK TO HIM, DID YOU TALK TO HIM IN A
2 ROOM AT THE DETENTION CENTER?

3 A YES SIR, THE INTERVIEW ROOM.

4 Q WHEN YOU TALKED TO HIM WITH DETECTIVE STRAIT, WERE
5 YOU THERE WHEN DETECTIVE STRAIT WENT OVER HIS RIGHTS?

6 A YES, I WAS.

7 Q CAN YOU TELL ME, LOOKING AT COURT'S EXHIBIT NUMBER ONE,
8 IN THAT PACKET, IF YOU WOULD LOOK AND TELL ME IS THE RIGHTS
9 FORM IN THERE?

10 A YES SIR, IT IS.

11 Q DO YOU REMEMBER DETECTIVE STRAIT READING THOSE
12 RIGHTS, LINE BY LINE, TO THE DEFENDANT?

13 A YES SIR.

14 Q DID THE DEFENDANT SEEM TO UNDERSTAND THOSE RIGHTS IN
15 YOUR OPINION?

16 A YES SIR.

17 Q AND WHAT INDICATED TO YOU THAT HE UNDERSTOOD HIS
18 RIGHTS?

19 A WE ASKED HIM IF HE SPEAKS ENGLISH, AND HE SAID HE DID, HE
20 SPEAKS AND UNDERSTANDS ENGLISH.

21 Q DID HE SAY ANYTHING FURTHER THAN THAT?

22 A HE SAID THAT HE SPEAKS AND UNDERSTANDS ENGLISH, BUT HE
23 DIDN'T READ OR WRITE IN ENGLISH.

24 Q GOING OVER THAT RIGHTS FORM, THE THINGS THAT HE
25 UNDERSTOOD, DID HE RESPOND YES, THAT HE UNDERSTOOD?

RUSS YEAGER - DIRECT EXAMINATION BY MR. THOMPSON

- 1 A YES.
- 2 Q DID HE VERBALLY RESPOND YES?
- 3 A YES SIR.
- 4 Q WHEN YOU WENT OVER THE WAIVER OF RIGHTS, OR THAT
- 5 DETECTIVE STRAIT DID, ABOUT HIS RIGHT TO ANSWER QUESTIONS
- 6 AND SO ON, DID HE READ THAT WORD FOR WORD AS WELL?
- 7 A YES SIR, HE DID.
- 8 Q AND DID THE DEFENDANT SEEM TO UNDERSTAND THOSE AS
- 9 WELL?
- 10 A YES SIR.
- 11 Q DID HE INDICATE THAT VERBALLY, THAT HE UNDERSTOOD?
- 12 A YES SIR, HE DID.
- 13 Q DURING THE TIME THAT HE WENT OVER HIS EDUCATION LEVEL,
- 14 DID HE UNDERSTAND THAT QUESTION, AND DID HE INDICATE WHAT
- 15 LEVEL OF EDUCATION HE HAD?
- 16 A YES.
- 17 Q WHAT DID HE SAY?
- 18 A THAT HE COULD READ AND HE COULD WRITE IN SPANISH.
- 19 Q HOW ABOUT HIS ACTUAL EDUCATIONAL LEVEL?
- 20 A NINTH GRADE.
- 21 Q NINTH GRADE?
- 22 A YES SIR.
- 23 Q YOU WERE THE ONE, I BELIEVE, TAKING NOTES DURING THIS
- 24 TIME?
- 25 A YES SIR, I WAS.

1 Q THE NOTES THAT YOU RECORDED, DID YOU MEMORIALIZE
2 THOSE IN WRITTEN NOTES?

3 A YES SIR, I DID.

4 Q CAN YOU TELL ME, WHAT DID HE TALK ABOUT INITIALLY WHEN
5 HE STARTING TALKING WITH YOU AT THAT POINT? HOW DID THE
6 CONVERSATION GO, INITIALLY?

7 A MYSELF AND DETECTIVE STRAIT, WHEN WE WENT INTO THE JAIL
8 WE INTRODUCED OURSELVES, TOLD HIM WHO WE WERE, WHO WE
9 WERE WITH, EXPLAINED TO HIM WE WERE DETECTIVES WITH THE
10 SHERIFF'S OFFICE.

11 WE TOLD HIM WE WERE HERE TO TALK TO HIM IN REFERENCE
12 TO THE MURDER OF CLARENCE CUBLEY.

13 Q WERE YOU DRESSED IN PLAIN CLOTHES THAT DAY?

14 A YES SIR, WE WERE.

15 Q DID EACH OF YOU HAVE YOUR BADGES ON?

16 A YES SIR.

17 Q AFTER INITIALLY GOING OVER THIS STUFF WITH HIM AS FAR AS
18 HIS RIGHTS AND THAT SORT OF THING, TELLING HIM WHY YOU WERE
19 THERE, DID YOU ALSO GO OVER HIS RIGHTS REGARDING HIS RIGHT TO
20 NOTIFY THE MEXICAN CONSULATE?

21 A YES SIR, WE DID.

22 Q CAN YOU TELL ME HOW YOU WENT OVER THAT?

23 A WE HAD A FORM BEFORE WE WENT TO THE JAIL TO TALK TO
24 HIM. WE HAD A FORM, ONE IN ENGLISH AND ONE IN SPANISH.

25 Q ALL RIGHT.

1 A WE READ THE ONE IN ENGLISH AND WE GAVE HIM ONE TO READ
2 IN SPANISH.

3 Q SO, YOU READ THE ONE IN ENGLISH AND HANDED HIM THE ONE
4 TO READ IN SPANISH?

5 A YES.

6 Q DID HE SIGN THE FORM?

7 A YES SIR. HE SIGNED THE ONE IN SPANISH, SAYING HE DID WANT
8 THE MEXICAN CONSULATE NOTIFIED.

9 Q DID YOU AS A RESULT OF THAT ALSO NOTIFY THE MEXICAN
10 CONSULATE?

11 A YES SIR, WE DID.

12 Q DO YOU REMEMBER WHEN YOU DID THAT?

13 A THAT DAY WHEN WE LEFT THE JAIL WE WENT BACK UPSTAIRS
14 TO OUR OFFICE. WE NOTIFIED THEM BY LEAVING A MESSAGE. IT WAS
15 ON A WEEKEND. WE LEFT A MESSAGE ON THEIR VOICE MAIL AND
16 ALSO A FAX NOTIFICATION FORM.

17 Q NOW, IF YOU COULD, DESCRIBE THE CONVERSATION AND WHAT
18 HE SAID WHEN YOU AND DETECTIVE STRAIT WERE TALKING WITH HIM
19 AFTER THE MIRANDA RIGHTS AND AFTER THE CONSULATE FORM WAS
20 SIGNED.

21 A WE STARTED OUT JUST ASKING-- WE EXPLAINED TO HIM THAT
22 WE HAD TALKED TO DANA AND THAT SHE HAD COOPERATED WITH
23 LAW ENFORCEMENT AND THAT SHE HAD MADE A STATEMENT
24 IMPLICATING HIM IN THE MURDER OF MR. CUBLEY.

25 Q OKAY.

1 A WE EXPLAINED TO HIM THAT WE TOLD HER THAT WE JUST
2 WANTED TO SPEAK WITH HIM AND GET HIS SIDE OF THE STORY AND
3 SEE WHAT HE HAD TO SAY ABOUT IT.

4 Q WHAT DID HE TELL YOU AT THAT POINT?

5 A HE STARTED TALKING ABOUT SOME CHECKS, THAT HE DID GET
6 SOME CHECKS FROM DANA, THAT SHE HAD TOLD HIM SHE HAD GOT
7 THEM FROM HER GRANDFATHER.

8 Q OKAY.

9 A AND THAT HE DID GO AND CASH THOSE CHECKS.

10 Q DID YOU SHOW HIM ANYTHING ABOUT THOSE CHECKS AT THAT
11 TIME?

12 A DETECTIVE STRAIT SHOWED HIM PICTURES AND COPIES OF THE
13 CHECKS FROM THE BANK.

14 Q WHAT, IF ANYTHING, DID HE SAY ABOUT THOSE THINGS?

15 A HE LOOK AT THE PHOTOGRAPHS AND SAID THAT WAS HIM AND
16 THAT WAS HIS SIGNATURE ON THE CHECKS.

17 Q WHAT ELSE, IF ANYTHING, DID HE SAY AT THAT POINT?

18 A THEY USED THE MONEY. THEY HAD WANTED TO BUY A CAR.

19 Q GO ON AND TELL ME WHAT ELSE DID HE SAY?

20 A HE SAID WHENEVER HE CASHED THE CHECKS, HE GAVE THE
21 MONEY TO DANA. HE STATED RIGHT AFTER THAT HE LEFT TOWN. HE
22 SAID HE KNEW THE POLICE WERE LOOKING FOR HIM AND HE HAD
23 SOME OUTSTANDING WARRANTS FOR CRIMINAL DOMESTIC VIOLENCE.
24 HE TOLD US THAT THE POLICE HAD BEEN BY HIS TRAILER THREE
25 TIMES AND THAT HE HAD RAN EVERY TIME. HE SAID HE WANTED TO

1 GET AWAY FROM DANA AND GET OUT OF TOWN SO HE WOULDN'T GO
2 TO JAIL.

3 Q DID HE TELL YOU WHEN HE FOUND OUT THAT MR. CUBLEY HAD
4 DIED?

5 A HE SAID HE WAS IN JAIL IN MISSOURI AND HE SAID THESE WHITE
6 BOYS SHOWED HIM A NEWSPAPER ARTICLE.

7 Q ALL RIGHT. UP TO THIS POINT, WHILE HE WAS TALKING TO YOU,
8 DID HE HAVE ANY PROBLEM COMMUNICATING WITH YOU?

9 A NO SIR.

10 Q SO, ARE YOU HAVING ANY PROBLEM COMMUNICATING WITH
11 HIM?

12 A NO SIR.

13 Q WHAT NEXT HAPPENED AFTER HE GAVE YOU THIS
14 INFORMATION?

15 A WHEN HE WAS EXPLAINING IT TO US HE DID MENTION THE FACT
16 THAT HE COULD EXPLAIN IT BETTER IF HE COULD SPEAK IN SPANISH.

17 Q OKAY.

18 A THERE WERE SOME WORDS THAT HE SAID HE DIDN'T KNOW THE
19 ENGLISH WORD FOR IT, THAT IT WOULD BE EASIER IF HE COULD
20 COMMUNICATE IN SPANISH.

21 Q DID YOU FIND SOMEONE WHO SPOKE SPANISH AT THAT TIME?

22 A YES SIR. THERE WAS A DETENTION OFFICER GUZMAN THAT WAS
23 WORKING AT THAT TIME AND HE COULD SPEAK SPANISH. SO WE
24 ASKED HIM TO COME INTO THE INTERVIEW.

1 Q DID HE THEN COME IN AND BEGIN TO SPEAK WITH THE
2 DEFENDANT IN SPANISH?

3 A YES, HE DID.

4 Q HOW DID THE INTERVIEW GO AFTER THAT?

5 A HE WENT ON TO SAY THAT-- WHEN WE HAD TALKED TO HIM
6 FOR TWENTY TO THIRTY MINUTES, HE TOLD US THAT WHENEVER HE
7 LEFT FORT MILL HE TOOK A TAXI FROM THE BP STATION ON HIGHWAY
8 21 IN FORT MILL TO THE GREYHOUND BUS STATION IN CHARLOTTE.

9 Q DID HE TELL WHERE HE WENT AFTER THAT?

10 A WHEN HE LEFT THERE HE WENT TO KENTUCKY FOR A YEAR,
11 THEN WENT TO FLORIDA FOR A YEAR AND A HALF, THEN HOUSTON,
12 TEXAS, KANSAS, AND THEN MISSOURI.

13 Q WHAT ELSE DID HE TELL YOU AT THAT POINT?

14 A HE SAID HE WORKED IN CONSTRUCTION DOING ROOFING WORK
15 AND THAT HE WOULD TRAVEL TO WHEREVER THEIR JOBS WERE.

16 Q DID YOU THEN ASK HIM SPECIFIC QUESTIONS AS TO WHETHER
17 HE HAD KILLED MR. CUBLEY?

18 A YES SIR. WE ASKED DETENTION OFFICER GUZMAN IF HE COULD
19 ASK HIM ABOUT MR. CUBLEY AND SEE IF HE COULD TELL US ABOUT
20 ANY INVOLVEMENT IN THAT. HE TOLD US THAT HE DIDN'T KILL HIM;;
21 STATED THAT HE DID KNOW HIM, BUT THAT HE DIDN'T KNOW THAT HE
22 WAS DEAD UNTIL HE WAS IN JAIL IN MISSOURI.

23 Q NOW, AFTER Y'ALL TALKED TO HIM AT THAT POINT, DID YOU
24 CONCLUDE THE INTERVIEW AT THAT TIME?

25 A YES SIR.

1 Q ABOUT WHAT TIME WAS THAT?

2 A APPROXIMATELY ELEVEN, A LITTLE AFTER ELEVEN, IT WAS
3 11:07.

4 Q SO, AT 11:07, YOU CONCLUDED THE INTERVIEW?

5 A YES.

6 Q WHERE DID YOU GO THEN?

7 A MYSELF AND DETECTIVE STRAIT, WE WENT TO THE DETENTION
8 CENTER AND WENT BACK UPSTAIRS TO OUR OFFICE.

9 Q WHAT DID YOU DO AT THAT POINT?

10 A AT THAT POINT WE NOTIFIED THE MEXICAN CONSULATE'S
11 OFFICE IN RALEIGH WITH PHONE AND ALSO FAX THE REQUEST.

12 Q DID YOU ALSO DO A WRITTEN STATEMENT FOR THE DEFENDANT
13 AT THAT TIME?

14 A YES, I DID.

15 Q WERE YOU THE ONE THAT TYPED UP THAT STATEMENT?

16 A YES, I WAS.

17 Q AFTER YOU TYPED UP THAT STATEMENT WHAT DID YOU DO?

18 A AFTER WE TYPED THE STATEMENT WE WENT BACK DOWN TO
19 THE DETENTION CENTER AND READ IT TO MR. GUTIERREZ. I HAD
20 OFFICER GUZMAN THERE TRANSLATING INTO SPANISH AND ASKED
21 HIM IF THIS WHAT HE SAID. AND HE AGREED THIS IS WHAT HE TOLD
22 US. AT THAT TIME HE SIGNED IT.

23 Q IS THAT THE STATEMENT THAT YOU HAVE THERE IN COURT'S
24 EXHIBIT NUMBER ONE? IS THAT THE STATEMENT THAT YOU WROTE
25 AND HE SIGNED THAT DAY?

1 A YES SIR, IT IS.

2 Q DID ANYONE FORCE HIM TO TALK WITH YOU THAT DAY OR TO
3 SIGN THE STATEMENT?

4 A NO SIR.

5 Q DID ANYONE THREATEN HIM IN ANY WAY?

6 A NO SIR.

7 Q COERCE HIM IN ANY WAY?

8 A NO SIR.

9 Q PROMISE HIM ANYTHING FOR HIS STATEMENT AT THAT TIME?

10 A NO SIR.

11 Q DID HE EVER AT ANY POINT INVOKE HIS RIGHT TO HAVE AN
12 ATTORNEY OR ASK TO STOP SPEAKING TO YOU?

13 A NO SIR.

14 Q WHEN YOU WERE TALKING TO HIM AT THE POINT WHERE HE
15 ASKED TO TRY TO COMMUNICATE SOMETHING IN SPANISH, HAD YOU
16 EVER HAD THE INDICATION THAT HE DID NOT UNDERSTAND WHAT
17 WAS GOING ON?

18 A NO SIR.

19 Q WERE YOU ABLE TO CARRY ON A CONVERSATION WITH HIM IN
20 ENGLISH AT THAT POINT?

21 A YES SIR.

22 Q DID YOU HAVE ANY PROBLEM UNDERSTANDING WHAT HE WAS
23 TELLING YOU?

24 A NO SIR.

1 Q DID HE APPEAR TO HAVE ANY PROBLEM UNDERSTANDING WHAT
2 YOU WERE TELLING HIM?

3 A NO SIR.

4 Q THANK YOU.

5 MR. THOMPSON: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: CROSS EXAMINATION.

7 CROSS EXAMINATION BY MR. CHIARENZA:

8 Q THE STATEMENT THAT YOU TYPED UP, THAT'S EVERYTHING
9 THAT HE SAID THAT DAY?

10 A YES SIR.

11 Q AND SO, THERE WASN'T ANYTHING OUTSIDE OF WHAT'S
12 WRITTEN ON THOSE PAGES THAT WAS COMMUNICATED TO YOU,
13 EITHER BY THE DEFENDANT---

14 A NO SIR.

15 Q ---OR THROUGH TRANSLATION BY OFFICER GUZMAN?

16 A NO SIR.

17 Q SO, THAT'S THE SUM TOTAL OF EVERYTHING EITHER YOU HEARD
18 HIM SAY IN ENGLISH, OR GUZMAN TOLD YOU WHAT HE SAID IN
19 SPANISH?

20 A YES SIR.

21 MR. CHIARENZA: THAT'S ALL MY QUESTIONS.

22 MR. THOMPSON: NOTHING FURTHER.

23 THE COURT: YOU MAY STEP DOWN.

24 MS. COLLINS: YOUR HONOR, THE STATE CALLS OFFICER
25 GUZMAN.

1 MR. THOMPSON: YOUR HONOR, WHILE HE'S COMING IN, I WOULD
2 MAKE PART OF THE COURT'S EXHIBIT THE LETTER THAT WE HAVE
3 REFERRED FROM THE MEXICAN CONSULATE, AND THE FORM THAT
4 WAS FILLED OUT REGARDING NOTIFICATION OF THE MEXICAN
5 CONSULATE BEFORE WE SPOKE WITH THE DEFENDANT.

6 THE COURT: ALL RIGHT.

7 ROBERT RIVERA GUZMAN III, DULY
8 SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MS. COLLINS:

10 Q WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

11 A ROBERT RIVERA GUZMAN III.

12 Q WHAT'S YOUR OCCUPATION?

13 A I'M A DETENTION OFFICER WITH THE YORK COUNTY SHERIFF'S
14 OFFICE.

15 Q WERE YOU SO EMPLOYED IN DECEMBER OF 2006?

16 A YES MA'AM.

17 Q DID YOU HAVE OCCASION TO SPEAK WITH THE DEFENDANT,
18 ISAIAS GUTIERREZ ON DECEMBER 10, 2006?

19 A YES MA'AM.

20 Q WHO ASKED YOU TO SPEAK TO THE DEFENDANT AT THAT TIME?

21 A I'M SORRY, MA'AM. REPEAT THE QUESTION.

22 Q WHO ASK YOU TO SPEAK WITH THE DEFENDANT AT THAT TIME?

23 A DETECTIVE YEAGER AND DETECTIVE STRAIT.

24 Q WERE YOU ON DUTY AT THAT TIME AS A DETENTION CENTER
25 OFFICER?

1 A YES MA'AM.

2 Q NOW, PRIOR TO SPEAKING TO THE DEFENDANT PURSUANT TO
3 THE REQUEST OF DETECTIVE STRAIT AND DETECTIVE YEAGER, HAD
4 YOU HAD ANY INTERACTION WITH THE DEFENDANT?

5 A NO MA'AM.

6 Q NEITHER AS A GUARD OR SOCIALLY?

7 A NO MA'AM.

8 Q AND SINCE YOU WERE ON DUTY AS A GUARD, WERE YOU
9 DRESSED THEN AS YOU ARE DRESSED NOW?

10 A YES MA'AM.

11 Q WHEN YOU CAME TO MEET WITH THE DEFENDANT, DO YOU
12 RECALL WHERE HE WAS?

13 A YES MA'AM.

14 Q WHERE WAS THAT?

15 A HE WAS IN THE INTERVIEW ROOM OF THE INTAKE AREA OF THE
16 YORK COUNTY DETENTION CENTER, FACING THE DOORWAY.

17 Q WHO ELSE WAS PRESENT AT THAT TIME?

18 A DETECTIVE YEAGER AND DETECTIVE STRAIT.

19 Q NOW, PLEASE TELL US, OFFICER, A LITTLE BIT ABOUT YOUR
20 OWN BACKGROUND IN TERMS OF YOUR ABILITY TO SPEAK SPANISH
21 AND WHERE THAT DERIVES FROM?

22 A I AM MEXICAN-AMERICAN. MY FATHER WAS MEXICAN. MY
23 MOTHER WAS AMERICAN. I WAS BORN IN PHOENIX, ARIZONA. AT THE
24 AGE OF THREE I MOVED TO CALIFORNIA. I LIVED IN CALIFORNIA
25 UNTIL I WAS FIFTEEN, IN PLACES LIKE FRESNO, SAN DIEGO, OAKLAND.

1 FROM THERE I MOVED TO SOUTH CAROLINA FOR ONE YEAR UNTIL I
2 WAS SIXTEEN. FROM THE AGE OF SIXTEEN TO NINETEEN I LIVED IN
3 SOUTH MIAMI. AFTER NINETEEN I MOVED BACK HERE.

4 I'VE BEEN IMMersed IN LATIN CULTURE ALL MY LIVE. I'M ALSO
5 MEXICAN-AMERICAN. IT'S SOMETHING I GREW UP HEARING IN THE
6 HOME, HEARING WITH MY FRIENDS.

7 Q AND NOT ONLY HEARING, BUT ALSO---

8 A SPEAKING.

9 Q DID YOU SPEAK TO THE DEFENDANT THAT DAY IN SPANISH?

10 A YES MA'AM, I DID.

11 Q WERE YOU ABLE TO COMMUNICATE SUFFICIENTLY WITH HIM?

12 A YES MA'AM.

13 Q WERE THERE ANY PROBLEMS WITH DIALECT OR THE LANGUAGE
14 ITSELF THAT WOULD CAUSE A BARRIER TO YOUR COMMUNICATING
15 WITH HIM?

16 A NO MA'AM, THERE WAS NOT.

17 Q DID HE EVER INDICATE TO YOU THAT HE DID NOT UNDERSTAND
18 YOU?

19 A THERE WAS ONCE, POSSIBLY TWICE, WHEN HE INDICATED HE
20 DIDN'T QUITE UNDERSTAND WHAT I WAS SAYING, SO I REPHRASED
21 THE QUESTION AND HE UNDERSTOOD.

22 Q DO YOU RECALL WHAT THAT WAS ABOUT?

23 A NO, I DON'T.

24 Q DID YOU HAVE ANY PROBLEM UNDERSTANDING THE
25 DEFENDANT?

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

2 Q WHEN YOU FIRST MET WITH THE DEFENDANT AT THE REQUEST
3 OF DETECTIVE STRAIT AND DETECTIVE YEAGER, WHAT IF ANYTHING
4 DID YOU SAY TO HIM REGARDING HIS RIGHTS?

5 A I SPOKE TO HIM, DO YOU UNDERSTAND YOUR RIGHTS, AND HE
6 SAID-- ACTUALLY I SAID, DO YOU COMPREHEND YOUR RIGHTS.

7 Q WHAT WAS HIS RESPONSE?

8 A HIS RESPONSE WAS YES.

9 Q AND YOU STATED JUST AS YOU STATED TODAY, EXCEPT IN
10 SPANISH?

11 A YES MA'AM.

12 Q DID YOU DELINEATE THEM IN ANY WAY SPECIFICALLY AS TO
13 THE DIFFERENT MIRANDA RIGHTS?

14 A NO MA'AM, I DID NOT.

15 Q DID YOU DISTINGUISH THEM FROM THE MIRANDA RIGHTS TO
16 THE RIGHT TO THE MEXICAN CONSULATE?

17 A I DID NOT, MA'AM.

18 Q WAS IT YOUR UNDERSTANDING THAT THOSE RIGHTS HAD
19 ALREADY BEEN REVIEWED WITHOUT DIFFICULTY WITH THE
20 DEFENDANT AND DETECTIVE STRAIT AND YEAGER?

21 A I ASSUMED, MA'AM.

22 Q BUT YOU ASKED HIM IF HE UNDERSTOOD HIS RIGHTS AND HE
23 SAID YES?

24 A YES MA'AM.

25 Q AND HE DID NOT ASK YOU TO ELABORATE FURTHER?

1 A NO MA'AM.

2 Q AND THAT WAS ALL SPOKEN IN SPANISH?

3 A YES MA'AM.

4 Q DID YOU MAKE ANY PROMISES TO THE DEFENDANT IN SPANISH?

5 A NO MA'AM.

6 Q DID YOU MAKE ANY THREATS TO THE DEFENDANTS IN
7 SPANISH?

8 A NO MA'AM.

9 Q DID HE INDICATE TO YOU IN SPANISH THAT ANYONE HAD MADE
10 ANY PROMISES OR THREATS TO HIM?

11 A NO MA'AM.

12 Q DID HE EVER INDICATE TO YOU DURING THE COURSE OF HIS
13 QUESTIONING PRIOR TO SIGNING HIS STATEMENT THAT HE WANTED
14 TO SPEAK WITH AN ATTORNEY?

15 A NO MA'AM.

16 Q AFTER YOU ASKED THE DEFENDANT IF HE UNDERSTOOD HIS
17 RIGHTS, WHAT DID YOU THEN ASK HIM IN SPANISH?

18 A I WAS ASKED BY DETECTIVE YEAGER TO ASK HIM WHERE HE
19 HAD GOTTEN THE CHECKS, WHICH I DID.

20 Q DO YOU RECALL HIS RESPONSE?

21 A HE SAID HE GOT THE CHECKS FROM DANA, WHOEVER DANA IS,
22 MA'AM.

23 Q DO YOU RECALL WHY HE SAID HE GOT THE CHECKS?

24 A I WAS ASKED WHY HE HAD GOTTEN THE CHECKS, AND I ASKED
25 HIM WHY HE HAD RECEIVED THE CHECKS, AND HE SAID TO BUY A CAR.

1 Q WHAT ELSE DID YOU ASK HIM IN SPANISH?

2 A I ASKED HIM WHY HE ASSAULTED MR. CUBLEY?

3 Q AND WHAT WAS HIS RESPONSE?

4 A HE SAID HE DID NOT ASSAULT MR. CUBLEY; THAT THEY HAD
5 HAD AN ARGUMENT AND HE HAD LEFT IN A TAXI.

6 Q THESE WERE STATEMENTS HE MADE TO YOU VERBALLY IN
7 SPANISH?

8 A YES MA'AM.

9 Q DO YOU RECALL IF YOU RELATED THAT INFORMATION TO
10 DETECTIVE STRAIT AND DETECTIVE YEAGER?

11 A I DID NOT RELAY THE ARGUMENT PART TO DETECTIVE YEAGER.
12 I RELATED THE FACT THAT HE HAD LEFT IN A TAXI. AS PART OF THAT
13 STATEMENT HE SAID HE HAD LEFT IN A TAXI; HE HAD GONE TO THE
14 CHARLOTTE GREYHOUND AND HAD TAKEN A GREYHOUND BUS TO
15 KENTUCKY WHERE HE HAD ROOF WORK.

16 Q YOU SAID YOU DID NOT RELATE THE ARGUMENT PART TO
17 DETECTIVE YEAGER.

18 A I DID NOT.

19 Q DID YOU RELATE IT TO DETECTIVE STRAIT?

20 A I DID NOT, MA'AM.

21 Q WAS THERE ANY SPECIAL OR PARTICULAR REASON WHY YOU
22 DID NOT RELATE THAT INFORMATION TO EITHER OF THESE
23 DETECTIVES?

24 A THERE WASN'T, MA'AM. THE CONVERSATION WAS GOING VERY
25 QUICKLY. SO, AS HE WAS SPEAKING, I WAS HAVING TO TRANSLATE

1 WHAT HE WAS SAYING. AND I WAS HAVING TO TRANSLATE WHAT
2 WAS BEING ASKED BY THE DETECTIVE STRAIT.

3 Q I WANT TO SHOW YOU WHAT'S BEEN MARKED AS COURT'S
4 EXHIBIT ONE AT THIS TIME. THE SECOND AND THIRD PAGE OF THAT -
5 WELL, THE SECOND PAGE OF THAT - DID YOU REVIEW THAT
6 VOLUNTARY STATEMENT WITH THE DEFENDANT?

7 A (PAUSE TO PERUSE STATEMENT)

8 Q LET ME ASK YOU, IS THAT ONE SIGNED AT THE BOTTOM?

9 A YES MA'AM.

10 Q IS IT SIGNED BY THE DEFENDANT?

11 A YES MA'AM.

12 Q DID HE SIGN IT IN YOUR PRESENCE?

13 A YES MA'AM.

14 Q DID YOU WITNESS IT?

15 A YES MA'AM.

16 Q DID YOU SIGN IT IN THE DEFENDANT'S PRESENCE?

17 A YES MA'AM.

18 Q DID YOU SIGN IT IN THE PRESENCE OF DETECTIVE STRAIT?

19 A YES MA'AM.

20 Q DID DETECTIVE STRAIT SIGN IT IN YOUR PRESENCE?

21 A YES, HE DID.

22 Q AND THAT WAS ON DECEMBER 10, 2006?

23 A YES MA'AM.

24 Q AT 12:41?

25 A YES MA'AM.

1 Q GOING BACK TO THAT, I WANT TO MAKE SURE THAT WASN'T
2 JUST A SUMMARY BY YEAGER THAT WASN'T SIGNED. GOING BACK TO
3 THAT PAGE, PAGE TWO OF COURT'S EXHIBIT ONE THAT'S SIGNED AT
4 THE BOTTOM BY THE DEFENDANT, DID YOU REVIEW THAT STATEMENT
5 WITH HIM BEFORE HE SIGNED IT IN YOUR PRESENCE?

6 A YES MA'AM. I TRANSLATED THIS STATEMENT IN SPANISH. I
7 ASKED HIM IF HE COMPREHENDED WHAT I HAD SAID, AND HE SAID
8 YES. AND I TOLD HIM TO SIGN IF HE AGREED WITH WHAT WAS STATED
9 IN THE PAPER AND HE SIGNED IT, AGREEING WITH IT.

10 Q AT ANY TIME DID HE ASK ABOUT MAKING ANY ADDITIONS OR
11 CHANGES TO THAT STATEMENT?

12 A NO MA'AM.

13 Q HE SIGNED IT AS IT WAS WRITTEN?

14 A YES MA'AM.

15 Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEY HAS
16 FOR YOU.

17 MS. COLLINS: I'M SORRY, COUNSELOR. IF I CAN JUST INTERJECT,
18 IT MIGHT SAVE A LITTLE BIT OF TIME. I'VE CONFERRED WITH CO-
19 COUNSEL THOMPSON AND IT'S MY UNDERSTANDING THAT THE
20 AGREEMENT THAT'S BEEN ENTERED INTO BY THE STATE AND THE
21 DEFENSE ATTORNEY - AND I FELT THAT IT WAS IMPORTANT TO PUT
22 EVERYTHING ON THE RECORD FOR THE PURPOSES OF THIS HEARING -
23 THAT WE WOULD NOT ELICIT THE TESTIMONY REGARDING THE
24 ARGUMENT BETWEEN THE DEFENDANT AND MR. CUBLEY AS RELATED
25 BY THIS WITNESS IN THAT IT WAS NOT PHYSICALLY SHARED BY

1 EITHER OF THESE DETECTIVES, NOR SHARED WITH THE DEFENSE
2 ATTORNEY. WE ONLY LEARNED OF THIS LAST WEEK, AND THEREFORE,
3 WE WILL NOT GET INTO THAT IN THE JURY'S PRESENCE.

4 MR. CHIARENZA: I DO NOT HAVE ANY QUESTIONS, YOUR
5 HONOR.

6 THE COURT: IS THIS WITNESS GOING TO TESTIFY DURING THE
7 TRIAL?

8 MS. COLLINS: HE WILL, BUT NOT AS TO THE ISSUE OF THE
9 VERBAL STATEMENT, THAT HE HAD HAD AN ARGUMENT WITH MR.
10 CUBLEY.

11 THE COURT: SO, YOU UNDERSTAND THAT YOU WILL NOT BE
12 PERMITTED TO TESTIFY THAT THE DEFENDANT TOLD YOU ORALLY
13 THAT HE HAD HAD AN ARGUMENT WITH MR. CUBLEY?

14 A YES SIR.

15 THE COURT: OKAY.

16 MS. COLLINS: THANK YOU, YOUR HONOR.

17 THE COURT: YOU MAY STEP DOWN.

18 MS. COLLINS: WE WOULD ASK THAT THIS WITNESS BE EXCUSED.

19 THE COURT: YOU'RE EXCUSED.

20 MR. THOMPSON: BEFORE WE CLOSE, WE WOULD ASK THE COURT
21 TO CONSIDER SOME OF THE TESTIMONY AS WELL, WHICH WAS GIVEN
22 THROUGHOUT THE COURSE OF THE TRIAL FROM DANA BLACKMON, AS
23 WELL AS THE TESTIMONY REGARDING THE VEHICLE, AND HOLDING
24 THE CHILD HERE, THAT WITNESS. WE WOULD JUST ASK THE COURT TO

1 CONSIDER THAT ALONG WITH THE TESTIMONY DURING THE JACKSON
2 V. DENNO HEARING.

3 THE COURT: MR. CHIARENZA, DO YOU WISH TO PRESENT ANY
4 TESTIMONY OR OTHER EVIDENCE?

5 MR. CHIARENZA: NO, YOUR HONOR. I WOULD JUST RENEW THE
6 OBJECTION I MADE EARLIER.

7 THE COURT: HAVE YOU DISCUSSED WITH THE DEFENDANT HIS
8 RIGHT TO TESTIFY IN THIS HEARING?

9 MR. CHIARENZA: YES, I HAVE, YOUR HONOR.

10 THE COURT: AND HE'S INDICATED THAT HE DOES NOT WISH TO
11 PROVIDE ANY ADDITIONAL TESTIMONY?

12 MR. CHIARENZA: NOT AS TO THIS ISSUE, YOUR HONOR.

13 THE COURT: OKAY. DO YOU HAVE ANY STATEMENTS YOU
14 WANT TO MAKE?

15 MR. CHIARENZA: YOUR HONOR, AGAIN, THE STATEMENT THAT I
16 MADE, AGAIN, PREMATURELY, WHETHER PROPER, WAS TO SUPPRESS
17 THE INTRODUCTION OF THIS STATEMENT BASED ON THE FACT THAT I
18 DO NOT BELIEVE THERE WAS AN INTELLIGENT WAIVER OF THIS
19 IMPORTANT CONSTITUTIONAL RIGHT, GIVEN THE ISSUE OF THE
20 LANGUAGE BARRIER.

21 IN ADDITION TO THAT, THEY WENT TO THE EFFORT TO
22 QUESTION HIM IN SPANISH, BUT THEY DIDN'T MIRANDIZE HIM IN
23 SPANISH. AND AS FAR AS THE CONSULATE ISSUE IS CONCERNED, IT
24 APPEARS THAT THAT MAY BE A RIGHT WITHOUT A REMEDY. FROM
25 WHAT I READ OF THE CASE LAW, THEY DO IT, OR THEY DON'T DO IT,

1 THEY DO IT BEFORE QUESTIONING, THEY DO IT AFTER QUESTIONING. I
2 DON'T REALLY KNOW IF THERE ARE ANY RIGHTS THERE THAT ARE ON
3 THE LEVEL OF CONSTITUTIONAL PROTECTION. BUT THAT MAY BE FOR
4 SOMEONE ELSE TO FIGURE OUT DOWN THE ROAD.

5 I'LL JUST POINT OUT FOR THE RECORD THAT HE DID REQUEST
6 THAT THE CONSULATE BE ADVISED, THAT THAT REQUEST WAS NOT
7 COMPLIED WITH UNTIL AFTER THE QUESTIONING AND THIS
8 STATEMENT WAS CREATED.

9 CLEARLY, HE WAS IN CUSTODY AT THE TIME OF THE CUSTODIAL
10 STATEMENT. I WOULD NOT ASSERT THAT ANY FORCE OR
11 INTIMIDATION IS HERE, CERTAINLY, BUT MY QUESTION IS WHETHER
12 OR NOT HE WAS MAKING AND INTELLIGENT WAIVER OF HIS MIRANDA
13 RIGHTS, HIS CONSTITUTIONAL RIGHTS.

14 BUT, AGAIN, THE COURT HAS AS THE COURT'S EXHIBIT A LETTER
15 FROM AN ATTORNEY WHO WORKS FOR THE MEXICAN CONSULATE
16 WHO DID ASSERT HIS SIXTH AMENDMENT RIGHT ON BEHALF OF MR.
17 GUTIERREZ PRIOR TO THIS DATE IN QUESTION.

18 NOW, IN ALL FAIRNESS, I DON'T BELIEVE THAT WE CAN MAKE A
19 SHOWING THAT MR. GUTIERREZ EVER ACTUALLY MET MR. MONTROSE
20 AND WAS PROVIDED THAT LETTER.

21 THE COURT: WELL, BASED UPON THE TESTIMONY AND THE
22 EVIDENCE THAT HAS BEEN INTRODUCED DURING THE HEARING IN
23 THIS MATTER, I DID FIND THAT THE STATE HAS ESTABLISHED BY THE
24 GREATER WEIGHT OF THE EVIDENCE THAT THE DEFENDANT WAS IN
25 CUSTODY; THAT HE WAS FULLY ADVISED OF HIS CONSTITUTIONAL