VOLUME I of IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Michael G. Nettles, Circuit Court Judge

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S.C. SUPREME COURT

SHAWN REAVES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000630

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF MARION — IN THE COURT OF GENERAL SESSIONS
07-GS-33-00325

THE STATE OF SOUTH CAROLINA,
PLAINTIFF,
vs.
SHAWN REAVES,
DEFENDANT.

TRANSCRIPT OF RECORD

AUGUST 24, 2010
MARION, SOUTH CAROLINA

BEFORE:

THE HONORABLE, WILLIAM H. SEALS; AND JURY

APPEARANCES:

BY: H. STEVEN DEBERRY, ESQ.
ATTORNEY FOR STATE

BY: THURMOND BROOKER, ESQ.
ATTORNEY FOR SHAWN REAVES

BRENDA R. BABB
Circuit Court Reporter

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THE COURT: SOLICITOR, IF YOU'D CALL YOUR FIRST CASE?

MR. DEBERRY: YOUR HONOR, WE'D CALL INDICTMENT NUMBER 2010-GS-33-0375 THE STATE OF SOUTH CAROLINA V. SHAWN REAVES. IT'S A TWO COUNT INDICTMENT, COUNT ONE IS MURDER, COUNT TWO IS ASSAULT AND BATTERY WITH INTENT TO KILL.

THE COURT: ALL RIGHT, THANK YOU VERY MUCH. NOW MEMBERS OF THE JURY PANEL, AT THIS TIME I NEED TO ASK YOU A FEW MORE QUESTIONS, AND KEEP IN MIND WHAT I'M TRYING TO DO IS WE'RE TRYING TO SELECT A JURY THAT CAN BE FAIR AND IMPARTIAL TO BOTH SIDES IN THIS CASE, TO THE DEFENSE AS WELL AS THE STATE, BUT PLEASE REMEMBER YOU'RE UNDER OATH AND IF ANY OF THESE QUESTIONS APPLY TO YOU YOU NEED TO STAND AND RESPOND TO THEM.

MEMBERS OF THE JURY PANEL, THIS CASE INVOLVES THE MURDER AND ASSAULT AND BATTERY WITH INTENT TO KILL. THE STATE IS ALLEGING THAT A SHAWN REAVES DID IN MARION COUNTY ON OR ABOUT MAY 13, 2007, COMMIT THE CRIME OF MURDER AND ASSAULT AND BATTERY WITH INTENT TO KILL. IN THAT REGARD HAS ANY MEMBER OF THE JURY PANEL SEEN ANYTHING ABOUT THIS CASE, HEARD ANYTHING ABOUT THIS CASE EITHER FROM THE NEWSPAPER, THE INTERNET, OR TALKING WITH SOMEBODY ON THE STREET; IF YOU KNOW ANYTHING AT ALL ABOUT THIS CASE I WOULD ASK THAT YOU, PLEASE, STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

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AND, MR. BROOKER, WOULD YOU PLEASE HAVE MR. SHAWN REAVES STAND? THANK YOU VERY MUCH, YOU MAY BE SEATED.

ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR HAVE A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH THE DEFENDANT, MR. SHAWN REAVES, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

MR. DEBERRY, IF YOU'D PLEASE STAND INTRODUCE YOURSELF AND ANY MEMBERS OF YOUR STAFF?

MR. DEBERRY: THANK YOU, YOUR HONOR, I'M STEVEN DEBERRY; I WORK FOR THE SOLICITOR IN THIS COUNTY MR. ED CLEMENTS. THIS IS ANN NUTTS WITH OUR OFFICE, LIEUTENANT FARMER BLUE AND CAPTION JIM GRAY WITH THE MARION POLICE DEPARTMENT.

THE COURT: AND, MR. CLEMENTS, PLEASE STAND AND INTRODUCE YOURSELF?

MR. CLEMENTS: THANK YOU, YOUR HONOR, MAY IT PLEASE THE COURT, GOOD MORNING, LADIES AND GENTLEMEN, I'M ED CLEMENTS; I AM THE SOLICITOR WITH THE TWELFTH JUDICIAL CIRCUIT WHICH IS MARION COUNTY AND FLORENCE COUNTY.

THE COURT: THANK YOU VERY MUCH, ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR HAVE A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH MR. DEBERRY OR ANY MEMBER OF HIS STAFF OR HAVE EVER BEEN REPRESENTED BY HIM OR ANY MEMBER OF HIS STAFF, IF SO PLEASE STAND?

ALL RIGHT, GIVE ME YOUR NAME AND YOUR NUMBER?

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JURY PANEL MEMBER: BRYAN CARFLEY, NUMBER 29.

THE COURT: ALL RIGHT, HOW DOES THAT APPLY TO YOU?

JURY PANEL MEMBER: WE HAD A, I THINK, I BELIEVE IT IS STILL AN ONGOING CASE WHERE I WAS A VICTIM MR. CLEMENTS IS REPRESENTING ME.

THE COURT: IS THAT CASE STILL PENDING?

MR. DEBERRY: I BELIEVE IT IS ON ONE DEFENDANT, YOUR HONOR.

THE COURT: WITH HIM?

MR. DEBERRY: YES, SIR.

THE COURT: ALL RIGHT, I'LL EXCUSE YOU FOR THE PURPOSES OF THIS TRIAL, JUST HAVE A SEAT FOR NOW I APPRECIATE IT.

AND YOUR NAME AND NUMBER, PLEASE?

JURY PANEL MEMBER: SHELLY PAGE, NUMBER 122, I'M NOT SURE IF THIS DIRECTLY RELATES TO MR. BLUE BUT THIS IS MY FATHER IN LAW.

THE COURT: WHO IS YOUR FATHER IN LAW?

JURY PANEL MEMBER: MR. BLUE.

THE COURT: OH, LT. BLUE, ALL RIGHT, I TELL YOU I'M GOING TO EXCUSE YOU FOR THE PURPOSES OF THIS TRIAL.

JURY PANEL MEMBER: THANK YOU.

THE COURT: ANYBODY ELSE? IF YOU'D JUST HAVE A SEAT FOR NOW, WE'LL EXCUSE YOU IN JUST A MOMENT, THANK YOU.

MR. BROOKER, IF YOU'D PLEASE STAND AND INTRODUCE YOURSELF AND ANY MEMBERS OF YOUR FIRM?

MR. BROOKER: GOOD MORNING, LADIES AND GENTLEMEN, MY NAME IS THURMOND BROOKER, I'M AN ATTORNEY, MY PRINCIPAL OFFICE IS IN FLORENCE COUNTY, SOUTH CAROLINA.

THE COURT: THANK YOU, ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR HAVE ANY CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH MR. BROOKER OR HAVE BEEN REPRESENTED BY HIM AT ANY POINT IN THE PAST OR ARE CURRENTLY BEING REPRESENTED BY HIM, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

THE WITNESSES IN THIS CASE WILL BE A:

MR. LARRY WOODS WITH THE MARION COUNTY SHERIFF'S DEPARTMENT

LISA MCREYNOLDS WITH SLED

MICHAEL MOSKAL WITH SLED

LT. DAVIS WITH THE CITY OF MARION POLICE DEPARTMENT

FARMER BLUE WITH THE CITY OF MARION POLICE DEPARTMENT

JASON HUFFMAN

DAN DEFREESE WITH SLED

NIKKI PERRY WITH SLED

GARY COOK WITH THE MARION POLICE DEPARTMENT

LAURIE SHACKER WITH SLED

DR. SCHANDLE, MEDICAL UNIVERSITY OF SOUTH CAROLINA

LATOYA DAVIS

JOE MILLER WILSON-DOZIER

JACKIE MCGILL

TRAVIS LANE

TYLER CONNOR, AND

KEN KENSY, A FORMER SLED AGENT.

IN THIS REGARD ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR HAVE A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH ANY OF THE WITNESSES IN THIS CASE, IF SO PLEASE STAND.

LET THE RECORD REFLECT THAT NO ONE STOOD.

IS THERE ANY MEMBER OF THE JURY PANEL THAT IS RELATED BY BLOOD OR MARRIAGE TO ANY LAW ENFORCEMENT OFFICER, IF SO PLEASE STAND?

AND YOUR NAME AND NUMBER?

52, NORMAN EDWARDS, I'VE GOT A NEPHEW ON THE SHERIFF'S DEPARTMENT.

THE COURT: HERE IN MARION COUNTY?

JURY PANEL MEMBER: YES, SIR.

THE COURT: ALL RIGHT, TAKING THAT INTO ACCOUNT IF YOU WERE SELECTED TO SERVE AS A JUROR IN THIS CASE ---

JURY PANEL MEMBER: I DON'T FEEL LIKE I CAN GIVE HIM A FAIR TRIAL.

THE COURT: ALL RIGHT, I'LL EXCUSE YOU FOR THE

PURPOSES OF THIS TRIAL, IF YOU'D HAVE A SEAT.

YOUR NAME AND NUMBER?

JURY PANEL MEMBER: MY NAME IS KIMBERLY BULLARD, AND I'M JUROR 26, MY BROTHER IS A SOUTH CAROLINA STATE TROOPER.

THE COURT: ALL RIGHT, TAKING THAT INTO ACCOUNT IF YOU WERE SELECTED TO SERVE AS A JUROR IN THIS CASE COULD YOU BE FAIR AND IMPARTIAL NOT ONLY TO THE STATE BUT THE DEFENDANT AS WELL?

JURY PANEL MEMBER: YES, SIR.

THE COURT: WOULD YOU BE FAIR AND IMPARTIAL TO BOTH SIDES?

JURY PANEL MEMBER: I WOULD BE.

THE COURT: ALL RIGHT, THANK YOU, AND YOUR NAME AND NUMBER?

JURY PANEL MEMBER: MARVIN HAMMOND, NUMBER 81, MY SON IN LAW IS AN HORRY COUNTY POLICE.

THE COURT: TAKING THAT INTO ACCOUNT IF YOU WERE SELECTED TO SERVE AS A JUROR IN THIS CASE COULD YOU FAIR AND IMPARTIAL TO BOTH SIDES?

JURY PANEL MEMBER: I THINK SO, YES, SIR.

THE COURT: WOULD YOU BE FAIR AND IMPARTIAL TO BOTH SIDES?

JURY PANEL MEMBER: YES, SIR.

THE COURT: ALL RIGHT, THANK YOU, ANYBODY ELSE?

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THE COURT: LET THE RECORD REFLECT THAT NO ONE ELSE STOOD.

ARE ANY OF YOU AWARE OF OR CONSCIOUS OF ANY BIAS OR PREJUDICE FOR OR AGAINST THE STATE IN THIS CASE, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

HAS ANY MEMBER OF THE JURY PANEL FORMED AN OPINION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT A MR. SHAWN REAVES IN THIS CASE, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A MEMBER OF OR CONTRIBUTOR TO ANY GROUP WHICH HAS AS ITS PRIMARY CONCERN THE PROMOTION OF LAW ENFORCEMENT OR VICTIMS RIGHTS? THESE GROUPS WOULD INCLUDE BUT CERTAINLY NOT BE LIMITED TO MADD, SADD, OR CAVE, CITIZENS AGAINST VIOLENT CRIMES, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN INVOLVED IN A CRIME OF PERSONAL VIOLENCE? CRIME OF PERSONAL VIOLENCE COULD BE CRIMINAL SEXUAL CONDUCT, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, ASSAULT AND BATTERY WITH INTENT TO KILL, MURDER, MANSLAUGHTER, KIDNAPPING, ARMED ROBBERY, ETCETERA. THOSE ARE JUST SOME EXAMPLES BUT WITH THAT I THINK YOU GET THE IDEA AS TO WHAT I'M LOOKING FOR. NOW IF YOU OR ANY MEMBER

OF YOUR IMMEDIATE FAMILY HAVE EVER BEEN A VICTIM OR DEFENDANT IN A CRIME SUCH AS THESE JUST MENTIONED PLEASE STAND AND FORM A LINE AT THE RAIL?

IS THERE ANY MEMBER OF THE JURY PANEL WHO KNOWS OF ANY REASON WHATSOEVER WHY THEY COULD NOT GIVE THE PARTIES IN THIS CASE A FAIR AND IMPARTIAL TRIAL, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

DOES ANY MEMBER OF THE JURY PANEL HAVE ANY RELIGION OR PHYSIOLOGICAL OBJECTIONS TO RENDERING JUDGMENT AGAINST THEIR FELLOW MAN, IF SO PLEASE STAND?

ALL RIGHT, IF YOU WOULD COME FORWARD PLEASE, MA'AM?

HAS ANY MEMBER OF THE JURY PANEL OR ANY MEMBER OF THEIR FAMILY EVER BEEN PROSECUTED BY THIS SOLICITOR OR ANY MEMBER OF THE SOLICITOR'S STAFF REGARDLESS OF WHETHER THE CASE WAS DISMISSED OR NOT, IF SO PLEASE STAND?

LET THE RECORD REFLECT THAT NO ONE STOOD.

ANYTHING FURTHER FROM THE STATE?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

MR. BROOKER: YES, YOUR HONOR, MAY WE APPROACH, YOUR HONOR?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE

RECORD IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE HEARING OF THE JURY PANEL.)

THE COURT: THE VICTIM IN THIS CASE IS A MR. RAMEL KESHON APPLEWHITE, IN THAT REGARD ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR HAVE A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH THE VICTIM IN THIS CASE, IF SO PLEASE STAND?

ALL RIGHT, LET THE RECORD REFLECT THAT NO ONE STOOD.

ANYTHING FURTHER, MR. BROOKER?

MR. BROOKER: NOTHING FURTHER, YOUR HONOR.

THE COURT: ANYTHING FURTHER FROM THE STATE?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: ALL RIGHT, FOR THE RECORD I FIND THE JURY PANEL QUALIFIED FOR THIS CASE, MS. CLERK, IF YOU WOULD GIVE US A JURY.

MADAM CLERK: WE'LL PULL FROM THE NUMBER ONE COLUMN, THE SECOND COLUMN, LET'S PULL FROM THE NUMBER ONE COLUMN, NAME COLUMN.

ARBY J. BARNES, MR. BARNES, IF YOU'LL COME FORWARD, THAT'S NUMBER 7. MR. BARNES, IF YOU'LL STAND RIGHT HERE AT THE END OF THIS DESK AND FACE OUT TOWARD THE PANEL?

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. BARNES.

THE COURT: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MR. BARNES, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE, SIR?

NUMBER TWO WILL BE NUMBER 19, PATRICIA L. BROWN.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. BROWN.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE EXCUSE THIS JUROR.

MADAM CLERK: MS. BROWN, YOU'RE EXCUSED FROM THIS TRIAL, THANK YOU.

NUMBER THREE WILL BE NUMBER 155, CATHY I. STOKES.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. STOKES.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MS. STOKES, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE.

NUMBER FOUR WILL BE 170, LEROY WILLIAMS.

WHAT SAY THE PLAINTIFF, EXCUSE ME, WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. WILLIAMS.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE EXCUSE THIS JUROR.

MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL,

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MR. WILLIAMS, THANK YOU.

NUMBER 94, LINDA E. HOWARD.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. HOWARD.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE EXCUSE THIS JUROR.

MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL, MS. HOWARD, THANK YOU.

NUMBER 167, PAULA C. WEBSTER.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. WEBSTER.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. DEBERRY: PLEASE EXCUSE THIS JUROR.

MADAM CLERK: YOU'RE EXCUSED, MS. WEBSTER, FROM THIS TRIAL, THANK YOU.

NUMBER 89, DANIEL G. HILL.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE EXCUSE MR. HILL FROM THIS TRIAL.

MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL, MR. HILL, THANK YOU, SIR.

NUMBER 156, ALEXANDER TART, JUST TURN AROUND AND FACE THAT WAY, THANK YOU, SIR.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE EXCUSE THE JUROR FROM THIS TRIAL.

MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL, MR. TART, THANK YOU.

MADAM CLERK: NUMBER 84, NEHEMIAH HANNER. NO, SIR, NO, SIR, NOT YOU, SIR.

JURY PANEL MEMBER: 81?

MADAM CLERK: NO, SIR, NUMBER 84.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. HANNER.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MR. HANNER, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE, SIR.

NUMBER 51, ESTHER G. EADY.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. EADY.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MS. EADY, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM.

NUMBER 31, KEVIN R. CASALE.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. CASALE.

MADAM CLERK: WHAT SAY THE DEFENSE?

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MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR, THANK YOU.

NUMBER 26, KIMBERLY H. BULLARD.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. BULLARD.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: NUMBER 106, VIRGINIA F. LANE.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. LANE.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MS. LANE, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE.

NUMBER 59, TIFFANY W. FINNELL.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. FINNELL.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM.

NUMBER 38, CARRIE F. DANIELS.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. DANIELS.

MADAM CLERK: WHAT SAY THE DEFENSE?
MR. BROOKER: PLEASE PRESENT THE JUROR.
MADAM CLERK: NUMBER 105, MARGO L. LANE.
WHAT SAY THE STATE?
MR. DEBERRY: PLEASE PRESENT MS. LANE.
MADAM CLERK: WHAT SAY THE DEFENSE?
MR. BROOKER: PLEASE EXCUSE THE JUROR.
MADAM CLERK: THANK YOU, MS. LANE.
NUMBER 81, MARVIN D. HAMMOND.
WHAT SAY THE STATE?
MR. DEBERRY: PLEASE PRESENT MR. HAMMOND.
MADAM CLERK: WHAT SAY THE DEFENSE?
MR. BROOKER: PLEASE EXCUSE THE JUROR.
MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL, THANK YOU, SIR.
NUMBER 116, FREDERICK E. MULLINS.
WHAT SAY THE STATE?
MR. DEBERRY: PLEASE PRESENT MR. MULLINS.
MADAM CLERK: WHAT SAY THE DEFENSE?
MR. BROOKER: PLEASE PRESENT THE JUROR.
MADAM CLERK: MR. MULLINS, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE, SIR.
NUMBER 120, MARY E. OWENS.
WHAT SAY THE STATE?
MR. DEBERRY: PLEASE PRESENT MS. OWENS.

MADAM CLERK: WHAT SAY DEFENSE?

MR. BROOKER: PLEASE EXCUSE THIS JUROR FROM THIS TRIAL.

MADAM CLERK: MS. OWENS, YOU'RE EXCUSED FROM THIS TRIAL, THANK YOU.

NUMBER 136, RONNIE SANDERS.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. SANDERS.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: WHAT WAS THAT NUMBER AGAIN, PLEASE?

MADAM CLERK: 136.

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE, MR. SANDERS.

NUMBER 92, JESSICA L. HOULE.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT THE JUROR.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE EXCUSE THIS JUROR.

MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL, THANK YOU, MA'AM.

NUMBER 98, KENNETH W. JACKSON.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. JACKSON.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE EXCUSE THIS JUROR.

MADAM CLERK: YOU'RE EXCUSED FROM THIS TRIAL, MR. JACKSON, THANK YOU.

NUMBER 165, JAMES CURTIS WADE.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. WADE.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: YOUR HONOR, JUST A SECOND, I'M SORRY IT'S TAKING SO LONG.

THE COURT: MR. BROOKER?

MR. BROOKER: OKAY, I'M SORRY, PLEASE EXCUSE THIS JUROR.

MADAM CLERK: YOU'RE EXCUSED.

NUMBER 61, LEONARD W. FORE.

THE COURT: SEVEN AND TEN, SOLICITOR AND MR. BROOKER, WE'RE GOING TO STRIKE TWO ALTERNATES.

MADAM CLERK: TWO ALTERNATES.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE SEAT MR. FORE.

MADAM CLERK: WHAT SAY ---

MR. BROOKER: PLEASE SEAT THE JUROR.

MADAM CLERK: MR. FORE, IF YOU'LL HAVE A SEAT IN THE JURY BOX, PLEASE.

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AND WE'RE GOING TO DRAW FOR TWO ALTERNATES, THE FIRST WOULD BE NUMBER 71, VICKI H. GODBOLT.

WHAT SAY THE STATE?

MR. DEBERRY: EXCUSE MS. GODBOLT.

MADAM CLERK: MS. GODBOLT, YOU'RE EXCUSED FROM THIS TRIAL.

NUMBER 62, JEROME FOXWORTH.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MR. FOXWORTH.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MS. FOXWORTH, IF YOU'LL HAVE A SEAT IN THE ONE OF THE ALTERNATES CHAIRS, PLEASE.

NUMBER 18, HENRIETTA R. BROWN.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. BROWN.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: I'M SORRY, COULD YOU GIVE ME HER NUMBER AGAIN?

MADAM CLERK: NUMBER 18.

MR. BROOKER: 18, OKAY, PLEASE EXCUSE THE JUROR.

MADAM CLERK: THANK YOU, MS. BROWN.

NUMBER 66, ANGELA F. FULLARD.

WHAT SAY THE STATE?

MR. DEBERRY: PLEASE PRESENT MS. FULLARD.

MADAM CLERK: WHAT SAY THE DEFENSE?

MR. BROOKER: PLEASE PRESENT THE JUROR.

MADAM CLERK: MS. FULLARD, IF YOU'LL HAVE A SEAT IN THE ALTERNATE CHAIR, PLEASE, MA'AM.

JURY NUMBER 66: RIGHT HERE?

MADAM CLERK: RIGHT OVER THERE, YES, MA'AM, THANK YOU.

THE COURT: ANY OBJECTIONS TO THE JURY OR THE PROCESS BY WHICH THEY WERE SELECTED, WHAT SAYS THE STATE?

MR. DEBERRY: NONE FROM THE STATE, YOUR HONOR.

THE COURT: WHAT SAYS DEFENSE?

MR. BROOKER: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU VERY MUCH. ALL RIGHT, MEMBERS OF THE JURY, I'M GOING TO EXCUSE YOU UNTIL 9:30 IN THE MORNING. IF YOU WOULD COME BACK A LITTLE BIT BEFORE 9:30 GO AHEAD AND GO INTO THAT JURY ROOM AND WE'LL START SHORTLY THEREAFTER, AND I DO WANT TO EMPHASIZE TO YOU THAT YOU KNOW VERY LITTLE BIT ABOUT THIS CASE BUT YOU DO KNOW A LITTLE BIT BASED ON THE QUESTIONS THAT I ASKED YOU A LITTLE WHILE AGO, WHEN YOU GO HOME I DON'T WANT YOU TO TALK ABOUT THE CASE AT ALL. THE FIRST THING YOUR FAMILY IS GOING TO DO IS SAY WHAT HAPPENED, IF YOU WANT TO TELL THEM YOU GOT DRAWN ON A JURY THAT'S FINE, BUT STOP THERE. DON'T GO INTO ANY NAMES, DON'T GO INTO ANY DETAILS, AND PLEASE DO NOT UNDERTAKE ANY INDEPENDENT INVESTIGATIONS.

DON'T START RESEARCHING THE CASE OR ANYTHING. I WANT TO MAKE SURE THAT YOU GET THE CASE FROM RIGHT HERE IN THIS COURTHOUSE IN THIS COURTROOM AND IT'S PROPERLY DONE, SO YOU ARE HEREBY DISMISSED AND I'LL SEE YOU BACK SHORTLY BEFORE 9:30. EVERYBODY ELSE YOU KEEP YOUR SEATS.

(WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING AT 12:19 P.M.)

THE COURT: THE JURY PANEL IS EXCUSED FOR THE DAY BUT IF YOU WOULD EACH NIGHT CALL IN AFTER 6:00 FOR FURTHER INSTRUCTIONS AND IF WE NEED YOU WE'LL LEAVE A MESSAGE AND GIVE YOU DETAILS AT THAT TIME BUT YOU ARE EXCUSED AND THANK YOU FOR COMING.

(WHEREUPON, JURY VENIRE IS EXCUSED.)

MR. DEBERRY: YOUR HONOR, THE SOLICITOR SAYS MAYBE JUST COME BACK AFTER LUNCH?

THE COURT: IS 2:00 OKAY?

MR. CLEMENTS: YES, SIR.

THE COURT: ALL RIGHT, 2:00 AND WE'LL TAKE UP MOTIONS AND WHATEVER YOU NEED TO DO AND THEN WE'LL BE RELEASED FOR THE REST OF THE DAY. WE'LL BE IN RECESS UNTIL 2:00.

(WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE FOLLOWING TAKES PLACE ON THE RECORD AFTER THE LUNCH RECESS.)

THE COURT: WHAT DO WE HAVE?

MR. BROOKER: YOUR HONOR, WE HAVE AT LEAST A COUPLE OF MOTIONS THAT WE'D LIKE FOR THE COURT TO HEAR AND OBVIOUSLY THE FIRST ONE IS GOING TO BE A SUPPRESSION MOTION SEEKING TO SUPPRESS ANYTHING THAT WAS TOLD AT THE, AT THE SCENE. I THINK ON THE NIGHT IN WHICH THIS INCIDENT TOOK PLACE, SPECIFICALLY MY UNDERSTANDING WAS IS, MY UNDERSTANDING IS, IS IS THAT WHEN THIS INCIDENT OR EVENT TOOK PLACE ON MAY 13 OF 2007, THAT SPECIFICALLY IT WAS ALLEGED AT LEAST IN THE LAW ENFORCEMENT OFFICERS REPORT THAT THEY RECEIVED A TELEPHONE CALL, THEY RECEIVED A 911 CALL SAYING THAT THERE WAS A FIGHT IN PROGRESS AT THE SCENE, THAT THE LAW ENFORCEMENT OFFICERS EVENTUALLY WERE DISPATCHED TO THE SCENE AND WHEN THEY CAME TO THE SCENE THEY DISCOVERED OBVIOUSLY THE SHOOTING VICTIM. MY UNDERSTANDING AT LEAST FROM, FROM THE OFFICERS REPORT, AND THIS IS SPECIFICALLY FROM OFFICER DAVIS' REPORT AND LT. DAVIS' REPORT IS THAT EMS WAS CALLED AND I THINK INVESTIGATORS FROM THE MARION CITY POLICE DEPARTMENT WAS ALSO CONTACTED. EMS ARRIVED AND, OF COURSE, THE GUNSHOT VICTIM WAS, WAS REMOVED FROM THE SCENE THEN TAKEN TO THE MARION COUNTY HOSPITAL FOR FURTHER TREATMENT.

AT THAT PARTICULAR PERIOD IN TIME MY UNDERSTANDING IS THAT LAW ENFORCEMENT CAME SOMETIME AFTER THE VICTIM WAS REMOVED FROM THE SCENE AND OBVIOUSLY SOUGHT TO PROCESS THE SCENE. I THINK PART OF THAT WAS IS, IS THAT

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THEY HAD TO SEARCH THE GROUNDS OF THE RESIDENCE. THEY COLLECTED CERTAIN EVIDENCE FROM THE RESIDENCE, I THINK BOTH IN AND OUTSIDE OF THE RESIDENCE AND, OF COURSE, IT'S OUR CONTENTION IS THAT THAT EVIDENCE WAS COLLECTED WITHOUT A WARRANT AND OBVIOUSLY IS THAT THERE IS A, THERE IS A CASE THAT IS PARTICULARLY ON POINT AND THAT IS A 1978 CASE. MY UNDERSTANDING THERE'S NOT NO RULE YET AND THAT IS MINCEY V. ARIZONA AND, OF COURSE, I CAN, I HAVE A COPY OF IT HERE, YOUR HONOR, IF YOU WANT TO TAKE A LOOK AT IT.

THE COURT: SURE.

MR. BROOKER: THANK YOU, AND WHAT THAT CASE DEALS WITH IS IS A SITUATION THAT'S VERY SIMILAR TO THIS PARTICULAR SITUATION. IT DEALT WITH A SITUATION IN WHICH LAW ENFORCEMENT OFFICERS, I THINK, ENTERED THE APARTMENT AND THESE WERE UNDERCOVER OFFICERS, I THINK, TO CONDUCT A DRUG RAID. WHEN THEY ENTERED THE APARTMENT SHOTS WERE FIRED. I THINK ONE OF THE OFFICERS WAS KILLED AND I THINK AT LEAST TWO OR THREE OTHER OCCUPANTS IN THE RESIDENCE WERE SHOT. AT THAT PARTICULAR PERIOD IN TIME THE LAW ENFORCEMENT AGENCY RAIDED THE APARTMENT, CONTACTED EMS, OBVIOUSLY THIS IS TO CARE FOR AND REMOVE THE WOUNDED, AND THEY ALSO CONTACTED, CONTACTED DETECTIVES BECAUSE THE APARTMENT AT THAT PARTICULAR PERIOD OF TIME HAD A RULE THAT IF A LAW ENFORCEMENT OFFICER OR OFFICERS WERE INVOLVED IN A PARTICULAR SHOOTING THAT THEY WERE NOT ALLOWED TO

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INVESTIGATE THAT SHOOTING SO THEY CALLED SEPARATE INVESTIGATORS TO COME AND PROCESS THE SCENE.

THOSE INVESTIGATORS CAME TO THE SCENE AND I THINK TO MY UNDERSTANDING AT THE TIME THAT THEY CAME EITHER THE DECEASED OFFICER AND THE WOUNDED HAD ALREADY BEEN REMOVED OR IN THE PROCESS OF BEING REMOVED AND, OF COURSE, OVER THE COURSE OF THE NEXT FOUR DAYS WHAT THEY DID WAS IS THEY COLLECTED SOME TWO TO THREE HUNDRED PIECES OF EVIDENCE FROM THAT, FROM THAT SCENE THAT WAS LATER USED IN THE PROSECUTION OF, I THINK, ONE, ONE OF THE DEFENDANTS IN THAT PARTICULAR CASE AND, OF COURSE, IN THAT CASE WHAT THE ISSUE WAS IS IS, IS THAT UNDER WHAT AUTHORITY DID LAW ENFORCEMENT HAVE TO BE ON THE PREMISES OR BE ON THE PROPERTY TO COLLECT EVIDENCE AND OBVIOUSLY THE WARRANT REQUIREMENT BASICALLY SAYS IS THAT LAW ENFORCEMENT OFFICERS, THE FOURTH AMENDMENT REQUIRED THAT LAW ENFORCEMENT OFFICERS HAVE TO HAVE A WARRANT TO ENTER PROPERTY AND SEARCH PRIVATE PROPERTY. OBVIOUSLY THEY'RE CERTAIN EXCEPTIONS TO THAT AND, OF COURSE, ONE EXCEPTION IS THAT OBVIOUSLY IS AN EMERGENCY CIRCUMSTANCES OR EXIGENT CIRCUMSTANCES AND LAW ENFORCEMENT OFFICERS CAN ENTER THE PREMISES WITHOUT A WARRANT BUT WHEN THEY ENTER THE PREMISES WITHOUT A WARRANT UNDER EXIGENT CIRCUMSTANCES THEY CAN ONLY REMAIN ON THE PREMISES LONG ENOUGH UNTIL THAT EMERGENCY ENDS. AFTER THAT EMERGENCY ENDS THEN, OF COURSE, THE AUTHORITY TO BE ON THAT PROPERTY

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ENDS AND THEY HAVE TO HAVE SOME OTHER, SOME OTHER SORT OF AUTHORITY TO BE ON THAT PROPERTY.

IN THAT PARTICULAR SITUATION AFTER, IN MINCEY IS THAT AFTER EMS WAS CALLED THE DECEASED OFFICER WAS REMOVED, THE WOUNDED DEFENDANTS IN THAT CASE WERE REMOVED AND, OF COURSE, DETECTIVES CAME IN AND THEN PROCESSED THE SCENE OVER THE COURSE OF THE NEXT FOUR DAYS AND, OF COURSE, THE ARIZONA SUPREME COURT WHICH WAS THE STATE COURT CASE, I THINK THE DEFENDANT WAS CONVICTED. IT WENT ALL THE WAY UP TO THE ARIZONA COURT.

THE ARIZONA SUPREME COURT SAYS THAT, SAID THAT CREATED SOME SORT OF EXCEPTION. IT BASICALLY SAYS BECAUSE THIS WAS A MURDER INVESTIGATION, A MURDER HAD TAKEN PLACE ON THE PRIVATE PROPERTY THAT THEY DIDN'T HAVE TO HAVE A WARRANT, THAT THEY COULD COME IN AND GO AHEAD AND PROCESS THE SCENE BECAUSE THE MURDER WAS THERE. THE UNITED STATES SUPREME COURT ACTUALLY TOOK UP THAT ISSUE AND SAID SPECIFICALLY IS THAT EVEN IN A CASE WHERE A HOMICIDE TAKES PLACE IS, IS THAT THERE IS NO HOMICIDE EXCEPTION TO THE FOURTH AMENDMENT. IT SAYS THAT WHEN LAW ENFORCEMENT COMES ONTO THE SCENE AND OBVIOUSLY IF THERE IS A, IF THERE IS A PERSON WHO IS AT LEAST IN NEED OF EMERGENCY CARE THEN OBVIOUSLY THEY CAN COME ON THE SCENE FOR THE PURPOSE OF RENDERING THAT CARE BUT ONCE THAT PERSON IS REMOVED THEN, OF COURSE, THE ORIGINAL AUTHORITY LIES AND, OF COURSE, THEY

HAVE NO OTHER AUTHORITY,

IN THIS PARTICULAR SITUATION IT WAS THE EXACT SAME SITUATION. I THINK THE, THE POLICE DEPARTMENT'S REPORT INDICATED THAT THEY ARRIVED ON THE SCENE, I THINK ROUGHLY AROUND 11:00, I THINK AROUND 10 OR 11:00 WHEN THE FIRST OFFICER WAS DISPATCHED. I THINK THEY HAVE A RETURN ON, ON, ON AT LEAST A PURPORTED SEARCH WARRANT THAT, THAT THEY OBTAINED ON AT LEAST A RETURN SHEET THAT CONTAINED THE ITEMS THAT THEY REMOVED FROM THE RESIDENCE AND, OF COURSE, AT THAT PARTICULAR PERIOD, AND, OF COURSE, I THINK THAT RETURN ON THAT, THE RETURN ON THAT WAS SOMETHING LIKE, I THINK, AROUND 1:00 OR SOMETIME THEREAFTER AROUND 1:00 THAT WHEN THIS EVIDENCE WAS SUPPOSED TO BE COLLECTED AND, OF COURSE, THE QUESTION THEN BECOMES IS THAT THE, THAT THE, THAT THE SHOOTING VICTIM HAD BEEN REMOVED, I THINK, FROM THE SCENE AROUND 10 OR 11:00 AND, OF COURSE, IF THE SHOOTING VICTIM HAD BEEN REMOVED AT THAT PARTICULAR PERIOD OF TIME THEN THE QUESTION THEN IS IS THAT WHAT AUTHORITY DID THEY HAVE TO BE ON THE PREMISES AND ALSO TO COLLECT PROPERTY.

IN THAT PARTICULAR CASE IN MINCEY I THINK THAT, THAT EVIDENCE I THINK WAS TWO HUNDRED OR THREE HUNDRED PIECES OF EVIDENCE THAT WAS COLLECTED BY THE DETECTIVES AFTER THE DECEASED OFFICER'S BODY WAS REMOVED AND THE OTHER WOUNDED VICTIMS WERE REMOVED, THAT THE UNITED STATES

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SUPREME COURT SAYS THAT THAT EVIDENCE WAS SUPPRESSIBLE BECAUSE THEY HAD ABSOLUTELY NO OTHER AUTHORITY TO BE ON THAT PREMISES AND THE INVESTIGATION OF COLLECTING EVIDENCE RESTRAINT TO A MURDER AND WAS NOT ACTUALLY AN EXCEPTION TO THE FOURTH AMENDMENT.

THEY ACTUALLY HAVE HAD TO HAVE A WARRANT OR EITHER THEY HAVE TO HAVE SOME OTHER AN EXCEPTION TO THE WARRANT IN ORDER TO BE ON THERE, MAYBE PERMISSION FROM SOMEONE WHO HAD THE AUTHORITY TO GIVE PERMISSION AND, OF COURSE, I THINK THAT EXACT SYMPTOM IN THIS PARTICULAR CASE UNLESS, UNLESS THEY CAN PROVE IT BECAUSE EVEN IN THIS PARTICULAR MOTION ALTHOUGH WE RAISED THE MOTION I THINK THE LAW IS, IS IS THAT THE BURDEN OF PROOF IS ON THE STATE TO PROVE THAT THEY HAVE SOME SORT OF LEGAL RIGHT TO BE THERE TO COLLECT THE EVIDENCE IN WHICH THEY COLLECTED AND WE THINK THEY DO NOT.

THE COURT: SOLICITOR?

MR. DEBERRY: THANK YOU, YOUR HONOR, I WOULD MAKE THE COURT AWARE THAT THAT NIGHT THERE WAS A SHOOTING THAT TOOK PLACE ON EAST MULLINS STREET IN THE CITY OF MARION. WHEN POLICE OFFICERS ARRIVED AT THE HOME THERE WERE PEOPLE THAT WERE INSIDE OF THE HOME THAT WOULD NOT COME OUTSIDE OF THE HOME. THERE WAS EVIDENCE ON THE OUTSIDE OF THE HOME THAT WAS EVANESCENCE IN NATURE, COULD HAVE BEEN CONTAMINATED, COULD HAVE BEEN LOST AND, YOUR

HONOR, I WOULD SAY THAT THE STATE BASICALLY ON THE CASE THAT WE INTEND TO PRESENT DOESN'T HAVE ANYTHING TO DO WITH WHAT HAPPENED INSIDE OF THE HOUSE.

YOUR HONOR, THERE WERE SOME GUNSHOT RESIDUE KITS THAT WERE TAKEN FROM THE INDIVIDUALS INSIDE OF THE HOUSE BUT THEY WERE TAKEN FROM THE INDIVIDUALS AND NOT INSIDE OF THE HOUSE, YOUR HONOR. THERE WAS A VERY REAL THREAT THAT NIGHT WITH THE SHOOTER COULD HAVE STILL BEEN INSIDE OF THE HOUSE, SO I WOULD SAY THAT THE REQUIREMENTS OF THEM HAVING A SEARCH WARRANT WOULD NOT BE MANDATED BY LAW IN THIS SITUATION AND THAT THE EVIDENCE THAT THEY FOUND OUTSIDE OF THE HOME WOULD CERTAINLY BE ADMISSIBLE JUST BASED ON THE FACT THAT IT WAS IN PLAIN SIGHT IN PLAIN VIEW AND THAT A MURDER HAD JUST TAKEN PLACE SHORTLY THERE BEFORE.

THE COURT: SO IT'S MY UNDERSTANDING THERE IS NO EVIDENCE THAT CAME FROM THE INSIDE OF THE HOUSE THAT YOU INTEND ON INTRODUCING IN TRIAL?

MR. DEBERRY: NO, YOUR HONOR, THAT'S CORRECT.

THE COURT: ALL RIGHT.

MR. BROOKER: IF I COULD SIMPLY RESPOND, YOUR HONOR, I THINK YOU MAKE, THAT, THAT THE PROSECUTOR'S IS MAKING THE DISTINCTION THAT JUST DOESN'T EXIST IS THAT BASICALLY THE DISTINCTION THAT THE PROSECUTION IS MAKING IS THAT LAW ENFORCEMENT OFFICERS CAN SEARCH PRIVATE PROPERTY OUTSIDE AS LONG AS THEY DON'T GO INTO A DWELLING AND THAT'S

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NOT THE CASE IS THAT A LAW ENFORCEMENT OFFICER CANNOT WALK ONTO A FARM AND SAY WELL WE CAN SEARCH THE ENTIRE FARM AND WE CAN SEARCH THE YARD OR WE CAN SEARCH THE TREES OR WE CAN SEARCH NEXT TO THE HOUSE. WE CAN SEARCH AROUND THE HOUSE UPON PRIVATE PROPERTY AS LONG AS WE DON'T STEP ON, STEP ONTO THE PROPERTY. THAT'S NOT ACTUALLY WHAT THE LAW IS. IT IS THAT THEY CAN'T SEARCH THE OUTSIDE OR THE INSIDE UNLESS THEY HAVE A WARRANT. IT DOESN'T MATTER WHETHER OR NOT IT'S A DWELLING OR NOT THEY CANNOT HAVE A WARRANT AND THIS PARTICULAR SITUATION IS IS THAT THEY DID DISCOVER EVIDENCE, THEY DID DISCOVER EVIDENCE , I THINK, OR TOOK EVIDENCE THAT WAS, YOU KNOW, THAT WAS NOT EASILY SEEN, EVIDENCE THAT HAD BE SEARCHED FOR, BUT THE, BUT THE SUPREME COURT IN MINCEY WAS VERY CLEAR AND I THINK THAT HE MENTIONED, I THINK THE PROSECUTOR MENTIONED THE FACT THAT BECAUSE THIS WAS A MURDER AND THAT'S EXACTLY ON POINT, THAT'S EXACTLY THE POINT THAT THE MINCEY COURT ADDRESSED. THE MINCEY COURT ADDRESSED THE ISSUE THAT WAS CREATED BY THE ARIZONA SUPREME COURT ---

THE COURT: WHAT EVIDENCE IS IT YOU INTEND ON INTRODUCING AT TRIAL; WHAT SPECIFICALLY ARE WE TALKING ABOUT?

MR. DEBERRY: WELL, YOUR HONOR, WHEN LAW ENFORCEMENT ARRIVED THERE WAS A, THE VICTIM WAS STILL ON THE SCENE. THERE WAS AN APPARENT GUNSHOT WOUND OR MULTIPLE

GUNSHOT WOUNDS TO THE VICTIM AND THERE WAS BLOOD. THERE WAS A SHELL CASING. ALL THAT WAS OUTSIDE AND IN PLAIN VIEW. I THINK THE POLICE OFFICERS HAVE EVERY RIGHT TO BE ON THAT PROPERTY TO INVESTIGATE THAT CRIME AND FURTHERMORE, YOUR HONOR, THERE WAS PEOPLE INSIDE OF THE HOUSE THAT THEY AT THE TIME DIDN'T KNOW WHETHER OR NOT THEY MAY HAVE BEEN THE SHOOTERS OR NOT, VERY DANGEROUS SITUATION, YOUR HONOR, AND NOT A SITUATION WHERE YOU WOULD STOP AND GO GET A WARRANT AND LIKE I SAID, YOUR HONOR, THERE, THERE IS NO EVIDENCE THAT CAME FROM IN THE HOUSE THAT WE, THAT WE EVEN WANT TO INTRODUCE AND OFFER.

IN THE MINCEY CASE, YOUR HONOR, THERE, THEY TALKED ABOUT A FOUR DAY SEARCH THAT TURNED UP THREE HUNDRED ITEMS OF EVIDENCE THAT LED TO DRUG CONVICTIONS, A MURDER CONVICTION, AND ANOTHER CONVICTION, YOUR HONOR; THAT'S JUST NOT WHAT WE HAVE IN THIS SITUATION.

MR. BROOKER: AND, OF COURSE, I WOULD INSTRUCT THAT, I WOULD BEG THE COURT TO READ MINCEY BECAUSE MINCEY ADDRESSED EACH ONE OF THOSE ISSUES THAT HE JUST RAISED IS IS THAT THE COURT DIDN'T SAY WHAT ALL THE EVIDENCE THAT WAS COLLECTED ON DAY ONE OR ALL THE EVIDENCE THAT WAS COLLECTED, COLLECTED ON TEN OR FIFTEEN MINUTES AFTER THE SHOOTING THAT EVIDENCE IS ADMISSIBLE BUT THE EVIDENCE THAT WAS COLLECTED, COLLECTED ON DAY TWO OR DAY THREE IS INADMISSIBLE. IT SAYS ALL OF THE, ALL OF IT WAS COLLECTED

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EVEN THOUGH THE DETECTIVES IN THAT PARTICULAR CASE ARRIVED I THINK IMMEDIATELY AFTER THE SHOOTING TOOK PLACE IT SAYS IT WAS ALL INADMISSIBLE, IT WAS ABSOLUTELY ALL INADMISSIBLE BECAUSE THEY DIDN'T HAVE THE AUTHORITY TO BE ABLE TO COLLECT THAT AND, OF COURSE, WITH RESPECT TO ---

THE COURT: GO AHEAD.

MR. BROOKER: AND, AND WITH RESPECT THE EVIDENCE THAT WAS, THAT WAS AT LEAST IN PLAIN VIEW IN THAT PARTICULAR SITUATION THERE WAS TONS OF EVIDENCE THAT WAS IN PLAIN VIEW WHEN THE LAW ENFORCEMENT OFFICERS DID WENT IN, WENT IN THE HOUSE TO CONDUCT THE RAID AND, OF COURSE, THE COURT DIDN'T MAKE A DISTINCTION BETWEEN EVIDENCE THAT WAS IN PLAIN VIEW AND, AND EVIDENCE THAT WAS NOT. IT BASICALLY SAYS IS IS THAT YOU HAVE TO HAVE A WARRANT IN ORDER TO SEARCH AND ALSO NOT JUST SEARCH BUT TO SEIZE ANYTHING ON PRIVATE PROPERTY. YOU HAVE TO HAVE A WARRANT FOR THAT AND, OF COURSE, I THINK HE ADDRESSED THE ISSUE AS TO WHETHER OR NOT LAW ENFORCEMENT OFFICERS COULD SIT AROUND AND, AND GO FOR A WARRANT AND, OF COURSE, THE MINCEY COURT ADDRESSED THAT PARTICULAR ISSUE. THE MINCEY COURT BASICALLY SAYS IS, IS IS THAT THE ONLY TIME THAT LAW ENFORCEMENT OFFICERS MIGHT BE JUSTIFIED, THEY MIGHT BE JUSTIFIED, YOU KNOW, IN, IN MOVING IN WITHOUT A WARRANT IS IS THAT IF LAW ENFORCEMENT OFFICERS WAS CONFIRMING THAT SOME SORT OF THREAT IN WHICH THE EVIDENCE WAS UNDER THREAT OF BEING

IMMEDIATELY DESTROYED. FOR EXAMPLE, IS IF, IF WE WERE IN A SITUATION WHERE YOU TALKED ABOUT, YOU KNOW, PROBABLY FOOTPRINTS THAT WAS IMBEDDED IN THE, IN THE SAND AND, OF COURSE, IT WAS ABOUT TO RAIN PROBABLY WITHIN THE NEXT TEN OR FIFTEEN MINUTES AND THEY HAVE TO GET THE CAST DONE IMMEDIATELY IT SAYS THAT UNDER THOSE CIRCUMSTANCES WHEN THERE'S EMINENT THREAT THAT THE EVIDENCE IS GOING TO, THAT THE EVIDENCE IS GOING TO BE DESTROYED THEN, OF COURSE, THEY MIGHT BE JUSTIFIED IN DOING IT IN THAT PARTICULAR SITUATION BUT IT SAYS IN A SITUATION WHERE THE SCENE CAN BE SECURED, AND I THINK IN THE REPORTS IS THAT THE LAW ENFORCEMENT OFFICER SAID WHEN THEY GOT THERE THAT THEY SECURED THE SCENE AND THEY ACTUALLY EVEN INTERVIEWED PEOPLE RIGHT IN THE RESIDENCE. IT SAYS IF THE SCENE CAN BE SECURED AND A WARRANT CAN, A WARRANT CAN BE OBTAINED THAT YOU HAVE TO OBTAIN THE WARRANT. IT'S NOT BASED UPON CONVENIENCE; IT'S NOT BASED UPON WELL WHATEVER IS CONVENIENT FOR LAW ENFORCEMENT. IT SAYS THAT YOU HAVE TO, HAVE TO PROTECT THE SCENE AND THEN GET A WARRANT.

IN THIS PARTICULAR SITUATION IS IS THAT WE'RE TALKING ABOUT ITEMS THAT WAS NOT READILY PERISHABLE AND ALSO LAW ENFORCEMENT OFFICERS WERE ACTUALLY ON THE SCENE AND, OF COURSE, ANY TIME COULD HAVE OBTAINED A WARRANT BECAUSE I THINK THEY INDICATED IN THEIR REPORTS THAT THEY HAVE PROTECTED THE SCENE AND THOSE ITEMS WERE ON THE GROUND

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AND, OF COURSE, THEY MARKED THEM. IT WAS HOURS FROM THE TIME IN WHICH, I THINK THE TIME IN WHICH THEY WERE FIRST DISPATCHED UNTIL THE EVIDENCE WAS COLLECTED AND, OF COURSE, YOU CAN OBTAIN THE WARRANT IN THAT PARTICULAR PERIOD OF TIME.

IT'S JUST, ALL OF THOSE ISSUES THAT ARE DEALT WITH BY THE STATE, ARGUED BY THE STATE IS DEALT WITH ALMOST DIRECTLY ON POINT IN MINCEY AND IT SAYS THAT THERE IS NO MURDER EXCEPTION. YOU CAN'T SAY WELL THERE'S A MURDER AND WE NEED TO PROCESS THE SCENE SO WE, SO WE HAD TO GO AND DO IT, IT SAYS, NO, YOU DON'T UNLESS YOU'RE CONFRONTED WITH A SITUATION WHERE DESTRUCTION OF EVIDENCE IS EMINENT AND YOU CANNOT WAIT TO GO GET A WARRANT. AT THAT POINT IT SAYS YOU MIGHT BE JUSTIFIED IN DOING IT THEN, BUT THAT SITUATION DOESN'T PRESS, THAT SITUATION IS NOT PRESENT. THERE WAS AN OPPORTUNITY TO OBTAIN A WARRANT BECAUSE THERE WAS HOURS BETWEEN THE TIME IN WHICH THEY WERE DISPATCHED UNTIL THE TIME IN WHICH, I THINK THEY WERE DISPATCHED AROUND TEN SOMETHING, AND, OF COURSE, THE RETURN INDICATE THAT THEY COLLECTED EVIDENCE AROUND 1:00 OR AT LEAST SLED DID, ALL THIS EVIDENCE WAS COLLECTED, SO THERE IS NO EXCUSE AND, OF COURSE, THERE IS NO EVIDENCE, I THINK, IN WHICH THEY CAN CITE IT TO SUPPORT THE POSITION IN WHICH THEY'RE ARGUING BUT MINCEY SUPPORTS THE POSITION IN WHICH WE'RE ARGUING AND OBVIOUSLY IS IS THAT A LEGAL ARGUMENT, AT LEAST AN ARGUMENT

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WITHOUT LEGAL SUPPORT IS JUST SIMPLY NO ARGUMENT AT ALL.

THE COURT: SOLICITOR, ANY REPLY?

MR. DEBERRY: THANK YOU, YOUR HONOR, I'D JUST LIKE TO SAY IN THE MINCEY CASE AND THIS SITUATION THAT WE'RE DEALING WITH TODAY ARE TOTALLY UNALIKE AND, YOUR HONOR, IN THE MINCEY CASE YOU HAVE AN UNDERCOVER POLICE OFFICER ENTER INTO A HOME, A SHOOT OUT TOOK PLACE, AND A FOUR DAY SEARCH ENSUED AFTER SUCH. THE COURT REALIZES IN THE MINCEY CASE THAT THERE WAS A PERIOD WHERE THEY DIDN'T KNOW WHETHER EVIDENCE WAS GOING AWAY, THERE IS A PERIOD JUST AFTER THE SHOOTING THAT THEY'RE ALLOWED TO CHECK FOR OTHER VICTIMS OR FOR PEOPLE WHO MAY BE INVOLVED OR FOR DANGERS IN THE HOME AND, YOUR HONOR, IN OUR CASE WE HAVE A SITUATION WHERE THERE IS A SHOOTING AND THE POLICE OFFICERS HAVE REASON TO BELIEVE THAT THERE COULD BE PEOPLE INSIDE OF THE HOME WHICH GIVES THEM HOWEVER THEY DECIDE TO HANDLE THE SITUATION LIKE THAT. THEY COULD BE THERE IN THE HOME WHERE A PERSON JUST COMMITTED A MURDER AND THE HOME IS HARBORING THAT PERSON AND I DON'T BELIEVE THEY NEED A WARRANT FOR THAT AND I DON'T BELIEVE THEY NEED A WARRANT TO RESPOND TO A MURDER SCENE AND FINDING WHAT THEY FOUND ALL BEING LESS THAN THIRTY FEET FROM A PUBLIC ROAD AND THEY FOUND A VICTIM, BLOOD, SHELL CASING, OTHER EVIDENCE OUTSIDE OF THE HOME AND AGAIN I JUST LET THE COURT KNOW THAT WE DON'T INTEND TO INTRODUCE ANYTHING THAT CAME OUT OF THAT HOUSE.

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SO THAT WOULD BE THE STATE'S POSITION, YOUR HONOR.

THE COURT: I'M GOING TO TAKE IT UNDER ADVISEMENT FOR THE MOMENT AND I'LL HAVE YOU AN ANSWER SHORTLY BUT IN THE MEANTIME IF YOU WANT TO DO SOME PLEAS.

MR. DEBERRY: ALL RIGHT.

MR. BROOKER: YOUR HONOR, IF WE MAY APPROACH, WE DO HAVE ONE OTHER ISSUE THAT I THINK THAT MAY ATTENTION BY THE COURT.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD OUT OF THE HEARING OF THE COURT REPORTER.)

THE COURT: I'VE READ THE MINCEY CASE AND DONE A LITTLE BIT OF RESEARCH AND IT APPEARS TO ME THAT IN MINCEY THE OFFICERS WERE CONDUCTING, THAT WERE CONDUCTING THE SEARCH WERE NOT ON THE PROPERTY DUE TO THE EMERGENCY CIRCUMSTANCES. IN OTHER WORDS, THEY WERE NOT THE INITIAL RESPONDERS TO THE PROPERTY. THEY ACTUALLY CAME LATER TO ACTUALLY DO THE SEARCH ITSELF. FURTHERMORE IN MINCEY THE EVIDENCE WAS INDOORS AND LOTS OF IT WAS NOT IN PLAIN VIEW WHICH ENGAGED THE OFFICER TO LOOK IN THE WALLS THEMSELVES AND UNDER THE CARPET AND IN DRAWERS AND CLOSETS. IN THIS CASE WHAT I'VE HEARD SO FAR IT APPEARS THAT THE EVIDENCE SOUGHT TO BE SUPPRESSED WAS IN THE PLAIN VIEW OF THE RESPONDING OFFICERS.

MR. DEBERRY: COULD YOU REPEAT THAT?

THE COURT: IN THIS CASE THE EVIDENCE SOUGHT TO

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BE SUPPRESSED BY MR. BROOKER WAS IN PLAIN VIEW TO THE RESPONDING OFFICERS.

MR. DEBERRY: THAT'S CORRECT.

THE COURT: IS THAT RIGHT? ALL RIGHT, THE OFFICERS WERE LAWFULLY ON THE PROPERTY IN RESPONSE TO THE CALL. THE EVIDENCE WAS INADVERTENTLY SEEN, THE DISCRIMINATING NATURE OF THE EVIDENCE WAS IMMEDIATELY APPARENT TO THE OFFICERS SO ACCORDING TO STATE V. BROWN, 289, S.C. 581, IT SEEMS TO ME THAT THAT MOTION NEEDS TO BE DENIED AT THIS TIME.

MR. BROOKER: THE ONLY THING THAT I WOULD LIKE, YOUR HONOR, IS AT LEAST FOR THE PURPOSES OF THE RECORD IS IS THAT, IS THAT THE EVIDENCE OBVIOUSLY IS THAT IN THIS PARTICULAR SITUATION THERE WAS, THERE WAS A NUMBER OF EVIDENCE THAT WAS, THAT WAS COLLECTED, I THINK, SPECIFICALLY ON THE OUTSIDE OF THE RESIDENCE; AND FOR THE PURPOSES OF YOUR RULING IS THAT SO WE COULD, YOU KNOW, FOR PURPOSES OF THE RECORD, IF WE COULD MAKE AN IDENTIFICATION, IDENTIFICATION OF THE EVIDENCE THAT SPECIFICALLY ALLEGING TO BE IN PLAIN VIEW BECAUSE OBVIOUSLY THIS HAPPENED, I THINK, AT NIGHT; AND OBVIOUSLY IS, IS THAT SOME OF THE ITEMS THAT WERE, THAT WERE COLLECTED WOULD HAVE BEEN IN THE GRASS AT NIGHT AND YOU WOULD HAVE TO SEARCH FOR THEM. IT'S NOT SOMETHING WHERE YOU COULD JUST WALK PAST AND THERE IT WOULD BE, SO IF WE CAN AT LEAST, IF PART OF THE ARGUMENT IS

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IS THAT, IS THAT, OR YOUR RULING IS BASED UPON THE FACT THAT SOME OF THIS EVIDENCE IS IN PLAIN VIEW AT LEAST FOR THE PURPOSES OF THE RECORD THAT WE CAN IDENTIFY WHAT EVIDENCE WAS IN PLAIN VIEW AND WHAT EVIDENCE WAS NOT IN PLAIN VIEW AT LEAST FOR THE RECORD.

THE COURT: ANY RESPONSE?

MR. DEBERRY: YOUR HONOR, I DON'T HAVE ANY PROBLEM DOING THAT. I WOULD REQUEST MAYBE THAT WE COULD JUST DO THAT MAYBE FIRST THING IN THE MORNING, THAT WAY MR. BROOKER AND I COULD GET TOGETHER ON EXACTLY WHAT EVIDENCE WE'RE TALKING ABOUT OR I COULD DO IT NOW HOWEVER YOU WOULD LIKE.

THE COURT: WHY DON'T WE GO AHEAD AND DO IT? THAT WAY WE KNOW WHAT WE'RE TALKING ABOUT.

MR. BROOKER: YOU KNOW I DON'T HAVE A PREFERENCE IS WE COULD TAKE A LOOK AT LEAST THE EVIDENCE THAT WAS COLLECTED AT THE SCENE AND OBVIOUSLY I THINK A LOT OF IT HAS BEEN TAINTED AND PHOTOGRAPHS THAT WAS TAKEN SO AT LEAST WE CAN MAKE THAT DISTINCTION, IF AT LEAST, IF THE LEGAL DISTINCTION IS BEING MADE IS, IS THAT WHETHER OR NOT IT WAS PLAIN VIEW OR NOT IN PLAIN VIEW. I DON'T WANT TO LUMP ALL THE EVIDENCE TOGETHER.

THE COURT: WELL THAT'S JUST PART OF THE DISTINCTION, YOU KNOW. PLAIN VIEW IS CRITICAL IN SOUTH CAROLINA, WELL ALSO WAS THAT THE INITIAL RESPONDERS THAT

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WERE DISPATCHED TO THE SCENE THEY SHOW UP AND THEN FIND BLOOD ON THE GROUNDS AND GUN SHELL CASING ON THE GROUND AND SO FORTH, AND SO IN MINCEY WHAT YOU HAVE IS NOT ONLY THE INITIAL RESPONDERS. THEY CALL IN A TEAM OF OTHER PEOPLE TO COME IN THERE AND SEARCH THIS PLACE. THEY WENT IN THE HOUSE AND THEY TORE INTO THE WALLS AND DUG UP THE CARPET AND WENT ALL THROUGH THAT HOUSE AND I WOULD SAY THAT WAS NEEDING A SEARCH WARRANT FOR SURE, BUT IN THIS CASE IT SEEMS TO ME THAT THE LAW SHOWED UP AND COLLECTED EVIDENCE IN PLAIN VIEW, AS FAR AS I KNOW RIGHT NOW.

MR. DEBERRY: YES, YOUR HONOR.

MR. BROOKER: AND I THINK, OF COURSE, AND I THINK IT ACTUALLY DIDN'T HAPPEN THAT WAY. I THINK IS THAT THE INVESTIGATORS, THE INITIAL OFFICERS WHO SHOWED UP ACTUALLY I THINK IN THEIR REPORT SAYS WHEN THEY GOT THERE THEY CALLED THE INVESTIGATORS AND, OF COURSE, THE INVESTIGATORS DID ARRIVE AND IT WAS THE INVESTIGATORS THAT COLLECTED THE EVIDENCE AND NOT THE INITIAL OFFICERS ON THE SCENE. THEY WERE I GUESS YOU MIGHT SAY BEAT OFFICERS WHO AT 11:00 ON NIGHT THAT IS ON THE BEAT. THEY GET CALLED, ARRIVE EARLY THEY DON'T DO INVESTIGATIONS. THEY THEN CALLED IN THE INVESTIGATORS AND THAT'S EXACTLY WHAT HAPPENED IN MINCEY IS THAT THE OFFICERS WHO ACTUALLY WENT IN, BUT NOT THE OFFICERS WHO ACTUALLY COLLECT THE EVIDENCE THERE, IS THAT THEY CALL IN THE, I GUESS FOR LACK OF A

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BETTER WORD IS, IS THAT THEY CALLED IN THE INVESTIGATORS OR THE CRIME SCENE INVESTIGATORS WHO THEN CAME, YOU KNOW, AND THEN COLLECTED THE SCENE WHICH IS EXACTLY WHAT HAPPENED IN THIS PARTICULAR SITUATION, NOT THE INITIAL OFFICERS.

MR. DEBERRY: ARE YOU GOING TO DO THAT NOW OR DO THAT TOMORROW?

MR. BROOKER: IT DOESN'T MATTER TO ME.

THE COURT: ANY RESPONSE TO THAT?

MR. DEBERRY: YOUR HONOR, THERE'S VERY LITTLE EVIDENCE THAT THIS ISSUE IS OVER. I HAVE ALL THE PICTURES OF ALL THE EVIDENCE THAT WOULD EVEN BE RELEVANT OR THAT AT LEAST THE STATE CONTENDS IS RELEVANT AND HERE THEY ARE IF YOU WANT TO LOOK AT THEM AND HOWEVER YOU WANT TO DO THEM.

THE COURT: GO AHEAD AND LET MR. BROOKER LOOK AT THEM.

MR. BROOKER: YOUR HONOR, I THINK HE HAS A LIST OF THE EVIDENCE. THIS IS AT LEAST THE PHOTOGRAPHS THAT WERE TAKEN, AT LEAST SOME OF THE EVIDENCE AT THE SCENE AND, OF COURSE, WE CAN AT LEAST I GUESS PRESENT THOSE PICTURES TO YOUR HONOR MAYBE AND SO THAT HE CAN MAKE A DETERMINATION AS TO WHETHER OR NOT THIS WAS ACTUALLY; AND I KNOW THAT YOU SAID THAT'S ONLY PART OF YOUR, YOUR RATIONALE BUT IF OBVIOUSLY WE JUST WANT THAT DISTINCTION FOR THE PURPOSES OF THE RECORD, YOU KNOW, JUST IN CASE, YOU KNOW ---

THE COURT: AND, MR. DEBERRY, DID THE INITIAL

RESPONDERS COME AND THEN DID THEY CALL UP A BACK UP INVESTIGATIVE TEAM TO COME?

MR. DEBERRY: YES, SIR, YOUR HONOR.

THE COURT: TO SEARCH THE PREMISES?

MR. DEBERRY: SLED CAME AND ACTUALLY PICKED UP THE EVIDENCE.

THE COURT: A SEARCH WARRANT WAS NOT ISSUED?

MR. DEBERRY: NO, NOT, NOT FOR THE EVIDENCE OUTSIDE AND THERE WAS NO EVIDENCE INSIDE. ALL THIS WAS RIGHT HERE.

THE COURT: AND WHAT TIME DID THE INCIDENT HAPPEN?

MR. DEBERRY: RIGHT AROUND 10:00 IN THE EVENING.

THE COURT: AT NIGHT?

MR. BROOKER: YEAH, THE FIRST OFFICER SAID HE WAS DISPATCHED, I THINK, AT, AT FOUR MINUTES AFTER TEN IS WHEN HE WAS, HE WAS DISPATCHED AND HE ARRIVED AT SEVEN AFTER TEN, 10:07.

THE COURT: 10:07, AND WHEN DID THE INVESTIGATIVE TEAM COME IN?

MR. BROOKER: SLED INVESTIGATORS AT LEAST ON THEIR RETURN WAS AROUND 1:00 IN WHICH THEY ISSUED A RETURN SAYING THAT THEY, THEY COLLECTED THE EVIDENCE SOMEWHERE AROUND, THEY'RE SAYING AROUND TWELVE OR ONE, I THINK IT'S ONE SOMETHING THAT'S ON THE RETURN FROM SLED.

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THE COURT: AND HOW FAR AWAY IS THIS EVIDENCE LOCATED ON THE SIDEWALK AND IN THE GRASS FROM THE STREET?

MR. DEBERRY: YOUR HONOR, I'D SAY IT'S NO MORE THAN THIRTY FEET.

MR. BROOKER: AND, OF COURSE, IF YOU COULD TAKE A LOOK AT LEAST SOME OF THE PHOTOGRAPHS SPECIFICALLY WITH THE, WITH THE, IT'S AT NIGHT OBVIOUSLY AND, OF COURSE, FOR EXAMPLE IS, IS THAT THE, THE PHOTOGRAPH OF AT LEAST THE SPENT SHELL CASINGS THAT'S ALMOST IMBEDDED WITH GRASS AT NIGHT I DON'T THINK THAT THAT'S CONSIDERED TO BE IN PLAIN VIEW. THAT PROBABLY IS GOING TO BE SOMETHING THAT HAS TO BE SEARCHED FOR. OBVIOUSLY WE DON'T AND OUR POSITION IS THAT DOESN'T EVEN MAKE A DISTINCTION WHETHER IT HAS TO BE SEARCHED FOR OR NOT BECAUSE IN MINCEY THEY SUPPRESSED ALL THE EVIDENCE, THE ONE THAT WAS IN PLAIN VIEW AND ALSO THE ONE THAT HAD TO BE SEARCHED FOR THAT WAS ON THE INSIDE OF THE APARTMENT. THE JUDGE MADE, THE UNITED SUPREME COURT MADE NO DISTINCTION ---

THE COURT: GIVE ME ONE SECOND.

MR. BROOKER: YES, SIR, I'M SORRY.

THE COURT: WHAT WAS MUD DOING IN THE CAR AND ON THE SIDEWALK?

MR. BROOKER: IT ACTUALLY I THINK IT WAS RAINING THAT DAY AND ACTUALLY WHAT IT WAS IS THAT, IS THAT WHEN THE, WHEN THE VICTIM WAS SHOT I THINK HIS TWO FRIENDS TRIED

TO PUT HIM IN THE VEHICLE, AT LEAST THEIR STATEMENTS WAS AND TAKE HIM TO THE HOSPITAL. SO, SO WHEN THE INITIAL LAW ENFORCEMENT OFFICERS ARRIVED IN THEIR STATEMENTS THEY'RE SAYING THAT WHEN THEY ARRIVED THEY SAW THESE TWO INDIVIDUALS TRYING TO LOAD THE SHOOTING VICTIM UP IN THE CAR AND, OF COURSE, THAT WOULD PROBABLY BE HOW, YOU KNOW, MUD GOT ON THE CAR BECAUSE MUD WAS PROBABLY ON THE VICTIM WHEN THEY WERE TRYING TO LOAD HIM INTO THE VEHICLE, LOAD HIM INTO THE VEHICLE; AND, OF COURSE, YOUR HONOR, WE'D BE MORE THAN HAPPY TO SUBMIT, SUBMIT THE POLICE OFFICERS REPORT IN THE RECORD, DETAILS OF THAT.

THE COURT: LET'S JUST HAVE THE TRIAL AND LET'S HEAR THE FACTS AND WE CAN TAKE THAT TESTIMONY OUTSIDE THE JURY'S PRESENCE AND THAT WAY I CAN HEAR WHAT THEY HAVE TO SAY, WHAT THEY DID SEE, WHAT WAS IN PLAIN VIEW, WHO SHOWED UP WHEN. RIGHT NOW I'M JUST KIND OF GOING ON GUESSING BASED ON WHAT YOU'RE TELLING ME AND WHAT MR. DEBERRY IS TELLING ME. LET'S JUST HEAR THE FACTS AND GO FROM THERE, HOW ABOUT THAT, AND WE CAN DO IT OUTSIDE THE JURY'S PRESENCE, JUST REMIND ME BEFORE THESE ITEMS GO INTO EVIDENCE AND WHATEVER WE'LL DO IT.

MR. BROOKER: THAT'S PERFECTLY FINE WITH ME, YOUR HONOR.

THE COURT: ALL RIGHT, IT'S MY UNDERSTANDING THAT YA'LL NEED, THE SOLICITOR NEEDS MR. WOODS TO ESTABLISH

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A CHAIN AS TO SOME OF THE EVIDENCE; IS THAT CORRECT?

MR. DEBERRY: YES, SIR.

THE COURT: IT'S MY UNDERSTANDING THAT MR. BROOKER DOES NOT WANT TO CONCEDE OR GO FORWARD WITHOUT MR. WOODS TESTIFYING; IS THAT CORRECT?

MR. BROOKER: YES, YOUR HONOR.

THE COURT: AND IT'S MY UNDERSTANDING THAT YOU WANT HIM TO TESTIFY IN FRONT OF THE JURY SO THEY CAN ACTUALLY SEE HIM AND JUDGE HIS CREDIBILITY AND BELIEVABILITY; IS THAT CORRECT?

MR. BROOKER: ABSOLUTELY, YOUR HONOR.

THE COURT: IS HE UNDER SUBPOENA?

MR. DEBERRY: YES, YOUR HONOR, BY US.

THE COURT: WE'RE GOING TO NEED HIM, WE CAN DO HIM FIRST.

MR. WOODS: WELL, YOUR HONOR, THE PROBLEM IS IF I'M NOT, IF I DON'T RETURN THEN I'LL BE CONSIDERED THE SAME AS BEING AWOL.

THE COURT: EVEN WITH A COURT ORDER FROM ME?

MR. WOODS: I DON'T HAVE ANY DAYS OR ---

THE COURT: OBVIOUSLY WE HAVE A SERIOUS DOCUMENT AND YOU ARE AN IMPORTANT WITNESS IN THIS TRIAL. IF THE PARTIES AGREE NOT TO NEED YOU OR NOT HAVE YOU UNDER SUBPOENA IT WOULD BE DIFFERENT.

MR. WOODS: YES, SIR, I'M SORT OF STUCK AND THE

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OTHER THING IS I HAVE A FLIGHT FOR TOMORROW, I'D HAVE TO CHANGE MY FLIGHT. THAT'S ---

THE COURT: HOW LONG AGO DID YOU RECEIVE THE SUBPOENA?

MR. WOODS: THURSDAY, LAST WEEK THURSDAY. I WAS NOTIFIED THURSDAY LAST WEEK.

THE COURT: THIS PAST THURSDAY?

MR. WOODS: THIS PAST THURSDAY, 19TH OR 20TH, 19TH.

THE COURT: SO YOU GOT IT THURSDAY?

MR. WOODS: YES, SIR.

THE COURT: AND YOU HAD FRIDAY AND YESTERDAY TO MAKE ANY CALLS?

MR. WOODS: WELL WHAT I DID WAS I NOTIFIED THE SOLICITOR'S OFFICE AND THE COURT BECAUSE I DON'T HAVE ANY REAL CONCERN IN THE TRIAL AND I'VE ALREADY HAD THE ARRANGEMENTS TO RETURN ON THE 8TH. I WAS HOPING THAT THIS WOULD BE RESOLVED WITHOUT ME HAVING TO DO ANYTHING, YOUR HONOR.

THE COURT: I UNDERSTAND.

MR. WOODS: YOU KNOW IT'S GOING TO COST ME A LOT OF PROBLEMS BUT I'M HERE IN COURT AND I WILL DO WHATEVER YOU TELL ME TO DO, IT'S GOING TO COST ME A LOT OF PROBLEMS.

THE COURT: WE NEED YOUR TO TESTIFY.

MR. WOODS: I UNDERSTAND.

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THE COURT: IF WE CAN TAKE HIM OUT OF ORDER TO BE FIRST.

MR. WOODS: IF I MISS MY FLIGHT, YOUR HONOR, I'M JUST GOING TO COST ME A LOT OF MONEY.

THE COURT: IS THERE ANYTHING WRONG WITH YOU TESTIFYING FIRST AND LEAVING IN THE AFTERNOON?

MR. WOODS: WHATEVER I DO, JUDGE, IT'S, THE CHANGES IN MY FLIGHT ARRANGEMENTS ARE GOING TO COST ME A LOT.

THE COURT: THE SOLICITOR'S OFFICE MAY BE WILLING TO HELP YOU OUT.

MR. WOODS: WELL IT'S GOING TO BE PROBABLY $1200 OR MORE.

THE COURT: OKAY.

MR. WOODS: SIR?

THE COURT: I EXPECT THEY GOT $1200 IF IT'S NEEDED.

MR. DEBERRY: JUDGE, I DON'T --

THE COURT: BUT I HATE TO SAY WE'VE GOT TO HAVE YOU AND YOU'RE UNDER SUBPOENA, MY HANDS ARE TIED.

MR. WOODS: YES, SIR.

THE COURT: ALL RIGHT, WE WILL START AT 9:30 SHARP. YA'LL MAKE OPENING STATEMENTS, I'LL BE VERY BRIEF WITH MY OPENING REMARKS AND THEN MR. WOODS.

MR. WOODS: SIR?

THE COURT: YOU'LL BE THE VERY FIRST WITNESS AND WE'LL GET YOU UP AND OUT. ALL RIGHT, ANYTHING FURTHER?

MR. DEBERRY: NO, YOUR HONOR, JUST IF WE COULD TAKE A MOTION UP AT MAYBE 9:00.

THE COURT: YOU WANT TO GO AHEAD AND HAVE THIS MATTER PREMARKED? MIGHT BE A GOOD IDEA TO DO IT NOW SO WE CAN MOVE. DO OUR OPENING STATEMENTS AND LET MR. WOODS GO AHEAD AND TESTIFY AND GET HIM ON OUT.

MR. DEBERRY: YES, SIR.

THE COURT: THEN WE CAN CONTINUE ALL THIS OTHER STUFF.

(WHEREUPON, STATE'S EXHIBITS NUMBERS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, AND 19 MARKED FOR IDENTIFICATION.)

(WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING AND RESUMES ON AUGUST 24, 2010 AT 9:00 A.M.)

LIEUTENANT FARMER BLUE

BEING FIRST DULY SWORN, TESTIFIED IN CAMERA AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q GOOD MORNING, LIEUTENANT BLUE.

A GOOD MORNING.

Q COULD YOU FOR THE RECORD STATE WHERE YOU WORK AND WHAT'S YOUR RANK AT THAT FACILITY?

A MY NAME IS FARMER BLUE. I WORK IN THE

MARION POLICE DEPARTMENT IN MARION, SOUTH CAROLINA, WHERE I'M LIEUTENANT OF INVESTIGATIONS.

Q OKAY ---

MADAM COURT REPORTER: SPEAK UP, PLEASE, SIR.

MR. DEBERRY: (CONTINUING)

Q IN 2007, MAY OF 2007 WERE YOU WORKING IN THAT SAME CAPACITY?

A YES, I WAS.

Q OKAY, AND IN THAT MONTH DID YOU HAVE AN OCCASION TO INVESTIGATE A MURDER?

A YES, I DID.

Q OKAY, AND WAS THE SUSPECT THAT WAS ULTIMATELY ARRESTED AND CHARGED IN THAT CASE SHAWN REAVES?

A YES, IT WAS.

Q OKAY, AND LIEUTENANT BLUE, DURING THAT COURSE OF INVESTIGATION DID YOU HAVE A NEED TO SHOW WITNESSES A PHOTO LINEUP?

A YES, I DID.

Q OKAY, CAN YOU EXPLAIN THE CIRCUMSTANCES OF ABOUT HOW THAT CAME ABOUT?

A THE CIRCUMSTANCES WAS THAT JUST ALL THE WITNESSES WANTED, I WANTED TO BE SURE THAT THEY WERE IDENTIFYING THE PERSON THAT WE WERE ACTUALLY SEEKING IN THIS CASE. ACTUALLY WHAT I DID WAS HAD SLED COMPOSE A PHOTO LINEUP USING MR. REAVES PHOTO WITH SOME OTHER PHOTOS

FROM AROUND THE COUNTRY AND THOSE PHOTOS WERE ULTIMATELY PUT IN A PACKAGE FOR A LINEUP AND SHOW THEM TO THE VICTIMS.

Q OKAY ---

A SHOW THEM TO THE WITNESSES.

Q SO SLED PREPARED THE ACTUAL PICTURES FOR THE LINEUP?

A YES, THEY DID.

Q OKAY, AND YOU TESTIFIED THAT THE PICTURES IN THE LINEUP ARE, THEY'RE ALL DIFFERENT PEOPLE?

A YES.

Q OKAY, AND THEY'RE FROM ALL AROUND THE COUNTRY?

A YES.

Q OKAY, AND WAS SHAWN REAVES A PART OF THE LINEUP?

A YES, HE WAS.

Q OKAY, AND WHAT, WERE THE WITNESSES THAT CLAIM, WERE THE IDENTIFICATIONS MADE BY EYEWITNESSES THE NIGHT OF THE MURDER WERE THEY THE REASON THAT YOU PERFORMED THE PHOTO A LINEUP?

A YES, IT WAS, AND THAT'S HOW HE WAS IDENTIFIED.

Q OKAY, AND WHO WERE THE INDIVIDUALS THAT YOU ASKED IF THEY WOULD BE WILLING TO LOOK AT THE LINEUP TO SEE IF THEY RECOGNIZED THE SHOOTER?

A WELL ALL OF THE WITNESSES WAS ASKED TO LOOK AT THE PHOTO LINEUP TO SEE IF THEY COULD PICK OUT THE ACTUAL SHOOTER. ONE OF THE WITNESSES DID IDENTIFY MR. SHAWN REAVES AS BEING THE SHOOTER.

Q OKAY, AND WHICH WITNESS WAS THAT?

A THAT WAS JOEMELLER WILSON.

Q OKAY, AND IS THIS THE LINEUP THAT YOU SHOWED THAT NIGHT OR THAT DAY?

A YES, IT IS.

Q OKAY --

MR. DEBERRY: YOUR HONOR, CAN WE MAKE THIS A COURT'S EXHIBIT?

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTION, YOUR HONOR.

THE COURT: SURE.

(WHEREUPON, COURT'S EXHIBIT NUMBER 1 MARKED.)

MR. DEBERRY: (CONTINUING)

Q AND LIEUTENANT BLUE, DID, IS THERE ANY PAPER WORK AT YOUR OFFICE OR THROUGH POLICY IN THE MARION POLICE DEPARTMENT THAT GOES ALONG WITH, YOU KNOW, RECORDING THE NAMES OF WHO YOU SHOWED THIS TO AND THE DATES?

A YES, THERE IS PAPER WORK. THE PAPER WORK IS ALSO DONE PRINTED BY THE POLICE DEPARTMENT, IT SHOWS THE PHOTOS NUMBERS BESIDE THEM AND ALSO GOT A PLACE FOR THE WITNESS TO SIGN AND WHAT THE DATE ACTUALLY IS.

Q OKAY, IF YOU WOULD LOOK AT JOEMELLER WILSON-DOZIER'S PAPER WORK WAS SHE AN INDIVIDUAL THAT YOU SHOWED THIS LINEUP TO?

A YES, SHE WAS.

Q AND DO YOU HAVE REASON TO BELIEVE THAT SHE WAS AN EYEWITNESS TO THIS CRIME?

A YES, I DID.

Q OKAY, AND WHEN YOU SHOWED, AND WHEN YOU SHOWED HER THE PHOTO LINEUP DID YOU SUGGEST, HOW, HOW DID YOU PRESENT THE LINEUP TO MS. WILSON?

A I PRESENTED THE PHOTO, THE LINEUP TO HER AND ASKED HER TO PICK OUT THE SUBJECT INVOLVED IN THE SHOOTING, THE SUBJECT INVOLVED IN THE SHOOTING AND SHE IMMEDIATELY PICKED OUT MR. SHAWN REAVES.

Q OKAY, AND DID YOU SUGGEST TO HER WHERE, WHERE HIS PICTURE MAY BE OR ---

A NO, I DID NOT.

Q DID YOU TELL HER THAT, THAT THE SUSPECT MAY OR MAY NOT BE IN THE LINEUP?

A NO, I DID NOT.

Q OKAY, WAS ANYBODY ELSE PRESENT IN THE ROOM WITNESSING THE IDENTIFICATION IN THE LINEUP?

A NO, SIR.

Q OKAY, AND YOU, DID YOU TESTIFY THAT, HOW LONG AFTER YOU LAID DOWN THE PHOTO DID THE WITNESS PICK OUT

MR. REAVES?

A IMMEDIATELY.

Q IMMEDIATELY. ALL RIGHT, ON THE BOTTOM OF THIS SHEET IT SAYS WITNESSED BY HEATHER EVANS?

A YES, SHE WAS IN THE OFFICE AT POLICE DEPARTMENT.

Q OKAY ---

THE COURT: SPEAK UP A LITTLE BIT AND MAKE SURE SHE CAN HEAR YOU.

MR. DEBERRY: YOUR HONOR, AT THIS TIME I'D LIKE TO MAKE MS. WILSON-DOZIER'S LINEUP PAGE A PART OF THE COURT'S EXHIBIT?

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTION, YOUR HONOR.

(WHEREUPON, COURT'S EXHIBIT NUMBER 2 MARKED.)

MR. DEBERRY: (CONTINUING)

Q LIEUTENANT BLUE, WERE THERE, HOW MANY OTHER INDIVIDUALS DID YOU SHOW THIS PHOTO LINEUP TO?

A I THINK THERE WAS AT LEAST FOUR OTHER WITNESSES AT THE SCENE THAT I ALSO SHOWED THE LINEUP TO.

Q OKAY, I'M GOING TO SHOW YOU A TRAVIS LANE AND A JACKIE MCGILL, CAN YOU EXPLAIN THOSE FACES FOR US?

A YES, THESE ARE WITNESSES AT THE SCENE.

Q OKAY, AND WHAT REASON DID YOU ASK MR. LANE AND MR. MCGILL WHETHER OR NOT THEY HAD SEEN THE PHOTO

LINEUP OR WHETHER OR NOT, FOR WHAT REASONS DID YOU SHOW THEM THE PHOTO LINEUP?

A THEY WERE WITNESSES AT THE SCENE AND DUE TO THAT I WANTED THEM TO SEE IF THEY COULD PICK OUT THE SHOOTER ALSO.

Q OKAY, DID THEY INDICATE THAT THEY KNEW THE SHOOTER?

A THEY INDICATED THEY DIDN'T KNOW HIM PERSONALLY BUT THEY HAD SEEN IN THE AREA, SEEN HIM AROUND BEFORE.

Q OKAY, AND PICTURE NUMBER THREE IN THE LINEUP IS THAT MR. REAVES?

A YES, IT IS.

Q OKAY, AND IS THAT WHAT HE LOOKED LIKE AT THE TIME OF THE INCIDENT?

A NO, IT'S NOT.

Q OKAY, AND DID MS. MCGILL OR MR. LANE POSITIVELY IDENTIFY HIM IN THIS LINEUP?

A NO, THEY DIDN'T POSITIVELY IDENTIFY HIM. I THINK MR. MCGILL, I THINK HE, I THINK HE STATED THAT HE KNEW HIM AND THAT HE DIDN'T THINK THAT WAS HIM. I THINK MR. LANE IS HE ONE WHO SAID HE COULDN'T IDENTIFY HIM FROM THE PHOTO LINE UP.

Q OKAY, DID YOU SUGGEST TO THEM WHICH PICTURE MAY HAVE BEEN MR. REAVES OR DID YOU IN ANY WAY TELL THEM

WHICH PICTURE TO PICK?

A NO, I DID NOT.

Q OKAY, AND HOW LONG DID IT TAKE THEM TO MAKE THEIR DECISION?

A IT TOOK MR. JACKIE MCGILL, I THINK IT TOOK HIM ABOUT AT LEAST ABOUT FIVE MINUTES; MR. LANE LIKE I SAID I THINK HE JUST SAID HE COULDN'T REALLY PICK HIM OUT.

Q SO NEITHER ONE OF WHICH PICKED THE SUSPECT THAT WAS ARRESTED?

A NO.

MR. DEBERRY: YOUR HONOR, I'D LIKE TO MAKE THOSE TWO COURT'S EXHIBITS.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO, OBJECTION.

(WHEREUPON, COURT'S EXHIBITS NUMBERS 3 AND 4 MARKED.)

MR. DEBERRY: (CONTINUING)

Q LIEUTENANT BLUE, DID YOU EVER INDICATE TO THE THREE PEOPLE THAT YOU SHOWED THESE LINEUPS TO, DID YOU EVER INDICATE THAT THESE PEOPLE IN THE LINEUP MAY HAVE BEEN DETAINED OR ARRESTED OR HAVE PRIOR CONVICTIONS OR THAT THESE MAY HAVE MUG SHOTS?

A NO.

Q OKAY, AND IN YOUR OPINION DID THESE PEOPLE CLOSELY RESEMBLE EACH OTHER AS FAR AS AGE AND BACKGROUND

AND ETHNICITY?

A TO MY KNOWLEDGE, YES.

MR. DEBERRY: THANK YOU, I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: MR. BROOKER, CROSS.

CROSS EXAMINATION

BY MR. BROOKER:

Q LIEUTENANT BLUE, I THINK YOU TESTIFIED TO THE FACT THAT YOU WERE NOT RESPONSIBLE FOR AT LEAST CONSTRUCTING THE PHOTO LINEUP, THAT YOU ACTUALLY ASKED THE SLED TO PERFORM THE PHOTO LINEUP FOR YOU; IS THAT CORRECT?

A YES.

Q OKAY, SO WITH RESPECT TO WHAT, YOU KNOW, METHODOLOGY, METHODOLOGY THAT WAS USED IN DETERMINING WHAT PHOTOGRAPHS WOULD BE PLACED IN THIS PHOTO LINEUP YOU HAVE ABSOLUTELY NO IDEA HOW SLED DETERMINED, KNOW EXACTLY HOW IT WOULD PUT TOGETHER THESE PHOTOGRAPHS AND WHAT CRITERIA THAT THEY USED IN DECIDING WHICH PHOTOGRAPHS THEY PUT TOGETHER IN ORDER TO DETERMINE, IN ORDER TO MAKE SURE EITHER TRY TO DETERMINE THAT THEY WOULD NOT BE SUGGESTED IN ANY WAY; IS THAT CORRECT?

A YES, SIR.

Q OKAY, SO YOU DON'T KNOW WHETHER OR NOT THEY LOOK AT THE, LOOK AT THE EARS OF THE PERSON OR LOOKED AT THE EYES OF THE PERSON OR EITHER LOOKED AT THE HAIR SIZE OR

EITHER LOOKED AT THE COMPLEXION AND USED THOSE AS FACTORS IN DETERMINING HOW THEY WOULD CONSTRUCT THIS LINEUP; IS THAT CORRECT?

A THAT IS CORRECT.

Q DO YOU KNOW THE PHOTO LINEUP I THINK THAT'S BEEN ENTERED INTO EVIDENCE, OKAY, AND I THINK THAT WE ONLY HAVE A PHOTO COPY OF THAT PHOTO LINEUP IS, IS THAT YOU, DO YOU KNOW THE COMPLEXION OR THE SPECIFIC TONE, SKIN TONE OF EACH PARTICULAR INDIVIDUAL THAT'S CONTAINED IN THE PHOTO LINEUP?

A NO, I DO NOT.

Q OKAY, DO YOU KNOW WHETHER OR NOT SOME PERSONS WERE LIGHTER OR DARKER IN, IN SKIN COMPLEXION THAN THE OTHERS?

A NO, I DO NOT.

Q OKAY, ALL RIGHT, SO YOU COULDN'T TESTIFY WITH RESPECT TO, YOU KNOW, WHAT, WHAT METHOD WAS USED IN ORDER TO DECIDE WHAT PICTURES TO PUT TOGETHER AND SO YOU COULDN'T AT LEAST TELL THE COURT, YOU KNOW, SPECIFICALLY WHETHER OR NOT ANY METHODOLOGY THAT WAS USED WAS USED IN ORDER TO, YOU KNOW, SUGGEST ONE PERSON OVER THE OTHER, AT LEAST WITH RESPECT TO THE PHOTO LINEUP; IS THAT CORRECT?

A THAT'S CORRECT.

Q THE ONLY PERSON THAT COULD TESTIFY TO THAT WOULD BE THE SLED OFFICER WHO ACTUALLY PUT TOGETHER THE

PHOTO LINEUP; IS THAT CORRECT?

A THAT IS CORRECT.

Q ALL RIGHT, NOW I THINK YOU STATED AND, OF COURSE, JUST FOR, FOR, I THINK YOU STATED ON DIRECT EXAMINATION THAT, THAT IN ADDITION TO, TO JOEMELLER, HER NAME IS, INDULGE ME FOR JUST A SECOND, JOEMELLER WILSON, THANK YOU, IN ADDITION TO JOEMELLER WILSON THERE WAS AT LEAST, I THINK YOU SAID I WROTE IT DOWN, AT LEAST FOUR OTHER PERSONS THAT WERE SHOWN THIS PHOTO LINEUP, WHO WERE THE OTHER, YOU SAID AT LEAST FOUR OTHER PERSONS?

A AT LEAST FOUR PEOPLE, THAT WAS INCLUDING MS. JOEMELLER WILSON THERE WAS AT LEAST FOUR.

Q AT LEAST FOUR?

A YES.

Q WHO ARE THE OTHER PERSONS, OF COURSE WE KNOW ABOUT THREE AND, OF COURSE, WE KNOW ABOUT MS. WILSON, WE KNOW ABOUT MR. LANE, AND WE KNOW ABOUT MR. MCGILL, WHO ARE THE OTHER PERSONS THAT WERE SHOWED THE PHOTO LINEUP?

A THE OTHER PERSON THAT WAS SHOWN IT WAS, WAS THE WITNESS THAT LIVED ACROSS THE STREET WHO STATED THAT SHE HAD SEEN THE ACTUAL INCIDENT WHEN IT FIRST TOOK PLACE BUT SHE FAILED TO COOPERATE.

A OKAY, HOW DID YOU PROVIDE THAT PHOTO LINEUP TO HER, DID YOU PROVIDE IT TO HER IN THE SAME FASHION IN WHICH YOU PROVIDED TO THIS PARTICULAR PERSON?

A YES, I DID.

Q OKAY, DID YOU GET HER TO, TO, TO SIGN SOMETHING INDICATING WHETHER OR NOT SHE IDENTIFIED THIS PERSON OR NOT?

A LIKE I SAID SHE REFUSED TO COOPERATE WITH US.

Q OKAY, ALL RIGHT. DID YOU MAKE A NOTE OF THAT?

A NO, I DID NOT.

Q SO YOU DID NOT MAKE A NOTE OF ANY OF THAT?

A NO, I DID NOT.

Q ALL RIGHT, NOW, THIS PHOTO LINEUP WAS DONE ON, ON MAY 21, 2007; IS THAT CORRECT?

A YES.

Q OKAY, NOW DID YOU TALK TO PERSONS AT THE SCENE OF THE CRIME, WHEN YOU GOT THERE, I MEAN, OF COURSE, YOU WERE ON THE SCENE THAT NIGHT, WERE YOU NOT?

A YES, I WAS ON THE SCENE.

Q DID YOU TALK TO PERSONS AT THE SCENE OF THE CRIME?

A I TALKED TO OFFICERS AT THE SCENE OF THE CRIME THAT CAME AND INTERVIEWED THE WITNESSES AT THAT TIME.

Q OKAY, YOU DIDN'T DIRECTLY INTERVIEW ANY WITNESSES AT THE TIME?

A AT THAT TIME.

Q OKAY, WHAT POINT IN TIME DID YOU BECOME AT LEAST THAT YOU BELIEVED THAT THERE WAS PROBABLE CAUSE TO BELIEVE THAT, THAT SHAWN REAVES HAD COMMITTED THIS OFFENSE?

A I DON'T UNDERSTAND THE QUESTION.

Q OKAY, AT WHAT PARTICULAR, AT WHAT PARTICULAR POINT IN TIME DID YOU BELIEVE THAT YOU HAD PROBABLE CAUSE THAT SHAWN REAVES WAS, WAS, WAS INVOLVED IN THIS PARTICULAR EVENT?

A IT WAS PROBABLY AROUND EARLY THAT MORNING, THE MORNING FOLLOWING THE INVESTIGATION BY SLED.

Q OKAY, EARLY THAT MORNING AND HOW DID YOU REACH THAT CONCLUSION, AND I'M ASSUMING THAT WAS THE 15TH, THE INCIDENT TOOK PLACE, I'M SORRY, THE 13TH, SO EARLY THE NEXT MORNING WOULD HAVE BEEN THE 14TH?

A RIGHT.

Q OKAY, AND WHAT SPECIFICALLY LED, LED YOU TO THAT CONCLUSION?

A TALKING TO THE WITNESS AT THE SCENE AFTER A LITTLE, AFTER A LITTLE SHORT TIME TALKED TO MS. JOEMELLER WILSON AND AFTER TALKING TO THE OTHER WITNESSES AT THE SCENE.

Q OKAY, AND, OF COURSE, THAT LED YOU TO BELIEVE THAT IT WAS, THAT LED YOU TO BELIEVE THAT IT WAS, IT WAS SHAWN REAVES?

A YES.

Q OKAY, AND, AND WHAT DID MS. JOEMELLER WILSON TELL YOU AT THE, AT THE SCENE TO, TO LEAD YOU TO BELIEVE?

A NOT AT THE SCENE IT WAS LATER ON THAT DAY.

Q LATER ON THAT DAY WHAT DID SHE TELL YOU LATER ON THAT NEXT DAY THE 14TH?

MR. DEBERRY: YOUR HONOR, THIS IS IRRELEVANT AS OPPOSED TO THE PHOTO LINEUP, THIS HEARING THAT WE'RE HAVING AT THIS PRESENT TIME.

THE COURT: I TEND TO AGREE, HOW IS THIS RELEVANT TO IT?

MR. BROOKER: WELL THE REASON WHY IT'S RELEVANT, YOUR HONOR, IS IS THAT, IS THAT WHAT HE IS DOING IS IS THAT, IS THAT WHAT WE'RE TRYING TO ESTABLISH IS, IS THAT MS., MS. JOEMELLER WILSON HAD PRIOR KNOWLEDGE OF MR. REAVES AND PRIOR KNOWLEDGE OF THEIR BELIEF THAT HE WAS INVOLVED IN THIS, IN THIS THING I THINK ON THE DAY AFTER THE INCIDENT, SO WHEN THEY GO BACK ON THE, ON THE, ON THE 21ST AND, AND, AND PUT TOGETHER THIS PHOTO LINEUP, YOU KNOW, AND SAYS THAT THESE ARE ANONYMOUS PEOPLE PICK OUT, PICK OUT THE ONE AND, OF COURSE, THAT IS BOGUS, THAT IS ABSOLUTE BOGUS. SHE HAD PRIOR KNOWLEDGE IN THIS. SHE WAS ARRESTED AND, OF COURSE, THEY DIDN'T EVEN ASK THE QUESTION ---

MR. DEBERRY: OBJECTION, YOUR HONOR, THERE'S NO EVIDENCE THAT SHE WAS ARRESTED.

THE COURT: HOLD ON LET ME RESPOND, OF COURSE, YOU GOT TO HAVE PRIOR KNOWLEDGE TO BE ABLE TO IDENTIFY.

MADAM CLERK: ONE OF THE JURORS NEEDS SOMETHING.

THE COURT: OF COURSE, IN ORDER TO IDENTIFY SOMEBODY YOU HAVE TO HAVE PRIOR KNOWLEDGE OF SOMETHING IN ORDER TO IDENTIFY THEM IN A LINEUP. RIGHT NOW ALL WE'RE TRYING TO DETERMINE IS IF THE IDENTIFICATION WAS RELIABLE. YOU GOT PLENTY ROOM FOR CROSS WHEN TIME COMES FOR SURE.

MR. BROOKER: YOU HAVE TO HAVE PRIOR KNOWLEDGE BUT, OF COURSE, WHEN DID THAT KNOWLEDGE COME FROM. IT IS A DIFFERENCE IF, IF YOU, IF YOUR KNOWLEDGE CAME FROM AT LEAST THE FIRST TIME THAT YOU SAW THAT PERSON IS AT THE TIME OF THE EVENT AND YOU'RE IDENTIFYING THE PERSON FROM THAT PARTICULAR EVENT AND FROM THAT PARTICULAR RECOLLECTION, BUT WHAT HAPPENS IN A SITUATION WHERE YOU HAVE A PERSON AND THAT YOU HAVE KNOWN PREVIOUSLY AND KNOWN PREVIOUSLY FOR SOME TIME AND YOU'RE NOT IDENTIFYING THAT PERSON FROM YOUR, YOU MAY NOT BE IDENTIFYING THAT PERSON FROM YOUR RECOLLECTION AT THE SCENE BUT YOU MAY BE IDENTIFYING THAT PERSON FROM SOME OTHER RECOLLECTION AND THAT'S THE PROBLEM WHEN YOU HAVE A SITUATION WHERE ACQUAINTANCES WHERE YOU HAVE MORE, YOU HAVE PEOPLE WHO, WHO ARE ACQUAINTED WITH EACH OTHER AND, OF COURSE, IT TAINTS AT LEAST THE PHOTO LINEUP PARTICULAR PROBLEM.

THEY CAN ASK THEM, WELL OKAY, DO YOU HAVE PRIOR

KNOWLEDGE OF THIS PARTICULAR PERSON, IS THAT, AND, OF COURSE, WHO, WHO WAS THIS, YOU KNOW, IS THIS THE PARTICULAR PERSON THAT COMMITTED THIS OFFENSE, DO YOU HAVE PRIOR KNOWLEDGE OF, BUT TO TRY TO PERPETRATE A FRAUD AND PRETEND AS IF, AS IF THIS PERSON IS IDENTIFYING OR AT LEAST IDENTIFYING THIS PERSON FROM KNOWLEDGE THAT WAS OBTAINED FROM THE SCENE AND NO OTHER IS FICTITIOUS AND THAT, THAT'S WHAT CORRUPTS THE, THE AT LEAST THE PHOTO LINEUP SITUATION WITH SOMEONE WHO, WHO HAS PRIOR ACQUAINTANCES.

IF IT'S STRANGERS PEOPLE WHO DON'T KNOW EACH OTHER AND, OF COURSE, THEY TAKE A LOOK AT A PHOTO LINEUP AND SAYS, DO YOU KNOW ANY OF THESE PEOPLE AND THEN, OF COURSE, THAT PERSON THEN SAYS YES I CAN IDENTIFY THIS PERSON FROM MY RECOLLECTION OF THE, OF THE INCIDENT AT THE SCENE AND NOT FROM A PRIOR RECOLLECTION, YOU KNOW, AND THAT'S WHAT WE'RE TALKING ABOUT IS, IS THAT CAN THEY EXCLUDE HER FROM IDENTIFYING. IT, IT BASICALLY PUTS, PUTS THIS IN A SITUATION WHERE AT LEAST THIS PHOTO LINEUP SITUATION, AND I'M ASSUMING THEY INTEND TO, TO, TO SOMEHOW GRANDSTAND BEFORE THE JURY, YOU KNOW, IT'S CORRUPT, IT'S NOT USELESS, IT'S NOT USEFUL IN CIRCUMSTANCES WHERE, WHERE THE WITNESS WOULD HAVE PRIOR KNOWLEDGE FROM PRIOR KNOWLEDGE OF AT LEAST THE SUSPECT, YOU KNOW, FROM OTHER EVENTS AS OPPOSED TO THE EVENT THAT IS, YOU KNOW ---

THE COURT: OF COURSE THERE ARE LOTS OF CRIMES

IN THIS COUNTRY AND LOTS OF TRIALS IN THIS COUNTRY WHERE THE WITNESS HAS PRIOR KNOWLEDGE OF THE PERSON BEING IDENTIFIED.

MR. BROOKER: ABSOLUTELY.

THE COURT: WE'RE STILL JUST FOCUSING IN ON A LINEUP IT SELF NOT NECESSARILY INNOCENCE OR GUILT AT THIS STAGE, JUST AS THE IDENTIFICATION OF THE LINEUP USING OUT OF COURT LINEUP RELIABLE OR UNDULY SUGGESTIVE, SO LET'S JUST FOCUS IN ON THAT A LITTLE BIT AND KEEP GOING IF YOU NEED TO.

MR. BROOKER: AND THAT'S WHAT, AND, OF COURSE, IN FOCUSING ON THAT THAT'S, THOSE ARE THE TYPES OF QUESTIONS THAT YOU HAVE TO ASK YOURSELF IS, YOU KNOW, AND, OF COURSE, WE DON'T HAVE MS. WILSON HERE TO, TO BE ABLE TO ASK HER THOSE EXACT SAME QUESTIONS IS, YOU KNOW, WITH RESPECT TO WHAT WAS IN HER MIND AT THE TIME WHEN SHE MADE THE IDENTIFICATION IS THAT WAS SHE IDENTIFYING THIS PERSON BECAUSE THIS IS THE ONLY PERSON ON THE PAGE THAT SHE KNEW BECAUSE ANOTHER ISSUE THEN BECOMES IS, IS I THINK AND, OF COURSE, I'LL ASK IN THIS QUESTION IS THAT, THAT THIS PHOTO LINEUP WAS TAKEN FROM PEOPLE AROUND THE COUNTRY AND, OF COURSE, ASSUMING IT WAS TAKEN FROM NOBODY ELSE LOCATED IN MARION COUNTY EXCEPT THE ONE PARTICULAR PERSON WHICH MEANS IS, IS THAT THERE WAS ONLY FACE THAT WAS INDICATED ON THAT PHOTO LINEUP THAT PEOPLE WOULD HAVE KNOWN AND THAT IS

SUGGESTIVE. IT'S DIFFERENT IF IT WAS TAKEN FROM PEOPLE WITHIN THE COMMUNITY WHERE THEY HAVE AN OPPORTUNITY TO SAY WELL I'M CONFUSED BY THAT BUT I'LL GO AHEAD AND, I THINK HE'S ALREADY ANSWERED THAT QUESTION BUT I'LL GO AHEAD AND CONTINUE CROSS EXAMINING HIM.

Q (CONTINUING) AND I'LL ASK YOU THAT QUESTION AGAIN IS, IS THAT YOU SAID THESE, DO YOU KNOW FOR A FACT WHETHER OR NOT ANY OF THE PHOTOS THAT WAS OBTAINED IN THE PHOTO LINE UP, WHETHER OR NOT ANY OF THOSE PHOTOS WERE PHOTOS OF INDIVIDUALS FROM MARION COUNTY OTHER THAN, OTHER THAN THE PHOTOGRAPH OF SHAWN REAVES?

A NO, SIR.

Q OKAY, OKAY, NOW YOU ALREADY TESTIFIED TO THE FACT, YOU ALREADY TESTIFIED TO THE FACT THAT, THAT AT LEAST, WELL LET ME ASK YOU THIS QUESTION, DO YOU KNOW WHETHER OR NOT MS. WILSON HAD PRIOR KNOWLEDGE OF SHAWN REAVES?

A I KNOW THAT SHE DID HAVE PRIOR KNOWLEDGE OF HIM BUT THE FACT IS NO ONE KNEW HIS NAME; THEY WAS CALLING HIM BY HIS STREET NAME.

Q DO YOU KNOW, AND I GUESS THE QUESTION IS AGAIN DO YOU KNOW WHETHER OR NOT SHE HAD PRIOR KNOWLEDGE OF MR. REAVES?

A NO, I DID NOT.

Q WHAT ABOUT MR. LANE, DO YOU KNOW WHETHER OR

NOT MR. LANE HAD PRIOR KNOWLEDGE OF MR. REAVES?

A NO, I DO NOT. ALL, NO ONE HAD SEEN AROUND ON THIS DAY HERE.

Q MR. MCGILL, DID MR. MCGILL HAVE PRIOR KNOWLEDGE OF MR. REAVES?

A HE ---

MR. DEBERRY: I WOULD JUST LIKE TO OBJECT FOR THE RECORD THAT PRIOR KNOWLEDGE DOESN'T HAVE ANYTHING TO DO WITH THE LAW AND THE PHOTO LINEUP. TO SAY THAT WHETHER OR NOT AN INDIVIDUAL, AN EYEWITNESS TO A MURDER HAD PRIOR KNOWLEDGE OF THE PERSON THAT PULLED THE TRIGGER, WHO THEY WATCHED SHOOT SOMEBODY MAKES THE PHOTO LINEUP UNRELIABLE IS ABSURD.

THE COURT: I AGREE.

MR. BROOKER: WELL, WELL, YOUR HONOR, THE ONLY THING I WOULD SAY TO THAT IS IS THAT WITH RESPECT TO HOW I CROSS EXAMINE HIM IN TRYING TO ELICIT INFORMATION RELEVANT TO WHETHER OR NOT, WHETHER OR NOT, WHETHER OR NOT THOSE PHOTOS WERE SUBJECTIVE IS THAT IT'S LEFT UP TO ME, OKAY, AND WHETHER OR NOT HE THINKS IT'S RELEVANT I THINK IS PRETTY MUCH IRRELEVANT. NOW IN, IN THOSE QUESTIONS ARE ASKED AT LEAST FOR A PARTICULAR, FOR A SPECIFIC REASON AND THAT IS ---

THE COURT: HOW MUCH LONGER DO YOU NEED?

MR. BROOKER: WELL WE'RE ABOUT TO WRAP UP.

THE COURT: ALL RIGHT, GO AHEAD.

MR. BROOKER: WE'RE ABOUT TO WRAP UP.

Q (CONTINUING) NOW YOU SAID AT LEAST TWO OF THOSE PERSONS OR TWO OF THOSE PERSONS KNEW SHAWN REAVES THEN YOU SAID MS. WILSON SAID SHE KNEW SHAWN REAVES, YOU ALSO SAID MS. MCGILL, MR. MCGILL, I BELIEVE, SAID THAT HE KNEW SHAWN REAVES; IS THAT CORRECT?

A THEY HAD PRIOR KNOWLEDGE, YES, PRIOR KNOWLEDGE OF THE INCIDENT.

Q OKAY, AND SO AT LEAST IN YOUR OPINION THERE WAS ONLY ONE PERSON THAT WAS CONTAINED IN THAT PHOTO LINEUP THAT THEY KNEW; IS THAT CORRECT?

A AS FAR AS I KNOW, YES.

Q NOBODY ELSE IN THAT LINEUP THAT THEY WOULD HAVE KNOWN?

A NO.

Q OKAY, AND, OF COURSE, IF THERE'S ONLY ONE PERSON IN THE, IN THE LINEUP THAT YOU KNOW ONLY ONE PERSON FROM, FROM, FROM MARION COUNTY IN THAT LINEUP THAT YOU KNOW AT LEAST IN YOUR OPINION DO YOU THINK THAT THEN AT LEAST CREATES AN IMPLICATION IN THAT PERSONS MIND THAT MAYBE THEY'RE FOCUSING ON THIS PERSON OR AT LEAST LEAD THEM TO IDENTIFY THIS PARTICULAR PERSON?

MR. DEBERRY: YOUR HONOR, OBJECTION, HE'S ASKING LIEUTENANT BLUE TO DRAW A CONCLUSION IN A SITUATION THAT'S

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NOT ---

THE COURT: SUSTAINED.

MR. BROOKER: I'M ASKING HIM FOR HIS OPINION AND THIS WAS NOT ---

THE COURT: YOU'RE GETTING INTO TRIAL STUFF. LET'S STICK WITH THE NEIL V. BIGGERS HEARING ITSELF.

MR. BROOKER: I ALSO CAN ASK HIM THAT DURING THE TRIAL.

THE COURT: I'LL LET YOU GO DURING TRIAL ALL YOU WANT TO, GO AHEAD, AND WRAP IT UP.

MR. BROOKER: I'LL ASK HIM THAT DURING TRIAL BUT I CAN'T ASK HIM THAT DOING THIS SITUATION, OKAY.

THE WITNESS: (CONTINUING)

A REPEAT THE QUESTION?

Q WELL AND I'LL DO IT IN A DIFFERENT WAY, DO IT IN A DIFFERENT WAY IS, IS THAT, LET ME JUST ASK THIS FINAL QUESTION. IS THERE ANYBODY ELSE THAT WAS ON THAT LIST THAT YOU ARE AWARE OF THAT THEY KNEW OF OTHER THAN SHAWN REAVES?

A NOT THAT I'M AWARE OF.

MR. BROOKER: OKAY, NO FURTHER QUESTIONS.

THE COURT: ANYTHING FURTHER FROM THE SOLICITOR?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: ALL RIGHT, FOR THE RECORD BASED ON WHAT I HAVE SEEN AND HEARD I FIND THAT THE OUT OF COURT

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IDENTIFICATION PROCESS WAS NOT UNDULY SUGGESTIVE, I FIND IT RELIABLE. ANYTHING FURTHER BEFORE WE BEGIN THE TRIAL?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: ANYTHING FURTHER FROM MR. BROOKER.

MR. BROOKER: YES, THERE IS, YOUR HONOR, AND I THINK I TALKED TO THIS IS, IS THAT WE MAY BE, IT MIGHT BE NECESSARY FOR US TO DO, TO MAKE A REQUEST FOR AN EVIDENTIARY HEARING ---

THE COURT: SURE.

MR. BROOKER: --- TO DETERMINE WHETHER OR NOT WE HAD ALL THE EVIDENCE. WE'VE BEEN GETTING EVIDENCE THAT'S BEEN DRIFTED INTO US I THINK FROM LAST WEEK AND, OF COURSE, RECENTLY SOMETHING THAT WAS GIVEN TO US THIS MORNING AND, OF COURSE, WE'RE NOT AT LEAST CONVINCED AS TO WHETHER OR NOT WE'VE HAD ALL THE EVIDENCE THAT WE REQUIRED TO BE PRODUCED TO US ACCORDING TO THE BRADY MOTION AND ALSO ACCORDING TO RULE FIVE THAT WAS SERVED AND ON THE SOLICITOR'S OFFICE. AND, AND, OF COURSE, LIKE I SAID I UNDERSTAND THAT THIS MAY BE UNDULY INCONVENIENCE FOR THE COURT, YOU KNOW, BUT, OF COURSE, WE HAVE AT LEAST AN INDIVIDUAL LIFE IN HANDS, IN OUR HANDS AND, OF COURSE, WE'RE CONCERNED AS TO WHETHER OR NOT THEY'VE PRODUCED US EVERYTHING THEY'RE SUPPOSED TO PRODUCE AND THE ONLY THING THAT WE CAN DO AT LEAST AT THIS PARTICULAR PERIOD OF TIME IS ASK FOR AN EVIDENTIARY HEARING TO MAKE SURE WE HAVE IT.

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I THINK THE LATEST THING THAT WE WERE PRODUCED THIS MORNING, AND IT WAS JUST HANDED THIS MORNING, WAS THE CRIME SCENE NOTES FROM SLED THAT WE HAD NOT BEEN PRODUCED BEFORE AND SHOULD HAVE BEEN PRODUCED.

MR. DEBERRY: YOUR HONOR, I'D JUST LIKE TO RESPOND THAT LAST WEEK MR. BROOKER AND I SAT DOWN DOWNSTAIRS IN THIS COURTHOUSE. I OPENED MY FILE TO HIM AND MADE SURE HE HAD EVERYTHING THAT WE HAD. WE DID GIVE HIM SOME STUFF. THERE WAS A REPORT THAT WE ASKED FROM SLED TO BE FAXED INTO OUR OFFICE. IT WAS ON THE FAX MACHINE. MR. BROOKER WAS STANDING THERE. WE TOOK IT OFF OF THERE. WE MADE A COPY OF IT AND I GAVE IT TO MR. BROOKER. NOW THIS MORNING I SHOWED HIM AN EXCERPT FROM THAT FAX FROM SLED AND HE SAYS HE DIDN'T HAVE IT. AS SOON AS, AS SOON AS I REALIZED THAT, I DON'T KNOW HOW HE DIDN'T GET IT BUT JUST FOR ARGUMENT SAKE HE DIDN'T HAVE IT, I GUESS, WE MADE A COPY THIS MORNING AND HANDED IT TO HIM, JUST ONE PIECE OF PAPER, YOUR HONOR.

MR. BROOKER: JUST FOR THE RECORD, YOUR HONOR, THERE WAS TWO SEPARATE FAXES, ONE FAX WAS SENT IN AT 12:47 ON THE 17TH AND THE OTHER FAX WAS SENT IN AT 12:52. WE WERE ONLY GIVEN THE ONE THAT CAME OFF THE FAX AT 12:47, SO THERE WERE TWO SEPARATE FAXES, WE DIDN'T GET THE SECOND ONE.

THE COURT: ALL RIGHT.

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MR. DEBERRY: WELL, YOUR HONOR, IF THAT'S THE CASE I APOLOGIZE, WE HAD A CONTINUUM TO DISCLOSE. THERE'S ABSOLUTELY NO PROBLEM WITH HIM SEEING EVERYTHING WE HAVE. I KNOW, IF THAT'S, IF THAT'S HOW IT GOT MIXED UP I APOLOGIZE, I WASN'T AWARE OF THAT.

THE COURT: OTHERWISE ARE WE READY TO GO?

MR. DEBERRY: THE STATE IS, YOUR HONOR.

THE COURT: MR. BROOKER?

MR. BROOKER: WELL I GUESS AFTER WE HAVE AN EVIDENTIARY HEARING TO MAKE SURE THAT WE HAVE EVERYTHING.

THE COURT: WHAT IS IT YOU INTEND TO PUT INTO EVIDENCE?

MR. DEBERRY: YOUR HONOR, WHAT IT IS ---

THE COURT: WHY DON'T YOU GO AHEAD AND JUST LIST EVERYTHING THAT YOU'RE GOING TO PUT IN JUST FOR THE RECORD.

MR. DEBERRY: YES, SIR, IT DOES, IT DOES APPLY TO SOME EVIDENCE IN THIS CASE, KIND OF DEPENDING ON HOW THE TRIAL PLAYED OUT AS FAR AS INTRODUCTION OF THE EVIDENCE. THERE'S A NOTE THAT REFERS TO A SEARCH WARRANT AND JUST FOR THE RECORD, YOUR HONOR, THE SEARCH WARRANT IS PART OF A LITIGATION IN A SEPARATE MATTER AND AS FAR AS THAT SEPARATE MATTER ---

THE COURT: I DIDN'T THINK THERE WAS A SEARCH WARRANT IN THIS CASE.

MR. DEBERRY: WELL, YOUR HONOR, IT'S BEEN

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SUPPRESSED IN ANOTHER MATTER SO I DIDN'T KNOW, YOU KNOW --

THE COURT: THAT SHOULDN'T HAVE ANYTHING TO DO WITH THIS CASE.

MR. BROOKER: WELL IT MAY GO TO IF THEY'RE RELYING ON, IF THEY'RE RELYING ON THAT, ON THAT SEARCH WARRANT FOR THE COLLECTION OF EVIDENCE. OF COURSE ANOTHER THING THAT HASN'T BEEN RAISED IS THAT I THINK IT WAS A SEARCH WARRANT THAT YOU MAY HAVE SIGNED SO THAT MAY BECOME AN ISSUE AS WELL OF COURSE WE GET INTO AN ARGUMENT OVER THAT SEARCH WARRANT.

THE COURT: BUT EITHER WAY YOU DIDN'T USE, NOBODY USED THE SEARCH WARRANT TO GET ANY OF THIS EVIDENCE; DID THEY?

MR. DEBERRY: RIGHT, IT'S NOT INTRODUCIBLE, THE ACTUAL SEARCH WARRANT IS NOT ABLE TO BE INTRODUCED INTO EVIDENCE. IT'S JUST ---

THE COURT: THE SEARCH WARRANT ITSELF WAS NOT USED, WAS IT, TO GET THE EVIDENCE?

MR. DEBERRY: YOUR HONOR, IT WAS OBTAINED, THE STATE BELIEVES IT WAS OBTAINED BEFORE THE EVIDENCE WAS COLLECTED BUT OUR MOTION YESTERDAY WAS UNDER THE THEORY THAT WE, THAT THERE WASN'T A SEARCH WARRANT NEEDED.

THE COURT: ALL RIGHT.

MR. DEBERRY: SO IF IT IS ABSOLUTELY NEEDED WE COULD INTRODUCE IT BUT IT DOES HAVE PROBLEMS AS FAR AS

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IMPLICATIONS IN ANOTHER CASE THAT'S NOT RELATED TO THIS MURDER WHATSOEVER.

THE COURT: SO WE'RE GOING TO PROCEED AS IF THERE WAS NOT A SEARCH WARRANT; IS THAT CORRECT, AND RULE ON THE ADMISSIBILITY OF EVIDENCE UNDER THAT UMBRELLA AS NO SEARCH WARRANT?

MR. BROOKER: WELL IF THERE'S A RULE, BASICALLY IF YOU'RE RULING THAT THE, THAT THE, THAT THIS EVIDENCE IS ADMISSIBLE AND, OF COURSE, IF, IF, IF, IF THE STATE IS STIPULATING, YOU KNOW, THAT, THAT THERE WAS NO WARRANT OR AT LEAST WE'RE STIPULATING TO THAT THEN, OF COURSE, IT WOULD NOT THEN BECOME AN ISSUE IN THIS PARTICULAR CASE.

THE COURT: THAT'S MY UNDERSTANDING I WOULD ASSUME.

MR. CLEMENTS: BEG THE COURT'S INDULGENCE, YOUR HONOR. YOUR HONOR, IT MIGHT BE MR. DEBERRY IS LOOKING AT THIS RETURN OVER. IT MIGHT BE WE WANT TO PUT IT IN AS A COURT'S EXHIBIT JUST TO CLEAR EVERYTHING UP. HE'S CHECKING BUT WHAT HE'S JUST SAYING TO ME I DON'T THINK THERE'S ANYTHING ON THIS RETURN TO THIS SEARCH WARRANT THAT HAS ANYTHING TO DO WITH THIS TRIAL.

THE COURT: SO A SEARCH WARRANT, IS IT STIPULATED THAT THE SEARCH WARRANT IS NOT APPLICABLE TO THIS CASE?

MR. DEBERRY: WELL, YOUR HONOR, I GUESS IT WOULD

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DEPEND ON YOUR RULING OF WHETHER OR NOT THE EVIDENCE FOUND AT THE SCENE IN PLAIN VIEW WILL BE ADMISSIBLE WITHOUT THE SEARCH WARRANT.

THE COURT: IN OTHER WORDS, I'M ASKING IS THERE A SEARCH WARRANT IN THIS CASE OR NOT? I DIDN'T HEAR ANYTHING ABOUT A SEARCH WARRANT YESTERDAY SO I ASSUMED WE DID NOT HAVE A SEARCH WARRANT.

MR. DEBERRY: RIGHT, YOUR HONOR. THE STATE WOULD TRY THIS CASE WITH NO EVIDENCE ON MR. TURNER. AS FAR AS CONDUCTING THE EVIDENCE COLLECTION PROCESS AT THE SCENE THEY, WE BELIEVE THEY DID HAVE A SEARCH WARRANT IN HAND.

MR. BROOKER: WELL, AND THIS JUST FOR CLARIFICATION IS THAT HE'S SAYING IS THAT, IF HE'S SAYING THAT NO, NO EVIDENCE ON THE RETURN IS INTENDED TO BE USED THERE'S ALSO AT LEAST IN A NOTE THAT WE WERE PRODUCED THIS MORNING SLED AT LEAST INDICATED THEY COLLECTED THE EVIDENCE PURSUANT TO A SEARCH WARRANT, PURSUANT TO A SEARCH WARRANT THEY SERVED AT 1:30, NOW, EITHER THEY STIPULATE THAT THERE WAS NO SEARCH WARRANT AND THAT WE'RE PROCEEDING ON THE FACT AS TO WHETHER OR NOT THE EVIDENCE WAS ADMISSIBLE IN THE ABSENCE OF THE SEARCH WARRANT OR, YOU KNOW, THEY SAID THERE IS A SEARCH WARRANT AND THEN, OF COURSE, WE THEN HAVE TO THEN ARGUE, YOU KNOW, THAT THE VALIDITY OF THAT SEARCH WARRANT.

THE COURT: MR. DEBERRY, I AGREE, I MEAN ARE YOU

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STIPULATING THERE WAS NO SEARCH WARRANT? I THOUGHT THAT'S WHAT WE TALKED ABOUT.

MR. DEBERRY: I BEG YOUR INDULGENCE, YOUR HONOR.

THE COURT: PRETTY MUCH ALL DAY YESTERDAY.

MR. DEBERRY: WE'LL STIPULATE THAT THERE IS NOT A SEARCH WARRANT, YOUR HONOR.

THE COURT: ANYTHING ELSE, MR. BROOKER?

MR. BROOKER: NOTHING ELSE, THE ONLY THING THAT WE STILL HAVE TO RESOLVE IS THAT THE EVIDENTIARY ISSUE IS THAT WITH RESPECT TO THE EVIDENTIARY ISSUE THEY NOT ONLY HAVE TO TELL US, YOU KNOW, WHAT THEY INTEND TO PUT IN EVIDENCE, YOUR HONOR, IS, IS THAT THEY HAVE TO, THAT THEY HAVE TO TELL US AND PRODUCE TO US ANYTHING THAT WOULD BE, THAT WOULD BE PRODUCIBLE UNDER RULE FIVE AND BRADY SO IT'S NOT JUST TO, IT'S NOT JUST WHAT I INTEND TO USE IT'S IS THIS PRODUCIBLE UNDER RULE FIVE AND BRADY. IF IT'S PRODUCED UNDER RULE FIVE AND BRADY WHETHER THEY WANT TO USE IT OR NOT IF IT'S USEFUL WITH US, YOU KNOW, IT MIGHT TEND TO, TO DISPROVE HIS GUILT THEN BRADY SAYS IT HAS TO BE PRODUCED TO US AND SO IT'S NOT JUST LIMITED TO WHAT THEY INTEND TO PUT INTO EVIDENCE.

THE COURT: MR. DEBERRY, YOU WANT TO JUST CLEAR UP THE RECORD AND JUST GO OVER WHAT YOU SENT HIM UNDER RULE FIVE?

MR. DEBERRY: YOUR HONOR, I GUESS IT WOULD BE

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EASIEST IF HE JUST WANTS TO LOOK IN OUR FILE AND SEE EVERYTHING WE HAVE.

THE COURT: OR DID YOU HAVE A FORMAL LETTER WHERE YOU LISTED OUT ONE, TWO, THREE, FOUR, FIVE, SIX PURSUANT TO RULE FIVE?

MR. DEBERRY: WE SHOULD, YOUR HONOR. YOUR HONOR, HE'S WELCOME TO ANYTHING I'VE GOT, WE DID THIS LAST WEEK, AND I'VE MADE EVERY ATTEMPT I CAN MAKE TO GIVE HIM EVERYTHING I'VE GOT.

THE COURT: I UNDERSTAND AND IT STILL SEEMS TO ME THE SIMPLEST THING TO DO WOULD BE TO LOOK AT YOUR LETTER WHERE YOU SENT HIM EVERYTHING YOU GOT.

MR. DEBERRY: THAT'S RIGHT, THAT WAS A LETTER FROM ALONG, YOU KNOW, THAT AND THE ORIGINAL DISCOVERY WAS TRANSFERRED TO MR. BROOKER AND THEN LAST WEEK THERE WAS A FAX, SOME PICTURES, AND THEN TAPED STATEMENT FROM A WITNESS.

THE COURT: ALL RIGHT, WHAT WAS IN YOUR ORIGINAL LETTER THAT YOU SENT TO HIM?

MR. BROOKER: I COULD READ THAT OFF FOR YOU, YOUR HONOR, IF YOU'D LIKE?

THE COURT: ALL RIGHT, DO THAT IF YOU WILL?

MR. BROOKER: IT SAYS A COPY OF INDICTMENT AND, OF COURSE,

MARION POLICE DEPARTMENT REPORTS, NUMBER TWO,

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IT SAYS WARRANTS NUMBER I, AS IN IKE, 05582, INVESTIGATING OFFICERS REPORT IS, IS NUMBER FOUR,

NUMBER FIVE IS BOOKING REPORT.

NUMBER SIX IS MARION POLICE DEPARTMENT CRIME SCENE LOG,

NUMBER SEVEN IS SLED REPORT, L07-07310,

NUMBER EIGHT IS NCIC,

NINE IS MARION POLICE DEPARTMENT LINEUP,

TEN IS MARION POLICE DEPARTMENT CONSENT TO SEARCH,

ELEVEN MARION FIRE DEPARTMENT LIST,

TWELVE SLED LAB REQUEST, NUMBER L07-07310,

THIRTEEN IS SLED TOXICOLOGY, NUMBER L07-07310,

FOURTEEN IS SLED TRACE, T-R-A-C-E, NUMBER L07-07104,

FIFTEEN SLED FIREARMS, NUMBER L07-07103,

SIXTEEN SLED FIREARMS, NUMBER L07-07310,

SEVENTEEN SLED LAB REQUEST, NUMBER 7, EXCUSE ME, L07-07104,

EIGHTEEN FORM B (RULE FIVE),

NINETEEN SLED DNA, NUMBER L07-07310,

TWENTY STATEMENTS OF TYLER CONNOR, AND THAT IS IT.

THE COURT: ALL RIGHT, AND THE FAX ITSELF WAS DATED WHAT?

MR. BROOKER: THE FAX IS DATED AUGUST 17, 2010.

THE COURT: AND THAT IS A WHAT?

MR. BROOKER: AND THAT IS SAYS SLED REPORT OF TITLE LATENT PRINTS, IT'S ADDRESSED TO A LIEUTENANT FARMER BLUE AND IT HAS A DATE OF MAY 17, 2007, AT THE TOP, AND IT CONSISTS OF PAGES ONE THROUGH THREE.

THE COURT: ALL RIGHT, AND PICTURES, HOW MANY PICTURES DO YOU HAVE IN TOTAL?

MR. DEBERRY: YOUR HONOR, THE ONLY PICTURES I HAVE IN ADDITION TO WHAT MR. BROOKER HAS ARE A PICTURE OF THE VICTIM, WHICH HIS MAMA GAVE ME YESTERDAY, AND TWO GENERIC PICTURES OF FIREARMS.

THE COURT: TWO PICTURES.

MR. DEBERRY: JUST THEY AREN'T RELATED TO THIS CASE, THEY JUST MAY, THERE'S A ---

THE COURT: TWENTY TWO PHOTOS IN ALL; IS THAT CORRECT?

MR. DEBERRY: THREE PICTURES.

THE COURT: NINETEEN PLUS THREE.

MR. BROOKER: AND, OF COURSE, YOU CAN SEE THIS IS AN EXAMPLE OF WHAT WE'RE TALKING ABOUT IS THAT THEY HAVE TO PRODUCE US WITH EVERYTHING.

THE COURT: YOU GOT THEM NOW.

MR. BROOKER: WE GOT THEM THIS MORNING.

THE COURT: IT'S MY UNDERSTANDING THOSE THREE

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PHOTOS ARE NOT COMING INTO EVIDENCE ANYWAY, ALL RIGHT, AND THEN THERE IS A ---

MR. DEBERRY: WELL, YOUR HONOR, THE PICTURE OF THE VICTIM WE INTEND TO INTRODUCE BUT WE DON'T SEE HOW THIS PICTURE OF THE VICTIM TENDS TO PROVE MR. SHAWN REAVES GUILTY.

THE COURT: ALL RIGHT, THERE'S TWENTY TWO PHOTOS IN TOTAL, CORRECT?

MR. DEBERRY: YES, SIR.

MR. BROOKER: IN FULL DISCLOSURE WE WERE GIVEN AT LEAST CRIME SCENE NOTES FROM SLED THIS MORNING AND, OF COURSE, THE FAX AT THE TOP FROM SLED IS OR THE DATE FROM SLED IS DATED, THE DATE IT WAS FAXED OVER TO THE SOLICITOR'S OFFICE WAS 8-17-2010.

THE COURT: ALL RIGHT, AND A TAPED STATEMENT OF WHO?

MR. DEBERRY: YOUR HONOR, IT WAS I BELIEVE IN THE ORIGINAL DISCOVERY IT HAD THE WRITTEN STATEMENT OF TYLER CONNOR. WE ALSO HAVE IT ON VIDEO WHICH WE JUST PRODUCED HIM LAST WEEK.

THE COURT: ALL RIGHT.

MR. DEBERRY: THE VIDEO IS NOT GOING TO COME INTO EVIDENCE, YOUR HONOR.

THE COURT: AND FOR THE RECORD THAT IS IT; IS THAT CORRECT, SOLICITOR?

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MR. DEBERRY: AS FAR AS I KNOW, YOUR HONOR, THAT'S IT.

THE COURT: ALL RIGHT, YOU READY TO PROCEED, MR. BROOKER?

MR. BROOKER: WE'RE READY TO PROCEED IF THAT'S EVERYTHING, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. BROOKER: BUT IF IT'S NOT ---

THE COURT: GO AHEAD AND BRING THE JURY UP.

(WHEREUPON, THE JURY IS ESCORTED TO THE JURY ROOM AT 10:02 A.M. FROM THE LOBBY OF THE COURTHOUSE.)

MR. BROOKER: YOUR HONOR, COULD I GO BACK AND USE THE MENS ROOM VERY QUICKLY BEFORE WE GET STARTED?

THE COURT: GO AHEAD.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 10:04 A.M.)

THE COURT: AND I'M GOING TO APPOINT MS. LANE AS THE FOREPERSON OF THE JURY. YOU ARE THE FOREPERSON OF THE JURY, YOU LOOK WISE, YOU LOOK LIKE YOU WOULD MAKE A GOOD ONE. IF YOU'LL SWEAR THE JURY, PLEASE.

(WHEREUPON, THE JURY WAS SWORN.)

THE COURT: ALL RIGHT, THANK YOU, MS. CLERK.

GOOD MORNING, I WANT TO FIRST OF ALL APOLOGIZE FOR THE DELAY; WE'VE BEEN UP HERE WORKING TRYING TO GET EVERYTHING READY SO WE CAN MAKE IT MOVE ALONG AND RUN

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SMOOTHLY FOR YOU AND I THINK WE'RE READY TO BEGIN. HOWEVER BEFORE WE BEGIN I WANT TO GO OVER A FEW THINGS WITH YOU JUST TO GIVE YOU A LITTLE BETTER WORKING KNOWLEDGE THAT YOU CAN JUST TUCK IN YOUR BACK POCKET AND SIT ON IT.

THE FIRST THING I WANT TO TELL YOU -- YOU CAN GO AHEAD AND BRING EVERYBODY IN AND LOCK THAT ROOM, GO AHEAD AND CLOSE THAT DOOR.

THE FIRST THINK I WANT TO TELL YOU IS THAT THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROOF IN THIS TRIAL. THEY HAVE TO PROVE THE DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT, THAT IS VERY IMPORTANT AND I'LL EXPLAIN THAT TO YOU IN GREAT DETAIL AT THE END OF THIS TRIAL.

NOW YOU ASK YOURSELVES WELL WHAT IS MY JOB, WHAT IS YOUR JOB AS JURORS, YOUR JOB AS JURORS IS TO BE THE FINDERS OF FACT. YOU DETERMINE WHAT THE FACTS OF THIS CASE ARE, AND YOU ASK YOURSELF WELL HOW DO I DETERMINE THAT. YOU JUST LISTEN TO THE WITNESSES THAT COME UP HERE AND SIT IN THIS WITNESS STAND. YOU LISTEN TO THEM; YOU DETERMINE WHO'S TELLING THE TRUTH AND WHO'S NOT TELLING THE TRUTH. I WANT YOU TO UNDERSTAND THAT IS YOUR JOB AND YOUR JOB ALONE. THAT IS NOT MY JOB; THAT IS NOT THE COURT STAFFS JOB, NOBODY OUT THERE IN THE AUDIENCE, YOU ARE THE FINDERS OF FACT. YOU LISTEN TO THE WITNESSES, YOU DETERMINE WHO'S TELLING THE TRUTH.

I WANT YOU TO UNDERSTAND THAT YOU CAN BELIEVE

NOTHING A WITNESS TELLS YOU, YOU CAN BELIEVE EVERYTHING A WITNESS TELLS YOU. YOU CAN BELIEVE PART OF WHAT A WITNESS TELLS YOU. YOU CAN BELIEVE ONE WITNESS AGAINST MANY OF THEM. YOU CAN BELIEVE A BUNCH OF THEM AGAINST ONE, THAT IS SIMPLY YOUR JOB, AND I THINK YOU'LL FIND IT'S PRETTY EASY. YOU JUST YOUR COMMON SENSE THROUGHOUT THIS TRIAL AND YOU LISTEN CAREFULLY AND YOU JUDGE THE CREDIBILITY OF THE WITNESSES.

YOU MAY ASK YOURSELF WELL WHAT IS MY JOB AS THE JUDGE, I AM THE JUDGE OF THE LAW. AT THE END OF THIS CASE I WILL INSTRUCT YOU IN GREAT DETAIL AS TO WHAT THE LAW IN THIS CASE IS AND I WANT YOU TO UNDERSTAND THAT YOU HAVE TO ACCEPT THE LAW AS I GIVE IT TO YOU. IF YOU HAVE ANY PRECONCEIVED IDEAS AS TO WHAT YOU THINK THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOESN'T AGREE WITH WHAT I TELL YOU THE LAW IS YOU MUST IGNORE YOUR THOUGHTS AND ACCEPT THE LAW AS I GIVE IT TO YOU AND THEN AND ONLY AT THE APPROPRIATE TIME WHEN I TELL YOU TO BEGIN YOUR DELIBERATIONS AND WHEN I TELL YOU TO SPECIFICALLY START DECIDING ISSUES OF THIS CASE YOU WILL TAKE YOUR FINDINGS OF FACT, AND YOU WILL TAKE THE LAW AS I GIVE IT TO YOU, YOU WILL COUPLE THEM TOGETHER, AND YOU'LL MAKE A DECISION THAT'S RIGHT, ACTUALLY VERY SIMPLE.

ALSO ANOTHER THING I WANT TO TELL YOU IS THAT WHAT THE LAWYERS TELL YOU, WHAT THEY SAY IS NOT EVIDENCE.

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THE EVIDENCE COMES FROM THIS WITNESS STAND RIGHT HERE AND ANY EXHIBITS THAT GO BACK INTO THE JURY ROOM WITH YOU. THE LAWYERS ARE IMPORTANT HOWEVER. THEY ARE SPOKESPERSONS FOR THEIR CLIENTS. THEY ARE ADVOCATES FOR THEIR CLIENTS. THEY FIGHT FOR THEIR CLIENTS, BUT WHAT THEY SAY IS NOT EVIDENCE.

ALSO I WANT YOU TO UNDERSTAND THAT I DO NOT WANT YOU TO DISCUSS THIS CASE AT ANY POINT IN TIME WHEN YOU GO BACK INTO YOUR JURY ROOM. FROM TIME TO TIME WE'RE GOING TO HAVE TO TAKE UP MATTERS OF LAW OUT HERE. WE'RE GOING TO HAVE TO DISCUSS LEGAL ISSUES. I WILL HAVE TO HEAR TESTIMONY TO DETERMINE IF IT'S PROPER FOR YOU TO HEAR, SO I'LL HAVE TO SEND YOU OUT EVERY NOW AND THEN AND WE'LL BE OUT HERE WORKING AND WHEN I DO SEND YOU OUT DON'T DISCUSS THE CASE BECAUSE IT'S NOT PROPER TO DISCUSS THE CASE. IT'S NOT PROPER UNTIL YOU'VE HEARD EVERY SINGLE WITNESS AND YOU'VE HEARD THE LAW AS I GIVE IT TO YOU AND THEN I'LL TELL YOU SPECIFICALLY WHEN TO BEGIN YOUR DELIBERATIONS, SO IF YOU TAKE A BREAK AND YOU GO INTO THE JURY ROOM, IF WE TAKE A BREAK DURING LUNCH AND YOU GO OUT TO EAT OR YOU GO HOME OR THIS CASE GOES INTO TOMORROW AND YOU GO HOME TONIGHT, JUST TELL EVERYBODY YOU CAN'T TALK ABOUT THE CASE AND CAN'T EVEN TALK ABOUT IT AMONG YOURSELVES. YOU SAY WELL WHAT CAN I TALK ABOUT, YOU CAN TALK ABOUT SPORTS, YOU CAN TALK ABOUT THE HURRICANES, YOU CAN TELL JOKES, YOU CAN DO ANYTHING YOU WANT TO DO BUT DO NOT DISCUSS THIS CASE. THAT'S VERY VERY

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IMPORTANT.

ALSO IF YOU GO HOME TONIGHT DON'T GET ON THE INTERNET AND START LOOKING UP STUFF, DON'T START CHECKING NAMES, DON'T READ THE NEWSPAPER. WHY DON'T YOU JUST NOT WATCH THE NEWS DURING THE COURSE OF THIS TRIAL. I WANT YOU TO GET WHATEVER INFORMATION YOU NEED RIGHT HERE IN THIS COURTROOM LEGALLY AND PROPERLY AS OUR CONSTITUTION DICTATES, SO DON'T TEXT ANYBODY OR ANYTHING, JUST, JUST SIT BACK, JUST RELAX, KEEP AN OPEN MIND TO EVERYTHING BEFORE YOU AND I THINK YOU'LL FIND IT WILL PRETTY SMOOTH.

ALSO IF AT ANY POINT DURING THE TRIAL ANY OF YOU NEED ANYTHING, SOMETIMES I FORGET, AND IF YOU NEED A BATHROOM BREAK OR SOMETHING LIKE THAT YOU JUST KIND OF WAVE AT ME AND I'LL MAKE SURE YOU GET ONE. IF YOU NEED A SMOKE BREAK FROM TIME TO TIME I'LL MAKE SURE YOU GET ONE. IF YOU NEED A COKE OR YOU NEED SOME NABS, IF YOU NEED ANYTHING I WANT TO MAKE SURE YOU'RE AS COMFORTABLE AS YOU CAN POSSIBLY BE, SO DON'T HESITATE TO ASK ME OR ASK THE BAILIFFS AND THEY'LL BRING IT TO YOU. ALL RIGHT, NOW JUST SIT BACK AND RELAX AND TAKE IT IN. I'LL RECOGNIZE MR. DEBERRY.

MR. DEBERRY: THANK YOU, YOUR HONOR, MR. BROOKER.

OPENING STATEMENT

BY MR. DEBERRY:

LADIES AND GENTLEMEN OF THE JURY, I APPRECIATE

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RIGHT OFF THE BAT YOUR WILLINGNESS TO SERVE HERE TODAY AND THIS WEEK. IT'S AN IMPORTANT PART OF OUR SYSTEM OF JUSTICE, IT TRULY IS, AND YOUR PURPOSE HERE THIS WEEK JUST AS THE JUDGE TOLD YOU IS TO DETERMINE THE FACTS IN THIS CASE. WE INTEND TO MAKE IT VERY CLEAR AND VERY EASY TO UNDERSTAND THAT.

WE ASK THAT YOU JUST, PLEASE, GIVE MR. SHAWN REAVES A FAIR TRIAL. WE'D ALSO ASK THAT YOU GIVE THE STATE OF SOUTH CAROLINA A FAIR TRIAL AND THE VICTIM IN THIS CASE EVEN THOUGH HE'S NO LONGER HERE HE DESERVES HIS DAY IN COURT AS WELL AND SO DOES HIS FAMILY. THAT'S YA'LL'S JOB HERE THIS WEEK SO, PLEASE, KEEP AN OPEN MIND. PLEASE BE AS FAIR AS YOU CAN, PLEASE PAY ATTENTION TO EVERYTHING THAT YOU CAN. THE ONLY THING THAT YOU CAN CONSIDER AS THE JUDGE TOLD YOU IS THE STUFF THAT COMES FROM THIS WITNESS STAND AND THE ITEMS THAT ARE INTRODUCED INTO EVIDENCE.

WHAT I SAY OR WHAT MR. BROOKER SAYS IS NOT EVIDENCE. WE JUST FIGHT FOR OUR CLIENTS, OKAY, AND I REPRESENT THE STATE OF SOUTH CAROLINA AND THE VICTIM IN THIS CASE. MR. BROOKER REPRESENTS SHAWN REAVES. SHAWN REAVES IS BROUGHT HERE UNDER AN INDICTMENT THAT SAYS THAT HE EITHER MURDERED KESHON APPLEWHITE, WHICH WE BELIEVE IS TRUE, OR AT THE VERY LEAST HE COMMITTED AN ASSAULT AND BATTERY WITH INTENT TO KILL.

YOU'RE GOING TO HEAR THAT THERE'S TWO BULLETS

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SHOT FROM TWO DIFFERENT GUNS IN THE VICTIM, OKAY. IT'S GOING TO BE UP TO YOU TO DECIDE AFTER YOU HEAR THE EVIDENCE, AFTER YOU HEAR MEDICAL DOCTOR COME IN HERE AND TELL YOU WHAT SHE FOUND IN THE AUTOPSY, BUT THAT'S GOING TO BE YOUR DECISION TO DECIDE WHICH ONE HE'S GUILTY OF BUT I CAN TELL YOU RIGHT NOW THAT WE BELIEVE THE STATE'S EVIDENCE IS GOING TO PROVE HE'S GUILTY OF MURDER.

IT WAS MOTHER'S DAY 2007, KESHON APPLEWHITE WAS HOME. HE WAS LIVING OUT OF TOWN WORKING. HE CAME HOME AND HE SPENT THE WEEKEND WITH HIS MOTHER. HE SAW, WENT TO SEE HIS GIRLFRIEND OR MAYBE HIS EX-GIRLFRIEND AS THE EVIDENCE WILL TELL YOU. THEY GOT INTO AN ARGUMENT NOT VERY FAR FROM THE COURTHOUSE STEPS HERE OVER ON EAST MULLINS STREET, THAT THERE WAS OTHER PEOPLE AT THE RESIDENCE. HE WENT THERE AND GOT IN AN ARGUMENT.

YOU'RE GOING TO HAVE AT LEAST TWO EYEWITNESSES SAY THAT THEY SAW SHAWN REAVES SHOOT HIM DOWN, KILL HIM IN THE FRONT YARD OF EAST MULLINS STREET RIGHT HERE IN THE CITY OF MARION.

I ASK YOU TO JUST PAY ATTENTION TO THE EVIDENCE, GIVE EVERYBODY HERE A FAIR TRIAL. DON'T TAKE SIDES, DON'T FALL IN LOVE WITH ME OR MR. BROOKER IN OUR WAYS, JUST PLEASE GIVE THE STATE OF SOUTH CAROLINA AND SHAWN REAVES A FAIR TRIAL THIS WEEK, JUST BASE IT ON THE EVIDENCE, AND IF YOU DO THAT I'M VERY CONFIDENT THAT YOU CAN FIND HIM GUILTY

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OF MURDER BECAUSE THAT'S ALL THE EVIDENCE SHOWS, HE KILLED HIM ON MOTHERS DAY NIGHT.

MR. BROOKER: OBJECTION, YOUR HONOR.

MR. DEBERRY: THANK YOU.

THE COURT: THANK YOU. MR. BROOKER?

MR. BROOKER: THANK YOU, YOUR HONOR.

OPENING STATEMENT

BY MR. BROOKER:

GOOD MORNING, LADIES AND GENTLEMEN, THE FIRST THING I'M GOING TO START OUT BY SAYING IS TO EMPHASIZ SOMETHING THAT JUDGE SEALS SAID. SO I'M GOING TO RE-EMPHASIZE THAT BECAUSE IT IS SO IMPORTANT IN CONNECTION WITH THE CRIMINAL PROCESS. IT IS EXTREMELY IMPORTANT IN CONNECTION WITH THE CRIMINAL PROCESS IF THERE IS AN APPEAL.

THE FIRST THING IS IS THAT OBVIOUSLY IS THAT I REPRESENT SHAWN REAVES THAT'S SITTING RIGHT THERE AND OBVIOUSLY THE STATE JUST ADVISED YOU THAT SHAWN REAVES HAS BEEN ACCUSED OF AT LEAST MURDER AND HE'S ALSO ACCUSED OF AND/OR ASSAULT AND BATTERY WITH INTENT TO KILL, THOSE TWO THINGS IN WHICH THE STATE ACCUSED HIM OF.

NOW WHAT'S IMPORTANT AND WHAT'S VITAL IN CONNECTION WITH ANY CRIMINAL TRIAL IS, IS THAT TWO VERY IMPORTANT PRINCIPALS OF LAW THAT YOU THE JURY MUST, MUST ADHERE TO IN ORDER FOR THIS TO BE A FAIR TRIAL. I THINK YOU HEARD THE PROSECUTION USE THE WORD FAIR TRIAL AND, OF

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COURSE, IT'S SUPPOSED BE A FAIR TRIAL. THE FIRST PRINCIPAL IS, AND IT'S AN ESTENIAL PRINCIPAL IS, IS THAT AS MR. REAVES SITTING RIGHT IN THAT CHAIR HE IS AS INNOCENT AS YOU AND I. HE'S AS INNOCENT AS ANYONE THAT SITS IN THIS COURTROOM. THAT IS INNOCENCE THAT IS AFFORDED EACH AND EVERY CITIZEN IN THIS COUNTRY. WE ALL CLOTHED, WE ARE ALL CLOTHED WITH THE ROBE OF INNOCNCE, EVERY LAST ONE OF US, EVERY LAST CITIZEN DOWN TO EVERY MAN, WOMAN, AND CHILD IN THIS COUNTRY WE ARE INNOCENT, WE ARE INNOCENT.

NOW THAT INNOCENCE CAN ONLY BE REDEEMED BY ONE WAY AND THAT IS IS THAT AT THE END OF THE DAY AFTER YOU'VE HEARD, AND I DON'T REALLY MEAN AT THE END OF THE DAY, BUT AT THE END OF THIS TRIAL AND AFTER YOU'VE HEARD ALL THE TESTIMONY IN CONNECTION WITH THIS CASE, YOU HAVE TO GO IN THAT JURY ROOM AND YOU HAVE TO MAKE A DETERMINATION AS TO WHETHER OR NOT THAT ROBE OF INNOCENCE HAS BEEN REMOVED FROM SHAWN REAVES AND THAT THE STATE HAS PROVED HIS GUILT FOR MURDER OR AND/OR ASSAULT AND BATTERY OF A HIGH, EXCUSE ME, ASSAULT AND BATTERY WITH INTENT TO KILL BY A BURDEN OF PROOF BEYOND A REASONABLE DOUBT.

THOSE ARE THE TWO IMPORTANT PRINCIPALS THAT I WANT TO RE-EMPHASIZE THAT THE JUDGE SAID IS THAT HE'S ABSOLUTELY INNOCENT AS HE SITS THERE AND HE IS INNOCENT UNTIL THAT CLOAK OF INNOCENCE HAS BEEN REMOVED BY A BURDEN OF PROOF BEYOND A REASONABLE DOUBT. THAT'S OUR LEGAL

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SYSTEM AND IN ORDER FOR YOU TO EXERCISE YOUR JOB AS JURORS YOU HAVE TO ACCEPT THOSE PRINCIPALS. YOU HAVE TO TAKE THEM SERIOUSLY AND YOU HAVE TO APPLY THEM AS YOU ARE INSTRUCTED TO DO SO.

NOW YOU ARE ALSO HAVE BEEN TOLD THAT EVIDENCE WILL BE PRESENTED AND I THINK SPECIFICALLY THE PROSECUTOR SAID THEY WILL INTRODUCE TWO WITNESSES THAT INTENDS TO GET UP AND SAY I SAW SHAWN REAVES SHOT MR. APPLEWHITE, THAT'S WHAT THE PROSECUTION SAID TO YOU JUST A MINUTE AGO.

THE OTHER THING I WOULD SAY IS, IS AT THE END OF THIS TRIAL, AT THE END OF THIS TRIAL THE JUDGE IS GOING TO INSTRUCT YOU WITH RESPECT TO WHAT THE LAW IS REGARDING MURDER AND REGARDING ASSAULT AND BATTERY WITH INTENT TO KILL. NOW AS THE PROSECUTOR HAS EXPLAINED TO YOU YOU PROBABLY WILL THINK, WELL OKAY, THIS PROCESS IS GOING TO BE A SIMPLISTIC PROCESS. WELL TRUST ME IT IS NOT, IT IS NOT. THERE ARE ELEMENTS OF EACH CRIME THAT HAVE TO BE SATISFIED. THERE ARE ELEMENTS OF EACH CRIME, THE CRIME OF MURDER AND THE CRIME OF ASSAULT AND BATTERY WITH INTENT TO KILL THAT HAVE TO BE SATISFIED, THAT THROUGHOUT THE COURSE OF THIS TRIAL YOU NEED TO LISTEN VERY CLOSELY, LISTEN EXTREMELY CLOSELY AT EVERY BIT OF EVIDENCE THAT IS PRESENTED AND NOT JUST THE EVIDENCE THAT IS PRESENTED BUT THE LACK OF EVIDENCE THEREOF, SOMETIMES THAT'S JUST AS IMPORTANT. THE ABSENCE OF EVIDENCE IS JUST AS IMPORTANT AS THE EXISTENCE

OF EVIDENCE BECAUSE AT THE END OF THIS TRIAL YOU'RE GOING TO BE ASKED TO GO BACK IN THAT JURY ROOM AND APPLY EVERYTHING THAT YOU HEARD OR EVERYTHING THAT YOU DID NOT HEARD TO EACH AND EVERY ELEMENT OF THESE OFFENSES AND MAKE A DETERMINATION AS TO WHETHER OR NOT THOSE ELEMENTS HAS BEEN SATISFIED, EACH AND EVERY ONE OF THEM BY A BURDEN OF PROOF BEYOND A REASONABLE DOUBT. THAT'S YOUR CHARGE HERE TODAY. THAT'S WHAT'S ABOUT TO HAPPEN, SO ONE MORE IMPORTANT THING I THINK THE PROSECUTOR SAID THAT BEARS REPEATING AND THAT IS IS THAT I'M A LAWYER, MR. DEBERRY IS A LAWYER, WE ARE NOT WITNESSES IN CONNECTION WITH THIS TRIAL. IT IS ABSOLUTELY NECESSARY FOR YOU TO UNDERSTAND THE ROLE OF PEOPLE IN THIS COURTROOM.

MR. SEALS IS THE JUDGE IN THIS CASE. WE ARE NOT WITNESSES. I DIDN'T SEE THE EVENTS THAT TOOK PLACE THAT DAY. MR. DEBERRY DIDN'T SEE THE EVENTS THAT TOOK PLACE. JUDGE SEALS DIDN'T SEE THE EVENTS THAT TOOK PLACE THAT DAY. UNDERSTANDING OUR ROLES ARE AS LAWYERS AND JUDGES OUR JOB IS FACILITATORS IN THE PRESENTATION OF THIS CASE TO YOU. WE'RE FACILITATING THE ORDERLY PRESENTATION OF THE EVIDENCE TO YOU IN A WAY HOPEFULLY THAT YOU CAN CONSUME IT AND GO BACK AND MAKE A DECISION THAT THERE'S JUSTICE AT THE END OF THIS CASE.

ANYTHING THAT I SAY IS NOT EVIDENCE. ANYTHING THAT MR. DEBERRY SAYS IS NOT EVIDENCE. WE WERE NOT

PRESENT. THE EVIDENCE WILL COME FROM WITNESSES THAT ARE PRESENTED ON THE STAND, OR LACK THEREOF. IT WILL COME FROM DOCUMENTS OR EXHIBITS THAT WILL BE PRESENTED TO YOU AND THAT'S WHAT YOU WILL BASE YOUR DECISION ON, SO DON'T BE CONFUSED BY OUR ROLE IS THAT WE'RE CERTAINLY HERE TO FACILITATE THE ORDERLY PRESENTATION OF THIS EVIDENCE TO YOU AND SO YOU CAN CONSUME IT AND HOPEFULLY BRING BACK A JURY, A VERDICT THERE'S JUSTICE AT THE END OF THIS, SO KEEP AN OPEN MIND.

YOU HAVEN'T HEARD ANY EVIDENCE YET, NOT ONE SINGLE PIECE OF EVIDENCE HAVE YOU HEARD. SO NO ONE SHOULD BE OF THE OPINION, AT LEAST HAVE DEVELOPED AN OPINION AT THIS PARTICULAR PERIOD IN TIME AND, OF COURSE, KEEP AN OPEN MIND AND LISTEN TO THE EVIDENCE FURTHER, APPLY THAT EVIDENCE TO EACH PARTICULAR ELEMENT THAT THE JUDGE CHARGES YOU AT THE END OF THIS CASE AND, OF COURSE, IT MIGHT BE POSSIBLE THAT WE WALK OUT OF THIS CASE AT THE END OF IT AND JUSTICE WILL BE SERVED. THANK YOU VERY MUCH.

THE COURT: THANK YOU. SOLICITOR?

MR. DEBERRY: YOUR HONOR, DUE TO SOME TIME CONSTRAINTS FOR THE PARTICULAR WITNESS WE'D LIKE TO CALL DETECTIVE LARRY WOODS OUT OF ORDER IN THIS TRIAL FIRST.

DETECTIVE LARRY WOODS

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MR. WOODS, WOULD YOU, PLEASE, STATE YOUR NAME AND OCCUPATION AND TELL THE JURY ABOUT YOUR CAREER IN LAW ENFORCEMENT?

A MY NAME IS LARRY WOODS AND MY CURRENT OCCUPATION IS I WORK, I'M WORKING IN HAITI FOR THE UNITED NATIONS LEGALIZATION MISSION IN THE STATE DEPARTMENT. I'VE BEEN THERE SINCE SEPTEMBER OF LAST YEAR, ALMOST A YEAR. WHILE IN THE COUNTY I WORKED AS A DETECTIVE WITH THE SHERIFF'S DEPARTMENT FROM 2002 TO 2007.

Q OKAY, AND IN 2007 AROUND MAY 13TH, 14TH, WHO WERE YOU EMPLOYED WITH?

A THE SHERIFF'S OFFICE.

Q AND WHAT WAS YOUR CAPACITY OR WHAT WAS YOUR JOB DESCRIPTION THERE AT THAT TIME?

A I WAS A LIEUTENANT DETECTIVE; I WORKED IN INVESTIGATIONS.

Q OKAY, DID YOU HAVE AN OCCASION TO INVESTIGATE ANY PART OF THE INCIDENT THAT WE'RE HERE TODAY ABOUT?

A I ASSISTED WITH THAT INVESTIGATION.

Q OKAY, AND WHAT, AND WHAT DID YOU DO AS ASSISTING IN THAT INVESTIGATION?

A I EXECUTED THREE GUNSHOT RESIDUE KITS ON SOME INDIVIDUALS.

Q CAN YOU EXPLAIN JUST BY YOUR KNOWLEDGE WHAT A GUNSHOT RESIDUE IS?

A A GUNSHOT RESIDUE KIT IS A, IS A KIT THAT'S USED TO COLLECT EVIDENCE ON A PERSON'S HANDS THAT'S BEEN, THAT'S RECENTLY FIRED A WEAPON. YOU CAN TAKE THE FINGER INSIDE OF THAT KIT, YOU CAN SWAB THE PERSONS HANDS, REPACKAGE IT AND SUBMIT THAT TO THE CRIME LAB.

Q OKAY, AND AS A RESULT, NOT THE RESULTS IN THESE THREE CASES BUT WHAT, WHAT CAN A CRIME LAB TELL YOU, OF YOUR KNOWLEDGE?

A A CRIME LAB CAN TELL YOU IF, IF THERE WAS GUNSHOT RESIDUE PRESENT ON A PERSON'S HANDS.

Q OKAY --

MR. DEBERRY: YOUR HONOR, MAY I HAVE THESE MARKED AS STATE'S EXHIBITS 1, 2, AND 3.

THE COURT: MR. BROOKER?

MR. BROOKER: PRIOR OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. BROOKER: THIS IS BASED UPON THE PREVIOUS OBJECTION THAT WE RAISED REGARDING THE INTRODUCTION OF EVIDENCE.

THE COURT: IF THE JURY COULD STEP INTO THE JURY ROOM FOR JUST A MOMENT WE'RE GOING TO TAKE UP A MATTER OF LAW.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT

10:29 A.M.)

THE COURT: ALL RIGHT, FOR THE RECORD, MR. BROOKER.

MR. BROOKER: YOUR HONOR, THIS IS JUST I GUESS A RESTATEMENT OF THE RECENT PRETRIAL ARGUMENT THAT WE MADE I THINK INVOLVING, INVOLVING WHETHER OR NOT LAW ENFORCEMENT LAWFULLY COLLECTED EVIDENCE THAT WAS AT THE SCENE BASED UPON THE FACT THAT NO WARRANT EXISTED THAT WOULD ALLOW THEM TO COLLECT ANY EVIDENCE IN WHICH THEY ARE ALLEGING TO HAVE COLLECTED. SPECIFICALLY WE CITED I THINK MINCEY V. ARIZONA I THINK THAT'S THE BASIS OF OUR ARGUMENT WHICH IS A CASE THAT IS VERY SIMILAR TO THIS.

THE COURT: AND YOU DON'T HAVE TO REPEAT ALL THAT.

MR. BROOKER: YEAH, SO WE MAKE AN OBJECTION BASED UPON AT LEAST ARGUMENTS THAT WE MADE AT PRETRIAL IN YOUR HONOR'S PRESENCE.

THE COURT: THANK YOU. MR. DEBERRY, ANY RESPONSE?

MR. DEBERRY: YES, SIR, YOUR HONOR, THROUGH TESTIMONY THAT HASN'T DEVELOPED YET I BELIEVE THAT DETECTIVE WOODS IS GOING TO TESTIFY ---

THE COURT: WHY DON'T YOU GO AHEAD AND TAKE A LITTLE BIT OF TESTIMONY AS TO WHAT YOU'RE TALKING ABOUT AND SEE WHERE IT GOES IN CAMERA.

MR. DEBERRY: (CONTINUING)

Q DETECTIVE WOODS, WHAT, WHAT INDICATION DID YOU HAVE THAT YOU NEEDED TO TAKE GUNSHOT RESIDUE SAMPLES FROM THE INDIVIDUALS THAT YOU DID?

A I WAS AT THE, I WAS ASSISTING THE MARION POLICE DEPARTMENT TO COLLECT, TO COLLECT THOSE GUNSHOT RESIDUE KITS; I WASN'T INVOLVED IN WHO.

Q WHERE DID YOU COLLECT THE EVIDENCE?

A I WAS AT THE MARION POLICE DEPARTMENT.

Q YOU WERE AT THE MARION POLICE DEPARTMENT?

A YES, SIR.

Q AND DID YOU COLLECT THE EVIDENCE AT THE MARION, DID YOU COLLECT THE EVIDENCE AT THE MARION POLICE DEPARTMENT?

A YES, I DID.

Q AND IT CAME OFF OF AN INDIVIDUAL'S HANDS?

A YES.

Q OKAY, IS IT YOUR, THROUGH YOUR TRAINING DO YOU BELIEVE THAT GUNSHOT RESIDUE -- HOW LONG DO YOU KNOW IT STAYS ON SOMEBODY'S HANDS?

A WELL I'M NOT EXACTLY SURE HOW LONG IT CAN BE DETECTED ONCE A WEAPON, A PERSON USES A WEAPON BUT THIS WAS RIGHT AFTER THE INCIDENT.

Q IS IT THE SOONER THE BETTER?

A YES.

Q OKAY, AND IS IT EVIDENCE THAT CAN WASHED OFF OR BRUSHED OFF?

A IT CAN BE IF THE PERSON WASHES THEIR HANDS; THERE'S A POSSIBILITY THAT THAT CAN HAPPEN.

MR. DEBERRY: YOUR HONOR, WE WOULD SAY THAT THIS EVIDENCE ISN'T A PART OF THE HOUSE; IT'S NOT A PART OF, IT'S NOT SUBJECT TO ANY WARRANT. IT WAS ACTUALLY ATTACHED TO THE INDIVIDUALS. IT WAS NOT TAKEN IN THE HOUSE.

THE COURT: DID THE INDIVIDUALS GIVE CONSENT FOR THIS TO HAPPEN?

MR. DEBERRY: (CONTINUING)

Q DID THE INDIVIDUALS CONSENT, DETECTIVE WOODS, TO HAVE THE GUNSHOT RESIDUE KITS PERFORMED?

A YES, THAT WAS PART OF -- THEY COOPERATED.

Q THEY COOPERATED.

MR. DEBERRY: THAT WOULD BE OUR ARGUMENT, YOUR HONOR.

THE COURT: ALL RIGHT, I'M GOING TO OVERRULE THE OBJECTION IN REGARDS TO THIS WITNESS AND WHAT HE DID. ALL RIGHT, BRING THE JURY IN.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 10:31 A.M.)

(WHEREUPON, STATE'S EXHIBITS NUMBERS 20, 21, AND 22 MARKED FOR IDENTIFICATION.)

THE COURT: YOU MAY CONTINUE, SOLICITOR.

MR. DEBERRY: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES.

MR. DEBERRY: (CONTINUING)

Q DETECTIVE WOODS, I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 20, 21, AND 22. COULD YOU READ THE NAMES OF THE PEOPLE WHO, COULD YOU TELL THE JURY IF THAT'S, IF THOSE ARE THE GUNSHOT RESIDUE KITS YOU PERFORMED AT THAT TIME?

A YES.

Q ALL RIGHT, AND CAN YOU READ THE NAMES OF THE INDIVIDUALS WHO YOU TOOK THE SAMPLES FROM?

A JOEMELLA CHRISSHERREA WILSON-DOZIER, BRANDON DESHON BELLAMY, RODNEY DENTON MCELVEEN.

Q MCELVEEN?

A MCELVEEN.

Q OKAY, AND WHAT IS YOUR UNDERSTANDING, WHY IS THE REASON YOU TOOK FROM THOSE INDIVIDUALS?

A LIKE I SAID I WAS ASSISTING THE MARION POLICE DEPARTMENT. THEY, NORMALLY THIS IS TAKEN FROM PEOPLE WHO ARE SUSPECTED OF FIRING A WEAPON. LIKE I SAID I WAS ASSISTING THEM TO COLLECT THIS, THIS EVIDENCE.

Q OKAY, DO YOU KNOW IF THEY WERE AT THE SCENE THAT NIGHT?

A I DON'T KNOW.

Q OKAY, AND THIS, AND WHAT DID YOU DO WHEN YOU COLLECTED THAT EVIDENCE, WHO DID YOU GIVE IT TO?

A I COLLECTED THIS EVIDENCE AND I PASSED IT ON TO LIEUTENANT BLUE OF THE MARION POLICE DEPARTMENT.

Q OKAY, THANK YOU VERY MUCH --

MR. DEBERRY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS?

MR. BROOKER: BRIEFLY.

CROSS EXAMINATION

BY MR. BROOKER:

Q MR. WOODS, I THINK YOU SAID YOU TOOK THESE SAMPLES; DO YOU KNOW WHAT TIME YOU TOOK THEM AND WHAT DATE THAT YOU TOOK THEM ON?

A ALL OF THAT IS INSIDE OF THE KIT. IT'S A INVENTORY, IT'S A INVENTORY INSTRUCTION SHEET IN THERE THAT HAS ALL THAT INFORMATION INSIDE OF THE KIT.

Q WELL I'M ASKING YOU THE QUESTION, DO YOU KNOW WHAT TIME, DO YOU KNOW WHAT TIME YOU TOOK THEM?

A I DON'T RECALL SPECIFICALLY, IT WAS SOME TIME DURING THE NIGHT.

Q SOME TIME DURING THE NIGHT?

A YES.

Q OKAY, SO --

A WITHOUT LOOKING AT THE INVENTORY SHEET I

WOULDN'T KNOW.

Q I UNDERSTAND. WE'LL STIPULATE THAT YOU'RE RELYING ON YOUR MEMORY. ALL RIGHT. NOW SO YOU DON'T KNOW WHETHER OR NOT AT LEAST TO YOUR OWN PERSONAL RECOLLECTION WHETHER OR NOT IT WAS TWO HOURS, THREE HOURS, FOUR HOURS OR FIVE HOURS LATER?

A NO, I WOULD STATE IT WAS WITHIN A REASONABLE AMOUNT OF TIME AFTER THE INCIDENT.

Q OFFICER WOODS, HOW CAN YOU SAY IT WAS WITHIN A REASONABLE PERIOD, AMOUNT OF TIME WHEN YOU JUST SIMPLY TESTIFIED THAT YOU DON'T KNOW WHAT TIME IT WAS, SO IN ORDER ---

A I ALSO SAID THAT IT WAS SOMETIME DURING THE NIGHT SO I KNOW IT WAS WITHIN A REASONABLE AMOUNT OF TIME.

Q BUT YOU JUST DON'T KNOW WHAT THAT TIME IS?

A I JUST DON'T KNOW EXACTLY WHAT TIME THAT WAS.

Q OKAY. NOW, FOR THE TIME YOU CAME IN CONTACT WITH THESE PERSONS, THIS IS JOEMELLA WILSON-DOZIER AND RODNEY MCELVEEN AND BRANDON BELLAMY, FOR THE FIRST TIME THAT YOU CAME IN CONTACT WITH THOSE INDIVIDUALS WOULD HAVE BEEN DOWN AT THE MARION COUNTY POLICE DEPARTMENT WHEN YOU TOOK THESE RESIDUE SAMPLES?

A THE FIRST TIME THAT I CAME IN CONTACT WITH THEM?

Q YEAH, IS THAT THE FIRST TIME THAT YOU CAME IN CONTACT WITH THESE INDIVIDUALS IS THAT WHEN YOU TOOK THE RESIDUE SAMPLES FROM THEM DOWN AT THE MARION COUNTY POLICE DEPARTMENT?

A I'M NOT SURE IF THAT'S THE FIRST TIME OR NOT. I'M NOT SURE IF THAT'S THE FIRST TIME I SAW THEM WAS IN THE POLICE DEPARTMENT.

Q IS THAT THE FIRST TIME YOU HAD PHYSICAL CONTACT WITH THEM?

A I'M NOT SURE.

Q YOU'RE NOT SURE?

A NO.

Q DO YOU KNOW WHETHER OR NOT THEY HAD TIME TO WASH THEIR HANDS OR HAD WASHED THEIR HANDS AT ANY POINT IN TIME PRIOR TO YOU TAKING THESE GUNSHOT RESIDUE TESTS?

A NO, I DON'T.

Q NOW, AND YOU CAN ANSWER THIS QUESTION BUT IF YOU DON'T KNOW THE ANSWER TO IT SAY YOU DON'T. THE GUN POWDER RESIDUE TEST, AND I THINK YOU TESTIFIED ON DIRECT EXAMINATION THE PURPOSE OF THAT IS TO, IS TO TRY TO DETERMINE WHETHER OR NOT AN INDIVIDUAL HAS FIRED A GUN; IS THAT CORRECT?

A YES.

Q OKAY, AND OF COURSE AM I CORRECT IN ASSUMING THAT THAT WHEN A, WHEN A GUN IS DISCHARGED AND

SOMETIMES THERE IS GUN POWDER RESIDUE THAT MIGHT SPIT BACK UP ON THE SKIN OF A PERSON OR ON THE ARM OR EITHER ON THE, ON THE FOREARM OF THE PERSON WHEN FIRING A GUN; IS IT SOMETHING SIMILAR TO THAT OR HOW DOES IT WORK?

A I'M NOT A RESIDUE EXPERT. I JUST, I JUST KNOW THAT FROM WHAT I'VE BEEN TAUGHT THAT A PERSON THAT FIRES A WEAPON IT'S A POSSIBILITY THERE IS A GUN POWDER OR RESIDUE ON HIS HAND.

Q IS IT YOUR UNDERSTANDING IS THAT, IS THAT, IS THAT RESIDUE THERE'S A POSSIBILITY THAT THOSE TEST RESULTS CAN BE AFFECTED OR EITHER THAT RESIDUE MIGHT BE REMOVED BY WASHING OF THE HANDS OR CLEANING OF THE HANDS; IS THAT A POSSIBILITY?

A I ASSUME IT IS, I CAN'T EXPERTLY TESTIFY TO THAT.

Q OKAY, SO AND, AND JUST, JUST FOR CLARIFICATION OF THE RECORD IS THAT YOU'RE SIMPLY TESTIFYING THAT, THAT YOU TOOK THESE SAMPLES. YOU'RE NOT TESTIFYING WITH RESPECT OF THE ACCURACY OF THE SAMPLES AND NOT TESTIFYING WITH RESPECT TO I GUESS ON, ON, ON WHETHER THEY HAD OR HAD NOT, WHETHER OR NOT ANY OF THOSE INDIVIDUALS HAD OR HAD NOT FIRED A GUN?

A THE ONLY THING I CAN TESTIFY TO IS THAT I COLLECTED THE EVIDENCE ACCORDING TO PROCEDURE.

Q AND JUST SO I CAN GET AN ANSWER FROM YOU.

YOU'RE NOT TESTIFYING, YOU'RE NOT TESTIFYING YOU KNOW WHETHER OR NOT ANY OF THOSE INDIVIDUALS HAD OR HAD NOT FIRED A GUN THAT NIGHT; THAT'S NOT WHAT YOUR TESTIMONY IS, IS THAT CORRECT?

A JUST THE COLLECTION OF THE KIT.

Q IT'S A YES OR NO?

A I'M TESTIFYING TO THE COLLECTION OF THE KIT.

Q DO YOU KNOW WHETHER OR NOT ONE OF THOSE INDIVIDUALS SHOT A GUN THAT NIGHT?

A I DIDN'T WITNESS ANYONE SHOOTING.

Q SO THE ANSWER TO THAT WOULD BE NO; IS THAT CORRECT?

A I JUST EXECUTED THE KIT.

MR. BROOKER: YOUR HONOR, IF WE CAN ASK AT LEAST A YES OR NO ANSWER; HE CAN GIVE AN EXPLANATION WE'RE ENTITLED TO THAT.

MR. DEBERRY: YOUR HONOR, I BELIEVE THAT BY HIS ANSWERS IT'S CLEARLY NO. HE CAN'T TESTIFY WHETHER THEY SHOT A GUN THAT NIGHT. HE CAN JUST TESTIFY THAT HE GOT THE EVIDENCE.

MR. BROOKER: WE CAN ASK HIM WITH RESPECT TO WHAT HIS KNOWLEDGE IS, YOUR HONOR, THAT'S ---

THE COURT: ANSWER THE QUESTION.

MR. BROOKER: AND THAT'S WHAT WE'RE ASKING HIM

IF HE DOESN'T HAVE KNOWLEDGE WHETHER OR NOT THEY FIRED A GUN, YES OR NO.

MR. BROOKER: (CONTINUING)

Q DO YOU HAVE KNOWLEDGE OF WHETHER OR NOT ANY OF THOSE INDIVIDUALS FIRED A GUN, PERIOD?

A NO, I DON'T.

Q OKAY, NO, YOU DON'T?

A I DIDN'T WITNESS ANY, I DIDN'T WITNESS THE SHOOTING.

Q THANK YOU. DO YOU HAVE KNOWLEDGE WITH RESPECT TO THE ACCURACY OF ANY TEST RESULTS THAT, THAT, THAT CAME AS A RESULT OF THE GUNSHOT RESIDUE ---

MR. DEBERRY: OBJECTION, YOUR HONOR, ASKED AND ANSWERED AND HE DOESN'T KNOW.

THE COURT: SUSTAINED. GO AHEAD AND ASK YOUR NEXT QUESTION.

MR. BROOKER: (CONTINUING)

Q WAS THAT YOUR ONLY INVOLVEMENT IN CONNECTION WITH THE CASE?

A YES.

Q OKAY, SO I'M ASSUMING THAT, THAT THESE INDIVIDUALS THAT YOU TOOK THE GUN POWDER RESIDUE TESTS FOR YOU SAID YOU TOOK IT DOWN OUT AT THE MARION POLICE DEPARTMENT?

A YES.

Q OKAY, WERE THEY IN CUSTODY?

A NOT TO MY KNOWLEDGE, BUT LIKE I SAID I'M NOT SURE BUT NOT TO MY KNOWLEDGE.

Q YOU DON'T, I'M SORRY, GO AHEAD I DIDN'T MEAN TO INTERRUPT YOU.

A NOT TO MY KNOWLEDGE, I'M NOT SURE IF THEY WERE IN CUSTODY OR WHAT THEIR CIRCUMSTANCES WERE AT THAT, AT THAT MOMENT.

Q DID THEY HAVE HANDCUFFS ON THEM DOWN AT THE JAIL OR DOWN AT THE MARION COUNTY POLICE DEPARTMENT?

A NOT THAT I RECALL.

Q OKAY, AND JUST -- I'M SORRY, GO AHEAD?

A NOT THAT I RECALL BUT I'M NOT, I'M NOT SURE.

Q YOU'RE NOT SURE IF THEY HAD HANDCUFFS OR NOT?

A NO.

Q OKAY, WHAT TIME DID YOU ARRIVE AT THE SCENE?

MR. DEBERRY: OBJECTION, YOUR HONOR. HE'S TESTIFIED HE DIDN'T GO THE SCENE.

THE COURT: GO AHEAD AND ANSWER THE QUESTION.

MR. BROOKER: I CAN ASK HIM AGAIN, JUDGE.

Q (CONTINUING) DID YOU GO TO THE SCENE OR WERE YOU EVER AT THE SCENE?

A I WAS AT THE SCENE.
Q WHAT TIME DID YOU ARRIVE AT THE SCENE?
A I HAVE NO IDEA.
Q HOW LONG WERE YOU AT THE SCENE?
A I DON'T KNOW HOW LONG I WAS THERE.
Q WAS IT MORE THAN AN HOUR?
A MAYBE, I DON'T, I'M NOT SURE.
Q WERE YOU THE FIRST CAR ON THE SCENE?
A WAS I THE FIRST CASE ON THE SCENE?
Q YEAH.
A I WASN'T THE FIRST RESPONDER. I WASN'T, I WASN'T INVOLVED IN THE, IN THE EXECUTION OF THE CASE.
Q WHO WERE, WHO WERE SOME OF THE PEOPLE THAT WERE THERE AT THE TIME IN WHICH YOU ARRIVED AT THE SCENE?
A THE ONLY THING I CAN SAY IS THAT, THAT THE MARION POLICE DEPARTMENT WAS PRESENT. I DON'T KNOW WHO THE INDIVIDUALS WERE BUT I CAN SAY THAT THE MARION POLICE DEPARTMENT WERE PRESENT.
Q WAS FARMER BLUE PRESENT, OR FIRST OF ALL DO YOU KNOW FARMER BLUE, LIEUTENANT FARMER BLUE?
A. I KNOW WHO LIEUTENANT BLUE IS.
Q WAS HE PRESENT WHEN YOU ARRIVED?
A I DON'T RECALL.
Q WAS CAPTAIN GREY PRESENT, OF THE MARION COUNTY CITY POLICE DEPARTMENT, PRESENT WHEN YOU ARRIVED?

A I DON'T RECALL.

Q WAS EMS PRESENT WHEN YOU ARRIVED?

A I'M NOT SURE IF EMS WAS THERE OR IF THEY HAD ALREADY LEFT.

Q WOULD THIS MAKE IT EASY, WAS THERE ANYBODY THERE THAT YOU KNOW BY NAME, OTHER THAN THE PERSONS I JUST ASKED YOU ABOUT, IS THERE ANY OTHER PERSON WHO WAS PRESENT THAT YOU KNOW BY NAME THAT WAS THERE AT THE TIME IN WHICH YOU ARRIVED?

A IF YOU HAVE A LIST OF NAMES I CAN TELL YOU IF I KNOW.

MR. BROOKER: IF I MAY APPROACH THE WITNESS, YOUR HONOR?

THE COURT: SURE.

MR. DEBERRY: YOUR HONOR, IF DETECTIVE WOODS TESTIFIES BASED ON THAT DOCUMENT IT NEEDS TO BE INTO INTRODUCED BY MR. BROOKER IN EVIDENCE.

MR. BROOKER: I HAVE NO PROBLEM ENTERING IT INTO EVIDENCE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. BROOKER: WE'D MOVE TO ENTER THAT INTO EVIDENCE AS, AS DEFENSE EXHIBIT 1 OR A.

THE COURT: ANY OBJECTION?

MR. DEBERRY: NO OBJECTION.

THE COURT: DEFENSE EXHIBIT NUMBER 1 IN

EVIDENCE.

(WHEREUPON, DEFENSE EXHIBIT NUMBER 1 MARKED AND ENTERED INTO EVIDENCE.)

THE WITNESS: (CONTINUING)

A WHAT WAS THE QUESTION?

Q WHAT I WAS ASKING IS THAT YOU SAID YOU DIDN'T, YOU DIDN'T KNOW, YOU DIDN'T REMEMBER WHETHER OR NOT CAPTAIN BLUE WAS THERE. YOU DIDN'T KNOW WHETHER OR NOT I THINK, EXCUSE ME, LIEUTENANT BLUE WAS THERE, CAPTAIN GREY THERE. THEN I ASKED YOU WHETHER OR NOT IS THERE ANYBODY THAT YOU CAN REMEMBER THAT'S ON THAT LIST THAT'S BEEN MARKED AS DEFENSE EXHIBIT 1 THAT WAS PRESENT AT THE TIME IN WHICH YOU ARRIVED?

A YES, I RECOGNIZE A LOT OF NAMES ON THIS. THIS IS A CRIME SCENE LOG.

Q AND WHICH, AND THE QUESTION WAS WHICH, WHICH OF THOSE PERSONS WERE PRESENT WHEN YOU ARRIVED?

A I SEE CAPTAIN GREY'S NAME ON HERE, LIEUTENANT BLUE, THE SOLICITOR ED CLEMMONS, BUDDY FEAGIN. THERE'S SOME SHERIFF'S DEPUTIES HERE WATSON, BARFIELD, GRISE, MILES. I RECOGNIZE ALL THESE NAMES BUT FROM MEMORY I'M TRYING TO REMEMBER, IT'S BEEN SOME TIME AGO.

Q SO, AND JUST CORRECT ME IF I'M WRONG, IS YOUR RECOLLECTION IS IS THAT YOU THINK SOME PEOPLE WERE THERE BUT OUT OF ALL THOSE PEOPLE ON THAT LIST YOU DON'T

REMEMBER WHO?

A LOOKING AT THIS LIST I DO REMEMBER THESE PERSONNEL BEING THERE, THE ONES THAT I JUST CALLED.

Q WHEN YOU SAY PERSONNEL YOU'RE TALKING ABOUT ALL THE PEOPLE ON THAT LIST?

A I REMEMBER BECAUSE THOSE ARE THE NAMES THAT I'M FAMILIAR WITH.

Q SO THE NAMES THAT YOU JUST READ OUT THOSE, THOSE ARE THE NAMES OF THE PERSONS THAT, THOSE ARE THE PERSONS THAT WERE PRESENT WHEN YOU ARRIVED THAT YOU CAN REMEMBER?

A THOSE ARE, I DON'T KNOW IF THEY WERE PRESENT WHEN I ARRIVED BUT I KNOW THAT THEY WERE THERE, JUST LOOKING AT THE LIST AND, AND DOING A RECOLLECTION.

Q SO THEY WERE THERE SOME, YOU DON'T KNOW WHEN THEY ARRIVED BUT THEY WERE THERE SOMETIME AT THE SAME TIME THAT YOU WERE THERE?

A YES.

Q OKAY, OKAY. NOW JUST, JUST FOR THE PURPOSE OF THE RECORD, WAS ANY, DID YOU OBTAIN ANY SEARCH WARRANT? DID YOU ENTER THE HOUSE THAT NIGHT AT **D.**

D. , DID YOU ENTER THE HOUSE THAT NIGHT?

A YES.

MR. DEBERRY: OBJECTION, YOUR HONOR.

THE COURT: IF YA'LL WOULD APPROACH FOR ONE

MINUTE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD OUT OF THE HEARING OF THE COURT REPORTER.)

MR. BROOKER: (CONTINUING)

Q JUST TO MAKE SURE THAT I UNDERSTAND AND, OF COURSE, WE'RE ALMOST FINISHED AND WE'LL GET YOU OFF THE STAND. I JUST NEED TO UNDERSTAND WHAT YOUR INVOLVEMENT WAS. CORRECT ME IF I'M WRONG, IS THAT YOU SAID YOU ARRIVED THERE, YOU DON'T REMEMBER WHAT TIME YOU ARRIVED THERE AND THEN, OF COURSE, ON ENTERING THE HOUSE, DO YOU REMEMBER ENTERING THE HOUSE?

A YES.

Q OKAY, SO AND WHEN YOU ENTERED THE HOUSE WERE THESE INDIVIDUALS THAT, THAT WE'RE TALKING ABOUT, MS., MS. JOEMELLA WILSON-DOZIER, RODNEY MCELVEEN, AND BRANDON BELLAMY, WERE THEY IN THE HOUSE WHEN YOU ENTERED IT?

A THERE WAS, THERE WERE SOME INDIVIDUALS IN THE HOUSE. I DIDN'T PERSONALLY MAKE CONTACT WITH THOSE INDIVIDUALS. ONCE I ASSISTED IN ENTERING THE HOUSE I LET THE MARION POLICE DEPARTMENT DO THEIR JOB. I DIDN'T PERSONALLY MAKE CONTACT WITH ANY OF THE INDIVIDUALS.

Q SO YOU WERE PRESENT WHEN ENTRY WAS MADE INTO THE HOUSE?

A I WAS PRESENT.

Q OKAY, AND WERE YOU ONE OF THE OFFICERS WHO

ASSISTED IN MAKING ENTRY INTO THE HOUSE?

A I WENT IN WITH THE TEAM THAT ENTERED THE HOUSE, I WENT IN WITH THE GROUP.

Q OKAY, AND WHO WAS IN FRONT OF YOU AND WHO WAS IN BACK OF YOU? WELL LET ME WITHDRAW THAT QUESTION, LET ME ASK YOU THIS. WERE YOU THE FIRST OFFICER IN OR I MEAN WHERE DID YOU ENTER?

A NO, I WOULDN'T HAVE BEEN THE FIRST ONE BECAUSE I WAS JUST ASSISTING THE MARION POLICE DEPARTMENT. WE ENTERED IT FACING THE HOUSE TO THE RIGHT SIDE.

Q YOU ENTERED FROM THE SIDE ENTRANCE AND, OF COURSE, YOU WENT IN BEHIND THE MARION POLICE DEPARTMENT BECAUSE IT WAS THEIR CASE?

A YES.

Q OKAY, BUT DID ENTER WITH THEM?

A YES.

Q OKAY, AND DID YOU, DID YA'LL SEARCH THE ROOMS OR ANYTHING LIKE THAT?

A SEARCHED, WE CLEARED IS THE TERM.

Q OKAY, WHAT ROOMS DID YOU GO INTO?

A I REMAINED IN THE HALL AREA, THE DOOR FACES STRAIGHT DOWN THE HALL.

Q OKAY, AND, OF COURSE, THOSE INDIVIDUALS, ISN'T IT NOT TRUE THAT THAT, THAT JOEMELLA DOZIER AND RODNEY MCELVEEN AND BRANDON BELLAMY, THAT THEY WERE

COLLECTED FROM BEDROOMS IN THE HOUSE; IS THAT CORRECT?

A THAT'S ENTIRELY POSSIBLE BUT I'M NOT 100 PERCENT SURE.

Q YOU WERE STANDING IN THE HALLWAY AND THEY WOULD HAVE HAD TO HAVE PASSED YOU IF THEY WERE IN THE HOUSE; IS THAT NOT CORRECT?

A WHO WOULD HAVE HAD TO PASS ME?

Q THOSE INDIVIDUALS?

A NO, THEY DIDN'T, THEY DIDN'T PASS ME IN THE HALL.

Q SO MY UNDERSTANDING IS THAT YOU ENTERED THE HOUSE WHERE THESE INDIVIDUALS WERE EXTRACTED FROM BUT, BUT YOU WERE IN THE HALLWAY BUT YOU NEVER SEEN (SIC) THEM BEING EXTRACTED FROM THE HOUSE? IS THAT YOUR TESTIMONY?

A I CAN'T, I DON'T RECALL WHAT THE DISPOSITION OF THOSE INDIVIDUALS IN THE HOUSE WERE ONCE WE CLEARED THE HOUSE. I JUST DON'T REALLY KNOW, I DON'T, I DON'T RECALL.

Q ALL RIGHT, THERE'S A LOT THAT YOU'VE TESTIFIED THAT YOU DON'T RECALL. IS THERE ANYTHING THAT YOU DO RECALL ABOUT BEING INSIDE THAT HOUSE? ONCE YOU GOT IN THE HALLWAY, DO YOU RECALL WHAT YOU DID ONCE YOU GOT IN THE HOUSE?

A I ASSISTED THE MARION POLICE DEPARTMENT IN CLEARING THE HOUSE. ONCE THAT WAS DONE I HAD NO OTHER

FUNCTION.

Q CLEARING THE HOUSE?

A YES.

Q HOW DO YOU ASSIST IN CLEARING THE HOUSE?

MR. DEBERRY: ASKED AND ANSWERED, YOUR HONOR.

THE COURT: I DON'T THINK HE'S ANSWERED THAT, OVERRULED.

MR. BROOKER: (CONTINUING)

Q HOW DID YOU ASSIST IN CLEARING THE HOUSE?

A I ASSISTED THEM BY I ENTERED THE HOUSE ALONG WITH THE MARION POLICE DEPARTMENT TO, TO MAKE SURE THAT THERE WEREN'T ANY VICTIMS IN THE HOUSE OR ANY KIND OF DANGER OR ANY DANGER TO LAW ENFORCEMENT OFFICERS AS THEY ENTERED THE HOUSE.

Q DID YOU HAVE YOUR GUN DRAWN?

A DID I HAVE MY GUN DRAWN? YES.

Q DID OTHER LAW ENFORCEMENT OFFICERS HAVE THEIR GUNS DRAWN?

A YES.

Q AND I'M GOING TO ASK YOU THIS ONE QUESTION AND I'M GOING TO SIT DOWN BECAUSE I DON'T THINK IT'S CLEAR. NOW YOU SAID YOU WENT IN THE HALLWAY, DID YOU GO IN ANY OTHER ROOM IN THE HOUSE OTHER THAN THE HALLWAY, OTHER THAN STANDING IN THE HALLWAY WHEN YA'LL ENTERED?

A NO, I DIDN'T GO IN ANY OTHER ROOMS. I WAS

IN THE KITCHEN AREA WHICH IS A BIG AREA WHEN YOU GO IN AT THE SIDE DOOR IN THE HALLWAY, THE LONG HALLWAY.

MR. BROOKER: I DON'T HAVE ANY OTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: ANY REDIRECT?

MR. DEBERRY: THANK YOU, YOUR HONOR, I'D JUST LIKE TO ASK A QUESTION.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q YOU WERE WORKING FOR THE MARION COUNTY SHERIFF'S DEPARTMENT?

A YES, I WAS.

Q IS EAST MULLINS STREET IN THE COUNTY'S JURISDICTION OR IS THAT IN MARION POLICE DEPARTMENT?

A THAT'S THE MARION POLICE DEPARTMENT.

Q DID YOU HAVE ANYTHING TO DO WITH THIS CASE OTHER THAN GUNSHOT RESIDUE COLLECTION AS FAR AS EVIDENTIARY MATTERS GOES?

A NOT AT ALL, JUST THE COLLECTION OF THE GUNSHOT RESIDUE KIT.

Q SO YOUR ONLY PURPOSE AT THE SCENE WAS TO HELP CLEAR THE HOUSE AFTER SOMEBODY WAS SHOT ON THE FRONT PORCH OR IN THE YARD?

A YES.

MR. BROOKER: OBJECTION, YOUR HONOR, LEADING.

THE COURT: SUSTAINED.

MR. DEBERRY: NO FURTHER QUESTIONS.

THE COURT: ANY RECROSS, MR. BROOKER?

MR. BROOKER: NO, YOUR HONOR.

THE COURT: ANY OBJECTION TO THIS WITNESS BEING EXCUSED?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: MR. BROOKER?

MR. BROOKER: NONE, YOUR HONOR.

THE COURT: YOU'RE EXCUSED.

THE WITNESS: THANK YOU.

THE COURT: SURE. MEMBERS OF THE JURY, DO YA'LL NEED A BREAK, RESTROOM OR ANYTHING BEFORE WE START ANOTHER WITNESS? YOU READY TO GO? SOLICITOR, IF YOU'D CALL YOUR NEXT WITNESS.

MR. DEBERRY: THANK YOU, YOUR HONOR, WE'D CALL LIEUTENANT DAVIS OF THE MARION COUNTY, MARION CITY POLICE DEPARTMENT.

LIEUTENANT WALKER DAVIS, SR.

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q LIEUTENANT DAVIS, COULD YOU, PLEASE, EXPLAIN TO THIS JURY YOUR JOB AND YOUR ROLE AS LIEUTENANT WITH THE MARION POLICE DEPARTMENT, HOW LONG YOU'VE BEEN

THERE?

A I'VE BEEN WITH THE MARION POLICE DEPARTMENT NOW FOR TWENTY YEARS. MY JOB IS SHIFT SUPERVISOR AND I HAVE THREE OTHER POSITIONS.

Q OKAY, WERE YOU WORKING 2007, MAY 13TH, 2007?

A YES, SIR, I SHOULD HAVE BEEN WORKING THAT NIGHT WHEN WE RECEIVED A CALL FROM 911 SAYING GUNSHOTS WERE FIRED ON EAST LIBERTY STREET.

Q EAST MULLINS OR EAST LIBERTY?

A EAST MULLINS STREET.

Q OKAY, AND THAT'S IN THE CITY?

A THAT'S INSIDE THE CITY LIMITS.

Q HOW FAR IS THAT FROM THE COURTHOUSE?

A PROBABLY ABOUT, I'D SAY ABOUT FOUR BLOCKS OVER.

Q OKAY, SO AND WHAT ARE YOUR DUTIES AS FAR AS RESPONDING TO A CALL OF THAT NATURE?

A MY DUTIES IS TO RESPOND TO THE CALL OF THAT NATURE TO MAKE SURE ONCE WE GET THERE EVERYTHING IS SECURED, THE SCENE IS SECURE, AND ALSO ROPED OFF AND DON'T LET NOBODY ELSE INSIDE THE CRIME SCENE.

Q AND DID YOU, WERE YOU THE FIRST TO RESPOND THAT NIGHT, ONE OF THE FIRST TO RESPOND?

A I WAS ONE OF THE FIRST RESPONDERS THERE ALONG WITH MY SERGEANT, MY SERGEANT JACKSON, ALONG WITH THE MARION POLICE DEPARTMENT. HE RESPONDED FIRST AND THEN I ARRIVED AND WE BLOCKED OFF THE AREA.

Q HOW LONG DO YOU THINK IT WAS AFTER HE RESPONDED THAT YOU, THAT YOU GOT THERE?

A PROBABLY BETWEEN, ABOUT TWO OR THREE SECONDS RIGHT AROUND.

Q SO YOU WERE JUST --

A I WAS RIGHT AROUND.

Q RIGHT AROUND, ALL RIGHT, COULD YOU, PLEASE, EXPLAIN TO THE JURY WHAT YOU, WHAT YOU CAME UPON WHEN YOU ARRIVED ON MULLINS STREET THAT NIGHT?

A UPON MY ARRIVAL WHEN I GOT TO EAST MULLINS STREET THERE WAS A WHITE CROWN VIC UNMARKED PARKED IN FRONT OF THE RESIDENCE AND THEN ALSO IT HAD BEEN RAINING. THERE WAS A PUDDLE OF WATER AND THE CROWN VIC HAD TWO DOORS OPEN ON THE PASSENGER SIDE AND THE PASSENGER SIDE OF THE BACK BEHIND THE DRIVER AND THE DRIVERS SIDE. THOSE DOORS WAS OPEN AND WITH THOSE DOORS OPEN I LOOKED INSIDE THERE WAS A GUY IN THE BACK SEAT, YOU KNOW, SLUMPED OVER LAYING DOWN AND HE HAD BLOOD ON HIS CLOTHES. I IN TURN ASKED THE GUY'S FRIEND WHO WAS WITH HIM WHAT HAPPENED AND HE COMMENCED TO TELLING ME THAT ---

MR. BROOKER: OBJECTION, YOUR HONOR, HEARSAY.

THE COURT: ANY RESPONSE?

MR. DEBERRY: YOUR HONOR, I WILL SAY IT'S PRESENT SENSE IMPRESSION AND IT'S THE SCENE OF A MURDER. YOU KNOW IT WAS IN THE ACT OF HIM ACTUALLY HELPING A VICTIM INTO A CAR.

THE COURT: COME UP HERE ONE SECOND.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

Q LIEUTENANT DAVIS, IF YOU COULD JUST TELL THE JURY, YOU KNOW, WHAT YOU SAW AND JUST LEAVE OUT WHAT SOMEBODY TOLD YOU?

A OKAY, ALL RIGHT, ONCE I GOT THERE THE CAR WAS PARKED, THE DRIVERS SIDE DOOR WAS OPEN, THE BACK PASSENGER SIDE OF THE CROWN VIC WAS OPEN, THE GUY WAS LAYING IN THERE SLUMPED OVER AND HE WAS, YOU COULD HEAR HIM BREATHING A LITTLE BIT. I IN TURN CALLED 911 AND I TOLD THEM I NEEDED AN AMBULANCE OVER THERE ASAP, OKAY, NEED THE AMBULANCE OVER THERE. THEY IN TURN SENT THE AMBULANCE. I IN TURN STARTED IN THE PROCESS OF GETTING MY GUYS TO ROPE THIS AREA OFF. ONCE WE GET THE AREA ROPED OFF NOBODY ELSE IS COMING INSIDE THE CRIME SCENE, THEN IN TURN I NOTIFIED THE CHIEF AND THE CAPTAIN. THEY COME AND WHEN THEY COME THEN THEY TOOK OVER THE SCENE AND, YOU KNOW, WE GET NAMES OF EVERYBODY THAT COMES IN AND OUT OF THAT CRIME SCENE

CAUSE NOBODY IS SUPPOSED TO COME IN AND CONTAMINATE ANYTHING CAUSE IF YOU COME IN AND CONTAMINATE SOMETHING THERE'S A POSSIBILITY YOU CAN PICK UP SOME EVIDENCE ON YOUR SHOES AND CARRY IT OUT SO THAT'S THE REASON WHY OF ROPING IT OFF, THAT'S WHY TO SECURE IT.

Q OKAY, WAS THE VICTIM MR. APPLEWHITE, WAS HE STILL ALIVE WHEN YOU ARRIVED ON THE SCENE?

A HE WAS STILL BREATHING THAT'S THE REASON WHY I HAD THE AMBULANCE GO AHEAD AND TAKE HIM TO THE HOSPITAL CAUSE THERE WAS A POSSIBILITY HE COULD HAVE BEEN SAVED.

Q OKAY, AND I'D LIKE TO SHOW YOU A COUPLE OF PHOTOGRAPHS THAT'S MARKED AS STATE'S EXHIBIT 11 AND 8, 8 AND 11, COULD YOU TELL US IF THAT WAS THE CAR AND IT'S THE WAY YOU SAW IT THAT NIGHT?

THE COURT: WOULD YOU LIKE TO SHOW THEM TO CO-COUNSEL FIRST?

MR. BROOKER: IF WE COULD SEE THEM FIRST TO MAKE SURE WE GOT NO OBJECTION TO THEM?

MR. DEBERRY: (CONTINUING)

Q STATE'S EXHIBIT NUMBER 8 IS THAT, DOES THAT FAIRLY AND ACCURATELY SHOW WHAT, WHAT YOU SAW THAT NIGHT ON THE SCENE?

A UH-HUH.

Q OKAY ---

A THAT'S THE PUDDLE OF WATER THAT I SAW.

Q OKAY, AND IS THAT THE RESIDENCE ON [redacted]

[redacted]

A YES.

Q OKAY, ARE THOSE OTHER CARS IN THAT PHOTOGRAPH WERE THEY THERE WHEN YOU ARRIVED?

A YES.

Q OKAY, AND THE WHITE VEHICLE IS THAT THE VEHICLE THAT YOU DESCRIBED THAT YOU SAW THE VICTIM IN?

A YES.

Q OKAY, AND IS THAT IN THE SAME POSITION AS --

A SAME POSITION, YOU CAN SEE RIGHT THERE THE BACK DOOR THERE IS OPEN AND HE'S SLUMPED DOWN OVER IN THE BACKSEAT.

MR. DEBERRY: OKAY, YOUR HONOR, AT THIS TIME WE'D LIKE TO INTRODUCE STATE'S EXHIBIT NUMBER 8 INTO EVIDENCE.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTIONS TO NUMBER 8, YOUR HONOR,

THE COURT: STATE'S NUMBER 8 INTO EVIDENCE.

(WHEREUPON, STATE'S EXHIBIT NUMBER 8 ENTERED INTO EVIDENCE.)

MR. DEBERRY: YOUR HONOR, IS IT OKAY IF I

PUBLISH THIS TO THE JURY?

THE COURT: SURE.

MR. DEBERRY: (CONTINUING)

Q LIEUTENANT DAVIS, YOU TESTIFIED THAT'S, THAT'S WHERE EVERYTHING WAS IN PLACE WHEN YOU ARRIVED?

A YES.

Q OKAY, DID YOU ENTER THE RESIDENCE?

A NO, SIR.

Q OKAY, WAS THAT POLICY OR WHY DID YOU NOT ENTER THE RESIDENCE?

A I DIDN'T ENTER THE RESIDENCE BECAUSE I HAD THE PERIMETER TO COVER SO NOBODY ELSE WOULD ENTER.

Q OKAY, THAT WAS YOUR PURPOSE?

A THAT WAS MY PURPOSE.

Q OKAY --

MR. DEBERRY: BEG THE COURT'S INDULGENCE JUST A SECOND. I HAVE NO FURTHER QUESTIONS AT THIS TIME, THANK YOU.

THE COURT: CROSS EXAMINATION?

MR. BROOKER: YES, YOUR HONOR.

CROSS EXAMINATION

BY MR. BROOKER:

Q IS IT LIEUTENANT DAVIS; IS THAT CORRECT?

A YES, RIGHT.

Q LIEUTENANT DAVIS, I THINK YOU TESTIFIED

THAT, THAT YOU WERE ONE OF THE FIRST ONES, NOT THE EXACT FIRST ONE BUT ONE OF THE FIRST ONES THAT RESPONDED TO THE SCENE?

A YES, SIR.

Q AND, OF COURSE, IF I'M NOT CORRECT YOU SAID THAT, THAT THERE WAS ONE OTHER OFFICER WHO ARRIVED THERE, MAYBE A COUPLE OF SECONDS PRIOR TO YOU DO?

A RIGHT, SERGEANT JACKSON.

Q SERGEANT JACKSON AND, OF COURSE, YOU SAID HE'S NO LONGER WITH, WITH THE POLICE DEPARTMENT?

A HE'S NO LONGER WITH US, RIGHT.

Q OKAY, NOW YOU TESTIFIED AT LEAST ON CROSS (SIC) EXAMINATION IS THAT YA'LL RESPOND TO THAT SCENE LOCATION, YA'LL RESPONDED TO THAT SCENE LOCATION AS A RESULT OF THE SHOOTING?

A YES.

Q IS THAT CORRECT?

A YES.

Q BUT THAT'S NOT EXACTLY TRUE, IS IT NOT? ISN'T THE FIRST, THE FIRST, AT LEAST, CALL THAT YA'LL RECEIVED TO RESPOND TO THAT, THAT LOCATION WAS THE RESULT OF A WOMAN BEING BEATEN; ISN'T THAT CORRECT?

A NO.

Q IT'S NOT CORRECT?

A NO.

Q OKAY, OFFICER DAVIS, DO YOU REMEMBER PREPARING A REPORT IN CONNECTION WITH THIS?

A YES, I DID.

Q OKAY, AND, OF COURSE, DO YOU REMEMBER PREPARING THAT REPORT, I THINK, WHEN WAS IT, WAS IT SHORTLY AFTER THE INCIDENT THAT YOU PREPARED THAT REPORT?

A YES.

Q OKAY. I HAVE IN MY HANDS AT LEAST WHAT IS PRESUMED TO BE YOUR REPORT AND I WANT YOU TO TAKE A LOOK AT IT AND TELL ME WHETHER OR NOT YOU, WHETHER OR NOT YOU RECOGNIZE THAT?

A OKAY, A REPORT.

MR. DEBERRY: OBJECTION, YOUR HONOR, THIS IS, CAN I LOOK AT THAT REPORT?

THE WITNESS: (CONTINUING)

A THIS IS, THIS IS PART OF IT.

Q IS THAT YOUR REPORT?

A THIS IS PART OF A REPORT BUT THIS IS, THIS IS WHAT SERGEANT JACKSON MIGHT HAVE HAD AND THEY MIGHT HAVE TOLD HIM ABOUT THIS BUT WHEN I GOT THE CALL WAS ABOUT THE GUNSHOT, IT WASN'T THE WOMAN BEING BEATEN.

Q WELL JUST, JUST, I'M ASKING YOU QUESTION IS, IS THAT IS THAT ---

A THIS IS PART OF IT, THIS IS NOT ---

Q THAT'S, I'M SORRY, GO AHEAD, GO AHEAD I

DON'T MEAN TO INTERRUPT YOU, GO AHEAD?

A DOWN THERE WHERE A LITTLE FARTHER WHERE HE START TALKING ABOUT THE ---

Q JUST FIRST, OFFICER DAVIS, THE ANSWER TO THAT QUESTION IS YOU SAID THAT'S, THAT'S A PART OF A REPORT, THAT'S A PART OF WHO'S REPORT?

A SOMEBODY'S REPORT.

Q OKAY, IS YOUR NAME ANYWHERE ON AT LEAST THE FIRST PAGE?

A MY NAME IS ON IT SAYING ARRESTING OFFICER LIEUTENANT DAVIS OF MARION POLICE DEPARTMENT, BUT LIAM, I DON'T THINK LIAM WAS THERE. I THINK LIAM IS THE GUY THAT WENT WITH ME TO PENNSYLVANIA TO PICK HIM UP, SO THIS IS SOMETHING DIFFERENT.

Q IF WE COULD AT LEAST INSTRUCT YOU JUST TO ANSWER THE QUESTIONS THAT WE'RE ASKING, OKAY, IS YOUR NAME IS ON THAT REPORT?

A UH-HUH.

Q OKAY, AND, OF COURSE, AND, OF COURSE, IS ANYBODY ELSE'S NAME ON THAT REPORT BESIDES YOURS?

A LIAM, A GUY NAMED LIAM.

Q WAS LIAM AT THE SCENE WITH YOU?

MR. DEBERRY: OBJECTION, YOUR HONOR.

THE WITNESS: (CONTINUING)

A I DON'T, I DON'T RECALL THAT.

THE COURT: WHAT'S YOUR OBJECTION?

MR. DEBERRY: MY OBJECTION WOULD BE THAT IF LIEUTENANT DAVIS SAYS HE DID NOT PRODUCE THAT REPORT, WRITE IT OR TYPE IT THEN HE CAN'T TESTIFY TO IT.

THE COURT: I THINK THE QUESTION WAS WAS LIAM AT THE SCENE. I'M GOING TO OVERRULE THAT OBJECTION AND HE CAN ANSWER THE QUESTION.

MR. BROOKER: (CONTINUING)

Q WAS LIAM AT THE, AT THE SCENE?

A I DON'T RECALL LIAM BEING AT THE SCENE.

Q OKAY ---

A I DON'T RECALL HIM BEING AT THE SCENE.

Q OKAY, YOU DON'T RECALL LIAM BEING AT THE SCENE?

A I DON'T RECALL.

Q NOW, NOW YOU AGREE WITH ME IS, IS THAT YOUR NAME IS ON THAT REPORT?

A YES.

Q LIAM IS ON THAT REPORT AND, OF COURSE, YOU SAID THAT LIAM WAS, YOU DON'T, YOU DON'T BELIEVE THAT LIAM WAS AT THE SCENE; IS THAT CORRECT?

A RIGHT.

MR. BROOKER: IF YOU CAN INDULGE ME FOR JUST A SECOND, YOUR HONOR.

Q (CONTINUING) NOW YOU SAID THAT A DETAILED,

TESTIFIED THAT CRIME SCENE LOG WHEN, WHEN, WHEN YA'LL SECURE THE CRIME SCENE THAT A CRIME SCENE LOG WAS PREPARED; IS THAT CORRECT?

A UH-HUH.

Q AND, OF COURSE, THAT PEOPLE, ONLY AUTHORIZED PERSONNEL WAS ALLOWED TO ENTER, ENTER THE CRIME SCENE; IS THAT CORRECT?

A RIGHT.

Q OKAY. I HAVE HERE WHAT'S BEEN MARKED AS, AS DEFENSE EXHIBIT NUMBER 1 AND, OF COURSE, IS THAT NOT THE CRIME SCENE LOG THAT DAY?

A YEAH, THIS IS THE, THE LOG.

Q OKAY, WAS THAT LOG PREPARED AT THE TIME, AT THE TIME OF THE INCIDENT AS PEOPLE CAME IN AND OUT OF THE CRIME SCENE OR WAS THAT PREPARED LATER ON?

A THIS IS, THIS IS PREPARED WHEN THE PEOPLE ARE COMING IN AND OUT OF THE CRIME SCENE AND THIS ONE, THIS LOG, I BELIEVE, IS DONE BY ONE OF THE OTHER OFFICERS TOOK THAT.

Q IS LIAM NAME ON THAT CRIME SCENE?

A I DON'T SEE LIAM NAME ON THIS LOG.

Q OKAY, ALL RIGHT, NOW LIAM NAME IS NOT ON THAT CRIME SCENE LOG THEN, OF COURSE, WOULD IT BE SAFE TO RECOLLECT THAT AT LEAST LIAM DID NOT ENTER THE CRIME SCENE, WAS NOT PRESENT ON THE CRIME SCENE?

A I DON'T RECALL LIAM BEING THERE.

Q IF YOU ENTER THE CRIME SCENE ---

A IF YOU ENTER THAT CRIME SCENE THEN, YES, HIS NAME WOULD BE ON IT.

Q AND HOW CAN YOU BE CERTAIN OF THAT?

A BECAUSE THE PERSON THAT DID THIS WOULD MAKE SURE THAT HIS NAME IS ON THAT, ON THIS LIST, THAT'S WHY I TOLD YOU THAT LIAM, I DON'T RECALL LIAM BEING THERE BUT I KNOW LIAM WENT TO PENNSYLVANIA WITH ME.

MR. BROOKER: YOUR HONOR, IF WE MAY APPROACH?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

MR. BROOKER: (CONTINUING)

Q I THINK YOU SAID IF LIAM HAD BEEN THERE LIAM'S NAME WOULD HAVE BEEN ON THAT, ON THAT CRIME SCENE LOG?

A RIGHT.

Q AND BECAUSE HIS NAME WAS NOT ON THAT CRIME SCENE LOG THEN, OF COURSE, IT'S SAFE TO SAY THAT LIAM WAS NOT PRESENT; IS THAT CORRECT?

A CORRECT.

Q NOW ON THE REPORT THAT I JUST SHOWED YOU, ON THE REPORT THAT I JUST SHOWED YOU, OKAY, YOUR NAME AND

LIAM'S NAME ARE THE ONLY ONES THAT'S ON THAT REPORT; IS THAT CORRECT?

A RIGHT.

Q OKAY, AND, AND, OF COURSE, YOU SAID THAT LIAM WAS NOT AT THE CRIME SCENE?

A I DON'T RECALL HIM BEING THERE.

Q OKAY, AND HIS NAME IS NOT ON THE CRIME SCENE?

A NO.

Q NOT ON THE CRIME SCENE AS WELL?

A RIGHT.

Q OKAY, SO IF YOUR NAME AND LIAM'S NAME ARE THE ONLY ONE ON THE CRIME SCENE REPORT AND, OF COURSE, IT'S ON THE REPORT BUT YOU ARE THE ONLY OF THOSE TWO PERSONS THAT WERE PRESENT, IS IT LOGICAL TO CONCLUDE THAT, THAT THIS CRIME SCENE, THAT THIS REPORT IS BASED UPON YOUR ACCOUNT OF WHAT TOOK PLACE AT THE SCENE?

A I DIDN'T DO THAT REPORT.

Q OKAY --

A BECAUSE I DID NOT RESPOND TO NOTHING ABOUT A WOMAN BEING BEATEN AND IT WOULDN'T BE IN THAT REPORT. I WROTE THE REPORT.

Q HOW MANY CALLS, HOW MANY, HOW MANY 911 CALLS DID YOU RECEIVE, WELL LET ME ASK IT THIS, LET ME WITHDRAW THAT. THE 911 CALL THAT YOU'RE TALKING ABOUT

RIGHT NOW THAT YOU RESPONDED TO, OBVIOUSLY IF A 911 CALL COMES OUT AND OFFICERS ARE DISPATCHED DOES THAT GO TO ALL THE OFFICERS THAT GOES TO ALL PATROL CARS OR THAT JUST GOES TO ONE IN PARTICULAR?

A IT ALL DEPENDS ON WHAT'S GOING ON THAT NIGHT.

Q OKAY ---

A IF YOU, IF IT'S LIKE IF IT'S A NORMAL NIGHT THEN OFFICERS GO TO DIFFERENT AREAS, LOOK AT DIFFERENT SECTIONS.

Q I UNDERSTAND, AND MY QUESTION IS THAT WOULD YOU HEAR THAT CALL ON YOUR RADIO?

A I WOULD HEAR ALL OF THEM.

Q OKAY, YOU HEAR EVERY CALL OVER THE RADIO?

A YES.

Q AND, AND, AND YOU ONLY HEARD ONE CALL; IS THAT CORRECT?

A YES.

Q OKAY, OKAY, AND, OF COURSE, YOU SAID THAT YOU WERE PROBABLY THE SECOND OR THIRD ONE THAT RESPONDED TO THE SCENE?

A I WAS SECOND.

Q ABOUT THE SECOND ONE AND WHO'S CAR WAS THERE PRIOR TO YOURS?

A SERGEANT JACKSON.

Q JACKSON WAS THERE AND YOU SAID YOU ARRIVED A COUPLE OF MINUTES AFTER HIM?

A YEAH.

Q OKAY, AND THAT'S THE ONLY CALL THAT YOU HEARD WAS A CALL ABOUT A SHOOTING?

A UH-HUH.

Q OKAY, AND YOU RESPONDED TO THAT?

A UH-HUH.

Q OKAY --

THE COURT: YOU NEED TO RESPOND YES OR NO.

THE WITNESS: (CONTINUING)

A YES.

THE COURT: SPEAK UP.

MR. BROOKER: (CONTINUING)

Q AND, OF COURSE, YOU'RE SAYING THAT THIS REPORT, JUST MAKE A CLARIFICATION, AND, OF COURSE, I'M NOT ASKING YOU WHETHER OR NOT YOU TYPED THIS REPORT BUT IS THAT, IS THIS YOUR STATEMENT THAT'S CONTAINED IN THIS REPORT REGARDLESS IF WHO TYPED IT?

A SOME OF IT.

Q SOME OF IT IS YOUR STATEMENT?

A YEAH.

Q OKAY, AND THEN SOME OF IT WAS NOT?

A AND SOME OF IT HAS GOT TO BE JACKSON'S.

Q OKAY, BUT YOU WOULD AGREE WITH ME JACKSON'S

NAME IS NOWHERE ON THIS REPORT; IS IT?

A NO, I DON'T SEE JACKSON ON IT.

Q OKAY, IT'S NOWHERE ON THERE; IS IT NOT?

A I DON'T SEE IT.

Q SO WHEN YOU SAY IT'S GOT TO BE JACKSON'S THEN, OF COURSE, YOU'RE GUESSING; IS THAT CORRECT?

A YEAH.

Q IS THAT A GUESS WHEN YOU SAY GOT TO BE JACKSON'S AND NOT YOURS?

A THE REASON WHY I'M SAYING THAT IS BECAUSE JACKSON WAS THE FIRST CAR THERE AND MINE WAS THE SECOND AND JUST LIKE YOU SAID YOU DON'T WANT TO HEAR ABOUT HEARSAY SO JACKSON MUST HAVE TALKED TO SOMEBODY ELSE LIKE I WAS TALKING TO THE OTHER INDIVIDUALS THAT YOU TOLD ME NOT TO EVEN MENTION.

Q OKAY, BUT, OKAY --

A SO THAT'S HOW THAT INFORMATION GOT THERE.

Q SO JACKSON NAME IS NOT ON THIS REPORT; IS IT NOT?

A RIGHT.

Q WOULD YOU AGREE WITH THAT?

A RIGHT, YES.

Q OKAY, NOW YOU SAID THAT WHEN YOU ARRIVED AT THE SCENE THAT YOU SECURED THE SCENE; IS THAT CORRECT?

A YES, WE DID.

Q AND HOW DID YOU SECURE THE SCENE?

A WITH THE ROPE THAT WE GOT AND THE CRIME SCENE TAPE THAT WE HAVE INSIDE OUR VEHICLES.

Q OKAY, AND, OF COURSE, WHEN YOU SECURE THAT SCENE WHAT THAT MEANS IS YOU BLOCK IT OFF AND NO ONE CAN ENTER OR EITHER, OR EITHER EXIT THE SCENE WITHOUT YOUR AUTHORIZATION OR WITHOUT THE AUTHORIZATION OF THE PERSONS WHO ARE GUARDING THE SCENE?

A ONCE I MAKE CONTACT WITH THE CHIEF AND THE CAPTAIN AND THEY ARRIVED ON THE SCENE, THEN WHEN THEY GET THERE THAT'S WHEN IT'S TURNED OVER TO THEM AND THEY'RE IN CHARGE OF THE SCENE.

Q I UNDERSTAND THAT BUT I'M TALKING ABOUT WHEN YOU'RE IN CHARGE OF THE SCENE, YOU SAID ---

A WHEN I'M IN CHARGE OF THE SCENE IT'S ROPED OFF AND NOBODY COMES IN UNTIL THOSE INVESTIGATORS ARE DONE.

Q AND YOU'RE SAYING THAT YOU CAN, AND, OF COURSE, YOU SAID THAT YOU SECURED THE SCENE WHEN YOU GOT THERE?

A RIGHT.

Q OKAY ---

A WE DID.

Q YOU AND, AND WAS IT JACKSON?

A THE REST OF MY OFFICERS THAT WAS THERE DURING THE TIME.

Q OKAY, HOW MANY, HOW MANY OFFICERS ARRIVED? I KNOW THAT YOURSELF AND JACKSON WAS THE FIRST OFFICERS ON THE SCENE, HOW MANY OTHER OFFICERS ARRIVED AFTER YOU AND JACKSON?

A I THINK IT WAS THREE OF US AND THEN AFTER THAT THE NOTIFICATION FOR THE CAPTAIN, CHIEF, LIEUTENANT BLUE, AND OTHER OFFICERS THAT FOLLOW IN THAT LINEUP, THEN ALL THOSE GUYS WOULD RESPOND.

Q OKAY, AND I'M SORRY YOU SAID TEN, HOW MANY?

A NO, I SAID THREE.

Q THREE, THREE, AND YA'LL SECURED THE SCENE AND THEN, OF COURSE, CAPTAIN GRAY ---

A THE CAPTAIN, THE CHIEF, LIEUTENANT BLUE, ALL THE OTHER OFFICERS ARRIVED TO HELP DO WHAT THEY GOT TO DO IN THEIR INVESTIGATION.

Q THEN YOU TURN THE SCENE OVER TO THEM?

A YES.

Q OKAY, HOW LONG DID IT TOOK FOR, FOR THE CAPTAIN GREY AND BLUE TO ARRIVE, CAPTAIN GREY AND CHIEF, I THINK, SMITH TO ARRIVE?

A I CAN'T TELL YOU THE EXACT TIME IT TAKE FOR THEM TO ARRIVE BECAUSE THEY HAVE DIFFERENT LOCATIONS THEY COME FROM. LIEUTENANT BLUE HAVE TO COME FROM WHEREVER HE LIVES AT THEN THE CHIEF WOULD HAVE TO COME FROM WHEREVER HE LIVES AT AND THE CAPTAIN WOULD HAVE TO COME FROM WHEREVER

HE LIVES AT BECAUSE THEY'RE NOT ALL THERE. THEY HAVE TO GET UP, GET DRESSED, AND COME ON OUT.

Q IS THAT SOMETHING THAT'S NORMALLY INDICATED ON THE CRIME SCENE LOG?

A WHAT, THE TIME THAT THEY ARRIVED?

Q YEAH?

A I DON'T THINK THEY PUT THAT DOWN, ALL THEY DO IS JUST PUT THEIR NAMES.

Q OKAY, NOW DID THEY ARRIVE BEFORE EMS DID?

A NO, THEY DIDN'T ARRIVE UNTIL THE EMS BECAUSE I HAD THE BODY MOVED.

Q OKAY, SO THEY ARRIVED SOME TIME, HOW LONG DID IT TAKE EMS TO ARRIVE, TO THE BEST OF YOUR RECOLLECTION?

A I WOULD SAY IT TOOK EMS PROBABLY ABOUT, ABOUT TEN MINUTES.

Q SO WE KNOW, WE KNOW THAT THEY WERE NOT THERE AT LEAST TEN MINUTES AFTER YOU ARRIVED BECAUSE EMS ARRIVED BEFORE THEM. HOW LONG DID EMS STAY ON THE SCENE?

A EMS STAYED ON THE SCENE PROBABLY ABOUT FIFTEEN, FIFTEEN OR TWENTY MINUTES.

Q DID THEY ARRIVE BEFORE EMS, EMS LEFT?

A DID THEY ARRIVE BEFORE EMS LEFT?

Q PRIOR TO EMS LEAVING?

A NO.

Q OKAY, SO TEN MINUTES FOR EMS TO GET THERE, THEY HAD NOT ARRIVED. EMS WAS THERE ABOUT TEN TO FIFTEEN MINUTES AND THEY HAD NOT ARRIVED, SO ABOUT TWENTY TO TWENTY FIVE MINUTES SINCE THE TIME THAT YOU ARRIVED ON THE SCENE AND I THINK CAPTAIN GREY, CAPTAIN SMITH HAVE NOT ARRIVED YET; IS THAT CORRECT?

A CHIEF SMITH.

Q I'M SORRY, CAPTAIN GREY AND CHIEF SMITH?

A RIGHT.

Q OKAY, NOW DID YOU, WHAT HAPPENED WHEN CAPTAIN GREY AND CHIEF SMITH DID ARRIVE? WHAT DID THEY DO WHEN THEY DID ARRIVE? NOT WHAT THEY SAID WHAT DID THEY DO, TELL ME WHAT YOU SAW, WHAT HAPPENED WHEN CAPTAIN GREY AND CHIEF SMITH DID?

A THEY WALKED AROUND THE AREA TO SEE WHAT WAS GOING ON AND ASKED WHAT HAD HAPPENED AND I TOLD THEM, I TOLD THEM THE GUY WAS STILL BREATHING.

Q I'M SORRY?

A BUT THEY WANTED TO KNOW DID THE PERSON EXPIRE THERE OR DID THE PERSON EXPIRE THERE THEN WE DON'T MOVE HIM, WE DON'T MOVE NO BODY. SO IF THE PERSON HADN'T EXPIRED THEN WE MOVE TO TRY TO SAVE A LIFE.

Q SO YOU TOLD THEM, YOU TOLD THEM WHAT YOU SAW WHEN YOU GOT THERE?

A RIGHT.

Q OKAY, YOU FILLED THEM IN ON WHAT YOU ---

A RIGHT.

Q --- WHEN YOU GOT THERE?

A RIGHT.

Q NOW AT SOME POINT IN TIME WAS THE DECISION MADE TO ENTER THE HOUSE?

A I DON'T KNOW ABOUT THE HOUSE.

Q OKAY ---

A EVERYTHING I DID WAS ON THE OUTSIDE.

Q YEAH, I UNDERSTAND, BUT AT SOME POINT IN TIME DID THEY ENTER THE HOUSE?

A DID WHO ENTER THE HOUSE, THE CHIEF AND THOSE?

Q YEAH, ANYBODY?

A NOT NONE OF MY GUYS.

Q WELL I'M NOT TALKING ABOUT JUST YOUR GUYS. I'M TALKING ABOUT DID ANYONE FROM THE MARION COUNTY POLICE DEPARTMENT, ANYONE ELSE IN LAW ENFORCEMENT ENTER THE HOUSE?

A YEAH, THEY DID GO IN THE HOUSE.

Q OKAY, ABOUT WHAT TIME DID THEY ENTER THE HOUSE?

A I COULDN'T TELL YOU THAT.

Q ABOUT WHAT TIME DID YOU ARRIVE ON THE SCENE?

A I ARRIVED ON THE SCENE PROBABLY ABOUT FOUR

OR FIVE MINUTES AFTER ---

Q ABOUT WHAT TIME, DO YOU REMEMBER THE TIME?

A NO, I DON'T KNOW EXACTLY THE TIME.

Q I CAN PROVIDE YOU AT LEAST, LET YOU TAKE A LOOK AT THE INCIDENT REPORT, YOUR INCIDENT REPORT ---

A I'LL ---

Q --- TO REFRESH YOUR MEMORY; WOULD YOU TAKE A LOOK AT THAT?

A YEAH.

Q WHAT TIME, WHAT TIME OF ARRIVAL?

A 22:07, THAT'S MILITARY TIME AND, OF COURSE, THAT'S 10:07.

Q THAT'S 10:07, RIGHT?

A RIGHT.

Q OKAY, SO YOU ARRIVED AT ABOUT 10:07?

A RIGHT.

Q OKAY. AND, OF COURSE, YOU SAID YOU DON'T KNOW HOW LONG IT WAS BEFORE THEY ENTERED THE HOUSE?

A NO.

Q OKAY, NOW WERE YOU STILL PROTECTING THE PERIMETER WHEN THEY ENTERED THE HOUSE? WHERE WERE YOU AT WHEN THEY WERE ENTERING THE HOUSE?

A I WAS ON THE FRONT SIDE. I WAS A LITTLE MORE ON THE EAST SIDE WHEN THEY WENT, THE PERIMETER OF THE HOUSE TOP, THE HOUSE FRONT.

Q COULD YOU SEE THEM AS THEY, AS THEY WERE ENTERING THE HOUSE FROM WHERE YOU WERE STANDING?

A I SEEN THE DOOR WAS OPEN BUT I COULDN'T SEE WHEN THEY WENT IN.

Q YES, AND THAT'S WHAT I'M TALKING ABOUT, YOU COULD SEE THEM JUST BEFORE THEY WENT INTO THE HOUSE?

A RIGHT.

Q OKAY, ALL RIGHT, AND DO YOU KNOW WHO WAS THE OFFICERS THAT ENTERED THE HOUSE?

A NO, I COULDN'T TELL YOU THAT.

Q YOU COULDN'T SAY WHO THE OFFICERS WAS?

A NO, CAUSE WHEN YOU GO ABOUT THE AREA IT'S NOT A CLOSE DISTANCE THAT YOU GO ABOUT THE AREA. YOU GO ABOUT THE AREA SAY IF YOU HAVE CRIME SCENE HERE SOMEBODY WAS LAYING DOWN HERE ON THIS THING ON THE GROUND HERE THE CRIME SCENE WOULD BE ROPED OFF PROBABLY UP TO AARONS GASOLINE STATION FROM BACK DOWN AND PROBABLY OUR THERE BY THE RED LIGHT.

Q NOW ---

A WITH SOME CARS AND STUFF ON IT.

Q I'M GOING TO LET YOU TAKE A LOOK AT YOUR REPORT?

A OKAY.

Q DO YOU REMEMBER ANYTHING IN YOUR REPORT AND AFTER CAPTAIN GREY, CHIEF SMITH, AND LIEUTENANT HOFFMAN,

AND, I THINK LIEUTENANT BLUE ARRIVED THAT THE HOUSE WAS THEN EMPTY?

A NO.

Q BUT NOW YOUR TESTIMONY IS THAT YOU DON'T KNOW WHO ENTERED THE HOUSE?

A NO, I DIDN'T SAY I DON'T KNOW, I'M SAYING THEY ARE THE ONES THAT CAME TO ENTER THE HOUSE. NOW FAR AS TELLING YOU WHO WENT INSIDE THE HOUSE AND YOU WENT INSIDE THE HOUSE AND YOU WENT INSIDE THE HOUSE I CAN'T TELL YOU THAT BECAUSE I WASN'T OVER THERE. I GOT THEIR NAMES ON THERE BECAUSE YOU CAME BUT I CAN'T TELL YOU, NO, HE DIDN'T GO INSIDE THE HOUSE, I CAN'T TELL YOU SHE DIDN'T GO INSIDE THE HOUSE.

Q BUT YOU DID SAY THAT YOU ---

A I SAID ---

Q YOU DID SAY THAT YOU COULD SAW, YOU SAW THEM PRIOR TO THEIR ENTERING THE DOOR, YOU COULDN'T SEE THEM ONCE THEY ENTERED THE DOOR BUT YOU SAID YOU SAW THEM PRIOR TO THEM ENTERING THE DOOR; IS THAT CORRECT?

A RIGHT, LIKE I TOLD YOU, LIKE I'M SAYING I COULD, I COULDN'T EVEN SEE WHEN, ONCE YOU, ONCE YOU GO PAST THAT PERIMETER THE PEOPLE THAT'S THERE THAT'S SUPPOSED TO BE DOING THEIR JOB THERE THEN THAT'S ENTIRELY DIFFERENT, OKAY, DO YOU SEE WHAT I'M SAYING.

Q ALL RIGHT, I'M LISTENING TO YOU?

A BECAUSE THEY ARE THE ONES THAT WOULD GO IN THERE, NOT MY GUYS AND NOT MYSELF. WE GOT THIS PERIMETER COVERED; WE'RE NOT WATCHING THEM.

Q OKAY, JUST TO MAKE SURE NOW BEFORE YOU SAID YOU SAW THEM BEFORE THEY WENT IN THE HOUSE JUST WHEN THEY WERE AT THE DOOR WENT IN THE HOUSE BUT YOU COULDN'T SEE THEM GO IN THE HOUSE?

A I SEEN THEM ALL, I SEEN THEM ALL THERE.

Q SO YOU WERE WATCHING THEM?

MR. DEBERRY: YOUR HONOR, I THINK THIS HAS ALL BEEN ASKED AND ANSWERED.

THE WITNESS: (CONTINUING)

A I CAN'T TELL YOU WHEN THEY WENT IN THE HOUSE.

THE COURT: HOLD ON ONE SECOND, IS THERE AN OBJECTION?

MR. DEBERRY: YES, SIR, YOUR HONOR, THIS HAS BEEN ASKED AND ANSWERED ---

THE COURT: SUSTAINED.

MR. DEBERRY: --- AND PROBABLY MULTIPLE TIMES.

THE COURT: SUSTAINED, GO AHEAD AND MOVE ON TO YOUR NEXT MATTER.

MR. DEBERRY: (CONTINUING)

Q DID YOU TALK TO WITNESSES AT THE SCENE?

A YOU TOLD ME NOT TO SAY THAT THAT'S HEARSAY.

Q NO, I'M NOT ASKING YOU TO TELL ME WHAT THEY SAID. I'M ASKING YOU DID YOU TALK TO ANYONE, NOT TELL ME WHAT THEY SAY BUT DID YOU TALK WITH ANY, ANYBODY OTHER THAN THE LAW ENFORCEMENT OFFICERS AT THE SCENE?

A YES, I DID.

Q WHO WERE THE PERSONS THAT YOU TALKED WITH AT THE SCENE?

A IT'S ON THE REPORT.

Q DO YOU NEED THE REPORT TO REFRESH YOUR MEMORY?

A OKAY.

Q DON'T TELL ME WHAT THEY SAID?

A YOU JUST ASK THE PEOPLE WHO I TALKED TO.

Q YEAH, THE NAMES OF WHO YOU TALKED WITH?

A I TALKED WITH MR. MCGILL AND I TALKED TO LANE, TRAVIS LANE, THOSE ARE THE ONLY TWO, CARVIS, CRAVIS GUY.

MADAM COURT REPORTER: I'M SORRY, I DIDN'T HEAR YOU.

THE WITNESS: (CONTINUING)

A CRAVIS, KAREN CRAVIS.

Q KAREN CRAVIS?

A RIGHT.

Q OKAY ---

A THOSE ARE THE ONES I SPOKE TO.

Q DON'T TELL ME WHAT THEY SAY BUT I'M GOING TO ASK YOU WHAT YOU SAID? WHAT SORT OF QUESTIONS WERE YOU ASKING?

MR. DEBERRY: OBJECTION, YOUR HONOR, THESE QUESTIONS ARE ELICITING HEARSAY RESPONSES.

A EXACTLY, THAT'S EXACTLY RIGHT.

THE COURT: HE DIDN'T ASK WHAT THEY SAID, HE JUST SAID WHAT QUESTIONS DID YOU ASK THEM NOT THE ANSWERS.

MR. BROOKER: THANK YOU.

THE WITNESS: (CONTINUING)

A WHAT HAPPENED.

Q YOU ASKED THEM WHAT HAPPENED, ANY OTHER QUESTIONS DID YOU ASK THEM?

A WHAT DID YOU SEE.

Q WHAT DID YOU SEE, ASK THEM ANY OTHER QUESTIONS?

A NO.

Q OKAY, ABOUT HOW LONG DID YOUR CONVERSATIONS TAKE, HOW LONG DID THOSE CONVERSATION LAST BETWEEN EACH ONE OF THOSE PERSONS?

A PROBABLY ABOUT THREE OR FOUR MINUTES.

Q ABOUT THREE OR FOUR MINUTES, OKAY, NOW OTHER THAN ASKING QUESTIONS, ASKING QUESTIONS OF THOSE PERSONS THAT YOU JUST NAMED, WHAT ELSE INVOLVEMENT DID, YOU ASKED THOSE QUESTIONS OF THOSE PERSONS AND YOU SECURED THE

SCENE, OKAY, DID YOU HAVE ANY OTHER INVOLVEMENT IN THE ACTUAL INVESTIGATION?

A NO, SIR.

Q OKAY, AT THAT PARTICULAR PERIOD OF TIME, AT THAT PARTICULAR PERIOD OF TIME DID YOU HAVE A SUSPECT?

A JUST WHAT I'VE GOT ON A PIECE OF PAPER, LOOKING FOR A GUY WITH DREADS AND CALL OUT HIS NAME AND THEY LIVED AROUND THE CORNER.

Q OKAY, YOU SAID YOU HAD A SUSPECT AT THAT PARTICULAR PERIOD OF TIME? I'M SORRY, YOU SAID YOU HAD A SUSPECT, YOU TOLD ME YOU HAD A SUSPECT AT THAT PARTICULAR TIME?

A JUST WHAT I GOT ON THE PIECE OF PAPER WHAT WE WAS LOOKING FOR.

MR. BROOKER: IF YOU'D INDULGE ME FOR JUST A SECOND.

Q (CONTINUING) AT THAT PARTICULAR PERIOD OF TIME HAD YOU, HAD YOU IDENTIFIED A SUSPECT BY NAME? DON'T TELL ME WHAT ANYBODY SAYS, BUT IN YOUR MIND DID YOU HAVE A SUSPECT THAT YOU THOUGHT BY NAME?

A NO, JUST WHAT'S ON THAT, ON THE, ON THE PIECE OF PAPER THERE AND A NICKNAME THAT THEY WAS USING AND THAT'S THE ONLY THING LIKE I SAY.

Q YOU SAID ON YOUR SHEET OF PAPER?

A YEAH.

Q OKAY, COULD YOU TAKE A LOOK AT YOUR SHEET OF PAPER AND TELL ME WHAT SUSPECT THAT YOU'RE TALKING ABOUT ON YOUR REPORT THAT YOU'RE TALKING ABOUT?

A WHAT I GOT RIGHT HERE IS GUY WITH DREADS AND SAYS A BROWN PAIR OF SHORTS.

Q ARE YOU FINISHED? CAN I ASK YOU A FOLLOW UP QUESTION?

A YEAH, THAT'S, THIS IS THE ONLY, THAT'S THE ONLY THING I HAD WAS HIS NICKNAME AND DRIVE UP IN A BLACK HONDA.

Q OKAY, OKAY, AND IN, IN YOUR REPORTS YOU TALK ABOUT A BLACK HONDA; IS THAT CORRECT?

A UH-HUH.

Q OKAY ---

A A BLACK HONDA.

Q OKAY, ALL RIGHT, SO YOU GAVE THAT DESCRIPTION?

A RIGHT.

Q YOU HAD THAT DESCRIPTION?

A LOOKING FOR A BLACK HONDA.

Q OKAY, ALL RIGHT, WAS ANYBODY ARRESTED? LET ME ASK IT STRAIGHT UP, WAS BRANDON BELLANY ARRESTED THAT NIGHT?

A NO.

Q DID YOU SEE THE OCCUPANTS IN THE HOUSE WHEN

THEY WERE REMOVED FROM THE HOUSE?

A I DIDN'T SEE NOTHING THAT WENT ON INSIDE THAT HOUSE.

Q YEAH, I UNDERSTAND THAT, BUT I'M TALKING ABOUT OUTSIDE THE HOUSE. WERE OCCUPANTS REMOVED FROM THE, OCCUPANTS OTHER THAN, OTHER THAN LAW ENFORCEMENT OFFICERS WERE THEY REMOVED FROM THAT HOUSE? DID YOU SEE ANY OCCUPANTS OTHER THAN LAW ENFORCEMENT OFFICERS BEING REMOVED FROM THAT HOUSE?

A I DON'T KNOW.

Q OKAY, SO YOU DON'T KNOW WHETHER OR NOT OCCUPANTS WERE PLACED UNDER ARREST?

A I DON'T KNOW WHAT WENT ON INSIDE THAT HOUSE, I CAN'T TELL YOU WHETHER ANYBODY WAS ARRESTED IN THERE OR WHAT.

Q I UNDERSTAND, I'M JUST ASKING YOU ABOUT WHAT YOU SAW FROM THE OUTSIDE?

A I DIDN'T SEE NOTHING.

Q DID YOU SEE ANYBODY BE BROUGHT OUTSIDE THE HOUSE, ANY CIVILIAN BEING BROUGHT OUTSIDE THE HOUSE?

A NO, I DIDN'T SEE ANYTHING.

Q OKAY --

MR. BROOKER: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANY REDIRECT?

MR. DEBERRY: YES, SIR, YOUR HONOR, BRIEFLY.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q LIEUTENANT DAVIS?

A YES, SIR.

Q JUST QUICKLY FOR THE RECORD WOULD YOU GIVE THE COURT REPORTER YOUR FULL NAME?

A MY NAME IS ROBERT DAVIS SR.

Q ALL RIGHT, THANK YOU, OKAY, WITHOUT TELLING US AGAIN WHAT THE PEOPLE ON SCENE THAT NIGHT TOLD YOU, DID YOU IN THIS CASE ARREST OR TAKE INTO CUSTODY AN INDIVIDUAL BASED IN PART ON WHAT YOU LEARNED THAT NIGHT?

A NOT THAT NIGHT I DIDN'T TAKE NOBODY NOWHERE.

Q DID YOU THROUGHOUT THE COURSE OF THIS INVESTIGATION DID YOU TAKE AN INDIVIDUAL INTO CUSTODY BASED IN PART ON WHAT THIS REPORT?

A YES, I WENT TO PENNSYLVANIA, PHILADELPHIA FROM SOUTH CAROLINA WITH OFFICER BINGHAM AND PICKED UP SHAWN REAVES.

Q IS SHAWN REAVES THE ONE WE SEE IN THE COURTROOM HERE TODAY?

A YES, SIR.

Q OKAY, AND BASED IN PART, YOU TESTIFIED THAT YOU PICKED HIM UP, BASED IN PART ON WHAT YOU LEARNED THAT NIGHT AT THE SCENE AND ALSO WAS THERE OTHER EVIDENCE THAT -

--

MR. BROOKER: OBJECTION, YOUR HONOR.

MR. DEBERRY: (CONTINUING)

Q --- THEY ASKED YOU TO GO GET HIM ON?

MR. BROOKER: LEADING QUESTIONS.

THE COURT: REPHRASE.

MR. DEBERRY: (CONTINUING)

Q SO YOU TESTIFIED THAT YOU WENT TO PENNSYLVANIA AND PICKED UP SHAWN REAVES?

A YES.

Q OKAY, AND WHY DID YOU DO THAT?

A THEY HAD HIM UP THERE HE HAD DID SOMETHING UP THERE AND THEY FOUND OUT HE WAS WANTED ---

MR. BROOKER: OBJECTION, YOUR HONOR.

A --- DOWN HERE IN MARION.

MR. BROOKER: OBJECTION, YOUR HONOR.

THE COURT: HOLD ON A SECOND.

A AND THEY WANTED TO KNOW ---

THE COURT: HOLD ON ONE SECOND. LET ME HEAR HIS OBJECTION.

MR. BROOKER: CAN WE APPROACH, YOUR HONOR?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

THE COURT: IF YOU'LL GO BACK INTO THE JURY ROOM, DO NOT DISCUSS THE CASE DURING THE BREAK, THOUGH.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 11:45 A.M.)

THE COURT: MR. DAVIS, MAKE SURE YOU DO NOT MENTION ANYTHING THAT YOU MAY HAVE DONE IN PENNSYLVANIA. I THINK YOU WERE STARTING TO SAY THAT HE HAD DONE SOMETHING IN PENNSYLVANIA OR SOMETHING LIKE THAT AND THEY HAD HIM UP THERE AND YOU HAD TO GO GET HIM?

THE WITNESS: RIGHT.

THE COURT: LET'S JUST STOP FROM THAT RIGHT THERE AND YOU CAN CONTINUE ANSWERING HIS QUESTIONS.

THE WITNESS: OKAY.

THE COURT: LET'S JUST STAY RIGHT THERE ABOUT PENNSYLVANIA AND ALSO IF THE SOLICITOR WOULD ON ALL FUTURE WITNESSES JUST MAKE SURE THEY DON'T MENTION ANYTHING ABOUT A SEARCH WARRANT. IT'S ALREADY BEEN STIPULATED THERE ISN'T ONE AND THAT WOULD JUST KEEP THE RECORD CLEAN FOR MR. BROOKER AS WELL AS ME, AS WELL AS YOU. ANYTHING ELSE, MR. BROOKER?

MR. BROOKER: WELL, YOUR HONOR, IS THE ONLY REASON WHY WE MADE AN OBJECTION OBVIOUSLY YOU HAVEN'T RULED ON IS THAT, IS THAT, THAT AN OFFICER MADE A COMMENT THAT HE WENT UP THERE TO PICK HIM UP THERE BECAUSE HE HAD BEEN ---

THE COURT: WHAT I'LL DO I CAN TELL THE JURY TO

DISREGARD THAT COMMENT.

MR. BROOKER: HE HAD BEEN PICKED UP THERE BECAUSE, BECAUSE HE HAD DONE SOMETHING UP THERE WHICH IS A REFERENCE TO AT LEAST A PRIOR BAD ACT WHICH, YOU KNOW, EVERYONE, EVERYONE ONE OF US IN HERE KNOWS IS IMPERMISSIBLE. IT IS THAT YOU CANNOT COMMENT ON ANY ---

THE COURT: YOU WANT ME TO INSTRUCT THE JURY TO DISREGARD THAT COMMENT OR DO YOU WANT ME TO LEAVE IT ALONE, I'LL DO WHATEVER YOU SAY?

MR. BROOKER: WELL, YOUR HONOR, NOW, WELL WE'D HAVE TO FIGURE OUT HOW WE'RE GOING TO HANDLE IT NOW BECAUSE OBVIOUSLY IS THAT ---

THE COURT: I'M GOING TO GIVE A CURATIVE INSTRUCTION IF YOU'D LIKE, IF YOU DON'T WANT ME TO I'LL JUST LEAVE IT ALONE, THAT'S YOUR CALL.

MR. BROOKER: IF YOU CAN INDULGE ME FOR JUST A SECOND.

THE COURT: SURE.

MR. BROOKER: LET ME SPEAK TO MY CLIENT. JUDGE, WE PREFER A CURATIVE INSTRUCTION BUT MAYBE WE NEED TO TALK ABOUT HOW THE CURATIVE INSTRUCTION IS GOING TO GO BEFORE WE LET THE JURY KNOW.

THE COURT: ALL RIGHT.

MR. BROOKER: BECAUSE I DON'T WANT TO MAKE IT ANY WORSE THAN WHAT IT IS.

THE COURT: WHAT I'M GOING TO DO IS I'M GOING TELL THE JURY THAT, LADIES AND GENTLEMEN OF THE JURY, I INSTRUCT YOU TO DISREGARD ANY TESTIMONY BY LIEUTENANT DAVIS THAT SAID I WENT TO GET HIM IN PENNSYLVANIA BECAUSE HE HAD DONE SOMETHING UP THERE. IN THAT REGARD I HAVE DETERMINED THAT IT IS NOT PROPER EVIDENCE AND YOU SHOULD NOT CONSIDER IT FOR ANY PURPOSES DURING YOUR DELIBERATIONS, ANY PROBLEM WITH THAT?

MR. DEBERRY: YOUR HONOR, I WOULD HAVE A PROBLEM WITH THAT BECAUSE THE FACT THAT THE DEFENDANT WENT TO PENNSYLVANIA IS CERTAINLY SOMETHING WE WANT TO ARGUE ABOUT IN CLOSING ARGUMENT AND IT'S IN THE RECORD NOW.

THE COURT: NO PROBLEM WITH GOING TO PENNSYLVANIA. I JUST HAVE A PROBLEM WITH HE DID SOMETHING UP THERE AND WHAT THAT INSINUATES.

MR. DEBERRY: I UNDERSTAND, I UNDERSTAND JUST THE PART OF THE CURATIVE INSTRUCTION THAT SAYS ABOUT HIM GOING TO PENNSYLVANIA I THINK SHOULD NOT BE A PART OF THE CURATIVE INSTRUCTION.

THE COURT: AND I CAN LIMIT IT TO HE HAD DONE SOMETHING UP THERE, NOTHING WRONG WITH GOING TO PENNSYLVANIA, IT'S JUST INSINUATING HE HAD GOTTEN IN CRIME AND WHATEVER.

MR. BROOKER: YOUR HONOR, IT WOULDN'T BE IMPROPER FOR HIM TO TESTIFY TO A FACTUAL, TESTIFY TO A FACT

THAT THEY WENT TO PENNSYLVANIA TO PICK HIM UP. OUR ONLY CONCERN IS THAT HE SUGGESTED THAT IS THAT ANYTHING THAT WOULD SUGGEST THAT HE WAS INVOLVED IN ANY SORT OF MISCONDUCT UP THERE, UP IN PENNSYLVANIA IS IMPERMISSIBLE. AS LONG AS IT'S FASHIONED THE WAY, YOU KNOW, THAT WOULD JUST SIMPLY STATE THE OBVIOUS FACT THAT HE WENT UP THERE AND PICKED HIM UP BUT WOULD NEGATE AT LEAST ANYTHING BEING ENTERED INTO THE EVIDENCE THAT WOULD SUGGEST THAT HE ENGAGED IN ANY MISCONDUCT MIGHT BE APPROPRIATE.

THE COURT: HOW DO YOU WANT ME TO SAY IT, JUST TELL THEM TO DISREGARD THE STATEMENT WHEN HE SAID HE HAD DONE SOMETHING UP THERE, JUST LEAVE IT AT THAT OR DO YOU WANT ME TO LEAVE IT ALONE?

MR. BROOKER: I KNOW, YOUR HONOR, I'M JUST HUNTING A GOOD ANSWER, IF YOU LEAVE IT ALONE THEN THEY THINK IT'S ACCEPTABLE.

THE COURT: THAT'S FINE.

MR. BROOKER: IT'S ACCEPTABLE EVIDENCE AND, SO, SO --

THE COURT: HOW DO YOU WANT ME TO SAY IT?

MR. BROOKER: YOUR HONOR, I GUESS, I GUESS THERE'S NO GOOD WAY TO SAY IT EXCEPT MAYBE SIMPLY ADVISE THE JURY IS, IS THAT, IS THAT THE, YOU KNOW, MAYBE THE OFFICER'S LAST STATEMENTS REGARDING, LAST STATEMENTS REGARDING GOING TO PICK HIM UP IN PENNSYLVANIA PART OF THAT

STATEMENTS WAS IMPROPER AND IS NOT CONSIDERED TO BE EVIDENCE AND THAT THE ONLY PERMISSIBLE STATEMENT THAT WAS MADE WAS THAT HE WENT TO PENNSYLVANIA AND PICK HIM UP BUT ANYTHING HE SAID THEREAFTER REGARDING REASONS WHY SHOULD BE DISREGARDED.

MR. DEBERRY: THAT'S FINE WITH THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT, SO WE'RE GOING TO TELL THEM, INSTRUCT THEM TO DISREGARD THAT PORTION OF THE OFFICER'S LAST STATEMENTS REGARDING GOING TO PENNSYLVANIA WHICH IS OKAY BUT THE REASON WHY HE WENT THEY NEED TO DISREGARD, HOW ABOUT THAT?

MR. BROOKER: I GUESS, YOUR HONOR, THERE IS NO PERFECT WAY TO SAY IT.

MR. DEBERRY: YOUR HONOR, I WOULD JUST ASK THAT YOU SAY SOMETHING ALONG THE LINES OF WHAT HE DID IN PENNSYLVANIA IS COMPLETELY IRRELEVANT TO THIS TRIAL IF HE DID ANYTHING. HE WAS JUST RETRIEVED FROM THERE BY THE MARION COUNTY, MARION POLICE DEPARTMENT.

MR. BROOKER: SO JUST REMIND THEM I THINK DISREGARD IT AND IT'S NOT, IT'S NOT EVIDENCE IN THIS CASE AND THEY CANNOT CONSIDERED IT AS BEING EVIDENCE IN THEIR DELIBERATIONS.

THE COURT: ALL RIGHT, I'M GOING TO TYPE IT EXACTLY AS YA'LL WANT ME TO READ IT TO THEM, TELL ME WHAT

YOU WANT ME TO SAY AND I WANT YA'LL TO AGREE ON IT. HOW ABOUT THE OFFICER'S TESTIMONY THAT HE WENT TO PENNSYLVANIA TO RETRIEVE THE DEFENDANT FROM THERE, HOWEVER WHY ANY REASONS THAT HE STATED AS TO WHY HE WENT TO PENNSYLVANIA TO GET HIM ARE IMPROPER AND THAT THEY SHOULD NOT CONSIDER IT FOR ANY REASON.

MR. BROOKER: THAT'S FINE WITH ME, YOUR HONOR, THEY SHOULD NOT CONSIDER IT FOR ANY REASON AND IT'S NOT EVIDENCE IN THIS CASE AND THEY SHOULD NOT ---

THE COURT: I'LL TELL THEM NOT TO REGARD IT.

MR. BROOKER: THAT THEY SHOULD NOT CONSIDER IT FOR THE PURPOSES --

THE COURT: LET'S TAKE A LITTLE BREAK AND WE ALL CAN BE READY FOR THEM TO COME BACK. THE COURT IS IN RECESS.

(WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING TAKES PLACE ON THE RECORD AFTER THE RECESS.)

THE COURT: ALL RIGHT, EVERYBODY BE SEATED, THANK YOU. LET'S BRING THE JURY BACK OUT.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 12:10 P.M.)

THE COURT: ALL RIGHT, MEMBERS OF THE JURY, THE OFFICER'S TESTIMONY THAT HE WENT TO PENNSYLVANIA TO RETRIEVE THE DEFENDANT IN THIS CASE IS PROPER. ANY STATEMENT AS TO WHAT MAY HAVE OCCURRED IN PENNSYLVANIA IS

IMPROPER AND IRRELEVANT AND IT SHOULD NOT BE CONSIDERED BY YOU IN ANY WAY WHATSOEVER, THANK YOU VERY MUCH, AND YA'LL MAY CONTINUE.

MR. DEBERRY: THANK YOU, YOUR HONOR, THE STATE HAS NO FURTHER QUESTIONS FOR LIEUTENANT DAVIS.

THE COURT: ANYTHING FURTHER MR. BROOKER?

MR. BROOKER: JUST VERY BRIEFLY.

RECROSS EXAMINATION

BY MR. BROOKER:

Q YOU WAS NOT AN EYEWITNESS TO THE, TO THE EVENT THAT TOOK PLACE ON THE 16TH, WERE YOU NOT, AT LEAST THE SHOOTING INCIDENT?

A NO.

Q OKAY, SO YOU WERE NOT THERE, YOU JUST RESPONDED TO THE SCENE?

A YES.

Q OKAY, AND, OF COURSE, ANY KNOWLEDGE THAT YOU OBTAINED WOULD BE, WOULD BE COLLECTED FROM OTHER WITNESSES AND FROM OTHER THINGS THAT'S COLLECTED AT THE SCENE?

A EXACTLY.

Q OKAY, BUT NO, NO DIRECT KNOWLEDGE WITH RESPECT TO WHAT TOOK PLACE AT THE SCENE? NO DIRECT, YOU DIDN'T SEE, YOU DIDN'T SEE WHAT TOOK PLACE AT THE SCENE, THE SHOOTING THAT TOOK PLACE AT THE SCENE?

A NO, NO.

MR. BROOKER: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, ANYTHING FURTHER, SOLICITOR?

MR. DEBERRY: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, LIEUTENANT DAVIS.

ALL RIGHT, MEMBERS OF THE JURY, WE'RE GOING TO TAKE A LUNCH HOUR RIGHT NOW AND I WOULD ASK THAT YOU BE BACK AT 2:00, HOWEVER AS I TOLD YOU AT THE BEGINNING OF THIS TRIAL DO NOT DISCUSS THIS CASE AMONG YOURSELVES OR WITH ANYBODY. JUST GO ABOUT YOUR BUSINESS AND ENJOY YOUR LUNCH AND IF ANYBODY ASKS ABOUT IT JUST TELL THEM YOU'RE UNDER A COURT ORDER AND CAN'T TALK ABOUT IT. EVERYBODY ELSE REMAIN SEATED AND THE JURY IS EXCUSED UNTIL 2:00.

(WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT 12:14 P.M.)

(WHEREUPON, COURT'S 5 MARKED FOR IDENTIFICATION.)

THE COURT: ALL RIGHT, IS THERE ANYTHING FROM THE SOLICITOR WE NEED TO TAKE UP BEFORE LUNCH?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: HOW ABOUT YOU, MR. BROOKER?

MR. BROOKER: NOTHING I CAN THINK OF, YOUR HONOR, AT THE PRESENT. THE ONLY THING I WOULD AT LEAST SAY

TO THE COURT IS, IS THAT, IS THAT AT SOME POINT IN TIME LIKE I SAID I DON'T KNOW WHEN WE'RE GOING TO MAKE A DECISION WITH RESPECT TO, I GUESS WITH RESPECT TO, TO THE MOTION WE MADE YESTERDAY CAUSE OBVIOUSLY IS, IS THAT IT AFFECTS WHAT TYPE OF QUESTIONS THAT WE CAN ASK AND I THINK ---

THE COURT: WHY DON'T WE DO THIS, BEFORE YOU GET READY, SOLICITOR, BEFORE YOU GET READY TO INTRODUCE ALL OF THE ITEMS IN EVIDENCE SUCH AS PICTURES OR SHELL CASINGS OR WHATEVER IF YOU'LL JUST LET US KNOW WE'LL TAKE SOME TESTIMONY IN CAMERA AND SEE IF IT'S PROPER AND THEN BRING THEM BACK OUT AND PLAY THEM FOR THE JURY.

MR. BROOKER: YEAH, BECAUSE WHAT I'M TRYING TO FIGURE OUT IS, IS ARE WE GOING TO DO IT INDIVIDUALLY FOR EACH PIECE OF EVIDENCE THAT'S GOING TO BE ENTERED OR ARE WE GOING TO MAKE A DETERMINATION, WE JUST GOT TO, YOU KNOW, MAKE A DETERMINATION ---

THE COURT: MR. DEBERRY??

MR. DEBERRY: YOUR HONOR, I'D LIKE TO DO IT AS SMOOTHLY AS POSSIBLE WITH HOWEVER METHOD YA'LL WANT TO DO IT WE CAN TALK ABOUT IT NOW OR BEFORE OR LATER OR AS IT COMES UP.

THE COURT: IT DOESN'T MATTER TO ME.

MR. DEBERRY: BASICALLY, YOUR HONOR, ALL I'D LIKE TO INTRODUCE FROM THE SCENE REALLY AND TRULY IS, IS

PICTURES.

THE COURT: ALL RIGHT, THAT'S IT, WHY DON'T WE TAKE A LOOK AT THE PICTURES RIGHT NOW?

MR. DEBERRY: YOUR HONOR ---

THE COURT: WHY DON'T YA'LL LOOK AT THEM AND SEE IF YOU AGREE?

(WHEREUPON, COUNSEL REVIEWED THE STATE'S EXHIBITS.)

THE COURT: YOU AGREE, IS THAT CORRECT, MR. BROOKER, STATE'S EXHIBIT?

MR. BROOKER: THAT'S CORRECT.

THE COURT: ALL RIGHT, STATE'S EXHIBIT NUMBER 9 IS INTO EVIDENCE.

(WHEREUPON, STATE'S EXHIBIT NUMBER 9 ENTERED INTO EVIDENCE.)

THE COURT: THAT'S GOOD, THAT'S ONE, WHAT'S THE NEXT ONE?

MR. DEBERRY: ALL RIGHT, YOUR HONOR, STATE'S EXHIBIT 16.

THE COURT: IS THAT CORRECT, MR. BROOKER?

MR. BROOKER: THERE WOULD BE NO OBJECTION AND THAT'S STATE'S EXHIBIT 16.

THE COURT: ALL RIGHT, STATE'S EXHIBIT NUMBER 16 IS INTO EVIDENCE BY STIPULATION.

(WHEREUPON, STATE'S EXHIBIT NUMBER 16 ENTERED

INTO EVIDENCE.)

MR. DEBERRY: STATE'S EXHIBIT 15.

THE COURT: MR. BROOKER?

MR. BROOKER: OBJECTION TO 16, 15, IS IT NOT, 15.

THE COURT: ALL RIGHT, SO WHICH ONE YOU TALKING ABOUT NOW, 15?

MR. BROOKER: THIS IS 15 THEN, OF COURSE, WE HAVE AN OBJECTION TO 15.

THE COURT: ALL RIGHT, THEN WE'LL JUST DEAL WITH THAT WHEN YOU GO TO PUT IT INTO EVIDENCE. I'LL RULE ON IT AT THAT TIME.

MR. DEBERRY: WELL, JUDGE, THERE ARE, 15 IS NOT EXACTLY CRUCIAL BUT THERE ARE, I GUESS THERE IS A NEED FOR A RULING AT THIS TIME ON SOME OF THESE BECAUSE ---

THE COURT: I NEED A LITTLE BIT OF TESTIMONY TO DETERMINE IF THESE ITEMS WERE IN PLAIN VIEW ON THAT PARTICULAR NIGHT.

MR. DEBERRY: ALL RIGHT.

THE COURT: THAT'S CRUCIAL, AND I DON'T HAVE THAT YET AND THAT'S WHY I CAN'T REALLY RULE ON THAT, BUT I'M ASSUMING AT THE APPROPRIATE TIME ALL OF THAT INFORMATION WILL COME OUT AND THEN I'LL DECIDE AT THAT POINT AND SINCE IT'S JUST PHOTOGRAPHS I DON'T THINK IT'S GOING TO BE TERRIBLY HARD TO DO. WE'LL JUST ENTER THEM AS

THEY COME UP, ANYTHING ELSE?

MR. BROOKER: NOTHING ELSE THAT I CAN THINK OF.

THE COURT: AT LEAST YOU GOT TWO, THAT'S A START.

MR. BROOKER: WE AGREE ON SOMETHING AT LEAST.

THE COURT: ALL RIGHT, WE'LL BE BACK AT 2:00.

(WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE FOLLOWING TAKES PLACE ON THE RECORD AFTER THE LUNCH RECESS.)

THE COURT: ARE YOU READY?

MR. BROOKER: YES, YOUR HONOR.

THE COURT: AND WHY DON'T WE GO AHEAD AND PUT IN THE TWO ITEMS THAT YOU'VE PUT INTO EVIDENCE BY STIPULATION IN FRONT OF THE JURY WHENEVER THEY COME OUT AND THEN WE'LL GO FROM THERE. GO AHEAD AND BRING THEM ON OUT.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 1:58 P.M.)

THE COURT: ALL RIGHT, SOLICITOR, ANYTHING YOU NEED TO PUT ON THE RECORD BEFORE WE BEGIN?

MR. DEBERRY: YES, YOUR HONOR, THE STATE AND THE DEFENSE HAS STIPULATED TO STATE'S EXHIBITS, STATE'S EXHIBITS 9 AND 10, YOUR HONOR.

THE COURT: WAS IT 16?

MR. DEBERRY: 9 AND 16.

THE COURT: 9 AND 16; IS THAT CORRECT, MR.

BROOKER?

MR. BROOKER: THAT IS CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT, STATE'S NUMBER 9 AND 16 ARE INTO EVIDENCE VIA STIPULATION.

(WHEREUPON, STATE'S EXHIBITS NUMBERS 9 AND 16 ENTERED INTO EVIDENCE.)

THE COURT: ALL RIGHT, IF YOU'D CALL YOUR NEXT WITNESS.

MR. DEBERRY: THANK YOU, YOUR HONOR, THE STATE WOULD CALL JASON HUFFMAN TO THE STAND.

JASON DAVID HUFFMAN

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MR. HUFFMAN, WOULD YOU STATE YOUR FULL NAME FOR THE RECORD?

A JASON DAVID HUFFMAN.

Q OKAY, AND COULD YOU TELL THE JURY HOW YOU WERE EMPLOYED IN MAY OF 2007?

A I WAS WORKING WITH THE MARION CITY POLICE DEPARTMENT AT THE TIME I WAS A TRAINING OFFICER.

Q AND WHAT WAS YOUR RANK AT THAT TIME?

A LIEUTENANT.

Q AND DID YOU HAVE ANY INVOLVEMENT WITH THE CASE THAT IS AT TRIAL TODAY?

A YES, I DID, I TRANSPORTED THE EVIDENCE.

Q OKAY, WAS THAT, WHEN YOU SAY YOU TRANSPORTED THE EVIDENCE IN THIS CASE?

A YES, I DID.

Q IS THAT YOUR ONLY ROLE IN THIS CASE?

A YES, SIR.

Q OKAY, AND WHEN YOU SAY TRANSPORTED EVIDENCE --

MR. DEBERRY: YOUR HONOR, MAY I APPROACH?

THE COURT: SURE.

MR. DEBERRY: I'M HANDING THE WITNESS A VERIFIED TRANSCRIPT.

Q (CONTINUING) MR. HUFFMAN, COULD YOU TELL THE JURY WHAT ITEMS OF EVIDENCE YOU TRANSFERRED, WHERE YOU GOT THEM FROM, WHERE YOU TOOK POSSESSION OF THEM, AND WHERE YOU DEPOSITED THEM, DEPOSITED THAT EVIDENCE?

A I TOOK THE EVIDENCE FROM MARION P.D. EVIDENCE LOCKER AND TRANSPORTED THEM TO COLUMBIA, SOUTH CAROLINA, TO SLED DEPARTMENT.

Q ALL RIGHT, SLED, WHAT DO THEY DO AT SLED?

A THEY ACTUALLY DO ALL YOUR, ANYTHING TO COME BACK WITH FORENSICS OR ANYTHING LIKE THAT, DO TESTS ON THEM FOR AGENCIES

Q AND CAN YOU TELL THE JURY WHAT SPECIFIC PIECES OF EVIDENCE YOU TRANSFERRED?

A YES, SIR, I TRANSFERRED ONE SEALED ENVELOPE CONTAINING A FIRED BULLET TAKEN FROM THE VICTIM AT AUTOPSY. I ALSO TAKEN ANOTHER SEALED ENVELOPE WITH ANOTHER FIRED BULLET TAKEN FROM THE VICTIM AT AUTOPSY, ACTUALLY TWO BULLETS IN TOTAL FROM THE AUTOPSY. I HAD ALSO TAKEN ONE SEALED BOX CONTAINING BLOOD TOXICOLOGY DESCRIBED AS TRANSFERRED THORACIC BLOOD LABELED APPLEWHITE RAMEL KESHON AND AS WELL ANOTHER TUBE TAKEN, SEALED HEAT POUCH CONTAINING BLOOD STANDARD DESCRIBED AS KESHON RAMEL APPLEWHITE.

Q SO THERE'S FOUR PIECES OF EVIDENCE ALTOGETHER THAT YOU HAD CUSTODY OF?

A YES, SIR.

Q AND AGAIN WHAT DID YOU DO WITH THEM?

A I TOOK THEM FROM OUR EVIDENCE LOCKER AND DROPPED THEM OFF AT SLED.

Q OKAY, DID YOU HAVE ANY OTHER INVOLVEMENT IN THIS CASE?

A NO, SIR.

Q ALL RIGHT, I HAVE NO FURTHER QUESTIONS.

THE COURT: CROSS?

MR. BROOKER: NO QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU, YOU MAY STEP DOWN. IF YOU'D CALL YOUR NEXT WITNESS?

MR. DEBERRY: YOUR HONOR, WE'D CALL KEN KENSY.

KENNETH LEE KENSY

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MR. KENSY, WOULD YOU STATE YOUR FULL NAME FOR THE RECORD, PLEASE?

A KENNETH LEE KENSY.

Q OKAY, HOW WERE YOU EMPLOYED BACK IN MAY OF 2007?

A I WAS A SPECIAL AGENT WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION COMMONLY KNOWN AS THE ACRONYM SLED.

Q OKAY, AND WHAT WAS YOUR ROLE IN THE DIVISION AT THAT TIME?

A AT THAT TIME I WAS ASSIGNED TO THE LATENT PRINT CRIME SCENE DEPARTMENT.

Q OKAY, AND DID YOU HAVE AN OCCASION TO BE CALLED TO MARION COUNTY ON THE NIGHT OF MAY 13TH, 2007?

A YES, SIR, I DID.

Q OKAY, AND CAN YOU, CAN YOU EXPLAIN TO THE JURY WHAT YOUR PURPOSE WAS AT THAT, THAT NIGHT?

A WE WERE CALLED TO ASSIST THE MARION P.D. IN A DEATH INVESTIGATION.

Q OKAY, AND WHEN YOU ARRIVED ON SCENE, I'D

LIKE TO SHOW YOU, SHOW YOU SOME PHOTOGRAPHS AND SEE IF THEY FAIRLY AND ACCURATELY DEPICT WHAT YOU ARRIVED TO AND SAW THAT NIGHT. STATE'S EXHIBIT 11, 14, AND 15, DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY SHOW THE SCENE AS IT WAS THAT NIGHT?

A YES, SIR, THEY DO.

Q OKAY, AND YOU WERE THERE TO SEE THAT AND EXPERIENCED THAT AND THAT'S WHAT, THAT'S WHAT IT LOOKED LIKE?

A YES, SIR, THESE ARE MY PHOTOGRAPHS.

MR. DEBERRY: OKAY, YOUR HONOR, AT THIS TIME I'D LIKE TO INTRODUCE THOSE AS INTO EVIDENCE.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: YES, YOUR HONOR, WE OBJECT.

THE COURT: ALL RIGHT, HOLD ON ONE SECOND, IF THE JURY WOULD STEP INTO THE JURY ROOM FOR JUST A BRIEF MOMENT, WE'LL BE RIGHT BACK WITH YOU, DO NOT DISCUSS THE CASE.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 2:06 P.M.)

THE COURT: ALL RIGHT, MR. BROOKER?

MR. BROOKER: YOUR HONOR, WE OBJECT AT LEAST TO THE INTRODUCTION OF THOSE PHOTOGRAPHS. IF I'M NOT MISTAKEN I BELIEVE THE OBJECTION IS BASED UPON ONE OF THOSE PHOTOGRAPHS, I THINK IT'S THREE PHOTOGRAPHS AND, OF COURSE,

IF I CAN SEE THEM SO I CAN IDENTIFY THEM BY NAME AS WE TALK ABOUT SO IT WON'T BE CONFUSING ON THE RECORD. I THINK ONE OF THESE PHOTOGRAPHS IS IDENTIFIED AS, AS STATE'S EXHIBIT 14 FOR PURPOSES OF IDENTIFICATION AND, OF COURSE, THAT PHOTOGRAPH OBVIOUSLY DEPICTS SOME OBJECTS THAT ARE, THAT ARE ON THE GROUND. I THINK AT LEAST WHAT IS VISIBLE FROM AT LEAST THIS PHOTOGRAPH IT LOOKS LIKE TWO CELL PHONES AND I THINK SOME SHOES AND, OF COURSE, OUR OBJECTION IS BASED AT LEAST ON THIS PARTICULAR PHOTOGRAPH BASED UPON WHAT WE PREVIOUSLY STATED IS, IS THAT BASED UPON MINCEY OBVIOUSLY IS, IS THAT MINCEY STATES THAT HE DIDN'T DURING THE COURSE OF THE INVESTIGATION, INVESTIGATION OF THE CRIME THAT IT IS ABSOLUTELY NECESSARY THAT, THAT LAW ENFORCEMENT HAVE A SEARCH WARRANT TO SEARCH AND TO ALSO SEIZE PROPERTY FROM, FROM A PRIVATE RESIDENCE AND THAT FOURTH AMENDMENT REQUIREMENT OF SEARCH AND SEIZURE IS NOT RELAXED AS A RESULT OF, OF INVESTIGATING A MURDER. I THINK IN MINCEY THEY WERE INVESTIGATING A MURDER AT THAT PARTICULAR PERIOD OF TIME AND THE MINCEY COURT SAYS THERE IS NO MURDER EXCEPTION.

WITH RESPECT TO I THINK PHOTOGRAPHS, STATE'S EXHIBIT 11 FOR IDENTIFICATION PURPOSES IS THAT WE OBJECT TO THAT IS, IS THAT BASICALLY IS, IS THAT THE PROBATIVE VALUE OF THIS PARTICULAR PHOTOGRAPH IS OUTWEIGHED BY ANY, IS, IS, EXCUSE ME, THE PREJUDICE OF THIS PHOTOGRAPH IS OUTWEIGHED

BY ANY PROBATIVE VALUE THAT MIGHT HAS. I THINK THIS PARTICULAR PHOTOGRAPH IS SIMPLY A PHOTOGRAPH OF THE WHITE VEHICLE IN WHICH IT WAS PREVIOUSLY TESTIFIED TO THAT, THAT MCGILL AND LANE WAS ATTEMPTING TO PUT THE VICTIM INTO AT THE TIME IN WHICH OFFICERS RODE UP AND, OF COURSE, IT SIMPLY DEPICTS I THINK BLOOD, A POOL OF BLOOD ON THE INSIDE, I THINK, FLOORBOARD OF THE, OF THE BACK DRIVER'S SIDE AND THEN, OF COURSE, BLOOD ON THE, YOU KNOW, ON THE DOOR WAY AND, OF COURSE, THIS PHOTOGRAPH AT LEAST WE THINK IS JUST A DEPICTION OF BLOOD. THERE WAS NO CONTROVERSION WITH RESPECT TO, WITH RESPECT TO WHETHER OR NOT THE DEFENDANT, WHETHER OR NOT LANE AND MCGILL WAS ATTEMPTING TO, YOU KNOW, PUT THE VICTIM IN THE VEHICLE AND IT'S NOT AT LEAST ANY FACTUAL ISSUE THAT I KNOW OF TO CONTROVERSY THAT IS MADE CLEAR BY THIS PARTICULAR PHOTOGRAPH. NO ONE HAS OBJECTED AT LEAST, AT LEAST OBJECTED TO OR EITHER DID OR EVEN STATED ANYTHING THAT WOULD CONTRADICT AT LEAST THE FACTS THAT ARE DEPICTED IN THIS PHOTOGRAPH AND I THINK THIS PHOTOGRAPH WAS ENTERED PRIMARILY FOR THE PURPOSES OF PRESENTING SOME BLOOD FOR THE JURY AND, OF COURSE, THAT IS IN, IS EXPECTED TO, I THINK, MAYBE AROUSE SOME PASSION OR EMOTION FROM THE JURY THAT WE THINK IS IMPROPER.

NOW IF THERE WAS ANY FACTUAL ISSUE IN CONTROVERSY AND, OF COURSE, THIS PHOTOGRAPH WAS OFFERED TO MAKE THAT FACTUAL ISSUE CLEAR THEN, OF COURSE, WE THINK THAT WE

MIGHT, MIGHT THEN BE AT A DISADVANTAGE BUT THERE IS NO FACTUAL ISSUE THAT IS MADE CLEAR BY THIS PHOTOGRAPH. IT PURELY DEPICTS BLOOD AND, OF COURSE, THE PREJUDICE OF THIS PHOTOGRAPH OUTWEIGH ANY VALUE IT MIGHT HAVE.

AND, OF COURSE, THE FINAL PICTURE IS NUMBER 15, STATE'S EXHIBIT NUMBER 15, FOR I.D. PURPOSES AND, OF COURSE, WE OBJECT TO THAT FOR THE SAME REASON AS WE OBJECTED TO, I THINK, STATE'S EXHIBIT NUMBER 14 BECAUSE IT DEPICTS EVIDENCE THAT WAS, THAT WHICH WAS OBTAINED AS A RESULT OF ILLEGAL SEARCH AND SEIZURE AND, OF COURSE, YOU KNOW WE DEEM THAT THE COLLECTION OF THAT EVIDENCE WAS IMPROPER IN VIOLATION OF THE FOURTH AMENDMENT AND THAT THESE PHOTOGRAPHS OBVIOUSLY PUT THAT EVIDENCE, WOULD PUT THESE AT LEAST ITEMS INTO EVIDENCE THAT WHICH WE THINK SHOULD BE BARRED AS A RESULT OF THE FRUIT OF THE POISONOUS TREE DOCTRINE SO WE OBJECT TO THAT ONE BASED ON THOSE GROUNDS.

THE COURT: ANY RESPONSE?

MR. DEBERRY: YES, SIR, YOUR HONOR, I WOULD JUST RESPOND THAT THIS WAS BEFORE ANY POISONOUS TREE WAS EVEN CAME ABOUT. THIS IS VERY EARLY ON. THIS WAS BEFORE ANY MARKER, EVIDENCE MARKERS WERE PUT DOWN. IT'S IN PLAIN VIEW. YOUR HONOR, THEY HAVE EVERY RIGHT TO COME THERE. THE PICTURE OF THE VEHICLE SHOWS EXACTLY WHAT HAPPENED. IT'S UNFAIR TO THE STATE TO NOT BE ABLE TO SHOW THE CRIME

SCENE. IT'S NOT AN EXTRAORDINARY AMOUNT OF BLOOD OR IT CORROBORATES WHAT'S BEEN TESTIFIED TO AND, YOUR HONOR, YOU KNOW, MR. KENSY HAS TESTIFIED THAT THIS IS HOW THE SCENE WAS WHEN HE FIRST ARRIVED AND WHEN HE FIRST ARRIVED THERE WAS NO REQUIREMENT THAT THEY HAVE A SEARCH WARRANT BEFORE THEY EVEN BEGIN THEIR INVESTIGATION ESPECIALLY IN A MURDER SCENE SITUATION.

THE COURT: I'M GOING TO OVERRULE THE OBJECTIONS. I'M GOING TO FIND THAT 14 AND 15 ARE ITEMS WHICH WERE IN PLAIN VIEW AND AN OFFICER WAS THERE LAWFULLY.

AS TO NUMBER 11 I FIND THAT THAT PICTURE SIMPLY CORROBORATING THE TESTIMONY OF LT. DAVIS HAS ALREADY GIVEN AND IT'S NECESSARY, SO I'M GOING TO OVERRULE THE OBJECTIONS AND I'M GOING TO ALLOW THEM TO BE PLACED INTO EVIDENCE. YOU CAN BRING OUT THE JURY, MR. WHITE, IF YOU'D GO AHEAD AND BRING THEM OUT.

(WHEREUPON, STATE'S EXHIBITS NUMBERS 11, 14, AND 15 ENTERED INTO EVIDENCE.)

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 2:15 P.M.)

THE COURT: YOU MAY CONTINUE.

MR. DEBERRY: (CONTINUING)

Q I'M GOING TO SHOW YOU AGAIN THESE THREE PHOTOGRAPHS STATES EXHIBIT 14, 11, 15, DO THOSE FAIRLY AND ACCURATELY SHOW WHAT YOU FOUND THAT NIGHT?

A YES, SIR, THEY DO.

MR. DEBERRY: OKAY, AND LET THE RECORD REFLECT THAT THESE ITEMS ARE IN EVIDENCE, AND, YOUR HONOR, MAY I PUBLISH THESE TO THE JURY AT THIS TIME?

THE COURT: YOU MAY.

Q NOW, MR. KENSY, I'M GOING TO HAND YOU THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION CHAIN OF CUSTODY, THE TOP ITEM IN THAT CHAIN OF CUSTODY FORM, FIRST OF ALL -- -

MR. BROOKER: EXCUSE ME, IF YOU'D JUST WAIT FOR ME TO LOOK AT IT FIRST?

MR. DEBERRY: SURE.

MR. BROOKER: MAKE SURE.

Q THE VERY TOP ITEM ON THIS LIST, MR. KENSY, SAYS THREE GUN GSR KITS, WHAT WOULD THAT BE?

A GSR ARE THE INITIALS FOR THE TEST KITS FOR GUNSHOT RESIDUE THAT WE USE TO DETECT GUNSHOT RESIDUE.

Q OKAY, AND DOES THIS FORM CHAIN OF CUSTODY WHAT DOES IT REPRESENT?

A IT REPRESENT ANY TIME YOU MOVE CUSTODY FROM OFFICER TO OFFICER OR AGENCY TO AGENCY YOU HAVE TO KEEP A RECORD OF IT AND THE CHAIN OF CUSTODY IT NOTE THE DATE AND THE TIME THAT THE EVIDENCE CHANGED HANDS.

Q ALL RIGHT, AND WHAT DOES THIS FORM INDICATE IT INDICATES THAT YOU RECEIVED GUNSHOT RESIDUE KITS?

A YES, SIR, ON MAY THE 14TH OF 2007 AT APPROXIMATELY 6:39 A.M. I RECEIVED THREE GUNSHOT RESIDUE KITS FROM LT. FARMER BLUE OF THE MARION POLICE DEPARTMENT.

Q IS IT MAY OR SEPTEMBER, WHAT'S YOUR DATE ON IT?

A IT SAYS MAY 14TH, I'M SORRY.

Q ALL RIGHT, WHEN YOU TOOK CUSTODY OF THAT, I'M GOING TO HAND YOU A VERIFIED CHAIN OF CUSTODY FROM SLED SHOW YOU, DOES THAT, DOES THAT TELL YOU WHAT YOU DID WITH THAT?

A YES, SIR, IT DOES, THIS IS, I LOGGED IT IN. AFTER I RECEIVED IT FROM LT. FARMER BLUE I WOULD HAVE LOGGED IT INTO THE FORENSIC BUILDING AT SLED.

Q ALL RIGHT, AND WHO, AND WHO GOT IT FROM THERE?

A IT WOULD HAVE WENT TO LISA MCREYNOLDS.

Q OKAY, SO YOU JUST DEPOSITED IT AT SLED AND SHE PICKED IT UP?

A YES, SIR.

Q OKAY, ALL RIGHT --

A WE SEAL IT AND LOG IT IN AND THEN IT GOES TO THE ANALYST WHO WILL ACTUALLY BREAK IT DOWN.

Q OKAY, NOW YOUR INVOLVEMENT, HOW LONG DID YOUR INVOLVEMENT WITH THIS CASE LAST?

A A COUPLE OF DAYS THE TIME I WAS ON SCENE

HERE AND THERE AND NOW.

Q DID YOU RECEIVE INFORMATION FROM MARION POLICE DEPARTMENT THAT INDICATED THAT YOU STOP WORKING ON THE CASE OR HOW, HOW DID THAT COME ABOUT?

A I DID, I RECEIVED A CALL,, AND I CANNOT TELL YOU EXACTLY WHO AT THE TIME, IT WAS SOMEONE IN THE ADMINISTRATION OF THE MARION POLICE DEPARTMENT THAT TOLD ME TO CEASE ALL - --

MR. BROOKER: OBJECTION, HEARSAY, YOUR HONOR.

THE COURT: ANY RESPONSE?

MR. DEBERRY: NO, YOUR HONOR.

Q IF YOU COULD JUST TESTIFY AS TO WHY YOU BELIEVE THAT YOUR INVOLVEMENT WAS NO LONGER NEEDED?

A I WAS CONTACTED AND ADVISED THAT WE WERE NO LONGER NEEDED.

MR. DEBERRY: OKAY, I HAVE NO FURTHER QUESTIONS.

THE COURT: CROSS?

MR. BROOKER: YES, VERY QUICKLY.

CROSS EXAMINATION

BY MR. BROOKER:

Q WHAT, WHAT'S YOUR PROPER TITLE, ARE YOU STILL WITH SLED?

A I'M NOW AT THE VIOLENT CRIME INVESTIGATIVE WITH THE FIRST JUDICIAL CIRCUIT SOLICITOR'S OFFICE.

Q OKAY, OKAY, OKAY, AT THAT PARTICULAR PERIOD

OF TIME YOU WERE WITH, YOU WERE WITH SLED, YOU SAID THAT THE, THE GSR KITS, YOU HAD THREE GSR, GSR KITS THAT YOU TESTIFIED TO, YOU SAID THAT THOSE WERE TAKEN TO SLED AND DROPPED OFF AT SLED; IS THAT CORRECT?

A I DON'T THINK I SAID DROPPED OFF, WE LOGGED THEM IN.

Q OKAY, AND LET ME ASK YOU, WHAT DO YOU MEAN WHEN YOU SAY LOGGED THEM IN?

A WE ACTUALLY TYPE UP A DESCRIPTION; WE PUT IT IN A STEEL CONTAINER. WE GO THROUGH THE LOG IN PROCESS INTO THE COMPUTER SYSTEM AND THEN WE HAND DELIVER THEM TO THE DEPARTMENT WHERE THEY WILL BE BROKEN DOWN AND ANALYZED.

Q WHAT IS THE LOG IN PROCESS AT SLED THAT YOU GO THROUGH?

A YOU PACKAGE THE MATERIALS, EITHER YOU DO IT AT THAT TIME YOU LOG YOUR OWN EVIDENCE IN, WE LOG IN THROUGH A COMPUTER SYSTEM WHICH DATE STAMPS IT AND GIVES YOU LABELS. THE ITEMS ARE THEN AS I MENTIONED HAND DELIVERED TO THE DEPARTMENT THAT WILL BE BREAKING THEM DOWN AND THEY WILL BE PUT INTO EVIDENCE FOR ANALYSIS THAT ONLY THE ANALYST WILL HAVE ACCESS TO.

Q OKAY, DID YOU HAND DELIVER THEM TO SLED?

A YES, SIR, I DID.

Q OKAY, AND WHEN DID YOU DELIVER THEM TO SLED; WHOSE HAND DID YOU PUT THEM IN?

A YOU'D HAVE TO HAND ME THE CHAIN OF CUSTODY, SIR?

MR. BROOKER: IF YOU'D INDULGE ME FOR JUST A SECOND. I APOLOGIZE, YOUR HONOR, IF YOU WOULD INDULGE ME FOR JUST A SECOND. YOUR HONOR, WE HAVE AN ISSUE I THINK THAT PROBABLY NEEDS TO BE TAKEN UP OUTSIDE OF THE PRESENCE OF THE JURY.

THE COURT: OKAY, SO, JURY, ONCE AGAIN IF YOU WOULD GET YOUR EXERCISE AND GO BACK INTO THE JURY ROOM, DO NOT TALK ABOUT THE CASE.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 2:25 P.M.)

MR. BROOKER: YOUR HONOR, WE'RE GOING TO OBJECT TO AT LEAST ANY MENTION OF THE CHAIN, OF THIS CHAIN OF CUSTODY REPORT AND THE REASON WHY IS, IS THAT AGAIN THIS IS SOMETHING THAT WAS NOT PRODUCED TO US THAT WE'RE JUST NOW SEEING FOR THE FIRST TIME. IT LOOKS LIKE IT'S ---

THE COURT: IT HASN'T BEEN OFFERED INTO EVIDENCE, HAS IT?

MR. DEBERRY: NO, YOUR HONOR, AND IT'S MINISTERIAL IN NATURE AND ALL IT SAYS IS A LIST OF PEOPLE AND IT DOESN'T INTEND TO PROVE HIS CLIENT GUILTY IN ANY WAY.

THE COURT: YOU HAVEN'T EVEN OFFERED IT YET.

MR. DEBERRY: NO, SIR.

THE COURT: IT'S NOT AN ISSUE YET.

MR. BROOKER: WELL, YES, SIR, IT STILL IS AN ISSUE AND THE REASON WHY IT'S AN ISSUE IS THAT WHAT WE TALKED ABOUT BEFORE IS, IS THAT, IS THAT WHETHER HE INTENDS TO ENTER IT INTO EVIDENCE OR NOT UNDERNEATH RULE 5 AND BRADY ---

THE COURT: WHEN DID YOU GET IT?

MR. BROOKER: --- WE'RE ENTITLED TO -- WELL I JUST SEEN IT WHEN IT WAS MENTIONED AND SO I HAVE NOT SEEN IT UNTIL JUST NOW.

THE COURT: WHY DON'T YOU TAKE YOUR TIME AND LOOK AT IT AND STUDY IT AND LET ME KNOW WHEN YOU'RE DONE AND WE'LL GO FROM THERE AND I'M NOT GOING TO RUSH YOU.

MR. BROOKER: THANK YOU, YOUR HONOR.

THE COURT: MR. BROOKER?

MR. BROOKER: I'VE BRIEFLY LOOKED OVER IT. I THINK THEY'RE GOING TO MAKE A COPY FOR US, YOUR HONOR. WHEN HE GETS BACK UP, YOUR HONOR, IS, IS THAT WHAT WE'RE GOING TO AT LEAST PRESENT A MOTION AT LEAST ON THE RECORD,

(WHEREUPON, MR. DEBERRY ENTERS THE COURT ROOM.)

MR. BROOKER: NOW PUT SOME MOTIONS ON THE RECORD?

THE COURT: SURE.

MR. BROOKER: AT LEAST FIRST IS GOING TO BE, FIRST IS GOING TO BE A MOTION TO, TO DISMISS THE INDICTMENT AGAINST SHAWN REAVES BASED UPON VIOLATION OF RULE FIVE AND

BRADY MOTION IS, IS THAT THIS CASE HAS BEEN PENDING I THINK EVER SINCE 2007. I THINK IT'S BEEN PENDING EVER SINCE 2007 AND, OF COURSE, AT LEAST FROM WHAT I SEE FROM AT LEAST THE DISCOVERY THAT WE'VE SEEN TO THIS PARTICULAR POINT IS THAT MOST OF THIS DISCOVERY WAS COMPLETED IN 2007 AND 2008 AND, OF COURSE, THAT IS NEARLY A YEAR AND A HALF, SOME OF IT TWO YEARS PRIOR TO THE CONCLUSION, PRIOR TO, PRIOR TO AT LEAST IN TRIAL OF THIS PARTICULAR CASE IS, IS THAT SINCE THIS CASE HAS STARTED OR AT LEAST COME CLOSE TO TRIAL WITHIN THE LAST COUPLE OF DAYS WE HAVE BEEN, DISCOVERY HAS BEEN DRIPPING IN TO US, PHOTOGRAPHS, REPORTS, AND I THINK, FOR INSTANCE, I THINK THE SLED REPORT WE JUST GOT LAST WEEK THEN, OF COURSE, AFTER THAT WE GOT PHOTOGRAPHS WHICH I THINK ON WEDNESDAY OR TUESDAY OR WEDNESDAY OF LAST WEEK, GOT PHOTOGRAPHS AND ALSO A STATEMENT FROM, A STATEMENT FROM ONE OF THE WITNESSES, A VIDEO TAPED STATEMENT FROM THE WITNESSES, WE JUST RECEIVED THAT I THINK ON THURSDAY OF LAST WEEK. WE RECEIVED THE REPORT FROM SLED I THINK THIS MORNING. WE RECEIVED NOW THIS CHAIN OF CUSTODY RECORDS I THINK JUST THIS MORNING. THERE WAS OTHER PHOTOGRAPHS I THINK THAT WE DIDN'T SEE UNTIL JUST THIS MORNING AND OBVIOUSLY IS, IS THAT WE MAKE THIS MOTION IS THAT, IS, IS THAT ONE OF THE FAIR AMOUNT FUNDAMENTAL RIGHTS OF ANY DEFENDANT IS DUE PROCESS, YOU KNOW, DUE PROCESS UNDERNEATH THE CONSTITUTION, THE UNITED STATES CONSTITUTION AND ALSO

THE SOUTH CAROLINA CONSTITUTION AND WHAT DUE PROCESS MEANS IS THAT A PERSON HAS A FAIR TRIAL AND, OF COURSE, THE SOUTH CAROLINA GENERAL ASSEMBLY HAS CONSTRUCTED RULES THAT GOVERNS EXACTLY WHAT CONSTITUTES A FAIR TRIAL AND OBVIOUSLY THOSE RULES REQUIRE DISCLOSURE OF CERTAIN INFORMATION SO THAT A DEFENDANT WHO IS CHARGED WITH THE MOST SERIOUS CRIME THAT YOU CAN BE CHARGED WITH HAVE THE CHANCE TO REVIEW THOSE DOCUMENTS AND PREPARE A DEFENSE BASED UPON THOSE, BASED UPON THOSE DOCUMENTS AND OBVIOUSLY IS, IS THAT WE'RE SITTING BACK AND WE'RE RECEIVING STUFF MINUTE BY MINUTE AND, OF COURSE, WE'RE HAVING TO PERFORM OUR DEFENSE AND READJUST OUR DEFENSE ON THE FLY BASED UPON STUFF THAT'S BEEN HANDED TO US AT THE LAST MINUTE WHEN THIS CASE HAS BEEN PENDING FOR, YOU KNOW, THREE YEARS NOW. IT IS ABSOLUTELY NOT FAIR. IT IS A VIOLATION OF THE DUE PROCESS CLAUSE AND, OF COURSE, WE THINK IT'S JUSTIFICATION FOR DISMISSABLE OF THIS ACTION BASED UPON THESE PARTICULAR ISSUES AND, OF COURSE, WE'LL ALLOW HIM TO RESPOND TO THAT AND, OF COURSE, BASED UPON YOUR HONOR'S RULING ON THAT AND, OF COURSE, WE HAVE ONE MORE MOTION TO MAKE PERTAINING TO IT.

THE COURT: FIRST OF ALL I'M GOING TO ALLOW YOU TO RESPOND BUT LET'S JUST ISOLATE IT. I DON'T HAVE ANY PICTURES THAT YOU HAVE ASKED ME TO INTRODUCE AT THIS TIME. THE ONLY THING THAT'S BEFORE ME IS A VERIFIED CHAIN OF

CUSTODY FORM THAT HAS NOT EVEN BEEN OFFERED INTO EVIDENCE. NOW YOU MAY RESPOND, MR. DEBERRY?

MR. DEBERRY: THANK YOU, YOUR HONOR, I'M NOT SURE, YOUR HONOR, WE HAD A MOTION EARLIER TODAY, I MADE AVAILABLE EVERYTHING I'VE HAD TO HIM, TO MR. BROOKER. I DID THE SAME THING LAST WEEK. I'VE MADE EVERY ATTEMPT THAT I CAN. YOUR HONOR, I DIDN'T KNOW AND I'M NOT SURE IF A VERIFIED CHAIN OF CUSTODY REPORT IS, IT'S CERTAINLY NOT INCULPATORY OR EXCULPATORY WHERE IF IT'S SUBJECT TO RULE FIVE. HE CERTAINLY HAS EVERYTHING, CAN'T HAVE EVERYTHING I HAVE AS FAR AS PHOTOGRAPHS, YOUR HONOR, HE'S HAD A COPY OF THE PHOTOGRAPHS. WE'VE DONE EVERYTHING WE CAN. I'VE OPENED MY FILE TO HIM.

THE COURT: I DON'T EVEN SEE WHY WE'RE TALKING ABOUT PHOTOGRAPHS. RIGHT NOW WE'RE TALKING ABOUT THE VERIFIED CHAIN OF CUSTODY FORM.

MR. DEBERRY: YES, SIR.

THE COURT: I'LL DEAL WITH THE PHOTOGRAPHS AS THEY COME UP.

MR. DEBERRY: ALL RIGHT, THANK YOU, AND AS FAR AS THE VERIFIED CHAIN OF CUSTODY THEY HAVEN'T BEEN, JUST THE VERY FIRST LINK OF THE CHAIN OF CUSTODY HAS BEEN TESTIFIED TO FOR ANY EVIDENCE AND IT HASN'T EVEN BEEN PERTAINED TO INSIDE THE HEADQUARTERS OF SLED. THE ONLY WITNESSES THAT HAVE TESTIFIED THAT THEY TOOK POSSESSION OF

THE EVIDENCE THAT THEY TESTIFIED TO FROM THE CRIME SCENE, FROM MARION POLICE DEPARTMENT AND, AND TRANSPORTED IT TO SLED, SO HE HAS EVERY RIGHT TO AT THIS POINT I THINK THE RECORD IS STILL PRISTINE AND HE CAN COME BACK TO THE CHAIN OF CUSTODY HOWEVER HE LIKES TO. HE'S GOT IT NOW AND LIKE I SAID IT HASN'T EVEN BEEN TESTIFIED TO YET.

THE COURT: I'M GOING TO DENY THE MOTION TO DISMISS THE INDICTMENT AT THIS TIME. I DON'T SEE THE NEED TO RULE ON ANYTHING ELSE BECAUSE NOTHING ELSE IS BEFORE ME A THIS TIME.

MR. BROOKER: AND, YOUR HONOR, I THINK IS AT LEAST WHAT WE'RE SIMPLY SAYING IS, IS THAT IT DOES NOT MATTER WHAT HE INTENDS TO ENTER, INTRODUCE INTO EVIDENCE IS THAT THAT'S NOT WHAT RULE FIVE AND BRADY MOTION PERTAINS TO.

THE COURT: WELL THIS MORNING HE OPENED HIS WHOLE FILE TO YOU AND IS ALLOWING YOU TO LOOK AT IT AND I GAVE YOU TIME TO LOOK AT THAT, ALL THE TIME THAT YOU NEEDED, I'LL GIVE YOU MORE TIME IF YOU NEED IT.

MR. BROOKER: WELL AND THAT'S WHY, YOUR HONOR, WE HAVE THE EVIDENCE YOU'RE HEARING AND, OF COURSE, WE IDENTIFIED EVERYTHING WAS TURNED OVER TO US AND, OF COURSE, I THINK IT WAS ASKED WHETHER OR NOT THERE WAS ANYTHING ELSE THAT WAS INCLUDED ON THAT LIST THAT WAS NOT TURNED OVER TO US AND, OF COURSE, IT WAS RESPONDED THAT THERE WAS NOT.

THE COURT: WELL HE TURNED OVER HIS FILE TO YOU.

MR. BROOKER: IN THE MIDDLE OF THE TRIAL.

THE COURT: AT THE BEGINNING OF THE DAY.

MR. BROOKER: I THINK THAT'S WHY WE'RE IN TRIAL, YOUR HONOR, AND THAT'S THE PURPOSE OF HAVING EVIDENTIARY HEARING AND I UNDERSTAND YOUR CONCERN BUT IT'S NOT JUST THE AND, OF COURSE, THAT MOTION IS NOT BASED UPON THE FACT THAT OF JUST THIS IS. IT'S BASED UPON THE FACT THAT WE'VE BEEN HAVING DOCUMENTS AND EVIDENCE DRIP IN, DRIP IN TO US OVER THE COURSE OF THE LAST COUPLE OF DAYS WHEN THIS THING HAS BEEN PENDING, YOU KNOW, FOR THREE, OVER THREE YEARS, THREE AND A HALF YEARS IT'S BEEN PENDING AND WE'RE HAVING STUFF DRIPPED INTO US AFTER THREE AND A HALF YEARS. SOME OF THIS DISCOVERY THAT WE'RE RECEIVING IS DISCOVERY THAT'S BEEN IN EXISTENCE FOR AT LEAST TWO YEARS AND WE'RE JUST NOW RECEIVING IT AND, OF COURSE, AND WHAT OUR COMPLAINT IS, IS THAT YOU'RE SAYING WELL HE'S PRODUCING IT TO US NOW IS THAT WHEN WE RECEIVED THIS DISCOVERY, YOUR HONOR, WHAT WE DO IS, IS THAT DAYS BEFORE, WEEKS BEFORE THIS TRIAL WE SIT DOWN AND WE, WE DEVELOP A STRATEGY BASED UPON WHAT WE HAVE, BASED UPON THE FACT THAT WE KNOW EVERYTHING AND THEN, OF COURSE, WHEN WE RECEIVE DOCUMENTS ON THE FLY WE'RE LOOKING AT STUFF THAT WE HAVE NOT EVEN CONSIDERED THAT NOW WE'RE TRYING TO SAY WELL HOW DOES THIS AFFECT THE STRATEGY THAT WE'VE DEVELOPED, HOW DO WE HAVE TO CHANGE OUR STRATEGY, AND

WE HAVE TO DO IT ON THE FLY. I COULD SEE IF THIS EVIDENCE ---

THE COURT: LET ME ASK THE SOLICITOR, DID YA'LL NOT GIVE HIM ANY OF THESE PHOTOGRAPHS PRIOR TO TODAY?

MR. DEBERRY: YES, SIR, YOUR HONOR.

THE COURT: DID HE HAVE ALL THESE PHOTOGRAPHS THAT YOU'VE ENTERED?

MR. DEBERRY: AT SOME POINT WE MET AND I GAVE HIM COPIES.

THE COURT: OF ALL THE PHOTOGRAPHS?

MR. DEBERRY: ACTUALLY I THINK IT WAS TWO WEEKS AGO THAT WE MET AND HE VIEWED ALL THE PHOTOGRAPHS DOWNSTAIRS AND I MADE A COPY OF THE DISK AND TRANSFERRED THEM TO HIM, YES, SIR.

MR. BROOKER: THAT WAS ACTUALLY, THAT WAS ACTUALLY THE 17TH THE DAY THAT YOU GAVE ME A COPY WHAT WAS AUGUST THE 17TH WHICH WAS LAST WEEK AND, OF COURSE, A COPY WAS MADE AND WE PICKED UP A COPY FROM THE SOLICITOR'S OFFICE HERE IN FLORENCE, SO WE PICKED UP THAT COPY, YOUR HONOR, ON TUESDAY, THURSDAY WHATEVER DAY THAT WAS, YOUR HONOR.

THE COURT: BASED ON THAT RESPONSE I'M GOING TO DENY YOUR MOTION AT THIS TIME.

MR. BROOKER: THE NEXT MOTION THAT WE'RE GOING TO MAKE AND PUT ON, YOUR HONOR, YOUR HONOR, IS A MOTION FOR

A MISTRIAL AND, OF COURSE, THAT MOTION IS BASED UPON PRETTY MUCH THE SAME THING IS, IS THAT WE'RE SITTING BACK AND, AND WE'RE HAVING TO DO THINGS THAT WE'RE NOT SUPPOSED TO DO AND THAT IS, IS, IS THAT WE'RE HAVING TO SIT BACK AND RESPOND TO THINGS THAT WE'RE RECEIVING RIGHT NOW, ACTUALLY DURING LUNCH DOING THE SLED REPORTS WE HAD TO READ SOME OF THESE SLED REPORTS DURING LUNCH SO THAT WE CAN PREPARE FOR THEM BUT TRY TO PREPARE FOR THEM BEFORE THE WITNESSES ACTUALLY GET ON THE STAND AND THEN, OF COURSE, THERE WAS ISSUES WITH RESPECT TO THESE NEW CHAIN OF CUSTODY DOCUMENTS IS, IS THAT THEY'RE PEOPLE THAT'S NOW THAT WE JUST LEARNED THAT'S CONTAINED WITHIN THE CHAIN OF CUSTODY, CHAIN OF CUSTODY WHICH IS EXTREMELY IMPORTANT IN A CASE BECAUSE IT HAS TO BE ESTABLISHED IN ORDER TO GET THIS EVIDENCE INTO, GET THIS, THIS, THIS EVIDENCE INTO THE RECORD. WE'RE IDENTIFYING PEOPLE THAT'S IN THE CHAIN OF CUSTODY THAT WE HAD ABSOLUTELY NO IDEA THAT WAS IN THE CHAIN OF CUSTODY UNTIL JUST A MOMENT AGO.

EVEN IF WE HAD, WE THOUGHT THAT THERE WAS A PROBLEM AND WE THOUGHT THAT WE WANTED TO SUBPOENA ANY OF THOSE PERSONS, AND NOT SAYING THAT WE ARE, NOT SAYING THAT WE ARE, WE WOULDN'T HAVE THE OPPORTUNITY TO DO SO IS BECAUSE WE DID NOT KNOW OF THE EXISTENCE OF THESE PERSONS. THIS INFORMATION HAS TO BE TURNED OVER TO US ON RULE FIVE AND BRADY. NOW IF IT'S A SITUATION WHERE THIS INFORMATION

JUST CAME INTO EXISTENCE TWO DAYS AGO AND, OF COURSE, AS SOON AS IT CAME INTO EXISTENCE THEY CAME TO US AND SAYS THIS JUST CAME INTO EXISTENCE HERE IT IS WE DON'T HAVE A PROBLEM, BUT OBVIOUSLY THIS, APPARENTLY THIS REPORT WAS PRINTED, I DON'T KNOW HOW LONG IT'S BEEN IN EXISTENCE, BUT IT WAS PRINTED LOOKS LIKE ON THE 20TH AND I DON'T KNOW WHAT, HOW LONG IT'S BEEN IN EXISTENCE. I THINK ALL OF THESE DOCUMENTS HERE REFERS TO CHAIN OF CUSTODY'S OR EXCHANGE THIS EVIDENCE FROM ONE PERSON TO ANOTHER BACK IN LOOKS LIKE STARTING FROM MAY OF 2007 AND GOING ON UNTIL LIKE AUGUST OF 2007, SO THIS IS EVIDENCE THAT'S BEEN IN EXISTENCE FOR THREE YEARS, HAS BEEN IN EXISTENCE FOR THREE YEARS AND WE JUST GET IT TODAY.

THE COURT: ALL RIGHT, ANY RESPONSE?

MR. DEBERRY: YOUR HONOR, WE REQUESTED THESE VERIFIED CHAINS OF CUSTODY LAST WEEK, IT TOOK SLED SOME TIME. I DIDN'T GET THIS ONE UNTIL THIS MORNING. THEY TOLD ME WHO WAS IN THE CHAIN. I HAD THEM SUBPOENAED; THEY'RE ON THE WITNESS LIST. THEY HAVEN'T TESTIFIED YET. I THINK THE RECORD IS STILL PRISTINE AS FAR AS HIM BEING ABLE TO CREATE A DEFENSE IF THERE'S, IF THERE'S A CHAIN THAT'S NOT PROVEN IT'S OUR BURDEN TO PROVE THE CHAIN AND IT'S A LEGAL ARGUMENT INSTEAD OF A FACTUAL ONE WHETHER OR NOT THE CHAIN IS MADE AND I WOULD THINK THAT HAVING TO COME UP WITH A DEFENSE AS FAR AS WHETHER OR NOT WE PRODUCED THE RIGHT

WITNESSES IN A CHAIN OF CUSTODY SHOULDN'T BE, YOU KNOW, ANY KIND OF REASON FOR DELAY.

THE COURT: THE MOTION IS DENIED, BRING IN THE JURY, GO AHEAD AND BRING THEM IN.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 2:45 P.M.)

THE COURT: CONTINUE.

MR. BROOKER: (CONTINUING)

Q THESE CHAIN OF CUSTODY DOCUMENTS, I THINK, IN WHICH YOU WERE JUST REFERRING TO ON DIRECT EXAMINATION I THINK MY QUESTION WAS IS, IS THAT THOSE GSR KITS WHO YOU TURNED THOSE GSR KITS TO AND I THINK YOU SAID YOU NEEDED TO REFER TO, TO, TO THE CHAIN OF CUSTODY REPORT?

A THEY WOULD HAVE WENT FROM MYSELF TO LISA MCREYNOLDS WHO IS A FORENSIC TECHNICIAN.

Q OKAY, AND, AND, OF COURSE, YOU'RE REFERRING TO THAT ON THE REPORT BUT TELL ME WHERE IT, WHERE YOUR NAME IS ON THIS REPORT WHERE IT INDICATES IT WENT TO HER?

A LOOK HERE I LOGGED THEM IN AT 10:15 A.M. ON THE 16TH, IT VERIFIES THAT RIGHT HERE. ALL RIGHT, AT 10:26 I CARRIED THEM TO HER, THAT'S THE LAST TIME IT WAS IN MY CUSTODY AT 10:26. LOOK OVER TO THE NEXT PAGE OF THE CHAIN YOU SEE WHERE SHE TOOK CHAIN OF CUSTODY ON 5-24 SO THAT'S WHEN SHE RETRIEVED IT OUT OF HER EVIDENCE LOCKER.

Q OKAY, AND I THINK THAT'S MY, THAT MY POINT

WAS IS, IS THAT YOU DIDN'T DELIVER DIRECTLY TO HER, YOU'RE SAYING, I THINK YOU TESTIFIED ON DIRECT THAT YOU DELIVERED TO HER BUT YOU DIDN'T DELIVER TO HER, YOU PUT THEM IN AN EVIDENCE LOCKER?

A NOT A EVIDENCE LOCKER, HER, HER EVIDENCE LOCKER AND I DON'T HAVE ACCESS TO THAT. SHE OPENS IT, LET'S ME PLACE IT IN THERE; SHE LOCKS IT UP AND WHEN SHE PROCESSES IT I DON'T KNOW THAT HAS NOTHING TO DO WITH ME.

Q OKAY, SO, SO YOU PUT THEM IN THE EVIDENCE LOCKER, SHE PUT IT IN THE EVIDENCE LOCKER IS WHAT YOU'RE SAYING?

A SHE GIVES ME ACCESS, I PUT IT IN THERE AND THEN SHE SECURES IT BACK.

Q OKAY, OKAY, NOW THIS CHAIN OF CUSTODY REPORT THAT WE'RE JUST REFERRING TO THAT YOU JUST USED TO REFRESH YOUR MEMORY HOW LONG HAS THIS CHAIN OF CUSTODY REPORT BEEN IN EXISTENCE?

A I CAN'T ANSWER THAT, I'M NOT THE ONE IN CHARGE OF THE CHAIN OF CUSTODY DOCUMENT, NEVER HAD ACCESS TO PRINT ONE OUT.

Q OKAY, DO YOU KNOW WHO'S IN CHARGE OF THE CHAIN OF CUSTODY REPORTS?

A NO, SIR, I DO NOT.

Q OKAY, NOW YOU ARRIVED ON THE SCENE ABOUT WHAT TIME THAT NIGHT?

A AT APPROXIMATELY 1:30.

Q ABOUT 1:30, AND, OF COURSE, AT THAT SCENE WHEN YOU ARRIVED TO THE SCENE THAT NIGHT WHAT ITEMS, WELL LET'S DO IT LIKE THIS I'M NOT GOING TO ASK YOU WHAT ITEMS, BUT DID YOU COLLECT ANY, DID YOU COLLECT, WELL STRIKE, STRIKE THAT. WHEN YOU ARRIVED ON THAT SCENE AT 1:30 WHAT IS THE FIRST THING YOU DID WHEN YOU ARRIVED ON THE SCENE?

A I'M USUALLY BRIEFED BY AN OFFICER THAT'S IN CHARGE OF THE SCENE.

Q OKAY, AND DO YOU KNOW WHO WAS THAT THAT BRIEFED YOU?

A MAY I REFER TO MY NOTES?

Q YES, SIR?

A IT WOULD HAVE BEEN CHIEF WILLIE SMITH.

Q OKAY, AND ABOUT HOW LONG DO YOU THINK THAT YA'LL TALKED FROM YOUR RECOLLECTION OR HOW LONG DID HE, NOT ASKING YOU WHAT HE SAID, YOU CAN'T TELL ME WHAT HE SAYS IS HEARSAY, BUT HOW LONG DID YOU TALK WITH CHIEF SMITH?

A I REALLY COULDN'T DETERMINE, HOWEVER LONG IT TOOK HIM TO EXPLAIN TO ME WHAT HE THOUGHT HAD HAPPENED THERE, COULD BE MINUTES, COULD BE A HALF HOUR.

Q WHEN YOU ARRIVED WHERE WAS CHIEF WILLIE SMITH, WHERE DID, WHERE DID YA'LL HAVE THAT DISCUSSION AT?

A WE WOULD HAVE RESPONDED DIRECTLY TO THE SCENE.

Q WHERE AT ON THE SCENE?

A AT MY TRUCK USUALLY OUTSIDE THE SCENE, YES, SIR.

Q OKAY, DID YOU WENT INSIDE OF THE HOME THAT NIGHT?

A AT ALL THAT NIGHT OR DO YOU MEAN IMMEDIATELY UPON ARRIVAL?

Q AT ALL THAT NIGHT?

A YES, SIR, I DID.

Q OKAY, AND, AND ABOUT WHAT TIME DID YOU ENTER THE HOME AFTER YOUR ARRIVAL?

A IT WOULD HAVE PROBABLY BEEN HOURS, THE MAJORITY OF THE SCENE OR THE SCENE AS I KNEW IT WAS CONTAINED TO THE FRONT YARD OF THE RESIDENCE.

Q IT WOULD HAVE BEEN HOURS AFTER YOU ARRIVED THAT YOU ENTERED THE RESIDENCE?

A YES, SIR.

Q OKAY, NOW HAD THE HOME ALREADY BEEN ENTERED AT THE TIME OF YOUR ARRIVAL?

A I DON'T RECALL IF THE HOME HAD BEEN ENTERED. I DO RECALL THERE WAS AN OCCUPANT IN THE HOME AND I ADVISED THEM THAT I NEEDED THEM TO REMOVE HER WHILE I PROCESSED THE CRIME SCENE.

Q OKAY, DO YOU HAVE THE NOTES; WOULD YOU LIKE TO TAKE A LOOK AT YOUR NOTES TO REFER TO AS TO WHETHER OR

NOT TO REFRESH YOUR MEMORY?

A WHAT WAS YOUR QUESTION?

Q HAD THE, HAD THE HOME ALREADY BEEN ENTERED AT THE TIME OF YOUR, I'M SORRY, I THINK WAS THE HOME ALREADY ENTERED INTO AT THE TIME OF YOUR ARRIVAL?

A THERE WAS DAMAGE TO A DOOR ON THE END OF THE HOUSE THAT WE WERE ADVISED WAS DAMAGED FROM FORCED ENTRY BUT THAT WAS PRIOR TO ME BEING ON THE SCENE.

Q OKAY, AND DO YOU KNOW WHO MADE FORCIBLE ENTRY, WAS IT, WAS IT NOT THAT LAW ENFORCEMENT MADE ENTRY INTO THAT HOME PRIOR TO, PRIOR TO YOUR ARRIVAL?

A ALL I DOCUMENTED IS FORCED ENTRY AND I CANNOT TELL YOU FROM RECOLLECTION.

Q WAS LAW ENFORCEMENT IN THE HOME WHEN YOU ARRIVED?

A WHEN I ARRIVED LAW ENFORCEMENT WAS NOT IN THE HOME, NO, SIR, THE ONLY TIME THEY ENTERED THE HOME UPON MY ARRIVAL WAS TO REMOVE, REMOVE THE FEMALE THAT WAS THE OCCUPANT OF THE HOME AND THAT WAS AT MY REQUEST FOR OFFICER SAFETY.

Q OKAY, AND LET ME, LET ME BE ABSOLUTELY CERTAIN, WHAT FEMALE ARE YOU REFERRING TO?

A I CANNOT TELL YOU, SIR, THERE WAS A FEMALE IN THE HOME.

Q THERE WAS A FEMALE ON THE INSIDE OF THE

HOME?

A YES, SIR.

Q OKAY, AND WAS SHE INSIDE OF THE HOME ALONE?

A I ASSUME, SHE WAS THE ONLY ONE THEY BROUGHT OUT AT MY REQUEST.

Q SO, SO, SO YOU'RE, SO, SO YOUR QUESTION IS THAT THEY THEN ENTERED THE HOME AND THEN REMOVED THE FEMALE?

A I DON'T KNOW IF THEY ENTERED THE HOME TO REMOVE HER OR IF THEY ASKED HER TO COME OUT THE DOOR, I DON'T KNOW, I WAS PROCESSING THE CRIME SCENE. FOR OFFICER SAFETY I ADVISED THEM THAT I NEEDED EVERYONE REMOVED FROM THE AREA.

Q AT SOME POINT IN TIME DID YOU ENTER, DID YOU ENTER INTO THE HOME, I THINK YOU SAID YOU DID?

A YES, SIR.

Q OKAY, AND WHO DID YOU ENTER IT WITH OR DID YOU ENTER IT WITH ANYONE?

A IT WOULD HAVE BEEN MEMBERS OF THE MARION POLICE DEPARTMENT, THEIR LEAD INVESTIGATOR, MY PARTNER AND I CANNOT TELL YOU WHO ELSE, SEVERAL POLICE OFFICERS FROM THE MARION POLICE DEPARTMENT.

Q CAN YOU TELL US UNDER WHAT AUTHORIZATION THAT YOU ENTERED THE HOME UNDER?

MR. DEBERRY: OBJECTION, YOUR HONOR.

THE COURT: WHAT GROUNDS?

MR. DEBERRY: YOUR HONOR, CAN WE APPROACH?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: LADIES AND GENTLEMEN, ONE MORE TIME GET YOUR EXERCISE AND GO INTO THE JURY ROOM, DO NOT TALK ABOUT THE CASE.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 2:54 P.M.)

THE COURT: ALL RIGHT, MR. BROOKER, PUT YOUR OBJECTION ON THE RECORD.

MR. BROOKER: YOUR HONOR, MY UNDERSTANDING IS, IS THAT, THAT WE'RE IN THE PROCESS OF ASKING, ASKING THE WITNESS AND I THINK THE SPECIFIC QUESTION WAS IS, IS THAT WHAT LEGAL AUTHORITY DID THEY HAVE OR DID HE HAVE TO BE IN A RESIDENCE AND, OF COURSE, THAT IS, IS I GUESS AN INTRODUCTORY QUESTION TO US ASKING ABOUT THE EXISTENCE OF A SEARCH WARRANT AND, OF COURSE, THAT SEARCH WARRANT, YOU KNOW, OBVIOUSLY IS, IS THAT IS INDICATE IN THE, THE WITNESSES RECORDS, WITNESSES I THINK NOTES THAT WAS JUST PRODUCED TO US TODAY, I THINK THIS MORNING, WHERE THE WITNESSES NOTES INDICATED THAT AN S.W. PRODUCED AND EXECUTED AT 1:30 APPROXIMATELY AND, OF COURSE, AN S.W. WE

UNDERSTAND STANDS FOR SEARCH WARRANT. IT IS A FACTUAL ISSUE AND BECAUSE IT IS A FACTUAL ISSUE I KNOW THAT THE SOLICITOR'S OFFICE SAYS THAT WE STIPULATE IT WITH RESPECT TO FOR LEGAL PURPOSES AND IT IS, IS THAT THEY WOULD TAKE THE POSITION THAT THERE IS NO, NO SEARCH WARRANT BUT FOR FACTUAL AND, OF COURSE, WE ARE ALLOWED TO ASK FACTUAL QUESTIONS BECAUSE ALL OF THIS GOES TO THE CREDIBILITY OF THE PARTIES WHO ARE INVOLVED AND THE JURY IS ENTITLED TO HEAR IT. THE JURY CANNOT BE EXCLUDED FROM ANY FACTS, YOU KNOW, THAT IS NICELY WRAPPED UP SO THAT THEY CAN HEAR ONE VERSION OF WHAT WENT ON THAT NIGHT AND THEN, OF COURSE, ANOTHER VERSION AND, AND, AND REMAINING VERSIONS OR REMAINING PORTIONS OF IT BE, YOU KNOW, COMPLETELY EXCLUDED, SO WE BELIEVE THAT WE HAVE THE RIGHT TO ASK HIM ABOUT THE QUESTIONS OF WHAT TOOK PLACE THAT NIGHT INCLUDING THE EXISTENCE AND NON EXISTENCE OF A SEARCH WARRANT AND WHAT LEGAL AUTHORITY THEY HAD IN THERE AND, OF COURSE, IT GOES NOT ONLY TO, YOU KNOW, WHETHER OR NOT THIS EVIDENCE WOULD, WOULD BE ADMISSIBLE BUT IT ALSO GOES TO, GOES TO THE CREDIBILITY OF WITNESSES THAT WERE TESTIFYING. IT GOES TO THE CREDIBILITY OF THE INVESTIGATION THAT WAS CONDUCTED THAT NIGHT BUT THERE'S MANY OTHER REASONS WHY THE JURY HAS A NEED TO KNOW AT LEAST THE COMPLETE AND TOTAL FACTS OF WHAT TOOK PLACE THAT NIGHT SO THEY CAN CONSIDER THAT AS A PART OF THEIR DELIBERATION.

THE COURT: ALL RIGHT, AND YOUR RESPONSE?

MR. DEBERRY: YES, YOUR HONOR, I THINK THIS IS A CLEAR ATTEMPT AT A BACK DOOR OPENING TO SEND THROUGH A SEARCH WARRANT THAT'S BEEN ALREADY RULED UPON BY YOUR HONOR AND IS STIPULATED BY THE STATE AND THE DEFENSE THAT WE'RE GOING WITHOUT A SEARCH WARRANT. IT'S CURTAILED OUR CASE SERIOUSLY ALREADY AND FOR HIM TO BE ALLOWED TO THEN ASK QUESTIONS ABOUT IT IS NOT FAIR AT ALL.

THE COURT: AS FAR AS THIS ORDER IS CONCERNED THERE IS NO SEARCH WARRANT AND THERE IS NO SEARCH WARRANT BECAUSE THE STATE AND THE DEFENSE ALREADY HAS STIPULATED THAT THERE IS NO SEARCH WARRANT SO THERE'S NO NEED TO QUESTION ANYBODY ABOUT A SEARCH WARRANT BECAUSE THERE ISN'T ONE.

MR. BROOKER: FOR PURPOSES ---

THE COURT: ANY DOCUMENTS THAT MIGHT HAVE SEARCH WARRANT WRITTEN ON IT TAKE THEM OUT AND WE'LL REDACT THEM. NONE OF THE STATE'S WITNESSES ARE ALLOWED TO TALK ABOUT A SEARCH WARRANT BECAUSE FOR THIS RECORD AND FOR THIS PURPOSE THERE IS NOT A SEARCH WARRANT. SOUNDS TO ME LIKE THE DEFENDANT'S ATTORNEY DOESN'T WANT THE SEARCH WARRANT BUT THEN HE WANTS A SEARCH WARRANT WHEN IT'S HELPFUL TO HIS CASE. BOTH OF YA'LL HAVE STIPULATED THERE IS NO SEARCH WARRANT AND THAT ENDS THIS ISSUE RIGHT NOW.

MR. BROOKER: YOUR HONOR, WHAT WE WOULD THEN

MOVE TO DO IS THAT WE WOULD MOVE TO PUT COPIES OF THIS IN THE RECORD FOR IDENTIFICATION PURPOSES, NOT TO BE PRODUCED TO THE JURY BUT FOR IDENTIFICATION PURPOSES.

THE COURT: COPIES OF WHAT?

MR. BROOKER: AND, OF COURSE, I THINK THIS IS, THIS IS THE OFFICER'S NOTES INDICATING THE EXISTENCE OF, EXISTENCE OF A SEARCH WARRANT.

THE COURT: THAT IS NOT COMING INTO EVIDENCE, IS IT?

MR. BROOKER: NO, NO, NO, NOT TO THE JURY FOR, FOR THE PURPOSES OF THIS MOTION FOR IDENTIFICATION PURPOSES FOR THE PURPOSES OF THIS MOTION FOR THE RECORD.

MR. DEBERRY: YOUR HONOR, THAT, THOSE NOTES OF THE OFFICER THAT'S ON THE STAND SHOULDN'T BE IN THIS RECORD BECAUSE THEY HAVE TO DO WITH WHAT WAS DONE PURSUANT TO A SEARCH WARRANT. WE ASKED THIS OFFICER A VERY NARROW LINE OF QUESTIONING AND INTRODUCED PICTURES AS HE SAW THEM WHEN HE ARRIVED ON THE SCENE. WE HAVEN'T EVEN BEEN ABLE TO SHOW THE PICTURES OF EVIDENCE THAT WAS COLLECTED EVIDENCE AT THAT SCENE AND WE'RE NOT GOING TO INTRODUCE IT BECAUSE OF A SEARCH WARRANT ISSUE. IT'S NOT FAIR TO NOT HAVE IT IN THE RECORD.

THE COURT: I'M NOT GOING TO ALLOW IT TO GO INTO EVIDENCE FOR THE JURY TO SEE. HE'S JUST PUTTING IT INTO THE RECORD TO SUPPORT HIS MOTION, THAT'S THE ONLY THING.

MR. DEBERRY: YOUR HONOR, THE SEARCH WARRANT SHOULD ALSO GO INTO THE RECORD.

MR. BROOKER: AND I AGREE WITH YOU ONE HUNDRED PERCENT, THIS IS BEING PROFFERED INTO THE RECORD.

THE COURT: I FIND IT INTERESTING NOBODY MENTIONED THE SEARCH WARRANT TO ME UNTIL TODAY, I THOUGHT WE DIDN'T HAVE A SEARCH WARRANT AND THAT'S WHAT WE TALKED ABOUT YESTERDAY. GO AHEAD AND MARK THAT FOR IDENTIFICATION PURPOSES ONLY TO SUPPORT YOUR MOTION AND THEN WE'RE NOT GOING TO TALK A SEARCH WARRANT ANY MORE.

(WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 2 MARKED FOR IDENTIFICATION.)

MR. DEBERRY: CAN I ASK THAT ANY LINE OF QUESTIONS ABOUT WHAT GOES ON IN THE HOUSE IS IRRELEVANT?

THE COURT: IS THERE EVIDENCE COMING FROM INSIDE THE HOUSE?

MR. DEBERRY: NO, SIR.

THE COURT: THERE'S BEEN NO TESTIMONY THAT ANY CRIME HAPPENED INSIDE OF THE HOUSE. THERE WAS EVIDENCE, WAS TESTIMONY ABOUT A PROTECTIVE SWEEP WHEN THEY JUST WENT IN TO MAKE SURE NOBODY WAS ARMED BUT THAT'S ABOUT IT.

MR. DEBERRY: YES, SIR.

THE COURT: WE'RE NOT GOING TO BACK DOOR IT INTO ANYTHING BEING WITH A SEARCH WARRANT.

MR. BROOKER: WE'RE NOT GOING BACK DOOR IT.

THE COURT: BUT IF YOU HAVE ANOTHER REASON FOR IT?

MR. BROOKER: WE'RE NOT TRYING TO GET ANYTHING IN, YOUR HONOR, IF YOU REMEMBER IS THAT WE WERE TRYING TO EXCLUDE EVERYTHING. THEY'RE THE ONES WHO'S TRYING TO GET EVERYTHING IN WITHOUT, WITHOUT THE SEARCH WARRANT AND OUR ARGUMENT WAS IS YOU NEED A SEARCH WARRANT TO GET IT IN SO, SO, SO WE'RE NOT TRYING TO BACK DOOR ANYTHING IN. WE'VE BEEN TRYING TO EXCLUDE IT; THEY'RE TRYING TO BACK DOOR ALL THIS STUFF IN WITHOUT THE EXISTENCE OF A WARRANT.

THE COURT: ALL RIGHT, GO AHEAD AND BRING IN THE JURY.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 3:01 P.M.)

THE COURT: ALL RIGHT, CONTINUE, MR. BROOKER.

MR. BROOKER: THANK YOU, YOUR HONOR.

MR. BROOKER: (CONTINUING)

Q NOW THERE WERE ALSO, LET ME MAKE SURE THAT I UNDERSTAND EXACTLY WHAT YOUR INVOLVEMENT WAS IN THIS CASE, MR. KENSY, OKAY, AND YOU CAN CORRECT ME IF I'M WRONG, WHAT POSITION THAT YOU HELD AT THAT PARTICULAR PERIOD OF TIME WITH SLED?

A I WAS A CRIME SCENE EXAMINER.

Q OKAY, AND, OF COURSE, YOU TESTIFIED THAT YOU REPORTED TO THE SCENE AND, OF COURSE, I THINK YOU

TESTIFIED TO TAKING PHOTOGRAPHS THAT HAVE BEEN PLACED INTO EVIDENCE AND I THINK THOSE PHOTOGRAPHS WERE IDENTIFIED AS STATE'S EXHIBIT 11, 14, AND 15; IS THAT CORRECT?

A THAT IS CORRECT.

Q OKAY, ACCORDING TO MY NOTES DID YOU ALSO COLLECT FINGERPRINTS?

MR. DEBERRY: OBJECTION, YOUR HONOR, MAY WE APPROACH?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: CONTINUE.

MR. BOOKER: (CONTINUING)

Q AND, OF COURSE, I DON'T KNOW WHETHER OR NOT YOU DID THIS OR NOT IS, IS THAT DID YOU COLLECT FINGERPRINTS FROM A BLACK HONDA CIVIC?

A YES, SIR, I DID.

Q OKAY, AND DID YOU PERSONALLY COLLECT THOSE FINGERPRINTS FROM THE BLACK HONDA CIVIC?

A I ALONG WITH MY PARTNER COLLECTED AND PROCESSED THE HONDA CIVIC.

Q OKAY, AND WHAT WOULD HAVE BEEN THE PURPOSES OF COLLECTING THOSE FINGERPRINTS FROM THAT BLACK CIVIC?

A IT WAS A REQUEST BY THE POLICE DEPARTMENT.

Q OKAY, WAS THOSE FINGERPRINTS EVER PROCESSED OR EXAMINED, THE SAMPLES THAT WERE TAKEN FROM A BLACK CIVIC?

A NO, SIR, THEY WERE NOT.

Q AND WHY WERE THEY NOT EXAMINED?

A THEY WERE RETURNED AT THE REQUEST OF THE MARION POLICE DEPARTMENT.

MR. BROOKER: IF YOU COULD INDULGE ME FOR JUST A SECOND, YOUR HONOR, I'M ALMOST FINISHED, JUST FLIPPING THROUGH THIS REPORT.

Q DID YOU, DID YOU COLLECT ANYTHING ELSE AT THE SCENE THAT NIGHT ON THE 13TH AND, OF COURSE, WE'RE TALKING ABOUT WITH RESPECT TO PROPERTY THAT WAS OUTSIDE OF THE HOUSE?

MR. DEBERRY: YOUR HONOR, I WOULD OBJECT TO OUR PREVIOUS OBJECTION, THIS IS ABSOLUTELY EXACTLY WHAT WE'VE BEEN DISCUSSING.

THE COURT: OVERRULED, CONTINUE.

MR. BROOKER: (CONTINUING)

Q DID YOU COLLECT ANY OTHER PROPERTY AT THE SCENE OF THAT HOUSE?

A I COLLECTED AS TO WHAT?

Q DID YOU COLLECT A CELL PHONES OR ANY CELL PHONES AT THAT HOUSE?

A YES, SIR, I DID.

MR. DEBERRY: YOUR HONOR, MAY WE APPROACH?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

MR. BROOKER: (CONTINUING)

Q LET ME ASK YOU TO TAKE A LOOK AT SOME PHOTOGRAPHS?

A OKAY.

Q AND I THINK WE'RE LOOKING AT RIGHT NOW STATE'S EXHIBIT 14, IF YOU COULD TAKE A LOOK AT THAT AND, OF COURSE, THAT'S ALREADY INTO EVIDENCE; DO YOU SEE THOSE TWO SMALL OBJECTS THAT'S SITTING ON THE GROUND, ARE THOSE CELL PHONES?

A THEY APPEAR TO BE.

Q THEY APPEAR TO BE CELL PHONES, AND, OF COURSE, WERE THOSE TWO, JUST ASKING ABOUT THOSE TWO ITEMS, WERE THOSE TWO ITEMS COLLECTED AT THE SCENE BY YOURSELF?

A YES, THEY WERE.

Q OKAY, NOW AND, OF COURSE, WE'RE JUST STICKING TO THOSE TWO ITEMS, THOSE TWO CELL PHONES, WHAT WOULD BE THE PURPOSE OF YOU COLLECTING THOSE ITEMS AT THE SCENE?

A AT THE TIME, TIME WORKING THE SCENE WE WOULD NOT KNOW BUT ONCE YOU LEAVE THEM AT THE SCENE YOU

CAN'T JUST LEAVE THEM THERE, YOU DON'T KNOW WHAT FORENSIC VALUE THEY MAY HOLD AT THE TIME CAUSE YOU DON'T KNOW WHERE THE SCENE IS GOING TO EVOLVE TO.

Q SO THERE IS A POSSIBILITY, CORRECT ME I'M NOT UNDERSTANDING, THERE'S A POSSIBILITY THAT THOSE CELL PHONES COULD CONNECT TO SOME SORT OF EVIDENTIARY VALUE THAT WOULD ASSIST IN CONNECTION, ASSIST IN CONNECTION WITH THIS CASE; IS THAT CORRECT?

A THAT'S THE THOUGHT.

Q OKAY, AND, OF COURSE, THE EVIDENTIARY VALUE SOMETIMES WOULD BE IS, WOULD BE IS, IS THAT THOSE CELL PHONES COULD BE USED TO IDENTIFY THE PRESENCE OF PEOPLE AT THE SCENE AND POSSIBLY IDENTIFY THE PRESENCE OF PERSONS AT THE SCENE; IS THAT CORRECT?

A THAT IS CORRECT.

Q BECAUSE MY UNDERSTANDING IS, YOU CORRECT ME IF I'M WRONG IS, IS THAT IF THOSE CELL PHONES HAS AN ELEMENT AND, OF COURSE, IF THE OWNER'S CELL PHONE IS AT THE SCENE IT MIGHT SUGGEST THAT THAT OWNER MAY HAVE BEEN AT THE SCENE THAT NIGHT AS WELL, TOO; IS THAT CORRECT?

A THAT'S A CORRECT DECISION.

Q FINGERPRINTS SOMETIMES CAN BE LIFTED FROM THOSE CELL PHONES; IS THAT CORRECT?

A THAT IS CORRECT.

Q OKAY, NOW WERE ANY PRINTS REMOVED FROM ANY

OF THOSE CELL PHONES?

A THOSE CELL PHONES WERE NOT PROCESSED.

Q AND WHY WERE THEY NOT PROCESSED?

A ONCE AGAIN AT THE REQUEST OF MARION P.D. THEY WERE TURNED OVER TO THE MARION POLICE DEPARTMENT.

Q OKAY, SO LET ME CORRECT ME IF I'M NOT UNDERSTAND, IS THAT NO FINGERPRINTS WERE ATTEMPTED TO TAKE, TO BE TAKEN FROM THE CELL PHONES; IS THAT CORRECT?

A THE PHONES WERE TURNED OVER TO THE MARION P.D. AT THEIR REQUEST.

Q OKAY, BUT IF THEY HAD NOT BEEN TURNED BACK OVER TO THE MARION P.D. WAS IT YOUR INTENTION TO HAVE THEM PROCESSED?

A YES, SIR, WE WOULD HAVE TAKEN THEM TO THE FORENSIC LAB FOR PROCESSING BUT YOU ALSO HAVE THE VALUE OF WHATEVER DIGITAL MEDIA MAY BE OBTAINED FROM THOSE PHONES AND IT'S A TOSS UP ONCE I PUT THEM INTO THE SUPER GLUE CHAMBER AND I FINGERPRINT THEM WHATEVER INFORMATION IS ON THAT PHONE MAY NOT BE ABLE TO BE RETRIEVED SO IT'S A TOSS UP AND IT'S A DECISION THAT THE LEAD AGENCY HAS TO MAKE.

Q OKAY, BUT AND WHAT OTHER INFORMATION HAS BEEN TAKEN FROM THOSE PHONES COULD THAT INFORMATION, CAN THAT INFORMATION BE REMOVED FIRST OR BE DISCOVERED FIRST PRIOR TO TAKING FINGERPRINTS OR PERFORMING ANY OTHER EXAMINATION?

A NOT IF THEY AREN'T DOWNLOADED. I CAN'T WAIT PROPER CHANNELS TO HAVE CELL PHONES DOWNLOADED.

Q OKAY, AND, AND, OF COURSE, I THINK FROM YOUR PHOTOGRAPHS, AND AGAIN I'M REFERRING TO STATE'S EXHIBIT 14, HOW MANY ELECTRONIC DEVICES DO YOU SEE THERE ON THE GROUND?

A IT APPEARS TO BE TWO BUT I'M NOT EXACTLY SURE THAT IT IS ACTUALLY TWO, I THINK IT MAY BE THE BACK OF ONE CELL PHONE AND THE REMAINING PART OF A PHONE AND THE OTHER CELL PHONES MAY BE OUT OF SIGHT IN THAT PHOTOGRAPH. I THINK THAT'S ACTUALLY TWO PARTS OF THE SAME PHONE IS WHAT I'M, I GUESS IS WHAT I'M SAYING. I'M FAIRLY CERTAIN THE OTHER CELL PHONE IS OUT OF, OUTSIDE OF THE CAMERA.

Q OKAY, I'M HANDING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 15, IN THAT PHOTOGRAPH CAN YOU SEE AND, OF COURSE, YOU TELL ME WHETHER YOU CAN OR CANNOT ---

A THAT'S THE SAME PHOTOGRAPH, THAT'S JUST FROM A DIFFERENT ANGLE.

Q YEAH, YEAH, I UNDERSTAND THAT, I'M ASKING YOU IS, IS THAT DO YOU SEE WHAT ELECTRONIC DEVICES DO YOU SEE IN THAT PHOTOGRAPH OR DO YOU SEE ANY ELECTRONIC DEVICES?

A I SEE THE SAME TWO ITEMS BUT LIKE I SAID I'M NOT SURE THAT'S TWO DEVICES. I THINK THAT'S ONE CELL PHONE WITH THE BACK REMOVED OR THE BACK IS KNOCKED OFF OF

IT.

MR. BROOKER: IF YOU COULD INDULGE ME FOR JUST A SECOND.

THE WITNESS: (CONTINUING)

A THE OTHER CELL PHONE IS CLOSER TO THE OTHER CORNER OF THE HOUSE IN FRONT OF THE VEHICLE, THAT IS THE SAME CELL PHONE THERE. THAT WOULD BE MARKER NUMBER SIX THAT IS RIGHT IN FRONT OF THE STEPS AND THAT WOULD BE CORRECT. THERE ARE THREE CELL PHONES, THOSE ARE TWO CELL PHONES AND THERE WAS A THIRD CELL PHONE OVER IN FRONT OF THAT VEHICLE.

Q OKAY, NOW AND, AND, AND MY UNDERSTANDING IS, IS THAT NONE OF THOSE WERE PROCESSED, THEY WERE ASKED TO BE RETURNED BY THE MARION P.D.?

A THEY WERE RETURNED ON THE CHAIN OF CUSTODY.

Q WITHOUT BEING PROCESSED?

A YES, SIR.

Q OKAY, NOW THERE WAS ALSO AT LEAST, OF COURSE WE'RE STILL LOOKING AT STATE'S EXHIBIT 15 AND ALSO STATE'S EXHIBIT 14 AND 15, DOES THERE APPEAR SHOES OR SLIPPER THAT ARE ON THE GROUND?

A THERE ARE, A PAIR OF BEDROOM SLIPPERS.

Q OKAY, AND WERE THOSE COLLECTED AS WELL?

A THEY WERE COLLECTED.

Q OKAY, WHO WERE THE IDENTIFIED OWNER OF

THOSE SLIPPERS?

A I DON'T KNOW THAT THEY WERE IDENTIFIED.

Q YOU DON'T KNOW THAT THEY WERE IDENTIFIED?

A NO, SIR, I DO NOT.

Q WHAT WAS THE PURPOSE OF COLLECTING THEM?

A THE SAME AS WITH THE CELL PHONES, YOU CAN'T LEAVE THEM THERE IN THE CRIME SCENE; YOU DON'T KNOW WHAT EVIDENTIARY VALUE THEY MAY HOLD.

Q SO MY UNDERSTANDING IS, IS THAT WHAT YOU DO IS YOU COLLECT THINGS THAT YOU THINK THAT MIGHT, NOT NECESSARILY THAT THEY DO, BUT ANYTHING THAT IS AT THE SCENE THAT YOU BELIEVE, AND I'M SPEAKING IN GENERAL NOW, ANYTHING WHEN YOU GO ON A CRIME SCENE WHAT YOU DO IS, IS THAT YOU'RE TRYING TO COLLECT ANYTHING AT THAT CRIME SCENE THAT YOU THINK MIGHT PRODUCE SOME EVIDENCE TO HELP YOU SOLVE THAT PARTICULAR CRIME; IS THAT CORRECT?

A THAT IS CORRECT.

Q OKAY, OKAY, AND SO AT THE TIME IN WHICH YOU COLLECT, AT THE TIME IN WHICH YOU COLLECT THOSE CELL PHONES AND YOU ALSO COLLECT, I THINK, THOSE PAIR OF SHOES YOU COLLECT THEM BECAUSE YOU THOUGHT, NOT THAT THEY, THEY HAVE EVIDENTIARY VALUE, BUT THERE IS A PROBABILITY THAT THEY MAY POSSESS SOME EVIDENTIARY VALUE AND OBVIOUSLY YOU DON'T WANT TO LEAVE THEM AND LATER ON DISCOVER THAT THEY DID AND SO IS THAT THE REASON WHY YOU COLLECTED THEM BECAUSE THERE'S A

POSSIBILITY THEY COULD HAVE EVIDENTIARY VALUE, SOME SORT OF EVIDENTIARY VALUE?

A THAT IS CORRECT.

Q OKAY, AND WITH RESPECT TO THE SHOES WHAT SORT OF EVIDENTIARY VALUE COULD POTENTIALLY BE COLLECTED FROM THOSE SHOES?

A WELL THERE'S A THEORY CALLED LOCARD'S EXCHANGE PRINCIPLE WHICH STATES THAT EVERY TIME ANYONE ENTERS A CRIME SCENE THEY NOT ONLY LEAVE SOMETHING THERE BUT THEY TAKE SOMETHING AWAY SO IF I'VE GOT A PAIR OF SHOES IN THE MIDDLE OF A CRIME SCENE AND I DON'T HAVE A PERSON TO GO ALONG WITH THOSE SHOES THEN WHAT I WOULD TRY TO DO IS ESTABLISH SOME TYPE OF OWNERSHIP TO THOSE SHOES.

Q OKAY, NOW IS THERE A POSSIBILITY THAT, THAT, THAT DNA MIGHT BE OBTAINED IN THOSE SHOES LIKE HAIR FIBERS?

A OWNERSHIP THAT WOULD BE DNA AND IT WOULDN'T BE IN THE FORM OF HAIR, IT WOULD BE IN THE FORM OF CELLS OR SWEAT.

Q CELLS THAT WERE SHED?

A EXACTLY.

Q OKAY, BUT THAT, BUT OBVIOUSLY THAT PARTICULAR, THAT PARTICULAR, THOSE SHOES WERE NEVER EXAMINED FOR THAT PARTICULAR PURPOSE AND OBVIOUSLY THEY WERE NEVER IDENTIFIED OR THE OWNER OF THOSE SHOES WERE

NEVER IDENTIFIED?

A I CAN'T GIVE YOU THAT INFORMATION; I WAS CRIME SCENE AND LATENT FINGERPRINTS. I DON'T DO THE TESTING OF THE SHOES; I'M NOT PRIVY TO THAT INFORMATION.

Q I UNDERSTAND, OKAY, ALL RIGHT, NOW --

MR. BROOKER: IF YOU COULD INDULGE ME FOR JUST A SECOND.

MR. BROOKER: (CONTINUING)

Q WERE, WERE THERE CHAINS THAT WERE COLLECTED AT THE SCENE?

A YOU SPEAK OF JEWELRY?

Q JEWELRY?

A YES, SIR, THERE WERE.

Q OKAY, AND THERE WERE TWO CHAINS THAT WAS COLLECTED OR WAS IT ONE?

A ACCORDING TO THE REPORT TWO.

Q WERE THOSE COLLECTED FOR AGAIN FOR THE SAME PURPOSES THAT YOU THOUGHT THEY MIGHT CONTAINS SOME SORT OF EVIDENTIARY VALUE?

A YES, SIR.

Q WAS IT YOUR INTENTIONS TO PROCESS THOSE CHAINS TO SEE WHETHER OR NOT ANY EVIDENTIARY VALUE COULD BE OBTAINED FROM THOSE CHAINS?

A YES, SIR.

Q WERE THEY PROCESSED?

A THEY WERE NOT, THEY WERE RETAINED BY THE MARION P.D. FOR THE POSSIBILITY OF FUTURE TESTING IF NEED BE.

Q WERE THEY EVER TESTED TO YOUR KNOWLEDGE?

A NOT TO MY KNOWLEDGE, NO, SIR, I DON'T HAVE THAT INFORMATION.

Q WHAT ARE THE THINGS THAT MIGHT BE OBTAINED FROM THOSE CHAINS, TYPE OF EVIDENCE THAT COULD POSSIBLY BE OBTAINED FROM JEWELRY?

A THE SAME TESTING OF DNA OF ANY NATURE.

MR. BROOKER: NO FURTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: REDIRECT?

MR. DEBERRY: JUST VERY BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q MR. KENSY, DO YOU KNOW WHETHER OR NOT YOU KNOW THE ANSWER TO THIS QUESTION BUT DO YOU HAVE AN IDEA OF WHY MARION COUNTY OR MARION POLICE DEPARTMENT CALLED YOU AND REQUESTED THE ITEMS BACK UNTESTED?

A NO, SIR, I DO NOT BUT WE'RE AN ASSISTING AGENCY AND WE FOLLOW THE LEAD OF THE LEAD AGENCY.

MR. DEBERRY: OKAY, NO FURTHER QUESTIONS.

THE COURT: ANY RECROSS?

MR. BROOKER: NONE, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU, YOU MAY STEP DOWN.

A THANK YOU.

THE COURT: YA'LL COME ON UP HERE FOR A SECOND.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

MR. DEBERRY: THE STATE WOULD CALL LISA MCREYNOLDS.

LISA MCREYNOLDS

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q GOOD AFTERNOON, WOULD YOU, PLEASE, STATE YOUR NAME AND OCCUPATION FOR THE RECORD?

A MY NAME IS LISA MCREYNOLDS, I WORK AS A FORENSIC TECHNICIAN IN THE STATE POLICE DEPARTMENT.

Q OKAY, AND THAT'S AT SLED?

A YES, IT IS.

Q OKAY, AND AS A FORENSIC TECHNICIAN WHAT DOES YOUR JOB ENTAIL?

A I PICK UP EVIDENCE AND I PROCESS GUNSHOT RESIDUE KITS.

Q OKAY, WITH REGARDS TO REPORT L07-07104 I'M GOING TO HAND YOU A CHAIN OF CUSTODY AND AS FAR AS ITEMS

FIVE, SIX, AND SEVEN GO COULD YOU TELL US WHAT ROLE YOU HAD IN THEM?

A SURE, ON ITEM FIVE I PICKED UP THE EVIDENCE.

Q OKAY, COULD YOU TELL THE JURY WHAT ITEM FIVE IS?

A THIS IS A GSR KIT FROM RODNEY MCELVEEN.

Q MCELVEEN?

A MCELVEEN, OKAY, I PICKED UP EVIDENCE ---

THE COURT: HOLD ON ONE SECOND, IS THERE AN OBJECTION?

MR. BROOKER: NO OBJECTION, I JUST NEED TO SEE IT BECAUSE I DON'T KNOW IF I HAVE IT, IF I DO, SO I CAN IDENTIFY IT AS MY, IN MY DISCOVERY.

THE COURT: WHAT WOULD BE A GOOD IDEA IS TO HAND IT TO HIM EVERY TIME BEFORE YOU USE IT.

MR. DEBERRY: (CONTINUING)

Q NOW YOU SAID NUMBER, ITEM NUMBER FIVE IS A GUNSHOT RESIDUE KIT?

A YES, SIR.

Q OKAY, CAN YOU EXPLAIN TO THE JURY WHAT YOUR ROLE IS AS FAR AS YOU SAY YOU EXAMINE THEM?

A WELL I PROCESS THEM AND THEN I TURN THEM OVER TO THE ANALYST AND THEY ACTUALLY DO THE EXAMINATION.

Q OKAY, AND CAN YOU TELL US WHO, FROM WHO YOU

RECEIVED THAT KIT FROM?

A FROM ITEM NUMBER FIVE WAS KEN KENSY.

Q OKAY, SO HE WOULD HAVE DEPOSITED IT INTO YOUR POSSESSION?

A HE ACTUALLY BROUGHT IT TO ME.

Q OKAY, HE BROUGHT IT TO YOU, OKAY, AND THEN WHAT DID YOU DO WITH ITEM NUMBER FIVE?

A I PUT IT IN A LOCKED FILE CABINET UNTIL I'M READY AND THEN I PROCESS AND THEN I PUT IT BACK IN A LOCKED FILE CABINET AND TURN IT OVER TO THE ANALYST.

Q OKAY, AND WHO'S THE ANALYST?

A IN THIS CASE IT IS MICHAEL MOSKAL.

Q MICHAEL MOSKAL, AND WHAT IS HIS TITLE, IS HE FORENSIC --

A SCIENTIST.

Q FORENSIC SCIENTIST, OKAY, AND IS EVERY PART OF ITEM FIVE HAS DIFFERENT PARTS TO IT, CAN YOU EXPLAIN THOSE?

A YES, SIR, THERE IS FOUR DIFFERENT PARTS AND RIGHT PALM, THE RIGHT BACK, LEFT PALM, AND THE LEFT BACK OF THIS KIT.

Q OKAY, SO THERE'S FOUR TO EACH KIT?

A THERE'S FOUR ON THIS AND FOUR SLOTS.

Q OKAY, AND DID YOU, ARE YOU THE ONLY ONE BETWEEN KEN KENSY AND MICHAEL MOSKAL WHO HANDLED THAT

EVIDENCE?

A YES, SIR, I AM.

Q OKAY, AND ITEM NUMBER SIX, CAN YOU TELL THE JURY WHAT THAT IS?

A A GSR KIT FROM DOZIER AND I RECEIVED THAT ONE FROM KEN KENSY ALSO.

Q OKAY, THAT'S JOEMELLA DOZIER, AND ARE THERE FOUR PARTS TO ITEM NUMBER SIX AS WELL?

A YES, THERE ARE.

Q OKAY, AND ARE YOU THE ONLY ONE THAT HANDLED THAT EVIDENCE BETWEEN THE TIME THAT KEN KENSY BROUGHT IT TO YOU AND THAT MICHAEL MOSKAL EVALUATED IT?

A YES, SIR.

Q OKAY, AND ITEM NUMBER SEVEN?

A GSR KIT FROM BRANDON BELLAMY AND I GOT THAT FROM KEN KENSY ALSO.

Q OKAY, AND DOES ITEM NUMBER SEVEN ALSO HAVE THE TWO SLUGS AND THE TWO LIFTS?

A THERE'S ACTUALLY FOUR, YES, SIR.

Q OKAY, AND YOU TESTIFIED THAT YOU GOT THAT FROM MR. KEN KENSY?

A YES, SIR.

Q AND YOU GAVE THAT TO WHO?

A MICHAEL MOSKAL.

Q OKAY, AND YOU TESTIFIED THAT HE IS A

SCIENTIST THAT ACTUALLY PERFORMS THE ANALYSIS?

A YES, SIR.

Q OKAY, THAT'S ALL, THAT'S THE ONLY INVOLVEMENT YOU HAD IN THIS CASE?

A YES, WELL I RETURNED THE EVIDENCE ALSO.

MR. DEBERRY: OKAY, THANK YOU VERY MUCH, I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: MR. BROOKER?

MR. BROOKER: JUST VERY BRIEFLY.

CROSS EXAMINATION

BY MR. BROOKER:

Q MY UNDERSTANDING IS, IS THAT, IS THAT ITEM NUMBER FIVE, SIX, AND SEVEN YOU WERE SAYING THAT YOU RECEIVED THAT EVIDENCE FROM KENNY KENSY; IS THAT CORRECT?

A YES, SIR.

Q OKAY, AND CORRECT ME IF I'M WRONG, THIS IS A SITUATION WHERE HE COMES AND, OF COURSE, YOU AND HIM HAVE AT LEAST, YOU KNOW, AT LEAST PHYSICALLY SEE EACH OTHER AND, AND, AND YOU PHYSICALLY WATCH HIM DEPOSIT IT INTO THE EVIDENCE BOX?

A ACTUALLY HE BROUGHT IT STRAIGHT TO ME AND PUT IT IN MY HANDS.

Q OKAY, HE BROUGHT IT STRAIGHT TO YOU AND PUT IT IN YOUR HANDS AND NOT IN THE EVIDENCE BOX?

A YES, SIR.

Q OKAY, NOW YOU SAID FROM THERE THAT IT STAYS IN THE, STAYS IN YOUR BOX UNTIL YOU RETRIEVE IT?

A I PUT IT IN LOCKED CABINET UNTIL I'M READY TO PROCESS IT AND THEN ONCE I PROCESS IT I HAVE TO TAKE IT OUT TO PROCESS IT AND THEN I PUT IT BACK IN THE LOCKED CABINET AND TURN IT OVER TO THE ANALYST WHICH IN THIS INSTANCE IS MICHAEL MOSKAL.

Q OKAY, IS THIS A LOCKED CABINET IN YOUR OFFICE OR WHERE IS THE LOCKED CABINET AT?

A IT'S WITHIN OUR OFFICE, IT'S IN A ROOM BY ITSELF.

Q OKAY, WHAT IS THAT ROOM USED FOR?

A FOR STORING THE EVIDENCE AND FOR, THEY DO A LOT OF COLLECTION OF DIFFERENT TYPES OF THINGS THAT ARE EVIDENCED IN CASES.

Q OKAY, SO THAT WOULD BE A PLACE THAT YA'LL STORE, STORE DIFFERENT EVIDENCE THAT YOU, STORE EVIDENCE, IS IT USED JUST STRICTLY FOR THE PURPOSE OF STORING EVIDENCE OR IS IT USED FOR ANYTHING ELSE?

A WE DO HAVE A COUPLE OF TABLES IN THERE; THEY DO ANALYZE DIFFERENT, MY DEPARTMENT DOES DIFFERENT THINGS. THEY DO ANALYZE OTHER THINGS AND THEN IN THE VERY BACK IS, THAT'S WHERE I PROCESS THE GUNSHOT RESIDUE KITS AND THAT'S THE ONLY THING DONE BACK THERE.

Q OKAY, YOU SAID OTHER PEOPLE PROCESS THINGS IN

THERE, THESE ARE OTHER TECHNICIANS IN YOUR LAB?

A NO, JUST A FORENSIC SCIENTIST.

Q JUST FORENSIC SCIENTIST?

A YES, SIR.

Q OKAY, THE CABINET THAT YOU'RE TALKING ABOUT IS THAT, FIRST OF ALL WHO HAS ACCESS TO THE ROOM?

A THE EMPLOYEES OF THE TRACE DEPARTMENT.

Q OKAY, AND I KNOW YOU DON'T KNOW EXACTLY, ROUGHLY ABOUT HOW MANY WOULD THAT BE?

A THERE'S EIGHT OF US.

Q ABOUT EIGHT OF YOU, OKAY, OKAY, NOW WHO HAS ACCESS TO THE CABINET?

A IT WOULD BE MYSELF AND THE ANALYST, WHICHEVER ANALYST. WE'VE GOT SEVERAL CABINETS SO IT WOULD BE THE ANALYST WITH KEYS TO A SET OF CABINETS.

Q OKAY, EACH ANALYST IS, IS ASSIGNED A CABINET?

A RIGHT.

Q AND, OF COURSE, YOU WOULD GO AND PUT THAT IN THE CABINET BELONGING TO THE ANALYST THAT, THAT IS, THAT'S GOING, GOING TO EXAMINE THAT, THAT PIECE OF EVIDENCE?

A THAT'S CORRECT.

Q AND, OF COURSE, THE ONLY PERSONS THAT WOULD HAVE THAT, WOULD HAVE A KEY TO THAT CABINET WOULD BE YOURSELF AND WOULD BE THE ANALYST, WOULD ANYONE ELSE HAVE ACCESS TO THAT, THAT CABINET?

A MY SUPERVISOR.

Q YOUR SUPERVISOR WOULD HAVE ACCESS TO THE CABINET AS WELL?

A YES.

Q SO THAT WOULD BE THREE KEYS MY UNDERSTANDING IS THAT IT WOULD BE YOURSELF, YOUR SUPERVISOR, AND THEN, OF COURSE, THE, THE ANALYST WHO'S GOING TO ANALYZE THE EVIDENCE?

A THAT'S CORRECT.

Q OKAY, NOW THAT CABINET THAT BELONGS TO THAT ANALYST, THAT ANALYST HE KEEPS ALL OF THE, ALL OF THE, THE EVIDENCE THAT HE'S GOING TO ANALYZE DID HE KEEP IT IN THAT ONE CABINET?

A AS FAR AS I KNOW, YES, I KNOW THE GSR KITS ARE THERE.

Q OKAY, SO, SO BASICALLY ---

A THERE'S DIFFERENT DRAWERS.

Q OKAY, THERE'S DIFFERENT SHELVES?

A IT'S LIKE A FILE CABINET, THERE'S DIFFERENT DRAWERS AND ALL OF THE GSR KITS ARE IN ONE DRAWER.

Q OKAY, OKAY, OKAY, AND SO, SO HE KEEPS, SO WHATEVER EVIDENCE THAT HE HAS TO ANALYZE HE WOULD COME AND HE WOULD TAKE IT OUT OF THERE?

A YES, SIR.

Q OKAY, SO HE JUST WOULDN'T COME AND TAKE THE EVIDENCE OUT, TAKE THE EVIDENCE OUT, TAKE THE GS KIT THAT

WE'RE REFERRING TO, REFERRING TO HERE TODAY THAT WOULDN'T BE THE ONLY EVIDENCE THAT'S CONTAINED WITHIN THAT, WITHIN THAT, THAT CABINET?

A NO, SIR.

Q SO HE WOULD GO BACK AND FORTH IN THERE I GUESS, YOU KNOW, EXAMINING STUFF OTHER THAN THE, THE, OTHER THAN THE KIT THAT WE'RE TALKING ABOUT, THE GUN, THE GUN POWDER RESIDUE KIT THAT WE'RE TALKING ABOUT, HE'D BE GOING BACK AND FORTH IN THAT CABINET TO REMOVE THINGS THAT HE'S EXAMINING AT THAT PARTICULAR PERIOD OF TIME?

A RIGHT.

Q AND THEN, OF COURSE, HE WOULD REMOVE AT LEAST THE, THE, HE'D REMOVE THE GSR KIT THAT WE'RE REFERRING TO, FIVE, SIX, AND SEVEN, WHEN HE IS READY TO EXAMINE THEM?

A THAT'S CORRECT.

Q OKAY, WHAT'S THE POLICY AND PROCEDURE, DO YA'LL HAVE A WRITTEN POLICY AND PROCEDURE AS FAR AS, AND I KNOW YOU SAID THREE PERSONS HAVE ACCESS TO THAT CABINET, DO YA'LL HAVE A WRITTEN POLICY AND PROCEDURE AS TO HOW THAT DONE, DO YOU HAVE A SHEET WHERE YOU SIGN IN AND SIGN OUT EVERY TIME YOU ACCESS THE CABINET?

A WE DO NOT HAVE A SIGN IN AND OUT.

Q OKAY ---

A BECAUSE IT'S ONLY ACCESSED WITH THE TRACE DEPARTMENT EMPLOYEES.

Q TRACE DEPARTMENT EMPLOYEE AND ---

A THE ROOM.

Q OKAY, OKAY, AND SO AT LEAST FOR, FOR, FOR THE CABINET THAT THIS WAS CONTAINED IN AND THAT'S WHAT I'M NARROWING IT DOWN TO IS, IS IT THERE ARE LOGS SHOWING WHO GOES IN AND OUT OF THE CABINET, THE CABINET THAT, THAT THIS, THIS KIT WAS, WAS PLACED IN?

A JUST SOMEBODY THAT HAD A KEY.

Q OKAY, AND SO, SO IF, IF YOUR SUPERVISOR HAD WENT IN THERE AFTER YOU HAD PUT THE KIT IN THERE THERE WOULD NOT BE A LOG WHERE WHEN YOU COME BACK AND TAKE A LOOK AT IT YOU WOULD SEE THAT YOUR SUPERVISOR HAD ACCESSED THE CABINET?

A CORRECT.

Q OKAY, SO YOU WOULDN'T KNOW WHETHER OR NOT YOUR SUPERVISOR ACCESSED THE CABINET?

A THAT'S RIGHT.

Q YOU WOULDN'T KNOW WHETHER OR NOT ANYONE ELSE HAD ACCESSED THE CABINET?

A ONCE I PUT THE SAMPLES IN THE CABINET, THE GSR KITS IN THE CABINET I DON'T GO BACK IN THE CABINET.

Q OKAY, SO GENERALLY THE PERSON WOULD TAKE IT OUT THEN WOULD BE THE SCIENTIST?

A THAT'S CORRECT.

Q OKAY, NOW ONCE HE TAKE IT OUT, JUST FOR THE RECORD, DO YOU HAVE ANY KNOWLEDGE OF WHAT HAPPENS TO IT FROM

THAT POINT ON AND WHAT HANDS IT'S HANDLED IN FROM THAT POINT ON ONCE HE TAKES IT OUT?

A I KNOW THAT HE PUTS IT ON THE INSTRUMENT AND THEN IT RUNS FOR SO MANY HOURS OR DAY MAYBE AND THEN HE GETS THE RESULTS OFF AND THEN HE DETERMINES WHAT TO DO NEXT.

Q OKAY, HE PUTS IT ON AN INSTRUMENT AND IT RUNS FOR YOU SAID HOURS OR A DAY?

A USUALLY IT'S OVERNIGHT.

Q OKAY, AND, AND USUALLY ANY OF THOSE EIGHT PERSONS WOULD HAVE ACCESS TO, ACCESS TO IT WHEN IT'S OUT AND RUNNING?

A YES, SIR.

Q OKAY, SO ANY OF THOSE EIGHT EMPLOYEES THAT HAVE ACCESS TO THAT ROOM WOULD THEN HAVE ACCESS TO THAT, TO THAT SAMPLE THAT'S BEING EXAMINED ONCE IT'S OUT AND BEING STUDIED IF IT HAS TO SIT THERE OVERNIGHT OR SOMETHING?

A YES, SIR.

Q SO, SO, THEN ONE MORE QUESTION, BASED UPON WHAT YOU JUST DESCRIBED TO ME IS, IS THAT WHAT YOU JUST DESCRIBED TO ME OF WHAT THE, YOU KNOW, I GUESS THE PATTERN OF PRACTICE IS THERE IS, IS THAT THERE IS NO WAY THAT YOU COULD SAY FOR CERTAIN WHO HAD ACCESS TO THOSE GS KITS AND WHO DID NOT FOR CERTAIN ONCE ---

A IF THEY'RE IN THE FILE CABINET IT HAS TO BE ONE OF THE THREE THAT HAVE THE KEY.

Q AND THEN WHEN IT'S OUT BEING EXAMINED OVERNIGHT IT WOULD HAVE TO BE ONE OF THE EIGHT?

A THAT'S CORRECT.

Q OKAY, AND YOU WOULDN'T KNOW IF ANY OF THEM DID ACCESS THAT CABINST?

A I WOULD NOT.

MR. BROOKER: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: SOLICITOR?

MR. DEBERRY: NO, REDIRECT, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN, THANK YOU.

MR. DEBERRY: MAY SHE BE RELEASED FROM HER SUBPOENA?

THE COURT: ANY OBJECTIONS?

MR. BROOKER: I DON'T HAVE ANY OBJECTIONS, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS.

MR. DEBERRY: YOUR HONOR, THE STATE WOULD CALL MICHAEL MOSKAL.

MICHAEL MOSKAL

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MR. MOSKAL, COULD YOU JUST STATE YOUR NAME FOR THE RECORD?

A YES, SIR, MICHAEL MOSKAL, M-O-S-K-A-L.

Q AND HOW ARE YOU EMPLOYED?

A I'M CURRENTLY EMPLOYED BY SOUTH CAROLINA LAW ENFORCEMENT DIVISION WHICH IS COMMONLY KNOWN AS SLED.

Q OKAY, AND WITHIN THAT CAPACITY WHAT IS YOUR JOB DESCRIPTION AND WHAT ARE YOU QUALIFIED AS?

A I AM ASSIGNED TO THE SCIENTIFIC TRACE EVIDENCE DEPARTMENT AND CURRENTLY I, EXCUSE ME, I AM QUALIFIED TO ACCEPT AND ANALYZE GUNSHOT RESIDUE CASES, BULLET HOLE DETERMINATION CASES, ARSON, PAINT, AND I AM TRAINING IN FOR OTHER ANALYSIS.

Q OKAY, AS FAR AS, CAN YOU EXPLAIN TO THE JURY WHAT GUNSHOT RESIDUE IS?

A YES, SIR, GUNSHOT RESIDUE IS EVERYTHING THAT COMES OUT OF THE OPENING WHEN A WEAPON IS FIRED. THE MAJORITY OF IT COMES OUT THE MUZZLE END OR THE END OF THE HOLE THAT THE BULLET COMES IT BUT YOU CAN ALSO GET SOME TO COME OUT THE CYLINDER GAP OR FROM THE EJECTING PORT IN A SEMI-AUTOMATIC. GUNSHOT RESIDUE CONTAINS SOME GUN POWDER PARTICLES THAT HAVE BEEN BURNED. SOME THAT HAVE NOT BEEN BURNED. IT CONTAINS PIECES OF LEAD THAT MAY HAVE BEEN LEFT OVER IN THE BARREL OF THAT WEAPON AND IT ALSO WHAT WE LOOK FOR OR, ARE PIECES THAT COME OUT OF THE FIRING PEN. THE FIRING PEN IS COMPOSED OF THREE ELEMENTS, LEAD, BARIUM, AND ANTIMONY AND THOSE ARE SPECIFICALLY WHAT WE LOOK FOR WHEN WE ANALYZE GUNSHOT RESIDUE.

Q ALL RIGHT, AND YOU SAID THAT YOU HAVE TRAINING IN THAT AREA?

A YES, SIR, WHEN I WAS HIRED ON AT SLED I WORKED WITH A QUALIFIED ANALYST IN GUNSHOT RESIDUE FOR SIX MONTHS, WORKING WITH THEM, RUNNING CASE WORK THAT THEY HAD TO COME IN. I READ LITERATURE; I READ BOOKS, READ INSTRUMENTATION, TOOK CASES TO ANALYZE FOR SIX MONTHS WHICH ADDED UP TO ABOUT THREE HUNDRED CASES. AT THE END OF THAT SIX MONTHS PERIOD I WAS GIVEN A MOCK, MOCK CASE, WHERE I TOOK A GUNSHOT RESIDUE CASE THAT CAME IN JUST LIKE IT WOULD COME IN AND I TOOK IT INTO MY CUSTODY, WORKED IT UP, PRESENTED IT TO THE DEPARTMENT, AND HAD TO SUPPORT MY DATA AND MY FINDINGS AND AT THE END OF COMPLETION OF THAT I WAS QUALIFIED AS A GUNSHOT RESIDUE ANALYST.

Q AND HOW MANY TIMES HAVE YOU TESTIFIED IN COURT TO THE ANALYSIS OF GUNSHOT RESIDUE?

A THIRTEEN TIMES.

Q OKAY, AND PREVIOUSLY HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THIS AREA?

A YES, SIR, I HAVE.

MR. DEBERRY: OKAY, YOUR HONOR, AT THIS TIME WE'D LIKE THE COURT TO FIND MR. MOSKAL AS AN EXPERT IN FORENSIC SCIENCE AS IT RELATES TO GUNSHOT RESIDUE.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, SO QUALIFIED.

MR. DEBERRY: (CONTINUING)

Q MR. MOSKAL, BACK IN 2007 DID YOU HAVE AN OCCASION TO WORK ON LAB NUMBER L07-07104?

A YES, SIR, I DID.

Q OKAY, WHO DID YOU, AND WHAT, AS FAR AS THE GUNSHOT RESIDUE ANALYSIS WHAT ALL DID THAT PERTAIN TO, I MEAN HOW MANY KITS WERE THERE?

A MAY I REFER TO MY REPORT?

Q SURE?

A THIS CASE HAD THREE GUNSHOT RESIDUE CASES.

Q OKAY, AND DID YOU TEST ALL THREE OF THOSE AT THE SAME TIME OR WOULD THEY HAVE BEEN SEPARATE?

A MAY I REFER TO THE NOTES?

Q SURE?

A I BELIEVE IT WAS, JUST DOUBLE CHECK ON THAT, YES, SIR, THEY WERE ALL TESTED AT THE SAME TIME.

Q OKAY, AND CAN YOU EXPLAIN TO THE JURY WHAT THIS PACKAGE IS?

A YES, SIR, IS THERE ANOTHER OUTER CONTAINER THAT THESE WERE IN?

Q YES, SIR?

A WHAT I WAS LOOKING AT TO START WITH IS WHEN EVIDENCE COMES INTO THE OFFICE IT'S ALL GIVEN A MARKER WITH THE LAB NUMBER WHICH CORRESPONDS TO THE REPORT I ISSUE. WHEN

I FINISH WITH IT I SEAL AND INITIAL THE OUTSIDE OF THE ENVELOPE AND SO I WAS LOOKING AT IT TO MAKE SURE THAT THIS HAD MY INITIALS ON IT, THE LAB NUMBER ON THE FRONT CORRESPOND WITH THIS CASE AND THE SAME THING WAS TRUE WITH EACH ONE OF THESE.

THESE ARE THE THREE GUNSHOT RESIDUE CASES FOR THE THREE GUNSHOT RESIDUE KITS THAT WERE SUBMITTED. THEY WERE ALL SUBMITTED INSIDE THIS ENVELOPE AND THEY WERE SEALED WHEN THEY CAME IN, SEALED AND INITIALED, AND THEN THEY WERE OPENED UP TO BE ANALYZED.

Q OKAY, WHO DID YOU RECEIVE THOSE FROM?

A I RECEIVED THESE FROM LISA MCREYNOLDS OUR TECHNICIAN IN THE TRACE EVIDENCE DEPARTMENT.

Q OKAY, CAN YOU EXPLAIN A LITTLE BIT ABOUT THE TRANSFER BETWEEN MS. MCREYNOLDS AND YOURSELF AS FAR AS EVIDENCE IS CONCERNED?

A YES, SIR, GENERALLY LISA IS GOING TO EITHER RECEIVE EVIDENCE FROM THE EVIDENCE CUSTODIANS AT SLED RELATING TO IT OR MOST CASES PICK EVIDENCE UP AND LOG IT IN AND ASSIGN IT A CASE NUMBER. SOMETIMES THE SLED AGENT WILL DIRECTLY TRANSFER THAT EVIDENCE TO LISA MCREYNOLDS. IN EITHER CASE SHE RECEIVES THE EVIDENCE FROM EITHER EVIDENCE LOG IN OR FROM THE AGENT. SHE PUTS IT INTO HER CUSTODY. SHE WILL CHECK TO MAKE CERTAIN THAT EVERYTHING IS SEALED AND INITIAL THAT IT'S SUPPOSED TO BE, THEN SHE PROCESSES THE

GUNSHOT RESIDUE KIT AND DOES A LITTLE BIT OF PREPARATORY WORK ON IT BEFORE PASSING IT ONTO ME. SHE GETS IT READY FOR THE INSTRUMENTATION THAT WE USE TO ANALYZE FOR GUNSHOT RESIDUE AND ONCE IT IS PREPARED SHE TRANSFERS THE EVIDENCE TO ME.

Q OKAY, IS THAT TRANSFER SECURE IN YOUR MIND?

A YES, SIR, THAT TRANSFER IS SECURE. WE HAVE A ROOM WHERE SHE PREPARES THE GUNSHOT RESIDUE CASES. WHEN SHE IS THROUGH WITH IT AND BEFORE SHE TRANSFERS IT TO ME IT GOES INTO A FILE. IT GOES INTO A DRAWER IN A FILE CABINET; THAT ROOM ITSELF IS SECURE. NOW IT'S LOCKED AT NIGHT. ANY TIME ANY OF THE ANALYSTS ASSIGNED TO THE DEPARTMENT ARE OUT THE ROOM IS SHUT SO THAT NOBODY HAS ACCESS TO IT WITHOUT US BEING THERE SO, YES, SIR, THOSE ITEMS ARE VERY SECURE WHEN THEY'RE INSIDE THAT ROOM.

Q OKAY, HOW ABOUT DURING THE ACTUAL ANALYSIS ITSELF, ARE THE KITS SECURE AT THAT TIME?

A DURING THE ANALYSIS ITSELF, YES, SIR.

Q CAN YOU EXPLAIN TO THE JURY HOW LONG THAT MIGHT TAKE AND WHAT KIND OF PROCESS THAT IS?

A OKAY, THE ACTUAL ANALYSIS OF THIS WE POUR A PORTION OF THE GUNSHOT RESIDUE KIT OUT. IT HAS COTTON SWABS ON IT. WE ADD A LITTLE BIT OF NITRIC ACID TO IT, PUT IT INTO A TEST TUBE AND IT GOES ONTO AN INSTRUMENT WHICH IS ALSO IN A SECURE ROOM. THE ANALYST IN THE LAB ARE THE ONLY ONES WHO HAVE KEYS TO THAT ROOM, SO WHILE IT'S BEING ANALYZED IT IS ON

THE INSTRUMENT AND THE INSTRUMENT IS IN A SECURE ROOM AS WELL. THAT TYPICALLY CAN TAKE ANYWHERE FROM A THREE HOUR PERIOD ON THE INSTRUMENT TO UP TO ABOUT A 12 OR 13 HOUR TIME PERIOD BECAUSE WE DON'T RUN JUST ONE KIT OR ONE CASE BY ITSELF; WE DO UPWARDS TO TWENTY OR THIRTY GSR KITS AT A TIME SO IT CAN TAKE A WHILE.

Q ALL RIGHT, AND IS THERE ANY DANGER OF THE KITS GETTING MIXED UP OR CASES GETTING MIXED UP?

A NO, SIR, THERE IS NOT. IN THE ACTUAL PREPARATORY PORTION OF THIS WE DON'T OPEN UP BUT A SIMPLE KIT AT A TIME. ONE KIT IS OPENED UP, THE TRANSFERS ARE NECESSARY FOR THE AREAS OF THE HANDS TO BE WORKED ON OR TAKEN OUT ONE AT A TIME. WHEN IT GOES FROM THIS TO THE, TO THE TEST TUBES THAT WE USE ON THE INSTRUMENTATION EVERYTHING IS NUMBERED PRIOR TO MOVING ANYTHING FROM ONE AREA TO ANOTHER AND SO THE NUMBERS ARE RECORDED AND IT'S A VERY INVOLVED PROCESS.

Q OKAY, AND IN THIS CASE COULD YOU TELL THE JURY WHO THE THREE INDIVIDUALS WERE THAT WERE TESTED FOR GUNSHOT RESIDUE?

A YES, SIR, THESE THREE WERE FROM RODNEY DESHON MCELVEEN, JOEMELLER CHRISSHERREA WILSON-DOZIER, AND BRANDON DESHON BELLAMY.

Q OKAY, AND THOSE ARE THE THREE THAT YOU PERFORMED THE KITS ON?

A YES, SIR.

Q NOW CAN YOU TELL, TELL THE JURY WHAT THE RESULTS OF YOUR TESTS WERE?

A YES, WHEN WE ANALYZE A KIT THE KIT COLLECTS AREAS, FOUR AREAS OF THE PERSONS HANDS. THEY TEST THE RIGHT PALM, THE RIGHT BACK, THE LEFT PALM AND THE LEFT BACK, AND SO WHEN WE SEND OUT A REPORT WE SEND OUT A REPORT REFLECTING WHAT WE FOUND ON EACH ONE OF THOSE AREAS, AND FOR THESE THREE KITS THE FOUR AREAS ON EACH ONE OF THOSE THREE KITS THE QUANTITY OF METALS DETECTED DID NOT INDICATE THE PRESENCE OF GUNSHOT RESIDUE.

Q OKAY, SO THERE WAS NO INDICATION THAT THESE THREE INDIVIDUALS FIRED A WEAPON?

A NO, SIR, WHAT WE FOUND WAS NONEXISTENT WITH GUNSHOT RESIDUE.

Q OKAY, IF I CAN GET YOU TO TAKE A LOOK AT THIS REPORT TO SEE IF THAT IS YOUR REPORT?

A YES, SIR, THIS APPEARS TO BE A COPY OF MY REPORT.

MR. DEBERRY: OKAY, YOUR HONOR, AT THIS TIME THE STATE WOULD LIKE TO INTRODUCE THIS REPORT INTO EVIDENCE.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTIONS, YOUR HONOR.

THE COURT: WHAT NUMBER WOULD THAT BE?

MADAM COURT REPORTER: 23.

THE COURT: STATE'S NUMBER 23 INTO EVIDENCE

WITHOUT OBJECTION.

(WHEREUPON, STATE'S EXHIBIT NUMBER 23 ENTERED INTO EVIDENCE.)

MR. DEBERRY: (CONTINUING)

Q NOW, MR. MOSKAL, AFTER ANALYSIS IS THE CHAIN OF CUSTODY IT'S STILL MAINTAINED BY SLED?

A YES, SIR, IT'S STILL MAINTAINED. WHEN I, WHEN I COMPLETE MY ANALYSIS I TAKE THE INDIVIDUAL GSR KITS, I SEAL THEM UP. I PLACE THEM BACK INTO THE CONTAINER THAT IT CAME IN ALONG WITH THIS CASE NUMBER THAT HAS TO BE PLACED INTO A LARGER CONTAINER ITEM, INTO A LARGER CONTAINER, THIS ONE GOES BACK INTO THE ORIGINAL ONE THEN I TRANSFER THAT BACK TO LISA MCREYNOLDS WHO THEN TRANSFERS IT TO THE LOG IN OR TO THE AGENT.

MR. BROOKER: OBJECTION, YOUR HONOR, OBJECTION WITH RESPECT, WITH RESPECT TO WHAT SHE MAY HAVE DONE WITH IT AFTER HE RETURNED IT TO HER AND OBVIOUSLY IS, IS THAT'S ASSUMING FACTS THAT'S NOT IN EVIDENCE. SHE WAS PRESENT HERE AND WAS ABLE TO TESTIFY TO THAT HERSELF IF THAT QUESTION WAS ASKED.

THE COURT: ANY RESPONSE?

MR. DEBERRY: YOUR HONOR, IT'S JUST A QUESTION OF PROCEDURE.

THE COURT: I'M GOING TO OVERRULE THAT, CONTINUE.

MR. DEBERRY: ALL RIGHT, THANK YOU VERY MUCH FOR

COMING HERE TODAY AND I APPRECIATE YOUR HELP. ANSWER ANY QUESTIONS MR. BROOKER HAS.

THE COURT: CROSS?

MR. BROOKER: AND I'LL TRY TO BE BRIEF, YOUR HONOR.

CROSS EXAMINATION

BY MR. BROOKER:

Q MR. MOSKAL, I THINK YOU SAID THAT NORMALLY WHAT HAPPENS IS, IS THAT WHEN LISA MCREYNOLDS RECEIVED THE EVIDENCE DOES SHE TAKE IT DIRECTLY TO YOU OR DOES SHE PUT IT IN SOME SORT OF EVIDENCE LOCKER FOR YOU?

A SHE DOES SOME PROCESSING ON IT AND THEN PUTS INTO AN EVIDENCE LOCKER FOR ME, YES, SIR.

Q OKAY, AND, OF COURSE, THAT EVIDENCE LOCKER IS SPECIFICALLY YOUR EVIDENCE LOCKER?

A YES, SIR.

Q OKAY, OKAY, AND WHO HAS ACCESS TO THAT EVIDENCE LOCKER, HOW MANY PEOPLE DO?

A THE, THE AGENTS IN OUR DEPARTMENT, THE TECHNICIAN AND THE ANALYST THAT WE HAVE.

Q NINE PEOPLE HAVE ACCESS TO YOUR, TO THE LOCKER?

A YES, SIR.

Q OKAY, AND THAT'S, THAT'S A LOCKER THAT'S IDENTIFIED FOR YOURSELF?

A YES, SIR.

Q OKAY, SO NINE PEOPLE HAVE ACCESS TO THAT LOCKER, SO WHEN SHE PUTS IT IN THAT LOCKER, OF COURSE, DO YOU HAVE YOUR CHAIN OF CUSTODY REPORT WITH YOU?

A YES, SIR, I DO.

Q OKAY, WHEN SHE PUT IT IN THAT LOCKER, OF COURSE, WHAT DAY DID SHE PUT IT IN THAT LOCKER, TO YOUR UNDERSTANDING AND, OF COURSE, AGAIN I'M TALKING ABOUT THE, THE GS, GSR KITS FIVE, SIX, AND SEVEN?

A ACCORDING TO THE CHAIN SHE TOOK THAT INTO HER EVIDENCE, INTO HER CUSTODY ON 5-24-07 AND SO SHE WOULD HAVE PUT IT INTO MY LOCKER AROUND THAT TIME, YES, SIR.

Q AROUND THAT TIME, AND, OF COURSE, WHAT TIME DID YOU RETRIEVE IT FROM THE LOCKER?

A PHYSICALLY I WOULD HAVE RETRIEVED THIS AND I KNOW THIS FROM LOOKING AT THE DATA THAT I HAVE IN MY CASE JACKET AND NOT THE CHAIN OF CUSTODY, THE CHAIN OF CUSTODY IS AN ELECTRONIC CHAIN OF CUSTODY, THE ACTUAL PHYSICAL CHAIN OF CUSTODY HERE ACCORDING TO MY DOCUMENTATION THE ITEMS WOULD HAVE BEEN IN MY CUSTODY ON 5-31-07.

Q OKAY, SO, SO THE, SO THE SLED CHAIN OF CUSTODY REPORT AT LEAST THAT WE'RE REFERRING TO WHICH SAYS THAT, THAT, THAT THAT CAME INTO CUSTODY ON 6-6-07, THAT WOULD NOT BE ACCURATE, THAT'S NOT WHEN IT CAME INTO YOUR CUSTODY?

A THAT IS NOT WHEN THE PHYSICAL EVIDENCE CAME

INTO MY CUSTODY, NO, SIR.

Q OKAY, SO THAT 6-6-07 DATE WHAT DATE WOULD THAT REFLECT THAT'S CONTAINED IN THE CHAIN OF CUSTODY REPORT FROM SLED?

A WHEN LISA MCREYNOLDS PROCESSES THESE GSR KITS AND I TAKE THEM INTO MY CUSTODY IT'S OFTENTIMES 10, 15, 20 DIFFERENT CASES TOGETHER. THEY'RE ALL IN THIS FILE CABINET AND I SCAN THROUGH THEM. OCCASIONALLY ONE OF THEM GETS OVERLOOKED DURING ACTUAL ELECTRONIC TRANSFER CHAIN OF CUSTODY AND THEN WHEN I GO TO TAKE THESE ITEMS AND TO RETURN THEM TO LISA MCREYNOLDS FOR HER TO TRANSFER THEM BACK TO LOG IN IF IT IS NOT ELECTRONIC SHOWN INTO MY CHAIN OF CUSTODY SHE RECOGNIZES IT AT THAT POINT AND AT THAT POINT I WILL TAKE IT INTO MY CUSTODY AND TRANSFER IT TO HER. IN THIS CASE THAT'S WHAT HAS HAPPENED HERE.

Q OKAY, SO THE ACTUAL, THE DATE OF TRANSFER THAT'S CONTAINED IN SLED'S CHAIN OF CUSTODY REPORT, THIS PRINTOUT, IS NOT THE ACCURATE ACTUAL DATE OF TRANSFER WHEN YOU REMOVED IT FROM THE EVIDENCE LOCKER?

A FOR MY PORTION, YES, SIR.

Q FOR YOUR PORTION, OKAY, NOW SO THIS CHAIN OF CUSTODY REPORT IS WHAT YOU'RE TELLING ME IS, IS THAT IT'S NOT ALWAYS ACCURATE, AT LEAST THE DATES THAT ARE CONTAINED ON HERE?

A THERE ARE SOME GLITCHES ON IT, YES, SIR.

Q THERE ARE SOME GLITCHES, OKAY, NOW YOU SAID THAT, THAT THAT EVIDENCE LOCKER THAT'S IDENTIFIED TO YOU, THAT'S IDENTIFIED AS YOUR EVIDENCE LOCKER YOU SAID THAT THERE WAS HOW MANY EIGHT OR NINE PEOPLE THAT HAD ACCESS TO THAT?

A NINE PEOPLE, YES, SIR.

Q THAT, THAT EVIDENCE LOCKER, OKAY, AND WHEN THOSE NINE PEOPLE HAVE ACCESS TO THAT EVIDENCE LOCKER IS THERE A LOG WHEN THEY HAVE TO, THEY HAVE TO SIGN EVERY TIME THAT THEY GO INTO THAT EVIDENCE LOCKER AND REMOVE THINGS AND THEN, AND THEN SIGN?

A THERE IS A LOG THAT IF ANYBODY OUTSIDE OF THOSE NINE PEOPLE, PEOPLE ASSIGNED TO OUR DEPARTMENT IF THEY GO INTO THAT ROOM THERE'S A LOG THAT ANYBODY ELSE HAS TO SIGN, YES, SIR. THE, THE AGENTS ASSIGNED AND THE TECHNICIAN ASSIGNED TO OUR DEPARTMENT, NO, SIR, THEY DO NOT HAVE TO SIGN AS THEY COME IN AND OUT OF THAT ROOM.

Q OKAY, SO FROM THE TIME IN WHICH, IN WHICH LISA PLACED, PLACES IT INTO THE LOCKER AND THEN, OF COURSE, LET'S SAY FOR EXAMPLE IF LISA PLACED IT INTO THE LOCKER ON DAY ONE AND THEN ON, ON, ON DAY SIX YOU COME AND GET IT AT THE TIME BETWEEN DAY ONE AND DAY SIX ANYONE THAT'S WITHIN THAT DEPARTMENT, THAT WORKS WITHIN THAT DEPARTMENT COULD HAVE ACCESSED IT DURING THOSE SIX DAYS?

A YES, SIR.

Q OKAY, AND, AND, OF COURSE, YOU WOULD NOT KNOW

ABOUT IT UNLESS, UNLESS YOU HAD A CONVERSATION WITH ONE OF THOSE PERSONS AND THEY EITHER TOLD YOU, THEY EITHER TOLD YOU THAT THEY ACCESSED THAT PARTICULAR KIT OR NOT; IS THAT CORRECT?

A THAT IS CORRECT.

Q OKAY, CAN YOU TELL US FROM THE TIME IN WHICH LISA REYNOLDS LOOKED THESE GSR KITS IDENTIFIED AS FIVE, SIX, AND SEVEN AT THE TIME IN WHICH SHE, SHE PLACED IT INTO YOUR EVIDENCE LOCKER ON LOOKS LIKE MAY 24 OF 2007, AND WHEN YOU RETRIEVED IT, I THINK YOU SAID ON MAY 31ST; IS THAT CORRECT?

A YES, SIR.

Q OF 2007, WHICH IS ROUGHLY SIX TO SEVEN DAYS, YOU CAN'T TELL US WHETHER OR NOT ANY OF THE OTHER SEVEN OR EIGHT PEOPLE THAT'S WITHIN YOUR DEPARTMENT ACCESSED THOSE GS KITS OR NOT?

A NO, SIR, I CAN'T, BUT OUTSIDE OF LISA MCREYNOLDS THE OTHER EIGHT OR THE OTHER SEVEN ANALYSTS ARE ALL SWORN LAW ENFORCEMENT OFFICERS.

Q I UNDERSTAND THAT, BUT CAN YOU TELL ME WHETHER OR NOT THEY ACCESSED THOSE KITS?

A NO, SIR.

Q BETWEEN THAT PERIOD OF TIME?

A NO, I CANNOT.

Q IF THEY HAVE ACCESSED THOSE KITS THEN, OF COURSE, THERE IS NO PROCEDURE THAT'S PUT IN PLACE BY SLED

THAT WOULD LET YOU KNOW OR LET SOMEONE ELSE KNOW THAT KIT HAD BEEN ACCESSED, YOU KNOW, DURING THAT SIX OR SEVEN DAY PERIOD?

A NO, SIR, THEY DON'T HAVE A REASON TO BE IN THOSE KITS.

Q OKAY, SO THERE IS NOT, I THINK PREVIOUSLY WHEN YOU WERE ASKED, YOU KNOW, WHETHER OR NOT THEY WERE ABSOLUTELY, I DON'T KNOW HOW IT WAS ASKED, WHETHER OR NOT IT WAS ABSOLUTELY SECURE OR ABSOLUTELY TRACEABLE THAT'S NOT ACTUALLY TRUE, IS IT NOT, THOSE GS KITS AND THAT EVIDENCE IS NOT ABSOLUTELY TRACEABLE AT EVERY MOMENT?

A IT IS SECURE TO ANYBODY OUTSIDE OF OUR DEPARTMENT.

Q YEAH, BUT NOT SECURE TO ANYBODY INSIDE?

A NOT TO THOSE WITHIN, NO, SIR.

Q AND I THINK YOU ALSO SAID THAT WHEN YOU REMOVE IT FROM THE EVIDENCE LOCKER, YOU REMOVE THAT EVIDENCE FROM THE EVIDENCE LOCKER AND THEN, OF COURSE, USUALLY THERE IS, THERE IS, THERE IS, THE ROOM THAT THE EVIDENCE LOCKER IS IN IS ACTUALLY A TESTING FACILITY OR SOME SORT OF TESTING ROOM AND THAT YOU ACTUALLY CONDUCT THE TEST WITHIN THAT SAME ROOM WHERE THE EVIDENCE LOCKER IS LOCATED AT?

A NO, SIR, IT'S A SEPARATE ROOM.

Q IT'S A SEPARATE ---

A IT IS ALSO A SECURE ROOM.

Q IT IS A SEPARATE ROOM?

A YES, SIR.

Q OKAY, OKAY, I WAS UNDER THE IMPRESSION IT WAS THE SAME ROOM, AND WHAT'S THE, WHAT'S THE DISTANCE BETWEEN THE ROOM WHERE THE EVIDENCE LOCKER IS IN AND THE ROOM THAT, THAT YOU HAVE TO TAKE TO BE TESTED?

A THE DOORS ARE PROBABLY FIVE FEET, SIX FEET APART.

Q OKAY ---

A BUT THE DISTANCE FROM WHERE THE LOCKER IS TO WHERE THE INSTRUMENTATION IS IS PROBABLY ABOUT A FORTY YARD WALK.

Q SO THEY'RE ADJOINING ROOMS?

A YES, SIR.

Q OKAY, OKAY, AND WHEN YOU TAKE IT INTO THAT PARTICULAR ROOM, AND OBVIOUSLY YOU SAID YA'LL GENERALLY, YOU KNOW, SOMETIMES DO TWENTY, TWENTY FIVE, OR THIRTY OF THESE GS KITS, TEST THEM AT THE SAME TIME; IS THAT CORRECT?

A YES, SIR.

Q OKAY, AND, AND I'M ASKING BECAUSE I DON'T KNOW, WHAT'S THE PROCESS, I KNOW YOU SAID THAT YOU TAKE IT OUT OF THE, YOU TAKE THE SWAB, I'M ASSUMING, IS THAT, IS THAT WHAT IT IS IS ACTUALLY A SWAB THAT'S CONTAINED IN THE GS PACKAGE?

A THE STANDARD PRACTICE ON THIS, IT'S THE WAY I WAS TRAINED TO DO THIS, IS THE GSR KIT IS GOING TO HAVE

EITHER FIVE OR SIX COTTON SWABS IN IT. YOU'RE GOING TO HAVE AREA FROM THE RIGHT PALM, THE RIGHT BACK, THE LEFT PALM, THE LEFT BACK. THEY WILL TAKE A CONTROL SAMPLE FROM SOMEBODY'S PERSON, NORMALLY IT'S UNDERNEATH PANTS LEG OR A SMALL PATCH UNDERNEATH SHIRT. THE IDEA OF THAT IS IT COMES FROM AREAS NOT EXPOSED TO THE WEAPON WHEN IT'S FIRED IN THE VICINITY, AND THEN THERE'S ALSO A SWAB THAT THE INVESTIGATOR CAN SWAB A CARTRIDGE CASE BECAUSE SOMETIMES THAT COMES INTO IMPORTANCE, SO THERE'S UP TO SIX COTTON SWABS PER KIT FOR SIX AREAS, TWO SWABS PER EACH ONE.

THE WAY THAT WORKS IS WE LINE THEM UP AND WE'LL LINE THEM UP THE CONTROL TWO, THE RIGHT PALM TWO, THE RIGHT BACK, THE LEFT PALM, THE LEFT BACK, AND IF IT'S THERE WE DO THE CARTRIDGE CASE, AND THEN WE'LL PUT A BLANK BEHIND IT BECAUSE WE'RE GOING TO RUN A BLANK IN EVERY KIT TO ENSURE THAT WHEN I TRANSFER ONE KIT TO THE OTHER ON INSTRUMENTATION, SO THOSE KITS OR THOSE TEST TUBES ARE LAID OUT AND THEY ARE MARKED ON THERE AS TO WHICH AREA OF THE HAND THE CONTROL OR CARTRIDGE CASE THEY ARE, THEN WE PULL OUT EQUAL NUMBER OF BRAND NEW TEST TUBES AND LAY THEM TO THE SIDE AND THEY'RE MARKED WITH A NUMBER. THERE IS A LOG SHEET BESIDE IT WHERE IT SAYS, FOR EXAMPLE, ITEM OR TEST TUBE NUMBER ONE THEY CONTAIN JANE DOE'S RIGHT PALM, SO WE'LL WRITE NUMBER ONE ON THAT FIRST TEST TUBE, AND THEN WE'LL TAKE THE RIGHT PALM OUT OF THE ONE THAT CAME IN THE GSR KIT THEN WE WILL TRANSFER THE

EVIDENCE FROM THE TEST TUBE THAT WAS SUBMITTED AND PLACE IT INTO ONE OF THE TEST TUBES AND WE DO THAT ALL THE WAY THROUGH.

WHEN THAT KIT IS FINISHED THE OLD TEST TUBES IS STUCK BACK IN HERE, IT GETS SEALED UP, IT IS SECURED, AND THEN WE MOVE TO THE SECOND KIT, AND WE REPEAT THAT SAME PROCESS ALL THE WAY THROUGH.

Q AND, OF COURSE, I THINK YOU MAY HAVE JUST ANSWERED MY QUESTION, WHEN THOSE, WHEN YOU SAID SOMETIMES FIVE OR SIX SWABS ARE FOUND IN ONE KIT AND, OF COURSE, ARE THEY SEPARATED ON THE INSIDE OF THAT KIT, ON THE KIT THAT YOU GET FROM, YOU KNOW, FROM THE LAW ENFORCEMENT AGENCY ARE THOSE SWABS SEPARATED ON THE INSIDE OF THE GS KIT THAT YOU GET?

A YES, SIR.

Q AND ---

A FOR A SINGLE PERSON, YES, SIR, THEY'RE SEPARATE, SO THE RIGHT PALM WOULD BE IN A SINGLE TEST TUBE, THE RIGHT BACK IN A SINGLE TEST TUBE, THE LEFT PALM, THE LEFT BACK, AND CONTROL ON EACH DNA SEPARATE TEST TUBE INSIDE THIS KIT.

Q OKAY ---

A AND THEN FOR THE SECOND PERSON WE'LL HAVE THIS SAME PROCESS IN THIS KIT AND SO ON DOWN THE LINE.

Q I UNDERSTAND, NOW WHEN YOU THEN TEST IT, AND I THINK YOU SAID THAT SOMETIMES IT TAKES SOMETIMES THREE

HOURS, SOMETIMES IT MAY TAKE UP TO 13 HOURS TO, TO, TO DO THE TESTING WHEN YOU TEST THESE LARGE NUMBER OF GS KITS THAT YOU TEST AT THE SAME TIME?

A DEPENDING ON HOW MANY SAMPLES, YES, SIR.

Q OKAY, DURING THAT PARTICULAR PERIOD OF TIME AGAIN I THINK IT'S MY UNDERSTANDING IS THAT THE ONLY PEOPLE WHO WOULD HAVE ACCESS TO THAT TESTING ROOM WOULD BE THE EIGHT OR NINE, THE EIGHT OR NINE SCIENTISTS OR EMPLOYEES; IS THAT CORRECT, THAT YOU PREVIOUSLY TALKED ABOUT BEFORE THAT HAD ACCESS TO YOUR LOCKER?

A IT IS A SECURE ROOM IN THAT THE DOORS ARE LOCKED, WHEN, WHEN WE'RE NOT THERE THAT ROOM IS LOCKED AND NOBODY HAS ACCESS TO IT WITHOUT US. THE INSTRUMENTATION ROOM DOES NOT HAVE A LOG IN SHEET TO IT AND SO LIKE THE MAINTENANCE PEOPLE ARE ABLE TO COME THROUGH THAT ROOM.

Q AND THAT'S ---

A WHERE THE INSTRUMENTATION IS.

Q THE INSTRUMENTATION, IS THAT THE, THAT'S THE ROOM WHERE THE EVIDENCE LOCKER IS IN?

A THAT'S SEPARATE FROM THE EVIDENCE ROOM.

Q OKAY, OKAY, SO THE ROOM WHERE THE ACTUAL TESTING IS BEING DONE THE MAINTENANCE PEOPLE HAVE ACCESS TO THAT PARTICULAR ROOM?

A YES, SIR.

Q OKAY, SO HOW WOULD YOU KNOW WHILE TESTING IS

BEING DONE IF YOU, IF YOU PUT SOME TEST IN THERE AROUND THREE OR 4:00 THAT AFTERNOON AND IT'S GOING TO TAKE UNTIL THE NEXT MORNING AND, AND, OF COURSE, THOSE TESTS ARE RUNNING AND YOU GO HOME AT NIGHT, HOW DO YOU KNOW MAINTENANCE MAN DOESN'T COME IN THERE THAT AFTERNOON AND ACTUALLY INTERFERE WITH THE, WITH THE MACHINE?

A THEY HAVE ACCESS TO IT WHILE WE'RE PRESENT; THEY DON'T HAVE ACCESS TO IT WHEN WE ARE NOT PRESENT.

Q OKAY, OKAY, SO THEY COME IN THERE WHEN, WHEN ONE OF YOUR, IS IT EIGHT EMPLOYEES?

A NINE EMPLOYEES.

Q NINE EMPLOYEES AND ONE OF THE ---

A COUNTING MYSELF.

Q I'M SORRY, I DIDN'T MEAN TO TALK OVER YOU?

A I'M SORRY.

Q GO AHEAD?

A YES, THERE'S NINE OF US COUNTING MYSELF.

Q OKAY, SO WHEN ONE OF THE NINE EMPLOYEES ARE PRESENT THE MAINTENANCE PEOPLE CAN THEN COME IN AND, AND, AND DO WHATEVER CLEAN UP THAT THEY NEED TO DO?

A YES, SIR.

Q OKAY, AND, OF COURSE, MY UNDERSTANDING WOULD BE, AND YOU CORRECT ME IF I'M WRONG, IS THAT THE ONLY PERSON WHO WOULD HAVE ACCESS WOULD BE THE NINE EMPLOYEES THAT WERE THERE AND ANY MAINTENANCE PEOPLE THAT MIGHT COME IN WHILE

THEY'RE PRESENT?

A YES, SIR.

Q OKAY, NOW IF YOU HAVE SAMPLES, IF YOU HAVE SAMPLES THAT, THAT YOU HAVE IN THIS MACHINE DO EACH SCIENTISTS PUT IN, PUT IN THEIR OWN SAMPLES?

A NO, SIR, WITH, WITH GUNSHOT RESIDUE THERE'S ONLY ONE ANALYST ACTUALLY WORKING GUNSHOT RESIDUE AT A TIME.

Q OKAY ---

A RIGHT NOW IT'S ON A MONTHLY BASIS.

Q SO ALL THOSE SAMPLES THAT WOULD BE IN THERE IF YOU COULD, IF THERE WAS TEN OR TWELVE OR FIFTEEN OR TWENTY SAMPLES WOULD BE IN THERE THEY WOULD ALL BE YOUR SAMPLES?

A YES, SIR, MOST, I'M GOING TO SAY MOST OF THE TIME BECAUSE OCCASIONALLY YOU DO GET AN OLD CASE THAT HAS NEW EVIDENCE IN IT ---

Q OKAY ---

A --- AND SO THEY'RE MADE FROM TIME TO TIME ONE OR TWO CASES PUT ON THERE THAT BELONGS TO SOMEBODY ELSE AND THEY GET RUN THROUGH BUT THE MAJORITY OF THE TIME IT'S ALL ONE PERSONS.

Q AND, OF COURSE, WHILE YOU'RE NOT THERE AND THIS ANALYZING IS GOING ON THE OTHER EIGHT EMPLOYEES OF THAT ANALYZING LAB WOULD HAVE ACCESS TO, TO, TO I GUESS THE ANALYZING ROOM, HOW YOU DESCRIBE IT?

A YES, SIR, THEY WOULD.

Q OKAY, AND, AND THEN, OF COURSE, DO YOU KNOW WHO COMES IN AND OUT OF THE ANALYZING ROOM WHEN YOU HAVE STUFF THAT'S BEING ANALYZED OVER NIGHT OR STUFF THAT'S BEING ANALYZED FOR A WHILE?

MR. DEBERRY: YOUR HONOR, THIS IS ASKED AND ANSWERED AND IT'S BEEN OVER SEVERAL TIMES, I BELIEVE.

MR. BROOKER: I DON'T THINK WE'VE ASKED THIS QUESTION, WE ASKED ABOUT ---

THE COURT: GO AHEAD AND WRAP IT UP, IF YOU WOULD.

MR. BROOKER: ABOUT THE EVIDENCE ROOM.

Q (CONTINUING) NOW IN THE EXAMINATION ROOM WHERE THIS STUFF IS BEING EXAMINED AND TESTED IS THERE A LOG SAYING WHO GOES IN AND OUT WHILE YOU'VE GOT SOMETHING ON THE MACHINE BEING TESTED?

A IN THE INSTRUMENTATION ROOM, NO, THERE IS NOT A LOG, NO, SIR.

Q OKAY, SO YOU WOULDN'T KNOW WHO COME, WHO CAME IN THERE WHEN YOU WERE AWAY WHILE YOUR, YOUR GS KIT SAMPLES WERE, WERE BEING, I GUESS, ANALYZED?

A THEY DO NOT COME IN WITHOUT US BEING PRESENT BUT THERE'S NOT A LOG TO GO BACK AND SEE WHO CAME IN.

Q OKAY, THE OTHER OFFICIALS, THE OTHER, THE OTHER EMPLOYEES?

A LIKE THE MAINTENANCE PERSON.

Q I KNOW, BUT I'M NOT TALKING ABOUT THE

MAINTENANCE, I'M TALKING ABOUT ALSO THE OTHER EIGHT EMPLOYEES?

A RIGHT, THERE IS NOT A LOG TO KNOW WHO CAME AND WENT.

Q I GOT YOU. SO YOU WOULDN'T KNOW WHO CAME IN WHILE YOU WERE NOT THERE, THE OTHER EIGHT EMPLOYEES YOU WOULDN'T KNOW WHICH ONE OF THEM WOULD COME IN WHILE YOUR, YOUR GS KITS ARE BEING ANALYZED AND YOU WERE NOT PRESENT?

A NO, SIR, I WOULD NOT.

Q OKAY, NOW JUST VERY QUICKLY LET ME ASK YOU ABOUT AT LEAST GS, ASK YOU ABOUT GUNSHOT RESIDUE, I KNOW THAT YOU TOLD US IS, IS THAT NORMALLY WHAT HAPPENS IS, IS THAT YOU TAKE, TAKE A SWAB FROM THE BACK OF THE PALM AND THEN ALSO FROM THE PALM ITSELF?

A YES, SIR.

Q BACK OF THE HAND AND PALM?

A CORRECT.

Q IS THAT CORRECT?

A FOR BOTH HANDS.

Q OKAY, ALL RIGHT, AND, AND, OF COURSE I THINK WHAT YOU STATED IS, IS THAT YOU TRY TO DETECT ANY METALS THAT MAY HAVE BEEN DISCHARGED FROM, FROM THE FIREARM OR EITHER BURNT OR EITHER UNBURNT GUN POWDER RESIDUE OR EITHER, YOU KNOW, ANY, ANY PARTICLES THAT MAY HAVE BEEN, MAY HAVE BEEN EJECTED WHEN THE GUN WAS FIRED; IS THAT CORRECT?

A WHAT WE'RE SPECIFICALLY LOOKING FOR ARE THE THREE METAL ELEMENTS, LEAD, BARIUM, AND ANTIMONY.

Q OKAY, OKAY, NOW IF AN INDIVIDUAL FIRES A GUN AND HE'S WEARING GLOVES WOULD THAT NEGATE, WOULD THAT NEGATE THE POSSIBILITY OF PICKING UP GUN POWDER RESIDUE ON THE PALMS OR, OR EITHER ON THE BACK OF THE HAND?

A YES, SIR, IT WOULD, ANY INTERVENING OBJECT BETWEEN THE WEAPON AND A PERSON'S HANDS MEETING ANYTHING BETWEEN THE OBJECT AND THE PERSON'S HANDS WILL HAVE THE POTENTIAL TO STOP THAT GUNSHOT RESIDUE FROM SHOWING ON THE HANDS AND GLOVES.

Q SO WHEN YOU PERFORM A GUNSHOT RESIDE ON A PERSON AND IT COMES BACK AND SAYS THERE'S NO GUNSHOT RESIDUE THAT IS NOT AN INDICATION THAT THAT PERSON DIDN'T FIRE A GUN; IT'S JUST SIMPLY IS THAT THERE WAS NOTHING FOUND? YOU DON'T KNOW WHETHER THE PERSON WAS WEARING GLOVES OR NOT?

A IT TELLS US THAT WHAT WE FOUND IS NOT CONSISTENT WITH SOMEBODY HAVING FIRED AND YOU'RE ABSOLUTELY RIGHT IT DOESN'T RULE OUT THE POSSIBILITY OF SOMEBODY HAVING GLOVES OR HAVING BEEN REMOVED BY SOME OTHER MEANS.

Q SO, SO YOUR GUNSHOT RESIDUE TEST ON, ON, ON, ON BRANDON BELLAMY, ON LET'S SEE WHO ELSE IT WAS ON, ON RODNEY MCELVEEN, AND I THINK ONE WAS PERFORMED ON, ON MS. WILLIAMS, IS THAT THAT GUNSHOT RESIDUE TEST DOESN'T TELL US THAT THEY DIDN'T FIRE A GUN?

A I DO NOT HAVE A KIT ON A WILLIAMS.

Q IS THAT DOZIER?

A DOZIER, YES, SIR.

Q OKAY ---

A DOZIER.

Q DOZIER, OKAY, SO THAT GUNSHOT RESIDUE TEST THAT YOU PERFORMED CANNOT TELL US THAT THEY DIDN'T FIRE A GUN?

A NO, SIR, IT CANNOT SAY THAT.

Q OKAY, AND YOU'RE NOT HERE TO TELL THIS JURY THAT, THAT THOSE PERSONS DIDN'T FIRE A GUN THAT DAY?

A NO, SIR.

Q OKAY, NOW WERE THOSE THE ONLY GUNSHOT RESIDE, RESIDUE KITS THAT WAS GIVEN TO YOU TO PERFORM IN CONNECTION WITH THIS PARTICULAR CASE?

A YES, SIR.

Q OKAY, NONE OTHER, NONE OTHER GUNSHOT RESIDUE KITS WERE GIVEN TO YOU TO PERFORM?

A NO, SIR.

Q OKAY, AND I AM JUST ABOUT FINISHED, JUST A COUPLE OF MORE QUESTIONS AND I'M GOING TO LET YOU DOWN. NOW ONCE YOU FINISHED YOUR TESTS, AND I KNOW YOU'VE WENT THROUGH THE PROCESS WHERE YOU GET, YOU'VE TESTED IT, PACKAGE EVERYTHING BACK UP TO BE SENT OUT, THEN, OF COURSE, YOU SAY, DO YOU ACTUALLY GIVE THAT BACK TO LISA OR DO YOU ACTUALLY PUT

THAT BACK INTO THE EVIDENCE LOCKER FOR HER TO TRANSFER TO WHOEVER SHE'S GOING TO TRANSFER IT TO?

A THAT ONE IS KIND OF, IT GOES BOTH WAYS, SOMETIMES IT GOES BACK INTO THE EVIDENCE LOCKER AND SHE PULLS IT FROM THERE OR I HAND IT TO HER DIRECTLY.

Q OKAY, DO YOU KNOW WHICH ONE OCCURRED IN THIS PARTICULAR CASE?

A I CAN'T TELL YOU EXACTLY WHICH ONE IT WAS.

MR. BROOKER: OKAY, NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q MR. MOSKAL, CAN THE RESULTS OF YOUR TEST CHANGE AFTER THE GUNSHOT RESIDUE KITS LEAVE YOUR POSSESSION? I MEAN IS THERE ANY WAY THAT SOMEBODY CAN ALTER THE TEST AFTER YOU'VE PERFORMED IT?

A NO, SIR.

Q OKAY, SO YOUR RESULTS ARE FROM DIRECTLY INTERPRETING THE GUNSHOT RESIDUE KITS, THAT'S WHAT'S IN THAT?

A CORRECT.

MR. DEBERRY: OKAY, NO FURTHER QUESTIONS.

THE COURT: ANYTHING FURTHER?

MR. BROOKER: JUST ONE MORE.

RECROSS EXAMINATION

BY MR. BROOKER:

Q EVEN IF THE PERSON WAS NOT WEARING GLOVES WOULD WASHING THEIR HANDS DESTROY EVIDENCE?

A YES, SIR, IT CAN, THE GUNSHOT RESIDUE IS A VERY FRAGILE TYPE EVIDENCE AND ANYTHING YOU DO WHETHER IT'S TAKING YOUR HANDS AND RUBBING THEM ON YOUR PANTIES OR RUBBING THROUGH YOUR HAIR OR SHUFFLING PAPERS OR ANY TYPE OF ACTIVITIES LIKE THAT ARE GOING TO REMOVE OR HAVE THE POTENTIAL TO REMOVE GUNSHOT RESIDUE. WHAT WE FOUND THROUGH TESTING IS THAT IT LASTS ON A PERSONS HANDS DOING MINIMAL ACTIVITY FOR UP TO ABOUT A SIX HOUR PERIOD AND HONESTLY ANYTHING YOU DO THAT HAS FLUID MOVING ACROSS YOUR HANDS OR THE MORE ACTIVITY YOU HAVE THE MORE LIKELY IS TO BE REMOVED.

Q SO IF YOU SWEAT THAT COULD REMOVE IT?

A YES, SIR, IT COULD.

Q OKAY, AND I THINK YOU JUST ANSWERED I THINK THE LAST QUESTION I HAVE IS, IS THAT AND THAT'S THE LIFE OF GUNSHOT RESIDUE ON THE, ON THE PALMS AND THE BACK OF THE HAND AND I THINK YOU SAID ROUGHLY AROUND SIX, SIX HOURS?

A SIX HOURS FOR A LIVING PERSON.

Q OKAY, DO YOU KNOW HOW LONG FROM THE TIME ---

MR. DEBERRY: OBJECTION, YOUR HONOR, HE DOESN'T KNOW HOW LONG.

MR. BROOKER: I CAN ASK HIM AND IF HE DOESN'T KNOW HE CAN SAY SO.

MR. DEBERRY: IT'S OUTSIDE OF CROSS EXAMINATION.

THE COURT: I'M NOT SURE WHAT THE QUESTION IS, I HAVEN'T HEARD IT YET.

MR. BROOKER: OH, I'M SORRY, DO YOU WANT US TO APPROACH?

THE COURT: GO AHEAD, JUST TELL ME WHAT THE QUESTION IS.

MR. BROOKER: I'M SIMPLY GOING TO ASK HIM IS, IS THAT WHETHER OR NOT, WHETHER OR NOT WHEN HE RECEIVED THE GUNSHOT RESIDUE TEST IS THERE ANY INDICATION AT LEAST ON THE PACKAGE AS TO, AS TO THE TIME IN WHICH IT'S SUSPECTED A GUN HAS BEEN FIRED AND THE TIME IN WHICH THE, THE LAPSE IN TIME IN WHICH THE RESIDUE TEST WAS TAKEN; IS THERE ANY INDICATION ON THE PACKAGE THAT HE RECEIVES ABOUT THAT PERIOD OF TIME.

MR. DEBERRY: YOUR HONOR, THERE'S BEEN TESTIMONY FROM DIFFERENT PEOPLE THAT'S ALREADY ANSWERED THIS QUESTION. HE WASN'T THERE AND IT'S ALSO OUTSIDE OF THE SCOPE OF CROSS EXAMINATION, IT'S NOT FAIR.

THE COURT: I AGREE, OVERRULED, I'M GOING TO SUSTAIN THE OBJECTION.

MR. BROOKER: I'M SORRY?

THE COURT: ANYTHING FURTHER?

MR. BROOKER: THAT'S IT, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

THE WITNESS: AM I EXCUSED, YOUR HONOR?

THE COURT: ANY OBJECTION TO HIM BEING EXCUSED?

MR. DEBERRY: NO, SIR, YOUR HONOR.

THE COURT: MR. BROOKER?

MR. BROOKER: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT, WHY DON'T WE TAKE A BREAK, TAKE A 15 MINUTE BREAK AND COME BACK.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 4:24 P.M.).

(WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING TAKES PLACE ON THE RECORD AFTER THE RECESSS.)

THE COURT: GO AHEAD AND BRING IN THE JURY.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 4:48 P.M.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. DEBERRY: THANK YOU, YOUR HONOR, THE STATE CALLS OFFICER GARY COOK.

SERGEANT GARY E. COOK

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q OFFICER COOK, COULD YOU PLEASE STATE YOUR NAME, FULL NAME FOR THE RECORD AND WHERE YOU WORK?

A SERGEANT GARY COOK, I'M THE SRO WITH THE MARION COUNTY SHERIFF'S OFFICE.

Q ALL RIGHT, AND WHAT'S YOUR CAPACITY WITH THE

MARION COUNTY, WHAT DOES SRO ENTAIL?

A I'M THE SCHOOL RESOURCE OFFICER WITH CREEK RIDGE HIGH SCHOOL.

Q OKAY, HOW LONG HAVE YOU BEEN DOING THAT?

A THIS IS MY FIRST YEAR AS AN SRO.

Q OKAY, AND IN MAY OF 2007 HOW WERE YOU EMPLOYED THEN?

A I WAS A CORPORAL WITH THE MARION POLICE DEPARTMENT.

Q OKAY, SO YOU WORKED FOR THE MARION POLICE DEPARTMENT?

A YES, I DID.

Q DID YOU HAVE ANY INVOLVEMENT IN THE CASE OF THE STATE OF SOUTH CAROLINA V. SHAWN REAVES?

A YES, I ESCORTED THE BODY OF THE VICTIM TO THE MEDICAL UNIVERSITY OF CHARLESTON FOR AUTOPSY TO BE PERFORMED.

Q OKAY, SO YOU WERE THE OFFICER THAT ACCOMPANIED THE VICTIM TO THE MEDICAL UNIVERSITY FOR AUTOPSY?

A YES, SIR.

Q OKAY, AND WERE YOU PRESENT DURING AUTOPSY?

A YES, SIR.

Q ALL RIGHT, AND DID YOU OBSERVE THE PATHOLOGIST REMOVE OR WHAT DID YOU OBSERVE THE PATHOLOGIST

REMOVE FROM THE BODY AT AUTOPSY?

A WELL I OBSERVED THE AUTOPSY AND ALSO OBSERVED WHAT I THINK IT WAS TWO BULLETS AND SOME BLOOD.

Q TWO FIRED BULLETS AND A SAMPLE OF BLOOD?

A YES, SIR.

Q OKAY, AND YOU WATCHED THAT COME FROM THE VICTIM'S BODY?

A YES, SIR.

Q OKAY, AND DID THE PATHOLOGIST WHAT, WHAT DID SHE DO WITH THAT?

A SHE THEN TURNED IT OVER TO ME AND SIGNED IT OVER TO ME THEN I ACCOMPANIED THE VICTIM BACK TO THE MORGUE AND THEN I TURNED THE EVIDENCE OVER PERSONALLY TO LIEUTENANT BLUE

Q SO YOU RETURNED FROM CHARLESTON TO MARION WITH THE EVIDENCE AND YOU PERSONALLY HANDED THAT TO LIEUTENANT FARMER BLUE OF THE POLICE DEPARTMENT?

A YES.

Q OKAY, WAS THAT THE TOTALITY OF YOUR INVOLVEMENT WITH THIS CASE?

A YES, IT WAS.

Q THAT'S THE ONLY THING YOU HAD TO DO WITH THIS CASE?

A YES, SIR.

MR. DEBERRY: ALL RIGHT, THANK YOU VERY MUCH.

THE COURT: CROSS?

MR. BROOKER: JUST VERY BRIEFLY.

CROSS EXAMINATION

BY MR. BROOKER:

Q WERE YOU PRESENT AT THE, WERE YOU PRESENT AT THE SCENE OF THIS PARTICULAR INCIDENT SHOOTING?

A AT THE SCENE THE ONLY THING I WAS WAS I WENT WITH THE MARION RESCUE, I WAS ON THE RESCUE SQUAD. I WAS NOT THERE AS A DUTY POLICE OFFICER, JUST RESCUE I WAS REGULAR THERE.

Q OKAY ---

A THAT WAS IT, ALL I DID WAS RESPOND WITH THE RESCUE AND RETURN BACK TO QUARTERS.

Q OKAY, OKAY, SO YOU WERE THERE FOR A BRIEF PERIOD OF TIME?

A JUST FOR THE RESCUE PART OF IT, BUT NO INVESTIGATION WISE, JUST RESCUE.

Q OKAY, OKAY, AND WHEN YOU'RE TALKING ABOUT RESCUE YOU'RE TALKING ABOUT LIKE EMS SERVICES?

A YES, MARION RESCUE SQUAD.

Q OKAY, OKAY, EMS SERVICES, OKAY, ALL RIGHT, NOW WERE YOU THERE AT THE TIME IN WHICH, IN WHICH MR. APPLEWHITE WAS, WAS SHOT?

A NO.

Q OKAY, SO JUST TO BE ABSOLUTELY CERTAIN IS,

IS THAT, IS THAT YOU DIDN'T WITNESS ANY SHOOTING AND YOU HAVE ABSOLUTELY NO DIRECT KNOWLEDGE WITH RESPECT TO THE SHOOTING ITSELF?

A THE ONLY THING I KNOW WAS OTHER THAN THE REPORT.

Q OKAY, AND I'M ASSUMING THAT WOULD BE THE NO, YOU HAVE NO, YOU WAS NOT PERSONALLY THERE DURING THE EVENT?

A I WAS PERSONALLY NOT THERE AT THE TIME OF THE SHOOTING, NO.

Q OKAY, OKAY, AND THAT'S WHAT, THAT'S WHAT I WAS TRYING TO ASK IS, SO YOU WERE NOT THERE DURING THE TIME OF THE SHOOTING; IS THAT CORRECT?

A NO, I WAS NOT.

Q WHICH MEANS IS THAT YOU HAVE NO DIRECT EYEWITNESS KNOWLEDGE WITH RESPECT TO WHAT OCCURRED DURING THE SHOOTING?

A NO.

Q OKAY, AND YOU'RE NOT HERE TO TESTIFY TO THE JURY OR GIVE THE JURY ANY EVIDENCE WITH RESPECT TO, YOU KNOW, ANY DIRECT KNOWLEDGE THAT YOU HAVE REGARDING WHAT TOOK PLACE DURING THE SHOOTING; IS THAT CORRECT?

A NO.

MR. BROOKER: NO FURTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

MR. DEBERRY: THAT'S ALL, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, YOU'RE EXCUSED. MEMBERS OF THE JURY, WE'RE GOING TO QUIT FOR TODAY AND AGAIN WHEN YOU GO HOME TONIGHT I GUARANTEE THE FIRST THING YOUR FAMILY IS GOING TO ASK YOU IS WHAT HAPPENED. YOU NEED TO KNOW WHAT TO TELL THEM. JUST TELL THEM I CAN'T TALK ABOUT IT RIGHT NOW. DON'T TALK ABOUT IT WITH YOUR FAMILY, DON'T TALK ABOUT IT AMONG YOURSELVES OR WITH YOUR FRIENDS, JUST LEAVE IT ALONE UNTIL WE'RE ALL SAID AND DONE AND YOU CAN TALK TO WHOEVER YOU WANT ALL YOU WANT, BUT YOU ARE DISMISSED UNTIL TEN IN THE MORNING. OUR COURT REPORTER HAS TO COME FROM LITTLE RIVER, SHE HAS TO DRIVE AN HOUR AND A HALF TO GET HERE SO WE'RE GOING TO TRY TO GIVE HER A LITTLE TIME TO GET HERE AND NOT BE WORN OUT WHEN SHE IS HERE, SO YOU'RE EXCUSED UNTIL TEN IN THE MORNING AND WE'LL SEE YOU THEN, THANK YOU. EVERYBODY ELSE REMAIN SEATED.

(WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING AT 4:54 P.M.)

THE COURT: WE'LL BE AT EASE UNTIL 10:00 IN THE MORNING THEN WE'RE GOING TO WORK TILL 12:30, I HAVE A COUPLE OF MOTIONS I HAVE TO HEAR AND THAT WILL GIVE YA'LL TIME TO DO WHATEVER YOU NEED TO DO AND THEN WE'LL START BACK AND JUST KEEP ON GOING.

MR. BROOKER: THANK YOU, SIR.

THE COURT: ALL RIGHT, THANK YOU.

(WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING.)

(WHEREUPON, COURT RESUMES ON AUGUST 25, 2010 AT 10:00 A.M.)

THE COURT: MR. BROOKER.

MR. BROOKER: THE ONLY MOTION WE'LL MAKE, YOUR HONOR, IS THAT WITH RESPECT TO MY UNDERSTANDING IS OBVIOUSLY WE JUST HAVEN'T TALKED ABOUT AT LEAST A, A, A STATEMENT AND OBVIOUSLY IS, IS THAT THE RULE I THINK CLEARLY STATES THAT THEY DON'T HAVE TO TURN THAT OVER UNTIL THAT TIME THE WITNESS TESTIFIES AND THE ONLY MOTION WE WOULD MAKE THEN WOULD BE WITH RESPECT TO, AND I THINK MY UNDERSTANDING WAS IS, IS THAT 911 TAPES THAT WAS IN POSSESSION OF LAW ENFORCEMENT THAT HAS NOT BEEN TURNED OVER AT LEAST WE RECENTLY LEARNED THAT IT WAS COLLECTED BY, BY LT. BLUE IN CONNECTION WITH THE INVESTIGATION BACK IN SOMETIMES IN 2007 AND, OF COURSE, THOSE HAVE NOT BEEN PRODUCED TO US AND, OF COURSE, WE WOULD (ONE) MAKE A MOTION TO ASK THOSE DOCUMENTS, ASK THOSE, THOSE RECORDINGS BE PRODUCED TO US AND (TWO) THEN, OF COURSE, WE WOULD RENEW OUR PREVIOUS MOTIONS AND TWO MOTIONS THAT WAS A MOTION TO DISMISS THIS ACTION BASED UPON THE FACT THAT, THAT, THAT THERE'S NON COMPLIANCE WITH RULE FIVE AND ALSO BRADY MOTIONS WITH RESPECT TO THE PRODUCTION OF CERTAIN DOCUMENTS

WHICH REQUIRES IT AND, OF COURSE, THERE'S BEEN AN ISSUE MADE ABOUT, ABOUT DOCUMENTS THAT THEY INTEND TO USE AT TRIAL BUT OBVIOUSLY IS, IS THAT RULE FIVE AND BRADY AND I'LL SAY THIS VERY QUICKLY, YOUR HONOR, BECAUSE I THINK I'VE REPEATED IT PREVIOUSLY AND I DON'T WANT TO WASTE THE COURT'S TIME, THAT RULE FIVE AND BRADY REQUIRES PRODUCTION, PRODUCTION OF NOT ONLY DOCUMENTS THAT THEY INTEND TO USE AT TRIAL BUT ANY DOCUMENTS THAT WERE LISTED UNDERNEATH RULE FIVE AND ALSO ANY OTHER DOCUMENTS UNDERNEATH BRADY THAT MIGHT, YOU KNOW, PRODUCE ANY EXCULPATORY EVIDENCE OR EVIDENCE THAT MIGHT BE BENEFICIAL TO THE DEFENSE. OBVIOUSLY IS THAT THERE'S BEEN A VIOLATION OF THAT AND, OF COURSE, THERE'S BEEN A LIST OF DOCUMENTS, YOU KNOW, BRIEFLY REMEMBER, YOU KNOW, THAT'S BEEN PRODUCED TO US THAT I THINK WITHIN THE LAST, SOME WITHIN, WITHIN THREE, WITHIN THREE OR FOUR, FOUR OR FIVE DAYS OF TRIAL AND SOME ON THE DAY OF THE TRIAL AND SOME DURING THE COURSE OF THE TRIAL THAT WE'VE HAD TO REVIEW AND LOOKED AT AND EXAMINED AND, OF COURSE, READJUST WHAT WE SAY ON THE FLY AS A RESULT OF BEING PROVIDED THAT INFORMATION.

AND, OF COURSE, THE SECOND MOTION IS GOING TO BE IS THAT SHOULD THE COURT, THE COURT DENY THAT MOTION THERE'S GOING TO BE A MOTION FOR A MISTRIAL BASED UPON THOSE VERY SAME REASONS IS THAT THE DEFENDANT HAS EVERY RIGHT TO DUE PROCESS. DUE PROCESS REQUIRES THAT THE

DEFENDANT BE PROVIDED HIS DISCOVERY WITHIN THIRTY DAYS AFTER, AFTER THE RULE FIVE AND BRADY IS SUBMITTED AND, THEN, OF COURSE, IF THERE'S ANY EVIDENCE THAT LATER ON, LATER ON THAT COMES INTO THEIR HANDS AFTER THAT THIRTY DAYS EXPIRES AND, OF COURSE, THERE'S NO DISCLOSURE AND, OF COURSE, A LOT OF THESE DOCUMENTS THAT WE'RE TALKING ABOUT ARE DOCUMENTS THAT'S BEEN IN EXISTENCE SINCE 2007 AND 2008 AND, OF COURSE, THIS IS A THREE AND A HALF YEAR OLD CASE AND, OF COURSE, THERE IS NO LOGICAL EXPLANATION AS TO WHY THAT STUFF WASN'T PROVIDED TO US WITHIN, WITHIN FOUR OR FIVE DAYS OF TRIAL, FROM THE DATE OF THE TRIAL, AND DURING THE COURSE OF THE TRIAL REQUIRING THE DEFENDANT TO THEN REVIEW THAT INFORMATION AS QUICKLY AS THEY CAN AND ASK QUESTIONS AND ASK QUESTIONS AND MAKE DECISIONS BASED UPON THAT INFORMATION BEING PRODUCED IN SUCH A SHORT PERIOD OF TIME WHEN THE PROSECUTION HAS HAD THE BENEFIT OF THAT INFORMATION FOR YEARS AND HAD AN OPPORTUNITY TO SCULPT THEIR, THEIR STRATEGY WITH POSSESSION OF THAT INFORMATION FOR YEARS AND WE WITHIN FIVE DAYS, SOMETIME WITHIN HOURS, OF HAVING TO MAKE A DECISION AND SOMETIMES EVEN LESS THAN AN HOUR OF HAVING TO MAKE A DECISION AS TO HOW WE'RE GOING TO USE THAT INFORMATION OR PROVIDE QUESTIONS, SO WE'D ASK THAT FOR (ONE) A DISMISSAL OF THIS ACTION, DISMISSAL OF THE INDICTMENT BASED UPON THE VIOLATION OF RULE FIVE AND BRADY AND, OF COURSE, WE WOULD ALSO ASK FOR A DISMISSAL OR AT

LEAST A, ASK THAT THE COURT CONSIDER OUR SECOND MOTION TO, AND, OF COURSE, THAT IS, THAT IS A MOTION FOR A MISTRIAL, YOU KNOW, BASED UPON THESE PARTICULAR FACTORS OR AT LEAST GRANT THE DEFENDANT A MOTION FOR A CONTINUANCE AND GIVE US PROPER TIME TO REVIEW THIS INFORMATION AND DEVELOP A STRATEGY BASED UPON THIS INFORMATION, BASED UPON THIS NEW INFORMATION THAT WE, WE'VE BEEN PROVIDED AND ALSO ISSUE AN ORDER MANDATING THE DISCLOSURE OF EVERYTHING, NOT JUST THINGS IN THE POSSESSION OF THE PROSECUTION BUT ALSO THINGS THAT ARE IN POSSESSION OF LAW ENFORCEMENT BECAUSE OBVIOUSLY IS THAT LAW ENFORCEMENT HAS AN OBLIGATION TO TURN THAT INFORMATION OVER TO THE PROSECUTION SO THE PROSECUTION CAN HAVE IT AND TURN IT OVER TO US. IT IS NOT GROUNDS TO SAY THAT WELL LAW ENFORCEMENT MAINTAINED CONTROL OF THIS AND NEVER TURNED IT OVER TO US, THEREFORE, WE COULDN'T TURN IT OVER TO YOU AND SO THOSE ARE OUR MOTIONS, YOUR HONOR.

THE COURT: DID YOU ADDRESS THE WITNESS AS WE TALKED ABOUT IT IN CHAMBERS A FEW MINUTES AGO? DID MR. BROOKER ADDRESS THE WITNESS?

MR. DEBERRY: YOUR HONOR, I THINK HE DID TO BEGIN, IT WAS ---

THE COURT: HOLD ON ONE SECOND, DID YOU ADDRESS THE WITNESS THAT WE HAD TALKED ABOUT, THE WITNESSES STATEMENT?

MR. BROOKER: YEAH, I THINK I DID ADDRESS THAT

WITNESS, I THINK AT THE BEGINNING OF OUR STATEMENT WE BASICALLY SAID IS, IS THAT, IS THAT RULE FIVE DOES ALLOW FOR THEM TO PROVIDE DISCLOSURE THAT AT THE TIME THE WITNESS TESTIFIES OR AFTERWARDS, IMMEDIATELY AFTER THE WITNESS TESTIFIES AND SO THAT'S WHY WE MADE OUR MOTION AT LEAST OR RENEW OUR MOTION BASED UPON AT LEAST THAT THE 911 TAPES THAT WERE NOT TURNED OVER TO US.

MR. DEBERRY: YOUR HONOR, JUST AS FAR AS THE STATEMENT GOES I THINK HE'S CORRECT AS FAR AS RULE FIVE DOESN'T REQUIRE IT. THIS HAS BEEN ON THE RECORD SEVERAL TIMES THAT I'VE OPENED MY FILE TO HIM, IT'S BEEN IN OUR FILE, AND I FIGURED HE WOULD HAVE IT. IF HE DIDN'T HE'S CERTAINLY WELCOME TO IT AS PROVIDED BY RULE FIVE.

YOUR HONOR, TO ADDRESS 911 TAPES TO BE HONEST WITH THE COURT I DON'T HAVE THEM IN MY POSSESSION. I DON'T KNOW WHAT THEY SAY; I'M NOT INTENDING TO USE THEM IN MY CASE.

THE COURT: EITHER WAY I'M GOING TO ORDER THAT YOU PROVIDE HIM WITH THE 911 TAPES TODAY AND I'M GOING TO MAKE SURE THAT HE HAS ADEQUATE TIME TO REVIEW THEM AND STUDY THEM, LISTEN TO THEM, AND PREPARE ACCORDINGLY, AND AS FAR AS YOUR FIRST WITNESS THE STATEMENT THAT YOU PROVIDED TO HIM JUST A FEW MINUTES AGO I'M JUST GOING TO EXCLUDE THAT LIST, PERIOD.

MR. DEBERRY: WELL, YOUR HONOR, I THINK UNDER

THE RULE THAT WE DON'T HAVE TO DISCLOSE THE STATEMENT UNTIL THE WITNESS TESTIFIES SO I THINK UNDER THE RULES WE'RE CLEARLY OKAY AND I THINK MR. BROOKER AGREES WITH THAT.

THE COURT: DOES HE AGREE ON THAT?

MR. BROOKER: YOUR HONOR, UNDERNEATH THE RULE THEY DON'T HAVE TO DISCLOSE THAT STATEMENT UNTIL AFTER THE WITNESS TESTIFIES.

THE COURT: OKAY, THEN WE WON'T WORRY ABOUT THAT. ALL RIGHT, I'M GOING TO DENY THE MOTION FOR A MISTRIAL. I'M GOING TO MAKE SURE THAT FROM HERE ON OUT ANYTHING NEW THAT MIGHT COME UP I'M GOING TO DEAL WITH IT ACCORDINGLY AND I'M GOING TO MAKE SURE YOU HAVE TIME TO PREPARE AND LOOK AT IT AND REVIEW AND ADJUST AND IF ANYTHING IS MAJOR ENOUGH I'LL DEAL WITH IT AT THAT TIME ALSO.

MR. BROOKER: OKAY, AND I THINK IN THOSE ARGUMENTS, YOUR HONOR, IS I WANT TO MAKE SURE THERE'S NOT ANY MORE, THAT WAS A MOTION FOR AGAIN A RENEW OF A MOTION TO DISMISS THE INDICTMENT OR DISMISS THE ACTION.

THE COURT: RIGHT, I'M DENYING THAT MOTION.

MR. BROOKER: AND, OF COURSE, THE MISTRIAL YOU'RE DENYING, AND THEN, OF COURSE, I THINK WE ALSO MADE A MOTION FOR A CONTINUANCE TO HAVE A CHANCE TO BE ABLE TO REVIEW THIS INFORMATION THOROUGHLY.

THE COURT: WELL FIRST OF ALL I'M GOING TO ORDER

THAT THE 911 TAPE SHOULD BE TURNED OVER TO YOU AND I'M GOING TO MAKE SURE YOU HAVE TIME TO REVIEW IT IN DETAIL.

MR. BROOKER: AND IF WE CAN DO ONE MORE THING, YOUR HONOR, IS, IS AT LEAST THAT OBVIOUSLY IS, IS THAT IF YOU COULD AT LEAST INSTRUCT, I DON'T KNOW WHAT'S CONTAINED WITHIN, WITHIN, WITHIN THE DEPARTMENTS FILE THAT WOULD BE WORK PRODUCT AND THAT'S NOT, I GUESS APPROPRIATE FOR DISCLOSURE BUT IF YOU WOULD HAVE AT LEAST OR INSTRUCT THE PROSECUTOR'S OFFICE, AT LEAST INSTRUCT THE MARION COUNTY SHERIFFS DEPARTMENT WHICH IS THE PROSECUTING AGENCY TO OPEN THEIR FILES UP TO, TO SOLICITOR DEBERRY AND HAVE SOLICITOR DEBERRY REVIEW THAT INFORMATION AND COMPARE IT WITH WHAT WE'VE BEEN SUBMITTED TO TO MAKE A DETERMINATION AS TO WHETHER OR NOT THE LAW ENFORCEMENT DEPARTMENT HAS STUFF IN THEIR FILE THAT IT'S SUPPOSED TO BE DISCLOSED ---

THE COURT: WHY DON'T WE LOOK AT IT RIGHT NOW, DOES LT. BLUE HAVE HIS FILE WITH HIM?

MR. BROOKER: IS THAT THE COMPLETE FILE?

LT. BLUE: THIS IS NOT THE COMPLETE FILE.

THE COURT: WHY DON'T YOU GET YOUR COMPLETE FILE AND WE'LL MAKE SURE YOU HAVE AN OPPORTUNITY TO LOOK AT IT, AS WELL AS THE SOLICITOR'S FILE.

MR. BROOKER: OKAY, BECAUSE I DON'T WANT TO SEE ANYTHING THAT'S WORK PRODUCT AND WE DON'T HAVE TO PRODUCE AND THAT'S WHY I MADE THE REQUEST TO AT LEAST WE'D BE FINE

IF, IF, IF, IF MR. DEBERRY LOOKS AT IT BECAUSE OBVIOUSLY, YOU KNOW, WE'RE NOT ALLEGING ANY, YOU KNOW, YOU KNOW, ANY DISHONESTY ON HIS PART. WE'D BE FINE WITH HIM REVIEWING IT AND THEN, OF COURSE, HE HAS A LIST OF WHAT WE'VE BEEN PROVIDED AND THEN SEE WHETHER OR NOT THERE'S ANYTHING THAT'S CONTAINED IN THERE THAT'S NOT ---

THE COURT: WHAT I WOULD PREFER IS IF LT. BLUE GO AHEAD AND GIVE THAT AND THEN I'LL JUST LET YOU LOOK AT IT, YOU AND MR. DEBERRY ALL AT THE SAME TIME, BUT ARE WE READY TO PROCEED IN THE MEANTIME?

MR. DEBERRY: THE STATE IS READY, YOUR HONOR.

THE COURT: ALL RIGHT, ARE YOU READY, MR. BROOKER?

MR. BROOKER: WE'RE READY, YOUR HONOR.

THE COURT: ALL RIGHT, IF YOU'D GO AHEAD AND BRING OUT THE JURY.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 10:24 A.M.)

THE COURT: ALL RIGHT, SOLICITOR, IF YOU'D CALL YOUR NEXT WITNESS.

MR. DEBERRY: YOUR HONOR, THE STATE CALLS LATOYA DAVIS.

LATOYA DAVIS

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: NOW, MS. DAVIS, I'M GOING TO ASK

THAT YOU SPEAK UP, I WANT YOU TO SPEAK TO THAT MAN SITTING IN THE MIDDLE OF THE AISLE CAN HEAR YOU BACK THERE, OKAY, IF YOU DON'T SPEAK UP I'LL START TAPPING OUT LIKE THAT.

THE WITNESS: OKAY.

THE COURT: ALL RIGHT, GO AHEAD, MR. DEBERRY.

MR. DEBERRY: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MS. DAVIS, COULD YOU JUST SAY YOUR NAME FOR THE RECORD, PLEASE?

A LATOYA DAVIS.

Q LATOYA DAVIS?

A YES.

Q ALL RIGHT, FIRST OF ALL I WANT TO THANK YOU FOR BEING HERE THIS MORNING, CAN YOU TELL THIS JURY IF YOU KNEW OR IF YOU KNOW JOEMELLER WILSON-DOZIER?

A YES, SIR.

Q OKAY, HOW LONG HAVE YA'LL BEEN FRIENDS?

A ABOUT SIX, SEVEN YEARS.

Q OKAY, AND DO YA'LL KNOW EACH OTHER FROM THE MARION CITY COMMUNITY?

A YES, SIR.

Q OKAY, AND WERE YA'LL FRIENDS BACK ON MAY THE 13TH, 2007?

A YES, SIR.

Q OKAY, WERE YOU WITH HER THAT DAY?

A YES, SIR.

Q ALL RIGHT, CAN YOU JUST TELL THE JURY WHAT HAPPENED THAT DAY?

A THAT NIGHT KESHAWN AND JOEMELLER WAS FIGHTING.

Q OKAY, CAN YOU TELL US WHO DESHON IS?

A KESHAWN WAS OUR GOOD FRIEND AT THE TIME.

THE COURT: SPEAK UP.

Q OKAY, AND HAD THEY HAD A RELATIONSHIP OR DO YOU KNOW?

A I DON'T KNOW.

Q OKAY, ALL RIGHT, CONTINUE ON?

A AND THEY WAS FIGHTING AND SO AFTER THEY, AFTER THEY FOUGHT I WENT, I GET UP AND WENT HOME, AND WHEN I WENT HOME I HEARD A GUNSHOT.

Q OKAY, HOLD ON JUST A MINUTE, WHERE WERE THEY, BEFORE YOU LEFT AND WENT HOME WHERE, WHERE WERE YA'LL?

A ON MULLINS STREET.

Q OVER ON EAST MULLINS STREET, OKAY, WAS THERE A BUNCH OF PEOPLE THERE?

A YES, SIR.

Q CAN YOU REMEMBER ABOUT HOW MANY?

A NO, SIR.

Q WAS SHAWN REAVES PRESENT?

A YES, SIR.

Q ALL RIGHT, DO YOU KNOW HIM BY ANY OTHER NAME?

A MISTER.

Q MISTER, OKAY, SO YOU TESTIFIED THAT THEY WERE FIGHTING, KESHAWN AND JOEMELLER, AND THAT YOU LEFT AND WENT HOME?

A YES.

Q NOW WHERE, NOW WHERE IS THAT?

A ON EAST MULLINS STREET.

Q OKAY, CAN YOU JUST EXPLAIN THE HOUSE THAT YOU LEFT THEM AT ON [redacted] AND BOND STREET, CAN YOU EXPLAIN HOW THEY ARE IN RELATION TO EACH OTHER?

A LIKE FIVE SECONDS AWAY.

Q FIVE SECONDS, AND THAT'S IF YOU'RE DRIVING?

A ABOUT FIFTEEN SECONDS IF YOU'RE DRIVING.

Q OKAY, IS IT, ARE THEY JUST ONE ON ONE BLOCK AND ONE ON THE NEXT BLOCK?

A YES, SIR.

Q OKAY, WAS THERE ANY ROUTE BETWEEN THE TWO HOUSES THAT SOMEBODY COULD HAVE, I MEAN WHAT WOULD, IF SOMEBODY WAS GOING TO LEAVE WALKING AND THEY WALKED STRAIGHT FROM EAST MULLINS STREET FROM THE HOUSE YOU'RE

TALKING ABOUT STRAIGHT TOWARDS YOUR HOUSE WHERE WOULD, WHAT KIND OF STUFF WOULD THEY HAVE TO GO THROUGH?

A IF YOU WALK LIKE, IF YOU GO ON THE SIDEWALK IT'S JUST A STRAIGHT SHOT, BUT IF YOU LIKE A BIG PATH YOU CAN RUN THROUGH THERE.

Q OKAY, SO THERE'S A PATH THERE, PEOPLE USE IT OFTEN?

A I AIN'T NEVER SEEN NOBODY USE IT; IT'S LIKE A BIG OPENING.

Q OKAY, AND SO YOU TESTIFIED THAT YOU LEFT JOEMELLER AND KESHAWN THERE AND THAT MR. REAVES WAS AT THAT RESIDENCE AS WELL?

A UH-HUH.

Q OKAY, AND YOU WENT HOME, ALL RIGHT, NOW TELL THE JURY WHAT HAPPENED FROM THEN?

A THEN I HEARD SOME GUNSHOTS AND I WENT IN THE HOUSE AND I CAME BACK OUTSIDE AND I SEEN A GREY CIVIC HONDA ACCORD WITH TINTED WINDOWS AND I SEEN MISTER IN THE CAR.

Q MISTER BEING SHAWN REAVES?

A UH-HUH.

Q DID YOU SEE SHAWN REAVES IN THIS COURTROOM?

THE COURT: YES, YOU GOT TO YES OR NO, YOU CAN SAY UH-HUH.

A YES, SIR.

Q SHAWN REAVES IN THE COURTROOM?

MR. BROOKER: OBJECTION, YOUR HONOR.

THE COURT: GROUNDS?

MR. BROOKER: WELL AT LEAST ON THE, ON THE IN COURT IDENTIFICATION, I MEAN THERE IS ABSOLUTELY, YOU KNOW, NO NEED TO DO THIS IN FRONT OF THE JURY.

THE COURT: COME ON UP HERE AND LET'S SEE WHAT WE GOT.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

Q AND, MS. DAVIS, DO YOU SEE MISTER OR SHAWN REAVES IN THE COURTROOM TODAY, IS HE SEATED AT THIS TABLE?

THE COURT: YOU HAVE TO SAY YES OR NO NOW.

A YES, SIR.

Q IS HE SEATED AS THIS TABLE?

A YES, SIR.

Q OKAY --

MR. DEBERRY: YOUR HONOR, I'D LIKE THE RECORD TO REFLECT MS. DAVIS IDENTIFIED SHAWN REAVES.

THE COURT: THE RECORD WILL REFLECT THAT.

Q OKAY, NOW YOU SAW, WHO DID YOU BELIEVE WAS DRIVING THE GRAY CIVIC?

A JEREMY VEREEN.

Q VEREEN, OKAY, AND WHAT DID YOU SEE THEM DO?

A DRIVE OFF TO THE LEFT.

Q THEY DROVE OFF ON BOND STREET, AND ABOUT HOW LONG AFTER YOU HEARD GUNSHOTS DID THAT HAPPEN?

A LIKE FIVE MINUTES.

Q OKAY, THEY WOULD HAVE HAD TIME TO ---

THE COURT: SUSTAINED.

MR. BROOKER: OBJECTION.

Q ALL RIGHT, SO YOU SAW THEM DRIVE OFF, IS THAT ALL YOU SAW?

A YES, SIR.

Q OKAY, WAS JEREMY VEREEN AT EAST MULLINS STREET WHEN YOU LEFT JOEMELLER AND KESHAWN?

A HE WAS THERE THAT DAY BUT I DON'T KNOW IF HE WAS THAT NIGHT.

MR. DEBERRY: OKAY, I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: CROSS?

MR. BROOKER: YES.

CROSS EXAMINATION

BY MR. BROOKER:

Q MS. DAVIS, WHAT TIME OF NIGHT WAS IT THAT NIGHT?

A I CAN'T REMEMBER.

Q ABOUT, YOU DON'T ---

A I CAN'T REMEMBER.

Q WAS IT NIGHT WHEN YOU WERE THERE?

A IT WAS NIGHT TIME.

Q OKAY, WAS IT DARK?

A THE STREET LIGHTS WAS ON.

Q I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU?

A THE STREET LIGHTS WAS ON.

Q THE STREET LIGHTS WAS ON, SO IT WAS NIGHT WHEN YOU LEFT AND THE STREET LIGHT WAS ON?

A UH-HUH.

Q OKAY, AND YOU SAID THAT WHEN YOU LEFT KESHAWN, IS THAT MR. APPLEWHITE, THAT'S THE INDIVIDUAL, INDIVIDUAL WHO WAS SHOT; IS THAT CORRECT?

A YES, SIR.

Q OKAY, HE WAS FIGHTING WITH JOEMELLER?

A YES, SIR.

Q IS THAT CORRECT?

A UH-HUH

Q OKAY, OF COURSE YOU ANSWER WHETHER YOU KNOW OR NOT, DO YOU KNOW WHAT THEY WERE FIGHTING OVER?

A NO, SIR.

Q OKAY, BUT JUST THAT THEY WERE FIGHTING?

A YES, SIR.

Q OKAY, WHERE WAS YOU AT WHEN THEY WERE FIGHTING OR ---

A I WAS ---

Q I'M SORRY, WHERE WERE YOU AT, WHERE WERE YOU STANDING AT OR WHERE WERE YOU AT WHEN THEY WERE FIGHTING?

A I WAS LIKE IN THE YARD.

Q YOU WERE IN THE YARD?

A YES.

Q OKAY, AND, AND WHERE WERE THEY AT WHEN THEY WERE FIGHTING?

A LIKE IN THE STREET.

Q OKAY, AND WHAT TYPE OF FIGHT WAS THIS, WHEN YOU SAY FIGHTING DID YOU GIVE ME A DESCRIPTION OF WHAT TOOK PLACE?

A I SEEN A PUSH AND HIT, THAT'S ALL I SEEN.

Q PUSHING AND HITTING?

A UH-HUH.

THE COURT: YOU HAVE TO ANSWER YES OR NO.

A YES, SIR.

Q OKAY, ALL RIGHT, AND ABOUT HOW LONG DID THE FIGHTING LAST?

A LIKE TWO TO THREE MINUTES.

THE COURT: SPEAK UP.

A TWO TO THREE MINUTES.

Q TWO TO THREE MINUTES, AND, OF COURSE, YOU SAID AT THAT PARTICULAR PERIOD OF TIME YOU LEFT?

A YES, SIR.

Q OKAY, OKAY, NOW WHILE YOU WERE THERE, I KNOW YOU SAID A LOT OF PEOPLE WERE THERE AND I'M GOING TO ASK YOU TO IDENTIFY THEM, YOU SAID THAT, THAT, THAT SHAWN REAVES WAS THERE; IS THAT CORRECT?

A YES, SIR.

Q AND, OF COURSE, KESHAWN APPLEWHITE WAS THERE?

A YES, SIR.

Q OKAY, YOU WERE THERE?

A YES, SIR.

Q IS THAT CORRECT?

A YES, SIR.

Q JOEMELLER WILLIAMS-DOZIER WAS THERE?

A YES, SIR.

Q OKAY, WERE THERE TWO OTHER PERSONS THAT WAS, THAT WAS THERE WITH MR. APPLEWHITE?

A YES, SIR.

Q DO YOU KNOW THOSE INDIVIDUALS?

A NO, SIR.

Q OKAY, SO THERE'S SIX PEOPLE THERE?

A YES.

Q OKAY, YOU SAID THAT WHO ELSE WAS THERE THAT YOU KNOW OF?

THE COURT: SPEAK UP.

A I CAN'T REMEMBER.

Q DO YOU KNOW BRANDON BELLAMY?

A GOT ANOTHER NAME?

Q LET ME ASK YOU THIS QUESTION, IS THAT THE HOUSE AT [redacted] DO YOU KNOW THAT HOUSE?

A YES, SIR.

Q ALL RIGHT, DO YOU KNOW THE PEOPLE WHO LIVE THERE?

A NOT, NO, SIR.

Q OKAY, WHEN YOU, I KNOW YOU HESITATE WHEN YOU SAID, NO, SIR, YOU DON'T KNOW THEM AT ALL?

A I KNOW THEM BUT NOT LIKE THAT.

Q ALL RIGHT, WELL THAT'S WHAT I'M TRYING TO GET AT, HOW WOULD YOU DESCRIBE HOW YOU KNOW THEM?

A JUST BY IN THE COMMUNITY.

Q OKAY, YOU KNOW THEM IN THE COMMUNITY BUT YOU'RE NOT FRIENDS WITH THEM, IS THAT WHAT YOU'RE TRYING TO SAY?

A YES, SIR.

Q OKAY, OKAY, NOW AND I KNOW I ASKED YOU WAS BRANDON BELLAMY THERE AND YOU SAID MAYBE YOU DON'T KNOW HIM BY THE NAME BRANDON BELLAMY BUT WAS, WAS THERE ANOTHER GENTLEMAN THERE ABOUT, I DON'T KNOW ABOUT MAYBE FIVE SIX OR BETWEEN FIVE SIX AND FIVE NINE AFRICAN AMERICAN GENTLEMAN, SLENDER BUILT?

A I DON'T KNOW.

Q OKAY, WAS THERE, OKAY, DO YOU KNOW DORETHA MCELVEEN?

A NO, SIR.

Q OKAY, NOW APPROXIMATELY HOW MANY PEOPLE, AND LIKE I SAID I KNOW YOU SAID YOU DON'T KNOW EXACTLY, WAS THERE MORE THAN TEN PEOPLE THERE?

A I DON'T KNOW.

Q OKAY, YOU DON'T KNOW WHETHER OR NOT IT WAS MORE OR LESS THAN TEN PEOPLE?

A I THINK IT WAS MORE THAN TEN PEOPLE.

Q WAS THERE MORE THAN FIFTEEN PEOPLE?

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

Q OKAY, AND YOU'RE SAYING YOU DON'T KNOW THE IDENTITY OF ALL OF THOSE FIFTEEN PEOPLE, BETWEEN TEN TO FIFTEEN PEOPLE, THERE WAS SOMEWHERE BETWEEN TEN TO FIFTEEN PEOPLE, YOU SAID THERE WAS MORE THAN TEN BUT YOU DON'T THINK IT WAS MORE THAN FIFTEEN; IS THAT CORRECT?

A YES, SIR.

Q AND, OF COURSE, I THINK YOU IDENTIFIED MAYBE SIX OR SEVEN PERSONS THAT, THAT YOU KNEW AND THEN, OF COURSE, ROUGHLY THERE WAS MORE PEOPLE THERE THAT YOU DIDN'T KNOW; IS THAT CORRECT?

A YES, SIR.

Q ALL RIGHT, NOW YOU SAID THAT YOU LEFT WHEN THEY WERE FIGHTING; IS THAT CORRECT?

A YES, SIR.

Q AND YOU WENT HOME; IS THAT CORRECT?

A YES, SIR.

Q HOW LONG DID IT TAKE YOU DRIVE FROM AND, OF COURSE, BECAUSE I, I DON'T KNOW THIS AREA PROBABLY AS WELL AS YOU DO, FROM [redacted] TO WHERE YOU LIVE HOW LONG A DRIVE IS THAT?

A ABOUT TEN SECONDS.

Q ABOUT TEN SECONDS, OKAY, AND, OF COURSE, YOU DROVE OVER TO YOUR HOUSE?

A YES, SIR.

Q OKAY, AND WHEN, EXACTLY WHERE WERE YOU STANDING OR WHERE WERE YOU AT, INSIDE OR OUTSIDE OF THE APARTMENT WHEN YOU HEARD GUNSHOTS?

A I WAS OUTSIDE.

Q YOU WERE OUTSIDE AND WHAT WERE YOU DOING OUTSIDE?

A GETTING OUT OF MY CAR.

Q I'M SORRY?

A GETTING OUT OF MY CAR.

Q OKAY, YOU WERE GETTING OUT OF YOUR CAR AND YOU HEARD GUNSHOTS, OKAY, I'M ASSUMING BECAUSE YOU HEARD GUNSHOTS IS THAT YOU YOU'RE HERE TO TELL THIS JURY IS THAT YOU SAW WHO SHOT GUNS THAT DAY, DID YOU?

A NO.

Q BECAUSE YOU DIDN'T?

A NO.

Q IS THAT CORRECT?

A YES, SIR.

Q OKAY, AND JUST LIKE SHAWN REAVES WAS THERE, THERE WAS OTHER PEOPLE THAT WAS THERE; IS THAT CORRECT?

A YES, SIR.

Q OKAY, NOW YOU SAID ABOUT FIVE MINUTES AFTER YOU HEARD GUNSHOTS YOU SAW SHAWN REAVES GET INTO, I THINK, A HONDA CIVIC THAT WAS DRIVEN BY, WHO DID YOU SAY WAS DRIVING?

A JEREMY VEREEN.

Q OKAY, SO FIVE MINUTES LATER, OKAY, NOW WHEN THEY GOT IN THAT SUV FIVE, THIS IS FIVE MINUTES AFTER THIS SHOOTING YOU SAID YOU SAW THEM, WHERE WERE YOU AT AT THAT PARTICULAR PERIOD OF TIME?

A ON MY PORCH.

Q OKAY, YOU WERE JUST SITTING ON YOUR PORCH?

A I HAD WENT IN THE HOUSE AND I CAME BACK OUTSIDE.

Q OKAY, YOU WENT IN, YOU WENT INSIDE AND THEN, AND THEN YOU CAME BACK OUTSIDE AND YOU STOPPED ON YOUR PORCH AND THAT'S WHEN, THAT'S WHEN YOU SAW THEY GET IN THE CAR AND THEN, OF COURSE, THEY, THEY LEFT?

A YES, SIR.

Q IS THAT IT, IS THAT EVERYTHING THAT YOU HEARD, YOU SAW?

A YES, SIR.

MR. BROOKER: INDULGE ME FOR JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

MR. BROOKER: NO FURTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: REDIRECT?

MR. DEBERRY: NONE, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, CALL YOUR NEXT WITNESS.

MR. DEBERRY: WE CALL JOEMELLER WILSON-DOZIER.

JOEMELLER WILSON DOZIER

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MS. WILSON OR WILSON-DOZIER, HOW IS IT, WOULD YOU STATE YOUR NAME?

A JOEMELLER CHRISHERREA WILSON-DOZIER.

Q OKAY, IS IT OKAY IF WE JUST CALL YOU JOEMELLER?

A YES, SIR.

Q ALL RIGHT, THANK YOU FOR BEING HERE THIS MORNING, JOEMELLER, I KNOW IT'S PROBABLY DIFFICULT AND YOU

MAY BE NERVOUS BUT DID YOU KNOW KESHAWN APPLEWHITE BACK IN 2007?

A YES, SIR.

THE COURT: SPEAK UP NOW.

A YES, SIR, I KNEW HIM.

Q ALL RIGHT, CAN YOU EXPLAIN TO THE JURY, WELL LET ME ASK YOU THIS, DID YOU WITNESS HIM BEING SHOT?

A YES, SIR.

Q OKAY, AND CAN YOU EXPLAIN TO THE JURY THE EVENTS OF THAT DAY AND WHAT, YOU KNOW, WHY HE WAS AROUND AND WHAT WAS GOING ON?

A WHERE DO YOU WANT ME TO START?

THE COURT: SPEAK UP NOW.

A WHERE DO YOU WANT ME TO START?

Q WELL YOU CAN START, YOU KNOW, JUST PREVIOUS TO THE EVENTS WHERE YOU WITNESSED THE SHOOTING?

A I WAS ON PINE STREET, I THINK THAT'S THE STREET, AT MS. DOZIER HOUSE, KESHAWN'S HOUSE.

Q IS THAT EAST MULLINS STREET?

A YES, SIR.

Q OKAY?

A AND I WAS OVER THERE, THEN I, HE CAME OVER THERE, KESHAWN CAME OVER AND I LEFT.

Q OKAY, CAN YOU JUST EXPLAIN HOW YOU KNEW KESHAWN?

A HE WAS MY BOYFRIEND.
Q HE WAS YOUR BOYFRIEND?
A YEAH.
Q OKAY, HOW LONG HAD YA'LL HAD A RELATIONSHIP?
A SINCE I WAS 17 OR 18.
Q AND WHERE WAS HE LIVING DURING, DURING THAT TIME?
A IN ATLANTA.
Q HE WAS IN GEORGIA?
A YEAH, AFTER I GRADUATED HE MOVED TO ATLANTA.
Q OKAY, WHAT WAS HE DOING THERE, DO YOU KNOW?
A WORKING AT, I'VE FORGOTTEN, WORKING IN ATLANTA, I FORGOT WHERE.
Q SO HE WAS WORKING IN GEORGIA?
A YES, SIR.
Q SO HE WAS JUST HOME FOR A WEEKEND?
A YES, SIR.
MR. BROOKER: OBJECTION, YOUR HONOR.
THE COURT: SUSTAINED.
Q ALL RIGHT, WHY WAS HE HOME?
A IT WAS MOTHER'S DAY WEEKEND.
Q OKAY, ALL RIGHT, AND CAN YOU JUST EXPLAIN TO THE JURY WHAT DAY DID THIS EVENT OCCUR DURING THE

WEEKEND?

A I'M NOT SURE WHICH DAY, I JUST KNOW IT WAS MOTHER'S DAY.

Q OKAY, ALL RIGHT, AND EXPLAIN TO THE JURY WHAT HAPPENED LEADING UP TO THE TIME THAT HE GOT KILLED?

A LIKE I SAID I WAS AT HIS HOUSE, I HAD LEFT MY FRIEND'S GRANDMOTHER HOUSE AND WENT TO DESHON'S HOUSE AND THEN KESHAWN CAME OVER THERE AND THEN I LEFT AND THEN HE LEFT THEN I WENT BACK OVER THERE LATER ON AND ---

Q WHO WERE YOU WITH WHEN YOU LEFT?

A LATOYA.

Q LATOYA DAVIS?

A YES, SIR.

Q OKAY?

A THEN I CAME BACK AND I WAS IN THE HOUSE BY THIS TIME, EVERYBODY ELSE WAS OUTSIDE, AND SOMEBODY CAME TO THE DOOR AND WAS LIKE KESHAWN IS OUTSIDE, HE WANT YOU TO COME OUTSIDE, SO I WENT OUTSIDE ---

MR. BROOKER: JUST OBJECTION TO THE HEARSAY.

THE COURT: SUSTAINED, DON'T SAY ANYTHING ANYBODY ELSE SAID.

A OKAY, WELL WHEN I GOT TO THE DOOR KESHAWN WAS STANDING AT THE DOOR.

Q ALL RIGHT, LET ME STOP YOU FOR JUST A MINUTE, WHEN YOU, WHEN YOU LEARNED THAT KESHAWN HAD COME

WHEN YOU WERE INSIDE THE HOUSE LIKE YOU TESTIFIED, WHO, WHO CAN YOU TELL US WAS OUTSIDE?

A I DON'T KNOW, THERE WAS A LOT OF PEOPLE OUTSIDE, I DON'T EXACTLY WHO WAS OUTSIDE.

Q OKAY, WAS SHAWN, DO YOU KNOW SHAWN REAVES?

A YES, SIR.

Q OKAY, WAS HE OUTSIDE?

A WHICH TIME, THE FIRST TIME OR THE SECOND TIME?

Q THE SECOND TIME?

A I DON'T REMEMBER IF HE WAS OUTSIDE THEN, HE WASN'T OUTSIDE WHEN I CAME OUTSIDE, SOME PEOPLE CAME UP LATER ON WHEN WE WAS OUTSIDE, WHEN ME AND KESHAWN WAS OUTSIDE FIGHTING.

Q OKAY, ALL RIGHT, HOLD ON, DO YOU KNOW MISTER SHAWN REAVES BY ANY OTHER NAME?

A YES, SIR.

Q WHAT IS THAT?

A MISTER.

Q OKAY, DO YOU SEE SHAWN REAVES IN THIS COURTROOM TODAY?

A YES, SIR.

Q OKAY, IS HE SEATED RIGHT OVER HERE?

A YES, SIR.

MR. DEBERRY: YOUR HONOR, MAY THE RECORD REFLECT

THAT SHE IDENTIFIED SHAWN REAVES?

THE COURT: THE RECORD WILL SO REFLECT.

MR. DEBERRY: THANK YOU.

Q OKAY, TELL US WHAT HAPPENED AS FAR AS THE FIGHT BETWEEN YOU AND KESHAWN?

A WHEN I CAME TO THE DOOR HE ASKED ME TO COME OUTSIDE AND COME IN THE STREET AND WHEN I GOT IN THE STREET WE TALKED FOR A LITTLE WHILE BUT THEN WE STARTED FIGHTING AND ONCE WE STARTED FIGHTING WE FOUGHT FOR A GOOD WHILE, THEN I STARTED WALKING BACK TOWARDS THE HOUSE AND I THOUGHT HE WAS GOING TO GET IN HIS CAR. I DIDN'T REALIZE HE WAS BEHIND ME AND HE CAME WALKING BEHIND ME AND BY THE TIME I REACHED THE PORCH HE WAS ALREADY BESIDE ME AND MISTER WAS STANDING ON THE SIDE LIKE THE RAILS OF THE PORCH, HE WAS STANDING RIGHT BESIDE THE RAILS ON THE PORCH AND ---

Q MISTER WAS?

A YES, SIR.

Q OKAY, SO YOU'RE TESTIFYING THAT YA'LL WERE FIGHTING IN THE STREET AND THAT YA'LL STOPPED FIGHTING AND YOU STARTED WALKING BACK TO THE HOUSE?

A YES, SIR.

Q AND HE WAS RIGHT BEHIND YOU?

A YES, SIR, I DIDN'T KNOW HE WAS BEHIND ME.

Q OKAY, AND YOU WALK, STARTED TO WALK UP ON THE STEPS?

A YES, SIR.
Q OKAY, GO AHEAD?
A AND MISTER WAS STANDING BESIDE THE RAILS AND THEY WERE, I DON'T KNOW WHO HE WAS CURSING AT, KESHAWN WAS CURSING, I DON'T KNOW WHO HE WAS CURSING AT, I JUST KNOW THAT WHEN I LOOKED I SAW HIM PUSH SHAWN AND SNATCH SHAWN'S CHAINS OFF AND THAT'S WHEN HE GOT KILLED.
Q ALL RIGHT, SO HE PUSHED SHAWN AND PULLED HIS CHAINS OFF; IS THAT WHAT YOU SAID?
A YES, SIR.
Q OKAY, AND WHAT HAPPENED?
A HE PULLED OUT A GUN AND STARTED SHOOTING.
Q WHAT, WHAT DID THE GUN LOOK LIKE?
A I DON'T, THE LITTLE SPIN THING.
Q A REVOLVER?
A YES, SIR.
Q WAS IT A COLOR?
A OH, I DON'T KNOW WHAT COLOR, LIKE WHAT DO YOU MEAN AS IN THE HANDLE OR --
Q JUST ANYTHING YOU KNOW ABOUT THE GUN?
A ALL I KNOW IS IT WAS SILVER, THAT'S ALL.
Q IT WAS A SILVER GUN?
A YES, SIR.
Q AND THEN IT LOOKED TO YOU AS A REVOLVER?
A YES, SIR.

Q OKAY, HOW FAR WERE YOU FROM MISTER WHEN YOU SAW HIM START SHOOTING? IF I WAS TO COME TO YOU YOU TELL ME?

A BACK UP A LITTLE BIT, PROBABLY RIGHT THERE.

Q OKAY, IS THERE ANY DOUBT IN YOUR MIND THAT SHAWN REAVES WAS PULLING THE TRIGGER?

A NO, SIR.

Q HOW DO YOU KNOW?

A I WAS STANDING RIGHT THERE.

Q OKAY, DID YOU HEAR ANY, WHAT, WHAT DID YOU HEAR, DID YOU HEAR MAYBE TWO GUNS FIRING?

A I DIDN'T, I COULDN'T HEAR ANYTHING, IT WAS LIKE EVERYTHING GOT REAL QUIET, I COULD ONLY SEE THE FIRE COMING FROM THE GUN.

Q YOU SAW FIRE COMING FROM THE END OF THE GUN?

A YES, SIR.

Q SHAWN REAVES WAS SHOOTING?

A YES, SIR.

Q AND HOW FAR FROM SHAWN REAVES WAS KESHAWN APPLEWHITE?

A HE WAS CLOSE BECAUSE HE JUST HAD PUSHED HIM AND SNATCHED ---

Q IF YOU WERE SHAWN REAVES AND I WAS KESHAWN HOW, HOW CLOSE?

A COME UP A LITTLE BIT, RIGHT, PROBABLY RIGHT HERE.

Q OKAY, AND YOU WERE STANDING MAYBE FROM HERE TO THE OTHER SIDE OF THE JUDGE?

A YES, SIR.

Q AND YOU WATCHED IT AND YOU SAW THE FIRE COME FROM THE GUN?

A YES, SIR.

Q OKAY, AND YOU SAY IT WAS A SILVER REVOLVER?

A YES, SIR.

Q HOW MANY TIMES DID YOU, CAN YOU TELL OR CAN YOU REMEMBER HOW MANY TIMES HE SHOT?

A NO, SIR.

Q ALL RIGHT, DID YOU SEE KESHAWN APPLEWHITE TURN AROUND AND TRY TO GET AWAY?

A NO, SIR.

Q OKAY, WHAT DID YOU DO WHEN THIS STARTED TAKING PLACE?

A WHEN THE, WHEN I REALIZED THAT HE WAS SHOOTING I, IT WAS A CAR PARKED IN THE DRIVEWAY, I RAN AROUND THE CAR AND THEN I CAME FROM AROUND THE CAR CAUSE EVERYBODY AND EVERYBODY, IT WAS A LOT OF PEOPLE OUTSIDE, BUT BY THEN THE YARD HAD CLEARED OUT LIKE IT WASN'T ANYBODY OUTSIDE, IT WAS ONLY A COUPLE OF PEOPLE OUTSIDE, ME AND KESHAWN IN THE YARD AND THE PEOPLE THAT HAD CAME WITH HIM I

THINK THEY WERE IN THE STREET OR COMING FROM, I DON'T KNOW WHERE THEY WERE COMING FROM. IT WAS LIKE EVERYBODY RAN WHEN THE SHOOTING STARTED AND WHEN I CAME OVER KESHAWN WAS LIKE BESIDE THE PORCH, CAUSE IT WAS DARK OUTSIDE, NO PORCH LIGHT WAS ON, AND KESHAWN HAD ALREADY FELL TO HIS KNEES BY THEN AND HE WAS TRYING TO GET UP BUT HE COULDN'T GET UP. HE KEPT, EVERY TIME HE TRIED TO GET UP HE WOULD FALL BACK DOWN SO HE KIND OF SORT OF CRAWLED LIKE RIGHT ON THE WALK WAY IN FRONT OF THE PORCH AND HE COULDN'T GET UP.

Q OKAY, DO YOU KNOW WHO WAS THERE WITH HIM?

A YES, SIR.

Q ALL RIGHT, WHO WAS THAT?

A JACKIE, TRAVIS, AND NICOLE.

Q OKAY, DO YOU KNOW JACKIE'S NAME, JACKIE?

A MCGILL.

Q OKAY, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT, STATE'S EXHIBIT 8, 14, AND 15, I'M GOING TO ASK YOU SOME QUESTIONS ABOUT THESE PICTURES?

A OKAY.

Q DOES THAT LOOK LIKE THE RESIDENCE?

A YES, SIR.

Q OKAY, IS THIS THE CAR THAT YOU RAN AROUND THE SIDE OF?

A NO, SIR, IT WAS THIS CAR.

Q OKAY?

A I DON'T, YEAH.

THE COURT: IF YOU WOULD REFER TO THE EXHIBIT NUMBER THAT YOU'RE REFERRING TO.

Q THIS IS EXHIBIT 15, OKAY, SO THIS IS THE FRONT OF THE HOUSE?

A YES, SIR.

Q OKAY, NOW CAN YOU POINT TO SHOW THE JURY WHERE YOU WERE OR WHERE YOU RAN, WHICH CAR YOU SAID THAT YOU RAN AROUND?

A THIS IS THE CAR.

Q THAT CAR THERE?

A YES, SIR.

Q OKAY, NOW WHERE WERE YOU WHEN YOU SAID THAT YOU AND KESHAWN WERE WALKING BACK UP TO THE STEPS OR YOU WERE WALKING AND HE WAS FOLLOWING YOU?

A I WAS LIKE RIGHT HERE.

Q YOU WERE RIGHT IN FRONT OF THE STEPS?

A YES, SIR.

Q AND KESHAWN WAS RIGHT BEHIND YOU?

A YEAH, HE WAS COMING UP BEHIND ME.

THE COURT: WHY DON'T YA'LL GET DOWN WHERE THE JURY CAN ACTUAL SEE IT? I DON'T SEE HOW THEY CAN SEE IT FROM THAT FAR AWAY.

Q CAN YOU JUST STEP DOWN?

THE COURT: THANK YOU.

MR. DEBERRY: COME THIS WAY.

Q (CONTINUING) ALL RIGHT, COULD YOU JUST SHOW THEM AGAIN WHERE YOU WERE?

A I WAS RIGHT HERE.

Q OKAY, RIGHT THERE, AND WHERE WAS SHAWN REAVES?

A OVER HERE ON THE SIDE.

Q SHAWN REAVES WAS OVER HERE?

A YES, SIR.

Q OKAY, AND KESHAWN APPLEWHITE?

A HE CAME WALKING THIS WAY.

Q SO THOSE TWO WERE OVER HERE BY THIS BLUE CAR?

A YES.

Q AND YOU, AND YOU WERE JUST IN FRONT OF THE STEPS?

A YES, SIR.

Q OKAY, AND THAT'S WHEN YOU TESTIFIED THAT HE STARTED SHOOTING?

A YES.

Q OKAY, ALL RIGHT, DO YOU REMEMBER HOW MANY TIMES HE SHOT?

A NO, SIR.

Q OKAY, AND SO WHEN YOU RAN, WHEN THE SHOOTING STARTED AND YOU SAW WHAT WAS HAPPENING ---

A I JUST WANTED TO GET OUT OF THE WAY.

Q JUST TO GET OUT OF THE WAY?

A YES, SIR.

Q LET ME ASK YOU, NOW THIS PICTURE IS FROM THE HOUSE ---

THE COURT: AND WHAT PHOTOGRAPH IS THAT?

MR. DEBERRY: THIS IS STATE'S EXHIBIT 14, YOUR HONOR.

THE COURT: THANK YOU.

Q IT'S A PICTURE OF FRONT OF THE HOUSE LOOKING OUT?

A YES, SIR.

Q OKAY, ALL RIGHT, NOW CAN YOU, THEY WOULD HAVE BEEN OVER HERE?

A YES, SIR.

MADAM COURT REPORTER: SPEAK UP PLEASE.

A YES, SIR.

Q OKAY, SO THEY WERE, THEY WERE OVER HERE WHERE THE SHOOTING STARTED?

A YES, SIR.

Q AND YOU WERE OVER IN FRONT OF THE STEPS?

A YES, SIR.

Q OKAY, NOW YOU TESTIFIED THAT MR. APPLEWHITE FELL TO THE GROUND AFTER THE SHOOTING WAS OVER AND PEOPLE SCATTERED, IS THIS THE CAR THAT THEY CAME IN?

A WHO KESHAWN?

Q UH-HUH?

A YES, SIR.

Q OKAY, AND MR. MCGILL AND MR. LANE DID THEY, WHAT DID THEY DO?

A WHEN?

Q AFTER THE SHOOTING?

A THEY CAME AND GOT KESHAWN, I SAW THEM COME AND GET KESHAWN AND THEY WAS TAKING HIM TO THE CAR, DRAGGING HIM TO THE CAR.

Q AND SO THEY WERE DRAGGING HIM TO, TO THE CAR?

A DRAGGING HIM TO THE CAR.

Q HERE?

A YES, SIR.

Q ALL RIGHT, AND THIS IS JUST ANOTHER PICTURE?

THE COURT: WHAT NUMBER?

MR. DEBERRY: THIS IS STATE'S EXHIBIT 8.

Q IT'S JUST A DIFFERENT ANGLE OF THE FIRST PICTURE, YOU CAN AGAIN JUST POINT OUT WHERE YOU WERE AND WHERE THEY WERE?

A RIGHT HERE.

Q OKAY, AND WHERE WAS THE CAR THAT YOU RAN AROUND?

A HERE.

Q ALL RIGHT, YOU CAN SIT BACK DOWN?

A OKAY.

Q AFTER, AFTER THE EVENTS TOOK PLACE JACKIE MCGILL AND TRAVIS TRIED TO GET HIM BACK IN THE CAR, WHAT, WHAT DID YOU DO?

A I RAN IN THE HOUSE, I WAS BANGING ON THE DOOR CAUSE EVERYBODY HAS LEFT AND I WAS BANGING ON THE DOOR TRYING TO GET IN THE HOUSE TO CALL 9-1 BUT I DIDN'T REALIZE BY THE TIME I GOT IN THE HOUSE GOOD I SAW THE POLICE COME UP. I COULD SEE THE LIGHTS OUTSIDE, THE POLICE HAD CAME. I DIDN'T REALIZE THE PEOPLE HAD CROSS THE, ACROSS THE STREET HAD CALLED THE POLICE FROM WHERE ME AND KESHAWN WAS OUTSIDE FIGHTING.

Q OKAY, SO DID THEY LET YOU IN THE HOUSE?

A YES, SIR.

Q ALL RIGHT, AND WHAT DID YOU DO?

A I GOT THE PHONE.

Q OKAY?

A AND WAS TRYING TO CALL 911 BUT I, WHEN I SAW THE LIGHTS OUTSIDE I HAD CALLED MY MAMA BECAUSE I SAW THE LIGHTS SO I ASSUME THE AMBULANCE WAS OUTSIDE, TOO.

Q OKAY, DID YOU COME OUT, WERE YOU SCARED?

A YES, SIR.

Q OKAY, DID YOU KNOW WHAT TO DO?

A NO, SIR.
Q DID YOU STAY IN THE HOUSE FOR A WHILE?
A YES, SIR.
Q OKAY, WHERE WERE YOU WHEN THE POLICE CAME IN THE HOUSE?
A IN THE HALLWAY, COMING UP THE HALLWAY.
Q ALL RIGHT, DID YOU COOPERATE WITH LAW ENFORCEMENT?
A YES, SIR.
Q OKAY, DID YOU TELL LAW ENFORCEMENT SOME TIME LATER WHAT YOU SAW?
A YES, SIR.
Q OKAY, DID THEY GIVE YOU AN OPPORTUNITY TO SHOW YOU A PHOTO LINEUP?
A NOT THAT NIGHT.
Q BUT LATER?
A YES.
Q IN THE INVESTIGATION?
A YES, SIR.
Q AND WHO DID YOU PICK OUT IN THAT PHOTO LINEUP?
A MISTER.
Q MISTER?
A YES, SIR.
Q THAT WOULD BE SHAWN REAVES?

A YES, SIR.

Q AND THAT'S WHO YOU SAW SHOOT --

A YES, SIR.

Q JOEMELLER APPLEWHITE, KESHAWN?

A YES, SIR.

MR. DEBERRY: I DON'T HAVE ANY FURTHER QUESTIONS, PLEASE ANSWER ANY QUESTIONS MR. BROOKER HAS.

THE COURT: CROSS?

MR. BROOKER: IF YOU WOULD GIVE ME JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

MR. BROOKER: I'VE JUST BEEN HANDED A STATEMENT AND I'D LIKE TO TAKE THE OPPORTUNITY JUST TO REVIEW IT.

THE COURT: TAKE YOUR TIME.

CROSS EXAMINATION

BY MR. BROOKER:

Q MS. WILSON OR IS IT MS. DOZIER?

A EITHER ONE IS FINE.

Q EITHER ONE?

A YES, SIR.

Q WHICH DO YOU PREFER?

A WILSON.

Q WILSON, OKAY. MS. WILSON, NOW YOU SAID THAT YOU WERE, YOU WERE AT [redacted] AND, OF COURSE, I THINK YOU TESTIFIED TO THE FACT THAT YOU WERE

THERE ON TWO OCCASIONS?

A YES, SIR.

Q OKAY, AND, AND THE SHOOTING TOOK PLACE ON THE FIRST OCCASION; IS THAT CORRECT?

A NO, SIR.

Q EXCUSE ME, THE SECOND OCCASION?

A YES, SIR.

Q I'M SORRY, OKAY, LET'S TALK ABOUT AT LEAST THE FIRST OCCASION, THE FIRST TIME YOU CAME ONTO [redacted] WOULD HAVE BEEN APPROXIMATELY WHAT TIME THAT DAY?

A I DON'T KNOW.

Q OKAY, WOULD HAVE BEEN DAYLIGHT OR WOULD HAVE BEEN NIGHT AT THAT PARTICULAR PERIOD OF TIME?

A IT WAS NIGHT.

Q IT WAS AT NIGHT THAT PARTICULAR TIME, AND, AND WHAT REASON DID YOU, WERE YOU GOING OVER TO [redacted]?

A FOR DESHON.

Q I'M SORRY?

A FOR DESHON.

Q IS THAT, IS THAT BRANDON BELLAMY?

A YES, SIR.

Q OKAY, THEY CALL HIM DESHON?

A YES, SIR.

Q OKAY, OKAY, ALL RIGHT, WAS HE A FRIEND OF YOURS OR, OR WAS, WAS YA'LL IN A RELATIONSHIP?

A NO, SIR.

Q OKAY, WHAT WAS HIS RELATIONSHIP TO YOU?

A HE WAS JUST A FRIEND.

Q OKAY, OKAY, AND HOW LONG WERE YOU OVER THERE THAT FIRST TIME?

A NOT LONG, PROBABLY FIFTEEN MINUTES AT THE MOST.

Q OKAY, AND WHO WAS OVER THERE AT THAT PARTICULAR PERIOD OF TIME WHEN YOU WENT OVER THE FIRST TIME?

A I DON'T REMEMBER, I JUST, WHEN I PULLED UP DESHON WAS ALREADY OUTSIDE SO I JUST WENT DIRECTLY TO HIM.

Q YA'LL STOOD OUTSIDE AND TALKED FOR ABOUT FIFTEEN MINUTES OR SO?

A YES, SIR.

Q OKAY, AND NO ONE WAS OUTSIDE AT THAT PARTICULAR PERIOD OF TIME?

A THERE WAS PEOPLE OUTSIDE, I JUST DON'T REMEMBER WHO WAS OUTSIDE.

Q OKAY, APPROXIMATELY HOW MANY PEOPLE WAS OUTSIDE ROUGHLY?

A I'M NOT SURE, MAYBE ---

Q WAS IT MORE THAN FIVE?

A YES, SIR.

Q WAS IT MORE THAN TEN?

A NO, SIR.

Q SO SOMEWHERE BETWEEN FIVE AND TEN THE FIRST TIME YOU WERE THERE?

A YES, SIR.

Q OKAY, NOW YOU STATED IN YOUR TESTIMONY THAT, THAT, THAT, THAT, THAT SHAWN, THAT KESHON APPLEWHITE CAME OVER THE FIRST TIME?

A YES, SIR.

Q OKAY, OKAY, AND WAS THAT WHY YOU WERE STANDING OUTSIDE TALKING WITH, WITH, WITH DESHON?

A NO, SIR.

Q OKAY, WHEN HE CAME OVER TO THE HOUSE THE FIRST TIME WHERE WERE YOU?

A OUTSIDE, WHEN I SAW THE CAR COMING, I CAN SEE THE END OF THE STREET AND I SAW HIS CAR COMING SO WHEN I SAW HIS CAR COMING I GOT IN THE CAR AND I LEFT.

Q WHY DID YOU GET IN THE CAR AND LEAVE?

A BECAUSE I ALREADY KNEW LIKE BECAUSE BEFORE HE EVEN CAME HERE HE HAD ALREADY TOLD ME HE BETTER NOT SEE ME TALKING TO DESHON, SO I ALREADY KNEW THAT BY HIM COMING OVER THERE THERE WAS GOING TO BE A PROBLEM ---

Q A PROBLEM ---

A --- SO I JUST LEFT.

Q OKAY, ALL RIGHT, SO YOU LEFT AND WHERE DID YOU GO TO FROM THAT PARTICULAR POINT?

A I WENT, I REALLY DON'T REMEMBER WHERE I WENT, I JUST KNOW I LEFT, ME AND LATOYA LEFT. I THINK WE WENT TO THE STORE IF I'M NOT MISTAKEN.

Q YOU WERE WITH LATOYA?

A YES, SIR.

Q SHE WAS DRIVING?

A YES, SIR.

Q OKAY, AND, OF COURSE, YOU SAID, YOU SAID THAT YOU LEFT BECAUSE YOU KNEW THERE WAS GOING TO BE A PROBLEM?

A YES, SIR.

Q OKAY, WHAT WERE YOU AFRAID OF, WHAT SORT OF PROBLEM YOU THOUGHT THERE WOULD BE?

A I WASN'T SURE, I JUST KNEW KESHON WILL BE MAD SO I DIDN'T KNOW WHAT TO EXPECT SO I JUST WENT AHEAD AND LEFT.

Q OKAY, BUT I'M ASSUMING BECAUSE YOU LEFT THAT YOU WERE AFRAID THERE WAS GOING TO BE A PROBLEM?

A YES, SIR.

Q IF HE HAD GOTTEN THERE, OKAY, DO YOU THINK IT'S POSSIBLE, POSSIBILITY THAT VIOLENCE WOULD BREAK OUT?

MR. DEBERRY: OBJECTION, YOUR HONOR, THAT CALLS FOR SPECULATION.

MR. BROOKER: WELL I'M ASKING FOR HER OPINION, NOT ANYONE ELSE'S.

MR. DEBERRY: SHE STILL HAS TO SPECULATE ---

THE COURT: SUSTAIN THE OBJECTION.

MR. DEBERRY: --- TO ANSWER THAT QUESTION.

THE COURT: SUSTAINED.

MR. BROOKER: SHE CAN SPECULATE ABOUT HER OWN.

THE COURT: REPHRASE.

MR. BROOKER: OKAY, OKAY.

Q (CONTINUING) WERE YOU AFRAID THAT SOMETHING WAS GOING TO HAPPEN?

A YES, SIR.

Q IS THAT WHY YOU LEFT?

A YES, SIR.

Q OKAY, AND WHAT CAUSED YOU TO BE AFRAID, WHAT YOU THOUGHT WAS GOING TO HAPPEN?

A BECAUSE OF THE PHONE CALL LEADING UP TO HIM COMING HOME SO JUST WENT AHEAD AND LEFT BEFORE ANYTHING GOT STARTED.

Q OKAY, AND DON'T TELL ME ABOUT ANY PHONE CALL HAD YOU RECEIVED PHONE CALL?

A WHEN?

Q LEADING UP, I THINK YOU JUST MENTIONED YOU HAD RECEIVED PHONE CALLS LEADING UP TO KESHON COMING HOME?

A YES, SIR.

Q OKAY, DID YOU FELT THREATENED BY THIS TELEPHONE CALL?

A NO, NOT FOR ME BUT FOR DESHON OR ANYBODY ELSE, NOT FOR ME.

Q YOU FELT THREATENED, YOU FELT THREATENED FOR OTHER PEOPLE?

A YES, SIR.

Q BASED UPON THE CALLS THAT, THAT KESHON APPLEWHITE MADE TO YOU?

A YES, SIR.

Q NOW AND THAT'S WHY WERE AFRAID AND THAT'S WHY LEFT?

A YES, SIR.

Q OKAY, IS THAT YOU WERE CONCERNED FOR DESHON'S SAFETY?

A YES, SIR.

Q OKAY, ALL RIGHT, NOW WHEN YOU LEFT, YOU AND I THINK YOUR FRIEND, I THINK MS., MS. LATONYA?

A LATOYA.

Q LATOYA, WHAT'S LATOYA'S LAST NAME?

A DAVIS.

Q MS. LATOYA DAVIS, YA'LL LEFT WHEN YOU SAW HIS CAR?

A YES, SIR.

Q OKAY, ALL RIGHT, NOW WHEN YOU LEFT DO YOU

KNOW WHETHER OR NOT AND, OF COURSE YOU TELL ME YES OR NO, DO YOU KNOW WHETHER OR NOT HE STOPPED AT [redacted]?

A YES, SIR.

Q OKAY, AND HOW DID YOU KNOW THAT HE HAD STOPPED AT [redacted]

A I COULD SEE IN THE REAR VIEW.

Q YOU COULD SEE IN THE REAR VIEW MIRROR?

A UH-HUH.

Q OKAY, COULD YOU SEE WHETHER OR NOT HE GOT OUT OF THE CAR?

A NO, SIR.

Q OKAY, YOU JUST KNOW THAT THE CAR STOPPED?

A YES, SIR.

Q OKAY, OKAY, AND HOW LONG DID YOU SEE THE CAR BEFORE, BEFORE YOU WERE OUT OF SIGHT AND COULDN'T SEE IT ANYMORE?

A NOT LONG BECAUSE WE PASSED THE CAR, IT WASN'T LONG.

Q OKAY, ALL RIGHT, DID ANYONE APPROACH THE CAR AT THAT PARTICULAR PERIOD OF TIME?

A I DIDN'T SEE ANYBODY.

Q OKAY, ALL RIGHT, NOW OKAY, YOU SAID YA'LL WENT SOME PLACE?

A YES, SIR.

Q AND HOW LONG WAS IT BEFORE YA'LL CAME BACK?

A IT WAS MAYBE THIRTY MINUTES TO AN HOUR.

Q THIRTY MINUTES TO AN HOUR YOU CAME BACK?

A YES, SIR.

Q OKAY, ALL RIGHT, AND WHEN YOU CAME BACK WHO WAS AT THE HOUSE WHEN YOU, WHEN YOU ARRIVED BACK?

A IT WAS STILL A LOT OF PEOPLE OUTSIDE.

Q OKAY, AND I'M GOING TO ASK YOU THE SAME QUESTION I ASKED, AT THIS PARTICULAR PERIOD OF TIME WAS IT MORE THAN FIVE PEOPLE OUTSIDE?

A YEAH, THERE WAS MORE PEOPLE THIS TIME.

Q OKAY, SO IT'S MORE THAN FIVE PEOPLE, WAS IT MORE THAN TEN PEOPLE?

A PROBABLY MORE THAN TEN.

Q OKAY, WAS IT MORE THAN FIFTEEN PEOPLE?

A OH, NO.

Q OKAY, NOW BUT BETWEEN TEN AND FIFTEEN PEOPLE THAT WERE OUT THERE TELL ME WHO DID YOU KNEW THAT WAS OUT THERE WHEN YOU ARRIVED THE SECOND TIME, WE'RE TALKING ABOUT THE SECOND TIME YOU ARRIVED TELL ME WHO YOU RECOGNIZED THAT WAS OUT THERE?

A I DON'T KNOW, IT'S JUST A COUPLE OF CARS THAT HAD PULLED UP BY THEN SO I DON'T KNOW WHEN I GOT OUT OF THE CAR I WENT STRAIGHT IN THE HOUSE. I DIDN'T SEE DESHON OUTSIDE SO I WENT ON IN THE HOUSE

Q OKAY, SO YOU'RE NOT SURE ABOUT THE BETWEEN THE TEN OR FIFTEEN PEOPLE THAT YOU'RE TALKING ABOUT ON THE OUTSIDE OF THE HOUSE WHEN YOU PULLED UP; IS THAT CORRECT?

A YES, SIR, IT WAS A COUPLE OF PEOPLE I KNEW FROM MULLINS LIKE PLACES LIKE THAT.

Q OKAY ---

A WAS STANDING OUTSIDE.

Q OKAY, AND WHO WERE THOSE PEOPLE THAT YOU KNOW FROM MULLINS THAT WERE STANDING OUTSIDE?

A THIS BOY NAMED TRUETT AND THEN THERE WERE A COUPLE WERE IN A CAR AND I DON'T REMEMBER, IT WAS SOME PEOPLE FROM ACROSS THE STREET HAD CAME OUTSIDE, I DON'T KNOW THOSE PEOPLE SO --

Q OKAY, YEAH, AND I'M ONLY ASKING YOU TO IDENTIFY THE ONES THAT YOU DO KNOW?

A OKAY.

Q OKAY, THAT'S ALL THE ONES THAT YOU DID KNOW IS THAT YOU RECOGNIZED PEOPLE FROM ACROSS THE STREET?

A YES, SIR.

Q AND YOU RECOGNIZED SOME PEOPLE FROM MULLINS?

A YES, SIR.

Q IS THAT CORRECT, NOW YOU WENT INSIDE THE HOUSE AND WHO WAS ON THE INSIDE OF THE HOUSE WITH YOU?

A DESHON.

Q OKAY, ANYBODY ELSE ON THE INSIDE OF THE HOUSE?

A I THINK HIS MAMA WAS IN THERE.

Q OKAY, ANYONE ELSE ON THE INSIDE OF THE HOUSE?

A AND HIS LITTLE BROTHER.

Q OKAY, ALL RIGHT, ANYONE ELSE?

A I DON'T THINK SO, NO, SIR, NO ONE ELSE.

Q OKAY, ALL RIGHT, NOW HOW LONG WERE YOU ON THE INSIDE OF THE HOUSE BEFORE KESHON APPLEWHITE ARRIVED?

A PROBABLY FIFTEEN, TWENTY MINUTES, IT WASN'T LONG.

Q OKAY, AND, OKAY, NOW WHEN DID YOU FIRST NOTICE THAT HE HAD PULLED UP, DON'T TELL ME WHAT ANYBODY ELSE SAID, WHEN DID YOU FIRST NOTICE THAT HE HAD PULLED UP?

A WHEN I GOT TO THE DOOR.

Q OKAY, OKAY, WHEN YOU GOT TO THE DOOR?

A YES, SIR.

Q OKAY, DID YOU OPEN THE DOOR?

A YES, SIR.

Q OKAY, AND, AND WHY DID YOU OPEN THE DOOR?

A HE TOLD ME TO COME OUTSIDE SO I JUST WENT OUTSIDE.

Q OKAY, AND WHY DID YOU, I THINK YOU TESTIFIED EARLIER IS THAT, THAT YOU HAD RECEIVED SOME, SOME

MESSAGES, SOME TELEPHONE CALLS AND THAT BASED UPON THE NATURE OF THOSE TELEPHONE, YOU HAD RECEIVED SOME TELEPHONE CALLS I THINK FROM, FROM, FROM, FROM KESHON APPLEWHITE?

A YES, SIR.

Q AND BASED UPON THE NATURE OF THOSE TELEPHONE CALLS YOU FEARED THE SAFETY, YOU FEAR THE SAFETY OF, I THINK YOU SAID YOU FEARED FOR THE SAFETY OF DESHON?

A YES, SIR.

Q AND YOU ALSO FEARED FOR THE SAFETY MAYBE OF SOME OF OTHER PEOPLE?

A YES, SIR.

Q NOW WITH THAT IN YOUR MIND THAT YOUR THEORY NOW THAT, THAT MR. APPLEWHITE, MR. APPLEWHITE MIGHT HURT THESE PEOPLE WHY WOULD YOU COME OUT?

A OH, I ALREADY KNEW HE WASN'T LEAVING, HE WASN'T GOING TO LEAVE BECAUSE I LOOKED PAST HIM AND I SAW THAT HE HAD JACKIE AND THEM WITH HIM BY THEN SO I ALREADY KNEW HE WASN'T GOING TO LEAVE AND HE WAS JUST LIKE COME OUTSIDE, JUST COME OUTSIDE I JUST WANT TO TALK TO YOU.

Q NOW YOU SAID HE HAD JACKIE, HE HAD JACKIE WITH HIM, WHO WAS THE PEOPLE THAT WERE WITH HIM?

A JACKIE, TRAVIS, AND NICOLE.

Q NICOLE, DO YOU KNOW NICOLE'S NAME?

A I THINK THEY CALL HER KAREN, I DON'T KNOW HER LAST NAME.

Q OKAY, NICOLE, OKAY, THEY CAME WITH HIM TO YOUR KNOWLEDGE, IN HIS CAR?

A YES, SIR.

Q DID HE HAVE THEM IN THE CAR THE FIRST TIME THAT HE CAME UP?

A NO, SIR.

Q OKAY, SO WHEN YOU OPENED THAT DOOR AND CAME OUT AS REQUESTED WHAT WERE YOU FEELING AT THAT PARTICULAR PERIOD OF TIME?

A BECAUSE HE KEPT SAYING JUST COME OUTSIDE, I'M NOT GOING TO TOUCH YOU, JUST COME OUTSIDE, I JUST WANT TO TALK TO YOU. SO I FIGURED IF I JUST GO OUTSIDE AND TALK TO HIM AND HEAR WHAT HE GOT TO SAY THEN HE'LL JUST LEAVE.

Q WERE YOU SCARED?

A A LITTLE BIT.

Q OKAY, SO YOU DID GO OUTSIDE?

A YES, SIR.

Q OKAY, AND, AND WHEN, WHEN YOU ANSWERED THE DOOR WAS, WAS KESHON APPLEWHITE WAS HE ON THE, ON THE, ON THE FRONT PORCH?

A YES, SIR.

Q WHEN YOU OPENED THE DOOR, SO HE WAS UP ON THE FRONT PORCH WHEN YOU OPENED THE DOOR?

A YES, SIR, IT WAS A GLASS DOOR, I DIDN'T HAVE TO OPEN A BIG DOOR, I COULD SEE STRAIGHT THROUGH.

Q OKAY, SO, SO THERE WAS, THERE WAS A TRANSPARENT GLASS THERE?

A YES, SIR.

Q OKAY, SO WHEN YOU WALKED UP TO THE DOOR HE WAS STANDING ON THE OTHER SIDE ON THE PORCH ON THE OTHER SIDE OF THE TRANSPARENT GLASS DOOR?

A YES, SIR.

Q OKAY, OKAY, SO, AND, OF COURSE, I'M GOING TO RUN YOU THROUGH IT STEP BY STEP, SO WHEN HE WALKED OUTSIDE OR WHEN YOU GO OUTSIDE WITH HIM WHAT DID YA'LL DO, STEP BY STEP?

A I WALKED, I CAME DOWN THE STEPS AND I WAS LIKE, OKAY, WHAT YOU WANT TO TALK ABOUT AND HE WAS LIKE, NO, NOT RIGHT HERE, COME IN THE STREET. SO I WAS LIKE, NO, YOU'RE NOT GOING TO HIT ME. HE'S LIKE, NO, I'M NOT GOING TO PUT MY HANDS ON YOU, I JUST WANT TO ASK YOU SOMETHING, SO HE GOT IN THE STREET AND WE STARTED TALK ---

MR. DEBERRY: OBJECTION, YOUR HONOR. ALL THIS IS HEARSAY, IT'S NOT --

THE COURT: ANY RESPONSE?

MR. BROOKER: NO RESPONSE, YOUR HONOR, IS, IS THAT ---

THE COURT: OBJECTION SUSTAINED, DON'T SAY WHAT ANYBODY ELSE SAID.

MR. BROOKER: (CONTINUING)

Q TESTIFY TO WHAT YOU SAID AND WHAT YOU SAW, OKAY, SO START WITH WHEN, WHEN YA'LL GOT DOWN IN THE STREET; DID YOU WALK DOWN, WALK DOWN TO THE STREET WITH HIM?

A YES, SIR.

Q OKAY, AND WHEN YOU WALKED DOWN TO THE STREET WHAT HAPPENED WHEN YOU WALKED DOWN TO THE STREET?

A WE STARTED ARGUING ---

Q OKAY?

A --- AND HE THREW ME DOWN IN THE STREET.

Q OKAY, NOW I DON'T WANT TO HEAR HIS SIDE OF THE STORY, TO YOUR UNDERSTANDING AND, OF COURSE, THIS IS BASED UPON YOUR KNOWLEDGE, WHAT WAS THE ARGUMENT ABOUT?

A THE FACT THAT I WAS TALKING TO SOMEBODY ELSE.

Q OKAY, OKAY, ALL RIGHT, OKAY, HE SAID, HE THREW YOU DOWN IN THE STREET?

A YES, SIR.

Q OKAY, AND WHAT HAPPENED, AND WHAT HAPPENED AFTER HE THREW YOU DOWN IN THE STREET?

A I GOT UP AND WE WAS FIGHTING.

Q OKAY, OKAY, NOW WHEN YOU'RE TALKING ABOUT FIGHTING WHAT DO YOU MEAN FIGHTING?

A AS IN FIGHTING, FIST FIGHTING.

Q OKAY, OKAY, HOW BIG IS, HOW, HOW, HOW BIG

IS HE, MY UNDERSTANDING IS HE'S AROUND SIX FOOT ONE?

A YES, SIR.

Q OKAY, AND, OF COURSE, HE'S AROUND MAYBE 230, 240; IS THAT CORRECT?

A YES, SIR.

Q SO HE'S A BIG FELLOW?

A YES, SIR.

Q OKAY, ALL RIGHT, HE THREW YOU DOWN ON THE STREET?

A YES, SIR.

Q AND YA'LL STARTED FIGHTING?

A YES, SIR.

Q AND YOU SAID YA'LL START FIGHTING WITH YOUR FISTS?

A YES, SIR.

Q OKAY, HOW DID YOU FEEL AT THAT PARTICULAR PERIOD OF TIME?

A WHAT DO YOU MEAN HOW I FEEL, HOW DID I FEEL?

Q WERE YOU AFRAID?

A BY THEN ALL THAT HAD WENT OUT THE WINDOW, I WAS MAD.

Q YOU WERE MAD?

A YES, SIR.

Q OKAY, OKAY, DID YOU GET HURT?

A YES, SIR.

Q WHERE DID YOU GET HURT AT?

A I HAD A COUPLE OF BRUISES IN MY FACE AND I HAD SOME BRUISES ON ME FROM WHERE I HAD, AND I HAD A KNOT ON MY HEAD CAUSE I HAD HIT MY HEAD ON THE, SOMEBODY'S CAR, I DON'T KNOW WHO CAR WAS PARKED OUTSIDE THE ROAD, AND I JUST HAD A COUPLE OF BRUISES FROM WHERE HE THREW ME DOWN.

Q HOW LONG DID YA'LL FIGHT?

A I'M NOT SURE.

Q WAS IT A MINUTE?

A NO, LONGER THAN A MINUTE.

Q TWO MINUTES?

A I'M NOT SURE HOW LONG IT WAS, I JUST KNOW WE WAS FIGHTING. IT WASN'T LIKE A CONSTANT THING, LIKE WE WERE FIGHTING AND SOMEBODY WILL PULL US APART THEN WE'LL START BACK FIGHTING.

Q SO NOBODY ATTEMPTED TO STOP IT?

A NO, SIR, THEY CAN'T REALLY STOP IT, THEY COULDN'T REALLY STOP IT.

Q OKAY, OKAY, YOU SAID YOU CAN'T REALLY STOP, I DON'T UNDERSTAND?

A BECAUSE HE'S SO MUCH BIGGER THAN EVERYBODY, HE'S STRONG, TOO, YOU CAN'T STOP THAT.

MR. BROOKER: OKAY, IF WE COULD APPROACH, YOUR HONOR.

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

MR. BROOKER: (CONTINUING)

Q OKAY, NOW WHEN YOU CAME OUTSIDE, WHEN YOU CAME OUTSIDE, I'M GOING TO TAKE YOU BACK A LITTLE BIT, OKAY? WHEN YA'LL FIRST CAME OUT THOSE GLASS DOORS AND THEN AFTER I DO THAT I'M GOING TO TAKE YOU BACK TO WHERE YOU JUST LEFT OFF?

A OKAY.

Q WHEN YOU CAME OUTSIDE AND YA'LL FIRST WALKED THROUGH THOSE GLASS DOORS, NOW I KNOW THAT YOU TOLD, TOLD US AT THAT PARTICULAR PERIOD OF TIME IT WAS SOMEWHERE BETWEEN TEN TO FIFTEEN PEOPLE THAT WERE ON THE OUTSIDE AND THEN, OF COURSE, YOU SAID YOU RECOGNIZED SOME PEOPLE?

A YES, SIR.

Q SOME OF THEM WERE FROM ACROSS THE STREET AND SOME OF THEM WAS, I THINK, YOU SAID FROM MULLINS?

A YES, SIR.

Q OKAY, AND, OF COURSE, YOU SAID THAT MY UNDERSTANDING WAS, AND YOU CORRECT ME IF I'M WRONG, THAT, THAT YOU WERE IN THE HOUSE FOR ABOUT NOW MAYBE FIFTEEN, TWENTY MINUTES BEFORE MR. APPLEWHITE CAME UP; IS THAT CORRECT?

A UH-HUH.

Q NOW AT THAT TIME AS YOU WERE WALKING OUT OF THE HOUSE WITH MR. APPLEWHITE, HAD THAT CROWD GROWN OR GOTTEN SMALLER?

A I DON'T KNOW.

THE COURT: SPEAK UP.

MR. BROOKER: (CONTINUING)

Q OKAY, OKAY, GO AHEAD AND REPEAT IT SO THE COURT REPORTER CAN HEAR IT?

A I DON'T KNOW.

Q YOU DON'T KNOW WHETHER OR NOT THE CROWD HAD GROWN OR HAD EITHER GOTTEN SMALLER?

A NO, SIR.

Q OKAY, NOW I'M GOING TO TAKE YOU BACK UP TO WHERE THE FIGHT TOOK PLACE?

A OKAY.

Q NOW I THINK YOU SAID HE THREW YOU TO THE GROUND?

A YES, SIR.

Q AND THEN, OF COURSE, YA'LL THEN GOT UP AND YA'LL FIST FIGHT?

A YES, SIR.

MR. DEBERRY: YOUR HONOR, THIS HAS BEEN ASKED AND ANSWERED AND COVERED.

MR. BROOKER: WELL I'M NOT ASKING A QUESTION,

I'M TAKING HER BACK.

THE COURT: WELL IT'S CROSS EXAMINATION, I'LL GIVE YOU SOME ROOM, GO AHEAD.

MR. BROOKER: OKAY.

Q (CONTINUING) OKAY, I'M GOING TO TAKE YOU BACK UP TO THAT PARTICULAR POINT, OKAY, WHERE HE THREW YOU TO THE GROUND?

A OKAY.

Q OKAY, AND I KNOW I'VE GOT IT FROM THE FIGHT, I THINK YOU SAID THAT I LEFT OFF WITH IT, YOU SAID THAT YOU DIDN'T KNOW HOW LONG YOU FOUGHT BUT AT SOME POINT AT TIME DID THE FIGHT END?

A YES, SIR.

Q OKAY, AND HOW DID THE FIGHT END?

A I DON'T REMEMBER, I JUST, WE JUST STOPPED FIGHTING.

Q OKAY ---

A AND HE WAS JUST, WE STOPPED FIGHTING AND THEN WE ARGUED A LITTLE WHILE AND THAT WAS IT AND I STARTED BACK TO THE HOUSE.

Q OKAY, OKAY, NOW BEFORE HE, BEFORE HE STRUCK YOU OR BEFORE HE THREW YOU TO THE GROUND THE FIRST TIME WERE YOU LOOKING AT HIS FACE?

A YES, SIR.

Q WHAT WAS HIS FACIAL EXPRESSION BEFORE HE

THREW YOU TO THE GROUND?

A OH, HE WAS MAD.

Q WAS HE MAD THROUGHOUT THE FIGHT?

MR. DEBERRY: OBJECTION, YOUR HONOR, THAT IS HEARSAY, CALLS FOR HEARSAY AND EXPRESSION IS HEARSAY AND SHE CAN'T TESTIFY TO ANYTHING ANYBODY ELSE SAID OR DID.

THE COURT: REPHRASE.

MR. BROOKER: WE'RE NOT ASKING, AT LEAST, YOUR HONOR, IT'S NOT ASKING, WE'RE ASKING FOR HER IMPRESSION, PRESENCE SENSE IMPRESSION AND NOT A STATEMENT THAT'S MADE BY KESHON, THIS IS HER OWN THOUGHTS.

THE COURT: I THINK YOU ASKED WAS HE MAD.

MR. BROOKER: YEAH, I ASK --

THE COURT: ASK HER, REPHRASE IT PROPERLY.

MR. BROOKER: (CONTINUING)

Q WELL I'LL ASK THE SAME QUESTION I ASK HER AGAIN AND SHE'LL GIVE ME THE SAME ANSWER AND THAT IS THAT DID YOU SEE HIS FACIAL EXPRESSION?

MR. DEBERRY: YOUR HONOR, FACIAL EXPRESSION IS HEARSAY, IT'S A STATEMENT.

MR. BROOKER: IT'S NOT.

MR. DEBERRY: IT'S A STATEMENT, YES, IT IS, YOUR HONOR.

THE COURT: OVERRULED, GO AHEAD.

MR. BROOKER: (CONTINUING)

Q COULD YOU SEE HIS FACIAL EXPRESSION?
A YES, SIR.
Q OKAY, WHAT WAS HIS FACIAL EXPRESSION?
A HE WAS MAD.
Q OKAY, NOW WAS THAT FACIAL EXPRESSION MAINTAINED THROUGHOUT THE ENTIRE FIGHT?
A I DON'T KNOW.
Q OKAY ---
A I MEAN I WASN'T PAYING ATTENTION TO THAT.
Q OKAY, NOW I'M GOING TO TAKE YOU BACK UP WHEN THE FIGHT ENDS, I THINK YOU SAID THE FIGHT ENDS AND YA'LL TALK AGAIN; IS THAT CORRECT?
A WE ARGUED.
Q YA'LL ARGUED, OKAY, I'M SORRY, YA'LL ARGUED AFTER THE FIGHT WAS OVER WITH, HOW LONG DID YA'LL STOOD THERE AND ARGUE?
A I DON'T KNOW.
Q OKAY, WAS IT LONGER THAN FIVE MINUTES?
A I REALLY DON'T KNOW HOW LONG IT WAS.
Q OKAY, WELL THAT'S ALL RIGHT, OKAY, NOW AT SOME POINT IN TIME, WHERE WERE YA'LL WHEN THE ARGUMENT WAS OCCURRING?
A IN THE STREET.
Q YA'LL WERE STILL IN THE STREET WHERE THE FOUGHT TOOK PLACE?

A YES, SIR.

Q OKAY, SO WHEN THE FIGHT ENDED, EXCUSE ME, WHEN THE ARGUMENT ENDED ---

A YES, SIR.

Q --- WHAT DID YOU DO?

A I WENT WALKING BACK TOWARDS THE HOUSE.

Q AND WHAT DID MR. APPLEWHITE DO?

A I THOUGHT HE WAS AT HIS CAR BUT HE CAME BEHIND. HE WASN'T RIGHT UP ON BEHIND ME BUT HE WAS BEHIND ME.

Q OKAY, OKAY, NOW SO THE FIGHT WAS TAKING PLACE, I KNOW YOU SAID THAT, THAT THERE WAS A, THERE WAS A, HE HAD THREE PERSONS THAT WAS THERE WITH HIM, I THINK THAT CAME WITH HIM THE SECOND TIME?

A YES, SIR.

Q AND THAT WAS A MR. LANE AND A MR. MCGILL?

A YES, SIR.

Q OKAY, WHERE WERE THEY WHEN THE FIGHT TOOK PLACE?

A IN THE STREET.

Q OKAY, THEY WERE IN THE STREET WITH YA'LL?

A YES, SIR.

Q WAS ANYBODY ELSE IN THE STREET WITH YA'LL?

A KAREN.

Q THAT'S THE OTHER PERSON THAT CAME WITH HIM?

A YES, SIR.

Q OKAY, BESIDES THE PEOPLE THAT CAME WITH HIM THAT SECOND TIME WAS THERE ANYONE ELSE IN THE STREET WITH YA'LL?

A NO, SIR.

Q SO ALL THE OTHER TEN TO FIFTEEN PEOPLE, I THINK YOU SAID, ROUGHLY, YOU DIDN'T KNOW THAT WAS THERE WHEN YOU ARRIVED, THEY WERE, THEY WERE IN THE YARD OF THE HOUSE?

A YES, SIR.

Q OKAY, ALL RIGHT, DID, DID MR. MCGILL AND MR. LANE OR EITHER, OR EITHER KAREN DID THEY ATTEMPT TO STOP THE FIGHT?

A THEY WERE TELLING US TO STOP.

Q DON'T TELL ME WHAT THEY SAID BUT DID THEY PHYSICALLY ATTEMPT TO STOP THE FIGHT?

A YES, JACKIE TRIED TO GRAB KESHON.

Q OKAY, HE TRIED TO GRAB HIM AND HOLD HIM BACK?

A YES, SIR.

Q OKAY, WAS HE ABLE TO?

A NO, SIR.

Q DID ANYONE ELSE TRY AND STOP KESHON APPLEWHITE?

A NO, SIR.

Q OKAY, ALL RIGHT, SO WHEN YOU WERE WALKING BACK AND, OF COURSE, YOU SAID THAT HE WAS WALKING BEHIND YOU, YOU THOUGHT HE WAS GOING BACK TO THE CAR BUT HE'S WALKING BEHIND YOU, WHEN DID YOU NOTICE THAT HE WAS NOT GOING BACK TO THE CAR BUT HE WAS COMING BEHIND YOU?

A WHEN I REACHED THE PORCH, WHEN I REACHED THE WALKWAY IN FRONT OF THE PORCH.

Q UH-HUH?

A HE WAS BESIDE, HE ENDED UP BESIDE ME.

Q OKAY, AND, AND IF YOU HOLD ON FOR JUST A SECOND TAKE A LOOK AT THESE PHOTOGRAPHS AND SEE IF YOU CAN GIVE US AN INDICATION? I HAVE IN MY HANDS WHAT'S BEEN MARKED AS STATE'S EXHIBIT 15, STATE'S EXHIBIT 14, AND STATE'S EXHIBIT 8, OKAY, I WANT YOU TO TAKE A LOOK AT THOSE PHOTOGRAPHS AND, AND, AND LET'S START OFF WITH STATE 14, OKAY, OKAY? IF YOU'D TAKE A LOOK AT THAT PHOTOGRAPH, OKAY, AND, AND, AND, AND THIS, THE PHOTOGRAPH IN THIS PICTURE DEPICTS OR AT LEAST DEPICTS WHERE YA'LL WERE STANDING AT WHEN YA'LL REACHED BACK TO THE PORCH?

A YES, SIR.

Q OKAY, OKAY, ALL RIGHT --

MR. BROOKER: MAY I ASK HER TO STEP DOWN?

THE COURT: SURE, BE SURE AND REFER TO THE NUMBER ON THE PHOTOGRAPH.

MR. BROOKER: OKAY, YES, SIR, WE'RE STILL

REFERRING TO STATE'S EXHIBIT 14.

Q (CONTINUING) WE'RE STILL LOOKING AT STATE'S 14, WHERE WERE YOU AT WHEN YOU FIRST NOTICED THAT HE WAS, HE WAS COMING BEHIND YOU AND HE WASN'T GONE BACK TO THE CAR?

A RIGHT HERE.

Q OKAY, DO THAT AGAIN?

A RIGHT HERE.

THE COURT: SPEAK UP.

MR. BROOKER: OKAY, NOW IF I CAN ASK THE STATE IS THAT WOULD THERE BE ANY OBJECTION TO HER PUTTING AN (X) MARK WHERE SHE WAS STANDING WHEN SHE FIRST NOTICED THAT THEY WERE FOR IDENTIFICATION PURPOSES FOR THE JURY.

MR. DEBERRY: I DO NOT.

MR. BROOKER: OKAY, ALL RIGHT.

Q (CONTINUING) I'M GOING TO GIVE YOU THIS BLUE PEN AND, OF COURSE, WE'RE STILL REFERRING TO STATE'S EXHIBIT 14, IF YOU PUT AN (X) MARK WHERE YOU WERE STANDING AT WHEN YOU FIRST NOTICED THAT, THAT HE WAS STILL BEHIND YOU? OKAY, NOW USING THE SAME PHOTO ABOUT WHERE WAS HE BEHIND YOU WHEN YOU NOTICED THAT HE WAS NEXT TO YOU?

A BY THEN HE WAS ALREADY OVER HERE.

Q OKAY, OKAY, PUT AN (O) TO REPRESENT WHERE MR. APPLEWHITE WAS, IF YOU'D PUT JUST A LITTLE SMALL CIRCLE TO REPRESENT WHERE MR. APPLEWHITE WAS STANDING WHEN YOU

NOTICED HE WAS STILL BEHIND YOU?

AT THAT PARTICULAR PERIOD OF TIME MY UNDERSTANDING IS THAT YOU WERE STANDING RIGHT THERE WHERE THE (X) MARK WHEN YOU NOTICED THAT MR. APPLEWHITE, WHEN YOU HAD REACHED THE PORCH AND YOU NOTICED MR. APPLEWHITE WAS BEHIND YOU AND MR. APPLEWHITE IS STANDING RIGHT HERE THERE WHERE THE (O) IS; IS THAT CORRECT?

A YES.

Q THAT YOU MARKED ON STATE'S EXHIBIT 14?

A I DIDN'T REALIZE THAT HE DIDN'T GET IN HIS CAR AND HE WAS BEHIND ME HE WAS RIGHT HERE.

Q ABOUT WHERE, WHERE THE (O) SYMBOL IS; IS THAT CORRECT?

A HERE.

Q NOW DON'T TELL ME WHAT WAS SAID BUT WHEN YOU NOTICED THAT HE WAS BEHIND YOU WERE THERE WORDS EXCHANGED?

A NOT WITH ME.

Q OKAY, AND WHO WAS THE WORDS EXCHANGED WITH?

A THE BOYS THAT WERE STANDING, IT WAS SOME BOYS STANDING IN FRONT OF THAT CAR, IT WAS THE CAR RIGHT HERE ON THE OTHER SIDE OF THAT CAR, YEAH, HE JUST ASKED THEM LIKE WHAT THEY ALL LOOKING AT, HE WAS CURSING.

Q OKAY, OKAY, ALL RIGHT, ALL RIGHT, NOW I'M GOING TO ASK YOU THE SAME THING AGAIN, IS THAT DID YOU SEE

HIS FACIAL EXPRESSION AT THAT PARTICULAR PERIOD OF TIME?

A NO, SIR.

Q OKAY, OKAY, NOW WHAT HAPPENED AT THAT PARTICULAR PERIOD OF TIME WHEN YOU NOTICED THAT YOU WERE STANDING THERE WHERE THE (X) MARK IS AND HE WAS THERE WHERE THE CIRCLE WAS, WHAT HAPPENED AT THAT PARTICULAR PERIOD OF TIME?

A HE WALKED UP TO MISTER OVER HERE AND HE ---

Q WHERE WAS, AND, OF COURSE, YOU SAID MISTER YOU'RE REFERRING TO, I THINK YOU PREVIOUSLY IDENTIFIED AS --

A SHAWN.

Q SHAWN REAVES, WHERE WAS HE STANDING AT?

A OVER HERE.

Q OKAY, COULD YOU PUT A BOX TO REPRESENT WHERE SHAWN REAVES WAS STANDING, A SQUARE, I'M SORRY?

OKAY, AND WAS THERE, WAS THERE ANYONE ELSE THAT WAS STANDING OVER THERE WHERE SHAWN REAVES WAS STANDING?

A I DIDN'T SEE ANYBODY.

Q OKAY, WERE THERE OTHER PEOPLE STANDING, WHERE WERE THE OTHER PEOPLE STANDING?

A OVER HERE ON THE SIDE OF THIS CAR, OVER IN THAT AREA.

Q OKAY, THEY WERE ON THE OTHER SIDE OF THIS CAR THAT'S SHOWN IN THIS PICTURE; IS THAT CORRECT?

A YES, SIR.

Q THEY WAS ON THE OTHER SIDE OF THIS CAR THAT'S SHOWN IN THIS PHOTOGRAPH?

A YES, SIR.

Q NOW WHERE WAS MR. MCGILL AND MR. LANE?

A THEY WERE OUT HERE, OUT HERE AT HIS CAR.

Q MR. MCGILL AND MR. LANE WAS OUT HERE AT THIS WHITE VEHICLE, THAT'S PICTURED IN THIS PHOTOGRAPH?

A YES, SIR.

Q OKAY, NOW GO AHEAD AND FROM THAT PARTICULAR POINT I THINK YOU SAID THERE WAS SOME WORDS EXCHANGED BACK AND FORTH, FROM THAT PARTICULAR POINT, YOU CAN RETAKE THE STAND, IF YOU'D LIKE, GO AHEAD AND EXPLAIN TO US WHAT HAPPENED AT THAT PARTICULAR POINT?

A WHEN ME AND KESHON GOT TO THE PORCH?

Q YEAH, STARTING FROM THAT PARTICULAR POINT?

A HE PUSHED SHAWN AND SNATCHED HIS CHAINS OFF AND THAT'S WHEN HE STARTED SHOOTING.

Q OKAY, OKAY, YOU SAID SHOVED HIM?

A YES, SIR.

Q AND HE SNATCHED SOMETHING OFF FROM WHERE, FROM WHERE IN THE BODY?

A FROM HIS NECK.

Q OKAY, NOW PRIOR TO THAT PARTICULAR EVENT HAD SHAWN REAVES SWUNG AT HIM OR HIT HIM OR DID ANYTHING?

A NO, SIR.

Q SO YOUR TESTIMONY IS, IS THAT MR. APPLEWHITE STRUCK HIM FIRST?

A PUSHED HIM, YES, SIR.

Q AND THEN SNATCHED HIS CHAIN OFF?

A YES, SIR.

Q AND THEN, OF COURSE, YOU SAID THEN SHAWN RIGHT THEN PULLED A GUN AND THEN STARTED SHOOTING; IS THAT CORRECT?

A YES, SIR.

Q ALL RIGHT, NOW I THINK YOU PREVIOUSLY TESTIFIED ON DIRECT EXAMINATION THAT YOU DON'T KNOW HOW MANY TIMES HE SHOT?

A NO, SIR.

Q OKAY, BUT YOU SAID THAT I THINK YOU TESTIFIED THAT MR. APPLEWHITE WAS STANDING IN FRONT FACING SHAWN REAVES WHEN SHAWN REAVES ALLEGEDLY, ALLEGEDLY FIRED THE GUN; IS THAT CORRECT?

A YES, SIR.

Q OKAY, AND, OF COURSE, I THINK YOU TESTIFIED THAT MR. REAVES, THAT, THAT DESHON APPLEWHITE, EXCUSE ME, NOT DESHON BUT KESHON APPLEWHITE, THEN FELL TO HIS KNEES?

A YES, SIR.

Q DID HE FELL FORWARD?

A YES, SIR.

Q OKAY, DID HE FELL FORWARD?

A YES, SIR.

Q OKAY, WAS HIS HEAD FACING THE HOUSE OR DID HE FELL BACKWARDS, WAS HIS HEAD FACING AWAY FROM THE HOUSE?

A NO, SIR, IT WAS FORWARD.

Q FORWARD, SO HE WAS FACING THE HOUSE WHEN HE WENT TO THE, HE WAS FACING THE HOUSE WHEN HE FELL TO THE GROUND?

A YES, SIR.

Q OKAY, DID HE EVER TURNED AROUND, TURNED AROUND WITH HIS BACK TO THE HOUSE AT ANY TIME OF THIS PERIOD?

A WHILE HE WAS SHOOTING?

Q YEAH?

A I DON'T THINK SO, I DON'T KNOW, I RAN.

Q OKAY, OKAY, BUT WHEN HE FALL HE WAS FACING THE HOUSE?

A YES, SIR.

Q OKAY, NOW DID YOU HEAR ANY OTHER SHOOTING?

A I DIDN'T HEAR THAT SHOOTING, I COULD ONLY SEE THE FIRE COMING OFF THE GUN.

Q YEAH, I'M SORRY, YOU TESTIFIED THAT, YEAH, YEAH, THAT YOU DIDN'T HEAR THAT SHOOTING, YOU JUST SAW FIRE COMING FROM THE GUN, DID YOU KNOW WHETHER OR NOT ANYONE ELSE WAS SHOOTING?

A NO, SIR.
Q OKAY, NOW YOU SAW, YOU SAW SHAWN REAVES SHOOTING?
A YES, SIR.
Q OKAY, HOW MANY GUNS WAS HE SHOOTING?
A I ONLY SAW THAT ONE.
Q HAD ONE GUN?
A YES, SIR.
Q OKAY, OKAY, YOU CERTAIN OF THAT, YOU ONLY SAW ONE GUN?
A YES, SIR.
Q OKAY, HE DIDN'T HAVE TWO IN HIS HANDS?
A NO, SIR.
Q SHOOTING WITH TWO GUN IN HIS HANDS?
A NO, SIR.
Q OKAY, NOW HOW MUCH DO YOU KNOW ABOUT GUNS?
A NOTHING.
Q OKAY, ALL RIGHT, NOW YOU SAID YOU SAW IT WAS A SILVER IN COLOR GUN?
A YES, SIR.
Q OKAY, OKAY, AND I THINK YOU WERE ASKED SOMETHING ABOUT WHETHER OR NOT IT WAS A REVOLVER?
A YES, SIR.
Q OKAY, TO YOUR UNDERSTANDING WHAT IS A REVOLVER?

A THE ONES WITH THE LITTLE SPIN THING THAT COME OUT AND YOU PUT THE BULLETS IN IT AND PUSH IT BACK IN, THAT'S ALL I KNOW.

Q OKAY, COULD YOU SEE THE GUN SPIN?

A NO, SIR.

Q OKAY, ALL RIGHT, AND I'M TRYING TO FIGURE OUT HOW YOU'RE SURE IT WAS A REVOLVER?

A I COULD SEE THE GUN, I WAS STANDING CLOSE ENOUGH TO SEE THE GUN BUT I WASN'T STANDING UP CLOSE ENOUGH TO SEE IT SPIN AND IT WAS NO PORCH LIGHT, LIKE THEY HAVE A, THE, I DON'T KNOW THE LIGHTS, THE BIG TALL LIGHTS?

Q STREET LIGHTS?

A YES, SIR.

Q DID THEY HAVE A YARD LIGHT?

A YES, SIR.

Q AND WHERE WAS THAT YARD LIGHT POSITIONED AT?

A I'M NOT SURE, IT WASN'T DARK ENOUGH TO WHERE I COULDN'T SEE BUT I DO KNOW THE PORCH LIGHT WASN'T ON.

Q OKAY, I'M GOING TO HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 8, OKAY, I'M GOING TO SHOW YOU THAT PHOTOGRAPH, OKAY? WHERE IS A YARD LIGHT IN POSITION TO WHERE THE HOUSE IS?

A THERE'S NO LITTLE YARD LIGHT OVER HERE. I

MEAN OTHER THAN THE ONES IN THE STREET, YOU KNOW WHAT I'M SAYING.

Q OKAY, SO THE STREET LIGHTS WAS ON?

A THAT'S WHAT I'M TALKING ABOUT THE TALL LIGHTS.

Q OKAY, OKAY, AND, OF COURSE, THOSE, YOU'RE TALKING ABOUT THE STREET LIGHTS THAT'S BEYOND THE HOUSE THAT WOULD BE OUT IN THE STREETS?

A YES, SIR.

Q OKAY, BUT, BUT THERE WAS NO LIGHTS ON OUTSIDE OF THE HOUSE ILLUMINATING THE HOUSE?

A NO, SIR.

Q OKAY, ALL RIGHT, NOW WHEN YOU SAW THE GUN BEING FIRED DID YOU STAND UP AND FALL TO THE GROUND OR WHAT DID YOU DO?

A RAN.

Q AND WHERE DID YOU RAN AT?

A RAN TO BEHIND THE CAR THAT'S PARKED IN THE DRIVEWAY.

Q OKAY, I'M GOING TO GIVE YOU WHAT'S BEEN MARKED, LET YOU LOOK AT STATE'S EXHIBIT 8, YOU RAN BEHIND WHAT CAR?

A THIS CAR.

Q OKAY, OKAY, SO YOU'RE SAYING THAT YOU, YOU RAN BEHIND AND, OF COURSE, THE STATE HAS RELEASED IT AND

THE JURY COULD SEE IT, YOU RAN BEHIND THIS CAR WHEN YOU HEARD GUN FIRE; IS THAT CORRECT?

A YES, SIR.

Q OKAY, DID YOU START RUNNING WHEN YOU, DID YOU START RUNNING, I THINK, IMMEDIATELY AFTER, AFTER THE GUN STOPPED?

A YES, SIR.

Q OKAY, SO YOU INSTANTLY JUST STOPPED RUNNING?

A YES, SIR, BUT I, YEAH, I RAN AROUND THE CAR BUT I DIDN'T GET DOWN BESIDE THE CAR, I JUST WAS STANDING ON THE OTHER SIDE OF THE CAR.

Q OKAY, OKAY, ALL RIGHT, NOW AT THAT PARTICULAR PERIOD OF TIME WHAT DID YOU DO AT THAT PARTICULAR PERIOD OF TIME?

A AFTER THE SHOOTING STOPPED?

Q YEAH?

A CAME FROM AROUND THE CAR AND WENT TO WHERE KESHON WAS.

Q OKAY, ALL RIGHT, AND DID LAW ENFORCEMENT COME?

A AFTER THAT, YES, SIR.

Q OKAY ---

A AFTER I GOT IN THE HOUSE I SAW THE LIGHTS OUTSIDE.

Q OKAY, OKAY, I'M GOING TO ASK YOU THIS IS HOW LONG DID YOU STAYED OUTSIDE BEFORE YOU WENT IN THE INSIDE?

A I DON'T REMEMBER.

Q OKAY, WAS IT MORE THAN A MINUTE?

A I DON'T REMEMBER, I DON'T KNOW.

Q YOU DON'T KNOW HOW LONG YOU STAYED OUTSIDE?

A NO, SIR, I WAS OUTSIDE LONG ENOUGH FOR HIM TO TRY TO GET UP FROM BESIDE THE PORCH ---

Q OKAY ---

A --- AND MAKE IT TO THE WALKWAY AND JACKIE AND TRAVIS CAME AND DRUG HIM TO THE CAR.

Q OKAY, AT THAT PARTICULAR POINT YOU WENT INSIDE AFTER THAT?

A YES, SIR.

Q OKAY, NOW YOU WERE INSIDE HOW LONG WAS IT BEFORE LAW ENFORCEMENT SHOWS UP?

A IT WASN'T LONG BECAUSE AS SOON AS I GOT IN THE HOUSE GOOD I SAW THE BLUE LIGHTS OUTSIDE.

Q OKAY, AND, AND WHAT DID YOU DO AT THAT PARTICULAR PERIOD OF TIME?

A I WAS GETTING THE PHONE, TRYING TO GET THE PHONE.

Q I'M SORRY?

A GETTING THE PHONE.

Q I'M SORRY, OKAY, YOU TRYING TO GET TO THE PHONE?

A YES, SIR.

Q OKAY, YOU WERE ATTEMPTING TO CALL 911?

A YES, SIR.

Q OKAY, OKAY, THEY HAD ALREADY BEEN CALLED?

A YES, SIR.

Q OKAY, TO YOUR UNDERSTANDING, AT LEAST LAW ENFORCEMENT HAD ARRIVED?

A YES, SIR.

Q OKAY, OKAY, NOW HOW LONG WAS, DID LAW ENFORCEMENT EVER COME, COME AND KNOCK ON THE DOOR OR ANYTHING LIKE THAT?

A YES, SIR.

Q OKAY, HOW LONG, FROM THE TIME IN WHICH THE FIRST OFFICER ARRIVED ON THE SCENE HOW LONG DID IT TAKE BEFORE LAW ENFORCEMENT COME AND KNOCKED ON THE DOOR?

A I DON'T KNOW HOW LONG IT WAS.

Q OKAY, OKAY, I'M JUST ASKING YOU FOR THE BEST ESTIMATION WAS IT MORE THAN TEN MINUTES?

A MAYBE TEN MINUTES, MAYBE TEN, FIFTEEN MINUTES, IT WASN'T LONG.

Q MAYBE TEN OR FIFTEEN MINUTES BEFORE AN OFFICER COME AND KNOCKED ON THE DOOR?

A YES, SIR.

Q OKAY, AND, AND WHAT HAPPENED OR WHO ANSWERED, WHO ANSWERED THE, THE, THE DOOR WHEN THE OFFICER COME AND KNOCKED ON THE DOOR?

A THEY CAME IN, IT WAS MORE THAN ONE.

Q OKAY, GO AHEAD?

A IT WAS MORE THAN ONE POLICE OFFICER.

Q DO YOU KNOW WHO, WHO RESPONDED TO THE DOOR, WHO ANSWERED THE DOOR?

A NO, SIR.

Q OKAY, WHERE WERE YOU AT WHEN THE DOOR KNOCK CAME?

A I WAS COMING UP LIKE, LIKE IN THE BACK ROOM, THE BACK ROOM I WAS BACK THERE AND I WAS COMING UP THE HALLWAY BY THE TIME THE POLICE CAME IN I WAS COMING UP THE HALLWAY.

Q OKAY, DID THEY KNOCK ON THE FRONT DOOR OR THE BACK DOOR?

A THE SIDE DOOR.

Q OKAY, OKAY, OKAY, ALL RIGHT, WHAT HAPPENED NEXT, DID SOMEONE ANSWER THE DOOR?

A I'M NOT SURE.

Q OKAY, ALL RIGHT --

THE COURT: YOU GOING TO BE MUCH LONGER, YOU THINK WE NEED TO TAKE A BREAK?

MR. BROOKER: PROBABLY ABOUT MAYBE TEN OR

FIFTEEN MINUTES. IF YOU WANT TO TAKE A BREAK ---

THE COURT: ARE YA'LL OKAY OR DO YOU, YOU RATHER HIM GO AHEAD AND FINISH, YA'LL OKAY?

JURY PANEL MEMBER: YOU CAN GO AHEAD AND FINISH.

THE COURT: GO AHEAD, THAT'S FINE.

MR. BROOKER: OKAY, ALL RIGHT.

Q (CONTINUING) SO ABOUT TEN OR FIFTEEN MINUTES, OKAY, ALL RIGHT, AND THEN, OF COURSE, YOU HEARD KNOCKING AT THE DOOR?

A YES, SIR.

Q WHAT HAPPENED NEXT AFTER YOU HEARD THE KNOCKING AT THE DOOR?

A HE CAME IN AND WHEN THEY CAME IN THEY GOT EVERYBODY AND PUT HANDCUFFS ON EVERYBODY AND HAD US SIT DOWN IN THE KITCHEN AND THEY BROUGHT THE DOG IN AND WAS CHECKING THROUGHOUT THE HOUSE.

Q OKAY, ALL RIGHT, WERE YOU PLACED UNDER ARREST THAT NIGHT?

A YES, SIR.

Q OKAY, WAS DESHON BELLAMY PLACED UNDER ARREST THAT NIGHT?

A YES, SIR.

Q WAS HIS MOTHER, I THINK, DORETHA MCELVEEN, WAS SHE PLACED UNDER ARREST THAT NIGHT?

A I DIDN'T KNOW AT THE TIME THAT SHE WAS.

Q OKAY, ROBBIE MCELVEEN WAS HE PLACED UNDER ARREST THAT NIGHT?

A YES, SIR.

Q WERE YA'LL TAKEN, TAKEN FROM THE SCENE TOGETHER?

A NO, SIR.

Q OKAY, WHERE WERE YOU TAKEN AT WHEN YOU WERE ARRESTED?

A I WAS TAKEN TO THE POLICE STATION BUT I WAS IN THE CAR BY MYSELF.

Q OKAY, MARION COUNTY P.D., MARION CITY POLICE DEPARTMENT STATION?

A YES, SIR.

Q OKAY, OKAY, DID, DO YOU KNOW WHETHER OR NOT THE OTHER TWO BOYS, DESHON AND ROBBIE MCELVEEN WAS TAKEN DOWN THERE?

A NO, SIR.

Q OKAY, OKAY, AND WHEN YOU WERE TAKEN DOWN THERE WERE YOU QUESTIONED?

A YES, SIR.

Q OKAY, AND WHO QUESTIONED YOU?

A CAPTAIN GRAY, I THINK.

Q OKAY ---

A I DON'T KNOW IF IT'S CAPTAIN BUT GRAY.

Q OKAY, AND HOW LONG DID HE QUESTION YOU?

A I DON'T KNOW HOW LONG CAUSE THEY DID, BEFORE THEY QUESTIONED THEY CHECKED FOR THE RESIDUE ON YOUR HANDS.

Q OKAY, THEY, THEY SWABBED, THEY SWABBED YOUR PALM AND SWABBED THE BACK OF YOUR HAND?

A YES, SIR.

Q OKAY, OKAY, ABOUT WHAT TIME DID THEY DO THAT?

A I DON'T KNOW WHAT TIME IT WAS.

Q WAS IT STILL NIGHT OR WAS IT THE NEXT MORNING?

A IT WAS STILL NIGHT.

Q STILL NIGHT, OKAY, ALL RIGHT, DO YOU KNOW WHAT, HOW LONG YOU HAD BEEN DOWN TO THE POLICE STATION WHEN THEY DID THAT?

A NO, SIR, I DON'T KNOW HOW LONG.

Q OKAY, ALL RIGHT, NOW YOU SAID YOU TALKED TO, TO, I THINK CAPTAIN GRAY?

A YES, SIR.

Q WHAT DID YOU TELL CAPTAIN GRAY ABOUT THIS PARTICULAR INCIDENT?

A I TOLD HIM WHAT HAPPENED, WHAT I SAW AND WHAT HAPPENED THAT NIGHT.

Q OKAY, DID YOU TELL THEM A STORY SIMILAR TO WHAT YOU TESTIFIED HERE IN COURT TODAY?

A YES, SIR.

Q OKAY, DID YOU TELL HIM THAT, THAT, THAT, THAT YOU SAW SHAWN REAVES SHOOT?

A YES, SIR.

Q OKAY, ALL RIGHT, DID YOU KNOW SHAWN REAVES BY SHAWN REAVES?

A NO.

Q YOU KNEW HIM BY SHAWN REAVES AND YOU ALSO KNEW HIM BY, WHAT OTHER NAME DID YOU KNOW HIM BY?

A MISTER.

Q OKAY, THAT NIGHT WHEN YOU TALKED WITH CAPTAIN GRAY DID YOU IDENTIFY HIM AS SHAWN REAVES?

A AS MISTER.

Q YOU IDENTIFIED HIM AS MISTER?

A UH-HUH.

Q OKAY --

A I DIDN'T KNOW HIS LAST NAME, ALL I KNEW WAS SHAWN BUT I NEVER CALLED HIM SHAWN, I ALWAYS CALLED HIM MISTER.

Q OKAY, DID YOU KNEW, YOU KNEW HIM BY SHAWN?

A MISTER.

Q YEAH, YOU KNEW HIM BY MISTER BUT WHAT I'M SAYING IS YOU KNEW HIS FIRST NAME WAS SHAWN?

A YES, SIR.

Q OKAY, DID, DID YOU IDENTIFY HIS FIRST NAME

TO LAW ENFORCEMENT?

A I'M NOT SURE, I DON'T REMEMBER.

Q OKAY --

MR. BROOKER: ALMOST FINISHED, YOUR HONOR.

Q (CONTINUING) NOW WHEN YOU, WHEN YOU APPROACHED THE, WHEN YOU APPROACHED THE FRONT STAIRS, I THINK YOU SAID WHEN YOU NOTICED THAT, THAT KESHON APPLEWHITE WAS, WAS STILL WALKING BEHIND YOU TOWARDS THE PORCH, WHO WAS THE FIRST PERSON YOU SAW WHEN YOU WALKED TOWARDS THE FRONT PORCH?

A MISTER.

Q OKAY, OKAY, WAS HE THE LAST PERSON THAT YOU SAW PRIOR TO, PRIOR TO THE SHOOTING STARTED?

A YES, SIR, HE WAS STANDING THE CLOSEST TO ME, THAT'S THE ONE I SAW.

Q WHO ELSE WAS, WHO ELSE WAS THERE AND I'M NOT SURE I ASKED YOU THIS, I KNOW YOU TOLD ME YOU SAID THERE WAS SOME OTHER PEOPLE OUTSIDE THAT WAS NEXT TO THE VEHICLE THAT WAS PARKED THERE, DO YOU KNOW WHO ELSE WAS OUT THERE OR DO YOU KNOW WHO ELSE WAS OUTSIDE?

A I DON'T EVEN REMEMBER.

Q WAS IT ANY PEOPLE THAT YOU KNEW?

A I DON'T REMEMBER.

Q OKAY, YOU DON'T REMEMBER WHETHER THERE WERE PEOPLE THAT YOU KNEW OR YOU ---

A I DON'T REMEMBER WHO WAS OUTSIDE, I JUST REMEMBER SEEING MISTER STANDING BESIDE THE PORCH. I DON'T REMEMBER WHO ELSE WAS OUTSIDE.

Q OKAY, AT ANY POINT IN TIME WAS RODNEY MCELVEEN OUTSIDE?

A I DON'T REMEMBER.

Q OKAY, YOU DON'T REMEMBER WHETHER RODNEY OR DESHON WAS OUTSIDE?

A NO, SIR.

Q OKAY, OKAY, NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q I'M JUST GOING TO ASK YOU, YOU TESTIFIED THAT THE FIGHT WAS OVER WITH AND THAT YA'LL ARGUED SOME AFTER THE FIGHT?

A YES, SIR.

Q OKAY, AT THAT TIME WAS IT YOUR UNDERSTANDING THAT IT WAS OVER, THAT IT WAS OVER WITH AND THE THREAT WAS GONE?

A I THOUGHT IT WAS OVER AND DONE WITH BY THEN.

Q OKAY, NO FURTHER QUESTIONS.

THE COURT: RECROSS?

MR. BROOKER: NONE, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK YOU. ALL RIGHT, MEMBERS OF THE JURY, LET'S TAKE A FIFTEEN, TWENTY MINUTE BREAK, THEN WE'LL COME BACK AND CONTINUE, DO NOT TALK ABOUT THE CASE AT ALL AND IF ANYBODY NEEDS A SMOKE BREAK WE'LL MAKE SURE THAT YOU ARE ACCOMMODATED.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 11:40 A.M.)

(WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING TAKES PLACE ON THE RECORD AFTER THE RECESS.)

THE COURT: THE SOLICITOR HAS TURNED OVER THE 911 TAPES TO THE DEFENSE COUNSEL AND YOU CAN HAVE A COUPLE OF HOURS OVER LUNCH TO LISTEN TO THEM AND IF YOU NEED MORE TIME FEEL FREE TO ASK ME AND I'LL GIVE YOU WHATEVER TIME YOU NEED, MR. BROOKER, TO REVIEW THEM.

MR. BROOKER: I THINK, YOUR HONOR, IS THAT WE'RE GOING TO REVIEW THEM TOGETHER AT LUNCH TIME. I THINK THEY'RE STILL IN THE POSSESSION OF THE PROSECUTOR'S OFFICE BUT THEY HAVE PRODUCED THEM AND WE'RE GOING TO REVIEW THEM TOGETHER AT LUNCH TIME.

THE COURT: IF YOU NEED TIME LET ME KNOW. ALL RIGHT, GO AHEAD AND BRING THEM OUT.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 11:56 A.M.)

THE COURT: SOLICITOR, ANY TIME YOU'RE READY?

MR. DEBERRY: THANK YOU, YOUR HONOR, THE STATE WOULD CALL DR. CYNTHIA SCHANDL.

DR. CYNTHIA ANNA SCHANDL

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: ALL RIGHT, SOLICITOR?

MR. DEBERRY: THANK YOU.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q DR. SCHANDL, COULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD?

A CYNTHIA ANNA SCHANDL, S-C-H-A-N-D-L.

Q THANK YOU FOR BEING HERE THIS MORNING. COULD YOU EXPLAIN TO THE JURY ABOUT YOUR OCCUPATION AND WHAT TYPE OF DOCTOR YOU ARE AND WHAT YOU DO AND BY WHOM YOU'RE EMPLOYED WITH?

A YES, SIR, I AM A FORENSIC PATHOLOGIST; I'M EMPLOYED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON, SOUTH CAROLINA. A FORENSIC PATHOLOGIST IS A MEDICAL DOCTOR. I GOT MY BACHELORS DEGREE AT CALIFORNIA STATE UNIVERSITY IN SAN BERNARDINO AND THEN CAME TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON WHERE I DID MY MEDICAL SCHOOL AND GRADUATE SCHOOL, GRADUATED FROM THE MEDICAL SCHOOL GRADUATE SCHOOL AND THEN CONTINUED IN PATHOLOGY RESIDENCY PROGRAM. IN ORDER TO BECOME A FORENSIC PATHOLOGIST YOU MUST FIRST BECOME A PATHOLOGIST SO I WENT

THROUGH THE RESIDENCY PROGRAM ALSO AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

IN ADDITION THEN YOU NEED TO GO THROUGH A YEAR OF FELLOWSHIP, SPECIALIZED TRAINING IN THE FIELD OF FORENSIC PATHOLOGY, AND AFTER ALL OF THAT TRAINING YOU CAN THEN TAKE BOARD EXAMINATIONS IN THE FIELD OF ANATOMIC PATHOLOGY, CLINICAL PATHOLOGY, AND FORENSIC PATHOLOGY; AND I AM BOARD CERTIFIED BY THE AMERICAN BOARD OF PATHOLOGY IN THOSE THREE FIELDS OF PATHOLOGY AND IN 2004 AFTER THAT TRAINING AND SO FORTH I WAS INVITED TO JOIN THE FACULTY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WHERE I HAVE BEEN SINCE.

Q ALL RIGHT, CAN YOU JUST EXPLAIN TO THE JURY JUST A LITTLE BIT ABOUT WHAT FORENSIC PATHOLOGY IS?

A YES, SO PATHOLOGY QUITE SIMPLY IS THE STUDY OF DISEASE. IF YOU TACK FORENSIC PATHOLOGY IN FRONT OF THAT WE'RE NOW CONCERNED WITH THOSE PROCESSES THAT MAY HAVE MEDICAL, LEGAL IMPLICATIONS SO, FOR EXAMPLE, IF SOMEBODY IS AN ACCIDENT WHAT SORT OF, WHAT SORT OF FINDINGS DO WE, DO WE SEE. IF SOMEBODY IS INVOLVED IN SOME KIND OF AN ALTERCATION WHAT DO WE SEE, AND SO FORENSIC PATHOLOGY IS A FIELD WHERE WE SPECIALIZE IN DOCUMENTING INJURIES AS WELL AS NATURAL DISEASE PROCESSES AND THE WAY THAT WE DO THAT GENERALLY SPEAKING IS THROUGH THE USE OF THE AUTOPSY EXAMINATION.

THE AUTOPSY EXAMINATION IS DIVIDED INTO SEVERAL

DIFFERENT PARTS BEGINNING WITH WHAT WE CALL THE EXTERNAL EXAMINATION WHERE WE'LL LOOK AT THE BODY AS IT COMES TO US WHETHER CLOTHED OR NOT CLOTHED, LOOK AT THE SKIN AND THE HAIR AND THE EYES FOR BOTH FOR IDENTIFYING FEATURES AS WELL FOR, AS WELL AS FEATURES OF DISEASE OR OF INJURIES SUCH AS PERHAPS GUNSHOT WOUNDS.

AFTER COMPLETING THE EXTERNAL EXAMINATION IF CLOTHING IS AVAILABLE WE MIGHT LOOK AT THAT SEPARATELY AND THEN WE WOULD CONTINUE TO WHAT IS CLASSICALLY THOUGHT OF AS THE AUTOPSY EXAMINATION WHICH IS THE INTERNAL EXAMINATION PORTION OF THE AUTOPSY AT WHICH POINT WE CAN DOCUMENT INJURIES OR DISEASE PROCESSES WITHIN THE BODY, SO WITHIN THE ORGANS.

PART OF THAT PROCESS IS TAKING PORTIONS OF THE TISSUES, A PORTION OF HEART, A PORTION OF KIDNEY, AND SO FORTH TO LOOK AT UNDER THE MICROSCOPE, AGAIN TO LOOK FOR INJURY AND TO LOOK FOR ANY DISEASE PROCESS THAT MAY NOT BE OBVIOUS TO THE NAKED EYE. SO THAT IS ALSO PART OF THAT INTERNAL EXAMINATION THAT OCCURS DURING THE COURSE OF THE AUTOPSY.

ANOTHER PART WHEN AVAILABLE WE WILL TAKE BODY FLUIDS FOR TESTING FOR TOXICOLOGY AND WE MAY ALSO TAKE BODY FLUIDS TO LOOK FOR ELECTROLYTE LEVELS, SODIUM POTASSIUM, THOSE KINDS OF THINGS, SO ALL THESE THINGS ARE A PART OF THE AUTOPSY AND THROUGH THAT PROCESS WE GENERATE DIAGRAMS.

WE GENERATE PHOTOGRAPHS AND AT THE END WE GENERATE A FINAL REPORT WHICH HAS ALL OF THOSE FINDINGS COMBINED.

Q ALL RIGHT, AND HAVE YOU EVER BEEN QUALIFIED BY A CIRCUIT JUDGE IN SOUTH CAROLINA AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY?

A YES, SIR.

Q AND DO YOU KNOW ABOUT HOW MANY TIMES?

A MORE THAN FIFTY.

Q MORE THAN FIFTY, ALL RIGHT --

MR. DEBERRY: YOUR HONOR, AT THIS TIME WE WOULD LIKE TO HAVE MS. OR DR. SCHANDL QUALIFIED AS AN EXPERT IN THIS WORK OF FORENSIC PATHOLOGY.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTION.

THE COURT: GRANTED.

MR. DEBERRY: (CONTINUING)

Q DR. SCHANDL, WERE YOU SO EMPLOYED AS A, AS A FORENSIC PATHOLOGIST FOR THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN MAY OF 2007?

A YES, SIR.

Q OKAY, AND DID YOU HAVE AN OCCASION TO PERFORM AN AUTOPSY EXAMINATION ON MR. RAMEL KESHAWN APPLEWHITE?

A YES, SIR.

Q OKAY, AND CAN YOU EXPLAIN TO THE JURY HOW

THAT PROCESS WENT AND, AND YOUR FINDINGS THAT YOU MADE DURING THAT PROCESS?

A YES, SIR.

Q SO MR. APPLEWHITE CAME TO US AND WE PERFORMED THE AUTOPSY ON MAY THE 14TH OF 2007. HE CAME TO US WITHOUT HIS CLOTHING, SOMETIMES THE CLOTHING, IF THE PERSON GOES TO THE EMERGENCY ROOM DURING THOSE RESUSCITATION EFFORTS THE CLOTHING MAY BE REMOVED, YOU KNOW. PEOPLE TRYING TO RESUSCITATE YOU THEY'LL TAKE YOUR CLOTHING OFF, SO WE DIDN'T GET THE CLOTHING IN THIS CASE, SO HE CAME TO US WITHOUT CLOTHING.

NOW OBVIOUS UPON EXTERNAL EXAMINATION THERE WERE MULTIPLE DEFECTS TO HIS BODY. THESE DEFECTS WERE CONSISTENT WITH GUNSHOT WOUNDS. ALTOGETHER THROUGH THE ENTIRE COURSE OF THE AUTOPSY, ALL THOSE STEPS THAT I JUST DESCRIBED, IT TURNED OUT THAT HE WAS SHOT FIVE TIMES. THREE OF THE BULLETS WENT ALL THE WAY THROUGH THE BODY AND WE TERM THAT AS PERFORATING CAUSE THEY'RE GOING ALL THE WAY THROUGH AND THEN TWO OF THEM, SO OF THE FIVE THREE WENT ALL THE WAY THROUGH AND TWO JUST WENT INTO THE BODY AND WE RECOVERED A BULLET, THOSE WE CALL PENETRATING, SO TWO WERE PENETRATING GUNSHOT WOUNDS AND THREE WERE PERFORATING GUNSHOT WOUNDS.

OF THE ONES THAT WERE PERFORATING, MEANING GOING ALL THE WAY THROUGH THE BODY, ONE WENT FROM FRONT TO BACK

THROUGH THE LEFT THIGH. ONE WENT SUPERFICIALLY INTO HIS RIGHT BACK AND RIGHT BACK OUT OF HIS RIGHT BACK IN AN UPWARD DIRECTION, UPWARD AND OUTWARD DIRECTION, SO BASICALLY INTO THE SKIN, INTO THE TISSUE BENEATH THE SKIN, AND THEN RIGHT BACK OUT OF THE SKIN. AND THEN THE THIRD ONE THAT WAS PERFORATING AND WENT ALL THE WAY THROUGH WENT FROM THE LEFT SIDE OF HIS STOMACH THROUGH TO ABOUT THE CHEST LEVEL, BUT AGAIN IN A SUPERFICIAL PATHWAY THEY DIDN'T HIT ANY ORGANS OR GO INTO THE BODY CAVITIES. SO THOSE WERE THE THREE PERFORATING GUNSHOT WOUNDS. SO WE DON'T RECOVER A BULLET IF THEY'RE PERFORATING AGAIN BECAUSE THE BULLET GOES ALL THE WAY THROUGH THE BODY SO IT WOULD BE AT THE SCENE OR SOMEWHERE ELSE, NOT, NOT WITH US.

ONE OF THE PENETRATING GUNSHOT WOUNDS WAS TO THE SHOULDER RIGHT AT THE TOP OF THE LEFT SHOULDER GOING IN A, IN A DOWNWARD AND BACKWARDS DIRECTION AND IT CAUSED A GREAT DEAL OF FRACTURE TO THE SCAPULA, THAT WING BONE YOU HAVE RIGHT THERE, AND SO IT FRACTURED THAT BONE AND THIS BULLET WE RETRIEVED FROM THE UNDERARM REGION OF, OF MR. APPLEWHITE. THAT WAS ONE OF THE PENETRATING GUNSHOT WOUNDS MEANING IT DIDN'T GO ALL THE WAY THROUGH, WE COLLECTED A BULLET.

THE FIFTH GUNSHOT WOUND, THE LAST GUNSHOT WOUND WHICH WAS ALSO A PENETRATING GUNSHOT WOUND WHERE WE WERE ABLE TO RECOVER A BULLET WAS TO THE BACK, THE LEFT SIDE OF

THE BACK, THE UPPER LEFT BACK, AND IT WENT THROUGH THE UPPER LOBES, YOUR LEFT LUNG HAS TWO LOBES, IT WENT THROUGH THE UPPER LOBE OF YOUR, OF HIS LEFT LUNG. IT THEN WENT THROUGH THE AORTA WHICH IS ABOUT THE CALIBER OF A GARDEN HOSE AND IT'S A HIGH PRESSURE BLOOD VESSEL, SO IT WENT THROUGH THE AORTA, VERY NEAR TO THE HEART, CAUSING DAMAGE TO THE HEART. IT THEN CONTINUED ON A DOWNWARD AND FORWARD PATH THROUGH THE LIVER AND INTO THE, INTO THE COLON OR THE LARGE BOWEL AND THAT'S WHERE WE RECOVERED THE BULLET THAT WAS ASSOCIATED WITH THAT WOUND. SO ALTOGETHER THAT PENETRATING GUNSHOT WOUND, MEANING WE FOUND A BULLET, WENT THROUGH LUNG, IT WENT THROUGH BRONCHUS, WHICH IS A VERY LARGE AIRWAY, WENT THROUGH THE AORTA, WHICH IS THE VERY LARGEST BLOOD VESSEL, DAMAGED THE HEART, WENT THROUGH LIVER, AND ENDED UP IN THE BOWEL, AND SO MY OPINION IS THAT THAT GUNSHOT WOUND, THAT PENETRATING GUNSHOT WOUND IS THE ONE THAT MOST LIKELY DID LEAD TO MR. APPLEWHITE'S DEATH.

Q ALL RIGHT, WHEN YOU SAY YOU COLLECTED THE TWO BULLETS, DID YOU LABEL THOSE BULLETS?

A WHAT WE DO WHEN WE FIND A BULLET WE'LL GIVE IT A NUMBER DESIGNATION SO IN THIS CASE THE ONE THAT'S ASSOCIATED WITH THE WOUND TO THE BACK THAT WENT THROUGH THE LUNG AND ALL THE STRUCTURES AND THAT WE FOUND, THAT ONE WE LABELED NUMBER ONE, AND THEN THE ONE THAT WAS TO THE SHOULDER THAT WE FOUND IN THE UNDER ARM WE LABELED THAT ONE

NUMBER TWO, SO WE GIVE THEM THESE NUMBER DESIGNATIONS SO THAT WE KNOW WHERE WHICH ONE CAME FROM IN OUR REPORT.

Q OKAY, AND WHAT DO YOU DO WITH THEM WHEN YOU, WHEN YOU GET THEM AND LABEL THEM?

A WELL WE GET THEM AS EVIDENCE SO WE, WE DON'T DO BALLISTICS TESTING IN OUR LABORATORY SO WE WILL HAND THEM TO AN OFFICIAL OF LAW ENFORCEMENT POTENTIALLY TO BE TESTED FOR BALLISTICS OR OTHER STUDIES AND IN THIS CASE, I'M REFERRING TO THAT REPORT THAT I MENTIONED THAT WE GENERATE ON THESE CASES. IN THIS CASE THOSE BULLETS WERE TRANSFERRED TO GARY E. COOK OF THE MARION COUNTY POLICE DEPARTMENT.

Q OKAY, AND THOSE WERE LABELED AS BULLETS ONE AND BULLETS TWO?

A THAT'S CORRECT.

Q OKAY, AND JUST TO BE CLEAR YOU SAY THE BULLET THAT STRUCK THE LUNG, THE AORTA NEAR THE HEART, THE LIVER, AND WOUND UP IN THE COLON IN YOUR PROFESSIONAL OPINION THAT'S GOING TO BE THE BULLET THAT CONTRIBUTED TO THE DEATH OF THE VICTIM?

A THAT IS, IS THE ONE THAT MOST LIKELY CAUSED DEATH. THE OTHER BULLET WOUNDS MAY HAVE CAUSED DEATH. YOU CAN NEVER SAY THAT THEY COULDN'T HAVE BECAUSE YOU CAN HAVE SIGNIFICANT BLEEDING, YOU CAN HAVE INFECTION LATER ON, YOU CAN HAVE MANY MANY COMPLICATIONS FROM WHAT IS TYPICALLY

THOUGHT OF AS A SURFACE GUNSHOT WOUND. SO I CANNOT TELL YOU THAT ANY ONE OF THOSE OTHER GUNSHOT WOUNDS COULD NOT HAVE KILLED MR. APPLEWHITE BUT I CAN TELL YOU FOR SURE AND FOR CERTAIN THAT THAT GUNSHOT WOUND THAT WENT THROUGH HIS LUNG AND DAMAGED HIS HEART AND HIS AORTA DID CAUSE DEATH.

Q NOW DID YOU, DO YOU LABEL IN YOUR REPORT THE GUNSHOT WOUNDS TO THE BODY?

A WE DO. SO WHAT WE DO IS WE GIVE THEM LETTERS BECAUSE, FOR EXAMPLE, IN THIS CASE HE HAS EIGHT HOLES IN HIS BODY BUT REALLY ONLY FIVE GUNSHOT WOUNDS BECAUSE THREE OF THEM WENT ALL THE WAY THROUGH, SO WE'LL LABEL THEM (A), (B), (C), (D), (E), (F) TO NOT GET CONFUSED WITH HOW MANY ACTUAL TIMES THE INDIVIDUAL WAS SHOT.

Q OKAY, AND BULLET NUMBER ONE BEING THE ONE THAT CAUSED DAMAGE TO HIS LUNG, HIS AORTA HEART, AND LIVER THAT ONE WAS FROM GUNSHOT WOUND WHAT?

A THAT ONE IS FROM GUNSHOT WOUND THAT WE DESIGNATED (D) TO THE LEFT UPPER BACK.

Q OKAY ---

A (D) AS IN DOG.

Q AND THE BULLET NUMBER TWO THAT YOU TESTIFIED LODGED IN HIS SHOULDER IS FROM GUNSHOT WOUND LETTER --

A THE ONE THAT, THAT WENT THROUGH THE SHOULDER BLADE INTO THE UNDER ARM THAT IS FROM GUNSHOT

WOUND DESIGNATED AS (A).

Q OKAY, DID YOU CAUSE, DID YOU DETERMINE THE MANNER OF DEATH IN THIS CASE?

A YES, SIR, A MANNER OF DEATH WE'RE GIVEN SEVERAL CHOICES IN THIS STATE THAT IT WOULD INCLUDE THE POSSIBILITY OF NATURAL, ACCIDENTAL, SUICIDE, HOMICIDE, OR UNDETERMINED, SO IN THIS CASE THIS IS A HOMICIDE.

Q OKAY, AND WHAT'S THE DEFINITION OF HOMICIDE?

A A HOMICIDE IS WHEN ONE PERSON'S LIFE IS TAKEN BY ANOTHER'S ACTION OR INACTION.

MR. DEBERRY: ALL RIGHT, THANK YOU VERY MUCH, DOCTOR, PLEASE ANSWER ANY QUESTIONS MR. BROOKER HAS.

THE COURT: MR. BROOKER?

CROSS EXAMINATION

BY MR. BROOKER:

Q IS IT DR. SCHANDL?

A YES, SIR.

Q AM I PRONOUNCING THAT CORRECTLY?

A THAT IS CORRECT.

Q OKAY, JUST I WANT TO ASK YOU A COUPLE OF QUESTIONS, IT WON'T TAKE TOO LONG. NOW THIS MIGHT SOUND LIKE A SILLY QUESTION BUT I'M GOING TO ASK IT BECAUSE IT'S IMPORTANT FOR THE JURY TO KNOW. NOW YOU WERE NOT AT THE INCIDENT SCENE, WERE YOU NOT?

A NO, SIR, I DO NOT GO TO THE SCENE.

Q OKAY, SO WHEN YOU'RE TESTIFYING HERE TODAY YOU'RE NOT TESTIFYING WITH RESPECT TO ANYTHING THAT TOOK PLACE AT THE INCIDENT SCENE; YOUR JOB IS TO SIMPLY TRY AND DETERMINE MANNER OF DEATH; IS THAT CORRECT?

A THE CAUSE AND THE MANNER OF DEATH, YES, SIR.

Q OKAY, OKAY, NOW MY UNDERSTANDING WAS IS, IS THAT, AND YOU CORRECT ME IF I'M WRONG, IS THAT YOU SAID THAT YOU, THERE WERE FIVE GUNSHOT WOUNDS, EXCUSE ME, I THINK A TOTAL OF EIGHT GUNSHOT WOUNDS. HE WAS SHOT FIVE TIMES; IS THAT CORRECT?

A HE WAS SHOT FIVE TIMES, THAT'S CORRECT.

Q OKAY, AND, AND I THINK YOU SAID THAT THREE GUNSHOT WOUNDS WERE PERFORATING GUNSHOT WOUNDS, WHICH MEANS THAT, THAT THE, THAT THE OBJECT THAT CAUSED THE WOUND TO ACTUALLY PASS THROUGH THE BODY AND IS NOT RECOVERED IN THE BODY; IS THAT CORRECT?

A THAT IS CORRECT.

Q OKAY, ALL RIGHT. NOW CAN YOU DETERMINE, CAN YOU DETERMINE, FOR THE PERFORATING WOUNDS CAN YOU DETERMINE WHAT TYPE OF, WHAT TYPE OF GUN CAUSES A, CAN CAUSE A PARTICULAR WOUND SIMPLY BY EXAMINING THE WOUND TO DETERMINE WHAT TYPE OF GUN WAS USED?

A NO, SIR, I CANNOT DETERMINE THE CALIBER OF

THE WEAPON. SOMETIMES YOU CAN TELL BETWEEN LIKE A HIGH POWER RIFLE WHICH MAKES A VERY BIG DEFECT AND A HANDGUN, BUT, BUT IT'S DEFINITELY A GENERALIZATION. THE ANSWER IS NO.

Q OKAY, AND SO FOR AT LEAST FOR THE PERFORATED WOUNDS IS THAT YOU DON'T KNOW WHAT TYPE OF, WHAT TYPE OF GUN WAS USED OR EITHER WHETHER OR NOT THE SAME GUN OR MULTIPLE GUNS WAS USED TO MAKE THOSE PERFORATED WOUNDS?

A NO, I CANNOT KNOW THAT.

Q SO EACH ONE OF THOSE THREE PERFORATED GUNSHOT WOUNDS COULD HAVE CAME FROM THREE DIFFERENT GUNS?

A THAT IS A POSSIBILITY.

Q OKAY, NOW TWO OF THE WOUNDS WERE, WERE NOT PERFORATED AND IT MEANS THAT THERE WAS NOT, THE, THE SLUG OR THE GUNSHOT SLUG DID NOT PASS THROUGH THE BODY; IS THAT CORRECT?

A THAT IS CORRECT.

Q OKAY, NOW AND YOU CORRECT ME IF I'M WRONG, I THINK YOU INDICATED THAT, THAT ONE OF THE GUNSHOT WOUNDS WAS, WAS TO THE UPPER SHOULDER OR TO THE SHOULDER?

A YES, TO THE LEFT SHOULDER, THE TOP OF THE LEFT SHOULDER.

Q THE TOP OF THE LEFT SHOULDER. WAS THAT GUNSHOT WOUND WAS THAT, WAS THAT AN ENTRY WOUND?

A YES, THAT WAS AN ENTRY WOUND.

Q AND IT WAS TO THE LEFT SHOULDER?

A YES, SIR.

Q TO THE BACK OR THE FRONT OF THE PERSON?

A THE ONE TO THE SHOULDER WAS SORT OF RIGHT HERE AT THE TOP OF HIS SHOULDER. IT WAS HEADING SLIGHTLY BACK BUT IT WAS SORT OF RIGHT AT THE MIDLINE, NOT REALLY FRONT OR BACK.

Q SO I'M TRYING TO FIGURE OUT WHICH, WHICH SIDE OF THE BODY DID THE WOUND, DID THE BULLET ENTER THE BODY?

A WELL IT REALLY ENTERED FROM ABOVE FROM THAT POINT OF VIEW.

Q OKAY, IT ENTERED FROM ABOVE?

A THAT PARTICULAR, THAT PARTICULAR ROUND, YES.

Q DIRECTLY ABOVE?

A I DON'T KNOW, YOU KNOW, WHETHER HE WAS BENDING OVER, YOU KNOW, I CAN'T TELL YOU HOW THE BODIES WERE SITUATED IN SPACE. ALL I KNOW IS THAT THE ENTRANCE WOUND IS HERE AND THE BULLET ENDS UP OVER HERE SO IT'S GOING BASICALLY DOWN SLIGHTLY BACK AND TO THE LEFT.

Q OKAY, SO BASED UPON THAT YOU COULDN'T AT LEAST TELL, YOU KNOW, EXACTLY IF THE PERSON WHO ACTUALLY SHOOTING THE GUN ACTUALLY MADE THAT GUNSHOT WOUND YOU COULDN'T SAY SPECIFICALLY IN WHAT POSITION THAT PARTICULAR

PERSON WAS IN?

A NO, I CANNOT, NOT WITH ANY OF THE GUNSHOT WOUNDS REGARDLESS OF WHERE THEY ARE OR HOW, HOW EVIDENT IT MAY SEEM BECAUSE PEOPLE MOVE. I MEAN IF I, IF I WAS TO BE SHOT STRAIGHT ON AND I HAPPENED TO BE BENDING OVER IT WOULD LOOK LIKE IT WAS COMING RIGHT FROM THE SKY, SO I CAN NEVER MAKE THAT SORT OF A DETERMINATION WHERE THE TWO PEOPLE ARE.

Q OKAY, AND, OF COURSE, YOU SAID THAT YOU THINK AT LEAST THE BULLET THAT ACTUALLY ENTERED, I THINK YOU SAID THE UPPER BACK ACTUALLY PASSED THROUGH THE AORTA. I THINK YOU SAID ALSO THROUGH THE LIVER AND WAS EVENTUALLY RECOVERED IN THE COLON, OKAY, WAS, WHAT NUMBER WAS THAT BULLET DESIGNATED AS?

A THE BULLET THAT GOES WITH THAT WOUND THAT'S GUNSHOT WOUND (D) TO THE LEFT UPPER BACK IS DESIGNATED AS ONE, NUMBER ONE.

Q DESIGNATED AS NUMBER ONE, OKAY. NOW DID ANY OF THESE WOUNDS OR AT LEAST IN THE PATHWAYS THAT WAS MADE BY THE BULLETS WERE ANY OF THEM CLOSE IN PROXIMITY ON THE INSIDE OF THE BODY?

A NO, THEY WERE NOT.

Q THEY WERE ALL COMPLETELY SEPARATED?

A THEY DID NOT PASS EACH OTHER IN THE BODY. THE ONLY ONE THAT WENT INTO THE BODY CAVITIES AGAIN WAS THAT, THAT (D), THE ONE THAT WAS TO THE LEFT UPPER BACK, SO

THE OTHER ONES DID NOT CROSS EACH OTHER.

Q OKAY, AND JUST FOR MY UNDERSTANDING AND ALSO FOR THE JURY'S UNDERSTANDING IS, IS THAT WHEN, WHEN A BULLET ENTERS THE BODY AND, OF COURSE, I THINK YOU TESTIFIED THAT IT TRAVELED SOME DISTANCE IN THE BODY, WHAT METHOD DO YA'LL USE TO MAKE SURE THAT YOU ACCURATELY TRACE THAT BULLET, THAT BULLET ON A, I GUESS, YOU KNOW, AN ACCURATE PASS WAY OR TRY AND DETERMINE THE ACCURATE PASS THAT THE BULLET MADE THROUGHOUT THE BODY?

A WELL IT'S ACTUALLY NOT, IT'S FAIRLY RUDIMENTARY. WHEN YOU OPEN THE BODY BASICALLY YOU'RE FOLLOWING A PATH OF BLEEDING OR HEMORRHAGE AND A PATH OF ACTUAL DEFECTS OR HOLES THROUGH DIFFERENT STRUCTURES. SO IN THIS CASE, YOU KNOW, THERE'S A HOLE TO THE BACK AND THEN DIRECTLY BENEATH THAT THERE'S A HOLE TO THE RIBS AND THEN DIRECTLY BENEATH THAT THERE'S A HOLE TO THE LUNGS AND DIRECTLY NEXT TO THAT IS THE HOLE TO THE AORTA AND SO FORTH, SO BASICALLY YOU ARE JUST TRACKING THAT TRAIL OF INJURY THROUGH THE BODY.

NOW WHEN WE MAKE AN ESTIMATION OF WHAT WE CALL TRAJECTORY OR THE DIRECTION WE CAN AND DO SOMETIMES PLACE WHAT WE CALL A PROBE WHICH IS JUST A METAL STICK AND WE CAN PLACE THAT INTO THE ENTRANCE WOUND AND HAVE IT GO TO WHERE THE BULLET WAS RECOVERED OR WHERE THERE IS AN EXIT WOUND, EITHER ONE, AND THEN THAT CAN GIVE US SORT OF A GRAPHIC

PICTURE OF HOW THE BULLET TRAVELED THROUGH THE BODY, BUT WHEN WE'RE LOOKING AT THE ORGANS IT'S REALLY QUITE, QUITE SIMPLE YOU'RE JUST GOING FROM ONE HOLE TO THE NEXT THROUGH THE STRUCTURES IN THE BODY.

Q AND THAT'S JUST A VISUAL OBSERVATION?

A THAT'S RIGHT.

Q THAT YOU MADE AT THAT PARTICULAR PERIOD OF TIME?

A THAT'S CORRECT.

Q OKAY, OKAY, AND, OF COURSE, FROM THAT VISUAL OBSERVATION, AND I WANT TO MAKE SURE I UNDERSTAND YOU CORRECTLY, IS, IS THAT YOU DIDN'T COMPLETELY TRACK THE PATH, YOU KNOW, WITH SOME SORT OF OBJECT. YOU BASICALLY IS, IS THAT JUST WENT FROM, FROM ONE WOUND TO THE NEXT AND THEN MADE A LOGICAL CONCLUSION THAT THAT'S THE WAY IT TRAVELED BY LOOKING AT WHERE THE BULLET ENTERED AND THEN, OF COURSE, LOOKING AT, YOU KNOW, I GUESS AT ONE WOUND TO THE NEXT WOUND INSIDE OF THE BODY AND THEN MAKE A DETERMINATION THAT THIS IS THE PATH IT TOOK?

A YES, AND THE STRUCTURES IN THE BODY ARE FAIRLY QUITE, THEY'RE RIGHT NEXT TO EACH OTHER SO IT DOESN'T TAKE ANY LEAP OF BRILLIANCE TO FIGURE OUT WHERE IT WENT NEXT.

Q OKAY, OKAY, ALL RIGHT, I DON'T THINK I HAVE ANY FURTHER QUESTIONS, JUDGE.

THE COURT: ALL RIGHT, ANY REDIRECT?

MR. DEBERRY: NO, YOUR HONOR, CAN DR. SCHANDL BE RELEASED FROM HER SUBPOENA?

THE COURT: SURE, ANY OBJECTIONS?

MR. BROOKER: I DON'T HAVE ANY OBJECTIONS, YOUR HONOR.

THE COURT: THANK YOU FOR COMING, YOU ARE RELEASED. ALL RIGHT, MEMBERS OF THE JURY, WE'RE GOING TO TAKE A LUNCH BREAK UNTIL 2:00 SO YOU'RE EXCUSED UNTIL TWO BUT DO NOT TALK ABOUT THE CASE WITH ANYBODY OR AMONG YOURSELVES, JUST GO AND ENJOY YOUR LUNCH, COME BACK RELAXED AND READY TO GO AND WE'LL CHARGE FORWARD, YOU ARE EXCUSED.

(WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT 12:20 P.M.)

THE COURT: WE'RE AT EASE UNTIL 2:00.

(WHEREUPON A LUNCH RECESS WAS TAKEN AND THE FOLLOWING TAKES PLACE IN THE RECORD AFTER THE RECESS.)

THE COURT: MR. BROOKER?

MR. BROOKER: WE'RE ADVISED THAT I THINK THE NEXT WITNESS THEY'RE GOING TO CALL IS TYLER, I THINK, CONNOR AND, OF COURSE, MR. CONNOR, I THINK, GAVE A STATEMENT TO LAW ENFORCEMENT AND, OF COURSE, THERE IS AT LEAST SOME INCONSISTENCIES IN HIS STATEMENT IN WHICH MR. CONNOR GAVE THAT VERSUS WHAT THE ACTUAL FACTS OF THE CASE IS AND, OF COURSE, AND, OF COURSE, WHAT WE'RE ARGUING IS,

IS THAT IF, IF IT'S WHETHER OR NOT THE, THE, THE ALLEGATIONS THAT WILL BE MADE BY MR. CONNOR WHETHER OR NOT THOSE ALLEGATIONS, ACTUALLY LET ME MAKE IT A LITTLE BIT MORE CLEARER, JUDGE. I KNOW I'M BEING A LITTLE BIT CHOPPY HERE, IS THAT TYLER CONNOR I THINK WAS AT DJJ WHEN THEY TRANSFERRED SHAWN REAVES THERE. TYLER CONNOR GIVING A STATEMENT SAYING THAT SHAWN REAVES TOLD HIM A STORY ABOUT SOME SORT OF DRUG DEAL GOING BAD AND THAT HE AND SOME FRIEND SHOOTING UP A GUY, OKAY, AND, OF COURSE, OBVIOUSLY THOSE FACTS IS, IS DIFFERENT THAN, DIFFERENT THAN THE FACTS IN THIS PARTICULAR CASE. THEY INTEND TO PUT CONNOR REAVES UP AND, OF COURSE, TEND TO PRESENT THAT TO THE JURY, I'M ASSUMING IN A FASHION THAT THIS IS ACTUALLY, YOU KNOW, SHAWN REAVES ADMITTING TO THIS PARTICULAR EVENT BUT, OF COURSE, WE'RE ALLEGING THAT IS, IS THAT THE STORY THAT TYLER CONNOR INTENDS TO TELL IS NOT THE EVENTS OF THIS PARTICULAR, OF THIS PARTICULAR CASE. IF THEY'RE NOT THE EVENTS OF THIS PARTICULAR CASE THEN THERE IS ABSOLUTELY NO QUESTION THEY'RE NOT ADMISSIBLE BECAUSE IT WOULD BE A PRIOR BAD ACT AND PRIOR BAD ACTS ARE INADMISSIBLE AND SO THEY WOULD THEN BE INCUMBENT TO PROVE THAT THESE ARE ACTUALLY THE SAME EVENTS THAT TYLER CONNOR IS TALKING ABOUT AND, THEREFORE, WOULD BE ADMISSIBLE. SO AT THIS PARTICULAR PERIOD OF TIME WE MAKE A MOTION TO AT LEAST EXCLUDE THAT TESTIMONY AND, OF COURSE, I THINK IT'S INCUMBENT UPON THEM

TO, TO PROVE THAT, YOU KNOW, THESE ARE SIMILAR FACTS AND CIRCUMSTANCES OR THE SAME FACTS AND CIRCUMSTANCES, THEREFORE, THIS IS RELEVANT AND ADMISSIBLE, ADMISSIBLE TO THIS PARTICULAR TRIAL.

THE COURT: HOW LONG WILL IT TAKE TO HEAR THE STATEMENT?

MR. DEBERRY: YOUR HONOR, WE COULD PUT HIM ON THE STAND AND PROFFER IT IF YOU WOULD LIKE TO?

THE COURT: LET'S GO AHEAD AND DO THAT.

MR. DEBERRY: ALL RIGHT.

THE COURT: AND WE CAN LISTEN TO IT AHEAD OF TIME.

TYLER CONNOR

BEING FIRST DULY SWORN, TESTIFIED IN CAMERA:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q TYLER, COULD YOU STATE YOUR NAME FOR THE RECORD?

A TYLER CONNOR.

Q OKAY, AND BACK IN 2007, MAY OF 2007 WERE YOU IN SOME SORT OF TROUBLE?

A YES, SIR.

Q OKAY, AND WHERE WERE YOU?

A IN DJJ IN COLUMBIA.

Q OKAY, AND WHAT DOES DJJ STAND FOR?

A DEPARTMENT OF JUVENILE JUSTICE.

Q OKAY, IS THAT KIND OF LIKE A JAIL?

A YES, SIR, DETENTION CENTER.

Q DETENTION CENTER?

A YES, SIR.

Q OKAY, AND WHY WERE YOU THERE?

A CONSPIRACY TO BURGLARY FIRST.

Q OKAY, AND CAN YOU, DID YOU, WHEN YOU WERE IN THAT FACILITY DID YOU COME IN CONTACT WITH SHAWN REAVES?

A YES, SIR.

Q OKAY, DO YOU SEE HIM IN THE COURT TODAY?

A YES, SIR.

Q OKAY, AND DID HE, DID YA'LL HAVE A CONVERSATION DURING THE TIME YA'LL WERE IN DJJ TOGETHER?

A YES, SIR.

Q OKAY, AND DID HE TELL YOU OR HOW DID THE CONVERSATION COME ABOUT?

A I'M NOT SURE, WE WERE JUST TALKING IN OUR ROOM TOGETHER, TWO PEOPLE IN A ROOM, CELL.

Q OKAY, SO YA'LL WERE IN THE SAME CELL TOGETHER WHEN THIS CONVERSATION TOOK PLACE?

A YES, SIR.

Q OKAY, AND COULD YOU TELL THE COURT WHAT HE TOLD YOU?

A I CAN TELL YOU WHAT I REMEMBER AND THAT'S

THE ONLY THING I CAN DO.

Q OKAY.

A WE WERE IN A ROOM, I ASKED HIM WHAT HE WAS IN THE DETENTION CENTER FOR. HE TOLD ME MURDER ONE AND I ASKED HIM WHAT HAPPENED AND HE EXPLAINED TO ME SOMETHING HAD HAPPENED WITH ANOTHER MAN OR SOMEBODY AND THAT HE WENT LOOKING FOR HIM OVER SOMETHING, I'M NOT SURE, AND THAT HE SHOT HIM AND THEN THERE WAS ANOTHER PERSON THERE AND HE SHOT HIM AGAIN.

Q OKAY, SO HE TOLD YOU THAT HE SHOT AND KILLED A PERSON THAT HE WAS THERE FOR MURDER?

A YES.

Q OKAY, HOW LONG HAD HE BEEN THERE OR DO YOU KNOW WHEN HE GOT THERE?

A IT WAS AFTER I WAS THERE, WITHIN A FEW WEEKS AFTER, I'M NOT SURE.

Q OKAY, SO WAS HE IN THE DETENTION CENTER FOR A LONG TIME BEFORE YA'LL HAD THIS CONVERSATION?

A NOT TOO LONG BEFORE.

Q OKAY, DID YOU NOTICE THAT HE HAD TALKED TO ANY OTHER PEOPLE OR DO YOU KNOW?

A NO, SIR.

Q OKAY, ALL RIGHT, WHAT WAS HIS DEMEANOR WHEN HE FIRST CAME INTO THE DETENTION CENTER?

A THE ONLY THING I CAN REMEMBER WHEN HE CAME

IN HE WAS REAL SICK.

Q THAT WAS WHEN HE FIRST CAME IN?

A QUIET AND DIDN'T TALK TO ANYONE.

Q DIDN'T TALK TO ANYONE?

A NO.

Q AND HOW LONG AFTER THAT WAS IT THAT HE TOLD YOU THAT HE HAD COMMITTED MURDER?

A MAYBE TWO TO THREE WEEKS.

MR. DEBERRY: OKAY, ALL RIGHT, I HAVE NOTHING FURTHER.

MR. BROOKER: JUST VERY BRIEFLY.

CROSS EXAMINATION

BY MR. BROOKER:

Q I THINK YOU SAID THAT, AND CORRECT ME IF I'M WRONG, IS THAT HE SAID THAT HE WAS LOOKING FOR SOMEBODY?

A YES, SIR.

Q AND DID HE SAID WHO HE WAS LOOKING FOR?

A NO.

Q ALLEGEDLY SAID HE WAS LOOKING FOR?

A NO, SIR.

Q HE SAID WHY, ALLEGEDLY SAID WHY HE WAS LOOKING FOR THAT PERSON?

A I THINK IT WAS OVER LIKE A DRUG DEAL OR SOMETHING GONE BAD, I CAN'T REMEMBER IT'S BEEN SO LONG.

Q SO, SO HE TOLD YOU THAT THIS WAS A SITUATION WHERE A DRUG DEAL WENT BAD AND HE AND ANOTHER PERSON HAD SHOT SOMEONE?

A YES, SIR.

Q OKAY ---

A AS I REMEMBER.

Q AS YOU, WELL THAT'S WHAT WE'RE BASING ON ON WHAT YOUR RECOLLECTION WAS, SO YOU SAID THIS WAS A DRUG DEAL GONE BAD AND HE, THAT, THAT, THAT HE AND ANOTHER PERSON HAD SHOT SOMEONE, DID HE SAY ANYTHING ELSE THAT YOU CAN ---

A NO, SIR, NOT THAT I CAN REMEMBER.

Q OKAY, NOW HOW DID YOU CAME, HOW DID YOU COME IN CONTACT WITH LAW ENFORCEMENT?

A MY DAD CAME TO VISIT ME AND IT JUST KIND RATTLED ME A LITTLE BIT, I'VE NEVER TALKED TO ANYBODY WHO ADMITTED TO KILLING ANYONE, SO I WAS TALKING TO MY DAD ABOUT IT AND THEN AND HE TOOK IT TO MY LAWYER.

Q OKAY, GO AHEAD, GO AHEAD, ARE YOU FINISHED?

A THEN HE TOOK IT TO MY LAWYER AND MY LAWYER GOT ME IN TOUCH WITH, I GUESS, SOMEBODY IN MARION COUNTY, AN INVESTIGATOR, AND HE CAME AND TALKED TO ME WHEN I WAS ON HOUSE ARREST AT MY LAWYER'S OFFICE.

Q OKAY, OKAY. BUT YOU'RE SURE HE TOLD YOU THIS WAS A DRUG DEAL GONE BAD?

A AS I CAN REMEMBER.

Q OKAY, NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, I'M GOING TO ALLOW IT AS AN ADMISSION OF A PARTY IN PART. ALL RIGHT, YOU WANT HIM TO SIT DOWN OR YOU JUST WANT TO LEAVE HIM WHERE HE IS?

MR. DEBERRY: HE CAN STAY THERE, YOUR HONOR.

THE COURT: ALL RIGHT, YOU CAN GO AHEAD AND BRING OUT THE JURY, GO AHEAD AND BRING OUT THE JURY.

MR. BROOKER: ARE YOU GOING TO RULE ON IT?

THE COURT: I'VE RULED ON IT, ADMISSION OF PARTY IN PAR T, I'M GOING TO ALLOW IT.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 2:21 P.M.)

MR. BROOKER: MAY WE APPROACH?

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

THE COURT: SO IF YOU'D TAKE JUST A COUPLE MORE MINUTES, GO BACK INTO THE JURY ROOM WE HAVE TO PUT SOMETHING ON THE RECORD THAT YOU CAN'T HEAR AT THIS TIME AND WE'LL BE RIGHT BACK OUT.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 2:23 P.M.)

THE COURT: GO AHEAD.

MR. BROOKER: YOUR HONOR, THE ONLY THING WE WERE

ASKING IS, IS THAT OBVIOUSLY THIS MOTION WAS BASED UPON THE FACT THAT WHETHER OR NOT, WHETHER OR NOT THE, THE EVENT THAT HE INTENDS TO TESTIFY TO AND THIS PARTICULAR EVENT ARE THE SAME OR SIMILAR CIRCUMSTANCES BECAUSE OBVIOUSLY IF THEY ARE THE SAME OR SIMILAR CIRCUMSTANCES THEN, OF COURSE, IT WOULD BE PART ADMISSION AND THEN, OF COURSE, IT WOULD BE ADMISSIBLE AND THE JURY WOULD THEN WEIGH IT. BUT IF IT'S NOT THE SAME OR SIMILAR CIRCUMSTANCES AND ACTUALLY A DIFFERENT EVENT THEN, OF COURSE, IT WOULD BE EXCLUDED BY PRIOR BAD ACT AND, OF COURSE, WHAT WE WERE ASKING FOR IS A RULING ON WHETHER OR NOT THE COURT'S FIND THAT THESE ARE THE SAME OR SIMILAR CIRCUMSTANCES, YOU KNOW, THAT, THAT WOULD THEN, OF COURSE, MAKE IT ADMISSIBLE IN CONNECTION WITH THIS CASE THEN THE JURY WEIGHS THE CREDIBILITY, YOU KNOW, BASED UPON HOWEVER IT WEIGHS IT.

THE COURT: ALL RIGHT, I'LL BE GLAD TO HEAR FROM YOU, SOLICITOR.

MR. DEBERRY: YOUR HONOR, I'D JUST LIKE TO RESPOND SAYING THAT I THINK THE TESTIMONY COMES AS A DIRECT RESULT FROM A CONVERSATION THAT TOOK PLACE ABOUT WHY MR. REAVES WAS IN PRISON AND HE WAS SERVED WITH ARREST WARRANTS OR HE WAS ARRESTED ON CHARGES OF MURDER THAT THIS CASE REVOLVES AROUND AND I THINK THAT KIND OF ACTIVITY WITH THE TIME PERIOD AND ALSO HIM SAYING THAT THERE MAY HAVE BEEN TWO SHOOTERS. WE KNOW THERE'S TWO BULLETS, TWO, WE KNOW

THERE'S TWO BULLETS IN THIS CASE, WOULD TEND TO PROVE THAT THIS MURDER THAT HE WOULD BE TALKING ABOUT.

THE COURT: ALL RIGHT, I'M GOING TO OVERRULE THE OBJECTION AND ALLOW IT.

MR. BROOKER: THANK YOU, YOUR HONOR.

THE COURT: ANYTHING ELSE BEFORE WE BRING THEM OUT?

MR. BROOKER: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: GO AHEAD AND BRING THEM OUT AT THIS TIME.

MR. BROOKER: NOTHING FROM THE DEFENSE.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 2:26 P.M.)

THE COURT: YOU DON'T NEED TO COME TO GO ON A DIET. JUST COME TO COURT AND I'LL RUN YOU IN AND OUT ALL DAY LONG. ALL RIGHT, SOLICITOR, GO AHEAD.

MR. DEBERRY: THANK YOU.

TYLER CONNOR

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q TYLER, COULD YOU, PLEASE, STATE YOUR NAME FOR, FOR THE RECORD?

A TYLER CONNOR.

Q TYLER CONNOR?

A YES, SIR.

Q ALL RIGHT, AND CAN YOU STATE, TELL THE JURY IF YOU WERE IN ANY KIND OF TROUBLE BACK IN MAY OF 2007?

A YES, I WAS FOR CONSPIRACY TO BURGLARY FIRST.

Q OKAY, AND WERE YOU INCARCERATED DURING THAT TIME?

A YES, SIR.

THE COURT: BE SURE AND SPEAK UP.

MR. DEBERRY: (CONTINUING)

Q AND WHERE WERE YOU INCARCERATED?

A DJJ IN COLUMBIA.

Q OKAY, AND WHAT DOES DJJ STAND FOR?

A DEPARTMENT OF JUVENILE JUSTICE.

Q OKAY, SO YOU WERE INCARCERATED THERE AT THAT TIME?

A YES, SIR.

Q OKAY, DURING YOUR INCARCERATION AT DJJ BACK IN MAY OF 2007, DID YOU COME TO BE ACQUAINTED WITH OR DID YOU KNOW SHAWN REAVES?

A YES, SIR.

Q OKAY, AND DO YOU SEE SHAWN REAVES IN THIS COURTROOM TODAY?

A YES, SIR.

Q IS HE SITTING AT THE DEFENSE TABLE?

A YES, SIR.

Q OKAY, CAN YOU TELL THE JURY ABOUT YA'LL'S RELATIONSHIP AND IF YA'LL EVER HAD A CONVERSATION DURING THAT TIME?

A WE HAD ONE CONVERSATION THE WHOLE TIME WHEN I WAS THERE.

Q OKAY.

A THE ONLY THING THAT I ASKED HIM WAS WHY HE WAS IN DJJ, WHAT HIS CHARGE WAS, AND HE TOLD ME THAT IT WAS FOR MURDER AND HE TOLD ME, THAT I CAN REMEMBER IT WAS FOR A DRUG DEAL THAT WAS GONE BAD AND THAT HE HAD SHOT SOMEONE AND THAT SOMEONE ELSE WAS THERE AND SHOT THAT PERSON, TOO, THE SAME PERSON.

Q OKAY, SO HE ADMITTED TO YOU THAT HE WAS IN DJJ FOR MURDER?

A YES, SIR.

Q AND THAT HE HAD SHOT SOMEONE?

A YES, SIR.

Q OKAY, HOW WAS IT, WERE YOU THERE BEFORE HE GOT THERE?

A YES, SIR.

Q SO YOU WERE IN DJJ WHEN HE ARRIVED?

A YES, SIR.

Q OKAY, HOW WAS HIS DEMEANOR WHEN HE ARRIVED?

A SICK AND QUIET AND DIDN'T TALK TO ANYONE, STAYED TO HIMSELF.

Q YOU SAY HE WAS SICK, OKAY, AND HOW LONG, DID YOU EVER SEE HIM TALKING TO ANYBODY ELSE AT DJJ?

A NO, SIR.

Q ALL RIGHT, AND HOW DID IT COME ABOUT THAT YA'LL TWO HAD A CONVERSATION?

A WE WERE PUT IN A CELL TOGETHER FOR A HOUR, THEY JUST PUT YOU IN DIFFERENT CELLS EVERY, EVERY SO OFTEN.

Q SO YA'LL JUST STARTED A CONVERSATION ABOUT, HEY, WHY ARE YOU HERE?

A YES, SIR.

Q AND, OKAY, DID YOU EVER TALK TO HIM AGAIN?

A MAYBE LIKE, HEY, HOW IS IT GOING, NOT ANY MORE CONVERSATION ABOUT WHAT HE WAS IN FOR.

Q OKAY, SO HE, HE TOLD YOU THAT HE SHOT THE PERSON AND THAT SOMEBODY ELSE SHOT HIM, TOO?

A YES, SIR.

MR. DEBERRY: OKAY, ALL RIGHT, ALL RIGHT, THAT'S ALL I HAVE FOR YOU, THANK YOU VERY MUCH.

THE COURT: MR. BROOKER?

MR. BROOKER: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. BROOKER:

Q I THINK, TYLER, YOU SAID THAT YOU WERE IN

THERE FOR CONSPIRACY AND, I THINK, BURGLARY FIRST?

A YES, SIR.

Q OKAY, AND JUST TO MAKE SURE I UNDERSTAND IS THAT, CAUSE I DON'T KNOW, FOR THE CONSPIRACY AND BURGLARY FIRST WERE YOU BEING CHARGED AS A JUVENILE OR YOU WERE GOING TO BE CHARGED AS AN ADULT?

A JUVENILE.

Q BEING CHARGED AS A JUVENILE?

A YES, SIR.

MR. DEBERRY: OBJECTION, YOUR HONOR, I JUST WANT TO CLEAR, I THINK HE SAID HE'S IN FOR CONSPIRACY TO COMMIT BURGLARY.

THE WITNESS: (CONTINUING)

A YES, CONSPIRACY TO COMMIT BURGLARY.

Q CONSPIRACY TO COMMIT BURGLARY?

A YES, SIR.

Q AM I RIGHT IN HEARING YOU SAID CONSPIRACY TO COMMIT BURGLARY FIRST?

A YES, SIR.

Q IT WAS CONSPIRACY TO COMMIT BURGLARY FIRST DEGREE?

A YES, SIR.

Q OKAY, AND HOW LONG HAD YOU BEEN IN THERE AT THAT PARTICULAR PERIOD OF TIME WHEN YOU ALLEGE THIS STATEMENT TOOK PLACE?

A THREE WEEKS.

Q HOW LONG DID YOU STAY IN THERE AFTER THIS STATEMENT TOOK PLACE?

A ABOUT A MONTH LONGER.

Q AND WHAT WAS THE DEPOSITION OF YOUR CHARGE CONSPIRACY TO BURGLARY FIRST?

A I'M NOT SURE OF THE QUESTION YOU'RE ASKING?

Q I'M SORRY, WHAT WAS THE, WHAT WAS THE DEPOSITION OF THOSE CHARGES OF CONSPIRACY, CONSPIRACY TO COMMIT, CONSPIRACY TO COMMIT BURGLARY FIRST?

A I WAS HANGING OUT WITH SOME PEOPLE WHEN THEY COMMITTED BURGLARY.

MR. DEBERRY: OBJECTION, YOUR HONOR.

MR. BROOKER: (CONTINUING)

Q NOT THE FACTS, NOT THE FACTS OF IT. BASICALLY WHAT I'M SAYING IS THAT HOW DID THOSE CHARGE END UP?

A HOW DID THEY END, I GOT, I PLEADED GUILTY.

Q OKAY, AND WERE YOU GIVEN PROBATIONARY SENTENCE?

A PROBATION AND I WENT TO A CAMP, A JUVENILE CAMP FOR SEVEN MONTHS.

Q NOW YOU TESTIFIED, TESTIFIED THAT, THAT SHAWN REAVES, I THINK, AFTER THREE WEEKS, YOU SAID THE PRIOR THREE WEEKS HE WAS IN THERE HE WAS PRETTY MUCH QUIET

OR KEPT TO HIMSELF?

A YES.

Q DIDN'T TALK TO ANYBODY ELSE?

A NOT THAT I WAS AWARE OF.

Q OKAY, WERE YA'LL CELL MATES?

A NO, WE WEREN'T.

Q YA'LL WERE NOT CELL MATES?

A NO, SIR.

Q OKAY, DO YOU KNOW WHETHER OR NOT HE HAD A CELL MATE?

A I DON'T THINK HE DID. I DON'T THINK, I'M NOT SURE.

Q OKAY, DID YOU HAVE A CELL MATE?

A YES, SIR, A FEW OF THEM.

Q OKAY, NOW THIS ALLEGED CONVERSATION WHERE DID IT ALLEGEDLY TAKE PLACE AT THE DJJ?

A IN A CELL, IN THE DORMS.

Q I'M TALKING ABOUT IS THIS A COMMON AREA, I DON'T KNOW ANYTHING ABOUT DJJ?

A THEY JUST HAVE SEPARATE DORMS AND EACH DORM IS JUST A ROOM AND CELLS ON EACH SIDE.

Q THIS WAS ONE LARGE ROOM?

A YES, SIR.

Q OKAY, WERE THERE SITTING AREAS IN THE MIDDLE?

A YES, SIR, THERE'S SITTING AREAS.

Q COMMON AREAS, SITTING AREAS IN THE MIDDLE?

A YEAH.

Q OKAY, AND YA'LL WERE SITTING IN THAT COMMON AREA WHEN YOU SAY HE ALLEGEDLY TOLD YOU?

A NO, SIR, WE WERE IN A CELL.

Q YA'LL WERE SITTING IN A CELL?

A TOGETHER.

Q OKAY, AND YOU'RE ASKING THE JURY TO BELIEVE THAT AFTER THREE MONTHS OF NOT TALKING TO ANYONE ELSE AT THE JAIL AND NOT CONFESSING TO ANYONE ELSE THAT HE SIMPLY CONFESSED TO YOU?

A IT WAS THREE WEEKS.

Q THAT'S WHAT I'M TALKING ABOUT, THAT HE SIMPLY TOLD, THAT HE SIMPLY TOLD YOU THIS?

A WE WERE IN A ROOM TOGETHER AND STRUCK UP A CONVERSATION.

Q COULD YOU TELL ME WHAT'S SPECIAL ABOUT YOU THAT, THAT WOULD CAUSE HIM TO MAKE SUCH A CONFESSION TO YOU?

MR. DEBERRY: OBJECTION, YOUR HONOR, THAT CALLS FOR SPECULATION.

MR. BROOKER: I'M ASKING HIM ABOUT HIMSELF.

THE COURT: IT'S CROSS EXAMINATION, I'M GOING TO LET HIM DO IT, GO AHEAD.

Q NOW WHAT WAS SPECIAL ABOUT YOU THAT CAUSED HIM TO MAKE SUCH A INFLAMMATORY CONFESSION TO YOU WHEN HE HASN'T MADE IT TO ANYONE ELSE?

A I'M NOT SURE, I DON'T, I TOLD HIM ABOUT MY CHARGES AND --

Q NOW YOU SAID THAT HE TOLD YOU THAT HE WAS INVOLVED IN A DRUG DEAL GONE BAD AND THAT, THAT, THAT HE AND SOMEBODY ELSE SHOT A GUY IN A DRUG DEAL GONE BAD?

A YES, SIR, THAT'S ALL I REMEMBER.

Q OKAY, NOW IS THAT THE ONLY THING THAT, THAT, THAT YOU'RE ALLEGING THAT HE TOLD YOU?

A AND HE ALSO TOLD ME WHAT KIND OF PISTOLS WERE USED.

Q OKAY, HE TOLD YOU WHAT TYPE OF PISTOL HE USED?

A WERE USED.

Q OKAY, WHAT DID HE TELL YOU ABOUT PISTOLS IN THAT CELL?

A HE TOLD ME ONE OF THE PISTOLS THAT HE HAD WAS A 38 REVOLVER AND THE OTHER BOY HAD A 9 MM.

Q OKAY, AND WHAT ELSE DID, WHAT ELSE DID HE ALLEGEDLY TELL YOU?

A THAT'S ALL I CAN REMEMBER, THIS HAS BEEN ABOUT FOUR YEARS.

Q OKAY, I HAVE A STATEMENT HERE AND, OF

COURSE, I'LL BE MORE THAN HAPPY TO REFRESH YOUR MEMORY ---

A YES, SIR.

Q --- TO TELL ME WHETHER OR NOT, WHETHER OR NOT THIS IS ACCURATE?

MR. BROOKER: INDULGE ME JUST A SECOND.

Q (CONTINUING) YOU STATED, YOU STATED IN YOUR STATEMENT THAT HE TOLD ME HE WAS SELLING DRUGS TO SOMEONE AND THEY STARTED ARGUING AND THEN THE SUBJECT THEN, THE SUBJECT THAT GOT SHOT THREW THE DRUGS ON THE GROUND; DO YOU REMEMBER SAYING THAT TO LAW ENFORCEMENT?

A YES, SIR, IN THAT STATEMENT.

Q OKAY, YOU THEN SAID THAT, THAT, THAT, THAT REAVES SAID HE SHOT THE GUY FIVE TIMES WITH A 38 PISTOL; DO YOU REMEMBER TELLING THE POLICE THAT?

A YES, SIR, I DO.

Q MAKING THAT STATEMENT?

A YES, SIR, I DO.

Q OKAY, YOU SAID THAT THEN SHAWN TOLD YOU THAT THE BULLETS HIT THE GUY IN THE CHEST?

A YES, SIR.

Q OKAY, DO YOU REMEMBER THAT?

A YES, SIR, I DO.

Q OKAY, DO YOU REMEMBER TELLING THE POLICE THAT YOU TOLD HIM THAT --

MR. BROOKER: INDULGE ME FOR JUST A SECOND, YOUR

HONOR.

Q (CONTINUING) THAT, THAT A FRIEND SHOT THE GUY IN THE BACK OF THE HEAD?

A YES, SIR, AFTER HE WAS DONE SHOOTING.

Q A FRIEND SHOT HIM IN THE BACK OF THE HEAD?

A YES, SIR.

Q OKAY, AND YOU SAID THAT HE ALSO TOLD YOU THAT THE FRIEND WAS USING A 9 MM?

A YES, SIR.

Q NOW, MR. CONNOR, ISN'T IT TRUE THAT HE DIDN'T TELL YOU ANY OF THAT?

A THAT'S NOT TRUE.

Q AND THAT THE REASON WHY YOU WERE PROVIDED THIS INFORMATION TO THE STATE WAS, IS THAT SO THAT YOU CAN RECEIVE A SHORTER DEAL FOR THE TROUBLE THAT YOU WERE IN?

A NO, SIR, I DID NOT RECEIVE ANY SHORTER AMOUNTS OF TIME AT ALL.

Q HOW MANY TIMES DID HE TALK WITH YOU, TALK WITH YOU PRIOR TO ALLEGEDLY MAKING, MAKING SUCH AN ADMISSION TO YOU?

A NONE.

Q I'M SORRY?

A NONE.

Q HE HADN'T TALKING TO YOU IN THE WHOLE THREE WEEKS HE HAD TALKING TO YOU NONE?

A NONE BUT ONE TIME.

Q OKAY, AND THEN JUST THAT ONE TIME HE TALKED WITH YOU YOU'RE SAYING THAT HE THEN MADE ADMISSION TO YOU?

A YES, SIR.

Q HOW LONG DID YA'LL TALK?

A WE WERE IN THE CELL, AS I REMEMBER, FOR AN HOUR.

Q AND WHAT PART OF THAT HOUR DID HE ALLEGEDLY MAKE SUCH AN ADMISSION TO YOU?

A WELL WE SET IN THE ROOM FOR ABOUT TEN MINUTES AT AN AWKWARD SILENCE AND THEN I JUST ASKED THE QUESTION AND WE MET EACH OTHER AND TOLD EACH OTHER NAMES. I THINK HE ASKED ME WHAT I WAS IN HERE FOR AND I ASKED HIM THE SAME QUESTION.

Q SO AFTER ABOUT TEN MINUTES AND AFTER BEING THERE FOR THREE MONTHS AND NEVER TALKING TO YOU BEFORE ---

A THREE WEEKS.

Q I'M SORRY, THREE WEEKS, I APOLOGIZE, THREE WEEKS AND HAVE NEVER TALKED TO YOU BEFORE AND TO ANYONE ELSE IN THERE AND HE SIMPLY MADE, SAID THAT HE WAS INVOLVED IN A DRUG DEAL GONE BAD?

A I DON'T KNOW WHO ELSE HE WOULD HAVE TOLD THIS STORY BUT THAT'S ALL I KNOW IS HE TOLD ME.

MR. BROOKER: IF YOU COULD INDULGE ME FOR JUST A SECOND, YOUR HONOR, WE MIGHT BE FINISHED. JUST ONE OTHER

QUESTION, YOUR HONOR, JUST A MINUTE.

Q (CONTINUING) YOU ALSO STATED IN THAT STATEMENT DO YOU REMEMBER TELLING, TELLING THE OFFICER IN YOUR STATEMENT THAT, THAT THERE WERE FIVE OTHER GUYS WHOSE NAME YOU DON'T REMEMBER?

A YES, SIR, HE WAS TALKING ABOUT I GUESS A GROUP OF PEOPLE THAT HE HUNG OUT WITH.

Q OKAY, THAT WAS WITH HIM WHEN THIS EVENT TOOK PLACE?

A NOT THAT WAS WITH HIM BUT HE WAS JUST TALKING ABOUT OTHER PEOPLE THAT HE KNEW.

Q AND YOU TOLD HIM THAT A 38 DIDN'T HAVE A HAMMER ON IT?

A YES, WELL THE HAMMER WAS ACTUALLY ONE, I'M NOT SURE WHAT IT'S CALLED BUT IT'S A HAMMER'S SHAVEN, ROUNDED OFF.

Q YOU SPECIFICALLY SAID THAT HE SAID THAT THE 38 WAS SILVER WITHOUT A HAMMER?

A YES, SIR, BUT WE ALL KNOW THAT ALL REVOLVERS HAVE HANDLES.

Q THAT'S WHAT YOU TOLD THE POLICE; IS IT NOT?

A YES, SIR, THAT'S WHAT I TOLD THEM, I JUST DIDN'T HOW TO STATE WHAT KIND OF HAMMER IT WAS.

Q OKAY, SO WHAT YOU'RE, OKAY, BUT THAT IS WHAT YOU SAID?

A YES, SIR.

Q ABOUT THE HAMMER?

A YES, SIR.

MR. BROOKER: OKAY, NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q JUST CLEARING UP. THE 38 THAT'S SILVER WITHOUT A HAMMER, HE SAID THAT WAS A REVOLVER?

A YES, SIR,

MR. DEBERRY: OKAY, I HAVE NOTHING FURTHER.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK YOU. CALL YOUR NEXT WITNESS.

MR. DEBERRY: YOUR HONOR, WE'D CALL NIKKI PERRY.

NIKKI PERRY

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q MS. PERRY, COULD YOU STATE YOUR NAME AND OCCUPATION FOR THE RECORD, PLEASE?

A MY NAME IS NIKKI PERRY, P-E-R-R-Y, AND I'M A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL DEPARTMENT OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION COMMONLY KNOWN AS SLED.

Q OKAY, AND HOW LONG HAVE YOU BEEN WORKING FOR SLED?

A LITTLE OVER FOUR YEARS.

Q OKAY, AND SO BACK IN MAY OF 2007 YOU WOULD HAVE BEEN EMPLOYED BY SLED?

A YES, SIR.

Q OKAY, AND DID YOU TAKE INTO CUSTODY ANY EVIDENCE PERTAINING TO LAB NUMBER L07-07310?

A I DID.

Q OKAY, AND DO YOU HAVE A CHAIN OF CUSTODY SHEET WITH YOU ON THAT CASE?

A I DO.

Q AND CAN YOU TELL THE JURY FROM WHOM YOU TOOK THE EVIDENCE FROM THAT DAY?

A I DID, I ACCEPTED EVIDENCE ON THIS CASE FROM JASON HUFFMAN OF THE MARION POLICE DEPARTMENT.

Q OKAY, AND ITEM NUMBER ONE CAN YOU TELL THE JURY WHAT ITEM NUMBER TWO AND, ITEM NUMBER ONE AND ITEM NUMBER TWO WERE THAT YOU TOOK INTO CUSTODY THAT DAY?

A SURE, ITEM NUMBER ONE WAS ONE SEALED ENVELOPE CONTAINING FIRE BULLETS DESCRIBED AS BULLET TAKEN FROM VICTIM AT AUTOPSY AND ITEM NUMBER TWO IS DESCRIBED AS ONE SEALED ENVELOPE CONTAINING FIRED BULLETS DESCRIBED AS BULLET TAKEN FROM VICTIM AT AUTOPSY.

Q OKAY, CAN YOU EXPLAIN WHAT YOU DID WITH

THAT EVIDENCE?

A WHEN THE, WHEN THE EVIDENCE IS BROUGHT INTO THE, TO THE LAB A POLICE OFFICER WILL PROVIDE ME WITH A SLED FORENSIC SERVICES REQUEST FORM AND ON THAT FORM IT STATES THE ITEMS OF EVIDENCE THAT THEY'RE BRINGING IN AS WELL AS CASE INFORMATION, SUBJECT VICTIM. I WILL LOG THAT INTO OUR COMPUTER SYSTEM AND AT THAT TIME OUR COMPUTER SYSTEM WILL GENERATE A UNIQUE LAB NUMBER FOR THAT CASE AS WELL AS AN ITEM NUMBER FOR EACH PIECE OF EVIDENCE BROUGHT IN. I WILL PACKAGE THE EVIDENCE AND SEAL IT AND I HAVE THE OFFICER INITIAL AND DATE ON THE SEAL AND AFTER IT IS COMPLETE I WILL PLACE IT IN OUR EVIDENCE INTAKE STORAGE, IN THIS PARTICULAR CASE OUR FIREARMS EVIDENCE INTAKE STORAGE WHICH IS LOCATED IN A SEALED EVIDENCE ROOM AND THAT'S WHERE IT WILL SIT UNTIL AN ANALYST COMES DOWN TO RETRIEVE IT.

Q OKAY, AND BY THE VERIFIED CHAIN OF CUSTODY FORM THAT YOU HAVE CAN YOU TELL WHO THE NEXT PERSON WHO WAS EMPLOYED WITH SLED IS THAT TOOK CUSTODY OF THAT EVIDENCE?

A AMY STEVENS.

Q OKAY, IS THAT TRUE WITH ITEMS ONE AND TWO?

A YES, SIR.

Q OKAY, AND AGAIN THE LAB NUMBER YOU ASSIGNED TO THIS EVIDENCE IS WHAT?

A L07-07310.

Q OKAY, AND DID YOU HAVE ANY OTHER

INVOLVEMENT WITH THIS CASE?

A BESIDES THERE WAS ONE OTHER ITEM.

Q JUST, JUST WITH REGARDS TO THESE TWO ITEMS?

A NO, SIR.

MR. DEBERRY: ALL RIGHT, THANK YOU VERY MUCH, I HAVE NO FURTHER QUESTIONS.

THE COURT: MR. BROOKER?

MR. BROOKER: INDULGE ME FOR JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

CROSS EXAMINATION

BY MR. BROOKER:

Q OKAY, NOW I THINK ACCORDING TO THE SLED CHAIN OF CUSTODY REPORT, AND I THINK YOU SAID THAT YOU RECEIVED THIS, YOU RECEIVED THIS EVIDENCE FROM, FROM, I THINK, LT., LT. HUFFMAN; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND THAT WAS ON 5-21 OF '07?

A YES, SIR.

Q OKAY, AND, AND AT LEAST JUST FOR MY UNDERSTANDING IS THAT IS THIS EVIDENCE THAT YOU PERSONALLY RECEIVED FROM HIM OR WAS IT PLACED IN A, IN A DROP BOX AND YOU RETRIEVED IT FROM A DROP BOX?

A I PERSONALLY RECEIVED IT FROM THE OFFICER.

Q OKAY, AND WHAT DID YOU DO WHEN YOU

PERSONALLY RECEIVED IT AGAIN?

A IT WOULD HAVE BEEN PLACED IN AN ENVELOPE AND WE SEAL IT AND HAVE THE OFFICER INITIAL AND DATE ON THE SEAL IN MY PRESENCE.

Q OKAY, ALL RIGHT, AND THEN WHAT DO YOU DO WITH IT THEN?

A AND THEN I PLACE IT OUR FIREARMS EVIDENCE INTAKE STORAGE LOCATED IN OUR LOCKED EVIDENCE ROOM.

Q OKAY, OKAY, IS THIS THE SAME EVIDENCE, IS THIS THE EVIDENCE ROOM WHERE ALL, ALL THE EVIDENCE IS, IS HELD AT FOR THE TECHNICIANS, FOR AT LEAST THE SCIENTISTS WHO ARE GOING PERFORM TESTING ON THAT?

A IT IS.

Q AND, OF COURSE, DOES EACH SCIENTIST HAVE A LOCKER OR SOMETHING OR WHERE THEIR EVIDENCE IS PLACED IN FOR THEM?

A NO, SIR.

Q OKAY, TELL ME HOW THAT WORKS, WHAT, WHERE DO YOU PUT IT AT?

A EACH DEPARTMENT HAS AN AREA THAT WE CALL INTAKE STORAGE. THERE'S FIREARMS INTAKE, DRUG INTAKE, A TRACE INTAKE. SO WHEN WE GET IN FIREARMS EVIDENCE WE WOULD PLACE THE EVIDENCE INTO A FIREARMS INTAKE AND THAT IS WHERE IT WOULD REMAIN UNTIL AN ANALYST COMES DOWN AND ASKS FOR THAT PARTICULAR CASE AND ITEM NUMBER AND THEN WE WOULD

RETRIEVE IT AND WE WOULD TRANSFER IT PHYSICALLY TO THE CUSTODY OF THE ANALYST.

Q ALL RIGHT, NOW THIS PLACE WHERE IT'S KEPT, KEPT UNTIL THE ANALYST OR THE TECHNICIAN ASKS FOR IT, THE SCIENTIST ASKS FOR IT, IS THIS A, IS THIS A, AND I'M ASKING BECAUSE I DON'T KNOW, I'VE NEVER BEEN TO SLED BEFORE, IS THIS A, IS THIS A LOCKED ROOM OR IS, WHAT EXACTLY IS IT THAT YOU PUT THE EVIDENCE IN?

A IT'S JUST, IT'S A LARGE ROOM, WE HAVE DIFFERENT BINS AND DIFFERENT SHELVES THAT WE DESIGNATE FOR DIFFERENT AREAS FOR DIFFERENT DEPARTMENTS AND IT'S JUST AN AREA AND IN OUR FIREARMS AREA IS ACTUALLY LOCATED, OUR EVIDENCE ROOM IS LOCKED BY ELECTRONIC KEY PAD, KEY AS WELL AS AN ALARM SYSTEM. INSIDE OF THAT EVIDENCE ROOM WE HAVE ANOTHER ADDITIONAL LOCKED AREA WHERE WE KEEP OUR FIREARMS AND OUR DRUG EVIDENCE AND IT IS IN THAT AREA.

Q HOW MANY TECHNICIANS HAVE, HAVE ACCESS TO THE EVIDENCE ROOM YOU SAID HAS AN ELECTRONIC LOCK AND THAT SHORT OF THING?

A FIVE TECHNICIANS.

Q FIVE TECHNICIANS, HOW MANY SCIENTISTS?

A NO SCIENTISTS.

Q NO SCIENTISTS, OKAY, SO FIVE TECHNICIANS HAS ACCESS AND, OF COURSE, YOU THEN GO INTO, ONCE YOU GET ACCESS YOU SAID IT'S KEPT IN BINS?

A UH-HUH.

Q OKAY, ARE THESE JUST OPEN BINS?

A IT IS. IT IS BINS AND SHELVES THAT ARE LOCATED IN A LOCKED CLOSED OFF AREA IN OUR EVIDENCE ROOM.

Q OKAY, SO ONCE YOU GO TO THE EVIDENCE ROOM THEN, OF COURSE, THEY'RE NOT IN ANYTHING ELSE THAT'S LOCKED, THEY'RE JUST IN BINS, THEY'RE JUST IN BINS AND STUFF LIKE THAT, BINS AND SHELVES, BUT THEY'RE NOT ADDITIONALLY LOCKED IN A CABINET OR LOCKED IN, IN A SAFE OR SOMETHING LIKE THAT?

A WELL THE FIREARMS EVIDENCE IS, THAT PARTICULAR EVIDENCE IS LOCATED ON SHELF THAT IS AN ADDITIONAL LOCKED AREA OF OUR EVIDENCE ROOM.

Q OKAY, SO YOU'RE IN THE EVIDENCE ROOM AND THEN FOR THE FIREARMS STUFF THERE IS ANOTHER ROOM THAT IS LOCKED?

A IT'S A PORTION OF OUR SHELVING, WE HAVE ELECTRONIC SHELVING ---

Q I UNDERSTAND.

A --- AND THAT PORTION OF OUR ELECTRONIC SHELVING HAS AN ADDITIONAL LOCK ON IT.

Q OKAY, AND WHO HAS ACCESS TO THE ADDITIONAL LOCK?

A THE FIVE TECHNICIANS.

Q OKAY, SO FIVE TECHNICIANS HAS ACCESS TO,

TO, TO THE EVIDENCE ROOM AND THEN, OF COURSE, THE ADDITIONAL, I GUESS, CASE WHERE, WHERE, WHERE THE, YOU KNOW, WHERE THESE FIREARMS SAMPLES ARE KEPT TO BE TESTED THERE'S ADDITIONAL LOCK AND THE FIVE TECHNICIANS HAVE ACCESS TO THAT?

A YES, SIR.

Q OKAY, NOW WHEN THE FIVE TECHNICIANS WHEN THEY ENTER AND LEAVE THE PLACES IS THERE A SIGN IN OR SIGN OUT OR HOW DOES THAT WORK; HOW DO YOU KNOW AT WHAT TIMES THE FIREARM TECHNICIANS GO IN AND GO OUT AND LEAVE?

A THE FIREARMS TECHNICIANS OR FIREARMS TECHNICIANS LIKE MYSELF?

Q I'M SORRY, THE FORENSIC TECHNICIANS LIKE YOURSELF?

A WE DON'T HAVE A SIGN OR SIGN OUT; WE ARE THE EVIDENCE CONTROL TECHNICIANS SO WE HAVE ACCESS AS LONG AS WE ARE AT WORK. WE HAVE A TECHNICIAN THAT IS SPECIFICALLY ASSIGNED TO THE EVIDENCE ROOM IN THE BACK BUT WE ALSO, THE FOUR TECHNICIANS THAT LOG IN THE EVIDENCE ALSO HAVE ACCESS TO THE EVIDENCE ROOM.

Q OKAY, OKAY, SO WHEN YOU PUT IT IN THERE, AND I THINK YOU SAID THAT YOU PUT IT IN IN THE EVIDENCE ROOM, I THINK, ON THE DAY THAT YOU GOT IT ON, ON MAY 21 OF 2007; IS THAT CORRECT?

A THAT IS CORRECT.

Q ON THE EVIDENCE INTAKE STORAGE AND, OF COURSE, IT WAS NOT REMOVED UNTIL FOUR DAYS LATER MAY 25 OF '07; IS THAT CORRECT?

A THAT'S CORRECT.

Q OKAY, AND MY QUESTION TO IS, IS THAT THOSE FOUR DAYS IS THERE ANY RECORD OR ANY WAY THAT WE CAN DETERMINE WHETHER OR NOT ANY OTHER ANALYST OR ANY OTHER TECHNICIAN LIKE YOURSELF WOULD HAVE WENT IN, ANY OF THE FOUR TECHNICIANS LIKE YOURSELF WOULD HAVE WENT INTO THAT ROOM AND, AND REMOVE IT FOR SOME REASON?

A IF ANY EVIDENCE IS REMOVED IN OUR EVIDENCE ROOM BE IT ON ANOTHER SHELF OR TO ANOTHER INDIVIDUAL. WE SCAN, WE EACH HAVE OUR OWN PERSONAL BAR CODE THAT WE SCAN WHICH IS HOW WE TRACK WHO HAS HAD PHYSICAL CUSTODY OF THAT PIECE OF EVIDENCE.

Q I'M NOT TALKING ABOUT NECESSARILY MOVE IT TO ONE PLACE OR ANOTHER, BUT ANYONE OF THOSE FOUR TECHNICIANS BETWEEN THOSE FOUR MONTHS OTHER FOUR TECHNICIANS WOULD HAVE HAD ACCESS TO THAT EVIDENCE?

A RIGHT.

Q AND YOU COULDN'T SAY WHETHER OR NOT THEY PICKED IT UP OR OPENED OR LOOKED AT IT OR DID WHAT?

A WELL THE SEAL WOULD APPEAR TO BE TAMPERED WITH IF SOMEBODY HAD, YOU KNOW, TAMPERED WITH THE SEALED EVIDENCE WHICH THE FORENSIC SCIENTIST COULD ATTEST TO THAT.

BUT THERE ISN'T ANY SIGN IN OR SIGN OUT TO KNOW THAT THEY PHYSICALLY TOUCHED IT IF THEY DIDN'T SCAN THEIR BAR CODE, NO.

Q AND THE SEAL IS JUST A PIECE OF TAPE FOR JUST CLOSING IT OFF?

A RIGHT, WE HAVE SLED SEAL TAPE.

Q OKAY, AND, OF COURSE ---

A THAT'S TAMPERED EVIDENT.

Q OKAY, AND YA'LL HAVE PLENTY SEAL TAPES, A LOT OF THAT TAPE, DON'T YOU?

A RIGHT, BUT IT'S INITIALED BY THE OFFICER.

Q OKAY, ALL RIGHT. NOW WHEN YOU SEND IT TO THE TECHNICIAN, I THINK OBVIOUSLY IT SAYS HERE ON, WELL YOU DON'T KNOW, BUT THAT WAS YOUR ONLY INVOLVEMENT OR ONLY HANDLING OF THE EVIDENCE ON THAT PARTICULAR DAY?

A YES, SIR.

Q OKAY, OKAY, NOW I ASKED AND I KNOW WHAT THE ANSWER IS GOING TO BE IS, IS THAT, IS THAT THE INCIDENT THAT IS, THAT IS THE SUBSTANCE OF THIS TRIAL TODAY DO YOU KNOW ANYTHING ABOUT THIS PARTICULAR INCIDENT THAT'S THE SUBSTANCE OF TRIAL TODAY OTHER THAN HANDLING THE EVIDENCE THAT WAS BROUGHT TO YOU ON THAT PARTICULAR DAY?

A NO, SIR, I DON'T.

Q OKAY, SO YOU COULDN'T TELL THE JURY ABOUT NOTHING THAT HAPPENED ON THE SCENE IN THIS PARTICULAR CASE?

A NO, SIR.

MR. BROOKER: OKAY, I THINK WE'RE JUST ABOUT FINISHED, YOUR HONOR, BUT LET ME CHECK EVERYTHING. THAT'S IT FOR THIS WITNESS, YOUR HONOR.

THE COURT: ANY REDIRECT?

MR. DEBERRY: NO, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK YOU.

THE WITNESS: THANK YOU.

THE COURT: ALL RIGHT, IF YOU'D CALL YOUR NEXT WITNESS.

MR. DEBERRY: MAY SHE BE EXCUSED, YOUR HONOR?

THE COURT: ANY OBJECTIONS?

MR. BROOKER: I HAVE NO OBJECTION.

THE COURT: SHE'S RELEASED.

MR. DEBERRY: THANK YOU, CALL MR. DAN DEFREESE.

FRANK DAN DEFREESE

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q GOOD AFTERNOON, COULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

A MY NAME IS FRANK DAN DEFREESE.

Q OKAY, AND COULD YOU TELL THE JURY A LITTLE BIT ABOUT YOUR BACKGROUND IN FIREARMS AND WHO YOU'RE

EMPLOYED WITH?

A I ALSO WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN THE LABORATORY IN COLUMBIA, AND I AM ASSIGNED TO THE DEPARTMENT WITHIN THE LABORATORY WHERE WE ANALYZE FIREARM AND TOOL MARK EVIDENCE. I'VE BEEN EMPLOYED WITH SLED FOR 43 YEARS. I'VE BEEN ASSIGNED TO THE FIREARMS LABORATORY FOR THE MAJORITY OF THAT TIME BUT NOT ALL OF THAT TIME AND MY USUAL DAYS WORK DEALS WITH THE ANALYSIS OF FIRED AMMUNITION COMPONENTS USUALLY WITH TRYING TO IDENTIFY THOSE COMPONENTS BACK WITH THE FIREARMS IN WHICH THEY WERE FIRED OR TO GIVE THE OFFICERS INFORMATION ABOUT FIRED AMMUNITION AND COMPONENTS, BULLETS, CARTRIDGE CASES, SHOT, WADDING AND THAT SORT OF THING.

Q OKAY, HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN YOUR FIELD?

A I HAVE.

Q OKAY, AND THAT WOULD BE THE FIELD OF FIREARM?

A FIREARMS IDENTIFICATION.

Q FIREARMS IDENTIFICATION. HOW MANY TIMES HAVE YOU BEEN DECLARED AN EXPERT IN THAT FIELD?

A I DON'T ACTUALLY KNOW. I ESTIMATE IT BETWEEN SIX HUNDRED AND SEVEN HUNDRED TIMES.

Q SO YOU'VE BEEN DOING IT FOR QUITE A WHILE?

A YES, SIR.

MR. DEBERRY: YOUR HONOR, AT THIS TIME WE'D LIKE TO HAVE HIM INTRODUCED AS AN EXPERT IN THIS FIELD?

THE COURT: ANY OBJECTIONS?

MR. BROOKER: YOUR HONOR, THERE'S NO OBJECTIONS TO INTRODUCING HIM AS AN EXPERT BUT THERE MAY BE AN OBJECTION WITH RESPECT TO, TO ANY TESTIMONY REGARDING, I THINK, THE EVIDENCE THAT HE INTENDS TO TESTIFY BASED UPON, YOU KNOW, BREAKING THE CHAIN OF CUSTODY.

THE COURT: I'M NOT SURE IF I UNDERSTAND YOUR OBJECTION.

MR. BROOKER: NO OBJECTION TO QUALIFYING HIM AS AN EXPERT.

THE COURT: ALL RIGHT, ALL RIGHT, THAT IS GRANTED, GO AHEAD.

MR. DEBERRY: YOUR HONOR, I GUESS WE NEED TO TAKE THAT UP OUTSIDE OF THE PRESENCE OF THE JURY BECAUSE THAT WOULD BE WHAT WE'RE GOING TO BE TALKING ABOUT.

THE COURT: ALL RIGHT, ONCE AGAIN IF YOU DON'T MIND GOING BACK TO THE JURY ROOM I'D APPRECIATE IT.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 2:55 P.M.)

MR. BROOKER: JUST VERY BRIEFLY, YOUR HONOR, IS THAT THIS EVIDENCE AT LEAST THE MOTION THAT WE MAKE IS BASED UPON THE CHAIN OF EVIDENCE, BASED ON BREAKING THE CHAIN OF EVIDENCE, OR AT LEAST NOT A COMPLETE, I KNOW IT

DOESN'T HAVE TO BE ABSOLUTE CERTAIN CHAIN OF EVIDENCE, BUT OBVIOUSLY IS THAT IT HAS TO BE A SUBSTANTIAL CHAIN AND, OF COURSE, WE BELIEVE AT LEAST THERE'S BEEN A BREAK AT LEAST IN THE CHAIN OF EVIDENCE BASED UPON TWO FACTORS.

ONE IS THAT WE KNOW THAT, THAT I THINK OFFICER DETECTIVE COOK TESTIFIED THAT AT THE TIME OF THE AUTOPSY THAT HE WAS PRESENT AT THE AUTOPSY AND, OF COURSE, I THINK IT WAS GARY GOOK THAT, THAT ONCE THE, THE, THE SLUGS WERE EXTRACTED FROM THE BODY THEN, OF COURSE, HE COLLECTED THOSE SLUGS AND, THEN, OF COURSE, HE TOOK THEM BACK TO THE MARION P.D. AND THEN, OF COURSE, WHAT HE DID NOT TESTIFY TO IS, IS THAT, IS, IS THAT, THAT WHO TOOK CONTROL OF THOSE, TOOK CONTROL OF THOSE SLUGS AT THAT PARTICULAR PERIOD OF TIME.

MY UNDERSTANDING IS, IS THAT EVERY P.D. HAS PROCEDURE IS THAT WHEN, WHEN THOSE OFFICERS, AND I THINK HE SAID HE WAS A TRANSPORT OFFICER, THAT HE TRANSPORTED, HE TRANSPORTED BACK TO MARION P.D. AND, OF COURSE, WHEN HE TRANSPORTED IT BACK TO THAT P.D. THEN, OF COURSE, HE WOULD THEN TURN THAT EVIDENCE INTO SOMEONE HAVE TO SIGN THAT EVIDENCE IN TO, TO SOMEONE WHO WOULD THEN TAKE CUSTODY OF IT AND, AND THEN, OF COURSE, KEEP IT UNTIL IT'S CHECKED OUT; AND, OF COURSE, THE AUTOPSY TOOK PLACE ON, ON MAY 14TH, THAT'S RIGHT, ON, ON, ON THE DATE OF THE AUTOPSY WAS MAY 14TH, WHICH WAS THE NEXT DAY OF THE SHOOTING AND, OF COURSE, HE TESTIFIED THAT HE IMMEDIATELY TOOK IT AT THE

TIME OF THE AUTOPSY AND THEN, OF COURSE, SO ON MAY 14TH IT WOULD HAVE BEEN TURNED BACK OVER TO, TOOK INTO MARION P.D. I GUESS TURNED INTO WHOEVER KEEPS THE EVIDENCE AT THAT PARTICULAR PERIOD OF TIME.

HUFFMAN, JASON HUFFMAN I THINK TESTIFIED THAT, THAT ON 5-21 OF '07, THAT WOULD HAVE BEEN ROUGHLY SEVEN DAYS LATER. HE THEN COLLECTED THAT EVIDENCE FROM THE EVIDENCE LOCKER AND THEN, OF COURSE, HE THEN TOOK, TOOK THE EVIDENCE TO SLED AND THEN TURNED IT OVER TO THE YOUNG LADY WHO JUST TESTIFIED, I THINK THAT'S NIKKI PERRY, OKAY? BUT AT LEAST FOR THOSE SEVEN DAYS THAT IT WAS IN, IT WAS IN FROM THE TIME IN WHICH IT WAS TAKEN FROM, FROM WHICH IT WAS TAKEN FROM, FROM THE AUTOPSY, AUTOPSY EXAMINERS OFFICE AND TAKEN BACK TO MARION P.D. AND, OF COURSE, THERE WOULD HAVE BEEN A BREAK IN THE CHAIN AT LEAST FOR THOSE SEVEN DAYS.

THERE'S NO TESTIMONY WITH RESPECT TO WHO IT WAS TURNED OVER TO, WHO PLACED IT IN THE EVIDENCE LOCKER, AND WHO HAD ACCESS TO IT AT THAT PARTICULAR PERIOD OF TIME. THE ONLY OTHER KNOWLEDGE THAT WE KNOW IS THAT PARTICULAR PERIOD SEVEN DAYS LATER THEN I THINK LIEUTENANT HUFFMAN TESTIFIED TO THE FACT THAT HE PICKED IT UP AND THEN TOOK IT TO SLED.

THE COURT: SOLICITOR?

MR. DEBERRY: YOUR HONOR, I THINK THERE'S EVIDENCE IN THE RECORD, TESTIMONY IN THE RECORD THAT GARY

COOK TOOK THE BULLETS FROM THE AUTOPSY, TOOK POSSESSION OF THEM, AND HE SAID THAT HE TRANSFERRED THE POSSESSION OF THOSE BULLETS TO LIEUTENANT FARMER BLUE. I THINK IT WAS LIEUTENANT HUFFMAN, OR JASON HUFFMAN, TESTIFIED THAT HE TOOK CONTROL OF THOSE BULLETS FROM THE MARION POLICE DEPARTMENT AND HE TOOK THEM TO SLED AND THERE'S ALSO, THERE'S GOING TO BE AN AMY STEVENS FROM SLED WHO HAS NOT TESTIFIED THAT TOOK CONTROL AND NIKKI PERRY TESTIFIED TOOK CONTROL OF THIS EVIDENCE AND GAVE IT TO DAN DEFREESE.

THERE IS A CASE ON POINT, YOUR HONOR, STATE V. VALENTINE THAT SAYS THAT THE COMPLETE CHAIN DOES NOT HAVE TO BE MADE, THAT IT CAN, EVIDENCE CAN COME IN ON A CHAIN OF CUSTODY WHERE EVERYBODY IN THE CHAIN IS AT LEAST IDENTIFIED AND THE OPEN ENDS OF THE CHAINS ARE CLOSED IN A SITUATION, YOUR HONOR. WE THINK IT'S RELIABLE AND THAT IT SHOULD BE ADMITTED.

MR. BROOKER: AND JUST SIMPLY IS, YOUR HONOR, IS AND I THINK THAT THAT HELPS MAKE OUR POINT IS, IS THAT IF, IF, IF ON THE 7TH, IF THAT EVIDENCE WAS TURNED INTO LIEUTENANT BLUE, EXCUSE ME ON THE 14TH THE DAY OF THE AUTOPSY, ON MAY 14TH IT WAS TURNED OVER TO LIEUTENANT BLUE THEN, OF COURSE, LIEUTENANT BLUE WOULD THEN HAVE TO BE ON THE STAND AND TESTIFY WITH RESPECT TO WHAT HE DID TO IT AT THAT PARTICULAR PERIOD OF TIME AND THEN, OF COURSE, HUFFMAN THEN WOULD TESTIFY TO THE FACT THAT HE'S TAKEN, BUT WHAT'S

HE'S INTENDING TO DO IS THAT HE'S INTENDING TO AT LEAST PUT THE EVIDENCE IN THE RECORD, PUT AT LEAST THE EVIDENCE IN THE RECORD WITH RESPECT TO, YOU KNOW, THE RESULTS OF THE TEST THAT CAME FROM THESE BALLISTICS TESTS WITHOUT FIRST PUTTING ALL OF THE CHAIN WITNESSES ON THE STAND AND HAVE THEM COMPLETE THE CHAIN FIRST.

HE'S SAYING THAT HE HAS THE CHAIN WITNESSES BUT, OF COURSE, YOU CAN'T PUT THE EVIDENCE IN UNTIL YOU COMPLETE THE CHAIN AND THEN, OF COURSE, THIS OFFICER HERE OBVIOUSLY IS GOING TO TESTIFY TO THE RESULTS, TO THE RESULTS OF RECEIVING IT AFTER, AFTER THIS COMPLETE CHAIN AND PUT IT INTO EVIDENCE.

NOW IF IT'S DETERMINED THAT AFTER LIEUTENANT BLUE GETS ON THE STAND THAT THERE WAS A PROBLEM WITH CHAIN THEN, OF COURSE, WE CAN'T GET BACK WHAT THE SCIENTISTS HAVE TESTIFIED TO. IT WOULD HAVE ALREADY BEEN OUT THERE AND THEN, OF COURSE, IT WOULD BE GROUNDS FOR A MISTRIAL.

THE COURT: RESPONSE?

MR. DEBERRY: YOUR HONOR, LIKE I SAID <u>STATE V. VALENTINE</u> DOES NOT REQUIRE US TO HAVE, TO PUT UP EVERY PERSON THAT'S INSIDE THE CHAIN. WE'VE IDENTIFIED WHO THE CHAIN, WHO WAS IN THE CHAIN AND I THINK IT'S ADMISSIBLE.

THE COURT: I AGREE. I'M SATISFIED WITH THE CHAIN OF CUSTODY THAT HAS BEEN ESTABLISHED; ANYTHING FURTHER?

MR. BROOKER: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT, BRING OUT THE JURY.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 3:02 P.M.)

MR. DEBERRY: (CONTINUING)

Q MR. DEFREESE, I THINK THAT YOU TESTIFIED THAT YOU WERE EMPLOYED WITH SLED IN 2007 AS A FIREARMS EXAMINER?

A YES.

Q OKAY, AND DID YOU HAVE AN OCCASION TO COME ACROSS THE CASE OF LAB NUMBER L07-07310?

A I DID.

Q OKAY, AND WITH RESPECT TO THAT CASE WERE YOU IN THE CHAIN OF CUSTODY OF THE EVIDENCE?

A I WAS.

Q OKAY, AND WITH ITEMS NUMBER ONE AND ITEM NUMBER TWO COULD YOU TELL, TELL THE JURY FROM WHOM YOU TOOK THAT EVIDENCE FROM?

A I RECEIVED THE EVIDENCE ON MAY 25TH OF 2007 FROM AMY STEVENS WHO WORKS IN OUR EVIDENCE CONTROL AREA AND I RETURNED THE EVIDENCE ON JUNE THE 8TH, 2007, TO SELENA KINARD WHO'S ALSO A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL AREA.

Q OKAY, BUT WHEN YOU RECEIVED IT WAS THERE ANYONE THAT TOOK CONTROL OF IT BEFORE YOU TESTED IT BETWEEN

THE TIME AMY STEVENS GAVE IT TO YOU AND YOU GAVE IT BACK TO SELENA KINARD?

A NO.

Q OKAY, SO WHEN YOU TOOK POSSESSION OF IT YOU DID YOUR EXAMINATION?

A YES, I DID, THE EVIDENCE REMAINED IN MY CUSTODY, I'M NOT SURE I STARTED THE EXAMINATION OF IT AT THAT TIME. I ACTUALLY OPENED THE CONTAINER OF EVIDENCE ON JUNE THE 4TH AND RESEALED IT ON JUNE THE 6TH SO I ACTUALLY HAD THE CASE OPEN FOR A PERIOD OF ABOUT TWO DAYS.

Q OKAY, WHAT ARE THE TWO ITEMS, ITEM NUMBER ONE AND ITEM NUMBER TWO?

A ITEM NUMBER ONE IS A BULLET AND ITEM NUMBER TWO IS A BULLET. THEY'RE BOTH FIRED BULLETS.

Q OKAY, I'M GOING TO HAND YOU --

MR. DEBERRY: MARK THIS AS STATE'S EXHIBITS.

(WHEREUPON, STATE'S EXHIBITS NUMBERS 24 AND 25 MARKED FOR IDENTIFICATION.)

MR. DEBERRY: STATE'S EXHIBIT 24 AND 25, YOUR HONOR.

Q (CONTINUING) SEE IF YOU RECOGNIZE THOSE, ARE THOSE ITEMS NUMBER ONE AND ITEM NUMBER TWO FROM THE TESTING?

A INDULGE ME JUST A MINUTE. YES, SIR, STATE'S EXHIBIT 25 IS MY BULLET NUMBER ONE AND STATE'S

EXHIBIT 24 IS MY BULLET NUMBER ONE AND STATE'S EXHIBIT 25 IS MY BULLET NUMBER TWO.

Q OKAY, NOW IS THAT, ARE THOSE BULLETS NUMBER ONE AND BULLET NUMBER TWO WERE THOSE IDENTIFIED BY, BY THE DOCTOR WHO PERFORMED THE AUTOPSY?

A THEY WERE LABELED AS BULLET NUMBER ONE; MY NUMBER ONE IS THEIR BULLET NUMBER WHICH IS MARKED APPLEWHITE RAMEL, AND IT HAS THE AUTOPSY NUMBER AND DR. SCHANDL'S NAME ON IT.

Q OKAY, SO YOUR BULLET NUMBER ONE AND HER BULLET NUMBER ONE ARE ONE IN THE SAME?

A YES, AND BULLET NUMBER, MY BULLET NUMBER TWO AND HER BULLET NUMBER TWO, HER BULLET NUMBER TWO IS MY ITEM NUMBER TWO AND IT ALSO IS RECEIVED IN A CONTAINER MARKED APPLEWHITE RAMEL WITH AN AUTOPSY NUMBER AND DR. SCHANDL'S NAME ON IT.

Q OKAY, AND THOSE CANISTERS HAVE THE LAB NUMBER?

A THEY DO, THEY HAVE MY LABORATORY NUMBER AND ITEM NUMBER ON THEM AS WELL AND THEY ALSO, I'VE INDIVIDUALLY MARKED THE BULLETS. THE BULLETS ARE ENGRAVED AND THEY HAVE MY INITIAL AND MY CASE NUMBER AND MY ITEM NUMBER ACTUALLY ENGRAVED ON THE BULLET AS WELL.

Q SO YOU TAKE THAT, THAT MARK IS YOURS?

A THAT'S WHAT I WAS LOOKING FOR WHEN I OPENED

THE CONTAINER JUST TO MAKE SURE THAT, THAT MY MARKS WERE THERE AND THEY ARE.

Q OKAY, ALL RIGHT, SO YOUR BULLET ONE AND YOUR BULLET TWO ARE THE SAME AS DR. SCHANDL'S BULLET ONE AND BULLET TWO?

A CORRECT.

Q THOSE ARE THE ONES THAT YOU TESTED IN THIS CASE?

A YES, SIR.

Q OKAY, CAN YOU TELL US BULLET NUMBER ONE WHICH IS ITEM NUMBER ONE ON YOUR REPORT, CAN YOU TELL US WHAT YOU LEARNED ABOUT THAT BULLET?

A YES, SIR, I EXAMINED THE BULLET WHICH IS NOW STATE'S EXHIBIT 24. I WEIGHED IT AND MEASURED IT AND OBTAINED THE DIMENSIONS OF THE LAND AND GROOVE IMPRESSIONS THAT WERE ON THIS BULLET. THIS BULLET'S DIAMETER AND WEIGHT ARE CONSISTENT WITH THAT OF A 38 SPECIAL OR A 357 MAGNUM CALIBER BULLET. THE BULLET HAS A CRIMPING CONDOLER WHICH IS CONSISTENT WITH THE KIND OF BULLETS THAT ARE USED IN REVOLVER CARTRIDGES BECAUSE REVOLVER CARTRIDGES USUALLY HAVE A PRETTY GOOD CRIMP PLACED ON THE BULLET TO KEEP THE BULLETS FROM COMING OUT. IT'S A JACKETED HOLLOW POINT BULLET AND IT'S RIFLED WITH FIVE GROOVES WITH RIGHT HAND TWISTS. I MEASURED THOSE GROOVES AND FROM THE LAND AND GROOVE DIMENSIONS I OBTAINED A LIST OF POSSIBLE FIREARMS

THAT MAY HAVE FIRED THIS BULLET THAT I FURNISHED AS AN INVESTIGATIVE LEAD FOR THE OFFICERS INVOLVED.

I DID A SIMILAR THING WITH STATE'S EXHIBIT 25 WHICH IS BULLET NUMBER TWO AND MY ITEM NUMBER TWO. THIS BULLET IS MOST CONSISTENT WITH BULLETS LOADED INTO 9MM LUGER CALIBER CARTRIDGES. IT'S A BRASS JACKETED FULL METAL CASE BULLET. THIS BULLET IS RIFLED WITH SIX GROOVES WITH RIGHT TWIST.

GROOVES ARE INSIDE THE BARREL OF A FIREARM AND THEY GRIP THE BULLET AS THE BULLET IS BEING PROPELLED THROUGH THE BORE OF THE GUN AND OUT OF THE GUN AND THEY'RE THERE TO IMPART A SPIN ON THE BULLET TO MAKE THE BULLET STABLE IN FLIGHT. MOST ALL RIFLED FIREARMS WHICH INCLUDES RIFLES, PISTOLS, AND REVOLVERS, AND NOT USUALLY BUT EVEN SOMETIMES SHOTGUNS, HAVE A NUMBER OF THESE GROOVES IN THE BARREL. FOR EACH GROOVE, WHICH IS THE LOWERED AREA IN THE BARREL, THERE'S A RAISED AREA WHICH WE CALL THE LAND. THEY MAKE CORRESPONDING MARKS ON THE BULLETS AND DIFFERENT MANUFACTURERS USE DIFFERENT NUMBERS OF LANDS AND GROOVES IN THERE BARRELS AND THEY SOME OF THEM TWIST THE BULLET SO THE BULLET GOES TO THE RIGHT AND SOME TWIST IT TO THE LEFT. IT HAS TO BE EITHER LEFT OR RIGHT BUT THE NUMBER CAN VARY.

AND IN THIS CASE THIS BEING SIX LANDS AND GROOVES WITH RIGHT HAND TWISTS, THAT'S ITEM STATE'S EXHIBIT 25 MY ITEM TWO, STATE'S EXHIBIT 24 HAS FIVE LANDS AND GROOVES OR

LAND AND GROOVE IMPRESSIONS WITH RIGHT HAND TWISTS. THERE'S NO WAY THAT THESE COULD HAVE BEEN FIRED BY THE SAME GUN BARREL WHICH IS ANOTHER WAY TO SAY THEY WEREN'T FIRED BY THE SAME GUN.

Q OKAY -- YOUR HONOR, AT THIS TIME I'D LIKE TO INTRODUCE STATE'S EXHIBIT 24, 25, AND 26 INTO EVIDENCE.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: YEAH, YOUR HONOR, OUR OBJECTIONS ARE BASED UPON OUR PREVIOUS ARGUMENT IN THAT INVOLVES A RECENT CHAIN OF CUSTODY.

THE COURT: THANK YOU, BUT THAT OBJECTION IS OVERRULED.

(WHEREUPON, STATE'S EXHIBITS NUMBERS 24, 25, AND 26 ENTERED INTO EVIDENCE.)

MR. DEBERRY: (CONTINUING)

Q SO YOUR TESTIMONY IS THAT BULLET NUMBER ONE IS FIRED FROM EITHER A 38 OR A 357?

A ALL OF THE REMAINING OBSERVABLE PHYSICAL CHARACTERISTICS THAT BULLET ARE MOST CONSISTENT WITH BULLETS LOADED INTO 38 SPECIAL CALIBER AND 357 MAGNUM CALIBER CARTRIDGES.

Q OKAY, CAN YOU EXPLAIN FOR THE JURY CAN A 38 SPECIAL AND A 357 MAGNUM CAN THEY BE FIRED OUT OF THE SAME GUN?

A A 38 SPECIAL CARTRIDGE CAN BE FIRED IN A

357 MAGNUM CALIBER FIREARM. A 357 MAGNUM CALIBER CARTRIDGE CANNOT BE FIRED IN A 38 SPECIAL. THERE IS A ONE WAY INTERCHANGABILITY BETWEEN THE CARTRIDGES AND THAT'S DUE TO THE FACT THAT THE 357 MAGNUM CARTRIDGE IS USUALLY LOADED TO MUCH HIGHER PRESSURES THAN A 38 SPECIAL SO NOW IT'S SAFE TO SHOOT THAT IN A 38 SPECIAL CALIBER GUN. IT'S CARTRIDGE CASE THE 357 IS ABOUT A TENTH OF AN INCH LONGER AND THAT WAY IT PREVENTS PEOPLE FROM PUTTING 357 CARTRIDGES IN 38 SPECIAL REVOLVERS BUT NOT VICE VERSA.

Q OKAY, SO IT'S YOUR TESTIMONY THAT CHARACTERISTICS WITH BULLET NUMBER ONE CAN YOU, CAN YOU JUST SAY EVERYTHING THAT GOES ALONG WITH BULLET NUMBER ONE THAT YOU BELIEVE TENDS TO PROVE IT WAS FIRED OUT OF A REVOLVER?

A TO THE EXTENT POSSIBLE THE FIVE LAND AND GROOVE RIFLING SPECIFICATION IS COMMONLY USED BY REVOLVERS. IT'S ONLY USED BY ONE SEMI AUTOMATIC 357 MAGNUM CALIBER PISTOL AND THE MAJORITY OF THE FIREARMS EVER MADE WITH FIVE GROOVES AND RIGHT TWISTS ARE REVOLVERS BUT I CAN'T SAY FROM LOOKING AT THE BULLET THAT IT WAS FIRED BY A REVOLVER IN THIS CASE.

Q OKAY, BUT YOU CAN TESTIFY THAT MOST OF THE FIREARMS THAT HAVE FIVE LANDS AND GROOVES ARE REVOLVERS?

A MOST 38 AND 357'S WITH FIVE RIGHT TWISTS ARE REVOLVERS.

Q AND AGAIN YOU TESTIFIED THAT BULLET NUMBER TWO IS MOST CONSISTENT WITH FIRING FROM A 9MM?

A YES, ALL THE REMAINING OBSERVABLE PHYSICAL CHARACTERISTICS OF ITEM 25, BULLET NUMBER TWO, FIT A 9MM LUGER CALIBER BULLET AND NOT A 38 SPECIAL OR A 357.

Q NOW ON YOUR REPORT, WHICH IS INTO EVIDENCE, STATES EXHIBIT NUMBER 26, I JUST HAND YOU A COPY, CAN YOU EXPLAIN TO THE JURY ON ITEM NUMBER ONE YOU LISTED SPECIFIC BRAND NAMES OF FIREARMS THAT MAY HAVE FIRED THIS BULLET, NOW CAN YOU EXPLAIN WHY YOU COULD NOT DO THAT WITH A 9MM?

A THE WAY THAT THE RIFLING ENGAGED THE 9MM BULLET IN STATE'S EXHIBIT 25 IT ENGAGED WELL ON ONE SIDE OF THE LAND IMPRESSION IN THE BULLET, WHAT WOULD BE THE GROOVE IN THE BULLET, HAD SIX DISTINCT MARKS WHERE THE BULLET ENGAGED ON ONE SIDE BUT ON THE OTHER SIDE IT DID NOT ENGAGE WELL. IT SORT OF SLIPPED AWAY INSTEAD OF HAVING A DISTINCT MARK. I HAD SIX DRIVING SIDE MARKS BUT THE, THE OTHER SIDE OF THE LAND JUST DIDN'T LEAVE A DISTINCT MARK, SO I KNOW I WAS DEALING WITH SIX LANDS AND GROOVES IN THE BORE BUT I COULDN'T GET A MEASUREMENT WITH ANY CONFIDENCE OF HOW WIDE THE LAND AND GROOVE IMPRESSIONS WERE. IT'S THE WIDTH OF THE LAND AND GROOVE IMPRESSIONS THAT PERMIT ME TO SUGGEST POSSIBLE MAKES OF FIREARMS IN WHICH THE BULLET WOULD HAVE BEEN FIRED.

SIX GROVES WITH RIGHT TWIST IS A VERY VERY COMMON

RIFLING SPECIFICATION FOR 9MM LUGER CALIBER FIREARMS AND IF I HAD, I COULD HAVE GIVEN A LIST BUT THE LIST WOULD HAVE INCLUDED PERHAPS HUNDREDS OF DIFFERENT MAKES OF FIREARMS AND PROBABLY WOULD NOT HAVE BEEN MUCH IN THE WAY OF INVESTIGATIVE ASSISTANCE. BY THE TIME WE GET TO A LIST THAT BIG IT'S SORT OF LIKE WE CAN TELL THE INVESTIGATOR TO SEND US ANY 9MM LUGER FIREARM YOU FIND AND WE'LL SORT THEM OUT.

THE OTHER LIST, THE ONE ON THE 38 SPECIAL CALIBER ARE STATE'S EXHIBIT 24, BULLET NUMBER ONE, ONLY INCLUDED ABOUT EIGHT POSSIBLE MANUFACTURES, SO IT, IT WAS WORTH GIVING THEM AS AN INVESTIGATIVE LEAD.

Q OKAY, FOR PURPOSES IF THEY HAD FOUND A GUN THEY COULD HAVE SENT IT TO YOU AND YOU COULD COMPARE IT?

A RIGHT, BY SUGGESTING MEANS MAKES. IF THEY WERE TO FIND A MAKE OF GUN OTHER THAN THE ONES THAT I'VE LISTED FOR THE ITEM NUMBER ONE BULLET FOR STATE'S EXHIBIT 24 THERE WOULD HAVE BEEN A VERY LOW LIKELIHOOD THAT THAT WOULD BE THE RIGHT GUN.

Q SO, SO IN OTHER WORDS YOU CAN IDENTIFY A GUN, POSSIBLE GUN MANUFACTURER BY HOW MANY LANDS AND GROOVES THAT ARE ON THE BULLET OR IN THE BARRELS?

A WE CAN SUGGEST POSSIBLE MAKES OF FIREARMS THAT MAY HAVE FIRED BULLETS BASED ON THE NUMBER, BASED ON THEIR CALIBER, ON THE NUMBER OF LANDS AND GROOVES, ON THE

DIRECTION OF TWIST, AND THEN ON THE WIDTH OF THE LAND AND GROOVE IMPRESSIONS THAT WE FIND ON THE BULLET. I COULD FIND ALL BUT THE LAST; I COULD TELL ON STATE'S EXHIBIT 25 BULLET NUMBER TWO I CAN TELL YOU THE CALIBER AND THE NUMBER OF LANDS AND GROOVES BUT I COULDN'T DISCRIMINATE THE WIDTH OF THE LANDS VERSUS THE GROOVES WHICH MADE PREDICTING A BRAND OF FIREARM THAT MIGHT HAVE FIRED IT REALLY NOT WORTH DOING IN THIS CASE.

Q OKAY, AND I THINK YOU TESTIFIED BEFORE THAT THE CHARACTERISTICS, THE DIFFERENT CHARACTERISTICS THAT ARE FOUND ON BULLET NUMBER ONE AND BULLET NUMBER TWO YOU CAN SAY FOR CERTAIN THAT, THAT THEY'RE NOT FIRED FROM THE SAME GUN?

A ABSOLUTELY.

Q OKAY, AND YOU CAN SAY WITH YOUR MOST CONFIDENCE THAT BULLET NUMBER ONE IS A 38 AND BULLET NUMBER TWO IS A 9MM?

A I CAN'T TELL THE DIFFERENCE IN LOOKING AT THE BULLET BETWEEN A BULLET THAT A 38 SPECIAL AND THE BULLET THAT A 357 MAGNUM CALIBER CARTRIDGE MIGHT HAVE BEEN LOADED WITH, SO THE NUMBER ONE BULLET IS CONSISTENT WITH 38 SPECIAL BUT I CAN'T EXCLUDE 357 MAGNUM.

Q OKAY, AND 9MM, AND THEN BULLET NUMBER TWO IS MOST CONSISTENT WITH A 9MM?

A WITH A 9MM LUGER CALIBER BULLET.

Q OKAY, AND YOU TESTIFIED THAT THE CRIMPING ON THE 38 SUGGESTED THAT IT MAY HAVE BEEN SHOT FROM A REVOLVER?

A YES, THE PRESENCE OF A CRIMPING CONDOLER SUGGESTS BULLETS THAT WERE INTENDED TO BE LOADED INTO A REVOLVER CARTRIDGE.

MR. DEBERRY: OKAY, THANK YOU VERY MUCH.

THE COURT: MR. BROOKER?

MR. BROOKER: OKAY.

CROSS EXAMINATION

BY MR. BROOKER:

Q MR. DEFREESE, I'M GOING TO ASK YOU A COUPLE OF QUESTIONS, I THINK IT HELPS ME OUT MORE THAN IT WILL HELP YOU, OKAY, AND THAT IS I THINK YOU TESTIFIED THAT YOU HAD TWO SPECIMENS THERE. I THINK ONE WAS IDENTIFIED AS BULLET ONE; IS THAT CORRECT?

A YES, SIR.

Q OKAY, AND, OF COURSE, I THINK YOU TESTIFIED THAT THAT'S MORE CONSISTENT WITH THE TYPE OF BULLET OR SLUG THAT WOULD COME FROM A 358, EXCUSE ME, A 357 OR EITHER 38; IS THAT CORRECT?

A EITHER A 357 MAGNUM OR A 38 SPECIAL CALIBER CARTRIDGE, YES, SIR.

Q OKAY, NOW I KNOW YOU ALSO TESTIFIED THAT, THAT MOST GUNS, YOU KNOW, OBVIOUSLY THERE WERE TWO TYPES OF

BARRELS RIGHT ON A GUN, THERE'S ONE THAT'S A SMOOTH BARREL AND THEN, OF COURSE, THERE'S ONE THAT'S, THAT'S RIFFLED AND IT HAS, YOU KNOW, LAND AND GROOVES THAT'S OFTEN SOMETIMES IS IT'S TWISTED EITHER TO THE RIGHT OR LEFT; IS THAT CORRECT?

A I'M NOT SURE EVERYTHING YOU SAID WAS CORRECT.

Q OKAY, WELL, WELL DID YOU HEAR WHAT I SAID, IF SOMETHING THAT I SAID IT INCORRECT THEN CORRECT ME?

A ALL RIGHT, I SAID RIFLED FIREARMS WILL INCLUDE RIFLES, PISTOLS, AND REVOLVERS, BUT NOT USUALLY SHOTGUNS. SHOTGUNS HAVE USUALLY HAVE A SMOOTH BORE ALTHOUGH THERE ARE SHOTGUNS MADE FOR SLUGS THAT EVEN THEY ARE RIFLED.

Q THEY ARE RIFLED?

A RIGHT, BUT, YOU KNOW, WE'RE OBVIOUSLY NOT DEALING WITH A SHOTGUN TYPE PROJECTILE IN THIS CASE AND RIFLING, IN ORDER TO IMPART A SPIN ON THE BULLET IT HAS TO TWIST THE BULLET EITHER TO THE RIGHT OR TO THE LEFT SO IN TERMS OF DIRECTION OF TWISTS ALL WE HAVE ARE LEFT OR RIGHT IF RIFLING IS PRESENT.

Q NOW THE NUMBER OF LANDS AND GROOVES, I THINK YOU SAID IN BULLET ONE THERE WAS, IF I'M NOT MISTAKEN, YOU SAID FIVE, WAS IT FIVE LAND AND GROOVES, I THINK, ON BULLET ONE?

A THAT'S CORRECT, BULLET NUMBER ONE HAS FIVE LAND AND GROOVE IMPRESSIONS ON IT.

Q OKAY, OKAY, NOW AND, OF COURSE, THIS IS WHERE I'M A LITTLE CONFUSED AT I'M GOING TO NEED YOUR HELP, AND THEN, OF COURSE, IT ALSO RIFLES OR EITHER TWISTS TO THE RIGHT; IS THAT CORRECT?

A YES, SIR, THIS, THIS ONE TWISTED TO THE RIGHT.

Q TO THE RIGHT, OKAY, HOW MANY TYPE GUNS, DO SLED KEEPS A DATA BASE OF, OF THE TYPES OF GUNS THAT, THAT HAS FIVE LANDS AND GROOVES THAT TWIST TO THE RIGHT?

A YES.

Q OKAY, GUNS THERE ARE, HOW MANY CALIBER DIFFERENT CALIBER OF GUNS HAS FIVE LANDS AND GROOVES THAT TWIST TO THE RIGHT?

A I DON'T KNOW HOW MANY DIFFERENT FIREARMS, I COULD, I COULD RESEARCH THAT CAUSE WE KEEP IT ON A COMPUTER AND WE QUERY THE COMPUTER ACCORDING TO THE CALIBER, THE NUMBER OF LANDS AND GROOVES, THE DIRECTION OF TWISTS, AND THE WIDTH OF THOSE AND WE DO IT IN THAT ORDER. SO THERE ARE, FOR INSTANCE THERE ARE FIVE LAND AND GROOVE GUNS IN 30 CALIBER BUT, YOU KNOW, IN THIS CASE I WOULDN'T BE SEARCHING FOR THEM. I'M ONLY LOOKING FOR 38 CALIBER OR NOMINAL 38 CALIBER BULLETS.

Q OKAY, AND THAT COMES TO MY NEXT QUESTION.

HOW DO YOU DETERMINE THE CALIBER OF BULLET BASED UPON THE LANDS AND GROOVES AND THEN ALSO THE TWISTING THAT YOU SEE ON EACH SPENT SHELL?

A WELL THE DIRECTION OF TWIST DOESN'T HAVE ANYTHING TO DO WITH DETERMINING THE CALIBER BUT THE CALIBER CAN BE DETERMINED BY SIMPLY MEASURING THE BULLETS DIAMETER WHICH I DID IN THIS CASE ON ITEM, ON MY BULLET NUMBER ONE ON STATE'S EXHIBIT 24, AND IT MEASURED JUST OVER 35 CALIBER WHICH IS WHAT I WOULD EXPECT TO SEE WITH A FIVE LAND AND GROOVE BULLET IN 38 SPECIAL OR 357 MAGNUM. EVEN THOUGH WE CALL IT 38 SPECIAL THE BULLETS THAT ARE LOADED INTO THE CARTRIDGE ARE NOMINALLY .357 INCHES IN DIAMETER, SO IT'S REALLY JUST A LITTLE OVER THIRTY FIVE AND A HALF CALIBER.

Q OKAY, AND, AND, AND, AND JUST TO MAKE SURE MY UNDERSTANDING IS THAT THE WAY THAT YOU KNOW THE CALIBER IS THAT YOU MEASURE, MEASURE THE DIAMETER WHICH MEANS HOW ROUND THE BULLET IS?

A RIGHT, YOU MEASURE, YOU MEASURE ACROSS THE ROUND END OF THE BULLET.

Q OKAY, ACROSS THE ONE END DIAGONALLY TO THE OTHER END?

A FROM ONE SIDE TO THE OTHER.

Q ONE SIDE TO THE OTHER?

A YES.

Q YOU MEASURE IT AND THEN, OF COURSE, THAT'S

HOW YOU DETERMINE THE POSSIBLE CALIBER?

A YES.

Q IS THAT CORRECT, OKAY?

A WE ALSO STUDY THE WEIGHT OF IT AND THE WEIGHT OF THIS BULLET WAS JUST LESS THAN ONE HUNDRED AND TWENTY FIVE GRAINS, A GRAIN BEING ONE SEVEN THOUSANDTH OF A POUND, SO IT'S A FAIRLY SMALL AMOUNT BUT A HUNDRED AND TWENTY FIVE GRAIN BULLETS ARE COMMONLY LOADED IN TO 38 SPECIAL AND 357 MAGNUM CALIBER CARTRIDGES.

Q ARE THEY LOADED IN ANY OTHER TYPE OF GUNS?

A YES, THERE ARE, THERE ARE OTHER CALIBERS LOADED WITH BULLETS OF ABOUT THAT SAME WEIGHT.

Q WHAT OTHER GUNS ARE LOADED WITH THOSE, THAT SAME BULLET?

A I'D HAVE TO LOOK AT THE LIST FOR A COMPLETE RESUSCITATION OF IT BUT THERE'S A HUNDRED AND TWENTY FOUR GRAIN LOADING THAT'S LOADED IN A 9MM. THERE'S, THERE'S BULLETS IN THE CLOSE TO ONE HUNDRED AND TWENTY FIVE GRAINS LOADED INTO A NUMBER OF NOMINAL 38 CALIBER CARTRIDGES. BY NOMINAL 38 CALIBER CARTRIDGES I MEAN CARTRIDGES WITH BULLET DIAMETERS IN THAT SAME GENERAL RANGE AND THE 9MM LUGER CALIBER HAS APPROXIMATELY, IT'S A LITTLE BIT SMALLER IN DIAMETER BUT IT'S VERY CLOSE TO THE SAME THING.

Q OKAY, CAN A 38 CALIBER BULLET BE FIRED FROM LET'S SAY OBVIOUSLY A 357, 357 CALIBER, I GUESS, GUN

BARREL, CAN A BULLET THAT WOULD NORMALLY BE SHOT MAYBE IN A 38 BE SHOT FROM THE BARREL OF A, YOU KNOW, MAYBE A 45 CALIBER GUN OR TYPES OF, DIFFERENT TYPES OF, ANY TYPE OF 45 CALIBER GUN?

A STRICTLY SPEAKING YOU CAN GET THE WRONG CALIBER OF AMMUNITION TO FIRE IN LARGER CALIBER GUNS, THAT IS BY EITHER BUSHING OR TAPING OR IMPROVISING YOU CAN GET THE WRONG CALIBER OF AMMUNITION TO FIRE IN OTHER GUN BARRELS BUT IF THEY DO THEY WON'T ENGAGE THE RIFLING PROPERLY AND IN THE CASE OF THIS BULLET THE RIFLING WAS PROPERLY ENGAGED. SO THERE'S NO ISSUE OF THIS BULLET OR OF THE NUMBER TWO BULLET, OR STATE'S EXHIBIT 25, BEING FIRED IN THE WRONG CALIBER.

Q SO THE RIFLING IN A 38, AND I WANT TO MAKE SURE THAT I UNDERSTAND THIS AND HAVE PATIENCE WITH ME ---

A SURE.

Q --- BECAUSE THE RIFLING THAT'S IN A 38 IF A, IF A 38, I GUESS, CALIBER BULLET IS FIRED FROM A 357 WHAT YOU'RE SAYING IS, IS THAT 38 CALIBER BULLET MAY NOT ENGAGE THE RIFLING ON THE RIGHT WEIGHT FROM THAT 357 GUN THAT'S SHOT?

A NO.

Q BECAUSE THEY'RE DIFFERENT CALIBERS?

A NO, A 38 SPECIAL BULLET AND A 357 MAGNUM BULLET ARE THE SAME DIAMETER BULLET AND THE GUN BARREL

DIMENSIONS, THE INTERIOR BOARD DIMENSIONS ARE THE SAME. THE ONLY REAL DIFFERENCE BETWEEN THE TWO CARTRIDGES IS JUST THE CARTRIDGE CASE LENGTH AND THE PRESSURE TO WHICH THE CARTRIDGE IS LOADED AND THE CASE LENGTH IS CHANGED FOR SAFETY SAKE TO PROVIDE THAT ONE WAY INTERCHANGE. WHAT I WAS REFERRING TO EARLIER IS IF WE COULD PUT A 38 SPECIAL CALIBER CARTRIDGE IN A 45 CALIBER BARREL AND MAKE IT FIRE THAT THE BULLET WOULD NOT ENGAGE THE RIFLING PROPERLY. IT MIGHT STRIKE THE RIFLING ON ONE SIDE OF THE BARREL OR ON THE OTHER BUT IT WOULDN'T HAVE A UNIFORM ENGAGEMENT OF RIFLING ALL THE WAY AROUND THE BULLET THE WAY THAT IT WOULD BE IT IF WERE FIRED IN ITS CORRECT CALIBER BORE, BUT THERE'S NO PROBLEM WHATSOEVER IN SHOOTING A 38 SPECIAL CALIBER CARTRIDGE IN A 357 MAGNUM CALIBER FIREARM BECAUSE THE BULLET WILL PROPERLY SLUG IN THE BARREL AND IT WILL BE PROPERLY MARKED AND ENGAGED AND WILL SAFELY FIRE.

Q NOW WHEN, WHEN, WHEN IDENTIFYING A GUN IS A 357 OR EITHER A 38 AND, AND, AND I GUESS WE'LL GET INTO YOUR KNOWLEDGE A LITTLE BIT ABOUT GUNS, WHEN A MANUFACTURER IDENTIFIES A GUN AS A, AS A 357 OR EITHER A 38 WHEN THEY IDENTIFY THAT GUN AS A 357 OR EITHER 48 ARE THEY MEASURING THE SIZE, MEASURING THE DIAMETER, THE DIAMETER OF THE BULLET THAT ACTUALLY IS DISCHARGED FROM THAT GUN OR ARE THEY MEASURING THE DIAMETER OF THE BARREL?

A ACTUALLY THEY'RE DOING NEITHER, THE NAME OF

CARTRIDGES, THE NAME OF CARTRIDGE CALIBERS ARE ONLY LOOSELY LINKED TO THE DIAMETER OF THE BULLETS THAT ARE FIRED IN THOSE CARTRIDGES. FOR INSTANCE IN THE CASE OF 357 MAGNUM CALIBER AMMUNITION IT ACTUALLY DOES FIRE A .357 INCH DIAMETER BULLET. IT'S ONE OF THE FEW THAT IS EXACTLY RIGHT. A 38 SPECIAL ALSO FIRES THAT SAME DIAMETER BULLET, SO THERE ARE OTHER 38 CALIBERS THAT MIGHT FIRE A BULLET THAT'S JUST VERY SLIGHTLY SMALLER OR VERY SLIGHTLY LARGER THAN THAT IN TERMS OF THEIR NOMINAL DIAMETER.

Q OKAY, AND SO AT LEAST IN THIS PARTICULAR SITUATION, AT LEAST IN THIS PARTICULAR CASE YOU'RE SAYING THAT, THAT, THAT THE BULLET THAT YOU IDENTIFIED I THINK AS ITEM NUMBER ONE EITHER CAME FROM A 357 38 AND IT WAS FIRED FROM THE MANUFACTURER'S OR ONE OF THE MANUFACTURER'S THAT YOU'VE LISTED, LISTED, I THINK YOU LISTED MAYBE SIX OR SEVEN MANUFACTURERS?

A I GOT, WHAT, ALPHA, COONAN, INA, LLAMA, RUGER, SMITH AND WESSON, SPORT ARMS, AND TAURUS, I LISTED EIGHT.

Q LISTED EIGHT POSSIBLE?

A EIGHT POSSIBLE FIREARMS MANUFACTURERS THAT USE DIMENSIONS LIKE THE DIMENSIONS THAT I FOUND ON STATE'S EXHIBIT 24 ON MY BULLET NUMBER ONE.

Q AND, AND, OF COURSE, WHAT'S THE DISTINCTION, THE PHYSICAL DISTINCTION IN THOSE GUNS AS FAR

AS, AS FAR AS WHAT THEY LOOK LIKE? WHAT'S THE DIFFERENCE BETWEEN AN ALPHA, A 38 OR 357 THAT'S MADE BY ALS, THE ONE THAT'S MADE BY SMITH AND WESSON, OR EITHER SPORTS ARMS?

A ALL OF THE GUNS, ALL OF THE MAKES OF FIREARMS THAT I SUGGESTED IN MY LIST EXCEPT FOR THE COONAN ARMS ARE ALL REVOLVERS AND THEY ALL RESEMBLE SOME OF THE, SOME OF THE FIREARMS MADE BY THOSE MANUFACTURERS RESEMBLE EACH OTHER VERY CLOSELY BECAUSE THE ALPHA, THE INA, AND THE LLAMA AND SOME OF THE TAURUS' ARE REALLY SORT OF COPIES OF A SMITH AND WESSON REVOLVER AND THEY, THEY LOOK VERY MUCH LIKE SMITH AND WESSON REVOLVERS. THE RUGER REVOLVER LOOKS A LITTLE DIFFERENT THAN THE SMITH AND WESSON REVOLVER BUT IT'S STILL A REVOLVER. THE COONAN ARMS IS A VERY LARGE PISTOL THAT LOOKS SORT OF LIKE THE GOVERNMENT MODEL 45 BUT IT'S IN 357 MAGNUM CALIBER. IT LOOKS NOTHING LIKE THE OTHER ONES BUT IT DOES HAVE THE SAME BORE DIMENSIONS.

Q OKAY, OKAY, SAME SIZE IN LENGTH AND WEIGHT, YOU SAID LENGTH AND WEIGHT AND COLOR AND THAT SORT OF THING?

A WELL SMITH AND WESSON MAKES MANY MANY MANY DIFFERENT MODELS OF 38 AND 357 MAGNUM CALIBER FIREARMS. THEY MAKE THEM AT A, THEY'RE CAPABLE OF HOLDING FIVE, SIX, AND SEVEN AND PERHAPS SOME OF THEM EVEN EIGHT ROUNDS IN THEIR CYLINDERS NOW, SO THEY, THEY MAKE A BUNCH OF DIFFERENT 38 357'S. ALPHA IS JUST A COPY OF A SMITH AND

WESSON MILITARY AND POLICE REVOLVER THAT'S MADE IN SPAIN OR WAS FORMERLY MADE IN SPAIN. THE LLAMA'S ARE COPIES OF SMITH AND WESSON MILITARY AND POLICE REVOLVERS. THEY WERE ALSO MADE IN SPAIN AND THE TAURUS REVOLVERS ARE BOTH FIVE SIX AND I THINK THEY HAVE A SEVEN SHOT. THEY'RE MADE IN BRAZIL AND THEY, THEY FAVOR SMITH AND WESSON SOMEWHAT IN THEIR APPEARANCE ALTHOUGH THE LATER GUNS ARE DISTINCTIVE TO ME BUT THEY ALL LOOK A LOT ALIKE.

Q OKAY, ARE YOU FAMILIAR WITH A, WITH A TECHNIQUE THAT'S CALLED, I GUESS, STRIATION COMPARISON?

A YES.

Q OKAY, AND COULD YOU EXPLAIN TO ME WHAT THAT IS?

A THE COMPARISON OF STRIATIONS IS WHAT WE USE WHERE WE HAVE BULLETS THAT WE THINK WERE FIRED BY THE SAME GUN. WE'LL BEYOND LOOKING AT THE CALIBER AND THE NUMBER OF LANDS AND GROOVES AND THE DIRECTION OF TWISTS WHEN THE, THE LAND AND GROOVE IMPRESSIONS ARE ABOUT THE SAME WE'LL BE LOOKING FOR INDIVIDUAL STRIATED MARKS WITHIN THE LAND AND GROOVE IMPRESSIONS ON TWO DIFFERENT BULLETS TO SEE IF THOSE, THOSE SAME MARKINGS ARE PRESENT. WHERE WE CAN FIND SUFFICIENT AGREEMENT IN INDIVIDUAL STRIATING MARKINGS ON TWO BULLETS WE CAN CONCLUDE THAT BOTH BULLETS WERE FIRED BY THE SAME GUN BARREL. NOW WHERE WE FIND DIFFERENCES IN INDIVIDUAL MARKINGS OR WHERE WE FIND DIFFERENCES IN CLASS

CHARACTERISTICS WE CAN CONCLUDE THAT THEY WERE NOT FIRED BY THE SAME GUN BARREL.

Q NOW AND, OF COURSE, WE'RE ALMOST FINISHED, WITH RESPECT TO ITEM NUMBER TWO I THINK WHAT YOU INDICATED AT LEAST IN YOUR REPORT THAT THE, THAT THE SLUG THAT WAS TAKEN FROM ITEM TWO IS IT'S MORE CONSISTENT WITH A 9MM; IS THAT CORRECT?

A YES, THAT'S CORRECT, SIR.

Q OKAY, NOW WHEN YOU SAID IT'S MORE CONSISTENT WITH A 9MM IS THAT EXCLUSIVE BETWEEN YOUR SAYING IS, IS THAT IT IS DEFINITELY, IT DEFINITELY COMES FROM A 9MM MANUFACTURER, DOES THAT EXCLUDE ALL OTHER, ALL OTHER POSSIBLE TYPES OF GUNS?

A NO, IT JUST MEANS THAT ALL THE REMAINING CHARACTERISTICS THAT WE CAN OBSERVE ABOUT THIS BULLET ARE DEAD ON CONSISTENT WITH A 9MM LUGER. IT DOESN'T MEAN THAT WE ABSOLUTELY POSITIVELY EXCLUDE THE POSSIBILITY THAT NO OTHER CALIBER OF AMMUNITION COULD HAVE BEEN USED BECAUSE IT IS POSSIBLE TO LOAD BULLETS THAT WERE INTENDED FOR 9MM LUGER CALIBER CARTRIDGES INTO OTHER NOMINAL 38 CALIBER CARTRIDGES. IT CAN BE DONE, IT ALMOST NEVER IS BUT THAT'S THE REASON WE USE THE LANGUAGE THAT WE DO. WE ARE STRONGLY SUGGESTING THAT THIS IS 9MM LUGER BUT WE'RE NOT ABSOLUTELY EXCLUDING THE POSSIBILITY THAT SOME OTHER EXPLANATION MAY EXIST.

Q THAT'S THE MOST LOGICAL CONCLUSION?

A YES, SIR.

Q TO BE DRAWN?

A IT'S KIND OF LIKE IT LOOKS LIKE A DUCK AND IT QUACKS LIKE A DUCK AND IT'S PROBABLY A DUCK BUT WE'RE NOT SAYING THAT IT'S NOT SOME OTHER BIRD.

Q OKAY, AND SO, AND SO AT LEAST MY UNDERSTANDING IS THAT YOU'RE SAYING IS THAT, IS THAT THERE'S REASON TO BELIEVE THAT, THAT, THAT TWO SEPARATE GUNS MAY HAVE BEEN FIRED, THESE BULLETS WERE FIRED FROM TWO SEPARATE GUNS?

A YES, SIR, IN MY OPINION THERE'S NO QUESTION BUT THAT THERE WAS TWO DIFFERENT GUNS BECAUSE ONE HAS FIVE LANDS AND GROOVES AND THE OTHER HAS SIX. THERE'S JUST NO WAY THOSE TWO BULLETS COULD HAVE BEEN FIRED BY THE SAME GUN, THOUGH.

Q I GOT YOU, I GOT YOU. SO THAT IS FOR SURE?

A ABSOLUTELY.

Q THAT'S ABSOLUTELY THE TRUTH, OKAY. NOW ALMOST FINISHED, JUST A SECOND. HOW MANY, I HATE TO BEAT A DEAD HORSE BUT I WANT TO MAKE SURE I UNDERSTAND BEFORE I WALK AWAY. I THINK YOU SAID THAT YA'LL KEPT A DATABASES OF, OF GUNS THAT HAS FIVE GROOVES AND LANDS?

A YES, SIR, WE DO.

Q OKAY, AND, OF COURSE, YOU SAID THAT THAT

BATABASE COMPRISED OF, I GUESS, COUNTLESS NUMBER OF GUNS?

A WELL THERE'S THOUSANDS OF INDIVIDUAL ENTRIES IN THE DATABASE, I DON'T KNOW EXACTLY, THEY WOULD REPRESENT AT LEAST ONE GUN PER ENTRY.

Q NOW, NOW JUST ONE MORE QUESTION AND, OF COURSE, IT'S GOING TO BE A QUESTION SIMILAR TO THE TYPE OF QUESTION I JUST ASKED YOU ABOUT, ABOUT ITEM NUMBER TWO OR BULLET NUMBER TWO THAT'S MOST CONSISTENT WITH A 9MM?

A YES, SIR.

Q THE BULLET THAT I THINK YOU TESTIFIED TO IS MORE CONSISTENT, IS MORE CONSISTENT WITH A 9MM OR 357 IS, IS THAT IN WHAT DEGREE OF CERTAINTY CAN YOU SAY THE CALIBER GUN?

A I'M NOT SURE I CAN PUT A NUMBER ON CERTAINTY LIKE NINETY EIGHT PERCENT OR WHAT HAVE YOU. ALL I CAN SAY IS THAT ALL THE PHYSICAL CHARACTERISTICS THAT I CAN OBSERVE, FOR INSTANCE, ABOUT BULLET NUMBER ONE ARE COMPLETELY CONSISTENT WITH THAT OF BULLETS LOADED INTO 38 SPECIAL AND 357 MAGNUM CALIBER CARTRIDGES, THAT IS THEIR DIAMETER, THEIR CONSTRUCTION, THE PLACEMENT OF THE CONDOLER WITH RESPECT TO THE BASE. ALL OF THESE FACTORS ARE THE SAME AS BULLETS THAT I HAVE SEEN LOADED INTO 38 SPECIAL AND 357 MAGNUM CALIBER AMMUNITION. BEYOND THAT I, I CAN'T SAY ANYTHING. I CAN'T SAY, FOR INSTANCE, THAT SOMEONE DIDN'T PULL A BULLET OUT OF A 38 SPECIAL CARTRIDGE AND LOAD IT

INTO A 335 REMINGTON CALIBER RIFLE AND FIRE IT BECAUSE I WOULDN'T BE ABLE TO TELL THAT, BUT THEY DON'T TYPICALLY DO THAT. THEY TYPICALLY USE THE AMMUNITION THAT'S INTENDED FOR THAT PARTICULAR CALIBER FIREARM.

Q OKAY, SO, SO, SO YOU'RE BASING AT LEAST A PART OF YOUR CONCLUSIONS IS ALSO BASING ON, ON A RATIONAL PERSON THAT, THAT GENERALLY RATIONAL PEOPLE USUALLY USE THE CALIBER OF BULLETS THAT'S DESIGNED FOR, I GUESS, THE CORRECT CALIBER GUN; IS THAT CORRECT?

A MOST OF THE TIME THE CORRECT AMMUNITION IS USED, SOME OF THE TIME IT ISN'T, AND BECAUSE IT'S IMPOSSIBLE TO SAY THAT SOMETHING DIDN'T HAPPEN I DON'T EVEN TRY. I'M JUST SAYING THAT, THAT EVERYTHING I CAN SEE ABOUT IT IS JUST LIKE A 38 OR 357 BUT I CAN'T ABSOLUTELY RULE OUT ANY OTHER POSSIBILITY YOU CAN THINK OF.

Q YOU CAN'T RULE OUT ANY OTHER, ANY OTHER CALIBER?

A WELL I CAN OBVIOUSLY RULE OUT A CALIBER THAT'S SMALLER THAN A NOMINAL 38 OR LARGER THAN A NOMINAL 38. FOR INSTANCE IT COULDN'T HAVE BEEN FIRED BY A 44 OR 45 BECAUSE IT WOULDN'T HAVE GRIPPED THE BULLET. IT COULDN'T HAVE BEEN FIRED BY A 32 BECAUSE THE CARTRIDGE WON'T FIT INTO A 32 CALIBER CHAMBER, SO IT'S TO HAVE BEEN FIRED IT WOULD HAVE HAD TO HAVE BEEN FIRED IN SOMETHING CLOSE TO THAT, TO THE BOARD DIAMETER OF A 38 SPECIAL OR 357 MAGNUM.

Q OKAY, SO AND I THINK I GOT THIS RIGHT, YOU'RE SAYING IS THAT YOU COULD EXCLUDE SOME CALIBERS THAT WOULD BE TOO SMALL AND SOME CALIBER GUNS THAT WOULD BE TOO SMALL AND SOME CALIBER GUNS THAT WOULD BE TOO LARGE BUT IF IT WAS A CALIBER GUN THAT WAS CLOSE AROUND THE CALIBER OF THIS PARTICULAR BULLET IT IS WITHIN THE REALM OF POSSIBILITY IT COULD HAVE BEEN DISCHARGED FROM, FROM, FROM A DIFFERENT CALIBER GUN, DIFFERENT CALIBER THAN THE 38 OR EITHER THE 357; YOU COULDN'T EXCLUDE, EXCLUDE ANY OTHER CLOSE CALIBER GUN?

A I'M TRYING TO THINK OF THERE ARE, THERE ARE A NUMBER OF CALIBER FIREARMS THAT USE BULLETS THAT ARE CLOSE TO THIS BUT AS I, AS I LOOK OVER MY RATIONAL CHOICES, FOR INSTANCE, THERE'S A 38 SMITH AND WESSON CALIBER THEY DON'T LOAD BULLETS LIKE THIS. THE MANUFACTURERS JUST DON'T LOAD THIS STYLE OF BULLET INTO A 38 S&W CALIBER CARTRIDGE, NOT TO SAY A HAND LOADER COULDN'T DO IT OR SOME SMALL AMMUNITION COMPANY COULDN'T DO IT BUT NONE OF THE BIG GUYS DO. THERE ARE SOME CUSTOM CALIBERS THAT ANYBODY COULD HAVE PUT ANYTHING INTO. THERE'S A CARTRIDGE CALLED A 357 MAXIMUM WHICH IS LONGER THAN A 357 MAGNUM; YOU COULD LOAD THAT INTO THAT. YOU COULD LOAD A BULLET SUCH AS MY NUMBER ONE BULLET STATE'S EXHIBIT 24 INTO ONE OF THEM. I'VE NEVER SEEN IT DONE BUT IT'S PHYSICALLY POSSIBLE TO DO SO YOU GET INTO THE, YOU GET INTO WHAT MIGHT BE PHYSICALLY POSSIBLE TO

DO VERSUS WHAT YOU ACTUALLY SEE DONE AND THAT'S WHY I SAY I CAN'T RULE OUT THE POSSIBILITY OF SOME OTHER EXPLANATION BUT TO THE EXTENT POSSIBLE TO THE EXTENT THAT I'VE SEEN IT IT'S JUST LIKE A 38 SPECIAL OR 357 MAGNUM.

Q OKAY ---

A I'M SAYING IF IT QUACKS LIKE A DUCK AND IT LOOKS LIKE A DUCK BUT I'M NOT SAYING IT COULDN'T BE SOME OTHER BIRD.

Q I GOT YOU, I GOT YOU. YOU'RE SAYING IT MOST LIKELY, AND YOU CORRECT ME IF I'M WRONG, I WANT TO MAKE SURE I GET YOU RIGHT, YOU'RE SAYING MOST LIKELY A 357 OR EITHER A 38 BUT IT'S NOT BEYOND THE REALM OF POSSIBILITY THAT IS ANOTHER SIMILAR, ANOTHER CLOSE IN CALIBER FIREARM?

A I CAN'T ABSOLUTELY RULE OUT THAT IT ISN'T SOMETHING ELSE.

MR. BROOKER: THANK YOU VERY MUCH.

THE COURT: REDIRECT?

MR. DEBERRY: YOUR HONOR, JUST VERY BRIEFLY.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q BULLET NUMBER ONE IS A 38 CALIBER MOST CONSISTENT; BULLET NUMBER TWO IS A 9MM?

A BULLET NUMBER ONE IS 38 OR 357 MAGNUM; I CAN'T TELL THE DIFFERENCE BETWEEN THE TWO OF THEM BY LOOKING AT THE BULLET AND BULLET NUMBER TWO IS 9MM.

MR. DEBERRY: THANK YOU VERY MUCH.

THE WITNESS: THANK YOU.

THE COURT: ALL RIGHT, ANYTHING FURTHER?

MR. BROOKER: NO FOLLOW UP, NO FOLLOW UP, JUDGE.

THE COURT: YOU MAY STEP DOWN, ANY OBJECTIONS TO HIM BEING EXCUSED?

MR. BROOKER: I DON'T HAVE ANY, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU, MEMBERS OF THE JURY, DO YOU NEED TO TAKE A BREAK BEFORE WE GO TO THE NEXT WITNESS OR DO YOU WANT TO KEEP ON GOING?

JURY PANEL MEMBER: YES.

THE COURT: YOU NEED A BREAK, ALL RIGHT, LET'S TAKE ABOUT A FIFTEEN MINUTE BREAK, DO NOT DISCUSS THE CASE.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 3:46 P.M.)

(WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING TAKES PLACE ON THE RECORD AFTER THE RECESS.)

THE COURT: READY?

MR. DEBERRY: YES, YOUR HONOR.

MR. BROOKER: YES, YOUR HONOR.

THE COURT: BRING THE JURY IN.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 4:13 P.M.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. DEBERRY: YOUR HONOR, THE STATE CALLS JACKIE

MCGILL.

JACKIE MCGILL, JR.

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q GOOD AFTERNOON, MR. MCGILL.

A HOW YOU DOING.

Q THANK YOU FOR BEING HERE. COULD YOU, PLEASE, STATE YOUR NAME FOR THE RECORD?

A JACKIE MCGILL, JR.

THE COURT: SPEAK UP NOW.

THE WITNESS: (CONTINUING)

A JACKIE MCGILL JR.

THE COURT: GOOD JOB.

MR. DEBERRY: (CONTINUING)

Q ARE YOU FROM MARION COUNTY?

A YES, SIR.

Q OKAY, WERE YOU FRIENDS WITH RAMEL KESHAWN APPLEWHITE?

A YES, SIR.

Q OKAY, HOW, CAN YOU EXPLAIN YOUR RELATIONSHIP WITH HIM TO THE JURY?

A WE HAVE BEEN FRIENDS SINCE ABOUT THE FIFTH GRADE.

Q FIFTH GRADE?

A YES, SIR.

Q DID YA'LL GO TO SCHOOL TOGETHER?

A YES, SIR.

Q OKAY, SO YA'LL PRETTY MUCH GREW UP TOGETHER?

A YES, SIR.

Q OKAY, BACK IN MAY OF 2007 WERE YA'LL STILL CLOSE FRIENDS THEN?

A YES, SIR.

Q OKAY, ON MOTHER'S DAY THAT YEAR, MAY 13TH, SUNDAY AFTERNOON, COULD YOU EXPLAIN THE EVENTS THAT TOOK PLACE AS YOU SAW THEM?

A YES, SIR, I WAS ---

Q JUST START FROM KIND OF EARLIER OR DID ON THAT DAY DID YOU EVER, DID YOU GO TO [redacted]?

A YES, SIR.

Q OKAY, AND IS THAT IN THE CITY OF MARION?

A YES, SIR.

Q OKAY, AND CAN YOU JUST TAKE YOUR TIME AND TELL THE JURY THE EVENTS AS THEY UNFOLDED AS YOU SAW THEM ON THAT DAY?

A OKAY, PULLED UP TO EAST MULLINS STREET I SAW AT THE TIME WHAT I CAN REMEMBER I SAW A HONDA CIVIC,

LATOYA DAVIS. I SAW ANOTHER HONDA CIVIC, WELL IT WAS A HONDA ACCORD, HERS WAS A BLACK ONE. I SAW A GRAY ONE WHICH WAS A HONDA CIVIC. I SAW A WHITE INFINITY IN THE BACK YARD.

Q HOW DID YOU GET THERE, HOW DID YOU GET THERE?

A I RODE WITH KESHAWN, ME AND KESHAWN, KESHAWN WAS THE DRIVER, HIS COUSIN KAREN GRAVES, ANOTHER ONE OF OUR FRIENDS TRAVIS LANE, AND THEN IT WAS ME.

Q AND YOURSELF?

A YES, SIR.

Q AND HOW, WHAT WERE YA'LL TRAVELING IN?

A IT WAS A WHITE FORD CROWN VIC.

Q OKAY, AND THAT WAS KESHAWN'S CAR?

A YES, SIR.

Q OKAY, ALL RIGHT, SO YA'LL WENT TO THE RESIDENCE ON [redacted]

MR. BROOKER: OBJECTION, YOUR HONOR, AT LEAST TO HEARSAY, EXCUSE ME, NOT HEARSAY BUT AT LEAST LEADING.

THE COURT: SUSTAINED.

MR. DEBERRY: (CONTINUING)

Q OKAY, EXPLAIN WHAT HAPPENED WHEN YOU GOT THERE?

A WE CAME UP TO THE RESIDENCE EAST MULLINS STREET, LIKE I SAID BEFORE, I SAW THE CARS IN THE YARD. IT

WAS A LOT OF OTHER PEOPLE IN THE YARD, MOSTLY MALES. KESHON GOT, HE STOPPED THE CAR AND HE GOT OUT OF THE CAR FIRST. TRAVIS GOT OUT OF THE CAR KIND OF LINGERING ON THE BACK OF THE CAR AT FIRST. I GUESS HE HAD AN ISSUE WITH HIS GIRLFRIEND. HE KEPT ASKING TO TALK TO HER. HE CAME AROUND THE CORNER. I CAME AROUND THE CAR, WENT UP, HE STARTED WALKING TOWARDS THE STEP, SO I THEN CAME AROUND THE CAR, I STARTED WALKING UP TOWARDS THE STEP. HE KEPT ASKING, THEY WAS TELLING HIM YOU NEED TO GET OUT THE YARD. HE WAS SAYING HE WANTED TO TALK TO JOEMELLER.

MR. BROOKER: OBJECTION, HEARSAY, YOUR HONOR.

THE COURT: ANY RESPONSE?

MR. DEBERRY: (CONTINUING)

Q OKAY, MR. MCGILL, IF YOU COULD JUST ---

THE COURT: SUSTAINED.

Q IF YOU COULD JUST TESTIFY TO WHO CAME OUT OF THE HOUSE TO TALK TO, TO TALK TO KESHON?

A AT THAT TIME THERE WAS JEREMY VEREEN AND KESHON DOING MOST OF THE TALKING TO EACH OTHER.

Q OKAY?

A JEREMY THEN SAID ---

Q YOU CAN'T SAY WHAT JEREMY SAID?

A OKAY, OKAY, WELL JOEMELLER THEN CAME OUT THE HOUSE.

Q OKAY?

A HER AND KESHON WALKED DOWN THE ROAD, THEY WERE ARGUING, STARTED FIST FIGHTING. I WENT, I GRABBED KESHON, SHE WAS STILL, YOU KNOW, LINGERING ON AFTER I GRABBED HIM.

Q OKAY, LET ME ASK YOU JUST ONE QUESTION, HOW FAR DOWN THE ROAD WERE THEY IN RELATION TO THE HOUSE?

A IT WAS A LIGHT POLE THAT WAS RIGHT THERE, [redacted] IT'S A HOUSE ON THE LEFT SIDE OF THE, IT WAS A LIGHT POLE THAT WAS RIGHT HERE RIGHT BEFORE YOU GET ALL THE WAY TO THE END OF THE STREET THERE'S A LIGHT POLE RIGHT THERE. THEY WAS STANDING RIGHT THERE BY THE LIGHT POLE.

Q SO FURTHER THAN THE DISTANCE IN THIS COURTROOM FROM THE HOUSE?

A MAYBE TO THE END OF TO THE WALL DOWN THERE.

Q OKAY, SO THEY WERE, THEY HAD WALKED DOWN THE ROAD THAT FAR ---

A YEAH.

Q JUST THE TWO OF THEM?

A UH-HUH.

Q ALL RIGHT, AND THEY WERE FIGHTING AND YOU SAID WHAT?

A I GRABBED KESHON, SAID SOME WORDS TO HIM, TRIED TO GET HIM TO COME BACK TO THE CAR SO THAT WE COULD LEAVE, SO THERE WOULDN'T BE ANY MORE PROBLEMS. SHE THEN

HIT HIM, THEY STARTED FIGHTING AGAIN. AFTER I BROKE IT UP THE SECOND TIME I GOT HIM TO CALM DOWN, GET IN THE CAR, OKAY. HE GETS IN THE CAR, I CAME IN ON THE PASSENGER SIDE BUT MY OTHER FRIEND TRAVIS HE WORE SLIPPERS. HE DIDN'T WANT TO STEP IN THE MUD THAT WAS BY THE CAR, SO HE ASKED ME WOULD I GET IN ON THIS SIDE THIS TIME; I SAID, YEAH, SO I GOT IN ON THIS SIDE. HE GOT TOWARDS THE STREET, MORE CLEAN AREA. JOEMELLER THEN CAME UP TO THE CAR, SPIT ON KESHON. SHE SPIT ON KESHON, SHE WENT TOWARDS THE STEPS OF THE HOUSE. KESHON MAD, GETS OUT THE CAR. I GRABBED HIM AGAIN, HE SNATCHES AWAY FROM ME. HE WALKS UP TO THE FRONT OF THE PORCH WHERE JOEMELLER WAS STANDING, I THEN SEE SHAWN REAVES STANDING ON THE BOTTOM OF THE STEPS. I'M WALKING UP, I HEARD THE WORD WHAT, AS I'M WALKING UP I HEAR THE WORD WHAT, I SEE HIM START SHOOTING, SO I IMMEDIATELY HIT THE GROUND.

Q OKAY, WHEN YOU SAY YOU SEE HIM?

A YEAH, SHAWN.

Q SHAWN REAVES?

A UH-HUH.

MR. BROOKER: OBJECTION, YOUR HONOR.

THE COURT: WHAT GROUNDS?

MR. BROOKER: LEADING, OBJECTION TO AT LEAST THE IN COURT IDENTIFICATION.

THE COURT: ON WHAT GROUNDS?

MR. BROOKER: MAY WE APPROACH JUST VERY BRIEFLY?

THE COURT: ALL RIGHT.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

MR. DEBERRY: (CONTINUING)

Q ALL RIGHT, MR. MCGILL, YOU SAID YOU, YOU SAW SHAWN REAVES SHOOT KESHON APPLEWHITE?

A YES, SIR.

Q ALL RIGHT, I'M GOING TO SHOW YOU SOME PICTURES, I WANT YOU TO EXPLAIN TO THE JURY, I'M GOING TO SHOW YOU WHAT'S IN EVIDENCE AS STATE'S EXHIBIT 15, 14, AND 8. OKAY, JUST TAKE A LOOK AT THESE THREE PHOTOGRAPHS AND TELL ME AND PICK ONE THAT YOU CAN DESCRIBE EVERYONE'S LOCATION FOR THE JURY?

A OKAY, JUST A MINUTE.

MR. DEBERRY: OKAY, CAN HE STEP DOWN, YOUR HONOR?

THE COURT: YES, AND IDENTIFY THE BACK OF THE PHOTOGRAPH, THE NUMBER?

MR. DEBERRY: OKAY, HE'S CHOSEN STATE'S, WHAT'S IN EVIDENCE AS STATE'S EXHIBIT NUMBER 8.

THE COURT: ALL RIGHT, STEP DOWN, IF YOU WOULD.

MR. DEBERRY: (CONTINUING)

Q ALL RIGHT, STAND BACK WHERE THE JURY CAN

SEE YOU. NOW IS THIS WHERE THE CAR WAS IN RELATION TO WHERE YA'LL PARKED?

A YES, SIR.

Q OKAY, ALL RIGHT, AND YOU SAID THAT YOU WITNESSED KESHON APPLEWHITE FOLLOW JOEMELLER TO THE PORCH STEPS?

A YES, SIR.

Q ALL RIGHT, WHERE WERE YOU STANDING WHEN THE SHOTS WERE FIRED?

A I WAS ABOUT RIGHT HERE RIGHT SIDE OF KESHON MAYBE HERE ---

THE COURT: SPEAK UP NOW.

THE WITNESS: (CONTINUING)

A MAYBE ABOUT ME TO THE JURY ROOM.

Q OKAY, MAYBE TEN FEET?

A TEN FEET, YES, SIR, ON THE RIGHT SIDE.

Q ALL RIGHT, I'M GOING TO GET YOU TO PUT A (JM) FOR JACKIE MCGILL RIGHT WHERE YOU WERE STANDING. OKAY, WHERE WAS SHAWN REAVES?

A HE WAS IN FRONT OF ME. HE WAS STANDING IN FRONT OF ME TOWARD THE STEPS.

Q OKAY, I WANT YOU TO PUT A (SR) WHERE HE WAS. OKAY, AND KESHON APPLEWHITE WHEN THE SHOTS WERE FIRED I WANT YOU TO PUT A (K) WHERE HE WAS. OKAY, AND JUST POINT TO THE JURY WHAT YOU DONE?

A I WAS STANDING HERE, SHAWN WAS STANDING HERE, KESHON WAS STANDING HERE.

Q OKAY, SO YA'LL WERE WITHIN CLOSE PROXIMITY OF EACH OTHER?

A YES.

Q OKAY, YOU CAN TAKE THE STAND BACK. HOW MANY PEOPLE WERE, HOW MANY OTHER PEOPLE DO YOU THINK WERE AROUND THE CLOSE VICINITY WHEN THE SHOTS WERE FIRED?

A IT WAS A BUNCH OF PEOPLE ON THE PORCH, MAYBE SIX, SEVEN.

THE COURT: SPEAK UP.

THE WITNESS: (CONTINUING)

A MAYBE SIX, SEVEN ON THE PORCH.

Q OKAY, DID YOU HEAR ANY OTHER GUNSHOTS GOING OFF SIMULTANEOUSLY?

A NO, SIR, NO, SIR.

Q OKAY, NOW DID YOU SEE HIM SHOOT MULTIPLE TIMES?

A YES, SIR.

Q AND HOW DID YOU KNOW SHAWN REAVES?

A I SAW HIM MAYBE A FEW TIMES WITH SOME OF MY OTHER PEOPLE, COUSINS, SAW HIM AND HIS BROTHER MAYBE A FEW TIMES BEFORE, NOTHING REAL PERSONAL, I JUST SAW HIM AROUND.

Q NOW WHAT WAS HIS HAIR DO LIKE THAT NIGHT?

A KIND OF DREADED OR PLAITED, SOMETHING LIKE

THAT.

Q OKAY, IS THAT KIND OF CONSISTENT WITH WHAT YOU GOT NOW?

A YES, SIR.

Q OKAY, AND DID YOU KNOW HIM BY ANOTHER NAME?

A NO, SIR.

Q IS THERE ANY DOUBT IN YOUR MIND THAT SHAWN REAVES SITTING IN THIS COURTROOM PULLED THE TRIGGER THAT NIGHT?

A GOT NO DOUBT.

Q NOW WHEN THE SHOOTING HAPPENED TELL THE JURY WHAT YOU DID?

A WHEN THE SHOOTING HAPPENED I WAS ON THE GROUND AT THE TIME, SOUND LIKE I HEARD GUN CLICKS POPPED UP OFF THE GROUND. I YELLED AT KESHON, BY THEN PEOPLE SCATTERED. I YELLED FOR KESHON, HE WAS LAYING ON THE GROUND NEXT TO THE, THE PORCH WHERE THE STEPS WAS AT, HE WAS LAYING NEXT TO THE GROUND. I YELLED FOR HIM, HE POPPED UP, TOOK TWO STEPS, HE FELL. I RAN UP TO HIM, WHEN I RAN UP TO HIM HE HAD BLOOD AND FOR A MINUTE WHEN HE HIT THE GROUND I WAS LIKE, WELL MAYBE HE CAN MAKE IT. I RAN UP TO HIM, THERE WAS BLOOD COMING OUT OF HIS MOUTH. I THEN CALLED FOR MY OTHER FRIEND TRAVIS TO COME TO ME. HE CAME, HE GRABBED HIM, TOOK HIM TO THE CAR, WAS PUTTING HIM IN ON THE BACK SIDE OF THE DRIVER, WAS PUTTING HIM IN THERE. WAS

KIND OF WINDED FROM DRAGGING HIM, CARRYING HIM FROM WHERE HE HAD LANDED THE SECOND TIME TO THE CAR, SO WE WAS STRUGGLING TRYING TO GET HIM IN THERE. WE BOTH WERE KIND OF LIKE WEAK FROM TRYING TO PUT HIM IN THE CAR, GOT HIM HALFWAY IN THE CAR AND THEN THE POLICEMAN CAME, TOLD ME TO BACK AWAY, THEY WOULD HANDLE IT. FROM THEN ON IT WAS KIND OF IN THEIR HANDS. THEY ASKED ME WHAT HAPPENED, I GAVE THEM A STATEMENT, WAS KIND OF WORRIED ABOUT WHAT WAS GOING ON WITH KESHON.

Q ALL RIGHT, SO DID YOU STAY THERE DURING THE TIME THAT THE POLICE CALLED EMS?

A YES, SIR, I WAS STILL THERE.

Q OKAY, SO YOU WITNESSED EMS COME PICK UP MR. APPLEWHITE?

A YES, SIR, YES, SIR.

Q THAT'S THE LAST TIME YOU SAW HIM?

A KESHON?

Q YES, SIR?

A AT THE FUNERAL.

Q NOW AFTER YOU, AFTER THE EVENTS THAT NIGHT TOOK PLACE DID, DID MARION POLICE DEPARTMENT ASK YOU TO IDENTIFY MR. SHAWN REAVES IN A PHOTO LINEUP?

A YES, SIR, THEY DID.

Q OKAY, AND, EXCUSE ME JUST A MINUTE, WAS THAT PHOTO LINEUP PRESENTED TO YOU IN COLOR?

A I DON'T THINK SO, I DON'T, I DON'T REALLY REMEMBER.

MR. DEBERRY: OKAY, BEG THE COURT'S INDULGENCE FOR JUST A SECOND. YOUR HONOR, I'D LIKE TO MARK THIS AS STATE'S EXHIBIT, STATE'S EXHIBIT 27, OUR HONOR.

(WHEREUPON, STATE'S EXHIBIT NUMBER 27 MARKED FOR IDENTIFICATION.)

MR. DEBERRY: (CONTINUING)

Q MR. MCGILL, I WANT TO SHOW YOU THIS LINEUP AND SEE IF YOU RECOGNIZE THIS AS THE LINEUP THEY SHOWED YOU?

A NOT REALLY, I DON'T REMEMBER IF THIS IS THE ACTUAL LINEUP THAT THEY SHOWED ME.

Q OKAY, ARE THOSE, DID ANY OF THOSE INDIVIDUALS HAVE THE HAIR STYLE THAT YOU SAID SHAWN REAVES HAD THAT NIGHT?

A NO, SIR.

Q OKAY, DO YOU REMEMBER PICKING SOMEBODY OUT OF THE LINEUP?

A I REMEMBER PICKING SOMEONE OUT, YES, SIR.

Q OKAY, AND WERE YOU TOLD THAT IT WAS NOT SHAWN REAVES?

A YES, SIR.

Q OKAY, BUT IF THAT WAS THE BLOWN UP PHOTO LINEUP THAT WAS SHOWN TO YOU THAT NIGHT THEY NONE OF THE

INDIVIDUALS WOULD HAVE HAD THE HAIRDO THAT YOU SAY HE HAD THAT NIGHT?

A NO, SIR.

Q OKAY --

MR. DEBERRY: YOUR HONOR, I'D LIKE TO ENTER STATE'S 27 INTO EVIDENCE.

THE COURT: ANY OBJECTIONS?

MR. BROOKER: NO OBJECTION.

THE COURT: STATE'S NUMBER 27 INTO EVIDENCE.

(WHEREUPON, STATE'S EXHIBIT NUMBER 27 ENTERED INTO EVIDENCE.)

MR. DEBERRY: (CONTINUING)

Q IS THERE ANY DOUBT IN YOUR MIND ABOUT WHAT YOU SAW THAT NIGHT AND WHO YOU SAW SHOOT KESHON APPLEWHITE?

A NONE.

MR. DEBERRY: PLEASE ANSWER ANY QUESTIONS MR. BROOKER HAS.

THE COURT: CROSS?

CROSS EXAMINATION

BY MR. BROOKER:

Q MR. MCGILL?

A YES, SIR.

Q I THINK YOU TESTIFIED THAT, FIRST OF ALL JUST FOR REFERENCES, WERE YOU IN THE COURTROOM WHEN JOEMELLER WILSON-DOZIER TESTIFIED?

A YES, SIR.

Q NOW, OF COURSE, YOU MUST HAVE HEARD HER TESTIMONY; IS THAT CORRECT?

A YES, SIR.

Q ALL RIGHT, NOW YOU INDICATED, AT LEAST TESTIFIED THAT, THAT, THAT KESHON APPLEWHITE CAME AND PICKED YOURSELF UP, PICKED YOU UP ALONG WITH TRAVIS LANE AND WAS THERE ANOTHER PERSON IN THE VEHICLE WITH YOU?

A YES, SIR, HIS COUSIN WAS ALREADY IN THE VEHICLE, FEMALE.

Q FEMALE WAS ALREADY IN, ALL RIGHT, AND, OF COURSE, YA'LL THEN RODE AROUND BACK AROUND EAST MULLINS STREET?

A YES, SIR.

Q DID YOU KNOW THAT KESHON HAD ALREADY BEEN AROUND TO EAST MULLINS STREET?

A NO, SIR.

Q YOU DIDN'T, DO YOU KNOW WHY YA'LL WERE GOING BACK AROUND TO EAST MULLINS STREET?

A NO, SIR.

Q NOW YOU TESTIFIED ON DIRECT EXAMINATION AT ONE POINT IN THE TIME THAT, THAT, THAT AND, OF COURSE, I THINK THIS WAS ACTUALLY DURING THE COURSE OF THE FIGHT AND, OF COURSE, YOU STATED THAT ONCE YOU WERE, YOU WERE ABLE TO CALM HIM DOWN AND GET HIM IN THE CAR?

A UH-HUH.

Q SO WHEN YOU SAID YOU WAS ABLE TO CALM HIM DOWN AND GET HIM IN THE CAR IS THAT I AM ASSUMING, YOU CORRECT ME IF I'M WRONG IS, IS THAT FROM YOUR IMPRESSION THAT HE WAS VERY UPSET?

A YES, SIR.

Q AND, AND YOU CAN STATE YES OR NO WHETHER YOU KNOW THIS OR NOT, DO YOU KNOW WHY HE WAS UPSET, YES OR NO QUESTION FIRST?

A YES.

Q OKAY, DID IT HAVE ANYTHING TO DO WITH JOEMELLER BEING OVER, OVER AT [redacted]

A YES, SIR.

MR. DEBERRY: OBJECTION, YOUR HONOR. THIS CALLS FOR SPECULATION FROM SOMEONE WHO'S NOT HERE TO TESTIFY.

MR. BROOKER: I AM ASKING HIM OPINION OF HIS UNDERSTANDING AS TO WHY THEY WERE, WHY THEY WERE THERE.

MR. DEBERRY: HE'S ASKING HIM OF THE STATE OF MIND OF A DIFFERENT, OF ANOTHER PERSON.

THE COURT: SUSTAINED, CONTINUE ON.

MR. BROOKER: (CONTINUING)

Q NOW YOU SAID A FIGHT BROKE OUT, LET ME, LET ME BACK YOU UP A LITTLE BIT, WHY WERE YOU GOING AROUND, GOING AROUND EAST MULLINS STREET WITH, WITH MR. APPLEWHITE?

A I DIDN'T KNOW, HAD NO IDEA. HE ASKED ME TO

RIDE WITH HIM, I ASKED HIM WHERE WERE WE GOING, HE SAID JUST RIDE WITH ME. I MADE IT CLEAR TO HIM I WASN'T GOING TO GET INTO ANY KIND OF TROUBLE OR NOTHING LIKE THAT. HE SAID JUST RIDE WITH ME, I WAS UNDER THE ASSUMPTION THAT IT MIGHT HAVE BEEN WE WERE GOING TO LOOK FOR FEMALES BECAUSE THE FACT OF THE MATTER HIS COUSIN AND OUR OTHER FRIEND WERE KIND OF DEALING WITH EACH OTHER SO THAT'S WHAT I THOUGHT.

Q AND I WOULD JUST REMIND YOU IS THAT YOU CAN'T SAY WHAT ANYONE ELSE SAID BEFORE AN OBJECTION IS MADE AT LEAST BY HEARSAY. YOU CAN'T SAY WHAT HE SAID AND NOT WHAT ANYONE ELSE SAYS, BUT, OF COURSE, YOU TOLD HIM THAT, YOU TOLD HIM THAT, THAT, THAT YOU DIDN'T WANT TO GET INTO A FIGHT OR ANYTHING LIKE THAT ---

A TROUBLE.

Q SO I'M ASSUMING THAT YOU TOLD HIM THAT YOU DIDN'T WANT TO GET IN A FIGHT, A FIGHT OR ANYTHING LIKE THAT BUT OBVIOUSLY IT WAS ON YOUR MIND THAT THAT COULD BE A POSSIBILITY.

A YES.

Q NOW YA'LL THEN RODE AROUND THERE; IS THAT CORRECT?

A YES, SIR.

Q OKAY, AND I THINK YOU TESTIFIED THAT YA'LL GOT OUT OF THE CAR; IS THAT CORRECT, AND THAT MR. APPLEWHITE WENT UP TO THE DOOR?

A YES, SIR.

Q OKAY, AND, OF COURSE, JOEMELLER DOZIER SHE WAS ON THE INSIDE; IS THAT CORRECT?

A YES, SIR.

Q OKAY, NOW AND SHE DID COME OUT?

A YES, SIR.

Q OKAY, I THINK YOUR TESTIMONY WAS IS THEY WALKED DOWN THE ROAD, THEY WALKED OFF FROM THE HOUSE, I THINK DOWN THE ROAD AND, OF COURSE, A FOUGHT BROKE OUT?

A UH-HUH.

Q IS IT TRUE THAT, THAT KESHON APPLEWHITE SLAMMED HER TO THE GROUND?

A YES, SIR, AFTER SHE HIT HIM FIRST.

Q SO IT'S YOUR TESTIMONY IS THAT SHE STRUCK HIM FIRST AND THEN HE SLAMMED HER TO THE GROUND?

A YES, SIR.

MR. BROOKER: IF YOU COULD INDULGE ME FOR JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

MR. BROOKER: (CONTINUING)

Q NOW DO YOU REMEMBER GIVING A STATEMENT ON, ON, ON MAY 14TH, 2007, GIVING A HANDWRITTEN STATEMENT?

A NOT ON MAY 14TH, MAY 13TH.

Q I'M SORRY, OKAY, AND WAS THAT GIVEN DOWN, DOWN TO MARION, AT MARION POLICE DEPARTMENT?

A I DON'T REMEMBER. I THINK I GAVE THE STATEMENT THAT SAME NIGHT ON OFFICER DAVIS CAR.

Q OKAY, IS THIS A, DOES THIS LOOK LIKE THE STATEMENT THAT YOU WROTE OUT THAT NIGHT?

A IT WAS, I WROTE A STATEMENT LIKE THIS, I'M NOT SAYING, I CAN'T SAY WHETHER THIS IS MY STATEMENT OR NOT.

Q YOU'RE SAYING YOU WROTE A STATEMENT LIKE THIS?

A YEAH, HE GAVE ME A SHEET OF PAPER, I WROTE DOWN WHAT HAPPENED AND WHAT I DID.

Q DID YOU SIGN YOUR NAME TO THAT SHEET OF PAPER?

A I DON'T REMEMBER.

Q OKAY, IS THIS YOUR HANDWRITING?

A I WRITE SLOPPY.

Q SO YOU'RE SAYING YOU DON'T KNOW WHETHER THIS IS YOUR STATEMENT OR NOT?

A NO, SIR.

Q OKAY, ALL RIGHT, IF THIS IS NOT YOUR STATEMENT DO YOU KNOW, AND FIRST, AND I WANT TO MAKE MAKE UNDERSTAND IS, ARE YOU SAYING THAT, THAT THIS IS NOT YOUR STATEMENT? ARE YOU SAYING THAT YOU DON'T KNOW WHETHER OR NOT THIS IS YOUR STATEMENT?

A I DON'T KNOW WHETHER OR NOT THE, I WROTE

EVERYTHING THAT, I WROTE A LOT OF STUFF, YOU KNOW, I DON'T KNOW IF THAT'S A PART OF A STATEMENT OR WHAT, BUT I WROTE A LOT OF STUFF THAT WENT ON THAT NIGHT.

Q YOU WROTE, I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU, GO AHEAD.

A FROM THE TIME HE PICKED ME UP TO THE TIME THE SHOOTING TOOK PLACE TILL WHEN I GRABBED HIM, DRUG HIM IN THE CAR. I WROTE ALL THAT DOWN.

Q HOW MANY PAGES WOULD YOU SAY?

A I DON'T REMEMBER, MAYBE ONE, TWO.

Q NOW, IF YOU WOULD TAKE A LOOK AT THIS, DO YOU SEE WHAT TIME IT IS ON THERE ON THAT STATEMENT, POINT IT OUTWARD TO YOU?

A 3:42 A.M. MAY 14TH.

THE COURT: SPEAK UP.

THE WITNESS: (CONTINUING)

A 3:42 A, LET ME SEE, A.M., A.M. MAY 14TH OR IS IT 8:42?

Q 8:42?

A 8:42 A.M., OKAY.

Q THAT WOULD HAVE BEEN THE NEXT MORNING, WOULD IT NOT HAVE BEEN?

A YES, SIR.

Q OKAY, AND, OF COURSE, JACKIE E. MCGILL, I'M SORRY, JACKIE F. MCGILL, SO THAT IS YOUR NAME ON THERE?

A THE (E) IS NOT IF THAT'S AN (E) OR (F).

Q OKAY, SO YOU'RE NOT JACKIE E. MCGILL, YOU'RE JACKIE F. MCGILL?

A IT'S F. MCGILL, YEAH.

Q OKAY, AND DO YOU LIVE AT [redacted] IN MARION SOUTH CAROLINA, AT LEAST AT THAT PARTICULAR PERIOD OF TIME?

A YES, SIR.

Q AGE 24 AT THAT TIME?

A I DON'T KNOW.

Q AND WHAT WAS YOUR DATE OF BIRTH?

A TWENTY-FOUR OR 25.

Q WHAT WAS YOUR DATE OF BIRTH?

A [redacted].

Q OKAY, NOW ON THIS PARTICULAR STATEMENT IT SAYS THAT WHEN WE ARRIVED, I'M SORRY, WHEN WE ARRIVED A LOT OF BOYS WERE ON THE PORCH. THEY STARTED YELLING AND ARGUING AND KESHON THREW HER IN THE MUD; DO YOU REMEMBER GIVING THAT STATEMENT TO LAW ENFORCEMENT?

A I MIGHT HAVE, I DON'T THINK I WOULD HAVE SKIPPED SOME OF THE OTHER PARTS THAT WERE IN MY STATEMENT.

Q SO IF YOU WROTE THAT STATEMENT THAT, THAT, THAT THEY WERE, THEY WERE YELLING AND ARGUING AT EACH OTHER AND THEN KESHON GRABBED HER AND THREW HER IN THE MUD; IS THAT WHAT HAPPENED?

A YES, SIR.

Q OKAY, NOW WHEN HE THREW HER DOWN, I KNOW YOU TESTIFIED PREVIOUSLY IS, IS THAT THEY HAD WALKED DOWN THE ROAD, DID HE THROW HER DOWN DOWN THE ROAD WHEN THEY WERE WALKING DOWN THE ROAD?

A WHILE DOWN THE ROAD THEY WERE ARGUING, THEY GOT IN THE FIGHT, HE DID THROW HER DOWN.

Q DOWN THE ROAD?

A YES, SIR.

Q OKAY, HE THREW HER DOWN THE ROAD WHEN DID HE THREW HER DOWN IN THE MUD; YOU SAID, AT LEAST THIS STATEMENT SAID THEY WERE ARGUING, THAT, THAT, I'LL LOOK AT IT AGAIN, THEY STARTED YELLING AND ARGUING AND THEN KESHON GRABBED HER AND THREW HER DOWN IN THE MUD?

A OKAY, THERE WAS MUD ON THE FIRST, THE FIRST FIGHT THAT THEY, THE FIRST CONFRONTATION THERE WAS MUD BY THE BLACK HONDA ACCORD, THREW HER DOWN, SLUNG HER TO THE CAR IN THE MUD BY THE BLACK HONDA ACCORD, THREW HER DOWN, SLUNG HER INTO THE CAR. I GRABBED HIM ---

Q GO AHEAD, I'M SORRY.

A SHE GOT UP, SHE GRABBED HIM, ASKING FOR HIM TO COME ON LET'S GO, WE DON'T NEED TO GET IN NO TROUBLE ABOUT NONE OF THIS. SHE, HE REPEATS TO ME ---

Q AGAIN YOU CAN'T SAY WHAT HE SAYS?

A OKAY, ANYWAY SHE STILL HAD, SHE STILL HAD

HIM, HE COULDN'T REALLY, I COULDN'T GRAB HIM BECAUSE SHE STILL HAD HIS CLOTHES, OKAY. SHE THEN HIT HIM FIGHT NUMBER, ARGUMENT NUMBER TWO, SHE THEN HIT HIM, SLAPS HIM IN THE FACE. HE GRABS HER, HE SLAMS HER AGAIN. I THEN GRAB HIM CAUSE SHE'S STILL ON THE GROUND, I THEN GRAB HIM TRYING TO GET HIM TO THE CAR. I GET HIM IN THE CAR, LIKE I SAID, TRAVIS DIDN'T WANT TO GET BACK ON THAT SIDE.

Q I'M GOING TO STOP YOU THERE?

A OKAY.

Q NOW YOU SAID THAT'S FIGHT NUMBER ONE; IS THAT CORRECT?

A UH-HUH, NO, NOT, WHEN HE SLAMMED HER THE SECOND, THE MUD WAS FIGHT NUMBER ONE.

Q THAT'S WHAT I'M TALKING ABOUT?

A OKAY.

Q HE SLAMMED HER ON THE GROUND IN THE MUD THAT WAS FIGHT NUMBER ONE?

A UH-HUH.

Q AND, OF COURSE, AND, OF COURSE, WHEN YOU SAY HE SLAMMED HER DOWN IN THE MUD WAS THAT IN THE YARD, WAS THAT IN THE YARD OF THE HOUSE?

A HE DIDN'T SLAM HER. I SAID SLAM, HE DIDN'T SLAM HER. HE KIND OF SLUNG HER AND THEN THREW HER INTO THE CAR AND IT WAS MUD BY THE CAR. THE CAR WAS LIKE HERE, THE CAR WAS IN THE YARD MAYBE FARTHER TO THE LEFT. I HAVE, YOU

WILL HAVE TO HAVE A MARKER TO SAY WHETHER OR NOT THAT WAS THEIR YARD OR THE PERSON'S NEXT DOOR YARD.

MR. BROOKER: IF YOU'D INDULGE ME FOR JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

MR. BROOKER: (CONTINUING)

Q WHICH CAR WAS YOU SAYING SHE HIT?

A THE BLACK HONDA ACCORD.

Q BLACK HONDA ACCORD?

A YES, SIR.

Q THEN WHERE WAS THAT PARKED AT?

A FAR LEFT OF THE HOUSE.

MR. BROOKER: INDULGE ME FOR JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

MR. BROOKER: I APOLOGIZE, YOUR HONOR, WE SEEM TO BE LOOKING FOR AT LEAST STATE'S EXHIBITS THAT WAS TESTIFIED TO ON DIRECT EXAMINATION.

THE COURT: SURE.

MR. BROOKER: (CONTINUING)

Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 14 AND THEN, OF COURSE, IS, IS THAT A PUDDLE OF WATER RIGHT THERE ON THE STATE'S 14?

A YES, SIR.

Q OKAY, CAN YOU DEPICT WHERE THAT HONDA

ACCORD WAS PARKED AT THAT YOU SAID THAT SHE HIT AND FELL IN THE MUD?

A IT WAS ON, LET ME SEE MY PICTURE, OKAY, I'M COMING TO THIS HOUSE HERE, THE CAR WOULD BE BACK HERE. THE HONDA ACCORD IT'S ON THE FAR LEFT SIDE OF THE HOUSE, OVER ON THE LEFT SIDE.

THE COURT: BE SURE AND IDENTIFY THE PHOTOGRAPH THAT YOU'RE LOOKING AT.

MR. BROOKER: WE'RE RIGHT NOW LOOKING AT, I THINK, YOUR HONOR, LOOKING AT STATE'S EXHIBIT 8.

THE COURT: AND MAKE SURE THE JURY CAN SEE WHAT YOU'RE DOING.

MR. BROOKER: OKAY.

A THE HONDA ACCORD WAS ON THE OTHER SIDE OF THIS CAR IS THE STREET, EAST MULLINS STREET. THE HONDA ACCORD WAS PARKED ON THE OTHER SIDE FAR LEFT. IT'S A ROW OF TREES RIGHT HERE. IT'S PARKED CLOSER TO THOSE TREES ON THE FAR LEFT SIDE OF THE HOUSE.

Q OKAY ---

A CLOSER TO THE STREET.

Q YOUR TESTIMONY IS THE HONDA ACCORD WAS PARKED, PARKED SOMEWHERE ON THIS SIDE?

A YES, SIR.

Q THE STREET IS NOT PICTURED IN THIS PHOTO?

A NO, SIR.

Q OKAY, AND THAT, DID HE THROW HER IN THE MUD? I'M ASKING THIS AGAIN BECAUSE ---

A YEAH, IT WASN'T ---

Q --- CAN YOU STATE WHAT YOU SAID. HE THREW HER IN THE MUD AND, OF COURSE, NOW YOU'RE QUALIFYING AND SAYING THAT HE KIND OF ---

A YEAH, SLUNG HER, YOU KNOW, HE DIDN'T PICK HER UP AND SLAM HER, ALL HE DID WAS HE SLUNG HER INTO THE MUD, INTO THE CAR.

Q OKAY, SO HE NEVER SLUNG HER ON THE ROAD AND, OF COURSE ---

A YEAH, HE DID SLAM HER THE SECOND, SECOND TIME, HE PICKED HER UP AND HE SLAMMED HER THE SECOND TIME.

Q AND THAT WAS ON THE ROAD?

A ON THE ROAD, YES, SIR.

Q OKAY, OKAY, AND WAS THAT DURING THE FIRST FIGHT OR THE SECOND FIGHT HE SLAMMED HER ON THE ROAD?

A THE SECOND FIGHT.

Q OKAY, OKAY ---

A SHE THEN SLAPPED HIM AND HE THEN PICKED HER UP AND SLAMMED HER.

Q ALL RIGHT, NOW YOU SAID THAT YOU WROTE A LONG DETAILED STATEMENT THAT YOU TOLD LAW ENFORCEMENT ALL OF THAT?

A UH-HUH.

Q CAN YOU TAKE A LOOK AT THAT AND, AND SEE WHETHER OR NOT ANYTHING THAT'S CONTAINED WITHIN THAT STATEMENT ABOUT THE FIRST AND SECOND FIGHT?

A NO, SIR.

Q THERE'S NOTHING CONTAINED IN THAT STATEMENT ABOUT A FIRST AND SECOND FIGHT, IS IT?

A NO.

Q NOW DO YOU AGREE THAT MOST PEOPLE'S MEMORY FADE OVER TIME?

A I CERTAINLY DO.

Q OKAY, AND MOST PEOPLE'S MEMORIES ARE BETTER AT THE TIME OF OR AT LEAST IMMEDIATELY AFTER AN INCIDENT OCCURRED?

A YES, SIR.

Q OKAY, COULD YOU EXPLAIN WHY YOU TEND TO SEEM TO REMEMBER FACTS THAT ARE NOT CONTAINED AT LEAST IN THIS STATEMENT THAT'S PRESENTED TO THE POLICE THAT IS IN MUCH MORE GREATER DETAIL TODAY THAN IT WAS AT THAT PARTICULAR PERIOD OF TIME?

A LIKE I'M TELLING YOU EVERYTHING I'M SAYING IT AIN'T THAT I DON'T REMEMBER. I REMEMBER EVERYTHING THAT I WROTE DOWN, WHETHER THAT STATEMENT SAYS THAT WHAT YOU SAYING, WHAT I'M TELLING YOU IS WHAT I WROTE DOWN. I, I'M HUNDRED PERCENT SURE THAT I WROTE THAT DOWN ON THAT, THAT NIGHT WHETHER THAT STATEMENT SAYS IT OR NOT.

Q OKAY, SO THEN WHAT YOU WOULD BE SAYING IS THAT THIS STATEMENT THAT IS PURPORTED TO BE YOUR STATEMENT BY LAW ENFORCEMENT IS NOT ACTUALLY YOUR STATEMENT?

A IF IT DOESN'T SAY WHAT I TOLD YOU, NO, SIR, IT'S NOT MY STATEMENT.

Q AND WOULD YOU AGREE THAT IT DOESN'T STATE WHAT YOU, WHAT YOU JUST TOLD ME?

A THAT STATEMENT ALSO SAID THAT I WROTE IT ON 5-14?

Q 5-14?

A THAT WAS THE MONDAY THE DAY AFTER, I WROTE THE STATEMENT THAT NIGHT, WHETHER I WROTE ANOTHER STATEMENT LATER ON I DON'T REMEMBER BUT I KNOW I WROTE A STATEMENT THAT NIGHT EXPLAINING EVERYTHING THAT HAPPENED.

Q SO THERE'S, SO THERE'S ANOTHER STATEMENT OTHER THAN THIS THAT YOU WROTE?

A POSSIBLY, IF THIS, NO, YES, SIR, YES, SIR, I'M SAYING THERE'S ANOTHER STATEMENT.

Q OKAY, BECAUSE THIS DOES NOT CONTAIN WHAT YOU JUST TESTIFIED TO; IS THAT, DO WE AGREE ON THAT?

A WE AGREE ON THAT.

Q AND, OF COURSE, YOU WERE CERTAIN THAT WHAT YOU JUST TESTIFIED TO YOU PUT IT IN A STATEMENT THAT YOU WROTE TO LAW ENFORCEMENT?

A I'M A HUNDRED PERCENT SURE THAT WHAT I SAID

TO YOU TODAY I PUT IN THAT STATEMENT.

Q SO THIS IS NOT THE FIRST STATEMENT THAT YOU PROVIDED TO LAW ENFORCEMENT THAT NIGHT?

A NO, SIR.

MR. BROOKER: IF YOU COULD INDULGE ME FOR JUST A SECOND, YOUR HONOR.

THE COURT: SURE.

MR. BROOKER: (CONTINUING)

Q NOW DO YOU REMEMBER TALKING WITH A, DO YOU REMEMBER TALKING WITH A, A LIEUTENANT DAVIS AT THE SCENE?

A YES, SIR.

Q OKAY, DO YOU REMEMBER TELLING LIEUTENANT DAVIS THAT KESHON APPLEWHITE AND, AND MS. DOZIER WHEN YA'LL GOT THERE THAT THEY WALKED DOWN THE ROAD AND TALKED?

A DO I REMEMBER TELLING HIM THAT?

Q YES.

A YES, SIR.

Q AND THAT WHEN THEY WALKED BACK UP FROM DOWN THE STREET THAT MR. APPLEWHITE THEN THREW A PUNCH AND KNOCKED HER INTO THE WATER?

A NO.

Q YOU DIDN'T TELL THAT TO, TO LIEUTENANT DAVIS?

A NO, SIR.

Q IS THAT WHAT HAPPENED?

A HE THREW A PUNCH AND KNOCKED HER INTO A PUDDLE?

Q HE THREW, YES, LET ME MAKE SURE THAT I UNDERSTAND IT CORRECTLY? HE HIT HER, THAT KESHON WHITE HIT MS., MS. DOZIER, HIT MS. DOZIER AND KNOCKED HER INTO A WATER PUDDLE?

A NO, SIR.

Q YOU DIDN'T TELL HIM THAT?

A UH-UH.

Q SO THAT STATEMENT OR IF IT'S ALLEGED THAT YOU MADE THAT STATEMENT IT WOULD BE INACCURATE?

A HE MAY HAVE INTERPRETED IT THE WRONG WAY JUST LIKE YOU JUST SAID I SLAMMED, I SLUNG, HE MAY INTERPRETED IT THE WRONG WAY. LIKE I SAID WHAT I TOLD HIM WAS SHE HIT HIM, HE THEN SLUNG HER, THEY WERE FIGHTING, BUT HE SLUNG HER INTO THE MUD INTO THE CAR.

Q OKAY, THE REASON WHY I ASK YOU IS, IS THAT, IS THAT THERE ARE TWO DISTINCT, AT LEAST RIGHT NOW, I'M TALKING ABOUT AT LEAST TWO TO THREE DISTINCT DIFFERENT VERSIONS OF, OF WHAT YOUR STATEMENT IS, OKAY? ONE IS THAT ---

MR. DEBERRY: OBJECTION, HE NEEDS TO ASK A QUESTION, YOUR HONOR.

MR. BROOKER: WELL I'M ABOUT TO, OKAY, IF YOU'LL ALLOW US.

Q (CONTINUING) ONE VERSION OF YOUR STATEMENT WAS IS, THE ONE THAT I SHOWED YOU IN, ONE THAT I SHOWED YOU IN, I GUESS, THIS PARTICULAR STATEMENT THAT'S IDENTIFIED AS 5-14-07 AT 8:42 A.M. AND, OF COURSE, IS THAT ON MARION, MULLINS POLICE DEPARTMENT LETTERHEAD?

A MARION POLICE DEPARTMENT.

Q YES, I'M SORRY, I APOLOGIZE, MARION POLICE DEPARTMENT LETTERHEAD?

A YES, SIR.

Q OKAY, AND YOU WOULD AGREE WITH ME THAT THAT STATEMENT SAYS, SAYS, AND THIS STATEMENT IS PURPORTED TO BE YOURS, THAT KESHON THREW HER IN THE MUD?

A I'M LOOKING AT THIS STATEMENT, SIR, I MEAN I SEE MY NAME AT THE TOP OF IT, I ALSO SEE TRAVIS E. LANE AT THE TOP OF THE STATEMENT ALSO, SO WHETHER HE GAVE HIS STATEMENT OR NOT I DON'T KNOW, BUT HIS NAME IS ALSO AT THE TOP OF THAT, OF THIS LETTERHEAD.

Q OKAY, OKAY, SO BUT ANY, BUT, BUT, THAT WOULD BE INACCURATE; IS WHAT YOU'RE SAYING?

A AS FAR AS WHAT, AS FAR AS MY STATEMENT, YES, SIR. TRAVIS LANE LIKE I SAID HIS NAME IS ALSO ON THE TOP UP THERE, HE MIGHT HAVE GIVE THAT STATEMENT, BUT WHAT I'M TELLING YOU IN HERE TODAY IS WHAT HAPPENED AND WHAT I PUT ON MY STATEMENT. A FEW THINGS MIGHT HAVE BEEN LEFT OUT, I'M FOR CERTAIN THAT AS FAR AS WHAT I TOLD THE COURT A

FEW THINGS WAS LEFT OUT BECAUSE OF WHAT YOU SAID YOU CAN'T SAY WHAT NOBODY SAID OR, YOU KNOW, BUT OTHER THAN THAT EVERYTHING I TOLD YOU HERE TODAY IS ON MY STATEMENT.

Q WHAT ELSE DID YOU PUT IN YOUR STATEMENT?

A HEARSAY?

Q NO, NO, NO, I'M TALKING ABOUT YOU, WHAT YOU PUT ---

A WHAT I PUT IN MY STATEMENT WAS WHAT HAPPENED THAT DAY.

Q OKAY ---

A WHEN WE PULLED UP IT WAS OTHER WORDS, THE MOTHER, SHE HAD SOME WORDS TO SAY ALSO, I PUT THAT IN MY STATEMENT. I DIDN'T SAY THAT INTO THE COURTROOM BECAUSE LIKE YOU DIDN'T WANT ME TO SAY WHAT JEREMY SAID SO --

Q AND, AND, AND LET ME MAKE IT EASY FOR YOU?

A OKAY.

Q IS THAT YOU DON'T NECESSARILY HAVE TO SAY WHAT SOMEONE SAID BUT YOU CAN SAY THAT SOMEONE MADE STATEMENTS, JUST DON'T SAY WHAT THE STATEMENTS ARE?

A OKAY.

Q SO TELL ME AS YOU, AS YOU WROTE IT DOWN?

A THE MOTHER, THE MOTHER MADE STATEMENTS, KESHON MADE STATEMENTS BACK AT HER. LIKE I SAID WE WENT DOWN THE ROAD HIM AND HER, BEFORE THE FIGHTING EVEN TOOK PLACE THERE WERE STATEMENTS MADE AS FAR AS WHY HE WAS OVER

THERE, WHY HE HAD A PROBLEM.

Q AGAIN DON'T TELL ME WHAT PEOPLE SAID, YOU CAN SAY THAT PEOPLE, PEOPLE ---

A WELL BASICALLY I TOLD YOU EVERYTHING.

Q ALL RIGHT, WELL ---

A I'VE TOLD YOU WHAT WAS SAID THERE, IF I CAN'T TELL YOU EXACTLY WHAT WAS SAID THAT I HEARD HER SAY.

Q NOW WHAT, WHAT'S, WHAT'S CONTRIBUTING TO YOU, WHAT YOU PURPORTEDLY STATED TO, TO, TO LIEUTENANT DAVIS THAT WAS INACCURATE AS WELL, YOU TOLD ME THAT WAS NOT ACCURATE?

A WHAT I REPORTED TO LIEUTENANT DAVIS?

Q YEAH?

A WHAT I REPORTED TO LIEUTENANT DAVIS MAY 13TH, 2007, WAS ACCURATE.

Q NOW I'M TALKING THE STATEMENT THAT ---

A I HAVEN'T SEEN THAT ONE.

Q THE STATEMENT THAT IS ATTRIBUTABLE TO YOU DID YOU NOT TELL LIEUTENANT DAVIS THAT THEY WALKED DOWN THE STREET, THEY WALKED BACK AND THEN HE HIT HER AND KNOCKED HER INTO THE WATER?

A NO, SIR, I DIDN'T SAY IT LIKE THAT.

Q NOW DO YOU REMEMBER TALKING TO LIEUTENANT BLUE?

A YES, SIR.

Q WHEN DID YOU TALK TO LIEUTENANT BLUE?

A I DON'T RECALL, I TALKED TO HIM SEVERAL TIMES, I DON'T RECALL, YOU KNOW, WHAT EXACTLY THE TIME THAT I TALKED TO HIM.

Q I UNDERSTAND, OKAY, YOU TALKED WITH HIM ON, ON, ON, AT THE, AT THE SCENE OF THE EVENT WHEN HE ARRIVED THERE?

A I DON'T REMEMBER, I JUST SPECIFICALLY REMEMBER TALKING TO HIM DOING MY REPORT FOR DAVIS.

Q OKAY, OKAY, YOU REMEMBER DOING A REPORT FOR DAVIS?

A MY STATEMENT.

Q THAT'S A HANDWRITTEN STATEMENT?

A YES, SIR.

Q THAT YOU WROTE ON THE CAR?

A YES, SIR.

Q OKAY, OKAY, AND, AND JUST FOR CLARIFICATION IS THAT THAT STATEMENT THAT YOU HANDWRITTEN ON THE POLICE CAR WHAT SORT OF, WHAT WAS THAT WRITTEN ON?

A IT WAS KIND OF LIKE A LETTERHEAD LIKE THE ONE YOU SHOWED ME WITH ME AND TRAVIS NAME ON IT.

Q OKAY, IT WAS SIMILAR?

A YES, SIR.

Q OKAY, OKAY, AND, AND, AND, AND WHEN YOU DID THAT ONE DID TRAVIS PUT HIS NAME ALSO ON THAT ONE?

A I DON'T RECALL, I THINK I WAS WRITING ONE, HE MIGHT HAVE BEEN WRITING ONE, KAREN MIGHT HAVE BEEN WRITING ONE.

Q SO TRAVIS WAS ASKED, TO YOUR UNDERSTANDING HE WAS ASKED TO WRITE A SEPARATE ONE?

A YES, SIR, I THINK.

Q DID HE WRITE IT THERE RIGHT THERE RIGHT AT THE SCENE?

A I HAVE NO IDEA, MY MAIN CONCERN WAS I WAS WRITING WHAT HAPPENED AND I WAS CONCERNED ABOUT MY FRIEND.

Q I GOT YOU, OKAY, NOW YOU WAS ALSO ASKED, ASKED WHETHER OR NOT YOU KNOW SHAWN REAVES BY ANY OTHER NAME AND YOU SAID NO, OKAY, ISN'T IT TRUE THAT YOU TOLD LIEUTENANT BLUE THAT YOU KNEW HIM BY MISTER?

A NO, SIR.

Q SO, SO YOU'VE NEVER TOLD LIEUTENANT BLUE THAT YOU KNOW HIM BY MISTER?

A I DON'T HIM BY MISTER.

Q WOULD THAT NOT BE ACCURATE IF IT WAS, IF IT, IF IT, IF THAT STATEMENT WAS ATTRIBUTABLE TO YOU THAT YOU SAID YOU KNEW HIM BY MISTER THAT WOULD BE INACCURATE?

A YES, SIR, I DON'T KNOW HIM BY NO MISTER, NO, SIR.

Q NOW I THINK YOU TESTIFIED TO THE FACT THAT, TESTIFIED TO THE FACT THAT, THAT YOU KNEW SHAWN REAVES AND

YOU KNEW HIM BECAUSE YOU HAD SEEN HIM AROUND TOWN AND THAT SORT OF THING?

A FROM HANGING WITH COUSINS, SOMETHING LIKE THAT.

Q I'M SORRY, GO AHEAD.

A FAMILY, FROM HANGING WITH FAMILY MEMBERS THAT'S HOW I KNOW HIM. I DIDN'T KNOW HIM AS IS HE TALKED A CERTAIN WAY OR, YOU KNOW.

Q AND I'M, AND I'M STARTING FROM THAT INCIDENT, THAT INCIDENT WAS MAY 13 OF 2007, BEFORE THAT INCIDENT DAY HOW LONG BEFORE THAT DID YOU KNEW HIM? WHAT I MEAN BY KNEW HIM IS THAT KNOWN HIM AROUND TOWN?

A FROM THAT DAY HOW LONG I KNOW HIM, LIKE I SAID I MAYBE SAW HIM A FEW TIMES, YOU KNOW, I KNEW OF HIM, I DON'T KNOW HIM PERSONALLY.

Q YEAH, I UNDERSTAND ---

A IS WHAT I'M SAYING.

Q --- YOU WEREN'T FRIENDS WITH HIM?

A I DON'T HOW MANY DAYS BEFORE THAT INCIDENT THAT I SEE HIM IN SAVE WAY OR DID I SEE HIM IN MCDONALDS, I DON'T KNOW.

Q THAT'S WHAT I'M TRYING TO FIGURE OUT. WHEN IS THE FIRST TIME YOU EVER LAID EYES ON THIS PERSON? DID YOU LAY EYES ON HIM WHEN YA'LL WERE TEN YEARS OLD?

A OH, IT WAS THAT YEAR, IT WAS THAT YEAR.

Q THAT YEAR WAS THE FIRST TIME YOU EVER LAID EYES ON HIM?

A YEAH.

Q OKAY, AND YOU SAID YOU SEEN HIM A COUPLE OF TIMES, ABOUT HOW MANY TIMES DO YOU RECALL?

A I SAY A FEW TIMES WITH FAMILY MEMBERS.

Q MORE OR LESS THAN FIVE?

A PROBABLY LESS THAN FIVE.

Q LESS THAN FIVE TIMES YOU'VE SEEN HIM?

A UH-HUH.

Q OKAY, NOW YOU MADE A POSITIVE IDENTIFICATION. I THINK YOU SAID IN THIS COURTROOM THAT YOU COULD, THAT YOU POSITIVELY IDENTIFIED HIM AS BEING THE PERSON THAT WAS SHOOTING; IS THAT RIGHT?

A THAT'S RIGHT.

Q OKAY, NOW WHAT'S I THINK HAS ALREADY BEEN PREVIOUSLY MARKED I THINK AS STATE'S EXHIBIT 27, THAT'S A PHOTO LINEUP THAT YOU WERE SHOWN; IS THAT CORRECT?

A I HAVE NO, I DON'T RECALL BEING SHOWN THAT LINEUP, SIR.

Q YOU DON'T RECALL BEING SHOWN THIS LINEUP?

A I DON'T REMEMBER THE ACTUAL LINEUP THAT HE, THAT HE, THAT HE, THAT HE, HE SHOWED ME.

Q OKAY, OKAY, SO YOU DON'T RECALL WHETHER OR NOT THIS IS THE ACTUAL PHOTO LINEUP, STATE'S EXHIBIT 27,

YOU DON'T RECALL WHETHER OR NOT THIS IS THE ACTUAL PHOTO LINEUP THAT WAS SHOWED YOU?

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

Q NOW ARE YOU SAYING THAT YOU JUST DON'T REMEMBER OR ARE YOU SAYING THAT THIS IS NOT THE ONE?

A I DON'T, IF I CAN BE, I WAS THINKING I SAW LINE UPS WITH PEOPLE IN DRESSED OUT MUG SHOT, SOMETHING LIKE THAT.

Q YOU SAW LINE UPS THAT WERE ---

A THAT'S WHAT, THAT'S WHAT I'M THINKING I SAW, YOU KNOW, I DON'T REMEMBER SEEING THAT BECAUSE HONESTLY I KNOW ONE OF THE FELLOWS ON THE, ON THAT AND I DON'T REMEMBER SEEING HIS FACE WHILE I WAS, WHILE I SAW THAT.

Q WHICH ONE OF THE FELLOWS THAT, THAT'S IDENTIFIED IN STATE'S EXHIBIT 27 THAT YOU KNOW?

A RIGHT HERE, NUMBER TWO.

Q NUMBER TWO?

A YES, SIR.

Q OKAY, AND WHO IS THAT, WHO IS THAT FELLOW?

A LIKE I DON'T HIM, I DON'T KNOW HIM PERSONALLY, I SEEN HIM A LOT OF TIMES, I WANT TO SAY B.T. BUT IT COULD BE THE WRONG NAME BUT HE PLAYED BALL WITH MY BROTHER.

Q OKAY, IS HE FROM, HE'S, IS HE FROM MARION

COUNTY?

A MARION?

MR. DEBERRY: OBJECTION, YOUR HONOR, THIS IS NOT RELEVANT.

MR. BROOKER: YES, IT IS.

THE COURT: OVERRULED, IT'S CROSS, CONTINUE.

THE WITNESS: (CONTINUING)

A NO, SIR, HE'S NOT FROM MARION.

Q HE'S NOT FROM MARION COUNTY?

A NO, SIR.

Q SO LET ME IF I UNDERSTAND YOU CORRECTLY IS THAT WHAT YOU'RE SAYING IS, IS THAT YOU REMEMBER SEEING A PHOTO LINEUP FROM WHAT APPEARED TO BE MUG SHOTS?

A YES, I'M NOT HUNDRED PERCENT SURE THAT'S WHAT I SAW BUT I'M THINKING THAT'S WHAT I SAW.

Q AND THE PERSON WHO'S IDENTIFIED AS NUMBER TWO IN THIS, IN STATE'S EXHIBIT 27 THAT YOU'RE SHOWING IS THAT YOU'RE SAYING THAT WAS THAT PERSON IN THAT LINEUP THAT YOU SAW OF MUG SHOTS?

A NO, SIR, I DON'T SAY HE WAS IN THAT.

Q HE WAS NOT IN THAT LINEUP?

A NO, SIR.

MR. DEBERRY: OBJECTION, YOUR HONOR, HE SAYS HE CAN'T REMEMBER A LINEUP SO HE CONTINUES TO ASK QUESTIONS THAT HAS ALREADY BEEN ANSWERED AND HE'S TRYING TO SUGGEST

ANSWERS NOW.

MR. BROOKER: YOUR HONOR, HE JUST SIMPLY SAID IS THAT, SIMPLY SAID THAT THAT PERSON WAS NOT IN THE LINEUP SO HE ANSWERED HIMSELF.

THE COURT: I'M GOING TO OVERRULE IT, YOU'VE ALREADY ASKED IT, IT'S BEEN ANSWERED, GO AHEAD AND MOVE ON.

MR. BROOKER: (CONTINUING)

Q NOW I HAVE HERE A DOCUMENT THAT'S, THAT, AND I WANT YOU TO TAKE A LOOK AT IT; DO YOU RECOGNIZE THAT DOCUMENT?

A CAN'T SAY I DO.

Q COULD YOU LOOK AT THE NAME ON THERE AT THE BOTTOM, IS THAT YOUR NAME ON THERE?

A YES, SIR.

Q OKAY, DID YOU, DOES THAT LOOK LIKE YOUR HANDWRITING?

A YES, SIR.

Q IS THAT, DOES THAT LOOK LIKE YOUR SIGNATURE ON THE OTHER SIDE BY THE HANDWRITING?

A YES, SIR.

Q NOW THIS IS A, THIS IS A PHOTO LINEUP IDENTIFICATION FORM; IS THAT CORRECT, IS THAT WHAT IT SAYS?

A YES, SIR.

Q AND YOU SAYS THIS IS YOUR SIGNATURE?

A YES, SIR.

Q NOW BEHIND RIGHT NEXT TO PHOTO NUMBER TWO IS THAT YOUR INITIALS?

A YES, SIR.

Q OKAY ---

A JFM, YES, SIR.

Q OKAY, SO A GENTLEMAN WHO IS DEPICTED IN PHOTO NUMBER TWO DID YOU NOT IDENTIFY TO LAW ENFORCEMENT THAT THAT'S THE PERSON THAT WAS DOING THE SHOOTING THAT NIGHT?

A I DON'T REMEMBER TELLING LAW ENFORCEMENT THAT THAT WAS HIM, I DON'T REMEMBER.

Q OKAY, OKAY, YOU DON'T, YOU DON'T REMEMBER?

A NO, SIR.

Q OKAY, AND, AND LET ME JUST ASK IT ANOTHER WAY TO MAKE SURE, YOU DON'T REMEMBER WHICH MEANS THAT YOU COULD HAVE?

A LIKE I SAID I KNOW THIS FELLOW HERE SO, YOU KNOW, I KNOW THAT WASN'T HIM.

Q AND DID YOU IDENTIFIED, AND MY QUESTION IS DID YOU IDENTIFY HIM AS BEING THE PERSON TO LAW ENFORCEMENT?

A I WOULDN'T HAVE IDENTIFIED HIM AS BEING CAUSE I KNOW HIM, THAT'S WHAT I'M SAYING.

Q SO YOU'RE SAYING THAT THESE PHOTOGRAPHS THAT --

MR. BROOKER: I'LL MOVE TO INTRODUCE THIS INTO EVIDENCE AS, AS DEFENSE EXHIBIT 2, I BELIEVE?

MADAM COURT REPORTER: 3.

MR. BROOKER: 3, DEFENSE EXHIBIT 3.

THE COURT: ANY OBJECTIONS?

MR. DEBERRY: NOT A BIT.

THE COURT: ALL RIGHT, DEFENSE NUMBER 3 INTO EVIDENCE.

(WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 3 MARKED AND ENTERED INTO EVIDENCE.)

MR. BROOKER: (CONTINUING)

Q DID YOU SAY THAT YOU KNOW THAT YOU DIDN'T IDENTIFY NUMBER TWO THE PERSON WHOSE PHOTOGRAPHS IS IDENTIFIED AS NUMBER TWO IN THIS PHOTOGRAPH, STATE'S EXHIBIT NUMBER 27, ARE YOU SAYING THERE'S A PROBLEM WITH THIS PAPER WORK?

A POSSIBLY.

Q NOW YOU ALSO TESTIFIED, I AM LOOKING AT STATE'S EXHIBIT 8 AND, OF COURSE, YOU MARKED ON HERE I THINK A (JM) HERE YOU WERE STANDING; IS THAT NOT CORRECT?

A YES, SIR.

Q AND, AND YOU MARKED AS AN (SR) WHERE SHAWN REAVES WAS ALLEGEDLY STANDING, RIGHT?

A UH-HUH.

Q AND A (K) IS MARKED AT THE SPOT WHERE

KESHAWN APPLEWHITE WAS ALLEGEDLY STANDING; IS THAT CORRECT?

A YES, SIR.

Q NOW IN THOSE STATEMENTS THAT I SHOWED YOU, IN THE STATEMENT I SHOWED YOU THAT WAS PURPORTED TO BE YOURS EARLIER WOULD YOU AGREE WITH ME THAT THERE IS NO INDICATION IN THAT STATEMENT THAT, AND I'LL GIVE IT TO YOU FOR YOU TO LOOK AT AGAIN IF YOU WANT TO REFRESH YOUR MEMORY, AND, OF COURSE THAT STATEMENT HAS BEEN, THERE IS NO INDICATION IN THAT STATEMENT, NO INDICATION IN THAT STATEMENT WHATSOEVER THAT KESHAWN APPLEWHITE EVER SHOVED SHAWN REAVES AND SNATCHED A CHAIN FROM HIS NECK?

A SAYING THAT STATEMENT THERE'S NO --

Q IS THERE ANY PLACE IN THAT STATEMENT THAT'S PURPORTED TO BE YOUR STATEMENT WHERE IT SAYS THAT KESHAWN APPLEWHITE SHOVED SHAWN REAVES AND THEN SNATCHED A CHAIN FROM AROUND HIS NECK OR CHAINS FROM AROUND HIS NECK?

A ARE YOU SAYING IN HERE IT DOESN'T SAY THAT HE SHOVED SHAWN REAVES?

Q DID YOU EVER MAKE THAT STATEMENT TO LAW ENFORCEMENT?

A NO, SIR.

Q BUT THAT AGAIN NEVER HAPPENED?

A AS FAR AS HIM SHOVING HIM?

Q YEAH?

A NO, SIR, I DON'T, I DON'T KNOW, I DON'T

KNOW WHETHER HE SHOVED HIM, ALL I HEARD WAS WHAT.

Q YOU INDICATED IN STATE'S EXHIBIT, AND I'LL SHOW THIS TO THE JURY, YOU INDICATED IN STATE'S EXHIBIT 8 THAT YOU WERE STANDING RIGHT HERE WHERE THE (JM) IS IDENTIFIED AND THAT MR. APPLEWHITE IS STANDING RIGHT IN FRONT OF YOU WHERE THE (K) IS, KESHAWN APPLEWHITE, WHERE THE (K) IS IDENTIFIED, SO ACCORDING TO THOSE MARKINGS YA'LL WERE IN VERY CLOSE PROXIMITY OF EACH OTHER?

A YES, AT THE TIME OF THE SHOOTING?

Q YEAH?

A YES, SIR.

Q JUST BEFORE THE SHOOTING?

A AT THE TIME OF THE SHOOTING, LIKE I'M SAYING IF HE, IF HE PUSHED OR GRABBED HIS CHAIN THAT WAS HAPPENING AS I WAS WALKING UP TO KESHAWN. WHEN I WALKED UP TO HIM THOSE COORDINATES SHOW WHEN THE SHOOTING ACTUALLY TOOK PLACE.

Q SO YOU'RE SAYING THAT YOU DON'T KNOW WHETHER OR NOT HE SHOVED ---

A NO, SIR, I DON'T KNOW IF HE SNATCHED HIS CHAIN ---

Q --- SHAWN REAVES?

A I'M NOT SAYING THAT DIDN'T HAPPEN, WHAT I'M SAYING IS I DON'T WHETHER THAT HAPPENED OR NOT.

Q BUT IT'S NOT CONTAINED IN YOUR STATEMENT

THAT YOU NEVER TOLD THAT TO LAW ENFORCEMENT?

A NO, SIR, NO, SIR.

Q NOW I KNOW THAT YOU SAID THAT YOU WERE STANDING, THAT YOU WERE STANDING BEHIND, AT LEAST IN SOME POSITION BEHIND MR. APPLEWHITE, HE WAS STANDING IN FRONT OF YOU AND YOU WERE SOMEWHERE BEHIND HIM; IS THAT CORRECT?

A CLOSE TO THE RIGHT, I WAS PULL, I WAS PULLING ON THE RIGHT SIDE, I PULLED THE RIGHT SIDE OF HIS SHIRT.

Q OKAY, AND MY UNDERSTANDING WAS IS THAT YOU WERE BEHIND HIM AND, AND YOU WERE BEHIND HIM TO HIS RIGHT?

A YES, SIR.

Q HE WOULD HAVE BEEN STANDING IN FRONT OF YOU AND HE WOULD HAVE BEEN SLIGHTLY TO THE LEFT AND YOU SLIGHTLY TO HIS RIGHT?

A YES, SIR.

Q COULD YOU SEE IN FRONT OF HIM AND SEE, AND SEE SHAWN REAVES?

A YES, SIR, I COULD SEE SHAWN REAVES.

Q YOU COULD SEE SHAWN REAVES AND YOU COULD SEE AROUND ---

A I SAW SHAWN REAVES ON HIS WAY WALKING UP THERE, I SAW HIM.

Q YEAH, I KNOW BUT I'M TALKING ABOUT AT THE TIME IN WHICH YOU WERE STANDING BEHIND MR. APPLEWHITE AND

YOU WERE TO HIS RIGHT AND, AND HE WAS IN FRONT OF YOU, AND I THINK YOU SAID HE MADE SOME COMMENTS?

A WHAT.

Q I'M SAYING WERE YOU ABLE TO SEE MR. REAVES AT THAT PARTICULAR PERIOD OF TIME?

A YES, SIR.

Q OKAY, WERE YOU LOOKING AT MR. REAVES?

A I WAS, I WAS WALKING, I GLANCED, I COULD SEE KESHAWN AND I COULD SEE REAVES. HOW GOOD I COULD SEE HIM I MEAN I COULDN'T TELL IF HE HAD A MOLE ON HIS, ON HIS FACE OR, YOU KNOW, WHAT HE HAD SOME PURPLE BELT ON OR SOMETHING LIKE THAT, I COULDN'T SEE ALL THAT, I COULD SEE HIM.

Q AND YOU WERE WATCHING HIM, WERE YOU WATCHING HIM?

A NO, I WASN'T STARING HIM DOWN, NO, SIR.

Q NOT NECESSARILY STARING HIM DOWN BUT WERE YOU WATCHING HIM?

A I COULD SEE HIM, I COULD SEE, YES, SIR, I COULD SEE, I COULD SEE HER. I'M NOT STARING AT THEM BUT I CAN HER.

Q BUT THOSE EVENTS YOU COULD NOT SEE WHETHER OR NOT MR. APPLEWHITE SHOVED HIM AND PULLED HIS CHAINS?

A LIKE I SAID I WAS WALKING TOWARDS, WHEN THAT HAPPENED I WAS WALKING UP TO, TO KESHAWN.

Q OKAY, NOW WE KNOW YOU WERE STANDING BEHIND AND TO HIS RIGHT, KESHAWN TO HIS RIGHT, WHERE WAS JACKIE LANE?

A WHO IS JACKIE LANE?

Q I'M SORRY, I MEANT TO SAY MR. LANE, TRAVIS LANE?

A HE WAS BEHIND ME, HE WAS AT THE CAR, RIGHT IN FRONT OF THE CAR.

Q AND HOW FAR WOULD THAT HAVE BEEN BEHIND YOU?

A PROBABLY LIKE FROM ME TO I GUESS DEBERRY.

Q DID YOU HAVE A GUN ON YOU?

A NO, SIR.

Q DID YOU FIRE A GUN?

A NO, SIR.

Q DID MR. TRAVIS LANE HAVE A GUN?

A NO, SIR, NONE OF US WHO CAME WITH KESHAWN HAD A GUN.

Q NOW AND YOU'RE CERTAIN THAT YOU WERE STANDING BEHIND TRAVIS, STANDING BEHIND KESHAWN AND THEN, OF COURSE, BEHIND YOU FURTHER BACK NEAR THE CAR WAS, WAS TRAVIS LANE?

A THAT'S WHERE I LEFT TRAVIS.

Q OKAY, WHERE WAS THE YOUNG LADY AT, KAREN?

A WHEN I STARTED WALKING SHE WAS ON THE OTHER

SIDE OF THE CAR.

Q WERE THERE ANYBODY ELSE BEHIND YA'LL?

A BEHIND THE CAR, BEHIND US, YEAH, IT WAS, IT WAS A TRAILER RIGHT ACROSS FROM THE ROAD PEOPLE WERE STANDING ALL ON THEIR PORCH OR STEPS.

Q PEOPLE, WAS ANYBODY IMMEDIATELY BEHIND YA'LL IN THE YARD?

A IMMEDIATELY BEHIND US, NO, SIR.

Q IMMEDIATELY IN THE YARD, WAS ANYBODY WAS STANDING BEHIND YA'LL IN THE YARD?

A NO, SIR, NO, SIR.

Q ALL THE PEOPLE THAT WERE IN THE YARD WHERE WERE THEY AT IN RELATIONSHIP TO WHERE YOU AND KESHAWN WAS?

A I SAW A BUNCH OF PEOPLE ON THE, ON THE PORCH AND SHAWN, KESHAWN, ME, AND THE TWO THAT I LEFT BEHIND ME.

Q NOW WERE YOU IDENTIFIED IN, IN, IN STATE'S EXHIBIT 8, WERE YOU IDENTIFY THE LOCATION OF, OF, OF KESHAWN APPLEWHITE AND SHAWN REAVES, WERE THEY IN THAT SAME LOCATION WHEN, WHEN, WHEN KESHAWN APPLEWHITE WAS, WAS, WAS SHOT?

A WHERE WERE THEY AT?

Q WERE THEY STANDING RIGHT THERE WHEN, WHEN THE SHOOTING STARTED?

A YES, SIR.

Q AND WERE YOU STANDING IN THE POSITION THAT YOU IDENTIFIED ON STATE'S EXHIBIT 8?

A I WAS STILL, I WAS ACTUALLY STILL WALKING, THAT'S WHERE I WIND UP HITTING THE GROUND AT.

MR. BROOKER: ALMOST FINISHED, YOUR HONOR.

Q (CONTINUING) NOW I'M GOING TO TAKE YOU BACK TO WHAT'S BEEN, WHAT'S BEEN PURPORTED TO BE YOUR, YOUR STATEMENT AND WHAT WAS GIVEN TO US AS YOUR STATEMENT AND, OF COURSE, NOW FROM THAT PHOTOGRAPH WOULD YOU AGREE WITH ME, WOULD YOU AGREE WITH ME THAT YOU WERE SAYING THAT KESHAWN WAS STANDING ON THE GROUND WHEN HE WAS, WHEN HE WAS SHOT?

A YES, YES.

Q WAS HE STANDING ON THE STEPS OR ON THE PORCH?

A HE WASN'T STANDING ON THE PORCH.

Q NOW AND, OF COURSE, WOULD YOU AGREE WITH ME AND, OF COURSE, I WANT YOU TO READ IT WITH ME, THIS STATEMENT SAYS, THAT'S PURPORTING TO BE YOUR STATEMENT SAYS, WHILE WALKING UP THE STEPS KESHAWN SAID WHAT AND THAT'S WHEN, THAT'S WHEN, WHEN THE DUDE WITH THE DREADLOCKS STARTED SHOOTING, SO THIS STATEMENT SAID THAT HE WAS WALKING UP THE STEPS AND HE WAS SHOT AS HE WAS WALKING UP THE STEPS; DID YOU STATE IT THAT THAT HE WAS SHOT WHILE YOU THOUGHT HE WAS WALKING UP THE STEPS?

A NO, SIR.

Q WELL CAN YOU EXPLAIN TO ME HOW DID THAT COME IN, GET INTO A DOCUMENT THAT'S PURPORTED TO BE YOUR STATEMENT?

A LIKE I SAID BEFORE TRAVIS LANE'S NAME IS ALSO AT THE TOP OF THAT STATEMENT; HE MIGHT HAVE WROTE THAT STATEMENT, I DIDN'T SAY THAT.

Q DID YOU EVER WRITE THAT IN ANY STATEMENT THAT YOU GAVE; YOU SAID YOU GAVE A PREVIOUS STATEMENT THAT DETAILED ALL THE STUFF ---

A YES, SIR, I DIDN'T SAY NOTHING ABOUT HIM WALKING UP THE STEPS GETTING SHOT.

Q OKAY, AND I'M GOING TO GO AHEAD AND FINISH AND ASK YOU TO MAKE SURE THE COURT REPORTER GETS IT CORRECTLY?

A OKAY, I'M SORRY.

Q OKAY, IS THAT IT'S YOUR TESTIMONY TODAY THAT, THAT NOT ONLY DID YOU NOT SAY THAT IN THIS STATEMENT BUT THE STATEMENT THAT YOU SAID THAT YOU WROTE ON THE, ON THE PATROL CAR THE NIGHT OF THE INCIDENT WHICH IS NOT THIS STATEMENT RIGHT HERE YOU'RE SAYING THAT YOU DID NOT PUT THAT EVEN IN THAT STATEMENT THAT, THAT, THAT, THAT KESHAWN APPLEWHITE WAS SHOT WHILE HE WAS WALKING UP THE STEPS?

A NO, SIR, I DIDN'T PUT IT IN MY STATEMENT.

Q NOW WHEN, WHEN MR. APPLEWHITE WAS SHOT WHAT

DID YOU DO WHEN YOU, WHEN YOU FIRST HEARD IT, THE FIRST BULLET WHAT DID YOU DO?

A I HIT THE GROUND.

Q YOU HIT THE GROUND?

A YES, SIR.

Q OKAY, HOW MANY SHOTS DID YOU HEAR?

A IT WAS POP, POP, POP, POP.

Q NOW WHEN YOU HIT THE GROUND WERE YOU STILL LOOKING UP AT MR. APPLEWHITE OR DID YOU PUT YOUR HEAD DOWN?

A I LOOKED, I MEAN I KIND OF, I LOOKED AT KESHAWN AND THEN I, IT HAPPENED SO FAST, I HIT THE GROUND, BY THE TIME I HIT THE GROUND I COULD HEAR CLICKING SO I GOT UP, EVERYBODY ELSE WAS RUNNING.

Q BUT YOUR EYES NEVER LEFT KESHAWN WHEN YOU, WHEN YOU HIT THE GROUND, DID YOU EVER STOP LOOKING AT HIM?

A POSSIBLY, YES, SIR.

Q DID YOU EVER STOP LOOKING AT SHAWN REAVES?

A YES, SIR.

Q HOW MANY SHOOTERS DID YOU SEE THAT NIGHT?

A ONE.

Q NOW I'M GOING TO ASK YOU ABOUT YOUR SOUND, I'M GOING TO ASK YOU ABOUT YOUR SOUND, DID YOU HEAR ANY SOUND OF ANY GUNSHOTS COMING FROM BEHIND YOU?

A NO, SIR.

Q YOU TELL ME WHETHER YOU KNOW THIS OR NOT, I

DON'T KNOW AND THAT'S WHY I'M ASKING, DO YOU KNOW WHETHER OR NOT MR. APPLEWHITE WAS STRUCK IN THE BACK?

A NO, SIR, I DON'T KNOW THAT.

Q NOW WHEN MR. APPLEWHITE WHEN HE WAS SHOT DID HE FELL TO THE GROUND?

A ONCE THE SHOOTING, ONCE HE, ONCE HE START THE GUN FIRE STARTED I HIT THE GROUND LIKE YOU ASKED ME A WHILE AGO, I CAN'T SAY I WAS DIRECTLY STARING AT KESHAWN OR SHAWN REAVES. I KNOW I SAW HIM WHEN HE WAS SHOOTING, I HIT THE GROUND, I HEARD THE CLICKING. I GOT UP, WHEN I GOT UP I WAS LOOKING KESHAWN WAY, I YELLED AT HIM, HE GOT UP. HE WAS LAYING, HE WAS LAYING CHEST ON THE GROUND NEXT TO THE PORCH.

Q SO HE FELL FORWARD?

A I GUESS HE FELL FORWARD, WHEN I GOT UP HE WAS GETTING UP LAYING FORWARD.

Q WAS HE, WAS HE ON HIS STOMACH WHEN HE GOT UP OR ON HIS KNEES OR HOW WAS HE?

A HE WAS ON HIS STOMACH.

Q HE WAS ON HIS STOMACH?

A YES, SIR.

Q OKAY, AND THAT WAS AFTER HE WAS ON HIS STOMACH WHEN, WHEN YOU GET UP, YOU GOT UP WHEN THE SHOTS STOPPED?

A YES, SIR.

Q AND, AND WHEN YOU GOT UP YOU SAW HIM AND HE WAS ON HIS, ON HIS STOMACH?

A YES, SIR.

Q AND, OF COURSE, HE WAS FACING THE HOUSE?

A THE HOUSE.

Q OKAY, OKAY, AND THEN WHAT DID YOU DO AT THAT PARTICULAR PERIOD OF TIME?

A I YELLED, I YELLED AT HIM TO COME ON, GOT UP, TURNED AROUND, TOOK TWO STEPS HIT THE GROUND AGAIN. I THEN RAN UP TO HIM. I COULD SEE BLOOD COMING OUT OF HIS MOUTH, WAS KIND OF ON HIS CHIN. I CALLED FOR MY OTHER FRIEND TO COME, WE GRABBED HIM, TOOK HIM TO THE CAR, WAS TRYING TO GET HIM IN THE CAR, COULDN'T GET HIM IN THE CAR.

Q AND, OF COURSE, IS THAT WHEN LAW ENFORCEMENT CAME WHEN YOU WERE TRYING TO PUT HIM IN THE CAR?

A YEAH, WE HAD HAD HIM IN THE CAR HALFWAY AND THEN LAW ENFORCEMENT CAME UP.

Q WHAT DID LAW ENFORCEMENT DO WHEN THEY ARRIVED?

A THEY TOLD ME TO BACK AWAY, BOTH OF US TOLD US TO BACK AWAY AND I TOLD THEM, I EXPLAINED ---

Q YEAH, YEAH, AND ---

A OH, I'M SORRY, OKAY.

Q DON'T TELL ME WHAT THEY SAY, JUST TELL ME

WHAT THEY DID?

A THEY JUST CAME UP AND WE BACKED AWAY AND I GUESS THEY SAW THE BODY IN THERE.

Q HOW MANY LAW ENFORCEMENT OFFICERS WERE ON THE SCENE?

A FROM ONE, FROM THE START?

Q YEAH, YEAH, WHEN, WHEN, WHEN, WHEN, WHEN, WHEN THE LAW ENFORCEMENT OFFICERS ARRIVED AND I THINK YOU SAID THEY APPROACHED, THEY APPROACHED YOU AND, AND THEN, OF COURSE, YOU BACKED UP; IS THAT CORRECT?

A YES, SIR.

Q HOW MANY OFFICERS WERE THERE AT THAT PARTICULAR PERIOD OF TIME?

A I JUST RECALL, I JUST SAW A LAW OFFICER.

Q WAS THERE MORE THAN TWO OR THREE OR FOUR?

A I DON'T RECALL. I JUST SAW A LAW OFFICER TELLING ME TO GET BACK, YOU KNOW. I WAS, WASN'T TRYING TO COUNT HOW MANY IT WAS, I WAS JUST TRYING TO LET THEM KNOW WHAT WAS GOING ON, HE NEED HELP, YOU KNOW.

Q I UNDERSTAND, OF COURSE WAS LT. DAVIS ONE OF THOSE OFFICERS?

A I DON'T RECALL IF HE WAS THE ONE THAT CAME UP OR I JUST, I DON'T RECALL THAT.

Q HOW LONG DID YOU STAY ON THE SCENE?

A I STAYED LONG ENOUGH FOR EMS TO COME,

LEAVE, AND FOR ME TO WRITE MY STATEMENT.

Q ALMOST FINISHED, I PROMISE YOU, DID LAW ENFORCEMENT AT ANY TIME DID A GUN POWDER RESIDUE ON YOUR PALM OR EITHER ON THE BACK OF YOUR HAND?

A NO, SIR.

Q OKAY, AND I'M ONLY ASKING YOU OF YOUR KNOWLEDGE, IF YOU DON'T KNOW YOU TELL ME YOU DON'T KNOW, AT ANY TIME AT THE SCENE DID YOU SEE LAW ENFORCEMENT DID A GUN POWDER RESIDUE ON THE PALM OF JACKIE, OF TRAVIS LANE'S HAND AND TRAVIS LANE'S PALM?

A I DON'T KNOW.

Q OKAY, BUT YOU DIDN'T SEE, SEE THEM DO THAT AT THE SCENE?

A NO, SIR, I DIDN'T SEE THEM DO IT.

Q DID THEY DO A GUN POWDER RESIDUE AT THE SCENE OF ANYBODY ELSE THAT WAS THERE ON THE SCENE THAT YOU SAW?

A I DON'T KNOW.

Q SO YOU DIDN'T SEE THEM DO ANYTHING LIKE THAT?

A I DIDN'T SEE ANYTHING LIKE THAT.

Q OKAY, OKAY, NOW AT THE TIME OF THE SHOOTING, AND YOU GIVE ME YOUR BEST GUESS, APPROXIMATELY HOW MANY PEOPLE WAS OUT, OUT THERE?

A HOW MANY PEOPLE WAS OUT?

Q YEAH, OUT THERE?

A THE WHOLE AREA OR --

Q WELL, WELL ---

A THE AREA WHERE HE WAS SHOT AT?

Q I TELL YOU LET'S CONFINE IT TO THE YARD FIRST, HOW MANY PEOPLE WAS IN THE YARD?

A ABOUT THE SAME AMOUNT OF PEOPLE THAT WAS IN THE YARD WHEN I GOT THERE.

Q ABOUT HOW MANY WAS THAT, JUST GIVE YOUR BEST ESTIMATE, I KNOW YOU DIDN'T COUNT THEM?

A EIGHT, TEN.

Q ANYWHERE FROM EIGHT TO TEN?

A YEAH.

Q OKAY, AND THEN, OF COURSE, THAT'S JUST THE YARD AREA ONLY, YOU INDICATED THERE WAS SOME OTHER PEOPLE ON THE OTHER SIDE OF THE ROAD?

A ACROSS THE ROAD IT WAS A TRAILER WITH PEOPLE STANDING AROUND.

Q I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU?

A PEOPLE STANDING ON THE OUTSIDE OF THEIR HOUSE.

Q ABOUT HOW MANY PEOPLE WERE OVER THERE?

A I HAVE NO IDEA, JUST KNOW THERE WAS SOME PEOPLE OVER THERE, IT WASN'T TWENTY.

Q IT WAS LESS THAN TWENTY?

A YEAH.

Q LESS THAN TEN?

A MAYBE.

Q WAS THERE ANYBODY OUT NEAR THE ROAD OR ANYTHING LIKE THAT, ANY PERSONS OUT NEAR THE ROAD?

A THE ONLY ONE I LEFT AT THE ROAD WAS NICOLE, I MEAN KAREN AND TRAVIS.

Q AND THOSE ARE THE PEOPLE WHO CAME WITH YOURSELF AND THE DRIVER?

A YES, SIR.

MR. BROOKER: I THINK WE'RE JUST ABOUT FINISHED, YOUR HONOR, LET ME JUST CHECK AND SEE.

YOUR HONOR, THIS PARTICULAR STATEMENT WE WOULD MOVE TO ENTER THIS INTO EVIDENCE AND NOT FOR THE TRUTH OF THE STATEMENT'S ALLEGED BUT WE WOULD MOVE IT INTO FOR THE ABSOLUTE REASON I THINK BECAUSE THIS HAS BEEN PROVIDED TO US BY THE STATE AS MR. MCGILL'S STATEMENT. MR. MCGILL HAS TESTIFIED THAT IT IS NOT HIS STATEMENT.

THE COURT: ANY OBJECTIONS?

MR. DEBERRY: YOUR HONOR, MAY WE APPROACH?

THE COURT: SURE.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY AND THE COURT REPORTER.)

THE COURT: WE'LL BE WITH YOU IN A MINUTE. GO

INTO YOUR JURY ROOM, WE'LL BE BACK WITH YOU IN JUST A SECOND AND TRY TO WRAP IT UP.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 5:31 P.M.)

THE COURT: ALL RIGHT?

MR. BROOKER: YOUR HONOR, AGAIN WHAT WE'RE GOING TO DO, YOUR HONOR, IS THAT WE'RE GOING TO MAKE A MOTION AGAIN I THINK FOR THE FIRST TIME BUT, OF COURSE, WE'RE MAKING MANY BECAUSE EVERY TIME WE MAKE THIS MOTION THERE'S ADDITIONAL THINGS WE DISCOVER THAT WE DON'T HAVE THAT, THAT WAS NOT PROVIDED TO US, IS THAT MR. APPLEWHITE TESTIFIED, I THINK ON THAT STATEMENT THAT, THAT HE DID A STATEMENT AND THAT THAT STATEMENT CONTAINED ALL THE THINGS THAT HE TESTIFIED TO REGARDING WHAT TOOK PLACE AT THAT PARTICULAR ---

THE COURT: THIS IS MR. MCGILL NOT MR. APPLEWHITE.

MR. BROOKER: I'M SORRY, I APOLOGIZE, MR. MCGILL.

THE COURT: ALL RIGHT, GOT YOU.

MR. BROOKER: TESTIFIED THAT HE MADE THAT STATEMENT THAT HE GAVE THAT STATEMENT AND THAT THAT STATEMENT WAS TAKEN I THINK RIGHT OUT THERE AT THE SCENE OF THE ACCIDENT, SCENE OF THE INCIDENT HE SAID HAPPENED ---

THE COURT: HE SAID HE GAVE A STATEMENT. HE

DIDN'T SAY HE GAVE THAT STATEMENT.

MR. BROOKER: YEAH, YEAH, HE SAID HE GAVE, HE GAVE ANOTHER STATEMENT ---

THE COURT: A STATEMENT.

MR. BROOKER: THIS IS NOT THE ONE THAT HE GAVE THAT NIGHT.

THE COURT: HE WEREN'T SURE.

MR. BROOKER: BECAUSE HE SAID HE GAVE ONE THAT NIGHT AND HE SAID THE ONE HE GAVE THAT NIGHT, AND I SPECIFICALLY ASKED HIM IS, IS THAT THE ONE THAT YOU GAVE DID IT CONTAIN ALL THIS STUFF THAT YOU TESTIFIED TO AND HE SAID YES ABOUT THE TWO FIGHTS AND THAT SORT OF STUFF. I SHOWED HIM THAT STATEMENT AND SAYS, IS THIS THE STATEMENT, IS THIS STATEMENT CONTAINS THE STUFF THAT YOU WROTE IN YOUR STATEMENT THAT NIGHT AND HE SAID ABSOLUTELY NOT. HE WROTE A DIFFERENT STATEMENT THAT CONTAINED ALL THE STUFF THAT HE TESTIFIED TO THAT PARTICULAR NIGHT AND HE SAID THAT THAT STATEMENT WAS GIVEN THAT NIGHT AND WAS NOT GIVEN THE NEXT DAY AND, OF COURSE, THAT'S WHY WE ASKED HIM ABOUT THE DATE AND TIME. THIS WAS GIVEN 8:42 I THINK THE NEXT, THE NEXT DAY, HE SAID IT WAS GIVEN THAT NIGHT AT THE SCENE OF THE ACCIDENT. HE TESTIFIED THAT HE STAYED AROUND I THINK FOR THE AMBULANCE AND, AND I THINK THE AMBULANCE I THINK SOME OF THE POLICE OFFICERS AND I BELIEVE THAT HE LEFT THE SCENE SOMETIME THAT NIGHT, SO THE STATEMENT THAT HE TESTIFIED

THAT HE GAVE WAS NOT GIVEN, THAT THIS WAS NOT THE STATEMENT THAT HE GAVE.

THE COURT: THAT'S WHAT HE SAYS.

MR. BROOKER: THAT PARTICULAR, THAT'S WHAT HE SAYS WAS NOT GIVEN THAT PARTICULAR DAY.

THE COURT: HE THINKS.

MR. BROOKER: OKAY, AND, OF COURSE, HE TESTIFIED WITH CERTAINTY THAT HE GAVE THAT STATEMENT AND, OF COURSE, IS THAT ---

THE COURT: THAT HE GAVE A STATEMENT, HE'S NOT REALLY SURE WHAT STATEMENT IS THE ONE HE GAVE IF I REMEMBER.

MR. BROOKER: HE SAYS HE GAVE A STATEMENT THAT IT WASN'T THIS ONE, OKAY, AND THAT'S THE POINT WE'RE TRYING TO MAKE. HE SAID THAT, THAT MAYBE HE GAVE A SECOND STATEMENT THE NEXT DAY, HE WASN'T SURE.

THE COURT: WELL HOW IS THAT ADMISSIBLE?

MR. BROOKER: WELL, WELL, WELL WHAT WE'RE GOING TO DO I THINK WE'RE GOING TO PROFFER THIS INTO EVIDENCE I THINK WITH RESPECT TO OUR MOTION IS THAT WE WANT THAT STATEMENT THAT HE GIVE THAT NIGHT AND HE SAID THAT, THAT, THAT HE TALKED WITH LIEUTENANT DAVIS THAT NIGHT AND THAT, AND THAT IF I'M NOT MISTAKEN IS, IS THAT IT WAS LIEUTENANT DAVIS THAT, THAT, THAT PROMPTED HIM TO WRITE THAT STATEMENT WAS PREPARING THAT STATEMENT, IS THAT WE'RE ENTITLED TO

THAT STATEMENT.

THE COURT: IF THERE IS ANOTHER STATEMENT, I MEAN FROM WHAT I GATHER.

MR. BROOKER: WELL, YOUR HONOR, IS THE ONLY WAY THAT YOU CAN SAY THERE IS A STATEMENT IS UNLESS YOU'RE SAYING HE'S LYING ON THE STAND.

THE COURT: THAT'S FOR THEIR, THAT'S THEIR JOB AND I THINK YOU DID A GOOD JOB WITH POINTING EVERYTHING OUT.

MR. BROOKER: AND, AND WE'RE GOING TO MAKE A MOTION AND WE'RE GOING TO MAKE OUR MOTION FOR THE SAME REASON IS, IS THAT THERE IS JUST A PLETHORA OF OMISSIONS IN THIS CASE. NOW AT SOME POINT IN TIME YOU REACHED A CONCLUSION OR YOU SAYS IN A DUE PROCESS I MEAN WE'RE SCRUTINED AND, AND, AND IN MY OPINION ---

THE COURT: HOLD ON ONE SECOND, THAT'S FOR YOU TO ARGUE TO THE JURY. NOW YOU'RE JUST ASSUMING EVERYTHING HE'S SAYING IS THE TRUTH; THAT'S THEIR JOB TO DETERMINE IF HE'S TELLING THE TRUTH OR NOT.

MR. BROOKER: I'M GOING TO GO AHEAD AND MAKE MY, YES, SIR. I'M GOING TO GO AHEAD AND MAKE MY MOTION TO YOU AND, OF COURSE, IF YOU, IF YOU DON'T ACCEPT IT ---

THE COURT: ALL RIGHT.

MR. BROOKER: --- THEN YOU CAN JUST DENY IT BUT I JUST WANT TO PUT IT ON THE RECORD AND BECAUSE YOU MAY

VERY WELL DENY IT BUT I JUST WANT TO PUT IT ON THE RECORD SO IF THIS THING IS APPEALED, NOT THAT I'LL BE THE ONE APPEALING IT BUT IF IT IS APPEALED THEN THE COURT OF APPEALS NEEDS TO BE ABLE TO HAVE THE ENTIRE RECORD SO THEY CAN READ IT AND UNDERSTAND BECAUSE OTHERWISE IF WE DON'T PUT IT ON THE RECORD WE CAN'T ARGUE IT LATER AND SO I'M JUST PROTECTING THE RECORD. BUT THAT, THAT THIS IS JUST ANOTHER EXAMPLE OF A PLETHORA OF DOCUMENTS THAT HAVE NOT BEEN PRODUCED TO US. IT'S JUST ANOTHER EXAMPLE, IT'S ANOTHER EXAMPLE OF THAT AND WE'RE ENTITLED TO IT AND, OF COURSE, IF, IF THIS HAD BEEN THE FIRST TIME, THE FIRST TIME DURING THE COURSE OF ---

MR. DEBERRY: YOUR HONOR, MAY I OBJECT?

THE COURT: GO AHEAD AND LET HIM FINISH AND THEN I'LL LET YOU TALK.

MR. BROOKER: WELL HE CAN'T OBJECT DURING A MOTION. BUT IF THIS HAD BEEN THE FIRST TIME THERE HAD BEEN AN OMISSION THEN, OF COURSE, YOU KNOW, WE OBVIOUSLY BE IN THE POSITION WHERE HE'D SAY WELL OKAY WE UNDERSTAND THAT MISTAKES ARE MADE, THERE'S NO PATTERN HERE, BUT THIS IS MORE THAN, THAN THE FIRST TIME. THERE IS A CLEAR PATTERN HERE AND I WOULD ARGUE TO YOU IS, IS THAT, THAT DUE PROCESS THAT WE'VE PASSED THE LINE OF DUE PROCESS. WE, WE PASSED THAT LINE A LONG TIME AGO.

THE COURT: WHAT ARE YOU SAYING THAT THAT

STATEMENT WAS NOT GIVEN TO YOU, THE ONE THAT YOU HAVE IN YOUR HAND OR THE ONE THAT HE ALLEGEDLY SAYS HE GAVE, WHICH ONE ARE YOU TALKING ABOUT?

MR. BROOKER: NOT THE ONE THAT HE ALLEGEDLY SAID HE GAVE, THE ONE HE SAID HE GAVE.

THE COURT: ARE YOU TALKING ABOUT THE ONE THAT'S IN YOUR HAND?

MR. BROOKER: NO, THE ONE THAT HE GAVE THAT NIGHT BEFORE HE LEFT THE SCENE.

THE COURT: ALL RIGHT.

MR. BROOKER: THE ONE HE GAVE THAT NIGHT BEFORE HE LEFT THE SCENE.

THE COURT: I HAVE NO WAY OF KNOWING IF HE DID GIVE ONE THAT NIGHT.

MR. BROOKER: HE SAID HE GAVE ONE.

THE COURT: IF ONE EVEN EXISTS FOR THE SOLICITOR TO GIVE TO YOU.

MR. BROOKER: HE SAID HE GAVE A WRITTEN STATEMENT THAT NIGHT BEFORE HE LEFT THE SCENE AND, AND, OF COURSE, WE'RE GOING TO MAKE A MOTION AGAIN, RENEW OR MOTION BASED UPON NOW THIS NEW EVIDENCE THAT, THAT WE MAKE A MOTION AGAIN TO DISMISS THE, THE INDICTMENT BASED UPON, AGAIN VIOLATION OF THE RULES OF CRIMINAL PROCEDURE THAT REQUIRES THAT YOU HAVE ALL RULE FIVE DOCUMENTS AND THAT WE HAVE ALL BRADY DISCOVERY; AND, OF COURSE, THE STATEMENT

THAT HE IS TESTIFYING TO SOME OF THE INFORMATION THAT'S CONTAINED IN THAT STATEMENT IS EXCULPATORY BECAUSE OBVIOUSLY IS, IS THAT SOME OF THE STUFF THAT HE IS TESTIFYING TO THAT HE SAID THAT HE PUT IN THAT STATEMENT IS IN CONTRADICTION TO OTHER STUFF THAT WAS TESTIFIED TO. IT'S IN CONTRADICTION TO WHAT MS. JOEMELLER WHITE-DOZIER TESTIFIED TO. IT'S IN CONTRADICTION TO OTHER DOCUMENTS THAT WE WERE GIVEN, NOT THIS PARTICULAR STATEMENT, BUT ALSO IN OTHER LAW ENFORCEMENT DOCUMENTS THAT STATEMENTS THAT AND, OF COURSE, THAT WERE GIVEN TO US PURPORTING THAT MR. MCGILL MADE STATEMENTS THAT HE NOW SAYS THAT HE DID NOT MAKE, OKAY.

THREE MOTIONS AND I'M GETTING READY TO SIT DOWN, YOUR HONOR, CAUSE I KNOW YOU'RE READY FOR ME TO, IS THAT IS A MOTION TO DISMISS THE INDICTMENT AGAIN BASED UPON, YOU KNOW, BASED UPON A VIOLATION OF THOSE RULES PUTS HIM AT A DISADVANTAGE.

IN THE ALTERNATIVE A MOTION FOR A MISTRIAL BASED UPON THE EXACT SAME REASON BECAUSE I THINK THAT WE'VE LEFT THE GATE OF DUE PROCESS AND WE'RE OUT TO PASTURE AND, OF COURSE, THE THIRD MOTION WOULD BE A MOTION FOR A CONTINUANCE AND, OF COURSE, FORCE THEM TO PROVIDE US WITH ALL THIS INFORMATION SO THAT WE CAN PROVIDE A PROPER AND FAIR TRIAL FOR THIS GUY THAT'S IN COMPLIANCE WITH THE DUE PROCESS CLAUSE IN SOUTH CAROLINA AND THE UNITED STATES

CONSTITUTION.

THE COURT: SOLICITOR, YOU MAY RESPOND.

MR. DEBERRY: YOUR HONOR, BRIEFLY I'D JUST LIKE TO REITERATE WHAT I'VE BEEN SAYING THROUGHOUT THESE MOTIONS AND THIS TRIAL HE HAS EVERYTHING THAT WE HAVE. WE'VE MADE SEVERAL ATTEMPTS TO OPEN OUR NOTES FOR HIM. THERE'S NO OTHER STATEMENT WE HAVE FROM JACKIE MCGILL. HE'S RELYING ON THIS MOTION NOW BASED SOLELY ON WHAT A WITNESS IS SAYING FROM THE STAND AND FOR HIM TO, TO RELY ON THAT FOR A MOTION WHEN HE'S NOT GOING TO RELY ON EVERY OTHER WITNESS THAT WE HAVE FOR TELLING THE TRUTH IS, IS, IS NOT RELIABLE.

THE COURT: AND IT'S PRETTY OBVIOUS THAT CREDIBILITY AND BELIEVABILITY OF THIS WITNESS IS DEFINITELY AT AN ISSUE AND YOU'VE DONE A GOOD JOB BRINGING THAT OUT FOR THE JURY BUT THAT'S A QUESTION FOR THE JURY. I'M GOING TO DENY ALL THREE MOTIONS.

MR. DEBERRY: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT, GO AHEAD AND BRING OUT THE JURY.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 5:40 P.M.)

THE COURT: ALL RIGHT, MR. BROOKER, YOU MAY CONTINUE IF YOU NEED TO OR HAVE YOU COMPLETED YOUR CROSS?

MR. BROOKER: GIVE ME JUST A SECOND, YOUR HONOR ---

THE COURT: SURE.

MR. BROOKER: --- TO MAKE SURE THERE'S NOTHING THAT WE DIDN'T MISS. I HAVE NO FURTHER QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: ANY REDIRECT?

MR. DEBERRY: NONE FROM THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK YOU.

MR. BROOKER: YOUR HONOR?

THE COURT: YES?

MR. BROOKER: AT LEAST BECAUSE THERE HAS BEEN AT LEAST SOME ISSUES ---

THE COURT: GO AHEAD.

MR. BROOKER: AT LEAST BECAUSE THERE HAVE BEEN SOME ISSUES THAT I THINK THAT'S BEEN RAISED OUTSIDE OF THE PRESENCE OF THE JURY I'M GOING TO ASK THE COURT NOT TO RELEASE THIS WITNESS AT THIS PARTICULAR PERIOD OF TIME BECAUSE THERE MAY BE A REASON TO CALL HIM IN REBUTTAL.

THE COURT: ALL RIGHT, HE'LL BE BACK TOMORROW; IS THAT CORRECT, SOLICITOR?

MR. DEBERRY: YOUR HONOR, IF HE DON'T RELEASE HIM FROM HIS SUBPOENA.

THE COURT: I'M NOT GOING TO RELEASE HIM FROM THE SUBPOENA. HE'S BEEN HERE EVERY DAY, HE'LL BE BACK TOMORROW.

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ALL RIGHT, MEMBERS OF THE JURY, WE'RE GOING TO CONCLUDE IT FOR TODAY. BE BACK AT 10:00 TOMORROW, AGAIN DO NOT TONIGHT, DO NOT INVESTIGATE THIS MATTER, DON'T CHECK INTO IT, DON'T CALL ANYBODY AND DON'T TALK ABOUT, ABOUT IT WITH ANYBODY. THANK YOU AND WE'LL SEE YOU 10 IN THE MORNING AND IF YOU'RE RUNNING LATE WE'LL WAIT ON YOU, DON'T GET A TICKET.

(WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING AT 5:45 P.M.)

THE COURT: ANYTHING FURTHER BEFORE WE ADJOURN?

MR. DEBERRY: NOTHING FROM THE STATE.

THE COURT: ALL RIGHT, MR. BROOKER, ANYTHING FURTHER BEFORE WE ADJOURN?

MR. BROOKER: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU, WE'LL BE ADJOURNED UNTIL TOMORROW AT 10.

(WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING AND RESUMES ON AUGUST 26, 2010 AT 10:00 A.M.)

THE COURT: ANYTHING BEFORE WE BEGIN, MR. BROOKER?

MR. BROOKER: YOUR HONOR, WE'D LIKE TO PUT A MOTION, AT LEAST A COUPLE OF MOTIONS ON THE RECORD AND, OF COURSE, THE TWO MOTIONS THAT WE WOULD PUT ON A MOTION, PUT ON THE RECORD IS THAT FIRST IS A MOTION TO DISMISS THIS ACTION AND DISMISS THE INDICTMENTS AND, OF COURSE, THE

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SECOND ONE OBVIOUSLY, AND I'M ASSUMING THAT YOU, WE CAN ARGUE THEM TOGETHER BECAUSE THE OF GROUNDS, THE BASIS FOR THESE MOTIONS AND ARGUMENTS AND THE BASIS FOR THESE MOTIONS ARE ACTUALLY THE SAME; AND, OF COURSE, THAT'S BASED UPON OBVIOUSLY IS THAT WHAT WE THINK IS A GROSS VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS SPECIFICALLY DUE PROCESS CLAUSE, YOU KNOW, THAT MANDATES FAIRNESS IN ALL TRIALS.

BASICALLY THAT'S IT AND OBVIOUSLY I THINK YESTERDAY DURING COURT PROCEEDINGS I THINK THERE WAS AN ISSUE WITH RESPECT TO WHETHER OR NOT THERE'S MORE EVIDENCE THAT, THAT HAVE NOT BEEN TURNED OVER TO US AND, OF COURSE, AND I THINK THE PROSECUTOR'S OFFICE TURNED OVER TO US WHAT THEY DID HAVE AND, OF COURSE, WE MADE A REQUEST THAT, THAT, THAT I THINK LIEUTENANT BLUE HAD BEEN IDENTIFIED AT LEAST TO OUR KNOWLEDGE AND BELIEVE THAT THE INVESTIGATOR IN THIS CASE WITH THE MARION COUNTY P.D. WHO CONDUCTED THE INVESTIGATION IN THIS PARTICULAR INCIDENT THAT WE REQUESTED THAT, THAT HIS FILE BE BROUGHT UP AND REVIEWED TO DETERMINE WHETHER OR NOT THERE WAS ANYTHING THAT WAS IN THAT FILE OR WAS IN MARION P.D.'S FILE THAT HAD NOT BEEN TURNED OVER TO THE PROSECUTOR'S OFFICE; AND, OF COURSE, YESTERDAY AFTER THE CONCLUSION OF THE COURT WE HAD AN OPPORTUNITY TO DO THAT AND THEN, OF COURSE, WHAT WE DISCOVERED IS, IS THAT A NUMBER OF DOCUMENTS AND, OF COURSE, I WON'T READ THEM, I THINK WE'VE DISCUSSED THEM I THINK IN CHAMBERS ---

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THE COURT: GO AHEAD AND PUT IT ON THE RECORD.

MR. BROOKER: A NUMBER OF DOCUMENTS THAT WE THINK THAT WAS ABSOLUTELY REQUIRED TO BE PRODUCED TO US PURSUANT TO RULE 5 REQUEST FOR DISCLOSURE AND/OR BRADY BECAUSE OBVIOUSLY SOME OF THIS DOCUMENTS ARE EXTREMELY IMPORTANT. I THINK SOME OF THEM WERE EXCULPATORY AND WOULD SUGGEST THAT MY CLIENT COULD NOT HAVE BEEN THE CULPRIT WHO ACTUALLY CAUSED THE DEATH, THE DEATH OF THE VICTIM AND, OF COURSE, THAT WAS, THAT DOCUMENT IS A VOLUNTARY STATEMENT THAT WAS GIVEN TO THE DEPARTMENT ON AUGUST 8TH OF 2007, NEARLY THREE YEARS AGO, BY AN ASHLEY, AND I THINK IT MAY BE SALT, S-A-L-T.

ANOTHER ONE IS A HANDWRITTEN NOTE THAT'S DATED OCTOBER 50 OF 2007 SIGNED AT THE BOTTOM BY LIEUTENANT BLUE ALSO SUGGESTS INFORMATION THAT THERE MAY HAVE BEEN A SECOND PERSON INVOLVED IN THAT SHOOTING AND THAT THAT INFORMATION HAD CAME FROM A NUMBER OF INDIVIDUALS WHICH WOULD HAVE BEEN EXTREMELY IMPORTANT TO US BECAUSE OBVIOUSLY WE WOULD HAVE HAD THE OPPORTUNITY TO, TO TAKE THAT INFORMATION, RESEARCH THAT INFORMATION, TALK TO THE INDIVIDUALS WHO ACTUALLY SUGGESTED THAT THERE MAY HAVE BEEN SOMEONE ELSE WHO MAY HAVE BEEN THE CAUSE OF THE DEATH IN THIS PARTICULAR CASE AND THAT WOULD HAVE BEEN EXTREMELY IMPORTANT TO, TO MR. REAVES DEFENSE AND OBVIOUSLY WE DON'T HAVE THE OPPORTUNITY TO DO THAT AND THAT IS NO WAY, THERE IS NO WAY IN THE WORLD

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THAT THAT CAN BE CURED AT LEAST AT THIS PARTICULAR PERIOD OF TIME BECAUSE THAT WOULD REQUIRE US TO GO BACK AND ACTUALLY INTERVIEW WITNESSES SOME OF WHICH MIGHT BE KNOWN, SOME OF WHICH MIGHT NOT BE KNOWN. ALL THEIR NAMES WERE NOT IDENTIFIED AND SO THAT IS SOMETHING THAT CANNOT BE CURED TODAY BY ANY MEASURE.

THE SECOND WOULD HAVE BEEN A LIKE A MEMO THAT'S DATED MAY 14 OF 2007 FROM IT SAYS CORPORAL G.P. COOK AND THAT WOULD HAVE BEEN A MEMO THAT PERTAINED TO, THAT PERTAINED TO THE CHAIN OF CUSTODY. I THINK OFFICER COOK, I THINK, TESTIFIED AS TO, AS TO A CHAIN OF CUSTODY THAT IS DIFFERENT THAN WHAT'S CONTAINED ON THIS MEMO AND OBVIOUSLY IF WE HAD HAD THAT MEMO IN ADVANCE WE'D HAVE AN OPPORTUNITY TO PREPARE FOR THAT. OFFICER COOK HAS TESTIFIED AND OBVIOUSLY WE CANNOT HAVE THE OPPORTUNITY TO IMPEACH HIM AND, OF COURSE, ANOTHER ONE IS AN EVIDENTIARY TRANSFER OF EVIDENCE DATED MAY 14 OF 2007 FROM DR. JEFFREY, LOOKS LIKE IT'S SPRINGER, M.D. AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA TO GARY E. COOK WHICH WAS NOT PRODUCED TO US.

THE NEXT ITEM IS, IS AN INCIDENT REPORT FROM LIEUTENANT WALTER DAVIS, SR., DATED 5-13 OF 2007 AND, OF COURSE, THIS IS AN INCIDENT REPORT THAT PERTAINS TO I'M ASSUMING LIEUTENANT WALKER DAVIS, SR.'S, INVESTIGATION, HIS PART OF THE INVESTIGATION AT THE SCENE ON THAT PARTICULAR DATE AND WAS NOT PRODUCED TO US, AND WHAT MAKES THIS

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IMPORTANT IS THAT WE WERE PRODUCED, WE WERE PRODUCED A, A, AN INCIDENT REPORT FROM LIEUTENANT DAVIS THAT WAS A HANDWRITTEN REPORT AND, OF COURSE, IN THE HANDWRITTEN REPORT THERE WAS INFORMATION THAT'S CONTAINED IN THE TYPEWRITTEN REPORT THAT IS CONTRARY TO WHAT WAS CONTAINED IN THE HANDWRITTEN REPORT THAT WE RECEIVED AND SHOULD HAVE HAD ACCESS TO THAT WHICH THAT IS DISCOVERABLE UNDER RULE FIVE AND BRADY.

THE SECOND DOCUMENT WOULD BE LOOKS LIKE A MEMO DATED 9-17-2007 SIGNED BY LIEUTENANT FARMER BLUE AND, OF COURSE, THIS DOCUMENT IS A DOCUMENT THAT DEALS WITH CONNOR TYLER WHO WAS THE INDIVIDUAL WHO TESTIFIED IN THIS PARTICULAR CASE EARLIER AND WHAT'S IMPORTANT BY THIS INVESTIGATORY NOTE IS, IS THAT THE INFORMATION THAT'S CONTAINED IN THIS INVESTIGATORY NOTE IS ACTUALLY INFORMATION THAT IS, THAT IS CONTRARY TO WHAT MR. CONNOR I THINK IF PROFFERED TO THE COURT WHEN HE TESTIFIED, I THINK, YESTERDAY OBVIOUSLY IF WE HAD HAD THIS DOCUMENT WE'D HAD THE OPPORTUNITY TO IMPEACH HIM, IMPEACH HIS CREDIBILITY BECAUSE WHAT THIS DOCUMENT SUGGESTS IS, IS, IS THAT WHAT HE TESTIFIED TO OR WHAT BEEN SUGGESTED IS THAT WHAT HE TESTIFIED TO YESTERDAY AT LEAST PART OF IT IS CONTRADICTED BY THIS DOCUMENT AND OBVIOUSLY IT WOULD HAVE BEEN BENEFICIAL TO US TO IMPEACH HIS CREDIBILITY.

THE OTHER DOCUMENT IS REALLY NOT, I DON'T THINK

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THAT REALLY, ALTHOUGH IS DISCOVERABLE UNDER RULE 5 BUT, YOU KNOW, DOESN'T CRIPPLE US IN ANY WAY, AND THAT WOULD HAVE JUST BEEN A LOOKS LIKE A, LOOKS LIKE SIX PAGES, FAX PAGES FROM PHILADELPHIA AND I THINK THESE PAGES JUST SIMPLY PERTAINED TO HIS TRANSFER FROM PHILADELPHIA TO SOUTH CAROLINA WHEN HE WAS APPREHENDED AND OBVIOUSLY IT IS PRODUCIBLE BUT, YOU KNOW, OBVIOUSLY THAT IS NOT SOMETHING I DON'T BELIEVE AT LEAST THAT CRIPPLES US TODAY.

OTHER DOCUMENTS THAT WERE NOT PRODUCED IS IN EVIDENCE WHAT'S, WHAT'S IDENTIFIED IS EVIDENCE PROCESSING LETTER. IT'S ON SLED LETTERHEAD FROM PATTY RUFF AND IT IS DATED SEPTEMBER 25 OF 2007 THAT PERTAINS TO THE RETURN OF CERTAIN EVIDENCE THAT WAS SUBMITTED TO SLED FOR DNA TESTING THAT WAS THEN LATER RETURNED, AND THEN, OF COURSE, THERE'S A, THERE'S A LABORATORY EVIDENCE RELEASE FORM SIGNED BY NIKKI PERRY WITH LAB CASE NUMBER L08-02318 AND THERE IS A SECOND PAGE TO THAT REPORT.

THE NEXT PAGE LOOKS LIKE A FORENSIC, FORENSIC SERVICES REQUEST FORM FROM SLED AND THAT LOOKS LIKE THAT WAS SIGNED BY LT. J.C. HUFFMAN; IT'S A TWO PAGE DOCUMENT.

LABORATORY EVIDENCE RELEASE FORMS PAGES ONE THROUGH FOUR SIGNED BY LOOKS LIKE, I CAN'T MAKE OUT THE NAME, LOOKS LIKE, I SEE, SELENA KINARD, ON A SLED FORM AND, OF COURSE, IT'S DATED AUGUST 15 OF 2007 LAB CASE NUMBER L00-12183.

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LAB RELEASE, THE NEXT DOCUMENT IS A LAB EVIDENCE RELEASE FORM SIGNED BY NANCY PERRY DATED 5-12-2008.

THE SECOND ONE, THE NEXT DOCUMENT LOOKS LIKE IS A THREE PAGE CAB REPORT DATED 5-16-2007 AND IT'S IDENTIFIED AT THE TOP AS MARION COUNTY SOUTH CAROLINA CAB INCIDENT DETAIL THREE PAGES LONG.

THESE ARE THE DOCUMENTS THAT, THAT WE DISCOVERED YESTERDAY AT THE CLOSE OF COURT AND THESE DOCUMENTS I THINK BECAUSE THEY WERE NOT PRODUCED TO US I THINK WARRANTS A DISMISSABLE OF THIS CASE FOR THE VIOLATIONS THAT HAVE TAKEN PLACE, TAKEN PLACE IN THE PROSECUTION OF THIS CASE OR IN THE ALTERNATIVE IT DEFINITELY WARRANTS A GRANT OF MISTRIAL BECAUSE OBVIOUSLY THERE IS A PLETHORA OF EVIDENCE THAT WOULD HAVE BEEN EXTREMELY IMPORTANT TO HIM AND THIS EVIDENCE WAS MOSTLY A LOT OF THIS WAS OBTAINED BACK IN 2007. THERE'S A PLETHORA OF EVIDENCE THAT SUGGESTED THAT SOMEONE ELSE MAY HAVE BEEN INVOLVED IN THE SHOOTING AND ANOTHER ONE THAT SUGGESTS THAT SOMEONE ELSE MAY HAVE BEEN THE CAUSE OF THE DEATH OF MR. APPLEWHITE AND THAT WOULD BE EXTREMELY IMPORTANT TO US THAT WE COULD FOLLOW UP, FOLLOW UP ON, INTERVIEW OTHER PERSONS, USE THAT INFORMATION IN PREPARING FOR THE DEFENSE AND, OF COURSE, AT LEAST THE IDENTIFY OF ONE OF THE PERSONS THAT WAS SUGGESTED, I WON'T CALL THAT NAME IN COURT, THAT, THAT WAS SUGGESTED WAS ACTUALLY A, A, A, A CLIENT OF MINE AT THE TIME AND

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OBVIOUSLY WOULD HAVE BEEN IMPORTANT FOR AT LEST ME TO KNOW BECAUSE THEN WE WOULD THEN NEED TO GO THROUGH THE PROCESS OF MAKING A DETERMINATION AS TO WHETHER OR NOT WE HAVE A CONFLICT OF INTEREST BUT THAT NAME WAS NOT DISCLOSED TO ME UNTIL YESTERDAY WHEN WE RECEIVED THOSE DOCUMENTS. FOR THESE REASONS WE'RE REQUESTING A DISMISSAL OF THIS CASE OR IN THE ALTERNATIVE WE'RE REQUESTING A MISTRIAL.

THE COURT: SOLICITOR, ANY RESPONSE?

MR. DEBERRY: YOUR HONOR, IN RESPONSE I'D JUST LIKE TO SAY THAT ---

MR. BROOKER: YOUR HONOR, AND I THINK ONE OF THE THINGS I NEGLECTED TO, TO MENTION IS, IS THAT OBVIOUSLY WE'RE GOING TO BE MAKING A COPY OF THIS BUT WE WOULD MOVE TO AT LEAST ENTER THESE INTO THE RECORDS FOR IDENTIFICATION PURPOSES AT LEAST ---

THE COURT: COURT'S EXHIBITS.

MR. BROOKER: --- COURT'S EXHIBITS, AND I SHOULDN'T SAY ENTER INTO THE RECORD BUT MAKE THESE EXHIBITS TO THIS MOTION FOR PURPOSES OF IDENTIFICATION. I THINK WE'RE GOING TO MAKE COPIES OF IT.

MR. JEPERTINGER: YOUR HONOR, IF YOU WOULD LIKE WE WILL MAKE COPIES FOR BOTH THE DEFENSE AND THE STATE AND INTRODUCE IT AS AN EXHIBIT.

MR. DEBERRY: YOUR HONOR, BRIEFLY IN RESPONSE. I'D JUST LIKE TO SAY THAT AS A PART OF YOUR COURT ORDER

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YESTERDAY DURING THE TRIAL LAW ENFORCEMENT DID PRODUCE EVERYTHING THEY HAD. MR. BROOKER AND I WENT OVER IT AFTER TRIAL YESTERDAY. IT'S THE FIRST TIME EITHER HE OR I HAD SEEN THIS INFORMATION. I DO UNDERSTAND THAT IT IS CRITICAL FOR HIS, FOR HIS CASE. WE HAD NO IDEA IT WAS IN EXISTENCE; WE TRIED OUR CASE ACCORDINGLY. WE UNDERSTAND THAT A MISTRIAL IS APPROPRIATE. WE ASK THAT THE INDICTMENT NOT BE DISMISSED.

THE COURT: ALL RIGHT, THANK YOU VERY MUCH. I AM NOT GOING TO DISMISS THE INDICTMENT BUT I AM GOING TO GRANT A MISTRIAL AND HOPEFULLY BETWEEN NOW AND THE NEXT TIME WE TRY THE CASE ALL THE INFORMATION WILL BE PROPERLY LISTED AND DOCUMENTED AND TURNED OVER TO THE DEFENSE COUNSEL IN TIME FOR HIM TO STUDY IT AND USE IT AND PREPARE FOR TRIAL. IT'S VERY IMPORTANT TO ME TO MAKE SURE THAT NOT ONLY THE STATE GETS A FAIR TRIAL BUT ALSO THE DEFENDANT GETS A FAIR TRIAL AND I THINK THAT WOULD BE THE APPROPRIATE THING TO DO AND I WOULD ASK THAT YA'LL DO THAT AND IF YOU HAVE ANY TROUBLE ALONG THE WAY JUST LET ME KNOW AND I'LL TRY TO HELP YOU OUT IN ANY WAY I CAN, ALL RIGHT.

MR. DEBERRY: THANK YOU, YOUR HONOR.

MR. BROOKER: THANK YOU, YOUR HONOR, AND, OF COURSE, YOUR HONOR, WHETHER OR NOT THIS IS APPROPRIATE TIME BUT AT SOME POINT IN TIME, YOUR HONOR, WE'D LIKE AT LEAST TO ADDRESS THE ISSUE, ISSUE OF BAIL FOR HIM. HE'S BEEN IN

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JAIL FOR OVER THREE YEARS WAITING FOR THIS TRIAL. TODAY WAS HIS DAY IN TRIAL, THIS WEEK WAS HIS DAY IN TRIAL AND OBVIOUSLY THIS TRIAL HAS BEEN, BEEN DECLARED A MISTRIAL AND OBVIOUSLY, AND I DON'T THINK ANYONE CAN ARGUE THAT A MISTRIAL HAS BEEN GRANTED IN THIS CASE AND FOR ANY REASON THAT WAS HIS FAULT. I DON'T KNOW HOW LONG IT'S GOING TO TAKE TO NOW PREPARE THIS CASE AGAIN BUT THREE AND A HALF YEARS IS AN AWFULLY LONG TIME TO SIT IN JAIL WAITING FOR, WAITING FOR TRIAL THAT NOW IS GOING TO BE CONTINUED AGAIN FOR I DON'T KNOW HOW LONG.

THE COURT: WHEN CAN YOU TRY IT AGAIN?

MR. JEPERTINGER: NOVEMBER THE 8TH.

MR. DEBERRY: YOUR HONOR, WE WOULD CERTAINLY WELCOME YOU TO SET A DATE CERTAIN. THE EVIDENCE I THINK, I MEAN WE'LL TRIPLE CHECK BUT HE SHOULD HAVE IT NOW. WE CAN BE READY AT THAT TIME, I THINK HE HAS THE FACTS THAT THE STATE PRODUCED IN THIS CASE OR THE EVIDENCE OF THIS TRIAL. THERE'S AN EYEWITNESS TESTIMONY THAT HE PULLED THE TRIGGER. I THINK ---

THE COURT: I TELL YOU WHAT LET'S DO I'M GOING TO LEAVE HIS STATUS JUST LIKE IT IS BUT LET'S GO AHEAD AND SET THIS TRIAL FOR THE DATE CERTAIN FIRST TRIAL FOR THE WEEK OF NOVEMBER 8TH. I'M FAMILIAR WITH IT, I'M ASSUMING I'M GOING TO BE HERE THAT WEEK. I HOPE TO BE ABLE TO EXPEDITE THINGS AND THAT'S, OF COURSE, TAKING INTO ACCOUNT

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THAT YOU'VE GOTTEN EVERYTHING YOU NEED AND YOU'VE HAD TIME TO STUDY IT AND PREPARE.

MR. BROOKER: PREPARE BECAUSE OBVIOUSLY, YOUR HONOR, IS THE ISSUE IS, IS THAT WHETHER OR NOT SOME OF THE PEOPLE IDENTIFIED BACK IN 2007 IS THAT NOW THESE PEOPLE ARE GOING TO HAVE TO BE, HAVE TO BE ATTEMPTED TO LOCATE, ATTEMPT TO LOCATE SOME OF THESE PEOPLE WHICH OBVIOUSLY WOULD HAVE BEEN EASIER IF IT HAD BEEN TURNED OVER BACK IN 2007 WHEN THIS THING TOOK PLACE.

THE COURT: IF YOU HAVE ANY TROUBLE LET ME KNOW.

MR. BROOKER: SO THAT SHOULD BE KEPT IN MIND BY AT LEAST THE TRIAL DATE.

(WHEREUPON, COURT'S EXHIBIT NUMBER 6 MARKED.)

THE COURT: LET'S GO AHEAD AND BRING OUT THE JURY.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 10:58 A.M.)

THE COURT: EVERYBODY CAME OUT OF THE JURY ROOM WITH SMILES ON THEIR FACE, WHAT WERE YA'LL TALKING ABOUT? I'VE OFTEN WONDERED, I TELL JURORS GO BACK THERE YOU CAN'T TALK ABOUT THE CASE AND YOU DON'T KNOW EACH OTHER WHAT DO YOU TALK ABOUT.

I JUST WANT TO LET YA'LL KNOW THAT WE'VE HAD A MISTRIAL DUE TO SOME TECHNICALITIES WITH THE LAW. WE'RE GOING TO HAVE TO COME BACK ANOTHER DAY AND TRY THIS CASE

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ANOTHER DAY WITH ANOTHER JURY, SO I WANT YOU TO KNOW THAT YOUR JOB IS CONCLUDED. YOU'VE DONE EVERYTHING YOU'RE SUPPOSED TO DO AND YOU HAVE DONE A GOOD JOB AND I APPRECIATE EVERYBODY BEING HERE ON TIME AND WORKING WITH US.

BY BEING HERE THIS WEEK AND SERVING THIS WEEK YOU HAVE EARNED A THREE YEAR EXEMPTION FROM FURTHER JURY SERVICE IN THIS COURT SHOULD YOU BE CALLED UP HERE AGAIN BUT YOU ARE HEREBY DISMISSED FOR THE WEEK AND YOU ARE DONE AND YOU HAVE COMPLETED YOUR JOB AND I THANK YOU AND IF ANY OF YOU HAVE ANY QUESTIONS I'LL BE GLAD TO TALK TO YOU IF YOU'D LIKE TO COME UP AND SPEAK TO ME.

MADAM CLERK: IF ANYBODY NEEDS AN EXCUSE FOR YOUR WORK IF YOU'LL JUST GO NEXT DOOR TO THE CLERK'S OFFICE AND SOMEONE WILL BE GLAD TO GIVE IT TO YOU.

(WHEREUPON, THE JURY WAS EXCUSED AT 11:00 A.M.)

END OF REQUESTED TRANSCRIPT- - - -

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR MARION, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

May 12, 2011

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

SHAWN REAVES,)

DEFENDANT.)

TRANSCRIPT OF RECORD
10-GS-33-375
November 8, 2010
Marion, South Carolina

BEFORE:

THE HONORABLE WILLIAM SEALS, JUDGE;
AND JURY

APPEARANCES:

E. L. CLEMENTS, III, ESQ., Solicitor
STEVEN S. DEBERRY, ESQ.
FITZLEE MCEACHIN, ESQ.
Assistant Solicitors

THURMOND BROOKER, ESQ.
Attorney for defendant

FRANCES BAKIS-RAY, RPR
Circuit court reporter

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1	Photo lineup-remarked (re-marked as Deft. 14)	46
2	Photo lineup/identification form	46
3	Photo lineup	46
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5	Photo of gun	83
6	Photo of gun	83
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17	SLED report/trace evidence	83/229
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1	Crime scene log sheet	126/127
2	Photo of cell phone	192/192
3	Photo of durag	192/192
4	Photo of blue tooth	192/192
5	Photo of hat	192/192
6	Photo of slippers	192/192
7	Photo of chain	192/192
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9	Photo of credit card	192/192
10	Photo of cell phone	192/192
11	Photo of cell phone	192/192
12	Photo of chain	192/192

13	Photo lineup	322/336

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No.	Description	I.D./EVD.
14	Photo lineup	337/337
15	Diagram showing lands and grooves	416/416
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17	Photo lineup form	529/529
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THE COURT: Members of the jury panel, at this time we have to select a jury for a particular case, and I'm gonna have the solicitor to call that case.

Mr. Deberry, if you'd call your case.

MR. DEBERRY: Thank you, Your Honor. We call case number 2010-GS-33-0375, the State of South Carolina versus Shawn Reaves, a two count indictment, count number one being for murder, count number two being for assault and battery with intent to kill.

THE COURT: All right, thank you very much. Members of the jury panel, the State of South Carolina has charged a Shawn Reaves with murder and assault and battery with intent to kill, which is an incident that happened on or about May 13th, 2007. In this regard, have any of you seen, heard, read, or know anything about this case or have any knowledge about this case from any source whatsoever? If so, please stand.

Ma'am, if you would come forward please.

(WHEREUPON, potential juror approached the Bench for an on-the-record discussion.)

THE COURT: And your name?

THE POTENTIAL JUROR: Melissa Flowers.

THE COURT: And your number?

THE POTENTIAL JUROR: 53.

THE COURT: All right. And how do you know

something about this case?

THE POTENTIAL JUROR: I think one of my cousins will testify.

THE COURT: All right. What's his name?

THE POTENTIAL JUROR: Her name is Nicole.

THE COURT: Nicole what?

THE POTENTIAL JUROR: I don't remember her last name 'cause she got married recently.

THE COURT: Has she talked to you about the case?

THE POTENTIAL JUROR: No, I just -- my mother told me that she's supposed to be testifying in a trial coming up so I wasn't sure if it's this one or not.

THE COURT: Do we have a Nicole?

MR. DEBERRY: It doesn't ring a bell.

THE POTENTIAL JUROR: I just want to make sure.

THE COURT: I tell you what, out of abundance of caution just excuse her. I would hate for this trial to get started and you know something about it and have to do it again. Can you tell me anymore? Would it be a Vickie Perry?

THE POTENTIAL JUROR: No.

(Mr. Deberry and Mr. Brooker confer.)

THE COURT: When did you talk to your cousin?

THE POTENTIAL JUROR: Her mother told me. She's my aunt.