

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

John C. Few, Circuit Court Judge

Case No. 00-CP-32-3470

GARY DUBOSE TERRY Petitioner,

v.

STATE OF SOUTH CAROLINA Respondent.

APPENDIX
VOLUME III OF VII

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INDEX

Record on Appeal	1
Final Brief of Appellant	2216
Final Brief of Respondent	2247
Final Reply Brief of Appellant	2304
Opinion of South Carolina Supreme Court	2318
Petition for Rehearing	2328
Order Denying Rehearing	2333
U.S. Petition for Writ of Certiorari	2335
Brief in Opposition	2411
Denial of Writ of Certiorari	2443
Application for Post-Conviction Relief	2444
Return and Motion to Dismiss	2457
Applicant's Final Amendments to Application for Post-Conviction Relief	2481
Transcript of Evidentiary Hearing July 10-12, 2006	2483
Applicant's Post-Hearing Memorandum of Law	2804
Respondent's Proposed Order of Dismissal	2875
Applicant's Objections to Respondent's Proposed Order of Dismissal	2989
Order of Dismissal	3014
Applicant's Motion for Reconsideration in Re: Final Order of Dismissal	3126
Order Denying Motion For New Trial	3127
Order Appointing Counsel	3129

STATE OF SOUTH CAROLINA

1000

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY DUBOSE TERRY,

APPELLANT.

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1 IN FURTHER DETAIL, SIMPLY LET US KNOW AND WE'LL BE GLAD TO
2 DO THAT.

3 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
4 TALKING ABOUT TONIGHT, WE'RE GOING TO SPEAK OF THE WORD
5 PENALTY, BUT THE MERE FACT THAT THAT WORD IS EVEN MENTIONED
6 BY ANY OF US DOES NOT IN ANY WAY INDICATE ANYTHING ABOUT
7 THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
8 INNOCENT. DO YOU UNDERSTAND THAT?

9 A YES.

10 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
11 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
12 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
13 JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT
14 LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

15 A YES, I COULD.

16 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
17 EVIDENCE PRESENTED TO YOU HERE IN THIS COURTROOM?

18 A YES.

19 Q NOW, IN A CRIMINAL CASE, THE STATE HAS THE BURDEN OF
20 PROVING A DEFENDANT'S GUILT AND THE BURDEN OF PROOF THAT
21 THE STATE MUST MEET IS TO PROVE THE ELEMENTS OF EACH AND
22 EVERY CRIME WITH WHICH THE DEFENDANT IS CHARGED BEYOND A
23 REASONABLE DOUBT. A DEFENDANT HAS NO BURDEN TO PROVE
24 HIMSELF INNOCENT. DO YOU UNDERSTAND THAT?

25 A YES.

1 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
2 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
3 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
4 GUILTY?

5 A YES.

6 Q NOW, AS YOU UNDERSTAND FROM YESTERDAY MORNING, I TOLD
7 YOU AND YOUR FELLOW JURORS THAT THIS IS A CASE IN WHICH THE
8 STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND AS A
9 RESULT THIS IS WHAT WE CALL A BIFURCATED TRIAL; MEANING
10 THAT IT'S DIVIDED INTO TWO PARTS. THE GUILT PHASE; THE
11 SENTENCING PHASE.

12 NOW, IF YOU WERE A JUROR IN SUCH A CASE AND IF
13 THE JURY FOUND THE DEFENDANT NOT GUILTY OF MURDER IN THE
14 GUILT PHASE, DO YOU UNDERSTAND THAT THERE WOULD BE NO NEED
15 TO HAVE THE SECOND OR SENTENCING PHASE OF THE TRIAL?

16 A YES.

17 Q HOWEVER, IF YOU WERE A JUROR IN SUCH CASE AND IF THE
18 JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
19 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING PHASE
20 OF THE TRIAL?

21 A YES.

22 Q NOW, IN THAT PHASE OF THE TRIAL, MR. BANKS, YOU WOULD
23 BE PRESENTED WITH EVIDENCE IN THE FORM OF AGGRAVATING
24 CIRCUMSTANCE AS WELL AS MITIGATING CIRCUMSTANCES.

25 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,

1 INCIDENTS, DETAILS, OCCURRENCES WHICH THE GENERAL ASSEMBLY
2 OF THE STATE OF SOUTH CAROLINA HAS DECLARED BY LAW WOULD
3 MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF MURDER.

4 IN OTHER WORDS, WHEN THE MURDER IS ACCOMPANIED BY
5 AN AGGRAVATING CIRCUMSTANCE, THAT MURDER INCREASE -- IS
6 INCREASED IN ENORMITY OR ADDS TO THE INJURY OF THAT CRIME.

7 FOR EXAMPLE, I'M SPEAKING OF A MURDER THAT IS
8 COMMITTED IN ASSOCIATION WITH THE CRIME OF CRIMINAL SEXUAL
9 CONDUCT, BURGLARY OR THINGS LIKE THAT. DO YOU UNDERSTAND?

10 A YES.

11 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
12 INCIDENTS, FACTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
13 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW REDUCES THE
14 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED BY
15 THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL
16 CULPABILITY OR RESPONSIBILITY.

17 AND EXAMPLES OF THAT WOULD BE THAT THE MURDER WAS
18 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF
19 MENTAL OR EMOTIONAL DISTURBANCE; THAT THE CAPACITY OF THE
20 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
21 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WERE
22 SUBSTANTIALLY IMPAIRED AND THE MENTALITY OF THE DEFENDANT
23 AT THE TIME OF THE CRIME. DO YOU UNDERSTAND THOSE EXAMPLES
24 OF MITIGATING CIRCUMSTANCES?

25 A YES.

1 Q NOW, LET'S CONSIDER IF YOU WERE A JUROR IN THAT
2 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
3 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE
4 CONSIDER THE AGGRAVATING AND MITIGATING CIRCUMSTANCES AND
5 THE LAW THAT I WOULD INSTRUCT YOU AT THE CONCLUSION OF THE
6 CASE, RETURN A SENTENCE OF LIFE IN PRISON?

7 A YES.

8 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
9 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
10 THAT CASE INCLUDING THE CONSIDERATION OF AGGRAVATING AND
11 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
12 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
13 DEATH?

14 A YES.

15 Q NOW, MR. BANKS, IF YOU ARE CHOSEN FOR SERVICE ON THIS
16 JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD BE
17 HOUSED IN A MOTEL FOR THE ENTIRE LENGTH OF THE TRIAL. I
18 DON'T KNOW HOW LONG IT WOULD BE. MAYBE SOMEWHERE BETWEEN
19 SEVEN AND TEN DAYS. IT COULD BE SHORTER THAN THAT, BUT
20 I'LL GIVE YOU THAT ESTIMATE AT THE OUTSIDE. EXCEPT FOR THE
21 PERSONAL INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS
22 POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
23 YOURSELF OR OF THOSE DEPENDENT UPON YOU?

24 A YES.

25 Q COULD YOU TELL ME A LITTLE BIT ABOUT THAT?

1 A OKAY. ABOUT A MONTH, I WASN'T WORKING. I JUST
2 STARTED ON A NEW JOB---

3 Q UH-HUH.

4 A ---ABOUT THREE WEEKS AGO.

5 Q YES, SIR.

6 A AND I'VE GOT FOUR KIDS AND I'M PUTTING MY WIFE
7 THROUGH SCHOOL. I'M THE ONLY ONE WORKING AND SINCE I TOOK
8 OFF LAST WEEK -- I TOOK OFF THIS WEEK, TOO. I'M A TRUCK
9 DRIVER---

10 Q YOU'RE WORKING IN---

11 A NO, I USED TO. I WORK AT U.S. EXPRESS NOW.

12 Q OKAY. BUT YOU ARE A LONG DISTANCE DRIVER?

13 A YES, SIR.

14 Q AND AS A RESULT OF YOUR SERVICE, WOULD THAT CREATE A
15 FINANCIAL HARDSHIP ON YOU IF YOU WERE SEQUESTERED FOR TEN
16 DAYS?

17 A YES. LAST -- THE PAST, THESE DAYS I'VE BEEN OFF,
18 IT'S HURTING ME.

19 THE COURT: OKAY. LET ME SEE THE LAWYERS AT THE
20 SIDE BAR, PLEASE.

21 (WHEREUPON, A BENCH CONFERENCE WAS
22 HELD AT THIS TIME OFF THE RECORD.)

23 THE COURT: MR. BANKS, I WANT TO THANK YOU VERY
24 MUCH FOR HAVING BEEN HERE. I'M SORRY IF WE'VE
25 INCONVENIENCED YOU IN ANY WAY, BUT YOU'VE PROVIDED A VERY

1 VALUABLE SERVICE TO THE COUNTY OF LEXINGTON AND ALSO THE
2 STATE OF SOUTH CAROLINA.

3 I CAN ASSURE YOU THAT IF YOU DID NOT HAVE A
4 FINANCIAL HARDSHIP THAT YOU FACED, THAT YOU WOULD HAVE BEEN
5 A QUALIFIED POTENTIAL JUROR IN THIS CASE, BUT BEING
6 CONSISTENT WITH OTHER PEOPLE THAT HAVE BEEN IN THE
7 PREDICAMENT AND THE POSITION THAT YOU ARE IN, I HAVE
8 ALLOWED THEM TO BE EXCUSED AND I WILL ALLOW YOU TO BE
9 EXCUSED SO THAT YOU CAN GO ON ABOUT YOUR ACTIVITIES AND
10 EARNING A LIVING AND SUPPORTING YOUR FAMILY.

11 THANK YOU VERY MUCH FOR BEING HERE.

12 THE JUROR: THANK YOU.

13 THE COURT: YES, SIR.

14 (WHEREUPON, THE JUROR WAS EXCUSED
15 AT THIS TIME.)

16 THE COURT: LET THE RECORD REFLECT THAT JUROR
17 NUMBER EIGHT, DAVID BANKS, IS EXCUSED DUE TO FINANCIAL
18 HARDSHIP.

19 JUROR NUMBER 59, CARROLL D. CRAPPS.

20 CARROLL D. CRAPPS,

21 (JUROR NUMBER 59, WHITE MALE,
22 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

23 EXAMINATION

24 BY THE COURT:

25 Q GOOD AFTERNOON, MR. CRAPPS.

1 A GOOD AFTERNOON.

2 Q YOU ARE CARROLL D. CRAPPS, IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q NOW, YOU UNDERSTAND THAT YOU ARE UNDER OATH FOR THESE
5 PROCEEDINGS TODAY?

6 A YES, SIR.

7 Q AND YOU REMEMBER YESTERDAY THAT WHEN I DISMISSED YOU,
8 I INSTRUCTED YOU THAT YOU WERE NOT TO DISCUSS THIS CASE
9 WITH ANYONE, THAT IF ANYONE ATTEMPTED TO CONTACT YOU, THAT
10 YOU WERE TO REPORT THAT TO ME.

11 AND ALSO, THAT YOU WERE NOT TO READ, WATCH OR
12 LISTEN TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

13 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
14 INSTRUCTIONS?

15 A NO, SIR.

16 Q NOW, MR. CRAPPS, I'M GOING TO ASK YOU SOME QUESTIONS
17 AND THEREAFTER MR. STONE WILL PROBABLY ASK YOU SOME FOR --
18 ON BEHALF OF THE DEFENDANT, MR. TERRY, AND THEN MR. CHASE
19 WILL ASK QUESTIONS ON BEHALF OF THE SOLICITOR'S OFFICE.

20 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
21 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
22 NATURE OF THE CASE THAT WE ARE TRYING THIS WEEK AND THE
23 NATURE OF THESE PROCEEDINGS, THERE ARE CERTAIN QUESTIONS
24 THAT MUST BE ANSWERED. KEEP IN MIND THAT THERE ARE NO
25 RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. SO PLEASE JUST

1 ANSWER OPENLY, HONESTLY AND FULLY. AND ALSO KEEP IN MIND
2 THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW
3 WHAT THAT VIEW IS.

4 ALSO, KEEP IN MIND THAT WE ARE PROBABLY GOING TO
5 ASK YOU QUESTIONS THAT YOU MAYBE HAVE NEVER EVEN CONSIDERED
6 BEFORE. SO LISTEN VERY CAREFULLY TO THE QUESTIONS THAT ARE
7 PRESENTED TO YOU. IF YOU HAVE ANY QUESTION OR NEED THEM TO
8 BE CLARIFIED OR RESTATED AT ANY TIME, ALL YOU HAVE TO DO IS
9 INFORM US AND WE'LL BE GLAD TO DO THAT.

10 NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
11 TALKING ABOUT TONIGHT WILL INCLUDE THE WORD PENALTY, BUT
12 THE MERE FACT THAT WE EVEN TALK ABOUT PENALTY DOES NOT
13 INDICATE ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE IS
14 PRESUMED IN THE LAW TO BE INNOCENT. DO YOU UNDERSTAND
15 THIS?

16 A YES, SIR.

17 Q NOW, IF YOU WERE A JUROR IN A CRIMINAL CASE LET'S
18 CONSIDER FOR A FEW MOMENTS, COULD YOU LISTEN TO THE LAW,
19 ACCEPT AND APPLY THE LAW AS I WOULD INSTRUCT YOU AS THE
20 JUDGE OF THIS COURT EVEN THOUGH YOU MAY NOT AGREE WITH THAT
21 LAW OR THINK THAT IT OUGHT TO BE SOME OTHER WAY?

22 A YES, SIR.

23 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
24 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

25 A YES, SIR.

1 Q NOW, IN A CRIMINAL CASE, MR. CRAPPS, THE STATE OF
2 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
3 GUILT AND THE BURDEN OF PROOF THAT THE STATE MUST MEET IS
4 TO PROVE THE ELEMENTS OF EACH AND EVERY CRIME OF WHICH THE
5 DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT. A
6 DEFENDANT HAS ABSOLUTELY NO BURDEN OR RESPONSIBILITY TO
7 PROVE HIMSELF INNOCENT. YOU UNDERSTAND THAT?

8 A YES, SIR.

9 Q NOW, COULD YOU, DEPENDING UPON THE FACTS AND EVIDENCE
10 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
11 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

12 A YES, SIR.

13 Q NOW, AS YOU UNDERSTAND FROM BEING IN THE COURTROOM
14 YESTERDAY WITH YOUR FELLOW JURORS, YOU UNDERSTAND THAT THIS
15 IS A CASE IN WHICH THE STATE OF SOUTH CAROLINA SEEKS THE
16 DEATH PENALTY?

17 A YES, SIR.

18 Q AND I TOLD YOU AT THAT TIME, THAT THESE ARE WHAT WE
19 CALL BIFURCATED TRIALS; MEANING THAT THEY ARE DIVIDED INTO
20 TWO PARTS. THE GUILT PHASE AND THE SENTENCING PHASE.

21 NOW, IF YOU WERE A JUROR IN SUCH CASE AND IN THE
22 GUILT PHASE AND THE JURY FOUND THE DEFENDANT NOT GUILTY, DO
23 YOU UNDERSTAND THAT THE TRIAL WOULD END THEN AND THERE
24 WOULD BE NO NECESSITY FOR THE SENTENCING PHASE?

25 A YES, SIR.

1 Q HOWEVER, IF YOU WERE A JUROR IN A DEATH PENALTY CASE
2 AND IF THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER,
3 YOU WOULD THEN MOVE TO THE SENTENCING PHASE OF THE TRIAL?

4 A YES, SIR.

5 Q NOW, IN THAT PHASE OF THE TRIAL, YOU WOULD BE
6 PRESENTED EVIDENCE IN THE FORM OF AGGRAVATING CIRCUMSTANCES
7 AS WELL AS MITIGATING CIRCUMSTANCES.

8 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
9 INCIDENTS, DETAILS OR AN OCCURRENCE WHICH OUR GENERAL
10 ASSEMBLY HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO
11 AGGRAVATE THE OFFENSE OF MURDER.

12 IN OTHER WORDS, WHEN THE MURDER IS ACCOMPANIED BY
13 AN AGGRAVATING CIRCUMSTANCE, IT INCREASES THE ENORMITY OR
14 ADDS TO THE INJURY OF THE CRIME OF MURDER.

15 FOR EXAMPLE, WE ARE TALKING ABOUT WHEN A MURDER
16 IS COMMITTED IN CONNECTION OR IN CONJUNCTION WITH A CRIME
17 LIKE CRIMINAL SEXUAL CONDUCT, BURGLARY OR THE LIKE. DO YOU
18 UNDERSTAND THAT?

19 A YES, SIR.

20 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
21 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH THE GENERAL
22 ASSEMBLY, ONCE AGAIN, HAS DECLARED BY LAW THAT REDUCES THE
23 SEVERITY OF THE CRIME OF MURDER AND MAY BE CONSIDERED BY
24 THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF
25 RESPONSIBILITY OR MORAL CULPABILITY.

1 NOW, EXAMPLES OF MITIGATING CIRCUMSTANCES ARE
2 WHEN A MURDER IS COMMITTED WHILE THE DEFENDANT IS UNDER THE
3 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY
4 OF A DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT
5 OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW
6 WAS SUBSTANTIALLY IMPAIRED OR THE MENTALITY OF THE
7 DEFENDANT AT THE TIME OF THE CRIME. DO YOU UNDERSTAND
8 THOSE MITIGATING CIRCUMSTANCES---

9 A YES, SIR.

10 Q ---OR THOSE EXAMPLES?

11 A YES, SIR.

12 Q NOW, LET'S CONSIDER IF YOU WERE A JUROR IN THAT
13 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
14 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE
15 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
16 CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT YOU AT THE
17 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
18 PRISON?

19 A YES, SIR.

20 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
21 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
22 THAT CASE, ONCE AGAIN, CONSIDERING THE AGGRAVATING AND
23 MITIGATING CIRCUMSTANCES AND THE LAW AS I WOULD INSTRUCT
24 YOU AT THE CONCLUSION OF CASE, RETURN A SENTENCE OF DEATH?

25 A NO, SIR.

1 Q YOU COULD NOT UNDER ANY CIRCUMSTANCES?

2 A NO, SIR.

3 Q IF I INSTRUCTED YOU THAT THE LAW OF THIS STATE IS
4 THAT YOU WOULD HAVE TO CONSIDER THE IMPOSITION OF THOSE TWO
5 PENALTIES, YOU WOULD BE UNABLE TO IMPOSE A DEATH PENALTY?

6 A YES, SIR.

7 Q THANK YOU VERY MUCH. PLEASE ANSWER MR. STONE'S
8 QUESTIONS.

9 EXAMINATION

10 BY MR. STONE:

11 Q MR. CRAPPS, I'LL BE BRIEF.

12 THE JUDGE GIVES YOU AN INSTRUCTION -- IF YOU'RE
13 SITTING IN THIS JURY BOX, YOUR JOB IS TO FIND THE FACTS YOU
14 UNDERSTAND THAT?

15 A YES, SIR.

16 Q THE JUDGE IS THE FINDER OF THE LAW, DO YOU UNDERSTAND
17 THAT?

18 A YES, SIR.

19 Q THE JUDGE HAS TOLD YOU AND ASKED YOU IF HE GIVES YOU
20 INSTRUCTIONS ACCORDING TO THE LAW, YOU ACCEPT THOSE IF
21 YOU'RE ON THE JURY WHETHER YOU LIKE IT OR NOT?

22 A YES, SIR.

23 Q IN SOUTH CAROLINA, THE LAW ALLOWS FOR THE DEATH
24 PENALTY. IT DOESN'T MEAN YOU'VE GOT TO GIVE IT, BUT THEY
25 ALLOW FOR THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

1 A YES, SIR.

2 Q AND YOU MAY OR MAY NOT LIKE THE DEATH PENALTY, BUT
3 CAN YOU CONSIDER THE FACTS AS YOU HEAR THEM?

4 A YES, SIR.

5 Q CAN YOU IN CONSIDERING THOSE FACTS, IF YOU AND ELEVEN
6 OTHER PEOPLE AGREE THAT IT'S AN APPROPRIATE CASE, CAN YOU
7 COME BACK WITH A VERDICT THAT SAYS THAT YOU RECOMMEND THE
8 DEATH PENALTY?

9 A NO, SIR.

10 Q ALL RIGHT, SIR. THANK YOU, MR. CRAPPS.

11 THE COURT: MR. CRAPPS, I WANT TO THANK YOU VERY
12 MUCH FOR YOUR PARTICIPATION NOT ONLY TODAY BUT ALSO
13 YESTERDAY AND THE FORTHRIGHTNESS OF WHICH YOU HAVE
14 RESPONDED TO THE COURT'S QUESTIONS AS WELL AS THE LAWYERS
15 QUESTIONS.

16 THIS IS GOING TO CONCLUDE YOUR RESPONSIBILITIES
17 IN THIS CASE. ON BEHALF OF LEXINGTON COUNTY, THE STATE OF
18 SOUTH CAROLINA, I THANK YOU VERY MUCH FOR HAVING
19 PARTICIPATED IN THIS PROCESS AND YOUR RESPONSIBILITIES IN
20 THIS TERM OF COURT ARE CONCLUDED. THANK YOU VERY MUCH.

21 THE JUROR: THANK YOU, SIR.

22 THE COURT: HAVE A PLEASANT EVENING.

23 THE JUROR: YOU, TOO.

24 (WHEREUPON, THE JUROR WAS EXCUSED
25 AT THIS TIME.)

1 THE COURT: ALL RIGHT. LET THE RECORD REFLECT
2 THAT JUROR NUMBER 59, CARROLL D. CRAPPS IS NOT QUALIFIED TO
3 SERVE AS A POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION
4 16-320 OF OUR CODE AS HE SAYS THAT HE WOULD BE UNABLE TO
5 IMPOSE THE DEATH PENALTY.

6 THAT CONCLUDES PANEL NUMBER EIGHT. I THANK YOU
7 VERY MUCH FOR A VERY GOOD DAY OF WORK TO BOTH THE STATE AND
8 THE DEFENSE. WE NOW HAVE 35 JURORS QUALIFIED.

9 PROBABLY WHAT WE'RE GOING TO DO IS START IN THE
10 MORNING AT NINE AND GO AHEAD AND QUALIFY AT LEAST PART OF
11 THAT PANEL AND THEN WE WILL STRIKE OUR PANEL SOMETIME IN
12 THE MORNING. I'D SAY BETWEEN TEN AND ELEVEN AND BE ABLE TO
13 MOVE FORWARD WITH THIS MATTER. IF WE WERE TO GET ALL 35
14 HERE AND HAVE NO FALLOUTS, THAT WOULD BE WONDERFUL, BUT I'M
15 NOT THAT OPTIMISTIC. SO WE'LL GET STARTED IN THE MORNING
16 AT NINE WITH PANEL NUMBER NINE.

17 Y'ALL HAVE A VERY PLEASANT EVENING.

18 IS THERE ANYTHING FURTHER FROM THE STATE?

19 MR. CHASE: NOTHING FROM THE STATE, YOUR HONOR.

20 THE COURT: THE DEFENSE?

21 MS. FULLWOOD: WE WOULD HAVE AN EX PARTE MATTER
22 TO TAKE UP IN CHAMBERS VERY BRIEFLY.

23 THE COURT: OKAY. I'LL SEE YOU IN CHAMBERS.

24 (WHEREUPON, COURT RECESSED FOR THE
25 DAY AT 8:07 P.M.)

1 WEDNESDAY, SEPTEMBER 17, 1997.

2 (WHEREUPON, COURT RECONVENED ON
3 WEDNESDAY, SEPTEMBER, 17, 1997, AT 9:00 A.M.)

4 THE BAILIFF: ALL RISE. COURT IS NOW IN SESSION.

5 THE COURT: GOOD MORNING. THANK YOU. PLEASE
6 TAKE YOUR SEATS.

7 WHILE HE'S COMING IN, LET ME SEE THE LAWYERS OVER
8 HERE JUST A MINUTE.

9 (WHEREUPON, THE FOLLOWING BENCH
10 CONFERENCE WAS HELD AT THIS TIME.)

11 THE COURT: I KNOW WE TALKED ABOUT THIS THE OTHER
12 DAY. THE MANNER IN WHICH THE JURORS HAVE BEEN SEATED AS
13 POTENTIAL JURORS, THAT'S THE WAY WE ARE GOING TO STRIKE
14 THEM. IS THAT THE WAY YOU UNDERSTAND---

15 MR. STONE: IN THE SAME ORDER---

16 MR. FULLWOOD: THEY WILL COME UP IN THE ORDER
17 THEY WERE QUALIFIED.

18 THE COURT: YES. I THOUGHT THAT'S WHAT WE TALKED
19 ABOUT THE OTHER DAY---

20 MR. STONE: WE DID.

21 THE COURT: ---I JUST WANTED TO MAKE SURE
22 EVERYONE KNEW.

23 WHAT I WAS THINKING WE MAY DO IS QUALIFY -- SEE
24 IF WE CAN GET TWO OR THREE, THEN STOP, AND SEE IF WE CAN
25 GET A JURY AND IF WE HAVE TO GO BACK OVER A FEW MORE.

1 HOPEFULLY---

2 MS. FULLWOOD: ONCE WE GET TWO OR THREE
3 QUALIFIED, CAN WE TAKE TEN OR 15 MINUTES SO BOTH SIDES CAN
4 GO OVER THE LINEUP?

5 THE COURT: YES.

6 WHAT WE ARE DOING, WE'VE GOT SOME THAT ARE
7 SUPPOSED TO BE HERE AT NINE-THIRTY. WE ARE PUTTING ALL
8 THESE QUALIFIED IN THE GRAND JURY ROOM. WE HAVE MOVED THE
9 POTENTIAL ONES VOIR DIRE INTO THE JURY ROOM SO THAT WAY WE
10 CAN ACCOMMODATE THEM ALL.

11 (WHEREUPON, THE BENCH CONFERENCE
12 WAS CONCLUDED AT THIS TIME.)

13 THE COURT: ONE THING THAT -- I CAN'T REMEMBER.
14 I THINK MAYBE WE DID IT BACK IN MAY WHEN WE FIRST GOT
15 TOGETHER, BUT I KNOW THAT MS. FULLWOOD IS DULY QUALIFIED BY
16 THE SUPREME COURT TO SERVE AS LEAD COUNSEL IN THIS CASE. I
17 JUST WANTED TO MAKE SURE WE HAD THAT ON THE RECORD.

18 MS. FULLWOOD: YES, SIR.

19 THE COURT: OKAY.

20 JUROR NUMBER 87, DENNIS J. FOWLER.

21 DENNIS J. FOWLER,

22 (JUROR NUMBER 87, WHITE MALE,
23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

24 EXAMINATION

25 BY THE COURT:

1 Q GOOD MORNING TO YOU, MR. FOWLER.

2 A GOOD MORNING, SIR.

3 Q YOU ARE DENNIS J. FOWLER, CORRECT?

4 A YES, SIR.

5 Q AND FOR THE RECORD, HE IS JUROR NUMBER 87.

6 MR. FOWLER, YOU UNDERSTAND THAT YOU ARE UNDER
7 OATH FOR THESE PROCEEDINGS TODAY?

8 A YES, SIR.

9 Q AND YOU ALSO REMEMBER WHEN YOU WERE HERE BACK ON
10 MONDAY, WHEN I DISMISSED YOU, THAT I GAVE YOU CERTAIN
11 INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
12 ANYONE. IF ANYONE ATTEMPTED TO CONTACT YOU CONCERNING THIS
13 CASE, THAT YOU WERE TO REPORT THAT TO ME AND ALSO THAT YOU
14 WERE NOT TO READ, WATCH OR LISTEN TO ANY NEWS ACCOUNTS
15 CONCERNING THIS CASE.

16 HAVE ANY OF THOSE INSTRUCTIONS BEEN VIOLATED?

17 A NO, SIR.

18 Q NOW, OVER THE NEXT FEW MINUTES, I'M GOING TO BE
19 ASKING YOU SEVERAL QUESTIONS AND THEN ONE OF THE LAWYERS
20 FOR MR. TERRY, AS WELL AS ONE OF THE LAWYERS FOR THE STATE,
21 WILL ASK YOU SOME QUESTIONS.

22 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
23 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
24 THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
25 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED AND ANSWERED.

1 ALSO KEEP IN MIND THAT THERE ARE NO RIGHT OR
2 WRONG ANSWERS TO THESE QUESTIONS.

3 A YES, SIR.

4 Q PLEASE JUST ANSWER THEM OPENLY AND HONESTLY AND FULLY
5 AND ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING THE VIEW
6 THAT YOU MIGHT HAVE. WE JUST NEED TO KNOW WHAT THAT VIEW
7 IS.

8 I WOULD ALSO TELL YOU THAT WE'RE PROBABLY GOING
9 TO ASK YOU SOME QUESTIONS THAT YOU MAY HAVE NEVER EVEN
10 CONSIDERED BEFORE. SO LISTEN VERY CAREFULLY TO THE
11 QUESTIONS THAT I POSE TO YOU, AS WELL AS THE LAWYERS. IF
12 THERE'S ANYTHING THAT YOU DO NOT UNDERSTAND OR YOU NEED
13 CLARIFIED OR YOU NEED REPEATED, ALL YOU HAVE TO DO IS LET
14 US KNOW THAT.

15 A ALL RIGHT, SIR.

16 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
17 ABOUT WILL BE USING THE WORD PENALTY, BUT THE MERE FACT
18 THAT I EVEN MENTION THAT WORD DOES NOT IN ANY WAY INDICATE
19 ANYTHING ABOUT THE DEFENDANT, MR. TERRY.

20 HE IS PRESUMED IN THE LAW TO BE INNOCENT. YOU
21 UNDERSTAND THAT?

22 A YES, SIR.

23 Q NOW, LET'S SUPPOSE YOU WERE A JUROR IN A CRIMINAL
24 CASE. COULD YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE
25 LAW, AS I WOULD INSTRUCT YOU AS THE JUDGE OF THIS COURT,

1 EVEN THOUGH YOU MIGHT NOT AGREE WITH THAT LAW OR THINK THAT
2 IT SHOULD BE SOME OTHER WAY?

3 A YES, SIR, I COULD DO THAT.

4 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
5 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

6 A YES, SIR.

7 Q NOW, IN A CRIMINAL CASE, MR. FOWLER, THE STATE HAS
8 THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE BURDEN OF
9 PROOF THAT THEY MUST MEET IS TO PROVE EACH AND EVERY
10 ELEMENT OF THE CRIME OR CRIMES WITH WHICH THE PERSON IS
11 CHARGED BEYOND A REASONABLE DOUBT. A DEFENDANT HAS
12 ABSOLUTELY NO BURDEN TO PROVE HIMSELF INNOCENT. DO YOU
13 UNDERSTAND THAT?

14 A YES, SIR.

15 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
16 AND THE LAW, AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
17 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

18 A I'M SORRY, SIR?

19 Q COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE AND
20 THE LAW, AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE -- I
21 KNOW THAT WE ARE ASSUMING A LOT -- COULD YOU FIND A
22 DEFENDANT EITHER GUILTY OR NOT GUILTY?

23 A YES, SIR.

24 Q NOW, AS YOU ARE AWARE FROM WHAT I TOLD YOU AND YOUR
25 FELLOW JURORS ON MONDAY MORNING, THIS IS A CASE IN WHICH

1 THE STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND AS
2 A RESULT, I ALSO EXPLAINED TO YOU THAT THIS IS WHAT WE CALL
3 A BIFURCATED TRIAL, MEANING THAT IT'S DIVIDED INTO TWO
4 PARTS; THE GUILT PHASE; SENTENCING PHASE.

5 NOW, IF YOU WERE A JUROR IN SUCH A CASE AND IF IN
6 THE GUILT PHASE, THE JURY HAD FOUND THE DEFENDANT NOT
7 GUILTY OF MURDER, DO YOU UNDERSTAND THAT THE CASE WOULD END
8 AT THAT POINT IN TIME AND THERE WOULD NOT BE ANY NEED FOR A
9 SECOND PHASE?

10 A YES, SIR.

11 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
12 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
13 FULLY UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING
14 PHASE OF THE TRIAL?

15 A YES, SIR, I UNDERSTAND THAT.

16 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
17 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
18 AS MITIGATING CIRCUMSTANCES.

19 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
20 INCIDENTS, DETAILS, AN OCCURRENCE WHICH OUR GENERAL
21 ASSEMBLY HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO
22 AGGRAVATE THE CRIME OF MURDER.

23 IN OTHER WORDS, THE PRESENCE OF THAT AGGRAVATING
24 CIRCUMSTANCE ACCOMPANIED THE CRIME OF MURDER INCREASES THE
25 ENORMITY OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

1 NOW, WHAT I AM TALKING ABOUT THERE IS WHEN A
2 MURDER IS COMMITTED IN CONJUNCTION WITH ANOTHER CRIME SUCH
3 AS CRIMINAL SEXUAL CONDUCT, BURGLARY OR THE LIKE. YOU
4 UNDERSTAND THAT?

5 A YES, SIR.

6 Q NOW, ON THE OTHER HAND, MITIGATING CIRCUMSTANCES ARE
7 ALSO FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH, ONCE
8 AGAIN, THE GENERAL ASSEMBLY HAS DECLARED BY LAW REDUCES THE
9 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
10 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY
11 OR RESPONSIBILITY.

12 AND AS AN EXAMPLE, WHAT I AM TALKING ABOUT THERE,
13 IT COULD BE WHEN THE MURDER WAS COMMITTED WHILE A DEFENDANT
14 WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE;
15 WHEN THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
16 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE
17 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; AS WELL AS
18 THE MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME.
19 YOU UNDERSTAND WHAT I'M SPEAKING OF WHEN I REFER TO
20 MITIGATING CIRCUMSTANCES?

21 A YES, SIR.

22 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION AND WE ARE
23 TALKING ABOUT THAT SECOND PHASE, THE SENTENCING PHASE,
24 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
25 CIRCUMSTANCES OF THAT CASE, CONSIDERING THE -- ANY

1 AGGRAVATING AND MITIGATING CIRCUMSTANCES THAT WERE
2 INTRODUCED AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
3 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
4 PRISON?

5 A IF THE CIRCUMSTANCES PRESENTED THEMSELVES, YES, SIR.

6 Q ALL RIGHT, SIR.

7 IF YOU ARE A JUROR IN THAT SITUATION, COULD YOU,
8 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
9 THAT CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
10 MITIGATING CIRCUMSTANCES AND THE LAW, AS I WOULD INSTRUCT
11 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
12 DEATH?

13 A YES, SIR, IF THE CIRCUMSTANCES PRESENTED THEMSELVES.

14 Q ALL RIGHT.

15 NOW, MR. FOWLER, IF YOU ARE CHOSEN FOR SERVICE ON
16 THIS JURY, YOU WOULD BE SEQUESTERED, HOUSED IN A MOTEL FOR
17 THE DURATION OF THE TRIAL. I REALLY DON'T HAVE ANY IDEA
18 EXACTLY HOW LONG THE TRIAL WOULD LAST, BUT AN OUTSIDE RANGE
19 WOULD BE SOMEWHERE BETWEEN SEVEN TO TEN DAYS. IT COULD BE
20 SHORTER THAN THAT. EXCEPT FOR THE PERSONAL INCONVENIENCE
21 THAT YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO
22 THE HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT
23 UPON YOU?

24 A NO, SIR.

25 Q THANK YOU VERY MUCH FOR RESPONDING TO MY QUESTIONS.

1 PLEASE ANSWER ANY OF MS. FULLWOOD'S QUESTIONS.

2 EXAMINATION

3 BY MS. FULLWOOD:

4 Q GOOD MORNING, MR. FOWLER.

5 A GOOD MORNING, MA'AM.

6 Q MR. FOWLER, MY NAME IS BETH FULLWOOD. ALONG WITH
7 DUFFIE STONE, WHO IS SEATED ON THE BENCH OVER THERE, WE
8 REPRESENT GARY TERRY, WHO IS SEATED AT COUNSEL TABLE.

9 A YES, MA'AM.

10 Q I APPRECIATE THE OPPORTUNITY TO BE ABLE TO TALK TO
11 YOU THIS MORNING. THIS IS THE ONLY TIME THE LAWYERS ARE
12 GOING TO GET TO ASK POTENTIAL JURORS QUESTIONS. SO LIKE I
13 SAY, I APPRECIATE YOU BEING UP HERE.

14 MR. FOWLER, CAN YOU TELL US IN GENERAL WHAT YOUR
15 VIEWS ON THE DEATH PENALTY ARE?

16 A GENERALLY?

17 Q YES, SIR.

18 A IT DEPENDS ON THE CIRCUMSTANCES.

19 Q UH-HUH.

20 A I'M NOT AN ADVOCATE OF THE DEATH PENALTY NOR AM I AN
21 OPPONENT OF IT. IT'S -- I FEEL THAT IT IS SOMETHING THAT
22 YOU HAVE TO WEIGH IN EACH CIRCUMSTANCE.

23 Q ALL RIGHT. SO YOU THINK -- IS IT FAIR TO SAY YOU
24 THINK THAT IT DEPENDS ON THE CIRCUMSTANCES OF EACH
25 INDIVIDUAL CASE?

1 A YES, MA'AM.

2 Q ALL RIGHT.

3 NOW, MR. FOWLER, I KNOW THAT YOU HAVE WORKED AT
4 PUBLIC SAFETY FOR A NUMBER OF YEARS?

5 A YES, MA'AM.

6 Q NOW -- SO I -- SO I -- SO I IMAGINE YOU KNOW PROBABLY
7 MORE ABOUT THE LAW THAN THE AVERAGE PERSON. SO IF I'M
8 ALREADY ASKING YOU ABOUT SOMETHING YOU ALREADY KNOW, I'M
9 NOT TRYING TO INSULT YOU---

10 A RIGHT.

11 Q ---I JUST NEED TO MAKE SURE THAT WE ARE ON THE SAME
12 PAGE HERE.

13 DO YOU UNDERSTAND, MR. FOWLER, THAT IN SOUTH
14 CAROLINA, MURDER MEANS KILLING SOMEONE WITH MALICE
15 AFORETHOUGHT?

16 A YES, MA'AM.

17 Q OKAY. AND ARE YOU AWARE THAT IF A PERSON IS
18 CONVICTED OF MURDER, THAT EXCLUDES SUCH THINGS AS
19 SELF-DEFENSE OR AN ACCIDENT OR HEAT OF PASSION OR ANYTHING
20 LIKE THAT?

21 A YES, MA'AM.

22 Q ALL RIGHT. AS I SAY, I THOUGHT YOU PROBABLY DID, BUT
23 I JUST WANTED TO MAKE SURE.

24 SO YOU UNDERSTAND THAT IF A JURY EVER GETS TO A
25 SENTENCING TRIAL, IT'S ALREADY CONVICTED THE DEFENDANT OF

1 MURDER?

2 A YES, MA'AM.

3 Q ALL RIGHT. NOW, IF YOU WERE A JUROR IN A SECOND
4 TRIAL AND YOU HAD ALREADY -- YOU AND ELEVEN OTHER PEOPLE
5 HAD ALREADY CONVICTED THE DEFENDANT OF MURDER, AFTER
6 HEARING ALL OF THE EVIDENCE FROM BOTH SIDES IN THAT TRIAL,
7 COULD YOU SENTENCE THAT DEFENDANT TO A DEATH SENTENCE IF
8 YOU THOUGHT THE CIRCUMSTANCES WARRANTED IT?

9 A YES, MA'AM, IF THE CIRCUMSTANCES WARRANTED IT.

10 Q ALL RIGHT, SIR.

11 AND UNDERSTANDING, OF COURSE, THAT UNDER THE LAW,
12 YOU ARE NEVER REQUIRED TO SENTENCE A PERSON TO DEATH---

13 A YES, MA'AM.

14 Q ---COULD YOU, IF YOU WERE SITTING AS A JUROR IN A
15 CAPITAL CASE, AFTER HEARING ALL OF THE EVIDENCE, SENTENCE A
16 DEFENDANT TO LIFE IMPRISONMENT DESPITE THE FACT YOU HAD
17 ALREADY FOUND HIM GUILTY OF MURDER?

18 A YES, MA'AM.

19 Q ALL RIGHT, SIR. THANK YOU SO MUCH FOR ANSWERING THE
20 QUESTIONS.

21 A YOU'RE WELCOME.

22 THE COURT: MR. CHASE.

23 MR. CHASE: MAY IT PLEASE THE COURT, YOUR HONOR.

24 THE COURT: YES, SIR.

25 EXAMINATION

1 BY MR. CHASE:

2 Q GOOD MORNING, MR. FOWLER.

3 A GOOD MORNING, SIR.

4 Q HOW ARE YOU DOING?

5 A FINE. THANK YOU.

6 Q GOOD. MY NAME IS TOM CHASE AND I WILL BE ASSISTING
7 DEPUTY SOLICITOR FRAN HUMPHRIES AND SOLICITOR DONNIE MYERS
8 IN THE PROSECUTION OF THIS CASE AND I JUST HAVE A COUPLE OF
9 QUESTIONS FOR YOU. I APPRECIATE YOU BEING HERE THIS
10 MORNING.

11 FIRST IS A PROCEDURAL STEP THAT FOLLOWS UP ON MS.
12 FULLWOOD'S QUESTIONING ABOUT THE IMPOSITION OR THE
13 POTENTIAL IMPOSITION OF A DEATH SENTENCE.

14 UNDER THE LAW OF OUR STATE, FOR A JURY TO
15 ACTUALLY IMPOSE A DEATH SENTENCE AT THE CONCLUSION OF THE
16 PENALTY PHASE, THEY ALL HAVE TO SIGN A VERDICT FORM AND
17 LITERALLY EACH JUROR WOULD HAVE A LINE TO SIGN ON THE
18 VERDICT FORM SAYING, WE, THE JURY FIND DEATH IS THE
19 APPROPRIATE SENTENCE IN THIS CASE, SOMETHING TO THAT
20 EFFECT. BUT THERE WILL BE TWELVE INDIVIDUAL LINES ON THAT
21 VERDICT FORM.

22 WOULD THE FACT THAT YOU HAD TO SIGN YOUR NAME,
23 PHYSICALLY AFFIX YOUR SIGNATURE ON THAT VERDICT FORM,
24 IMPAIR YOUR ABILITY TO NOT ONLY CONSIDER A DEATH SENTENCE,
25 BUT ALSO IMPOSE A DEATH SENTENCE UNDER THE APPROPRIATE

1 CIRCUMSTANCES?

2 A NO, SIR.

3 Q OTHER THAN THAT, MR. FOWLER, WHAT WE ARE LOOKING FOR
4 IN THIS CASE IS A JUROR WHO CAN BE FAIR AND IMPARTIAL TO
5 NOT ONLY THE STATE OF SOUTH CAROLINA BUT THE DEFENDANT IN
6 THIS CASE, GARY DUBOSE TERRY. COULD YOU BE THAT TYPE
7 JUROR?

8 A YES, SIR.

9 Q THANK YOU. THAT'S ALL WE CAN ASK.

10 A OKAY. THANK YOU, SIR.

11 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

12 MS. FULLWOOD: NO, SIR.

13 THE COURT: FROM THE STATE?

14 MR. CHASE: NO, SIR, YOUR HONOR.

15 THE COURT: MR. FOWLER, I WANT TO THANK YOU VERY
16 MUCH FOR YOUR PARTICIPATION NOT ONLY TODAY, BUT ALSO
17 EARLIER THIS WEEK. I FIND THAT YOU ARE QUALIFIED TO SERVE
18 AS A POTENTIAL JUROR IN THIS CASE AND WITH THAT
19 QUALIFICATION, SEVERAL THINGS.

20 OF COURSE, YOU ARE TO CONTINUE TO REFRAIN FROM
21 DISCUSSING THIS CASE WITH YOUR FELLOW JURORS, WITH YOUR
22 FAMILY, FRIENDS OR ANYONE ELSE. ALSO, IF ANYONE SHOULD
23 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, I THINK THAT
24 YOU KNOW THAT YOU SHOULD GATHER AS MUCH INFORMATION ABOUT
25 THAT INDIVIDUAL AND REPORT IT TO ME IMMEDIATELY AND ALSO

1 THAT YOU ARE TO REFRAIN FROM READING, WATCHING OR LISTENING
2 TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

3 VERY SIMPLY PUT, IF YOU ARE CHOSEN TO SERVE AS A
4 JUROR IN THIS CASE, ALL WE WOULD WANT YOU TO CONSIDER IS
5 WHAT YOU SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND
6 NOTHING LESS. I THINK THAT YOU PROBABLY RECEIVED SOME
7 INSTRUCTIONS LAST NIGHT THAT YOU WERE TO COME WITH YOUR
8 BAGS PACKED TODAY---

9 THE JUROR: YES, SIR.

10 THE COURT: ---SO WHAT I'M GOING TO DO AT THIS
11 TIME IS ALLOW THE BAILIFF TO TAKE YOU TO A ROOM WHERE THE
12 OTHER JURORS WHO HAVE BEEN QUALIFIED WILL BE GATHERING --
13 IF THEY ARE NOT ALREADY THERE, IT WILL BE SHORTLY AND A
14 LITTLE BIT LATER ON THIS MORNING, WE ARE GOING TO BE
15 STRIKING A JURY IN THIS CASE.

16 SO HAVE A PLEASANT HOUR OR SO BEFORE MAYBE WE
17 START THAT PROCESS AND I'LL SEE YOU THEN.

18 THE JUROR: OKAY. THANK YOU, SIR.

19 THE COURT: THANK YOU.

20 (WHEREUPON, THE JUROR WAS EXCUSED
21 AT THIS TIME.)

22 THE COURT: LET THE RECORD REFLECT THAT JUROR
23 NUMBER 87, DENNIS J. FOWLER, IS QUALIFIED TO SERVE AS A
24 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
25 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS

1 AMENDED.

2 JUROR NUMBER 245, LISA F. WINGATE.

3 LISA F. WINGATE,

4 (JUROR NUMBER 245, BLACK FEMALE,
5 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

6 EXAMINATION

7 BY THE COURT:

8 Q EXCUSE ME FOR KEEPING YOU WAITING, MS. WINGATE. HOW
9 ARE YOU THIS MORNING?

10 A I'M DOING FINE. HOW ARE YOU?

11 Q I'M FINE. YOU ARE LISA F. WINGATE, IS THAT CORRECT?

12 A EXACTLY.

13 Q AND YOU UNDERSTAND THAT YOU ARE UNDER OATH FOR THIS
14 PROCEEDING THIS MORNING?

15 A YES.

16 Q AND YOU REMEMBER WHEN I DISMISSED YOU AND YOUR FELLOW
17 JURORS MONDAY---

18 A UH-HUH.

19 Q ---NOW IT IS, THAT I GAVE YOU CERTAIN INSTRUCTIONS
20 THAT YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE, THAT
21 YOU WERE ALSO TO REPORT IT TO ME IF ANYONE ATTEMPTED TO
22 CONTACT YOU CONCERNING THIS CASE---

23 A UH-HUH.

24 Q ---THAT YOU WERE TO REFRAIN FROM READING, WATCHING OR
25 LISTENING TO ANY NEWS ACCOUNTS OF THIS CASE. HAVE ANY OF

1 THOSE INSTRUCTIONS BEEN VIOLATED?

2 A NO.

3 Q NOW, MS. WINGATE, I'M GOING TO BE ASKING YOU SOME
4 QUESTIONS AND THEN MR. STONE WILL ASK YOU SOME QUESTIONS ON
5 BEHALF OF MR. TERRY---

6 A OKAY.

7 Q ---AND THEN ONE OF THE ASSISTANT SOLICITORS WILL ASK
8 YOU SOME QUESTIONS FOR THE STATE---

9 A OKAY.

10 Q ---KEEP IN MIND THAT WE ARE NOT IN ANY WAY ATTEMPTING
11 TO INVADE YOUR PRIVACY, BUT OF THE PROCEEDINGS THAT WE ARE
12 ABOUT THIS WEEK, IT'S EXTREMELY NECESSARY THAT CERTAIN
13 QUESTIONS ARE ASKED OF EACH POTENTIAL JUROR.

14 KEEP IN MIND THAT THERE ARE ABSOLUTELY NO RIGHT
15 OR WRONG ANSWERS TO THE QUESTIONS THAT YOU ARE GOING TO BE
16 ASKED. SO JUST ANSWER THEM OPENLY AND HONESTLY AND FULLY
17 AND ALSO KEEP IN MIND THAT NOBODY OR NO ONE IS CHALLENGING
18 THE VIEW THAT YOU MIGHT HAVE. WE JUST NEED TO KNOW WHAT
19 YOUR VIEW IS IN CERTAIN AREAS.

20 AND ALSO, UNDERSTAND THAT WE ARE PROBABLY GOING
21 TO ASK YOU SOME QUESTIONS THAT YOU HAVE NEVER EVEN
22 CONSIDERED BEFORE. SO LISTEN VERY CAREFULLY TO THE
23 QUESTIONS THAT ARE PRESENTED TO YOU. IF YOU NEED FOR US TO
24 RESTATE THEM, CLARIFY THEM OR IN ANY WAY HELP YOU
25 UNDERSTAND WHAT THE QUESTIONS ARE, PLEASE ASK US TO DO SO

1 AND WE'LL BE GLAD TO DO THAT.

2 A OKAY.

3 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
4 DISCUSSING THIS MORNING AND TALKING ABOUT WILL INCLUDE THE
5 WORD PENALTY---

6 A UH-HUH.

7 Q ---BUT THE MERE FACT THAT I EVEN MENTION THAT WORD OR
8 THAT WE EVEN TALK ABOUT PENALTY, DOES NOT INDICATE ANYTHING
9 ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW
10 TO BE INNOCENT. DO YOU UNDERSTAND THAT?

11 A UH-HUH.

12 Q NOW, LET'S SUPPOSE FOR JUST A FEW MINUTES THAT YOU
13 WERE A JUROR IN A CRIMINAL CASE, COULD YOU LISTEN TO THE
14 LAW, ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS
15 THE JUDGE OF THIS COURT, EVEN THOUGH YOU MIGHT NOT AGREE
16 WITH THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

17 A YES.

18 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
19 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

20 A UH-HUH.

21 Q NOW, IN A CRIMINAL CASE, MS. WINGATE, THE STATE OF
22 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
23 GUILT AND THE BURDEN OF PROOF THAT THE STATE MUST MEET IS
24 TO PROVE ALL OF THE ELEMENTS OF EACH CRIME WITH WHICH THE
25 DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT.

1 A DEFENDANT HAS ABSOLUTELY NO RESPONSIBILITY OR
2 BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND THAT?

3 A UH-HUH.

4 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND THE
5 EVIDENCE AND THE LAW AS I WOULD INSTRUCT YOU IN A
6 PARTICULAR CASE, FIND A DEFENDANT EITHER GUILTY OR NOT
7 GUILTY?

8 A YES.

9 Q NOW, AS YOU KNOW FROM BEING HERE ON MONDAY, I TOLD
10 YOU AND THE REST OF THE JURORS THAT THIS IS A CASE IN WHICH
11 THE STATE OF SOUTH CAROLINA SEEKS THE DEATH PENALTY AND IN
12 SUCH A CASE, WE CALL IT A BIFURCATED TRIAL, MEANING THAT
13 IT'S DIVIDED INTO TWO PARTS. THE GUILT PHASE WHICH IS THE
14 FIRST PART; THE SENTENCING PHASE WHICH IS THE SECOND PART.

15 NOW, IF YOU ARE A JUROR IN SUCH A CASE AND IF THE
16 JURY HAD FOUND THE DEFENDANT NOT GUILTY OF MURDER IN THE
17 GUILT PHASE, DO YOU UNDERSTAND THAT THERE WOULD BE
18 ABSOLUTELY NO REASON AND THAT THE SENTENCING PHASE WOULD
19 NOT OCCUR?

20 A YES.

21 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
22 THE JURY FOUND THE DEFENDANT GUILTY OF MURDER IN THE GUILT
23 PHASE, DO YOU FULLY UNDERSTAND THAT YOU WOULD THEN PROCEED
24 TO THE SECOND PART OF THE TRIAL, THE SENTENCING PHASE?

25 A UH-HUH.

1 Q NOW, IN THE SENTENCING PHASE, THE JURY WOULD RECEIVE
2 EVIDENCE IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
3 AS MITIGATING CIRCUMSTANCES.

4 NOW, BY WAY OF ILLUSTRATION AND DEFINITION,
5 AGGRAVATING CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS OR
6 AN OCCURRENCE WHICH THE GENERAL ASSEMBLY OF THIS STATE HAS
7 DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE
8 OFFENSE OF MURDER.

9 IN OTHER WORDS, WHEN A MURDER OCCURS ALONG WITH
10 AN AGGRAVATING CIRCUMSTANCE, IT INCREASES THE ENORMITY OR
11 ADDS TO THE INJURY OF THE CRIME OF MURDER.

12 AND WHAT I AM TALKING ABOUT TO ILLUSTRATE THAT
13 WOULD BE WHEN A MURDER OCCURS ALONG WITH ANOTHER CRIME SUCH
14 AS CRIMINAL SEXUAL CONDUCT, BURGLARY OR THE LIKE. DO YOU
15 UNDERSTAND THAT?

16 A UH-HUH.

17 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
18 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
19 OUR GENERAL ASSEMBLY HAS DECLARED BY LAW REDUCES THE
20 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED BY
21 THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL
22 CULPABILITY OR RESPONSIBILITY.

23 AND WHAT I AM TALKING ABOUT AS A WAY OF
24 EXPLAINING THAT AND AN EXAMPLE WOULD BE FOR THE JURY TO
25 CONSIDER THAT THE MURDER WAS COMMITTED WHILE THE DEFENDANT

1 WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE;
2 THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY
3 OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE
4 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; AS WELL AS
5 THE MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME.
6 SO DO YOU UNDERSTAND WHAT I'M SPEAKING OF WHEN WE SAY THAT
7 YOU WOULD BE PRESENTED AND CONSIDER MITIGATING
8 CIRCUMSTANCES?

9 A UH-HUH.

10 Q NOW, IF YOU WERE A JUROR IN THAT SITUATION AND WE ARE
11 ASSUMING CERTAIN THINGS HERE AND WE ARE TALKING ABOUT THE
12 SENTENCING PHASE, COULD YOU, DEPENDING UPON THE PARTICULAR
13 FACTS AND CIRCUMSTANCES OF THAT CASE, INCLUDING THE
14 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES
15 AS WELL AS THE LAW, AS I WOULD INSTRUCT YOU AT THE
16 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
17 PRISON?

18 A WITH EVERYTHING YOU SAID?

19 Q YES, MA'AM. CONSIDERING ALL THOSE THINGS?

20 A UH-HUH.

21 Q YOU NEED TO ANSWER OUT LOUD FOR THE COURT REPORTER.

22 A OH, YES.

23 Q OKAY. NOW, IF YOU WERE A JUROR IN THAT SITUATION,
24 COULD YOU, DEPENDING UPON THE PARTICULAR FACTS AND
25 CIRCUMSTANCES OF THAT CASE, INCLUDING THE CONSIDERATION OF

1 AGGRAVATING CIRCUMSTANCES AS WELL AS MITIGATING
2 CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
3 CONCLUSION OF THAT CASE, RETURN A SENTENCE OF DEATH?

4 A YES.

5 Q NOW, MS. WINGATE, IF YOU WERE CHOSEN TO SERVE ON THIS
6 JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD BE
7 HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. I DON'T
8 KNOW EXACTLY HOW LONG THIS CASE IS GOING TO LAST. IT COULD
9 BE AT THE OUTSIDE SEVEN TO TEN DAYS. IT COULD BE LESS THAN
10 THAT. I REALLY DON'T HAVE A REAL IDEA BECAUSE WE NEVER
11 KNOW HOW LONG CASES WILL TAKE.

12 A UH-HUH.

13 Q BUT I DO KNOW THAT THAT WOULD BE AN OUTSIDE RANGE OF
14 SEVEN TO TEN DAYS. EXCEPT FOR THE PERSONAL INCONVENIENCE
15 THAT YOU WOULD SUFFER, WOULD THIS POSE A SERIOUS DANGER TO
16 THE HEALTH OR WELL-BEING OF YOURSELF OR OF THOSE DEPENDENT
17 UPON YOU?

18 A NO.

19 Q THANK YOU FOR RESPONDING TO MY QUESTIONS. PLEASE
20 ANSWER ANY OF MR. STONE'S QUESTIONS.

21 A ALL RIGHT.

22 MR. STONE: THANK YOU, YOUR HONOR.

23 EXAMINATION

24 BY MR. STONE:

25 A HEY, MS. WINGATE. HOW ARE YOU?

1 A HELLO.

2 Q MY NAME IS DUFFIE STONE. I WAS INTRODUCED EARLIER,
3 BUT I WANTED TO DO THAT AGAIN.

4 A YES.

5 Q THIS IS BETH FULLWOOD---

6 A HEY.

7 Q ---SHE IS, ALONG WITH ME, REPRESENTING GARY TERRY,
8 WHO IS ALSO SITTING AT THAT TABLE OVER THERE.

9 A OKAY.

10 Q YOUR FATHER USED TO WORK AT KIRKLAND CORRECTIONAL
11 INSTITUTE?

12 A UH-HUH.

13 Q HOW LONG DID HE WORK THERE?

14 A OH, LET'S SEE. I THINK FROM LIKE '82---

15 Q RIGHT.

16 A ---UNTIL -- MAYBE ABOUT THREE YEARS AGO.

17 Q OKAY. THAT'S A PRETTY GOOD TIME. IN FACT, TEN
18 YEARS. A LITTLE OVER TEN YEARS?

19 A YEAH.

20 Q DID -- DID YOU GUYS TALK ABOUT HIM WORKING THERE?

21 WERE YOU -- WOULD YOU TALK ABOUT KIRKLAND CORRECTIONAL AT
22 ALL?

23 A NO.

24 Q OKAY.

25 A NO.

1 Q SO YOU'VE REALLY GOT NO IMPRESSION ABOUT THE CRIMINAL
2 JUSTICE SYSTEM FROM HIM WORKING AT KIRKLAND?

3 A NO. I JUST KNEW THAT HE WORKED THERE.

4 Q OKAY. ALL RIGHT. WHAT THE JUDGE TALKED ABOUT
5 EARLIER--

6 A UH-HUH.

7 Q ---WAS SOMETHING THAT WE MAY NEVER GET TO. HE TALKED
8 ABOUT A PENALTY PHASE.

9 NOW, IF MR. TERRY IS FOUND NOT GUILTY, WE DON'T
10 -- WE DON'T GO TO A PENALTY PHASE, BUT WE HAVE -- AS
11 LAWYERS, WE'VE GOT TO ASK YOU ABOUT THE PENALTY PHASE
12 REGARDLESS OF WHETHER IT HAPPENS OR NOT, OKAY?

13 A UH-HUH.

14 Q IN FACT, YOU MAY OR MAY NOT BE ABLE TO SIT ON THE
15 JURY. SO THESE QUESTIONS MAY BE SORT OF HYPOTHETICAL, TOO,
16 BUT LET'S JUST ASSUME THE FACT, THAT'S THE SITUATION.

17 HAVE YOU EVER SERVED ON A CRIMINAL CASE BEFORE?

18 A NO.

19 Q OKAY. IN A NORMAL CRIMINAL CASE, YOU SIT AS A JUROR
20 AND DETERMINE THE FACTS IF SOMEBODY'S GUILTY OR NOT GUILTY.

21 IN A DEATH PENALTY CASE, YOU MAY SIT ALSO IN A
22 JURY THAT DETERMINES THE SENTENCE, WHETHER THAT BE LIFE OR
23 DEATH, YOU UNDERSTAND?

24 A UH-HUH.

25 Q AFTER YOU HAVE DONE THAT, WHEN YOU ARE IN THE

1 SENTENCING PHASE, YOU HAVE ALREADY FOUND SOMEBODY GUILTY OF
2 MURDER, YOU'VE ALSO FOUND THEM GUILTY OF ANOTHER CRIME,
3 MAYBE RAPE, MAYBE BURGLARY, ALL THREE. IT COULD BE ALL
4 THREE.

5 IF YOU ARE IN THAT SITUATION, HAVING ALREADY
6 DECIDED SOMEBODY IS GUILTY OF MURDER AND RAPE AND BURGLARY,
7 CAN YOU CONSIDER MITIGATING CIRCUMSTANCES AND FIND THAT
8 PERSON APPROPRIATE FOR A LIFE SENTENCE?

9 A I WOULD SAY, YES, YOU KNOW.

10 Q OKAY. NOT -- NOT TAKING ANY -- YOU HAVE ALREADY
11 DECIDED GUILT---

12 A OKAY.

13 Q ---YOU UNDERSTAND THAT?

14 A UH-HUH.

15 Q YOU ARE NOW IN SENTENCING. COULD YOU STILL, KNOWING
16 SOMEBODY IS A MURDERER AND A RAPIST AND A BURGLAR, THAT
17 THEY COULD STILL BE SOMEBODY THAT YOU WOULD RECOMMEND A
18 LIFE SENTENCE FOR?

19 A YEAH.

20 Q OKAY. AND LIKEWISE, COULD YOU DO THE SAME THING AND
21 RECOMMEND THE DEATH PENALTY SENTENCE FOR THEM?

22 A I -- YES, YES.

23 Q OKAY. DEPENDING ON ALL THE CIRCUMSTANCES THAT YOU
24 HEAR, THE AGGRAVATION AND THE MITIGATION?

25 A OKAY.

1 Q IS THAT RIGHT -- IS THAT FAIR?

2 A YES.

3 Q OKAY. SO IN OTHER WORDS, WHAT YOU'RE TELLING US,
4 BECAUSE THE JUROR WE NEED IS A JUROR WHO WILL LISTEN TO ALL
5 OF THE EVIDENCE, NOT JUST THE GUILT AND INNOCENCE STUFF,
6 BUT ALSO THE AGGRAVATION, ALSO THE MITIGATION, ALL THOSE
7 THINGS THAT THE JUDGE TALKED TO YOU ABOUT BEFORE---

8 A UH-HUH.

9 Q ---AND AFTER YOU HEAR ALL OF THAT, WE NEED A JUROR
10 WHO CAN MAKE A DECISION BETWEEN LIFE AND DEATH. YOU
11 UNDERSTAND THAT?

12 A YES.

13 Q AND YOU COULD BE THAT KIND OF JUROR?

14 A YES.

15 Q ALL RIGHT.

16 NOW, IN SOUTH CAROLINA ALSO, THEY REQUIRE THAT
17 YOU SIGN THE SENTENCE FORM. IN OTHER WORDS, IF YOU
18 RECOMMEND DEATH, THERE ARE TWELVE -- TWELVE LINES FOR
19 TWELVE JURORS, OKAY?

20 A UH-HUH.

21 Q AND YOU, AS ONE OF THOSE JURORS, WOULD HAVE TO SIGN
22 THAT. WOULD THAT GIVE YOU ANY PROBLEM?

23 A NO PROBLEM.

24 Q OKAY. ALL RIGHT. IT'S JUST A MERE QUESTION OF
25 WHETHER OR NOT YOU'LL LISTEN TO ALL OF THE EVIDENCE AND AT

1 THE END OF THAT MAKE A DETERMINATION, IS THAT RIGHT?

2 A YES.

3 Q OKAY. THANK YOU, MA'AM. I APPRECIATE IT. THANK
4 YOU, MA'AM.

5 THE COURT: MR. CHASE.

6 MR. CHASE: THANK YOU, YOUR HONOR.

7 EXAMINATION

8 BY MR. CHASE:

9 Q GOOD MORNING, MS. WINGATE.

10 A HI.

11 Q HOW ARE YOU DOING?

12 A DOING GOOD.

13 Q THANKS FOR BEING HERE. I KNOW IT'S NOT BY CHOICE,
14 BUT WE APPRECIATE IT.

15 A OKAY.

16 Q MY NAME IS TOM CHASE---

17 A UH-HUH.

18 Q ---AND I WILL BE ASSISTING DEPUTY SOLICITOR, FRAN
19 HUMPHRIES, AND SOLICITOR DONNIE MYERS IN THE PROSECUTION OF
20 THIS CASE.

21 A UH-HUH.

22 Q I BASICALLY HAVE ONE QUESTION FOR YOU.

23 SINCE THIS IS THE FIRST TIME WE'VE EVER MET---

24 A UH-HUH.

25 Q ---WE TRY TO FIND OUT AS MUCH AS WE CAN---

1 A UH-HUH.

2 Q ---AND I DON'T WANT TO KNOW THE BASIS FOR ANYTHING,
3 LIKE YOUR -- ANY SORT OF BELIEF THAT YOU HAVE OR ANYTHING
4 LIKE THAT BECAUSE THAT'S NONE OF MY BUSINESS. ALL I WANT
5 TO KNOW IS, IS THERE ANYTHING IN YOUR BACKGROUND, YOUR
6 UPBRINGING, YOUR FAMILY TIES, YOUR WORK RELATIONSHIPS OR
7 ANYTHING THAT WOULD PREVENT YOU FROM NOT ONLY CONSIDERING,
8 BUT ALSO IMPOSING A LIFE SENTENCE IN THE APPROPRIATE
9 CIRCUMSTANCES?

10 A (WHEREUPON, THE JUROR NODS IN THE NEGATIVE AT THIS
11 TIME.)

12 THE COURT: YOU NEED TO ANSWER OUT LOUD, MA'AM.

13 THE JUROR: OH, NO.

14 MR. CHASE: AND ON THE FLIP SIDE, THE SAME THING.
15 IS THERE ANYTHING, ANYTHING OUT OF YOUR PAST OR ANY OF YOUR
16 RELATIONSHIPS OR ANYTHING LIKE THAT, THAT UNDER THE
17 APPROPRIATE CIRCUMSTANCES, THAT WOULD PREVENT YOU FROM
18 CONSIDERING AND ALSO IMPOSING A DEATH SENTENCE IF YOU FELT
19 THAT WAS THE APPROPRIATE SENTENCE?

20 A NO.

21 Q WHAT WE ARE LOOKING FOR IS A JUROR THAT CAN BE FAIR
22 AND IMPARTIAL BOTH TO THE STATE OF SOUTH CAROLINA AND TO
23 THE DEFENDANT, GARY DUBOSE TERRY. COULD YOU BE THAT TYPE
24 JUROR?

25 A YES, YES.

1 Q THAT'S ALL WE CAN ASK OF YOU, MS. WINGATE.

2 THANK YOU.

3 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

4 MR. STONE: NO, SIR. THANK YOU, MS. WINGATE.

5 THE JUROR: OKAY.

6 THE COURT: JUST ONE MOMENT, PLEASE, MS. WINGATE.

7 THE JUROR: OKAY.

8 THE COURT: MS. WINGATE, I WANT TO THANK YOU VERY
9 MUCH FOR YOUR PARTICIPATION HERE THIS WEEK, NOT ONLY TODAY,
10 BUT ALSO ON MONDAY---

11 THE JUROR: UH-HUH.

12 THE COURT: ---I FIND THAT YOU ARE QUALIFIED TO
13 SERVE AS A POTENTIAL JUROR IN THIS CASE AND WITH THAT
14 QUALIFICATION, I WOULD REMIND YOU, ONCE AGAIN, THAT YOU ARE
15 NOT TO DISCUSS THIS MATTER WITH YOUR FELLOW JURORS, FAMILY,
16 FRIENDS OR ANYONE ELSE THAT YOU MAY COME IN CONTACT WITH.

17 THE JUROR: OKAY.

18 THE COURT: ALSO, YOU ARE -- IF ANYONE SHOULD
19 ATTEMPT TO CONTACT YOU CONCERNING THIS CASE, ONCE AGAIN,
20 GATHER AS MUCH INFORMATION AS YOU POSSIBLY CAN ABOUT THAT
21 INDIVIDUAL AND REPORT IT TO ME IMMEDIATELY BECAUSE THAT'S A
22 VERY SERIOUS MATTER AND ALSO YOU ARE TO REFRAIN FROM
23 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
24 CONCERNING THIS CASE.

25 SIMPLY PUT, ALL I WOULD WANT YOU TO CONSIDER IN

1 THIS CASE IF YOU ARE SELECTED TO SERVE AS A POTENTIAL JUROR
2 IN THIS CASE OR TO SERVE AS A JUROR IN THIS CASE WOULD BE
3 WHAT YOU SEE AND HEAR IN THIS COURTROOM---

4 THE JUROR: UH-HUH.

5 THE COURT: ---NOTHING MORE AND NOTHING LESS.

6 NOW, I THINK YOU RECEIVED SOME INSTRUCTIONS
7 YESTERDAY THAT YOU WERE TO COME HERE WITH YOUR BAGS PACKED
8 THIS MORNING AND BE READY TO STAY WITH US IF YOU ARE
9 SELECTED.

10 WE ARE GOING TO BE SENDING YOU TO A HOLDING ROOM
11 WITH THE REMAINDER OF THE JURORS THAT HAVE BEEN QUALIFIED
12 AS POTENTIAL JURORS IN THIS CASE BECAUSE IN JUST A SHORT
13 WHILE, WE ARE GOING TO SELECT A JURY IN OUR CASE. I'LL
14 LOOK FORWARD TO SEEING YOU IN JUST A LITTLE WHILE.

15 THE JUROR: ALL RIGHT.

16 THE COURT: THANK YOU, MA'AM.

17 THE JUROR: THANK YOU.

18 (WHEREUPON, THE JUROR WAS EXCUSED
19 AT THIS TIME.)

20 THE COURT: ALL RIGHT.

21 LET THE RECORD REFLECT THAT JUROR NUMBER 245,
22 LISA F. WINGATE, IS QUALIFIED TO SERVE AS A POTENTIAL JUROR
23 IN THIS CASE PURSUANT TO SECTION 16-320 OF THE CODE OF LAWS
24 OF THE STATE OF SOUTH CAROLINA, 1976 AS AMENDED.

25 LET ME ADVISE THE ATTORNEYS THAT ON PANEL NUMBER

1 TEN, JUROR NUMBER 217, DAVID W. SONNEFELD, IS HAVING AN
2 ASTHMATIC ATTACK.

3 IS THERE ANY OBJECTION TO -- FROM THE DEFENSE OR
4 THE STATE TO HIM BEING EXCUSED?

5 MS. FULLWOOD: WHICH PANEL IS THAT?

6 THE COURT: IT'S NUMBER TEN, THE NEXT PANEL.

7 MS. FULLWOOD: OH, NO, SIR. NOT AT ALL.

8 MR. CHASE: NO OBJECTION.

9 THE COURT: ALL RIGHT. PLEASE EXCUSE MR.
10 SONNEFELD.

11 LET ME SEE THE LAWYERS AT THE SIDE BAR, PLEASE.

12 (WHEREUPON, THE FOLLOWING BENCH
13 CONFERENCE WAS HELD AT THIS.)

14 THE COURT: OKAY. ALL RIGHT. WE'VE GOT ALLISON
15 WHITAKER'S, NUMBER 12(SIC), HUSBAND HAS TO HAVE AN M.R.I.,
16 MAY NEED BACK SURGERY NEXT WEEK.

17 DAVID FOULKS' WIFE WAS IN AN ACCIDENT FRIDAY.
18 BACK WENT OUT. SHE IS ON MEDICINE, I GUESS.

19 THE CLERK: I HAVE NOT EVEN READ THEM, JUDGE.
20 SHE JUST HANDED THEM TO ME. I DIDN'T EVEN READ THEM.

21 NUMBER 151, JAMES MCCABE, HAS SECOND THOUGHTS
22 ABOUT WHETHER HE COULD IMPOSE THE DEATH PENALTY.

23 MR. STONE: GOOD.

24 THE COURT: AND NUMBER 63, JAN CURTIS, HAS DENTAL
25 PROBLEMS. SHE HAS -- I THINK SHE TOLD ME THE OTHER DAY,

1 SHE HAD HAD A ROOT CANAL ON MONDAY, SEPTEMBER THE 8TH, AND
2 SHE SUFFERED SOME COMPLICATIONS. THAT HER DENTIST HAS BEEN
3 TREATING HER OVER THE PAST WEEK. SHE TOLD HIM TODAY SHE
4 WAS ON JURY DUTY AND WAS INFORMED TO PREPARE FOR POSSIBLY
5 FIVE TO TEN DAYS SEQUESTRATION. I'M CONCERNED THAT HER
6 TREATMENT PLAN MIGHT REQUIRE A VISIT TO MY OFFICE AT SOME
7 POINT DURING THAT TIME ESPECIALLY IF SHE EXPERIENCES MORE
8 PAIN. ASK YOU TO TAKE THIS IN CONSIDERATION.

9 I THINK WE CAN WORK WITH THAT.

10 MR. STONE: OKAY.

11 THE COURT: NOW, WHAT I'M GOING TO DO. LET'S
12 SEE, LET'S GO AHEAD AND WORK THROUGH THE REST OF THIS PANEL
13 AND WE'RE SEE.

14 I'M GOING TO HAVE TO FIND OUT FROM MS. WHITAKER
15 AND MR. FOULKS AND MR. MCCABE, I'LL HAVE TO TALK WITH THEM
16 A LITTLE BIT MORE.

17 MR. MCCABE SOUNDS LIKE A GUY I HAD IN A CASE IN
18 SPARTANBURG. HE WAS AN ELECTRICIAN FOR DUKE POWER AND WHEN
19 HE WAS INITIALLY EXAMINED, YES, I COULD IMPOSE EITHER ONE.
20 THEN WHEN HE CAME BACK FOR US TO SEAT THE JURY ON THAT
21 WEDNESDAY MORNING, HE SAID, YOU KNOW, JUDGE, I'VE HAD
22 SECOND THOUGHTS ABOUT THAT. I'VE BEEN WORKING ON
23 ELECTRICITY ALL MY LIFE. I DON'T BELIEVE I CAN. HE SAID I
24 HAD A VISION OVERNIGHT. AND THAT WAS PART OF THE APPEAL
25 THAT I SHOULDN'T HAVE EXCUSED HIM, BUT, OF COURSE, THAT WAS

1 NOT A PROBLEM BUT THAT'S THE KIND OF THING YOU GET AND WE
2 ALL KNOW THAT.

3 (WHEREUPON, THE BENCH CONFERENCE
4 WAS CONCLUDED AT THIS TIME.)

5 THE COURT: ALL RIGHT.

6 JUROR NUMBER 69, SPENCER L. DAVIS.

7 SPENCER L. DAVIS,

8 (JUROR NUMBER 69, WHITE MALE,
9 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

10 EXAMINATION

11 BY THE COURT:

12 Q A VERY PLEASANT GOOD MORNING TO YOU, MR. DAVIS.

13 A THANK YOU, SIR. THE SAME TO YOU.

14 Q MR. DAVIS, YOU UNDERSTAND THAT YOU ARE UNDER OATH FOR
15 THIS PROCEEDING THIS MORNING?

16 A YES, SIR, I DO.

17 Q AND YOU ALSO REMEMBER THAT ON MONDAY, BEFORE I
18 DISMISSED YOU, I GAVE YOU CERTAIN INSTRUCTIONS THAT YOU
19 WERE NOT TO DISCUSS THIS CASE WITH ANYONE, IF ANYONE
20 ATTEMPTED TO CONTACT YOU CONCERNING THIS CASE, THAT YOU
21 WERE TO REPORT THAT TO ME WHEN YOU CAME BACK HERE TODAY AND
22 THAT YOU WERE TO REFRAIN FROM READING, WATCHING OR
23 LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

24 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
25 INSTRUCTIONS?

1 A NO, SIR. I DID MENTION IT TO MY WIFE.

2 Q YOU DID MENTION IT TO YOUR WIFE. WHAT DID YOU
3 MENTION TO HER?

4 A I JUST MENTIONED TO HER THAT IT WAS A MURDER CASE.

5 Q ALL RIGHT. ANYTHING FURTHER THAN THAT?

6 A NO, NO, SIR.

7 Q ALL RIGHT. IF YOU COULD, I'M GOING TO GET YOU TO
8 SPEAK UP A LITTLE BIT SO THAT THE COURT REPORTER AND THE
9 LAWYERS CAN HEAR YOU.

10 NOW, I'M GOING TO BE ASKING YOU SEVERAL QUESTIONS
11 AND THEN ONE OF THE LAWYERS FOR THE DEFENDANT, AS WELL AS
12 ONE OF THE SOLICITORS, WILL ASK YOU SOME QUESTIONS.

13 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
14 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
15 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S NECESSARY
16 THAT CERTAIN QUESTIONS ARE ASKED.

17 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
18 WRONG ANSWERS TO THESE QUESTIONS THAT WE ARE GOING TO BE
19 POSING TO YOU. SO IF YOU WOULD, JUST ANSWER THEM OPENLY
20 AND HONESTLY AND FULLY AND ALSO KEEP IN MIND, MR. DAVIS,
21 THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW
22 WHAT YOUR VIEW IS IN A PARTICULAR AREA.

23 ALSO, I WANT YOU TO KEEP IN MIND THROUGHOUT THIS
24 QUESTIONING THAT YOU'RE PROBABLY GOING TO BE ASKED
25 QUESTIONS THAT YOU HAVE NEVER EVEN CONSIDERED BEFORE. SO

1 PLEASE LISTEN VERY CAREFULLY TO THE QUESTIONS. IF YOU HAVE
2 ANY NEED TO HAVE THEM REPEATED, EXPLAINED OR RESTATED IN
3 ANY WAY, ALL YOU HAVE TO DO IS LET US KNOW THAT. DO YOU
4 UNDERSTAND?

5 A YES, SIR, I DO.

6 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE
7 DISCUSSING OVER THE NEXT FEW MINUTES WILL INCLUDE TALKING
8 ABOUT PENALTY, BUT THE MERE FACT THAT WE EVEN TALK ABOUT
9 PENALTY OR MENTION THAT WORD, DOES NOT INDICATE ANYTHING
10 ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW
11 TO BE INNOCENT. DO YOU UNDERSTAND THAT?

12 A YES, SIR.

13 Q NOW, MR. DAVIS, LET'S ASSUME FOR A FEW MOMENTS THAT
14 YOU WERE A JUROR IN A CRIMINAL CASE AND IF YOU WERE, COULD
15 YOU LISTEN TO THE LAW, ACCEPT AND APPLY THE LAW, AS I WOULD
16 INSTRUCT YOU AS THE JUDGE OF THIS COURT, EVEN THOUGH YOU
17 MAY NOT AGREE WITH THAT LAW OR THINK THAT IT OUGHT TO BE
18 SOME OTHER WAY?

19 A YES, SIR, I COULD.

20 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
21 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

22 A YES, SIR.

23 Q NOW, MR. DAVIS, IN A CRIMINAL CASE, THE STATE OF
24 SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
25 GUILT. AND THE BURDEN OF PROOF THAT THE STATE MUST MEET IS

1 TO PROVE EACH AND EVERY ELEMENT OF THE CRIME OR CRIMES WITH
2 WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT. A DEFENDANT
3 HAS NO BURDEN TO PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND
4 THAT?

5 A YES, SIR.

6 Q NOW, COULD YOU, DEPENDING ON THE FACTS AND EVIDENCE
7 AND THE LAW AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
8 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

9 A YES, SIR, I COULD.

10 Q NOW, YOU UNDERSTAND WHEN I HAD YOU HERE ON MONDAY
11 MORNING WITH YOUR FELLOW JURORS THAT I EXPLAINED TO YOU
12 THAT THIS IS A CASE IN WHICH THE STATE OF SOUTH CAROLINA
13 SEEKS THE DEATH PENALTY AND I ALSO EXPLAINED TO YOU THAT AS
14 A RESULT OF THAT, THAT WE ARE ENGAGED IN WHAT IS CALLED A
15 BIFURCATED TRIAL, MEANING THAT IT'S DIVIDED INTO TWO PARTS.
16 THE FIRST PART OF THAT TRIAL IS CALLED THE GUILT PHASE AND
17 THE SECOND PART IS CALLED THE SENTENCING PHASE. DO YOU
18 UNDERSTAND THAT?

19 A YES, SIR.

20 Q NOW, IF YOU WERE A JUROR IN SUCH A CASE AND WE ARE
21 TALKING ABOUT THE GUILT PHASE OF THE TRIAL AND IF THE JURY
22 RETURNED A VERDICT OF NOT GUILTY AS TO MURDER, DO YOU
23 UNDERSTAND THAT THERE WOULD BE NO NEED -- THAT THERE WOULD
24 BE NO PURPOSE OR REASON TO HAVE THE SECOND PART OF THE
25 TRIAL, THE SENTENCING PHASE?

1 A YES, SIR, I DO.

2 Q CONVERSELY, IF YOU WERE A JUROR IN SUCH A CASE AND IF
3 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
4 UNDERSTAND THAT YOU WOULD THEN MOVE TO THE SENTENCING PHASE
5 OF THE TRIAL?

6 A YES, SIR, I DO.

7 Q NOW, IN THAT PHASE OF THE TRIAL, MR. DAVIS, THERE
8 WOULD BE EVIDENCE PRESENTED IN THE FORM OF AGGRAVATING
9 CIRCUMSTANCES AS WELL AS MITIGATING CIRCUMSTANCES.

10 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
11 INCIDENTS, DETAILS AND OCCURRENCES WHICH THE GENERAL
12 ASSEMBLY OF OUR STATE HAS DECLARED BY LAW WOULD MAKE WORSE;
13 THAT IS, TO AGGRAVATE THE OFFENSE OF MURDER.

14 IN OTHER WORDS, WHEN THE MURDER OCCURS IN
15 CONJUNCTION WITH AN AGGRAVATING CIRCUMSTANCE, IT INCREASES
16 THE ENORMITY OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

17 WHAT WE ARE TALKING ABOUT, BY WAY OF EXAMPLE,
18 WOULD BE WHEN A MURDER IS COMMITTED ALONG WITH THE CRIME
19 OF, SAY, CRIMINAL SEXUAL CONDUCT OR BURGLARY OR THE LIKE.
20 DO YOU UNDERSTAND THAT?

21 A YES, SIR.

22 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
23 INCIDENTS, FACTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
24 OUR GENERAL ASSEMBLY HAS DECLARED BY LAW REDUCES THE
25 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED BY

1 THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL
2 CULPABILITY OR RESPONSIBILITY.

3 AND EXAMPLES OF MITIGATING CIRCUMSTANCES WOULD BE
4 THE MURDER WAS COMMITTED WHILE A DEFENDANT WAS UNDER THE
5 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY
6 OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
7 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
8 LAW WAS SUBSTANTIALLY IMPAIRED; AS WELL AS THE MENTALITY OF
9 THE DEFENDANT AT THE TIME OF THE CRIME. DO YOU UNDERSTAND
10 WHAT I'M SPEAKING OF WHEN I SAY MITIGATING CIRCUMSTANCES?

11 A YES, SIR, I DO.

12 Q NOW, LET'S ASSUME THAT YOU WERE A JUROR IN THAT
13 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
14 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE,
15 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
16 CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
17 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
18 PRISON?

19 A YES, SIR.

20 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
21 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
22 THAT CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
23 MITIGATING CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT
24 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
25 DEATH?

1 A YES, SIR, I COULD.

2 Q NOW, MR. DAVIS, IF YOU ARE CHOSEN TO SERVE ON THIS
3 JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD BE
4 HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL.

5 NOW, I DON'T HAVE A REAL GOOD IDEA OF HOW LONG
6 THE TRIAL WOULD LAST, BUT I DO HAVE AN ESTIMATE THAT IT
7 WOULD LAST NO LONGER THAN SEVEN TO TEN DAYS. IT COULD BE
8 SHORTER THAN THAT EVEN. EXCEPT FOR THE PERSONAL
9 INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS POSE A
10 SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR
11 OF THOSE DEPENDENT UPON YOU?

12 A NO, SIR.

13 Q THANK YOU VERY MUCH FOR ANSWERING MY QUESTIONS.
14 PLEASE RESPOND TO MS. FULLWOOD'S QUESTIONS AT THIS TIME.

15 EXAMINATION

16 BY MS. FULLWOOD:

17 Q GOOD MORNING, MR. DAVIS.

18 A GOOD MORNING.

19 Q HOW ARE YOU?

20 A FINE.

21 Q GOOD.

22 AS JUDGE CLARY TOLD YOU, I'M BETH FULLWOOD.
23 ALONG WITH DUFFIE STONE, SEATED AT COUNSEL TABLE, I
24 REPRESENT GARY TERRY.

25 IT'S SORT OF UNUSUAL TO BE ABLE TO ASK JURORS

1 QUESTIONS, AT LEAST, FOR US LAWYERS. IF YOU'LL JUST KIND
2 OF BEAR WITH ME HERE. BUT IT'S IMPORTANT THAT I DO GET TO
3 ASK YOU QUESTIONS. MOST OF MY QUESTIONS ARE GOING TO BE
4 ABOUT THE SECOND TYPE OF TRIAL THE JUDGE WAS TALKING ABOUT.
5 I KNOW THAT THAT'S SOMETHING THAT MAY OR MAY NOT HAPPEN,
6 BUT SINCE THIS IS THE ONLY TIME I GET TO TALK TO YOU,
7 THAT'S WHY I HAVE TO ASK YOU QUESTIONS ABOUT THAT PHASE OF
8 THE TRIAL IF WE GET THERE.

9 COULD YOU TELL ME A LITTLE BIT, MR. DAVIS, ABOUT
10 YOUR POSITION ON THE DEATH PENALTY?

11 A WELL, I FEEL -- I FEEL THAT IF MURDER IS COMMITTED
12 AND IF IT'S -- IF -- I FEEL LIKE IF IT'S PLANNED AND
13 COMMITTED, I THINK THAT THE DEATH PENALTY IS A JUST
14 PENALTY.

15 Q OKAY. SO YOU SAY IF MURDER WAS COMMITTED AND IT WAS
16 PLANNED, THEN IT'S A JUST PENALTY?

17 A RIGHT.

18 Q OKAY. DO YOU FEEL LIKE IT'S THE JUST PENALTY, THE
19 ONLY PENALTY IN ANY CASE WHERE THE MURDER WAS PLANNED AND
20 COMMITTED?

21 A NO, I DON'T FEEL LIKE -- NOT NECESSARILY.

22 Q OKAY. OKAY. WELL, DO YOU UNDERSTAND THAT IN SOUTH
23 CAROLINA MURDER IS KILLING SOMEONE WITH MALICE
24 AFORETHOUGHT?

25 A RIGHT.

1 Q AND MALICE MEANS WITH AN EVIL INTENTION OR A WICKED
2 INTENTION, JUST MEANNESS?

3 A RIGHT.

4 Q AND AFORETHOUGHT MEANS THAT THE KILLER THOUGHT ABOUT
5 IT BEFOREHAND. IT DOESN'T HAVE TO BE A LONG PERIOD OF
6 TIME. IT COULD JUST BE A SECOND BEFORE IT HAPPENS, BUT
7 IT'S THOUGHT BEFOREHAND, I'M GOING TO KILL THAT PERSON.
8 THAT'S WHAT MURDER MEANS BASICALLY. BASICALLY KILLING
9 SOMEBODY WICKEDLY AND MEANING TO DO IT.

10 NOW, YOU UNDERSTAND THAT IF A JURY EVER GETS TO
11 THAT SECOND TYPE OF TRIAL JUDGE CLARY WAS TELLING YOU
12 ABOUT, THAT MEANS THEY'VE ALREADY CONVICTED THE DEFENDANT
13 OF MURDER, OF KILLING SOMEONE WICKEDLY AND INTENDING TO DO
14 IT AND OF SOME OTHER RELATED TYPE OF CRIME SUCH AS RAPE OR
15 SUCH AS BURGLARY. IS THAT CLEAR TO YOU?

16 A RIGHT.

17 Q ALL RIGHT. NOW, IF YOU WERE A JUROR SITTING IN THAT
18 SECOND TYPE OF TRIAL AND KEEP IN MIND YOU HAVE ALREADY
19 CONVICTED THIS DEFENDANT OF MURDER AND SOME OTHER CRIME,
20 AFTER HEARING ALL OF THE EVIDENCE, WOULD YOU AUTOMATICALLY
21 VOTE TO GIVE HIM THE DEATH PENALTY.

22 A I DON'T THINK I WOULD AUTOMATICALLY VOTE TO GIVE IT
23 TO HIM, BUT I THINK THAT I WOULD HAVE TO SEE WHAT HAPPENED
24 AS NEARLY AS POSSIBLE.

25 Q OKAY.

1 A BUT I THINK THAT IF HE HAD PLANNED IT---

2 Q UH-HUH.

3 A ---AND THOUGHT ABOUT IT A LOT AND I DON'T SEE ANY
4 REASON, YOU KNOW, WITH A LOT OF AFORETHOUGHT, I DON'T SEE
5 ANY REASON WHY HE SHOULDN'T GET THE DEATH PENALTY.

6 Q OKAY. WELL, LET ME MAKE SURE THAT THIS IS CLEAR, MR.
7 DAVIS.

8 IF -- IF A JURY GETS TO THE POINT WHERE IT MOVES
9 INTO THAT SECOND TRIAL, IT'S ALREADY RULED OUT THINGS LIKE
10 THE KILLING WAS AN ACCIDENT OR THE KILLING WAS DONE IN HEAT
11 OF PASSION OR THE KILLING WAS DONE IN SELF-DEFENSE. IF
12 THOSE ARE EVER ISSUES IN A TRIAL, THEY DON'T -- THEY ARE
13 NOT THERE ANYMORE ONCE A PERSON HAS BEEN CONVICTED OF
14 MURDER. OKAY. AND SOME PEOPLE DON'T KNOW THAT. I DON'T
15 KNOW IF YOU KNEW THAT BEFORE OR NOT. AND, YOU KNOW, I JUST
16 NEED TO KNOW WHAT YOU REALLY THINK. SOME PEOPLE SORT OF
17 THINK AN EYE FOR AN EYE, A TOOTH FOR A TOOTH AND IF YOU
18 KILL, YOU OUGHT TO BE KILLED AND SOME PEOPLE SAY, WELL, THE
19 OTHER EXTREME IS NOBODY SHOULD EVER BE KILLED AND THEN, YOU
20 KNOW, THERE'S IN THE MIDDLE WHERE YOU COULD DO EITHER. YOU
21 WOULD HAVE TO, YOU KNOW, IT WOULD DEPEND ON THE
22 CIRCUMSTANCES.

23 A WELL, I GUESS THAT'S WHAT I'M SAYING. I DON'T -- I'M
24 NOT ON EITHER END. I'M MORE IN THE MIDDLE---

25 Q OKAY.

1 A ---ON, YOU KNOW---

2 Q ALL RIGHT, SIR.

3 A ---THE WAY YOU DESCRIBED IT. I MEAN, I WOULD HAVE TO
4 LOOK AT THE CIRCUMSTANCES AND SEE WHAT HAPPENED.

5 Q OKAY. WELL, IF YOU WERE A JUROR SITTING IN THAT
6 SECOND TYPE OF TRIAL AND YOU HAD HEARD ALL OF THE EVIDENCE
7 FROM THE PROSECUTION IN AGGRAVATION OF THE CASE AND ALL THE
8 EVIDENCE FROM THE DEFENSE IN MITIGATION OF THE CASE, COULD
9 YOU VOTE TO GIVE THAT DEFENDANT A LIFE SENTENCE EVEN THOUGH
10 YOU HAD ALREADY CONVICTED THEM OF KILLING SOMEBODY WITH A
11 WICKED INTENT AND HAVING THOUGHT ABOUT IT BEFOREHAND?

12 A I COULD DEPENDING ON THE CIRCUMSTANCES.

13 Q ALL RIGHT, SIR. SO, I GUESS, WHAT YOU ARE TELLING ME
14 THEN, IS YOU COULD LISTEN WITH AN OPEN MIND TO BOTH SIDES?

15 A YES, I COULD.

16 Q OKAY. WELL, THAT'S ALL ANYBODY CAN ASK FOR THEN.
17 THANK YOU, SIR.

18 THE COURT: MR. CHASE.

19 MR. CHASE: THANK YOU, YOUR HONOR.

20 EXAMINATION

21 BY MR. CHASE:

22 Q GOOD MORNING, MR. DAVIS.

23 A GOOD MORNING.

24 Q MY NAME IS TOM CHASE AND I WILL BE ASSISTING DEPUTY
25 SOLICITOR FRAN HUMPHRIES AND SOLICITOR DONNIE MYERS IN THE

1 PROSECUTION OF THIS CASE.

2 AND I JUST WANT TO WALK BACK THROUGH A COUPLE OF
3 THINGS TO MAKE SURE I UNDERSTOOD WHAT YOU SAID TO MS.
4 FULLWOOD QUESTIONS.

5 FROM WHAT I UNDERSTOOD, IN THE EVENT, WE REACHED
6 THAT -- YOU WERE A JUROR SITTING ON THE JURY AND WE MOVED
7 INTO THAT SECOND PHASE, DID YOU -- I THINK YOU INDICATED
8 THAT YOU WOULD LISTEN TO, NOT ONLY EVIDENCE IN AGGRAVATION,
9 BUT ALSO EVIDENCE IN MITIGATION, WOULD YOU LISTEN TO THAT?

10 A YES.

11 Q AND ONCE YOU HAD LISTENED TO ALL OF THAT EVIDENCE,
12 COULD YOU CONSIDER AND IMPOSE A LIFE SENTENCE IN THE
13 APPROPRIATE CIRCUMSTANCES?

14 A I COULD.

15 Q IF YOU FELT LIKE THAT WAS THE RIGHT PENALTY?

16 A I COULD.

17 Q AND ALSO, AFTER LISTENING TO THAT EVIDENCE IN
18 AGGRAVATION AND MITIGATION, IF YOU FELT THE CIRCUMSTANCES
19 WARRANTED IT, COULD YOU IMPOSE A SENTENCE OF DEATH?

20 A I COULD.

21 Q IN THE EVENT WE GOT TO THAT POINT WHERE YOU HAD
22 CONSIDERED ALL OF THE EVIDENCE AND -- IN AGGRAVATION AND
23 MITIGATION AND YOU AND ALL THE TWELVE JURORS -- ALL THE
24 OTHER JURORS, ELEVEN JURORS, FELT THAT A DEATH SENTENCE WAS
25 APPROPRIATE IN THE CASE, UNDER THE LAW OF OUR STATE, EACH

1 INDIVIDUAL JUROR WOULD LITERALLY HAVE TO SIGN THE VERDICT
2 FORM. THERE WOULD BE TWELVE LINES THERE AND, MR. DAVIS, IN
3 THE EVENT THAT WAS THE APPROPRIATE SENTENCE AND YOU FELT
4 THAT WAS APPROPRIATE, WOULD YOU BE ABLE TO LITERALLY AFFIX
5 YOUR SIGNATURE ON THERE---

6 A YES, I WOULD.

7 Q ---IMPOSING THAT SENTENCE? SO, THE FACT THAT YOU
8 WOULD HAVE TO SIGN YOUR NAME WOULD NOT HINDER YOUR ABILITY
9 TO IMPOSE THAT SENTENCE?

10 A NO.

11 Q MR. DAVIS, ALL WE ARE LOOKING FOR IN THIS CASE IS A
12 JUROR WHO CAN BE FAIR AND IMPARTIAL, NOT ONLY TO THE STATE
13 OF SOUTH CAROLINA, BUT TO THE DEFENDANT, MR. TERRY, IN THIS
14 CASE. COULD YOU BE THAT TYPE JUROR?

15 A I FEEL I CAN.

16 Q THAT'S ALL WE CAN ASK OF YOU. THANK YOU FOR YOU
17 TIME, SIR.

18 THE COURT: MR. DAVIS, I WANT TO THANK YOU VERY
19 MUCH FOR YOUR PARTICIPATION HERE EARLIER THIS WEEK, AS WELL
20 AS TODAY.

21 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A -- IS
22 THERE ANYTHING FURTHER FROM THE DEFENSE?

23 MS. FULLWOOD: NO, SIR.

24 THE COURT: ALL RIGHT. THE STATE?

25 MR. CHASE: NO, SIR.

1 THE COURT: I FIND THAT YOU ARE QUALIFIED TO
2 SERVE AS A POTENTIAL JUROR FOR THIS CASE AND WITH THAT
3 QUALIFICATION, THERE COMES SEVERAL MORE WORDS OF
4 INSTRUCTION.

5 FIRST OF ALL, YOU ARE NOT TO DISCUSS THIS CASE
6 WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR ANYONE ELSE
7 THAT YOU MAY COME IN CONTACT WITH.

8 ALSO, IF ANYONE ATTEMPTS TO CONTACT YOU
9 CONCERNING THIS MATTER, ONCE AGAIN, GATHER AS MUCH
10 INFORMATION ABOUT THAT INDIVIDUAL OR THOSE INDIVIDUALS AS
11 YOU POSSIBLY CAN AND REPORT THAT TO ME IMMEDIATELY BECAUSE
12 IT'S VERY SERIOUS AND I WOULD DEAL WITH IT PROMPTLY.

13 ALSO, YOU ARE TO CONTINUE TO REFRAIN FROM
14 READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
15 CONCERNING THIS CASE.

16 VERY SIMPLY PUT, IF YOU SERVE AS A JUROR IN THIS
17 CASE, ALL I WOULD WANT YOU TO CONSIDER IN THIS MATTER IS
18 WHAT YOU SEE AND HEAR IN THIS COURTROOM. NOTHING MORE AND
19 NOTHING LESS.

20 NOW, I THINK THAT YOU HAVE PROBABLY ALREADY
21 PACKED YOUR BAGS AS YOU WERE INSTRUCTED TO DO LAST NIGHT
22 AND BROUGHT THEM WITH YOU. AND I'M GOING TO BE SENDING YOU
23 TO A HOLDING ROOM HERE WHERE YOUR COLLEAGUES ON THIS JURY
24 WILL BE WITH YOU. IN A SHORT WHILE, WE ARE GOING TO BE
25 STRIKING A JURY IN THIS CASE. SO WE'LL SEND YOU TO BE WITH

1 THE REMAINDER OF THE QUALIFIED JURORS AT THIS TIME,
2 POTENTIAL JURORS. SEE YOU BACK IN HERE IN A LITTLE WHILE.

3 THANK YOU, SIR.

4 (WHEREUPON, THE JUROR WAS EXCUSED
5 AT THIS TIME.)

6 THE COURT: LET THE RECORD REFLECT THAT JUROR
7 NUMBER 69, SPENCER L. DAVIS, IS QUALIFIED TO SERVE AS A
8 POTENTIAL JUROR IN THIS CASE PURSUANT TO SECTION 16-320 OF
9 THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
10 AMENDED.

11 WHY DON'T WE DO THIS. I WOULD LIKE TO GO AHEAD
12 AND DEAL WITH THESE JURORS THAT HAVE PARTICULAR PROBLEMS.
13 AND, MADAM CLERK, IF YOU COULD JUST BRING THEM BASICALLY
14 ONE AT A TIME.

15 LET'S BRING MS. WHITAKER IN, ALLISON WHITAKER.

16 MR. CHASE: JUDGE, IF I COULD JUST ASK THAT WE --
17 MR. HUMPHRIES ASKED TO BE PRESENT WHEN WE DEALT WITH THE
18 JURORS THAT WERE ON THE ORIGINAL PANEL.

19 THE COURT: ALL RIGHT. HOW ABOUT GETTING HIM.

20 MR. CHASE: I'VE GOT MS. CARROLL ACTUALLY GOING
21 OVER TO GET HIM. IF I COULD JUST HAVE TWO MINUTES.

22 THE COURT: WELL, LET'S TAKE A COUPLE OF MINUTES
23 AND THEN WE WILL START WITH THAT AND BRING THOSE
24 INDIVIDUALS IN.

25 (RECESS.)

1 THE BAILIFF: ALL RISE. COURT IS IN SESSION.

2 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

3 MR. HUMPHRIES, I ASSUME THAT YOU HAVE BEEN FILLED
4 IN ON THE PROBLEMS THAT HAVE ARISEN.

5 MR. HUMPHRIES: I HAVE, YOUR HONOR.

6 THE COURT: ALL RIGHT. LET'S DO THIS.

7 I'M GOING TO BRING THEM IN, ONE AT A TIME,
8 STARTING WITH ALLISON WHITAKER.

9 ALLISON H. WHITAKER,

10 (JUROR NUMBER 236, WHITE FEMALE,
11 RESUMES THE WITNESS STAND AND TESTIFIED AS FOLLOWS:)

12 EXAMINATION

13 BY THE COURT:

14 Q HOW ARE YOU, MS. WHITAKER?

15 A FINE.

16 MR. STONE: YOUR HONOR, EXCUSE ME JUST A MOMENT.

17 (WHEREUPON, MR. STONE CONFERS WITH
18 THE DEFENDANT AT THIS TIME OFF THE RECORD.)

19 MR. STONE: THANK, YOUR HONOR. SORRY FOR THE
20 DELAY.

21 THE COURT: THANK YOU. NO PROBLEM.

22 YOU ARE ALLISON WHITAKER, CORRECT?

23 A YES, SIR.

24 Q NOW, MS. WHITAKER, YOU REMEMBER THAT YOU WERE PLACED
25 UNDER OATH ON MONDAY AS WELL AS YESTERDAY?

1 A YES, SIR.

2 Q YOU UNDERSTAND THAT YOU ARE STILL UNDER OATH TODAY?

3 A YES.

4 Q I'VE RECEIVED SOME INFORMATION THAT YOUR HUSBAND IS

5 GOING TO HAVE TO HAVE A M.R.I. AND MAY NEED BACK SURGERY

6 NEXT WEEK?

7 A YES, SIR.

8 Q WOULD YOU TELL ME A LITTLE BIT MORE ABOUT THAT?

9 A HE -- HIS BACK WENT OUT EARLY LAST WEEK AND I TOOK

10 HIM TO THE DOCTOR LAST MONDAY AND IT HADN'T GOTTEN ANY

11 BETTER SO HE WENT YESTERDAY---

12 Q UH-HUH.

13 A ---AND THE DOCTOR TOLD HIM THAT HE WOULD GO AHEAD AND

14 SCHEDULE THAT FOR TOMORROW, TO HAVE THE M.R.I., AND HE

15 DIDN'T KNOW IF HE MIGHT HAVE TO HAVE SURGERY SOMETIME NEXT

16 WEEK OR NOT ON IT. I JUST WANT TO MAKE Y'ALL AWARE OF IT.

17 Q OKAY. IS THAT SOMETHING -- EXCUSE ME. GO AHEAD.

18 A BECAUSE I KNOW THAT IF HE DOES HAVE IT, SOMEBODY WILL

19 HAVE TO BE ABLE TO TAKE CARE OF HIM AND STUFF.

20 Q OKAY.

21 A SO -- I HAVE NO IDEA IF THEY WILL DO IT OR NOT.

22 Q BUT HE IS GOING TO THE DOCTOR TOMORROW?

23 A BUT HE MAY HAVE -- YES.

24 THE COURT: QUESTIONS FROM THE DEFENSE?

25 MS. FULLWOOD: NO, YOUR HONOR.

1 THE COURT: FROM THE STATE?

2 MR. HUMPHRIES: NO, SIR.

3 THE COURT: LET ME SEE Y'ALL AT THE SIDE BAR,
4 PLEASE.

5 (WHEREUPON, A BENCH CONFERENCE WAS
6 HELD AT THIS TIME OFF THE RECORD.)

7 THE COURT: MS. WHITAKER, I THINK, GIVEN THE
8 SITUATION THAT YOU HAVE PRESENTED TO ME ABOUT YOUR HUSBAND,
9 AND AFTER DISCUSSING IT WITH THE LAWYERS ON BOTH SIDES,
10 WERE YOU TO BE SEATED ON THIS JURY TODAY BECAUSE WE ARE
11 GOING IN A SHORT WHILE GOING TO BE STRIKING A JURY IN THIS
12 CASE AND YOUR HUSBAND'S M.R.I. TURNS OUT TO BE A PROBLEM
13 FOR HIM, THEN SURGERY IS SCHEDULED, THEN WE WOULD CERTAINLY
14 BE AT A DISADVANTAGE IN HAVING YOU ON THE JURY BECAUSE I
15 WOULD HAVE TO EXCUSE YOU THEN TO CARE FOR HIM, SO I AM
16 GOING TO, OUT OF AN ABUNDANCE OF CAUTION, GO AHEAD AND
17 EXCUSE YOU WITH OUR THANKS FOR BEING HERE.

18 I'M SORRY THAT YOU ARE NOT GOING TO BE ABLE TO
19 FURTHER PARTICIPATE IN OUR PROCESS. I APOLOGIZE FOR ANY
20 INCONVENIENCE THAT WE HAVE CAUSED YOU AND ALSO WISH YOUR
21 HUSBAND THE BEST OF LUCK IN HIS M.R.I.

22 THE JUROR: THANK YOU.

23 THE COURT: THANK YOU, MA'AM.

24 (WHEREUPON, THE JUROR WAS EXCUSED
25 AT THIS TIME.)

1 THE COURT: WHEN WE DEPARTED LAST EVENING, WE HAD
2 THIRTY-FIVE QUALIFIED. WE HAVE QUALIFIED THREE MORE THIS
3 MORNING WHICH TOOK US TO THIRTY-EIGHT. NOW WE ARE AT
4 THIRTY-SEVEN.

5 ALL RIGHT. DAVID FOULKS.

6 DAVID L. FOULKS,

7 (JUROR NUMBER 86, BLACK MALE,
8 BEING ALREADY DULY SWORN, RETURNED TO THE WITNESS STAND AND
9 TESTIFIED AS FOLLOWS:)

10 EXAMINATION

11 BY THE COURT:

12 Q HEY.

13 A GOOD MORNING.

14 Q YOU ARE DAVID L. FOULKS, CORRECT?

15 A YES, SIR.

16 Q NOW, MR. FOULKS, YOU UNDERSTAND THAT YOU WERE PLACED
17 UNDER OATH MONDAY AS WELL AS YESTERDAY WHEN WE EXAMINED YOU
18 AND YOU UNDERSTAND THAT YOU ARE STILL UNDER OATH?

19 A YES, SIR.

20 Q ALL RIGHT. I HAVE RECEIVED SOME INFORMATION HERE
21 THAT YOUR WIFE WAS IN AN ACCIDENT AND HER BACK -- SHE'S
22 HAVING A BACK PROBLEM AND THAT SHE IS NOW ON MEDICINE. IS
23 THAT CORRECT?

24 A YES, SIR.

25 Q COULD YOU TELL ME A LITTLE BIT MORE ABOUT THAT?

1 A WELL, WHAT HAPPENED, SHE WAS IN A FOUR-CAR ACCIDENT
2 FRIDAY AND IT TOTAL LOST HER CAR AND SHE WENT INITIALLY TO
3 THE EMERGENCY ROOM.

4 YESTERDAY WHILE AT WORK, HER BACK TIGHTENED UP ON
5 HER AND SHE HAD TO LEAVE WORK AND GO TO THE DOCTOR. SHE
6 WENT BACK THIS MORNING, THEY PUT HER ON MEDICATION AND
7 SHE'S HAVING A LOT OF PROBLEMS GETTING AROUND. SO -- I
8 DIDN'T KNOW THAT UNTIL I GOT HOME LAST NIGHT OR I WOULD
9 HAVE MENTIONED IT YESTERDAY.

10 Q ALL RIGHT. INsofar AS HER CONDITION IS CONCERNED, IS
11 THAT -- I THINK THAT I ASKED YOU A QUESTION YESTERDAY --
12 THE FACT THAT YOU WOULD BE SEQUESTERED IN A MOTEL FOR THE
13 DURATION OF THE TRIAL, WOULD THAT POSE A SERIOUS DANGER TO
14 THE HEALTH OR WELL-BEING OF YOUR WIFE AND CHILDREN AS A
15 RESULT OF HER SITUATION?

16 A YES, SIR, IT WOULD.

17 THE COURT: ANYTHING FROM THE DEFENSE?

18 MS. FULLWOOD: NO, SIR.

19 THE COURT: FROM THE STATE?

20 MR. HUMPHRIES: NO, SIR.

21 THE COURT: MR. FOULKS, AS YOU ARE AWARE, WE ARE
22 GOING TO BE SELECTING A JURY HERE IN A VERY SHORT WHILE---

23 THE JUROR: YES, SIR.

24 THE COURT: ---AND GIVEN THE SITUATION THAT YOUR
25 WIFE IS IN, WERE YOU SELECTED AS A JUROR IN THIS CASE AND

1 SHE DEVELOPED SOME FURTHER PROBLEMS, THEN IF I HAD TO
2 RELEASE YOU FROM THE JURY AT THAT TIME, THAT WOULD
3 CERTAINLY IMPACT THE POSTURE OF OUR CASE. SO I AM GOING TO
4 EXCUSE YOU AS A RESULT OF YOUR WIFE'S CONDITION. I
5 CERTAINLY WOULDN'T WANT YOU TO BE ON A JURY CONCERNED ABOUT
6 HER AS WELL AS YOUR CHILDREN.

7 I KNOW YOU HAVE YOUNG CHILDREN---

8 THE JUROR: YES, SIR.

9 THE COURT: ---AND CERTAINLY THOSE OF US WHO ARE
10 MARRIED AND HAVE CHILDREN REALIZE HOW MUCH WE DEPEND UPON
11 OUR WIVES FOR THE CARE OF THOSE. I HAVE OLDER CHILDREN AND
12 I STILL DEPEND UPON MY WIFE TO MAKE SURE THAT THEY ARE
13 TAKEN CARE OF WHILE I'M ON THE ROAD. SO PLEASE UNDERSTAND
14 THAT I APOLOGIZE FOR ANY INCONVENIENCE THAT WE HAVE CAUSED
15 YOU AS A RESULT OF YOUR PARTICIPATION HERE THIS WEEK. YOU
16 HAVE BEEN VERY COOPERATIVE WITH US AND I APPRECIATE THAT.
17 I ALSO APPRECIATE YOU BRINGING THIS TO MY ATTENTION. I
18 HOPE THAT YOUR WIFE IS GOING TO DO WELL AND RECOVER FROM
19 HER INJURIES AND I WILL EXCUSE YOU FROM FURTHER
20 PARTICIPATION IN THIS CASE.

21 THE JUROR: I APPRECIATE THAT.

22 THE COURT: THANK YOU, SIR.

23 THE JUROR: THANK YOU.

24 (WHEREUPON, THE JUROR WAS EXCUSED
25 AT THIS TIME.)

1 THE COURT: JAMES MACABE.

2 JAMES M. MCCABE, JR.,

3 (JUROR NUMBER 151, WHITE MALE,
4 RETURNED TO THE WITNESS STAND AND TESTIFIED AS FOLLOWS:)

5 EXAMINATION

6 BY THE COURT:

7 Q GOOD MORNING, MR. MCCABE.

8 A GOOD MORNING.

9 Q YOU ARE JAMES MCCABE, IS THAT CORRECT?

10 A YES, SIR.

11 Q MR. MCCABE, ON MONDAY, YOU WILL RECALL THAT I PLACED
12 THE ENTIRE JURY UNDER OATH AND ALSO WHEN YOU WERE EXAMINED,
13 THAT YOU WERE PLACED UNDER OATH. DO YOU UNDERSTAND THAT
14 YOU ARE STILL UNDER OATH?

15 A YES, SIR.

16 Q NOW, I'VE RECEIVED SOME INFORMATION THAT YOU HAVE
17 SOME SECOND THOUGHTS ABOUT WHETHER OR NOT YOU COULD IMPOSE
18 THE DEATH PENALTY. WOULD YOU SHARE THOSE WITH ME?

19 A WELL, I HAVE BEEN AGONIZING OVER IT EVER SINCE I LEFT
20 HERE ON MONDAY AND IT REALLY, I GUESS, HIT ME YESTERDAY
21 BEING ALONE. AND I DON'T KNOW, ONE QUESTION THAT JUST KEPT
22 COMING TO MY MIND WAS THAT OF THE PROSECUTOR WHEN HE ASKED
23 IF I COULD SIGN MY NAME TO A DEATH WARRANT. AND THAT'S
24 REALLY BEEN BOTHERING ME. I DON'T KNOW IF I COULD OR NOT.

25 Q YOU UNDERSTAND THAT PART OF THE PROCESS OF BEING A

1 JUROR IN SUCH A CASE IS THAT YOU ARE TO BE ABLE TO CONSIDER
2 ALL OF THE FACTS, EVIDENCE THAT'S PRESENTED AND THE LAW, AS
3 I WOULD INSTRUCT YOU, AND FROM THAT BE ABLE TO RENDER
4 EITHER VERDICT, WHETHER IT BE LIFE IN PRISON OR DEATH. AND
5 THAT APART OF THAT RESPONSIBILITY OF SERVING AS A JUROR
6 THAT IF YOU AND THE OTHER TWELVE JURORS WERE TO DECIDE TO
7 IMPOSE THE DEATH PENALTY RATHER THAN A LIFE SENTENCE, THAT
8 EACH AND EVERY ONE OF YOU WOULD HAVE TO SIGN THAT SENTENCE
9 FORM ATTESTING THAT YOU HAD AGREED TO THAT. WOULD YOU BE
10 ABLE TO PERFORM THAT FUNCTION?

11 A I DON'T THINK I COULD AND LIVE WITH MY CONSCIENCE IS
12 THE BOTTOM-LINE.

13 THE COURT: ALL RIGHT, SIR. QUESTIONS FROM THE
14 DEFENSE.

15 EXAMINATION

16 BY MS. FULLWOOD:

17 Q HI, MR. MCCABE.

18 A GOOD MORNING.

19 Q I JUST WANT TO ASK YOU A FEW QUESTIONS JUST TO GET
20 CLEAR IN MY MIND WHAT YOU ARE SAYING.

21 YOU MENTIONED THAT ONE THING THAT HAD YOU
22 CONCERNED WAS THE IDEA OF SIGNING THAT PIECE OF PAPER?

23 A RIGHT.

24 Q I BELIEVE YOU REFERRED TO IT AS A DEATH WARRANT?

25 A OR WHATEVER THEY CALL IT.

1 Q OKAY. OKAY. WELL, WHAT IT IS, IT'S A VERDICT
2 FORM---

3 A UH-HUH.

4 Q OKAY. IT'S A VERDICT FORM AND THROUGH THAT FORM EACH
5 JUROR LET'S THE COURT KNOW WHAT HIS OR HER VERDICT IS IN
6 THE CASE. IT'S NOT A FORM THAT ACCOMPANIES THE PERSON TO
7 THE DEPARTMENT OF CORRECTIONS AND IS USED IN THE ACTUAL
8 CARRYING OUT OF THE SENTENCE. DO YOU UNDERSTAND THAT?

9 MR. HUMPHRIES: YOUR HONOR, I'M GOING TO OBJECT
10 TO THAT.

11 THE COURT: YES, I'LL SUSTAIN THE OBJECTION.
12 LET'S PLEASE STICK TO EXACTLY WHAT THE FORM OF VERDICT IS.

13 MS. FULLWOOD: YES, SIR. ALL RIGHT.

14 IT'S A FORM THAT LET'S THE COURT KNOW WHAT YOUR
15 DECISION IS, OKAY.

16 NOW, WHAT WAS IT, WAS IT MONDAY THAT YOU WERE
17 HERE LAST?

18 A YEAH, MONDAY EVENING.

19 Q MONDAY EVENING. THAT'S RIGHT. THE DAYS ARE KIND OF
20 TAKEN ON A BLUR TO US IN HERE.

21 ON MONDAY EVENING, YOU INDICATED TO THE COURT AND
22 US THAT YOU COULD CONSIDER EITHER SENTENCE AND YOU COULD
23 IMPOSE EITHER SENTENCE, DEPENDING ON THE CIRCUMSTANCES AND
24 WHICH SENTENCE YOU THINK WAS WARRANTED. IS THAT STILL A
25 FAIR STATEMENT OF HOW YOU FEEL ABOUT THIS?

1 A BASICALLY, BUT I JUST -- I DON'T KNOW GOING ON WITH
2 EVERYTHING THAT HAD HAPPENED -- TRANSPIRED SINCE MONDAY
3 EVENING, JUST THINKING OF ALL OF THE IMPLICATIONS, MY
4 VIEWS, I GUESS, HAVE CHANGED. I DON'T KNOW IF I COULD
5 ACTUALLY SENTENCE SOMEONE TO DEATH.

6 Q OKAY. ARE YOU SURE YOU CAN'T OR IT'S SOMETHING THAT
7 YOU WOULD HESITATE TO DO UNLESS IT WAS REALLY A SERIOUS
8 SITUATION?

9 A AFTER CONTEMPLATING THIS FOR THE LAST TWENTY-FOUR
10 HOURS OR MORE, IT'S BEEN ON MY MIND CONSTANTLY---

11 Q OKAY.

12 A ---AND I HAVE HAD TO DEAL WITH IT MYSELF AND I
13 HONESTLY THINK, I DON'T THINK I COULD LIVE WITH MYSELF.

14 I USED TO BE A STRONG -- I USED TO BELIEVE IN THE
15 DEATH PENALTY, BUT I WAS FINALLY CONFRONTED FACE-TO-FACE,
16 IT ENTIRELY CHANGED ME.

17 Q OKAY. WELL, WE JUST APPRECIATE YOU COMING IN HERE
18 AND BEING FRANK WITH US ABOUT WHAT YOUR OPINION IS.

19 THANK YOU SO MUCH.

20 MR. HUMPHRIES: NO, SIR.

21 THE COURT: WELL, MR. FOULKS, I WANT TO THANK YOU
22 VERY MUCH FOR YOUR HONESTY AND BEING VERY CANDID WITH NOT
23 ONLY ME, BUT ALSO THE LAWYERS IN THIS CASE, AND THE FACT
24 THAT YOU HAVE GIVEN US YOUR, I BELIEVE, HEART-FELT OPINION
25 AS TO WHAT YOU THOUGHT ABOUT OVER THE PAST DAY OR SO AND AS

1 A RESULT OF THAT, I AM GOING TO EXCUSE YOU FROM FURTHER
2 PARTICIPATION IN THIS CASE.

3 ONCE AGAIN, I APOLOGIZE FOR ANY INCONVENIENCE
4 THAT WE HAVE CAUSED YOU, BUT I THANK YOU VERY MUCH FOR
5 PARTICIPATING IN OUR PROCESS. BECAUSE WITHOUT CITIZENS
6 THAT SERVE AS JURORS IN CASES, THEN WE WOULD NOT HAVE A
7 SYSTEM AT ALL. SO I THANK YOU VERY MUCH FOR BEING HERE AND
8 YOU ARE EXCUSED.

9 THE JUROR: I APOLOGIZE FOR ANY INCONVENIENCE I
10 HAVE CAUSED Y'ALL.

11 THE COURT: YOU DON'T NEED TO DO THAT. THANK YOU
12 VERY MUCH.

13 THE JUROR: UH-HUH.

14 (WHEREUPON, THE JUROR WAS EXCUSED
15 AT THIS TIME.)

16 THE COURT: ALL RIGHT.

17 LET THE RECORD REFLECT THAT JUROR NUMBER 86,
18 DAVID L. FOULKS IS NOT---

19 THE CLERK: JUDGE, THAT'S MR. MCCABE.

20 THE COURT: EXCUSE ME. I'M SORRY. MR. MCCABE.
21 I'M SORRY. I WAS LOOKING AT THE WRONG -- THANK YOU VERY
22 MUCH. MR. JAMES MCCABE, JUROR NUMBER 151, HAS EXPRESSED
23 SECOND THOUGHTS ABOUT WHETHER OR NOT HE COULD IMPOSE THE
24 DEATH PENALTY AND, IN FACT, UPON QUESTIONING BY THE COURT,
25 AS WELL AS QUESTIONING BY MS. FULLWOOD, SAID THAT HE WOULD

1 NOT BE ABLE TO LIVE WITH HIMSELF IN ORDER TO IMPOSE SUCH A
2 SENTENCE AND AS A RESULT, HE IS NOT QUALIFIED PURSUANT TO
3 SECTION 16-320 OF THE CODE OF LAWS OF THE STATE OF SOUTH
4 CAROLINA, 1976 AS AMENDED.

5 THE COURT: ALL RIGHT. THE REMAINING PERSON IS
6 JAN CURTIS. LET'S BRING HER IN SO WE CAN TALK ABOUT HER
7 DENTAL PROBLEMS.

8 JAN M. CURTIS,
9 (JUROR NUMBER 63, WHITE FEMALE,
10 BEING ALREADY DULY SWORN, RETURNED TO THE WITNESS STAND AND
11 TESTIFIED AS FOLLOWS:)

12 EXAMINATION

13 BY THE COURT:

14 Q GOOD MORNING. HOW ARE YOU?

15 A OKAY. HOW ARE YOU?

16 Q YOU ARE JAN CURTIS, CORRECT?

17 A YES, SIR.

18 Q AND, MS. CURTIS, YOU WILL RECALL THAT YOU WERE PLACED
19 UNDER OATH WITH THE ENTIRE PANEL ON MONDAY AND THEN ALSO
20 WHEN YOU CAME BACK FOR YOUR INDIVIDUAL QUESTIONING?

21 A YES, SIR.

22 Q AND YOU UNDERSTAND THAT YOU ARE STILL UNDER OATH?

23 A YES, SIR.

24 Q I HAVE RECEIVED THE LETTER FROM DR. HOLIDAY, WHO IS
25 YOUR DENTIST---

1 A YES, SIR.

2 Q ---THAT SAYS THAT SHE HAD INITIATED A ROOT CANAL ON
3 YOU ON SEPTEMBER THE 8TH AND THAT YOU HAD HAD SOME
4 COMPLICATIONS FOR WHICH SHE HAS BEEN TREATING YOU. ARE YOU
5 TAKING ANY MEDICATIONS FOR THAT?

6 A YES, SIR, TWO---

7 Q TELL ME WHAT YOU ARE TAKING.

8 A AMOXICILLIN AND FLAGYL, TWO ANTIBIOTICS.

9 Q OKAY. AND HOW MUCH LONGER DO YOU HAVE FOR THAT
10 COURSE OF TREATMENT?

11 A I THINK SATURDAY. I THINK TOMORROW IS THE LAST DAY
12 FOR THE AMOXICILLIN AND SATURDAY IS THE LAST DAY FOR THE
13 FLAGYL. I DO HAVE -- THE ROOT CANAL DID ABSCESS AND I WENT
14 BACK IN -- IT WAS INITIATED MONDAY, AS SHE SAID, AND I WENT
15 BACK IN WEDNESDAY AND TWICE ON THURSDAY AND BACK AGAIN ON
16 MONDAY MORNING RIGHT BEFORE I CAME TO COURT. IT DOES NOT
17 HAVE A TEMPORARY FILLING OR ANYTHING IN IT AT THIS TIME.

18 Q OKAY. IS THAT SOMETHING THAT IS CAUSING YOU PAIN AT
19 THIS TIME?

20 A SLIGHT DISCOMFORT. I'M NOT IN THE PAIN THAT I WAS IN
21 BEFORE.

22 Q ALL RIGHT. DR. HOLIDAY TELLS ME THAT -- OF COURSE,
23 SHE IS CONCERNED ABOUT YOUR -- THAT YOUR TREATMENT PLAN
24 MIGHT REQUIRE A VISIT TO HER OFFICE AT SOME POINT DURING
25 THE TIME IN WHICH YOU WOULD BE SEQUESTERED, ESPECIALLY IF

1 YOU EXPERIENCE MORE PAIN AND BELIEVE ME I KNOW WHAT YOU ARE
2 TALKING ABOUT BECAUSE I HAVE BEEN THROUGH THE SAME THING
3 SEVERAL TIMES SO I CAN IDENTIFY WITH YOU.

4 IF I WERE TO MAKE ARRANGEMENTS FOR YOU TO BE
5 ALLOWED TO VISIT HER OFFICE, IF YOU WERE SELECTED AS A
6 JUROR IN THIS CASE, WOULD THAT BE AGREEABLE WITH YOU?

7 A THAT WOULD -- THAT WOULD BE GOOD, YES.

8 Q ALL RIGHT.

9 A I MEAN WHEN I LEFT YESTERDAY, I WAS -- IT'S LIKE A
10 MILLION AND ONE THINGS HIT ME OF ALL THESE COMMITMENTS I
11 HAD AND THEN I THOUGHT ABOUT THIS AND HOW MANY TIMES I HAD
12 TO GO BACK AND WHEN I CONTACTED HER.

13 Q IS THERE ANYTHING ELSE INsofar AS WHEN I TOLD YOU
14 ABOUT THE SEQUESTRATION, OTHER THAN THE ROOT CANAL THAT
15 WOULD CAUSE YOU A PROBLEM IN SERVING AS A POTENTIAL JUROR
16 IN THIS CASE?

17 A JUST A LOT OF FAMILY THINGS, THE COMMITMENTS THAT
18 DIDN'T EVEN REALLY -- LIKE I SAID, UNTIL I GOT OUT OF HERE
19 YESTERDAY, THAT DIDN'T REALLY EVEN HIT ME UNTIL THEN.

20 Q OKAY. WELL, I GUESS, WHAT I'M ASKING YOU IS AND I'VE
21 ASKED OF EVERY ONE IS WHETHER OR NOT THE SEQUESTRATION
22 WOULD POSE A SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF
23 YOURSELF OR OF THOSE DEPENDENT UPON YOU?

24 A NO, NOT A SERIOUS DANGER, NO, SIR.

25 Q OKAY. AND IF WE DEAL WITH YOUR DENTAL NEEDS, WHAT I

1 WOULD DO, WHAT I WOULD NEED TO DO IS GET INFORMATION ABOUT
2 FROM DR. HOLIDAY HOW SHE COULD BE A REACHED SO THAT THE
3 CLERK COULD MAKE ARRANGEMENTS THAT IF YOU NEEDED TO BE
4 CARED FOR, OF COURSE, WE ARE GOING TO SEE THAT THAT'S DONE.
5 THE JURY CUSTODIANS WOULD BE INSTRUCTED ABOUT THAT AS WELL
6 AS DR. HOLIDAY MAYBE WORKING AROUND OUR SCHEDULE JUST A
7 LITTLE BIT, TOO, AND IF SHE WOULD BE COOPERATIVE WITH THAT,
8 THEN I DON'T SEE ANY PROBLEM IN US SEEING THAT YOUR DENTAL
9 NEEDS ARE MET.

10 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
11 THIS TIME.)

12 Q IS THAT AGREEABLE WITH YOU?

13 A YES, SIR.

14 THE COURT: ANYTHING FROM THE DEFENSE?

15 MS. FULLWOOD: NO, SIR.

16 THE COURT: FROM THE STATE?

17 MR. HUMPHRIES: NO, SIR.

18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MS.
19 CURTIS. I'M GOING TO SEND THE CLERK BACK WITH YOU SO THAT
20 WE CAN GO AHEAD AND GET THAT INFORMATION AND SHE CAN TALK
21 WITH DR. HOLIDAY AND IF NECESSARY, I'LL DO THE SAME THING.
22 BUT THANK YOU VERY MUCH FOR BRINGING THIS TO MY ATTENTION.

23 THE JUROR: OKAY.

24 (WHEREUPON, THE JUROR WAS EXCUSED
25 AT THIS TIME.)

1 THE COURT: ALL RIGHT. MADAM REPORTER, COURT'S
2 EXHIBIT.

3 (WHEREUPON, COURT'S EXHIBIT NUMBER
4 FOUR, JUROR NOTE/CURTIS, MARKED FOR THE RECORD AT THIS
5 TIME.)

6 THE COURT: ALL RIGHT.

7 WE ARE AT THIRTY-SIX NOW. ARE Y'ALL READY TO TRY
8 TO STRIKE A JURY? IS THAT RIGHT---

9 MR. HUMPHRIES: YOUR HONOR, I BELIEVE---

10 THE COURT: LET ME SEE. WE HAD THIRTY-FIVE. I
11 HAVE EXCUSED, ONE, TWO, THREE. THIRTY-FIVE. WHY DON'T WE
12 DO THIS. WHY DON'T WE GO A COUPLE MORE AND THAT WILL BUMP
13 US UP TO THIRTY-SEVEN AND SEE IF WE CAN'T GET A JURY THEN.

14 ALL RIGHT.

15 LET'S BRING IN NUMBER 198, JAMES A. SANDERS.

16 JAMES A. SANDERS,

17 (JUROR NUMBER 198, WHITE MALE,
18 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

19 EXAMINATION

20 BY THE COURT:

21 Q GOOD MORNING TO YOU, MR. SANDERS. HOW ARE YOU?

22 A PRETTY GOOD.

23 Q YOU ARE JAMES A. SANDERS?

24 A RIGHT.

25 Q NOW, MR. SANDERS, YOU UNDERSTAND THAT YOU ARE UNDER

1 OATH FOR THESE PROCEEDINGS THIS MORNING?

2 A UH-HUH.

3 Q AND YOU ALSO RECALL THAT WHEN I DISMISSED YOU AND
4 YOUR FELLOW JURORS ON MONDAY, THAT I GAVE YOU CERTAIN
5 INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
6 ANYONE, THAT IF ANYONE ATTEMPTED TO CONTACT YOU, YOU WERE
7 TO REPORT THAT TO ME WHEN YOU CAME BACK TO THE COURT HOUSE
8 AND THAT YOU WERE ALSO TO REFRAIN FROM READING, WATCHING OR
9 LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

10 HAVE YOU VIOLATED ANY OF THOSE INSTRUCTIONS?

11 A NO.

12 Q NOW, I'M GOING TO BE ASKING YOU A FEW QUESTIONS AND
13 THEREAFTER, MR. STONE WILL ASK YOU SOME QUESTIONS ON BEHALF
14 OF MR. TERRY AND THEN MR. CHASE WILL POSE SOME QUESTIONS TO
15 YOU ON BEHALF OF THE STATE.

16 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
17 ATTEMPTING TO INVADE YOUR PRIVACY, BUT BECAUSE OF THE
18 PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
19 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED OF YOU.

20 ALSO, KEEP IN MIND THAT THERE ARE NO RIGHT OR
21 WRONG ANSWERS TO THESE QUESTIONS. PLEASE JUST ANSWER THEM
22 OPENLY AND HONESTLY AND FULLY AND ALSO KEEP IN MIND THAT NO
23 ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW WHAT
24 THAT VIEW IS.

25 ALSO, I'M GOING TO INFORM YOU THAT WE'RE PROBABLY

1 GOING TO ASK YOU SOME QUESTIONS THAT YOU HAVEN'T PROBABLY
2 EVER CONSIDERED BEFORE. SO LISTEN VERY CAREFULLY TO THE
3 QUESTIONS AS THEY ARE GIVEN TO YOU. IF YOU NEED FOR THEM
4 TO BE REPEATED OR CLARIFIED IN ANY WAY, ALL YOU HAVE TO DO
5 IS LET US KNOW. YOU UNDERSTAND?

6 A YES.

7 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
8 ABOUT OVER THE NEXT FEW MINUTES WILL INCLUDE REFERENCE TO
9 THE WORD PENALTY, BUT THE MERE FACT THAT WE EVEN MENTION OR
10 TALK ABOUT THAT WORD IN NO WAY INDICATES ANYTHING ABOUT THE
11 DEFENDANT, MR. TERRY. HE IS PRESUMED IN THE LAW TO BE
12 INNOCENT. DO YOU UNDERSTAND THAT?

13 A UH-HUH.

14 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
15 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
16 ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS THE
17 JUDGE OF THIS COURT, EVEN THOUGH YOU MAY NOT AGREE WITH
18 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

19 A I'M PRETTY OPINIONATED.

20 Q WELL, COULD YOU LISTEN TO THE LAW AND ACCEPT IT AS I
21 GIVE IT TO YOU OR WOULD YOU USE YOUR OWN OPINIONS AND IDEAS
22 TO MAKE A DECISION OUTSIDE OF THE LAW?

23 A I WOULD PROBABLY USE MY OWN VIEWS.

24 Q SO WOULD YOU BE ABLE TO DECIDE THIS CASE BASED SOLELY
25 ON THE EVIDENCE PRESENTED HERE IN THIS COURTROOM AND THE

1 LAW AS I WOULD INSTRUCT YOU?

2 A I DON'T BELIEVE SO.

3 Q NOW, YOU UNDERSTAND IN A CRIMINAL CASE, THE STATE HAS
4 THE BURDEN OF PROVING A DEFENDANT'S GUILT AND THE BURDEN OF
5 PROOF THAT THEY MUST MEET IS TO PROVE EACH AND EVERY
6 ELEMENT OF THE CRIMES WHICH ARE CHARGED BEYOND A REASONABLE
7 DOUBT. DO YOU UNDERSTAND THAT A DEFENDANT HAS NO BURDEN TO
8 PROVE HIMSELF INNOCENT?

9 A RIGHT.

10 Q NOW, COULD YOU, DEPENDING UPON THE FACTS, EVIDENCE
11 AND THE LAW, AS I WOULD INSTRUCT YOU IN A PARTICULAR CASE,
12 FIND A DEFENDANT EITHER GUILTY OR NOT GUILTY?

13 A YES.

14 Q NOW, YOU UNDERSTAND THAT THIS IS A CASE IN WHICH THE
15 STATE OF SOUTH CAROLINA SEEKS THE PENALTY OF DEATH?

16 A RIGHT.

17 Q AND I TOLD YOU THE OTHER DAY, THAT AS A RESULT OF
18 THAT, THIS IS WHAT WE CALL A BIFURCATED TRIAL, MEANING THAT
19 IT IS SPLIT INTO TWO PARTS; THE GUILT PHASE; THE SENTENCING
20 PHASE.

21 AND DO YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
22 SUCH A CASE THAT IF THE JURY FOUND THE DEFENDANT NOT GUILTY
23 OF MURDER, THAT THERE WOULD BE NO SECOND TRIAL, NO SECOND
24 PHASE OF THE TRIAL, THAT THE CASE WOULD END AT THAT POINT?

25 A RIGHT.

1 Q HOWEVER, IF YOU WERE A-JUROR IN SUCH A CASE AND IF
2 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
3 UNDERSTAND THAT YOU WOULD THEN MOVE INTO THE SENTENCING
4 PHASE?

5 A UH-HUH.

6 Q NOW, IN THAT PHASE OF THE TRIAL, DO YOU UNDERSTAND
7 THAT THERE WOULD BE EVIDENCE PRESENTED IN THE FORM OF
8 AGGRAVATING CIRCUMSTANCES, AS WELL AS MITIGATING
9 CIRCUMSTANCES? DID YOU KNOW THAT?

10 A NO.

11 Q ALL RIGHT. WELL, THERE WOULD BE EVIDENCE OF THAT
12 TYPE PRESENTED TO YOU.

13 AND AGGRAVATING CIRCUMSTANCES ARE FACTS,
14 INCIDENTS, DETAILS, OCCURRENCES WHICH THE GENERAL ASSEMBLY
15 OF THE STATE OF SOUTH CAROLINA HAS DECLARED BY LAW WOULD
16 MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OR THE OFFENSE
17 OF MURDER.

18 IN OTHER WORDS, THE PRESENCE OF THAT AGGRAVATING
19 CIRCUMSTANCE, COUPLED WITH THE MURDER INCREASES THE
20 ENORMITY OR ADDS TO THE INJURY OF THE CRIME OF MURDER.

21 FOR EXAMPLE, I'M TALKING ABOUT WHERE A MURDER IS
22 COMMITTED IN CONJUNCTION WITH A CRIME SUCH AS CRIMINAL
23 SEXUAL CONDUCT, SUCH AS BURGLARY OR THE LIKE. DO YOU
24 UNDERSTAND THAT?

25 A UH-HUH.

1 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
2 INCIDENTS, FACTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
3 THE GENERAL ASSEMBLY OF THIS STATE HAS DECLARED BY LAW
4 REDUCES THE SEVERITY OF THE CRIME OF MURDER AND MAY BE
5 CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF MORAL
6 CULPABILITY OR RESPONSIBILITY.

7 NOW, WHAT WE TALK ABOUT WHEN WE SPEAK OF
8 MITIGATING CIRCUMSTANCES WOULD BE THINGS LIKE THE MURDER
9 WAS COMMITTED WHILE THE PERSON, THE DEFENDANT WAS UNDER THE
10 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY
11 OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
12 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
13 LAW WAS SUBSTANTIALLY IMPAIRED, AS WELL AS THE MENTALITY OF
14 THE DEFENDANT AT THE TIME OF THE CRIME.

15 NOW, DO YOU UNDERSTAND WHAT I'M TALKING ABOUT
16 WHEN I SPEAK OF MITIGATING CIRCUMSTANCES?

17 A RIGHT.

18 Q NOW, IF YOU WERE A JUROR IN SUCH A SITUATION, THE
19 SENTENCING PHASE, COULD YOU, DEPENDING UPON THE PARTICULAR
20 FACTS AND CIRCUMSTANCES OF THAT CASE, INCLUDING THE
21 CONSIDERATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES,
22 AND THE LAW, AS I WOULD INSTRUCT YOU AT THE CONCLUSION OF
23 THE CASE, RETURN A SENTENCE OF LIFE IN PRISON?

24 A UH -- YEAH.

25 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,

1 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
2 THAT CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
3 MITIGATING CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT
4 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
5 DEATH?

6 A YES.

7 Q NOW, I WANT TO ASK YOU A LITTLE BIT FURTHER ABOUT
8 YOUR ANSWERS TO MY QUESTIONS. YOU UNDERSTAND THAT IF YOU
9 WERE A JUROR IN THIS CASE, THAT YOU WOULD BE A JUDGE OF THE
10 FACTS IN THE CASE AND THAT IS YOUR ROLE. AND YOU
11 UNDERSTAND THAT I AM THE JUDGE OF THE LAW IN THE CASE. I
12 DO NOT INVADE YOUR PROVINCE AND DIFFER WITH YOU ABOUT WHAT
13 THE FACTS ARE AND YOU ARE NOT TO INVADE MY PROVINCE AND
14 DIFFER WITH ME ABOUT WHAT THE LAW IS.

15 ARE YOU TELLING ME THAT YOU WOULD BE -- NOT BE
16 ABLE TO FOLLOW MY INSTRUCTIONS AS TO THE LAW IN THE CASE?

17 A RIGHT.

18 Q LET ME SEE THE LAWYERS, PLEASE.

19 (WHEREUPON, A BENCH CONFERENCE WAS
20 HELD AT THIS TIME OFF THE RECORD.)

21 THE COURT: ALL RIGHT.

22 MR. STONE, ANY QUESTIONS YOU HAVE?

23 MR. STONE: THANK YOU, YOUR HONOR.

24 EXAMINATION

25 BY MR. STONE:

1 Q MR. SANDERS, MY NAME IS DUFFIE STONE. I REPRESENT
2 GARY TERRY, ALONG WITH BETH FULLWOOD.

3 I UNDERSTAND WHAT THE JUDGE HAS TALKED TO YOU
4 ABOUT EARLIER AND I WANT TO TALK ABOUT THAT JUST A SECOND,
5 OKAY, SIR.

6 THE JUDGE IS NOT ASKING YOU TO LEAVE YOUR COMMON
7 SENSE AND YOUR PAST EXPERIENCES AT THE DOOR WHEN YOU COME
8 IN. DO YOU UNDERSTAND THAT?

9 A YES.

10 Q AT LOT OF TIMES WHEN YOU SERVE ON A JURY, YOU ARE
11 GOING TO GET A LOT OF DIFFERENT TYPES OF PEOPLE. I MEAN,
12 SOME PEOPLE IN THE JURY MAY AGREE WITH OTHERS IN THE JURY.
13 THEY MAY BE TOTALLY DIFFERENT FROM SOME OF THEM OR ALL OF
14 THEM. YOU UNDERSTAND THAT?

15 A RIGHT.

16 Q OKAY. THAT'S KIND OF WHAT THE WHOLE COURT SYSTEM IS
17 ABOUT. IT TAKES A GROUP OF PEOPLE THAT DON'T KNOW ANYTHING
18 ABOUT THIS CASE, BUT THEY TAKE THEIR LIFE EXPERIENCE AND
19 THEIR COMMON SENSE AND IT PUTS THEM IN THIS POSITION TO
20 JUDGE. DO YOU UNDERSTAND?

21 A UH-HUH.

22 Q OKAY. WHEN THE JUDGE WAS TALKING TO YOU EARLIER, IN
23 ORDER TO KEEP THIS SYSTEM FAIR, HE'S GOT THE LAW. HE CAN
24 TELL YOU THINGS LIKE WHAT THE DEFINITION OF MURDER IS, WHAT
25 THE DEFINITION OF RAPE IS AND THINGS LIKE THAT. DO YOU

1 UNDERSTAND THAT?

2 A RIGHT.

3 Q ALL RIGHT. THE LAW THAT HE WILL TELL YOU, HE'S THE
4 JUDGE OF THE LAW. YOU, AS A JUROR, SOMEBODY WHO SITS IN
5 THE JURY BOX, YOU JUDGE THE FACTS AND WE EXPECT YOU TO HAVE
6 YOUR LIFE EXPERIENCES AS PART OF THAT PROCESS. DO YOU
7 UNDERSTAND? DOES THAT MAKE SENSE?

8 A RIGHT.

9 Q OKAY. WHAT THE JUDGE IS ASKING YOU IS COULD YOU
10 FOLLOW THE LAW AS HE GIVES IT AND NOT NECESSARILY IGNORE
11 EVERYTHING YOU HAD IN YOUR PAST, BUT TO FOLLOW THE LAW AS
12 HE SAYS IT AND TO AGREE TO JUDGE THE FACTS OVER HERE AND
13 APPLY THEM TO THE LAW AS HE TELLS YOU ABOUT THE LAW. DOES
14 THAT MAKE SENSE?

15 A YEAH.

16 Q OKAY. NOW, CAN YOU DO THAT?

17 A NO.

18 Q OKAY. AND WHY IS THAT?

19 A I'M A VERY OPINIONATED PERSON.

20 Q OKAY.

21 A I ALWAYS LET MY PERSONAL PREJUDICE -- PREJUDICES
22 INTERFERE.

23 Q OKAY. DO YOU HAVE ANY PERSONAL PREJUDICES WHEN IT
24 COMES TO THE LAW?

25 A YEAH.

1 Q OKAY. DO YOU HAVE ANY PERSONAL PREJUDICES WHEN IT
2 COMES TO THE CRIMES OF MURDER OR RAPE OR ROBBERY?

3 A SURE.

4 Q OKAY. AND THOSE WOULD KEEP YOU FROM BEING A FAIR
5 JUDGE TO MR. TERRY AND TO THE STATE?

6 A I THINK SO.

7 Q OKAY. THANK YOU, JUDGE.

8 THE COURT: ANYTHING FROM THE STATE?

9 MR. CHASE: NO, SIR, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 MR. SANDERS, I WANT TO THANK YOU VERY MUCH FOR
12 YOUR PARTICIPATION IN THIS CASE THIS WEEK ON MONDAY, AS
13 WELL AS TODAY, BEING VERY FORTHRIGHT IN THE ANSWERS THAT
14 YOU HAVE GIVEN TO THE COURT.

15 THIS IS GOING TO CONCLUDE YOUR RESPONSIBILITIES
16 HERE THIS WEEK. I WANT TO THANK YOU VERY MUCH FOR
17 PARTICIPATING AND YOU ARE EXCUSED.

18 THE JUROR: THANK YOU.

19 (WHEREUPON, THE JUROR WAS EXCUSED
20 AT THIS TIME.)

21 THE COURT: ALL RIGHT.

22 LET THE RECORD REFLECT THAT JUROR NUMBER 198,
23 JAMES A. SANDERS, IS NOT QUALIFIED TO SERVE AS A JUROR IN
24 THIS CASE PURSUANT TO SECTION 16-320 OF THE CODE OF LAWS OF
25 THE STATE OF SOUTH CAROLINA, 1976 AS AMENDED, AS HE STATES

1 THAT HE WOULD BE UNABLE TO FOLLOW THE LAW AS IT WAS
2 INSTRUCTED BY THE COURT.

3 VICKI M. LEWTER, NUMBER 142.

4 VICKI M. LEWTER,
5 (JUROR NUMBER 142, WHITE FEMALE,
6 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

7 EXAMINATION

8 BY THE COURT:

9 Q GOOD MORNING, MS. LEWTER.

10 A GOOD MORNING.

11 Q YOU ARE VICKI M. LEWTER, CORRECT.

12 A YES, SIR.

13 Q NOW, MS. LEWTER, YOU UNDERSTAND THAT YOU ARE UNDER
14 OATH FOR THESE PROCEEDINGS?

15 A YES, SIR.

16 Q AND YOU RECALL WHEN I DISMISSED YOU AND YOUR FELLOW
17 JURORS ON MONDAY, THAT I GAVE YOU CERTAIN INSTRUCTIONS THAT
18 YOU WERE NOT TO DISCUSS THIS CASE WITH ANYONE, THAT IF
19 ANYONE ATTEMPTED TO CONTACT YOU, THAT YOU SHOULD REPORT
20 THAT TO ME WHEN YOU CAME BACK TO COURT, AS WELL AS THE FACT
21 THAT YOU SHOULD REFRAIN FROM READING, WATCHING OR LISTENING
22 TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

23 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
24 INSTRUCTIONS?

25 A NO, SIR.

1 Q NOW, MS. LEWTER, I'M GOING TO BE ASKING YOU SOME
2 QUESTIONS AND THEREAFTER MS. FULLWOOD OR MR. STONE WILL ASK
3 YOU SOME QUESTIONS ON BEHALF OF MR. TERRY AND THEN MR.
4 CHASE WILL ASK YOU SOME QUESTIONS FOR THE STATE.

5 KEEP IN MIND THAT WE ARE NOT IN ANY WAY
6 ATTEMPTING TO INVADE YOUR PRIVACY, BUT DUE TO THE NATURE OF
7 THE PROCEEDINGS THAT WE ARE ABOUT THIS WEEK, IT'S EXTREMELY
8 IMPORTANT THAT CERTAIN QUESTIONS ARE ASKED AND ANSWERED.

9 ALSO KEEP IN MIND THAT THERE ARE NO RIGHT OR
10 WRONG ANSWERS TO THESE QUESTIONS. SO PLEASE JUST ANSWER
11 THEM OPENLY AND HONESTLY AND FULLY. AND ALSO KEEP IN MIND
12 THAT NO ONE IS CHALLENGING YOUR VIEW. WE JUST NEED TO KNOW
13 WHAT THAT VIEW IS.

14 NOW, ALSO, AS WE GO THROUGH THIS QUESTIONING,
15 KEEP IN MIND THAT WE ARE PROBABLY GOING TO ASK YOU SOME
16 QUESTIONS THAT YOU HAVE NEVER BEEN REQUIRED TO CONSIDER
17 BEFORE. SO LISTEN VERY CAREFULLY TO THE QUESTIONS AS THEY
18 ARE PRESENTED TO YOU. IF AT ANY TIME, YOU DO NOT
19 UNDERSTAND ANY OF THE QUESTIONS OR IF YOU NEED THEM
20 REPEATED OR CLARIFIED, ALL YOU HAVE TO DO IS LET US KNOW.
21 DO YOU UNDERSTAND?

22 A YES, SIR.

23 Q NOW, DURING THE NEXT FEW MINUTES, WE ARE GOING TO BE
24 TALKING ABOUT A NUMBER OF THINGS, BUT WE'LL ALSO BE USING
25 THE WORD PENALTY. THE MERE FACT THAT WE EVEN MENTION THAT

1 WORD OR TALK ABOUT THE WORD PENALTY DOES NOT INDICATE
2 ANYTHING ABOUT THE DEFENDANT, MR. TERRY. HE IS PRESUMED IN
3 THE LAW TO BE INNOCENT. DO YOU UNDERSTAND THAT?

4 A YES, SIR.

5 Q NOW, LET'S SUPPOSE FOR A FEW MINUTES THAT YOU WERE A
6 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
7 ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS THE
8 JUDGE OF THIS COURT, EVEN THOUGH YOU MAY NOT AGREE WITH
9 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

10 A WHAT'S THE QUESTION?

11 Q IF YOU WERE A JUROR IN A CRIMINAL CASE---

12 A UH-HUH.

13 Q ---COULD YOU LISTEN TO THE LAW---

14 A UH-HUH.

15 Q ---ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU
16 AS THE JUDGE OF THIS COURT, EVEN THOUGH YOU MAY NOT AGREE
17 WITH THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

18 A YES, I COULD.

19 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
20 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

21 A YES, SIR.

22 Q NOW, IN A CRIMINAL CASE, MS. LEWTER, WE -- THE STATE
23 OF SOUTH CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S
24 GUILT. THEY MUST MEET THAT BURDEN OF PROOF BY PROVING EACH
25 OF THE ELEMENTS OF THE CRIME OR CRIMES WITH WHICH THE

1 DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT. A
2 DEFENDANT HAS ABSOLUTELY NO BURDEN TO PROVE HIMSELF
3 INNOCENT. DO YOU UNDERSTAND THAT?

4 A YES, SIR.

5 Q NOW, COULD YOU, AND WE ARE ASSUMING CERTAIN THINGS,
6 DEPENDING ON THE FACTS AND THE EVIDENCE AND THE LAW, AS I
7 WOULD INSTRUCT YOU IN A PARTICULAR CASE, FIND A DEFENDANT
8 EITHER GUILTY OR NOT GUILTY?

9 A YES, SIR.

10 Q NOW, AS YOU KNOW FROM BEING HERE ON MONDAY MORNING,
11 WHEN I TALKED WITH THE ENTIRE JURY PANEL, THAT THIS IS A
12 CASE IN WHICH THE STATE OF SOUTH CAROLINA SEEKS THE DEATH
13 PENALTY AND AS RESULT OF THAT, I ALSO EXPLAINED TO YOU ON
14 MONDAY THAT THIS IS WHAT WE CALL A BIFURCATED TRIAL,
15 MEANING THAT IT'S DIVIDED INTO TWO PARTS; THE GUILT PHASE;
16 THE SENTENCING PHASE.

17 DO YOU UNDERSTAND THAT IF YOU WERE A JUROR IN
18 SUCH A CASE AND IF THE JURY HAD FOUND THE DEFENDANT NOT
19 GUILTY OF MURDER IN THE GUILT PHASE, THAT THERE WOULD NOT
20 BE A SECOND PHASE OF THE TRIAL, THERE WOULD BE NO NEED FOR
21 IT?

22 A RIGHT.

23 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
24 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, YOU
25 UNDERSTAND THAT YOU WOULD THEN MOVE TO THAT SECOND

1 SENTENCING PHASE?

2 A YES, SIR.

3 Q NOW, IN THAT PHASE OF THE TRIAL, EVIDENCE WOULD BE
4 PRESENTED IN THE FORM OF AGGRAVATING CIRCUMSTANCES AS WELL
5 AS MITIGATING CIRCUMSTANCES.

6 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
7 INCIDENTS, DETAILS, AN OCCURRENCE WHICH THE GENERAL
8 ASSEMBLY OF THE STATE OF SOUTH CAROLINA HAS DECLARED BY LAW
9 WOULD MAKE WORSE; THAT IS, TO AGGRAVATE THE CRIME OF
10 MURDER.

11 IN OTHER WORDS, WHEN THE MURDER IS ACCOMPANIED BY
12 AN AGGRAVATING CIRCUMSTANCE WHICH INCREASES THE ENORMITY OR
13 ADDS TO THE INJURY OF THE CRIME OF MURDER, THAT'S WHAT WE
14 CALL AGGRAVATING CIRCUMSTANCE.

15 AN EXAMPLE OF THAT WOULD BE A MURDER THAT
16 OCCURRED WHEN THE CRIME OF CRIMINAL SEXUAL CONDUCT IS
17 COMMITTED OR BURGLARY OR THE LIKE. DO YOU UNDERSTAND THAT?

18 A YES, SIR.

19 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
20 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
21 THE GENERAL ASSEMBLY OF OUR STATE HAS DECLARED BY LAW
22 REDUCES THE SEVERITY OF THE CRIME OF MURDER AND MAY BE
23 CONSIDERED BY THE JURY AS EXTENUATING OR AS REDUCING THE
24 DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY.

25 NOW, WHEN WE TALK ABOUT MITIGATING CIRCUMSTANCES,

1 AN EXAMPLE OF THAT WOULD BE THAT THE MURDER WAS COMMITTED
2 WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
3 EMOTIONAL DISTURBANCE, THE CAPACITY OF THE DEFENDANT TO
4 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
5 CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
6 IMPAIRED, AS WELL AS THE MENTALITY OF THE DEFENDANT AT THE
7 TIME OF THE CRIME. YOU UNDERSTAND WHAT I'M SPEAKING OF
8 WHEN I MENTION MITIGATING CIRCUMSTANCES?

9 A YES, SIR.

10 Q TAKING ALL OF THAT INTO CONSIDERATION, IF YOU WERE A
11 JUROR IN THAT SITUATION, THE SENTENCING PHASE, COULD YOU,
12 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES,
13 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
14 CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
15 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN
16 PRISON?

17 A YES, SIR.

18 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
19 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
20 THAT CASE, ONCE AGAIN, CONSIDERING AGGRAVATING AND
21 MITIGATING CIRCUMSTANCES, AS WELL AS THE LAW THAT I WOULD
22 INSTRUCT YOU AT THE CONCLUSION OF THE CASE, RETURN A
23 SENTENCE OF DEATH?

24 A YES, SIR.

25 Q NOW, MS. LEWTER, IF YOU WERE CHOSEN TO SERVE AS A

1 JUROR IN THIS CASE, YOU WOULD BE SEQUESTERED, MEANING THAT
2 YOU WOULD BE HOUSED IN A MOTEL FOR THE DURATION OF THE
3 TRIAL.

4 NOW, I DON'T KNOW EXACTLY HOW LONG IT WOULD LAST,
5 BUT I HAVE GOT AN ESTIMATE OF ANYWHERE FROM SEVEN TO TEN
6 DAYS. IT COULD BE SHORTER THAN THAT, BUT I GIVE YOU THAT
7 SEVEN TO TEN-DAY RANGE AS KIND OF AN OUTSIDE FIGURE SO THAT
8 YOU WOULD KNOW WHAT TO EXPECT. EXCEPT FOR THE PERSONAL
9 INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS POSE A
10 SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR
11 OF THOSE DEPENDENT UPON YOU?

12 A NO, SIR.

13 Q THANK YOU FOR RESPONDING TO MY QUESTIONS.

14 PLEASE ANSWER MS. FULLWOOD'S QUESTIONS, PLEASE.

15 EXAMINATION

16 BY MS. FULLWOOD:

17 Q GOOD MORNING, MS. LEWTER.

18 A GOOD MORNING.

19 Q HOW ARE YOU?

20 MY NAME IS BETH FULLWOOD. ALONG WITH DUFFIE
21 STONE, WE REPRESENT GARY TERRY, WHO IS SEATED AT THE END OF
22 COUNSEL TABLE.

23 IT'S A LITTLE BIT DIFFERENT IN THIS TYPE OF CASE.
24 NORMALLY, ONLY THE COURT ASKS ANY JURORS QUESTIONS ABOUT
25 THEIR ATTITUDES OR BIASES IN A CASE.

1 IN THIS TYPE OF CASE, THE LAWYERS GET TO ASK SOME
2 QUESTIONS ALSO. A LOT OF MY QUESTIONS ARE GOING TO HAVE TO
3 DO WITH YOUR ATTITUDES TOWARDS THE SECOND PART OF THE TRIAL
4 AND IT'S KIND OF STRANGE BECAUSE AT THIS POINT WE DON'T
5 EVEN KNOW IF THERE'S GOING TO BE A NEED FOR A SECOND TRIAL.
6 BUT SINCE THIS IS THE ONLY TIME I HAVE TO ASK YOU
7 QUESTIONS, I JUST HAVE TO DO IT NOW.

8 COULD YOU TELL US IN GENERAL WHAT YOUR OPINION IS
9 ABOUT THE DEATH PENALTY?

10 A I BELIEVE IN THE DEATH PENALTY. I BELIEVE THAT
11 PEOPLE SHOULD HAVE TO BE PUNISHED FOR A CRIME THEY
12 COMMITTED AS LONG AS THE CRIME WAS -- I THINK IF THE CRIME
13 IS SEVERE ENOUGH, THEY SHOULD BE PUNISHED BY THE DEATH
14 PENALTY.

15 Q OKAY. AND YOU REALIZE THAT THE ONLY WAY ANY JURY
16 WOULD EVER REACH THAT SECOND KIND OF TRIAL IS IF THEY FOUND
17 A PERSON GUILTY OF MURDER AND SOME OTHER CRIMES IN THE
18 FIRST TRIAL?

19 A CORRECT.

20 Q OKAY. YOU GO INTO A SECOND TRIAL WITH A VERDICT OF
21 GUILTY OF MURDER---

22 A UH-HUH.

23 Q ---AND OTHER CRIMES?

24 A UH-HUH.

25 Q AND DO YOU UNDERSTAND THAT MURDER MEANS KILLING

1 SOMEONE WITH MALICE AFORETHOUGHT? DID YOU REALIZE THAT?

2 A NO, I DIDN'T THINK THROUGH IT, BUT---

3 Q RIGHT. WELL, WHAT I'M TRYING TO GET AT IS DID YOU
4 REALIZE WHEN WE SAY MURDER, WE ARE NOT TALKING ABOUT
5 KILLING SOMEBODY IN SELF-DEFENSE OR---

6 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT
7 THIS TIME.)

8 Q ---SOMEONE'S DEATH THROUGH AN ACCIDENT OR WE'RE NOT
9 EVEN TALKING ABOUT A HEAT OF PASSION SITUATION, OKAY?

10 A RIGHT.

11 Q OKAY. YOU UNDERSTAND THAT?

12 A YES, MA'AM.

13 Q OKAY. WELL, IF YOU WERE A JUROR IN A SECOND TYPE OF
14 TRIAL THAT THE JUDGE TALKED ABOUT AND AFTER YOU LISTENED TO
15 ALL OF THE EVIDENCE FROM BOTH SIDES IN THAT SECOND TRIAL,
16 COULD YOU IMPOSE A DEATH SENTENCE IF YOU THOUGHT IT WAS THE
17 PROPER SENTENCE?

18 A YES, MA'AM.

19 Q OKAY. AND ON THE OTHER HAND, IF YOU WERE A JUROR IN
20 THAT TYPE OF TRIAL, AFTER LISTENING TO ALL OF THE EVIDENCE,
21 COULD YOU IMPOSE A LIFE SENTENCE EVEN THOUGH YOU HAD
22 ALREADY FOUND THAT PERSON GUILTY OF MURDER AND OTHER
23 CRIMES?

24 A YES.

25 Q OKAY. SO YOU ARE SAYING THAT YOU WOULD HAVE AN OPEN

1 MIND IN THAT SECOND TRIAL AND WOULD JUST LISTEN TO THE
2 EVIDENCE AND DEPENDING ON THE EVIDENCE, THAT'S HOW YOU MAKE
3 YOUR DECISION?

4 A YES, MA'AM.

5 Q OKAY. THANK YOU VERY MUCH.

6 A UH-HUH.

7 THE COURT: MR. CHASE.

8 MR. CHASE: THANK YOU, YOUR HONOR.

9 EXAMINATION

10 BY MR. CHASE:

11 Q GOOD MORNING, MS. LEWTER.

12 A GOOD MORNING.

13 Q HOW ARE YOU DOING?

14 A GOOD.

15 Q GOOD. MY NAME IS TOM CHASE AND I WILL BE ASSISTING
16 DEPUTY SOLICITOR FRAN HUMPHRIES AND SOLICITOR DONNIE MYERS
17 IN THE PROSECUTION OF THE CASE.

18 I THINK YOU HAVE BEEN VERY CLEAR SO FAR. I JUST
19 WANT TO ASK YOU A COUPLE MORE QUESTIONS JUST TO FINISH IT
20 UP.

21 ONE DEALS WITH A PROCEDURAL STEP IN THE POTENTIAL
22 IMPOSITION OF THE DEATH SENTENCE. IN THE EVENT YOU ARE
23 SEATED ON THE JURY AND YOU DECIDED GUILT WAS THE
24 APPROPRIATE SENTENCE, MOVED INTO THAT PENALTY PHASE, AND
25 AFTER HEARING ALL OF THE EVIDENCE, DECIDED THAT A DEATH

1 SENTENCE WAS APPROPRIATE FOR THE CRIMES WHICH WERE
2 COMMITTED, IF YOU REACHED THAT POINT, THERE'S A VERDICT
3 FORM THAT LITERALLY HAS TWELVE LINES ON IT. ONE LINE FOR
4 EACH JUROR TO SIGN THE DEATH SENTENCE, THE VERDICT FORM.
5 WOULD THE FACT THAT YOU HAD TO SIGN YOUR NAME ON THERE,
6 PHYSICALLY AFFIX YOUR SIGNATURE ON THAT VERDICT FORM, WOULD
7 THAT IMPAIR YOUR ABILITY TO CONSIDER A DEATH SENTENCE AND
8 ALSO IMPOSE IT THROUGH THAT VERDICT FORM?

9 A NO.

10 Q IF YOU FELT IT WAS APPROPRIATE UNDER THE
11 CIRCUMSTANCES?

12 A I DON'T THINK SO.

13 Q OKAY. NOW, THIS IS KIND OF A DIFFERENT TWIST, TO
14 GIVE YOU KIND OF A DIFFERENT THOUGHT PROCESS. MS. FULLWOOD
15 ASKED YOU WHETHER YOU COULD CONSIDER A LIFE SENTENCE AFTER
16 HEARING ALL OF THE EVIDENCE. SOMETIMES IT DOESN'T GIVE YOU
17 THE OPPORTUNITY TO THINK ABOUT YOUR CORE PERSON---

18 A UH-HUH.

19 Q ---JUST -- AND WHAT I WANT YOU TO DO IS, IS I'M GOING
20 TO ASK YOU IF THERE'S ANYTHING IN YOUR PAST, YOUR
21 UPBRINGING, YOUR FRIENDS, YOUR RELATIONSHIPS, YOUR JOBS,
22 FAMILY, ANYTHING THAT WOULD PREVENT YOU, IF WE REACHED THAT
23 SECOND STAGE, THE PENALTY STAGE, FROM CONSIDERING AND
24 IMPOSING A LIFE SENTENCE UNDER THE APPROPRIATE
25 CIRCUMSTANCES?

1 A NO.

2 Q AND ON THE FLIP SIDE OF THAT, IS THERE ANYTHING UNDER
3 THE SAME CIRCUMSTANCES THAT WOULD PREVENT YOU FROM IMPOSING
4 A DEATH SENTENCE IF YOU FELT IT WAS APPROPRIATE UNDER THE
5 FACTS THAT WERE PRESENTED?

6 A NO.

7 Q WHAT WE ARE LOOKING FOR IS A JUROR THAT IS GOING TO
8 BE FAIR AND IMPARTIAL TO BOTH THE STATE OF SOUTH CAROLINA
9 AND THE DEFENDANT IN THIS CASE, MR. TERRY, COULD YOU BE
10 THAT TYPE JUROR?

11 A YES, I COULD.

12 Q THAT'S ALL WE CAN ASK OF YOU.

13 Q THANK YOU, MS. LEWTER.

14 A THANK YOU.

15 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

16 MS. FULLWOOD: NO, SIR.

17 THE COURT: FROM THE STATE?

18 MR. CHASE: NO, SIR, YOUR HONOR.

19 THE COURT: MS. LEWTER, I WANT TO THANK YOU VERY
20 MUCH FOR YOUR PARTICIPATION HERE, NOT ONLY TODAY, BUT ALSO
21 ON MONDAY.

22 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
23 POTENTIAL JUROR IN THIS CASE AND WITH THAT QUALIFICATION,
24 SEVERAL MORE WORDS OF INSTRUCTION.

25 YOU ARE NOT TO DISCUSS THIS CASE IN ANY FASHION

1 WITH YOUR FELLOW JURORS, FAMILY, FRIENDS OR ANYONE ELSE.

2 ALSO, IF ANYONE SHOULD ATTEMPT TO CONTACT YOU
3 CONCERNING THIS CASE, YOU ARE TO REPORT THAT TO ME
4 IMMEDIATELY AND YOU ARE TO REFRAIN FROM READING, WATCHING
5 OR LISTENING TO ANY NEWS ACCOUNTS CONCERNING THIS CASE.

6 I THINK THAT YOU WERE GIVEN INSTRUCTIONS THAT YOU
7 WERE TO REPORT HERE THIS MORNING WITH YOUR LUGGAGE PACKED
8 AND READY TO GO. WHAT I'M GOING TO DO IS SEND YOU TO A
9 ROOM WHERE THE OTHER JURORS WHO HAVE BEEN QUALIFIED AS
10 POTENTIAL JURORS IN THIS CASE ARE TOGETHER AND IN A SHORT
11 WHILE, WE WILL BE STRIKING A JURY IN THIS CASE.

12 THANK YOU VERY MUCH FOR BEING HERE THIS MORNING.
13 I'LL SEE YOU IN JUST A LITTLE WHILE.

14 THE JUROR: OKAY. THERE'S ONE THING I WANTED TO
15 SAY.

16 THE COURT: OKAY.

17 THE JUROR: WHEN WE WERE HERE ON MONDAY, THERE
18 WAS A COUPLE -- THEY LOOKED LIKE BROTHER OR SISTER SITTING
19 ON THE FRONT PEW---

20 THE COURT: UH-HUH.

21 THE JUROR: ---I DON'T KNOW HER, BUT SHE WENT TO
22 THE SAME HIGH SCHOOL THAT I DID. I DON'T EVEN KNOW HER
23 NAME. AND I JUST WANTED TO SAY THAT JUST TO HAVE THAT OFF
24 MY CHEST.

25 THE COURT: ALL RIGHT. WELL, LET ME ASK YOU

1 THIS.

2 THE FACT THAT YOU RECOGNIZED THAT INDIVIDUAL --
3 I'M NOT SURE WHO IT WAS -- WOULD THE FACT OF THAT PERSON
4 BEING PRESENT HERE ON MONDAY OR IF THEY WOULD BE PRESENT
5 DURING THE COURSE OF THE TRIAL, WOULD THAT IN ANY WAY
6 INTERFERE WITH YOUR ABILITY TO RENDER A FAIR AND IMPARTIAL
7 VERDICT FOR EITHER THE STATE OR THE DEFENDANT BASED SOLELY
8 UPON THE TESTIMONY AND EVIDENCE THAT YOU WOULD HEAR
9 PRODUCED IN THIS COURTROOM?

10 THE JUROR: NO, SIR.

11 THE COURT: ANYTHING FURTHER FROM THE -- LET ME
12 SEE THE LAWYERS JUST A MOMENT, PLEASE---

13 THE JUROR: I JUST WANT TO STATE THE FACT THAT
14 I---

15 THE COURT: I'M SORRY?

16 THE JUROR: I JUST WANT TO STATE THE FACT THAT I
17 HAD SEEN THAT PERSON BEFORE.

18 THE COURT: THANK YOU VERY MUCH. LET ME TALK TO
19 THE LAWYERS OVER HERE JUST A MINUTE. KEEP YOUR SEAT.

20 (WHEREUPON, A BENCH CONFERENCE WAS
21 HELD AT THIS TIME OFF THE RECORD.)

22 THE COURT: LET ME ASK YOU THIS, MS. LEWTER.
23 INSOFAR AS THOSE -- YOU RECOGNIZED ONE PERSON OR DID YOU
24 RECOGNIZE BOTH OF THEM?

25 THE JUROR: JUST ONE.

1 THE COURT: JUST ONE. AND WAS THAT A MALE OR
2 FEMALE?

3 THE JUROR: FEMALE.

4 THE COURT: ALL RIGHT. AND WAS THAT -- DO YOU
5 KNOW THAT PERSON'S NAME?

6 THE JUROR: NO, SIR.

7 THE COURT: WAS THAT PERSON A VERY CLOSE FRIEND
8 OF YOURS?

9 THE JUROR: NO, SIR.

10 THE COURT: HOW DID YOU RECOGNIZE HER? FROM
11 SCHOOL?

12 THE JUROR: I THINK -- I THINK SHE WENT TO THE
13 SAME HIGH SCHOOL I DID. I DON'T KNOW. I WORKED A SECOND
14 JOB IN A VIDEO STORE FOR FIVE YEARS AND MET HUNDREDS OF
15 PEOPLE. I MEAN, SHE COULD HAVE BEEN FROM THERE, BUT---

16 THE COURT: ALL RIGHT.

17 THE JUROR: ---IT'S ONE OF THOSE FACES THAT YOU
18 MIGHT HAVE SEEN BEFORE OR MIGHT NOT.

19 THE COURT: ALL RIGHT.

20 THE FACT THAT THAT PERSON -- YOU HAVE SEEN THAT
21 PERSON, IF THAT INDIVIDUAL WERE TO TESTIFY IN THIS CASE,
22 WOULD THAT IN ANY WAY INTERFERE WITH YOUR ABILITY TO RENDER
23 A FAIR AND IMPARTIAL VERDICT FOR EITHER THE STATE OR THE
24 DEFENDANT IN THIS MATTER?

25 THE JUROR: NO, SIR.

1 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

2 MS. FULLWOOD: NO, YOUR HONOR.

3 THE COURT: FROM THE STATE?

4 MR. CHASE: NO, SIR, YOUR HONOR.

5 THE COURT: MS. LEWTER, ONCE AGAIN, I FIND THAT
6 YOU ARE QUALIFIED TO SERVE AS A JUROR, POTENTIAL JUROR IN
7 THIS CASE. I'M GOING TO BE SENDING YOU BACK TO JOIN YOUR
8 COLLEAGUES FOR JUST A FEW MINUTES.

9 THE JUROR: OKAY.

10 THE COURT: THANK YOU VERY MUCH.

11 THE JUROR: THANK YOU.

12 (WHEREUPON, THE JUROR WAS EXCUSED
13 AT THIS TIME.)

14 THE COURT: I'M GLAD MR. HUMPHRIES IS HERE. I
15 NEED -- I HAVE A MATTER I NEED TO TAKE UP WITH HIM
16 CONCERNING -- WITH ALL OF YOU CONCERNING MS. CURTIS. BUT
17 BEFORE I DO THAT, LET THE RECORD REFLECT THAT JUROR NUMBER
18 142, VICKI M. LEWTER, IS QUALIFIED TO SERVE AS A POTENTIAL
19 WITNESS -- POTENTIAL JUROR IN THIS CASE WITH -- IN
20 ACCORDANCE WITH SECTION 16-320 OF THE CODE OF LAWS OF THE
21 STATE OF SOUTH CAROLINA, 1976 AS AMENDED.

22 THE CLERK HAS TALKED WITH DR. HOLIDAY CONCERNING
23 MS. CURTIS AND DR. HOLIDAY TELLS US THAT IF SHE HAS A
24 FLAREUP OF THIS ROOT CANAL, THAT SHE IS GIVEN SOME PRETTY
25 POWERFUL PAIN KILLERS AND AS RESULT, THE DOCTOR SAID SHE

1 WOULD NOT BE MUCH USE TO US OR ANYONE ELSE WHILE SHE IS
2 TAKING THOSE PAIN KILLERS.

3 SO, ONCE AGAIN, I AM GOING TO ALLOW HER TO BE
4 EXCUSED BECAUSE OF THAT PARTICULAR SITUATION.

5 AND IF YOU WOULD, HOW ABOUT BRINGING MS. CURTIS
6 BACK IN AND I'LL TELL HER WHAT I HAVE FOUND OUT.

7 JAN M. CURTIS,

8 (JUROR NUMBER 63, WHITE FEMALE,
9 RETURNS TO THE WITNESS STAND AND TESTIFIED AS FOLLOWS:)

10 THE COURT: MS. CURTIS, I WANTED TO LET YOU KNOW
11 THAT WE HAVE BEEN IN CONTACT WITH DR. HOLIDAY'S OFFICE.
12 AND SHE HAS INFORMED US THAT WERE YOU TO HAVE AN EPISODE OF
13 THIS PROBLEM WITH YOUR ROOT CANAL, THAT PART OF THE
14 TREATMENT THAT SHE WOULD GIVE YOU WOULD BE SOME PRETTY HIGH
15 POWERED PAIN KILLERS.

16 THE JUROR: (WHEREUPON, THE WITNESS NODS IN THE
17 AFFIRMATIVE AT THIS TIME.)

18 THE COURT: AND SHE SAYS THAT IN TAKING THOSE,
19 THAT YOU WOULDN'T BE MUCH USE TO US OR TO ANYONE ELSE
20 DURING THAT PERIOD OF TIME AND AS A RESULT OF THAT, OUT OF
21 AN ABUNDANCE OF CAUTION FOR YOUR OWN HEALTH, AS WELL AS THE
22 CONTINUATION OF THIS CASE, I'M GOING TO EXCUSE YOU FROM
23 FURTHER PARTICIPATION IN THIS MATTER.

24 I HOPE THAT YOU SUCCESSFULLY COMPLETE YOUR
25 TREATMENT WITH THE ROOT CANAL WITH DR. HOLIDAY AND, ONCE

1 AGAIN, GIVE YOU THANKS OF LEXINGTON COUNTY AND THE STATE OF
2 SOUTH CAROLINA AND I APOLOGIZE FOR ANY INCONVENIENCE THAT
3 WE HAVE CAUSED YOU.

4 THANK YOU VERY MUCH FOR BEING HERE.

5 THE JUROR: THANK YOU SO MUCH.

6 (WHEREUPON, THE JUROR WAS EXCUSED
7 AT THIS TIME.)

8 THE COURT: BOBBY JOWERS, NUMBER 127.

9 ONE STEP FORWARD, ONE STEP BACK, RIGHT.

10 MR. HUMPHRIES: WE BETTER GO AHEAD AND STRIKE
11 BEFORE WE LOSE THEM ALL.

12 THE COURT: YEAH. AFTER THIS ONE, WE ARE GOING
13 TO. ONE WAY OR THE OTHER.

14 BOBBY D. JOWERS,

15 (JUROR NUMBER 127, WHITE MALE,
16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

17 EXAMINATION

18 BY THE COURT:

19 Q GOOD MORNING. YOU ARE BOBBY D. JOWERS?

20 A THAT'S CORRECT.

21 Q MR. JOWERS, YOU UNDERSTAND THAT YOU HAVE BEEN PLACED
22 UNDER OATH?

23 A YES, SIR.

24 Q AND YOU ALSO UNDERSTAND THAT WHEN I DISMISSED YOU AND
25 YOUR COLLEAGUES ON THE JURY ON MONDAY THAT I GAVE YOU SOME

1 INSTRUCTIONS THAT YOU WERE NOT TO DISCUSS THIS CASE WITH
2 ANYONE; THAT IF ANYONE ATTEMPTED TO CONTACT YOU, YOU WERE
3 TO REPORT THAT TO ME WHEN YOU CAME BACK HERE TODAY AND THAT
4 YOU WERE TO REFRAIN FROM READING, WATCHING OR LISTENING TO
5 ANY NEWS ACCOUNTS CONCERNING THIS CASE.

6 HAVE THERE BEEN ANY VIOLATIONS OF THOSE
7 INSTRUCTIONS?

8 A NO, SIR.

9 Q NOW, MR. JOWERS, I'M GOING TO BE ASKING YOU SOME
10 QUESTIONS AND THEN THEREAFTER MR. STONE WILL ASK YOU SOME
11 QUESTIONS ON BEHALF OF MR. TERRY AND THEN MR. CHASE WILL
12 POSE SOME QUESTIONS TO YOU ON BEHALF OF THE STATE.

13 PLEASE KEEP IN MIND THAT WE ARE NOT IN ANY WAY
14 ATTEMPTING TO INVADE YOUR PRIVACY---

15 A I UNDERSTAND.

16 Q ---BUT DUE TO THE NATURE OF THE PROCEEDINGS THAT WE
17 ARE ABOUT, THAT THERE ARE A NUMBER OF QUESTIONS THAT HAVE
18 TO BE ANSWERED.

19 KEEP IN MIND THAT THERE ARE NO RIGHT OR WRONG
20 ANSWERS TO THESE QUESTIONS. SO PLEASE JUST ANSWER THEM
21 OPENLY AND HONESTLY AND FULLY.

22 ALSO KEEP IN MIND THAT NO ONE IS CHALLENGING ANY
23 VIEW THAT YOU MIGHT HAVE. WE JUST NEED TO KNOW WHAT THAT
24 VIEW IS.

25 ALSO KEEP IN MIND THROUGHOUT THE QUESTIONING THAT

1 WE'RE PROBABLY GOING TO ASK QUESTIONS THAT YOU HAVE NEVER
2 BEEN ASKED TO CONSIDER BEFORE. SO PLEASE LISTEN VERY
3 CAREFULLY TO THE QUESTIONS THAT WE ALL PRESENT TO YOU. IF
4 YOU DON'T UNDERSTAND ONE, IF YOU NEED TO HAVE ONE REPEATED
5 OR IF YOU NEED TO CLARIFY IT, ALL YOU HAVE TO DO IS LET US
6 KNOW, OKAY?

7 A YES, SIR.

8 Q NOW, AMONG THE THINGS THAT WE ARE GOING TO BE TALKING
9 ABOUT OVER THE NEXT FEW MINUTES WILL BE THE WORD PENALTY,
10 BUT THE MERE FACT THAT WE EVEN MENTION THAT WORD DOES NOT
11 IN ANY WAY INDICATE ANYTHING ABOUT THE DEFENDANT, MR.
12 TERRY. HE IS PRESUMED IN THE LAW TO BE INNOCENT. DO YOU
13 UNDERSTAND THAT?

14 A YES, SIR.

15 Q NOW, LET'S SUPPOSE FOR A FEW MOMENTS THAT YOU WERE A
16 JUROR IN A CRIMINAL CASE. COULD YOU LISTEN TO THE LAW,
17 ACCEPT AND APPLY THE LAW, AS I WOULD INSTRUCT YOU AS THE
18 JUDGE OF THIS COURT, EVEN THOUGH YOU MAY NOT AGREE WITH
19 THAT LAW OR THINK THAT IT SHOULD BE SOME OTHER WAY?

20 A YES, SIR.

21 Q COULD YOU DECIDE THIS CASE BASED SOLELY ON THE
22 EVIDENCE PRESENTED HERE IN THIS COURTROOM?

23 A (WHEREUPON, THE JUROR NODS IN THE AFFIRMATIVE AT THIS
24 TIME.)

25 Q DO YOU NEED FOR ME---

1 A YES, SIR.

2 Q ALL RIGHT.

3 NOW, IN A CRIMINAL CASE, THE STATE OF SOUTH
4 CAROLINA HAS THE BURDEN OF PROVING A DEFENDANT'S GUILT.
5 THE BURDEN OF PROOF THAT THE STATE MUST MEET IS TO PROVE
6 EACH ELEMENT OF THE CRIME OR CRIMES WITH WHICH THE
7 DEFENDANT IS CHARGED BEYOND A REASONABLE DOUBT. A
8 DEFENDANT HAS ABSOLUTELY NO RESPONSIBILITY, NO BURDEN TO
9 PROVE HIMSELF INNOCENT. DO YOU UNDERSTAND THAT?

10 A YES, SIR.

11 Q NOW, WE ARE ASSUMING CERTAIN THINGS HERE. SO, COULD
12 YOU, DEPENDING ON THE FACTS AND THE EVIDENCE AND THE LAW AS
13 I WOULD INSTRUCT YOU IN A PARTICULAR CASE, FIND A DEFENDANT
14 EITHER GUILTY OR NOT GUILTY?

15 A YES.

16 Q NOW, AS YOU KNOW FROM BEING HERE ON MONDAY, I TOLD
17 YOU THEN THAT THIS WAS A CASE IN WHICH THE STATE OF SOUTH
18 CAROLINA SEEKS THE DEATH PENALTY AND I ALSO TOLD YOU AT
19 THAT TIME THAT THIS IS WHAT WE CALL A BIFURCATED TRIAL,
20 MEANING THAT IT'S DIVIDED INTO TWO PARTS. THE GUILT PHASE;
21 THE SENTENCING PHASE.

22 NOW, IF YOU WERE A JUROR IN SUCH CASE, A DEATH
23 PENALTY CASE, AND IF THE JURY HAD FOUND THE DEFENDANT NOT
24 GUILTY OF MURDER IN THE GUILT PHASE, YOU UNDERSTAND THAT
25 THERE WOULDN'T BE A SECOND PHASE? THERE WOULD NOT BE A

1 SENTENCING PHASE IF YOU FOUND THE DEFENDANT NOT GUILTY OF
2 MURDER?

3 A YES, SIR, I UNDERSTAND.

4 Q HOWEVER, IF YOU WERE A JUROR IN SUCH A CASE AND IF
5 THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER, DO YOU
6 UNDERSTAND THAT YOU WOULD THEN MOVE TO THAT SECOND PHASE,
7 THE SENTENCING PHASE OF THE TRIAL?

8 A YES, SIR.

9 Q NOW, DURING THAT PHASE OF THE TRIAL, MR. JOWERS,
10 THERE WOULD BE EVIDENCE PRESENTED IN THE FORM OF
11 AGGRAVATING CIRCUMSTANCES AS WELL AS MITIGATING
12 CIRCUMSTANCES.

13 NOW, AGGRAVATING CIRCUMSTANCES ARE FACTS,
14 INCIDENTS, DETAILS, AN OCCURRENCE WHICH THE GENERAL
15 ASSEMBLY HAS DECLARED BY LAW WOULD MAKE WORSE; THAT IS, TO
16 AGGRAVATE THE CRIME OF MURDER.

17 IN OTHER WORDS, WHEN A MURDER OCCURS ALONG WITH
18 AN AGGRAVATING CIRCUMSTANCE, IT INCREASES THE ENORMITY OR
19 ADDS TO THE INJURY OF THE CRIME OF MURDER.

20 FOR EXAMPLE, WE ARE TALKING ABOUT WHEN A MURDER
21 IS COMMITTED IN CONJUNCTION WITH THE CRIME OF CRIMINAL
22 SEXUAL CONDUCT, BURGLARY, SOMETHING LIKE THAT. DO YOU
23 UNDERSTAND THAT?

24 A YES.

25 Q NOW, MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE

1 FACTS, INCIDENTS, DETAILS OR OCCURRENCES WHICH, ONCE AGAIN,
2 OUR GENERAL ASSEMBLY HAS DECLARED BY LAW REDUCES THE
3 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED BY
4 THE JURY AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL
5 CULPABILITY OR RESPONSIBILITY.

6 NOW, WHAT I'M SPEAKING OF WHEN I REFER TO
7 MITIGATING CIRCUMSTANCES COULD BE SOME OF THE FOLLOWING:
8 THAT THE MURDER WAS COMMITTED WHILE THE DEFENDANT WAS UNDER
9 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE; THE CAPACITY
10 OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
11 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
12 LAW WAS SUBSTANTIALLY IMPAIRED; AS WELL AS THE MENTALITY OF
13 THE DEFENDANT AT THE TIME OF THE CRIME.

14 A YES, SIR.

15 Q YOU UNDERSTAND WHAT I'M SPEAKING OF WHEN WE
16 MENTION---

17 A YES.

18 Q ---MITIGATING CIRCUMSTANCES?

19 A YES, SIR.

20 Q NOW, LET'S SUPPOSE THAT YOU WERE A JUROR IN THAT
21 SITUATION, THE SENTENCING PHASE, COULD YOU, DEPENDING UPON
22 THE PARTICULAR FACTS AND CIRCUMSTANCES OF THAT CASE,
23 INCLUDING THE CONSIDERATION OF AGGRAVATING AND MITIGATING
24 CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT YOU AT THE
25 CONCLUSION OF THE CASE, RETURN A SENTENCE OF LIFE IN

1 PRISON?

2 A YES, SIR.

3 Q IF YOU WERE A JUROR IN THAT SITUATION, COULD YOU,
4 DEPENDING UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF
5 THAT CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING AND
6 MITIGATING CIRCUMSTANCES, AND THE LAW, AS I WOULD INSTRUCT
7 YOU AT THE CONCLUSION OF THE CASE, RETURN A SENTENCE OF
8 DEATH?

9 A YES.

10 Q NOW, MR. JOWERS, IF YOU WERE CHOSEN FOR SERVICE ON
11 THIS JURY, YOU WOULD BE SEQUESTERED, MEANING THAT YOU WOULD
12 BE HOUSED IN A MOTEL FOR THE DURATION OF THE TRIAL. I
13 DON'T KNOW EXACTLY HOW LONG THAT WOULD BE, BUT I HAVE AN
14 IDEA THAT IT WOULD NOT EXCEED SEVEN TO TEN DAYS. IT COULD
15 EVEN BE SHORTER THAN THAT. EXCEPT FOR THE PERSONAL
16 INCONVENIENCE THAT YOU WOULD SUFFER, WOULD THIS POSE A
17 SERIOUS DANGER TO THE HEALTH OR WELL-BEING OF YOURSELF OR
18 OF THOSE DEPENDENT UPON YOU?

19 A NO, SIR.

20 Q THANK YOU FOR RESPONDING TO MY QUESTIONS.

21 ANSWER MR. STONE'S QUESTIONS AT THIS TIME AND
22 THEN MR. CHASE WILL HAVE SOME QUESTIONS FOR YOU.

23 MR. STONE: THANK YOU, YOUR HONOR.

24 EXAMINATION

25 BY MR. STONE:

1 Q HELLO, MR. JOWERS. MY NAME IS DUFFIE STONE. I WAS
2 INTRODUCED EARLIER. I, ALONG WITH BETH FULLWOOD, REPRESENT
3 GARY TERRY.

4 LET ME ASK YOU JUST A FEW QUESTIONS. I READ YOUR
5 QUESTIONNAIRE THAT YOU SENT IN AND IT INDICATED THAT YOU
6 WERE A VICTIM OF A BURGLARY, IS THAT RIGHT?

7 A UH -- YES.

8 Q IN FACT, YOU HAVE HAD TWO BURGLARIES AT YOUR HOUSE,
9 IS THAT RIGHT?

10 A WELL, I USED TO LIVE IN A LITTLE CABIN OUT IN THE
11 WOODS---

12 Q OKAY.

13 A ---AND THEY DIDN'T GET ANYTHING. I KIND OF WALKED IN
14 ON THEM.

15 Q OH, I SEE.

16 A I CAME IN THE FRONT DOOR AND THEY WENT OUT THE BACK
17 DOOR. THEY DIDN'T HAVE TIME TO EVEN DRINK A COLD COLA.

18 Q OH, I'M SORRY. OKAY.

19 DID YOU TESTIFY -- WAS THAT THE TRIAL YOU
20 TESTIFIED AT?

21 A (NO RESPONSE.)

22 Q OR DID -- DIDN'T YOU TESTIFY---

23 A UH -- THOSE BURGLARIES WERE JUST REPORTED TO
24 LEXINGTON COUNTY---

25 Q OH, I SEE. OKAY.

1 A NOTHING EVER CAME OUT OF THE INVESTIGATION.

2 Q OKAY. ON EITHER ONE OF THEM?

3 A WHERE I LIVE AT PRESENTLY, MY WIFE AND I, WE GOT
4 BROKE INTO, I THINK THE SECOND YEAR WE WERE THERE.

5 Q YES, SIR.

6 A THEY DUSTED FOR PRINTS, BUT NEVER DID COME UP WITH
7 ANYTHING.

8 Q OKAY. THANK YOU. I APPRECIATE THAT. I HAD READ
9 YOUR REPORT WRONG. I'M SORRY.

10 LET ME TALK TO YOU A LITTLE BIT ABOUT THE DEATH
11 PENALTY BECAUSE THIS IS OBVIOUSLY A DEATH PENALTY CASE.
12 IT'S GOING TO BE SOMETHING THAT THE JUDGE ASKED YOU A
13 LITTLE BIT ABOUT AND WE ARE GOING TO NEED TO ASK YOU ABOUT
14 IT, TOO.

15 WHAT ARE YOUR VIEWS ON THE DEATH PENALTY OR
16 CAPITAL PUNISHMENT OR HOWEVER YOU WANT TO CALL IT,
17 WHATEVER YOU WANT TO CALL IT?

18 A THAT'S VERY HARD TO DESCRIBE. IT REALLY IS. I'VE
19 SEEN CASES WHERE PEOPLE HAVE BEEN GIVEN THE DEATH PENALTY.
20 I HAVE SEEN CASES WHERE PEOPLE HAVE BEEN GIVEN LIFE
21 IMPRISONMENT. BASICALLY ON THAT, I'M PRETTY WELL NEUTRAL.

22 Q OKAY.

23 A PRETTY WELL NEUTRAL.

24 Q ALL RIGHT. ARE YOU NEUTRAL AS WELL ON LIFE IN PRISON
25 OR DO YOU HAVE ANY FEELINGS TOWARDS THAT ONE WAY OR THE

1 OTHER?

2 A I BELIEVE LIFE IN PRISON WOULD BE VERY TOUGH.

3 Q DO YOU UNDERSTAND---

4 A I---

5 Q ---I'M SORRY, DID I -- I DIDN'T MEAN TO INTERRUPT
6 YOU.

7 A LIKE I SAY, I'M JUST FAIRLY NEUTRAL ABOUT BOTH. IT
8 WOULD DEPEND ON THE CIRCUMSTANCES I'M SURE.

9 Q OKAY. THE JUDGE TOLD YOU EARLIER AND I HAVE TO COME
10 UP HERE AS A LAWYER AND ASK YOU ABOUT THINGS THAT MAY OR
11 MAY NOT HAPPEN. OBVIOUSLY, YOU MAY OR MAY NOT BE ON THE
12 JURY.

13 THERE MAY NOT BE A SENTENCING PHASE, BUT WE HAVE
14 GOT TO ASK YOU QUESTIONS ABOUT THE SENTENCING PHASE, OKAY.

15 IN A SENTENCING PHASE IN A DEATH PENALTY CASE,
16 IT'S A LITTLE BIT DIFFERENT THAN ANY OTHER TRIAL IN A
17 CRIMINAL COURT. ONCE YOU GET ON THE SENTENCING PHASE, IT
18 MEANS THAT, AS A JURY, YOU OR -- AND ELEVEN OTHER PEOPLE
19 HAVE AGREED BEYOND A REASONABLE DOUBT THAT SOMEONE IS
20 GUILTY OF MURDER AND THEY ARE GUILTY OF ANOTHER CRIME.
21 THAT OTHER CRIME COULD BE RAPE; IT COULD BE BURGLARY; IT
22 COULD BE BOTH. IT COULD BE ALL THREE. DO YOU UNDERSTAND
23 THAT?

24 A YES.

25 Q IN A SITUATION LIKE THAT, WHEN YOU HAVE ALREADY

1 DETERMINED THAT SOMEBODY BEYOND A REASONABLE DOUBT IS A
2 MURDERER AND A RAPIST AND EVEN A BURGLAR, COULD YOU GIVE A
3 LIFE SENTENCE IN THAT CASE?

4 A IT WOULD DEPEND UPON WHAT THE JUDGE CALLED THE
5 MITIGATING CIRCUMSTANCES I WOULD THINK.

6 Q OKAY. NOW, YOU UNDERSTAND AT THIS POINT THEN YOU
7 WOULD GET SOME MORE INFORMATION FROM BOTH THE STATE AND THE
8 DEFENSE, SOME AGGRAVATION, SOME MITIGATION. WHAT YOU ARE
9 TELLING US, THEN, YOU WOULD WAIT UNTIL THE END TO HEAR THAT
10 AGGRAVATION AND MITIGATION?

11 A I DON'T BELIEVE I WOULD HAVE ANY CHOICE BUT TO.

12 Q OKAY. AND THAT'S ALL WE NEED. WE JUST WANT TO MAKE
13 SURE WE HAVE A JUROR THAT CAN BE FAIR TO BOTH SIDES. THANK
14 YOU. I APPRECIATE IT.

15 THANK YOU, YOUR HONOR.

16 THE COURT: MR. CHASE.

17 MR. CHASE: THANK YOU, YOUR HONOR.

18 EXAMINATION

19 BY MR. CHASE:

20 Q HI, MR. JOWERS.

21 A HEY.

22 Q MY NAME IS TOM CHASE. I WILL BE ASSISTING THE DEPUTY
23 SOLICITOR, FRAN HUMPHRIES, AND SOLICITOR DONNIE MYERS IN
24 THE PROSECUTION OF THE CASE.

25 I JUST HAVE A COUPLE OF QUESTIONS FOR YOU.

1 ONE OF THEM DEALS WITH A FOLLOW-UP TO YOUR
2 STATEMENT THAT YOU SAID THAT UNDER THE APPROPRIATE
3 CIRCUMSTANCES, THAT YOU COULD IMPOSE A DEATH SENTENCE AND
4 WHICH IS -- AND I DON'T WANT TO PUT WORDS IN YOUR MOUTH --
5 THAT IS WHAT YOU SAID, RIGHT?

6 A I DO BELIEVE SO, YES. SOMETHING SIMILAR TO THAT.
7 LIKE I SAY, I'M PRETTY NEUTRAL ABOUT IT. I WOULD HAVE TO
8 KNOW ALL OF THE EVIDENCE, SEE ALL OF THE EVIDENCE AND SEE
9 WHAT THE CIRCUMSTANCES WOULD BE.

10 Q AND YOU UNDERSTAND THAT IF YOU GET TO THAT SECOND
11 PHASE, IF YOU WERE A JUROR ON THE JURY AND WE REACHED THAT
12 SECOND PHASE, THERE WILL ONLY BE TWO CHOICES, RIGHT? YOU
13 UNDERSTAND THAT? IT WOULD BE EITHER A LIFE SENTENCE OR A
14 SENTENCE OF DEATH?

15 A I UNDERSTAND.

16 Q AND ARE YOU SAYING -- AND ONCE AGAIN, I'M A LITTLE
17 CONFUSED BY WHAT YOU'RE TELLING ME. ARE YOU SAYING THAT
18 YOU COULD CONSIDER AND ALSO IMPOSE A LIFE SENTENCE IF YOU
19 FELT IT WAS APPROPRIATE?

20 A IF THE CIRCUMSTANCES WARRANTED THAT, IF I THOUGHT IT
21 WAS APPROPRIATE -- I MEAN, IF I THOUGHT IT WAS APPROPRIATE,
22 YES, I COULD.

23 Q AND ON THE FLIP SIDE OF THAT, COULD YOU ALSO CONSIDER
24 AND IMPOSE A DEATH SENTENCE IF YOU FELT THE CIRCUMSTANCES
25 WERE APPROPRIATE?

1 A YES.

2 Q OKAY. NOW, IF YOU WERE TO GET TO THE POINT WHERE YOU
3 WERE IN THE PENALTY PHASE AND YOU AND THE ELEVEN OTHER
4 JURORS ARE SEATED AND DECIDED THAT A DEATH SENTENCE WAS
5 APPROPRIATE FOR THE CIRCUMSTANCES OF THIS CASE, OKAY. WE
6 ARE ASSUMING YOU GET TO THAT POINT. IF YOU WERE TO GET TO
7 THAT POINT AND YOU DECIDED A DEATH SENTENCE WAS
8 APPROPRIATE, IN ORDER FOR THAT SENTENCE TO BE IMPOSED, A
9 VERDICT FORM HAS TO BE FILLED OUT AND UNDER THE LAW OF OUR
10 STATE, EACH INDIVIDUAL JUROR THAT DECIDED THAT THAT WAS THE
11 APPROPRIATE SENTENCE WOULD HAVE TO SIGN THAT FORM. THERE
12 LITERALLY WOULD BE TWELVE LINES GOING DOWN THAT SHEET AND
13 ONE OF THOSE LINES WOULD BE FOR YOUR NAME IF YOU FELT A
14 DEATH SENTENCE WAS APPROPRIATE AND YOU HAD REACHED THAT
15 CONCLUSION. WOULD THE FACT THAT YOU WOULD HAVE TO SIGN
16 YOUR NAME ON THAT DEATH SENTENCE IMPAIR YOUR ABILITY IN ANY
17 WAY TO CONSIDER AND ALSO IMPOSE THAT DEATH SENTENCE?

18 A NO, SIR.

19 Q MR. JOWERS, WHAT WE ARE LOOKING FOR IS A JUROR THAT
20 CAN BE FAIR AND IMPARTIAL TO BOTH THE STATE AND ALSO THE
21 DEFENSE IN THIS CASE. DO YOU FEEL LIKE YOU COULD BE THAT
22 TYPE OF JUROR?

23 A YES, SIR.

24 Q IS THERE ANYTHING IN YOUR PAST, YOUR UPBRINGING, YOUR
25 RELATIONSHIPS, YOUR FRIENDS, YOUR RELIGION, ANYTHING THAT

1 WOULD PREVENT YOU IN THE APPROPRIATE CIRCUMSTANCES, AFTER
2 CONSIDERING ALL OF THE EVIDENCE FROM, ONE, IMPOSING A LIFE
3 SENTENCE IF YOU FELT IT WAS APPROPRIATE?

4 A NO, SIR.

5 Q AND ON THE FLIP SIDE OF THAT, IS THERE ANYTHING THAT
6 WOULD PREVENT YOU UNDER THE APPROPRIATE CIRCUMSTANCES FROM
7 IMPOSING A DEATH SENTENCE?

8 A NO, SIR.

9 Q THAT'S ALL WE CAN ASK OF YOU.

10 THANK YOU, MR. JOWERS.

11 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

12 MR. STONE: NO, SIR.

13 THE COURT: FROM THE STATE?

14 MR. CHASE: NO, SIR, YOUR HONOR.

15 THE COURT: MR. JOWERS, I WANT TO THANK YOU VERY
16 MUCH FOR YOUR PARTICIPATION HERE ON MONDAY, AS WELL AS
17 TODAY.

18 I FIND THAT YOU ARE QUALIFIED TO SERVE AS A
19 POTENTIAL JUROR IN THIS CASE.

20 WITH THAT QUALIFICATION, I'LL REMIND YOU, ONCE
21 AGAIN, THAT YOU ARE NOT TO DISCUSS THIS CASE WITH YOUR
22 FELLOW JURORS, WITH ANYONE ELSE WHETHER IT BE FAMILY OR
23 FRIENDS.

24 ALSO, IF ANYONE ATTEMPTS TO CONTACT YOU
25 CONCERNING THIS CASE, I WANT YOU TO REPORT THAT TO ME

1 IMMEDIATELY WITH AS MUCH INFORMATION ABOUT THAT INDIVIDUAL
2 AS YOU CAN. AND ALSO THAT YOU ARE TO CONTINUE TO REFRAIN
3 FROM READING, WATCHING OR LISTENING TO ANY NEWS ACCOUNTS
4 CONCERNING THIS CASE.

5 NOW, I THINK THAT YOU WERE GIVEN INSTRUCTIONS
6 THAT YOU WERE TO BRING YOUR BELONGINGS WITH YOU TODAY TO
7 THE COURT HOUSE. WE ARE GOING TO BE STRIKING A JURY VERY
8 SHORTLY IN THIS CASE. SO I'M GOING TO BE SENDING YOU BACK
9 TO A ROOM WHERE THE REMAINDER OF THE QUALIFIED JURORS ARE
10 AND WE'LL BE WITH YOU IN JUST A FEW MINUTES TO START THAT
11 PROCESS.

12 THANK YOU VERY MUCH.

13 THE JUROR: YES, SIR. THANK YOU.

14 (WHEREUPON, THE JUROR WAS EXCUSED
15 AT THIS TIME.)

16 THE COURT: ALL RIGHT.

17 LET THE RECORD REFLECT THAT JUROR NUMBER 127,
18 BOBBY D. JOWERS, IS QUALIFIED TO SERVE AS A POTENTIAL JUROR
19 IN THIS CASE PURSUANT TO SECTION 16-320 OF THE CODE OF LAWS
20 OF THE STATE OF SOUTH CAROLINA, 1976 AS AMENDED.

21 THAT GIVES US THIRTY-SIX, I BELIEVE, AND WE ARE
22 GOING TO STRIKE A JURY AT 11:40.

23 WHAT WE ARE GOING TO DO IS MOVE THE JURY INTO THE
24 COURTROOM SO THERE'S TO BE ABSOLUTELY NO DISCUSSION WITH
25 ANYONE IN THE COURTROOM WITH THE JURORS AND ANY DISCUSSIONS

1 THAT YOU MIGHT HAVE, LET'S PLEASE TAKE THEM OUTSIDE THE
2 COURTROOM.

3 THE CLERK: JUDGE, ALSO THE SIX THAT ARE LEFT IN
4 THE JURY ROOM, WHAT SHALL WE DO WITH THEM?

5 THE COURT: HOLD THEM FOR A LITTLE WHILE.

6 (RECESS.)

7 (WHEREUPON, ALL QUALIFIED
8 POTENTIAL JURORS ARE BROUGHT INTO THE COURTROOM AT THIS
9 TIME.)

10 THE BAILIFF: ALL RIGHT. COURT IS NOW IN
11 SESSION.

12 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

13 GOOD MORNING TO YOU, LADIES AND GENTLEMEN OF THE
14 JURY. THOSE OF YOU WHOM I HAVE NOT SEEN THIS MORNING, IT'S
15 GOOD TO SEE YOU AGAIN.

16 FROM THE INFORMATION THAT YOU GAVE ME DURING THE
17 INDIVIDUAL QUALIFICATION, HAVE THERE BEEN ANY CHANGES IN
18 ANY JUROR'S SITUATION?

19 (NO RESPONSE.)

20 THE COURT: LADIES AND GENTLEMEN, WE ARE PREPARED
21 TO EMPANELED A JURY AT THIS TIME. THE MANNER IN WHICH THAT
22 WILL BE DONE, THE STATE IS ENTITLED TO FIVE STRIKES, THE
23 DEFENSE TEN ON THE ORIGINAL PANEL AND THEN ONE AND TWO ON
24 THE ALTERNATES.

25 MADAM CLERK, YOU WANT TO GO AHEAD AND START THIS

1 PROCESS.

2 THE CLERK: YES, SIR.

3 AS YOUR NAME IS CALLED, IF YOU WILL PLEASE COME
4 FORWARD HERE ALL THE WAY UP TO THE FRONT, TURN AROUND AND
5 FACE BACK OUT TOWARDS THE AUDIENCE AND REMAIN STANDING.
6 WE'LL ASK WHAT SAY YOU FOR THE STATE, WHAT SAY YOU FOR THE
7 DEFENSE AND THEN WE WILL INSTRUCT YOU TO EITHER HAVE A SEAT
8 IN THE JURY BOX OR GO BACK AND HAVE YOUR SEAT.

9 NUMBER 50, GLENDA CLIFTON.

10 WHAT SAY YOU FOR THE STATE?

11 MR. HUMPHRIES: PLEASE EXCUSE THE JUROR.

12 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.

13 (JUROR EXCUSED.)

14 THE CLERK: NUMBER 169, CHARLES MOORE.

15 WHAT SAY YOU FOR THE STATE?

16 MR. HUMPHRIES: PLEASE PRESENT, MR. MOORE.

17 THE CLERK: THE DEFENSE?

18 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.

19 THE CLERK: GO BACK AND HAVE YOUR SEAT, SIR.

20 (JUROR EXCUSED.)

21 THE CLERK: NUMBER 35, NORWOOD BROWN.

22 WHAT SAY YOU FOR THE STATE?

23 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

24 THE CLERK: THE DEFENSE?

25 MS. FULLWOOD: PLEASE SWEAR THE JUROR.

1 THE CLERK: HAVE A SEAT IN THE JURY BOX.

2 (JUROR SEATED.)

3 THE CLERK: NUMBER 163, GEORGIA MILLER.

4 WHAT SAY YOU FOR THE STATE?

5 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

6 THE CLERK: THE DEFENSE?

7 MS. FULLWOOD: PLEASE SWEAR THE JUROR.

8 THE CLERK: HAVE A SEAT IN THE JURY BOX.

9 (JUROR SEATED.)

10 THE CLERK: NUMBER 185, KAY REEVES.

11 WHAT SAY YOU FOR THE STATE?

12 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

13 THE CLERK: THE DEFENSE?

14 MS. FULLWOOD: PLEASE SWEAR THE JUROR.

15 THE CLERK: HAVE A SEAT IN THE JURY BOX.

16 (JUROR SEATED.)

17 THE CLERK: NUMBER 202, JEFFREY SHAW.

18 WHAT SAY YOU FOR THE STATE?

19 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

20 THE CLERK: THE DEFENSE?

21 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.

22 THE CLERK: GO BACK AND HAVE YOUR SEAT, SIR.

23 (JUROR EXCUSED.)

24 THE CLERK: NUMBER 188, GWENDOLYN RICHARDSON.

25 WHAT SAY YOU FOR THE STATE?

1 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

2 THE CLERK: THE DEFENSE?

3 MS. FULLWOOD: PLEASE SWEAR THE JUROR.

4 THE CLERK: HAVE A SEAT IN THE JURY BOX.

5 (JUROR SEATED.)

6 THE CLERK: NUMBER 214, ROBIN SMITH.

7 WHAT SAY YOU FOR THE STATE?

8 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

9 THE CLERK: THE DEFENSE?

10 MS. FULLWOOD: PLEASE SWEAR THE JUROR.

11 THE CLERK: HAVE A SEAT IN THE JURY BOX.

12 THE JUROR: MAY I GET MY PURSE?

13 THE CLERK: YES, MA'AM. PLEASE BRING YOUR PURSES
14 AND ANYTHING WITH YOU WHEN YOU COME UP.

15 (JUROR SEATED.)

16 THE CLERK: NUMBER 170, KAREN MOORE.

17 WHAT SAY YOU FOR THE STATE?

18 MR. HUMPHRIES: PLEASE EXCUSE THE JUROR.

19 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.

20 (JUROR EXCUSED.)

21 THE CLERK: NUMBER 137, CHERYL KIRKPATRICK.

22 WHAT SAY YOU FOR THE STATE?

23 MR. HUMPHRIES: PLEASE EXCUSE THE JUROR.

24 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.

25 (JUROR EXCUSED.)

1 THE CLERK: NUMBER 139, SANDRA KYZER.
2 WHAT SAY YOU FOR THE STATE?
3 MR. HUMPHRIES: PLEASE EXCUSE THE JUROR.
4 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
5 (JUROR EXCUSED.)
6 THE CLERK: NUMBER 183, ERNEST RAMSEY.
7 WHAT SAY YOU FOR THE STATE?
8 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
9 THE CLERK: THE DEFENSE?
10 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
11 THE CLERK: GO BACK AND HAVE YOUR SEAT, SIR.
12 (JUROR EXCUSED.)
13 THE CLERK: NUMBER 18, KATHRYN BECKSTROM.
14 WHAT SAY YOU FOR THE STATE?
15 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
16 THE CLERK: THE DEFENSE?
17 MS. FULLWOOD: PLEASE EXCUSE THE JUROR:
18 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
19 (JUROR EXCUSED.)
20 THE CLERK: NUMBER 16, KENDALL BEACH.
21 WHAT SAY YOU FOR THE STATE?
22 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
23 THE CLERK: THE DEFENSE?
24 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
25 THE CLERK: HAVE A SEAT IN THE JURY BOX.

1 (JUROR SEATED.)

2 THE CLERK: NUMBER 148, DAMMIE MARSHALL.

3 WHAT SAY YOU FOR THE STATE?

4 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

5 THE CLERK: FOR THE DEFENSE?

6 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.

7 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.

8 (JUROR EXCUSED.)

9 THE CLERK: NUMBER 68, JEANETTE DAVIS.

10 WHAT SAY YOU FOR THE STATE?

11 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

12 THE CLERK: THE DEFENSE?

13 MS. FULLWOOD: PLEASE SWEAR THE JUROR.

14 THE CLERK: HAVE A SEAT IN THE JURY BOX.

15 (JUROR SEATED.)

16 THE CLERK: NUMBER 195, SANDRA RUNION.

17 WHAT SAY YOU FOR THE STATE?

18 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

19 THE CLERK: THE DEFENSE?

20 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.

21 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.

22 (JUROR EXCUSED.)

23 THE CLERK: NUMBER 197, CHERYL SANDERS.

24 WHAT SAY YOU FOR THE STATE?

25 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.

1 THE CLERK: THE DEFENSE?
2 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
3 THE CLERK: HAVE A SEAT IN THE JURY BOX.
4 (JUROR SEATED.)
5 THE CLERK: NUMBER 77, MARY ELLIS.
6 WHAT SAY YOU FOR THE STATE?
7 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
8 THE CLERK: THE DEFENSE?
9 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
10 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
11 (JUROR EXCUSED.)
12 THE CLERK: NUMBER 30, WILLIAM BRAUN.
13 WHAT SAY YOU FOR THE STATE?
14 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
15 THE CLERK: THE DEFENSE?
16 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
17 THE CLERK: GO BACK AND HAVE YOUR SEAT, SIR.
18 (JUROR EXCUSED.)
19 THE CLERK: NUMBER 34, LOUISE BROWN.
20 WHAT SAY YOU FOR THE STATE?
21 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
22 THE CLERK: THE DEFENSE?
23 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
24 THE CLERK: HAVE A SEAT IN THE JURY BOX.
25 (JUROR SEATED.)

1 THE CLERK: NUMBER 94, PATRICIA GOFF.
2 WHAT SAY YOU FOR THE STATE?
3 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
4 THE CLERK: THE DEFENSE?
5 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
6 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
7 (JUROR EXCUSED.)
8 THE CLERK: NUMBER 128, JERRY JUMPER.
9 WHAT SAY YOU FOR THE STATE?
10 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
11 THE CLERK: THE DEFENSE?
12 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
13 THE CLERK: HAVE A SEAT IN THE JURY BOX.
14 (JUROR SEATED.)
15 THE CLERK: NUMBER 15, SAUNDREA BAUER.
16 WHAT SAY YOU FOR THE STATE?
17 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
18 THE CLERK: THE DEFENSE?
19 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
20 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
21 (JUROR EXCUSED.)
22 THE CLERK: NUMBER 241, LARRY WILLIAMSON.
23 WHAT SAY YOU FOR THE STATE?
24 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
25 THE CLERK: THE DEFENSE?

1 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
2 THE CLERK: HAVE A SEAT IN THE JURY BOX.
3 (JUROR SEATED.)
4 THE CLERK: NUMBER 141, CASSANDRA LEAPHART.
5 WHAT SAY YOU FOR THE STATE?
6 MR. HUMPHRIES: PLEASE EXCUSE THE JUROR.
7 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
8 (JUROR EXCUSED.)
9 THE CLERK: NUMBER 109, MARY HARVEY.
10 WHAT SAY YOU FOR THE STATE?
11 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
12 THE CLERK: THE DEFENSE?
13 MS. FULLWOOD: PLEASE SEAT THE JUROR.
14 THE CLERK: HAVE A SEAT IN THE JURY BOX.
15 (JUROR SEATED.)
16 THE COURT: ALL RIGHT. ON THE ALTERNATES.
17 THE CLERK: NUMBER 5, KEVIN ANDERSON.
18 WHAT SAY YOU FOR THE STATE?
19 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
20 THE CLERK: THE DEFENSE?
21 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
22 THE CLERK: HAVE A SEAT IN THE JURY BOX.
23 (JUROR SEATED.)
24 THE CLERK: NUMBER 43, BRANDON CALDWELL.
25 WHAT SAY YOU FOR THE STATE?

1 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
2 THE CLERK: THE DEFENSE?
3 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
4 THE CLERK: GO BACK AND HAVE YOUR SEAT, SIR.
5 (JUROR EXCUSED.)
6 THE CLERK: NUMBER 216, CONNIE SOLES..
7 WHAT SAY YOU FOR THE STATE?
8 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
9 THE CLERK: THE DEFENSE?
10 MS. FULLWOOD: PLEASE EXCUSE THE JUROR.
11 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
12 (JUROR EXCUSED.)
13 THE CLERK: NUMBER 20, PAT BENTLEY.
14 WHAT SAY YOU FOR THE STATE?
15 MR. HUMPHRIES: PLEASE EXCUSE THE JUROR.
16 THE CLERK: GO BACK AND HAVE YOUR SEAT, MA'AM.
17 (JUROR EXCUSED.)
18 THE CLERK: NUMBBER 87, DENNIS FOWLER.
19 WHAT SAY YOU FOR THE STATE?
20 MR. HUMPHRIES: PLEASE PRESENT THE JUROR.
21 THE CLERK: THE DEFENSE?
22 MS. FULLWOOD: PLEASE SWEAR THE JUROR.
23 THE CLERK: HAVE A SEAT IN THE JURY BOX.
24 (JUROR SEATED.)
25 THE COURT: LET ME SEE THE LAWYERS AT THE SIDE

1 BAR, PLEASE.

2 (WHEREUPON, A BENCH CONFERENCE WAS
3 HELD AT THIS TIME OFF THE RECORD.)

4 THE COURT: ANYTHING FROM THE STATE BEFORE I
5 SWEAR THE JURY?

6 MR. HUMPHRIES: NO, SIR.

7 THE COURT: FROM THE DEFENSE?

8 MS. FULLWOOD: NO, YOUR HONOR.

9 THE COURT: MS. SMITH, I'M GOING TO ASK THAT YOU
10 SERVE AS THE FOREPERSON OF THE JURY AND SWAP SEATS WITH
11 THIS LADY RIGHT HERE IN FRONT OF YOU. AND THROUGHOUT THE
12 COURSE OF THE TRIAL, MADAM FOREPERSON, YOU WILL CONTINUE TO
13 OCCUPY THAT SEAT AND THEN, MR. ANDERSON AND MR. FOWLER, YOU
14 GENTLEMEN, WILL CONTINUE TO OCCUPY THOSE SEATS THAT YOU
15 PRESENTLY SIT IN. THE REMAINDER OF THE JURY MAY SIT IN
16 WHATEVER SEAT IS AVAILABLE WHEN YOU COME IN THE COURTROOM
17 OTHER THAN THOSE THREE SEATS.

18 ALL RIGHT. PLEASE SWEAR THE JURY.

19 THE CLERK: PLEASE STAND AND RAISE YOUR RIGHT
20 HAND TO BE SWORN.

21 (WHEREUPON A JURY CONSISTING OF
22 TWELVE JURORS AND TWO ALTERNATES WAS FIRST DULY SWORN AT
23 12:05 P.M.)

24 THE COURT: LADIES AND GENTLEMEN, I WANT TO THANK
25 YOU VERY MUCH FOR YOUR PARTICIPATION IN OUR PROCESS. YOU

1 HAVE NOW BEEN SWORN AS JURORS IN THIS CASE.

2 I'M GOING TO BE INTRODUCING TO YOU THE JURY
3 CUSTODIANS WHO WILL BE RESPONSIBLE FOR ALL OF YOUR CARE AND
4 CUSTODY THROUGHOUT THE DURATION OF THIS TRIAL AND AS I CALL
5 YOUR NAMES, WOULD YOU PLEASE COME FORWARD. RICK MCLEOD,
6 JENNIFER EDWARDS, JERRY MERRITT, BUDDY LITTLEJOHN, TERRY
7 HOFFMAN AND THEN JOINING US ON FRIDAY WILL BE JENNY JACOBS.
8 SHE IS NOT HERE TODAY, BUT SHE WILL BE SWORN ON FRIDAY
9 BEFORE THE JURY.

10 ALL RIGHT, MADAM CLERK, WILL YOU PLEASE SWEAR THE
11 CUSTODIANS.

12 THE CLERK: RAISE YOUR RIGHT HAND.

13 (WHEREUPON, THE JURY CUSTODIANS
14 WERE SWORN AT THIS TIME.)

15 THE COURT: THANK YOU VERY MUCH. YOU MAY BE
16 SEATED.

17 LADIES AND GENTLEMEN, AS I HAVE TOLD YOU
18 THROUGHOUT THE PAST DAY AND A HALF OR SO. I HAVE KIND OF
19 LOST TRACK OF TIME. I KNOW IT'S WEDNESDAY HERE AT NOON AND
20 WE STARTED ON THIS PROCESS MONDAY AFTERNOON WITH YOU
21 INDIVIDUALLY AND CONTINUED THROUGH YESTERDAY AND ALSO
22 TODAY.

23 I'M GOING TO BE SENDING YOU TO YOUR MOTEL IN JUST
24 A MOMENT. THE JURY CUSTODIANS WILL SEE THAT YOU ARE
25 PROPERLY SITUATED THERE.

1 WHILE YOU ARE THERE, THERE ARE CERTAIN RULES AND
2 REGULATIONS THAT YOU WILL ABIDE BY. THE CUSTODIANS WILL
3 ALSO BE SEEKING CERTAIN INFORMATION FROM YOU THAT THEY WILL
4 NEED THROUGHOUT THE COURSE OF THE TRIAL. IF YOU HAVE A
5 CELLULAR TELEPHONE, YOU ARE GOING TO NEED TO GIVE THAT TO
6 THE JURY CUSTODIANS. THAT IS SOMETHING THAT, ONCE AGAIN,
7 IS PART OF THE PROCESS.

8 ALSO, ONCE YOU REACH YOUR DESIGNATION, THEY WILL
9 ALSO TAKE YOUR CAR KEYS FOR YOUR VEHICLES AND SEE THAT ALL
10 OF THOSE THINGS ARE KEPT IN VERY SAFE ORDER. ALL OF YOUR
11 NEEDS WILL BE MET. IF THERE'S ANYTHING THAT YOU DO NEED
12 THAT THE CUSTODIANS ARE UNABLE TO ADDRESS, IF YOU WOULD
13 SIMPLY -- THEY WILL LET ME KNOW AND I WILL SEE THAT THOSE
14 THINGS ARE ADDRESSED AND PROPERLY TAKEN CARE OF.

15 DURING THE COURSE OF THIS TRIAL, LET ME REMIND
16 YOU, ONCE AGAIN, THAT YOU ARE NOT TO DISCUSS THIS CASE IN
17 ANY FASHION WHATSOEVER DURING THE COURSE OF THE TRIAL. YOU
18 ARE GOING TO BE TOGETHER ALL THE TIME AND YOU CAN TALK
19 ABOUT A LOT OF THINGS, BUT NOT THIS CASE.

20 ALSO DURING THE COURSE OF YOUR SEQUESTRATION,
21 WHILE YOU ARE GOING TO HAVE THESE JURY CUSTODIANS WITH YOU,
22 IF THERE IS ANY ATTEMPT BY ANYONE TO CONTACT YOU OR IN ANY
23 WAY DISCUSS THIS MATTER WITH YOU IN ANY FASHION WHATSOEVER,
24 I WANT YOU TO REPORT THAT TO THEM AND THEY WILL SEE THAT
25 IT'S REPORTED TO ME BECAUSE, ONCE AGAIN, THAT IS A VERY

1 SERIOUS MATTER AND I TAKE IT SERIOUSLY AND I WILL HANDLE IT
2 APPROPRIATELY.

3 ALSO, THE READING MATERIAL THAT YOU HAVE WILL BE
4 CLOSELY MONITORED IN THE FORM OF NEWSPAPERS FROM A
5 STANDPOINT THAT -- SO THAT YOU WOULD NOT BE EXPOSED TO
6 ANYTHING THAT MAY BE WRITTEN OR SAID IN ANY WAY ABOUT THIS
7 CASE. THOSE TYPES OF THINGS WILL BE MONITORED BY THE JURY
8 CUSTODIANS.

9 NOW, THAT DOES NOT MEAN THAT YOU ARE NOT GOING TO
10 HAVE ENTERTAINMENT, THAT YOU WILL NOT HAVE ACCESS TO
11 MATERIALS, READING MATERIALS AND SO FORTH. I WILL SEE THAT
12 THE S.L.E.D. AGENTS ARE ABLE TO PROVIDE INFORMATION TO YOU
13 IN THE FORM OF NEWSPAPERS AND SO FORTH. IF THERE'S
14 ANYTHING IN THERE ABOUT THE CASE, THEN I WILL SEE THAT THAT
15 IS PROPERLY REMOVED BECAUSE ALL I WOULD WANT YOU TO
16 CONSIDER IN THIS MATTER IS WHAT YOU SEE AND HEAR IN THIS
17 COURTROOM. ABSOLUTELY NOTHING MORE AND NOTHING LESS.

18 ALSO, WHILE YOU ARE AWAY, I KNOW THAT YOU WILL BE
19 GATHERED TOGETHER BEFORE YOU ARE BROUGHT UP HERE THIS
20 AFTERNOON FOR US TO START THE TRIAL OF THE CASE. OF
21 COURSE, YOU ARE AWAY FROM YOUR NORMAL SURROUNDINGS AND I
22 UNDERSTAND THAT AND I INTEND TO WORK AS HARD AS WE POSSIBLY
23 CAN TO MOVE THIS CASE ALONG TO SEE THAT THE CASE IS FAIRLY
24 TRIED FOR BOTH THE STATE AND THE DEFENSE, BUT ALSO, KEEPING
25 IN MIND, THAT YOU ARE AWAY FROM YOUR FAMILY AND FRIENDS AND

1 LOVE ONES AND YOUR REGULAR ACTIVITIES. SO I WANT TO GO
2 AHEAD AND TELL YOU THIS. WE WILL WORK EVERYDAY IN THE DAYS
3 AHEAD. IF SATURDAY, IF IT'S NECESSARY TO WORK ON SATURDAY,
4 WE WILL WORK ON SATURDAY. AS FAR AS SUNDAY IS CONCERNED, I
5 ALSO WILL WORK WHATEVER SCHEDULE YOU, THE JURY, DESIRE TO
6 WORK. IF YOU WANT TO START AT THE REGULAR TIME ON SUNDAY,
7 WE WILL DO THAT. IF YOU WANT TO START AT A LATER TIME ON
8 SUNDAY, WE WILL DO THAT. IF YOU, AS A JURY, DECIDE THAT
9 YOU DO NOT WANT TO WORK ON SUNDAY, WE WILL DO THAT. I'M
10 GOING TO GIVE YOU THAT OPTION. BUT IF YOU WANT TO WORK,
11 WHATEVER HOURS ON SUNDAY, WE WILL BE HERE TO DO THAT, BUT,
12 ONCE AGAIN, MADAM FOREPERSON, I WOULD LIKE FOR YOU TO
13 HANDLE THAT INSOFAR AS THE JURY IS CONCERNED, FOR Y'ALL TO
14 TALK ONLY ABOUT THE TIME THAT YOU WOULD LIKE TO WORK ON
15 SUNDAY. THE REST OF THE TIME WE ARE GOING TO WORK FULL
16 DAYS BECAUSE I'M LIKE YOU. I'M AWAY FROM HOME AND I PREFER
17 TO BE WORKING AND FOR US TO MOVE THE SITUATION ALONG, BUT,
18 ALSO, I UNDERSTAND THAT THERE IS TIME THAT YOU WILL NEED TO
19 EAT AND RELAX AND SO FORTH AND WE'LL GIVE YOU THAT TIME.
20 BUT WE WILL WORK FULL DAYS. WE WON'T BE WORKING A COUPLE
21 OF HOURS AND THEN TAKING OFF THE REST OF THE DAY. I DON'T
22 INTEND TO DO THAT BECAUSE I UNDERSTAND THE SITUATION THAT
23 YOU ARE IN.

24 SO PLEASE FULLY UNDERSTAND ALL OF THAT AND WE
25 WILL SEE THAT YOUR NEEDS ARE MET.

1 NOW, WHAT I AM GOING TO BE DOING IS ALLOWING THE
2 JURY CUSTODIANS TO TAKE OVER AND WHAT, I GUESS, THAT WE
3 NEED TO DO IS PROBABLY ALLOW THIS GROUP TO GO TO THE GRAND
4 JURY ROOM SO THAT THEY CAN BE PROPERLY ORGANIZED. WOULD
5 THAT BE WHAT YOU WOULD LIKE TO DO, MR. MCLEOD?

6 MR. MCLEOD: YES, SIR, THAT WILL BE FINE.

7 THE COURT: ALL RIGHT. AND WE WILL SEE THAT YOU
8 ARE TRANSPORTED TO YOUR MOTEL. WE ARE GOING TO BE DOING
9 SOME THINGS TO GET READY FOR THE START OF THE TRIAL THIS
10 AFTERNOON. I DON'T KNOW EXACTLY WHAT TIME I'M GOING TO
11 BRING YOU BACK. I'LL NOTIFY THE JURY CUSTODIANS, BUT WE
12 ARE GOING TO START THE CASE THIS AFTERNOON AS QUICKLY AS
13 POSSIBLE.

14 THANK YOU VERY MUCH FOR YOUR COOPERATION AND I'LL
15 LOOK FORWARD TO SEEING EACH AND EVERY ONE OF YOU BACK HERE,
16 I WOULD SAY, SOMETIME AROUND 3 O'CLOCK OR SHORTLY
17 THEREAFTER. HAVE A VERY PLEASANT AFTERNOON AND WE'LL SEE
18 YOU BACK HERE LATER ON TODAY.

19 EVERYONE ELSE REMAIN SEATED WHILE THE JURY EXITS
20 THE COURTROOM, PLEASE.

21 (JURY OUT.)

22 THE COURT: TO THE REMAINING MEMBERS OF THIS JURY
23 POOL, I WANT TO THANK YOU VERY MUCH FOR YOUR PARTICIPATION
24 IN THIS CASE. I KNOW THAT THIS HAS BEEN AN EXPERIENCE THAT
25 YOU HAVE NOT CONFRONTED BEFORE. I THANK YOU VERY MUCH FOR

1 YOUR FORTHRIGHTNESS IN ANSWERING THE QUESTIONS THAT HAVE
2 BEEN PRESENTED TO YOU. THIS IS GOING TO CONCLUDE YOUR
3 RESPONSIBILITIES IN THIS MATTER AND I HOPE THAT WE HAVEN'T
4 INCONVENIENCED YOU GREATLY THIS WEEK, BUT ON BEHALF OF THE
5 STATE OF SOUTH CAROLINA AND, IN PARTICULAR, LEXINGTON
6 COUNTY, I THANK YOU VERY MUCH FOR BEING HERE, BEING READY,
7 WILLING AND ABLE TO SERVE. AND IF THERE IS NOTHING
8 FURTHER, MADAM CLERK, I WILL ALLOW YOU TO DISMISS THEM.

9 THE CLERK: JUST A WORD. THE CHECKS AND
10 CERTIFICATES THAT WE WILL BE SENDING TO YOU, YOU WILL NOT
11 RECEIVE THEM UNTIL THIS CASE HAS CONCLUDED. SO THERE WILL
12 BE ABOUT PROBABLY A TWO TO TWO AND A HALF WEEK LAPSE BEFORE
13 YOU GET THAT.

14 IF ANY OF YOU NEED SOMETHING IMMEDIATELY, IF YOU
15 WILL STOP DOWN IN THE CLERK OF COURT'S OFFICE IN THE
16 GENERAL SESSIONS DIVISION, THEY WILL BE HAPPY TO GIVE YOU A
17 CERTIFICATE. WE CAN'T CUT YOU A CHECK, BUT WE CAN GIVE YOU
18 A STATEMENT FOR YOUR JOB.

19 THE COURT: THANK YOU ALL VERY MUCH. YOU ARE
20 EXCUSED. THANK YOU VERY MUCH FOR BEING HERE.

21 (WHEREUPON, THE REMAINDER OF THE
22 JURY VENIRE WAS EXCUSED FROM FURTHER SERVICE AT THIS TIME.)

23 THE COURT: ALL RIGHT.

24 I KNOW THAT WE HAVE SOME PRE-TRIAL MATTERS TO
25 DEAL WITH. LET'S SEE IF WE CAN START THOSE IN ABOUT

1 TEN-MINUTES AND MOVE AS QUICKLY AS WE CAN.

2 IF YOU COULD GIVE ME AN ESTIMATE OF HOW LONG YOU
3 THINK THEY WILL LAST. IF WE ARE GOING TO GET INTO A RATHER
4 LENGTHY PROCESS, WHAT I THINK THAT I WOULD REALLY PREFER TO
5 DO IS MAYBE LET EVERYONE INVOLVED HERE GET A QUICK BITE TO
6 EAT AND THEN LET'S COME BACK AND GET STARTED.

7 I ADVISED MR. MCLEOD THAT WE WILL NOTIFY HIM AS
8 TO THE TIME THAT WE ARE TO HAVE THE JURY BACK. WHAT I
9 WOULD REALLY LIKE TO DO IS MAYBE LET'S TAKE ABOUT AN HOUR
10 FOR LUNCH AND COME ON BACK HERE AND GET STARTED ABOUT 1:15
11 BECAUSE I THINK THAT WHATEVER WE DO WOULD RUN US PAST 1
12 O'CLOCK.

13 DON'T YOU AGREE, SOLICITOR?

14 MR. HUMPHRIES: YOUR HONOR, CLEARLY THE COURT'S
15 DISCRETION. I HAVE TWO WITNESSES ON ALL THESE ISSUES.
16 WHAT I INTENDED TO DO WAS TO ELICIT THE TESTIMONY
17 SURROUNDING -- OR ABOUT THE SURROUNDING CIRCUMSTANCES
18 REGARDING THE TAKING OF THE STATEMENTS. I WAS NOT GOING TO
19 PUBLISH THE TAPED STATEMENT UNLESS DEFENSE COUNSEL REQUIRED
20 IT. JUST GO INTO THE SURROUNDING CIRCUMSTANCES.

21 MY FEELING ON THAT IS I CAN PUT THE STATE'S
22 PORTION OF THAT EVIDENCE, INCLUDING THE CONSENT TO SEARCH,
23 WITHIN FIFTEEN MINUTES.

24 NOW, THEY MAY DISAGREE AS TO HOW LONG IT WOULD
25 TAKE.

1 THE COURT: WELL---

2 MR. HUMPHRIES: IT'S ENTIRELY UP TO YOU.

3 THE COURT: I DON'T. OH, I UNDERSTAND THAT.

4 MR. HUMPHRIES: I KNOW YOU DO.

5 THE COURT: IF IT'S GOING TO TAKE YOU 15 MINUTES,
6 HOW LONG WILL IT TAKE YOU, MR. STONE, MS. FULLWOOD?

7 MR. STONE: LET ME GO AHEAD AND THROW A WRENCH IN
8 THESE PLANS EARLY TO AVOID THE CHRISTMAS RUSH.

9 I KNOW HE'S GOT HIS IDEA ABOUT THE SEARCH ISSUES.
10 I HAVE POTENTIALLY A DIFFERENT SEARCH ISSUE THAT HAS NOT
11 BEEN DISCUSSED WHICH WILL TAKE, I BELIEVE, TWO OTHER
12 WITNESSES THAT ARE NOT OVER THERE RIGHT NOW. SO I'M
13 ASSUMING -- I'LL BE HONEST WITH YOU, I THINK, THAT IF WE
14 COVERED THE CONFESSION, COVERED THAT SEARCH ISSUE AND THEN
15 MY SEARCH ISSUE, I DON'T THINK WE ARE GOING TO GET THROUGH
16 WITH IT AT ANY TIME WITHIN A REASONABLE PERIOD OF TIME.
17 I'M NOT -- I CERTAINLY DON'T WANT TO DRAG IT OUT EITHER,
18 BUT I THINK IT'S GOING TO TAKE MORE TIME THAN THAT.

19 THE COURT: LET'S DO THIS. IF WE ARE BACK HERE
20 AT 1:15 -- WHAT I WANT TO TRY TO DO IS START THIS CASE
21 ABOUT 3 O'CLOCK, NO LATER THAN 3 O'CLOCK. WE SHOULD BE
22 ABLE TO DO IT IN THAT PERIOD OR TIME THEN, SHOULDN'T WE?
23 THAT WOULD GIVE YOU AN HOUR AND FORTY-FIVE MINUTES TO DO
24 WHATEVER YOU HAVE TO OR THEREABOUTS.

25 MR. STONE: YOUR HONOR, PROBABLY. IT WILL BE

1 CLOSE.

2 THE COURT: OKAY.

3 MR. STONE: I'LL DO THE BEST I CAN. I DON'T PLAN
4 TO DRAG IT OUT---

5 THE COURT: AS LONG AS WE'RE CLOSE, THAT'S ALL
6 I'M ASKING FOR. I UNDERSTAND THAT THESE THINGS DON'T
7 ALWAYS RUN ON AN EXACT TIME TABLE.

8 MR. HUMPHRIES: YOUR HONOR, IT MAY ASSIST THINGS,
9 IF I'M GIVEN, AT LEAST, SOME INDICATION OF WHAT THE OTHER
10 SEARCH ISSUE MIGHT BE SO THAT I CAN HAVE THE APPROPRIATE
11 WITNESSES TO RESPOND TO THAT ISSUE.

12 THE COURT: WELL, IF WE'VE GOT WITNESSES -- IF
13 THEY ARE NOT GOING TO HAVE THE WITNESSES HERE, THEN WE ARE
14 GOING TO MOVE FORWARD WITH THESE ISSUES SO I EXPECT THEM TO
15 HAVE THEM HERE.

16 MR. STONE: WE HAVE -- WE HAVE THEM UNDER
17 SUBPOENA. JOE MEANS FROM S.L.E.D. IS HERE OR WAS HERE
18 EARLIER. I CUT HIM LOOSE, TOLD HIM I WOULD CALL HIM BACK.
19 THE OTHER ONE IS STEVE DERRICK, WHO, I BELIEVE -- WE HAVE
20 HIM UNDER SUBPOENA.

21 THE COURT: WELL, JUST SO YOU HAVE HIM HERE.
22 BECAUSE IF NOT, I WANT TO MAKE SURE THAT HE'S GOING TO BE
23 HERE WHEN WE ARE READY TO START. I'M NOT GOING TO BE
24 WAITING ON WITNESSES. THAT IS YOUR RESPONSIBILITY TO HAVE
25 HIM HERE. IF YOU DON'T, THEN YOU NEED TO LET ME KNOW NOW

1 SO THAT I CAN ENSURE THEY ARE HERE.

2 MR. STONE: HE WAS SUPPOSED TO BE HERE THIS
3 MORNING.

4 THE COURT: WELL, THEN---

5 MR. STONE: IN FACT, JOE MEANS FROM S.L.E.D.
6 SHOWED UP THIS MORNING AT 9 O'CLOCK.

7 THE COURT: WELL, THEN, INSOFAR AS THE OTHER
8 WITNESS IS CONCERNED, I WOULD BE TRACKING HIM DOWN.

9 ALL RIGHT. WE'LL STAND IN RECESS UNTIL 1:15.

10 (WHEREUPON, COURT RECESSED FOR
11 LUNCH AT 12:20 P.M.)

12 (WHEREUPON, COURT RECONVENED AFTER
13 LUNCH AT 1:15 P.M.)

14 (WHEREUPON, COURT'S EXHIBIT NUMBER
15 FIVE, JUROR EXCUSES, MARKED FOR THE RECORD AT THIS TIME.)

16 THE BAILIFF: COURT IS NOW IN SESSION.

17 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

18 ALL RIGHT. ARE WE READY TO PROCEED?

19 IS THE STATE READY?

20 MR. HUMPHRIES: THE STATE IS READY, YOUR HONOR.

21 THE COURT: IS THE DEFENSE READY?

22 MS. FULLWOOD: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 I ASSUME THE FIRST ISSUE IS THAT OF THE
25 STATEMENTS. ARE YOU READY TO MOVE INTO THAT?

1 MR. HUMPHRIES: THE STATE IS READY.

2 I BELIEVE, AT LEAST FOR THE RECORD THAT THE
3 DEFENSE PROBABLY SHOULD MAKE A MOTION ON THE RECORD FOR THE
4 SUPPRESSION---

5 THE COURT: ALL RIGHT. OH, AND ALSO, DIDN'T YOU
6 WANT TO PUT SOMETHING ON ABOUT YOUR---

7 MR. HUMPHRIES: I WITHDRAW THAT.

8 THE COURT: OKAY. ALL RIGHT.

9 LET ME HEAR FROM THE DEFENSE THEN.

10 MS. FULLWOOD: THANK YOU.

11 YOUR HONOR, AT THIS TIME, WE WOULD MOVE TO
12 SUPPRESS THE STATEMENTS MADE BY MR. TERRY. THOSE WOULD BE
13 STATEMENTS MADE JANUARY THE 17TH, 1995, AND MARCH THE 24TH,
14 1995.

15 THE GROUNDS FOR THE MOTION ARE THAT THE
16 STATEMENTS WERE INVOLUNTARY AND WERE NOT ACCOMPANIED BY A
17 KNOWING AND INTELLIGENT WAIVER OF HIS FIFTH AMENDMENT
18 RIGHT.

19 JUDGE, IN ADDITION TO THAT, WE HAVE A FOURTH
20 AMENDMENT ISSUE. SOME OF THE WITNESSES, ESPECIALLY THE
21 STATE'S WITNESSES MAY OVERLAP SO I JUST WANTED THE COURT TO
22 KNOW THAT.

23 THE COURT: ARE YOU ASKING THAT THEY BE
24 SEQUESTERED? WHAT ARE YOU TELLING ME?

25 MS. FULLWOOD: YES, SIR. WE ASK THAT.

1 THE COURT: ALL RIGHT. WE'LL SEQUESTER
2 WITNESSES.

3 MR. HUMPHRIES: I GUESS WE ARE TALKING ABOUT
4 SCOTTIE FRIER AND LIEUTENANT PHILLIPS.

5 MS. FULLWOOD: THOSE WOULD BE THE WITNESSES.

6 THE COURT: I'M SHAKING MY HEAD IN AGREEMENT. I
7 HAVE NO IDEA.

8 MR. HUMPHRIES: THAT'S WHY I---

9 THE COURT: I'M STILL TRYING TO LEARN EVERYONE SO
10 FAR.

11 MR. HUMPHRIES: THE STATE CALLS INVESTIGATOR
12 SCOTTIE FRIER TO THE STAND.

13 SCOTTIE R. FRIER,

14 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

15 MR. HUMPHRIES: YOUR HONOR, FOR THE RECORD, AS IT
16 RELATES TO ANY FOURTH AMENDMENT ISSUE REGARDING A SEARCH,
17 THE STATE WOULD ASK THE COURT TO DIRECT THE DEFENSE,
18 PURSUANT TO THE CASE OF THE STATE VERSUS WILLIAM MICHAEL
19 PATTON, TO STATE THE GROUNDS, THE FACTUAL AND LEGAL
20 GROUNDS, FOR THE SUPPRESSION OF ANY EVIDENCE AS RELATES TO
21 THE FOURTH AMENDMENT ISSUE AND QUITE FRANKLY, I'M NOT
22 EXACTLY CERTAIN. I GOT NO NOTICE OF IT.

23 THE COURT: YOU WANT TO BE HEARD ON THAT?

24 MR. STONE: EXCUSE ME JUST A MOMENT, YOUR HONOR.

25 THE COURT: YES, SIR.

1 MR. STONE: YOUR HONOR, THE ONLY THING, AS FAR AS
2 THIS WITNESS IS CONCERNED, AS FAR AS THE SEARCH ISSUE,
3 WOULD BE THE CONSENT THAT HE OBTAINED FROM MR. TERRY FOR A
4 SCHMERBER ANALYSIS. THAT, OF COURSE, CAN BE WRAPPED UP,
5 I THINK, IN THE SAME TIME FRAME THAT WE DEAL WITH THIS
6 CONFESSION.

7 IT'S OUR POSITION, AS WELL, THAT MR. TERRY WAS
8 NOT IN ANY CONDITION TO CONSENT TO THAT AND THAT HIS
9 CONSENT WAS NOT KNOWINGLY AND INTELLIGENTLY MADE. I THINK
10 THAT'S THE ONLY FOLLOW-THROUGH.

11 THE OTHER SEARCH ISSUE, YOUR HONOR, AND I JUST
12 WANT TO TELL YOU THIS FROM THE STANDPOINT IN TIMING IS THAT
13 -- IS MY POSITION IS THAT THE FINGERPRINT THAT THEY ARE
14 WISHING TO OFFER IN EVIDENCE, THAT THE MATCH WAS OBTAINED
15 IN VIOLATION OF THE FOURTH AMENDMENT. THAT IS NOT AN
16 OVERLAP WITH DETECTIVE FRIER AND NOT WITH DETECTIVE
17 PHILLIPS EITHER. SO THERE'S NO OVERLAP OF THAT. THAT WAS
18 -- THAT WAS SPECIFICALLY STEVE DERRICK AND JOE MEANS AND, I
19 THINK, STEVE DERRICK IS OUT OF THE COURT AT THIS TIME WHICH
20 IS HOW I WOULD ASK THE COURT TO KEEP IT.

21 IS THAT CLEAR FOR THE PROSECUTION AS WELL?

22 MR. HUMPHRIES: YES, SIR.

23 THE COURT: ALL RIGHT.

24 MR. STONE: AND, YOUR HONOR, MAY I PUT THIS ALSO
25 TO YOU---

1 THE COURT: YES, SIR.

2 MR. STONE: ---DURING THE COURSE OF THIS TRIAL,
3 OBVIOUSLY FROM MY STANDPOINT, IT'S VERY DIFFICULT FOR ME TO
4 SEE THE WITNESS.

5 THE COURT: IF YOU NEED TO GET UP AND MOVE
6 AROUND, YOU MAY DO SO.

7 MR. STONE: IF I MOVE AROUND, WILL THAT BE A
8 PROBLEM FOR YOU?

9 THE COURT: NO, SIR. I WANT YOU TO DO SO.

10 MR. STONE: THANK YOU.

11 THE COURT REPORTER: STATE YOUR FULL NAME FOR THE
12 RECORD, PLEASE.

13 THE WITNESS: SCOTTIE, S-C-O-T-T-I-E, R. FRIER,
14 F-R-I-E-R.

15 DIRECT EXAMINATION

16 BY MR. HUMPHRIES:

17 Q WITH WHOM ARE YOU EMPLOYED?

18 A WITH THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

19 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

20 A I HAVE BEEN WITH THEM FOR A LITTLE OVER TEN YEARS
21 NOW.

22 Q PRESENTLY, IN WHAT CAPACITY, ARE YOU EMPLOYED WITH
23 THE SHERIFF'S DEPARTMENT?

24 A I AM A CRIMINAL INVESTIGATOR IN THE MAJOR CRIMES
25 UNIT.

1 Q AND IN JANUARY OF 1995, WHAT CAPACITY WERE YOU
2 EMPLOYED?

3 A I WAS -- I WAS A CRIMINAL INVESTIGATOR.

4 Q IN CONNECTION WITH YOUR DUTIES AS A CRIMINAL
5 INVESTIGATOR, DID YOU HAVE AN OCCASION TO COME INTO CONTACT
6 WITH THE DEFENDANT, GARY DUBOSE TERRY, IN JANUARY OF 1995?

7 A YES, I DID.

8 Q TELL THE COURT THE FACTS AND CIRCUMSTANCES
9 SURROUNDING THAT CONTACT WITH GARY DUBOSE TERRY.

10 A WE WERE INVESTIGATING THE HOMICIDE OF URAI JACKSON
11 WHICH HAD OCCURRED ON BUCKEYE DRIVE IN LEXINGTON COUNTY.

12 DURING THE COURSE OF THAT INVESTIGATION, GARY
13 TERRY HAD BECOME A SUSPECT IN THAT INVESTIGATION. AFTER
14 MR. TERRY -- AFTER MR. TERRY WAS IDENTIFIED, WE TRAVELED TO
15 HIS HOME IN FAIRFIELD COUNTY IN AN ATTEMPT TO ELICIT FROM
16 HIM A CONSENT TO SEARCH AND AFTER DOING THAT, ALSO,
17 ELICITED FROM HIM A WRITTEN STATEMENT, A SIGNED STATEMENT.

18 Q LET ME ASK YOU AT THIS TIME. DO YOU HAVE THE
19 ORIGINAL STATEMENT IN YOUR POSSESSION?

20 A FROM THE FIRST CONTACT WE HAD WITH HIM ON THE 17TH OF
21 JANUARY, 1995, YES, SIR, I DO.

22 MR. HUMPHRIES: A COPY OF THIS HAS BEEN
23 PREVIOUSLY PROVIDED TO THE DEFENSE.

24 I INTEND TO MARK IT AS A COURT'S EXHIBIT AT THIS
25 TIME, YOUR HONOR.

1 MR. STONE: YES, SIR.

2 THE COURT: IT WILL BE COURT'S EXHIBIT NUMBER
3 SIX.

4 (WHEREUPON, COURT'S EXHIBIT NUMBER
5 SIX, STATEMENT/1/17/95, MARKED FOR THE RECORD AT THIS
6 TIME.)

7 MR. HUMPHRIES: TELL THE COURT WHERE YOU ACTUALLY
8 MADE CONTACT WITH MR. TERRY.

9 THE WITNESS: WE FIRST LOCATED HIM AT HIS HOME.

10 Q WHERE IS HIS HOME LOCATED?

11 A AT SIMMS AND CHERRY ROAD IN WINNSBORO, SOUTH
12 CAROLINA.

13 Q DID -- HAD YOU MADE PRIOR ARRANGEMENTS TO CONTACT MR.
14 TERRY?

15 A YES. WE HAD MADE -- I HAD MADE TELEPHONE CONTACT
16 WITH MR. TERRY AND HE WAS SUPPOSED TO COME INTO LEXINGTON
17 FOR SOME OTHER BUSINESS AND WAS GOING TO MEET WITH US AT
18 THE SHERIFF'S DEPARTMENT. THAT MEETING HAD FALLEN THROUGH.
19 SUBSEQUENT TO THAT, I HAD MADE PHONE CONTACT WITH HIM AGAIN
20 AND MADE ARRANGEMENTS TO ME WITH HIM IN HIS HOME IN
21 FAIRFIELD.

22 Q LET ME ASK YOU THIS.

23 DURING ANY OF THESES CONTACTS WITH MR. TERRY,
24 LEADING UP TO THE TIME WHERE YOU ACTUALLY HAVE PHYSICAL
25 CONTACT WITH HIM, DID HE EVER INDICATE TO YOU THAT HE WAS

1 UNWILLING TO MEET WITH YOU?

2 A NO, HE DID NOT.

3 Q IN FACT, DID HE INDICATE A WILLINGNESS TO MEET WITH
4 YOU?

5 A HE SUGGESTED TO US THAT SINCE HE WAS COMING TO
6 LEXINGTON, HE WOULD EVEN MAKE IT EASIER FOR US BY COMING TO
7 THE SHERIFF'S OFFICE.

8 Q THAT MEETING DID NOT GO THROUGH?

9 A NO, SIR, IT DID NOT.

10 Q AS A RESULT, YOU WENT TO WINNSBORO?

11 A WENT TO WINNSBORO, YES, SIR.

12 Q DID YOU ACTUALLY GO TO HIS RESIDENCE?

13 A YES, SIR, I DID.

14 Q OKAY. FROM HIS RESIDENCE, WHERE, IF ANY PLACE, DID
15 YOU GO?

16 A WE TRAVELLED TO THE SHERIFF'S DEPARTMENT IN
17 WINNSBORO. I MET WITH HIM BRIEFLY THERE AND THEN WENT TO
18 THE HOSPITAL. I THINK IT'S FAIRFIELD GENERAL OR FAIRFIELD
19 MEMORIAL HOSPITAL.

20 Q LET ME ASK YOU THIS. AT ANY TIME, DURING THIS
21 PROCESS, WAS MR. TERRY UNDER ARREST?

22 A NO, SIR, HE WAS NOT.

23 Q WAS HE AT THIS TIME A SUSPECT IN THE CASE?

24 A YES, SIR, HE WAS.

25 Q DID YOU HAVE TO PLACE MR. TERRY IN HANDCUFFS OR

1 RESTRAINTS IN ANY MANNER TO MOVE HIM FROM ONE PLACE TO
2 ANOTHER?

3 A NO, SIR. HE WAS VERY VOLUNTARILY WILLING TO DO WHAT
4 WE ASKED, MEET US WHERE WE NEEDED TO MEET.

5 Q IN FACT, DID YOU ASK HIM IF HE WAS WILLING TO GO TO
6 THE SHERIFF'S DEPARTMENT?

7 A YES, SIR, WE DID.

8 Q DID YOU SUBSEQUENTLY ASK HIM IF HE WAS WILLING TO GO
9 TO THE HOSPITAL?

10 A YES, SIR, WE DID.

11 Q AND IN EACH AND EVERY CASE, WHAT DID HE INDICATE TO
12 YOU?

13 A HE INDICATED A WILLINGNESS TO COOPERATE.

14 Q IN FACT, WHAT WAS YOUR UNDERSTANDING IF HE REFUSED TO
15 GO WITH YOU? WHAT COULD YOU DO?

16 A WE HAD NO GROUNDS TO DO ANYTHING WITHOUT HIS CONSENT.

17 Q NOW, WHAT I WANT YOU TO DO IS GO DIRECTLY TO THE
18 POINT AT WHICH YOU RECEIVED A STATEMENT, A WRITTEN
19 STATEMENT, FROM MR. TERRY. WHERE WAS THAT?

20 A THAT WAS PARKED IN THE DRIVEWAY AT MR. TERRY'S HOME
21 IN LIEUTENANT PHILLIPS' PATROL CAR WITH LIEUTENANT PHILLIPS
22 DRIVING. ME SEATED IN THE FRONT PASSENGER'S SEAT AND MR.
23 TERRY SEATED IN THE BACK-SEAT.

24 Q OKAY. WAS MR. TERRY DETAINED FOR ANY PURPOSE AT THAT
25 TIME?

1 A NO, SIR. WE WERE SITTING IN THE DRIVEWAY OF HIS
2 HOME, ASKED HIM IF HE WOULD BE WILLING TO GIVE US A
3 STATEMENT OF SOME INFORMATION OF SOME QUESTIONS WE WERE
4 GOING TO ASK, IF HE WOULD SIGN IT AND WHEN WE WERE THROUGH,
5 TOLD HIM HE WAS FREE TO GO HOME OR WALK INTO HIS HOME.

6 Q DID HE INDICATE THAT HE WAS WILLING TO GIVE YOU THAT
7 STATEMENT?

8 A YES, SIR, HE DID.

9 Q YOUR HONOR, AT THIS TIME, I HAVE A PHOTOCOPY OF THE
10 STATEMENT I'LL JUST GIVE TO THE COURT FOR REFERENCE---

11 THE COURT: ALL RIGHT.

12 MR. HUMPHRIES: ---IF THERE'S NO OBJECTION SO
13 THAT THE DETECTIVE CAN READ FROM THE ORIGINAL.

14 MR. STONE: NO OBJECTION.

15 THE COURT: ALL RIGHT.

16 MR. HUMPHRIES: LET ME ASK THE WITNESS. IS THIS
17 A TRUE AND ACCURATE PHOTOCOPY OF THE ORIGINAL STATEMENT IN
18 THIS CASE?

19 THE WITNESS: YES, SIR, IT IS.

20 Q AND I'LL PROVIDE THAT TO THE COURT.

21 DESCRIBE TO THE COURT WHAT THAT -- AND IN WHOSE
22 HANDWRITING WAS THAT STATEMENT MADE?

23 A THIS STATEMENT IS WRITTEN OUT IN MY HANDWRITING
24 EXCEPT FOR A COUPLE OF NOTATIONS MADE BY GARY TERRY.

25 Q IF YOU WILL, PUBLISH THE TOP PART OF THAT STATEMENT

1 OR THAT FORM, IF YOU WILL?

2 A IT'S -- THIS WAS DONE ON NOTEBOOK PAPER. I DID NOT
3 HAVE A WITNESS FORM WITH ME SO I JUST WROTE IT OUT ON
4 NOTEBOOK PAPER. THE TOP RIGHT-HAND CORNER IS 17 JANUARY OF
5 1995---

6 Q WAS THAT THE DATE OF EXECUTION OF THIS STATEMENT?

7 A YES, SIR, IT WAS.

8 THEN THERE'S GARY D. TERRY, SIMMS AND CHERRY
9 ROAD, ROUTE 1, BOX 166-C, WINNSBORO, SOUTH CAROLINA.

10 Q IS THAT THE LOCATION OF WHICH THE STATEMENT WAS
11 TAKEN?

12 A THAT'S WHERE WE WERE SEATED IN THE CAR AT THE TIME
13 THE STATEMENT WAS TAKEN.

14 Q WHAT FOLLOWS AFTER THAT IN THAT FIRST PARAGRAPH?

15 A FOLLOWING THAT IS WHERE I HAVE HANDWRITTEN OUT THE
16 RIGHTS THAT WOULD APPLY UNDER THE MIRANDA DECISION.

17 Q PUBLISH THOSE TO THE COURT, PLEASE, SIR.

18 A THAT I HAVE THE RIGHT TO REMAIN SILENT.

19 ANYTHING I SAY CAN BE USED AGAINST ME IN COURT OR
20 AGAINST ME, PERIOD.

21 I HAVE THE RIGHT TO AN ATTORNEY, PERIOD.

22 IF I CANNOT AFFORD ONE, I CAN HAVE ONE APPOINTED,
23 PERIOD.

24 I CAN STOP ANSWERING QUESTIONS AT ANY TIME AND
25 SPEAK TO AN ATTORNEY, PERIOD.

1 Q LET ME ASK YOU THIS. IS IT YOUR UNDERSTANDING THAT
2 IT IS REQUIRED TO PROVIDE MIRANDA WARNINGS TO A SUSPECT
3 NOT IN CUSTODY?

4 A IT WOULD NOT HAVE BEEN APPLICABLE IN THIS POSITION.

5 Q WHY DID YOU DO IT IN THIS CASE?

6 A JUST AS A SECONDARY SAFEGUARD, MAKE SURE MR. TERRY
7 UNDERSTOOD THE PROCEDURES.

8 Q AFTER WRITING THIS OUT, DID YOU HAVE MR. TERRY READ
9 THESE RIGHTS?

10 A YES, SIR, I DID. AND ASKED HIM ALSO IF HE UNDERSTOOD
11 THEM.

12 Q WHAT DID HE INDICATE TO YOU AT THAT TIME?

13 A HE INDICATED THAT HE DID AND IF YOU'LL NOTICE ON THE
14 LEFT-HAND SIDE, THERE IS A LINE AND THEN SOME INITIALS,
15 THAT ARE G.T. AND THOSE WERE PLACED THERE BY MR. TERRY

16 AFTER I WAS CONFIDENT THAT HE UNDERSTOOD THOSE
17 RIGHTS AND WAS MAKING A KNOWING WAIVER OF THOSE RIGHTS, I
18 ASKED HIM IF HE WOULD PLACE HIS INITIALS THERE INDICATING
19 TO ME THAT, ONE, HE UNDERSTOOD THESE RIGHTS, UNDERSTOOD
20 WHAT THEY MEANT, AND WAS HE WILLING TO SPEAK WITH ME
21 WITHOUT AN ATTORNEY.

22 Q THESE RIGHTS, WERE THEY READ TO HIM AND WAS HE
23 ALLOWED TO READ THEM HIMSELF?

24 A YES, SIR. THE FORM WAS ACTUALLY HANDED TO HIM WHERE
25 HE COULD INITIAL IT.

1 Q NOW, THE PORTION OF THE FORM, THAT NEXT -- THE NEXT
2 TWO PARAGRAPHS, IN WHOSE HAND IS THAT?

3 A THAT IS, AGAIN, IN MY HANDWRITING.

4 Q TELL THE COURT HOW YOU CAME TO WRITE THE SUBSTANCE OF
5 THAT STATEMENT OUT?

6 A BASED ON QUESTIONS WE ASKED MR. TERRY AND HIS
7 RESPONSES.

8 Q AND IS THIS AS CLOSE AS POSSIBLE, THE SUM AND
9 SUBSTANCE OF YOUR ORAL CONVERSATIONS WITH MR. TERRY?

10 A YES, SIR, JUST BASICALLY HITTING THE HIGH SPOTS OF
11 THE QUESTIONS WE ASKED.

12 Q PUBLISH IT FOR THE COURT.

13 A I HAVE BEEN INSIDE MS. JACKSON'S HOME BEFORE TO VISIT
14 WITH HER SON. I HAVE NEVER BEEN OVER IN THERE INSIDE THE
15 HOUSE ALONE WITH MS. JACKSON.

16 DIANNE AND I WERE NOT LIVING ON BUCKEYE DRIVE
17 WHEN MS. JACKSON WAS KILLED. WE WERE LIVING IN BALLENTINE.

18 ME AND DIANNE WERE BACK OVER ON BUCKEYE DRIVE THE
19 WEEKEND SHE WAS KILLED. WE HAD GONE TO HER BROTHER'S
20 HOUSE. I WAS NOT OVER THERE BY MYSELF THAT WEEKEND.

21 Q NOW, THERE APPEARS TO BE A SIGNATURE ON THE BOTTOM
22 RIGHT-HAND SIDE OF THAT PAGE, WHOSE SIGNATURE IS THAT?

23 A THAT'S THE SIGNATURE OF GARY TERRY, SR.

24 Q LET ME ASK YOU THIS. DID YOU GIVE GARY TERRY, THE
25 DEFENDANT, AN OPPORTUNITY TO REVIEW YOUR HANDWRITTEN, THE

1 SUBSTANCE OF THIS STATEMENT PRIOR TO HIS SIGNING THIS FORM?

2 A YES, SIR. I READ THE FORM TO HIM AND HANDED THE FORM
3 TO HIM AND ASKED HIM IF WE WOULD SIGN IT.

4 Q YOU READ WHAT YOU HAD WRITTEN---

5 A YES, SIR.

6 Q ---REGARDING YOUR CONVERSATIONS?

7 A ---I SURE DID.

8 Q AND WHAT -- WHAT IS INDICATED BY GARY TERRY'S
9 SIGNATURE AT THE BOTTOM OF THAT FORM?

10 A THERE'S AN "X" BY HIS FORM.

11 Q AND WHAT DOES HE INDICATE BY SIGNING THE FORM?

12 A INDICATES THAT WHAT WE HAVE WRITTEN THERE IS A
13 FACTUAL REBROADCAST -- REBROADCAST OF WHAT WE HAD SPOKEN
14 ABOUT.

15 Q AND THIS IS YOUR NOTARY?

16 A YES, SIR, I NOTARIZED IT WITH MY COMMISSION DATE ALSO
17 AFFIXED UNDERNEATH.

18 Q NOW, LET ME -- NOW, LET ME ASK YOU SOME SPECIFIC
19 QUESTIONS AROUND -- CONCERNING THE CIRCUMSTANCES OF TAKING
20 THIS STATEMENT.

21 IN WHAT CONDITION WAS MR. TERRY AT THE TIME OF
22 THE OBTAINING OF THIS STATEMENT?

23 A HE WAS FINE. IT WAS -- IF I'M NOT MISTAKEN, IT WAS
24 BEFORE LUNCH. HE WAS AWAKE. HE DIDN'T APPEAR TO HAVE BEEN
25 DRINKING. HE CERTAINLY DIDN'T APPEAR TO BE UNDER THE

1 INFLUENCE OF ANY DRUGS OR ANY NARCOTICS. HE WAS VERY
2 COHERENT. ACTUALLY, QUITE FRIENDLY, QUITE OUTGOING. WE
3 DISCUSSED SEVERAL THINGS OUTSIDE OF THIS -- THE REALM OF
4 THIS QUESTIONING---

5 Q LIKE WHAT?

6 A HE ASKED US WHAT KIND OF FISHING WE LIKED TO DO AND
7 WE SPOKE -- I'M ALSO A FISHERMAN. WE TALKED AT GREAT
8 LENGTH ABOUT THAT. HE ACTUALLY INVITED MY BOSS AND I TO GO
9 CATFISHING WITH HIM IN FAIRFIELD COUNTY.

10 Q DID HE APPEAR TO UNDERSTAND EACH AND EVERYTHING YOU
11 SAID TO HIM, SPECIFICALLY, HIS WARNINGS PURSUANT TO
12 MIRANDA AND THE SUBSTANCE OF THE STATEMENT THAT YOU WROTE
13 OUT FOR HIM?

14 A CERTAINLY.

15 Q DID HE INDICATE ANY MISUNDERSTANDING REGARDING
16 ANYTHING THAT YOU HAD WRITTEN OUT AND PROVIDED TO HIM TO
17 REVIEW?

18 A NONE WHATSOEVER, SIR.

19 Q DID YOU, AT ANY TIME, FORCE OR COERCE HIM TO PROVIDE
20 YOU A WRITTEN STATEMENT?

21 A NO, SIR, I DID NOT.

22 Q DID YOU, AT ANY TIME, PROMISE HIM ANY HOPE OF REWARD
23 OR LENIENCY IN RETURN FOR PROVIDING YOU THAT STATEMENT?

24 A NO, SIR, I DID NOT.

25 Q DURING THE STATEMENT, WAS HE HANDCUFFED OR DETAINED

1 IN ANY MANNER?

2 A NO, SIR, HE WAS NOT.

3 Q WHO ELSE WAS PRESENT DURING THE OBTAINING OF THE
4 STATEMENT?

5 A LIEUTENANT PHILLIPS WAS WITH ME.

6 Q DURING THAT TIME, DID LIEUTENANT PHILLIPS EITHER
7 FORCE OR COERCE MR. TERRY INTO PROVIDING A STATEMENT?

8 A NO, SIR, HE DID NOT.

9 Q DID HE PROMISE HIM ANY HOPE OF REWARD, HOPE OF
10 LENIENCY IN ORDER TO OBTAIN THAT STATEMENT?

11 A NO, SIR, HE DID NOT.

12 Q DID YOU HAVE YOUR GUNS DRAWN WHEN YOU WERE TAKING THE
13 STATEMENT?

14 A NO, SIR, WE DID NOT.

15 Q AFTER OBTAINING THE STATEMENT, WHAT DID MR. TERRY DO?

16 A HE LEFT, WENT BACK INTO HIS HOME AND WE DROVE OF.

17 MR. HUMPHRIES: YOUR HONOR, THAT'S ALL I HAVE IN
18 REGARD TO THE FIRST STATEMENT, WHICH IS COURT'S EXHIBIT
19 NUMBER SIX, I BELIEVE.

20 THE COURT: CROSS-EXAMINATION.

21 MR. STONE: JUST A FEW THINGS.

22 CROSS-EXAMINATION

23 BY MR. STONE:

24 Q DETECTIVE, LET ME MAKE SURE I UNDERSTAND THIS.

25 YOU TOLD MR. TERRY HE WAS A MURDER SUSPECT?

1 A HE KNEW THAT WE WERE THERE INVESTIGATING THE DEATH OF
2 MS. JACKSON.

3 Q HE DID?

4 A YES, SIR.

5 Q YOU DID TELL HIM THAT?

6 A YES, SIR.

7 Q OKAY. AND YOU TOLD HIM THAT HE DIDN'T HAVE TO TELL
8 YOU ANYTHING AND ALL THAT KIND OF STUFF, RIGHT? GAVE HIM
9 ALL OF HIS RIGHTS---

10 A CERTAINLY, YES, SIR.

11 Q AND HE STILL TALKED TO YOU?

12 A YES, SIR, HE DID.

13 Q OKAY. DID HE HESITATE ABOUT TALKING TO YOU?

14 A LIKE I SAID, HE WAS QUITE COOPERATIVE.

15 Q OKAY. IN FACT, Y'ALL TALKED ABOUT GOING FISHING?

16 A YES, SIR.

17 Q OKAY. HE WASN'T UNDER THE INFLUENCE OF DRUGS OR
18 ALCOHOL OR ANYTHING LIKE THAT---

19 A ---DID NOT---

20 Q ---TO YOUR -- TO YOUR KNOWLEDGE?

21 A ---DID NOT APPEAR TO BE, NO, SIR.

22 Q OKAY. WAS FAIRLY COHERENT?

23 A VERY COHERENT.

24 Q OKAY. BUT YET, HE UNDERSTOOD THAT HE WAS A SUSPECT?

25 A YES, SIR. IT WAS EXPLAINED TO HIM THAT ON JANUARY

1 17TH IN GREAT DETAIL---

2 Q OKAY.

3 A ---THAT HE WAS BEING LOOKED AT IN THAT INCIDENT.

4 Q OKAY. I DON'T HAVE ANYTHING ELSE. THANK YOU.

5 THE COURT: ANYTHING FURTHER FROM THE STATE?

6 MR. HUMPHRIES: THAT'S ALL WE HAVE TO OFFER ON
7 THIS STATEMENT.

8 THE COURT: ALL RIGHT. THANK YOU, SIR, YOU MAY
9 STEP DOWN.

10 MR. HUMPHRIES: YOUR HONOR, WE CAN LEAVE MR.
11 FRIER ON THE STAND FOR PURPOSES OF THE SECOND---

12 THE COURT: OKAY.

13 MR. HUMPHRIES: ---SUBSEQUENT STATEMENT---

14 THE COURT: ALL RIGHT.

15 MR. HUMPHRIES: AND THE WAY I'LL ADDRESS THIS OR
16 THESE STATEMENTS IS THIS WAY, YOUR HONOR.

17 THIS STATEMENT WOULD HAVE BEEN TAKEN AFTER MR.
18 TERRY'S ARREST. THERE IS A VIDEOTAPED INVESTIGATION -- A
19 COPY OF WHICH HAS BEEN PROVIDED TO THE DEFENSE -- AND THEN
20 A WRITTEN STATEMENT WHICH BASICALLY SUMMARIZES THE
21 VIDEOTAPED STATEMENT.

22 WHAT I WILL GO INTO IS THE FACTUAL CIRCUMSTANCES
23 SURROUNDING BOTH BECAUSE THEY ARE CONTEMPORANEOUS. I WILL
24 NOT, AT THIS TIME, PUBLISH THE VIDEOTAPED STATEMENT UNLESS
25 THE DEFENSE WISHES. I WILL PUBLISH THE WRITTEN STATEMENT.

1 THE COURT: ALL RIGHT.

2 DIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q DEFECTIVE FRIER, FURTHER ALONG IN INVESTIGATION, DID
5 YOU HAVE AN OCCASION TO TALK WITH GARY DUBOSE TERRY ON
6 MARCH 24TH, 1995, AFTER HIS ARREST FOR THE MURDER OF URAI
7 JACKSON?

8 A YES, SIR, WE DID.

9 Q TELL THE COURT HOW THAT CONTACT CAME TO BE.

10 A WE HAD OBTAINED ARREST WARRANTS FOR GARY TERRY
11 CHARGING HIM IN THE DEATH OF MS. JACKSON. CONTACT WAS MADE
12 WITH SOME AGENTS AT THE RICHLAND COUNTY SHERIFF'S
13 DEPARTMENT WHO WERE FAMILIAR WITH MR. TERRY AND WERE
14 FAMILIAR WITH THE LOCATION WHERE HE MAY BE ABLE TO BE
15 FOUND. HE WAS, IN FACT, FOUND BY SOME AGENTS AT RICHLAND
16 COUNTY WHO CONTACTED US. HE WAS PICKED UP AND TRANSPORTED
17 OVER TO OUR AGENCY.

18 Q HOW LONG AFTER HIS ARREST AND HAVING BEEN PLACED IN
19 THE DETENTION CENTER, DID YOU SPEAK WITH HIM AND OBTAIN---

20 A WE HAD NOT PLACED HIM IN THE DETENTION -- I'M SORRY.

21 Q GO AHEAD.

22 A WE HAD NOT PLACED HIM IN THE DETENTION FACILITY.
23 WHEN WE PICKED HIM UP, WE BROUGHT HIM OVER WITH THE INTENT
24 TO INTERVIEW HIM.

25 Q CLEARLY, HE WAS UNDER ARREST?

1 A CERTAINLY.

2 Q AND CLEARLY A SUSPECT AT THAT TIME?

3 A CERTAINLY.

4 Q CLEARLY THIS WAS INTERROGATION?

5 A YES, SIR.

6 Q TELL THE COURT WHAT SAFEGUARDS YOU TOOK IN ORDER TO
7 PROTECT THE CONSTITUTIONAL RIGHTS OF GARY DUBOSE TERRY
8 REGARDING GIVING A STATEMENT.

9 A HE WAS, AGAIN, GIVEN THE WARNINGS UNDER THE MIRANDA
10 DECISION. THE INTERVIEW WAS ALSO VIDEOTAPED.

11 Q LET ME ASK YOU THIS. AND DO YOU HAVE WITH YOU THE
12 ORIGINAL WRITTEN STATEMENT FROM THAT DATE?

13 A YES, SIR, I DO.

14 MS. FULLWOOD: NO OBJECTION.

15 MR. HUMPHRIES: COURT'S SIX.

16 THE COURT: SEVEN.

17 MR. HUMPHRIES: SEVEN. I'M SORRY, YOUR HONOR,
18 AND YOU MAY WANT TO STAPLE IT AT THIS TIME IF THERE IS NO
19 OBJECTION. THEY ARE LOOSE PAGES, THREE OF THREE.

20 THE COURT: THREE PAGES.

21 MR. HUMPHRIES: YES, SIR.

22 THE COURT: ALL RIGHT.

23 (WHEREUPON, COURT'S EXHIBIT NUMBER
24 SEVEN, STATEMENT/3/24/95, THREE PAGES, MARKED FOR THE
25 RECORD AT THIS TIME.)

1 MR. HUMPHRIES: LET ME SHOW YOU WHAT HAS BEEN
2 MARKED COURT'S EXHIBIT NUMBER SEVEN.

3 THE WITNESS: YES, SIR.

4 Q CAN YOU IDENTIFY THAT DOCUMENT? AND LET ME DO THIS.
5 LET ME SHOW YOU THIS PHOTOCOPY. TELL ME IF IT IS AN
6 ACCURATE PHOTOCOPY OF COURT'S SEVEN?

7 A YES, SIR, IT IS. AND, YES, SIR, THIS IS THE ORIGINAL
8 STATEMENT.

9 Q WITH THE COURT'S PERMISSION AND DEFENSE COUNSEL'S
10 CONSENT, I'LL HAND THIS TO THE COURT FOR THE PURPOSES OF
11 CONTEMPORANEOUS REVIEW.

12 THE COURT: ALL RIGHT, SIR.

13 MR. HUMPHRIES: INVESTIGATOR FRIER---

14 THE WITNESS: YES, SIR.

15 MR. HUMPHRIES: ---AGAIN, CAN YOU IDENTIFY THAT
16 DOCUMENT?

17 A YES, SIR. THIS IS THE STATEMENT THAT I HANDWROTE OUT
18 IN MY HANDWRITING ON THE 24TH OF MARCH OF 1995.

19 Q IN ORDER TO ASSIST THE COURT, TELL THE COURT WHEN
20 THIS STATEMENT WAS TAKEN IN RELATION TO THE VIDEOTAPED
21 STATEMENT.

22 A WE HAD -- WE HAD STARTED THE VIDEOTAPE, HAD DONE AN
23 INTERVIEW OF MR. TERRY AND AFTER COMPLETED THAT INTERVIEW,
24 WE GO BACK AND DID A WRITTEN STATEMENT BASICALLY, AGAIN,
25 HITTING THE HIGH SPOTS OF THAT TAPED INTERVIEW.

1 Q WAS THERE -- WAS THERE ANY APPRECIABLE BREAK IN TIME
2 BETWEEN THE VIDEOTAPED STATEMENT AND THE TAKING OF THE
3 WRITTEN STATEMENT?

4 A NO, SIR---

5 Q OR THE EXECUTING OF THE WRITTEN STATEMENT---

6 A ---IT WAS ALL TAKEN -- ALL DONE AT THE SAME TIME.

7 Q NOW, I KNOW THAT THERE ARE MIRANDA WARNINGS WHICH
8 APPEAR ON COURT'S EXHIBIT NUMBER SEVEN---

9 A YES, SIR.

10 Q ---TELL THE COURT IF YOU HAD PREVIOUSLY PROVIDED GARY
11 DUBOSE TERRY THE WARNINGS PURSUANT TO MIRANDA PRIOR TO
12 THIS STATEMENT?

13 A YES, SIR. I HAD GIVEN HIM THOSE SAME WARNINGS ON THE
14 17TH OF JANUARY.

15 Q DID YOU GIVE IT TO HIM -- DID YOU GIVE HIM THOSE
16 WARNINGS -- OR TELL ME THIS. WHEN DID YOU PROVIDE HIM
17 THESE WARNINGS IN CONNECTION WITH THE VIDEOTAPED STATEMENT?

18

19 A AT THE SAME TIME. ON THE 24TH OF MARCH, WE
20 REITERATED AND REVIEWED AGAIN HIS RIGHTS UNDER THE
21 MIRANDA DECISION.

22 Q OKAY. YOU DID THAT PRIOR TO ELICITING THE VIDEOTAPED
23 STATEMENT?

24 A YES, SIR.

25 Q OKAY. DID YOU DO THAT WITH THIS FORM?

1 A YES, SIR. IF I REMEMBER CORRECTLY, I WOULD HAVE DONE
2 THIS AT THE VERY START OF THE TAPING. WE WOULD HAVE
3 DISCUSSED EVERYTHING THAT WE NEEDED TO DISCUSS AND THEN I
4 WOULD HAVE GONE IN AND WRITTEN INTO THIS STATEMENT.

5 Q SO IT'S YOUR TESTIMONY THEN THAT THE INFORMATION
6 WHICH APPEARS ON THE FIRST PAGE, TOP PORTION OF THAT PAGE,
7 ON COURT'S EXHIBIT NUMBER SEVEN, WOULD HAVE BEEN EXECUTED
8 PRIOR TO TALKING WITH GARY DUBOSE TERRY?

9 A THAT'S -- THAT'S THE STANDARD COURSE I WOULD FOLLOW
10 IN DOING AN INTERVIEW LIKE THIS. I WOULD MAKE SURE THAT
11 MIRANDA IS CLEAR AND THEN WE WILL DO THE INTERVIEW AND
12 THEN WE'LL GO BACK AND---

13 Q AND WILL YOU DO THAT IN EVERY -- EVERY OCCASION?

14 A THAT'S THE---

15 Q IS THAT YOUR PRACTICE?

16 A THAT'S THE CONSISTENT PRACTICE, YES, SIR.

17 Q PUBLISH FOR THE COURT, IF YOU WILL, THE TOP PORTION
18 OF THAT STATEMENT.

19 A IT HAS THE VOLUNTARY STATEMENT OF SUSPECT OR
20 DEFENDANT. PAGE ONE OF THREE. THERE'S A SOCIAL SECURITY
21 NUMBER AFFIXED TO THE TOP WHICH WAS PROVIDED TO ME BY GARY
22 TERRY WHICH IS 250-13-0611. THE DATE 24 MARCH, 1995. THE
23 PLACE L.C.S.D., WHICH IS FOR LEXINGTON COUNTY SHERIFF'S
24 DEPARTMENT. TIME STARTED 1548, WHICH IS 3:48 IN THE
25 AFTERNOON.

1 I, THE UNDERSIGNED -- IT IS LISTED FOR GARY
2 DUBOSE TERRY, AM 27 YEARS OF AGE, MY DATE AND PLACE OF
3 BIRTH BEING THE FIRST DAY OF DECEMBER, 1967, AT RICHLAND
4 COUNTY.

5 MY PRESENT ADDRESS IS ROUTE ONE, BOX 166-C,
6 WINNSBORO, SOUTH CAROLINA.

7 BEFORE ANSWERING ANY QUESTIONS OR MAKING ANY
8 STATEMENT, DETECTIVE S. R. FRIER, A PERSON WHO HAS
9 IDENTIFIED HIMSELF AS A DETECTIVE WITH L.C.S.D., DULY
10 WARNED AND ADVISED ME AND FOLLOW ARE FIVE SENTENCES OF
11 MIRANDA WARNINGS.

12 Q LET ME ASK YOU THIS. IN WHOSE HAND WERE THESE BLANKS
13 FILLED?

14 A THEY ARE FILLED OUT IN MY HANDWRITING.

15 Q AND WHO PROVIDED YOU THE INFORMATION REGARDING THE
16 ADDRESS AND THE DATE OF BIRTH?

17 A THIS WAS FROM CONVERSATION WITH MR. TERRY.

18 Q PLACE OF BIRTH?

19 A RIGHT.

20 Q VERY GOOD.

21 TELL THE COURT, IF YOU WILL, PUBLISH THE WARNINGS
22 YOU PROVIDED TO MR. TERRY.

23 A THEY WERE READ TO HIM OFF THE FORM.

24 1. THAT I HAVE THE RIGHT TO REMAIN SILENT AND
25 NOT MAKE ANY STATEMENT AT ALL.

1 2. THAT ANY STATEMENT I DO MAKE CAN BE USED
2 AGAINST ME IN COURT.

3 3. THAT I HAVE THE RIGHT TO AN ATTORNEY PRESENT
4 AT ANY TIME DURING QUESTIONING.

5 4. THAT IF I CANNOT AFFORD AN ATTORNEY, I CAN
6 APPLY TO THE COURT TO HAVE ONE APPOINTED AT NO COST TO ME.

7 5. THAT IF I DECIDE TO TALK TO AN OFFICER
8 WITHOUT AN ATTORNEY PRESENT, I MAY STOP AT ANY TIME AND
9 REQUEST AN ATTORNEY BE PRESENT FOR FURTHER QUESTIONING.

10 Q NOW, LET ME ASK YOU. WHAT IS THE SIGNIFICANCE, FIRST
11 OF ALL, OF THE CIRCLING OF THOSE NUMBERS, ONE THROUGH FIVE?

12 A IT IS MY PRACTICE, WHEN I ADVISE SOMEONE OF THEIR
13 RIGHTS UNDER THE MIRANDA DECISION USING THIS FORM, AFTER
14 I HAVE READ THEM THE QUESTIONS -- OR READ THEM THE
15 STATEMENT OR THE SENTENCE, ASK THEM, DO THEY UNDERSTAND IT
16 AND ARE THEY WILLING TO STILL CONTINUE TO TALK WITH ME. IF
17 I AM CONFIDENT AND COMFORTABLE WITH THEIR ACKNOWLEDGE OF
18 WHAT I'VE JUST READ TO THEM, I WILL CIRCLE THE NUMBER AND
19 GO ON TO THE NEXT.

20 Q YOU DO THAT FOR EACH AND EVERY WARNING, ONE THROUGH
21 FIVE, IS THAT CORRECT?

22 A YES, SIR. I ASK THEM IF THEY UNDERSTAND IT AND ASK
23 THEM WHAT THE IMPLICATIONS ARE. IF WE ARE COMFORTABLE WITH
24 THAT, THEN WE GO TO THE NEXT ONE AFTER I CIRCLE IT.

25 Q LET ME ASK YOU THIS. BESIDE THE CIRCLED NUMBERS,

1 THERE APPEAR SOME INITIALS, APPARENTLY TWO SETS---

2 A RIGHT.

3 Q CAN YOU TELL ME IN WHOSE HAND THOSE ARE? WHO AFFIXED
4 THOSE TO THESE FORMS AND WHAT THEY INDICATE?

5 A RIGHT DIRECTLY TO THE LEFT BESIDE THE CIRCLED NUMBERS
6 ARE FIVE SETS OF THE INITIALS G. T. WHICH WERE PLACED THERE
7 BY GARY TERRY.

8 BESIDE THOSE ON THE FAR LEFT, ARE MY INITIALS,
9 S.R.F., WHICH I PLACED THERE AFTER MR. TERRY HAS PLACED HIS
10 INITIALS BY THERE AND I AM -- I'M STILL VERY COMFORTABLE
11 THAT HE UNDERSTANDS WHAT WE ARE DOING, THAT HE'S MADE A
12 VOLUNTARY WAIVER OF THESE RIGHTS AND WE ARE CLEAR TO
13 CONTINUE WITH WHAT WE ARE DOING.

14 Q AND, AGAIN, WHAT DO GARY TERRY'S INITIALS INDICATE ON
15 THIS FORM?

16 A THEY SIGNIFY THAT HE UNDERSTANDS THESE RIGHTS THAT
17 I'VE PRESENTED TO HIM, THAT HE'S WILLING TO SPEAK WITH US
18 WITHOUT AN ATTORNEY PRESENT OR IN VIOLATION OF ANY OF THESE
19 RIGHTS AND THAT EVERYTHING IS VOLUNTARY.

20 Q LET ME ASK YOU THIS. DID MR. TERRY AT ANY TIME
21 REQUEST TO HAVE AN ATTORNEY PRESENT DURING THIS INTERVIEW?

22 A NO, SIR, HE DID NOT.

23 Q DID HE AT ANY TIME INDICATE TO YOU THAT HE WISHED TO
24 STOP SPEAKING WITH YOU?

25 A NO, SIR, HE DID NOT.

1 Q DID HE, IN FACT, INDICATE THAT HE WISHED TO SPEAK
2 WITH YOU?

3 A AS WAS SIGNIFIED BY HIS INITIALS ON THE FORM.

4 Q AND DID HE, IN FACT, SPEAK WITH YOU?

5 A YES, HE DID.

6 Q NOW, REGARDING THE WRITTEN FORM, IS THIS THE SUM AND
7 SUBSTANCE OF YOUR ORAL INVESTIGATIONS WHICH IS CAPTURED ON
8 VIDEOTAPE?

9 A YES, SIR, IT IS.

10 Q PUBLISH IT FOR THE COURT, PLEASE, SIR.

11 MS. FULLWOOD: YOUR HONOR, I'M GOING TO OBJECT AT
12 THIS POINT. I REALIZE THE STATEMENT ITSELF IS BEFORE THE
13 COURT AS IT HAS THE WRITTEN WAIVER OF MIRANDA RIGHTS, BUT
14 I THINK AT THIS POINT IN TIME, THE SUBSTANCE IS IRRELEVANT.

15 THE COURT: I DON'T TEND TO DISAGREE WITH YOU IF
16 YOU'RE NOT CONTESTING WHAT IS CONTAINED WITHIN THE
17 STATEMENT. AT THIS POINT IN TIME, IF YOU'RE JUST
18 CONTESTING THE VOLUNTARINESS OF HIS WAIVER AND SO FORTH---

19 MS. FULLWOOD: THAT'S CORRECT.

20 THE COURT: ---I WOULD AGREE WITH THAT.

21 MR. HUMPHRIES: I DON'T -- I DON'T HAVE ANY ISSUE
22 WITH THAT AS LONG AS THERE'S NO EXCEPTION TO THE CONTENT IF
23 YOU FIND THAT IT WAS FREELY AND VOLUNTARILY GIVEN.

24 THE COURT: WELL, IF I FIND THAT HIS RIGHTS HAVE
25 NOT BEEN VIOLATED, THEN I'M GOING TO FIND THAT THEN THE

1 STATEMENT WAS PROPERLY DOCUMENTED.

2 MR. HUMPHRIES: VERY GOOD.

3 THE COURT: SINCE THERE'S NO CONTEST FROM THAT
4 FROM THE DEFENSE.

5 MR. HUMPHRIES: NOW, LET ME ASK YOU THIS.

6 IN WHOSE HAND WAS THE STATEMENT WRITTEN?

7 THE WITNESS: IT'S WRITTEN OUT IN MY HAND.

8 Q ON THE BOTTOM OF THE FIRST PAGE WHERE THERE IS A
9 SIGNATURE LINE INDICATING PERSON GIVING STATEMENT, WHOSE
10 SIGNATURE IS THAT?

11 A IT'S SIGNED THERE BY GARY TERRY.

12 Q AND AT WHAT POINT DID GARY TERRY SIGN THIS PAGE?

13 A IT WOULD BE MY CUSTOMARY PRACTICE THAT AFTER I GET
14 THE THING WRITTEN, WE WOULD REVIEW IT AND I WOULD HAND HIM
15 EACH PAGE, ASK HIM TO REVIEW THE PAGE AND THEN SIGN IT.

16 Q AND IS THAT YOUR PRACTICE IN EACH AND EVERY CASE?

17 A YES, IT IS.

18 Q REFERRING NOW TO THE SECOND PAGE OR TWO OF THREE---

19 A YES, SIR.

20 Q ---AT THE TOP, THERE APPEARS TO BE SOME LINES
21 SCRATCHED OUT OR SOME WRITING SCRATCHED OUT AND THE NAME
22 GARY D. TERRY WRITTEN IN. WHO DID THAT?

23 A I SCRATCHED THAT OUT. THIS IS THE SECOND -- THE FORM
24 THAT I USED FOR PAGE TWO WAS A STATEMENT FORM WE USE FOR A
25 VOLUNTARY OR A WITNESS STATEMENT. AND I JUST SCRATCHED

1 OUT. I THINK THE WORDS ARE WITNESS IN PARENTHESIS NOT
2 UNDER ARREST. I'VE SCRATCHED THAT OUT AND WRITTEN THE
3 WORDS GARY D. TERRY.

4 Q AT WHAT TIME DID YOU DO THAT?

5 A UH---

6 Q DID YOU DO IT PRIOR TO HIS SIGNING THE FORM?

7 A YES, SIR. THERE WOULD HAVE BEEN NO CHANGES MADE TO
8 THE FORM AFTER HE SIGNED IT.

9 Q OKAY. AND, AGAIN, THERE APPEARS TO BE A SIGNATURE
10 LINE, SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT AND
11 THE SIGNATURE OF GARY TERRY. DID THE DEFENDANT, GARY
12 TERRY, SIGN HIS NAME AT THAT TIME?

13 A YES, HE DID.

14 Q AND -- EXCUSE ME, ON THAT LINE. AND DID IT LIKEWISE,
15 THAT SIGNATURE LIKEWISE INDICATE THAT THE TWO OF YOU
16 REVIEWED THIS STATEMENT AND HE HAD NO PROBLEMS WITH THE
17 CONTENT OF THE STATEMENT?

18 A YES, SIR.

19 Q AND ON THE THIRD PAGE, AGAIN, GARY D. TERRY IN
20 CAPITAL LETTERS WRITTEN AT THE TOP---

21 A RIGHT.

22 Q ---IN WHOSE HAND?

23 A THAT'S IN MY HAND.

24 Q AT THE END OF THE WRITTEN PORTION, THE HANDWRITTEN
25 PORTION OF THE STATEMENT, THERE IS A SLASH AND IT APPEARS

1 TO BE TWO SETS OF INITIALS---

2 A RIGHT.

3 Q ---WHOSE INITIALS ARE THOSE?

4 A THOSE ARE -- THOSE ARE GARY TERRY'S INITIALS AND MY
5 INITIALS PLACED THERE. IT'S CUSTOMARY PROCEDURE FOR ME
6 WHEN I TAKE A WRITTEN STATEMENT, IF I HAVE DONE IT IN MY
7 HAND, AS I CLOSE THE STATEMENT OUT, I WILL GIVE THE PERSON
8 THAT I'M INTERVIEWING AN OPPORTUNITY TO ADD ANY INFORMATION
9 THAT HE CHOOSES FOR ME TO ADD EITHER IN MY WRITING OR IF
10 THERE'S SOMETHING THAT HE WISHES TO WRITE IN, I GIVE HIM AN
11 OPPORTUNITY. THAT SAME OPPORTUNITY WAS AFFORDED TO MR.
12 TERRY AND IT SIGNIFIES, AS WITH THE SENTENCE, I DON'T WISH
13 TO ADD ANY INFORMATION. A SLASH IS PLACED THERE AND I
14 ASKED MR. TERRY IF THAT -- IF THAT WAS A PROPER SENTENCE
15 THAT HE HAD NO INFORMATION TO ADD, IF HE WOULD PLEASE PLACE
16 HIS INITIALS BY IT.

17 Q HE DID SO?

18 A AND SIGNIFIED BY MY PLACING MY INITIALS UNDERNEATH.

19 Q AT THE BOTTOM OF THE STATEMENT, MR. TERRY SIGNS
20 AGAIN?

21 A YES, SIR, HE DOES.

22 Q AND THAT IS AFTER HIS REVIEW OF THE CONTENT OF THE
23 STATEMENT ON THAT PAGE?

24 A YES, SIR, IT IS.

25 Q AND YOU NOTARIZED THE FORM, IS THAT CORRECT?

1 A ALL THREE FORMS ARE SIGNED WITH MY NOTARY, YES, SIR.

2 Q NOW, TELL ME THIS. REGARDING THE FACTS AND
3 CIRCUMSTANCES SURROUNDING THE OBTAINING OF THIS
4 STATEMENT---

5 A YES, SIR.

6 Q ---AND THE VIDEOTAPED STATEMENT, WHERE WAS THE
7 STATEMENT TAKEN?

8 A IN THE INTERVIEW ROOM AT THE LEXINGTON COUNTY
9 SHERIFF'S DEPARTMENT.

10 Q MR. TERRY UNDER ARREST?

11 A YES, SIR, HE WAS.

12 Q WAS HE AND AT THAT TIME HAD HE BEEN BOOKED IN OR DO
13 YOU RECALL?

14 A HE HAD NOT BEEN BOOKED IN AT THAT POINT.

15 Q WHAT WAS MR. TERRY'S CONDITION, HIS DEMEANOR, HIS
16 AFFECT? CAN YOU TELL ME THAT?

17 A HE CERTAINLY WASN'T AS JOYFUL AS HE WAS THE DAY WE
18 MET IN FAIRFIELD IN MARCH. THERE WAS SOME CONCERN,
19 REALIZING THAT HE HAD BEEN CHARGED WITH A HOMICIDE.
20 CERTAINLY WASN'T AN ADVERSARIAL CONVERSATION BETWEEN US,
21 BUT IT WASN'T AS LIGHTEARTED AND FRIENDLY AS THE FIRST
22 CONVERSATION. HE WAS, HOWEVER, VERY COHERENT AND HE SEEMED
23 TO UNDERSTAND EVERYTHING WE DISCUSSED. A LITTLE MORE
24 DOWNTRODDEN, AS I SAID, THAN BEFORE, BUT HE CERTAINLY
25 DIDN'T APPEAR TO BE UNDER THE INFLUENCE OF ANY ALCOHOL OR

1 DRUGS OR ANYTHING THAT WOULD IMPAIR HIS ABILITY TO CARRY ON
2 A CONVERSATION WITH US.

3 Q DURING YOUR CONVERSATIONS WITH MR. TERRY AND YOUR
4 OBSERVATIONS OF MR. TERRY DURING THIS PERIOD -- AND DO YOU
5 KNOW ABOUT HOW LONG IT LASTED?

6 A IT WOULD HAVE BEEN A PRETTY SUBSTANTIAL INTERVIEW. I
7 WOULD IMAGINE -- I DON'T REMEMBER FOR SURE, BUT I CAN SEE
8 IT BEING AN HOUR TO AN HOUR AND FIFTEEN MINUTES.

9 Q YOU WOULD HAVE HAD AN AMPLE OPPORTUNITY TO OBSERVE
10 MR. TERRY, HIS AFFECT, HIS DEMEANOR, HIS EMOTIONAL STATE?

11 A CERTAINLY.

12 Q DID YOU OBSERVE ANYTHING IN MR. TERRY DURING THAT
13 PERIOD OF TIME WHICH GAVE YOU CAUSE FOR CONCERN REGARDING
14 WHETHER OR NOT HE UNDERSTOOD WHAT WAS HAPPENING WITH HIM AT
15 THAT TIME?

16 A NO, SIR, OTHER THAN BEING MUCH MORE QUIET THAN HE WAS
17 THE TIME BEFORE, STILL BASICALLY THE SAME.

18 Q DID HE RESPOND APPROPRIATELY TO YOUR QUESTIONS TO
19 HIM?

20 A YES, SIR, HE DID.

21 Q WHEN ADVISING HIM OF HIS WARNINGS, PURSUANT TO
22 MIRANDA, DID HE APPEAR TO UNDERSTAND EACH AND EVERY
23 WARNING AS PROVIDED TO HIM?

24 A YES, SIR, HE DID.

25 Q AND, IN FACT, HAD YOU JUST THREE MONTHS EARLIER

1 PROVIDED HIM THE SAME WARNINGS?

2 A YES, SIR, I HAD.

3 Q HE UNDERSTOOD THEM AT THAT TIME?

4 A YES, SIR, HE DID.

5 Q AND IT'S YOUR OPINION THAT HE UNDERSTOOD THEM AT THIS
6 TIME?

7 A CERTAINLY.

8 Q DID HE EVER GIVE YOU ANY CAUSE FOR CONCERN REGARDING
9 HIS EMOTIONAL STATE; THAT IS, DID HE BECOME VERY UPSET OR
10 SO DEPRESSED THAT HE APPEARED TO LOSE CONTACT WITH YOU?

11 A NO, SIR.

12 Q DID YOU AT ANY TIME DURING THE OBTAINING OF EITHER
13 THE VIDEOTAPED STATEMENT OR THE WRITTEN STATEMENT FORCE OR
14 COERCE HIM TO PROVIDE THOSE STATEMENTS?

15 A NO, SIR, I DID NOT.

16 Q DID YOU AT ANY TIME DURING THE OBTAINING OF THE
17 VIDEOTAPED STATEMENT OR THE WRITTEN STATEMENT PROMISE HIM
18 ANY HOPE OF REWARD OR HOPE OF LENIENCY IN RETURN FOR THOSE
19 STATEMENTS?

20 A NO, SIR, I DID NOT.

21 Q WHO WAS PRESENT WHEN YOU OBTAINED BOTH THE VIDEOTAPED
22 STATEMENT AND THE WRITTEN STATEMENT?

23 A LIEUTENANT BUCKY PHILLIPS WAS PRESENT WITH ME WHEN WE
24 DID -- WHEN WE CONDUCTED THIS INTERVIEW.

25 Q WAS HE THERE WHEN YOU PROVIDED HIM HIS WARNINGS

1 PURSUANT TO MIRANDA?

2 A YES, SIR, HE WAS.

3 Q DID LIEUTENANT PHILLIPS AT ANY TIME FORCE OR COERCE
4 GARY TERRY TO PROVIDE EITHER THE VIDEOTAPE OR WRITTEN
5 STATEMENT?

6 A NO, SIR, WE DID NOT.

7 Q DID HE, AT ANY TIME, OFFER MR. TERRY ANY HOPE OF
8 REWARD OR LENIENCY IN ORDER TO PROVIDE THAT VIDEOTAPED
9 STATEMENT OR WRITTEN STATEMENT?

10 A NO, SIR, HE DID NOT.

11 Q AND WAS MR. TERRY COOPERATIVE THROUGHOUT THE PROCESS?

12 A YES, SIR.

13 Q THAT IS, DID HE RESPOND APPROPRIATELY TO YOUR
14 QUESTIONS?

15 A YES, SIR, HE DID.

16 Q DID HE RESPOND TO ALL OF YOUR QUESTIONS?

17 A YES, SIR, HE DID.

18 Q DID HE INDICATE AT ANY TIME THAT HE WISHED NOT TO
19 SPEAK WITH YOU?

20 A NO, HE DID NOT.

21 Q DID HE, AT ANY TIME, REQUEST AN ATTORNEY DURING THE
22 PROCESS?

23 A NO, SIR, HE DID NOT.

24 MR. HUMPHRIES: YOUR HONOR, THAT'S ALL WE HAVE ON
25 THIS ISSUE AT THIS TIME.

1 THE COURT: MS. FULLWOOD.

2 MS. FULLWOOD: THANK YOU.

3 CROSS-EXAMINATION

4 BY MS. FULLWOOD:

5 Q DETECTIVE FRIER---

6 A YES, MA'AM.

7 Q ---YOU PICKED MR. TERRY UP IN RICHLAND COUNTY?

8 A YES, SIR -- YES, MA'AM. IF I REMEMBER PROPERLY, WE
9 PICKED HIM UP OVER AT THE NEW SHERIFF'S OFFICE ON TWO NOTCH
10 ROAD.

11 Q ON TWO NOTCH ROAD?

12 A YES, SIR -- YES, MA'AM, I'M SORRY.

13 Q HAD YOU -- HAD YOU TRANSMITTED THOSE ARREST WARRANTS
14 FOR HIM TO RICHLAND COUNTY FOR SERVICE? IS THAT HOW
15 RICHLAND COUNTY CAME TO PICK HIM UP?

16 A WE CONTACTED AGENTS AT RICHLAND COUNTY AND INFORMED
17 THEM THAT WE DID HAVE THE WARRANTS AND WE JUST NEEDED HIM
18 APPREHENDED. I -- I CAN'T REMEMBER IF WE FAXED THEM COPIES
19 OR NOT. THAT -- THAT CERTAINLY WOULD BE A COMMON PRACTICE
20 TO FAX THEM COPIES SO THEY WOULD HAVE SOMETHING IN HAND IN
21 CASE HE WAS LESS THAN COOPERATIVE WHEN THEY TRY TO ROUND
22 HIM UP. BUT THE GENTLEMAN THAT WENT TO LOOK FOR HIM IS AN
23 OLD ACQUAINTANCE AND HE WOULD HAVE GOTTEN IN THE CAR AND
24 GONE WITH HIM. HE SAID IF I CAN FIND HIM, I'LL GET HIM TO
25 COME UP HERE.

1 Q OKAY. SO AT SOME POINT THAT DAY, RICHLAND COUNTY HAD
2 PICKED HIM UP FOR THE LEXINGTON SHERIFF'S DEPARTMENT?

3 A RIGHT. AT OUR REQUEST, YES, MA'AM.

4 Q I UNDERSTAND.

5 DO YOU KNOW WHAT TIME OF DAY RICHLAND COUNTY
6 PICKED HIM UP?

7 A THEY DIDN'T HAVE HIM LONG BEFORE WE WENT AND PICKED
8 HIM UP. THEY KNEW WE WERE LOOKING FOR HIM, KNEW WE WANTED
9 TO TALK TO HIM. SO IT -- YOU KNOW, WE TAKE THE STATEMENT
10 AT 3 O'CLOCK -- ALMOST 4 O'CLOCK IN THE AFTERNOON. THAT
11 ALL WOULD HAVE TAKEN PLACE PRETTY RAPIDLY FROM THE TIME
12 THEY FOUND HIM TO US GETTING OVER THERE TO GET HIM AND
13 GETTING BACK.

14 Q OKAY. WHAT TIME DO YOU THINK YOU WENT OVER THERE TO
15 RICHLAND COUNTY TO PICK HIM UP?

16 A YOU'RE TALKING ABOUT A TWENTY -- THIRTY-MINUTE DRIVE,
17 YOU KNOW, I'D CERTAINLY SAY SOMEWHERE BETWEEN ONE AND 2:00
18 P.M.

19 Q BETWEEN ONE AND TWO?

20 A UH-HUH.

21 Q DO YOU HAVE ANY IDEA HOW LONG HE HAD BEEN AT THE
22 SHERIFF'S DEPARTMENT BEFORE YOU GOT THERE?

23 A NO, MA'AM. I -- THEY KNEW HOW IMPORTANT IT WAS.
24 OBVIOUSLY, HE WAS WANTED UNDER A HOMICIDE WARRANT. THEY
25 CALLED US AS QUICKLY AS THEY HAD HIM WHERE WE COULD PICK

1 HIM UP.

2 Q ONCE YOU GOT OVER TO RICHLAND, DID YOU SERVE THE
3 WARRANTS ON HIM AT THAT TIME?

4 A NO, MA'AM. WE -- WE TRANSPORTED HIM BACK OVER HERE
5 SO WE COULD TALK TO HIM AND PROCESS HIM IN.

6 Q DID YOU TALK TO HIM AT ALL WHILE HE WAS AT THE
7 RICHLAND SHERIFF'S DEPARTMENT?

8 A AS FAR AS A FORMAL INTERVIEW OF HIM, NO, MA'AM.

9 Q JUST PUT HIM IN THE CAR?

10 A YES, MA'AM, TRANSPORTED HIM BACK.

11 A OKAY. WHO IS DRIVING, YOU OR MR. PHILLIPS?

12 A I -- I DON'T REMEMBER.

13 Q WELL, I DON'T KNOW HOW YOU FOLKS DRIVE, BUT IT'S,
14 WHAT? IT'S ABOUT A 25-MINUTE DRIVE. WELL, YOU'RE ON TWO
15 NOTCH. IT WOULD BE A GOOD THIRTY MINUTES OR SO TO GET TO
16 LEXINGTON.

17 A I -- YEAH, I MEAN, YOU JUMP RIGHT THERE ON TWENTY AND
18 GO TO 378. IT'S NOT THAT BAD OF A DRIVE.

19 Q RIGHT.

20 A I DON'T REMEMBER WHO WAS DRIVING.

21 Q OKAY. OKAY. AND DID YOU HAVE ANY CONVERSATION WITH
22 MR. TERRY DURING THAT DRIVE?

23 A MS. FULLWOOD, I CAN'T REMEMBER. I -- WE HAD HAD
24 PLEASANT CONVERSATION WITH HIM BEFORE. I CERTAINLY WOULD
25 THINK WE PROBABLY SPOKE WITH HIM SOME THEN. I---

1 Q OKAY. AND HAD YOU ADVISED HIM, ONCE YOU PICKED HIM
2 UP FROM RICHLAND COUNTY, YOU HAD WARRANTS FOR THE MURDER OF
3 MS. JACKSON?

4 A YES, MA'AM. HE KNEW AS WE WERE TRANSPORTING HIM WHAT
5 WAS -- WHAT HE WAS FACING.

6 Q OKAY. DO YOU RECALL MAKING A REMARK TO HIM ON THAT
7 DRIVE OVER TO LEXINGTON, I THINK YOU HAVE GOT A DEMON
8 INSIDE YOU OR SOMETHING TO THAT EFFECT?

9 A I DON'T RECALL MAKING ANY STATEMENT LIKE THAT.

10 Q YOU DON'T REMEMBER ANY STATEMENT LIKE THAT?

11 A NO, MA'AM.

12 Q ALL RIGHT. NOW, WE HAVE THIS FORM BEFORE THE COURT
13 THAT HAS THE MIRANDA RIGHTS AND THE WRITTEN STATEMENT ON
14 IT?

15 A YES, MA'AM.

16 Q DID YOU READ THOSE RIGHTS JUST PRIOR TO TAKING THAT
17 WRITTEN STATEMENT?

18 A IT WOULD BE MY -- IT'S MY COMMON PRACTICE AND IT
19 CERTAINLY WOULD SHOW ON THE VIDEOTAPE TAPE, BUT IT'S MY
20 COMMON PRACTICE THAT I WOULD READ THEIR RIGHTS AS WE START
21 THE INTERVIEW AND I'LL HAVE THEM INITIAL AND WE'LL
22 BASICALLY ESTABLISH THE WAIVER AND THEN I -- IT'S COMMON
23 FOR ME TO PUT THE FORM ASIDE AND WE TALK. HAVE AN
24 INTERVIEW. AND WHEN THAT'S CONCLUDED, THEN WE'LL GO BACK
25 AND LACK OF A BETTER TERM, JUST KIND OF HIT THE HIGH SPOTS

1 ON A WRITTEN STATEMENT.

2 Q ALL RIGHT. ONCE MR. TERRY GOT BACK TO LEXINGTON, DID
3 YOU TAKE HIM STRAIGHT TO THE INTERVIEW ROOM OR DID YOU
4 CHECK HIM INTO THE JAIL FIRST? BOOK HIM IN?

5 A NO, MA'AM. IF I REMEMBER CORRECTLY, WE TOOK HIM
6 STRAIGHT TO AN INTERVIEW ROOM.

7 Q OKAY. AND I KNOW IT'S BEEN AWHILE, BUT YOU AND MR.
8 PHILLIPS TALKED TO HIM FOR QUITE AWHILE BEFORE YOU TOOK THE
9 ACTUAL WRITTEN STATEMENT, IS THAT CORRECT?

10 A YEAH. IF I REMEMBER CORRECTLY, WE TALKED TO HIM FOR
11 QUITE AWHILE. THE EXACT TIME I'M NOT SURE.

12 Q COULD IT HAVE BEEN ALMOST CLOSE TO, SAY, AN HOUR AND
13 FORTY-FIVE MINUTES?

14 A I CERTAINLY WOULDN'T ARGUE WITH THAT, NO, MA'AM.

15 Q OKAY. IT WAS A FAIRLY LENGTHY INTERVIEW?

16 A YES, MA'AM.

17 Q AND AS YOU'VE SAID, IT WAS NOT AS CORDIAL A SITUATION
18 AS Y'ALL'S MEETING BEFORE AT HIS HOME?

19 A NO, MA'AM, IT WASN'T.

20 Q IT WAS A MUCH MORE SERIOUS TONE?

21 A CERTAINLY.

22 Q OKAY. AND, OF COURSE, YOU REMEMBER TALKING TO MR.
23 TERRY IN THE INTERVIEW ROOM?

24 A YES, MA'AM.

25 Q AND DO YOU REMEMBER THAT FOR MUCH OF THE TIME THAT

1 YOU TALKED WITH HIM, HE WAS SITTING AT THAT TABLE SORT OF
2 WITH HIS HEAD IN HIS HANDS AND HE WAS SORT OF SHAKING HIS
3 HEAD AND HE KEPT TELLING YOU AND MR. PHILLIPS, I JUST DON'T
4 REMEMBER, I JUST DON'T KNOW. THINGS OF THAT NATURE?

5 A YES, MA'AM. I DO REMEMBER THAT HE WOULD TELL US TO
6 SEVERAL THINGS WE ASKED HIM THAT HE DIDN'T REMEMBER.

7 Q OKAY---

8 A I DO REMEMBER THAT.

9 Q HAVE YOU REVIEWED THAT -- THE VIDEOTAPE OF THAT
10 INTERVIEW FOR PREPARING FOR THIS TRIAL?

11 A MS. FULLWOOD, I DON'T KNOW IF I'VE EVER WATCHED THAT
12 TAPE. I CERTAINLY HAVEN'T REVIEWED IT FOR PREPARATION---

13 Q OKAY.

14 A ---AND I DON'T REMEMBER I EVER WATCHED IT AFTER WE
15 MADE IT.

16 Q IT WASN'T -- I'M NOT TRYING TO IMPLY THERE WOULD BE
17 ANYTHING WRONG WITH THAT---

18 A NO. RIGHT. NO. BUT, NO, I HAVE NOT, NO, MA'AM.

19 Q WELL, DO YOU REMEMBER THAT REALLY ACTUALLY MOST OF
20 THAT INTERVIEW WAS WITH HIM SORT OF SITTING THERE WITH HIS
21 HEAD ON HIS HANDS SAYING I JUST DON'T REMEMBER, I DON'T
22 KNOW. THINGS OF THAT NATURE?

23 A YES, MA'AM. I REMEMBER SEVERAL THINGS HE RESPONDED
24 TO THAT HE DIDN'T REMEMBER. AND AS I -- HIS Demeanor WAS
25 MUCH MORE SUBDUED THAN IT WAS WHEN WE TALKED TO HIM IN

1 MARCH.

2 Q WELL, OUT OF MAYBE UP TO AN HOUR AND FORTY-FIVE
3 MINUTES, WOULD IT BE FAIR TO SAY MAYBE YOU ONLY GOT ABOUT
4 FIFTEEN MINUTES' WORTH OF INFORMATION?

5 A I DO REMEMBER HE WOULD SIT THERE SILENT FOR A LONG
6 TIME WHEN WE WOULD ASK HIM SOME QUESTIONS.

7 Q AND HE DIDN'T SEEM REAL CHIPPER THAT DAY, DID HE?

8 A NO, MA'AM.

9 Q AND HE WAS QUITE SUBDUED?

10 A YES, MA'AM.

11 Q THANK YOU VERY MUCH.

12 MR. HUMPHRIES: NOTHING FURTHER.

13 THE COURT: ANYTHING FURTHER -- ALL RIGHT. THANK
14 YOU, SIR. YOU MAY STEP DOWN.

15 THE WITNESS: THANK YOU, YOUR HONOR.

16 (WHEREUPON, THE WITNESS WAS
17 EXCUSED AT THIS TIME.)

18 THE COURT: ANYTHING FURTHER FROM THE STATE AS TO
19 THESE STATEMENTS?

20 MR. HUMPHRIES: NO, SIR.

21 THE COURT: FROM THE DEFENSE?

22 MS. FULLWOOD: YES, SIR.

23 YOUR HONOR, WE WOULD CALL LOU ANN TERRY.

24 THE COURT: ALL RIGHT.

25 LOU ANN TERRY,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: WOULD YOU STATE YOUR FULL NAME,
3 SPELLING YOUR LAST NAME.

4 THE WITNESS: LOU ANN TERRY, T-E-R-R-Y.

5 DIRECT EXAMINATION

6 BY MS. FULLWOOD:

7 Q YOU ARE LOU ANN TERRY?

8 A YES, MA'AM.

9 Q OKAY. AND YOU ARE THE WIFE OF GARY TERRY, THE
10 DEFENDANT?

11 A YES, MA'AM.

12 Q ALL RIGHT. MS. TERRY, I WANT TO TAKE YOU BACK TO
13 MARCH OF 1995. YOU RECALL THAT MONTH?

14 A YES, I DO.

15 Q OF COURSE, THAT WOULD BE A SIGNIFICANT MONTH TO YOU?

16 A YES.

17 Q LET ME TAKE YOU BACK -- YOU REMEMBER THE DAY YOUR
18 HUSBAND GOT ARRESTED?

19 A YES, I DO.

20 Q OKAY. LET ME TAKE YOU BACK A LITTLE WAYS TO THE
21 WEEKEND BEFORE THAT HAPPENED---

22 A YES, MA'AM.

23 Q ---WHERE HAD YOU BEEN THAT WEEKEND? WHO HAD YOU BEEN
24 WITH?

25 A I WENT TO THE MOUNTAINS. GARY WAS UP THERE WITH SOME

1 FRIENDS---

2 A UH-HUH.

3 Q ---AND I WENT TO PICK HIM UP AND WE HAD OUR TWO
4 YOUNGEST CHILDREN WITH US AND DECIDED TO MAKE A NICE
5 ROMANTIC WEEKEND OF IT AND SO WE STAYED IN THE MOUNTAINS.
6 WE STAYED IN MAGGIE VALLEY AND ROAD AROUND THE PARKWAY.

7 Q OKAY. DURING THAT WEEKEND, DID ANYTHING HAPPEN AS IT
8 CONCERNED YOUR HUSBAND'S HEALTH?

9 A DURING THE COURSE OF THE DAY, SUNDAY, AS WE WERE
10 TOURING THE PARKWAY AND GOING TO SOME OLD CHURCHES AND WHAT
11 NOT THAT WERE SET ASIDE ON THE PARKWAY IN AN AREA, HE BEGAN
12 TO START FEELING BAD. HE WAS ACHY AND BEGAN TO BE FEVERISH
13 AND HAVE A HEADACHE AND THROUGHOUT THE DAY, ON THE WAY BACK
14 DOWN THE MOUNTAIN AND INTO SOUTH CAROLINA ON THE WAY BACK
15 TO WINNSBORO, HE BECAME VERY FEVERISH, FLUSHED AND HIS HEAD
16 STARTED HURTING REALLY BAD.

17 Q OKAY. THIS WAS SUNDAY?

18 A YES, MA'AM.

19 Q OKAY. CAN YOU TELL US A LITTLE MORE ABOUT HIS
20 CONDITION AS THAT WEEK PROGRESSED?

21 A GARY STAYED IN THE BED ALL WEEK. I DON'T EVEN RECALL
22 THAT HE GOT UP TO GO TO THE BATHROOM. I'M SURE HE DID. HE
23 DIDN'T EAT. THE ONE TIME THAT HE DID TRY TO EAT, MONDAY
24 EVENING, WHEN I GOT OFF OF WORK, HE THREW THAT UP.

25 Q UH-HUH.

1 A HE WAS ALTERNATING TURNING THE ELECTRIC BLANKET ON
2 HIGH BECAUSE HE WAS CHILL AND THEN THROWING ALL THE COVERS
3 OFF THE BED BECAUSE HE WAS BURNING UP WITH FEVER AND
4 POURING WITH SWEAT.

5 Q OKAY. NOW, YOU SAID HE HAD FEVER. DID YOU EVER
6 ACTUALLY TAKE HIS TEMPERATURE?

7 A YES, I TOOK IT SEVERAL TIMES AND IT RANGED FROM 102
8 TO 104, 104.2 OR SOME SUCH.

9 Q OKAY. AND OVER WHAT PERIOD OF TIME DID HE HAVE THOSE
10 TYPES OF SYMPTOMS?

11 A THROUGHOUT THE WHOLE WEEK THAT WE WERE BACK FROM THE
12 BEACH. I MEAN, THE MOUNTAINS. SUNDAY, WHEN WE CAME IN, I
13 HAD TO UNLOAD THE CHILDREN AND THE VAN AND HE WENT STRAIGHT
14 TO BED. AND THEN, MONDAY, WHEN I LEFT FOR WORK, HE WAS IN
15 THE BED. HE WAS IN EXACTLY THE SAME PLACE WHEN I GOT HOME
16 MONDAY. TUESDAY, LIKEWISE; WEDNESDAY, LIKEWISE; THURSDAY
17 MORNING WHEN I LEFT, HE WAS STILL HEADACHY, ACHING. HIS
18 BACK HAS BEEN BROKEN TWICE AND SO WHEN HE GETS FEVER, HIS
19 BACK HURTS A LOT. HE COULDN'T GET COMFORTABLE. HE TOSSED
20 AND TURNED ALL NIGHT LONG, ALTERNATING FEVER AND CHILLS.

21 ON THURSDAY, WHEN I GOT HOME FROM WORK, IT WAS
22 ABOUT 4 O'CLOCK IN THE AFTERNOON AND HE WAS SITTING UP IN
23 THE BED AND HE WAS DRINKING SOME ICE WATER AND HE SAID THAT
24 HE NEEDED SOME FRESH AIR, WOULD I RIDE HIM AROUND. AND I
25 SAID, WELL, I NEED TO GO TO THE GROCERY STORE, DO YOU FEEL

1 LIKE RIDING. HE SAID, YEAH, HE THOUGHT HE CAN MANAGE THAT.

2 HE GOT IN THE VAN. IT'S NOT, BUT A MILE AND A
3 HALF, TWO MILES TO THE BILO WHERE WE WENT AND BY THE TIME
4 WE GOT THERE, HE WAS ALREADY FLUSHED AND POURING OF SWEAT
5 AGAIN.

6 Q WELL, LET ME ASK YOU THIS. YOU SAID YOU WENT TO THE
7 BILO?

8 A RIGHT.

9 Q DID -- WHILE YOU WERE AT THE BILO, DID YOU AND GARY
10 SEE ANYONE?

11 A YES. I SAW SEVERAL PEOPLE THAT I KNEW AND, IN
12 PARTICULAR, I SAW MY SON, MY OLDEST SON, OUR OLDEST SON IS
13 HEARING IMPAIRED AND HE HAS A HEARING SPECIALIST THAT WORKS
14 WITH HIM AT SCHOOL AND I SAW HER IN THE GROCERY STORE AND
15 SHE HAD NEVER MET GARY AND SO I ASKED HER TO COME OVER AND
16 MEET HIM.

17 Q OKAY. AND WHAT'S THE NAME OF THIS INDIVIDUAL?

18 A LILLIAN BONDS.

19 Q ALL RIGHT. SO THURSDAY EVENING, WHAT WAS YOUR
20 HUSBAND'S CONDITION?

21 A WHEN I GOT HOME FROM SCHOOL, HE WAS SITTING UP BUT
22 WITHIN FIFTEEN OR 20 MINUTES, HE WAS AGAIN FLUSHED, POURING
23 SWEAT, SHAKING, I GUESS FROM THE FEVER. HE WANTED TO GO
24 INSIDE THE GROCERY STORE. HE ASKED ME IN THE VAN, HE SAID,
25 IT WILL BE COOL IN THERE, WON'T IT, AND I SAID, YEAH, IT

1 SHOULD BE AND SO HE WALKED INSIDE WITH ME. HE PUSHED THE
2 GROCERY CART AND HE WAS GRIPPING HOLD OF IT VERY TIGHTLY
3 ALMOST TO KEEP HIMSELF STANDING UP AND IT WAS IN THAT
4 POSITION THAT HE MET MS. BONDS.

5 Q OKAY. NOW, GOING ON TO THE NEXT DAY, FRIDAY, WOULD
6 THAT HAVE BEEN THE 23RD OF MARCH?

7 A THURSDAY THAT WE WENT TO THE BILO WAS THE 23RD.
8 FRIDAY, THE 24TH, WAS THE DATE THAT HE WAS ARRESTED.

9 Q OKAY. SO FRIDAY -- THE NEXT DAY WAS THE DAY THAT HE
10 WAS ARRESTED?

11 A YES, MA'AM.

12 Q OKAY. CAN YOU TELL US WHAT HIS CONDITION WAS WHEN
13 YOU WENT TO WORK THAT DAY?

14 A WHEN I LEFT FOR WORK, HE HAD TOSSED AND TURNED ALL
15 NIGHT, THURSDAY NIGHT, AGAIN. HE WAS SLEEPING WHEN I GOT
16 UP TO GET READY FOR WORK AND AS I WAS LEAVING, HE SAID FOR
17 ME TO CALL HIM---

18 MR. HUMPHRIES: YOUR HONOR, AT THIS TIME, I NEED
19 TO INTERPOSE THIS OBJECTION. I DON'T HAVE ANY PROBLEM WITH
20 THIS WITNESS TESTIFYING REGARDING HER OBSERVATION OF THE
21 DEFENDANT. I DO HAVE AN OBJECTION AS TO SELF-SERVING
22 HEARSAY ELICITED FROM THIS WITNESS.

23 THE COURT: ALL RIGHT. WELL, FOR THE PURPOSES OF
24 THIS HEARING, I'M GOING TO LET HER TESTIFY TO IT.

25 MR. HUMPHRIES: YES, YOUR HONOR.

1 THE COURT: NOTE YOUR OBJECTION.

2 MS. FULLWOOD: THANK YOU, YOUR HONOR.

3 IF YOU COULD JUST CONTINUE, MS. TERRY.

4 THE WITNESS: OKAY. HE TOLD ME TO PLEASE CALL
5 HIM WHEN I WENT ON LUNCH BREAK. THAT PARTICULAR YEAR MY
6 LUNCH AND PLANNING PERIODS WERE IN THE SAME BLOCK AND I HAD
7 ABOUT AN HOUR AND A HALF OF FREE TIME. HE ASKED ME TO CALL
8 HIM. THAT HE TOLD HIS BROTHER BILLY THAT HE WOULD HELP HIM
9 AND SO, I DID. I AGREED TO CALL HIM.

10 BEFORE I COULD GET TO THE PHONE TO CALL HIM AT MY
11 LUNCH HOUR, HE HAD CALLED THE SCHOOL AND TOLD ME TO COME ON
12 HE WAS GOING TO TRY TO HELP BILLY.

13 WHEN I GOT HOME, HE HAD DRESSED HIMSELF. HE HAD
14 NOT SHAVED. HE STILL LOOKED REAL WEAK AND SHAKY KIND OF
15 AND HE WAS NOT VERY -- HE WAS NOT ROBUST AT ALL. AND I
16 SAID, ARE YOU SURE YOU WANT TO GO DOWN THERE. HE SAID,
17 YEAH, GO AHEAD AND TAKE ME DOWN THERE. AND SO WE GOT IN
18 THE VAN AND I DROVE HIM TO TIFFANY GARDENS.

19 THROUGHOUT THE WAY DOWN THERE, HE WAS -- HE WAS
20 SQUIRMING IN HIS SEAT. HE COULDN'T GET COMFORTABLE. JUST,
21 I GUESS, FROM ACHING, THE BACK HURTING AND WHAT NOT AND HE
22 COMMENTED THAT HIS HEAD WAS STILL HURTING. I DIDN'T GO ALL
23 THE WAY INTO TIFFANY GARDENS BECAUSE HE SAW HIS BROTHER'S
24 TRUCK PARKED AT THE STORE AND GAS STATION THAT'S IN THE
25 FRONT. HE GOT OUT AND WENT IN AND SAW THAT HIS BROTHER WAS

1 THERE AND WAVED FOR ME TO GO ON AND THAT'S THE LAST THAT I
2 SAW OF HIM THAT DAY.

3 Q ALL RIGHT. ALL RIGHT. LET ME ASK YOU THIS. I
4 BELIEVE YOU HAVE GOT FOUR CHILDREN?

5 A YES, MA'AM.

6 Q IF ANY OF YOUR CHILDREN HAD SHOWN THE SYMPTOMS THAT
7 YOUR HUSBAND SHOWED THAT FRIDAY, WOULD YOU HAVE LET THEM GO
8 TO SCHOOL?

9 A NO.

10 Q OKAY. OKAY.

11 MS. TERRY, THAT'S ALL THE QUESTIONS I HAVE.
12 PLEASE ANSWER ANY QUESTIONS THAT THE PROSECUTION MIGHT
13 HAVE.

14 A YES, MA'AM.

15 CROSS-EXAMINATION

16 BY MR. HUMPHRIES:

17 Q MS. TERRY, YOU ENGAGED IN A NUMBER OF CONVERSATIONS
18 WITH YOUR HUSBAND OVER THIS COURSE OF TIME?

19 A THE COURSE OF WHAT TIME?

20 Q WELL, THE TIME THAT YOU'VE TALKED ABOUT, TALKED
21 ABOUT---

22 A THE TIME FROM THE MOUNTAINS UNTIL I DROPPED HIM OFF
23 AT TIFFANY GARDENS?

24 Q YES, MA'AM.

25 A WE DIDN'T HAVE ALL THAT MANY CONVERSATIONS BECAUSE---

1 Q WELL, YOU'VE TESTIFIED ABOUT A NUMBER OF THEM,
2 HAVEN'T YOU?

3 A WE TALKED IN THE MOUNTAINS. WE DIDN'T HAVE -- WE
4 SPOKE CERTAINLY.

5 Q THAT'S---

6 A I WAS THERE WITH HIM. WE DID NOT HAVE IN-DEPTH
7 CONVERSATIONS BECAUSE HE WAS TOO ILL---

8 Q I'M NOT ASKING THAT---

9 A ---TO SIT UP AND CONVERSE.

10 Q I APPRECIATE THAT. I'M NOT ASKING THAT. HE WAS ABLE
11 TO CONVERSE WITH YOU ENOUGH TO TELL YOU WHAT HE WANTED TO
12 DO?

13 A ON FRIDAY MORNING---

14 Q OKAY.

15 A ---HE TOLD ME IN A FEW SHORT WORDS HE WANTED ME TO
16 CALL HIM.

17 Q DIDN'T YOU JUST SAY THAT HE WANTED TO GO WITH YOU TO
18 THE GROCERY STORE? HE WAS ABLE TO CONVEY THAT TO YOU?

19 A HE SAT UP AND SAID I NEED SOME FRESH AIR, CAN YOU
20 RIDE ME AROUND.

21 Q RIGHT.

22 A THAT'S NOT AN IN-DEPTH CONVERSATION---

23 Q MA'AM, I'M NOT ASKING YOU TO CHARACTERIZE IT. I'M
24 JUST ASKING YOU WHAT HE SAID, OKAY---

25 A I'M TRYING TO ANSWER YOUR QUESTION, SIR.

1 Q I APPRECIATE THAT.

2 AND YOU SAID YOU CAN GO TO THE GROCERY STORE WITH
3 ME AND HE SAID OKAY.

4 A I ASKED HIM IF HE FELT LIKE GOING TO THE GROCERY
5 STORE---

6 Q AND HE SAID---

7 A ---HE SAID, I GUESS SO.

8 Q OKAY. AND HE WENT WITH YOU?

9 A YES, HE DID.

10 Q HE WENT INSIDE THE GROCERY STORE WITH YOU?

11 A HE ASKED ME IF I THOUGHT IT WOULD BE COOL. HE SAID
12 DO YOU THINK IT WILL BE COOLER IN THERE THAN HIM WAITING IN
13 THE PARKING LOT. THIS IS MID-MARCH IN THE AFTERNOON. I
14 SAID, YES, THAT IT WOULD BE COOLER IN THE GROCERY STORE
15 THAN SITTING OUTSIDE IN THE VAN.

16 Q HE DIDN'T MISUNDERSTAND YOU AND YOU DIDN'T
17 MISUNDERSTAND HIM DURING THOSE BRIEF CONVERSATIONS?

18 A NOT THAT I KNOW OF. I DID NOT MISUNDERSTAND HIM.

19 Q THANK YOU, MA'AM.

20 MS. FULLWOOD: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: THANK YOU, MA'AM.

22 YOU CAN STEP DOWN.

23 (WHEREUPON, THE WITNESS WAS
24 EXCUSED AT THIS TIME.)

25 MS. FULLWOOD: YOUR HONOR, THE DEFENSE CALLS

1 LILLIAN BONDS.

2 LILLIAN BONDS,

3 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: STATE YOUR FULL NAME AND SPELL IT FOR
5 US.

6 THE WITNESS: LILLIAN BONDS, L-I-L-L-I-A-N,
7 B-O-N-D-S.

8 DIRECT EXAMINATION

9 BY MS. FULLWOOD:

10 Q MS. BONDS---

11 A YES.

12 Q ---CAN YOU TELL THE COURT HOW YOU ARE EMPLOYED,
13 PLEASE?

14 A I'M EMPLOYED WITH FAIRFIELD COUNTY SCHOOLS.

15 Q OKAY. AND WHAT'S YOUR POSITION WITH THEM?

16 A I'M A TEACHER OF HEARING IMPAIRED CHILDREN.

17 Q OKAY. AND DO YOU KNOW MS. TERRY, MS. LOU ANN TERRY?

18 A YES, I DO.

19 Q AND HOW DO YOU KNOW HER?

20 A WELL, I KNOW HER IN TWO FUNCTIONS. I KNOW HER AS A
21 FELLOW CO-WORKER. I'M BASED AT FAIRFIELD-CENTRAL HIGH
22 SCHOOL---

23 Q UH-HUH.

24 A ---AND I'M ITINERANT TO THE HEARING IMPAIRED CHILDREN
25 IN THE DISTRICT. SO SHE IS A CO-WORKER OF MINE AND I AM

1 THE TEACHER OF HER SON, WHO IS HER OLDEST SON, IS HEARING
2 IMPAIRED.

3 Q ALL RIGHT. NOW, MS. BONDS, DO YOU KNOW GARY TERRY?

4 A I HAVE MET HIM ONCE.

5 Q OKAY. YOU MET HIM ONE TIME?

6 A UH-HUH.

7 Q DO YOU KNOW WHERE -- TELL THE COURT WHERE YOU WERE
8 WHEN YOU MET HIM?

9 A WE WERE IN BILO GROCERY STORE IN WINNSBORO.

10 Q OKAY. AND CAN YOU TELL THE COURT WHEN YOU MET HIM IN
11 THE BILO IN WINNSBORO?

12 A IT WAS THE LATTER PART OF MARCH OF '95. I DON'T
13 REMEMBER THE EXACT DATE.

14 Q ALL RIGHT. HOW DID YOU MEET HIM IN THE GROCERY
15 STORE?

16 A I WAS SHOPPING AND HE AND HIS WIFE AND CHILDREN WERE
17 SHOPPING AND I STOPPED TO TALK WITH LOU ANN AND SHE SAID
18 YOU'VE NEVER MET MY HUSBAND AND I SAID, NO, AND SHE SAID
19 COME OVER HERE, I WOULD LIKE FOR YOU TO MEET HIM.

20 Q UH-HUH.

21 A AND SO WE -- I WENT OVER TO MEET HIM AND SHE
22 INTRODUCED ME TO HIM AND HE SAID -- I SAID, I'VE NEVER MET
23 YOU AND HE SAID, NO, AND I HATE FOR YOU TO MEET ME UNDER
24 THESE CONDITIONS.

25 Q OKAY. AND BY THESE CONDITIONS, CAN YOU TELL THE

1 COURT WHAT YOU OBSERVED, IF ANYTHING, ABOUT HIM PHYSICALLY?

2 A WELL, I ASKED HIM. I SAID WHAT DO YOU MEAN, THESE
3 CONDITIONS, AND HE SAID I AM REALLY ILL. HE SAID I FEEL
4 LIKE I'VE GOT THE FLU.

5 Q UH-HUH.

6 A AND I SAID, I'M SORRY. I SAID, I HEARD IT WAS GOING
7 AROUND AND HE SAID, YEAH, HE SAID I HAVE JUST BEEN SO SICK
8 AND HE SAID, I'VE BEEN IN THE BED.

9 Q UH-HUH.

10 A AND I SAID, WELL, YOU PROBABLY NEED TO GO BACK AND
11 GET BACK IN THE BED. THAT WAS THE EXTENT OF IT.

12 Q DID YOU NOTICE ANYTHING ABOUT HIS PHYSICAL CONDITION
13 THAT WOULD SHOW THAT HE MIGHT HAVE THE FLU?

14 A I HAD NEVER SEEN HIM BEFORE, SO I DON'T HAVE ANYTHING
15 TO COMPARE IT WITH---

16 Q I UNDERSTAND---

17 A ---BUT YES, HE LOOKED LIKE SOMEBODY WHO -- I MEAN, HE
18 LOOKED FEVERISH.

19 Q UH-HUH.

20 A HE WAS PALE.

21 Q YEAH.

22 A AND, YOU KNOW, HE CERTAINLY APPEARED TO HAVE THE
23 SYMPTOMS OF THE FLU.

24 Q ALL RIGHT. THANK YOU, MA'AM.

25 MS. BOND, THAT'S ALL THE QUESTIONS I HAVE FOR

1 YOU. IF YOU WOULD, ANSWER ANY THAT THE STATE MIGHT HAVE
2 FOR YOU.

3 A OKAY.

4 MR. HUMPHRIES: YOU CAN COME DOWN.

5 THE WITNESS: OKAY.

6 MR. HUMPHRIES: THANK YOU, MA'AM.

7 THE WITNESS: ALL RIGHT.

8 MS. FULLWOOD: YOUR HONOR, MAY MS. BONDS BE
9 EXCUSED?

10 MR. HUMPHRIES: NO OBJECTION, JUDGE.

11 THE COURT: WITHOUT ANY OBJECTION, YOU ARE
12 EXCUSED. THANK YOU, MA'AM.

13 THE WITNESS: THANK YOU.

14 (WHEREUPON, THE WITNESS WAS
15 EXCUSED AT THIS TIME.)

16 THE COURT: NEXT WITNESS.

17 MS. FULLWOOD: NO FURTHER WITNESSES, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 ANYTHING FURTHER AS TO THE STATEMENTS?

20 MS. FULLWOOD: YOUR HONOR, WE WOULD MOVE TO
21 SUPPRESS THE STATEMENT MADE MARCH THE 24TH OF '95. I JUST
22 DON'T THINK THE STATE HAS MET ITS BURDEN OF SHOWING THAT
23 THE STATEMENT WAS VOLUNTARY AND WAS MADE WITH A KNOWING AND
24 INTELLIGENT WAIVER OF HIS RIGHTS BECAUSE I THINK WE HAVE
25 SHOWN THAT HE WAS SICK AND THAT HE WAS FEVERISH. HE HAD

1 BEEN ILL FOR APPROXIMATELY FIVE OR SIX DAYS WITH HIGH
2 FEVER, SHAKES -- SHAKES, CHILLS AND THAT'S CORROBORATED BY
3 DETECTIVE FRIER'S TESTIMONY THAT DURING MOST OF THE
4 CONVERSATION, HE SAT WITH HIS HEAD ON HIS HANDS, HE DIDN'T
5 KNOW, HE DIDN'T REMEMBER.

6 I THINK THAT THE STATE HASN'T SHOWN THAT HE WAS
7 IN ANY PHYSICAL CONDITION TO BE CAPABLE OF MAKING A
8 VOLUNTARY RELINQUISHMENT OF HIS RIGHTS.

9 SO WE MOVE TO SUPPRESS THAT STATEMENT.

10 THE COURT: SOLICITOR, YOU WANT TO BE HEARD ON
11 THIS?

12 MR. HUMPHRIES: JUST VERY BRIEFLY, YOUR HONOR.

13 WHAT THE COURT -- WHAT THE COURT HAS TO RELY ON
14 TODAY ARE THE OBSERVATIONS OF SCOTTIE FRIER AND THE
15 EVIDENCE PRESENTED BY THE DEFENSE.

16 AT THE TIME OF THE TAKING OF THE STATEMENT,
17 SCOTTIE FRIER SAID HE WENT THROUGH EACH ONE OF THESE VERY
18 DETAILED INSTRUCTIONS REGARDING HIS MIRANDA WARNINGS AND
19 THAT AT EVERY OCCASION, ONE THROUGH FIVE, HE ASKED MR.
20 TERRY IF HE UNDERSTOOD IT AND DIDN'T CIRCLE THAT NUMBER AND
21 HAVE GARY TERRY INITIAL IT UNTIL HE INDICATED THAT HE DID.

22 THE FACT THAT MR. TERRY MAY HAVE BEEN SICK TO A
23 CERTAIN DEGREE, THAT CLEARLY DOES NOT RING ABSOLUTELY TRUE
24 AT LEAST TO INVESTIGATOR FRIER. HE DOES RECALL HIM BEING A
25 BIT DESPONDENT WHICH IS ABSOLUTELY CONSISTENT WITH ONE

1 HAVING BEEN ARRESTED FOR MURDER.

2 I BELIEVE THAT THE TOTALITY OF THE CIRCUMSTANCES
3 WILL INDICATE THAT BEYOND -- AT LEAST FOR A PREPONDERANCE
4 OF THE EVIDENCE, THE STATE HAS MET ITS BURDEN AS TO THE
5 ADMISSIBILITY OF THOSE STATEMENTS OR THAT -- THE VIDEOTAPED
6 STATEMENT AND THE WRITTEN STATEMENT.

7 THE COURT: WELL, IS THERE -- IS IT MY
8 UNDERSTANDING THAT THERE'S NO CONTEST FROM THE DEFENSE AS
9 TO THE STATEMENT OF JANUARY 17, 1995, THEN?

10 MS. FULLWOOD: CORRECT YOUR HONOR.

11 THE COURT: SO YOU DO NOT CONTEST THE
12 ADMISSIBILITY OF THAT STATEMENT AND THE WAIVER OF RIGHTS
13 THAT WAS GIVEN?

14 MS. FULLWOOD: THAT'S RIGHT.

15 THE COURT: OKAY.

16 WELL, LET THE RECORD REFLECT THAT THE COURT HAS
17 CAREFULLY CONSIDERED ALL OF THE EVIDENCE WHICH HAS BEEN
18 OFFERED BY THE STATE AND THE DEFENDANT AND THIS COURT IS
19 CONVINCED BY A PREPONDERANCE OF THE EVIDENCE AND I SO FIND
20 THAT BEFORE THE ALLEGED STATEMENT WAS OBTAINED FROM THE
21 DEFENDANT, THE DEFENDANT WAS FULLY ADVISED OF HIS RIGHTS
22 UNDER THE FIFTH AND SIXTH AMENDMENTS TO THE CONSTITUTION OF
23 THE UNITED STATES AND THAT THE DEFENDANT WAS ADVISED OF THE
24 CONSTITUTIONAL SAFEGUARDS REQUIRED BY MIRANDA V. ARIZONA,
25 384 U.S. 436, AS FOLLOWS:

A-19

1 THE DEFENDANT WAS ADVISED PRIOR TO ANY
2 INTERROGATION THAT HE HAD THE RIGHT TO REMAIN SILENT; AND
3 THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT
4 IF HE WAIVED HIS RIGHT TO REMAIN SILENT AND MADE A
5 STATEMENT, THAT SUCH STATEMENT CAN AND WILL BE USED AGAINST
6 HIM IN A COURT OF LAW; AND THE DEFENDANT WAS ADVISED PRIOR
7 TO ANY INTERROGATION THAT HE HAD THE RIGHT TO EMPLOY OR
8 SELECT AN ATTORNEY OF HIS OWN CHOICE; AND IF HE DID NOT
9 HAVE THE MONEY, FUNDS OR RESOURCES TO EMPLOY AN ATTORNEY,
10 THAT THE COURT WOULD APPOINT AND PROVIDE AN ATTORNEY FOR
11 HIM IF HE SO DESIRED WITHOUT COST OR EXPENSE TO HIM; AND
12 THAT HE HAD THE RIGHT TO HAVE HIS ATTORNEY PRESENT WITH HIM
13 AT ALL TIMES DURING ALL INTERVIEWS AND ALL INTERROGATION
14 AND THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION
15 THAT HE HAD THE RIGHT TO CONSULT WITH HIS ATTORNEY BEFORE
16 INTERROGATION; AND THE DEFENDANT WAS ADVISED PRIOR TO ANY
17 INTERROGATION THAT HE HAD THE RIGHT TO INTERRUPT AND
18 TERMINATE THE INTERROGATION AT ANY TIME; AND THAT HE HAD
19 THE FURTHER RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME
20 DURING THE INTERROGATION; AND THE DEFENDANT WAS ADVISED
21 PRIOR TO ANY INTERROGATION THAT, IF DURING THE
22 INTERROGATION, HE DESIRED AN ATTORNEY, THE INTERROGATION
23 WOULD CEASE UNTIL AN ATTORNEY WAS PROVIDED FOR HIM AND HE
24 WOULD BE GIVEN AN OPPORTUNITY TO CONSULT WITH HIS ATTORNEY
25 PRIOR TO FURTHER INTERROGATION.

1 THAT THE DEFENDANT KNOWINGLY AND INTELLIGENTLY
2 WAIVED HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS TO
3 THE CONSTITUTION OF THE UNITED STATES AND THE A-20
4 CONSTITUTIONAL SAFEGUARDS REQUIRED BY MIRANDA V. ARIZONA;
5 AND THAT THE ALLEGED STATEMENT OBTAINED FROM THE DEFENDANT
6 WAS FREELY AND VOLUNTARILY GIVEN WITHOUT DURESS, WITHOUT
7 COERCION, WITHOUT UNDUE INFLUENCE, WITHOUT REWARD, WITHOUT
8 PROMISE OR HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY,
9 WITHOUT THREAT OF INJURY AND WITHOUT COMPULSION OR
10 INDUCEMENT OF ANY KIND AND THAT SUCH ALLEGED STATEMENT WAS
11 THE VOLUNTARY PRODUCT OF THE FREE AND UNCONSTRAINED WILL OF
12 THE DEFENDANT.

13 THIS COURT FINDS ALL OF THE FOREGOING CONCLUSIONS
14 BY A PREPONDERANCE OF THE EVIDENCE AND I THEREFORE FIND
15 THAT THE STATEMENT OF MARCH 24, 1995, IS ADMISSIBLE INTO
16 EVIDENCE AS WELL AS THE VIDEOTAPED PORTION OF THE
17 STATEMENTS.

18 ALSO, LET THE RECORD FULLY REFLECT THAT THE
19 DEFENSE DOES NOT CONTEST THE ADMISSIBILITY AND THE WAIVER
20 OF RIGHTS OF JANUARY 17, 1995.

21 ALL RIGHT. NEXT ISSUE.

22 MS. FULLWOOD: YOUR HONOR, WE WOULD MOVE TO
23 SUPPRESS ALL EVIDENCE DEVELOPED AS A RESULT OF OBTAINING
24 SAMPLES FROM MR. TERRY FOR THE PURPOSES OF TESTING FOR
25 D.N.A. MATCHES.

1 THE GROUNDS FOR THAT IS THAT THE CONSENT TO
2 SEARCH WAS NOT MADE VOLUNTARILY OR INTELLECTUALLY IN THAT
3 MR. TERRY WAS NOT FULLY INFORMED OF THE PURPOSES FOR WHICH
4 THE SAMPLES WERE TAKEN.

5 MR. HUMPHRIES: YOUR HONOR, I BELIEVE WE CAN
6 ADDRESS THAT WITHOUT TAKING ANY TESTIMONY WHATSOEVER IF
7 THOSE ARE THE GROUNDS ON WHICH THEY RELY.

8 THERE'S ABSOLUTELY NO REQUIREMENT THAT THE STATE
9 PROVIDE A DEFENDANT THE SPECIFICITY OF WHY THEY ARE
10 OBTAINING THE SAMPLES FOR EXACTLY WHAT PURPOSE.

11 I'LL BE GLAD TO PUT UP TESTIMONY. PROBABLY WE
12 SHOULD DO THAT FOR THE RECORD, BUT THAT'S THE STATE'S FIRST
13 POSITION.

14 THE COURT: YES, SIR. I UNDERSTAND WHAT THE
15 STATE'S POSITION IS, BUT I THINK GIVEN THE NATURE OF THE
16 PROCEEDINGS THAT WE ARE ABOUT---

17 MR. HUMPHRIES: BE GLAD TO---

18 THE COURT: ---THAT I WOULD RATHER YOU PUT UP THE
19 INFORMATION THAT IS AVAILABLE SO THAT WE CAN CLEAR THE
20 RECORD FOR FUTURE REFERENCE.

21 MR. HUMPHRIES: YES, SIR, BE GLAD TO DO THAT.

22 THE STATE CALLS INVESTIGATOR SCOTTIE FRIER TO THE
23 STAND.

24 SCOTTIE R. FRIER,
25 (BEING ALREADY DULY SWORN,

1 RETURNED TO THE WITNESS STAND AND TESTIFIED AS FOLLOWS:)

2 THE COURT: REMIND INVESTIGATOR FRIER THAT HE IS
3 STILL UNDER OATH.

4 THE WITNESS: YES, SIR. THANK YOU.

5 MR. HUMPHRIES: YOUR HONOR, AT THIS TIME, I ASK
6 THAT THE TESTIMONY OF SCOTTIE FRIER AS IT RELATES TO THE
7 PRIOR STATEMENT ON JANUARY 17TH, 1995, BE INCORPORATED INTO
8 THIS MOTION HEARING SO WE DON'T HAVE TO GO OVER IT AGAIN.

9 THE COURT: YES, SIR.

10 MR. HUMPHRIES: THANK YOU.

11 DIRECT EXAMINATION

12 BY MR. HUMPHRIES:

13 Q ON JANUARY 17, 1995, DID YOU HAVE AN OCCASION TO COME
14 INTO CONTACT WITH GARY DUBOSE TERRY FOR THE PURPOSE OF
15 OBTAINING BODY AND FLUID SAMPLES?

16 A YES, SIR, WE DO.

17 Q DO YOU HAVE A WRITTEN PERMISSION TO SEARCH FORM, THE
18 ORIGINAL, WHICH YOU EXECUTED THAT DAY IN CONNECTION WITH
19 OBTAINING THOSE SAMPLES?

20 A YES, SIR, I DO. IT'S A STANDARD FORM THAT HAS SOME
21 ADDITIONS TYPED IN -- ON TO IT BY MYSELF.

22 MS. FULLWOOD: NO OBJECTION.

23 MR. HUMPHRIES: PREVIOUSLY PROVIDED TO THE
24 DEFENSE, YOUR HONOR.

25 LET ME SHOW YOU A PHOTOSTATIC COPY. TELL ME IF

1 IT'S -- I'M SORRY. TELL ME IF THAT IS AN ACCURATE
2 PHOTOSTATIC COPY?

3 THE WITNESS: YES, SIR, IT IS.

4 MR. HUMPHRIES: YOUR HONOR, I MOVE TO---

5 THE COURT: COURT'S NUMBER EIGHT.

6 MR. HUMPHRIES: ---INTRODUCE IT AS COURT'S EIGHT,
7 YES, SIR.

8 (WHEREUPON, COURT'S EXHIBIT NUMBER
9 EIGHT, PERMISSION TO SEARCH/1/17/95, MARKED FOR THE RECORD
10 AT THIS TIME.)

11 MR. HUMPHRIES: AT THIS TIME, I'LL HAND TO THE
12 COURT A PHOTOSTATIC COPY OF THAT FORM.

13 NOW, TELL THE COURT, JUST TO ORIENT OURSELVES,
14 WAS THIS PERMISSION TO SEARCH FORM EXECUTED AT THE TIME
15 THAT YOU OBTAINED THE WRITTEN STATEMENT OF GARY DUBOSE
16 TERRY IN WINNSBORO AT HIS HOME?

17 THE WITNESS: NO, SIR, THIS WAS OBTAINED EARLIER
18 IN MEETING WITH MR. TERRY.

19 Q TELL THE COURT EXACTLY WHEN THAT WAS OBTAINED AND
20 WHERE IT WAS OBTAINED.

21 A IT WAS OBTAINED FROM HIM AT THE FAIRFIELD COUNTY
22 SHERIFF'S OFFICE AFTER HE HAD BEEN PICKED UP FROM HIS HOME
23 AND HAD VOLUNTEERED TO COME THERE.

24 Q OKAY. LET'S MAKE THAT CLEAR. HE CAME FROM HIS HOUSE
25 TO THE SHERIFF'S DEPARTMENT ON HIS OWN VOLITION?

1 A YES, HE DID.

2 Q NOW, ONCE ARRIVING AT THE SHERIFF'S DEPARTMENT, DID
3 YOU PRESENT HIM WITH THIS FORM?

4 A YES, SIR, I DID.

5 Q IF YOU WILL, PUBLISH THE FORM?

6 A IT READS LEXINGTON COUNTY SHERIFF'S DEPARTMENT,
7 DETECTIVE DIVISION, PERMISSION TO SEARCH.

8 I AND THEN I'VE TYPED IN GARY DUBOSE TERRY---

9 Q WHEN -- DID YOU DO THAT PRIOR TO GARY DUBOSE
10 ARRIVING?

11 A I DID -- I DID THIS AT MY OFFICE BEFORE WE LEFT TO GO
12 TO FAIRFIELD.

13 Q VERY GOOD.

14 A HAVE BEEN INFORMED BY AND I HAVE LIEUTENANT DETECTIVE
15 H. E. PHILLIPS AND DETECTIVE SCOTTIE R. FRIER TYPED IN.

16 Q AND, IN FACT, WERE BOTH LIEUTENANT PHILLIPS AND
17 YOURSELF PRESENT AT THE TIME OF THE EXECUTION OF THIS FORM?

18 A YES, SIR, WE WERE.

19 WHO MADE PROPER IDENTIFICATION AS AN AUTHORIZED
20 LAW ENFORCEMENT OFFICERS OF THE AND I HAVE TYPED IN
21 LEXINGTON COUNTY SHERIFF'S DEPARTMENT OF MY CONSTITUTIONAL
22 RIGHT NOT TO HAVE A SEARCH MADE OF THE PREMISES AND THE
23 PROPERTY OWNED BY ME OR UNDER MY CARE, CUSTODY AND CONTROL,
24 WITHOUT A SEARCH WARRANT.

25 KNOWING OF MY LAWFUL RIGHT TO REFUSE TO CONSENT

1 TO SUCH A SEARCH, I WILLINGLY GIVE MY PERMISSION TO THE
2 ABOVE-NAMED OFFICERS TO CONDUCT A COMPLETE SEARCH OF THE
3 PREMISES AND THE PROPERTY, INCLUDING ALL BUILDINGS AND
4 VEHICLES, BOTH INSIDE AND OUTSIDE OF THE PROPERTY LOCATED
5 AND I HAVE TYPED IN THE BODY AND PERSON OF GARY D. TERRY,
6 W/M FOR WHITE MALE; D.O.B. FOR DATE OF BIRTH 12/01/67; AND
7 S.S. NUMBER FOR SOCIAL SECURITY NUMBER: 250-13-0611.

8 Q WOULD ALL OF THE TYPING PRESENT ON THIS FORM BEEN
9 PRESENT WHEN YOU PRESENTED THE FORM TO GARY DUBOSE TERRY?

10 A YES, SIR, IT WOULD HAVE BEEN.

11 Q PARTICULARLY, THE REFERENCE TO THE BODY AND PERSON OF
12 GARY DUBOSE TERRY, THAT INFORMATION WAS ON THE FORM PRIOR
13 TO IT BEING PRESENTED TO GARY DUBOSE TERRY, THE DEFENDANT?

14 A YES, SIR, IT WAS.

15 Q CONTINUE TO PUBLISH THE FORM, PLEASE, SIR.

16 A THE ABOVE SAID OFFICERS FURTHER HAVE MY PERMISSION TO
17 TAKE FROM MY PREMISES AND PROPERTY ANY LETTERS, PAPERS,
18 MATERIALS OR ANY OTHER PROPERTY OR THINGS WHICH THEY DESIRE
19 AS EVIDENCE FOR CRIMINAL PROSECUTION IN THE CASE OR CASES
20 UNDER INVESTIGATION.

21 THIS WRITTEN PERMISSION TO SEARCH WITHOUT A
22 SEARCH WARRANT IS GIVEN BY ME TO THE ABOVE OFFICERS
23 VOLUNTARILY AND WITHOUT ANY THREATS OF PROMISES OF ANY KIND
24 AT AND I HAVE HANDWRITTEN IN THERE 0949 A.M. ON THIS 17TH
25 DAY OF JANUARY, 1995, AT FAIRFIELD COUNTY, SOUTH CAROLINA.

1 Q IN WHOSE HAND IS THAT WRITTEN?

2 A THAT IS WRITTEN IN MY HAND.

3 IMMEDIATE BELOW THAT, THERE IS A LINE FOR SIGNED.
4 THERE'S AN "X" PLACED THERE AND THE SIGNATURE OF GARY
5 TERRY, SR., IS AFFIXED TO THAT FORM.

6 Q LET ME ASK YOU THIS. LET'S GO DOWN TO THE BOTTOM OF
7 THE PAGE. THERE'S SOME TYPEWRITTEN MATERIAL OR INFORMATION
8 THERE---

9 A UH-HUH.

10 Q ---PUBLISH THAT FOR THE COURT FIRST.

11 A I HAD TYPED ONTO THIS FORM THIS SIGNED CONSENT ALLOWS
12 THE AFOREMENTIONED OFFICERS TO HAVE SAMPLES OF BLOOD,
13 SALIVA AND PUBIC HAIRS FROM THE BODY AND PERSON OF THE
14 AFOREMENTIONED GARY D. TERRY, PERIOD.

15 Q WAS THAT INFORMATION, THAT TYPED INFORMATION ON THAT
16 FORM PRIOR TO PRESENTATION TO GARY DUBOSE TERRY?

17 A YES, SIR, IT WAS.

18 Q TELL ME EXACTLY HOW YOU EXECUTED THAT FORM WITH THE
19 DEFENDANT.

20 A WE EXPLAINED TO MR. TERRY THAT WE WERE THERE UNDER
21 THE GUISE OF THE INVESTIGATION OF THE HOMICIDE OF MS.
22 JACKSON WHICH HAD OCCURRED ON BUCKEYE DRIVE.

23 WE EXPLAINED TO HIM THAT WE HAD A VOLUNTARY
24 PERMISSION TO SEARCH FORM. THAT WE HAD NO LAWFUL WARRANTS
25 NOR ANY COURT ORDERS WHICH FORCED HIM TO COMPLY WITH WHAT

1 WE WANTED TO DO.

2 WE EXPLAINED TO HIM THAT WE WERE THERE STRICTLY
3 TO SEEK A VOLUNTARY CONSENT ON HIS PART TO GIVE US THE
4 THINGS WE HAVE MENTIONED IN THIS FORM. SPECIFICALLY, THE
5 BLOOD, THE PUBIC HAIR AND THE SALIVA TO COMPARE AGAINST AND
6 THE EXACT TERMINOLOGY WE USED WITH HIM TO COMPARE AGAINST
7 ANY EVIDENCE THAT WAS RECOVERED AT THE HOMICIDE SCENE OF
8 MS. JACKSON.

9 THIS WAS EXPLAINED TO HIM BY BOTH MYSELF AND
10 LIEUTENANT PHILLIPS. ON TOP OF READING THIS FORM TO HIM, I
11 KNOW I SPECIFICALLY WENT OVER IT TWO OR THREE TIMES IN
12 DETAIL. EXPLAINING TO HIM THAT HE DID NOT HAVE TO DO THIS.
13 THERE WAS NO COURT ORDER THAT MANDATED HIM TO DO THIS NOR
14 ANY LAWFULLY ISSUED WARRANTS THAT FORCED HIM TO DO THIS.
15 WHAT WE HAD SET UP OR WHAT WE WANTED HIM TO DO WAS STRICTLY
16 VOLUNTARILY ON HIS PART.

17 Q DID YOU, AFTER EXPLAINING ALL OF THAT IN DETAIL TO
18 HIM, ASK HIM TO SIGN THAT FORM INDICATING HIS CONSENT?

19 A YES, SIR, WE DID.

20 Q AND DID HE SIGN IT INDICATING HIS CONSENT?

21 A YES, SIR, HE DID.

22 Q AS A RESULT OF OBTAINING THAT FORM, WHAT DID YOU DO
23 WITH MR. TERRY?

24 A WE TRANSPORTED HIM THEN TO FAIRFIELD HOSPITAL, MET
25 WITH THE -- I BELIEVE HER POSITION, SHE WAS THE HEAD NURSE

1 IN THE EMERGENCY DEPARTMENT WHO WE HAD PREVIOUSLY MADE
2 PHONE CONTACT WITH, EXPLAINED TO HER THAT WE MAY, IF WE HAD
3 A VOLUNTARY SITUATION, BE BRINGING A GENTLEMAN IN TO DO A
4 COLLECTION. WITH THE VOLUNTARINESS OF HIS STATEMENT, WE
5 DID TRANSPORT HIM THERE AND THOSE SAMPLES WERE TAKEN.

6 Q DID YOU PLACE HIM IN CUSTODY FOR THE PURPOSE OF
7 TRANSPORTATION?

8 A NO, SIR, WE DID NOT. HE GOT IN CAR AND RODE WITH US.

9 Q DID HE AT ANY TIME AFTER EXECUTING THAT DOCUMENT
10 INDICATE TO YOU THAT HE WISHED TO WITHDRAW HIS CONSENT FOR
11 THE PURPOSE OF OBTAINING THOSE SAMPLES?

12 A NO, HE DID NOT.

13 Q DID YOU ULTIMATELY HAVE THOSE SAMPLES OBTAINED?

14 A YES, I DID.

15 Q AND IN WHOSE PRESENCE AND BY WHOM?

16 A THEY WERE COLLECTED BY THE NURSE WITH ME STANDING
17 THERE WATCHING THE ENTIRE PROCEDURE AND THEN TAKING
18 POSSESSION OF THE MATERIAL.

19 Q AND DURING THE COLLECTION OF THOSE SAMPLES, DID YOU
20 EVER LEAVE THE IMMEDIATE PRESENCE OF GARY DUBOSE TERRY OR
21 THE PERSON COLLECTING THE SAMPLES?

22 A NO, SIR, I STOOD RIGHT THERE WITH THEM THE ENTIRE
23 TIME.

24 Q AFTER THE COLLECTION OF THE SAMPLES, INTO WHOSE
25 CUSTODY WERE THOSE SAMPLES TRANSFERRED?

1 A THEY WERE TAKEN BY ME INTO MY CUSTODY AND TRANSPORTED
2 TO THE STATE LAW ENFORCEMENT DIVISION WHERE THEY WERE
3 PLACED INTO EVIDENCE.

4 Q OKAY. NOW, IN ORDER TO OBTAIN THAT CONSENT TO SEARCH
5 FORM, DID YOU PROMISE GARY DUBOSE TERRY ANY HOPE OF
6 LENIENCY OR REWARD IN ORDER TO OBTAIN THOSE SAMPLES?

7 A NO, SIR, WE DID NOT.

8 Q DID YOU FORCE OR COERCE GARY TERRY IN ANY FORM OR
9 FASHION IN ORDER TO OBTAIN THAT FORM, THAT CONSENT TO
10 SEARCH?

11 A NO, SIR, WE DID NOT.

12 Q TELL ME AGAIN JUST BRIEFLY ABOUT THE DEMEANOR,
13 EMOTIONAL STATE, THE AFFECT OF GARY DUBOSE TERRY AT THE
14 TIME YOU OBTAINED THAT FORM.

15 A AS I STATED, THE SAME DAY WE TOOK THE STATEMENT FROM
16 HIM ON THE 17TH OF JANUARY, HE WAS VERY PLEASANT, VERY
17 PLEASANT TO SPEAK WITH. WE TALKED ABOUT MUTUAL HOBBIES AND
18 INTERESTS THAT WE HAD IN THE OUTDOORS. VERY COOPERATIVE.
19 HE SEEMED TO BE INTERESTED IN HELPING US WITH WHATEVER WE
20 NEEDED TO TRY TO DO.

21 Q DID YOU, IN FACT, TELL GARY DUBOSE TERRY THAT YOU
22 WERE TAKING THOSE SAMPLES FOR THE PURPOSE OF ELIMINATING
23 SUSPECTS IN THE HOMICIDE OF MS. JACKSON?

24 A YES, I DID; AND SPECIFICALLY IMPLIED TO HIM THAT
25 THOSE WOULD BE COMPARED AGAINST EVIDENCE WHICH HAD BEEN

1 COLLECTED AT THE SCENE.

2 Q AND, THE FACT, FOR THE PURPOSES OF PROBABLE CAUSE,
3 WHICH I DON'T BELIEVE WE HAVE TO ESTABLISH AT THIS TIME,
4 BUT HAD CERTAIN ITEMS OF EVIDENCE BEEN COLLECTED AT THE
5 AUTOPSY AND FROM THE PERSON OF THE VICTIM IN THE CASE?

6 A YES, THEY HAD.

7 Q WERE THEY SUBJECT TO BEING EXAMINED BY SEROLOGY,
8 D.N.A. AND TRACE AT S.L.E.D.?

9 A YES, SIR. YES, SIR, THEY WERE.

10 Q AND WERE SAMPLES NECESSARY FOR COMPARISON FROM
11 SUSPECTS IN ORDER TO DETERMINE WHETHER OR NOT THAT SUSPECT
12 COULD BE THE DONOR OF THE EVIDENCE FOUND ON THE BODY OF THE
13 PERSON OF MS. URAI JACKSON?

14 A YES, SIR, WE WOULD HAVE TO HAVE SAMPLES FROM SUSPECTS
15 FOR COMPARISON.

16 Q AND PREVIOUSLY, YOU HAD GENERATED GARY DUBOSE TERRY
17 AS A SUSPECT IN THIS CASE IN THE MURDER OF URAI JACKSON?

18 A YES, SIR, HIS NAME HAD BECOME PREVALENT IN THE
19 INVESTIGATION.

20 Q YOUR HONOR, THAT'S ALL WE HAVE ON THIS ISSUE.

21 THE COURT: CROSS-EXAMINATION, MR. STONE.

22 MR. STONE: THANK YOU, YOUR HONOR.

23 CROSS-EXAMINATION

24 BY MR. STONE:

25 Q DETECTIVE, YOU IMPLIED OR YOU TOLD MR. TERRY THAT HE

- 1 WAS A SUSPECT IN A MURDER?
- 2 A WE TOLD HIM THAT WE NEEDED THESE ITEMS FROM HIM---
- 3 Q OKAY.
- 4 A ---TO COMPARE AGAINST ITEMS THAT HAD BEEN COLLECTED
- 5 FROM THE CRIME SCENE.
- 6 Q FROM THE CRIME SCENE, FROM THE MURDER OF URAI
- 7 JACKSON?
- 8 A IT WAS EXPLAINED IN GREAT DETAIL THAT THIS WAS
- 9 CONCERNING THE HOMICIDE OF MS. JACKSON---
- 10 Q DID---
- 11 A ---AND THAT---
- 12 Q ---SORRY. I DIDN'T MEAN TO INTERRUPT YOU.
- 13 A THAT'S FINE. I'M SORRY.
- 14 Q YOU DIDN'T THREATEN HIM. YOU DIDN'T TELL HIM, LOOK,
- 15 IF YOU DON'T GIVE US THIS NOW, WE'LL JUST GO DOWN TO A
- 16 JUDGE AND GET HIM TO ORDER IT?
- 17 A NO, SIR, I DID NOT.
- 18 Q OKAY. DID YOU PHYSICALLY THREATEN HIM IN ANY WAY?
- 19 A NO, SIR, I DID NOT.
- 20 Q IN YOUR OPINION, DID HE FEEL THREATENED?
- 21 A HE CERTAINLY WOULD HAVE HAD NO REASON TO.
- 22 Q HOW LONG HAVE YOU BEEN DOING THIS?
- 23 A I'VE BEEN IN LAW ENFORCEMENT FOR 13 YEARS NOW.
- 24 Q HOW LONG HAVE YOU BEEN TAKING CONFESSIONS AND GETTING
- 25 CONSENTS TO SEARCH AND STUFF LIKE THAT?

1 A WELL, I'VE BEEN IN INVESTIGATIONS FOR A LITTLE OVER
2 EIGHT YEARS NOW, WHICH IS SOMETHING WE DO ALL THE TIME.

3 Q AND YOU'VE GOTTEN A NUMBER OF CONFESSIONS, YOU'VE
4 GOTTEN A NUMBER OF CONSENTS TO SEARCH, THINGS LIKE THAT
5 OVER YOUR TIME, HAVEN'T YOU?

6 A THAT'S RIGHT.

7 Q OKAY. DETECTIVE, IS THERE ANY CERTAIN TECHNIQUE THAT
8 YOU USE TO GET SOMEBODY TO CONSENT TO A SEARCH?

9 A I'M NOT SURE I FOLLOW YOU.

10 Q HOW DO YOU GET SOMEBODY TO CONSENT TO A SEARCH?

11 A I JUST PRESENTED TO HIM WHAT WE WERE DOING AND WHAT
12 WE NEEDED TO DO.

13 Q ACCORDING TO YOU, YOU INSTRUCTED GARY THAT HE WAS
14 BASICALLY A MURDER SUSPECT, THAT THERE WAS A MURDER THAT
15 TOOK PLACE AND YOU WANTED BLOOD FROM HIM TO SEE IF HE WAS
16 AT THE SCENE, RIGHT?

17 A INDICATED THAT WE WOULD COMPARE THE ITEMS WE TOOK
18 FROM HIM AGAINST EVIDENCE THAT HAD BEEN COLLECTED AT THE
19 SCENE. THAT WAS THE TERMINOLOGY I USED.

20 Q AND YOUR TESTIMONY TODAY IS THAT HE GAVE YOU THAT
21 WITHOUT ANY STRUGGLE, WITHOUT ANY FIGHT, WITHOUT SAYING
22 HEY, WAIT A MINUTE, I COULD -- I COULD GO TO JAIL FOR THIS.
23 HE DIDN'T SAY ANY OF THAT, DID HE?

24 A HE WAS VERY COOPERATIVE.

25 Q YOU GOT ANY IDEA WHY?

1 MR. HUMPHRIES: OBJECTION AS TO RELEVANCY.

2 MR. STONE: IT'S RELEVANT, YOUR HONOR.

3 THE COURT: WELL, FOR THE PURPOSE OF THIS
4 HEARING, I'M GOING TO GO AHEAD AND LET IT GO---

5 MR. STONE: THANK YOU -- THANK YOU, JUDGE---

6 THE COURT: ---IT DOESN'T MEAN THAT WILL BE
7 ADMISSIBLE LATER ON.

8 MR. STONE: YOU GOT ANY IDEA WHY? HAVE YOU GOT
9 ANY IDEA WHY GARY TERRY KNOWING HE WAS A SUSPECT IN THIS
10 MURDER WOULD TELL YOU, SURE, TAKE MY BLOOD?

11 THE WITNESS: I -- I CAN'T SPEAK FOR WHAT GARY
12 TERRY WAS THINKING AT THE TIME.

13 Q WELL, YOU CAN SPEAK FOR WHAT GARY TERRY WAS THINKING
14 FOR THE TIME FOR THE PURPOSE OF SAYING THAT HE VOLUNTARILY
15 GAVE IT TO YOU, CAN'T YOU? THAT HE WASN'T COERCED, THAT HE
16 DIDN'T FEEL COERCED?

17 A HE CERTAINLY -- HE HAD NO REASON TO.

18 Q OKAY. YOU ALSO TESTIFIED EARLIER THAT HE WAS IN A
19 GOOD ENOUGH STATE OF MIND TO UNDERSTAND WHAT YOU WERE
20 TALKING ABOUT, RIGHT?

21 A YES.

22 Q SO YOU CAN TESTIFY A LITTLE BIT AS TO WHAT GARY'S
23 THINKING. YOU'VE GOT ANY IDEA AS TO WHY HE WOULD AGREE TO
24 THAT?

25 A I CAN TESTIFY AS TO MY INTERPRETATIONS OF HIS

1 ACTIONS. I---

2 Q AND THAT'S -- THAT'S ALL I'M ASKING YOU TO DO.

3 A WHAT HE WOULD HAVE BEEN THINKING AT THE TIME TO
4 CONSENT TO SUCH A SEARCH, I DON'T KNOW.

5 Q DID YOU TELL HIM YOU WERE GOING TO TAKE PUBIC HAIR AS
6 WELL AS OTHER HAIR SAMPLES, THINGS LIKE THAT OTHER THAN
7 JUST BLOOD?

8 A RIGHT. THIS FORM WAS -- THIS FORM IS VERY SPECIFIC.
9 BLOOD, SALIVA AND PUBIC HAIRS AND IT WAS READ AND PRESENTED
10 TO HIM PRIOR TO BEING TAKEN TO THE HOSPITAL.

11 Q SO YOU KNEW IT WASN'T JUST BLOOD TO COMPARE WITH
12 MAYBE THE BLOOD AT THE SCENE?

13 A (NO RESPONSE.)

14 Q HE UNDERSTOOD THAT YOU'RE TAKING SOMETHING MORE THAN
15 JUST BLOOD TO COMPARE TO BLOOD THAT YOU SAID OR TOLD HIM
16 THAT YOU FOUND AT THE SCENE?

17 A I DIDN'T SAY ANYTHING ABOUT BLOOD.

18 Q YOU DID NOT?

19 A I SAID EVIDENCE COLLECTED AT THE CRIME SCENE.

20 Q ALL RIGHT, SIR. THAT'S FAIR.

21 A RIGHT.

22 Q OKAY. IS IT YOUR IMPRESSION, SIR, THAT GARY IS SLOW?
23 THAT GARY, WHILE HE UNDERSTOOD HIS RIGHTS AND MAY HAVE
24 UNDERSTOOD WHAT YOU WERE TELLING HIM, AT THE SAME TIME JUST
25 NEVER PUT IT TOGETHER THAT THAT'S WHAT WAS GOING TO HAPPEN?

1 A I.

2 Q HOW LONG DID YOU SPEND WITH GARY?

3 A MAYBE AN HOUR AND A HALF.

4 Q AN HOUR AND A HALF. AND OVER THE TIME, YOU'VE SPENT
5 SOME MORE TIME WITH HIM, HAVE YOU NOT?

6 A RIGHT.

7 Q ISN'T IT TRUE, SIR, THAT YOU THINK GARY IS FAIRLY
8 DUMB? THAT HE CAN'T PUT THINGS LIKE THAT TOGETHER?

9 A I DON'T KNOW THAT'S FAIR FOR ME TO SAY. I DON'T KNOW
10 WHAT KIND OF EDUCATIONAL BACKGROUND HE'S GOT---

11 Q I UNDERSTAND AND I DON'T MEAN LEARNING. I DON'T MEAN
12 BOOK SENSE.

13 A I UNDERSTAND.

14 Q I MEAN COMMON SENSE. DO YOU GET THE IMPRESSION THAT
15 HE GAVE YOU THAT STUFF JUST BECAUSE HE REALLY WAS KIND OF
16 DUMB? ISN'T THAT FAIR?

17 A I'M NOT SURE WHERE YOU'RE TRYING GO, MR. STONE. I
18 DON'T KNOW.

19 Q I UNDERSTAND. I'M JUST ASKING YOU, THE TIME THAT YOU
20 SPENT WITH HIM AND YOU EXPLAINED EVERYTHING TO HIM THREE
21 TIMES AND I UNDERSTAND THAT HE MAY HAVE UNDERSTOOD HIS
22 RIGHTS AND HE MAY HAVE VOLUNTARILY WAIVED THOSE RIGHTS, BUT
23 IS IT NOT YOUR OPINION THAT GARY WAS KIND OF DUMB?

24 A HE'S CERTAINLY NOT AS INTELLIGENT AS YOU OR A DOCTOR
25 OR---

1 Q I DON'T KNOW ABOUT THAT.

2 A ---OR -- HE'S CERTAINLY MUCH BRIGHTER THAN A LOT OF
3 PEOPLE I'VE DEALT WITH THROUGH THE COURSE OF MY JOB ON THE
4 OTHER TOKEN.

5 Q SURE. OKAY. ALL RIGHT, SIR. NOTHING ELSE. THANK
6 YOU, JUDGE.

7 THE COURT: ANYTHING FURTHER FROM THE STATE?

8 MR. HUMPHRIES: NO, SIR.

9 THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

10 THE WITNESS: THANK YOU, SIR.

11 (WHEREUPON, THE WITNESS WAS
12 EXCUSED AT THIS TIME.)

13 THE COURT: ANYTHING FURTHER IN THIS REGARD FROM
14 THE STATE?

15 MR. HUMPHRIES: NO, SIR.

16 THE COURT: ANYTHING FROM THE DEFENSE?

17 MR. STONE: NO, SIR.

18 THE COURT: OF COURSE, WHAT I AM TO CONSIDER IN
19 AN ISSUE SUCH AS THIS THAT THE DEFENSE HAS RAISED, DO YOU
20 HAVE ANY ARGUMENT ON THAT THAT YOU WANT TO MAKE BEYOND WHAT
21 YOU'VE ALREADY GIVEN?

22 MS. FULLWOOD: WE HAVE NOTHING FURTHER, JUDGE.

23 THE COURT: I THINK THAT IN CONSIDERING SUCH AN
24 INCIDENT REGARDING A CONSENT TO SEARCH AND THE
25 VOLUNTARINESS OF SUCH A SEARCH, OF COURSE, I LOOK AT A LINE

1 OF CASES TO PERSONS WHO MAY CONSENT TO SEARCH. OF COURSE,
2 THE DEFENDANT MAY CONSENT TO SEARCH. THAT'S THE CASE OF
3 STONER VERSUS CALIFORNIA, 376 U.S. 483; 84 SUPREME COURT
4 889; 11 LAW ED, 2D 856. THAT'S A 1964 CASE, BUT IT'S STILL
5 RELEVANT, AS WELL AS THE STATE VERSUS POLLARD, 255
6 SOUTH CAROLINA 339 AND 179 SOUTH EASTERN, 2D, 21 (1971)
7 CASE.

8 AND THEN, OF COURSE, TO BE VALID, THE CONSENT
9 MUST BE VOLUNTARY UNDER THE TOTALITY OF THE CIRCUMSTANCES.
10 THAT IS THE CASE OF SCHNECKLOTH VERSUS BUSTAMONTE, 412
11 U.S. 218; 93 SUPREME COURT 2041, 36 LAW ED, 2D, 854 AND
12 STATE V. WALLACE IS 269 SOUTH CAROLINA 547; 238 SOUTH
13 EASTERN 2D 675 (1977). AND, OF COURSE, THE BURDEN IS UPON
14 THE STATE TO PROVE THE VOLUNTARINESS OF THE CONSENT AND THE
15 DETERMINATION OF VOLUNTARINESS IS A QUESTION OF FACT FOR
16 THE JUDGE. THAT'S STATE V. HARRIS, 277 SOUTH CAROLINA
17 274; 286 S.E. 2D, 137 (1982) CASE.

18 AND, OF COURSE, GOING BACK TO THE BUSTAMONTE
19 CASE, IT'S NOT NECESSARY THAT THE STATE PROVE THE CONSENT
20 WAS A KNOWING AND INTELLIGENT WAIVER OF THE PROTECTIONS OF
21 THE FOURTH AMENDMENT, INSTEAD THE STATE MUST ESTABLISH THAT
22 THE CONSENT WAS, IN FACT, VOLUNTARILY GIVEN, NOT THE RESULT
23 OF DURESS OR COERCION, EXPRESSED OR IMPLIED.

24 AND I FIND THAT FROM THE INFORMATION THAT HAS
25 BEEN PRESENTED TO ME, IN PARTICULAR, THE TESTIMONY OF

1 DETECTIVE FRIER AND THE PERMISSION TO SEARCH WARRANT THAT
2 WAS EXECUTED BY MR. TERRY, THAT THE CONSENT TO SEARCH
3 PERMISSION TO SEARCH WAS VOLUNTARY -- FREELY AND
4 VOLUNTARILY GIVEN.

5 NEXT ISSUE.

6 MR. STONE: THANK YOU, YOUR HONOR.

7 YOUR HONOR, THE DEFENSE WOULD MOVE AT THIS TIME
8 TO EXCLUDE ANY TESTIMONY OF A FINGERPRINT COMPARISON THAT
9 WAS MADE BETWEEN MR. TERRY -- PRINTS TAKEN FROM MR. TERRY
10 AND A LATENT PRINT THAT WAS TAKEN OFF OF A PHONE BOX ON MAY
11 THE 30TH, 1994.

12 THIS APPARENTLY IS THE EVIDENCE THAT THEY ARE
13 USING TO LINK MR. TERRY WITH THE MALICIOUS INJURY TO
14 TELEPHONE OR WHATEVER EXACTLY THAT PARTICULAR CODE SECTION
15 THAT THEY ARE CITING MR. TERRY UNDER.

16 IT'S MY POSITION THAT THERE WAS NO PROBABLE CAUSE
17 TO TAKE PRINTS FROM MR. TERRY AT THIS TIME. IT'S MY
18 POSITION THAT AND I HAVE WITNESSES THAT I PROBABLY NEED TO
19 CALL TO CLARIFY FOR THE COURT EXACTLY WHAT I'M TALKING
20 ABOUT, BUT IT'S MY FIRST POSITION THAT IT'S NECESSARY TO
21 HAVE PROBABLE CAUSE; THE SECOND AND THE VERY LEAST, IT
22 WOULD BE NECESSARY TO GET A COURT ORDER OF SOME TYPE,
23 WHETHER THAT BE A SEARCH WARRANT OR AN ORDER FROM THIS
24 COURT TO GET THE CASE PRINTS THAT WERE TAKEN FROM MR. TERRY
25 AND THE REPORT ON THAT -- IT'S HARD TO READ IT -- IT IS

1 EITHER APRIL THE 10TH, 1995 OR JUNE THE 10TH, 1995.

2 THE COURT: COULD I SEE THE INDICTMENT PLEASE,
3 PHYLLIS.

4 (WHEREUPON, THE INDICTMENT IS
5 HANDED TO THE COURT AT THIS TIME.)

6 THE COURT: THANK YOU, MA'AM.

7 TELL ME THE DATE THAT YOU SAY THE REPORT WAS
8 DONE.

9 MR. STONE: THE REPORT WAS SUBMITTED, YOUR HONOR,
10 JUNE THE 15TH, 1995. I WILL SHOW YOU AND I WILL GO AHEAD
11 AND MARK THESE IF YOU WOULD LIKE AS COURT'S EXHIBIT. I
12 CANNOT READ THIS. IT IS EITHER APRIL THE 10TH, 1995, OR
13 JUNE THE 10TH, 1995, AND I POTENTIALLY HAVE TO ASK AGENT
14 DERRICK THE ANSWER TO THAT---

15 THE COURT: OKAY. ALL RIGHT.

16 MR. STONE: THIS WOULD BE THE CASE PRINT I'M
17 TALKING ABOUT.

18 THE COURT: OKAY. ARE WE READY TO MOVE FORWARD
19 THEN WITH THIS?

20 MR. STONE: YES, SIR.

21 THE DEFENSE CALLS LIEUTENANT JOE MEANS TO THE
22 STAND.

23 JOSEPH E. MEANS, JR.,

24 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT REPORTER: STATE YOUR FULL NAME,

1 SPELLING YOUR LAST NAME, PLEASE.

2 THE WITNESS: JOSEPH E. MEANS, JR., M-E-A-NS.

3 DIRECT EXAMINATION

4 BY MR. STONE:

5 Q LIEUTENANT MEANS, YOU ARE WITH S.L.E.D. -- WHOA! YOU
6 OKAY? THAT CHAIR WENT BACK, JUDGE, SORRY, I DIDN'T MEAN TO
7 HAVE THAT---

8 THE COURT: WELL, EVERYONE'S BEEN WARNED. I
9 THINK THAT HE FOUND OUT.

10 MR. STONE: BE CAREFUL WITH THE CHAIR YOU'RE
11 SITTING IN, LIEUTENANT, OKAY?

12 THE WITNESS: OKAY.

13 Q YOU'RE WITH S.L.E.D.?

14 A YES, SIR.

15 Q ALL RIGHT, SIR. HOW LONG HAVE YOU BEEN WITH
16 S.L.E.D.?

17 A TWENTY-SIX AND A HALF YEARS.

18 Q WHAT DO YOU DO THERE CURRENTLY?

19 A I'M THE LIEUTENANT IN CHARGE OF THE CRIMINAL CENTRAL
20 RECORDS REPOSITORY AT S.L.E.D.

21 Q OKAY. WHAT DOES THAT MEAN? WHAT IS THE CENTRAL
22 CRIMINAL RECORDS REPOSITORY?

23 A WE COLLECT ALL OF THE ARREST INFORMATION SENT IN TO
24 US FROM ALL THE CRIMINAL JUSTICE AGENCIES THROUGHOUT SOUTH
25 CAROLINA BY POSITIVE IDENTIFICATION, FINGERPRINTS CARDS.

1 Q ALL RIGHT, SIR. WHAT -- AND YOU HAVE RESPONDED TODAY
2 TO A SUBPOENA THAT I SENT YOU, IS THAT CORRECT?

3 A YES, SIR.

4 Q ALL RIGHT, SIR. THAT SUBPOENA ASKED YOU TO BRING
5 SOME THINGS WITH YOU. DID YOU BRING THOSE THINGS?

6 A YES, SIR.

7 Q ALL RIGHT. WHAT DID YOU BRING WITH YOU TODAY?

8 A ALL THE FINGERPRINT CARDS THAT WERE SENT IN ON GARY
9 TERRY.

10 Q ALL RIGHT, SIR. AND DID YOU BRING ALSO HIS CRIMINAL
11 RECORDS SHEET?

12 A YES, SIR.

13 Q ALL RIGHT, SIR.

14 I WOULD ASK, IF I COULD, YOUR HONOR, TO MARK THIS
15 AS COURT'S EXHIBIT -- I DON'T KNOW WHAT THE S.L.E.D. RULES
16 ARE ABOUT HOLDING ON TO THESE THINGS, BUT IT WILL BE
17 NECESSARY FOR YOU TO LOOK AT IT.

18 FIRST THING, FIRST---

19 THE COURT: WELL, IF S.L.E.D.'S RULES ARE THAT
20 THEY NEED TO KEEP THEM, THEN WE BETTER NOT MAKE THEM A
21 COURT'S EXHIBIT UNLESS THEY'RE WILLING TO ALLOW US TO KEEP
22 THEM AND MAKE A COPY AND GET THEM BACK TO THEM.

23 MR. STONE: COULD WE DO THAT? COULD WE KEEP THE
24 AND MAKE A COPY OF THEM AND GIVE THEM BACK TO YOU?

25 THE WITNESS: YES, SIR. IT'S A ORIGINAL COPY OF

1 DOCUMENT THAT WE NEED SO---

2 MR. STONE: I SEE.

3 THE WITNESS: ---I DIDN'T MAKE A COPY.

4 Q OKAY. SO YOU BROUGHT THE COPIES WITH YOU TODAY OR
5 YOU BROUGHT THE ORIGINALS?

6 A NO, SIR, ALL THE ORIGINALS.

7 Q ALL RIGHT, SIR. IF WE COULD DO THAT.

8 THE FIRST THING I WOULD OFFER TO THE COURT IS
9 CRIMINAL RECORDS FROM GARY DUBOSE TERRY.

10 THE COURT: THAT WILL BE COURT'S NUMBER NINE?

11 THE COURT REPORTER: YES, SIR.

12 (WHEREUPON, COURT'S EXHIBIT NUMBER
13 NINE, RAP SHEET, MARKED FOR THE RECORD AT THIS TIME.)

14 MR. STONE: LET ME SHOW YOU, LIEUTENANT WHAT'S
15 BEEN MARKED AS COURT'S EXHIBIT NUMBER NINE. YOU'RE ALSO
16 CUSTODIAN OF CRIMINAL RECORDS OR THE RAP SHEETS, ARE YOU
17 NOT?

18 THE WITNESS: YES, SIR.

19 Q ALL RIGHT, SIR.

20 IS THAT A CURRENT CRIMINAL RECORD AND RAP SHEET
21 OF GARY DUBOSE TERRY?

22 A YES, SIR.

23 Q ALL RIGHT, SIR. AT THE VERY TOP OF THAT OR MAYBE THE
24 FIRST PARAGRAPH OF THAT CRIMINAL RECORDS, IT INDICATES THE
25 TERM AFIS. COULD YOU EXPLAIN WHAT THAT TERM IS?

1 A THE FINGERPRINT IMAGE ON THIS SUBJECT IS STORED ON
2 THE SOUTH CAROLINA AFIS.

3 IN OTHER WORDS, WHEN WE CREATE A DATABASE FOR
4 AFIS SEARCHING IN NOVEMBER, 1990, WE WENT BACK AND
5 REENTERED OR ENTERED ALL OF OUR OLDER CARDS ONTO THE AFIS
6 DATABASE.

7 Q ALL RIGHT, SIR. IS IT FAIR TO SAY THAT ANY
8 FINGERPRINT RECORDS YOU HAD AT THE TIME, NOVEMBER OF 1990,
9 WHEN AFIS WENT INTO EFFECT, ALL OF THOSE RECORDS WOULD HAVE
10 GONE TO AFIS?

11 A WE USED MOST OF THE ACTIVE CARDS. I THINK WE HAD AN
12 AGE CUTOFF OF 55 YEARS OF AGE---

13 Q I SEE.

14 A ---AND OVER.

15 Q DO YOU KNOW AND CAN YOU READ THAT REPORT TO TELL IF
16 GARY TERRY'S FINGERPRINTS ARE STORED IN AFIS?

17 A YES, SIR.

18 Q THE ARREST THAT TOOK PLACE -- WELL, LET ME ASK YOU
19 THIS. IF SOMEBODY GETS ARRESTED, DO YOU, AS S.L.E.D., DO
20 YOU KEEP A RECORD OF THEIR FINGERPRINT CARD?

21 A IF IT'S SUBMITTED TO S.L.E.D., WE DO.

22 Q OKAY. SO WHEN THEY ARE ARRESTED AND THEY ARE
23 FINGERPRINTED, YOU GET A COPY---

24 A YES, SIR.

25 Q ---DO YOU NOT? AND THE LOCAL AGENCY GETS A COPY, IS

1 THAT CORRECT?

2 A IF THEY CHOOSE TO MAINTAIN A COPY THEMSELVES, THEY
3 WILL.

4 Q ALL RIGHT, SIR. ALL RIGHT, SIR. ARE ANY OTHER
5 COPIES MADE TO YOUR KNOWLEDGE?

6 A ONE GOES TO THE F.B.I. ALSO.

7 Q ALL RIGHT, SIR. HOW MANY ARRESTS DOES GARY TERRY
8 HAVE ON HIS CRIMINAL RECORD---

9 A UH---

10 Q ---AND THIS, BY THE WAY, IS NOT BASED ON CONVICTION,
11 THIS IS ON ARREST, IS THAT RIGHT?

12 A IT'S ON ARREST---

13 Q ALL RIGHT.

14 A ---APPROXIMATELY EIGHT.

15 Q EIGHT?

16 A YES, SIR.

17 Q DOES THAT MEAN THAT AT CURRENT TIME, GARY TERRY HAS
18 EIGHT FINGERPRINTS CARDS AT S.L.E.D.?

19 A YES, SIR.

20 Q ALL RIGHT, SIR. WHEN WAS GARY'S FIRST FINGERPRINT
21 CARD AT S.L.E.D.? CAN YOU TELL THAT?

22 A THE FIRST SUBMISSION WE HAVE ON HIM WAS ON MAY THE
23 15TH, 1985.

24 Q 1985. HOW MANY DO YOU HAVE AFTER THAT? AND YOU HAVE
25 SEVEN AFTER THAT?

1 A YES, SIR.

2 Q WHAT ARE THE NEXT DATES?

3 A 12/13/85, 6/23/88---

4 Q OKAY.

5 A ---9/15/88, 6/9/92, 8/11/94, 12/19/94, 2/14/95 AND
6 3/24/95 IS THE LAST ONE.

7 Q BASICALLY, ALL OF THEM EXCEPT FOR THE VERY LAST ONE
8 WAS IN THE RECORDS OF S.L.E.D. PRIOR TO JUNE OF 1995, IS
9 THAT RIGHT?

10 A YES, SIR.

11 Q AND, IN FACT, EVEN PRIOR TO APRIL OF 1995, IS THAT
12 RIGHT?

13 A BEFORE -- LET'S SEE. I HAVE THE DATE OF LAST UPDATE
14 THAT THE LAST CARD WAS SENT IN---

15 Q YES, SIR.

16 A ---WAS ON 5/31/96 WHEN THE LAST ENTRY WAS MADE ON THE
17 RAP SHEET.

18 Q SO SIX OUT OF SEVEN---

19 A YES, SIR.

20 Q ---BASICALLY WERE ALREADY IN S.L.E.D. PRIOR TO APRIL
21 OF 1995?

22 A YES, SIR.

23 Q ALL RIGHT, SIR.

24 NOW, I HAVE LOOKED THROUGH YOUR FILE. YOU HAVE
25 ACTUALLY TEN FINGERPRINT CARDS, IS THAT RIGHT?

1 A YES, SIR.

2 Q ALL RIGHT, SIR. WHERE ARE THE OTHER THREE COMING
3 FROM, DO YOU KNOW?

4 A YES, SIR. WE TRACK INDIVIDUALS SOMETIMES THROUGHOUT
5 THE CRIMINAL JUSTICE PROCESS. IF THEY RECEIVE PROBATION,
6 SOMETIMES WE GET A PROBATION CARD, SOMETIMES IF THEY GET
7 INCARCERATION WITH THE DEPARTMENT OF CORRECTIONS, WE
8 RECEIVE THAT CARD ALSO AND IT MAY BE A DUPLICATE OFFENSE.

9 Q I SEE. BUT THERE ARE SEPARATE CARDS TAKEN AT
10 SEPARATE AGENCIES, IS THAT RIGHT?

11 A YES, SIR.

12 Q ALL RIGHT, SIR. AND YOU GET COPIES OF THOSE AS WELL?

13 A YES, SIR.

14 Q ALL RIGHT, SIR. OF THOSE THAT YOU HAVE WITH YOU, HOW
15 MANY WERE PREPARED AS INDIVIDUALS. I DON'T WANT TO TALK
16 ABOUT ANY COPIES. I'M TALKING ABOUT INDIVIDUAL PRINT CARDS
17 WERE PREPARED AND HELD AT S.L.E.D. PRIOR TO APRIL OF 1995?

18 A HOW MANY---

19 Q OF THOSE THAT YOU HAVE WITH YOU?

20 A ALL OF THEM.

21 Q ALL OF THEM?

22 A YES, SIR.

23 Q ALL RIGHT. AND THAT WOULD BE TEN?

24 A YES, SIR.

25 Q ALL RIGHT, SIR.

1 NOW, THOSE FINGERPRINT CARDS, WHO HAS ACCESS TO
2 THEM?

3 A JUST OUR OFFICE. THE CRIMINAL RECORDS SECTION IN
4 ITSELF BUT IF ANY OTHER -- I GUESS OUR LATENT SECTION WOULD
5 ALSO, IF THEY WANT TO EXAMINE A CARD, THEY FREQUENTLY COME
6 IN AND WANT TO EXAMINE CARDS.

7 Q YOUR LATENT SECTION?

8 A YES, SIR.

9 Q WHAT IS YOUR LATENT SECTION?

10 A WHAT IS IT?

11 Q YES, SIR.

12 A IT'S A -- THE LATENT SECTION IN THE FORENSIC
13 BUILDING.

14 Q ALL RIGHT, SIR. AND WHAT IS -- LATENT -- IN OTHER
15 WORDS, YOUR FINGERPRINT EXPERTS---

16 A YES, SIR---

17 Q ---IS THAT FAIR---

18 A ---THEY ARE THE CRIME SCENE PROCESSING.

19 Q ALL RIGHT, SIR. IF YOU ARE A FINGERPRINT EXPERT AND
20 YOU ARE WORKING CRIME SCENES, DO YOU HAVE ACCESS TO THAT
21 FILE?

22 A YES, SIR.

23 Q ALL RIGHT, SIR. IS THERE ANY PROCESS THEY HAVE TO GO
24 THROUGH TO GET THAT OUT OF YOUR FILE?

25 A THEY COME UP TO THE FRONT TO THE RECEPTIONIST AND,

1 YOU KNOW, THEY'LL PULL THE CARD. WE'VE GOT PEOPLE WHO WILL
2 PULL THE CARDS FOR THEM.

3 Q ALL RIGHT, SIR.

4 IF YOU WOULD, LET ME HAND THOSE UP TO THE COURT
5 REPORTER AND WE'LL MARK THOSE AS -- JUDGE, I'M NOT SURE
6 WHAT THE BEST THING TO DO IS. IF WE'LL JUST GO AHEAD AND
7 SHOW THOSE TO YOU AND THEN WE CAN MARK THEM LATER AS
8 COPIES. I DON'T WANT TO OBVIOUSLY MESS UP S.L.E.D.'S
9 PROCEDURE.

10 THE COURT: WELL, I'M NOT AS CONCERNED ABOUT
11 MESSING UP S.L.E.D.'S PROCEDURE AS I AM KEEPING THIS RECORD
12 CLEAN. SO IF YOU ARE GOING TO---

13 MR. STONE: I AGREE.

14 THE COURT: ---INTRODUCE SOMETHING, RIGHT NOW,
15 I'LL LET S.L.E.D. WORRY ABOUT THAT LATER---

16 MR. STONE: ALL RIGHT, SIR.

17 THE COURT: ---BECAUSE THEY KNOW THEY'RE COMING
18 TO COURT. IF THEY NEED TO PROVIDE COPIES, THEY CAN DO SO.
19 WE'LL MAKE SURE THE COPIES ARE MADE, BUT WE ARE GOING TO GO
20 AHEAD AND---

21 MR. STONE: AND MARK THEM---

22 THE COURT: ---MARK THEM---

23 MR. STONE: YES, SIR.

24 THE COURT: ---AS COURT'S NUMBER TEN.

25 MR. STONE: DO YOU HAVE THOSE FINGERPRINT CARDS

1 WITH YOU?

2 THE WITNESS: YES, SIR.

3 THE COURT: HOW MANY ARE THERE?

4 MR. STONE: THERE ARE TEN, YOUR HONOR.

5 THE COURT: CONSISTING OF TEN CARDS, COURT'S
6 NUMBER TEN.

7 (WHEREUPON, COURT'S EXHIBIT NUMBER
8 10, FINGERPRINT CARDS/TEN, MARKED FOR THE RECORD AT THIS
9 TIME.)

10 MR. STONE: ALL RIGHT, SIR.

11 THANK YOU, YOUR HONOR. I DON'T HAVE ANYTHING
12 ELSE FROM LIEUTENANT MEANS.

13 THANK YOU, LIEUTENANT.

14 THE WITNESS: THANK YOU.

15 MR. HUMPHRIES: NO, SIR.

16 THE COURT: ALL RIGHT. THANK YOU, LIEUTENANT,
17 YOU MAY STEP DOWN. APPRECIATE YOU BEING HERE.

18 THE WITNESS: YES, SIR.

19 MR. HUMPHRIES: YOUR HONOR, I BELIEVE, LIEUTENANT
20 MEANS HAD PREVIOUSLY BEEN CALLED OUT ON A SWAT CALL. I
21 DON'T KNOW IF THAT'S STILL ACTIVE. I DON'T HAVE ANY
22 OBJECTION TO HIM BEING EXCUSED.

23 MR. STONE: I DON'T EITHER, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 THE WITNESS: THIS IS YOURS---

1 THE COURT: YES, SIR, WE ARE GOING TO KEEP THOSE
2 WITH US AND WHAT I WILL DO IS ASK THE CLERK TO MAKE SOME
3 COPIES OF THOSE AND YOU CAN GET THE ORIGINALS BACK IF YOU
4 SO DESIRE.

5 THE WITNESS: OKAY.

6 THE COURT: OR IF YOU WERE OUT -- YOU NEEDED TO
7 BE ON A SWAT CALL, I'D SAY YOU'RE PROBABLY A LITTLE LATE
8 RIGHT NOW.

9 THE WITNESS: THEY'VE JUST APPREHENDED HIM.
10 SO---

11 THE COURT: OKAY.

12 BUT YOU MAY BE EXCUSED. IF YOU WANT TO WAIT
13 UNTIL WE FINISH THIS, THEN I'LL GET THE COPY MADE.

14 THE WITNESS: OKAY.

15 MR. STONE: THANK YOU, AGAIN, LIEUTENANT.

16 (WHEREUPON, THE WITNESS WAS
17 EXCUSED AT THIS TIME.)

18 MR. STONE: WE CALL STEVE DERRICK TO THE STAND,
19 YOUR HONOR.

20 THE COURT: STEVE DERRICK.

21 STEVEN M. DERRICK,

22 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE STATE YOUR FULL NAME, SPELLING
24 YOUR LAST NAME.

25 THE WITNESS: STEVEN M. DERRICK. THE SPELLING OF

1 THE LAST NAME, D-E-R-R-I-C-K.

2 DIRECT EXAMINATION

3 BY MR. STONE:

4 Q SIR, I DON'T WANT TO GET YOU -- IS YOUR TITLE AGENT
5 OR DO YOU HAVE A SPECIFIC RANK?

6 A I'M A SENIOR AGENT.

7 Q ALL RIGHT. SENIOR AGENT DERRICK, LET ME FIRST SHOW
8 YOU -- COULD I MARK THIS, PLEASE, MA'AM, AS COURT'S EXHIBIT
9 NUMBER?

10 (WHEREUPON, COURT'S EXHIBIT NUMBER
11 ELEVEN, FINGERPRINT CARD/4/10/95, MARKED FOR THE RECORD AT
12 THIS TIME.)

13 MR. STONE: I SHOW YOU WHAT HAS BEEN MARKED AS
14 COURT'S EXHIBIT NUMBER ELEVEN. ASK IF YOU CAN IDENTIFY
15 THAT, PLEASE, SIR?

16 THE WITNESS: YES, SIR.

17 Q OKAY. WHAT IS THAT?

18 A THAT IS A PHOTOSTATIC COPY OF AN INKED FINGERPRINT
19 CARD OF MR. GARY TERRY THAT BEARS MY SIGNATURE AS THE
20 OFFICIAL WHO TOOK THE PRINT, AS WELL AS OTHER INITIALS OF
21 OTHER AGENTS IN OUR SECTION.

22 Q OKAY. WHAT ARE THE OTHER INITIALS AND YOU MAY WANT
23 TO SHOW THIS TO ME, WHAT INITIALS ARE YOU TALKING ABOUT?
24 UP AT THE TOP RIGHT CORNER?

25 A THAT'S CORRECT, SIR.

1 Q ALL RIGHT, SIR. WHOSE INITIALS ARE THOSE?

2 A ONE IS LIEUTENANT JAMES A. SPRINGS; THE OTHER IS
3 SENIOR AGENT TOM DARNELL AND THE OTHER ONE IS AGENT DAVID
4 W. BLACK.

5 Q OKAY. AND ALL THOSE PEOPLE LOOKED AT THAT CARD AFTER
6 -- AFTER YOU PREPARED IT?

7 A THAT'S CORRECT, SIR.

8 Q ALL RIGHT, SIR. DO YOU REMEMBER WHO YOU SHOWED IT TO
9 FIRST?

10 A IT WOULD HAVE BEEN BETWEEN AGENT BLACK AND AGENT
11 DARNELL.

12 Q OKAY. AND WHAT WAS THE PURPOSE OF SHOWING THEM THAT
13 CARD?

14 A THE PURPOSE FOR THAT IS THIS CARD WAS USED IN THE
15 COMPARISON AGAINST A LATENT PRINT THAT WAS DEVELOPED FROM
16 THE CRIME SCENE.

17 AS PART OF OUR POLICY AND PROCEDURE, ONCE A
18 CONCLUSION IS REACHED ON A LATENT PRINT AND ITS COMPARISON
19 TO AN INKED PRINT, IT HAS TO BE VERIFIED BY ANOTHER
20 EXAMINER.

21 IN CASES OF WHERE WE FEEL NECESSARY TO
22 CORROBORATE OURSELVES, THE CARD AND THE LATENT WOULD ALSO
23 BE TAKEN TO THE DEPARTMENTAL SUPERVISOR FOR HIM TO LOOK AT
24 AND EXAMINE AND RENDER A CONCLUSION.

25 Q AND THAT WOULD BE AGENT SPRINGS?

1 A THAT'S CORRECT, SIR.

2 Q OKAY. DO YOU REMEMBER WHEN YOU TOOK THAT TO AGENT
3 SPRINGS?

4 A THIS PARTICULAR CARD, IT WOULD HAVE BEEN VERY SHORTLY
5 AFTER THE DAY I PRINTED HIM AND CONDUCTED THE EXAMINATION.
6 THE SPECIFIC DATE I DON'T KNOW.

7 Q OKAY. DO YOU RECALL BRINGING IT TO HIM BEFORE OR
8 AFTER THESE OTHER PEOPLE?

9 A IT WOULD HAVE GONE TO HIM AFTER IT HAD BEEN VERIFIED
10 BY THE OTHER EXAMINER.

11 Q IT DID NOT GO TO HIM FIRST AND THEN GO TO SOME OTHER
12 PEOPLE AND COME BACK FOR HIS SIGNATURE, DID IT?

13 A NOT THAT I RECALL, NO, SIR.

14 Q ALL RIGHT, SIR. ALL RIGHT, SIR.

15 NOW, YOU PREPARED COURT'S EXHIBIT NUMBER ELEVEN,
16 IS THAT CORRECT?

17 A I HAVE THE ORIGINAL.

18 Q OKAY. RIGHT. AND I REALIZE THIS IS A COPY, BUT THE
19 ORIGINAL THAT WE ARE TALKING ABOUT ON HERE, YOU PREPARED
20 IT, DID YOU NOT?

21 A I TOOK THE INKED IMPRESSIONS, THAT'S CORRECT, SIR.

22 Q OKAY. AND DO YOU HAVE THE ORIGINAL WITH YOU NOW?

23 A YES, SIR.

24 Q PERHAPS THAT WOULD BE BETTER, YOUR HONOR. I
25 APOLOGIZE. I DIDN'T KNOW HE HAD THAT.

1 THE COURT: WELL, WE'RE GOING TO RUN INTO THE
2 SAME SITUATION WITH THE ORIGINALS. IF I'M GOING TO LET HIM
3 TAKE IT BACK WITH HIM, IF HE CAN VERIFY IT, THEN THAT WILL
4 BE FINE.

5 MR. STONE: ALL RIGHT, SIR.

6 IF YOU CAN LOOK AT THAT, THE ORIGINAL, AND WHAT
7 HAS BEEN MARKED AS COURT'S EXHIBIT NUMBER ELEVEN, ARE THOSE
8 THE SAME THING? JUST ONE IS A COPY OF THE OTHER?

9 THE WITNESS: ONE IS A MACHINE COPY OF THE OTHER.

10 Q ALL RIGHT, SIR. COULD YOU TELL ME WHAT DATE THAT IS
11 TAKEN?

12 A THE PRINTS WERE ROLLED ON 4/10 OF '95.

13 Q OKAY. AND THAT'S UP IN THE LEFT -- IT LOOKS LIKE THE
14 SECOND LINE THAT HAS WRITING ON IT IN THE LEFT CORNER OF
15 THE EXHIBIT, IS THAT RIGHT?

16 A THAT'S THE DATE NEXT TO MY SIGNATURE AS THE OFFICIAL
17 TAKING THE PRINTS.

18 Q OKAY. SO WHEN YOU -- SO WHAT YOU'RE TELLING ME IS
19 COURT'S EXHIBIT NUMBER ELEVEN, THAT IS A DUPLICATION OF THE
20 ACTUAL ORIGINAL, IS THAT RIGHT?

21 A THAT IS CORRECT, SIR.

22 Q OKAY. AND THAT IS -- THE ORIGINAL IS WHAT YOU
23 YOURSELF TOOK. WHEN I ASK TOOK, DO YOU MEAN YOU ACTUALLY
24 ROLLED THE PRINTS YOURSELF?

25 A THAT IS CORRECT, SIR.

1 Q OKAY. IS THAT SOMETHING YOU DO ON A NORMAL COURSE OF
2 BUSINESS?

3 A YES, SIR, THAT'S PART OF MY JOB, YES, SIR.

4 Q TO ACTUALLY TAKING PRINTS?

5 A THAT'S CORRECT.

6 Q IS THERE ANY PARTICULAR EXPERTISE THAT IS REQUIRED TO
7 TAKE PRINTS? I GUESS, ROLL PRINTS, TAKE PRINTS. IS THAT
8 THE SAME THING. I DON'T WANT TO PUT WORDS IN YOUR MOUTH.
9 IS THAT---

10 A BOTH WORDS ARE USED---

11 Q ALL RIGHT, SIR.

12 A ---FOR ROLLING OR TAKING OF AN INKED IMPRESSION.

13 THERE'S A BASIC TRAINING COURSE THAT CAN BE
14 ADMINISTERED TO INDIVIDUALS AND THERE'S A NUMBER OF WRITTEN
15 MATERIALS AS FAR AS ROLLING OR TAKING INKED IMPRESSIONS
16 FROM AN INDIVIDUAL. HOWEVER, AS AN EXAMINER, IN A NUMBER
17 OF CASES, IF I HAVE A DIFFICULT LATENT, I PREFER TO TAKE
18 THE INKED IMPRESSIONS MYSELF BECAUSE I'M THE ONE THAT HAS
19 TO EFFECT THE CONCLUSION FROM THE EXAMINATION. THEREFORE,
20 I'M LOOKING FOR SPECIFIC CLARITY IN ALL OF THE RIDGE
21 DETAIL.

22 Q DID -- DO OTHER PEOPLE THAT TAKE PRINTS, ROLL PRINTS
23 FOR POLICE AGENCIES AND THINGS LIKE THAT, DO THEY HAVE THAT
24 COURSE AS WELL?

25 A I DON'T KNOW SPECIFIC TRAINING FOR LOCAL OR POLICE

1 DEPARTMENTS, COUNTY POLICE DEPARTMENTS. I DON'T KNOW WHAT
2 TRAINING. EACH DEPARTMENT IS DIFFERENT. AS FAR AS TO WHO
3 TAKES THE INKED PRINTS, WHETHER IT'S JAIL PERSONNEL, THE
4 IDENTIFICATION OFFICER, ET CETERA. SO I REALLY CAN'T
5 ANSWER THAT.

6 Q I SEE.

7 A ALL OF OUR AGENTS ARE TRAINED THE PROPER TECHNIQUES
8 OF TAKING ROLLED INKED IMPRESSIONS.

9 Q WHEN YOU TOOK THIS, DO YOU REMEMBER WHERE YOU TOOK
10 THIS PRINT?

11 A YES, SIR. IT WAS AT THE FINGERPRINT STATION ACROSS
12 FROM THE BOOKING DESK AT THE LEXINGTON COUNTY JAIL.

13 Q ALL RIGHT, SIR. AND WAS ANYBODY WITH YOU WHEN YOU
14 DID THAT?

15 A NO ONE FROM MY AGENCY. THE ONLY PEOPLE PRESENT WAS
16 THE ON-DUTY SHIFT PEOPLE AT THE BOOKING DESK.

17 Q OKAY. WHEN YOU TOOK THOSE PRINTS, DID YOU HAVE --
18 DID YOU ASK GARY, BY THE WAY, IF YOU COULD TAKE THOSE
19 PRINTS OR DID YOU JUST TAKE THEM?

20 A I IDENTIFIED MYSELF TO MR. TERRY, THE AGENCY I WORK
21 FOR AND THE PURPOSE OF MY VISIT WITH HIM, THAT I NEEDED TO
22 TAKE A SET OF INKED PRINTS FROM HIM. HE COOPERATED WITH ME
23 FULLY.

24 Q ALL RIGHT, SIR. ALL RIGHT, SIR. DID YOU HAVE ANY
25 TYPE OF COURT ORDER WHEN YOU DID THAT?

1 A NO, SIR, I DID NOT.

2 Q NO SEARCH WARRANT, NO ORDER FROM ANYONE TO DO THAT?

3 A NO, SIR.

4 Q ALL RIGHT, SIR. WHAT -- AND THIS WAS -- I'M SORRY,
5 YOU TOLD ME WAS THAT APRIL OR JUNE THE 10TH OF 1995?

6 A I BELIEVE IT'S GOT FOUR---

7 Q YES, SIR. YOU -- FEEL FREE TO LOOK AT IT. I
8 COULDN'T TELL.

9 A THAT'S 4/10 OF '95.

10 Q APRIL THE 10TH. ALL RIGHT, SIR.

11 LET ME SHOW YOU WHAT HAS ALREADY BEEN MARKED AS
12 COURT'S EXHIBIT NUMBER TEN AND ASK IF YOU COULD REVIEW
13 THOSE THINGS. DO YOU RECOGNIZE THOSE, SIR?

14 A I BELIEVE THE MACHINE COPY IS A COPY OF THE INKED
15 FINGERPRINT CARD OF MR. GARY TERRY THAT I HAD SECURED FROM
16 OUR RECORDS SECTION SOMETIME EARLIER. THE INKED---

17 Q LET ME INTERRUPT YOU JUST A SECOND. IS THAT -- IS
18 THAT CARD NUMBER 53?

19 A I DON'T KNOW WHERE YOU'RE GETTING YOUR NUMBER FROM.
20 IT'S COURT'S EXHIBIT NUMBER TEN.

21 Q OKAY. IS THAT ONE THAT YOU HAD PREVIOUSLY COMPARED
22 WITH THE PRINT THAT YOU FOUND ON THE CRIME SCENE?

23 A IF YOU'LL BEAR WITH ME ONE MOMENT, I CAN VERIFY THAT.

24 Q YES, SIR.

25 A IT APPEARS TO BE A MACHINE COPY OF THE SAME CARD WITH

1 THE EXCEPTION OF SOME NUMBERS THAT'S BEEN CIRCLED IN BLUE.

2 Q I'M SORRY?

3 A THE WRITING INFORMATION APPEARS TO BE THE SAME AS THE
4 INKED CARD THAT I HAVE WITH THE EXCEPTION OF THESE TWO
5 NUMBERS THAT ARE CIRCLED IN BLUE.

6 Q OKAY. THAT WOULD BE -- ONE NUMBER WOULD BE 94-7886
7 AND 8/24/94?

8 A THAT'S CORRECT.

9 Q ALL RIGHT. DO YOU KNOW WHAT THOSE NUMBERS WOULD
10 SIGNIFY?

11 A ONE WOULD BE THE LAB NUMBER THAT IT WAS PULLED FOR
12 AND THE DATE THAT I PULLED IT FROM.

13 Q SO THIS CARD WAS PULLED AUGUST THE 24TH, 1994, IS
14 THAT RIGHT?

15 A THAT'S CORRECT BY ME.

16 Q OKAY. LET ME -- LET ME ASK YOU THIS. ARE THERE ANY
17 HANDWRITTEN NOTES THAT GO ALONG WITH THIS PULLING?

18 A NO, SIR.

19 Q ALL RIGHT, SIR. IF YOU PULL A FINGERPRINT AND MAKE A
20 -- AND ATTEMPT TO MAKE A COMPARISON BETWEEN WHAT YOU HAD
21 PULLED AND THE ITEM THAT YOU ARE TRYING TO COMPARE IT TO,
22 YOU DON'T MAKE ANY NOTES THAT THIS DID MATCH OR DIDN'T
23 MATCH OR ANYTHING LIKE THAT?

24 A I HAVE A NOTE ON THE CONCLUSION I RENDERED ON THAT
25 PARTICULAR CARD. I MISUNDERSTOOD YOUR QUESTION.

1 Q I'M SORRY. OKAY.

2 A I THOUGHT DID I TAKE NOTES OF WHAT SPECIFIC DATE AND
3 TIME I GOT THE CARD. I DID NOT. I DO HAVE A LOG-IN SHEET
4 OF WHENEVER I LOGGED IT IN AND I HAVE A CONCLUSION NOTES
5 THAT I RENDERED ON THE COMPARISON OF THAT LATENT TO THAT
6 CARD.

7 Q OKAY. THAT -- LET ME ASK YOU THIS. I DON'T MEAN TO
8 KEEP INTER -- THOSE CONCLUSION NOTES, DO YOU HAVE THOSE
9 WITH YOU TODAY?

10 A YES, SIR.

11 Q MAY I SEE THEM, PLEASE?

12 (WHEREUPON, THE DOCUMENT IS HANDED
13 TO MR. STONE AT THIS TIME.)

14 MR. STONE: ALL RIGHT, SIR.

15 WHAT YOU HAVE HANDED ME ARE -- IS A SERIES OF --
16 ARE THESE A SERIES OF NOTES THAT YOU HAVE MADE OVER THE
17 TIME WITH THIS CASE OR IS THAT JUST---

18 A OKAY. WHAT I HAVE HERE ON THE FIRST PAGE OF NOTES IS
19 THE ITEMS AND A LIST OF FINGERPRINT CARDS, THE DAY THAT I
20 EITHER RETRIEVED OR WERE DELIVERED TO ME; THE PROCESS NOTES
21 THAT I USED ON THE ITEMS THAT I TOOK FROM THE CRIME SCENE
22 TO PROCESS AT THE LABORATORY AND THE CONCLUSION AGAINST THE
23 FIRST PAGE OF THE NOTES.

24 ON THE THIRD SHEET IS LABELLED A SUPPLEMENTAL
25 REPORT FROM WHICH I HAVE LISTED THE EVIDENCE, THREE INKED

1 FINGERPRINT CARDS SUBMITTED AND THE RESULTS AGAINST THE TWO
2 LATENT LIFTS.

3 Q LET ME MARK THIS AS COURT'S EXHIBIT NUMBER -- WHAT
4 NUMBER ARE WE ON, ROBBIE---

5 THE COURT: TWELVE.

6 MR. STONE: TWELVE.

7 (WHEREUPON, COURT'S EXHIBIT NUMBER
8 TWELVE, CONCLUSION NOTES/DERRICK, MARKED FOR THE RECORD AT
9 THIS TIME.)

10 MR. STONE: AT THE BOTTOM OF THIS IT SAYS RESULTS
11 I27, WHAT DOES I27 MEAN?

12 A THAT IS THE ITEM NUMBER FOR THE LATENT LIFT FROM THE
13 PHONE BOX.

14 Q ALL RIGHT. I SEE. AND IT SAYS CANNOT ELIMINATE WITH
15 I53. WHAT DOES THAT MEAN?

16 A I COULD NOT ELIMINATE IT WITH THE ITEM 53 INKED
17 FINGERPRINT CARD, THAT CARD BEARING THE NAME OF GARY TERRY.

18 Q OKAY.

19 THE FACT THAT YOU COULDN'T ELIMINATE IT, WAS
20 THERE A MATCH AT ALL?

21 A THERE WERE SUFFICIENT NUMBER OF CHARACTERISTICS THAT
22 WERE PRESENT IN THE LATENT AND THE PART OF THE INKED CARD
23 THAT WAS CLEAR AND DISTINCT, THEY WERE ALL IN THE SAME UNIT
24 RELATIONSHIP. BECAUSE OF A DISTORTION IN THE CARD THAT I
25 HAD PULLED FROM RECORDS, AN EXAMINATION OF PREVIOUS CARDS

1 WHICH WERE ON FILE DATED BEFORE THAT DATE, ARREST DATE,
2 THAT WAS THE CLEAREST CARD THAT WAS AVAILABLE ON FILE AT
3 S.L.E.D. BECAUSE I COULD NOT SEE ALL THE CHARACTERISTICS
4 THAT I WAS SEARCHING FOR IN THE INKED CARD OF THOSE THAT
5 WERE CLEAR AND DISTINCT IN THE CARD WERE IN THE SAME UNIT
6 RELATIONSHIP WITH THOSE OF THE LATENT, I REQUESTED AN
7 ADDITIONAL CARD IF AVAILABLE THROUGH THE SHERIFF'S
8 DEPARTMENT. I DID NOT RECEIVED ONE UNTIL I WAS NOTIFIED
9 THAT MR. TERRY WAS IN JAIL AT THE LEXINGTON COUNTY
10 SHERIFF'S DEPARTMENT. AT THAT TIME OR SHORTLY AFTER BEING
11 NOTIFIED, I PROCEEDED AND TOOK THE INKED PRINTS MYSELF
12 BECAUSE I KNEW SPECIFICALLY OF THE FINGER I WAS LOOKING FOR
13 AND THE SPECIFIC AREA I NEEDED SPECIFIC CLARITY IN.

14 Q OKAY. AND WHO TOLD YOU THAT HE WAS IN JAIL?

15 A I BELIEVE SCOTTIE FRIER, AN INVESTIGATOR WITH THE
16 SHERIFF'S DEPARTMENT CALLED ME AND INFORMED ME THAT HE WAS
17 IN JAIL.

18 Q DID HE ALSO INFORM YOU AT THAT TIME THAT A D.N.A.
19 MATCH HAD BEEN MADE?

20 A UH -- I DON'T RECALL.

21 Q ALL RIGHT, SIR. THE PRINT MATCH THAT YOU MADE OR
22 WHEN YOU WENT OVER THERE TO ROLL THE PRINTS AGAIN, DID YOU
23 DO ANYTHING PARTICULARLY DIFFERENT THAN WHAT HAPPENED
24 BEFORE?

25 A YES, SIR.

1 Q WHAT DID YOU DO?

2 A THE NUMBER FOUR RIGHT RING FINGER I HAD CLEAR AND
3 DISTINCT RIDGE CHARACTERISTICS THAT I HAD ROLLED ON THE
4 CARD WHEREAS THE PRECEDING CARD AND THE CARD THAT YOU HAVE
5 A MACHINE COPY OF WAS NOT CLEAR AND DISTINCT IN THAT AREA.

6 Q ALL RIGHT, SIR. SO LET ME ASK YOU ABOUT THIS NOW.
7 THIS IS WHAT YOU'VE JUST REFERRED TO COURT 'S EXHIBIT
8 NUMBER TEN, SPECIFICALLY, THE CARD 53 OR THE CARD THAT YOU
9 HAD MADE THAT COMPARISON WITH, THAT WAS NOT CLEAR ENOUGH,
10 IS THAT CORRECT?

11 A THAT'S CORRECT.

12 Q DID YOU ASK AT THE DETENTION CENTER IF THEY HAD A
13 CARD, A PRINT CARD WHEN YOU WENT DOWN THERE?

14 A WHEN I WENT TO PRINTING?

15 Q WHEN YOU WENT TO THE DETENTION -- DO I NEED TO --
16 I'LL REPEAT IT.

17 A OKAY.

18 Q WHEN YOU WENT DOWN TO THE DETENTION CENTER---

19 A TO PRINT---

20 Q ---TO PRINT HIM---

21 A OKAY.

22 Q ---DID YOU CHECK WITH THE BOOKING DESK TO SEE IF THEY
23 HAD MADE A PRINT OF HIM?

24 A NO, SIR, I DID NOT.

25 Q SO YOU DIDN'T -- YOU DON'T KNOW IF THERE'S IS CLEAR

1 OR NOT?

2 A NO, SIR, I DON'T EVEN KNOW WHETHER THEY TOOK ANY. I
3 NEVER PURSUED IT.

4 Q DID YOU PULL THESE OTHER, THESE OTHER NINE CARDS?

5 A I ONLY PULLED THE ONES THAT WERE ON FILE PRIOR TO THE
6 DATE THAT I GOT THE ITEM 53 CARD WHICH HAD ARREST DATES
7 PRIOR TO THAT DATE.

8 THESE OTHER CARDS WHICH SHOW ARRESTS AFTER THE
9 APRIL OF '94, ET CETERA; I DIDN'T PULL THOSE OR LOOK AT
10 THEM. I DIDN'T NEED TO. BUT THE ONES PRIOR TO THAT, I
11 LOOKED AT AND THEY WERE NOT CLEAR AT ALL.

12 Q YOUR TESTIMONY TODAY IS THAT YOU WENT THROUGH AND
13 PULLED EVERY ONE OF THE CARDS THAT WERE IN EXISTENCE AT
14 S.L.E.D. AT THAT TIME TO SEE IF THEY WERE CLEAR?

15 A THAT'S CORRECT. I HAD THE GIRL AT RECORDS GIVE ME
16 THE FILE---

17 Q OKAY.

18 A ---AND I EXAMINED ALL THE ADDITIONAL CARDS ONCE I HAD
19 ISOLATED DOWN TO THAT ONE PARTICULAR FINGER AND THEY WERE
20 -- ONE SUCH AS THE ONE I'M LOOKING AT NOW, THERE IS NO
21 VISIBLE RIDGE DETAIL ON THAT AREA. THERE'S BLURRED RIDGE
22 DETAIL ON THAT PARTICULAR AREA. THERE'S BLURRED DETAIL ON
23 THAT PARTICULAR AREA. THIS IS BROKEN UP AND NOT COMPLETE
24 RIDGE DETAIL. THIS ONE IS SMEARED IN THAT PARTICULAR AREA.
25 THIS ONE WAS FAINT, CANNOT SEE THAT PARTICULAR AREA. THESE

1 SUBSEQUENTLY CAME IN AFTER I HAD AFFECTED THE
2 IDENTIFICATION.

3 Q THESE THREE THAT YOU HAVE GOT HERE?

4 A TWELVE OF---

5 Q THAT ONE SAYS---

6 A TWELVE OF -- NO, I HAD NOT SEEN THESE---

7 Q OKAY. AND THAT ONE IS DATED---

8 A ---I NEVER---

9 Q ---THAT ONE IS DATED 12 -- 12/1994?

10 A THAT'S CORRECT. I HAD NOT SEEN THAT ONE AND DID NOT
11 KNOW THAT THAT ONE EXISTED. I PULLED MINE SHORTLY BEFORE
12 9/15 OF '94.

13 Q AND THIS ONE IS DATED FEBRUARY THE 14TH OF '95 WHICH
14 WOULD ALSO HAVE BEEN---

15 A DID NOT KNOW THAT ONE EXISTED.

16 Q ALL RIGHT, SIR. ALL RIGHT, SIR.

17 I DON'T KNOW IF I SEE A DATE. OH, THIS IS MARCH
18 THE 24TH, 1995.

19 A DID NOT KNOW THAT ONE EXISTED.

20 Q SO THESE THREE YOU DID NOT TAKE A LOOK AT?

21 A THAT'S CORRECT, SIR.

22 Q ALL RIGHT, SIR. THE PRINT THAT YOU TOOK -- FIRST OF
23 ALL, YOU TOOK THE PRINT FROM THE PHONE BOX, DID YOU NOT?

24 A YOU'RE REFERRING TO THE LATENT PRINT?

25 Q YES, SIR. AND THE LATENT PRINT WOULD BE THE HIDDEN

1 PRINT?

2 A THAT'S CORRECT, SIR.

3 Q ALL RIGHT. YOU TOOK THAT OFF THE PHONE BOX, ISN'T
4 THAT RIGHT?

5 A I DEVELOPED IT AND LIFTED IT OFF THE PHONE BOX,
6 THAT'S CORRECT.

7 Q DO YOU RECALL -- WELL, LET ME ASK YOU ONE OTHER THING
8 REAL QUICK ABOUT THOSE CARDS. YOU SAID THAT THEY DID NOT
9 HAVE -- THAT CARD 53 DID NOT HAVE A SUFFICIENT NUMBER OF
10 IDENTIFICATION POINTS. HOW MANY POINTS DID IT HAVE, YOU
11 RECALL?

12 A NO, SIR, I DID NOT. IT'S NOT BASED ONLY ON POINTS,
13 BUT IT'S THE TOTALITY OF THE PRINT ITSELF THAT LACKED
14 SUFFICIENT CLARITY IN CERTAIN AREAS AND I COULD NOT -- I
15 COULD NOT EFFECT A POSITIVE IDENTIFICATION THAT I WAS SURE
16 OF FROM THAT CARD.

17 Q SO YOU CANNOT TESTIFY TODAY THAT CARD 53 MATCHED TO
18 GARY TERRY'S FINGER, CAN YOU?

19 A NOT IN THE INITIAL EXAMINATION; HOWEVER, COMPARING
20 THE PRINTS THAT I TOOK BACK TO THE CARD, I FIND THAT ALL
21 THE PRINTS, THAT ALL THE CHARACTERISTICS AND ALL THE
22 FINGERS MATCH. SO THE SAME FINGERS THAT MADE THE ORIGINAL
23 CARD THAT I LOOKED AT ALSO MADE THE PRINT CARD THAT I TOOK
24 MYSELF.

25 Q DO YOU HAVE ANY IDEA HOW MANY POINTS OF COMPARISON

1 CARD NUMBER 53 COULD BE MADE WITH THE PRINT THAT WAS FOUND
2 ON THE PHONE BOX?

3 A NO, SIR, I DON'T RECALL.

4 Q OKAY. IS THERE A CERTAIN NUMBER?

5 A NO, SIR. IT'S THE TOTALITY OF THE PRINT ITSELF.

6 WHEN YOU REFER TO POINTS, THAT'S ONLY PART OF THE

7 EXAMINATION PROCESS AND THOSE -- IT IS WHAT'S READILY USED

8 TO EXPLAIN THE IDENTIFICATION TO A JURY BECAUSE THEY ARE

9 EASY TO SEE AND DISPLAY AND EASY FOR A LAY PERSON TO

10 UNDERSTAND, BUT IT GOES BEYOND JUST THE POINTS OF

11 IDENTIFICATION OF WHAT CERTAIN RIDGES DO. YOU GET INTO

12 INCIPIENT RIDGES WHICH ARE NOT FULLY DEVELOPED RIDGES. THE

13 RIDGEOLOGY ITSELF, IF PORES ARE PRESENT. IT'S THE TOTALITY

14 OF THE PRINT AND NOT JUST SPECIFIC POINTS.

15 Q I SEE.

16 ON THE OTHER HAND, HAVE YOU EVER TESTIFIED TO

17 SOMETHING THAT WAS LESS THAN SEVEN POINTS?

18 A NO, SIR, I CAN'T SAY THAT I HAVE.

19 Q HAVE YOU EVER TESTIFIED TO SEVEN POINTS?

20 A NO, SIR.

21 Q OKAY. EIGHT?

22 A YES, SIR.

23 Q OKAY, SIR. THE PRINT THEN, THE LATENT PRINT THAT YOU

24 LIFTED OFF THE PHONE BOX, YOU LIFTED THAT ON MAY THE 30TH,

25 1994, IS THAT CORRECT?

- 1 A IT WAS IN MAY OF '94, YES, SIR.
- 2 Q DO YOU KNOW IF IT WAS MAY THE 30TH, MAY THE 31ST
- 3 OR---
- 4 A I HAVE THE 31ST---
- 5 Q I'M SORRY---
- 6 A ---ON MY RUN SHEET.
- 7 Q ---IT'S THE 31ST. DO YOU KNOW WHAT TIME YOU LIFTED
- 8 THAT PRINT?
- 9 A NO, SIR, I DO NOT KNOW EXACTLY. I KNOW THAT WE
- 10 ARRIVED ON THE SCENE AT APPROXIMATELY 1:40 IN THE
- 11 AFTERNOON. I RECALL WE HAD OVERCAST SKIES. WE HAD THE
- 12 INFORMATION ABOUT THE PHONE LINES BEING PULLED. WE TOOK
- 13 IMMEDIATE STEPS TO WORK WITH POTENTIAL EVIDENCE OUTSIDE AND
- 14 SHORTLY AFTER DEVELOPING THE PRINT, I FRANTICALLY WAS
- 15 GETTING THE BOX OFF THE WALL BECAUSE OF A RAIN SHOWER THAT
- 16 WAS DEVELOPING OVER THE RESIDENCE.
- 17 Q IT HAD NOT RAINED PRIOR TO THAT TO YOUR KNOWLEDGE?
- 18 A DON'T KNOW ANY OF THE PRIOR WEATHER FOR THAT
- 19 PARTICULAR AREA, BUT I DO KNOW THAT I HAD A DEVELOPED PRINT
- 20 AND IT WAS STARTING TO RAIN ON ME. SO IT WAS SHORTLY AFTER
- 21 WE ARRIVED AT 1:40.
- 22 Q THAT LATENT PRINT, DO YOU HAVE THAT WITH YOU TODAY AS
- 23 WELL?
- 24 A YES, SIR, I DO.
- 25 Q ALL RIGHT, SIR. JUST FOR THE CLARITY OF THE RECORD,

1 YOUR HONOR, MAY I -- I WOULD MOVE THAT AS A COURT'S EXHIBIT
2 AS WELL.

3 THE COURT: COURT'S THIRTEEN---

4 MR. STONE: THANK YOU.

5 MR. HUMPHRIES: YOUR HONOR, JUST IN AN ABUNDANCE
6 OF CAUTION, THOSE ITEMS ARE READILY IDENTIFIABLE. I DON'T
7 THINK THEY ARE SUBJECT TO THE CHAIN OF CUSTODY ANALYSIS,
8 BUT FOR THE PURPOSES OF THE RECORD, I WOULD LIKE TO
9 STIPULATE -- I WOULD LIKE FOR THE DEFENSE TO STIPULATE TO
10 THE CHANGE OF CUSTODY AS IT RELATES FROM STEVE DERRICK TO
11 THE COURT FOR THE RECORD IF THEY INTEND TO INTRODUCE THEM
12 INTO EVIDENCE.

13 MR. STONE: I WOULD ASSUME THAT THE STATE WOULD
14 BE INTRODUCING THESE INTO EVIDENCE, BUT AS FAR AS THE CHAIN
15 OF CUSTODY FROM -- BETWEEN THE COURT AND THIS WITNESS, I
16 DON'T HAVE ANY OBJECTION TO THAT.

17 THE COURT: ALL RIGHT. JUST SO THAT THERE'S NO
18 PROBLEM SINCE WE ARE GOING TO BE MAKING COPIES OF
19 ORIGINALS---

20 MR. STONE: YES, SIR.

21 THE COURT: ---I WANT TO MAKE SURE THAT THERE'S
22 NEVER GOING TO BE A QUESTION ABOUT THAT. SO YOU ARE IN
23 AGREEMENT WITH THAT.

24 MR. STONE: I TRUST THE COURT, YOUR HONOR.

25 (WHEREUPON, COURT'S EXHIBIT NUMBER

1 13, LATENT PRINT, MARKED FOR THE RECORD AT THIS TIME.)

2 MR. STONE: LET ME HAND YOU BACK NOW WHAT'S BEEN
3 MARKED---

4 THE WITNESS: I'M SORRY.

5 Q ---LET ME HAND YOU BACK WHAT'S BEEN MARKED AS COURT'S
6 EXHIBIT NUMBER 13. THAT IS THE LATENT PRINT, IS IT NOT,
7 THAT YOU LIFTED FROM THE PHONE BOX ON THE 31ST?

8 A I DIDN'T UNDERSTAND YOUR QUESTION.

9 Q THAT IS THE PRINT THAT YOU LIFTED, THE LATENT PRINT
10 YOU THAT LIFTED OFF OF A TELEPHONE BOX AT MS. JACKSON'S
11 HOUSE ON MAY THE 31ST AROUND 1:40 IN THE AFTERNOON?

12 A THAT'S CORRECT, SIR.

13 Q YOU RAN THAT AS WELL THROUGH AFIS ON JUNE THE 20TH,
14 1994, DID YOU NOT?

15 A THAT'S CORRECT, SIR.

16 Q FROM THE AFIS REPORT THAT YOU GOT, THERE WAS NO MATCH
17 FROM GARY TERRY, WAS THERE?

18 A NO, SIR, THERE WAS NOT.

19 Q YOU ALSO CHECKED ON AUGUST THE 25TH, 1994, WITH MR.
20 TERRY'S PRINTS, SPECIFICALLY CARD 53, IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND AT THAT TIME, YOU COULD STILL NOT MAKE A MATCH
23 BETWEEN THAT LATENT PRINT AND MR. TERRY'S PRINT, IS THAT
24 CORRECT?

25 A BETWEEN THAT SPECIFIC INKED CARD AND THE LATENT,

1 THAT'S CORRECT.

2 Q AND THEN ON APRIL THE 10TH, I BELIEVE IT WAS, IS WHEN
3 YOU WENT BACK AND GOT THE PRINT CARD FROM MR. TERRY AT THE
4 DETENTION CENTER, IS THAT CORRECT?

5 A THAT'S CORRECT, SIR.

6 Q AND AFTER THAT AFTER, AFTER YOU HAD SPOKEN TO SCOTTIE
7 FRIER AND KNEW HE WAS IN JAIL, AT THAT POINT, YOU WERE ABLE
8 TO MAKE AN IDENTIFICATION BETWEEN THE TWO, IS THAT RIGHT?

9 A BETWEEN THE CARDS I ROLLED AND THE LATENT ITSELF,
10 YES, SIR, I PERFECTED THE IDENTIFICATION.

11 Q I DON'T HAVE ANYTHING ELSE, YOUR HONOR.

12 THE COURT: SOLICITOR.

13 CROSS-EXAMINATION

14 BY MR. HUMPHRIES:

15 Q I'M NOT REAL SURE WHAT TO ASK HIM. I DON'T KNOW WHAT
16 THE GROUNDS OF THE MOTION ARE.

17 LET ME ASK YOU THIS. AS IT RELATES TO AFIS AND
18 THESE CARDS WHICH YOU'VE TESTIFIED -- AT LEAST THE ONES
19 THAT YOU HAD PULLED PREVIOUS TO ROLLING YOUR OWN PRINTS,
20 THESE PRINTS CARDS YOU'VE TESTIFIED DID NOT HAVE SPECIFIC
21 ENOUGH DETAIL AS THEY RELATE TO THE LATENT LIFT WHICH YOU
22 TOOK FROM THE HOME OF URAI JACKSON, IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q YOU THEN DID FEEL THE NEED TO ROLL YOUR OWN PRINTS TO
25 DEVELOP THAT SPECIFIC DETAIL IN ORDER TO GET A FAIR

- 1 COMPARISON, IS THAT CORRECT?
- 2 A THAT'S CORRECT, SIR.
- 3 Q AND DID YOU DO THAT?
- 4 A YES, SIR.
- 5 Q NOW, WHEN WE TALK ABOUT CARD 53 AND I ASSUME THAT IS
- 6 THE LAST CARD AVAILABLE TO YOU IN THAT LINE OF CARDS---
- 7 A NO. CARD 53, ACCORDING TO MY NOTES, IF IT'S ITEM 53
- 8 WOULD BE THE FIRST CARD THAT I PULLED FROM RECORDS AND---
- 9 Q WOULD IT -- WOULD IT BE THE BEST CARD IN TERMS OF
- 10 DETAIL IN THAT AREA OF THE OTHER CARDS?
- 11 A THAT'S CORRECT, SIR.
- 12 Q THAT'S WHY YOU SELECTED THAT CARD?
- 13 A THAT'S CORRECT, SIR.
- 14 Q OKAY. NOW, YOU HAVE NOT TOLD THE COURT THAT THAT
- 15 PRINT WAS NOT GARY TERRY'S; THAT IS, THE LATENT LIFT AS
- 16 COMPARED TO CARD 53?
- 17 A NO, SIR, I HAVE NOT. AND AS I STATED IN MY NOTES ON
- 18 ITEM 27, I COULD NOT ELIMINATE IT WITH ITEM 53.
- 19 Q AS IT RELATES TO AFIS, AFIS AND I DON'T KNOW THAT WE
- 20 WANT TO GET INTO A DEEP DISCUSSION ABOUT HOW AFIS ACTUALLY
- 21 WORKS, BUT SUFFICE IT TO SAY, AFIS HAD AVAILABLE TO IT ONLY
- 22 THE RIDGE DETAIL AND SPECIFICITY AS WAS CONTAINED IN THOSE
- 23 PRINT CARDS THAT YOU HAD PULLED AND FOUND PROBLEMS WITH?
- 24 A THAT'S CORRECT, SIR. PLUS AFIS, BEING A MACHINE,
- 25 REQUIRES A LITTLE MORE DETAIL TO PUT IN AND THE POINTS THAT

1 HE MADE REFERENCE TO NEEDS TO BE EFFECTIVE SOMEWHERE
2 BETWEEN TEN AND TWELVE POINTS AND, HERE AGAIN, THE CARDS
3 HAVE TO BE CLEAR. THE AFIS ITSELF IS LOOKING AT THE SAME
4 MINUTIA THAT I WAS LOOKING AT.

5 Q IS IT FAIR TO SAY THAT IN TERMS OF HIERARCHY OF
6 SENSITIVITY OF IDENTIFICATION, THAT AFIS WOULD FALL BELOW A
7 QUALIFIED LATENT PRINT EXAMINER IN TERMS OF ABILITY TO
8 IDENTIFY AND COMPARE LATENTS TO PRINTS?

9 A THE AFIS ITSELF DOES NOT IDENTIFY A PRINT. IT GIVES
10 YOU A LIST OF WHATEVER YOU SET, EIGHT TO SIXTEEN CANDIDATE
11 PRINTS, TO LOOK AT.

12 IF THE MINUTIA OR POINTS OF IDENTIFICATION, AS
13 MOST PEOPLE REFER TO THEM, APPEAR TO BE IN THE SAME UNIT
14 RELATIONSHIP, THEN THE INKED CARD IS PULLED AND EXAMINED
15 AGAINST THE LATENT PRINT BY A QUALIFIED LATENT EXAMINER.
16 NO IDENTIFICATION IS EVER EFFECTED OFF OF THAT T.V. SCREEN
17 OR WHAT AFIS SENDS UP.

18 Q VERY GOOD.

19 NOW, AS IT RELATES TO THE OBTAINING OF THESE
20 PRINT CARDS FROM GARY TERRY, I BELIEVE, YOUR TESTIMONY THAT
21 WAS ON APRIL THE 10TH OF 1995?

22 A THAT'S THE DATE I HAVE ON THE CARD, SIR.

23 Q OKAY. DID -- DID YOU ADVISE MR. TERRY WHY YOU WERE
24 THERE?

25 A YES, SIR, I IDENTIFIED MYSELF I WAS IN UNIFORM, TOLD

1 HIM THAT I WAS WITH S.L.E.D., THAT I WAS THERE TO TAKE
2 INKED FINGERPRINTS OF HIM CONCERNING THE CASE HE HAD BEEN
3 CHARGED WITH.

4 Q DID HE INDICATE TO YOU THAT HE WISHED NOT TO GIVE YOU
5 THOSE PRINTS?

6 A NO, SIR. HE WAS VERY COOPERATIVE WITH ME ALL THE WAY
7 THROUGH.

8 Q AND LET ME ASK YOU THIS. ARE PRINTS HARD TO ROLL
9 WHEN YOU HAVE AN UNCOOPERATIVE SUSPECT?

10 A I DON'T TRY -- WELL, I MAY ATTEMPT TO ROLL A PRINT,
11 BUT I WILL NOT GET A CLEAR PRINT UNLESS THE INDIVIDUAL WILL
12 FOLLOW MY INSTRUCTIONS AND COOPERATE WITH ME.

13 Q HE WAS CLEARLY IN CUSTODY?

14 A THAT'S CORRECT.

15 Q FOR THE MURDER OF URAI JACKSON BASED ON THE
16 INFORMATION YOU HAD?

17 A BASED ON THE INFORMATION I RECEIVED, THAT'S CORRECT,
18 SIR.

19 Q THANK YOU. THAT'S ALL I HAVE.

20 MR. STONE: JUST BRIEFLY, YOUR HONOR.

21 REDIRECT EXAMINATION

22 BY MR. STONE:

23 Q THE INFORMATION YOU HAVE, WHAT PROBABLY CAUSE DID YOU
24 HAVE TO BELIEVE THAT GARY'S PRINT WOULD MATCH THAT PHONE
25 BOX?

1 A BECAUSE I COULD NOT ELIMINATE WITH THE ITEM 53 CARD
2 THE RIGHT RING FINGER.

3 Q THAT'S IT?

4 A THAT'S IT.

5 Q DID YOU HAVE ANY CANDIDATES -- DID ANY CANDIDATES
6 COME UP ON THE AFIS REPORT?

7 A NONE THAT WERE EVEN CLOSE. AND IT SHOULD ALSO BE
8 NOTED BEFORE GETTING MR. TERRY'S CARD, I HAD EXAMINED SOME
9 TWELVE OTHER INKED FINGERPRINTS CARDS OF DIFFERENT
10 INDIVIDUALS THAT DIDN'T EVER COME CLOSE IN THE MINUTIA,
11 PLUS RECEIVED TWO ADDITIONAL CARDS THAT DAY THAT WERE
12 CHECKED ALONG WITH MR. TERRY'S CARD AND THEIR MINUTIA AND
13 CHARACTERISTICS WERE NOT EVEN CLOSE TO THE LATENT. ONLY
14 I53 CARD CAME CLOSE. THERE WASN'T SUFFICIENT ENOUGH FOR ME
15 TO MAKE THAT CALL. IF I ERRED, I ERRED ON THE SIDE OF
16 CAUTION.

17 Q CERTAINLY. CERTAINLY.

18 I UNDERSTAND WHAT MR. HUMPHRIES ASKED YOU IS
19 CONCERNING WHETHER OR NOT MR. TERRY COOPERATED. DID YOU
20 TELL MR. TERRY HE HAD A RIGHT NOT TO DO THAT?

21 A NO, SIR.

22 Q HAVE YOU EVER GOTTEN A COURT ORDER BEFORE YOU'VE
23 GOTTEN FINGERPRINTS FROM SOMEBODY?

24 A THE ONLY ONES THAT I CAN REMEMBER WOULD HAVE BEEN
25 JUVENILE RELATED MATTERS.

1 Q OKAY. EVER USE A SEARCH WARRANT TO GET PRINTS LIKE
2 THAT?

3 A NO, SIR. BASED ON MY TRAINING AND WHAT I'VE READ, IT
4 WAS ALWAYS MY UNDERSTANDING THAT IF THE INDIVIDUAL WAS IN
5 CUSTODY, THAT LAW ENFORCEMENT HAD THE RIGHT TO THEIR
6 PRINTS.

7 Q THANK YOU. NOTHING ELSE.

8 MR. HUMPHRIES: YOUR HONOR, JUST THIS.

9 RECROSS EXAMINATION

10 BY MR. HUMPHRIES:

11 Q AS IT RELATES TO THE PROBABLE CAUSE ASPECT, YOUR
12 TESTIMONY THEN IS YOU HAVE COMPARED -- HAD COMPARED AT THAT
13 TIME THE LATENT LIFT FROM THE HOME OF URAI JACKSON WHERE
14 THE PHONE CORD HAD BEEN PULLED---

15 A FROM THAT METAL BOX, YES, SIR.

16 Q ---TO CARD I53 OR 53, WHICH WAS FROM A PRIOR ARREST
17 OF GARY DUBOSE TERRY?

18 A THAT'S CORRECT, SIR.

19 Q NOW, I WANT YOU WITH SOME SPECIFICITY TO TELL THE
20 COURT EXACTLY WHAT THE RESULTS OF YOUR COMPARISON MEAN?

21 A WELL, THE RESULTS OF MY COMPARISON MEAN IS THE
22 MINUTIA THAT WAS PRESENT IN THE LATENT PRINT ITSELF AND
23 THAT THAT WAS CLEAR AND DISTINCT IN THE INKED CARD WAS IN
24 THE SAME UNIT RELATIONSHIP. THIS BEING THE ITEM 53 CARD,
25 THE FIRST CARD. HOWEVER, THERE WAS NOT ENOUGH CLARITY IN

1 THAT INKED CARD FOR ME, AS A QUALIFIED EXAMINER, TO EFFECT
2 THAT IDENTIFICATION BECAUSE THERE WAS CERTAIN
3 CHARACTERISTICS THAT WERE VISIBLE IN THE LATENT PRINT THAT
4 WERE NOT CLEAR AND DISTINCT IN THE INKED PRINT.

5 AS I SPOKE EARLIER, BECAUSE OF THAT LACK OF
6 CLARITY, I WOULD NOT EFFECT THAT IDENTIFICATION AND IF I
7 ERRED, I ERRED ON THE SIDE OF CAUTION.

8 WHEN I ROLLED THE PRINTS OF MR. TERRY, I GOT THAT
9 AREA CLEAR AND DISTINCT. THOSE CHARACTERISTICS WERE
10 PRESENT. I HAD NO PROBLEM EFFECTING THE IDENTIFICATION.

11 Q LET ME ASK YOU THIS. BASED ON YOUR COMPARISON CARD
12 53 AND THE LATENT LIFT, WAS IT MORE LIKELY THAN NOT THAT
13 GARY DUBOSE TERRY WAS THE DONOR OF THAT LATENT LIFT?

14 A IT WOULD HAVE BEEN MORE PROBABLY HIM THAN LESS,
15 HAVING LOOKED AT ALL THE OTHER CARDS THAT HAD BEEN
16 SUBMITTED ALSO.

17 FINGERPRINTS ARE UNIQUE. THE CHARACTERISTICS ARE
18 UNIQUE TO EACH FINGER ON EACH INDIVIDUAL. NO TWO HAVE EVER
19 BEEN FOUND TO BE THE SAME. WHEN I HAVE A CLEAR AREA,
20 SUFFICIENT RIDGEOLOGY, THE POINTS OF IDENTIFICATION, BUT I
21 CAN'T SEE IT ALL, THEN IT'S MORE PROBABLY THAT FINGER THAN
22 ANOTHER FINGER.

23 Q AND, IN FACT, WHAT DID YOU TELL DETECTIVE FRIER AND
24 LIEUTENANT PHILLIPS REGARDING YOUR COMPARISON OF CARD 53
25 AND THAT LATENT LIFT AS RELATES TO GARY TERRY?

1 A SPECIFICALLY, I DON'T RECALL THE EXACT CONVERSATION.
2 THE BASIS OF IT WAS THAT I COULD NOT ELIMINATE HIM AS BEING
3 A SUSPECT.

4 Q DID YOU HAVE ANY DIRECTION FOR THEM AS A RESULT OF
5 YOUR COMPARISON?

6 A THAT THEY MAY WANT TO PURSUE HIM FURTHER.

7 Q THANK YOU.

8 THE COURT: ANYTHING FURTHER?

9 REDIRECT EXAMINATION

10 BY MR. STONE:

11 Q IS IT YOUR TESTIMONY, SIR, THAT THE FACT THAT YOU
12 COULD NOT COME INTO COURT AND SAY TO THIS COURT THAT THAT
13 FINGERPRINT MATCHED GARY TERRY'S FINGERPRINT, BUT YET IT
14 WAS MORE PROBABLY THAN NOT HIS FINGERPRINT? IS THAT WHAT
15 YOU'RE TELLING US?

16 A I WOULD NOT HAVE COME INTO COURT AND EFFECTED
17 IDENTIFICATION ON ITEM 53 CARD AGAINST THAT LATENT;
18 HOWEVER, AS MY NOTES STATED, I COULD NOT ELIMINATE THAT
19 FINGER BASED ON MY KNOWLEDGE AND THE SCIENCE OF
20 FINGERPRINTS. WHAT MINUTIA WAS PRESENT WAS IN THE SAME
21 UNIT RELATIONSHIP AS IN THE LATENT AND THE INKED CARD.

22 PROBABILITY IS AN INVESTIGATIVE LEAD. AN
23 IDENTIFICATION OR A NEGATION IS AN IDENTIFICATION OR A
24 NEGATION AND THAT'S A PERMANENT THING THAT HAS TO MEET THE
25 SCIENTIFIC STANDARD.

1 Q AND IS IT FAIR TO SAY, SIR, THAT THOSE IDENTIFYING
2 FACTORS THAT YOU SAY DID NOT ELIMINATE GARY TERRY WOULD
3 PROBABLY NOT ELIMINATE A COUPLE OF HUNDRED OR A COUPLE OF
4 THOUSAND OTHER PEOPLE AS WELL?

5 A COULDN'T SAY THAT UNLESS I SAW THE CARDS. THEY
6 DIDN'T EVEN FOLLOW CLOSE TO THE OTHER TWELVE OR FOURTEEN
7 CARDS THAT I LOOKED AT.

8 Q BUT AFIS KICKED BACK A NUMBER OF THEM, DIDN'T THEY?

9 A THEY KICKED BACK SIXTEEN THAT WEREN'T EVEN ANYWHERE
10 CLOSE OR THEY WOULD HAVE BEEN EXAMINED AND ADDED TO THE
11 LIST OF CARDS I LOOKED AT.

12 Q I DON'T HAVE ANYTHING ELSE.

13 THE COURT: ANYTHING ELSE, SOLICITOR?

14 MR. HUMPHRIES: NO, SIR, YOUR HONOR.

15 THE COURT: THANK YOU. YOU MAY STEP DOWN, AGENT
16 DERRICK.

17 THE WITNESS: THANK YOU, YOUR HONOR.

18 (WHEREUPON, THE WITNESS WAS
19 EXCUSED AT THIS TIME.)

20 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
21 DEFENSE IN THIS REGARD?

22 MR. STONE: NO WITNESSES, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. STONE: YOUR HONOR, AS OF APRIL 10, 1995,
25 BEFORE THIS AGENT TOOK FINGERPRINTS FROM GARY TERRY, THE

1 ONLY PROBABLE CAUSE HE HAD TO DO SO AS HE -- AS HE STATED
2 ON THE STAND WAS THAT HE COULD NOT ELIMINATE MR. TERRY'S
3 PRINT DESPITE THE FACT THAT THERE WERE A NUMBER OF OTHER
4 PRINTS ON THE SCENE THAT WERE NEVER MATCHED TO ANYBODY, HE
5 COULD NOT ELIMINATE MR. TERRY. THAT WAS IT. HE DIDN'T SAY
6 HE HAD THE PROBABLE CAUSE FOR HIM BECAUSE HE HAD BEEN -- HE
7 HAD CONFESSED TO A MURDER OR THAT HE HAD GOTTEN THE D.N.A.
8 REACTION. IN FACT, HE COULD NOT EVEN REMEMBER KNOWING
9 THAT.

10 AS I UNDERSTAND AND FIRST OF ALL, LET ME BE QUITE
11 FRANK WITH THE COURT. I FOUND NOTHING IN SOUTH CAROLINA ON
12 THIS ISSUE AND IF YOU DO, LET ME SEE IT, PLEASE, BUT I
13 CAN'T FIND ANYTHING ON---

14 THE COURT: OH, I WILL IF I FIND IT.

15 MR. STONE: THE ONLY THING I COULD FIND DIRECTLY
16 ON POINT WAS THE UNITED STATES SUPREME COURT DECISION FROM
17 1969, SPECIFICALLY, DAVIS VERSUS MISSISSIPPI.

18 NOW, THAT CASE TALKED ABOUT A SEIZURE WITHOUT
19 PROBABLE CAUSE OF TWENTY-FOUR PEOPLE IN WHICH THEY DID A
20 DRAGNET PROCEEDING. SOMETHING, I WOULD ARGUE, WOULD BE A
21 LITTLE BIT FAIRER THAN WHAT HAPPENED TO MR. TERRY AT THE
22 DETENTION CENTER. THOSE TWENTY-FOUR PEOPLE, THE PROBABLE
23 CAUSE THEY HAD WAS THEY MET THE GENERAL DESCRIPTION AND
24 THEY WERE IN THE VICINITY, WHICH, AGAIN, I WOULD SAY, IS
25 PROBABLY A LITTLE BIT MORE THAN WHAT WE HAVE FROM THE

1 IDENTIFICATION OF THE PROBABLE CAUSE ELICITED BY THAT LAST
2 WITNESS THAT TOOK THE STAND.

3 THEY HELD THAT THE SEIZURE ITSELF WAS NOT PROPER.
4 IT WAS VIOLATIVE OF THE FOURTH AMENDMENT AND THE FACT THAT
5 THEY TOOK PRINTS AFTER THAT, SOMETHING DIFFERENT. THAT WAS
6 SOMETHING THAT WAS THE FRUIT OF THE POISONOUS TREE AND
7 COULD NOT COME INTO EVIDENCE.

8 WHEN I FIRST LOOKED AT THIS CASE, I ASSUMED THAT
9 THOSE PRINTS WERE TAKEN FROM THE PEOPLE AT THE DEPARTMENT
10 OF CORRECTIONS -- OR EXCUSE ME, AT THE DETENTION CENTER.
11 THAT WOULD BE IN MY OPINION TOTALLY SEPARATE THAN WHAT WE
12 HAVE HERE.

13 WE HAVE AN INVESTIGATING OFFICER COMING TO MR.
14 TERRY AND TAKING HIS PRINTS. NOT IN THE ORDINARY COURSE OF
15 DETENTION, NOT IN THE ORDINARY COURSE OF ANYTHING OTHER
16 THAN INVESTIGATING HIS OWN CRIME; AND INTERESTING ENOUGH,
17 IF WE ARE LOOKING AT IT FROM AN ANALYSIS OF PROBABLE CAUSE,
18 HE HAS WHAT I WOULD CONSIDER LESS THAN PROBABLE CAUSE. HE
19 HAS ALREADY RUN IT THROUGH AFIS AND GOT ZERO. HE RAN IT
20 AGAIN ON AUGUST THE 25TH, STILL COULD NOT MAKE A MATCH. HE
21 ALMOST HAS INFORMATION TELLING HIM THAT THAT'S NOT IT AS
22 OPPOSED TO ENOUGH TO ESTABLISH PROBABLE CAUSE.

23 NOW, IF HE HAS PROBABLE CAUSE, YOUR HONOR, I
24 WOULD STILL -- IT SEEMS TO ME THAT IN ORDER FOR A SEARCH
25 NOT TO BE REASONABLE -- FOR A SEARCH TO BE REASONABLE, THAT

1 THE FIRST STEP WE LOOK AT IS DO YOU HAVE PROBABLE CAUSE AND
2 IF YOU DO, A SEARCH WOULD STILL BE UNREASONABLE IF YOU
3 DON'T HAVE A COURT ORDER OR A WARRANT.

4 NOW, OF COURSE, THERE'S A BOAT LOAD OF EXCEPTIONS
5 TO THAT ALL BASED ON EXIGENT CIRCUMSTANCES. AND I WOULD
6 ARGUE, YOUR HONOR, MR. TERRY HAD NO EXIGENT CIRCUMSTANCES
7 WHATSOEVER. HE'S IN THE DETENTION CENTER. HE'S NOT GOING
8 ANYWHERE. AT ANY POINT OF TIME, HE COULD HAVE GOTTEN THE
9 RECORDS FROM THE DETENTION CENTER WHICH HE DID NOT DO. HE
10 COULD HAVE ASKED THEM TO DO THEM, WHICH HE DID NOT DO. HE
11 COULD HAVE GONE BACK AND LOOKED AT ANY OF THESE OTHER
12 AGENCIES THAT AGENT MEANS TESTIFIED HAD THESE PRINTS WHICH
13 HE ALSO DID NOT DO.

14 IN FACT, THERE ARE THREE CARDS THAT WERE AT
15 S.L.E.D. AT THE TIME ACCORDING TO AGENT -- LIEUTENANT MEANS
16 THAT HE DIDN'T EVEN BOTHER TO LOOK AT.

17 YOUR HONOR, MY FIRST POSITION IS I DON'T THINK --
18 I DON'T THINK IT'S EVEN CLOSE AS FAR AS PROBABLE CAUSE AND
19 I THINK FOR A SEIZURE IN THAT SITUATION, I DON'T THINK THE
20 FACT THAT HE'S JUST IN THE DEPARTMENT OF -- THE DETENTION
21 CENTER IS ENOUGH TO GET AROUND THAT. IT WOULD BE ONLY, I
22 BELIEVE, IF IT WAS IN THE ORDINARY COURSE OF BUSINESS FROM
23 THE DETENTION CENTER'S STANDPOINT FOR A BOOKING PROCEDURE
24 OR WHATEVER WHICH HE NEVER BOTHERED TO CHECK.

25 THANK YOU.

1 THE COURT: MR. HUMPHRIES.

2 MR. HUMPHRIES: I'VE GOT THREE POSITIONS AND
3 ASSERT HIERARCHY.

4 THE FIRST POSITION IS THIS. UNDER STATE VERSUS
5 RICH, WHICH IS A SOUTH CAROLINA CASE, THE ADMISSION OF
6 PROPERLY AUTHENTICATED FINGERPRINT CARDS ARE -- PROPERLY
7 AUTHENTICATED --WELL, THEY'RE ADMISSIBLE, IF THEY'RE
8 PROPERLY AUTHENTICATED.

9 OUR FIRST POSITION IS THESE WILL BE AT THE TIME
10 OF TRIAL. EVERYTHING ELSE IS IRRELEVANT.

11 MOVING ON, YOUR HONOR, OUR FIRST POSITION IS
12 FINGERPRINTING, WHILE IN CUSTODY WHETHER AT THE TIME OF
13 ARREST OR SOMETIME DURING THAT DETENTION, IS NOT A SEARCH
14 AT ALL.

15 AND, YOUR HONOR, I APOLOGIZE TO COURT. I
16 BASICALLY HAD TO SURMISE WHAT THIS MOTION MIGHT BE. I
17 DON'T HAVE ANY HARD COPY CASES TO PROVIDE YOU. QUITE
18 FRANKLY, I'M WORKING WITH SUMMARIES. HAD HAD SOME NOTICE,
19 PERHAPS, I COULD HAVE DONE THAT, BUT I HAD NO NOTICE. SO
20 I'LL DO THE BEST I CAN IN THAT REGARD.

21 FIRST OF ALL, YOUR HONOR, AS IT RELATES TO
22 WHETHER OR NOT IT'S A SEARCH, STATE VERSUS EDWARDS, WHICH
23 IS CITED AT 415 U.S. 800 STATES THAT IT'S THE -- IT IS
24 CLEAR THAT A LEGAL ARREST OF A PERSON DOES FOR, AT LEAST, A
25 REASONABLE TIME AND TO A REASONABLE EXTENT TAKE HIS OWN

1 PRIVACY OUT OF THE REALM OF PROTECTION FROM POLICE INTEREST
2 AND WEAPONS, MEANS OF ESCAPE AND EVIDENCE. AND THUS, IF A
3 PERSON HAS BEEN LAWFULLY ARRESTED, IT IS REALLY NOT
4 SIGNIFICANT WHETHER CERTAIN TYPES OF IN-CUSTODY
5 INVESTIGATION, FOR EXAMPLE, FINGERPRINTING CONSTITUTES A
6 FOURTH AMENDMENT SEARCH. INVESTIGATION IS LAWFUL IN ANY
7 EVENT BECAUSE A VALID ARREST WAS MADE.

8 THERE HAS BEEN ABSOLUTELY NO CONTEST TO THE
9 QUESTION OF WHETHER OR NOT THIS ARREST WAS VALID AT THIS
10 POINT. THAT'S MY FIRST POSITION.

11 THAT EVEN IF PROBABLY -- EVEN IF THIS IS A
12 SEARCH, WHICH I SUBMIT IT IS NOT, THEN THIS IS A SEARCH
13 WHICH REQUIRES NO PROBABLE CAUSE BASED ON THE FACTS AND
14 CIRCUMSTANCES.

15 UNITED STATES VERSUS ROBINSON, WHICH IS CITED
16 AT 14 -- 414 U.S. 218. FULL SEARCH OF THE PERSON INCIDENT
17 TO A CUSTODIAL ARREST IS NOT ONLY AN EXCEPTION TO THE
18 WARRANT REQUIREMENT OF THE FOURTH AMENDMENT, BUT IT -- IT
19 IS ALSO A REASONABLE SEARCH UNDER THAT AMENDMENT WITHOUT A
20 SHOWING OF PROBABLE CAUSE THAT WEAPONS OR EVIDENCE WOULD BE
21 FOUND.

22 IT BASICALLY STATES WE DON'T EVEN NEED PROBABLE
23 CAUSE IF THIS IS A SEARCH.

24 UNITED STATES VERSUS EDWARDS STANDS FOR THE
25 PROPOSITION THAT IT'S A BROAD RIGHT, WHILE A DEFENDANT IS

1 IN CUSTODY, THAT THESE TYPES OF EVIDENCE ARE COLLECTED FROM
2 HIM.

3 NOW, MOST CASES THAT RELATE TO THIS TYPE OF
4 EVIDENCE USE FINGERPRINTING AS THE ABSOLUTE ROCK SOLID
5 BOTTOM FOR THE LEAST INTRUSIVE.

6 IN FACT, FINGERPRINTING IS COMPARED TO THINGS
7 LIKE VOICE EXEMPLARS, HANDWRITING EXEMPLARS. BOTH OF WHICH
8 HAVE BEEN FOUND ADMISS -- THAT YOU CAN TAKE THOSE WITHOUT A
9 WARRANT, WITHOUT A SHOWING OF PROBABLE CAUSE. AND THEY
10 COMPARE THOSE AS SLIGHTLY HIGHER IN TERMS OF OR SLIGHTLY
11 MORE PROTECTED THAN FINGERPRINTS.

12 YOUR HONOR, SPECIFICALLY ON POINT IS THE CASE OF
13 UNITED STATES VERSUS SEACREST (PHONETICALLY) .

14 NOW, THAT'S A SEVENTH CIRCUIT COURT OF APPEALS
15 CASE, BUT IN THAT CASE, THE DEFENDANT WAS IN CUSTODY, UNDER
16 ARREST, HAD BEEN PROPERLY BOOKED IN BY THAT DETENTION
17 CENTER AND LATER AN F.B.I. AGENT CAME AND PRINTED HIM FOR,
18 AT LEAST, BASED ON WHAT I CAN READ, YOUR HONOR, SIMILAR
19 CIRCUMSTANCES THAT WE HAVE IN THIS CASE.

20 AND THE COURT SAID IN THAT CASE THAT WHERE A
21 DEFENDANT IS INCARCERATED IN THE COUNTY JAIL AWAITING TRIAL
22 THE F.B.I. AGENT COULD TAKE THE DEFENDANT'S PRINTS BECAUSE
23 HE WAS ALREADY IN CUSTODY AND FINGERPRINTING IS NOT A
24 SIGNIFICANT INVASION OF PRIVACY BECAUSE IT INVOLVES ONLY
25 PASSIVE PARTICIPATION BY THE INDIVIDUAL AND VERY LITTLE

1 INCONVENIENCE.

2 YOUR HONOR, IF WE WERE TALKING ABOUT TAKING
3 SUSPECT SAMPLES IN THIS CASE OR SOME KIND OF INTRUSION OR
4 EVEN -- OR EVEN A MORE INVOLVED INSPECTION OF THE BODY OF
5 GARY TERRY, OTHER THAN FINGERPRINTS, WHICH LIKE VOICE AND
6 LIKE HANDWRITING ARE COMMONLY EXPOSED TO THE PUBLIC WHERE
7 THERE IS NO REASONABLE EXPECTATION OF PRIVACY, THEN WE
8 MIGHT HAVE A DIFFERENT MATTER, BUT IN THIS CASE, MR. TERRY
9 WAS IN CUSTODY. FINGERPRINTING, WHETHER AT THE TIME OF
10 ARREST OR SOMETIME AFTER HE IS ARRESTED WHILE STILL IN
11 CUSTODY, IT IS NOT A SEARCH. IF IT IS A SEARCH, IT IS NOT
12 A SEARCH THAT REQUIRES PROBABLE CAUSE AND EVEN IF IT
13 REQUIRES PROBABLE CAUSE, SENIOR AGENT STEVE DERRICK
14 TESTIFIED THAT BASED ON HIS COMPARISON WITH CARD 53 AND THE
15 LATENT LIFT OBTAINED FROM THE HOUSE OF URAI -- URAI
16 JACKSON'S HOUSE, THAT MORE PROBABLY THAN NOT, GARY DUBOSE
17 TERRY WAS THE DONOR OF THAT LATENT LIFT WHICH IS THE
18 STANDARD FOR PROBABLE CAUSE.

19 YOUR HONOR, BASED ON THOSE ARGUMENTS AND I FEEL
20 LIKE I HAVE DONE THAT IN SORT OF A HURRIED FASHION AND I
21 HATE TO MOVE ON WITHOUT BEING MORE THOROUGH, BUT, YOUR
22 HONOR, AND LET ME CITE THIS ONE OTHER CASE. FLOYD
23 VERSUS STATE, WHICH IS AN ARKANSAS CASE, BUT THAT CASE
24 STATES THAT THE MOST OBVIOUS AND EXAMPLE AS IT RELATES TO
25 INHERENTLY REASONABLE SEARCHES CONDUCTED PURSUANT TO

1 ROBINSON AND EDWARDS, THAT THE MOST OBVIOUS EXAMPLE IS
2 THE TAKING OF THE ARRESTEE'S FINGERPRINTS WHICH QUIET
3 CLEARLY WAS JUSTIFIED FROM THE MERE FACT OF LAWFUL
4 INCARCERATION.

5 THAT'S THE STATE'S POSITION, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 ANYTHING ELSE, MR. STONE?

8 MR. STONE: JUST BRIEFLY, YOUR HONOR.

9 I THANK MR. HUMPHRIES FOR CITING STATE VERSUS
10 RICH. CHIEF JUSTICE NESS AND THE REST OF THE SUPREME
11 COURT REVERSED AND REMANDED THAT CASE.

12 NOW, AS FAR AS SOUTH CAROLINA CASE LAW, WHAT I
13 CITED TO YOU IS UNITED STATES CASE LAW. I THINK -- I
14 UNDERSTAND HIS POSITION. WHAT CONFUSES ME, YOUR HONOR,
15 ABOUT THIS WHOLE SITUATION IS THAT COMMONLY IN SOUTH
16 CAROLINA IN ORDER TO GET MAJOR CASE PRINTS, IN ORDER TO GET
17 HANDWRITING EXEMPLARS, IN ORDER TO GET ANYTHING ONCE
18 SOMEBODY IS IN CUSTODY AND ARRESTED FOR A CHARGE ESPECIALLY
19 FOR ONE SO SERIOUS AS THIS, YOU COME INTO THE COURTROOM AND
20 WE HAVE A MOTION ON IT.

21 I MEAN, I'M READING RIGHT NOW AND ORDER THAT WAS
22 SIGNED AND DATED JULY THE 28TH, '97, A STANDARD ORDER THAT
23 CAME IN AND REQUIRED THE DEPUTY SOLICITOR, FRAN HUMPHRIES,
24 AND THE DEPUTY PUBLIC DEFENDER, KATHY EVATT, TO COME IN
25 HERE AND TALK ABOUT HANDWRITING EXEMPLARS AND MAJOR CASE

1 PRINTS.

2 THE COURT: WAS THAT A PERSON IN CUSTODY?

3 MR. STONE: I -- SIR?

4 THE COURT: WAS THAT A PERSON IN CUSTODY?

5 MR. STONE: AND HAD ALREADY BEEN INDICTED, YES,
6 SIR. I MEAN, IT'S MY -- THEY MAY NOT NEED THIS PRINT, YOUR
7 HONOR, FOR THE MURDER CASE, BUT FOR THE PHONE PRINT CASE,
8 FOR THE PHONE CASE, IT'S PRETTY IMPORTANT. AND IT SEEMS TO
9 ME THAT IF WE GO TO THE TROUBLE TO COME IN HERE AND ASK FOR
10 AN ORDER SUCH AS THIS, THERE'S GOT TO BE A REASON FOR IT
11 AND MY POSITION IS THE FOURTH AMENDMENT IS PRETTY GOOD
12 REASON.

13 THANK YOU.

14 MR. HUMPHRIES: LET ME JUST SAY THIS TO CLEAR THE
15 RECORD. REGARDING STATE VERSUS RICH, IT WAS REVERSED AND
16 REMANDED. I'M NOT CITING TO THE COURT AN AUTHORITY WHICH
17 ON THAT POINT HAS BEEN REVERSED AND REMANDED. IT STANDS
18 FOR THE PROPOSITION THAT A PROPERLY AUTHENTICATED PRINT
19 CARD CAN BE ADMITTED INTO EVIDENCE.

20 IN THAT CASE, IT WAS NOT PROPERLY AUTHENTICATED.
21 AND I WANTED TO MAKE SURE I WAS NOT TRYING MISLEAD THE
22 COURT AND I'M SURE YOUR HONOR UNDERSTOOD THAT---

23 THE COURT: YES, SIR.

24 MR. HUMPHRIES: ---I WANTED THE RECORD CLEAR IN
25 THAT REGARD.

1 THE COURT: I'M READING THAT CASE AND I'M ALSO
2 GOING TO READ THAT CASE THAT HE'S TALKING ABOUT BECAUSE I
3 DON'T WANT ANYBODY TO MISSTATE ANY OF THE LAW TO ME WITHOUT
4 ME FULLY UNDERSTANDING IT OR MAKING ANY REPRESENTATIONS TO
5 IT ON AN ISSUE LIKE THIS. AND IT'S ALWAYS NICE TO HAVE THE
6 COURT A COPY OF A CASE LIKE THAT WHENEVER YOU ARE GOING TO
7 ARGUE SUCH A POINT. IF YOU KNEW THAT YOU WERE GOING TO
8 COME IN AND ARGUE IT BECAUSE I DON'T HAVE THAT. I DON'T
9 HAVE ACCESS TO IT. SO I'M GOING TO ASK MY CLERK TO MAKE A
10 COPY OF IT. WE ARE GOING TO TAKE A BREAK. I'M GOING TO
11 LOOK AT THAT AND THEN I'M GOING TO MAKE MY DECISION, BUT I
12 LOOK AT THAT AS I DID WHEN I PRACTICED LAW. I ALWAYS TRIED
13 TO PROVIDE THINGS TO THE OTHER SIDE WHENEVER I WAS GOING TO
14 CITE A POINT EVEN IF IT WAS THE DAY THAT I WENT IN THERE
15 BECAUSE I THINK IT'S PARTICULARLY ADVANTAGEOUS TO A JUDGE
16 WHEN HE'S NEVER EVEN HEARD OF A CASE WHEN HE COMES IN TO
17 TRY IT AND HAS NO IDEA WHAT THE FACTS AND CIRCUMSTANCES OF
18 IT ARE. AND I'M JUST NOW BEGINNING TO LEARN ABOUT A CASE
19 THAT YOU ALL HAVE BEEN DEALING WITH FOR MONTHS AND YEARS.
20 SO I'D LIKE TO HAVE THAT CASE.

21 MR. STONE: YOUR HONOR, I HAVE AND I APOLOGIZE.
22 I HAVE -- ACTUALLY I FOUND THIS IN A CASE BOOK. CERTAINLY,
23 I WILL PASS THAT UP, BUT I KIND OF WAS TRYING TO GET A COPY
24 OF THE WHOLE THING WHICH I'M NOT OPERATING---

25 THE COURT: YOU DON'T HAVE A COPY OF THE CASE?

1 MR. STONE: I HAVE GOT A COPY OF THE CASE THAT'S
2 -- IT'S CITED PRETTY HEAVILY IN THIS CASE BOOK WHICH I'LL
3 BE GLAD TO HAND UP TO THE COURT.

4 THE COURT: WELL, DO WE HAVE ANY---

5 MR. STONE: JUDGE, WE HAVE IT ON THIS COMPUTER
6 HERE, BUT I CAN'T FIGURE OUT HOW TO MAKE THAT PRINT.

7 JUDGE, PLEASE -- AND I APOLOGIZE FOR NOT GIVING
8 YOU MORE NOTICE ON THIS, BUT IT WAS NOT UNTIL THIS WEEKEND
9 THAT I FOUND OUT THAT PRINT WAS NOT TAKEN FROM THE
10 DETENTION CENTER AS I---

11 THE COURT: WELL, WHEN DID YOU FIND OUT ABOUT
12 THIS CASE?

13 MR. STONE: IN ALL HONESTY, LAST NIGHT AT 11
14 O'CLOCK.

15 THE COURT: OKAY. WELL, THAT'S A GOOD ENOUGH---

16 MR. STONE: AND I APOLOGIZE. I MEAN I DIDN'T---

17 THE COURT: ---THAT'S A GOOD ENOUGH REASON FOR
18 ME, BUT IF I HAD KNOWN ABOUT IT EARLIER, I COULD HAVE SENT
19 MY LAW CLERK TO THE LAW SCHOOL AND WE COULD HAVE VERY
20 EASILY GOTTEN A COPY OF IT OR EVEN HAVE SOMEBODY FAX ME ONE
21 OVER HERE.

22 MR. STONE: YES, SIR. I HAVE THE DISK, YOUR
23 HONOR---

24 THE COURT: WE'LL TAKE A BREAK.

25 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

1 (RECESS.)

2 THE BAILIFF: ALL RISE.

3 THE COURT: THANK YOU. PLEASE TAKE YOUR SEAT.

4 LET ME SEE THE LAWYERS OVER HERE TO THE SIDE,
5 PLEASE.

6 (WHEREUPON, A BENCH CONFERENCE WAS
7 HELD AT THIS TIME OFF THE RECORD.)

8 THE COURT: ALL RIGHT. SO THE RECORD IS CLEAR.

9 I THINK THAT THE COURT REPORTER HAS MADE COPIES
10 OF THE COURT'S EXHIBITS NINE, TEN, ELEVEN AND TWELVE --
11 THIRTEEN WAS A COPY, CORRECT?

12 THE COURT REPORTER: YES, SIR.

13 THE COURT: AND THE ORIGINALS HAVE NOW BEEN
14 RETURNED TO THE AGENTS.

15 IS THAT UNDERSTOOD?

16 MR. STONE: YES, SIR. I THINK THE COPIES CAME
17 THROUGH SUBSTANTIALLY LIGHTER THAN THE ORIGINALS AND
18 THERE'S SOME PROBLEMS ON ONE OF THEM, BUT, YES, SIR, THAT
19 IS TRUE.

20 THE COURT: WELL, OF COURSE, IF THEY COME AND
21 TESTIFY, WE ARE GOING TO HAVE THE -- WE'LL HAVE THEM TO
22 HAVE THE ORIGINALS WITH THEM---

23 MR. STONE: YES, SIR.

24 THE COURT: ---THEY WOULD HAVE THOSE, BUT JUST
25 FOR THE PURPOSES OF THESE EXHIBITS, JUST MAKE SURE THAT --

1 WE WANTED TO MAKE SURE THAT THEY KEPT THE ORIGINALS AND
2 THAT THEY WERE NOT HERE UNTIL THEY ARE ADMITTED INTO AS A
3 STATE OR DEFENSE EXHIBIT.

4 ALL RIGHT. ONE OTHER THING THAT I HAD ASKED THE
5 LAWYERS IN THE SIDE BAR WAS ON THE APRIL 10TH OF '95,
6 WHETHER OR NOT THE DEFENDANT WAS REPRESENTED BY COUNSEL AT
7 THAT TIME AND I THINK THAT IS SOMETHING THAT IS BEING
8 CHECKED AT THIS TIME.

9 SO IF YOU COULD ADVISE ME AS TO WHETHER OR NOT.
10 I UNDERSTAND MS. FULLWOOD TOLD ME THAT THERE HAD BEEN SOME
11 OTHER MATTERS WHICH HE HAD BEEN REPRESENTED FROM AUGUST OF
12 '94, IS THAT CORRECT?

13 MS. FULLWOOD: YES, SIR, THAT'S CORRECT. YOUR
14 HONOR, IN MY FILE HERE, I HAVE AN ORDER OF APPOINTMENT
15 DATED AUGUST 18, 1994.

16 THE COURT: AND WHAT WAS THAT FOR?

17 MS. FULLWOOD: YOUR HONOR, THE ORDER---

18 THE COURT: I MEAN, IT WASN'T ANYTHING ATTENDANT
19 TO THE CHARGES WITH WHICH HE IS BEFORE THE COURT AT THIS
20 TIME THOUGH.

21 MS. FULLWOOD: NO, SIR, IT IS NOT.

22 AS I EXPLAINED TO THE COURT IN THE SIDE BAR, WHAT
23 WE NORMALLY DO, IF WE HAVE AN OPEN ACTIVE FILE ON A CLIENT,
24 IF THAT CLIENT PICKS UP NEW CHARGES DURING THE COURSE OF
25 THAT REPRESENTATION, WE GO AHEAD AND REPRESENT THAT CLIENT

1 WITHOUT REQUIRING THAT THEY BE RE-SCREENED.

2 THE COURT: WELL, IN THE SEVENTH CIRCUIT, WE
3 WOULD RE-SCREEN THEM AT THAT TIME TO SEE IF THEY QUALIFIED
4 AGAIN FOR A PUBLIC DEFENDER BECAUSE CIRCUMSTANCES DO CHANGE
5 AND SOMETIMES PEOPLE COME IN FRONT OF ME AND SAY THAT
6 THEY'VE GOT A JOB AND THEY'RE WORKING AND THEY ARE
7 REPRESENTED BY THE PUBLIC DEFENDER AND I WANT TO KNOW WHY
8 THEY ARE. MAYBE Y'ALL HAVE A DIFFERENT WAY OF EVALUATING
9 THEM DOWN HERE THOUGH.

10 MS. FULLWOOD: I THINK THE PRACTICE MIGHT BE A
11 LITTLE BIT DIFFERENT.

12 THE COURT: MAYBE Y'ALL HAVE A LIFETIME BENEFIT
13 IF YOU'RE REPRESENTED BY THE PUBLIC DEFENDER, THAT YOU
14 REPRESENT THEM FROM NOW ON.

15 MS. FULLWOOD: WELL, SOMETIMES IT SEEMS THAT WAY.

16 THE COURT: YES, MA'AM.

17 MR. HUMPHRIES: YOUR HONOR, I DON'T HAVE ANY
18 EXCEPTION AS TO THE STATED PRACTICE OF THE PUBLIC
19 DEFENDER'S OFFICE WITH REGARD TO REPRESENTATIONS OF
20 DEFENDANTS. PERHAPS, THE CLERK -- I NOTICE THAT MADAM
21 CLERK IS NOW REVIEWING THE FILE REGARDING ANY ORDER OF
22 REPRESENTATION IN THIS CASE, WHICH I WOULD ASK HER TO DO.
23 I KNOW THAT THE CLERK'S OFFICE ROUTINELY RE-SCREENS
24 EVERYONE WHO REQUESTS A SCREEN AT THE JAIL AND THAT'S DONE
25 INDEPENDENT OF THE PUBLIC DEFENDER'S OFFICE.

1 THE COURT: OKAY.

2 MR. HUMPHRIES: I DON'T KNOW IF THAT WAS DONE IN
3 THIS CASE.

4 THE COURT: OF COURSE, I WOULD SAY THAT, OF
5 COURSE, THE REPRESENTATION BY COUNSEL THAT FINGERPRINTING
6 IS NOT A CRITICAL STAGE ACCORDING TO THE CASE OF CAMPBELL
7 VERSUS STATE, 256 S.C. 474; 182 S.E. 2D. 883

8 ALL RIGHT. ARE WE READY TO PROCEED?

9 MS. FULLWOOD: YES, SIR. IF I COULD SUPPLEMENT
10 MY EARLIER REMARKS---

11 THE COURT: YES.

12 MS. FULLWOOD: ---ABOUT COUNSEL?

13 AFTER WE WERE APPOINTED IN 1994 TO REPRESENT MR.
14 TERRY, WE FIRST CONSULTED WITH HIM ABOUT THIS CASE ON APRIL
15 THE 7TH OF 1995, AT THE DETENTION CENTER---

16 THE COURT: APRIL 7TH---

17 MS. FULLWOOD: ---THE FILE REFLECTS A JAIL VISIT.

18 THANK YOU.

19 THE COURT: APRIL 7TH OF '95?

20 MS. FULLWOOD: YES, SIR.

21 THE COURT: ALL RIGHT.

22 IS THE STATE READY TO PROCEED AT THIS POINT?

23 MR. HUMPHRIES: YES, SIR, YOUR HONOR. THE STATE
24 IS READY.

25 THE COURT: IS THE DEFENSE READY?

1 MS. FULLWOOD: YES, SIR.

2 THE COURT: ALL RIGHT.

3 THE MANNER IN WHICH I NORMALLY HANDLE BRINGING
4 THE JURY BACK, WHETHER IT BE ONE THAT IS SEQUESTERED OR
5 NOT, IS I WILL ALWAYS ASK THE STATE AND THE DEFENSE IF THEY
6 DESIRE POLLING OF THE JURY IN ANY FASHION CONCERNING ANY
7 OUTSIDE CONTACT AND SO FORTH. AND IF YOU DESIRE TO WAIVE
8 THAT, YOU MAY DO SO. IF YOU WANT POLLING, SIMPLY LET ME
9 KNOW. BUT I WILL ASK YOU THAT EACH TIME THAT THEY LEAVE
10 THE COURT HOUSE WHETHER IT BE AT THE END OF THE DAY, COMING
11 BACK IN THE MORNING OR IF THEY GO OUT FOR LUNCH.

12 ALL RIGHT. LET'S BRING OUR JURY IN

13 (JURY IN.)

14 THE COURT: POLLING OF THE JURY BY THE STATE?

15 MR. HUMPHRIES: THE STATE WAIVES.

16 THE COURT: BY THE DEFENSE?

17 MS. FULLWOOD: THE DEFENSE WAIVES.

18 THE COURT: MADAM FOREPERSON, LADIES AND
19 GENTLEMEN OF THE JURY, IT'S GOOD TO SEE YOU AGAIN.

20 I APOLOGIZE FOR KEEPING YOU WAITING IN YOUR JURY
21 ROOM FOR THIS PERIOD OF TIME, BUT AS YOU WILL LEARN
22 THROUGHOUT THE COURSE OF THE TRIAL, THERE ARE TIMES WHEN I
23 HAVE MATTERS OF LAW THAT I'M DEALING WITH THAT WILL BE DONE
24 OUTSIDE OF YOUR PRESENCE AND I'LL GIVE YOU A FURTHER
25 EXAMINATION ABOUT THAT IN JUST A FEW MOMENTS.

1 NOW, LADIES AND GENTLEMEN OF THE JURY, UNDER THE
2 LAW OF SOUTH CAROLINA WHERE THE STATE SEEKS THE DEATH
3 PENALTY, AS IT DOES HERE, THEN THE TRIAL IS A BIFURCATED
4 ONE; THAT IS, IT IS A TRIAL WHICH IS HELD IN TWO PARTS.

5 FIRST, A TRIAL IS HELD BEFORE A JURY TO DETERMINE
6 THE GUILT OR INNOCENCE OF THE DEFENDANT. THAT IS THE PHASE
7 OF THE TRIAL WHICH WE ARE PRESENTLY HOLDING. AT THE
8 CONCLUSION OF THE FIRST TRIAL, SHOULD THE VERDICT OF THE
9 JURY BE GUILTY AND I MAKE NO RECOMMENDATION TO YOU
10 CONCERNING THE VERDICT, IF THE JURY IS CONVICTED OF THE
11 CRIME OF MURDER, THEN THE SECOND PROCEEDING WILL BE HELD.

12 THAT SECOND PROCEEDING IS A SENTENCING PROCEEDING
13 AT WHICH EXTENUATING, AGGRAVATING AND MITIGATING
14 CIRCUMSTANCES MAY BE INTRODUCED INTO EVIDENCE AND
15 CONSIDERED BY YOU, THE JURY. SHOULD SUCH A PROCEEDING BE
16 NECESSARY, I WILL FURTHER INSTRUCT YOU AT THAT TIME.

17 PLEASE DERIVE NO INFERENCE FROM WHAT I HAVE JUST
18 TOLD AS TO WHAT YOUR VERDICT SHOULD BE. THE PURPOSE OF MY
19 TELLING YOU THIS IS TO EMPHASIZE THAT YOU ARE NOT TO
20 CONSIDER PUNISHMENT OR SENTENCE IN THIS PHASE OF THE CASE.
21 YOU ARE ONLY TO DETERMINE THE INNOCENCE OR GUILT OF THE
22 DEFENDANT BASED ON THE EVIDENCE THAT HAS BEEN INTRODUCED IN
23 THE TRIAL OF THIS CASE.

24 NOW, MADAM FOREPERSON AND LADIES AND GENTLEMEN OF
25 THE JURY, THE CASE THAT WE ARE ABOUT TO TRY IS THAT OF

1 THE STATE VERSUS GARY DUBOSE TERRY. HE IS THE DEFENDANT
2 WHO IS CHARGED BY AN INDICTMENT FILED IN THIS COURT WITH
3 THE CRIMES OF MURDER, BURGLARY IN THE FIRST DEGREE,
4 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND MALICIOUS
5 INJURY TO A TELEPHONE SYSTEM. THE ELEMENTS OF WHICH WILL
6 BE EXPLAINED TO YOU SHORTLY.

7 NOW, YOU SHOULD UNDERSTAND THAT THE INDICTMENT IS
8 SIMPLY THE CHARGE BY WHICH THE CASE IS BROUGHT INTO COURT
9 AND THAT IT IS NOT IN ANY SENSE EVIDENCE OF ANY OF THE
10 ALLEGATIONS THAT IT CONTAINS.

11 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO THE
12 INDICTMENT. THE STATE, THEREFORE, HAS THE BURDEN OF
13 PROVING EACH OF THE ESSENTIAL ELEMENTS OF THE INDICTMENTS
14 BEYOND A REASONABLE DOUBT AND IT WILL BE YOUR DUTY, LADIES
15 AND GENTLEMEN, TO DECIDE WHETHER THE STATE HAS MET THAT
16 BURDEN.

17 IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE
18 GUILT OR INNOCENCE OF THE DEFENDANT AND YOUR VERDICT MUST
19 BE BASED SOLELY ON THE EVIDENCE AS IT'S PRESENTED TO YOU IN
20 THIS TRIAL AND ON THE LAW AS I INSTRUCT YOU DURING AND AT
21 THE CONCLUSION OF THE CASE.

22 NOW, IN JUST A MOMENT, THE SOLICITOR WILL MAKE
23 WHAT IS CALLED HIS OPENING STATEMENT IN WHICH HE WILL
24 EXPLAIN TO YOU THE ISSUES IN THIS CASE OR AT LEAST WHAT HE
25 CONTENTS TO BE THE ISSUES IN THIS CASE AND IF THE ATTORNEY

1 FOR THE DEFENDANT WISHES TO DO SO, HE OR SHE MAY ALSO MAKE
2 AN OPENING STATEMENT, THOUGH, HE OR SHE IS NOT REQUIRED TO.

3 NOW, I WISH TO TELL YOU THAT WHAT THE ATTORNEYS
4 WILL SAY AT THIS TIME IS NOT EVIDENCE IN THIS CASE. IT'S
5 IS ONLY THEIR CONTENTION AS TO WHAT THE ISSUES ARE.

6 THE EVIDENCE IN THIS CASE WILL BE PRESENTED TO
7 YOU BY THE TESTIMONY OF SWORN WITNESSES FROM THIS WITNESS
8 STAND OR BY SUCH EXHIBITS AS MAY BE INTRODUCED INTO
9 EVIDENCE.

10 NOW, UNDER CONSIDERATION OF THIS EVIDENCE, YOU
11 SHOULD REMEMBER THAT UNDER THE CONSTITUTION OF THE STATE OF
12 SOUTH CAROLINA, YOU, JURORS ALONE, ARE THE SOLE JUDGES OF
13 THE FACTS IN THIS CASE. AND THE SAME LAW THAT MAKES YOU
14 THE JUDGES OF THE FACTS ALSO MAKES ME THE JUDGE OF THE LAW.
15 I CANNOT INVADE YOUR PROVINCE AND TELL YOU WHAT THE FACTS
16 ARE AND YOU SHOULD NOT INVADE MY PROVINCE AND DIFFER WITH
17 ME ABOUT WHAT THE LAW IS. YOUR JOB IS TO TAKE THE LAW AS I
18 WILL GIVE IT TO YOU AND APPLY IT TO THE FACTS AS YOU FIND
19 THEM FROM THE WITNESSES THAT TESTIFY FROM THE WITNESS
20 STAND, AS WELL AS ANY EXHIBITS THAT MAY BE INTRODUCED INTO
21 EVIDENCE. AND AFTER DOING THAT, YOU WILL RENDER YOUR
22 VERDICT, A TRUE AND JUST VERDICT UNDER THE SOLEMN OATH THAT
23 YOU TOOK SEVERAL HOURS AGO AS JURORS.

24 NOW, FROM TIME TO TIME DURING THE TRIAL OF THIS
25 CASE, YOU MAY HEAR ONE OF THE LAWYERS SAY SOMETHING LIKE I

1 BELIEVE WE HAVE A QUESTION OF LAW OR A MATTER OF LAW TO
2 DISCUSS OR MAY WE APPROACH THE BENCH OR SOMETIMES I MIGHT
3 FIND IT NECESSARY THAT YOU BE EXCUSED FROM THE COURTROOM
4 FOR AWHILE AS THE ATTORNEYS AND I DISCUSS MATTERS OF LAW.
5 NOW THE REASON FOR THIS IS BECAUSE YOU ARE THE JUDGES OF
6 THE FACTS IN THIS CASE AND SOMETIMES WHEN I AM DISCUSSING
7 MATTERS OF LAW WITH THE ATTORNEYS, IT MAY BE NECESSARY FOR
8 ME TO MAKE SOME COMMENT AS TO THE FACTS IN CONNECTION WITH
9 RULING WHETHER OR NOT A PARTICULAR LAW IS APPLICABLE.

10 NOW, ONCE AGAIN, I'M NOT SUPPOSED TO TELL YOU
11 WHAT I THINK THE FACTS ARE. SO MY PRACTICE IS TO EXCUSE
12 YOU FROM THE COURTROOM WHILE THESE DISCUSSIONS MAY TAKE
13 PLACE SO THAT IN WAY WILL YOU BE INFLUENCED BY ANYTHING
14 THAT I MIGHT SAY OR DO IN CONNECTION WITH THE FACTS.

15 AND IN THAT REGARD, LET ME TELL YOU AGAIN THAT
16 YOU AND YOU ALONE ARE THE SOLE JUDGES OF THE FACTS IN THIS
17 CASE.

18 IN DETERMINING WHAT THE TRUE FACTS ARE IN THIS
19 CASE, YOU OF NECESSITY MUST PASS UPON THE CREDIBILITY OR
20 THE BELIEVABILITY OF THE WITNESSES WHO WILL TAKE THE
21 WITNESS STAND. IT WILL BE MY RESPONSIBILITY TO RULE AS A
22 MATTER OF LAW AS TO WHETHER CERTAIN TESTIMONY IS ADMISSIBLE
23 AT ALL OR NOT, BUT ONCE I HAVE ALLOWED THAT TESTIMONY TO BE
24 ADMITTED, WHETHER OR NOT YOU BELIEVE IT, IS SOLELY FOR YOU
25 TO DETERMINE.

1 IN PASSING UPON THE CREDIBILITY OR BELIEVABILITY
2 OF THE WITNESSES, YOU HAVE A RIGHT AS A JURY TO TAKE INTO
3 CONSIDERATION THE INTEREST OF ANY WITNESS, THE BIAS OF ANY
4 WITNESSES, THE PREJUDICE OF ANY WITNESS, THE OPPORTUNITY
5 FOR THE WITNESS TO HAVE OBSERVED THE MATTERS AND THINGS
6 ABOUT WHICH HE OR SHE MAY TESTIFY AS WELL AS THE Demeanor
7 OF THE WITNESS UPON THE WITNESS STAND. ANYTHING THAT IS IN
8 THE RECORD THAT WILL AID AND ASSIST YOU IN EVALUATING THE
9 TESTIMONY OF THE SEVERAL WITNESSES WHO WILL TESTIFY IN THIS
10 CASE, YOU HAVE A RIGHT TO CONSIDER AND THAT MEANS, MADAM
11 FOREPERSON AND LADIES AND GENTLEMEN, THAT IT IS YOUR DUTY,
12 UNDER YOUR SWORN OBLIGATIONS AS JURORS TO PAY CLOSE
13 ATTENTION TO THESE WITNESSES, TO OBSERVE THEM AND TO LISTEN
14 TO THEM AND TO PAY CLOSE ATTENTION TO THE ATTORNEYS AS WELL
15 AS TO THE COURT. DO NOT LET YOUR THOUGHTS WANDER, BUT GIVE
16 STRICT ATTENTION TO THE TESTIMONY OF THIS CASE SO THAT AT
17 THE CONCLUSION OF ALL OF THE TESTIMONY, AFTER THE ARGUMENTS
18 OF THE LAWYERS AND THE CHARGE OR INSTRUCTIONS ON THE LAW BY
19 THE COURT, YOU WILL THEN BE IN A POSITION TO DETERMINE WHAT
20 THE TRUE FACTS ARE AND TO APPLY THE LAW AS I SHALL GIVE IT
21 TO YOU AS TO THOSE FACTS AND THUS RENDER A TRUE AND JUST
22 VERDICT.

23 NOW, FROM TIME TO TIME DURING THE COURSE OF THIS
24 TRIAL, ONE OF THE LAWYERS MAY OBJECT TO SOME BIT OF
25 TESTIMONY OR EVIDENCE WHICH THE OTHER SIDE SEEKS TO

1 PRESENT. AS IN SPORTS, BUSINESS OR ANY OTHER STRUCTURED
2 ACTIVITY, THERE ARE CERTAIN RULES THAT BOTH SIDES MUST OBEY
3 IN PRESENTING EVIDENCE. THESE RULES HAVE A DEFINITE
4 PURPOSE. THEY ENSURE THAT THE INFORMATION YOU RECEIVE IS
5 THE MOST TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE.

6 NOW, AN OBJECTION IS THE PROCEDURE THAT'S USED
7 FOR AN ATTORNEY TO CALL A POSSIBLE VIOLATION OF THE RULES
8 OF EVIDENCE TO MY INTENTION AS THE JUDGE OF THIS COURT AND
9 FOR THIS REASON, YOU SHOULD NOT HOLD AN ATTORNEY'S
10 OBJECTION AGAINST HIS OR HER CLIENT NOR SHOULD YOU CONCLUDE
11 FROM MY RULING ON THE OBJECTION THAT I FAVOR ONE SIDE OR
12 THE OTHER.

13 NOW, YOU ARE NOT TO CONSIDER ANYTHING THAT YOU
14 MAY HAVE READ OR HEARD ABOUT THIS CASE OUTSIDE THE
15 COURTROOM, WHETHER BEFORE OR DURING THE TRIAL AND YOU ARE
16 ALSO NOT TO TAKE ANY NOTES DURING THE COURSE OF THIS TRIAL.
17 AND UNTIL THIS CASE IS SUBMITTED TO YOU, YOU MUST NOT
18 DISCUSS IT WITH ANYONE, NOT EVEN AMONG YOURSELVES WHEN YOU
19 LEAVE THE COURT HOUSE EACH DAY OR WHEN YOU GO TO THE JURY
20 ROOM ON YOUR BREAKS.

21 AFTER IT IS SUBMITTED TO YOU, YOU WILL ONLY
22 DISCUSS IT IN THE JURY ROOM AMONG YOURSELVES. IT'S
23 EXTREMELY IMPORTANT THAT YOU KEEP AN OPEN MIND AND NOT
24 DECIDE THIS CASE UNTIL THE ENTIRE MATTER HAS BEEN SUBMITTED
25 TO YOU UNDER MY INSTRUCTIONS.

1 NOW, IT WILL BE YOUR ADDED DUTY, MADAM
2 FOREPERSON, TO BE THE JURY'S SPOKESPERSON HERE IN COURT AND
3 TO PRESIDE IN THE JURY ROOM AT THE APPROPRIATE TIME AND AT
4 THE APPROPRIATE TIME, IT WILL ALSO BE YOUR DUTY TO WRITE
5 THE VERDICT IN THIS CASE. BUT I WILL GIVE YOU FURTHER
6 INSTRUCTIONS ABOUT THAT AT THE CONCLUSION OF THE TRIAL.

7 NOW, I DO NOT INTEND THAT YOU OR ANYONE ELSE
8 SHOULD CONSTRUE THESE REMARKS THAT I HAVE MADE AS A CHARGE
9 ON THE LAW IN THIS CASE BECAUSE IT'S NOT THAT. I WILL
10 CHARGE YOU THE LAW THAT APPLIES TO THIS CASE AT THE
11 CONCLUSION OF THE TRIAL. THIS HAS MERELY BEEN AN ATTEMPT
12 ON MY PART TO BRIEFLY EXPLAIN TO YOU SOME OF PROCEDURES
13 THAT WE WILL FOLLOW IN THE TRIAL OF THIS CASE SO THAT YOU
14 WILL HAVE A BETTER UNDERSTANDING AS TO WHAT MAY BE
15 HAPPENING FROM TIME TO TIME.

16 WE WILL NOW BEGIN THE TRIAL OF THE CASE.

17 SOLICITOR, OPENING STATEMENT.

18 MR. HUMPHRIES: MAY IT PLEASE THE COURT.

19 THE COURT: YES, SIR.

20 MR. HUMPHRIES: MADAM FORELADY, LADIES AND
21 GENTLEMEN OF THE JURY, I HAVE OBVIOUSLY BEEN PREVIOUSLY
22 INTRODUCED TO YOU AS FRAN HUMPHRIES. I'M THE DEPUTY
23 SOLICITOR IN THE ELEVENTH JUDICIAL CIRCUIT. THAT CIRCUIT
24 SERVES SALUDA, EDGEFIELD, MCCORMICK AND LEXINGTON COUNTIES.
25 IT'S IN THAT CAPACITY THAT I APPEAR BEFORE YOU TODAY AND

1 IT'S MY PLEASURE AND HONOR.

2 NOW, WE HAVE SPENT AN EXHAUSTIVE AMOUNT OF TIME
3 IN SELECTING EACH AND EVERY ONE OF YOU. YOU, PERHAPS, NOT
4 SO EXHAUSTIVE AS WE. IT WAS AN IMPORTANT TASK. POSSIBLY,
5 THE MOST IMPORTANT TASK IN THE TRIAL OF THIS CASE BECAUSE
6 YOU FOURTEEN PEOPLE WILL DETERMINE WHAT THE FACTS ARE. YOU
7 FOURTEEN PEOPLE WILL RENDER A VERDICT WHICH SPEAKS THE
8 TRUTH, WHICH DOES JUSTICE.

9 YOU'LL HEAR ME SAY A NUMBER OF TIMES IN MY
10 COMMENTS TO YOU THAT WE ARE ABOUT THE BUSINESS OF JUSTICE
11 BECAUSE TRULY WE ARE. BUT FOR THE TWELVE -- FOURTEEN AT
12 THIS TIME INDIVIDUALS IN THIS BOX, NEVER EVER WOULD WE
13 ACHIEVE IN THIS CASE JUSTICE. JUSTICE IS WHAT YOU SAY IT
14 IS. JUSTICE IS WHAT YOU SPEAK IN TERMS OF YOUR VERDICT.
15 IT'S JUSTICE FOR GARY DUBOSE TERRY, JUSTICE FOR THE STATE
16 OF SOUTH CAROLINA AND JUSTICE FOR THE MEMORY AND THE FAMILY
17 OF URAI JACKSON.

18 I'M GOING TO TELL YOU A LITTLE BIT ABOUT URAI
19 JACKSON. WHAT I HOLD IN MY HAND IS A COPY OF AN
20 INDICTMENT. FOLKS, THIS IS A CHARGING PAPER. IT HAS NO
21 EVIDENTIARY VALUE. THE JUDGE, I BELIEVE, HAS ALREADY TOLD
22 YOU THAT, BUT BASICALLY WHAT IT DOES IS TELLS YOU WHAT THE
23 STATE MUST PROVE TO YOU BEYOND A REASONABLE DOUBT AND THAT
24 IS THE STANDARD.

25 WHAT THE STATE HAS CHARGED GARY DUBOSE TERRY, THE

1 DEFENDANT, IN THE CASE WITH IS, FIRST, THE OFFENSE OF
2 MURDER. THE FELONIOUS, WILLFUL AND UNLAWFUL TAKING OF URAI
3 JACKSON'S LIFE WITH MALICE AFORETHOUGHT.

4 WE MUST PROVE, NUMBER ONE, THE IDENTITY OF GARY
5 DUBOSE TERRY; NUMBER TWO, THAT THE CRIME OCCURRED IN
6 LEXINGTON COUNTY; NUMBER THREE, THAT IT WAS A KILLING OF
7 ANOTHER HUMAN BEING; NUMBER FOUR, THAT IT WAS DONE WITH
8 MALICE AFORETHOUGHT.

9 EVERYBODY KNOWS WHAT MALICE IS. YOU MAY NOT
10 THINK YOU DO, BUT IT'S EVILNESS, WICKEDNESS, DEPRAVITY, A
11 HEART FATALLY BENT ON MISCHIEF. IT'S EVIL. AFORETHOUGHT,
12 MALICE AFORETHOUGHT. IT MEANS THAT THAT MALICE MUST HAVE
13 EXISTED IN THE MIND OF THE PERPETRATOR FOR A PERIOD OF
14 TIME, NOT A GREAT PERIOD, NOT NECESSARILY A SMALL PERIOD,
15 BUT A MEASURABLE PERIOD OF TIME BEFORE THE FATAL BLOW WAS
16 STRUCK. NOT THAT HE MUST HAVE PLANNED IT AS YOU MAY HAVE
17 HEARD PRIOR, BUT THAT THE MALICE EXISTED PRIOR TO THE FATAL
18 BLOW. WE HAVE CHARGED GARY DUBOSE TERRY WITH MURDER.

19 WE HAVE CHARGED HIM WITH BURGLARY IN THE FIRST
20 DEGREE. BURGLARY IN THE FIRST DEGREE IS SIMPLY THIS: THAT
21 HE UNLAWFULLY ENTERED THE DWELLING OF URAI JACKSON WITH THE
22 INTENT TO COMMIT A CRIME THEREIN. WE SPECIFICALLY ALLEGE
23 THAT HE INTENDED TO COMMIT CRIMINAL SEXUAL CONDUCT, MURDER
24 OR SOME OTHER LIKE CRIME AND HE DID SO WITH CERTAIN
25 CIRCUMSTANCES OF AGGRAVATION. THAT IT OCCURRED IN THE

1 NIGHTTIME; THAT IT OCCURRED WHEN THE PARTICIPANT IN THE
2 CRIME USED A DEADLY WEAPON OR PRESENTED OR THREATENED WITH
3 A DEADLY WEAPON. BURGLARY IN THE FIRST DEGREE.

4 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. YOU
5 HAVE HEARD BEFORE THAT'S RAPE. WHAT THE STATE HAS CHARGED
6 GARY DUBOSE TERRY WITH IS COMMITTING A SEXUAL BATTERY --
7 AND THESE ARE TERMS OF ART WHICH THE JUDGE OBVIOUSLY WILL
8 DEFINE TO YOU -- BUT A SEXUAL BATTERY UPON THE PERSON OF
9 URAI JACKSON. WE ALLEGE THE SEXUAL BATTERY TO BE VAGINAL
10 AND OR ANAL INTERCOURSE AND THAT SEXUAL BATTERY WAS
11 COMMITTED WITHOUT HER CONSENT AND WAS COMMITTED WITH
12 AGGRAVATED FORCE OR WAS COMMITTED WHILE SHE WAS ALSO THE
13 VICTIM OF FORCIBLE CONFINEMENT, BURGLARY, KIDNAPPING.

14 IN A FOURTH CHARGE, WE HAVE CHARGED GARY DUBOSE
15 TERRY WITH MALICIOUS INJURY TO TELEPHONE SYSTEM WHICH IN
16 AND OF ITSELF SEEMS TO BE SORT OF INSIGNIFICANT COMPARED
17 WITH THE OTHER THREE. BUT THAT SIMPLY IS A CHARGE WHERE WE
18 ALLEGE GARY DUBOSE TERRY DAMAGED THE TELEPHONE SYSTEM OF
19 URAI JACKSON AT SOME POINT DURING THE PERPETRATION OF THESE
20 CRIMES WILL BECOME CLEAR TO YOU.

21 LET ME TELL SHOW YOU -- LET ME TELL YOU WHAT THE
22 STATE IS GOING TO PROVE AND I SUBMIT WE WILL PROVE THIS
23 WITH COMPETENT AND COMPELLING EVIDENCE.

24 WE WILL ESTABLISH THAT GARY DUBOSE TERRY ON MAY
25 30TH, ON OR ABOUT MAY 30TH, 1994, FORCIBLY ENTERED, WITHOUT

1 CONSENT, THE HOME OF URAI JACKSON, A 47-YEAR-OLD WOMAN WHO
2 LIVED ALONE AND HE KNEW IT. HE ENTERED THAT RESIDENCE. HE
3 ASSAULTED URAI JACKSON BY STRIKING HER MULTIPLE TIMES, MANY
4 TIMES IN THE HEAD WITH A BLUNT OBJECT TO THE POINT HE
5 CRACKED HER SKULL AND AFTER ASSAULTING HER IN THAT MANNER,
6 SEXUALLY ASSAULTED HER BY VAGINAL OR ANAL INTERCOURSE. BUT
7 BEFORE DOING ANY OF THAT, BEFORE DOING ANY OF THAT, GARY
8 DUBOSE TERRY PULLED MS. JACKSON'S TELEPHONE LINES.

9 WE'LL PRESENT TO YOU ABOUT FOURTEEN OR FIFTEEN
10 WITNESSES IN THIS PHASE. IT IS ABSOLUTE IMPOSSIBLE NOR AM
11 I GOING TO ASK YOU TO COMPLETELY FORGET THAT THIS IS A
12 CAPITAL CASE. THE STATE SEEKS THE DEATH PENALTY.

13 WHAT I AM GOING TO ASK YOU TO DO IS THIS, FOLKS,
14 AND THE JUDGE HAS INSTRUCTED YOU LIKEWISE. WHAT WE ARE
15 CONCERN ABOUT RIGHT NOW, WHAT WE ARE CONCERNED ABOUT IN
16 THIS PHASE IS THE GUILT OR INNOCENCE OF GARY DUBOSE TERRY.
17 THAT REQUIRES ALL YOUR CONCENTRATION. THAT REQUIRES ALL
18 YOUR FOCUS. TO DO LESS, WOULD BE NOT TO FULFILL YOUR OATH
19 AS A JURY.

20 IT'S TOUGH NOT TO LOOK DOWN THE ROAD, KNOWING
21 THAT PERHAPS A SPECTER OF THE DEATH PENALTY IS OUT THERE,
22 BUT, FOLKS, WE ARE ABOUT JUSTICE. I'M GOING TO MAKE YOU
23 ONE PROMISE AND THAT'S THIS. AND I DON'T EVER DO IT. AT
24 THE END OF THIS CASE, IN THE GUILT PHASE, FRAN HUMPHRIES,
25 THE DEPUTY SOLICITOR, WILL NOT TELL YOU WHAT VERDICT TO

1 RENDER. I DON'T DO IT AND I DON'T DO IT FOR THIS REASON.
2 THE STATE BRINGS THE CHARGES. GARY DUBOSE TERRY IS A-21
3 ENTITLED TO HIS DAY IN COURT. WE HAVE AN AWESOME
4 RESPONSIBILITY IN THAT REGARD. WE HAVE TO PROVE EACH AND
5 EVERY ELEMENT OF EVERY OFFENSE BEYOND A REASONABLE DOUBT.
6 WE ARE GOING TO DO THAT AND WHEN WE DO THAT I EXPECT ONE
7 THING AND ONE THING ALONE FROM THE JURORS IN THIS CASE AND
8 THAT'S TO ISSUE A VERDICT WHICH SPEAKS THE TRUTH AND DOES
9 JUSTICE. JUSTICE TO THE STATE AND TO GARY DUBOSE TERRY.

10 I APPRECIATE YOUR ATTENTION. I'LL BE BACK WITH
11 YOU SHORTLY WITH MY FIRST WITNESS.

12 THANK YOU.

13 THE COURT: MR. STONE.

14 MR. STONE: PLEASE THE COURT, YOUR HONOR.

15 THE COURT: YES, SIR.

16 MR. STONE: LADIES AND GENTLEMEN, GARY TERRY OVER
17 HERE TOLD THE POLICE HE DID IT. HE TOLD THE POLICE THAT HE
18 HAD SEXUAL INTERCOURSE WITH URAI JACKSON. HE TOLD THE
19 POLICE THAT HE KILLED HER, OKAY. IT'S CALLED A CONFESSION
20 AND HE MADE ONE. HE TOLD THE POLICE HE DID IT. SO WHAT IN
21 THE WORLD ARE WE DOING HERE? WHY ARE WE EVEN HAVING ONE OF
22 THESE GUILT PHASES?

23 WELL, THE JUDGE WILL TELL YOU AND THE JUDGE HAS
24 ALREADY TALKED TO YOU A LITTLE BIT ABOUT THIS THAT
25 EVERYBODY DESERVES A FAIR TRIAL. THAT EVERYBODY COMES INTO

1 COURT PRESUMED INNOCENT. THAT THEY SIT THERE IN THAT SEAT
2 OVER THERE AND THEY ARE INNOCENT UNTIL THE STATE, THESE
3 PEOPLE AROUND HERE, PROVE HIM GUILTY. AND THE JUDGE EVEN
4 GOES A LITTLE BIT FURTHER AND SAYS THAT'S BEYOND A
5 REASONABLE DOUBT.

6 IN SOUTH CAROLINA THAT MEAN A DOUBT THAT YOU CAN
7 ATTACH -- EXCUSE ME. THAT MEANS A DOUBT THAT WOULD CAUSE
8 YOU TO HESITATE TO ACT. THAT'S THE EXACT LANGUAGE THAT IS
9 A REASONABLE DOUBT IN SOUTH CAROLINA. SOMETHING THAT WOULD
10 CAUSE YOU AS A JUROR HONESTLY SEEKING THE TRUTH TO
11 HESITATE, TO HESITATE TO ACT.

12 NOW, YOU'VE HEARD IT EXPLAINED A LOT OF DIFFERENT
13 WAYS, LADIES AND GENTLEMEN, BUT, SEE, WE ARE HUMAN. YOU
14 ARE HUMAN. YOU ARE EXPECTED TO COME IN THIS JURY BOX AND
15 SIT HERE AND FOLLOW THE INSTRUCTIONS OF THE COURT, BUT IN A
16 WAY THEY ASK YOU TO DO SOMETHING THAT YOU ARE NOT USED TO
17 DOING. WHEN YOU SIT AT HOME IN THE MORNING AND WHENEVER
18 YOU READ THE NEWSPAPER OR WATCH T.V. AND YOU FIND SOMEBODY
19 WHO HAS BEEN ARRESTED FOR A CHARGE, AS A NORMAL CITIZEN, AS
20 A HUMAN, YOU DO WHAT EVERYBODY DOES. YOU SAY THANK
21 GOODNESS, THANK GOODNESS THEY GOT HIM.

22 BUT WHAT THE JUDGE ASKED YOU TO DO AND WHAT WE
23 ASK YOU TO DO IN THE COURTROOM IS TO COME IN HERE AND SAY,
24 FORGET ALL OF THAT, FORGET ALL OF THAT. BECAUSE THEY
25 CHARGED HIM, I CAN'T ASSUME ANYTHING. THE STATE HAS TO

1 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. THEY'VE GOT TO
2 PUT YOU IN A MIND-SET TO WHERE, INTERESTING ENOUGH, THEY
3 SAY A JURY OF YOUR PEERS BECAUSE THEY HAVE TO PUT YOU IN A
4 MIND-SET OF SITTING THERE IN THE JURY BOX AND GOING I DON'T
5 BELIEVE IT UNTIL YOU PROVE IT TO ME. LIKE ARRESTING A
6 RELATIVE OR A FRIEND. I DON'T BELIEVE IT UNLESS YOU PROVE
7 IT TO ME. YOU'VE GOT TO PROVE IT BEYOND A REASONABLE
8 DOUBT.

9 NOW, LADIES AND GENTLEMEN, WHAT I HAVE TOLD YOU
10 IS A BUNCH OF -- MAYBE A SIMPLE WAY OF SAYING A BUNCH OF
11 LEGAL TERMS. IT'S THE RULES THAT YOU HAVE TO GO BY BECAUSE
12 THAT'S WHAT THE COURT IS GOING TO TELL YOU, THAT'S WHAT THE
13 JUDGE IS GOING TO TELL YOU AND THAT'S WHAT YOU'VE PROBABLY
14 HEARD ABOUT EVERY CASE THAT YOU'VE EVER WATCHED ON
15 TELEVISION OR READ ANYTHING ABOUT. AND THERE'S A GOOD
16 REASON FOR THAT. IT'S THAT STUFF ABOUT AMERICA AND ALL THE
17 CRIMINAL JUSTICE AND HOW SOMEBODY DESERVES A FAIR TRIAL AND
18 ALL THAT. THAT'S NOT WHAT I'M GOING TO SIT HERE AND TELL
19 YOU ABOUT, LADIES AND GENTLEMEN.

20 I SUBMIT TO YOU THAT YOU ARE GOING TO HEAR
21 EVIDENCE THAT DOESN'T TALK ABOUT REASONABLE DOUBT, IT
22 DOESN'T TALK ABOUT ANY OF THAT.

23 I WOULD SUBMIT TO YOU LADIES AND GENTLEMEN, BY
24 THE TIME YOU END UP LISTENING TO EVERYTHING THAT YOU WILL
25 HEAR IN THIS CASE WHETHER THAT LAST TWENTY-FOUR OR

1 FORTY-EIGHT OR SEVENTY-TWO HOURS, I WILL SUBMIT TO YOU,
2 LADIES AND GENTLEMEN, THAT YOU WILL KNOW TWO THINGS.

3 ONE IS THAT GARY TERRY TOLD THE POLICE HE DID IT.
4 ALSO, YOU WILL KNOW THAT GARY TERRY TRIED TO TELL THE
5 POLICE HE COMMITTED ANOTHER MURDER. ANOTHER MURDER THAT
6 HE'S NOT CHARGED WITH AND HE NEVER WILL BE PROSECUTED FOR.

7 I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT
8 FOR WHATEVER REASON, IF YOU ASK GARY RIGHT, HE WILL ADMIT
9 TO JUST ABOUT ANYTHING. THEY HAVE A CONFESSION. THEY HAVE
10 THAT STATEMENT. PARTS OF WHICH THEY DON'T EVEN BELIEVE.
11 THEY'RE GOING TO ASK YOU TO BELIEVE IT. YOU MAY UNDERSTAND
12 BY THE END OF THIS CASE THAT GARY IS DIFFERENT. THAT HE IS
13 SOMEBODY THAT WILL CONFESS TO A CRIME THAT HE DIDN'T
14 COMMIT. BUT BECAUSE SOMEBODY IS DIFFERENT, LADIES AND
15 GENTLEMEN, DOESN'T MAKE HIM GUILTY.

16 THE ONLY THING I ASK IS THAT YOU PAY VERY CLOSE
17 ATTENTION TO WHAT YOU HEAR THESE NEXT FEW DAYS AND THEN
18 COME BACK WITH A VERDICT THAT SPEAKS THE TRUTH.

19 THANK YOU.

20 THE COURT: SOLICITOR, CALL YOUR FIRST WITNESS.

21 MR. HUMPHRIES: ED RIVERS.

22 EDWARD M. RIVERS,

23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. HUMPHRIES:

- 1 Q STATE YOUR FULL NAME FOR THE RECORD, PLEASE, SIR.
- 2 A EDWARD M. RIVERS.
- 3 Q WITH WHOM ARE YOU EMPLOYED?
- 4 A LEXINGTON COUNTY SHERIFF'S DEPARTMENT.
- 5 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?
- 6 A FIVE YEARS.
- 7 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED?
- 8 A I'M CURRENTLY A RESIDENT DEPUTY.
- 9 Q IN -- IN WHAT SECTION OR SECTOR ARE YOU THE RESIDENT
- 10 DEPUTY?
- 11 A THE EDMUND-BOILING SPRINGS AREA.
- 12 Q NOW, HAVE YOU ALWAYS BEEN THE RESIDENT DEPUTY---
- 13 A NO, SIR.
- 14 Q ---IN THE BOILING SPRINGS AREA?
- 15 A NO, SIR.
- 16 Q WHAT WERE YOUR DUTIES BACK IN MAY OF 1994?
- 17 A I WAS JUST A REGULAR PATROL OFFICER.
- 18 Q LET MET TAKE YOU BACK TO MAY 31ST OF 1994. DID YOU
- 19 HAVE AN OCCASION TO GO ON A CALL TO A RESIDENCE IN
- 20 WESTGATE, A SUBDIVISION?
- 21 A YES, SIR.
- 22 Q I WANT YOU TO TELL THE JURY WHEN YOU RECEIVED THAT
- 23 CALL, THE KIND OF CALL IT WAS AND WHERE YOU WENT.
- 24 A OKAY.
- 25 AT APPROXIMATELY 12:50 IN THE AFTERNOON ON MAY

1 31ST, I RECEIVED A -- IT WAS GIVEN TO ME AS 1073 WITH ONE
2 DOWN WHICH IS A BURGLARY WITH ONE PERSON EITHER SERIOUSLY
3 HURT OR DEAD AND IT WAS ON 3148 BUCKEYE DRIVE IN WEST
4 COLUMBIA, LEXINGTON COUNTY.

5 Q YOU RECEIVED A CALL AT APPROXIMATELY WHEN?

6 A APPROXIMATELY 12:50 IN THE AFTERNOON.

7 Q HOW LONG DID IT TAKE YOU TO RESPOND TO THAT CALL?

8 A FOUR MINUTES.

9 Q WITH WHOM DID YOU MAKE CONTACT ONCE YOU RESPONDED TO
10 THAT INCIDENT LOCATION?

11 A WHEN I FIRST ARRIVED, I MET WITH SAMANTHA JACKSON
12 FOX.

13 Q TELL THIS JURY HER EMOTIONAL STATE AND CONDITION AT
14 THE TIME YOU MET WITH HER.

15 A AT THE TIME, SHE WAS VERY UPSET, VERY DISTRAUGHT.

16 Q VISIBLY SO?

17 A VERY VISIBLY SO.

18 Q DID SHE APPEAR TO BE EXCITED?

19 A YEAH.

20 Q DID SHE INDICATE TO YOU WHAT HER RELATIONSHIP WAS TO
21 THE VICTIM IN THE CASE?

22 A SHE STATED SHE IS THE DAUGHTER OF THE VICTIM.

23 Q NOW, DID YOU GO INTO THE RESIDENCE AT THIS TIME?

24 A NOT AT THAT TIME.

25 Q OKAY. DID SHE INDICATE TO YOU THAT SHE HAD SEEN

1 SOMETHING UPSETTING?

2 A YES.

3 Q VERY RECENTLY?

4 A VERY RECENTLY.

5 Q DID SHE INDICATE TO YOU WHAT IT WAS?

6 A YES. SHE SAID THAT SHE FOUND HER MOTHER LYING ON THE
7 FLOOR.

8 Q DID SHE INDICATE WHETHER SHE KNEW WHAT HER MOTHER'S
9 CONDITION WAS?

10 A SHE FELT LIKE SHE WAS DECEASED.

11 Q WHAT ELSE DID SHE TELL YOU?

12 A SHE STATED THAT SHE HAD BEEN TRYING TO CALL THE
13 RESIDENCE MOST OF THE DAY. EVERY TIME SHE CALLED, SHE
14 WOULD EITHER GET THE ANSWERING MACHINE OR IN HER WORDS, THE
15 PHONE LINES KEPT MESSING UP. WITH NO ANSWER ON THE
16 TELEPHONE, SHE BECAME WORRIED AND DECIDED TO GO TO HER
17 MOTHER'S HOUSE AND CHECK ON HER MOTHER.

18 Q DID SHE SAY WHAT SHE SAW WHEN SHE GOT TO HER MOTHER'S
19 HOUSE?

20 A WHEN SHE ARRIVED, SHE FOUND THAT THE -- THAT THE
21 CARPORT DOOR WAS OPEN AND ONE OF THE WINDOW PANES HAD BEEN
22 BUSTED OUT. AND SHE WENT INSIDE AND FOUND HER MOTHER LYING
23 ON THE FLOOR.

24 Q WHAT DID SHE DO WHEN SHE FOUND HER MOTHER LYING ON
25 THE FLOOR, IF SHE TOLD YOU?

1 A SHE TRIED TO PICK UP THE TELEPHONE AND DIAL 911 AND
2 FOUND THAT THE PHONE LINE WAS NOT WORKING.

3 Q WHAT DID SHE DO THEN IF SHE TOLD YOU?

4 A SHE WENT NEXT DOOR TO 3144 BUCKEYE DRIVE TO A
5 NEIGHBOR'S HOUSE TO DIAL 911.

6 Q AS A RESULT OF GATHERING THAT INFORMATION AND THAT'S
7 SOMETHING THAT YOU DO WHEN YOU GO TO AN INCIDENT LOCATION,
8 IS IT NOT?

9 A THAT'S CORRECT.

10 Q WHAT DID YOU DO NEXT, DEPUTY RIVERS?

11 A AT THAT POINT, I WENT NEXT DOOR TO 3148 BUCKEYE
12 DRIVE. I WENT TO THE CARPORT DOOR WHERE SHE SAID SHE HAD
13 WENT IN AND CAME BACK OUT. I, TOO, FOUND THAT THE DOOR HAD
14 BEEN -- HAD BEEN OPENED.

15 Q LET'S DO THIS.

16 A OKAY.

17 Q LET ME SHOW YOU THIS CHART. TELL ME IF IT ACCURATELY
18 REFLECTS THE LAYOUT OF THE RESIDENCE THAT YOU CLEARED?

19 A IT DOES.

20 Q AND WOULD IT ASSIST YOU IN YOUR TESTIMONY TODAY?

21 A IT WOULD.

22 MR. STONE: NO OBJECTION.

23 MR. HUMPHRIES: MOVE TO INTRODUCE IT AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: ALL RIGHT. WITHOUT OBJECTION, IT

1 WILL BE ADMITTED AS STATE'S NUMBER---

2 MR. HUMPHRIES: ONE, I BELIEVE.

3 THE COURT: ---ONE.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER
5 ONE, CHART/HOME, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
6 OBJECTION.)

7 MR. HUMPHRIES: YOUR HONOR, I APOLOGIZE TO THE
8 COURT. I DON'T KNOW ANY EFFICIENT WAY TO LET THE JURY SEE
9 THIS AND YOU.

10 THE COURT: YOU GO RIGHT AHEAD. I'LL GET DOWN IF
11 I -- SO THAT I CAN SEE IT.

12 MR. STONE: AND, YOUR HONOR -- AGAIN, YOUR HONOR,
13 I APOLOGIZE. I NEED TO MOVE AROUND AS WELL IF THAT'S
14 OKAY---

15 THE COURT: YOU MAY FEEL FREE TO.

16 MR. STONE: THANK YOU.

17 MR. HUMPHRIES: I'M GOING TO ASK YOU TO USE
18 THIS---

19 THE WITNESS: OKAY.

20 MR. HUMPHRIES: --- HIGHLY TECHNICAL DEVICE.

21 A YES, SIR.

22 Q LET ME DO THIS FIRST. LET ME SHOW YOU THIS
23 PHOTOGRAPH. TELL ME IF YOU CAN IDENTIFY IT.

24 A THAT IS THE HOUSE AT 3148 BUCKEYE DRIVE.

25 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE HOUSE AS

1 YOU SAW IT THAT DAY?

2 A IT DOES.

3 MR. STONE: I DON'T HAVE ANY OBJECTION.

4 MS. FULLWOOD: NO OBJECTION.

5 MR. HUMPHRIES: MOVE TO INTRODUCE.

6 THE COURT: WITHOUT OBJECTION, IT WILL BE
7 ADMITTED AS STATE'S NUMBER TWO.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER
9 TWO, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
10 OBJECTION.)

11 MR. HUMPHRIES: TELL THE JURY, IF YOU WILL -- I'M
12 GOING TO COME UP HERE WITH YOU---

13 THE WITNESS: GO RIGHT AHEAD.

14 Q ---WHAT DOES THIS VIEW OF THE HOUSE REPRESENT?

15 A THIS IS THE FRONT OF THE HOUSE.

16 Q TO THE RIGHT HERE WOULD BE WHAT?

17 A TO RIGHT HERE IS THE CARPORT AND RIGHT OVER HERE
18 BESIDE THE LIGHT IS THE FRONT DOOR.

19 Q NOW, YOU INDICATED THAT YOU ENTERED THROUGH A CARPORT
20 DOOR, IS THAT CORRECT?

21 A YES, SIR.

22 Q I'M GOING TO SHOW YOU A PHOTOGRAPH AND ASK IF YOU CAN
23 IDENTIFY THIS?

24 A THAT IS THE CARPORT AND THE CARPORT FRONT -- THE DOOR
25 TO THE HOUSE AT THE CARPORT.

1 MS. FULLWOOD: NO OBJECTION.

2 MR. HUMPHRIES: MOVE TO INTRODUCE, YOUR HONOR.

3 THE COURT: WITHOUT OBJECTION, IT WILL BE
4 ADMITTED AS STATE'S NUMBER THREE.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER
6 THREE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
7 WITHOUT OBJECTION.)

8 MR. HUMPHRIES: NOW, WHERE WOULD THIS PHOTO HAVE
9 BEEN TAKEN FROM IN RELATION TO THIS DIAGRAM, STATE'S
10 EXHIBIT NUMBER ONE?

11 A IT WOULD HAVE BEEN TAKEN SOMEWHERE ALONG
12 HERE (INDICATES) .

13 Q LOOKING BACK TOWARDS THE HOUSE?

14 A LOOKING BACK TOWARD THE HOUSE, YES.

15 Q AND WHAT DOES IT PORTRAY?

16 A IT PORTRAYS THE CARPORT WITH THE CAR IN IT AND THE
17 CARPORT DOOR OPEN.

18 Q WHAT DID YOU FIND THE CONDITION OF THE DOOR THERE AT
19 THE CARPORT TO BE?

20 A FOUND THE DOOR OPEN AND THE -- ONE OF THE WINDOW
21 PANES HAD BEEN BROKEN OUT.

22 Q LET ME SHOW YOU TWO PHOTOGRAPHS. TELL ME IF YOU CAN
23 IDENTIFY THEM.

24 A THIS IS THE FRONT DOOR AND A PICTURE OF THE WINDOW
25 PANE WHERE THE GLASS HAS BEEN BROKEN.

1 Q IS THAT THE FRONT DOOR?

2 A THAT IS THE CARPORT DOOR.

3 Q OKAY. AND THE OTHER PHOTOGRAPH?

4 A THE OTHER PHOTOGRAPH IS THE DOOR OPEN SHOWING GLASS
5 ON THE STEPS AND GLASS ON THE INSIDE WITH THE SCREEN DOOR
6 OPEN.

7 Q DO THEY FAIRLY AND ACCURATELY REPRESENT THE CONDITION
8 OF THE DOOR AND THE INTERIOR IMMEDIATELY INSIDE THE DOOR AS
9 YOU FOUND THAT DAY?

10 A YES, SIR.

11 MS. FULLWOOD: NO OBJECTION.

12 MR. HUMPHRIES: MOVE TO INTRODUCE, YOUR HONOR.

13 THE COURT: WITHOUT OBJECTION, IT WILL BE
14 ADMITTED AS STATE'S NUMBER FOUR AND FIVE, RESPECTIVELY.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER
16 FOUR AND FIVE, PHOTOGRAPHS, ENTERED INTO EVIDENCE AT THIS
17 TIME WITHOUT OBJECTION.)

18 MR. HUMPHRIES: NOW, SPECIFICALLY, LET'S -- LET'S
19 LOOK AT STATE'S FIVE, FIRST, IF YOU WILL, AND WHAT I'M
20 GOING TO ASK YOU TO DO IS GET YOUR YARDSTICK AGAIN AND---

21 A WHICH ONE AM I LOOKING AT?

22 Q I'M SORRY.

23 A OKAY.

24 Q STATE'S FIVE---

25 A THAT'S FINE.

1 Q REFERENCE STATE'S FIVE ON STATE'S ONE, THE DIAGRAM.
2 SHOW THEM WHAT AREA THIS DEPICTS.

3 A THAT PICTURE DEPICTS THIS IMMEDIATE AREA RIGHT
4 HERE(INDICATES).

5 Q NOW, AND WHAT APPEARS TO BE ON THE GROUND INSIDE THE
6 HOUSE?

7 A APPEARS TO BE GLASS IMMEDIATELY ON THE INSIDE OF IT
8 AND THE KITCHEN IS KIND OF MESSED UP INSIDE.

9 Q DID YOU FIND THAT ACTUALLY TO BE GLASS WHEN YOU
10 ENTERED IT?

11 A YES, I DID.

12 Q LET ME SHOW YOU STATE'S FOUR. AGAIN, IDENTIFY THIS
13 PHOTOGRAPH FOR THE JURY.

14 A THAT IS THE DOOR ITSELF WITH THE WINDOW PANE NEXT TO
15 THE KNOB BROKEN OUT.

16 Q INDICATE ON STATE'S ONE WHERE THE DOOR WOULD HAVE
17 BEEN LOCATED IN THE HOUSE.

18 A WOULD HAVE BEEN LOCATED RIGHT HERE(INDICATES).

19 Q WHEN YOU GO IN THE DOOR, WHAT -- WHAT IS THE FIRST
20 ROOM YOU GO INTO WHEN YOU GO INTO THAT SIDE DOOR?

21 A WHEN YOU FIRST WALK INTO THE DOOR, YOU COME INTO THE
22 KITCHEN.

23 Q AND IS THAT THE DOOR THAT YOU WENT IN AGAIN?

24 A THAT IS THE DOOR I WENT IN.

25 Q SHOW YOU THAT PHOTOGRAPH. TELL ME IF YOU CAN

1 IDENTIFY THAT.

2 A THAT IS THE INTERIOR OF THE KITCHEN.

3 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE CONDITION
4 OF THE KITCHEN WHEN YOU WENT IN---

5 A YES, IT DOES.

6 Q ---THE FIRST TIME?

7 A YES, IT DOES.

8 MS. FULLWOOD: NO OBJECTION.

9 MR. HUMPHRIES: MOVE TO INTRODUCE.

10 THE COURT: WITHOUT OBJECTION, IT WILL BE
11 ADMITTED AS STATE'S NUMBER SIX.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER
13 SIX, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
14 OBJECTION.)

15 MR. HUMPHRIES: REFERRING TO STATE'S SIX, AGAIN,
16 POINT OUT ON STATE'S ONE WHERE THIS ROOM WOULD HAVE BEEN
17 LOCATED?

18 THE WITNESS: THIS ROOM IS LOCATED RIGHT
19 HERE(INDICATES).

20 Q AND WHAT WAS THE CONDITION OF THAT ROOM?

21 A IT WAS IN A MESS.

22 Q CONSISTENT WITH THIS PHOTOGRAPH?

23 A VERY CONSISTENT.

24 Q NOW, DEPUTY RIVERS, ONCE YOU ENTERED THE KITCHEN,
25 WHERE DID YOU GO?

1 A WHEN I ENTERED THE KITCHEN, I WENT THIS WAY, THROUGH
2 THIS LITTLE DOOR THAT GOES INTO THE LIVING ROOM(INDICATES).

3 Q WHAT DID YOU FIND, IF ANYTHING, ONCE YOU WENT THROUGH
4 THAT LITTLE DOOR?

5 A ACTUALLY FROM HERE, I COULD SEE THE VICTIM'S LEGS
6 LYING ACROSS HERE(INDICATES).

7 Q WERE YOU ABLE TO GO CLOSER AND FULLY INSPECT THE
8 POSITION OF THE VICTIM IN THE RESIDENCE?

9 A YES, I WAS.

10 Q WHAT I'M GOING TO ASK YOU TO DO -- I'M GOING TO SHOW
11 THIS TO THE DEFENSE.

12 MS. FULLWOOD: MAY WE HAVE A SIDE BAR?

13 THE COURT: YES, MA'AM.

14 (WHEREUPON, A BENCH CONFERENCE WAS
15 HELD AT THIS TIME OFF THE RECORD.)

16 MR. HUMPHRIES: LET ME SHOW YOU A STICK-ON
17 DRAWING, IF YOU WILL?

18 THE WITNESS: OKAY.

19 Q DOES THAT ACCURATELY REPRESENT THE POSITION THAT YOU
20 FOUND THE VICTIM IN?

21 A YES, IT DOES.

22 Q LET ME ASK YOU TO DO THIS. PLACE THIS ON STATE'S
23 EXHIBIT NUMBER ONE IN THE POSITION YOU FOUND THE VICTIM
24 THAT EVENING?

25 THE COURT: ANY OBJECTION?

1 MR. HUMPHRIES: I'M SORRY. I BELIEVE THAT WAS
2 OFF THE RECORD AND THEY HAD CONSENTED TO THAT.

3 THE COURT: ALL RIGHT. WITHOUT OBJECTION, YOU
4 MAY DO SO. THANK YOU, SIR.

5 (WHEREUPON, THE WITNESS COMPLIES
6 AT THIS TIME.)

7 MR. HUMPHRIES: NOW, YOU ARE NOT A PHYSICIAN OR
8 AN E.M.S. WORKER, ARE YOU?

9 A NO, SIR.

10 Q WERE YOU ABLE TO DETERMINE IF THERE WERE ANY SIGNS OF
11 LIFE?

12 A NOT BY LOOKING AT HER.

13 Q WHAT DID YOU DO?

14 A AT THAT POINT, I BEGAN TO CLEAR THE RESIDENCE.

15 Q TELL THE JURY THE CONDITION OF THE RESIDENCE AS
16 RELATES TO THE DOORS WHEN YOU WENT IN.

17 A OKAY. WHEN I CAME IN HERE, I CLEARED THIS -- CLEARED
18 THE LIVING ROOM BASICALLY BY LOOKING AT IT, BUT I NOTICED
19 THAT EVERY -- EVERY DOOR THROUGHOUT THE REST OF THE HOUSE
20 HAD BEEN CLOSED.

21 WHEN I WENT THROUGH THE REST OF THE ROOMS AND THE
22 REST OF THE HOUSE -- AND THE REST OF THE HOUSE, THE REST OF
23 THE HOUSE APPEARED TO BE IN A NEAT AND ORDERLY FASHION,
24 AGAIN, WITH ALL OF THE DOORS CLOSED.

25 Q SPECIFICALLY RELATING TO THE CONDITION OF THE VICTIM

1 IN THIS CASE, HOW WAS SHE CLOTHED, IF SHE WAS?

2 A OKAY. THE ONLY THING SHE HAD ON WAS A SHIRT DRAPED
3 KIND OF DIAGONAL WAYS ACROSS HER CHEST.

4 Q SHE HAD NO OTHER CLOTHING ON?

5 A NO OTHER CLOTHING.

6 Q AND IN WHAT MANNER WAS -- LET ME ASK YOU THIS. WHAT,
7 IF ANYTHING, WAS EXPOSED BY THE SHIRT?

8 A ALL OF HER GENITAL AREA AND HER BREAST AREA.

9 Q WHAT WAS THE PURPOSE IN CLEARING THE HOUSE? YOU'VE
10 USED THAT TERM.

11 A CLEARING THE HOUSE BASICALLY JUST TO VERIFY THAT THE
12 SUSPECT IS STILL NOT IN THE HOUSE.

13 Q AND WAS ANYBODY ELSE IN THE HOUSE?

14 A NOBODY ELSE WAS IN THE HOUSE.

15 Q AFTER YOU CLEARED THE HOUSE, WHAT HAPPENED NEXT?

16 A AS I STARTED COMING BACK OUT, LIEUTENANT PHILLIPS
17 WITH THE SHERIFF'S DEPARTMENT HAD ALREADY STEPPED INSIDE.

18 I WALKED OUTSIDE, FOUND THAT THE E.M.S. HAD ALREADY
19 ARRIVED. BASICALLY TURNED THE SCENE OVER TO LIEUTENANT
20 PHILLIPS AND E.M.S. WENT INSIDE TO PERFORM THEIR FUNCTIONS.

21 Q LIEUTENANT PHILLIPS WAS IN CHARGE OF THE MAJOR CRIMES
22 DIVISION AT THE SHERIFF'S DEPARTMENT, IS THAT CORRECT---

23 A HE WAS IN CHARGE OF---

24 Q ---DETECTIVE DIVISION---

25 A ---INVESTIGATIONS AT THE TIME.

- 1 Q AND THAT WOULD BE SOMETHING CONSISTENT WITH YOUR
2 DUTIES TO TURN OVER THE SCENE TO THE---
- 3 A THAT'S CORRECT.
- 4 Q ---LEADING INVESTIGATOR?
- 5 A THAT'S CORRECT.
- 6 Q YOU SAID E.M.S. PERSONNEL. THEY ARRIVED WHILE YOU
7 WERE THERE?
- 8 A THEY ARRIVED SOMETIME WHILE I WAS INSIDE THE HOUSE
9 CLEARING IT.
- 10 Q OKAY. DO YOU KNOW OF YOUR OWN KNOWLEDGE IF
11 INDIVIDUALS OR LAW ENFORCEMENT INDIVIDUALS FROM S.L.E.D. OR
12 THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION ARRIVED TO
13 PROCESS THE SCENE?
- 14 A YES, THEY DID.
- 15 Q WHILE YOU WERE PRESENT?
- 16 A YES, THEY WERE.
- 17 Q WHAT WERE YOUR DUTIES AFTER -- AFTER YOU CLEARED THE
18 HOUSE?
- 19 A AFTER I CLEARED THE HOUSE, MY DUTY WAS TO BASICALLY
20 WRITE THE INITIAL INCIDENT REPORT AND TURN THE CRIME SCENE
21 OVER TO THE DETECTIVE DIVISION AND S.L.E.D.
- 22 Q NOW, LET ME SHOW YOU THIS DIAGRAM. TELL ME, NUMBER
23 ONE, IF IT ACCURATELY REFLECTS TO A SUBSTANTIAL DEGREE THE
24 AREA IN WHICH THIS INCIDENT OCCURRED.
- 25 A IT DOES.

1 Q AND DOES IT ACCURATELY REFLECT THE LOCATION OF BOTH
2 THE VICTIM'S HOUSE AND THAT OF THE DEFENDANT IN THIS CASE,
3 GARY DUBOSE TERRY?

4 A I CAN'T STIPULATE TO WHERE THE DEFENDANT LIVED, BUT
5 THE REST OF IT, YES.

6 Q OKAY. WE'LL MARK IT AT THIS TIME FOR IDENTIFICATION
7 PURPOSES.

8 THE COURT: STATE'S NUMBER SEVEN FOR I.D.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER
10 SEVEN, CHART/MAP, MARKED FOR IDENTIFICATION ONLY AT THIS
11 TIME.)

12 MR. HUMPHRIES: DEPUTY, THAT'S ALL I HAVE OF YOU
13 AT THIS TIME. PLEASE ANSWER ANY QUESTIONS THAT THE DEFENSE
14 HAS OF YOU.

15 THE WITNESS: OKAY.

16 THE COURT: CROSS-EXAMINATION.

17 CROSS-EXAMINATION

18 BY MR. STONE:

19 Q LET ME ASK YOU TO TAKE A LOOK AT WHAT MR. HUMPHRIES
20 ASKED YOU -- REFERRED TO AS STATE'S EXHIBIT FOR
21 IDENTIFICATION NUMBER SEVEN. IS WINNSBORO ON THERE
22 ANYWHERE?

23 A NO, SIR.

24 Q WHEN YOU GOT TO THE HOUSE, OFFICER, YOU WERE CERTAIN
25 THAT THIS BEDROOM DOOR RIGHT HERE (INDICATES) WAS CLOSED?

- 1 A YES, SIR.
- 2 Q AND ALL OF THESE DOORS, IN FACT, WERE CLOSED?
- 3 A YES, SIR.
- 4 Q NO QUESTION ABOUT THAT?
- 5 A NO, SIR.
- 6 Q I KNOW YOU HAD SPOKEN EARLIER WITH THE -- WITH THE
- 7 VICTIM'S DAUGHTER. DID SHE INDICATE THAT SHE WENT THROUGH
- 8 THE HOUSE AND CLOSED ANY OF THE DOORS?
- 9 A NOT TO ME, SHE DID NOT.
- 10 Q OKAY. DO YOU HAVE ANY KNOWLEDGE THAT ANYBODY CLOSED
- 11 THOSE DOORS?
- 12 A NO, SIR, NOT TO MY KNOWLEDGE.
- 13 Q AND YOU WERE THE SECOND PERSON ON THE SCENE, IS THAT
- 14 RIGHT?
- 15 A I WAS THE FIRST OFFICER ON THE SCENE.
- 16 Q ALL RIGHT, SIR. NOW, THIS BACK DOOR -- THIS SIDE
- 17 DOOR THAT YOU REFERRED TO EARLIER, THIS IS WHERE, I
- 18 BELIEVE, YOUR REPORT INDICATES THAT YOU FOUND GLASS ON THE
- 19 GROUND, IS THAT RIGHT?
- 20 A YES, SIR.
- 21 Q AND THIS DOOR WAS SLUNG OPEN. IT'S KIND OF IN A --
- 22 LET ME SEE ONE OF THE EXHIBITS. EXHIBIT -- STATE'S EXHIBIT
- 23 NUMBER FIVE FOR IDENTIFICATION. THIS IS HOW THE DOOR WAS
- 24 FOUND?
- 25 A THIS IS THE SCREEN DOOR(INDICATES).

- 1 Q RIGHT.
- 2 A YES, SIR.
- 3 Q OKAY. THAT'S HOW IT WAS FOUND WHEN YOU GOT THERE?
- 4 A YES, SIR.
- 5 Q DO YOU KNOW WHETHER OR NOT THE VICTIM HAD ANYTHING TO
- 6 DO WITH THAT DOOR?
- 7 A I HAVE NO IDEA.
- 8 Q ALL RIGHT, SIR. ANYBODY TELL YOU ANYBODY OPENED THAT
- 9 DOOR?
- 10 A NO, SIR.
- 11 Q OKAY. SO THIS IS HOW YOU FOUND THE SCENE WHEN YOU
- 12 GOT THERE?
- 13 A YES, SIR.
- 14 Q THIS HERE AND GLASS ON THE GROUND(INDICATES). IN
- 15 FACT, GLASS OUT HERE(INDICATES), IS THAT RIGHT?
- 16 A THAT'S CORRECT.
- 17 Q THE DOOR LOOKS KIND OF BENT. IS IT BENT? IT LOOKS
- 18 WARPED HERE(INDICATES), IS THAT WARPED OR IS IT JUST A BAD
- 19 PICTURE?
- 20 A I'M NOT GOING TO SPECULATE BECAUSE I DON'T KNOW.
- 21 Q SURE. YOU SAW THIS DOOR, DIDN'T YOU?
- 22 A I SAW IT, YES, SIR.
- 23 Q DO YOU RECALL WHETHER OR NOT IT WAS---
- 24 A I DON'T RECALL---
- 25 Q ---BENT OR ANYTHING LIKE THAT?

1 A NOT RIGHT OFF.

2 Q AND WHEN YOU GOT THERE, IT WAS 12:50, IS THAT RIGHT?

3 A WHEN I GOT THERE---

4 Q YES, SIR.

5 A ---IT WAS 12:54.

6 Q 12:54?

7 A YES, SIR.

8 Q ALL RIGHT, SIR. HAD IT STARTED TO RAIN YET?

9 A NO, SIR.

10 Q IT STARTED TO RAIN ABOUT 1 O'CLOCK?

11 A I DON'T RECALL THAT.

12 Q YOU---

13 A I REMEMBER I HAD BEEN THERE A GOOD WHILE AND IT WAS
14 NOT RAINING THEN.

15 Q OKAY. YOU RECALL IT RAINING AT ALL?

16 A NO, SIR.

17 Q NOTHING ELSE, YOUR HONOR.

18 THE COURT: REDIRECT.

19 MR. HUMPHRIES: NO, SIR.

20 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MR. CHASE: PLEASE THE COURT, YOUR HONOR.

24 THE COURT: YES, SIR.

25 MR. CHASE: THE STATE CALLS CYNTHIA PLANT.

1 CYNTHIA D. PLANT,

2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE COURT REPORTER: STATE YOUR FULL NAME,
4 SPELLING YOUR LAST NAME, PLEASE.

5 THE WITNESS: CYNTHIA DIANA PLANT, P-L-A-N-T.

6 DIRECT EXAMINATION

7 BY MR. CHASE:

8 Q MS. PLANT, WHERE ARE YOU EMPLOYED?

9 A LEXINGTON COUNTY E.M.S.

10 Q AND WHAT DUTIES DO YOU PERFORM AT THE LEXINGTON
11 COUNTY E.M.S.?

12 A I'M CURRENTLY A SENIOR PARAMEDICS SERVING A CREW
13 CHIEF ROLE ON A DAILY BASIS AND AT TIMES SERVING AS A
14 SUPERVISOR.

15 Q IN THAT CAPACITY, WHAT DO YOU DO GENERALLY SPEAKING?

16 A SERVE AS A CREW CHIEF ON AN E.M.S. UNIT THAT OPERATES
17 TWENTY-FOUR HOURS, SEVEN DAYS A WEEK. WE WORK TWENTY-FOUR
18 HOURS ON AND FORTY-EIGHT HOURS OFF. SO I WAS CREW CHIEF ON
19 A UNIT.

20 Q WHEN YOU SAY AN E.M.S. UNIT, WHAT DO YOU MEAN?

21 A EMERGENCY MEDICAL SERVICE AND AMBULANCE FUNCTIONS IN
22 THE COUNTY FOR 911 CALLS.

23 Q THE SAME UNITS WE SEE, BOX-TYPE UNITS, THAT RESPOND
24 AND AS AN E.M.S. ATTENDANT, WHAT WOULD YOU DO IN YOUR ROLE
25 AS THAT?

1 A WE TREAT THE SICK AND INJURED AND TRANSPORT THEM TO
2 THE HOSPITAL.

3 Q SO YOU, MORE OR LESS, PERFORM IN A FUNCTION OF THE
4 EMERGENCY CARE, NOT THE FOLLOW-UP CARE?

5 A THAT'S CORRECT.

6 Q DID YOU HAVE THE SAME POSITION ON MAY THE 31ST OF
7 1994?

8 A YES, SIR.

9 Q DO YOU RECALL WHETHER YOU WERE WORKING THAT DAY?

10 A ON MAY 31ST, YES, SIR.

11 Q WERE YOU WORKING ALONE?

12 A NO. TONY WINGARD WAS WORKING WITH ME. HE WAS THE
13 E.M.T. ON THE UNIT.

14 Q WHAT WAS YOUR STATUS COMPARED TO TONY WINGARD AS FAR
15 AS THE E.M.S. UNIT WENT?

16 A MY CERTIFICATION LEVEL WAS THAT OF A PARAMEDIC. HIS
17 WAS THAT OF AN E.M.T.

18 Q THAT MAKES YOU THE CREW CHIEF?

19 A RIGHT.

20 Q NOW, DO YOU RECALL WHILE YOU WERE ON DUTY THAT DAY
21 WHETHER YOU RESPONDED TO A CALL AT 3148 BUCKEYE DRIVE?

22 A YES, SIR. THAT AFTERNOON WE RESPONDED TO THAT
23 ADDRESS.

24 Q DO YOU KNOW WHAT TIME YOU RESPONDED?

25 A MY CALL WAS DISPATCHED AT 12:46.

1 Q DO YOU KNOW WHAT TYPE OF CALL THAT WAS?

2 A WE WERE DISPATCHED TO THAT CALL BY THE RECORDS THAT I
3 HAVE IN FRONT OF ME. I COULDN'T TELL YOU HOW WE WERE
4 DISPATCHED, BUT WE WERE DISPATCHED AND ADVISED THAT LAW
5 ENFORCEMENT WAS ON THE SCENE.

6 Q HOW DID YOU RESPOND AS FAR AS CODES?

7 A ALL OF OUR CALLS, BECAUSE WE ARE THE 911 SERVICE FOR
8 LEXINGTON COUNTY, WE RESPOND TO ALL CALLS, CODE THREE,
9 MEANING WITH LIGHTS AND SIREN ON.

10 Q WHEN YOU ACTUALLY ARRIVED 3148 BUCKEYE COURT, WAS
11 THERE ANYONE ON THE SCENE?

12 A YES, SIR. LAW ENFORCEMENT WAS ALREADY ON THE SCENE.
13 BOTH ROAD DEPUTIES IN UNIFORM AND DETECTIVES WITH THE
14 SHERIFF'S DEPARTMENT WERE ON THE SCENE AND THEY MET US
15 OUTSIDE.

16 Q WHAT DID YOU DO ONCE THEY MET YOU OUTSIDE?

17 A THEY ADVISED US THAT THERE WAS A PERSON INSIDE THE
18 HOUSE AND THAT THEY WANTED US TO GO IN THERE AND CONFIRM
19 THAT THE PERSON WAS DECEASED AND TO BE VERY CAREFUL AS WE
20 ENTERED THE HOUSE.

21 Q WHEN YOU SAY THAT YOU WERE INSTRUCTED TO BE VERY
22 CAREFUL, WHAT DO YOU MEAN?

23 A THEY ADVISED THAT THERE WAS DAMAGE INSIDE THE HOUSE
24 IN AREAS OF BLOODSTAINS IN THE HOUSE AND THEY DID NOT WANT
25 US TO TOUCH ANYTHING OR STEP IN ANY AREAS OF BLOOD.

1 Q ONCE YOU RECEIVED THOSE INSTRUCTIONS, WHAT DID YOU
2 DO?

3 A WE WERE ESCORTED INSIDE BY LAW ENFORCEMENT AND WENT
4 TO WHERE THE PATIENT WAS LYING ON THE FLOOR.

5 Q SO YOU ACTUALLY DID SEE THE PATIENT LYING ON THE
6 FLOOR?

7 A YES, SIR.

8 Q WHAT DID YOU DO ONCE YOU SAW?

9 A WE OBSERVED THAT THERE WERE NO OBVIOUS SIGNS OF LIFE
10 WITHOUT TOUCHING HER. IT DID NOT APPEAR THAT SHE WAS
11 BREATHING. THERE WAS DRIED BLOOD ABOUT HER HEAD AND TO HER
12 FACE. HER PUPILS, THERE WERE NO RESPONSE. HER EYELIDS
13 WERE OPEN AND THERE WAS NO RESPONSE FROM HER EYES. WE
14 NEVER TOUCHED THIS PERSON. SHE---

15 Q WHAT WAS YOUR---

16 A ---SHE APPEARED---

17 Q ---BASED ON WHAT YOU SAW AND WHAT YOU'VE JUST TOLD
18 US, WHAT WAS YOUR ASSESSMENT OF HER CONDITION?

19 A THAT SHE WAS DECEASED AND THERE WAS NOTHING FOR US
20 FURTHER TO DO.

21 Q AND, IN FACT, DID YOU DO ANYTHING ELSE RELATED TO THE
22 VICTIM?

23 A NO, SIR. DUE TO IT BEING A CRIME SCENE, THERE WAS
24 NOTHING FURTHER FOR US TO DO. WE DO NOT TOUCH THOSE
25 PATIENTS ANY FURTHER THAN WE NEED TO.

1 Q NOW, YOU SAID THAT YOU SAW THE PATIENT THERE AND YOU
2 MADE THESE ASSESSMENTS. DID YOU, IN FACT, EVER TOUCH THE
3 PATIENT?

4 A NO, SIR.

5 Q WHEN YOU LEFT THE SCENE, DID YOU HAVE TO DO ANY SORT
6 OF TRANSPORTING OF THE PATIENT?

7 A NO, SIR.

8 Q AND, IN FACT, DID YOU TOUCH ANYTHING THE ENTIRE TIME
9 THAT YOU WERE IN THERE?

10 A NO, SIR. WE CARRIED A COUPLE OF OUR BAGS OF
11 EQUIPMENT INSIDE THE HOUSE AND WE WALKED TO WHERE THE
12 PATIENT WAS, FOUND OUR FINDINGS AND WE LEFT ESCORTED BY LAW
13 ENFORCEMENT.

14 Q AND DID YOU LEAVE THE SCENE IN THE SAME CONDITION
15 THAT YOU CAME IN THE CODE THREE?

16 A NO, SIR. ONCE WE LEFT THE SCENE, WE LEFT CODE ONE,
17 WITHOUT LIGHTS AND SIREN.

18 Q THANK YOU, MS. PLANT. ANSWER ANY QUESTIONS THEY MAY
19 HAVE.

20 CROSS-EXAMINATION

21 BY MR. STONE:

22 Q JUST A FEW QUESTIONS, MS. PLANT.

23 WHEN YOU WERE IN THE HOUSE, HOW MANY PEOPLE CAME
24 IN WERE YOU?

25 A I DO NOT RECALL. MY PARTNER AND I WENT IN AND WE

1 WERE ESCORTED BY LAW ENFORCEMENT. I DON'T REMEMBER HOW
2 MANY WENT IN.

3 Q OKAY. DID ANYBODY IN YOUR PRESENCE -- DID YOU SEE
4 ANYBODY IN YOUR PRESENCE TOUCH ANYTHING AROUND THE HOUSE?

5 A NO, SIR.

6 Q SPECIFICALLY, DID YOU SEE ANYBODY THAT WAS WITH YOU
7 TOUCH ANY BEER CANS THAT WERE IN THE SINK?

8 A I DON'T RECALL BEER CANS BEING IN THE SINK. I DID
9 NOT GO THROUGH THAT AREA FOR THAT LONG A PERIOD OF TIME.

10 Q BUT YOU DIDN'T TOUCH ANYTHING?

11 A NO, SIR. WE DIDN'T TOUCH ANYTHING AT ALL IN THE
12 HOUSE.

13 Q ALL RIGHT.

14 THANK YOU FOR BEING HERE, MS. PLANT. THANK YOU.

15 THE COURT: REDIRECT.

16 MR. HUMPHRIES: NO, SIR.

17 MR. CHASE: NOTHING, YOUR HONOR.

18 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

19 (WHEREUPON, THE WITNESS WAS
20 EXCUSED AT THIS TIME.)

21 MR. HUMPHRIES: CHARLES CATO.

22 CHARLES W. CATO,

23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE COURT REPORTER: STATE YOUR FULL NAME,
25 SPELLING YOUR LAST NAME, PLEASE.

1 THE WITNESS: CHARLES WILLIAM CATO, C-A-T-O.

2 DIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q BY WHOM ARE YOU EMPLOYED?

5 A LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

6 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

7 A SIXTEEN YEARS.

8 Q IN WHAT CAPACITY ARE YOU NOW EMPLOYED?

9 A I'M IN THE IDENTIFICATION SECTION.

10 Q IN MAY OF 1994, HOW WERE YOU EMPLOYED?

11 A I WAS IN THE IDENTIFICATION SECTION.

12 Q DID YOU HAVE AN OCCASION TO ARRIVE AT A SCENE ON
13 BUCKEYE DRIVE IN WESTGATE SUBDIVISION IN WEST COLUMBIA MAY
14 THE 31ST OF 1994?

15 A YES, SIR, THAT'S CORRECT.

16 Q WHAT TYPE OF SCENE WAS IT?

17 A THIS WAS A DEATH SCENE.

18 Q ARE YOU TYPICALLY CALLED OUT TO THOSE TYPES OF SCENE?

19 A YES, I AM.

20 Q UPON ARRIVING AT THE RESIDENCE, DID YOU INSPECT THE
21 EXTERIOR OF THE RESIDENCE?

22 A THAT'S CORRECT.

23 Q LET ME SHOW YOU THIS PHOTOGRAPH. TELL ME IF YOU CAN
24 IDENTIFY IT.

25 A YES, I CAN.

1 Q WHAT IS IT?

2 A IT'S A PICTURE OF THE REAR OF THE RESIDENCE.

3 MS. FULLWOOD: NO OBJECTION.

4 MR. HUMPHRIES: MOVE TO INTRODUCE.

5 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER
6 EIGHT WILL BE ADMITTED.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER
8 8, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
9 OBJECTION.)

10 MR. HUMPHRIES: IF YOU WILL, REFERENCE TO THE
11 JURY TO STATE'S EXHIBIT NUMBER ONE, SHOW THEM WHAT STATE'S
12 NUMBER EIGHT DEPICTS?

13 THE WITNESS: THIS IS -- THIS IS GOING TO BE THIS
14 SIDE OF THE HOUSE. THIS AREA BACK IN HERE(INDICATES).

15 Q CAN YOU IDENTIFY THIS PHOTOGRAPH?

16 A YES. THIS IS THE -- IF YOU ARE LOOKING AT THE HOUSE,
17 THIS WOULD BE THE LEFT SIDE OF THE HOUSE?

18 MS. FULLWOOD: NO OBJECTION.

19 MR. HUMPHRIES: MOVE TO INTRODUCE.

20 THE COURT: STATE'S NUMBER NINE WITHOUT
21 OBJECTION.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER
23 NINE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
24 WITHOUT OBJECTION.)

25 MR. HUMPHRIES: ORIENT THE JURY WITH REFERENCE TO

1 STATE'S EXHIBIT NUMBER NINE TO STATE'S EXHIBIT NUMBER ONE.

2 THE WITNESS: THIS BEING THE FRONT OF THE HOUSE,
3 IT WOULD BE THIS SIDE OF THE HOUSE.

4 Q SHOW YOU THIS PHOTOGRAPH. TELL ME IF YOU CAN
5 IDENTIFY THAT.

6 A YES. THIS IS THE SECTION OF THE HOUSE, THE BACK SIDE
7 OF THE CARPORT AREA.

8 Q CAN YOU TELL ME WHAT -- WHAT THE BOX IS THAT APPEARS
9 TO BE JUST TO THE LEFT AS YOU'RE LOOKING AT THE PHOTO OF
10 THE STAIRCASE?

11 A THAT'S A PHONE BOX, THE PHONE CONNECTION BOX.

12 MS. FULLWOOD: NO OBJECTION.

13 THE COURT: WITHOUT OBJECTION, IT WILL BE
14 ADMITTED AS STATE'S EXHIBIT NUMBER TEN.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER
16 TEN, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
17 OBJECTION.)

18 MR. HUMPHRIES: IF YOU WILL STEP DOWN JUST A
19 MOMENT.

20 A (WITNESS COMPLIES.)

21 Q FIRST OF ALL, REFERENCE ON STATE'S EXHIBIT NUMBER
22 ONE, THE VIEW DEPICTED BY THIS PHOTOGRAPH, STATE'S EXHIBIT
23 NUMBER TEN?

24 A THE VIEW HERE WOULD BE THIS SIDE OF THE HOUSE AND IT
25 WOULD BE FROM THIS AREA TO THE CARPORT END(INDICATES).

1 Q NOW, WE ARE GOING TO GO DOWN IN STAGES. POINT OUT TO
2 THE JURY THE LOCATION OF THE TELEPHONE BOX ON STATE'S
3 NUMBER TEN.

4 A JUST TO THE RIGHT OF THE CARPORT. IT'S RIGHT THERE
5 NEAR THAT VENT ON THE BOTTOM OF THE HOUSE(INDICATES).

6 Q LET'S MOVE DOWN.

7 A (WITNESS COMPLIES.) HERE, AGAIN, THE BACK OF THE
8 CARPORT, TO THE RIGHT OF THE CARPORT, IT'S RIGHT NEXT TO
9 THE VENT(INDICATES).

10 Q AND ONE MORE TIME.

11 A THE CARPORT AREA, TO THE RIGHT OF THE CARPORT, NEXT
12 TO THE VENT(INDICATES).

13 Q THANK YOU. TAKE YOUR SEAT.

14 A (WITNESS COMPLIES.)

15 Q SHOW YOU THIS PHOTOGRAPH. TELL ME IF YOU CAN
16 IDENTIFY THAT ONE.

17 A THAT'S A CLOSE-UP PICTURE OF THE PHONE BOX NEXT TO
18 THE VENT OF THE HOUSE -- ON THE HOUSE.

19 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE CONDITION
20 OF THE PHONE BOX---

21 A YES, IT DOES---

22 Q ---AT THE TIME?

23 MR. STONE: YOUR HONOR, COULD WE HAVE JUST A
24 MOMENT---

25 THE COURT: YES, SIR.

1 MR. STONE: ---AT THE BENCH, YOUR HONOR?

2 (WHEREUPON, A BENCH CONFERENCE WAS
3 HELD AT THIS TIME OFF THE RECORD.)

4 THE COURT: LADIES AND GENTLEMEN OF THE JURY. I
5 HAVE A MATTER OF LAW THAT I NEED TO DEAL WITH THE LAWYERS
6 OUTSIDE OF YOUR PRESENCE.

7 ONCE AGAIN, I THINK THAT I HAVE TOLD YOU IN MY
8 OPENING REMARKS THAT WHEN I CONSIDER MATTERS OF LAW THAT
9 SOMETIMES IT'S NECESSARY IN DISCUSSING THAT, THAT IT MIGHT
10 BE NECESSARY FOR ME TO MAKE SOME COMMENT AS TO THE FACTS OF
11 THE PARTICULAR CASE THAT WE ARE DEALING WITH HERE TODAY AND
12 OUT OF AN ABUNDANCE OF CAUTION, I SEND YOU OUT OF THE
13 COURTROOM SO THAT YOU WOULD NOT BE IN ANY WAY INFLUENCED BY
14 ANYTHING THAT I MIGHT SAY OR DO IN CONNECTION WITH THE
15 FACTS OF THE CASE BECAUSE, ONCE AGAIN, YOU ARE THE JUDGES
16 OF THE FACTS. I'M THE JUDGE OF THE LAW.

17 SO IF YOU WOULD, PLEASE, RETIRE TO THE JURY ROOM,
18 BUT, PLEASE, DO NOT DISCUSS THIS CASE WHILE YOU ARE THERE.
19 WE'LL GET YOU BACK IN JUST A MOMENT.

20 (JURY OUT.)

21 THE COURT: THE REASON THAT I SENT THE JURY OUT
22 WAS BECAUSE IN THE SIDE BAR, THE DEFENSE WAS RAISING AN
23 OBJECTION TO THE INTRODUCTION OF A PHOTOGRAPH THAT WAS
24 GOING TO BE OFFERED BY THE STATE OF THE TELEPHONE BOX WHICH
25 IS LOCATED OUTSIDE THE HOUSE WHICH IS THE SUBJECT OF THE

1 ISSUE OF THE FINGERPRINT SUPPRESSION MATTER THAT I WAS
2 DEALING WITH PRIOR TO ACTUALLY STARTING THE TRIAL AND MR.
3 STONE CITED THE CASE OF JOHN DAVIS VERSUS THE STATE OF
4 MISSISSIPPI, WHICH IS 394 U.S. 721; 22 LAW ED. 2D 676; 89
5 SUPREME COURT 1394, A 1969 CASE.

6 AND IN THIS CASE, IT WAS ONE IN WHICH AN
7 86-YEAR-OLD WOMAN WAS ALLEGEDLY RAPED IN MISSISSIPPI AND A
8 NUMBER OF BLACK YOUTHS WERE ROUNDED UP AND FINGERPRINTS
9 WERE TAKEN OF THEM AND THE SUPREME COURT OR THE LOWER COURT
10 -- THE LOWER COURT IN MISSISSIPPI REFUSED TO OVERRULE THE
11 OBJECTION TO THE FINGERPRINT EVIDENCE COMING IN ON THE
12 BASIS THAT IT WAS THE PRODUCT OF UNLAWFUL DETENTION AND THE
13 MISSISSIPPI SUPREME COURT SUSTAINED THAT ADMISSION OF THE
14 FINGERPRINT EVIDENCE AND AFFIRMED THE CONVICTION. AND THEN
15 ON CERTIORARI TO THE UNITED STATES SUPREME COURT, IT WAS
16 REVERSED. THAT OPINION HELD THAT SINCE THE DEFENDANT'S
17 DETENTION BY THE POLICE WAS UNLAWFUL, HIS FINGERPRINTS WERE
18 OBTAINED IN VIOLATION OF THE FOURTH AND FOURTEENTH
19 AMENDMENT SO AS TO BE INADMISSIBLE AT TRIAL.

20 THE INTERESTING THING TO NOTE ABOUT THIS CASE IN
21 READING IT IN FULL WAS THAT AT NO TIME WHILE THIS YOUNG
22 MAN'S FINGERPRINTS WERE TAKEN WAS HE EVER CHARGED WITH ANY
23 CRIME. HE HAD NOT BEEN SERVED WITH ANY TYPE OF A WARRANT
24 AND AS A RESULT, THE SUPREME COURT OF THE UNITED STATES
25 HELD THAT THERE WAS NOT ANY PROBABLE CAUSE BASED UPON WHAT

1 THEY HAD AT THAT TIME FOR THE ARREST FOR THE ACTIONS THAT
2 WERE TAKEN BECAUSE FINGERPRINTS, NUMBER ONE, IS SOMETHING
3 THAT'S NOT GOING TO CHANGE AND THAT GOES ON THROUGHOUT THE
4 -- THROUGHOUT THE COURSE OF THE ARGUMENT OR THE OPINION,
5 BUT, I THINK, THE THING THAT IS KEY HERE, TO ME, BECAUSE
6 I'VE READ THIS WHILE I'VE BEEN ON THE BENCH, THERE WAS
7 NEITHER -- THE COURT SAID THE DETENTION WAS BASED ON
8 NEITHER A WARRANT NOR PROBABLE CAUSE AND WAS THEREFORE
9 CONSTITUTIONALLY INVALID AND IT GOES ON TO SAY THAT WE HAVE
10 NO OCCASION IN THIS CASE; HOWEVER, TO DETERMINE THE -- TO
11 DETERMINE WHETHER THE REQUIREMENTS OF THE FOURTH AMENDMENT
12 COULD BE MET BY NARROWLY CIRCUMSCRIBED PROCEDURES FOR
13 OBTAINING DURING THE COURSE OF A CRIMINAL INVESTIGATION THE
14 FINGERPRINTS OF INDIVIDUALS FOR WHOM THERE IS NO PROBABLE
15 CAUSE TO ARREST.

16 AND THEN IT GOES ON TO SAY FOR IT IS CLEAR NO
17 ATTEMPT WAS MADE HERE TO EMPLOY PROCEDURES WHICH MIGHT
18 COMPLY WITH THE REQUIREMENTS OF THE FOURTH AMENDMENT. THE
19 DETENTION AT POLICE HEADQUARTERS OF PETITIONER AND OTHER
20 YOUNG NEGROES WAS NOT AUTHORIZED BY A JUDICIAL OFFICER.
21 PETITIONER WAS UNNECESSARILY REQUIRED TO UNDERGO TWO
22 FINGERPRINTING SESSIONS AND PETITIONER WAS NOT MERELY
23 FINGERPRINTED DURING THE DECEMBER 3RD DETENTION, BUT ALSO
24 SUBJECTED TO AN INTERROGATION.

25 I THINK HERE THE DIFFERENCE IN THE CASES THAT WE

1 HAVE IS THE FACT THAT THIS DEFENDANT WAS IN CUSTODY. HE
2 HAD BEEN ARRESTED UNDER WARRANTS THAT HAD BEEN SIGNED, AT
3 LEAST, FOR MURDER, MAYBE SOME OTHERS. I KNOW, AT LEAST,
4 FOR MURDER. AND THE FACT THAT HE WAS INCARCERATED PURSUANT
5 TO A JUDICIAL OFFICER, I DO NOT FIND THAT THERE WAS ANY
6 NEED FOR ANY TYPE OF A SEARCH WARRANT BECAUSE HE WAS IN
7 CUSTODY, THAT THE PROCEDURE WAS NOT INVASIVE AND THERE WAS
8 ABSOLUTELY NO NEED FOR A MUTUALLY DETACHED MAGISTRATE
9 BECAUSE HE WAS IN POLICE CUSTODY AND SUBJECT TO THESE
10 THINGS.

11 SO I AM GOING TO DENY THE MOTION TO SUPPRESS THE
12 INTRODUCTION OF THE FINGERPRINT INFORMATION THAT WAS THE
13 SUBJECT OF THE SUPPRESSION HEARING EARLIER THIS AFTERNOON.

14 MR. HUMPHRIES: THANK YOU.

15 MR. STONE: YOUR HONOR, IF I MAY ADD ONE OTHER
16 THING FOR THE RECORD.

17 THE COURT: YES, SIR.

18 MR. STONE: IT'S MY UNDERSTANDING -- I DON'T --
19 DO YOU HAVE A COPY OF THE INDICTMENTS WITH YOU, YOUR HONOR?

20 THE COURT: I SURE DO.

21 MR. STONE: THE INDICTMENT FOR THE TELEPHONE
22 CHARGE, I DO NOT BELIEVE -- I MAY BE WRONG ABOUT THIS AND
23 IF MR. HUMPHRIES KNOWS DIFFERENTLY, I WILL DEFER TO HIS
24 RESPONSE TO THIS, BUT THE TELEPHONE CHARGE ITSELF I DO NOT
25 BELIEVE WAS PENDING AT THE TIME OF THE FINGERPRINTING AND

1 IT WOULD BE MY POSITION THAT THAT WOULD BE THE CHARGE THAT
2 WOULD HAVE TO BE PENDING AND THAT WOULD BE THE COURT
3 WARRANT IN ORDER TO ALLOW HIM TO BE IN DETENTION FOR THIS
4 PARTICULAR CHARGE. I DON'T THINK THEY CAN GO IN AND DO
5 THIS EVEN IF THEY ARE INVESTIGATING OTHER CRIMES AND I
6 THINK THAT'S EXACTLY WHAT YOU'VE GOT IN THIS SITUATION.

7 I UNDERSTAND YOUR RULING. I'M NOT ARGUING WITH
8 IT. THAT WOULD BE MY POSITION AS FAR AS---

9 THE COURT: CAN YOU TELL ME ABOUT THAT?

10 MR. HUMPHRIES: YOUR HONOR, WHAT I'LL SAY IS
11 THIS. HE WAS CHARGED WITH BURGLARY IN THE FIRST DEGREE.
12 THE PULLING OF THE PHONE LINES IS CIRCUMSTANTIAL EVIDENCE
13 OF A BURGLARY, UNLAWFULLY ENTERING. WE DIRECTLY PRESENTED
14 MALICIOUS INJURY TO TELEPHONE SYSTEM WHICH IS WHAT WE DO ON
15 A ROUTINE BASIS IN THESE CAPITAL CASES. IT'S AMAZING HOW
16 OFTEN IT COMES UP.

17 THE COURT: AND THE BURGLARY CHARGE WAS
18 PENDING---

19 MR. HUMPHRIES: YES, SIR.

20 THE COURT: ---WHEN THE MURDER CHARGE WAS WHEN HE
21 WAS ARRESTED?

22 MR. HUMPHRIES: YES, SIR.

23 THE COURT: WELL, AS THE BASIS OF MY ARGUMENT, I
24 -- OR MY DECISION AS TO THE ARGUMENTS THAT HAVE BEEN MADE
25 AND I THINK THAT THERE WAS CERTAINLY AMPLE REASON FOR THIS

1 DEFENDANT TO BE HELD IN THAT REGARD ALSO AND, AS A RESULT,
2 I STILL STAND BY MY RULING. NOTE YOUR OBJECTION TO MY
3 RULING AND LET'S BRING OUR JURY BACK.

4 MR. HUMPHRIES: JUDGE, LET ME DO THIS TO AVOID
5 SENDING THE JURY BACK OUT---

6 THE COURT: YEAH.

7 MR. HUMPHRIES: --- THE NEXT PHOTOGRAPH WHICH I
8 WILL ATTEMPT TO INTRODUCE THROUGH THIS WITNESS---

9 THE COURT: UH-HUH.

10 MR. HUMPHRIES: ---IT IS A PHOTOGRAPH WHICH IS
11 DARKENED JUST BY VIRTUE OF THE PROCEDURE WE USED TO BLOW IT
12 UP. I'M GOING TO GIVE THE DEFENSE AN OPPORTUNITY TO
13 INSPECT IT---

14 THE COURT: OKAY.

15 MR. HUMPHRIES: WHAT IT DOES AND WHAT I SUBMIT IS
16 RELEVANT IN THIS CASE IS THE POSITION IN WHICH THE VICTIM
17 WAS FOUND AS CIRCUMSTANTIAL EVIDENCE OF THE SEXUAL ASSAULT
18 HAVING OCCURRED AT THE PLACE WHERE SHE WAS FOUND.

19 THIS PHOTOGRAPH -- AND AS SOON AS THEY FINISH
20 LOOKING AT IT, I'LL GIVE IT TO THE COURT SO YOU CAN REVIEW
21 -- IS A DARKENED IMAGE OF HER POSITION WHICH SHOWS FAINTLY
22 THE POSITION OF HER LEGS. I'VE THOUGHT OF A NUMBER OF WAYS
23 IN WHICH TO ACCOMPLISH THIS. I COULD TRY -- I'LL DO IT BY
24 LIVE TESTIMONY, THAT IS HER POSITION. I DON'T THINK THAT
25 ADEQUATELY CONVEYS TO THE JURY HER POSITION.

1 I'M GOING TO HAVE AN ARTIST RENDITION OF HER
2 POSITION, JUST BY DRAWING THE OUTLINE OF HER BODY TO GIVE
3 SOME IDEA. I THINK WE WILL HAVE REAL DIFFICULTY WITH A
4 THREE-DIMENSIONAL ASPECT OF THAT. I'LL TRY TO DO IT JUST
5 AS CLEANLY AS POSSIBLE. WE, OBVIOUSLY, HAVE SOME
6 PHOTOGRAPHS WHICH ARE VERY CLEAR WHICH I WILL NOT ATTEMPT
7 TO INTRODUCE IN THIS PHASE. THAT'S ABOUT THE BEST I CAN
8 DO. I'M GOING TO GIVE IT TO THE COURT TO REVIEW AT THIS
9 TIME AND THEN THE DEFENSE CAN MAKE ANY OBJECTION THEY WISH
10 TO.

11 (WHEREUPON, THE PHOTOGRAPH IS
12 HANDED TO THE COURT AT THIS TIME.)

13 THE COURT: WELL, I DON'T KNOW ABOUT THE DEFENSE,
14 BUT I CAN'T SEE MUCH ABOUT THIS PHOTOGRAPH, MR. HUMPHRIES.

15 MR. HUMPHRIES: WHAT I THINK -- WHAT I'M
16 ATTEMPTING TO DO IS TO SHOW THE POSITION OF THE VICTIM
17 WITHOUT -- MAYBE -- I DON'T HAVE ANY OF THE OTHER PICTURES
18 OVER HERE. MAYBE IT MIGHT HELP YOU TO COMPARE. YOU CAN
19 SEE THE OUTLINE OF HER CLOTHING.

20 THE COURT: I SEE THE OUTLINE OF, I GUESS, A LEG
21 HERE---

22 MR. HUMPHRIES: YES, SIR.

23 THE COURT: ---AND THE CLOTHING HERE.

24 MR. HUMPHRIES: YES, SIR, AND THAT'S -- AND
25 BASICALLY I'M GOING FOR THE LEG POSITIONS.

1 THE COURT: ALL RIGHT. WHAT SAYS THE DEFENSE?

2 MS. FULLWOOD: WE HAVE NO OBJECTION TO THAT
3 PHOTOGRAPH.

4 THE COURT: ALL RIGHT.

5 MR. HUMPHRIES: VERY GOOD. WE MAY BE ABLE TO
6 SPEED THINGS UP JUST A LITTLE BIT QUICKER IF MR. CATO WILL
7 RETRIEVE FROM THE EVIDENCE ONE PIECE OF EVIDENCE WHICH I
8 WILL BE ASKING HIM TO IDENTIFY INSTEAD OF HAVING TO DO
9 THAT---

10 THE COURT: ALL RIGHT. WHY DON'T YOU DO THAT
11 THEN---

12 MR. HUMPHRIES: IT'S RIGHT HERE.

13 THE COURT: LET'S DO THIS. WHILE WE'VE GOT OUR
14 JURY OUT, LET'S TAKE ABOUT FIVE MINUTES AND THEN WE CAN
15 PUSH ON BECAUSE THEY ARE GOING TO BE TAKING CARE OF
16 THEMSELVES AND WE'LL TAKE CARE OF OURSELVES.

17 ALSO, LET'S DO THIS. LET ME TRY TO ESTIMATE FOR
18 OUR JURY CUSTODIAN ABOUT HOW MUCH LONGER WE ARE GOING TO
19 BE---

20 MR. HUMPHRIES: WHAT I INTENDED TO DO AT THIS
21 TIME -- LET ME TELL -- I WILL TELL YOU WHAT WE ARE GOING TO
22 PUT UP.

23 THE COURT: GOOD.

24 MR. HUMPHRIES: WE'VE GOT -- WE'LL FINISH WITH
25 INVESTIGATOR CATO, WHO WILL TESTIFY BRIEFLY ABOUT THE

1 SCENE, AND THEN WILL BE A CHAIN WITNESS.. I DON'T
2 ANTICIPATE MY EXAMINATION OF INVESTIGATOR CATO TO GO ANY
3 LONGER THAN TEN-MINUTES. I DON'T KNOW ABOUT THE DEFENSE.

4 WE WILL THEN PUT UP -- LET ME CHECK THE ORDER. I
5 DON'T WANT TO MISINFORM THE COURT.

6 WE'LL PUT UP ONE CHAIN WITNESS THAT SHOULDN'T
7 TAKE TWO MINUTES. WE'LL PUT UP TWO INVESTIGATORS RELATING
8 SPECIFICALLY TO THE CONSENT TO SEARCH. THEN, I ANTICIPATE
9 TWO OTHER CHAIN WITNESSES WHICH SHOULD BE NO MORE THAN FIVE
10 TO TEN-MINUTES A PIECE. SIMPLY CHAIN WITNESSES. NOT
11 SUBSTANTIVE WITNESSES. I WOULD LIKE TO REACH THAT POINT
12 THIS EVENING.

13 THE COURT: WELL, WE WILL REACH THAT
14 IRREGARDLESS. IT SOUNDS TO ME LIKE WE ARE GOING TO BE
15 SOMEWHERE, MAYBE AN HOUR AND A HALF, TWO HOURS AT MOST?

16 MR. HUMPHRIES: I DON'T ANTICIPATE HAVING TO GO
17 MUCH PAST SEVEN WITH THE TESTIMONY I INTEND TO PRESENT.

18 THE COURT: OKAY. WELL, IRREGARDLESS, WHY DON'T
19 YOU JUST DO THIS, MR. MCLEOD, JUST TELL THEM THAT SOMETIME
20 AFTER SEVEN-THIRTY, QUARTER TILL EIGHT THAT YOU WILL BE
21 LEAVING HERE AT THE LATEST AND WE'LL GO FROM THERE.

22 YES, SIR.

23 MS. FULLWOOD: JUDGE, THIS MIGHT BE A GOOD POINT
24 FOR US TO MAKE A MOTION IN LIMINE.

25 JUDGE, WE ASK THAT THE COURT DIRECT THE

1 SOLICITOR'S OFFICE NOT TO DISPLAY TO THE JURY ANY ITEM OF
2 PHYSICAL EVIDENCE THAT THEY INTEND TO PUT IN UNTIL SUCH
3 TIME AS THE COMPLETE CHAIN IS ESTABLISHED, RELEVANCE IS
4 ESTABLISHED AND THE COURT RULES THAT IT'S ADMISSIBLE IN
5 EVIDENCE.

6 MR. HUMPHRIES: I'LL BE GLAD TO DO THIS. AS IT
7 RELATES TO THIS ONE PIECE OF EVIDENCE I INTEND TO PUT UP
8 THROUGH INVESTIGATOR CATO, I DO NOT CONCEDE THAT EVERY ITEM
9 OF EVIDENCE I INTEND TO INTRODUCE IN THIS CASE IS SUBJECT
10 TO THE CUSTODY OF CHAIN ANALYSIS. IN PARTICULAR, THIS
11 ITEM, BUT I WILL BECAUSE I DON'T INTEND TO ELICIT ANY
12 FORENSIC TESTIMONY REGARDING THE ITEM. IT IS A
13 THREE-FOOT-SECTION OF ONE-BY-ONE WOOD WHICH THEY'VE BEEN
14 ABLE TO INSPECT. THAT'S ALL I INTEND TO INTRODUCE THROUGH
15 THIS WITNESS.

16 I WILL TAKE UP THE INTRODUCTION OF ANY OTHER ITEM
17 OF EVIDENCE WITH THE COURT OUTSIDE THE PRESENCE OF THE JURY
18 AT THE REQUEST OF THE DEFENSE. I DON'T HAVE ANY PROBLEM AT
19 ALL WITH THAT.

20 MR. STONE: IS THIS IT?

21 MR. HUMPHRIES: THAT'S IT.

22 MR. STONE: IS IT GOING TO BE STILL ATTACHED TO
23 THE IRON BAR---

24 MR. HUMPHRIES: NO, HE'S GOING TO TAKE THAT OUT.
25 THAT'S ALL. AND WE MAY BE ABLE TO RESOLVE

1 WHETHER THERE IS AN OBJECTION OR NOT AT THIS TIME TO THAT.
2 I'LL BE GLAD TO ESTABLISH THE RELEVANCY THROUGH THIS
3 INVESTIGATOR.

4 AND IF YOU WILL TAKE IT OUT OF THAT BAG?

5 THE WITNESS: I'M GOING TO SPLIT IT HERE.

6 MR. HUMPHRIES: THAT'S FINE. THEY MAY BE ABLE TO
7 TELL ME NOW IF THEY'VE GOT AN OBJECTION. IF THEY DO, I'LL
8 BE GLAD TO PUT IT ON THE RECORD.

9 THE COURT: WELL, WHAT WE'LL DO THEN, LET'S TAKE
10 OUR BREAK AND BE BACK IN HERE IN FIVE MINUTES SO THAT MEANS
11 BE BACK AT TWENTY-FIVE TILL SIX AND THEN WE'LL MOVE
12 FORWARD.

13 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

14 MR. STONE: THANK YOU.

15 (WHEREUPON, THE WITNESS LEAVES THE
16 WITNESS STAND AT THIS TIME.)

17 (RECESS.)

18 THE BAILIFF: ALL RISE.

19 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

20 CHARLES W. CATO,

21 (BEING ALREADY DULY SWORN,
22 RETURNED TO THE WITNESS STAND AND TESTIFIED AS FOLLOWS:)

23 THE COURT: LET ME ALSO PUT ONE OTHER THING ON
24 THE RECORD INSOFAR AS THE ISSUE CONCERNING FINGERPRINTS IS
25 CONCERNED.

1 SENIOR AGENT DERRICK ALSO TESTIFIED THAT HE
2 IDENTIFIED HIMSELF AS A PROPER S.L.E.D. AGENT, HE WAS
3 DRESSED APPROPRIATELY AND THAT THE DEFENDANT HAD NO
4 OBJECTION AND ALLOWED HIS PRINTS TO BE TAKEN.

5 ALL RIGHT. DO YOU HAVE ANYTHING WE NEED TO TAKE
6 UP BEFORE I BRING THE JURY BACK?

7 MR. HUMPHRIES: I'M JUST INQUIRING OF THE DEFENSE
8 IF THEY WISH TO MAKE SOME OBJECTION, SPECIFIC OBJECTION
9 REGARDING THIS APPROXIMATELY THREE-FOOT LENGTH OF
10 ONE-BY-ONE WOOD AND I'LL BE GLAD TO IN-CAMERA ESTABLISH ITS
11 RELEVANCE THROUGH THIS WITNESS.

12 MS. FULLWOOD: YOUR HONOR, OUR POSITION IS THAT
13 THEY HAVEN'T SHOWN ANY RELEVANCE OF THIS PARTICULAR ITEM
14 AND I'M NOT SURE IF, PERHAPS, THIS WITNESS CAN SHOW THE
15 RELEVANCE; BUT CONCERNING THIS PIECE OF EVIDENCE AND THE
16 OTHER PIECES OF PHYSICAL EVIDENCE, WHILE IT MIGHT BE
17 SOMETHING THAT, DEPENDING ON THE COURT'S VIEW OF THINGS,
18 MAY OR MAY NOT BE ABLE TO PUT INTO EVIDENCE UNTIL A WITNESS
19 ESTABLISHES RELEVANCY, IT SHOULDN'T BE DISPLAYED IN FRONT
20 OF A JURY AND WAVED AROUND THE COURTROOM.

21 MR. HUMPHRIES: I DON'T HAVE ANY PROBLEM WITH
22 THAT.

23 MS. FULLWOOD: BECAUSE THE COURT MAY ULTIMATELY
24 RULE THAT THEY HAVEN'T SHOWN RELEVANCY.

25 MR. HUMPHRIES: I DON'T HAVE ANY PROBLEM WITH

1 THAT.

2 THE COURT: OKAY.

3 MR. HUMPHRIES: LET ME DO THIS. LET'S DO THIS
4 IN-CAMERA THEN.

5 THE COURT: ALL RIGHT. INSOFAR AS THIS PIECE OF
6 EVIDENCE IS CONCERNED.

7 MR. HUMPHRIES: THAT'S ALL. AND THEN I'LL DO IT
8 FULLY IN FRONT OF THE JURY.

9 THE COURT: OKAY. ALL RIGHT.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. HUMPHRIES:

12 Q LET ME SHOW YOU THIS ITEM OF EVIDENCE. TELL ME IF
13 YOU CAN IDENTIFY IT.

14 A YES. IT'S A PIECE OF ONE-BY-ONE WOOD THAT WAS
15 LOCATED IN A CHAIR FOUND NEXT TO THE BODY.

16 Q AT THE VICTIM, URAI JACKSON'S HOME?

17 A THAT'S CORRECT.

18 Q DO YOU KNOW OF YOUR OWN PERSONAL -- FIRST OF ALL, DID
19 YOU ATTEND THE AUTOPSY?

20 A YES, I DID.

21 Q DO YOU KNOW IF DR. CARTER WAS PRESENTED THIS ITEM OF
22 EVIDENCE TO COMPARE TO BRUISING ON THE VICTIM?

23 A YES, HE WAS.

24 Q AND WAS DR. CARTER'S DETERMINATION AT THAT TIME IT
25 WAS CONSISTENT WITH SOME OF THE BRUISING TO THE VICTIM?

1 A THAT'S CORRECT---

2 MS. FULLWOOD: YOUR HONOR, I WOULD OBJECT TO
3 THAT. THAT WOULD CALL FOR HEARSAY.

4 MR. HUMPHRIES: I'LL BE GLAD TO DO IT THIS WAY.
5 WAS THIS ITEM OF EVIDENCE PRESENTED TO DR. CARTER?

6 THE WITNESS: YES, YES, IT WAS.

7 Q DID HE USE THIS ITEM OF EVIDENCE TO COMPARE IT TO
8 BRUISING ON THE VICTIM IN YOUR PRESENCE?

9 A YES, HE DID.

10 Q AND I WOULD LIMIT IT TO THAT AT THIS TIME.

11 THE COURT: ALL RIGHT.

12 MS. FULLWOOD: AND OUR POSITION WOULD BE EVEN IF
13 HE SAW THE DOCTOR USE THE ITEM DURING THE AUTOPSY, THE
14 STATE STILL HASN'T SHOWN THAT THAT ITEM IS RELEVANT. NOT
15 THROUGH THIS WITNESS. MAYBE THERE'S ANOTHER WITNESS.
16 MAYBE DR. CARTER CAN ESTABLISH ITS RELEVANCY. THIS WITNESS
17 HASN'T.

18 THE COURT: WELL, THERE ARE TWO THINGS, MS.
19 FULLWOOD, THAT I -- I UNDERSTAND YOUR CONCERN, BUT I DON'T
20 KNOW HOW MANY WAYS WE ARE GOING TO BE ABLE TO DISGUISE A
21 THREE-FOOT-PIECE OF WOOD---

22 MS. FULLWOOD: YES, SIR.

23 THE COURT: ---FOR HIM TO BRING IT UP HERE AND
24 PRESENT IT TO THIS WITNESS---

25 MS. FULLWOOD: YES, SIR.

1 THE COURT: ---AND IF DR. CARTER -- IS THAT HIS
2 NAME?

3 MR. HUMPHRIES: DR. CARTER, JOHN B. CARTER.

4 THE COURT: DR. CARTER IS GOING TO COME IN AND
5 TESTIFY TO WHAT I HAVE HEARD HERE, THEN THAT PIECE OF
6 EVIDENCE IS GOING TO COME IN AT THAT TIME ANYWAY. IF THAT
7 IS CONSISTENT OR IF YOU NEED TO PUT HIM BACK UP AT THAT
8 TIME, THEN---

9 MR. HUMPHRIES: YOUR HONOR, I GET -- WELL -- AND
10 THIS IS MY PROBLEM. I DON'T WANT TO BE IN THE BUSINESS OF
11 HAVING TO RECALL WITNESSES WHEN I SHOULD PROPERLY BE ABLE
12 TO IDENTIFY IT AT THIS TIME.

13 THE COURT: AND I AGREE -- I AGREE FULLY. SO WE
14 ARE NOT GOING TO GET INTO THAT. IF YOU WANT TO OBJECT TO
15 THAT, YOU MAY DO SO, BUT ONCE I ALLOW IT TO COME IN FINALLY
16 -- IF I DON'T, THE JURY IS GOING TO -- THERE ARE TWO THINGS
17 AND IT ALMOST HAPPENS IN EVERY CASE, YOU KNOW, WHERE IS THE
18 REPORT THAT WAS TALKED ABOUT AND SO FORTH THAT DIDN'T COME
19 INTO EVIDENCE THAT WAS MARKED FOR I.D. OR WHERE WAS THIS
20 THAT WAS MARKED FOR I.D. OR WHERE WAS THAT THAT WAS
21 REFERRED TO.

22 I TELL THEM THAT THEY ARE ONLY TO CONSIDER THE
23 EVIDENCE THAT HAS BEEN INTRODUCED IN THIS CASE, THE
24 DOCUMENTARY, AS WELL AS TANGIBLE EVIDENCE, AND THAT THOSE
25 OTHER ISSUES ARE NOT BEFORE THEM TO SEE. ANY TESTIMONY CAN

1 BE. AND I UNDERSTAND YOUR CONCERN BECAUSE I HAVE DONE THE
2 SAME THING THAT YOU ARE DOING AT AN EARLIER STAGE IN LIFE,
3 BUT THE FACT REMAINS IS THAT IT'S GOT TO BE PROPERLY
4 IDENTIFIED SOMEHOW, SOMEWAY.

5 MS. FULLWOOD: YES, SIR, I UNDERSTAND THAT AND I
6 DON'T DISAGREE THEY SHOULD BE ABLE TO HAVE A WITNESS
7 IDENTIFY SOMETHING BECAUSE IT'S SOMETHING THEY ARE GOING TO
8 HAVE TO DO; HOWEVER, ONCE THAT HAPPENS, WHAT WE DON'T WANT
9 IS FOR THINGS THAT HAVE SIMPLY BEEN MARKED FOR
10 IDENTIFICATION AND HAVEN'T BEEN PUT IN EVIDENCE PUT UP HERE
11 AND DISPLAYED.

12 CAN'T THE COURT REPORTER KEEP THEM---

13 THE COURT: NOW, MS. FULLWOOD, I TAKE THIS COURT
14 HOUSE AS I GET IT.

15 MS. FULLWOOD: YES, SIR.

16 THE COURT: AND I DON'T KNOW HOW Y'ALL HAVE DONE
17 THINGS DOWN HERE IN THE PAST. A LOT OF PEOPLE HAVE AN
18 EVIDENCE TABLE THAT IT IS PLACED ON EITHER OVER HERE OR
19 HERE OR IN FRONT OF THE JURY BOX SOMEWHERE, BUT I DON'T
20 BELIEVE YOU WOULD BE ABLE TO OPERATE IF YOU HAD ONE
21 THERE---

22 MS. FULLWOOD: NO, SIR.

23 THE COURT: ---BUT, NO, MA'AM. YOU KNOW, IF
24 YOU'VE GOT ANY SUGGESTIONS AS TO WHAT THE COURT REPORTER
25 CAN DO WITH IT NOW, I'LL BE GLAD TO ACCEPT THOSE AND TRY TO

1 HANDLE IT, BUT I WOULD IMAGINE THAT Y'ALL HAVE DONE THINGS
2 LIKE THIS AD INFINITUM HERE IN LEXINGTON COUNTY SINCE YOU
3 BUILT THIS COURT HOUSE LIKE THIS.

4 MS. FULLWOOD: WELL, SIR, THERE'S AN AREA HERE
5 WHERE THINGS COULD BE KEPT. THAT WOULD BE---

6 THE COURT: WELL, AS LONG YOU WANT TO WALK UP
7 HERE AND PICK THEM UP WHEN YOU NEED THEM, THAT WILL BE
8 FINE---

9 MS. FULLWOOD: I DON'T---

10 THE COURT: ---BUT THE COURT REPORTER IS NOT
11 GOING TO BE HANDING THEM BACK AND FORTH TO YOU BECAUSE IT'S
12 EVIDENCE THAT Y'ALL HAVE PUT IN---

13 MS. FULLWOOD: YES, SIR.

14 THE COURT: ---BUT IF THIS IS GOING TO BECOME A
15 PROBLEM, I'M NOT -- THE COURT REPORTER IS NOT GOING TO BE
16 DOFFING-OFF EVERY PIECE OF EVIDENCE WHEN SHE PUTS A STICKER
17 ON IT.

18 WE'RE GOING TO MOVE THIS TRIAL ALONG---

19 MS. FULLWOOD: YES, SIR.

20 THE COURT: WE'RE GETTING BOGGED DOWN NOW AND I
21 -- I DON'T GET BOGGED DOWN. IF YOU KNOW ANYTHING ABOUT MY
22 REPUTATION, WE DON'T GET BOGGED DOWN AND WE'RE GOING TO
23 MOVE THIS CASE BECAUSE I'VE BEEN BOGGED DOWN ALREADY AND
24 WE'RE GOING TO MOVE.

25 NO, MA'MA, WE ARE GOING TO DO IT JUST LIKE YOU'VE

1 ALWAYS DONE IT DOWN HERE. WE ARE GOING TO PUT IT RIGHT
2 THERE UNLESS IT'S TOO BIG TO GO THERE AND THEN WE'LL LAY IT
3 SOMEWHERE ELSE.

4 ANYTHING ELSE?

5 MS. FULLWOOD: NO, SIR.

6 THE COURT: ALL RIGHT.

7 BRING THE JURY BACK.

8 (JURY IN.)

9 THE COURT: ALL RIGHT.

10 SOLICITOR, CONTINUE YOUR DIRECT EXAMINATION.

11 MR. HUMPHRIES: PLEASE THE COURT, YOUR HONOR.

12 AT THIS TIME, I MOVE TO INTRODUCE THIS ITEM OF
13 EVIDENCE.

14 MS. FULLWOOD: SUBJECT TO OUR PRIOR OBJECTION.

15 THE COURT: ALL RIGHT.

16 SUBJECT TO OBJECTION, IT IS ADMITTED. THE
17 OBJECTION IS OVERRULED. IT WILL BE STATE'S NUMBER TEN --
18 ELEVEN.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER
20 ELEVEN, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME OVER
21 OBJECTION OF COUNSEL.)

22 CONTINUED DIRECT EXAMINATION

23 BY MR. HUMPHRIES:

24 Q LET ME SHOW YOU STATE'S ELEVEN. PLEASE, AGAIN,
25 IDENTIFY WHAT'S DEPICTED IN THAT PHOTOGRAPH.

1 A THIS IS THE PHONE BOX OR A CLOSE-UP OF THE PHONE BOX
2 THAT WE'VE SHOWN, I THINK, ON STATE'S EXHIBIT NUMBER TEN, A
3 FURTHER AWAY VIEW.

4 Q IF YOU WILL POINT OUT ON STATE'S EXHIBIT NUMBER ONE
5 THE LOCATION OF THE PHONE BOX?

6 A ON STATE'S EXHIBIT NUMBER ONE, IT'S JUST TO THE LEFT
7 SIDE OF THE CARPORT AREA IN THE BACK OF THE HOUSE.

8 Q AND IS IT ACCURATELY DEPICTED ON STATE'S EXHIBIT
9 NUMBER ONE?

10 A YES, IT IS.

11 Q OKAY. AND IF YOU WILL, STEP DOWN AND -- FIRST OF
12 ALL, WHAT IS THE CONDITION OF THE WIRES LEADING INTO THE
13 PHONE BOX?

14 A THE WIRES HAVE EITHER BEEN CUT OR PULLED OUT.

15 Q IF YOU'LL STEP DOWN AND POINT OUT THE CONDITION OF
16 THE WIRES TO THE JURY.

17 A (WITNESS COMPLIES.) SEE THE RED AND THE GREEN AND
18 THE YELLOW WIRES PULLED OUT OF THE BOX---

19 Q KEEP YOUR VOICE UP, PLEASE, SIR.

20 THE COURT: YOU NEED TO SPEAK UP, PLEASE, SIR.

21 THE WITNESS: SEE THE DIFFERENT COLORED WIRES
22 PULLED OUT OF THE BOX, THE RED, THE GREEN AND THE YELLOW
23 WIRES(INDICATES) .

24 SEE THE WIRES PULLED OUT OR CUT OUT OF THE BOTTOM
25 OF THE BOX(INDICATES) .

1 HERE YOU'LL SEE THE DIFFERENT COLORED WIRES
2 PULLED OUT OF THE BOTTOM OF THE BOX(INDICATES) .

3 Q THANK YOU.

4 A NOW, DID YOU ALSO HAVE AN OCCASION TO INSPECT THE
5 INTERIOR OF THE RESIDENCE?

6 A THAT'S CORRECT.

7 Q LET ME ASK YOU THIS.

8 WERE YOU ABLE TO OBSERVE THE CONDITION OF THE
9 SIDE DOOR IN THE CARPORT AREA?

10 A YES. THE WOODEN DOOR THAT GOES INTO THE KITCHEN AREA
11 OF THE RESIDENCE LOCATED AT THE REAR OF THE CARPORT.

12 Q LET ME SHOW YOU STATE'S FOUR AND FIVE. DO THOSE
13 ACCURATELY REFLECT THE CONDITION OF BOTH THE DOOR AND
14 LOOKING IN FROM THE EXTERIOR TO THE INTERIOR---

15 A YES, THEY DO.

16 Q ---THAT SIDE DOOR?

17 A YES, THEY DO.

18 Q TELL THE JURY, IF YOU WILL, WHAT YOU FOUND TO BE THE
19 CONDITION OF THAT SIDE DOOR, PARTICULARLY, THE GLASS
20 PANELS.

21 A REFERRING TO STATE'S EXHIBIT NUMBER FOUR, WHICH IS A
22 PHOTOGRAPH OF THE WOODEN DOOR AT THE DOORKNOB, THE PANE OF
23 GLASS RIGHT TO THE LEFT OF THE DOORKNOB IS BROKEN.

24 Q WERE YOU ABLE TO DETERMINE -- WHEN YOU SAY BROKEN,
25 GLASS HAD BEEN KNOCKED OUT OF THE PANE?

1 A THAT'S CORRECT.

2 Q WERE YOU ABLE TO DETERMINE WHERE THE GLASS LAY?

3 A REFERRING TO STATE'S EXHIBIT NUMBER FIVE, THE GLASS
4 FROM THAT PANE OF -- THAT WAS BROKEN, THE MAJORITY OF THE
5 GLASS IS LAYING ON A PIECE OF CARPET THAT'S JUST INSIDE THE
6 DOOR OF THE KITCHEN SIDE OF THE STOOP.

7 Q LET ME ASK YOU THIS. AS IT RELATES TO STATE'S
8 EXHIBIT NUMBER FIVE AND THE CONDITIONS OF THE DOOR AND THE
9 GLASS AS YOU FOUND THEM, HOW MANY CRIME SCENE BREAK-INS
10 HAVE YOU WORKED WITH THE SHERIFF'S DEPARTMENT?

11 A IT WOULD BE CLOSE TO FOUR HUNDRED.

12 Q HAVE YOU RECEIVED SPECIFIC TRAINING REGARDING
13 PROCESSING OF CRIME SCENES?

14 A YES, I HAVE.

15 Q HAVE YOU RECEIVED SPECIFIC TRAINING REGARDING THE
16 MEANING OF CERTAIN EVIDENCE AT CRIME SCENES, SPECIFICALLY,
17 WHERE GLASS LAY IN RELATION TO A DOOR?

18 A THAT'S CORRECT.

19 Q BASED ON YOUR EXPERIENCE, WHAT WOULD THE CONDITION OF
20 THE GLASS IN THIS CASE INDICATE TO YOU ABOUT WHETHER THE
21 FORCE THAT BROKE THE GLASS CAME FROM THE INTERIOR OR THE
22 EXTERIOR?

23 A IN CASES SUCH AS THIS, THE -- THE FORCE WOULD COME
24 FROM THE OUTSIDE OF THE DOOR PUSHING THE GLASS TO THE
25 INSIDE OF THE RESIDENCE.

1 THEREFORE, PUSHING THE MAJORITY OF THE GLASS ONTO
2 THE FLOOR INSIDE THE KITCHEN AREA.

3 ALSO, A SMALL AMOUNT OF GLASS WOULD FALL DIRECTLY
4 DOWN OR RIGHT AT THE DOOR JAM.

5 Q AND IS THAT CONSISTENT WITH THE CONDITION OF THE DOOR
6 AND THE GLASS IN THIS CASE?

7 A THAT'S CORRECT.

8 Q OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER SIX.
9 DOES THAT ACCURATELY REFLECT THE CONDITION OF THE KITCHEN
10 WHEN YOU FIRST OBSERVED IT?

11 A THAT'S CORRECT.

12 Q AND YOU WOULD CHARACTERIZE THAT AS WHAT KIND OF
13 CONDITION?

14 A A DISARRAY OF TRASH THROWN ON THE FLOOR.

15 Q AND IS THE KITCHEN PROPERLY DESIGNATED ON STATE'S
16 EXHIBIT NUMBER ONE?

17 A THAT'S CORRECT.

18 Q WHICH WOULD BE JUST INSIDE THE SIDE DOOR, IS THAT
19 CORRECT?

20 A THAT IS CORRECT.

21 Q DID YOU ENTER THE RESIDENCE?

22 A YES, I DID.

23 Q DID YOU DETERMINE THE POSITION AND LOCATION OF THE
24 VICTIM IN THIS CASE?

25 A THAT'S CORRECT, SIR.

1 Q IS IT -- IS THE POSITION OF THE VICTIM PROPERLY
2 INDICATED BY THAT BODY STICK-ON IN STATE'S EXHIBIT NUMBER
3 ONE?

4 A THAT'S CORRECT.

5 Q I WANT YOU AS -- AS DETAILED AS POSSIBLE TO TELL THE
6 JURY, NUMBER ONE, HOW THE VICTIM WAS CLOTHED, IF ANY; AND,
7 NUMBER TWO, WHAT HER POSITION WAS, HER BODY POSITION WAS IF
8 YOU RECALL.

9 A THE BEST OF MY RECOLLECTION, THE BODY HAD EITHER A
10 SHIRT OR A GOWN ON UP TOP, BUT HAD NO UNDERWEAR ON.

11 THE VICTIM'S LEGS, THE LEFT LEG WAS UP AT AN
12 ANGLE LIKE ALMOST WITH THE BOTTOM OF THE FOOT ON THE FLOOR
13 WHERE THE LEG WOULD BE UP. THE RIGHT LEG WOULD BE JUST
14 LAYING STRAIGHT AND THE LEGS WOULD BE APART.

15 Q LET ME SHOW YOU THIS PHOTOGRAPH. TELL ME IF YOU CAN
16 IDENTIFY IT.

17 A YES, I CAN. THIS IS A PHOTOGRAPH OF THE INTERIOR OF
18 THE RESIDENCE AT APPROXIMATELY WHERE THE BODY WAS LAYING.

19 Q NOW, IS THIS A VERY DARK PHOTOGRAPH, AT LEAST, AS IT
20 RELATES TO THE POSITION OF THE VICTIM?

21 A YES, IT IS.

22 Q AND DOES IT GRAPHICALLY DEPICT THE VICTIM?

23 A YOU CAN'T VERY -- YOU CANNOT VERY WELL SEE THE
24 VICTIM. IT'S -- IT'S VERY DARK.

25 Q GOOD.

1 I BELIEVE PREVIOUS THERE WAS NO OBJECTION---

2 MS. FULLWOOD: NO OBJECTION.

3 THE COURT: WITHOUT OBJECTION, IT WILL BE
4 ADMITTED AS STATE'S NUMBER TWELVE.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER
6 TWELVE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
7 WITHOUT OBJECTION.)

8 MR. HUMPHRIES: NOW, I WOULD LIKE FOR YOU TO STEP
9 DOWN, IF YOU WILL?

10 A (WITNESS COMPLIES.)

11 Q AGAIN, KEEPING IN MIND, THIS IS A DARK PHOTOGRAPH,
12 POINT OUT FOR THE JURY THE POSITION OR WHERE THE VICTIM IS
13 LOCATED IN THIS DARK PHOTOGRAPH.

14 THE COURT: PLEASE KEEP YOUR VOICE UP WHILE YOU
15 ARE OFF THE STAND, TOO, SIR.

16 THE WITNESS: YES, SIR.

17 IN THIS PHOTOGRAPH, YOU WILL NOTICE THIS IS LIKE
18 A LIVING ROOM AREA. YOU CAN JUST BARELY MAKE OUT THE
19 VICTIM. THE VICTIM'S HEAD WOULD BE CLOSER TO THIS LITTLE
20 HALL AREA RIGHT HERE(INDICATES) WHERE THE -- THERE'S AN
21 IN-TAKE VENT FOR THE HEATING AND AIR-CONDITIONING UNIT.
22 YOU CAN JUST BARELY SEE A PORTION OF THE LEG
23 HERE(INDICATES).

24 THIS IS LIKE THE LIVING ROOM AREA. YOU CAN JUST
25 SEE HIGHLIGHTS OF THE VICTIM HERE(INDICATES). HER HEAD

1 WOULD BE MORE UP IN THIS AREA NEXT TO THE IN-TAKE VENT, THE
2 HEATING AND AIR-CONDITIONING AREA, DUCT WORK AND YOU CAN
3 SEE PART OF THE LEG RIGHT HERE(INDICATES).

4 THE LIVING ROOM AREA HERE(INDICATES). THE HEAD
5 WOULD BE IN THIS AREA NEXT TO THE IN-TAKE VENT FOR THE
6 HEATING AND AIR-CONDITIONING AND YOU CAN JUST SEE THE
7 COLORATION HERE OF THE LEG(INDICATES).

8 THE LIVING ROOM AREA(INDICATES). THE HEAD WOULD
9 BE UP TOWARD THIS AREA NEXT TO THE IN-TAKE VENT OF THE
10 HEATING AND AIR-CONDITIONING(INDICATES). YOU CAN SEE THE
11 COLORATION OF THE LEGS HERE(INDICATES).

12 Q THANK YOU VERY MUCH. YOU CAN TAKE YOUR SEAT AGAIN.

13 A (WITNESS COMPLIES.)

14 Q NOW, LET ME SHOW YOU THIS ITEM OF EVIDENCE. JUST
15 TELL ME IF YOU CAN IDENTIFY IT.

16 A YES, SIR, I CAN.

17 Q WHAT IS THAT ITEM OF EVIDENCE?

18 A IT'S A ONE-BY-ONE PIECE OF WOOD.

19 Q AND DO YOU KNOW IF THAT WAS LOCATED AT THE CRIME
20 SCENE OR NOT?

21 A YES, IT WAS.

22 Q POINT OUT, IF YOU WILL, WITH THE YARD STICK WHERE
23 THIS ITEM OF EVIDENCE WOULD HAVE BEEN FOUND?

24 A THERE WAS A SMALL TABLE AND CHAIRS HERE AND THE PIECE
25 OF WOOD WAS LOCATED IN THE CHAIR DIAGONALLY(INDICATES).

1 MR. HUMPHRIES: YOUR HONOR, LET ME MARK THIS FOR
2 IDENTIFICATION PURPOSES AT THIS TIME.

3 THE COURT: IT WILL BE MARKED AS STATE'S NUMBER
4 13 FOR I.D.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER
6 13, ONE-BY-ONE PIECE OF WOOD, MARKED FOR IDENTIFICATION
7 ONLY AT THIS TIME.)

8 MR. HUMPHRIES: IF YOU WILL, USING THIS STICK-ON
9 -- LET ME SHOW IT TO THE DEFENSE. I BELIEVE IT'S FAIRLY
10 INNOCUOUS, BUT.

11 MR. STONE: NO, THAT'S FINE. NO OBJECTION.

12 MR. HUMPHRIES: WILL YOU AFFIX THIS STICK-ON TO A
13 LOCATION WHERE THIS -- WHERE STATE'S EXHIBIT NUMBER 13 FOR
14 IDENTIFICATION PURPOSES WAS FOUND?

15 A (WITNESS COMPLIES.)

16 THE COURT: HEARING NO OBJECTION, IT WILL BE
17 ADMITTED -- BE ALLOWED.

18 MR. STONE: NO OBJECTION, YOUR HONOR.

19 MR. HUMPHRIES: AND WE CAN JUST HOPE THAT STAYS
20 ON.

21 NOW, IS IT ALSO CONSISTENT WITH YOUR DUTIES AS AN
22 IDENTIFICATION OFFICER TO ACCOMPANY THE BODY OF THE VICTIM
23 TO THE AUTOPSY?

24 A THAT'S CORRECT.

25 Q DID YOU DO SO IN THIS CASE?

1 A I DID.

2 Q AND DID YOU REMAIN AT THE AUTOPSY FOR THE COMPLETION
3 OF THE AUTOPSY?

4 A THE ENTIRE DURATION.

5 Q AND, IN FACT, DID YOU TAKE PHOTOGRAPHS DURING THE
6 AUTOPSY?

7 A THAT'S CORRECT.

8 Q DID YOU -- LET ME ASK YOU THIS. WERE YOU PRESENT --
9 I'LL ASK IT ANOTHER WAY. WHO PERFORMED THE AUTOPSY TO YOUR
10 RECOLLECTION?

11 A DR. JOHN CARTER.

12 Q DID DR. CARTER COLLECT CERTAIN SAMPLES FROM THE
13 VICTIM, IN THIS CASE, URAI JACKSON, IN YOUR PRESENCE?

14 A YES, SIR.

15 Q SPECIFICALLY, DID HE COLLECT A BLOOD STANDARD,
16 VAGINAL WASH AND A RECTUM SWAB IN THIS CASE?

17 A THAT'S CORRECT.

18 Q WERE YOU PRESENT WHEN HE COLLECTED THESE SAMPLES?

19 A YES, SIR.

20 Q INTO WHOSE CUSTODY, DID HE TURN THESE SAMPLES OVER?

21 A TURNED THEM OVER TO ME.

22 Q NOW, INVESTIGATOR CATO, WHAT DID YOU DO WITH THOSE
23 SAMPLES?

24 A I TOOK THOSE SAMPLES BACK TO THE LEXINGTON COUNTY
25 SHERIFF'S DEPARTMENT AND PLACED THEM IN THE REFRIGERATOR

1 FOR TRANSPORTATION TO THE SOUTH CAROLINA LAW ENFORCEMENT
2 DIVISION, FORENSIC DIVISION FOR ANALYSIS.

3 Q LET ME ASK YOU THIS. INTO WHAT, DID YOU PLACE THESE
4 SAMPLES? IS MY QUESTION CLEAR? WHAT DID YOU PUT THE
5 SAMPLES IN WHEN YOU GOT TO THE SHERIFF'S DEPARTMENT?

6 A REFRIGERATOR.

7 Q OKAY. AND FOR WHAT PURPOSE IS THAT?

8 A TO KEEP THEM FRESH, TO KEEP THEM FROM SPOILING.

9 Q PRESERVE THEIR INTEGRITY, THEIR QUALITY?

10 A THAT'S CORRECT.

11 Q NOW, WHERE IS THIS REFRIGERATOR SITTING? IT'S NOT
12 OUT BY THE DRINK MACHINE, IS IT?

13 A NO, SIR.

14 Q TELL THE JURY ABOUT THE WAY THE EVIDENCE ROOM IS SET
15 UP, WHO HAS ACCESS TO IT, IF YOU WILL?

16 A IN THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT, WE ARE
17 -- OUR INTEGRITY TO KEEP OUR EVIDENCE SECURED, WE HAVE A
18 LOCKED-SECURITY EVIDENCE ROOM.

19 AT THAT TIME, THERE WERE THREE PEOPLE THAT HAVE A
20 KEY TO THE EVIDENCE ROOM. MYSELF BEING ONE; MY PARTNER AT
21 THAT TIME WHICH WOULD HAVE BEEN R.M. FREEMAN HAD A KEY AND
22 THERE'S ALSO A KEY THAT IS STORED IN A VAULT WITHIN THE
23 SHERIFF'S OFFICE, LOCKED UP IN THE CHIEF'S OFFICE.

24 THE REASON FOR THAT KEY BRING THERE IS IN CASE OF
25 EMERGENCIES, IN CASE SOMETHING HAPPENED TO ONE OF US

1 BECAUSE NOBODY CAN GET IN WITHOUT THAT KEY.

2 WE KEEP THOSE THINGS LOCKED UP TO MAINTAIN THE
3 INTEGRITY. THAT REFRIGERATOR THAT WE ARE TALKING ABOUT IS
4 WITHIN THAT LOCKED AREA. AS A MATTER OF FACT, IT'S BEHIND
5 TWO LOCKED DOORS.

6 Q NOW, WHILE, THESE SAMPLES -- LET ME ASK YOU THIS.
7 WERE THEY COLLECTED LIKE IN A KIT?

8 A YES. SOME -- SOME OF THE EVIDENCE THAT WAS TURNED
9 OVER TO ME FROM DR. CARTER WAS MAINTAINED IN A KIT. SOME
10 OF IT WAS IN PAPER POUCHES AND STUFF.

11 Q OKAY. THOSE WOULDN'T BE BODY FLUID TYPE EVIDENCE?

12 A NO, THEY WOULD NOT. BE FINGERNAIL CLIPPINGS AND THIS
13 TYPE OF STUFF.

14 Q NOW, WHILE THESE ITEMS OF EVIDENCE, THESE SAMPLES
15 WERE IN YOUR CUSTODY AND CONTROL, WERE THEY CHANGED
16 SUBSTANTIALLY AS TO FORM OR CONTENT?

17 A NO, THEY WERE NOT.

18 Q IN FACT, WERE THEY TAMPERED WITH AT ALL?

19 A NO, THEY WERE NOT.

20 Q ONCE YOU PLACED THEM IN THIS SECURE REFRIGERATOR IN
21 THE S.L.E.D. EVIDENCE ROOM -- I MEAN, I'M SORRY, THE
22 LEXINGTON COUNTY EVIDENCE ROOM, DID YOU LEAVE ANY
23 INSTRUCTIONS -- FIRST OF ALL, LET ME ASK YOU THIS. WHEN
24 DID YOU ARRIVE BACK AT THE SHERIFF'S DEPARTMENT WITH THESE
25 ITEMS OF EVIDENCE?

1 A IT WAS LATE. I DON'T KNOW THE EXACT TIME, BUT AS
2 SOON AS I GOT BACK, I PREPARED A S.L.E.D. EVIDENCE FORM FOR
3 THE ITEMS TO BE TAKEN TO S.L.E.D. THE VERY NEXT DAY BY MY
4 PARTNER R.M. FREEMAN.

5 Q NOW, IS THAT YOUR POLICY, WHEN ARRIVING BACK LATE, TO
6 TAKE THE EVIDENCE TO S.L.E.D. ANOTHER DAY, AS OPPOSED TO
7 LATE THAT EVENING?

8 A WELL, S.L.E.D. WAS CLOSED. SO WE COULDN'T TAKE IT BY
9 TO THEM.

10 Q VERY GOOD. YOU LEFT THOSE INSTRUCTIONS TO HAVE THEM
11 DELIVERED THE NEXT DAY?

12 A THAT'S CORRECT.

13 Q AND THAT WAS INSTRUCTIONS FOR WHOM?

14 A R.M. FREEMAN.

15 Q HE WOULD HAVE BEEN THE ONLY OTHER EVIDENCE TECHNICIAN
16 AT THAT TIME WHO HAD ACCESS TO THAT EVIDENCE ROOM?

17 A THAT'S CORRECT.

18 Q VERY GOOD. I DON'T HAVE ANY FURTHER QUESTIONS OF
19 THIS WITNESS AT THIS TIME, YOUR HONOR.

20 THE COURT: CROSS-EXAMINATION BY MR. STONE.

21 MR. STONE: YES, SIR. JUST A FEW, YOUR HONOR.

22 CROSS-EXAMINATION

23 BY MR. STONE:

24 Q NOTHING WAS -- LET ME SHOW YOU WHAT HAS BEEN MARKED
25 AS STATE'S EXHIBIT NUMBER FOUR. THERE WASN'T ANY EVIDENCE

1 ON THAT DOOR, WAS THERE, OF ANY PRYING OR ANYTHING LIKE
2 THAT, WAS THERE?

3 A REFERRING TO STATE'S EXHIBIT NUMBER FOUR---

4 Q IS THAT FOUR?

5 A YES, SIR.

6 Q I DON'T WANT TO MISLEAD YOU. IS THAT RIGHT?

7 A YES, SIR.

8 Q OKAY. FOUR.

9 A I DO NOT RECALL ANY PRYING ON THE DOOR.

10 Q YOU KNOW WHAT I'M ASKING YOU. THERE'S NOTHING -- NO
11 BROKEN DOOR SEAM OR ANYTHING LIKE THAT?

12 A NOT THAT I'M AWARE OF.

13 Q ALL RIGHT, SIR. YOU DID SEE THIS ON THE SCENE,
14 DIDN'T YOU?

15 A YES, SIR.

16 Q ALL RIGHT, SIR. AND THIS, STATE'S EXHIBIT NUMBER
17 FIVE, THAT'S AN ACCURATE DEPICTION AS WELL OF THE SCENE
18 WHEN YOU GOT THERE?

19 A THAT'S CORRECT.

20 Q OKAY. NOW, A FEW PEOPLE HAD COME IN AND OUT, BUT
21 GENERALLY THAT'S -- THAT'S WHAT YOU SAW WHEN YOU GOT THERE?

22 A THAT'S EXACTLY RIGHT.

23 Q ALL RIGHT, SIR.

24 NOW, AS FAR AS THIS PHONE LINE IS CONCERNED,
25 STATE'S EXHIBIT NUMBER ELEVEN, YOU TESTIFIED THIS WAS THE

1 CONDITION OF THE PHONE BOX WHEN YOU GOT THERE?

2 A THAT'S CORRECT.

3 Q ANY WAY FOR YOU TO TELL IF THIS TOOK PLACE BEFORE OR
4 AFTER THE MURDER?

5 A NO.

6 Q OKAY. AND THERE'S NO WAY TO TELL IF THE PERPETRATOR
7 DID THIS BEFORE HE WENT INTO THE HOUSE, ON THE WAY OUT OF
8 THE HOUSE, IS THERE?

9 A THAT'S CORRECT.

10 Q AS FAR AS THIS GLASS IS CONCERNED ON THE FLOOR OF THE
11 KITCHEN, I UNDERSTAND YOUR TESTIMONY EARLIER WAS THAT IN
12 MOST OF THE CRIME SCENES YOU SEE GLASS IS INSIDE THE
13 KITCHEN DOOR, THAT SHOWS IT WAS BROKEN IN, IS THAT RIGHT?

14 A GENERALLY -- WELL, THE THING WHAT HAPPENS IS WHEN
15 THEY BREAK-IN, THEY PUSH THE GLASS THROUGH---

16 Q RIGHT.

17 A ---SO IT GOES INTO THE HOUSE INSTEAD OF OUT OF THE
18 HOUSE.

19 Q RIGHT. AND THAT'S WHAT YOU THINK HAPPENED IN THIS
20 CASE OR WAS THAT YOUR TESTIMONY? IF IT'S NOT, THAT'S FINE.

21 A THAT'S -- THAT'S CORRECT.

22 Q ALL RIGHT, SIR. THIS DOOR OPENS INSIDE, DOES IT NOT?

23 A YES, IT DOES.

24 Q OKAY. IS THERE ANY EVIDENCE THAT YOU CAN PROVIDE TO
25 US TODAY TO TELL US IT'S NOT POSSIBLE THAT THIS DOOR WOULD

1 HAVE ALREADY BEEN OPENED WHEN THE GLASS WAS BROKEN?

2 A MAY I SEE?

3 Q SURE. ABSOLUTELY. I'M SORRY. WHICH ONE DO YOU
4 WANT?

5 A REFERRING TO STATE'S EXHIBIT NUMBER FIVE, YOU CAN
6 SURMISE ANYTHING YOU'D LIKE TO ABOUT THIS GLASS, BUT FROM
7 THE DIRECTION OF THE GLASS AND THE LOCATION OF THE DOOR
8 HANDLE, WHICH WE HAVE A PHOTOGRAPH IN STATE'S EXHIBIT
9 NUMBER FOUR, THE PROXIMITY OF THE GLASS TO THE DOOR WOULD
10 MAKE A PERSON WHO PROCESSES CRIME SCENES---

11 Q UH-HUH.

12 A ---KNOW THAT DOOR WAS EITHER CLOSED OR COULD BE
13 POSSIBLY OPEN SOMEWHAT.

14 Q SURE. IT'S POSSIBLE, IS IT NOT, THAT THIS DOOR COULD
15 HAVE -- THE GLASS COULD HAVE ACTUALLY BEEN BROKEN,
16 ESPECIALLY IF SOMEBODY HAD SOMETHING IN THEIR HAND, ON THE
17 WAY OUT AND, IN FACT, IT COULD HAVE ACTUALLY BEEN BROKEN
18 WITH THE DOOR ALREADY OPENED ON THE WAY OUT? IS THAT
19 POSSIBLE?

20 A (NO RESPONSE.)

21 Q IF IT'S NOT, TELL ME, BUT I'M ASKING YOU IF THAT'S
22 POSSIBLE?

23 A I DON'T SEE IT.

24 Q SURE. BUT IT IS POSSIBLE?

25 A I DON'T SEE IT.

1 Q OKAY. DO YOU KNOW WHEN THE TRASH CAN WAS TURNED
2 OVER?

3 A NO, I DON'T.

4 Q OKAY. THE -- THERE IS A PHOTOGRAPH OF THE INSIDE OF
5 THE HOUSE. I'M NOT SURE WHAT THAT IS MARKED AS. DO YOU --
6 THAT YOU TESTIFIED TO EARLIER?

7 A YES.

8 Q THAT'S RIGHT. STATE'S EXHIBIT NUMBER TWELVE, THIS IS
9 -- AND THIS IS A FAIR AND ACCURATE DEPICTION OF HOW THAT
10 CRIME SCENE LOOKED WHEN YOU GOT THERE?

11 A YES, SIR.

12 Q NOW, DID YOU GO THROUGHOUT THE WHOLE HOUSE OR DID YOU
13 JUST COME TO THIS ONE AREA?

14 A I JUST WENT IN CERTAIN PARTS. I DON'T THINK I WENT
15 THROUGH THE WHOLE HOUSE.

16 Q OKAY. LOOKING AT STATE'S EXHIBIT NUMBER TWELVE,
17 WOULD YOU AGREE WITH ME THAT THAT'S A NON-RANSACKED TYPE
18 SETTING?

19 A (NO RESPONSE.)

20 Q DO YOU UNDERSTAND WHAT I MEAN BY THAT?

21 A SURE.

22 AS FAR AS THIS PICTURE IS -- IS -- GOES AND I
23 CAN'T TELL BY THIS COUCH HERE WHETHER THE COUCH IS SUPPOSED
24 TO BE -- IF YOU'D SEE WHAT I'M SAYING, THIS COUCH, I CAN'T
25 SEE THE FLOOR---

1 Q YES, SIR.

2 A ---I DON'T KNOW IF THERE ARE LEGS UNDERNEATH THIS
3 FLOOR -- I MEAN, UNDERNEATH THE COUCH, BUT AS FAR AS THE
4 GENERAL OVERVIEW OF THE PICTURE, IT IS A NON-RANSACKED
5 HOUSE.

6 Q AND, IN FACT, EXCEPT FOR THE TRASH CAN THAT'S
7 OVERTURNED IN THE KITCHEN, ESPECIALLY, NO SIGN OF ANY TYPE
8 OF STRUGGLE OR ANY TYPE OF RANSACKING?

9 A NOT, NOT TO MY KNOWLEDGE.

10 Q ALL RIGHT.

11 DID YOU NOTICE ANY JEWELRY IN THE HOUSE WHEN YOU
12 WERE THERE?

13 A NO, SIR, I DIDN'T.

14 Q ALL RIGHT, SIR. I DON'T HAVE ANYTHING ELSE. THANK
15 YOU.

16 THE COURT: REDIRECT.

17 MR. HUMPHRIES: NO, SIR.

18 THE COURT: THANK YOU. YOU MAY STEP DOWN, SIR.

19 (WHEREUPON, THE WITNESS WAS
20 EXCUSED AT THIS TIME.)

21 MR. CHASE: PLEASE THE COURT, YOUR HONOR.

22 THE STATE CALLS R. M. FREEMAN TO THE STAND.

23 RICHARD M. FREEMAN,

24 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT REPORTER: STATE YOUR FULL NAME,

1 SPELLING YOUR LAST NAME, PLEASE.

2 THE WITNESS: RICHARD M. FREEMAN, F-R-E-E-M-A-N.

3 DIRECT EXAMINATION

4 BY MR. CHASE:

5 Q MR. FREEMAN, WHERE ARE YOU CURRENTLY EMPLOYED?

6 A I'M THE ASSET FORFEITURE SPECIALIST WITH THE UNITED
7 STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT
8 ADMINISTRATION OFFICE IN COLUMBIA.

9 Q HOW LONG HAVE YOU HELD THAT POSITION?

10 A ALMOST THREE YEARS.

11 Q SO, YOU WEREN'T EMPLOYED THERE ON JUNE THE 1ST OF
12 1994?

13 A NO, SIR, I WAS NOT.

14 Q WHERE WERE YOU EMPLOYED AT THAT POINT?

15 A WITH THE LEXINGTON COUNTY SHERIFF'S OFFICE.

16 Q IN WHAT CAPACITY?

17 A AS AN IDENTIFICATION OFFICER.

18 Q WHAT WERE YOUR DUTIES AS AN IDENTIFICATION OFFICER?

19 A THE IDENTIFICATION OFFICER IN THE SHERIFF'S OFFICE
20 COLLECTS THE EVIDENCE AT THE CRIME SCENES, MAINTAINS THE
21 EVIDENCE, TRANSPORTS IT TO AND FROM THE LABORATORIES TO GET
22 IT EXAMINED, ANALYZED.

23 WE ALSO DID MARIJUANA EXAMINATIONS, CRIME SCENE
24 PHOTOGRAPHY, VIDEOGRAPHY WAS DONE AT THE CRIME SCENE.

25 Q WERE YOU ON DUTY IN THAT CAPACITY ON JUNE THE 1ST OF

1 1994?

2 A YES, I WAS.

3 Q DO YOU RECALL WHAT SHIFT YOU WOULD HAVE BEEN WORKING?

4 A JUNE 1ST, I WAS WORKING DAYS, WHICH WOULD MEAN THAT I
5 WOULD COME IN AT 8 O'CLOCK AND LEAVE AT FIVE.

6 Q AND WHEN YOU ARRIVED TO WORK THAT MORNING, DID YOU
7 RECEIVE ANY INSTRUCTIONS FROM CHARLES CATO?

8 A I RECEIVED INSTRUCTIONS AND I DON'T REMEMBER IF THEY
9 WERE WRITTEN -- COULD WELL HAVE BEEN WRITTEN. CHARLIE
10 COULD HAVE LEFT A NOTE ON MY DESK OR SOMETHING LIKE THAT TO
11 TRANSPORT SOME EVIDENCE OUT TO S.L.E.D.

12 Q AND WHERE WAS THAT EVIDENCE LOCATED?

13 A IT WAS IN THE REFRIGERATOR IN THE EVIDENCE ROOM.

14 Q DID YOU, IN FACT, TAKE EVIDENCE OUT TO S.L.E.D. THAT
15 DAY?

16 A YES, I DID.

17 Q DID THAT EVIDENCE INCLUDE A BLOOD SAMPLE, VAGINAL
18 SWABS -- VAGINAL WASH, VULVA SWABS, ORAL AND ANAL SWABS,
19 GENERALLY EVIDENCE RELATED TO A RAPE PROTOCOL KIT?

20 A YES, THAT'S RIGHT.

21 Q AND WHERE WERE THOSE ITEMS TAKEN FROM?

22 A THEY WERE TAKEN TO -- THEY WERE OUT OF THE
23 REFRIGERATOR IN THE EVIDENCE ROOM AT THE SHERIFF'S OFFICE.

24 Q WHERE WERE THEY TAKEN TO?

25 A THEY WERE TAKEN TO THE EVIDENCE IN-TAKE ROOM AT THE

1 STATE LAW ENFORCEMENT DIVISION.

2 Q ONCE YOU GOT TO THE EVIDENCE IN-TAKE ROOM AT THE
3 STATE LAW ENFORCEMENT DIVISION, WHAT DID YOU DO WITH THAT
4 EVIDENCE?

5 A AFTER THE EVIDENCE WAS LOGGED IN -- WAS LOGGED IN AND
6 A LABORATORY NUMBER ASSIGNED TO IT, THEN THE ITEMS THAT
7 NEEDED TO BE -- NEED CONTINUED REFRIGERATION WAS SEPARATED
8 AND THEN THEY WERE TURNED BACK OVER TO ME AND I DROPPED
9 THEM INTO A REFRIGERATED SEALED -- OR SEALED REFRIGERATOR.

10 Q REFERRING BACK TO YOUR STATEMENT ABOUT THEY WERE
11 GIVEN A LAB NUMBER, DO YOU RECALL WHAT LAB NUMBER THOSE
12 ITEMS WERE GIVEN?

13 A LET ME REFER TO MY SHEET. THEY WERE GIVEN LAB NUMBER
14 94-7486.

15 Q IS THAT 94-7 -- WHAT WAS THE NUMBER?

16 A I DON'T HAVE MY GLASSES, I'M SORRY. 7846?

17 Q DO YOU HAVE YOUR GLASSES ANYWHERE IN THE---

18 A THEY'RE IN THE CAR. I'M STILL TOO VAIN TO USE THOSE
19 THINGS.

20 Q COULD THAT BE 94-7886?

21 A THAT'S GOOD, YES, SIR.

22 Q THE ITEMS THAT YOU TOOK FROM THE REFRIGERATOR AT THE
23 LEXINGTON COUNTY SHERIFF'S DEPARTMENT TO S.L.E.D., DO YOU
24 KNOW WHERE THAT EVIDENCE HAD BEEN COLLECTED?

25 A NORMALLY, IT WOULD HAVE BEEN COLLECTED AT AUTOPSY.

1 Q AND WAS THIS COLLECTED FROM THE AUTOPSY OF URAI
2 JACKSON?

3 A TO THE BEST OF MY KNOWLEDGE, YES, SIR.

4 Q WHEN YOU DESCRIBED THAT YOU PLACED IT IN THE -- WAS A
5 REFRIGERATED COMPARTMENT AT S.L.E.D.?

6 A A LOCKED REFRIGERATOR, YES, SIR.

7 Q CAN YOU DESCRIBE THAT REFRIGERATOR?

8 A IT'S A OR IT WAS AT THAT TIME, IT WAS A SLENDER
9 REFRIGERATOR -- REFRIGERATED UNIT LIKE YOU'D FIND AT A
10 HOSPITAL, SOMETHING LIKE THAT, WITH A PADLOCK ON THE DOOR
11 AND A DROP SLOT LIKE A -- IN A MAILBOX DROP SLOT.

12 Q UPON PLACING EVIDENCE IN THAT SLOT, CAN YOU RETRIEVE
13 IT ONCE IT'S BEEN PLACED IN THERE?

14 A ONLY THE PERSON WITH A KEY CAN RETRIEVE IT.

15 Q SO THE LAST TIME THAT YOU HAD CONTROL OF THAT
16 EVIDENCE WAS WHEN YOU PLACED IT IN THE REFRIGERATOR
17 COMPARTMENT?

18 A YES, SIR, THAT'S RIGHT.

19 Q AND YOU DID NOT HAVE ACCESS TO IT AFTER THAT TIME?

20 A NO, SIR, I DID NOT.

21 Q DURING THE TIME THAT YOU HAD CONTROL OF THAT
22 EVIDENCE, FROM THE REFRIGERATOR AT THE LEXINGTON COUNTY
23 SHERIFF'S DEPARTMENT UNTIL THE TIME THAT YOU DROPPED IT
24 INTO THE REFRIGERATOR COMPARTMENT AT S.L.E.D., DID ANYBODY
25 ELSE HAVE CARE AND CUSTODY OF THAT EVIDENCE?

1 A NO, SIR.

2 Q AND DID -- WHILE IT WAS IN YOUR CARE AND CUSTODY, DID
3 IT CHANGE IN FORM OR CONTENT?

4 A NO, SIR, IT DID NOT.

5 Q IN FACT, DID YOU TAMPER WITH IT IN ANY WAY?

6 A NO, SIR.

7 Q YOU SIMPLY DELIVERED IT FROM ONE DESTINATION TO
8 ANOTHER?

9 A I WAS JUST THE TRANSPORTING OFFICER, THAT'S RIGHT.

10 Q BEG THE COURT'S INDULGENCE, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. CHASE: THAT'S ALL WE HAVE AT THIS TIME.

13 THE COURT: CROSS-EXAMINATION, MS. FULLWOOD.

14 MS. FULLWOOD: NO QUESTIONS.

15 THE COURT: THANK YOU, SIR.

16 MR. FREEMAN, YOU MAY STEP DOWN.

17 MR. HUMPHRIES: WE WOULD LIKE TO EXCUSE THIS
18 WITNESS IF POSSIBLE, YOUR HONOR.

19 THE COURT: WITHOUT OBJECTION?

20 MS. FULLWOOD: NO OBJECTION.

21 THE COURT: THANK YOU VERY MUCH FOR COMING, SIR.

22 (WHEREUPON, THE WITNESS WAS
23 EXCUSED AT THIS TIME.)

24 MR. HUMPHRIES: THE STATE CALLS LIEUTENANT
25 PHILLIPS TO THE STAND.

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H. E. PHILLIPS, JR.,

FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: PLEASE STATE YOUR NAME FOR THE
RECORD, PLEASE, SIR.

THE WITNESS: H. E. PHILLIPS, JR.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q WITH WHOM ARE YOU EMPLOYED?

A LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

A TWENTY-SEVEN YEARS.

Q HOW MUCH LONGER ARE YOU GOING TO BE EMPLOYED?

A FIVE MORE DAYS.

Q WHAT IS YOUR POSITION AT THE SHERIFF'S DEPARTMENT?

A RIGHT NOW, I'M LIEUTENANT IN CHARGE OF THE MAJOR
CRIME UNIT.

Q BACK IN MAY OF 1994, WHAT WAS YOUR POSITION WITH THE
SHERIFF'S DEPARTMENT?

A MY POSITION THEN WAS -- BEFORE THEY DECENTRALIZED, I
WAS IN CHARGE OF ALL THE CRIMINAL AND NARCOTIC
INVESTIGATORS.

Q LIEUTENANT PHILLIPS, DID YOU HAVE AN OCCASION TO
ARRIVE AT A CRIME SCENE ON BUCKEYE DRIVE, WESTGATE
SUBDIVISION ON MAY 31ST, 1994?

A YES, I DID.

1 Q HOW LONG AFTER THE CALL DID IT TAKE YOU TO RESPOND?

2 A IT DIDN'T TAKE ME VERY LONG. I WAS ALREADY IN THE
3 WEST COLUMBIA AREA WHEN THE CALL WENT OUT. IT PROBABLY
4 TOOK ME ABOUT TEN-MINUTES TO GET THERE OR LESS.

5 Q WHEN YOU FIRST ARRIVED AND LET ME ASK YOU THIS. DOES
6 STATE'S EXHIBIT NUMBER ONE FAIRLY AND ACCURATELY REPRESENT
7 THE LAYOUT OF THE RESIDENCE---

8 A YES, SIR.

9 Q ---OF THAT CRIME SCENE?

10 A YES, SIR.

11 Q WHEN YOU ARRIVED, WHO ELSE WAS THERE WITHIN THE
12 RESIDENCE?

13 A DEPUTY RIVERS.

14 Q DO YOU RECALL WHERE YOU SAW DEPUTY RIVERS IN THE
15 RESIDENCE?

16 A EXCUSE ME?

17 Q WHERE YOU SAW HIM IN THE RESIDENCE?

18 A WHEN I CAME UP, I CAME UP THROUGH THE CARPORT AND
19 WENT TO THE KITCHEN DOOR AND, OF COURSE, I KNEW HE WAS IN
20 THERE AND I HOLLERED AT HIM TO LET HIM KNOW THAT I WAS
21 COMING IN TO MAKE SURE HE DIDN'T THINK I WAS SOMEBODY ELSE
22 IN THE HOUSE.

23 Q YES, SIR.

24 A AND WE KIND OF MET RIGHT IN THE OPENING WHERE THE
25 KITCHEN COMES INTO THE HALLWAY WHERE THE BODY WAS LAYING

1 AT.

2 Q DID YOU AT THAT TIME TAKE CHARGE OF THE CRIME SCENE?

3 A YES, I DID.

4 Q LET ME DO THIS. LET'S GO BACK FIRST TO THE PLACE
5 WHERE YOU WENT INTO THE HOUSE. YOU WENT IN FROM THE SIDE
6 DOOR?

7 A THAT'S CORRECT, IN THE CARPORT.

8 Q WERE YOU ABLE TO OBSERVE THE CONDITION OF THE SIDE
9 DOOR AND THE IMMEDIATE INTERIOR OF THE KITCHEN? AND LET ME
10 SHOW YOU STATE'S FOUR AND FIVE?

11 A STATE'S FIVE IS BASICALLY THE WAY I FOUND IT WHEN I
12 WENT TO ENTER IN THERE.

13 AND IN FOUR, WHEN I LOOKED AT THE DOOR, THIS
14 REPRESENTS WHAT IT LOOKED LIKE.

15 Q YOU WOULD HAVE BEEN THE SECOND PERSON IN AFTER -- OR
16 THE FIRST PERSON IN AFTER DEPUTY RIVERS?

17 A THAT'S CORRECT.

18 Q IS THE POSITION OF THE BODY OF MS. URAI JACKSON
19 ACCURATELY DEPICTED ON STATE'S EXHIBIT NUMBER ONE?

20 A THAT'S CLOSE TO IT, YES.

21 Q LET ME ASK YOU THIS. SPECIFICALLY, WHAT WAS HER
22 POSITION; THAT IS, HOW WERE HER ARMS, LEGS POSITIONED? HOW
23 WAS SHE CLOTHED, IF ANY? CAN YOU TELL US THAT?

24 A SHE WAS LAYING WITH HER HEAD FACING TOWARDS THE
25 HALLWAY THERE WITH HER FEET TOWARDS THE LIVING ROOM AREA.

1 Q UH-HUH.

2 A SHE HAD SOMETHING THAT LOOKED LIKE A T-SHIRT OR A
3 NIGHTGOWN ON AND HER LEGS WERE SPREAD APART AND ONE OF HER
4 LEGS WAS BENT UP IN LIKE A PRONE POSITION AND HER HANDS
5 WERE JUST LAYING DOWN TOWARDS THE SIDE.

6 Q DID SHE HAVE ANY UNDERCLOTHING ON?

7 A NO, SHE DIDN'T.

8 Q LET ME ASK YOU THIS. WERE YOU ABLE TO OBSERVE ANY
9 WOUNDS ON THE VICTIM?

10 A SHE HAD SOME BRUISING ON HER ARMS THAT I COULD TELL.

11 Q COULD YOU -- DID YOU NOTE ANY WOUNDS ON HER HEAD
12 AREA?

13 A I DIDN'T GET A VERY GOOD LOOK AT IT BECAUSE OF THE
14 WAY THE BLOOD HAD DRIED UP THERE, BUT I DID SEE WHAT LOOKED
15 LIKE A LARGE GASH IN HER HEAD.

16 Q LET ME ASK YOU THIS. WITHOUT GOING INTO GREAT
17 DETAIL, HOW MUCH BLOOD WAS PRESENT AT THE SCENE, IF YOU
18 COULD SAY? AND THAT MAY NOT BE A GOOD WAY TO ASK IT.
19 WHERE WAS THE BLOOD LOCATED AT THE SCENE?

20 A MOST OF THE BLOOD WAS LOCATED AROUND THE HEAD AREA.

21 Q NOW, DID YOU ALSO OBSERVE THAT LENGTH, THE ONE-BY-ONE
22 WOOD IN THE POSITION INDICATED ON STATE'S EXHIBIT NUMBER
23 ONE?

24 A YES, SIR.

25 Q AND IS IT POSITIONED---

1 A ---JUST LIKE -- JUST LIKE HE DESCRIBED IT IN THE
2 CHAIR AT THE LITTLE DESK RIGHT THERE(INDICATES) .

3 Q DID E.M.S. PERSONNEL HAVE AN OCCASION TO RESPOND TO
4 THE SCENE?

5 A YES, THEY DID.

6 Q OKAY. WERE YOU PRESENT IN THE RESIDENCE WHEN THEY
7 RESPONDED?

8 A YES, SIR.

9 Q LET ME ASK YOU THIS IN GENERAL. WHEN YOU HAVE A
10 CRIME SCENE SUCH AS THIS, WHAT IS YOUR MAJOR OBJECTIVE
11 PRIOR TO IT BEING PROCESSED BY THE CRIME SCENE TECHS AS TO
12 PEOPLE GOING IN AND OUT?

13 A THE PRIMARY BEFORE?

14 Q UH-HUH.

15 A IS TO KEEP PEOPLE OUT OF THERE.

16 Q OKAY. IS IT NECESSARY IN THESE TYPES OF SITUATIONS
17 TO HAVE E.M.S. AT LEAST COME INTO THE SCENE?

18 A NOT IN THIS SITUATION. I BELIEVE I WAS INSIDE THE
19 HOUSE WHEN E.M.S. ARRIVED.

20 Q LET ME ASK YOU THIS. WHEN E.M.S. CAME INTO THE
21 HOUSE, DID THEY RECEIVE ANY INSTRUCTIONS FROM YOU?

22 A YES, SIR.

23 Q WHAT DID THEY RECEIVE?

24 A TO LEAVE.

25 Q DID THEY HAVE AN OPPORTUNITY, WHILE YOU OBSERVED

1 THEM, TO VIEW THE BODY OF THE VICTIM?

2 A THEY DIDN'T COME ANY CLOSER THAN RIGHT THERE TO THE
3 OPENING WHERE THE KITCHEN IS AT THAT LEADS INTO THE
4 HALLWAY.

5 Q DID THEY TOUCH OR DISTURB THE BODY OR THE CRIME SCENE
6 IN GENERAL IN ANY FASHION?

7 A NO. THEY WALKED IN, TURNED AROUND AND WALKED RIGHT
8 BACK OUT.

9 Q VERY GOOD.

10 NOW, AS THE -- AFTER HAVING TAKEN CHARGE OF THE
11 CRIME SCENE, DID YOU CALL IN OR HAVE CALLED IN SOUTH
12 CAROLINA LAW ENFORCEMENT DIVISION TO PROCESS THE CRIME
13 SCENE?

14 A YES, SIR. I CALL OUT TO S.L.E.D. FORENSIC AND
15 REQUESTED THAT THEY SEND THEIR CRIME SCENE TECHNICIANS OUT
16 TO MY LOCATION.

17 Q AND DO YOU KNOW WHO THE CHIEF TECHNICIAN WAS THAT
18 RESPONDED TO THIS CASE?

19 A STEVE DERRICK.

20 Q DID HE RESPOND WHILE YOU WERE THERE?

21 A YES, SIR.

22 Q WHAT I WOULD LIKE TO DO AT THIS TIME IS MOVE AWAY
23 FROM THE CRIME SCENE.

24 A OKAY.

25 Q AT SOME POINT IN TIME, WAS GARY DUBOSE TERRY

1 GENERATED AS A SUSPECT IN THIS CASE?

2 A YES, HE WAS.

3 Q DID YOU HAVE AN OCCASION IN JANUARY, JANUARY 17TH OF
4 1995, TO HAVE CONTACT WITH GARY DUBOSE TERRY?

5 A YES, WE DID.

6 Q TELL THE JURY THE PURPOSE, YOUR PURPOSE IN HAVING
7 THAT CONTACT WITH GARY DUBOSE TERRY.

8 A WELL, WE HAD RECEIVED SOME INFORMATION ON MR. TERRY
9 AND I FELT LIKE WE NEEDED TO TALK WITH HIM. SO DETECTIVE
10 FRIER CONTACTED HIM AND THIS IS PRIOR TO THIS DATE AND HE
11 ADVISED THAT HE WOULD BE IN LEXINGTON AND HE WOULD COME BY
12 THE SHERIFF'S DEPARTMENT AND TALK TO US.

13 AND ON THAT PARTICULAR DAY, HE DID NOT SHOW UP.
14 SO WE MADE SOME MORE CONTACT WITH HIM. HE SAID HE DIDN'T
15 HAVE ANY TRANSPORTATION. SO IT WAS MY DECISION TO GO TO
16 WINNSBORO AND SEE HIM.

17 Q AND TO YOUR KNOWLEDGE WAS THAT HIS PRESENT RESIDENCE?

18 A AS FAR AS I KNOW, YES.

19 Q IN WINNSBORO. AS FAR AS YOU KNOW.

20 NOW, WHAT WAS YOUR SPECIFIC PURPOSE IN GOING TO
21 WINNSBORO TO SPEAK WITH GARY DUBOSE TERRY?

22 A WELL, WE WANTED TO TALK TO HIM AND WE ALSO WANTED TO
23 GET CONSENT TO DRAW SOME BODY FLUIDS AND THE HAIR.

24 Q WHY DID YOU WANT THOSE ITEMS OF EVIDENCE FROM GARY
25 DUBOSE TERRY?

1 A TO DO D.N.A. ON THE UNKNOWN LIQUIDS OR FLUIDS AND
2 HAIR THAT WAS FOUND ON THE BODY OF MS. JACKSON.

3 Q TAKEN AT THE AUTOPSY?

4 A THAT'S CORRECT.

5 Q LET ME SHOW YOU THIS FORM. TELL ME IF YOU CAN
6 IDENTIFY IT.

7 A YES, SIR. THIS IS THE FORM THAT WAS PRESENTED TO MR.
8 TERRY AT THE TIME THAT WE TALKED WITH HIM IN WINNSBORO AT
9 THE FAIRFIELD COUNTY SHERIFF'S OFFICE.

10 MR. STONE: SUBJECT TO THE PRIOR---

11 THE COURT: SUBJECT TO PRIOR OBJECTION, IT IS
12 ADMITTED AS STATE'S NUMBER THIRTEEN -- FOURTEEN, EXCUSE ME.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER
14 FOURTEEN, PERMISSION TO SEARCH/1/17/95, ENTERED INTO
15 EVIDENCE AT THIS TIME OVER OBJECTION OF COUNSEL.)

16 MR. HUMPHRIES: LET ME SHOW YOU STATE'S EXHIBIT
17 NUMBER FOURTEEN. IF YOU WILL IDENTIFY WHAT STATE'S EXHIBIT
18 NUMBER FOURTEEN IS TO THE JURY.

19 THE WITNESS: THIS IS A FORM THAT WE USE FOR
20 PEOPLE TO GIVE US PERMISSION TO SEARCH WHEN WE DON'T HAVE A
21 SEARCH WARRANT.

22 Q NOW, WHO, ALONG WITH YOU, WENT TO SEE GARY DUBOSE
23 TERRY ON JANUARY 17TH, 1995?

24 A SCOTTIE FRIER, DETECTIVE FRIER.

25 Q AND WAS HE EMPLOYED WITH THE SHERIFF'S DEPARTMENT AT

1 THAT TIME?

2 A THAT'S CORRECT.

3 Q AS AN INVESTIGATOR?

4 A YES, SIR.

5 Q WHERE DID YOU GO SEE MR. TERRY?

6 A WELL, I WAS AT THE SHERIFF'S OFFICE IN WINNSBORO AND
7 DETECTIVE FRIER AND ONE OF FAIRFIELD COUNTY'S WENT TO -- TO
8 TERRY'S HOUSE -- GARY'S HOUSE AND HE CAME BACK UP TO THE
9 SHERIFF'S OFFICE.

10 Q OKAY. WAS IT AT THE SHERIFF'S DEPARTMENT THAT THAT
11 FORM WAS EXECUTED?

12 A THAT'S CORRECT.

13 Q WHAT DOES THAT FORM ASK FOR AND LET'S DO THIS.
14 PUBLISH THE FORM FOR THE JURY, IF YOU WILL?

15 A YOU WANT ME TO READ THE WHOLE THING?

16 Q YES, SIR.

17 A IT SAYS LEXINGTON COUNTY SHERIFF'S DEPARTMENT,
18 DETECTIVE DIVISION, PERMISSION TO SEARCH.

19 I, GARY DUBOSE TERRY, HAVE BEEN INFORMED BY
20 LIEUTENANT H. E. PHILLIPS AND DETECTIVE SCOTTIE R. FRIER
21 WHO MADE PROPER IDENTIFICATION AS AUTHORIZED LAW
22 ENFORCEMENT OFFICERS OF THE LEXINGTON COUNTY SHERIFF'S
23 DEPARTMENT OF MY CONSTITUTIONAL RIGHT NOT TO HAVE A SEARCH
24 MADE OF THE PREMISES AND PROPERTY OWNED BY ME AND UNDER MY
25 CARE, CUSTODY AND CONTROL, WITHOUT A SEARCH WARRANT.

1 KNOWING OF MY LAWFUL RIGHTS TO REFUSE TO CONSENT
2 TO SUCH A SEARCH, I WILLINGLY GIVE MY PERMISSION TO THE
3 ABOVE-NAMED OFFICERS TO CONDUCT A COMPLETE SEARCH OF THE
4 PREMISES AND THE PROPERTY, INCLUDING ALL BUILDINGS AND
5 VEHICLES, BOTH INSIDE AND OUTSIDE OF THE PROPERTY LOCATED
6 AND BASICALLY WHAT WE WERE LOOKING FOR WAS THE BODY AND
7 PERSON OF GARY D. TERRY; WHITE MALE; D.O.B. 12/01/67;
8 SOCIAL SECURITY NUMBER 250-13-0611.

9 THE ABOVE SAID OFFICERS FURTHER HAVE MY
10 PERMISSION TO TAKE FROM MY PREMISES AND PROPERTY, ANY
11 LETTERS, PAPERS, MATERIALS OR ANY OTHER PROPERTY OR THINGS
12 WHICH THEY DESIRE AS EVIDENCE FOR CRIMINAL PROSECUTION IN
13 THE CASE OR CASES UNDER INVESTIGATION.

14 THIS WRITTEN PERMISSION TO SEARCH WITHOUT A
15 SEARCH WARRANT IS GIVEN TO ME TO THE ABOVE OFFICERS
16 VOLUNTARILY AND WITHOUT ANY THREATS OF PROMISES OF ANY
17 KIND, AT 0948 A.M. ON THIS 17TH DAY OF JANUARY, 1995, AT
18 FAIRFIELD COUNTY, SOUTH CAROLINA.

19 Q WHO SIGNED THAT FORM?

20 A GARY TERRY, SR.

21 Q WHAT IS -- WHAT IS INDICATED BY GARY TERRY SIGNING
22 THAT FORM?

23 A THAT HE WAS GIVING US THE RIGHT.

24 NOW AT THE BOTTOM IT SAYS THIS SIGNED CONSENT
25 ALLOWS THE AFOREMENTIONED OFFICERS TO HAVE SAMPLES OF

1 BLOOD, SALIVA AND PUBIC HAIRS FROM THE BODY AND PERSON OF
2 THE AFOREMENTIONED GARY D. TERRY.

3 Q DID YOU EXPLAIN THAT ENTIRE FORM TO MR. TERRY?

4 A YES, WE DID.

5 Q DID HE VOLUNTARILY CONSENT TO THE TAKING OF THESE
6 SAMPLES?

7 A YES, SIR. WE LEFT THE FAIRFIELD COUNTY SHERIFF'S
8 OFFICE AND WENT TO THE HOSPITAL IN WINNSBORO. I DON'T
9 REMEMBER THE NAME OF IT.

10 Q WAS HE IN YOUR PRESENCE THE ENTIRE TIME?

11 A YES, SIR.

12 Q WAS HE TAKEN TO A NURSE FOR THE COLLECTION OF THESE
13 SAMPLES?

14 A YES, HE WAS. HE WAS TAKEN TO AN EXAMINING ROOM IN
15 THEIR EMERGENCY ROOM AREA AND WE TOOK WHAT WE CALL A
16 SUSPECT KIT AND THESE SAMPLES WERE TAKEN.

17 Q WERE THEY TAKEN IN YOUR PRESENCE?

18 A YES, THEY WERE.

19 Q AND INTO WHOSE CUSTODY AND CONTROL WERE THESE SAMPLES
20 DELIVERED FROM THE NURSE WHO COLLECTED THE SAMPLES?

21 A THEY WERE DELIVERED TO SCOTTIE FRIER, DETECTIVE
22 FRIER. AND AFTER THE EXAMINATION, WE TOOK MR. TERRY BACK
23 TO HIS HOUSE.

24 Q WAS HE UNDER ARREST AT ANY TIME DURING THIS PROCESS?

25 A NO, SIR.

1 Q DID YOU ATTEMPT TO FORCE OR COERCE GARY DUBOSE TERRY
2 INTO PROVIDING YOU THESE SAMPLES?

3 A NO, SIR.

4 Q DID YOU OFFER HIM ANY HOPE OF LENIENCY OR REWARD IN
5 RETURN FOR PROVIDING THE SAMPLES?

6 A NO, SIR.

7 Q DID HE PROVIDE THOSE SAMPLES FREELY AND VOLUNTARILY
8 AS INDICATED BY THAT FORM?

9 A THAT'S CORRECT.

10 Q YOUR HONOR, THAT'S ALL WE HAVE OF THIS WITNESS AT
11 THIS TIME.

12 THE COURT: CROSS-EXAMINATION.

13 CROSS-EXAMINATION

14 BY MR. STONE:

15 Q DO YOU HAVE THAT FORM, LIEUTENANT? IS THAT UP THERE?
16 OH, I'M SORRY, EXCUSE ME. JUST A MOMENT. UH -- EXCUSE ME.

17 WHAT HAS BEEN MARKED AS STATE'S EXHIBIT FOURTEEN
18 -- I'LL GIVE IT BACK TO THE JURY WHEN I AM THROUGH WITH
19 THIS---

20 A YES, SIR.

21 Q ---BUT MR. TERRY SIGNED THIS?

22 A YES, SIR.

23 Q AND YOU EXPLAINED ALL OF THIS TO HIM?

24 A DETECTIVE FRIER EXPLAINED IT TO HIM IN MY PRESENCE.

25 Q OKAY. AND YOU WERE THERE AND YOU HEARD IT?

1 A YES, SIR.

2 Q OKAY. CERTAINLY, YOU DIDN'T TELL MR. TERRY HE WAS A
3 MURDER SUSPECT AT THE TIME, DID YOU?

4 A NO, SIR. HE NEVER ASKED.

5 Q DID HE HAVE ANY IDEA AT ALL THAT -- WHY THE POLICE
6 WERE THERE?

7 A WELL, WE TOLD HIM THAT WE KNEW THAT HE HAD BEEN A
8 NEIGHBOR OF HERS AND WE ASKED HIM IF SHE KNEW -- IF HE KNEW
9 HER. HE SAID, YES, THAT HE KNEW HER AND THAT HE HAD BEEN
10 FRIENDS WITH HER TWO CHILDREN AND HAD BEEN OVER TO THE
11 HOUSE BEFORE.

12 Q OKAY. YOU DIDN'T TELL HIM THAT YOU WERE LOOKING INTO
13 THE MURDER OF MS. JACKSON?

14 A YES, WE WERE.

15 Q YOU DID TELL HIM THAT?

16 A YES, SIR.

17 Q SO HE WAS FULLY INFORMED FROM EITHER YOU OR DETECTIVE
18 FRIER WHY YOU WERE THERE?

19 A THAT'S CORRECT.

20 Q ALL RIGHT, SIR---

21 A WE WERE INVESTIGATING THE HOMICIDE OF URAI JACKSON.

22 Q YOU TOLD HIM THAT PRIOR TO HIM SIGNING THIS?

23 A YES, SIR.

24 Q WHEN YOU ASKED HIM FOR CONSENT FOR THE BLOOD, FOR THE
25 PUBIC HAIR, FOR THE OTHER ITEMS -- BODY HAIR, I GUESS, AS

- 1 WELL?
- 2 A YES, SIR.
- 3 Q WAS IT OBVIOUS TO HIM WHAT YOU WERE LOOKING FOR?
- 4 A I DON'T KNOW. HE NEVER ASKED US.
- 5 Q HE NEVER ASKED?
- 6 A NO, SIR.
- 7 Q YOU JUST WENT UP AND YOU SAID, MR. TERRY, I WOULD
- 8 LIKE YOU TO GIVE US SOME BLOOD AND SOME SALIVA. I'M
- 9 INVESTIGATING A MURDER. HE DIDN'T ASK. HE JUST SAID,
- 10 SURE, NO PROBLEM?
- 11 A THAT'S ABOUT -- THAT'S ABOUT IT, YES, SIR.
- 12 Q WHY DID YOU HAVE TO -- WHY DID YOU ASK FOR PUBIC
- 13 HAIRS?
- 14 A THAT'S STANDARD PROCEDURE IN A RAPE CASE.
- 15 Q WHY DIDN'T YOU JUST ASK FOR BLOOD?
- 16 A WELL, IN RAPE CASES, THE SUSPECT USUALLY LEAVES HIS
- 17 FOREIGN HAIR ON HERS, SO WE DO A COMBING OF THE VICTIM AND
- 18 PULLED SAMPLES FROM SUSPECTS TO COMPARE THEM WITH.
- 19 Q OKAY. DID YOU DO THAT OR DOES THE MEDICAL EXAMINER
- 20 DO THAT?
- 21 A THE NURSE AT THE HOSPITAL TOOK CARE OF EVERYTHING
- 22 THAT WAS DRAWN AS FAR AS BLOOD SAMPLES, HAIR SAMPLES,
- 23 EVERYTHING. THEY DID THAT WITH US STANDING THERE IN THE
- 24 ROOM.
- 25 Q OKAY. WHEN YOU FIRST WENT TO THE CRIME SCENE, YOU

1 TESTIFIED EARLIER THAT IT WAS CONSISTENT WITH WHAT YOU SEE
2 IN THESE PHOTOGRAPHS, IS THAT RIGHT?

3 A YES, SIR.

4 Q DID YOU SEE ANY BEER CANS?

5 A YES, SIR, THERE WERE SOME IN THE SINK.

6 Q DID YOU OR ANY OF YOUR PEOPLE -- YOU WERE IN CHARGE
7 OF THE SCENE WHEN YOU GOT THERE, WERE YOU NOT?

8 A THAT'S CORRECT.

9 Q DO YOU KEEP CHARGE OF THE SCENE UNTIL YOU TURN IT
10 OVER TO STEVE DERRICK WITH S.L.E.D.---

11 A WELL---

12 Q ---OR DID YOU STILL KEEP IT---

13 A ---I STILL KEEP IT. THEY COME TO ASSIST US.

14 Q I SEE. I SEE. ALL RIGHT. THE BEER CANS WHILE YOU
15 WERE THERE, DID YOU SEE ANYBODY TOUCH THOSE, MESS WITH THEM
16 IN ANY WAY?

17 A NO, SIR.

18 Q ALL RIGHT, SIR. DID YOU TAKE CUSTODY OF THOSE?

19 A I LET S.L.E.D. -- I LEFT THE HOUSE AND WENT OUT.

20 WHEN THEY -- WHEN S.L.E.D. ARRIVED, THEY WENT IN AND
21 PROCESSED IT AND IF IT'S ON AN INVENTORY, THEY TOOK IT. I
22 DON'T KNOW.

23 Q ALL RIGHT, SIR. BUT WHEN YOU GOT TO THE SCENE, YOU
24 SECURED THE SCENE AND NONE OF YOUR PEOPLE OR NOBODY ELSE
25 COMING IN THERE TOUCHED ANY OF THAT STUFF, MESSED WITH

1 ANYTHING IN ANY WAY, BEER CANS, GLASSES, NOTHING?

2 A NO, SIR.

3 Q BECAUSE IT'S IMPORTANT FOR YOU TO MAKE SURE THAT YOU
4 PRESERVE THE INTEGRITY OF THE SCENE, IS IT NOT?

5 A THAT'S CORRECT.

6 Q IN FACT, THAT'S -- YOUR MAIN JOB IS SECURING AN AREA,
7 IS THAT NOT CORRECT?

8 A THAT'S CORRECT.

9 Q ALL RIGHT, SIR.

10 A YES, SIR.

11 Q DID YOU SEE ANY JEWELRY IN THE HOUSE?

12 A YES, SIR.

13 Q WHERE WAS THE JEWELRY LOCATED? AND YOU FEEL FREE TO
14 USED THAT DIAGRAM IF YOU NEED TO POINT TO IT.

15 A IF I'M NOT MISTAKEN, THIS WAS MS. JACKSON'S BEDROOM
16 RIGHT HERE AND THIS IS A DRESSER AND JUST LIKE LADIES HAVE
17 THEIR LITTLE JEWELRY BOX ON THE -- ON THE DRESSER, IT WAS
18 THERE.

19 Q JEWELRY ON TOP OF THE DRESSER, NOT IN THE DRESSER?
20 YOU'RE TALKING ABOUT ON TOP?

21 A LET ME---

22 Q SURE. COME ON DOWN. JUST KEEP YOUR VOICE UP WHERE
23 EVERYBODY CAN HEAR YOU.

24 A (WITNESS COMPLIES.)

25 JUST WHERE HER DRESSER, I BELIEVE, RIGHT HERE IS

- 1 A JEWELRY BOX AND SO IT WAS THERE.
- 2 Q THROUGH THIS PART OF THE HOUSE WHEN YOU GOT THERE---
- 3 A UH-HUH.
- 4 Q ---THE TABLE DISTURBED, ANYTHING IN HERE DISTURBED?
- 5 A YES, SIR. THERE WAS A RECLINING CHAIR RIGHT HERE---
- 6 Q OKAY.
- 7 A ---THAT HAD BEEN FLIPPED OVER(INDICATES)---
- 8 Q OKAY.
- 9 A ---AND, ALSO, APPARENTLY SHE HAD LIKE A FLOOR VAN
- 10 THAT HAD BEEN TURNED OVER ALSO.
- 11 Q ALL RIGHT. IS THIS THE -- IN STATE'S EXHIBIT NUMBER
- 12 TWELVE, IS THIS THE RECLINING CHAIR YOU ARE TALKING ABOUT?
- 13 A THAT LOOKS LIKE IT. I'VE GOT MY GLASSES, BUT I
- 14 CAN'T---
- 15 Q I UNDERSTAND.
- 16 A IT LOOKS LIKE IT. I DON'T THINK THERE WAS ONLY ONE
- 17 CHAIR IN THERE.
- 18 Q ALL RIGHT, SIR. AND WHEN YOU SAY FLIPPED OVER, DO
- 19 YOU MEAN FLIPPED OVER -- YOU MEAN, THE CUSHION TURNED OR
- 20 WHAT?
- 21 A WELL, IT WAS LIKE THE RECLINER BACK -- THE CHAIR WAS
- 22 FLIPPED BACKWARDS.
- 23 Q I SEE. THE ENTIRE CHAIR?
- 24 A I BELIEVE SO.
- 25 Q SO THIS IS ACTUALLY NOT A FAIR AND ACCURATE DEPICTION

1 OF HOW THE SCENE LOOKED AT THE TIME?

2 A WELL, THERE'S NOT ENOUGH LIGHT IN THAT PICTURE THERE
3 TO REALLY -- FOR ME TO LOOK AT IT AND TELL YOU HONESTLY
4 THAT'S IT.

5 Q BUT THE CHAIR'S NOT FLIPPED OVER, IS IT?

6 A I CAN'T TELL IN THIS PICTURE.

7 Q ALL RIGHT, SIR. DID YOU SEE ANY RANSACKING
8 THROUGHOUT THE HOUSE?

9 A NO, SIR.

10 Q EXCUSE ME JUST A MOMENT, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. STONE: DID YOU GO INTO THE BATHROOM IN THE
13 HOUSE? DID YOU LOOK IN THE BATHROOM?

14 THE WITNESS: I DON'T REMEMBER IF I WENT INTO THE
15 BATHROOM OR NOT. I DIDN'T GO THROUGH THE HOUSE THAT MUCH.

16 Q ALL RIGHT, SIR. WELL, LET ME SHOW YOU THIS AND IF
17 YOU CAN'T IDENTIFY IT, THAT'S FINE.

18 I WILL MARK THIS AS DEFENDANT'S EXHIBIT FOR
19 IDENTIFICATION ONE.

20 THE COURT: DEFENDANT'S ONE FOR I.D.

21 (WHEREUPON, DEFENDANT'S EXHIBIT
22 NUMBER ONE, PHOTOGRAPH, MARKED FOR IDENTIFICATION ONLY, AT
23 THIS TIME.)

24 MS. STONE: LET ME SHOW YOU WHAT HAS BEEN MARKED
25 AS STATE'S EXHIBIT FOR IDENTIFICATION ONE---

1 THE COURT: IT WOULD BE DEFENDANT'S ONE---

2 MR. STONE: DEFENSE -- EXCUSE ME, EXHIBIT ONE.

3 DO YOU RECOGNIZE THAT PHOTOGRAPH?

4 THE WITNESS: NO, SIR, I DON'T.

5 Q ALL RIGHT. SO YOU DIDN'T GO INTO THAT PARTICULAR
6 PART OF THE HOUSE?

7 A I COULD HAVE, BUT I DON'T REMEMBER IT LOOKING LIKE
8 THIS.

9 Q THAT'S FINE. THANK YOU, SIR.

10 AND I WANT TO MAKE SURE I UNDERSTAND THIS. MR.
11 TERRY CONSENTED TO THIS, CONSENTED TO TAKING HIS BLOOD,
12 CONSENTED TO GIVING YOU HAIR, CONSENTED TO ANYTHING YOU
13 WANTED, DID HE NOT?

14 A YES, SIR, HE DID.

15 Q AND THAT'S AFTER YOU TOLD HIM YOU WERE INVESTIGATING
16 THE MURDER OF MS. JACKSON, IS THAT CORRECT?

17 A YES, SIR.

18 Q YOU DIDN'T THREATEN HIM, YOU DIDN'T PROMISE HIM
19 ANYTHING TO GET HIM TO DO THAT, DID YOU?

20 A NO, SIR.

21 Q A FAIRLY COOPERATIVE MAN, WASN'T HE?

22 A VERY COOPERATIVE.

23 Q ALL RIGHT, SIR.

24 NOTHING ELSE AT THIS TIME, YOUR HONOR.

25 THE COURT: REDIRECT.

1 MR. HUMPHRIES: NO, SIR. A-22
2 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.
3 MR. HUMPHRIES: I WOULD LIKE TO EXCUSE THIS
4 WITNESS, JUDGE.
5 MS. FULLWOOD: NO OBJECTION.
6 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.
7 THANK YOU VERY MUCH FOR COMING.
8 (WHEREUPON, THE WITNESS WAS
9 EXCUSED AT THIS TIME.)
10 MR. HUMPHRIES: THE STATE CALLS SCOTTIE FRIER TO
11 THE STAND.
12 THE COURT: IF YOU WOULD, PLEASE, SWEAR HIM,
13 MA'AM.
14 SCOTTIE R. FRIER,
15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:
16 MR. STONE: YOUR HONOR---
17 THE COURT: EXCUSE ME---
18 MR. STONE: ---COULD WE TAKE UP A SHORT
19 ADMINISTRATIVE MATTER BEFORE WE START?
20 THE COURT: SURE.
21 LADIES AND GENTLEMEN OF THE JURY, I HAVE A MATTER
22 OF LAW THAT I NEED TO TAKE UP WITH THE ATTORNEYS OUTSIDE
23 YOUR PRESENCE. ONCE AGAIN, I'M GOING TO SEND YOU TO THE
24 JURY ROOM WITH THE INSTRUCTION THAT YOU ARE NOT TO DISCUSS
25 THIS CASE WHILE YOU'RE THERE. WE'LL GET YOU BACK SHORTLY.

(JURY OUT.)

A-23

THE WITNESS: DO YOU WANT ME TO STEP DOWN, JUDGE?

THE COURT: IF YOU WOULD, STAY UP FOR JUST A
MOMENT.

THE WITNESS: YES, SIR.

THE COURT: ALL RIGHT.

MR. HUMPHRIES: JUDGE, I GUESS THIS IS IN THE
NATURE OF A MOTION IN LIMINE TO PREVENT THE DEFENSE FROM
ATTEMPTING TO ELICIT A STATEMENT TAKEN BY SCOTTIE FRIER OF
THE DEFENDANT AND BECAUSE I'VE GOT SENIOR ASSISTANT CHASE
HERE, I'M GOING TO LET HIM ARGUE THIS.

I'M ASSUMING THEY ARE GOING TO ATTEMPT TO ELICIT
THAT STATEMENT FROM THIS WITNESS. THAT IS NOT THE STATE'S
INTENTION. WE WILL NOT GO INTO ANY STATEMENTS WITH THIS
WITNESS. I GUESS WE JUST NEED SOME INDICATION FROM THEM IF
THEY INTEND TO DO THAT.

THE COURT: I MEAN, THEY CAN INFORM ME IF THEY
INTEND TO DO IT AT THIS TIME, BUT---

MR. HUMPHRIES: THAT'S FINE. I'LL WITHDRAW THAT.
MR. CHASE IS PREPARED TO ARGUE OUR POSITION---

THE COURT: ALL RIGHT.

MR. CHASE: YOUR HONOR, THE BASIS FOR THIS MOTION
IS THE FOUNDATION IS FOUND IN RULE 801, THE HEARSAY RULE
FOR THE SOUTH CAROLINA RULES OF EVIDENCE. IT STATES QUITE
CLEARLY WHAT IS NOT HEARSAY.

1 WHEN THERE IS -- THE ONLY TIME AN ADMISSION WOULD
2 COME IN BY THE DEFENDANT WAS IN THE EVENT THAT HE HAD
3 TESTIFIED. A-24

4 UNDER RULE 801(D)(1) A PRIOR STATEMENT BY THE
5 WITNESS WHEREIN IT STARTS OUT WITH THE DECLARANT TESTIFIES
6 AT THE TRIAL OR HEARING IS SUBJECT TO CROSS-EXAMINATION AND
7 THEN IT GIVES A WHOLE LITANY OF EXAMPLES WHEN IT CAN COME
8 IN.

9 THE SECOND EXAMPLE, YOUR HONOR, OF WHAT IS NOT
10 CONSIDERED HEARSAY IS WHERE THE STATEMENT IS OFFERED
11 AGAINST A PARTY.

12 CLEARLY, THE INTENTION OF THAT IS BY
13 PARTY-OPPONENT. CERTAINLY, IF THEY ARE SEEKING TO ADMIT A
14 STATEMENT BY THEIR CLIENT, THEY ARE NOT AN OPPONENT AND I
15 THINK IT'S CLEARLY STATED IN THOSE RULES, WHICH ARE IN
16 AFFECT, THAT THAT WOULD BE HEARSAY AND NOT ADMISSIBLE.

17 MR. HUMPHRIES: BASICALLY OUR POSITION IS THIS,
18 YOUR HONOR. WE DON'T HAVE TO PUT UP THE DEFENSE'S CASE.

19 I UNDERSTAND THE PURPOSE FOR WHICH THEY WISH TO
20 ELICIT HIS STATEMENT. THE STATE IS JUST CHARGED WITH
21 PRESENTING EVIDENCE SUFFICIENT TO CONVICT THE DEFENDANT.
22 WE INTEND TO DO THAT. WE ARE GOING TO GIVE THIS JURY
23 SUFFICIENT EVIDENCE TO DO THAT OR SUBMIT THAT WE WILL. WE
24 ARE NOT, HOWEVER, REQUIRED UNDER ANY CIRCUMSTANCES TO PUT
25 UP EVERY STATEMENT OR ANY PARTICULAR STATEMENT OF THE

1 DEFENDANT.

A-25

2 IN THIS CASE, WE CHOOSE ABSOLUTELY NOT TO DO SO.
3 WE CONSIDER THAT STATEMENT, NUMBER ONE, SELF-SERVING; AND
4 NUMBER TWO, EXCULPATORY TO A SIGNIFICANT EXTENT, AT LEAST,
5 AS IT RELATES TO AGGRAVATING CIRCUMSTANCES.

6 NOW, THAT WAS THE STATEMENT, YOUR HONOR, THEY
7 WISHED NOT TO PUBLISH. PERHAPS, YOUR HONOR, NEEDS TO
8 REVIEW THE CONTENTS OF THAT STATEMENT IN ORDER TO RULE ON
9 THIS ISSUE.

10 THE STATE'S POSITION IS THAT IT IS -- IT IS
11 INCULPATORY TO A CERTAIN EXTENT, EXCULPATORY IN THE GRAND
12 SCHEME OF THINGS; THAT IS, AS TO AGGRAVATING CIRCUMSTANCES
13 AND ACTUALLY ATTEMPTS TO MOVE THE CHARGE OF MURDER TO
14 VOLUNTARY MANSLAUGHTER AND NO CRIMINAL SEXUAL CONDUCT AND
15 NO BURGLARY.

16 WE ARE NOT REQUIRED TO ELICIT IT AND THEY CAN'T
17 ELICIT IT UNDER THE RULES AS THEY ARE NOW.

18 THE COURT: YOU WANT TO BE HEARD ON THAT EITHER,
19 MR. STONE OR MS. FULLWOOD?

20 MS. FULLWOOD: YES, SIR.

21 LET'S SEE. I'M THINKING RIGHT HERE. UH---

22 THE COURT: TELL YOU WHAT I'LL DO. LET ME TAKE A
23 SHORT BREAK AND ALLOW YOU SOME TIME TO ADDRESS THIS ISSUE.

24 MS. FULLWOOD: YES, SIR. I'M SORRY. IT SEEMS
25 LIKE WE ARE TAKING A LOT OF TIME---

1 THE COURT: THAT'S OKAY. I'M NOT GOING TO SIT UP
2 HERE AND MAKE YOU THINK THAT YOU HAVE GOT TO RUSH. YOU GO
3 AHEAD AND TAKE SOME TIME WHILE YOU ADDRESS THAT POINT. A-26

4 MR. HUMPHRIES: LET ME ASK YOU THIS, JUDGE. AT
5 THIS TIME, DO YOU WISH TO REVIEW THE CONTENT OF THE
6 STATEMENT?

7 THE COURT: I'VE READ IT.

8 MR. HUMPHRIES: VERY GOOD.

9 MR. STONE: HAVE YOU -- AND I DON'T MEAN TO BE
10 RUDE, BUT HAVE YOU WATCHED THE VIDEO AS WELL?

11 THE COURT: I HAVE NOT WATCHED THE VIDEO.

12 MR. STONE: I'M BE HONEST WITH, YOUR HONOR, I
13 DON'T KNOW IF THAT WOULD BE NECESSARY TO MAKE A RULING ON
14 THIS POINT OR NOT; HOWEVER, IT'S DIFFERENT THAN JUST THE
15 WRITTEN STATEMENT, OBVIOUSLY.

16 MR. HUMPHRIES: STANDS IN THE SAME PLACE.

17 THE COURT: I'LL BE GLAD TO WATCH IT, BUT GIVEN
18 THE FACTS AND CIRCUMSTANCES THAT ARE PRESENTED, I DON'T
19 KNOW, UNLESS YOU CAN GIVE ME SOME KIND OF AN ARGUMENT AND
20 I'LL GIVE YOU SOME TIME TO DO THAT, HOW YOU WILL GET AROUND
21 801.

22 MR. STONE: SURE. YES, SIR.

23 THE COURT: SO, YOU KNOW, IF YOU WANT ME TO VIEW
24 IT, CERTAINLY I WILL BE GLAD TO, BUT IF IT'S TAKEN IN THE
25 SAME CONTEXT AS WHAT I UNDERSTOOD FROM OUR DENNO HEARING

1 EARLIER TODAY THAT IT WAS CONTEMPORANEOUS WITH THE WRITTEN
2 STATEMENT, I DON'T KNOW HOW WE'LL GET AROUND 801. A-27

3 SO LET'S DO THIS. LET'S TAKE A SHORT BREAK.

4 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN, SIR.

6 THE WITNESS: THANK YOU, SIR.

7 (WHEREUPON, THE WITNESS LEAVES THE
8 WITNESS STAND AT THIS TIME.)

9 (RECESS.)

10 THE BAILIFF: ALL RISE. COURT IS NOW IN SESSION.

11 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

12 ALL RIGHT. UNDERSTANDING THE STATE'S ARGUMENT
13 BEFORE WE TOOK A BREAK, IS THERE ANYTHING FROM THE DEFENSE?

14 MS. FULLWOOD: YES, SIR.

15 YOUR HONOR, WE BELIEVE THAT THE STATEMENT MR.
16 TERRY MADE WOULD BE ADMISSIBLE UNDER RULE 804 -- 804(B)(3)
17 AS A STATEMENT AGAINST INTEREST, SPECIFICALLY AGAINST HIS
18 PENAL INTEREST.

19 IN ADDITION TO THAT, YOUR HONOR, I THINK THAT
20 UNDER THE FOURTEENTH AMENDMENT, THE COURT SHOULD ALLOW HIS
21 STATEMENT INTO EVIDENCE AND I REFER THE COURT TO TWO UNITED
22 STATES SUPREME COURT CASES AND I APOLOGIZE, JUDGE. WE
23 WEREN'T ANTICIPATING THIS. I THINK IT'S QUITE OBVIOUS TO
24 THE COURT. SO I DO NOT HAVE THE COURT COPIES. THEY ARE
25 PRETTY WELL KNOWN CASES, THOUGH.

1 THE FIRST CASE IS CHAMBERS V. MISSISSIPPI AND
2 THE CITATION TO THAT IS 410 U.S. 204. A-28

3 THAT CASE HOLDS THAT IT'S THE VIOLATION OF DUE
4 PROCESS FOR THE STATE TO APPLY IT'S HEARSAY RULES IN SUCH A
5 MECHANICAL MANNER AS TO PRECLUDE HIM FROM OFFERING EVIDENCE
6 RELEVANT TO HIS DEFENSE. THAT CASE HELD THAT IN THAT
7 SITUATION IT VIOLATED THAT DEFENDANT'S RIGHT TO A FAIR
8 TRIAL AND HIS RIGHT TO PRESENT EVIDENCE ON HIS BEHALF.

9 MORE RECENTLY, JUDGE, THE COURT IN GREEN V.
10 GEORGIA AND THAT CITE IS 442 U.S. 95 HELD THAT THE
11 EXCLUSION IN A SENTENCING PROCEEDING FOR IMPOSITION OF
12 CAPITAL PUNISHMENT OF HEARSAY RELEVANT TO PUNISHMENT
13 VIOLATES DUE PROCESS.

14 WHILE I THINK CHAMBERS IS MORE DIRECTLY ON
15 POINT, WE ARE IN A DEATH PENALTY PROCEEDING -- WHILE I
16 REALIZE WE ARE IN THE FIRST PHASE OF THE TRIAL -- IF WE GET
17 TO THE SECOND PHASE OF THE TRIAL, WE WILL BE ABLE -- BE
18 ENTITLED TO HAVE BEFORE THE JURY ALL THE EVIDENCE ADMITTED
19 INTO THIS PHASE OF THE TRIAL AND I THINK THAT THAT ALSO
20 GIVES US SOME AUTHORITY TO HAVE THE STATEMENT ADMITTED INTO
21 EVIDENCE.

22 I'D POINT OUT, YOUR HONOR, THAT THIS STATEMENT
23 CONTAINS THOSE INDICIA OF RELIABILITY THAT COURTS HAVE
24 TRADITIONALLY -- TRADITIONALLY USED IN EVALUATING WHETHER A
25 HEARSAY STATEMENT IS RELIABLE ENOUGH TO COME IN.

1 I'D POINT OUT TO THE COURT THE COURT HAS ALREADY
2 RULED THAT THAT STATEMENT WAS VOLUNTARILY MADE. IT WAS
3 MADE AFTER A KNOWING AND INTELLIGENT WAIVER OF FIFTH A-29
4 AMENDMENT RIGHTS AND I JUST POINT OUT TO THE COURT THAT IT
5 WAS ALSO MADE IN RESPONSE TO POLICE INTERROGATION. I
6 CERTAINLY THINK THAT THAT STATEMENT CONTAINS SUFFICIENT
7 INDICIA OF RELIABILITY TO TAKE IT OUTSIDE OF THE HEARSAY
8 EXCEPTION AND I THINK THE COURT WOULD CERTAINLY HAVE THE
9 DISCRETION, IF IT FOUND HIS STATEMENT TO BE RELIABLE, TO
10 ALLOW US TO PUT IT INTO EVIDENCE UNDER THE CIRCUMSTANCES OF
11 THIS CASE.

12 MR. HUMPHRIES: YOUR HONOR, LET ME RESPOND JUST
13 BRIEFLY.

14 FIRST, AS TO THAT LAST POINT, I FIND THAT
15 ABSOLUTELY INCREDIBLE. AS I UNDERSTOOD OPENING ARGUMENT
16 AND THE DEFENSE'S POSITION AND THE DEFENSE THEY WISH TO
17 ASSERT, IT WAS A FALSE CONFESSION.

18 SO ANY INDICATION OF RELIABILITY---

19 MS. FULLWOOD: YOUR HONOR---

20 MR. HUMPHRIES: ---IT'S A STRAW MAN THEY WISH TO
21 TEAR IT DOWN. I'VE GOT A PROBLEM WITH THAT.

22 THE SECOND THING IS THIS, YOUR HONOR, AND I WANT
23 THE RECORD TO BE CLEAR IN THIS RESPECT. THE STATE HAS
24 ELICITED NO STATEMENTS OF THE DEFENDANT. WE DIDN'T ELICIT
25 THE DENIAL, WHICH YOU'VE ALREADY RULED WAS ADMISSIBLE. IN

1 FAIRNESS TO THE DEFENDANT, WE DIDN'T WANT TO BE IN THE A-30
2 POSITION OF APPEARING OVERBEARING IN REGARD TO STATEMENTS
3 MADE BY THE DEFENDANT. SO WE DID NOT ELICIT THAT
4 STATEMENT. WE DON'T INTEND TO ELICIT THIS STATEMENT.

5 AND, YOUR HONOR, WE HAVE -- WE HAVE PROHIBITED BY
6 VIRTUE OF OUR DECISION IN REGARD TO TRIAL TACTICS, WE HAVE
7 PROHIBITED THE DEFENDANT FROM DOING NOTHING IN REGARD TO
8 ASSERTING A DEFENSE.

9 AND IF, FOR INSTANCE, HE TOOK THE STAND, HE COULD
10 NOT THEN USE THE STATEMENT TO BOLSTER. I MEAN, CLEARLY
11 THAT WOULD BE IMPERMISSIBLE.

12 THAT'S OUR POSITION, YOUR HONOR.

13 THE COURT: NOW, YOU CITED TO ME, MS. FULLWOOD.
14 804(B)(3), IS THAT CORRECT?

15 MS. FULLWOOD: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: WELL, WHAT'S THE UNAVAILABILITY OF
17 THE WITNESS UNDER 804(B) BECAUSE THAT -- THE FOLLOWING ARE
18 NOT EXCLUDED BY THE HEARSAY RULE IF THE DECLARANT IS
19 UNAVAILABLE AS A WITNESS. THIS WITNESS IS NOT UNAVAILABLE
20 AT THIS TIME AND I DON'T BELIEVE THAT YOU CAN GET AROUND
21 801(D)(1) AND YOU CITE THE STATE'S HEARSAY RULES. I
22 BELIEVE THAT THESE ARE THE FEDERAL RULES UNDER WHICH WE NOW
23 OPERATE BECAUSE, UNLESS I'M MISTAKEN, THAT 801 IS THE
24 FEDERAL RULE, 801(D)(1), IS THAT NOT CORRECT?

25 MS. FULLWOOD: I'M NOT SURE OF THE COURT'S

A-31

1 QUESTION. I BELIEVE THAT CERTAINLY---

2 THE COURT: WELL---

3 MS. FULLWOOD: ---WE HAVE ADOPTED THE FEDERAL
4 RULES---

5 THE COURT: WE HAVE ADOPTED THE FEDERAL RULES---

6 MS. FULLWOOD: YES, SIR.

7 THE COURT: ---AND, I BELIEVE, THAT 801 WAS
8 ADOPTED IN ACCORDANCE WITH SOUTH CAROLINA ADOPTED FEDERAL
9 RULE, IF I'M NOT MISTAKEN, IN THAT REGARD.

10 THE COURT: GO AHEAD, MR.---

11 MR. HUMPHRIES: NO, SIR.

12 THE COURT: ---YOU CAN ENLIGHTEN ME IF I'M WRONG.

13 MR. HUMPHRIES: I THINK THE TERM ADOPTED IS
14 PROBABLY -- NO OFFENSE INTENDED -- PROBABLY A LITTLE
15 LIBERAL BECAUSE THERE ARE CLEARLY SOME DIFFERENCES IN
16 REGARD TO THE FEDERAL AND THE STATE RULES OF EVIDENCE AS
17 THEY NOW EXIST---

18 THE COURT: ALL RIGHT.

19 MR. HUMPHRIES: ---THEY ARE CLEARLY THE MODEL.

20 THE COURT: YES, SIR.

21 BUT STILL, HOW DO I GET AROUND YOUR 804 (B) --
22 JUST (B) WITHOUT GOING INTO ANY OF THE SUB-PARTS WHEN WE
23 TALK ABOUT EVEN (3) AND WENT YOU TALK ABOUT (3) A STATEMENT
24 TENDING TO EXPOSE THE DECLARANT TO CRIMINAL LIABILITY AND
25 OFFERED TO EXCULPATE THE ACCUSED IS NOT ADMISSIBLE UNLESS

1 CORROBORATING CIRCUMSTANCES CLEARLY INDICATE THE
2 TRUSTWORTHINESS OF THE STATEMENT.

A-32

3 WELL, YOU'VE PRESENTED A VERY INTERESTING ISSUE
4 HERE LATE THIS AFTERNOON AND EARLY EVENING.

5 SINCE WE'VE TAKEN THIS MUCH TIME WITH IT, I'M
6 GOING TO SEND THE JURY AWAY FOR THE EVENING AND WE'LL PICK
7 BACK UP HERE IN THE MORNING SO THAT I CAN PROPERLY EVALUATE
8 THE ISSUES THAT HAVE BEEN RAISED BEFORE ME. I WAS HOPING
9 THAT WE COULD MOVE ON A LITTLE BIT FARTHER, BUT WE HAVE NOW
10 GOTTEN INTO OUR SIXTH -- GETTING READY TO START ON OUR
11 SIXTH WITNESS. SO LET ME BRING THE JURY BACK. I'M GOING
12 TO SEND THEM AWAY FOR THE EVENING AND SO THAT I CAN DO A
13 LITTLE MORE WORK IN THIS REGARD AND THEN WE'LL PICK BACK UP
14 IN THE MORNING.

15 SO YOU MAY STEP DOWN, MR. FRIER.

16 THE WITNESS: YES, SIR.

17 (WHEREUPON, THE WITNESS WAS
18 EXCUSED AT THIS TIME.)

19 THE COURT: AND, MR. CUSTODIAN -- YES, SIR.

20 MR. HUMPHRIES: I WAS JUST GOING TO GET MY FILE
21 SO WHEN THE JURY CAME BACK IN, THEY WOULDN'T SEE IT.

22 THE COURT: ALL RIGHT.

23 MR. CUSTODIAN, I'LL LET YOU -- THEN YOU CAN TAKE
24 THE JURY AND ALLOW THEM TO DINE THIS EVENING AND I'LL BE
25 GIVING THEM SOME INSTRUCTIONS ABOUT THAT.

1 THE OFFICER: YES, SIR.

2 THE COURT: ALL RIGHT. LET'S BRING OUR JURY
3 BACK.

4 (JURY IN.)

5 THE COURT: LADIES AND GENTLEMEN OF THE JURY, LET
6 ME APOLOGIZE, ONCE AGAIN, FOR SENDING YOU TO YOUR JURY ROOM
7 FOR THAT PERIOD OF TIME, BUT SOMETIMES WHEN I AM
8 CONSIDERING MATTERS OF LAW, IT DOES TAKE AWHILE FOR THAT TO
9 TAKE PLACE AND RATHER THAN KEEP YOU IN THAT ROOM FOR ANY
10 LONGER, I'VE TALKED TO YOUR JURY CUSTODIAN AND WE ARE GOING
11 TO GO AHEAD AND SEND YOU TO DINNER TONIGHT.

12 BEFORE I SEND YOU TO DINNER, I'VE DISCUSSED WITH
13 ANYONE INVOLVED THAT FACT THAT YOU ARE SEQUESTERED. YOU
14 ARE AWAY FROM HOME AND I'M GOING TO ALLOW YOU ONE ADULT
15 BEVERAGE TONIGHT. THAT DOES NOT MEAN THAT IF YOU HAVE A
16 NEIGHBOR THAT DOES NOT PARTAKE OF THOSE BEVERAGES THAT YOU
17 CAN GET HIS OR HERS. SO YOU ARE LIMITED TO ONE.

18 ALSO, MADAM FORELADY, HAVE YOU MADE A DECISION
19 INSOFAR AS A SUNDAY SESSION, IF THAT IS NECESSARY, WHAT
20 KIND OF HOURS THAT THE JURY WOULD LIKE TO WORK.

21 THE FOREMAN: WE WOULD LIKE TO GO AS LONG AS YOU
22 CAN.

23 THE COURT: WORK ALL DAY?

24 THE FOREMAN: UH-HUH.

25 THE COURT: ALL RIGHT. WELL, WE WILL CERTAINLY

1 DO THAT AND I CERTAINLY DON'T HAVE ANY OPPOSITION TO THAT
2 AT ALL.

3 SO BEFORE I SEND YOU AWAY, LET ME REMIND YOU THAT
4 YOU ARE NOT TO DISCUSS THIS CASE AMONG YOURSELVES IN ANY
5 FASHION WHATSOEVER. YOU CAN TALK ABOUT A LOT OF THINGS,
6 BUT NOT THIS CASE BECAUSE YOU'VE GOT THIRTEEN NEW FRIENDS,
7 EACH OF YOU DO, THAT YOU ARE GOING TO GET TO KNOW VERY WELL
8 OVER THE NEXT FEW DAYS. SO TAKE ADVANTAGE OF THAT GETTING
9 TO KNOW EACH OTHER.

10 ALSO, DURING THE COURSE OF THIS EVENING, OF
11 COURSE, YOUR CUSTODIANS WILL BE WITH YOU, BUT IF ANYONE
12 SHOULD ATTEMPT TO MAKE ANY TYPE OF CONTACT WITH YOU, I WANT
13 THAT TO BE REPORTED IMMEDIATELY TO THOSE CUSTODIANS AND IF
14 THEY WOULD INFORM ME OF THAT.

15 ALSO, ONCE AGAIN, YOUR NEWSPAPER AND TELEVISION
16 PRIVILEGES AND SO FORTH WILL BE MONITORED BY THE
17 CUSTODIANS. SO PLEASE BE COOPERATIVE WITH THEM. I KNOW
18 THAT YOU WILL. THEY HAVE RULES AND REGULATIONS THAT THEY
19 HAVE TO GO BY BECAUSE THEY HAVE TO ANSWER TO ME ALSO. AND
20 SO PLEASE BE COOPERATIVE WITH THEM AND I KNOW THEY WILL BE
21 COOPERATIVE WITH YOU BECAUSE THEY ARE A VERY SEASONED GROUP
22 AND ARE EXPERIENCED IN WHAT THEY DO.

23 SO WITH THAT, I'M GOING TO ASK THAT THE JURY BE
24 BACK HERE IN THE MORNING SO THAT WE CAN START PROMPTLY AT
25 9:00 A.M. WE'LL GET STARTED THEN. I HOPE YOU HAVE A VERY

1 PLEASANT EVENING, HAVE A NICE DINNER AND BREAKFAST AND I'LL
2 LOOK FORWARD TO SEEING YOU IN THE MORNING.

3 THE JURY IS EXCUSED AND EVERYONE ELSE REMAIN
4 SEATED WHILE THEY EXIT THE COURTROOM PLEASE.

5 (JURY OUT.)

6 THE COURT: ALL RIGHT.

7 ANYTHING FROM THE STATE BEFORE WE BREAK FOR THE
8 DAY?

9 MR. HUMPHRIES: NO, SIR.

10 THE COURT: FROM THE DEFENSE?

11 MS. FULLWOOD: NO, SIR.

12 THE COURT: THANK YOU VERY MUCH. I'LL LOOK
13 FORWARD TO SEEING Y'ALL. I WILL BE HERE IN THE MORNING NO
14 LATER THAN 8:30, PROBABLY BEFORE THAT. IF YOU NEED TO SEE
15 ME PRIOR TO US STARTING, PLEASE COME ON AROUND, BUT I'LL
16 SEE YOU IN THE MORNING.

17 THANK YOU VERY MUCH.

18 (WHEREUPON, COURT RECESSED FOR THE
19 DAY AT 7:30 P.M.)

20 THURSDAY, SEPTEMBER 18, 1997.

21 (WHEREUPON, COURT RECONVENED ON
22 THURSDAY, SEPTEMBER 18, 1997, AT 9:00 A.M.)

23 THE BAILIFF: ALL RISE. COURT IS NOW IN SESSION

24 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

25 ALL RIGHT. WE'RE READY TO PROCEED?

1 MR. HUMPHRIES: THE STATE IS READY TO PROCEED,
2 YOUR HONOR. A-33

3 MS. FULLWOOD: READY, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 INSOFAR AS THE ISSUE THAT WAS RAISED LAST EVENING
6 CONCERNING THE ADMISSIBILITY OF THE STATEMENT ON
7 CROSS-EXAMINATION, IT'S MY UNDERSTANDING FROM ALL THE
8 DISCUSSIONS THAT WE HAD LAST EVENING WAS THAT THE STATE
9 DOES NOT INTEND TO OFFER THE STATEMENT THAT WAS GIVEN,
10 EITHER STATEMENT THAT WAS GIVEN, WHETHER IT BE JANUARY OR
11 MARCH, AND AS A RESULT OF THAT, THE STATE RAISES THAT THE
12 DEFENSE IS PRECLUDED FROM INTRODUCING SUCH A STATEMENT ON
13 CROSS-EXAMINATION OF THE WITNESS UNDER 801(D)(1).

14 I THINK THAT THAT IS A POINT WELL TAKEN. I
15 BELIEVE THAT THE AND ALSO THE DEFENSE HAS UNDER RULE
16 804(B)(3) STATED THAT THEY SHOULD BE ABLE TO GET THE
17 STATEMENTS IN UNDER HEARSAY EXCEPTION DUE TO THE
18 UNAVAILABILITY OF THE DECLARANT AND, AS I UNDERSTAND IT,
19 EXERCISING HIS FIFTH AMENDMENT RIGHT NOT TO TAKE THE STAND.

20 AFTER READING VARIOUS CASES IN THE AREA THAT I
21 COULD FIND AND GOING THROUGH THE RULES, I BELIEVE THAT THE
22 FIFTH AMENDMENT PRIVILEGE THAT A DEFENDANT ENJOYS IS ONE
23 THAT PREVENTS THE STATE FROM CALLING HIM AS A WITNESS AND
24 HE DOES NOT HAVE TO TESTIFY IN ANY FASHION WHATSOEVER IN A
25 TRIAL IF HE CHOOSES NOT TO. HOWEVER, I THINK THAT THE FACT

1 THAT A DEFENDANT HAS A RIGHT AND INVOKES A RIGHT NOT TO A-34
2 TESTIFY DOES NOT ALLOW HIM TO INTRODUCE A STATEMENT THAT
3 THE STATE DOES NOT PUT IN IN ITS CASE IN CHIEF IN ORDER TO
4 GET AROUND THE ISSUE OF HIM NOT TAKING THE STAND.

5 SO AS A RESULT OF THAT, THAT STATEMENT WILL NOT
6 COME IN ON CROSS-EXAMINATION. IF THE STATE INTRODUCES IT,
7 THE STATE IN ANY WAY OPENS THE DOOR FOR IT TO BE
8 INTRODUCED, THEN YOU MAY DO SO, BUT IF THE STATE DOES NOT
9 PUT IT IN THROUGH IT'S DIRECT WITNESS, THEN IT WILL NOT
10 COME IN.

11 ALL RIGHT. YES, MA'AM.

12 MS. FULLWOOD: IF, YOUR HONOR, PLEASE, MAYBE WE
13 OUGHT TO CLARIFY THIS BEFORE WE START WITH THE WITNESS
14 FRIER.

15 THE COURT: YES, MA'AM.

16 MS. FULLWOOD: I UNDERSTAND THE COURT'S RULING ON
17 THAT POINT, BUT MY QUESTION NOW WOULD BE ARE WE ALLOWED ON
18 CROSS-EXAMINATION TO ELICIT THE FACT THAT MR. TERRY MADE A
19 STATEMENT? NOT THE CONTENTS, BUT THE FACT THAT HE DID, IN
20 FACT, MAKE A STATEMENT.

21 THE COURT: WHAT'S THE STATE'S POSITION IN THAT
22 REGARD?

23 MR. HUMPHRIES: YOUR HONOR, I THINK THAT QUESTION
24 WOULD BE CONTRARY TO YOUR RULING. AND, YOU KNOW, THERE IS
25 THE RULE, YOUR HONOR, THAT EVIDENCE WHICH COULD BE

1 CONFUSING TO THE JURY IS NOT ADMISSIBLE. THAT CLEARLY
2 UNDER THIS SET OF FACTS WOULD BE CONFUSING TO THE JURY AND
3 WOULD PLACE AN ADDITIONAL BURDEN ON THE STATE, WHICH IT
4 DOES NOT HAVE; THAT IS, TO SUGGEST THAT THE STATE IS HIDING
5 SOME EVIDENCE.

6 THE COURT: WELL, I THINK THAT WHEN THE COURT
7 LOOKS AT SUCH A STATEMENT, ALSO, IN REVIEWING THE
8 STATEMENT, PARTICULARLY, A STATEMENT THAT WOULD TEND TO BE
9 SELF-SERVING TO A DEGREE, THERE -- CERTAINLY THAT ALSO IS
10 SOMETHING THAT I CONSIDERED -- BUT I DON'T BELIEVE THAT IF
11 THE STATE DOES NOT MENTION ANYTHING ABOUT A STATEMENT THAT
12 THE DEFENSE CANNOT CROSS ON ANYTHING ABOUT A STATEMENT
13 BECAUSE, ONCE AGAIN, IT'S THE STATE OF SOUTH CAROLINA'S
14 BURDEN TO PROVE A DEFENDANT'S GUILT; AND AS A RESULT, I DO
15 NOT FIND THAT THE STATEMENT CAN COME IN IF THE STATE DOES
16 NOT INTRODUCE IT IN ITS CASE IN CHIEF AND AS A RESULT,
17 THERE WILL BE NO MENTION OF THE STATEMENT.

18 I THINK THAT, YOU KNOW, THE FACT THAT WE HAVE
19 DENNO HEARINGS AND THINGS LIKE THIS, I'VE HELD THEM
20 NUMEROUS TIMES WHEN THE STATEMENTS DID NOT COME IN AND THE
21 REASON THAT THEY ARE HELD IS IN THE EVENT THAT A STATEMENT
22 IS GOING TO COME IN.

23 AND, OF COURSE, ANY REFERENCE THAT'S MADE TO
24 THOSE IS SOMETHING THAT IS DONE -- IF IT'S DONE BY THE
25 DEFENSE IN ANY FASHION, THEN THAT CAN BE A TRIAL STRATEGY

1 OR WHATEVER, BUT, I THINK, THAT GIVEN THE FACT THAT THE
2 STATE IF THEY ELECT NOT TO BRING THIS INTO PLAY, THEN IT IS
3 NOT GOING TO COME IN AND IT'S NOT GOING TO BE MENTIONED.

4 MS. FULLWOOD: YOUR HONOR, I UNDERSTAND YOUR
5 RULING AND I DON'T INTEND TO ARGUE WITH YOU---

6 THE COURT: THAT'S FINE.

7 MS. FULLWOOD: ---I DO WANT THE RECORD TO BE
8 CLEAR AS TO OUR POSITION.

9 THE COURT: YES, MA'AM.

10 MS. FULLWOOD: AS I UNDERSTAND THE COURT'S
11 RULING, THE STATEMENT CANNOT COME IN BECAUSE IT VIOLATES
12 THE RULING THAT IT'S HEARSAY AND OUR POSITION WOULD BE THE
13 FACT THAT HE HAS MADE THE STATEMENT AND NOTHING MORE IS NOT
14 HEARSAY BECAUSE WE ARE NOT TRYING TO GET IN THE CONTENTS OF
15 THE STATEMENTS AND WE ARE NOT OFFERING THAT FOR THE TRUTH
16 OF ANY MATTERS ASSERTED.

17 THANK YOU.

18 THE COURT: THANK YOU, MA'AM.

19 THE STATE READY TO PROCEED?

20 MR. HUMPHRIES: THE STATE IS READY.

21 I DON'T KNOW IF INVESTIGATOR FRIER WAS ON THE
22 STAND WHEN THE JURY WAS LAST IN -- THE COURT'S PREFERENCE
23 REGARDING---

24 THE COURT: WELL, HE WAS ON THE STAND. I THINK
25 THAT WE STEPPED AWAY. HAD -- MADAM REPORTER, HAD HE BEEN

1 SWORN?

2 THE COURT REPORTER: YES, SIR, AND THAT WAS IT.

3 THE COURT: HE WAS SEATED WHILE WE WERE IN OUR
4 SIDE BAR AND THEN I SENT THE JURY OUT SO WE COULD TAKE UP
5 THE MATTER OF LAW.

6 SO WHAT I WILL DO IS ASK MR. FRIER IF HE WOULD
7 PLEASE RESUME THE STAND. I'LL REMIND YOU, SIR, THAT YOU
8 ARE STILL UNDER OATH---

9 MR. FRIER: YES, SIR. THANK YOU.

10 THE COURT: AND LET ME SEE THE LAWYERS OVER IN A
11 SIDE BAR JUST A MINUTE.

12 (WHEREUPON, A BENCH CONFERENCE WAS
13 HELD AT THIS TIME OFF THE RECORD.)

14 SCOTTIE R. FRIER,

15 (BEING ALREADY DULY SWORN,
16 RETURNED TO THE WITNESS STAND AND TESTIFIED AS FOLLOWS:

17 THE COURT: ALL RIGHT. LET'S BRING OUR JURY
18 BACK.

19 (JURY IN.)

20 THE COURT: POLLING OF THE JURY BY THE STATE?

21 MR. HUMPHRIES: WAIVE THAT, YOUR HONOR.

22 THE COURT: BY THE DEFENSE?

23 MS. FULLWOOD: WAIVE, YOUR HONOR.

24 THE COURT: GOOD MORNING TO YOU, MADAM
25 FOREPERSON, LADIES AND GENTLEMEN OF THE JURY. IT'S GOOD TO

1 SEE YOU THIS MORNING.

2 I HOPE YOU HAD A PLEASANT EVENING. WE ARE GOING
3 TO CONTINUE WITH THE STATE'S CASE AND I WILL REMIND
4 INVESTIGATOR FRIER THAT YOU ARE STILL UNDER OATH.

5 THE WITNESS: YES, SIR. THANK YOU.

6 THE COURT: SOLICITOR.

7 MR. HUMPHRIES: PLEASE THE COURT.

8 THANK YOU, YOUR HONOR.

9 DIRECT EXAMINATION

10 BY MR. HUMPHRIES:

11 Q BECAUSE I DON'T HAVE A DISTINCT RECOLLECTION ABOUT
12 HOW FAR WE GOT, INVESTIGATOR FRIER, LET'S DO THIS.

13 WHOM ARE YOU EMPLOYED BY?

14 A I'M WITH THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

15 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

16 A I'VE BEEN WITH THEM FOR A LITTLE OVER TEN YEARS.

17 Q AND IN WHAT CAPACITY, AT THIS TIME, ARE YOU EMPLOYED?

18 A I AM AN INVESTIGATOR WITH THE MAJOR CRIMES UNIT IN
19 THE CRIMINAL INVESTIGATIVE DIVISION.

20 Q IN MAY OF 1994, HOW WERE YOU EMPLOYED WITHIN THE
21 DEPARTMENT?

22 A I WAS WITHIN THE CRIMINAL INVESTIGATIVE DIVISION.
23 WE'VE JUST RECENTLY SPECIALIZED.

24 Q LET ME ASK YOU THIS. ARE YOU KNOWLEDGEABLE OF
25 CERTAIN ASPECTS OF THE INVESTIGATION IN THIS PARTICULAR

1 CASE?

2 A YES, SIR, I WAS THE LEAD CASE OFFICER.

3 Q LET ME SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT
4 NUMBER SEVEN FOR IDENTIFICATION PURPOSES.

5 A YES, SIR.

6 Q CAN YOU IDENTIFY THIS CHART?

7 A YES, SIR. THIS IS WHAT WOULD BE AN AERIAL VIEW OF
8 THE ROAD LAYOUT IN THE WEST COLUMBIA AREA OF LEXINGTON
9 COUNTY AND SPECIFICALLY IN THE CENTER OF THE WEST -- A
10 PORTION OF THE WESTGATE SUBDIVISION.

11 Q AND DO YOU KNOW, BASED ON YOUR INVESTIGATION, WHETHER
12 THE VICTIM'S RESIDENCE IN THIS CASE AND THE PRIOR RESIDENCE
13 OF THE DEFENDANT ARE ACCURATELY PORTRAYED ON THIS EXHIBIT?

14 A YES, SIR---

15 MR. STONE: I WOULD OBJECT, YOUR HONOR.

16 THE COURT: STATE YOUR GROUNDS.

17 MR. STONE: HEARSAY. AS FAR AS THE VICTIM'S
18 RESIDENCE, THERE'S NO -- NO QUESTION, NO PROBLEM WITH THAT,
19 BUT AS FAR AS ANY INFORMATION CONCERNING WHERE THE
20 DEFENDANT LIVED, THAT'S HEARSAY.

21 THE COURT: YOU WANT TO LAY FURTHER FOUNDATION
22 FOR THAT, SOLICITOR?

23 MR. HUMPHRIES: I'LL BE GLAD TO, YOUR HONOR.

24 THE COURT: ALL RIGHT, SIR.

25 MR. HUMPHRIES: INVESTIGATOR FRIER---

1 THE WITNESS: YES, SIR.

2 MR. HUMPHRIES: ---TELL THE COURT, TELL THIS JURY
3 WHAT YOU DID IN ORDER TO ASCERTAIN WHERE THE DEFENDANT
4 LIVED PRIOR. WITHOUT SAYING WHAT SOMEBODY SAID, TELL THE
5 COURT WITH WHOM YOU SPOKE AND WHAT MEASURES YOU TOOK TO
6 DETERMINE WHERE THE DEFENDANT LIVED.

7 A JUST IN THE COURSE OF INVESTIGATION, WE INTERVIEWED
8 NEIGHBORS, RESIDENTS---

9 MR. STONE: I OBJECT, YOUR HONOR.

10 THE COURT: OVERRULED.

11 THE WITNESS: ---PRIOR ACQUAINTANCES.

12 MR. HUMPHRIES: THANK YOU.

13 MOVE TO INTRODUCE AT THIS TIME, YOUR HONOR.

14 THE COURT: OVER -- OVER OBJECTION, IT WILL BE
15 ADMITTED AS STATE'S NUMBER SEVEN.

16 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER
18 SEVEN, CHART/MAP, ENTERED INTO EVIDENCE AT THIS TIME OVER
19 OBJECTION OF COUNSEL.)

20 MR. HUMPHRIES: NOW, YOU'VE GOT OUR OFFICIAL
21 POINTER.

22 THE WITNESS: YES, SIR.

23 Q TELL YOU WHAT LET'S DO THIS.

24 A YES, SIR.

25 Q IF YOU WILL ORIENT THE JURY TO STATE'S NUMBER SEVEN,

1 PLEASE, SIR.

2 A THE MAIN THOROUGHFARE IS HERE (INDICATES). THIS IS
3 I-26 GOING THROUGH THE WEST COLUMBIA AREA OF LEXINGTON
4 COUNTY. THIS IS U.S. HIGHWAY 1. SOME OF YOU GENTLEMEN ARE
5 PROBABLY FAMILIAR WITH THE NEW LOWE'S, WHICH IS ACROSS FROM
6 THE OLD LOWE'S. THIS WOULD BE TRAVELING TOWARDS WEST
7 COLUMBIA AND THIS BACK TOWARDS LEXINGTON.

8 AS YOU COME UP HIGHWAY 1, YOU WOULD TURN ON
9 WATTLING ROAD WHICH TAKES YOU BACK TOWARDS PLATT SPRINGS
10 ROAD AND TWO STREETS DOWN, AFTER YOU TURN ONTO WATTLING
11 ROAD, YOU WOULD TURN ONTO WILTON ROAD WHICH TAKES YOU BACK
12 IN TOWARDS THE WESTGATE SUBDIVISION.

13 THE FIRST ROAD INTO THE SUBDIVISION, YOU WOULD
14 TURN LEFT INTO, YOU WOULD TAKE THE FIRST RIGHT WHICH WOULD
15 BE BUCKEYE DRIVE. PROBABLY A QUARTER OF A MILE DOWN
16 BUCKEYE DRIVE, YOU WOULD COME TO A CIRCLE WHICH IS BUCKEYE
17 COURT. RIGHT AT THE CORNER OF BUCKEYE DRIVE AND BUCKEYE
18 COURT IS WHERE URAI JACKSON RESIDED.

19 Q AND THE PRIOR RESIDENCE OF GARY DUBOSE TERRY?

20 A THROUGH THE INVESTIGATION, WE LEARNED THAT GARY
21 DUBOSE TERRY HAD SHARED A HOME DIRECTLY ACROSS THE STREET
22 WITH A DIANNE GIBSON.

23 Q LET ME SHOW YOU TWO PHOTOGRAPHS.

24 A YES, SIR.

25 Q WHICH ACTUALLY HAS -- AND YOU CAN SIT DOWN FOR THIS

1 FOR RIGHT NOW.

2 A (WITNESS COMPLIES.)

3 Q WHICH HAVE SOME HANDWRITING ON THEM.

4 FIRST OF ALL, TELL ME, NUMBER ONE, IF YOU CAN
5 IDENTIFY THE PHOTOGRAPHS.

6 A YES, SIR. THESE ARE SOME AERIAL PHOTOGRAPHS THAT I,
7 MYSELF, TOOK DURING THE COURSE OF THE INVESTIGATION.

8 Q LET ME ASK YOU THIS. AS IT RELATES SPECIFICALLY TO
9 THE PHOTOGRAPHS, DO THEY FAIRLY ACCURATELY REPRESENT THE
10 CONDITION, AT LEAST, AS IT RELATES TO AN OVERVIEW OF THE
11 VICTIM'S RESIDENCE AND THE PRIOR RESIDENCE OF THE
12 DEFENDANT?

13 A YES, SIR, IT DOES.

14 Q LET ME ASK YOU ADDITIONALLY. THERE ARE HANDWRITTEN
15 NOTATIONS ON BOTH OF THESE PHOTOGRAPHS---

16 A YES, SIR.

17 Q ---WHO MADE THOSE---

18 A THOSE WERE PLACED THERE BY ME.

19 Q AND WHAT SPECIFICALLY ARE THEY?

20 A THEY IDENTIFY THE STREETS; THEY ALSO IDENTIFY THE
21 VICTIM'S RESIDENCE AND THEY IDENTIFY THE PRIOR RESIDENCE OF
22 GARY TERRY.

23 MR. STONE: YOUR HONOR, I DON'T HAVE ANY
24 OBJECTION TO THE PHOTOGRAPHS THEMSELVES. THE HANDWRITING,
25 OF COURSE, INDICATING MR. TERRY'S RESIDENCE HAS TO BE BASED

1 ON NOTHING MORE THAN INTERVIEWS WITH OTHER PEOPLE AND
2 HEARSAY. I WOULD OBJECT TO IT. OTHER THAN THAT, I HAVE NO
3 OBJECTION.

4 THE COURT: OVER THE OBJECTION THAT IS STATED,
5 THEY WILL BE ADMITTED AS STATE'S NUMBER FIFTEEN AND
6 SIXTEEN.

7 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER
9 FIFTEEN AND SIXTEEN, PHOTOGRAPHS, ENTERED INTO EVIDENCE AT
10 THIS TIME OVER OBJECTION OF COUNSEL.)

11 MR. HUMPHRIES: IF YOU WILL, STEP DOWN TO THE
12 JURY, PLEASE, SIR.

13 A YES, SIR. (WITNESS COMPLIES.)

14 Q FIRST OF ALL, I WANT YOU TO ORIENT -- LET'S DO THIS.
15 USING BOTH STATE'S FIFTEEN AND SIXTEEN, ORIENT THE JURY TO
16 FIFTEEN AND SIXTEEN AS IT RELATES TO STATE'S SEVEN.

17 A THE WRITING IS GOING TO BE UPSIDE DOWN, BUT I'LL LAY
18 THIS RIGHT HERE (INDICATES).

19 Q TELL YOU WHAT, LET'S DO THIS---

20 THE COURT: YOU ARE ALSO GOING TO HAVE TO SPEAK
21 UP A LITTLE BIT, PLEASE, SIR.

22 MR. HUMPHRIES: YES, SIR. KEEP YOUR VOICE UP---

23 THE WITNESS: I'M SORRY.

24 MR. HUMPHRIES: ---AND WHAT I'M GOING TO DO IS
25 STAND BEHIND HERE AND HOLD THE BOARD AND WE'LL GO DOWN AND

1 DO IT IN TURNS FOR EACH SECTION OF THE JURY.

2 A AS I SAT THIS PHOTOGRAPH RIGHT BESIDE THE DRAWING,
3 YOU'LL NOTICE THIS WOULD BE BUCKEYE DRIVE AND THIS WOULD BE
4 BUCKEYE COURT.

5 THIS LIGHTER ROOF TONE AT THE CORNER IS THE
6 RESIDENCE OF URAI JACKSON. DIRECTLY ACROSS THE STREET,
7 THROUGH INVESTIGATION, WE LEARNED GARY TERRY HAD SHARED
8 THAT HOME.

9 Q STEP DOWN.

10 A THE CIRCLED STREET WOULD SIGNIFY BUCKEYE COURT. THIS
11 BEING BUCKEYE DRIVE. THIS WOULD BE THE HOME OF THE VICTIM
12 AND THIS WOULD BE A PRIOR HOME OF GARY TERRY.

13 Q AND ONE MORE TIME.

14 A THIS IS BUCKEYE CIRCLE, BUCKEYE DRIVE. THIS LIGHTER
15 ROOF TONE IS THE HOME OF URAI JACKSON. THIS, THROUGH
16 INVESTIGATION, WE LEARNED WAS A PRIOR HOME OF GARY TERRY.

17 Q THANK YOU AND HAVE A SEAT, PLEASE.

18 A (WITNESS COMPLIES.)

19 Q INVESTIGATOR FRIER, DID YOU HAVE AN OCCASION ON
20 JANUARY 17, 1995, TO BE PRESENT WHEN CERTAIN SAMPLES WERE
21 COLLECTED FROM GARY DUBOSE TERRY IN WINNSBORO, SOUTH
22 CAROLINA?

23 A YES, SIR, I WAS.

24 Q WERE YOU PRESENT THROUGHOUT THE COLLECTION OF THESE
25 SAMPLES?

1 A YES, SIR. I STAYED IN THE EXAMINATION ROOM WITH MR.
2 TERRY DURING THE ENTIRE PROCEDURE.

3 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER FOURTEEN.
4 TELL ME IF YOU CAN IDENTIFY THAT FORM.

5 A YES, SIR. THIS IS A PERMISSION TO SEARCH FORM THAT I
6 PREPARED PRIOR TO TRAVELING TO WINNSBORO WHICH WE INTENDED
7 TO USE TO VOLUNTARILY COLLECT THOSE SAMPLES FROM MR. TERRY.

8 Q AND DOES YOUR SIGNATURE APPEAR ON THE BOTTOM RIGHT AS
9 YOU LOOK AT THE PAGE?

10 A YES, SIR, IT DOES.

11 Q OKAY. AND TELL THE JURY SPECIFICALLY WHAT YOU WERE
12 THERE TO COLLECT?

13 A WE HAD ASKED MR. TERRY TO VOLUNTARILY CONSENT FOR US
14 TO HAVE BLOOD, PUBIC HAIR AND SALIVA TAKEN AS SAMPLES.

15 Q WERE THOSE SAMPLES VOLUNTARILY COLLECTED IN YOUR
16 PRESENCE?

17 A YES, THEY WERE.

18 Q WERE THEY COLLECTED BY YOU OR A HEALTH PROFESSIONAL?

19 A THEY WERE COLLECTED BY THE HEAD NURSE IN THE
20 EMERGENCY DEPARTMENT WITH MYSELF AND LIEUTENANT PHILLIPS
21 PRESENT.

22 Q WHO TOOK CUSTODY AND CONTROL OF THE SAMPLES ONCE
23 COLLECTED BY THE NURSE?

24 A I TOOK CONTROL OF THE SAMPLES.

25 Q WHAT DID YOU DO WITH THOSE SAMPLES WHILE IN YOUR

1 CUSTODY AND CONTROL?

2 A WE CARRIED THEM TO THE STATE LAW ENFORCEMENT DIVISION
3 FORENSIC LAB ON BROAD RIVER ROAD.

4 Q NOW, LET ME ASK YOU THIS. ONCE YOU GOT TO S.L.E.D.,
5 WHAT DID YOU DO WITH THESE SAMPLES?

6 A S.L.E.D. HAS A LOG-IN PROCEDURE WHICH WE FOLLOWED.
7 GO TO AN EVIDENCE TECHNICIAN OR A LOG-IN TECHNICIAN. WE
8 TURN THE EVIDENCE OVER TO THEM, FILL OUT PAPERWORK AND MAKE
9 SPECIFIC REQUESTS FOR WHATEVER ANALYSIS OR TEST WE NEED ON
10 THE SAMPLES WE ARE SUBMITTING.

11 Q DO YOU RECALL TO WHOM YOU DELIVERED THESE SAMPLES AT
12 S.L.E.D.?

13 A I DELIVERED IT TO A YOUNG LADY BY THE NAME OF CONNIE
14 MCKAY.

15 Q IS SHE AN EMPLOYEE OF S.L.E.D.?

16 A YES, SHE IS.

17 Q DO YOU REMEMBER WHAT DAY? WAS IT THE SAME DAY THAT
18 YOU OBTAINED THE SAMPLES?

19 A WE TOOK THEM STRAIGHT FROM WINNSBORO STRAIGHT TO THE
20 S.L.E.D. -- TO THE S.L.E.D. LAB.

21 Q DID YOU IN TURN REQUEST D.N.A. ANALYSIS AND
22 COMPARISON TO PRIOR SAMPLES SUBMITTED IN THIS CASE?

23 A YES, SIR. WE ASKED FOR D.N.A., TRACE EVIDENCE
24 ANALYSIS AND SEROLOGY. THERE WERE THREE REQUESTS THAT I
25 MADE WHEN WE SUBMITTED THOSE SAMPLES.

1 Q THIS -- THIS COLLECTION OF SAMPLES AS A GROUP IS
2 THERE A CERTAIN NAME BY WHICH THIS KIT GOES?

3 A IT'S CALLED A SUSPECT COLLECTION KIT.

4 Q NOW, WHILE THOSE SAMPLES WERE IN YOUR CUSTODY AND
5 CONTROL, WERE THEY EVER CHANGED SUBSTANTIALLY AS TO FORM OR
6 CONTENT?

7 A NO, SIR. ALL I DID WAS TRANSPORT THEM.

8 Q WERE THEY TAMPERED WITH IN ANY FASHION?

9 A NO, SIR.

10 Q THAT'S ALL I HAVE.

11 THANK YOU, SIR.

12 A YES, SIR.

13 THE COURT: CROSS-EXAMINATION, MR. STONE.

14 MR. STONE: THANK YOU, YOUR HONOR.

15 CROSS-EXAMINATION

16 BY MR. STONE:

17 Q YOU SCANNED THE NEIGHBORHOOD FIRST, DID YOU NOT?

18 A I'M SORRY, SIR?

19 Q IN THE COURSE OF YOUR INVESTIGATION, THE FIRST THING
20 YOU DID OR ONE OF THE FIRST THINGS YOU DID WAS SCAN THE
21 NEIGHBORHOOD, WENT THROUGH THE NEIGHBORHOOD TO FIND OUT WHO
22 WAS AROUND HER HOUSE, VARIOUS THINGS LIKE THAT, DID YOU
23 NOT?

24 A YES, SIR.

25 Q AND IT WAS DURING THAT INVESTIGATION THAT YOU FOUND

1 OUT THAT MR. TERRY, AT ONE TIME, LIVED WITH DIANNE GIBSON,
2 IS THAT RIGHT?

3 A DURING THE COURSE OF THE INVESTIGATION, YES, SIR.

4 Q ALL RIGHT. DIANNE GIBSON TOLD YOU THAT?

5 A AND A NUMBER OF OTHER PEOPLE.

6 Q OKAY. THESE WERE PEOPLE THAT YOU WERE TALKING TO IN
7 THE COURSE OF AN INVESTIGATION ABOUT A MURDER, IS THAT
8 RIGHT?

9 A YES, SIR.

10 Q OKAY. NOW, WHEN -- YOU WORKED THE MURDER SCENE, DID
11 YOU NOT?

12 A I DID NOT GO TO THE MURDER SCENE PRIOR TO THE BODY
13 HAVING BEEN REMOVED. I WAS---

14 Q BUT YOU DID GO TO THE MURDER SCENE, DID YOU NOT?

15 A YES, SIR.

16 Q AND YOU WENT THROUGH THE HOUSE, DID YOU NOT?

17 A YES, SIR.

18 Q SAW A NUMBER OF ITEMS OF JEWELRY AROUND THE HOUSE
19 THAT WERE NOT DISTURBED -- OR THAT AS FAR AS YOU COULD
20 TELL, WERE NOT DISTURBED?

21 A THERE WAS SOME JEWELRY IN THE HOME, YES, SIR.

22 Q AND, I BELIEVE, YOU TESTIFIED EARLIER AT A PRIOR
23 HEARING THAT THAT WAS PRETTY VALUABLE LOOKING JEWELRY,
24 WASN'T IT?

25 A I'M NOT A JEWELRY EXPERT. THERE WERE SEVERAL PIECES

1 OF JEWELRY WITHIN HER BEDROOM, YES, SIR.

2 Q OKAY. NO RANSACKING IN HER BEDROOM OR ANYTHING LIKE
3 THAT, WAS THERE?

4 A NO. SHE WASN'T THE BEST OF HOUSEKEEPERS. IT'S
5 DIFFICULT TO SAY, BUT, YOU KNOW, NO OBVIOUS RANSACKING.

6 Q I UNDERSTAND. I UNDERSTAND. THE -- YOU SEARCHED IN
7 THE -- DID YOU LOOK INSIDE THE KITCHEN, VARIOUS THINGS LIKE
8 THAT?

9 A PRIOR TO MY ARRIVAL ON THE SCENE, THE S.L.E.D. LAB OR
10 THE CRIME SCENE TECHNICIANS HAD DONE THEIR JOB AND SEVERAL
11 PEOPLE HAD BEEN THROUGH SO I DIDN'T EXACTLY SEARCH.

12 Q OKAY. OKAY. WERE THE BEER CANS ALREADY TAKEN BEFORE
13 YOU GOT THERE?

14 A I CAN'T ANSWER THAT, MR. STONE. WHAT WOULD HAVE BEEN
15 COLLECTED, I'M NOT SURE OF.

16 Q OKAY. DO YOU KNOW IF THEY COLLECTED ANY BEER CANS
17 OUT OF THE SINK?

18 A I'M NOT SURE.

19 Q ALL RIGHT, SIR.

20 A I WAS NOT THERE WHEN ANY COLLECTION TOOK PLACE.

21 Q ALL RIGHT. DO YOU KNOW IF S.L.E.D. COLLECTED THE GUN
22 THAT WAS FOUND AT THE HOUSE?

23 A I DO NOT KNOW.

24 Q DID YOU SEE THE GUN THERE?

25 A I DID NOT SEE THE GUN.

- 1 Q YOU DID NOT?
- 2 A I DID NOT.
- 3 Q OKAY. NOW, WHEN YOU TESTIFIED EARLIER THAT YOU GAVE
- 4 -- THAT THIS FORM, I THINK, IT'S STATE'S EXHIBIT NUMBER
- 5 14---
- 6 A UH-HUH.
- 7 Q ---THAT ALLOWED SAMPLES OF GARY TERRY'S BLOOD, SALIVA
- 8 PUBIC HAIRS FROM THE BODY AND PERSON OF GARY TERRY---
- 9 A YES, SIR.
- 10 Q ---THIS IS -- THIS IS WHAT YOU TESTIFIED TO EARLIER?
- 11 A YES, SIR.
- 12 Q ALL RIGHT, SIR. NOW, WHEN YOU TALKED TO GARY, YOU
- 13 TOLD HIM HE WAS UNDER INVESTIGATION FOR A MURDER, DID YOU
- 14 NOT?
- 15 A I TOLD HIM WE WERE THERE INVESTIGATING THE HOMICIDE
- 16 OF URAI JACKSON.
- 17 Q NOW, YOU TOLD GARY OR, FAIR TO SAY, THAT HE KNEW THAT
- 18 THERE WAS A MURDER INVESTIGATION GOING ON?
- 19 A OH, YES, SIR.
- 20 Q AND THE MURDER INVESTIGATION OF URAI JACKSON, IS THAT
- 21 RIGHT?
- 22 A YES, SIR.
- 23 Q ALL RIGHT, SIR. AND YOU GO TO MR. TERRY AND YOU ASK
- 24 FOR HIS BLOOD?
- 25 A YES, SIR.

1 Q OKAY. AND YOU ASK FOR HIS PUBIC HAIRS AND HIS
2 SALIVA, IS THAT RIGHT?

3 A YES, SIR.

4 Q AND WHEN YOU ASKED FOR ALL OF THIS STUFF, MY
5 UNDERSTANDING IS HE SAID NO PROBLEM?

6 A HE WAS VERY COOPERATIVE.

7 Q IN FACT, HE WAS VERY COOPERATIVE THROUGHOUT YOUR
8 ENTIRE TIME WITH HIM, WAS HE NOT?

9 A YES, HE WAS.

10 Q OKAY. Y'ALL HAD VERY PLEASANT TIMES TOGETHER, DID
11 YOU NOT?

12 A HE WAS PLEASANT TO DEAL WITH, YES, SIR.

13 Q IN FACT, AFTER YOU WENT AND TALKED -- TALKED TO HIM
14 ABOUT A MURDER INVESTIGATION, HE EVEN OFFERED TO GO FISHING
15 WITH YOU, DID HE NOT?

16 A HE DID MENTION HE ENJOYED FISHING, YES, SIR.

17 Q THIS WAS A GUY THAT WAS UNDER INVESTIGATION FOR
18 MURDER AND YOU ASKED HIM FOR SPECIFIC SAMPLES TO
19 POTENTIALLY TIE HIM TO THE MURDER SCENE?

20 A I TOLD HIM WE WERE COLLECTING THESE SAMPLES FOR
21 COMPARISON AGAINST EVIDENCE COLLECTED AT THE SCENE, YES,
22 SIR.

23 Q EXCUSE ME JUST A MOMENT, YOUR HONOR.

24 NOTHING ELSE, YOUR HONOR. THANK YOU.

25 THE COURT: REDIRECT.

1 MR. HUMPHRIES: NO, SIR.

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

3 THE WITNESS: THANK YOU.

4 (WHEREUPON, THE WITNESS WAS
5 EXCUSED AT THIS TIME.)

6 MR. CHASE: MAY IT PLEASE THE COURT, YOUR HONOR.

7 THE COURT: CERTAINLY, MR. CHASE.

8 MR. CHASE: WE CALL CONNIE MCKAY TO THE STAND.

9 CONNIE D. MCKAY,

10 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
12 PLEASE.

13 THE WITNESS: CONNIE D. MCKAY, M-C-K-A-Y.

14 DIRECT EXAMINATION

15 BY MR. CHASE:

16 Q MS. MCKAY, WHERE ARE YOU CURRENTLY EMPLOYED?

17 A WITH THE STATE LAW ENFORCEMENT DIVISION.

18 Q IS THAT COMMONLY REFERRED TO AS S.L.E.D.?

19 A YES.

20 Q WHAT'S YOUR POSITION AT S.L.E.D.?

21 A EVIDENCE TECHNICIAN IN THE FORENSIC LAB.

22 Q HOW LONG HAVE YOU HELD THAT POSITION?

23 A I HAVE BEEN AT S.L.E.D. FOR EIGHT YEARS. I'VE BEEN
24 IN THE CURRENT POSITION FOR FOUR YEARS.

25 Q YOU HOLD -- YOU HELD THAT POSITION ON JANUARY 17TH OF

1 1995?

2 A YES, THAT'S CORRECT.

3 Q AS PART OF YOUR ROLE AS AN EVIDENCE TECHNICIAN, DID
4 YOU RECEIVE ANY EVIDENCE RELATED TO LAB CASE NUMBER

5 94-7886---

6 A YES.

7 Q ---FROM SCOTTIE FRIER?

8 A I DID, ON JANUARY 17, 1995.

9 Q AND HOW WAS THAT EVIDENCE IDENTIFIED TO YOU?

10 A AS A SUSPECT EVIDENCE COLLECTION KIT.

11 Q WHAT DID YOU DO WITH THAT EVIDENCE?

12 A WE RECEIVE SUCH KITS SEALED, DELIVERED FROM THE
13 HOSPITAL, TAKEN FROM THE TECHNICIAN AT THE HOSPITAL. IT'S
14 SEALED WHEN IT COMES TO US. WE TAKE IT, PLACE IT IN
15 ANOTHER CONTAINER, LABEL IT AND PUT WHAT WE REFER TO AS A
16 BAR CODE ON IT, SEAL IT AND THEN THEY -- WE TAKE CUSTODY OF
17 IT AT THAT POINT AS A SEALED CONTAINER.

18 Q NOW, WHEN YOU SAID YOU LABEL IT, HOW DO YOU LABEL IT?

19 A AS WE ENTER THE INFORMATION INTO THE COMPUTER, A
20 LABEL IS GENERATED WITH THE LAB NUMBER, SUSPECT'S AND
21 VICTIM'S NAMES. WE PLACE THAT LABEL ON THE CONTAINER, SEAL
22 THE CONTAINER AND THE OFFICER DELIVERING THE CONTAINER
23 INITIALS THAT SEALED CONTAINER.

24 Q IN THIS CASE, AS EVIDENCE IS RECEIVED UNDER A LAB
25 NUMBER, ARE INDIVIDUAL NUMBERS GIVEN TO EACH OF THEM, EACH

1 PIECE OF EVIDENCE?

2 A NO. A LAB NUMBER IS CARRIED THROUGH THE ENTIRE
3 CASE---

4 Q OKAY.

5 A ---ON ANY EVIDENCE BROUGHT IN.

6 Q AND AS EACH ITEM OF EVIDENCE COMES IN, ARE THEY GIVEN
7 AN ITEM NUMBER?

8 A YES.

9 Q WAS THIS GIVEN -- THIS PIECE OF EVIDENCE, A SUSPECT
10 KIT, GIVEN AN ITEM NUMBER?

11 A IT WAS, ITEM NUMBER 56.

12 Q AND WHERE DID YOU -- WHAT DID YOU DO WITH ITEM NUMBER
13 56 ONCE YOU RECEIVED IT?

14 A I RECEIVED IT FROM SCOTTIE ON JANUARY THE 17TH. ON
15 THAT SAME DAY, IT WAS DELIVERED TO WHAT WE REFER TO AS
16 D-16, WHICH IS A PROCESSING REFRIGERATOR.

17 Q WHO HAS ACCESS TO D-16?

18 A NO ONE HAS ACCESS EXCEPT THE EVIDENCE TECHNICIANS IN
19 LOG-IN, PROCESSING TECHNICIANS AND SUPERVISORS IN THE LAB.

20 Q AND ON WHAT DATE DID YOU PLACE IT IN THE D-16
21 EVIDENCE LOCKER?

22 A THAT SAME DAY, JANUARY 17TH OF '95.

23 Q FROM THE TIME THAT YOU RECEIVED ITEM NUMBER 56, THE
24 SUSPECT KIT FROM SCOTTIE FRIER, TO THE TIME THAT YOU PLACED
25 IT INTO THE D-16 EVIDENCE LOCKER, DID YOU CHANGE IT IN FORM

1 OR CONTENT?

2 A NO.

3 Q YOU SIMPLY PUT IT INTO AN ADDITIONAL PACKAGE?

4 A CORRECT.

5 Q AND LABELLED IT AND IDENTIFIED IT AS ITEM NUMBER 56?

6 A THAT'S CORRECT.

7 Q THANK YOU, MS. MCKAY.

8 A THANK YOU.

9 Q ANSWER ANY QUESTIONS THEY MAY HAVE.

10 THE COURT: CROSS-EXAMINATION.

11 MS. FULLWOOD: NO QUESTIONS.

12 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

13 (WHEREUPON, THE WITNESS WAS

14 EXCUSED AT THIS TIME.)

15 MR. CHASE: THE STATE CALLS LISA KISER.

16 LISA KISER,

17 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE

19 RECORD, PLEASE.

20 THE WITNESS: LISA KISER, K-I-S-E-R.

21 DIRECT EXAMINATION

22 BY MR. CHASE:

23 Q MS. KISER, WHERE ARE YOU EMPLOYED?

24 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

25 Q THAT'S ALSO S.L.E.D.?

- 1 A YES.
- 2 Q AND WHAT'S YOUR POSITION THERE?
- 3 A I'M A FORENSIC TECHNICIAN IN THE EVIDENCE PROCESSING
4 DEPARTMENT.
- 5 Q DID YOU HOLD THAT SAME POSITION ON JANUARY THE 20TH
6 OF 1995?
- 7 A YES, I DID.
- 8 Q IN YOUR ROLE AS AN EVIDENCE TECHNICIAN, DID YOU
9 HANDLE EVIDENCE RELATED TO LAB NUMBER 94-7886 ON THAT DATE?
- 10 A YES, I DID.
- 11 Q WHAT ITEM NUMBERS DID YOU HANDLE?
- 12 A ITEM 56, THE SUSPECT EVIDENCE COLLECTION KIT.
- 13 Q AND WHAT DID YOU DO WITH ITEM NUMBER 56?
- 14 A I OPENED IT, INVENTORIED IT AND TRANSFERRED IT TO THE
15 APPROPRIATE DEPARTMENT.
- 16 Q IN THE INVENTORY STAGE -- AND YOU SAID THAT YOU BROKE
17 IT DOWN---
- 18 A UH-HUH.
- 19 Q ---DO YOU DO ANY ADDITIONAL LABELING OF THE CONTENTS
20 OF THE SUSPECT KIT?
- 21 A NOT THE ACTUAL CONTENTS. I JUST PUT THOSE ITEMS IN A
22 DIFFERENT CONTAINER AND TRANSFER IT TO THE APPROPRIATE
23 DEPARTMENT.
- 24 Q ARE THEY GIVEN SUBITEM NUMBERS AT THAT TIME?
- 25 A YES.

1 Q WHAT DID YOU IDENTIFY WITHIN THAT SUSPECT KIT IN YOUR
2 INVENTORY?

3 A I TRANSFERRED THE BLOOD STANDARD AND THE SALIVA TO
4 THE D.N.A. DEPARTMENT WHICH IS ITEM 56.4 AND 56.5.

5 Q AND THE BLOOD SAMPLE WOULD HAVE BEEN?

6 A 56.4.

7 Q AND WHAT DID YOU DO WITH THOSE ITEMS?

8 A I TRANSFERRED THOSE TO THE D.N.A. BOX---

9 Q AND WHAT---

10 A --WHICH IS A SECURE AREA.

11 Q ---WHAT IS THE D.N.A. BOX?

12 A IT'S A SECURE AREA THAT I JUST TRANSFERRED THE ITEMS
13 OF EVIDENCE INTO AND THEY CAN'T BE TAKEN OUT OTHER THAN
14 SOMEONE THAT HAS A KEY TO IT.

15 Q AND WHO HAS ACCESS TO THAT D.N.A. BOX WITH THE KEY?

16 A THE D.N.A. DEPARTMENT.

17 Q WHEN YOU INVENTORY THESE ITEMS, WHEN YOU INVENTORIED
18 THE BLOOD SAMPLE, DID YOU CHANGE IT IN FORM OR CONTENT?

19 A NO, I DID NOT.

20 Q KEPT IT IN ITS PACKAGE?

21 A UH-HUH.

22 Q YOU JUST TOOK IT FROM A LARGER PACKAGE?

23 A RIGHT.

24 Q THANK YOU, MS. KISER. ANSWER ANY QUESTIONS THEY MAY
25 HAVE.

1 MS. FULLWOOD: VERY BRIEFLY.

2 THE COURT: YES, MA'AM.

3 CROSS-EXAMINATION

4 BY MS. FULLWOOD:

5 Q I BELIEVE THERE WERE ALSO SOME HAIRS IN THAT SUSPECT
6 EVIDENCE KIT?

7 A THAT'S CORRECT.

8 Q OKAY. WHERE DID YOU TAKE THOSE?

9 A I TRANSFERRED THOSE INTO ANOTHER HEAT SEALED POUCH
10 AND I PUT THEM IN D-9, WHICH IS A SECURE AREA FOR HAIR.

11 Q OKAY. SO YOU TOOK IT TO THE DEPARTMENT OF YOUR
12 LABORATORY THAT ANALYZES HAIR?

13 A TRACE.

14 Q TRACE?

15 A UH-HUH.

16 Q THANK YOU, MA'AM.

17 A UH-HUH.

18 MR. CHASE: NOTHING FURTHER, YOUR HONOR. WE
19 WOULD ASK THAT BOTH OF THOSE WITNESSES BE RELEASED.

20 THE COURT: ANY OBJECTION?

21 MS. FULLWOOD: NO OBJECTION, YOUR HONOR.

22 THE COURT: ALL RIGHT. MS. MCKAY, MS. KISER, YOU
23 ARE EXCUSED. THANK YOU VERY MUCH FOR BEING HERE.

24 (WHEREUPON, THE WITNESS WAS
25 EXCUSED AT THIS TIME.)

1 MR. HUMPHRIES: THE STATE CALLS SENIOR AGENT
2 STEVE DERRICK.

3 STEVEN M. DERRICK,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
6 RECORD.

7 THE WITNESS: I'M STEVEN M. DERRICK

8 DIRECT EXAMINATION

9 BY MR. HUMPHRIES:

10 Q WITH WHOM ARE YOU EMPLOYED?

11 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
12 DIVISION, MORE COMMONLY KNOWN AS S.L.E.D.

13 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

14 A I HAVE BEEN WITH THE STATE LAW ENFORCEMENT DIVISION A
15 LITTLE OVER EIGHT YEARS.

16 Q AND DO YOU HAVE ANY PRIOR LAW ENFORCEMENT EXPERIENCE?

17 A YES, SIR, I DO. I WAS WITH THE AIKEN COUNTY
18 SHERIFF'S DEPARTMENT WHICH I SERVED IN THE CAPACITY AS THE
19 AGENT IN CHARGE OF THEIR CRIME LAB.

20 PRIOR TO THAT, I WAS WITH THE LEXINGTON COUNTY
21 SHERIFF'S DEPARTMENT, WHICH I SPENT APPROXIMATELY BETWEEN
22 FIVE AND SIX YEARS IN THEIR IDENTIFICATION LAB.

23 Q WHAT POSITION DO YOU HOLD, AGENT DERRICK, AT
24 S.L.E.D.?

25 A OKAY. I AM A SENIOR AGENT ASSIGNED TO THE DEPARTMENT

1 OF LATENT PRINTS AND CRIME SCENES.

2 THE RESPONSIBILITIES OF AN EXAMINER IN THAT
3 DEPARTMENT IS TO RESPOND TO, PROCESS AND RECONSTRUCT CRIME
4 SCENES WHEN REQUESTED; THE SCIENCE OF FINGERPRINTS, THE
5 SCIENCE OF TIRE AND FOOTWEAR AND THE SCIENCE OF BLOODSTAIN
6 PATTERN ANALYSIS.

7 Q DOES AN AGENT EXAMINER IN THAT DEPARTMENT RECEIVE ANY
8 SPECIAL EDUCATION AND SPECIFICALLY HAVE YOU RECEIVED ANY
9 SPECIAL EDUCATION AS IT RELATES TO PROCESSING CRIME SCENES
10 AND IN THE AREA OF LATENT EXAMINATION?

11 A YES, SIR. I HAVE ATTENDED NUMEROUS SCHOOLS, NOT ONLY
12 THROUGH S.L.E.D., BUT THE OTHER TWO DEPARTMENTS THAT I'VE
13 WORKED WITH.

14 Q HAVE YOU BEEN OFFERED AND QUALIFIED AS AN EXPERT IN
15 BOTH CRIME SCENE PROCESSING AND LATENT PRINT EXAMINATION
16 AND COMPARISON?

17 A YES, SIR, I HAVE.

18 Q DO YOU KNOW APPROXIMATELY HOW MANY TIMES AND WHAT
19 COURTS?

20 A JUST DURING MY EIGHT-YEAR TENURE AT S.L.E.D., I HAVE
21 TESTIFIED TO THE SCIENCE OF FINGERPRINTS ON APPROXIMATELY
22 SIXTY-FIVE OCCASIONS IN THE COURTS OF GENERAL SESSIONS IN
23 SOUTH CAROLINA, U.S. DISTRICT COURT AND THE MILITARY
24 COURTS.

25 I HAVE TESTIFIED APPROXIMATELY FIFTY-EIGHT TIMES

1 IN THE AREA OF CRIME SCENE RELATED MATTERS JUST IN THE LAST
2 EIGHT YEARS AT S.L.E.D.

3 Q AND THAT'S AS AN EXPERT?

4 A THAT IS CORRECT, SIR.

5 Q YOUR HONOR, AT THIS TIME, WE'D OFFER SENIOR AGENT
6 STEVE DERRICK AS AN EXPERT IN CRIME PROCESSING AND LATENT
7 PRINT EXAMINATION.

8 MR. STONE: WE DON'T HAVE ANY OBJECTION, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT.

11 WITHOUT OBJECTION, HE IS QUALIFIED AS AN EXPERT
12 IN THE AREA OF CRIME PROCESSING AND LATENT PRINT
13 IDENTIFICATION.

14 MR. HUMPHRIES: AGENT DERRICK, CONSISTENT WITH
15 YOUR POSITION AND YOUR DUTIES AT S.L.E.D. REGARDING CRIME
16 SCENE PROCESSING, DID YOU HAVE AN OCCASION TO RESPOND TO AN
17 INCIDENT LOCATION IN THE WESTGATE SUBDIVISION ON BUCKEYE
18 DRIVE ON MAY 31, 1994?

19 A YES, SIR, I DID.

20 Q AND IN WHAT CAPACITY?

21 A I WAS CALLED TO RESPOND TO ASSIST THE LEXINGTON
22 COUNTY SHERIFF'S DEPARTMENT IN AN HOMICIDE INVESTIGATION
23 AND TO PROCESS THE CRIME SCENE AT A RESIDENCE.

24 Q NOW, LET'S DO THIS, AGENT DERRICK. LET'S TELL THE
25 JURY, IF YOU WILL, WHAT YOU DO WHEN YOU RESPOND TO A CRIME

1 SCENE FIRST?

2 A OKAY. THE FIRST THING THAT I DO WHENEVER I ARRIVE ON
3 A CRIME SCENE IS I MEET WITH THE INVESTIGATING OFFICERS WHO
4 ARE ALREADY PRESENT AT THAT SCENE. I OBTAIN WHAT
5 INFORMATION THEY KNOW AT THAT TIME.

6 THE NEXT THING I DO IS CONDUCT WHAT IS REFERRED
7 -- WE REFER TO AS A WALK-THROUGH AND BY WALK-THROUGH, WE
8 EXAMINE A CRIME SCENE LOOKING AT THE OBVIOUS EVIDENCE THAT
9 IS PRESENT THAT JUST VISUALLY STANDS OUT AND LOOK FOR
10 POTENTIAL PLACES TO COLLECT ADDITIONAL EVIDENCE OR
11 ADDITIONAL ITEMS TO BE PROCESSED FOR SUCH THINGS AS LATENT
12 FINGERPRINTS.

13 ONCE THE WALK-THROUGH IS CONDUCTED AND YOU KIND
14 OF HAVE A FEEL FOR THE SCENE THAT YOU ARE GOING TO BE
15 WORKING WITH, MY NEXT STEP IS TO PHOTOGRAPHY DOCUMENT THAT
16 SCENE IN THE SAME CONDITION AS WHENEVER I ARRIVED OR THE
17 FIRST TIME I SAW IT.

18 FOLLOWING THAT, THE SCENE IS SKETCHED OUT SO THAT
19 VARIOUS ARTICLES AND INFORMATION CAN BE ADDED TO THAT
20 SKETCH AS THE PROCESSING OF THE SCENE CONTINUES.

21 ONCE THAT IS DONE, THEN IT IS THE COLLECTION,
22 PRESERVATION OF THE EVIDENCE THAT IS PRESENT AS WELL AS
23 PROCESSING, SEEKING OTHER TYPES OF EVIDENCE SUCH AS LATENT
24 FINGERPRINTS.

25 Q TELL THE JURY WHAT LATENT MEANS AND WHY YOU HAVE TO

1 SEEK OUT THAT TYPE OF EVIDENCE.

2 A OKAY. THE TERM ITSELF OR THE WORD ITSELF LATENT
3 MEANS HIDDEN OR INVISIBLE. WHEN REFERRED IN THE SCIENCE OF
4 FINGERPRINTS AS A LATENT PRINT, IT'S THAT PRINT THAT COULD
5 BE VISIBLE AS A LATENT PRINT OR MOST COMMONLY IS HIDDEN AS
6 A LATENT PRINT. THE REASON FOR THIS IS IF YOU WOULD
7 EXAMINE YOUR HANDS, ON EACH OF YOUR FINGERS AND IN THE PALM
8 OF YOUR HAND, THERE'S A SYSTEM OF RIDGES AND FURROWS WHICH
9 FLOW IN PATTERNS. ON TOP OF THE RIDGES, THERE ARE TINY
10 PORE OPENINGS AND THROUGH THESE PORE OPENINGS MOISTURE AND
11 OTHER BODY CHEMICALS ARE CONSTANTLY SECRETED THROUGH THESE
12 OPENINGS. AS THEY ARE SECRETED, THEY BUILD UP STARTING TO
13 OUTLINE THE TOP OF THE RIDGES.

14 AS WE TOUCH OTHER PARTS OF OUR BODY, ESPECIALLY
15 OUR FACE AND HAIR, THIS MOISTURE PICKS UP ADDITIONAL
16 GREASES AND OILS AND CONTAMINANTS WHICH CONTINUES TO BUILD
17 UP ON TOP OF THE RIDGES, THUS, OUTLINING THIS RIDGE PATTERN
18 THAT IS PRESENT.

19 THEREFORE, WHEN WE, AS INDIVIDUALS, TOUCH A
20 SURFACE, THERE IS A POTENTIAL FOR TRANSFERRING THE OUTLINE
21 OF THAT RIDGE DETAIL FROM THE RIDGES OF THE FINGERS OF THE
22 HAND TO THAT PARTICULAR SURFACE. BECAUSE OF MOISTURE AND
23 CHEMICALS THAT ARE SECRETED FROM THE BODY, MOST OF THE TIME
24 THEY ARE INVISIBLE, BUT THE APPLICATIONS OF SUCH ITEMS AS
25 BASIC FINGERPRINT POWDER, BLACK POWDER OR OTHER CHEMICALS

1 TO VARIOUS SURFACES, THEN THIS HIDDEN PRINT BECOMES VISIBLE
2 TO THE HUMAN EYE.

3 Q AGENT DERRICK, IN CONNECTION WITH THAT DESCRIPTION,
4 DID YOU HAVE AN OCCASION TO LIFT A LATENT PRINT FROM OR A
5 LATENT IMPRESSION FROM THE EXTERIOR OF THE RESIDENCE ON
6 BUCKEYE DRIVE?

7 A YES, SIR, I DID.

8 Q TELL THE JURY FROM WHENCE YOU LIFTED IT AND THE TYPE
9 OF LATENT LIFT IT WAS OR LATENT IMPRESSION IT WAS?

10 A OKAY. THE LATENT IMPRESSION WAS LIFTED FROM AN
11 ALUMINUM PHONE BOX WHICH WAS MOUNTED TO THE BACK WALL OF
12 THE HOME.

13 DURING OUR WALK-THROUGH EXAMINATION, I NOTICED
14 THAT THE PHONE LINES HAD BEEN PULLED FROM THAT BOX. ONCE
15 THE PHONE BOX WAS PHOTOGRAPHY DOCUMENTED, I PROCESSED THE
16 PHONE BOX WITH THE BASIC BLACK FINGERPRINT POWDER AT WHICH
17 TIME THERE WAS SOME PARTIAL RIDGE DETAIL THAT WAS DEVELOPED
18 AND BECAME VISIBLE.

19 Q LET ME SHOW YOU STATE'S EXHIBITS NUMBER TEN AND
20 ELEVEN. TELL ME IF YOU CAN IDENTIFY THESE PHOTOGRAPHS.

21 A YES, SIR, I CAN. STATE'S EXHIBIT NUMBER TEN IS A
22 KIND OF GENERAL OVERALL PHOTOGRAPH OF THE BACK OF THE
23 RESIDENCE THAT I PROCESSED.

24 STATE'S EXHIBIT NUMBER ELEVEN IS A CLOSE-UP
25 PHOTOGRAPH OF THE PHONE BOX FROM WHICH THE LATENT PRINT WAS

1 DEVELOPED.

2 Q TELL THE JURY JUST BRIEFLY HOW YOU ARE ABLE TO RAISE
3 THIS LATENT IMPRESSION.

4 A OKAY. ONCE THE APPLICATION OF BLACK POWDER IS
5 BRUSHED ONTO THE SURFACE AND THE PARTIAL RIDGE DETAIL
6 BECOMES VISIBLE, THEN A CLEAR TAPE IS THEN PRESSED OVER THE
7 RIDGE DETAIL, THUS TRANSFERRING THE POWDER FROM THE SURFACE
8 OF THE PHONE BOX TO THE STICKY SIDE OF THE TAPE. THE TAPE
9 IS THEN REMOVED AND PLACED ON A CONTRASTING WHITE
10 BACKGROUND LIFTING CARD.

11 Q DO YOU HAVE PRESENT WITH YOU TODAY THAT LATENT LIFT?

12 A NO, SIR. IT WAS TURNED OVER TO THE COURT YESTERDAY.

13 Q BEG THE COURT'S INDULGENCE.

14 LET ME SHOW YOU WHAT NOW IS MARKED AS COURT'S
15 EXHIBIT NUMBER 13. TELL ME IF YOU CAN IDENTIFY THAT.

16 A YES, SIR. I CAN IDENTIFY THIS AS THE LATENT LIFT
17 FROM THE PHONE BOX. IT BEARS MY INITIALS, THE DATE LIFTED
18 AND THE DESCRIPTION OF WHERE IT WAS LIFTED FROM.

19 MR. STONE: NO OBJECTION, YOUR HONOR.

20 MR. HUMPHRIES: MOVE TO INTRODUCE AT THIS TIME,
21 YOUR HONOR.

22 THE COURT: ALL RIGHT. WITHOUT OBJECTION, IT
23 WILL BE ADMITTED AS STATE'S NUMBER SEVENTEEN.

24 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

25 (WHEREUPON, STATE'S NUMBER 17,

1 LATENT PRINT, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
2 OBJECTION.)

3 MR. HUMPHRIES: NOW, AFTER HAVING LIFTED THAT,
4 CAN YOU THEN DETERMINE JUST BY THAT LATENT IMPRESSION WHO
5 DONATED THAT?

6 THE WITNESS: NOT ON JUST BY THE LATENT
7 IMPRESSION ITSELF. THERE HAS TO BE A COMPARISON OF THE
8 LATENT PRINT TO AN INKED FINGERPRINT CARD, WHICH IS THE
9 ROLLED INK IMPRESSION OF EACH FINGER OF AN INDIVIDUAL WHICH
10 IS A KNOWN STANDARD OF THAT RIDGE FORMATION OF THAT
11 PARTICULAR INDIVIDUAL.

12 Q OKAY. LET'S GO ON. DID YOU HAVE AN OCCASION THEN,
13 AFTER EXAMINING THE EXTERIOR OF THE RESIDENCE, TO EXAMINE
14 THE INTERIOR OF THE RESIDENCE?

15 A YES, SIR, I DID.

16 Q DID YOU HAVE, IN PARTICULAR, AN OPPORTUNITY TO
17 OBSERVE THE SIDE DOOR AREA UNDERNEATH THE CARPORT OF THIS
18 RESIDENCE?

19 A YES, SIR, I DID.

20 Q LET ME SHOW YOU STATE'S FOUR, FIVE AND SIX. TELL ME
21 IF YOU CAN IDENTIFY THOSE PHOTOGRAPHS.

22 A STATE'S EXHIBIT NUMBER FOUR IS A CLOSE-UP PHOTOGRAPH
23 OF THE SIDE DOOR WITH A BROKEN PANE OF GLASS NEXT TO THE
24 DOORKNOB.

25 STATE'S EXHIBIT NUMBER FIVE IS A PHOTOGRAPH OF

1 THE DOOR ITSELF SHOWING THE GLASS, BROKEN GLASS AS IT IS
2 PROTRUDED IN TOWARDS THE KITCHEN FLOOR AND SOME SMALL
3 PIECES THAT HAVE FALLEN ON THE STEP.

4 STATE'S EXHIBIT NUMBER SIX IS A PHOTOGRAPH OF THE
5 INTERIOR KITCHEN AREA.

6 Q DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT
7 THOSE AREAS OF THE CRIME SCENE AS YOU SAW THEM THAT DAY?

8 A YES, SIR, THEY DO.

9 Q AND, IN FACT, WHOSE PHOTOGRAPHS ARE THEY?

10 A THE PHOTOGRAPHS WERE TAKEN BY THE ASSISTING AGENT TED
11 SHEALY UNDER MY DIRECTION AND IN MY PRESENCE.

12 Q AND DID YOU HAVE AN OPPORTUNITY LATER TO REVIEW THESE
13 PHOTOGRAPHS?

14 A YES, SIR, I DID.

15 Q VERY GOOD.

16 NOW, SPECIFICALLY, AS IT RELATES TO THE POINT OF
17 ENTRY. WHY DON'T YOU DO THIS. WHY DON'T YOU STEP DOWN.

18 A (WITNESS COMPLIES.)

19 Q DO YOU RECEIVE ANY -- HAVE YOU RECEIVED ANY SPECIFIC
20 TRAINING IN ORDER TO DETERMINE WHETHER FORCE IS APPLIED
21 FROM THE EXTERIOR OR THE INTERIOR BY VIRTUE OF WHERE THE
22 GLASS FALLS?

23 A JUST IN THE BASIC CRIME SCENE TRAINING COURSES ABOUT
24 FORCE APPLIED TO GLASS AND THE DIRECTION THE GLASS WOULD
25 FLY IN.

1 Q USED THAT PHOTOGRAPH, IF IT'S OF ASSISTANCE TO YOU,
2 TO EXPLAIN TO THE JURY YOUR OPINION REGARDING WHETHER OR
3 NOT FORCE WAS APPLIED FROM THE EXTERIOR TO THE INTERIOR OF
4 THE RESIDENCE IN ORDER TO BREAK THAT GLASS.

5 A BASED ON---

6 Q AND YOU HAVE TO KEEP YOUR VOICE UP. I'M SORRY.

7 A OKAY. BASED ON THE EXAMINATION OF BROKEN GLASS AT
8 THE SCENE OF THE CRIME, WHEN FORCE IS APPLIED TO THE GLASS
9 ITSELF, THE GLASS WILL MOVE IN THE DIRECTION THAT THE FORCE
10 HITS IT.

11 IN THIS PARTICULAR CASE, THE GREATEST ABUNDANCE
12 OF GLASS STRUNG FROM THE DOORWAY WELL INTO THE KITCHEN
13 FLOOR. THEREFORE, MY OPINION, BASED ON MY TRAINING AND
14 SEVENTEEN YEARS OF EXPERIENCE, THE FORCE WAS APPLIED TO THE
15 GLASS FROM THE OUTSIDE CAUSING THE GLASS TO FLY TO THE
16 INTERIOR OF THE RESIDENCE ITSELF.

17 THERE ARE SOME BIGGER LARGER BROKEN PIECES WHICH
18 IS GLASS THAT'S IN THE WINDOW PANE THAT'S AWAY FROM THE
19 ACTUAL APPLIED FORCE WHICH HAS FALLEN DOWN AND IN CLOSE
20 VICINITY OF THE DOOR ITSELF.

21 Q THANK YOU, AGENT DERRICK.

22 A (WHEREUPON, THE WITNESS RETURNS TO THE WITNESS STAND
23 AT THIS TIME.)

24 Q NOW, IS IT SIGNIFICANT THAT THE PANE OF GLASS BROKEN
25 IN THE DOOR IS IMMEDIATELY ADJACENT TO THE DOORKNOB?

1 A I'M NOT SURE I UNDERSTAND YOUR QUESTION, I'M SORRY.

2 Q WELL, LET ME ASK YOU THIS. WHAT IS -- WHAT IS
3 AVAILABLE TO SOMEONE BREAKING A GLASS AT THAT POINT?

4 A THAT IS THE CLOSEST POINT TO THE DOOR HANDLE AND THE
5 LOCK MECHANISM ON THE DOOR.

6 Q AFTER ENTERING THE RESIDENCE, DID YOU LOCATE THE
7 VICTIM INSIDE?

8 A YES, SIR, I DID.

9 Q LET'S LOOK AT STATE'S EXHIBIT NUMBER ONE AGAIN AND
10 LET ME ASK YOU THIS. IF YOU'LL TAKE A LOOK AT IT. DOES IT
11 FAIRLY AND ACCURATELY REPRESENT THE LAYOUT OF THE
12 RESIDENCE?

13 A YES, SIR, IT DOES.

14 Q AND THERE'S A BODY STICK-ON, FOR LACK OF A BETTER
15 TERM, DOES THAT FAIRLY AND ACCURATELY REPRESENT THE
16 APPROXIMATE POSITION AS YOU FOUND THE VICTIM IN THE HOUSE?

17 A YES, SIR, IT DOES.

18 Q CAN YOU TELL THE JURY IN WHAT POSITION YOU FOUND THE
19 VICTIM AND IN WHAT STATE OF DRESS YOU FOUND THE VICTIM?

20 A THE VICTIM WAS FOUND NUDE LAYING ON HER BACK ON THE
21 FLOOR THERE AT THE LIVING ROOM AT THE CORNER OF THE
22 HALLWAY. BOTH KNEES ON EACH LEG HAD BEEN BENT WHERE THE
23 LEGS WERE IN A CURVE POSITION.

24 Q DID YOU ALSO LOCATE -- LET ME SHOW YOU THIS, STATE'S
25 EXHIBIT NUMBER 13 FOR IDENTIFICATION PURPOSES. WILL YOU

1 TAKE A LOOK AT THAT AND TELL ME IF YOU CAN IDENTIFY IT?

2 A YES, SIR, I CAN IDENTIFY THIS. IT BEARS MY INITIALS.

3 Q TELL ME WHAT THAT ITEM -- IT BEARS YOUR INITIALS?

4 A THAT'S CORRECT, SIR.

5 Q AND, IN FACT, DID YOU -- WAS IT PRESENT AT THE CRIME
6 SCENE ON THE DAY THAT YOU WERE THERE---

7 A YES---

8 Q ---MAY 31ST---

9 A YES, SIR, IT WAS AND THAT WAS THE DAY I COLLECTED IT.

10 Q LET ME ASK YOU, REFERRING AGAIN TO STATE'S EXHIBIT
11 NUMBER ONE, THERE APPEARS A -- FOR LACK OF A BETTER TERM --
12 STICK-ON PLACED ADJACENT TO THE BODY. TELL ME IF THAT
13 CLOSELY APPROXIMATES THE POSITION IN WHICH YOU FOUND THAT
14 ITEM, STATE'S EXHIBIT NUMBER 13 FOR IDENTIFICATION
15 PURPOSES?

16 A YES, SIR. THE STICK WAS AT AN ANGLE POSITIONED IN A
17 CHAIR NEXT TO THIS LITTLE DESK TYPE TABLE.

18 Q THANK YOU.

19 NOW, WITHOUT GOING INTO GREAT DETAIL, CAN YOU
20 TELL THE JURY BASICALLY WHERE BLOOD WAS COLLECTED IN
21 CONNECTION TO THE VICTIM?

22 A I DON'T KNOW THAT I COLLECTED SPECIFICALLY---

23 Q I'M SORRY---

24 A ---SWABS OF BLOOD---

25 Q ---THAT WAS -- THAT WAS THE WRONG WAY TO ASK THAT

1 QUESTION.

2 WHERE WAS THE BLOOD? NOT BLOOD THAT YOU
3 COLLECTED. I MEANT MORE IN GENERAL TERMS OF HOW IT WAS
4 COLLECTED ON THE FLOOR. WHERE WAS THE BLOOD PRESENT AT
5 THAT CRIME SCENE, THE MAJOR PORTION OF THE BLOOD?

6 A IF I MAY STEP DOWN AGAIN?

7 Q PLEASE.

8 A (WITNESS COMPLIES.) THE BLOOD THAT WAS NOTED IN THE
9 EXAMINATION OF THE CRIME SCENE WAS THERE WAS A POOL OF
10 BLOOD ON THE FLOOR IN THIS APPROXIMATE AREA, AS WELL AS A
11 POOL OF BLOOD THAT WAS UNDER THE HEAD OF THE
12 VICTIM(INDICATES).

13 ON THIS WALL(INDICATES) AND THIS CORNER WALL, THE
14 HALLWAY AND THIS DOOR AND ON THE CORNER WALL HERE IN THE
15 LIVING ROOM, THERE WAS BLOOD ALSO NOTICED THERE(INDICATES).

16 Q OKAY. HOW ABOUT HAVE A SEAT AND LET'S DO THIS.

17 A (WITNESS COMPLIES.)

18 Q IS THERE -- IS THERE A FORENSIC -- AN AREA OF
19 FORENSIC INTERPRETATION AND EXAMINATION CALLED BLOOD
20 SPATTER?

21 A YES, SIR, THERE IS.

22 Q TELL THE JURY, IF YOU WILL, IF YOU'VE RECEIVED ANY
23 SPECIFIC TRAINING IN THIS REGARD?

24 A YES, SIR, I HAVE.

25 I ATTENDED A COURSE, MY COURSE WAS UNDER JUDITH

1 BUNKER AND ASSOCIATES OUT OF FLORIDA. I'VE ALSO ATTENDED A
2 COURSE THAT WAS TAUGHT THROUGH THE GEORGIA POLICE ACADEMY.
3 ALSO, RECEIVED BLOODSTAIN PATTERN TRAINING THROUGH THE
4 SOUTHERN POLICE INSTITUTE HOMICIDE SCHOOL..

5 Q IS THIS A RECOGNIZED AREA OF FORENSIC EXAMINATION?

6 A YES, SIR, IT IS.

7 Q AND HAVE YOU HAD OCCASION TO BE OFFERED AS AN EXPERT
8 IN REGARD TO BLOOD SPATTER TESTIMONY?

9 A YES, SIR, ON APPROXIMATELY TWENTY OCCASIONS.

10 Q AND IN WHAT COURTS?

11 A THIS WOULD BE IN THE COURTS -- GENERAL SESSIONS
12 COURTS IN THE STATE OF SOUTH CAROLINA.

13 Q YOUR HONOR, AT THIS TIME, WE'D OFFER STEVE DERRICK AS
14 AN EXPERT IN THE AREA OF BLOOD SPATTER EXAMINATION.

15 THE COURT: QUESTIONS CONCERNING HIS
16 QUALIFICATIONS?

17 MR. STONE: NO, SIR, NO OBJECTION.

18 THE COURT: I'LL QUALIFY HIM AS AN EXPERT IN THE
19 FIELD OF BLOOD SPATTER INTERPRETATION.

20 MR. HUMPHRIES: THANK YOU.

21 NOW, WHAT I WOULD LIKE TO DO, AGENT DERRICK, IS
22 THIS. WITHOUT GOING INTO THE PICTURES OF THE BLOOD FOR
23 VARIOUS REASONS, WHAT I WOULD LIKE TO DO IS ASK YOU CERTAIN
24 QUESTIONS ABOUT THE POSITION OF THE VICTIM, BOTH AS YOU
25 FOUND HER AND WHERE SHE WOULD HAVE HAD TO BEEN OR WOULD

1 HAVE BEEN BASED ON YOUR OPINION AND YOUR EXAMINATION OF
2 BLOOD SPATTER AT THE TIME OF THE ASSAULT?

3 A OKAY, SIR.

4 Q IF YOU WILL, FIRST OF ALL, LET'S TALK ABOUT WHERE THE
5 VICTIM WOULD HAVE BEEN AT THE TIME OF THE ASSAULT,
6 PARTICULARLY TO THE HEAD?

7 A IN EXAMINING THE CRIME SCENE, IF I MAY STEP DOWN,
8 AGAIN?

9 Q PLEASE.

10 A (WITNESS COMPLIES.)

11 THIS FIRST POOL OF BLOOD WHICH WAS CLOSER TO THIS
12 WALL OVER HERE WAS A HEAVY POOL OF BLOOD, A LOT OF VOLUME.

13 IN LOOKING AT THAT POOL AND THE SPATTERING THAT
14 WAS ON THE WALL, SPECIFICALLY THIS WALL HERE (INDICATES),
15 THIS PARTICULAR CORNER WALL, THE SPATTER RELATED BACK INTO
16 THIS PARTICULAR AREA.

17 NOW, THERE ARE CERTAIN SCIENTIFIC KNOWN FACTS
18 ABOUT WHAT BLOOD DOES WHEN FORCE IS APPLIED TO IT AND WHAT
19 TYPE OF FORCE IS APPLIED TO IT. AND THIS GIVES US THIS
20 SPATTERING EFFECT.

21 FOR EXAMPLE, HIGH SPEED VELOCITY OF BLOOD SPATTER
22 ARE VERY, VERY TINY DROPS THAT ARE ONE MILLIMETER OR LESS
23 IN SIZE WHEN THE FORCE IS APPLIED AND THEY FLY AWAY FROM A
24 BLOOD-SOAKED SURFACE. THIS IS ASSOCIATED WITH FORCE THAT'S
25 A HUNDRED FOOT A SECOND OR GREATER.

1 IN SIMPLIFIED TERMS, THAT COULD BE FROM A GUNSHOT
2 ROOM OR FROM EXPIRATING OR COUGHING UP BLOOD THAT HAS
3 GOTTEN IN THE MOUTH AND EXPIRATED OUT.

4 THERE'S A SECOND CLASSIFICATION OF FORCE WHICH IS
5 REFERRED TO AS MEDIUM VELOCITY FORCE.

6 NOW, THIS IS FORCE THAT IS GREATER THAN
7 TWENTY-FIVE FOOT A SECOND. THIS IS THE TYPE SPATTER WHICH
8 IS A LITTLE LARGER THAN HIGH VELOCITY BLOOD SPATTER. THIS
9 IS LIKE ONE MILLIMETER IN SIZE TO APPROXIMATELY FOUR
10 MILLIMETERS IN SIZE. VERY SMALL, BUT DIFFERENTIATES
11 BETWEEN THE HIGH VELOCITY SPATTER.

12 NOW, THIS TYPE OF FORCE IN SIMPLIFIED TERMS WOULD
13 BE IF I'M FLAILING AN OBJECT. IF I'VE GOT ENOUGH STRENGTH
14 OF MOTION TO DO IT WITH YOUR FIST. AND AS I HIT THIS
15 SURFACE THAT HAS BLOOD ON IT AND APPLY THAT FORCE, THEN
16 THAT BLOOD FLIES AND SPATTERS OUT.

17 BY THE BLOOD SIZE, WE DETERMINE THE PARTICULAR
18 RANGE OF FORCE. GUNSHOT OR BEATING.

19 THE THIRD TYPE IS LOW VELOCITY. THIS IS REAL
20 SLOW-MOVING BLOOD. THE SIMPLEST WAY TO DESCRIBE THAT IS IF
21 I CUT MY FINGER AND I HOLD IT OUT, AS THE BLOOD DROPS,
22 BECAUSE OF THE GRAVITATIONAL PULL, THERE'S REALLY LITTLE TO
23 NO FORCE, OTHER THAN THAT PULL, AND THAT IS THE LOW
24 VELOCITY DROP. IT WILL BE MUCH LARGER THAN THAT THAT'S HAD
25 GREATER FORCE APPLIED TO IT.

1 IN EXAMINING THESE CORNER WALLS, THERE WAS THE
2 PRESENCE OF THIS MEDIUM VELOCITY BLOOD SPATTER ON THIS
3 CORNER AND ON THIS CORNER HERE(INDICATES) .

4 IN TAKING THOSE ANGLES AND TRACKING THEM BACK,
5 THEY ALL WENT BACK SPECIFICALLY TO THIS FIRST POOL OF
6 BLOOD.

7 ALONG WITH THE SPATTER WAS ALSO PRESENT A KIND OF
8 AN IRREGULAR TYPE PATTERN WHICH IS REFERRED TO AS A
9 TRANSFER-TYPE PATTERN. THERE IS SOMETHING, EITHER HER HAIR
10 OR HER ARM OR SOME CLOTHING, THERE WAS SOMETHING THAT HAD
11 BLOOD ON IT THAT MADE CONTACT WITH THIS CORNER OF THE WALL,
12 THUS, TRANSFERRING THE BLOOD FROM THAT SURFACE TO THE WALL
13 ITSELF.

14 Q LET ME ASK YOU THIS. BASED ON YOUR EXAMINATION OF
15 THE BLOOD SPATTER IN THIS CASE---

16 A YES, SIR.

17 Q ---CAN YOU TELL THIS JURY YOUR EXPERT OPINION
18 REGARDING WHAT THE VICTIM'S POSITION MUST HAVE BEEN WHEN
19 SHE RECEIVED THE BLOWS TO THE HEAD?

20 A ALL THE SPATTER THAT WAS NOTED ON BOTH WALLS
21 HERE(INDICATES) RANGE FROM TWO INCHES ABOVE THE FLOOR TO
22 NINE INCHES ABOVE THE FLOOR IN A PARALLEL OR
23 STRAIGHT-ACROSS PATTERN. THEREFORE, THE BLOWS WERE
24 DELIVERED WHILE THE INDIVIDUAL WAS AT OR ON THE FLOOR.

25 Q THANK YOU. AND, ALSO, YOU HAD MENTIONED IN YOUR

1 DESCRIPTION IN GENERAL OF BLOOD SPATTER, ASPIRATED BLOOD---

2 A IT'S EXPIRATED.

3 Q ---DID YOU FIND ANY PRESENT -- I'M SORRY, EXPIRATED.

4 A YES, SIR.

5 Q HE'S AN EXPERT. YOU'VE GOT TO BE CAREFUL WITH HIM.

6 TELL THE JURY IF YOU FOUND ANY EXPIRATED BLOOD ON
7 THIS SCENE.

8 A YES, SIR, I DID. I FOUND SOME EXPIRATED BLOOD THAT
9 WAS INTERMINGLED WITH MEDIUM VELOCITY SPATTER WHICH WAS
10 NOTED ON THIS WALL HERE(INDICATES).

11 AS I SPOKE OF EARLIER, HIGH VELOCITY CAN BE
12 ASSOCIATED WITH A GUNSHOT WOUND OR IT CAN BE EXPIRATING OR
13 COUGHING UP BLOOD. THE PRIMARY DIFFERENCE IN MAKING THE
14 DETERMINATION OF WHETHER IT'S COUGHED UP BLOOD OR WHETHER
15 IT'S BEEN ASSOCIATED WITH A GUNSHOT WOUND, IS IN THE COLOR
16 OF THE BLOOD ITSELF. BLOOD THAT HAS BEEN COUGHED UP OR
17 EXPIRATED OUT, MIXES WITH SALIVA AND OTHER FLUIDS IN THE
18 MOUTH AND, THUS, WHEN IT'S EXPIRATED OUT, IT IS NOT AS DARK
19 IN COLOR AS IT WOULD BE IF IT HAD BEEN ASSOCIATED WITH AN
20 ACTUAL BLOOD OR TRUE BLOOD.

21 IN EXAMINING THE BLOOD THAT WAS ON THIS WALL,
22 WHILE NOT THAT DEEP DARK RICH RED COLOR, IT WAS MORE OF A
23 LIGHT RED TO A FROTHY PINK COLOR; THEREFORE, I ASSOCIATED
24 THAT WITH THE COUGHING OR EXPIRATING OF BLOOD.

25 Q ONE FINAL QUESTION IN REGARD TO BLOOD SPATTER. THE

1 POSITION IN WHICH THE VICTIM WAS FOUND, WHEN YOU ARRIVED AT
2 THE SCENE, WAS THAT THE POSITION THAT SHE RECEIVED THESE
3 BLOWS WHICH CAUSED THE BLOOD SPATTER OR WAS IT MORE
4 CONSISTENT WITH THE FIRST LARGER POOL OF BLOOD THAT YOU'VE
5 DESCRIBED EARLIER?

6 A ALL THE MEDIUM VELOCITY SPATTER, AS I SPOKE OF
7 EARLIER, WHEN TRAILED OUT, COMES TO THE FIRST POOL OF
8 BLOOD.

9 Q THANK YOU. YOU MAY HAVE YOUR SEAT.

10 A (WITNESS COMPLIES.)

11 Q NOW, AT SOME POINT IN TIME, WAS THE SUSPECT GARY
12 DUBOSE TERRY IDENTIFIED TO YOU BY LAW ENFORCEMENT AS A
13 POTENTIAL SUSPECT IN THIS CASE?

14 A YES, SIR, HE WAS.

15 Q AS A RESULT OF THAT AND PRIOR TO HIS ARREST, WHAT
16 ACTIONS DID YOU TAKE TO DETERMINE WHETHER OR NOT GARY
17 DUBOSE TERRY COULD HAVE BEEN THE DONOR OF THE LATENT
18 IMPRESSION YOU LIFTED FROM THE PHONE BOX?

19 A I RECEIVED INFORMATION THAT MR. TERRY WAS A SUSPECT
20 IN THIS CASE. CHECKING WITH A RECORDS SECTION, I PULLED A
21 KNOWN INKED FINGERPRINT CARD OR A KNOWN STANDARD OF THE
22 INKED IMPRESSIONS OF MR. TERRY.

23 Q LET ME ASK YOU THIS. THESE KNOWN FINGERPRINT CARDS,
24 WOULD YOU HAVE ACTUALLY ROLLED THE INKED IMPRESSIONS ON
25 THESE CARDS THAT ARE CONTAINED AT S.L.E.D., THE ONES THAT

1 YOU REFER TO NOW?

2 A NO, SIR. I WOULD NOT HAVE ROLLED THOSE CARDS. THEY
3 WOULD HAVE BEEN ROLLED BY VARIOUS AGENCIES.

4 Q OKAY. OKAY. MY QUESTION IS YOU DIDN'T NECESSARILY
5 ROLLED THEM?

6 A NO, SIR.

7 Q OKAY. ARE THE CARDS WHICH S.L.E.D. MAINTAINS, ARE
8 THEY OF UNIFORM, GOOD QUALITY AS RELATES TO THE INKED
9 IMPRESSIONS?

10 A THEY VARY IN QUALITY. DEPENDS ON THE, I GUESS, THE
11 EXPERIENCED TRAINING OF THE INDIVIDUAL ACTUALLY TAKING THE
12 ROLLED INKED IMPRESSION. SOME ARE VERY GOOD. SOME ARE SO
13 POOR THAT NO COMPARISON CAN BE DONE AT ALL.

14 Q LET ME ASK YOU THIS. DID YOU HAVE AN OCCASION TO
15 COMPARE A KNOWN PRINT CARD OF GARY DUBOSE TERRY PRIOR TO
16 HIS ARREST---

17 A YES, SIR, I DID.

18 Q ---WITH THE LATENT IMPRESSION YOU LIFTED FROM THE
19 HOME?

20 A FROM THE PHONE BOX, YES, SIR, I DID.

21 Q TELL THE JURY THE RESULTS OF YOUR EXAMINATION.

22 A IN EXAMINING THE LATENT PRINT AGAINST MR. TERRY'S
23 CARD, I EXAMINED THE LATENT AGAINST THE INKED PRINT OF THE
24 RIGHT RING FINGER IS THE CARD THAT I HAD IN MY POSSESSION.

25 THERE WERE A NUMBER OF CHARACTERISTICS THAT WERE

1 IN THE SAME UNIT RELATIONSHIP, BOTH IN THE LATENT PRINT AND
2 THE INKED FINGERPRINT CARD; HOWEVER, THERE WAS AN AREA IN
3 WHICH THERE WERE CHARACTERISTICS IN THE LATENT BUT BECAUSE
4 OF THE QUALITY OF THE INKED CARD WERE NOT CLEAR AND
5 DISTINCT; THEREFORE, I COULD NOT RENDER AN OPINION OR A
6 CONCLUSION BASED ON THIS EXAMINATION BECAUSE I DID NOT HAVE
7 THE TOTALITY OF THE INKED PRINT CLEAR AND DISTINCT TO MAKE
8 THE POSITIVE COMPARISON WITH THE LATENT PRINT.

9 Q BASED ON THAT COMPARISON, DID YOU ELIMINATE GARY
10 DUBOSE TERRY AS THE DONOR OF THAT LATENT IMPRESSION?

11 A NO, SIR, I COULD NOT ELIMINATE MR. TERRY. I HAD
12 ACTUALLY SEARCHED FOURTEEN OTHER CARDS OF INDIVIDUALS THAT
13 HAD BEEN CALLED INTO US. THERE WAS NOTHING -- NONE OF THE
14 CHARACTERISTICS OF THOSE CARDS WERE ANYWHERE CLOSE TO THE
15 CHARACTERISTICS I HAD IN THE LATENT.

16 THE LATENT WAS ALSO RUN ON THE FINGERPRINT
17 COMPUTER. THIS COMPUTER SCANS A DATABASE OF OVER A HALF
18 MILLION CARDS ON FILE AT S.L.E.D. IT GAVE ME BACK SIXTEEN
19 INKED PRINTS TO LOOK AT. NONE OF THOSE SIXTEEN INKED
20 IMPRESSIONS WERE CLOSE WITH THE CHARACTERISTICS THAT I WAS
21 LOOKING AT IN THE LATENT; HOWEVER, THE NUMBER FOUR FINGER,
22 RIGHT RING FINGER OF MR. TERRY WHAT I COULD SEE BOTH IN THE
23 INKED CARD AND IN THE LATENT WERE IN THE SAME UNIT
24 RELATIONSHIP. BECAUSE OF THAT, I COULD NOT ELIMINATE THAT
25 FINGER AS BEING THE ONE THAT COULD HAVE POSSIBLY MADE THAT

1 IMPRESSION.

2 Q MOVING ON FROM THERE, SENIOR AGENT DERRICK, WERE YOU
3 SUBSEQUENTLY ADVISED THAT THERE HAD BEEN AN ARREST MADE OF
4 GARY DUBOSE TERRY IN CONNECTION WITH THIS CASE?

5 A YES, SIR, I WAS.

6 Q AND DID YOU, AFTER THAT ARREST AND WHILE MR. TERRY
7 WAS IN CUSTODY, OBTAIN ADDITIONAL PRINT CARDS?

8 A YES, SIR, I DID.

9 Q HOW MANY PRINT CARDS---

10 A I DID---

11 Q ---AND WHAT WAS THE PURPOSE FOR YOUR OBTAINING PRINT
12 CARDS?

13 A I WENT TO THE LEXINGTON COUNTY JAIL AND OBTAINED
14 THREE INKED FINGERPRINT CARDS FROM MR. TERRY. THE REASON I
15 WENT AND PRINTED MR. TERRY IS I KNEW SPECIFICALLY WHICH
16 FINGER I WANTED TO DO CLOSER EXAMINATION TO AND I KNEW
17 SPECIFICALLY THE AREA THAT I NEEDED TO LOOK THAT WAS NOT
18 PRESENT IN THE OTHER CARDS THAT I HAD LOOKED AT.

19 Q AND AFTER HAVING OBTAINED -- AND LET ME ASK YOU THIS.
20 DO YOU HAVE WITH YOU NOW THE ORIGINALS OF THOSE PRINT
21 CARDS?

22 A YES, SIR, I DO.

23 Q AND HOW DO YOU KNOW THEY ARE ORIGINALS AND HOW DO YOU
24 KNOW THEY ARE THE ONES THAT YOU ACTUALLY INKED?

25 A BECAUSE THEY BEAR MY SIGNATURE AND THE DATE I TOOK

1 THEM.

2 MR. STONE: NO OBJECTION.

3 THE COURT: WITHOUT OBJECTION, IT WILL BE
4 ADMITTED AS STATE'S NUMBER EIGHTEEN CONSISTING OF THREE
5 CARDS, MR. HUMPHRIES?

6 MR. HUMPHRIES: YES, SIR, YOUR HONOR.

7 THE COURT: DO YOU WANT TO DO THEM AS ONE?

8 MR. HUMPHRIES: 18-A, B AND C, IF THAT'S ALL
9 RIGHT, YOUR HONOR?

10 THE COURT: 18-A, B AND C, THAT WILL BE FINE.

11 (WHEREUPON, STATE'S EXHIBIT
12 NUMBERS 18-A, 18-B AND 18-C, FINGERPRINT CARDS, ENTERED
13 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

14 MR. HUMPHRIES: AGAIN, 18-A, B AND C ARE ROLLED
15 INKED IMPRESSIONS YOU TOOK FROM THE DEFENDANT, GARY DUBOSE
16 TERRY, IS THAT CORRECT?

17 THE WITNESS: THAT'S CORRECT.

18 Q NOW, DID YOU SUBSEQUENTLY HAVE AN OPPORTUNITY TO MAKE
19 A COMPARISON BETWEEN STATE'S A, B -- 18-A, B AND C AND
20 STATE'S 17?

21 A YES, SIR, I DID.

22 Q DID YOU PREPARE A CHART IN ORDER TO ASSIST YOU TO
23 MAKING YOUR PRESENTATION TO THE JURY REGARDING THIS
24 COMPARISON?

25 A YES, SIR, I DID.

1 MR. HUMPHRIES: MOVE TO INTRODUCE AT THIS TIME,
2 YOUR HONOR.

3 MR. STONE: NO OBJECTION.

4 THE COURT: WITHOUT OBJECTION, IT WILL BE
5 ADMITTED AS STATE'S NUMBER 19.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER
7 19, ENLARGEMENT OF LATENT STANDARD, ENTERED INTO EVIDENCE
8 AT THIS TIME WITHOUT OBJECTION.)

9 MR. HUMPHRIES: IF YOU WILL, FIRST OF ALL, TELL
10 THE JURY WHAT YOU DO IN TERMS OF MAKING YOUR COMPARISON AND
11 THEN USE YOUR CHART, IF YOU WILL, TO TELL THE JURY YOUR
12 FINDINGS?

13 THE WITNESS: OKAY, SIR.

14 FIRST OF ALL, LET'S BACK UP A LITTLE BIT TO WHAT
15 I PREVIOUSLY TESTIFIED TO ABOUT THE SYSTEM OF RIDGES THAT
16 ARE ON THE FINGERS AND THE HANDS.

17 AS THESE RIDGES FLOW THROUGH A PATTERN, THESE
18 RIDGES HAVE A POTENTIAL TO DO A NUMBER OF THINGS. SUCH AS
19 THERE MAY BE A RIDGE THAT FLOWS IN THE PATTERN THAT STARTS
20 ON ONE SIDE OF IT AND CONTINUOUSLY FLOWS ALL THE WAY
21 THROUGH THE PATTERN.

22 THE RIDGE NEXT TO IT MAY BE A RIDGE THAT STARTS
23 FLOWING IN THE PATTERN AND THEN ABRUPTLY STOPS; OR ENDS
24 WHILE THE PATTERN CONTINUES ON; OR A RIDGE FLOWING IN THAT
25 PATTERN MAY START OFF AS A SINGLE RIDGE, DIVIDE OFF FORMING

1 TWO RIDGES WHICH CONTINUE TO FLOW THROUGH THE PATTERN; OR
2 INTERMINGLED IN THE PATTERN ITSELF COULD BE SOME VERY TINY
3 SHORT RIDGES INDEPENDENT OF THE OTHER RIDGES FLOWING
4 THROUGH THE PATTERN.

5 ALSO, YOU CAN HAVE A RIDGE THAT STARTS OFF AS A
6 SINGLE RIDGE AND DIVIDES OFF FORMING TWO RIDGES AND FLOWS
7 FOR A WAY AND THEN CLOSES BACK UP CAUSING AN ISLAND OR AN
8 ENCLOSURE. THESE ARE COMMONLY REFERRED TO AS POINTS OF
9 IDENTIFICATION. THEY ARE THE EASIEST ASPECT OF THE LATENT
10 PRINT EXAMINE ITSELF AND THE MOST OBVIOUS CHARACTERISTICS
11 THAT ARE IN THE PATTERN.

12 AS IN THIS CASE, IF I MAY STEP DOWN?

13 Q PLEASE.

14 A (WITNESS COMPLIES.) IN COMPARING THE LATENT PRINT OF
15 THE NUMBER FOUR RIGHT RING FINGER FROM MR. TERRY'S
16 FINGERPRINT CARD TO THE LATENT PRINT THAT WAS DEVELOPED OFF
17 THE PHONE BOX, I HAVE CHARTED OUT NINE OF THESE POINTS OF
18 IDENTIFICATION THAT ARE IN THE SAME UNIT RELATIONSHIP BOTH
19 IN THE LATENT PRINT AND THE INKED FINGERPRINT CARD.

20 NOW, WE START WITH POINT NUMBER ONE WHICH IS
21 LOCATED RIGHT HERE AND RIGHT HERE IN THE LATENT (INDICATES).
22 THIS IS ONE OF THOSE RIDGES THAT HAS FLOWED THROUGH THE
23 PATTERN AND HAS ABRUPTLY STOPPED OR ENDED WHILE THE TWO
24 RIDGES NEXT TO IT CONTINUE FLOWING ON THROUGH THE PATTERN.

25 POINT NUMBER TWO IS ANOTHER RIDGE THAT ENDS.

1 THIS ONE IS ENDING UPWARD. IT IS ONE RIDGE COUNT OVER FROM
2 POINT NUMBER ONE, THE DOWN-ENDING RIDGE.

3 IF WE TAKE THIS DOWN-ENDING RIDGE AND FOLLOW IT
4 DOWN AND COME BACK INSIDE ONE RIDGE, WE COME UP WITH POINT
5 NUMBER THREE WHICH IS ANOTHER ONE OF THOSE ABRUPT UP-ENDING
6 RIDGES.

7 ONE RIDGE COUNT OVER FROM POINT NUMBER THREE
8 WHERE A SOLID RIDGE IS RUNNING BETWEEN THREE AND FOUR IS
9 POINT NUMBER FOUR, WHICH AGAIN, IS ANOTHER ABRUPT-ENDING
10 RIDGE.

11 POINT NUMBER FIVE IS, AGAIN, ANOTHER RIDGE THAT
12 FLOWS IN THE PATTERN AND STOPS BY THE RIDGES NEXT TO IT AND
13 CONTINUES ON THROUGH THE PATTERN.

14 SUCH ARE THE EXAMPLES IN SIX THROUGH NINE.

15 Q THANK YOU.

16 A (WHEREUPON, THE WITNESS RETURNS TO THE WITNESS STAND
17 AT THIS TIME.)

18 Q BASED ON THAT COMPARISON, DO YOU HAVE AN OPINION AS
19 TO WHO THE DONOR OF THAT LATENT LIFT WAS?

20 A YES, SIR.

21 Q AND WHAT IS THAT EXPERT OPINION?

22 A THAT LATENT WAS MADE BY THE NUMBER FOUR RIGHT RING
23 FINGER OF MR. TERRY.

24 Q YOUR HONOR, THAT'S ALL WE HAVE OF THIS WITNESS AT
25 THIS TIME.

1 THE COURT: CROSS-EXAMINATION, MR. STONE.

2 MR. STONE: YES, SIR.

3 CROSS-EXAMINATION

4 BY MR. STONE:

5 Q AGENT DERRICK, FIRST, WHAT I WANT TO TALK TO YOU
6 ABOUT IS STATE'S EXHIBIT ONE FOR IDENTIFICATION.

7 A YES, SIR.

8 Q DID YOU -- I DON'T MEAN TO STEP ON THE JUROR. WHEN
9 -- WHEN YOU -- YOU WENT THROUGH THIS HOUSE IS WHAT YOU CALL
10 A WALK-THROUGH, IS THAT RIGHT?

11 A THAT'S CORRECT.

12 Q ALL RIGHT, SIR. YOU WENT THROUGH THE KITCHEN AREA,
13 IS THAT RIGHT? COME ON DOWN. I DON'T MEAN TO -- I'M NOT
14 TRYING TO TALK OUTSIDE OF YOUR PRESENCE.

15 A (WITNESS COMPLIES.)

16 Q YOU WENT THROUGH THE KITCHEN AREA, RIGHT?

17 A THAT'S CORRECT.

18 Q DID YOU GO THROUGH THIS BEDROOM HERE (INDICATES)?

19 A WE LOOKED IN THAT BEDROOM.

20 Q BATHROOM?

21 A LOOKED IN THAT BATHROOM.

22 Q THIS BEDROOM HERE (INDICATES)?

23 A YES, SIR.

24 Q AND THIS MASTER BEDROOM HERE (INDICATES)?

25 A YES, SIR.

1 Q ALL RIGHT.

2 A AND THE LIVING ROOM ALSO.

3 Q AND THE LIVING ROOM -- I'M SORRY, IN THIS AREA AS
4 WELL(INDICATES)?

5 A YES, SIR.

6 Q ALL RIGHT, SIR. DID -- DID YOU SEE A GUN IN THIS
7 BEDROOM(INDICATES)?

8 A YES, SIR, THERE WAS A GUN THAT WAS UP UNDER THE BED.

9 Q OKAY. DID YOU TAKE THAT INTO CUSTODY?

10 A NO, SIR, I DID NOT TAKE THE GUN INTO CUSTODY BECAUSE
11 IT HAD NO PROBATIVE VALUE TO MY INVESTIGATION---

12 Q OKAY. I APPRECIATE YOUR OPINION---

13 MR. HUMPHRIES: YOUR HONOR, I BELIEVE -- HE IS AN
14 EXPERT. HE'S ALLOWED TO ANSWER THE QUESTION FULLY.

15 MR. STONE: AS TO -- AS TO PROBATIVE INFORMATION,
16 YOUR HONOR. I BELIEVE THAT'S UP TO THE JURY.

17 THE COURT: WELL, SIR, HE IS ON CROSS-EXAMINATION
18 AND RESPONDING. I WOULD ASK THAT HE BE RESPONSIVE TO YOUR
19 QUESTIONS. IF HE NEEDS TO EXPLAIN ANYTHING, HE MAY DO SO.

20 MR. STONE: THANK YOU.

21 YOU DIDN'T TAKE THAT GUN INTO CUSTODY, DID YOU?

22 THE WITNESS: NO, SIR.

23 ONCE I HAD EXAMINED THIS AREA HERE(INDICATES), I
24 COULD NOT -- AND EXAMINED THE GUN ITSELF, I COULD NOT
25 RELATE IT TO THE CRIME SCENE.

1 Q WAS THIS THE MASTER BEDROOM OR COULD YOU TELL?

2 A JUST BASED ON APPEARANCE, IT APPEARED TO BE THE
3 MASTER BEDROOM.

4 Q OKAY. WHERE THE VICTIM WOULD HAVE SLEPT, IS THAT
5 RIGHT?

6 A PRESUME SO.

7 Q OKAY. NOW, TELL THE JURY, IF YOU WILL, IN THIS AREA
8 THAT YOU WALKED THROUGH, THIS -- THESE ROOMS AND THE
9 BATHROOM, HOW MANY FINGERPRINTS YOU MATCHED TO GARY TERRY
10 INSIDE THIS HOUSE?

11 A THERE WERE NONE.

12 Q DID YOU TRY -- DID YOU TRY TO GET FINGERPRINTS OFF
13 THESE ITEMS IN THIS ROOM -- IN THIS HOUSE?

14 A THESE ROOMS WERE LOOKED AT, CLOSELY EXAMINED TO SEE
15 IF THEY HAD ANY INDICATION OF BEING INVOLVED IN THE CRIME ..
16 ITSELF. THIS ROOM(INDICATES), THE BACK BATHROOM, HAD AN
17 APPEARANCE OF POSSIBLY THE ROOM THAT THE VICTIM SLEPT IN
18 WAS CHECKED VERY THOROUGHLY.

19 IN PROCESSING, WE LOOKED THROUGH. THERE WAS
20 NOTHING THAT WAS REALLY NOTED BACK HERE IN THE BEDROOM FOR
21 LATENT PRINT PROCESSING. ALL THIS AREA IN HERE AROUND
22 WHERE THE VICTIM WAS LOCATED WAS PROCESSED FOR LATENT
23 PRINTS OR EITHER ITEMS COLLECTED AND TAKEN BACK TO THE
24 LABORATORY FOR ADDITIONAL LATENT PRINT PROCESSING. SEVERAL
25 ITEMS FROM THE LIVING ROOM, SOME ITEMS FROM THE KITCHEN

1 ITSELF.

2 WHILE ON THE SCENE, THIS STORM DOOR AND THE WOOD
3 DOOR WITH THE BROKEN GLASS PANE WAS PROCESSED FOR LATENT
4 PRINTS AS WELL AS THE LARGER PIECES OF BROKEN GLASS ON THE
5 FLOOR.

6 Q OKAY. AND THAT -- THAT WAS CLOSE TO MY QUESTION. MY
7 QUESTION WAS OF THOSE ITEMS THAT YOU TOOK, DID ANY OF THEM
8 MATCH TO GARY TERRY?

9 A NO, SIR.

10 Q THE ITEMS IN THE LIVING ROOM, NO ITEMS IN THE LIVING
11 ROOM MATCHED TO GARY TERRY?

12 A THE MAJORITY OF THE ITEMS HAD INSUFFICIENT RIDGE
13 DETAIL FOR IDENTIFICATION AND BY INSUFFICIENT RIDGE DETAIL,
14 AS I SPOKE OF EARLIER---

15 Q AND I APPRECIATE -- YOUR HONOR -- EXCUSE ME FOR
16 INTERRUPTING YOU, BUT MY QUESTION IS, DID ANY OF THE ITEMS
17 MATCH TO GARY TERRY THAT YOU FOUND IN THE LIVING ROOM?

18 A NO, SIR.

19 Q OKAY. DID -- YOU TOOK ITEMS OUT OF THE KITCHEN AS
20 WELL, IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q AND THOSE ITEMS WERE, I BELIEVE, SOME BEER CANS THAT
23 WERE DRAINING IN THE SINK?

24 A THAT'S CORRECT.

25 Q THOSE HAD SUFFICIENT RIDGE IDENTIFICATION ON THEM,

1 DIDN'T THEY?

2 A THERE -- IF I CAN RESPOND BACK AND EXPLAIN WHAT
3 INSUFFICIENT RIDGE DETAIL IS, THEN I CAN EXPLAIN RIDGE
4 DETAIL THAT'S SUITABLE.

5 AS I POINTED OUT, PRIMARILY THROUGH THE DISPLAY
6 IN MY TESTIMONY ABOUT CHARACTERISTICS IN THE RIDGE
7 FORMATION, THE LATENT CAN BE IDENTIFIED TO AN INDIVIDUAL IF
8 THESE CHARACTERISTICS ARE IN THE SAME UNIT RELATIONSHIP AND
9 MATCHED OR IF THEY DO NOT MATCH, THEN THAT PARTICULAR
10 LATENT CAN BE NEGATED OR NOT MADE BY THAT INDIVIDUAL.

11 THERE'S A THIRD TYPE WHICH THERE IS A PARTIAL
12 LATENT PRINT THAT COULD POSSIBLY BE A SMUDGE OR A SMEAR OR
13 JUST A FRAGMENTED AREA FROM WHICH THERE IS SO LITTLE OF THE
14 RIDGE DETAIL THAT A QUALIFIED EXAMINER CAN RENDER AN
15 OPINION OR A CONCLUSION.

16 SPEAKING OF THE BEER CANS, THERE WAS ONE AREA OF
17 RIDGE DETAIL THAT WAS SUITABLE FOR IDENTIFICATION WITH THE
18 REMAINING RIDGE DETAIL BEING THE SMUDGES OR SMEARS --
19 INSUFFICIENT FOR COMPARISON OR IDENTIFICATION. THAT ONE
20 PRINT DID NOT BELONG TO MR. TERRY.

21 Q AND IT DIDN'T BELONG TO THE VICTIM EITHER, DID IT?

22 A NO, SIR, IT DID NOT.

23 Q THESE DOORS, WERE THEY CLOSED WHEN YOU GOT TO THE
24 CRIME SCENE?

25 A I DON'T RECALL.

1 Q DO YOU RECALL DUSTING THE KNOBS ON THE DOORS?

2 A THE DOORS WERE EXAMINED. NO, SIR, I DO NOT RECALL
3 DUSTING THOSE KNOBS.

4 Q ALL RIGHT, SIR. HAVE A SEAT.

5 A (WITNESS COMPLIES.)

6 Q YOU TESTIFIED EARLIER, I BELIEVE, AS TO BLOOD
7 SPLATTER?

8 A SPATTER.

9 Q EXCUSE ME?

10 A SPATTER.

11 Q SPATTER?

12 A YES, SIR.

13 Q ALL RIGHT, SIR. SINCE YOU'RE AN EXPERT IN THIS
14 FIELD, DID THIS STICK CAUSE THAT BLOOD SPATTER?

15 A I CANNOT SAY THAT BECAUSE I DID NOT EXAMINE THE
16 WOUNDS. THOSE WERE EXAMINED BY THE PATHOLOGIST. THE ONLY
17 THING THAT I CAN SAY ABOUT THE STICK IS I DID NOT DETECT
18 ANY SPATTER ON THE STICK.

19 Q NO BLOOD ON THE STICK?

20 A THAT'S -- NO SPATTER THAT I NOTED.

21 Q IS IT REASONABLE TO ASSUME IF THERE'S NO BLOOD ON THE
22 STICK AND THE STICK WAS FOUND BESIDE THE VICTIM
23 HERE(INDICATES), THAT THAT STICK DIDN'T CAUSE THE BLOOD
24 THAT'S ON THAT WALL?

25 A I CAN'T SAY THAT TOTALLY WITH CERTAINTY. AN ITEM CAN

1 BE USED. IT CAN BE WIPED DOWN AND THERE NOT BE A VISIBLE
2 APPEARANCE OF BLOOD. THERE WAS NO VISIBLE APPEARANCE OF
3 BLOOD OR SPATTER ON THE STICK.

4 ALSO, IF A WEAPON IS USED AND THE SKIN IS NOT
5 BROKEN, THEN THAT WEAPON -- THEN THERE IS NO BLOOD LEADING,
6 THEN THERE WOULD BE NO TRANSFER OF BLOOD. BECAUSE OF THOSE
7 PARTICULAR FACTORS, I CANNOT CONCLUDE, HAVING NOT BEEN
8 PRESENT AT THE AUTOPSY, AS TO WHETHER THAT STICK WAS
9 INVOLVED OR NOT.

10 Q THANK YOU.

11 YOU ALSO SPOKE ABOUT TWELVE OTHER PRINTS THAT YOU
12 TRIED TO MATCH OR PRINT CARDS THAT YOU TRIED TO MATCH, IS
13 THAT RIGHT?

14 A THAT'S CORRECT, SIR.

15 Q THOSE TWELVE ALSO, AND I MEANT TO ASK YOU EARLIER DID
16 NOT MATCH TO THAT -- TO THOSE BEER CANS EITHER, DID THEY?

17 A NO, SIR, THEY DID NOT.

18 Q AND, I MEAN, WHEN I SAY THEY DIDN'T MATCH, THEY
19 WEREN'T THOSE. THEY WERE NOT THE SAME, WERE THEY?

20 A NO. THE LATENT HAS NOT BEEN IDENTIFIED.

21 Q OKAY. SO THE PRINT THAT WAS FOUND ON THE BEER CAN IN
22 THE SINK DIDN'T MATCH TO THE TWELVE PEOPLE YOU HAD, THE
23 TWELVE PRINTS YOU HAD, AND IT ALSO DIDN'T MATCH TO MR.
24 TERRY AND IT ALSO DIDN'T MATCH TO THE VICTIM, IS THAT
25 RIGHT?

1 A THAT'S CORRECT.

2 Q ALL RIGHT, SIR.

3 YOU TESTIFIED A GREAT DEAL ABOUT FINGERPRINTS AND
4 I WANT TO TALK TO YOU ABOUT THAT A LITTLE BIT, IF I COULD,
5 SIR.

6 YOU'RE AN EXPERT IN FINGERPRINT ANALYSIS
7 EVERYBODY AGREES WITH THAT. IT'S FAIR TO SAY THAT, SIR,
8 ON EVERYBODY'S INDIVIDUAL HAND, NO MATTER WHO YOU ARE, YOU
9 HAVE AN AVERAGE OF ABOUT SEVENTY-FIVE AREAS THAT COULD BE
10 COMPARED TO OTHER AREAS, POINTS OF COMPARISON, IS THAT
11 FAIR?

12 A THERE'S A POTENTIAL THAT MOST AREAS IN THE FINGERS
13 THEMSELVES OR CHARACTERISTICS AVAILABLE WOULD BE IN THE
14 THUMB AND THEN DIMINISH ON DOWN TO THE LITTLE FINGER.

15 Q OF THE POTENTIAL SEVENTY-FIVE THAT WAS ON MR. TERRY'S
16 FINGER HERE, YOU FOUND NINE IDENTIFIABLE POINTS, IS THAT
17 RIGHT?

18 A I HAVE CHARTED NINE IDENTIFIABLE POINTS. THERE
19 WAS---

20 Q DID YOU FIND ANYMORE THAN NINE?

21 A YES, SIR, THERE WAS ONE MORE THAT'S UP TOWARDS THE
22 TOP OF THE PRINT WHICH WOULD BE THE TENTH CHARACTERISTIC
23 AND THAT WOULD BE A RIDGE THAT STARTS OFF AS A SINGLE RIDGE
24 AND DIVIDES OFF FORMING TWO RIDGES WHICH CONTINUE THROUGH
25 THE PATTERN.

1 Q WHY DIDN'T YOU PUT IT ON THE BOARD?

2 A I AVERAGED OUT. THE CHART IS FOR DISPLAY PURPOSES.
3 I CHART OUT THE POINTS THAT ARE OBVIOUSLY CLEAR AND
4 DISTINCT SO THAT PEOPLE CAN UNDERSTAND WHAT I AM LOOKING
5 FOR AND HOW I REACHED MY CONCLUSION. I JUST CHOSE NINE
6 ARBITRARILY THAT WERE CLEAR AND DISTINCT FOR THIS DISPLAY
7 PURPOSE.

8 THERE ARE OTHER SUBTLE CHARACTERISTICS WHICH ARE
9 PRESENT BOTH IN THE LATENT AND THE INKED PRINT. SOME OF
10 THEM ARE VERY TINY, MINUTE AND HARD TO SEE IN THE
11 PHOTOGRAPHS THEMSELVES, BUT WERE PRESENT BOTH IN THE INKED
12 PRINT AND PRESENT IN THE LATENT PRINT WHICH CREATES THE
13 TOTALITY OF EXAMINING THE LATENT PRINT TO THE INKED PRINT
14 IN RENDERING A CONCLUSION OF THE IDENTIFICATION.

15 Q THANK YOU.

16 IN YOUR -- IN YOUR ARBITRARY CHOICE OF NINE OR
17 TEN, HOWEVER YOU WANT TO SAY IT, YOU HAVE TESTIFIED IN
18 COURT HOW MANY TIMES, A 165 TOTAL?

19 A NO. I SAID I HAVE TESTIFIED SIXTY-FIVE TIMES IN THE
20 LAST EIGHT YEARS.

21 Q OKAY. AND THEN YOU -- WHAT FIFTY-EIGHT AS FAR AS
22 CRIME SCENE EXPERTISE?

23 A THAT'S CORRECT.

24 Q ALL RIGHT, SIR. AND THE TIMES THAT YOU HAVE
25 TESTIFIED IN COURT, HOW MANY TIMES HAVE YOU TESTIFIED TO

1 SEVEN POINTS OF COMPARISON?

2 A I HAVE NEVER TESTIFIED TO SEVEN POINTS OF COMPARISON.

3 Q LESS THAN SEVEN?

4 A NO, SIR.

5 Q SO IN THIS CASE, WHAT YOU'RE TELLING THE JURY IS
6 YOU'VE GOT THREE MORE POINTS THAN WHAT YOU'VE NEVER
7 TESTIFIED TO BEFORE. EIGHT, I'M ASSUMING YOU'VE TESTIFIED
8 TO BEFORE, IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q ALL RIGHT, SIR. THE MAJORITY OF THE TIME, IS IT
11 REASONABLE TO SAY, THAT YOU ARE PROBABLY IN THE HIGHER
12 DOUBLE DIGITS, FIFTEEN, SIXTEEN POINTS OF COMPARISON?

13 A I HAVE HAD LATENT PRINTS THAT RANGE FROM EIGHT TO
14 TWENTY-FIVE OR ABOVE AND IT DEPENDS ON HOW MUCH OF THE
15 LATENT IS PRESENT AND THE QUALITY OF THE LATENT.

16 AS I SPOKE OF EARLIER, NOT ALL LATENTS ARE --
17 REPHRASE THAT. NOT EVERY TIME YOU TOUCH A SURFACE ARE YOU
18 GOING TO LEAVE THE ENTIRE RIDGE AREA OF A FINGER.

19 FOR EXAMPLE, IF I TOUCH STRAIGHT DOWN AND LIFT
20 STRAIGHT UP, THESE GREASES AND OILS WILL PROBABLY TRANSFER
21 AND CAN BE DEVELOPED WHERE THIS WHOLE FINGER WOULD BE
22 VISIBLE ONCE PROCESSED AND COULD BE COMPARED TO THE ENTIRE
23 INKED ROLLED IMPRESSION. CENTER OF THE PRINT ALL THE WAY
24 OUT TO THE DIVIDING RIDGES OF THE DELTA.

25 HOWEVER, IF I TOUCH, IN SPITE OF MY FINGER, THERE

1 IS A GOOD CHANCE THAT THE MAJORITY OF THAT PRINT AREA IS
2 GOING TO BE OBSCURE BECAUSE OF THE MOVEMENT AND JUST THE
3 TIP OF THE FINGER BE PRESENT TO BE LOOKED AT AND COMPARED
4 TO THE INKED STANDARD.

5 SO THERE'S A NUMBER OF VARIABLES. IT DEPENDS ON
6 ENVIRONMENT FACTORS, WHETHER THE LATENT IS LEFT OR NOT,
7 WHETHER THERE ARE CONTAMINANTS ON THAT RIDGE FOR IT TO
8 TRANSFER FROM THE HAND TO THE SURFACE, MOVEMENT AS IT MAKES
9 CONTACT WITH THE SURFACE. THERE ARE A NUMBER OF VARIABLES.

10 I CAN'T PREDICT HOW MUCH OF A LATENT I'M GOING TO
11 DEVELOP, BUT WHAT I DEVELOP I EXAMINE AND MAKE A
12 DETERMINATION OF WHETHER IT IS SUITABLE FOR COMPARISON OR
13 NOT SUITABLE FOR COMPARISON.

14 Q WHICH TWO OF THESE POINTS ARE INCIPIENT RIDGES?

15 A POINT NUMBER EIGHT, POINT NUMBER NINE, POINT NUMBER
16 SEVEN AND POINT NUMBER SIX.

17 Q I'M SORRY, EIGHT, NINE, SEVEN AND SIX?

18 A IN SIMPLIFIED TERMS, THE SIDE OF THE---

19 Q THE WHOLE LEFT SIDE?

20 A THAT'S CORRECT.

21 Q THESE POINTS OVER HERE THAT YOU'VE---

22 A THAT'S CORRECT.

23 Q AND THEY MATCH INCIPIENT RIDGES OVER HERE, IS THAT
24 RIGHT?

25 A THAT IS CORRECT, SIR, IN THE SAME UNIT RELATIONSHIP.

1 Q POINT NUMBER EIGHT IS AN INCIPIENT RIDGE, IS THAT
2 RIGHT?

3 A YES, SIR, THAT'S CORRECT, SIR. THAT'S THE BOTTOM END
4 OF THAT SHORT INCIPIENT RIDGE.

5 Q IT LOOKS LIKE A SPACE. IS IT A SPACE?

6 A WHAT ARE YOU -- I'M NOT SURE---

7 Q NUMBER EIGHT?

8 A THERE -- BETWEEN POINT SEVEN AND EIGHT THERE IS A
9 SPACE BETWEEN THOSE RIDGES. EIGHT AND NINE -- POINT NUMBER
10 EIGHT BEING THE BOTTOM END OF THIS SHORT INCIPIENT RIDGE
11 AND POINT NUMBER NINE BEING THE TOP PART.

12 SINCE I HADN'T SPOKE OF INCIPIENT RIDGES TO THIS
13 QUESTION, LET ME EXPLAIN TO YOU WHAT THOSE ARE. THE POINTS
14 ON THE RIGHT-SIDE OF THE COLUMN ARE FULLY DEVELOPED RIDGES
15 THAT ARE PRESENT IN THIS PATTERN FORMATION.

16 SOME RIDGES DO NOT FULLY DEVELOP FOR WHATEVER
17 REASON AND THOSE ARE CALLED INCIPIENT RIDGES BECAUSE AS THE
18 PRESSURE IS APPLIED, THERE IS A POTENTIAL FOR THEM TO
19 TRANSFER OR A POTENTIAL FOR THEM NOT TO TRANSFER BECAUSE
20 THEY ARE NOT AS HIGH AS THE FULLY DEVELOPED RIDGES, BUT
21 WHEN THEY TRANSFER, THEY ARE IDENTIFYING CHARACTERISTICS OF
22 THAT PARTICULAR LATENT PRINT, BUT THE TERM INCIPIENT RIDGE
23 IS NOT THAT RIDGE THAT IS FULLY DEVELOPED, BUT PRESENT IN
24 THE FORMATION.

25 Q THE CARD THAT YOU TALKED ABOUT EARLIER -- LET'S SEE.

1 THESE ARE THE THREE FINGERPRINT CARDS YOU TOOK FROM MR.
2 TERRY, IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q ALL RIGHT. AND THESE ARE -- THAT'S YOUR SIGNATURE ON
5 THAT? YOU ACTUALLY ROLLED THOSE PRINTS, IS THAT RIGHT?

6 A THAT'S CORRECT, SIR.

7 Q THAT WAS STATE'S EXHIBIT NUMBER 18 A, B AND C, I
8 THINK, IS THAT RIGHT?

9 A THAT'S CORRECT, SIR.

10 Q OKAY. THE PRINT THAT YOU TOOK IS STATE'S EXHIBIT
11 NUMBER 17, IS THAT RIGHT?

12 A THAT'S THE LATENT LIFT, SIR.

13 Q LET ME GET YOU TO STEP DOWN, IF I COULD, SIR.

14 A (WITNESS COMPLIES.)

15 Q COULD YOU HOLD THIS CARD FOR ME?

16 A SURE.

17 Q THANK YOU. I APPRECIATE IT. THIS IS THE PRINT THAT
18 YOU LIFTED OFF THE PHONE BOX, IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q ALL RIGHT, SIR. AND THIS IS THE PRINT, AS WE KNOW AS
21 STATE'S EXHIBIT OR THE PRINT THAT YOU ROLLED YOURSELF, IS
22 THAT RIGHT?

23 A THAT'S THE INKED PRINT OF MR. TERRY.

24 Q ALL RIGHT, SIR. I SEE YOU HAVE GRAPHED THIS AREA
25 HERE AND YOU HAVE BLOWN THAT UP TO WHERE THE JURY CAN SEE

1 THAT. I APPRECIATE THAT. BUT MY QUESTION IS, IS THIS A
2 PRINT AS WELL(INDICATES)?

3 A THERE WAS A FRAGMENTED SMUDGE THAT WAS DOWN BELOW IT.

4 Q IS THIS A PRINT HERE(INDICATES)?

5 A NO, SIR. I CALL THAT A SMUDGE.

6 Q IS THIS A PRINT(INDICATES)?

7 A I CALL THAT A SMUDGE OR A SMEAR OR SOMETHING POWDER
8 REACTED TO, BUT IT'S INSUFFICIENT RIDGE DETAIL TO DO A
9 COMPARISON.

10 Q ALL RIGHT, SIR.

11 THIS, STATE'S EXHIBIT NUMBER 17, WHERE THIS ARROW
12 IS HERE(INDICATES), THAT IS THE PRINT THAT YOU SPOTTED, IS
13 THAT RIGHT?

14 A THAT IS CORRECT.

15 Q OKAY. LET'S SHOW THESE PEOPLE THIS OVER HERE, IF YOU
16 WOULD. YOU CAN PUT THAT DOWN IF YOU'D LIKE.

17 A (WITNESS COMPLIES.)

18 Q THIS IS -- COME OVER HERE.

19 A OKAY.

20 Q THIS IS THE PRINT YOU SPOTTED, IS THAT RIGHT?

21 A THAT IS THE ONE THAT IS DISPLAYED IN THE CHART.

22 Q OKAY. AND YOU ARE TELLING ME THIS IS A PRINT OR IT'S
23 A SMUDGE OR WHAT?

24 A IT'S A SMUDGE, A FRAGMENTED LATENT FROM WHICH THERE
25 WAS INSUFFICIENT AREA TO CONDUCT AN EXAMINATION OR A

1 COMPARISON TO A KNOWN INKED FINGERPRINT CARD.

2 Q OKAY. SO YOU ARE SAYING THIS ONE IS CLEARER THAN
3 THIS ONE, IS THAT RIGHT?

4 A THIS ONE(INDICATES) HAD SUITABLE CHARACTERISTICS FOR
5 COMPARISON TO A KNOWN STANDARD. THIS ONE(INDICATES) WAS
6 VERY SMUDGED, SMEARED. I COULD NOT SEE A CLEAR AND
7 DISTINCT FORMATION OR RIDGE OUTLAY AS REPRESENTED IN THE
8 LATENT NEXT TO IT.

9 Q BUT ON THIS PRINT HERE(INDICATES), YOU CAN SEE SOME
10 IDENTIFICATION POINTS, CAN YOU NOT?

11 A I THINK THERE ARE JUST FRAGMENTED CHARACTERISTICS UP
12 TOWARD THE CENTER OF THE CORE.

13 Q OKAY. ALL RIGHT, SIR. LET ME GO DOWN HERE AND LET
14 THESE PEOPLE SEE IT.

15 THIS IS THE PRINT THAT YOU IDENTIFIED, IS THAT
16 CORRECT?

17 A THAT'S CORRECT.

18 Q THIS PRINT HERE TO THE LEFT IS WHAT YOU ARE SAYING
19 WAS FRAGMENTED OR TOO DIFFICULT TO TAKE A TEST OF, IS THAT
20 RIGHT?

21 A NOT TOO DIFFICULT TO TAKE A TEST OF. IT LACKS
22 SUFFICIENT CLARITY FOR EXAMINATION OR COMPARISONS TO KNOWN
23 STANDARDS. THERE WAS NOT ENOUGH OF THE PRINT OR THE RIDGE
24 DETAIL PRESENT FROM WHICH ANY QUALIFIED EXAMINER COULD
25 RENDER AN OPINION OF AN IDENTIFICATION OR A NEGATION TO ANY

1 SPECIFIC INDIVIDUAL.

2 Q OKAY. NOT ENOUGH INFORMATION TO COMPARE, BUT YOU
3 COULD EXCLUDE FROM THAT, COULDN'T YOU?

4 A NO, SIR.

5 Q YOU COULD NOT?

6 A I WOULD NOT EXCLUDE. THERE'S NOT ENOUGH
7 CHARACTERISTICS TO DO A COMPARISON TO NEGATE OR EXCLUDE OR
8 IDENTIFY; THEREFORE, THE PRINT IS OF NO VALUE.

9 Q THIS BEING GARY TERRY'S FINGERPRINT CARD HERE, IS
10 THIS RIGHT, WHEREAS STATE'S EXHIBIT 18-A.?

11 A THAT'S CORRECT.

12 Q THE RIGHT RING FINGER IS WHAT YOU'RE TESTIFYING TO
13 MATCHES -- MATCHES THIS RIGHT HERE (INDICATES), IS THAT
14 CORRECT?

15 A THAT'S CORRECT, SIR.

16 Q ISN'T IT NOT TRUE, SIR, THAT THIS PRINT HERE IS NOT
17 AND YOU CAN TELL IT'S NOT MR. TERRY'S MIDDLE FINGER?

18 A IF I USED THE LIMITED AMOUNT OF CHARACTERISTICS ON
19 THIS LATENT TO SAY THAT THAT PRINT BELONGED OR DID NOT
20 BELONG TO MR. TERRY, I WOULD NOT BE FULFILLING MY
21 OBLIGATION AS A LATENT PRINT EXAMINER IN RENDERING
22 IDENTIFICATIONS AND NEGATIONS. THERE IS A PART OF THE
23 CORE. THERE IS MOVEMENT IN THIS PRINT. THERE IS
24 FRAGMENTATION IN THIS PRINT. IN ACTUALITY---

25 Q NO, SIR NO, SIR. AND I DON'T MEAN TO CUT YOU OFF,

1 BUT---

2 THE COURT: WELL, SIR---

3 MR. STONE: ---IT WAS A VERY CLEAR QUESTION---

4 THE COURT: NO, SIR. HE CAN EXPLAIN HIS ANSWER,
5 MR. STONE.

6 IF YOU WANT TO RE-POSE THE QUESTION, YOU MAY DO
7 SO, BUT HE MAY EXPLAIN HIS ANSWER.

8 MR. STONE: CERTAINLY.

9 SIR, MY QUESTION IS THE MIDDLE RIGHT FINGER OF
10 GARY TERRY---

11 THE WITNESS: RIGHT.

12 MR. STONE: ---THE MIDDLE RIGHT FINGER OF GARY
13 TERRY, YOU KNOW, DO YOU NOT, THAT THIS, THE PRINT RIGHT
14 BESIDE THE FINGER THAT YOU SAY IS GARY TERRY'S RIGHT RING
15 FINGER, THIS PRINT IS NOT GARY TERRY'S MIDDLE FINGER AND
16 YOU KNOW THAT, DO YOU NOT?

17 A I DO NOT KNOW THAT BECAUSE I DO NOT HAVE ENOUGH
18 CHARACTERISTICS TO SAY ONE WAY OR ANOTHER. AND IF YOU'RE
19 MAKING AN INFERENCE BECAUSE IT IS NEXT TO IT OF BEING A
20 SIMULTANEOUS IMPRESSION, WELL, LET'S EXAMINE IT.

21 IF YOU WILL NOTICE THE ONE I HAVE THE ARROW ON,
22 THIS RIDGE FORMATION IS BASICALLY GOING UP AND DOWN. AND
23 IF WE TAKE THE CORE OF THE ONE NEXT TO IT, THIS RIDGE
24 FORMATION IS GOING IN AN ANGLE. I HAVE NO IDEA WHAT FINGER
25 MADE THAT, BUT I FIND IT VERY DIFFICULT, IF I'M USING A

1 SIMULTANEOUS IN THIS ORIENTATION, TO GET MY FINGER, MIDDLE
2 FINGER, TO SHIFT TO THIS ANGLE AND STILL LEAVE A FLAT
3 IMPRESSION ON THIS LATENT LIFT.

4 Q OKAY, SIR. THANK YOU.

5 A YES, SIR. EXCUSE ME. (WHEREUPON, THE WITNESS
6 RETURNS TO THE WITNESS STAND AT THIS TIME.)

7 Q IN FACT, AGENT DERRICK, WHEN YOU PUT FINGERPRINT DUST
8 ON THAT PRINT, THEY BOTH LIFTED OFF AT THE SAME TIME,
9 DIDN'T THEY?

10 A THAT'S CORRECT.

11 Q IN FACT, SIR, THEY APPEARED TO YOU, FROM THAT DUST ON
12 THAT PHONE BOX, WHEN YOU PUT THE DUST ON THERE, THAT THEY
13 CAME OFF AT THE SAME TIME AND WOULD HAVE BEEN PUT THERE AT
14 APPROXIMATELY THE SAME TIME, IS THAT NOT TRUE?

15 A THAT COULD BE A REASONABLE CONCLUSION. THERE IS NO
16 SCIENTIFIC WAY TO AGE WHEN A PRINT IS LEFT ON A SURFACE.

17 Q SO YOU DON'T -- IN OTHER WORDS, WHAT YOU ARE TELLING
18 US, THEN, YOU DON'T HAVE ANY IDEA WHEN THAT PRINT WAS PUT
19 THERE?

20 A NOT SPECIFICALLY, NO, SIR, I DON'T.

21 Q YOU WENT TO THE CRIME SCENE ON MAY THE 31ST, 1991 --
22 1994, IS THAT CORRECT?

23 A THAT IS CORRECT, SIR.

24 Q ON JUNE THE 20TH, 1994, YOU RAN GARY TERRY'S PRINTS
25 -- EXCUSE ME. YOU RAN THAT PRINT THAT YOU FOUND ON THE

1 PHONE BOX AGAINST GARY TERRY BY GOING THROUGH AFIS, DID YOU
2 NOT?

3 A I RAN IT AGAINST A HALF MILLION CARD DATABASE THROUGH
4 THE AFIS.

5 Q OKAY. AND AFIS IS WHAT, SIR?

6 A THAT IS THE AUTOMATED FINGERPRINT IDENTIFICATION
7 SYSTEM. IT IS A COMPUTER WHERE THE MINUTIA OR
8 CHARACTERISTICS I SPOKE OF EARLIER CAN BE ENTERED INTO THE
9 COMPUTER AND THAT COMPUTER WILL TAKE THAT INFORMATION AND
10 SEARCH IT AGAINST THE ENTIRE RECORD SYSTEM AT S.L.E.D.

11 ONCE IT SEARCHES THAT SYSTEM, IT CAN GIVE YOU A
12 LIST OF ANY FINGERPRINTS RANGING ANYWHERE FROM EIGHT TO
13 SIXTEEN CANDIDATES TO LOOK AT. THE COMPUTER IS SEARCHING
14 THE DATABASE, BUT IS NOT AFFECTING IDENTIFICATION. THAT IS
15 SOMETHING THAT IS DONE BY THE EXAMINER.

16 Q LET ME ASK YOU THIS. DO YOU DO FINGERPRINTS FOR THE
17 LAW SCHOOL AS WELL?

18 A NO, SIR.

19 Q OKAY. I WAS CURIOUS. IF SOMEBODY GETS THEIR
20 FINGERPRINTS PRINTED AT THE LAW SCHOOL, DOES THAT GO INTO
21 AFIS AS WELL?

22 A I DON'T WORK IN THE RECORDS SESSION, BUT I DON'T
23 BELIEVE SO.

24 Q ALL RIGHT, SIR. NOW, AS FAR AS AFIS IS CONCERNED, IS
25 THAT STATE OR NATIONAL?

1 A THAT IS IN THE STATE OF SOUTH CAROLINA.

2 Q ALL RIGHT, SIR. ON THAT DATE, YOU RAN THE PRINT THAT
3 YOU FOUND ON THE PHONE BOX AGAINST AFIS WITH NEGATIVE
4 RESULTS, IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q ON AUGUST THE 25TH, 1994, YOU TOOK GARY TERRY'S PRINT
7 CARD AND COMPARED IT TO THAT THAT YOU FOUND ON THE PHONE
8 BOX, IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND AT THAT TIME, YOU DID NOT MAKE A MATCH BETWEEN
11 GARY TERRY'S PRINT AND THAT PHONE BOX, IS THAT CORRECT?

12 A THAT IS CORRECT, SIR. I WOULD NOT ELIMINATE IT, BUT
13 THERE WASN'T ENOUGH THERE FOR ME TO EFFECT THE
14 IDENTIFICATION.

15 Q IN FACT, SIR, IT WASN'T UNTIL AFTER MARCH THE 24TH,
16 1995, THAT YOU WERE ABLE TO MAKE THIS MATCH, IS THAT RIGHT?

17 A I BELIEVE THAT WAS APRIL OF 1995 WHEN I TOOK THE
18 PRINTS.

19 Q SO IN---

20 A THAT'S CORRECT TO ANSWER YOUR QUESTION.

21 Q IN OTHER WORDS, SIR, YOU TOOK THE PRINT FROM THE
22 CRIME SCENE AND COULD NOT MATCH IT TO ANYBODY, IS THAT
23 CORRECT?

24 A I DID NOT EFFECT A POSITIVE IDENTIFICATION, BUT I
25 COULD NOT ELIMINATE IT TO THAT FINGER UNTIL I HAD A BETTER

1 INKED STANDARD TO LOOK AT.

2 Q YOU THEN TOOK GARY TERRY'S CARD AND STILL COULD NOT
3 MAKE IT THE SECOND TIME, COULD YOU?

4 A WHAT DO YOU MEAN THE SECOND---

5 Q YOU TOOK CARD NUMBER 53 AND STILL COULD NOT MAKE A
6 POSITIVE IDENTIFICATION WITH THE PRINT YOU FOUND ON THE
7 PHONE BOX, COULD YOU?

8 A DID NOT MAKE AN IDENTIFICATION, COULD NOT ELIMINATE
9 IT.

10 Q IN FACT, SIR, IT WAS NOT UNTIL AFTER YOU FOUND OUT
11 THAT GARY TERRY HAD BEEN ARRESTED FOR THIS MURDER THAT YOU
12 FINALLY WERE ABLE SOMEHOW TO MAKE THAT PRINT MATCH, IS THAT
13 CORRECT, SIR?

14 A I WAS ABLE TO AFFECT IDENTIFICATION BECAUSE THE AREA
15 THAT WAS NOT CLEAR AND OBSCURE ON THE CARD THAT I HAD IN MY
16 POSSESSION, BECAME VERY CLEAR AND DISTINCT WITH THE RIDGE
17 CHARACTERISTICS THAT WERE PRESENT AND AFFECTED THE
18 IDENTIFICATION AND IT SHOULD ALSO BE NOTED THAT THE PRINT
19 CARD THAT I TOOK FROM MR. TERRY IN COMPARING ALL OF THE
20 FINGERS ON THE ORIGINAL TEN PRINT CARD I HAD INDICATED THAT
21 THE SAME FINGERS THAT MADE THOSE IMPRESSIONS WERE THE SAME
22 IMPRESSIONS THAT I TOOK IN APRIL OF '95; HOWEVER, MY
23 IMPRESSIONS WERE CLEARER AND MORE DISTINCT THAN THE CARD I
24 WAS USING.

25 Q YOU USED TO WORK WITH THE LEXINGTON COUNTY SHERIFF'S

1 DEPARTMENT?

2 A YES, SIR, I DID.

3 Q IS IT FAIR TO SAY THAT I THINK LIEUTENANT BUCKY
4 PHILLIPS, YOU'VE KNOWN HIM FOR ABOUT TWENTY-FIVE YEARS, IS
5 THAT RIGHT?

6 A I'VE KNOWN HIM FOR A LONG TIME.

7 Q ALL RIGHT, SIR. AND HE WAS ONE OF THE MAIN
8 INVESTIGATORS OF THIS CASE. I THINK THE ONE THAT SECURED
9 THE SCENE AND TOOK CHARGE OF IT INITIALLY, IS THAT CORRECT?

10 A HE WAS PRESENT AT THE SCENE WHEN I ARRIVED. HE WAS
11 THE RANKING INVESTIGATOR THERE TO THE BEST OF MY MEMORY.

12 Q YOU'VE WORKED WITH THESE GENTLEMEN ON THIS CASE FROM
13 MAY OF 1994, IS THAT CORRECT?

14 A THAT'S CORRECT, SPORADICALLY AS INFORMATION WAS
15 CALLED IN, ADDITIONAL THINGS THEY WANTED ME TO DO SUCH AS
16 THE COMPARISON OF THE LATENT TO OTHER INKED CARDS.

17 Q AND IT WAS INVESTIGATOR FRIER THAT TOLD YOU THAT GARY
18 TERRY WAS IN THE DETENTION CENTER ARRESTED FOR THE MURDER
19 OF MS. JACKSON BEFORE YOU MADE THAT PRINT MATCH, IS THAT
20 CORRECT?

21 A THAT WAS THE FIRST TIME THAT I KNEW WHERE MR. TERRY
22 WAS THAT I COULD ACTUALLY GO AND GET A CLEAR SET OF PRINTS
23 TO SEARCH THE AREA THAT I NEEDED TO SEARCH TO FINISH AND
24 RENDER A CONCLUSION OF MY EXAMINATION WHICH HAD BEEN
25 STARTED THE YEAR BEFORE.

1 Q I DON'T HAVE ANYTHING ELSE, YOUR HONOR.

2 THE COURT: REDIRECT.

3 MR. HUMPHRIES: BRIEFLY.

4 REDIRECT EXAMINATION

5 BY MR. HUMPHRIES:

6 Q SENIOR AGENT DERRICK, DID YOU, AS A FAVOR FOR YOUR
7 OLD BUDDIES, MAKE A POSITIVE IDENTIFICATION OF GARY DUBOSE
8 TERRY IN THIS CASE?

9 A NO, SIR, I'M TOO CLOSE TO RETIREMENT.

10 Q LET ME ASK YOU THIS. WE'VE TALKED ABOUT THE BEER
11 CANS?

12 A THAT'S CORRECT.

13 Q NOW, WERE YOU ABLE TO DEVELOP SUFFICIENT RIDGE DETAIL
14 ON EACH AND EVERY CAN THAT WAS COLLECTED AT THE SCENE?

15 A NO, SIR. THERE WAS ONLY ONE AREA OF RIDGE DETAIL
16 THAT WAS SUITABLE FOR IDENTIFICATION.

17 Q ON ONE OF THE FIVE CANS?

18 A THAT'S CORRECT, SIR.

19 Q NOW, TELL THE JURY A LITTLE BIT ABOUT THE SURFACE,
20 PARTICULARLY OF A BEER CAN, AND HOW IT CAN RETAIN PRINTS?

21 A WELL, THE SURFACE OF THE BEER CAN WAS AN ALUMINUM
22 SURFACE. IT'S A SMOOTH SURFACE. IT HAS THE POTENTIAL FOR
23 ACCEPTING A RIDGE DETAIL AND HOLDING IT.

24 ONE FACTOR THAT NEEDS TO BE EXAMINED ESPECIALLY
25 WITH COLD CANS COMING INTO HOT AIR IS THAT CONDENSATION OR

1 MOISTURE DEVELOPS ON THE EXTERIOR OF THE CANS THEMSELVES.

2 AS I SPOKE OF EARLIER ABOUT THE PORES AT THE TOP
3 OF THE RIDGES, THERE IS A CONSTANT SECRETION OF MOISTURE AS
4 WELL AS OTHER CHEMICALS FROM THE HUMAN BODY. HOWEVER, THE
5 BREAKDOWN OF THIS SECRETION IS 99 PERCENT MOISTURE;
6 THEREFORE, WHEN YOU MIX MOISTURE WITH MOISTURE, THE
7 POTENTIAL OF GETTING RIDGE DETAIL THAT IS SUITABLE FOR
8 COMPARISON BEGINS TO DWINDLE.

9 Q CAN YOU TELL THIS JURY HOW LONG THAT PARTIAL PRINT
10 WAS ON THAT CAN?

11 A THERE IS NO WAY TO TELL.

12 Q COULD THE BAG BOY HAVE DONE IT?

13 A IT'S POSSIBLE.

14 Q THANK YOU, SIR.

15 A YES, SIR.

16 THE COURT: RECROSS?

17 MR. STONE: NOTHING, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 THANK YOU, SIR. YOU MAY STEP DOWN, AGENT DERRICK.

20 THE WITNESS: THANK YOU, YOUR HONOR.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I
24 THINK WE HAVE REACHED AN APPROPRIATE POINT FOR US TO TAKE A
25 MORNING BREAK. WE'VE BEEN GOING ABOUT AN HOUR AND A HALF

1 NOW.

2 WHILE YOU ARE IN THE JURY ROOM, ONCE AGAIN,
3 PLEASE DO NOT DISCUSS THIS CASE AMONG YOURSELVES. WE'LL
4 GET YOU BACK IN JUST A FEW MINUTES.

5 EVERYONE ELSE REMAIN SEATED WHILE THE JURY EXITS
6 THE COURTROOM, PLEASE, SIR.

7 (JURY OUT.)

8 THE COURT: ALL RIGHT, SIR. BE BACK AT 10:55.

9 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

10 (RECESS.)

11 THE BAILIFF: ALL RISE. COURT IS NOW IN SESSION.

12 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

13 I TOOK A LITTLE BIT LONGER BREAK THAN I HAD
14 ANTICIPATED SO THAT WE COULD GET THE JURY'S LUNCH ORDER.
15 THE JURY HAS ALSO INFORMED ME, THROUGH THE CLERK, THAT THEY
16 DESIRE TO EAT IN TODAY AND TAKE A SHORTER LUNCH BREAK. SO
17 WE WILL DO THAT ACCORDINGLY.

18 MR. HUMPHRIES: YOUR HONOR, THE NEXT WITNESS THE
19 STATE INTENDS TO OFFER IS DR. JOHN CARTER, THE PATHOLOGIST
20 IN THIS CASE.

21 HE HAS, EITHER AT HIS DIRECTION OR AND ABLE TO
22 ASSIST HIM, THERE HAVE BEEN THREE CHARTS PREPARED. LET ME
23 GO AHEAD AND MARK THEM -- WELL, LET ME MARK THESE TWO.

24 THESE ARE BODY CHARTS PREPARED WITH INDICATION OF
25 WOUNDS WITH THE ASSISTANCE OF DR. CARTER.

1 I AM ADVISED BY DEFENSE COUNSEL, WHOM I'VE
2 ALLOWED TO REVIEW THEM, THAT THEY HAVE NO OBJECTION TO
3 THESE.

4 OBVIOUSLY, THESE CHARTS WOULD TAKE THE PLACE OF
5 THE PHOTOGRAPHS WHICH WE DECLINE TO OFFER AT THIS STAGE.

6 THE COURT: ALL RIGHT, SIR. IS THAT---

7 MS. FULLWOOD: THAT'S RIGHT. WE DON'T HAVE AN
8 OBJECTION.

9 THE COURT: ALL RIGHT. AND WHAT ARE THE NUMBERS
10 THEN, TWENTY AND TWENTY-ONE---

11 MR. HUMPHRIES: TWENTY AND TWENTY-ONE, YOUR
12 HONOR.

13 (WHEREUPON, STATE'S EXHIBIT
14 NUMBERS 20 AND 21, CHARTS/DR. CARTER, ENTERED INTO EVIDENCE
15 AT THIS TIME WITHOUT OBJECTION.)

16 MR. HUMPHRIES: AND LET ME JUST -- I UNDERSTAND
17 THAT THE DEFENSE COUNSEL INTENDS TO INTERPOSE AN OBJECTION
18 TO THE ADMISSION OF THIS CHART WHICH WOULD DEPICT IN
19 THREE-DIMENSIONAL FORM, THE POSITION OF THE VICTIM AS SHE
20 WAS FOUND AND WE'LL ABIDE BY YOUR HONOR'S RULING.

21 THE COURT: I THINK AT THIS STAGE OF THE TRIAL,
22 THAT I WOULD AGREE WITH THE DEFENSE.

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

24 MS. FULLWOOD: THANK YOU, YOUR HONOR.

25 MR. HUMPHRIES: THE STATE IS READY -- OH, I'M

1 ALSO ADVISED THEY WILL STIPULATE TO HIS EXPERT
2 QUALIFICATIONS.

3 MS. FULLWOOD: THAT'S RIGHT, YOUR HONOR.

4 MR. HUMPHRIES: I WILL OFFER HIM IN THE PRESENCE
5 OF THE JURY.

6 THE COURT: SURE.

7 ALL RIGHT. VERY GOOD. LET'S BRING OUR JURY
8 BACK.

9 STATE'S TWENTY AND TWENTY-ONE ARE ADMITTED
10 WITHOUT OBJECTION.

11 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

12 (JURY IN.)

13 THE COURT: THANK YOU VERY MUCH, LADIES AND
14 GENTLEMEN. I KNOW THAT YOUR LUNCH ORDERS HAVE BEEN TAKEN
15 AND WE RECEIVED THE INFORMATION THAT YOU WANT TO EAT IN AND
16 KEEP WORKING AND WE'LL TAKE AS SHORT A BREAK AS WE POSSIBLY
17 CAN, UNDERSTANDING THAT SOME OF THE PEOPLE HERE ARE GOING
18 TO HAVE TO GET SOMETHING TO EAT, BUT WE WILL CERTAINLY TAKE
19 A SHORTER LUNCH BREAK TODAY.

20 NEXT WITNESS.

21 MR. HUMPHRIES: THE STATE CALLS DR. JOHN B.
22 CARTER TO THE STAND.

23 DR. JOHN B. CARTER,

24 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. HUMPHRIES:

2 Q DR. CARTER, STATE YOUR FULL NAME FOR THE RECORD,
3 PLEASE, SIR?

4 A I'M DR. JOHN B. CARTER.

5 Q DR. CARTER, WHAT IS YOUR PROFESSION?

6 A I'M A PHYSICIAN, A MEDICAL DOCTOR. I'M A PATHOLOGIST
7 AND I'M DIRECTOR OF CLINICAL PATHOLOGY LABORATORIES AT
8 LEXINGTON MEDICAL HOSPITAL.

9 MR. HUMPHRIES: YOUR HONOR, AT THIS TIME, I'M
10 ADVISED THAT THE DEFENSE HAS STIPULATED TO HIS EXPERT
11 QUALIFICATIONS IN THE FIELD OF FORENSIC PATHOLOGY.

12 THE COURT: THAT IS CORRECT?

13 MS. FULLWOOD: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 HE'S QUALIFIED AS AN EXPERT IN THE FIELD OF
16 FORENSIC PATHOLOGY.

17 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

18 DR. CARTER, VERY BRIEFLY, TELL THE JURY WHAT
19 FORENSIC PATHOLOGY IS?

20 THE WITNESS: FORENSIC PATHOLOGY OR LEGAL
21 MEDICINE PRINCIPALLY INVOLVES THE DETERMINATION OF THE
22 CAUSE AND MANNER OF DEATH OF PERSONS THAT ARE SUSPECTED OF
23 -- THAT HAVE DIED OUTSIDE OF MEDICAL ATTENTION OR THE
24 MEDICAL CARE WHERE THE CAUSE OF DEATH IS UNKNOWN AND WHERE
25 THERE'S A POSSIBLY OF UNNATURAL CAUSE OF DEATH OR CRIMINAL

1 ACTIVITY.

2 Q NOW, IN CONNECTION WITH THOSE DUTIES, DID YOU HAVE AN
3 OCCASION TO ARRIVE AT A CRIME SCENE ON MAY 31ST, 1994, IN
4 THE WESTGATE SUBDIVISION IN WEST COLUMBIA ON BUCKEYE DRIVE?

5 A I DID. IF I CAN RECOUP A LITTLE BIT, OUR PATHOLOGIST
6 GROUP AT LEXINGTON MEDICAL CENTER HAS DONE THE MAJORITY OF
7 THE LEGAL MEDICINE FORENSIC PATHOLOGY FOR LEXINGTON COUNTY
8 SINCE 1971; AND AS PART OF MY DUTIES THERE, THE SHERIFF'S
9 DEPARTMENT CALLED ME ON THAT AFTERNOON AND TOLD ME OF A
10 CRIME AND SENT A DEPUTY TO COME AND GET ME.

11 Q VERY GOOD. AND DID YOU RESPOND TO THAT RESIDENCE?

12 A I DID.

13 Q DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE POSITION
14 IN WHICH THE VICTIM WAS FOUND WITHIN THE RESIDENCE?

15 A YES, I DID.

16 Q I'M GOING TO ASK YOU TO REFER TO STATE'S EXHIBIT
17 NUMBER ONE, PARTICULARLY, DR. CARTER, FOR LACK OF A BETTER
18 TERM, THE BODY STICK-ON. DOES THAT FAIRLY AND ACCURATELY
19 REPRESENT BOTH WHERE THE VICTIM WAS AND THE RELATIVE
20 POSITION THE VICTIM WAS FOUND IN?

21 A YES, SIR.

22 Q THANK YOU.

23 NOW, DID YOU SUBSEQUENTLY HAVE AN OPPORTUNITY TO
24 PERFORM AN AUTOPSY ON THE BODY OF URAI JACKSON?

25 A YES, I DID.

1 AFTER THE SCENE INVESTIGATION, VIDEOS AND
2 PHOTOGRAPHS, THE VICTIM WAS TRANSPORTED TO LEXINGTON
3 MEDICAL CENTER AND AN AUTOPSY EXAMINATION WAS PERFORMED
4 THAT SAME AFTERNOON AND EVENING.

5 Q DID YOU HAVE AN OPPORTUNITY TO MAKE SOME EXTERNAL
6 EXAMINATION OF THE VICTIM IN THIS CASE, URAI JACKSON?

7 A YES, I DID.

8 Q AND IN THAT EXTERNAL EXAMINATION WERE YOU ABLE TO
9 IDENTIFY CERTAIN WOUNDS ON THE PERSON OF URAI JACKSON?

10 A SHE HAD MULTIPLE WOUNDS. SHE HAD WOUNDS THAT
11 DIRECTLY CAUSED HER DEATH AND THEN SHE HAD MULTIPLE WHAT WE
12 TERM DEFENSE WOUNDS THAT INDICATE SOME DEGREE OF A STRUGGLE
13 WHERE SHE HAD ATTEMPTED TO DEFEND HERSELF.

14 Q LET'S DO THIS.

15 DID YOU HAVE PREPARED OR DID YOU ASSIST IN THE
16 PREPARATION OF TWO CHARTS SHOWING THE BODY AND RELATIVE
17 POSITION OF WOUNDS ON THE BODY OF URAI JACKSON FOR---

18 A YES, I DID---

19 Q ---THE PURPOSE OF YOUR TESTIMONY?

20 A ---MR. JACK HENSELL, THE POLICE ARTIST, PREPARED THE
21 DRAWINGS UNDER MY CONSULTATION.

22 Q LET'S DO THIS.

23 REFERRING TO STATE'S EXHIBIT NUMBER 20, DEPICTING
24 THE HEAD AREA OF THE VICTIM, IF YOU WILL, DR. CARTER,
25 IDENTIFY FOR THE JURY THE WOUNDS PRESENT ON THE HEAD AND

1 THE TYPES OF WOUNDS AND THE EXTENT OF THE DAMAGES RESULT OF
2 THE WOUNDS?

3 A THERE WERE AT LEAST FOUR AND POSSIBLY MORE WHAT WE
4 CALL BLUNT TRAUMA WOUNDS WHERE A BLUNT STRONG HEAVY
5 CLUB-LIKE OBJECT HIT THE VICTIM JUST ABOVE AND BEHIND HER
6 RIGHT EAR WITH SUFFICIENT FORCE TO SPLIT THE SCALP IN
7 SEVERAL DIRECTIONS TO CAVE IN OR CRUSH THE SKULL BONE
8 EXPOSING SOME BRAIN TISSUE BEHIND THE RIGHT EAR AND VERY
9 LIKELY CAUSING IMMEDIATE UNCONSCIOUSNESS AND DEATH SHORTLY
10 THEREAFTER.

11 THERE WERE ADDITIONAL WOUNDS ON THE OTHER SIDE OF
12 HER SKULL, SUPERFICIAL LACERATIONS THAT MAY HAVE OCCURRED
13 WHEN SHE WAS FALLING. THE APPEARANCE OF THESE WOUNDS
14 INDICATED THAT SHE WAS STRUCK FROM BEHIND AND POSSIBLY FROM
15 ABOVE AND BEHIND.

16 Q WITH A BLUNT INSTRUMENT?

17 A WITH A BLUNT INSTRUMENT. IT WOULD HAVE HAD TO BE OF
18 SIGNIFICANT STRENGTH TO CAVE IN AND CRUSH THE SKULL FOR IT
19 TO HIT.

20 Q NOW, LET'S REFER TO STATE'S EXHIBIT NUMBER TWENTY --
21 TWENTY-ONE, I'M SORRY, WHICH GIVES FOUR VIEWS OF THE BODY
22 OF THE VICTIM IN THIS CASE.

23 WOULD YOU DESCRIBE THE WOUNDS PRESENT AND THE
24 MANNER AND THE EXTENT OF THE DAMAGE AS A RESULT OF THOSE
25 WOUNDS?

1 A FIRST, WE HAVE THE HEAD INJURIES THAT I HAVE JUST
2 DESCRIBED AND THE BRUISING AREAS CALLED FRACTURES TO THE
3 RIGHT, THE BACK OF THE RIGHT SIDE OF THE HEAD.

4 THERE ARE TWO BLUNT TRAUMA LACERATIONS. IF YOU
5 WOULD STAND OVER HERE---

6 Q SURE, I'LL BE GLAD TO.

7 A ---I CAN DEMONSTRATE WITH YOU ALMOST AS WELL.

8 QUITE POSSIBLY THE SAME INSTRUMENT OR A SIMILAR
9 INSTRUMENT ON THE TOP OF THE VICTIM'S SHOULDER HIT HER LIKE
10 THIS(INDICATES).

11 THERE WERE ON THE LATERAL OR THE SIDE OF THE
12 RIGHT UPPER ARM, ALMOST THE WIDTH OF THIS YARDSTICK A
13 COUPLE -- AT LEAST TWO SLAP-TYPE INJURIES IN DIFFERENT
14 DIRECTIONS AND A LARGE BRUISE OVER THE RIGHT SIDE OF THE
15 ARM.

16 A VERY SIMILAR -- IF YOU CAN TURN AROUND HERE AND
17 DEMONSTRATE ON THE LEFT SIDE -- TYPE OF INJURY WHERE -- AND
18 THIS IS WHAT WE MEAN BY DEFENSE WOUNDS WHERE IF THE ARM HAD
19 BEEN HELD UP TO WARD OFF BLOWS SIMILAR OR THE SAME
20 INSTRUMENT STRIKING THE LEFT ARM LIKE THAT(INDICATES).

21 SOME RELATIVELY FRESH BRUISES ON THE SIDE AND THE
22 FRONT OF THE LOWER LEGS. THE VICTIMS'S RIGHT THUMB WAS
23 VERY SWOLLEN AND APPEARED TO BE ALMOST SMASHED. THAT COULD
24 HAVE HAPPENED HOLDING UP HER RIGHT HAND TO WARD OFF A BLOW
25 OR IT COULD HAVE HAPPENED IF SHE WAS ON THE FLOOR AND BEEN

1 STOMPED UPON.

2 Q NOW, ARE ANY OF THESE PATTERNS, ANY OF THESE
3 BRUISING, DOES IT HAVE ANY PATTERN? SOMETHING WE CALL
4 PATTERN BRUISING, WHICH MAY INDICATE THE TYPE OF BLUNT
5 INSTRUMENT USED?

6 A WELL, THE HEAD INJURIES CAVED IN AND CRUSHED BOTH THE
7 SKIN AND THE SCALP INDICATING PROBABLY A ROUNDED SURFACE
8 WITHOUT EDGES ON IT THAT JUST BY COMPRESSIONS SPLIT THE
9 SCALP AND SPLIT THE SKULL UNDERNEATH IT.

10 ON THE ARM, RIGHT UPPER ARM, AND THE SIDE OF THE
11 LEFT FOREARM, THERE ARE ON PHOTOGRAPHS VISIBLE TWO KIND OF
12 PARALLEL TRACKS THAT AT THE -- WE HAD AT THE SCENE A SQUARE
13 SICK SLIGHTLY NARROWER THAN---

14 Q LET ME SHOW YOU THIS---

15 A ---THAT WHEN APPROXIMATED WITH TRACKS, THE PARALLEL
16 TRACKS ON THESE WOUNDS WAS THE SAME SIZE AS THE STICK.

17 Q STATE'S EXHIBIT NUMBER 13 FOR IDENTIFICATION
18 PURPOSES, WAS THIS STICK PRESENTED TO YOU AT AUTOPSY FOR
19 COMPARISON TO THAT BRUISING?

20 A THIS STICK OR ONE THAT'S EVEN SIMILARLY IN APPEARANCE
21 TO THIS.

22 MR. HUMPHRIES: MOVE TO INTRODUCE AT THIS TIME,
23 YOUR HONOR.

24 THE COURT: ANY OBJECTION?

25 MS. FULLWOOD: NO, SIR.

1 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER 13
2 IS ADMITTED.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER
4 13, A ONE-BY-ONE PIECE OF WOOD, ENTERED INTO EVIDENCE AT
5 THIS TIME WITHOUT OBJECTION.)

6 MR. HUMPHRIES: NOW, LET ME ASK YOU THIS, DR.
7 CARTER, STATE'S 13, DID IT CAUSE THE WOUNDS TO THE HEAD OF
8 URAI JACKSON?

9 THE WITNESS: IT'S CONCEIVABLE, BUT UNLIKELY. IF
10 -- IF THE JURY OR OTHER PERSONS WILL HAVE A CHANCE TO LOOK
11 AT IT, THIS IS NOT A REAL HEAVY INSTRUMENT.

12 SO WHILE -- AND THE HEAD INJURIES ARE MORE OF A
13 BLOW OF A CLUB OR A BALL BAT, SOMETHING ROUND LIKE THAT
14 THAT JUST HAD IT CENTRAL WHERE THE ROUNDED PART OF THE
15 INSTRUMENT HIT THE SOFT TISSUES AND JUST CAVED IT IN.

16 SO, WHILE IT'S REMOTELY CONCEIVABLE, I SINCERELY
17 DOUBT IT.

18 Q VERY GOOD.

19 DR. CARTER -- AND YOU CAN HAVE A SEAT. THANK
20 YOU, SIR.

21 A (WITNESS COMPLIES.)

22 Q DID YOU ALSO HAVE THE OPPORTUNITY TO COLLECT CERTAIN
23 SAMPLES FROM THE BODY OF URAI JACKSON?

24 A WE DID. WE -- FIRST OF ALL, HER NIGHTGOWN WAS THE
25 ONLY CLOTHING SHE HAD ON AND WE TOOK THAT OFF CAREFULLY AND

1 SEALED THAT UP AND GIVE IT TO DETECTIVE CATO AS EVIDENCE.

2 WE REMOVED MULTIPLE HAIRS FROM DIFFERENT PORTIONS
3 OF HER BODY. PROBABLY, VERY SIGNIFICANTLY, THERE WERE SOME
4 PUBIC HAIRS INTERMIXED WITH HER OWN PUBIC HAIRS THAT WERE
5 OF A DISTINCTIVE DIFFERENT LENGTH AND COLOR AND ONE OF
6 THOSE I NOTED HAD THE ROOT STILL ON IT. WE REMOVED THAT IN
7 CASE IT WOULD BE USEFUL FOR D.N.A. TESTING.

8 THE -- AND THE INTERNAL -- WELL, EXTERNALLY, WE
9 TOOK SWABS OF THE POSTERIOR PORTION OF THE MOUTH, THE
10 PHARYNX, AS WE WOULD CALL IT, OF THE ANUS AND RECTUM AND OF
11 THE VAGINAL CANAL. AND THEN INTERNALLY, DURING THE
12 INTERNAL EXAMINATION, WHICH IS DONE AS PART OF INTERNAL OR
13 -- EVERY AUTOPSY, A REASONABLE AMOUNT OF FLUID, MUCOID
14 FLUID, WAS PRESENT IN THE VAGINAL CANAL AND THAT WAS
15 SECURED FOR ANALYSIS.

16 Q REFERRED TO AS THE VAGINAL WASH, I BELIEVE?

17 A THAT'S CORRECT.

18 ADDITIONALLY, BLOOD AND URINE SAMPLES WERE TAKEN
19 FOR TOXICOLOGY TESTING.

20 Q ALL OF THESE SAMPLES YOU TURNED OVER THEN TO
21 INVESTIGATOR CATO---

22 A THAT'S CORRECT.

23 Q ---AT THE TIME OF THE AUTOPSY?

24 A THAT'S CORRECT.

25 Q LET ME ASK YOU THIS. OF COURSE, YOU WENT TO THE

1 SCENE IN THIS CASE. TELL ME IF THE POSITION IN WHICH URAI
2 JACKSON WAS FOUND AT HER RESIDENCE IS CONSISTENT WITH HER
3 HAVING BEEN SEXUALLY ASSAULTED IN THAT POSITION?

4 A THE -- AT THE SCENE INVESTIGATION AND THERE ARE
5 PHOTOGRAPHS THAT SHOW IT, A DECEASED INDIVIDUAL ON THEIR
6 BACK WITH ONE OR BOTH LEGS LIFTED UP, COCKED BACK, THERE
7 WAS ALSO A SMALL TRACE OF FLUID EXTERNALLY ON THE PUBIC
8 HAIRS THAT APPEARED VERY SIMILAR TO SEMEN, BOTH OF THOSE
9 FINDINGS ARE VERY CHARACTERISTIC OF SEXUAL ACTIVITY OR
10 SEXUAL ASSAULT AT THE TIME.

11 Q DOCTOR, DO YOU HAVE A POSITION TO A DEGREE OF MEDICAL
12 CERTAINTY AS TO THE CAUSE OF DEATH MS. URAI JACKSON?

13 A THE CAUSE OF DEATH I THINK CERTAINLY IS THE BLOWS TO
14 THE HEAD, THE BACK OF THE HEAD AND THE SKULL FRACTURE.

15 Q THANK YOU, DOCTOR.

16 THE COURT: MS. FULLWOOD.

17 CROSS-EXAMINATION

18 BY MS. FULLWOOD:

19 Q GOOD MORNING, DR. CARTER.

20 A GOOD MORNING.

21 Q HOW ARE YOU? DR. CARTER, IN THIS PARTICULAR CASE,
22 YOU WEREN'T ABLE TO PINPOINT THE TIME OF DEATH BEYOND ABOUT
23 A 72-HOUR PERIOD, IS THAT CORRECT?

24 A WELL, PROBABLY IT WASN'T RECENT BECAUSE THE WOUND HAD
25 DECAYED. THERE WERE INSECT LARVAE IN IT. THERE WAS START

1 TO DECAY OF THE BODY. THIS WAS -- THIS WAS A WARM TO HOT
2 PERIOD OF EARLY SUMMER AND SO YOU SAY WITHIN 72 HOURS, I
3 THINK IT WAS AT LEAST 24 HOURS, BUT THEN WITHIN THE 72-HOUR
4 PERIOD BACK OF THAT, NO.

5 Q OKAY. AND BASICALLY, YOU ARE KIND OF RELYING ON THE
6 LAST REPORTED TIME SOMEONE SAW OR SPOKE TO MS. JACKSON AND
7 THEN THE TIME THAT SHE WAS FOUND IN HER HOME?

8 A THAT'S CORRECT WITH THE EXCEPTION I HAVE JUST
9 MENTIONED. I DON'T THINK IT WAS A RECENT OR SAME DAY, THAT
10 MORNING TYPE OF DEATH.

11 Q I UNDERSTAND. I UNDERSTAND.

12 BUT AS YOU JUST MENTIONED, YOU DID TAKE SOME
13 SAMPLES THAT COULD HAVE BEEN TESTED AND THOSE TESTS RESULTS
14 COULD HAVE HELPED YOU PINPOINT IT A LITTLE BIT MORE, COULD
15 THEY NOT?

16 A WITH THAT TIME SPAN AND WITH THAT AMOUNT OF DECAY OF
17 THE BODY -- WELL, THE INSECT LARVAE. I'M TOLD THAT
18 ENTOMOLOGIST CAN TIME AND DATE THOSE CREATURES FAIRLY
19 ACCURATELY, BUT THAT'S -- THAT'S WAY OUT OF MY FIELD. I
20 DON'T KNOW HOW I COULD HAVE---

21 Q BUT YOU TOOK THOSE TYPE OF SAMPLES?

22 A THAT'S CORRECT AND WE SAVED IT FOR THEM.

23 Q OKAY. BECAUSE THAT COULD HAVE BEEN HELPFUL IN
24 PINPOINTING A LITTLE MORE PRECISELY, IS THAT CORRECT?

25 A POSSIBLY, BUT YOU WILL HAVE TO ASK AN ENTOMOLOGIST---

1 Q OH, YES, SIR, I UNDERSTAND. I JUST---

2 A BUT IN CASE IT COULD HAVE BEEN DONE, THAT'S WHY THE
3 SAMPLES WERE SAVED.

4 Q I UNDERSTAND THAT. AND, IN FACT, YOU HAVE ALREADY
5 TESTIFIED TO HAVING BAGGED THAT NIGHTGOWN?

6 A THAT'S CORRECT.

7 Q THAT'S RIGHT. AND MS. JACKSON WAS WEARING A
8 NIGHTGOWN, WAS SHE NOT?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. AND YOU'VE ALSO TESTIFIED THAT YOU
11 COLLECTED PUBIC HAIRS, IS THAT CORRECT?

12 A HER OWN AND WHAT APPEARED TO BE FOREIGN MALE TYPE
13 PUBIC HAIRS INTERMIXED AND COLLECTED THEM SEPARATELY AND
14 SUBMITTED THEM IN SEPARATE ENVELOPES.

15 Q ALL RIGHT. YOU FOUND, WHAT FIVE OR SIX PUBIC HAIRS
16 IN THE COMBING THAT WERE CONSIDERABLY LIGHTER IN COLOR THAN
17 HERS?

18 A AND LONGER---

19 Q UH-HUH.

20 A ---AND A DIFFERENT TEXTURE, YES.

21 Q THAT'S RIGHT. AND YOU SUBMITTED THEM---

22 A YES.

23 Q ---ALONG WITH THE OTHER EVIDENCE?

24 A THAT IS CORRECT.

25 Q THE WAY YOU ROUTINELY DO?

1 A THAT'S CORRECT.

2 Q OKAY. I BELIEVE MS. JACKSON HAD SOME JEWELRY ON HER.
3 WASN'T SHE WEARING A RING AND BRACELET?

4 A YES.

5 Q MAYBE MORE THAN ONE RING, I DON'T RECALL?

6 A I DON'T RECOLLECT, BUT---

7 Q BUT IN ANY EVENT, YOU COLLECTED TRACE FIBERS FROM
8 THAT RING AND FROM THE OTHER JEWELRY AND SUBMITTED THEM FOR
9 ANALYSIS?

10 A THAT'S CORRECT.

11 Q ALL RIGHT. I BELIEVE THERE WERE ALSO SOME HAIRS IN
12 HER HAND?

13 A AND AS I RECOLLECT, I COULD REFER TO THE REPORT, THEY
14 APPEARED TO BE HAIR OF THE LENGTH AND COLOR SIMILAR TO HER
15 OWN.

16 Q UH-HUH. BUT NEVERTHELESS, YOU COLLECTED THOSE AND
17 SUBMITTED THEM?

18 A THAT IS CORRECT.

19 Q ALL RIGHT. DID YOU COLLECT AND SUBMIT ANY OTHER
20 HAIRS THAT YOU FOUND ON HER BODY?

21 A I WOULD HAVE TO REFER TO THE REPORT. I DON'T
22 RECOLLECT IT AT THIS TIME.

23 Q OKAY. NOW, YOU TESTIFIED ABOUT DEFENSIVE TYPE
24 WOUNDS?

25 A THAT'S CORRECT.

1 Q OKAY. AND IN THE COURSE OF PERFORMING AUTOPSIES, AT
2 TIMES YOU FIND THAT PEOPLE WILL SCRATCH IN AN ATTEMPT TO
3 DEFEND THEMSELVES, IS THAT CORRECT?

4 A RIGHT, RIGHT.

5 Q AND IN THIS CASE YOU TOOK FINGERNAIL---

6 A DEPUTY CORONER---

7 Q ---SCRAPING, DID YOU NOT?

8 A ---DEPUTY CORNER LYBRAND TOOK THE FINGERNAIL
9 SCRAPINGS, YES.

10 Q THAT WAS DONE AT THE AUTOPSY?

11 A THAT'S CORRECT.

12 Q OKAY. AND THAT'S WHAT YOU ROUTINELY DO?

13 A IN A CASE SIMILAR TO THIS, YES.

14 Q AND THEY WERE SCRAPINGS?

15 A YES.

16 Q AND YOU SUBMITTED THEM FOR ANALYSIS?

17 A DEPUTY CORONER LYBRAND DID THAT.

18 Q ALL RIGHT. BUT THOSE SAMPLES WERE TAKEN?

19 A THAT'S CORRECT.

20 Q AND, OF COURSE, I UNDERSTAND ONCE THEY ARE OUT OF
21 YOUR OFFICE, YOU DON'T HAVE ANY CONTROL OVER THEM?

22 A THAT'S CORRECT.

23 Q BUT YOU SUBMITTED THEM?

24 A WELL, THEY WERE TAKEN AND SUBMITTED UNDER MY
25 DIRECTION.

1 Q ALL RIGHT.

2 A I DID NOT -- IN CONTRAST TO THE HAIR AND THE VAGINAL
3 FLUID SAMPLES, I DID NOT DO THE FINGERNAIL SCRAPINGS WITH
4 MY OWN HANDS.

5 Q ALL RIGHT. YOU TESTIFIED THAT THE MOST SEVERE WOUNDS
6 WERE ON THE RIGHT SIDE OF MS. JACKSON'S HEAD?

7 A JUST ABOVE AND BEHIND HER RIGHT EAR, THAT'S CORRECT.

8 Q RIGHT. SO IT WOULD BE IN THIS AREA(INDICATES)?

9 A THAT'S RIGHT.

10 Q AND THOSE WOUNDS -- FROM THE PATTERN OF THOSE WOUNDS,
11 CAN YOU TELL FROM WHICH DIRECTION THEY WERE ADMINISTERED?

12 A THE---

13 Q DO YOU WANT ME FOR AN EXAMPLE OR DO YOU WANT TO USE
14 THE CHART OR WHAT?

15 A WE CAN MAYBE DO BOTH.

16 Q USE THE CHART.

17 A OKAY. THE WOUNDS ARE FROM FRONT TO BACK IN THIS
18 DIRECTION(INDICATES) AND THEY ARE THREE TO FOUR INCHES LONG
19 AND THEY TEND TO BE A LITTLE WIDER AT THE FRONT THAN IN THE
20 BACK. AND SO, I DON'T KNOW HOW MANY WAYS IT'S CONCEIVABLE,
21 BUT TAKING A CLUB OR A BAT OR SOMETHING WITH A TURN OF THE
22 WRIST, IT FORCES THE BLOW HIT MORE TOWARD THE FRONT AND
23 THEN TAPERED OFF TO THE BACK IN A DIRECTION PARALLEL WITH A
24 NATURAL FORWARD FACING OF THE HEAD.

25 Q SO YOU CONCLUDE SOMEONE WAS STANDING TO HER RIGHT OR

1 BEHIND HER TO HER RIGHT?

2 A THAT'S CORRECT.

3 Q ADMINISTERING THE BLOWS?

4 A OR DIRECTLY BEHIND HER.

5 Q OKAY. AND THESE BLOWS WOULD HAVE BEEN MOST LIKELY
6 ADMINISTERED BY THE ASSAILANT WITH HIS OR HER RIGHT HAND?

7 A YES.

8 Q ALL RIGHT, SIR.

9 NOW THESE HEAD WOUNDS INVOLVED A GREAT DEGREE OF
10 FORCE, DID THEY NOT?

11 A THEY DID, YES.

12 Q ALL RIGHT. AND, IN FACT, THEY WERE SUCH THAT EVEN
13 ONE OF THOSE TYPE OF WOUNDS WOULD MOST LIKELY HAVE RENDERED
14 ANYONE IMMEDIATELY UNCONSCIOUS?

15 A I WOULD THINK SO. THEY WERE -- WHEN THERE ARE FOUR
16 OR FIVE BLOWS, IT'S HARD TO SAY IF THEY WERE ALL EQUAL
17 FORCE, BUT SINCE THEY CRUSHED THE SKULL INTO MULTIPLE SMALL
18 PIECES, I WOULD THINK THAT IMMEDIATE UNCONSCIOUSNESS
19 PROBABLY HAPPENED.

20 Q ALL RIGHT. NOW, YOU DID NOT FIND ANY EVIDENCE OF
21 BRUISES, SCRAPES, TEARS OR CUTS IN MS. JACKSON'S VAGINAL
22 AREA, DID YOU?

23 A THAT'S CORRECT.

24 Q OKAY. AND LIKEWISE, YOU DID NOT FIND ANY EVIDENCE OF
25 BRUISES, SCRAPES, TEARS OR CUTS IN HER ANAL AREA, IS THAT

- 1 CORRECT?
- 2 A THAT'S CORRECT.
- 3 Q ALL RIGHT. NOW, YOU DID COLLECT WHAT APPEARED TO BE
- 4 SEMINAL FLUID FROM THE VAGINA, IS THAT CORRECT?
- 5 A YES.
- 6 Q OKAY. BUT YOU DIDN'T TAKE ANY LIKE SAMPLE, ANY
- 7 VISIBLE AMOUNT OF SEMINAL FLUID FROM HER ANAL AREA, DID
- 8 YOU?
- 9 A TOOK A -- DID NOT SEE ANY VISIBLE FLUID, BUT TOOK A
- 10 SWAB OF THE ANAL CANAL---
- 11 Q ALL RIGHT---
- 12 A ---FOR TESTING.
- 13 Q YOU ROUTINELY TAKE A SWAB, DO YOU NOT?
- 14 A WHERE THERE IS POSSIBILITY OF SEXUAL ASSAULT, THAT'S
- 15 CORRECT.
- 16 Q BUT IN THE VAGINAL AREA, THERE WAS FLUID THAT YOU
- 17 COULD SEE?
- 18 A FROM THE INTERNAL EXAM.
- 19 Q UH-HUH. ALL RIGHT. ALL RIGHT. AND, I BELIEVE, YOU
- 20 ALSO TOLD ME OR TESTIFIED THAT THERE WAS A FLUID THAT
- 21 APPEARED TO BE SEMINAL FLUID JUST IN THE GENITAL REGION?
- 22 A AT THE SCENE.
- 23 Q AT THE SCENE?
- 24 A CORRECT.
- 25 Q AND, OF COURSE, IF THAT'S WHAT IT WAS, HER LYING ON

1 HER BACK, BY GRAVITY, IT WOULD HAVE FLOWED DOWNWARD, IS
2 THAT CORRECT?

3 A IT VERY WELL COULD HAVE, YES.

4 Q TO HER ANAL AREA?

5 A IT VERY WELL COULD HAVE.

6 Q OKAY. SO AN ANAL SWAB FOR THAT TYPE OF FLUID, IF IT
7 WERE POSITIVE, COULD BE ACCOUNTED FOR FOR THAT -- BY THAT
8 TYPE OF SEEPAGE?

9 A CONCEIVABLY, YES.

10 Q ALL RIGHT. NOW, YOU'VE TESTIFIED THAT YOU TOOK A
11 BLOOD SAMPLE SO THAT A BLOOD ALCOHOL LEVEL COULD BE
12 DETERMINED?

13 A THAT'S RIGHT.

14 Q OKAY. CAN YOU TELL US WHERE YOU TOOK THAT FROM?

15 A I DON'T -- I DON'T RECOLLECT IT. I DON'T -- I COULD
16 CHECK FROM THE REPORT. MY PRACTICE, MY STANDARD OF
17 PRACTICE IS TO TAKE IT FROM ONE OF THE SUBCLAVIAN VEINS AND
18 SINCE A TOTAL AUTOPSY WAS DONE, MY ALTERNATE METHOD IS TO
19 DRAW THE BLOOD DIRECTLY FROM THE HEART SO THAT WE DON'T GET
20 G.I. TRACT CONTAMINANTS.

21 Q WELL, DO YOU FEEL PRETTY SURE YOU USED A METHOD OF
22 DRAWING THAT BLOOD---

23 A IT WAS ACCURATE---

24 Q ---THAT WOULD GIVE YOU ACCURATE RESULTS?

25 A THAT'S CORRECT. THAT'S CORRECT.

1 Q OKAY. OKAY. AND WHAT WAS THE RESULT OF THAT BLOOD
2 ALCOHOL TEST?

3 A THE -- HER BLOOD ALCOHOL LEVEL WAS 0.5 PERCENT. THE
4 LEGAL LIMIT BEING ONE POINT OR .10. SO SHE WAS HALF THE
5 LEGAL LIMIT.

6 Q OKAY. AND IS THAT CONSISTENT WITH HAVING DRUNK A
7 BEER OR TWO?

8 A THAT'S CORRECT.

9 Q THANK YOU, SIR.

10 THE COURT: REDIRECT?

11 MR. HUMPHRIES: NO, SIR. ASK THIS WITNESS BE
12 EXCUSED.

13 THE COURT: ANY OBJECTION?

14 MS. FULLWOOD: NO, SIR.

15 THE COURT: THANK YOU VERY MUCH FOR COMING
16 DOCTOR. YOU ARE EXCUSED.

17 (WHEREUPON, THE WITNESS WAS
18 EXCUSED AT THIS TIME.)

19 MR. HUMPHRIES: THE STATE CALLS KEN BOGAN TO THE
20 STAND.

21 KENNETH L. BOGAN,

22 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR
24 FULL NAME, SIR.

25 THE WITNESS: MY NAME IS KENNETH L. BOGAN. MY

1 LAST NAME IS SPELLED B-O-G-A-N.

2 DIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q AGENT BOGAN, BY WHOM ARE YOU EMPLOYED?

5 A I'M EMPLOYED WITH THE STATE LAW ENFORCEMENT DIVISION.

6 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

7 A GOING ON FOURTEEN YEARS.

8 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED?

9 A I'M EMPLOYED THERE AS A FORENSIC SEROLOGIST AND
10 D.N.A. ANALYST.

11 Q NOW, HAVE YOU RECEIVED SPECIFIC TRAINING IN THOSE
12 AREAS, SEROLOGY AND D.N.A. ANALYSIS?

13 A YES, I HAVE.

14 Q AND HAVE YOU BEEN OFFERED AS AN EXPERT IN THE STATE
15 OF SOUTH CAROLINA IN OTHER COURTS RELATED TO THAT AREA OF
16 EXPERTISE?

17 A YES, I HAVE.

18 Q HOW MANY TIMES?

19 A AS RELATED TO SEROLOGY, IN EXCESS OF A HUNDRED TIMES.
20 AS A D.N.A. EXPERT, APPROXIMATELY EIGHTEEN TIMES.

21 MR. HUMPHRIES: YOUR HONOR, WE WOULD OFFER
22 SPECIAL AGENT BOGAN AT THIS TIME AS AN EXPERT IN THE FIELD,
23 SPECIFICALLY SEROLOGY, SEROLOGY-D.N.A. ANALYSIS.

24 THE COURT: QUESTIONS CONCERNING HIS
25 QUALIFICATIONS?

1 MS. FULLWOOD: MAY WE HAVE A SIDE BAR?

2 THE COURT: YES, MA'AM.

3 (WHEREUPON, A BENCH CONFERENCE WAS
4 HELD AT THIS TIME OFF THE RECORD.)

5 THE COURT: ANY OBJECTION, MS. FULLWOOD?

6 MS. FULLWOOD: NO, SIR.

7 THE COURT: ALL RIGHT.

8 WITHOUT OBJECTION, HE IS QUALIFIED AS AN EXPERT
9 IN THE FIELD OF SEROLOGY AND D.N.A. SEROLOGY.

10 MR. HUMPHRIES: AND I SAID SPECIAL AGENT, ARE YOU
11 A SENIOR AGENT?

12 THE WITNESS: YES, I AM.

13 Q WELL, I APOLOGIZE.

14 SENIOR AGENT BOGAN, IN CONNECTION WITH YOUR
15 QUALIFICATIONS IN THE FIELD OF SEROLOGY, DID YOU HAVE AN
16 OCCASION TO PROCESS CERTAIN ITEMS OF EVIDENCE IN CONNECTION
17 WITH THIS CASE, LAB NUMBER 94-7886?

18 A YES, I DID.

19 Q TELL THE JURY WHAT YOU DID IN CONNECTION WITH THESE
20 ITEMS OF EVIDENCE.

21 A OKAY.

22 EVIDENCE WHEN IT'S PLACED IN WHAT'S KNOWN AS THE
23 D.N.A. BOX, WHICH IS A SECURED REFRIGERATED EVIDENCE
24 CONTAINER, IT'S SIMILAR TO, I GUESS, A MAIL DROP WHERE
25 THERE IS A SLOT WHERE EVIDENCE IS DROPPED IN AND IT'S

1 PADLOCKED. I HAVE A KEY. AND MY DUTIES WERE TO TAKE THE
2 EVIDENCE OUT OF THAT LOCKED CONTAINER AND PROCESS THE
3 EVIDENCE.

4 IN THIS PARTICULAR CASE, WHAT I DID WAS TOOK A
5 KNOWN BLOOD SAMPLE FROM THE VICTIM IN THIS CASE, URAI
6 JACKSON, AND TOOK A PORTION OF THE LIQUID SAMPLE AND PUT IT
7 ON A PIECE OF STERILE CLOTH.

8 I ALLOWED THIS -- THE SAMPLE TO DRY AND THEN PUT
9 IT BACK INTO THE SAME POUCH WITH THE OTHER EVIDENCE. I
10 TOOK THE LIQUID SAMPLE, THE REMAINING PORTION AND SEALED IT
11 IN A SEPARATE CONTAINER AND SENT IT TO THE TOXICOLOGY
12 DEPARTMENT.

13 THE SAMPLE, THE DRIED SAMPLE, ALONG WITH THE
14 OTHER SAMPLES THAT WERE COLLECTED, I PLACED INTO A D.N.A.
15 FREEZER WHICH IS A SECURED FREEZER IN THE LABORATORY.

16 Q DO YOU DO THAT TO PRESERVE THE INTEGRITY AND QUALITY
17 OF THE SAMPLE FOR FURTHER ANALYSIS?

18 A YES. PRIMARY IN CASES WHERE WE ARE WAITING FOR OTHER
19 SAMPLES FOR COMPARISON TO COME IN, WE HAVE FOUND THAT IT'S
20 BEST TO FREEZE THE SAMPLES AND SINCE WE CAN'T FREEZE THE
21 LIQUID SAMPLE, WE ALLOW IT TO DRY ON CLOTH AND THEN FREEZE
22 ALL THE SAMPLES TOGETHER.

23 Q THESE ITEMS OF EVIDENCE THEY INCLUDE THE BLOOD
24 STANDARD---

25 A YES.

1 Q ---THE VAGINAL -- A VAGINAL WASH AND A RECTUM SWAB---

2 A YES.

3 Q ---CONNECTED WITH THIS CASE? WHILE THOSE ITEMS OF
4 EVIDENCE WERE IN YOUR CUSTODY AND CONTROL, WERE THEY
5 CHANGED SUBSTANTIALLY AS TO FORM OR CONTENT OTHER THAN THE
6 METHOD BY WHICH YOU PRESERVED THE BLOOD STANDARD?

7 A NO. I DID NOT CHANGE OR ALTER THEM IN ANY FASHION
8 OTHER THAN THE LIQUID SAMPLE.

9 Q AND, IN FACT, DID YOU TAMPER WITH THESE ITEMS OF
10 EVIDENCE IN ANY WAY OTHER THAN THE MANNER IN WHICH YOU SAY
11 YOU PRESERVED THEM?

12 A NO.

13 Q THAT'S ALL WE HAVE. THANK YOU.

14 THE COURT: CROSS-EXAMINATION.

15 MS. FULLWOOD: NO QUESTIONS.

16 THE COURT: THANK YOU VERY MUCH. YOU MAY STEP
17 DOWN.

18 (WHEREUPON, THE WITNESS WAS
19 EXCUSED AT THIS TIME.)

20 MR. HUMPHRIES: THE STATE CALLS SENIOR AGENT
21 NANCY SKRABA.

22 NANCY J. SKRABA,

23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: HAVE A SEAT AND STATE YOUR FULL NAME
25 FOR THE RECORD.

1 THE WITNESS: NANCY JEAN SKRABA.

2 DIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q AGENT SKRABA, WITH WHOM ARE YOU EMPLOYED?

5 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
6 DIVISION.

7 Q IN WHAT CAPACITY?

8 A I'M A FORENSIC SEROLOGIST.

9 Q HAVE YOU RECEIVED SPECIFIC TRAINING IN REGARD TO
10 FORENSICS SEROLOGY?

11 A YES, I HAVE.

12 Q TELL THE JURY A LITTLE BIT ABOUT YOUR TRAINING, IF
13 YOU WILL?

14 A IN ADDITION TO MY TRAINING AT S.L.E.D., I'VE ALSO
15 ATTENDED SEVERAL SCHOOLS IN MY FIELD OF FORENSIC SEROLOGY
16 INCLUDING THE F.B.I. SEROLOGY SCHOOL AND D.N.A. TYPING
17 METHOD SCHOOL IN QUANTICO, VIRGINIA.

18 Q DOES THE FIELD OF SEROLOGY CONSUME, IF YOU WILL, THE
19 FIELD OF D.N.A. ANALYSIS?

20 A YES, IT DOES.

21 Q OKAY. AND HAVE YOU BEEN OFFERED AS AN EXPERT IN
22 COURTS OF THE STATE AND OR FEDERAL COURT IN THIS AREA OF
23 EXPERTISE?

24 A YES, I HAVE.

25 Q DO YOU KNOW APPROXIMATELY HOW MANY TIMES?

1 A OVER ONE HUNDRED TIMES.

2 MR. HUMPHRIES: YOUR HONOR, AT THIS TIME, WE
3 WOULD SUBMIT AGENT NANCY SKRABA AS AN EXPERT IN THE FIELD
4 OF FORENSIC SEROLOGY.

5 THE COURT: QUESTIONS CONCERNING QUALIFICATION?

6 MS. FULLWOOD: NO, SIR.

7 THE COURT: ALL RIGHT.

8 SHE IS QUALIFIED AS AN EXPERT IN THE FIELD OF
9 FORENSIC SEROLOGY.

10 MR. HUMPHRIES: AGENT SKRABA, IF YOU WILL, TELL
11 THE JURY JUST A LITTLE BIT ABOUT WHAT FORENSIC SEROLOGY IS.

12 A A FORENSIC SEROLOGIST IDENTIFIES AND CLASSIFIES BODY
13 FLUIDS SUCH AS BLOOD AND SEMEN. I RECEIVE PHYSICAL
14 EVIDENCE FROM VARIOUS LAW ENFORCEMENT AGENCIES THROUGHOUT
15 THE STATE FOR ANALYSIS IN THE INVESTIGATION OF VIOLENT
16 CRIMES. I PERFORM BIOCHEMICAL ANALYSES ON BODY FLUIDS AND
17 TESTIFY IN COURT AS TO MY FINDINGS.

18 Q NOW, IN CONNECTION WITH THOSE DUTIES, DID YOU HAVE AN
19 OCCASION TO RECEIVE CERTAIN ITEMS OF EVIDENCE IN THE CASE
20 LAB NUMBER 94-7886?

21 A YES.

22 Q AND, SPECIFICALLY, I REFER YOU TO ITEMS 13, 15, 18
23 AND 56.4---

24 A YES.

25 Q ---WHICH WOULD BE AND WILL YOU IDENTIFY THOSE ITEMS

1 FOR THE JURY?

2 A ITEM 13 IS A BLOOD STANDARD FROM URAI JACKSON. ITEM
3 15 IS A VAGINAL WASH. ITEM 18, RECTUM SWAB AND ITEM 56 IS
4 A BLOOD STANDARD FROM THE DEFENDANT, GARY TERRY.

5 Q LET ME ASK YOU TO DO THIS, IF YOU WILL. LET'S DEAL
6 WITH ITEM 13, THE BLOOD STANDARD; ITEM 15, THE VAGINAL WASH
7 AND ITEM 18, RECTUM SWAB FIRST. CAN YOU TELL THE JURY
8 WHERE YOU RECEIVED THESE ITEMS FROM?

9 A I RECEIVED THEM FROM THE D.N.A. FREEZER.

10 Q AND ON WHAT DATE? IF YOU HAVE IT?

11 A SEPTEMBER 16, 1994.

12 Q AND TELL THE JURY JUST A BIT ABOUT THAT FREEZER,
13 WHETHER IT IS SECURE OR NON-SECURE?

14 A YES, IT IS A SECURED FREEZER.

15 Q UPON RECEIVING THESE ITEMS OF EVIDENCE, WHAT TESTS
16 DID YOU PERFORM ON THEM?

17 A I DID NOT PERFORM ANY TESTS ON THE BLOOD STANDARD
18 FROM URAI JACKSON. ON THE VAGINAL WASH AND THE RECTUM
19 SWAB, I IDENTIFIED SEMEN ON BOTH THOSE ITEMS.

20 Q DID YOU ALSO HAVE SUBMITTED TO YOU OTHER SAMPLES FROM
21 THE AUTOPSY OF URAI JACKSON, A VAGINAL SWAB, A VULVA SWAB
22 AND AN ORAL SWAB?

23 A YES, I DID.

24 Q NOW, WERE YOU ABLE TO IDENTIFY SEMEN ON THOSE
25 SAMPLES?

1 A NO. NO SEMEN WAS IDENTIFIED ON THOSE SAMPLES.

2 Q AND IN REGARD TO -- DID YOU RECEIVE FINGERNAIL
3 SCRAPINGS IN THIS CASE?

4 A YES, I DID.

5 Q WHAT WERE YOU ABLE TO DETERMINE OR CONCLUDE ABOUT
6 THOSE FINGERNAIL SCRAPINGS?

7 A I IDENTIFIED HUMAN BLOOD ON THE FINGERNAIL SCRAPINGS?
8 RIGHT-HAND FINGERNAIL SCRAPINGS AND LEFT-HAND FINGERNAIL
9 SCRAPINGS WERE SUBMITTED. THE LEFT-HAND FINGERNAIL
10 SCRAPINGS WERE INSUFFICIENT FOR FURTHER ANALYSIS.

11 Q AND THE RIGHT HAND SCRAPINGS---

12 A THEY WERE SENT TO THE D.N.A. LAB FOR FURTHER
13 CHARACTERIZATION.

14 Q NOW, WHERE DID THOSE ITEMS GO WHEN THEY LEFT YOU?

15 A THEY WENT TO AGENT GALLMAN OF OUR D.N.A. LABORATORY.

16 Q FOR THE PURPOSES OF CONDUCTING D.N.A. ANALYSIS?

17 A OF D.N.A. ANALYSIS, THAT'S CORRECT.

18 Q LET ME ASK YOU, SPECIFICALLY, ABOUT ITEM 56, MORE
19 SPECIFICALLY ABOUT 56.4, THE BLOOD STANDARD OF GARY DUBOSE
20 TERRY?

21 A YES.

22 Q DID YOU HAVE AN OCCASION TO COME INTO CONTACT WITH
23 THAT ITEM OF EVIDENCE?

24 A YES, I DID.

25 Q CAN YOU TELL THE JURY WHEN?

- 1 A ONE MOMENT. JANUARY OF '95.
- 2 Q AND DO YOU KNOW FROM WHENCE YOU RECEIVED THAT ITEM?
- 3 A THE D.N.A. BOX.
- 4 Q IS THAT ALSO A SECURE CONTAINER FOR THESE ITEMS---
- 5 A YES, IT IS. IT'S A LOCKED REFRIGERATOR.
- 6 Q WHAT, IF ANYTHING, DID YOU DO WITH THAT PARTICULAR
- 7 STANDARD?
- 8 A THAT STANDARD I ANALYZED FOR ABO TYPE AND ALSO FOR
- 9 SECRETOR STATUS. THE ABO TYPE IS GROUP A AND THE SECRETOR
- 10 STATUS IS NON-SECRETOR, LEWIS A POSITIVE.
- 11 Q NOW, AS IT RELATES TO 56.4, DID YOU SUBMIT THAT ITEM
- 12 OR A STANDARD OF THAT ITEM FOR FURTHER ANALYSIS?
- 13 A YES, I DID.
- 14 Q TELL THE JURY WHAT YOU DID.
- 15 A I SUBMITTED THAT ITEM, THE BLOOD STANDARD FROM THE
- 16 DEFENDANT, TO MS. GALLMAN FOR FURTHER D.N.A. ANALYSIS.
- 17 Q AND DO YOU HAVE WITH YOU THE DATE THAT YOU WOULD HAVE
- 18 SUBMITTED?
- 19 A YES. THOSE ITEMS WERE SUBMITTED ON AUGUST 21ST, '97.
- 20 Q SO IN SUMMARY, YOU SUBMITTED BOTH---
- 21 A OH, EXCUSE ME. THAT'S WRONG.
- 22 Q I'M SORRY---
- 23 A SEPTEMBER OF '94. I'M SORRY.
- 24 Q YOU SUBMITTED BLOOD STANDARD, ITEM 13; VAGINAL WASH,
- 25 ITEM 15 AND RECTUM SWAB, ITEM 18 TO AGENT LILLIE GALLMAN IN

1 SEPTEMBER OF '94?

2 A CORRECT.

3 Q YOU SUBMITTED ITEM 56.4 TO LILLIE GALLMAN IN JANUARY
4 -- ON JANUARY 31ST, 1995, SOMETIME AFTER THE AUTOPSY, IS
5 THAT CORRECT?

6 A THAT'S CORRECT.

7 Q WHILE THESE ITEMS WERE IN YOUR CUSTODY AND CONTROL,
8 WERE THEY CHANGED SUBSTANTIALLY AS TO FORM OR CONTENT OTHER
9 THAN YOUR USING THEM FOR THOSE ANALYSES THAT YOU'VE
10 DESCRIBED TO THE JURY?

11 A NO.

12 Q THAT'S ALL I HAVE. THANK YOU VERY MUCH.

13 THE COURT: MS. FULLWOOD.

14 MS. FULLWOOD: THANK YOU.

15 CROSS-EXAMINATION

16 BY MS. FULLWOOD:

17 Q MS. SKRABA, DID YOU ALSO RECEIVE AN ITEM NUMBERED AS
18 33?

19 A I RECEIVED ITEM 33.1, WHICH IS SWAB OF A PIECE OF
20 UNFINISHED WOOD.

21 Q OKAY. SO YOU GOT A SWAB FROM A PIECE OF WOOD?

22 A THAT'S CORRECT.

23 Q YOU DID NOT ACTUALLY TAKE THE SWAB YOURSELF?

24 A NO, I DID NOT.

25 Q ALL RIGHT. CAN YOU TELL THE JURY WHAT THE RESULTS OF

1 ANALYZING THAT SWAB WAS?

2 A NO BLOOD WAS IDENTIFIED ON THAT SWAB.

3 Q THERE WAS NO BLOOD ON THE PIECE OF WOOD?

4 A THAT'S CORRECT.

5 Q THANK YOU, MA'AM.

6 THE COURT: REDIRECT.

7 MR. HUMPHRIES: NO, SIR.

8 THANK YOU VERY MUCH. WE ASK THAT THIS WITNESS BE
9 EXCUSED.

10 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED,
11 AGENT SKRABA.

12 MR. HUMPHRIES: THANK YOU, MS. SKRABA.

13 (WHEREUPON, THE WITNESS WAS
14 EXCUSED AT THIS TIME.)

15 MR. CHASE: PLEASE THE COURT, YOUR HONOR.

16 THE STATE CALLS SENIOR AGENT LILLIE GALLMAN TO
17 THE STAND.

18 LILLIE S. GALLMAN,

19 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
21 PLEASE.

22 THE WITNESS: MY NAME IS LILLIE SMALLS GALLMAN.

23 DIRECT EXAMINATION

24 BY MR. CHASE:

25 Q AGENT GALLMAN, WHERE ARE YOU EMPLOYED?

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

3 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

4 A SEVEN YEARS.

5 Q WHAT ARE YOUR DUTIES AT S.L.E.D.?

6 A AT S.L.E.D., I AM A FORENSIC SEROLOGIST AND D.N.A.
7 ANALYST.

8 Q WOULD YOU PLEASE DESCRIBE WHAT A FORENSIC SEROLOGIST
9 AND A D.N.A. ANALYST DOES?

10 A AS A FORENSIC D.N.A. SEROLOGIST AT -- FORENSIC D.N.A.
11 ANALYST AND SEROLOGIST AT S.L.E.D., I RECEIVE EVIDENCE FROM
12 VARIOUS AGENCIES FOR TESTING.

13 WE TEST BODY FLUIDS TO DEVELOP A PATTERN FROM
14 THAT IN D.N.A. WHETHER IT BE AN INCLUSION OR EXCLUSION
15 BETWEEN A KNOWN SAMPLE WITH EVIDENCE THAT WE RECEIVE FROM
16 THEM.

17 Q AGENT GALLMAN, COULD YOU GIVE ME AN IDEA AND THE JURY
18 AN IDEA OF YOUR EDUCATIONAL BACKGROUND IN THOSE FIELDS?

19 A OKAY. I HAVE A DEGREE FROM THE UNIVERSITY OF SOUTH
20 CAROLINA. ONCE I RECEIVED MY DEGREE, I CONTINUED WORKING
21 AT THE UNIVERSITY OF SOUTH CAROLINA FOR TEN YEARS IN THE
22 AREA OF GENETICS. I, AT THAT TIME, DID VARIOUS WORK WITH
23 D.N.A. CLONING, EXTRACTING, UTILIZING SOME OF THE
24 PROCEDURES THAT I USE AT S.L.E.D.

25 ONCE I BEGAN WORKING WITH S.L.E.D. IN 1990, I WAS

1 SENT TO THE F.B.I. ACADEMY FOR THEIR D.N.A. TYPING CLASS
2 AND DURING THAT FIRST YEAR, I WAS TAUGHT BY OTHER D.N.A.
3 ANALYSTS WHO HAD BEEN CERTIFIED IN THE AREA OF D.N.A.
4 ANALYSIS.

5 I'VE ALSO BEEN BACK TO THE F.B.I. TO TAKE THEIR
6 ADVANCED D.N.A. COURSE IN WHICH TIME WE STUDIED ABOUT
7 POPULATION GENETICS AND COURT TESTIMONY, DIFFERENT AREAS
8 ABOUT D.N.A. THAT I DIDN'T ENCOUNTER DURING ACADEMIC STUDY.

9 Q NOW, THIS TRAINING, DOES THAT INCLUDE -- FOR THE
10 D.N.A. ANALYSIS, DOES THAT INCLUDE THE DETERMINATION OF
11 POPULATION FREQUENCY STATISTICS AND THE APPLICATION
12 THEREOF?

13 A YES. WHILE I WAS WORKING IN THE AREA OF ACADEMIA AT
14 THE UNIVERSITY, WE DID CLONING AND DIFFERENT PROCEDURES
15 WITH D.N.A., BUT I WAS NOT INVOLVED IN DOING POPULATION
16 GENETICS -- POPULATION STATISTICS AND WHAT WE UTILIZE IN
17 FORENSIC STUDY OF D.N.A.

18 AT THE F.B.I., THEY TAUGHT US ABOUT DOING
19 POPULATION STATISTICS, HOW TO GATHER THE SAMPLES AND HOW TO
20 ANALYZE THE SAMPLES ONCE WE HAD GATHERED THEM.

21 Q NOW, AGENT GALLMAN, HAVE YOU BEEN QUALIFIED IN THE
22 STATE OF SOUTH CAROLINA AS A FORENSIC D.N.A. ANALYST WHO
23 CAN GIVE TESTIMONY REGARDING POPULATION FREQUENCIES --
24 FREQUENCIES STATISTICS?

25 A YES, I HAVE.

1 Q HOW MANY TIMES?

2 A APPROXIMATELY TWENTY.

3 MR. CHASE: YOUR HONOR, AT THIS TIME, WE WOULD
4 MOVE TO HAVE AGENT GALLMAN QUALIFIED AS AN EXPERT IN THE
5 AREA OF FORENSIC SEROLOGY AND AS A D.N.A. ANALYST INCLUDING
6 THE ABILITY TO DETERMINE POPULATION FREQUENCIES STATISTICS.

7 THE COURT: QUESTIONS -- QUESTIONS CONCERNING
8 HER QUALIFICATIONS?

9 MS. FULLWOOD: WE HAVE NONE, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 I WILL QUALIFY HER AS AN EXPERT IN THE FIELD OF
12 FORENSIC SEROLOGY, D.N.A. ANALYSIS, ALSO IN POPULATION
13 FREQUENCIES STATISTICS.

14 MR. CHASE: THANK YOU, YOUR HONOR.

15 AGENT GALLMAN, COULD YOU PLEASE EXPLAIN TO THE
16 JURY WHAT D.N.A. IS?

17 THE WITNESS: OKAY. D.N.A. STANDS FOR
18 DEOXYRIBONUCLEIC ACID. THAT'S WHY WE JUST USE THE THREE
19 LETTERS, D.N.A. IT'S SUCH A LONG NAME.

20 YOU GET PART OF YOUR D.N.A. FROM YOUR MOTHER AND
21 PART FROM YOUR FATHER, BUT EVERYONE'S D.N.A. IS UNIQUE
22 EXCEPT FOR IDENTICAL TWINS WHO HAVE THE EXACT D.N.A.

23 SINCE EVERYONE'S D.N.A. IS DIFFERENT, WE ARE ABLE
24 TO UTILIZE THE UNIQUENESS OF D.N.A. TO ESTABLISH WHETHER A
25 KNOWN STANDARD THAT'S GIVEN TO US MATCHES OR DOES NOT MATCH

1 A PIECE OF EVIDENCE IN A PARTICULAR CASE.

2 Q NOW, IN RELATION TO THIS CASE, DID YOU RECEIVE ANY
3 SAMPLES FROM AGENT SKRABA RELATED TO LAB NUMBER 94-7886?

4 A YES, I DID.

5 Q COULD YOU, PLEASE, IDENTIFY WHAT SAMPLES YOU RECEIVED
6 FROM HER?

7 A I RECEIVED ITEM NUMBER 13.1, WHICH WAS THE BLOOD
8 STANDARD FROM URAI JACKSON; ITEM NUMBER 15, A VAGINAL WASH;
9 ITEM NUMBER 18, ANAL SWAB; ITEM NUMBER 19.1, RIGHT-HAND
10 FINGERNAIL SCRAPINGS AND ITEM NUMBER 56.4, BLOOD STANDARD.
11 FROM GARY TERRY.

12 Q FIRST, I WANT TO ASK YOU ABOUT ITEM NUMBER 19.1.
13 DID YOU PERFORM ANY D.N.A. ANALYSIS ON THE FINGERNAIL
14 SCRAPINGS?

15 A NO, I DID NOT. THE PROCEDURE THAT WE UTILIZE IN OUR
16 LAB FOR D.N.A. TESTING, THAT PARTICULAR SAMPLE WAS
17 INSUFFICIENT.

18 Q AS RELATES TO ITEM NUMBERS 13, 15, 18 AND 56.4, DID
19 YOU PERFORM ANY D.N.A. ANALYSIS ON THOSE?

20 A YES, I DID. I---

21 Q AND DID YOU DO A D.N.A. PROFILE ON THOSE?

22 A YES, I DID.

23 Q AND COULD YOU PLEASE GIVE YOUR RESULTS?

24 A GOING FROM MY REPORT AND IT SAYS THAT THE D.N.A.
25 PROFILE OF GARY TERRY MATCHES THAT OF THE D.N.A. EXTRACTED

1 FROM THE SEMEN FOUND ON ITEM 15, WHICH IS THE VAGINAL WASH,
2 AND ITEM NUMBER 18, WHICH IS THE ANAL SWAB, AND I GAVE THE
3 DIFFERENT D.N.A. PROFILE LOCUS THAT WE LOOK AT. AND THE
4 PROBABILITY OF SELECTING AN UNRELATED INDIVIDUAL AT RANDOM
5 FROM THE POPULATION HAVING A D.N.A. PROFILE MATCHING ITEM
6 15 AND 18 IS APPROXIMATELY ONE IN 110 BILLION BLACKS AND
7 ONE IN 33 BILLION CAUCASIANS.

8 Q BEG THE COURT'S INDULGENCE, YOUR HONOR.

9 THANK YOU, AGENT SKRABA -- I MEAN, AGENT GALLMAN.
10 PLEASE ANSWER ANY QUESTIONS THEY MAY HAVE.

11 THE COURT: CROSS-EXAMINATION.

12 MS. FULLWOOD: THANK YOU, YOUR HONOR.

13 CROSS-EXAMINATION

14 BY MS. FULLWOOD:

15 Q GOOD MORNING, MS. GALLMAN.

16 A HELLO.

17 Q I HEARD YOU SAY YOU WENT TO U.S.C.?

18 A YES, I DID.

19 Q OKAY. AND WHAT'S YOUR -- WHAT'S YOUR FIELD THAT YOUR
20 DEGREE IS IN?

21 A BIOLOGY.

22 Q BIOLOGY. AND IS THAT A B.S., M.S. OR WHAT?

23 A I HAVE A B.S. DEGREE IN BIOLOGY.

24 Q IN BIOLOGY.

25 A UH-HUH.

1 Q OKAY. AND YOU WORKED AT U.S.C. FOR TEN YEARS?

2 A YES.

3 Q AND WHAT WAS YOUR POSITION THERE?

4 A I WAS A RESEARCH SPECIALIST---

5 Q UH-HUH---

6 A ---DURING THAT TIME, AS A RESEARCH SPECIALIST, I
7 WORKED IN A PARTICULAR LAB AND I HAD DIFFERENT PROJECTS
8 THAT WERE MINE WHICH INVOLVED THE CLONING OF D.N.A.,
9 EXTRACTING, SEQUENCING OF D.N.A.---

10 Q UH-HUH.

11 A ---THAT SORT OF THING. I ALSO SUPERVISED THE LAB FOR
12 THE PROFESSOR WHO I WAS WORKING WITH.

13 Q OKAY. OKAY. IS -- ARE YOU FINISHED?

14 A WELL, YEAH.

15 Q OKAY. THANK YOU. THANK YOU. I WAS JUST SORT OF
16 INTERESTED.

17 NOW, WHEN YOU TALKED ABOUT AND THE WORK YOU DO
18 LOOKING AT SOMEBODY'S D.N.A., YOU'RE NOT LOOKING AT ALL
19 THEIR D.N.A., ARE YOU?

20 A NO. WE LOOK AT PARTICULAR AREAS THAT DO NOT CODE FOR
21 ANYTHING.

22 Q UH-HUH.

23 A THE MAJORITY OF YOUR D.N.A. IS -- DOES NOT CODE FOR
24 ANYTHING, BUT WE ONLY LOOK AT PARTICULAR AREAS. THE AREAS
25 THAT YOU NORMALLY -- PEOPLE THINK ABOUT WOULD BE THE D.N.A.

1 THAT WOULD CODE FOR THE COLOR OF EYES OR HAIR OR WHATEVER,
2 BUT WE DON'T LOOK AT THAT AREA.

3 Q OKAY. BECAUSE, IN FACT, 98 PERCENT OF OUR D.N.A. IS
4 THE SAME IN EVERYBODY, RIGHT?

5 A WHEN IT COMES TO ACCORDING -- SETTING UP GENES TO
6 MAKE AN EYE, TO DO SKIN OR WHATEVER. THAT'S WHY THEY SAY
7 THAT THE MAJORITY OF IT IS THE SAME.

8 Q THAT'S RIGHT. IN FACT, WE SHARE D.N.A. WITH ANIMALS
9 LIKE FROGS OR BIRDS OR---

10 A I DON'T KNOW ABOUT FROGS AND BIRDS. WE -- MOSTLY THE
11 D.N.A. THAT HUMANS WOULD SHARE WOULD BE WITH -- IF
12 ANYTHING, WOULD BE MANUALS.

13 Q IS MANUALS?

14 A YES.

15 Q BUT WE DO SHARE A CONSIDERABLE AMOUNT OF D.N.A., AT
16 LEAST, WITH MANUALS THEN, RIGHT?

17 A WHEN YOU START QUOTING FOR GENES THAT ARE UTILIZED
18 FOR PARTICULAR THINGS.

19 Q OKAY. SO -- SO THERE'S REALLY ABOUT TWO PERCENT OR
20 LESS -- OR LESS THAT YOU ARE TALKING ABOUT WHERE THERE
21 MIGHT BE SOME VARIABILITY?

22 A YES. WE'RE TALKING ABOUT -- WHEN YOU TALK ABOUT
23 VARIABILITY IN THAT RESPECT.

24 Q OKAY.

25 A BECAUSE EVEN WHEN YOU GET INTO THE GENES FOR HAIR OR