

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 IV OF VII

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APPEAL FROM LEXINGTON COUNTY

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY DUBOSE TERRY,

APPELLANT.

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1 EYE COLOR, THERE IS SOME VARIATION RIGHT THERE FOR THAT
2 BECAUSE IF YOU HAVE BROWN EYES AND ONE OTHER PERSON HAS
3 BLUE EYES, THERE HAS TO BE SOME KIND OF GENETIC DIFFERENCE
4 THERE TO EVEN CREATE THE COLOR IN THAT PARTICULAR EYE.

5 Q BUT YOU'RE NOT---

6 A SO EVEN -- EVEN IN THE D.N.A. THAT'S SIMILAR BETWEEN
7 PEOPLE, YOU'VE STILL GOT DIFFERENCES.

8 Q OKAY. BUT THAT'S NOT THE TYPE OF D.N.A. YOU ARE
9 LOOKING AT---

10 A NO.

11 Q ---FOR THE PURPOSES OF YOUR TEST, RIGHT?

12 A THAT'S TRUE.

13 Q OKAY. OKAY. AND, IN FACT, THE D.N.A. THAT YOU ARE
14 LOOKING AT IN YOUR TEST HAS -- DOESN'T HAVE ANY FUNCTION
15 THAT WE KNOW OF AND I THINK YOU ALLUDED TO THAT.

16 A YES.

17 Q IT'S D.N.A. WE DON'T KNOW WHAT IT'S FOR---

18 A THAT'S RIGHT.

19 Q ---YET?

20 A RIGHT NOW.

21 Q OKAY. OKAY. AND SOMETIMES IN THE FIELD, ISN'T THAT
22 TYPE OF D.N.A. CALLED JUNK D.N.A. FOR JUST THAT REASON?

23 A WELL, SOME PEOPLE REFER TO IT AS THAT, BUT IF YOU GO
24 AND YOU DIG DEEPER, YOU REALIZE THAT MOST THINGS HAVE A
25 FUNCTION.

- 1 Q WE JUST DON'T KNOW IT YET?
- 2 A THAT'S RIGHT.
- 3 Q OKAY. OKAY. NOW, WHEN YOU RUN YOUR TEST, THE
- 4 RESULTS DON'T REVEAL THE RACE OF THE DONOR OF THE D.N.A.,
- 5 DO THEY?
- 6 A NO, WE DO NOT LOOK AT THE RACE OF THE PERSON. JUST
- 7 ONCE D.N.A. IS STRIPPED OFF EVERYTHING, IT'S D.N.A.
- 8 Q IT DOESN'T TELL YOU THAT?
- 9 A NO, IT DOES NOT TELL YOU THE RACE.
- 10 Q OKAY. AND IT DOES NOT TELL YOU THE AGE OF THE DONOR,
- 11 DOES IT?
- 12 A NO.
- 13 Q NO WAY YOU CAN TELL FROM THAT, CAN YOU?
- 14 A NO.
- 15 Q OKAY. OKAY. AND -- AND IT DOESN'T TELL YOU WHERE
- 16 THE PERSON WAS FROM, DOES IT?
- 17 A AS IN?
- 18 Q AS IN SOUTH CAROLINA, ALASKA, ENGLAND?
- 19 A NO.
- 20 Q YOU DON'T KNOW THAT. AND -- AND WHEN YOU ARE LOOKING
- 21 AT THESE SAMPLES THAT ARE SUBMITTED, YOUR TESTS DON'T SHOW
- 22 WHEN THE SAMPLES GOT FROM WHERE THEY WERE COLLECTED FROM,
- 23 DOES IT?
- 24 A NO.
- 25 Q THAT'S OUTSIDE OF WHAT YOU DO, RIGHT?

1 A YES.

2 Q OKAY. AND YOUR TESTS LIKEWISE DON'T TELL YOU UNDER
3 WHAT CIRCUMSTANCES THE SAMPLES YOU RECEIVED WERE DEPOSITED,
4 RIGHT?

5 A NO.

6 Q YOU DON'T KNOW HOW THE SAMPLES GOT WHERE THEY WERE
7 RETRIEVED FROM, DO YOU?

8 A NO.

9 Q OKAY. OKAY. NOW, I BELIEVE -- LET'S SEE. I'M
10 LOOKING AT YOUR REPORT HERE. DO YOU HAVE A COPY WITH YOU?

11 A YES.

12 Q OKAY. OKAY. YOU -- YOU -- IN YOUR REPORT, WHEN YOU
13 TALK ABOUT THE ITEMS YOU GOT, YOU REFER TO ITEM NUMBER
14 19.1, RIGHT?

15 A YES.

16 Q AND THAT WAS THE FINGERNAIL SCRAPINGS?

17 A YES.

18 Q OKAY. AND THERE WASN'T ENOUGH MATERIAL IN THOSE
19 SCRAPINGS TO RUN A TEST LIKE YOUR LAB DOES, RIGHT?

20 A NO, IT WAS NOT.

21 Q YOU HAVE TO HAVE A CERTAIN QUANTITY OF D.N.A. BEFORE
22 YOUR TEST WILL WORK, IS THAT CORRECT?

23 A YES.

24 Q OKAY. OKAY. BUT NOW, THERE'S ANOTHER D.N.A. TEST,
25 ISN'T THERE? I MEAN, YOU DO WHAT'S CALLED, WHAT'S A

1 R.F.L.P. TEST?

2 A YES, WE DO R.F.L.P.

3 Q OKAY. AND -- PARDON ME.

4 A THAT'S WHAT WE DO RIGHT NOW, CURRENTLY.

5 Q OKAY. OKAY. AND I'M NOT EVEN GOING TO TRY TO SAY
6 WHAT ALL OF THOSE LETTERS STAND FOR, BUT NOW THERE'S A
7 DIFFERENT TEST CALLED A P.C.R. TEST, ISN'T THERE?

8 A THAT'S TRUE.

9 Q AND YOU CAN DO A P.C.R. TEST WITH JUST A VERY LITTLE
10 BIT OF MATERIAL, IS THAT RIGHT?

11 A THAT'S CORRECT.

12 Q OKAY. AND IT WOULD HAVE BEEN POSSIBLE TO RUN THAT
13 P.C.R. TEST FROM THOSE FINGERNAIL SCRAPINGS, ISN'T THAT
14 RIGHT?

15 A I CAN'T TELL YOU THAT THAT WOULD BE THE CASE.

16 Q OKAY.

17 A YOU FIRST WOULD HAVE TO TAKE THEM THROUGH CERTAIN
18 PROCESSES BEFORE YOU EVEN ESTABLISH THAT YOU WOULD HAVE
19 ENOUGH SAMPLE TO EVEN GET A P.C.R. PRINT.

20 Q OKAY. BUT ISN'T IT POSSIBLE THAT THOSE SCRAPINGS
21 COULD HAVE BEEN USED TO GET RESULTS FROM THE P.C.R. TEST?

22 A OF COURSE, IT'S POSSIBLE.

23 Q OKAY. AND THAT TEST HAD THE POTENTIAL TO EXCLUDE MR.
24 TERRY AS THE SOURCE OF THOSE SCRAPINGS, RIGHT?

25 A WELL, THAT'S TRUE WITH ANY TEST---

- 1 Q THAT'S CORRECT.
- 2 A ---YOU HAVE THE POSSIBILITY TO INCLUDE OR EXCLUDE.
- 3 Q OKAY. AND -- AND YOU DIDN'T DO P.C.R. WHY?
- 4 A I DID NOT SEND THEM OFF FOR P.C.R. I CONCENTRATED ON
- 5 THE VAGINAL WASH AND THE ANAL SWABS BECAUSE I HAD ENOUGH
- 6 D.N.A. THERE.
- 7 Q OKAY. BUT YOUR LAB HAS IN THE PAST SENT SAMPLES OFF
- 8 FOR P.C.R. TESTING, IS THAT RIGHT?
- 9 A YES, WE HAVE.
- 10 Q OKAY. BUT IT WASN'T DONE IN THIS CASE?
- 11 A NO, IT WAS NOT.
- 12 Q OKAY. I WANT TO TALK WITH YOU A LITTLE BIT ABOUT THE
- 13 AUTORADIOGRAPH RESULTS. IS THAT THE WAY TO SAY IT? IS
- 14 THAT THE RIGHT WORD? AUTORADIOGRAPH?
- 15 A AUTORADIOGRAPH.
- 16 Q AUTORADIOGRAPH.
- 17 A UH-HUH.
- 18 Q OKAY. WHEN YOU CONDUCT THESE TESTS, YOU INSERT A
- 19 SERIES OF PROBES INTO THE D.N.A. THAT YOU EXTRACT, IS THAT
- 20 BASICALLY HOW IT'S DONE?
- 21 A OKAY. LET'S SEE. I COULD EXPLAIN THAT SIMPLY TO
- 22 YOU.
- 23 YOU ARE TAKING THE BEGINNING -- YOU ARE TAKING
- 24 THE BEGINNING AND PUTTING IT WITH THE END AND THERE'S A
- 25 PROCESS ALL THROUGH THE MIDDLE. SO TELL ME EXACTLY WHERE

1 YOU -- WHERE WOULD YOU LIKE ME TO START, I CAN DO THAT.

2 Q OKAY. WELL, LET'S START WHEN YOU'VE GOT YOUR

3 SOUTHERN BLOT?

4 A OKAY.

5 Q OKAY.

6 A OKAY. I HAVE A SOUTHERN BLOT AND WHAT THAT MEANS IS

7 THAT I HAVE -- ONCE THE SOUTHERN BLOT IS OVER, I HAVE A

8 NYLON MEMBRANE, OKAY.

9 Q THAT'S RIGHT.

10 A AND THE D.N.A. IS ON THE NYLON MEMBRANE. IT'S

11 ATTACHED TO IT. AND THAT'S WHAT I UTILIZE THE -- TO GO

12 FROM PROBE TO PROBE TO DEVELOP A D.N.A. PROFILE.

13 Q OKAY. SO YOU SAY PROBE FOR PROBE YOU---

14 A FROM PROBE TO PROBE TO DEVELOP A D.N.A. PROFILE.

15 Q OKAY. AND YOU USED HOW MANY PROBES IN THIS CASE?

16 A SEVEN.

17 Q SEVEN PROBES?

18 A I WAS ABLE TO GET A SEVEN-PROBE MATCH.

19 Q OKAY. LET ME SEE WHAT I'VE GOT HERE. I GUESS I WANT

20 TO START OUT TALKING ABOUT PROBE ONE, OKAY?

21 A WHAT DO YOU CONSIDER PROBE ONE?

22 Q WELL, AREN'T YOUR PROBES NUMBERED?

23 A WELL, WHAT -- WHAT -- WHAT -- AND I DON'T KNOW --

24 TELL ME WHAT YOU ARE READING AND THEN I COULD TELL YOU

25 EXACTLY WHAT YOU'RE TALKING ABOUT.

1 Q I'M LOOKING FROM -- LET ME SHOW YOU WHAT I'VE GOT SO
2 YOU CAN SEE. SEE IF YOU HAVE GOT THE SAME STUFF.

3 A OKAY. WHAT -- WHAT YOU ARE TALKING ABOUT D1S7 AND
4 THE D1 MEANS WHAT CHROMOSOME AND THE S7 MEANS WHAT POSITION
5 ON THAT CHROMOSOME.

6 Q OKAY. SO -- SO THIS NUMBER---

7 A DOES NOT MEAN THAT IT'S PROBE NUMBER ONE.

8 Q RIGHT. I UNDERSTAND IT DOESN'T MEAN THE FIRST ONE
9 YOU DID.

10 A OKAY.

11 Q THAT'S JUST THE---

12 A CHROMOSOME NUMBER ONE---

13 Q ---SORT OF THE INDUSTRY NAME FOR THIS STANDARD TYPE
14 OF PROBE THAT'S USED?

15 A WELL, NOT DEFINITELY INDUSTRY. THAT'S WHO DEVELOPED
16 THE PROBE. THEY HAVE TO GIVE IT IDENTIFICATION SO YOU CAN
17 KNOW EXACTLY WHERE IT CAME FROM---

18 Q UH-HUH.

19 A ---SO THAT THE NEXT PERSON WHO IS LOOKING FOR A NEW
20 PROBE WON'T IDENTIFY THE SAME PROBE AGAIN.

21 Q OKAY. OKAY. WELL, LET ME ASK YOU THIS. WHEN YOU
22 DID THE PROBE D1S7, YOU GOT A D.N.A. FRAGMENT THAT WAS
23 GREATER THAN TEN THOUSAND NINETY BASE PAIRS, IS THAT RIGHT?

24 A I'VE GOT A LOT OF PAPERS TO LOOK THROUGH.

25 Q I UNDERSTAND. I UNDERSTAND. IT'S A LOT OF

1 PAPERWORK.

2 A OKAY. WHAT YOU ARE REFERRING TO IS THE D.N.A.
3 PROFILE DEVELOPED FROM MS. JACKSON WHICH IS ABOVE TEN
4 THOUSAND.

5 Q OKAY. IT WAS OVER TEN THOUSAND NINETY, RIGHT?

6 A YES.

7 Q OKAY. AND YOU ALSO GOT A D.N.A. FRAGMENT OF GREATER
8 THAN TEN THOUSAND NINETY BASE PAIRS WHEN YOU USED PROBE --
9 LET'S SEE, PROBE D4S139, IS THAT CORRECT?

10 A YES.

11 Q OKAY. NOW, MS. GALLMAN, ISN'T IT TRUE, THAT OTHER
12 STATE POLICE LABS WHEN THEY GET AN AUTORAD WITH D.N.A.
13 BANDS GREATER THAN TEN THOUSAND NINETY BASE PAIRS, THEY
14 DON'T USE THEM, ISN'T THAT CORRECT?

15 A OKAY. LET ME EXPLAIN. YOU HAVE A MISUNDERSTANDING
16 ABOUT ONE THING.

17 IT'S THAT -- WHAT YOU ARE LOOKING AT IS THE
18 D.N.A. PROFILE OF MS. JACKSON---

19 Q UH-HUH.

20 A ---OKAY? AND THAT PROFILE IS DEVELOPED -- LET ME
21 EXPLAIN IT. WHEN YOU EXTRACT D.N.A. FROM A VAGINAL OR
22 VULVA OR ANAL TYPE SWAB, YOU'RE GETTING D.N.A. THAT'S
23 COMING FROM THE VICTIM AND THE SUBJECT IN A PARTICULAR CASE
24 AND WHAT WE DO IS THE FIRST FRACTION THAT COMES OFF WILL BE
25 COMING FROM THE VICTIM. IN THE AREA OF THE VAGINAL AREA OR

1 SKIN, THEY ARE CALLED EPITHELIAL CELLS AND THEY BREAK OPEN
2 REAL EASY, OKAY. AND THAT WILL COME OFF IN THE FIRST
3 FRACTION AND ALL THE SPERMS IN THAT SOUP -- WE ARE GOING TO
4 SPIN THEM DOWN AND THEY'RE GOING TO MAKE A PELLET IN THE
5 BOTTOM OF THE TUBE. TAKE OFF THAT FIRST FRACTION AND ADD
6 SOME MORE SOLUTION TO THAT TUBE. AND WHEN YOU DO THAT,
7 WE'RE ADDING ALSO ANOTHER REAGENT THAT'S CAPABLE OF
8 BREAKING OPEN THE SPERM HEAD AND WHAT SHE IS TALKING ABOUT
9 IS THE FIRST FRACTION WHICH BELONGED TO MS. JACKSON AND HER
10 BANDS ARE ABOUT TEN THOUSAND, BUT WHAT I'M COMPARING FOR
11 THE STATISTICAL PURPOSES TO DEVELOP, DECIDE WHETHER I HAVE
12 A MATCH BETWEEN MR. TERRY AND THE SEMEN FOUND THERE IS HIS
13 D.N.A. PROFILE AND HIS BANDS ARE NOT ABOVE TEN THOUSAND.
14 AND WE DO, TOO, ALSO IN OUR LAB, UTILIZE THE POLICY THAT IF
15 YOU ARE ABOVE TEN THOUSAND, IF YOUR BANDS FALL ABOVE TEN
16 THOUSAND BASE PAIRS, THEN WE DO NOT CALL THAT PARTICULAR
17 PROBE.

18 BUT WHAT SHE IS LOOKING AT IS THE D.N.A. PROFILE
19 OF MS. JACKSON AND WHAT I AM BASING MY STATISTICAL
20 EVALUATION ON IS THE D.N.A. PROFILE OF MR. TERRY.

21 Q SO YOU'RE SAYING THAT OTHER LABS WOULD USE THOSE
22 RESULTS?

23 A NO, I'M SAYING IT DEPENDS ON THE STATE. SOME STATES
24 HAVE SET UP A CERTAIN PROCEDURE WHERE THEY ARE ABLE TO --
25 WHERE THEY DO CALL THEM. WE DON'T. TO ERR ON THE

1 CONSERVATIVE SIDE, WE DECIDED THAT WE WILL NOT CALL BANDS
2 ABOVE TEN THOUSAND, BUT LIKE I'M TRYING TO EXPLAIN TO YOU
3 IS THAT, THAT WHAT YOU'RE LOOKING AT IS A D.N.A. PROFILE OF
4 MS. JACKSON AND NOT THE D.N.A. PROFILE OF GARY TERRY. HIS
5 BANDS ARE NOT ABOVE TEN THOUSAND.

6 Q SO YOU'RE SAYING HER BANDS WOULDN'T GET INTO HIS?

7 A SAY THAT AGAIN? I DON'T---

8 Q ARE YOU SAYING HER BANDS WOULD NOT GET INTO HIS
9 BANDS?

10 A NO. I'M NOT SAYING THAT. THAT HIS BANDS WILL NOT
11 GETTING -- THEY -- THEY COULD VERY WELL BE IN THE SAME
12 LANE, BUT THAT PARTICULAR D.N.A. PROFILE THAT YOU ARE
13 LOOKING AT BELONGS TO HER WHO IS THE VICTIM IN THIS---

14 Q SO YOU'RE SAYING YOU SEPARATED THEM OUT?

15 A IT'S POSSIBLE TO SEPARATE THEM OUT, BUT IF YOU LOOK
16 AT THE AUTORADS, YOU'LL SEE IN THE FIRST FRACTION, YOU'LL
17 SEE HER. IN THE SECOND FRACTION, YOU'LL SEE HIM---

18 Q UH-HUH.

19 A ---NOW, IF THE D.N.A. -- IF THE D.N.A. FROM THE SPERM
20 STARTS TO DEGRADE OVER TIME, THE SPERM HEAD WILL BREAK OPEN
21 AND YOU CAN GET SOME OFF THE D.N.A. FROM THE SPERM FALLING
22 IN THE FEMALE FRACTION. YOU CAN HAVE THAT.

23 Q CAN THE FEMALE FRACTION FALL INTO THE MALE FRACTION?

24 A YES---

25 Q OKAY.

1 A ---IT CAN. BECAUSE WHAT YOU'RE DOING IS YOU'RE
2 PELLETING THE SPERM DOWN TO THE BOTTOM OF THE TUBE AND
3 YOU'RE TRYING TO BE VERY CAREFUL NOT TO PULL ANY OF THE
4 SPERM UP WHEN YOU TAKE OFF THAT FIRST SOUP. AND SOMETIMES
5 YOU LEAVE A TINY BIT OF THE SOUP -- A SMALL AMOUNT OF THE
6 SOUP IN THE TUBE WITH THE PELLET -- THE PELLET AT THE
7 BOTTOM OF THE TUBE AND THAT COULD CONTAIN THE D.N.A. FROM
8 THE VICTIM.

9 Q OKAY. WELL, THAT'S INTERESTING, BUT, I GUESS, WHAT
10 I'M ASKING AND I THINK YOU HAVE ANSWERED THAT QUESTION --
11 THE QUESTION. SOME LABS WOULD NOT ACCEPT YOUR FINDINGS ON
12 D1S7 AND D4S139 AS RESULTS THEY COULD USE?

13 A IF YOU ARE TALKING -- OUR LAB DOES THE SAME THING.
14 IF YOU ARE TALKING ABOUT THE STATISTICAL VALUE THAT I'M
15 TRYING TO ESTABLISH, THE NUMBER LIKE ONE IN 33 BILLION---

16 Q UH-HUH.

17 A ---WHEN IT GETS TO THAT POINT, WE DO NOT UTILIZE
18 THOSE IN COMING TO THE FINAL RESULTS. IN THIS PARTICULAR
19 CASE, THE BANDS THAT ARE ABOVE TEN THOUSAND BELONG TO THE
20 VICTIM. I AM NOT DEVELOPING A MATCH BETWEEN THE D.N.A.
21 FROM THE VICTIM AND HER FEMALE FRACTION. I'M DEVELOPING A
22 D.N.A. PROFILE THAT MATCHES THE SEMEN PART, THE SPERM PART,
23 FROM THE FRACTION.

24 Q ARE YOU SAYING THEN -- DID YOU USED THESE TWO PROBES
25 IN REACHING YOUR STATISTICAL RESULTS?

1 A YES, I DID, BUT IF YOU---

2 Q OKAY. SO MY QUESTION IS -- MY QUESTION IS---

3 MR. CHASE: YOUR HONOR, WE WOULD ASK THAT AGENT
4 GALLMAN BE ALLOWED TO FINISH HER ANSWER.

5 THE COURT: MA'AM, IF YOU NEED TO EXPLAIN YOUR
6 ANSWER, YOU MAY DO SO.

7 THE WITNESS: WOULD IT BE POSSIBLE FOR ME TO SHOW
8 THE JURY THESE PARTICULAR PAIRS THAT SHE'S TALKING ABOUT?
9 IT WILL BE MUCH EASIER.

10 MS. FULLWOOD: WELL, THAT'S WELL AND GOOD, BUT I
11 -- I'VE GOT A QUESTION I WANT YOU TO ANSWER.

12 A OKAY. WELL, THE---

13 Q MAYBE IF -- MAYBE IF YOU---

14 A WOULD YOU REPEAT YOUR QUESTION TO ME THEN?

15 Q OKAY. OKAY. THE QUESTION IS THIS, MA'AM.

16 ISN'T IT TRUE THAT SOME STATES WOULD NOT USE
17 THESE TWO PROBES IN CALCULATING THE STATISTICAL
18 PROBABILITIES BECAUSE YOU GOT RESULTS GREATER THAN TEN
19 THOUSAND AND NINETY?

20 A YES. THERE ARE LABS AND OUR LAB IS THE SAME WAY
21 ALSO. I DID NOT UTILIZE THESE PARTICULAR BANDS IN COMING
22 UP WITH MY STATISTICAL PROBABILITY BECAUSE THOSE BANDS
23 BELONG TO THE VICTIM IN THIS PARTICULAR CASE.

24 THE BANDS THAT I DID A MATCH BETWEEN WITH THE
25 SAMPLES ARE THE ONES THAT ARE COMING FROM MR. TERRY AND HIS

1 BANDS ARE NOT ABOVE TEN THOUSAND.

2 Q OKAY. NOW, IN FACT, WE WERE TALKING ABOUT THE
3 FRAGMENTS LEAVING AND GETTING INTO EACH OTHER. IN D7S467,
4 MS. JACKSON HAS A BAND -- ONE OF HER OWN BANDS IS -- GETS
5 INTO THIS UNKNOWN MALE---

6 A YES.

7 Q ---SAMPLE, IS THAT CORRECT?

8 A THAT'S TRUE.

9 Q SO THE MALE AND THE FEMALE PART DID NOT EXACTLY
10 SEPARATE IN THAT, DID IT?

11 A LIKE I -- LIKE I SAID BEFORE, WHEN WE -- THE FIRST
12 SOLUTION THAT WE ADD TO THE SWAB, WHICH WOULD BE A COTTON
13 SWAB, WE PUT IT IN THE TUBE, WE PUT A SOLUTION ON IT, AN
14 REAGENT, AND WHAT -- WHAT IT'S THERE FOR IS TO BREAK OPEN
15 THE EPITHELIAL CELLS.

16 WE TAKE THAT SOUP OFF AND, AS I SAID, WE SPIN
17 DOWN THE SPERM AND IT SHOULD PELLET IN THE BOTTOM OF THE
18 TUBE. YOU'RE TRYING TO KEEP FROM DISRUPTING THAT PELLET
19 AND SO YOU MIGHT LEAVE SOME RESIDUAL FLUID ON TOP OF THAT,
20 THAT PELLET, AND THAT FLUID WILL CONTAIN THE VICTIM'S
21 D.N.A., THE D.N.A. FROM THE EPITHELIAL CELLS.

22 Q OKAY. LET'S LOOK -- DO YOU HAVE YOUR D7 MATERIAL IN
23 FRONT OF YOU RIGHT NOW?

24 A YES.

25 Q OKAY. LET'S LOOK AT THIS A LITTLE BIT MORE IN

1 ANOTHER RESPECT.

2 ON LANE THREE, LOOKING AT BAND ONE, YOU'VE GOT
3 4975BP---

4 A UH-HUH.

5 Q ---AND THEN ON LANE FOUR, WHICH WOULD BE THE SAME
6 SAMPLE, ON THAT SAME BAND, YOU'VE GOT 5014BP. NOW, HOW
7 COULD THAT BE? IT'S A DIFFERENT NUMBER.

8 A YES. IT'S A DIFFERENT NUMBER AND WHAT SHE'S TALKING
9 -- EXCUSE ME. I EXTRACTED MS. JACKSON'S BLOOD TWICE AND
10 THE REASON BEING IS THAT HER BLOOD WAS PRETTY MUCH DEGRADED
11 AND I WAS TRYING TO GET A SUITABLE SAMPLE TO USE AS A
12 STANDARD. AND SHE'S TALKING ABOUT THE FACT THAT WHEN YOU
13 LOOK AT THE -- WHEN YOU SIZE -- UTILIZE THE COMPUTER TO
14 SIZE THE BAND, I HAVE DIFFERENT SIZES.

15 THE ONLY WAY YOU CAN KNOW EXACTLY WHAT A SIZABLE
16 BAND IS IF YOU DO THE SEQUENCE. THAT MEANS YOU GO DOWN TO
17 THE VERY LAST BASE ON THAT STRETCH OF D.N.A. AND IT SAYS
18 THAT IT'S A THOUSAND. NOT 999, BUT IT'S A THOUSAND.

19 IN OUR PROCEDURE, WE ARE LOOKING AT -- WE UTILIZE A
20 LADDER TO HELP US GET THE SIZE OF THESE PARTICULAR BANDS.

21 WOULD IT BE POSSIBLE FOR ME TO SHOW THEM WHAT YOU
22 ARE TALKING ABOUT?

23 Q LET ME SEE WHAT YOU WANT TO SHOW---

24 A THAT WOULD HELP -- EXACTLY WHAT YOU'RE TALKING ABOUT.
25 THAT AND THIS ONE HERE (INDICATES).

1 Q SURE. COME ON. YOU CAN SHOW THAT.

2 A OKAY. (WITNESS COMPLIES.)

3 THE COURT: IF YOU WOULD, KEEP YOUR VOICE UP,
4 PLEASE, AGENT GALLMAN?

5 THE WITNESS: YES, SIR.

6 OKAY. ONCE WE DEVELOP AN AUTORAD -- AN AUTORAD
7 IS A PIECE OF X-RAY FILM THAT YOU PUT AGAINST THAT NYLON
8 MEMBRANE I WAS TALKING ABOUT. ON THAT NYLON MEMBRANE,
9 YOU'RE FIND THE D.N.A. AND WE TAKE A RADIOACTIVE PROBE AND
10 PUT IT AGAINST THAT NYLON MEMBRANE.

11 THE RADIOACTIVE PROBE ATTACHES ITSELF TO THE
12 D.N.A. ON THAT MEMBRANE. YOU PUT IT AGAINST THE X-RAY FILM
13 AND IT WILL CAUSE IT TO LIGHT UP. OKAY.

14 THIS PICTURE THAT YOU ARE LOOKING AT IS WHAT THE
15 COMPUTER PUTS OUT AFTER IT CAPTURES THE IMAGE OF AN
16 AUTORAD AND YOU SEE THE BANDS HERE WHICH ARE LADDERS THAT
17 WE UTILIZE TO DETERMINE THE SIZE OF OUR BANDS THAT ARE
18 FOUND WITHIN THE LADDERS.

19 OKAY. HERE IS A CONTROL AND THAT'S A CONTROL.
20 OKAY. THEY ARE CONTROLS THAT WE UTILIZE IN OUR LABS.

21 IF THOSE CONTROL DON'T RUN PROPERLY, THEN THE
22 WHOLE THING IS THROWN OUT. YOU CANNOT USE THEM.

23 OKAY. SO THAT'S THE FIRST THING YOU DO.
24 ESTABLISH THAT YOUR CONTROLS ARE RAN PROPERLY.

25 IF YOU LOOK IN LANE THREE AND LANE FOUR, THAT'S

1 FROM THE BLOOD OF MS. JACKSON, OKAY. AND AS YOU CAN SEE IN
2 LANE THREE, YOU DON'T HAVE THAT MUCH SO I WENT BACK AND
3 EXTRACTED IT AGAIN TO TRY TO GET A BETTER STANDARD BECAUSE
4 THE BLOOD ITSELF WAS DEGRADED CAUSING THE D.N.A. TO BE
5 DEGRADED, OKAY.

6 THEN, IF YOU GO OVER BETWEEN THE NEXT SET OF
7 LADDERS, YOU ARE LOOKING AT THE FIRST FRACTION. AS I WAS
8 TELLING YOU ABOUT, YOU TAKE OFF THE FIRST SOUP AND YOUR
9 PELLET, THE SPERM AT THE BOTTOM OF THE TUBE, THAT'S COMING
10 FROM HER FIRST FRACTION, HER EPITHELIAL CELLS.

11 THE NEXT LANE IS FROM THE SPERM. AFTER YOU CRACK
12 OPEN THE SPERM HEAD, YOU'VE GOT THE D.N.A. FALLING OUT AND
13 THAT'S THE SPERM -- THE D.N.A. FROM THE SPERM.

14 AND NEXT, YOU'LL FIND ANOTHER FIRST FRACTION AND
15 THEN THE SECOND FRACTION WHICH IS COMING FROM THE SPERM.
16 AND AS SHE WAS TALKING ABOUT THAT, THAT I HAD A MIXTURE OF
17 HER AND HIM, YOU CAN SEE HER TOP BAND HERE AND THEN HIS
18 HERE AND THEN HER BOTTOM BAND RIGHT THERE (INDICATES).

19 Q OKAY.

20 A OKAY. SO THAT'S WHAT THAT IS. OKAY. NOW, LET ME
21 TAKE THIS---

22 Q WELL, I THINK YOU'VE PRETTY MUCH ANSWERED THAT
23 QUESTION---

24 A YEAH, BUT I NEED TO EXPLAIN THAT.

25 IF YOU LOOK AT THIS, YOU DON'T SEE HIS STANDARD

1 AT ALL ON THIS PARTICULAR PICTURE, OKAY. HIS STANDARD WAS
2 RECEIVED LATER.

3 Q YOUR HONOR, I THINK WE'RE GETTING PAST IN RESPONSE TO
4 THE QUESTION.

5 THE COURT: WELL, MA'AM, SHE CAN EXPLAIN HER
6 ANSWER IF SHE SO DESIRES.

7 THE WITNESS: I DIDN'T WANT TO LEAVE YOU WITH A
8 HALF PICTURE, OKAY. SO I GOT THE STANDARD LATER AND RAN IT
9 SEPARATELY AND THAT'S HIS STANDARD RIGHT IN THE MIDDLE.
10 SEE THE CONTROL HERE (INDICATES), CONTROL THERE (INDICATES).
11 RIGHT. AND THEN HIS STANDARD IN THE MIDDLE. AND I USED
12 THAT -- THAT THE SIZING OF THAT PARTICULAR BAND TO COMPARE
13 TO THESE BANDS THAT I FOUND IN THE EVIDENCE, OKAY.

14 AND WHAT SHE WAS ASKING ME ABOUT THE DIFFERENCE
15 IN THE SIZES IS THAT YOU ARE USING THE -- THE COMPUTER
16 PICKS UP THE BAND SIZES AND IT GIVES YOU AN ESTIMATE OF THE
17 SIZE OF THE BAND AND THAT -- THAT PARTICULAR BAND WOULD
18 HAVE TO FALL IN A CERTAIN RANGE IN ORDER FOR US TO CALL IT
19 A MATCH AND THEY DO ON BOTH STANDARDS. THE FIRST SAMPLE
20 THAT I EXTRACTED AND THE SECOND ONE.

21 Q SO YOU'RE SAYING THE COMPUTER GIVES YOU A RANGE?

22 A NO. THE COMPUTER DOESN'T GIVE US A RANGE. THE RANGE
23 WAS ESTABLISHED BY US DOING REPRODUCIBILITIES STUDIES TO
24 FIND OUT A RANGE.

25 Q OKAY. BUT THE COMPUTER LOOKS AT THE STUFF AND IT

1 GIVES YOU A RANGE. WHO DECIDES ON THE EXACT NUMBER TO
2 ASSIGN TO EACH---

3 A BASED ON THE LAB, THE SIZES OF THE LADDER, THAT'S
4 WHERE YOU GET THE SIZES OF THE BANDS.

5 Q OKAY. OKAY.

6 NOW, LET'S LOOK ON PROBE D2, YOU TALK ABOUT
7 PARTIAL DIGESTION BANDS. WHAT DID YOU MEAN BY THAT?

8 A YOU KNOW IT SEEMS LIKE WE'RE PUTTING THE CART BEFORE
9 THE HORSE, BUT LET ME EXPLAIN TO YOU WHAT -- WHAT SHE'S
10 TALKING ABOUT PARTIAL DIGESTION BANDS.

11 WHEN YOU GET D.N.A., IT'S ALL INTACT. EVERYTHING
12 IS INTACT AND WHAT WE DO IS WE DIGEST IT OUT, CUT IT UP
13 WITH AN ENZYME. WE PUT IT IN WITH THE D.N.A. AND IT WILL
14 CUT AT A SPECIAL SITE. IT WILL RECOGNIZE A SPECIAL SITE
15 AND ONCE THE D.N.A. HAS BEEN DIGESTED, THEN WE WOULD RUN IT
16 OUT ON -- SPREAD IT OUT ON WHAT'S TERMED A GEL AND YOU USE
17 AN ELECTRIC CURRENT TO MAKE IT MOVE BETWEEN A GEL.

18 THIS GEL IS REAL FLIMSY BECAUSE IT'S JUST LIKE --
19 SIMILAR TO JELL-O. SO THAT'S WHY, WHEN WE ARE TALKING
20 ABOUT THE NYLON MEMBRANE AND THE SOUTHERN BLOT, I'M MOVING
21 THE D.N.A. OUT OF THAT FLIMSY GEL ONTO A NYLON MEMBRANE SO
22 I CAN RE-USE THAT NYLON MEMBRANE OVER AND OVER AGAIN TO DO
23 ALL SEVEN OF THE PROBES. I WOULD NOT BE ABLE TO DO THAT
24 WITH THE GEL THAT THE D.N.A. IS IN AT FIRST BECAUSE AFTER
25 THE FIRST PROBING, LIKE JELL-O, IT'S GONE, OKAY.

1 SO WHEN I DIGESTED THE D.N.A., CUT IT UP,
2 SOMETIMES THE D.N.A. DOES NOT CUT TO COMPLETION. AND WHEN
3 YOU TALK ABOUT PARTIAL DIGESTION, THAT'S WHAT IT IS, IT'S
4 PARTIALLY DIGESTED.

5 Q OKAY. SO BASICALLY, IT DIDN'T PERFORM PROPERLY THE
6 FIRST TIME SO YOU NEEDED TO DO IT A SECOND TIME?

7 A NO. WHAT -- WHEN YOU DIGEST THE D.N.A. WITH THE
8 ENZYME AND YOU -- THE FIRST THING YOU WOULD, YOU LOOK AT A
9 PICTURE TO SEE IF IT DIGESTED PROPERLY AND WITH SOME
10 PROBES, THEY PICK UP PARTIAL DIGESTION BANDS MORE READILY
11 THAN OTHERS AND WITH THE D2 THAT'S ONE, IT DOES THAT. IT
12 WILL SHOW UP THE PARTIALLY DIGESTED BAND MORE SO, BUT IT
13 DOES NOT CHANGE THE D.N.A. PROFILE.

14 WE HAVE DONE STUDIES THAT MAKE IT -- MAKE US ABLE
15 TO HELP US TO BE ABLE TO SAY THAT THESE ARE PARTIAL
16 DIGESTION BANDS, YOU KNOW, BECAUSE WE'VE SEEN THEM OVER THE
17 YEARS AND THESE ARE PARTIAL DIGESTION BANDS AND YOU GET
18 THEM; AND WE KNOW THAT IF THIS PARTICULAR BAND IS A PARTIAL
19 DIGESTION BAND, BASED ON THE SIZE, AFTER YOU DO THE SIZING
20 WITH THE COMPUTER.

21 Q OKAY. NEXT, I WOULD LIKE TO TALK ABOUT PROBE 17.

22 AND IT'S INTERESTING -- DO YOU HAVE THE MATERIAL
23 YOU NEED?

24 A YES.

25 Q IT'S INTERESTING IN THE SAMPLE FROM MS. JACKSON THAT

1 THERE'S ONLY ONE LANE?

2 A THERE'S WHAT?

3 Q THERE'S ONLY ONE BAND ON THE TEST DONE ON MS.

4 JACKSON'S BLOOD. WHY IS THAT?

5 A OKAY. THERE'S ONLY ONE BAND. THAT MEANS THAT SHE --

6 SHE HAS A SINGLE BAND AT THAT PARTICULAR AREA. IT COULD

7 ALSO MEAN THAT, LIKE I SAID, YOU GET PART OF YOUR D.N.A.

8 FROM YOUR MOTHER AND PART FROM YOUR FATHER. IT COULD ALSO

9 MEAN THAT THEIR BANDS ARE SIMILAR IN LENGTH, MEANING THAT

10 THEY -- IT APPEARS TO BE ONE BAND, BUT IT COULD BE TWO

11 BANDS SITTING ON TOP OF EACH OTHER AND SINCE WE DO NOT HAVE

12 THE EXACT SEQUENCE OF THAT BAND, WE DON'T KNOW WHETHER

13 THERE COULD BE ANOTHER BAND UNDER IT.

14 ALSO, THE SECOND -- IT'S POSSIBLE THAT IF YOU

15 LOOK AT HOW LOW THAT PARTICULAR BAND'S ON THE GEL, RIGHT, ..

16 HER BAND COULD HAVE BEEN MUCH SMALLER AND NOT APPARENT ON

17 THE GEL.

18 Q BUT THAT COULD BE JUST ONE BAND? THE SAME GENE FROM

19 BOTH PARENTS?

20 A THAT'S HIGHLY UNLIKELY.

21 Q SO YOU THINK ONE OF THE BANDS IS MISSING THEN?

22 A LIKE I SAID, THEY COULD BE ON TOP OF EACH OTHER. AS

23 I SAID EARLIER, WE DO NOT GIVE THE EXACT SIZES FOR THE

24 PARTICULAR BAND. SO THEY COULD BE RUNNING TOGETHER ON THAT

25 PARTICULAR GEL.

1 Q AND I NOTICED ALSO THAT ON THAT SAME PROBE WHEN YOU
2 DID MR. TERRY'S KNOWN SAMPLE, YOU JUST GOT ONE BAND ON HIM,
3 TOO?

4 A UH-HUH. WITH THIS PARTICULAR PROBE D17---

5 Q UH-HUH.

6 A ---A LOT OF TIMES YOU WILL JUST SEE SINGLE BANDS, BUT
7 IF YOU LOOK AT OUR FREQUENCY SHEET HOW WE GET -- DO OUR
8 STATISTICS, IT'S TAKEN DIFFERENTLY THAN THE OTHER PROBES
9 WITH TWO ALLELES.

10 Q OKAY. WELL, MS. JACKSON'S BAND AND THE BAND THAT MR.
11 TERRY HAD FROM THE KIT THAT THEY GAVE YOU, THEY ARE IN A
12 VERY SIMILAR LOCATION, RIGHT, IN THE---

13 A UH-HUH. YOU WILL FIND THAT WITH D17 THAT THEY ARE
14 SIMILAR---

15 Q OKAY. IT WOULD ALMOST BE LIKE THEY HAD THE SAME
16 GENE, RIGHT?

17 A NO. I WOULDN'T SAY THAT.

18 Q WELL, THE SAME PIECE OF D.N.A.?

19 A NO, I STILL WOULDN'T SAY THAT.

20 Q YOU WOULDN'T SAY IT'S A SIMILAR PIECE OF D.N.A.?

21 A IT'S SIMILAR, BUT I WOULDN'T SAY IT'S THE SAME
22 BECAUSE THERE'S LIMITATIONS WHEN YOU COME TO THE GEL AND
23 YOU CAN RUN IT LONGER. IF YOU RAN THE GEL LONGER, IF YOU
24 HAD A LONG, LONG GEL WHICH OURS IS ABOUT THIS
25 LONG(INDICATES). IF YOU HAD A LONG, LONG, LONG GEL, OKAY?

1 THEN YOU PROBABLY COULD SEE A SEPARATION THAT WAS MUCH
2 LARGER THAN YOU SEE ON OUR PARTICULAR GEL.

3 Q OKAY. WELL, THESE -- IS IT FAIR TO SAY THAT ON THIS
4 PARTICULAR PROBE, YOU FOUND A VERY SIMILAR PIECE OF D.N.A.
5 BOTH IN MS. JACKSON AND MR. TERRY?

6 A YES.

7 Q OKAY. AND AS FAR AS YOU KNOW, THEY ARE NOT RELATED
8 TO EACH OTHER, RIGHT?

9 A AS FAR AS I KNOW.

10 Q AND IS YOUR INFORMATION MS. JACKSON WAS AN ASIAN
11 FEMALE?

12 A THAT'S WHAT I HEARD.

13 Q UH-HUH. AND, OF COURSE, MR. TERRY IS A CAUCASIAN
14 MALE THAT YOU CAN KIND OF EYEBALL FROM LOOKING AT HIM? TO
15 ALL APPEARANCES, HE'S A CAUCASIAN MALE?

16 A OKAY.

17 Q IS THAT FAIR?

18 A YES.

19 Q OKAY. YET, YET IT APPEARS THEY HAVE A VERY SIMILAR
20 PIECE OF D.N.A.?

21 A YES.

22 Q OKAY. OKAY. SO THEN THAT LITTLE TWO PERCENT YOU'RE
23 LOOKING AT OF THE -- YOU KNOW, YOU SAY YOU JUST LOOK AT A
24 SMALL LITTLE BIT OF D.N.A. YOU DON'T LOOK AT THE WHOLE
25 THING, YOU JUST LOOK AT A SMALL BIT, RIGHT? SO IN THAT

1 SMALL BIT, THESE TWO UNRELATED PEOPLE OF DIFFERENT RACES
2 HAD A VERY SIMILAR MAKEUP, IS THAT FAIR TO SAY?

3 A YES. WHEN IT COMES TO THAT PARTICULAR PROBE.

4 Q OKAY. SO NOW, DO YOU THINK IT WOULD BE EVEN A BETTER
5 CHANCE OF TWO RELATED PEOPLE HAVING SIMILAR D.N.A.?

6 A RELATED IN WHAT WAY?

7 Q BLOOD KIN?

8 A OH, YES. THE POSSIBILITY INCREASES THE CLOSER THE
9 RELATIONSHIP.

10 Q OKAY. OKAY. OF COURSE, YOU DIDN'T GET ANY SAMPLES
11 TO TEST ANY MALES RELATED TO MR. TERRY, IS THAT CORRECT?

12 A NO.

13 Q NO---

14 A BUT WE ARE ALSO LOOKING AT SEVEN PROBES AND I'M
15 GIVING YOU STATISTICAL VALUE BASED ON THOSE SEVEN PROBES.

16 Q AND STATISTICAL VALUE, NOTWITHSTANDING ON ONE PROBE,
17 THE D.N.A. WAS -- MAKEUP WAS VERY MUCH ALIKE ON TWO
18 UNRELATED PEOPLE OF A DIFFERENT RACE, IS THAT CORRECT?

19 A WELL, WE DON'T LOOK AT RACE FOR ONE THING AND THEN
20 WHEN -- AGAIN, I'M LOOKING AT -- THE D.N.A. PROFILE IS
21 DEVELOPED FROM SEVEN PROBES. IF I DID TAKE THE D17 BY
22 ITSELF, THE PROBABILITY WOULD DECREASE GREATLY. YOU COULD
23 PROBABLY GET LIKE A NUMBER IN ONE IN TWO HUNDRED, BUT I
24 HAVE SEVEN PROBES AND THAT'S WHY WE'RE UP ONE IN 33 BILLION
25 IN THE CAUCASIAN RACE.

1 Q AND THAT'S -- YOU GET THOSE NUMBERS FROM THE S.L.E.D.
2 DATABASE?

3 A YES.

4 Q HOW MANY PEOPLE ARE IN THAT DATABASE?

5 A WE HAVE A BLACK AND CAUCASIAN DATABASE AND WE HAVE A
6 HUNDRED SAMPLES IN EACH. APPROXIMATELY A HUNDRED, MAYBE
7 MORE.

8 Q SO YOU BASE THE STATISTICS FROM TWO HUNDRED SAMPLES
9 IN YOUR DATABASE?

10 A YES.

11 Q AND WHO GIVES YOU THESE PROFILES TO PUT IN YOUR
12 DATABASE?

13 A IN THE BEGINNING WHEN I FIRST BEGIN WORKING AT
14 S.L.E.D., WE WENT AROUND THE STATE AND COLLECTED RANDOM
15 SAMPLES FROM THE DIFFERENT AREAS IN THE STATE OF SOUTH
16 CAROLINA.

17 Q JUST FROM PEOPLE OFF THE STREET OR LAW ENFORCEMENT
18 OFFICERS OR WHAT?

19 A NO, WE UTILIZED THE HOSPITALS.

20 Q THE HOSPITALS?

21 A UH-HUH.

22 Q WOULD THESE BE FROM LIKE PEOPLE GOING INTO THE
23 EMERGENCY ROOM OR SOMETHING LIKE THAT?

24 A UH -- WE -- THEY DID NOT TELL US EXACTLY -- IT WAS
25 FROM -- YOU COULD HAVE COME IN TO GO IN THE EMERGENCY ROOM,

1 COULD HAVE BEEN THERE FOR SURGERY, COULD HAVE JUST COME IN
2 FOR A PHYSICAL, ANYTHING. IT WAS NOT ANY PARTICULAR SET OF
3 PEOPLE.

4 Q SO YOU CALCULATE YOUR STATISTICS FROM A DATABANK
5 CONTAINING PROFILES FROM TWO HUNDRED PEOPLE?

6 A YES.

7 Q THANK YOU, MA'AM.

8 THE COURT: REDIRECT.

9 MR. CHASE: BRIEFLY, YOUR HONOR.

10 REDIRECT EXAMINATION

11 BY MR. CHASE:

12 Q AGENT GALLMAN, WHEN YOU DISCUSSED EARLIER THAT THERE
13 MIGHT BE SOME RESIDUAL AMOUNTS FROM THE VICTIM THAT WOULD
14 BE LEFT OVER AS YOU EXTRACTED THAT PELLET OF SEMEN OR
15 D.N.A.---

16 A YES.

17 Q ---WOULD THAT AFFECT YOUR RESULTS?

18 A NO, IT WOULD NOT. THE ONLY THING YOU WOULD SEE WOULD
19 BE THE D.N.A. PROFILE FROM THE VICTIM, THE EPITHELIAL CELLS
20 ALONG WITH THE D.N.A. PROFILE FROM THE D.N.A. FOUND IN THE
21 SPERM.

22 Q AND SO, WOULD THAT -- WOULD THAT CHANGE YOUR OPINION
23 WHETHER THAT RESIDUAL AMOUNT WAS THERE OR NOT AS TO THE
24 PROBE ON GARY TERRY?

25 A NO, IT WOULD NOT.

1 Q SO IT WOULDN'T AFFECT YOUR RESULTS AS TO GARY TERRY?

2 A NO.

3 Q THANK YOU, AGENT GALLMAN.

4 THE COURT: RECROSS.

5 MS. FULLWOOD: NOTHING FURTHER.

6 THE COURT: THANK YOU, AGENT GALLMAN. YOU MAY
7 STEP DOWN.

8 ARE YOU ASKING THAT SHE BE EXCUSED?

9 MR. CHASE: YES, SIR.

10 THE COURT: THANK YOU VERY MUCH FOR COMING.

11 (WHEREUPON, THE WITNESS WAS
12 EXCUSED AT THIS TIME.)

13 MR. HUMPHRIES: YOUR HONOR, THE STATE CALLS
14 SAMANTHA JACKSON TO THE STAND.

15 SAMANTHA A. JACKSON,

16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
18 PLEASE.

19 THE WITNESS: SAMANTHA ANN JACKSON.

20 DIRECT EXAMINATION

21 BY MR. HUMPHRIES:

22 Q SAMANTHA, TELL THE JURY, WHAT, IF ANY, RELATION YOU
23 ARE, TO URAI JACKSON.

24 A SHE WAS MY MOTHER.

25 Q WHAT WAS YOUR MOTHER'S RESIDENCE AT THE TIME OF HER

1 DEATH?

2 A 3148 BUCKEYE DRIVE.

3 Q AT THE TIME OF HER DEATH, WAS SHE LIVING WITH SOMEONE
4 OR LIVING ALONE?

5 A SHE WAS LIVING ALONE.

6 Q FOR THE TIME SHE LIVED AT BUCKEYE DRIVE, WHO WERE THE
7 OTHER PEOPLE THAT MIGHT HAVE LIVED WITH HER DURING THAT
8 PERIOD OF TIME?

9 A FOR A PERIOD OF TIME, I, OF COURSE, LIVED AT HOME AND
10 MY BROTHER.

11 Q YOUR BROTHER'S NAME IS---

12 A JOHN.

13 Q HOW LONG DID URAI JACKSON LIVE AT THAT RESIDENCE ON
14 BUCKEYE DRIVE?

15 A WE MOVED THERE IN 1978.

16 Q SHE LIVED THERE CONTINUOUSLY UNTIL HER DEATH?

17 A YES.

18 Q TELL ME THIS, DID YOUR MOTHER DATE TO YOUR KNOWLEDGE?

19 A NO, SHE DID NOT.

20 Q AND DID SHE HAVE ANY CLOSE ACQUAINTANCES WITH WHICH
21 SHE KEPT FREQUENT TOUCH?

22 A NO, NOT REALLY, OTHER THAN THE NEIGHBORS SHE SAW
23 EVERYDAY.

24 Q HOW WOULD YOU DESCRIBE HER AS IT RELATES TO HER
25 RELATIONSHIP WITH OTHER PEOPLE?

- 1 A SHE WAS VERY MUCH A LONER. SHE KEPT A LOT TO
2 HERSELF. SHE DID NOT ENJOY SOCIALIZING, LIKE GOING OUT.
- 3 Q AND I KNOW THIS IS DIFFICULT. IF YOU WILL TRY AND
4 KEEP YOUR VOICE UP JUST A LITTLE BIT.
- 5 A OKAY.
- 6 Q OKAY. WHEN DID YOU MOVE FROM BUCKEYE DRIVE FOR THE
7 LAST TIME?
- 8 A I MOVED OUT IN 1991.
- 9 Q DO YOU KNOW WHEN YOUR BROTHER JOHN WOULD HAVE MOVED
10 OUT?
- 11 A I BELIEVE HE MOVED OUT SOMETIME IN 1993.
- 12 Q FROM THAT TIME ON, SHE WOULD HAVE LIVED BY HERSELF?
- 13 A YES.
- 14 Q WAS YOUR MOTHER -- DID YOU HAVE TO MAINTAIN FREQUENT
15 CONTACT WITH YOUR MOTHER?
- 16 A I MAINTAINED VERY FREQUENT CONTACT WITH MY MOTHER.
- 17 Q DID YOU CHOOSE TO MAINTAIN FREQUENT CONTACT WITH YOUR
18 MOTHER?
- 19 A YES, I CHOSE TO.
- 20 Q ALL RIGHT. DID YOU HAVE TO ASSIST HER IN CERTAIN
21 DAILY ACTIVITIES OR WEEKLY ACTIVITIES?
- 22 A I ASSISTED HER FREQUENTLY WITH HER FINANCES, WRITING
23 CHECKS FOR BILLS, THAT SORT OF THING.
- 24 Q DID YOU ENGAGE IN ANY KIND OF ACTIVITIES AT HER
25 HOUSE, ANY PARTICULAR ACTIVITIES?

1 A I SPENT A LOT OF MY WEEKENDS IN '94 DOING MY LAUNDRY
2 AT HER HOUSE ON THE WEEKENDS.

3 Q YOU HAVE TOLD US ABOUT YOUR RELATIONSHIP WITH URAI
4 JACKSON. DO YOU KNOW GARY DUBOSE TERRY?

5 A YES, I DO.

6 Q HOW DO YOU KNOW GARY DUBOSE TERRY?

7 A I MET HIM SOCIALLY AROUND 1986-'87.

8 Q WAS HE CONNECTED CLOSELY WITH ANY OF YOUR FRIENDS OR
9 ACQUAINTANCES?

10 A YES. HE WAS SEEING A -- MY BEST FRIEND AT THE TIME,
11 DIANNE GIBSON.

12 Q AND FOR HOW LONG, APPROXIMATELY, DO YOU THINK HE SAW
13 DIANNE GIBSON?

14 A I BELIEVE HE SAW HER OFF AND ON FROM 1987 UNTIL
15 REALLY I LOST TOUCH WITH HER PROBABLY IN 1993.

16 Q NOW, DO YOU KNOW FROM YOUR OWN KNOWLEDGE WHETHER OR
17 NOT GARY DUBOSE TERRY EVER LIVED IN THE NEIGHBORHOOD, THE
18 WESTGATE NEIGHBORHOOD?

19 A YES, HE DID.

20 Q WITH WHOM DID HE LIVE?

21 A HE LIVED WITH DIANNE ACROSS THE STREET.

22 Q ACROSS THE STREET FROM WHOM, SAMANTHA?

23 A MY MOTHER'S HOUSE.

24 Q DOES STATE'S EXHIBIT NUMBER SEVEN PROPERLY INDICATE
25 THE LOCATION OF YOUR MOTHER'S HOUSE AND THE PRIOR HOME OF

- 1 GARY TERRY?
- 2 A YES, IT DOES.
- 3 Q LET ME ASK YOU THIS. TO YOUR KNOWLEDGE, WAS GARY
- 4 DUBOSE TERRY LIVING ACROSS THE STREET FROM YOUR MOTHER AT
- 5 THE TIME OF YOUR MOTHER'S DEATH?
- 6 A I WAS NOT AWARE OF IT.
- 7 Q LET ME ASK YOU THIS. WHAT I NEED TO DO AT THIS TIME
- 8 IS TAKE YOU BACK TO MAY OF 1994, SPECIFICALLY THE TIME
- 9 AROUND THE 29TH, 30TH, 31ST OF MAY, OKAY?
- 10 A OKAY.
- 11 Q DID YOU HAVE ANY SPECIFIC PLANS BETWEEN YOU AND YOUR
- 12 MOTHER FOR THAT PERIOD OF TIME?
- 13 A YES, I DID. I NORMALLY WENT ON SATURDAY MORNINGS AND
- 14 DID MY LAUNDRY AT HER HOUSE AND WE SPENT THE DAY PRETTY
- 15 MUCH SOCIALIZING WHILE I DID MY LAUNDRY.
- 16 Q OKAY. ON SATURDAY MORNING BEFORE SHE WAS FOUND ON
- 17 THE 31ST, DID YOU SEE HER THAT DAY?
- 18 A I DID NOT SEE HER.
- 19 Q DID YOU ATTEMPT TO CALL HER THAT DAY AND, I GUESS, WE
- 20 ARE TALKING ABOUT THE 29TH?
- 21 A YES, I DID. I CALLED AND LEFT A MESSAGE FOR HER TO
- 22 CALL ME BACK.
- 23 Q ON THE 29TH, DO YOU RECALL WHETHER YOU GOT THE
- 24 ANSWERING MACHINE OR NOT?
- 25 A I BELIEVE I DID GET THE ANSWERING MACHINE, YES.

- 1 Q DID SHE CALL YOU BACK?
- 2 A NO, SHE DID NOT.
- 3 Q DID YOU ATTEMPT TO CALL HER THE NEXT DAY, SUNDAY?
- 4 A I ATTEMPTED TO CALL HER SEVERAL TIMES.
- 5 Q DID YOU GET THE ANSWERING MACHINE ON SUNDAY?
- 6 A NO, I DID NOT.
- 7 Q DID YOU ATTEMPT TO CALL HER ON MONDAY?
- 8 A YES, I DID.
- 9 Q DID YOU GET ANY RESPONSE AT THAT TIME? WERE YOU ABLE
- 10 TO GET THE ANSWERING MACHINE AT THAT TIME?
- 11 A NO, I DID NOT.
- 12 Q NOW -- AND I KNOW IN RETROSPECT YOU PROBABLY FEEL
- 13 COMPLETELY DIFFERENTLY, BUT AT THAT TIME, DID THAT CONCERN
- 14 YOU GREATLY THAT YOU WERE NOT ABLE TO GET IN TOUCH WITH
- 15 YOUR MOTHER?
- 16 A IT DID NOT CONCERN ME GREATLY, NO---
- 17 Q TELL THE JURY WHY.
- 18 A ---IT WAS A HOLIDAY WEEKEND. IT WAS A HOLIDAY
- 19 WEEKEND.
- 20 Q WHAT WOULD YOUR MOTHER TYPICALLY ENGAGE IN DURING
- 21 HOLIDAY WEEKENDS?
- 22 A SHE WAS A FREQUENT VISITOR TO LAKE MURRAY. SHE LIKED
- 23 TO GO SWIMMING.
- 24 Q WOULD SHE GO IN THE COMPANY OF OTHERS OR BY HERSELF?
- 25 A BY HERSELF.

1 Q DID YOU ATTEMPT TO CALL HER TUESDAY, THE 31ST?

2 A I ATTEMPTED TO CALL HER THAT MORNING.

3 Q WERE YOU ABLE TO GET AN ANSWER TUESDAY, THE 31ST?

4 A NO, I WAS NOT.

5 Q AS A RESULT, WHAT DID YOU DO?

6 A I GREW CONCERNED. I DECIDED TO GO TO HER HOUSE.

7 Q TELL THE JURY WHAT YOU FIRST NOTICED WHEN YOU FIRST
8 ARRIVED AT YOUR MOTHER'S HOUSE.

9 A I NOTICED THAT THE OUTDOOR LIGHT WAS ON. IT WAS
10 AFTER LUNCH TIME. THAT WAS VERY ODD. SHE WAS---

11 Q TELL THE JURY WHY THAT'S ODD.

12 A SHE'S AN EARLY RISER. SHE'S UP WITH THE SUN
13 GENERALLY.

14 Q WOULD SHE LEAVE THAT LIGHT ON AFTER SHE WOKE UP?

15 A NO.

16 Q WHAT ELSE DID YOU DO, SAM?

17 A I DROVE INTO THE DRIVEWAY AND PULLED UP AND WALKED UP
18 THE CARPORT. THAT WAS OUR NORMAL ENTRANCE DOOR AND NOTICED
19 THAT THE DOOR WAS AJAR. AND I NOTICED GLASS EVERYWHERE AND
20 GREW VERY CONCERNED AND I ENTERED THE RESIDENCE AT THAT
21 TIME. I NOTICED THAT THE KITCHEN WAS IN DISARRAY, THERE
22 WAS GARBAGE ON THE FLOOR AND I PROCEEDED INTO THE HALL AND
23 LIVING ROOM AREA AND I SAW HER LEGS FIRST.

24 Q DID YOU GO ANY FURTHER IN THE HOUSE?

25 A YES, I DID.

1 Q AND WHAT DID YOU OBSERVE AFTER GOING FURTHER IN THE
2 HOUSE?

3 A I WALKED AROUND THE CORNER OF THE DESK, SAW HER LYING
4 THERE. MY IMMEDIATE IMPRESSION WAS NOT REAL GOOD. I
5 BELIEVE I STOOD THERE FOR A MINUTE OR TWO NOT
6 COMPREHENDING. I THEN BACKED UP A FEW STEPS AND GRABBED
7 THE TELEPHONE AND COULD NOT GET A DIAL TONE.

8 Q THE PHONE DIDN'T HAVE ANY SERVICE?

9 A NO SERVICE.

10 Q WHAT DID YOU DO THEN?

11 A PRETTY MUCH RAN SCREAMING OUT OF THE HOUSE NEXT DOOR.

12 Q WERE YOU ABLE TO GET HELP?

13 A YES, I WAS.

14 Q DID YOU OR SOMEONE AT YOUR DIRECTION CALL 911?

15 A I BELIEVE I DIALED 911 AND COULD NOT COMPLETE GIVING
16 THEM SOME INFORMATION SO MY NEIGHBOR TOOK THE CALL FROM
17 THERE.

18 Q SHORTLY AFTER CALLING, DID A DEPUTY FROM LEXINGTON
19 COUNTY RESPOND TO THE SCENE?

20 A YES, HE DID.

21 Q WHEN WOULD HAVE BEEN YOUR LAST CONTACT WITH YOUR
22 MOTHER, IF YOU KNOW, BEFORE THIS?

23 A FACE-TO-FACE OR TELEPHONE?

24 Q OR TELEPHONE?

25 A I BELIEVE I TALKED TO HER ON THURSDAY. I CAN'T BE

1 POSITIVE. I'M PRETTY SURE IT WAS THURSDAY.

2 Q NOW, YOUR MOTHER, WAS SHE A HEAVY SLEEPER OR A LIGHT
3 SLEEPER?

4 A EXTREMELY LIGHT SLEEPER.

5 Q DID SHE -- DID SHE KEEP ANYTHING AROUND THE BED OR
6 OTHERWISE FOR PROTECTION?

7 A SHE GENERALLY KEPT VARIOUS ITEMS, MAYBE A -- I HAD A
8 BOTTOM HALF OF A POOL CUE THAT I HAD SEEN IN AND AROUND HER
9 BEDROOM, STICKS---

10 Q LET ME ASK YOU THIS. WHOSE POOL CUE WAS THAT?

11 A MINE.

12 Q DID IT HAVE TWO PIECES?

13 A YES. IT WAS A SCREW OFF.

14 Q WELL, LET'S ASK THIS. DID YOUR MOTHER DRINK?

15 A SHE DID NOT DRINK HEAVILY. SHE INDULGED IN A BEER OR
16 TWO ON OCCASION.

17 Q WHAT, IF ANYTHING, DID SHE DO WITH THE BEER CANS WHEN
18 SHE FINISHED DRINKING THE BEER?

19 A SHE HAD A VERY ODD HABIT OF RINSING THEM COMPLETELY
20 AND PUTTING THEM IN THE SINK FOR RECYCLING. SHE DIDN'T
21 WANT ANTS TO GET INTO THEM.

22 Q WAS THERE A PERIOD OF TIME WHEN LEXINGTON COUNTY
23 SECURED YOUR MOTHER'S RESIDENCE AND WOULDN'T ALLOW YOU IN?

24 A YES, ABOUT THREE WEEKS.

25 Q AT THE END OF THAT PERIOD, SAM, DID YOU GO INTO THE

1 RESIDENCE FOR THE PURPOSE OF CLEANING IT OUT AND MOVING THE
2 AFFECTS?

3 A YES, I DID.

4 Q HOW THOROUGHLY DID YOU GO THROUGH THE HOUSE AT THAT
5 TIME?

6 A I -- I WOULD SAY PRETTY THOROUGHLY. I WAS -- I WAS
7 BASICALLY LOOKING FOR ITEMS OF VALUE. I WAS WORRIED ABOUT
8 VANDALS, THAT TYPE OF THING, GETTING INTO THE HOUSE,
9 BREAKING AND TAKING THINGS.

10 Q LET ME ASK YOU THIS. IN YOUR -- IN GOING THROUGH THE
11 HOUSE, WERE YOU ABLE TO LOCATE THE BOTTOM HALF OF YOUR POOL
12 CUE?

13 A NO, I WAS NOT.

14 Q DID YOU, HOWEVER, LOCATE THE TOP HALF OF YOUR POOL
15 CUE?

16 A YES, I DID.

17 Q NOW, YOU SAID THAT THERE WAS TRASH ON THE FLOOR?

18 A YES.

19 Q YOU'VE HEARD TESTIMONY THAT THE HOUSE MIGHT NOT HAVE
20 BEEN PARTICULARLY NEAT?

21 A YES.

22 Q WOULD IT BE CONSISTENT WITH YOUR MOTHER'S PRACTICE TO
23 ALLOW TRASH TO REMAIN ON THE FLOOR?

24 A NO.

25 Q TO YOUR KNOWLEDGE, DID YOUR MOTHER KNOW GARY DUBOSE

1 TERRY?

2 A SHE PROBABLY KNEW HIM IN A PASSING TYPE SENSE.

3 Q TO YOUR KNOWLEDGE, DID SHE AND GARY DUBOSE TERRY
4 SPEND ANY TIME TOGETHER?

5 A NO.

6 Q FOR THAT MATTER, DID SHE SPEND TIME WITH ANY MAN
7 OTHER THAN JOHN?

8 A NO.

9 Q NOW, IS YOUR FATHER PRESENT HERE IN THE COURTROOM
10 TODAY?

11 A YES, HE IS.

12 Q HOW LONG HAD YOUR FATHER AND YOUR MOTHER BEEN
13 SEPARATED?

14 A THEY WERE DIVORCED IN 1974.

15 Q IN 1974?

16 A YES.

17 Q THANK YOU.

18 THE COURT: CROSS-EXAMINATION.

19 MS. FULLWOOD: NO QUESTIONS, YOUR HONOR.

20 THE COURT: THANK YOU, MS. JACKSON. YOU MAY STEP
21 DOWN.

22 MR. HUMPHRIES: YOUR HONOR, WITH THAT, THE STATE
23 RESTS.

24 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
25 THAT CONCLUDES THE STATE'S CASE. WE ARE AT RIGHT ON TOP OF

1 OUR LUNCH HOUR. SO I'M GOING TO BE SENDING YOU TO YOUR
2 JURY ROOM TO AWAIT ITS ARRIVAL.

3 WHILE YOU ARE THERE, PLEASE, DO NOT DISCUSS THIS
4 CASE AMONG YOURSELVES. WE'LL GET YOU BACK AFTER A LUNCH
5 BREAK AND RESUME THE TRIAL.

6 YOU MAY RETIRE TO THE JURY ROOM. EVERYONE ELSE
7 REMAIN SEATED WHILE THEY EXIT THE COURTROOM, PLEASE.

8 (JURY OUT.)

9 THE COURT: ALL RIGHT. ANY MOTIONS?

10 MS. FULLWOOD: YOUR HONOR, AT THIS TIME, WE WOULD
11 MOVE FOR A DIRECTED VERDICT ON ALL CHARGES CONTAINED IN THE
12 INDICTMENT ON THE GROUNDS THAT THE EVIDENCE TAKEN AS A
13 WHOLE IN THE LIGHT MOST FAVORABLE TO THE STATE IS
14 INSUFFICIENT TO CONVINCE A RATIONAL TRIER OF THE FACTS
15 BEYOND A REASONABLE DOUBT THAT THE STATE HAS PROVED EVERY
16 ELEMENT OF THE OFFENSES CHARGED.

17 THE COURT: ANYTHING FROM THE STATE IN THAT
18 REGARD?

19 MR. HUMPHRIES: WE'LL STAND ON THE EVIDENCE
20 PRESENTED, YOUR HONOR.

21 I DIDN'T MEAN TO SAY I WOULDN'T ASSIST THE COURT
22 IN POINTING TO THE EVIDENCE THAT---

23 THE COURT: IF YOU WANT TO SAY ANYTHING, YOU
24 CERTAINLY MAKE. IT'S NOT NECESSARY.

25 MR. HUMPHRIES: NO, SIR. THANK YOU.

1 THE COURT: I DON'T REQUIRE IT.

2 OF COURSE, IN A MOTION FOR A DIRECTED VERDICT, I
3 AM TO CONSIDER THE EVIDENCE PRESENTED IN THE LIGHT MOST
4 FAVORABLE TO THE STATE AND IF THERE IS ANY SUBSTANTIAL
5 EVIDENCE WHICH REASONABLY TENDS TO PROVE THE GUILT OF THE
6 ACCUSED, FROM WHICH IT MAY BE FAIRLY AND LOGICALLY DEDUCED,
7 THEN I AM TO SEND IT TO THE JURY AND I THINK THAT THERE IS
8 AMPLE EVIDENCE IN THIS CASE FOR THE JURY TO CONSIDER ON ALL
9 ISSUES.

10 THE MOTION FOR A DIRECTED VERDICT IS DENIED AS TO
11 ALL INDICTMENTS OR ALL COUNTS OF THE INDICTMENT.

12 ALL RIGHT. WE ARE GOING TO TAKE OUR LUNCH BREAK.
13 OF COURSE, I WILL BE DISCUSSING WITH THE DEFENDANT HIS
14 RIGHT TO TAKE THE STAND DURING YOUR PORTION OF THE CASE AND
15 I'M SURE THAT YOU WILL WANT TO DISCUSS THAT WITH HIM OVER
16 LUNCH AND THAT WILL BE THE FIRST THING THAT I DO WHEN WE
17 GET BACK AND THEN WE'LL MOVE DIRECTLY INTO THE DEFENSE'S
18 CASE.

19 SO IF THERE'S NOTHING FURTHER FROM EITHER SIDE.

20 MR. STONE: NO, SIR. THANK YOU.

21 THE COURT: HAVE A NICE LUNCH. LET'S BE BACK
22 HERE -- WELL, LET ME FIND THIS OUT. IS OUR LUNCH HERE? IS
23 THE JURY'S LUNCH HERE?

24 THE OFFICER: YES, SIR.

25 THE COURT: I'D SAY, LET'S BE BACK IN ONE HOUR.

1 MR. HUMPHRIES: YOUR HONOR, LET ME -- LET ME JUST
2 ASK THIS. THEY AIN'T GOT TO SAY AND I KNOW IT, BUT IF THEY
3 DON'T INTEND TO PRESENT ANY CASE, IT WOULD BE HELPFUL TO
4 KNOW IF WE ARE PREPARING FOR CLOSING.

5 LIKE I SAY, THEY AIN'T GOT TO TELL ME.

6 MS. FULLWOOD: JUDGE, UNTIL WE TALK TO MR. TERRY,
7 WE CAN'T TELL DEFINITELY, BUT YOU MIGHT WANT TO START
8 THINKING ABOUT IT.

9 THE COURT: WELL, WHAT I WILL DO, MR. HUMPHRIES,
10 IS---

11 MR. HUMPHRIES: IT WILL TAKE VERY LITTLE TIME---

12 THE COURT: ---WE WILL -- IF THERE IS TO BE NO
13 EVIDENCE PRESENTED BY THE DEFENSE, THEN, CERTAINLY, I'LL
14 GIVE YOU SOME TIME TO PREPARE BECAUSE IT WILL TAKE ME A
15 LITTLE WHILE TO GET MY CHARGE TOGETHER, BUT WE'D PROCEED
16 VERY QUICKLY INTO THAT.

17 MR. HUMPHRIES: VERY GOOD.

18 THE COURT: ALL RIGHT.

19 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

20 THE COURT: HAVE A NICE LUNCH HOUR.

21 (WHEREUPON, COURT RECESSED FOR
22 LUNCH AT 12:55 P.M.)

23 (WHEREUPON, COURT RECONVENED AFTER
24 LUNCH AT 2:00 P.M.)

25 THE BAILIFF: ALL RISE.

1 THE COURT: PLEASE TAKE YOUR SEATS.

2 MS. FULLWOOD.

3 MS. FULLWOOD: THANK YOU.

4 YOUR HONOR, I HAVE USED THE LUNCH HOUR TO DISCUSS
5 WITH MR. TERRY WHAT WE ARE GOING TO DO AT THIS JUNCTURE.

6 I'LL TELL THE COURT -- WELL, I'LL DO IT IN FRONT
7 OF THE JURY, BUT WE WILL BE RESTING. WE DO NOT INTEND TO
8 PUT UP ANY EVIDENCE, TESTIMONY AT THIS POINT AND MR. TERRY
9 HAS ELECTED NOT TO TESTIFY.

10 THE COURT: ALL RIGHT. WELL, LET ME GO OVER HIS
11 RIGHTS WITH HIM.

12 WOULD YOU PLEASE STAND, MR. TERRY. PLEASE RAISE
13 YOUR RIGHT HAND.

14 GARY DUBOSE TERRY,

15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE COURT: MR. TERRY, AT THIS TIME I'M GOING TO
17 EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS. IF YOU DO NOT
18 UNDERSTAND ANYTHING THAT I SAY, I WANT YOU TO PLEASE LET ME
19 KNOW AND IF YOU WANT ME TO EXPLAIN ANYTHING IN FURTHER
20 DETAIL, ALL YOU HAVE TO DO IS LET ME KNOW THAT AND I'LL
21 EXPLAIN WHATEVER YOU NEED TO HAVE CLEARED UP.

22 YOU UNDERSTAND THAT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: NOW, WE'VE REACHED THE STAGE OF THE
25 TRIAL WHERE YOU MAY PRESENT YOUR OWN DEFENSE AND YOU HAVE

1 THE RIGHT TO TESTIFY IN YOUR OWN BEHALF; HOWEVER, NO ONE
2 CAN MAKE YOU TESTIFY.

3 IN THE EVENT THAT YOU HAVE A RECORD FOR ANY
4 CONVICTION INVOLVING DISHONESTY OR FALSE STATEMENT OR FOR A
5 CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR AND
6 THIS COURT DETERMINES THAT THE PROBATIVE VALUE OF ADMITTING
7 THIS EVIDENCE OUTWEIGHS ITS PREJUDICIAL EFFECT TO YOU, THEN
8 THE SOLICITOR WOULD BE ABLE TO INTRODUCE THAT RECORD FOR
9 IMPEACHMENT PURPOSES TO ATTACK YOUR CREDIBILITY OR
10 BELIEVABILITY BEFORE THE JURY.

11 IF YOU ELECT NOT TO TAKE THE STAND AND YOUR
12 LAWYERS SO DESIRE, I WILL CHARGE THE JURY THAT THEY ARE NOT
13 TO GIVE THE FACT THAT YOU DID NOT TESTIFY ANY CONSIDERATION
14 WHATSOEVER AND THERE'S TO BE ABSOLUTELY NO PREJUDICE TO YOU
15 WHATSOEVER.

16 IT WILL BE LEFT ENTIRELY UP TO YOU AS TO WHETHER
17 OR NOT YOU TESTIFY. YOU CAN TALK WITH YOUR LAWYERS, WITH
18 YOUR FAMILY, FRIENDS OR ANYONE ELSE, BUT THE ULTIMATE
19 DECISION WILL BE LEFT ENTIRELY UP TO YOU.

20 DO YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: AND IT'S MY UNDERSTANDING THAT YOU
23 WILL NOT TAKE THE STAND?

24 THE DEFENDANT: THAT'S CORRECT, SIR.

25 THE COURT: ALL RIGHT.

1 MS. FULLWOOD: YOUR HONOR---

2 THE COURT: YES, MA'AM.

3 MS. FULLWOOD: OF COURSE, FOR THE RECORD, WE
4 WOULD BE RENEWING OUR MOTION FOR A DIRECTED VERDICT AT THIS
5 JUNCTURE. I WOULD LIKE TO DO IT AT THIS POINT RATHER THAN
6 HAVE THE JURY HOP OUT OF THE ROOM AGAIN.

7 THE COURT: WELL, HERE'S WHAT I'M GOING TO DO. I
8 CAN DO ONE OF A COUPLE OF THINGS. I CAN BRING THE JURY
9 BACK AND LET YOU REST ON THE RECORD IN FRONT OF THEM AND
10 THEN I WILL TELL THEM THAT WE ARE GOING TO TAKE JUST A FEW
11 MINUTES BEFORE WE GO INTO CLOSING ARGUMENTS AND THAT WAY
12 THEY'LL KNOW WHEN I TOLD THEM THAT WE'D TAKE ABOUT AN HOUR
13 FOR LUNCH, THAT THAT'S EXACTLY WHAT WE HAVE DONE. AND THEN
14 WE'LL TAKE TEN OR FIFTEEN MINUTES OR WHATEVER TIME WE NEED
15 TO TALK ABOUT SOME CHARGES IF Y'ALL HAVE ANY THAT YOU WANT
16 TO PRESENT TO ME. I'VE GOT SOME CHARGES AND I HAVE ALREADY
17 PULLED THEM UP AND SO WE'LL DO A SHORT CHARGE CONFERENCE
18 AND GO FROM THERE. AND THEN, ALSO, I WANT TO -- WE'LL WANT
19 TO DISCUSS WITH MR. TERRY HIS RIGHT TO ADDRESS THE JURY
20 HERE AT THE CONCLUSION OF THIS PHASE OF THE TRIAL. HE HAS
21 THE RIGHT TO ADDRESS THE JURY AT THIS JUNCTURE ALSO IN
22 CLOSING ARGUMENTS. SO YOU'LL NEED TO TALK TO HIM AND I'LL
23 GIVE YOU SOME TIME TO DO THAT ALSO.

24 MS. FULLWOOD: YES, SIR.

25 MR. HUMPHRIES: IN THAT REGARD, YOUR HONOR, I

1 WOULD, AT LEAST, LIKE A FEW MINUTES NOTICE PRIOR TO MY
2 CLOSING TO KNOW WHETHER OR NOT MR. TERRY INTENDS TO ADDRESS
3 THE JURY.

4 THE COURT: WELL, WE'LL DO THAT BEFORE THE JURY
5 COMES BACK IN.

6 MR. HUMPHRIES: VERY GOOD.

7 THE COURT: ALL RIGHT---

8 MR. HUMPHRIES: AND I WILL NOT REQUIRE MUCH TIME
9 FOR PREPARATION.

10 THE COURT: THANK YOU.

11 LET'S BRING OUR JURY BACK AND I'LL SAY DEFENSE
12 CAN CALL YOUR FIRST WITNESS AND YOU CAN SAY REST.

13 (JURY IN.)

14 THE COURT: LADIES AND GENTLEMEN, I HOPE YOU HAD
15 A NICE LUNCH BREAK. WE'RE GOING TO CONTINUE WITH OUR CASE
16 NOW.

17 CALL YOUR FIRST WITNESS, PLEASE

18 MS. FULLWOOD: THE DEFENSE RESTS.

19 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THE
20 DEFENSE HAS RESTED. WHAT REMAINS IN THIS CASE WILL THE
21 CLOSING ARGUMENTS OF THE LAWYERS AND THEN MY CHARGE OR
22 INSTRUCTION ON THE LAW THAT APPLIES TO THIS MATTER.

23 I'M GOING TO TAKE JUST A FEW MINUTES BECAUSE I
24 HAVE SOME MATTERS THAT I'LL NEED TO DEAL WITH, WITH THE
25 LAWYERS BEFORE WE ACTUALLY GO INTO THE CLOSING ARGUMENTS.

1 I'M GOING TO SEND YOU BACK TO YOUR JURY ROOM, BUT
2 WE'LL ONLY HAVE YOU BACK THERE PROBABLY FIFTEEN OR TWENTY
3 MINUTES OR SO AND THEN WE'LL MOVE DIRECTLY INTO THE CLOSING
4 ARGUMENTS AT THAT TIME.

5 SO THE JURY MAY RETIRE. ONCE AGAIN, PLEASE DO
6 NOT DISCUSS THIS CASE WHILE YOU ARE IN THE JURY ROOM.
7 WE'LL GET YOU BACK SHORTLY.

8 (JURY OUT.)

9 THE COURT: AND INSOFAR AS YOUR MOTIONS THAT HAVE
10 BEEN RENEWED, ONCE AGAIN, I'M DENYING ALL MOTIONS AT THIS
11 TIME.

12 WHY DON'T YOU DO THIS. I'M GOING TO LET YOU TALK
13 WITH MR. TERRY ABOUT HIS RIGHT TO ADDRESS THE JURY DURING
14 CLOSING ARGUMENTS IF HE SO DESIRES AND WE'LL TALK ABOUT
15 THAT ONCE WE GET BACK HERE ON THE RECORD AND THEN ONCE YOU
16 GET THROUGH WITH THAT, I WOULD LIKE TO SEE Y'ALL AND THE
17 SOLICITOR IN CHAMBERS SO WE CAN GO OVER CHARGES.

18 STAND AT EASE UNTIL CALL OF THE COURT.

19 (RECESS.)

20 THE BAILIFF: ALL RISE.

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

22 ALL RIGHT. IS THE STATE READY?

23 MR. HUMPHRIES: THE STATE IS READY TO PROCEED.

24 THE COURT: THE DEFENSE READY?

25 MR. STONE: YES, SIR.

1 THE COURT: ALL RIGHT.

2 MR. TERRY, WOULD YOU PLEASE STAND AGAIN, SIR?
3 AND YOU REMEMBER THAT YOU ARE STILL UNDER OATH?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: MR. TERRY, AS PART OF THE PROCESS IN
6 A CASE SUCH AS THIS, YOU AND YOUR LAWYERS HAVE THE RIGHT TO
7 MAKE THE FINAL ARGUMENT TO THE JURY. YOU ALSO HAVE THE
8 RIGHT TO ADDRESS THE JURY IF YOU SO DESIRE. AND I WANT TO
9 MAKE SURE THAT YOU UNDERSTAND THAT YOU DO HAVE THE RIGHT TO
10 ADDRESS THE JURY ON YOUR OWN?

11 (WHEREUPON, THE DEFENDANT NODS IN
12 THE AFFIRMATIVE AT THIS TIME.)

13 THE COURT: I'M SORRY?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: AND DO YOU DESIRE TO ADDRESS THE JURY
16 DURING THIS PHASE OF THE TRIAL?

17 THE DEFENDANT: NO, I DON'T.

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

19 THE DEFENDANT: THANK YOU.

20 THE COURT: ALL RIGHT. LET'S BRING OUR JURY
21 BACK.

22 (JURY IN.)

23 THE COURT: MADAM FOREPERSON, LADIES AND
24 GENTLEMEN OF THE JURY, AS I TOLD YOU BEFORE YOU LEFT THE
25 COURTROOM A FEW MINUTES AGO, WHAT REMAINS IN THIS CASE WILL

1 BE THE CLOSING ARGUMENTS OF THE LAWYERS, THEN MY CHARGE OR
2 INSTRUCTION ON THE LAW THAT APPLIES TO THIS MATTER.

3 NOW, I WANT YOU TO GIVE THE LAWYERS YOUR
4 UNDIVIDED ATTENTION BECAUSE THEY ARE GOING TO BE POINTING
5 OUT IMPORTANT THINGS THAT THEY HAVE SEEN DEVELOP THROUGHOUT
6 THE COURSE OF THE TRIAL; HOWEVER, I WOULD ALSO REMIND YOU
7 THAT WHAT THE LAWYERS ACTUALLY SAY IS NOT EVIDENCE IN THE
8 CASE.

9 THE EVIDENCE IN THIS CASE COMES FROM THE
10 TESTIMONY OF THE SWORN WITNESSES WHO HAVE TAKEN THIS
11 WITNESS STAND, TOGETHER WITH THE OTHER EVIDENCE THAT HAS
12 BEEN INTRODUCED INTO THE CASE. PLEASE KEEP THAT IN MIND
13 THROUGHOUT THE COURSE OF THE CLOSING ARGUMENTS THAT WHAT
14 THE LAWYERS SAY DOES NOT REPRESENT EVIDENCE IN THE CASE AND
15 IF THEY SAY SOMETHING ABOUT THE FACTS THAT YOU RECALL IN A
16 DIFFERENT WAY FROM WHAT THE WITNESSES SAID, THEN YOU WOULD
17 CERTAINLY RELY UPON YOUR RECOLLECTION OF THAT.

18 ALSO, IF THERE IS ANY MENTION AS TO THE LAW OF
19 THIS STATE BY THE LAWYERS, IF IT DISAGREES WITH WHAT I
20 INSTRUCT YOU AT THE CONCLUSION OF THE ARGUMENTS, THEN YOU
21 WILL FOLLOW THE LAW AS I INSTRUCT YOU AT THAT TIME.

22 THE STATE WILL HAVE THE OPENING ARGUMENT AND THE
23 DEFENSE WILL HAVE THE FINAL ARGUMENT.

24 SOLICITOR.

25 MR. HUMPHRIES: MAY IT PLEASE THE COURT.

1 THE COURT: YES, SIR.

2 MR. HUMPHRIES: MADAM FORELADY, LADIES AND
3 GENTLEMEN OF THE JURY, I HAD PRESUMED THAT WE WOULD REACH
4 THIS STAGE EARLY-ON AND WE HAVE.

5 LET ME SAY AT THE ONSET THAT THE SPEED WITH WHICH
6 THE EVIDENCE HAS BEEN PRESENTED TO YOU IS IN NO WAY
7 INDICATIVE HERE OF THE LACK OF SERIOUSNESS IN THIS MATTER
8 AND I KNOW YOU KNOW THAT.

9 WE'VE CHARGED GARY DUBOSE TERRY WITH FOUR VERY
10 SERIOUS CHARGES.

11 MURDER. THE UNLAWFUL KILLING OF A HUMAN BEING BY
12 ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT. THERE ARE A
13 NUMBER OF TERMS OF ART IN THAT DEFINITION. THE JUDGE WILL
14 EXPLAIN EACH AND EVERY ONE OF THEM TO YOU. BUT THE CENTRAL
15 THING IN THIS CHARGE OF MURDER, THE THING THAT RINGS TRUE
16 AND THE EVIDENCE PRESENTED IN THIS CASE IS THE DEPRAVITY OF
17 SPIRIT, THE WICKEDNESS, THE SHEER EVILNESS IN WHICH THIS
18 MURDER WAS COMMITTED. THAT MALICE DID EXIST PRIOR TO THE
19 STRIKING OF THE FIRST FATAL BLOW. CLEARLY. NO ONE, NO ONE
20 WOULD WIELD A HEAVY CLUB AND INTEND ON STRIKING ANOTHER
21 PERSON IN THE HEAD WITHOUT THAT SPECIFIC INTENT TO KILL
22 THAT PERSON.

23 THE THING THAT DRIVES A PERSON TO DO THAT, LADIES
24 AND GENTLEMEN, IS WICKEDNESS, IS A DEEP DOWN DARK EVIL.
25 THAT'S MURDER.

1 IS THERE EVIDENCE OF MURDER IN THIS CASE?
2 ABSOLUTELY. YOU HEARD DR. CARTER, THE PATHOLOGIST, WHOSE
3 EXPERT QUALIFICATIONS WERE STIPULATED TO TO TESTIFY AND
4 WHAT HE SAID QUITE SIMPLY WAS THAT THE CAUSE OF DEATH IN
5 THIS CASE WERE THE VERY SEVERE BLOWS TO THE BACK OF THE
6 HEAD OF THE VICTIM. NOT ONE BLOW, NOT A CHANCE OCCURRENCE,
7 BUT MULTIPLE BLOWS TO THE POINT THAT THEY ACTUALLY
8 FRACTURED THE SKULL AND EXPOSED THE BRAIN TISSUE. A
9 TREMENDOUS AMOUNT OF FORCE.

10 AS A RESULT, MS. URAI JACKSON DIED. THE STATE
11 HAS GIVEN YOU EVIDENCE, MORE THAN SUFFICIENT EVIDENCE TO
12 ESTABLISH THE CHARGE OF MURDER.

13 BURGLARY IN THE FIRST DEGREE. ENTERING THE
14 DWELLING OF ANOTHER, WITHOUT CONSENT, WITH THE INTENT TO
15 COMMIT A CRIME THEREIN.

16 WAS THERE AN ENTERING? CLEARLY. IN FACT, IT WAS
17 A FORCED ENTRY. IS THERE ANY QUESTION ABOUT THAT IN YOUR
18 MIND AT ALL? AND THERE WERE SOME QUESTIONS FROM THE
19 DEFENSE ABOUT, PERHAPS, THE DOOR WAS BROKEN ON THE WAY OUT.
20 THAT'S CLEARLY INCONSISTENT WITH THE PHYSICAL EVIDENCE.

21 THE PHYSICAL EVIDENCE. AND I'M GOING TO TALK TO
22 YOU A LITTLE BIT ABOUT THAT. FORCED ENTRY. WHAT ELSE IS
23 CONSISTENT WITH BURGLARY IN THE FIRST DEGREE?

24 WELL, YOU'VE GOT A SITUATION, FOLKS, WHERE THERE
25 WERE PHONE LINES PULLED. NOW, MAKE OF THAT WHAT YOU WILL.

1 THERE WAS ALSO SOME SUGGESTION THAT, PERHAPS, THAT WAS DONE
2 ON THE WAY OUT. FOR WHAT REASON, I DON'T KNOW. DOESN'T IT
3 -- ISN'T IT MUCH MORE CONSISTENT, MUCH MORE CONSISTENT THAT
4 THE LINES WERE PULLED ON THE WAY IN.

5 AGAIN, IT'S PHYSICAL EVIDENCE. TO BE BURGLARY IN
6 THE FIRST DEGREE, ONE HAS TO BE ARMED WITH A DEADLY WEAPON,
7 TO CAUSE HARM TO ONE NOT PARTICIPANT IN THE CRIME OR TO
8 THREATEN THE USE OF A DEADLY WEAPON. CLEARLY, THAT'S THE
9 CASE IN THIS CASE.

10 ALSO, THE REMAINING -- THE ENTERING OR REMAINING
11 WOULD HAVE OCCURRED IN THE NIGHTTIME.

12 NOW, WHAT DID SAMANTHA JACKSON TELL YOU. AND IT
13 SEEMS LIKE A MINOR POINT, BUT I THINK IT'S VERY TELLING.
14 SHE KNOWS HER MOTHER'S PRACTICES. SHE KNOWS WHEN SHE WAKES
15 UP FROM HER NIGHT SLEEP, SHE CUTS OFF HER NIGHT LIGHT.
16 WELL, HER LIGHT IS ON. HAD THIS BURGLARY OCCURRED IN THE
17 DAY, THAT LIGHT WOULDN'T BE ON.

18 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.
19 COMMITTING A SEXUAL BATTERY ON ANOTHER PERSON WITHOUT
20 CONSENT WITH ACCOMPANYING CIRCUMSTANCES SUCH AS THE USE OF
21 AGGRAVATED FORCE.

22 FOLKS, IF THAT'S NOT AGGRAVATED FORCE, I DON'T
23 KNOW WHAT IS; OR WHILE THE VICTIM WAS ALSO THE VICTIM OF
24 FORCIBLE CONFINEMENT, KIDNAPPING OR BURGLARY.

25 AND CLEARLY THAT'S WHAT WE'VE GOT.

1 AND THEN THE MALICIOUS INJURY TO TELEPHONE
2 SYSTEM. SIMPLY ENOUGH, JUST THE PULLING OF THE PHONE
3 LINES.

4 TELL YOU WHAT, LET'S AGREE ON THIS, IF WE CAN.
5 MS. URAI JACKSON WAS MURDERED. MS. URAI JACKSON'S HOME WAS
6 BURGLARIZED. MS. URAI JACKSON WAS SEXUALLY ASSAULTED, WAS
7 RAPED. AND MS. JACKSON'S PHONE LINES WERE PULLED.

8 I GUESS THE CENTRAL QUESTION AND I DON'T GUESS, I
9 KNOW. THE CENTRAL QUESTION IN THIS ENTIRE CASE IS ONE
10 SINGLE ELEMENT AND THAT IS THE ELEMENT OF IDENTITY.

11 YOU HAVE BEFORE YOU, BASED ON THE TESTIMONY OF
12 ACCOMPLISHED EXPERTS, WHOM YOU HEARD TESTIFY EXTENSIVELY,
13 THE IDENTIFICATION OF THE PERPETRATOR OF THIS CASE WAS NONE
14 OTHER, TO THE EXCLUSION OF ALL OTHERS, GARY DUBOSE TERRY.

15 LET ME TELL YOU WHY THAT IS SO COMPELLING. LET
16 ME TELL YOU WHY THAT'S BETTER THAN AN EYEWITNESS. THIS
17 EVIDENCE, THE D.N.A. ANALYSIS AND THE FINGERPRINT, IT'S NOT
18 SUBJECT TO THE OTHER CONCERNS THAT YOU MIGHT HAVE WITH AN
19 EYEWITNESS. YOU DON'T HAVE TO WORRY ABOUT THE LIGHTING
20 CONDITIONS. YOU DON'T HAVE TO WORRY ABOUT THE DISTANCE
21 BETWEEN THE TWO. YOU DON'T HAVE TO WORRY ABOUT THE
22 OPPORTUNITY TO VIEW THE PERPETRATOR. YOU DON'T HAVE TO
23 WORRY ABOUT WHETHER THE PERPETRATOR WAS KNOWN BY THE
24 WITNESS. YOU DON'T HAVE TO WORRY ABOUT ANY OF THOSE
25 THINGS.

1 D.N.A. ANALYSIS CANNOT BE SHADED OR JADED BY
2 ATMOSPHERIC CONDITIONS AND LOGISTICS.

3 FINGERPRINTING, FOLKS, IT CAN'T LIE TO YOU.
4 PHYSICAL EVIDENCE CANNOT LIE TO YOU. IT CAN'T TELL YOU A
5 HALF TRUTH. IT CAN'T TRY AND FOOL YOU. IT CAN'T TRY AND
6 DECEIVE YOU.

7 WHAT YOU HAVE BEFORE YOU, FOLKS, IS EVIDENCE
8 WHICH IS ABSOLUTELY RECOGNIZED THROUGHOUT THE WORLD AS MORE
9 THAN COMPETENT EVIDENCE ON IDENTIFICATION.

10 NOW, YOU MAY HEAR -- AND I GO FIRST -- I'VE GOT
11 THE BURDEN OF PROOF. AND I HAVE TO, AT LEAST, TO A CERTAIN
12 EXTENT, TRY AND ANTICIPATE WHAT THE DEFENSE MAY TELL YOU OR
13 ASK YOU TO CONSIDER. THEY MAY SAY, WELL, THERE WERE
14 FINGERNAIL SCRAPINGS, THERE WERE OTHER HAIRS. THEY MAY SAY
15 THERE WAS ANOTHER FINGERPRINT ON A BEER CAN IN THE KITCHEN
16 IN THE SINK. ALL OF THAT, I CONCEDE IS ABSOLUTELY TRUE.

17 NOW, THE FINGERNAIL SCRAPINGS NEVER EXCLUDED GARY
18 DUBOSE TERRY. THE FOREIGN HAIRS NEVER EXCLUDED GARY DUBOSE
19 TERRY AND THE BEER CANS, FOLKS, LET ME TELL YOU. IF YOU
20 CAN TAKE ONE PARTIAL LATENT LIFT OFF OF ONE BEER CAN AND IT
21 WAS IN MS. URAI JACKSON'S SINK AND IF THAT CONVINCES YOU
22 THAT GARY DUBOSE TERRY DIDN'T COMMIT THIS OFFENSE, YOU GIVE
23 THAT WHAT WEIGHT IT'S WORTH.

24 ISN'T IT CONVENIENT, ISN'T IT CONVENIENT THAT
25 GARY DUBOSE TERRY KNEW MS. URAI JACKSON. NOW, THAT IN AND

1 OF ITSELF ISN'T MUCH, IS IT. MS. URAI JACKSON HAD A NUMBER
2 OF VISITORS. NOT VISITORS. SHE HAD A NUMBER OF NEIGHBORS.
3 BUT A NUMBER OF HER NEIGHBORS DIDN'T LEAVE THEIR SEMEN IN
4 HER VAGINA AND A NUMBER OF HER NEIGHBORS DIDN'T LEAVE THEIR
5 FINGERPRINT ON THE TELEPHONE BOX AS THEY PULLED THE WIRES
6 OUT. THAT'S NOT JUST A COINCIDENT. THAT'S AN OPPORTUNITY.
7 THAT'S AN OPPORTUNITY FOR GARY DUBOSE TERRY TO COMMIT THESE
8 ACTS. DO I KNOW WHY? NO.

9 YOU MAY HEAR THIS. YOU MAY HEAR THE HOUSE WASN'T
10 RANSACKED, NONE OF THE JEWELRY WASN'T TAKEN. WELL, JUST
11 HOW DIABOLICAL IS IT THAT GARY DUBOSE TERRY'S INTENT AND
12 PURPOSE IN ENTERING THAT HOME THAT NIGHT WAS NOT TO STEAL,
13 WAS NOT TO PLUNDER. IT WAS TO RAPE AND KILL A
14 47-YEAR-OLD-WOMAN WHOM HE KNEW LIVED THERE AND LIVED ALONE.

15 IS THAT SOMETHING YOU GIVE THE DEFENDANT CREDIT
16 FOR? DOES HE DESERVE A PAT ON THE BACK FOR THAT?
17 SOMETHING ELSE YOU MAY HEAR. YOU MAY HEAR, WELL, THE STATE
18 CLEARLY HAS NOT PRODUCED A MURDER WEAPON. THAT'S TRUE. I
19 CONCEDE TO YOU THAT ALTHOUGH THIS WEAPON IS CLEARLY
20 CONSISTENT WITH SOME OF THE BRUISING SUSTAINED BY MS. URAI
21 JACKSON, IT'S NOT THE MURDER WEAPON. IT'S NOT.

22 NOW, SAM JACKSON SAYS THAT THERE WAS ONCE A TWO-PIECE POOL
23 CUE IN THAT HOME AND THEN UPON SEARCHING THREE WEEKS AFTER,
24 AFTER THE SHERIFF'S DEPARTMENT RELEASED THAT RESIDENCE TO
25 HER, THE BOTTOM OF THAT POOL CUE WAS GONE.

1 NOW, FOLKS, LET'S GIVE GARY DUBOSE TERRY CREDIT
2 FOR THINKING ENOUGH TO REMOVE THE MURDER WEAPON WHEN HE
3 LEAVES. IS THAT COMPELLING TO YOU?

4 HOW DO WE KNOW GARY DUBOSE TERRY COMMITTED THIS
5 ATROCIOUS OFFENSE? WE KNOW BECAUSE BY THE VIRTUE OF WHAT
6 HE DID AND HOW HE DID IT, HE'S TOLD YOU THAT HE HAS. HE'S
7 TOLD YOU HE HAS.

8 NOW, YOU HEARD A LOT OF CROSS-EXAMINATION IN
9 RELATION TO BOTH THE FINGERPRINT AND THE D.N.A. YOU HEARD
10 SENIOR AGENT STEVE DERRICK, CLEARLY AN EXPERT IN HIS FIELD,
11 TESTIFY, NOT THAT THIS COULD BE GARY DUBOSE TERRY'S
12 FINGERPRINT, THAT'S NOT WHAT HE SAYS. IN REGARD TO THIS,
13 HE DIDN'T SAY I COULDN'T ELIMINATE GARY DUBOSE TERRY. HE
14 SAID THAT GARY DUBOSE TERRY AND NONE OTHER DONATED, LEFT
15 THIS LATENT PRINT ON THE PHONE BOX.

16 NOW, THAT'S UNEQUIVOCAL. THAT'S UNEQUIVOCAL.
17 THAT IS THE SCIENTIFIC, PHYSICAL EVIDENCE RECOGNIZED THE
18 WORLD OVER. THAT'S IDENTIFICATION. AND THEY MIGHT SAY,
19 WELL, THAT'S JUST A PHONE BOX. THAT CERTAINLY DOES NOT PUT
20 HIM IN THE HOUSE. YOU DIDN'T FIND ANY FINGERPRINTS IN THE
21 HOUSE. LET'S GIVE GARY TERRY CREDIT FOR NOT LEAVING HIS
22 FINGERPRINTS IN THE HOUSE.

23 YOU KNOW WHO ELSE TELLS YOU GARY TERRY COMMITTED
24 THIS ABSOLUTELY HORRENDOUS OFFENSE. YOU KNOW YOU'VE MET,
25 YOU'VE MET JUST ABOUT EVERYBODY INVOLVED IN THIS PROCESS.

1 YOU'VE MET THE VICTIM'S DAUGHTER. YOU MET THE
2 INVESTIGATORS INVOLVED IN THIS CASE. YOU'VE MET THE
3 FORENSIC EXPERTS THAT HAVE BEEN INVOLVED IN THIS CASE.
4 YOU'VE BEEN INTRODUCED TO GARY TERRY DURING YOUR
5 QUALIFICATIONS. YOU'VE MET THE LAWYERS. YOU MET THE
6 JUDGE.

7 ONE PERSON YOU HAVEN'T MET. YOU HAVEN'T MET URAI
8 JACKSON AND YOU DON'T MEET HER CLEARLY IN THIS PHOTOGRAPH.
9 THERE ARE REASONS FOR THAT, FOLKS, BUT YOU REST ASSURED
10 THAT URAI JACKSON JUST ASSUREDLY AS YOU'RE SITTING THERE
11 LIES ON HER BACK IN A POOL OF BLOOD WITH HER LEGS WIDE
12 OPEN, UNCLOTHED, WITH HER HEAD CAVED IN. THAT'S URAI
13 JACKSON. WHO ELSE TELLS YOU THAT GARY DUBOSE TERRY
14 COMMITTED THESE OFFENSES? THE BODY OF URAI JACKSON.
15 THAT'S PITIFUL, ISN'T IT? THAT WE SHOULD HAVE TO RELY ON
16 MS. JACKSON TO TELL US WHO. BUT THAT'S EXACTLY THE CASE
17 BECAUSE AT THE AUTOPSY DR. CARTER TOOK CERTAIN SAMPLES OF
18 EVIDENCE. SOME HAD TO COME FROM WITHIN THE BODY OF URAI
19 JACKSON, BUT THAT EVIDENCE, GARY DUBOSE TERRY'S SEMEN ONCE
20 EXTRACTED FROM THE VAGINAL VAULT OF URAI JACKSON WAS
21 TESTED, ANALYZED AND YOU'VE HEARD THE CONCLUSIONS.

22 NOW, THEY MAY TRY AND TELL YOU THAT'S JUST
23 WITCHCRAFT. THAT'S JUST A BUNCH OF NUMBERS. LET ME TELL
24 YOU SOMETHING. IF IT WAS NOT COMPETENT EVIDENCE, IF IT WAS
25 NOT COMPETENT EVIDENCE, YOU COULD NOT HAVE HEARD IT. WHY

1 DID THEY CONCENTRATE SO HARD ON THE FINGERPRINT AND ON THE
2 D.N.A. ANALYSIS? BECAUSE THAT STANDING ALONE, ABSOLUTELY
3 STANDING ALONE POINTS CONCLUSIVELY, CONCLUSIVELY TO THE
4 IDENTITY AND ULTIMATELY THE GUILT OF GARY DUBOSE TERRY.

5 NOW, FOLKS, YOU'LL NOTICE I HAVE NOT ATTEMPT TO
6 AROUSE YOUR PASSIONS, YOUR PREJUDICES. I HAVE NOT
7 ATTEMPTED TO BEAT YOU INTO A FRENZY TO RETURN A VERDICT
8 BASED ON EMOTION. THERE'S PLENTY OF EMOTION IN THIS CASE.
9 THAT'S NOT WHAT I'M LOOKING FOR AND I TOLD YOU. I'VE TOLD
10 YOU THAT MANY TIMES. I WANT TO SAY IT NOW. WE ARE ABOUT
11 THE BUSINESS OF JUSTICE. JUSTICE. NOT ABOUT WHIMSICAL
12 DOUBT, NOT ABOUT GRABBING AT A STRAW, BUT CONCLUSIVE
13 EVIDENCE POINTING TO THE GUILT OF THE ACCUSED AND TO NONE
14 OTHER AND THAN BRINGING THAT DEFENDANT TO JUSTICE.

15 I SUBMIT TO YOU THAT'S THE LAST THING, BASED ON
16 THESE SET OF FACTS AND THIS EVIDENCE GARY TERRY WANTS.

17 THEY ARE GOING TO TELL YOU THAT GARY TERRY
18 COULDN'T POSSIBLY HAVE BEEN THE DONOR OF THAT SEMEN BECAUSE
19 IF HE WAS, HE WOULD HAVE NEVER EVER, EVER LET LAW
20 ENFORCEMENT TAKE SAMPLES FROM HIM. I CAN'T TELL YOU WHAT'S
21 IN THE HEART AND MIND OF GARY DUBOSE TERRY WITH THE
22 EXCEPTION OF DEPRAVITY AND WICKEDNESS. I CAN'T TELL YOU
23 HOW SMART GARY DUBOSE TERRY IS. I CAN'T TELL YOU IF HE
24 KNEW JUST HOW COMPELLING AND HOW CERTAIN D.N.A. ANALYSIS
25 WAS. I CAN'T TELL YOU HE'S A SMART FELLOW. I CAN TELL YOU

1 THIS. I CAN TELL YOU THIS. I GUARANTEE YOU HE WISHES HE
2 HAD IT BACK NOW.

3 I'M GOING TO ASK YOU TO DO YOUR JOB. I'M GOING
4 TO ASK YOU TO CARRY OUT YOUR OATH. I'M NOT ASKING FOR
5 VINDICTIVENESS. I'M NOT ASKING FOR A LYNCH MOB. I'M
6 ASKING FOR A VERDICT THAT SPEAKS THE TRUTH, NOTHING LESS
7 BECAUSE I TELL YOU THIS, FOLKS, GARY TERRY DESERVES
8 JUSTICE. HE DOES. THE STATE OF SOUTH CAROLINA DESERVES
9 JUSTICE. THE FAMILY OF URAI JACKSON DESERVES JUSTICE AND
10 SUCH AS SHE IS, THE MEMORY OF URAI JACKSON DESERVES
11 JUSTICE.

12 AS I TOLD YOU BEFORE, I CAN DO MY JOB. THE
13 DEFENSE CAN DO THEIRS. THE JUDGE CAN DO HIS JOB, BUT UNTIL
14 YOU TWELVE PEOPLE SPEAK, THERE IS NO JUSTICE.

15 KEEP YOUR MIND FOCUSED. KEEP YOUR MIND FOCUSED.
16 WE ARE DEALING WITH THE GUILT OR INNOCENCE OF THE ACCUSED
17 GARY DUBOSE TERRY. SPEAK THE TRUTH.

18 MR. STONE: PLEASE THE COURT, YOUR HONOR.

19 THE COURT: YES, SIR.

20 MR. STONE.

21 MR. STONE: THERE ARE A FEW THINGS THAT WE KNOW.
22 WE KNOW THAT THE KILLER WAS RIGHT-HANDED. WE KNOW THAT MS.
23 JACKSON HAS PASSED AWAY. WE KNOW THERE WAS SOMEBODY ELSE
24 IN THAT HOUSE. WE KNOW THAT FROM THE BEER CANS THAT DID
25 NOT, DID NOT MATCH GARY TERRY. NOT THAT THEY COULD HAVE,

1 NOT THAT THEY MIGHT HAVE NOT, BUT THEY DID NOT, ABSOLUTELY
2 NOT, MATCH GARY TERRY AND THEY ALSO DID NOT MATCH THE
3 VICTIM. WE KNOW THAT. THEIR OWN EXPERT SAID THAT.

4 WE KNOW THAT THERE WAS NO EVIDENCE OF RAPE. THE
5 DOCTOR TOOK THE STAND AND HE TESTIFIED THAT THERE WAS NO
6 CUTS, NO LACERATIONS, NOTHING AROUND THE VAGINAL AREA TO
7 INDICATE A RAPE. NO EVIDENCE OF IT.

8 WHAT WE DON'T KNOW IS WHAT HAPPENED. NOBODY IN
9 THIS COURTROOM KNOWS WHAT HAPPENED. NOBODY. THEY HAVE
10 PRESENTED A LOT OF STUFF THAT YOU ARE SUPPOSED TO TAKE WITH
11 YOU AND MAKE A DECISION ABOUT WHAT HAPPENED IN THIS CASE.
12 THAT'S WHAT THEY WANT YOU TO DO. THE SOLICITOR WAS VERY
13 CORRECT IN SOMETHING. HE SAID HE HAD A JOB. I HAVE A JOB.
14 THE JUDGE HAS A JOB AND NOW HE WANTS YOU TO DO YOUR JOB.
15 HE WANTS YOU TO DO HIS JOB.

16 FOR A NUMBER OF YEARS, I PROSECUTED. IT'S A
17 TOUGH JOB. THESE GUYS HAVE TO COME IN HERE WITH LAW
18 ENFORCEMENT AND EVERYBODY ELSE AND THEY HAVE GOT TO PROVE
19 THEIR CASE BEYOND A REASONABLE DOUBT. THEY HAVE TO PROVE
20 TO YOU BEYOND A REASONABLE DOUBT A MURDER, A RAPE, A
21 BURGLARY. THAT'S WHAT THEY HAVE TO PROVE TO YOU. AND YOU
22 HAVE HEARD TESTIMONY FROM S.L.E.D., FROM SCIENTISTS.
23 YOU'VE HEARD TESTIMONY FROM THE F.B.I. YOU'VE HEARD
24 TESTIMONY FROM A LOT OF DIFFERENT PEOPLE, FROM A LOT OF
25 DIFFERENT AREAS AND A LOT OF DIFFERENT RESOURCES AND THOSE

1 PEOPLE THAT TOOK THE STAND ARE HERE SUPPOSEDLY TO GIVE YOU
2 EVIDENCE. BUT WHAT THEY DIDN'T GIVE YOU, LADIES AND
3 GENTLEMEN, IS WHAT HAPPENED IN THIS CASE. THEY TOOK PUBIC
4 HAIRS FROM GARY TERRY, BUT THEY DIDN'T MATCH THEM TO
5 ANYTHING. THEY TOOK HAIRS OUT OF THE HOUSE, BUT THEY
6 DIDN'T MATCH THEM TO ANYTHING. THEY TOOK FINGERPRINTS OFF
7 OF THOSE BEER CANS. THEY KNOW THEY ARE NOT GARY'S AND THEY
8 KNOW THEY ARE NOT THE VICTIM'S, BUT THEY DON'T KNOW WHOSE
9 THEY ARE AND DIDN'T BOTHER TO FIND OUT. THEY SAW A GUN IN
10 THE HOUSE. DIDN'T BOTHER TO EVEN SEIZE THAT. EVERY BIT OF
11 EVIDENCE THAT THEY'VE BROUGHT YOU WAS JUST WHAT THEY WANTED
12 TO SHOW YOU.

13 AGENT DERRICK FROM S.L.E.D. WHO TESTIFIED TO THE
14 FINGERPRINT SHOWED YOU -- SAID THIS IS THE PHOTOGRAPH OF
15 THE LATENT PRINT THAT HE TOOK OFF THE PHONE BOX. AND THIS
16 IS WHAT HE SHOWED YOU. WHY IS THAT IMPORTANT? HE SHOWED
17 YOU WHAT HE WANTED YOU TO SEE. HE SHOWED YOU THIS PRINT,
18 BUT IT WASN'T UNTIL I ASKED HIM THAT HE EVEN ACKNOWLEDGED
19 THAT THERE WAS ANOTHER ONE. HE SHOWED YOU AND HE BLEW IT
20 UP FOR YOU WHAT HE WANTED YOU TO SEE.

21 IS HE EVIL? NO. IS HE TRYING TO LIE TO YOU?
22 NO. HE WAS SHOWING YOU WHAT HE WANTED YOU TO SEE. IT WAS
23 FILL-IN-THE-BLANK JUSTICE BECAUSE AGENT DERRICK DID EXACTLY
24 WHAT THE PROSECUTION IS NOW TRYING TO GET YOU TO DO.

25 WHAT WE ALSO KNOW ABOUT THIS CASE IS THAT IT

1 STAYED UNSOLVED FROM MAY OF 1994 TO MARCH OF 1999 (SIC).
2 THEY DIDN'T EVEN HAVE A SUSPECT. THEY DIDN'T HAVE ANYBODY
3 FOR ALMOST A YEAR. THEY HAD GATHERED ALL THE EVIDENCE FROM
4 THE SCENE. ALL THAT TOOK PLACE IN MAY OF 1994, BUT THEY
5 CAME IN HERE AND SHOWED YOU SOME OF THE EVIDENCE THEY
6 GATHERED IN 1994 THAT IN THEIR MIND POINTED TO GARY TERRY.
7 THEY DID THE SAME THING STEVE DERRICK DID WHICH
8 IS THEY TRIED TO FIGURE OUT WHO DID IT. THEY TRIED TO
9 FIGURE OUT WHO DID IT AND ALL OF A SUDDEN WHEN THEY THINK
10 THEY'VE GOT SOMEBODY, STEVE DERRICK GOES BACK IN AND SAYS,
11 OH, YEAH, I CAN MAKE THAT PRINT NOW. HE COULDN'T MAKE IT
12 IN '94 IN MAY WHEN IT HAPPENED. HE COULDN'T MAKE IT AGAIN
13 ALTHOUGH HE TOOK GARY'S PRINT AND COMPARED IT DIRECTLY TO
14 WHAT HE HAD AND I WOULD SUBMIT TO YOU, LADIES AND
15 GENTLEMEN, THERE'S A VERY GOOD REASON HE COULDN'T DO THAT.
16 IT'S NOT HIS PRINT. AND THIS OTHER PRINT THAT HE DIDN'T
17 WANT TO TALK ABOUT, HE DIDN'T WANT TO TALK ABOUT IT BECAUSE
18 THAT'S NOT THE SECOND FINGER ON GARY'S RIGHT HAND BECAUSE
19 THIS PRINT IS NOT THE THIRD FINGER ON GARY'S RIGHT HAND
20 ALTHOUGH HE WOULDN'T TALK ABOUT THIS HAD I NOT ASKED HIM
21 ABOUT IT. HE COULDN'T MAKE THE PRINT WHEN THE CASE FIRST
22 HAPPENED. HE COULDN'T MAKE IT AGAIN IN AUGUST, BUT HE KEPT
23 IN CONTACT WITH THE POLICE WHO WERE TRYING TO MAKE THE CASE
24 AND AFTER HE FOUND OUT THAT SCOTTIE FRIER HAD SOMEBODY
25 ARRESTED, HE WENT BACK IN AND SAID OH, YEAH, I'VE GOT IT

1 NOW. THIS IS THE PRINT.

2 DO I THINK THEY GOT TOGETHER BECAUSE OF SOME BIG
3 FRIENDSHIP AND SAID, YOU KNOW, WE CAN SET THIS GUY UP. NO.
4 I THINK IT WAS A LITTLE BIT EMBARRASSING MAYBE FOR STEVE
5 DERRICK WHO WASN'T ABLE TO MAKE THIS COMPARISON THE FIRST
6 TIME AND WASN'T ABLE TO MAKE IT THE SECOND AND THEN THEY
7 CALL HIM AND THEY SAY, YOU KNOW, WE'VE GOT THE GUY THAT DID
8 IT. WHY ELSE WOULD HE EVEN BOTHER TO GO BACK AND DO IT.
9 HE'S ALREADY TRIED IT TWICE. BECAUSE, LADIES AND
10 GENTLEMEN, HE'S A SCIENTIST AND HE'S A MEMBER OF LAW
11 ENFORCEMENT AND I WOULD SUBMIT TO YOU IT'S A LITTLE
12 EMBARRASSING WHEN ALL OF A SUDDEN YOUR FELLOW PEOPLE CALL
13 YOU AND SAY WE GOT THE GUY WE THINK DID IT AND YOU CAN'T
14 EVEN MAKE A MATCH OF HIM.

15 THAT, LADIES AND GENTLEMEN, IS FILL-IN-THE-BLANK
16 LAW ENFORCEMENT AND THAT'S WHAT IS GOING ON TODAY. THEY
17 DON'T KNOW WHAT HAPPENED. NOBODY IN THIS COURTROOM KNOWS
18 WHAT HAPPENED. WE KNOW THE CASE HAD REMAINED UNSOLVED AND
19 WE ALSO KNOW THAT GARY, WHEN APPROACHED BY THE POLICE,
20 DIDN'T SAY, NO, I'M NOT TALKING TO YOU, DIDN'T SAY GO AWAY,
21 DIDN'T SAY I'M NOT DOING ANYTHING. HE SAID WHATEVER YOU
22 NEED. WHATEVER YOU NEED. THIS IS A MALICIOUS KILLING
23 ACCORDING TO THE SOLICITOR. THIS IS SOMEBODY THAT HAS EVIL
24 IN HIS HEART AND MURDERS AND RAPES, AND YET, WHEN THE
25 POLICE COME TO HIM, HE SAYS NO PROBLEM, WHATEVER YOU NEED.

1 DOES THIS MAKE SENSE, LADIES AND GENTLEMEN? BUT WE KNOW
2 THAT TO BE A FACT. NO QUESTION ABOUT IT.

3 NOW, I'M NOT GOING TO SIT HERE A LONG TIME AND
4 TALK ABOUT D.N.A. LIKE THE SOLICITOR SAID I WAS GOING TO.
5 WE KNOW THAT THE D.N.A. BETWEEN THE VICTIM AND MR. TERRY IS
6 SIMILAR. AT LEAST IN ONE OF THOSE PROBES, THERE WAS THAT
7 INDICATION. WHAT THOSE NUMBERS MEAN, THAT'S UP TO YOU. WE
8 KNOW THAT D.N.A. IS BASED ON PROBABILITY AND GUESS WHAT
9 ELSE IS? THE WEATHER. AND WE CERTAINLY KNOW THE
10 WEATHERMAN IS NEVER WRONG. BUT THAT'S WHAT THE STATE WANTS
11 YOU TO BELIEVE CONVICTS GARY TERRY, NOT JUST OF RAPE
12 DESPITE THE FACT THAT THERE IS NO VAGINAL TEARING, NO
13 ABRASIONS, NOTHING AROUND THE INSIDE OF THE VICTIM TO
14 INDICATE FORCIBLE ENTRY.

15 MURDER, BURGLARY AND MALICIOUS INJURY TO A PHONE
16 LINE. THEY BRING YOU A FINGERPRINT AND THEY BRING YOU
17 D.N.A. AND THEY WANT YOU TO FILL IN THE BLANKS.

18 NOW, THE JUDGE HAS TOLD YOU OR THE JUDGE WILL
19 TELL YOU ABOUT PROBABLE CAUSE AND ABOUT REASONABLE DOUBT.
20 AND, FOLKS, YOU CAN HAVE A REASONABLE DOUBT ABOUT WHAT THE
21 STATE SHOWED YOU OR FOR THAT MATTER WHAT THEY DIDN'T SHOW
22 YOU. AND, LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU IF
23 THEY WERE HERE ASKING FOR JUSTICE AND ASKING FOR THE TRUTH,
24 THEY WOULD HAVE DONE THEIR HOMEWORK. THEY WOULD HAVE
25 BROUGHT YOU ALL THE EVIDENCE, NOT JUST WHAT THEY WANTED YOU

1 TO LOOK AT, EVERYTHING, AND LET YOU MAKE THE DECISION THEY
2 ARE ASKING YOU TO MAKE. BUT INSTEAD THEY WANT YOU TO FILL
3 IN THE BLANKS.

4 WELL, LADIES AND GENTLEMEN, FILL IN THE BLANKS IS
5 NOT WHAT WE ARE ABOUT. IT'S NOT WHAT THIS COURTROOM IS
6 ABOUT. YOU CAN FILL IN THE BLANKS WHEN YOU'RE SITTING AT
7 HOME AND READING THE NEWSPAPER AND SAYING THANK GOODNESS,
8 SOMEBODY CAUGHT HIM, BUT WHEN YOU ARE IN THE COURTROOM AND
9 YOU ARE SITTING IN THAT JURY BOX, YOU CAN'T FILL IN THE
10 BLANKS. IT'S NOT RIGHT. IT'S NOT FAIR TO MR. TERRY AND
11 IT'S NOT FAIR TO THE MEMORY OF SOMEONE WHO IS DEAD.

12 THE JOB FROM THE STATE'S STANDPOINT IS NOT TO
13 MAKE YOU DO THE WORK, BUT TO BRING YOU EVIDENCE TO SHOW
14 WHAT HAPPENED AND, LADIES AND GENTLEMEN, NOBODY, NOBODY AT
15 THIS POINT KNOWS WHAT HAPPENED.

16 THANK YOU.

17 THE COURT: MR. BAILIFF, WOULD YOU PLEASE REMOVE
18 THESE.

19 (WHEREUPON, THE COURT CHARGED THE
20 JURY AS FOLLOWS:)

21 THE COURT: MADAM FOREPERSON AND MEMBERS OF THE
22 JURY, THE STATE OF SOUTH CAROLINA CHARGES THE DEFENDANT,
23 ONE GARY DUBOSE TERRY, WITH THE OFFENSES OF MURDER,
24 BURGLARY IN THE FIRST DEGREE, CRIMINAL SEXUAL CONDUCT IN
25 THE FIRST DEGREE AND MALICIOUS INJURY TO TELEPHONE SYSTEM.

1 THE INDICTMENTS HAVE BEEN READ OR EXPLAINED TO
2 YOU SO I WILL NOT REPEAT THE ALLEGATIONS CONTAINED IN THEM.
3 YOU WILL HAVE THEM IN YOUR JURY ROOM DURING YOUR
4 DELIBERATIONS.

5 NOW, TO THIS INDICTMENT, THE DEFENDANT HAS
6 ENTERED A PLEA OF NOT GUILTY WHICH PLACES UPON THE STATE
7 THE BURDEN OF PROVING THE DEFENDANT GUILTY. A PERSON
8 CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH
9 CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

10 I CHARGE YOU THAT IT IS A VITAL IMPORTANT RULE OF
11 THE LAW OF EVIDENCE THAT THE DEFENDANT IN A CRIMINAL TRIAL,
12 NO MATTER HOW GREAT OR SERIOUS MAY BE THE OFFENSE WITH
13 WHICH HE IS CHARGED, MUST ALWAYS BE PRESUMED INNOCENT UNTIL
14 HIS GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT. THIS
15 PRESUMPTION OF INNOCENCE REMAINS WITH THE DEFENDANT AT ALL
16 TIMES FROM THE MOMENT OF HIS APPEARANCE IN THIS COURT,
17 THROUGHOUT THE TRIAL AND UNTIL THE JURY HAS, UPON THE
18 TESTIMONY AND EVIDENCE PRESENTED, REACHED A VERDICT OF
19 GUILTY BEYOND A REASONABLE DOUBT.

20 FOR IT IS THE SOLEMN DUTY OF YOU, THE JURY, IF
21 NOT CLEARLY CONVINCED OF HIS GUILT BEYOND A REASONABLE
22 DOUBT TO THE CONTRARY, TO ACQUIT THE DEFENDANT. SO THE
23 BURDEN OF PROOF IS UPON THE STATE TO ESTABLISHED BY
24 EVIDENCE TO YOUR SATISFACTION THE GUILT BEYOND A REASONABLE
25 DOUBT OF THIS DEFENDANT HERE ON TRIAL FOR THE CRIMES OF

1 MURDER, BURGLARY IN THE FIRST DEGREE, CRIMINAL SEXUAL
2 CONDUCT FIRST DEGREE AND MALICIOUS INJURY TO TELEPHONE
3 SYSTEM.

4 NOW, WHAT IS A REASONABLE DOUBT? A REASONABLE
5 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
6 PERSON TO HESITATE TO ACT.

7 NOW, MADAM FORELADY AND LADIES AND GENTLEMEN,
8 THERE ARE TWO TYPES OF EVIDENCE FROM WHICH A JURY MAY
9 PROPERLY FIND THE TRUTH AS FACTS OF THE CASE.

10 ONE IS BY DIRECT EVIDENCE SUCH AS THE TESTIMONY
11 OF AN EYEWITNESS AND THE OTHER IS BY INDIRECT OR
12 CIRCUMSTANTIAL EVIDENCE, THE PROOF OF A CHAIN OF
13 CIRCUMSTANCES POINTING TO THE EXISTENCE OR NONEXISTENCE OF
14 CERTAIN FACTS.

15 BY THE TERM DIRECT EVIDENCE, THE LAW MEANS THE
16 TESTIMONY OF PERSONS WHO HAVE PERCEIVED ITS EXISTENCE BY
17 MEANS OF THEIR SENSES. AS IN THE INSTANCE WHERE A PERSON
18 SEES A CRIME COMMITTED AND COMES INTO COURT TO TESTIFY AS
19 TO WHAT HE OR SHE SAW. THIS IS FREQUENTLY CALLED
20 EYEWITNESS TESTIMONY.

21 IN OTHER WORDS, IT COMES FROM A PERSON WHO BY HIS
22 OR HER OWN SENSES HAD ACTUAL PERSONAL KNOWLEDGE THAT AN
23 EVENT HAS OCCURRED OR NOT OCCURRED OR A FACT DOES OR DOES
24 NOT EXIST.

25 DIRECT EVIDENCE MAY ARISE FROM THE USE OF ANY OF

1 OUR SENSES. SIGHT, SMELL, TASTE, SOUND OR FEEL WITHOUT THE
2 AID OF ANY INFERENCES.

3 NOW, CIRCUMSTANTIAL EVIDENCE INVOLVES TESTIMONY
4 OR EVIDENCE OF SURROUNDING FACTS FROM WHICH ONE MAY OR MAY
5 NOT INFER THAT AN EVENT HAS OCCURRED OR A FACT HAS BEEN
6 ESTABLISHED.

7 CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, MEANS
8 THE PROOF OF SOME OTHER FACT OR FACTS FROM WHICH TAKEN
9 EITHER SINGULARLY OR COLLECTIVELY THE EXISTENCE OF THE
10 PARTICULAR FACT IN QUESTION MAY BE INFERRED AS A NECESSARY
11 CONSEQUENCE.

12 NOW, CIRCUMSTANTIAL EVIDENCE CAN EXIST WHERE
13 CERTAIN FACTS ARE KNOWN THROUGH ONE OR MORE OF THE FIVE
14 SENSES BEING SIGHT, SMELL, HEARING, TOUCH OR TASTE AND GIVE
15 RISE TO LOGICAL INFERENCES THAT OTHER FACTS DO, IN FACT,
16 EXIST WITHOUT DIRECTLY PROVING THOSE FACTS.

17 NOW, A VIOLATION OF THE LAW MAY BE PROVED BY
18 CIRCUMSTANTIAL EVIDENCE AS WELL AS BY DIRECT TESTIMONY OF
19 EYEWITNESSES.

20 ON A CONTESTED FACTUAL ISSUE, YOU MAY HAVE SOME
21 DIRECT EVIDENCE AND SOME CIRCUMSTANTIAL EVIDENCE; THAT IS,
22 A COMBINATION OF THE TWO TYPES OF EVIDENCE ON THAT DISPUTED
23 FACT.

24 NOW, THE STATE IN THE PROOF OF ITS CASE MAY RELY
25 ON EITHER OR BOTH OF THESE TYPES OF EVIDENCE; THAT IS,

1 DIRECT OR CIRCUMSTANTIAL EVIDENCE.

2 NOW, WITH REGARD TO BOTH DIRECT AND
3 CIRCUMSTANTIAL EVIDENCE, IT MUST BE SUCH SO AS TO PROVE THE
4 GUILT OF THE ACCUSED, THE DEFENDANT, BEYOND A REASONABLE
5 DOUBT.

6 CIRCUMSTANTIAL EVIDENCE IS ALSO GOOD EVIDENCE
7 PROVIDED IT MEETS THE LEGAL TEST SET FORTH HEREIN.

8 NOW, BEFORE YOU CAN CONVICT A DEFENDANT ON
9 CIRCUMSTANTIAL EVIDENCE ALONE, THE CIRCUMSTANTIAL EVIDENCE
10 MUST MEASURE UP TO THE REQUIREMENTS OF THE LAW. IT IS
11 NECESSARY THAT EVERY CIRCUMSTANCE RELIED UPON BY THE STATE
12 BE PROVEN BEYOND A REASONABLE DOUBT AND THAT ALL OF THE
13 CIRCUMSTANCES SO PROVEN BE CONSISTENT WITH EACH OTHER AND
14 TAKEN TOGETHER POINT CONCLUSIVELY TO THE GUILT OF THE
15 ACCUSED TO THE EXCLUSION OF EVERY OTHER REASONABLE RATIONAL
16 AND LOGICAL HYPOTHESIS.

17 IT IS NOT SUFFICIENT THAT THE CIRCUMSTANCES
18 CREATE SUSPICION OR PROBABILITY, THOUGH A STRONG ONE, AND
19 EVEN ASSUMING THE CIRCUMSTANCES TO BE TRUE, THEY MAY BE
20 ACCOUNTED FOR UPON ANY REASONABLE, RATIONAL AND LOGICAL
21 HYPOTHESIS WHICH DOES NOT INCLUDE THE GUILT OF THE ACCUSED,
22 THEN THE PROOF HAS FAILED.

23 THIS PART OF THE TEST REGARDING THE CONSIDERATION
24 OF CIRCUMSTANTIAL EVIDENCE SHALL IN NO WAY BE CONSTRUED AS
25 REQUIRING THE DEFENDANT TO PROVE ANYTHING OR OFFER ANY

1 EXPLANATION. THE BURDEN OF PROOF IS UPON THE STATE TO
2 PROVE BEYOND A REASONABLE DOUBT THE GUILT OF THE ACCUSED.
3 THEREFORE, IF, YOU, THE JURY, MAKE A DETERMINATION THAT
4 SUCH CIRCUMSTANTIAL EVIDENCE DOES NOT MEET THIS TEST, THEN
5 YOU WOULD IN SUCH A CASE SET ASIDE SUCH CIRCUMSTANTIAL
6 EVIDENCE, DISREGARD IT AND FIND THE DEFENDANT NOT GUILTY
7 UNLESS THE STATE HAS PROVED BY DIRECT EVIDENCE OR THROUGH A
8 COMBINATION OF DIRECT AND CIRCUMSTANTIAL EVIDENCE THE GUILT
9 OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

10 NOW, THE REASON FOR THE PROCEEDING PRINCIPLE IS
11 THAT ALL PRESUMPTIONS OF THE LAW, INDEPENDENT OF THE
12 EVIDENCE, ARE IN FAVOR OF THE INNOCENT AND EVERY PERSON IS
13 PRESUMED TO BE INNOCENT UNTIL HIS GUILT IS PROVED BEYOND A
14 REASONABLE DOUBT.

15 NOW, A VERDICT OF GUILTY CAN BE BASED UPON
16 CIRCUMSTANTIAL EVIDENCE AS SAFELY AS UPON DIRECT EVIDENCE,
17 PROVIDED THE CIRCUMSTANTIAL EVIDENCE RELIED UPON TO PROVE
18 GUILT MEASURES UP TO THESE REQUIREMENTS OF THE LAW THAT I
19 HAVE STATED TO YOU.

20 SO IN SUMMARY, THERE ARE TWO TYPES OF EVIDENCE
21 WHICH ARE GENERALLY PRESENTED DURING A TRIAL: DIRECT
22 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

23 DIRECT EVIDENCE, ONCE AGAIN, IS THE TESTIMONY OF
24 A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF
25 A FACT SUCH AS AN EYEWITNESS.

1 CIRCUMSTANTIAL EVIDENCE IS A PROOF OF A CHAIN OF
2 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.
3 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT
4 OR VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL
5 EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
6 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU
7 SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AND AFTER
8 WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF
9 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU
10 MUST FIND THE DEFENDANT NOT GUILTY. CONVERSELY, IF YOU ARE
11 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
12 DOUBT, THEN YOU MUST FIND HIM GUILTY.

13 NOW, MADAM FOREPERSON AND MEMBERS OF THE JURY,
14 UNDER THE CONSTITUTION AND LAWS OF THE STATE OF SOUTH
15 CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I
16 DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN TO
17 EXPRESS ANY OPINION I MIGHT HAVE AS TO THEM, NOR MAY I
18 INTIMATE IN ANY WAY WHAT I MAY THINK ABOUT THE GUILT OR THE
19 INNOCENCE OF THE DEFENDANT.

20 YOU ARE ALSO THE JUDGES, THE SOLE JUDGES OF THE
21 CREDIBILITY, THE BELIEVABILITY OF THE WITNESSES WHO HAVE
22 TESTIFIED IN THIS CASE.

23 IN PASSING UPON THEIR CREDIBILITY, YOU MAY TAKE
24 INTO CONSIDERATION MANY THINGS SUCH AS THE FOLLOWING: THE
25 Demeanor OR Manner OF TESTIFYING; WHETHER THE WITNESS HAD

1 REASON TO BE BIASED OR PREJUDICED; WHETHER A WITNESS'
2 TESTIMONY WAS CONTRADICTED ON THE ONE HAND OR SUPPORTED AND
3 CORROBORATED ON THE OTHER HAND.

4 NOW, YOU MAY BELIEVE A SMALL PORTION OF A
5 WITNESS' TESTIMONY AND DISREGARD THE LARGER OR VICE-VERSA.
6 YOU MAY BELIEVE ONE WITNESS AGAINST MANY OR MANY AGAINST
7 ONE. ALL OF THESE THINGS YOU WILL CONSIDER, BEARING IN
8 MIND, THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF A
9 REASONABLE DOUBT.

10 NOW, I CHARGE YOU FURTHER, MADAM FOREPERSON AND
11 MEMBERS OF THE JURY, THAT THE FACT THAT A DEFENDANT ELECTS
12 NOT TO TESTIFY IN HIS OWN BEHALF CANNOT AND MUST NOT BE
13 CONSIDERED AGAINST HIM UNDER ANY CIRCUMSTANCES OR IN ANY
14 MANNER WHATSOEVER. THE DECISION OF ANY DEFENDANT TO ELECT
15 NOT TO TAKE THE STAND AND TESTIFY IN HIS OWN BEHALF DOES
16 NOT CREATE ANY INFERENCE AGAINST HIM AND I TELL YOU NOW
17 THAT YOU MUST NOT PERMIT THAT FACT TO WEIGH IN EVEN THE
18 SLIGHTEST DEGREE AGAINST SUCH A DEFENDANT. YOU SHOULD NOT
19 PERMIT THIS FACT TO ENTER INTO THE DISCUSSIONS OR
20 DELIBERATIONS OF THE ISSUES IN THIS CASE.

21 NOW, THE RULES OF EVIDENCE ORDINARILY DO NOT
22 PERMIT WITNESSES TO TESTIFY AS TO THEIR OPINION OR
23 CONCLUSIONS. AN EXCEPTION, HOWEVER, TO THIS RULE DOES
24 EXIST AS TO THOSE WHOM WE CALL EXPERT WITNESSES.

25 NOW, EXPERT WITNESSES ARE WITNESSES WHO BY

1 EDUCATION AND EXPERIENCE HAVE BECOME EXPERTS IN SOME ART,
2 SCIENCE, PROFESSION OR CALLING. THESE WITNESSES MAY STATE
3 THEIR OPINIONS AS TO RELEVANT AND MATERIAL MATTERS IN WHICH
4 THEY PROFESS TO BE AN EXPERT AND MAY ALSO STATE THEIR
5 REASONS FOR THE OPINION.

6 NOW, YOU SHOULD CONSIDER EXPERT OPINION RECEIVED
7 IN EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU MAY
8 THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION
9 OF AN EXPERT IS NOT BASED UPON SUFFICIENT EDUCATION AND
10 EXPERIENCE OR IF YOU SHOULD CONCLUDE THAT THE REASONS GIVEN
11 IN SUPPORT OF THE OPINION ARE NOT SOUND OR IF YOU FEEL THAT
12 IT IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE
13 OPINION ENTIRELY.

14 NOW, BY THE SAME CONSTITUTION AND LAW WHICH MAKES
15 YOU THE FINDERS OF THE FACTS AND THE EVIDENCE AS I HAVE
16 DISCUSSED WITH YOU, I AM, AS THE JUDGE, MADE THE SOLE AND
17 THE ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS CORRECT
18 THE LAW WHICH I CHARGE AND APPLY IT TO THE EVIDENCE AS YOU
19 FIND IT AND REACH YOUR VERDICT.

20 AND FINALLY, I CHARGE YOU IN THIS REGARD THAT
21 YOU, OR, FOR THAT MATTER, I SHOULD NOT BE CONCERNED ABOUT
22 WHAT WE THINK THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE
23 THE LAW TO BE.

24 NOW, AS I HAVE INDICATED TO YOU AND YOU ARE WELL
25 AWARE, THE STATE HAS CHARGED IN ITS INDICTMENT THAT THE

1 DEFENDANT IS GUILTY OF THE CRIME OF MURDER.

2 NOW, WHAT IS MURDER BY DEFINITION? WELL, MURDER
3 MAY BY DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN
4 BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT. THAT
5 MALICE BEING EITHER EXPRESSED MALICE OR IMPLIED OR INFERRED
6 MALICE.

7 NOW, WHAT IS MALICE? MALICE IS DEFINED IN THE
8 LAW OF HOMICIDE AS A TERM OF ART. THIS IS A TECHNICAL TERM
9 IMPORTING WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL
10 EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM WICKEDNESS,
11 FROM DEPRAVITY, FROM A DEPRIVED SPIRIT, FROM A HEART DEVOID
12 OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.

13 THE WORDS EXPRESSED OR IMPLIED MALICE DO NOT MEAN
14 DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH
15 THE ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO
16 EXIST; THAT IS TO SAY, EITHER BY DIRECT EVIDENCE OR BY
17 INFERENCE, MALICE MAY BE EXPRESSED AS WHERE PREVIOUS
18 THREATS OF VENGEANCE OR LYING IN WAIT OR OTHER
19 CIRCUMSTANCES SHOW DIRECTLY THAT AN INTENT TO KILL WAS
20 ENTERTAINED.

21 THE JURY MAY ALSO CONCLUDE BY DEDUCTIVE REASONING
22 THAT UNDER CERTAIN CIRCUMSTANCES MALICE MAY ARISE EVEN
23 THOUGH THERE IS NO EXPRESSED OR DIRECT EVIDENCE OF AN
24 INTENT TO KILL. MALICE MAY BE INFERRED WHERE, THOUGH NO
25 EXPRESSED INTENT TO KILL IS PROVED BY DIRECT EVIDENCE, IT

1 MAY BE INFERRED FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
2 PROVED.

3 MALICE MAY BE INFERRED FROM THE WILLFUL,
4 DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT
5 JUST CAUSE OR LEGAL EXCUSE.

6 IN OTHER WORDS, IN ITS GENERAL SIGNIFICATION,
7 MALICE MEANS THE DOING OF A WRONGFUL ACT INTENTIONALLY
8 WITHOUT JUSTIFICATION OR LEGAL EXCUSE. BUT EVEN IF FACTS
9 PROVED ARE SUFFICIENT TO RAISE AN INFERENCE OF MALICE, THIS
10 INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
11 INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH ALL THE
12 OTHER EVIDENCE IN THE CASE AND YOU MAY GIVE IT SUCH WEIGHT
13 AS YOU DETERMINE IT SHOULD RECEIVE AS TO WHETHER OR NOT
14 MALICE HAS BEEN PROVED BEYOND A REASONABLE DOUBT.

15 FURTHERMORE, EVEN WHERE THERE IS AN ABSENCE OF A
16 SPECIFIC FIXED AND DELIBERATE INTENT TO TAKE THE LIFE OF A
17 PARTICULAR PERSON, THE LAW SAYS THAT IF IT IS PROVED BEYOND
18 A REASONABLE DOUBT THAT ONE INTENTIONALLY KILLED ANOTHER
19 WITH A DEADLY WEAPON, AN IMPLICATION OF MALICE MAY ARISE.
20 THE USE OF A DEADLY WEAPON PERMITS YOU TO INFER MALICE, BUT
21 IT DOES NOT REQUIRE YOU TO INFER MALICE.

22 IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT
23 SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
24 SATISFACTION, THIS WOULD, ONCE AGAIN, SIMPLY BE AN
25 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE

1 JURY, ALONG WITH THE OTHER EVIDENCE IN THE CASE AND YOU MAY
2 GIVE IT SUCH WEIGHT AS YOU FIND IT SHOULD RECEIVE. YOU, AS
3 JURORS, ARE FREE TO ACCEPT OR REJECT THIS PERMISSIVE
4 EVIDENCE DEPENDING ON YOUR VIEW OF THE FACTS.

5 IN OTHER WORDS, IF SUCH CONDUCT RESULTS DIRECTLY
6 IN THE DEATH OF ANOTHER AND IF SUCH CONDUCT WAS SO CULPABLE
7 AND INEXCUSABLE, SO AGGRAVATED AND GROSSLY RECKLESS AS TO
8 SHOW AN ACTIVE INTENTIONAL DISREGARD TO THE CONSEQUENCES OF
9 HUMAN LIFE, THUS, DENOTING A MALIGNANT SPIRIT, A HEART
10 DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF, AN
11 IMPLICATION OF MALICE MAY ARISE.

12 FURTHERMORE, IT'S NOT JUST CARELESSNESS, NOT MERE
13 RECKLESSNESS OR A PASSIVE INDIFFERENCE TO THE SAFETY OF
14 OTHERS. THIS CONDUCT WHEN IT SHOWS A DELIBERATE AND
15 INTENTIONAL DESIGN TO SO USE OR EMPLOY OR HANDLE A DEADLY
16 WEAPON SO AS TO ENDANGER THE LIFE OF ANOTHER WITHOUT JUST
17 CAUSE OR EXCUSE MAY BE SUFFICIENT TO RAISE THIS
18 IMPLICATION; HOWEVER, IT IS FOR YOU, THE JURY, TO DECIDE
19 BEYOND A REASONABLE DOUBT WHETHER UPON ALL OF THE FACTS AND
20 CIRCUMSTANCES OF THIS CASE, THE DEFENDANT'S ALLEGED USE OF
21 A DEADLY WEAPON DEMONSTRATED SUCH AN INTENTIONAL DISREGARD
22 FOR HUMAN LIFE THAT MALICE MAY BE IMPLIED OR INFERRED FROM
23 THE USE OF A DEADLY WEAPON AND IT IS FOR YOU, THE JURY, TO
24 DECIDE WHAT WEIGHT; IF ANY, SHOULD BE GIVEN THIS FACT. AND
25 IT WILL BE OBSERVED, LADIES AND GENTLEMEN, THAT THERE MUST

1 BE MALICE AFORETHOUGHT AND WHILE THE LAW DOES NOT REQUIRE
2 THAT MALICE SHALL EXIST FOR ANY PARTICULAR LENGTH OF TIME
3 BEFORE THE COMMISSION OF THE ACT, IT MUST BE AFORETHOUGHT.
4 THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND
5 THE ACT PRODUCING THE FATAL RESULT.

6 MALICE IS A WORD SUGGESTING WICKEDNESS, HATRED
7 AND A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG
8 WITHOUT JUST CAUSE OR EXCUSE OR LEGAL PROVOCATION. MALICE
9 NEED NOT BE IN THE MIND OF THE ONE DOING THE KILLING ANY
10 PARTICULAR LENGTH OF TIME BEFORE THE ACT OF KILLING IN
11 ORDER TO RENDER THE KILLING MURDER. IF IT IS PRESENT IN
12 THE MIND OF THE ONE DOING THE KILLING ANY LENGTH OF TIME
13 BEFORE THE ACT, THEN IT'S PRESENCE WOULD BE SUFFICIENT TO
14 RENDER THE KILLING MURDER.

15 MALICE IS SAID TO BE EXPRESSED WHERE THERE IS
16 MANIFESTED A VIOLENT, DELIBERATE INTENTION UNLAWFULLY TO
17 TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING. MALICE IS
18 IMPLIED WHERE ONE INTENTIONALLY AND DELIBERATELY DOES AN
19 UNLAWFUL ACT WHICH HE THEN KNOWS TO BE WRONG AND IN
20 VIOLATION OF HIS DUTY TO ANOTHER AND WHERE NO EXCUSE OR
21 LEGAL PROVOCATION APPEARS AND WHEN THE CIRCUMSTANCES
22 ATTENDING A KILLING SHOW AN ABANDONED HEART, A MALIGNANT
23 HEART FATALLY BENT UPON MISCHIEF.

24 IF THE EVIDENCE SHOULD SHOW UNDER WHAT
25 CIRCUMSTANCES A BLOW DELIVERED WHICH TOOK THE LIFE OF

1 ANOTHER, THEN, YOU, THE JURY, WOULD HAVE TO DETERMINE
2 WHETHER UNDER SUCH CIRCUMSTANCES THE ACT WAS MALICIOUS.

3 NOW, IN COUNT TWO OF THE INDICTMENT, THE STATE
4 CHARGES THE DEFENDANT WITH BURGLARY FIRST DEGREE.

5 UNDER SECTION 16-11-311 OF THE CODE OF LAWS OF
6 THE STATE OF SOUTH CAROLINA, 1976 AS AMENDED, BURGLARY IN
7 THE FIRST DEGREE IS DEFINED AS THE ENTERING OF A DWELLING
8 HOUSE OF ANOTHER WITHOUT CONSENT, WITH THE INTENT TO COMMIT
9 A CRIME THEREIN, AS I WILL DEFINE FOR YOU, AND WHICH IS
10 ACCOMPANIED BY ONE OF THE FOLLOWING CIRCUMSTANCES:

11 WHEN ENTERING OR WHILE IN THE HOUSE OR IN
12 FLEEING, THE DEFENDANT IS ARMED WITH A DEADLY WEAPON;
13 CAUSES PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN THE
14 CRIME; OR USES OR THREATENS TO USE A DANGEROUS OBJECT OR
15 THE DEFENDANT ENTERED OR REMAINED IN THE HOUSE AT NIGHT.

16 NOW, THERE ARE FOUR ESSENTIAL ELEMENTS TO THE
17 REQUIREMENT THAT THE DEFENDANT DID ENTER INTO THE DWELLING
18 HOUSE OF ANOTHER WITHOUT CONSENT WITH THE INTENT TO COMMIT
19 A CRIME AND THEY ARE THAT:

20 THERE MUST BE AN ENTERING. THE STATE MUST PROVE
21 THAT THERE WAS AN ENTERING; THAT IS, THAT THE DEFENDANT
22 ACTUALLY WENT INSIDE THE HOUSE OR SOME PART OF IT. NO
23 FORCE NEED BE USED TO GAIN ENTRY.

24 TWO, THE ENTRY MUST BE WITHOUT CONSENT. ASIDE
25 FROM THE USUAL AND NORMAL UNDERSTANDING OF THE PHRASE

1 WITHOUT CONSENT, THE TERM ENTRY ALSO MEANS TO ENTER A
2 BUILDING BY USING DECEPTION, ARTIFICE, TRICK OR
3 MISREPRESENTATION TO GAIN CONSENT TO ENTER FROM THE PERSON
4 IN LAWFUL POSSESSION.

5 THREE, THE PLACE ENTERED MUST BE A DWELLING
6 HOUSE. THE TERM DWELLING HOUSE MEANS ANY BUILDING
7 INHABITED BY A PERSON OR PERSONS AND IN WHICH THEY
8 CUSTOMARILY SLEEP.

9 FOUR, THE DEFENDANT MUST HAVE AN INTENT TO COMMIT
10 A CRIME. THE MERE ENTRY INTO A DWELLING HOUSE WITHOUT
11 CONSENT IS NOT A VIOLATION OF THIS BURGLARY STATUTE. IT IS
12 ONLY WHERE THERE IS AN INTENT TO COMMIT A CRIME, WHETHER IT
13 BE A FELONY OR MISDEMEANOR, THAT THE CRIME IS COMPLETE.
14 PROOF OF INTENT NECESSARILY RESTS ON INFERENCE FROM
15 CONDUCT.

16 NOW, UNDER COUNT THREE OF THE INDICTMENT, THE
17 STATE CHARGES THE DEFENDANT WITH CRIMINAL SEXUAL CONDUCT IN
18 THE FIRST DEGREE AND FOR THE PURPOSES OF THIS CRIME, I'M
19 GOING TO GIVE YOU SOME DEFINITIONS WHICH ARE DEFINED IN
20 SECTION 16-360-651 OF THE CODE OF LAWS OF THE STATE OF
21 SOUTH CAROLINA, 1976 AS AMENDED.

22 ACTOR MEANS A PERSON ACCUSED OF CRIMINAL SEXUAL
23 CONDUCT.

24 AGGRAVATED COERCION MEANS THAT THE ACTOR
25 THREATENS TO USE FORCE OR VIOLENCE OF A HIGH AND AGGRAVATED

1 NATURE TO OVERCOME THE VICTIM OR ANOTHER PERSON IF THE
2 VICTIM REASONABLY BELIEVES THAT THE ACTOR HAS THE PRESENT
3 ABILITY TO CARRY OUT THE THREAT OR THREATENS TO RETALIATE
4 IN THE FUTURE BY INFLICTION OF PHYSICAL HARM, KIDNAPPING OR
5 EXTORTION UNDER CIRCUMSTANCES OF AGGRAVATION.

6 AGGRAVATED FORCE MEANS THAT THE ACTOR USES
7 PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A HIGH AND
8 AGGRAVATED NATURE TO OVERCOME THE VICTIM OR INCLUDES THE
9 THREAT OF THE USE OF A DEADLY WEAPON.

10 INTIMATE PARTS INCLUDE THE PRIMARY GENITAL AREA,
11 ANUS, GROIN, INNER THIGHS OR BUTTOCKS OF A MALE OR FEMALE
12 HUMAN BEING AND THE BREASTS OF A FEMALE HUMAN BEING.

13 PHYSICALLY HELPLESS MEANS THAT A PERSON IS
14 UNCONSCIOUS, ASLEEP OR FOR ANY OTHER REASON PHYSICALLY
15 UNABLE TO COMMUNICATE UNWILLINGNESS TO AN ACT.

16 SEXUAL BATTERY MEANS SEXUAL INTERCOURSE,
17 CUNNILINGUS, FELLATIO, ANAL INTERCOURSE OR ANY INTRUSION,
18 HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY
19 OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER
20 PERSON'S BODY EXCEPT WHEN SUCH INTRUSION IS ACCOMPLISHED
21 FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

22 VICTIM MEANS THE PERSON ALLEGING TO HAVE BEEN
23 SUBJECTED TO CRIMINAL SEXUAL CONDUCT.

24 NOW, I CHARGE YOU THAT A PERSON IS GUILTY OF
25 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IF THE ACTOR

1 ENGAGES IN SEXUAL BATTERY WITH A VICTIM AND CERTAIN OTHER
2 CIRCUMSTANCES ARE PRESENT.

3 NOW, ONCE AGAIN, SEXUAL BATTERY MEANS ANY TYPE OF
4 INTERCOURSE OR INTRUSION; HOWEVER SLIGHT, OF ANY PART OF A
5 PERSON'S BODY OR OF ANY OBJECT INTO OR ON ANOTHER PERSON'S
6 BODY EXCEPT WHEN SUCH INTRUSION IS ACCOMPLISHED FOR
7 MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

8 NOW, IN ORDER TO HAVE FIRST DEGREE CRIMINAL
9 SEXUAL CONDUCT, THERE MUST BE A SHOWING THAT THIS SEXUAL
10 BATTERY OCCURRED WITH ONE OF THE FOLLOWING CIRCUMSTANCES:
11 THE ACTOR HAS USED AGGRAVATED FORCE TO ACCOMPLISH THE
12 SEXUAL BATTERY; OR THE VICTIM SUBMITS TO SEXUAL BATTERY BY
13 THE ACTOR UNDER CIRCUMSTANCES WHERE THE VICTIM IS ALSO THE
14 VICTIM OF FORCIBLE CONFINEMENT, KIDNAPPING, BURGLARY OR
15 SOME OTHER OFFENSE OR ACT.

16 NOW, AGGRAVATED FORCE IS DEFINED, ONCE AGAIN, AS
17 FORCE OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE
18 TO OVERCOME THE VICTIM OR INCLUDES THE THREAT OF THE USE OF
19 A DEADLY WEAPON.

20 NOW, YOU WILL ALSO RECALL THAT THE DEFENDANT IS
21 CHARGED UNDER COUNT FOUR OF THE INDICTMENT WITH INJURY TO
22 TELEPHONE. AND I CHARGE YOU THAT SECTION 16-11-740 OF THE
23 CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, 1976 AS
24 AMENDED, READS AS FOLLOWS:

25 IT IS UNLAWFUL FOR A PERSON WITHOUT THE CONSENT

1 OF THE OWNER TO WILLFULLY DESTROY, DAMAGE OR IN ANY WAY
2 INJURY A TELEPHONE SYSTEM INCLUDING WIRES, FIXTURES OR
3 OTHER APPARATUS, EQUIPMENT OR APPLIANCES OR OBSTRUCT,
4 IMPEDE OR IMPAIR THEIR SERVICES OR TRANSMISSION.

5 NOW, LADIES AND GENTLEMEN OF THE JURY, CRIMINAL
6 INTENT IS A NECESSARY ELEMENT OF EACH CRIME THAT MUST BE
7 PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

8 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
9 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING
10 THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A
11 MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE
12 CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE HAD IN
13 MIND. SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED
14 FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW
15 THE JURY MAKES A DETERMINATION WHETHER OR NOT THE ELEMENT
16 REQUIRING INTENT WAS PRESENT.

17 CRIMINAL INTENT IS A STATE OF MIND WHICH OPERATED
18 JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME. CRIMINAL
19 INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. SO IT IS
20 UP TO YOU, THE JURY, TO DETERMINE WHAT THE DEFENDANT
21 INTENDED TO DO BASED ON THE CIRCUMSTANCE SHOWN TO HAVE
22 EXISTED.

23 I TELL YOU THAT THE STATE MUST PROVE CRIMINAL
24 INTENT BEYOND A REASONABLE DOUBT JUST AS THE STATE MUST
25 PROVE EVERY ELEMENT BEYOND A REASONABLE DOUBT AS I HAVE

1 PREVIOUSLY EXPLAINED TO YOU.

2 NOW, LADIES AND GENTLEMEN OF THE JURY, YOU HAVE
3 BEEN SELECTED AS FAIR AND IMPARTIAL JURORS SWORN TO
4 IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE AND
5 WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE ELSE
6 WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT AND YOU WILL
7 HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

8 YOU ARE TO DECIDE THIS CASE ACCORDING TO THE
9 TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN
10 WITNESSES ALONG WITH THE OTHER EVIDENCE THAT HAS BEEN
11 INTRODUCED.

12 I CHARGE YOU THAT AS JURORS, YOU MUST DECIDE THE
13 ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
14 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE
15 GOVERNED BY SYMPATHY, BY PREJUDICE, BY PASSION, BY PUBLIC
16 OPINION OR ANY OTHER ARBITRARY FACTOR. BOTH THE STATE AND
17 THE DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF YOU
18 WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE
19 IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS I HAVE
20 EXPLAINED IT TO YOU.

21 NOW, LADIES AND GENTLEMEN OF THE JURY, I THANK
22 YOU VERY MUCH FOR THE ATTENTION THAT YOU HAVE PAID
23 THROUGHOUT THE COURSE OF THIS TRIAL AND I WANT YOU TO
24 CONTINUE TO PAY VERY CLOSE ATTENTION TO ME AND IN
25 PARTICULAR, MADAM FOREPERSON, I WANT YOU TO PAY ATTENTION

1 BECAUSE YOU ARE GOING TO BE RESPONSIBLE FOR WRITING THE
2 VERDICTS IN THIS CASE.

3 NOW, I HOLD IN MY HAND THE INDICTMENT IN THIS
4 CASE WHICH LISTS THE FOUR COUNTS WITH WHICH THE DEFENDANT
5 IS CHARGED AND IN THIS HAND I HOLD THE FORM OF VERDICT
6 WHICH CORRESPONDS TO THE CHARGES THAT ARE MADE IN THE
7 INDICTMENT.

8 NOW, THE POSSIBLE VERDICTS IN THIS CASE ARE
9 LISTED AS FOLLOWS: WE, THE JURY, BY UNANIMOUS CONSENT FIND
10 THE FOLLOWING: AS TO COUNT ONE OF THE INDICTMENT, MURDER,
11 WE FIND THE DEFENDANT, GARY DUBOSE TERRY, AND PLEASE ATTACH
12 NO SIGNIFICANCE TO THE FACT THAT I LIST ONE VERDICT BEFORE
13 THE OTHER. IT'S SIMPLY THAT ONE VERDICT MUST BE LISTED
14 FIRST.

15 ONCE AGAIN, AS TO COUNT ONE OF THE INDICTMENT,
16 MURDER, WE FIND THE DEFENDANT, GARY DUBOSE TERRY, GUILTY OR
17 NOT GUILTY.

18 AND, MADAM FOREPERSON, ONCE YOU'VE REACHED A
19 VERDICT TO WHICH YOU ALL TWELVE AGREE, YOU WILL PLACE A
20 CHECK OR AN "X" ON THE LINE TO THE LEFT OF THE VERDICT THAT
21 YOU HAVE REACHED.

22 AS TO COUNT TWO OF THE INDICTMENT, BURGLARY IN
23 THE FIRST DEGREE, WE FIND THE DEFENDANT, GARY DUBOSE TERRY,
24 GUILTY OR NOT GUILTY.

25 ONCE AGAIN, WHEN YOU, THE JURY, HAVE REACHED A

1 VERDICT TO WHICH YOU ALL TWELVE AGREE, THEN YOU WOULD PLACE
2 A CHECK OR AN "X" ON THE LINE TO THE LEFT OF WHICH VERDICT
3 YOU HAVE REACHED.

4 AS TO COUNT THREE OF THE INDICTMENT, CRIMINAL
5 SEXUAL CONDUCT, FIRST DEGREE, WE FIND THE DEFENDANT, GARY
6 DUBOSE TERRY, EITHER GUILTY OR NOT GUILTY.

7 AND ONCE AGAIN, INDICATE TO THE LEFT OF THE
8 APPROPRIATE VERDICT TO WHICH YOU ALL TWELVE AGREE, THE
9 VERDICT WHICH YOU HAVE REACHED.

10 AS TO COUNT FOUR OF THE INDICTMENT, MALICIOUS
11 INJURY TO TELEPHONE SYSTEM, WE FIND THE DEFENDANT, GARY
12 DUBOSE TERRY, GUILTY OR NOT GUILTY.

13 AND WHICHEVER VERDICT YOU REACH, YOU WOULD
14 INDICATE, ONCE AGAIN, BY AN "X" OR A CHECK TO THE LEFT OF
15 THAT VERDICT.

16 MADAM FOREPERSON, WHEN YOU HAVE REACHED A VERDICT
17 TO WHICH YOU ALL TWELVE AGREE AS TO THE COUNTS OF THE
18 INDICTMENTS, YOU WOULD SIGN YOUR NAME AS THE FOREPERSON AND
19 YOUR DELIBERATIONS WOULD BE CONCLUDED AT THAT POINT.

20 NOW, KEEP IN MIND, ONCE AGAIN, THAT YOUR VERDICT
21 MUST BE UNANIMOUS. YOUR VERDICT MUST BE THE VERDICT OF ALL
22 TWELVE OF YOU.

23 THE WORD VERDICT COMES FROM THE LATIN WORD
24 VEREDICTO WHICH MEANS TO SPEAK THE TRUTH AND ONCE YOU'VE
25 REACHED A VERDICT TO WHICH YOU ALL TWELVE AGREE, THEN IT

1 WILL SPEAK THE TRUTH OF YOU COLLECTIVELY AS WELL AS
2 INDIVIDUALLY.

3 NOW, I'M GOING TO BE SENDING YOU TO THE JURY ROOM
4 IN JUST A MOMENT. YOU ARE NOT TO BEGIN YOUR DELIBERATIONS
5 UNTIL I INSTRUCT YOU TO DO SO. I'LL CHECK WITH THE LAWYERS
6 TO SEE IF THERE ARE ANY EXCEPTIONS OR ADDITIONS TO MY
7 CHARGE. IF IT IS NOT NECESSARY FOR ME TO BRING YOU BACK
8 INTO THE COURTROOM FOR FURTHER INSTRUCTION, THEN I WILL
9 SEND THE FORM OF VERDICT, TOGETHER WITH THE INDICTMENT IN
10 THIS CASE BACK TO THE JURY ROOM, TOGETHER WITH ALL OF THE
11 EVIDENCE THAT'S BEEN INTRODUCED IN THIS CASE AND YOU MAY
12 THEN BEGIN YOUR DELIBERATIONS.

13 ONCE AGAIN, ONCE YOU'VE REACHED A VERDICT TO
14 WHICH YOU ALL TWELVE AGREE AS TO THE COUNTS -- ALL FOUR
15 COUNTS OF THE INDICTMENT, MADAM FOREPERSON, AND YOU HAVE
16 FILLED OUT THE FORM, AS I HAVE INSTRUCTED YOU, SIMPLY KNOCK
17 ON THE DOOR, TELL THE BAILIFF THAT YOU HAVE REACHED A
18 VERDICT IN THIS CASE AND WE WILL RECEIVE YOU BACK INTO THE
19 COURTROOM TO PUBLISH THE VERDICT.

20 IF YOU HAPPEN TO HAVE A QUESTION DURING THE
21 COURSE OF YOUR DELIBERATIONS, I'M GOING TO SEND SOME PAPER
22 BACK INTO THE JURY ROOM IF THERE'S NOT SOME ALREADY THERE
23 AND IF YOU HAVE A QUESTION, SIMPLY WRITE OUT THAT QUESTION,
24 SIGN YOUR NAME AS THE FOREPERSON, HAND -- KNOCK ON THE DOOR
25 AND HAND IT TO THE BAILIFF AND HE'LL SEE THAT IT'S

1 DELIVERED TO ME AND THEN I WILL ADDRESS THAT FOR YOU.

2 ONCE AGAIN, PLEASE DO NOT BEGIN YOUR
3 DELIBERATIONS UNTIL I INSTRUCT YOU TO DO SO AND PLEASE KEEP
4 IN MIND THAT YOUR VERDICT MUST BE UNANIMOUS, IT MUST BE THE
5 VERDICT OF ALL TWELVE OF YOU.

6 IF I DO HAVE TO BRING YOU BACK INTO THE COURTROOM
7 FOR FURTHER INSTRUCTION, THAT WOULD BE VERY QUICKLY SO BE
8 PREPARED FOR THAT IN THE EVENT THAT I DO.

9 MR. BAILIFF, THE JURY MAY RETIRE TO THE JURY
10 ROOM. PLEASE HOLD THE ALTERNATES IN A SEPARATE ROOM.

11 SO, MS. ALTERNATES, IF YOU WOULD JUST STAND RIGHT
12 THERE AND LET THE REMAINDER OF THE JURY GO OUT, THEN YOU
13 CAN FOLLOW THEM OUT.

14 AND PLEASE HOLD THE ALTERNATES OUTSIDE OF THE
15 JURY ROOM, PLEASE, SIR.

16 (JURY OUT.)

17 THE COURT: ALL RIGHT.

18 ANY EXCEPTIONS OR ADDITIONS FROM THE STATE?

19 MR. HUMPHRIES: NONE FROM THE STATE, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MR. STONE: EXCUSE ME, YOUR HONOR.

22 THE COURT: CERTAINLY.

23 MS. FULLWOOD: YES, YOUR HONOR.

24 WE HAVE NO ADDITIONS.

25 WE WOULD TAKE EXCEPTION TO THAT PART OF THE

1 CHARGE THAT DEFINED CRIMINAL INTENT. WE BELIEVE THE
2 CHARGE, AS GIVEN TO THE JURY, WAS SUSCEPTIBLE TO CONFUSING
3 THEM AND ALLOWING THEM TO FIND AS TO THE CHARGE OF MURDER
4 SOME TYPE OF GENERAL CRIMINAL INTENT AS OPPOSED TO THE
5 MALICE REQUIRED.

6 THE COURT: I THINK THAT I FULLY INSTRUCTED THEM
7 AS TO MALICE AND ALSO I THINK CRIMINAL INTENT IS SOMETHING
8 THAT IS A PART OF EVERY CRIME.

9 AND I'LL NOTE YOUR EXCEPTION, BUT I DO NOT INTEND
10 TO INSTRUCT THEM FURTHER IN THAT REGARD.

11 NOW, I WANT YOU TO PLEASE CHECK ALL OF YOUR
12 EXHIBITS TO MAKE SURE THAT THEY ARE PROPERLY BEFORE THE
13 COURT AND THAT YOU WILL AGREE ON THOSE ON THE RECORD THAT
14 THEY ARE PROPER TO GO BACK TO THE JURY.

15 ALSO, I'LL LET YOU LOOK OVER THE FORM OF VERDICT
16 TOGETHER WITH THE INDICTMENTS AND THAT WILL ALSO GO BACK TO
17 THE JURY.

18 MR. HUMPHRIES: LET ME SAY ON THE RECORD THAT
19 THAT IS THE MOST FULLY CHARGED MALICE I HAVE EVER HEARD. I
20 THINK THEY SHOULD KNOW WHAT MALICE IS. I THINK I
21 UNDERSTAND.

22 (WHEREUPON, ALL EXHIBITS WERE
23 EXAMINED BY BOTH THE STATE AND THE DEFENSE AT THIS TIME.)

24 THE COURT: ALL RIGHT. LET'S HAVE A LITTLE
25 ORDER, PLEASE.

1 ALL RIGHT.

2 IS THE STATE IN AGREEMENT AS TO THE EXHIBITS THAT
3 ARE TO GO BACK TO THE JURY?

4 MR. CHASE: YES, SIR, YOUR HONOR.

5 THE COURT: AND THE DEFENSE?

6 MS. FULLWOOD: YES, SIR.

7 THE COURT: ALL RIGHT.

8 AND YOU HAVE LOOKED AT THE FORM OF VERDICT AND
9 THE INDICTMENTS TO GO BACK?

10 MS. FULLWOOD: YES, SIR, WE HAVE.

11 MR. STONE: YES, SIR.

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

13 THE COURT: ALL RIGHT.

14 TELL THE JURY THEY MAY BEGIN THEIR DELIBERATIONS.
15 THE ALTERNATES ARE IN THE GRAND JURY ROOM.

16 YOU MAY TAKE IT ON BACK AND TELL THEM THEY MAY
17 BEGIN THEIR DELIBERATIONS.

18 WHILE WE ARE BEGINNING THIS PROCESS, LET ME
19 REMIND EVERYONE THAT'S IN THE COURTROOM THAT ONCE A VERDICT
20 IS RETURNED, IF YOU DO NOT FEEL THAT YOU CAN CONTROL YOUR
21 EMOTIONS, REGARDLESS OF WHAT THAT VERDICT MAY BE, PLEASE
22 REMOVE YOURSELF FROM THE COURTROOM BECAUSE I WILL TOLERATE
23 ABSOLUTELY NO OUTBURST WHATSOEVER AND I WILL HOLD YOU IN
24 CONTEMPT OF COURT. SO PLEASE KEEP THAT IN MIND. I'LL TRY
25 TO MAKE THAT WARNING WHEN THE JURY COMES BACK, BUT IF I DO

1 NOT, CONSIDER YOURSELF FOREWARNED NOW.

2 MR. HUMPHRIES: THE STATE'S WITNESSES HAVE
3 ALREADY BEEN ADVISED, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. STONE: THE DEFENSE WITNESSES WILL BE
6 ADVISED.

7 THE COURT: ALL RIGHT.

8 WE WILL STAND AT EASE UNTIL WE GET A QUESTION OR
9 A VERDICT.

10 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

11 (WHEREUPON, THE JURY BEGAN THEIR
12 DELIBERATIONS AT 3:50 P.M.)

13 (RECESS.)

14 THE BAILIFF: ALL RISE.

15 THE COURT: THANK YOU VERY MUCH PLEASE. PLEASE
16 TAKE YOUR SEATS.

17 ALL RIGHT. LET ME REMIND EVERYONE THAT IF YOU
18 WEREN'T HERE WHEN I SENT THE JURY OUT EARLIER, TO PLEASE,
19 IF YOU CANNOT CONTROL YOUR EMOTIONS, I WANT YOU TO REMOVE
20 YOURSELF FROM THE COURTROOM BECAUSE I WILL NOT TOLERATE ANY
21 OUTBURST WHATSOEVER.

22 ALL RIGHT. LET'S BRING THE JURY BACK.

23 (WHEREUPON, THE JURY RETURNED TO
24 THE COURTROOM WITH A VERDICT AT 5:45 P.M.)

25 THE COURT: MADAM FORELADY, IT'S MY UNDERSTANDING

1 THAT YOU HAVE REACHED A VERDICT TO WHICH YOU ALL TWELVE
2 AGREE, IS THAT CORRECT?

3 THE FOREMAN: YES, YOUR HONOR.

4 THE COURT: AND YOU'VE FILLED OUT THE FORM AS I
5 INSTRUCTED YOU?

6 THE FOREMAN: YES, YOUR HONOR.

7 THE COURT: PLEASE HAND IT TO THE BAILIFF.

8 (WHEREUPON, THE VERDICT IS HANDED
9 TO THE BAILIFF AT THIS TIME.)

10 THE COURT: ALL RIGHT.

11 MADAM CLERK, YOU MAY PUBLISH THE VERDICT.

12 THE CLERK: IN THE CASE OF THE STATE OF SOUTH
13 CAROLINA VERSUS GARY DUBOSE TERRY, WE, THE JURY, BY
14 UNANIMOUS CONSENT, FIND THE FOLLOWING:

15 AS TO COUNT ONE OF THE INDICTMENT, MURDER, WE
16 FIND THE DEFENDANT, GARY DUBOSE TERRY, GUILTY.

17 AS TO COUNT TWO OF THE INDICTMENT, BURGLARY IN
18 THE FIRST DEGREE, WE FIND THE DEFENDANT, GARY DUBOSE TERRY,
19 GUILTY.

20 AS TO COUNT THREE OF THE INDICTMENT, CRIMINAL
21 SEXUAL CONDUCT, FIRST DEGREE, WE FIND THE DEFENDANT, GARY
22 DUBOSE TERRY, GUILTY.

23 AS TO COUNT FOUR OF THE INDICTMENT, MALICIOUS
24 INJURY TO TELEPHONE SYSTEM, WE FIND THE DEFENDANT, GARY
25 DUBOSE TERRY, GUILTY.

1 MADAM FORELADY, LADIES AND GENTLEMEN, IF THIS SO
2 BE YOUR VERDICTS, PLEASE INDICATE EACH OF YOU BY RAISING
3 YOUR RIGHT HANDS?

4 (WHEREUPON, ALL JURORS RAISE THEIR
5 RIGHT HAND AT THIS TIME.)

6 THE CLERK: ALL HANDS WERE RAISED, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 LET THE RECORD REFLECT THAT THIS WAS SIGNED BY
9 ROBIN RICHIE SMITH, FOREPERSON.

10 GO AHEAD AND POLL THE JURY.

11 THE CLERK: AS I CALL YOUR NAME, IF YOU WILL LET
12 ME KNOW WHICH -- WHERE YOU ARE SEATED, PLEASE.

13 NORWOOD BROWN.

14 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
15 ARE THEY STILL YOUR VERDICTS?

16 THE JUROR: YES.

17 THE COURT: GEORGIA MILLER.

18 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
19 ARE THEY STILL YOUR VERDICTS?

20 THE JUROR: YES.

21 THE CLERK: KAY REEVES.

22 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
23 ARE THEY STILL YOUR VERDICTS?

24 THE JUROR: YES.

25 THE CLERK: GWENDOLYNE RICHARDSON.

1 AS TO THESE VERDICTS, ARE THEY YOUR VERDICTS AND
2 ARE THEY STILL YOUR VERDICTS?

3 THE JUROR: YES.

4 THE CLERK: ROBIN SMITH.

5 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
6 ARE THEY STILL YOUR VERDICTS?

7 THE FOREMAN YES.

8 THE CLERK: KENDALL BEACH.

9 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
10 ARE THEY STILL YOUR VERDICTS?

11 THE JUROR: YES, MA'AM.

12 THE COURT: JEANETTE DAVIS.

13 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
14 ARE THEY STILL YOUR VERDICTS?

15 THE JUROR: YES.

16 THE CLERK: CHERYL SANDERS.

17 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS
18 AND ARE THEY STILL YOUR VERDICTS?

19 THE JUROR: YES, THEY ARE.

20 THE CLERK: LOUISE BROWN.

21 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
22 ARE THEY STILL YOUR VERDICTS?

23 THE JUROR: YES.

24 THE CLERK: JERRY JUMPER.

25 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND

1 ARE THEY STILL YOUR VERDICTS?

2 THE JUROR: YES.

3 THE CLERK: LARRY WILLIAMSON.

4 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
5 ARE THEY STILL YOUR VERDICTS?

6 THE JUROR: YES.

7 THE CLERK: MARY HARVEY.

8 AS TO THESE VERDICTS, ARE THESE YOUR VERDICTS AND
9 ARE THEY STILL YOUR VERDICTS?

10 THE JUROR: YES.

11 THE CLERK: ALL JURORS POLLED, YOUR HONOR.

12 THE COURT: ANYTHING FURTHER FROM THE STATE?

13 MR. HUMPHRIES: NOTHING FROM THE STATE.

14 THE COURT: FROM THE DEFENSE?

15 MS. FULLWOOD: NO, YOUR HONOR.

16 MADAM FORELADY, LADIES AND GENTLEMEN, I HAVE SOME
17 MATTERS OF LAWS THAT I NEED TO TAKE UP WITH THE LAWYERS AT
18 THIS POINT IN TIME. I'M GOING TO BE SENDING YOU TO YOUR
19 JURY ROOM AT THIS TIME.

20 I'M GOING TO ASK THAT THE ALTERNATES PLEASE
21 REJOIN THE JURY IN THE JURY ROOM AND I'LL BRING YOU BACK IN
22 FOR FURTHER INSTRUCTIONS IN JUST A FEW MOMENTS.

23 PLEASE, ONCE AGAIN, DO NOT DISCUSS THIS CASE
24 WHILE YOU ARE IN THE JURY ROOM. WE'LL GET YOU BACK IN JUST
25 A FEW MINUTES,

1 (JURY OUT.)

2 THE COURT: ALL RIGHT.

3 ANY FURTHER MOTIONS?

4 MS. FULLWOOD: YOUR HONOR, AT THIS TIME, I WOULD
5 MOVE FOR A NEW TRIAL ON THE GROUNDS FOR THE MOTION ARE
6 PREDICATED UPON ALL OBJECTIONS MADE AND EXCEPTIONS TAKEN
7 DURING THE COURSE OF THIS TRIAL.

8 THE COURT: ALL RIGHT.

9 THE MOTION FOR A NEW TRIAL IS DENIED. I THINK
10 THAT BEING CONSISTENT WITH ALL OF THE RULINGS THAT I MADE
11 THROUGHOUT THE COURSE OF THE TRIAL, THE JURY HAS SPOKEN AND
12 I WOULD DO NOTHING TO INTERFERE WITH THEIR VERDICT AT THIS
13 TIME.

14 ALL RIGHT. WE ARE AT TEN UNTIL SIX THIS EVENING.
15 LET ME SEE THE LAWYERS IN A SIDE BAR JUST A MINUTE, PLEASE.

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

18 THE COURT: ALL RIGHT.

19 OF COURSE -- MR. TERRY, WOULD YOU PLEASE STAND?

20 MR. TERRY, YOU HAVE A STATUTORY RIGHT TO DELAY
21 THE SENTENCING PROCEEDING IN THIS CASE FOR TWENTY-FOUR
22 HOURS AND I KNOW THAT MR. STONE AND MS. FULLWOOD HAVE
23 DISCUSSED THAT WITH YOU.

24 WHAT IS THE DECISION OF THE DEFENDANT IN THAT
25 REGARD, MS. FULLWOOD, MR. STONE?

1 MS. FULLWOOD: WE WILL WAIT THE TWENTY-FOUR
2 HOURS.

3 THE COURT: YOU WILL WAIT THE TWENTY-FOUR HOURS?

4 MS. FULLWOOD: YES, SIR, WE WILL.

5 THE COURT: ALL RIGHT.

6 AND YOU ARE IN AGREEMENT WITH THAT, MR. TERRY?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.

9 ALL RIGHT. LET'S BRING THE JURY IN. BRING OUR
10 JURY BACK, PLEASE, SIR.

11 (JURY IN.)

12 THE COURT: MADAM FOREPERSON, LADIES AND
13 GENTLEMEN OF THE JURY, WE HAVE REACHED THE CONCLUSION OF
14 THE GUILT PHASE OF THIS TRIAL AND THE SECOND PHASE, OF
15 COURSE, AS I EXPLAINED TO YOU DURING THE QUALIFICATION
16 PROCESS, IS THE SENTENCING PHASE.

17 THERE IS A STATUTORY REQUIREMENT THAT TWENTY-FOUR
18 HOURS SHALL ELAPSE BEFORE THAT SECOND PROCEEDING SHALL
19 BEGIN AND THAT WOULD BE TOMORROW EVENING AROUND 6 O'CLOCK.

20 NOW, THERE ARE TWO THINGS THAT COULD BE DONE AND
21 I'M GOING TO LEAVE IT UP TO YOU, LADIES AND GENTLEMEN OF
22 THE JURY, WHETHER OR NOT YOU DESIRE TO START TOMORROW NIGHT
23 AT 6 O'CLOCK OR WOULD YOU RATHER DEFER TO START SATURDAY
24 MORNING.

25 I'M GOING TO SEND YOU TO THE JURY ROOM ONE MORE

1 TIME SO THAT YOU CAN DISCUSS THAT. I WILL BE GLAD TO START
2 AT WHATEVER TIME YOU WANT TO TOMORROW AFTER 6 O'CLOCK OR
3 FIRST THING SATURDAY MORNING. EITHER WAY YOU WANT TO DO
4 IT, I'LL GIVE YOU THAT OPTION.

5 SO IF YOU WOULD, PLEASE RETURN TO THE JURY ROOM
6 AND IF YOU WISH, YOU MAY JUST SEND ME A NOTE OUT WITH THE
7 DECISION THAT YOU MAKE, OKAY.

8 (JURY OUT.)

9 THE COURT: ALL RIGHT.

10 ALSO, THE CLERK HAS ADVISED ME THAT SHE NEEDS TO
11 GET THE FORELADY TO ACTUALLY SIGN THE INDICTMENTS TO
12 TRANSPOSE THE VERDICTS FROM THE SENTENCING SHEET TO THAT.
13 SO, I'M GOING TO SEND HER TO THE JURY ROOM SO THAT CAN BE
14 ACCOMPLISHED.

15 IS THERE ANY OBJECTION FROM THE STATE?

16 MR. HUMPHRIES: ABSOLUTELY NONE.

17 THE COURT: FROM THE DEFENSE?

18 MR. STONE: NO, YOUR HONOR.

19 MS. FULLWOOD: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 MADAM CLERK, PLEASE TAKE CARE OF THAT FUNCTION,
22 PLEASE, MA'AM, AND WE'LL STAND AT EASE FOR JUST A MOMENT
23 UNTIL WE GET THE DECISION FROM THE JURY.

24 (RECESS.)

25 THE COURT: ALL RIGHT.

1 THE JURY HAS ADVISED ME THAT THEY WOULD LIKE TO
2 BEGIN TOMORROW AT SIX AND STAY AS LONG AS I WOULD LIKE.

3 I'M GOING TO BRING THEM BACK OUT. WE WILL START
4 BACK TOMORROW AT 6:00 P.M. SO LET'S BRING OUR JURY IN AND
5 I'LL EXPLAIN TO THEM THE SCHEDULE THAT WE ARE GOING TO
6 KEEP.

7 (JURY IN.)

8 THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN,
9 I HAVE RECEIVED YOUR NOTE THAT YOU WOULD LIKE TO BEGIN
10 TOMORROW EVENING AT 6:00 P.M. AND STAY AS LONG AS I WOULD
11 LIKE.

12 WHAT I WILL PROPOSE TO DO THEN, IS WE WILL START
13 BACK TOMORROW AT 6 O'CLOCK AND WE'LL PROBABLY RUN UNTIL
14 AROUND NINE OR SO. THEN, WE'LL START BACK FIRST THING ON
15 SATURDAY MORNING. I DON'T WANT TO RUN TOO LATE TOMORROW
16 NIGHT AND THERE'S A COUPLE OF REASONS WHY I WOULDN'T WANT
17 TO DO THAT.

18 NUMBER ONE, I WOULDN'T WANT YOUR ATTENTION SPAN
19 TO WANE AS WE WENT INTO THE LATER HOURS. I KNOW I GO TO
20 BED A LITTLE BIT EARLIER THAN I USED TO AND SOMETIMES MY
21 ATTENTION SPAN IS NOT AS GOOD AS IT USED TO BE. SO WE'LL
22 WORK TOMORROW NIGHT FROM SIX UNTIL ABOUT NINE AND THEN GET
23 BACK HERE -- GET YOU HERE BETWEEN EIGHT-THIRTY AND NINE ON
24 SATURDAY MORNING AND GO THEN AND CONTINUE IN THAT MODE
25 UNTIL WE COMPLETE THIS PHASE OF THE CASE.

1 I WANT TO THANK YOU VERY MUCH FOR YOUR ATTENTION
2 AND COOPERATION THROUGHOUT THE FIRST PHASE OF THIS TRIAL.

3 I'M GOING TO BE SENDING YOU AWAY IN JUST A MOMENT
4 AND, OF COURSE, ALWAYS WITH THE INSTRUCTION THAT YOU ARE
5 NOT TO DISCUSS THIS CASE AMONG YOURSELVES IN ANY FASHION
6 WHATSOEVER, THAT YOU ARE NOT TO -- IF ANYONE ATTEMPTS TO
7 CONTACT YOU CONCERNING THIS CASE, THAT THEY'RE -- YOU ARE
8 TO REPORT THAT IMMEDIATELY TO YOUR CUSTODIANS AND THEY
9 WOULD SEE THAT I WAS CONTACTED BECAUSE THAT'S JUST A VERY
10 SERIOUS MATTER. THEY WILL SEE THAT NO ONE COMES IN CONTACT
11 WITH YOU.

12 ALSO, YOU ARE WELL AWARE THAT YOUR READING AND
13 TELEVISION PRIVILEGES ARE MONITORED BY THE CUSTODIANS. OF
14 COURSE, WE HAVE TALKED ABOUT THAT AND THEY WILL SEE THAT
15 EVERYTHING IS PROPERLY TAKEN CARE OF FOR YOU AND WILL SEE
16 THAT YOU GET A NEWSPAPER TOMORROW AFTER ANY ARTICLES
17 CONCERNING THIS CASE HAVE BEEN REDACTED FROM IT BECAUSE ALL
18 WE WANT YOU TO CONSIDER IN THIS CASE IS WHAT YOU SEE AND
19 HEAR IN THIS COURTROOM. NOTHING MORE AND NOTHING LESS.

20 SO I KNOW THAT YOU ARE GOING TO BE ON YOUR OWN
21 TIME TOMORROW. WHAT I WOULD SUGGEST IS THAT YOU TAKE A
22 LITTLE BIT OF TIME TOMORROW AFTERNOON TO MAYBE REST AND
23 RELAX SO THAT YOU WILL BE ALERT TOMORROW NIGHT WHEN WE GET
24 STARTED BACK AT AN UNUSUAL HOUR, BUT IT DOESN'T MEAN THAT
25 WE DON'T DO THIS -- I HAVEN'T DONE THIS IN THE PAST, BUT

1 JUST KEEP IN MIND THAT YOU DO NEED TO BE ALERT TOMORROW
2 NIGHT FOR THE SESSION THAT WE WILL DO THEN.

3 SO WITHOUT FURTHER ADO, I'M GOING TO SEND YOU
4 AWAY WITH ALL OF THOSE INSTRUCTIONS. THE CUSTODIANS WILL
5 HAVE YOU HERE SO THAT WE CAN START TOMORROW NIGHT AT 6
6 O'CLOCK AND I'LL LOOK FORWARD TO SEEING YOU BACK HERE THEN.

7 THE JURY IS EXCUSED.

8 EVERYONE ELSE REMAIN SEATED WHILE THEY EXIT THE
9 COURTROOM, PLEASE, SIR.

10 (JURY OUT.)

11 THE COURT: ALL RIGHT.

12 AFTER TALKING WITH THE LAWYERS IN THE SIDE BAR, I
13 THINK THAT WE CAN GET A GOOD THREE HOURS IN TOMORROW AND
14 THEN COME BACK ON SATURDAY MORNING AND FINISH UP THE
15 STATE'S PORTION OF THE CASE MAYBE AROUND LUNCH TIME OR AT
16 LEAST, IF NOT THEN, SHORTLY THEREAFTER. SO THE DEFENSE
17 WOULD BE PREPARED TO START WITH THEIR PRESENTATION AT THE
18 LATEST BY SATURDAY AFTERNOON AND THEN WE WILL CONTINUE
19 UNTIL WE DO WRAP THIS CASE UP.

20 ALSO, I'M GOING HAVE MY CLERK RUN A COPY --
21 DOWNLOAD A COPY OF MY CHARGE IN THE NEXT PHASE FOR YOU TO
22 HAVE AND ALSO, IF YOU WOULD, TOMORROW WHEN WE GET BACK
23 TOGETHER, PLEASE HAVE YOUR AGGRAVATING AND MITIGATING
24 CIRCUMSTANCES FOR ME SO THAT I CAN START PROPERLY PREPARING
25 THOSE FORMS WHEN WE GET TO THE POINT OF FINAL ARGUMENTS IN

1 THE CASE AND THE CHARGE ON THE LAW.

2 ALL RIGHT. IS THERE ANYTHING FURTHER FROM THE
3 STATE?

4 MR. HUMPHRIES: YOUR HONOR, AND WE TALKED ABOUT
5 THIS AT THE SIDE BAR.

6 MR. STONE INDICATED THAT THEY WOULD DELIVER TO US
7 OR ALLOW US TO INSPECT AND TO ALLOW OUR EXPERT TO REVIEW AN
8 X-RAY.

9 QUITE FRANKLY, I DON'T KNOW WHAT IT IS. I DON'T
10 KNOW WHAT THOSE THINGS ARE, BUT I'M GOING TO GIVE IT TO
11 SOMEBODY WHO DOES.

12 THE COURT: ALL RIGHT.

13 MR. HUMPHRIES: IF WE COULD JUST ARRANGE FOR A
14 TIME PERIOD---

15 MR. STONE: SURE.

16 MR. HUMPHRIES: ---WE'LL BE IN THE OFFICE FIRST
17 THING.

18 MR. STONE: ALL RIGHT, SIR.

19 I DON'T KNOW -- I COULD PROBABLY GET IT OVER HERE
20 BY TEN OR ELEVEN, IS THAT---

21 MR. HUMPHRIES: THAT'S SATISFACTORY.

22 THE COURT: ALL RIGHT.

23 WHY DON'T YOU JUST HAVE IT HERE NO LATER THAN 11
24 O'CLOCK IN THE MORNING..

25 MR. STONE: SURE.

1 THE COURT: IF YOU HAVE A PROBLEM WITH THAT, LET
2 ME KNOW. I'LL BE EITHER IN COLUMBIA OR OVER HERE IN THE
3 MORNING BECAUSE I'M GOING TO BE HERE. I'M NOT GOING
4 ANYWHERE. IT WOULD BE COUNTERPRODUCTIVE FOR ME TO TRY TO
5 RUN HOME BETWEEN NOW AND 6 O'CLOCK TOMORROW NIGHT. SO --
6 ALSO, I THINK THAT YOU HAVE ALSO AGREED ON CERTAIN THINGS
7 INsofar AS RECORDS ARE CONCERNED.

8 DO YOU WANT TO PUT THAT ON THE RECORD?

9 MR. HUMPHRIES: YES, SIR.

10 IF THEY ARE PREPARED TO DO THAT AT THIS TIME. WE
11 HAVE DISCUSSED THIS PARTICULAR ASPECT WITH DEFENSE COUNSEL.
12 WHAT WE WOULD INTEND TO DO AS IT RELATES TO CERTIFIED TRUE
13 COPIES OF COURT DOCUMENTS INDICATING CONVICTIONS -- WELL,
14 CHARGES AND SENTENCING SHEETS, I BELIEVE, THAT THE DEFENSE
15 COUNSEL IS STIPULATING TO THE INTRODUCTION OF THOSE WITHOUT
16 THE KEEPER OF THE RECORDS OR THE CLERK OF COURT.

17 THE COURT: IS THAT CORRECT, MR. STONE?

18 MR. STONE: WE ARE STIPULATING TO THE CHAIN ON
19 THE ADMINISTRATIVE END OF THAT, YES, SIR.

20 THE COURT: ALL RIGHT.

21 THANK YOU VERY MUCH.

22 ANYTHING ELSE FROM EITHER SIDE THAT WE NEED TO
23 CONSIDER BEFORE WE BREAK?

24 MR. HUMPHRIES: IF MS. FULLWOOD AND MR. STONE
25 WOULD LIKE TO COME OVER TO OUR OFFICE TOMORROW AT 5

1 O'CLOCK, WE WOULD BE ABLE TO PROVIDE THEM A COPY OF WHAT WE
2 INTEND TO PLACE INTO EVIDENCE BY WAY OF A CHART OF THE
3 PRIOR CRIMINAL HISTORY.

4 MR. STONE: I APPRECIATE THAT. I WOULD PREFER 4
5 O'CLOCK IF WE COULD HAVE AT LEAST A LITTLE BIT MORE THAN
6 MAYBE---

7 MR. HUMPHRIES: THAT'S FINE.

8 THE COURT: OKAY.

9 MR. HUMPHRIES: IN FACT, WHAT WE CAN DO IS THAT
10 IF WE KNOW -- WE CAN FAX IT TO YOU BECAUSE IT WILL BE A
11 SHEET---

12 MR. STONE: OH, THAT'S FINE.

13 MR. HUMPHRIES: WE'LL FAX IT TO THEM BY 4
14 O'CLOCK.

15 MR. STONE: THAT'S FINE.

16 MR. HUMPHRIES: WE'LL FAX IT TO THEIR -- TO THE
17 PUBLIC DEFENDER'S FAX MACHINE.

18 THE COURT: INsofar AS STARTING TOMORROW AT 6
19 O'CLOCK, WHAT I WANT TO DO IS ONCE WE GET THE JURY HERE IS
20 TO BE ABLE TO START THE TESTIMONY THEN. SO IF WE HAVE ANY
21 PRE-TRIAL MATTERS THAT WE NEED TO DEAL WITH, I'LL BE GLAD
22 TO GET HERE A LITTLE BIT EARLY BECAUSE I DON'T WANT TO
23 LEAVE THEM SITTING IN THAT LITTLE ROOM BACK THERE WHILE WE
24 MAYBE DEAL WITH SOME MATTERS INVOLVING PHOTOGRAPHS OR THE
25 LIKE. SO THINK ABOUT THAT.

1 MR. HUMPHRIES: YES, SIR.

2 THE ONLY THING WE WOULD NEED TO DO PRIOR TO THE
3 BEGINNING OF THE PENALTY PHASE IS TO MOVE TO INCORPORATE
4 THE EVIDENCE AND TESTIMONY FROM THE GUILT PHASE INTO THE
5 PENALTY PHASE.

6 THE COURT: RIGHT.

7 MR. HUMPHRIES: I CAN WAIT AND DO THAT IN THE
8 MORNING.

9 THE COURT: OKAY. VERY GOOD.

10 ANYTHING ELSE FROM THE DEFENSE?

11 MR. STONE: I DON'T BELIEVE SO, YOUR HONOR.

12 ANYTHING ELSE WE CAN CERTAINLY TAKE UP TOMORROW.

13 THE COURT: ALL RIGHT.

14 IF YOU NEED ME, I THINK YOU KNOW HOW TO GET IN
15 TOUCH WITH ME, BUT I'LL SEE YOU ALL TOMORROW, IF NOT
16 BEFORE, 6:00 P.M.

17 WE'LL STAND IN RECESS UNTIL 6:00 P.M. TOMORROW.

18 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

19 MR. STONE: THANK YOU.

20 MS. FULLWOOD: THANK YOU.

21 THE COURT: IF Y'ALL NEED ANYTHING MARKED EARLY
22 BY THE COURT REPORTER, SHE WILL BE HERE BY 5 O'CLOCK.

23 MR. HUMPHRIES: VERY GOOD.

24 THE COURT: SO PLEASE KEEP THAT IN MIND.

25 (WHEREUPON, COURT'S EXHIBIT NUMBER

1 14, JURY NOTE, MARKED FOR THE RECORD AT THIS TIME.)

2 (WHEREUPON, COURT RECESSED FOR THE
3 DAY AT 6:30 P.M.)

4 FRIDAY, SEPTEMBER 19, 1997.

5 (WHEREUPON, COURT RECONVENED ON
6 FRIDAY, SEPTEMBER 19, 1997, AT 6:00 P.M.)

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

8 THE COURT: THANK YOU. PLEASE BE SEATED.

9 MR. STONE: GOOD EVENING.

10 THE COURT: GOOD EVENING.

11 ALL RIGHT. IS THE STATE READY TO PROCEED?

12 MR. HUMPHRIES: THE STATE IS READY TO PROCEED,
13 YOUR HONOR.

14 THE COURT: IS THE DEFENSE READY?

15 MS. FULLWOOD: READY, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MR. STONE: NOT QUITE READY.

18 THE COURT: WELL, WE DO NEED MR. TERRY.

19 (WHEREUPON, THE DEFENDANT ENTERS
20 THE COURTROOM AT THIS TIME.)

21 THE COURT: ALL RIGHT.

22 LET'S BRING OUR JURY BACK.

23 (JURY IN.)

24 THE COURT: POLLING OF THE JURY BY THE STATE?

25 MR. HUMPHRIES: THE STATE WAIVES.

1 THE COURT: BY THE DEFENSE?

2 MS. FULLWOOD: THE DEFENSE WAIVES.

3 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
4 GOOD TO SEE YOU AGAIN. I HOPE YOU HAVE HAD A PLEASANT DAY.

5 LADIES AND GENTLEMEN OF THE JURY, THE DEFENDANT,
6 GARY DUBOSE TERRY, WAS CONVICTED ON SEPTEMBER 18, 1997, OF
7 THE OFFENSE OF MURDER AND THE OFFENSES OF BURGLARY FIRST
8 DEGREE, CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND MALICIOUS
9 INJURY TO TELEPHONE SYSTEM.

10 IT, THEREFORE, BECOMES NECESSARY FOR US TO HOLD
11 THIS ADDITIONAL PROCEEDING WHICH WILL DETERMINE THE
12 PUNISHMENT THAT THE COURT IS TO IMPOSE UPON THE DEFENDANT.

13 SECTION 16-320 OF THE SOUTH CAROLINA CODE OF
14 LAWS, AS AMENDED, PROVIDES IN PART AS FOLLOWS: A PERSON
15 WHO IS CONVICTED OF MURDER MUST BE PUNISHED BY DEATH OR BY
16 IMPRISONMENT FOR LIFE.

17 THAT SECTION AS FURTHER AMENDED ALSO PROVIDES IN
18 PART: UPON CONVICTION OF A DEFENDANT OF MURDER, THE COURT
19 SHALL CONDUCT A SEPARATE SENTENCING PROCEEDING TO DETERMINE
20 WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE
21 IMPRISONMENT.

22 SO OUR PURPOSE IN CONDUCTING THE PROCEEDING IN
23 WHICH WE ARE NOW ENGAGED IS TO DETERMINE WHETHER THE
24 DEFENDANT, GARY DUBOSE TERRY, SHOULD BE SENTENCED BY THE
25 COURT TO DEATH OR TO LIFE IMPRISONMENT..

1 WITH RESPECT TO YOUR PARTICULAR ROLE IN THIS
2 PROCEEDING, YOU WILL BE ASKED TO RECOMMEND TO THE COURT
3 WHETHER IT SHOULD SENTENCE THE DEFENDANT, GARY DUBOSE
4 TERRY, TO DEATH OR TO LIFE IMPRISONMENT.

5 DURING THE SENTENCING PROCEEDING, THE STATE AND
6 THE DEFENDANT WILL HAVE AN OPPORTUNITY TO INTRODUCE
7 ADDITIONAL EVIDENCE IN AGGRAVATION, EXTENUATION OR
8 MITIGATION AND BOTH SIDES WILL HAVE AN OPPORTUNITY TO
9 PRESENT ARGUMENTS FOR AND AGAINST THE DEATH PENALTY.

10 SHOULD YOU RECOMMEND A SENTENCE OF LIFE
11 IMPRISONMENT OR SHOULD YOU RECOMMEND A SENTENCE OF DEATH,
12 THAT IS THE ONLY ISSUE INVOLVED HERE.

13 AFTER THE LAST ARGUMENT HAS BEEN MADE TO YOU
14 CONCERNING THE PUNISHMENT THAT SHOULD BE IMPOSED UPON THE
15 DEFENDANT, THE COURT WILL GIVE YOU CERTAIN INSTRUCTIONS AND
16 YOU WILL THEN RETIRE TO DETERMINE WHETHER A DEATH SENTENCE
17 OR A LIFE SENTENCE IS TO BE RECOMMENDED.

18 SOLICITOR.

19 MR. HUMPHRIES: PLEASE THE COURT, YOUR HONOR.

20 THE COURT: YES, SIR.

21 MR. HUMPHRIES; MADAM FORELADY, LADIES AND
22 GENTLEMEN OF THE JURY, LET THERE BE NO MISTAKE ABOUT THIS
23 ONE THING AND THAT IS THAT ONE MAN AND ONE MAN'S CRIME
24 BRINGS YOU HERE TODAY, PRESENTS YOU WITH TWO CHOICES: LIFE
25 OR DEATH. THAT ONE MAN IS GARY DUBOSE TERRY, THE

1 DEFENDANT.

2 NOW, GARY DUBOSE TERRY NO LONGER WEARS THAT ROBE
3 OF RIGHTEOUSNESS, WHICH WHILE ON HIS BODY, ROTTED FROM THE
4 INSIDE OUT.

5 HE IS TODAY, AS HE WAS YESTERDAY AND THE DAY
6 BEFORE AND BACK TO MAY 30, 1994, A MURDERER, ONE WHO
7 INVADES THE HOME OF ANOTHER AND A RAPIST. THAT'S GARY
8 DUBOSE TERRY.

9 NOW, WHAT WE'LL ASK YOU TO DO, WHAT YOUR OATH
10 REQUIRES YOU TO DO IS TO MAKE A DECISION.

11 NOW, WE ARE NOT GOING TO ASK YOU TO JUDGE GARY
12 DUBOSE TERRY AS HE SITS THERE TODAY, ALTHOUGH I SUBMIT TO
13 YOU, THAT GARY DUBOSE TERRY, AS HE SITS THERE TODAY, BASED
14 ON HIS CRIME, HIS CONDUCT, AS YOU HAVE HEARD IT ALREADY,
15 CRIES OUT FOR THE ULTIMATE JUSTICE. WE'RE NOT GOING TO ASK
16 YOU TO DO THAT.

17 WE ARE GOING TO ASK YOU TO JUDGE AND DECIDE THE
18 FATE OF A MAN WHO THROUGH THE COURSE OF HIS LIFE CUT A PATH
19 OF DESTRUCTION THROUGH THE LIVES OF THOSE HE KNEW AND THOSE
20 HE DID NOT. WE ARE GOING TO SHOW YOU CRIMES AND BAD ACTS
21 GREAT AND SMALL. THE GREAT ONES MAY OFFEND YOU. THEY MAY
22 TAKE YOU BACK. THE SMALL ONES MAY MAKE YOU SHRUG YOUR
23 SHOULDERS AND SAY WHY. WHY DOES THE STATE OFFER ME THAT
24 EVIDENCE ABOUT GARY TERRY? IT'S FOR THIS ONE PURPOSE.
25 THERE IS ONE THING THAT GARY TERRY HAS BEEN OVER THE COURSE

1 OF HIS LIFE AND THAT IS CONSISTENT IN THIS REGARD. HE HAS
2 BEEN A BREAKER OF THE LAWS OF MAN AND THE LAWS OF MORALITY.

3 YOU SEE, IN THIS PHASE, LADIES AND GENTLEMEN, AND
4 THERE ARE GOOD REASONS FOR THIS. YOU HAVE UP TO THIS NOW
5 NOT HEARD ONE WORD, NOT ONE SHRED OF EVIDENCE DIRECTLY
6 RELATING TO THE CHARACTER OF GARY DUBOSE TERRY EXCEPT BY
7 VIRTUE OF HIS CONDUCT ON THE NIGHT OF MAY 30, 1994. AND
8 THAT'S AS IT SHOULD BE. YOU WERE TO DECIDE THE CASE, AS
9 YOU DID, BASED ONLY ON THE EVIDENCE THAT DIRECTLY RELATED
10 TO THE CASE.

11 IN THIS PHASE, FOLKS, WHAT IS ABSOLUTELY AND
12 CRITICALLY IMPORTANT FOR YOU TO REVIEW AND YOU TO KNOW IS
13 THE CHARACTER OF GARY DUBOSE TERRY.

14 YOU WILL HEAR EVIDENCE IN AGGRAVATION. YOU MAY
15 HEAR EVIDENCE IN MITIGATION. YOU WILL BE ASKED TO CONSIDER
16 EACH OF THESE TYPES OF EVIDENCE AND ULTIMATELY, ULTIMATELY
17 YOU WILL BE REQUIRED BY YOUR OATH TO MAKE A DECISION.

18 GARY DUBOSE TERRY, MURDERER, RAPIST, AN INVADER
19 OF THE HOME. WHAT PUNISHMENT DOES HIS CRIMES DESERVE?
20 WHAT PUNISHMENT DOES HIS CONDUCT AND CHARACTER DESERVE?

21 THE STATE'S CASE WILL GO UP QUICKLY. I SUBMIT TO
22 YOU IT WILL GO UP WITH COMPELLING EVIDENCE. BECAUSE IT
23 WILL GO UP QUICKLY, I'M SURE THERE WILL BE NO PROBLEM IN
24 YOUR PAYING VERY CLOSE ATTENTION AS YOU CLEARLY HAVE.

25 I TOLD YOU BEFORE THAT THERE IS NO JUSTICE UNTIL

1 YOU FOLKS SPEAK THE TRUTH. YOU'VE DONE THAT AS IT RELATES
2 TO THE GUILT OR INNOCENCE OF GARY DUBOSE TERRY. THERE'S NO
3 MISTAKE ABOUT THAT. NO ONE WILL TAKE EXCEPTION TO THAT,
4 BUT YOU'VE GOT ONE MORE JOB TO DO AND WE ARE STILL ABOUT
5 THE BUSINESS OF JUSTICE.

6 THANK YOU.

7 THE COURT: MS. FULLWOOD.

8 MS. FULLWOOD: THANK YOU, YOUR HONOR.

9 MADAM FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
10 THE ISSUE BEFORE YOU NOW IS PUNISHMENT. IT IS NOT A
11 QUESTION ANYMORE OF WHETHER GARY TERRY COMMITTED THE CRIME
12 OF MURDER. YOU DECIDED THAT YESTERDAY. THE QUESTION
13 BEFORE YOU ALSO ISN'T WHETHER GARY TERRY IS A WONDERFUL
14 PERSON. I THINK YOUR VERDICT SAYS THAT HE IS NOT SIMPLY BY
15 VIRTUE OF THE FACT THAT HE COMMITTED THE CRIME OF MURDER.
16 AND WE HAVE NO QUALM WITH YOUR VERDICT. WE RESPECT IT.
17 BUT WE HAVE GOT TO MOVE ON.

18 THE QUESTION BEFORE YOU ISN'T WHETHER YOU ARE
19 GOING TO BE SOFT OR TOUGH, BECAUSE YOU'RE BEING ASKED TO
20 DECIDE BETWEEN THE TWO HARSHTEST PUNISHMENTS THE LAW ALLOWS.
21 LIFE, LIFE IN PRISON OR DEATH.

22 WE ARE NOT UP HERE TODAY TO ASK YOU TO FORGET
23 ABOUT THE EVIDENCE THAT YOU HEARD OVER THE PAST FEW DAYS.
24 IT'S EVIDENCE THAT YOU SHOULD PROPERLY TAKE INTO ACCOUNT,
25 BUT I TELL YOU WHAT, THERE'S A REASON THAT YOU FOURTEEN

1 PEOPLE ARE SITTING IN THIS BOX AND THAT REASON IS THAT YOU
2 TOLD THE COURT, YOU TOLD THE PROSECUTION AND YOU TOLD THE
3 DEFENSE SOMETHING WHEN WE TALKED TO YOU BEFORE THE TRIAL OF
4 THIS CASE. WHAT EACH AND EVERY ONE OF YOU TOLD US WAS THAT
5 YOUR MIND WOULD NOT BE MADE UP ABOUT THE RIGHT PUNISHMENT
6 IN A CASE AFTER A CONVICTION. EVERYONE OF YOU TOLD US THAT
7 YOU WOULD WANT TO HAVE MORE INFORMATION. YOU WOULD WANT TO
8 LEARN EVERYTHING YOU POSSIBLY COULD ABOUT THE ENTIRE
9 SITUATION BEFORE YOU MADE UP YOUR MINDS AS TO WHAT THE
10 APPROPRIATE PUNISHMENT WAS. YOU PROMISED TO DO THAT WHEN
11 YOU TOOK YOUR OATH AS JURORS. SO THAT'S WHAT WE'RE HERE
12 FOR TODAY.

13 YOU'VE LEARNED A LOT ABOUT WHAT HAPPENED THAT
14 NIGHT IN MS. JACKSON'S HOUSE AND NO DOUBT YOU'LL LEARN
15 MORE, BUT WE'RE HERE TO ASK YOU NOT TO LET YOUR DECISION BE
16 SOME KIND OF KNEE-JERK RESPONSE TO EVIDENCE THAT WE ARE ALL
17 SURE SHOCKED YOU BECAUSE THERE'S SOME STUFF THAT YOU DON'T
18 KNOW YET.

19 WHAT YOU DON'T KNOW AND WHAT'S VITALLY IMPORTANT
20 FOR YOU TO KNOW BEFORE YOU CAN MAKE UP YOUR MINDS IS WHO IS
21 GARY TERRY. YOU ARE GOING TO HEAR SOME BAD THINGS ABOUT
22 GARY TERRY. MR. HUMPHRIES REFERRED TO THAT IN HIS
23 STATEMENT TO YOU. THAT'S RIGHT YOU WILL. YOU ARE GOING TO
24 HEAR SOME BAD THINGS ABOUT HIM IN THE STATE'S CASE AND YOU
25 ARE MORE THAN LIKELY GOING TO HEAR SOME BAD THINGS ABOUT

1 HIM IN THE DEFENSE'S CASE, TOO, BECAUSE WE ARE NOT GOING TO
2 BE TRYING TO HIDE FACTS FROM YOU. WE'VE GOT TO PRESENT
3 THEM FULLY AND FAIRLY IN ORDER FOR YOU TO MAKE UP YOUR
4 MIND, BUT YOU ARE GOING TO LEARN SOME THINGS ABOUT GARY.
5 YOU ARE GOING TO LEARN ABOUT HIS BACKGROUND, HOW HE CAME UP
6 AND SOME OF THE THINGS THAT INFLUENCED THE PERSON HE IS
7 TODAY. YOU ARE GOING TO HEAR FROM PEOPLE WHO LOVE HIM AND
8 WHO CARE ABOUT HIM.

9 JUST AS MS. JACKSON HAS FAMILY WHO YOU HAVE HEARD
10 FROM AND WHO YOU WILL PROBABLY HEAR FROM AGAIN WHO LOVED
11 HER AND CHERISHED HER, GARY HAS FAMILY WHO HAS THOSE SAME
12 TYPES OF FEELING ABOUT HIM, BUT MOST IMPORTANT, WHAT YOU
13 ARE GOING TO LEARN ABOUT GARY THAT IS DIFFERENT. YOU ARE
14 GOING TO LEARN THAT HE'S DIFFERENT FROM THE REST OF US.
15 YOU'RE GOING TO LEARN WHY WE WEREN'T ABLE TO PUT UP ANY
16 CASE IN DEFENSE.

17 LADIES AND GENTLEMEN, GARY IS DIFFERENT AND I
18 THINK YOU ARE GOING TO CONCLUDE AFTER YOU HEAR ALL OF THE
19 EVIDENCE AND YOU LEARN MORE ABOUT GARY TERRY AND WHY HE'S
20 THE WAY HE IS AND WHY AFTER 30 YEARS OF LIFE, HE'S ENDED UP
21 HERE TODAY, A MAN CONVICTED OF MURDER AND ON TRIAL FOR HIS
22 LIFE, I BELIEVE THAT YOU ARE GOING TO CONCLUDE THAT AFTER
23 YOU CONSIDER ALL THE EVIDENCE, JUSTICE AND FAIRNESS REQUIRE
24 A SENTENCE OF LIFE IMPRISONMENT.

25 THANK YOU VERY MUCH.

1 MR. HUMPHRIES: PRIOR TO CALLING THE FIRST
2 WITNESS, THE STATE WOULD MOVE TO INCORPORATE THE EVIDENCE
3 AND TESTIMONY TAKEN IN THE GUILT PHASE INTO THE SENTENCING
4 PHASE FOR CONSIDERATION.

5 THE COURT: ALL RIGHT.

6 MS. FULLWOOD: YES, SIR.

7 THE COURT: NO OBJECTION FROM THE DEFENSE, IT
8 WILL BE INCORPORATED INTO -- ALL EVIDENCE FROM THE GUILT
9 PHASE WILL BE INCORPORATED INTO THE SENTENCING PHASE.

10 MR. HUMPHRIES: THANK YOU.

11 THE COURT: CALL YOUR FIRST WITNESS, PLEASE.

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

13 THE STATE CALLS BILL BROWN TO THE STAND.

14 WILLIAM H. BROWN,

15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
17 RECORD.

18 THE WITNESS: WILLIAM HAROLD BROWN.

19 DIRECT EXAMINATION

20 BY MR. CHASE:

21 Q MR. BROWN, WHERE ARE YOU EMPLOYED?

22 A I'M EMPLOYED WITH THE RICHLAND COUNTY SHERIFF'S
23 DEPARTMENT.

24 Q AND WHAT IS YOUR TITLE AT THE RICHLAND COUNTY
25 SHERIFF'S DEPARTMENT?

1 A I'M A LIEUTENANT.

2 Q LIEUTENANT BROWN, DID YOU HOLD THAT SAME POSITION ON
3 MAY THE 4TH OF 1985?

4 A NO, SIR. AT THAT POINT, I WAS AN INVESTIGATOR
5 ASSIGNED TO THE INVESTIGATIVE DIVISION.

6 Q ON THAT DATE, DID YOU HAVE THE OCCASION THEN TO
7 INVESTIGATE AN INCIDENT FROM A CONSTRUCTION SITE OWNED BY A
8 BEN KIRBY?

9 A YES, SIR.

10 Q WHAT TYPE OF INCIDENT OCCURRED AT THAT SITE?

11 A THAT WAS A BURGLARY AND A GRAND LARCENY CASE THAT WE
12 WERE INVESTIGATING AT IMPORTS PLUS. IT WAS A BUSINESS.

13 Q WHAT TYPE OF ITEMS WERE TAKEN FROM THAT SITE?

14 A BASICALLY, BUSINESSES THAT WERE USED TO WORK ON
15 AUTOMOBILES.

16 Q AND -- AND WHAT WAS TAKEN?

17 A SEVERAL ITEMS WERE TAKEN. ABOUT EIGHTEEN ITEMS THAT
18 I CAN REMEMBER TO INCLUDE THINGS SUCH AS SANDERS, THINGS
19 THAT WOULD BE UTILIZED IN A BODY SHOP, A CAR BODY SHOP, TO
20 REPAIR DAMAGE ONTO -- ON A VEHICLE.

21 Q LIEUTENANT BROWN, WERE YOU ABLE TO FIND OR GET BACK
22 ANY PORTION OF THOSE MATERIALS FROM THAT INCIDENT?

23 A YES, SIR.

24 Q HOW WERE YOU ABLE TO GET THOSE BACK?

25 A IN MAY OF 1985, I DEVELOPED GARY TERRY AS A SUSPECT

1 IN THIS BREAK-IN AND AS A RESULT OF THAT, I WORKED WITH
2 GARY FOR SEVERAL DAYS AND WAS ABLE TO RETRIEVE SEVERAL
3 ITEMS THAT HAD BEEN STOLEN FROM THAT BUSINESS AND RETURNED
4 THEM TO THE LAWFUL OWNER.

5 Q DID GARY TERRY LEAD YOU TO THOSE MATERIALS?

6 A YES, SIR, HE DID.

7 Q HOW DID HE KNOW WHERE THOSE MATERIALS WERE?

8 A BECAUSE HE WAS INVOLVED IN THE BREAK-IN.

9 Q AND DID HE ADMIT THAT TO YOU?

10 A YES, SIR.

11 Q THANK YOU, LIEUTENANT BROWN. ANSWER ANY QUESTIONS
12 THEY MAY HAVE.

13 A YES, SIR.

14 THE COURT: CROSS-EXAMINATION.

15 MR. STONE: EXCUSE ME JUST A MOMENT.

16 THE COURT: YES, SIR.

17 MR. STONE: NO QUESTIONS.

18 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN,
19 LIEUTENANT BROWN.

20 MR. CHASE: ASK THAT THIS WITNESS BE EXCUSED,
21 YOUR HONOR.

22 MS. FULLWOOD: NO OBJECTION.

23 THE COURT: WITHOUT OBJECTION, HE IS EXCUSED.

24 THANK YOU VERY MUCH FOR COMING.

25 THE WITNESS: THANK YOU, SIR.

1 (WHEREUPON, THE WITNESS WAS
2 EXCUSED AT THIS TIME.)

3 MR. CHASE: BEG THE COURT'S INDULGENCE ONE
4 SECOND, YOUR HONOR.

5 THE COURT: YES, SIR.

6 MR. CHASE: YOUR HONOR, AT THIS TIME, THE STATE
7 CALLS MITCH WILKERSON TO THE STAND.

8 MITCH WILKERSON,
9 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

10 MS. FULLWOOD: YOUR HONOR, COULD WE HAVE A BRIEF
11 SIDE BAR.

12 THE COURT: YES, MA'AM.

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

15 THE COURT: ALL RIGHT.

16 MR. CHASE, YOU MAY CONTINUE.

17 MR. CHASE: THANK YOU, YOUR HONOR.

18 THE WITNESS: IT'S MITCH WILKERSON.

19 DIRECT EXAMINATION

20 BY MR. CHASE:

21 Q MR. WILKERSON, WHERE ARE YOU EMPLOYED?

22 A AT THE COLUMBIA POLICE DEPARTMENT.

23 Q AND WHAT IS YOUR TITLE THERE?

24 A I'M A SERGEANT IN CHARGE OF THE MAJOR CRIMES UNIT IN
25 THE INVESTIGATIVE DIVISION.

1 Q SERGEANT WILKERSON, DID YOU HOLD THAT SAME POSITION
2 ON NOVEMBER THE 14TH OF 1985?

3 A I WAS AN INVESTIGATOR IN THAT SAME UNIT.

4 Q WERE YOU INVOLVED IN AN INVESTIGATION OF AN INCIDENT
5 INVOLVING AN ANN LOMAX (PHONETICALLY) FROM THAT DATE?

6 A YES, I WAS.

7 Q COULD YOU PLEASE TELL US WHAT YOU WERE INVESTIGATING?

8 A I WAS CALLED TO THE SCENE. THIS OCCURRED ON BELTLINE
9 BOULEVARD NEAR TWO NOTCH ROAD. I WAS CALLED TO THE SCENE.
10 A WOMAN HAD BEEN STABBED IN THE THROAT, MS. LOMAX, HAD WITH
11 A KNIFE AND SHE WAS IN THE MEDIAN AREA OF BELTLINE AND WAS
12 LATER TRANSPORTED TO THE HOSPITAL FOR EMERGENCY TREATMENT.

13 Q WAS A SUSPECT DEVELOPED IN THIS CASE?

14 A YES, IT WAS. AS -- IN THE COURSE OF INVESTIGATION,
15 WE DID DEVELOP A SUSPECT.

16 Q AND WHO WAS THAT SUSPECT?

17 A THAT WAS GARY TERRY.

18 Q ULTIMATELY, DID MR. TERRY PLEAD TO ANY CHARGES
19 RELATED TO THIS?

20 A YES, HE DID.

21 Q AND -- YOU CAN PUBLISH THAT PLEASE. IS THAT A COURT
22 DOCUMENT, THE INDICTMENT FROM THE CASE AS TO WHAT MR. TERRY
23 PLED GUILTY TO?

24 A YES, IT IS.

25 Q AND WHAT WAS THAT CHARGE?

1 A ASSAULT AND BATTERY WITH A HIGH AND AGGRAVATED
2 NATURE.

3 Q AND ON WHAT DATE, DID THE OFFENSE OCCUR?

4 A ON THE 14TH OF NOVEMBER, 1985.

5 Q AND WHAT WAS HIS SENTENCE RELATED TO THAT CHARGE?

6 A HE WAS SENTENCED UNDER THE YOUTHFUL OFFENDER ACT THAT
7 WAS NOT TO EXCEED SIX YEARS. IT WAS SUSPENDED ON SIX
8 MONTHS OR SEVEN-HUNDRED-FIFTY DOLLARS PLUS COURT COSTS AND
9 TWO YEARS PROBATION.

10 MR. CHASE: YOUR HONOR, AT THIS TIME, WE WOULD
11 MOVE A CERTIFIED TRUE COPY OF THE INDICTMENT AND SENTENCING
12 SHEET INTO EVIDENCE.

13 THE COURT: WITHOUT OBJECTION?

14 MS. FULLWOOD: THAT'S CORRECT.

15 THE COURT: ALL RIGHT. WITHOUT OBJECTION, IT
16 WILL BE ADMITTED AS STATE'S NUMBER 22.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER
18 22, INDICTMENT/86-GS-40-0861 AND SENTENCING SHEET, ENTERED
19 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

20 MR. CHASE: ALSO, YOUR HONOR, SUBJECT TO THE
21 STIPULATION OF DEFENSE COUNSEL, I HAVE A BOARD WHICH WILL
22 RELATE TO THE CRIMINAL HISTORY OF GARY D. TERRY, WHICH HAS
23 BEEN STIPULATED TO BY DEFENSE AND WE WILL REFER TO THAT
24 THROUGHOUT THE TESTIMONY. IF WE COULD MOVE THAT INTO
25 EVIDENCE AT THIS TIME.

1 THE COURT: WITHOUT OBJECTION?

2 MS. FULLWOOD: YES, SIR, THAT'S CORRECT.

3 THE COURT: WITHOUT OBJECTION IT WILL BE ADMITTED
4 AS STATE'S EXHIBIT NUMBER 23.

5 MR. CHASE: THANK YOU, YOUR HONOR.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER
7 23, CHART/CRIMINAL HISTORY PAGE 1, ENTERED INTO EVIDENCE AT
8 THIS TIME WITHOUT OBJECTION.)

9 MR. CHASE: LIEUTENANT WILKERSON, IS THIS AN
10 ACCURATE SUMMARY OF YOUR TESTIMONY? THAT FROM AN OFFENSE
11 RELATED TO NOVEMBER THE 14TH OF 1985, GARY DUBOSE TERRY WAS
12 CONVICTED OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
13 NATURE. HE WAS SENTENCED TO A SENTENCE UNDER THE YOUTHFUL
14 OFFENDER ACT AND IT WAS SUSPENDED ON THE SERVICE OF SIX
15 MONTHS OR THE PAYMENT OF 750 DOLLARS AND TWO YEARS
16 PROBATION?

17 A YES, THAT'S CORRECT.

18 MR. CHASE: YOUR HONOR, AT THIS TIME, WE WOULD
19 AFFIX THIS TO STATE'S EXHIBIT NUMBER 23.

20 THE COURT: ALL RIGHT, SIR.

21 MR. CHASE: THANK YOU, YOUR HONOR.

22 ANSWER ANY QUESTIONS THEY MAY HAVE.

23 THE COURT: CROSS-EXAMINATION.

24 CROSS-EXAMINATION

25 BY MR. STONE:

1 Q IS IT LIEUTENANT?

2 A SERGEANT.

3 Q SERGEANT. GOOD TO SEE YOU AGAIN. SORRY ABOUT THAT.

4 LET ME ASK YOU JUST A FEW QUESTIONS, SIR.

5 AFTER THE STABBING OF THE PROSTITUTE -- YOU
6 DIDN'T -- YOU WERE THE CASE INVESTIGATOR ON THIS?

7 A YES, I WAS.

8 Q OKAY. AFTER -- AFTER THE STABBING TOOK PLACE, IS IT
9 NOT TRUE, THAT MR. TERRY, THIS GENTLEMAN OVER HERE, WAS SO
10 CONFUSED THAT HE COULDN'T ACTUALLY FIGURE OUT HOW TO GET
11 OUT OF THE HOUSE THAT HE WAS IN?

12 A NO. NO. THAT IS---

13 Q THAT IS NOT TRUE?

14 A NO.

15 Q EXPLAIN THAT, IF YOU WILL?

16 A WELL, THAT WAS -- THAT WAS -- HE GAVE A STATEMENT OF
17 THE INCIDENT LATER ON AFTER HE WAS ARRESTED. THAT WAS A --
18 HE INDICATED THAT IN HIS STATEMENT, BUT THAT WAS NOT THE
19 VERSION OF THE VICTIM.

20 Q OKAY. THE VICTIM DID NOT GIVE YOU THAT STATEMENT?

21 A NO.

22 MR. STONE: CAN I MARK THIS JUST FOR
23 IDENTIFICATION PURPOSES, YOUR HONOR?

24 THE COURT: ALL RIGHT.

25 DEFENDANT'S NUMBER TWO---

1 MR. STONE: I THINK IT'S TWO, YOUR HONOR.

2 THE COURT: ---FOR I.D.

3 (WHEREUPON, DEFENDANT'S EXHIBIT
4 NUMBER TWO, STATEMENT/11/27/85, MARKED FOR IDENTIFICATION
5 ONLY AT THIS TIME.)

6 MR. STONE: THANK YOU.

7 SERGEANT, I KNOW IT'S BEEN A LONG TIME. LET ME
8 SHOW YOU WHAT'S BEEN MARKED STATE'S(SIC) EXHIBIT NUMBER TWO
9 AND ASK DOES THAT REFRESH YOUR MEMORY?

10 THE WITNESS: YES. THIS IS A STATEMENT THAT I
11 TOOK FROM MS. LOMAX.

12 Q OKAY. THAT WOULD BE THE VICTIM?

13 A (NO RESPONSE.)

14 Q I'M SORRY. THAT WOULD BE THE VICTIM?

15 A YES.

16 Q YOU DON'T HAVE TO READ IT. IF YOU COULD JUST REVIEW
17 IT AND I'LL GO BACK TO ASK SOME QUESTIONS. HAVE YOU
18 REVIEWED IT?

19 A UH---

20 Q IS IT FAIR TO SAY, SIR, THAT AFTER THE STABBING TOOK
21 PLACE, MR. TERRY JUST WALKED TO THE DOOR LIKE NOTHING HAD
22 HAPPENED? HE WAS SO CALM, BUT HE COULDN'T GET OUT OF THE
23 DOOR. IN FACT, THE VICTIM HAD TO SHOW HIM HOW TO OPEN THE
24 DOOR?

25 A YES. HE WAS HAVING TROUBLE WITH THE DOOR, BUT I WAS

1 REFERRING TO THE FACT THAT HE WAS CALM, ACTED LIKE NOTHING
2 HAD HAPPENED. HE DIDN'T SHOW ANY CONFUSION THERE.

3 MR. CHASE: YOUR HONOR, AT THIS TIME, UNDER RULE
4 106, HE'S REFERRING TO A PORTION OF THE STATEMENT, WE WOULD
5 ASK THAT THE ENTIRE STATEMENT BE PUBLISHED TO THE JURY SO
6 THAT THERE'S NOT ANY CONFUSION THERE.

7 THE COURT: ALL RIGHT, SIR.

8 MR. STONE: I APPRECIATE THAT, YOUR HONOR, BUT I
9 SPECIFICALLY ASKED HIM IF HE NEEDED THIS TO REFRESH HIS
10 MEMORY. HE DID AND I ASKED THE SAME QUESTION OVER AGAIN.
11 AND THAT'S WHAT WE'RE -- THAT'S ALL HE'S DONE IS REFRESHED
12 HIS MEMORY AND I ASKED HIM SPECIFICALLY ABOUT THE
13 STATEMENT.

14 THE COURT: AND YOU ASKED HIM A QUESTION -- LET
15 ME SEE THE STATEMENT THEN---

16 MR. STONE: YES, SIR.

17 THE COURT: ---SO THAT I CAN PROPERLY RULE UPON
18 IT.

19 MR. STONE: YES, SIR.

20 (WHEREUPON, THE DOCUMENT IS HANDED
21 TO THE COURT AT THIS TIME.)

22 THE COURT: AS PART OF THE STATEMENT, PURSUANT TO
23 THE RULE, THE ENTIRE STATEMENT WILL BE PUBLISHED.

24 MR. STONE: CERTAINLY.

25 IF YOU WILL PUBLISH THAT TO THE JURY.

1 THE WITNESS: THIS IS DATED NOVEMBER 27, 1985.

2 IT INDICATES PERSONALLY APPEARED BEFORE ME, THIS
3 DATE, AN OFFICER, DULY AND LEGALLY AUTHORIZED TO ADMINISTER
4 OATH IN AND ABOVE-NAMED COUNTY AND STATE AFORESAID, COMES
5 ONE, ANN LOMAX, AGE 27, MAKES THE FOLLOWING STATEMENT UNDER
6 OATH:

7 THE STATEMENT BEGINS, HE PARKED BEHIND THE
8 LAUNDROMAT AT HEAD STREET AND TWO NOTCH ROAD. HE FLASHED
9 HIS LIGHTS. I WENT UP TO THE CAR. WE MADE A DEAL AND THEN
10 WENT ONTO MY HOUSE ON BELTLINE BOULEVARD. WE WENT IN THE
11 HOUSE AND SAT AND TALKED FOR A FEW MINUTES. HE ASKED ME TO
12 TURN THE CANDLE OUT BECAUSE IT WAS BOTHERING HIM. HE FELT
13 LIKE SOMEBODY WAS IN THE HOUSE. SO I WALKED HIM AROUND THE
14 HOUSE TO SHOW HIM THAT NO ONE WAS THERE.

15 HE WAS HUGGING ME AROUND THE NECK. AS SOON AS WE
16 GOT TO THE FIRST ROOM, HE STABBED ME. HE JUST SLOWLY
17 WALKED TO THE DOOR LIKE HE HADN'T DONE ANYTHING. HE WAS
18 JUST SO CALM. HE COULDN'T GET OUT THE DOOR. I WAS
19 STANDING IN THE KITCHEN TELLING HIM HOW TO OPEN THE DOOR.

20 WHEN HE LEFT, I LOCKED THE DOOR AND WATCHED HIM
21 -- WATCHED FOR HIM TO GO DOWN THE DRIVEWAY. THEN I OPENED
22 THE DOOR AND WENT FOR HELP.

23 AND AFTER THAT, IT'S A SERIES OF QUESTIONS.

24 QUESTION: WHAT WERE YOU DOING ON TWO NOTCH ROAD?

25 ANSWER: I WAS WORKING AS A PROSTITUTE.

1 QUESTION: WHAT KIND OF CAR DID HE HAVE?

2 ANSWER: A TAN PINTO STATION WAGON WITH PORT
3 WINDOWS IN THE BACK WITH GEOMETRIC COLORS ON THE SIDE OF
4 THE WINDOW.

5 QUESTION: DID HE APPEAR TO BE DRUNK OR ON DRUGS?

6 ANSWER: NOT UNTIL HE MENTIONED IT IN THE HOUSE.
7 HE SAID HE HAD BEEN SMOKING REEFER AND MARIJUANA.

8 QUESTION: DID YOU HAVE SEX WITH HIM OR TAKE ANY
9 MONEY?

10 ANSWER: NO.

11 QUESTION: DID YOU EVER THREATEN HIM VERBALLY OR
12 WITH ANY TYPE OF WEAPON?

13 ANSWER: NO.

14 QUESTION: WHAT WERE YOU TALKING ABOUT BEFORE THE
15 STABBING?

16 ANSWER: HE WAS TALKING ABOUT THE REEFER HE HAD
17 SMOKED. HE SAID IT WAS DOING -- WHAT IT WAS DOING TO HIS
18 HEAD.

19 QUESTION: HAD YOU EVER MET HIM BEFORE?

20 ANSWER: NO.

21 I HAD SEEN HIM BEFORE IN THE TWO NOTCH ROAD AREA
22 IN THE SAME CAR.

23 SORRY, IT'S STAPLED. BUT I HAD NEVER TALKED TO
24 HIM.

25 QUESTION: WHAT DID HE STAB YOU WITH?

1 ANSWER: I DON'T KNOW, BUT IT LOOKED LIKE IT WAS
2 A BROKEN END OF A BIG KNIFE. I PULLED IT OUT OF MY NECK,
3 BUT I THINK IT WAS STILL IN MY HAND WHEN I DID.

4 QUESTION: DID HE SAY ANYTHING AFTER STABBING
5 YOU?

6 ANSWER: JUST WHEN HE WAS TRYING GET OUT OF THE
7 HOUSE. HE SAW ME GOING FOR THIS DOOR AND SAID GET BACK.

8 QUESTION: WHO DID YOU THINK WAS IN THE HOUSE?

9 ANSWER: HE NEVER SAID. HE WAS JUST -- THOUGHT
10 SOMEONE WAS THERE.

11 QUESTION: DID YOU EVER SMOKE MARIJUANA, DRINK OR
12 TAKE ANY KIND OF DRUGS WITH HIM?

13 ANSWER: NO.

14 QUESTION: HOW LONG WAS HE IN THE HOUSE?

15 ANSWER: ABOUT 15 MINUTES.

16 QUESTION: DID HE WANT TO PICK YOU UP ESPECIALLY
17 ON TWO NOTCH ROAD?

18 ANSWER: NO. I WAS JUST CLOSER.

19 QUESTION: IS THIS A TRUE STATEMENT?

20 ANSWER: YES.

21 MR. STONE: HE THOUGHT OTHER PEOPLE WERE IN THE
22 HOUSE, BUT, IN FACT, NOBODY ELSE WAS THERE, IS THAT
23 CORRECT?

24 A THAT'S CORRECT.

25 Q AFTER HE DID THE STABBING, HE LOOKED AT HER AS IF HE

1 DIDN'T KNOW ANYTHING HAD HAPPENED, DIDN'T HE?

2 A WELL, SHE SAYS -- SHE SAYS HE JUST SLOWLY WALKED TO
3 THE DOOR LIKE HE HADN'T DONE ANYTHING.

4 Q NOTHING ELSE.

5 THE COURT: ANYTHING FURTHER?

6 MR. CHASE: NOTHING FURTHER, YOUR HONOR.

7 WE ASK THAT THIS WITNESS BE EXCUSED.

8 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.

9 THANK YOU VERY MUCH FOR COMING, SERGEANT WILKERSON.

10 (WHEREUPON, THE WITNESS WAS
11 EXCUSED AT THIS TIME.)

12 MR. CHASE: YOUR HONOR, THE STATE CALLS MIKE
13 GRANT TO THE STAND.

14 MIKE GRANT,

15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: TAKE A SEAT, PLEASE, AND GIVE US YOUR
17 FULL NAME.

18 THE WITNESS: MIKE GRANT.

19 DIRECT EXAMINATION

20 BY MR. CHASE:

21 Q MR. GRANT, WHERE ARE YOU EMPLOYED?

22 A I'M EMPLOYED WITH THE STATE LAW ENFORCEMENT DIVISION.

23 Q AND WHAT ARE YOUR DUTIES THERE?

24 A I'M A SPECIAL AGENT.

25 Q DID YOU HOLD THAT SAME POSITION IN MAY OF 1988?

1 A NO, SIR, I DID NOT.

2 Q WHAT WAS YOUR POSITION AT THAT TIME?

3 A I WAS A DRIVER IMPROVEMENT ANALYST, FRAUDULENT
4 LICENSE INVESTIGATOR FOR THE DEPARTMENT OF HIGHWAYS AND
5 PUBLIC TRANSPORTATION.

6 Q PURSUANT TO YOUR DUTIES AS AN INVESTIGATOR, DID YOU
7 CONDUCT AN INVESTIGATION RELATED TO A GARY DUBOSE TERRY?

8 A YES, SIR, I DID.

9 Q WHAT TYPE OF INVESTIGATION WERE YOU DOING?

10 A A FRAUDULENT DRIVERS LICENSE INVESTIGATION.

11 Q WERE YOU ABLE TO DETERMINE ANYTHING FROM YOUR
12 INVESTIGATION?

13 A YES, SIR, I WAS.

14 Q WHAT WERE YOU ABLE TO DETERMINE?

15 A I DETERMINED THAT ON AUGUST THE 19TH, 1987, THAT GARY
16 DUBOSE TERRY, WAS ISSUED A DRIVERS LICENSE IN THE NAME OF
17 BILLY RAY TERRY. I BELIEVE HIS BROTHER.

18 Q WHAT DID YOU USED IN ORDER TO COME TO THAT
19 CONCLUSION?

20 A OFFICIAL DRIVERS LICENSE PHOTOGRAPHS TAKEN FROM
21 DRIVER LICENSE HISTORIES.

22 Q ASK YOU, CAN YOU IDENTIFY -- FIRST OF ALL, CAN YOU
23 IDENTIFY WHAT THIS IS?

24 A YES, SIR. THIS IS A COPY OF A HIGHWAY DEPARTMENT
25 DOCUMENT, A CERTIFIED DOCUMENT IN THE NAME OF GARY DUBOSE

1 TERRY. IT WAS A BEGINNERS PERMIT FOR A MOTORCYCLE.

2 Q IS THIS ONE OF THE ITEMS THAT YOU USED IN YOUR
3 INVESTIGATION?

4 A YES, SIR, IT IS.

5 Q CAN YOU IDENTIFY THIS, PLEASE?

6 A THIS IS AN OFFICIAL HIGHWAY DEPARTMENT DOCUMENT IN
7 THE NAME OF GARY DUBOSE TERRY FOR A VEHICLE.

8 Q AND WAS THIS ALSO USED---

9 A YES---

10 Q ---IN YOUR INVESTIGATION?

11 A YES, SIR, IT WAS.

12 Q ASK IF YOU CAN IDENTIFY THESE?

13 A YES, SIR, I CAN. ONE IS A PHOTOGRAPH OF BILLY RAY
14 TERRY FROM HIS DRIVERS LICENSE HISTORY. ONE IS IN -- OR
15 THE SECOND IS IN THE NAME OF BILLY RAY TERRY, BUT HAS A
16 PHOTOGRAPH OF, IN FACT, HIS BROTHER, GARY DUBOSE TERRY.

17 Q AND, IN FACT, ARE THESE EXACT REPLICATES OF THE
18 DOCUMENTS AND PHOTOS THAT YOU USED IN YOUR INVESTIGATION?

19 A YES, SIR, THEY ARE.

20 MR. CHASE: YOUR HONOR, AT THIS TIME, WE WOULD
21 MOVE THESE INTO EVIDENCE.

22 MS. FULLWOOD: NO OBJECTION.

23 THE COURT: WITHOUT OBJECTION, THEY WILL BE
24 ADMITTED -- DO YOU WANT THEM INDIVIDUALLY MARKED OR AS A
25 GROUP---

1 MR. CHASE: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT. AND YOU HAVE HOW MANY?

3 MR. CHASE: THERE ARE THREE SEPARATE DOCUMENTS.

4 THE COURT: THEY WILL BE STATE'S NUMBER 24, 25

5 AND 26.

6 MR. CHASE: YES, SIR. I JUST DESCRIBED THEM AS

7 LAMINATED DOCUMENTS.

8 THE COURT: ALL RIGHT.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER

10 24, PHOTOCOPY BEGINNERS PERMIT/G.D.T.; STATE'S EXHIBIT

11 NUMBER 25, PHOTOCOPY S.C. DRIVERS LICENSE/G.D.T.; AND

12 STATE'S EXHIBIT NUMBER 26, PHOTOCOPY S.C. DRIVERS

13 LICENSE/B.R.T.J., ENTERED INTO EVIDENCE AT THIS TIME

14 WITHOUT OBJECTION.)

15 MR. CHASE: SPECIAL AGENT GRANT, IF YOU COULD

16 STEP DOWN.

17 A (WITNESS COMPLIES.)

18 Q AND PLEASE DESCRIBE TO THE JURY WHAT YOU USED AND ONE

19 THING YOU'LL NEED TO SPEAK UP SO THAT THE COURT REPORTER

20 CAN HEAR YOU WHILE YOU'RE AWAY FROM THE MICROPHONE AND ALSO

21 ALLOW ALL THE JURORS TO SEE. WE'LL ACTUALLY DO IT ONE TIME

22 FROM DOWN HERE AND ONE TIME FROM DOWN HERE.

23 A OKAY, SIR. YOU WANT ME TO DESCRIBE WHAT THIS IS?

24 Q REFERRING TO STATE'S EXHIBIT NUMBER 25, WHAT IS THIS

25 A PICTURE OF?

1 A THIS IS A PHOTOGRAPH OF GARY DUBOSE TERRY AND IT IS
2 WHAT WE CALL A CLASS ONE, MEANING A REGULAR CAR LICENSE.

3 WHENEVER THE HIGHWAY DEPARTMENT TAKES YOUR
4 PHOTOGRAPH AT ANY D.M.V. OFFICE WHEN YOU REVIEW YOUR
5 DRIVERS LICENSE, A 35 MILLIMETER COPY IS KEPT AT THE MAIN
6 HIGHWAY DEPARTMENT, WHETHER THAT BE A PERMIT,
7 IDENTIFICATION CARD OR ANY TYPE OF DOCUMENT THAT THEY
8 ISSUE.

9 Q NOW, REFERRING TO STATE'S EXHIBIT NUMBER 24, WHAT IS
10 THAT?

11 A THIS, AGAIN, IS A HIGHWAY DEPARTMENT DOCUMENT IN THE
12 NAME OF GARY DUBOSE TERRY. THIS IS A MOTORCYCLE PERMIT
13 ISSUED TO HIM.

14 Q THEN REFERRING TO STATE'S EXHIBIT NUMBER 26, COULD
15 YOU PLEASE DESCRIBE TO THE JURY WHAT THIS DEPICTS?

16 A THIS, AGAIN, ARE TWO HIGHWAY DEPARTMENT DOCUMENTS
17 TAKEN FROM OFFICIAL RECORDS. ONE IN THE NAME OF BILLY --
18 OR BOTH IN THE NAME OF BILLY RAY TERRY. HOWEVER, AS YOU
19 CAN CLEARLY SEE, THEY ARE TWO DIFFERENT INDIVIDUALS.

20 Q IF YOU COULD PLEASE JUST STEP DOWN AND ALLOW THIS END
21 OF THE COUNTER TO SEE THAT.

22 A (WITNESS COMPLIES.)

23 Q HAVE A SEAT.

24 A (WITNESS COMPLIES.)

25 Q THANK YOU, SPECIAL AGENT GRANT. ANSWER ANY QUESTIONS

1 THEY MAY HAVE.

2 MS. FULLWOOD: NO QUESTIONS.

3 THE COURT: ARE YOU ASKING ALSO THAT HE BE
4 EXCUSED?

5 MR. CHASE: PLEASE, YOUR HONOR.

6 THE COURT: WITHOUT OBJECTION, HE IS EXCUSED.
7 THANK YOU FOR COMING.

8 (WHEREUPON, THE WITNESS WAS
9 EXCUSED AT THIS TIME.)

10 MR. CHASE: THE STATE CALLS ANDY GRANGER, YOUR
11 HONOR.

12 ANDY GRANGER,

13 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
15 LAST NAME, PLEASE.

16 THE WITNESS: ANDY GRANGER, G-R-A-N-G-E-R.

17 DIRECT EXAMINATION

18 BY MR. CHASE:

19 Q MR. GRANGER, WHERE ARE YOU EMPLOYED?

20 A PRESENTLY, I'M SELF-EMPLOYED AS A FARMER.

21 Q DID YOU HAVE THAT SAME EMPLOYMENT ON APRIL THE 14TH
22 OF 1988?

23 A NO, SIR. I WAS EMPLOYED AT THAT TIME WITH THE
24 RICHLAND COUNTY SHERIFF'S DEPARTMENT.

25 Q AND WHAT TITLE DID YOU HOLD?

1 A I WAS A DEPUTY SHERIFF, ROAD DEPUTY.

2 Q WHAT WERE YOUR DUTIES AS A ROAD DEPUTY?

3 A WE PATROLLED THE AREA, PROTECTED PROPERTY, PERSONS --
4 PERSONNEL. BASICALLY ANSWERED CALLS FOR DIFFERENT CRIMES,
5 BREAK-INS, ET CETERA.

6 Q ON APRIL THE 14TH OF 1988, DID YOU HAVE THE OCCASION
7 TO BE INVOLVED IN AN INCIDENT WITH A GARY DUBOSE TERRY?

8 A YES, SIR, I DID.

9 Q WILL YOU PLEASE DESCRIBE THAT INCIDENT?

10 A I WAS ON COLUMBIA COLLEGE DRIVE WHEN I OBSERVED MR.
11 TERRY OPERATING A RED MOTORCYCLE WITHOUT A HEADLIGHT OR A
12 VEHICLE LICENSE ON COLUMBIA COLLEGE DRIVE HEADING TOWARDS
13 MONTICELLO ROAD.

14 I TURNED THE VEHICLE AROUND ON HIM AND AT
15 COLUMBIA COLLEGE AND DALE STREET, I ACTIVATED MY BLUE LIGHT
16 AND SIREN AT WHICH TIME THE SUSPECT BEGAN TO ACCELERATE
17 RAPIDLY AWAY FROM ME.

18 SUSPECT TURNED RIGHT OFF OF COLUMBIA COLLEGE
19 DRIVE ONTO LINDEN STREET, TRAVELLED AT A HIGH RATE OF SPEED
20 AND IN A RECKLESS MANNER APPROXIMATELY FOUR-TENTHS OF A
21 MILE. HE DISREGARDED THE STOP SIGN AT THE END OF LINDEN
22 STREET, TAKING A LEFT ONTO DALE STREET.

23 SUSPECT TRAVELLED APPROXIMATELY SIX-TENTHS OF A
24 MILE ON DALE STREET TO RIDGEWAY STREET WHERE HE TURNED OFF
25 OF DALE ONTO RIDGEWAY. THEN THE SUSPECT TRAVELLED

1 APPROXIMATELY TWO-TENTHS OF A MILE TO THE DEAD-END OF
2 RIDGEWAY STREET AT WHICH TIME THE SUSPECT NEARLY STRUCK A
3 SMALL CHILD WHO WAS PLAYING IN HER YARD AT THE DEAD-END OF
4 RIDGEWAY STREET.

5 THERE WAS -- THE ROAD STOPPED AND THERE WAS
6 BASICALLY AN EMBANKMENT AND THEY WERE PLAYING DOWN IN THE
7 EDGE OF THE YARD AND AFTER HE ALMOST STRUCK HER, HE TOOK
8 THE MOTORCYCLE, DROVE IT OVER THE EMBANKMENT THAT'S AT THE
9 DEAD-END OF RIDGEWAY STREET AND THE EMBANKMENT LED TO A
10 LARGE WOODED AREA THAT'S JUST OFF OF BUCKNER ROAD.

11 I OBSERVED THE SUSPECT GO DOWN INTO A WOODED AREA
12 IN SOME SMALL PINES AND I PROCEEDED TO BUCKNER ROAD TO BOX
13 THE SUSPECT IN WHILE OFFICER BELUE REMAINED AT THE DEAD-END
14 OF RIDGEWAY WHICH OVERLOOKED THE WOODED AREA.

15 I STOPPED ON BUCKNER ROAD AND PROCEEDED TO SEARCH
16 THE WOODED AREA WHILE OTHER OFFICERS PAROLED THE AREA. THE
17 SEARCH CAME UP NEGATIVE AND MYSELF AND OTHERS BEGAN TO
18 LEAVE THE AREA WHEN I SPOTTED THE SUSPECT IN A WOODED AREA
19 AT THE CORNER OF BUCKNER ROAD AND MONTICELLO ROAD.

20 WE PULLED INTO THE SHELL FOOD MART WHICH IS RIGHT
21 BESIDE THE -- AT THAT PARTICULAR WOODED AREA. WE EXITED
22 OUR VEHICLES AND IDENTIFIED OURSELVES. THE SUSPECT WAS
23 ORDERED TO STOP AND TOLD THAT HE WAS UNDER ARREST.

24 THE SUSPECT TURNED AND THEN FLED BACK INTO THE
25 WOODS. MYSELF AND OFFICER BELUE GAVE FOOT CHASE TO THE

1 SUSPECT WHO ATTEMPTED TO GET AWAY BY CROSSING A LARGE WATER
2 WAY. THE SUSPECT WAS CAUGHT BY MYSELF AND OFFICER BELUE
3 ABOUT FIVE HUNDRED YARDS INTO THE WOODS OFF OF MONTICELLO
4 ROAD.

5 SUSPECT WAS ADVISED OF HIS MIRANDA RIGHTS AND
6 AS HE WAS BEING TAKEN TO MY PATROL CAR, HE ADVISED ME THAT
7 THE MOTORCYCLE WAS STOLEN AND THAT HE WAS TAKING IT HOME.
8 HE ALSO ADVISED THAT THE REASON HE FAILED TO STOP FOR ME
9 WAS THAT HE THOUGHT THAT I WAS OFFICER TRUESDALE, WHICH WAS
10 A TRAFFIC OFFICER FOR THE RICHLAND COUNTY SHERIFF'S
11 DEPARTMENT AT THE TIME. HE ADVISED THAT HE LEFT THE
12 MOTORCYCLE IN THE WOODS JUST OFF OF MONTICELLO ROAD BEHIND
13 A BLUE AND WHITE HOUSE. WE WENT BACK TO THE WOODED AREA,
14 AS DIRECTED BY HIM, AND FOUND THE MOTORCYCLE. I BROUGHT
15 THE MOTORCYCLE TO THE DEAD-END OF RIDGEWAY STREET AND
16 CALLED FOR A WRECKER TO TAKE IT TO OUR COMPOUND AND THE
17 V.I.N. NUMBER HAD BEEN SCRATCHED OFF OF THIS MOTORCYCLE.

18 Q MR. GRANGER, DO YOU KNOW WHAT THE STATUS OF HIS --
19 WERE YOU ABLE TO DETERMINE WHAT THE STATUS OF HIS LICENSE
20 WAS AT THAT TIME?

21 A AT THAT TIME, HIS LICENSE WAS SUSPENDED---

22 Q MR. GRANGER, BASED ON THIS INCIDENT, WAS MR. TERRY
23 CONVICTED OF ANY OFFENSES?

24 A YES, SIR, HE WAS..

25 Q I'LL ASK YOU USING THIS, WHAT WAS HE CONVICTED OF?

1 A HE WAS CONVICTED OF RESISTING ARREST AND WAS
2 SENTENCED TO A ONE YEAR UNDER THE YOUTHFUL OFFENDER'S ACT.

3 THIS ONE, HE WAS CONVICTED OF POSSESSION OF A
4 STOLEN VEHICLE AND WAS ALSO SENTENCED TO ONE YEAR UNDER THE
5 YOUTHFUL OFFENDER ACT.

6 THIS ONE, HE WAS CONVICTED OF FAILURE TO STOP FOR
7 A POLICE VEHICLE AND WAS ALSO CONVICTED, SENTENCED TO ONE
8 YEAR YOUTHFUL OFFENDER ACT.

9 HE WAS ALSO CONVICTED OF DRIVING UNDER
10 SUSPENSION, SECOND OFFENSE, AND WAS SENTENCED TO SIXTY DAYS
11 UNDER THE YOUTHFUL OFFENDER ACT.

12 MR. CHASE: YOUR HONOR, AT THIS TIME, THE STATE
13 MOVES TO INTRODUCE CERTIFIED TRUE COPIES OF THE INDICTMENTS
14 AND SENTENCING SHEETS RELATED TO THE OFFENSES JUST
15 DESCRIBED BY MR. GRANGER.

16 MR. STONE: NO OBJECTION.

17 THE COURT: WITHOUT OBJECTION, THAT'S THREE
18 SEPARATE---

19 MR. CHASE: THERE ARE FOUR SEPARATE INDICTMENTS
20 AND SENTENCING SHEETS, YOUR HONOR.

21 THE COURT: ALL RIGHT. IT WILL BE STATE'S NUMBER
22 27, 28, 29 AND 30.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER
24 27, INDICTMENT/88-GS-40-2639 & SENTENCING SHEET; STATE'S
25 EXHIBIT NUMBER 28, INDICTMENT/88-GS-40-2640 & SENTENCING

1 SHEET; STATE'S EXHIBIT NUMBER 29, INDICTMENT/88-GS-40-2641
2 & SENTENCING SHEET; AND STATE'S EXHIBIT NUMBER 30,
3 INDICTMENT/88-GS-40-2638 & SENTENCING SHEET, ENTERED INTO
4 EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

5 MR. CHASE: MR. GRANGER, DOES THIS ACCURATELY
6 REFLECT YOUR TESTIMONY HERE TODAY THAT FROM AN INCIDENT
7 ARISING ON APRIL THE 14TH OF 1988, GARY DUBOSE TERRY WAS
8 CONVICTED OF DRIVING UNDER SUSPENSION, SECOND OFFENSE, AND
9 WAS SENTENCED TO 60 DAYS?

10 A YES, SIR.

11 Q ALSO, FROM THAT SAME DATE, HE WAS CONVICTED OF
12 POSSESSION OF A STOLEN VEHICLE, SENTENCED TO A YOUTHFUL
13 OFFENDER ACT SENTENCE?

14 A YES, SIR.

15 Q THAT ON THAT SAME DATE, HE WAS CONVICTED OF FAILURE
16 TO STOP AND ALSO SENTENCED UNDER THE YOUTHFUL OFFENDER ACT?

17 A YES, SIR.

18 Q ON THAT SAME DATE, HE WAS CONVICTED OF RESISTING
19 ARREST AND ALSO SENTENCED UNDER THE YOUTHFUL OFFENDER ACT?

20 A YES, SIR.

21 MR. CHASE: YOUR HONOR, AT THIS TIME, THE STATE
22 WOULD AFFIX THESE TO THE BOARD.

23 THE COURT: ALL RIGHT, SIR.

24 MR. CHASE: REFERRING TO STATE'S EXHIBIT NUMBER

25 23.

1 MR. STONE: NO OBJECTION, YOUR HONOR.

2 MR. CHASE: THANK YOU, MR. GRANGER.

3 ANSWER ANY QUESTIONS THEY MAY HAVE.

4 CROSS-EXAMINATION

5 BY MR. STONE:

6 Q HI, MR. GRANGER. JUST A FEW.

7 WHEN YOU STOPPED AND HE RAN FROM YOU, HE DIDN'T
8 FIGHT YOU OR ANYTHING, DID HE? IT WASN'T AN ASSAULT ON A
9 POLICE OFFICER---

10 A NO, SIR.

11 Q ---OR ANYTHING LIKE THAT---

12 A NO, SIR, IT WASN'T AN ASSAULT.

13 Q OKAY, SIR. AND ALL THESE FOUR CHARGES, FAILURE TO
14 STOP, RESISTING ARREST, POSSESSION OF STOLEN VEHICLE,
15 DRIVING, ALL THAT WAS THAT ONE EVENT, IS THAT RIGHT?

16 A YES, SIR, THAT'S CORRECT.

17 Q OKAY. THANK YOU. NOTHING ELSE, YOUR HONOR

18 THE COURT: ANYTHING FURTHER FROM THE STATE?

19 MR. CHASE: NO, SIR, YOUR HONOR. ASK THAT THIS
20 WITNESS BE EXCUSED.

21 MR. STONE: NO OBJECTION.

22 THE COURT: ALL RIGHT. WITHOUT OBJECTION, YOU
23 ARE EXCUSED, MR. GRANGER.

24 THE WITNESS: THANK YOU.

25 THE COURT: THANK YOU VERY MUCH FOR COMING.

1 (WHEREUPON, THE WITNESS WAS
2 EXCUSED AT THIS TIME.)

3 MR. CHASE: THE STATE CALLS SYLVIA FOSTER TO THE
4 STAND, YOUR HONOR.

5 SYLVIA FOSTER,
6 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
8 PLEASE.

9 THE WITNESS: MY NAME IS SYLVIA FOSTER.

10 DIRECT EXAMINATION

11 BY MR. CHASE:

12 Q MS. FOSTER, WHERE ARE YOU EMPLOYED?

13 A WITH THE SOUTH CAROLINA DEPARTMENT OF PROBATION,
14 PAROLE AND PARDON SERVICE AT THE RICHLAND COUNTY OFFICE.

15 Q WHAT ARE YOUR DUTIES IN THAT POSITION?

16 A I AM A SPECIAL PAROLE AGENT SUPERVISING OFFENDERS
17 PLACED ON PROBATION AND PAROLE.

18 Q DID YOU HOLD THAT SAME POSITION IN APRIL OF 1986?

19 A YES, SIR, I DID.

20 Q ON THAT DATE IN APRIL OF 1986, WERE YOU ASSIGNED AS A
21 PROBATION AGENT FOR A GARY DUBOSE TERRY?

22 A YES, SIR, I WAS.

23 Q AND BASED ON WHAT CONVICTION, WERE YOU ASSIGNED AS
24 HIS PROBATION AGENT?

25 A HE RECEIVED AN ASSAULT AND BATTERY OF A HIGH AND

1 AGGRAVATED NATURE ON APRIL 16, 1986.

2 Q MS. FOSTER, I ASK YOU, WHEN A PERSON IS PLACED UNDER
3 YOUR CARE OR IS ASSIGNED TO YOU AS A PROBATION AGENT, DO
4 THEY AGREE TO CERTAIN CONDITIONS OF THEIR PROBATION?

5 A YES, SIR, THEY DO.

6 Q IN FACT, ARE THERE THIRTEEN BASIC CONDITIONS THAT
7 THEY AGREE TO?

8 A YES, SIR.

9 Q DO YOU HAVE A LIST OF THOSE CONDITIONS IN FRONT OF
10 YOU?

11 A YES, SIR, I DO.

12 Q COULD YOU PLEASE LIST OR PUBLISH TO THE JURY
13 CONDITION NUMBER NINE?

14 A FOLLOW THE ADVICE AND INSTRUCTIONS OF YOUR -- OF THE
15 PROBATION AGENT.

16 Q THAT WOULD HAVE BEEN YOU IN THIS CASE?

17 A YES, SIR.

18 Q COULD YOU PLEASE PUBLISH NUMBER TEN?

19 A PERMIT THE PROBATION AGENT TO VISIT YOUR HOME, PLACE
20 OF EMPLOYMENT OR ELSEWHERE AT ANY TIME.

21 Q COULD YOU PUBLISH NUMBER ELEVEN, PLEASE?

22 A REPORT TO THE PROBATION AGENT AS DIRECTED.

23 Q AND ALSO NUMBER THIRTEEN, PLEASE?

24 A IN ACCORDANCE WITH THE PROBATION ACT OF 1980, AS
25 PASSED BY THE GENERAL ASSEMBLY, I SHALL PAY A SUPERVISION

1 FEE OF 240 DOLLARS PER YEAR.

2 Q SUBSEQUENT TO GARY DUBOSE TERRY BEING ASSIGNED TO YOU
3 AND YOU BEING HIS PROBATION AGENT, DID HE FULFILL THE
4 CONDITIONS WHICH YOU'VE JUST PUBLISHED TO THE JURY?

5 A NO, SIR, HE DID NOT.

6 Q AND, IN FACT, WAS A PROBATION REVOCATION HEARING HELD
7 ON JUNE THE 10TH, 1988, RELATED TO THOSE INFRACTIONS OR THE
8 FAILURE TO MEET THOSE CONDITIONS?

9 A YES, SIR.

10 Q WHAT WAS THE RESULT OF THAT PROBATION REVOCATION
11 HEARING?

12 A THE RESULT OF THAT HEARING, MR. TERRY'S PROBATION
13 SENTENCE WAS REVOKED AND HE WAS SENTENCED TO SERVE HIS
14 Y.O.A., YOUTHFUL OFFENDER SENTENCE.

15 Q CAN YOU IDENTIFY THIS DOCUMENT?

16 A THIS IS HIS ORDER OF REVOCATION WHICH IS SIGNED BY
17 THE JUDGE ON THAT DATE ON JUNE 10, 1988.

18 Q AND, IN FACT, IS THIS THE ORDER FROM THE PROBATION
19 REVOCATION HEARING WHICH WAS HELD---

20 A YES, SIR.

21 Q ---IMPOSING THE ORIGINAL Y.O.A. SENTENCE?

22 A YES, SIR.

23 MR. CHASE: MOVE THIS INTO EVIDENCE AT THIS TIME,
24 YOUR HONOR.

25 MS. FULLWOOD: NO OBJECTION.

1 THE COURT: WITHOUT OBJECTION, IT WILL BE
2 ADMITTED AS STATE'S NUMBER 31.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER
4 31, ORDER OF REVOCATION/6/10/88, ENTERED INTO EVIDENCE AT
5 THIS TIME WITHOUT OBJECTION.)

6 MR. CHASE: MS. FOSTER, IS THIS AN ACCURATE
7 SUMMARY OF YOUR TESTIMONY HERE TODAY?

8 ON JUNE THE 10TH OF 1988, A PROBATION REVOCATION
9 HEARING WAS HELD FOR THE VIOLATION OF PROBATION CONDITIONS
10 AND THAT AS A RESULT, GARY DUBOSE TERRY'S PROBATION WAS
11 REVOKED AND HE WAS REQUIRED TO SERVE THE TERM OF THE
12 YOUTHFUL OFFENDER ACT SENTENCE?

13 A YES, SIR, IT IS.

14 MR. CHASE: MOVE TO AFFIX THIS TO THE BOARD,
15 STATE'S EXHIBIT NUMBER 23, YOUR HONOR.

16 THE COURT: WITHOUT OBJECTION?

17 MS. FULLWOOD: NO OBJECTION, YOUR HONOR.

18 MR. CHASE: THANK YOU, MS. FOSTER.

19 ANSWER ANY QUESTIONS THEY MAY HAVE.

20 THE COURT: MS. FULLWOOD.

21 MS. FULLWOOD: THANK YOU.

22 CROSS-EXAMINATION

23 BY MS. FULLWOOD:

24 Q JUST A COUPLE OF QUESTIONS, MS. FOSTER.

25 AFTER GARY SERVED HIS SENTENCE ON THE PROBATION

1 REVOCATION, HE WAS RELEASED ON PAROLE, WAS HE NOT?

2 A I DON'T HAVE THE RECORDS FROM OUR FILE WHERE HE WAS
3 RELEASED BACK TO Y.O.A. PAROLE. I JUST ONLY SENTENCED HIM
4 FOR THIS PARTICULAR SENTENCE.

5 Q WELL, WASN'T -- WASN'T HE RELEASED ON PAROLE AND THEN
6 AFTER A YEAR, HIS PAROLE ENDED SATISFACTORY?

7 A YES. HE DID HAVE ANOTHER CASE, BUT I DON'T HAVE THE
8 RECORDS FOR THAT.

9 Q OKAY. THANK YOU.

10 MR. CHASE: NOTHING FURTHER, YOUR HONOR, AND WE
11 ASK THAT THIS WITNESS BE EXCUSED.

12 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED,
13 MS. FOSTER. THANK YOU VERY MUCH FOR COMING.

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

16 MR. CHASE: YOUR HONOR, THE STATE CALLS LEWIS
17 PATTERSON TO THE STAND.

18 LEWIS G. PATTERSON,
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 LEWIS G. PATTERSON.

23 DIRECT EXAMINATION

24 BY MR. CHASE:

25 Q MR. PATTERSON, WHERE ARE YOU EMPLOYED?

1 A I AM EMPLOYED WITH THE SOUTH CAROLINA DEPARTMENT OF
2 CORRECTIONS.

3 Q AND ARE YOU SPECIFICALLY ASSIGNED TO ANY FACILITY?

4 A AT THE PRESENT, I'M LOCATED AT LOWER SAVANNAH WORK
5 RELEASE CENTER.

6 Q AND WHAT IS YOUR TITLE THERE?

7 A MY PRESENT TITLE IS AN OFFICER, A CORRECTIONAL
8 OFFICER.

9 Q DID YOU HOLD THE SAME POSITION AT THE SAME FACILITY
10 ON AUGUST THE 23RD OF 1988?

11 A NO, SIR, I DIDN'T. AT WHICH TIME, I WAS A
12 CORRECTIONAL OFFICER ASSISTANT SUPERVISOR.

13 Q AND WHERE -- WHAT FACILITY WERE YOU WORKING AT?

14 A AIKEN YOUTH CORRECTIONAL CENTER.

15 Q AT THE TIME, ON THAT DATE, AUGUST THE 23RD OF 1988,
16 WAS THERE AN INMATE AT THE AIKEN YOUTH CORRECTIONAL CENTER
17 BY THE NAME OF GARY TERRY?

18 A YES, SIR.

19 Q ON THAT DATE, WAS THERE -- WERE YOU INVOLVED IN AN
20 INCIDENT WITH A GARY TERRY?

21 A YES, SIR, I WAS.

22 Q COULD YOU PLEASE DESCRIBE WHAT THAT INCIDENT WAS?

23 A ON THIS PARTICULAR DATE, AUGUST THE 23RD, 1988, I
24 OBSERVED GARY DUBOSE TERRY IN THE AUTO SHOP WHICH WAS
25 CLOSED FOR THE DAY. FROM MY OBSERVATION, HE WAS USING A

1 TELEPHONE UN-AUTHORIZABLE WITH A FELLOW INMATE. THEREFORE,
2 I ADVISED BOTH INMATES TO DEPART THE BUILDING AND APPROACH
3 ME WHICH THEY DID NOT, REFUSED TO DO SO.

4 Q WHEN YOU INSTRUCTED THEM TO LEAVE THE BUILDING, THEY
5 DID WHAT?

6 A THEY REFUSED TO DO SO AT WHICH TIME---

7 Q WHAT HAPPENED AFTER YOU WOULD ASK THEM TO COME OUT
8 AND THEY DIDN'T?

9 A THEY EXITED ANOTHER DOORWAY AND PROCEEDED TO---

10 Q AND HOW -- HOW WOULD YOU DESCRIBE HOW THEY EXITED
11 THAT DOORWAY?

12 A THEY RUN OUT, SIR.

13 Q WHAT HAPPENED AFTER THEY RAN OUT OF THE BUILDING?

14 A I CALLED FOR ASSISTANCE.

15 Q WERE YOU ABLE TO APPREHEND THE---

16 A YES, SIR, WE WERE---

17 Q ---INMATES?

18 A YES, SIR.

19 Q AND ONE OF THOSE INMATES WAS GARY TERRY?

20 A YES, SIR, ONE WAS GARY TERRY.

21 Q MR. PATTERSON, AT THE AIKEN YOUTH CORRECTIONAL
22 CENTER, THE INCIDENT YOU'VE JUST DESCRIBED, WHAT WOULD THAT
23 BE A VIOLATION OF UNDER THE RULES THAT WERE BEING USED AT
24 THAT TIME?

25 A AT WHICH TIME, IT WOULD BE A VIOLATION OF S.C.D.C.

1 POLICY FOR OUT OF PLACE AND DISOBEYING A DIRECT ORDER.

2 Q THANK YOU. ANSWER ANY QUESTIONS THEY HAVE.

3 THE COURT: CROSS-EXAMINATION.

4 CROSS-EXAMINATION

5 BY MR. STONE:

6 Q HE WAS CHARGED WITH OUT OF PLACE, IS THAT RIGHT?

7 A YES, SIR.

8 Q I DON'T HAVE ANYTHING FURTHER.

9 THE COURT: ANYTHING FURTHER FROM THE STATE?

10 MR. CHASE: NO, SIR, YOUR HONOR. WE ASK THAT
11 THIS WITNESS BE RELEASED.

12 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED,
13 MR. PATTERSON. THANK YOU FOR COMING.

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

16 MR. CHASE: YOUR HONOR, THE STATE CALLS MICHAEL
17 DUNBAR TO THE STAND.

18 MICHAEL DUNBAR,

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 MICHAEL DUNBAR.

23 DIRECT EXAMINATION

24 BY MR. CHASE:

25 Q MR. DUNBAR, WHERE ARE YOU EMPLOYED?

1 A PRESENTLY, I'M EMPLOYED WITH THE LOWER SAVANNAH WORK
2 RELEASE CENTER.

3 Q AND WHAT IS YOUR POSITION THERE?

4 A I AM A CORRECTIONAL OFFICER.

5 Q DID YOU HOLD THAT SAME POSITION AT THE SAME FACILITY
6 ON DECEMBER THE 29TH OF 1988?

7 A NO, SIR, I DID NOT.

8 Q WHERE WERE YOU WORKING AT THAT TIME?

9 A AT THAT TIME, I WAS EMPLOYED AT AIKEN YOUTH
10 CORRECTIONAL CENTER.

11 Q ON THAT DATE, WAS THERE AN INMATE BY THE NAME OF GARY
12 TERRY AT THE AIKEN YOUTH CORRECTIONAL CENTER?

13 A YES, SIR, IT WAS.

14 Q ON THAT DATE, WERE YOU INVOLVED IN AN INCIDENT WITH
15 GARY TERRY?

16 A YES, SIR, I WAS.

17 Q COULD YOU PLEASE DESCRIBE THAT INCIDENT?

18 A ON THAT DATE IN QUESTION, I WAS PATROLLING GARY
19 TERRY'S DORM WHICH HE RESIDES IN. AS I APPROACHED GARY
20 TERRY'S LIVING AREA, HIM AND OTHER GUYS WERE SITTING ON
21 THEIR BEDS, ROLLING WHAT APPEARED TO BE MARIJUANA AT THAT
22 TIME. I ASKED GARY TERRY TO STAND UP FROM HIS BED AND
23 WHICH HE DID, FIVE HAND-ROLLED CIGARETTES CONTAINING A
24 GREEN LEAFY SUBSTANCE FELL FROM HIS AREA.

25 Q WERE YOU ABLE TO DETERMINE WHETHER THAT SUBSTANCE,

1 THAT GREEN LEAFY SUBSTANCE, WAS, IN FACT, MARIJUANA?

2 A I GAVE THAT SUBSTANCE TO MY SUPERVISOR AT THE TIME,
3 C.E.O. NESBITT, HE VOL-TEST(PHONETICALLY) THE SUBSTANCE AND
4 IT WAS POSITIVE THAT IT WAS MARIJUANA.

5 Q IS IT A VIOLATION OF THE RULES THAT WERE IMPOSED AT
6 THE AIKEN YOUTH CORRECTIONAL CENTER AT THAT TIME TO
7 POSSESS MARIJUANA, POSSESSION OF MARIJUANA BY AN INMATE?

8 A YES. IT'S A DEFINITE VIOLATION OF S.C.D.C. RULES AND
9 POLICY WITH POSSESSION OR ATTEMPT TO OBTAIN CONTRABAND AT
10 THAT TIME.

11 Q AND, IN FACT, WAS GARY TERRY FOUND GUILTY OF
12 POSSESSION OR ATTEMPTING TO OBTAIN CONTRABAND?

13 A YES. WE HAD AN ADJUSTMENT COMMITTEE APPROXIMATELY A
14 MONTH AFTERWARDS AND HE WAS VOTED GUILTY OF THIS LAW.

15 Q DID HE RECEIVE A PENALTY FOR BEING FOUND GUILTY?

16 A YES. HE RECEIVED A THIRTY-DAY ADMINISTRATIVE
17 SEGREGATION, ALSO HE RECEIVED A Y.O.S. EXTENSION AT THAT
18 TIME.

19 Q WOULD THAT BE A YOUTHFUL OFFENDER SENTENCE EXTENSION?

20 A YES, THAT WOULD BE, SIR.

21 Q OFFICER DUNBAR, I ASK YOU IF THIS IS A CORRECT
22 STATEMENT OF YOUR TESTIMONY HERE TODAY. THAT ON AN
23 INCIDENT ARISING ON DECEMBER THE 29TH OF 1988, THAT GARY
24 DUBOSE TERRY WAS FOUND GUILTY OF POSSESSION OR ATTEMPT TO
25 OBTAIN CONTRABAND AND THAT AS A RESULT OF THAT FINDING, HE

1 WAS SENTENCED TO THIRTY DAYS' ADMINISTRATIVE SEGREGATION
2 AND HE ALSO RECEIVED AN EXTENSION OF THE TIME BEFORE HIS
3 PAROLE ELIGIBILITY?

4 A THAT IS A TRUE STATEMENT, YES.

5 MR. CHASE: WE MOVE TO AFFIX THIS TO STATE'S
6 EXHIBIT NUMBER 23 AT THIS TIME, YOUR HONOR.

7 MS. FULLWOOD: NO OBJECTION, YOUR HONOR.

8 THE COURT: WITHOUT OBJECTION.

9 MR. CHASE: THANK YOU, YOUR HONOR.

10 THANK YOU, OFFICER DUNBAR. ANSWER ANY QUESTIONS
11 THEY MAY HAVE FOR YOU

12 THE WITNESS: OKAY, SIR.

13 THE COURT: CROSS-EXAMINATION.

14 MS. FULLWOOD: NO QUESTIONS.

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

16 YOU MAY STEP DOWN, OFFICER DUNBAR.

17 THE WITNESS: THANK YOU.

18 MR. CHASE: WE ASK THAT THIS WITNESS BE RELEASED,
19 YOUR HONOR.

20 THE COURT: WITHOUT OBJECTION, HE IS EXCUSED.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MR. CHASE: YOUR HONOR, THE STATE CALLS BARRY
24 O'CONNOR TO THE STAND.

25 BARRY O'CONNOR,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: GIVE US YOUR FULL NAME, PLEASE.

3 THE WITNESS: MY NAME IS MINISTER BARRY O'CONNOR.

4 DIRECT EXAMINATION

5 BY MR. CHASE:

6 Q MR. O'CONNOR, WHERE ARE YOU CURRENTLY EMPLOYED?

7 A KIMBERLY-CLARK CORPORATION.

8 Q IS THAT THE ONLY PLACE THAT YOU WORK?

9 A NO, SIR.

10 Q WHERE ELSE DO YOU WORK?

11 A AIKEN YOUTH CORRECTIONAL CENTER.

12 Q DO YOU ALSO HAVE AN ADDITIONAL TITLE?

13 A I WAS A CORRECTIONAL OFFICER.

14 Q ARE YOU ALSO A MINISTER?

15 A YES, SIR.

16 Q WITH THE -- WITH THE YOUTH GROUP?

17 A NO. I'M A YOUTH MINISTER AT REEDY BRANCH BAPTIST
18 CHURCH.

19 Q MR. O'CONNOR, WHAT POSITION DID YOU HOLD ON FEBRUARY
20 THE 21ST OF 1989?

21 A CORRECTIONAL OFFICER ON SECOND SHIFT AT AIKEN YOUTH
22 CORRECTIONAL CENTER.

23 Q ON THAT DATE, WAS THERE AN INMATE IN THAT FACILITY BY
24 THE NAME OF GARY TERRY?

25 A YES, SIR.

1 Q WERE YOU INVOLVED IN AN INCIDENT WITH MR. TERRY ON
2 THAT DATE?

3 A YES, SIR.

4 Q COULD YOU, PLEASE, DESCRIBE WHAT HAPPENED?

5 A OKAY. I WAS WORKING OVER ON MIDNIGHT THAT PARTICULAR
6 NIGHT. IT WAS -- I WAS TAKING A FORMAL COUNT OF THE
7 INMATES IN DORM TWO. INMATE GARY TERRY AND ANOTHER INMATE,
8 AFTER I WENT THROUGH AND CONDUCTED THE COUNT, HAD THE IDEA
9 TO THROW SOME STATE BOOTS.

10 Q WHEN YOU SAY THROW STATE BOOTS, WHAT ARE STATE BOOTS?

11 A ISSUED SHOES THAT THE INSTITUTION GIVES INMATES.

12 Q HOW DID THEY THROW THE STATE BOOTS AND WHERE DID THEY
13 THROW THEM?

14 A WELL, WHEN I WENT THROUGH FOR THE COUNT, AS I TURNED
15 AROUND, ONE BOOT HIT THE WALL IN FRONT OF ME.

16 Q HOW FAR IN FRONT OF YOU?

17 A PROBABLY, TWO FEET FROM MY HEAD.

18 Q WHAT HAPPENED THEN?

19 A OKAY. AS I PROCEEDED TO GO TO THE FRONT OF THE DORM,
20 THE SECOND BOOT HIT ME IN THE BACK OF THE HEAD ON THE LEFT
21 SIDE AND IT FELL AND HIT MY LEFT LEG.

22 Q AS A RESULT OF WHAT HAPPENED, THE INCIDENT INVOLVING
23 GARY TERRY ON FEBRUARY 21ST OF 1989, WAS HE FOUND GUILTY OF
24 ANY INFRACTIONS OF THE RULES AT THE AIKEN YOUTH
25 CORRECTIONAL CENTER?

1 A YES, HE WAS.

2 Q WHAT WERE THOSE?

3 A IT WAS DISORDERLY CONDUCT/FIGHTING.

4 Q COULD YOU PLEASE TELL US WHAT THE SENTENCE WAS FOR

5 THAT VIOLATION?

6 A THIRTY DAYS UNDER THE YOUTHFUL OFFENDERS ACT.

7 Q WAS THERE ALSO ANY ADMINISTRATIVE SEGREGATION?

8 A YES, SIR.

9 Q HOW LONG WAS THAT?

10 A THIRTY DAYS.

11 Q WHAT WAS THE TOTAL AMOUNT IN THAT CASE?

12 A SIXTY DAYS TOTAL.

13 Q INCLUDING THE ADMINISTRATIVE SEQUESTRATION AND ALSO

14 THE YOUTHFUL OFFENDER SENTENCE EXTENSION?

15 A YES, SIR.

16 Q MR. O'CONNOR, I ASK YOU IF THIS IS AN ACCURATE

17 SUMMARY OF YOUR STATEMENT HERE TODAY. THAT FROM AN

18 INCIDENT ARISING ON FEBRUARY THE 21ST OF 1989, GARY DUBOSE

19 TERRY WAS FOUND GUILTY OF DISORDERLY CONDUCT/FIGHTING.

20 THAT HE WAS SENTENCED TO THIRTY DAYS ADMINISTRATIVE

21 SEGREGATION AND THIRTY DAYS REIMPOSED EXTENSION OF TIME

22 BEFORE PAROLE ELIGIBILITY?

23 A YES.

24 MR. CHASE: YOUR HONOR, AT THIS TIME, WE MOVE TO

25 AFFIX THIS TO STATE'S EXHIBIT NUMBER 23.

1 THE COURT: WITHOUT OBJECTION.

2 MR. CHASE: THANK YOU, YOUR HONOR.

3 MR. O'CONNOR, ANSWER ANY QUESTIONS THEY MAY HAVE.

4 THE COURT: CROSS-EXAMINATION.

5 MS. FULLWOOD: NO QUESTIONS.

6 THE COURT: THANK YOU, MR. O'CONNOR. YOU MAY
7 STEP DOWN.

8 ASKING THAT HE BE EXCUSED?

9 MR. CHASE: YOUR HONOR, WE WOULD ASK THAT HE BE
10 EXCUSED.

11 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.

12 THANK YOU VERY MUCH FOR COMING, SIR.

13 (WHEREUPON, THE WITNESS WAS
14 EXCUSED AT THIS TIME.)

15 MR. CHASE: YOUR HONOR, ALSO, AT THIS TIME, WE
16 WOULD ASK THAT GEORGE HAGEN BE RELEASED. HE WAS A
17 POTENTIAL WITNESS AND BASED ON THE TESTIMONY OF THESE TWO
18 WITNESSES, WE WOULD JUST ASK THAT HE BE RELEASED ALSO.

19 THE COURT: WITHOUT OBJECTION?

20 MS. FULLWOOD: NO OBJECTION.

21 MR. STONE: NO OBJECTION.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH FOR
23 COMING, MR. HAGEN.

24 MR. CHASE: PLEASE THE COURT, YOUR HONOR.

25 THE COURT: YES, SIR.

1 MR. CHASE: THE STATE CALLS SAMMIE BROWN TO THE
2 STAND.

3 SAMMIE D. BROWN,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
6 PLEASE.

7 THE WITNESS: MY NAME IS SAMMIE D. BROWN.

8 DIRECT EXAMINATION

9 BY MR. CHASE:

10 Q MS. BROWN, WHERE ARE YOU EMPLOYED?

11 A SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

12 Q AND WHAT ARE YOUR DUTIES AT THE SOUTH CAROLINA
13 DEPARTMENT OF CORRECTIONS?

14 A I'M ASSISTANT DIRECTOR RESPONSIBLE FOR INMATE
15 RECORDS.

16 Q DID YOU HOLD THAT SAME POSITION ON MARCH THE 23RD OF
17 1989?

18 A NO, I HAD A DIFFERENT POSITION THEN.

19 Q AND WHAT WAS YOUR POSITION THEN?

20 A I WAS DIRECTOR OF CLASSIFICATION AND RESPONSIBLE FOR
21 THE YOUTHFUL OFFENDER PROGRAM.

22 Q IN FACT, DID YOU SIT AS THE CHAIR OF THE YOUTHFUL
23 OFFENDER REVIEW BOARD?

24 A THAT IS CORRECT.

25 Q PURSUANT TO THOSE DUTIES, DID YOU HAVE -- TAKE ANY

1 ACTION AGAINST AN INMATE BY THE NAME OF GARY TERRY ON THAT
2 DATE?

3 A THERE WAS AN ACTION ON MARCH 23RD, 1989; AND THAT WAS
4 AN EXTENSION OF ONE MONTH AS A RESULT OF A DISCIPLINARY
5 INFRACTION.

6 Q AND IS THAT CONSIDERED PUNISHMENT UNDER THE YOUTHFUL
7 OFFENDER SYSTEM?

8 A YES.

9 Q AND THAT WAS -- THE DATE WAS MARCH THE 23RD OF 1989,
10 CORRECT?

11 A THAT'S CORRECT.

12 Q I APOLOGIZE FOR MISSTATING THAT.

13 THANK YOU, MS. BROWN. ANSWER ANY QUESTIONS THEY
14 MAY HAVE.

15 MS. FULLWOOD: NO QUESTIONS.

16 THE COURT: THANK YOU, MS. BROWN.

17 ASKING SHE BE EXCUSED ALSO?

18 MR. CHASE: PLEASE, YOUR HONOR.

19 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.
20 APPRECIATE YOU COMING.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MR. CHASE: YOUR HONOR, THE STATE CALLS CAPTAIN
24 LEON BROWN TO THE STAND -- LEON HOWARD, I APOLOGIZE.

25 LEON C. HOWARD,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
3 PLEASE.

4 THE WITNESS: MY NAME IS LEON CARL HOWARD.

5 DIRECT EXAMINATION

6 BY MR. CHASE:

7 Q CAPTAIN HOWARD, WHERE ARE YOU EMPLOYED?

8 A PRESENTLY EMPLOYED WITH THE SOUTH CAROLINA DEPARTMENT
9 OF CORRECTIONS AT LEE CORRECTIONAL INSTITUTION IN
10 BISHOPVILLE, SOUTH CAROLINA.

11 Q AND WHAT ARE YOUR DUTIES THERE?

12 A CAPTAIN OF SECURITY.

13 Q DID YOU HOLD THAT SAME POSITION ON JULY THE 26TH OF
14 1989?

15 A SIMILAR POSITION, DIFFERENT LOCATION. MANNING
16 CORRECTIONAL INSTITUTE, COLUMBIA, SOUTH CAROLINA.

17 Q WHAT WAS YOUR OFFICIAL TITLE?

18 A CHIEF CORRECTIONAL OFFICER.

19 Q THAT ALSO INCLUDE---

20 A THE INSTITUTIONAL DISCIPLINARY OFFICER.

21 Q PART OF YOUR DUTIES AS THE INSTITUTIONAL DISCIPLINARY
22 OFFICER, DID YOU HAVE TO TAKE ANY ACTION WHENEVER THERE WAS
23 AN INMATE DISCIPLINARY ACTION?

24 A YES, SIR, I DID.

25 Q WHAT WAS YOUR ROLE?

1 A AS THE INSTITUTIONAL DISCIPLINARY OFFICER, I WOULD
2 DECIDE WHETHER THE INMATE, WHAT TYPE PUNISHMENT OR
3 DISCIPLINARY ACTION, EXCUSE ME, WOULD BE TAKEN AGAINST THE
4 INMATE AND OR REFER HIM TO THE ADJUSTMENT COMMITTEE.

5 Q AND, IN FACT, DID YOU APPROVE INMATE DISCIPLINARY
6 ACTIONS?

7 A YES, SIR, I DID.

8 Q YOU WOULD BASICALLY SIGN OFF ON THEM?

9 A SIGN OFF.

10 Q ON THAT DATE, DID YOU AUTHORIZE OR SIGN OFF ON AN
11 INMATE DISCIPLINARY ACTION RELATED TO GARY TERRY?

12 A YES, SIR, I DID.

13 Q AND WHAT WAS THE CHARGE AND WHAT DID HE PLEAD GUILTY
14 TO?

15 A INMATE TERRY PLEADED GUILTY TO 4.8 (B) BRIBERY.

16 Q WAS HE PUNISHED?

17 A YES, HE WAS.

18 Q WHAT WAS THE PUNISHMENT THAT HE RECEIVED?

19 A THE INMATE RECEIVE 40 HOURS OF EXTRA DUTY.

20 Q CAPTAIN HOWARD, IS THIS AN ACCURATE STATEMENT OF YOUR
21 TESTIMONY HERE TODAY? THAT ON JUNE THE 26TH OF 1989, GARY
22 DUBOSE TERRY FOUND GUILTY -- PLED GUILTY TO CHARGE OF
23 BRIBERY; THAT HE RECEIVE 40 HOURS OF EXTRA DUTIES IN
24 PRODUCTIVE LABOR?

25 A YES, SIR. YOU SAID JUNE, BUT IT WAS JULY.

1 Q JULY?

2 A JULY 26TH.

3 MR. CHASE: YOUR HONOR, WE -- YOUR HONOR, AT THIS
4 TIME, WE MOVE INTO EVIDENCE A SECOND BOARD, IDENTICAL TO
5 THE FIRST BOARD RELATING TO THE CRIMINAL HISTORY OF GARY D.
6 TERRY AND IT IS DESIGNATED AS PAGE TWO.

7 THE COURT: WITHOUT OBJECTION?

8 MS. FULLWOOD: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION, IT WILL BE
10 ADMITTED AS STATE'S NUMBER 32.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER
12 32, CHART/CRIMINAL HISTORY PAGE TWO, ENTERED INTO EVIDENCE
13 AT THIS TIME WITHOUT OBJECTION.)

14 MR. CHASE: AND, YOUR HONOR, WE WOULD MOVE TO
15 AFFIX THIS ADDITION TO THE BOARD WITH AN -- A HANDWRITTEN
16 AMENDMENT AS TO THE MONTH OF THE INFRACTION.

17 THE COURT: WITHOUT OBJECTION?

18 MS. FULLWOOD: NO OBJECTION.

19 MR. CHASE: THANK YOU, YOUR HONOR.

20 THANK YOU, CAPTAIN HOWARD. ANSWER ANY QUESTIONS
21 THEY MIGHT HAVE.

22 THE COURT: MS. FULLWOOD.

23 MS. FULLWOOD: JUST A FEW.

24 CROSS-EXAMINATION

25 BY MS. FULLWOOD:

1 Q CAPTAIN, DIDN'T THIS BRIBERY INCIDENT INVOLVE A
2 SITUATION WHERE A CORRECTIONAL OFFICER HAD CONFISCATED A
3 RADIO THAT BELONGED TO ONE OF GARY'S FRIENDS AND HE -- GARY
4 OFFERED THE OFFICER MONEY TO GET THE RADIO BACK FOR HIS
5 FRIEND?

6 A I'M NOT FAMILIAR WITH THE INCIDENT.

7 Q YOU HAVEN'T REVIEWED THE RECORDS---

8 A NO, MA'AM---

9 Q ---BEFORE COMING TO COURT TODAY?

10 A NO, MA'AM.

11 Q OKAY. WELL, CAPTAIN, DO YOU REMEMBER TALKING TO
12 CAROL WINGARD LAST WEEK ON THE TELEPHONE?

13 A (NO RESPONSE.)

14 Q DID SOMEBODY CALL YOU UP TO TALK TO YOU ABOUT GARY?

15 A YES, THEY DID.

16 Q OKAY. AND ACTUALLY AT THE INSTITUTION, GARY NEVER
17 POSED ANY SERIOUS PROBLEMS OUT THERE, DID HE?

18 A NOTHING SERIOUS.

19 Q THANK YOU, SIR.

20 MR. CHASE: NOTHING FURTHER, YOUR HONOR---

21 THE COURT: ALL RIGHT.

22 MR. CHASE: ---WE ASK THAT THIS WITNESS ALSO BE
23 RELEASED.

24 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED,
25 MR. HOWARD. THANK YOU VERY MUCH FOR BEING HERE.

1 THE WITNESS: THANK YOU, SIR.

2 (WHEREUPON, THE WITNESS WAS
3 EXCUSED AT THIS TIME.)

4 MR. CHASE: YOUR HONOR, AT THIS TIME, THE STATE
5 WOULD SEEK TO INTRODUCE THE CERTIFIED TRUE COPY OF THE
6 TICKET WHICH INCLUDES THE DISPOSITION AND SENTENCE FOR A
7 DRIVING UNDER SUSPENSION.

8 THE COURT: WITHOUT OBJECTION?

9 MS. FULLWOOD: NO OBJECTION.

10 THE COURT: WITHOUT OBJECTION, IT WILL BE
11 ADMITTED AS STATE'S NUMBER 33.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER
13 33, UNIFORM TRAFFIC TICKET/D.U.S., ENTERED INTO EVIDENCE AT
14 THIS TIME WITHOUT OBJECTION.)

15 MR. CHASE: WITH THE COURT'S PERMISSION TO
16 PUBLISH THIS?

17 THE COURT: YES, SIR.

18 MR. CHASE: THAT ON -- FROM AN INCIDENT ARISING
19 ON OCTOBER THE 11TH OF 1991, GARY DUBOSE TERRY WAS FOUND
20 GUILTY OF DRIVING UNDER SUSPENSION AND FINED 233 DOLLARS.

21 AND WE WOULD MOVE TO AFFIX THAT EXACT INFORMATION
22 ON TO STATE'S EXHIBIT NUMBER 32, YOUR HONOR.

23 THE COURT: IS THAT THIRTY-THREE?

24 MR. CHASE: I HAVE IT LISTED AS---

25 THE COURT: THAT'S RIGHT, THIRTY-TWO. I'M SORRY.

1 WITHOUT OBJECTION.

2 MR. CHASE: THANK YOU, YOUR HONOR.

3 YOUR HONOR, AT THIS TIME, THE STATE WOULD MOVE TO
4 INTRODUCE THE TICKET, INCLUDING THE DISPOSITION OF A SECOND
5 DRIVING UNDER SUSPENSION CONVICTION FOR GARY DUBOSE TERRY
6 AND IT IS A CERTIFIED TRUE COPY.

7 THE COURT: WITHOUT OBJECTION?

8 MS. FULLWOOD: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION, IT WILL BE
10 ADMITTED AS STATE'S EXHIBIT NUMBER 34.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER
12 34, UNIFORM TRAFFIC TICKET/D.U.S., ENTERED INTO EVIDENCE AT
13 THIS TIME WITHOUT OBJECTION.)

14 MR. CHASE: AND WITH THE COURT'S PERMISSION,
15 PUBLISH THIS TO THE JURY.

16 THE COURT: YES, SIR.

17 MR. CHASE: FROM AN INCIDENT ARISING ON JUNE THE
18 9TH OF 1992, GARY DUBOSE TERRY WAS CONVICTED OR FOUND
19 GUILTY OF DRIVING UNDER SUSPENSION AND RECEIVED A
20 248-DOLLAR FINE.

21 YOUR HONOR, WE WOULD MOVE TO AFFIX TO STATE'S
22 EXHIBIT NUMBER 32, A CHART LISTING THAT INFORMATION.

23 THE COURT: WITHOUT OBJECTION.

24 MR. CHASE: THANK YOU, YOUR HONOR.

25 YOUR HONOR, AT THIS TIME, THE STATE WOULD SEEK TO

1 INTRODUCE CERTIFIED TRUE COPIES OF THE INDICTMENTS
2 INCLUDING THE DISPOSITION FOR MURDER, BURGLARY IN THE FIRST
3 DEGREE, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND
4 MALICIOUS INJURY TO A TELEPHONE SYSTEM.

5 THE COURT: WITHOUT OBJECTION?

6 MR. STONE: NO OBJECTION.

7 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER 35
8 IS ADMITTED.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER
10 35, INDICTMENT/95-GS-32-1670, ENTERED INTO EVIDENCE AT THIS
11 TIME WITHOUT OBJECTION.)

12 MR. CHASE: THANK YOU, YOUR HONOR.

13 YOUR HONOR, BASED ON THESE INDICTMENTS AND THEIR
14 DISPOSITION HERE IN COURT WHICH TOOK PLACE YESTERDAY, THE
15 STATE WOULD SEEK TO PUBLISH THE FOLLOWING CHART: THAT FROM
16 AN INCIDENT ARISING ON MAY THE 30TH OF 1994, THE DEFENDANT
17 COMMITTED THE MURDER OF URAI JACKSON, BURGLARY IN THE
18 FIRST, CRIMINAL SEXUAL CONDUCT IN THE FIRST AND MALICIOUS
19 INJURY TO TELEPHONE EQUIPMENT.

20 I WOULD MOVE TO AFFIX THAT TO STATE'S EXHIBIT
21 NUMBER 32.

22 THE COURT: WITHOUT OBJECTION.

23 MR. CHASE: THANK YOU, YOUR HONOR.

24 YOUR HONOR, THE STATE CALLS TOM AMARO TO THE
25 STAND.

1 THOMAS M. AMARO, JR.,

2 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE CLERK: WILL YOU GIVE US YOUR FULL NAME,
4 PLEASE, SIR?

5 THE WITNESS: MY NAME IS THOMAS MEITO, M-E-I-T-O,
6 AMARO, JR. IT'S A-M-A-R-O.

7 DIRECT EXAMINATION

8 BY MR. CHASE:

9 Q WHERE ARE YOU EMPLOYED?

10 A I'M EMPLOYED BY THE RICHLAND COUNTY SHERIFF'S
11 DEPARTMENT IN COLUMBIA, SOUTH CAROLINA.

12 Q AND WHAT IS YOUR POSITION THERE?

13 A I'M A CORPORAL WITH THE INVESTIGATIVE UNIT FOR
14 RICHLAND COUNTY.

15 Q AND WHAT IS YOUR TITLE?

16 A INVESTIGATOR.

17 Q INVESTIGATOR AMARO, DID YOU HOLD THAT SAME POSITION
18 ON DECEMBER THE 7TH OF 1994.

19 A YES, SIR, I DID.

20 Q ON THAT DATE, WERE YOU INVOLVED IN AN INVESTIGATION?

21 A YES, SIR, I WAS.

22 Q COULD YOU PLEASE DESCRIBE WHAT THAT INVESTIGATION WAS
23 ABOUT?

24 A YES, SIR. AT THAT TIME, I WAS IN THE AUTO THEFT
25 DIVISION. I WAS ASSIGNED A REPORT, DECEMBER THE 8TH --

1 CORRECTION, DECEMBER THE 9TH. IT WAS AN INCIDENT THAT TOOK
2 PLACE ON DECEMBER THE -- BETWEEN THE 7TH AND THE 8TH OF
3 1994, SYRUP MILL ROAD IN BLYTHEWOOD. IT WAS A GOLF COURSE
4 BEING CONSTRUCTED AT THAT TIME WHERE THEY HAD A THEFT OF
5 SEVERAL PIECES OF PROPERTY FROM THAT LOCATION.

6 Q COULD YOU DESCRIBE WHAT TYPE OF PROPERTY WAS TAKEN?

7 A YES, SIR. IT INCLUDED A JOHN DEER FIVE-WHEEL A.T.M.,
8 ALL-TERRAIN MOTOR VEHICLE; A FOUR WHEELER, A JOHN DEER SIX
9 BY FOUR GATOR UTILITY VEHICLE, A JOHN DEER 22-INCH GREEN
10 MOWER; MCCLAIN REEL MOWER AND A MURRAY 42-INCH RIDING MOWER
11 -- LAWNMOWER AND ABOUT A DAY LATER, WE GOT AN AMENDED
12 REPORT WHERE SOME ADDITIONAL ITEMS WERE ALSO TAKEN WHICH
13 INCLUDED A COLEMAN 5000 WATT GENERATOR; A HOMELITE HEDGE
14 CLIPPERS AND A ONE TRAILER WITH A SINGLE AXLE ON IT.

15 Q BASED ON YOUR INVESTIGATION, WERE YOU ABLE TO LOCATE
16 THAT TRAILER?

17 A YES, SIR, I WAS. INFORMATION THAT WAS DEVELOPED, IT
18 WAS LOCATED ON SMALLWOOD DRIVE IN FAIRFIELD COUNTY ON A
19 PROPERTY OF BILLY RAY TERRY AT ROUTE 2, SMALLWOOD ROAD IN
20 RIDGEWAY, SOUTH CAROLINA.

21 Q WERE YOU ABLE TO DEVELOP A SUSPECT?

22 A YES, SIR, I WAS.

23 Q WHO WAS THE SUSPECT ALLEGED TO THE TRAILER?

24 A GARY DUBOSE TERRY.

25 Q RELATED TO THAT TRAILER WHICH HAD BEEN TAKEN FROM

1 THAT CONSTRUCTION SITE---

2 A YES, SIR, THAT'S CORRECT.

3 Q ---WAS MR. TERRY CONVICTED OF AN OFFENSE?

4 A YES, SIR, HE WAS. I JUST SIGNED A WARRANT AGAINST
5 MR. GARY TERRY FOR RECEIVING STOLEN GOODS IN WINNSBORO,
6 SOUTH CAROLINA, FAIRFIELD COUNTY AND FOR RECEIVING STOLEN
7 GOODS UNDER A THOUSAND DOLLARS.

8 Q I'LL REFER YOU TO THIS. IN FACT, WAS HE SENTENCED
9 UNDER THAT FOR THAT CRIME?

10 A YES, SIR.

11 ON JANUARY 24, 1995, COURT WAS HELD IN WINNSBORO,
12 SOUTH CAROLINA, AND HE DID PLEAD -- PLED TO THE CHARGE AND
13 WAS FINED THREE-HUNDRED DOLLARS PLUS ASSESSMENTS OR THIRTY
14 DAYS.

15 MR. CHASE: AT THIS TIME, YOUR HONOR, THE STATE
16 WOULD MOVE TO INTRODUCE THE SENTENCING SHEET FROM THIS
17 CONVICTION.

18 THE COURT: WITHOUT OBJECTION?

19 MR. STONE: NO OBJECTION, YOUR HONOR.

20 THE COURT: WITHOUT OBJECTION, IT WILL BE
21 ADMITTED AS STATE'S NUMBER 36.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER
23 36, SENTENCING SHEET/1/24/95, ENTERED INTO EVIDENCE AT THIS
24 TIME WITHOUT OBJECTION.)

25 MR. CHASE: INVESTIGATOR MARO, IS THIS AN

1 ACCURATE SUMMARY OF YOUR TESTIMONY HERE TODAY? FROM AN
2 INCIDENT ARISING AROUND DECEMBER THE 9TH OF 1994, GARY
3 DUBOSE TERRY WAS FOUND GUILTY OF RECEIVING STOLEN GOODS AND
4 HE WAS SENTENCED TO A THREE-HUNDRED-DOLLAR-FINE PLUS
5 ASSESSMENTS OR THIRTY DAYS?

6 A THAT'S CORRECT, SIR.

7 MR. CHASE: THE STATE WOULD MOVE TO AFFIX THIS TO
8 STATE'S EXHIBIT NUMBER 32 AT THIS TIME, YOUR HONOR.

9 THE COURT: WITHOUT OBJECTION.

10 MR. CHASE: THANK YOU, YOUR HONOR.

11 THANK YOU. ANSWER ANY QUESTIONS THEY MAY HAVE.

12 CROSS-EXAMINATION

13 BY MR. STONE:

14 Q THIS WAS A MAGISTRATE'S COURT LEVEL PROCEEDING?

15 A YES, SIR, THAT'S CORRECT.

16 Q AND HE PAID A THREE-HUNDRED-DOLLAR-FINE?

17 A THAT IS CORRECT, SIR.

18 Q THANK YOU. NOTHING ELSE.

19 MR. CHASE: WE ASK THAT THIS WITNESS BE RELEASED,
20 YOUR HONOR.

21 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED,
22 MR. MARO.

23 THE WITNESS: THANK YOU, SIR.

24 THE COURT: THANK YOU VERY MUCH FOR COMING.

25 (WHEREUPON, THE WITNESS WAS

1 EXCUSED AT THIS TIME.)

2 THE COURT: BEFORE WE CALL OUR NEXT WITNESS,
3 SOLICITOR, LET'S TAKE A SHORT BREAK. WE'VE BEEN GOING
4 ABOUT AN HOUR AND TWENTY, TWENTY-FIVE MINUTES.

5 LADIES AND GENTLEMEN OF THE JURY, WHILE YOU ARE
6 IN THE JURY ROOM, YOU ARE NOT TO DISCUSS THIS CASE AMONG
7 YOURSELVES. WE'LL GET YOU BACK IN JUST A VERY FEW MINUTES.

8 EVERYONE ELSE REMAIN SEATED WHILE THE JURY EXITS
9 THE COURTROOM, PLEASE, SIR.

10 (JURY OUT.)

11 THE COURT: ALL RIGHT.

12 LET'S TAKE A SHORT BREAK BEFORE WE CONTINUE.

13 MR. CHASE: YES, SIR.

14 (RECESS.)

15 THE BAILIFF: ALL RISE.

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

17 MR. HUMPHRIES: YOUR HONOR, COULD THE LAWYERS --
18 WELL, WE DON'T HAVE A JURY HERE SO I DON'T THINK IT
19 MATTERS.

20 I JUST WANTED TO SETTLE THE PRIOR CRIMINAL
21 HISTORY OF MY NEXT WITNESS.

22 THE COURT: OKAY.

23 MR. HUMPHRIES: PLEASE THE COURT, YOUR HONOR.

24 THE COURT: YES, SIR.

25 MR. HUMPHRIES: I HAVE ALLOWED MR. STONE AN

1 OPPORTUNITY TO REVIEW THIS CRIMINAL RAP SHEET ON JEFFREY
2 DOUGLAS FORD WHO WILL BE THE STATE'S NEXT WITNESS.

3 FOR THE RECORD, YOUR HONOR, HE HAS A 1986
4 CONVICTION FOR SIMPLE POSSESSION OF MARIJUANA.

5 THE STATE WOULD SUBMIT CLEARLY THAT THAT IS NOT A
6 CRIME WITH WHICH HE COULD BE IMPEACHED.

7 1987, A CONVICTION FOR UNLAWFUL DRUGS WHICH AND I
8 CAN'T ELUCIDATE ANY FURTHER AS TO WHAT TYPE OF DRUGS IT
9 WAS. IT APPEARS TO BE BASED ON THE MARIJUANA CHARGE IN
10 THAT THAT WAS THE ARREST CHARGE.

11 IN ANY EVENT, THAT WOULD CARRY LESS THAN ONE YEAR
12 -- OR ONE YEAR OR LESS, I'M SORRY. AND WE WOULD SUBMIT
13 THAT'S NOT AVAILABLE FOR IMPEACHMENT.

14 AT THE SAME TIME, HE PLED GUILTY TO POSSESSION OF
15 LESS THAN ONE OUNCE OF MARIJUANA, WHICH WAS A SECOND
16 OFFENSE, WHICH IS ALSO ONE YEAR -- ONE YEAR OR LESS.

17 THERE IS ONE THAT I THINK MR. STONE AND I DO
18 AGREE ON AND THAT IS THE 1989 CONVICTION FOR MALICIOUS
19 INJURY TO PERSONAL PROPERTY FOR WHICH HE RECEIVED A
20 TEN-YEAR SENTENCE SUSPENDED, FIVE YEARS PROBATION. HE WAS
21 SENT TO THE RESTITUTION CENTER.

22 THERE ARE TWO OTHER ARRESTS WHICH ARE NOT THE
23 SUBJECT OF CONVICTIONS.

24 MR. STONE: I WOULD AGREE WITH MR. HUMPHRIES ON
25 -- CAN I SEE IT?

1 MR. HUMPHRIES: SURE.

2 MR. STONE: I AGREE WITH MR. HUMPHRIES, AS FAR AS
3 THE SIMPLE POSSESSION OF UNLAWFUL DRUGS, THAT FROM HIS
4 KNOWLEDGE, HE INDICATES IT ONLY CARRIED UP TO A YEAR WHICH
5 I DON'T HAVE -- I HAVE NO KNOWLEDGE AND THAT'S PERFECTLY
6 FINE.

7 I THINK WE CAN CROSS ON MALICIOUS INJURY TO
8 PERSONAL PROPERTY. I AGREE WITH HIM THERE.

9 THE CONCERN I HAVE IS THAT IT APPEARS THAT MR.
10 FORD CURRENTLY HAS TWO CHARGES. ONE, WHICH I AM
11 PARTICULARLY INTERESTED IN WHICH IS A POSSESSION WITH
12 INTENT TO DISTRIBUTE L.S.D. THAT CHARGE IS PENDING IN THE
13 LEXINGTON COUNTY SOLICITOR'S OFFICE. IT WAS MADE BY THE
14 LEXINGTON COUNTY SHERIFF'S DEPARTMENT AND, I THINK,
15 PURSUANT TO RULE 608(C), I THINK THIS GOES TO SHOW
16 PREJUDICE AND BIAS THAT HE IS HERE TESTIFYING FOR THE STATE
17 WHILE HE'S GOT CHARGES THAT CAN POTENTIALLY CARRY, AS I
18 UNDERSTAND IT, UP TO FIFTEEN YEARS IN PRISON.

19 MR. HUMPHRIES: I -- ALL I CAN SAY, YOUR HONOR,
20 ABOUT THAT CHARGE, IT -- IT IS NOT CURRENTLY ACTIVE IN OUR
21 OFFICE. IT'S A 1990 CHARGE. I CAN'T EVER EXPLAIN TO THE
22 COURT WHY SOME THINGS APPEAR ON A RAP SHEET AND SOME THINGS
23 DO NOT. AND I CAN'T HELP THE COURT ANY FURTHER IN THAT
24 REGARD. OUR POSITION IS HE'S---

25 MR. STONE: YOUR HONOR---

1 MR. HUMPHRIES: ---AVAILABLE FOR IMPEACHMENT
2 PURPOSES OR FOR THAT PURPOSE UNDER THE RULE REGARDING
3 PRIOR CONVICTIONS OR ANY OTHER IMPEACHMENT PURPOSE.

4 MR. STONE: OF COURSE, YOUR HONOR, I'M EXTREMELY
5 INTERESTED IF THAT CASE JUST HAPPENED TO HAVE DISAPPEARED
6 OUT OF THE LEXINGTON COUNTY SOLICITOR'S OFFICE. THAT WOULD
7 INTEREST ME AS WELL

8 MR. HUMPHRIES: OF COURSE, I WOULD HAVE TOLD THE
9 COURT -- I WOULD HAVE TOLD THE COURT IF WE HAD DISMISSED
10 THE CHARGE AS A RESULT OF HIS COOPERATION---

11 MR. STONE: YEAH, LET ME MAKE SURE I'M CLEAR ON
12 THIS.

13 I KNOW WHERE MR. HUMPHRIES IS COMING FROM. I'VE
14 READ THESE RAP SHEETS BEFORE. NO QUESTION ABOUT IT. BUT
15 IF THAT'S THE CASE, MR. HUMPHRIES MAY NOT KNOW ABOUT THAT. .
16 I DON'T KNOW. BUT I THINK IT'S IMPORTANT ENOUGH THAT HE'S
17 EITHER GOT PENDING CHARGES OR HE HAS CHARGES THAT
18 DISAPPEARED. EITHER WAY, I THINK THAT'S APPROPRIATE UNDER
19 RULE 608(C).

20 MR. HUMPHRIES: THE FACT THAT CHARGES WERE
21 DISMISSED. I DON'T KNOW HOW IT WOULD RELATE TO THIS
22 PROCEEDING.

23 THE COURT: MR. HUMPHRIES---

24 MR. HUMPHRIES: YES, YOUR HONOR.

25 THE COURT: ---FROM WHAT YOU ARE TELLING ME IS

1 THAT YOU DON'T HAVE ANY EVIDENCE AS TO WHY THIS CHARGE HAS
2 BEEN DISMISSED.

3 MR. HUMPHRIES: NO, SIR. QUITE FRANKLY, YOUR
4 HONOR---

5 THE COURT: OR NOT PROCESSED.

6 MR. HUMPHRIES: I DON'T HAVE ANY AFFIRMATIVE
7 INFORMATION IN THAT REGARD.

8 WE RAN THIS RAP SHEET JUST MOMENTS AGO AT THE
9 REQUEST OF THE DEFENSE IN ANTICIPATION OF THIS WITNESS. I
10 HAVE NOT HAD AN OPPORTUNITY TO -- I CAN SAY THIS. I -- I
11 CONSISTENTLY REVIEW COURT ADMINISTRATION'S PRINTOUT OF OLD
12 CHARGES AND HAVE A PRETTY GOOD WORKING KNOWLEDGE OF
13 ANYTHING, AT LEAST, THAT'S AS OLD AS 1990, AND I'M FAIRLY
14 CERTAIN I WOULD HAVE BEEN AWARE OF A 1990 DRUG CHARGE ON
15 JEFFREY DOUGLAS FORD. THAT'S -- AND THAT'S THE ONLY
16 INFORMATION I CAN OFFER THE COURT IN THAT REGARD.

17 THE COURT: OF COURSE, THE ONLY CASE THAT'S CITED
18 -- CRIMINAL CASE THAT'S CITED IN THE RULE IS STATE VERSUS
19 BREWINGTON; AND I DON'T THINK THAT IT IS INSTRUCTIVE AS
20 TO THE COURT IN REGARDS TO THIS PARTICULAR CASE INVOLVED A
21 CO-DEFENDANT IN A CASE OF ASSAULT AND BATTERY OF A HIGH AND
22 AGGRAVATED NATURE. WAS ACTUALLY, I THINK, AN ORIGINAL, IT
23 WAS ASSAULT AND BATTERY WITH INTENT TO KILL AND THEN THERE
24 WAS A DIRECTED VERDICT AS TO THAT CHARGE LEAVING THE CHARGE
25 OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

1 BUT I THINK WHEN I LOOK AT 608 (C), EVIDENCE OF
2 BIAS. BIAS, PREJUDICE OR ANY MOTIVE TO MISREPRESENT MAY BE
3 SHOWN TO IMPEACH THE WITNESS EITHER BY EXAMINATION OF THE
4 WITNESS OR BY EVIDENCE OTHERWISE ADDUCED. AND, OF COURSE,
5 THAT IS THE RULE THAT'S IDENTICAL TO THE FEDERAL RULE THAT
6 WAS ADDED -- WAS AN ADDITION.

7 I BELIEVE THAT, OF COURSE, YOU HAVE AGREED ON
8 RULE 609, IMPEACHMENT INFORMATION. I THINK THAT I'M GOING
9 TO ALLOW HIM TO EXPLORE THIS AVENUE, MR. HUMPHRIES, FROM A
10 STANDPOINT THAT I ALSO THINK THAT IT'S THE MANNER IN WHICH
11 THE QUESTION IS ASKED. I DON'T KNOW THAT IT CAN BE JUST A
12 -- AN EXPEDITION. I THINK THAT IT'S -- IT'S GOING TO BE
13 THE MANNER IN WHICH THE QUESTION IS ASKED AS TO WHETHER OR
14 NOT YOU CAN FOLLOW-UP ON IT TO ANY EXTENT.

15 MR. STONE: YES, SIR, YES, SIR.

16 THE COURT: SO WE'LL LET YOU PLOW ON THEN.

17 MR. STONE: YES, SIR. I'LL GIVE IT MY BEST SHOT.

18 THE COURT: BUT I'M GOING TO LET YOU GET INTO
19 THAT ISSUE---

20 MR. HUMPHRIES: YES, SIR.

21 THE COURT: ---AND THEN, OF COURSE, MR.
22 HUMPHRIES, YOU CAN TRY TO REHABILITATE HIM OR RESURRECT HIM
23 IN ANY MANNER---

24 MR. HUMPHRIES: I WOULDN'T EVEN ATTEMPT TO.

25 THE COURT: OKAY. ALL RIGHT.

1 ARE WE READY?

2 MR. HUMPHRIES: YES, SIR, YOUR HONOR.

3 THE COURT: LET'S BRING OUR JURY BACK.

4 (JURY IN.)

5 THE COURT: THANK YOU VERY MUCH, LADIES AND
6 GENTLEMEN.

7 CALL YOUR NEXT WITNESS, PLEASE, SOLICITOR.

8 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

9 THE STATE CALLS JEFFREY DOUGLAS FORD.

10 MR. FORD, COME AROUND AND BE SWORN, PLEASE.

11 JEFFREY DOUGLAS FORD,

12 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
14 PLEASE.

15 (NO RESPONSE.)

16 DIRECT EXAMINATION

17 BY MR. HUMPHRIES:

18 Q STATE YOUR FULL NAME FOR THE RECORD, PLEASE, SIR,
19 ONCE YOU ARE SEATED.

20 A JEFFREY DOUGLAS FORD.

21 Q WHAT NAME DO YOU GO BY?

22 A DOUG.

23 Q DOUG, HOW ARE YOU PRESENTLY EMPLOYED?

24 A MYSELF.

25 Q AND WHAT KIND OF BUSINESS ARE YOU IN?

1 A INSTALLATIONS, HEATING AND AIR, DIFFERENT THINGS.

2 Q LET'S GO AHEAD AND TAKE CARE OF THIS ON THE ONSET.

3 DOUG, WERE YOU CONVICTED BACK IN 1989 ON THE
4 CHARGE OF MALICIOUS INJURY TO PERSONAL PROPERTY?

5 A YES, I WAS.

6 Q OKAY. DOUG, DO YOU KNOW THE DEFENDANT, GARY DUBOSE
7 TERRY?

8 A YES, I DO.

9 Q TELL THE JURY HOW LONG YOU'VE KNOWN MR. TERRY.

10 A I MET HIM PROBABLY THE END OF 1988.

11 Q DID YOU LEARN SHORTLY THEREAFTER THAT YOU WERE
12 RELATED TO MR. TERRY?

13 A ABOUT A YEAR LATER.

14 Q AND HOW -- HOW ARE YOU RELATED TO MR. TERRY?

15 A UH -- ROUGHLY MY SECOND COUSIN ON DOWN THE LINE. I
16 REALLY DON'T KNOW. IT NEVER -- WE NEVER DID CHECK INTO IT
17 TOO FAR.

18 Q OKAY. YOU'VE KNOWN MR. TERRY SINCE 1988?

19 A YES, SIR.

20 Q IS THAT -- AND WHAT TYPE OF RELATIONSHIP WOULD YOU
21 SAY THAT YOU HAVE HAD WITH MR. TERRY SINCE THAT TIME?

22 A SINCE THAT TIME, HUNG OUT ON THE WEEKENDS, YOUNG,
23 STUPID STUFF. PARTYING ON THE WEEKENDS, WORKING AT BARS,
24 DIFFERENT THINGS.

25 Q OKAY. KEEP YOUR VOICE UP. Y'ALL ALSO WORKED AT

1 BARS?

2 A YES, SIR.

3 Q IN WHAT CAPACITY?

4 A AS SECURITY.

5 Q IS THERE ANOTHER COMMON NAME FOR THAT?

6 A SOME PEOPLE CALL IT A BOUNCER.

7 Q OKAY. NOW, DOUG, LET ME ASK YOU THIS. AS IT RELATES
8 TO AUTOMOBILES---

9 A UH-HUH.

10 Q ---WHAT DO YOU KNOW, IF ANYTHING, ABOUT GARY TERRY'S
11 INVOLVEMENT IN THE THEFT OF AUTOMOBILES?

12 A WELL, I THOUGHT IT WAS A JOKE BETWEEN US, BUT AS IT
13 TURNED OUT, IT SEEMED TO BE A HABIT FOR SOME PEOPLE OTHER
14 THAN ME.

15 Q THIS IS WHAT I WANT YOU TO DO, DOUG. I WANT YOU TO
16 TELL THE JURY WHAT GARY'S INVOLVEMENT WAS AND WHAT YOUR
17 INVOLVEMENT WAS?

18 A WE WOULD -- I THOUGHT WE WERE TAKING IT AS JUST TO
19 SEE IF WE COULD DO IT WITHOUT HAVING ANY RECOURSE ON
20 ANYTHING AND THAT WAS ABOUT IT I THOUGHT BECAUSE I NEVER
21 SEEN NOTHING OUT OF IT. I MEAN, I SEEN THE CAR TAKEN AND
22 THE CAR DISAPPEARING AND I NEVER GOT ANYTHING OUT OF IT SO.

23 Q WELL, LET'S DO THIS. LET'S BE MORE SPECIFIC. WHAT,
24 IF ANY, VEHICLES DID YOU SEE MR. TERRY TAKE?

25 THE COURT: BEFORE YOU ANSWER THAT, COULD I GET

1 YOU TO SPEAK INTO THAT MICROPHONE A LITTLE BIT MORE,
2 PLEASE, MR. FORD.

3 MR. HUMPHRIES: THAT OUGHT TO PICK IT UP RIGHT
4 THERE. KEEP YOUR VOICE UP, DOUG, OKAY.

5 THE WITNESS: OKAY. CAN YOU GO BACK OVER THAT
6 AGAIN?

7 Q WHAT I WANT TO KNOW IS, SPECIFICALLY, WHAT VEHICLES
8 YOU SAW MR. TERRY TAKE? IF YOU CAN DESCRIBE THEM FOR THE
9 JURY?

10 A WITH OR WITHOUT KEYS?

11 Q BOTH?

12 A THERE WAS ONE TAKEN OFF OF PROPERTY IN RICHLAND
13 COUNTY IN WHICH THE KEYS WERE IN HAND. WHERE THEY COME
14 FROM, I DON'T KNOW. WHETHER THEY WERE TAKEN OFF THE PERSON
15 OR PICKED UP OFF THE FLOOR OR---

16 Q WELL, LET ME ASK YOU THIS. THE VEHICLE THAT WAS
17 TAKEN, DID IT BELONG TO GARY TERRY?

18 A NO.

19 Q OKAY. WHAT KIND OF VEHICLE WAS IT?

20 A AN OLDER MODEL CORVETTE. OTHER THAN THAT, I COULDN'T
21 DISTINGUISH.

22 Q AND DO YOU KNOW WHAT BECAME OF THAT CORVETTE?

23 A NO.

24 Q WHAT OTHER VEHICLES, IF ANY, DID YOU SEE MR. TERRY
25 INVOLVE HIMSELF WITH?

1 A AN OLDER MODEL CHEVROLET TRUCK OFF OF NUMBER ONE
2 HIGHWAY IN WEST COLUMBIA.

3 Q KEYS OR NO KEYS?

4 A NO KEYS.

5 Q TELL THE JURY WHAT YOU OBSERVED IN REGARD TO THAT
6 VEHICLE?

7 A HE SEEN IT.

8 Q HE WAS WITH YOU?

9 A YEAH.

10 Q OKAY.

11 A I WAS DRIVING. AND WE RODE BY AND SEEN IT AND TALKED
12 ABOUT IT AND JOKED ABOUT IT AND SAID WE'RE GOING TO GO BACK
13 AND GET IT. AND SO WE WENT BACK OVER THERE. I LET HIM
14 OUT, SAT ACROSS THE STREET AND FIVE MINUTES LATER, IT WAS
15 CRANKED UP AND DROVE OFF.

16 Q DO YOU KNOW WHAT HAPPENED TO THAT VEHICLE?

17 A NEVER SEEN IT AFTER THAT NIGHT.

18 Q ARE THERE ANY OTHER VEHICLES?

19 A YES, THERE WERE, BUT PLACES AND THINGS, I, YOU KNOW,
20 I CAN'T -- THAT'S BEEN A LONG TIME AGO. I COULDN'T
21 PINPOINT ALL OF THEM.

22 Q I UNDERSTAND. WOULD YOU THEN DESCRIBE THIS AS FAIRLY
23 REGULAR ACTIVITY?

24 A I THOUGHT IT WAS CHILDISH PRANKS BETWEEN US, BUT
25 APPARENTLY IT HAPPENED OTHER TIMES WHEN I WASN'T WITH HIM.

1 Q OKAY. BUT YOU DON'T KNOW ANYTHING ABOUT THAT---

2 A NO, I COULDN'T---

3 Q ---DIRECTLY---

4 A ---SAY FOR SURE, NO.

5 Q OKAY. NOW, YOU MENTIONED THAT YOU ACTED AS SECURITY

6 AT BARS?

7 A YEAH.

8 Q YOU DID THAT WITH MR. TERRY?

9 A YEAH.

10 Q WHAT BARS?

11 A HIDEAWAYS ON -- IT WAS OFF OF BROAD RIVER ROAD.

12 Q WHAT TYPE OF BAR WAS THAT?

13 A LATE NIGHT. STRICTLY LATE NIGHT.

14 Q AND WERE YOU PAID FOR YOUR -- FOR THE PERFORMANCE OF

15 YOUR DUTIES?

16 A WE WERE -- HOW WOULD I SAY IT? NOT EXACTLY PAID, BUT

17 WE WERE COMPENSATED FOR OUR TIME.

18 Q HOW?

19 A DRINKS, DIFFERENT THINGS, I MEAN. AND THEN AFTER IT

20 -- IT DID INVOLVE -- IT DID COME DOWN TO FIVE DOLLARS AN

21 HOUR AND THAT'S WHEN WE QUIT AFTER THAT.

22 Q OKAY. DID YOU OBSERVE MR. TERRY DURING THAT TIME --

23 AND HOW LONG DO YOU THINK HE BOUNCED AT HIDEAWAYS?

24 A BOTH OF US, OFF AND ON, OVER TWO AND A HALF, THREE

25 YEARS.

1 Q DID YOU SEE MR. TERRY DURING THAT TIME ENGAGE IN ANY
2 FIGHTS?

3 A YEAH. I MEAN, IT WAS COMMON PLACE THERE. THAT'S --
4 THAT'S WHAT EVERYBODY CAME THERE FOR BASICALLY AND THAT WAS
5 OUR JOB TO TAKE IT OUTSIDE AND THAT'S WHAT WE DID.

6 Q NOW, LET ME ASK YOU THIS. OTHER THAN THOSE FIGHTS
7 THAT YOU AND MR. TERRY WOULD HAVE BEEN BREAKING UP, DID YOU
8 SEE MR. TERRY ENGAGE IN ANY FIGHTS ONE-ON-ONE WITH ANOTHER
9 PATRON OF THE BAR?

10 A WELL, I DON'T KNOW IF SOME OF Y'ALL HAVE EVER
11 FREQUENTED ANY PLACE LIKE THIS, BUT YOU BREAK UP TWO PEOPLE
12 THAT'S FIGHTING, YOU WIND UP FIGHTING THEM YOURSELF.

13 Q OKAY. DURING THESE -- THESE ALTERCATIONS, DID MR.
14 TERRY EVER USE A WEAPON OF ANY TYPE?

15 A WE WASN'T WORKING THE NIGHT THAT THE GUYS SPILLED
16 BEER ON HIS JACKET AND HE HIT HIM WITH A BEER MUG.

17 Q WHAT HAPPENED TO THE FELLOW HE HIT WITH THE BEER MUG?

18 A HE FELL DOWN PRETTY MUCH. AND NOTHING HAPPENED AFTER
19 THAT. IT WASN'T NOTHING ELSE TO IT.

20 Q LET ME ASK THIS. DID YOU EVER SEE HIM USE ANY KIND
21 OF BLUNT WEAPONS? CLUBS OR ANYTHING LIKE THAT?

22 A OUTSIDE THE BAR ONE NIGHT, WE HAD A GUY THAT
23 FREQUENTED THE BAR. ALWAYS STARTED TROUBLE, BUT HE SEEMED
24 TO HAVE -- HE WAS A VERY STRONG PERSON OR HE HAD A VERY --
25 ALCOHOL OR OTHER DRUGS HYPED HIM UP VERY MUCH, YOU KNOW.

1 WE DIDN'T KNOW WHICH, BUT YOU COULDN'T STOP THE GUY AND
2 GARY DID HIT HIM WITH A ROCK. BUT NOW, IT DIDN'T -- IT
3 SLOWED HIM DOWN, BUT IT STILL DIDN'T STOP HIM.

4 Q DID YOU EVER OBSERVE GARY TERRY USE ANYTHING SIMILAR
5 TO A CLUB---

6 A WELL---

7 Q ---OR A POOL CUE?

8 A WELL, HE USED -- WE DIDN'T HAVE MUCH ON THE PORCH
9 EXCEPT FOR THE PORCH RAILINGS AND THE PICKETS THAT HELD IT
10 UP. AND THAT'S THE CLOSEST THING YOU COULD GET YOUR HANDS
11 ON, THAT'S WHAT YOU GOT. THE POOL STICK. I SAW HIM HIT
12 THE GUY WITH A POOL STICK. CAN'T PUT DOWN ON THAT BECAUSE
13 THE GUY WAS HOLDING ME.

14 Q AND HE HELPED YOU OUT?

15 A YEAH.

16 Q I GUESS I NEED TO ASK YOU THIS, DOUG. YOU'RE NOT
17 REAL HAPPY ABOUT TESTIFYING HERE FOR THE STATE AS OPPOSED
18 TO GARY TERRY, ARE YOU?

19 A I DON'T HAVE ANY PROBLEM TESTIFYING, OTHER THAN I'VE
20 HAD THREE HOURS SLEEP IN THREE DAYS. I'M VERY TIRED.

21 Q I UNDERSTAND.

22 HOW WOULD YOU DESCRIBE GARY TERRY IN TERMS OF HIS
23 TEMPER?

24 A WHEN WE FIRST MET OR YEARS LATER?

25 Q SAY LATER ON.

1 A VERY EDGY. YOU KNOW, TEMPERAMENTAL. I MEAN, NOT
2 LIKE HE WAS WHEN I MET HIM.

3 Q HOW WAS HE WHEN YOU FIRST MET HIM?

4 A VERY CALM ABOUT EVERYTHING.

5 Q HE WAS CALM ABOUT EVERYTHING---

6 A YEAH.

7 Q ---ABOUT WHEN DID YOU MEET HIM?

8 A IN '88, IN '88.

9 Q NOW, WHEN YOU SAY THAT, WAS HE CALM EVEN WHEN HE
10 ENGAGED IN FIGHTS?

11 A YEAH, THAT'S HOW YOU KEPT FROM GETTING HURT YOURSELF.

12 Q WAS HE A GOOD FIGHTER?

13 A YEAH.

14 Q DID HE GET HURT---

15 A EVERYBODY HAS THEIR OPINION ON THAT, BUT WE DIDN'T
16 COME HOME SCRATCHED UP TOO MANY TIMES.

17 Q HOW ABOUT LATER, HOW WAS HIS TEMPER?

18 A WHEN I -- BEFORE EVERYTHING BASICALLY FELL APART
19 AROUND HIM, I QUIT HANGING AROUND HIM, TALKING TO HIM OR
20 ANYTHING FOR WELL OVER A YEAR AND A HALF AND I SEEN HIM
21 HERE AND THERE AND HE WAS A DIFFERENT PERSON. I MEAN, HE
22 JUST WASN'T THE SAME OLD CALM PERSON. I MEAN, IT WAS LIKE
23 HE WAS ON EDGE ALL THE TIME.

24 Q AND WHAT PERIOD OF TIME, WOULD THIS HAVE BEEN? HOW
25 MANY YEARS AFTER YOU MET HIM, DO YOU THINK?

1 A THIS WAS PROBABLY '93, '94. IT COULD HAVE BEEN A
2 LITTLE BEFORE THAT.

3 Q DID YOU ASSOCIATE MUCH WITH GARY DUBOSE TERRY IN '93
4 AND '94?

5 A NO. PRETTY MUCH AFTER THE FIRST PART OF '92, ME AND
6 A FRIEND OF MINE OPENED A BUSINESS AND THAT WAS MY MAIN
7 THING. I DIDN'T -- THERE WASN'T NO GOING OUT AT NIGHT AND
8 STAYING OUT ALL NIGHT. IT WAS WORKING SIXTEEN HOURS A DAY.

9 Q WHAT WAS THAT BUSINESS?

10 A IT WAS HEATING AND AIR BUSINESS.

11 Q ANSWER ANY QUESTIONS MR. STONE HAS FOR YOU.

12 THE COURT: BEFORE YOU DO THAT, LET ME SEE THE
13 LAWYERS AT THE SIDE BAR, PLEASE, SIR.

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

16 THE COURT: CROSS-EXAMINATION, MR. STONE.

17 MR. STONE: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION

19 BY MR. STONE:

20 Q YOU ARE JEFFREY DOUG FORD, IS THAT CORRECT?

21 A YEAH.

22 Q YOUR DATE OF BIRTH IS AUGUST THE 27TH, 1968?

23 A YES, SIR.

24 Q YOU ARE BASICALLY TESTIFYING -- I WANT TO MAKE SURE
25 I'M CLEAR ON THIS. YOU ARE HERE TODAY TO TELL US THAT GARY

1 TERRY IS A THIEF AND THAT HE BEATS PEOPLE AND YOU KNOW THAT
2 BECAUSE YOU DID THAT WITH HIM, IS THAT RIGHT?

3 A WE DONE IT FOR A LIVING, YEAH.

4 Q YOU DID IT FOR A LIVING.

5 SO YOU DID IT AND YOU WERE A THIEF AND YOU KNOW
6 THAT SO THAT'S WHY YOU ARE ABLE TO BE HERE TODAY AND
7 TESTIFY THAT GARY'S A THIEF, IS THAT RIGHT?

8 A I'M PRETTY MUCH TELLING THE TRUTH. THANK YOU.

9 Q BUT YOUR THIEF WAYS ARE SOMEHOW DIFFERENT THAN MR.
10 TERRY'S I'M ASSUMING?

11 A MY SOMEHOW THIEF DAYS HAVE BEEN LONG OVER WITH, THANK
12 YOU.

13 Q OKAY. I DON'T NOTICE ANYTHING ABOUT YOUR CRIMINAL
14 RECORD THAT'S GOT ANY THEFTS ON IT?

15 A PRETTY MUCH.

16 Q NEVER GOT ARRESTED FOR THAT?

17 A NO.

18 Q DID YOU EVER TELL THE POLICE ABOUT ANY OF THIS STUFF
19 THAT YOU'RE TELLING US TODAY?

20 A NO.

21 Q YOU NEVER VOLUNTEERED ANY INFORMATION LIKE, HEY, I
22 KNOW WHERE SOME STUFF THAT WAS STOLEN FROM OR ANYTHING LIKE
23 THAT?

24 A YOU'VE GOT TO KNOW WHERE IT'S AT BEFORE YOU CAN TELL
25 ANYBODY WHERE IT'S AT.

1 Q SO YOU DIDN'T TELL THEM BECAUSE YOU DIDN'T KNOW THE
2 FULL STORY, IS THAT RIGHT?

3 A EXACTLY.

4 Q OTHERWISE, YOU WOULD HAVE BEEN GLAD TO GO IN AND TELL
5 THE POLICE THAT YOU WERE A THIEF?

6 A THAT WOULD HAVE BE KIND OF STUPID ON MY PART,
7 WOULDN'T IT?

8 Q I THINK SO.

9 MR. HUMPHRIES ASKED YOU ABOUT EARLIER THE
10 MALICIOUS INJURY TO PERSONAL PROPERTY CHARGE THAT YOU
11 PICKED UP IN DECEMBER OF 1989, YOU HAD A TEN-YEAR SENTENCE,
12 BUT YOU ONLY RECEIVED FIVE YEARS PROBATION, IS THAT RIGHT?

13 A YES, SIR. SOME PEOPLE---

14 Q AND---

15 A ---CALL THAT SELF-DEFENSE.

16 Q SELF-DEFENSE?

17 A YEAH.

18 Q MALICIOUS INJURY TO PERSONAL PROPERTY---

19 A I JUST HAPPENED TO HAVE THE KNIFE WHEN THE POLICE GOT
20 THERE.

21 Q OH, I UNDERSTAND. YOU HAD A KNIFE?

22 A SOMEBODY ELSE HAD THE KNIFE. I WOUND UP WITH IT.

23 Q I UNDERSTAND.

24 AND YOU GOT A FIVE-YEAR PROBATIONARY SENTENCE.
25 YOU DIDN'T DO ANY TIME ON THAT, UH?

1 A NO.

2 Q AND YOU DON'T HAVE ANYTHING ON YOUR RECORD TO
3 INDICATE YOU HAVE EVER HAD ANY THEFTS, IS THAT RIGHT?

4 A UH-HUH. YOU HAVE IT. YOU'VE LOOKED AT IT.

5 Q AND, IN FACT, IN 1990, YOU WERE CHARGED FOR A CRIME
6 THAT CARRIED UP TO FIFTEEN YEARS IN JAIL, IS THAT RIGHT?

7 A IF YOU WOULD LIKE TO ENLIGHTEN ME ON THAT?

8 Q EXCUSE ME?

9 A IF YOU WOULD LIKE TO ENLIGHTEN ME ON THAT---

10 Q I WILL CERTAINLY BE GLAD TO ENLIGHTEN YOU OF THAT.

11 POSSESSION WITH INTENT TO DISTRIBUTE L.S.D.

12 DOES THAT RING A BELL TO YOU?

13 A IS THERE A CONVICTION ON THAT, SIR?

14 Q NO, THERE IS NOT AND I'M GLAD YOU BROUGHT THAT UP.
15 WHY ISN'T THERE A CONVICTION ON THIS?

16 A I REALLY COULDN'T EXPLAIN THAT.

17 Q COULD IT BE THAT YOU WERE A SNITCH FOR THE SAME
18 POLICE AGENCY THAT ARRESTED YOU?

19 A IF YOU'D HAVE ANY PROOF ON THAT, I WOULD LIKE TO SEE
20 THAT. THANK YOU.

21 MR. STONE: CERTAINLY.

22 MOVE THIS, YOUR HONOR, AS DEFENSE'S EXHIBIT
23 NUMBER THREE FOR IDENTIFICATION.

24 THE COURT: THAT'S THREE FOR I.D.---

25 THE WITNESS: COULD I SEE THAT, SIR---

1 THE COURT: JUST A MINUTE, PLEASE, SIR.

2 THE WITNESS: SORRY.

3 (WHEREUPON, DEFENDANT'S EXHIBIT
4 NUMBER THREE, GENERAL SESSIONS DOCKET SHEET, MARKED FOR
5 IDENTIFICATION ONLY AT THIS TIME.)

6 MR. STONE: LET ME SHOW YOU WHAT HAS BEEN MARKED
7 AS DEFENSE'S EXHIBIT I.D. NUMBER THREE. IS YOUR NAME
8 JEFFREY D. FORD? IS THAT YOUR NAME UP AT THE TOP?

9 THE WITNESS: UH-HUH.

10 Q DID YOU LIVE AT 1564 PINE STREET IN WEST COLUMBIA?

11 A UH-HUH.

12 Q AND DOES THAT SAY POSSESSION WITH INTENT TO
13 DISTRIBUTE L.S.D.?

14 A UH-HUH.

15 Q AND DOES THAT SAY NOL PROSSED OR DISMISSED ON
16 DECEMBER THE 6TH, 1990, PER DEPUTY PEAKE?

17 A OKAY. WHAT ARE YOU TRYING TO PROVE HERE?

18 MR. STONE: YOUR HONOR, I'D ASK JUDICIAL NOTICE
19 FOR THIS TO BE INCLUDED AS A COURT'S RECORD SINCE WE KNOW
20 IT CAME FROM THE CLERK'S OFFICE UNLESS THERE'S SOME
21 OBJECTION FROM THE SOLICITOR'S OFFICE.

22 MR. HUMPHRIES: NO OBJECTION.

23 THE COURT: NO OBJECTION. ALL RIGHT, SIR.

24 MR. STONE: SO YOU'RE HERE TODAY TELLING US ALL
25 ABOUT THE BAD STUFF THAT YOU AND MR. TERRY DID TOGETHER,

1 BUT THAT WAS SOMEHOW DIFFERENT THE WAY YOU DID IT AND THE
2 WAY HE DID IT, IS THAT RIGHT?

3 THE WITNESS: WELL, THAT THERE WAS A BLATANT
4 SETUP BY AN EX-GIRLFRIEND MAINLY AS RECOURSE FROM AN
5 OFFICER THAT IS NO LONGER WITH LEXINGTON COUNTY POLICE
6 DEPARTMENT THAT I WOULD RATHER NOT SAY HIS NAME BECAUSE HE
7 STILL HAS FAMILY IN THE POLICE DEPARTMENT---

8 Q I SEE.

9 A ---AND I WOULD LIKE TO LEAVE THAT AT THAT. THANK
10 YOU.

11 Q SO YOU ARE HERE TODAY JUST TO TELL THE TRUTH, IS THAT
12 RIGHT?

13 A YEAH.

14 Q JUST CURIOUS. WHEN THE INVESTIGATOR FROM THE PUBLIC
15 DEFENDER'S OFFICE CAME TO TALK TO YOU, YOU WOULDN'T TALK TO
16 HIM, WOULD YOU?

17 A WHO?

18 Q TOMMY DAVIS, AN EX-F.B.I. AGENT, WEARING A SUIT, CAME
19 TO ASK YOU SOME QUESTIONS. SAID HE WAS WORKING FOR THE
20 DEFENSE.

21 A HE WASN'T WEARING A SUIT.

22 Q YOU KNOW WHO I'M TALKING ABOUT, SIR?

23 A APPARENTLY NOT.

24 Q YOU REMEMBER SOMEBODY COMING TO YOUR HOUSE AND ASKING
25 YOU QUESTIONS AND TELLING YOU HE WORKED FOR THE DEFENSE AND

1 YOU HELD A GUN ON HIM AND TOLD HIM TO GET OFF YOUR
2 PROPERTY? DO YOU REMEMBER THAT?

3 A I DID PULL A GUN ON SOMEBODY AND TOLD THEM TO GET OFF
4 MY PROPERTY.

5 Q AND HE WAS WORKING FOR THE DEFENSE---

6 A I HAVE NO---

7 Q ---AND YOU KNEW THAT, DID YOU NOT?

8 A NO, I DID NOT KNOW THAT.

9 Q OKAY. ALL RIGHT, SIR. SO YOU ARE HERE TODAY
10 TESTIFYING FOR THE STATE, TELLING US HOW BAD MR. TERRY IS,
11 BUT WHEN SOMEBODY ELSE ASKS YOU ABOUT IT, YOU DON'T WANT TO
12 TALK ABOUT IT, DO YOU?

13 A PEOPLE DON'T WALK UP BEHIND ME IN MY YARD AT 8:30 AT
14 NIGHT IN THE DARK.

15 Q OKAY.

16 EXCUSE ME JUST A MOMENT, YOUR HONOR.

17 THE COURT: YES, SIR.

18 MR. STONE: NOTHING ELSE, YOUR HONOR.

19 THE COURT: ANYTHING FURTHER FROM THE STATE?

20 MR. HUMPHRIES: NO, SIR. THANK YOU, MR. FORD.

21 THE COURT: THANK YOU VERY MUCH.

22 MR. HUMPHRIES: WE'D ASK THAT MR. FORD BE
23 EXCUSED. HE IS OPERATING ON A VERY FEW HOURS' SLEEP.

24 MR. STONE: NO OBJECTION, YOUR HONOR.

25 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.

1 THANK YOU VERY MUCH FOR COMING, MR. FORD.

2 (WHEREUPON, THE WITNESS WAS
3 EXCUSED AT THIS TIME.)

4 THE COURT: NEXT WITNESS.

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

6 AT THIS TIME, THE STATE SEEKS TO INTRODUCE THE
7 CERTIFIED TRUE COPY OF THE INDICTMENT, DISPOSITION AND
8 SENTENCING SHEET FROM CONVICTION FOR GARY DUBOSE TERRY FOR
9 DRIVING UNDER SUSPENSION, THIRD OFFENSE.

10 MS. FULLWOOD: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION, IT WILL BE
12 ADMITTED AS STATE'S NUMBER 37.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER
14 37, INDICTMENT/96-GS-40-1864, ENTERED INTO EVIDENCE AT THIS
15 TIME WITHOUT OBJECTION.)

16 MR. CHASE: PERMISSION TO PUBLISH, YOUR HONOR.

17 THE COURT: YES, SIR.

18 MR. CHASE: THIS INDICATES THAT FROM AN OFFENSE
19 ARISING ON FEBRUARY THE 14TH OF 1995, GARY DUBOSE TERRY WAS
20 CONVICTED OF DRIVING UNDER SUSPENSION, THIRD OFFENSE AND
21 SENTENCED TO NINETY DAYS, YOUR HONOR.

22 THE STATE WISH TO AFFIX THIS SUMMARY OF THAT
23 TESTIMONY TO STATE'S EXHIBIT NUMBER 32, YOUR HONOR.

24 THE COURT: WITHOUT OBJECTION.

25 MR. STONE: NO OBJECTION.

1 MR. CHASE: THANK YOU, YOUR HONOR.

2 MR. HUMPHRIES: THE STATE CALLS TYRONE KELLY TO
3 THE STAND.

4 TYRONE KELLY,

5 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: HAVE A SEAT AND GIVE US YOUR FULL
7 NAME.

8 THE WITNESS: MY FULL NAME IS TYRONE KELLY.

9 DIRECT EXAMINATION

10 BY MR. HUMPHRIES:

11 Q NOW, I'M GOING TO CALL YOU TYRONE, IS THAT ALL RIGHT?

12 A YES, SIR.

13 Q NOW, TYRONE, WHERE ARE YOU FROM?

14 A I'M FROM BLACKSTOCK, SOUTH CAROLINA, IN FAIRFIELD
15 COUNTY.

16 Q THAT'S IN FAIRFIELD COUNTY?

17 A YES, SIR.

18 Q AND LET ME ASK YOU THIS. DO YOU KNOW A FELLOW NAME
19 GARY TERRY?

20 A YES, SIR.

21 Q NOW, HERE'S WHAT I WANT YOU TO DO. IN A LOUD CLEAR
22 VOICE, I WANT YOU TO TELL THIS JURY HOW YOU KNOW GARY
23 TERRY.

24 A WELL, I KNOW GARY TERRY FROM A GARAGE OUT OF
25 WINNSBORO. HE USED TO WORK WITH A GUY NAME BIG JOHNNY AND

1 MY CAR WAS BROKE DOWN ONE TIME AND I TOOK IT TO BIG JOHNNY
2 AND BIG JOHNNY MESSED IT UP SO ON THIS PARTICULAR OCCASION,
3 I HAD MY CAR PARKED IN FRONT OF A FRIEND'S HOUSE---

4 Q WELL, TELL THE JURY WHAT KIND OF CAR YOU HAD?

5 A I HAD AN '89 G.T. MUSTANG.

6 Q OKAY. NOW, YOU CAN GET A LITTLE FURTHER BACK FROM
7 THAT MIKE SO IT WON'T BITE YOU.

8 A OKAY.

9 Q YOU'RE ALL RIGHT LIKE THAT.

10 A OKAY.

11 Q A LITTLE SLOWER, TOO.

12 A ALL RIGHT. AND I HAD MY CAR PARKED AND MY FRIEND --
13 ME AND MY FRIEND WERE WORKING ON IT AND GARY AND JOHNNY
14 THEY WANTED TO FIX IT, BUT I WOULDN'T LET THEM FIX IT.
15 THEY SAID IF I FIX IT, YOU KNOW, THEY COULD FIX IT. I GIVE
16 THEM SOME MONEY SO THEY CAN GO GET SOMETHING TO SMOKE. I
17 SAID I AIN'T GOING TO DO THAT BECAUSE THEY HAD MESSED MY
18 CAR UP ONE TIME BEFORE. AND I SAID I WASN'T GOING TO DO
19 THAT.

20 SO GARY GOT MAD AND HE WENT AND GOT, I GUESS, HIS
21 WIFE'S DODGE MINI VAN AND HE RAMMED THE SIDE OF MY MUSTANG.

22 Q TELL THE -- TELL THE JURY WHERE THEY STRUCK ON YOUR
23 MUSTANG.

24 A THE REAR---

25 Q OR WHERE HE STRUCK ON YOUR MUSTANG---

- 1 A HE STRUCK THE REAR QUARTER PANEL.
- 2 Q ON WHO -- ON WHICH SIDE?
- 3 A ON THE DRIVER'S SIDE.
- 4 Q WHERE WERE YOU STANDING WHEN THE VEHICLE GOT STRUCK?
- 5 A WE WAS STANDING UP UNDER THE HOOD LIKE -- WE WAS
- 6 FIXING THE -- I WAS FIXING MY OWN CAR. HE CAME BACK SO
- 7 FAST WE HAD TO JUMP OUT OF THE WAY AND IF WE HADN'T JUMPED
- 8 OUT OF THE WAY, HE WOULD HAVE HIT US.
- 9 Q WHEN HE LEFT -- DID HE LEAVE ULTIMATELY?
- 10 A YEAH. HE LEFT, BUT WHEN HE LEFT, HE HAD LEFT -- HE
- 11 LEFT MY CAR DAMAGED AND HE LEFT HIS BUMPER.
- 12 Q THE BUMPER CAME OFF HIS VEHICLE?
- 13 A THE BUMPER CAME OFF THE MINI VAN.
- 14 Q HOW MUCH DAMAGE DID HE DO TO YOUR VEHICLE?
- 15 A ABOUT 38 HUNDRED DOLLARS' WORTH OF DAMAGE.
- 16 Q DID YOU EVER SEE A DIME OF THAT?
- 17 A NO.
- 18 Q IS THAT THE LAST CONTACT YOU HAD WITH GARY TERRY?
- 19 A THAT'S THE LAST CONTACT I HAD WITH HIM.
- 20 Q TYRONE, ANSWER ANY QUESTIONS THEY HAVE FOR YOU, OKAY.
- 21 THE COURT: CROSS-EXAMINATION.
- 22 MS. FULLWOOD: NO QUESTIONS.
- 23 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN,
- 24 MR. KELLY.
- 25 THE WITNESS: ALL RIGHT. THANK YOU.

1 MR. CHASE: WE ASK THAT THAT WITNESS BE EXCUSED,
2 YOUR HONOR.

3 THE COURT: WITHOUT OBJECTION, HE IS EXCUSED.

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

6 MR. CHASE: THE STATE CALLS KEVIN RILEY TO THE
7 STAND, YOUR HONOR.

8 KEVIN A. RILEY,
9 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: STATE YOUR FULL NAME, PLEASE.

11 THE WITNESS: KEVIN ANDRE RILEY.

12 DIRECT EXAMINATION

13 BY MR. CHASE:

14 Q MR. RILEY, WHERE ARE YOU EMPLOYED?

15 A WEST COLUMBIA POLICE DEPARTMENT.

16 Q AND, IN FACT, ARE YOU CURRENTLY GOING THROUGH AN
17 INSTRUCTION COURSE?

18 A YES, SIR. I'M NOW AT THE SOUTH CAROLINA CRIMINAL
19 JUSTICE ACADEMY, JUST COMPLETED MY FIFTH WEEK.

20 Q THIS IS KIND OF A REPRIEVE FROM THAT, ISN'T IT?

21 A YES, SIR.

22 Q YOU HELD THAT SAME POSITION WITH WEST COLUMBIA POLICE
23 DEPARTMENT ON DECEMBER THE 9TH OF 1996?

24 A NO, SIR.

25 Q WHERE WERE YOU EMPLOYED AT THAT TIME?

1 A RICHLAND COUNTY DETENTION CENTER ASSIGNED TO THE
2 MAXIMUM SECURITY UNIT WITH THE RESPONSE TEAM.

3 Q AND WHAT WERE YOUR DUTIES OVER AT THE DETENTION
4 CENTER?

5 A TO RESPOND TO ANY EMERGENCY AND TO PATROL THE MAXIMUM
6 SECURITY UNIT.

7 Q WHAT WAS YOUR TITLE?

8 A CORRECTIONAL OFFICER.

9 Q ON THAT -- ON DECEMBER THE 9TH, 1996, WAS THERE AN
10 INMATE THERE BY THE NAME OF GARY TERRY?

11 A YES, THERE WAS.

12 Q WAS THERE AN INCIDENT INVOLVING GARY TERRY THAT
13 OCCURRED ON THAT DATE?

14 A YES, SIR.

15 Q COULD YOU PLEASE DESCRIBE WHAT HAPPENED?

16 A OKAY. AS I WAS CONDUCTING MY THIRTY MINUTE SECURITY
17 CHECK, I HEARD AND OBSERVED INMATE TERRY TALKING THROUGH
18 HIS INTERCOM WITH ANOTHER INMATE.

19 Q NOW, AT THE RICHLAND COUNTY DETENTION CENTER, IS THAT
20 AN INFRACTION OF THE RULES AS APPLIED TO THE INMATES?

21 A YES, SIR, IT IS.

22 Q BASED ON THAT INFRACTION, WAS GARY TERRY PUNISHED?

23 A THERE WERE SOME SANCTIONS IMPOSED UPON HIM.

24 Q COULD YOU PLEASE DESCRIBE WHAT THOSE SANCTIONS WERE?

25 A HE LOST RECREATION, VISITATION AND TELEPHONE

1 PRIVILEGES FOR TWO WEEKS.

2 Q MR. RILEY, IS THIS AN ACCURATE SUMMARY OF YOUR
3 TESTIMONY HERE TODAY? INCIDENT ON DECEMBER THE 9TH OF
4 1996, GARY TERRY WAS SANCTIONED FOR TALKING THROUGH THE
5 INTERCOM TO ANOTHER INMATE'S CELL; LOST TWO WEEKS OF
6 RECREATION, VISITATION AND TELEPHONE PRIVILEGES?

7 A YES, SIR.

8 MR. CHASE: THE STATE WOULD MOVE TO AFFIX THIS TO
9 STATE'S EXHIBIT NUMBER 32, YOUR HONOR.

10 THE COURT: WITHOUT OBJECTION?

11 MR. STONE: NO OBJECTION.

12 YOUR HONOR, I -- I APOLOGIZE FOR MOVING OVER
13 HERE. I CANNOT SEE THE WITNESS.

14 THE COURT: THAT'S PERFECTLY ALL RIGHT. I
15 UNDERSTAND THAT.

16 MR. STONE: THANK YOU, SIR.

17 THE COURT: YOU MAY FEEL FREE TO MOVE ABOUT.

18 MR. CHASE: PLEASE ANSWER ANY QUESTIONS THEY MAY
19 HAVE.

20 THE WITNESS: YES, SIR.

21 THE COURT: MR. STONE.

22 MR. STONE: THANK YOU, SIR.

23 CROSS-EXAMINATION

24 BY MR. STONE:

25 Q IS IT OFFICER -- IS IT CORRECTIONAL OFFICER, OFFICER?

1 WHAT'S YOUR TITLE?

2 A CORRECTIONAL OFFICER, SIR.

3 Q ALL RIGHT, SIR. OFFICER, YOU ARE WORKING AT THE
4 RICHLAND COUNTY DETENTION CENTER, IS THAT RIGHT?

5 A PRESENTLY, I'M A POLICE OFFICER, WEST COLUMBIA.

6 Q THAT'S A TOUGH MIKE. JUST---

7 THE COURT: JUST SLIDE IT BACK JUST A LITTLE BIT,
8 PLEASE.

9 MR. STONE: I WANT YOU TO BE CLOSE TO IT, BUT
10 DON'T QUITE TOUCH IT BECAUSE IT WILL MAKE THAT SOUND.

11 THE WITNESS: OKAY.

12 Q BE CAREFUL WITH THAT CHAIR, TOO.

13 THE RICHLAND COUNTY DETENTION CENTER WHERE YOU
14 USED TO WORK---

15 A YES, SIR.

16 Q ---AND THE AREA THAT HOUSED MR. TERRY, THAT WAS FOR
17 ADULT PRISONERS?

18 A YES, SIR.

19 Q ALL RIGHT. SO IT WASN'T A YOUTHFUL CAMP OR YOUTH
20 FACILITY OR ANYTHING LIKE THAT, WAS IT?

21 A NO, SIR.

22 Q ALL RIGHT, SIR. AND LET ME MAKE SURE I UNDERSTAND
23 THAT. FOR TALKING THROUGH AN INTERCOM TO ANOTHER INMATE'S
24 CELL, MR. TERRY WAS NOT ALLOWED RECREATION FOR TWO WEEKS?

25 A YES, SIR.

1 Q HE WAS NOT ALLOWED VISITATION FOR TWO WEEKS?

2 A YES, SIR.

3 Q AND HE WAS NOT ALLOWED THE USE OF THE TELEPHONE.

4 BASICALLY, IN A WAY, CUT OFF FROM ANYTHING OUTSIDE OF THE
5 CORRECTIONAL FACILITY FOR TWO WEEKS, IS THAT FAIR?

6 A YES, SIR. ACCORDING TO THE RULES---

7 Q YES, SIR.

8 A ---THERE WAS ONLY A FIVE-MINUTE PHONE CALL PER WEEK.
9 SO ACTUALLY HE ONLY LOST TWO PHONE CALLS. HE ONLY LOST TWO
10 HOURS' WORTH OF RECREATION AND ONE VISIT.

11 Q BUT -- AND THAT FOR TALKING THROUGH AN INTERCOM TO
12 ANOTHER INMATE'S CELL?

13 A YES, SIR.

14 Q ALL RIGHT, SIR. NOTHING ELSE. THANK YOU.

15 THE COURT: ANYTHING FURTHER FROM THE STATE?

16 MR. CHASE: NOTHING FURTHER AND WE ASK THAT THIS
17 WITNESS PLEASE BE EXCUSED, YOUR HONOR.

18 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.

19 THANK YOU VERY MUCH FOR COMING, OFFICER RILEY.

20 THE WITNESS: ALL RIGHT.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MR. CHASE: THE STATE CALLS SERGEANT JENNY HARE
24 TO THE STAND.

25 JENNY HARE,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
3 PLEASE.

4 THE WITNESS: JENNY HARE.

5 DIRECT EXAMINATION

6 BY MR. CHASE:

7 Q SERGEANT HARE, WHERE ARE YOU EMPLOYED?

8 A THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

9 Q WHAT ARE YOUR DUTIES THERE?

10 A I AM A SUPERVISOR IN THE DETENTION CENTER OVERSEEING
11 THE OPERATIONS OF THE FACILITIES.

12 Q WERE YOU EMPLOYED AT THE LEXINGTON COUNTY DETENTION
13 CENTER IN SEPTEMBER OF 1995?

14 A YES, I WAS.

15 Q DURING THAT TIME, SERGEANT HARE, DID YOU HAVE THE
16 OPPORTUNITY TO FIND A FIRE EXTINGUISHER THAT WAS OUT OF
17 PLACE?

18 A YES, SIR, I DID.

19 Q ON WHAT DATE DID YOU FIND THAT FIRE EXTINGUISHER?

20 A THE FIRE EXTINGUISHER WAS FOUND THE MORNING OF
21 SEPTEMBER THE 10TH, 1995.

22 Q IN WHAT CONDITION WAS THAT FIRE EXTINGUISHER?

23 A IT WAS FOUND TO BE BENT UP ALL AROUND THE BOTTOM
24 AREA.

25 Q SERGEANT HARE, WAS GARY DUBOSE TERRY AN INMATE AT THE

1 LEXINGTON -- LEXINGTON COUNTY DETENTION CENTER---

2 A YES---

3 Q ---ON THAT DATE?

4 A YES, HE WAS.

5 Q PURSUANT TO YOUR INVESTIGATION OF THAT FIRE

6 EXTINGUISHER -- WELL, DID YOU HAVE AN INVESTIGATION RELATED
7 TO THAT FIRE EXTINGUISHER?

8 A YES, SIR, WE DID.

9 Q PURSUANT TO THAT INVESTIGATION, DID YOU HAVE THE
10 OPPORTUNITY TO LOOK IN MR. TERRY'S CELL?

11 A YES, SIR.

12 Q WHAT CONDITION WAS THAT CELL IN?

13 A WHEN I ENTERED HIS CELL, WHICH WAS ON THE THIRD FLOOR
14 IN 3-A-2, A HOLE IN THE WALL ABOVE THE BOTTOM BUNK AREA --
15 WE HAVE A DOUBLE BUNK, BOTTOM AND UPPER -- BELOW THE BOTTOM
16 BUNK TO THE OUTSIDE EXTERIOR WALL, INSIDE WALL, THERE WAS A
17 HOLE STARTED IN THE WALL APPROXIMATELY THREE AND A HALF TO
18 FOUR INCHES ROUND AND A HALF-INCH DEEP.

19 Q PURSUANT TO YOUR INVESTIGATION, WERE YOU ABLE TO
20 DETERMINE HOW THE FIRE EXTINGUISHER WAS DAMAGED?

21 A YES, SIR.

22 Q HOW WAS THE FIRE EXTINGUISHER DAMAGED?

23 A IT WAS DAMAGED BY A STATEMENT TAKEN FROM GARY TERRY
24 THAT HE HAD TAKEN THE FIRE EXTINGUISHER AND TRIED TO KNOCK
25 A HOLD IN THE WALL TO GET TO HIS KIDS.

1 Q SERGEANT HARE, CAN YOU IDENTIFY WHAT THIS PICTURE
2 DEPICTS?

3 A YES, SIR. THIS WAS THE FIRE EXTINGUISHER THAT WAS
4 FOUND THAT WAS USED IN THE ROOM.

5 Q IS THIS A FAIR AND ACCURATE DEPICTION OF THE FIRE
6 EXTINGUISHER AS IT EXISTED WHEN YOU FOUND IT SEPTEMBER OF
7 1995?

8 A YES, IT IS.

9 MR. CHASE: THE STATE MOVES THIS IN EVIDENCE,
10 YOUR HONOR.

11 MS. FULLWOOD: JUST TO BE SURE WE DON'T HAVE AN
12 OBJECTION, LET ME LOOK AT IT.

13 (WHEREUPON, THE PHOTOGRAPH IS
14 SHOWN TO MS. FULLWOOD AT THIS TIME.)

15 MS. FULLWOOD: NO OBJECTION.

16 THE COURT: ALL RIGHT. WITHOUT OBJECTION, IT
17 WILL BE ADMITTED AS STATE'S NUMBER 38.

18 MR. CHASE: THANK YOU, YOUR HONOR.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER
20 38, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
21 OBJECTION.)

22 MR. CHASE: SERGEANT HARE, CAN YOU PLEASE
23 IDENTIFY WHAT THAT PICTURE DEPICTS?

24 THE WITNESS: THIS IS A PICTURE OF THE WALL OF
25 ROOM 3-A-2 WHERE GARY TERRY WAS HOUSED AND A PICTURE OF THE

1 HOLE IN THE WALL WITH ME AND THE CEMENT DUST ON THE BED
2 ALSO WHERE THE FIRE EXTINGUISHER WAS USED TO KNOCK THE WALL
3 OUT.

4 Q SERGEANT HARE, DOES THIS PICTURE FAIRLY AND
5 ACCURATELY REPRESENT THE CONDITION OF GARY TERRY'S CELL IN
6 SEPTEMBER OF 1995 AS YOU INVESTIGATED THE DAMAGE TO THE
7 FIRE EXTINGUISHER?

8 A YES.

9 MR. CHASE: THE STATE MOVES THIS INTO EVIDENCE,
10 YOUR HONOR.

11 THE COURT: WITHOUT OBJECTION?

12 MS. FULLWOOD: NO OBJECTION.

13 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER 39
14 WILL BE ADMITTED.

15 MR. CHASE: THANK YOU, YOUR HONOR.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER
17 39, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
18 OBJECTION.)

19 MR. CHASE: SERGEANT HARE, ANSWER ANY QUESTIONS
20 THEY MAY HAVE.

21 THE COURT: MS. FULLWOOD.

22 CROSS-EXAMINATION

23 BY MS. FULLWOOD:

24 Q JUST A FEW, LIEUTENANT.

25 A SURE.

1 Q LIEUTENANT, I BELIEVE, THAT EARLIER THIS WEEK, JILL
2 ABERNATHY FROM OUR OFFICE CAME OUT TO TALK ABOUT THIS WITH
3 YOU?

4 A YES.

5 Q OKAY. YOU REMEMBER THAT?

6 A YES.

7 Q AND ACTUALLY YOU COULDN'T RECALL THE INCIDENT WHEN
8 SHE CAME OUT? YOU NEEDED TO REVIEW THE RECORDS?

9 A YES, MA'AM, CORRECT.

10 Q SO YOU DIDN'T HAVE ANY INDEPENDENT REALLY
11 RECOLLECTION OF IT?

12 A NOT AT THAT TIME. THE FOLDER HAD TO BE PULLED.

13 Q ALL RIGHT---

14 A IT HAD BEEN THERE SINCE '95 AND I HAD TO REVIEW
15 EVERYTHING.

16 Q OKAY. AND ACTUALLY, DIDN'T YOU FOLKS GET THE FIRE
17 EXTINGUISHER BECAUSE GARY GAVE IT TO YOU?

18 A NO, MA'AM. THROUGH THE REPORT AND THROUGH THE
19 INVESTIGATION, THE FIRE EXTINGUISHER WAS ACTUALLY FOUND IN
20 THE TRASH CAN INSIDE THE DAYROOM AREA WHICH IS LOCATED NOT
21 TOO FAR FROM THE TOWER. THAT'S WHERE IT WAS FOUND BY
22 OFFICER GOODWIN.

23 Q SO IT WAS IN THE TRASH CAN?

24 A YES, MA'AM.

25 Q BY THE TOWER?

1 A YES, MA'AM.

2 Q OKAY. AND WHEN YOU APPROACHED GARY ABOUT IT, HE
3 ADMITTED TO YOU FOLKS THAT THAT'S WHAT HAPPENED?

4 A BASICALLY, YES, MA'AM, THAT'S ALL IT WAS, WAS THAT HE
5 WANTED TO KNOCK A HOLE IN THE WALL TO GET TO HIS KIDS.

6 Q OKAY. AND, OF COURSE, THAT WASN'T A VERY SMART WAY
7 TO TRY TO GET TO HIS KIDS, WAS IT?

8 A NO, MA'AM.

9 Q I MEAN, THE FIRE EXTINGUISHER WOULD HAVE BEEN TORN UP
10 LONG BEFORE A HOLE WAS KNOCKED IN THE WALL, RIGHT?

11 A I DON'T KNOW. THOSE ARE VERY STURDY FIRE
12 EXTINGUISHERS AND VERY WELL -- VERY WELL MADE AND IT'S VERY
13 HEAVY METAL.

14 Q BUT IT WAS PRETTY TORN UP, WASN'T IT?

15 A JUST THE BOTTOM OF IT, YES, MA'AM.

16 Q YEAH.

17 A IT WAS BENT.

18 Q THANK YOU.

19 MR. CHASE: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: ALL RIGHT. THANK YOU, MS. HARE. YOU
21 MAY STEP DOWN AND ASK THAT SHE BE EXCUSED?

22 MR. CHASE: PLEASE, YOUR HONOR.

23 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.
24 THANK YOU VERY MUCH FOR COMING.

25 (WHEREUPON, THE WITNESS WAS

1 EXCUSED AT THIS TIME.)

2 MR. CHASE: YOUR HONOR, THE STATE CALLS ANGIE
3 FEDORCHAK TO THE STAND.

4 ANGELA FEDORCHAK,

5 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
7 SPELLING YOUR LAST NAME.

8 THE WITNESS: ANGELA P. FEDORCHAK,
9 F-E-D-O-R-C-H-A-K.

10 DIRECT EXAMINATION

11 BY MR. CHASE:

12 Q MS. FEDORCHAK, WHERE DO YOU CURRENTLY LIVE?

13 A I LIVE IN PITTSBURG. PENNSYLVANIA.

14 Q HOW LONG HAVE YOU LIVED THERE?

15 A SINCE MAY OF '97.

16 Q SINCE MAY OF THIS YEAR?

17 A YES.

18 THE COURT: IF I COULD GET YOU TO SPEAK UP JUST A
19 LITTLE BIT, PLEASE, MA'AM.

20 MR. CHASE: IT'S A SENSITIVE MICROPHONE, SO YOU
21 DON'T WANT TO BUMP INTO IT, BUT JUST MAKE SURE THAT I CAN
22 HEAR YOU AND THEN EVERYBODY ELSE WILL BE ABLE TO HEAR YOU.

23 YOU SAID THAT YOU MOVED UP TO PITTSBURGH IN MAY
24 OF THIS YEAR?

25 THE WITNESS: YES, SIR.

1 Q AND WHO DO YOU LIVE IN PITTSBURGH WITH?

2 A MY HUSBAND.

3 Q HOW LONG HAVE YOU BEEN MARRIED?

4 A SINCE FEBRUARY OF '97.

5 Q FEBRUARY OF '97. NOW, WHERE DID YOU USED TO RESIDE
6 BEFORE YOU MOVED UP TO PITTSBURGH?

7 A I LIVED WITH MY HUSBAND AT RAINTREE APARTMENTS.

8 Q HERE IN SOUTH CAROLINA?

9 A YES, SIR.

10 Q AND WHERE IS THAT?

11 A THAT IS ON ST. ANDREWS ROAD.

12 Q OKAY. NOW, WHAT ABOUT IN AUGUST OF 1994, WHERE WERE
13 YOU LIVING THEN?

14 A I LIVED IN WEST COLUMBIA.

15 Q WHO DID YOU LIVE WITH?

16 A DIANNE GIBSON AND MICHAEL GIBSON.

17 Q ARE THEY RELATED?

18 A BROTHER AND SISTER.

19 Q DO YOU REMEMBER WHERE YOU WERE LIVING AT THE TIME?

20 A YES.

21 Q WHAT WAS THE ADDRESS? DO YOU REMEMBER THAT?

22 A YES, SIR.

23 Q WHAT WAS THAT?

24 A 3141 BUCKEYE DRIVE IN WESTGATE SUBDIVISION.

25 Q BUCKEYE DRIVE?

- 1 A UH-HUH.
- 2 Q WHEN YOU WERE LIVING THERE, DID YOU KNOW GARY TERRY?
- 3 A I HAD A RUN-IN WITH HIM AT ONE TIME, YES, SIR.
- 4 Q DO YOU REMEMBER THAT RUN-IN?
- 5 A YES, SIR.
- 6 Q WHEN DID THIS RUN-IN OCCUR?
- 7 A LET'S SEE. I BELIEVE THE EXACT DATE WAS AUGUST THE
- 8 11TH, 1994.
- 9 Q OKAY. AND AT THAT TIME, YOU WEREN'T MARRIED, RIGHT?
- 10 A CORRECT.
- 11 Q WHAT WAS YOUR LAST NAME THEN?
- 12 A PASTIVA(PHONETICALLY).
- 13 Q OKAY. YOU'VE JUST TAKEN YOUR MAIDEN NAME AND PUT IT
- 14 TO YOUR MIDDLE NAME?
- 15 A YES, SIR.
- 16 Q COULD YOU PLEASE TELL THIS JURY WHAT HAPPENED ON
- 17 AUGUST THE 11TH OF 1994?
- 18 A YES, SIR. I RECEIVED A CALL FROM DIANNE LETTING ME
- 19 KNOW THAT GARY WAS DRIVING AROUND THE NEIGHBORHOOD.
- 20 Q OKAY. LET ME ASK YOU THIS. WAS THERE SOME
- 21 RELATIONSHIP BETWEEN DIANNE GIBSON AND GARY TERRY THAT YOU
- 22 KNEW OF?
- 23 A I KNEW THEY DATED.
- 24 Q OKAY.
- 25 A THAT THEY HAD BEEN DATING.

1 Q AND YOU SAID THAT SHE CALLED YOU AND TOLD YOU WHAT?

2 A THAT GARY WAS ROAMING AROUND THE NEIGHBORHOOD.

3 Q WHY DID SHE CALL YOU TO TELL YOU THAT?

4 A HE WAS IN SEARCH OF HER, WAITING FOR HER TO COME OUT.

5 Q WHAT HAPPENED AFTER DIANNE CALLED YOU?

6 A I WAITED ON THE PORCH AND SHE INFORMED ME OF WHAT
7 KIND OF VEHICLE HE WAS DRIVING. I DID NOTICE IT DRIVE BY
8 THE HOUSE AND I CALLED LEXINGTON COUNTY SHERIFF'S
9 DEPARTMENT TO LET THEM KNOW THAT HE WAS DRIVING AROUND THE
10 NEIGHBORHOOD AND WAITING ON HER TO GET HOME.

11 Q AND WHY DID YOU CALL LEXINGTON COUNTY?

12 A BECAUSE HE HAD THREATENED HER.

13 Q OKAY. WHAT HAPPENED AFTER YOU CALLED LEXINGTON
14 COUNTY?

15 A THEY SAID THAT THEY WOULD SEND SOMEBODY OUT. THEN
16 DIANNE CALLED ME AGAIN AND WANTED ME TO COME MEET HER AT A
17 GAS STATION OFF OF PINEY GROVE ROAD TO FOLLOW HER HOME SO
18 THAT GARY WOULD NOT FOLLOW HER.

19 Q DO YOU RECALL WHAT HER CONDITION WAS WHEN YOU GOT TO
20 HER?

21 A SHE WAS VERY SCARED.

22 Q OKAY. WHAT HAPPENED WHEN YOU GOT OUT THERE?

23 A I PULLED UP TO THE GAS STATION, I JUST TURNED AND
24 FOLLOWED HER BACK TO THE HOUSE.

25 Q AND IS THIS THE HOUSE ON BUCKEYE DRIVE?

- 1 A YES, SIR.
- 2 Q DID YOU EVENTUALLY GET TO THE HOUSE?
- 3 A YES, SIR.
- 4 Q WHAT HAPPENED WHEN YOU GOT THERE?
- 5 A DIANNE IMMEDIATELY PARKED HER TRUCK IN THE BACKYARD,
6 WENT INTO THE HOUSE. I PARKED IN THE DRIVEWAY.
- 7 Q DID YOU SEE WHERE SHE WENT ONCE SHE GOT IN THE HOUSE?
- 8 A NO, SIR.
- 9 Q WERE ANY LIGHTS ON IN THE HOUSE?
- 10 A I DO NOT RECALL.
- 11 Q OKAY. YOU SAID THAT SHE WENT IN THE HOUSE AND YOU
12 DID WHAT?
- 13 A I WAS OUT ON THE PORCH WITH THE CORDLESS PHONE. WE
14 BOTH FIGURED THAT HE WOULD BE COMING BACK AROUND AND MAYBE
15 TRY TO STOP AT THE HOUSE, SO, I WAITED ON THE PORCH WITH
16 THE CORDLESS PHONE.
- 17 Q WHY DID YOU HAVE THE PHONE?
- 18 A IN CASE ANYTHING WERE TO HAPPEN AND I NEEDED TO CALL
19 SOMEONE.
- 20 Q OKAY. WHAT HAPPENED WHILE YOU WERE WAITING ON THE
21 PORCH?
- 22 A HE ARRIVED AND PARKED---
- 23 Q WHEN YOU SAY HE, WHO DO YOU MEAN?
- 24 A GARY ARRIVED AT THE HOUSE AND PARKED IN FRONT OF THE
25 HOUSE NEXT TO THE MAILBOX.

1 Q MS. FEDORCHAK, IS THIS THE FIRST TIME YOU HAD HAD ANY
2 DEALING WITH GARY TERRY?

3 A YES, SIR.

4 Q WHAT HAPPENED WHEN HE ARRIVED AT THE HOUSE?

5 A I MET HIM DOWN BY HIS VEHICLE. HE ASKED ME IF DIANNE
6 WAS AT THE HOUSE AND I TOLD HIM NO. THAT---

7 Q WHY -- WHY DID YOU TELL HIM THAT?

8 A BECAUSE I WAS AFRAID HE WAS GOING TO HURT HER.

9 Q HOW DID HE RESPOND?

10 A HE SAID THAT HE KNEW SHE WAS THERE AND I PROCEEDED TO
11 TELL HIM THAT SHE WAS NOT THERE, THAT I WAS WAITING ON HER
12 TO GET THERE. THAT SHE MIGHT CALL ANY MINUTE BECAUSE SHE
13 WAS NOT THERE.

14 Q WHAT HAPPENED AFTER YOU TOLD HIM THAT?

15 A HE ASKED IF HIS TRUCK -- IF HER TRUCK WAS IN THE
16 BACKYARD AND I TOLD HIM NO. HE THEN PROCEEDED TO TURN---

17 Q MS. FEDORCHAK, WAS, IN FACT, HER TRUCK BACK THERE?

18 A YES, SIR.

19 Q WHY DID YOU TELL HIM THAT IT WASN'T?

20 A BECAUSE I WAS AFRAID THAT HE WAS GOING TO HURT HER.

21 Q OKAY. WHAT HAPPENED AT THAT POINT?

22 A OKAY. HE PROCEEDED TO GO TOWARDS THE BACK OF THE
23 HOUSE. I STEPPED TO MY SHOULDER INTO HIS SHOULDER. MY
24 RIGHT SHOULDER INTO HIS LEFT SHOULDER. HE PUSHED ME
25 BACKWARDS AND RAN TO THE BACK OF THE HOUSE.

1 Q WHAT HAPPENED WHEN HE GOT TO THE BACK OF THE HOUSE?

2 A I TURNED TO GO, RUN TOWARDS THE FRONT OF THE HOUSE UP
3 THE STEPS ONTO THE PORCH. HE THEN CAME AROUND FROM THE
4 BACK OF THE HOUSE. I DIALED 911 AS I WAS RUNNING. I MET
5 HIM UP ON THE PORCH AT THE SCREEN DOOR.

6 Q WHAT HAPPENED WHEN YOU MET HIM AT THE SCREEN DOOR?

7 A I TRIED TO GET IN BETWEEN HIM AND THE DOOR TO KEEP
8 HIM FROM GETTING INSIDE. I KNEW THE FRONT DOOR WAS
9 UNLOCKED. I PUSHED -- HE HAD THE SCREEN DOOR OPENED. I
10 PUSHED IT SHUT. HE THEN PROCEEDED TO OPEN THE SCREEN DOOR
11 SLAMMING INTO THE BRICK WALK THAT WAS RIGHT BEHIND IT.

12 Q SLAMMING WHAT INTO THE BRICK WALL?

13 A ME WITH THE SCREEN DOOR INTO THE BRICK WALL.

14 Q WHAT HAPPENED AFTER HE SLAMMED INTO THE BRICK WALL?

15 A I THEN TOOK THE SCREEN DOOR AND SLAMMED IT INTO HIM.
16 HE HAD THE FRONT DOOR OPENED. HE FELL FACE FIRST ONTO THE
17 CARPET WITH HIS LEGS TRAPPED UP UNDERNEATH THE SCREEN DOOR.
18 HE THEN KNOCKED WITH HIS FEET THE BOTTOM OF THE SCREEN DOOR
19 OUT AND CRACKED THE GLASS.

20 AT THAT TIME, HE WAS IN THE HOUSE. THERE WAS
21 NOTHING I COULD DO. I PICKED UP THE PHONE SINCE I KNEW I
22 WAS ALREADY ON THE PHONE WITH 911.

23 Q WHAT HAPPENED THEN?

24 A 911 -- I EXPLAINED TO 911 WHAT WAS GOING ON AND THEY
25 TRANSFERRED ME TO LEXINGTON COUNTY. I THEN TALKED TO

1 SOMEBODY AT LEXINGTON COUNTY, TOLD THEM WHAT WAS GOING ON
2 AND THEY SAID THEY WOULD HAVE SOMEBODY RIDE OUT.

3 Q DID YOU SEE WHERE GARY DUBOSE TERRY WENT ONCE HE WAS
4 INSIDE THE RESIDENCE?

5 A NO, SIR.

6 Q WHEN WAS THE NEXT TIME THAT YOU SAW HIM? .

7 A I SAW HIM WHEN HIM AND DIANNE WERE COMING OUT ONTO
8 THE PORCH.

9 Q HOW WERE GARY TERRY AND DIANNE POSITIONED WHEN THEY
10 CAME OUT?

11 A FROM WHAT I RECALL, DIANNE WAS IN THE FRONT AND GARY
12 WAS IN THE BACK.

13 Q OKAY. WHAT HAPPENED THEN?

14 A SHE WAS GOING OUT TOWARDS HIS VEHICLE AND I WAS
15 TELLING HER NOT TO GET IN THE VEHICLE AND SHE TOLD ME THAT
16 EVERYTHING WAS OKAY, THAT SHE KNEW WHAT SHE WAS DOING AND
17 PROCEEDED.

18 Q DID THE POLICE FINALLY ARRIVE?

19 A YES, SIR.

20 Q DID YOU SEE ANYTHING THAT HAPPENED AFTER THEY
21 ARRIVED?

22 A I RAN OUT TO THE FIRST COP THAT PULLED UP AND TOLD
23 THEM THAT THEY WERE HEADED IN THE OTHER DIRECTION AND TO
24 PLEASE GO FOLLOW THEM AND THE FIRST OFFICER WENT TO THE
25 SECOND OFFICER THAT PULLED UP AND HAD HIM GO FOLLOW WHERE I

1 SAID THEY WERE GOING.

2 Q MS. FEDORCHAK, AS A RESULT OF BEING -- THAT DOOR
3 BEING SLAMMED INTO YOU AND YOU BEING SLAMMED INTO THE WALL,
4 WERE YOU INJURED?

5 A YES, SIR.

6 Q HOW WERE YOU INJURED?

7 A I WENT TO THE HOSPITAL THE NEXT DAY WITH INTERNAL
8 BLEEDING.

9 Q THANK YOU, MS. FEDORCHAK. ANSWER ANY QUESTIONS THEY
10 MAY HAVE FOR YOU.

11 THE COURT: CROSS-EXAMINATION.

12 CROSS-EXAMINATION

13 BY MS. FULLWOOD:

14 Q GOOD EVENING, MS. PASTIVA.

15 MS. PASTIVA, THIS INCIDENT THAT YOU REFERRED TO,
16 DID THAT -- IS THAT AN INCIDENT THAT HAPPENED ON AUGUST THE
17 11TH OF 1994?

18 A YES, MA'AM.

19 Q OKAY. OKAY. AND DURING -- DURING THIS INCIDENT,
20 WERE YOU IN A POSITION TO BE ABLE TO TELL WHETHER OR NOT
21 MR. TERRY WAS INTOXICATED OR HAD BEEN DRINKING OR ANYTHING
22 OF THAT NATURE?

23 A I DO NOT RECALL SMELLING ANYTHING. I WAS TOLD THAT
24 HE HAD BEEN DRINKING. THAT'S WHY I WAS AFRAID WHEN HE CAME
25 TO THE HOUSE.

1 Q THANK YOU, MA'AM. THAT'S ALL.

2 MR. CHASE: NOTHING FURTHER, YOUR HONOR.

3 WE ASK THAT THIS WITNESS BE EXCUSED.

4 THE COURT: WITHOUT OBJECTION, MS. FEDORCHAK, YOU
5 ARE EXCUSED.

6 THANK YOU VERY MUCH FOR COMING.

7 (WHEREUPON, THE WITNESS WAS
8 EXCUSED AT THIS TIME.)

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

10 THE COURT: YES, SIR.

11 MR. CHASE: THE STATE CALLS JAMES GRASSANO TO THE
12 STAND.

13 JAMIE B. GRASSANO,

14 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
16 PLEASE.

17 THE WITNESS: JAMIE BENNETT GRASSANO,
18 G-R-A-S-S-A-N-O.

19 DIRECT EXAMINATION

20 BY MR. CHASE:

21 Q DETECTIVE GRASSANO, WHERE ARE YOU EMPLOYED?

22 A THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

23 Q AND WHAT'S YOUR POSITION THERE?

24 A INVESTIGATOR.

25 Q DID YOU HOLD THE SAME POSITION ON AUGUST THE 11TH OF

1 1994?

2 A NO, I WORKED AS A DEPUTY.

3 Q ON THAT DATE, DID YOU RESPOND TO AN INCIDENT OVER IN
4 THE WESTGATE SUBDIVISION?

5 A YES, I DID.

6 Q CAN YOU DESCRIBE WHAT HAPPENED ON THAT NIGHT?

7 A WE RESPONDED TO A -- THEY GAVE US THE CALL AS A
8 BREAK-IN IN PROGRESS AT 3141 BUCKEYE DRIVE.

9 I RESPONDED TO THE LOCATION. UPON ARRIVAL, I WAS
10 THE SECOND OFFICER THERE, I BELIEVE. UPON ARRIVAL, I SPOKE
11 TO THE FIRST OFFICER THERE. HE STATED THAT THE INDIVIDUALS
12 THAT WERE INVOLVED IN THE DISPUTE AT THE HOUSE HAD ALREADY
13 LEFT IN A WHITE VAN. WE PROCEEDED UP BUCKEYE DRIVE.

14 Q LET ME ASK YOU THIS, DETECTIVE GRASSANO---

15 A UH-HUH.

16 Q ---WHEN YOU RESPONDED, WHAT TYPE OF VEHICLE DID YOU
17 RESPOND IN?

18 A PATROL VEHICLE.

19 Q IT WAS A FULLY MARKED VEHICLE?

20 A YES, IT HAS LIGHTS IN IT.

21 Q IF YOU COULD, JUST DESCRIBE HOW THAT VEHICLE WAS
22 MARKED?

23 A BLUE LIGHTS ON THE TOP, LEXINGTON COUNTY SHERIFF'S
24 DEPARTMENT DECALS ON THE PASSENGER'S SIDE DOOR AND THE
25 DRIVER'S SIDE DOOR.

1 Q ARE THOSE THE SAME KIND OF TAN COLORED---

2 A YES, THEY ARE---

3 Q ---VEHICLES YOU SEE AROUND LEXINGTON COUNTY?

4 A YES, SIR.

5 Q AFTER YOU RECEIVED THE INFORMATION THAT THE SUSPECT
6 HAD MOVED DOWN THE ROAD IN THIS VAN, WHAT DID YOU DO?

7 A MYSELF AND THE OTHER OFFICER PROCEEDED DOWN BUCKEYE
8 DRIVE TO WESTGATE DRIVE AND WE LOCATED THE SUSPECT AT THE
9 INTERSECTION OF WESTGATE DRIVE AND DELREE STREET.

10 Q HOW WOULD YOU DESCRIBE HOW THAT VEHICLE WAS MOVING?

11 A AT THE TIME WHEN WE LOCATED THEM, THE VEHICLE WAS
12 STOPPED.

13 Q OKAY. WHAT HAPPENED WHEN YOU CAME UPON THE VEHICLE
14 AND IT WAS STOPPED?

15 A GARY TERRY WAS BEHIND THE VEHICLE AND A FEMALE WAS
16 BEHIND WITH HIM. I THINK IT WAS A GIRLFRIEND OR WHOMEVER
17 WAS AT THE HOUSE EARLIER.

18 Q WHAT DID THEY DO ONCE YOU PULLED UP?

19 A SHE CAME, WALKED TO US AND WE SEPARATED THEM AND
20 ATTEMPTED TO FIND OUT WHAT WAS GOING ON.

21 Q BASED ON YOUR DISCUSSIONS WITH THEM, WHAT DID YOU DO?

22 A WE TOOK -- I BELIEVE ONE OFFICER TOOK THE FEMALE BACK
23 TO 3141 BUCKEYE DRIVE. HE WENT BACK WITH HER AND GOT THE
24 OTHER INFORMATION FROM THE OTHER PEOPLE WHO WERE AT THE
25 RESIDENCE.

1 THE GARY TERRY, WHO THE VEHICLE WAS REGISTERED
2 TO, WE RAN HIM, WE DIDN'T HAVE ANY WARRANTS OUT ON HIM AT
3 THAT TIME. HIS DRIVING RECORD WAS UNDER SUSPENSION,
4 THOUGH, AND HE HAD BEEN DRIVING THAT NIGHT. SO WE CALLED A
5 FRIEND OF HIS, A DOUG FORD, TO COME TO THAT LOCATION TO
6 GIVE HIM A RIDE.

7 Q DID, IN FACT, DOUG FORD COME TO THE LOCATION?

8 A YES, HE DID.

9 Q WHAT HAPPENED ONCE DOUG FORD GOT THERE?

10 A DOUG FORD CAME TO THE LOCATION WHERE WE WERE. WE HAD
11 DOUG FORD TAKE GARY TERRY'S TRUCK TO A BUSINESS THAT WAS
12 LOCATED AT DELREE STREET AND AUGUSTA ROAD TO LEAVE IT FOR
13 THE REMAINDER OF THE NIGHT DUE TO THE FACT THAT GARY TERRY
14 COULD NOT DRIVE.

15 Q HOW FAR IS THAT LOCATION FROM THE INCIDENT LOCATION,
16 ROUGHLY?

17 A ROUGHLY, ONE MILE.

18 Q OKAY. DID YOU, IN FACT, OBSERVE THAT TRUCK BEING
19 PLACED THERE?

20 A YES, I DID.

21 Q WHAT HAPPENED AFTER THE TRUCK WAS PLACED THERE?

22 A SHORTLY AFTER THAT, GARY TERRY GOT IN DOUG FORD'S
23 TRUCK AND THEY LEFT THE LOCATION. THE---

24 Q DID YOU ACTUALLY WATCH THEN PULL AWAY?

25 A YES, I DID.

1 Q WHERE DID YOU GO AT THAT TIME?

2 A AT THAT TIME, I JUST PROCEEDED TO NORMAL PATROL
3 DUTIES. I WAS A SHORT DISTANCE FROM THE LOCATION WHEN THE
4 DEPUTY, WHO WAS AT THE HOUSE MAKING THE ORIGINAL REPORT ON
5 THE INCIDENT OCCURRED, HE CALLED ME ON THE RADIO AND SAID
6 THAT THEY HAD JUST RECEIVED A PHONE CALL AND THAT GARY
7 TERRY WAS BACK EN ROUTE TO PICK HIS TRUCK UP.

8 Q ONCE YOU RECEIVED THAT INFORMATION, WHAT DID YOU DO?

9 A I TOOK MY PATROL VEHICLE AND I PARKED IT AT A
10 BUSINESS LOCATED BEHIND WHERE GARY TERRY'S VEHICLE WAS
11 PARKED BY DOUG FORD SO I CAN OBSERVE THE VEHICLE.

12 Q COULD YOU SEE THE VEHICLE?

13 A YES, I COULD.

14 Q WHILE YOU WERE SITTING THERE WATCHING THE VEHICLE,
15 WHAT HAPPENED?

16 A A -- I WAS THERE A SHORT TIME AND I SAW -- I
17 OBSERVED DOUG FORD'S TRUCK PULL BACK UP ALONG SIDE GARY
18 TERRY'S VAN. I OBSERVED SOMEONE GET OUT OF THE TRUCK, GET
19 IN THE VAN, START THE VAN UP AND TURN ONTO DELREE STREET
20 AND THEN ONTO AUGUSTA ROAD.

21 Q AND WERE YOU ABLE TO IDENTIFY WHO THE INDIVIDUAL WAS
22 DRIVING THE TRUCK AT THAT TIME?

23 A NOT AT THAT TIME.

24 Q WHAT DID YOU DO?

25 A AT THAT TIME, I ALSO PULLED ON DELREE STREET, PULLED

1 ON AUGUSTA ROAD AND ATTEMPTED TO CATCH UP TO THE WHITE VAN.

2 Q WERE YOU ABLE TO CATCH UP?

3 A I WAS -- AUGUSTA ROAD AND I-26, AT THE ON-RAMP TO
4 I-26, WEST BOUND.

5 Q WHAT HAPPENED ONCE YOU CAUGHT UP WITH THE VAN?

6 A AS THE VAN WAS GOING ONTO THE ON-RAMP, IT WAS GOING
7 AT A HIGH RATE OF SPEED. THE BACK OF THE VAN, IT APPEARED
8 AT ONE TIME, THE DRIVER ALMOST LOST CONTROL OF THE VAN. IT
9 WAS FISHTAILING. HE WENT ONTO I-26 WESTBOUND. HE WAS
10 SWERVING FROM LANE TO LANE. I THEN GOT UP BEHIND THE
11 VEHICLE AND ATTEMPTED TO PERFORM A TRAFFIC STOP ON THE
12 VEHICLE.

13 Q HOW DID YOU ATTEMPT TO PERFORM THE TRAFFIC STOP?

14 A I ACTIVATED MY BLUE LIGHTS.

15 Q THE BLUE LIGHTS THAT YOU DESCRIBED EARLIER?

16 A YES.

17 Q AND THEY ARE PLACED WHERE ON THE VEHICLE?

18 A ON TOP OF THE VEHICLE, ON THE ROOF.

19 Q DID YOU ACTIVATE YOUR SIREN AT THAT TIME?

20 A NOT AT THAT TIME.

21 Q WHAT HAPPENED?

22 A WHEN I ACTIVATED MY BLUE LIGHTS, THE WHITE VAN, AT
23 THAT TIME, ATTEMPTED TO ELUDE MY PATROL VEHICLE---

24 Q HOW -- HOW DID HE ATTEMPT TO ELUDE YOUR VEHICLE?

25 A BY SWERVING INTO A -- INTO THE FAR HAND LEFT LANE AND

1 THEN I ACTIVATED MY SIREN, ATTEMPTED TO STOP THE VEHICLE
2 AND HE ATTEMPTED ALSO TO ELUDE MY VEHICLE AND HE PULLED IN
3 FRONT OF AN EIGHTEEN-WHEELER AND CUT THE EIGHTEEN-WHEELER
4 OFF SO I WOULD NOT BE ABLE TO FOLLOW HIM.

5 Q CAN YOU DESCRIBE THE SITUATION WHEN HE CUT IN FRONT
6 OF THAT EIGHTEEN-WHEELER?

7 A WELL, HE WAS, YOU KNOW, ATTEMPTING TO ELUDE ME. HE
8 TURNED SHARPLY IN FRONT OF THE EIGHTEEN-WHEELER WHICH WAS
9 TRAVELING DOWN THE INTERSTATE AND ALSO THE CARS WERE BEHIND
10 THE EIGHTEEN-WHEELER. WHEN HE PULLED IN FRONT OF THE
11 EIGHTEEN-WHEELER TO CUT ME OFF, HE PULLED FROM THE FAR LEFT
12 LANE AND THE EIGHTEEN-WHEELER WAS IN THE MIDDLE LANE, IN
13 FRONT OF THE EIGHTEEN-WHEELER, ACROSS THE OTHER LANE AND
14 ONTO THE ON RAMP OF HIGHWAY 378.

15 Q DID THE EIGHTEEN-WHEELER HAVE TO TAKE ANY ACTION WHEN
16 HE DID THAT?

17 A I BELIEVE, HE HAD TO HIT HIS BRAKES.

18 Q WHAT HAPPENED AT THAT TIME?

19 A I, AT THAT TIME, HIT MY BRAKES WHERE I COULD GET TO
20 THE BACK OF THE EIGHTEEN WHEELER AND I CROSSED THE LANES OF
21 TRAFFIC ALSO, GOT ON THE ON-RAMP AND BEGAN PURSUING THE
22 WHITE VAN UP THE ON-RAMP ONTO 378 WHERE IT RAN THE RED
23 LIGHT AT HIGHWAY 378 COMING ON THE ON-RAMP.

24 Q WHAT HAPPENED AFTER HE RAN THE RED LIGHT?

25 A I ALSO WENT THROUGH THE RED LIGHT. WE WENT BACK --

1 THE WHITE VAN WENT BACK ON THE ON-RAMP ONTO I-26 WESTBOUND
2 AND WE PROCEEDED DOWN I-26 WESTBOUND TO I-20.

3 Q WHAT HAPPENED WHEN YOU GOT TO I-20?

4 A I-20, HE WENT FROM I-26 WESTBOUND TO I-20 EASTBOUND
5 AND I ALSO PROCEED BEHIND HIM.

6 Q WHAT HAPPENED AT THAT TIME?

7 A WE TRAVELLED ON I-20 EASTBOUND ONTO EXIT 70, WHICH
8 WAS FAIRFIELD ROAD. HE GOT OFF ON EXIT 70, FAIRFIELD ROAD,
9 AND TRAVELLED A SHORT DISTANCE AND THEN TURNED LEFT ONTO A
10 DIRT ROAD.

11 Q WHAT HAPPENED WHEN HE GOT TO THE DIRT ROAD?

12 A HE TURNED ON THE DIRT ROAD APPROXIMATELY, I'D SAY,
13 TWENTY YARDS AFTER TURNING ONTO THE DIRT ROAD, THE VAN
14 STRUCK A TREE. AT THAT TIME, THE DRIVER EXITED THE VEHICLE
15 AND RAN INTO THE WOODS.

16 Q NOW, WHEN THE DRIVER EXITED THE VEHICLE, HOW FAR
17 BEHIND WERE YOU AT THAT TIME?

18 A I WAS NOT VERY FAR BEHIND THE VEHICLE.

19 Q WERE YOU ABLE TO IDENTIFY THE DRIVER OF THAT VEHICLE?

20 A YES, I WAS.

21 Q WHO WAS THE DRIVER OF THAT VEHICLE?

22 A IT WAS GARY TERRY.

23 Q THANK YOU, DETECTIVE GRASSANO.

24 ANSWER ANY QUESTIONS THEY MAY HAVE.

25 THE COURT: CROSS-EXAMINATION, MR. STONE.

1 MR. STONE: THANK YOU, SIR.

2 CROSS-EXAMINATION

3 BY MR. STONE:

4 Q JUST A FEW QUESTIONS, OFFICER.

5 THIS WAS THE SAME NIGHT AS THE EVENT THAT WAS
6 DESCRIBED BY THE LADY THAT JUST TESTIFIED?

7 A YES, IT WAS.

8 Q ALL RIGHT. IN FACT, THAT WAS WHY YOU WERE CALLED TO
9 THE SCENE?

10 A YES, IT WAS.

11 Q ALL RIGHT, SIR. AND YOU CHARGED HIM WITH DRIVING
12 UNDER SUSPENSION, HABITUAL TRAFFIC OFFENDER, RECKLESS
13 DRIVING AND FAILURE TO STOP FOR A BLUE LIGHT?

14 A YES, SIR.

15 Q ALL RIGHT, SIR.

16 THANK YOU. NOTHING ELSE, YOUR HONOR.

17 THE COURT: ANYTHING FURTHER?

18 MR. CHASE: NOTHING FURTHER, YOUR HONOR. ASK
19 THAT THIS WITNESS BE EXCUSED.

20 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.

21 THANK YOU VERY MUCH FOR COMING.

22 MR. STONE: NO OBJECTION.

23 (WHEREUPON, THE WITNESS WAS
24 EXCUSED AT THIS TIME.)

25 MR. HUMPHRIES: COULD WE HAVE A SIDE BAR?

1 THE COURT: YES, SIR.

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

4 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE
5 TALKED LAST EVENING ABOUT THE TIME WE WOULD TRY TO STOP FOR
6 THE NIGHT AND I THINK WE HAVE REACHED THAT POINT. WE HAVE
7 COVERED A LOT OF GROUND TONIGHT INSOFAR AS THE STATE'S CASE
8 IS CONCERNED AND I APPRECIATE THE ATTENTION THAT YOU HAVE
9 GIVEN THROUGHOUT THE COURSE OF THE TRIAL AND ALSO TODAY.

10 I'M GOING TO BE SENDING YOU AWAY FOR THE EVENING,
11 ONCE AGAIN, WITH THE INSTRUCTION THAT YOU ARE NOT TO
12 DISCUSS THIS CASE IN ANY FASHION WHATSOEVER AMONG
13 YOURSELVES. YOU CAN TALK ABOUT A LOT OF THINGS WHILE YOU
14 ARE TOGETHER, BUT NOT THIS CASE.

15 ALSO, I'M SURE THAT YOUR JURY CUSTODIANS WILL SEE
16 THAT NO ONE HAS ANY CONTACT WITH YOU, BUT IN THE EVENT THAT
17 ANYONE DID, I WANT YOU TO REPORT THAT IMMEDIATELY TO THE
18 JURY CUSTODIANS AND THEN THAT WOULD BE REPORTED DIRECTLY TO
19 ME AND I WOULD HANDLE IT ACCORDINGLY.

20 ONCE AGAIN, TOMORROW MORNING, I'M SURE THAT THE
21 CUSTODIANS WILL PROVIDE YOU WITH YOUR MORNING NEWSPAPERS
22 AND SO FORTH AFTER THEY HAVE BEEN PROPERLY CENSORED.

23 I ALSO UNDERSTAND THAT YOU HAD AN EARLY DINNER
24 TONIGHT BEFORE YOU CAME OVER HERE, BUT IN THE EVENT THAT
25 YOU ARE IN NEED OF ANY TYPE OF SNACK OR ANYTHING, THEY ARE

1 GOING TO SEE THAT YOUR NEEDS ARE TAKEN CARE OF.

2 ONCE AGAIN, THANK YOU VERY MUCH FOR A GOOD
3 NIGHT'S WORK AND WE ARE GOING TO BE BACK HERE IN THE
4 MORNING. I'M GOING TO ASK THE JURY CUSTODIANS TO HAVE THE
5 JURY HERE IN THE COURTROOM -- IN THE COURT HOUSE SO THAT WE
6 CAN START AT 9:00 A.M. SO GET THEM HERE IN SUFFICIENT TIME
7 FOR THAT. THAT WILL GIVE YOU TIME TO GET UP, GET YOUR
8 BREAKFAST AND GET MOVING AROUND AND I CAN GET FROM WHERE
9 I'M COMING, OVER HERE AND GET UP AND DO EVERYTHING THAT I'M
10 SUPPOSED TO DO BEFORE I GET HERE. SO HAVE A VERY PLEASANT
11 EVENING AND I'LL LOOK FORWARD TO SEEING YOU IN THE MORNING
12 AT 9:00 A.M.

13 THE JURY IS EXCUSED. EVERYONE ELSE PLEASE REMAIN
14 SEATED EXCEPT FOR THE LAWYERS AND THE DEFENDANT.

15 MR. STONE: YES, SIR.

16 (JURY OUT.)

17 THE COURT: ALL RIGHT.

18 SO THAT WE CAN PLAN FOR -- YES, SIR, YOU GO RIGHT
19 ON OUT. I THINK THAT YOUR -- THEY ARE WAITING FOR YOU ON
20 THE ELEVATOR OUT THERE. WE HAVE A HOBbled S.L.E.D. AGENT.

21 MR. HUMPHRIES: ARE WE ON THE RECORD?

22 THE COURT: WE'RE ON THE RECORD, YES, SIR.

23 MR. HUMPHRIES: AS IS OFTEN THE CASE, WE RECEIVED
24 A LETTER WHICH WAS WRITTEN BY -- PURPORTEDLY WRITTEN BY
25 GARY TERRY TO THE VICTIM'S DAUGHTER, SAMANTHA JACKSON,

1 RECEIVED THAT TODAY AND ARE CONSEQUENTLY PROVIDING IT TO
2 THE DEFENSE TODAY. IT'S A TWO-PAGE-HANDWRITTEN LETTER FROM
3 GARY TERRY TO SAMANTHA JACKSON.

4 THE COURT: ALL RIGHT.

5 MR. HUMPHRIES: IN ADDITION, YOUR HONOR, I HAVE
6 PREVIOUSLY PROVIDED DEFENSE COUNSEL BOTH A COPY OF OUR
7 AGGRAVATING CIRCUMSTANCES AND A PROPOSED JURY CHARGE WHICH
8 WE'VE ALREADY OFFERED TO THE COURT.

9 THE COURT: YES, MA'AM.

10 MS. FULLWOOD: MR. STONE IS REVIEWING THE
11 DISCOVERY THAT WE JUST GOT DURING THE TRIAL OF THE CASE.

12 CONCERNING STATUTORY MITIGATING CIRCUMSTANCES,
13 YOUR HONOR, WE WILL BE HAPPY TO TYPE UP SOMETHING LIKE THIS
14 OR I CAN TELL YOU WHICH ONES.

15 THE COURT: WHY DON'T YOU JUST TELL ME WHICH
16 ONES. I CAN HANDLE IT FROM THERE IF YOU WANT ME TO.

17 MS. FULLWOOD: YES, SIR.

18 THEY ARE THE ONES WE ASKED YOU TO -- TO USE
19 DURING VOIR DIRE---

20 THE COURT: TWO, SIX, SEVEN?

21 MS. FULLWOOD: THAT'S IT, JUDGE.

22 THE COURT: ALL RIGHT. ALL RIGHT.

23 NOW, I KNOW THAT WE HAVE GONE A LITTLE BIT DEEPER
24 INTO THE STATE'S CASE TONIGHT THAN WE PROBABLY ANTICIPATED
25 THAT WE WOULD AND IN OUR SIDE BAR, WE WERE TALKING ABOUT

1 PLANNING FOR TOMORROW. OF COURSE, WE ARE GOING TO START IN
2 THE MORNING AT 9:00 A.M. AND I ALSO UNDERSTAND THAT WE HAVE
3 FESTIVITIES HERE IN LEXINGTON COUNTY IN THE FORM OF FUN
4 FEST AND I DON'T KNOW WHAT KIND OF NOISE FACTOR THE PARADE
5 THAT'S SCHEDULED AT 10:00 A.M. WILL CAUSE US, BUT WE SHOULD
6 BE AT A POINT BY THEN, HOPEFULLY, WHERE WE COULD TAKE A
7 BREAK IF NECESSARY.

8 YOU KNOW, LIVING IN GAFFNEY AND THE HOME OF THE
9 WORLD FAMOUS SOUTH CAROLINA PEACH FESTIVAL, I UNDERSTAND
10 HOW IMPORTANT THESE EVENTS ARE IN THE LIVES OF THE
11 CITIZENRY AND THE VAST DRAW THAT THESE PARADES HAVE. SO I
12 DON'T KNOW, NUMBER ONE, HOW LONG IT LASTS. MAYBE YOU CAN
13 GIVE ME SOME IDEA ABOUT THAT FROM YOUR PAST EXPERIENCE WITH
14 THE FUN FEST PARADE AND ALSO IF WE NEED TO TAKE A THIRTY,
15 FORTY-FIVE-MINUTE BREAK, I WOULD EXPLAIN TO THE JURY WHY WE^{AS}
16 ARE BREAKING THAT IT'S BECAUSE OF ANY NOISE FACTOR THAT
17 MIGHT INTERFERE WITH THE TESTIMONY, BUT ALSO ASSURE THEM
18 THAT WE'LL BE BACK TO OUR CASE AS QUICKLY AS POSSIBLE.

19 AND ALSO, SINCE WE'VE MOVED SO QUICKLY, TO GO
20 AHEAD AND HAVE THE STATE -- THE DEFENSE TO NOTIFY ANY EARLY
21 WITNESSES THAT YOU INTEND TO CALL. I KNOW WE HAD TALKED
22 ABOUT YOU HAVING THEM HERE AT TWO-THIRTY. YOU'LL PROBABLY
23 WANT TO MOVE THEM UP BECAUSE FROM WHAT I PICKED UP FROM THE
24 JURY IN THEIR DESIRE TO WORK, WE'LL GET A VERY QUICK LUNCH
25 BROUGHT IN HERE TOMORROW AND TAKE ABOUT AN HOUR LIKE WE DID

1 THE OTHER DAY AND THEN MOVE DIRECTLY ON INTO THE TESTIMONY.

2 IF WE CAN PUT UP SOME OF YOUR WITNESSES PRIOR TO
3 THE LUNCH BREAK, WE'LL DO THAT AND THEN BREAK FOR LUNCH AND
4 THEN COME BACK AND KEEP GOING AND GO AS LONG AS YOU WANT TO
5 TOMORROW NIGHT.

6 IF WE CAN FINISH YOUR CASE TOMORROW NIGHT,
7 TOMORROW AFTERNOON, TOMORROW NIGHT, WE WILL CERTAINLY DO
8 SO. YOU KNOW, I WAS A LITTLE SHOCKED THAT I DIDN'T HAVE
9 SOME JURORS TELLING ME THAT THEY HAD TICKETS TO THE SOUTH
10 CAROLINA-EAST CAROLINA GAME, BUT I WAS EVEN MORE SHOCKED
11 THAT I DIDN'T HAVE SOME OF THEM TELL ME THAT THEY HAD
12 TICKETS TO THE CLEMSON-FLORIDA STATE GAME THAT I'M MISSING
13 THIS WEEKEND, BUT I'M GOING TO DIRECT THE S.L.E.D. AGENTS
14 TO KEEP ME FULLY INFORMED OF THE SCORES OF BOTH GAMES
15 BECAUSE I HAVE HEIGHTENED INTEREST IN BOTH OF THEM AND IF
16 THE JURY'S INTERESTED, WE'LL GIVE THEM UPDATES THROUGHOUT
17 THE COURSE OF THE AFTERNOON ALSO. BUT SINCE THAT WAS NOT
18 AN ISSUE, I DON'T ASSUME THAT IT WILL BECOME ONE TOMORROW.
19 IT WILL ONLY BE ONE FOR THE COURT AND I'LL TAKE CARE OF
20 THAT.

21 SO AS LONG AS WE ARE READY TO GO TOMORROW---

22 MR. HUMPHRIES: YOUR HONOR, LET ME JUST SAY THIS.
23 I DIDN'T WANT TO INTERRUPT, BUT IT IS ENTIRELY PLAUSIBLE,
24 EVEN WITH A THIRTY TO FORTY-FIVE-MINUTE BREAK, WHICH I'M --
25 WHICH THE DEPUTY CLERK INDICATES IS PROBABLY ABOUT WHAT WE

1 ARE TALKING ABOUT, WE COULD -- THEY PROBABLY NEED TO BE
2 READY BY NOON.

3 THE COURT: OKAY.

4 SO WITH THAT -- I'M LETTING YOU OUT EARLY TONIGHT
5 SO YOU CAN MAKE ALL OF YOUR CALLS TO YOUR EARLY WITNESSES
6 AND THEN GET ABOUT YOUR PREPARATION FOR TOMORROW.

7 THANK YOU ALL VERY MUCH---

8 MR. STONE: THANK YOU.

9 THE COURT: ---FOR ALL OF YOUR COOPERATION AND
10 EFFORTS THROUGHOUT THE TRIAL OF THE CASE. I THINK THAT
11 BOTH SIDES -- I DIDN'T TELL YOU YESTERDAY WHEN WE BROKE
12 THAT YOU'VE DONE A WONDERFUL JOB ON BOTH SIDES IN
13 REPRESENTING THE STATE AND THE DEFENDANT AND YOU'VE BEEN A
14 REAL PLEASURE TO WORK WITH AS WELL AS EVERYONE HERE IN
15 LEXINGTON COUNTY.

16 THANK YOU ALL VERY MUCH. WE WILL STAND IN RECESS
17 UNTIL IN THE MORNING AT 9:00 A.M.

18 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

19 THE COURT: IF YOU NEED ME, I'LL BE HERE EARLY.

20 MS. FULLWOOD: THANK YOU, JUDGE.

21 MR. STONE: JUDGE, BEFORE YOU GO---

22 THE COURT: YEAH.

23 MR. STONE: THIS IS ACTUALLY PHYSICALLY INTO
24 EVIDENCE, IS IT NOT?

25 MR. HUMPHRIES: THAT ACTUALLY PHYSICALLY IS A

1 COURT'S EXHIBIT ACCORDING TO THE MANNER IN WHICH YOU -- NO,
2 NO, WAIT A MINUTE---

3 THE COURT: FOR I.D.

4 MR. HUMPHRIES: NO, THIS IS -- THAT WAS
5 PUBLISHED---

6 THE COURT: WELL, NO. WELL, WHAT YOU SAID WAS I
7 WOULD, YOU KNOW, THAT I WOULD TAKE JUDICIAL NOTICE---

8 MR. HUMPHRIES: WE ARE TALKING ABOUT THAT ONE.

9 MR. STONE: THAT ONE'S FINE.

10 THE COURT: NO, I DIDN'T---

11 MR. HUMPHRIES: ALL WE DID WAS -- ALL WE DID WAS
12 CONSISTENT WITH THE RULE, ASK THAT IT ALL BE PUBLISHED.

13 MR. STONE: OKAY.

14 THE COURT: AND WHAT THE RULE SAYS IS THAT WHEN
15 IT IS INTRODUCED AND I INTERPRET THE RULE AS SOMETHING --
16 IT DOESN'T HAVE TO BE INTRODUCED AS AN EXHIBIT---

17 MR. HUMPHRIES: NO---

18 THE COURT: ---IT IS WHEN IT IS USED IN THE CASE,
19 THEN EVEN IF IT'S NOT INTRODUCED AS A DIRECT EXHIBIT, IT
20 STILL HAS TO BE PUBLISHED IF---

21 MR. HUMPHRIES: RIGHT. I GOT YOU.

22 THE COURT: BUT, I MEAN, IF Y'ALL WANT IT---

23 MR. HUMPHRIES: NOW, THIS ONE, I THOUGHT WAS A
24 COURT'S EXHIBIT THE WAY HE -- I DON'T KNOW---

25 MR. STONE: NO---

1 THE COURT: NO.

2 MR. HUMPHRIES: OKAY. WELL, IT DOESN'T -- I

3 JUST---

4 MR. STONE: I JUST ASKED JUDICIAL NOTICE---

5 THE COURT: JUDICIAL NOTICE THAT THIS WAS---

6 MR. HUMPHRIES: I'LL BE HONEST WITH YOU, I DON'T

7 CARE.

8 THE COURT: I KNEW YOU DIDN'T.

9 MR. HUMPHRIES: I JUST -- THAT'S THE WAY WE HAD

10 IT NOTED.

11 MR. STONE: I THOUGHT THIS WAS INTO EVIDENCE. IT

12 DOESN'T BOTHER ME---

13 THE COURT: WHAT DO YOU SAY---

14 MR. STONE: ---HOWEVER. I JUST DON'T---

15 MR. HUMPHRIES: I WILL CONSENT TO ITS

16 INTRODUCTION INTO EVIDENCE.

17 MR. STONE: OKAY. FINE.

18 THE COURT: ALL RIGHT. IT WILL BE---

19 MR. HUMPHRIES: WAIT NOW. IS THAT THAT STATEMENT

20 FROM THAT GIRL?

21 MR. STONE: YES.

22 MR. HUMPHRIES: IF YOU WANT IT IN.

23 MR. STONE: YES, SIR.

24 (WHEREUPON, DEFENDANT'S EXHIBIT

25 NUMBER TWO, STATEMENT/11/267/85; AND DEFENDANT'S EXHIBIT

1 NUMBER THREE, GENERAL SESSIONS DOCKET SHEET, ENTERED INTO
2 EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

3 (WHEREUPON, COURT RECESSED FOR THE
4 DAY AT 9:07 P.M.)

5 SATURDAY, SEPTEMBER 20, 1997.

6 (WHEREUPON, COURT RECONVENED ON
7 SATURDAY, SEPTEMBER 20, 1997, AT 9:00 A.M.)

8 THE BAILIFF: ALL RISE.

9 THE COURT: THANK YOU VERY MUCH. PLEASE TAKE
10 YOUR SEATS.

11 GOOD MORNING.

12 MR. HUMPHRIES: GOOD MORNING, YOUR HONOR.

13 MR. STONE: GOOD MORNING.

14 MS. FULLWOOD: GOOD MORNING.

15 THE COURT: WE'RE READY TO PROCEED?

16 MR. HUMPHRIES: THE STATE IS READY TO PROCEED.

17 MS. FULLWOOD: THE DEFENSE IS READY, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 LET'S BRING OUR JURY BACK.

20 (JURY IN.)

21 THE COURT: POLLING OF THE JURY BY THE STATE?

22 MR. HUMPHRIES: WAIVE THAT, YOUR HONOR.

23 THE COURT: BY THE DEFENSE?

24 MS. FULLWOOD: WAIVE, YOUR HONOR.

25 THE COURT: MADAM FOREPERSON, LADIES AND

1 GENTLEMEN, IT'S GOOD TO SEE YOU AGAIN THIS MORNING. I HOPE
2 YOU HAD A PLEASANT EVENING LAST NIGHT.

3 WE ARE GOING TO CONTINUE WITH THE STATE'S CASE.

4 CALL YOUR NEXT WITNESS, PLEASE, SIR.

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

6 THE COURT: YES, SIR.

7 MR. CHASE: THE STATE CALLS EDDIE HITE TO THE
8 STAND.

9 EDWARD V. HITE,

10 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE BE SEATED AND GIVE US YOUR
12 FULL NAME.

13 THE WITNESS: IT'S EDWARD V. HITE.

14 DIRECT EXAMINATION

15 BY MR. CHASE.

16 Q MR. HITE, WHERE ARE YOU CURRENTLY EMPLOYED?

17 A LEXINGTON COUNTY CORONER'S OFFICE.

18 Q AND WHAT ARE YOUR DUTIES THERE?

19 A I'M A SENIOR DEPUTY CORONER.

20 Q DID YOU HOLD THAT SAME POSITION IN MAY OF 1996?

21 A NO, SIR. I WAS AN INVESTIGATOR AT LEXINGTON COUNTY
22 SHERIFF'S DEPARTMENT.

23 Q DURING THAT TIME, MAY OF 1996, DO YOU KNOW OF YOUR
24 OWN KNOWLEDGE WHETHER THERE WAS AN INMATE AT THE LEXINGTON
25 COUNTY DETENTION CENTER BY THE NAME OF GARY TERRY?

1 A YES, SIR, I DO.

2 Q PURSUANT TO YOUR DUTIES AS AN INVESTIGATOR WITH THE
3 LEXINGTON COUNTY SHERIFF'S DEPARTMENT, DID YOU HAVE THE
4 OCCASION TO SEARCH THE CELL OF GARY DUBOSE TERRY?

5 A YES, I DID.

6 Q WHY DID YOU DO THAT?

7 A I HAD RECEIVED INFORMATION THAT MR. TERRY AND ANOTHER
8 INMATE, JOHNNY BREWER, WHO HAD BEEN ARRESTED FOR AN
9 UNRELATED MURDER WERE PLANNING AN ESCAPE AND THAT MR. TERRY
10 WAS GOING TO TAKE -- WAS GOING TO CONFESS TO THE MURDER
11 THAT JOHNNY BREWER HAD BEEN CHARGED WITH AND ALSO DIAGRAMS.

12 Q WERE YOU LOOKING FOR ANYTHING AS FAR AS THE PHYSICAL
13 -- IN THE PHYSICAL NATURE OF THE CELL?

14 A YES. THROUGH THIS INFORMATION I RECEIVED, THAT THE
15 WAY THEY WOULD HAVE BEEN PASSING SOME INFORMATION, THERE
16 WAS A HOLE IN THE SMALL WINDOW OF GARY TERRY'S CELL THAT
17 LED TO THE OUTSIDE TO THE EXERCISE YARD AT THE JAIL.

18 Q ON WHAT DATE, DID YOU ACTUALLY GO INTO THE CELL?

19 A I BELIEVE IT WAS MAY 8TH OF 1996.

20 Q LAST YEAR?

21 A YES, SIR.

22 Q WHEN YOU WENT IN THE CELL, DID YOU FIND ANYTHING AS
23 FAR AS THE PHYSICAL NATURE OF THE CELL?

24 A YES. THERE WAS A HOLE THAT APPEARED TO HAVE BEEN
25 BURNED OR SOMEHOW MADE INTO THE SMALL WINDOW THAT LED TO

1 THE OUTSIDE.

2 Q WHAT IS ON THE OUTSIDE OF THAT WINDOW?

3 A IT'S THE EXERCISE YARD WHEN THEY ALLOW THE INMATES TO
4 GO OUTSIDE FOR RECREATION.

5 Q SO WHO WOULD HAVE ACCESS TO THAT AREA ON THE OUTSIDE
6 WHEN THE INMATES GO ON RECREATION?

7 A THE INMATES THAT ARE OUT THERE. MR. TERRY IF HE WAS
8 OUT THERE OR MR. BREWER IF HE WAS OUT THERE.

9 Q SO THERE'S NO -- THERE'S NOTHING IN BETWEEN THE
10 WINDOW AND THE RECREATION AREA?

11 A NO, THERE IS NOT.

12 Q IT'S ACTUALLY A PART OF THE RECREATIONAL AREA---

13 A YES, IT IS.

14 Q ---ABUTS THAT WINDOW?

15 A THAT'S CORRECT.

16 Q NOW, DID YOU FIND ANYTHING ELSE WHEN YOU WENT IN HIS
17 CELL?

18 A INSIDE -- IT'S A PLASTIC LIKE TRAY THAT THE INMATES
19 USE TO KEEP PERSONAL BELONGINGS, PAPERS, SO FORTH AND SO
20 ON, WE FOUND A LETTER THAT WAS ADDRESSED TO GARY TERRY AND
21 INSIDE THAT LETTER WERE TWO PIECES OF PAPER THAT ONE WAS
22 DIAGRAMS AND THE OTHER WAS INFORMATION RELATING TO THE
23 HOMICIDE THAT JOHNNY BREWER HAD BEEN ARRESTED FOR.

24 Q YOU INDICATED THAT YOU FOUND THIS IN A PLASTIC TRAY?

25 A THAT'S CORRECT.

1 Q DO YOU KNOW WHOSE PLASTIC TRAY THAT WAS?

2 A GARY TERRY'S.

3 Q ALL RIGHT. MR. HITE, CAN YOU IDENTIFY THIS?

4 A THIS IS THE ENVELOPE THAT WE FOUND IN MR. TERRY'S
5 TRAY.

6 Q CAN YOU IDENTIFY THE CONTENTS OF THAT ENVELOPE?

7 A THIS IS THE LETTER THAT WAS ADDRESSED TO GARY TERRY
8 AND THESE ARE THE PAPERS THAT WERE INSIDE CONCERNING THE
9 HOMICIDE.

10 Q AND YOU SAID EARLIER THAT YOU WERE LOOKING FOR A MAP.
11 IS ONE OF THOSE A MAP?

12 A YES. THIS ONE -- THIS HERE IS THE DIAGRAM OF THE
13 RESIDENCE WHERE THE MURDER TOOK PLACE AND THIS APPEARS TO
14 BE A DIAGRAM OF WHERE THE MURDER VICTIM'S CAR WAS FOUND.

15 Q ARE THESE, IN FACT, THE ACTUAL DOCUMENTS THAT YOU
16 TOOK FROM GARY TERRY'S CELL ON MAY THE 8TH OF 1996?

17 A YES, THEY ARE.

18 Q AND YOU CAN IDENTIFY THESE AS THEM?

19 A YES, SIR.

20 MR. CHASE: YOUR HONOR, AT THIS TIME, WE WOULD
21 MOVE TO INTRODUCE THE LETTER AND THE MAP INTO EVIDENCE.

22 MR. STONE: I DON'T THINK I HAVE ANY OBJECTION.
23 LET ME JUST SEE IF I COULD, PLEASE.

24 (WHEREUPON, THE DOCUMENTS ARE
25 HANDED TO MR. STONE AT THIS TIME.)

1 MR. STONE: NO OBJECTION, YOUR HONOR.

2 THE COURT: WITHOUT OBJECTION, IT WILL BE
3 ADMITTED AS STATE'S NUMBER FORTY.

4 MR. CHASE: YOUR HONOR, IF THIS COULD BE
5 INTRODUCED AS TWO SEPARATE---

6 THE COURT: FORTY AND FORTY-ONE.

7 MR. CHASE: THANK YOU, YOUR HONOR.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER
9 40, LETTER; AND STATE'S EXHIBIT NUMBER 41, MAP, ENTERED
10 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

11 MR. CHASE: DEPUTY HITE, IF YOU WOULD PLEASE
12 PUBLISH TO THE JURY THE SUBSTANTIVE PORTIONS OF THAT LETTER
13 AND ALSO THE APPROPRIATE PORTIONS OF THAT MAP?

14 THE WITNESS: OKAY.

15 IT STARTS OUT THIS IS THE NIGHT OF DECEMBER 7,
16 1994, THAT WAS A WEDNESDAY NIGHT OR AS YOU KNOW, ONCE IT
17 PAST TWELVE, IT TURNED INTO THE EARLY MORNING HOURS OF
18 DECEMBER 8, '94, THURSDAY MORNING.

19 THE FRONT DOOR TO THE HOUSE WAS FOUND UNLOCKED
20 THE NEXT DAY. WOODS BEHIND HER HOUSE. YOU SMOKED MARLBORO
21 LIGHT CIGARETTES, PUT THEM OUT IN THE CARPET IN BOTH
22 BEDROOMS. YOU ALSO WORE WORK BOOTS. YOU WENT THROUGH HER
23 POCKETBOOK AND TOOK A COUPLE OF CREDIT CARDS AND A ROLL OF
24 QUARTERS, TEN-DOLLAR ROLL.

25 THEN IT GOES ON. 1989 CHEVROLET BLUE CAMARO.

1 FIRE WAS STARTED WITH A CAN OF CARBONATOR CLEANER, A CAN
2 LIKE W-D-40 COMES IN, WITH THE LITTLE RED TUBE THAT GOES IN
3 THE SIDE OF THE SPRAYS.

4 YOU SPRAYED THAT INSIDE THE CAR. SEATS, CARPET
5 AND YOU PUT STICKS IN THE GAS TANK SO THE FIRE WOULD RUN
6 FROM THE STICKS TO THE GAS IN THE TANK.

7 REMEMBER THE CAR WAS RUNNING BAD. THE ENGINE WAS
8 CUTTING IN AND OUT SO BEFORE YOU LIT THE INSIDE OF THE CAR,
9 YOU OPENED THE HOOD AND TOOK THE BREATHER OFF THE
10 CARBONATOR. YOU DID ALL THIS AT THE PLACE YOU DITCHED THE
11 CAR OFF SWENDELL ROAD.

12 YOU SHOULD NOT NEED TO KNOW HOW BAD IT BURNT
13 BECAUSE YOU GOT THE HELL OUT OF THERE. AFTER WE GOT THE
14 FIRE GOING GOOD, YOU LEFT THE KEY IN THE CAR. THEY WERE ON
15 A BIG METAL KEY RING, BUT, YES, THE CAR WAS TOTALLY BURNT.
16 ALL THE PAINT WAS BURNED OFF. THE INSIDE WAS ALL BURNT.
17 ABOUT THE PACKAGE, I THOUGHT YOU TOLD PATTY YOU WERE CASING
18 THE HIGHWAY PATROL MUSTANG. THE MUSTANG WAS MARKED WITH
19 LIGHTS ON ROOF AND LOGOS LIKE THE CROWN VICTORIAS AND THEN
20 YOU GOT IN THE CAMARO AND KELLY CAME OUT OF THE HOUSE AND
21 WALKED UP ON YOU AND THE CAR AND THEN YOU CHASED HER INTO
22 THE HOUSE. I DO NOT KNOW WHAT THE PACKAGE WAS. MAYBE SAY
23 IT WAS IN A BAG AND YOU GAVE IT TO A FRIEND THAT DROVE YOU
24 BACK FROM THERE AND YOU DO NOT KNOW WHAT IT WAS. YOU TOOK
25 IT OUT OF THE CAR BEFORE YOU BURNED IT.

1 I WILL TRY TO GET YOU A PICTURE OF KELLY, BUT
2 WATCH THE NEWS EVERY NIGHT, AT LEAST TWO WEEKS BEFORE THE
3 TRIAL BECAUSE THEY MIGHT SHOW HER ON THERE. THE HOUSE,
4 TOO. AND READ THE NEWSPAPERS, TOO.

5 SHE WAS FIVE FEET FOUR TO FIVE FEET SIX INCHES
6 TALL, LONG CURLY BLOND HAIR, KIND OF KINKY HAIR, REAL
7 THICK, ABOUT FOUR TO SIX INCHES PAST HER SHOULDERS. SHE
8 DID NOT HAVE A TAN AND HER NOSE TURNED UP. SHE WAS WEARING
9 COTTON P.J.'S, PANTS AND A LONG SLEEVE COTTON SHIRT THAT
10 MATCHED, OFF WHITE WITH FLOWERS OR SOMETHING ON IT. NO
11 SOCKS OR SHOES. SHE WAS ON THE FLOOR RIGHT BESIDE THE BED,
12 HEAD TOWARDS THE DOOR. FEET TOWARDS THE BATHROOM LAYING
13 FACE UP. POURED GASOLINE ON AND AROUND HER. SHE WEIGHED
14 ABOUT 115, 120 POUNDS. NOT FAT; NOT SKINNY. SHE WAS
15 PRETTY.

16 REMEMBER YOU DID POUR GAS DOWN THE HALL AND IN
17 THE KITCHEN AND KITCHEN STOVE AND SOME IN THE BEDROOM
18 ACROSS THE HALL FROM THE MASTER BEDROOM. YOU LEFT THE GAS
19 CAN IN THE BEDROOM DIRECTLY ACROSS THE HALL AND YOU TOOK
20 THE YELLOW SPOUT OFF SO IT WOULD POUR BETTER. RED TWO AND
21 A HALF GALLON PLASTIC GAS CAN WITH YELLOW SPOUT.

22 THE HOUSE WAS ON A HILL. THE OTHER HOUSES WERE
23 CLOSE TOGETHER LIKE MOST SUBDIVISIONS. LIKE FRIARSGATE, ET
24 CETERA. A SINGLE STORY VINYL HOUSE, 460 PIN OAK STREET,
25 GARDEN POND SUBDIVISION LOCATED IN THE LEFT REAR OF THE

1 SUBDIVISION. SHE WORE NO BRA. SHE DID HAVE PANTIES ON.
2 YOU ALSO PULLED HER SHIRT OVER HER FACE BEFORE YOU LIT THE
3 FIRE. YOU HAD CAUGHT HER IN THE KITCHEN AND HAD A
4 STRUGGLE. THAT IS WHERE SHE SCRATCHED HER NECK AND TOOK
5 THE WHITE -- THAT'S WHERE SHE SCRATCHED HER NECK. YOU TOOK
6 THE WHITE NIGHT LIGHTS OUT OF THE SOCKETS AND PLACED THEM
7 AND THE PURSE BESIDE THE BODY BEFORE YOU BURNT HER. A
8 METAL TEAPOT WAS FOUND WITH A DENT ON IT ON THE FLOOR IN
9 THE KITCHEN.

10 THIS OTHER PAPER, IT GOES ON TO SHOW SOME MAP OF
11 DIRECTIONS. ONCE YOU LEFT THE SUBDIVISION, TURN RIGHT OUT
12 OF GARDEN POND SUBDIVISION ONTO OLD BARNWELL, THEN LEFT
13 ONTO OLD ORANGEBURG AND THEN RIGHT ON PLATT SPRINGS, THEN
14 LEFT ON HIGHWAY NUMBER SIX. THEN RIGHT ON SOUTH CAROLINA
15 HIGHWAY 302. THEN GO THROUGH PELION, THEN TO WAGENER. 302
16 GOES LEFT THROUGH WAGENER, THEN 302 TURNS RIGHT TOWARD
17 AIKEN.

18 REMEMBER NO ONE ELSE IS GOING TO SAVE US BUT US.

19 THIS GOES ON TO SAY LAND BETWEEN SOUTH CAROLINA
20 302, PLACE WHERE CAR FOUND WAS A MIX BETWEEN WOODS AND
21 FIELD AREA. IT WAS NOT THICK WOODS.

22 KEEP THESE PAPERS AS LONG AS YOU CAN, BROTHER, OR
23 EVEN AFTER I GET OUT.

24 GARY, DID YOU GET THE MONEY I PUT IN THE NOTE?
25 TWENTY-FIVE DOLLARS. MAKING SURE THE DUDE DID NOT KEEP IT.

1 IF HE IS SOLID, GARY, KEEP THE PAPERS UNTIL I GO TO COURT,
2 THEN TAKE THEM MATERIAL -- TAKE THEM WITH YOU WHEN THEY
3 TAKE YOU TO COURT, THEN FLUSH THEM AT THE CELL -- FLUSH
4 THEM AT THE CELL AT THE COURT HOUSE.

5 GARY OUR LIVES ARE DEPENDING ON YOU KNOWING THIS.
6 WE'VE ONLY GOT ONE SHOT AT THIS. WE'VE BEEN PARTNERS FOR A
7 TOTAL -- FOR A YEAR NOW. SO LET'S KICK ASS AND GET AWAY.
8 WRITE ON YOUR OWN -- WRITE ON YOUR OWN PAPER LIKE THIS TO
9 HELP STUDY THIS. STEP ONE, CASE AND CAR. STEP TWO, GOT IN
10 CAMARO. STEP THREE, SO ON AND SO ON.

11 AND THE REST IS THE DIAGRAM AND THE MAP.

12 Q THANK YOU, SENIOR DEPUTY CORONER HITE. ANSWER ANY
13 QUESTIONS THEY MAY HAVE.

14 THE COURT: MR. STONE.

15 MR. STONE: YES, SIR.

16 CROSS-EXAMINATION

17 BY MR. STONE:

18 Q GOOD MORNING.

19 A GOOD MORNING.

20 Q SENIOR DEPUTY CORONER, OKAY. I'M GOING TO CALL YOU
21 MR. HITE JUST FOR THE PURPOSES OF THIS, ALL RIGHT?

22 A THAT IS FINE.

23 Q THAT LETTER THAT YOU READ, THAT IS A LETTER FROM
24 JOHNNY BREWER, NOT FROM GARY TERRY, IS THAT RIGHT?

25 A WHAT I UNDERSTAND IT'S FROM JOHN BREWER TO GARY

1 TERRY.

2 Q IT IS A BASIC INSTRUCTION PLAN FROM MR. BREWER TO
3 GARY TERRY TO TELL GARY TERRY HOW TO CONFESS TO THE MURDER
4 OF KELLY BURBAGE (PHONETICALLY), IS THAT RIGHT?

5 A THAT'S CORRECT.

6 Q AND, IN FACT, MR. TERRY WAS NEVER CHARGED WITH KELLY
7 BURBAGE'S MURDER, WAS HE?

8 A NO, HE WAS NOT.

9 Q HE WAS, IN FACT, NEVER A SUSPECT IN THE KELLY BURBAGE
10 MURDER, WAS HE?

11 A NO, HE WAS NOT.

12 Q SO IN OTHER WORDS, THIS LETTER IS JOHNNY BREWER
13 TELLING GARY TO CONFESS TO A CRIME THAT GARY DIDN'T COMMIT,
14 IS THAT FAIR?

15 A THAT'S -- THAT'S CORRECT, YES, SIR.

16 Q AND GARY, TO YOUR UNDERSTANDING, AT LEAST THROUGH
17 THIS LETTER, AGREED TO DO THAT, IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q ALL RIGHT. OF COURSE, THIS GETS -- THEORETICALLY
20 GETS JOHNNY BREWER OUT OF JAIL. IT DOESN'T EXACTLY GET
21 GARY TERRY OUT OF JAIL, DOES IT?

22 A NOT AT THAT TIME, BUT LATER IT WAS SUPPOSED TO.

23 Q THE PLAN, IN FACT, WAS THEN WHEN ALL OF THIS WAS OVER
24 AND JOHNNY BREWER HAD GOT FREE, HE WAS GOING TO TAKE A
25 FRONT-END LOADER AND KNOCK THE JAIL DOWN WALL -- WALL DOWN

1 TO GET HIM OUT?

2 A IT WAS A -- IT WAS A -- HE WAS GOING TO GET A
3 BULLDOZER AND COME BACK, TAKE THE WALL DOWN SO GARY COULD
4 GET OUT AND THEN HE WAS JUST GOING TO RUN THE BULLDOZER
5 THROUGH THE SHERIFF'S OFFICE TO CREATE A DIVERSION AND THEY
6 WERE TO HAVE TWO CARS WAITING WITH GUNS IN THEM.

7 Q OKAY. YOU GOT ANY IDEA HOW FAST A BULLDOZER IS?

8 A I HAVE NO IDEA.

9 Q NO QUESTIONS. THANK YOU.

10 THE COURT: ANYTHING FURTHER?

11 MR. CHASE: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: ASKING THAT HE BE EXCUSED?

13 MR. CHASE: PLEASE, YOUR HONOR.

14 MR. STONE: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED,
16 SENIOR DEPUTY CORONER HITE.

17 (WHEREUPON, THE WITNESS WAS
18 EXCUSED AT THIS TIME.)

19 MR. CHASE: YOUR HONOR, THE STATE CALLS DIANNE
20 GIBSON SMITH.

21 DIANNE GIBSON SMITH,

22 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT AND GIVE US YOUR
24 FULL NAME.

25 THE WITNESS: DIANNE GIBSON SMITH.

1 DIRECT EXAMINATION

2 BY MR. CHASE:

3 Q MS. SMITH, I'M GOING TO CALL YOU DIANNE IF THAT'S
4 OKAY?

5 A UH-HUH.

6 Q DIANNE, DO YOU CURRENTLY LIVE IN LEXINGTON COUNTY?

7 A YES, I DO.

8 Q HOW LONG HAVE YOU LIVED HERE?

9 A ALL MY LIFE EXCEPT FOR A YEAR THAT I LIVED IN
10 RICHLAND COUNTY.

11 THE COURT: COULD YOU SPEAK UP JUST A LITTLE BIT,
12 PLEASE, MA'AM?

13 THE WITNESS: YES, SIR. I'M SORRY.

14 MR. CHASE: WHAT I'M GOING TO DO IS SCOOT THIS UP
15 A LITTLE BIT SO EVERYBODY CAN HEAR YOU.

16 A OKAY.

17 Q ARE YOU MARRIED?

18 A YES, I AM.

19 Q AND DO YOU HAVE A FAMILY?

20 A YES, I HAVE A DAUGHTER.

21 Q HOW OLD?

22 A THREE -- FOUR MONTHS.

23 Q YOU PROBABLY SHOULD BE THERE WITH HER. YOU PROBABLY
24 WANT TO BE THERE WITH HER?

25 A (WHEREUPON, THE WITNESS NODS IN THE AFFIRMATIVE AT

1 THIS TIME.)

2 Q I WANT TO GO BACK THROUGH SOME STUFF IN YOUR PAST.
3 I'M GOING TO ASK YOU, DO YOU KNOW WHO GARY TERRY IS?

4 A YES, I DO.

5 Q HOW DO YOU KNOW HIM?

6 A I'VE KNOWN HIM SINCE 1987. WE DATED AND WE LIVED
7 TOGETHER.

8 Q WHERE DID YOU MEET HIM?

9 A DUTCH SQUARE.

10 Q DO YOU REMEMBER HOW YOU MET HIM?

11 A YES, I DID. I WAS -- HE WAS INTRODUCED TO A FRIEND
12 OF MINE, SAMANTHA JACKSON, AND I MET HER THROUGH HIM.

13 Q DID YOU DEVELOP A RELATIONSHIP WITH HIM?

14 A YES, I DID.

15 Q HOW DID THAT RELATIONSHIP START OUT?

16 A WE DATED ON OCCASION WHEN WE SAW EACH OTHER.

17 Q WHAT TIME FRAME ARE WE TALKING ABOUT WHEN YOU SAID
18 THAT YOU WERE DATING AND SAW EACH OTHER?

19 A '87, '88 -- SUMMERTIME OF '87, I BELIEVE.

20 Q NOW, DURING THAT TIME, DO YOU KNOW WHETHER HE WAS
21 INVOLVED WITH ANY OTHER RELATIONSHIPS?

22 A I KNOW HE WAS SEEN WITH DIFFERENT WOMEN A LOT OF
23 TIME, BUT FOR SURE, I'M NOT POSITIVE.

24 Q DID YOU KNOW IF HE WAS MARRIED AT THE TIME?

25 A NO, I DID NOT.

- 1 Q DID HE EVER INDICATE ANYTHING ABOUT THAT---
- 2 A NO.
- 3 Q ---THEN?
- 4 A NO.
- 5 Q NOW, YOU SAID IN THE '87 TO '88 RANGE. DID YOUR
- 6 RELATIONSHIP CONTINUE AFTER THAT TIME?
- 7 A YES, IT DID.
- 8 Q WERE YOU ABLE TO SEE HIM AS STEADILY AFTER THAT?
- 9 A UP UNTIL HE WENT TO JAIL.
- 10 Q OKAY. YOU REMEMBER ROUGHLY WHEN HE WENT TO JAIL?
- 11 A NO.
- 12 Q WAS IT IN -- WOULD IT HAVE BEEN IN THE LATE '80'S?
- 13 A YES, SIR.
- 14 Q WHILE HE WAS IN JAIL, DID YOU CONTINUE YOUR
- 15 RELATIONSHIP WITH HIM?
- 16 A YES, WE DID.
- 17 Q HOW DID YOU CONTINUE THAT?
- 18 A WITH LETTERS, PHONE CALLS AND I ALSO VISITED HIM ONCE
- 19 IN AIKEN.
- 20 Q SO YOU ACTUALLY RECEIVED SOME LETTERS FROM HIM?
- 21 A YES, I DID.
- 22 Q HOW MANY LETTERS? CAN YOU EVEN ESTIMATE?
- 23 A I'M NOT POSITIVE. FIFTEEN -- TWENTY TOPS.
- 24 Q CAN YOU IDENTIFY HIS HANDWRITING?
- 25 A YES, I CAN.

1 Q I'M GOING TO ASK YOU, DIANNE, CAN YOU IDENTIFY THIS
2 LETTER?

3 A YES. IT'S A LETTER THAT GARY WROTE TO ME FROM AIKEN.

4 Q DO YOU KNOW -- IS THAT LETTER DATED?

5 A JULY 5, 1988.

6 Q CAN YOU IDENTIFY THIS?

7 A IT'S ALSO ANOTHER LETTER RECEIVED -- I RECEIVED FROM
8 GARY.

9 Q AND IS THAT LETTER DATED?

10 A JULY 12, 1988.

11 Q AND IS THAT HIS HANDWRITING?

12 A YES, IT IS.

13 Q CAN YOU IDENTIFY THIS?

14 A ANOTHER LETTER FROM GARY, DATED JULY 5(SIC), 1988.

15 MR. CHASE: YOUR HONOR, AT THIS TIME, WE WOULD
16 MOVE THE LETTERS FROM JULY 5, 1988, JULY 12, 1988, AND JULY
17 25, 1988, INTO EVIDENCE.

18 THE COURT: WITHOUT OBJECTION?

19 MS. FULLWOOD: NO OBJECTION.

20 THE COURT: WITHOUT OBJECTION, THEY WILL BE
21 ADMITTED AS STATE'S 42, 43 AND 44.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER
23 42, LETTER DATED 7/25/88; STATE'S EXHIBIT NUMBER 43, LETTER
24 DATED 7/12/88 AND STATE'S EXHIBIT NUMBER 44, LETTER DATED
25 7/5/88, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT

1 OBJECTION.)

2 MR. CHASE: DIANNE, AFTER GARY GOT OUT OF JAIL,
3 WHAT HAPPENED TO YOUR RELATIONSHIP?

4 THE WITNESS: IT CONTINUED. HE CONTACTED ME. WE
5 STARTED DATING AGAIN. EVENTUALLY HE MOVED INTO MY HOUSE
6 WITH ME.

7 Q WHEN HE GOT OUT OF JAIL, DID YOU KNOW WHETHER HE WAS
8 MARRIED OR NOT?

9 A YES, I DID.

10 Q DID YOU KNOW WHO HE WAS MARRIED TO?

11 A YES, I DID.

12 Q WHO WAS THAT?

13 A LOU ANN.

14 Q LOU ANN TERRY?

15 A YES, SIR.

16 Q WHERE DID YOU LIVE TOGETHER?

17 A AT MY HOME AT 3141 BUCKEYE DRIVE IN WEST COLUMBIA,
18 LEXINGTON COUNTY.

19 Q HOW LONG DID YOU LIVE THERE WITH GARY?

20 A ABOUT A YEAR, UP UNTIL JUNE OF '93.

21 Q NOW, THE HOUSE ON BUCKEYE DRIVE, IS THAT A FAMILY
22 HOME?

23 A YES, IT IS.

24 Q HOW LONG HAS YOUR FAMILY OWNED THAT HOUSE?

25 A SINCE IT WAS BUILT IN 1968.

1 Q WHO LIVES THERE NOW?

2 A ME, MY HUSBAND AND MY BROTHER AND MY DAUGHTER.

3 Q WHO IS YOUR BROTHER?

4 A MICHAEL GIBSON.

5 Q WHEN YOU WERE LIVING THERE AND GARY TERRY WAS LIVING
6 THERE, WHO ELSE RESIDED THERE?

7 A MICHAEL GIBSON, MY BROTHER.

8 Q IS THAT THE ONLY PLACE YOU LIVED WITH GARY TERRY?

9 A NO, SIR. AFTER WE MOVED FROM -- WELL, HE MOVED OUT
10 FROM THERE THE END OF JUNE OF '93 AND ABOUT A WEEK LATER, I
11 JOINED HIM UP AT THE LAKE IN RICHLAND COUNTY.

12 Q AND ROUGHLY WHERE IS THAT?

13 A IT'S ON BIRDY(PHONETICALLY) ROAD RIGHT IN -- GOING
14 INTO CHAPIN-BALLENTINE.

15 Q HOW LONG DID YOU STAY OUT THERE?

16 A A YEAR.

17 Q AND DURING THAT TIME, WAS GARY TERRY AND BACK WHEN
18 YOU WERE LIVING ON BUCKEYE DRIVE, WAS HE STAYING WITH YOU
19 ALL THE TIME?

20 A PRETTY MUCH, YES. IF HE WASN'T WITH ME, HE WOULD
21 TELL ME HE HAD GONE UP TO SEE LOU ANN.

22 Q DID YOU TELL LOU ANN TERRY THAT YOU WERE INVOLVED IN
23 A RELATIONSHIP WITH GARY TERRY AT THAT TIME?

24 A NO.

25 Q BUT YOU DID KNOW THAT HE WAS MARRIED?

1 A YES.

2 Q AFTER LIVING AT THE LAKE, WHAT HAPPENED?

3 A I MOVED OUT FROM THE LAKE JULY 27TH OF '94 AND MOVED
4 BACK HOME.

5 Q DID GARY TERRY EVER LIVE WITH YOU AGAIN AFTER THAT?

6 A NO.

7 Q NOW, I WANT TO TAKE A COUPLE OF STEPS BACK AGAIN.

8 DURING THIS TIME THAT YOU AND GARY TERRY WERE LIVING
9 TOGETHER AND HE WAS STAYING WITH YOU AND ALSO GOING TO SEE
10 LOU ANN TERRY, HOW WOULD YOU DESCRIBE HIS TEMPER?

11 A VERY HOT TEMPER, QUICK TEMPER.

12 Q CAN YOU THINK OF ANY SPECIFIC EXAMPLES THAT YOU COULD
13 DESCRIBE TO THIS JURY THE TYPE OF TEMPER THAT HE HAD?

14 A ONE NIGHT I HAD FOUND OUT HE HAD GONE TO A CLUB AND
15 HE HAD TOLD ME HE WAS GOING FISHING SO I -- ME AND SAM WENT
16 UP TO THE CLUB AND HE GOT IRATE WITH ME WHEN WE SHOWED UP.
17 HE MADE ME GET IN THE TRUCK WITH HIM AND TOOK ME TO
18 SAMANTHA'S HOUSE TO GET MY CAR. HE LEFT ME THERE.

19 WHEN I GOT HOME, HE HAD TORN UP -- BUSTED MY
20 ANSWERING MACHINE, TORN UP PICTURES AND THROWN THINGS ABOUT
21 MY ROOM.

22 Q WHAT IF YOU DIDN'T DO WHAT GARY TERRY WANTED TO DO?

23 A HE WOULD THROW THINGS.

24 Q CAN YOU THINK OF ANY EXAMPLES OF THAT?

25 A WHEN WE WERE LIVING AT THE LAKE, HE WANTED ME TO GO

1 WITH HIM TO GET A BOAT AND I WOULDN'T AND HE THREW MY
2 KITTEN UP AGAINST THE WALL AND THREW THE T.V. OFF THE
3 SHELF.

4 Q HOW WOULD YOU DESCRIBE GARY TERRY AS FAR AS YOUR
5 RELATIONSHIP GOES? HOW DID HE TREAT YOU?

6 A HE NEVER PHYSICALLY ABUSED ME OTHER THAN A FEW TIMES
7 JUST GRABBING ME BY THE ARM, BUT HE -- HE CONTROLLED ME
8 EMOTIONALLY AND MENTALLY.

9 Q HOW DID HE DO THAT?

10 A I HAD NO FRIENDS. I LOST CONTACT WITH MY FAMILY WHEN
11 I MOVED AWAY. I WENT TO WORK IN THE MORNINGS; I CAME HOME
12 AT NIGHT AND THAT WAS IT. I COOKED FOR HIM AND I WAITED ON
13 HIM HAND AND FOOT.

14 Q DURING THE TIME THAT YOU WERE STAYING TOGETHER, DID
15 GARY TERRY WORK?

16 A OFF AND ON, BUT NOTHING ON LEGITIMATE JOBS AS FAR AS
17 ON THE BOOKS, A PAYCHECK COMING IN, NO.

18 Q YOU KNOW OF HIM TO STEAL AT ALL?

19 A YES, I DO.

20 Q WHAT TYPE OF THINGS DID HE STEAL?

21 A TRAILERS, BOAT TRAILERS, CAR TRAILERS.

22 Q DID YOU KNOW THAT THAT WAS GOING ON?

23 A SOMETIMES; NOT ALL THE TIME.

24 Q HOW DO YOU KNOW THAT HE WAS DOING THAT?

25 A TRAILERS WOULD SHOW UP AND THEY WOULD DISAPPEAR A

1 COUPLE OF DAYS LATER. ONE TIME HE DID ASK ME TO GO WITH
2 HIM TO PICK UP A TRAILER.

3 Q WHERE DID YOU GO?

4 A IT WAS AT THE LAKE. I BELIEVE IT WAS NEAR GOVERNOR'S
5 GRANT.

6 Q WHAT DID YOU DO?

7 A WE GOT TO GOVERNOR'S GRANT AND THE BOAT AREA WHERE
8 THE TRAILERS WERE KEPT WAS LOCKED---

9 Q YOU SAY A BOAT AREA?

10 A THEY KEPT TRAILERS FOR THE RESIDENTS OF GOVERNOR'S
11 GRANT IN A LOCKED AREA WITH A GATE AND A FENCE AND IT HAD A
12 LOCK ON IT.

13 Q LIKE A CHAIN-LINK FENCE?

14 A RIGHT.

15 Q YOU SAY THAT THAT AREA WAS LOCKED?

16 A YES, IT WAS.

17 Q WHAT HAPPENED WHEN YOU PULLED UP TO THIS LOCKED AREA?

18 A GARY SAID HE HAD A KEY.

19 Q DID HE HAVE A KEY?

20 A BOLT CUTTERS.

21 Q WHAT HAPPENED WHEN YOU SAW THE BOLT CUTTERS?

22 A I WOULDN'T GO ALONG WITH IT.

23 Q WHAT DID YOU DO?

24 A I WENT BACK HOME -- TO THE LAKE.

25 Q DID YOU SEE A TRAILER LATER ON THAT NIGHT?

1 A YES, I DID.

2 Q HOW LONG DID IT STAY AT YOUR HOUSE?

3 A TWO DAYS.

4 Q BESIDE FROM TAKING THINGS FROM OTHERS, DID HE EVER
5 TAKE ANYTHING FROM YOU?

6 A MONEY.

7 Q HOW OFTEN WOULD YOU SAY HE TOOK MONEY FROM YOU?

8 A EVERY PAYCHECK. ANYTIME I HAD ANY MONEY ON ME, EXTRA
9 MONEY. IF I GOT PAID ON THURSDAY, BY FRIDAY NIGHT, IT WAS
10 GONE.

11 Q DID YOU KNOW WHERE THAT MONEY WAS GOING?

12 A HE WAS BUYING CRACK.

13 Q HOW REGULARLY WAS THAT HAPPENING?

14 A FOUR OR FIVE TIMES A WEEK. ANY TIME THAT I HAD MONEY
15 OR THAT HE COULD GET MONEY.

16 Q DID HE EVER -- HE TOOK YOU TO GO TRY TO TAKE A
17 TRAILER. DID HE EVER TAKE YOU WHEN HE WAS GOING TO
18 PURCHASE CRACK?

19 A YES, HE DID.

20 Q WHEN WAS THAT?

21 A WHEN WE WERE LIVING AT MY HOUSE IN LEXINGTON COUNTY.

22 Q WHAT HAPPENED?

23 A WE WENT -- I WENT WITH HIM.

24 Q DID YOU KNOW WHERE YOU WERE GOING?

25 A NOT AT THE TIME. HE JUST DIRECTED ME WHERE TO TURN

1 AND WHICH WAY TO GO.

2 Q SO YOU WERE DRIVING?

3 A RIGHT.

4 Q DO YOU REMEMBER WHERE YOU WENT?

5 A BEHIND COLUMBIA COLLEGE.

6 Q WHAT HAPPENED WENT YOU GOT BACK TO -- BEHIND COLUMBIA
7 COLLEGE?

8 A HE MADE ME TURN LEFT AND STOP. WHEN I STOPPED, SOME
9 GUYS APPROACHED THE TRUCK AND HE PURCHASED CRACK.

10 Q WHEN YOU SAID THAT HE WAS TAKING MONEY FROM YOU TO
11 PURCHASE CRACK, DO YOU REMEMBER ANY PARTICULAR TIMES WHEN
12 HE TOOK THE MONEY FROM YOU IN YOUR HOME? ASKED FOR MONEY?

13 A SOMETIMES HE WOULD ASK FOR MONEY AND I WOULD THROW
14 THE MONEY ON THE FLOOR AND TELL HIM TO DO WHAT HE THOUGHT
15 WAS RIGHT. HE WOULD TAKE IT AND LEAVE.

16 THERE WAS AN INCIDENT IN DECEMBER OF '93. YEAH,
17 DECEMBER OF '93, WE WERE LIVING AT THE LAKE AND CHRISTMAS
18 EVE I WOKE UP AND HE HAD COME IN. I WAS SLEEPING IN THE
19 HOUSE NEXT DOOR AT THERESA'S HOUSE WHERE WE STAYED ON HER
20 PROPERTY AND HE SAID THAT HE WAS TAKING THE LAUNDRY BACK
21 NEXT DOOR TO OUT PLACE, TO GET UP OUT OF BED AND COME NEXT
22 DOOR. AND WHEN I GOT NEXT DOOR, HE WAS GONE AND SO WAS MY
23 PURSE. THE NEXT MORNING HE SHOWED BACK UP WITH MY TRUCK
24 AND ALL MY MONEY WAS GONE.

25 Q DID YOU KNOW GARY TERRY TO FIGHT?

1 A YES, I DID.

2 Q DID YOU KNOW OF ANY PARTICULAR INCIDENTS WHEN HE
3 WOULD FIGHT?

4 A AFTER I LEFT HIM IN JULY, THERE WAS THAT FOLLOWING
5 WEEKEND HE GOT INTO A FIGHT WITH A MICHAEL LOONEY AT THE
6 LAKE.

7 Q DO YOU KNOW WHAT HAPPENED?

8 A I WAS TOLD BY HIM---

9 MS. FULLWOOD: OBJECTION TO THE HEARSAY, YOUR
10 HONOR.

11 MR. CHASE: SHE SAID THE DEFENDANT TOLD HER.

12 THE COURT: SHE CAN IDENTIFY WHO TOLD HER.

13 THE WITNESS: I WAS TOLD BY GARY TERRY---

14 THE COURT: OVERRULED.

15 MR. CHASE: THANK YOU, YOUR HONOR.

16 THE WITNESS: ---THAT HE WAS WATCHING HIS TWO
17 YOUNGEST CHILDREN AND THAT MICHAEL LOONEY HAD COME OUT ON
18 THE DECK AND WAS HOLLERING. HE CAME OUT AND TOLD HIM TO BE
19 QUIET. MICHAEL LOONEY CUSSSED HIM AND HE PROCEEDED TO BEAT
20 HIM HALF TO DEATH. HE KICKED HIM AND HE PUNCHED HIM.

21 Q DID HE TELL YOU WHAT HAPPENED WHEN GARY LOONEY -- I
22 MEAN, MICHAEL LOONEY WENT DOWN?

23 A HE CONTINUED TO BEAT HIM.

24 Q DIANNE, REFERRING TO STATE'S NUMBER 43, WOULD YOU
25 PUBLISH THAT LETTER TO THE JURY?

1 A THE WHOLE THING?

2 Q PLEASE.

3 A JULY 12, 1988. HI, SWEETIE. I KNOW YOUR FEELINGS
4 AND I'M SORRY. I DO LOVE YOU AND TRUST YOU. SO YOU WANT
5 SOME ANSWERS. WELL, OKAY. THE REASON I GOT MARRIED WAS TO
6 TRY AND KEEP JEFFREY AND, YES, I DID LOVE HER. WELL, I
7 GUESS I STILL DO IN A WAY. I THOUGHT ABOUT GETTING A
8 DIVORCE, BUT I DON'T HAVE THE MONEY AND SHE WILL FIGHT IT.
9 THERE'S NO DOUBT ABOUT THAT. THINGS ARE NOT GOING TO
10 CHANGE AND I'M NOT GOING TO CHANGE.

11 SHIT. I WOULD NOT KNOW HOW TO CHANGE. I AM ME.
12 LIKE I SAID, THERE IS NOBODY LIKE ME AND NOBODY WILL MESS
13 WITH ME BECAUSE THEY KNOW I WILL HURT THEM. I DON'T KNOW
14 WHAT PERSON THEY ARE GOING TO PUT -- EXCUSE ME -- I DON'T
15 KNOW WHAT PRISON THEY ARE GOING TO PUT ME IN, BUT I SHOULD
16 KNOW SOMETIME THIS WEEK. I'M GOING TO BE JUST LIKE I WAS
17 BEFORE, MAYBE A LITTLE MORE MEANER THAN I WAS, BUT THAT'S
18 ALL. I'LL WRITE YOU SOME MORE LATER.

19 LIKE THE ROSE I DREW YOU. LOVE YOU, GARY T.

20 Q REFERRING TO STATE'S EXHIBIT NUMBER 44, IF YOU COULD,
21 PUBLISH, STARTING FROM YOU, DOWN?

22 A WHERE DO YOU WANT ME TO STOP?

23 Q AFTER THIS POINT(INDICATES).

24 A OKAY.

25 YOU ARE THE ONLY ONE THAT REALLY KNOWS ME AND YOU

1 KNOW HOW I AM. I NEED TO START CALMING DOWN. I AM GETTING
2 TOO OLD FOR ALL THIS SHIT. I ALWAYS LOVED TO FIGHT. I DID
3 IT SO GOOD. IT FELT SO GOOD TO HURT PEOPLE THAT WAS BIGGER
4 THAN ME, BUT THAT'S ALL BEHIND ME.

5 LIKE I SAID, I'M GETTING TOO OLD FOR THIS SHIT.

6 Q AND ALSO, COULD YOU PUBLISH THE LETTER FROM JULY
7 25TH, STATE'S EXHIBIT NUMBER 42, IN ITS ENTIRETY?

8 A HI BABE. SO WHAT'S UP. I AM SO PISSED OFF. THEY
9 WOULD NOT LET ME CALL YOU BACK TODAY, BUT I WILL CALL YOU
10 WHEN I GET TO AIKEN AND LET YOU KNOW WHAT'S GOING ON AND
11 HOPEFULLY YOU CAN COME AND SEE ME.

12 MAYBE I CAN CATCH UP ON SOME OF THE TIME I OWE
13 YOU. MY HEAD IS HURTING SO BAD AND I AM SO UPSET ABOUT HOW
14 LONG I'VE GOT TO STAY IN HERE, BUT I WILL STAY OUT OF
15 TROUBLE AND TRY TO CONTROL MY TEMPER SO I CAN GET OUT IN
16 JUNE.

17 I GOT YOUR LETTER TODAY AND I DON'T UNDERSTAND
18 WHY YOU LOVE ME AS MUCH AS YOU DO. WELL, I'M GOING TO LAY
19 DOWN. MY HEAD IS ABOUT TO KILL ME. I'LL WRITE YOU WHEN I
20 GET TO AIKEN. I LOVE YOU VERY MUCH.

21 P.S. REMEMBER I LOVE MY LITTLE GIRL. LOVE YOU
22 ALWAYS, GARY T.

23 Q NOW, DIANNE, DO YOU KNOW WHETHER LOU ANN TERRY IS THE
24 ONLY WIFE THAT GARY TERRY HAS HAD?

25 A NO. HE WAS MARRIED ONCE BEFORE HER.

- 1 Q DID HE HAVE ANY CHILDREN FROM THAT RELATIONSHIP?
- 2 A JEFFREY.
- 3 Q DO YOU KNOW WHETHER, OF YOUR OWN KNOWLEDGE, HE WAS
- 4 REQUIRED TO PAY CHILD SUPPORT FOR JEFFREY?
- 5 A YES, HE WAS.
- 6 Q DO YOU KNOW WHETHER HE FULFILLED HIS OBLIGATIONS IN
- 7 THAT REGARD?
- 8 A TO MY KNOWLEDGE, HE DID NOT.
- 9 Q YOU KNOW ANY PARTICULAR INCIDENTS WHEN HE WENT OUT OF
- 10 HIS WAY TO AVOID THAT?
- 11 A YES, SIR. IN '91, I BELIEVE THE FALL OF '91, HE WAS
- 12 SCHEDULED TO GO TO COURT FOR BACK CHILD SUPPORT IS WHAT HE
- 13 TOLD ME AND TO KEEP HIM FROM GOING TO COURT, HE ASKED ME TO
- 14 SHOOT HIM AND I DID.
- 15 Q DESCRIBE HOW THAT INCIDENT TOOK PLACE.
- 16 A DOUG FORD AND ME AND HIM AND DOUG'S GIRLFRIEND AT THE
- 17 TIME WERE ALL TOGETHER---
- 18 Q DO YOU KNOW WHERE YOU WERE?
- 19 A WE WERE AT MY HOUSE, IN THE FRONT OF MY HOUSE IN
- 20 DOUG'S CAR.
- 21 Q IS THIS AT THE LAKE OR---
- 22 A NO, THIS WAS IN WEST COLUMBIA, LEXINGTON COUNTY.
- 23 Q WEST COLUMBIA.
- 24 A ORIGINALLY, THEY WERE GOING -- DOUG WAS GOING TO DO
- 25 IT. HE WAS TALKING TO DOUG. AT ONE POINT, THEY WERE GOING

1 TO HAVE HIM USE A SHOTGUN AND SHOOT HIM IN THE SIDE OF HIS
2 STOMACH. THEY KEPT TALKING AND EVENTUALLY DOUG SAID HE
3 DIDN'T WANT TO DO IT. SO I TOLD HIM, I WOULD DO IT.

4 Q WHERE DID YOU GO TO DO IT?

5 A THE GRAVEYARD BY MY HOUSE.

6 Q WHAT HAPPENED ONCE YOU GOT TO THE GRAVEYARD?

7 A I DIDN'T WANT TO DO IT.

8 Q WHAT DID GARY -- WHAT DID GARY TERRY DO WHEN YOU TOLD
9 HIM YOU DIDN'T WANT TO?

10 A HE SAID FINE. THAT IF I DIDN'T LOVE HIM ENOUGH TO
11 SHOOT HIM, HE WOULD FIND SOMEBODY THAT WOULD.

12 Q WHAT DID YOU DO THEN?

13 A PULLED THE TRIGGER.

14 Q WHERE DID YOU HIT HIM?

15 A SHOT HIM IN THE LEG.

16 Q WHAT DID YOU DO THEN?

17 A I WENT BACK TO MY HOUSE AND GAVE DOUG BACK HIS GUN
18 AND A SHIRT AND A PILLOW THAT WE HAD TO MUFFLE THE NOISE
19 AND I TOOK HIM TO THE HOSPITAL.

20 Q DO YOU KNOW WHETHER HE EVER WENT TO COURT FOR THAT
21 BACK SUPPORT?

22 A NO, HE DID NOT.

23 Q WHEN YOU FIRST MET GARY TERRY, DO YOU REMEMBER WHAT
24 CAR HE WAS DRIVING?

25 A IT WAS A BROWN CUTLASS.

1 Q DO YOU KNOW WHAT HAPPENED TO THAT CAR?

2 A YES, SIR. HE TOLD ME HE SIDESWIPE A TELEPHONE POLE
3 ON TWO NOTCH ROAD AND IT MESSED UP THE SIDE OF IT SO HE
4 TOOK A U-HAUL AND RAN IT OVER IN THE PARKING LOT.

5 Q THE PARKING LOT OF WHAT?

6 A DUTCH SQUARE.

7 Q OVER THE VEHICLE?

8 A RIGHT.

9 Q IS THAT THE ONLY TIME THINGS HAPPENED TO CARS WHEN
10 THEY WERE IN GARY TERRY'S POSSESSION?

11 A NO, SIR. HE ALSO OWNED A GRAY -- I DON'T KNOW WHAT
12 THE MODEL CAR WAS. IT WAS A LONG CAR AND HE CALLED IT THE
13 GRAY GHOST. I DON'T KNOW WHAT HAPPENED TO IT.

14 HE OWNED A GRAY CUTLASS THAT I WAS TOLD WAS
15 WRECKED AND TOTALED.

16 Q DID HE EVER HAVE POSSESSION OF ANY OF YOUR CARS?

17 A MY TRUCK THAT I OWN NOW CURRENTLY. WHEN HE WOULD
18 DRIVE IT. I STILL HAVE POSSESSION OF IT, BUT IT HAS A LOT
19 OF BODY DAMAGE TO IT.

20 Q HOW DID THAT BODY DAMAGE GET ON THERE?

21 A I TRIED TO LEAVE HIM AND HE THREW A CHILD'S RIDE TOY
22 AT IT AND KICKED THE DOOR IN.

23 Q KICKED THE DOOR IN. WHAT WAS HE DOING WHEN HE KICKED
24 THE DOOR IN? WHAT WERE YOU DOING?

25 A I WAS OPENING THE DOOR, THE DRIVER'S DOOR AT THE

1 TIME.

2 Q TO DO WHAT?

3 A TO LEAVE.

4 Q AND WHAT DID HE DO?

5 A KICKED IT SHUT.

6 Q DID YOU EVER HAVE A CAR THAT BURNED?

7 A YES, I DID.

8 Q DO YOU KNOW THE CIRCUMSTANCES OF HOW YOUR CAR GOT
9 BURNED?

10 A I WAS CALLED -- I RECEIVED A PHONE CALL THREE OR FOUR
11 O'CLOCK IN THE MORNING FROM LOU ANN. GARY HAD MY CAR AND
12 SHE SAID MY CAR WAS OUTSIDE AND ON FIRE AND GARY TOLD HER
13 TO CALL.

14 Q DID YOU FIND OUT WHAT HAPPENED TO THAT CAR?

15 A I FOUND OUT MONTHS LATER THAT GARY HAD BURNED IT.

16 Q WHO TOLD YOU THAT GARY HAD BURNED IT?

17 A HE DID.

18 Q DID HE TELL YOU HOW HE HAD DONE THAT?

19 A HE TOLD ME HE POURED LIGHTER FLUID IN THE DASH AND
20 SET IT ON FIRE.

21 Q YOU TALKED ABOUT ONE TIME WHEN YOU ATTEMPTED TO END
22 THE RELATIONSHIP---

23 A UH-HUH.

24 Q ---AND HE HAD DAMAGED YOUR VEHICLE. IS THAT THE ONLY
25 TIME THAT YOU TRIED TO END THE RELATIONSHIP UNSUCCESSFULLY?

1 A NO, SIR. I TRIED TO END THE RELATIONSHIP IN DECEMBER
2 OF, I BELIEVE, IT WAS IN '93 THAT HE TOOK MY MONEY AND HE
3 CALLS ME AT HOME AND TOLD ME IF I WASN'T BACK TO THE LAKE
4 IN TWENTY MINUTES, HE WOULD BURN DOWN MY HOUSE.

5 Q DO YOU KNOW WHAT HOUSE HE WAS REFERRING TO?

6 A MY HOUSE THAT I WAS LIVING IN AT 3141 BUCKEYE DRIVE.

7 Q IS THAT YOUR FAMILY HOME---

8 A RIGHT, MY FAMILY'S HOME---

9 Q ---THAT YOU DESCRIBED EARLIER?

10 A UH-HUH.

11 Q IS THAT THE ONLY TIME HE'S THREATENED TO BURN OR
12 DAMAGE YOUR FAMILY'S POSSESSIONS?

13 A NO, SIR. THERE WERE OTHER TIMES THAT I TRIED TO
14 LEAVE HIM. I DON'T REMEMBER DATES, BUT THAT WAS USUALLY
15 THE WAY HE KEPT ME FROM LEAVING HIM WAS TO THREATEN MY
16 FAMILY OR MY HOME.

17 Q SO HE WOULDN'T THREATEN YOU?

18 A NO.

19 Q HE WOULD THREATEN YOUR FAMILY?

20 A RIGHT.

21 Q IN YOUR OPINION, SINCE THIS IS YOU, WAS IT SMARTER
22 FOR HIM TO THREATEN YOU OR TO THREATEN YOUR FAMILY?

23 A THREATEN MY FAMILY.

24 Q DO YOU REMEMBER THE NIGHT OF AUGUST THE 11TH, 1994?

25 A YES, I DO.

1 Q WHAT HAPPENED ON THAT NIGHT?

2 A I HAD LEFT HIM THE END OF JULY. I HAD MOVED BACK
3 HOME TO MY HOUSE AT 3141 BUCKEYE DRIVE. HE CALLED ME AND
4 SAID HE WAS ON HIS WAY BACK FROM TENNESSEE AND WANTED TO
5 MEET ME AT DUTCH SQUARE IN RICHLAND COUNTY. I MET HIM. HE
6 GAVE ME FLOWERS. HE GAVE ME A BRACELET. HE WAS DRINKING
7 JACK DANIELS.

8 Q WHAT HAPPENED AFTER HE GAVE YOU THAT?

9 A THE CONVERSATION STARTED OFF FINE. I TOLD HIM THAT I
10 DID NOT LOVE HIM ANY MORE, THAT I DID NOT WANT TO BE WITH
11 HIM. THEN HE GOT MAD. HE TRIED TO PUNCH OUT MY
12 PASSENGER'S SIDE WINDOW OF MY TRUCK.

13 I ATTEMPTED TO LEAVE AND AT ONE POINT, HE POPPED
14 THE HOOD OF MY TRUCK AND HE RIPPED THE COIL WIRE AND
15 SOMETHING ELSE OFF MY DISTRIBUTOR.

16 Q LET ME ASK YOU. WHEN YOU SAID HE ATTEMPTED TO PUNCH
17 OUT THE WINDOW OF THE CAR---

18 A UH-HUH.

19 Q ---WITH HIS HANDS---

20 A HE HAD A CAST ON ONE HAND.

21 Q DO YOU KNOW WHAT THAT CAST WAS THE RESULT OF?

22 A THE FIGHT WITH MICHAEL LOONEY.

23 Q WHAT HAPPENED AFTER HE PULLED THE COIL WIRES FROM
24 YOUR TRUCK?

25 A I JUMPED OUT OF THE TRUCK AND GOT IN HIS FACE AND HE

1 PUSHED ME AWAY FROM HIM.

2 Q WHAT HAPPENED THEN?

3 A HE TOLD ME HE WOULD PUT MY TRUCK -- THE PARTS BACK ON

4 MY TRUCK IF I RODE DOWN THE ROAD WITH HIM. SO I DID. AND

5 HE TOOK ME BY THE ZOO AND TOLD ME THAT HE WAS GOING TO MAKE

6 ME WATCH HIM KILL HIMSELF. SO---

7 Q WHAT DID YOU DO?

8 A I JUMPED OUT OF THE TRUCK AND STARTED RUNNING AND HE

9 CAME AND PICKED ME BACK UP AND AGREED TO TAKE ME BACK TO MY

10 TRUCK AND PUT IT TOGETHER BECAUSE I AGREED TO MEET HIM

11 LATER.

12 Q DID YOU GO BACK TO YOUR TRUCK?

13 A YES, WE DID.

14 Q AND DID HE PUT THE WIRES BACK ON?

15 A YES, HE DID.

16 Q WHAT DID YOU DO ONCE THE WIRES WERE BACK ON?

17 A I WENT TO MY CURRENT BOYFRIEND'S HOUSE AT THE TIME,

18 CALLED MY HOME AND SPOKE WITH MY ROOMMATE AT THE TIME,

19 ANGIE, LET HER KNOW WHAT WAS GOING ON AND ASKED HER TO MEET

20 ME, TO FOLLOW ME HOME.

21 Q DID SHE COME OUT AND MEET YOU?

22 A YES, SIR. SHE MET ME ON PINEY GROVE ROAD.

23 Q WHAT DID YOU DO ONCE SHE ARRIVED?

24 A WE WENT BACK TO MY HOUSE. I PARKED MY TRUCK IN THE

25 BACKYARD. I WENT INSIDE. I BELIEVE SHE WAS OUT ON THE

1 FRONT PORCH.

2 Q WHAT DID YOU DO WHEN YOU WENT INSIDE?

3 A I -- FIRST, I GOT A PHONE CALL FROM THERESA FROM THE
4 LAKE THAT SAID GARY HAD LEFT THERE, HEADING TOWARDS MY
5 HOUSE AND THEN I GOT ANOTHER CALL FROM DOUG FORD FROM HIS
6 TRUCK PHONE SAYING THAT HE -- THAT HE WAS FOLLOWING GARY,
7 HE COULDN'T STOP HIM, THAT HE HAD JUST ROUNDED THE CORNER
8 INTO MY NEIGHBORHOOD, THAT I NEEDED TO GET OUT OF THE
9 HOUSE.

10 Q DID YOU LEAVE THE HOUSE?

11 A NO. I WENT INTO MY BEDROOM AND LOCKED THE DOOR AND
12 SHUT THE LIGHTS OFF.

13 Q WHAT HAPPENED NEXT?

14 A GARY PULLED UP OUT FRONT. THERE WAS A CONVERSATION
15 BETWEEN HIM AND ANGIE, A LOUD CONVERSATION. THE NEXT THING
16 I HEARD WAS A COMMOTION AT THE FRONT DOOR, A BANGING---

17 Q WHAT DID YOU HEAR?

18 A ---THINGS THAT---

19 Q HOW WOULD YOU DESCRIBE IT?

20 A A BANGING NOISE, A FIGHTING SOUND. THINGS HITTING
21 THE BRICK WALL. THE SOUND OF SOMEONE HITTING THE FLOOR.

22 Q OKAY---

23 A IT WAS A LOT OF NOISE.

24 Q WHAT HAPPENED AFTER THOSE NOISES?

25 A HE BUSTED INTO MY ROOM DOOR. I DON'T KNOW IF HE

1 PUNCHED IT OR KICKED IT, BUT WITH ONE HIT, HE KNOCKED MY
2 BEDROOM DOOR OPEN.

3 Q WHAT DID YOU DO THEN?

4 A I WAS SITTING ON THE BED IN THE DOOR. HE GRABBED ME
5 BY THE ARM BECAUSE WHEN THE HALL LIGHT WAS ON AND THE DOOR
6 OPENED, HE COULD SEE ME. HE GRABBED ME BY THE ARM AND
7 PULLED ME OUT OF MY ROOM.

8 Q WHERE DID YOU GO?

9 A WE WENT OUTSIDE AND HE WANTED ME TO LEAVE WITH HIM.
10 I TOLD HIM I WOULDN'T. HE SAID HE WAS GOING TO TAKE MY
11 TRUCK IF I DIDN'T GO WITH HIM. HE HAD A KEY, A SPARE KEY
12 TO MY TRUCK.

13 Q SO WHAT DID YOU DO?

14 A I LEFT WITH HIM. I DROVE.

15 Q WHERE DID YOU GO?

16 A I DROVE VERY SLOWLY BECAUSE I KNEW THE POLICE WAS --
17 THE POLICE WERE ON THEIR WAY AND I TURNED RIGHT OFF OF
18 BUCKEYE ONTO WESTGATE DRIVE. AT THE END OF WESTGATE, WHEN
19 I SAW THE BLUE LIGHTS COMING UP BEHIND ME, I PUT IT IN PARK
20 AND JUMPED OUT.

21 Q DO YOU REMEMBER WHO WAS THERE?

22 A DEPUTY GRASSANO.

23 Q DIANNE, WHEN WAS THE FIRST TIME YOU LEARNED THAT URAI
24 JACKSON HAD BEEN MURDERED?

25 A TUESDAY FOLLOWING THAT LABOR DAY WEEKEND OR THAT

1 HOLIDAY WEEKEND.

2 Q THE SAME DAY THAT HER BODY WAS FOUND?

3 A RIGHT, THE SAME DAY.

4 Q DID GARY TERRY EVER INDICATE TO YOU WHETHER HE KNEW
5 ANYTHING ABOUT THE EVIDENCE FROM THAT CASE?

6 A YES, HE DID. ABOUT THREE OR FOUR DAYS LATER, HE TOLD
7 ME THAT A FRIEND OF HIS, KEITH STOKES, HAD GONE TO THE
8 CRIME SCENE AND TOLD HIM THAT THE PHONE BOX HAD BEEN MESSED
9 WITH, THAT THE GLASS ON THE CARPORT WAS BROKEN OUT, BUT IT
10 LOOKED LIKE IT WAS BROKEN FROM THE INSIDE OUT.

11 Q AND THIS WAS THREE DAYS AFTERWARDS?

12 A RIGHT.

13 Q DO YOU KNOW WHETHER THERE WAS A MEMORIAL SERVICE FOR
14 URAI JACKSON?

15 A YES, THERE WAS.

16 Q DID YOU ATTEND THAT MEMORIAL SERVICE?

17 A YES, I DID.

18 Q DID YOU GO ALONE?

19 A NO. GARY WENT WITH ME.

20 Q DO YOU REMEMBER WHO WAS THERE? DO YOU REMEMBER
21 ANYONE THAT WAS THERE?

22 A SAMANTHA WAS THERE. JONATHAN WAS THERE. HER FATHER
23 WAS THERE. RODNEY -- HER -- I BELIEVE, EX-HUSBAND AT THE
24 TIME WAS THERE, HER GRANDMOTHER AND GRANDFATHER WERE THERE.

25 Q WHAT DID YOU DO WHEN YOU GOT IN FROM THE MEMORIAL

1 SERVICE?

2 A WE SPOKE WITH -- I SPOKE TO JONATHAN AND RODNEY.

3 Q WHERE WAS GARY TERRY WHEN YOU WERE TALKING TO THEM?

4 A BESIDE ME.

5 Q WHERE DID YOU GO AFTER THAT?

6 A WE WENT INTO THE ROOM WHERE THE CASKET WAS AND SPOKE
7 WITH THE -- SAMANTHA'S GRANDMOTHER AND GRANDFATHER.

8 Q WERE YOU ALONE AT THAT TIME?

9 A NO, GARY WAS WITH ME.

10 Q BEG THE COURT'S INDULGENCE, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. CHASE: DIANNE, CAN YOU IDENTIFY THIS?

13 THE WITNESS: THAT'S MY SIGNATURE, MY NAME AND I
14 SIGNED GARY'S NAME.

15 Q YOU SIGNED FOR HIM?

16 A YES, I DID.

17 Q DO YOU KNOW WHAT THIS IS?

18 A THAT IS THE SIGN-IN BOOK FOR RELATIVES AND FRIENDS
19 THAT VISIT THE FUNERAL HOME.

20 Q AND IS THAT YOUR SIGNATURE?

21 A YES, IT IS.

22 MR. CHASE: YOUR HONOR, WE WOULD MOVE THIS INTO
23 EVIDENCE AT THIS TIME.

24 MS. FULLWOOD: NO OBJECTION.

25 THE COURT: WITHOUT OBJECTION, IT WILL BE

1 ADMITTED AS STATE'S NUMBER 45.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER
3 45, CONDOLENCE BOOK, ENTERED INTO EVIDENCE AT THIS TIME
4 WITHOUT OBJECTION.)

5 MR. CHASE: THANK YOU, DIANNE. ANSWER ANY
6 QUESTIONS THEY MAY HAVE.

7 THE COURT: CROSS-EXAMINATION, MS. FULLWOOD.

8 MS. FULLWOOD: THANK YOU, YOUR HONOR.

9 CROSS-EXAMINATION

10 BY MS. FULLWOOD:

11 Q GOOD MORNING, MS. SMITH.

12 A GOOD MORNING.

13 Q MS. SMITH, YOU MET GARY IN 1987?

14 A I BELIEVE SO, YES.

15 Q OKAY. AND YOU STOPPED SEEING HIM, WHAT, ROUGHLY JULY
16 '94?

17 A YES. JULY 27TH WAS THE LAST -- WHEN I MOVED OUT AND
18 MOVED HOME. I KEPT PHONE CONTACT WITH HIM UP UNTIL
19 FEBRUARY OF '95.

20 Q OKAY. OKAY. SO FROM -- AT SOME POINT IN 1987, UP TO
21 JULY, '94, YOU WERE VERY CLOSE FRIENDS WITH HIM AND THEN
22 FROM JULY, '94 TO FEBRUARY OF '95 YOU HAD SPORADIC TYPE OF
23 CONTENT---

24 A RIGHT.

25 Q ---CONTACT?

- 1 A RIGHT.
- 2 Q OKAY. SO YOU'VE KNOWN -- YOU KNEW HIM FOR A PERIOD
- 3 OF ABOUT SEVEN YEARS?
- 4 A AT THAT TIME, YES.
- 5 Q OKAY. DID YOU TWO SPENT ABOUT A YEAR JUST DATING
- 6 EACH OTHER SORT OF CASUALLY?
- 7 A YES, MA'AM.
- 8 Q '87 AND '88?
- 9 A UP UNTIL HE WENT TO JAIL, YES, MA'AM.
- 10 Q AND THAT WAS IN 1988?
- 11 A I BELIEVE SO.
- 12 Q OKAY. AND THEN YOU MAINTAINED CONTACT WITH HIM WHILE
- 13 HE WAS IN PRISON?
- 14 A UP UNTIL HE WAS IN AIKEN. WHEN HE WAS IN AIKEN, I
- 15 QUIT HAVING CONTACT -- WHEN HE WAS IN AIKEN, I QUIT HAVING
- 16 CONTACT WITH HIM.
- 17 Q OKAY. SO FOR ABOUT -- WHAT PERIOD OF TIME DID YOU
- 18 HAVE CONTACT?
- 19 A UP UNTIL, I BELIEVE, LATE '88.
- 20 Q LATE '88. AND HE WROTE YOU LETTERS?
- 21 A YES, HE DID.
- 22 Q DID YOU WRITE HIM LETTERS ALSO?
- 23 A YES, I DID.
- 24 Q ALL RIGHT. AND HE CALLED YOU?
- 25 A YES.

1 Q NATURALLY, YOU COULD NOT CALL HIM?

2 A NO.

3 Q AND YOU VISITED HIM?

4 A ONCE.

5 Q AND ONCE YOU VISITED HIM.

6 ALL RIGHT. NOW, WHEN DID YOU RESUME CONTACT WITH
7 HIM?

8 A HE CONTACTED ME WHEN HE GOT OUT OF JAIL, I BELIEVE,
9 IN '90.

10 Q IN '90?

11 A EITHER '90 OR THE BEGINNING OF '91.

12 Q OKAY. AND DID YOU START LIVING WITH HIM AT THAT
13 TIME?

14 A NOT IMMEDIATELY, NO.

15 Q NOT IMMEDIATELY.

16 NOW, YOU LEARNED WHILE HE WAS IN JAIL THAT HE WAS
17 MARRIED, IS THAT CORRECT?

18 A YES.

19 Q OKAY. AND YOU KNEW THAT IN '91?

20 A YES.

21 Q WHEN DID YOU START LIVING WITH HIM?

22 A HE STARTED LIVING WITH ME IN '92, I BELIEVE.

23 Q OKAY. SO YOU---

24 A THE MIDDLE OF '92.

25 Q EXCUSE ME?

- 1 A PROBABLY THE MIDDLE OF '92.
- 2 Q SO YOU TWO LIVED TOGETHER FROM MID '92 UNTO MID '94?
- 3 A YES, MA'AM.
- 4 Q ALL RIGHT. DURING THE TIME YOU LIVED TOGETHER, WAS
- 5 THAT ALSO THE PERIOD OF TIME THAT DOUG FORD WAS FRIENDLY
- 6 WITH GARY?
- 7 A AT TIMES.
- 8 Q AT TIMES?
- 9 A YES.
- 10 Q WAS HE THE SORT OF PERSON WHO KIND OF DRIFTED IN AND
- 11 OUT OF HIS LIFE?
- 12 A HE WAS FRIENDS WITH GARY WHEN I FIRST MADE CONTACT
- 13 WITH GARY AGAIN---
- 14 Q UH-HUH.
- 15 A ---AND SHORTLY AFTER, THEY QUIT HAVING A LOT OF
- 16 CONTACT AND THEN NEAR THE END OF OUR RELATIONSHIP, THEY HAD
- 17 CONTACT AGAIN.
- 18 Q I SEE. OKAY. IS IT -- SO DOUG FORD WAS THERE WHEN
- 19 YOU SHOT GARY IN 1991?
- 20 A HE WASN'T THERE WHEN I SHOT HIM. HE WAS THERE PRIOR
- 21 TO AND AFTER -- HE WAS THERE BEFORE AND AFTER I SHOT HIM.
- 22 Q AND HE ASKED YOU TO SHOOT -- GARY ASKED YOU TO SHOOT
- 23 HIM BECAUSE HE DIDN'T WANT TO HAVE TO GO TO FAMILY COURT?
- 24 A RIGHT.
- 25 Q OKAY. AND YOU SHOT HIM IN THE LEG?

- 1 A YES, I DID.
- 2 Q WOULD THAT BE IN THE THIGH PART OF THE LEG?
- 3 A YES.
- 4 Q OKAY. DO YOU HAVE ANY TRAINING IN FIREARMS?
- 5 A NO.
- 6 Q HAD YOU EVER SHOT A GUN BEFORE THAT?
- 7 A YES.
- 8 Q YEAH. DO YOU CONSIDER YOURSELF A MARKSMAN?
- 9 A NO.
- 10 Q ALL RIGHT. NOW, THESE -- THESE TRAILERS YOU WERE
- 11 TALKING ABOUT, ACTUALLY WHEN YOU LIVED AT THE LAKE WITH
- 12 GARY, YOU TWO HAD LIVED IN A STOLEN TRAILER?
- 13 A I FOUND AFTER I MOVED THAT IT WAS STOLEN.
- 14 Q YOU DIDN'T HAVE ANY IDEA BEFOREHAND?
- 15 A NO, MA'AM.
- 16 Q OKAY. DID YOU EVER REPORT TO THE POLICE THE FACT
- 17 THAT YOU KNEW THAT THIS THEFT WAS GOING ON?
- 18 A NO, MA'AM.
- 19 Q ALL RIGHT. ALL RIGHT. WHAT ABOUT THE CRACK, DID YOU
- 20 EVER REPORT THAT TO THE POLICE?
- 21 A NO, MA'AM.
- 22 Q BUT YOU DID GO WITH HIM TO BUY THE CRACK?
- 23 A ONCE.
- 24 Q JUST ONCE?
- 25 A YES, MA'AM.

1 Q FOR ALL THESE OTHER TIMES THAT HE WAS DOING CRACK,
2 HOW DID YOU KNOW THAT HE WAS DOING IT? DID YOU SEE HIM
3 DOING IT?

4 A BECAUSE HE TOLD ME.

5 Q HE TOLD YOU HE WAS DOING IT.

6 ALL RIGHT. YOU HAD A LONG TERM RELATIONSHIP WITH
7 GARY?

8 A YES.

9 Q ALL RIGHT. SO, I SUPPOSE AT TIMES HE WAS NICE TO
10 YOU?

11 A YES.

12 Q ALL RIGHT. AND ALSO AT TIMES, YOU SAW REALLY
13 IRRATIONAL BEHAVIOR FROM HIM, IS THAT CORRECT?

14 A WHEN HE WAS ANGRY.

15 Q HE GOT IRRATIONAL?

16 A YES.

17 Q ALL RIGHT. DID THAT ANGER OR THAT IRRATIONAL
18 BEHAVIOR NORMALLY COME OUT WHEN HE WAS INTOXICATED?

19 A GARY DIDN'T DRINK OFTEN WHEN HE WAS AROUND ME. VERY
20 RARELY DID I SEE A DRINK IN GARY'S HAND.

21 Q SO IT COULD JUST COME OUT AT ANY TIME?

22 A USUALLY WHEN I WOULD NOT DO WHAT HE WANTED.

23 Q OKAY. I BELIEVE HE WAS QUITE UPSET AFTER YOU BROKE
24 IT OFF WITH HIM?

25 A YES, MA'AM.

1 Q AND HE THREATENED TO HARM HIMSELF IN YOUR PRESENCE?

2 A YES.

3 Q THANK YOU, MA'AM. NO FURTHER QUESTIONS.

4 MR. CHASE: NOTHING FURTHER FROM THE STATE, YOUR
5 HONOR. WE ASK THAT THIS WITNESS BE EXCUSED.

6 THE COURT: WITHOUT OBJECTION---

7 MS. FULLWOOD: YES, SIR.

8 THE COURT: ---MS. SMITH, YOU ARE EXCUSED AND MAY
9 STEP DOWN.

10 (WHEREUPON, THE WITNESS WAS
11 EXCUSED AT THIS TIME.)

12 MR. HUMPHRIES: MAY WE HAVE A BRIEF SIDE BAR?

13 THE COURT: YES, SIR

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

16 THE COURT: NEXT WITNESS.

17 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

18 THE STATE CALLS TAMMY GRIFFIN TO THE STAND.

19 TAMATHA A. GRIFFIN,

20 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
22 PLEASE.

23 THE WITNESS: TAMATHA ANN GRIFFIN.

24 DIRECT EXAMINATION

25 BY MR. HUMPHRIES:

- 1 Q CAN I CALL YOU TAMMY?
- 2 A RIGHT.
- 3 Q TAMMY, YOU NEED TO KEEP YOUR VOICE UP, OKAY?
- 4 A OKAY.
- 5 Q TAMMY, HOW OLD ARE YOU?
- 6 A I'M TWENTY-NINE.
- 7 Q IS THAT OKAY FOR ME TO ASK YOU THAT?
- 8 A SURE.
- 9 Q TAMMY, DO YOU KNOW GARY DUBOSE TERRY?
- 10 A YES, I WAS MARRIED TO HIM.
- 11 Q HOW LONG WERE YOU MARRIED TO MR. TERRY?
- 12 A HOW LONG?
- 13 Q UH-HUH.
- 14 A WE WERE MARRIED FOR -- MARRIED IN MAY OF '85 AND THEN
- 15 WE SPLIT UP IN DECEMBER OF '85 AND I FILED FOR DIVORCE IN
- 16 SEPTEMBER OF '86.
- 17 Q TELL THE JURY HOW YOU CAME TO MEET MR. TERRY.
- 18 A I MET HIM AT A VIDEO ARCADE ROOM OFF OF BROAD RIVER
- 19 ROAD.
- 20 Q HOW OLD WERE YOU WHEN YOU MET HIM?
- 21 A I WAS -- I WAS FIFTEEN.
- 22 Q DID YOU ULTIMATELY DEVELOP A RELATIONSHIP WITH MR.
- 23 TERRY?
- 24 A YES, I DID.
- 25 Q WHAT TYPE OF RELATIONSHIP?

1 A WE DATED. I GOT PREGNANT AND -- WELL, I GOT PREGNANT
2 IN MARCH OF '84 AND I HAD A SON IN DECEMBER OF '84.

3 Q AND YOU WERE HOW OLD THEN?

4 A I HAD TURNED FIFTEEN.

5 Q DO YOU KNOW HOW OLD GARY WAS AT THAT TIME?

6 A HE WAS A YEAR OLDER THAN I AM. YES.

7 Q UH---

8 A EXCUSE ME, I WAS SIXTEEN.

9 Q OKAY.

10 A I HAD TURNED SIXTEEN.

11 Q OKAY. NOW, AFTER YOU BORE HIS CHILD, DID YOU GET
12 MARRIED? DID YOU GET MARRIED BEFORE OR AFTER THE DELIVERY?

13 A AFTER.

14 Q AND DID Y'ALL LIVE TOGETHER?

15 A WE LIVED WITH HIS BROTHER BILLY AND WE LIVED WITH A
16 GIRL NAME PATTY.

17 Q WHO WAS PATTY?

18 A UH -- I DON'T KNOW HER LAST NAME.

19 Q WHAT RELATIONSHIP, WHAT RELATION WAS SHE TO THE OTHER
20 TWO, BILLY AND GARY?

21 A SHE IS NOW BILLY'S WIFE.

22 Q OKAY.

23 A SHE WAS JUST A FRIEND OF OURS WHEN WE WERE YOUNGER.

24 Q OKAY. HOW LONG DID YOU LIVE THERE WITH BILLY?

25 A I DON'T REMEMBER HOW LONG. OUR TRAILER BURNED UP AND

1 THEN I MOVED BACK IN WITH MY MOM AND THEN THAT'S WHEN WE
2 MOVED IN WITH PATTY.

3 Q OKAY. YOU MOVED BACK IN WITH YOUR MOM. DID GARY
4 TERRY MOVE IN WITH YOU WITH YOUR MOM?

5 A NO.

6 Q DO YOU KNOW WHERE HE WAS THEN? YOU KNOW WHERE HE WAS
7 THEN?

8 A UH -- NO, I DON'T REMEMBER WHERE HE WAS.

9 Q BY THIS TIME, YOU HAD A SON?

10 A YES.

11 Q DID THERE COME A TIME WHEN YOU LIVED TOGETHER AGAIN?
12 YOU, GARY TERRY AND YOUR SON?

13 A NO, MY SON HAS NEVER LIVED WITH HIS FATHER.

14 Q DID YOU LIVE WITH GARY FOR A TIME AFTER THAT?

15 A AFTER?

16 Q AFTER YOU MOVED BACK IN WITH YOUR MOTHER?

17 A YEAH, WE MOVED IN WITH PATTY.

18 Q HOW LONG WERE YOU THERE?

19 A I DON'T REMEMBER HOW LONG IT WAS. SEVERAL MONTHS.

20 Q DID YOU STAY IN ONE HOUSE WITH GARY TERRY OR ANY
21 NUMBER OF HOUSES WITH GARY TERRY FOR ANY SIGNIFICANT AMOUNT
22 OF TIME?

23 A NO.

24 Q DURING THE TIME THAT GARY TERRY AND YOU WERE MARRIED,
25 HOW WAS HE EMPLOYED?

1 A HE WORKED FOR A SWEEPER COMPANY AND OTHER THAN THAT,
2 I THINK HE HELPED HIS FATHER.

3 Q DID HE PROVIDE ADEQUATE SUPPORT TO YOU AND YOUR CHILD
4 WHILE Y'ALL WERE MARRIED?

5 A NO, HE HAS NEVER REALLY PROVIDED VERY WELL FOR MY
6 SON.

7 Q AND AFTER YOU WERE DIVORCED?

8 A NO. HE HAS PAID SOME, BUT, YOU KNOW, NOT VERY MUCH.

9 Q WAS THAT BY COURT ORDER?

10 A RIGHT.

11 Q TELL THE JURY WHAT WERE THE GROUNDS OF THE DIVORCE?

12 A PHYSICAL CRUELTY.

13 Q AND, MS. GRIFFIN, WAS THE DIVORCE ULTIMATELY GRANTED
14 BASED ON THOSE GROUNDS, PHYSICAL CRUELTY?

15 A YES, IT WAS.

16 Q TELL THE JURY, IF YOU WILL, SOME OF THE INSTANCES OF
17 PHYSICAL VIOLENCE THAT SUPPORTED THAT GROUND OF PHYSICAL
18 CRUELTY, IF YOU WILL?

19 A HE CAME HOME WHEN WE WERE LIVING WITH PATTY IN
20 DECEMBER OF '85. GARY TOLD ME THAT HE HAD STABBED A
21 PROSTITUTE IN THE NECK AND HE HAD TO LEAVE. SO HE LEFT AND
22 WENT TO FLORIDA. BUT PRIOR TO THIS, HE WOULD GRAB A HOLD
23 OF MY ARM. HE WANTED TO TAKE MY CAR ONE NIGHT AND I DIDN'T
24 WANT HIM TO TAKE IT. SO I HAD THE KEYS IN MY HAND AND HE
25 WAS TWISTING MY ARM AND FINALLY HE GOT THE KEYS AND HE SAID

1 THAT HE WAS GOING TO TAKE THE CAR AND I SAID, WELL, YOU ARE
2 NOT GOING TO TAKE THE CAR WITHOUT ME IN IT. WE WERE GOING
3 DOWN A DIRT ROAD AND HE OPENED MY DOOR AND TRIED TO PUSH ME
4 OUT OF THE CAR.

5 HE'S BROKEN THE WINDSHIELD OUT OF MY STEPFATHER'S
6 VAN. MY STEPFATHER TOOK ME TO HIS MOTHER'S HOUSE AND I GOT
7 MY CAR THAT WAS THERE AND WHILE I WAS TRYING TO LEAVE, HE
8 BUSTED THE WINDSHIELD OUT OF MY CAR AND THE GLASS HIT MY
9 FACE AND CUT MY FACE.

10 Q OTHER THAN THAT, HOW WAS YOUR RELATIONSHIP WITH GARY
11 TERRY?

12 A I REMEMBER THE BAD TIMES. I DON'T -- I DON'T
13 REMEMBER THE GOOD TIMES.

14 Q ARE YOU TELLING THIS JURY THAT THERE WERE NO GOOD
15 TIMES?

16 A THERE WERE GOOD TIMES IN THE BEGINNING.

17 Q IS IT JUST HARD TO RECALL THE GOOD TIMES BECAUSE OF
18 THE BAD TIMES?

19 A YES, IT IS.

20 Q TAMMY, I'M NOT QUITE SURE HOW TO ASK YOU THIS. WAS
21 GARY TERRY EVER VERY FORCEFUL WITH YOU?

22 A AS IN?

23 Q WAS HE VERY FORCEFUL SEXUALLY WITH YOU?

24 A YES. ONE NIGHT WHEN WE WERE LIVING AT HIS MOM'S --
25 WHEN WE WERE STAYING AT HIS MOM'S, ONE NIGHT AND I DON'T

1 KNOW WHAT STARTED IT, PRIOR TO, BUT HE HAD RIPPED MY
2 CLOTHES OFF. ACTUALLY, I WOULD SAY THAT HE RAPED ME.

3 Q BUT YOU WERE HIS WIFE AT THE TIME?

4 A RIGHT.

5 Q TAMMY, DID YOU DO ANYTHING AS A RESULT OF THAT?

6 A NO, I DIDN'T. THERE WAS NO LAWS THEN TO SAY THAT A
7 WIFE COULD BE RAPED BY HER HUSBAND.

8 Q IN YOUR MIND, THAT'S WHAT HAPPENED?

9 A YES.

10 Q WAS IT YOUR HEARING REGARDING THE CHILD SUPPORT OF
11 YOUR SON THAT GARY TERRY MISSED BY HAVING DIANNE SHOOT HIM
12 IN THE LEG?

13 A YES. BUT HIS WIFE WAS THERE AT COURT AND SHE SAID
14 THAT HE HAD GOTTEN SHOT IN THE LEG WHILE TRYING TO
15 REPOSSESS A CAR.

16 Q NOW, YOU ARE NOT TALKING ABOUT DIANNE. YOU ARE
17 TALKING ABOUT SOMEBODY ELSE, AREN'T YOU?

18 A LOU ANN.

19 Q TAMMY, I APPRECIATE IT. THANK YOU VERY MUCH.

20 THE COURT: MS. FULLWOOD.

21 MS. FULLWOOD: THANK YOU.

22 CROSS-EXAMINATION

23 BY MS. FULLWOOD:

24 Q GOOD MORNING, MS. GRIFFIN?

25 A GOOD MORNING.

1 Q MS. GRIFFIN, IS IT FAIR TO SAY THAT GARY CHANGED OVER
2 THE TIME THAT YOU KNEW HIM?

3 A YES.

4 Q OKAY. NOW, YOU WERE FIFTEEN WHEN YOU MET GARY AND HE
5 WAS SIXTEEN, IS THAT RIGHT?

6 A YES.

7 Q AND YOU WERE THOSE -- BOTH THOSE SAME AGES WHEN YOU
8 HAD YOUR CHILD?

9 A CORRECT.

10 Q AND HIS NAME IS JEFFREY, RIGHT?

11 A RIGHT.

12 Q AND THEN, WHAT, YOU WERE SIXTEEN AND HE WAS SEVENTEEN
13 WHEN THE TWO OF YOU MARRIED?

14 A YES.

15 Q ALL RIGHT. MS. GRIFFIN, DO YOU FEEL THAT YOU WERE
16 MATURE ENOUGH TO BE A MOTHER WHEN YOU WERE
17 FIFTEEN-YEARS-OLD?

18 A NO, I DIDN'T THINK I WAS, BUT I DID.

19 Q YOU'VE DONE YOUR JOB, RIGHT?

20 A I HAVE -- YES, I HAVE.

21 Q BUT THAT WAS AWFULLY YOUNG?

22 A YES, IT WAS.

23 Q OKAY. AND SIXTEEN IS AWFULLY YOUNG TO BE A FATHER,
24 ISN'T THAT RIGHT?

25 A YES.

1 Q AND WERE EITHER OF YOU MATURE ENOUGH FOR MARRIAGE
2 WHEN YOU GOT MARRIED?

3 A BACK THEN, WE THOUGHT WE WERE.

4 Q OF COURSE. BUT LOOKING BACK, DO YOU THINK THAT YOU
5 WERE MATURE ENOUGH NOW?

6 A NO.

7 Q DO YOU WANT YOUR SON TO GET MARRIED AT THE AGE YOU
8 DID?

9 A NO, I DON'T.

10 Q OKAY. WHILE YOU WERE WITH GARY, DO YOU REMEMBER
11 GOING TO SEE HIM IN FLORIDA?

12 A YES, I DID.

13 Q OKAY. AND WHY DID YOU GO DOWN THERE TO SEE HIM?

14 A HE HAD -- I GUESS HE HAD FALLEN OUT OF A TREE AND
15 HURT HIS BACK---

16 Q UH-HUH.

17 A ---AND I WENT WITH HIS PARENTS DOWN THERE TO SEE HOW
18 HE WAS DOING.

19 Q DO YOU KNOW HOW LONG HE WAS IN THE HOSPITAL DOWN
20 THERE?

21 A NO, I DON'T.

22 Q YOU REMEMBER SEEING HIM HOOKED UP TO MACHINES AND
23 ALL?

24 A YES.

25 Q OKAY. AND LET ME SHOW YOU THIS PICTURE, MS. GRIFFIN,

1 AND LET ME SEE IF YOU CAN TELL THE JURY WHAT IT'S A PICTURE
2 OF?

3 A GARY AND MYSELF.

4 Q WOULD THAT BE THE TIME YOU WENT TO SEE HIM IN
5 FLORIDA?

6 A RIGHT.

7 MS. FULLWOOD: YOUR HONOR, I MOVE TO INTRODUCE
8 THIS AS A DEFENSE EXHIBIT.

9 MR. HUMPHRIES: WE WOULD JUST LIKE FOR HER TO
10 SHARE IT WITH US.

11 THE COURT: ALL RIGHT.

12 (WHEREUPON, THE PHOTOGRAPH IS
13 SHOWN TO MR. HUMPHRIES AT THIS TIME.)

14 MR. HUMPHRIES: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION, IT WILL BE
16 ADMITTED AS DEFENDANT'S NUMBER FOUR.

17 (WHEREUPON, DEFENDANT'S EXHIBIT
18 NUMBER FOUR, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
19 WITHOUT OBJECTION.)

20 MS. FULLWOOD: NOW, YOU AND GARY REALLY NEVER
21 LIVED TOGETHER LIKE A COUPLE NORMALLY DOES?

22 THE WITNESS: NO, NEVER BY OURSELVES.

23 Q THAT'S RIGHT. YOU ALWAYS LIVED WITH RELATIVES?

24 A RIGHT.

25 Q BUT YOU DID LIVE TOGETHER AS HUSBAND AND WIFE?

- 1 A RIGHT.
- 2 Q IN OTHER PEOPLES' HOUSES?
- 3 A RIGHT.
- 4 Q OKAY. NOW, JEFFREY'S TURNED OUT PRETTY MUCH OKAY
- 5 THANKS TO YOU, RIGHT?
- 6 A HE HAS SOME PROBLEMS IN SCHOOL, BUT, YES, MA'AM.
- 7 Q BUT HE'S A PRETTY GOOD KID?
- 8 A YES, HE IS.
- 9 Q I KNOW YOU'RE PROUD OF HIM?
- 10 A YES, MA'AM.
- 11 Q BUT YOU DID MENTION HE'S HAD SOME PROBLEMS WITH
- 12 SCHOOL. COULD YOU TELL THE JURY WHAT THOSE PROBLEMS HAVE
- 13 BEEN?
- 14 A UH -- MOSTLY DISRUPTING CLASS, NOT ABLE TO KEEP
- 15 QUIET, THINGS LIKE THAT.
- 16 Q OKAY. AND YOU'VE TAKEN HIM FOR AN EVALUATION BECAUSE
- 17 OF THOSE PROBLEMS?
- 18 A YES, I HAVE.
- 19 Q HAVE YOU GOTTEN SOME KIND OF DIAGNOSIS ABOUT HIS
- 20 PROBLEMS?
- 21 A I TOOK HIM TO WILLIAM S. HALL AND HE WAS EVALUATED AS
- 22 BEING A.D.H.D.
- 23 Q OKAY. AND---
- 24 A ATTENTION DEFICIT HYPERACTIVITY DISORDER.
- 25 Q ALL RIGHT. THAT'S RIGHT. AND IS HE ON MEDICATION

1 NOW FOR IT?

2 A NO, HE IS NOT THIS YEAR. NO.

3 Q OKAY. WAS HE ON MEDICATION---

4 A THE LAST---

5 Q ---IN THE PAST?

6 A YES. HE WAS ON MEDICATION FOR SIX YEARS.

7 Q SO APPARENTLY YOU'RE GETTING HIM HELP?

8 A YES.

9 Q HAS HELPED SOLVE THE PROBLEM?

10 A HE IS STILL HAVING PROBLEMS IN SCHOOL AS FAR AS
11 DISRUPTING CLASS.

12 Q UH-HUH. SO YOU ARE STILL WORKING ON IT?

13 A YES. CONTINUOUSLY WORKING.

14 Q OKAY. THANK YOU, MS. GRIFFIN.

15 A UH-HUH.

16 MR. HUMPHRIES: NO, SIR. ASK THAT THIS WITNESS
17 BE EXCUSED. THANK YOU VERY MUCH.

18 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.
19 APPRECIATE YOU COMING, MS. GRIFFIN.

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

22 MR. HUMPHRIES: THE STATE CALLS INVESTIGATOR
23 FRIER TO THE STAND.

24 THE COURT: TELL YOU, BEFORE WE ACTUALLY HAVE
25 INVESTIGATOR FRIER TO TESTIFY, LET'S GO AHEAD AND TAKE A

1 SHORT BREAK.

2 LADIES AND GENTLEMEN, WE DON'T KNOW EXACTLY HOW
3 OUR TRIAL IS GOING TO PROGRESS RIGHT NOW BECAUSE I
4 UNDERSTAND THAT YOU HAVE A PARADE HERE IN LEXINGTON THAT'S
5 SUPPOSED TO OCCUR THIS MORNING AROUND 10 O'CLOCK AND WE
6 DON'T KNOW WHAT THE NOISE FACTOR WILL BE HERE IN THE
7 COURTROOM AS IT WILL BE HERE ON MAIN STREET.

8 WE ARE GOING TO TAKE A SHORT BREAK. IF THE
9 FESTIVITIES START DURING THAT PERIOD OF TIME AND I
10 DETERMINE THAT WE CAN CONTINUE, WE'LL CERTAINLY DO SO, BUT
11 IF THE NOISE IS TOO GREAT, THEN I'M GOING TO LEAVE YOU IN
12 THE JURY ROOM FOR A PERIOD OF TIME UNTIL THAT NOISE
13 SUBSIDES AND IT SHOULDN'T BE A LONG PERIOD OF TIME; BUT
14 WHILE YOU ARE IN THE JURY ROOM, PLEASE DO NOT DISCUSS THIS
15 CASE AMONG YOURSELVES. WE'LL GET YOU BACK IN JUST A FEW
16 MINUTES.

17 EVERYONE ELSE REMAIN SEATED EXCEPT FOR THE
18 LAWYERS WHILE THE JURY EXITS THE COURTROOM.

19 (JURY OUT.)

20 THE COURT: ALL RIGHT.

21 MAYBE SECURITY COULD GIVE ME AN IDEA AS TO WHEN
22 THIS PARADE IS SUPPOSED TO START.

23 THE OFFICER: IT WAS MY UNDERSTANDING 10 O'CLOCK,
24 YOUR HONOR, BUT THE LAST TIME I CHECKED OUT THE WINDOW, IT
25 HAS NOT STARTED.

1 THE COURT: WELL, IF IT'S LIKE THE GREAT PEACH
2 TREE FESTIVAL PARADE, THAT SOMETIMES WILL RUN THIRTY OR
3 FORTY MINUTES LATE. SO WE MAY RUN INTO THAT, BUT WE'LL
4 JUST SEE.

5 ALL RIGHT. WE'LL STAND AT EASE FOR JUST A FEW
6 MINUTES.

7 (RECESS.)

8 THE BAILIFF: ALL RISE.

9 THE COURT: PLEASE TAKE YOUR SEATS.

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

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

13 THE COURT: I GOT A NOTE FROM THE JURY. SOME OF
14 THE JURORS ARE HAVING DIFFICULTIES HEARING SOME OF THE
15 WITNESSES AND THE ATTORNEYS. WOULD YOU PLEASE ASK THEM TO
16 SPEAK A LITTLE LOUDER?

17 YOU NOTICE THEY DIDN'T SAY ANYTHING ABOUT THE
18 JUDGE.

19 MR. HUMPHRIES: THEY DIDN'T SAY NOTHING ABOUT ME
20 EITHER.

21 MR. STONE: THEY DIDN'T SAY ANYTHING ABOUT ME
22 EITHER.

23 MR. HUMPHRIES: IT'S TOM. IT'S TOM.

24 MR. STONE: IT'S TOM.

25 (WHEREUPON, THE BENCH CONFERENCE

1 WAS CONCLUDED AT THIS TIME.)

2 (WHEREUPON, COURT'S EXHIBIT NUMBER
3 15, JURY NOTE, MARKED FOR THE RECORD AT THIS TIME.)

4 THE COURT: ALL RIGHT. TO ANY OF THE WITNESSES
5 THAT ARE HERE IN THE COURTROOM, I HAVE RECEIVED A NOTE FROM
6 THE JURY THAT THEY WANT YOU TO SPEAK UP.

7 SO I WANT YOU TO GO AHEAD AND SPEAK OUT.
8 EVERYBODY THAT'S SO SOFT-SPOKEN, I DON'T UNDERSTAND THAT.
9 SO GO AHEAD AND SPEAK OUT. I GUARANTEE YOU IF I GOT YOU
10 OUT OF THE COURTROOM THAT WE WOULDN'T NEED ANY
11 AMPLIFICATION. SO SPEAK UP SO THAT THEY CAN HEAR YOU.

12 I HAVE ALSO ADVISED THE LAWYERS OF THAT AND LET'S
13 ACCOMMODATE THE JURY IN THEIR WISHES.

14 ALL RIGHT. INsofar AS ANY EVIDENCE THAT MAY BE
15 OBJECTIONABLE, IS THERE SOMETHING THAT WE NEED TO TAKE UP
16 AT THIS TIME?

17 MR. HUMPHRIES: PERHAPS WE CAN DO THAT.

18 THE COURT: RATHER THAN SENDING THE JURY OUT.

19 MR. HUMPHRIES: YES, SIR.

20 AS IT RELATES AND I DON'T MIND TAKING UP THE
21 PHOTOGRAPHS AT THIS TIME. I DON'T HAVE DR. CARTER WHO WILL
22 BE ABLE TO -- I THINK WE UNDERSTAND THE RELEVANCE OF IT---

23 THE COURT: WE MAY HAVE TO -- YEAH, YEAH---

24 MR. HUMPHRIES: ---AND MAYBE WE CAN STIPULATE --
25 AT LEAST, WE CAN AGREE TO GO AHEAD AND REVIEW THEM WITHOUT

1 DR. CARTER HERE AND JUST AGREE THAT DR. CARTER WILL TESTIFY
2 THAT THEY WILL ASSIST HIM IN CORROBORATING HIS TESTIMONY.
3 I THINK WE COULD DO THAT.

4 SO LET'S GO AHEAD AND DO THAT JUST BRIEFLY.

5 THE COURT: OKAY.

6 MR. HUMPHRIES: THAT WAY WE COULD MOVE ALONG AT A
7 PRETTY GOOD PACE.

8 I WILL ASK THIS, YOUR HONOR, AT THIS TIME IS I
9 JUST NEED TO LET MY VICTIMS KNOW THAT WE WILL BE REVIEWING
10 SOME PHOTOGRAPHS.

11 THE COURT: OKAY.

12 MR. HUMPHRIES: IF Y'ALL WANT TO STEP OUT FOR A
13 MOMENT OR YOU CAN STAY IN---

14 THE COURT: YOU CAN JUST COME UP HERE---

15 MR. STONE: YEAH, COULD WE JUST GO UP HERE?

16 THE COURT: YOU CAN JUST COME UP HERE. YOU CAN
17 JUST COME UP HERE AND DO THEM---

18 MR. STONE: WE PREFER THAT AS WELL.

19 MR. HUMPHRIES: THAT'S FINE.

20 I GUESS WE'LL TAKE THEM IN THE ORDER AND WE
21 PROBABLY SHOULD GO AHEAD AND MARK THEM FOR IDENTIFICATION
22 PURPOSES SO WE CAN IDENTIFY THEM FOR THE RECORD.

23 THE COURT: YEAH. I THINK THAT WOULD BE A GOOD
24 IDEA.

25 MR. HUMPHRIES: AND THE WAY I WILL PRESENT THEM

1 TO THE WITNESSES, I WILL HAND A COLLECTION OF PHOTOGRAPHS
2 AND ASK THEM IF THEY RECOGNIZE THEM AND IF THEY WILL ASSIST
3 THEM IN THEIR TESTIMONY.

4 THE FIRST GROUP WILL BE A GROUP OF PHOTOGRAPHS
5 RELATING TO THE TESTIMONY OF STEVE DERRICK CONSISTING OF
6 SEVEN PHOTOGRAPHS.

7 THE COURT: ALL RIGHT. SO THOSE WOULD BE MARKED
8 AS STATE'S 46 FOR I.D., 47, 48, 49, 50, 51, AND 52.

9 (WHEREUPON, STATE'S EXHIBIT
10 NUMBERS 46, 47, 48, 49, 50, 51, AND 52, PHOTOGRAPHS, MARKED
11 FOR IDENTIFICATION ONLY AT THIS TIME.)

12 MR. HUMPHRIES: LET'S GO AHEAD AND MARK THE
13 OTHERS AND THEN WE CAN TALK ABOUT ALL OF THEM.

14 THE NEXT GROUP OF PHOTOGRAPHS, YOUR HONOR, WOULD
15 BE PHOTOGRAPHS RELATING TO AND CORROBORATING THE TESTIMONY
16 OF DR. JOHN CARTER, THE PATHOLOGIST IN THE CASE, CONSISTING
17 OF -- CONSISTING OF THIRTEEN PHOTOGRAPHS.

18 THE COURT: OKAY. SO THAT WILL BE STATE'S 53,
19 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 AND 65.

20 (WHEREUPON, STATE'S EXHIBIT
21 NUMBERS 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 AND
22 65, PHOTOGRAPHS, MARKED FOR IDENTIFICATION ONLY AT THIS
23 TIME.)

24 MR. HUMPHRIES: YOUR HONOR, NOW, AS IT RELATES TO
25 THE COLLECTION OF PHOTOGRAPHS THAT THE STATE INTENDS TO USE

1 WITH SPECIAL AGENT STEVE DERRICK---

2 THE COURT: UH-HUH.

3 MR. HUMPHRIES: ---START -- BEGINNING, I GUESS,
4 56 FOR I.D. PURPOSES. LET ME MAKE SURE I'VE GOT THAT.
5 HERE WE GO.

6 THESE ARE -- THESE PHOTOGRAPHS ARE ALL RELATED TO
7 THE BLOOD SPATTER TESTIMONY---

8 THE COURT: UH-HUH.

9 MR. HUMPHRIES: ---THIS PHOTOGRAPH DEPICTS THE
10 VIEW OF A LOUVERED DOOR JUST DOWN THE HALLWAY WHICH
11 CONTAINS BLOOD SPLATTER.

12 MS. FULLWOOD: NO OBJECTION.

13 THE COURT: ALL RIGHT. THAT'S 52, NO OBJECTION,
14 IS THAT RIGHT?

15 MR. HUMPHRIES: ACTUALLY, THAT'S 46.

16 MR. STONE: FORTY-SIX.

17 THE COURT: OKAY. FORTY-SIX. ALL RIGHT.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER
19 46, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
20 OBJECTION.)

21 MR. HUMPHRIES: FORTY-SEVEN, YOUR HONOR, IS --
22 REPRESENTS A VIEW OF BLOOD SPATTER. SPECIFICALLY, CAST
23 OFF---

24 THE COURT: UH-HUH.

25 MR. HUMPHRIES: ---IT ALSO DEPICTS THE VICTIM IN

1 SUBSTANTIALLY THE SAME CONDITION AS LEFT BY THE DEFENDANT.

2 MS. FULLWOOD: WE WOULD OBJECT ON THE GROUNDS
3 THAT ANY PROBATIVE VALUE THE PICTURE MIGHT HAVE WOULD BE
4 OUTWEIGHED BY ITS POTENTIAL TO INFLAME THE PASSIONS OF THE
5 JURY.

6 THE COURT: OKAY. WE'LL -- I'LL DECIDE ON ALL OF
7 THESE AT ONE TIME.

8 MR. HUMPHRIES: VERY GOOD.

9 THE COURT: SO WHY DON'T YOU JUST MAYBE PUT THAT
10 ONE IN A DIFFERENT STACK AND THEN I CAN REVIEW THEM THEN.

11 MR. HUMPHRIES: YOUR HONOR, STATE'S EXHIBIT
12 NUMBER 48 FOR IDENTIFICATION PURPOSES IS A VIEW GOING DOWN
13 THE HALL, AFTER THE BODY OF THE VICTIM IS REMOVED. IT
14 DEPICTS TWO DISTINCT POOLS OF BLOOD WHICH IT WOULD
15 SPECIFICALLY RELATE TO SPECIAL AGENT DERRICK'S TESTIMONY
16 REGARDING BLOOD SPATTER, BLOOD LEADING.

17 MS. FULLWOOD: NO OBJECTION.

18 THE COURT: ALL RIGHT. SO THAT'S 48 WITHOUT
19 OBJECTION.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER
21 48, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
22 OBJECTION.)

23 MR. HUMPHRIES: FORTY-NINE, YOUR HONOR, IS A VIEW
24 OF THE CORNER OF THE WALL NEAREST WHERE THE VICTIM'S HEAD
25 WOULD HAVE BEEN DURING THE BEATING, ACCORDING TO SENIOR

1 AGENT DERRICK'S TESTIMONY, DEPICTS BOTH BLOOD SPATTER, A
2 BLOOD TRANSFER AND EXPIRATED BLOOD FROM THE VICTIM AND IT
3 WILL BE NECESSARY FOR HIS TESTIMONY.

4 MS. FULLWOOD: WE WILL OBJECT ON THE GROUNDS THAT
5 ANY PROBATIVE VALUE THE PICTURE MIGHT HAVE WOULD BE
6 OUTWEIGHED BY ITS POTENTIAL TO INFLAME THE PASSIONS OF THE
7 JURY.

8 THE COURT: ALL RIGHT.

9 MR. HUMPHRIES: STATE'S EXHIBIT NUMBER 50 AND,
10 YOUR HONOR, PERHAPS, IT'S BEST FOR ME TO -- AND, I GUESS, I
11 SHOULD HAVE DONE THIS ANOTHER WAY. AS RELATES TO AND, OF
12 COURSE, THEY'VE OBJECTED TO STATE'S EXHIBIT NUMBER 49 FOR
13 IDENTIFICATION---

14 THE COURT: RIGHT.

15 MR. HUMPHRIES: ---FORTY-NINE, 50 AND 51 SHOW
16 DIFFERENT ASPECTS OF THAT SAME CORNER.

17 THE COURT: OKAY.

18 MR. HUMPHRIES: FORTY-NINE SHOWS THE ASPECT OF
19 THE CORNER GOING DOWN THE HALL, WHICH IS NOT DEPICTED IN
20 STATE'S EXHIBIT NUMBER 50, WHICH IS A CLOSE-UP; AND STATE'S
21 51, WHICH IS A -- GIVES MORE CONTEXT TO THE BLOOD SPATTER.
22 THEY WOULD SPECIFICALLY RELATE TO SENIOR AGENT DERRICK'S
23 TESTIMONY REGARDING THE POSITION OF THE BODY DURING THE --
24 DURING THE ASSAULT.

25 THE COURT: WHAT SAYS THE DEFENSE?

1 MS. FULLWOOD: WE WOULD HAVE NO OBJECTION TO
2 THESE PICTURES.

3 THE COURT: YOU OBJECT TO 49, BUT NOT 50 AND
4 51---

5 MS. FULLWOOD: THAT'S RIGHT.

6 AND THEN AS A FURTHER GROUND FOR OBJECTION TO
7 EXHIBIT 49, MERELY CUMULATIVE TO 50, 51.

8 MR. HUMPHRIES: FOR THE RECORD, 49 IS NOT
9 CUMULATIVE. IT SHOWS A DIFFERENT ASPECT OF THAT CORNER.
10 THAT IS THE OTHER SIDE OF THE CORNER WHICH IS NOT
11 REPRESENTED---

12 THE COURT: YES, SIR. OKAY. I UNDERSTAND THAT.
13 (WHEREUPON, STATE'S EXHIBIT NUMBER
14 50 AND 51, PHOTOGRAPHS, ENTERED INTO EVIDENCE AT THIS TIME
15 WITHOUT OBJECTION.)

16 MR. HUMPHRIES: AND---

17 THE COURT: FIFTY-TWO.

18 MR. HUMPHRIES: ---FIFTY-TWO, YOUR HONOR,
19 SPECIFICALLY, AND LET ME RELATE THAT BACK TO---

20 THE COURT: THAT'S 48, I THINK, ISN'T IT? EXCUSE
21 ME, 52 RELATED BACK TO 48?

22 MR. HUMPHRIES: YES, SIR.

23 IT -- FIFTY-TWO AS IT RELATES TO 48, FIFTY-TWO --
24 LET ME SAY THIS. FIFTY-TWO SHOWS THE TWO DISTINCT POOLS OF
25 BLOOD. IT ALSO SPECIFICALLY SHOWS CAST OFF, WHICH WOULD

1 SPECIFICALLY RELATE TO SENIOR AGENT DERRICK'S TESTIMONY
2 REGARDING THE POSITIONING OF THE BODY AT THE TIME OF THE
3 ASSAULT, AND IT DIFFERS IN ASPECT FROM STATE'S 48, WHICH
4 HAS BEEN STIPULATED INTO EVIDENCE. SO WHILE THERE IS SOME
5 CUMULATIVE---

6 THE COURT: WHAT SAYS THE DEFENSE?

7 MS. FULLWOOD: WE WOULD OBJECT ON THE GROUNDS OF
8 ANY PROBATIVE VALUE THE PICTURE MIGHT HAVE WOULD BE
9 OUTWEIGHED BY ITS POTENTIAL TO INFLAME THE PASSIONS OF THE
10 JURY AND ON THE ADDITIONAL GROUND THAT IT'S CUMULATIVE TO
11 EXHIBIT 48.

12 MR. HUMPHRIES: AND OUR -- CLEARLY, OUR POINT
13 WOULD BE THAT IT DOES CONTAIN CAST OFF WHICH IS NOT
14 REPRESENTATIVE OF 48.

15 THE COURT: OKAY.

16 MR. HUMPHRIES: AND, I GUESS, WHAT WE'VE GOT --
17 DO YOU WANT TO RULE ON THESE AS A COLLECTION?

18 THE COURT: YES. LET ME GO AHEAD AND---

19 MR. HUMPHRIES: AND, YOUR HONOR, I DO HAVE -- AND
20 I APOLOGIZE. LET ME GET ONE CASE CITE FOR YOU. I CITE FOR
21 AUTHORITY ON THIS PARTICULAR ASPECT, THIS PARTICULAR SET OF
22 PHOTOGRAPHS, STATE VERSUS JAMES NEAL TUCKER, WHERE COLOR
23 PHOTOGRAPHS INTRODUCED TO SHOW THE DIFFERENCE BETWEEN BLOOD
24 THE VICTIM COUGHED UP AND BLOOD FROM HER WOUND, BLOOD
25 SPATTER TESTIMONY. AND THAT'S THE PURPOSE FOR WHICH THESE

1 ARE OFFERED.

2 THE COURT: UH-HUH.

3 ALL RIGHT. INsofar AS THE STATE'S EXHIBIT
4 NUMBERS 47, 49 AND 52 ARE CONCERNED, I THINK AND FIND THAT
5 THE CASE OF STATE V. TUCKER IS CONTROLLING IN THAT
6 PHOTOGRAPHS WERE ADMITTED IN THAT CASE TO DEPICT THE --
7 SHOW THE DIFFERENCE BETWEEN THE BLOOD COUGHED UP AND THE
8 BLOOD FROM THE WOUND.

9 ALSO, I THINK THAT THE RELEVANCE AND MATERIALITY
10 AND ADMISSIBILITY OF PHOTOGRAPHS ARE, ONCE AGAIN, MATTERS
11 WITHIN THE SOUND DISCRETION OF THE TRIAL COURT AND IF THE
12 PHOTOGRAPHS SERVE TO CORROBORATE TESTIMONY, IT IS NOT AN
13 ABUSE OF DISCRETION TO ADMIT THEM. THAT'S STATE VERSUS
14 NANCE, 466 SE 2D 349. STATE VERSUS TUCKER IS OPINION
15 NUMBER 24517, 478 SE 2D 260. AND I FIND THAT THEY ARE
16 ADMITTED OVER OBJECTION.

17 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

18 (WHEREUPON, STATE'S EXHIBIT
19 NUMBERS 47, 49, AND 52, PHOTOGRAPHS, ENTERED INTO EVIDENCE
20 AT THIS TIME OVER OBJECTION OF COUNSEL.)

21 MR. HUMPHRIES: NOW, REFERRING TO THE COLLECTION
22 OF PHOTOGRAPHS---

23 THE COURT: AND AS FURTHER BASIS OF THE DEFENSE
24 OBJECTION THAT THE PROBATIVE VALUE WOULD BE OUTWEIGHED OVER
25 THE POTENTIAL TO INFLAME THE JURY, I DO NOT FIND THAT THAT

1 IS APPLICABLE TO THIS MATTER, GIVEN MY PREVIOUS RULING, AND
2 I ALSO DO NOT FIND THAT THESE PHOTOGRAPHS, THE ONES THAT
3 WERE ELABORATED ON BY THE DEFENSE, ARE CUMULATIVE.

4 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

5 REGARDING STATE'S 53 FOR IDENTIFICATION PURPOSES,
6 YOUR HONOR, AS IT RELATES TO THE PATHOLOGIST'S TESTIMONY,
7 THE PICTURE DEPICTS THE BODY OF THE VICTIM LYING IN
8 SUBSTANTIALLY THE SAME CONDITION AS WHEN THE DEFENDANT LEFT
9 HER. IT IS BOTH WITH CIRCUMSTANTIAL EVIDENCE REGARDING, AT
10 LEAST, ONE OF THE AGGRAVATING CIRCUMSTANCES IN THIS CASE,
11 THE CRIMINAL SEXUAL CONDUCT IN ANY DEGREE AND IT IS NOT
12 CUMULATIVE, AT LEAST, AS IT RELATES TO PHOTOGRAPHS OFFERED
13 THROUGH SENIOR AGENT STEVE DERRICK, PARTICULARLY, AS IT
14 REPRESENTS THE POSITION OF THE LOWER EXTREMITIES OF THE
15 VICTIM.

16 MS. FULLWOOD: YOUR HONOR, WE WOULD OBJECT TO THE
17 ADMISSION OF STATE'S EXHIBIT NUMBER 53. OUR POSITION IS
18 THAT THIS PHOTOGRAPH IS INFLAMMATORY AND THE PROBATIVE
19 VALUE WOULD BE OUTWEIGHED BY ITS POTENTIAL TO INFLAME THE
20 PASSIONS OF THE JURY.

21 FURTHER, YOUR HONOR, I BELIEVE IT IS IN PART
22 CUMULATIVE TO STATE'S EXHIBIT NUMBER 47, WHICH YOUR HONOR
23 HAS RULED CAN COME INTO EVIDENCE OVER OUR OBJECTION. THAT
24 PHOTOGRAPH SHOWS THE UPPER PORTION OF THE BODY. IT'S ALSO
25 CUMULATIVE AND I DON'T HAVE THE STATE'S -- THE NUMBER TO

1 THE STATE'S EXHIBIT THAT HAS A DRAWING OF A BODY---

2 MR. HUMPHRIES: STATE'S EXHIBIT ONE.

3 MS. FULLWOOD: ---STATE'S EXHIBIT ONE WHICH HAS A
4 DRAWING OF A BODY IN SUBSTANTIALLY THIS SAME POSITION WHICH
5 SHOWS THE ENTIRE BODY.

6 MR. HUMPHRIES: OF COURSE, OUR POSITION WOULD BE
7 THAT THAT BODY STICK-ON DOES NOT COME CLOSE TO TESTIFYING
8 ACCURATELY AS TO THE DEFENDANT'S CHARACTER AND THE
9 CIRCUMSTANCES AND THE NATURE OF THE CRIME.

10 MS. FULLWOOD: YOUR HONOR, IT WOULD ALSO BE
11 CUMULATIVE TO STATE'S EXHIBIT NUMBER TWELVE WHICH IS
12 ALREADY IN EVIDENCE WHICH SHOWS THE SAME SCENE.

13 MR. HUMPHRIES: I WOULD -- THE REASON WE
14 INTRODUCED STATE'S 12 BECAUSE IT DID NOT SHOW THE SAME
15 THING.

16 THE COURT: RIGHT.

17 WELL, I THINK LOOKING AT THE CASE OF THE STATE
18 VERSUS FRANKLIN, 318 SC 47; 456 SE 2D 357, PHOTOGRAPHS
19 WHICH DEPICT THE BODIES OF MURDER VICTIMS IN SUBSTANTIALLY
20 THE SAME CONDITION IN WHICH THE DEFENDANT LEFT THEM WHEN
21 MATERIAL AND RELEVANT TO AN AGGRAVATING CIRCUMSTANCE ARE
22 ADMISSIBLE AND THAT'S ALSO IN ACCORDANCE WITH STATE
23 VERSUS KORNAHRENS, 290 SC 281; 357 SE 2D 19 -- EXCUSE ME,
24 350 SE 2D 180. THAT'S A 1986 CASE. AND I THINK THAT GIVEN
25 THE FACT OF THE CIRCUMSTANTIAL NATURE OF THE -- I KNOW WE

1 HAD TESTIMONY IN THE GUILT PHASE CONCERNING THE POSITION OF
2 THE BODY. I DID NOT ALLOW IN A DRAWING THAT THE STATE HAD
3 SOUGHT TO INTRODUCE CONCERNING THE POSITION OF THE
4 DEFENDANT'S BODY IN THE GUILT PHASE BECAUSE I DID NOT FEEL
5 THAT THAT WAS APPROPRIATE; HOWEVER, I DO FIND THAT THE --
6 STATE'S EXHIBIT NUMBER 53 IS NOT INFLAMMATORY. THAT IT
7 WOULD BE PROBATIVE AS TO THE ISSUES THAT I HAVE RAISED HERE
8 IN MY RULING AND AS A RESULT, I FIND THAT IT IS ADMISSIBLE.

9 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER
11 53, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME OVER
12 OBJECTION OF COUNSEL.)

13 MR. HUMPHRIES: YOUR HONOR, STATE'S EXHIBIT
14 NUMBER 54 FOR IDENTIFICATION PURPOSES IS A DEPICTION OF THE
15 SCALP OF THE VICTIM HAVING BEEN REFLECTED AND SHOWS THE
16 CRUSHED NATURE OF THE SKULL.

17 NOW, LET ME OFFER THIS AS AN ALTERNATIVE POSITION
18 PURSUANT TO STATE VERSUS FRANKLIN AND THAT IS THIS. IN
19 STATE VERSUS FRANKLIN, THE DEFENSE STIPULATED TO THE
20 INJURIES WHICH WERE DEPICTED IN THE PHOTOGRAPHS AND THAT
21 COMBINED WITH THE PATHOLOGIST'S TESTIMONY, THE COURT
22 DETERMINED WOULD MAKE INADMISSIBLE THOSE PHOTOGRAPHS FOR
23 THAT PURPOSE.

24 THE STATE WILL ACCEPT THE STIPULATION THAT UPON
25 REFLECTION OF THE SCALP, THE SKULL WAS FRAGMENTED AND

1 CRUSHED BY THE PATHOLOGIST -- I MEAN, FROM THE PATHOLOGIST
2 AS AN ALTERNATE POSITION TO ENTERING THIS PHOTOGRAPH INTO
3 EVIDENCE.

4 MS. FULLWOOD: YOUR HONOR, I BELIEVE THE
5 PATHOLOGIST HAS ALREADY TESTIFIED THAT HER SKULL WAS
6 CRUSHED. THAT CERTAINLY WASN'T CHALLENGED BY THE DEFENSE
7 ON CROSS-EXAMINATION.

8 MR. HUMPHRIES: I STILL THINK I'M ENTITLED TO A
9 STIPULATION---

10 THE COURT: FOR THE PHOTOGRAPH. YOU WANT TO BE
11 HEARD ON THAT, MS. FULLWOOD, MR. STONE?

12 MS. FULLWOOD: SO STIPULATE.

13 THE COURT: YOU WOULD SO STIPULATE?

14 MS. FULLWOOD: YES, SIR.

15 MR. STONE: YES, SIR.

16 THE COURT: ALL RIGHT. IF YOU WANT TO -- YOU
17 KNOW, IF YOU'RE GOING TO ENTER INTO A STIPULATION AS LONG
18 AS WE HAVE IT, WE NEED TO PREPARE THAT IN ADVANCE OF GIVING
19 IT TO THE JURY---

20 MR. HUMPHRIES: YES, SIR.

21 THE COURT: ---SO THAT WE DON'T GET INTO A
22 CONFLICT OVER THAT. SO IF THEY ARE WILLING TO STIPULATE AS
23 TO WHAT STATE'S EXHIBIT NUMBER 54 WOULD SHOW, THEN I'LL
24 ALLOW THAT STIPULATION RATHER THAN ALLOWING THE PHOTOGRAPH.

25 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

1 STATE'S EXHIBIT NUMBER 55, YOUR HONOR, IS AN
2 AUTOPSY PHOTO CLEANED UP, SHOWING NO PRESENCE OF BLOOD, BUT
3 DOES REFLECT THE NUMBER OF WOUNDS SPECIFICALLY.

4 IT WOULD BE OFFERED BY THE -- THROUGH THE
5 PATHOLOGIST FOR THE PURPOSE OF SHOWING THE NUMBER OF
6 WOUNDS, THE DEGREE OF FORCE WHICH DIRECTLY RELATE TO THE
7 CHARACTER OF THE DEFENDANT WHICH IS PERTINENT IN THIS
8 PHASE.

9 I CITE, AS IT RELATES TO ALL OF THE AUTOPSY
10 PHOTOS, I CITE AS AUTHORITY THE STATE VERSUS LUKE
11 WILLIAMS, WHICH WAS TRIED IN THIS CIRCUIT WHICH DIRECTLY
12 RELATES TO THAT ISSUE.

13 MS. FULLWOOD: YOUR HONOR, I BELIEVE, THE WOUNDS
14 ARE ALREADY DEPICTED ON STATE'S EXHIBIT NUMBER 20 AS FAR AS
15 THEIR LOCATION. THIS PHOTOGRAPH IS JUST AN AUTOPSY
16 PHOTOGRAPH, UNLIKE THE PHOTOGRAPHS, YOUR HONOR HAS ALREADY
17 RULED ADMISSIBLE, IT DOESN'T DEPICT THE VICTIM AS -- AS SHE
18 WAS LEFT. HER BODY HAS BEEN CHANGED TO -- AT LEAST, HER
19 HEAD HAS BEEN SHAVED TO DISPLAY THESE WOUNDS.

20 I THINK IT'S INFLAMMATORY AND ANY PROBATIVE VALUE
21 IT MIGHT HAVE WOULD BE OUTWEIGHED BY THE PREJUDICIAL IMPACT
22 AND IT'S JUST CUMULATIVE TO TESTIMONY AND EVIDENCE THAT ARE
23 ALREADY IN EVIDENCE.

24 MR. STONE: TWENTY-ONE AS WELL.

25 MS. FULLWOOD: TWENTY-ONE AS WELL, THAT'S RIGHT.

1 MR. HUMPHRIES: OF COURSE, THE STATE'S POSITION
2 WOULD BE THAT WE SUBMITTED THOSE CHARTS IN THE GUILT PHASE
3 IN THE ALTERNATIVE TO SUBMITTING THESE TYPES OF
4 PHOTOGRAPHS.

5 THE SCOPE IS MUCH BROADER IN THE SENTENCING PHASE
6 AND WE WOULD SUBMIT THAT THE CHARTS THEMSELVES IN NO WAY
7 ACCURATELY PROVIDE EVIDENCE REGARDING THE DEFENDANT'S
8 CHARACTER. SIMPLY, WHERE THE WOUNDS WERE SUSTAINED.

9 WE INTEND TO ELICIT FROM THE PATHOLOGIST THE
10 DEGREE OF FORCE, THE NUMBER OF WOUNDS AND THESE ARE
11 CLEANED-UP PHOTOGRAPHS WHICH HAVE BEEN ADMITTED INTO
12 EVIDENCE. AUTOPSY PHOTOGRAPHS CLEANED UP IN A NUMBER OF
13 CASES. IT HAS NONE OF THE -- IT HAS NONE OF THE
14 CHARACTERISTICS OF THOSE CASES IN WHICH AUTOPSY PHOTOGRAPHS
15 WERE ADMITTED AND THEN ULTIMATELY DETERMINED SHOULD NOT
16 HAVE BEEN ADMITTED.

17 MS. FULLWOOD: OF COURSE, MY POSITION WOULD ALSO
18 BE THIS DOESN'T GO TO THE CHARACTER OF THE DEFENDANT, BUT
19 IT GOES TO THE CIRCUMSTANCES OF THE CRIME AND WE ALREADY
20 HAVE EVIDENCE OF THAT IN THE RECORD AS WE'VE -- I HAVE
21 ALREADY DISCUSSED AND IT'S CUMULATIVE. IT'S INFLAMMATORY.

22 MR. HUMPHRIES: AND I'M ENTITLED TO OFFER
23 ADDITIONAL EVIDENCE IN THIS PHASE.

24 THE COURT: I THINK THAT CONTAINED WITHIN THE
25 OPINION OF STATE VERSUS LUKE WILLIAMS, 321 SC 327; 468 SE

1 2D 626 THAT REFERENCE WAS MADE THAT PHOTOGRAPHS OF THE
2 VICTIM'S BODY ARE ADMISSIBLE IN THE SENTENCING PHASE OF A
3 CAPITAL TRIAL TO SHOW THE CIRCUMSTANCES OF THE CRIME AND
4 THE CHARACTER OF THE DEFENDANT.

5 FURTHER CITING STATE VERSUS KORNAHRENS, WHICH
6 I'VE PREVIOUSLY CITED AND, OF COURSE, ONCE AGAIN, THE TRIAL
7 JUDGE MUST BALANCE THE PREJUDICIAL EFFECT OF THE
8 PHOTOGRAPHS AGAINST THEIR PROBATIVE VALUE; HOWEVER, THE
9 SCOPE OF THE PROBATIVE VALUE IS MUCH BROADER DURING THE
10 SENTENCING PHASE AND THE WILLIAMS CASE WAS A 1996
11 DECISION.

12 MR. HUMPHRIES: '94 DECIDED IN '96.

13 THE COURT: NOW, INsofar AS THAT PHOTOGRAPH IS
14 CONCERNED, THE ONLY THING THAT HAS BEEN DONE IS THAT THE
15 BODY HAS BEEN CLEANED UP AND THERE'S BEEN NOTHING ELSE
16 APPARENTLY DONE TO THE WOUNDS, IS THAT CORRECT?

17 MR. HUMPHRIES: YOUR HONOR, THE ONLY THING THAT
18 HAS BEEN DONE TO THE WOUNDS IS THE HAIR---

19 THE COURT: HAS BEEN---

20 MR. HUMPHRIES: ---AROUND IT HAVE BEEN REMOVED,
21 BUT NOTHING ELSE. THEY HAVE NOT BEEN ALTERED BY THE
22 PATHOLOGIST IN ANY FASHION AT THIS POINT.

23 THE COURT: ALL RIGHT.

24 FURTHERMORE, IN ACCORDANCE WITH STATE V.
25 FRANKLIN, 318 SC 47; 456 SE 2D 357, I THINK THAT THAT

1 CASE DISCUSSED THE INTRODUCTION OF SLIDES TAKEN AT AUTOPSY
2 WHERE THERE WAS AN OBJECTION TO AND THESE SLIDES DEPICTED
3 WOUNDS WHICH HAD BEEN DELIVERED TO THE VICTIM'S BODY.
4 PRIOR TO TAKING THE SLIDES, THE BODY AND SPECIFIC WOUNDS
5 WERE CLEANED. SLIDES WERE SIMPLY NOT THE SORT OF WHICH THE
6 COURT HAD HELD INADMISSIBLE IN THE STATE V. PATRICK, 289
7 SC 301; 345 SE 2D 481, A 1986 CASE.

8 ALSO THE CASE OF STATE VERSUS MIDDLETON, 288 SC
9 21; 339 SE 2D 692, ALSO A 1986 CASE, WHERE AN AUTOPSY
10 PHOTOGRAPHS OF THE VICTIM'S SCALP HAD PULLED AWAY FROM THE
11 SKULL AND SURGICALLY OPENED A VAGINAL CAVITY WAS
12 CALCULATED TO INFLAME.

13 SLIDES IN THE FRANKLIN CASE WERE ENTERED INTO
14 EVIDENCE FOR THE SAME PURPOSE AS THE PHOTOGRAPHS OF THE
15 SCENE TO MORE CLEARLY DEPICT THE FULL EXTENT OF THE
16 INJURIES SUFFERED AND TO SUBSTANTIATE THE TESTIMONY OF THE
17 PATHOLOGIST.

18 I FIND THAT IT IS ADMISSIBLE. AND WHAT WAS THAT
19 NUMBER AGAIN?

20 MR. HUMPHRIES: IT'S 55, YOUR HONOR.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER
22 55, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME OVER
23 OBJECTION OF COUNSEL.)

24 MR. HUMPHRIES: YOUR HONOR, I HAVE IN REGARD TO
25 STATE'S EXHIBIT NUMBER 56 FOR IDENTIFICATION PURPOSES, I

1 HAVE REVIEWED THOSE PHOTOGRAPHS ALREADY ADMITTED THROUGH
2 SENIOR AGENT -- OR WHICH WILL BE ADMITTED THROUGH SENIOR
3 AGENT STEVE DERRICK AND, I BELIEVE, THIS IS CUMULATIVE AND
4 WOULD WITHDRAW---

5 THE COURT: FIFTY-SIX IS WITHDRAWN---

6 MR. HUMPHRIES: FIFTY-SIX FOR IDENTIFICATION.

7 THE COURT: ALL RIGHT.

8 MR. HUMPHRIES: STATE'S 57 FOR IDENTIFICATION
9 PURPOSES, YOUR HONOR, IS -- DEPICTS THE LOWER LEFT ARM,
10 PARTICULARLY, DEFENSIVE WOUNDS INDICATED BY BRUISING
11 CORROBORATION OF THE PATHOLOGIST'S TESTIMONY IN THAT
12 REGARD.

13 MS. FULLWOOD: NO OBJECTION.

14 THE COURT: ALL RIGHT. AND THAT'S 57?

15 MR. HUMPHRIES: FIFTY-SEVEN, YOUR HONOR.

16 THE COURT: ALL RIGHT. WITHOUT OBJECTION,
17 FIFTY-SEVEN IS ADMITTED. STATE'S 57.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER
19 57, PHOTOGRAPH, ADMITTED INTO EVIDENCE AT THIS TIME WITHOUT
20 OBJECTION.)

21 MR. HUMPHRIES: STATE'S NUMBER 58 FOR
22 IDENTIFICATION PURPOSES SHOWS THE UPPER RIGHT ARM
23 INDICATING A BRUISING CONSISTENT WITH DEFENSIVE INJURIES
24 AMONG OTHERS. IT IS DARK, BUT THERE IS INDICATED CLEARLY
25 BRUISING WHICH WILL CORROBORATE THE PATHOLOGIST'S

1 TESTIMONY.

2 MS. FULLWOOD: NO OBJECTION.

3 THE COURT: WITHOUT OBJECTION, STATE'S 58 WILL BE
4 ADMITTED.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER
6 58, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
7 OBJECTION.)

8 MR. HUMPHRIES: YOUR HONOR, STATE'S 59 FOR
9 IDENTIFICATION PURPOSES DEPICTS THE UPPER RIGHT SHOULDER OF
10 THE VICTIM. THE WOUNDS WHICH ACTUALLY OPENED THE SKIN ON
11 THE TOP OF THE SHOULDER, ALONG WITH SOME OTHER PATTERN
12 BRUISING WHICH WOULD CORROBORATE THE PATHOLOGIST'S
13 TESTIMONY IN THAT REGARD.

14 THE COURT: MS. FULLWOOD.

15 MS. FULLWOOD: NO OBJECTION.

16 THE COURT: WITHOUT OBJECTION, STATE'S 59 WILL BE
17 ADMITTED.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER
19 59, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
20 OBJECTION.)

21 MR. HUMPHRIES: STATE'S NUMBER 60 SHOWS THE --
22 DEPICTS THE LOWER LEFT ARM OF THE VICTIM, ALSO INDICATING
23 BRUISING CONSISTENT WITH DEFENSIVE INJURIES WOULD
24 CORROBORATE THE PATHOLOGIST'S TESTIMONY IN THAT REGARD.

25 MS. FULLWOOD: NO OBJECTION.

1 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER 60
2 WILL BE ADMITTED.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER
4 60, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
5 OBJECTION.)

6 MR. HUMPHRIES: STATE'S 61 FOR IDENTIFICATION
7 PURPOSES SHOWS THE UPPER ASPECT OF THE LEFT ARM, ALSO
8 INDICATING BRUISING CONSISTENT WITH DEFENSE INJURIES,
9 CONSISTENT WITH THE ASSAULT, WOULD CORROBORATE THE
10 PATHOLOGIST'S TESTIMONY IN THAT REGARD.

11 MS. FULLWOOD: NO OBJECTION.

12 THE COURT: WITHOUT OBJECTION, STATE'S 61 WILL BE
13 ADMITTED.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER
15 61, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
16 OBJECTION.)

17 MR. HUMPHRIES: STATE'S NUMBER 62, FOR
18 IDENTIFICATION PURPOSES IS THE RIGHT HAND WHICH INDICATES
19 THE BRUISING CONSISTENT WITH A STOMP OR BLUNT TRAUMA INJURY
20 CORROBORATES THE PATHOLOGIST'S TESTIMONY IN THAT REGARD.

21 MS. FULLWOOD: NO OBJECTION

22 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER 62
23 WILL BE ADMITTED.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER
25 62, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT

1 OBJECTION.)

2 MR. HUMPHRIES: STATE'S 63 FOR IDENTIFICATION
3 PURPOSES SHOWS THE LOWER EXTREMITIES, PARTICULARLY, THE
4 THIGH AND CALF AREA, THE OUTER THIGH AND CALF AREA OF THE
5 RIGHT LEG, INDICATING BRUISING CONSISTENT WITH THE ASSAULT
6 WOULD CORROBORATE THE PATHOLOGIST'S TESTIMONY IN THAT
7 REGARD.

8 MS. FULLWOOD: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION, STATE'S 63 WILL BE
10 ADMITTED.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER
12 63, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
13 OBJECTION.)

14 MR. HUMPHRIES: STATE'S NUMBER 64, YOUR HONOR,
15 SHOWS THE EXTREME LOWER EXTREMITIES, A TOP VIEW INDICATING
16 -- SHOWING THE BRUISING JUST ABOVE THE ANKLES AND AT THE
17 ANKLE AREA WOULD CORROBORATE THE PATHOLOGIST'S TESTIMONY IN
18 THAT REGARD.

19 MS. FULLWOOD: NO OBJECTION.

20 THE COURT: WITHOUT OBJECTION, STATE'S 64.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER
22 64, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
23 OBJECTION.)

24 MR. HUMPHRIES: AND FINALLY, YOUR HONOR, THIS IS
25 STATE'S 65 FOR IDENTIFICATION PURPOSES. IT IS --YOUR

1 HONOR, I BELIEVE, AFTER REVIEW OF THOSE PHOTOGRAPHS
2 PREVIOUSLY ADMITTED, THAT IT WOULD BE CUMULATIVE---

3 THE COURT: FIFTY-FIVE(SIC)?

4 MR. HUMPHRIES: NOT ONLY 55(SIC), BUT ALSO -- I
5 BELIEVE WHAT THIS -- WHAT 65 REPRESENTS IS DEPICTED IN TWO
6 SEPARATE PHOTOGRAPHS, BUT WE CAN GAIN THE NECESSARY CONTEXT
7 THROUGH THE PATHOLOGIST'S TESTIMONY. WE WOULD WITHDRAW
8 THIS.

9 THE COURT: WITHDRAW SIXTY-FIVE. .

10 MR. HUMPHRIES: YOUR HONOR, FINAL MATTER
11 REGARDING ANY OF THIS TYPE EVIDENCE WOULD BE RELATED TO A
12 VIDEOTAPE OF THE CRIME SCENE WHICH HAS BEEN PREVIOUSLY
13 PROVIDED, OF COURSE, TO THE DEFENSE.

14 IT IS A VERY BRIEF CRIME SCENE. IT PROVIDES
15 CONTEXT TO THE SCENE WHICH STILL PHOTOGRAPHS CANNOT DO.

16 BEG THE COURT'S INDULGENCE JUST ONE MOMENT.

17 THE COURT: YES, SIR.

18 MR. HUMPHRIES: AND I WOULD CITE THE AUTHORITY,
19 YOUR HONOR, THIS IS THE CASE OF THE STATE VERSUS KELLY,
20 WHICH IS 1995 OPINION FROM LEE COUNTY. JUDGE THOMAS
21 COOPER, THE TRIAL JUDGE, AND BASICALLY IT INDICATES THE
22 PHOTOGRAPHS OF THE VIDEO SHOWED THE CRIME SCENE.
23 SPECIFICALLY TWO PHOTOGRAPHS OF THE VICTIM'S NUDE BODY
24 LYING ON THE LIVING ROOM FLOOR WITH HER FACE AND BODY
25 VISUALLY SWOLLEN FROM THE BEATING.

1 ADDITIONALLY, THE PHOTOGRAPHS SHOW BLOOD SMEARED
2 ON THE WALLS AND FLOOR. THE VIDEO SHOWS THE ENTIRE CRIME
3 SCENE. THESE PHOTOGRAPHS AND VIDEO WERE RELATIVE TO
4 ESTABLISH THE CRIME SCENE. REFERENCING STATE VERSUS
5 CAMPBELL, 259 SC 339.

6 MS. FULLWOOD: YOUR HONOR, IT WOULD BE OUR
7 POSITION THAT THERE'S ALREADY TESTIMONY THAT THE ENTIRE
8 CRIME SCENE WAS RIGHT IN THAT SMALL AREA IN THE LITTLE HALL
9 IN THERE. WE THINK THAT VIDEO WOULD BE ADDITIONAL AND
10 INFLAMMATORY EVIDENCE CALCULATED TO INFLAME THE PASSIONS OF
11 THE JURY. THEY ALREADY HAVE THE PHOTOGRAPHS IN. THEY HAVE
12 THE PHOTOGRAPHS OF THE BODY. THEY HAVE THE AUTOPSY
13 PHOTOGRAPHS. IT'S CUMULATIVE TO ALL OF THAT.

14 MR. HUMPHRIES: OF COURSE, THAT WAS THE POSITION
15 ARGUED IN THAT KELLY CASE BY THE DEFENSE.

16 THE COURT FOUND THAT THE VIDEOTAPE IN THAT CASE
17 PROVIDED THE CONTEXT WHICH DIAGRAMS AND PHOTOGRAPHS ALONE
18 COULD NOT.

19 IT IS A VERY BRIEF VIDEOTAPE, YOUR HONOR. IT
20 DOES NOT DWELL ON ANY ONE PARTICULAR ASPECT OF THE CRIME
21 SCENE FOR ANY SUBSTANTIAL PERIOD OF TIME.

22 THE COURT: IS IT MY UNDERSTANDING THAT YOUR
23 OBJECTION TO IT, MS. FULLWOOD, IS THE FACT THAT IT'S
24 CUMULATIVE TO OTHER EVIDENCE?

25 MS. FULLWOOD: AND THAT ANY PROBATIVE VALUE IT

1 WOULD HAVE WOULD BE OUTWEIGHED BY IT'S POTENTIAL TO INFLAME
2 THE PASSIONS OF THE JURY.

3 MR. HUMPHRIES: OF COURSE, IT WOULD HAVE TO BE
4 SUBSTANTIALLY OUTWEIGHED, YOUR HONOR.

5 THE COURT: YES, SIR.

6 WELL, I THINK, IN REVIEW OF THE CASE OF THE
7 STATE VERSUS KELLY, 319 SC 173; 460 SE 2ND 368, THAT IN
8 THAT CASE, AS THE SOLICITOR HAS DESCRIBED, THAT THE TRIAL
9 JUDGE ALLOWED INTO EVIDENCE PHOTOGRAPHS DEPICTING THE
10 BLOODSTAINS ON THE VICTIM, SURROUNDING AREA, THE VIDEO AND
11 THE CRIME SCENE, THE CHARTS THE PATHOLOGIST USED IN
12 DESCRIBING THE NUMEROUS WOUNDS TO THE VICTIM'S BODY.

13 OF COURSE, IT'S WELL SETTLED, ONCE AGAIN, THAT
14 THE EVIDENCE SHOULD BE EXCLUDED WHEN IT'S PROBATIVE VALUE
15 IS OUTWEIGHED BY ITS PREJUDICIAL EFFECT. STATE VERSUS
16 ALEXANDER, 303 SC 377; 401 SE 2D 146, A 1991 CASE; BUT
17 ALSO, ONCE AGAIN, THE STATE VERSUS KORNAHRENS CASE HOLDS
18 THAT A TRIAL JUDGE, ONCE AGAIN, HAS CONSIDERABLE LATITUDE
19 IN RULING ON THE ADMISSIBILITY OF EVIDENCE AND HIS RULINGS
20 WILL NOT BE DISTURBED ABSENT A SHOWING OF PROBABLE
21 PREJUDICE. AND THE DETERMINATION OF RELEVANCY AND
22 MATERIALITY OF A PHOTOGRAPH, ONCE AGAIN, IS LEFT TO THE
23 SOUND DISCRETION OF THE TRIAL JUDGE. STATE V. TODD, 290
24 SC 212; 349 SE 2D 339, A 1986 CASE. AND IN THAT CASE, ONCE
25 AGAIN, THERE WAS TESTIMONY CONCERNING CLOSED HEAD INJURY

1 DUE TO MASSIVE BEATING WITH ADDITIONAL MASSIVE BEATING AS A
2 CONTRIBUTED FACTOR. THE CHARTS CORROBORATED THE PHOTOGRAPH
3 OF THE PATHOLOGIST'S TESTIMONY. PHOTOGRAPHS AND VIDEO SHOW
4 THE CRIME SCENE AND SPECIFICALLY I THINK THERE WERE TWO
5 PHOTOGRAPHS OF THE VICTIM'S NUDE BODY LYING ON THE LIVING
6 ROOM FLOOR WITH HER FACE AND BODY VISUALLY SWOLLEN FROM THE
7 BEATING; AND, ADDITIONALLY, THE PHOTOGRAPHS SHOWED BLOOD
8 SMEARED ON THE WALLS AND FLOOR AND THE VIDEO SHOWS THE
9 ENTIRE CRIME SCENE. THESE PHOTOGRAPHS AND THE VIDEO WERE
10 RELEVANT TO ESTABLISH THE CRIME SCENE. STATE V.
11 CAMPBELL, 259 SC 339; 191 SE 2D 770, A 1972 CASE.

12 AND WHILE I UNDERSTAND THE ARGUMENT WHICH HAS
13 BEEN MADE HERE, KELLY ALSO ARGUED IN THIS CASE THAT THE
14 ITEMS WERE UNFAIRLY PREJUDICIAL; AND, THEREFORE, SHOULD
15 HAVE BEEN EXCLUDED AND TO CONSTITUTE UNFAIR PREJUDICE, THE
16 PHOTOGRAPHS MUST CREATE A TENDENCY TO SUGGEST A DECISION
17 ON AN IMPROPER BASIS, COMMONLY, THOUGH NOT NECESSARILY, AN
18 EMOTIONAL ONE. AND THAT WAS THE ALEXANDER CASE THAT IS
19 BEING CITED ONCE AGAIN. CHARTS IN THE KELLY CASE AND THE
20 PHOTOGRAPHS AND VIDEO DEPICTED THE EXCESS NATURE OF THE
21 KILLING AND THE RELEVANCE OF THESE ITEMS AND THEIR
22 PROBATIVE VALUE ON THE ISSUE WAS GREAT ENOUGH TO NEGATE THE
23 RISK OF THE JURY BASING IT'S DECISION ON IMPROPER PASSION.
24 ONCE AGAIN, CITING STATE VERSUS FRANKLIN, 456 SE 2D 357,
25 1995 CASE.

1 I FIND THAT IF YOU WANT ME TO LOOK AT THE VIDEO,
2 I'LL BE GLAD TO, BUT ARE YOU TELLING ME THAT IT IS SIX TO
3 SEVEN MINUTES?

4 MR. HUMPHRIES: YOUR HONOR, THAT IS MY
5 RECOLLECTION. IT IS NO MORE THAN -- IT IS NO LONGER THAN
6 TEN MINUTES.

7 THE COURT: WHY DON'T YOU LET ME LOOK AT IT THEN
8 BEFORE I RULE ON IT.

9 MR. HUMPHRIES: I'LL BE GLAD TO DO THAT, YOUR
10 HONOR.

11 THE COURT: CAN I SEE IT ON THIS MONITOR HERE?

12 MR. HUMPHRIES: YES, SIR, YOUR HONOR. WE'LL JUST
13 HAVE TO SET IT UP.

14 YOUR HONOR, COULD WE MARK IT FOR IDENTIFICATION
15 PURPOSES?

16 THE COURT: YES, SIR.

17 AND THAT WILL BE STATE'S NUMBER 66.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER
19 66, VIDEOTAPE, MARKED FOR IDENTIFICATION ONLY AT THIS
20 TIME.)

21 (WHEREUPON, THE VIDEOTAPE IS SHOWN
22 TO THE COURT AT THIS TIME.)

23 THE COURT: OKAY. ALL RIGHT.

24 LET THE RECORD REFLECT THAT I HAVE REVIEWED
25 STATE'S EXHIBIT NUMBER 66 FOR I.D., THE VIDEO.

1 I FIND THAT IN ACCORDANCE WITH THE OPINION
2 ELABORATED IN THE STATE V. KELLY, WHICH I HAVE PREVIOUSLY
3 CITED FOR THE RECORD, AND THE OTHER CASES THAT ARE ON POINT
4 ON THIS ISSUE, THAT IT IS ADMISSIBLE AND THAT THE PROBATIVE
5 NATURE OUTWEIGHS ANY PREJUDICE AND IS NOT INTENDED TO
6 INFLAME THE JURY.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER
8 66, VIDEOTAPE, ENTERED INTO EVIDENCE AT THIS TIME OVER
9 OBJECTION OF COUNSEL.)

10 MS. FULLWOOD: MAY WE APPROACH THE BENCH?

11 THE COURT: YES, SIR.

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

14 THE COURT: WE'LL TAKE FIVE MINUTES BEFORE WE
15 START BACK.

16 (RECESS.)

17 THE BAILIFF: ALL RISE.

18 THE COURT: TAKE YOUR SEATS, PLEASE.

19 ALL RIGHT. WE'RE READY TO PROCEED.

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

21 THE COURT: THE DEFENSE READY.

22 OH, WE NEED MR. STONE---

23 MS. FULLWOOD: WE NEED MR. STONE.

24 THE COURT: WE'LL WAIT ON HIM.

25 (WHEREUPON, MR. STONE ENTERS THE

1 COURTROOM AT THIS TIME.)

2 THE COURT: OKAY.

3 LET'S BRING OUR JURY BACK.

4 (JURY IN.)

5 THE COURT: LADIES AND GENTLEMEN, LET ME
6 APOLOGIZE TO YOU FOR KEEPING YOU IN THAT LITTLE ROOM FOR
7 THIS PERIOD OF TIME. WE HAVE BEEN WORKING ON SOME
8 EVIDENTIARY MATTERS THAT IT WOULD HAVE NECESSITATED ME
9 SENDING YOU OUT OF THE COURTROOM TO TAKE THOSE UP. SO I
10 TOOK THE TIME WHILE YOU WERE IN THE JURY ROOM TO GO AHEAD
11 AND DEAL WITH THOSE MATTERS AND SO THAT WAY WE SHOULD NOT
12 HAVE TO SEND YOU OUT OF THE COURTROOM A NUMBER OF TIMES
13 THROUGHOUT SOME OF THE UPCOMING TESTIMONY.

14 ALSO, WE HAVE MADE ARRANGEMENTS FOR YOUR LUNCH TO
15 BE HERE IN A REASONABLE PERIOD OF TIME, BUT WE ARE GOING TO
16 CONTINUE NOW WITH THE STATE'S CASE.

17 CALL YOUR NEXT WITNESS, PLEASE.

18 MR. HUMPHRIES: INVESTIGATOR FRIER.

19 SCOTTIE R. FRIER,

20 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. HUMPHRIES:

23 Q INVESTIGATOR FRIER, YOU'VE PREVIOUSLY TESTIFIED
24 BEFORE THIS JURY?

25 A YES, SIR, I HAVE.

1 Q AND YOU ARE EMPLOYED WITH THE LEXINGTON COUNTY
2 SHERIFF'S DEPARTMENT IN THE INVESTIGATIVE DIVISION?

3 A YES, SIR, I WAS.

4 Q AND YOU WERE INVOLVED IN THE INVESTIGATION OF THE
5 MURDER OF URAI JACKSON, IS THAT CORRECT?

6 A I WAS THE LEAD CASE OFFICER.

7 Q IN CONNECTION WITH THAT, DID YOU HAVE AN OCCASION ON
8 JANUARY THE 17TH, 1995, TO COME IN CONTACT WITH GARY DUBOSE
9 TERRY AND ULTIMATELY TO OBTAIN A STATEMENT FROM GARY DUBOSE
10 TERRY RELATED TO THE MURDER OF URAI JACKSON?

11 A YES, SIR, I DID. THE SAME DAY THAT WE OBTAINED THE
12 BODY SAMPLES THROUGH THE PERMISSION TO SEARCH FORM THAT I
13 DISCUSSED EARLIER---

14 Q OKAY.

15 A ---WE ALSO OBTAINED A STATEMENT FROM HIM.

16 Q AND KEEP YOUR VOICE UP JUST A BIT.

17 NOW, PRIOR TO OBTAINING THE STATEMENT FROM GARY
18 DUBOSE TERRY, DID YOU ADVISE HIM OF HIS WARNINGS PURSUANT
19 TO MIRANDA AND LET TELL ME SHOW YOU A DOCUMENT AND TELL
20 ME IF YOU CAN IDENTIFY THAT?

21 A THIS IS THE ORIGINAL STATEMENT THAT I TOOK FROM GARY
22 TERRY ON JANUARY 17TH OF 1995. IT'S ON A PIECE OF PLAIN
23 NOTEBOOK PAPER. I DID NOT HAVE A STATEMENT FORM WITH ME SO
24 I WROTE THIS STATEMENT OUT ON NOTE---

25 Q IN WHOSE HAND?

1 A THAT IS IN MY HAND.

2 MS. FULLWOOD: NO OBJECTION.

3 THE COURT: WITHOUT OBJECTION.

4 MR. HUMPHRIES: MOVE TO INTRODUCE, YOUR HONOR.

5 THE COURT: WITHOUT OBJECTION, IT WILL BE

6 ADMITTED AS STATE'S NUMBER 67.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER

8 67, STATEMENT/1/17/95, ENTERED INTO EVIDENCE AT THIS TIME

9 WITHOUT OBJECTION.)

10 MR. HUMPHRIES: TELL THE JURY, IF YOU WILL,

11 BRIEFLY, THE WARNINGS PURSUANT TO MIRANDA THAT YOU

12 PROVIDED MR. TERRY AT THAT TIME?

13 A I ADVISED MR. TERRY OF SOME RIGHTS AND WROTE THOSE

14 RIGHTS OUT. I CAN PUBLISH THEM, IF YOU'D LIKE---

15 Q PLEASE.

16 A I HAVE -- I HAVE THE RIGHT TO REMAIN SILENT.

17 ANYTHING I SAY CAN BE USED AGAINST ME.

18 I HAVE THE RIGHT TO AN ATTORNEY.

19 IF I CANNOT AFFORD ONE, I CAN HAVE ONE APPOINTED.

20 I CAN STOP ANSWERING QUESTIONS AT ANY TIME AND

21 SPEAK TO AN ATTORNEY.

22 Q DID HE INDICATE TO YOU THAT HE UNDERSTOOD THOSE

23 RIGHTS?

24 A YES, HE DID. HE'S PLACED HIS INITIALS JUST OVER TO

25 THE MARGIN BESIDE THOSE RIGHTS THAT I READ TO HIM

1 INDICATING TO ME THAT HE UNDERSTOOD THOSE RIGHTS AND HE
2 WOULD BE WILLING TO SPEAK TO ME.

3 Q DID HE REQUEST AT ANY TIME DURING YOUR TIME WITH HIM
4 ON THAT DAY TO HAVE AN ATTORNEY PRESENT?

5 A NO, SIR, HE DID NOT.

6 Q DID HE STOP YOUR QUESTIONING AT ANY TIME DURING THAT
7 PERIOD?

8 A NO, SIR, HE DID NOT.

9 Q AND DID HE ULTIMATELY PROVIDE YOU A STATEMENT OF
10 WHICH THAT IS A SUMMARY?

11 A YES, HE DID.

12 Q PUBLISH THAT STATEMENT, IF YOU WILL, SIR?

13 A I HAVE BEEN INSIDE MS. JACKSON'S HOME BEFORE TO VISIT
14 WITH HER SON. I HAVE NEVER BEEN OVER 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 THE BROTHER'S
20 HOUSE. I WAS NOT OVER THERE BY MYSELF THAT WEEKEND.

21 Q NOW, AFTER MR. TERRY'S ARREST, DID YOU HAVE AN
22 OCCASION TO OBTAIN ANOTHER STATEMENT FROM HIM?

23 A YES, SIR, I DID.

24 Q LET ME SHOW YOU THIS DOCUMENT AND TELL ME IF YOU CAN
25 IDENTIFY THAT?

1 A YES, SIR. THIS IS THE ORIGINAL THREE-PAGE-STATEMENT
2 FORM WHICH CONTAINS THE STATEMENT FROM AN INTERVIEW WE HAD
3 WITH GARY TERRY ON THE 24TH OF MARCH, 1995.

4 MR. STONE: NO OBJECTION.

5 MR. HUMPHRIES: MOVE TO INTRODUCE, YOUR HONOR.

6 THE COURT: WITHOUT OBJECTION, STATE'S NUMBER 68
7 WILL BE ADMITTED.

8 (WHEREUPON, STATE'S EXHIBIT NUMBER
9 68, STATEMENT CONSISTING OF THREE PAGES/3/24/95, ENTERED
10 INTO EVIDENCE AT THIS TIME WITHOUT OBJECTION.)

11 MR. HUMPHRIES: DID YOU AGAIN ADVISE MR. TERRY OF
12 HIS WARNINGS PURSUANT TO MIRANDA?

13 A YES, SIR, I DID. THIS FORM CONTAINS FIVE SENTENCES
14 WHICH CONTAINS THE MIRANDA WARNINGS AND THEY'RE PRESENTED
15 TO THE SUSPECT AT THE TIME A STATEMENT LIKE THIS IS TAKEN."

16 Q AND ARE THOSE -- DID YOU ADVISE MR. TERRY CONSISTENT
17 WITH THE WRITTEN WARNINGS ON THAT PAGE?

18 A YES, SIR, I DID. THOSE WRITTEN WARNINGS ARE
19 ACCOMPANIED WITH A NUMBER AND IT'S A PRACTICE OF MINE, I
20 WILL CIRCLE THAT NUMBER AFTER I'VE READ THE RIGHTS
21 INDICATING TO THEM THAT I HAVE READ THEM JUST AS THEY ARE
22 PRINTED ON THIS FORM.

23 Q DID HE INDICATE THAT HE UNDERSTOOD THOSE RIGHTS?

24 A YES, HE DID. HIS INITIALS ARE AFFIXED TO THE SIDE OF
25 EACH NUMBERED RIGHT WHICH IS, AGAIN, INDICATIVE OF HIM

1 UNDERSTANDING THE RIGHTS AND AGREEING TO SPEAK WITH ME
2 WITHOUT AN ATTORNEY PRESENT.

3 Q AND DID HE ULTIMATELY PROVIDE A STATEMENT TO YOU ON
4 THAT DAY?

5 A ON MARCH 24TH, 1995, YES, HE DID.

6 Q AND IS THAT A SUMMARY OF THE ORAL STATEMENT HE
7 PROVIDED YOU?

8 A YES, SIR, IT IS.

9 Q WILL YOU PUBLISH THAT TO THE JURY, PLEASE, SIR.

10 A AT THE TIME THIS HAPPENED, I WAS LIVING AT THE LAKE
11 WITH DIANNE GIBSON. WHILE I WAS COMING BACK FROM
12 TENNESSEE, I WENT OVER TO MS. JACKSON'S HOUSE ON BUCKEYE
13 DRIVE. I USED TO LIVE ACROSS THE STREET.

14 WHEN I GOT OVER THERE, IT WAS BETWEEN MIDNIGHT
15 AND THE SUN WAS COMING UP. IT WAS EITHER FRIDAY OR
16 SATURDAY MORNING. I KNOCKED ON THE FRONT DOOR FIRST. I
17 DIDN'T GET AN ANSWER. I WENT TO THE BACK DOOR AND I
18 KNOCKED ON IT. I DIDN'T GET AN ANSWER. I KNOCKED ON THE
19 WINDOW BY JOHN'S ROOM. I STILL DIDN'T GET AN ANSWER. I
20 GOT INTO THE HOUSE AT THE BACK DOOR. I DON'T REMEMBER IF I
21 HAD TO MOVE A CHAIN OR A LOCK. I HAD TO PUSH THE DOOR OPEN
22 KIND OF HARD. I WENT INSIDE AND I CALLED HER. SHE
23 ANSWERED ME ON ABOUT THE THIRD TIME. SHE WAS IN HER
24 BEDROOM. I WENT IN HER BEDROOM AFTER SHE GOT ME A GLASS OF
25 ICE WATER. WE WERE JUST TALKING. WE WENT TO BED. I HAD

1 SEX WITH HER. I GOT READY TO LEAVE. WE STARTED HAVING
2 WORDS ABOUT ME LEAVING. SHE WANTED ME TO STAY. THE
3 ARGUMENT GOT PRETTY HEATED. I WENT TO GO OUT OF THE ROOM
4 AND SHE GRABBED ME BY THE HAIR. I TURNED AROUND AND SWUNG
5 TO GET HER OFF OF ME. I THINK I HIT HER AND SHE WENT DOWN
6 TO HER KNEES.

7 I, AGAIN, TRIED TO WALK OUT OF THE ROOM. I GOT
8 ALMOST TO THE END OF THE HALLWAY. SHE GRABBED ME FROM
9 BEHIND AGAIN. I THEN LOST MY TEMPER. I SWUNG BACK AT HER
10 AGAIN. I THEN GOT SOMETHING INTO MY HAND. IT WAS JUST
11 THERE IN THE HALL. SHE COULD HAVE BROUGHT IT WITH HER. I
12 STARTED HITTING HER WITH IT. I LOST MY TEMPER AND I HIT
13 HER SEVERAL TIMES. I HAVE A BAD TEMPER.

14 I THEN REMEMBERED LEAVING OUT OF THE SAME BACK
15 DOOR. I COULD HAVE DUSTED A PANE OF GLASS ON THE DOOR WHEN
16 I BUSTED THE DOOR OPEN.

17 I DON'T REMEMBER PULLING THE PHONE LINES. I
18 DON'T REMEMBER WHAT I DID WITH THE OBJECT THAT I USED TO
19 HIT MS. JACKSON. I CAN'T REMEMBER WHAT IT WAS. I REMEMBER
20 THAT I COULD HOLD IT IN ONE HAND AND IT WASN'T AS BIG AS A
21 BASEBALL BAT.

22 THEN THERE'S ONE FINAL SENTENCE THAT SAYS, I
23 DON'T WISH TO ADD ANY INFORMATION.

24 Q IN THE OBTAINING OF EITHER OF THESE STATEMENTS, DID
25 YOU THREATEN OR COERCE MR. TERRY IN ORDER TO PROVIDE THESE

1 STATEMENTS?

2 A NO, SIR, WE DID NOT.

3 Q IN THE OBTAINING OF THESE TWO STATEMENTS, DID YOU
4 EVER OFFER MR. TERRY ANY HOPE OF REWARD OR LENIENCY IN
5 ORDER TO OBTAIN THESE TWO STATEMENTS?

6 A NO, SIR, WE DID NOT.

7 Q DID HE PROVIDE THEM TO YOU FREELY AND VOLUNTARILY?

8 A YES, SIR, HE DID.

9 Q IN RELATION TO THE SECOND STATEMENT, HAVE YOU AT THAT
10 TIME OR WAS HE ADVISED AT THAT TIME HE WOULD BE PLACED
11 UNDER ARREST FOR CRIMINAL SEXUAL CONDUCT, BURGLARY AND
12 MURDER CONNECTED TO THE MURDER OF URAI JACKSON?

13 A HE WAS FORMALLY IN CUSTODY AND HAD FORMALLY BEEN
14 ADVISED THAT HE WAS UNDER ARREST FOR THE MURDER, THE RAPE
15 AND THE ROBBERY -- OR THE BURGLARY OF MS. JACKSON'S HOME.

16 Q HAD YOU PRIOR TO OBTAINING THAT STATEMENT FROM HIM
17 INDICATED THAT THERE WAS EVIDENCE, CONCLUSIVE EVIDENCE,
18 CONNECTING HIM TO THE MURDER, RAPE AND BURGLARY OF URAI
19 JACKSON?

20 A PRIOR TO OUR BEGINNING THE STATEMENT WITH HIM, I HAD
21 INDICATED TO HIM THAT THERE WAS A PROBLEM WITH THE SAMPLES
22 THAT WE HAD TAKEN FROM HIM MATCHING UP TO THE CRIME SCENE.

23 Q LET ME ASK YOU THIS. IN THIS STATEMENT, DID GARY
24 DUBOSE TERRY ADMIT TO BREAKING IN OR BURGLARIZING THE HOME
25 OF URAI JACKSON?

1 A HE CLAIMED THAT HE WAS LET INTO OR BASICALLY FORCES
2 HIS WAY INTO THE HOME TO SEE MS. JACKSON, INDICATING THAT
3 SHE WAS A PRIOR ACQUAINTANCE.

4 Q DID HE INDICATE OR CONFESS IN THAT STATEMENT TO
5 RAPING URAI JACKSON?

6 A NO, SIR. HE -- HIS CLAIM WAS THAT THEY HAD HAD AN
7 ON-GOING CONSENSUAL RELATIONSHIP AND THAT HE WENT TO HER
8 HOUSE TO CONTINUE THAT RELATIONSHIP.

9 Q AND DID HE IN THAT STATEMENT CONFESS TO THE MURDER OF
10 URAI JACKSON OR A KILLING IN THE HEAT OF PASSION?

11 A HE INDICATED TO US THAT SHE BECAME MAD WITH HIM FOR
12 WANTING TO LEAVE AFTER THEY HAD HAD SEXUAL INTERCOURSE AND
13 THAT HE BECAME ENRAGED WHEN SHE GRABBED HIM.

14 Q THANK YOU.

15 ANSWER ANY QUESTIONS FOR THE DEFENSE.

16 THE COURT: CROSS-EXAMINATION, MR. STONE.

17 MR. STONE: JUST A FEW.

18 CROSS-EXAMINATION

19 BY MR. STONE:

20 Q INVESTIGATOR, THIS IS -- THIS STATEMENT CAME OUT
21 AFTER ABOUT AN HOUR AND FORTY-FIVE MINUTES WITH HIM, IS
22 THAT CORRECT?

23 A YES, SIR. WE -- WE TALKED WITH HIM ALMOST TWO HOURS.

24 Q YES, SIR. DURING THE HOUR AND FORTY-FIVE MINUTES,
25 MR. TERRY TOLD YOU A NUMBER OF TIMES THAT HE DIDN'T

1 REMEMBER VARIOUS THINGS ABOUT IT, IS THAT CORRECT?

2 A HE -- HE SEEMED TO NOT WANT TO DISCUSS SOME ASPECTS
3 AND WOULD CLAIM THAT HE JUST DIDN'T REMEMBER.

4 Q OKAY. BUT -- AND I UNDERSTAND WHAT YOU'RE SAYING
5 THAT HE CLAIMS HE DIDN'T WANT TO SAY IT, BUT, HOWEVER,
6 THERE ARE SOME ASPECTS THAT HE NEVER TOLD YOU ABOUT, IS
7 THAT CORRECT?

8 A YES, SIR.

9 Q ALL RIGHT, SIR. AND IT IS POSSIBLE, IS IT NOT, THAT
10 SOME OF THESE ASPECTS HE TRULY DID NOT REMEMBER, IS THAT
11 NOT POSSIBLE?

12 A ANYTHING IS POSSIBLE, SIR.

13 Q YOU DON'T KNOW, DO YOU?

14 A I DON'T KNOW.

15 Q YES, SIR. THAT'S FINE. THANK YOU AND I DON'T HAVE
16 ANYTHING ELSE.

17 MR. HUMPHRIES: NO, SIR.

18 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY
19 STEP DOWN.

20 THE WITNESS: THANK YOU, YOUR HONOR.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MR. HUMPHRIES: YOUR HONOR, THE STATE CALLS
24 INVESTIGATOR CHARLES CATO TO THE STAND AND WOULD REQUEST
25 PERMISSION TO SET UP THE T.V. FOR VIEWING OF THE VIDEOTAPE

1 AT THIS TIME.

2 THE COURT: ALL RIGHT, SIR.

3 CHARLES W. CATO,

4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: LADIES AND GENTLEMEN, IT WILL TAKE
6 JUST A MOMENT WHILE THE VIDEOTAPE IS PREPARED AND THE
7 MONITOR IS PLACED SO THAT YOU CAN SEE THE VIDEO THAT WILL
8 BE PLAYED FOR YOU.

9 DIRECT EXAMINATION

10 BY MR. HUMPHRIES:

11 Q STATE YOUR NAME FOR THE RECORD, PLEASE, SIR?

12 A CHARLES WILLIAM CATO.

13 Q WITH WHOM ARE YOU EMPLOYED?

14 A LEXINGTON COUNTY SHERIFF'S OFFICE.

15 Q AND IN WHAT CAPACITY?

16 A IDENTIFICATION OFFICER.

17 Q AND IN MAY OF 1994, WHAT CAPACITY?

18 A IDENTIFICATION OFFICER.

19 Q IN CONNECTION WITH YOUR DUTIES AS AN IDENTIFICATION
20 OFFICER, DID YOU HAVE AN OCCASION TO VIDEOTAPE A CRIME
21 SCENE ON BUCKEYE DRIVE ON MAY 31ST OF 1994, THE HOME OF
22 URAI JACKSON?

23 A THAT'S CORRECT. THAT'S OUR NORMAL PROCEDURE.

24 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 66. TELL ME
25 IF YOU CAN IDENTIFY THIS TAPE?

1 A YES, SIR. THIS IS THE VIDEOTAPE THAT I TOOK THAT DAY
2 OF THE CRIME SCENE.

3 Q DOES IT FAIRLY AND ACCURATELY REPRESENT THE CRIME
4 SCENE AS IT EXISTED THAT DAY?

5 A YES, IT DOES.

6 MR. HUMPHRIES: REQUEST PERMISSION TO PUBLISH AT
7 THIS TIME, YOUR HONOR. MOVE TO INTRODUCE AND REQUEST TO
8 PUBLISH.

9 THE COURT: IT'S ALREADY BEEN INTRODUCED---

10 MR. HUMPHRIES: THANK YOU.

11 THE COURT: ---AND YOU MAY PUBLISH IT. IT'S BEEN
12 INTRODUCED AS STATE'S 66.

13 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER
15 66, THE VIDEOTAPE, IS SHOWN TO THE JURY AT THIS TIME.)

16 MR. HUMPHRIES: YOUR HONOR, I DON'T HAVE ANY
17 FURTHER QUESTIONS OF THIS WITNESS.

18 MS. FULLWOOD: NO QUESTIONS.

19 THE COURT: ALL RIGHT. THANK YOU.

20 YOU MAY STEP DOWN, MR. CATO.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED AT THIS TIME.)

23 MR. HUMPHRIES: YOUR HONOR, WE'LL DISASSEMBLE
24 THE---

25 THE COURT: ALL RIGHT, SIR.

1 MR. HUMPHRIES: THE STATE CALLS SENIOR AGENT
2 STEVE DERRICK TO THE STAND.

3 STEVEN DERRICK,
4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 MR. HUMPHRIES: YOUR HONOR, PREVIOUSLY SENIOR
6 AGENT STEVE DERRICK WITH S.L.E.D HAS BEEN OFFERED AND
7 ACCEPTED BY THE COURT AS AN EXPERT IN THE FIELD OF BLOOD
8 SPATTER ANALYSIS. I DON'T KNOW IF THERE'S ANY---

9 MR. STONE: THERE'S NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT. QUALIFICATIONS CONTINUED
11 INTO THIS PHASE.

12 DIRECT EXAMINATION

13 BY MR. HUMPHRIES:

14 Q IN CONNECTION WITH THAT FIELD OF EXPERTISE, DID YOU
15 HAVE AN OCCASION TO ANALYZE BLOOD SPATTER IN THIS
16 PARTICULAR CASE, SPECIFICALLY, AT THE HOME OF URAI JACKSON?

17 A YES, SIR, I DID.

18 Q I'M GOING TO HOLD YOU -- SHOW YOU A COLLECTION OF
19 PHOTOGRAPHS ALREADY ADMITTED INTO EVIDENCE, STATE'S 46
20 THROUGH 52.

21 FIRST OF ALL, TELL ME IF YOU CAN IDENTIFY THESE
22 PHOTOGRAPHS AND TELL ME IF THEY WILL ASSIST YOU IN YOUR
23 PRESENTATION TO THE JURY REGARDING BLOOD SPLATTER
24 TESTIMONY.

25 A YES, SIR.

1 I CAN IDENTIFY EACH ONE OF THESE PHOTOGRAPHS AND,
2 YES, THEY WOULD BE OF GREAT ASSISTANCE.

3 Q LET ME ASK YOU THIS. LET ME SHOW YOU THIS CHART.
4 TELL ME IF YOU CAN IDENTIFY THE CHART?

5 A YES, SIR, I CAN.

6 Q BY WHOM WAS IT PREPARED?

7 A IT WAS PREPARED BY MYSELF.

8 Q AND WHAT DOES IT DEPICT?

9 A IT IS A BASIC THREE-DIMENSIONAL DRAWING OF THE
10 HALLWAY AND THE CORNER SECTION OF THE LIVING ROOM AND A
11 PARTICULAR PIECE OF FURNITURE THAT WAS NEXT TO THE WALL
12 THERE AT THE CORNER OF THE LIVING ROOM AND THE HALLWAY.
13 ALSO, DEPICTS THE DOOR WHICH WAS PRESENT ON THE HALLWAY.
14 Q AND WILL IT ASSIST YOU IN YOUR TESTIMONY TO THIS JURY
15 REGARDING BLOOD SPATTER?

16 A YES, SIR, IT WOULD.

17 MR. HUMPHRIES: YOUR HONOR, WE'LL MARK IT FOR
18 IDENTIFICATION PURPOSES AT THIS TIME AND THEN MOVE IT INTO
19 EVIDENCE AFTER SENIOR AGENT DERRICK'S NOTATIONS HAVE BEEN
20 MADE ON THE BOARD IF THAT'S SUITABLE.

21 MR. STONE: THAT'S FINE, YOUR HONOR. NO
22 OBJECTION.

23 THE COURT: ALL RIGHT. IT WILL BE MARKED AS
24 STATE'S NUMBER 69 FOR I.D.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER

1 69, CHART/DERRICK, MARKED FOR IDENTIFICATION ONLY AT THIS
2 TIME.)

3 MR. HUMPHRIES: NOW, SENIOR AGENT DERRICK, WHAT I
4 WOULD LIKE FOR YOU TO DO, JUST BRIEFLY, IS EXPLAIN TO THE
5 JURY WHAT BLOOD SPATTER ANALYSIS IS.

6 THE WITNESS: OKAY. MAY I STEP DOWN IN FRONT OF
7 THE JURY---

8 MR. HUMPHRIES: PLEASE.

9 THE WITNESS: ---TO DEMONSTRATE. (WITNESS
10 COMPLIES.)

11 BLOODSTAIN PATTERN ANALYSIS IS THE STUDYING OF
12 THE SPATTER IN BLOOD LEADING THAT OCCURS IN THIS PARTICULAR
13 CASE AT THE CRIME SCENE OF MS. JACKSON'S RESIDENCE.

14 IF I COULD TAKE A FEW MINUTES TO EXPLAIN A FEW
15 THINGS THAT OCCUR WITH BLOOD IT MAY BE EASIER TO UNDERSTAND
16 MY TESTIMONY DIRECTLY TO THIS CASE.

17 IF I WERE TO TAKE AN OBJECT AND STRIKE MY HAND
18 WITH ENOUGH FORCE TO WHERE THE SKIN WAS BROKEN AND THE
19 SURFACE WAS CUT, IMMEDIATELY BLOOD LEADING WOULD START TO
20 OCCUR.

21 IF I LEFT MY HAND IN THIS UPRIGHT POSITION,
22 DEPENDING ON HOW SEVERE THE WOUND IS, EVENTUALLY THE BLOOD
23 WOULD BEGIN TO FILL UP IN MY HAND CREATING A POOLING EFFECT
24 UNTIL POSSIBLY SUCH POINT THAT IT OVERRUNS THE SIDE OF MY
25 HAND, THUS FALLING TO THE CARPET BECAUSE OF THE GRAVITATION

1 AND PULL. THAT, IF YOU WOULD RECALL, IS WHAT I HAD
2 REFERRED TO EARLIER AS LOW VELOCITY SPATTER.

3 NOW, IF I TAKE MY HAND AND THIS POOL OF BLOOD
4 THAT IS STILL PRESENT IN MY HAND AND I TAKE AN OBJECT AND I
5 STRIKE IT AGAIN AND APPLY THE FORCE TO IT BECAUSE THE FORCE
6 IS APPLIED TO THIS BLOOD, IT IS GOING TO FLY OUT.

7 NOW, SOME OF THAT BLOOD, WHEN FORCE IS APPLIED,
8 MAY STRIKE OVER HERE(INDICATES). IT COULD PROJECT OUT IN
9 THIS DIRECTION AND IT CAN PROJECT OUT OVER IN THIS
10 DIRECTION(INDICATES). DEPENDING ON THE ANGLE OF FORCE, IT
11 COULD PROJECT BACK ON ME ALSO.

12 NOW, ONCE THIS FORCE IS APPLIED AND BLOOD HAS
13 STRUCK THE SURFACES, AS AN EXAMINER, I CAN LOOK AT THIS
14 BLOOD BECAUSE BLOOD WILL DO CERTAIN THINGS.

15 FOR INSTANCE, WHEN I STRIKE MY HAND
16 HERE(INDICATES) AND THE BLOOD FLIES OUT AND HITS THIS
17 SURFACE, PARALLEL OR STRAIGHT ACROSS FROM THE HEIGHT OF MY
18 HAND, WHEN THE BLOOD HITS THIS SURFACE, IT WILL CREATE A
19 CIRCULAR STAIN, A STAIN THAT IS STRUCK WE KNOW AT 90
20 DEGREES BECAUSE IT WILL BE CIRCULAR IN ITS DESIGN.
21 HOWEVER, NOT ALL OF THE BLOOD THAT'S GOING TO FLY OFF OF MY
22 HAND IS GOING TO STRIKE JUST STRAIGHT ACROSS ON EITHER
23 SIDE. BECAUSE OF THE FORCE AND THE MOTION OF THE BLOOD,
24 SOME OF IT MAY STRIKE UP HERE(INDICATES). IT MAY STRIKE
25 ACROSS HERE(INDICATES). OF COURSE, IF IT WENT THIS

1 DIRECTION, IT'S GOING TO FALL DOWN AT AN ANGLE ON THE
2 FLOOR.

3 THESE SPATTERS GIVE WHAT KIND OF LOOKS LIKE A
4 TEARDROP EFFECT WHEN IT STRIKES THE SURFACE. OKAY. AS
5 BLOOD HITS, WHICH IS A CIRCULAR DROP, IT BECOMES ELLIPTICAL
6 AS IT HITS BECAUSE OF THE FORCE AND MOTION THAT IT HAS.

7 APPLYING THE APPROPRIATE MATHEMATICAL FORMULAS
8 AND MEASUREMENTS OF THESE STAINS, WE CAN DETERMINE THE
9 DEGREE OR HOW FAR AWAY IN AN APPROXIMATE AREA WHERE THIS
10 BLOOD COMES FROM. THUS, IF I TAKE THIS 90 DEGREE SPATTER
11 THAT'S ON BOTH SIDES, WELL, I KNOW APPROXIMATELY THE HEIGHT
12 FROM THE FLOOR OF MY HAND BECAUSE THIS HIT 90
13 DEGREES (INDICATES). THIS HIT 90 DEGREES (INDICATES).

14 NOW, I CAN TAKE THESE OTHER PATTERNS AND MEASURE
15 THEM OFF THE ONES THAT WOULD HIT UP HERE (INDICATES), WOULD
16 BE IN AN ELLIPTICAL SHAPE IN THIS FORMATION. ONE HITTING
17 OVER HERE WOULD BE IN AN ELLIPTICAL SHAPE COMING BACK IN
18 THIS GENERAL AREA.

19 I CAN TAKE THOSE MEASUREMENTS, FIND OUT
20 APPROXIMATELY HOW FAR OUT FROM THE WALL THIS BLOOD WAS WHEN
21 IT MADE THE IMPACT. BY USING A MEDAL ROD, SOMETHING THAT
22 IS STRAIGHT, A PROTRACTOR, I CAN TAKE THESE ANGLES FROM
23 BLOOD UP HERE (INDICATES), BLOOD DOWN HERE (INDICATES), BLOOD
24 STRAIGHT ACROSS (INDICATES) AND GET THIS APPROXIMATE AREA OF
25 WHERE MY HAND IS. THIS IS THE BLOOD SOAKED SURFACE AND THE

1 APPROXIMATE AREA FROM WHERE FORCE WAS APPLIED TO THE BLOOD.

2 NOW, AS I CONTINUE TO STRIKE MY BLOOD SOAKED
3 HAND, OF COURSE, EVERY TIME I STRIKE IT, THERE'S GOING TO
4 BE A CERTAIN AMOUNT OF BLOOD THAT'S GOING TO BE PROJECTED
5 OUT.

6 A SECOND THING THAT OCCURS WHEN I TAKE THIS
7 OBJECT AND I STRIKE MY HAND IS THAT THERE IS A CERTAIN
8 AMOUNT OF BLOOD THAT'S PROBABLY OR MOST LIKELY IS GOING TO
9 TRANSFER TO THAT OBJECT.

10 IF I STRIKE IT AND GET BLOOD ON THIS PARTICULAR
11 OBJECT, IF I GO TO STRIKE IT AGAIN, BECAUSE OF MOTION AND
12 FORCE, THIS WET BLOOD HAS THE POTENTIAL OF FLYING OFF OF
13 THIS OBJECT, THUS, I COULD END UP GETTING AN ARC EFFECT.
14 SHOWING BY THE SPATTER ON VARIOUS THINGS IF I WERE TO DO IT
15 IN THIS DIRECTION, I WOULD HAVE THIS UP AND DOWN PATTERN
16 THAT WOULD BE PRESENT HERE(INDICATES). AS I GO STRAIGHT
17 UP, THE BLOOD HAS THE POTENTIAL FOR BEING ON THE CEILING.
18 PROBABLY NOT IN THE COURTROOM, BUT IN A NORMAL RESIDENCE
19 AND WHERE I STOP UP HERE(INDICATES), WHAT BLOOD IS LEFT
20 THAT IS LIQUIDIFIED IS GOING TO FALL BACK IN THIS MOTION.
21 AND AS THOSE SPATTERS HIT, AGAIN, MEASURING, YOU CAN FIND
22 OUT APPROXIMATELY HOW FAR OUT AND HIGH ABOVE THE FLOOR THIS
23 PARTICULAR OBJECT WAS.

24 THOSE ARE SOME BASIC PRINCIPLES IN BLOODSTAIN
25 PATTERN ANALYSIS. THE TYPE OF THINGS I LOOK FOR IN A BLUNT

1 TRAUMA TYPE CASE.

2 Q THANK YOU.

3 NOW, APPLYING THOSE PRINCIPLES TO THIS CRIME
4 SCENE, WHAT CAN YOU TELL THE JURY ABOUT THE LOCATION OF THE
5 BODY OF URAI JACKSON DURING THE PRIMARY ASSAULT IN THIS
6 CASE; THAT IS, SPECIFICALLY, THE HEAD WOUNDS?

7 A OKAY. IF I COULD USE THE PHOTOGRAPHS AND THE
8 DIAGRAM---

9 Q PLEASE---

10 A ---I THINK IT WOULD BE EASIER TO EXPLAIN.

11 Q ---AT YOUR DISCRETION.

12 A DO YOU HAVE SOMETHING I COULD MARK ON THE DIAGRAM
13 WITH?

14 Q YES.

15 A THANK YOU.

16 OKAY. STATE'S EXHIBIT NUMBER 52 -- IF I CAN GET
17 IT IN ITS RIGHT ORIENTATION.

18 LET'S START WITH THE FLOOR ITSELF. AND THIS IS
19 -- STATE'S 52 IS A PHOTOGRAPH SHOWING TWO POOLS OF BLOOD
20 THAT'S IN THE CARPET THAT IS REPRESENTED POOL NUMBER ONE,
21 THIS GENERAL AREA(INDICATES). POOL NUMBER TWO IN THIS
22 GENERAL AREA(INDICATES).

23 IN THESE POOLS, THERE IS A HEAVY AMOUNT OF BLOOD
24 LEADING THAT HAS OCCURRED. BLOOD IS FLOWN OUT. IT HAS
25 POOLED UP, COAGULATED IN THESE TWO AREAS.

1 IN EXAMINING THE TWO STAINS BY SIZE AND THE
2 AMOUNT OF VOLUME THAT APPEARS OR APPEARED THAT DAY IN MY
3 EXAMINATION, THIS POOL HERE, THE ONE CLOSER TO THE CORNER
4 HAD A GREATER VOLUME OF BLOOD IN IT THAN THE SECOND ONE
5 OVER HERE(INDICATES). ALONG WITH THE POOLS OF BLOOD, THERE
6 ARE SOME OTHER DROPS, SOME OTHER SPATTERS AND SOME
7 TRANSFER.

8 AS I SPOKE OF EARLIER, TRANSFER IS SOMETHING THAT
9 HAS BLOOD ON IT THAT WHEN IT MAKES CONTACT WITH ANOTHER
10 SURFACE WILL TRANSFER THE BLOOD FROM WHAT HAS BLOOD ON IT
11 TO THAT SURFACE.

12 FOR INSTANCE, IF I HAVE BLOOD ON MY HAND, I TOUCH
13 HERE, I HAVE A POTENTIAL OF TRANSFERRING THE BLOOD AS WELL
14 AS THE RIDGE DETAIL OF MY HAND.

15 FABRIC ABSORBS BLOOD. SO IT'S HARD TO MAKE A
16 DETERMINATION OF WHAT WOULD HAVE TRANSFERRED THERE BECAUSE
17 THE FABRIC ABSORBS IT AND IT RUNS OUT KIND OF LIKE WIPING
18 UP A SPILL WITH A PAPER TOWEL.

19 THE NEXT THING THAT I LOOKED AT -- BEAR WITH ME
20 ONE MOMENT -- IS---

21 THE COURT: WHAT EXHIBIT ARE YOU REFERRING TO?

22 THE WITNESS: SORRY, YOUR HONOR. IT'S STATE'S
23 EXHIBIT NUMBER 51.

24 THE COURT: THANK YOU, SIR.

25 THE WITNESS: STATE'S EXHIBIT NUMBER 51 IS A

1 PHOTOGRAPH OF A WALL AND THE SPATTER THAT IS PRESENT DOWN
2 PRIMARILY IN THIS AREA(INDICATES). THIS CORNER WALL AND
3 THERE'S SOME ELLIPTICAL PATTERNS THAT GO FURTHER OUT THE
4 WALL. THAT WOULD BE THIS GENERAL AREA RIGHT IN
5 HERE(INDICATES).

6 USING STATE'S EXHIBIT NUMBER 50, THIS IS A MORE
7 CLOSE-UP PHOTOGRAPH SHOWING THE SPATTER THAT IS PRESENT ON
8 THE WALL AND DOWN TOWARDS THE BASEBOARD, SOME OF THAT BLOOD
9 HAS JUST BEEN TRANSFERRED FROM SOMETHING.

10 NOW, IF YOU RECALL WHAT I SPOKE OF EARLIER, WE
11 TALKED ABOUT -- ABOUT THE BLOOD SPRAYING OUT. IF YOU WILL
12 LOOK AT THE END OF MY FINGER, THOSE ARE VERY PREDOMINATE
13 SPATTER STAINS. THEY ARE A LITTLE BIT LARGER THAN THE
14 OTHERS, BUT YOU CAN SEE THE TEARDROP EFFECT OF THE SPATTER
15 ITSELF AND IF YOU LOOK AT THAT TEARDROP EFFECT OF THE
16 SPATTER, ITS ALMOST LIKE AN ARROW POINTING BACK FROM THE
17 DIRECTION IT CAME FROM.

18 SO USING THAT, I KNOW IMMEDIATELY THAT THE
19 DIRECTION OF THE SPATTER COMES FROM OVER HERE IN THIS AREA
20 SOMEWHERE AROUND WHERE THAT POOL OF BLOOD IS.

21 NOW, TAKING THIS SPATTER, THE VERY OBVIOUS
22 SPATTER PRESENT HERE, I TRACK BACK, APPLY MY MATHEMATICAL
23 FORMULA AND GET THIS SPATTER BACK OVER HERE IN THIS AREA
24 WHERE THE POOL OF BLOOD IS(INDICATES). I CAN'T
25 SPECIFICALLY PINPOINT EXACTLY WHERE IT IS BUT IT'S IN THAT

1 APPROXIMATE AREA.

2 ANOTHER PARTICULAR PROBLEM I RAN INTO WITH THIS
3 IS IF YOU NOTICE THIS LIGHTER RED OR THIS KIND OF PINKISH
4 LOOKING BLOOD THAT'S VERY CONGREGATED TOGETHER, THIS IS
5 THAT BLOOD THAT I HAD SPOKE OF BEING EXPIRATED BLOOD OR
6 COUGHED-UP BLOOD WHICH IS NOW INTERMINGLED WITH THE SPATTER
7 ITSELF. BUT TAKING THE SPATTER SPECIFICALLY ON THIS
8 PARTICULAR WALL, I FOUND THAT ON THIS WALL THE LOWEST
9 SPATTER WAS FOUR INCHES ABOVE THE FLOOR WITH THE HIGHEST
10 ONES BEING SIX INCHES ABOVE THE FLOOR.

11 SO ALL THE SPATTER THAT WAS PROJECTED OUT ON THIS
12 WALL WAS SOMEWHERE BETWEEN SIX INCHES AND FOUR INCHES FROM
13 THE FLOOR ITSELF.

14 REFERRING TO STATE'S EXHIBIT NUMBER 48, THIS IS A
15 PHOTOGRAPH SHOWING THE HALLWAY WHICH IS REPRESENTED HERE IN
16 THIS DIAGRAM(INDICATES).

17 IF YOU WILL LOOK AT THE BASE OF THE WALL BETWEEN
18 THE DOOR AND THE CORNER, AGAIN, YOU FIND THIS FINE RED-LIKE
19 SUBSTANCE PRESENT ON THIS WALL(INDICATES).

20 ENLARGING THAT AREA IN STATE'S EXHIBIT NUMBER 41
21 SHOWS THE SPATTER THAT WAS EXAMINED ON THAT CORNER OF THE
22 WALL.

23 NOW, IF YOU LOOK AT THIS PHOTOGRAPH, YOU REMEMBER
24 WHAT I SPOKE OF EARLIER ABOUT BLOOD FLYING UP, FLYING DOWN
25 AND FLYING STRAIGHT ACROSS, YOU CAN TELL FROM THIS

1 PHOTOGRAPH THAT THERE'S A LOT OF SPATTER WHICH IS
2 ANGULATING BACK DOWN.

3 OKAY. THUS, USING ALL THOSE TEARDROPS, AGAIN, TO
4 CALCULATE THE MEASUREMENTS OF HEIGHT AND DISTANCE, USING
5 THAT SPATTER REPRESENTED IN STATE'S EXHIBIT NUMBER 41 -- OR
6 49, EXCUSED ME. YEAH, 49, I'M SORRY. AGAIN, CALCULATING
7 OUT, THEY COME BACK OUT TO THIS VICINITY(INDICATES).

8 Q WHICH IS?

9 A THE POOL OF BLOOD.

10 Q AND FOR THE RECORD, WILL YOU IDENTIFY POOL NUMBER ONE
11 AND POOL NUMBER TWO?

12 A CALL THE FIRST ONE CLOSEST TO THE CORNER, POOL NUMBER
13 ONE, AND THE SECOND ONE, POOL NUMBER TWO.

14 Q THANK YOU.

15 A YES, SIR.

16 ALSO IN LOOKING AT THOSE, THE LOWEST POINT FROM
17 THE FLOOR FROM THAT SPATTER WAS TWO INCHES WITH THE HIGHEST
18 MARK FROM THE FLOOR BEING NINE INCHES.

19 SO ALL THE FORCE THAT WAS APPLIED TO THE BLOOD
20 WAS SOMEWHERE BETWEEN TWO AND NINE INCHES CAUSING IT TO FLY
21 OUT. THAT WAS THE AREAS THAT THEY CRISSCROSSED.

22 USING STATE'S EXHIBIT NUMBER 47, THIS IS A
23 DEPICTION OF A WALL NEXT TO THE PIECE OF FURNITURE
24 REPRESENTED IN THIS AREA OVER HERE ON THE DIAGRAM. AND IF
25 YOU WILL NOTICE LOOKING AT THE PICTURE, OF COURSE, THERE IS

1 SOME SPATTER THERE REPRESENTED ON THE WALL. AND THERE WAS
2 SOME SPATTER REPRESENTED OVER HERE ON THE EDGE OF THE
3 FURNITURE. THERE WAS NOT A WHOLE LOT OF THE SPATTER WHICH
4 WAS LOCATED HERE AT THE BASE OF THE WALL THAT COULD HAVE
5 COME FROM MORE LIKELY POOL NUMBER TWO AS OPPOSED TO POOL
6 NUMBER ONE BECAUSE OF THE DISTANCE. THIS BLOOD WON'T FLY
7 ALL THE WAY ACROSS THE ROOM. WE'RE DEALING WITH AROUND A
8 THREE TO FOUR FOOT AREA ONCE THE FORCE IS APPLIED IN THIS
9 TYPE OF CASE. BUT EXAMINING THESE HIGHER SPATTERS, THOSE
10 THAT ARE COMING UP ALMOST TO THE THREE-FOOT MARK OF MY
11 RULER, THIS IS BLOOD THAT IS PROJECTED AT THE WALL THAT'S
12 IN MOTION RUNNING UP AND DOWN.

13 OKAY. AS I FOLLOW THAT TRAIL AND LOOK UP IN THE
14 CEILING WHICH WOULD BE HARD TO DRAW THIS ON HERE, BUT
15 DIRECTLY ABOVE THIS PARTICULAR POOL OF BLOOD AND THE
16 CEILING ITSELF IS A LARGE 90 DEGREE DROP OF BLOOD.

17 Q POOL BEING POOL NUMBER ONE?

18 A POOL NUMBER ONE.

19 FOLLOWING THAT CONTINUOUS PATTERN, I GO TO THE
20 DOOR WHICH IS IN THE HALLWAY -- MAKE SURE I'M RIGHT --
21 WHICH IS REPRESENTED IN STATE'S EXHIBIT NUMBER 46, IN
22 EXAMINING THAT DOOR WHERE THE SMALL SCALE RULER APPEARS ARE
23 SOME SPATTER ON THE DOOR. WHEN I CALCULATE AND MEASURE
24 THAT SPATTER BACK, IT COMES OUT FROM THE WALL AND ARCS AT
25 APPROXIMATELY 48 INCHES OR FOUR FOOT FROM THE FLOOR ITSELF.

1 ALL THIS BLOOD THAT IS BACK HERE MEETS AT A POINT
2 APPROXIMATELY FOUR FOOT FROM THE FLOOR. ALL THOSE SPATTERS
3 CRISSCROSS AT THAT MARK.

4 SO THE APPROXIMATE AREA FROM WHICH THAT SPATTER
5 CAME FROM IS APPROXIMATELY FOUR FOOT FROM THE FLOOR. IT
6 FALLS IN LINE WITH THE ARC WHICH STARTED HERE WITH VOLUME
7 BLOOD, BECAME LESS BLOOD ON THE CEILING AND THEN FINALLY
8 THE FINE SPATTER. I WOULD ASSOCIATE THIS AS ONE MOTION OF
9 AN OBJECT THROWING BLOOD OFF.

10 Q CAST OFF?

11 A CAST OFF.

12 Q BASED ON YOUR ANALYSIS, DO YOU HAVE AN OPINION
13 REGARDING THE POSITION OF URAI JACKSON WHEN SHE SUSTAINED
14 HER HEAD WOUNDS, ESPECIALLY DIFFERENTIATING BETWEEN POOL
15 ONE AND POOL TWO?

16 A THIS SPATTER HERE WITH THE GREATEST ABUNDANCE OF
17 SPATTER ON BOTH CORNERS OF THE WALL, THAT MEASURE -- AND
18 MEASURING ALL THIS OUT, CALCULATING IT ALL BACK, THERE WAS
19 FORCE APPLIED TO BLOOD WHICH CAME BACK IN THE VICINITY OF
20 POOL NUMBER ONE WHICH WAS SOMEWHERE BETWEEN TWO INCHES AND
21 NINE INCHES FROM THE FLOOR.

22 Q WHICH WOULD INDICATE WHAT ABOUT THE HEAD OF THE
23 VICTIM? HOW HIGH COULD THE HEAD OF THE VICTIM BEEN OFF THE
24 FLOOR WHEN IT SUSTAINED THE WOUNDS?

25 A THE VICTIM'S HEAD COULD HAVE BEEN LAYING ON THE

1 FLOOR, BUT, OBVIOUSLY, THE WOUNDS OF THE HEAD COULD BE NO
2 HIGHER THAN NINE INCHES.

3 Q NOW, UNDERSTANDING THAT THE WOUNDS ARE TO THE BACK
4 RIGHT OF THE HEAD OF THE VICTIM, CONSIDERING THAT IN YOUR
5 FORMULA, IS IT CONSISTENT OR INCONSISTENT THAT THE VICTIM
6 WOULD HAVE BEEN FACED DOWN WHEN SHE RECEIVED THE BLOWS?

7 A IF THE INJURIES ARE IN THIS LOCATION(INDICATES), I
8 HAVE TO STRIKE THE BLOOD SOAKED SURFACE TO CREATE THE
9 SPATTER. SO THAT WOULD BECOME CONSISTENT WITH FACE DOWN.

10 Q THANK YOU. THAT'S ALL I HAVE OF THIS WITNESS, YOUR
11 HONOR.

12 I WOULD MOVE TO INTRODUCE STATE'S EXHIBIT NUMBER
13 69 FOR IDENTIFICATION PURPOSES.

14 THE COURT: WITHOUT OBJECTION AS TO STATE'S
15 EXHIBIT NUMBER 69, THE CHART?

16 MR. STONE: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: ALL RIGHT. WITHOUT OBJECTION,
18 STATE'S EXHIBIT NUMBER 69 IS ADMITTED.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER
20 69, CHART/DERRICK, ENTERED INTO EVIDENCE AT THIS TIME
21 WITHOUT OBJECTION.)

22 THE COURT: CROSS-EXAMINATION, MR. STONE.

23 MR. STONE: I DON'T HAVE ANY QUESTIONS, YOUR
24 HONOR.

25 THANK YOU.

1 THE COURT: ALL RIGHT. THANK YOU, MR. DERRICK.
2 YOU MAY STEP DOWN.

3 THE WITNESS: THANK YOU, YOUR HONOR.

4 MR. HUMPHRIES: REQUEST THIS WITNESS BE EXCUSED
5 IF HE WISHES.

6 MR. STONE: NO OBJECTION.

7 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED IF
8 YOU DESIRE TO BE.

9 THE WITNESS: THANK YOU, YOUR HONOR.

10 THE COURT: APPRECIATE YOU COMING.

11 (WHEREUPON, THE WITNESS WAS
12 EXCUSED AT THIS TIME.)

13 MR. HUMPHRIES: THE STATE CALLS DR. JOHN CARTER
14 TO THE STAND.

15 DR. JOHN B. CARTER,

16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. HUMPHRIES:

19 Q DR. CARTER, YOU HAVE BEEN PREVIOUSLY PRESENTED TO
20 THIS JURY, OFFERED AND ACCEPTED AS AN EXPERT IN THE FIELD
21 OF FORENSIC PATHOLOGY.

22 WE WOULD INTEND TO HAVE THE DOCTOR CONTINUE IN
23 THAT REGARD AT THIS TIME IF THERE'S NO OBJECTION FROM THE
24 DEFENSE.

25 THE COURT: WITHOUT OBJECTION FROM THE DEFENSE

1 HIS QUALIFICATIONS AS AN EXPERT IN THE FIELD OF FORENSIC
2 PATHOLOGY IS CONTINUED.

3 MS. FULLWOOD: YES, SIR.

4 MR. HUMPHRIES: THANK YOU, YOUR HONOR.

5 DR. CARTER, LET ME DO THIS. LET ME HAND YOU A
6 COLLECTION OF PHOTOGRAPHS AND FOR THE RECORD THEY ARE THE
7 STATE'S 64, 63, 62, 61, 60, 59, 58, 57, 55 AND 53.

8 TELL ME IF YOU CAN IDENTIFY THESE PHOTOGRAPHS AND
9 IF THEY WOULD ASSIST YOU IN YOUR TESTIMONY BEFORE THIS JURY
10 TODAY?

11 A (WITNESS COMPLIES.)

12 THE COURT: WHILE HE'S LOOKING AT THOSE, LET ME
13 SEE THE LAWYERS AT THE SIDE BAR, PLEASE.

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

16 THE COURT: ALL RIGHT. YOU MAY CONTINUE, MR.
17 HUMPHRIES.

18 MR. HUMPHRIES: DR. CARTER, HAVE YOU REVIEWED
19 THOSE PHOTOGRAPHS?

20 THE WITNESS: I'VE REVIEWED THEM AND I AM
21 FAMILIAR WITH THEM. I ASSISTED OR -- IN THE TAKING OR TOOK
22 SOME OF THEM AND SOME OF THEM REFLECT THE APPEARANCE OF THE
23 CRIME SCENE.

24 Q NOW, WILL THEY ASSIST YOU IN YOUR TESTIMONY BEFORE
25 THIS JURY TODAY?

1 A THEY WOULD VERY MUCH AND ALSO, IF I MAY, THE
2 PHOTOGRAPH THAT WAS PREVIOUSLY INTRODUCED WITH THE BLOOD
3 POOLS ON THE FLOOR.

4 Q YES, SIR.

5 YOUR HONOR, HE IS REFERRING TO STATE'S EXHIBIT 52
6 AND I'LL ADD THAT TO THE COLLECTION AT THIS TIME.

7 DR. CARTER, YOU HAD PREVIOUSLY TESTIFIED BRIEFLY
8 ABOUT THE EXTENT OF THE WOUNDS ON THE BODY OF URAI JACKSON?

9 A THAT'S CORRECT.

10 Q WHAT I WOULD LIKE TO FOCUS ON AT THIS TIME ARE
11 CERTAIN NUMBER OF ASPECTS OF YOUR EXAMINATION.

12 SPECIFICALLY, RELATING TO THE AREA OF THE BRUISING, THE
13 TYPE OF BRUISING, AND LET'S DO THIS, IF YOU WILL. LET'S
14 START AT THE LOWER EXTREMITIES AND MOVE UP.

15 A DO WE HAVE THE DIAGRAMS?

16 Q YES, WE CERTAINLY DO.

17 AND, DOCTOR, FEEL FREE TO STEP DOWN IF YOU WISH
18 TO SHOW THE JURY THE PHOTOGRAPHS AS THEY RELATE TO YOUR
19 CHART.

20 A (WITNESS COMPLIES.) OKAY. AS NOTED IN THE CHART,
21 THE DIAGRAM HERE (INDICATES) BRUISES---

22 Q AND THAT IS STATE'S 21.

23 A ---BRUISES ON THE LOWER LEGS THAT HAVE THE APPEARANCE
24 OF RECENT DURATION.

25 THE PHOTOGRAPH SHOWS THEM TO BE ON THE LATERAL

1 SIDE OF THE LOWER RIGHT LEG ON THE FRONT AND A LITTLE BIT
2 TO THE SIDE OF THE LOWER LEFT LEG AND ON THE FRONT OF THE
3 RIGHT THIGH AND PATCHES OF WHAT APPEAR TO BE DIRT OR DUST
4 OR GRIME WHICH COULD WELL HAVE BEEN FROM THE FLOOR OR THE
5 CARPETING HAD THE VICTIM BEEN ON HER KNEES AT THE TIME OF
6 THE ASSAULT OR JUST ON THE FRONT OF THE KNEES.

7 Q AND MOVING UP THE BODY, IF YOU WOULD?

8 A THE RIGHT THUMB OF THE VICTIM, THE BLOOD IS FROM THE
9 HAND LYING IN THE POOL OF THE BLOOD, BUT THE THUMB ITSELF
10 WAS VERY SWOLLEN AND PUFFY AND DARKLY DISCOLORED. THIS
11 COULD HAVE HAPPENED FROM CATCHING A BLOW -- WARDING OFF A
12 BLOW OR IT COULD HAVE COME FROM HAVING THE HAND ON THE
13 FLOOR ONE SIDE UP OR THE OTHER SIDE UP AND THEN BEING
14 STOMPED ON OR BEING STRUCK SHARPLY WITH A HARD OBJECT.

15 THE VICTIM'S RIGHT SHOULDER -- THIS IS PHOTO
16 NUMBER 57 AND 59 AND REFERRING TO THE DIAGRAM, THERE ARE
17 TWO BLUNT INSTRUMENTS, STRIKE MARKS ACROSS THE TOP OF HER
18 SHOULDER. AND THESE ARE VERY MUCH THE SAME SIZE AND TYPE
19 OF BLOWS THAT WE WILL SHOW WITH THE HEAD WOUNDS IN AWHILE.

20 BUT ADDITIONALLY, THERE'S A VERY DIFFERENT TYPE
21 OF WOUND SHOWING -- THESE ARE BRUISED WITH A HARD OBJECT
22 CRUSHED INTO THE SOFT TISSUES OF THE SHOULDER, BUT THERE'S
23 A PARALLEL TRACK HERE THAT REPRESENTS THE EDGES OF A SQUARE
24 OR RECTANGULAR OBJECT THAT WE HAD AT THE TIME OF THIS
25 EXAMINATION A THIS STICK OR A BOARD WHICH WOULD BE EXHIBIT

1 NUMBER---

2 Q NUMBER 13.

3 A ---NUMBER 13 THAT AT THE TIME OF EXAMINATION -- THIS
4 IS NOT AN ACTUAL SIZE PHOTOGRAPH, BUT WE WERE ABLE TO PLACE
5 THIS AGAINST THE WOUND. THIS WAS FOUND BESIDE THE BODY AT
6 THE SCENE AND IT FIT EXACTLY WITH THE TRACKS OF THE WOUND
7 AS SUCH.

8 THERE APPEARED TO HAVE BEEN AT LEAST TWO
9 STRIKINGS AGAINST THE VICTIM'S RIGHT SHOULDER. THERE'S
10 KIND OF A V-SHAPE INTERSECTION WHERE THE STICK STRUCK ONCE
11 THIS DIRECTION AND STRUCK ONCE THIS DIRECTION.

12 THERE'S ALSO VERY EXTENSIVE BRUISING AGAINST HER
13 SHOULDER WHICH COULD HAVE COME FROM A NUMBER OF BLUNT
14 TRAUMA TYPE INJURIES. BUT TO SHOW THAT THERE APPEARED TO
15 HAVE BEEN TWO WEAPONS USED, THIS AND THIS AND STRUCK IN TWO
16 DIFFERENT DIRECTIONS IS A DIFFERENT TYPE OF BLOW THAN THE
17 TWO WOUNDS ON THE TOP OF HER SHOULDER.

18 Q YOUR OPINION THEN WOULD BE THERE WERE AT LEAST TWO
19 WEAPONS USED?

20 A WEAPONS, YES.

21 THE VICTIM'S LEFT -- THIS IS PHOTO NUMBER 60 AND
22 THE VICTIM'S LEFT FOREARM. THERE'S A BRUISE THAT APPEARS
23 TO BE VERTICAL, A LITTLE BIT PALE IN THE CENTER THAT WHEN
24 SOMETHING IS STRUCK SHARPLY WITH A HEAVY BLUNT OBJECT, THE
25 CENTRAL BLOOD VESSELS RIGHT UNDER THE IMPACT TEND TO BE

1 CRUSHED AND DON'T BLEED AND THOSE THAT AREN'T CRUSHED
2 DIRECTLY BLEED AND CAUSE THE BRUISE AND THIS IS VERY MUCH
3 THE TYPE OF INJURY OCCURRED BY TRYING TO WARD OFF A BLOW.

4 IN PHOTO NUMBER 61, THE SIDE OF THE LEFT UPPER
5 ARM, A LARGE FRESH BRUISE. NOT BEING SURE WHAT TYPE OF
6 WEAPON WAS USED TO CAUSE THAT ONE.

7 AND PHOTO NUMBER 58 IS JUST AN ADDITIONAL PHOTO
8 OF THE RIGHT UPPER ARM BRUISES.

9 Q VERY GOOD.

10 NOW, AS IT RELATES TO ALL OF THESE, ALL OF THE
11 PHOTOS OF THIS BRUISING ON THE BODY, WHAT TYPE OF FORCE IS
12 NECESSARY IN ORDER TO CAUSE THIS TYPE, AT LEAST, IN SOME
13 RESPECTS, MASSIVE BRUISING?

14 A THAT IT WOULD TAKE A VERY SEVERE BLOW, BUT A SHARP
15 STRIKING BLOW TO CAUSE THAT TYPE OF BRUISING. THE TWO
16 LACERATED OR CRUSHED INJURY BLEEDING, CRUSH INJURIES TO THE
17 TOP OF THE SHOULDER WOULD HAVE TAKEN QUITE A HEAVY BLOW.

18 Q AND WOULD HAVING RECEIVED THOSE BLOWS PARTICULARLY TO
19 THE LOWER EXTREMITIES AND THOSE TO THE TOP OF THE
20 SHOULDERS, IS THAT CONSISTENT WITH FORCING THE VICTIM TO
21 THE GROUND?

22 A WELL, CERTAINLY CONSISTENT WITH A STRUGGLE OF SOME
23 SORT AND SOME TYPE OF A PROLONGED STRUGGLE BECAUSE IT
24 SHOWED DIFFERENT TYPES OF EFFORTS AND DIFFERENT TYPES OF
25 RESISTANCE BY THE VICTIM WERE USED. IT WAS JUST VERY MUCH

1 PROBABLY NOT A ONE BLOW TO THE GROUND TYPE OF EPISODE.

2 Q NOW, AS IT RELATES TO THE WOUNDS TO THE HEAD, DOCTOR,
3 TELL THE JURY, IF YOU WILL, THE NUMBER OF WOUNDS, THE TYPE
4 OF WEAPON THAT MUST HAVE BEEN USED AND THE EXTENT OF THE
5 DAMAGE AND THE FORCE REQUIRED.

6 A THE -- AS WE SAW FROM THE DIAGRAM, THERE ARE MARKS OR
7 TRACKS, CRUSHED LACERATIONS OR CRUSHING AND SPLITTING OPEN
8 OF THE SKIN OF THE SCALP. AT LEAST FOUR DIFFERENT TRACKS
9 THAT WE CAN SEE, ALTHOUGH, THERE MAY HAVE BEEN MORE BLOWS
10 SUPERIMPOSED ON THE ORIGINAL AND THE FORCE WAS SUCH THAT
11 THE SKULL JUST BEHIND THE RIGHT EAR WAS CRUSHED AND
12 DEPRESSED IN MULTIPLE PIECES.

13 Q AND DO YOU MEAN THAT LITERALLY THAT THE BONE OF THE
14 SKULL WAS CRUSHED AND BROKEN?

15 A WAS CRUSHED AND SMASHED INWARD SOMEWHAT LIKE PUNCHING
16 AGAINST AN EGG SHELL.

17 THE PHOTO NUMBER 55 SHOWS THE SHOULDER INJURIES
18 THAT I DESCRIBED OF THE CLUB -- WHERE THE CLUB HIT THE TOP
19 OF THE RIGHT SHOULDER. IT SHOWS THE FOUR, AT LEAST FOUR,
20 CLUB INJURIES. THE HAIR HAS BEEN REMOVED. THE SCALP HAD
21 BEEN SHAVED. THIS IS THE VICTIM'S RIGHT EAR.

22 THE BLOWS HERE DID NOT CAUSE SKULL FRACTURE.
23 THESE BLOWS HERE (INDICATES), TWO OR THREE OF THEM, LED TO
24 THE SKULL FRACTURE THAT DARKENED -- THE DISCOLORATION THERE
25 IS DECOMPOSITION OF THE BODY HAVING BEEN THERE FOR TWO OR

1 THREE DAYS PRIOR TO DISCOVERY.

2 AND RIGHT BENEATH THIS AREA, THE SKULL HAS
3 CRUSHED INWARD. SOME BRAIN TISSUE WAS EXPOSED AND VISIBLE.

4 Q TELL THE JURY, IF YOU WILL, THE DEGREE OF FORCE
5 NECESSARY IN ORDER TO CRUSH THE SKULL OF A HUMAN BEING.

6 A WELL, YOU KNOW I COULD SAY VIRTUALLY MAXIMUM FORCE
7 BUT AN EXTREME DEGREE OF FORCE AND AN INTENT TO KILL
8 BASICALLY WHERE -- BECAUSE A HUMAN SKULL AND A CLUB ARE TWO
9 FAIRLY STRONG OBJECTS. IT WOULD TAKE A LOT OF FORCE BY A
10 REASONABLY STRONG PERSON TO DO THAT.

11 IT'S INTERESTING -- IF I -- MAY I REFER TO MR.---

12 Q PLEASE.

13 A ---DERRICK'S TESTIMONY?

14 Q PLEASE.

15 A THE BLOWS GO FROM FRONT TO BACK AND WE ARE OFTEN
16 ASKED, WELL, WHAT POSITION WAS THE VICTIM IN, WHAT POSITION
17 WAS THE ASSAILANT IN AND IF YOU KNOW ONE, YOU CAN KNOW THE
18 OTHER. BUT IN RELATIONSHIP TO EACH OTHER, THE BLOWS FROM
19 THE BACK -- FROM THE RIGHT SIDE OF THE HEAD WAS VERY MOST
20 LIKELY INFLICTED FROM THE POSTERIOR BY AN ASSAILANT USING
21 THE RIGHT HAND AND LIKELY, BUT NOT INEVITABLY A
22 RIGHT-HANDED PERSON SWINGING THE BLOWS LIKE
23 THAT(INDICATES).

24 NOW, IF THE VICTIM IS UPRIGHT, STRAIGHT FROM
25 BEHIND, BUT THE VICTIM COULD BE DOWN AND THROWN AND FROM

1 ABOVE AND DOWNWARD PRODUCING THE SAME RESULT, BUT IT'S
2 INTERESTING THAT WE CAME TO THE SAME CONCLUSION THAT MR.
3 DERRICK DID IN OUR OWN INVESTIGATION USING DIFFERENT
4 INFORMATION, THAT THE VICTIM WAS MOST LIKELY DOWN ON HER
5 KNEES FAIRLY LOW BECAUSE OF THE TWO BLOOD POOLS.

6 MAY I SHOW THE PHOTO OF THE VICTIM'S BODY?

7 Q PLEASE.

8 A THE VICTIM'S BODY, AS IT WAS SEEN IN THE VIDEOTAPE---

9 Q AND IF YOU WILL IDENTIFY IT BY NUMBER?

10 A ---IS PHOTO NUMBER 53..

11 THE LARGE POOL OF BLOOD AND IT WAS POOL NUMBER
12 ONE IN THE PREVIOUS TESTIMONY---

13 Q I'LL HOLD THAT UP FOR YOU.

14 A ---IS UNDERNEATH OF HER RIGHT HAND AT THE PRESENT
15 TIME; AND THE SMALLER, THE MUCH SMALLER POOL OF BLOOD --
16 NOW GOING BACK TO THIS PHOTOGRAPH, THIS IS POOL NUMBER ONE.
17 THIS IS THE POOL OF BLOOD THAT HER RIGHT HAND WAS OVER, A
18 MUCH SMALLER POOL OF BLOOD WHICH WAS PREVIOUSLY CALLED POOL
19 NUMBER TWO, HER HEAD WAS RESTING ON THAT. SO THE VAST
20 MAJORITY OF THE BLEEDING -- THIS IS A BLOOD SPOT -- THE
21 MAJORITY OF THE BLEEDING OCCURRED WITH THE BLOWS OBVIOUSLY
22 AND OCCURRED IN THIS SPOT AND THE VICTIM'S FACE WHICH CAN
23 BE SEEN SOMEWHAT FROM THIS PHOTO AND I THINK THERE ARE
24 OTHER PHOTOS SOMEWHERE SHOWING THE VICTIM'S FACE WAS
25 COVERED WITH BLOOD AND SO THAT OBVIOUSLY THE BEATING

1 OCCURRED WHEN HER FACE WAS DOWNWARD AND IN THIS LOCATION IN
2 THAT IT APPEARS THAT AFTER THE BEATING, THE BODY WAS TURNED
3 OVER INTO THE LOCATION OF WHERE THE IMPRINT OF POOL NUMBER
4 TWO WAS FOUND.

5 Q IN REFERENCE TO YOUR LAST REMARKS, I SHOW YOU STATE'S
6 EXHIBIT NUMBER 47. DOES THAT MORE CLEARLY DEPICT THE FACE
7 OF THE VICTIM AS YOU DESCRIBED IT TO THE JURY?

8 A YES, IT DOES WITH -- WITH HER HAIR MATTED OVER HER
9 FACE AND THEN BLOOD COVERED WITH HER FACE. THERE WERE NO
10 DIRECT INJURIES TO THE FACE. SO TO GET BLOOD ON HER FACE,
11 IT WOULD HAVE NEEDED TO BE PUSHED AGAINST ONE OF THE BLOOD
12 POOLS.

13 Q NOW, DR. CARTER, DO YOU HAVE AN -- LET ME ASK YOU
14 THIS WAY.

15 CLEARLY, YOU'VE ALREADY TESTIFIED THAT COLLECTED
16 AT THE TIME OF AUTOPSY WERE CERTAIN SAMPLES WHICH THE JURY
17 HAS ALREADY HEARD WERE DETERMINED TO BE SEMEN, LATER
18 MATCHED TO THE D.N.A. PROFILE OF GARY TERRY.

19 A THAT'S CORRECT.

20 Q YOU COLLECTED THOSE SAMPLES?

21 A THAT'S CORRECT.

22 Q SPECIFICALLY REFERRING TO STATE'S 53, IF YOU WOULD
23 DISPLAY THAT. WHAT, IF ANYTHING, DOES THE POSITION OF THE
24 VICTIM INDICATE TO YOU REGARDING SEXUAL ASSAULT?

25 A IN THE SCIENCE OF FORENSIC PATHOLOGY OR DEATH

1 INVESTIGATIONS, THE POSITION OF THE VICTIM'S BODY IS VERY
2 CHARACTERISTIC OF POSITIONS THE VICTIMS ARE FOUND IN THAT
3 HAVE BEEN ENGAGED IN SEXUAL ACTIVITY OR ASSAULT AT THE TIME
4 OF DEATH. THE LEGS ARE SPREAD APART AND DEATH OCCURS AND
5 THEY STAY THAT WAY.

6 Q NOW, LET ME ASK YOU THIS. WOULD THE FACT THAT THERE
7 WAS NO APPARENT TEARING OR BRUISING OF THE VAGINAL AREA OR
8 ANAL AREA INDICATE TO YOU OR ANY OTHER PATHOLOGIST THAT A
9 SEXUAL ASSAULT DID NOT OCCUR?

10 A THERE -- THE BODY BEING FOUND IN THIS POSITION, THERE
11 BEING SEMEN IN THE VAGINAL CANAL, I THINK QUITE THE
12 OPPOSITE.

13 Q THANK YOU.

14 NOW, MY FINAL QUESTION, DOCTOR, IS THIS.
15 REGARDING THE TWO POOLS OF BLOOD, YOU'VE INDICATED THAT IN
16 POOL NUMBER ONE, THE MAJOR BLOOD LEADING OCCURRED?

17 A THAT'S CORRECT.

18 Q AND CLEARLY IN POOL NUMBER TWO, THERE'S LESS BLOOD?

19 A MAJOR BLOOD LEADING, I THINK, OBVIOUSLY, CONCURRENT
20 WITH THE BEATING.

21 Q CORRECT.

22 TELL THE JURY, IF YOU CAN, IS THERE ANY
23 SCIENTIFIC WAY TO ESTIMATE HOW LONG MS. JACKSON MUST HAVE
24 BEEN IN THAT POSITION, POSITIONED OVER POOL NUMBER ONE IN
25 ORDER TO HAVE THAT MUCH BLOOD LEADING?

1 A THE BLOOD BLEEDS OUT WITH EACH HEART BEAT. THE BRAIN
2 CAN BE DAMAGED QUITE EXTENSIVELY AND THE HEART STILL KEEPS
3 BEATING AND WITH EACH HEART BEAT, PUMPING OUT FIFTY OR A
4 100 CC'S, A TENTH OF A PINT OF BLOOD, PROBABLY FIFTEEN TO
5 THIRTY SECONDS TO A MINUTE IN THAT POSITION.

6 IT WOULD TAKE A FEW SECONDS, BUT IT WOULDN'T TAKE
7 A REAL LONG TIME.

8 Q NOW, WHAT IS THE SIGNIFICANCE OF THE GREATER POOL OF
9 BLOOD BEING IN A POSITION WHERE THE VICTIM WAS NOT FOUND;
10 THAT IS---

11 A WELL, THE MAJOR PART OF THE TRAUMA, THE FATAL
12 INJURIES, THE BEATINGS OCCURRED WHEN SHE WAS FACED DOWN IN
13 A PRONE OR A SEMI-PRONE POSITION DIRECTLY OVER POOL NUMBER
14 ONE AND HER FACE WAS IMPRINTED IN THAT, AT LEAST, PART OF
15 THE TIME AND THEN WE -- JUST BY ESTIMATING THE DISTANCE
16 BETWEEN THE TWO POOLS AT THE SCENE, ROTATING THE BODY OVER,
17 TURNING THE BODY OVER JUST MOVES IT TO THE POSITION OF
18 POOL NUMBER TWO AND HEART ACTIVITY ALMOST CEASED AT THE
19 TIME OR MAYBE SHE HAD LOST ALMOST ALL HER BLOOD BY THE TIME
20 -- THERE WAS SIMPLY NOT THAT MUCH BLEEDING GOING ON BY THE
21 TIME HER BODY WAS TURNED OVER ONTO THE SECOND SPOT.

22 Q BUT CLEARLY, THE POSITION IN WHICH THE VICTIM WAS
23 FOUND IS CONSISTENT WITH HAVING BEEN ROLLED OVER FACE UP
24 FROM THE POSITION WHERE SHE WOULD HAVE HAD TO BEEN IN POOL
25 NUMBER ONE TO SUSTAIN THE HEAD BLOWS?

1 A THAT'S VERY CONSISTENT.

2 Q THANK YOU. I DON'T HAVE ANY FURTHER QUESTIONS.
3 THANK YOU VERY MUCH.

4 MS. FULLWOOD: NO QUESTIONS, YOUR HONOR.

5 THE COURT: THANK YOU, DOCTOR. YOU MAY STEP
6 DOWN.

7 ARE YOU ASKING THAT HE BE EXCUSED?

8 MR. HUMPHRIES: YES, SIR.

9 MS. FULLWOOD: NO OBJECTION.

10 THE COURT: WITHOUT OBJECTION, YOU ARE EXCUSED.
11 APPRECIATE YOU COMING.

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

14 MR. HUMPHRIES: CAN WE HAVE A BRIEF SIDE BAR,
15 YOUR HONOR?

16 THE COURT: YES, SIR.

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

19 THE COURT: NEXT WITNESS, SOLICITOR.

20 MR. HUMPHRIES: THE STATE CALLS SAMANTHA JACKSON
21 TO THE STAND.

22 SAMANTHA A. JACKSON,

23 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,
25 PLEASE.

1 THE WITNESS: SAMANTHA ANN JACKSON.

2 DIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q SAMANTHA, YOU'VE PREVIOUSLY TESTIFIED BEFORE THIS
5 JURY. YOU ARE THE DAUGHTER OF URAI JACKSON?

6 A YES.

7 Q YOU'RE THE ELDEST CHILD OF URAI JACKSON?

8 A YES, I AM.

9 Q IF YOU WILL, FOR THE RECORD, WILL YOU IDENTIFY THE
10 MEMBERS OF YOUR FAMILY PRESENT IN THE COURTROOM TODAY?

11 A MY FATHER IS HERE ON THE END, MY BROTHER IS IN THE
12 MIDDLE AND MY FIANCE SITTING NEXT TO HIM.

13 Q AT THE TIME OF YOUR MOTHER'S DEATH, HOW OLD WAS SHE?

14 A SHE WAS FORTY-SEVEN.

15 Q AND AGAIN, AT THE TIME OF YOUR MOTHER'S DEATH, WAS
16 SHE LIVING ALONE?

17 A YES, SHE WAS.

18 Q HAD YOU AND JOHN ESTABLISHED INDEPENDENT HOUSEHOLDS
19 AT THAT TIME?

20 A YES, WE HAD.

21 Q THE HOUSE THERE ON BUCKEYE DRIVE, HOW LONG HAD MS.
22 JACKSON LIVED THERE?

23 A WE HAD LIVED THERE SINCE 1978.

24 Q AND DID URAI JACKSON LIVE THERE CONTINUOUSLY UNTIL
25 HER DEATH?

- 1 A YES, SHE DID.
- 2 Q WHERE WAS MRS. JACKSON BORN?
- 3 A SHE WAS BORN IN THAILAND.
- 4 Q THAT'S WHERE YOU WERE BORN, IS IT NOT?
- 5 A YES, IT IS.
- 6 Q LET ME SHOW YOU A PHOTOGRAPH AND TELL ME IF YOU CAN
- 7 IDENTIFY IT.
- 8 A YES.
- 9 Q WHAT IS THIS A PHOTOGRAPH OF?
- 10 A I WAS TOLD THAT IT WAS A PHOTOGRAPH OF HER ON A
- 11 MAGAZINE COVER THAT SHE WAS A MODEL.
- 12 Q IT'S CLEARLY YOUR MOTHER?
- 13 A CLEARLY, MY MOTHER.
- 14 MR. HUMPHRIES: MOVE TO INTRODUCE AT THIS TIME,
- 15 YOUR HONOR.
- 16 MS. FULLWOOD: NO OBJECTION.
- 17 THE COURT: WITHOUT OBJECTION, IT WILL BE
- 18 ADMITTED AS STATE'S NUMBER 70.
- 19 (WHEREUPON, STATE'S EXHIBIT NUMBER
- 20 70, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
- 21 OBJECTION.)
- 22 MR. HUMPHRIES: YOUR MOTHER, WHILE IN THAILAND,
- 23 WAS A MODEL?
- 24 THE WITNESS: YES.
- 25 Q NOW, I ASSUME THEN, SHE MET YOUR FATHER IN THAILAND,

1 IS THAT CORRECT?

2 A YES, SHE DID.

3 Q DID THEY MARRY THERE?

4 A YES, THEY DID.

5 Q HOW LONG AFTER -- WELL, YOU WERE BORN IN THAILAND AS
6 WELL, WERE YOU NOT?

7 A YES, I WAS.

8 Q DID YOU SPEND SOME OF YOUR EARLY YEARS THERE?

9 A I BELIEVE WE WERE THERE ABOUT A -- I WAS THERE ABOUT
10 A YEAR. I'M NOT POSITIVE.

11 Q YOU WERE A LITTLE YOUNG THEN?

12 A I WAS A LITTLE YOUNG.

13 Q LET ME SHOW YOU A PHOTOGRAPH AND TELL ME IF YOU CAN
14 IDENTIFY THAT?

15 A YES. THAT'S MY MOTHER AND I.

16 MR. HUMPHRIES: MOVE TO INTRODUCE, YOUR HONOR.

17 MS. FULLWOOD: NO OBJECTION.

18 THE COURT: WITHOUT OBJECTION, IT WILL BE
19 ADMITTED AS STATE'S NUMBER 71.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER
21 71, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
22 OBJECTION.)

23 MR. HUMPHRIES: THAT'S QUITE A FLATTERING PICTURE
24 OF YOU. HOW OLD WOULD YOU HAVE BEEN AT THAT TIME?

25 A I WAS PROBABLY A FEW MONTHS OLD.

1 Q AND THAT HOUSE BEHIND YOU, DOES THAT HAVE ANY SPECIAL
2 SIGNIFICANCE TO YOU?

3 A I DON'T REMEMBER IT, BUT, I BELIEVE, THAT WAS THE
4 HOUSE THAT I WAS BORN IN.

5 Q WHEN DID -- WHEN DID YOUR FATHER AND YOUR MOTHER AND
6 YOU MOVE BACK TO THE UNITED STATES?

7 A I BELIEVE IT WAS IN THE LATE '70'S. I'M NOT
8 POSITIVE.

9 Q AND ULTIMATELY, DID YOU COME TO RESIDE HERE IN SOUTH
10 CAROLINA?

11 A YES.

12 Q MS. JACKSON DID SHE HAVE ANOTHER CHILD?

13 A YES, SHE DID, MY BROTHER.

14 Q IS THAT JOHN SEATED HERE(INDICATES)?

15 A YES, IT IS.

16 Q I SPARED JOHN THE EMBARRASSMENT OF USING AN INFANT
17 PICTURE. LET ME SHOW YOU THESE TWO PHOTOGRAPHS. TELL ME
18 IF YOU CAN IDENTIFY THOSE?

19 A YES. THIS IS MY MOTHER AND MY BROTHER.

20 Q BOTH OF THEM?

21 A YES.

22 MR. HUMPHRIES: MOVE TO INTRODUCE, YOUR HONOR.

23 MS. FULLWOOD: NO OBJECTION.

24 THE COURT: WITHOUT OBJECTION, THEY WILL BE
25 ADMITTED AS STATE'S NUMBER 72 AND 73.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER
2 72 AND 73, PHOTOGRAPHS, ENTERED INTO EVIDENCE AT THIS TIME
3 WITHOUT OBJECTION.)

4 MR. HUMPHRIES: DO YOU KNOW ABOUT HOW OLD JOHN
5 WOULD HAVE BEEN IN THIS PHOTOGRAPH?

6 THE WITNESS: HE MAY HAVE BEEN AROUND NINE OR
7 TEN.

8 Q AND THAT IS HIS MOTHER WITH HIM?

9 A YES.

10 Q AND -- I'M SORRY, I DIDN'T IDENTIFY THAT. THAT'S 72.

11 AND STATE'S EXHIBIT NUMBER 73, APPROXIMATELY HOW
12 OLD?

13 A HE WOULD HAVE BEEN ABOUT TWELVE OR THIRTEEN.

14 Q NOW, YOUR FATHER AND YOUR MOTHER DIVORCED ABOUT IN
15 '74, IS THAT RIGHT?

16 A YES.

17 Q DID -- WHAT DID YOUR -- DID YOUR MOTHER HAVE ANOTHER
18 SIGNIFICANT OTHER IN HER LIFE AFTER THE DIVORCE?

19 A NOT REALLY. SHE HAD DATED TWO MEN LATE IN THE 70'S.
20 NOT VERY SERIOUSLY.

21 Q TELL THE JURY WHAT -- WHAT WAS YOUR MOTHER'S
22 ATTENTION MOST FOCUSSED ON? WHAT TWO PEOPLE?

23 A SHE WAS MOST FOCUSSED ON RAISING MYSELF AND MY
24 BROTHER.

25 Q DID SHE DELICATE HER LIFE JUST TO THAT?

- 1 A PRETTY MUCH.
- 2 Q WHY DON'T YOU DO THIS, SAMANTHA, TELL US -- TELL THE
3 JURY WHAT DID YOUR MOTHER DO FOR A LIVING?
- 4 A SHE CLEANED OTHER PEOPLE'S HOUSES. SHE HAD A SELECT
5 FEW PEOPLE THAT SHE WOULD CLEAN FOR.
- 6 Q DID SHE CLEAN FOR ANY PARTICULAR TYPES OF PEOPLE OR
7 ENJOY ONE TYPE OF PERSON MORE THAN ANOTHER?
- 8 A AT ONE TIME, SHE HAD WORKED FOR A CLEANING SERVICE;
9 AND SEVERAL OF THE CLIENTS, WHEN SHE LEFT THAT SERVICE,
10 REQUESTED THAT SHE STAY WITH THEM BECAUSE SHE WAS BASICALLY
11 CONSIDERED PART OF THEIR FAMILY AT THAT TIME.
- 12 Q DID SHE HAVE AN OCCASION TO HELP CLEAN HOUSES FOR
13 ELDERLY PEOPLE?
- 14 A YES, SHE DID.
- 15 Q AND WAS THAT ONE OF HER -- ONE OF HER JOYS TO ASSIST
16 THE ELDERLY?
- 17 A SHE REALLY ENJOYED CLEANING HOUSES FOR CERTAIN
18 PEOPLE, WHERE THE ELDERLY COULD NOT TAKE CARE OF
19 THEMSELVES, SHE ENJOYED DOING SPECIAL FAVORS FOR THEM.
- 20 Q NOW, AROUND AND ABOUT HER NEIGHBORHOOD, DESCRIBE, IF
21 YOU WILL, HER RELATION WITH THE OTHER NEIGHBORS IN
22 WESTGATE?
- 23 A SHE WAS FRIENDLY, NOT OVERLY FRIENDLY. SHE NEVER
24 REALLY OFFERED A LOT OF INSIGHT INTO HER PERSONAL LIFE.
25 SHE KEPT PRETTY MUCH TO HERSELF. SHE DID TALK TO NEIGHBORS

1 WHEN SHE WAS CLEANING COMMON AREAS IN OUR NEIGHBORHOOD.

2 NEIGHBORHOODS HAVE MEDIANS OF GRASS AT EACH ENTRANCE AND

3 SHE TAKES CARE OF THOSE AREAS AND MAINTENANCE THEM.

4 Q WAS -- WAS SHE PAID FOR THAT ACTIVITY OR DID SHE---

5 A NO, SHE WAS NOT.

6 Q WHAT WERE SOME OF YOUR MOTHER'S INTERESTS OR HOBBIES?

7 A SHE ENJOYED GARDENING, PLANTING FLOWERS, HERBS, THAT
8 TYPE OF THING.

9 Q WHAT WAS A TYPICAL DAY FOR YOUR MOM?

10 A SHE WOULD RISE VERY EARLY. A LOT OF TIMES BEFORE THE
11 SUN CAME UP. SHE WOULD EAT BREAKFAST OR GO GET BREAKFAST
12 ON HER WAY TO CLEAN PEOPLE'S HOUSES. SHE NORMALLY STARTED
13 CLEANING AT 7:00 A.M.

14 Q ABOUT HOW MANY DAYS DID SHE WORK A WEEK?

15 A SHE GENERALLY WORKED FIVE OR SIX DAYS A WEEK.

16 Q SAMANTHA, DID YOUR MAMA BOTHER ANYBODY?

17 A NO, NOT REALLY.

18 Q DID EVERYBODY UNDERSTAND YOUR MAMA?

19 A I DON'T THINK THEY REALLY UNDERSTOOD HER BECAUSE SHE
20 WAS SO QUIET, BUT EVERYBODY SEEMED TO LIKE HER.

21 Q NOW, BACK IN 1994, DID YOUR MOTHER HAVE SOME PLANS?

22 A YES. SHE HAD DISCUSSED WITH ME THAT PRETTY MUCH SHE
23 FIGURED ME AND MY BROTHER WERE GROWN UP AND SHE INDICATED
24 THAT SHE REALLY WISHED TO GO HOME. SHE WANTED TO GO BACK
25 TO THAILAND. AND SHE PLANNED ON TAKING A LAST KIND OF

1 VACATION TYPE THING BEFORE SHE LEFT.

2 Q WHAT HAD THE TWO OF YOU PLANNED TO DO PRIOR TO HER
3 RETURN HOME?

4 A I'M SORRY?

5 Q WHAT HAD THE TWO OF YOU PLANNED TO DO PRIOR TO HER
6 RETURN HOME TO THAILAND?

7 A WE HAD TALKED ABOUT TAKING A CRUISE IN AUGUST AND HAD
8 LOOKED INTO IT, GOTTEN PRICES AND SHE WAS PLANNING ON
9 BOOKING IT.

10 Q AND WHEN WAS SHE PLANNING ON RETURNING TO THAILAND?

11 A SHE WAS TALKING ABOUT RETURNING EITHER RIGHT AFTER
12 CHRISTMAS, MAYBE THE FIRST OF THE FOLLOWING YEAR.

13 Q SOME SIX TO SEVEN MONTHS?

14 A YES.

15 Q AFTER HER DEATH. THAT -- THAT WISH TO RETURN HOME --
16 WHY HADN'T SHE RETURNED HOME AT THAT POINT?

17 A SHE HAD INDICATED EARLY-ON THAT SHE ALWAYS WANTED TO
18 GO HOME, BUT THAT, I GUESS, BASICALLY WITH THE CUSTODY AND
19 EVERYTHING OF US, THAT MY FATHER REALLY DIDN'T WISH FOR
20 HIS, YOU KNOW, VISITATION WITH US TO BE INTERRUPTED AND
21 THAT SHE WOULDN'T LEAVE -- SHE DIDN'T WANT TO LEAVE US HERE
22 AND GO BY HERSELF AT THE TIME. SHE WANTED TO SEE US GROWN
23 UP AND INDEPENDENT ON OUR OWN.

24 Q WAS THAT A DREAM OF HERS?

25 A YES.

1 Q WHAT WAS THE LAST CONTACT YOU HAD WITH YOUR MOTHER?

2 A I BELIEVE IT WAS THE WEDNESDAY BEFORE THAT WEEKEND.
3 SHE INDICATED TO ME THAT SHE WAS INTERESTED IN PURCHASING A
4 DIFFERENT CAR. HER CAR WAS MECHANICALLY GOING DOWN HILL
5 FAST AND WE MADE A TRIP TO THE PLACE WHERE I HAD RECENTLY
6 PURCHASED A CAR AND LOOKED AT SOME OF THE CARS. DROVE ONE
7 AROUND. SHE INDICATED A STRONG INTEREST IN PURCHASING IT.

8 WE WENT TO THE BANK AND ON THE WAY TO THE BANK,
9 WE HAD A DISCUSSION ABOUT SHE WAS GOING TO PAY FOR THIS CAR
10 IN FULL AND I INDICATED MAYBE SHE SHOULDN'T. MAKE SURE IT
11 RAN AND THAT TYPE OF THING.

12 SHE WENT TO THE BANK, SHE WITHDREW SOME MONEY.
13 WE DROVE BACK TO THE CAR DEALERSHIP AND SHE OFFERED ME SOME
14 MONEY AT THE TIME. I WAS GOING THROUGH A DIVORCE AND SHE
15 KNEW THAT MY FINANCIAL SITUATION WAS KIND OF BAD AND SHE
16 OFFERED ME AT THE TIME A GOOD BIT OF MONEY AND I DECLINED
17 IT. SHE WENT HOME.

18 Q LET ME ASK YOU THIS. DID YOU SHARE SOME, AT LEAST AT
19 THE TIME, SOME PRETTY SPECIAL DAYS WITH YOUR MOTHER?

20 A YES, I DID.

21 Q LET ME SHOW YOU THIS PHOTOGRAPH. CAN YOU IDENTIFY
22 IT?

23 A YES, I CAN. IT'S MYSELF AND MY MOTHER AT MY WEDDING.

24 MR. HUMPHRIES: MOVE TO INTRODUCE.

25 THE COURT: WITHOUT OBJECTION?

1 MS. FULLWOOD: NO OBJECTION.

2 THE COURT: WITHOUT OBJECTION, IT WILL BE
3 ADMITTED AS STATE'S NUMBER 74.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER
5 74, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME WITHOUT
6 OBJECTION.)

7 MR. HUMPHRIES: WHAT ELSE DID Y'ALL TALK ABOUT
8 BESIDES THE PURCHASE OF A VEHICLE?

9 THE WITNESS: I'M SORRY, WHAT?

10 Q WHAT ELSE DID YOUR MOTHER AND YOU TALK ABOUT THAT
11 LAST TIME BESIDES THE PURCHASE OF A VEHICLE?

12 A THE CRUISE.

13 Q IF YOU HAD KNOWN THAT IT WAS THE LAST TIME YOU TALKED
14 TO YOUR MAMA, WOULD YOU HAVE TALKED ABOUT SOMETHING ELSE?

15 A I THINK I WOULD HAVE.

16 Q SAMANTHA, TELL THE JURY WHAT IMPACT THE LOSS OF YOUR
17 MOTHER HAS HAD ON YOU?

18 A I VERY OBVIOUSLY LOST MY MOTHER. SHE NEVER -- UH --
19 EXCUSE ME. SHE NEVER KNEW THAT SHE WOULD BE A GRANDMOTHER.
20 SO SHE NEVER GOT TO REALIZE THAT DREAM. SHE ALWAYS WANTED
21 TO BE A GRANDMOTHER.

22 WE DID NOT HAVE THE PERFECT RELATIONSHIP WHEN I
23 WAS GROWING UP AND AS A TEENAGER WE HAD THE TYPICAL
24 MOTHER-DAUGHTER BATTLES. WE HAD BECOME MUCH CLOSER
25 ESPECIALLY WITH ME GOING THROUGH A DIVORCE THAT YEAR AND I

1 FELT LIKE I HAD SOMEHOW FINALLY FOUND THAT BEST FRIEND THAT
2 I HAD LOOKED FOR AND I LOST THAT.

3 MY BROTHER, OF COURSE, LOST HIS MOTHER AND
4 COMPLETELY CHANGED REALLY THE WAY I LED MY LIFE, THE COURSE
5 OF MY LIFE. IT REALLY MADE ME REALIZE THAT LIFE IS SHORT.

6 Q THANK YOU, SAMANTHA.

7 ANSWER ANY QUESTIONS THEY MAY HAVE OF YOU.

8 MS. FULLWOOD: NO QUESTIONS.

9 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

10 (WHEREUPON, THE WITNESS WAS
11 EXCUSED AT THIS TIME.)

12 MR. HUMPHRIES: YOUR HONOR, THE STATE RESTS ITS
13 PORTION OF THE CASE IN THE SENTENCING PHASE AT THIS TIME.

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THE
15 STATE HAS RESTED ITS CASE, ITS PRESENTATION OF EVIDENCE
16 HERE IN THIS PHASE OF THIS TRIAL. WE HAVE REACHED AN
17 APPROPRIATE POINT AT WHICH WE ARE GOING TO TAKE OUR LUNCH
18 BREAK.

19 BEFORE I SEND YOU BACK TO YOUR JURY ROOM TO HAVE
20 YOUR LUNCH, PLEASE, ONCE AGAIN, YOU ARE INSTRUCTED THAT YOU
21 ARE NOT TO DISCUSS THIS CASE IN ANY FASHION WHATSOEVER
22 WHILE YOU ARE IN THE JURY ROOM.

23 WE ARE GOING TO TAKE SOMEWHERE BETWEEN AN HOUR
24 AND AN HOUR AND TEN-MINUTES BREAK AND WE'LL GET YOU BACK IN
25 THE COURTROOM BETWEEN 2:15 AND 2:25.

1 SO THE JURY MAY RETIRE. EVERYONE EXCEPT THE
2 PARTIES INVOLVED MAY -- PLEASE REMAIN SEATED WHILE THEY
3 EXIT THE COURTROOM.

4 (JURY OUT.)

5 THE COURT: ALL RIGHT.

6 ANYTHING BEFORE WE BREAK FOR LUNCH?

7 MS. FULLWOOD: NOTHING FROM THE DEFENSE.

8 MR. HUMPHRIES: NO, SIR.

9 THE COURT: ALL RIGHT. OF COURSE, THE DEFENSE
10 WILL BE PREPARED TO MOVE FORWARD AT THE CONCLUSION OF THE
11 LUNCH HOUR.

12 I'M GOING TO ASK THAT EVERYONE BE BACK IN HERE BY
13 1:20 (SIC). THAT WILL GIVE YOU AN HOUR FOR LUNCH. AND AT
14 THAT TIME, I WILL BE DISCUSSING VARIOUS THINGS WITH MR.
15 TERRY CONCERNING HIS RIGHTS DURING THIS PHASE OF THE TRIAL.

16 ALL RIGHT. WE'LL STAND IN RECESS UNTIL 2:20.

17 (WHEREUPON, COURT RECESSED FOR
18 LUNCH AT 1:20 P.M.)

19 (WHEREUPON, COURT RECONVENED AFTER
20 LUNCH AT 2:20 P.M.)

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

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

23 ALL RIGHT. ARE WE READY TO PROCEED?

24 MS. FULLWOOD: WE ARE, YOUR HONOR.

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

1 MR. STONE: YOUR HONOR, IF I COULD, JUST TO LET
2 YOU KNOW AND PUT THIS ON THE RECORD, I WILL BE GOING IN AND
3 OUT OF THE COURTROOM AS QUIETLY AS POSSIBLE. THERE WILL BE
4 SOME PORTIONS I WILL NOT BE HERE FOR---

5 THE COURT: NO PROBLEM.

6 MR. STONE: ---AND I HAVE EXPLAINED THAT TO MR.
7 TERRY AND HE DOES NOT HAVE ANY OBJECTION TO THAT.

8 THE COURT: ALL RIGHT.

9 MR. TERRY, WOULD YOU STAND AGAIN, PLEASE, SIR.

10 NOW, MR. TERRY, ONCE AGAIN, WE HAVE REACHED THE
11 STAGE OF THE TRIAL WHERE YOU MAY PRESENT YOUR OWN DEFENSE
12 AND I'M GOING TO EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS.

13 IF YOU DO NOT UNDERSTAND ANYTHING THAT I SAY,
14 PLEASE LET ME KNOW AND IF YOU WANT ME TO EXPLAIN ANYTHING
15 IN FURTHER DETAIL, I WANT YOU TO LET ME KNOW THAT. DO YOU
16 UNDERSTAND?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: AND YOU UNDERSTAND THAT YOU ARE STILL
19 UNDER OATH, THE OATH THAT I PLACED YOU UNDER THE OTHER DAY?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: NOW, ONCE AGAIN, WE HAVE REACHED THE
22 STAGE OF THE TRIAL IN THIS SENTENCING PHASE WHERE YOU WILL
23 BE PRESENTING OR WHERE CERTAIN DEFENSES WILL BE PRESENTED.

24 YOU HAVE THE RIGHT, OF COURSE, TO TESTIFY DURING
25 THIS PHASE OF THE TRIAL; HOWEVER, NO ONE CAN MAKE YOU

1 TESTIFY. ONCE AGAIN, IT WILL BE YOUR DECISION WHICH YOU
2 MAY REACH THROUGH CONSULTATION WITH MR. STONE, MS.
3 FULLWOOD, WITH YOUR FAMILY, FRIENDS, ANYONE ELSE THAT YOU
4 DETERMINE THAT YOU WOULD LIKE TO TALK TO. HOWEVER, IT WILL
5 BE LEFT ENTIRELY UP TO YOU AS TO WHETHER OR NOT YOU TESTIFY
6 IN THIS STAGE OF THE TRIAL. AND, ONCE AGAIN, YOU MAY
7 DISCUSS IT WITH WHOMEVER, BUT THE ULTIMATE DECISION IS LEFT
8 ENTIRELY UP TO YOU. DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: ALL RIGHT.

11 YOU MAY BE SEATED.

12 AND WHAT I WILL DO, BEFORE YOU ACTUALLY REST, YOU
13 KNOW, WE NEED TO SEND THE JURY OUT. IF HE DOES NOT TAKE
14 THE STAND, LET'S TALK ABOUT THAT AGAIN AT THAT TIME.

15 MS. FULLWOOD: YES, SIR.

16 THE COURT: OKAY.

17 YOU READY TO PROCEED THEN?

18 MS. FULLWOOD: YES, SIR.

19 THE COURT: ALL RIGHT. LET'S BRING OUR JURY
20 BACK.

21 (JURY IN.)

22 THE COURT: LADIES AND GENTLEMEN, ONCE AGAIN, I
23 HOPE YOU HAD A NICE LUNCH HOUR. WE ARE GOING TO CONTINUE
24 WITH OUR CASE WITH THE DEFENSE'S CASE.

25 MS. FULLWOOD.

1 MS. FULLWOOD: THANK YOU.

2 YOUR HONOR, THE DEFENSE CALLS PATRICIA TERRY.

3 PATRICIA TERRY,

4 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
6 RECORD.

7 THE WITNESS: PATRICIA TERRY.

8 THE COURT: MS. TERRY, I'M GOING TO ASK THAT YOU
9 SPEAK AS LOUD AS YOU CAN, PLEASE, MA'AM, SO THAT EVERYONE
10 CAN HEAR YOU.

11 ALL RIGHT, MS. FULLWOOD.

12 DIRECT EXAMINATION

13 BY MS. FULLWOOD:

14 Q MS. TERRY, HOW ARE YOU RELATED TO GARY TERRY?

15 A HIS MOTHER.

16 Q HIS MOTHER?

17 A UH-HUH.

18 Q MS. TERRY, WHERE ARE YOU FROM?

19 A I'M FROM COLUMBIA, SOUTH CAROLINA.

20 Q DID YOU GROW UP THERE?

21 A YES.

22 Q CAN YOU TELL THIS JURY WHAT YOUR PARENTS DID FOR A
23 LIVING?

24 A MY MOTHER AND -- WAS A HOMEMAKER FOR AWHILE AND THEN
25 SHE HAD TO GO TO WORK AND MY DADDY WAS -- HE WORKED FOR THE

1 FIRE DEPARTMENT FOR AWHILE AND THEN HE WENT INTO SELF --
2 YOU KNOW, HE WAS A HOUSE PAINTER.

3 Q MS. TERRY, WHERE DID YOU GO TO SCHOOL?

4 A I WENT TO SCHOOL AT ARDEN AND ONE TIME WE LIVED IN
5 WEST COLUMBIA. I WENT TO SCHOOL AT BROOKLYN-CAYCE AND THEN
6 I WENT TO SCHOOL AT HEY -- I CAN'T EVEN REMEMBER THE JUNIOR
7 HIGH. IT'S HEYWARD SOMETHING. I CAN'T REMEMBER IT. IT'S
8 BEEN SO LONG.

9 Q ALL RIGHT. IN ADDITION TO GOING TO SCHOOL, DID YOU
10 HAVE RESPONSIBILITIES AT HOME?

11 A YES.

12 Q CAN YOU TELL THE JURY ABOUT WHAT THEY WERE?

13 A I'M THE OLDEST OF FIVE CHILDREN, TWO BROTHERS AND TWO
14 SISTERS YOUNGER THAN I AM. IT WAS MY RESPONSIBILITY TO
15 TAKE CARE OF THEM, PLUS IF IT WAS ON A WINTER MORNING, IT
16 WAS MY TURN -- I HAD TO GET UP TO MAKE SURE THE FIRE WAS
17 DONE, MAKE SURE THEY WERE READY TO GO TO SCHOOL WHILE MAMA
18 FIXED BREAKFAST.

19 Q DID YOU HAVE ANY HOUSEHOLD RESPONSIBILITIES AFTER
20 SCHOOL?

21 A YES. PRIMARILY TAKING CARE OF MY BROTHERS AND
22 SISTERS, KEEPING THEM OUT OF TROUBLE, FEEDING THEM A SNACK
23 WHEN I COME IN FROM THE AFTERNOONS AND KEEPING THEM
24 OCCUPIED UNTIL MAMA AND DADDY GOT HOME.

25 Q HOW FAR DID YOU GO IN SCHOOL?

1 A I WENT TO THE SEVENTH GRADE.

2 Q OKAY. DID YOU FINISH THE SEVENTH GRADE?

3 A NO, I DID NOT FINISH THE SEVENTH.

4 Q DID YOU QUIT SCHOOL?

5 A YES.

6 Q TELL THE JURY WHY YOU QUIT.

7 A I QUIT TO GET MARRIED.

8 Q OKAY. AND HOW OLD WERE YOU?

9 A THIRTEEN.

10 Q TELL THE JURY -- WELL, FIRST OF ALL, WHO IS YOUR

11 HUSBAND?

12 A BILLY RAY TERRY, SENIOR.

13 Q AND IS HE IN THE COURTROOM RIGHT NOW?

14 A YES.

15 Q CAN YOU POINT HIM OUT TO THE JURY?

16 A RIGHT OVER THERE IN THE GRAY SHIRT(INDICATES).

17 Q WHEN DID YOU MARRY BILL TERRY?

18 A JANUARY 5TH, 1957.

19 Q AND YOU HAVE BEEN MARRIED---

20 A FORTY YEARS.

21 Q FORTY YEARS.

22 CAN YOU TELL THE JURY HOW YOU MET BILL AND HOW

23 YOU CAME TO MARRY HIM?

24 A WHEN I WAS IN -- WHEN I STARTED JUNIOR HIGH, I HAD A

25 GOOD FRIEND NAME CHARLENE AND HER BROTHER KNEW MY HUSBAND.

1 THE FIRST TIME I SAW HIM, I WAS PLAYING SOFTBALL AND HE
2 PULLED UP IN THE TRUCK AND A COUPLE OF DAYS LATER, I MET
3 HIM AT MY FRIEND'S HOUSE, CHARLENE, AND WAS FORMALLY
4 INTRODUCED TO HIM AND IT JUST WENT FROM THERE.

5 Q OKAY. AND---

6 A AND STILL GOING.

7 Q ALL RIGHT. IT WENT FROM THERE AND IT'S STILL GOING.

8 DID YOU AND BILL HAVE TO GET YOUR PARENTS'
9 PERMISSION TO GET MARRIED?

10 A NO.

11 Q WHAT DID Y'ALL DO?

12 A WE CAME OVER HERE TO THE LEXINGTON COUNTY COURT HOUSE
13 AND APPLIED FOR A MARRIAGE LICENSE AND WE GOT IT. AND WE
14 ELOPED. WE ELOPED ON A SATURDAY NIGHT OF JANUARY THE 5TH
15 AND THE FOLLOWING MONDAY, SOUTH CAROLINA WROTE INTO THE
16 LAW, NO MORE ELOPEMENTS IN THE STATE OF SOUTH CAROLINA.

17 Q SO WERE YOU AND -- SO TO YOUR KNOWLEDGE, WERE YOU AND
18 BILL THE LAST COUPLE---

19 A YES.

20 Q ---TO ELOPE LIKE THAT?

21 A UH-HUH.

22 Q OKAY. MS. TERRY, HOW MANY CHILDREN DO YOU HAVE?

23 A I HAVE FIVE.

24 Q ALL RIGHT. TELL THE JURY THEIR NAMES, PLEASE.

25 A BILLY RAY TERRY, JR.

1 Q IS HE THE OLDEST?

2 A YES.

3 Q OKAY.

4 A I'LL NAME THEM AS IN BIRTH ORDER.

5 Q OKAY. AND HOW OLD WERE YOU WHEN BILLY WAS BORN?

6 A UH -- I WAS THIRTEEN WHEN I GOT MARRIED AND BILLY WAS
7 BORN IN NOVEMBER. I TURNED FOURTEEN IN APRIL. SO BILLY
8 WAS BORN IN NOVEMBER. I WAS FOURTEEN.

9 Q OKAY. AND YOUR SECOND CHILD?

10 A FAYE WAS BORN EXACTLY 24 MONTHS TO THE DAY AFTER
11 BILLY WAS.

12 Q AND HER NAME?

13 A AND HER NAME IS PATRICIA FAYE. SHE GOES BY THE NAME
14 FAYE.

15 THE THIRD CHILD IS JANET ELAINE. SHE WAS BORN A
16 LITTLE OVER A YEAR AND A HALF, MAYBE -- ALMOST TWO YEARS
17 AFTER FAYE. AND THEN JOHN DAVID. IT'S ABOUT THREE YEARS
18 DIFFERENCE BETWEEN JOHN AND LANIE AND THEN GARY IS THE
19 BABY. IT'S ALMOST FOUR YEARS DIFFERENCE BETWEEN JOHNNY AND
20 GARY.

21 Q OKAY. AND WHEN WAS GARY BORN?

22 A GARY WAS BORN DECEMBER THE 1ST, 1967.

23 Q OKAY. SO WITHIN A TEN-YEAR PERIOD OF TIME, YOU AND
24 BILL HAD FIVE CHILDREN?

25 A RIGHT.

1 Q OKAY. MS. TERRY, WHERE DID YOU AND BILL LIVE TO
2 RAISE YOUR CHILDREN?

3 A WHEN WE WERE FIRST MARRIED, WE LIVED IN THE HOME WITH
4 HIS MOTHER AND FATHER. THEY HAVE A PIECE OF LAND ABOUT AN
5 ACRE OF LAND IN A TOWN KNOWN AS EAU CLAIRE IN THE NORTH
6 COLUMBIA AREA. WE STAYED THERE WITH THEM PROBABLY THE
7 FIRST FIVE YEARS OF OUR MARRIAGE AND IT WAS ON THE BACK OF
8 THE LOT. IT WAS AN AREA OVER THERE THAT WAS SORT OF
9 CLEANED OFF, BUT NOT REALLY CLEANED OFF BECAUSE BETWEEN
10 THEIR HOUSE AND THE FRONT OF THE STREET AND OUR HOUSE THAT
11 WE BUILT ON THE BACK WAS A GARDEN SPOT, PLUS HALF OF THAT
12 WAS A SWAMP AREA. IT HAD NEVER BEEN FILLED IN. IT WAS ALL
13 VIRGIN. AND WE BUILT OUR OWN HOUSE OVER THERE AND MOVED
14 OVER THERE IN 1964.

15 Q OKAY. WHEN YOU SAY THAT YOU TOOK THAT LAND AND BUILT
16 YOUR OWN HOUSE, DO YOU MEAN YOU HIRED A CONTRACTOR TO BUILD
17 THE HOUSE FOR YOU?

18 A NO. WE BUILT IT BY OURSELVES BY HAND. HE SAWED
19 EVERY BOARD THAT WENT IN THE HOUSE BY A HAND SAW.

20 Q AND YOU MOVED INTO THAT HOUSE IN 1964?

21 A UH-HUH.

22 Q AND THAT'S WHERE GARY WAS RAISED?

23 A RIGHT.

24 Q YOU MENTIONED A GARDEN SPOT---

25 A UH-HUH.

1 Q ---WAS THAT SOMETHING THAT YOU AND BILL REGULARLY
2 DID?

3 A WELL, HIS MAMA AND DADDY STARTED THIS SPOT AND THEN
4 AS THEY GOT OLDER, WHILE HIS DAD WAS STILL LIVING, WE
5 PRETTY MUCH KEPT IT UP BECAUSE THE FAMILY KEPT GROWING AND
6 THEY WERE STILL WORKING AND WE USED THAT, YOU KNOW, TO HELP
7 UTILIZE THE INCOME ON BOTH SIDES OF THE FAMILY. ESPECIALLY
8 WITH THE CHILDREN.

9 Q OKAY. NOW, LET'S TALK ABOUT GARY FOR A LITTLE BIT---

10 A OKAY.

11 Q ---WHEN HE WAS LITTLE. HOW DID YOUR PREGNANCY WITH
12 GARY GO?

13 A I HAD -- I DID NOT HAVE A REALLY GOOD PREGNANCY WITH
14 GARY. THE FIRST FOUR OR FIVE MONTHS WENT FINE AND THEN I
15 STARTED HAVING PROBLEMS WITH MY KIDNEYS. A SORE THROAT --
16 I KEPT A SORE THROAT A LOT AND A LOT OF EAR INFECTIONS.
17 AND SO I HAD TO TAKE A LARGE AMOUNT OF TETRACYCLINE, WHICH
18 IS AN ANTIBIOTIC.

19 Q CAN YOU TELL THE JURY WHAT TYPE OF KIDNEY TROUBLE YOU
20 ARE TALKING ABOUT?

21 A I HAD -- I HAD A LOT OF INFECTIONS AND THEN A COUPLE
22 OF WEEKS BEFORE GARY WAS BORN, THE LEFT KIDNEY FAIL AND SO
23 THEY GOT THAT STRAIGHTEN OUT AND THEN IT WAS -- THAT WAS
24 AROUND MAYBE THREE OR FOUR DAYS AFTER NOVEMBER OF THE
25 THANKSGIVING OF THAT YEAR AND GARY WAS BORN THE 1ST OF

1 DECEMBER, 1967.

2 Q OKAY. NOW, DID GARY HAVE HEALTH PROBLEMS AS A BABY?

3 A WHEN GARY WAS FIRST BORN, WE HAD LOTS OF TROUBLE WITH
4 HIM SPITTING UP. A LOT OF BABIES GO THROUGH THAT STAGE OF
5 SPITTING UP, BUT AS HE GOT OLDER, HE JUST GOT WORSER(SIC);
6 AND SO FINALLY, THE DOCTOR FIGURED OUT THAT HE WAS BORN
7 WITH AN ESOPHAGUS THAT DID NOT CLOSE, COMPLETELY CLOSE UP
8 LIKE IT WAS SUPPOSED TO ONCE THE STOMACH WAS FULL.

9 SO WE HAD TO LEARN TO SAT HIM IN A SITTING-UP
10 POSITION TO KEEP HIS FOOD DOWN WHERE IT COULD DIGEST.

11 Q ALL RIGHT. AND WHEN YOU WERE RAISING YOUR CHILDREN,
12 WHO DID YOU TAKE THEM TO TO LOOK AFTER THEIR HEALTH?

13 A I TOOK THEM TO MY BROTHER-IN-LAW, DR. JAMES C. STEEL.

14 Q OKAY. DID YOU TAKE THEM TO HIS OFFICE OR HOW DID YOU
15 COME TO SEE DR. STEEL?

16 A SOMETIMES I WENT TO THE OFFICE, BUT THE MAJORITY OF
17 THE TIME, HE JUST CAME TO THE HOUSE IF I NEEDED HIM. I
18 CALLED HIM AND HE CAME THERE.

19 Q HE WOULD JUST SOMETIMES STOP BY?

20 A UH-HUH.

21 Q ALL RIGHT. NOW, MS. TERRY, WERE YOU ABLE TO STAY
22 HOME WITH GARY WHILE HE WAS A BABY---

23 A NO---

24 Q ---AND A TODDLER?

25 A ---NO, I WAS NOT.

1 Q OKAY. CAN YOU TELL THE JURY A LITTLE ABOUT THAT?

2 A I WENT TO WORK BECAUSE MY HUSBAND, HE HAD GOTTEN
3 HURT, BUT I HAD ALREADY STARTED A JOB AND WAS TRYING TO
4 WORK OUT WITH KEEPING THE CHILDREN AND BEING A MOTHER TO
5 THEM AND EVERYTHING AND HE IN 1971, HE WAS ALMOST
6 ELECTROCUTED ON THE JOB. HE BROKE HIS BACK, CONCUSSION AND
7 EVERYTHING. IT WAS TWO OR THREE YEARS LATER BEFORE THEY
8 FINALLY DECIDED TO DO BACK SURGERY ON HIM.

9 AT THAT TIME, THEY FOUND OUT THAT WHEN -- WHEN
10 THE ELECTRIC SHOCK HIT HIM AND THREW HIM OFF THE LADDER, IT
11 WAS A SMALL PIECE OF BONE THAT HAD BEEN LEFT ALL THIS TIME
12 FLOATING AROUND IN THE BOTTOM CLOSE TO HIS SPINE AND IT HAD
13 CUT SEVERAL NERVES IN THERE.

14 AND SO I TOOK TIME OFF FROM WORK AND HE HAD HIS
15 OPERATION AND WE JUST TRIED TO WORK IT OUT BETWEEN
16 OURSELVES. HE TRIED TO WATCH THEM DURING THE DAY WHILE I
17 SLEPT A FEW HOURS WITH HIS MOTHER'S HELP AND THEN I WORKED
18 AT NIGHT AND, YOU KNOW, THAT'S THE WAY IT WENT.

19 Q NOW, YOU TALKED ABOUT AN ACCIDENT THAT HAPPENED IN
20 1971?

21 A UH-HUH.

22 Q OKAY. AND HOW OLD WAS GARY THEN?

23 A GARY WAS PROBABLY FOUR.

24 Q PROBABLY FOUR-YEARS-OLD?

25 A PROBABLY FOUR OR SO. THREE OR FOUR -- MAYBE THREE

1 AND A HALF, FOUR.

2 Q OKAY. BEFORE 1971, DID YOUR HUSBAND BILL WORK
3 STEADILY?

4 A YES.

5 Q ALWAYS EMPLOYED?

6 A UH-HUH.

7 Q OKAY. WAS HE EVER EMPLOYED AFTER 1971?

8 A NO.

9 Q OKAY. DID HE -- AS A RESULT OF THAT ACCIDENT, DID HE
10 GET ANY TYPE OF DISABILITY PAYMENTS?

11 A YES, HE GOT -- HE DRAW WORKERS COMP AND BACK THEN HE
12 GOT FIFTY DOLLARS A WEEK AND EVERY THIRD CHECK OF THAT
13 FIFTY DOLLARS A WEEK WENT TO HIS ATTORNEY.

14 Q OKAY. AND YOU SAID YOU WENT TO WORK?

15 A UH-HUH.

16 Q WHERE DID YOU GO WORK?

17 A THE FIRST TIME I WORKED, I WENT TO WORK AT THAT TIME
18 WAS -- ONCE I TRIED THE SEWING ROOM AND THEY WOULDN'T WORK
19 OUT THE HOURS WITH ME. SO I WENT TO SHAKESPEARE ON THE
20 SECOND SHIFT. I HAD PROBLEMS WITH, YOU KNOW, WITH THE
21 BABY-SITTERS AND EVERYTHING AND HE WAS IN SO MUCH PAIN AND
22 THEN SO I FINALLY WENT TO THE MILL.

23 Q WHAT -- WHAT MILL WAS THAT?

24 A OLYMPIA.

25 Q OLYMPIA?

1 A UH-HUH.

2 Q ALL RIGHT. NOW, AFTER THE ACCIDENT, WAS BILL THE
3 SAME PERSON?

4 A NO.

5 Q HOW DID HE CHANGE?

6 A HE DIDN'T -- NOISE BOTHERED HIM. EVEN JUST THE --
7 SOMETIMES JUST THE CHATTER OF THE CHILDREN SITTING ON THE
8 FLOOR PLAYING OR TRYING TO WATCH T.V. LIKE LITTLE ONES DO.
9 HE COULDN'T TAKE IT. HE HAD TO GET UP AND GO OUTSIDE OR GO
10 BACK TO HIS -- WHAT WE CALL HIS ROOM AT THE TIME BECAUSE HE
11 HAD HIS HOSPITAL BED AND ALL THAT BACK THERE. AND -- HIS
12 NERVES, HE JUST COULDN'T HANDLE IT, YOU KNOW, AS FAR AS
13 EVERYTHING GOING ON.

14 Q OKAY. DID HIS ACCIDENT AFFECT YOU AS A FAMILY
15 FINANCIALLY?

16 A YES. IT REALLY DID.

17 Q DID YOU HAVE MUCH EXTRA MONEY FOR THINGS FOR THE
18 KIDS?

19 A NO. I HAD TO -- WE HAD JUST RECENTLY BOUGHT A BIG
20 FORD STATION WAGON AND I HAD TO TAKE IT DOWN TO THE BANK
21 AND GIVE IT BACK TO THEM BECAUSE I COULD NOT MAKE THE
22 PAYMENTS ON IT WITH WHAT I HAD TO DO WITH THE FAMILY AND
23 EVERYTHING. IT WAS JUST NO WAY.

24 Q OKAY.

25 A THAT WAS MOSTLY OUR BIGGEST FINANCIAL, YOU KNOW,

1 RESPONSIBILITY WAS THE CAR.

2 Q UH-HUH. BECAUSE YOU HAD BUILT YOUR HOUSE?

3 A RIGHT.

4 Q ALL RIGHT. MS. TERRY, I WANT YOU TO TELL THE JURY
5 WHAT GARY WAS LIKE WHEN HE WAS A LITTLE BOY?

6 A HE WAS VERY SHY. SHE WAS A LONER. EVEN WITH TWO
7 BROTHERS AND TWO SISTERS OLDER THAN HE WAS, HE WAS A LONER.
8 YOU COULD -- IF HE HAD HIS CARS -- HE LOVED CARS OR ANY
9 KIND OF CARS, TRUCKS OR WHATEVER. YOU COULD SIT HIM IN THE
10 CORNER OF THE ROOM OR IN THE MIDDLE OF THE FLOOR AND PUT
11 HIS TOYS AROUND HIM AND AS LONG AS HE COULD KEEP HIS DADDY
12 OR I OR ANY OF HIS BROTHERS OR SISTERS IN VIEW, HE WAS
13 FINE. HE WOULD SIT THERE AND PLAY JUST LIKE THAT RIGHT
14 THERE. HE REALLY WAS A GOOD BABY.

15 Q DID HE HAVE ANY SPECIAL INTERESTS OR ACTIVITIES THAT
16 HE LIKED TO---

17 A AS HE GOT OLDER, HE -- ANYTHING THAT HE COULD RUN
18 MECHANICALLY, HE WOULD TRY THAT RIGHT THERE. HE WOULD TAKE
19 HIS CARS APART AND IF THEY HAD A SMALL MOTOR IN THERE OR
20 WHATEVER, HE WOULD ADD BATTERIES TO THEM TO MAKE THEM GO
21 FASTER. YOU KNOW, THINGS LIKE THAT.

22 AND HE LOVES -- HE LOVES TO DRAW. PENCIL AND
23 PAPER DRAW. HE'S REALLY GOOD WITH HIS HANDS.

24 AS HE GOT OLDER, HE STARTED MAKING STUFF OUT OF
25 WOOD, YOU KNOW, DIFFERENT THINGS.

1 Q WHEN GARY WAS LITTLE, DID HE PARTICIPATE IN ANY
2 ACTIVITIES LIKE SCOUTING OR LITTLE LEAGUE OR THINGS OF THAT
3 NATURE?

4 A NO. HE DIDN'T HAVE AN ATTENTION SPAN TO SIT, YOU
5 KNOW, FOR LONGER PERIODS LIKE THAT IN AN AREA, YOU KNOW,
6 WHERE HE HAD TO BE STILL PERIOD -- FOR A LONG PERIOD.

7 Q OKAY. WELL, MS. TERRY, HOW DID HE DO IN SCHOOL?

8 A HE HAD HIS GOOD DAYS AND HIS BAD DAYS AND WHEN THEY
9 -- WHEN WE FIRST STARTED OFF IN SCHOOL, HE WAS, YOU KNOW,
10 HE WAS FAIRLY GOOD BECAUSE THE FIRST GRADE BACK THEN WAS
11 NOT REALLY HARD LIKE IT IS NOW, YOU KNOW.

12 AND THEN IN THE SECOND GRADE, MAYBE THE THIRD
13 GRADE -- THE SECOND OR THIRD GRADE, JOHNNY STARTED HAVING A
14 LOT OF PROBLEMS AND SO, I -- THEY STARTED TESTING THEM AT
15 SCHOOL AND THEY TESTED BOTH OF THE BOYS AT SCHOOL BECAUSE
16 JOHNNY WAS A GRADE OR TWO AHEAD OF GARY AND GARY WAS
17 DIAGNOSED AS HAVING A LEARNING DISABILITY AND ONE OF THE
18 TESTERS ALSO TOLD ME THAT GARY WAS BORDERLINE RETARDED.

19 Q OKAY. AND THAT'S WHAT THE SCHOOL PERSONNEL TOLD YOU?

20 A RIGHT.

21 Q ALL RIGHT. WELL, MS. TERRY, AS A RESULT OF WHAT YOU
22 LEARNED ABOUT HIS LEARNING PROBLEMS, DID YOU GET ANY
23 TUTORING OR ANYTHING OF THAT NATURE?

24 A WE DIDN'T TUTOR HIM. NO. THEY -- THEY STARTED UP
25 HAVING SPECIAL EDUCATION CLASSES THAT THEY HAVE NOW---

1 Q UH-HUH.

2 A ---EXCEPT THAT HE JUST WENT TO SPECIAL EDUCATION
3 CLASSES.

4 Q OKAY. NOW, MS. TERRY, DID THERE COME A TIME WHEN YOU
5 BEGAN TO NOTICE A CHANGE IN THE WAY GARY ACTED?

6 A YES, HE -- FIRST, HE -- HE AND HIS BROTHERS FOUGHT A
7 LOT. I MEAN, THEY REALLY DID. AND EVEN THOUGH HE'S THE
8 SMALLEST OF THEM, HE WOULD STILL HANG IN THERE, YOU KNOW---

9 Q UH-HUH.

10 A ---AND HE HAD A LOT OF RUN-INS WITH HIS DAD AND---

11 Q AND I DON'T MEAN TO INTERRUPT YOU, BUT ABOUT WHAT AGE
12 DID YOU START NOTICING THIS TYPE OF CHANGE?

13 A I GUESS HE MUST HAVE BEEN THIRTEEN -- TWELVE OR
14 THIRTEEN, SOMEWHERE ALONG IN THERE.

15 Q OKAY. SO -- WHEN YOU SAY THAT THERE WOULD BE
16 FIGHTING AMONG THE BOYS, WAS IT ALWAYS GARY THAT WAS
17 STARTING THE FIGHTS?

18 A NOT REALLY, NO. IT WAS JUST -- IT COULD START OUT AS
19 JUST A DISAGREEMENT AND END UP IN A FIGHT.

20 Q OKAY. SO THERE WAS -- THERE WERE PROBLEMS WITH YOUR
21 BOYS FIGHTING AMONGST EACH OTHER?

22 A RIGHT.

23 Q OKAY. DID THESE FIGHTS EVER ESCALATE TO THE POINT
24 WHERE YOU FELT YOU NEEDED TO BRING IN SOME OUTSIDE HELP?

25 A NOT REALLY FROM BRINGING ANYBODY ELSE IN FROM THE

1 OUTSIDE. HIS DAD AND I USUALLY TRIED TO TAKE CARE OF IT
2 OURSELVES.

3 Q DID YOU EVER HAVE TO CALL IN LAW ENFORCEMENT?

4 A NO.

5 Q NEVER?

6 A NO.

7 Q OKAY. COULD YOU TELL THE JURY, PLEASE, MS. TERRY,
8 ABOUT AN INCIDENT THAT HAPPENED WHEN YOU FOUND GARY IN HIS
9 BEDROOM?

10 A GARY WAS ABOUT THIRTEEN-YEARS-OLD AND I WOKE UP IN
11 THE MIDDLE OF THE NIGHT ONE NIGHT AND JUST -- I GUESS,
12 MOTHERLY INSTINCT SAID GO CHECK ON GARY. SO I GOT UP TO GO
13 IN THERE AND HE -- WHEN I STARTED DOWN THE HALL, I GOT THIS
14 REAL STRONG SMELL. I PUSHED THE DOOR TO HIS ROOM OPEN. I
15 COULD NOT PUSH THE DOOR ALL THE WAY OPEN BECAUSE HE HAD
16 PUSHED HIS DRESSER UP BESIDE THE DOOR. I HOLLERED FOR HIS
17 DADDY TO COME IN THERE AND SO HE CAME DOWN THE HALL AND IT
18 TOOK BOTH OF US TO PUSH THE DOOR BACK. WE TORE THE RUG UP
19 GETTING THE DOOR BACK. GARY WAS WRAPPED UP IN A HOMEMADE
20 QUILT. HE HAD WRAPPED HIMSELF UP COCOON STYLE, HEAD ALL
21 THE WAY DOWN AND WE -- WHEN I -- WE GOT HIM. I SNATCHED
22 HIM, TRIED TO PULL HIM OFF THE BED, HE WAS ROLLED UP IN IT.
23 WE GOT HIM OUT ON THE FLOOR AND STARTED TRYING TO DRAG HIM
24 OUT AND A CAN OF AIRPLANE REMOVER, GLUE REMOVER, HE HAD
25 WRAPPED UP IN THAT WITH THE LID OFF OF IT, PLUS A TUBE OF

1 AIRPLANE GLUE WAS IN THERE.

2 Q ONCE -- ONCE YOU GOT HIM OUT OF THERE, WHAT DID HE
3 ACT LIKE?

4 A HE WAS UNCONSCIOUS AND HIS DAD STARTED THROWING THE
5 DOORS OPEN, THE WINDOWS OPEN. WE DRUG HIM THROUGH THE
6 LIVING ROOM, GOT HIM OUT ON THE FRONT PORCH AND WENT BACK
7 IN THE HOUSE. IT WAS ABOUT 3 O'CLOCK IN THE MORNING. WE
8 CALLED MY BROTHER-IN-LAW AND I SAID DO YOU WANT ME TO TAKE
9 HIM TO THE HOSPITAL OR CALL AN AMBULANCE OR WHATEVER. HE
10 SAID GIVE HIM AT LEAST A COUPLE OF MINUTES AND SEE IF YOU
11 CAN GET HIM, YOU KNOW, START COMING BACK AROUND. IF YOU
12 CAN'T, GET THE AMBULANCE ON THE WAY.

13 AND SO WE GOT HIM OUT ON THE PORCH, UNROLLED HIM.
14 HE GOT ON ONE SIDE -- HIS DAD GOT ON ONE SIDE. I WAS ON
15 THE OTHER SIDE AND WE STARTED DRAGGING HIM UP AND DOWN THE
16 DRIVEWAY.

17 THE DRIVEWAY TO OUR HOUSE AT THAT TIME WAS
18 APPROXIMATELY 80 FEET LONG AND IT WAS COLD. IT WAS, YOU
19 KNOW, THE WEATHER WAS KIND OF COOL. SO WE DRUGGED HIM UP
20 AND DOWN THE DRIVEWAY, MAYBE TWO OR THREE TIMES AND HE
21 STARTED WALKING ON HIS OWN AND TALKING. AT THAT TIME --
22 AT THAT TIME, HE REALLY DIDN'T KNOW WHO HE WAS OR WHO WE
23 WERE OR WHERE HE WAS AT. AND WE KEPT HIM OUTSIDE AND --
24 WELL, HIS DAD KEPT HIM OUT THERE MOVING HIM AROUND. I WENT
25 BACK IN AND I CALLED JIM AND I -- IT'S DR. STEEL AND I TOLD

1 HIM THAT HE WAS CONSCIOUS AND HE WAS STARTING TO RECOGNIZE,
2 YOU KNOW, HIS DAD AND I AND WHAT DID HE WANT ME TO DO. HE
3 SAID, WELL, THERE'S NO USE IN TAKING HIM TO THE EMERGENCY
4 ROOM BECAUSE THERE'S NOTHING THEY CAN DO OTHER THAN WATCH
5 HIM.

6 AND SO WITH FINANCES LIKE THEY WERE, I PUT HIM ON
7 THE SOFA IN THE LIVING ROOM AND PROCEEDED TO SAT THERE AND
8 WATCH HIM. HE BREATHED VERY SHALLOW FOR ABOUT -- OH, I
9 DON'T KNOW, FOUR, MAYBE THREE AND A HALF, FOUR HOURS. THEN
10 HE STARTED TAKING DEEPER BREATHS, YOU KNOW, AND WAY ON UP
11 INTO THE DAY, THE NEXT DAY AROUND ONE, MAYBE 2 O'CLOCK, HE
12 COULD FINALLY GET IN FRONT OF HIM THAT HE COULD BREATHE.
13 THAT YOU COULD NOT DETECT WHAT HE HAD INHALED.

14 Q OKAY. MS. TERRY, DID YOU EVER TAKE GARY TO ACTUALLY
15 SEE A DOCTOR BECAUSE OF THIS?

16 A NO.

17 Q OKAY.

18 A JIM CAME BY ON HIS WAY HOME THAT AFTERNOON AND
19 CHECKED HIM OUT GOOD FOR ME.

20 Q DR. STEEL---

21 A YES.

22 Q ---SAW HIM THE NEXT AFTERNOON?

23 A RIGHT.

24 Q OKAY. DID YOU EVER TAKE GARY TO COUNSELING OR OTHER
25 KIND OF MENTAL HEALTH TREATMENT BECAUSE OF THIS?

1 A NO.

2 Q OKAY. HOW OLD WAS GARY WHEN HE LEFT HOME?

3 A THE FIRST TIME GARY LEFT HOME, HE MIGHT HAVE BEEN,
4 MAYBE FOURTEEN OR FIFTEEN. HE AND THE BROTHER NEXT TO HIM
5 HAD GOTTEN INTO A FIGHT AND I DON'T EVEN KNOW -- I CAN'T
6 EVEN ATTEMPT TO TELL YOU WHAT IT WAS ABOUT. BUT ANYWAY,
7 THEY HAD GOTTEN INTO A FIGHT AND GARY PICKED UP A BRICK BAT
8 AND THREW IT THROUGH HIS BROTHER'S WINDSHIELD AND HIS
9 BROTHER WAS AT THE STAGE OF RESTORING THIS VAN. YOU KNOW,
10 HE WAS INTO THIS AND THEY GOT INTO IT ABOUT SOMETHING, BUT
11 ANYWAY, MR. TERRY HAD GONE OUTSIDE TO BREAK HIM UP BECAUSE,
12 I MEAN, THEY WERE REALLY TANGLING AND WHEN HE DID, GARY
13 STARTED AT HIS DADDY AND HIS DADDY JUST REACHED DOWN AND
14 PICKED UP A PIECE OF PIPE -- A BOARD, A FLAT BOARD, AND
15 WHEN GARY CAME AT HIM TO STOP HIM, HE SWUNG IT AND HIT HIM
16 AND BROKE GARY'S COLLARBONE.

17 WELL, GARY LEFT. WENT DOWN THROUGH THE SWAMP TO
18 THE OTHER END OF THE ROAD WHERE THE OLDEST BOY LIVED AT AND
19 HE TOOK HIM TO THE HOSPITAL AND HE, YOU KNOW, THEY SHOWED
20 HE HAD A BROKEN COLLARBONE.

21 Q OKAY. WAS HE STILL IN SCHOOL AT THAT TIME?

22 A YES.

23 Q ABOUT HOW OLD WAS HE?

24 A GARY MUST HAVE BEEN. I GUESS HE WAS ABOUT -- HE MAY
25 HAVE BEEN FOURTEEN -- PROBABLY FOURTEEN, MAYBE FOURTEEN AND

1 A HALF.

2 Q FOURTEEN---

3 A YEAH.

4 Q OKAY. DID THERE COME A TIME WHEN GARY STOPPED GOING
5 TO SCHOOL?

6 A GARY GOT THROUGH ELEMENTARY SCHOOL. HE GOT THROUGH
7 MIDDLE SCHOOL. HE STARTED INTO THE NINTH GRADE AND WE WERE
8 LIVING IN THE EAU CLAIRE SECTION AND HE CAME TO ME AND HE
9 SAID, MOM, I DON'T WANT TO GO TO EAU CLAIRE. HIS BROTHER
10 HAD WENT THERE AND HE -- HE -- AT THAT TIME, HE FIGURED HE
11 JUST DIDN'T WANT TO GO AND I DIDN'T WANT HIM TO QUIT SCHOOL
12 IN THE NINTH GRADE LIKE HIS OLDEST BROTHER DID AND I SAID,
13 WELL, WHAT WILL IT TAKE TO KEEP YOU IN SCHOOL BECAUSE I
14 KNEW BY THEN THE LAW HAD NOT CHANGED. TECHNICALLY AT
15 SIXTEEN, HE COULD DROP OUT. THERE WAS NOTHING I COULD DO
16 ABOUT IT.

17 AND HE SAID, WELL, LET ME GO TO COLUMBIA HIGH AND
18 I SAID ALL RIGHT. I'LL GET UP EVERY MORNING AND GET YOU TO
19 COLUMBIA HIGH AND BRING YOU HOME AND THAT'S HOW HE
20 TRAVELLED BY ME TAKING HIM BACK AND FORTH. HE HAD BEEN
21 OVER THERE, I DON'T KNOW, PROBABLY -- IT WAS STARTING TO
22 GET COOL SO I'LL SAY PROBABLY AROUND THE FIRST OF NOVEMBER
23 OR IT COULD HAVE BEEN THE LATTER PART OF DECEMBER. I'M NOT
24 SURE. I STARTED WAKING UP AT NIGHT BECAUSE I WOULD HEAR
25 LIKE A MOTORCYCLE CRANK UP AND I THOUGHT THAT I WOULD HEAR

1 A WINDOW RAISE UP. AND I REALLY DIDN'T THINK ANYTHING
2 ABOUT IT AT THE TIME BECAUSE THE DOGS DIDN'T BARK. WE HAD
3 THREE GERMAN SHEPHERDS. AND THAT WENT ON FOR A WHILE AND
4 ONE NIGHT AGAIN I JUST WOKE UP WHEN I HEARD THE SOUND AND
5 SOMETHING SAID, I GUESS IN MY CONSCIOUS MIND, TOO MANY
6 THINGS WERE COMING TOGETHER AS A WHOLE, YOU KNOW. SO I
7 WENT IN THERE AND, AGAIN, THE DRESSER DRAWER WAS UP BESIDE
8 THE DOOR AND WE PUSHED THE DOOR OPEN. I CALLED HIS DADDY.
9 PUSHED THE DOOR OPEN AND GARY WAS NOT IN HIS ROOM. AND SO
10 HE HAD LEFT AND WENT OFF WITH TAMMY ON THE MOTORCYCLE.

11 Q THIS WOULD BE TAMMY GRIFFIN?

12 A RIGHT.

13 Q THE LADY WHO TESTIFIED THIS MORNING?

14 A RIGHT.

15 Q SO THEY HAD STARTED DATING?

16 A RIGHT.

17 Q ALL RIGHT. AND THAT WAS AROUND THE TIME GARY QUIT
18 GOING TO SCHOOL?

19 A THAT'S WHEN GARY QUIT GOING TO SCHOOL. I WOULD TAKE
20 HIM TO SCHOOL IN THE MORNING JUST LIKE I NORMALLY DID AND
21 THE -- FROM THE REPORTS THAT I GOT LATER, AS SOON AS I'D
22 PUT HIM OUT, HE AND TAMMY WOULD GET ON THE MOTORCYCLE AND
23 LEAVE.

24 Q ALL RIGHT. NOW, I BELIEVE, THAT TAMMY AND GARY HAD A
25 CHILD?

1 A RIGHT.

2 Q OKAY. AND, OF COURSE, THAT'S YOUR GRANDSON?

3 A RIGHT.

4 Q AND HAVE YOU SEEN YOUR GRANDSON DURING THE COURSE OF

5 HIS GROWING UP?

6 A SURE. I SAW HIM EVERY YEAR UP UNTIL LAST CHRISTMAS,

7 THE LAST TIME I SAW HIM.

8 Q LAST CHRISTMAS---

9 A UH-HUH.

10 Q ---WAS THE LAST TIME YOU SAW HIM---

11 A I HAVEN'T SEEN HIM SINCE, YOU KNOW, EVERYTHING

12 STARTED COMING UP -- TO A HEAD WITH THIS TRIAL.

13 Q OKAY. AND WHAT'S HIS NAME?

14 A JEFFREY DUBOSE GRIFFIN.

15 Q OKAY. HOW OLD WAS GARY WHEN JEFFREY WAS BORN?

16 A I THINK GARY MUST HAVE BEEN -- HE MIGHT HAVE BEEN

17 SEVENTEEN, BUT IT COULD HAVE BEEN SIXTEEN AND A HALF. IT

18 WASN'T VERY MUCH DIFFERENCE BETWEEN, YOU KNOW, HIS AGE WHEN

19 THEY WERE -- HE WAS BORN.

20 Q AND TAMMY WAS A YEAR YOUNGER?

21 A YEAH, TAMMY IS A YEAR YOUNGER.

22 Q ALL RIGHT.

23 MR. HUMPHRIES: NO OBJECTION, YOUR HONOR.

24 MS. FULLWOOD: MS. TERRY, I WANT TO SHOW YOU THIS

25 PICTURE AND ASK YOU IF YOU CAN IDENTIFY IT?

1 THE WITNESS: YES. THAT'S JEFFREY DUBOSE TERRY.

2 Q YOUR GRANDSON?

3 A GARY AND TAMMY'S MY SON.

4 Q THAT'S GARY'S OLDEST SON?

5 A RIGHT.

6 MS. FULLWOOD: YOUR HONOR, WE MOVE TO INTRODUCE
7 THIS INTO EVIDENCE.

8 THE COURT: BE ADMITTED WITHOUT OBJECTION AS
9 DEFENDANT'S EXHIBIT NUMBER FIVE.

10 (WHEREUPON, DEFENDANT'S EXHIBIT
11 NUMBER FIVE, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
12 WITHOUT OBJECTION.)

13 MS. FULLWOOD: NOW, GARY EVENTUALLY MARRIED
14 TAMMY?

15 THE WITNESS: YES.

16 Q ALL RIGHT. NOW, DID THEY REALLY LIVE TOGETHER AS
17 HUSBAND AND WIFE THE WAY YOU AND BILL DID?

18 A NO.

19 Q DID THEY EVER LIVE IN A RESIDENCE BY THEMSELVES ON
20 THEIR OWN?

21 A NO.

22 Q WHO DID THEY LIVE WITH?

23 A WELL, THEY LIVED WITH US FOR AWHILE AND THEN THEY
24 LIVED WITH BILLY, JR., FOR AWHILE AND THEN THEY -- AFTER
25 THEY LOST THEIR TRAILER, THEY MOVED IN WITH PATTY AND THEN

1 ALL OF THIS OTHER STUFF CAME UP AND, YOU KNOW, THEY
2 SEPARATED.

3 Q ALL RIGHT. MS. TERRY, DO YOU THINK THAT GARY WAS
4 MATURE ENOUGH TO BE A FATHER AT SIXTEEN YEARS OF AGE?

5 A NO.

6 Q WAS HE MATURE ENOUGH TO BE A HUSBAND?

7 A NO.

8 Q NOW, WAS IT ABOUT THAT TIME, MS. TERRY, THAT GARY
9 STARTED TO GET INTO SOME MORE SERIOUS TYPES OF PROBLEMS?

10 A FROM WHAT I WAS TOLD, YES.

11 Q OKAY. AND THOSE WOULD BE PROBLEMS WITH THE LAW?

12 A RIGHT.

13 Q OKAY. AND WOULD THOSE BE SOME OF THE PROBLEMS THAT
14 WERE PUT INTO EVIDENCE YESTERDAY AS FAR AS---

15 A YES.

16 Q ---LEGAL TYPE OF PROBLEMS?

17 A RIGHT.

18 Q OKAY. ARE YOU AWARE OF ANY STEPS THAT TAMMY TOOK TO
19 TRY TO GET SOME HELP FOR GARY?

20 A YES. SHE WENT -- TAMMY AND I HAD TALKED AND BY HER
21 BEING HIS LEGALLY -- HIS LEGALLY WIFE WHICH WHENEVER
22 THEY'RE LEGALLY MARRIED, YOU HAVE TO STEP BACK AND LET THEM
23 HANDLE IT, I ASKED HER TO GO AND HAVE -- HAVE GARY PUT IN A
24 MENTAL INSTITUTION OR SOMEWHERE FOR, AT LEAST, AN
25 EVALUATION. AND THEN HE LEFT AND WENT TO FLORIDA AND HE

1 GOT HURT DOWN THERE AND IT WAS JUST PUSHED ASIDE, YOU KNOW.

2

3 Q TAMMY TOOK STEPS TO HAVE GARY PUT IN A MENTAL
4 HOSPITAL?

5 A YEAH. SHE WENT -- SHE WENT SO FAR AS TO GET THE
6 PAPERS AND HAVE THEM, YOU KNOW, BUT THEY WERE NEVER
7 PROCESSED.

8 Q AND AT THAT POINT IN TIME, WAS HE ALREADY IN TROUBLE
9 WITH THE LAW?

10 A YES.

11 Q AND DO YOU REMEMBER WHAT INCIDENT THAT WAS?

12 A THAT PARTICULAR INCIDENT THERE WAS STABBING OF THE
13 LADY OVER THERE OFF OF TWO NOTCH.

14 Q OKAY. AND GARY'S REACTION TO THAT TROUBLE WAS TO DO
15 WHAT?

16 A RUN.

17 Q HE RAN?

18 A THAT'S RIGHT, HE RAN.

19 Q OKAY. NOW, MS. TERRY, DID THERE COME A TIME THAT YOU
20 BEGAN TO SUSPECT THAT GARY MIGHT BE USING DRUGS?

21 A YES.

22 Q CAN YOU TELL THE JURY WHEN THAT WAS AND WHY YOU BEGAN
23 TO SUSPECT THAT?

24 A WELL, THE FIRST TIME I EVER SAW MARIJUANA, JEFFREY
25 WAS TWO-YEARS-OLD AND WE HAD GONE OUT INTO CAROWINDS.

1 TAMMY HAD DRIVEN HER CAR WITH GARY AND DUBOSE IN IT. WE
2 HAD RODE WITH THE YOUNGER DAUGHTER AND HER FAMILY UP THERE,
3 MY HUSBAND AND I, AND IT WAS A BEAUTIFUL DAY. THE WIND WAS
4 BARELY BLOWING A LITTLE BIT LIKE IT IS NOW. I WAS IN THE
5 PROCESS OF HELPING EVERYBODY GET THEIR THINGS TOGETHER TO
6 GET OUT. WHEN GARY OPENED THE GLOVE COMPARTMENT OF TAMMY'S
7 CAR AND SOMETHING BLEW OUT OF IT. I THOUGHT IT WAS GRASS
8 CLIPPINGS. THAT'S WHAT IT LOOKED TO ME LIKE, YOU KNOW.
9 AND I SAW TAMMY GRAB A BAG AND GO RUNNING DOWN THE PARKING
10 LOT TRYING TO GRAB WHATEVER LITTLE PIECES OF STUFF SHE
11 COULD FIND. AND I ASKED MY BROTHER-IN-LAW AT THE TIME --
12 THEY ALWAYS TEASE ME ABOUT HOW NAIVE I AM AND I ASKED HIM,
13 I SAID, WHY IS TAMMY ACTING SO FOOL OVER GRASS CLIPPINGS,
14 YOU KNOW, AND HE LAUGHED. HE SAID, PATSY, THAT'S NOT GRASS
15 CLIPPINGS. HE SAID THAT'S MARIJUANA.

16 Q OKAY. DID YOU EVER SUSPECT HE WAS USING DRUGS
17 BECAUSE OF THE WAY HE ACTED?

18 A I HAD MY SUSPICIONS A FEW TIMES, BUT I HAVE NEVER
19 SEEN HIM INDULGE IN ANYTHING SO I -- I REALLY COULDN'T SAY,
20 LOOK, I THINK, YOU'VE GOT A PROBLEM HERE.

21 Q SO YOU DIDN'T SEE IT, BUT YOU SUSPECTED IT?

22 A RIGHT.

23 Q AND YOU DIDN'T FEEL -- DID YOU FEEL YOU HAD ENOUGH
24 EVIDENCE TO CONFRONT HIM WITH IT?

25 A NO, I DID NOT.

1 Q OKAY. MS. TERRY, YOU MENTIONED GARY RUNNING DOWN TO
2 FLORIDA?

3 A UH-HUH.

4 Q DID YOU EVER GO SEE HIM DOWN THERE?

5 A YES.

6 Q AND WHERE DID YOU GO WHEN YOU WENT TO SEE HIM?

7 A HE WAS IN THE HOSPITAL IN JACKSONVILLE, FLORIDA.

8 Q AND DO YOU KNOW WHY HE WAS IN THE HOSPITAL?

9 A HE HAD FALLEN -- HE HAD GONE TO WORK DOWN THERE FOR A
10 TREE COMPANY AND HE HAD FALLEN OUT OF THE TREE DOWN THERE
11 AND HE HAD FALLEN, I DON'T KNOW, TEN, FIFTEEN FEET AND
12 LANDED ON THE -- ON THE -- THEY TOLD ME HE LANDED ON THE
13 PAVEMENT WITH HIS HEAD LAYING UP ON THE CURB AND HIS BODY
14 LAYING IN THE ROAD.

15 Q OKAY. DO YOU KNOW OF ANYMORE ACCIDENTS THAT GARY HAS
16 HAD AS AN ADULT?

17 A WELL, HE -- HE ROLLED HIS MOTORCYCLE ONE TIME. A
18 DOG RUN OUT IN FRONT OF HIM AND HE ROLLED IT. HE DIDN'T
19 WEAR A HELMET SO HE LANDED ON HIS HEAD AND BUSTED UP HIS
20 LEG AND ALL. I TOOK HIM TO RICHLAND MEMORIAL. HE SAT DOWN
21 THERE AND THEN WHEN HE -- WHEN HE AND DOUG, WHATEVER THEY
22 WERE DOING, GOT INTO FIGHTS, SOMEBODY HAD JUMPED ON HIM
23 OVER THERE AND BEAT HIM WITH A BOARD WITH A NAIL IN IT AND
24 HE HAD I DON'T KNOW HOW MANY PLACES IN HIS HEAD THAT HE HAD
25 CLAMPS AND STITCHES AND EVERYTHING ELSE.

1 Q OKAY. DID GARY HAVE -- HAS GARY HAD ANY HEALTH
2 PROBLEMS AS AN ADULT? ANYTHING THAT HE KEEPS HAVING
3 PROBLEMS WITH?

4 A YES. AFTER HE CAME BACK FROM JACKSONVILLE DOWN
5 THERE, WHEN THEY BROUGHT HIM BACK FROM JACKSONVILLE AND HE
6 WAS IN RICHLAND COUNTY -- HE WAS IN THE JAIL. I THINK THEY
7 BROUGHT HIM BACK TO THE CITY JAIL IF I'M NOT WRONG, THE
8 COLUMBIA CITY JAIL---

9 Q UH-HUH.

10 A ---AND HE STARTED COUGHING UP BLOOD AND THEY TOOK HIM
11 TO RICHLAND MEMORIAL HOSPITAL AND THEY RUN ALL KIND OF
12 TESTS ON HIM, BUT THEY COULDN'T GET HIM TO DO THE SAME
13 THING OVER WHAT HE HAD BEEN DOING. AND SINCE HE GOT HURT
14 DOWN THERE, HE'S BEEN TO DOCTORS AND FOR EVERYTHING REALLY
15 AND THEY COULDN'T -- YOU KNOW, THEY SAID THEY COULDN'T FIND
16 ANYTHING WRONG WITH HIM OTHER THAN SLIGHT DEPRESSION.

17 Q OKAY. DO YOU KNOW, OTHER THAN THE INCIDENT IN
18 COLUMBIA, DO YOU KNOW OF ANY OTHER OCCASIONS WHEN HE HAD
19 PROBLEMS OF SPITTING UP BLOOD?

20 A YES. WHEN HE WAS HOME, WHEN HE GOT HOME, HE WAS -- I
21 HAD TOLD HIS DAD THAT I SUSPECTED THAT GARY WAS BLEEDING
22 FROM SOMEWHERE, BUT I DIDN'T KNOW WHERE BECAUSE I WOULD
23 FIND IT ON THE BED SHEETS.

24 ONE TIME, I FOUND A PUDDLE BESIDE HIS BED ON THE
25 FLOOR---

1 Q UH-HUH.

2 A ---AND WHEN I ASKED HIM ABOUT IT, HE SAID, OH, IT'S
3 NOTHING BECAUSE HE'S BEEN DOING IT NOW ALL THIS -- FOR OVER
4 A YEAR, I GUESS, YOU KNOW, WHILE HE WAS IN JAIL AND ONE DAY
5 HE WAS -- HE STARTED COUGHING IN THE LIVING ROOM AND HE GOT
6 UP AND WALKED FROM THE LIVING ROOM TO HIS BEDROOM AND SIT
7 DOWN ON THE BED. I FOLLOWED HIM IN THERE AND HE HAD HIS
8 HANDS LIKE THIS(INDICATES), HOLDING THEM LIKE THIS RIGHT
9 HERE(INDICATES), COUGHING INTO THEM AND THE BLOOD WAS JUST
10 DRIPPING OFF HIS ELBOWS.

11 Q OKAY. NOW, I BELIEVE, YOU SAID HE FELL IN FLORIDA
12 AND HIT HIS BACK AND HIS HEAD?

13 A RIGHT.

14 Q SINCE THAT TIME OR AT ANY TIME, HAS HE EVER HAD ANY
15 PROBLEMS WITH HIS HEAD? HEALTH-WISE?

16 A RIGHT. HE -- HE COMPLAINS. WELL, HE HAS REALLY BAD
17 HEADACHES. I'VE SEEN HIM STAGGER BEFORE. I'VE SEEN HIM GO
18 DO SOMETHING AND JUST COMPLETELY FORGET WHAT HE WAS DOING.
19 AND HE'S -- IT'S LIKE I SAID, HE JUST STAGGERS. I'VE NEVER
20 SEEN HIM COMPLETELY BLACK OUT, BUT I HAVE SEEN HIM FORGET
21 WHAT HE WAS DOING OR JUST COMPLETELY STOP AND TURN AROUND.
22 AND THEY'VE GIVEN HIM ALL KINDS OF MEDICINE. THEY'VE EVEN
23 TAKEN HIM TO THE HOSPITAL AND PUT MEDICINE IN HIS VEINS FOR
24 MIGRAINE HEADACHES AND, YOU KNOW, THEY STOP FOR AWHILE AND
25 THEN THEY COME RIGHT BACK.

1 Q OKAY. NOW, DID GARY EVENTUALLY REMARRY?

2 A YES.

3 Q OKAY. WHO DID HE MARRY?

4 A LOU ANN TERRY.

5 Q OKAY.

6 A LOU ANN SMITH TERRY.

7 A AND IS SHE HERE IN THE COURTROOM?

8 A YES. SHE'S SITTING OVER THERE BEHIND THE LADY OVER
9 THERE IN THE CHECKED JACKET (INDICATES).

10 Q OKAY. AND WHO IS THE LITTLE FELLOW SITTING NEXT TO
11 HER?

12 A NEXT TO LOU ANN?

13 Q YEAH.

14 A THAT'S GARY DUBOSE, JR.

15 Q OKAY. IS THAT'S GARY FIRST LITTLE SON WITH LOU ANN?

16 A YES, UH-HUH.

17 Q AND WHO IS THAT LITTLE FELLOW SITTING RIGHT NEXT TO
18 DUBOSE?

19 A THAT'S MORGAN.

20 Q THAT'S MORGAN?

21 A UH-HUH.

22 Q THE LITTLE SHY ONE RIGHT THERE (INDICATES).

23 A AND THE TWO TWINS ARE OVER THERE. THEY ARE BOY AND
24 GIRL TWINS. THEY DON'T LOOK ANYTHING ALIKE, BUT THEY'RE
25 TWINS.

1 Q I THINK THEY WERE IN HERE EARLIER, BUT---

2 A THEY THOUGHT---

3 Q ---HOW OLD ARE THEY NOW?

4 A THEY WILL BE FIVE IN OCTOBER.

5 Q THEY JUST DECIDED TO TAKE A LITTLE BREAK FROM COURT?

6 A WELL, YOU KNOW, THEY -- YEAH, THEY'VE GOT TO KEEP
7 MOVING SO.

8 Q OKAY. OKAY.

9 MR. HUMPHRIES: NO OBJECTION.

10 MS. FULLWOOD: MS. TERRY, WHO IS THIS PICTURE OF?

11 THE WITNESS: GARY AND LOU ANN'S CHILDREN.

12 Q OKAY. THAT'S MORGAN.

13 A LET ME SEE. WE HAVE MORGAN RIGHT HERE(INDICATES).

14 WE HAVE DUBOSE RIGHT HERE(INDICATES). TIFFANY IS HERE AND
15 THIS IS TYLER(INDICATES).

16 Q OKAY. YOUR HONOR, MOVE TO ADMIT THIS AS DEFENDANT'S
17 EXHIBIT NUMBER---

18 THE COURT: NUMBER SIX. WITHOUT OBJECTION, IT IS
19 ADMITTED AS DEFENDANT'S NUMBER SIX.

20 (WHEREUPON, DEFENDANT'S EXHIBIT
21 NUMBER SIX, PHOTOGRAPH, ENTERED INTO EVIDENCE AT THIS TIME
22 WITHOUT OBJECTION.)

23 MS. FULLWOOD: ARE YOU CLOSE TO YOUR
24 GRANDCHILDREN---

25 THE WITNESS: YES.

- 1 Q ---MS. TERRY?
- 2 A UH-HUH, YES.
- 3 Q YOU SEE THEM?
- 4 A YES.
- 5 Q DO THEY LOVE THEIR DADDY?
- 6 A YES, VERY MUCH.
- 7 Q NOW, MS. TERRY, HAS GARY ALWAYS LIVED WITH LOU ANN
- 8 DURING THE WHOLE TIME THEY'VE BEEN MARRIED?
- 9 A NO, HE HAS NOT.
- 10 Q OKAY. HAS HE LIVED WITH YOU WHILE HE HAS BEEN
- 11 MARRIED TO LOU ANN?
- 12 A NOT REALLY, NO. HE'S SPENT THE NIGHT A FEW TIMES,
- 13 BUT, HE -- NO, HE DIDN'T LIVE THERE.
- 14 Q OKAY. DID YOU KNOW OF HIM LIVING WITH DIANNE GIBSON
- 15 SMITH?
- 16 A YES.
- 17 Q WAS THAT WHILE HE WAS MARRIED TO LOU ANN?
- 18 A YES.
- 19 Q DID YOU AND BILL APPROVE OF THAT?
- 20 A NO.
- 21 Q COULD YOU DO ANYTHING ABOUT IT WITH A GROWN SON?
- 22 A NO.
- 23 Q ALL RIGHT. YOU WERE IN COURT YESTERDAY, WEREN'T YOU,
- 24 MS. TERRY?
- 25 A YES.

- 1 Q AND YOU HEARD THE TESTIMONY ABOUT GARY BEING
2 ARRESTED, THIS INCIDENT OVER AT DIANNE'S HOUSE---
- 3 A YES.
- 4 Q ---IN CONNECTION WITH THEM BREAKING UP?
- 5 A RIGHT, RIGHT, UH-HUH.
- 6 Q ALL RIGHT. AFTER HE WAS ARRESTED FOR THAT, DID LOU
7 ANN TAKE SOME STEPS TO GET HIM SOME HELP?
- 8 A I'M NOT SURE. I THINK SHE DID, BUT I'M NOT SURE.
- 9 Q WELL, DID HE END UP GETTING SOME HELP?
- 10 A YES.
- 11 Q OKAY. WHAT KIND OF HELP DID HE END UP GETTING?
- 12 A HE WENT TO CHARTER RIVERS.
- 13 Q OKAY. MS. TERRY, IS THAT THE FIRST TIME GARY HAD
14 EVER GOTTEN MENTAL HEALTH TREATMENT---
- 15 A RIGHT.
- 16 Q ---IN HIS LIFE?
- 17 A YES.
- 18 Q OKAY. MS. TERRY, ARE YOU UP HERE TO TRY TO PERSUADE
19 THIS JURY THAT GARY, YOUR SON, IS A PERFECT PERSON?
- 20 A NO, MA'AM.
- 21 Q OKAY. YOU KNOW HE IS NOT?
- 22 A NO WAY.
- 23 Q ALL RIGHT. BUT DESPITE THAT FACT, MS. TERRY, DO YOU
24 LOVE GARY?
- 25 A YES, I DO VERY MUCH.

1 Q MS. TERRY, DO YOU WANT THIS JURY TO GIVE HIM A LIFE
2 SENTENCE?

3 A YES.

4 Q WOULD THAT MEAN A LOT TO YOU?

5 A YES, IT WOULD.

6 Q NO FURTHER QUESTIONS, YOUR HONOR.

7 PLEASE ANSWER ANY QUESTIONS THE PROSECUTOR MIGHT
8 HAVE.

9 THE COURT: MR. CHASE.

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

11 THE COURT: YES, SIR.

12 CROSS-EXAMINATION

13 BY MR. CHASE:

14 Q GOOD AFTERNOON, MS. TERRY.

15 A HEY.

16 Q IF YOU'D BE SO KIND, I JUST WANT TO ASK YOU A COUPLE
17 OF QUESTIONS.

18 A THAT'S FINE.

19 THE COURT: YOU NEED TO SPEAK UP A LITTLE BIT,
20 MR. CHASE.

21 MR. CHASE: YES, SIR, YOUR HONOR.

22 MS. TERRY, I DIDN'T HEAR -- HOW LONG DID YOU SAY
23 THAT YOU AND -- IS IT BILL IS YOUR HUSBAND'S NAME?

24 THE WITNESS: RIGHT.

25 Q HOW LONG HAVE YOU AND MR. TERRY BEEN MARRIED?

- 1 A WE'VE BEEN MARRIED 40 YEARS.
- 2 Q AND BASICALLY BEEN TOGETHER FOR THAT ENTIRE TIME?
- 3 A THAT ENTIRE TIME, YES.
- 4 Q DURING THAT TIME, MR. TERRY, YOUR SON, GARY TERRY,
- 5 WAS BORN?
- 6 A RIGHT.
- 7 Q AND YOU AND YOUR HUSBAND RAISED HIM---
- 8 A RIGHT.
- 9 Q ---RIGHT? AND HOW LONG -- HOW LONG HAVE YOU BEEN IN
- 10 THE HOME THAT YOU ARE IN RIGHT NOW?
- 11 A WE'VE ONLY BEEN UP THERE A LITTLE OVER TWO YEARS.
- 12 Q IS THAT THE HOME -- THAT HOME WHERE YOU LIVE NOW HAVE
- 13 ANYTHING TO DO WITH THE HOME WHEN YOU WERE RAISING GARY?
- 14 A NO.
- 15 Q WHERE WAS THAT HOME?
- 16 A AT 937 1/2 FISK STREET, COLUMBIA, SOUTH CAROLINA, IN
- 17 NORTH COLUMBIA.
- 18 Q HOW LONG DID YOU LIVE THERE?
- 19 A IT WOULD HAVE BEEN THIRTY-EIGHT -- THIRTY-SEVEN AND A
- 20 HALF, THIRTY-EIGHT YEARS, SOMETHING LIKE THAT.
- 21 Q THE WHOLE TIME THAT YOU WERE RAISING---
- 22 A YES.
- 23 Q ---MR. TERRY?
- 24 A RIGHT.
- 25 Q YOU TALKED ABOUT YOUR SON AND HIS FATHER. THEY

1 ACTUALLY HAD A GOOD RELATIONSHIP, DIDN'T THEY?

2 A THEY HAD A FAIR RELATIONSHIP, BUT LIKE ALL -- ALL OF
3 THEM, YOU KNOW, THEY HAD THEIR UPS AND DOWNS JUST LIKE
4 EVERYBODY ELSE.

5 Q IN FACT, THEY LIKED TO GO FISHING TOGETHER, DIDN'T
6 THEY?

7 A THEY WENT FISHING TOGETHER.

8 Q AND HE ALSO HAD A GOOD RELATIONSHIP WITH YOU?

9 A YES.

10 Q IN FACT, YOU SAID BEFORE THAT HE LIKED FOR YOU TO
11 READ TO HIM?

12 A THAT'S RIGHT.

13 Q SO Y'ALL SPENT A LOT OF TIME WITH YOUR SON?

14 A THAT'S RIGHT.

15 Q IN FACT, WHILE HE WAS IN SCHOOL, EITHER YOU OR YOUR
16 HUSBAND WERE ALWAYS AT THE HOUSE WHENEVER HE WOULD COME
17 HOME?

18 A MOST OF THE TIME. THAT OR HIS GRANDMOTHER.

19 Q THERE WAS ALWAYS AN ADULT AROUND---

20 A YES.

21 Q ---WHILE GARY TERRY WAS BEING RAISED?

22 A MOST OF THE TIME.

23 Q NOW, AS FAR AS YOU HAVING PROBLEMS WITH GARY TERRY
24 WHEN HE WAS GROWING UP, ABOUT THE BIGGEST THING WAS WHEN HE
25 DIDN'T GET HIS WAY, WASN'T IT?

- 1 A NOT REALLY, NO.
- 2 Q MS. TERRY, DO YOU REMEMBER WHEN GARY TERRY WAS IN
- 3 SCHOOL HOW YOU WOULD HAVE PARENT-TEACHER CONFERENCES?
- 4 A YES.
- 5 Q AND DO YOU REMEMBER HOW THEY WOULD ASK YOU QUESTIONS?
- 6 A YES.
- 7 Q THEY WOULD ASK YOU QUESTIONS ABOUT YOUR HOME LIFE?
- 8 A UH-HUH.
- 9 Q AND ABOUT WHAT TYPE OF CHILD GARY TERRY---
- 10 A UH-HUH.
- 11 Q --- WAS?
- 12 A YES.
- 13 Q YOU REMEMBER TELLING THEM THAT THE BIGGEST PROBLEM---
- 14 A NO, I CAN'T REMEMBER THAT FAR BACK, NOT WITH FIVE OF
- 15 THEM. INDIVIDUALLY, NO WAY.
- 16 Q SO YOU COULD HAVE SAID THAT ABOUT GARY TERRY?
- 17 A I COULD HAVE.
- 18 Q NOW, YOU'VE DESCRIBED SOME OF THESE ACCIDENTS THAT
- 19 MR. TERRY HAD BEEN INVOLVED IN. THE MOTORCYCLE ACCIDENT,
- 20 WERE YOU PRESENT WHEN THAT HAPPENED?
- 21 A NO.
- 22 Q OKAY.
- 23 A IT HAPPENED IN FRONT OF THE OLDEST SON'S HOUSE.
- 24 Q THAT WAS IN 1984, RIGHT?
- 25 A RIGHT.

1 Q SO DID -- YOU FOUND OUT ABOUT IT AFTERWARDS?

2 A YES.

3 Q NOW, DO YOU REMEMBER WHEN HE WAS RELEASED FROM THE
4 HOSPITAL THAT HE ONLY HAD SOME PAIN TO HIS RIB CAGE?

5 A YES.

6 Q OKAY. SO IT DIDN'T HAVE ANYTHING TO DO WITH HIM
7 HURTING HIS LEG?

8 A WELL, HE HURT HIS LEG. HE BUSTED UP -- IF I REMEMBER
9 CORRECTLY, BOTH OF HIS KNEES WERE BUSTED UP AND HE HAD
10 BRUISES AND ABRASIONS ALL OVER HIS FACE AND ALL BECAUSE I
11 -- IF I'M NOT WRONG, I BELIEVE IT HAPPENED. IT WAS PRETTY
12 OUTSIDE AND WE HADN'T HAD ANY RAIN AND HE HIT THE ASPHALT.
13 YOU KNOW, THE ROAD.

14 Q AND HE LANDED ON HIS SIDE, DIDN'T HE?

15 A I DON'T KNOW. I WASN'T THERE.

16 Q THAT'S FAIR.

17 AND YOU ALSO TALKED ABOUT A TIME WHEN HE WAS --
18 DID YOU SAY HE WAS HIT WITH A BOARD WITH NAILS IN IT?

19 A THAT'S WHAT WAS TOLD TO ME, YES.

20 Q OKAY. COULDN'T IT ALSO HAVE BEEN THAT HE HAD BEEN
21 HIT WITH A FIST IN A BAR FIGHT?

22 A POSSIBILITY.

23 Q AND IT DIDN'T HAVE ANYTHING TO DO WITH THE BOARD
24 POSSIBILITY?

25 A I GUESS, POSSIBILITY. I DON'T KNOW. I WASN'T THERE.

1 Q AND THEN WHEN HE FELL FROM THE TREE DOWN IN
2 JACKSONVILLE, ACTUALLY THE PROBLEM THAT RELATED FROM THAT
3 WAS THAT HE HAD FRACTURED ONE OF THE VERTEBRA IN HIS BACK,
4 ISN'T THAT RIGHT?

5 A THEY TOLD ME THAT HE HAD -- SOMETHING TO DO WITH A
6 T-4---

7 Q RIGHT.

8 A ---BUT THEY ALSO TOLD ME THAT HE HAD -- HIS HEART HAD
9 STOP BEATING TWICE.

10 Q AND THE RESULTING PROBLEM WAS THAT HE HAD A
11 COMPRESSION FRACT -- A COMPRESSION FRACTURE---

12 A I DON'T KNOW. I NEVER TALKED TO THE---

13 Q ---IN HIS BACK---

14 A ---DOCTOR, ONLY THE NURSE.

15 Q THANK YOU, MS. TERRY.

16 A YOU'RE WELCOME.

17 MS. FULLWOOD: NO REDIRECT.

18 THE COURT: THANK YOU, MS. TERRY. YOU MAY STEP
19 DOWN.

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

22 MS. FULLWOOD: THE DEFENSE CALLS BILL TERRY.

23 BILLY RAY TERRY, SR.,
24 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD,

1 PLEASE.

2 THE WITNESS: BILLY RAY TERRY, SR.

3 DIRECT EXAMINATION

4 BY MS. FULLWOOD:

5 Q MR. TERRY, YOU ARE GARY'S FATHER?

6 A RIGHT. YES.

7 Q OKAY. MR. TERRY, WHERE ARE YOU FROM?

8 A FROM COLUMBIA. I WAS BORN IN RICHLAND COUNTY.

9 Q WHAT PART OF COLUMBIA?

10 A THE OLYMPIA SECTION, ACTUALLY IT WAS GRANBY. YOU
11 KNOW THERE WAS TWO SECTIONS, TWO PARTS. CALL ONE PART
12 GRANBY AND ONE PART OLYMPIA AND I WAS BORN IN THE GRANBY
13 PART OF IT.

14 Q WHAT DID YOUR PARENTS DO FOR A LIVING?

15 A WORKED IN THE COTTON MILL.

16 Q THE COTTON MILL DOWN THERE?

17 A RIGHT.

18 Q OKAY. MR. TERRY, I WANT TO TAKE YOU BACK TO WHEN YOU
19 WERE SEVEN-YEARS-OLD. DID SOMETHING SIGNIFICANT HAPPEN IN
20 YOUR LIFE THEN?

21 A YES. I WAS IN A PAINT REMOVER EXPLOSION.

22 Q TELL THE -- TELL THE JURY HOW THAT HAPPENED.

23 A WELL, WHERE WE STAYED AT WAS ON PICCADILLY STREET.
24 ACROSS THE ROAD IS -- YEARS AGO, THE MILL COMPANY USED TO
25 SELL WOOD TO, YOU KNOW, THE PEOPLE WHO HAD THE MILL HOUSES

1 AND THEY WOULD DUMP THEIR WOOD CHIPS, YOU KNOW, DOWN THE
2 HILL.

3 THE LADY -- ONE OF THE LADIES THAT STAYED UP THE
4 STREET FROM US, SHE HAD A CHICKEN TO DIE AND SHE ASKED ME
5 AND THIS OTHER FRIEND OF MINE, JOHN THOMAS WILLIAMS, WOULD
6 WE BURY THE CHICKEN FOR HER AND WE AGREED TO AND ACROSS
7 FROM OUR HOUSE ON THE OTHER SIDE OF THE HOUSE, THERE WERE
8 SOME GARAGES. ACTUALLY, IT WAS THIS ONE BIG GARAGE, BUT IT
9 HAD THREE DOORS ON IT AND THEY WERE SECTIONED OFF AND DADDY
10 HE OWNED THE GARAGES AND HE WOULD, YOU KNOW, CHARGE PEOPLE
11 TO RENT THEM, YOU KNOW, PER MONTH IF THEY WANTED TO STORE
12 STUFF OR WHATEVER. AND THIS ONE MAN, I THINK HIS NAME WAS
13 HOUSTON MORRIS, HE KEPT PINBALL MACHINES IN THERE AND HE
14 KEPT PAINT REMOVER, YOU KNOW, TO CLEAN THEM UP WITH WHEN HE
15 WOULD BRING THEM BACK IN FROM OUT OF A STORE. AND WHEN HE
16 GOT READY TO MOVE THE STUFF OUT, HE TOOK ALL OF THAT STUFF,
17 THE PAINT REMOVER AND ALL AND JUST THREWED(SIC) IT DOWN THE
18 HILL.

19 WELL, WE WERE DOWN THERE BURYING THE CHICKEN AND
20 THIS -- I WAS DIGGING THE HOLE AND JUST THIS FRIEND OF
21 MINE, HE WAS TAKING MATCHES -- I DON'T KNOW WHERE HE GOT
22 THEM AT, TOOK THE MATCHES AND WAS THROWING THEM AT THE
23 CANS, ONE OF THE SQUARE CANS THAT USED TO LOOK LIKE WHAT
24 ANTIFREEZE COME IN, BUT YOU HAD THE SCREW TOP ON IT. HE
25 WOULD TAKE THE TOP OFF AND WAS THROWING MATCHES AT IT. ONE

1 OF THEM WENT IN THERE AND IT BLEW UP. HE DIDN'T GET
2 BURNED. ALL THE FIRE, THE EXPLOSION COME BACK THIS
3 WAY(INDICATES). THAT'S WHAT YOU SEE HERE, MY NECK, FROM
4 THE WAIST UP, PART OF MY BACK.

5 Q MR.---

6 A THE CAN HIT ME IN THE BACK OF THE HEAD, YOU KNOW,
7 WHEN IT COME BACK DOWN AND FRACTURED MY SKULL AND, IN FACT,
8 IT'S A LAYER OF MY -- PART OF MY SKULL IS GONE, RIGHT IN
9 HERE(INDICATES).

10 Q YOU HAVE A CHUNK OF YOUR HEAD GONE---

11 A YES, IT'S---

12 Q ---GONE BACK THERE?

13 A YES, YES. IT'S -- WELL, IT'S NOT SOFT OR ANYTHING.
14 YOU KNOW, IT WAS JUST ONE LAYER OF MY SKULL, YOU KNOW, THEY
15 HAD TO TAKE THE PIECE OF BONE OUT.

16 Q SO YOU SAID YOU WERE HURT FROM THE WAIST UP?

17 A RIGHT.

18 Q THAT MEANS BURNED?

19 A BURNED, YEAH.

20 Q OKAY.

21 A I HAD THIRD -- THIRD DEGREE BURNS OVER MOST OF MY
22 UPPER BODY.

23 Q OKAY.

24 A AND MY MOUTH. I VOMITED UP PIECES OF FLESH THE WHOLE
25 NIGHT WHEN THEY TOOK ME TO THE HOSPITAL. AND SOME OF MY

1 INSIDES WERE BURNED TO. ALL THE HAIR OFF OF MY HEAD HAD
2 BURNED. I THINK I HAD FIRST DEGREE BURNS.

3 Q SO YOU HAD INTERNAL TYPE OF BURNS, TOO?

4 A RIGHT. I'VE STILL GOT SCARS IN MY MOUTH FROM IT.

5 Q AND YOU STILL HAVE SCARS ON YOUR BODY?

6 A YEAH, MY BODY. MY SCARS LOOK PRETTY BAD.

7 Q HOW LONG WERE YOU IN THE HOSPITAL FROM THIS ACCIDENT?

8 A SIX MONTHS AND TEN DAYS. I HAD THREE OR FOUR
9 DIFFERENT OPERATIONS.

10 Q UH-HUH.

11 A THEY -- THEY SKIN GRAPHS. YOU KNOW, THEY TOOK SKIN
12 OFF MY RIGHT UPPER LEG. THERE'S A SHEET OF SKIN, YOU KNOW.
13 RIGHT LEG WENT ON MY CHEST. MY LEFT LEG WENT BACK TO MY
14 RIGHT ARM. SOME PLACES YOU KNOW -- THEY JUST PUT IT IN THE
15 WORSE PLACES, YOU KNOW, WHERE -- THE PLACES THAT WOULDN'T
16 ACTUALLY HEAL UP FAST AND THEN THEY TOOK SKIN OFF MY --
17 JUST BELOW MY NAVEL AND PUT IT AROUND MY NECK.

18 Q OKAY.

19 A MOST OF THIS RIGHT HERE IS JUST IN PIECES. YOU KNOW,
20 MOST OF THIS HERE WAS -- THE FIRE WAS TALKED OUT BY ONE OF
21 MY AUNTS THAT COULD DO THAT.

22 Q TELL THE JURY HOW MUCH YOU WEIGHED WHEN YOU GOT OUT
23 OF THAT HOSPITAL.

24 A I WAS EIGHT-YEARS-OLD. SEVEN WHEN I GOT BURNED; I
25 WAS EIGHT WHEN I CAME OUT. I WEIGHED THIRTY POUNDS.

1 Q THIRTY POUNDS?

2 A THIRTY POUNDS.

3 Q DID THAT ACCIDENT HAVE ANY AFFECT ON YOUR FAMILY'S
4 FINANCES?

5 A YES. MY DADDY HAD TO SELL THE HOUSE TO PAY PART OF
6 THE HOSPITAL BILL. AND I REALLY DON'T KNOW WHETHER ALL THE
7 DOCTORS WERE PAID OFF OR NOT. I HAVE NO IDEA.

8 Q OKAY. ONCE YOU GOT OUT OF THE HOSPITAL, DID YOU LOOK
9 LIKE WHAT YOU LOOKED LIKE BEFORE?

10 A OH, NO.

11 Q WHAT WAS IT LIKE TO BE A CHILD WITH THAT TYPE OF
12 INJURY?

13 A IT WAS PRETTY ROUGH, ESPECIALLY, YOU KNOW, WITH
14 PEOPLE POINTING. WHEN I STARTED BACK TO SCHOOL, YOU KNOW,
15 I DON'T KNOW WHAT WOULD MAKE THEM DO IT, BUT PEOPLE WOULD
16 WANT TO JUMP ON ME AND, YOU KNOW, THE OTHER KIDS---

17 Q UH-HUH.

18 A ---AND THIS WAS IN THE -- I WAS IN THE FIRST GRADE
19 AND THE -- ONE OF THE KIDS THAT WAS IN THE GRADE AHEAD OF
20 ME, ME AND HIM, YOU KNOW, BECOME PRETTY GOOD FRIENDS AND
21 AFTER THAT, YOU KNOW, HE KEPT THEM OFF OF ME. BUT IT WAS
22 ROUGH.

23 Q DID YOU GO TO SCHOOL MUCH AFTER THAT?

24 A WELL, I WENT TO -- JUST ABOUT. I THINK IT WAS -- I
25 JUST ABOUT WENT THROUGH -- ALL THE WAY THROUGH THE SIXTH

1 GRADE OR WENT THROUGH THE SIXTH GRADE. SEE, I STAYED SICK
2 ALL THE TIME, YOU KNOW, FROM DIFFERENT THINGS COME ON, I'D
3 CATCH IT.

4 Q WAS THAT BECAUSE OF THE BURNS?

5 A RIGHT. YEAH.

6 Q DID YOU STILL HAVE PROBLEMS WITH THEM HEALING ALSO?

7 A YES. IN FACT, WHEN I COME OUT OF THE HOSPITAL, IT
8 WAS DURING MARCH OR APRIL, I DON'T REMEMBER, DADDY USED
9 COALS TO HEAT IN THE WINTERTIME WITH. HE USED WOOD, YOU
10 KNOW, FOR THE WOOD STOVE TO COOK WITH. AND MY SISTER HAD
11 WENT OUT TO THE WOOD SHED TO GET WOOD, YOU KNOW, TO BRING
12 INTO THE HOUSE FOR THE NEXT DAY'S, YOU KNOW, BREAKFAST,
13 DINNER AND PROBABLY SUPPER. AND I WAS STANDING BESIDE THE
14 DOOR AND, IN FACT, I STILL HAD SOME BANDAGES ON AND THE
15 DOOR -- WELL, SEE I COULDN'T -- BACK THEN I COULDN'T RAISE
16 MY ARM NO HIGHER THAN THIS (INDICATES) ---

17 Q UH-HUH.

18 A ---YOU KNOW, BECAUSE ALL OF THIS WAS SO TIGHT, BOTH
19 SIDES. AND THE DOOR COME SHUT ON ME. PUSH ME DOWN AND
20 PULLED THAT ARM UP, YOU KNOW. TORE ALL OF THIS BACK A
21 LOOSE AND BACK TO THE HOSPITAL. BUT THIS TIME THEY DIDN'T
22 KEEP ME. THEY BANDAGED IT UP. THEY COULDN'T PUT NO
23 STITCHES IN IT BECAUSE, YOU KNOW, ALL THAT WAS, YOU KNOW,
24 TOO SOFT. IT WOULDN'T HOLD. BACK THEN THEY DIDN'T HAVE,
25 YOU KNOW, ANYTHING OTHER THAN MAYBE STITCHES. I THINK THEY

1 USED SOME CLAMPS, BUT THEY COULDN'T USE IT HERE.

2 WHAT TAKES -- ANOTHER THING, IF I HAD TO GO TO
3 THE HOSPITAL OR ANYTHING, JUST LIKE -- LET'S SEE, I THINK
4 IT WAS LAST YEAR WHEN I WAS IN THERE FOR MY APPENDIX, I
5 COULDN'T LET THEM PUT NO NEEDLE IN THIS ARM HERE, YOU KNOW,
6 FOR THE I.V. AND STUFF BECAUSE EVERYTHING I, YOU KNOW,
7 SOMETHING, JUST LIKE IN HERE. EVEN IF ONE OF MY DOGS
8 TOUCHES ME HERE WITH HIS CLAWS, I GET AWFULLY SORE. IT
9 SEEMS LIKE IT DON'T NEVER WANT TO HEAL UP, YOU KNOW,
10 BECAUSE THERE'S NO FATTY TISSUES IN THERE. THAT'S WHAT THE
11 DOCTOR TOLD ME, TOLD MAMA.

12 Q OKAY. NOW, MR. TERRY, WAS THE LAST GRADE IN SCHOOL
13 YOU WENT TO THE SIXTH GRADE?

14 A SIXTH GRADE. I EITHER WENT THROUGH IT MAYBE NOT
15 QUITE THROUGH IT, I DON'T REMEMBER.

16 Q OKAY. AND THEN DID YOU QUIT?

17 A YEAH. IN FACT, I WAS STILL, YOU KNOW, BEING SICK.
18 IN FACT, I WAS MISSING MORE SCHOOL THAN I WAS GOING. I
19 MEAN, I DON'T EVEN REALLY KNOW HOW I GOT AS FAR AS I DID.

20 Q ALL RIGHT.

21 A AND SO I WENT AHEAD AND QUIT AND ANOTHER THING I
22 MEANT TO TELL YOU WAS WHEN I GOT OUT OF THE HOSPITAL, I
23 WEIGHED 30 POUNDS AND THE DOCTOR TOLD MY MOTHER, SAID YOU
24 NEED TO GIVE HIM MILK ALL THE TIME. SO INSTEAD OF BUYING
25 MILK -- YOU KNOW, THEY HAD THE DIARY TRUCKS TO COME AROUND

1 -- INSTEAD OF BUYING MILK, DADDY WENT AND BOUGHT A COW.
2 WHEN I WOULD WANT SOMETHING TO DRINK, RATHER THAN DRINKING
3 WATER, I WOULD DRINK MILK.
4 Q YOUR DADDY BOUGHT A COW?
5 A YEAH, BOUGHT A COW.
6 Q SO YOU WOULD HAVE MILK ALL THE DAY?
7 A HAVE MILK ALL THE TIME.
8 Q OKAY.
9 A SWEET MILK OR BUTTER MILK, EITHER ONE.
10 Q AND Y'ALL KEPT THE COW DOWN IN OLYMPIA?
11 A YEAH---
12 Q OKAY.
13 A ---WE HAD THE COW KEPT IN A PASTURE DOWN THERE.
14 Q OKAY. OKAY. NOW, MR. TERRY, HOW OLD WERE YOU WHEN
15 YOU MET PAT?
16 A UH -- TWENTY. I THINK I HAD JUST TURNED TWENTY.
17 Q ABOUT TWENTY?
18 A ABOUT TWENTY, RIGHT.
19 Q AND SHE WAS THIRTEEN?
20 A YEAH.
21 Q OKAY. AND HOW DID YOU MEET HER?
22 A I HAD -- THE FIRST TIME I MET HER, I WAS DOWN WHERE I
23 USED TO BUY GAS AT. SHE STAYED RIGHT AROUND THE CORNER
24 FROM THERE AND I SEEN HER. SHE SPOKE TO ME. SHE WENT
25 ACROSS THE ROAD OVER TO WHERE THEY PLAYED BALL AT AND THEN

1 THE NEXT DAY I COME UP AND I PULLED UP ON THE SIDE AND WAS
2 WATCHING THEM PLAY BALL AND THEN I ACTUALLY REALLY MET HER
3 THROUGH A FRIEND OF MINE, JAN HARWELL. SHE USED TO GO DOWN
4 THERE AND MESS AROUND WITH JAN'S SISTER. I THINK HER NAME
5 WAS CHARLENE AND THAT'S HOW I MET HER.

6 Q SO YOU SAW HER PLAYING BALL AND THEN FOUND A WAY TO
7 MEET HER?

8 A RIGHT.

9 Q OKAY. AND Y'ALL RAN OFF AND ELOPED?

10 A YEAH. WHAT WE DID, WE COME OVER HERE TO LEXINGTON
11 COUNTY AND GOT -- I REMEMBER MS. SARAH BOOZER. GOT THE
12 MARRIAGE LICENSE FROM HER. SHE KEPT ASKING US, NOW, ARE
13 Y'ALL REALLY OLD ENOUGH TO GET MARRIED. I THINK WE WERE
14 THE LAST ONES BEFORE THEY CHANGED WHERE YOU HAD TO SHOW A
15 BIRTH CERTIFICATE.

16 Q SO Y'ALL CAME OVER HERE?

17 A RIGHT. UH-HUH.

18 Q TO GET A LICENSE?

19 A COME IN THAT FRONT DOOR DOWN THERE.

20 Q RIGHT DOWN THERE (INDICATES)?

21 A UH-HUH.

22 Q ALL RIGHT.

23 NOW, MR. TERRY, YOUR WIFE HAS TALKED ABOUT THE
24 ACCIDENT YOU HAD IN 1971---

25 A RIGHT.

1 Q ---BUT CAN YOU TELL THE JURY WHAT KIND OF THINGS YOU
2 DID FOR A LIVING BEFORE THAT TIME?

3 A YES. FIRST, I WENT TO WORK, I WORKED IN THE SHOP,
4 THE OLYMPIA SHOP, AND MY DADDY AND MOTHER WORKED UP IN
5 GRANBY. THE TWO MILLS WERE RIGHT SIDE-BY-SIDE. I WORKED
6 IN THE ONE, YOU KNOW, THE LOWER ONE DOWN THE HILL.

7 Q SO YOU DID MILL WORK FIRST?

8 A NO, WHAT I DONE -- I WORKED ALL OVER THE MILL.
9 SOMETIMES I WOULD GO OVER TO THE OTHER MILLS. WORKED AT
10 RICHLAND, CAPITAL CITY, YOU KNOW, WHATEVER -- WHEREVER THEY
11 HAD SOMETHING BROKE DOWN AT.

12 AND WHEN I STARTED TO WORK, I THINK -- I BELIEVE
13 I WAS EITHER SEVENTEEN -- NO, I WAS SEVENTEEN OR
14 EIGHTEEN-YEARS-OLD. AND MY DADDY HAD BEEN WORKING 40 YEARS
15 IN THE SAME ROOM, THE QUALITY ROOM, AND THEY STARTED ME OUT
16 WHEN I WAS WORKING, YOU KNOW, WORKING DOWN THERE, THEY
17 STARTED ME OUT AT ABOUT HALF AS MUCH MORE AS HE WAS MAKING
18 AND HE HAD BEEN THERE 40 YEARS---

19 Q UH-HUH.

20 A ---BUT I KEPT HAVING A LOT OF TROUBLE, YOU KNOW,
21 GOING INSIDE, THAT DUST, YOU KNOW, COMING UP IN MY SINUSES
22 AND ALL.

23 Q ALL RIGHT.

24 A SO I QUIT AND WENT TO WORK FOR -- WELL, I DIDN'T WORK
25 NONE FOR ABOUT A COUPLE OF WEEKS. AND, YOU KNOW, I WAS OUT

1 LOOKING FOR A JOB. FINALLY, THIS FRIEND OF MINE COME BY
2 AND TOLD ME -- HE WORKED WITH AN EXTERMINATING COMPANY,
3 TERMINIX---

4 A UH-HUH.

5 Q ---SAID HE WAS PUTTING IN SOME SILL AND HE ASKED ME,
6 RECKON I COULD WORK A COUPLE OF DAYS WITH HIM. I TOLD HIM
7 I WASN'T DOING ANYTHING. I SAID, LET'S GO. SO I HELPED
8 HIM PUT SILL. I THINK IT TOOK US MORE LIKE A WEEK TO PUT
9 SILL UP UNDER THAT HOUSE.

10 Q SO YOU WENT AND DID THAT WORK FOR TERMINIX FOR A
11 COUPLE OF DAYS?

12 A THAT WAS A COUPLE OF---

13 Q WHEN DID THAT COUPLE OF DAYS END?

14 A IT TURNED INTO A PERMANENT JOB.

15 Q FOR HOW MANY YEARS?

16 A SOMEWHERE AROUND SEVEN YEARS I THINK.

17 Q ABOUT SEVEN YEARS?

18 A UH-HUH, AROUND SEVEN YEARS.

19 Q AFTER THAT, WHAT KIND OF WORK DID YOU DO?

20 A WELL, THE REASON I QUIT TERMINIX, I HAD -- I KEPT
21 STARTING HAVING A LOT OF TROUBLE WITH MY HANDS, MY ARMS.
22 IT WAS---

23 Q WHAT DO YOU MEAN BY HAVING TROUBLE?

24 A WELL, THOSE NUZZLES AND STUFF LEAKED BAD AND, YOU
25 KNOW, STUFF WOULD GET ON YOUR HANDS AND YOUR HANDS WOULD

1 START GETTING NUMB.

2 Q OKAY. AND WHAT KIND OF STUFF WOULD GET ON YOUR
3 HANDS?

4 A WELL, A CHEMICAL.

5 Q THE CHEMICALS?

6 A CHEMICALS, RIGHT. THEY HAD ONE THEY CALLED -- THEY
7 JUST USED INITIALS W.P, THAT WAS A WOOD PRESERVER AND THEN
8 THEY HAD O.G. THAT WAS TO TREAT THE GROUND. THEN THEY USED
9 ALDRIN(PHONETICALLY) TO DO THE -- WHAT YOU CALL THE
10 PRE-TREATS ON THESE GOVERNMENT PROJECTS.

11 Q SO YOU THOUGHT THAT THE CHEMICALS AFTER AWHILE WERE
12 HAVING A BAD AFFECT SO YOU LEFT THERE?

13 A YEAH. I'M PRETTY SURE IT WAS DOING IT BECAUSE I
14 COULD COME OUT ON THE WEEKENDS AND, YOU KNOW, NOT BE
15 WORKING ON THE WEEKENDS AND BE WORKING UNDER THE HOUSE ON
16 FISK AND MY HANDS WOULDN'T BOTHER ME ALL, BUT NO SOONER I
17 GO BACK AND GET BACK INTO THAT CHEMICAL, IT WOULD START
18 BOTHERING ME AGAIN. SO THAT'S -- I WAS TALKING TO THE
19 DOCTOR AND HE TOLD ME -- HE HAD CHECKED MY HANDS, YOU KNOW,
20 A GOOD MANY TIMES. HE SAID, WELL, I'M GOING TO TELL YOU
21 SOMETHING NOW, AFTER HE READ WHAT ALL WAS IN THE -- YOU
22 KNOW, I BROUGHT HIM ONE OF THE LABELS THAT WAS ON THE CAN.
23 IT HAD WORDS THAT LONG(INDICATES). I COULDN'T PRONOUNCE
24 THEM.

25 Q UH-HUH.

1 A AND HE READ THEM, WENT BACK THERE AND LOOKED THROUGH
2 A BOOK AND HE COME BACK AND TOLD ME, SAID, WELL, HE SAID,
3 IF YOU DON'T SOON CHANGE JOBS, HE SAID, I'LL COME TO YOUR
4 FUNERAL. HE SAID THIS STUFF WILL START WORKING ON YOU. SO
5 I THINK I WORKED A DAY AND A HALF AFTER THAT AND THEN --
6 SEE, I HAD LEARNED MYSELF ELECTRICAL WORK, YOU KNOW, BACK
7 -- YOU KNOW, LEARNED IT ON MY OWN. I MEAN, AIN'T NOBODY---

8 Q YOU KNEW HOW TO DO ELECTRICAL WORK?

9 A RIGHT. SO WHERE DID YOU GO FROM TERMINIX?

10 A I WENT TO WORK WITH ONE OF MY UNCLES.

11 Q FOR YOUR UNCLE?

12 A TERRY ELECTRIC.

13 Q AND DOING WHAT KIND OF WORK?

14 A HOUSE WIRING AND SOME COMMERCIAL WIRING. AND THE WAY
15 I GOT HURT WAS OUT ON -- LET'S SEE. THEY CALL ONE OF THEM
16 HOUSING PROJECTS, I THINK IT WAS LEE HILLS AND THE OTHER
17 ONE, HICKORY RIDGE.

18 ON THE HICKORY RIDGE, WE WERE WIRING -- THEY HAD
19 PUT A BIG GOLF COURSE IN THERE, TOO, AND WE WERE WIRING THE
20 GOLF BUILDING. WE HAD WIRED ALL -- EVERYTHING INSIDE AND
21 THIS WAS A METAL BUILDING AND I HAD PUT THE SERVICE ON THE
22 OUTSIDE AND ON TWO HUNDRED AMPS ON THEM KIND OF BUILDINGS
23 THERE, YOU KNOW, PULLING RACK, YOU KNOW, FOR THE POWER
24 COMPANY TO HOOK THE WIRE TOO. AND I HAD TOOK A BIT WHEN
25 THEY PUT IT IN THE GRILL, A SMALLER BIT, BUT I THINK IT WAS

1 ABOUT A HALF-INCH BIT AND WENT THROUGH THE METAL BEAM.
2 TOOK THAT BIT OUT AND PUT ANOTHER ONE. I THINK IT WAS A
3 FIVE-EIGHTHS BIT AND WENT BACK THROUGH THERE AGAIN. JUST
4 AS I WAS PULLING IT BACK OUT, THE DRILL SHORTED OUT AND
5 THROWED(SIC) THE JUICE BACK THROUGH ME.

6 I FELL -- I THINK PROBABLY ABOUT ALMOST TWELVE
7 FEET FLAT ON MY BACK AND IT BROKE MY BACK IN TWO PLACES,
8 BROKE ALL THE RIBS UP THIS LEFT SIDE(INDICATES).

9 Q DID YOU EVER WORK AFTER THAT ACCIDENT?

10 A NEVER WORKED NO MORE AFTER THAT.

11 Q WHAT AFFECT DID THAT ACCIDENT HAVE ON YOU?

12 A OH, IT REALLY AFFECTED ME. JUST LIKE, WE DIDN'T HAVE
13 THE MONEY COMING IN WHAT WE HAD COMING IN, YOU KNOW, FOR
14 GROCERIES, YOU KNOW, WHATEVER.

15 WE -- I SAY, WE. MY SON JOHNNY. HIS NAME IS
16 JOHN, WE CALL HIM JOHNNY. HE WOULD TAKE THE PICK UP TRUCK
17 WHAT I HAD, IT WAS AN OLD PICKUP AND HE WOULD DRIVE IT AND
18 I WOULD JUST RIDE WITH HIM, HE WOULD PICK UP SCRAP METAL
19 AND SELL IT TO GET EXTRA MONEY, YOU KNOW, TO HELP WITH
20 THE---

21 Q SO YOU WOULD GO WITH YOUR SON JOHN TO PICK UP SCRAP
22 METAL?

23 A RIGHT. I WOULD JUST RIDE AROUND.

24 Q DID YOU PICK IT UP?

25 A NO, NO, HE'D PICK IT UP. I WAS JUST WITH HIM.

1 Q AND YOU WOULD SELL THAT TO GET SOME EXTRA MONEY.

2 A RIGHT. BECAUSE, SEE, I WAS IN A BACK BRACE, TOO, FOR
3 A LONG TIME.

4 Q YOU'RE IN WHAT?

5 A A BACK BRACE.

6 Q OKAY. DID -- DID YOU HAVE ANY PAIN AS A RESULT OF
7 THIS ACCIDENT?

8 A I DIDN'T UNDERSTAND.

9 Q DID YOU HAVE ANY PAIN AS A RESULT OF THE ACCIDENT?

10 A OH, YES, I HAD PAIN. IN FACT, I HAVE PAIN NOW. I
11 MEAN, IT DON'T EVER GO AWAY.

12 Q HAVE YOU EVER FULLY RECOVERED FROM IT?

13 A EXCUSE ME?

14 Q HAVE YOU EVER COMPLETELY RECOVERED FROM THE ACCIDENT?

15 A NO, MA'AM.

16 Q ALL RIGHT. MR. TERRY, HOW DID YOU FEEL ABOUT NOT
17 BEING ABLE TO WORK AND PROVIDE FOR YOUR CHILDREN?

18 A WELL, IT MAKES YOU FEEL BAD KNOWING THAT YOU
19 COULDN'T, YOU KNOW, BUY THEM THE THINGS, YOU KNOW, WHAT
20 THEY NEEDED AND STUFF. YOU KNOW, TRY TO COUNT ON SOMEBODY
21 ELSE. THEY WASN'T GETTING THE FOOD AND STUFF WHAT THEY
22 NEEDED. I MEAN, THEY WERE -- THEY WERE GETTING FOOD, BUT
23 NOT LIKE THEY SHOULD.

24 WHAT REALLY DONE IT, MY WIFE HAD TO GO TO WORK,
25 YOU KNOW, REALLY TO SUPPORT US. WHAT WE HAD COMING IN, I

- 1 DON'T REMEMBER ON DISABILITY. NOW, I GOT WORKERS' COMP
2 LIKE MY WIFE HAD TOLD YOU SHE WAS GETTING -- THAT I WAS
3 GETTING 50 DOLLARS A WEEK AND THE ATTORNEY WAS TAKING THE
4 FOURTH CHECK EVERY WEEK -- EVERY FOUR WEEKS, HE WOULD TAKE
5 ONE OF THE CHECKS.
- 6 Q SO YOU WOULD HAVE 150 DOLLARS A MONTH?
- 7 A RIGHT. AND LET ME SEE. I DON'T REMEMBER -- WHEN
8 THEY PUT ME ON DISABILITY -- I CAN REMEMBER EXACTLY WHAT
9 THE CHECK WAS THAT I WAS GETTING. I MEAN, IT WASN'T VERY
10 MUCH.
- 11 Q YOU'RE TALKING ABOUT SOCIAL SECURITY DISABILITY?
- 12 A SOCIAL SECURITY DISABILITY. THAT'S THE SAME.
- 13 Q DID YOU GET THAT RIGHT AWAY?
- 14 A NO. IT SEEMS LIKE IT TOOK FOREVER TO GET IT. AND
15 FIVE CHILDREN, THEY WERE GETTING TWO DOLLARS AND A HALF
16 EACH PER MONTH.
- 17 Q YOUR CHILDREN -- EACH CHILD WOULD GET---
- 18 A TWO DOLLARS AND A HALF.
- 19 Q TWO-FIFTY PER MONTH?
- 20 A TWO-FIFTY, RIGHT.
- 21 Q AS THEIR PART OF IT?
- 22 A RIGHT.
- 23 Q OKAY. DO YOU THINK AFTER THE ACCIDENT YOU WERE ABLE
24 TO BE THE SAME TYPE OF FATHER THAT YOU WERE BEFORE?
- 25 A OH, NO, NOT THE SAME TYPE OF FATHER, NOT THE SAME

1 TYPE OF HUSBAND.

2 Q COULD YOU PLAY WITH THE CHILDREN LIKE YOU WANTED TO
3 OR DO THINGS WITH THEM LIKE YOU WANTED TO?

4 A I COULD PLAY WITH THEM, BUT NOT LIKE I USED TO -- YOU
5 KNOW, USED TO COULD. I COULDN'T GET, YOU KNOW, ROUGH WITH
6 THEM, YOU KNOW, PLAYING. I JUST COULDN'T DO IT.

7 Q OKAY.

8 A AND I HAD GOT TO WHERE, TOO, I JUST COULDN'T --
9 SOMETIMES I REALLY COULDN'T EVEN STAND TO BE AROUND WHERE
10 THEY WERE AT, YOU KNOW, IF THEY WERE GETTING KIND OF NOISY.
11 IT WOULD JUST GET ALL OVER MY NERVES. I WOULD JUST HAVE TO
12 GET OUT OF THE HOUSE AND WALK. AND IT WAS ROUGH. I'M
13 TELLING YOU.

14 Q YOU AND YOUR WIFE RAISED YOUR CHILDREN OVER ON FISK
15 STREET?

16 A FISK, RIGHT.

17 Q FISK STREET IN COLUMBIA?

18 A RIGHT.

19 Q AND TELL THE JURY HOW YOU -- HOW YOU BUILT THAT
20 HOUSE?

21 A YES. WE HAD -- MY FATHER HAD GIVEN ME THE PIECE OF
22 LAND ON THE BACK OF HIS LOT HE HAD. IT WAS A SEPARATE
23 PIECE OF LAND. IT WAS A 100 FOOT BY 115. IT HAD A TEN
24 FOOT DRIVEWAY GOING TO THE ROAD AND IT WAS ABOUT A GOOD
25 THREE HUNDRED, MAYBE FOUR HUNDRED FEET FROM THE ROAD. YOU

1 KNOW, FROM OUR PLACE TO THE ROAD.

2 AND I HAD SAVED -- AT THIS TIME, I WAS WORKING,
3 YOU KNOW, FOR TERMINIX AND I WOULD SAVE A LITTLE BIT ALONG
4 AND BUY WHAT THEY CALL A CUBE OF CONCRETE BLOCK. AND WE
5 WENT AHEAD AND DUG THE FOUNDATION, POURED THE FOUNDATION
6 AND WE LAID THE BLOCKS.

7 I HAD INTENDED TO TAKE THE WHOLE HOUSE UP WITH
8 CONCRETE BLOCK, BUT MY FATHER-IN-LAW, LIKE MY WIFE SAID,
9 YOU KNOW, HE WAS A CONTRACTOR AND HE HAD A HOUSE -- HE WAS
10 DOING A HOUSE FOR THE GOVERNMENT. IT WAS A F.H.A. HOUSE
11 AND BEHIND IT WAS A HOUSE THAT WAS IN TOO BAD OF SHAPE, YOU
12 KNOW, TO FIX UP SO HE ASKED ME WOULD I TEAR THE HOUSE DOWN
13 FOR THE MATERIAL THAT WAS IN IT AND I TOLD HIM, YES. AND
14 THAT'S HOW I GOT THE FRAMING AND STUFF OUT OF IT AND WE --
15 I THINK EVERY BOARD IN THAT HOUSE EXCEPT TILL THE VERY LAST
16 WAS CUT WITH A HAND SAW.

17 Q BY YOU?

18 A YES.

19 Q SO YOU RECYCLED MATERIAL FROM THE HOUSE THAT WAS
20 DILAPIDATED AND USED IT TO BUILD YOUR HOME?

21 A RIGHT. AND PUT NEW SIDING ON IT, NEW SHEETROCK
22 INSIDE OF IT.

23 Q WHO DID THE -- WHO DID THE ELECTRICAL WORK?

24 A OH, I DONE ALL OF THE ELECTRICAL, PLUMBING---

25 Q YOU DID THE ELECTRICAL, PLUMBING?

1 A UH-HUH, EVERYTHING.

2 Q EVERYTHING?

3 A EVERYTHING.

4 Q MR. TERRY, CAN YOU TELL THE JURY WHAT GARY WAS LIKE
5 AS A LITTLE BOY?

6 A YES. GARY WAS A -- HE WAS A GOOD KID. I COULD --
7 JUST LIKE MY WIFE SAID, HE OFTEN PLAYED BY HIMSELF, BUT HE
8 WOULDN'T GET FAR OFF FROM YOU, YOU KNOW, PLAYING.

9 HE JUST LIKED TO BE BY HIMSELF, YOU KNOW. I
10 DIDN'T REALLY NOTICE ANY CHANGES IN GARY UNTIL WHENEVER HE
11 STARTED DATING TAMMY. I DIDN'T -- I NEVER KNEW ANY CHANGES
12 IN HIM. HE'S JUST A QUIET PERSON. I KNOW HE'S -- SOME
13 KIDS -- I HAD WALKED DOWN TO THE STORE ONE DAY, SOME KIDS
14 DOWN IN AN OLD HOUSE DOWN THE ROAD THAT STARTED CURSING AT
15 ME AND THROWING ROCKS AT ME AND JUST SO HAPPENED GARY CAME
16 BY AND HE GOT A HOLD OF ONE OF THEM. I DON'T THINK I CAN
17 CALL THEIR NAMES, BUT HE GOT HIM AND, YOU KNOW, BUT WHEN HE
18 GOT HIM, THE REST OF THEM RUN.

19 Q SO -- NOW THESE BOYS WERE DOING WHAT?

20 A THROWING ROCKS AT ME AND CURSING AT ME.

21 Q THROWING ROCKS AND CURSING YOU?

22 A YEAH. YOU KNOW, I HADN'T DONE NOTHING TO THEM.

23 Q AND GARY CAME TO YOUR DEFENSE?

24 A RIGHT.

25 Q AND ABOUT HOW OLD WAS HE THEN?

- 1 A GARY WAS PROBABLY TWELVE -- TEN OR TWELVE YEARS OLD.
2 HE WASN'T OLD.
- 3 Q WHEN GARY WAS A KID, WOULD HE HELP YOU AROUND THE
4 HOUSE AND---
- 5 A OH, YES. YES, MA'AM, HE SHOULD WOULD.
- 6 Q WHAT KIND OF THINGS WOULD HE DO?
- 7 A DIFFERENT THINGS. HE WOULD HELP IN THE SHOP BACK
8 THERE. I HAD A LITTLE SHOP OUT THERE. I WOULD WORK
9 SOMETIMES AT NIGHT AFTER I GOT HOME FROM WORK. IF WE
10 WASN'T UP AT WATEREE FISHING, WE WOULD BE THERE AT THE SHOP
11 DOING SOMETHING. AND HE WOULD BE IN THERE. SOMETIMES HE
12 WOULD -- WELL, HE WOULD HELP HIS MOTHER, YOU KNOW, CLEAN
13 THE HOUSE. I MEAN, HE -- HE WAS A GOOD KID. IT WASN'T NO
14 TWO WAYS ABOUT IT. BUT HE WAS MORE OF A LONER.
- 15 Q DID HE LIKE TO FISH?
- 16 A YEAH, HE LOVED TO FISH.
- 17 Q DID YOU TAKE HIM WITH YOU?
- 18 A YEAH, I SURE DID. HE USED TO CATCH RIGHT ON THE LIVE
19 BAIT TO FISH WITH.
- 20 Q WHEN -- WHEN -- WHEN GARY GOT TO BE AN OLDER
21 TEENAGER, THINGS STARTED GETTING WORSE?
- 22 A YEAH. I THINK MY WIFE HAD TOLD YOU WHAT HE -- HE
23 WOULD SLIP OFF FROM HOME. YOU KNOW, HE WOULD GO OFF WITH
24 TAMMY ON THE MOTORCYCLE.
- 25 Q WOULD THINGS GO PRETTY MUCH LIKE YOUR WIFE DESCRIBED?

1 A THEY WERE JUST -- JUST LIKE SHE DESCRIBED. I WOULD
2 SIT THERE AND LISTEN TO HER AND EVERYTHING SHE SAID, YOU
3 KNOW, THAT'S JUST THE WAY IT HAPPENED.

4 Q YOU THINK THAT'S A PRETTY COMPLETE DESCRIPTION OF HOW
5 IT HAPPENED?

6 A PRETTY COMPLETE.

7 Q OKAY.

8 A UH-HUH. I KNOW I WENT TO THE -- LAST TIME HE RUN
9 OFF, WE DIDN'T KNOW WHERE HE WAS AT FOR AWHILE. HE WAS IN
10 GEORGIA AND WHEN WE FOUND OUT, I MEAN, I DIDN'T -- AT
11 FIRST, AFTER A COUPLE OF DAYS, YOU KNOW, I STARTED GETTING
12 REALLY WORRIED, YOU KNOW, BECAUSE WE DIDN'T KNOW WHETHER HE
13 WAS LAYING OUT SOMEWHERE DEAD OR WHAT, YOU KNOW. AND
14 THAT'S WHENEVER WE GOT WORD HE WAS DOWN OUT WORKING AT A
15 TRUCK STOP DOWN THERE AND HE SAID HE WANTED TO COME HOME. "
16 SO I -- WE HAD A '63 YEAR MODEL PLYMOUTH, I THINK, AT THAT
17 TIME. WE LEFT THAT NIGHT AND WENT ON DOWN THERE AND GOT
18 HIM AND COME BACK WITH HIM.

19 Q OKAY. HE WAS ABOUT HOW OLD THEN?

20 A HE WAS SIXTEEN OR SEVENTEEN. I THINK HE PROBABLY WAS
21 CLOSE TO 17-YEARS-OLD BECAUSE IT WAS WHEN HIM AND TAMMY
22 FIRST STARTED, YOU KNOW, GOING TOGETHER.

23 Q OKAY. MR. TERRY, ARE YOU PROUD OF EVERYTHING GARY'S
24 DONE IN HIS LIFE?

25 A NO, MA'AM.

1 Q BUT DO YOU LOVE HIM ANYWAY?

2 A YES, MA'AM, I REALLY DO.

3 Q ARE YOU ASKING THIS JURY TO SENTENCE HIM TO LIFE
4 IMPRISONMENT?

5 A YES, I AM.

6 Q DOES IT MEAN SOMETHING TO YOU?

7 A YES.

8 Q MR. TERRY, I DON'T HAVE ANY FURTHER QUESTIONS.
9 PLEASE ANSWER ANY THE PROSECUTION HAS.

10 MR. HUMPHRIES: YOU CAN COME ON DOWN, MR. TERRY.
11 THANK YOU, SIR.

12 THE COURT: THANK YOU, MR. TERRY. YOU MAY STEP
13 DOWN.

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

16 THE COURT: BEFORE YOU CALL YOUR NEXT WITNESS,
17 WE'LL GOING TO TAKE A SHORT BREAK.

18 LADIES AND GENTLEMEN OF THE JURY, I'M GOING TO BE
19 SENDING YOU TO THE JURY ROOM FOR A VERY SHORT BREAK. WHILE
20 YOU ARE THERE, YOU ARE NOT TO DISCUSS THIS CASE IN ANY
21 FASHION WHATSOEVER. WE'LL GET YOU BACK IN A VERY FEW
22 MINUTES. THE JURY MAY RETIRE.

23 EVERYONE ELSE REMAIN SEATED EXCEPT FOR THE
24 PARTIES.

25 (JURY OUT.)

1 THE COURT: LET'S TAKE A VERY SHORT BREAK. WE'LL
2 BE BACK ABOUT QUARTER TILL FOUR.

3 (RECESS.)

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

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

6 ALL RIGHT. YOU READY.

7 MS. FULLWOOD: YOUR HONOR, BEFORE WE CONTINUE,
8 THE SECOND WITNESS I'M GOING TO CALL, MS. VOGELSANG, THE
9 FORENSIC SOCIAL WORKER, HAS A VIDEOTAPE WHICH SHE HAD MADE
10 IN CONNECTION WITH HER TESTIMONY.

11 I ANTICIPATE THE STATE IS GOING TO HAVE AN
12 OBJECTION. YOU HEARD MR. TERRY'S PARENTS TESTIFY ABOUT THE
13 HOUSE ON FISK STREET. THEY NOW LIVE IN -- I THINK IT'S
14 RIDGELAND -- RIDGEVILLE -- A LITTLE TOWN IN FAIRFIELD
15 COUNTY.

16 THIS IS A VIDEO OF THE EXTERIOR OF THE HOME IN
17 FAIRFIELD COUNTY. MS. VOGELSANG MADE IT BECAUSE, DURING
18 THE COURSE OF HER INVESTIGATION AND INTERVIEWS WITH
19 PERSONS, SHE LEARNED THAT THE FAMILY COLLECTED SCRAP METAL
20 AND JUNK AS A MEANS OF SUPPORT AND THIS VIDEO IS TO SHOW
21 THE EXTERIOR OF THAT HOME AND TO SHOW, IN FACT, THERE IS A
22 LOT OF SCRAP METAL AND THINGS OF THAT NATURE ON THE
23 EXTERIOR OF THAT HOME. SO I WANT THAT TO BE KNOWN SO
24 THINGS CAN BE SMOOTH. IN CASE THEY WANT TO RAISE AN
25 OBJECTION, THEY CAN DO IT NOW AND TAKE CARE OF IT.

1 THE COURT: ANY OBJECTION, MR. HUMPHRIES---

2 MR. HUMPHRIES: HOW LONG IS IT?

3 MS. FULLWOOD: IT'S ABOUT THREE OR FOUR MINUTES
4 LONG. DO YOU WANT TO LOOK AT IT?

5 MR. HUMPHRIES: I THINK ONCE WILL BE ENOUGH.

6 WE HAD ASSUMED THAT IT WOULD BE OF THE HOUSE ON
7 FISK STREET, HIS HOME PLACE, BUT I -- NO OBJECTION.

8 MS. FULLWOOD: I CHECKED DURING THE BREAK AND I
9 JUST WANTED Y'ALL TO KNOW.

10 THE COURT: GO AHEAD THEN. IF THERE'S NO
11 OBJECTION, IT WILL BE DEFENDANT'S EXHIBIT NUMBER 7 WHEN IT
12 COMES IN.

13 MS. FULLWOOD: THEN WE'LL FINE.

14 THE COURT: ALL RIGHT. LET'S BRING OUR JURY
15 BACK.

16 (JURY IN.)

17 THE COURT: MADAM FOREPERSON, LADIES AND
18 GENTLEMEN, IF I EVER SEND YOU OUT OF THE JURY ROOM -- OUT
19 OF THE COURTROOM TO THE JURY ROOM AND I DON'T GIVE YOU
20 SUFFICIENT TIME WHILE YOU ARE IN THE JURY ROOM, PLEASE LET
21 ME KNOW AND YOU DON'T HAVE TO COME BACK WHEN I ASK YOU TO
22 COME BACK IF YOU ARE NOT FULLY PREPARED TO. SO JUST LET ME
23 KNOW THAT IF I CUT YOUR TIME SHORT.

24 ALL RIGHT. NEXT WITNESS.

25 MS. FULLWOOD: YOUR HONOR, THE DEFENSE CALLS LOU

1 ANN TERRY.

2 LOU ANN S. TERRY,

3 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: STATE YOUR FULL NAME, PLEASE.

5 THE WITNESS: MY NAME IS LOU ANN SMITH TERRY.

6 DIRECT EXAMINATION

7 BY MS. FULLWOOD:

8 Q MS. TERRY, YOU ARE PRESENTLY GARY'S WIFE?

9 A YES, I AM.

10 Q WHERE ARE YOU FROM, MS. TERRY?

11 A I GREW UP IN HARTSVILLE.

12 Q OKAY. COULD YOU BRIEFLY TELL THE JURY ABOUT YOUR
13 EDUCATION AND YOUR OCCUPATION AT THE PRESENT TIME?

14 A YES, MA'AM.

15 I ATTENDED HARTSVILLE HIGH SCHOOL AND GRADUATED
16 WITH HONORS AND I ATTENDED THE UNIVERSITY OF SOUTH
17 CAROLINA. I BEGAN AS A BUSINESS MAJOR AND THEN SWITCHED TO
18 EDUCATION WITH MY CONCENTRATION IN ENGLISH EDUCATION.

19 I GRADUATED FROM THE UNIVERSITY OF SOUTH CAROLINA
20 IN DECEMBER OF 1987 AND BECAME EMPLOYED WITH THE
21 BENNETTSVILLE SCHOOL DISTRICT, MARLBORO COUNTY SCHOOL
22 DISTRICT AT MCCOLL HIGH SCHOOL. I WAS THERE FOR TWO AND A
23 HALF YEARS AND THEN I BECAME EMPLOYED AT FAIRFIELD COUNTY
24 SCHOOL DISTRICT, FAIRFIELD CENTRAL HIGH SCHOOL IN
25 WINNSBORO.

- 1 Q ALL RIGHT. YOU MARRIED GARY TERRY WHEN?
- 2 A I MET GARY TERRY IN APRIL OF 1987 AND WE MARRIED IN
- 3 JUNE OF 1988.
- 4 Q AND EARLIER THIS AFTERNOON, YOUR MOTHER-IN-LAW
- 5 INTRODUCED TWO OF YOUR CHILDREN TO THE JURY?
- 6 A YES, MA'AM. THE OTHER TWO WERE GONE TO THE BATHROOM.
- 7 Q THEY ARE AT THAT AGE?
- 8 A YES, MA'AM.
- 9 Q OKAY. AND THEY ARE NOT IN THE COURTROOM NOW?
- 10 A FRIENDS OF THE FAMILY HAVE TAKEN THEM TO THE CARNIVAL
- 11 ACROSS THE STREET.
- 12 Q OKAY. THEY ARE A LITTLE YOUNG FOR THIS?
- 13 A YES, MA'AM.
- 14 Q MS. TERRY, HAS YOUR MARRIAGE TO GARY TURNED OUT TO BE
- 15 EVERYTHING YOU THOUGHT YOU WOULD HAVE IN A MARRIAGE?
- 16 A NO, IT HAS NOT.
- 17 Q HAS GARY BEEN TO YOU EVERYTHING YOU DREAMED A HUSBAND
- 18 WOULD BE?
- 19 A NOT THROUGHOUT THE ENTIRE COURSE OF OUR MARRIAGE, NO.
- 20 Q HAS HE BEEN THE FATHER THAT YOU HAD HOPED TO HAVE FOR
- 21 YOUR CHILDREN?
- 22 A IN THE RESPECT OF DOES HE LOVE THE CHILDREN HE HELPED
- 23 PRODUCE, YES; BUT HAS HE ALWAYS BEEN THERE FOR THEM, NO,
- 24 MA'AM.
- 25 Q ALL RIGHT. CAN YOU TELL THE JURY WHAT YOUR FEELINGS

1 ARE FOR GARY NOW?

2 A GARY IS MY FIRST LOVE. I HAD NEVER BEEN IN LOVE
3 BEFORE I MET GARY. THE NIGHT WE MET, WE TALKED EXTENSIVELY
4 UNTIL EARLY HOURS OF THE MORNING AND I FELT COMFORT WITH
5 HIM. I FELT LIKE I HAD KNOWN HIM ALL OF MY LIFE. THAT, IN
6 ESSENCE, WE WERE SOUL MATES. I FELL IN LOVE WITH HIM AFTER
7 WE DATED OVER A PERIOD OF TIME. I MARRIED HIM. WE HAD
8 HOPED TO START A LIFE TOGETHER, BUT HE BECAME INCARCERATED
9 AND WE WERE SEPARATED THE FIRST 22 MONTHS OF OUR MARRIAGE
10 DURING THE COURSE OF WHICH OUR SON, DUBOSE, WAS BORN. IT
11 WAS DIFFICULT, BUT I WOULD LEAVE WORK. I WOULD VISIT HIM
12 DURING HIS INCARCERATION AT EVERY OPPORTUNITY THAT I HAD.

13 ONCE HE WAS RELEASED, WE DID -- ONCE MY TENURE IN
14 MARLBORO COUNTY WAS FINISHED, I MOVED TO COLUMBIA. WE
15 STAYED BRIEFLY WITH HIS PARENTS AND THEN WITH HIS SISTER,
16 ELAINE, IN RIDGEWAY AND THEN WE FOUND OUR OWN HOME IN
17 COLUMBIA AND SET UP A LIFE TOGETHER AND THINGS WERE NOT
18 PERFECT. MONEY WAS ALWAYS TIGHT, AS IT IS WHEN YOU HAVE A
19 CHILD AND YOU ARE A STATE EMPLOYEE WITH FEW YEARS
20 EXPERIENCE, BUT WE WERE AS HAPPY AS I THINK THAT ANYBODY
21 COULD HAVE BEEN UNDER THE CIRCUMSTANCE.

22 I BECAME PREGNANT WITH OUR SECOND SON, MORGAN,
23 WHILE WE WERE LIVING IN COLUMBIA. SHORTLY THEREAFTER, WE
24 MOVED TO BLYTHEWOOD WHICH WAS A LITTLE BIT CLOSER TO WORK,
25 CLOSER TO WHERE HIS FAMILY WAS BUILDING THEIR HOME. HIS

1 SISTER LIVED -- CLOSER TO HIS SISTER, ELAINE, AND THINGS
2 PROGRESSED FROM THERE.

3 WE HAD OUR UPS AND DOWNS LIKE ANY MARRIED COUPLE
4 HAS. AND WHEN MORGAN WAS SEVEN MONTHS OLD, I BECAME
5 PREGNANT WITH TWINS. IT WAS GARY'S DREAM TO ALWAYS HAVE A
6 LITTLE GIRL AND MORGAN WAS SUCH A GOOD BABY, A GOOD HEALTHY
7 BABY THAT WE DECIDED TO TRY RIGHT AWAY FOR ANOTHER LITTLE
8 GIRL WHILE I WAS STILL YOUNG AND HE WAS YOUNG SO THAT WE
9 COULD TRY AND FULFILL ONE OF HIS DREAMS.

10 AND IN JUNE OF 1992, I WAS INFORMED THAT I WAS
11 PREGNANT WITH TWINS AND THE DOCTOR COULD TELL THAT ONE OF
12 THEM WAS A MALE BUT THE SEXUAL GENDER OF THE SECOND BABY
13 WAS A MYSTERY UNTIL AUGUST OF THAT YEAR, THE DAY BEFORE I
14 STARTED BACK TO WORK, AND WE FOUND OUT IT WAS A LITTLE
15 GIRL. AND HE AND I BOTH CRIED. NOT BOOHOOED, BUT WE BOTH
16 GOT TEARS IN OUR EYES WHEN I TOLD HIM THAT THE SECOND BABY
17 WAS A LITTLE GIRL. AND SO ONE OF HIS DREAMS WAS GOING TO
18 BE FULFILLED.

19 THROUGHOUT THE COURSE OF MY PREGNANCY, GARY
20 BECAME -- HE WENT THROUGH WHAT I CALL DEPRESSION. OF
21 COURSE, I'M NOT QUALIFIED TO CALL IT THAT, BUT THAT'S JUST
22 WHAT IT SEEMED FROM A WIFE'S STANDPOINT AND HE BEGIN
23 STAYING OUT LATE WITH FRIENDS AND WHAT NOT. I DID NOT KNOW
24 UNTIL AFTER THE TWINS WERE BORN ABOUT HIS RELATIONSHIP WITH
25 DIANNE GIBSON, BUT I STAYED WITH HIM. HE CONTINUED TO TAKE

1 UP AS MUCH TIME AS HE COULD WITH THE CHILDREN. HE WAS
2 THERE WHEN MORGAN WAS BORN. HE WAS THERE WHEN THE TWINS
3 WERE BORN AND LIFE WAS NOT ALL THAT IT HAD BEEN RIGHT AFTER
4 I GOT PREGNANT WITH MORGAN AND RIGHT AFTER MORGAN WAS BORN,
5 BUT WE STILL -- WE STUCK IT OUT AND THE TWINS WERE ABOUT A
6 YEAR OLD WHEN HE LEFT HOME AND MOVED IN WITH DIANNE. AND
7 HE STILL CONTINUED TO COME AND SEE THE TWINS AND THE OLDER
8 TWO BOYS.

9 I STILL LOVED HIM. I STILL LOVE GARY EVEN AFTER
10 HEARING ALL THAT I'VE HEARD AND KNOWING ALL THAT I KNOW. I
11 STILL BELIEVE IN HIM. AND HE CAME HOME TO ME IN AUGUST OF
12 1984 (SIC). WE ATTEMPTED TO PUT OUR MARRIAGE BACK TOGETHER
13 AND JUST THE WEEKEND BEFORE HIS ARREST, WE HAD GONE TO
14 TENNESSEE AND HAD THE MOST ROMANTIC WEEKEND THAT WE HAVE
15 EVER HAD. WE HAD THE TWINS WITH US, THE YOUNGER TWO, AND
16 IT WAS EVERYTHING THAT COULD HAVE BEEN HOPED FOR. AND HIS
17 ARREST CAME FRIDAY AFTER WE GOT BACK THAT SUNDAY NIGHT WAS
18 DEVASTATING AND IT WAS CRUSHING. IT WAS A HARD BLOW FOR
19 THE ENTIRE FAMILY TO ACCEPT BECAUSE WE HAD NO DOUBT IN OUR
20 MIND, I MEAN, THAT OUR MARRIAGE WAS GOING TO BE PUT BACK
21 TOGETHER, THAT WE WERE GOING TO BE ABLE TO LIVE HAPPILY
22 EVER AFTER WITH THE STORYBOOK ENDING, BUT IT WAS NOT TO BE.

23 Q DO YOUR CHILDREN LOVE THEIR FATHER?

24 A THEY LOVE THEIR FATHER VERY MUCH.

25 Q HOW DO THEY SHOW YOU THAT THEY DO?

1 A THEY WRITE GARY LETTERS, I LOVE YOU DADDY. THEY TALK
2 ABOUT WHEN DADDY COMES HOME, WILL HE TAKE US FISHING. WHEN
3 DADDY COMES HOME, I WANT HIM TO HELP ME WITH MY CUB SCOUT
4 PROJECT. THAT FROM THE OLDEST CHILD, DUBOSE.

5 I TRIED MY BEST TO EXPLAIN TO THEM THAT IT MIGHT
6 BE A VERY LONG TIME BEFORE DADDY GOT TO COME HOME. WE WERE
7 TOLD AT FIRST THAT IT MAY BE THREE TO FIVE YEARS BEFORE HIS
8 CASE CAME TO TRIAL. THANKFULLY, IT'S ONLY BEEN TWO AND A
9 HALF. BUT STILL THAT'S TIME THAT THE CHILDREN HAVE MISSED
10 WITH THEIR FATHER.

11 Q DID YOU HAVE TO TELL THE CHILDREN SOMETHING REAL
12 HARD---

13 A YES---

14 Q ---THIS WEEK---

15 A ---THURSDAY NIGHT. THE HARDEST THING I HAVE EVER HAD
16 TO DO IN MY LIFE IS TO GO HOME AND TELL THOSE FOUR CHILDREN
17 THAT THE JURY HAD RENDERED GUILTY VERDICTS ON ALL FOUR
18 COUNTS AND THAT AT BEST, DADDY WOULD NOT GET TO COME HOME
19 FOR THIRTY YEARS. THAT THERE WOULD BE NO CUB SCOUT
20 PROJECTS; THAT THERE WOULD BE NO TIME TO SPEND WITH THEM;
21 THAT THERE WOULD BE NO CAMPING TRIPS, NO FISHING TRIPS, NO
22 VACATIONS. THAT HE WOULD MOST PROBABLY NOT GET TO WALK HIS
23 DAUGHTER DOWN THE AISLE, THE DAUGHTER HE HOPED FOR FOR SO
24 LONG.

25 THE SECOND HARDEST THING I'M HAVING TO DO IS TO

1 PLEAD WITH YOU FOR HIS LIFE.

2 Q ARE YOU ASKING THIS JURY TO---

3 A I'M BEGGING---

4 Q ---TO GIVE YOUR HUSBAND A LIFE SENTENCE---

5 A ---TO CONSIDER THE LIFE SENTENCE AS OPPOSED TO DEATH
6 BECAUSE IN MY VIEW THE CHILDREN ARE ENTITLED TO A FATHER
7 EVEN THOUGH IT'S THROUGH DISTANCE. ONLY MAYBE ONCE A WEEK.
8 BUT THAT THEY ARE ENTITLED TO SHARE THEIR HOPES, THEIR
9 DREAMS, THEIR ACCOMPLISHMENTS WITH THEIR FATHER AND HE'S
10 ENTITLED TO SHARE HIS WITH THEM ALSO.

11 Q LOU ANN, ANSWER ANY QUESTIONS THE PROSECUTION MIGHT
12 HAVE.

13 A YES, MA'AM.

14 THE COURT: SOLICITOR.

15 CROSS-EXAMINATION

16 BY MR. HUMPHRIES:

17 Q DO YOU NEED A MOMENT?

18 A I'M FINE.

19 Q WHEN IS IT YOU WERE MARRIED?

20 A WE WERE MARRIED IN JUNE OF 1988---

21 Q 19---

22 A ---JUNE 7, 1988, AT THE HOME OF REVEREND AND MRS.
23 ALVIN BOZARD IN IRMO.

24 Q THAT WAS ABOUT THE TIME HE STARTED DATING DIANNE, IS
25 THAT RIGHT?

1 A GARY HAD KNOWN DIANNE SINCE BEFORE I MET HIM, BUT HE
2 WAS NOT DATING HER AT THAT PARTICULAR TIME.

3 Q AS FAR AS YOU KNEW?

4 A YES.

5 Q OKAY. HERE'S WHAT I WOULD LIKE TO DO.

6 I WOULD LIKE, AS CLEAR AS POSSIBLE, TO RELATE TO
7 THIS JURY TRULY THE AMOUNT OF TIME THAT GARY TERRY SPENT
8 WITH YOU AND YOUR CHILDREN. TRULY.

9 A YOU'VE PREVIOUSLY HEARD THE PROSECUTION PRESENT
10 GARY'S PRIOR ARREST AND SINCE I MET GARY IN APRIL OF 1987
11 AND MARRIED HIM IN JUNE OF 1988, IF YOU ADD UP THE TOTAL
12 AMOUNT OF TIME THAT GARY HAS BEEN INCARCERATED, WE HAVE
13 SPENT MORE NIGHTS APART OF OUR MARRIAGE THAN WE HAVE SPENT
14 TOGETHER.

15 BUT IF I MAY USE A CLICHE, THERE ARE MANY CASES
16 WHEN ABSENCE MAKES THE HEART GROW FONDER. I DON'T EXPECT
17 MY CHILDREN TO PUT THEIR FATHER ON A PEDESTAL. THEY HAVE
18 SOME HERO WORSHIP OF HIM RIGHT NOW AS TO BE EXPECTED OF ANY
19 CHILD. WE WOULD HOPE THAT ANY OF OUR CHILDREN WOULD PUT US
20 ON A PEDESTAL AND ADMIRE US.

21 AS THEY MATURE AND GET OLDER, THEY WILL REALIZE
22 THAT THEIR DADDY, AS WELL AS THEIR MOTHER AND GRANDPARENTS
23 AND ALL THE OTHER PEOPLE THEY MAY MEET, WE ALL HAVE FEET OF
24 CLAY. NONE OF US ARE PERFECT. THE AMOUNT OF TIME THAT
25 GARY MIGHT HAVE SPENT WITH ME AND WITH HIS CHILDREN, I FEEL

1 IS IRRELEVANT. IT WAS THE QUALITY OF THE TIME THAT HE
2 SPENT.

3 IN THIS DAY AND AGE AND THIS SOCIETY WHEN BOTH
4 PARENTS HAVE TO WORK, THE AMOUNT OF TIME THAT A PARENT
5 SPENDS WITH CHILDREN IS GREATLY DECREASED OVER THE
6 TRADITIONAL FAMILY STRUCTURE, BUT IN ORDER FOR ECONOMIC
7 BENEFIT AND WHAT NOT, PARENTS ARE FORCED TO SPENT TIME AWAY
8 FROM THEIR CHILDREN AND THEREFORE THE TIME THAT IS SPENT
9 MUST BE QUALITY TIME AND I FEEL THAT EVERY MINUTE THAT GARY
10 SPENT WITH THOSE CHILDREN AND WITH ME WAS QUALITY TIME. IT
11 WAS FILLED WITH LAUGHTER AND WITH LOVE.

12 THE TWINS WERE ONLY TWO AND A HALF WHEN GARY WAS
13 ARRESTED FOR THESE CRIMES. THEY DON'T HAVE VERY MANY
14 CONCRETE MEMORIES BUT ONE THAT STANDS OUT IN THEIR MIND AND
15 THEY TALK ABOUT OFTEN PARTICULARLY AT HALLOWEEN, WHICH WE
16 ARE NOW APPROACHING.

17 GARY HAD A SKELETON MASK AND EYES LIT UP. THEY
18 WERE PINK AND HE USED TO PUT THAT ON AND KIND OF PEEP
19 AROUND CORNERS AT THE CHILDREN AND TIFFANY, AT AGE OF TWO
20 AND A HALF, ACTUALLY SHE WAS ONLY JUST TWO, SHE HAD JUST
21 TURNED TWO, KNEW THAT THAT WAS HER DADDY'S BODY, BUT THAT
22 SOMETHING WAS ON HIS HEAD AND SHE WENT AND SHE GRABBED THAT
23 MASK AND SHE PULLED ON IT AND TUGGED ON IT AND AS A RESULT,
24 SHE GRABBED GARY'S HAIR AND SHE WRESTLED HIM TO THE GROUND
25 AND HE WAS THE ONE PLEADING FOR MERCY. HELP, GET HER OFF

1 OF ME, GET HER OFF OF ME. AND THE TWINS REMEMBER THAT.

2 MORGAN AND DUBOSE REMEMBER FISHING TRIPS AND
3 GOING TO THE MOUNTAINS AND HELPING THEIR DADDY WORK ON CARS
4 AND THINGS LIKE THAT. AND THOUGH THEY WILL NOT BE ABLE TO
5 BUILD ANYMORE MEMORIES OF THAT SORT WITH HIM, I WANT THEM
6 TO CHERISH THOSE MEMORIES, REMEMBER THAT THE TIME THAT
7 THEIR DADDY HAD WITH THEM WAS QUALITY TIME, THAT HE WAS
8 ABLE TO SHARE A PIECE OF HIMSELF WITH THEM AND I WANT THEM
9 TO BE ABLE TO SHARE PIECES OF THEIR LIVES WITH THEIR DADDY.

10 Q OKAY. NOW TELL ME HOW MUCH TIME GARY DUBOSE TERRY
11 SPENT WITH YOU AND THE CHILDREN WHEN HE WAS NOT
12 INCARCERATED?

13 A WE WERE MARRIED FOR NINE YEARS. WE HAD OUR
14 ANNIVERSARY IN JUNE OF THIS YEAR. THE TOTAL NUMBER OF DAYS
15 AND NIGHTS THAT GARY SPENT WITH US WAS ABOUT FOUR YEARS.

16 Q HE STAYED WITH YOU AND THE CHILDREN CONTINUOUSLY FOUR
17 YEARS?

18 A THAT WAS OFF AND ON THROUGHOUT PERIODS OF
19 INCARCERATION.

20 Q THAT'S WHEN HE WAS NOT SPENDING---

21 A HE SPENT---

22 Q ---THE TIME WITH -- WELL---

23 A THE TIME THAT HE SPENT WITH DIANNE GIBSON MAY HAVE
24 BEEN A NIGHT HERE AND A NIGHT THERE EXCEPT FOR THE PERIOD
25 FROM AUGUST OF 1993 -- EXCUSE ME, OCTOBER OF 1993, UNTIL

1 AUGUST OF 1994.

2 THE COURT: COULD I GET YOU TO SLIDE BACK JUST A
3 LITTLE BIT FROM THAT MICROPHONE---

4 THE WITNESS: YES, SIR.

5 THE COURT: ---THAT'S THE REASON IT'S POPPING, I
6 THINK.

7 THE WITNESS: OKAY.

8 MR. HUMPHRIES: WHAT ABOUT JULIE BOWMAN?

9 A I HAVE NO KNOWLEDGE OF JULIE BOWMAN OTHER THAN DIANNE
10 CALLED ME ON THE TELEPHONE ONE AFTERNOON AND TOLD ME THAT
11 SHE HAD BEAT UP JULIE BOWMAN.

12 Q I GUESS OSTENSIBLY BECAUSE GARY WAS SEEING JULIE
13 BEHIND DIANNE'S BACK AND SEEING DIANNE BEHIND YOUR BACK?

14 A YES.

15 Q DID GARY PROVIDE SUPPORT FOR YOU AND THE CHILDREN OR
16 -- AND LET ME SAY THIS. I BELIEVE YOU'VE DONE AN EXCELLENT
17 JOB WITH THOSE KIDS---

18 A THANK YOU.

19 Q ---THEY'RE ADORABLE, BUT WHAT ABOUT GARY DUBOSE
20 TERRY? HAS HE PROVIDED ANY FINANCIAL SUPPORT FOR YOU OR
21 THE CHILDREN ON A CONSISTENT BASIS?

22 A NO, NOT CONSISTENT. WHEN HE HAD AN ODD JOB, WHICH IT
23 WAS DIFFICULT FOR HIM TO HOLD BECAUSE OF HIS CHRONIC PAIN,
24 WHEN GARY WAS ABLE TO CONTRIBUTE, HE CONTRIBUTED.

25 Q DID YOU KNOW THAT HE GOT MONEY BOTH FROM JULIE BOWMAN

1 AND DIANNE GIBSON OSTENSIBLY TO BUY DIAPERS AND BABY FOOD
2 FOR YOUR CHILDREN AND SPENT IT ON CRACK? DID YOU KNOW
3 THAT?

4 A YES, I FOUND THAT OUT LATER. NOT AT THE PARTICULAR
5 TIME THAT HE WAS GIVEN THE MONEY FOR THEM.

6 I KNEW ABOUT GARY CRACK'S PROBLEM AND DIANNE'S
7 PART IN THAT AND DOUG FORD'S PART IN THAT BEFORE I TOOK HIM
8 BACK IN. I THOUGHT THAT, PERHAPS, I COULD HELP HIM AND
9 THERE WAS REFERENCE MADE TO MENTAL CARE THAT HE WAS GIVEN
10 AS ONE OF THE CONDITIONS OF HIS RELEASE AFTER SPLITTING
11 WITH DIANNE. I DID HAVE HIM ADMITTED TO CHARTER RIVERS
12 HOSPITAL AND THAT'S SHOWN THAT I DID THAT AND IT'S ON MY
13 INSURANCE RECORDS.

14 Q I'VE GOT THAT RIGHT HERE. LET ME ASK YOU ABOUT THAT
15 NOW THAT YOU MENTIONED IT.

16 DO YOU RECALL PROVIDING TO THE FOLKS AT CHARTER
17 RIVERS A PSYCHOSOCIAL SUMMARY OF GARY DUBOSE TERRY?

18 A I RECALL THAT GARY AND I WENT IN THE EVENING AFTER HE
19 WAS RELEASED FROM LEXINGTON COUNTY AND WERE ASKED NUMEROUS
20 QUESTIONS TOGETHER.

21 Q OKAY. HE WAS IN YOUR PRESENCE WHEN THE QUESTIONS
22 WERE ASKED---

23 A YES.

24 Q ---IS THAT CORRECT?

25 A YES.

1 Q YOU STATED EVEN AT THAT TIME YOU KNEW HE RAN WITH
2 OTHER WOMEN?

3 A YES.

4 Q THAT HE DID USE DRUGS?

5 A YES. THAT'S WHY HE WAS THERE.

6 Q RIGHT. AND THAT HE WAS INVOLVED IN TREATMENT BECAUSE
7 THE JUDGE PRESSURED HIM INTO IT AFTER THAT INCIDENT WITH
8 DIANNE GIBSON AT HER HOUSE?

9 A NO, SIR. I---

10 Q WELL, LET ME GET THIS STRAIGHT---

11 A ---I SPECIFICALLY---

12 Q LET ME GET THIS STRAIGHT. LET ME GET THIS STRAIGHT.

13 YOU DIDN'T -- YOU OR GARY DIDN'T SAY THAT TO THE
14 PERSON TAKING THE SUMMARY---

15 A WE---

16 Q ---AS I STATED IT---

17 A ---NEITHER ONE OF US USED THE WORD PRESSURE.

18 Q OKAY.

19 A IT WAS CONDITIONAL. I ASKED THE JUDGE IF SHE WOULD
20 REDUCE HIS BOND TO AN AFFORDABLE AMOUNT SO THAT I COULD GET
21 HIM TREATMENT AND -- BECAUSE I KNEW HE WOULD NOT GET IT
22 WITHIN THE PRISON SYSTEM.

23 Q OKAY. YOU STATED THAT HE LIES COMPULSIVELY?

24 A I DON'T RECALL USING THE WORD COMPULSIVELY. I SAID
25 THAT HE HAD LIED BEFORE.

1 Q THAT HE -- AND THIS IS IN QUOTES, HE SEEMS TO HAVE NO
2 BOUNDARIES? YOU RECALL SAYING THAT?

3 A I DON'T RECALL SAYING THAT.

4 Q OKAY. IN REGARD TO HIS STATED WEAKNESSES, DO YOU
5 RECALL TALKING ABOUT GENERALLY HIS WEAKNESSES?

6 A THAT INTERVIEW WAS LATE AT NIGHT AND IT HAD BEEN A
7 VERY EMOTIONAL DAY. I DON'T REMEMBER VERY MUCH ABOUT IT
8 OTHER THAN IT WAS AT NIGHT.

9 Q TELL YOU WHAT, LET ME ASK YOU -- LET ME ASK YOU AND
10 YOU TELL ME IF YOU RECALL SAYING THESE THINGS.

11 IN REGARD TO HIS STATED WEAKNESS -- STATED
12 WEAKNESSES, DO YOU REMEMBER TELLING THE PERSON TAKING THE
13 PSYCHOSOCIAL SUMMARY THAT HE WAS VERY MANIPULATIVE?

14 A I DON'T RECALL THAT.

15 Q THAT HE HAD A VIOLENT TEMPER?

16 A THAT HE HAD A TEMPER, YES.

17 Q THAT HE LIKED HAVING HIS OWN WAY?

18 A THAT HE WAS SPOILED, YES.

19 Q THAT HE IS VERY IMMATURE AND DEPENDENT?

20 A YES.

21 Q THAT HE DOES NOT SEE HIMSELF AS AN ADDICT OR AN
22 ALCOHOLIC?

23 A YES.

24 Q IN THAT HE SHOWS NO CONCERN FOR THE RIGHTS OR NEEDS
25 OF YOU, HIS WIFE, OR OTHERS?

1 A I DON'T RECALL THAT.

2 Q YOU DON'T RECALL THAT?

3 A NO.

4 Q LET ME ASK YOU THIS. IN REGARD TO THAT ADMISSION, DO
5 YOU KNOW OR DID YOU KNOW THAT WHILE THERE HE REFUSED A.A.
6 TREATMENT?

7 A YES, I DO.

8 Q DO YOU---

9 A HE DID NOT SEE THAT HE HAD A PROBLEM.

10 Q DO YOU KNOW OR DID YOU KNOW THEN THAT UPON DISCHARGE,
11 HE WAS ASKED ABOUT THE FOLLOW-UP A.A. MEETINGS AND HE SAID
12 HE HAD NO NEED OF THEM?

13 A I DON'T RECALL -- I DON'T HAVE ANY KNOWLEDGE THAT HE
14 SAID THAT TO THEM, BUT I KNOW THAT HE DID NOT GO TO ANY
15 FOLLOW-UP MEETINGS. HE STILL DENIED THAT HE HAD A PROBLEM
16 AS MANY ADDICTS DO UNTIL THEY HIT THAT ROCK BOTTOM.

17 Q AND -- AND HE, IN FACT, DID NOT ENGAGE IN ANY OR WAS
18 NOT ACTIVE IN ANY AFTERCARE FOLLOW-UP?

19 A THAT'S CORRECT.

20 Q DID YOU THEN KNOW OR DO YOU NOW KNOW THAT GARY DUBOSE
21 TERRY HIS ENTIRE PURPOSE FOR GOING TO CHARTER RIVERS WAS TO
22 STAY OUT OF JAIL AND STATED THAT WHILE THERE TO THE HEALTH
23 PROFESSIONALS?

24 A I WAS NOT THERE WITH HIM AT THE TIME. I ONLY HAD ONE
25 OCCASION TO VISIT HIM WHILE HE WAS THERE. SO I DON'T KNOW

1 WHAT HE MAY HAVE TOLD THEM.

2 Q OKAY. AND YOU SAY THAT YOU AND GARY TERRY REUNITED
3 IN AUGUST OF '94?

4 A YES.

5 Q THAT WOULD HAVE BEEN AFTER---

6 A AFTER---

7 Q ---DIANNE REFUSED TO SEE HIM?

8 A RIGHT. WELL, THAT'S HER VIEWPOINT.

9 Q YES, MA'AM.

10 A HIS VIEWPOINT WAS THAT HE WAS LEAVING HER.

11 Q OF COURSE, THAT'S NOT ENTIRELY CONSISTENT WITH THAT
12 INCIDENT THAT HAPPENED THAT NIGHT THOUGH, IS IT?

13 A I WAS NOT THERE.

14 Q I UNDERSTAND.

15 A THANK YOU, MA'AM.

16 THE COURT: REDIRECT.

17 MS. FULLWOOD: NO, YOUR HONOR?

18 THE COURT: THANK YOU, MA'AM.

19 YOU MAY STEP DOWN, MS. TERRY.

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

22 THE COURT: NEXT WITNESS.

23 MS. FULLWOOD: YOUR HONOR, THE DEFENSE CALLS JAN
24 VOGELSANG.

25 JAN VOGELSANG,

1 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: WILL YOU PLEASE STATE YOUR FULL NAME
3 AND SPELL YOUR LAST NAME?

4 THE WITNESS: MY NAME IS JAN VOGELSANG, V AS IN
5 VICTOR, O-G-E-L-S-A-N-G.

6 DIRECT EXAMINATION

7 BY MS. FULLWOOD:

8 Q MS. VOGELSANG, HOW ARE YOU EMPLOYED?

9 A I AM A PSYCHOTHERAPIST IN GREENVILLE, SOUTH CAROLINA.

10 Q OKAY. AND WHEN YOU SAY PSYCHOTHERAPIST, ARE YOU
11 EMPLOYED BY ANY AGENCY OR SELF-EMPLOYED OR WHAT?

12 A I'M IN PRIVATE PRACTICE AND I HAVE A SOLO PRACTICE.

13 Q AND WHAT DOES YOUR PRIVATE PRACTICE ENTAIL?

14 A BASICALLY IT IS CONDUCTING PSYCHOSOCIAL ASSESSMENTS,
15 WORKING WITH CLIENTS WHO HAVE EITHER EMOTIONAL OR
16 BEHAVIORAL PROBLEMS. I MAY WORK WITH INDIVIDUALS, FAMILIES
17 OR GROUPS.

18 Q DO YOU HAVE EXPERIENCE AND EXPERTISE IN ANY SPECIAL
19 AREA OF PSYCHOTHERAPY?

20 A YES. MY BACKGROUND AND MY DEGREES ARE IN SOCIAL
21 WORK. I'M A CLINICAL SOCIAL WORKER PRACTICING PRIVATELY AS
22 A PSYCHOTHERAPIST AND IN THAT CAPACITY I HAVE HAD MOST OF
23 MY EXPERIENCE IN FAMILY SYSTEMS IN TRAUMA, NEUROLOGICAL
24 PROBLEMS AND MEDICAL CONDITIONS SUCH AS LEARNING
25 DISABILITIES AND A.D.D. AND ALSO IN CONDUCTING PSYCHOSOCIAL

1 ASSESSMENTS BOTH FOR MY PRACTICE AND FOR THE COURT.

2 Q DO YOU HOLD LICENSES OR ANY CERTIFICATIONS?

3 A I'M LICENSED BY THE STATE OF SOUTH CAROLINA
4 DEPARTMENT OF LICENSING AND -- LABOR AND LICENSING. I HAVE
5 A BOARD CERTIFICATION FROM THE AMERICAN BOARD OF EXAMINERS
6 IN CLINICAL SOCIAL WORK. I ALSO HAVE A BOARD CERTIFICATION
7 BY THE ACADEMY OF CERTIFIED SOCIAL WORKERS. I HAVE A
8 CERTIFICATION FROM THE NATIONAL PROFESSIONAL CONSORTIUM AND
9 ATTENTION DEFICIT DISORDERS, ALCOHOL AND DRUG STUDIES AND A
10 COUPLE OTHERS AS WELL.

11 Q ALL RIGHT. DO YOU HOLD ANY APPOINTMENTS?

12 A I HAVE FOR THE PAST EIGHT YEARS. I RECENTLY FINISHED
13 MY TERM AND HAVE HELD AN APPOINTMENT WITH THE CRIME VICTIMS
14 ADVISORY BOARD OF SOUTH CAROLINA.

15 Q AND COULD YOU BRIEFLY TELL THE JURY ABOUT WHAT THAT
16 WORK OR APPOINTMENT ENTAILS?

17 A THIS BOARD WAS SET UP TO COMPENSATE VICTIMS OF CRIME
18 FOR WAGES, MEDICAL EXPENSES, BURIAL EXPENSES AND
19 COUNSELING. IT IS SET UP IN SUCH A WAY THAT INVESTIGATORS
20 MEET WITH VICTIMS AND DETERMINE WHETHER OR NOT THEY SHOULD
21 BE COMPENSATED IF THEY HAVE BEEN THE VICTIM OF A CRIME AND
22 THEN THE BOARD COMPENSATES THEM AGAIN FOR LOSS WAGES OR
23 MEDICAL, WHATEVER IT IS THEY NEED.

24 THERE ARE TIMES WHEN THE INVESTIGATORS ON THE
25 BOARD DENY A CLAIM AND I SERVED ON A PANEL ALONG WITH -- AT

1 DIFFERENT TIMES BUSINESSMEN, JUDGES, LAWYERS, POLICE CHIEF
2 FROM CHARLESTON TO HEAR THAT COMPLAINT AND TO DECIDE
3 WHETHER OR NOT THEY HAD A LEGITIMATE CLAIM FOR COMPENSATION
4 AND ABOUT 98 -- 99 PERCENT OF THE TIME WE REVERSED THE
5 INVESTIGATORS AND WE GAVE THE COMPENSATION TO THE VICTIM.

6 Q HAVE YOU -- SO YOU HAVE WORKED WITH CRIME VICTIMS
7 THROUGH THE COURSE OF YOUR CAREER?

8 A YES.

9 Q HAVE YOU ALSO WORKED WITH CRIMINAL OFFENDERS DURING
10 THE COURSE OF YOUR CAREER?

11 A YES, I HAVE.

12 Q IS THAT NOT A CONFLICT OF INTEREST FOR YOU?

13 A ACTUALLY, IT'S PART OF THE HISTORY OF SOCIAL WORKER.
14 IN OUR TRAINING, WE ARE TRAINED TO WORK WITH BOTH. THERE
15 ARE SOCIAL WORKERS IN CORRECTIONS. EVEN IN MY PRIVATE
16 PRACTICE, I GET REFERRED OFFENDERS FROM D.S.S. AND FROM THE
17 COURT. SO IT'S JUST A NORMAL PART OF BEING A SOCIAL WORKER
18 TO WORK WITH BOTH.

19 Q YOU GET REFERRALS FOR BOTH VICTIMS AND FOR OFFENDERS?

20 A THAT'S CORRECT. MOSTLY VICTIMS, BUT, CERTAINLY, SOME
21 OFFENDERS AS WELL.

22 Q MS. VOGELSANG, DO YOU HAVE ANY HOSPITAL AFFILIATIONS?

23 A SOME -- AFFILIATED WITH CHARTER HOSPITAL OF
24 GREENVILLE AND MARSHALL PICKENS HOSPITAL OF GREENVILLE.
25 BOTH OF THOSE ARE PSYCHIATRIC HOSPITALS.

1 Q OKAY. AND WHAT DOES YOUR AFFILIATION WITH THE
2 HOSPITALS INVOLVE?

3 A IF I REFER ONE OF MY PRIVATE CLIENTS TO THE HOSPITAL
4 FOR PSYCHIATRIC TREATMENT, I AM ALLOWED TO GO TO THE
5 HOSPITAL AND DO TREATMENT WITH MY CLIENT AFTER THEY BECOME
6 A PATIENT. I AM ALLOWED TO READ THEIR CHARTS, TO WRITE IN
7 THEIR CHARTS, TO CONFER WITH THEIR DOCTORS AND THE STAFF
8 AND ALSO BE PART OF THE TREATMENT TEAM WHEN THEY ARE
9 DISCHARGED FROM THE HOSPITAL.

10 Q OKAY. SO -- SO YOU AT TIMES REFER YOUR CLIENTS TO
11 THE HOSPITAL?

12 A YES.

13 Q OKAY. MS. VOGELSANG, TELL THE JURY A LITTLE BIT
14 ABOUT YOUR WORK EXPERIENCE IN THE FIELD OF SOCIAL WORK.

15 A AFTER I COMPLETED MY INTERNSHIP AT THE UNIVERSITY OF
16 SOUTH CAROLINA AT GREENVILLE MENTAL HEALTH, WILLIAM HALL
17 INSTITUTE AND THEN THE VETERANS ADMINISTRATION HOSPITAL IN
18 SALISBURY, NORTH CAROLINA, I HAD MY FIRST JOB IN WATTS IN
19 LOS ANGELES IN THE SOUTH CENTRAL NEIGHBORHOOD THERE. I WAS
20 A CASE WORKER. I WORKED WITH ABUSED CHILDREN AND WITH
21 FAMILIES THAT WERE HAVING PROBLEMS WITH FAMILY VIOLENCE.
22 ALSO, CHILDREN THAT HAD BEEN SEXUALLY ABUSED.

23 WHILE I WAS THERE, I ALSO HELPED TO START A GROUP
24 HOME. THERE WAS A PROBLEM IN LOS ANGELES WITH YOUNG BOYS
25 WHO HAD BEEN SEXUALLY -- TEEN-AGE BOYS WHO HAD BEEN

1 SEXUALLY ABUSED PROSTITUTING AND SO WE STARTED A SPECIAL
2 HOME FOR THEM BECAUSE MOST OF THE GROUP HOMES WOULD NOT
3 ACCEPT THEM.

4 AFTER THAT, I DID SOME PRIVATE PRACTICE IN SANTA
5 MONICA.

6 WHEN I RETURNED TO SOUTH CAROLINA, MY FIRST JOB
7 WHEN I CAME BACK HERE WAS IN COLUMBIA AT BAPTIST MEDICAL
8 CENTER AND I WAS THE MATERNAL CHILD CARE SUPERVISOR ON THE
9 PEDIATRIC WARD AND THEN THE PRENATAL WARD. ALSO, I WAS THE
10 EMERGENCY ROOM SUPERVISOR. NOT SUPERVISOR, THE EMERGENCY
11 ROOM SOCIAL WORKER.

12 WHEN I CAME HOME TO GREENVILLE, WHICH IS WHERE I
13 GREW UP, I WENT WITH A UNITED WAY AGENCY CALLED FAMILY
14 SERVICE GREENVILLE AND IN THAT CAPACITY WAS A PROGRAM
15 DIRECTOR FOR THEIR DOMESTIC VIOLENCE PROGRAM AND I WAS HEAD
16 OF THEIR SHELTER FOR BATTERED WOMEN.

17 IN EACH OF THESE CAPACITIES FROM THE VERY
18 BEGINNING, FROM WORKING IN WATTS, I HAVE BEEN CALLED UPON
19 FREQUENTLY TO TESTIFY IN COURT IN DIFFERENT KINDS OF CASES.

20 IN 1986, I WENT INTO PRIVATE PRACTICE WITH
21 BEHAVIORAL CONSULTANTS IN GREENVILLE. THIS WAS A GROUP OF
22 PSYCHIATRISTS, PSYCHOLOGISTS AND SOCIAL WORKERS DOING VERY
23 MUCH THE SAME THING I'M DOING NOW. WE AFFILIATED WITH
24 PSYCHIATRIC ASSOCIATES. I CONTINUED TO CONDUCT
25 PSYCHOSOCIAL ASSESSMENTS TO TESTIFY IN VARIOUS KINDS OF

1 CASES AND IN '93, I STARTED MY SOLO PRACTICE AND, AGAIN,
2 I'M DOING THE SAME THING. I CONTINUE TO WORK WITH THE
3 DOCTORS AND PSYCHOLOGISTS IN GREENVILLE.

4 Q OKAY. NOW, AS AN M.S.W., HAS YOUR EDUCATION TAUGHT
5 YOU A PROCEDURE THAT'S ROUTINELY ACCEPTED IN THE COURTS?

6 A YES.

7 Q OKAY. CAN YOU TELL US ABOUT THAT?

8 A PART OF -- AN INTEGRAL PART OF SOCIAL WORK TRAINING
9 IS LEARNING TO CONDUCT PSYCHOSOCIAL ASSESSMENTS AND THIS IS
10 A METHOD FOR GATHERING EXTENSIVE INFORMATION ABOUT AN
11 INDIVIDUAL. IT IS GENERALLY ACCEPTED -- IN FACT, IT'S
12 UNIVERSALLY ACCEPTED IN SOCIAL WORK PRACTICE AS BEING A
13 VERY COMPREHENSIVE WAY OF LOOKING AT PEOPLE.

14 SOCIAL WORKERS TAKE A FAMILY SYSTEMS APPROACH AND
15 AN ENVIRONMENTAL AND LEARNING APPROACH. WE INCLUDE
16 INFORMATION ON MEDICAL PROBLEMS, GENETIC PROBLEMS, BUT
17 BASICALLY, WE ARE PUTTING ALL OF THAT TOGETHER TO LOOK AT
18 WHAT CAUSES A PERSON TO END UP IN THE CIRCUMSTANCES THEY
19 ARE IN.

20 IN MY PRIVATE PRACTICE, I USE THAT INFORMATION TO
21 DO A TREATMENT PLAN OR TO GATHER RESOURCES FOR MY CLIENT.

22 FOR COURT GENERALLY, I'M ASKED TO CONDUCT IT AS A
23 WAY OF GIVING INFORMATION TO THE COURT FROM A VERY BROAD
24 PERSPECTIVE TO HELP THE COURT IN MAKING DECISIONS USUALLY
25 ABOUT SENTENCING.

1 Q ALL RIGHT. AND YOU SAY YOU EXAMINE THE FAMILY
2 SYSTEM?

3 A YES.

4 Q ALL RIGHT. AND HOW DO YOU GO ABOUT DOING THAT?

5 A THE PSYCHOSOCIAL ASSESSMENT HAS SEVERAL COMPONENTS.
6 ONE IS DOING INTERVIEWS. USUALLY WITH FAMILY MEMBERS OR
7 ANYONE THAT MIGHT HAVE BEEN SIGNIFICANT TO THE PEOPLE YOU
8 ARE EVALUATING. IT COULD BE SCHOOL TEACHERS. IT COULD BE
9 MINISTERS, DOCTORS, NEIGHBORS, FRIENDS. AS MANY PEOPLE AS
10 YOU ARE ABLE TO LOCATE AND WHO ARE WILLING TO SHARE
11 INFORMATION.

12 THE SECOND PART IS TO GATHER RECORDS ON THAT
13 PERSON AND SOMETIMES ON THEIR FAMILY MEMBERS AS WELL. IT'S
14 OFTEN THE CASE THAT I WILL HAVE SOMEONE ASSIST ME IN
15 GATHERING THOSE RECORDS AND AS THEY COME IN, I READ AND
16 EVALUATE THE RECORDS.

17 THE THIRD COMPONENT IS TO TALK TO OTHER PEOPLE
18 WHO HAVE DONE ASSESSMENTS. FOR EXAMPLE, IF YOUR CLIENT HAS
19 BEEN EVALUATED BY SOMEONE ELSE, THEN YOU WOULD LOOK AT
20 THEIR RECORDS AND THEIR REPORTS AND SEE WHAT THEY HAD TO
21 SAY ABOUT THAT PERSON AND ALSO TO LOOK AT ANY WORK THAT'S
22 BEEN DONE BY RECOGNIZED EXPERTS IN THE FIELD THAT RELATE TO
23 THE INFORMATION YOU ARE GETTING ON THAT PERSON.

24 FINALLY, THE LAST COMPONENT IS TO GO TO THE
25 RESEARCH AND THE LITERATURE AND TO SEE IF THERE HAS BEEN --

1 IF THERE HAVE BEEN ANY STUDIES OR ANYTHING WRITTEN ABOUT
2 WHAT IT IS YOU ARE LEARNING ABOUT THIS PARTICULAR FAMILY
3 AND THE PATTERNS OF BEHAVIOR IN THEIR FAMILY.

4 AND THEN OFTEN FOR COURT, THE LAST COMPONENT IS
5 TO HAVE VISUAL AIDS THAT PULL ALL OF THIS INFORMATION
6 TOGETHER BECAUSE IT'S EXTENSIVE TO GO THROUGH ALL OF IT.
7 IT WOULD KEEP THE COURTROOM GOING FOR TWO OR THREE DAYS.
8 SO THE VISUAL AIDS ARE A WAY OF GIVING A MORE EFFICIENT
9 VIEW OF WHAT YOU FOUND.

10 Q ALL RIGHT. YOU MENTIONED THAT ONE OF THE COMPONENTS
11 WAS TO EXAMINE RECORDS?

12 A YES.

13 Q CAN YOU TELL US WHAT TYPE OF RECORDS THAT YOU
14 EXAMINED?

15 A TYPICALLY, WE WILL LOOK FOR BIRTH RECORDS AND OTHER
16 KIND OF MEDICAL RECORDS, SCHOOL RECORDS. IN SOME CASES,
17 MILITARY RECORDS, MENTAL HEALTH, DEATH CERTIFICATES, ANY
18 KIND OF PAPER, JUVENILE RECORDS, JAIL RECORDS, PRISON
19 RECORDS, ANY KIND OF PAPER THAT MIGHT HAVE BEEN GENERATED
20 BY THE PERSON YOU ARE ASSESSING AND THEIR FAMILY MEMBERS AS
21 WELL.

22 Q SO YOU LOOK AT THE PERSON YOU ARE ASSESSING RECORDS
23 AS WELL AS THOSE OF HIS OR HER FAMILY MEMBERS?

24 A THAT'S CORRECT.

25 Q ALL RIGHT. AND NOW, YOU MENTIONED VISUAL AIDS. DID

1 YOU BRING SOME TO COURT TODAY?

2 A YES.

3 Q AND WE ARE GOING TO TALK ABOUT THEM LATER?

4 A YES.

5 Q ALL RIGHT. SO ONCE YOU GET ALL OF THIS INFORMATION,
6 BASICALLY, WHAT IS IT THAT YOU ARE DOING WITH IT?

7 A WELL, YOU ARE COMPILING THE INFORMATION FROM ALL OF
8 THESE SOURCES AND ONE OF THE THINGS YOU'RE DOING, PERHAPS,
9 THE MOST IMPORTANT THING IS LOOKING FOR CONSISTENCY OF
10 INFORMATION.

11 IN SOCIAL WORK, WE VALUE THE INFORMATION WE GET
12 FROM OUR CLIENTS, BUT WE KNOW THAT PEOPLE'S PERCEPTIONS OF
13 THEIR LIVES AND OF THEIR BEHAVIOR OFTEN ARE NOT ACCURATE.
14 AND SO WE TRY TO GET RECORDS AND THE PERCEPTIONS OF OTHER
15 PEOPLE AND TO LOOK AT WHAT OTHERS HAVE SAID ABOUT THIS
16 PERSON AS WELL AND ABOUT THE FAMILY IN ORDER TO DO AN
17 ASSESSMENT AND TO DRAW SOME CONCLUSIONS.

18 Q DO PSYCHIATRISTS OR PSYCHOLOGISTS DO THESE TYPES OF
19 ASSESSMENT?

20 A NO, THEY DON'T DO THE CLINICAL SOCIAL WORK; THE
21 PSYCHOSOCIAL ASSESSMENT THAT CLINICAL SOCIAL WORKERS ARE
22 TRAINED TO DO.

23 Q OKAY. DO PSYCHIATRISTS AND PSYCHOLOGISTS ROUTINELY
24 RELY ON CLINICAL SOCIAL WORKERS TO COMPILE THIS TYPE OF
25 INFORMATION?

1 A YES, THEY DO.

2 Q ALL RIGHT. AND NOW, WHAT TYPE OF TRAINING DOES A
3 SOCIAL WORKER NEED TO BE ABLE TO DO THIS TYPE OF
4 ASSESSMENT?

5 A YOU HAVE TO HAVE A MASTERS DEGREE IN SOCIAL WORKER OR
6 A DOCTORATE IN SOCIAL WORK.

7 Q OKAY. AND YOU HAVE A MASTERS DEGREE IN SOCIAL WORK?

8 A YES. FROM THE UNIVERSITY OF SOUTH CAROLINA.

9 Q AND YOU HAVE BEEN PRACTICING SOCIAL WORK HOW LONG?

10 A FOR 18 YEARS.

11 Q OKAY. MS. VOGELSANG, HAVE YOU BEEN QUALIFIED TO
12 TESTIFY AS AN EXPERT FORENSICS SOCIAL WORKER IN THE COURTS
13 OF THIS STATE?

14 A YES.

15 Q OKAY. CAN YOU GIVE US AN IDEA ON HOW MANY OCCASIONS?

16 A IN -- IN TERMS OF ALL TYPES OF CASES IN SOUTH
17 CAROLINA ALONE, I WOULD SAY I HAVE TESTIFIED IN EXCESS OR
18 AROUND FIFTY TIMES. I HAVE TESTIFIED IN CALIFORNIA AND
19 OTHER STATES AS WELL.

20 Q AND IN WHAT TYPES OF CASES HAVE YOU TESTIFIED AS AN
21 EXPERT WITNESS?

22 A IN RAPE CASES, SEXUAL ABUSE CASES, CHILD CUSTODY,
23 TERMINATION OF PARENTAL RIGHTS, DEATH PENALTY CASES,
24 HOMICIDE. I'VE TESTIFIED IN EQUITY COURT AND IN WORKERS
25 COMP CASES.

- 1 Q OKAY. SO IT SOUNDS LIKE YOU'VE TESTIFIED IN CIVIL
2 COURT; THAT IS, NOT, YOU KNOW---
- 3 A NOT CRIMINAL.
- 4 Q NOT CRIMINAL COURT---
- 5 A YES.
- 6 Q AND IN CRIMINAL COURT?
- 7 A AND FAMILY, YES..
- 8 Q AND FAMILY COURT?
- 9 A YES.
- 10 Q OKAY. IN YOUR WORK IN THE CRIMINAL FIELD, HAVE YOU
11 ALWAYS TESTIFIED FOR THE DEFENSE OR HAVE YOU TESTIFIED FOR
12 BOTH SIDES?
- 13 A BOTH SIDES.
- 14 Q BOTH SIDES. HAVE YOU TESTIFIED IN DEATH PENALTY
15 CASES BEFORE?
- 16 A YES, I HAVE.
- 17 Q OKAY. HAVE YOU EVER TURNED A CASE LIKE THIS DOWN?
- 18 A YES, I HAVE.
- 19 Q OKAY. WHY?
- 20 A THE TIME REQUIRED TO CONDUCT A PSYCHOSOCIAL
21 ASSESSMENT IN ANY CASE, BUT PARTICULARLY WHEN YOU ARE IN A
22 CRIMINAL CASE, IT IS REALLY EXTENSIVE AND IN ORDER TO DO A
23 THOROUGH JOB, YOU REALLY HAVE TO SET ASIDE A GREAT DEAL OF
24 TIME.
- 25 IT WOULD BE DIFFICULT TO DO VERY MANY OF THESE.

1 IN OTHER WORDS, THIS ISN'T SOMETHING YOU COULD DO ONCE A
2 WEEK. SO UNLESS I HAVE BEEN ABLE TO DEVOTE THE TIME TO A
3 CASE, BEEN ABLE TO GATHER ENOUGH INFORMATION THAT I AM
4 SATISFIED THAT I HAVE INFORMATION THAT I CAN SHARE WITH THE
5 COURT AND THAT IT WILL HELP THE COURT WITH THEIR DECISION
6 MAKING, THEN I WILL NOT AGREE TO DO ONE OF THESE CASES.

7 Q OKAY. YOUR HONOR, I WOULD ASK THAT MS. VOGELSANG BE
8 QUALIFIED AS AN EXPERT IN THE FIELD OF SOCIAL WORK,
9 SPECIFICALLY IN THE AREA OF CONDUCTING PSYCHOSOCIAL
10 ASSESSMENTS.

11 THE COURT: QUESTIONS CONCERNING HER
12 QUALIFICATIONS?

13 MR. HUMPHRIES: WE DON'T HAVE A POSITION ON IT.

14 THE COURT: ALL RIGHT.

15 I'LL QUALIFY HER AS AN EXPERT IN THE FIELD OF
16 SOCIAL WORK, IN PARTICULAR PSYCHOSOCIAL ASSESSMENTS.

17 MS. FULLWOOD: THANK YOU, YOUR HONOR.

18 MS. VOGELSANG, DID I ASK YOU TO CONDUCT A
19 PSYCHOSOCIAL ASSESSMENT OF GARY TERRY?

20 THE WITNESS: YES, YOU DID.

21 Q OKAY. AND YOU JUST WENT THROUGH DESCRIBING THE STEPS
22 OF THE PROCEDURES, THE COMPONENTS OF CONDUCTING THAT TYPE
23 OF ASSESSMENT. DID YOU DO THAT IN THIS CASE?

24 A YES.

25 Q OKAY. CAN YOU TELL ME IN THIS CASE WHO YOU

1 INTERVIEWED IN CONNECTION WITH THE ASSESSMENT?

2 A YES.

3 I INTERVIEWED GARY ON FOUR OCCASIONS WHEN I DID
4 AN INTERVIEW AND KEPT -- AND DID NOTES. I BELIEVE THAT
5 THERE WAS A FIFTH OCCASION WHEN I VISITED WITH HIM BRIEFLY.
6 I DON'T HAVE THE DATE, BUT I SAW HIM JULY 9TH, AUGUST 6TH,
7 AUGUST 18TH AND SEPTEMBER THE 16TH.

8 I INTERVIEWED HIS WIFE, LOU ANN, ON SEPTEMBER THE
9 4TH AND SEPTEMBER THE 10TH.

10 I INTERVIEWED HIS MOTHER PATRICIA ON JULY 10TH,
11 AUGUST 18TH, SEPTEMBER 4TH, SEPTEMBER 10TH AND AUGUST THE
12 6TH.

13 I INTERVIEWED HIS SISTER, LANIE, ON AUGUST THE
14 6TH.

15 I INTERVIEWED HIS FATHER ON THE SAME DATES THAT I
16 JUST READ FOR HIS MOTHER, BUT ON TWO OCCASIONS SAW THEM
17 SEPARATELY.

18 I INTERVIEWED HIS BROTHER BILLY ON AUGUST 18TH;
19 HIS SISTER FAYE ON SEPTEMBER 10TH; HIS BROTHER JOHNNY ON
20 SEPTEMBER 4TH; JOHNNY'S WIFE FRANKIE ON SEPTEMBER 4TH; HIS
21 FORMER GIRLFRIEND RHONDA ON SEPTEMBER 4TH; HIS
22 SISTER-IN-LAW PATTY ON AUGUST THE 6TH; HIS EX-WIFE TAMMY ON
23 SEPTEMBER 4TH; TWO OF HIS SONS, DUBOSE AND MORGAN ON
24 SEPTEMBER 4TH, SEPTEMBER 10TH; HIS DAUGHTER ASHLEY ON
25 AUGUST THE 6TH.

1 I MADE AN ATTEMPT TO SEE DIANNE GIBSON. I DID
2 TALK TO HER BROTHER AND HUSBAND AND WAS TOLD THAT I WOULD
3 NOT BE ABLE TO SEE HER.

4 I INTERVIEWED GARY'S AUNT MARIE STEEL ON AUGUST
5 THE 18TH.

6 BY TELEPHONE, I TALKED TO LOUISE MAULDIN, WHO IS
7 A GREAT-AUNT ON SEPTEMBER 17TH AND SEPTEMBER 18TH; HIS
8 GREAT-UNCLE CLYDE ON SEPTEMBER 16TH; HIS AUNT MELVA
9 REGISTER ON SEPTEMBER 18TH AND HIS UNCLE ON SEPTEMBER 18TH.

10 THERE WERE ATTEMPTS TO TALK TO OTHER PEOPLE. I
11 ASKED AN ASSISTANT IN THE P.D. OFFICE TO TRY TO REACH SOME
12 PEOPLE FOR ME AND THERE WERE ATTEMPTS THAT -- UP TO AROUND
13 THIRTY SCHOOL TEACHERS AND NO ONE REMEMBERED GARY. SHE
14 TOOK PICTURES BY TO SOME OF THEM AND THEY DID NOT REMEMBER.

15 AS WELL, THERE WERE ATTEMPTS MADE TO ABOUT, I
16 WOULD SAY TWENTY FORMER EMPLOYEES. SOME REMEMBERED HIM AND
17 SOME DID NOT. A COUPLE SAID THAT HE DID WORK THERE BRIEFLY
18 AND THAT WAS -- THAT WAS THE EXTENT OF THE INTERVIEWS.

19 Q WHAT DOCUMENTS DID YOU REVIEW IN CONNECTION WITH THIS
20 ASSESSMENT?

21 A GARY MOTHER'S, PATRICIA TERRY, KEPT DIARIES FOR A
22 NUMBER OF YEARS AND SO I REVIEWED ABOUT FOUR YEARS OF THOSE
23 DIARIES. THEY WENT FROM THE TIME GARY WAS ABOUT
24 12-YEARS-OLD UNTIL THE TIME HE WAS ABOUT -- WELL, AT LEAST,
25 UNTIL THE TIME PAST HE WAS ARRESTED FOR THIS CRIME.

1 I SAW SCHOOL RECORDS ON HIS MOTHER AND FATHER,
2 ALL HIS BROTHERS AND SISTERS. I SAW SCHOOL RECORDS ON
3 OTHER RELATIVES AS WELL. JASON TERRY, MIRANDA TERRY,
4 MORGAN TERRY, ASHLEY HOBBS, DUBOSE TERRY, RAY TERRY.

5 I SAW D.S.S. RECORDS ON HIS WIFE LOU ANN. I SAW
6 THE RECORD THAT MENTIONED GARY -- THE D.S.S. RECORD THAT
7 MENTIONED GARY AS WELL.

8 THE D.S.S. RECORDS ON HIS BROTHER BILLY, HIS
9 BROTHER JOHNNY, RECORDS ON OR DOCUMENTS ON TWO OF BILLY'S
10 SONS, RAY AND ROBERT, AND THE CUSTODY PAPERS ON HIS SISTER,
11 FAYE.

12 OF COURSE, I REVIEWED GARY'S CORRECTIONS RECORDS,
13 THE TIME THAT HE SPENT IN PRISON, HIS -- THE PRIORS ON HIM,
14 HIS BROTHER -- AND HIS TWO BROTHERS AND TWO OF HIS UNCLES,
15 HIS MEDICAL RECORDS, HIS BROTHERS' MEDICAL RECORDS AND HIS
16 PARENTS' MEDICAL RECORDS.

17 I SAW MENTAL HEALTH AND PSYCHO -- OR
18 PSYCHO-EVALUATIONS ON GARY, HIS SISTER FAYE, HIS BROTHER
19 JOHNNY AND NIECES AND NEPHEWS, APRIL, PAMELA, CHRIS AND
20 BILLY.

21 I ALSO SAW THE SCHOOL PSYCHOSOCIAL EDUCATION
22 EVALUATIONS ON HIS SON ASHLEY AND HIS -- HIS SON JEFFREY,
23 HIS DAUGHTER ASHLEY.

24 I READ THE REPORTS OF THE CRIME AND LOOKED AT THE
25 CRIME PHOTOGRAPHS. I SAW THE SPECT SCAN REPORT FROM THE

1 RADIOLOGIST.

2 THERE WAS A STATEMENT FROM DR. JIM STEEL ABOUT
3 HIS TREATMENT OF BILL'S -- OF GARY'S FATHER BILL.

4 I SAW MARRIAGE AND BIRTH CERTIFICATES, SOME --
5 SOME CHEMICAL REPORTS.

6 I SAW JUST A SMALL SECTION OF GARY'S CONFESSION
7 THAT WAS ON TAPE AND, OF COURSE, REVIEWED SOME RESEARCH AND
8 SOME LITERATURE THAT WOULD RELATE TO GARY'S FAMILY.

9 Q ALL RIGHT. AND DID YOU CONSULT WITH ANY OTHER
10 EXPERTS IN CONNECTION WITH THIS ASSESSMENT?

11 A YES. I SPOKE WITH DR. DONNA WHITE -- WATT. I SPOKE
12 BRIEFLY WITH A DR. BOB DEYSACH AND DR. DAVID BACHMAN.

13 Q ALL RIGHT.

14 MS. VOGELSANG, HAVE YOU DRAWN ANY CONCLUSIONS
15 BASED ON THE WORK THAT YOU DID IN THIS CASE?

16 A BASED ON THE DOCUMENTS I GATHERED, BASED ON THE
17 INTERVIEWS AND SOME OF THE OTHER INFORMATION I WAS ABLE TO
18 GET IN THIS CASE, I DREW A NUMBER OF CONCLUSIONS REGARDING
19 GARY AND HIS CHILDHOOD AND HIS FAMILY ENVIRONMENT AND THE
20 IMPACT OF THAT.

21 Q CAN YOU TELL THE JURY BRIEFLY WHAT YOUR CONCLUSIONS
22 ARE AND, I BELIEVE -- DO YOU HAVE A VISUAL AID TO ASSIST
23 THEM IN THIS?

24 A YES.

25 Q ALL RIGHT. AND IS THIS A SUMMARY OF YOUR

1 CONCLUSIONS?

2 A YES, IT IS.

3 Q DID YOU PREPARE THIS?

4 A YES.

5 MS. FULLWOOD: YOUR HONOR, I BELIEVE THIS IS
6 WITHOUT OBJECTION.

7 MR. CHASE: UPON APPROPRIATE TESTIMONY.

8 THE COURT: ALL RIGHT.

9 MS. FULLWOOD: I WOULD LIKE TO HAVE IT MARKED FOR
10 I.D. AT THIS TIME.

11 THE COURT: ALL RIGHT. IT WILL BE DEFENDANT'S
12 EXHIBIT NUMBER SEVEN FOR I.D.

13 (WHEREUPON, DEFENDANT'S EXHIBIT
14 NUMBER SEVEN, CHART/CONCLUSIONS, MARKED FOR IDENTIFICATION
15 ONLY AT THIS TIME.)

16 MS. FULLWOOD: ARE THESE THE FIVE CONCLUSIONS
17 THAT YOU'VE DRAWN BASED UPON YOUR ASSESSMENT?

18 THE WITNESS: YES, THEY ARE.

19 Q OKAY. I GUESS TO START OUT, MS. VOGELSANG, GIVE THE
20 JURY AN OVERVIEW OF YOUR CONCLUSIONS?

21 A THE FIRST CONCLUSION WAS THAT GARY WAS BORN TO
22 PARENTS WHOSE OWN LIVES AND CIRCUMSTANCES OF THEIR LIVES
23 HAD MADE IT VERY DIFFICULT FOR THEM TO PARENT EFFECTIVELY
24 AND FOR THAT REASON, THEY HAD GREAT DIFFICULTY PROVIDING
25 ANYMORE THAN VERY BASIC NEEDS FOR THEIR CHILDREN.

1 ESPECIALLY, AFTER HIS FATHER'S ACCIDENT.

2 GARY DID HAVE SOME SPECIAL DEVELOPMENTAL NEEDS AS
3 WELL AND THERE WERE NO RESOURCES AVAILABLE FOR THOSE AND NO
4 FAMILY MEMBERS CLOSE BY WHO COULD STEP IN AND TAKE OVER OR
5 WHO DID STEP IN AND TAKE OVER TO HELP THIS FAMILY AND TO
6 LEND A LITTLE BIT OF SUPPORT THAT COULD HAVE MADE A
7 DIFFERENCE AND DID, IN FACT, IN ONE CASE IN THE FAMILY MAKE
8 A DIFFERENCE.

9 BUT THE ENVIRONMENT WAS NEGLECTFUL. THIS FAMILY
10 HAD TO PUT ALL ITS ENERGY AND EFFORT INTO SURVIVING
11 FINANCIALLY. ESPECIALLY AFTER MR. TERRY'S ACCIDENT AND
12 THERE WAS LITTLE ENERGY OR TIME LEFT OVER TO GIVE THE
13 CHILDREN THE KIND OF ATTENTION, THE EDUCATIONAL HELP, THE
14 SOCIAL SKILLS IN THE FORMING OF FAMILY RELATIONSHIPS THAT
15 ONE WOULD HOPE TO SEE TO PRODUCE HEALTHY CHILDREN.

16 THERE IS A PATTERN ON ONE SIDE OF THE FAMILY OF
17 ALCOHOL ABUSE. THERE IS EVIDENCE OF -- I PUT EXTENSIVE
18 MEDICAL PROBLEMS, BUT ACTUALLY IT WOULD PROBABLY BE MORE
19 ACCURATE TO SAY SOME RATHER UNUSUAL MEDICAL PROBLEMS AND
20 THEN A PATTERN IN THE IMMEDIATE AND THE EXTENDED FAMILY OF
21 LEARNING AND EMOTIONAL PROBLEMS.

22 GARY HAS A DOCUMENTED HISTORY OF LEARNING
23 DISABILITIES AND CERTAINLY A HISTORY WITH AN ATTENTIVE --
24 ATTENTIVENESS IMPULSIVITY, POOR JUDGMENT, EXPLOSIVE
25 OUTBURSTS AND OTHER BEHAVIORAL INDICATIONS THAT LATER HAVE

1 TURNED OUT TO BE ATTRIBUTABLE TO A MEDICAL CONDITION THAT
2 CAUSES CHANGES IN HIS BEHAVIOR.

3 IT'S INTENSIFIED, CERTAINLY, BY THE USE OF
4 ALCOHOL AND DRUGS. HIS ABILITY TO CONTROL THESE OUTBURSTS,
5 TO RESTRAIN HIS BEHAVIOR, TO FORECAST CONSEQUENCES, TO
6 LEARN FROM EXPERIENCE ARE GREATLY IMPAIRED. THOSE -- WHAT
7 SKILLS HE HAS HAVE DETERIORATED A GOOD BIT OVER TIME. AND
8 THERE HAS NEVER BEEN ANY KIND OF AN APPROPRIATE
9 INTERVENTION AND TREATMENT AT AN EARLY AGE WHEN IT COULD
10 HAVE MADE A DIFFERENCE.

11 AND FINALLY, WITH MEDICAL INTERVENTION, IT IS
12 ENTIRELY POSSIBLE THAT HE WILL BE ABLE TO RESTRAIN HIMSELF,
13 CONTROL HIS BEHAVIOR AND ADAPT TO PRISON LIFE.

14 Q I NOTICE IN ONE OF YOUR CONCLUSIONS YOU SPEAK OF A
15 PATTERN OF MEDICAL PROBLEMS IN HIS FAMILY. MS. VOGELSANG,
16 WHEN YOU ARE LOOKING AT FAMILIES, DO YOU SEE OTHER TYPES OF
17 PATTERNS?

18 A WELL, TYPICALLY, YES. THERE ARE ALL KINDS OF
19 PATTERNS OF BEHAVIOR THAT OCCUR IN FAMILIES. AND JUST AS
20 IF YOU GO TO A DOCTOR FOR THE FIRST TIME, THEY HAVE YOU
21 FILL OUT A FORM AND THEY WANT TO KNOW IF HEART ATTACKS RUN
22 IN YOUR FAMILY OR IF BEING DIABETIC OR STROKES RUN IN YOUR
23 FAMILY. THAT'S BASICALLY WHAT WE ARE DOING WHEN WE LOOK AT
24 PATTERNS IN FAMILIES, BUT WE ARE FOCUSING MORE ON
25 BEHAVIORAL PATTERNS.

1 Q DID YOU SEE ANY PATTERNS OF BEHAVIOR IN GARY'S FAMILY
2 THAT YOU THINK MIGHT HAVE AFFECTED HIM OR HAD AN INFLUENCE
3 ON HIM?

4 A YES. THERE WERE THREE OR FOUR PATTERN THAT SHOWED
5 UP.

6 Q NOW, TO HELP YOU EXPLAIN THESE PATTERNS TO THE JURY,
7 HAVE YOU PREPARED ANOTHER VISUAL AID?

8 A YES, I HAVE.

9 Q OKAY. AND WHAT DO YOU CALL THIS TYPE OF VISUAL AID
10 WE ARE ABOUT TO SHOW THE JURY?

11 A THIS VISUAL AID IS CALLED THE GENOGRAM AND IT IS A
12 SOCIAL WORK TOOL. IT'S BASICALLY A FAMILY TREE. IT JUST
13 SHOWS A LITTLE MORE THE MARRIAGES AND BIRTHS AND DEATHS.
14 IT SHOWS THESE PATTERNS OF BEHAVIOR. IF THERE ARE ANY
15 OUTSTANDING GENETIC OR MEDICAL PROBLEMS FROM THE RECORDS
16 THAT CAN BE DOCUMENTED, THOSE ARE INCLUDED AS WELL.

17 Q AND DID YOU PREPARE A GENOGRAM FOR THE TERRY FAMILY?

18 A YES.

19 MR. CHASE: NO OBJECTION, YOUR HONOR.

20 THE COURT: WITHOUT OBJECTION, IT WILL BE
21 ADMITTED AS DEFENDANT'S NUMBER EIGHT.

22 DO YOU WANT THEM SEPARATELY NUMBERED?

23 MS. FULLWOOD: NO, SIR, JUST ONE EXHIBIT.

24 THE COURT: 8-A AND 8-B.

25 (WHEREUPON, DEFENDANT'S EXHIBIT

1 NUMBER 8-A AND 8-B, GENOGRAM, ENTERED INTO EVIDENCE AT THIS
2 TIME WITHOUT OBJECTION.)

3 MS. FULLWOOD: MS. VOGELSANG, I'M GOING TO LET
4 YOU HELP ME GET THIS SET UP.

5 A (WITNESS COMPLIES.)

6 THE COURT: YOU ARE GOING TO NEED TO KEEP YOUR
7 VOICE UP, MA'AM.

8 THE WITNESS: YES.

9 IF I CAN JUST HOLD THIS ONE.

10 MS. FULLWOOD: ALL RIGHT. ALL RIGHT.

11 MS. VOGELSANG, CAN YOU DESCRIBE WHAT THE LINES
12 AND THE SYMBOLS ON THIS CHART REPRESENT.

13 A THE LINES, OF COURSE, CONNECT VARIOUS FAMILY MEMBERS.
14 THE CIRCLES REPRESENT FEMALES AND THE SQUARES REPRESENT THE
15 MALES---

16 Q OKAY.

17 A ---IN THE FAMILY.

18 Q AND HOW MANY GENERATIONS ARE SHOWN ON THIS CHARTS?

19 A ON THIS CHART, FOUR GENERATIONS ARE SHOWN AND THEN
20 THERE'S AN ADDITIONAL GENERATION ON THIS CHART AND THESE
21 PEOPLE WOULD RUN OFF OF THIS WOMAN RIGHT HERE WHO IS GARY'S
22 MATERNAL GRANDMOTHER(INDICATES). SO THIS WOULD COME UP OFF
23 OF HER LINE RIGHT HERE(INDICATES).

24 Q ALL RIGHT. COULD YOU BRIEFLY GO OVER THE LEGEND IN
25 THE CORNER OF THE TOP CHART?

1 A IF YOU SEE THE COLOR RED ON THE CHART, THAT'S AN
2 INDICATION OF EMOTIONAL BEHAVIORAL OR LEARNING PROBLEMS IN
3 THE FAMILY.

4 IF YOU SEE THE COLOR BLUE, THAT'S AN INDICATION
5 OF ADDICTION, EITHER ALCOHOL OR DRUGS.

6 IF YOU SEE THE COLOR GREEN, THAT'S AN INDICATION
7 OF MEDICAL PROBLEMS AND IN THIS CASE I LIMITED THIS TO
8 PERVASIVE AND SORT OF UNUSUAL MEDICAL PROBLEMS BECAUSE IN
9 MANY CASES, WE DON'T HAVE MEDICALS ON THESE CHARTS.

10 AND THEN FINALLY, THE YELLOW INDICATES ANY PERSON
11 WHO HAS BEEN ENGAGED IN PHYSICAL VIOLENCE AND OR NEGLECT.

12 Q OKAY. WILL YOU SHOW THE JURY WHERE GARY IS ON THIS
13 CHART?

14 A IF YOU LOOK RIGHT DOWN HERE IN THE LEFT-HAND -- THE
15 BOTTOM LEFT-HAND CORNER, THIS IS GARY RIGHT HERE IN THIS
16 SQUARE (INDICATES).

17 Q OKAY. AND, OF COURSE, WE'VE HEARD TESTIMONY THAT
18 HE'S BEEN MARRIED TWICE. WHERE ARE HIS WIVES?

19 A THIS IS HIS FORMER WIFE TAMMY (INDICATES) AND THIS IS
20 HIS CURRENT WIFE LOU ANN AND THIS IS A WOMAN THAT HE HAD A
21 CHILD WITH. HER NAME IS RHONDA HOBBS AND ACTUALLY THIS
22 LINE SHOULD BE BROKEN. A BROKEN LINE WOULD INDICATE THAT
23 THEY WERE NEVER MARRIED.

24 Q OKAY. OF COURSE, YOU'VE GOT HIS CHILDREN UNDER
25 EACH---

1 A YES.

2 Q ---WIFE?

3 A -WITH HIS WIFE TAMMY, THIS LITTLE SQUARE IS HIS SON
4 JEFFREY. AND THERE ARE FOUR CHILDREN WITH LOU ANN. IT'S
5 DUBOSE, MORGAN, TYLER AND TIFFANY AND THEN HIS DAUGHTER
6 WITH RHONDA IS NAMED ASHLEY.

7 Q OKAY. NOW, YOU HAVE SHOWN US GARY. WILL YOU SHOW US
8 THE OTHER SQUARES OR CIRCLES THAT REPRESENT PEOPLE IN HIS
9 FAMILY IN HIS GENERATION.

10 A YES. START OVER HERE. THIS IS GARY'S OLDEST BROTHER
11 BILLY. THIS IS HIS OLDEST SISTER FAYE, HIS SISTER ELAINE
12 WHO IS KNOWN AS LANIE AND THIS IS HIS YOUNGEST BROTHER JOHN
13 AND GARY IS THE YOUNGEST OF THE FIVE CHILDREN. THESE
14 CHILDREN WERE ALL BORN OVER A TEN-YEAR PERIOD.

15 Q AND THIS LINE REPRESENTS SPOUSES OR---

16 A YES.

17 Q ----PARTNERS?

18 A RIGHT. HE -- JOHN HAD THREE WIVES AND THERE IS A
19 WOMAN LISTED IN THE RECORDS NAMED AGNES WHO SAYS IN SOME
20 D.S.S. RECORDS THAT SHE'S A WIFE. I CAN'T FIND ANY OTHER
21 EVIDENCE OF THAT.

22 ELAINE IS MARRIED TO WESLEY. FAYE WAS MARRIED TO
23 RANDALL AND CURRENTLY LIVES WITH KEVIN AND BILLY HAS BEEN
24 MARRIED TO PATTY, FRAN, VERA AND SUSAN. AND, OF COURSE,
25 THESE ARE ALL OF THEIR CHILDREN. I THINK I COUNTED

1 TWENTY-ONE CHILDREN ON THE BOTTOM.

2 Q SO THOSE SMALLEST CIRCLES AND SQUARES REPRESENT
3 EITHER GARY'S CHILDREN OR HIS NIECES AND NEPHEWS?

4 A THAT'S CORRECT.

5 Q ALL RIGHT.

6 MS. VOGELSANG, AS WE GO DOWN THROUGH THE
7 GENERATIONS ON YOUR CHART, IT'S PRETTY APPARENT THAT AS WE
8 GO DOWN, THERE'S ARE A LOT MORE -- THERE'S A LOT MORE OF
9 THE DIFFERENT COLORS IN THE CHART. WHY IS THAT?

10 A ACTUALLY THIS IS PRETTY TYPICAL IN THESE CASES FOR A
11 COUPLE OF REASONS. WHEN WE GET UP TO THIS GENERATION AND
12 ABOVE, IT IS OFTEN DIFFICULT TO FIND RECORDS TO DOCUMENT
13 SOME OF THE INFORMATION YOU GET FROM THE INTERVIEWS.
14 SOMETIMES WHEN YOU GET WITH THE OLDER GENERATIONS, RECORDS
15 WERE NOT KEPT. IF THEY WERE KEPT, SOMETIMES THEY HAVE BEEN
16 DESTROYED OR LOST IN A FIRE OR BEEN LOST IN A FLOOD.

17 THE FURTHER AWAY YOU GET, PARTICULARLY IN THIS
18 FAMILY, THE MORE DISTANT SOMETIMES YOU FIND RELATIONS
19 BECOME AND SO YOU FIND PEOPLE WHO WON'T AGREE TO INTERVIEWS
20 AND SO IT'S HARD TO GET MORE INFORMATION.

21 MOST OF THE INFORMATION HERE AND HERE (INDICATES)
22 HAVE COME FROM PRETTY MUCH THE INTERVIEWS. I DON'T HAVE A
23 LOT OF DOCUMENTATION ON THESE GENERATIONS. WHEREAS ON THIS
24 GENERATION AND DOWN (INDICATES), I HAVE THE INTERVIEWS,
25 INFORMATION FROM THE INTERVIEWS AND THEN CERTAINLY MUCH

1 MORE DOCUMENTATION.

2 Q OKAY. IF YOU WOULD LIKE, YOU CAN TAKE YOUR SEAT
3 UNLESS YOU FEEL LIKE YOU NEED TO BE DOWN WITH THE CHART?

4 A (WITNESS COMPLIES.)

5 Q MS. VOGELSANG, IN YOUR FIRST CONCLUSION, YOU STATE
6 THAT PAT AND BILL TERRY COULDN'T PROVIDE ANYMORE THAN
7 GARY'S BASIC NEEDS. WHAT DO YOU MEAN BY COULD ONLY PROVIDE
8 FOR HIS BASIC NEEDS?

9 A USUALLY, WHEN WE TALK ABOUT BASIC NEEDS, WE ARE
10 TALKING ABOUT FOOD, SHELTER AND CLOTHING, BASIC HUMAN
11 NEEDS.

12 Q WELL, HE DID HAVE A FOOD TO EAT?

13 A HE HAD FOOD TO EAT. THEY HAD A GARDEN AND WERE ABLE
14 TO BUY GROCERIES, ALTHOUGH, IT WAS OFTEN A STRUGGLE FOR
15 THEM TO DO THAT.

16 Q AND HE HAD A ROOF OVER HIS HEAD?

17 A HAD A ROOF OVER HIS HEAD.

18 Q CLOTHES ON HIS BACK?

19 A CLOTHES.

20 Q OKAY. AND WHERE DID YOU LEARN THAT HE HAD GROWN UP?

21 A HE GREW UP ON FISK STREET IN THE EAU CLAIRE SECTION
22 OF COLUMBIA.

23 Q OKAY. DID YOU LEARN ANYTHING ABOUT THE HOME THAT HE
24 LIVED IN GROWING UP?

25 A ONE OF THE THINGS THAT HAD INTERESTED ME ABOUT THE

1 HOME ON FISK STREET IS THAT IN READING MS. TERRY'S DIARIES
2 AND I CAN TELL YOU THIS IS MOST UNUSUAL. I DON'T THINK I
3 HAVE EVER HAD A CASE WHERE A PARENT HAS KEPT DIARIES, BUT
4 IN READING THOSE, MY IMPRESSION WOULD HAVE BEEN THAT THEY
5 LIVED IN A VERY ISOLATED AREA. THAT THEY WERE REMOVED FROM
6 A COMMUNITY.

7 WHEN I VISITED THE FISK STREET ADDRESS, THEIR
8 GRANDMOTHER'S HOUSE SITS UP ON THE STREET AS PART OF THE
9 NEIGHBORHOOD AND THEN THERE'S A DRIVEWAY THAT GOES WAY,
10 WAY, WAY BACK AND ONCE YOU'RE BACK WHERE THIS HOUSE IS
11 EXCEPT FOR THE GRANDMOTHER'S HOUSE, YOU ALMOST HAVE A SENSE
12 THAT THERE IS NO ONE ELSE AROUND. SO IT DOES HAVE A FEEL
13 OF BEING ISOLATED.

14 MR. TERRY BUILT THIS HOUSE FROM SCRAPS THAT HE
15 COLLECTED. THE HOUSE WAS, ACCORDING TO MR. TERRY, BUILT ON
16 A DUMP THAT THEY TRIED TO CLEAR OUT. THE SWAMP HE
17 DESCRIBED IS STILL THERE, ALTHOUGH GREATLY OVERGROWN. IT'S
18 A VERY SMALL HOUSE, BUT I MUST SAY HE DID A VERY GOOD JOB
19 TO HAVE PUT THIS HOUSE TOGETHER WITH JUST BITS AND PIECES
20 THAT HE COULD PICK UP ALONG THE WAY.

21 Q OKAY. SO GARY'S BASIC NEEDS WERE MET?

22 A YES.

23 Q IN THE SENSE THAT HE HAD FOOD, HE HAD SHELTER AND HE
24 HAD CLOTHING?

25 A YES.

1 Q BUT NOW, IS THAT ENOUGH TO RAISE A CHILD ADEQUATELY?

2 A WELL, IT'S CERTAINLY ENOUGH FOR SURVIVAL, BUT IN
3 ORDER TO RAISE A CHILD AND TO GET THEM THROUGH
4 DEVELOPMENTAL STAGES AND TO PRODUCE A HEALTHY PRODUCTIVE
5 ADULT, CERTAINLY TAKES MUCH MORE THAN FOOD, CLOTHING AND
6 SHELTER. IT TAKES ATTENTION, LOVE AND AFFECTION. IT TAKES
7 HAVING THE SKILLS TO FIND HELP FOR YOUR CHILD IF YOU CAN'T
8 PROVIDE IT YOURSELF. AND ESPECIALLY, IF YOU HAVE CHILDREN
9 WITH SPECIAL NEEDS, THEN YOU EITHER HAVE TO HAVE THE SKILLS
10 OR FIND THE SKILLS FROM OTHERS TO MAKE SURE ON A CONSISTENT
11 BASIS, ON A LONG TERM BASIS, THAT THOSE CHILDREN ARE HAVING
12 THOSE NEEDS MET IN ORDER TO GROW UP TO BE HEALTHY AND
13 HAPPY.

14 Q YOU'VE -- YOU'VE INTERVIEWED PAT AND BILL TERRY AND
15 FOUND OUT ABOUT THEIR BACKGROUND AND THEY HAVE TESTIFIED IN
16 DETAIL TO THE JURY ABOUT THEIR EARLIER YEARS IN GETTING
17 MARRIED. DOES THEIR BACKGROUND AND THE MANNER IN WHICH
18 THEY CLOSE TO BECOME A COUPLE, DID THAT AFFECT THEIR
19 ABILITY TO BE PARENTS?

20 A I THINK THEIR BACKGROUND PLAYED A SIGNIFICANT ROLE IN
21 THEIR PARENTING AND SOME OF THE PROBLEMS THAT THEY HAD AS
22 PARENTS.

23 Q OKAY. OKAY. YOU TALKED ABOUT ILLNESSES IN THE
24 FAMILY. CAN YOU DESCRIBE FOR THE JURY WHAT TYPE OF
25 ILLNESSES WERE PRESENCE IN THIS FAMILY?

1 A SOME OF THE ILLNESSES IN THIS FAMILY WERE JUST KIND
2 OF THINGS THAT HAPPEN IN ALL FAMILIES. IN THE DIARIES,
3 SOME OF THE THINGS THAT JUMPED OUT WERE; FOR EXAMPLE,
4 EARACHES, SORE THROATS, EAR INFECTIONS. THE REASON THOSE
5 JUMPED OUT IS THAT THE RESEARCH SHOWS THAT THOSE EARLY
6 CHILDHOOD ILLNESSES ARE ALSO CONSISTENT WITH LEARNING
7 DISABILITIES. SO, OF COURSE, I PAID SOME ATTENTION TO
8 THOSE.

9 I PAID ATTENTION TO THE FACT THAT MS. TERRY
10 APPEAR TO BE SICK A LOT OF THE TIME. SHE DID NOT APPEAR TO
11 BE WELL MUCH OF THE TIME, BUT THE THING THAT REALLY STOOD
12 OUT WAS THAT THERE SEEMED TO BE SOME UNUSUAL KINDS OF
13 THINGS IN THE FAMILY THAT I DON'T RECALL EVER SEEING BEFORE
14 IN OTHER EVALUATIONS I'VE DONE. CONGENITAL DROMEDARY HUMP,
15 A POSSIBLE HISTORY OF DWARFISM IN THE FAMILY,
16 HERSHBAUM'S (PHONETICALLY) DISEASE, WHICH WAS SOMETHING I'VE
17 NEVER HEARD OF BEFORE. IT'S A CONGENITAL GASTROINTESTINAL
18 DISEASE. CARPAL TUNNEL SYNDROME. NOT THAT UNUSUAL
19 ANYMORE. WE HEAR OF IT FREQUENTLY. BUT THIS FAMILY HAD A
20 LOT OF SWOLLEN AND PAINFUL JOINTS AND HANDS AND FEET,
21 FINGERS. ESOPHAGEAL DEFORMITIES. ONE CHILD WAS BORN WITH
22 A DISPLACED HIP THAT WAS CONGENITAL. KIDNEY PROBLEMS,
23 ULCERS. SOME OF THOSE ARE MORE TYPICAL.

24 AND THEN THERE WERE JUST IN GENERAL A LOT OF
25 ENTRIES IN THE DIARIES OF SOMATIC COMPLAINTS. AND THAT

1 DOESN'T MEAN THAT THEY WEREN'T REAL. I THINK THAT --
2 ESPECIALLY PATRICIA WAS IN A GREAT DEAL OF DISCOMFORT, BUT
3 STOMACH ACHES, HEADACHE, AGAIN SWOLLEN JOINTS, BACK
4 PROBLEMS. MR. TERRY'S BACK PROBLEMS, OF COURSE, WERE FROM
5 HIS ACCIDENT. AND INFECTIONS. BUT ONE OF THE THINGS THAT
6 STRUCK ME AS I READ THESE DIARIES AND I READ ABOUT FOUR
7 YEARS BEFORE I STOPPED WAS THAT IN SO MANY OF THE ENTRIES,
8 THERE WAS MENTION OF HEALTH PROBLEMS IN THE FAMILY.

9 Q OKAY. YOU HAVE ALSO TOLD US THAT THERE WAS A PATTERN
10 IN THE FAMILY OF LEARNING AND EMOTIONAL PROBLEMS. NOW, WHO
11 DID YOU FIND TO HAVE THOSE TYPES OF PROBLEMS?

12 A IF YOU LOOK ON THE GENOGRAM AND YOU LOOK AT THE AREAS
13 THAT ARE COLORED RED, YOU WILL BE ABLE TO SEE THE PEOPLE
14 WHERE, EITHER THROUGH INTERVIEWS OR THROUGH THE RECORDS, IT
15 WAS DETERMINED THAT THERE WERE EMOTIONAL BEHAVIORAL OR
16 LEARNING PROBLEMS.

17 STARTING DOWN ON THE FIRST GENERATION, DOWN
18 HERE (INDICATES), YOU SEE THAT BILLY'S CHILDREN, BILLY, THE
19 THIRD, AND CHRIS, PAMELA AND APRIL, JOHNNY'S TWO CHILDREN.
20 GARY'S SON JEFFREY, HIS SON, DUBOSE, MORGAN AND ASHLEY AND
21 AS WELL, YOU WILL SEE THAT GARY AND HIS BROTHERS AND
22 SISTERS ARE MARKED IN RED AS WELL.

23 I THINK I COUNTED EIGHTEEN OR NINETEEN CHILDREN
24 IN THAT YOUNGEST GENERATION WHO HAVE EITHER HAD LEARNING
25 PROBLEMS, CONTACT WITH D.S.S. WHERE IT'S DOCUMENTED THAT

1 THERE ARE SOME EMOTIONAL PROBLEMS OR BEHAVIORAL PROBLEMS
2 AND THEN ALSO SOME MENTAL HEALTH RECORDS THAT INDICATE
3 THOSE BEHAVIORAL PROBLEMS.

4 Q ALL RIGHT. NOW, YOU STATE IN YOUR CONCLUSIONS THAT
5 GARY WAS RAISED IN A NEGLECTFUL ENVIRONMENT. WHAT EXACTLY
6 DO YOU MEAN THAT HE WAS RAISED IN A NEGLECTFUL ENVIRONMENT?

7 A WELL, I THINK YOU HAVE TO LOOK AT MR. AND MS. TERRY'S
8 CIRCUMSTANCES. MR. TERRY WAS INJURED VERY BADLY WHEN HE
9 WAS SEVEN-YEARS-OLD.

10 ACCORDING TO SCHOOL RECORDS, HE STRUGGLED IN
11 SCHOOL NOT BECAUSE HE COULDN'T DO THE WORK. HE WAS IN PAIN
12 A LOT OF THE TIME AND EVENTUALLY HE DROPPED OUT.

13 AT AGE TWENTY, HE MARRIED MS. TERRY. SHE'S
14 THIRTEEN-YEARS-OLD. SHE WAS MORE OR LESS ESCAPING A VERY
15 BAD FAMILY SITUATION WITH AN ALCOHOLIC FATHER. SHE HAD NOT
16 HAD A CHILDHOOD HERSELF. SHE HAD HAD TO RAISE HER BROTHERS
17 AND SISTERS AND SO AT THIRTEEN, SHE MARRIED MR. TERRY AND
18 BEGIN HAVING CHILDREN.

19 INTERESTINGLY, FOR TWO VERY YOUNG AND
20 INEXPERIENCED PEOPLE, THEY SEEMED TO DO WELL FOR AWHILE.
21 THEY BEGIN HAVING CHILDREN. AS MS. TERRY WOULD SAY, I HAD
22 THREE BEFORE I REALLY REALIZED WHAT WAS HAPPENING TO ME.

23 AT THAT POINT, MR. TERRY WAS WORKING. HE HELD
24 JOBS. HIS WORK HISTORY WAS VERY STEADY. HE WAS WORKING
25 HARD. HE HAD EIGHT YEARS AT A -- TERMINIX, WHICH WAS AN

1 EXTERMINATING COMPANY, AND THEN IN 1971, HE HAD THIS
2 ACCIDENT WHERE HIS BACK WAS BROKEN. AND AT THIS POINT WHEN
3 GARY WAS THREE-AND A-HALF-YEARS-OLD, MS. TERRY IS NOW THE
4 SOLE BREAD-WINNER IN THE FAMILY. SHE HAS TO WORK AT THE
5 MILLS. IT'S VERY HARD WORK. SHE'S DOING SHIFT WORK. SHE
6 COMES HOME VERY TIRED.

7 MR. TERRY IS IN CHRONIC PAIN ALL THE TIME. HE IS
8 IRRITABLE. HE IS VERY UNHAPPY AND SO THESE CHILDREN HAVE
9 BASICALLY LOST THE KIND OF PARENTING THEY WERE GETTING
10 BEFORE THIS ACCIDENT OCCURRED. MS. TERRY DID NOT FEEL GOOD
11 A LOT OF THE TIME. SHE, ACCORDING TO THE DIARIES, WAS SICK
12 A GOOD BIT OF THE TIME. SHE WAS WORKING VERY, VERY HARD.
13 SO A LOT OF THE INTERVENTION, THE ATTENTION AND THE HELP
14 THAT THESE CHILDREN NEEDED, THEY JUST DID NOT GET.

15 Q IS THERE ANY INFORMATION THAT YOU HAD AVAILABLE TO
16 YOU ABOUT THE IMPACT OF NEGLECT ON CHILDREN?

17 A THE STUDY THAT AMONG MANY THAT PROBABLY MOST -- IS
18 MOST CONSISTENT WITH THESE KINDS OF SITUATIONS IS THE STUDY
19 THAT IS DONE BY THE DEPARTMENT OF JUSTICE THAT SHOWS THAT
20 THERE ARE TWO FACTORS THAT ARE MOST LIKELY TO CONTRIBUTE TO
21 CHILDREN ENDING UP IN THE CRIMINAL JUSTICE SYSTEM AND ONE
22 WAS NEGLECT.

23 THERE HAVE BEEN A LOT OF OUTCRIES LATELY IN
24 MENTAL HEALTH ABOUT THE NEGLECT OF NEGLECT. BECAUSE WE
25 HAVE GIVEN SO MUCH ATTENTION TO PHYSICAL AND SEXUAL ABUSE,

1 THAT WE HAVE NOT GIVEN ENOUGH ATTENTION TO THE IMPACT OF
2 NEGLECT ON CHILDREN AND THAT -- THAT IS ONE OF THE KEYS FOR
3 CHILDREN ENDING UP IN THE CRIMINAL JUSTICE SYSTEM.

4 Q OKAY. AND DO YOU HAVE AN OPINION ABOUT THE IMPACT OF
5 THIS TYPE OF NEGLECT ON GARY THAT HE EXPERIENCED DURING HIS
6 CHILDHOOD?

7 A AGAIN, GARY WAS THREE AND A HALF WHEN HIS FATHER HAD
8 HIS ACCIDENT. IF YOU LOOK AT THE PHOTOGRAPHS OF THE
9 FAMILY, IT APPEARS THAT GARY WAS SMALLER THAN EVERYBODY
10 ELSE. SISTERS AND BROTHERS HAVE TALKED ABOUT HIM BEING THE
11 SMALLEST. THEY REFER TO HIM AS THE RUNT OF THE LITTER.
12 THAT THEY BEAT ON HIM A LOT AND THERE WASN'T A LOT OF
13 INTERVENTION. MOM WAS GONE; DAD WAS SICK.

14 HIS BROTHERS, IN FACT, LATER IN HIS TEEN-AGE
15 YEARS WERE ARRESTED FOR BEATING HIM UP. HIS PARENTS HAD
16 THEM ARRESTED. HIS DAD BROKE HIS COLLARBONE WITH A BOARD.

17 NOW, I'M NOT SAYING ALL OF THIS TO IMPLY THAT
18 FAMILY VIOLENCE WAS THE SAME IN THIS FAMILY AS IT IS IN A
19 LOT OF FAMILIES BECAUSE THAT'S NOT WHAT I FOUND HERE.
20 THERE IS SOME VIOLENCE. I WOULD NOT SAY IT'S THE KIND OF
21 PERVASIVE VIOLENCE YOU FIND IN A LOT OF HOMES WHERE
22 BATTERING TAKES PLACE. BUT CERTAINLY, AT AN EARLY AGE, I
23 THINK GARY WAS ALREADY PROBABLY GIVING SIGNS AND CUES THAT
24 SOMETHING WAS TERRIBLY WRONG.

25 AT THIRTEEN, HE INHALES -- WRAPS HIMSELF IN A

1 BLANKET, PUTS A BUREAU IN FRONT OF THE DOOR AND HIS PARENTS
2 FIND HIM TWO AND A HALF YEARS LATER HAVING INHALED GLUE.
3 AND JIM STEEL, HIS UNCLE, HAS TO ADVISE THEM ON WHAT TO DO
4 TO KEEP HIM ALIVE.

5 AT THAT POINT, I THINK ALMOST ANY PARENT WOULD
6 SAY WE HAVE GOT TO DO SOMETHING. WE DON'T CARE HOW WE GET
7 HELP, WE'LL GO TO DR. STEEL, WE WILL FIND A WAY, BUT EVEN
8 THEN, THERE WAS NO INTERVENTION.

9 HIS BROTHER TALKS ABOUT WATCHING HIM SNIFF
10 GASOLINE WHEN HE WAS EIGHT-YEARS-OLD IN THE BARRELS THAT
11 HIS DAD USED TO CLEAN THE JUNK. THAT HE WOULD FIND JOHNNY
12 OUT THERE WITH HIS HEAD OVER IN THE BARRELS BREATHING.

13 SO CERTAINLY, THIS -- THERE WAS NEGLECT GOING ON.
14 FOR IT NOT TO BE NOTICED AND THEN WHEN IT IS NOTICED, IN A
15 RATHER DRAMATIC WAY, THE -- THEIR IS NO INTERVENTION, THERE
16 IS NO TREATMENT.

17 Q ARE YOU TRYING TELL THE JURY THAT MR. AND MS. TERRY
18 JUST DIDN'T CARE OR ARE YOU TELLING THEM THAT THEY JUST
19 DIDN'T KNOW?

20 A I THINK THAT THESE PARENTS CARED VERY MUCH. THIS --
21 THESE PARENTS COULD BE THE POSTER CHILDREN FOR BAD LUCK.
22 THE CIRCUMSTANCES OF THEIR LIVES HAVE BEEN VERY HARD.

23 I THINK THEY LOVE THEIR CHILDREN VERY MUCH. THAT
24 DOES NOT NECESSARILY MAKE FOR EFFECTIVE PARENTS. I THINK
25 THEY DID CARE. THEY JUST SIMPLY EITHER DID NOT KNOW WHAT

1 TO DO OR DID NOT HAVE THE ENERGY TO DO IT.

2 Q ALL RIGHT. COULD YOU TELL US A BIT ABOUT GARY'S
3 BROTHERS BILLY AND JOHN DAVID?

4 A BOTH BILLY AND JOHN DAVID HAVE LOST CUSTODY OF THEIR
5 CHILDREN, AT LEAST AT SOME POINT. JOHNNY NOW HAS ONE OF
6 HIS DAUGHTERS BACK. BILLY HAS LOST THREE OF HIS CHILDREN.
7 TWO OF HIS CHILDREN, THE WIVES SIMPLY -- EXCUSE ME, ONE OF
8 HIS CHILDREN, THE WIFE SIMPLY REMOVED AT A VERY YOUNG AGE
9 AND HAD VERY LITTLE CONTACT WITH BILLY. THE OTHER THREE
10 CHILDREN HAVE BEEN TAKEN BY D.S.S. GARY'S BROTHER HAS BEEN
11 ACCUSED OF PHYSICAL ABUSE OF THE CHILDREN AND THEY REPORT
12 BEING AFRAID OF THEIR FATHER.

13 JOHN HAS HAD BOTH CHILDREN REMOVED. HE HAS ONE
14 CHILD BACK AND, AGAIN, IN THE MENTAL HEALTH RECORDS, THE
15 CHILDREN TALK ABOUT BEING AFRAID OF THEIR FATHER. BOTH MEN
16 HAVE BEEN PHYSICALLY ABUSIVE TOWARD THEIR WIVES.

17 Q COULD YOU TELL US SOMETHING ABOUT HIS SISTER FAYE?

18 A FAYE ALSO LOST CUSTODY OF HER TWO CHILDREN. THEY
19 WERE GIVEN TO HER HUSBAND RANDALL. ACTUALLY TWO OF THE
20 CHILDREN. LORI WAS ALREADY OF AGE, BUT MANDY AND JASON
21 WERE GIVEN TO HER HUSBAND RANDALL AND IN THE CUSTODY
22 REPORT, THE JUDGE NOTES FAYE'S ANGRY AND HOSTILE BEHAVIOR
23 AND HER NEGLECT TO TEACH THE CHILDREN PROPER LOVE FOR THEIR
24 FATHER AND RESPECT FOR THEIR FATHER, HER MOVING THEM AROUND
25 FOURTEEN TIMES IN A VERY SHORT PERIOD OF TIME, AND THE

1 JUDGE RECOMMENDS HER TO COUNSELING AND SHE DID NOT COMPLY
2 WITH THAT ORDER.

3 YOU SEE ANOTHER CHILD OF FAYE'S DOWN THERE,
4 STEVEN. STEVEN DIED A COUPLE OF DAYS AFTER BIRTH. HE DIED
5 OF ASPHYXIATION IN THE WOMB. THERE'S NO INDICATION THAT
6 THE CORD WRAPPED AROUND HIS NECK. HE SIMPLY DIED JUST TO
7 GIVE YOU AN EXAMPLE OF THE VERY SIMPLISTIC WAY THIS FAMILY
8 UNDERSTANDS AND EXPLAINS THINGS. THE WAY GARY'S MOTHER
9 EXPLAINED THE DEATH OF THIS BABY WAS THAT STEVEN PANICKED
10 IN THE WOMB AND THAT'S WHY HE DIED. THAT IS AN EXAMPLE OF
11 THE KIND OF WAY THE FAMILY EXPLAINS DIFFERENT EVENTS TO
12 THEMSELVES AND TO EACH OTHER AND THROUGHOUT THE DIARIES.
13 YOU CAN SEE THE ATTEMPTS THAT THEY MAKE TO MAKE
14 UNDERSTANDING OF CERTAIN EVENTS IN LIFE AND HAVING A VERY
15 DIFFICULT TIME MAKING SENSE OF THOSE EVENTS.

16 Q NOW, ELAINE -- I THINK THE FAMILY CALLS HER LANIE?

17 A YES.

18 Q WHAT ABOUT HER?

19 A I THINK LANIE IS A PERFECT EXAMPLE OF WHAT HAPPENS
20 WHEN THERE IS INTERVENTION. SHE HAS NOT BEEN UNTOUCHED BY
21 THE PROBLEMS IN THE FAMILY. SHE SUFFERS FROM DEPRESSION.
22 SHE IS ON AN ANTIDEPRESSANT. LANIE HAS HAD SOME SERIOUS
23 MEDICAL PROBLEMS. SHE MARRIED VERY YOUNG, JUST LIKE HER
24 BROTHERS AND SISTERS. SHE WENT BACK TO SCHOOL AND GOT HER
25 G.E.D. ALL OF THESE KIDS DROPPED OUT. THE GIRLS WENT

1 BACK. PATRICIA WENT BACK AND GOT G.E.D., BUT IF YOU LOOK
2 UP HERE AND YOU SEE THE NAME JIM STEEL, M.D., DR. STEEL IS
3 A PHYSICIAN HERE IN LEXINGTON AND HE'S IN HIS 70'S NOW.
4 HE'S PRACTICED FOR MANY YEARS. GARY'S AUNT MARIE MARRIED
5 JIM AND THEY HAD FIVE CHILDREN. ALL FIVE OF THOSE CHILDREN
6 HAVE DONE VERY, VERY WELL IN LIFE. THEY ARE VERY ACTIVE IN
7 THEIR CHURCH. THEY'RE WITH A TOURING GROUP THAT SINGS
8 CHRISTIAN MUSIC. THEY HAVE ALL DONE WELL IN SCHOOL AND
9 MARIE STEEL, GARY'S AUNT, TOOK LANIE UNDER HER WING. SHE
10 GAVE THAT HAND UP THAT CAN MAKE SUCH A TREMENDOUS
11 DIFFERENCE IN A CHILD'S LIFE AND SHE TALKED TO LANIE AND
12 GAVE LANIE ATTENTION AND TO THIS DAY SPENDS TIME WITH HER,
13 ADVISED HER ON RAISING HER CHILDREN. THESE ARE THE TWO
14 CHILDREN ON THE BOTTOM THAT HAVE HAD THE VERY FEWEST
15 PROBLEMS. AND I ONLY COLORED THEM IN RED BECAUSE IT WAS
16 INTERESTING TO ME THAT THEIR SCHOOL PERFORMANCE FELL INTO
17 THAT AVERAGE TO LOW AVERAGE RANGE WHICH IS CONSISTENT WITH
18 ALL OF THE REST OF THE FAMILY, BUT OTHER THAN THAT, THOSE
19 CHILDREN HAVE DONE REAL WELL.

20 AGAIN, SHE HAS HAD SOME INTERVENTION FROM SOMEONE
21 WHO TOOK AN INTEREST ON A LONG-TERM CONSISTENT BASIS AND I
22 THINK YOU REALLY SEE THE DIFFERENCE IN HER AS A RESULT OF
23 THAT.

24 Q MS. VOGELSANG, YOU TOUCHED ON THE EMOTIONAL AND
25 BEHAVIORAL AND SOME OF THE LEARNING IMPAIRMENTS THAT OCCUR

1 IN GARY'S NIECES AND NEPHEWS. WHAT ABOUT HIS OWN CHILDREN?
2 WHAT HAVE YOU LEARNED ABOUT MEDICAL IMPAIRMENTS OR
3 LEARNING IMPAIRMENTS OR EMOTIONAL IMPAIRMENTS THAT THEY
4 MIGHT SUFFER FROM?

5 A HIS SON JEFFREY DOWN HERE TO THE LEFT(INDICATES), WHO
6 IS WAS ALSO THE SON OF TAMMY, HAS IN THE PAST BEEN TREATED
7 WITH RATALIN. HE HAS BEEN DIAGNOSED A.D.H.D. HIS PSYCHO
8 -- EXCUSE ME, HIS SCHOOL PSYCHOLOGICAL EVALUATION INDICATES
9 THAT HE HAS REALLY BEEN A VERY TROUBLED CHILD. HE HAS HAD
10 -- NOT ONLY HAD TROUBLE LEARNING, BUT ALSO HAS EXHIBITED
11 WHAT THE TEACHERS CALL RATHER BIZARRE BEHAVIOR IN THE
12 CLASSROOM AND I DON'T THINK HE'S ON ANY KIND OF MEDICATION
13 ANY LONGER BUT JEFFREY CERTAINLY HAS HAD HIS SHARE OF
14 PROBLEMS.

15 JUST WHILE I'M MENTIONING, THAT DOCUMENT THAT
16 TALKS ABOUT THE BIZARRE BEHAVIOR, YOU SEE THE SAME THING IN
17 FOUR OTHER PLACES. PAMELA, WHO IS THE DAUGHTER OF JOHNNY,
18 THE MENTAL HEALTH RECORDS SHOW AUDITORY AND VISUAL
19 HALLUCINATIONS AND POST-TRAUMATIC STRESS DISORDER.

20 AND APRIL, WHO HAS NOT HAD HALLUCINATIONS, HAS
21 HAD BEHAVIOR THAT WAS SO INTENSE THAT IT HAS REQUIRED A
22 GREAT DEAL OF INTERVENTION FROM MENTAL HEALTH. THE GOOD
23 NEWS BEING THAT THIS YOUNGER GENERATION IS GETTING A LOT OF
24 THE INTERVENTION THAT THIS OLDER GENERATION DID NOT GET AND
25 ALREADY FROM THE NOTES AND THE RECORDS, YOU ARE SEEING

1 COMMENTS ABOUT IMPROVEMENTS IN THESE CHILDREN AND THEN IF
2 YOU GO ALL THE WAY OVER TO THE LEFT TO BILLY, THE THIRD,
3 BILLY IS ABOUT SEVENTEEN NOW. BUT, I BELIEVE, HE WAS
4 AROUND 12-YEARS-OLD WHEN HE WAS DIAGNOSED WITH A MAJOR
5 MENTAL ILLNESS AND WAS TREATED FOR MAJOR DEPRESSION AND
6 GIVEN TOFRANIL.

7 AND THEN HIS BROTHER CHRIS, AS WELL, HAS BEEN
8 TREATED FOR OVERANXIOUS DISORDER AND FEARFUL DISORDER.

9 SO YOU HAVE, AS WELL AS GARY'S CHILDREN, SOME
10 RATHER SERIOUS, SOME OTHER CHILDREN WHO HAVE BEEN TREATED
11 MENTAL HEALTH, CERTAINLY HAVE PROBLEMS, BUT THEY ARE NOT
12 QUITE THAT SEVERE.

13 MORGAN, DUBOSE HAVE BEEN---

14 Q NOW, MORGAN AND DUBOSE, THOSE ARE GARY'S SONS WITH
15 LOU ANN?

16 A THAT'S CORRECT.

17 ARE CURRENTLY BEING EITHER WATCHED OR TREATED FOR
18 A.D.D. -- A.D.H.D. AND THEY'RE ALSO WATCHING TIFFANY
19 BECAUSE THEY BELIEVE SHE'S ALREADY EXHIBITING SOME OF THE
20 SYMPTOM OF LEARNING PROBLEMS.

21 MORGAN IS GARY'S CHILD WHO SEEMS TO BE HAVING
22 MORE BEHAVIORAL PROBLEMS. HE'S IN THE FIRST GRADE. HE'S
23 ALREADY BEEN SUSPENDED THREE TIMES. THAT'S A PRETTY CLEAR
24 SIGN OF PROBLEMS WHEN A FIRST GRADER IS -- IT COULD BE
25 ADJUSTMENT, BUT GIVEN THE PATTERNS IN THIS FAMILY, ONE

1 WOULD CERTAINLY WANT TO BE WATCHFUL OF HIM AS WELL.

2 Q AND, I BELIEVE, DUBOSE HAS A HEARING PROBLEM?

3 A ACTUALLY, DUBOSE AND MORGAN HAVE SPEECH IMPEDIMENTS.
4 MILD, BUT THEY'RE THERE.

5 Q I SEE.

6 NOW, IN YOUR CONCLUSIONS, YOU STATE THAT GARY HAS
7 A HISTORY OF LEARNING DISABILITY AND OUTBURST AND
8 BEHAVIORAL PROBLEMS?

9 A YES.

10 Q WHEN -- WHEN WAS THIS LEARNING DISABILITY DISCOVERED?

11 A THE LEARNING DISABILITY, I BELIEVE, WAS WHEN HE WAS
12 AROUND ELEVEN-YEARS-OLD. UP UNTIL THAT TIME, THERE ARE
13 SOME COMMENTS IN THE SCHOOL RECORDS, BUT THEY ARE
14 RELATIVELY MILD COMMENTS. IT DOESN'T APPEAR THAT HE IS TOO
15 GREAT A PROBLEM IN THE CLASSROOM. IT WAS INTERESTING TO ME
16 THAT TEACHERS DON'T SEEM TO REMEMBER GARY. WHAT THAT SAYS
17 TO ME IS THAT HE WAS PROBABLY A QUIET CHILD, MAYBE HE
18 DIDN'T ROCK THE BOAT AND THAT'S CONSISTENT WITH WHAT HIS
19 MOTHER SAYS ABOUT HIS EARLY YEARS. HE WAS, YOU KNOW, JUST
20 A -- JUST A PRETTY GOOD CHILD THAT DID NOT GIVE THEM A LOT
21 OF PROBLEMS AND THEN AROUND ELEVEN, HE STARTED SEEING
22 BEHAVIORAL CHANGES. THE SCHOOL EVALUATED HIM. THEY PUT
23 HIM IN SPECIAL EDUCATION L.D., RESOURCE CLASSES AND HE WAS
24 REEVALUATED AT FOURTEEN, FOUND TO CONTINUE TO BE LEARNING
25 DISABLED. SO HE CONTINUED IN THOSE CLASSES UNTIL HE

1 DROPPED OUT IN THE NINTH GRADE.

2 Q OKAY. NOW, YOU'VE TALKED EARLIER ABOUT THE
3 CORRELATION BETWEEN NEGLECT AND AN ADULT CRIMINAL HISTORY?

4 A YES.

5 Q OKAY. DO YOU THINK THAT -- IN YOUR OPINION, DID GARY
6 FOLLOW THAT PATTERN?

7 A WELL, CERTAINLY IT WOULD MAKE SENSE IN LOOKING AT IT
8 THAT IS WHAT HAPPENED. AGAIN, HE DID NOT HAVE THAT MUCH OF
9 A JUVENILE HISTORY.

10 IN OTHER WORDS, HE WAS NOT IN JUVENILE DETENTION
11 WHEN HE WAS TWELVE OR THIRTEEN OR FOURTEEN. HE WAS A YOUNG
12 ADULT OFFENDER AND THEN, OF COURSE, FROM THERE BECAME AN
13 ADULT OFFENDER.

14 Q OKAY. NOW, I BELIEVE, YOU MENTIONED YOU HAD A CHANCE
15 TO LOOK AT GARY'S RECORDS FROM CHARTER?

16 A YES.

17 Q OKAY. AND YOU SAID -- YOU ARE AFFILIATED WITH THE
18 CHARTER IN GREENVILLE?

19 A YES.

20 Q SO IS THAT THE SAME HOSPITAL SYSTEM---

21 A YES.

22 Q ---WHATEVER?

23 A YES.

24 Q YOU'RE FAMILIAR WITH THEIR RECORDS?

25 A YES.

1 Q OKAY. ARE YOU USED TO READING RECORDS PREPARE BY
2 CHARTER HOSPITAL?

3 A YES, I AM.

4 Q OKAY. WHAT DID YOU LEARN FROM HIS CHARTER RECORDS?

5 A WELL, OF COURSE, THE DIAGNOSES THAT HE WAS GIVEN AT
6 CHARTER WAS ORGANIC EXPLOSIVE DISORDER, ALCOHOL DEPENDENCE
7 ANTISOCIAL PERSONALITY DISORDER. THE PSYCHOSOCIAL
8 ASSESSMENT SAID CODE TWO AND AT SOME POINT I THINK I LOOKED
9 THAT UP AND IT WAS JUST SORT OF MILD PSYCHOSOCIAL STRESSORS
10 AND A GLOBAL FUNCTIONING OF AROUND 55, 60, SOMEWHERE AROUND
11 IN THERE.

12 Q AND WHAT DOES THAT MEAN, GLOBAL FUNCTIONING, 55, 60?

13 A IT'S AN ASSESSMENT SCALE THAT THE HOSPITALS USE TO
14 JUST LOOK -- TO ASSIGN A NUMBER TO OVERALL FUNCTIONING. SO
15 THEY PUT HIM RIGHT SORT OF IN THE MID-RANGE WHICH WAS
16 INTERESTING BECAUSE IN ALL OF THE TESTING OF GARY AND ALL
17 OF THESE OTHER PEOPLE, WHETHER IT'S ACADEMIC OR OTHERWISE,
18 THEY ALWAYS SORT OF FALL RIGHT IN THAT MID OR JUST BELOW
19 RANGE.

20 Q OKAY. AND WERE THE CHARTER RECORDS CONSISTENT WITH
21 THE RECORDS YOU EXAMINED ABOUT HIS FAMILY HISTORY?

22 A I THINK HIS BEHAVIOR AT CHARTER WAS CONSISTENT WITH
23 HIS PAST. CERTAINLY FROM THE TIME HE WAS AROUND THIRTEEN.

24 NOW, WE KNOW THAT HIS MOTHER HAD A COLLAPSED
25 KIDNEY AT THE TIME OF HIS BIRTH, BUT THE BIRTH RECORDS LOOK

1 AS THOUGH IT WAS A NORMAL BIRTH. WE KNOW THAT HE WALKED
2 LATE; THAT HE TALKED LATE, BUT OTHER THAN THAT, YOU HAVE
3 THIS LONG PERIOD OF TIME WHERE GARY PRETTY MUCH SEEMS TO BE
4 OKAY AND THEN AT SOME POINT BEGINS TO HAVE THESE OUTBURSTS,
5 BAD BEHAVIOR, THE -- MORE OF THE AGGRESSIVENESS AND
6 CERTAINLY THAT IS CONSISTENT. THE BRAVADO, THE BRAGGING,
7 THE WHISTLING IN THE DARK KIND OF SMART TALK, I'LL JUST
8 WALK OUT OF HERE. THAT SORT OF THING IS, IN FACT,
9 CONSISTENT WITH WHAT YOU BEGIN TO SEE AND HEAR FROM THE
10 FAMILY AND THEN SEE IN THE RECORDS LATER ON.

11 Q WHEN YOU SAY THAT TYPE OF BEHAVIOR STARTS AT A
12 CERTAIN AGE, AGAIN, ABOUT WHAT CERTAIN AGE DID THAT START?

13 A IT SEEMS TO BEGIN AROUND THE TIME HE TURNS THIRTEEN.
14 IT SEEMS TO BEGIN CLOSE AT LEAST, AS BEST I COULD DETERMINE
15 TO THIS INCIDENT WHERE HE INHALED THE GLUE. MY -- I DON'T
16 THINK YOU HAVE AN INCIDENT LIKE THAT AND THAT'S THE FIRST
17 TIME IT EVER HAPPENED, I WOULD BE CONFIDENT IN SAYING THAT
18 PROBABLY THERE WERE SOME SIGNS AND SYMPTOMS OF THIS
19 BEHAVIOR COMING DOWN THE PIPE BEFORE HE WAS THIRTEEN, BUT
20 CERTAINLY THAT'S THE POINT AT WHICH HIS PARENTS SEEM TO
21 START NOTICING CHANGES AND THEN FROM THAT POINT ON, YOU SEE
22 GARY HAVING SOME PROBLEMS WITH FIGHTS IN SCHOOL AND, OF
23 COURSE, HE MEETS TAMMY. WE KNOW ABOUT HIS PHYSICAL
24 VIOLENCE IN THE RELATIONSHIPS THAT HE HAD RIGHT UP TO
25 CHARTER AND I THINK THAT THOSE RECORDS ARE CONSISTENT WITH

1 THAT HISTORY.

2 Q NOW, MS. VOGELSANG, GARY'S SIBLINGS GREW UP IN THE
3 SAME ENVIRONMENT THAT GARY LIVED -- GREW UP IN, RIGHT?

4 A THAT'S CORRECT.

5 Q AND -- I MEAN, I KNOW THAT YOU HAVE DESCRIBED FOR US
6 CERTAIN PROBLEMS THAT THEY HAVE HAD WITH, YOU KNOW,
7 MEDICAL, MAYBE WITH THE COURT SYSTEM, THE FAMILY COURT
8 SYSTEM, WITH THE LAW, BUT THEY MORE OR LESS TURNED OUT ALL
9 RIGHT, IS THAT CORRECT?

10 A I WOULD HESITATE TO SAY THAT THEY ARE ALL RIGHT. NO
11 ONE IN THIS FAMILY HAS BEEN UNTOUCHED BY THE THINGS THAT
12 HAVE HAPPENED TO THIS FAMILY AND CERTAINLY EVEN TODAY
13 SITTING AND INTERVIEWING THEM, YOU CAN SEE THAT THERE IS
14 LOT OF STRESS AND A LOT OF TENSION THAT PROBABLY HAS
15 NOTHING SO MUCH TO DO WITH WHAT HAS HAPPENED TO GARY. IT
16 WAS AN INTERESTING DYNAMIC, I THINK, IN THIS FAMILY. NONE
17 OF HIS BROTHERS AND SISTERS ARE HERE. IT CERTAINLY
18 DEMONSTRATES A LACK OF BONDING AND ATTACHMENT AMONG THEM
19 THAT NOT ONLY DO THEY SEEM TO NOT CARE ABOUT GARY, THERE'S
20 NO INDICATION THAT THEY CARE ABOUT ONE ANOTHER AT ALL. NOT
21 A SINGLE ONE OF THEM. AND SO THAT WOULD SAY TO ME THAT
22 CERTAINLY NO ONE IN THE FAMILY HAS ESCAPED. I'M NOT SURE
23 IN THE TRUE SENSE OF THE WORD THIS IS A BONDED FAMILY.

24 LANIE, CERTAINLY, IS THE EXCEPTION. YOU LOOK AT
25 THE DIFFERENCE IN HER. SHE'S HAD THAT HAND UP. THERE ARE

1 STUDIES THAT SHOW THAT SOME CHILDREN ARE JUST MORE
2 RESISTANT TO THE STRESS THAN OTHER CHILDREN.

3 GENETIC STUDIES THAT SHOW THAT SOME CHILDREN CAN
4 HANDLE A LOT OF PROBLEMS IN A FAMILY BETTER THAN OTHERS.

5 ONE OF THE ANALOGIES THAT I LIKE BEST TO -- WHEN
6 YOU'RE LOOKING AT WHAT WENT WRONG WITH A PERSONAL IN THE
7 FAMILY COMPARED TO THEIR BROTHERS AND THEIR SISTERS IS
8 GOING TO THE GROCERY STORE AND GETTING A CARTON OF EGGS AND
9 YOU GET OUT OF YOUR CAR AND THOSE DOZEN EGGS FLIP OUT OF
10 THE BAG AND HIT THE PAVEMENT. YOU KNOW WHAT'S GOING TO
11 HAPPEN WHEN YOU OPENED UP THAT CARTON. THERE ARE GOING TO
12 BE TWO OR THREE EGGS THAT LOOK FINE. THEY MAY BE SHOOK UP
13 INSIDE, BUT THEY LOOK JUST FINE. MAYBE THE SHELLS WERE A
14 LITTLE TOUGHER, WHO KNOWS. BUT THEY LOOK OKAY AND THEY'RE
15 USABLE. YOU ARE GOING TO HAVE THREE OR FOUR EGGS THAT HAVE
16 GOT LITTLE DENTS IN THEM AND THEY ARE NOT PERFECT, BUT THEY
17 ARE STILL USABLE. SOME ARE GOING TO HAVE SOME CRACKS IN
18 THEM. MIGHT BE SEEPING OUT JUST A LITTLE BIT, MAYBE THEY
19 ARE STILL USABLE. BUT ONE OF THOSE EGGS IS GOING TO BREAK
20 WIDE OPEN AND RUN ALL OVER EVERYTHING. AND I THINK THAT IF
21 YOU LOOK AT THIS FAMILY THAT WAY, SOMETHING WENT TERRIBLY
22 WRONG WITH ONE OF THE CHILDREN IN THIS FAMILY AND PROBABLY
23 AN ACCUMULATION OF THINGS. IT'S HARD TO POINT TO ONE EVENT
24 AND SAY THIS IS WHAT CAUSED THIS CHILD TO GO OUT AND KILL
25 SOMEBODY. BUT YOU CAN POINT TO A NUMBER OF THINGS AND SAY

1 THESE THINGS TOGETHER PROBABLY PUT THIS CHILD AT VERY HIGH
2 RISK TO BEING MUCH MORE VULNERABLE TO END UP IN VERY, VERY
3 SERIOUS TROUBLE.

4 Q OKAY. AND, OF COURSE, NEITHER JOHNNY NOR BILLY NOR
5 LANIE NOR FAYE HAS KILLED ANYONE?

6 A THAT'S CORRECT.

7 Q AND IT'S YOUR OPINION THAT, AS YOU WERE EXPLAINING,
8 THAT GARY SIMPLY WAS THE MORE VULNERABLE FOR WHATEVER
9 REASON IN HIS FAMILY?

10 A HAVING TALKED WITH THE DOCTORS, LOOKING AT THE
11 CHARTER RECORD WHERE IT WAS NOTED BY AN NON-NEUROLOGIST
12 ACTUALLY THAT THERE WAS SOMETHING ABNORMAL ABOUT GARY'S
13 BRAIN SCAN AND THEN LOOKING -- TALKING TO THE DOCTORS WHO
14 HAVE TESTED HIM SINCE, THIS IS ONE THING THAT IS DIFFERENT
15 THAT WE KNOW OF ABOUT GARY AND THAT COMBINED WITH DRUG USE
16 WHICH WOULD CERTAINLY INTENSIFY ANY BRAIN ABNORMALITY AND
17 THEN ALL OF THESE OTHER FACTORS CERTAINLY WOULD PLACE HIM
18 AT HIGH-RISK TO END UP IN SERIOUS TROUBLE.

19 Q HAVE YOU HAD A CHANCE TO EXAMINE GARY'S RECORDS FROM
20 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

21 A YES.

22 Q AND HAVE YOU REVIEWED HIS RECORDS AS A PRE-TRIAL
23 DETAINEE AT THE RICHLAND COUNTY DETENTION CENTER AND THE
24 LEXINGTON COUNTY DETENTION CENTER?

25 A YES.

1 Q ALL RIGHT. HOW HAS GARY ADJUSTED TO PRISON LIFE?

2 A IT -- GARY HAS -- HAS, I THINK, BEEN SOMEWHAT
3 CONSISTENT IN TERMS OF HIS SOMATIC COMPLAINTS AND BY
4 SOMATIC, I MEAN, BODILY COMPLAINTS.

5 THIS IS A FAMILY, WHO HAVING NO UNDERSTANDING OF
6 THEIR EMOTIONS, THEIR FEELINGS, THEIR CONFLICTS WERE ABLE
7 TO UNDERSTAND BEING SICK. SO YOU SEE SOMEONE WHO IS
8 CONSTANTLY ASKING FOR SOME MEDICINE, CREAMS, ASPIRIN,
9 TYLENOL. SOMEONE WHO IS, OH, I'VE JUST HURT MY HAND. SO
10 THAT'S ONE PART OF GARY'S RECORDS THAT ARE REALLY
11 CONSISTENT WITH THE FAMILY BEHAVIOR OVERALL. YOU SEE SOME
12 DISCIPLINARY RECORDS IN THERE. MOST OF THEM ARE IN MY
13 OPINION FOR THE MOST PART SIGNS OF GREAT IMMATURITY AND
14 PROBABLY CONSISTENT WITH A LEVEL IN WHICH GARY FUNCTIONS.

15 MY -- MY OPINION ON GARY AND I BASE A LOT OF THIS
16 ON HAVING SEEN THIS BEFORE IS THAT IF GARY IS PLACED ON THE
17 PROPER MEDICATION, THAT BEING ONE THAT WE KNOW HE'S DONE
18 WELL ON, IF HE STAYED ON IT -- HE DID WELL ON IT AT CHARTER
19 -- THAT IF HE IS ON THAT MEDICATION, COMBINED WITH THE
20 STRUCTURE OF PRISON LIFE, HE IS PROBABLY GOING TO ADOPT AND
21 DO PRETTY WELL.

22 Q THANK YOU, MS. VOGELSANG.

23 PLEASE ANSWER ANY QUESTIONS THE STATE MIGHT HAVE.

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

25 THE COURT: MR. CHASE.

1 MR. CHASE: THANK YOU, YOUR HONOR.

2 CROSS-EXAMINATION

3 BY MR. CHASE:

4 Q MS. VOGELSANG, I DON'T WANT TO MISQUOTE WHAT YOU SAID
5 ON THIS ONE. HERE IT IS. ON NUMBER FOUR, YOU SAID THAT --
6 AND I'M JUST GOING TO -- WELL, GARY HAS A HISTORY OF
7 LEARNING DISABILITIES, INATTENTIVENESS, IMPULSIVITY, POOR
8 JUDGMENT, EXPLOSIVE OUTBURSTS AND OTHER BEHAVIORAL
9 INDICATIONS ATTRIBUTABLE TO A MEDICAL CONDITION.

10 WHAT IS THE MEDICAL CONDITION?

11 A I'M -- I AM -- I'M REALLY NOT QUALIFIED TO DISCUSS
12 THAT CONDITION, BUT I CAN TELL YOU THAT IT IS -- IT'S
13 CALLED AN ORGANIC BRAIN DISORDER DUE TO A MEDICAL CONDITION
14 IN THAT IT CAUSES PERSONALITY CHANGES AND, I BELIEVE, IT'S
15 A DIS-INHIBITED TYPE.

16 Q IS THIS FROM THE INFORMATION THAT YOU RECEIVED FROM
17 DR. BACHMAN AND DR. DEYSACH?

18 A YES.

19 Q OKAY. THEY DIDN'T TELL YOU EXACTLY WHAT YOU WERE
20 DEALING WITH?

21 A I DON'T UNDERSTAND WHAT YOU MAY MEAN.

22 Q WELL, YOU HAVE GIVEN ME A BASIC ANSWER. HAVEN'T YOU
23 JUST GIVEN ME A BASIC DESCRIPTION OF SOMETHING---

24 A YEAH, THEY---

25 Q ---WITHOUT GIVING ME A MEDICAL CONDITION?

1 A I GENERALLY ASK THEM WHAT IT IS. I LOOKED IT UP
2 MYSELF. IT CAUSES PERSONALITY CHANGES. WHAT I'M SAYING IS
3 I'M NOT QUALIFIED TO DISCUSS IT IN DETAIL BECAUSE IT IS A
4 PSYCHIATRIC CONDITION.

5 Q DID THEY TELL YOU THAT THEY HAD PERFORMED TESTS ON
6 MR. TERRY?

7 A YES.

8 Q DID THEY GIVE YOU A CONCLUSION BASED ON THEIR
9 TESTING?

10 A JUST THAT THE SPECT SCAN CONFIRMED A BRAIN
11 ABNORMALITY THAT I THINK FIRST SHOWED UP AT CHARTER.

12 Q AND DID THEY GIVE YOU ANY REPORT OR ANYTHING LIKE
13 THAT?

14 A NO.

15 Q YOU'VE SAID THAT YOU ARE A PSYCHOTHERAPIST, ALSO?

16 A I PRACTICE AS A PSYCHOTHERAPIST, YES.

17 Q OKAY. WELL, LET ME GO BACK TO ONE THING. YOU SAID
18 THAT WHILE HE WAS AT CHARTER, HE RESPONDED WELL TO A
19 MEDICATION THAT WOULD HANDLE THIS ALLEGED BRAIN DISORDER?

20 A ACCORDING TO THE DOCTORS, YES---

21 Q TEGRETOL, RIGHT?

22 A YES.

23 Q HOW LONG WAS HE ON THAT AT CHARTER?

24 A I DON'T RECALL HOW LONG HE WAS ON IT. HE WASN'T AT
25 CHARTER BUT MAYBE NINE DAYS---

1 Q RIGHT---

2 A ---SO HE COULD NOT HAVE BEEN ON IT VERY LONG. THEY
3 GAVE HIM, I THINK, THIRTY TO TAKE HOME. I HAVE NO
4 INDICATIONS THAT HE TOOK IT AFTER HE LEFT THE HOSPITAL.

5 Q AND HE WAS IN DETOX WHILE HE WAS THERE, RIGHT?

6 A YES.

7 Q AND IT WAS TOWARDS -- AND YOU'VE LOOKED AT THOSE
8 CHARTER---

9 A YES.

10 Q ---RIVERS' RECORDS---

11 A YES.

12 Q ---IT WAS TOWARDS THE TAIL END OF HIS VISIT TO
13 CHARTER THAT HE STARTED TAKING THIS TEGRETOL?

14 A YES.

15 Q SO, WE ARE TALKING HOW MANY DAYS THAT HE WAS ON IT?

16 A I WOULD SAY AT THE MOST, THREE OR FOUR.

17 Q DO YOU KNOW ABOUT TEGRETOL?

18 A I KNOW IT'S GIVEN FOR SEIZURE DISORDERS AND THAT SORT
19 OF THING.

20 Q OKAY. LET ME ASK YOU THIS AS A PSYCHOTHERAPIST, YOU
21 KNOW ABOUT THE CLINICAL DEFINITIONS OF AN ANTISOCIAL
22 PERSONALITY, DON'T YOU?

23 A YES, I DO.

24 Q OKAY. WOULD YOU SAY THAT A PERSON WHO LIKES HAVING
25 HIS OWN WAY, THAT QUALITY FITS THE DEFINITION OF ANTISOCIAL

- 1 PERSONALITY?
- 2 A ARE YOU ASKING ME THAT ACCORDING TO THE D.S.M. OR
- 3 JUST IN GENERAL---
- 4 Q IN GENERAL, IN YOUR---
- 5 A NOT NECESSARILY.
- 6 Q I'M NOT A PSYCHOTHERAPIST, SO I'M ASKING YOU.
- 7 A OKAY. NOT NECESSARILY.
- 8 Q OKAY.
- 9 A MANY PEOPLE LIKE HAVING THEIR OWN WAY AND THEY ARE
- 10 NOT ANTISOCIAL.
- 11 Q WELL, CONSIDERING THAT WITH THE FACT THAT A PERSON IS
- 12 MANIPULATIVE, WOULD YOU CONSIDER THOSE TWO FACTORS FITTING
- 13 THE DEFINITION OF AN ANTISOCIAL PERSONALITY?
- 14 A THEY COULD, BUT NOT NECESSARILY.
- 15 Q WOULD YOU SAY THAT A PERSON WHO LIKES HAVING THEIR
- 16 OWN WAY AND THAT IS MANIPULATIVE AND HAS NO CONCERN FOR THE
- 17 RIGHTS OF OTHERS, THOSE FACTORS, WOULD THOSE FIT WITHIN THE
- 18 DEFINITIONS OF AN ANTISOCIAL PERSONALITY?
- 19 A THEY CERTAINLY COULD, YES.
- 20 Q WOULD YOU ALSO AGREE WITH ME THAT A PERSON WHO LIKES
- 21 HAVING HIS OWN WAY, THAT IS MANIPULATIVE, HAS NO CONCERN
- 22 FOR THE RIGHTS OF OTHERS AND REALLY DOESN'T HAVE ANY SOCIAL
- 23 BOUNDARIES WOULD FIT WITHIN THE DEFINITION OF A PERSON WITH
- 24 AN ANTISOCIAL PERSONALITY DISORDER?
- 25 A IT CERTAINLY COULD, YES.

1 Q AND THAT'S NOT A -- AN ANTISOCIAL PERSONALITY
2 DISORDER, THAT'S NOT AN ORGANIC THING?

3 A NO.

4 Q THAT'S NOT A BRAIN ABNORMALITY?

5 A NO.

6 Q IN LAY PERSON'S TERMS, THAT'S JUST KIND OF BEING
7 MEAN, ISN'T IT?

8 A WELL, ACTUALLY, IF AN ORGANIC DISORDER HAS BEEN
9 DIAGNOSED, THEN THE ANTISOCIAL PERSONALITY IS SUPPOSED TO
10 BE RECONSIDERED?

11 Q SO IT ACTUALLY -- IT'S AN INCONSISTENT DIAGNOSIS FOR
12 SOMEONE TO BE DIAGNOSED WITH AN ORGANIC PERSONALITY OR AN
13 ORGANIC BRAIN DISORDER AND ALSO AN ANTISOCIAL PERSONALITY
14 DISORDER?

15 A THAT'S MY UNDERSTANDING, YES.

16 Q AND THAT'S EXACTLY WHAT THOSE CHARTER RIVERS' RECORDS
17 DID, RIGHT?

18 A YES.

19 Q SO THAT FACILITY GAVE AN INCONSISTENT DIAGNOSIS?

20 A WELL, I THINK THEY SAW SOMETHING ON THE CAT SCAN THAT
21 INDICATED AN ABNORMALITY. IN THE RECORDS, THEY WERE NOT
22 CERTAIN EXACTLY WHAT THAT MEANT. SO THEY GAVE HIM THAT AND
23 THE ALCOHOL ABUSE.

24 Q DID YOU RELY ON THAT REPORT?

25 A YES.

1 Q NOW, I WANT TO WALK BACK TO THAT TEGRETOL. I AGREE
2 WITH YOU AND I'LL -- IT DOES DEAL WITH SEIZURE DISORDERS,
3 DOESN'T IT?

4 A YES.

5 Q IT HELPS SOOTHE THOSE TYPE OF PROBLEMS.

6 A YES.

7 Q WOULD YOU NOT ALSO AGREE THAT TEGRETOL IS KNOWN FOR
8 SUPPRESSING THE TRAITS THAT GO ALONG WITH THE ANTISOCIAL
9 PERSONALITY?

10 A I'M -- I'M NOT TRAINED OR SKILLED ENOUGH. I'VE NEVER
11 HEARD THAT. SO, THAT'S -- I DON'T KNOW.

12 Q WOULD YOU AGREE WITH ME IT'S KIND OF LIKE A
13 DEPRESSANT BECAUSE WHAT IT'S DOING IS KIND OF STOPPING --
14 IT'S STOPPING THE BEHAVIOR. IT'S SLOWING DOWN SOME BRAIN
15 ACTIVITY OR WHATEVER AND ACTUALLY IT'S GOING TO SUPPRESS "
16 THEM. IT'S KIND OF LIKE BEING ON A DOWNER?

17 A THAT'S ABSOLUTELY TRUE. IN FACT, IT -- THE SAME
18 THING CAN OFTEN HAPPEN WITH AN ANTIDEPRESSANT. SO,
19 ABSOLUTELY. IT CONTROLS THE SEROTONIN LEVEL.

20 Q I THANK YOU FOR YOUR TIME.

21 A THANK YOU.

22 THE COURT: REDIRECT.

23 MS. FULLWOOD: VERY BRIEFLY, JUDGE.

24 AND IT DOESN'T EVEN INVOLVE A QUESTION. MOVE TO
25 PUT DEFENDANT'S EXHIBIT NUMBER SEVEN FOR I.D. INTO

1 EVIDENCE.

2 THE COURT: WITHOUT OBJECTION.

3 MR. CHASE: WITHOUT OBJECTION, YOUR HONOR.

4 THE COURT: IT WILL BE ADMITTED, DEFENDANT'S
5 NUMBER SEVEN.

6 (WHEREUPON, DEFENDANT'S EXHIBIT
7 NUMBER SEVEN, CHART/CONCLUSIONS, ENTERED INTO EVIDENCE AT
8 THIS TIME WITHOUT OBJECTION.)

9 MS. FULLWOOD: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: RECROSS?

11 MR. CHASE: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: YOU MAY STEP DOWN, MS. VOGELSANG.

13 (WHEREUPON, THE WITNESS WAS
14 EXCUSED AT THIS TIME.)

15 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
16 WE'RE GOING TO TAKE A BREAK AT THIS TIME.

17 WHILE YOU ARE IN THE JURY ROOM, ONCE AGAIN,
18 PLEASE DO NOT DISCUSS THIS CASE AMONG YOURSELVES. WE'LL
19 GET YOU BACK SHORTLY.

20 EVERYONE BUT THE PARTICIPANTS PLEASE REMAIN
21 SEATED WHILE THE JURY EXITS THE COURTROOM.

22 (JURY OUT.)

23 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A
24 BREAK.

25 (RECESS.)

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

2 THE COURT: THANK YOU. TAKE YOUR SEATS.

3 (WHEREUPON, DEFENDANT'S EXHIBIT
4 NUMBER NINE, CAT SCAN; AND DEFENDANT'S EXHIBIT NUMBER TEN,
5 CHART, MARKED FOR IDENTIFICATION ONLY AT THIS TIME.)

6 THE COURT: ALL RIGHT. WE READY TO MOVE FORWARD?

7 MR. STONE: YES, SIR.

8 MR. HUMPHRIES: THE STATE'S READY, YOUR HONOR.

9 THE COURT: ALL RIGHT. LET'S BRING THE JURY
10 BACK.

11 (JURY IN.)

12 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

13 MR. STONE: THANK YOU, YOUR HONOR.

14 DR. ROBERT DEYSACH.

15 DR. ROBERT E. DEYSACH,

16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: WILL YOU STATE YOUR FULL NAME AND
18 SPELL IT.

19 THE WITNESS: I SURE WILL. MY NAME IS ROBERT
20 EDWARD DEYSACH, D-E-Y-S-A-C-H.

21 DIRECT EXAMINATION

22 BY MR. STONE:

23 Q ALL RIGHT. DR. DEYSACH, THE CHAIR IS DIFFICULT. IT
24 SOMETIMES GOES BY SO BE CAREFUL WITH THAT, BUT I DO NEED
25 YOU TO KIND OF LEAN INTO THAT MICROPHONE AND MAKE SURE

1 EVERYBODY CAN UNDERSTAND YOU, ALL RIGHT, SIR?

2 A CAN YOU HEAR ME?

3 Q YES, FINE.

4 DR. DEYSACH, WHAT DO YOU DO, SIR?

5 A I'M A CLINICAL PSYCHOLOGIST WITH A SPECIALTY -- A
6 SPECIALTY IN CLINICAL NEUROPSYCHOLOGY.

7 Q OKAY. THAT'S ALL RIGHT. EVERYBODY'S HAD TROUBLE
8 WITH IT. JUST -- YOU CAN BACK OFF A LITTLE BIT. IT PICKS
9 IT UP PRETTY WELL.

10 THE COURT: IF YOU'LL JUST BACK OFF OF IT AND
11 SPEAK UP, IT WILL BE ALL RIGHT.

12 MR. STONE: YES, SIR.

13 I'M SORRY. WHAT DO YOU DO, SIR?

14 THE WITNESS: I AM A CLINICAL PSYCHOLOGIST WITH A
15 SPECIALTY IN CLINICAL NEUROPSYCHOLOGY.

16 Q WHAT -- WHAT IS THAT? WHAT IS CLINICAL
17 NEUROPSYCHOLOGY?

18 A A PSYCHOLOGIST STUDIES BEHAVIOR AND A CLINICAL
19 PSYCHOLOGIST STUDIES ABNORMAL BEHAVIOR AND A CLINICAL
20 NEUROPSYCHOLOGIST STUDIES ABNORMAL BEHAVIOR THAT'S RELATED
21 TO THE ABNORMAL BRAIN FUNCTION.

22 Q ARE YOU A MEDICAL DOCTOR?

23 A NO, I'M NOT.

24 Q WHAT DO YOU DO?

25 A I'M ON THE FACULTY AT THE UNIVERSITY OF SOUTH

1 CAROLINA IN THE DEPARTMENT OF PSYCHOLOGY AS A GRADUATE
2 FACULTY MEMBER.

3 Q HOW LONG HAVE YOU BEEN THERE, SIR?

4 A HALF MY LIFE, 27 YEARS.

5 Q ALL RIGHT, SIR. AND WHAT DO YOU DO IN YOUR CAPACITY
6 WITH THE UNIVERSITY?

7 A I AM A GRADUATE INSTRUCTOR. I TEACH GRADUATE AND
8 UNDERGRADUATE STUDENTS, CONDUCT RESEARCH AND IN ADDITION, I
9 ALSO SERVE AS THE DIRECTOR OF THE DEPARTMENT OF
10 NEUROPSYCHOLOGY AT SOUTH REHABILITATION HOSPITAL IN
11 COLUMBIA.

12 Q WHAT IS HEALTH SOUTH REHABILITATION HOSPITAL?

13 A IT'S A HOSPITAL THAT SERVES HEAD INJURED PATIENTS,
14 STROKE PATIENTS, AS WELL AS A VARIETY, ORTHOPEDIC AND OTHER
15 DISABILITIES.

16 Q OKAY. DO YOU ACTUALLY TREAT THESE PATIENTS OR JUST
17 CONSULT WITH THEM AND ANALYZE THEM?

18 A I DO TESTING. I HEAD A STAFF THAT PERFORMS THERAPY
19 AND OTHER KINDS OF TREATMENT AND I, MYSELF, AM ACTIVELY
20 INVOLVED IN A TEAM TREATMENT APPROACH.

21 Q ALL RIGHT, SIR. NOW, WHAT KIND OF BACKGROUND DO YOU
22 HAVE? WHAT KIND OF QUALIFICATIONS DO YOU HAVE THAT ALLOWS
23 YOU TO DO THIS TYPE OF WORK?

24 A I RECEIVED A P.H.D. IN CLINICAL PSYCHOLOGY FROM
25 SYRACUSE UNIVERSITY. I HAD INTERNSHIP AND RESIDENCIES IN

1 MEDICAL PSYCHOLOGY AT THE UNIVERSITY OF OREGON MEDICAL
2 SCHOOL AND SINCE THAT TIME, I'VE CONTINUED IN MY WORK AND
3 STUDY AT U.S.C.

4 Q OKAY. ARE THERE ANY TYPE BOARDS THAT ARE ASSOCIATED
5 WITH CLINICAL PSYCHOLOGY?

6 A I'M BOARDED AS A FORENSIC PSYCHOLOGIST WITH A
7 SPECIALTY IN NEUROPSYCHOLOGY.

8 Q OKAY. YOU ARE BOARD CERTIFIED?

9 A YES, I AM.

10 Q ALL RIGHT, SIR. HAVE YOU BEEN QUALIFIED BEFORE IN
11 COURTS OF LAW?

12 A YES, I HAVE.

13 Q ALL RIGHT. IN STATE? FEDERAL? WHAT KIND OF COURTS?

14 A PRIMARILY STATE COURT, BUT ALSO FEDERAL COURT.

15 Q OKAY. DO YOU REMEMBER HOW MANY TIMES?

16 A I WORKED AN AWFUL LOT IN FAMILY COURT FOR A LONG TIME
17 PRIOR TO WORKING PRIMARILY OVER THE LAST FIFTEEN YEARS IN
18 CIVIL COURT IN AREAS OF LITIGATION INVOLVING HEAD INJURY.

19 Q DO YOU ALSO DO SOME CONSULTING WORK AS WELL?

20 A YES, I DO.

21 Q IN THIS CONSULTING WORK, I'M ASSUMING YOU'RE MEETING
22 WITH LAWYERS AND VARIOUS OTHER PEOPLE TRYING TO DETERMINE
23 WHETHER BRAIN INJURIES EXIST?

24 A TO SOME EXTENT, YES. IT'S A SMALLER PART OF MY
25 PRACTICE, BUT I DO THAT, YES.

1 Q OKAY. HAVE YOU CONSULTED WITH PEOPLE AND FOUND --
2 WELL, IN YOUR CONSULTING JOBS, WHAT DO YOU DO WITH THAT?
3 WHAT DOES THAT MEAN?

4 A WELL, VERY FREQUENTLY -- VERY FREQUENTLY, I'M CALLED
5 UPON TO ASSESS INFORMATION AND DETERMINE WHETHER OR NOT
6 THERE IS OR IS NOT RELEVANT INJURY TO THE BRAIN IN A
7 PARTICULAR CASE.

8 Q DO YOU ALWAYS TESTIFY AFTER THESE CONSULTATIONS?

9 A NO, I DON'T.

10 MR. STONE: YOUR HONOR, AT THIS TIME, WE WOULD
11 MOVE THAT DR. DEYSACH IS QUALIFIED IN THE FIELD OF CLINICAL
12 NEUROPSYCHOLOGY.

13 THE COURT: QUESTIONS CONCERNING HIS
14 QUALIFICATIONS?

15 MR. CHASE: NO, SIR. NOTHING, YOUR HONOR.

16 THE COURT: ALL RIGHT. I'LL QUALIFY HIM AS AN
17 EXPERT IN THE FIELD OF CLINICAL NEUROPSYCHOLOGY.

18 MR. STONE: OKAY.

19 THANK YOU, YOUR HONOR.

20 NOW, WHEN DID YOU FIRST BECOME INVOLVED IN THIS
21 CASE, SIR?

22 THE WITNESS: I WAS INITIALLY CONTACTED, I THINK,
23 IN DECEMBER OF 1996.

24 Q BY WHOM?

25 A BY YOU.

1 Q ALL RIGHT. AND WHAT WAS YOUR PURPOSE?

2 A I WANTED TO REVIEW RECORDS TO -- YOU HAD ASKED ME
3 WHETHER OR NOT THERE WAS A -- WELL, WHAT HAD HAPPENED WAS
4 THAT YOU HAD SEEN SOME INFORMATION IN THE RECORD OF MR.
5 TERRY THAT SUGGESTED THE POSSIBILITY OF NEUROLOGICAL --
6 NEUROPSYCHOLOGICAL DYSFUNCTION AND YOU WANTED THE RECORDS
7 REVIEWED FOR THAT PURPOSE.

8 Q DID YOU REVIEW THE RECORDS OF GARY TERRY?

9 A YES, I DID.

10 Q WHAT RECORDS DID YOU REVIEW?

11 A I REVIEWED A SERIES OF HOSPITAL RECORDS, INCLUDING A
12 CHARTER RIVERS' RECORD. I REVIEWED SOME RECORDS RELATED TO
13 HIS PRIOR SCHOOLING AND THAT WAS PRIMARILY WHAT I REVIEWED.

14 Q ALL RIGHT, SIR.

15 SPECIFICALLY, ABOUT THE CHARTER RIVERS' RECORDS,
16 WHAT DID THOSE RECORDS INDICATE TO YOU OR DID THEY INDICATE
17 ANYTHING AT ALL TO YOU?

18 A THE PURPOSE OF MY REVIEW WAS TO DECIDE WHETHER OR NOT
19 IT MADE SENSE TO PURSUE DOING ANY ADDITIONAL TESTING. IT'S
20 -- NEUROPSYCHOLOGICAL TESTING IS LONG AND INVOLVED. IT
21 TAKES A NUMBER OF HOURS AND IT MAKES NO SENSE TO PURSUE
22 THAT IF, IN FACT, THERE'S NOT INDICATION IN THE RECORD THAT
23 WOULD BE SUGGESTIVE OF THE POSSIBILITY OF A BRAIN INJURY.

24 IN THE CHARTER RIVERS' RECORD, THERE WAS
25 INDICATION OF BOTH EXPLOSIVE BEHAVIOR ON THE PART OF MR.

1 TERRY AS WELL AS SOME CAT SCAN INFORMATION THAT WAS --
2 WOULD SUGGEST AN ABNORMALITY IN THE BRAIN INVOLVING A
3 PARTICULAR PORTION OF THE BRAIN.

4 Q OKAY. DO YOU RECALL THAT DIAGNOSIS OR, AT LEAST, ONE
5 OF THE DIAGNOSES OF THE CHARTER RIVERS' RECORDS?

6 A AT THAT TIME, THE -- ONE OF THE DIAGNOSES HAD TO DO
7 WITH A LUCUNAR INFARCT AND WHAT THAT REFERS TO IS A
8 POSSIBLE DEATH OF CELLS IN A PARTICULAR PART OF THE BRAIN.

9 Q LET ME TALK WITH YOU JUST A MOMENT, IF YOU WILL. LET
10 ME ASK YOU TO GO AHEAD AND STEP DOWN -- KEEP YOUR VOICE UP
11 AND STEP DOWN IF THAT'S OKAY WITH THE COURT?

12 THE COURT: YES, SIR. AS LONG AS HE KEEPS HIS
13 VOICE UP SO EVERYONE CAN HEAR HIM.

14 MR. STONE: THANK YOU.

15 WHY DON'T YOU STAND WHERE I AM AND I'M GOING TO
16 GIVE YOU THIS BLACK MAGIC MARKER---

17 THE WITNESS: UH-HUH.

18 MR. STONE: ---WITHOUT PUTTING YOUR BACK TO THE
19 JURY -- THIS LADY NEEDS TO TAKE DOWN WHAT YOU SAY, SO MAKE
20 SURE YOU KEEP YOUR VOICE UP.

21 COULD YOU, IF YOU WILL, DO YOU HAVE TO DO ANY
22 KIND OF DRAWINGS OF THE BRAIN OR ANYTHING FOR ANY OF YOUR
23 CLASSES?

24 A YES.

25 Q SEE IF YOU CAN DO THAT JUST WELL ENOUGH TO GIVE US