

# VOLUME THREE OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

Larry R. Patterson, Circuit Court Judge

---

**RECEIVED**  
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S.C. Supreme Court

JOHN RICHARD WOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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## APPENDIX

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**VOLUME THREE**  
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## INDEX

|                                                       |     |
|-------------------------------------------------------|-----|
| INDEX.....                                            | i   |
| TRIAL TRANSCRIPT                                      |     |
| <b>JURY QUALIFICATIONS – DAY 1 (FEBRUARY 4, 2002)</b> |     |
| COURT REPORTER’S INDEX.....                           | ii  |
| MATTERS AND MOTIONS .....                             | 1   |
| VOIR DIRE – PANEL NUMBER 1.....                       | 22  |
| WILL M. SHARPE                                        |     |
| VOIR DIRE BY THE COURT .....                          | 31  |
| VOIR DIRE BY MR. MAULDIN .....                        | 38  |
| MATTERS AND MOTIONS .....                             | 48  |
| KEITH A. WHITE                                        |     |
| VOIR DIRE BY THE COURT .....                          | 54  |
| VOIR DIRE BY MR. MAULDIN .....                        | 63  |
| VOIR DIRE BY SOLICITOR ARIAIL .....                   | 81  |
| MATTERS AND MOTIONS .....                             | 84  |
| HAMILTON E. RUSSELL, III                              |     |
| VOIR DIRE BY SOLICITOR ARIAIL .....                   | 92  |
| VOIR DIRE BY MR. RICHEY .....                         | 93  |
| MATTERS AND MOTIONS .....                             | 99  |
| CALVIN F. DONALDSON                                   |     |
| VOIR DIRE BY THE COURT .....                          | 102 |
| VOIR DIRE BY MR. MAULDIN .....                        | 110 |
| VOIR DIRE BY SOLICITOR ARIAIL .....                   | 116 |
| MATTERS AND MOTIONS .....                             | 123 |

|                                                          |     |
|----------------------------------------------------------|-----|
| CYNTHIA B. STANCIL                                       |     |
| VOIR DIRE BY THE COURT .....                             | 125 |
| VOIR DIRE BY SOLICITOR ARIAIL .....                      | 132 |
| VOIR DIRE BY MR. RICHEY .....                            | 133 |
| MATTERS AND MOTIONS .....                                | 136 |
| <br><b>JURY QUALIFICATIONS – DAY 2(FEBRUARY 5, 2002)</b> |     |
| MATTERS AND MOTIONS .....                                | 146 |
| VOIR DIRE – GROUP 2 .....                                | 262 |
| JENNIFER MCKINLEY                                        |     |
| VOIR DIRE BY THE COURT .....                             | 163 |
| VOIR DIRE BY MR. MAULDIN .....                           | 170 |
| VOIR DIRE BY SOLICITOR ARIAIL .....                      | 183 |
| MATTERS AND MOTIONS .....                                | 185 |
| MARK STUBER                                              |     |
| VOIR DIRE BY THE COURT .....                             | 187 |
| VOIR DIRE BY SOLICITOR ARIAIL .....                      | 197 |
| VOIR DIRE BY MR. MAULDIN .....                           | 199 |
| MATTERS AND MOTIONS .....                                | 208 |
| CLIFFORD SMITH                                           |     |
| VOIR DIRE BY THE COURT .....                             | 210 |
| VOIR DIRE BY MR. MAULDIN .....                           | 215 |
| MATTERS AND MOTIONS .....                                | 219 |
| CHARLOTTE SMITH                                          |     |
| VOIR DIRE BY THE COURT .....                             | 219 |
| VOIR DIRE GROUP 1 .....                                  | 223 |
| ERNEST MAYER                                             |     |
| VOIR DIRE BY THE COURT .....                             | 232 |
| VOIR DIRE BY SOLICITOR ARIAIL .....                      | 239 |
| VOIR DIRE BY MR. MAULDIN .....                           | 245 |

|                                     |     |
|-------------------------------------|-----|
| GEORGE D. SAUNDERS                  |     |
| VOIR DIRE BY THE COURT .....        | 253 |
| VOIR DIRE BY MR. MAULDIN .....      | 259 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 261 |
| KENYENA V. SMITH                    |     |
| VOIR DIRE BY THE COURT .....        | 263 |
| VOIR DIRE BY MR. MAULDIN .....      | 267 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 271 |
| MATTERS AND MOTIONS .....           | 273 |
| PRISCILLA ANN TORELLO               |     |
| VOIR DIRE BY THE COURT .....        | 278 |
| VOIR DIRE BY MR. MAULDIN .....      | 285 |
| PATRICIA L. JOHNSON                 |     |
| VOIR DIRE BY THE COURT .....        | 289 |
| VOIR DIRE BY MR. MAULDIN .....      | 295 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 302 |
| MATTERS AND MOTIONS .....           | 305 |
| VOIR DIRE GROUP 1 .....             | 313 |
| NORMA B. PITTS                      |     |
| VOIR DIRE BY THE COURT .....        | 323 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 331 |
| VOIR DIRE BY MR. MAULDIN .....      | 335 |
| MATTERS AND MOTIONS .....           | 345 |
| VERNON DAVID WADE, JR.              |     |
| VOIR DIRE BY THE COURT .....        | 350 |
| VOIR DIRE BY MR. MAULDIN .....      | 360 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 369 |
| MATTERS AND MOTIONS .....           | 374 |
| JOHN R. BAILEY                      |     |
| VOIR DIRE BY THE COURT .....        | 375 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 382 |
| VOIR DIRE BY MR. RICHEY .....       | 384 |
| MATTERS AND MOTIONS .....           | 388 |



|                                               |     |
|-----------------------------------------------|-----|
| TERRY B. MARSHALL                             |     |
| VOIR DIRE BY THE COURT .....                  | 390 |
| VOIR DIRE BY MR. MAULDIN .....                | 398 |
| MATTERS AND MOTIONS .....                     | 404 |
| TERRY B. MARSHALL                             |     |
| VOIR DIRE BY MR. MAULDIN .....                | 410 |
| VOIR DIRE BY SOLICITOR ARIAIL .....           | 412 |
| MATTERS AND MOTIONS .....                     | 414 |
| ANN CASEY SMITH                               |     |
| VOIR DIRE BY THE COURT .....                  | 417 |
| VOIR DIRE BY SOLICITOR ARIAIL .....           | 423 |
| VOIR DIRE BY MR. MAULDIN .....                | 425 |
| MATTERS AND MOTIONS .....                     | 432 |
| VOIR DIRE PANEL NUMBER 5.....                 | 435 |
| ISSIAC N. MILLER                              |     |
| VOIR DIRE BY THE COURT .....                  | 442 |
| VOIR DIRE BY MR. MAULDIN .....                | 450 |
| MATTERS AND MOTIONS .....                     | 457 |
| REBECCA D. ROGERS                             |     |
| VOIR DIRE BY THE COURT .....                  | 462 |
| VOIR DIRE BY SOLICITOR ARIAIL .....           | 471 |
| VOIR DIRE BY MR. MAULDIN .....                | 473 |
| VOIR DIRE CONTINUES BY SOLICITOR ARIAIL ..... | 479 |
| VOIR DIRE CONTINUES BY THE COURT.....         | 481 |
| MATTERS AND MOTIONS .....                     | 487 |
| REBECCA D. ROGERS                             |     |
| VOIR DIRE CONTIUES BY THE COURT.....          | 488 |
| MATTERS AND MOTIONS .....                     | 490 |
| NANCY L. MURPHY                               |     |
| VOIR DIRE BY THE COURT .....                  | 492 |

|                              |     |
|------------------------------|-----|
| RALPH MOODY                  |     |
| VOIR DIRE BY THE COURT ..... | 495 |

|                              |     |
|------------------------------|-----|
| THELMA D. HONEYCUTT          |     |
| VOIR DIRE BY THE COURT ..... | 498 |

## JURY QUALIFICATIONS – FEBRUARY 6, 2002 – FEBRUARY 7, 2002

### VOLUME TWO

|                                        |     |
|----------------------------------------|-----|
| THELMA D. HONEYCUTT                    |     |
| VOIR DIRE CONTINUES BY THE COURT ..... | 501 |
| VOIR DIRE BY MR. MAULDIN .....         | 508 |

|                              |     |
|------------------------------|-----|
| DERRICK P. ROSEMOND          |     |
| VOIR DIRE BY THE COURT ..... | 519 |

|                           |     |
|---------------------------|-----|
| MATTERS AND MOTIONS ..... | 524 |
|---------------------------|-----|

|                               |     |
|-------------------------------|-----|
| VOIR DIRE PANEL NUMBER 6..... | 526 |
|-------------------------------|-----|

|                         |     |
|-------------------------|-----|
| VOIR DIRE GROUP 1 ..... | 527 |
|-------------------------|-----|

|                                     |     |
|-------------------------------------|-----|
| PRACILLA A. GOODMAN                 |     |
| VOIR DIRE BY THE COURT .....        | 536 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 543 |
| VOIR DIRE BY MR. MAULDIN .....      | 548 |

|                           |     |
|---------------------------|-----|
| MATTERS AND MOTIONS ..... | 555 |
|---------------------------|-----|

|                                     |     |
|-------------------------------------|-----|
| NANCY C. WHERRY                     |     |
| VOIR DIRE BY THE COURT .....        | 562 |
| VOIR DIRE BY MR. MAULDIN .....      | 569 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 579 |

|                           |     |
|---------------------------|-----|
| MATTERS AND MOTIONS ..... | 582 |
|---------------------------|-----|

|                                     |     |
|-------------------------------------|-----|
| RAYMOND E. STARNES                  |     |
| VOIR DIRE BY THE COURT .....        | 583 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 592 |
| VOIR DIRE BY MR. MAULDIN .....      | 597 |

|                           |     |
|---------------------------|-----|
| MATTERS AND MOTIONS ..... | 607 |
|---------------------------|-----|

|                                     |     |
|-------------------------------------|-----|
| LINDA D. PRESSLEY                   |     |
| VOIR DIRE BY THE COURT .....        | 613 |
| VOIR DIRE BY MR. MAULDIN .....      | 622 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 629 |
| MATTERS AND MOTIONS .....           | 631 |
| JOSHUA C. COBB                      |     |
| VOIR DIRE BY THE COURT .....        | 633 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 643 |
| VOIR DIRE BY MR. MAULDIN .....      | 647 |
| MATTERS AND MOTIONS .....           | 655 |
| VOIR DIRE GROUP 1 .....             | 660 |
| JACOB M. CAMPBELL                   |     |
| VOIR DIRE BY THE COURT .....        | 670 |
| VOIR DIRE BY MR. MAULDIN .....      | 684 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 692 |
| MATTERS AND MOTIONS .....           | 696 |
| ROSITA J. SINGLETON                 |     |
| VOIR DIRE BY THE COURT .....        | 699 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 706 |
| VOIR DIRE BY MR. MAULDIN .....      | 709 |
| MATTERS AND MOTIONS .....           | 715 |
| LORETTA WILLIAMS                    |     |
| VOIR DIRE BY THE COURT .....        | 725 |
| VOIR DIRE BY MR. MAULDIN .....      | 734 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 739 |
| MATTERS AND MOTIONS .....           | 744 |
| SHIRLEY R. REDMOND                  |     |
| VOIR DIRE BY THE COURT .....        | 746 |
| VOIR DIRE BY MR. MAULDIN .....      | 752 |
| RHONDA F. SIMS                      |     |
| VOIR DIRE BY THE COURT .....        | 753 |

|                                     |     |
|-------------------------------------|-----|
| VOIR DIRE PANEL NUMBER 8.....       | 761 |
| STEPHANIE D. HASELWANDER            |     |
| VOIR DIRE BY THE COURT .....        | 770 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 777 |
| VOIR DIRE BY MR. MAULDIN .....      | 782 |
| MATTERS AND MOTIONS .....           | 791 |
| LARRY D. BUSHONG                    |     |
| VOIR DIRE BY THE COURT .....        | 792 |
| VOIR DIRE BY MR. MAULDIN .....      | 802 |
| MATTERS AND MOTIONS .....           | 813 |
| JAMES R. CHANCELLOR                 |     |
| VOIR DIRE BY THE COURT .....        | 817 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 825 |
| VOIR DIRE BY MR. MAULDIN .....      | 830 |
| MATTERS AND MOTIONS .....           | 840 |
| PETRA M. LACKEY                     |     |
| VOIR DIRE BY THE COURT .....        | 841 |
| VOIR DIRE BY MR. MAULDIN .....      | 850 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 860 |
| MATTERS AND MOTIONS .....           | 863 |
| AMY J. KESSLEY                      |     |
| VOIR DIRE BY THE COURT .....        | 869 |
| VOIR DIRE BY SOLICITOR ARIAIL ..... | 879 |
| VOIR DIRE BY MR. MAULDIN .....      | 883 |
| MATTERS AND MOTIONS .....           | 895 |
| FRED C. ROLLER, III                 |     |
| VOIR DIRE BY THE COURT .....        | 904 |
| MATTERS AND MOTIONS .....           | 906 |

|                                             |     |
|---------------------------------------------|-----|
| PRATAP NARAYAN, M.D.                        |     |
| EXAMINATION BY THE COURT .....              | 952 |
| CROSS-EXAMINATION BY SOLICITOR ARIAIL ..... | 963 |
| CROSS-EXAMINATION BY MR. MAULDIN .....      | 965 |
| REEXAMINATION BY THE COURT .....            | 983 |
| CAMILLA TEZZA, PH.D.                        |     |
| EXAMINATION BY THE COURT .....              | 986 |
| MATTERS AND MOTIONS .....                   | 990 |

### VOLUME THREE

|                                             |      |
|---------------------------------------------|------|
| MATTERS AND MOTIONS .....                   | 1001 |
| <u>JACKSON V. DENNO</u> HEARING.....        | 1022 |
| CHARLES BLACKBURN                           |      |
| DIRECT EXAMINATION BY MS. STROM .....       | 1023 |
| CROSS EXAMINATION BY MR. MAULDIN.....       | 1026 |
| MATTERS AND MOTIONS .....                   | 1030 |
| PRELIMINARY INSTRUCTION BY THE COURT .....  | 1037 |
| OPENING STATEMENTS BY SOLICITOR ARIAIL..... | 1043 |
| OPENING STATEMENTS BY MR. BANNISTER .....   | 1053 |
| TESTIMONY                                   |      |
| DONNIE M. GREENWAY, JR.                     |      |
| DIRECT EXAMINATION BY MS. STROM .....       | 1059 |
| CROSS EXAMINATION BY MR. MAULDIN.....       | 1066 |
| HARRY A. CRAFT, JR.                         |      |
| DIRECT EXAMINATION BY MS. STROM .....       | 1075 |
| CROSS EXAMINATION BY MR. MAULDIN.....       | 1085 |
| THOMAS MICHAEL GIBSON                       |      |
| DIRECT EXAMINATION BY MS. STROM .....       | 1096 |
| CROSS EXAMINATION BY MR. MAULDIN.....       | 1102 |

|                                                       |      |
|-------------------------------------------------------|------|
| WILLIAM H. MCCAULEY, JR.                              |      |
| DIRECT EXAMINATION BY MS. STROM .....                 | 1103 |
| CROSS EXAMINATION BY MR. MAULDIN.....                 | 1108 |
| CHRIS HINES                                           |      |
| DIRECT EXAMINATION BY MS. STROM .....                 | 1111 |
| CROSS EXAMINATION BY MR. MAULDIN.....                 | 1115 |
| CHAD ANTHONY JORDAN                                   |      |
| DIRECT EXAMINATION BY MS. STROM .....                 | 1119 |
| MATTERS AND MOTIONS .....                             | 1123 |
| TESTIMONY                                             |      |
| DARWIN SHAW                                           |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....           | 1127 |
| <b>TRIAL – GUILT PHASE (FEBRUARY 9, 2010)</b>         |      |
| MATTERS AND MOTIONS .....                             | 1147 |
| TESTIMONY                                             |      |
| DARWIN SHAW                                           |      |
| DIRECT EXAMINATION CONTINUES BY SOLICITOR ARIAIL..... | 1149 |
| CROSS EXAMINATION BY MR. MAULDIN.....                 | 1167 |
| MATTERS AND MOTIONS .....                             | 1172 |
| TESTIMONY                                             |      |
| DARWIN SHAW                                           |      |
| CROSS EXAMINATION CONTINUES BY MR. MAULDIN .....      | 1176 |
| REDIRECT EXAMINATION BY SOLICITOR ARIAIL.....         | 1191 |
| RECROSS EXAMINATION BY MR. MAULDIN .....              | 1195 |
| ZACK D. OWEN                                          |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....           | 1196 |
| DARWIN SHAW                                           |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....           | 1199 |
| CROSS EXAMINATION BY MR. MAULDIN.....                 | 1208 |
| REDIRECT EXAMINATION BY SOLICITOR ARIAL.....          | 1215 |

|                                               |      |
|-----------------------------------------------|------|
| MICHAEL E. WARD, M.D.                         |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1217 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1234 |
| REDIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1244 |
| RECROSS EXAMINATION BY MR. BANNISTER.....     | 1246 |
| PAUL A. SILVAGGIO                             |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1247 |
| CROSS EXAMINATION BY MR. MAULDIN.....         | 1254 |
| OSWALDO HURTADO                               |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1260 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1274 |
| MICHAEL J. WALSH                              |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1276 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1282 |
| RICHARD BEVERAGE                              |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1285 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1294 |
| TODD HAMLIN                                   |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1298 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1305 |
| ERIN BALMER                                   |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1308 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1314 |
| CAROL MARTIN                                  |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1315 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1320 |
| DAVID MANCINI                                 |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1324 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1333 |
| DEBORAH WHEELER                               |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1335 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1349 |
| TERRY WHEELER                                 |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....   | 1351 |
| CROSS EXAMINATION BY MR. BANNISTER.....       | 1357 |

|                                             |      |
|---------------------------------------------|------|
| MARY SWAFFORD                               |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1358 |
| CROSS EXAMINATION BY MR. MAULDIN.....       | 1363 |
| JEFFREY S. MCCALL                           |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1364 |
| CROSS EXAMINATION BY MR. BANNISTER.....     | 1368 |
| MARTY L. CLAPP                              |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1369 |
| CROSS EXAMINATION BY MR. BANNISTER.....     | 1379 |
| TANGIE SAYLORS                              |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1380 |
| JEFFREY M. HOLLIFIELD                       |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1381 |
| CROSS EXAMINATION BY MR. BANNISTER.....     | 1398 |

## FEBRUARY 10, 2002

|                                                          |      |
|----------------------------------------------------------|------|
| MATTERS AND MOTIONS .....                                | 1402 |
| TESTIMONY                                                |      |
| ILA SIMMONS                                              |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....              | 1409 |
| CROSS EXAMINATION BY MR. BANNISTER.....                  | 1422 |
| KAREN MCCALL                                             |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....              | 1424 |
| CROSS EXAMINATION BY MR. MAULDIN.....                    | 1454 |
| REDIRECT EXAMINATION BY SOLICITOR ARIAIL.....            | 1483 |
| MATTERS AND MOTIONS .....                                | 1487 |
| TESTIMONY                                                |      |
| KAREN MCCALL                                             |      |
| REDIRECT EXAMINATION CONTINUES BY SOLICITOR ARIAIL ..... | 1497 |
| RECROSS EXAMINATION BY MR. MAULDIN .....                 | 1498 |



## VOLUME FOUR

|                                          |      |
|------------------------------------------|------|
| ROBERT L. APPELL                         |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1500 |
| CROSS EXAMINATION BY MR. RICHEY .....    | 1510 |
| MIKE JONES                               |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1516 |
| CROSS EXAMINATION BY MR. RICHEY .....    | 1528 |
| VIC WOOTEN                               |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1536 |
| CROSS EXAMINATION BY MR. BANNISTER ..... | 1545 |
| REDIRECT EXAMINATION BY MS. STROM .....  | 1553 |
| MATTERS AND MOTIONS .....                | 1554 |
| TESTIMONY                                |      |
| KENNETH BROCK                            |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1559 |
| GEORGE S. CREMER, III                    |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1563 |
| JOHN THOMAS CLAMP, JR.                   |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1571 |
| STEVEN J. REEVES                         |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1575 |
| NEAL BRADLEY MCGUIRE                     |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1577 |
| JOHN MARK ORR                            |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1579 |
| C. P. BLACKBURN                          |      |
| DIRECT EXAMINATION BY MS. STROM .....    | 1582 |
| MATTERS AND MOTIONS .....                | 1585 |

TESTIMONY

|                                                 |      |
|-------------------------------------------------|------|
| C. P. BLACKBURN                                 |      |
| DIRECT EXAMINATION CONTINUES BY MS. STROM ..... | 1591 |
| CROSS EXAMINATION BY MR. MAULDIN.....           | 1591 |
| JEFF PARROTT                                    |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....     | 1593 |
| CROSS EXAMINATION BY MR. BANNISTER.....         | 1602 |
| BRETT BAKER                                     |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....     | 1603 |
| CHRISTOPHER B. BRYAN                            |      |
| DIRECT EXAMINATION BY MS. STROM .....           | 1611 |
| ILA SIMMONS                                     |      |
| DIRECT EXAMINATION BY MS. STROM .....           | 1621 |
| VELLO PAAVEL                                    |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL.....     | 1623 |
| CROSS EXAMINATION BY MR. MAULDIN.....           | 1650 |

**FEBRUARY 11, 2002 – FEBRUARY 12, 2002**

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1662 |
|---------------------------|------|

TESTIMONY

|                                |      |
|--------------------------------|------|
| JOHN RICHARD WOOD              |      |
| EXAMINATION BY THE COURT ..... | 1664 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1667 |
|---------------------------|------|

TESTIMONY

|                                          |      |
|------------------------------------------|------|
| JOHN RICHARD WOOD                        |      |
| EXAMINATION CONTINUES BY THE COURT ..... | 1676 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1678 |
|---------------------------|------|

TESTIMONY

|                                          |      |
|------------------------------------------|------|
| JOHN RICHARD WOOD                        |      |
| EXAMINATION CONTINUES BY THE COURT ..... | 1682 |

|                                             |      |
|---------------------------------------------|------|
| PAUL A. SILVAGGIO                           |      |
| DIRECT EXAMINATION BY MR. MAULDIN .....     | 1684 |
| CROSS EXAMINATION BY SOLICITOR ARIAIL ..... | 1691 |
| J. GRADY MILLER, JR.                        |      |
| DIRECT EXAMINATION BY MR. BANNISTER .....   | 1699 |
| CROSS EXAMINATION BY SOLICITOR ARIAIL ..... | 1702 |
| JOHN RICHARD WOOD                           |      |
| EXAMINATION CONTINUES BY THE COURT .....    | 1706 |
| MATTERS AND MOTIONS .....                   | 1707 |
| CLOSING ARGUMENTS BY SOLICITOR ARIAIL ..... | 1726 |
| CLOSING ARGUMENTS BY MR. BANNISTER.....     | 1744 |
| JURY CHARGE.....                            | 1756 |
| MATTERS AND MOTIONS .....                   | 1770 |
| RECHARGE.....                               | 1775 |
| MATTERS AND MOTIONS .....                   | 1778 |
| VERDICT .....                               | 1780 |
| MATTERS AND MOTIONS .....                   | 1782 |

## FEBRUARY 13, 2002

|                                        |      |
|----------------------------------------|------|
| MATTERS AND MOTIONS .....              | 1842 |
| PRELIMINARY INSTRUCTION .....          | 1842 |
| OPENING STATEMENTS BY MS. STROM .....  | 1846 |
| OPENING STATEMENTS BY MR. MAULDIN..... | 1850 |
| MATTERS AND MOTIONS .....              | 1860 |

TESTIMONY

|                                                                   |      |
|-------------------------------------------------------------------|------|
| WILLIAM H. MCCAULEY, JR.<br>DIRECT EXAMINATION BY MS. STROM ..... | 1864 |
|-------------------------------------------------------------------|------|

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1871 |
|---------------------------|------|

TESTIMONY

|                                                       |      |
|-------------------------------------------------------|------|
| JIMMY SLIGH<br>DIRECT EXAMINATION BY MR. HERVEY ..... | 1878 |
| CROSS EXAMINATION BY MR. RICHEY .....                 | 1905 |
| REDIRECT EXAMINATION BY MR. HERVEY .....              | 1911 |
| RECROSS EXAMINATION BY MR. RICHEY .....               | 1918 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1919 |
|---------------------------|------|

|                                      |      |
|--------------------------------------|------|
| <u>JACKSON V. DENNO</u> HEARING..... | 1923 |
|--------------------------------------|------|

|                                                                |      |
|----------------------------------------------------------------|------|
| DAVID LEE HANKS<br>DIRECT EXAMINATION BY SOLICITOR ARIAIL..... | 1923 |
| CROSS EXAMINATION BY MR. MAULDIN.....                          | 1926 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1930 |
|---------------------------|------|

TESTIMONY

|                                                               |      |
|---------------------------------------------------------------|------|
| CHARLES P. BLACKBURN<br>DIRECT EXAMINATION BY MS. STROM ..... | 1931 |
| CROSS EXAMINATION BY MR. MAULDIN.....                         | 1933 |

|                                                       |      |
|-------------------------------------------------------|------|
| GENE SHERIFF<br>DIRECT EXAMINATION BY MS. STROM ..... | 1935 |
| CROSS EXAMINATION BY MR. MAULDIN.....                 | 1938 |

|                                                               |      |
|---------------------------------------------------------------|------|
| SAMUEL MICHAEL GRANT<br>DIRECT EXAMINATION BY MS. STROM ..... | 1942 |
| CROSS EXAMINATION BY MR. MAULDIN.....                         | 1946 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1948 |
|---------------------------|------|

TESTIMONY

|                                       |      |
|---------------------------------------|------|
| MISTY NICHOLSON                       |      |
| DIRECT EXAMINATION BY MS. STROM ..... | 1950 |

|                                |      |
|--------------------------------|------|
| JOHN RICHARD WOOD              |      |
| EXAMINATION BY THE COURT ..... | 1959 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1961 |
|---------------------------|------|

TESTIMONY

|                                                     |      |
|-----------------------------------------------------|------|
| JEFF YOUNGMAN                                       |      |
| DIRECT EXAMINATION BY MR. BANNISTER .....           | 1965 |
| VOIR DIRE BY SOLICITOR ARIAIL .....                 | 1972 |
| DIRECT EXAMINATION CONTINUES BY MR. BANNISTER ..... | 1975 |
| CROSS EXAMINATION BY SOLICITOR ARIAIL .....         | 1990 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 1999 |
|---------------------------|------|

**VOLUME FIVE**

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2001 |
|---------------------------|------|

OUTSIDE THE PRESENCE OF THE JURY

|                                     |      |
|-------------------------------------|------|
| JEFF YOUNGMAN                       |      |
| QUESTIONS BY SOLICITOR ARIAIL ..... | 2004 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2006 |
|---------------------------|------|

OUTSIDE THE PRESENCE OF THE JURY

|                                                       |      |
|-------------------------------------------------------|------|
| JEFF YOUNGMAN                                         |      |
| QUESTIONS CONTINUES BY SOLICITOR ARIAIL .....         | 2013 |
| CROSS EXAMINATION CONTINUES BY SOLICITOR ARIAIL ..... | 2016 |
| REDIRECT EXAMINATION BY MR. BANNISTER .....           | 2021 |

|                                             |      |
|---------------------------------------------|------|
| TED KINSLER                                 |      |
| DIRECT EXAMINATION BY MR. MAULDIN .....     | 2026 |
| CROSS EXAMINATION BY SOLICITOR ARIAIL ..... | 2028 |

|                                        |      |
|----------------------------------------|------|
| JAMES EVANS AIKEN                      |      |
| DIRECT EXAMINATION BY MR. RICHEY ..... | 2030 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2044 |
|---------------------------|------|

**FEBRUARY 14 – 16, 2002**

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2051 |
|---------------------------|------|

TESTIMONY

|                                             |      |
|---------------------------------------------|------|
| RICHARD C. KERNS, JR.                       |      |
| DIRECT EXAMINATION BY MR. MAULDIN .....     | 2052 |
| CROSS EXAMINATION BY SOLICITOR ARIAIL ..... | 2054 |

|                                         |      |
|-----------------------------------------|------|
| DONNA MARIE SCHWARTZ-WATTS, M.D.        |      |
| DIRECT EXAMINATION BY MR. MAULDIN ..... | 2054 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2094 |
|---------------------------|------|

TESTIMONY

|                                             |      |
|---------------------------------------------|------|
| DONNA MARIE SCHWARTZ-WATTS, M.D.            |      |
| CROSS EXAMINATION BY SOLICITOR ARIAIL ..... | 2102 |
| REDIRECT EXAMINATION BY MR. MAULDIN .....   | 2125 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2129 |
|---------------------------|------|

TESTIMONY

|                                              |      |
|----------------------------------------------|------|
| PRATAP NARAYAN, M.D.                         |      |
| DIRECT EXAMINATION BY SOLICITOR ARIAIL ..... | 2136 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2159 |
|---------------------------|------|

TESTIMONY

|                                        |      |
|----------------------------------------|------|
| PRATAP NARAYAN, M.D.                   |      |
| CROSS EXAMINATION BY MR. MAULDIN ..... | 2162 |

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2174 |
|---------------------------|------|

|                                             |      |
|---------------------------------------------|------|
| CLOSING ARGUMENTS BY SOLICITOR ARIAIL ..... | 2181 |
|---------------------------------------------|------|

|                                        |      |
|----------------------------------------|------|
| CLOSING ARGUMENTS BY MR. MAULDIN ..... | 2195 |
|----------------------------------------|------|

|                           |      |
|---------------------------|------|
| MATTERS AND MOTIONS ..... | 2215 |
|---------------------------|------|

|                                                  |      |
|--------------------------------------------------|------|
| JURY CHARGE.....                                 | 2216 |
| MATTERS AND MOTIONS .....                        | 2231 |
| <u>ALLEN</u> CHARGE.....                         | 2243 |
| MATTERS AND MOTIONS .....                        | 2246 |
| VERDICT .....                                    | 2252 |
| MATTERS AND MOTIONS .....                        | 2258 |
| SENTENCING .....                                 | 2259 |
| PRELIMINARY HEARING DATED FEBRUARY 13, 2001..... | 2262 |
| COURT REPORT'S INDEX.....                        | 2263 |
| TESTIMONY                                        |      |

PAUL SILVAGGIO

|                                          |      |
|------------------------------------------|------|
| EXAMINATION BY SOLICITOR ARIAIL .....    | 2265 |
| EXAMINATION BY MR. MAULDIN.....          | 2274 |
| TRANSCRIPT DATED FEBRUARY 28, 2001 ..... | 2301 |
| TRANSCRIPT DATED JANUARY 18, 2002 .....  | 2338 |
| TRANSCRIPT DATED JANUARY 28, 2002 .....  | 2430 |

**VOLUME SIX**

|                                                     |      |
|-----------------------------------------------------|------|
| TRANSCRIPT DATED JANUARY 28, 2002 (CONTINUED) ..... | 2500 |
| TRANSCRIPT DATED DECEMBER 7, 2001 .....             | 2510 |
| OPINION NO. 25907 FILED DECEMBER 6, 2004 .....      | 2575 |
| ORDER DENYING PETITION FOR REHEARING.....           | 2585 |
| ORDER GRANTING STAY OF EXECUTION .....              | 2587 |
| APPLICATION FOR POST-CONVICTION RELIEF .....        | 2589 |

|                                                                      |      |
|----------------------------------------------------------------------|------|
| RETURN, MOTION TO DISMISS AND<br>MOTION FOR SUMMARY JUDGMENT .....   | 2597 |
| TRANSCRIPT DATED SEPTEMBER 30, 2005 .....                            | 2636 |
| TRANSCRIPT DATED JANUARY 8, 2007.....                                | 2657 |
| PETITIONER’S EXHIBIT 1 (AFFIDAVIT OF CONNIE JANTZ) .....             | 2693 |
| PETITIONER’S EXHIBIT 2 (LETTER TO JUDGE PATTERSON).....              | 2694 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT<br>MARCH 6 – 8, 2007 ..... | 2697 |
| TESTIMONY                                                            |      |
| THOMAS COBB                                                          |      |
| DIRECT EXAMINATION BY MR. BROWN.....                                 | 2711 |
| CROSS EXAMINATION BY MR. WATERS.....                                 | 2733 |
| REDIRECT EXAMINATION BY MR. BROWN.....                               | 2748 |
| CONNIE JANTZ                                                         |      |
| DIRECT EXAMINATION BY MR. BROWN.....                                 | 2755 |
| CROSS EXAMINATION BY MR. WATERS.....                                 | 2796 |
| REDIRECT EXAMINATION BY MR. BROWN.....                               | 2802 |
| RECROSS EXAMINATION BY MR. WATERS.....                               | 2805 |
| JEFF NAYLOR                                                          |      |
| DIRECT EXAMINATION BY MR. BROWN.....                                 | 2807 |
| DONNA SCHWARTZ-WATTS                                                 |      |
| DIRECT EXAMINATION BY MR. BROWN.....                                 | 2816 |
| CROSS EXAMINATION BY MR. WATERS.....                                 | 2856 |
| REDIRECT EXAMINATION BY MR. BROWN.....                               | 2864 |
| JOHN MAULDIN                                                         |      |
| DIRECT EXAMINATION BY MR. BROWN.....                                 | 2867 |



## VOLUME SEVEN

|                                                |      |
|------------------------------------------------|------|
| JOHN MAULDIN                                   |      |
| DIRECT EXAMINATION CONTINUES BY MR. BROWN..... | 3000 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3051 |
| REDIRECT EXAMINATION BY MR. BROWN.....         | 3119 |
| BRUCE BYRHOLDT                                 |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3131 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3132 |
| JOHN STEEDMAN                                  |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3134 |
| CAMILLA TEZZA                                  |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3141 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3151 |
| REDIRECT EXAMINATION BY MR. BROWN.....         | 3159 |
| CARLOS TORRES                                  |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3161 |
| TIMOTHY JONES                                  |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3165 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3168 |
| PAUL SILVAGGIO                                 |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3177 |
| BRIAN BOWEN                                    |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3184 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3189 |
| REDIRECT EXAMINATION BY MR. BROWN.....         | 3190 |
| PRAPAP NARAYAN                                 |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3195 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3224 |
| REDIRECT EXAMINATION BY MR. BROWN.....         | 3247 |
| JAMES BANNISTER                                |      |
| DIRECT EXAMINATION BY MR. BROWN.....           | 3256 |
| CROSS EXAMINATION BY MR. WATERS.....           | 3310 |
| REDIRECT EXAMINATION BY MR. BROWN.....         | 3343 |
| RECROSS EXAMINATION BY MR. WATERS.....         | 3357 |

|                                              |      |
|----------------------------------------------|------|
| RODNEY RICHEY                                |      |
| DIRECT EXAMINATION BY MR. BROWN.....         | 3359 |
| CROSS EXAMINATION BY MR. WATERS.....         | 3370 |
| PLAINTIFF'S EXHIBIT 1 (MEDICAL RECORDS)..... | 3409 |

## VOLUME EIGHT

|                                                         |      |
|---------------------------------------------------------|------|
| PLAINTIFF'S EXHIBIT 1 (MEDICAL RECORDS – CONTINUE)..... | 3500 |
| PLAINTIFF'S EXHIBIT 2 (DEPOSIT SHEET).....              | 3505 |
| PLAINTIFF'S EXHIBIT 2A (COPY OF P2).....                | 3508 |
| PLAINTIFF'S EXHIBIT 3 (SLED REPORT) .....               | 3514 |
| PLAINTIFF'S EXHIBIT 4 (POLICE REPORT) .....             | 3516 |
| PLAINTIFF'S EXHIBIT 5 (POLICE REPORT) .....             | 3520 |
| PLAINTIFF'S EXHIBIT 6 (TRANSCRIPT) .....                | 3522 |
| PLAINTIFF'S EXHIBIT 7 (TRANSCRIPT) .....                | 3587 |
| PLAINTIFF'S EXHIBIT 8 (LETTER) .....                    | 3603 |
| PLAINTIFF'S EXHIBIT 9 (LETTER) .....                    | 3605 |
| PLAINTIFF'S EXHIBIT 10 (LETTER) .....                   | 3606 |
| PLAINTIFF'S EXHIBIT 11 (MEMO) .....                     | 3607 |
| PLAINTIFF'S EXHIBIT 12 (ORDER) .....                    | 3608 |
| PLAINTIFF'S EXHIBIT 13 (ORDER) .....                    | 3610 |
| PLAINTIFF'S EXHIBIT 14 (SCHOOL RECORDS).....            | 3613 |
| PLAINTIFF'S EXHIBIT 15 (TABERNACLE RECORDS) .....       | 3629 |
| ORDER OF DISMISSAL WITH PREJUDICE.....                  | 3633 |
| INDICTMENTS .....                                       | 3727 |

MATTERS AND MOTIONS

1 THEY DON'T HAVE IT, BUT IF THEY HAD IT THEY WOULD BE SURE TO  
2 GIVE IT TO US.

3 THE COURT: LET ME JUST BACK UP A SECOND SO I CAN  
4 UNDERSTAND WHAT WE'RE DOING.

5 MR. MAULDIN: YES, SIR.

6 THE COURT: I'M TRYING TO UNDERSTAND THE PURPOSE OF  
7 BRINGING UP MOTIONS IN THE PAST FOR WHICH DEFINITIVE RULINGS  
8 WERE MADE WHICH RESULTED IN AFFIRMATIVE OBLIGATIONS ON THE  
9 STATE TO DISCLOSE CERTAIN THINGS IF CERTAIN THINGS EXISTED.  
10 AND NOW I'M SUPPOSED TO GO BACK AND INQUIRE OF THE STATE IF  
11 THEY FOLLOW MY ORDERS?

12 MR. MAULDIN: YES, SIR. AND TO THE EXTENT -- LET ME  
13 SAY THIS. I AM REASSERTING THE RIGHT OF OUR CLIENT TO THAT  
14 INFORMATION. NOW, I WOULD -- I WOULD CONCEDE, YOUR HONOR,  
15 THAT UNDER WHAT I CALL NORMAL CIRCUMSTANCES WE'RE JUST GOING  
16 TO ASSUME THAT ALL IS BEING PROVIDED. THE FACT OF THE MATTER  
17 IS, IN THIS -- THE LEVEL OF LITIGATION THAT THIS INVOLVES, I  
18 DON'T MAKE -- FROM THIS SIDE OF THIS ROOM, I DON'T MAKE ANY  
19 ASSUMPTIONS BECAUSE MY CLIENT'S ON TRIAL FOR HIS LIFE. SO I  
20 MUST NOT BE PLACED IN A POSITION TO MAKE AN ASSUMPTION. THAT  
21 IS WHAT OUR SOUTH CAROLINA SUPREME COURT HAS FORCED DEFENSE  
22 COUNSEL TO DO, MAKE NO ASSUMPTION THAT THE RECORD IS  
23 PROTECTED. SO I REASSERT THAT.

24 THE COURT: I MEAN, I'LL JUST TAKE THE FIRST ISSUE. I  
25 DON'T -- I UNDERSTAND YOUR DESIRE TO PROTECT THE RECORD.

MATTERS AND MOTIONS

1 ABSENT SOME PRIMA FACIE SHOWING THAT THERE IS NONCOMPLIANCE,  
2 I'M HESITANT TO GO OVER TO THE STATE AND SAY, "HAVE YOU  
3 REALLY BEEN FOLLOWING THE LAW?" I MEAN, THAT'S A LITTLE, TO  
4 ME, OFFENSIVE. BUT I WANT TO PROTECT THE DEFENDANT'S RIGHTS.

5 MR. MAULDIN: YES, SIR. I WOULD THINK THAT THAT IS --  
6 AND I -- I'M GOING TO HAVE TO BE CAREFUL ABOUT WHAT I SAY ON  
7 THE RECORD. I MUST REASSERT -- WHATEVER THE COURT CHOOSES  
8 REGARDING YOUR RESPONSE FROM THE BENCH IS OBVIOUSLY AND  
9 COMPLETELY UP TO YOU. BUT I FEEL I MUST REASSERT, EVEN IF  
10 IT'S OFFENSIVE.

11 THE COURT: OKAY. WELL, IT DOESN'T OFFEND ME. AND YOU  
12 KNOW HOW I ASK Y'ALL'S -- ON PROCEDURAL MATTERS HOW YOU WANT  
13 TO DO THIS, WHAT TIME DO YOU WANT TO DO IT, WHAT TIME DO YOU  
14 WANT TO START BACK, WE'LL DO THE JURY THIS WAY, HAVE YOU GOT  
15 ANY SUGGESTIONS. SO I'M AMENABLE---

16 MR. MAULDIN: YES, SIR.

17 THE COURT: ---TO DOING THAT. I'LL JUST TAKE THIS  
18 FIRST EXAMPLE. THERE IS AN ORDER FILED MARCH 1ST, DATED  
19 FEBRUARY 28TH LAST YEAR. AND YOU HAD CAPTIONED YOUR MOTION  
20 "TO REVEAL THE DEAL."

21 MR. MAULDIN: YES, SIR.

22 THE COURT: AND IT WAS GRANTED. THERE WAS A DISPUTE  
23 BETWEEN THE TWO OF YOU AS TO ANY ISSUE REGARDING MERE OFFERS  
24 BY THE STATE WHICH WERE REJECTED BY A POTENTIAL WITNESS. I  
25 THEN TOOK IT UNDER ADVISEMENT AND REQUESTED LEGAL AUTHORITY.

MATTERS AND MOTIONS

1 AND ON APRIL THE 19TH I ISSUED AN ORDER CONSISTENT WITH THE  
2 REQUEST YOU SOUGHT FOR THE STATE TO DISCLOSE ANY PLEA OFFER,  
3 OFFER OF A REDUCTION IN CHARGES, RECOMMENDATION OF LENIENCY,  
4 TRUST ME AGREEMENTS WHICH WERE OFFERED TO A WITNESS,  
5 INCLUDING THOSE OF ANYONE ANTICIPATED IN THE TRIAL OF THE  
6 CASE.

7 MR. MAULDIN: YES, SIR.

8 THE COURT: AND IT HAD TO BE DONE NOT LATER THAN ONE  
9 WEEK PRIOR TO THE COMMENCEMENT OF THE TRIAL.

10 MR. MAULDIN: YES, SIR. AND I AM STANDING HERE THE DAY  
11 OF THE COMMENCEMENT OF THE TRIAL, I AIN'T GOT ANYTHING.

12 THE COURT: SO YOU DON'T WANT A WITNESS TO TESTIFY, BE  
13 ADVERSE TO YOUR CLIENT'S INTEREST AND YOU FIND OUT FOR THE  
14 FIRST TIME ON CROSS EXAMINATION THAT A DEAL HAS BEEN OFFERED  
15 AND YOU COULDN'T ADDRESS IT PRELIMINARILY?

16 MR. MAULDIN: THAT WOULD BE IN DIRECT CONTRADICTION TO  
17 YOUR ORDER. YES, SIR.

18 THE COURT: ALL RIGHT.

19 MR. MAULDIN: AND THE REMEDY, YOUR HONOR, WOULD BE SOME  
20 SORT OF DELAY. IN OTHER WORDS, I DON'T KNOW WHETHER IT WOULD  
21 BE AN HOUR'S DELAY, A DAY'S DELAY. IN OTHER WORDS, IF THAT  
22 KIND OF THING COMES UP DURING THIS TRIAL, WE'RE GOING TO HAVE  
23 TO HAVE A REMEDY. THAT ORDER HAS TO HAVE SOME MEAT TO IT --  
24 OR TEETH TO IT. AND ALL WE'RE SAYING IS---

25 THE COURT: I AGREE WITH THAT.

MATTERS AND MOTIONS

1           MR. MAULDIN:    YES, SIR.

2           THE COURT:    I JUST DON'T ANTICIPATE THAT BEING AN  
3           ISSUE.   I TRUST BOTH SIDES---

4           MR. MAULDIN:    YES, SIR.

5           THE COURT:    ---TO COMPLY WITH THE ORDERS OF THE COURT.

6           MR. MAULDIN:    YES, SIR.

7           THE COURT:    AND I'VE BEEN GIVEN NO REASON THROUGH  
8           LONGSTANDING PRACTICE WITH BOTH SIDES TO ANTICIPATE  
9           NONCOMPLIANCE.

10          MR. MAULDIN:   YES, SIR.   SO WITH THAT IN MIND, YOUR  
11          HONOR, WE DO ASK AND WE ARE ASKING FOR A REVISIT OF WHAT I  
12          CALL THE SECOND BRADY REGARDING THIS PUBLIC INFORMATION  
13          REGARDING PUBLIC INFORMATION REGARDING POTENTIAL CONNECTIONS  
14          WITH BANK ROBBERIES THAT SIMPLY DID NOT EXIST.

15          THE COURT:    ALL RIGHT.

16          MR. MAULDIN:   THE NEXT ONE, YOUR HONOR, THAT WE WANT  
17          THE COURT TO RECONSIDER IS THE BARRING OF CAMERAS.

18                           (COUNSEL OFF RECORD)

19          MR. MAULDIN:   YOUR HONOR, THE NEXT ONE -- AND I -- I  
20          MEAN, DID YOU RULE?

21          THE COURT:    NO, GO AHEAD.   I DIDN'T RULE.

22          MR. MAULDIN:   ALL RIGHT.   THE NEXT ONE, YOUR HONOR, WAS  
23          MOTION FILED NOVEMBER THE 21ST WHERE WE REQUESTED A QUASHING  
24          OF THE DEATH NOTICE WHERE THE DEFENDANT -- UNDER STATUTORY  
25          SCHEME THE DEFENDANT WAS REQUIRED TO ENTER A PLEA OF NOT

MATTERS AND MOTIONS

1 GUILTY AND THE SENTENCE -- DO YOU REMEMBER THAT MOTION?

2 THE COURT: I DO.

3 MR. MAULDIN: ALL RIGHT.

4 THE COURT: AND I ALSO REMEMBER EITHER I TOLD YOU ON  
5 THE BENCH OR PUT IT IN A FOOTNOTE IN THE ORDER THAT THAT  
6 STRUCK ME AS A VERY SOUND ARGUMENT. I DON'T BELIEVE IT'S  
7 CONSTITUTIONALLY IN FIRM TO HAVE---

8 MR. MAULDIN: I'LL HAND YOU MY NOTE, YOUR HONOR. WHAT  
9 I WROTE YOU SAID, AND I THINK THAT'S EXACTLY WHAT YOU SAID.

10 THE COURT: IT DOESN'T RISE TO A CONSTITUTIONAL  
11 VIOLATION. BUT FROM A PRACTICAL STANDPOINT I CAN UNDERSTAND  
12 THE BENEFIT A PARTY WOULD SEEK TO OBTAIN BY THAT INITIAL  
13 ADMISSION ON THE FRONT END IN THE INABILITY TO PLEAD GUILTY  
14 TO A JUDGE AND THEN SUBMIT SENTENCING TO A JURY.

15 MR. MAULDIN: YES, SIR.

16 THE COURT: AND I OFFERED FROM THE BENCH AND/OR IN  
17 WRITING TO ADDRESS THAT AND TO HANDLE THAT DURING JURY  
18 SELECTION IF DEFENSE COUNSEL SO DESIRED.

19 MR. MAULDIN: YES, SIR.

20 THE COURT: SO I WAS WILLING TO TELL THE JURY THAT THE  
21 INDIVIDUAL WISHED TO PLEAD GUILTY, BUT IN ORDER TO SUBMIT THE  
22 SENTENCING ISSUE TO THEM WE WOULD GO THROUGH THE PROCESS OF A  
23 TRIAL FIRST. AND THEN IF YOU HAD DESIRED THAT, WE WOULD HAVE  
24 HAD LONG DISCUSSIONS OF HOW WE COULD APPROACH THAT WITH THE  
25 JURY AND THINGS OF THAT NATURE.

MATTERS AND MOTIONS

1           MR. MAULDIN:   YES, SIR.

2           THE COURT:    I SPECIFICALLY REMEMBER THAT ONE.  IT  
3 STRUCK A CHORD WITH ME.

4           MR. MAULDIN:   YES, SIR.  AND THE WAY OUR STATEMENT IS  
5 SET UP IS JUST THE WAY IT'S SET UP.  BUT WE DON'T BELIEVE  
6 THAT IT'S APPROPRIATE THE WAY IT'S SET UP WHERE IT REQUIRES  
7 -- WELL, I'M NOT GOING TO GO THROUGH AND REHASH THE ARGUMENT.

8           THE COURT:    RIGHT.  AND MY RULING STANDS ON THAT.

9           MR. MAULDIN:   YES, SIR.

10          THE NEXT MOTION, YOUR HONOR, THAT WOULD BE APPROPRIATE  
11 AT THIS TIME WHICH WAS HELD IN ABEYANCE, IF I'M NOT MISTAKEN,  
12 AT THE TIME OF THE HEARING, WAS THE SEQUESTRATION OF  
13 WITNESSES.  AND I ASSUME FROM WORDS YOU SAID EARLIER THAT  
14 SEQUESTRATION OF WITNESSES IS IN FACT GOING TO TAKE PLACE?

15          THE COURT:    IT'S GRANTED EXCEPT I'M GOING TO ALLOW THE  
16 VICTIM AND IF THERE IS AN AGENT INVOLVED AS A LEAD AGENT TO  
17 ALSO BE EXEMPTED FROM THE SEQUESTRATION ORDER.

18          MR. MAULDIN:   YES, SIR.

19          THE COURT:    AND YOU EARLIER -- AND IT'S ON THE RECORD.  
20 YOU, I BELIEVE, OBJECTED TO ANYONE BEING EXEMPTED FROM THE  
21 SEQUESTRATION ORDER.

22          MR. MAULDIN:   WHAT I SAID ON THE RECORD AT THAT TIME,  
23 YOUR HONOR, WE STILL TAKE THE---

24          THE COURT:    VERY GOOD, SIR.

25          MR. MAULDIN:   YOUR HONOR, AND BY -- WHEN YOU SAY UNDER



MATTERS AND MOTIONS

1 THE VICTIM'S RIGHTS ACT, BECAUSE THERE WERE MULTIPLE COUNTIES  
2 AND MULTIPLE CHARGES, I'M ASSUMING THAT THE VICTIM'S RIGHTS  
3 ACT APPLICATION IS AS TO THE INDICTMENT ON TRIAL IN THIS  
4 COURTROOM?

5 THE COURT: RIGHT. WE'RE NOT GOING TO HAVE 20 ANDERSON  
6 DEPUTIES SITTING BEHIND THE SOLICITOR AS VICTIMS.

7 MR. MAULDIN: YES, SIR.

8 SOLICITOR ARIAIL: ALL IN UNIFORM.

9 THE COURT: RIGHT.

10 SOLICITOR ARIAIL: MIGHT BE, THEY JUST WON'T BE IN  
11 UNIFORM.

12 THE COURT: ALL RIGHT. BUT THAT'S NOT -- THERE'S ALSO  
13 AN ACT OF DISCRETION UNDER THE RULES OF EVIDENCE THAT PERMITS  
14 THAT.

15 MR. MAULDIN: OKAY. OH, AND THIS ONE, YEAH, I DO  
16 FIRMLY REASSERT, AND THAT IS FOR A REASONABLE TRIAL  
17 ADJOURNMENT SCHEDULE. OBVIOUSLY, WE TAKE THE POSITION THAT  
18 ONCE THE JURY IS IMPANELLED THAT EVEN THOUGH WE HAVE THEM  
19 TAKEN FROM THEIR HOMES, WE BELIEVE THAT THEIR ABILITY TO BE  
20 FAIR AND IMPARTIAL IS IMPEDED IF THEY ARE WORN OUT. AND I  
21 KNOW MY ABILITY IS CERTAINLY IMPEDED. SO I DO REAFFIRM THAT  
22 REQUEST, YOUR HONOR.

23 THE COURT: THERE WILL BE A REASONABLE TRIAL SCHEDULE.

24 MR. MAULDIN: ALL RIGHT, SIR. ONE MOMENT, YOUR HONOR,  
25 YES, SIR. (PAUSE) WE REAFFIRM THE MOTION FILED ON JANUARY

MATTERS AND MOTIONS

1 15TH WHICH YOU DENIED ON JANUARY 18TH WHERE WE ASKED THAT A  
2 -- AT THE CONCLUSION OF THE FIRST PHASE A SECOND JURY BE  
3 IMPANELLED.

4 THE COURT: SAME RULING.

5 MR. MAULDIN: NOW, YOUR HONOR, THE ONLY TWO REMAINING  
6 THAT I -- WELL, NO, I'VE GOT -- WELL -- THE ONLY TWO THAT ARE  
7 FILED AND BEFORE THE COURT AT THIS POINT WOULD BE MATTERS  
8 REGARDING THE ANDERSON EVIDENCE ISSUES AND ANY ALLEGED  
9 STATEMENTS ATTRIBUTABLE TO THE DEFENDANT. AND THEN WE HAVE  
10 TWO ORAL MOTIONS THAT WE WOULD LIKE TO MAKE REGARDING CERTAIN  
11 SPECIFIC ITEMS OF EVIDENCE THAT WE BELIEVE NEED TO BE VISITED  
12 PRIOR TO THEIR DISPLAY TO THE JURY.

13 THE COURT: OKAY. THE JACKSON v. DENNO WE'RE GOING TO  
14 RESOLVE -- AND YOU MENTIONED -- I WAS WRITING AND YOU  
15 MENTIONED ANOTHER ONE. I'VE GOT THE EVIDENCE WE NEED TO  
16 REVIEW.

17 MR. MAULDIN: ALL RIGHT.

18 THE COURT: YOU SAID A COUPLE OF ISSUES. BUT THERE WAS  
19 SOMETHING ELSE I MISSED.

20 MR. MAULDIN: THERE ARE TWO PIECES OF EVIDENCE,  
21 PHYSICAL EVIDENCE, THAT WE ARE AWARE OF---

22 THE COURT: OKAY. I HEARD THAT. I THINK I MISSED  
23 SOMETHING ELSE.

24 MR. MAULDIN: ALL RIGHT. THE ANDERSON EVIDENCE.

25 THE COURT: RIGHT.

MATTERS AND MOTIONS

1           MR. MAULDIN:    AND THEN THE STATEMENTS.

2           THE COURT:    OKAY.   THANK YOU, SIR.

3           ALL RIGHT.   THE MOTION ONCE AGAIN TO BAR THE MEDIA IS  
4   DENIED.   WE WILL HAVE A REASONABLE TRIAL SCHEDULE.  
5   SEQUESTRATION IS AS ORDERED.   OTHER RULINGS AS PREVIOUSLY  
6   STATED.

7           SOLICITOR, IF YOU WANT TO RESPOND TO THE FEBRUARY OR  
8   APRIL ORDERS OF THE COURT REGARDING THE MOTION TO REVEAL THE  
9   DEAL AND OFFERS OF CONCESSION AND THINGS OF THAT NATURE, YOU  
10   MAY.   I'M NOT REQUIRING IT JUST BECAUSE I ANTICIPATE  
11   COMPLIANCE.   AND ALSO, THE SECOND BRADY MOTION ABOUT  
12   SUGGESTIONS THAT WERE APPARENTLY IN MEDIA ABOUT ROBBERIES AND  
13   EVIDENCE THAT THE STATE WOULD OFFER ABOUT ROBBERIES.

14          SOLICITOR ARIAIL:   WELL, I DON'T WISH TO RESPOND TO THE  
15   REVEAL THE DEAL BECAUSE OF THE FACT I'M UNDER A COURT ORDER  
16   AND THE COURT ORDER SAID I HAD TO DO IT BY LAST WEEK.   IF I  
17   DIDN'T DO IT BY LAST WEEK, I FIGURE YOU WILL BE LIKE MY  
18   FATHER AND YOU WILL GET YOUR POUND OF FLESH FOR VIOLATING THE  
19   RULE.

20          BUT AS TO THE BANK ROBBERIES, OBVIOUSLY THERE IS MORE  
21   KNOWN ABOUT THAT ON THAT SIDE OF THE TABLE THAN THERE IS ON  
22   THIS SIDE BECAUSE IT KEEPS COMING UP.   THERE WERE BANK  
23   ROBBERIES.   AND THE STATE BELIEVES, AND SO DOES THE FEDERAL  
24   GOVERNMENT, THAT THIS DEFENDANT AND HIS GIRLFRIEND WERE  
25   INVOLVED IN IT.   NO QUESTION ABOUT THAT.   THAT'S WHY HE'S SO

MATTERS AND MOTIONS

1 WORRIED.

2 HE TOLD THE COURT -- HE KNEW ABOUT THE EVIDENCE. HE  
3 KNOWS ABOUT ALL THE EVIDENCE IN THERE. BUT HE SAYS WE DON'T  
4 HAVE IT, AND HE KNOWS WE DON'T HAVE IT. WELL -- AND THAT'S  
5 TRUE. WE DON'T HAVE IT. BUT I CAN TELL YOU -- THE ONLY  
6 THING I CAN TELL YOU IS THAT IF SOMETHING DEVELOPS IN THIS  
7 TRIAL THAT MAKES ME NEED TO REALLY GO GET IT, THAT HE  
8 SUGGESTS SOMETHING OR SOMETHING COMES UP, THEN WE'LL START  
9 DIGGING HARD TO GET IT.

10 BUT I NEVER HAVE SEEN HOW IT WAS RELEVANT TO THIS CASE.  
11 I NEVER THOUGHT THE JUDGE WOULD ALLOW IT IN. IT WAS  
12 SPECULATIVE AT BEST IF SOMEBODY COULDN'T PROVE IT. BUT  
13 HAVING BEEN IN THIS END OF LAW ENFORCEMENT 30 YEARS, I KNOW  
14 THINGS THAT I SEE AND WE KNOW HOW THINGS OPERATE. THERE'S NO  
15 DOUBT IN MIND, PEOPLE DON'T CARRY AROUND CLIPPINGS IN THEIR  
16 CAR ABOUT BANK ROBBERS AND PEOPLE ON A SCOOTER UNLESS THEY'RE  
17 RELATED TO BANK ROBBERS. SO THAT THING'S BEEN ROLLING  
18 AROUND, BUT I'M NOT GOING TO BRING ANY EVIDENCE IN THIS  
19 COURTROOM UNLESS HE OPENS THE DOOR.

20 (OFF RECORD WITH CO-COUNSEL) AND MS. STROM POINTS OUT  
21 THAT WE HAVE MADE ARRANGEMENTS FOR MR. MAULDIN AND THE  
22 DEFENSE TEAM TO GO TO THE PROPERTY AND EVIDENCE ROOM TO VIEW  
23 ALL THE EVIDENCE WE HAD. IT'S ALL BEEN PREMARKED,  
24 PRESTICKERED. WE TOLD HIM WHAT WE WERE GOING TO PUT IN. WE  
25 TOLD HIM WHAT WE'RE NOT PLANNING ON PUTTING IN, SO HE

MATTERS AND MOTIONS

1 DIDN'T -- HE COULD LOOK AT IT FROM THAT VIEWPOINT.

2 AND ALL THE PHOTOS THAT WE HAVE HAD, WE'VE GIVEN HIM A  
3 COPY OF A CONTACT SHEET. WE TOLD HIM WHICH ONES WE INTENDED  
4 TO INTRODUCE, WHICH ONES WE DON'T, AND WE HAVE GIVEN HIM  
5 BLOWUPS OF THE ONES THAT WE INTEND TO INTRODUCE PLUS A NUMBER  
6 THAT WERE CLOSE THAT WE MIGHT GO BACK TO. THE REST OF THEM  
7 WE DIDN'T BLOW UP. SO WE THINK WE'VE COMPLIED WITH ALL OF  
8 THAT. THE COURT: DO YOU WANT TO RESPOND BRIEFLY?

9 MR. MAULDIN: YES, SIR. REFERENCE WAS MADE TO WHAT THE  
10 DEFENSE KNEW THAT THE STATE DID NOT. THE RESPONSE FROM THE  
11 DEFENSE IS THIS, YOUR HONOR. WHAT WE KNOW WE READ IN THE  
12 PAPER. AND THE READINGS IN THE PAPER REFER TO AUTHORITIES  
13 REPORT THAT THE, THE LAW ENFORCEMENT STATES THAT. IT'S THE  
14 SAME THING THAT HAPPENED IN THE COREY HARRIS CASE WHERE THEY  
15 CLAIMED THAT THE OFFICER HAD BEEN AMBUSHED, WHERE THERE WAS  
16 SWARMING. THIS IS INFORMATION THAT IS PUT OUT ON THE STREET  
17 CONTEMPORANEOUS WITH THE TIME OF THE OFFENSE THAT  
18 CONTAMINATES THE CASE. THAT'S WHAT WE'VE BEEN FIGHTING THIS  
19 WHOLE TIME.

20 THE COURT: ALL RIGHT.

21 MR. MAULDIN: I THINK OUR EFFORTS ARE OBVIOUS.

22 THE COURT: THANK YOU. AND I DO WANT TO NOTE  
23 PARENTHETICALLY THAT WE WENT THROUGH DOZENS OF JURORS. NOT A  
24 SINGLE ONE HAD ANY RECOLLECTION ABOUT ANY SUGGESTION OF THIS  
25 CASE BEING ASSOCIATED WITH ANY ROBBERIES. I WAS THINKING

MATTERS AND MOTIONS

1 THAT MAY COME UP BASED ON OUR PREVIOUS DISCUSSIONS AND  
2 MOTIONS. AND IT DID NOT SURFACE FROM A SINGLE JUROR.

3 NOW, SOLICITOR, I DO WANT TO ADDRESS THE JACKSON v.  
4 DENNO ISSUE. IF THERE IS ANY STATEMENT ATTRIBUTABLE TO THIS  
5 DEFENDANT, WE NEED TO ADDRESS THAT. AND WE CAN EITHER DO IT  
6 NOW, OR IF THE OFFICER IS NOT HERE AND YOU WANT TO DO IT  
7 AFTER LUNCH BEFORE THE JURY GETS HERE, WE CAN DO IT AT THAT  
8 TIME. IS THERE ANY STATEMENT?

9 MS. STROM: YES, SIR. THERE IS ONE STATEMENT  
10 ATTRIBUTED TO THE DEFENDANT. IT WAS -- THE STATE CONTENDS IT  
11 WAS A SPONTANEOUS UTTERANCE NOT IN RESPONSE TO ANY  
12 INTERROGATION. IT WAS MADE WHILE THE DEFENDANT WAS AT THE  
13 HOSPITAL AND BEING GUARDED BY ONE OF THE DEPUTIES.

14 THE COURT: OKAY. WELL, WE'LL NEED TO HEAR  
15 TESTIMONY---

16 MS. STROM: YES, SIR.

17 THE COURT: ---ON THAT. IS THAT IT?

18 MS. STROM: YES, SIR. THAT'S THE ONLY---

19 THE COURT: I DIDN'T MEAN TO CUT YOU OFF.

20 MS. STROM: ---STATEMENT WE INTEND TO INTRODUCE.

21 THE COURT: OKAY.

22 MS. STROM: AND I WOULD SUBMIT THAT THE JACKSON v.  
23 DENNO WILL TAKE LESS THAN 15 MINUTES.

24 THE COURT: ALL RIGHT. NOW THERE ARE TWO PIECES OF  
25 EVIDENCE. LET'S ADDRESS THAT. WHAT TWO PIECES OF EVIDENCE

MATTERS AND MOTIONS

1 ARE WE TALKING ABOUT, MR. MAULDIN?

2 MR. MAULDIN: YOUR HONOR, THE TWO PIECES OF EVIDENCE  
3 THAT WE WANT THE COURT TO AT LEAST BE ON NOTICE OF AND  
4 PERHAPS A SHORT MATTER REGARDING WHETHER OR NOT THEY WOULD BE  
5 APPROPRIATELY OFFERED WOULD BE, FIRST OF ALL, WE IN OUR  
6 PREPARATION DID OBTAIN THE TRANSCRIPTS OF RADIO TRANSMISSIONS  
7 OF LAW ENFORCEMENT PERSONNEL. AND QUITE FRANKLY, JUDGE, THE  
8 OVERALL TRANSMISSIONS ARE PROBABLY THREE, FOUR INCHES THICK,  
9 AND THEY RELATE TO ALL AGENCIES OF LAW ENFORCEMENT  
10 COMMUNICATING BACK AND FORTH FROM THE TIME OF THE INCIDENT  
11 UNTIL THE TIME OF THE ARREST. WE'RE TALKING ABOUT HOURS.  
12 WE'RE TALKING ABOUT GOING ALL DOWN INTO THE NEIGHBORHOODS,  
13 SEEING PEOPLE BEING SPOTTED, CHASES TAKING PLACE, TURNED OUT  
14 TO BE THE WRONG PEOPLE, A LOT OF STUFF. I HAVE READ EVERY  
15 WORD.

16 NOW, THE ONLY REAL MATTER -- AND I'M ASSUMING THERE WILL  
17 BE AN EFFORT TO ACTUALLY PUT IN VOICE EVIDENCE, RECORDED  
18 SOUND EVIDENCE. I WILL PASS UP -- AND I'LL HAND UP TWO PAGES  
19 AND THEY'RE MARKED ON, YOUR HONOR, FOR MY MARKINGS, BUT THE  
20 PRINT IS PRETTY CLEAR.

21 SOLICITOR ARIAIL: CAN I JUST END THIS? I GAVE HIM A  
22 LIST OF EXHIBITS. I'VE GIVEN ONE TO THE COURT REPORTER.  
23 THERE ARE NO TRANSCRIPTS ON THERE. WE DON'T INTEND TO PUT IN  
24 ANY TRANSCRIPTS. THE ONLY ONE THAT IS IN THERE IS ONE FROM  
25 THE WOMAN WHO TOOK THE 911 CALL.

MATTERS AND MOTIONS

1           MR. MAULDIN:   AND I'M NOT ASKING THAT THEY BE  
2   PROHIBITED FROM PUTTING IN TRANSCRIPTS.   WHAT I'M ASKING IS  
3   THAT THEY BE PROHIBITED FROM PUTTING IN THE ACTUAL RADIO  
4   NOISE RECORDING EVIDENCE.   I'M ASSUMING THEY'RE GOING TO TRY  
5   TO PUT THAT IN.   IF THEY AREN'T, THEN WE'VE GOT THAT SETTLED.

6           SOLICITOR ARIAIL:   (INDICATES NEGATIVE RESPONSE)

7           MR. MAULDIN:   YOU WE ARE NOT?

8           SOLICITOR ARIAIL:   NO.

9           MR. MAULDIN:   ALL RIGHT.   YOUR HONOR, IN THE EVENT THEY  
10   WOULD NOT INTEND TO PUT IN THE ACTUAL RADIO TRANSMISSIONS,  
11   THEN THAT ISSUE IS MOOT.

12          SOLICITOR ARIAIL:   IF WE CHANGE OUR MIND, WE'LL LET YOU  
13   KNOW.

14          MR. MAULDIN:   YES, SIR.

15          THE COURT:   I GUESS WE'RE TALKING BOTH A FIRST PHASE  
16   AND A POTENTIAL PHASE?   OR DO WE NEED TO REVISIT THESE ISSUES  
17   AT THAT TIME?

18          SOLICITOR ARIAIL:   WE MAY NEED TO REVISIT THE ISSUES AT  
19   THAT TIME.

20          THE COURT:   OKAY.

21          SOLICITOR ARIAIL:   IN THE CASE -- FIRST CASE, NO.

22          THE COURT:   OKAY.   LET'S GO TO THE NEXT ONE, MR.  
23   MAULDIN.

24          MR. MAULDIN:   AND THE OFFER WAS TO PUT IN A TRANSCRIPT  
25   INSTEAD OF AN ACTUAL SOUNDS BECAUSE THE SOUNDS ARE HYST --



MATTERS AND MOTIONS

1 THERE ARE SIRENS AND ALL KINDS OF STUFF GOING ON. SO IT'S  
2 REAL HARD TO HEAR.

3 ALL RIGHT.

4 THE COURT: ALL RIGHT. THE NEXT ONE.

5 MR. MAULDIN: THE NEXT ITEM, YOUR HONOR, IS AT THE TIME  
6 WE DID -- IN REVIEWING THE FILE, THE TAG, THE LICENSE TAG  
7 THAT WAS ON THE SCOOTER THAT WAS STOPPED HAD BEEN REPORTED  
8 LOST OR STOLEN BY A CITIZEN. THIS CITIZEN HAD NO -- HE JUST  
9 SAID HIS TAG WAS MISSING. HE EITHER LOST IT OR IT WAS  
10 STOLEN. WHEN THE SCOOTER WAS PULLED OVER IT WAS OBVIOUSLY  
11 CONFISCATED AS PART OF THIS CASE, AND THE TAG THAT WAS ON THE  
12 SCOOTER WAS RUN AND WENT BACK TO THIS PERSON WHO REPORTED A  
13 TAG LOST OR STOLEN.

14 OUR INVESTIGATION OF THIS TRIAL AND THIS INFORMATION IS  
15 THAT THE NATURE OF THE TAG IS COMPLETELY IRRELEVANT TO ANY  
16 ISSUE IN THIS CASE. IT HAS NO PROBATIVE VALUE. AND THE  
17 REASON WE SAY THAT, BECAUSE WE HAVE THE RADIO TRANSMISSIONS  
18 PRIOR TO THE STOP. IN OTHER WORDS, THERE IS NO -- IT WAS NOT  
19 DISCOVERED THAT THE TAG WASN'T EVEN SUSPECTED OR EVEN  
20 DISCOVERED THAT THE TAG WAS A LOST OR STOLEN TAG UNTIL A  
21 SUBSEQUENT INVESTIGATION. SO WE---

22 THE COURT: SO FROM THE OFFICERS' STANDPOINT, THEY  
23 DIDN'T HAVE A CLUE?

24 MR. MAULDIN: APPARENTLY THEY HAD NO CLUE UNTIL  
25 SUBSEQUENT INVESTIGATION. NOW, WHAT WE WANT -- THE REASON

MATTERS AND MOTIONS

1 I'M GOING THROUGH ALL OF THIS IS IF AN OFFICER GETS ON A  
2 WITNESS STAND, THE OFFICER NEEDS TO BE TOLD NOT TO JUST BLURT  
3 OUT SOMETHING THAT AFTER A WEEK OF JURY SELECTION COULD  
4 REALLY SCREW UP THE WHOLE SITUATION, WHICH IS -- AND IT'S  
5 INADMISSIBLE. IT HAS NO PROBATIVE VALUE ON ANY ISSUE IN THIS  
6 CASE. NONE. SO THERE IS NO BALANCING TEST BECAUSE THERE IS  
7 NO PROBATIVE VALUE.

8 THE COURT: WHAT ABOUT THE STATE OF MIND OF THE  
9 INDIVIDUAL ON THAT SCOOTER?

10 MR. MAULDIN: THE STATE OF MIND OF THE INDIVIDUAL ON  
11 THAT SCOOTER MAY BECOME RELEVANT. BUT THAT'S -- TO THE  
12 EXTENT IT'S AT LEAST ALLEGED THAT THAT WAS THE DEFENDANT,  
13 THAT WOULD BE OUR -- YOU KNOW, WE'D BE PERHAPS GOING INTO  
14 THAT, PERHAPS NOT.

15 SOLICITOR ARIAIL: I CONCUR WITH THE JUDGE'S  
16 ASSESSMENT. IT GOES TO THE STATE OF MIND OF THE PERSON ON  
17 THE SCOOTER.

18 THE COURT: ARE YOU SUGGESTING THAT A STIPULATION WOULD  
19 ELIMINATE THE RELEVANCE OF THAT BIT OF INFORMATION?

20 MR. MAULDIN: NO. WHAT I'M SUGGESTING IS THIS, AT SUCH  
21 TIME THE STATE OF MIND OF THE PERSON ALLEGED TO HAVE BEEN ON  
22 THE SCOOTER IS AN ISSUE AND BECOMES AN ISSUE, IF THE STATE  
23 THEN WANTS TO -- I MEAN, IT MAY NOT -- YOU KNOW, I'M TRYING  
24 TO FIGURE OUT HOW IT WOULD RELATE TO THEIR SIDE OF THE STATE  
25 OF MIND ISSUE. IT MAY VERY WELL BE RELEVANT TO OUR SIDE OF

MATTERS AND MOTIONS

1 THE STATE OF MIND ISSUE. IT IS NOT -- THE TAG -- THE STATUS  
2 OF THE TAG FOR PURPOSES OF THE STATE OF MIND OF THE VICTIM,  
3 IF YOU WOULD, IS A NON-ISSUE FROM OUR REVIEW OF THIS FILE.

4 NOW, BECAUSE OF THAT, IT MAY COME UP AND IT MAY RESULT  
5 IN A WITNESS BEING RECALLED TO SAY HERE'S WHAT THE STATUS OF  
6 THAT TAG WAS OR WHATEVER. IT MAY BE ESSENTIALLY ADMITTED AT  
7 SOME POINT. BUT THE POINT IS THAT WHEN THE WITNESSES BEGIN  
8 TO TESTIFY, IF SOME -- IF ONE OF THE OFFICERS JUST BLURTS OUT  
9 THAT THIS TAG WAS RUN BACK TO SOMEBODY ELSE WHO HAD REPORTED  
10 THEIR TAG STOLEN, OR MISSING OR STOLEN, OR LOST OR STOLEN,  
11 THEN THAT REALLY COULD -- THAT IS MAKING A PRESUMPTION UP  
12 FRONT THAT SUBSEQUENT EVIDENCE IS GOING TO SUPPORT THE  
13 ADMISSION OF THAT TYPE OF TESTIMONY.

14 THE COURT: ALL RIGHT. LET'S THINK OUT LOUD.

15 MR. MAULDIN: YES, SIR.

16 THE COURT: MY INITIAL REACTION WHEN YOU BROUGHT THIS  
17 UP IS, WELL, THE STATE HAS TO PROVE CERTAIN ELEMENTS. INTENT  
18 IS AN ELEMENT. IF AN INDIVIDUAL IS APPROACHED BY LAW  
19 ENFORCEMENT AND HAS IN HIS OR HER POSSESSION ITEMS WHICH HAVE  
20 BEEN LOST OR STOLEN, THAT SEEMS TO BE GOOD EVIDENCE AND A  
21 PROBATIVE NATURE OF AN ELEMENT OF INTENT OR OTHERWISE. IS  
22 YOUR CONCERN THERE OR THE EVENTUAL LINKING OF THE DEFENDANT'S  
23 KNOWLEDGE TO THE LOST OR STOLEN NATURE OF THE TAG?

24 MR. MAULDIN: ONE MOMENT.

25 THE COURT: AND IF I NEED TO EXPLAIN THAT, I'LL TRY

MATTERS AND MOTIONS

1 AGAIN.

2 MR. MAULDIN: YES, SIR. (OFF RECORD WITH CO-COUNSEL)

3 YOUR HONOR?

4 THE COURT: YES, SIR.

5 MR. MAULDIN: THERE ARE A LOT OF SUBTLETIES TO THIS  
6 KIND OF STUFF. I'M GOING TO SIMPLY -- WE HAVE LAID IT OUT  
7 AND I'M GOING TO ASK THAT ANY RULING BE HELD IN ABEYANCE  
8 REGARDING THE DEVELOPMENT OF THE CASE ISSUES.

9 THE COURT: ALL RIGHT, SIR.

10 MR. MAULDIN: ALL RIGHT. THANK YOU.

11 THE COURT: DO YOU WANT TO ADDRESS THAT AT THIS TIME OR  
12 ARE YOU ALSO -- I HAVEN'T REALLY GIVEN YOU A CHANCE TO  
13 RESPOND TO THIS ISSUE.

14 SOLICITOR ARIAIL: ON THE TAG?

15 THE COURT: ON THE TAG, YES, SIR.

16 SOLICITOR ARIAIL: NO. I JUST RESPONDED TO WHAT YOUR  
17 HONOR SAID, STATE OF MIND.

18 THE COURT: OKAY. WE'LL REVISIT IT.

19 ALL RIGHT. ANDERSON EVIDENCE.

20 MR. MAULDIN: YES, SIR. YOUR HONOR, AND I'M GOING TO  
21 -- IF YOU WILL JUST BE -- ARE WE GOING TO DO THAT JACKSON V.  
22 DENNO AFTER LUNCH AND PRIOR TO THE JURY?

23 THE COURT: IS THE OFFICER HERE?

24 MS. STROM: YES, SIR.

25 THE COURT: WE MAY DO IT BEFORE LUNCH.

MATTERS AND MOTIONS

1           MR. MAULDIN:   ALL RIGHT, SIR.   YOUR HONOR, LET ME --  
2   VERY BRIEFLY.   WE FILED A MOTION ON JANUARY THE 9TH, A MOTION  
3   TO EXCLUDE OTHER CRIMES EVIDENCE.   A RESPONSE WAS FILED ON  
4   JANUARY 17TH.   THE ORIGINAL REVIEW OF THE MATERIAL BY THE  
5   JUDGE WAS JANUARY THE 18TH.   YOU THEN REVISITED OR -- I GUESS  
6   IT WAS MORE OF A CONTINUATION RULING AND ARGUMENT ON JANUARY  
7   THE 28TH, AND IT WAS VERY SPECIFIC AND WE WON'T GO THROUGH  
8   THAT.   BUT IT WAS VERY SPECIFIC AS TO WHAT LIMITATIONS WOULD  
9   BE PUT ON.

10           THEN ON -- ONE MOMENT, YOUR HONOR.   THERE WAS AN UNFILED  
11   MOTION, AT LEAST MY RECORD INDICATES IT WAS UNFILED, DATED  
12   JANUARY THE 31ST, TITLED MOTION IN LIMINE IN SUPPORT OF  
13   ADMISSION OF EVIDENCE, AND IT WAS SIGNED BY MINDY, MINDY  
14   HERVEY.

15           WE THEN IMMEDIATELY -- WAIT A MINUTE.   WAIT A MINUTE.  
16   LET ME GET THIS RIGHT.

17           IN THE MEANTIME, THERE WAS A PARALLEL MATTER GOING ON,  
18   AND THAT WAS ON JANUARY THE 30TH.   WE RECEIVED SPECIFICATIONS  
19   OF EVIDENCE IN AGGRAVATION THAT RELATED TO SAME OR SIMILAR  
20   EVIDENCE.   WE FILED A MOTION ON JANUARY 31ST THAT THAT BE  
21   EXCLUDED.   YOU SUBSEQUENTLY, TO THE EXTENT THE RECORD  
22   REFLECTS GAVE -- THE COURT GAVE THE DEFENSE GUIDANCE AS TO  
23   WHAT A PROBABLE RULING WOULD BE PRIOR TO THE SENTENCING  
24   HEARING.

25           I, THEN, ON FEBRUARY 4TH, SUBMITTED A RESPONSE TO

MATTERS AND MOTIONS

1 STATE'S MOTION IN SUPPORT OF ADMISSION OF EVIDENCE OF  
2 SUBSEQUENT CRIMES THAT OCCURRED IN ANDERSON COUNTY, AND BY  
3 THAT MOTION FOR ALL INTENTS AND PURPOSES WITHDREW THE PRIOR  
4 MOTION THAT WE HAD FILED THAT HAD BEEN HEARD ON THOSE JANUARY  
5 DATES, AND CONSENTED TO THE STATE'S MOTION TO BE ALLOWED TO  
6 PRESENT SUCH EVIDENCE. THAT'S WHERE WE ARE, I BELIEVE, AS  
7 BEST MY FILE WILL SHOW.

8 WE TAKE THE POSITION, THEREFORE, THAT THAT ISSUE IS  
9 ESSENTIALLY A NONISSUE, EXCEPT THE VIABILITY OF YOUR BENCH  
10 RULINGS ON THE SENTENCING PHASE EVIDENCE. THAT'S THE ONLY  
11 ISSUE THAT REALLY REMAINS, AND WE'LL REVISIT THAT IN THE 24-  
12 HOUR WAITING PERIOD, IF THAT'S NECESSARY. SO THAT'S WHERE WE  
13 ARE ON THE ANDERSON EVIDENCE. OUR ATTITUDE IS IT'S FAIR GAME  
14 FOR EITHER SIDE TO THE EXTENT IT COMES OUT TO SHOW THE EVENTS  
15 THAT OCCURRED.

16 THE COURT: VERY GOOD, SIR. IF Y'ALL ARE PREPARED TO  
17 GO WITH THE JACKSON v. DENNO HEARING, I'D LIKE TO PROCEED  
18 WITH THAT.

19 SOLICITOR ARIAIL: YES, SIR. WE ARE.

20 MS. STROM: YOUR HONOR, IT WILL JUST TAKE ABOUT FIVE  
21 MINUTES TO GET THE OFFICER. HE'S OVER AT OUR OFFICE.

22 THE COURT: ALL RIGHT. AND LET ME TELL YOU WHERE I  
23 WANT Y'ALL TO SORT OF HELP ME OUT DURING THE TRIAL. I DON'T  
24 KNOW THE LENGTH OF THE WITNESSES. I DON'T KNOW THE SUBJECT  
25 MATTER ON WHICH THEY'RE GOING TO TESTIFY. I DON'T KNOW

MATTERS AND MOTIONS

1 WHAT'S THE ANTICIPATED CROSS OF WITNESSES. AND I WANT YOU TO  
2 KNOW THAT IF YOU SENSE WE'RE GETTING TO A BREAKING TIME AND  
3 YOU FEEL LIKE YOUR DIRECT EXAMINATION OR YOUR CROSS  
4 EXAMINATION WOULD BE INTERFERED WITH OR THE CONTINUITY WOULD  
5 BE INTERRUPTED, LET ME KNOW AND WE'LL BREAK AT THAT TIME TO  
6 ALLOW THE EXAMINATION TO PROCEED WITHOUT INTERRUPTION. IT  
7 MAY COME UP WE CAN'T AVOID IT ON CERTAIN OCCASIONS. BUT TO  
8 THE EXTENT POSSIBLE, IF YOU GIVE ME GUIDANCE OR JUST SORT OF  
9 A HEAD'S UP WHEN WE'RE MOVING FORWARD, I'LL HONOR THAT  
10 REQUEST.

11 YOU KNOW, A TYPICAL EXAMPLE, SAY WE THINK WE'RE GOING TO  
12 BREAK IN 30 MINUTES, AND IF YOU HAVE A WITNESS WHOSE DIRECT  
13 IS AN HOUR, JUST TELL ME. I'LL HONOR THAT. IF WE'RE GOING  
14 TO BREAK IN 15 MINUTES AND THERE IS A CROSS EXAMINATION ON  
15 EITHER SIDE AND YOU THINK THE EXAMINATION IS GOING TO BE  
16 FAIRLY LENGTHY, JUST LET ME KNOW THAT. I'LL BREAK ANY TIME  
17 TO ACCOMMODATE THAT TO ALLOW YOU TO HAVE A CONTINUOUS  
18 EXAMINATION OF A WITNESS.

19 MR. MAULDIN: DO YOU HAVE KIND OF A GUIDELINE AS TO  
20 START, BREAK, BREAK, START?

21 THE COURT: WE WILL START EITHER 9:00 OR 9:30 EACH DAY.  
22 WE WILL HAVE COURT TOMORROW. WE WILL START SUNDAY AT 1:00.  
23 WE WILL START MONDAY MORNING, PERHAPS, I HAVEN'T DECIDED,  
24 MAYBE AT 8:30 BECAUSE WE HAVE TO STOP AT 1:00 OR 1:30 ON  
25 MONDAY FOR DOCTOR'S APPOINTMENTS, ET CETERA, FOR THE JURORS.

MATTERS AND MOTIONS

1 MY SENSE IS WE WOULD CONCLUDE BETWEEN 5:00 AND 6:00 EACH  
2 EVENING. IF NECESSARY -- FOR AN OUT-OF-TOWN WITNESS WHO HAS  
3 TRAVEL ARRANGEMENTS, WE'LL STAY LATE, IF NECESSARY. WE WILL  
4 STOP A LITTLE BIT EARLY IF THE NEXT WITNESS IS NOT YET IN  
5 TOWN OR THINGS OF THAT NATURE. I KNOW THERE IS A LOT OF  
6 LOGISTICAL PLANNING GOING ON. AGAIN, YOU JUST NEED TO HELP  
7 ME UNDERSTAND THAT SO I CAN RESPOND IN KIND.

8 MR. MAULDIN: AND YOUR TENDENCY, YOUR HONOR, IS TO TAKE  
9 -- YOUR TENDENCY IS TO TAKE ONE BREAK IN MID-MORNING AND ONE  
10 BREAK IN MID-AFTERNOON?

11 THE COURT: IT MAY WORK OUT THAT WAY. I GENERALLY RUN  
12 COURT IN A TYPICAL CASE AN HOUR AND A HALF TO TWO HOURS AT A  
13 TIME. I TELL THE JURY THAT. I FURTHER INFORM THEM LEGAL  
14 ISSUES COME UP AND THEY MAY BE GOING TO THE JURY ROOM MORE  
15 FREQUENTLY. I ALSO GIVE THEM THE RIGHT JUST SIMPLY TO RAISE  
16 THEIR HAND IF THEY NEED TO TAKE A BREAK FOR OBVIOUS REASONS.

17 MR. MAULDIN: YES, SIR.

18 THE COURT: AND I EXTEND THAT COURTESY TO COUNSEL AND  
19 THE PARTICIPANTS. IF WE NEED TO TAKE A BREAK, YOU'VE JUST  
20 GOT TO GET MY ATTENTION, GIVE ME THE NOD AND I WILL RESPOND.

21 MS. STROM: YOUR HONOR, WE'RE READY TO PROCEED ON THE  
22 JACKSON v. DENNO.

23 THE COURT: ALL RIGHT. LET'S PROCEED, PLEASE, MA'AM.

24 MS. STROM: THE STATE CALLS OFFICER BLACKBURN.

25 MR. MAULDIN: WHAT'S THE NAME?



JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- DIRECT BY MS. STROM

1 MS. STROM: BLACKBURN.

2 CHARLES BLACKBURN, HAVING BEEN  
3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MS. STROM:

5 Q OFFICER BLACKBURN, PLEASE STATE YOUR FULL NAME FOR THE  
6 RECORD.

7 A CHARLES PURCELL BLACKBURN.

8 Q AND BY WHOM ARE YOU EMPLOYED?

9 A GREENVILLE COUNTY SHERIFF'S OFFICE.

10 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE GREENVILLE  
11 COUNTY SHERIFF'S OFFICE?

12 A SINCE MAY OF 1999.

13 Q I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE 9TH  
14 OF 2000. DO YOU RECALL THAT?

15 A YES, MA'AM.

16 Q AND DID YOU HAVE AN OCCASION TO BE IN THE PRESENCE OF  
17 THE DEFENDANT HERE, JOHN RICHARD WOOD?

18 A YES, I DID.

19 Q AND WHERE WAS THAT?

20 A AT GREENVILLE MEMORIAL HOSPITAL, ROOM 214.

21 Q AND WHY WERE YOU AT THE GREENVILLE MEMORIAL HOSPITAL?

22 A THE DEFENDANT WAS IN ROOM 214, AND THE SHERIFF'S OFFICE  
23 RESPONSIBILITY WAS GUARDING THE DEFENDANT.

24 Q SO HE WAS IN CUSTODY AT THAT TIME?

25 A YES, MA'AM.

JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- DIRECT BY MS. STROM

1 Q AND YOUR RESPONSIBILITIES WERE TO GUARD HIM?

2 A RIGHT.

3 Q AND DO YOU RECALL -- WHAT TIME DID YOU GO ON SHIFT?

4 A I WENT ON SHIFT AT 7:00 P.M., AND I ARRIVED AT MEMORIAL  
5 HOSPITAL SHORTLY THEREAFTER.

6 Q WOULD YOU PLEASE TELL US, OFFICER BLACKBURN, FIRST OF  
7 ALL, WHEN YOU ARRIVED AT ROOM 214 WAS THE DEFENDANT THERE  
8 PRESENT?

9 A YES, HE WAS.

10 Q WERE THERE OTHER OFFICERS THERE?

11 A YES, THERE WAS.

12 Q AND WAS YOUR DUTY TO RELIEVE THE OFFICERS WHO WERE THERE  
13 BEFORE YOU?

14 A YES, MA'AM.

15 Q AND WHILE YOU WERE THERE IN THE ROOM WITH -- I TAKE IT  
16 YOU WERE SEATED THERE IN THE ROOM OR WERE YOU OUTSIDE THE  
17 ROOM?

18 A I WAS SEATED IN THE DOORWAY, KIND OF HALF IN THE ROOM  
19 HALF IN THE HALLWAY, SO I COULD KEEP A LOOK DOWN THE HALLWAY.

20 Q AND WHILE YOU WERE THERE JOHN RICHARD WOOD WAS IN THE  
21 HOSPITAL BED?

22 A YES, MA'AM.

23 Q WHAT OCCURRED WHILE YOU WERE THERE?

24 A HE SLEPT -- OR AT LEAST I THOUGHT HE WAS SLEEPING -- THE  
25 MAJORITY OF THE NIGHT. AT ELEVEN O'CLOCK, TURNED THE T.V.

JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- DIRECT BY MS. STROM

1 ON, WATCHING T.V.

2 Q WHO TURNED THE T.V. ON?

3 A I DID.

4 Q OKAY.

5 A THE T.V. WAS ON INITIALLY WHEN WE GOT THERE. I TURNED  
6 IT OFF AND TURNED IT BACK ON SHORTLY BEFORE ELEVEN O'CLOCK.

7 Q OKAY. AND WHAT PROGRAM WERE YOU WATCHING AT  
8 APPROXIMATELY ELEVEN O'CLOCK?

9 A I WAS FLIPPING BACK AND FORTH BETWEEN CHANNEL 4 AND  
10 CHANNEL 7 NEWS.

11 Q AND WAS ANYTHING REPORTED ON THE NEWS ABOUT THE INCIDENT  
12 INVOLVING TROOPER NICHOLSON?

13 A YES, MA'AM.

14 Q AND WHAT WAS THAT?

15 A THEY HAD COVERAGE OF THE INCIDENT. I DON'T REMEMBER  
16 WHAT CHANNEL. ONE OF THE NEWS REPORTERS MADE A STATEMENT TO  
17 THE EFFECT OF AUTHORITIES ARE LOOKING INTO CHARGING THE  
18 DEFENDANT'S FIANCEE, MCCALL, WITH ACCESSORY. AND AS SOON AS  
19 THE REPORTER SAID THAT, HE, THE DEFENDANT, TURNED HIS HEAD TO  
20 ME AND SAID, "SHE WASN'T EVEN THERE WHEN IT HAPPENED." THEN  
21 HE TURNED HIS HEAD BACK AND, WHAT I THOUGHT, WENT BACK TO  
22 SLEEP. HE WAS HEAVY BREATHING. AND THAT'S THE ONLY  
23 CONVERSATION THAT HE -- AT THAT POINT THAT HE SAID TO ME.

24 Q PRIOR TO HIM SAYING THAT, THAT SHE WASN'T EVEN THERE  
25 WHEN IT HAPPENED, DID YOU ASK THE DEFENDANT ANY QUESTIONS?

JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- DIRECT BY MS. STROM

1 A NO, MA'AM.

2 Q DID YOU HAVE ANY CONVERSATIONS WITH HIM WHATSOEVER?

3 A NO.

4 Q AND PRIOR TO TURNING ON THE T.V., I BELIEVE YOU STATED  
5 EARLIER YOU THOUGHT HE WAS ASLEEP OR HE HAD BEEN ASLEEP?

6 A YES, MA'AM.

7 Q AND AFTER HE MADE THAT RESPONSE TO YOU DID YOU HAVE ANY  
8 CONVERSATION WITH HIM ABOUT THAT?

9 A NO, MA'AM.

10 MS. STROM: COURT'S INDULGENCE, YOUR HONOR?

11 THE COURT: YES, MA'AM.

12 MS. STROM: (OFF RECORD WITH CO-COUNSEL) THANK YOU.

13 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

14 CROSS EXAMINATION BY MR. MAULDIN:

15 Q OFFICER BLACKBURN, WAS ANYONE ELSE PRESENT IN THE ROOM?

16 A YES, THERE WAS.

17 Q ALL RIGHT. AND WHO WAS THAT?

18 A DEPUTY TRAVIS NELSON.

19 Q TRAVIS NELSON?

20 A YES, SIR.

21 Q SO THIS WAS ESSENTIALLY A TWO-PERSON GUARD UNIT?

22 A IT WAS.

23 Q ALL RIGHT. AND IT WAS 11:00 P.M.?

24 A SHORTLY THEREAFTER, A FEW MINUTES AFTER 11:00.

25 Q AND IT WAS ON THE DATE OF 12/9, DID YOU SAY?

JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q THIS INCIDENT OCCURRED ON THE 6TH. SO THIS WOULD HAVE  
3 BEEN THREE DAYS AFTER THE INCIDENT?

4 A RIGHT.

5 Q NOW, THE DEFENDANT -- AND IT WAS A PRIVATE ROOM, THERE  
6 WEREN'T ANY OTHER PATIENTS?

7 A CORRECT.

8 Q AND THE DEFENDANT HAD BEEN SHOT IN THE FACE?

9 A RIGHT.

10 Q AND HE WAS UNDER A DOCTOR'S CARE, HE WAS BEING TENDED TO  
11 FOR A BULLET WOUND TO THE FACE?

12 A RIGHT.

13 Q AND HE WAS CONFINED IN THE HOSPITAL; THIS WAS NOT AN  
14 OUTPATIENT HOSPITAL?

15 A CORRECT.

16 Q AND IF YOU DON'T KNOW THIS, PLEASE LET ME KNOW. BUT ARE  
17 YOU AWARE OF THE FACT THAT HE HAD BEEN TAKEN FROM THE SCENE  
18 TO THE ANDERSON HOSPITAL AND THEN TRANSPORTED TO THE  
19 GREENVILLE HOSPITAL PRIOR TO THIS STATEMENT? ARE YOU AWARE  
20 OF THAT?

21 A I WAS AWARE OF IT.

22 Q ALL RIGHT. AND YOU ARE NOT -- YOU HAVE NO MEDICAL  
23 TRAINING?

24 A THAT'S CORRECT.

25 Q YOU ARE NOT AWARE OR HAVE ANY KNOWLEDGE OF THE LEVEL OF

JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- CROSS BY MR. MAULDIN

1 MEDICATION THAT MR. WOOD WAS UNDER AT THE TIME THE STATEMENT  
2 WAS MADE?

3 A THAT'S RIGHT.

4 Q AND YOU HAVE NO METHOD BY WHICH YOU COULD EVALUATE THE  
5 EFFECT OF ANY MEDICATION ON MR. WOOD AT THAT TIME?

6 A CORRECT.

7 Q AND IT WAS 11:00 P.M. IN THE EVENING?

8 A SHORTLY THEREAFTER.

9 MR. MAULDIN: ALL RIGHT. ONE MOMENT. (OFF RECORD WITH  
10 CO-COUNSEL)

11 Q WHAT SHIFT -- YOU WOULD HAVE BEEN DOING THIS FOR A  
12 PARTICULAR TIME FRAME, RIGHT?

13 A CORRECT.

14 Q WHEN DID YOU TIME FRAME START ON THIS PARTICULAR  
15 OCCASION?

16 A AT -- SHORTLY AFTER 7:00 P.M.

17 Q ALL RIGHT. AND WHEN WOULD IT HAVE ENDED?

18 A AT APPROXIMATELY 1:00 IN THE MORNING, 1:00 A.M.

19 Q SO YOU WERE THE 7:00 TO 1:00 SHIFT FOR GUARDING?

20 A YES, SIR.

21 Q NOW, DURING THE TIME THAT YOU WERE GUARDING, ANYONE WHO  
22 CAME IN OR OUT OF THAT ROOM YOU WOULD HAVE OBSERVED?

23 A RIGHT.

24 Q WERE DOCTORS, NURSES, OTHER HEALTH CARE OFFICIALS OR  
25 PERSONNEL IN AND OUT OF THAT ROOM DURING THE PERIOD OF TIME

JACKSON v. DENNO HEARING

CHARLES BLACKBURN -- CROSS BY MR. MAULDIN

1 THAT YOU WERE IN THE ACCUSED'S PRESENCE?

2 A YES.

3 MR. MAULDIN: ALL RIGHT. THANK YOU.

4 THE COURT: ANY REDIRECT?

5 MS. STROM: NO, SIR.

6 THE COURT: DEPUTY BLACKBURN, THANK YOU, SIR.

7 APPRECIATE YOU BEING HERE.

8 WITNESS: THANK YOU.

9 (WITNESS STEPS DOWN AT 12:31 P.M.)

10 MS. STROM: THAT'S ALL THE STATE WOULD PRESENT ON THE  
11 JACKSON v. DENNO, YOUR HONOR.

12 THE COURT: - YOU HAVE A RIGHT TO PRESENT TESTIMONY.  
13 I'LL CERTAINLY HEAR ARGUMENT, BUT DO YOU HAVE ANY EVIDENCE ON  
14 THAT PARTICULAR ISSUE, SIR?

15 MR. MAULDIN: YOUR HONOR, THE ONLY -- WE RESERVE THE  
16 RIGHT -- WE DON'T KNOW WHAT POSITION THE COURT WOULD TAKE ON  
17 THE ADMISSIBILITY OF THE STATEMENT OF A PATIENT UNDER CARE OF  
18 DOCTORS WITHOUT SOME ADDITIONAL SHOWING THAT IT WAS A  
19 STATEMENT GIVEN BY A COHERENT -- OR BY A PERSON WHO WAS IN  
20 FACT PHYSICALLY CAPABLE OF MAKING A STATEMENT THAT COULD BE  
21 RELIED UPON. I DON'T HAVE ANY CLUE ABOUT THAT. I DON'T  
22 THINK IT IS NECESSARILY APPROPRIATE THAT WE JUST ASSUME THAT  
23 THE DEFENDANT WAS BECAUSE OF HIS PHYSICAL CONDITION CAPABLE  
24 OF MAKING A STATEMENT THAT SHOULD THEN BE RELIED UPON UNDER  
25 THESE CIRCUMSTANCES.

MATTERS AND MOTIONS

1       THERE IS NO -- IT IS NOT THE CLASSIC JACKSON v. DENNO IN  
2       THAT IT WAS -- THERE IS NOT AN INTERROGATION HERE. WE'RE NOT  
3       DEALING WITH THE RIGHTS BEING GIVEN OR ANY NEED FOR THE  
4       RIGHTS TO BE GIVEN. IT IS A RELIABILITY QUESTION, I THINK,  
5       MORE THAN A VOLUNTARY AND INTELLIGENT -- WELL, IT MIGHT BE --  
6       AND INTELLIGENT PROBABLY IS PART OF IT.

7       SO TO THE EXTENT THAT THE MEDICAL CONDITION OF THE  
8       DEFENDANT BEARS ON THE ADMISSIBILITY OF A STATEMENT MADE IN A  
9       SPONTANEOUS WAY, EVEN IF IT WERE ADMITTED THAT THE STATEMENT  
10      WERE MADE -- AND WE'RE NOT NECESSARILY DOING THAT -- BUT EVEN  
11      IF THERE WAS NO CONTEST AS TO THE CONTENT, THE ISSUE IS  
12      WHETHER THE COURT CAN ALLOW THE ADMISSIBILITY OF SOMETHING  
13      UNDER THAT -- WHERE A PATIENT IS UNDER CONSTANT MEDICAL  
14      ATTENTION FOR A GUNSHOT WOUND TO THE HEAD, YOU KNOW. HE WAS  
15      SHOT IN THE HEAD AND HE WAS ON CONSTANT MEDICATION ALL DURING  
16      THIS. AND THE OFFICER SAID DURING THE TIME HE WAS ON SHIFT,  
17      THEY WERE IN AND OUT OF HIS ROOM. WITHOUT THAT, I THINK THE  
18      COURT WOULD BE TAKING A SERIOUS GAMBLE AS TO WHETHER OR NOT  
19      THAT STATEMENT COULD THEN BE RELIED UPON FOR ANY VALUE.

20      **THE COURT:**    THANK YOU.    THE STATE'S POSITION, PLEASE?

21      **MS. STROM:**    YES, SIR, YOUR HONOR.    THE PURPOSE OF THE  
22      JACKSON v. DENNO IS TO DETERMINE IF IT IS AN ADMISSIBLE  
23      STATEMENT BASED UPON MIRANDA.    THE DEFENSE HAS ALREADY  
24      CONCEDED THAT IT WAS NOT INTERROGATION, THAT THERE WAS NO  
25      NEED FOR MIRANDA IN THIS CASE.    AS FAR AS IF THE DEFENDANT IS



MATTERS AND MOTIONS

1     -- IF THE DEFENDANT WERE UNDER ANY MEDICATION IF THAT MAKES  
2     THE STATEMENT RELIABLE, THE STATE'S POSITION IS THAT'S FOR  
3     THE JURY TO DETERMINE IF THEY WANT TO BELIEVE THIS STATEMENT,  
4     IF THEY WANT TO BELIEVE THE -- THE RELIABILITY GOES TO THE  
5     WEIGHT OF THE STATEMENT NOT ITS ADMISSIBILITY IN TERMS OF  
6     WHETHER HE WAS ON MEDICATION OR NOT ON MEDICATION. AND I  
7     THINK THE JURY CAN ASSESS THAT THIS STATEMENT WAS MADE IN  
8     RESPONSE -- WAS AN APPROPRIATE RESPONSE TO WHAT WAS BEING  
9     SAID ON THE TELEVISION. IT WASN'T MADE IN RESPONSE TO  
10    SOMETHING ELSE THAT CAME UP THAT WOULD INDICATE IT WAS JUST  
11    SOMEHOW OUT OF THE BLUE. IT WAS ACTUALLY IN RESPONSE TO AN  
12    APPROPRIATE T.V. -- SOMETHING THAT WAS ON THE T.V.

13           YOUR HONOR, WE BELIEVE THAT THERE HAS BEEN NO EVIDENCE  
14    SUBMITTED ABOUT THE MEDICATIONS THAT HE WAS ON THAT THAT  
15    WOULD IN ANY WAY PROHIBIT HIS ABILITY TO SPEAK OR UNDERSTAND.  
16    AND I THINK THAT BASED UPON WHAT THE STATE HAS PRESENTED THAT  
17    IT SHOULD BE ADMITTED TO THIS JURY FOR THEM TO DETERMINE WHAT  
18    WEIGHT THEY WISH TO GIVE THIS STATEMENT.

19           THE COURT:    OKAY. I'M NOT IN A POSITION TO RULE. I DO  
20    HAVE A REQUEST THAT PERHAPS Y'ALL COULD ASSIST ME ON. AND I  
21    MAY BE MISTAKEN. I THOUGHT PART OF MY FUNCTION IN A JACKSON  
22    v. DENNO SETTING WAS TO MAKE A MULTI-LAYERED RULING NOT ONLY  
23    AS TO ISSUES OF CUSTODY, THE SUFFICIENCY OF THE WARNINGS IN  
24    AN INTERROGATION SETTING, THE WAIVER OF THAT, BUT ALSO A  
25    FINDING THAT ANY SUCH STATEMENT FOR INITIAL ADMISSIBILITY WAS

MATTERS AND MOTIONS

1 FREELY AND VOLUNTARILY MADE. AND I MAY BE INCORRECT IN THAT  
2 REGARD. BUT IF MY UNDERSTANDING IS CORRECT, BASED ON WHAT'S  
3 BEEN PRESENTED, AND I DON'T KNOW ALL THE DETAILS, BUT BASED  
4 ON THE RECORDS THAT I CAN PIECE TOGETHER, THAT THE DEFENDANT  
5 WAS AT THAT TIME IN THE HOSPITAL IN AN INPATIENT BASIS  
6 RECOVERING FROM A GUNSHOT WOUND TO THE HEAD AREA. WHETHER  
7 THIS WAS POST-OP, PRE-OP, WHETHER THERE WAS ANY OPERATION, I  
8 DON'T KNOW. BUT I WOULD NEED MORE OF A SHOWING IN TERMS OF  
9 HIS PHYSICAL CONDITION, I THINK, TO MAKE AN INFORMED JUDGMENT  
10 ON THE FRONT END ABOUT A FREE AND VOLUNTARY STATEMENT. IT  
11 MAY BE UNDER JACKSON v. DENNO WHETHER IT'S FREE AND VOLUNTARY  
12 IS NOT WITHIN MY PURVIEW. I THOUGHT IT WAS, AND THAT MAY BE  
13 SOMETHING WE NEED TO LOOK AT. BUT IF IT IS, I WOULD BE  
14 RELUCTANT TO ADMIT THAT IN THE VACUUM IN WHICH IT HAS BEEN  
15 PRESENTED TO ME.

16 MS. STROM: JUST A MOMENT, YOUR HONOR. (OFF RECORD  
17 WITH CO-COUNSEL)

18 YOUR HONOR, AS TO THE STATE'S POSITION, WE WILL PREPARE  
19 TO PRESENT MORE TESTIMONY TO THE COURT IN AN IN-CAMERA  
20 FASHION PRIOR TO OUR OFFERING THIS STATEMENT. WE DO NOT HAVE  
21 THOSE WITNESSES AVAILABLE TO US RIGHT NOW, BUT WE WILL HAVE  
22 THOSE AND WE CAN PRESENT THOSE TO THE COURT.

23 THE COURT: OKAY. AND IT DOESN'T HURT MY FEELINGS IF  
24 MY STATEMENT ON MY VIEW OF THE LAW IS INCORRECT. AND IF I  
25 HAVE NO ROLE IN THAT AREA, JUST PRESENT THE LEGAL AUTHORITY

MATTERS AND MOTIONS

1 AND WE'LL MOVE ON.

2 MS. STROM: YES, SIR.

3 THE COURT: ANYTHING FURTHER AT THIS TIME?

4 MS. STROM: NOTHING FROM THE STATE, YOUR HONOR.

5 THE COURT: ALL RIGHT. WE'LL START AT (PAUSE) I'M  
6 GOING TO CONTACT ONE OF THE COURT SECURITY OFFICERS TO SEE IF  
7 THEY CAN GET EVERYTHING DONE IN TERMS OF REGISTRATION WITH  
8 THE JURY AND THEIR ROOMS AND BE BACK HERE AT 2:30. SO  
9 TENTATIVELY, LET'S LOOK FOR 2:30. BE READY TO GO. I HOPE WE  
10 CAN WORK THAT WITH THE JURY. IF THERE IS A SLIGHT DELAY,  
11 I'LL TRY TO DO THE BEST I CAN TO GET THEM HERE SHORTLY  
12 THEREAFTER. LET'S SHOOT FOR 2:30. THANK YOU.

13 (A LUNCH RECESS WAS TAKEN FROM 12:40 TO 2:39 P.M.)

14 THE COURT: WE'RE ON THE RECORD. I WANT TO REVIEW A  
15 SET OF RULES THAT ARE POSTED ON THE DOOR AND MAKE SURE THERE  
16 IS NO MISUNDERSTANDING. THERE WILL BE NO DISPLAY OF ANY CASE  
17 RELATED MATERIAL IN THE COURTROOM OR THE COURTHOUSE OR THE  
18 VICINITY OF THE COURTHOUSE. ONCE COURT IS IN SESSION, NO ONE  
19 MAY ENTER THE COURTROOM. PERSONS OTHER THAN THE PRESS MAY  
20 EXIT THE COURTROOM WHILE COURT IS IN SESSION, BUT IF YOU DO  
21 SO I WOULD JUST RESPECTFULLY URGE YOU TO DO SO QUIETLY AND  
22 RESPECT THE PROCEEDINGS SO IT DOES NOT DISRUPT THE  
23 PROCEEDINGS OR THE JURY'S ATTENTION TO THE PROCEEDINGS.

24 INSIDE THE COURTROOM THERE WILL BE NO TALKING, SLEEPING,  
25 OR READING. DO NOT SIT IN A RESERVED SECTION UNLESS THEY ARE

MATTERS AND MOTIONS

1 RESERVED FOR YOU. IF YOU ARE ASKED TO LEAVE THE COURTROOM BY  
2 A BAILIFF OR LAW ENFORCEMENT OFFICER, PLEASE COMPLY. DO NOT  
3 OBJECT IN THE COURTROOM AND MAKE A DISRUPTIVE SCENE. IF  
4 THERE IS A MATTER TO ADDRESS, I WILL DO IT OUTSIDE THE  
5 PRESENCE OF THE JURY DURING A BREAK. COMPLY WITH ANY  
6 DIRECTIVE OR INSTRUCTION GIVEN BY ANY BAILIFF OR LAW  
7 ENFORCEMENT OFFICER. THERE WILL BE NO LOITERING IN THE  
8 HALLWAY WHEN COURT IS IN SESSION.

9 THE PRESS WILL HAVE THE FRONT ROW. THE PRESS WILL NOT  
10 BE PERMITTED TO LEAVE THE COURTROOM EXCEPT DURING A RECESS.

11 BRING THE JURY.

12 MR. MAULDIN: ONE MATTER THAT JUST -- WE'VE BEEN  
13 PROVIDED WITH A SERIES OF COPIES OF PHOTOS. THAT'S JUST AN  
14 EXAMPLE. IT HAS A DESCRIPTION ON THE FOOT OF THE -- ALL OF  
15 THE PHOTOS HAVE IT. WE'RE ASKING THAT THAT JUST SIMPLY BE  
16 CROPPED OFF THE BOTTOM OF ALL OF THE PHOTOS SO THAT THEY ONLY  
17 SHOW THE PHOTOGRAPHIC IMAGE AND NO IDENTIFICATION.

18 THE COURT: WHAT IS THE STATE'S RESPONSE?

19 SOLICITOR ARIAIL: THE STATE'S RESPONSE IS IT'S  
20 IDENTIFYING INFORMATION. I WOULD POINT OUT, ON A COUPLE OF  
21 THESE IN ADDITION TO WHAT HE'S SHOWING YOU THERE WILL BE THE  
22 STANDARD PHOTOGRAPH TAKEN BY THE GREENVILLE COUNTY FORENSICS  
23 DEPARTMENT, AND THEY WILL HAVE THEIR TITLE AT THE TOP, AND IT  
24 WILL HAVE THE FACT THAT THEY ARE A LAW ENFORCEMENT AGENT.  
25 THAT ONE DOES NOT HAVE IT. SOME OF THEM DO. SOME OF THEM

MATTERS AND MOTIONS

1 DON'T. SOME WILL HAVE THIS.

2 THE COURT: ALL RIGHT.

3 SOLICITOR ARIAIL: AND THEN ALL OF THEM WILL HAVE THE  
4 IDENTIFYING -- IT WILL STATE THE DAY IT WAS TAKEN. IT WILL  
5 STATE THE TIME IT WAS TAKEN. IT WILL DO ITS COMPUTER IMAGE  
6 WHERE WE RETRIEVED IT FROM. IT WILL GIVE ITS CASE REFERENCE.  
7 AND IT WILL REFER TO WHAT INVESTIGATION IT WILL APPLY TO.  
8 THAT'S THE INFORMATION ON THE BOTTOM.

9 THE COURT: AND WILL THE WITNESS WHO AUTHENTICATES THE  
10 PHOTOGRAPH BE ABLE TO AUTHENTICATE THAT INFORMATION AS WELL?

11 SOLICITOR ARIAIL: YES, SIR.

12 MR. MAULDIN: YOUR HONOR, THAT CANNOT BE TRUE BECAUSE  
13 THIS ONE, FOR EXAMPLE, SAYS FEBRUARY 4TH OF '02.

14 SOLICITOR ARIAIL: THAT'S THE DATE IT WAS PRINTED.  
15 THIS WOULD BE THE DATE IT WAS PRINTED.

16 MR. MAULDIN: I MEAN, THAT'S NOT THE DATE IT WAS TAKEN,  
17 WHICH WOULD BE AN AUTHENTICATION.

18 SOLICITOR ARIAIL: THE PERSON WHO WILL AUTHENTICATE IT  
19 WILL AUTHENTICATE IT WAS TAKEN ON THE DATE IT WAS TAKEN,  
20 WHICH WOULD BE -- THIS PARTICULAR ONE WOULD BE DECEMBER THE  
21 6TH OF 2000. THE BOTTOM WILL BE THE DATE IT WAS PRINTED.

22 THE COURT: ALL RIGHT. IT'S ONE OF THESE ISSUES I SEE  
23 NO PREJUDICE TO THE DEFENDANT, I SEE NO RELEVANCE TO THE  
24 STATE. I MEAN, IT'S A GOOD START IF WE'RE GOING TO---

25 MR. MAULDIN: IT IS IRRELEVANT. THEREFORE, IT SHOULD

MATTERS AND MOTIONS

1 NOT BE ADMISSIBLE ON SOME SORT OF PREJUDICE---

2 THE COURT: THANK YOU. WHAT'S THE RELEVANCE?

3 SOLICITOR ARIAIL: IT HAS NO RELEVANCE OTHER THAN  
4 UNFORTUNATELY IT'S JUST -- IT'S THERE WHEN WE PRINT THEM.  
5 OTHERWISE, WE HAVE TO GO BACK AND CUT IT OFF SOMEHOW.

6 THE COURT: THANK YOU, SIR. THEY'LL NEED TO BE CUT  
7 OFF. AND IF WE NEED TO TAKE A BREAK TO ACCOMPLISH THAT, I'LL  
8 BE GLAD TO ACCOMMODATE YOU, SIR.

9 SOLICITOR ARIAIL: I THINK IT CAN BE DONE. (OFF RECORD  
10 WITH CO-COUNSEL) WE CAN DO IT.

11 THE COURT: DO IT LATER?

12 SOLICITOR ARIAIL: YEAH.

13 THE COURT: OKAY. BRING THE JURY.

14 (JURY ENTERS COURTROOM AT 2:44 P.M.)

15 THE COURT: ALL RIGHT. MADAME FORELADY, LADIES AND  
16 GENTLEMEN, THE FIRST ORDER OF BUSINESS IS TO ADMINISTER THE  
17 OATH TO YOU AS JURORS IN THIS CASE.

18 MS. MORRIS, YOU MAY BE PROCEED.

19 MADAME CLERK: STAND AND RAISE YOUR RIGHT HANDS,  
20 PLEASE, FOR THE OATH IN THIS CASE, AND THE APPROPRIATE  
21 RESPONSE AFTER THE OATH IS "I WILL."

22 YOU SHALL WELL AND TRULY TRY THE CASE 2001-GS-23-3106,  
23 THE STATE VERSUS JOHN RICHARD WOOD INDICTED FOR MURDER AND  
24 POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE  
25 ATTEMPT TO COMMIT A VIOLENT CRIME AND A TRUE VERDICT RENDER

MATTERS AND MOTIONS

1 ACCORDING TO THE LAW AND THE EVIDENCE SO HELP YOU GOD?

2 (JURORS RESPOND)

3 MADAME CLERK: THANK YOU. BE SEATED.

4 THE COURT: LADIES AND GENTLEMEN, YOU HAVE RECEIVED  
5 YOUR OATH AS JURORS IN THIS CASE. I'M GOING TO TAKE JUST A  
6 FEW MINUTES TO EXPLAIN THE PROCESS OF A TRIAL. MUCH OF WHAT  
7 I WILL SHARE WITH YOU IN SUMMARY FASHION ARE MATTERS WHICH WE  
8 VISITED IN GREAT DETAIL DURING THE INDIVIDUAL JURY SELECTION  
9 PROCESS. I AGAIN WANT TO REVIEW WHAT OUR VARIOUS ROLES ARE.  
10 TO THE EXTENT THERE IS STILL SOME UNCERTAINTY, I WANT YOU TO  
11 KNOW ON THE FRONT END WHAT IS EXPECTED OF YOU AND HOW YOU FIT  
12 INTO THE PROCESS, WHAT IS THE ROLE OF THE OTHER INDIVIDUALS  
13 INVOLVED IN THE CASE.

14 AS THE TRIAL JUDGE IT IS MY DUTY TO PRESIDE OVER THE  
15 TRIAL. I RULE ON THE ADMISSIBILITY OF EVIDENCE. AT THE END  
16 OF THE CASE I WILL INSTRUCT YOU ON THE LAW THAT APPLIES TO  
17 THIS CASE. YOUR DUTY LIES WITHIN THE OATH WHICH YOU HAVE  
18 JUST TAKEN TO WELL AND TRULY TRY THIS CASE. IT IS OFTEN SAID  
19 THAT THE TRIAL JUDGE IS THE JUDGE OF THE LAW. BUT YOU ARE  
20 JUDGES TOO, JUDGES OF THE FACTS. YOU WILL DETERMINE WHAT THE  
21 FACTS ARE AND WHAT THE TRUTH IS IN THIS PARTICULAR CASE. YOU  
22 WILL DO SO FROM THE EVIDENCE.

23 WHAT IS EVIDENCE? PLEASE UNDERSTAND WHAT EVIDENCE IS IN  
24 SOUTH CAROLINA. EVIDENCE CAN COME FROM ONE OF THREE SOURCES.  
25 EVIDENCE CAN BE THE TESTIMONY OF A WITNESS, A WITNESS THAT

PRELIMINARY INSTRUCTION BY THE COURT

1 YOU WILL SEE, HEAR. YOU WILL GET A SENSE FOR THE Demeanor OR  
2 CREDIBILITY OF THAT WITNESS AS YOU VIEW AND RECEIVE THAT  
3 TESTIMONY.

4 A SECOND SOURCE OF EVIDENCE IS WHAT THE LAW CALLS AN  
5 EXHIBIT. AN EXHIBIT COULD BE A PHOTOGRAPH, AN INVOICE, SOME  
6 TYPE OF TANGIBLE DOCUMENT. SOMETIMES JURORS WILL BE A LITTLE  
7 FRUSTRATED IN THE VIEWING OF EXHIBITS BECAUSE WHEN AN EXHIBIT  
8 IS INTRODUCED WE GENERALLY DON'T STOP THE TRIAL SO EVERY  
9 JUROR CAN LOOK AT THE EXHIBIT TO HIS OR HER HEART'S CONTENT.  
10 WE MOVE FORWARD WITH THE TRIAL. SO YOU MAY THINK TO  
11 YOURSELF, I WISH I HAD SEEN THAT EXHIBIT A LITTLE MORE  
12 CLOSELY, AND THIS IS WHAT I WANT TO EMPHASIZE TO YOU. AT THE  
13 END OF THE CASE WHEN YOU RETIRE TO THE JURY ROOM TO CONSIDER  
14 YOUR VERDICT IN THE CASE, THE EXHIBITS WILL BE WITH YOU. SO  
15 YOU WILL HAVE THE EXHIBITS IN THE JURY ROOM TO CAREFULLY  
16 STUDY IN THE DELIBERATION PROCESS.

17 THE THIRD SOURCE OF EVIDENCE IS WHAT THE LAW CALLS A  
18 STIPULATION. THERE MAY OR MAY NOT BE A STIPULATION IN THE  
19 CASE, BUT THE LAW RECOGNIZES A STIPULATION OR AN AGREEMENT  
20 BETWEEN THE PARTIES THROUGH THEIR RESPECTIVE COUNSEL AS  
21 EVIDENCE TO BE CONSIDERED BY THE JURY.

22 SO THAT'S WHAT EVIDENCE IS: TESTIMONY, EXHIBITS ANY  
23 STIPULATIONS. THE SIGNIFICANCE OF THAT IS OTHER THINGS ARE  
24 NOT EVIDENCE. WHAT I TELL YOU IS NOT EVIDENCE. WHAT THE  
25 FINE ATTORNEYS IN THIS CASE TELL YOU IS NOT EVIDENCE. THE



PRELIMINARY INSTRUCTION BY THE COURT

1 QUESTIONS THEY ASK OF WITNESSES IS NOT EVIDENCE. IT'S THE  
2 RESPONSE OF THE WITNESS. THE ATTORNEYS ARE ADVOCATES,  
3 EXCELLENT ADVOCATES REPRESENTING THEIR RESPECTIVE SIDE TO THE  
4 BEST OF THEIR ABILITY. THEY ASK QUESTIONS OF WITNESSES AND  
5 THEY FACILITATE IN THE INTRODUCTION AND THE RECEIPT OF THE  
6 EXHIBITS.

7 LADIES AND GENTLEMEN, YOU AND I DO NOT ASK QUESTIONS OF  
8 WITNESSES. WE DON'T OFFER EXHIBITS. YOUR DUTY IS TO PAY  
9 CLOSE ATTENTION TO THE EVIDENCE, FIND THE TRUTH FROM THE  
10 EVIDENCE, APPLY THE LAW AS I INSTRUCT IT, AND THROUGH THAT  
11 PROCESS ARRIVE AT A TRUE VERDICT IN THE CASE THAT IS  
12 PRESENTED TO YOU.

13 I WANT TO REMIND YOU OF THE LEGAL PRINCIPLES I MENTIONED  
14 AT THE BEGINNING ON MONDAY AND THROUGH MY INDIVIDUAL  
15 QUESTIONING OF EACH OF YOU.

16 IN A CRIMINAL CASE AN ACCUSED IS PRESUMED TO BE  
17 INNOCENT. THAT IS A SUBSTANTIAL RIGHT TO WHICH ANY ACCUSED  
18 IS ENTITLED. THAT PRESUMPTION OF INNOCENCE UNDER THE LAW IS  
19 ACCORDED MR. JOHN RICHARD WOOD. YOUR OATH MANDATES THAT YOU  
20 RESPECT AND HONOR THAT PRESUMPTION OF INNOCENCE. THERE IS NO  
21 BURDEN OF PROOF ON AN ACCUSED TO PROVE OR DISPROVE ANYTHING.  
22 UNDER OUR LAW AN ACCUSED HAS THE RIGHT TO REMAIN SILENT. THE  
23 PROOF IS AND REMAINS AT ALL TIMES ON THE STATE TO PROVE GUILT  
24 BEYOND A REASONABLE DOUBT. THE BURDEN IS ON THE STATE.

25 LADIES AND GENTLEMEN, IN THIS CASE UNDER THIS

PRELIMINARY INSTRUCTION BY THE COURT

1 INDICTMENT, THE INDICTMENT, WHICH IS NOT EVIDENCE, CONTAINS  
2 TWO CHARGES. IT IS ALLEGED THAT THE DEFENDANT, MR. JOHN  
3 RICHARD WOOD, DID, IN GREENVILLE COUNTY ON OR ABOUT DECEMBER  
4 6TH, 2000, COMMIT THE OFFENSE OF MURDER AGAINST ONE  
5 INDIVIDUAL IDENTIFIED AS ERIC NICHOLSON. IT IS FURTHER  
6 ALLEGED ON THE SAME DATE AND TIME THAT THE DEFENDANT, MR.  
7 WOOD, DID COMMIT THE OFFENSE OF POSSESSION OF A WEAPON DURING  
8 THE COMMISSION OF OR ATTEMPTED COMMISSION OF A VIOLENT CRIME.  
9 THE VIOLENT CRIME ALLEGED IN THE INDICTMENT IS THE OFFENSE OF  
10 MURDER. THOSE ARE THE TWO CHARGES PRESENTED TO YOU.

11 WE WILL BEGIN WITH EACH SIDE MAKING AN OPENING STATEMENT  
12 TO YOU. AFTER THE OPENING STATEMENTS, WE WILL HEAR EVIDENCE.  
13 THE STATE PROCEEDS FIRST. THE STATE GOES FIRST BECAUSE IT  
14 BROUGHT THIS CASE. IT BROUGHT THESE TWO CHARGES AND IT  
15 CARRIES THE BURDEN OF PROOF. AFTER YOU HAVE HEARD THE  
16 EVIDENCE FROM THE STATE, THE SAME OPPORTUNITY IS GRANTED TO  
17 DEFENSE, BEARING IN MIND, HOWEVER, AND I STRESS, THERE IS NO  
18 BURDEN WHATSOEVER ON AN ACCUSED TO PRESENT ANY EVIDENCE AT  
19 ALL. ONCE THE EVIDENCE HAS BEEN RECEIVED, EACH SIDE WILL  
20 THEN HAVE AN OPPORTUNITY TO MAKE A FINAL ARGUMENT OR  
21 SUMMATION TO YOU AFTER WHICH I WILL INSTRUCT YOU ON THE LAW.

22 AS WE GO THROUGH THIS PROCESS, LET ME GIVE YOU SORT OF  
23 SOME HOUSEKEEPING RULES. WE GENERALLY RUN COURT FOR ABOUT AN  
24 HOUR AND A HALF TO TWO HOURS AT A TIME. BUT LET ME TELL YOU  
25 THERE IS NO SCIENCE TO IT AND WE NEED TO BE FLEXIBLE. LEGAL

PRELIMINARY INSTRUCTION BY THE COURT

1 ISSUES MAY COME UP -- AND AS PART OF TRYING A CASE, IT DOES -  
2 - THAT YOU'LL NEED TO GO TO THE JURY ROOM PERHAPS MORE  
3 FREQUENTLY THAN YOU WOULD LIKE. PLEASE UNDERSTAND THAT IS  
4 NECESSARY AND THAT WE ADDRESS CERTAIN LEGAL ISSUES AND THE  
5 LAW REQUIRES WE DO IT OUTSIDE YOUR PRESENCE. ALSO, IF YOU  
6 NEED TO TAKE A BREAK AND IT'S NOT THE NORMAL BREAK TIME,  
7 DON'T SUFFER. JUST RAISE YOUR HAND AND GET MY ATTENTION.  
8 TAKE A BREAK WHENEVER YOU NEED TO.

9 IF, FOR EXAMPLE, YOU CAN'T HEAR ONE OF THE WITNESSES OR  
10 MYSELF AND WE NEED TO SPEAK UP MORE LOUDLY AND CLEARLY, LET  
11 US KNOW THAT SO WE CAN CORRECT IT. IT MAY BE WE HAVE A  
12 WITNESS WHO IS SOFT SPOKEN AND PARTICULARLY FOR THE JURORS  
13 WHO MAY BE AT THAT TIME SEATED AT THE END OR IN THE REAR.  
14 LET US KNOW. THE EVIDENCE IS IMPORTANT FOR YOU TO HEAR. YOU  
15 ARE THE FACT FINDERS. YOU ARE THE JUDGES OF THE FACTS. YOU  
16 WILL MAKE THE DECISION. NO ONE ELSE. YOU NEED TO HEAR THE  
17 EVIDENCE. YOU NEED TO SEE THE EVIDENCE. SO PLEASE LET US  
18 KNOW IF YOUR VIEW IS OBSTRUCTED FROM ANY EXHIBIT OR YOU  
19 CANNOT HEAR ANY ONE OF THE PARTICIPANTS.

20 LADIES AND GENTLEMEN, IF YOU NEED TO BRING ANYTHING TO  
21 MY ATTENTION DURING THE COURSE OF THE TRIAL, I WOULD ASK YOU  
22 TO COMMUNICATE IT TO ONE OF THE BAILIFFS IN CHARGE OF THIS  
23 MATTER OR ONE OF THE COURT SECURITY OFFICERS ASSIGNED FOR  
24 YOUR SAFETY AND WELFARE DURING THIS TIME. AND I WILL RESPOND  
25 TO ANY CONCERN OR QUESTION AS QUICKLY AS I CAN TO THE EXTENT

PRELIMINARY INSTRUCTION BY THE COURT

1 THE LAW PERMITS ME TO DO SO.

2 I KNOW THAT THERE IS AN INTEREST IN TAKING NOTES. THAT  
3 IS NOT UNUSUAL. LET ME TELL YOU THE RULES ABOUT NOTE TAKING.  
4 YOU ARE WELCOME TO TAKE NOTES. YOU'RE NOT REQUIRED TO. IF  
5 YOU'RE NOT TAKING NOTES NOW BUT TOMORROW OR SUNDAY OR MONDAY  
6 YOU CHANGE YOUR MIND, YOU CAN START AT ANY TIME. IF YOU ARE  
7 TAKING NOTES NOW AND TOMORROW YOU THINK I WOULD BE BETTER NOT  
8 TAKING NOTES, YOU CAN STOP. YOU CAN START, YOU CAN STOP AT  
9 YOUR PLEASURE.

10 HERE IS THE KEY ABOUT NOTE TAKING. NOTE TAKING IS FOR  
11 YOUR INDIVIDUAL BENEFIT. AT SOME POINT YOU WILL BE IN A JURY  
12 ROOM AT THE END OF THE CASE DELIBERATING. THE NOTES ARE FOR  
13 YOUR BENEFIT. UNDER THE LAW IT IS IMPROPER TO USE YOUR NOTES  
14 TO SWAY OR INFLUENCE THE OPINION OF A FELLOW JUROR. THE ONLY  
15 OFFICIAL RECORDING WE HAVE OF THESE PROCEEDINGS IS THAT OF  
16 THE CERTIFIED COURT REPORTER, MS. KOFFSKEY, SEATED IN FRONT  
17 OF ME WHO TAKES DOWN EVERYTHING THAT IS SAID. NOTE TAKING,  
18 FINE, IF YOU WANT. FINE, IF YOU DON'T WANT TO. BUT IF YOU  
19 DO, IT'S FOR YOUR INDIVIDUAL BENEFIT. EACH EVENING AS YOU  
20 LEAVE THE COURTHOUSE YOUR NOTES CAN BE SECURED. PRIVACY CAN  
21 BE PROTECTED BY PLACING A BLANK PAGE ON TOP INDICATING YOUR  
22 NAME, AND THEY WILL BE SECURED EITHER BY A COURT SECURITY  
23 OFFICER OR BY THE CLERK'S OFFICE AND RETURNED TO YOU THE NEXT  
24 MORNING. YOUR NOTES WILL NOT GO WITH YOU TO THE HOTEL FOR  
25 YOU TO PERUSE DURING THE EVENING BREAK.

PRELIMINARY INSTRUCTION BY THE COURT

1           NOW, LADIES AND GENTLEMEN, AS YOU ANTICIPATE, THIS IS A  
2 FAIRLY LENGTHY CASE. IF THERE IS ANYTHING WE CAN DO TO  
3 ASSIST YOU TO MAKE THIS MORE COMFORTABLE FOR YOU, PLEASE DO  
4 NOT HESITATE TO ASK US AND WE WILL RESPOND IF WE ARE ABLE TO.  
5 THIS CASE IS IMPORTANT. IT'S IMPORTANT TO THE STATE. IT'S  
6 IMPORTANT TO MR. WOOD. I BELIEVE YOU UNDERSTAND THAT FULLY,  
7 THAT YOU WILL GIVE THESE FINE ATTORNEYS AND THOSE INVOLVED IN  
8 THIS CASE THE SAME KIND ATTENTION AND THOUGHTFUL ATTENTION  
9 THAT YOU HAVE GIVEN THE COURT THUS FAR. WITH THAT, WE WILL  
10 BEGIN WITH OUR OPENING STATEMENTS.

11           SOLICITOR?

12           SOLICITOR ARIAIL:   THANK YOU, YOUR HONOR.

13           MADAME FORELADY. LADIES AND GENTLEMEN OF THE JURY, I  
14 WILL REINTRODUCE MYSELF AS BOB ARIAIL, THE SOLICITOR FOR THE  
15 THIRTEENTH JUDICIAL CIRCUIT. AND ASSISTING ME IN THIS CASE  
16 IS, I THINK I INTRODUCED EACH OF THEM IN OUR JURY VOIR DIRE,  
17 BUT IN CASE I DIDN'T, BETTY STROM, MY DEPUTY, AND MINDY  
18 HERVEY, MY ASSISTANT, AND THE PERSON THAT YOU HAVE NOT MET,  
19 MELITA GRAHAM, WHO IS MY PARALEGAL WHO WILL BE ASSISTING ME  
20 RUNNING BACK AND FORTH AND DOING VARIOUS THINGS.

21           IF YOU ARE A LITTLE BIT NERVOUS, THEN THAT'S NATURAL.  
22 YOU ARE IN A DIFFERENT ENVIRONMENT THAN YOU HAVE EVER BEEN  
23 IN. AND THERE IS NOTHING WRONG WITH BEING NERVOUS. I'VE  
24 BEEN DOING THIS NOW -- THIS IS MY THIRTIETH YEAR PROSECUTING,  
25 AND I CAN TELL YOU THAT I AM A LITTLE BIT NERVOUS. BUT AS WE

OPENING STATEMENTS -- BY MR. ARIAIL

1 GO THROUGH IT, WE'LL GET BETTER. IN FACT, MY WIFE CALLED ME  
2 ABOUT 15 MINUTES BEFORE -- AT 2:30 AND SAID, "I KNOW YOU'RE  
3 GOING TO DO YOUR OPENING STATEMENT. I KNOW, AS YOU USUALLY  
4 ARE, YOU'RE A LITTLE BIT NERVOUS. JUST TAKE IT EASY. YOU'VE  
5 DONE IT FOR 30 YEARS. YOU PROBABLY HAVE IT FIGURED OUT BY  
6 NOW."

7 WHAT I WANT TO DO IS INTRODUCE YOU TO A FEW OTHER PEOPLE  
8 IN THE COURTROOM SO YOU'LL UNDERSTAND WHAT'S GOING ON. THE  
9 JUDGE INTRODUCED MS. KOFFSKEY AS THE COURT REPORTER. SHE IS  
10 TAKING EVERYTHING DOWN. MS. MORRIS WORKS FOR THE CLERK'S  
11 OFFICE. SHE'LL BE IN CHARGE OF ALL OF THE EXHIBITS. YOU MET  
12 MR. MAULDIN, AND MR. RICHEY AND MR. BANNISTER. THEY ARE THE  
13 DEFENSE LAWYERS. YOU HAVE MET THE BAILIFFS AND YOU HAVE MET  
14 THE PROSECUTION. AND WE ALL HAVE OUR VARIOUS ROLES.

15 THE ROLES OF THE PROSECUTION, AS THE JUDGE HAS SAID, IS  
16 WE REPRESENT THE STATE OF SOUTH CAROLINA AND WE BRING THE  
17 CHARGES IN THIS CASE AND IN ANY CRIMINAL CASE. BUT  
18 PARTICULARLY IN THIS CASE THE CHARGES THAT HAVE BEEN BROUGHT  
19 HAVE BEEN READ TO YOU AND I WILL REFER TO THEM IN A MINUTE.  
20 BUT LET ME GO BACK TO THE ISSUE AT HAND, WHAT YOUR ROLE IS.  
21 YOU KNOW WHAT THE COURT REPORTER DOES. YOU KNOW WHAT I DO,  
22 THE DEFENSE LAWYERS, THE BAILIFFS AND EVERYBODY.

23 BUT WHAT IS YOUR ROLE? NOW, THE JUDGE HAS SAID THAT  
24 YOUR ROLE IS TO DETERMINE WHAT THE FACTS ARE. AND I CAN TELL  
25 YOU WHEN I GRADUATED FROM LAW SCHOOL AND BEGAN PRACTICING

OPENING STATEMENTS -- BY MR. ARIAIL

1 LAW, THAT WAS A VERY, VERY DIFFICULT CONCEPT FOR ME TO  
2 UNDERSTAND, THAT A JURY DETERMINES THE FACTS. IF I HAD BEEN  
3 ON A JURY, I WOULD HAVE BEEN SOMEWHAT UNSURE ABOUT WHAT IT IS  
4 THAT I WAS TO DO.

5 SO LET ME MAKE IT AS SIMPLE AS POSSIBLE. THIS IS WHAT  
6 YOUR ROLE IS. IN A CIVIL CASE CONTEXT, TWO PEOPLE SUING OVER  
7 AN AUTOMOBILE WRECK, BOTH SAY THEY HAD THE GREEN LIGHT AT THE  
8 INTERSECTION AND THEY HAD A COLLISION. THERE IS A CONFLICT  
9 IN THE TESTIMONY AND THE JURY'S JOB IS TO DETERMINE FOR WHOSE  
10 SIDE THE LIGHT WAS GREEN. YOU DETERMINE WHAT THE REAL FACTS  
11 ARE. YOU LISTEN TO THE EVIDENCE. YOU LISTEN TO THE  
12 TESTIMONY. AND YOU DECIDE BASED ON WHAT IS PRESENTED TO YOU,  
13 WHAT ARE THE REAL FACTS? WHAT HAS BEEN SHOWN TO YOU TO BE  
14 FACTUALLY TRUE?

15 NOW, SO YOU'RE NOT WANDERING AROUND OUT THERE TRYING TO  
16 FIGURE OUT THE FACTS, YOU ALSO HAVE TO KNOW WHERE WE'RE  
17 GOING. AND WHERE WE'RE GOING IS THAT THE STATE OF SOUTH  
18 CAROLINA THROUGH THIS INDICTMENT AND THROUGH OUR PROOF SAYS  
19 THAT JOHN RICHARD WOOD, ON DECEMBER THE 6TH OF 2000, MURDERED  
20 STATE TROOPER ERIC NICHOLSON. SO THE FACTS WE'RE GOING TO  
21 LOOK AT ARE MURDER. AND THE INDICTMENT HAS BEEN READ TO YOU  
22 OR TOLD YOU -- LET ME READ YOU WHAT IT SAYS. IT SAYS THAT  
23 "JOHN RICHARD WOOD DID IN GREENVILLE COUNTY ON OR ABOUT THE  
24 6TH DAY OF DECEMBER OF THE YEAR 2000 UNLAWFULLY AND WITH  
25 MALICE AFORETHOUGHT KILL ERIC NICHOLSON BY SHOOTING HIM AND

OPENING STATEMENTS -- BY MR. ARIAIL

1 THAT ERIC NICHOLSON DIED AS A PROXIMATE RESULT THEREOF."

2 THAT'S WHAT THE LAW REQUIRES THE INDICTMENT TO SAY.

3 NOW LET ME INTERPRET THAT TO YOU IN STRICT LAYMAN'S  
4 TERMS SO YOU'LL UNDERSTAND IT. YOU UNDERSTAND THAT JOHN  
5 RICHARD WOOD -- HE'S SEATED RIGHT HERE WITH HIS ATTORNEYS.

6 HE'S THE ACCUSED. THE 6TH DAY OF DECEMBER 2000, THAT'S A DAY  
7 WE'RE GOING TO TALK ABOUT THROUGH A NUMBER OF WITNESSES. ALL  
8 OF IT OCCURRED ON THE 6TH DAY OF DECEMBER OF 2000.

9 "UNLAWFULLY" -- THAT MEANS HE DID IT AND HE DIDN'T HAVE THE  
10 LAWFUL RIGHT TO KILL HIM -- "AND WITH MALICE AFORETHOUGHT."

11 THOSE ARE THE TWO PHRASES WE'RE GOING TO TALK ABOUT THAT MAKE  
12 A CRIME MURDER. BY MEANS OF SHOOTING HIM -- DID KILL ERIC  
13 NICHOLSON BY MEANS OF SHOOTING HIM. SHOOTING HIM MEANS HE  
14 SHOT HIM WITH A PISTOL.

15 NOW, THE ISSUES IN THIS CASE DEALING WITH THE CRIME OF  
16 MURDER, MALICE AND MALICE AFORETHOUGHT. AND ONE -- BEFORE I  
17 EXPLAIN THAT, LET ME GO BACK AND PICK UP ONE OTHER THING.  
18 THE JURY HAS THE RIGHT IN ITS DELIBERATIONS AND IN LISTENING  
19 TO WITNESSES, BECAUSE YOU'RE SITTING HERE AND THE WITNESSES  
20 ARE SITTING THERE, TO USE YOUR COMMON SENSE TO APPRAISE THE  
21 CREDIBILITY AND BELIEVABILITY OF WITNESSES. AND YOU HAVE THE  
22 ULTIMATE AUTHORITY IN DETERMINING WHAT THE FACTS ARE TO  
23 DETERMINE WHO YOU ARE GOING TO BELIEVE. AND YOU USE -- THEY  
24 DON'T GIVE YOU A MEASURING STICK. IT'S GOOD COMMON SENSE AND  
25 COLLECTIVE REASONING. AND BY LISTENING TO EACH WITNESS AND



OPENING STATEMENTS -- BY MR. ARIAIL

1 DETERMINING THEIR CREDIBILITY THEN YOU BEAR DOWN -- OR BOIL  
2 IT DOWN TO WHAT THE FACTS ARE.

3 SO LET'S TALK ABOUT THE ELEMENTS. MURDER, YOU HAVE TO  
4 HAVE A KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT.  
5 THE KILLING OF A HUMAN BEING WE WILL ESTABLISH THROUGH  
6 AUTOPSY TESTIMONY. THE TWO KEY ARE MALIC -- MALICE. MALICE  
7 IS EXACTLY WHAT IT MEANS. IT'S MALICIOUSNESS. IT'S  
8 MEANNESS. THE LAW DEFINES IT AS AN EVIL HEART OR A WICKED  
9 SPIRIT OR A HEART BENT ON MISCHIEF OR A HEART DEVOID OF  
10 SOCIAL DUTY. THOSE ARE THE PHRASES. BUT IT'S THE MEANNESS,  
11 THE MALICIOUSNESS THAT THE WORD MALICE CONNOTES IS WHAT WE  
12 ARE ABOUT IN MURDER. SECONDLY, AFORETHOUGHT. A LOT OF  
13 PEOPLE BELIEVE THAT AFORETHOUGHT MEANS THAT YOU HAVE TO HAVE  
14 PLANNED WHAT YOU ARE DOING. THAT'S NOT THE LAW IN SOUTH  
15 CAROLINA. YOU DON'T HAVE TO PLAN IT. YOU DON'T HAVE TO LAY  
16 IN WAIT. YOU DON'T HAVE TO EVEN HAVE HAD THE THOUGHT MORE  
17 THAN THE THOUGHT TO DO THE FINAL DEED, TO PULL THE TRIGGER,  
18 IT MUST BE IN THE PERSON'S HEAD WHO PULLED THE TRIGGER THAT  
19 THEY INTENDED TO DO THE ACT AT THAT TIME. IT'S ONE SECOND.  
20 IT'S A MINI-SECOND, JUST AS LONG AS THE THOUGHT TO DO THE  
21 DEATHLY DEED WAS THERE AT THE TIME THAT THE DEED WAS STRUCK.  
22 IT DOES NOT REQUIRE ANY PLANNING. IT DOESN'T REQUIRE ANY  
23 LAYING IN WAIT AS YOU MY HAVE SEEN OR THOUGHT ABOUT ON T.V.  
24 NOW, THERE ARE TWO ISSUES FOR YOUR FACT DECISION AS I  
25 SEE IT IN THIS CASE. THE FIRST IS, CAN THE STATE PROVE THE

OPENING STATEMENTS -- BY MR. ARIAIL

1 MURDER OCCURRED IN WHICH ERIC NICHOLSON WAS MURDERED? THAT'S  
2 NUMBER ONE. CAN WE SHOW THAT ERIC NICHOLSON DIED? DON'T  
3 WORRY ABOUT WHO DID THE MURDER. THE FIRST ELEMENT IS, CAN WE  
4 ESTABLISH THAT A MURDER OCCURRED? WAS ERIC NICHOLSON  
5 MURDERED? AND THEN THE SECOND ELEMENT IS DID THE DEFENDANT  
6 COMMIT THE MURDER?

7 WELL, LET'S TALK ABOUT THE FIRST ONE, THE FIRST ELEMENT.  
8 CAN THE STATE ESTABLISH THAT ERIC NICHOLSON WAS MURDERED?  
9 AND WHAT WE WILL ESTABLISH TO YOU THROUGH TESTIMONY IS THAT  
10 IT WAS AROUND NOON ON DECEMBER THE 6TH WHILE ERIC NICHOLSON  
11 WAS ON DUTY AS A HIGHWAY PATROLMAN ON I-85 HE PULLED OVER A  
12 RED MOTORCYCLE-SCOOTER -- YOU'LL HERE IT REFERRED TO BOTH  
13 WAYS -- CONCERNED AS TO WHETHER OR NOT THIS SCOOTER WAS A  
14 LAWFUL VEHICLE ON THE HIGHWAYS OF SOUTH CAROLINA. AND HE  
15 PULLED THIS SCOOTER OVER. AND WHEN THIS SCOOTER CAME TO A  
16 STOP, BEFORE ERIC NICHOLSON COULD PUT HIS CAR OUT OF -- INTO  
17 GEAR, OUT OF DRIVE BUT INTO NEUTRAL, HE WAS SHOT AT EIGHT  
18 TIMES BY A NINE MILLIMETER PISTOL. HE WAS HIT FIVE TIMES,  
19 FOUR OF WHICH WERE IN HIS BACK. HE DIED AS A RESULT OF ONE  
20 OF THOSE FIVE SHOTS THAT HIT HIM GOING THROUGH HIS HEART.  
21 AND AS A RESULT OF THAT HE DIED.

22 NOW, WE WILL SUBMIT TO YOU THAT THE ISSUE OF MURDER IS  
23 CLEARLY PROVIDED IN THE PROOF THAT DEALS WITH THE NUMBER OF  
24 TIMES HE WAS SHOT, THE FACT HE WAS SHOT BY A WEAPON. AND THE  
25 COURT WILL TELL YOU THAT YOU CAN INFER MALICE, NUMBER ONE,

OPENING STATEMENTS -- BY MR. ARIAIL

1 FROM THE USE OF A DEADLY WEAPON. NUMBER TWO, YOU CAN INFER  
2 MALICE FROM THE OVERALL SITUATION OF THE CRIME. WE SUBMIT TO  
3 YOU WE WILL PROVE THAT ERIC NICHOLSON WAS MURDERED ON  
4 DECEMBER THE 6TH.

5 NUMBER TWO, WHO DID THE MURDER? THAT'S THE SECOND  
6 ISSUE. WE SAY IN THESE CHARGES THAT THE DEFENDANT DID THE  
7 MURDER. IT'S OUR RESPONSIBILITY TO SHOW YOU THE PROOF THAT  
8 WE HAVE BEYOND A REASONABLE DOUBT. AND WHAT WE WILL DO IS WE  
9 WILL BEGIN ON DECEMBER THE 6TH -- WE'RE GOING TO DO IT A  
10 LITTLE BIT IN REVERSE ORDER. AND SO THAT YOU DON'T THINK  
11 THAT WE'RE GOING TO WANDER AROUND, WE ARE ORGANIZED AND WE DO  
12 KNOW WHERE WE'RE GOING. WE'RE GOING TO START WITH THE  
13 OFFICERS WHO FOUND ERIC NICHOLSON, AND THEY'RE GOING TO  
14 TESTIFY AS TO THE SCENE THAT OCCURRED ON FRONTAGE ROAD IN  
15 FRONT OF THE OLD CELANESE FIBER INDUSTRIES PLANT. THAT'S  
16 WHERE THIS OCCURRED.

17 I TOLD YOU IT OCCURRED ON DECEMBER THE 6TH AROUND NOON.  
18 A LOT OF TRAFFIC, A LOT OF CHRISTMAS SHOPPING, LUNCHTIME  
19 TRAFFIC, WITNESSES GALORE ALL OVER THE PLACE WHO SAW THE  
20 VEHICLE BEING -- THE SCOOTER-MOTORCYCLE BEING PULLED OVER BY  
21 THE POLICE OFFICER. A NUMBER OF PEOPLE ON WOODRUFF ROAD ARE  
22 WATCHING. SO WE WILL BEGIN AFTER WE GO TO THE SCENE AND  
23 ESTABLISH THE CAUSE OF DEATH AND THE FACT THAT ERIC NICHOLSON  
24 WAS SHOT AND KILLED. WE WILL THEN GO BACK AND START AT THE  
25 VERY BEGINNING, AND THAT WILL BE WHERE THESE PEOPLE ARE

OPENING STATEMENTS -- BY MR. ARIAIL

1 SITTING AT THE RED LIGHT AT WOODRUFF ROAD AND THE OFF RAMP  
2 FROM I-85 AND THEY WILL BEGIN TO TELL YOU WHAT THEY SAW.

3 AND THIS IS WHAT THEY WILL TELL YOU AS WE MARCH THROUGH  
4 TO THE END OF THAT DAY. THEY WILL TELL YOU THAT THEY WERE  
5 SITTING THERE AND THEY SAW THE PATROLMAN PULL OVER A SCOOTER,  
6 THAT THE SCOOTER WENT DOWN IN FRONT -- IT APPEARED THAT IT  
7 WOULDN'T STOP. THE PATROLMAN FINALLY SPED UP AND GOT IN  
8 FRONT, AND AS HE DID THE PERSON ON THE SCOOTER CAME TO A  
9 STOP, STOOD UP AND STARTED POINTING HIS ARM AT THE HIGHWAY  
10 PATROLMAN'S CAR. A NUMBER OF WITNESSES SAY THEY HEARD SHOTS.  
11 OTHER SAY THEY SEE THE ARM POINTED. AT THAT POINT THE  
12 SCOOTER DOES A REVERSE, COMES OUT OF THE FRONTAGE ROAD BACK  
13 ONTO WOODRUFF ROAD INTO THE TRAFFIC, AND IT'S FOLLOWED BY A  
14 MR. AND MRS. WHEELER.

15 MR. AND MRS. WHEELER HAD BEEN OUT SHOPPING TOGETHER.  
16 MS. WHEELER IS IN THE PASSENGER SEAT, MR. WHEELER IS IN THE  
17 DRIVER'S SEAT. A NUMBER OF THESE PEOPLE IN SEEING THIS KNOW  
18 SOMETHING IS WRONG AND CALL IMMEDIATELY TO 911. SO THERE IS  
19 A NUMBER -- THERE ALL RIGHT A NUMBER OF WITNESSES WHO ARE ON  
20 THE PHONE TO 911, THE WHEELERS BEING ONE OF THEM.

21 THE WHEELERS, HOWEVER, TOOK A LITTLE BIT MORE ACTIVE  
22 ROLE. THEY BEGAN TO FOLLOW THE SCOOTER. THEY FOLLOWED THE  
23 SCOOTER DOWN TO THE INTERSECTION OF MILLER ROAD AND WOODRUFF  
24 ROAD. ONE WITNESS SEES THE SCOOTER CUT THROUGH THE RED ROBIN  
25 FILLING STATION ON THAT CORNER, AND THE WHEELERS SEE IT ALSO.

OPENING STATEMENTS -- BY MR. ARIAIL

1 ONE WITNESS SEES THE JEEP, A JEEP GRAND WAGONEER, A 1975  
2 MODEL, BLUE IN COLOR WITH PEELING WOOD GRAIN SIDING, TURN  
3 RIGHT ON MILLER ROAD WITH A FEMALE DRIVER. THE MILLERS (SIC)  
4 FOLLOW, AND THE MILLERS (SIC) FOLLOW TILL THEY SEE THE  
5 SCOOTER TURN IN TO BEHIND THE GREENVILLE GYMNASTICS. AT THAT  
6 TIME THEY TURN IN, THE SCOOTER IS PARKED, AN INDIVIDUAL IS  
7 SEEN GETTING IN THE BACK -- INTO THE PASSENGER SIDE OF THE  
8 JEEP, FEMALE IS SEEN DRIVING, AND THEY TAKE OFF. THEY LEAVE  
9 THE SCOOTER, GO OFF IN A JEEP, AND THE JEEP IS THEN FOLLOWED  
10 BY THE WHEELERS, WHO GET A TAG NUMBER AND CALL THE TAG NUMBER  
11 IN TO 911.

12 THE TAG NUMBER IS REGISTERED TO KAREN MCCALL ON OLD  
13 DOBBINS MILL ROAD IN ANDERSON COUNTY. ANDERSON COUNTY IS  
14 IMMEDIATELY NOTIFIED THAT THIS IS WHAT -- BE ON THE LOOKOUT  
15 FOR SOMEBODY THAT MAY BE COMING IN A BLUE JEEP WITH SIDING  
16 WITH THIS TAG NUMBER.

17 KAREN MCCALL IS IN THE VEHICLE AND SHE WILL TESTIFY AS  
18 TO WHAT OCCURRED FROM THE TIME THEY LEFT ANDERSON EARLY THAT  
19 MORNING AND CAME TO GREENVILLE AND WHAT HAPPENED -- SHE WON'T  
20 BE ABLE TO TESTIFY AS TO WHAT HAPPENED AT THE POLICE SHOOTING  
21 BECAUSE SHE WASN'T THERE. BUT SHE WILL TESTIFY FROM THAT  
22 MOMENT ON WHAT HAPPENED AS THEY LEFT THE SCENE AT GREENVILLE  
23 GYMNASTICS.

24 AND SHE WILL TELL YOU THAT THEY RODE AROUND FOR  
25 APPROXIMATELY AN HOUR AND A HALF TO TWO HOURS IN GREENVILLE,

OPENING STATEMENTS -- BY MR. ARIAIL

1 HAD VERY LITTLE CONVERSATION AND THEN HEADED TO ANDERSON.  
2 AND WHEN THEY GOT TO ANDERSON AND CROSSED OVER I-85 ON ONE OF  
3 THE BACK ROADS GOING TO THE DOBBINS MILL ROAD ADDRESS, THE  
4 ANDERSON COUNTY DEPUTIES PULLED IN BEHIND THEM. AND FROM  
5 THAT POINT FOR APPROXIMATELY FIVE MILES A GUNFIGHT ERUPTED  
6 WHEN THE DEFENDANT BEGAN SHOOTING AT THE POLICE THROUGH THE  
7 REAR WINDOW OF THE JEEP. ONE OFFICER WAS HIT. SEVERAL CARS  
8 WERE HIT.

9 THIS WENT ON FOR QUITE SOME TIME UNTIL THE VEHICLE THAT  
10 KAREN MCCALL WAS DRIVING WAS TOTALLY DISABLED. THE DEFENDANT  
11 JUMPED OUT, HIJACKED ANOTHER TRUCK, A BLUE RIDGE ELECTRIC  
12 TRUCK, AN INDIVIDUAL -- A MAN COMING THE OTHER WAY ON THE  
13 ROAD -- AT GUNPOINT. GUNFIRE ERUPTED AT THAT TIME WHEN THE  
14 DEFENDANT TURNED TO SHOOT AT OFFICERS WHO HAD CLOSED IN.  
15 THEY THEN LEFT AND WENT DRIVING AS RECKLESSLY AS YOU CAN  
16 IMAGINE THROUGH A FIELD TRYING TO ESCAPE. THEY WERE  
17 EVENTUALLY HEMMED UP IN A DEAD END ROAD, AND THE DEFENDANT  
18 TURNED THE VEHICLE AROUND AND CAME BACK AT THE ROADBLOCK SET  
19 UP BY POLICE FIRING AND COMING THROUGH THE ROADBLOCK. AND AT  
20 THAT MOMENT, HE WAS SHOT BY DEPUTY VIC WOOTEN OF THE ANDERSON  
21 COUNTY SHERIFF'S OFFICE. HE WAS SHOT IN THE NOSE AND HE  
22 SURVIVED AND HE IS HERE FOR HIS TRIAL.

23 WHAT WE WILL DO AT THE END OF THIS CASE, WE WILL SHOW  
24 YOU THAT AT THE TIME THE DEFENDANT WAS ARRESTED, IN BETWEEN  
25 HIS FEET IN THE BLUE RIDGE ELECTRIC VEHICLE, WAS A 9

OPENING STATEMENTS -- BY MR. ARIAIL

1 MILLIMETER GLOCK WEAPON. AND THROUGH BALLISTICS TESTS WE  
2 WILL SHOW YOU THAT 23 ROUNDS WERE FIRED IN ANDERSON COUNTY,  
3 THAT EIGHT CASINGS FOUND AT THE SCENE OF THE TROOPER'S DEATH  
4 WERE ALL FIRED BY THAT WEAPON. IN ADDITION TO THAT, WE WILL  
5 SHOW YOU THAT A BULLET FOUND ON THE DASHBOARD OF THE  
6 TROOPER'S VEHICLE WAS ALSO FIRED BY THAT WEAPON. AND LASTLY,  
7 WE WILL SHOW YOU THAT A BULLET REMOVED FROM THE CHEST OF ERIC  
8 NICHOLSON WAS ALSO FIRED BY THAT WEAPON.

9 WITH THAT EVIDENCE WE WILL PAINT YOU A PICTURE, A  
10 STRAIGHT LINE FROM THE BEGINNING OF THAT DAY WITH KAREN  
11 MCCALL THAT THIS DEFENDANT KILLED ERIC NICHOLSON WITH THE 9  
12 MILLIMETER HANDGUN WHICH WAS A HANDGUN OWNED AND REGISTERED  
13 TO KAREN MCCALL.

14 THANK YOU VERY MUCH.

15 THE COURT: MR. BANNISTER?

16 MR. BANNISTER: THANK YOU, JUDGE.

17 GIVE ME JUST A MOMENT. (PAUSE)

18 LET HIM GO, CONVICT HIM OF MURDER OR POSSIBLY CONVICT  
19 HIM OF SOMETHING LESS THAN MURDER. THAT'S THE DECISION THAT  
20 YOU ARE GOING TO BE MAKING FOR JOHN WOOD IN THIS PART OF THE  
21 CASE. IF AND ONLY IF WE GET TO THE SECOND PART OF THE CASE,  
22 LET HIM DIE IN PRISON OR KILL HIM. THAT'S THE DECISION THAT  
23 YOU MIGHT BE CALLED UPON TO MAKE FOR JOHN WOOD.

24 NOW, I KNOW THAT WE HAVE BEEN IN HERE THROUGH JURY  
25 SELECTION AND YOU HAVE HEARD A LOT OF LEGAL TERMS -- LEGAL

OPENING STATEMENTS -- BY MR. BANNISTER

1 TERMS LIKE AGGRAVATORS, LEGAL TERMS LIKE MITIGATORS -- AND  
2 YOU'VE BEEN PUT IN A LOT OF HYPOTHETICAL SITUATIONS AND ASKED  
3 ABOUT YOUR OPINIONS IN THOSE SITUATIONS. THIS IS THE REAL  
4 DEAL.

5 WE ARE NOW BEGINNING. AND IT IS IMPORTANT THAT YOU  
6 FOCUS IN ON THE FACT THAT ALTHOUGH THERE IS A CRIME THAT HAS  
7 BEEN CHARGED THAT IS SERIOUS, THERE IS ALSO ANOTHER ASPECT OF  
8 THIS CASE THAT IS SERIOUS, AND THAT IS THE OATH THAT YOU  
9 TOOK, AN OATH THAT YOU MADE ON THE BIBLE, A BOOK THAT SAYS IN  
10 THERE, THOU SHALT NOT BEAR FALSE WITNESS.

11 ONE OF THE REASONS YOU'RE SITTING ON THIS JURY IS  
12 BECAUSE WE BELIEVED YOU WHEN YOU TESTIFIED TO THE QUESTIONS  
13 THAT WE ASKED AND YOU ANSWERED THE QUESTIONS THAT THE JUDGE  
14 PUT TO YOU. WE TRUSTED YOU WHEN YOU SAID THAT YOU COULD BE  
15 IMPARTIAL, THAT YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS AND  
16 THAT YOU WOULD GIVE THE DEFENDANT A FAIR TRIAL. I CLAIM THAT  
17 OATH FOR JOHN WOOD. WE CLAIM THAT COVENANT AND THAT PROMISE  
18 THAT YOU MADE TO THE COURT FOR JOHN WOOD FOR THE ENTIRE  
19 LENGTH OF THIS TRIAL. IMPARTIAL.

20 WE BELIEVED YOU WHEN YOU SAID AND GAVE US THE FULL  
21 DISCLOSURE OF THE INFORMATION THAT YOU MAY OR MAY NOT HAVE  
22 ALREADY HAD ABOUT THE FACTS OF THIS CASE THAT YOU MAY HAVE  
23 GOTTEN FROM OTHER SOURCES, MEDIA, SO FORTH. WE TRUSTED YOU  
24 THAT YOU WHEN YOU SAID THAT YOU COULD SET THAT INFORMATION  
25 ASIDE AND ONLY JUDGE THIS CASE ON THE EVIDENCE PRESENTED HERE



OPENING STATEMENTS -- BY MR. BANNISTER

1 THAT YOU WOULD. AND WE RELY ON EACH ONE OF YOU AND THE OATH  
2 THAT YOU TOOK THAT YOU HAVE NO HIDDEN AGENDA, THAT YOU TRULY  
3 ARE HERE WITH AN OPEN MIND.

4 FOLLOW THE JUDGE'S INSTRUCTIONS. TWO OF THOSE  
5 INSTRUCTIONS I WANT TO GO OVER. THE PRESUMPTION OF INNOCENCE  
6 AND PROOF BEYOND A REASONABLE DOUBT. THAT WAS PART OF YOUR  
7 OATH.

8 PRESUMPTION OF INNOCENCE IS A TERM THAT WE MAY USE. YOU  
9 MAY HAVE HEARD IT ON T.V. YOU MAY HAVE SEEN IT IN BOOKS.  
10 BUT HERE IT HAS A VERY SPECIFIC MEANING. IF YOU THINK THAT  
11 YOUR ROLE AS A JUROR IS TO BE NEUTRAL AND TO SIMPLY ABSORB  
12 THE FACTS OF THE CASE LIKE A SPONGE AND THEN WRING OUT A  
13 VERDICT AT THE END OF THE TRIAL, THAT WOULD BE WRONG AND THAT  
14 WOULD BE A VIOLATION OF YOUR OATH.

15 I'M GOING TO GIVE YOU AN EASY WAY TO THINK ABOUT IT.  
16 PICTURE IF YOU WILL, A SET OF SCALES, EXCEPT THESE SCALES  
17 AREN'T SITTING EQUALLY. ON ONE SIDE, THE DEFENDANT'S SIDE OF  
18 THE SCALES, THERE IS A LEAD WEIGHT THAT PINS THAT SCALE TO  
19 THE GROUND, AND ACROSS IT IT SAYS INNOCENT. THAT SCALE SITS  
20 RIGHT THERE THROUGHOUT THE ENTIRE DURATION OF THE TRIAL. YOU  
21 DON'T GET TO PUT ANYTHING ON THE STATE'S SIDE OF THE SCALE  
22 UNTIL THE JUDGE TELLS YOU TO, TELLS YOU THAT YOU CAN  
23 DELIBERATE, AND AFTER YOU DECIDE WHETHER OR NOT SOMETHING  
24 SHOULD GO ON THAT SCALE. SO AS THE EVIDENCE IN THE CASE  
25 COMES IN, EVIDENCE THAT YOU WILL HEAR ABOUT THE SCENE IN

OPENING STATEMENTS -- BY MR. BANNISTER

1 GREENVILLE, EVIDENCE THAT YOU WILL HEAR FROM KAREN MCCALL,  
2 JOHN WOOD'S GIRLFRIEND, AND EVIDENCE THAT YOU WILL HEAR ABOUT  
3 THE EXCHANGE OF GUNFIRE IN ANDERSON BETWEEN JOHN WOOD AND LAW  
4 ENFORCEMENT, SET THAT ASIDE.

5 ALSO, SINCE YOU'RE TAKING NOTES, UNDERSTAND THAT THOSE  
6 NOTES GO TO THE SIDE AND THEY STAY OVER HERE AND THE SCALE  
7 STAYS TIPPED TO THE DEFENDANT UNTIL THE JUDGE TELLS YOU IT'S  
8 OKAY TO START DISCUSSING THINGS SUCH AS "HOW MUCH DOES THIS  
9 EVIDENCE WEIGH? SHOULD IT EVEN GO ON THE SCALE?" KEEP THOSE  
10 SEPARATE.

11 REMEMBER THAT THESE SCALES THAT I'M TALKING TO YOU ABOUT  
12 APPLY NOT ONLY TO THE ENTIRE CASE BUT ALSO TO EACH ELEMENT  
13 THAT THE STATE MUST PROVE. I'LL GIVE YOU SOME EXAMPLES.  
14 IDENTITY. THOSE SCALES APPLY TO THE PROOF OF IDENTITY. HAS  
15 THERE BEEN A FATAL WOUNDING OF A LAW ENFORCEMENT OFFICER?  
16 THOSE SCALES APPLY TO THAT AS WELL.

17 AND AS THE SOLICITOR POINTED OUT, MALICE IS AN ELEMENT  
18 IN THIS CASE. THE GOVERNMENT HAS TO GET YOU INSIDE OF A  
19 PERSON'S MIND AND YOU'RE GOING TO HAVE TO DETERMINE WHAT WAS  
20 THE INTENT INSIDE OF THAT PERSON'S MIND. THAT WILL ALSO HAVE  
21 THOSE SCALES APPLIED TO IT.

22 NOW, WHAT THIS EVIDENCE AND WHETHER IT -- WHAT IT WEIGHS  
23 AND WHETHER IT SHOULD GO ON THE SCALE WHEN WE'RE TALKING  
24 ABOUT MALICE IS THE ARGUMENT THAT WE'LL BE MAKING TO YOU AT  
25 THE END OF THE CASE. BUT I JUST TELL YOU, FOR THE PURPOSES

OPENING STATEMENTS -- BY MR. BANNISTER

1 OF YOUR OATH AND WHAT YOUR GOAL AND YOUR DUTY IS, IS TO KEEP  
2 THOSE SEPARATE FOR NOW.

3 IN TALKING ABOUT PROOF BEYOND A REASONABLE DOUBT, I WANT  
4 YOU TO AGAIN PICTURE THE SCALES THAT I HAVE TALKED ABOUT AND  
5 THE EVIDENCE OF MALICE THAT WILL BE PRESENTED IN THIS CASE.  
6 IF YOU DECIDE IN YOUR DISCRETION THAT SOME EVIDENCE SHOULD GO  
7 ON THE SCALES WHEN WE'RE TALKING ABOUT MALICE AND IT PICKS IT  
8 UP JUST A LITTLE BIT TOWARDS THE STATE -- IN OTHER WORDS,  
9 JOHN MIGHT HAVE HAD MALICE -- THAT WOULD NOT BE PROOF BEYOND  
10 A REASONABLE DOUBT. IF YOU PUT MORE EVIDENCE ON AND IT'S,  
11 SAY, IT'S GETTING CLOSER TO HALFWAY BUT NOT QUITE -- IN OTHER  
12 WORDS, JOHN MORE LIKELY THAN NOT HAD MALICE -- THAT'S NOT  
13 PROOF BEYOND A REASONABLE DOUBT. IF YOU TAKE ALL OF THE  
14 EVIDENCE AND PUT IT ON THE SCALES AND IT TIPS DOWN BUT IT  
15 DOESN'T QUITE HIT THE GROUND -- IN OTHER WORDS JOHN PROBABLY  
16 HAD MALICE -- THAT'S NOT PROOF BEYOND A REASONABLE DOUBT.

17 SO I REMIND YOU OF YOUR OATH, THAT YOU WILL MAINTAIN  
18 THOSE LEGAL IDEAS IN YOUR MIND THROUGHOUT THE TRIAL OF THE  
19 CASE. FINALLY, YOU WILL GIVE THE DEFENDANT A FAIR TRIAL.

20 NOW, IF -- WHEN I SAID THE FIRST THREE WORDS OUT OF MY  
21 MOUTH WERE, "LET HIM GO," IF YOU SAID TO YOURSELF, "YEAH,  
22 RIGHT" OR "WE'LL SEE ABOUT THAT," THEN YOU ALREADY DON'T HAVE  
23 THE PROPER MIND SET TO BE IN THIS JURY BECAUSE YOUR OATH IS  
24 TO PRESUME HIM INNOCENT. AND RIGHT NOW, IF WE STOPPED THESE  
25 PROCEEDINGS, YOU SHOULD BE SAYING, "HE'S FREE TO GO."

OPENING STATEMENTS -- BY MR. BANNISTER

1        I FURTHER TELL YOU THAT IF AT ANY POINT DURING THE TRIAL  
2        OF THE CASE YOU FIND IT IS IMPOSSIBLE FOR YOU NOT TO START  
3        TAKING INTO CONSIDERATION THINGS THAT WERE OUTSIDE THE  
4        COURTROOM THAT YOU KNEW ABOUT THAT BROUGHT IN -- AND I'M NOT  
5        TALKING ABOUT YOUR OWN COMMON SENSE, BUT I'M TALKING ABOUT  
6        SPECIFIC THINGS THAT YOU HAD HEARD ABOUT THIS CASE -- AND YOU  
7        BECOME UNABLE TO SEPARATE THOSE IN YOUR MIND, THEN YOU HAVE A  
8        DUTY SINCE YOU HAVE SWORN TO GIVE THE DEFENDANT A FAIR TRIAL,  
9        TO LET THE COURT KNOW.

10       YOU ALSO INDIVIDUALLY HAVE A RESPONSIBILITY TO THE REST  
11       OF THE GROUP, AND THAT IS THAT YOU NEED TO BE ASSURED THAT  
12       NOTHING IMPROPER HAPPENS IN YOUR INTERACTIONS WITH EACH  
13       OTHER. SPECIFICALLY, YOUR OATH TO GIVE A FAIR TRIAL MEANS  
14       THAT YOU WILL HELP MONITOR EACH OTHER TO MAKE SURE THAT THERE  
15       ARE NO DISCUSSIONS ABOUT THE CASE UNTIL THE JUDGE SAYS IT'S  
16       OKAY.

17       FURTHERMORE, ONCE THE JUDGE SAYS IT'S OKAY TO  
18       DELIBERATE, IF YOU HEAR SOMEONE TALKING ABOUT EVIDENCE THAT  
19       WAS OUTSIDE THE COURTROOM AND NOT BROUGHT IN IN HERE, THEN IT  
20       WOULD AGAIN BE YOUR DUTY TO LET THE JUDGE KNOW. THAT WOULD  
21       BE IMPROPER.

22       FINALLY, AND I MUST TELL YOU THAT IT IS AWKWARD AS THE  
23       DEFENSE ATTORNEY TO BE STANDING HERE AND TALKING ABOUT A  
24       SECOND PHASE OF THE TRIAL WHICH MAY NEVER OCCUR. BUT I JUST  
25       NEED TO REMIND YOU THAT YOUR OATH TO GIVE THE DEFENDANT A

OPENING STATEMENTS -- BY MR. BANNISTER

1 FAIR TRIAL ALSO MEANS THAT THROUGHOUT THIS TRIAL YOU'VE GOT  
2 TO REMAIN OPEN MINDED ABOUT A POSSIBLE SENTENCE IF WE EVER  
3 END UP AT THAT POINT. IF YOU CANNOT DO THAT, AGAIN, YOU NEED  
4 TO LET THE COURT KNOW.

5 I CLAIM YOUR OATH FOR JOHN WOOD TO BE IMPARTIAL, TO  
6 FOLLOW THE JUDGE'S INSTRUCTIONS AND TO GIVE THE DEFENDANT A  
7 FAIR TRIAL THROUGHOUT THE COURSE OF THESE PROCEEDINGS. WE  
8 ARE COUNTING ON IT AND I TRUST THAT YOU WILL.

9 THANK YOU.

10 THE COURT: THANK YOU, MR. BANNISTER.  
11 WOULD THE STATE CALL ITS FIRST WITNESS, PLEASE?

12 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

13 MS. STROM: THE STATE CALLS DONNIE GREENWAY.

14 (BENCH CONFERENCE OFF RECORD FROM 3:21 TO 3:23 P.M.)

15 THE COURT: WE'RE READY TO PROCEED. MS. MORRIS,  
16 ADMINISTER THE OATH TO THIS FIRST WITNESS.

17 DONNIE M. GREENWAY, JR., HAVING  
18 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

19 MS. STROM: MY APOLOGIES, YOUR HONOR. I DIDN'T REALIZE  
20 YOU HAD TOLD HIM TO WAIT AND I WAS TRYING TO PUT HIM ON THE  
21 STAND.

22 THE COURT: THAT'S ALL RIGHT. NO PROBLEM.

23 DIRECT EXAMINATION BY MS. STROM:

24 Q OFFICER GREENWAY, PLEASE STATE YOUR FULL NAME FOR THE  
25 RECORD.

DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 A DONNIE MORRIS GREENWAY, JR.

2 Q AND BY WHOM ARE YOU EMPLOYED?

3 A GREENVILLE CITY POLICE DEPARTMENT.

4 Q HOW LONG HAVE YOU BEEN WITH THE GREENVILLE CITY POLICE  
5 DEPARTMENT?

6 A SINCE 1994, MA'AM.

7 Q AND WHAT ARE YOUR DUTIES WITH THE GREENVILLE CITY POLICE  
8 DEPARTMENT?

9 A I'M A TRAFFIC CORPORAL WITH THE TRAFFIC DIVISION. I  
10 INVESTIGATE -- MY PRIMARY JOB IS TO INVESTIGATE ACCIDENTS AND  
11 DO RECONSTRUCTION WORK.

12 Q DID YOU HAVE AN OCCASION ON DECEMBER 6TH OF 2000 TO  
13 RESPOND TO THE AREA OF WOODRUFF ROAD AND 85 AND MORE  
14 SPECIFICALLY TO THE FRONTAGE ROAD AREA THERE?

15 A YES, MA'AM, I DID.

16 Q AND WHY DID YOU GO TO THAT AREA?

17 A THERE WAS A CALL THAT CAME OUT ON OUR RADIOS THAT AN  
18 OFFICER MAY BE DOWN. IT WAS NOT QUITE KNOWN AT THE EXACT  
19 TIME SO I RESPONDED TO THE SCENE ALONG WITH SEVERAL OTHER  
20 PEOPLE.

21 Q AND ONCE YOU ARRIVED THERE AT THE SCENE WERE THERE OTHER  
22 OFFICERS THERE?

23 A YES, MA'AM. THERE WAS, I BELIEVE, ANOTHER HIGHWAY  
24 PATROLMAN, MAYBE A COUNTY DEPUTY. THERE WAS ANOTHER OFFICER  
25 ALONG WITH -- I WAS WITH ANOTHER OFFICER IN OUR CAR AND THERE

DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 WAS ANOTHER CITY OFFICER. WE GOT THERE ABOUT THE SAME TIME.  
2 AND A COUPLE OTHERS -- A COUPLE DIFFERENT PEOPLE GOT THERE  
3 ABOUT THE SAME TIME.

4 Q AND YOU WERE THERE AND SAW THE LOCATION OF TROOPER  
5 NICHOLSON'S CAR?

6 A YES, MA'AM.

7 Q AND AS A RESULT OF GOING TO THAT AREA AND AS A RESULT OF  
8 THIS TRIAL DID YOU EITHER PREPARE OR HAVE PREPARED CERTAIN  
9 DIAGRAMS FOR USE HERE TODAY?

10 A YES, MA'AM, I DID.

11 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

12 THE COURT: YES, MA'AM.

13 MS. STROM: YOUR HONOR, WE HAVE PREVIOUSLY SHOWN THIS.  
14 I'LL BE GLAD TO SHOW IT AGAIN. STATE'S EXHIBIT NUMBER 48 FOR  
15 IDENTIFICATION.

16 Q WITHOUT SHOWING IT TO THE JURY AT THIS TIME, DO YOU  
17 RECOGNIZE STATE'S EXHIBIT NUMBER 48?

18 A YES, MA'AM.

19 Q AND IS THAT AN ACCURATE DEPICTION OF THE AREA OF  
20 INTERSTATE 85, 385, WOODRUFF ROAD AND FRONTAGE ROAD?

21 A YES, MA'AM, IT IS.

22 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER  
23 STATE'S EXHIBIT NUMBER 48 INTO EVIDENCE.

24 MR. MAULDIN: NO OBJECTION.

25 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 48 MOVED INTO

DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 EVIDENCE)

2 MS. STROM: AND WITH THE COURT'S PERMISSION, YOUR  
3 HONOR, I WOULD LIKE THE WITNESS TO STEP DOWN SO HE CAN ORIENT  
4 THE JURY---

5 THE COURT: SURE.

6 WITNESS: (STEPS DOWN FROM WITNESS STAND)

7 Q IF YOU WOULD, OFFICER GREENWAY, PLEASE ORIENT THIS JURY  
8 AS TO THE AREAS LOCATED ON THAT MAP, SPECIFICALLY INTERSTATE  
9 85.

10 A INTERSTATE 85 IS MARKED HERE AND HERE (INDICATING). IT  
11 RUNS STRAIGHT UP AND DOWN HERE. NORTHERLY IS IN THIS  
12 DIRECTION HERE. IF YOU WERE TRAVELING ON THE INTERSTATE,  
13 THIS WOULD BE NORTH.

14 Q KEEP YOUR VOICE UP SO THE COURT REPORTER CAN STILL HEAR  
15 YOU. IF YOU WOULD, POINT OUT THE AREA OF 385.

16 A 385 IS MARKED HERE AND HERE. IT RUNS THIS WAY  
17 (INDICATING). THIS IS INTO THE CITY OF GREENVILLE AND THIS  
18 WOULD BE GOING LIKE IF YOU WANTED TO GO TOWARDS COLUMBIA,  
19 SOUTH CAROLINA. THIS IS THE INTERCHANGE AREA HERE WHERE IT  
20 CROSSES OVER INTERSTATE 85.

21 Q WOULD YOU PLEASE ORIENT THE JURY AS TO WOODRUFF ROAD OFF  
22 OF 85?

23 A WHERE WOODRUFF ROAD CROSSES OVER INTERSTATE 85 IS HERE.  
24 WOODRUFF ROAD RUNNING THIS DIRECTION HERE. THIS WOULD BE  
25 TOWARDS THE CITY OF GREENVILLE. THIS IS THE GREENVILLE MALL



DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 LOCATION HERE. AND THIS WOULD BE TOWARDS WHERE IT CROSSES  
2 BACK OVER 385 HERE.

3 Q AND OFF OF WOODRUFF ROAD THERE IS A FRONTAGE ROAD WHERE  
4 THIS INCIDENT OCCURRED. COULD YOU SHOW THE JURY WHERE THAT  
5 IS?

6 A YES, MA'AM. FRONTAGE ROAD -- THE INTERSECTION OF  
7 FRONTAGE AND WOODRUFF ROAD IS RIGHT HERE (INDICATING).  
8 FRONTAGE ROAD COMES DOWN, RUNS DOWN ALONG THE -- PARALLEL  
9 WITH THE INTERSTATE BACK DOWN IN THIS DIRECTION.

10 Q AND SPECIFICALLY AS TO THE AREA OF WOODRUFF ROAD AND  
11 FRONTAGE ROAD, DID YOU PREPARE AN ENLARGED DIAGRAM OF THAT  
12 AREA?

13 A YES, MA'AM.

14 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

15 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER  
16 48A. DO YOU RECOGNIZE THAT?

17 A YES, MA'AM.

18 Q IS THAT THE ENLARGEMENT WHICH YOU PREPARED?

19 A YES, MA'AM.

20 Q AND ARE YOU FAMILIAR WITH THE AREA OF WHERE TROOPER  
21 NICHOLSON'S VEHICLE WAS LOCATED THERE ON FRONTAGE ROAD?

22 A YES, MA'AM.

23 Q AND WHERE WAS IT -- ON THE LARGER MAP WHERE WAS IT  
24 LOCATED?

25 A FOR THE JURY, IT WOULD BE APPROXIMATELY RIGHT HERE ON

DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 FRONTAGE ROAD ABOUT WHERE THIS OTHER GRAY SHADED AREA IS HERE  
2 (INDICATING). THESE ARE LITTLE DRIVEWAYS HERE THAT GOES INTO  
3 A LARGER PARKING LOT RIGHT HERE (INDICATING).

4 Q AND ARE THERE ANY ISLANDS OR CONCRETE BARRICADES OR --  
5 NOT BARRICADES BUT MEDIANS THERE?

6 A YES, MA'AM. WHERE THE DRIVEWAY IS, THERE'S A COUPLE  
7 ISLANDS ALONG UP HERE NEAR THE INTERSECTION OF WOODRUFF ALSO.

8 Q AND ON STATE'S EXHIBIT 48A HAVE YOU REFLECTED ON STATE'S  
9 EXHIBIT 48A THE LOCATION OF TROOPER NICHOLSON'S VEHICLE AS  
10 YOU SAW IT ON THAT DAY?

11 A YES, MA'AM.

12 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER  
13 STATE'S EXHIBIT 48A INTO EVIDENCE.

14 MR. MAULDIN: YOUR HONOR, WE HAVE NO OBJECTION TO THE  
15 EXHIBIT. WE WOULD THINK FURTHER QUESTIONING REGARDING THE  
16 ACTUAL LOCATION OF THE CAR WOULD BE PROPER FOR PROPER  
17 FOUNDATION BEFORE IT'S ENTERED INTO EVIDENCE.

18 THE COURT: I HAVEN'T SEEN IT. DOES IT REFLECT THE  
19 LOCATION OF THE VEHICLE?

20 Q IS THAT AN ACCURATE REFLECTION OF THE VEHICLE WHERE YOU  
21 SAW IT ON THAT DAY ON DECEMBER 6TH?

22 A IT...

23 THE COURT: GO AHEAD.

24 A IT DOES. THE VEHICLE WAS MARKED BY MYSELF FOR ITS  
25 LOCATION OUT THERE ON THE SCENE WHEN IT WAS DIAGRAMED. SO

DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 THE LOCATION OF THE CAR ON THE DIAGRAM IS THE EXACT LOCATION  
2 WHERE THE VEHICLE WAS AT THE TIME IT WAS AT THE SCENE.

3 MR. MAULDIN: THAT'S SUFFICIENT FOR ME, YOUR HONOR. NO  
4 OBJECTION.

5 THE COURT: WITHOUT OBJECTION.

6 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 48A MOVED INTO  
7 EVIDENCE)

8 MS. STROM: AND AGAIN ORIENTING THE JURY, YOUR HONOR.

9 Q STATE'S EXHIBIT 48A, THIS IS AN ENLARGEMENT OF THE AREA  
10 OF FRONTAGE ROAD AND WOODRUFF ROAD?

11 A YES.

12 Q AND WOULD YOU PLEASE ORIENT THE JURY AS TO THAT MAP  
13 WHERE WOODRUFF ROAD IS, WHERE FRONTAGE ROAD IS AND WHERE ERIC  
14 NICHOLSON'S VEHICLE WAS LOCATED?

15 A THIS IS -- AS IT'S DIAGRAMMED, THIS IS WOODRUFF ROAD  
16 HERE. THIS IS HALF OF WOODRUFF ROAD, THE YELLOW LINE HERE  
17 AND THE YELLOW LINE HERE REPRESENTS THE DOUBLE YELLOW LINES  
18 IN THE MIDDLE OF THE ROADWAY ON WOODRUFF ROAD (INDICATING).  
19 THIS DIRECTION UP HERE WOULD BE WHERE THE BRIDGE IS WHERE YOU  
20 DRIVE OVER INTERSTATE 85, OKAY? THIS IS AN ON RAMP, IF YOU  
21 WILL IN HERE, A DRIVEWAY ACCESS TO FRONTAGE ROAD ITSELF. THE  
22 YELLOW LINES BEING AGAIN, THE DOUBLE YELLOW LINES, THE MEDIAN  
23 LANE DIVIDER LINES. THE FRONTAGE ROAD CONTINUES ON DOWN AS I  
24 SHOW YOU ON THE LARGER DIAGRAM ALONG AND DOWN PARALLEL WITH  
25 THE INTERSTATE. THIS REPRESENTS AN ISLAND HERE AND AN ISLAND

DONNIE M. GREENWAY, JR. -- DIRECT BY MS. STROM

1 MEDIAN HERE (INDICATING) THAT DIVIDES THE DRIVEWAYS. THIS IS  
2 A DRIVEWAY THAT GOES OVER INTO THE LARGER PARKING LOT THAT  
3 YOU CAN SEE ON THE LARGER DIAGRAM THAT IF YOU'RE COMING OUT  
4 YOU EITHER GO TO THE LEFT OR GO TO THE RIGHT TO COME OUT ON  
5 WOODRUFF ROAD DEPENDING ON WHICH WAY YOU WANTED TO GO IS THE  
6 PURPOSE THERE.

7 TROOPER NICHOLSON'S CAR WAS SITTING IN THE POSITION AS  
8 YOU SEE IT HERE. LIKE I SAID, IT WAS MARKED BY ME AT THE  
9 SCENE FOR ITS LOCATION AS IT SIT THERE THAT DAY. THEN WHEN  
10 THE SCENE WAS DIAGRAMMED I PLACED THE CAR BACK IN ITS  
11 ORIGINAL POSITION TO THIS DIAGRAM.

12 Q AND OFFICER GREENWAY, OTHER THAN MARKING THE LOCATION OF  
13 THE VEHICLE YOU WERE NOT RESPONSIBLE FOR COLLECTING ANY  
14 EVIDENCE THERE AT THE SCENE?

15 A NO, MA'AM.

16 Q THANK YOU. PLEASE RETURN TO THE WITNESS STAND.

17 A (COMPLIES)

18 MS. STROM: THANK YOU. PLEASE ANSWER ANY QUESTIONS THE  
19 DEFENSE MAY HAVE.

20 WITNESS: YES, MA'AM.

21 CROSS EXAMINATION BY MR. MAULDIN:

22 Q ALL RIGHT. OFFICER GREENWAY, I'M GOING TO ONLY HAVE A  
23 FEW QUESTIONS. AND I BELIEVE THE FIRST QUESTION I'VE GOT IS  
24 ACCORDING TO THIS THING, DID YOU ACTUALLY MAKE THIS DIAGRAM?  
25 DID YOU DRAW THIS THING OUT?

1 A YES, SIR.

2 Q ALL RIGHT. AND ACCORDING TO THIS IT SAYS THAT THE SCALE  
3 IS ONE INCH TO 20 FEET?

4 A YES, SIR.

5 Q AND I WANT TO MAKE SURE THAT THAT INCLUDES THE  
6 AUTOMOBILE YOU PUT ON THERE?

7 A YES, SIR.

8 Q ALL RIGHT. SO WHAT YOU'RE TESTIFYING TO THE JURY IS  
9 THAT EVERYTHING THAT'S ON THIS PAGE IS ONE INCH TO 20 FEET  
10 INCLUDING THE SIZE THAT THAT CAR IS DEMONSTRATED TO BE?

11 A YES, SIR.

12 Q NOW, WHEN YOU ARRIVED AT THE SCENE THERE WERE OTHER LAW  
13 ENFORCEMENT OFFICERS TAKING CONTROL OF THE SCENE; IS THAT  
14 RIGHT?

15 A YES, SIR. THERE WERE DIFFERENT PEOPLE THERE DOING  
16 DIFFERENT THINGS.

17 Q ALL RIGHT. TELL ME WHAT TIME YOU GOT THERE, PLEASE,  
18 SIR.

19 A I DON'T KNOW THE EXACT TIME, SIR. I ARRIVED ON THE  
20 SCENE JUST SHORTLY AFTER---

21 Q WELL, LET'S SEE.

22 A ---THE CALL WENT OUT ON OUR RADIOS.

23 Q DO WHAT?

24 A IT WASN'T LONG AFTER THE CALL CAME OUT ON THE RADIO.  
25 MYSELF, AS I DESCRIBED EARLIER, I WAS RIDING WITH ANOTHER

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 OFFICER. OFFICER JORDAN WAS IN HIS VEHICLE. THERE WAS, I  
2 THINK, ANOTHER HIGHWAY -- A HIGHWAY PATROLMAN AND POSSIBLY A  
3 DEPUTY WERE THERE JUST BEFORE US.

4 Q ALL RIGHT. AND WHEN YOU GOT TO THE SCENE THIS IS WHERE  
5 THE CAR WAS (INDICATING)?

6 A YES, SIR.

7 Q AND THE CAR WAS STATIONARY, IT WAS NOT MOVING?

8 A THAT'S CORRECT.

9 Q WAS IT RUNNING?

10 A UPON MY INITIAL ARRIVAL, WHETHER THE CAR WAS RUNNING AT  
11 THAT PARTICULAR TIME, I DO NOT KNOW, SIR.

12 Q ALL RIGHT. SO YOU DON'T KNOW IF IT WAS STILL RUNNING,  
13 BUT IT WAS NOT MOVING?

14 A THAT'S CORRECT.

15 Q NOW, THE CAR WOULD HAVE A DRIVE AND A REVERSE AND ALL OF  
16 THAT, BUT IT HAS A NEUTRAL AND IT HAS A PARK, A P AND AN N?

17 A THAT'S CORRECT.

18 Q ALL RIGHT. DO YOU KNOW OF YOUR OWN KNOWLEDGE WHAT GEAR  
19 THE CAR WAS IN?

20 A I---

21 Q AND IF YOU DON'T -- EXCUSE ME. IF YOU DON'T, JUST SAY  
22 YOU DON'T. I'M JUST ASKING OF YOUR OWN KNOWLEDGE WHAT GEAR  
23 THE CAR WAS IN.

24 A I BELIEVE THIS WILL ANSWER YOUR QUESTION. WHEN I FIRST  
25 GOT THERE, THERE WERE A LOT OF THINGS HAPPENING, A LOT OF

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 THINGS GOING ON. INITIALLY BECAUSE OF MY TRAINING AND WHAT I  
2 DO OUT HERE ON ACCIDENT SCENES IS I WANTED TO CONTROL THE  
3 SCENE -- HELP CONTROL THE SCENE AND PRESERVE ANY EVIDENCE  
4 THAT MAY BE THERE. IF THERE IS A WITNESS THERE THAT NEEDED  
5 TO BE TALKED TO OR HELPED OR SOMEONE ELSE TO DEAL WITH, THEN  
6 I INITIATED THAT PROCESS. YES, THE CAR WAS STATIONARY. THE  
7 CAR WAS NOT MOVING THE WHOLE TIME THAT I WAS THERE UNTIL THAT  
8 VEHICLE WAS TOWED BY A WRECKER AFTER IT HAD BEEN DOCUMENTED  
9 AND MARKED ON THE ROADWAY WHERE ITS RESTING POSITION WAS.  
10 THE CAR WAS NOT MOVED. WHETHER IT WAS IN PARK OR NEUTRAL AT  
11 THAT TIME, I DIDN'T MAKE ANY TYPE NOTATION OF WHETHER THE  
12 VEHICLE MYSELF WAS EITHER IN NEUTRAL OR WHETHER IT WAS IN  
13 PARK.

14 Q SO THE ANSWER, I GUESS, THEN WOULD BE, I DON'T KNOW?

15 A NO.

16 Q ALL RIGHT. NOW THESE ARE DOUBLE YELLOW LINES. SO THIS  
17 FRONTAGE ROAD ACTUALLY HAD YELLOW LINES PAINTED ON IT?

18 A YES, SIR.

19 Q IT DID?

20 A UH-HUH (AFFIRMATIVE).

21 Q AND THE ISLANDS THAT YOU HAVE INDICATED ON YOUR  
22 DIAGRAM -- THIS THING IS FLAT. THIS PIECE OF PAPER IS FLAT.  
23 WHAT'S IN THOSE ISLANDS?

24 A THOSE PARTICULAR ISLANDS, SHRUBBERY, LEAVES, KIND OF  
25 LIKE A -- JUST LIKE A PLANTING I GUESS YOU WOULD CALL IT.

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 Q HOW ABOUT BUSHES?

2 A BUSHES---

3 Q WOULD BUSHES PASS FOR SHRUBBERY?

4 A BUSHES, SHRUBBERY, YEAH.

5 Q DON'T GUESS. I'M JUST ASKING.

6 A THAT'S FINE. THERE'S A BUSH, SHRUBBERY, A HEDGE BUSH.

7 Q BUSHES---

8 A THEY GOT DIFFERENT NAMES.

9 Q ALL RIGHT. AND ALSO BECAUSE THIS THING'S JUST A FLAT  
10 PIECE OF PAPER THE ISLAND IS SURROUNDED BY A CONCRETE  
11 CURBING, RIGHT?

12 A YES, SIR.

13 Q LIKE YOU WOULD SEE ON THE SIDE OF A STREET? IT'S GOT A  
14 CURB BUILT AROUND THIS THING RIGHT HERE, RIGHT?

15 A YES, SIR.

16 Q AND THIS ONE RIGHT HERE TOO, RIGHT?

17 A I'M NOT SURE WHICH ONE YOU'RE---

18 Q THESE ARE ISLANDS. I'M IDENTIFYING THAT AND THAT AS AN  
19 ISLAND; IS THAT CORRECT?

20 A THAT'S CORRECT, SIR.

21 Q ALL RIGHT. AND BOTH OF THOSE ISLANDS ARE SURROUNDED BY  
22 A CURBING?

23 A YES, SIR.

24 Q AND THEN THEY HAVE DIRT IN THEM THAT HAS BUSHES AND  
25 SHRUBBERIES AND STUFF IN THEM, RIGHT?



DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q OKAY. NOW, DO YOU -- DO YOU KNOW OF YOUR OWN  
3 KNOWLEDGE -- AND AGAIN I DON'T WANT YOU GUESSING. I JUST  
4 WANT TO KNOW. DO YOU KNOW WHAT THE GRADE OF THIS ROAD IS?  
5 AND WHAT I MEAN BY GRADE IS, IS THIS POINT (INDICATING) LOWER  
6 THAN THIS POINT? I MEAN, YOU KNOW, IS THERE A SLIGHT UP OR  
7 DOWN GRADE TO THIS ROAD?

8 A I UNDERSTAND WHAT YOU'RE ASKING. I DID NOT TAKE A GRADE  
9 MEASUREMENT. A SLOPE ANGLE IS WHAT YOU'RE ASKING ME.

10 Q ALL RIGHT. A SLOPE ANGLE. THAT'S WHAT I WAS ASKING.  
11 SLOPE?

12 A AND THE ANSWER TO YOUR QUESTION IS NO. NO, SIR. I  
13 DON'T KNOW WHAT THE GRADE IS.

14 Q OKAY. THE ANSWER TO THE QUESTION IS SLOPE ANGLE IS WHAT  
15 I SHOULD HAVE ASKED YOU, AND THE ANSWER IS I DON'T KNOW?

16 A CORRECT.

17 Q ALL RIGHT. NOW, OFFICER GREENWAY, STEP BACK DOWN HERE A  
18 MINUTE, PLEASE, SIR.

19 A (COMPLIES)

20 Q I'M GOING TO TALK TO YOU A FEW MINUTES ABOUT THIS  
21 GENERAL LOCATION. THIS PARTICULAR LOCATION DESIGNATED  
22 EXHIBIT 48A, I WANT YOU TO ONCE AGAIN -- SO THE JURY WILL  
23 KNOW WHERE ON THE BIG MAP THAT MAP IS, I WANT YOU TO POINT TO  
24 THIS -- TO THE ACTUAL LOCATION WHERE THESE ISLANDS AND THINGS  
25 ARE. COME AROUND HERE AND SHOW THE JURY THAT.

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 A THIS AREA RIGHT HERE IS THIS AREA RIGHT IN HERE  
2 (INDICATING).

3 Q ALL RIGHT. AND YOU -- I'LL TELL YOU WHAT. JUST STEP  
4 RIGHT OVER TO THE SIDE BECAUSE I'M GOING TO BE ASKING YOU  
5 SOME QUESTIONS.

6 A (COMPLIES)

7 Q SO THIS EXHIBIT 48A IS LOCATED RIGHT WHERE I HAVE MY PEN  
8 ON 48; IS THE RIGHT?

9 A YES, SIR.

10 Q THEREFORE, IF THE PERSON CAME FROM THIS FRONTAGE ROAD  
11 AND MADE A TURN AT THESE ISLANDS, THEY WOULD GO INTO THE  
12 PARKING LOT OF THE BIG CELANESE PLANT, RIGHT?

13 A YES, SIR.

14 Q THIS IS THE CELANESE PLANT, RIGHT?

15 A IT'S EMPTY.

16 Q WELL, IT USED TO BE OR WAS ONCE OR WHATEVER. IT'S A BIG  
17 BUILDING?

18 A CORRECT.

19 Q NOW I WANT TO TAKE YOU BACK OUT AND ASK YOU A COUPLE OF  
20 THINGS ABOUT THIS STRIP OF I-85 FOR JUST A MOMENT. ALL  
21 RIGHT. IF YOU CAME BACK OUT TO WOODRUFF, WHICH IS COMING OUT  
22 THIS WAY ON EXHIBIT 48A TO WOODRUFF, DO YOU FOLLOW ME?

23 A YES, SIR.

24 Q ALL RIGHT. AND THEN YOU TURNED LEFT AND CAME TOWARD THE  
25 GREENVILLE MALL ON 48, DO YOU SEE WHERE I'M GOING?

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q YOU WOULD INTERSECT WITH 85. NOW, THIS DIRECTION ON 85  
3 IS TOWARD THE NEXT EXIT DOWN, WHICH IS LAURENS ROAD, RIGHT?

4 A CORRECT.

5 Q DO YOU HAPPEN TO KNOW ABOUT HOW FAR IT IS FROM THE  
6 LAURENS ROAD EXIT TO THE RAMP THAT YOU TAKE OFF AT THE  
7 WOODRUFF ROAD EXIT? AND IF YOU DON'T KNOW, PLEASE...

8 A EXACT MILEAGE OR TENTHS OF MILES, NO, SIR, I DON'T  
9 KNOW---

10 Q ALL RIGHT.

11 A ---THE EXACT DISTANCES.

12 Q BUT THERE ARE NO EXITS BETWEEN THEM?

13 A NO, SIR.

14 Q AND IF YOU COME NORTH ON 85 FROM THE AREA OF LAURENS  
15 ROAD, THIS ROAD COMING UP THIS WAY IS UP A SLIGHT GRADE UP  
16 HILL?

17 A YES, SIR.

18 Q AND YOU'RE -- ARE YOU FAMILIAR ENOUGH WITH THAT TO  
19 ANSWER?

20 A YES, SIR.

21 Q ALL RIGHT. BUT THIS IS A SLIGHT GRADE UPHILL?

22 A YES, SIR.

23 Q AND THE EXIT THAT YOU ACTUALLY TAKE IS A REAL LONG WAY  
24 FROM WOODRUFF ROAD IN TERMS OF AVERAGE EXITS, ISN'T IT? YOU  
25 GET OFF AND YOU HAVE TO KIND OF GO A GOOD WAYS BEFORE YOU GET

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 OFF ONTO WOODRUFF ROAD, DON'T YOU?

2 A YES, SIR.

3 Q ALL RIGHT. HANG ON A MINUTE. HAVE A SEAT THERE AND LET  
4 ME SEE IF I'VE GOT ANYMORE QUESTIONS.

5 A (COMPLIES)

6 Q (OFF RECORD WITH CO-COUNSEL) FINAL QUESTION, MR.  
7 GREENWAY. YOUR TESTIMONY WAS THAT YOU'RE NOT SURE WHEN  
8 TIMEWISE YOU ACTUALLY GOT THERE AND THEREFORE WOULD HAVE  
9 POSITIONED THE AUTOMOBILE ON THE DIAGRAM THAT YOU HAVE DRAWN?

10 A I'M NOT SURE I UNDERSTAND YOUR QUESTION. ARE YOU ASKING  
11 ME EXACTLY -- DO I KNOW EXACTLY WHAT TIME I ARRIVED ON THE  
12 SCENE?

13 Q YES, SIR.

14 A NO, SIR. I DON'T KNOW THE EXACT TIME. I DON'T RECALL.

15 MR. MAULDIN: ALL RIGHT, NO FURTHER QUESTIONS. THANK  
16 YOU.

17 THE COURT: ANY REDIRECT?

18 MS. STROM: NO, SIR, YOUR HONOR.

19 THE COURT: ALL RIGHT. CORPORAL GREENWAY, THANK YOU,  
20 SIR.

21 WITNESS: THANK YOU, YOUR HONOR.

22 MS. STROM: WE WOULD ASK THAT THIS WITNESS BE EXCUSED.

23 THE COURT: HEARING NO OBJECTION---

24 MR. MAULDIN: NO OBJECTION.

25 THE COURT: ---THE WITNESS IS EXCUSED. THANK YOU, SIR.

DONNIE M. GREENWAY, JR. -- CROSS BY MR. MAULDIN

1 (WITNESS EXCUSED AT 3:45 P.M.)

2 MS. STROM: THE STATE CALLS HARRY CRAFT.

3 HARRY A. CRAFT, JR., HAVING  
4 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MS. STROM:

6 Q MR. CRAFT, PLEASE STATE YOUR FULL NAME FOR THE RECORD.

7 A IT'S HARRY A. CRAFT, JR.

8 Q MR. CRAFT, I'LL NEED YOU TO SIT UP AND REALLY SPEAK INTO  
9 THAT MICROPHONE SO ALL THESE JURORS WILL BE ABLE TO HEAR YOU.

10 A OKAY.

11 Q AGAIN, PLEASE STATE YOUR NAME FOR THE RECORD.

12 A HARRY A. CRAFT, JR.

13 Q AND, MR. CRAFT, ARE YOU PRESENTLY EMPLOYED?

14 A NO.

15 Q ARE YOU RETIRED?

16 A I'M RETIRED, YES.

17 Q AND FROM WHERE ARE YOU RETIRED?

18 A FROM THE SOUTH CAROLINA HIGHWAY PATROL.

19 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SOUTH CAROLINA  
20 HIGHWAY PATROL?

21 A ALMOST 23 YEARS.

22 Q AND I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE  
23 6TH OF 2000. WERE YOU SO EMPLOYED AT THE HIGHWAY PATROL AT  
24 THAT TIME?

25 A YES, I WAS.

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 Q IN WHAT CAPACITY?

2 A AS A TROOPER.

3 Q WHAT WERE YOUR DUTIES AS A TROOPER WITH THE SOUTH  
4 CAROLINA HIGHWAY PATROL?

5 A ENFORCING TRAFFIC LAWS, SOUTH CAROLINA LAWS.

6 Q DID YOU KNOW ERIC NICHOLSON?

7 A YES, MA'AM, SURE DID.

8 Q HE WAS ALSO A HIGHWAY PATROLMAN?

9 A THAT'S RIGHT.

10 Q AND DID Y'ALL WORK THE SAME SHIFT?

11 A YES, WE DID.

12 Q I WANT -- AGAIN, GOING BACK TO DECEMBER 6TH OF 2000, DID  
13 YOU HAVE AN OCCASION TO HAVE A CONVERSATION WITH TROOPER ERIC  
14 NICHOLSON AT APPROXIMATELY NOON ON THAT DAY?

15 A YES, I DID.

16 Q WOULD YOU PLEASE TELL THIS JURY WHAT IT WAS THAT Y'ALL  
17 DISCUSSED, WHAT OCCURRED?

18 A ERIC HAD CALLED ME ON OUR RADIO AND ASKED ME TO GO TO A  
19 TALK AROUND CHANNEL, WHICH WAS ANOTHER CHANNEL THAT WOULDN'T  
20 INTERFERE WITH THE DISPATCHERS, WHICH I DID. AND ERIC HAD  
21 ASKED ME -- HE LAUGHED, IN A WAY, OVER THE RADIO AND ASKED ME  
22 IF A MOPED WAS SUPPOSED TO BE ON THE INTERSTATE. AND AT THAT  
23 TIME I TOLD HIM NO, IT WASN'T. AND HE WENT BACK TO THE  
24 REGULAR CHANNEL THAT WE MONITOR FOR THE DISPATCHERS.

25 Q WHEN YOU SAY YOU WENT TO A TALK AROUND CHANNEL, THAT'S A

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 CHANNEL THAT YOU SAID DOES NOT INTERFERE WITH DISPATCH?

2 A THAT'S RIGHT.

3 Q AND IS THAT NORMAL FOR OFFICERS TO DO THAT?

4 A YES. IF YOU HAVE A CONVERSATION THAT WON'T INTERFERE  
5 WITH THE OTHER TRAFFIC WITH THE DISPATCH OR OTHER TROOPERS,  
6 WE GO TO A TALK AROUND CHANNEL.

7 Q AND AFTER YOU INFORMED TROOPER NICHOLSON THAT IT WAS NOT  
8 LEGAL TO HAVE A MOPED ON THE INTERSTATE WHAT, IF ANYTHING,  
9 DID YOU HEAR AT THAT TIME?

10 A AS WE WENT BACK TO THE REGULAR CHANNEL AND ERIC WAS  
11 CALLING IN A TRAFFIC STOP ON THE MOPED ON INTERSTATE 85 ON  
12 THE NORTHBOUND DIRECTION.

13 Q DO YOU RECALL WHAT HE SAID?

14 A HE SAID SOMETHING ABOUT HE WAS GOING TO STOP THE MOPED  
15 ON 85, AND HE GAVE OUT THE TAG NUMBER, I THINK, ON THE MOPED.  
16 I DIDN'T REALLY HEAR THAT PART OF IT. THEN I HEARD THE  
17 SIREN, HIS SIREN COME OVER THE AIR, AND HE WAS CONVERSING  
18 WITH THE DISPATCHER SAYING THAT -- HE KIND OF HESITATED AND  
19 SAID, "GREENVILLE, I'M NOT SURE -- I DON'T WANT TO REALLY  
20 CALL THIS," THEN HE HESITATED, AND THEN HE SAID, "I THINK  
21 HE'S GOING TO MAKE THE RIGHT DECISION," WHICH INDICATED THAT  
22 WITH HIS SIREN GOING, I THINK THE SUBJECT PROBABLY WASN'T  
23 STOPPING IMMEDIATELY OR SOMETHING TO THAT EFFECT.

24 Q AFTER THAT WHEN HE SAID "I HATE TO CALL THIS IN" AND  
25 FURTHER WHAT HE SAID, WHAT, IF ANYTHING ELSE, DID YOU HEAR?

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1     A     AT THAT TIME I WAS AT OUR PATROL OFFICE ON CENTURY DRIVE  
2     JUST OFF OF 291, AND I WAS LEAVING THE OFFICE AND WAS WALKING  
3     TO MY PATROL VEHICLE. AND AS I WAS WALKING DOWN THE STAIRS  
4     TO GO TO THE PARKING LOT I HEARD THE -- I HEARD A SCREAM ON  
5     THE RADIO, AND IT WAS ERIC. I COULDN'T MAKE OUT WHAT HE WAS  
6     SAYING, BUT IT WAS -- HE WAS IN TROUBLE, YOU COULD TELL. I  
7     GOT IN MY CAR -- RAN TO MY CAR AND GOT IN IT AND TURNED THE  
8     SIREN AND BLUE LIGHTS ON AND HEADED OUT TO INTERSTATE 385  
9     FROM MY OFFICE AND HEADED IN THE DIRECTION THAT HE WAS  
10    SUPPOSED TO BE IN.

11   Q     HAD HE PREVIOUSLY GIVEN HIS AREA OF LOCATION?

12   A     I THINK HE GAVE IT OUT AS GETTING OFF I-85 AT WOODRUFF  
13    ROAD IN THAT GENERAL AREA THERE. AND AS I WAS GOING OUT  
14    INTERSTATE 385 TO THAT LOCATION THEY GAVE US A SPECIFIC  
15    LOCATION ON THE RADIO.

16   Q     AND WHAT DID YOU DO -- WHERE EXACTLY DID YOU GO? WHERE  
17    DID YOU END UP?

18   A     I WAS TRAVELLING SOUTHBOUND ON I-385 AND I CROSSED OVER  
19    85 AND GOT OFF AT WOODRUFF ROAD ON THAT RAMP AND TRAVELLED  
20    NORTH ON WOODRUFF ROAD BECAUSE TROOPER MCCAULEY WAS COMING  
21    FROM ANOTHER DIRECTION DOWN I-85 AND HE WAS GOING TO GO IN  
22    THE OPPOSITE DIRECTION OF WOODRUFF ROAD. SO WE CAME IN AT  
23    DIFFERENT -- AT OPPOSITE DIRECTIONS.

24   Q     YOU SAID YOU WERE GOING NORTH ON WOODRUFF ROAD. WOULD  
25    THAT BE BACK TOWARDS TOWN OR AWAY FROM TOWN?



HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 A THAT'S RIGHT, IT WOULD BE GOING BACK TOWARDS TOWN.

2 Q DID YOU -- WHERE DID YOU ULTIMATELY END UP?

3 A THEY GAVE US A LOCATION OF THE -- I THINK IT WAS THE OLD  
4 HOECHST CELANESE PLANT ENTRANCE. AND SO WHEN I GOT OFF AT  
5 WOODRUFF ROAD, I MADE A RIGHT TURN TO GO BACK NORTH ON  
6 WOODRUFF ROAD AND AS I WAS APPROACHING THAT ENTRANCE TO THE  
7 HOECHST CELANESE PLANT, I SAW A COUNTY CAR, A COUNTY DEPUTY'S  
8 CAR GO IN, THEN I FOLLOWED HIM IN, AND THEN TROOPER MCCAULEY  
9 CAME IN DIRECTLY BEHIND ME INTO THE ENTRANCE, AND THAT'S  
10 WHERE I SAW ERIC'S CAR.

11 Q WHAT DID YOU DO WHEN YOU GOT TO THAT AREA AND SAW ERIC'S  
12 CAR?

13 A WHEN I FIRST GOT TO THE SCENE I WAS LOOKING AROUND, AND  
14 I CAME TO THE REAR AND LEFT SIDE OF ERIC'S CAR AND STOPPED MY  
15 CAR, AND TROOPER MCCAULEY CAME UP TO MY RIGHT AND STOPPED HIS  
16 CAR. AND I NOTICED TO MY LEFT, PROBABLY 20 TO 30 YARDS AWAY  
17 FROM ERIC'S CAR, FOUR OR FIVE PEOPLE, CIVILIANS, STANDING UP  
18 IN A ROW TO THE LEFT SIDE OF ME, AND ERIC'S CAR, LIKE I SAID,  
19 WAS STILL SITTING THERE WITH THE LIGHTS GOING ON. AND THEN  
20 TROOPER MCCAULEY GOT OUT OF HIS CAR AND WENT UP TO ERIC'S  
21 CAR, THEN I WENT TO THE PEOPLE, CIVILIANS, STANDING ON THE  
22 LEFT SIDE.

23 Q DID YOU HAVE AN OCCASION TO SEE ERIC NICHOLSON INSIDE  
24 THE VEHICLE?

25 A AFTER -- AFTER I TALKED TO ONE OF THE CIVILIANS, THEN I

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 WENT OVER TO ERIC'S CAR AND OBSERVED ERIC IN THE CAR, YES.

2 Q LET'S GO BACK. YOU SAID YOU TALKED TO A CIVILIAN THERE.  
3 NOT GETTING INTO WHAT WAS SAID BY THAT CIVILIAN, BUT AS A  
4 RESULT OF WHAT WAS SAID, WHAT, IF ANYTHING, DID YOU DO?

5 A TROOPER MCCAULEY HAD GONE, AS I SAID, UP TO ERIC'S CAR  
6 BEFORE I ACTUALLY GOT THERE AND CALLED IN FOR AN AMBULANCE,  
7 AND CALLED FOR OUR SUPERVISORS TO COME TO THE LOCATION. AND  
8 AFTER HE CLEARED THE RADIO TRAFFIC WITH THE DISPATCHERS, THEN  
9 I GAVE THE DISPATCHERS THE INFORMATION THAT I WAS GIVEN, AND  
10 THEN I WENT TO ERIC'S CAR.

11 Q AND WHEN YOU WENT TO ERIC'S CAR, WHAT DID YOU SEE?  
12 PLEASE DESCRIBE THAT AREA TO THE JURY.

13 A BILL WAS LEANING INSIDE THE CAR ON THE DRIVER'S SIDE---

14 Q WHO IS BILL?

15 A TROOPER MCCAULEY, I'M SORRY. HE WAS LAYING INSIDE THE  
16 -- ON ERIC'S CAR ON THE DRIVER'S SIDE, AND I WENT AROUND TO  
17 THE PASSENGER SIDE, BUT THE DOOR WAS LOCKED, SO I HAD TO GO  
18 BACK AROUND AND UNLOCK THE DOOR AND THEN GO BACK INTO THE  
19 PASSENGER DOOR. AND I LEANED INSIDE AND ERIC WAS SLUMPED  
20 OVER TO THE RIGHT CENTER OF THE FRONT SEAT OVER -- I THINK HE  
21 HAD A CONSOLE IN BETWEEN HIS SEATS. AND HIS RIGHT ARM WAS  
22 LAYING ON THE SEAT, ON THE RIGHT FRONT SEAT, AND THE RADIO  
23 MICROPHONE WAS LAYING RIGHT BELOW HIS RIGHT KNEE.

24 Q WHAT, IF ANYTHING, DID YOU DO AT THAT TIME?

25 A TROOPER MCCAULEY WAS HOLLERING AT ERIC TRYING TO GET

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 SOME -- TO GET HIS ATTENTION. I NOTICED ERIC HAD NO COLOR  
2 ABOUT HIM, AND I CHECKED TO SEE IF HE WAS BREATHING AND I  
3 COULDN'T. AND THEN I TRIED TO GET A PULSE AND I COULDN'T DO  
4 THAT. I TRIED TWICE TO GET A PULSE. AND I TOLD BILL, I  
5 SAID, "I'M NOT GETTING A PULSE." I SAID, "LET'S GET HIM OUT  
6 AND LET'S TRY CPR."

7 AND AT THAT TIME I WENT AROUND AND TROOPER MCCAULEY AND  
8 I PULLED HIM OUT OF THE CAR AND LAID HIM ONTO THE GROUND AND  
9 STARTED TAKING HIS SHIRT AND HIS VEST OFF. AND TROOPER  
10 MCCAULEY STARTED COMPRESSIONS, CPR COMPRESSIONS, AND I  
11 COULDN'T -- I COULDN'T DO MOUTH-TO-MOUTH BECAUSE HE WAS  
12 BLOODY AROUND THE NOSE AND MOUTH AREA. AND BY THAT TIME A  
13 CITY OFFICER HAD GOTTEN THERE. I DON'T REMEMBER WHO WAS. I  
14 COULDN'T FIND A BREATHING MASK TO PUT OVER HIS MOUTH, AND I  
15 ASKED THE CITY OFFICER IF HE COULD FIND ONE. AND THEN RIGHT  
16 AFTER THAT THE E.M.S. GOT THERE AND THEN THEY STARTED -- THEY  
17 TOOK OVER WITH A BREATHING BAG AND CPR COMPRESSIONS.

18 Q DID YOU HAVE OCCASION TO NOTICE ANYTHING ABOUT TROOPER  
19 NICHOLSON'S DUTY WEAPON?

20 A THE FIRST THING I DID WHEN I LOOKED IN THE CAR I NOTICED  
21 TO SEE IF HIS WEAPON WAS STILL ON.

22 Q AND WHEN YOU SAY "STILL ON," WHAT DO YOU MEAN?

23 A IN HIS HOLSTER. ON HIS PERSON IN HIS HOLSTER. IT WAS  
24 IN HIS HOLSTER AND THE HOLSTER WAS SNAPPED SHUT.

25 Q DID YOU OBTAIN THOSE ITEMS?

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 A YES.

2 Q HOW DID YOU GO ABOUT DOING THAT?

3 A WHEN THE E.M.S. WAS TRYING TO REVIVE HIM THEY HAD CUT  
4 HIS UNIFORM PANTS SO THEY COULD GET ACCESS TO HIM. AND AS  
5 THEY DID THAT, THEN THEY RELEASED THE BUCKLE AND IT CAME OUT,  
6 AND THEN I PULLED IT OUT FROM UNDER ERIC AND TOOK IT IN MY  
7 POSSESSION AND THEN PUT IT IN MY PATROL CAR IN THE BACK SEAT,  
8 AND THEN I LOCKED MY PATROL CAR.

9 Q YOU SAID THAT YOU -- WHEN THEY CUT THE PANTS OFF OF ERIC  
10 IT LOOSENED A BUCKLE AND YOU TOOK IT OFF. WHAT ARE YOU  
11 TALKING ABOUT?

12 A THE UNIFORM HAS A BUCKLE -- THE BELT HAS A BUCKLE ON IT  
13 THAT HAS A HOOK, AND THAT'S HOW IT HOOKS ONTO THE BACK OF THE  
14 BUCKLE. SO THEY JUST UNHOOKED IT SO IT WOULD COME LOOSE SO I  
15 COULD PULL IT OUT FROM UNDER HIM IN ONE PIECE.

16 Q DID THE DUTY BELT CONTAIN THE WEAPON IN IT?

17 A YES.

18 Q THE HOLSTER IS ON THE DUTY BELT?

19 A THAT'S RIGHT.

20 Q AND THE WEAPON WAS IN THE HOLSTER?

21 A RIGHT.

22 Q AND I BELIEVE YOU SAID EARLIER THAT THE HOLSTER WAS  
23 SNAPPED?

24 A YES.

25 Q DO YOU RECALL IF THERE WERE ADDITIONAL MAGAZINES,

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 AMMUNITION MAGAZINES, ON THE DUTY BELT?

2 A YES.

3 MS. STROM: COURT'S INDULGENCE, YOUR HONOR?

4 THE COURT: YES, MA'AM.

5 MS. STROM: (OFF RECORD WITH CO-COUNSEL) YOUR HONOR,  
6 THIS MIGHT TAKE JUST ONE SECOND.

7 THE COURT: ALL RIGHT, MA'AM.

8 (OFF RECORD DISCUSSION)

9 Q I'M SORRY. IT'S A LITTLE HEAVY FOR ME. YOU NEED TO  
10 OPEN THIS PACKAGING AND LOOK IN THERE AND SEE IF YOU  
11 RECOGNIZE THE DUTY BELT, THE GLOCK MAGAZINE AND THE GLOCK  
12 PISTOL AND THE MAGAZINES.

13 A (COMPLIES)

14 Q WE'LL FIRST START WITH STATE'S EXHIBIT NUMBER 1. DO YOU  
15 RECOGNIZE STATE'S EXHIBIT NUMBER 1?

16 A YES, MA'AM, I DO.

17 Q THAT IS THE DUTY BELT YOU TOOK OFF OF ERIC NICHOLSON?

18 A YES, MA'AM, THAT'S THE DUTY BELT.

19 Q IT ALSO CONTAINS STATE'S EXHIBIT -- THESE ARE MAGAZINES  
20 THAT HOLD EXTRA AMMUNITION, CORRECT?

21 A THAT'S RIGHT.

22 Q THEY WERE INTACT ON THE DUTY BELT?

23 A THAT'S RIGHT.

24 Q THIS DUTY BELT ALSO, I BELIEVE, ACCORDING TO YOUR  
25 TESTIMONY, ALSO HAD THE WEAPON THAT WAS ISSUED TO ERIC

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM

1 NICHOLSON?

2 A YES, MA'AM, IN THE HOLSTER.

3 Q IT WAS IN THE HOLSTER. IT'S NOT IN THE HOLSTER NOW.  
4 IT'S BEEN SECURED INTO A BOX?

5 A RIGHT.

6 MS. STROM: WE OFFER STATE'S EXHIBIT NUMBER 1 INTO  
7 EVIDENCE, YOUR HONOR.

8 MR. MAULDIN: ASSUMING THAT IT'S COMPLETELY DISABLED,  
9 YOUR HONOR, THE FIREARM, WE'VE GOT NO OBJECTION TO ANY OF  
10 THIS.

11 THE COURT: VERY GOOD. THANK YOU.

12 (STATE'S EXHIBIT NUMBER 1, DUTY BELT, MOVED INTO  
13 EVIDENCE)

14 Q IS THAT PART OF STATE'S EXHIBIT NUMBER 1?

15 A YES.

16 Q AS TO THE GLOCK 9 MILLIMETER---

17 A IT'S A .40 CALIBER.

18 Q EXCUSE ME, I'M SORRY. IT'S A .40 CALIBER. I APOLOGIZE.  
19 THE WEAPON THAT WAS IN THE DUTY BELT IS IT THERE CONTAINED IN  
20 THAT BOX?

21 A YES, MA'AM, IT IS.

22 Q IS THAT THE WEAPON THAT YOU SECURED IN THE BACK OF YOUR  
23 CAR?

24 A YES, MA'AM.

25 Q DID YOU LATER TURN OVER THE DUTY BELT CONTAINING THE

HARRY A. CRAFT, JR. -- DIRECT BY MS. STROM.

1 WEAPON AND THE MAGAZINES TO LIEUTENANT GIBSON?

2 A YES, I DID.

3 Q AND THAT WAS DONE THERE AT THE SCENE?

4 A AT THE SCENE, YES, MA'AM.

5 Q DID YOU ADD ANYTHING TO THE DUTY BELT, WEAPON OR  
6 MAGAZINES OR TAKE ANYTHING AWAY FROM THEM BEFORE DELIVERING  
7 THEM TO LIEUTENANT GIBSON?

8 A NO, MA'AM. EVERYTHING WAS INTACT WHEN I PUT IT IN THE  
9 CAR AND GAVE IT TO LIEUTENANT GIBSON.

10 MS. STROM: COURT'S INDULGENCE?

11 THE COURT: YES, MA'AM.

12 MS. STROM: (OFF RECORD WITH CO-COUNSEL) PLEASE ANSWER  
13 ANY QUESTIONS THE DEFENSE MAY HAVE.

14 MR. MAULDIN: ONE MOMENT.

15 THE COURT: YES, SIR.

16 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL)

17 CROSS EXAMINATION BY MR. MAULDIN:

18 Q OFFICER CRAFT, I'M GOING TO ASK YOU A FEW QUESTIONS,  
19 PLEASE, SIR.

20 THE CALL THAT YOU GOT FROM ERIC THAT WAS OFF CHANNEL --  
21 IS THAT WHAT YOU DESCRIBED IT AS?

22 A YES -- WE CONSIDER IT A TALK AROUND CHANNEL.

23 Q ALL RIGHT. SO -- I MEAN, LET ME ASK YOU HOW THE  
24 SEQUENCE WOULD HAVE GONE. DID YOU GET A RADIO CALL ASKING TO  
25 GO OFF TO THIS OTHER CHANNEL? IS THAT HOW THAT WORKS?

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q ALL RIGHT. AND THEN WHEN YOU GO OFF TO THAT CHANNEL ARE  
3 YOU STILL ACTUALLY USING THE SAME RADIO EQUIPMENT?

4 A YES, SIR.

5 Q BUT YOU FLIP -- IT'S KIND OF LIKE FLIPPING -- ON A RADIO  
6 IT'S LIKE FLIPPING ON THE RADIO IN YOUR CAR, YOU'RE JUST  
7 GOING TO ANOTHER STATION?

8 A YES, SIR.

9 Q ALL RIGHT. SO YOU FLIP TO THE OTHER STATION, BUT YOU'RE  
10 STILL USING THE SAME EQUIPMENT? IT'S NOT LIKE YOU PULL OUT A  
11 CELL PHONE OR SOMETHING?

12 A NO, SIR.

13 Q SO YOU'RE STILL USING THE SAME MICROPHONE, THE SAME  
14 RADIO THING THAT'S IN YOUR DASHBOARD OR WHEREVER IT IS?

15 A THAT'S RIGHT.

16 Q AND WHEN -- AND WHEN THE COMMENT WAS MADE ABOUT GOING TO  
17 THE OTHER CHANNEL DID YOU THEN CALL HIM BACK, OR DID HE CALL  
18 YOU BACK, OR HOW DID HE GET BACK IN TOUCH WITH YOU?

19 A HE -- AFTER WE WENT TO THE OTHER CHANNEL, THEN HE CALLED  
20 ME AGAIN TO MAKE SURE I WAS ON THAT CHANNEL, AND THEN I  
21 ANSWERED.

22 Q ALL RIGHT. SO HE SAYS, "GO TO ANOTHER CHANNEL," AND  
23 THEN YOU GET A CALL ON THAT OTHER CHANNEL, AND YOU SAID HELLO  
24 OR WHATEVER, RIGHT?

25 A RIGHT.



HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 Q LET ME GET THIS BOX OUT OF YOUR WAY.

2 ALL RIGHT. NOW, THIS IS -- AND WHAT I WROTE WAS THAT  
3 YOU -- HE LAUGHED AND ALMOST -- OR ALMOST SOMEWHAT IN AN  
4 EMBARRASSED TONE OR HUMOROUS TONE ASKED YOU ABOUT A MOPED; IS  
5 THAT WHAT YOU MEANT WHEN YOU---

6 A HE KIND OF CHUCKLED. IT WASN'T REALLY A LAUGH. IT WAS  
7 JUST A LITTLE CHUCKLE. I COULDN'T TELL YOU IF IT WAS OUT OF  
8 EMBARRASSMENT OR NOT.

9 Q RIGHT. I MEAN, I'M NOT LOOKING FOR YOU TO READ HIS MIND  
10 OR SAY WHAT YOU WERE PERCEIVING WAS THAT HE WAS ASKING YOU A  
11 QUESTION ALMOST IN A JOVIAL -- SOMEWHAT OF A JOVIAL MOOD AT  
12 THAT POINT?

13 A YES, SIR, BECAUSE YOU DON'T SEE VERY MANY MOPEDS ON THE  
14 INTERSTATE.

15 Q ALL RIGHT.

16 A I THINK THAT'S MAYBE THE REASON.

17 Q AND HE ASKED ABOUT WHETHER A MOPED WAS LEGAL?

18 A ON THE INTERSTATE.

19 Q ALL RIGHT. NOW, OFFICER CRAFT, HOW LONG -- ARE YOU  
20 STILL WITH THE PATROL?

21 A NO, SIR, I'M RETIRED NOW.

22 Q ALL RIGHT. PRIOR TO RETIREMENT HOW LONG WERE YOU WITH  
23 THE PATROL?

24 A ALMOST 23 YEARS.

25 Q ALL RIGHT. SO YOU HAVE HAD, AND LET'S JUST SAY,

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 COUNTLESS OCCASIONS OVER YOUR MANY YEARS IN DETERMINING  
2 WHETHER A VEHICLE WAS LEGAL. LIKE, YOU KNOW, WHEN YOU'RE  
3 DRIVING ALONG AND YOU DRIVE UP BEHIND A CAR, THEN YOU'VE GOT  
4 PROBABLY PRETTY GOOD INSTINCT AND PRETTY GOOD EXPERIENCE  
5 ABOUT WHETHER WHATEVER IT IS YOU JUST PULLED IN BEHIND WAS  
6 LEGAL OR NOT, RIGHT?

7 A SOMETIMES, YES.

8 Q ALL RIGHT. ARE YOU IN FACT FAMILIAR WITH THE -- FOR  
9 PURPOSES OF DEFINITION WHETHER A MOPED MEANS -- AND YOU  
10 CORRECT ME IF YOU'RE NOT FAMILIAR WITH THIS, ALL RIGHT? -- A  
11 MOPED MEANS A CYCLE WITH PEDALS TO PERMIT PROPULSION BY HUMAN  
12 POWER OR WITHOUT PEDALS AND A MOTOR OF NOT MORE THAN 50 CUBIC  
13 CENTIMETERS? DID YOU ACTUALLY KNOW THAT THAT'S WHAT A MOPED  
14 WAS?

15 A YES. THEY MAKE DIFFERENT STYLES, YES.

16 Q ALL RIGHT. AND WITH REGARD TO WHAT IS OR ISN'T LEGAL ON  
17 THE HIGHWAY THAT NO PERSON -- AND I'M ASKING YOUR FAMILIARITY  
18 WITH THIS CONSIDERING YOUR MANY YEARS OF EXPERIENCE IN MAKING  
19 TRAFFIC STOPS. NO PERSON SHALL OCCUPY ANY SPACE WITHIN THE  
20 LIMITS OF THE ROADWAY OR SHOULDER OF A MAIN FACILITY OF A  
21 FREEWAY WITH AN ANIMAL DRAWN VEHICLE -- THAT WOULD BE LIKE A  
22 HORSE AND BUGGY, RIGHT?

23 A (INDICATES AFFIRMATIVE RESPONSE)

24 Q -- A RIDDEN OR LED ANIMAL -- THAT'D BE LIKE RIDING A  
25 HORSE?

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 A (INDICATES AFFIRMATIVE RESPONSE)

2 Q -- HERDED ANIMALS, A PUSH CART, A BICYCLE, A BICYCLE  
3 WITH A MOTOR ATTACHED OR A MOTOR DRIVEN CYCLE WITH A MOTOR  
4 THAT PRODUCES NOT TO EXCEED FIVE BRAKE HORSEPOWER. SO WITH  
5 REGARD TO WHETHER A VEHICLE WERE LEGAL ON THE HIGHWAY IS LESS  
6 THAN FIVE HORSEPOWER, RIGHT, ACCORDING TO THAT, ACCORDING TO  
7 YOUR UNDERSTANDING OF THAT?

8 A I THINK IT SAID BRAKE POWER OR WAS IT HORSEPOWER?

9 Q FIVE -- WELL, IT SAYS FIVE BRAKE HORSEPOWER. SO YOU CAN  
10 EXPLAIN THAT TO ME.

11 A I CAN'T.

12 Q YOU CAN?

13 A NO, SIR, I CAN'T.

14 Q OH, YOU CAN'T?

15 A NO, SIR.

16 Q ALL RIGHT. THE POINT I GUESS I MAKE IS THAT THERE IS A  
17 CUTOFF ABOUT WHETHER A VEHICLE IS OR ISN'T LEGAL ON THE  
18 HIGHWAY.

19 A YES, SIR.

20 Q AND YOU WHEN YOU GOT THIS CALL FROM ERIC HAD NO IDEA  
21 WHAT KIND OF VEHICLE HE MIGHT BE REFERRING TO OTHER THAN JUST  
22 WHAT HE ASKED YOU?

23 A THAT'S RIGHT.

24 Q SO WHEN YOU TOLD HIM NO -- I MEAN, AND I'M NOT GOING TO  
25 ASSUME ANYTHING. HE ASKED IF A MOPED WAS LEGAL; ISN'T THAT

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 RIGHT?

2 A ON THE INTERSTATE, YES, SIR.

3 Q AND YOUR RESPONSE WAS WHAT?

4 A NO.

5 Q SO WHEN YOU TOLD HIM NO YOU DIDN'T HAVE -- YOU WEREN'T  
6 THERE AND BE ABLE TO SEE WHAT HE WAS TALKING ABOUT?

7 A THAT'S RIGHT.

8 Q ALL RIGHT. NOW, THEN AFTER THAT IMMEDIATE -- THAT  
9 CONVERSATION WAS THE ONE THAT HAPPENED OFF CHANNEL?

10 A YES, SIR.

11 Q SO THE ONLY TWO PEOPLE THAT WOULD HAVE BEEN HEARING THAT  
12 WOULD HAVE BEEN YOU AND ERIC?

13 A UNLESS SOMEBODY ELSE WENT TO THAT CHANNEL ALSO.

14 Q WAS ON THAT SAME CHANNEL AT THE SAME TIME?

15 A RIGHT.

16 Q ALL RIGHT. YOU THEN WENT BACK ON THE MAIN CHANNEL OR  
17 HEARD ERIC ON THE MAIN CHANNEL?

18 A YES, SIR.

19 Q AND YOU SAID THAT -- IF I WROTE THIS DOWN CORRECTLY --  
20 "I HATE TO BE CALLING THIS IN BUT..." AND THEN---

21 A THERE'S A HESITATION.

22 Q SO THERE WAS A HESITATION. HE HATED TO CALL IT IN  
23 BUT...?

24 A RIGHT.

25 Q AND THEN HE STARTED MAKING SOME DESCRIPTION OF AN INTENT

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 TO MAKE A TRAFFIC STOP?

2 A RIGHT.

3 Q AND IT'S YOUR IMPRESSION THAT EVEN THOUGH YOU DIDN'T  
4 HEAR THIS ON THE RADIO THAT THAT WOULD HAVE RELATED TO THE  
5 MOPED?

6 A YES, SIR.

7 Q ALL RIGHT. NOW A COUPLE OF FINAL QUESTIONS, OFFICER --  
8 OR IS IT MR. NOW SINCE YOU'RE RETIRED?

9 A YEAH.

10 Q ALL RIGHT. MR. CRAFT, WHEN YOU GOT TO ERIC'S CAR AND  
11 FINALLY GOT IN ON THE -- YOU OPENED THE PASSENGER DOOR, YOU  
12 SAID THAT THERE WAS A MICROPHONE LAYING IN THE PASSENGER  
13 SEAT?

14 A NO, SIR. IT WAS IN THE FLOORBOARD, I BELIEVE.

15 Q THE FLOORBOARD IN FRONT OF THE PASSENGER SEAT?

16 A YES, SIR.

17 Q NOW, DESCRIBE TO US JUST A MOMENT IN SIMPLEST LAYMAN'S  
18 TERMS, IS THIS A HAND -- IS THIS A MICROPHONE THAT'S LIKE A  
19 HANDHELD, IT HAS A WIRE THAT GOES TO A RADIO?

20 A YES, SIR.

21 Q ALL RIGHT. AND IS THAT THE -- AND REALIZING I DON'T  
22 WANT YOU TO DRAW ANY CONCLUSIONS THAT YOU CAN'T ACTUALLY  
23 TESTIFY WITH SOME DEGREE OF CERTAINTY ABOUT, BUT WE REFERRED  
24 TO CONVERSATIONS THAT YOU HAD HAD WITH ERIC JUST PRIOR TO AN  
25 ANTICIPATED STOP. IS IT REASONABLE FOR THIS JURY TO BELIEVE

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 THAT THOSE CONVERSATIONS OCCURRED OVER THAT MICROPHONE OR IS  
2 THERE ANOTHER MICROPHONE FLOATING AROUND SOMEWHERE? I MEAN,  
3 I KNOW I'VE SEEN PEOPLE WHO HAVE HAD THEM ON THEIR SHOULDERS  
4 AND PEOPLE GOT THEM ON THEIR TIE CLIPS AND... SO TELL THE  
5 JURY WHETHER IT'S REASONABLE FOR THESE JURORS TO IMAGINE THAT  
6 THE MICROPHONE THAT WAS LAYING IN THE FLOORBOARD WAS THE SAME  
7 MICROPHONE THAT YOU HAD BEEN TALKING TO ERIC ON?

8 A I CAN'T SAY THAT IT WAS FOR SURE FOR HIM. ALL I CAN DO  
9 IS ASSUME BECAUSE WE CARRY THE WALKIE-TALKIE ALSO. AND YOU  
10 COULDN'T HAVE THE WALKIE-TALKIE ON AT THE SAME TIME IF YOU  
11 WERE TALKING ON THE OTHER RADIO BECAUSE IT WOULD FEEDBACK AND  
12 INTERFERE WITH EACH OTHER.

13 Q OKAY.

14 A THE WALKIE-TALKIES IS FOR USE OUTSIDE THE CAR MOSTLY.

15 Q OKAY. SO ON THE CALL IN TO THE STATION REGARDING THE  
16 ANTICIPATED TRAFFIC STOP IS IT FAIR FOR THE JURY TO ASSUME  
17 THAT THAT WAS ON THAT HANDHELD SINCE HE WAS IN THE AUTOMOBILE  
18 AT THE TIME?

19 A YES, SIR.

20 Q AND LIKEWISE, PRIOR TO MAKING THAT CALL THERE WAS A TALK  
21 WITH YOU ON THE OFF CHANNEL CONVERSATION. IS IT FAIR FOR THE  
22 JURY TO BELIEVE THAT THE SAME MICROPHONE WAS USED BOTH TIMES?

23 A YES, SIR.

24 Q ALL RIGHT. ONE OTHER -- OR ONE MOMENT PLEASE. (OFF  
25 RECORD WITH CO-COUNSEL)

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1           LAST QUESTION, MR. CRAFT. DO YOU -- WOULD YOU HAVE ANY  
2   WAY OF RECOLLECTION REGARDING THE APPROXIMATE TIME WHEN YOU  
3   ACTUALLY PULLED UP AT THE LOCATION?

4   A     I'M GUESSING IT WAS SOMEWHERE BETWEEN 12:15 AND 12:30,  
5   SOMEWHERE IN THAT AREA.

6   Q     AND ACCORDING TO MY NOTES YOU WERE PULLING IN AS A  
7   COUNTY DEPUTY SHERIFF'S AUTOMOBILE WAS ALSO IN MOTION TO THE  
8   SCENE?

9   A     YES, SIR.

10  Q     AND ANOTHER OFFICER WAS BEHIND YOU?

11  A     YES, SIR.

12  Q     AND AS THE THREE CARS WERE COMING TO THE SCENE WAS THERE  
13  ANY OTHER LAW ENFORCEMENT OFFICER AT THAT TIME ALREADY  
14  PRESENT?

15  A     NO, SIR.

16  Q     SO YOU AND THE PEOPLE BOTH IN THE COUNTY CAR AND TROOPER  
17  MCCAULEY WOULD HAVE BEEN THE FIRST LAW ENFORCEMENT OFFICERS  
18  ON THE SCENE?

19  A     YES, SIR.

20  Q     THERE WERE CIVILIANS ON THE SCENE THAT I THINK YOU SAID  
21  WERE OVER TO THE SIDE AT THAT POINT?

22  A     YES, SIR.

23  Q     DO YOU KNOW IF THEY HAD MOVED OVER TO THE SIDE UPON  
24  BEING DIRECTED TO OR CAN YOU JUST ONLY SAY THAT'S WHERE YOU  
25  SAW THEM? DID YOU -- DO YOU KNOW OF YOUR OWN KNOWLEDGE?

HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1 A THEY WERE ALREADY OVER TO THE SIDE WHEN I GOT THERE.

2 Q ALL RIGHT. SO YOU DON'T KNOW WHETHER THEY HAD BEEN  
3 INSTRUCTED TO DO THAT OR...

4 A NO, SIR.

5 MR. MAULDIN: ALL RIGHT. THAT'S ALL. THANK YOU.

6 THE COURT: ANY REDIRECT?

7 MS. STROM: NO, SIR, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MS. STROM: WE'D ASK THAT THIS WITNESS BE EXCUSED AT  
10 THIS TIME.

11 THE COURT: ALL RIGHT. TROOPER CRAFT, THANK YOU, SIR.  
12 WE APPRECIATE YOU BEING HERE, SIR.

13 ANY OBJECTION TO THE WITNESS BEING EXCUSED?

14 MR. MAULDIN: NO, SIR.

15 THE COURT: THANK YOU.

16 (WITNESS EXCUSED AT 4:16 P.M.)

17 THE COURT: LADIES AND GENTLEMEN, LET'S TAKE A SHORT  
18 BREAK. WE'VE BEEN GOING FOR ABOUT AN HOUR AND A HALF, HOUR  
19 AND ABOUT 40 MINUTES. DURING THE BREAK, OF COURSE, DO NOT  
20 DISCUSS THE CASE. ABOUT TEN MINUTES, AND THEN WE'LL COME OUT  
21 HERE AND MAKE SOME MORE PROGRESS THIS AFTERNOON. THANK YOU  
22 VERY MUCH.

23 LET'S REMAIN SEATED UNTIL THE JURY IS EXCUSED FROM THE  
24 COURTROOM, PLEASE.

25 (JURY EXITS COURTROOM AT 4:17 P.M.)



HARRY A. CRAFT, JR. -- CROSS BY MR. MAULDIN

1           **THE COURT:**   THE JURY HAS BEEN EXCUSED.  LET'S TAKE A  
2 RECESS UNTIL 4:30.

3           (A RECESS WAS TAKEN FROM 4:18 TO 4:32 P.M.)

4           **THE COURT:**   ALL RIGHT.  IF THERE IS ANYONE THAT NEEDS  
5 TO COME IN, IF YOU WOULD JUST GIVE AN OPPORTUNITY IN THE  
6 HALLWAY SINCE WE'RE GETTING READY TO GET STARTED.  I DON'T  
7 WANT TO LOSE AN OPPORTUNITY.

8           **MR. MAULDIN:**   WITH REGARD TO THAT, WE DO HAVE -- WE  
9 KNOW WE HAVE SOMEBODY COMING FROM OUR OFFICE, I'D ASK THAT  
10 THEY LET HER SLIP IN?

11          **THE COURT:**   RIGHT.  CONTACT PEOPLE, PARALEGALS EITHER  
12 SIDE.

13          **MR. MAULDIN:**   ALL RIGHT.

14          **THE COURT:**   REPRESENTATIVES OF EITHER SIDE, PARALEGALS,  
15 AND I'VE SEEN THEM COME IN.  THAT'S FINE.  IS THERE ANYBODY  
16 ELSE THERE WHO WANTS TO COME IN?

17          **BAILIFF:**    NO, SIR.

18          **THE COURT:**   VERY GOOD.  BRING THE JURY, PLEASE, MS.  
19 DAILEY.

20                 (JURY REENTERS COURTROOM AT 4:35 P.M.)

21          **THE COURT:**   MADAME FORELADY AND LADIES AND GENTLEMEN,  
22 WE'RE READY TO PROCEED.

23                 NEXT WITNESS, PLEASE.

24          **MS. STROM:**   THE STATE WOULD CALL LIEUTENANT MIKE  
25 GIBSON.

THOMAS MICHAEL GIBSON -- DIRECT BY MS. STROM

1                                    THOMAS MICHAEL GIBSON, HAVING  
2 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MS. STROM:

4 Q     LIEUTENANT GIBSON, IF YOU WILL, STATE YOUR NAME AGAIN  
5 FOR THE RECORD.

6 A     THOMAS MICHAEL GIBSON.

7 Q     THE SOLE PURPOSE FOR THAT WAS TO MAKE SURE THAT YOU'RE  
8 SPEAKING LOUDLY ENOUGH FOR EVERYONE TO HEAR YOU, AND YOU ARE.  
9 SO PLEASE KEEP YOUR VOICE AT THAT LEVEL.

10 A     ALL RIGHT.

11 Q     BY WHOM ARE YOU EMPLOYED?

12 A     THE SOUTH CAROLINA HIGHWAY PATROL.

13 Q     HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SOUTH CAROLINA  
14 HIGHWAY PATROL?

15 A     TWENTY-THREE YEARS.

16 Q     ON DECEMBER THE 6TH OF 2000, IN WHAT CAPACITY WERE YOU  
17 EMPLOYED WITH THE HIGHWAY PATROL? WHAT WERE YOUR DUTIES?

18 A     I'M A DISTRICT LIEUTENANT. I'M IN CHARGE OF SIX -- FIVE  
19 COUNTIES IN DISTRICT THREE. AND IN THE ABSENCE OF THE  
20 CAPTAIN, WE ARE ASSISTANT COMMANDERS.

21 Q     ON THAT SAME DATE, DECEMBER 6TH, 2000, DID YOU HAVE AN  
22 OCCASION TO GO TO THE AREA OF FRONTAGE ROAD OFF OF WOODRUFF  
23 ROAD?

24 A     YES, I DID.

25 Q     AND WAS THAT ABOUT NOONTIME OR WHAT TIME WAS IT?

1     A     IT WAS CLOSE TO NOON, YES.

2     Q     WHAT DID YOU DO -- WHY DID YOU GO THERE, FIRST OF ALL?

3     A     WELL, WE WERE IN A MEETING AT THE SOLICITOR'S OFFICE,  
4     MYSELF AND CAPTAIN GARDNER AND FIRST SERGEANT MICHAEL WARREN.  
5     AND FIRST SERGEANT WARREN WAS KEEPING A LISTEN OUT, IF YOU  
6     WANT, ON THE RADIO FOR ANY TRAFFIC BECAUSE HE WAS THE DAY  
7     SHIFT SUPERVISOR. AND HE LEFT THE OFFICE THAT WE WERE IN AND  
8     CAME RUNNING BACK IN AND SAID WE HAD AN OFFICER DOWN. AND SO  
9     WE IMMEDIATELY RAN TO THE CAR AND PROCEEDED TO WOODRUFF ROAD  
10    WHERE THIS OFFICER WAS LAST HEARD FROM. DURING THE WAY THERE  
11    WERE SEVERAL RADIO TRANSMISSIONS, AND WE FINALLY ARRIVED AT  
12    THE SCENE PROBABLY WITHIN FIVE OR SIX MINUTES.

13    Q     WHEN YOU GOT TO THE AREA OF FRONTAGE ROAD OFF OF  
14    WOODRUFF ROAD DID YOU SEE TROOPER NICHOLSON'S VEHICLE?

15    A     YES, I DID.

16    Q     WHERE WAS IT LOCATED?

17    A     IT WAS LOCATED ON THE FRONTAGE ROAD AND POINTED TOWARDS  
18    ANOTHER LITTLE DRIVE. I DON'T REMEMBER THE ROAD. IT WAS AN  
19    ENTRANCE TO SOMETHING THERE. AND THE DOOR WAS OPEN. WOULD  
20    YOU LIKE ME TO GO FURTHER?

21    Q     WHERE WAS ERIC NICHOLSON AT THAT TIME?

22    A     ERIC NICHOLSON WAS LAYING ON THE GROUND AND TROOPER  
23    MCCAULEY WAS GIVING HIM CPR.

24    Q     DID YOU GO OVER TO THAT IMMEDIATE AREA TO WHERE ERIC  
25    NICHOLSON WAS?

1 A YES, I DID.

2 Q DID YOU OBTAIN ANY ITEMS OFF OF HIS PERSON?

3 A YES, I DID.

4 Q A FIREFIGHTER OR A RESCUE PERSON MOTIONED THAT -- TO ME.  
5 I WAS STANDING OVER AND THEN HE MOTIONED TO ME THAT HIS ANKLE  
6 WEAPON WAS STILL ON, AND I THINK THEY WERE GETTING READY TO  
7 MOVE HIM AND THEY DIDN'T WANT THE WEAPON, OF COURSE, BEING ON  
8 HIM OR FOR WHATEVER REASON HE MOTIONED TO ME THAT THE WEAPON  
9 WAS THERE. AND I REACHED DOWN AND TOOK THE WEAPON OFF HIS  
10 LEG AND PUT IT IN MY POCKET.

11 Q SO HE HAD A WEAPON THAT WAS IN A HOLSTER ATTACHED TO ONE  
12 OF HIS LEGS?

13 A YES.

14 Q AND THAT WOULD BE A WEAPON IN ADDITION TO HIS ISSUED  
15 WEAPON THAT HE CARRIES IN HIS HOLSTER?

16 A YES. IT'S OUR BACKUP WEAPON.

17 Q YOU SECURED THAT WEAPON OFF OF HIS LEG?

18 A YES, I DID.

19 Q I'M GOING TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS  
20 STATE'S EXHIBIT NUMBER 2, WHICH IS LOCATED IN THIS BOX FOR  
21 SAFETY PURPOSES.

22 MS. STROM: AND, YOUR HONOR, FOR THE RECORD, THE  
23 WEAPONS HAVE BEEN MANIPULATED IN A WAY SO THEY CANNOT BE  
24 FIRED, AND THERE IS NO LIVE AMMUNITION IN THE WEAPONS.

25 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER

1 2. DO YOU RECOGNIZE THAT?

2 A YES, I DO.

3 Q WHAT IS STATE'S EXHIBIT NUMBER 2?

4 A STATE'S EXHIBIT NUMBER 2 IS A SMITH AND WESSON .38  
5 CALIBER STAINLESS PISTOL THAT TROOPERS CARRY AS THEIR BACKUP  
6 WEAPON.

7 Q IS THAT THE WEAPON THAT YOU TOOK OFF OF ERIC NICHOLSON  
8 THERE ON FRONTAGE ROAD?

9 A YES, IT IS.

10 Q DID YOU SECURE THAT WEAPON IN YOUR POSSESSION UNTIL  
11 LATER TURNING IT OVER TO DAR SHAW WITH THE FORENSICS  
12 DEPARTMENT?

13 A YES, I DID.

14 Q DID YOU TURN IT OVER TO DAR SHAW THERE AT FRONTAGE ROAD?

15 A YES, I DID.

16 Q HOW MANY ROUNDS ARE -- CAN BE CARRIED IN THAT SMITH AND  
17 WESSON?

18 A FIVE ROUNDS.

19 Q WHEN YOU TURNED THE WEAPON OVER TO DAR SHAW DID AT THAT  
20 TIME HE COUNT OUT THE NUMBER OF ROUNDS THAT WERE IN THAT  
21 WEAPON?

22 A HE DID SO.

23 Q AND HOW MANY WERE IN THERE?

24 A FIVE.

25 Q THERE WERE ALL UNFIRED ROUNDS?

THOMAS MICHAEL GIBSON -- DIRECT BY MS. STROM

1 A THAT'S CORRECT.

2 Q I ALSO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT  
3 NUMBER 1A, WHICH ANOTHER PISTOL; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q DO YOU RECOGNIZE THAT?

6 A I DO.

7 Q WHAT IS THAT?

8 A IT'S A STATE ISSUED .40 CALIBER GLOCK PISTOL.

9 Q DID YOU RECEIVE THAT WEAPON FROM AT THAT TIME TROOPER  
10 HARRY CRAFT THERE AT FRONTAGE ROAD?

11 A I DID.

12 Q WHEN YOU OBTAINED THAT FROM TROOPER CRAFT WAS IT  
13 CONTAINED IN WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 1,  
14 WHICH HAS BEEN IDENTIFIED AS THE DUTY BELT OF ERIC NICHOLSON?

15 A IT WAS.

16 Q THE DUTY BELT OF ERIC NICHOLSON CONTAINS TWO MAGAZINES,  
17 ADDITIONAL MAGAZINES; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q IS THAT STANDARD ISSUE?

20 A YES, IT IS.

21 Q HOW MANY -- HOW MANY ROUNDS ARE CONTAINED IN EACH  
22 MAGAZINE?

23 A EACH MAGAZINE CARRIES 15 ROUNDS.

24 Q SO THERE WOULD BE TWO MAGAZINES ON THE BELT?

25 A THAT'S CORRECT.

1 Q A MAGAZINE ACTUALLY IN THE WEAPON?

2 A THAT'S CORRECT.

3 Q AND EACH OF THOSE MAGAZINES CONTAINS 15 ROUNDS?

4 A THAT'S CORRECT.

5 Q IS THERE ANOTHER ROUND THAT IS SOMETIMES REFERRED TO AS  
6 "IN THE CHAMBER"?

7 A YES, THERE IS.

8 Q AND WAS THAT THE OCCASION WITH ERIC NICHOLSON'S WEAPON?

9 A THAT'S -- THAT'S CORRECT.

10 Q DID YOU THERE AT THE SCENE OF FRONTAGE ROAD DELIVER THE  
11 DUTY BELT WITH THE TWO MAGAZINES AND WITH THE PISTOL IN THE  
12 DUTY BELT TO DAR SHAW THERE AT THE SCENE?

13 A I DID.

14 Q DID HE COUNT OUT THE NUMBER OF LIVE ROUNDS THAT WERE  
15 CONTAINED IN EACH MAGAZINE AND IN THE PISTOL ITSELF?

16 A HE DID.

17 Q AND WERE THEY THE ACCURATE NUMBER OF ROUNDS THAT WERE  
18 ISSUED?

19 A YES, THEY WERE.

20 Q I MAY HAVE GONE OVER THIS BEFORE, BUT I WANT TO MAKE  
21 SURE. THE DUTY BELT WITH THE WEAPON AND THE MAGAZINE, YOU  
22 RECEIVED THAT FROM HARRY CRAFT, TROOPER HARRY CRAFT?

23 A I RECEIVED THE DUTY BELT AND THE GLOCK HANDGUN THAT WAS  
24 IN THE HOLSTER ON THE DUTY BELT FROM TROOPER HARRY CRAFT.

25 Q THE SMITH AND WESSON PISTOL YOU TALKED ABOUT, YOU

THOMAS MICHAEL GIBSON -- DIRECT BY MS. STROM

1 ACTUALLY TOOK OFF OF ERIC NICHOLSON?

2 A THAT'S CORRECT.

3 Q AND SECURED THAT AND TURNED ALL OF THOSE ITEMS OVER TO  
4 DAR SHAW THERE AT FRONTAGE ROAD?

5 A YES, I DID.

6 MS. STROM: COURT'S INDULGENCE, YOUR HONOR? (OFF  
7 RECORD WITH CO-COUNSEL) THANK YOU. PLEASE ANSWER ANY  
8 QUESTIONS THE DEFENSE MAY HAVE.

9 CROSS EXAMINATION BY MR. MAULDIN:

10 Q JUST A COUPLE, LIEUTENANT. DO YOU KNOW WHAT I MEAN WHEN  
11 I SAY A SPEED HOLSTER, DESCRIBE AS A SPEED HOLSTER? DO YOU  
12 KNOW WHAT THAT TERM MEANS?

13 A NO, SIR, I DON'T BELIEVE SO.

14 Q OKAY. SO YOU'RE NOT FAMILIAR WITH THE TERM "SPEED  
15 HOLSTER" JUST AS A...

16 A I DON'T THINK SO.

17 MR. MAULDIN: ALL RIGHT. NO FURTHER QUESTIONS, YOUR  
18 HONOR.

19 MS. STROM: NO REDIRECT, YOUR HONOR.

20 THE COURT: LIEUTENANT GIBSON, THANK YOU FOR BEING  
21 HERE, SIR. WE APPRECIATE IT.

22 MS. STROM: YOUR HONOR, WE WOULD ASK THAT LIEUTENANT  
23 GIBSON BE EXCUSED.

24 MR. MAULDIN: NO OBJECTION.

25 THE COURT: VERY GOOD. THANK YOU, SIR.



THOMAS MICHAEL GIBSON -- CROSS BY MR. MAULDIN

(WITNESS EXCUSED AT 4:45 P.M.)

THE COURT: NEXT WITNESS, PLEASE.

MS. STROM: THE STATE CALLS BILL MCCAULEY.

WILLIAM H. MCCAULEY, JR.,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. STROM:

Q TROOPER MCCAULEY, IF YOU WOULD, PLEASE STATE YOUR FULL NAME FOR THE RECORD.

A CORPORAL WILLIAM H. MCCAULEY, JR.

Q I NEED FOR YOU TO KEEP YOUR VOICE AT THAT LEVEL SO ALL THE JURORS CAN HEAR YOU.

A YES, MA'AM.

Q BY WHOM ARE YOU EMPLOYED?

A THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY WITH THE DIVISION OF SOUTH CAROLINA HIGHWAY PATROL.

Q HOW LONG HAVE YOU BEEN WITH THE HIGHWAY PATROL?

A SINCE SEPTEMBER THE 2ND OF 1985, SIXTEEN AND A HALF YEARS.

Q WHAT ARE YOUR DUTIES WITH THE HIGHWAY PATROL?

A TODAY I AM A FIRST LINE SUPERVISOR WITH THE SOUTH CAROLINA HIGHWAY PATROL OUT ON THE ROAD.

Q ON DECEMBER 6TH OF 2000 WHAT WERE YOUR DUTIES WITH THE HIGHWAY PATROL?

A AT THAT TIME I WAS A REGULAR ROAD TROOPER AND I WAS WORKING A CONSTRUCTION DETAIL ON I-85.

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 Q I WANT TO DIRECT YOUR ATTENTION TO DECEMBER 6TH OF 2000,  
2 APPROXIMATELY NOON THAT DAY, AND ASK YOU, DID ANYTHING  
3 UNUSUAL HAPPEN?

4 A YES, MA'AM.

5 Q WOULD YOU PLEASE TELL THIS JURY WHERE YOU WERE, WHAT YOU  
6 WERE DOING AND WHAT HAPPENED?

7 A YES, MA'AM. ON THAT PARTICULAR DAY I HAD A VEHICLE  
8 STOPPED JUST OFF OF I-85 ON HIGHWAY 14 BACK TOWARDS THE CITY  
9 OF GREER. AT THAT TIME I WAS CONDUCTING MY BUSINESS WITH  
10 THIS PARTICULAR VEHICLE AND I OVERHEARD CONVERSATION BY WAY  
11 OF OUR HIGHWAY PATROL RADIO THAT TOOK PLACE BETWEEN TROOPER  
12 CRAFT AND TROOPER NICHOLSON IN REFERENCE TO A MOPED ON THE  
13 INTERSTATE. AT THAT TIME THEY HAD WENT TO ANOTHER CHANNEL  
14 AND I DID NOT GO TO THE OTHER CHANNEL TO LISTEN TO EXACTLY  
15 WHAT THEIR CONVERSATION WAS.

16 SOMETIME -- SOME SECONDS LATER I HEARD TROOPER NICHOLSON  
17 CALL FOR DISPATCH AND STATE THAT HE WAS GOING TO BE STOPPING  
18 A MOPED IN THE VICINITY OF I-85 NORTHBOUND AND AROUND ROPER -  
19 - WOODRUFF ROAD, AND HE STARTED GIVING A TAG NUMBER OUT OVER  
20 THE RADIO ON THIS PARTICULAR MOPED, WHICH I THOUGHT WAS VERY  
21 UNUSUAL BECAUSE MOPEDS ARE NOT REQUIRED TO HAVE VEHICLE  
22 LICENSE IN THE STATE OF SOUTH CAROLINA. THIS PARTICULAR TAG,  
23 I DO NOT RECALL THE NUMBERS, BUT IT STARTED WITH A Z ZULU.  
24 IT IS USUALLY ISSUED TO A MOTORCYCLE. AND, OF COURSE, WHEN  
25 HE GAVE THAT OUT, I KIND OF LOOKED AT THE RADIO THINKING TO

1 MYSELF, THAT'S VERY ODD.

2 SOME FEW SECONDS LATER I OVERHEARD TROOPER NICHOLSON  
3 COME OVER THE RADIO STATING -- AND I HEARD A SIREN IN THE  
4 BACKGROUND THAT, "WELL, GREENVILLE, I KIND OF HATE TO CALL  
5 THIS," TO SOMETHING OF THIS EFFECT, "BUT I HATE TO CALL THIS  
6 BUT ... NEVER MIND HE'S HAD A CHANGE OF HEART." AND THAT WAS  
7 THE LAST TRANSMISSION THAT I HEARD FROM HIM FOR A PERIOD OF  
8 SECONDS UNTIL I HEARD A SCREAM OVER THE RADIO.

9 Q AND WHEN YOU HEARD THE SCREAM OVER THE RADIO, WHAT, IF  
10 ANYTHING, DID YOU DO?

11 A I LEFT. IT'S NOT THE FIRST TIME I'VE HEARD THAT, AND I  
12 KNEW SOMETHING WAS WRONG. A GUT FEELING, WHATEVER YOU WANT  
13 TO CALL IT. BUT I BASICALLY WENT BACK TO THE GENTLEMAN I HAD  
14 STOPPED AND GAVE HIM THE PAPERWORK BACK THAT I WAS GOING TO  
15 ISSUE HIM AND PROCEEDED TO WOODRUFF ROAD AND 85 BY WAY OF  
16 LIGHTS AND SIRENS AS QUICK AS I COULD GET THERE.

17 Q WHEN YOU GOT TO THE AREA OF WOODRUFF ROAD AND FRONTAGE  
18 ROAD WHERE DID YOU GO?

19 A IN TRANSMITTING WITH TROOPER CRAFT OVER THE RADIO WE  
20 WERE TRYING TO PINPOINT TROOPER NICHOLSON'S EXACT LOCATION  
21 THROUGH OUR DISPATCH. TROOPER CRAFT WAS COMING IN OFF OF 385  
22 FROM THE CITY OF GREENVILLE. I KNEW THAT. I KNEW I WAS  
23 COMING IN FROM THE SPARTANBURG COUNTY LINE. AS WE GOT CLOSER  
24 TO THIS PARTICULAR AREA, TROOPER CRAFT WENT ON DOWN TO  
25 WOODRUFF ROAD AND 385. I WENT IN TO 85 AND WOODRUFF ROAD AND

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 CAME IN IN THAT DIRECTION. AS I PROCEEDED UP THE EXIT RAMP,  
2 WE KNEW, THE DISPATCH HAD TOLD US, THAT HE WAS AROUND THE  
3 HOECHST FIBER PLANT, WHICH I KNEW EXACTLY WHERE THAT WAS AND  
4 PROCEEDED IN THAT DIRECTION.

5 Q DID YOU ACTUALLY GO ONTO FRONTAGE ROAD THERE OFF OF  
6 WOODRUFF ROAD IN FRONT OF WHAT WAS ONCE THE HOECHST CELANESE  
7 PLANT?

8 A YES, MA'AM. WHEN I MADE THE TURN TO GO TOWARDS THE  
9 PLANT AND GOT DOWN TO WHERE THAT ROAD COMES OUT ONTO WOODRUFF  
10 ROAD, TROOPER CRAFT AND I BASICALLY, KIND OF COMING FROM  
11 OPPOSITE DIRECTIONS, TURNED IN AT THE SAME TIME.

12 Q WHEN YOU TURNED IN THERE DID YOU SEE TROOPER NICHOLSON'S  
13 VEHICLE?

14 A YES, MA'AM, I DID.

15 Q WHAT WAS THE CONDITION OF HIS VEHICLE WHEN YOU  
16 APPROACHED IT?

17 A TROOPER CRAFT AND I PULLED UP TO THE SCENE AND  
18 IMMEDIATELY I NOTICED THAT THE DOOR WAS OPEN. THE WINDOW WAS  
19 SHOT OUT. IT WAS BUSTED. AND PRIOR TO MY ARRIVAL WE HAD  
20 BEEN GETTING INFORMATION FROM SOMEONE THROUGH OUR DISPATCH  
21 THAT AN OFFICER HAD BEEN SHOT. ONE WAS DOWN. AND WE BOTH  
22 EXITED OUR VEHICLES, APPROACHED TROOPER NICHOLSON'S VEHICLE  
23 AND FOUND TROOPER NICHOLSON IN THE CAR.

24 Q HOW WAS TROOPER NICHOLSON LOCATED PHYSICALLY IN HIS CAR?  
25 WHERE WAS HE SEATED?

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 A TROOPER NICHOLSON WAS STILL BEHIND THE DRIVER'S SEAT. I  
2 RECALL THAT HIS SEAT BELT WAS OFF. HE WAS STILL IN THE  
3 UPRIGHT POSITION, JUST LEANING OVER JUST A LITTLE BIT WITH  
4 HIS RIGHT ARM OVER TOWARDS THE PASSENGER SEAT.

5 Q I BELIEVE YOU SAID THAT THE WINDOW WAS BUSTED OUT OR  
6 SHOT OUT?

7 A YES, MA'AM.

8 Q WHICH WINDOW WAS THAT?

9 A THE DRIVER'S SIDE WINDOW.

10 Q WOULD THAT HAVE BEEN THE WINDOW OF THE FRONT DOOR OR THE  
11 WINDOW OF THE BACK DOOR?

12 A I'M SORRY. THE DRIVER'S FRONT LEFT WINDOW.

13 Q WHERE THE DRIVER WOULD BE SEATED?

14 A THAT'S CORRECT.

15 Q DID YOU NOTICE ANY GLASS AROUND THE AREA?

16 A THERE WAS -- YES, ON THE GROUND, THE FLOOR INSIDE THE  
17 CAR. IT WAS EVERYWHERE.

18 Q WHEN YOU SAW TROOPER NICHOLSON IN THE VEHICLE, WHAT, IF  
19 ANYTHING, DID YOU AND TROOPER CRAFT DO?

20 A WELL, TROOPER NICHOLSON WAS A PERSONAL FRIEND OF MINE,  
21 AND, OF COURSE -- HIS NICKNAME WAS TIGGER, SO I'M CALLING HIM  
22 TIGGER. I'M YELLING AT HIM TRYING TO GET SOME TYPE OF  
23 RESPONSE FROM HIM. THE COLORING ABOUT HIM APPEARED LIFELESS.  
24 IT HAD LEFT HIM. TROOPER CRAFT HAD WENT AROUND TO PASSENGER  
25 SIDE OF THE VEHICLE, GRABBED HIS ARM, CHECKED FOR PULSE AND

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 STATED TO ME THAT THERE WERE NO PULSE COMING FROM HIM. AT  
2 THAT TIME, TROOPER CRAFT MADE A SUGGESTION WE, YOU KNOW, TRY  
3 TO DO CPR ON HIM, AND I REACHED INTO THE CAR UNDER -- FROM  
4 HIS BACK AND THROUGH HIS ARMPITS AND PULLED HIM FROM THE CAR,  
5 LAID HIM ON THE GROUND, TOOK HIS SHIRT AND HIS VEST OFF OF  
6 HIM AND STARTED CPR.

7 Q AND DID YOU CONTINUE CPR UNTIL MEDICAL PERSONNEL CAME  
8 AND TOOK OVER?

9 A YES, MA'AM.

10 MS. STROM: COURT'S INDULGENCE, YOUR HONOR? (OFF  
11 RECORD WITH CO-COUNSEL) PLEASE ANSWER ANY QUESTIONS THE  
12 DEFENSE MAY HAVE.

13 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

14 THE COURT: TAKE YOUR TIME, SIR.

15 CROSS EXAMINATION BY MR. MAULDIN:

16 Q COUPLE OF QUESTIONS, OFFICER MCCAULEY. WITH REGARD TO  
17 THE SEAT BELT THAT YOU SAY THAT THE SEAT BELT WAS OFF OF  
18 OFFICER NICHOLSON?

19 A I DID NOT TAKE THE SEAT BELT OFF OF HIM BECAUSE I  
20 EXTRACTED HIM FROM THE VEHICLE.

21 Q ALL RIGHT. AND WHEN YOU WERE TAKING HIM OUT OF THE  
22 VEHICLE DID YOU HAVE TO UNLOOSEN THE SEAT BELT?

23 A NO, SIR.

24 Q ALL RIGHT. SO -- NOW, I THOUGHT YOU TESTIFIED TO MS.  
25 STROM THAT THE SEAT BELT WAS NOT ON HIM OR MAYBE THAT WAS A

1 PREVIOUS WITNESS?

2 A IT WASN'T ON HIM WHEN I TOOK HIM OUT OF THE CAR.

3 Q OKAY. OKAY. SO WHEN YOU GOT THERE -- AND YOU AND  
4 OFFICER CRAFT WERE APPARENTLY THE FIRST LAW ENFORCEMENT  
5 OFFICERS THERE TO HIS AUTOMOBILE -- THE SEAT BELT WAS NOT  
6 ENGAGED?

7 A THAT'S CORRECT.

8 Q ALL RIGHT. NOW, DID YOU NOTICE WHAT GEAR THE CAR WAS IN  
9 -- AND BY GEAR I MEAN, LIKE, PARK, NEUTRAL, DRIVE, REVERSE --  
10 DID YOU NOTICE WHAT GEAR THE CAR WAS IN, THE TROOPER CAR WAS  
11 IN?

12 A NO, SIR, I DID NOT. THE CAR WAS NOT ROLLING, SO I ONLY  
13 ASSUMED IT WAS IN PARK. BUT I HAD NO IDEA WHAT IT WAS IN.

14 Q COULD IT HAVE BEEN IN NEUTRAL INSTEAD OF PARK OR DO YOU  
15 HAVE AN IMPRESSION OF THAT?

16 A NO, SIR. I COULDN'T TESTIFY TO WHAT THE CAR WAS -- GEAR  
17 IT WAS PLACED IN. I DON'T KNOW IF IT WAS IN PARK, NEUTRAL,  
18 DRIVE REVERSE. BUT I KNOW THE CAR WAS STILL, WAS NOT  
19 ROLLING.

20 Q ALL RIGHT. NOW, YOUR -- YOU HEARD -- YOU WERE NOT A  
21 PARTICIPANT IN BUT YOU OVERHEARD THE COMMUNICATION BETWEEN  
22 ERIC NICHOLSON AND OFFICER CRAFT PRIOR TO THE INITIATION OF  
23 THE STOP THAT APPARENTLY TOOK PLACE. IS THAT WHAT I  
24 UNDERSTOOD YOU TO SAY?

25 A WHAT I HEARD WAS TROOPER NICHOLSON CALLING TROOPER CRAFT

WILLIAM H. MCCAULEY, JR. -- CROSS BY MR. MAULDIN

1 ON THE RADIO AND WANTED TO ASK HIM SOMETHING ABOUT A MOPE  
2 AND THEY WENT TO ANOTHER CHANNEL ON OUR PARTICULAR RADIO  
3 SYSTEM SO THEY WOULD NOT TIE UP THE MAIN CHANNEL. THAT'S  
4 NORMAL PROCEDURE WITH OUR AGENCY.

5 Q ALL RIGHT. AND AS FAR AS YOU KNOW WITHIN YOUR OWN  
6 KNOWLEDGE THERE WAS NO CONTACT OR CONNECTION OR ANYTHING  
7 BETWEEN OFFICER NICHOLSON AND JOHN WOOD PRIOR TO -- IN OTHER  
8 WORDS, THERE WASN'T PRIOR RADIO TRAFFIC OR COMMUNICATION OR  
9 ANYTHING ABOUT ANY SUCH MATTER? THAT FIRST COMMUNICATION  
10 BETWEEN CRAFT AND NICHOLSON WAS THE FIRST YOU HEARD ABOUT A  
11 MOPE AND THAT WAS ONLY SECONDS BEFORE THIS INCIDENT?

12 A I HEARD TROOPER NICHOLSON CALL TROOPER CRAFT. THEY WENT  
13 TO ANOTHER CHANNEL ON THE RADIO TO TALK ABOUT A MOPE. THE  
14 NEXT THING I HEAR IS TROOPER NICHOLSON CALLING OUR STATION TO  
15 STOP THIS PARTICULAR VEHICLE.

16 Q ALL RIGHT.

17 A AND THEN I HEARD THE SIREN AND THE CRY FOR HELP.

18 Q BUT PRIOR TO THAT, WHAT YOU HAVE DESCRIBED, THERE HAD  
19 NOT BEEN ANY OTHER TRAFFIC, RADIO TRAFFIC COMMUNICATIONS THAT  
20 WOULD HAVE CONNECTED OR COULD HAVE CONNECTED THE TWO?

21 A NOT TO MY KNOWLEDGE.

22 MR. MAULDIN: ALL RIGHT. NOTHING FURTHER.

23 THE COURT: ANY REDIRECT?

24 MS. STROM: NO, SIR, YOUR HONOR.

25 THE COURT: ALL RIGHT. TROOPER MCCAULEY, THANK YOU,



WILLIAM H. MCCAULEY, JR. -- CROSS BY MR. MAULDIN

1 SIR. WE APPRECIATE IT.

2 WITNESS: THANK YOU.

3 (WITNESS STEPS DOWN AT 4:59 P.M.)

4 THE COURT: NEXT WITNESS, PLEASE.

5 MS. STROM: THE STATE CALLS DEPUTY C. HINES.

6 CHRIS HINES, HAVING BEEN DULY

7 SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MS. STROM:

9 Q OFFICER, HINES, I NEED FOR YOU TO KEEP YOUR VOICE UP SO  
10 ALL THESE JURORS CAN HEAR YOU. BY WHOM ARE YOU EMPLOYED?

11 A THE GREENVILLE COUNTY SHERIFF'S OFFICE.

12 Q AND HOW LONG HAVE YOU BEEN SO EMPLOYED WITH THE  
13 GREENVILLE COUNTY SHERIFF'S OFFICE?

14 A SINCE APRIL OF 1998.

15 Q I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE 6TH  
16 OF 2000 AND ASK DID YOU RESPOND TO THE AREA OF FRONTAGE ROAD  
17 AND WOODRUFF ROAD?

18 A YES, MA'AM, I DID.

19 Q TELL THIS JURY WHERE YOU WERE RIGHT BEFORE RESPONDING  
20 THERE AND WHY YOU RESPONDED.

21 A I WAS WORKING A SIDE JOB, COMMONLY REFERRED TO AS  
22 MOONLIGHTING, AT THE BURGER KING AT WOODRUFF ROAD AND I-85.  
23 OUR DISPATCH ADVISED THAT THERE WAS A TROOPER REQUESTING  
24 ASSISTANCE, WOULD NOT ANSWER HIS RADIO AND POSSIBLY SHOTS  
25 FIRED AT THE INTERSECTION OF THE AREA OF I-85 AND 385, AT

CHRIS HINES -- DIRECT BY MS. STROM

1 WHICH TIME I LEFT MY SIDE JOB AND RESPONDED TO THAT AREA.

2 Q DO YOU RECALL APPROXIMATELY WHAT TIME THIS WAS?

3 A IT WAS AROUND LUNCHTIME. I'M NOT EXACTLY SURE OF THE  
4 EXACT TIME.

5 Q PLEASE TELL THIS JURY WHERE YOU WENT.

6 A THE LOCATION ORIGINALLY COME IN AS 385 AND I-85. I  
7 RESPONDED TO THAT LOCATION, TO THAT AREA. I DID NOT OBSERVE  
8 A PATROL CAR OF ANY SORT IN THAT AREA. AND EITHER DISPATCH  
9 OR ANOTHER DEPUTY ADVISED OVER THE RADIO THAT THE TROOPER WAS  
10 AT WOODRUFF ROAD AND I-85 AT WHICH POINT I RESPONDED BACK TO  
11 THE WOODRUFF ROAD I-85 AREA.

12 Q DID YOU GO ONTO THE FRONTAGE ROAD?

13 A RIGHT. AS I CROSSED OVER THE BRIDGE OVER 85 ON WOODRUFF  
14 ROAD I OBSERVED DEPUTY SCOTT ROBERSON'S PATROL CAR TURN ON  
15 FRONTAGE ROAD, AND I LOOKED OVER TO MY RIGHT AND I SAW A  
16 PATROL CAR, A SOUTH CAROLINA HIGHWAY PATROL CAR, SITTING ON  
17 THE FRONTAGE ROAD WITH HIS BLUE LIGHTS ACTIVATED. AS I  
18 PULLED UP I COULD HEAR A SIREN STILL GOING, WHICH I FELT WAS  
19 FROM THE TROOPER'S CAR, AND I SAW DEPUTY ROBERSON GET OUT OF  
20 HIS CAR AND RUN UP TO THE TROOPER'S CAR.

21 Q BY WHOM IS DEPUTY ROBERSON EMPLOYED?

22 A HE'S WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE.

23 Q AND HE ARRIVED THERE SHORTLY BEFORE YOU DID?

24 A YES, MA'AM.

25 Q I BELIEVE YOU STATED THAT THE LIGHTS WERE GOING. ARE

CHRIS HINES -- DIRECT BY MS. STROM

1 YOU TALKING ABOUT THE BLUE LIGHTS?

2 A RIGHT. HIS BLUE LIGHTS WAS ACTIVATED STILL.

3 Q AND THE SIREN WAS GOING WHEN YOU FIRST PULLED UP?

4 A AS I WAS PULLING UP, I COULD HEAR THE SIREN.

5 Q AND DO YOU KNOW IF OFFICER ROBERSON CUT OFF THAT SIREN?

6 A AS I GOT IN MY CAR, I SAW DEPUTY ROBERSON IN THE  
7 PATROL -- IN THE TROOPER'S CAR. IT LOOKED LIKE HE WAS  
8 TURNING OFF THE SIREN. AND AT THAT POINT, IT APPEARED THAT  
9 HE HAD TURNED THE SIREN OFF.

10 Q DID YOU GO UP TO THE AREA OF TROOPER NICHOLSON'S  
11 VEHICLE?

12 A YES, I DID.

13 Q WHAT WAS THE CONDITION OF TROOPER NICHOLSON'S CAR?

14 A I OBSERVED HIS DRIVER'S SIDE DOOR WINDOW WAS SHATTERED.  
15 THE RIGHT REAR GLASS OF THE PASSENGER -- THE RIGHT REAR  
16 PASSENGER DOOR GLASS WAS SHATTERED, THE LITTLE TRIANGLE GLASS  
17 ON THE DOOR, AND I OBSERVED TROOPER NICHOLSON SLUMPED OVER IN  
18 HIS PATROL CAR.

19 Q WERE THERE OTHER OFFICERS -- DID OTHER OFFICERS BEGIN TO  
20 ARRIVE ON THE SCENE?

21 A RIGHT. SHORTLY AFTER I ARRIVED, TWO TROOPERS ARRIVED.  
22 THEY ARRIVED ON SCENE. ONE OF THEM WAS CORPORAL MCCAULEY,  
23 AND I BELIEVE THE OTHER ONE WAS TROOPER CRAFT.

24 Q WERE YOU PRESENT WHEN THEY WERE PERFORMING CPR ON ERIC  
25 NICHOLSON?

CHRIS HINES -- DIRECT BY MS. STROM

1     **A**     RIGHT. I WENT TO THE TRUNK OF MY VEHICLE. THEY HAD  
2     REMOVED TROOPER NICHOLSON FROM THE VEHICLE AND BEGAN CPR, AND  
3     AT THAT POINT THERE WERE SEVERAL WITNESSES OR CIVILIANS  
4     AROUND. WE BEGAN ROPING OFF THE CRIME SCENE WITH CRIME SCENE  
5     TAPE.

6     **Q**     WERE YOU PART OF THE TEAM THAT SECURED THE SCENE BY  
7     PUTTING UP CRIME SCENE TAPE?

8     **A**     YES, MA'AM.

9     **Q**     AND THAT WAS FOR THE PURPOSE OF SECURING THE AREA UNTIL  
10    FORENSICS COULD ARRIVE?

11    **A**     RIGHT.

12    **Q**     DID YOU TALK WITH ANY OF THESE WITNESSES THERE ON THE  
13    SCENE OR DID YOU JUST TAPE OFF THE AREA?

14    **A**     I JUST TAPED OFF THE AREA. I DIDN'T SPEAK WITH ANY  
15    WITNESSES.

16    **Q**     PLEASE TELL THIS JURY, WHAT IS THE PURPOSE OF PUTTING UP  
17    CRIME SCENE TAPE?

18    **A**     IT'S TO KEEP, BASICALLY, EVERYBODY THAT'S NOT INVOLVED  
19    IN THE INVESTIGATION OUT OF THE IMMEDIATE SCENE TO PRESERVE  
20    EVIDENCE. LIKE I SAY, THERE WERE SEVERAL CIVILIANS THERE  
21    THAT WAS IN CLOSE PROXIMITY TO THE AREA AND WE WANTED TO MOVE  
22    THEM BACK, AS WELL AS THE NEWS MEDIA STARTED ARRIVING SHORTLY  
23    THEREAFTER, AND TO KEEP A SECURE AREA SO EVIDENCE COULD BE  
24    COLLECTED WHEN FORENSICS ARRIVED.

25           **MS. STROM:**   THANK YOU. PLEASE ANSWER ANY QUESTIONS THE

CHRIS HINES -- DIRECT BY MS. STROM

1 DEFENSE MAY HAVE.

2 CROSS EXAMINATION BY MR. MAULDIN:

3 Q OFFICER HINES, YOU AND OFFICER ROBER -- NOW, WHEN YOU'RE  
4 REFERRING TO OFFICER ROBERSON, YOU'RE TALKING ABOUT ANOTHER  
5 GREENVILLE COUNTY SHERIFF'S DEPUTY, RIGHT?

6 A YES, SIR.

7 Q AND YOU -- WHEN YOU WERE DOING YOUR OFF DUTY JOB AT THE  
8 BURGER KING DID YOU ACTUALLY HAVE YOUR SERVICE VEHICLE WITH  
9 YOU?

10 A YES, SIR.

11 Q ALL RIGHT.

12 A AND I WAS IN UNIFORM.

13 Q ALL RIGHT. AND THE -- SO YOU WERE HEADING BACK IN THAT  
14 DIRECTION IN A MARKED VEHICLE?

15 A YES, SIR.

16 Q OFFICER ROBERSON WAS ACTUALLY ON DUTY, I BELIEVE, WASN'T  
17 HE?

18 A YES, SIR.

19 Q AND HE WAS HEADING TO THE LOCATION IN ANOTHER MARKED  
20 VEHICLE?

21 A YES, SIR.

22 Q NOW, DID I UNDERSTAND YOU TO SAY THAT Y'ALL BASICALLY  
23 ARRIVED AT THE SAME TIME?

24 A HE ARRIVED PROBABLY 30 SECONDS BEFORE ME.

25 Q WAS HE -- WHEN YOU TURNED ONTO FRONTAGE ROAD AFTER

CHRIS HINES -- CROSS BY MR. MAULDIN

1 SEEING THE TROOPER'S CAR WITH THE BLUE LIGHTS ON, WHEN YOU  
2 TURNED TO GO TOWARD IT WAS HE ALREADY OUT OF HIS VEHICLE?

3 A I BELIEVE HE WAS IN THE PROCESS OF GETTING OUT. I  
4 REALLY DON'T RECALL EXACTLY.

5 Q OKAY. AND LET ME TELL YOU WHAT I'M TRYING TO -- I'M  
6 TRYING TO PIECE TOGETHER AS THE WITNESSES COME IN, YOU KNOW,  
7 WHO'S FIRST, WHO'S SECOND, HOW FAR BEHIND PEOPLE WERE AND ALL  
8 THAT. SO THAT'S WHY I'M -- WHERE I'M KIND OF GOING.

9 CAN YOU TELL ME WHO WAS THERE WHEN YOU GOT THERE?

10 A DEPUTY ROBERSON.

11 Q ALL RIGHT. AND YOU HAD SEEN HIM GET OUT OF HIS CAR?

12 A RIGHT.

13 Q AND HE WAS -- AND HE WOULD HAVE BEEN THE FIRST OFFICER  
14 ON THE SCENE?

15 A RIGHT.

16 Q YOU WOULD HAVE BEEN SECOND?

17 A CORRECT.

18 Q AND THEN RIGHT AS YOU WERE ARRIVING TWO TROOPERS CAME IN  
19 BASICALLY FROM OPPOSITE DIRECTIONS, TURNED ON THE FRONTAGE  
20 ROAD AND---

21 A I DON'T KNOW WHERE THEY CAME FROM. WHEN I TURNED  
22 AROUND, I SAW THEM PULLING UP.

23 Q WELL, THEY ALREADY TESTIFIED, SO I CAN TELL YOU HOW THEY  
24 CAME IN. BUT THEY CAME IN BASICALLY SIMULTANEOUSLY, THE SAME  
25 TIME?

1 A RIGHT.

2 Q BUT YOU AND ROBERSON HAD ALREADY BEEN THERE?

3 A RIGHT.

4 Q NOW, IN TERMS OF TIME, HOW LONG WOULD YOU ESTIMATE YOU  
5 HAD BEEN THERE BEFORE THE TROOPERS ACTUALLY GOT THERE, JUST A  
6 MATTER OF SECONDS?

7 A I WOULD SAY MATTER OF SECONDS, MAYBE A MINUTE.

8 Q OKAY. NOW, WHEN YOU WERE PULLING UP AND OFFICER  
9 ROBERSON WAS GETTING OUT OF HIS CAR THERE WERE CIVILIANS  
10 ALREADY AROUND THE VEHICLE?

11 A THEY WERE STANDING IN THE GRASS AREA, PROBABLY 15 FEET  
12 OR MORE FROM THE VEHICLE.

13 Q SO NOBODY WAS ACTUALLY IN, AND I'LL SAY -- WE'LL USE THE  
14 WORD CLOSE PROXIMITY, FIVE FEET OR LESS TO THE TROOPER'S CAR?

15 A NOT WHEN I ARRIVED.

16 Q THAT YOU COULD SEE?

17 A RIGHT.

18 Q BUT THERE WERE CIVILIANS PRESENT?

19 A RIGHT.

20 Q ALL RIGHT. AND CAN YOU GIVE US A NUMBER, ESTIMATE?

21 A I DON'T RECALL.

22 Q WAS IT LESS THAN 10?

23 A IF I HAD TO GIVE AN EDUCATED GUESS, I WOULD SAY PROBABLY  
24 FOUR TO SIX.

25 Q OKAY. ALL RIGHT. AND WE'RE NOT GOING TO HOLD YOU TO

CHRIS HINES -- CROSS BY MR. MAULDIN

1 THAT. I'M JUST TRYING TO -- THERE WASN'T A BIG CROWD?

2 A NO.

3 Q BUT THERE WERE A FEW CIVILIANS?

4 A YES.

5 Q OFFICER -- YOU SAW OFFICER ROBERSON GO TO THE TROOPER'S  
6 CAR?

7 A RIGHT.

8 Q YOU HEARD THE SIREN TURN OFF?

9 A RIGHT.

10 Q ALL RIGHT. AND YOU DID NOT DISTURB THE SCENE, YOU DID  
11 NOT -- HOW DID YOU -- DID YOU OPEN THE TROOPER'S DOOR?

12 A NO, SIR.

13 Q DID OFFICER ROBERSON OPEN THE DOOR?

14 A I'M NOT SURE WHO OPENED THE DOOR. WHEN I WALKED UP TO  
15 THE CAR, THE DOOR WAS OPEN.

16 Q ALL RIGHT. AND YOU ARRIVED AT THE CAR BEFORE THE  
17 HIGHWAY PATROL TROOPERS DID?

18 A RIGHT.

19 Q BUT YOU DID NOT PARTICIPATE IN TAKING OFFICER NICHOLSON  
20 OUT OF THE VEHICLE?

21 A NO, SIR. THE TROOPERS TOOK HIM OUT.

22 Q ALL RIGHT. DID YOU UNBUCKLE HIS SEAT BELT?

23 A I NEVER WENT INSIDE HIS CAR.

24 Q ALL RIGHT. OKAY.

25 MR. MAULDIN: NOTHING FURTHER. THANK YOU.



CHRIS HINES -- CROSS BY MR. MAULDIN

1           **THE COURT:**    ANY REDIRECT?

2           **MS. STROM:**   NO, SIR.  WE'D ASK THAT THIS OFFICER BE  
3   EXCUSED.

4           **MR. MAULDIN:**  NO OBJECTION.

5           **THE COURT:**  WITHOUT OBJECTION.  DEPUTY HINES, THANK  
6   YOU, SIR.

7           NEXT WITNESS, PLEASE.

8                           (WITNESS EXCUSED AT 5:10 P.M.)

9           **MS. STROM:**   THE STATE CALLS C.A. JORDAN.

10                           **CHAD ANTHONY JORDAN, HAVING**  
11   BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12   **DIRECT EXAMINATION BY MS. STROM:**

13   **Q**    OFFICER JORDAN, IF YOU WOULD, STATE YOUR FULL NAME.

14   **A**    CHAD ANTHONY JORDAN.

15   **Q**    I'M GOING TO NEED FOR YOU TO SPEAK UP AND SPEAK INTO  
16   THAT MICROPHONE SO ALL THESE JURORS CAN HEAR YOU.

17   **A**    OKAY.

18   **Q**    BY WHOM ARE YOU EMPLOYED?

19   **A**    THE GREENVILLE CITY POLICE DEPARTMENT.

20   **Q**    HOW LONG HAVE YOU BEEN EMPLOYED WITH THE GREENVILLE CITY  
21   POLICE DEPARTMENT?

22   **A**    SEVEN YEARS.

23   **Q**    I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER 6TH OF  
24   2000.  DO YOU RECALL GOING TO THE AREA OF WOODRUFF ROAD AND  
25   FRONTAGE ROAD NEAR 85?

CHAD ANTHONY JORDAN -- DIRECT BY MS. STROM

- 1 A YES, I DO.
- 2 Q DO YOU RECALL APPROXIMATELY WHAT TIME THAT WAS?
- 3 A THIS WAS RIGHT AROUND LUNCHTIME.
- 4 Q WERE YOU ON DUTY THAT DAY?
- 5 A I WAS.
- 6 Q AND WHAT WERE YOUR DUTIES?
- 7 A I'M ASSIGNED TO TRAFFIC DIVISION, BASICALLY ACCIDENTS
- 8 AND SAFETY CITATIONS.
- 9 Q WHEN YOU RESPONDED -- FIRST, LET ME ASK YOU THIS. WHY
- 10 DID YOU GO TO THE AREA OF FRONTAGE ROAD AND WOODRUFF ROAD?
- 11 A AT THE TIME THERE I WAS IN THE PROCESS OF EATING LUNCH
- 12 WITH SOME OTHER COWORKERS. A CALL CAME OUT OVER THE RADIO
- 13 FOR A TROOPER THAT NEEDED IMMEDIATE ASSISTANCE, AND HE WAS IN
- 14 THE AREA OF WOODRUFF ROAD AND 85 -- OR THE 385 AND 85 AREA.
- 15 Q AND WHERE WERE YOU?
- 16 A I WAS ON CONGAREE ROAD AT CONGAREE AND HALTON AT
- 17 FAZOLI'S RESTAURANT.
- 18 Q SO THAT'S NOT FAR FROM THE AREA OF 85 AND WOODRUFF ROAD?
- 19 A A COUPLE MILES.
- 20 Q WHEN YOU HEARD THE CALL COME OUT, WHAT DID YOU DO?
- 21 A I IMMEDIATELY HEADED TOWARD THE AREA, MYSELF AND TWO
- 22 OTHER OFFICERS THAT KIND OF KNEW THE AREA. SOON AS WE GOT TO
- 23 THE 385 AND I-85 SPLIT, WE KIND OF SPLIT UP BECAUSE THEY DID
- 24 NOT HAVE AN EXACT LOCATION ON THE TROOPER. SO WE WENT
- 25 DIFFERENT WAYS TO TRY TO LOCATE HIM.

1 Q DID YOU ULTIMATELY LOCATE HIM?

2 A I DID.

3 Q WAS THAT AT THE FRONTAGE ROAD OFF OF WOODRUFF ROAD?

4 A THAT'S CORRECT.

5 Q WHEN YOU ARRIVED THERE AT THE SCENE WHAT DID YOU  
6 OBSERVE?

7 A WHEN I FIRST PULLED UP THERE WAS A TROOPER'S CAR THAT  
8 THE DRIVER'S DOOR WAS OPEN. THE VEHICLE WAS IN THE MIDDLE OF  
9 THE ROADWAY KIND OF ANGLED TO THE ROAD. IT WAS NOT PARALLEL  
10 TO THE ROAD EDGE. THERE WAS A TROOPER THAT WAS ON THE GROUND  
11 LAYING FACE UP. THERE WAS ANOTHER TROOPER THAT WAS  
12 ADMINISTERING CPR TO THAT TROOPER. I NOTICED THAT HIS  
13 DRIVER'S WINDOW HAD BEEN BUSTED OUT BY UNKNOWN MEANS. THE  
14 GLASS WAS ON THE SIDE OF THE -- LAYING ON THE GROUND BESIDE  
15 THE LEFT SIDE OF THE VEHICLE. AND I WENT OVER AND ATTEMPTED  
16 TO ADMINISTER CPR WITH THE OTHER TROOPER.

17 Q DID YOU HAVE AN OCCASION TO LOOK IN THE INSIDE OF THE  
18 TROOPER'S -- OF TROOPER NICHOLSON'S VEHICLE?

19 A I DID.

20 Q DID YOU NOTICE WHAT GEAR THE CAR WAS IN?

21 A THIS WAS AFTER TROOPER NICHOLSON HAD BEEN PLACED IN A  
22 HELICOPTER AND FLOWN AWAY. I WAS JUST KIND OF LOOKING AROUND  
23 TO SEE AND I NOTICED THAT THE VEHICLE HAD APPEARED TO HAVE  
24 BEEN ATTEMPTED TO HAVE BEEN PLACED FROM DRIVE TO PARK, AS IF  
25 HE WAS GOING TO TRY TO GET OUT OR WHAT HAVE YOU. AND THE

CHAD ANTHONY JORDAN -- DIRECT BY MS. STROM

1 GEAR SHIFT APPEARED TO BE IN NEUTRAL, OUT OF DRIVE TOWARD  
2 NEUTRAL GOING TOWARD PARK.

3 Q YOU SAID YOU NOTICED THIS AFTER ERIC NICHOLSON HAD BEEN  
4 TAKEN AWAY FROM THE SCENE FOR ADDITIONAL MEDICAL CARE?

5 A THAT'S CORRECT.

6 Q AND THE CAR WAS IN NEUTRAL?

7 A YES.

8 MS. STROM: THANK YOU. PLEASE ANSWER ANY QUESTIONS THE  
9 DEFENSE MAY HAVE.

10 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) NO  
11 QUESTIONS.

12 THE COURT: OFFICER JORDAN, THANK YOU, SIR. WE  
13 APPRECIATE YOU BEING HERE, SIR.

14 WITNESS: YES, SIR. THANK YOU.

15 MS. STROM: YOUR HONOR, WE'D ASK THAT HE BE EXCUSED.

16 MR. MAULDIN: NO OBJECTION.

17 THE COURT: WITHOUT OBJECTION.

18 (WITNESS EXCUSED AT 5:15 P.M.)

19 THE COURT: NEXT---

20 SOLICITOR ARIAIL: YOUR HONOR, COULD WE JUST HAVE ONE  
21 MINUTE. WE DIDN'T REALIZE WE WERE GOING TO GET THAT FAR  
22 TODAY. WE'VE GOT TO PLUG UP A PIECE OF EQUIPMENT.

23 THE COURT: YES, SIR. THAT WILL BE FINE.

24 (PAUSE)

25 MS. STROM: YOUR HONOR, MAY WE APPROACH?

CHAD ANTHONY JORDAN -- DIRECT BY MS. STROM

1       **THE COURT:**     SURE.

2       (BENCH CONFERENCE OFF RECORD FROM 5:16 TO 5:17 P.M.)

3       **THE COURT:**     LADIES AND GENTLEMEN, IT'S GOING TO TAKE  
4 ABOUT 10 MINUTES TO GET THIS THING PUT TOGETHER. SO WHY  
5 DON'T WE JUST TAKE A SHORT BREAK AGAIN AND GET YOU RIGHT BACK  
6 OUT HERE? THANK YOU.

7                       (JURY EXITS COURTROOM AT 5:17 P.M.)

8       (A RECESS WAS TAKEN FROM 5:17 TO 5:30 P.M.)

9       **SOLICITOR ARIAIL:**   APPARENTLY, HE WANTS TO OBJECT, I  
10 THINK, TO TWO PHOTOGRAPHS.

11       **MR. MAULDIN:**   YOUR HONOR, THERE ARE A COUPLE OF  
12 PHOTOGRAPHS WE WANT TO -- THAT ARE GOING TO BE PUT ON THIS  
13 MACHINE THAT -- WE'RE GOING TO KEEP THEM IN ORDER. HERE'S  
14 YOUR TOP. ALL RIGHT. AND THE -- ONCE THEY ARE, OF COURSE,  
15 PUBLISHED, THE DAMAGE IS DONE. SO I WANT THE COURT TO REVIEW  
16 -- THIS ONE IS 3J, AND WE -- THE NATURE OF THE OBJECTION IS,  
17 ESSENTIALLY IS, UNLESS THEY HAVE SOME PROBATIVE POINT TO MAKE  
18 THE OBJECTION GOES TO THE EXISTENCE OF PHOTOGRAPHS ATTACHED  
19 TO THE DASH. AND THIS ONE ESSENTIALLY IS SIMILAR. THERE ARE  
20 NUMEROUS PHOTOGRAPHS OF THE INTERIOR OF THE CAR. AND WE TAKE  
21 THE POSITION THAT THEY ARE CUMULATIVE AT THE ABSOLUTE BEST  
22 AND THEY DO BRING INTO CONSIDERATION MATTERS THAT WE DON'T  
23 THINK SHOULD BE BECAUSE THERE IS REALLY NO VALUE TO THE  
24 ADDITIONAL PHOTOGRAPHS WHICH SHOW THAT.

25       **THE COURT:**     YES, SIR.

MATTERS AND MOTIONS

1           **SOLICITOR ARIAIL:** HE IS OBJECTING TO THE PHOTOS ON THE  
2 DASH. THEY'RE GOING TO COME IN IN ANOTHER PHOTOGRAPH THAT IS  
3 HIGHLY PROBATIVE. IT SHOWS THE CAR IN NEUTRAL. SO THE  
4 PURPOSE OF THAT PHOTOGRAPH IS TO SHOW THE -- I DON'T KNOW  
5 WHICH ONE IT IS BECAUSE I CAN'T SEE THEM FROM HERE. BUT  
6 THERE IS ONE THAT SHOWS THE DASH. 3S SHOWS THE DASH AND WHAT  
7 WE DID WAS BLOW UP 3U, SAME PICTURE BUT WE TOOK A SECTION TO  
8 BLOW UP THE GEAR SHIFT. SO THAT'S THE PROBATIVE EFFECT OF  
9 THOSE TWO.

10           **MR. MAULDIN:** THEN WE OBJECT TO THIS ONE. IF HE'S  
11 GOT---

12           **THE COURT:** IF IT'S THE SAME ONE AND YOU JUST HAVE A  
13 SEGMENT OF IT ENLARGED---

14           **SOLICITOR ARIAIL:** THE PROBLEM IS THE SEGMENT THAT'S  
15 ENLARGED IS OVER THE---

16           **MR. MAULDIN:** PASS IT UP THERE.

17           **SOLICITOR ARIAIL:** IT'S OVER A PART -- OVER A PORTION  
18 OF THE PICTURE. AND THE PART HE IS OBJECTING TO IS GOING TO  
19 BE IN THERE ANYWAY.

20           **MR. MAULDIN:** PASS THAT ONE UP THERE TOO SO HE CAN LOOK  
21 AT IT.

22           **SOLICITOR ARIAIL:** HE WANTS TO PASS UP 3U.

23           **MR. MAULDIN:** YOU KNOW, 3U, WE DO -- ARE CONSCIOUS OF A  
24 PROBATIVE ARGUMENT THERE. SO I -- I OBJECT TO 3U BUT I DON'T  
25 THINK I CAN POSSIBLY SUCCEED ON THAT BECAUSE IT HAS A

MATTERS AND MOTIONS

1 POIGNANT PROBATIVE POINT. AND THE OTHER ONE IS JUST SIMPLY  
2 THROWN IN FOR WHATEVER THE STATE SAYS IT'S THROWN IT FOR.  
3 BUT WE OBJECT TO IT.

4 THE COURT: ALL RIGHT. I UNDERSTAND 3S AND 3U. WHAT'S  
5 THE OTHER ONE?

6 MR. MAULDIN: THE OTHER ONE IS THIS ONE, YOUR HONOR.  
7 AS FAR AS WE'RE AWARE, THERE IS NO PROBATIVE VALUE OF THAT  
8 PHOTOGRAPH.

9 THE COURT: THAT'S THIS ONE?

10 SOLICITOR ARIAIL: THAT'S CORRECT.

11 THE COURT: AND WHAT IS YOUR POSITION ON THIS ONE?

12 SOLICITOR ARIAIL: PROBATIVE VALUE IS JUST IT'S ANOTHER  
13 ANGLE OF ANOTHER PICTURE OF THE INTERIOR OF THE CAR SHOWING  
14 THE GLASS, SHOWING THE MICROPHONE, AND SHOWING ANOTHER ANGLE  
15 FROM THE INTERIOR. OBVIOUSLY, IF THERE ARE SOME OTHER  
16 PICTURES FROM ANOTHER ANGLE, I DON'T KNOW THAT I SHOULD BE  
17 LIMITED TO WHAT ANGLE. THE DEFENSE OUGHT NOT TO BE TELLING  
18 ME WHAT ANGLE I CAN SHOW OF THE INTERIOR OF THE CAR. THE  
19 POINT THERE IS THAT -- I'M NOT SURE WHAT HIS OBJECTION IS.  
20 IS IT STILL THE DASH PHOTO?

21 MR. MAULDIN: YES, SIR.

22 SOLICITOR ARIAIL: WELL, THEY'RE IN ANYWAY.

23 THE COURT: ALL RIGHT. PART OF THE ARGUMENT IS  
24 CUMULATIVE. AND I WILL KEEP THOSE IN THE SAME ORDER YOU  
25 HANDED THEM TO ME. BUT IF I COULD LOOK AT THOSE, THAT WILL,

MATTERS AND MOTIONS

1 I THINK, ALLOW ME TO MAYBE ASSESS THIS CUMULATIVE ARGUMENT A  
2 LITTLE BIT BETTER.

3 SOLICITOR ARIAIL: ALL RIGHT.

4 THE COURT: AND I WILL KEEP THEM IN THE SAME ORDER YOU  
5 GIVE THEM TO ME.

6 SOLICITOR ARIAIL: THAT'S ALL RIGHT. I CAN GET THEM  
7 BACK. THEY'RE ALREADY MARKED BY NUMBER.

8 THE COURT: (REVIEWS PHOTOGRAPHS) ANYTHING FURTHER,  
9 COUNSEL?

10 SOLICITOR ARIAIL: NO. NOTHING FURTHER FROM THE STATE.

11 THE COURT: I WOULD SUSTAIN THE OBJECTION TO 3S. I  
12 BELIEVE 3U IS SUFFICIENT AND CONTAINS THE ENLARGEMENT OF THE  
13 GEAR SHIFT INDICATOR. I WOULD OVERRULE THE OBJECTION TO 3J.  
14 SO 3U, WHICH IS A DUPLICATE OF 3S, ASSUMING THE FOUNDATION IS  
15 LAID, WOULD BE ADMITTED. 3S WOULD NOT BE. BUT I WOULD  
16 OVERRULE THE OBJECTION AND ALLOW 3J INTO EVIDENCE. TO THE  
17 EXTENT THE STATE EXCEPTS TO MY RULING ON 3S, YOU ARE WELCOME  
18 TO MARK IT FOR IDENTIFICATION FOR THE PURPOSE OF THE RECORD.

19 SOLICITOR ARIAIL: OKAY. I DON'T HAVE AN EXCEPTION. I  
20 JUST COULDN'T FIND THE DURN THINGS THAT YOU WERE TALKING  
21 ABOUT.

22 THE COURT: OH, I HAVE THEM.

23 SOLICITOR ARIAIL: OH, YOU HAVE THEM. OKAY. TELL ME  
24 WHAT I'M DOING NOW.

25 THE COURT: YOU'LL HAVE TO GIVE THEM BACK PROBABLY.



MATTERS AND MOTIONS

1 3S IS OUT BECAUSE 3U IS THE SAME PICTURE BUT WITH THE  
2 ENLARGEMENT. SO THIS IS THE ONE TO WHICH I SUSTAINED THE  
3 OBJECTION.

4 SOLICITOR ARIAIL: OKAY. SO THIS ONE IS OUT. I JUST  
5 DON'T WANT TO PUT ANYTHING IN...

6 THE COURT: THE OTHER ONE IS SHOWN IN OTHER PHOTOGRAPHS  
7 BUT THEY ARE FROM DIFFERENT ANGLES AND I WOULD OVERRULE THE  
8 OBJECTION TO THAT. I CAN'T REMEMBER WHAT ITEM THAT IS.

9 SOLICITOR ARIAIL: 3U AND 3J. (PAUSE) THIS ONE'S OUT.

10 THE COURT: 3J OBJECTION WILL BE OVERRULED, ASSUMING  
11 THE FOUNDATION IS LAID. OKAY. ARE WE READY TO GO?

12 SOLICITOR ARIAIL: THERE IS NO OBJECTION.

13 THE COURT: IF YOU'VE GOT ANYBODY ELSE THAT WANTS TO  
14 COME IN, NOW WOULD BE THE TIME.

15 BRING THE JURY, PLEASE.

16 (JURY ENTERS COURTROOM AT 5:39 P.M.)

17 THE COURT: WE'RE READY TO PROCEED. CALL YOUR NEXT  
18 WITNESS, PLEASE, SIR.

19 SOLICITOR ARIAIL: THE STATE CALLS DAR SHAW.

20 DARWIN SHAW, HAVING BEEN DULY  
21 SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

23 Q MR. SHAW, IF YOU WOULD, STATE YOUR NAME FOR THE RECORD,  
24 PLEASE, SIR.

25 A DARWIN SHAW.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 Q AND IF YOU WOULD, BE SURE TO KEEP YOUR VOICE UP SO THESE  
2 LAST TWO JURORS DOWN HERE ON THE END CAN HEAR YOU.

3 A YES, SIR.

4 Q IF YOU WOULD, TELL US BY WHOM ARE YOU EMPLOYED.

5 A THE DEPARTMENT OF PUBLIC SAFETY FORENSIC DIVISION.

6 Q AND THE DEPARTMENT OF PUBLIC SAFETY IS A GREENVILLE  
7 COUNTY AGENCY?

8 A THAT'S CORRECT.

9 Q TELL US WHAT YOU DO -- WELL, FIRST TELL US WHAT THE  
10 GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY DOES.

11 A THERE ARE VARIOUS AGENCIES WITHIN THE DEPARTMENT OF  
12 PUBLIC SAFETY, WHICH INCLUDES THE JAIL, THE FORENSIC  
13 DIVISION, THE LATENT SECTION, THE RECORDS SECTION AND  
14 PROPERTY AND EVIDENCE.

15 Q AND YOU WORK IN WHAT PART?

16 A FORENSICS.

17 Q AND FORENSICS, WHAT DOES FORENSICS DO -- WHAT PURPOSE  
18 DOES IT SERVE?

19 A WE RESPOND TO CRIME SCENES AND ASSIST THE OFFICERS,  
20 INVESTIGATORS WITH PROCESSING SCENES, WHICH INCLUDE  
21 PHOTOGRAPHIC DOCUMENTATION, PROCESSING FOR LATENT  
22 FINGERPRINTS IF NECESSARY, LOCATING EVIDENCE, DOCUMENTING AND  
23 COLLECTING EVIDENCE AS NECESSARY, AND PREPARING A WRITTEN  
24 REPORT AS FAR AS THE ACTIONS THAT WE TAKE.

25 Q ALL RIGHT. SO THE JURY WILL UNDERSTAND, YOU ARE NOT

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 CONNECTED WITH ANY LAW ENFORCEMENT AGENCY?

2 A NO, SIR.

3 Q YOU ARE INDEPENDENT FROM THE LAW ENFORCEMENT AGENCY BUT  
4 YOU SUPPORT EVERY LAW ENFORCEMENT AGENCY WITHIN THE COUNTY?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. SO IF THE CITY OF SIMPSONVILLE, THE CITY OF  
7 GREER HAS A CASE, YOU WOULD BE CALLED AND YOU WOULD RESPOND?

8 A THAT'S CORRECT.

9 Q IN THIS CASE DID YOU HAVE OCCASION TO RESPOND TO AN  
10 INCIDENT ON DECEMBER THE 6TH OF THE YEAR 2000 AROUND  
11 LUNCHTIME, TWELVE O'CLOCK?

12 A YES, SIR.

13 Q AND LET ME GO BACK JUST A MINUTE AND ASK YOU, HOW LONG  
14 HAVE YOU BEEN WITH THE DEPARTMENT OF PUBLIC SAFETY?

15 A A LITTLE OVER THREE YEARS.

16 Q AND PRIOR TO THAT DID YOU HAVE OTHER LAW ENFORCEMENT  
17 EXPERIENCE AND BACKGROUND?

18 A YES, SIR.

19 Q WHAT WAS THAT EXPERIENCE?

20 A I WAS WITH A POLICE DEPARTMENT IN NEBRASKA FOR 21 YEARS,  
21 SEVEN YEARS AS A ROAD OFFICER AND 14 YEARS AS AN  
22 INVESTIGATOR.

23 Q AND THREE YEARS HERE WITH THE GREENVILLE COUNTY  
24 DEPARTMENT OF PUBLIC SAFETY FORENSICS DIVISION?

25 A YES, SIR.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 Q NOW, ON DECEMBER THE 6TH TELL ME -- OR TELL THE JURY HOW  
2 YOU CAME TO RESPOND TO THE AREA OF WOODRUFF ROAD AND I-85.

3 A WELL, ACTUALLY TWO TECHNICIANS AND MYSELF WERE GOING TO  
4 LUNCH WHEN THEY CALLED. IT WAS BROADCAST OVER THE RADIO  
5 ABOUT AN OFFICER NEEDING ASSISTANCE. AT THAT POINT IN TIME  
6 IT WAS UNCLEAR IF IT WAS WOODRUFF AND 85 OR WOODRUFF AND 385,  
7 SO I CHOSE THE 85 WOODRUFF EXIT TO RESPOND TO SEE IF I COULD  
8 FIND OUT IF THERE WAS AN OFFICER THERE.

9 Q AND WHERE DID YOU RESPOND TO, WHAT AREA BEFORE YOU  
10 ACTUALLY GOT TO THE AREA WHERE YOU STOPPED?

11 A I GOT OFF ON THE WOODRUFF EXIT AND A HIGHWAY PATROL  
12 OFFICER PASSED ME SO I FOLLOWED HIM TO ACROSS 85 TO A  
13 FRONTAGE ROAD ON THE OTHER SIDE OF 85.

14 Q IN FRONT OF THE OLD HOECHST CELANESE FIBER INDUSTRIES  
15 PLANT?

16 A THAT'S CORRECT.

17 Q AND WHEN YOU ARRIVED WHAT DID YOU OBSERVE FIRST?

18 A AS SOON AS I GOT TO THAT LOCATION I OBSERVED SEVERAL  
19 PATROL VEHICLES, HIGHWAY PATROL VEHICLES, AND DEPUTIES. I  
20 DID SEE ONE HIGHWAY PATROL VEHICLE WITH THE DOORS OPEN AND  
21 OBSERVED A UNIFORM OFFICER ON THE GROUND NEXT TO THE VEHICLE  
22 ON THE DRIVER'S SIDE AND TWO OTHER OFFICERS PERFORMING CPR ON  
23 THAT INDIVIDUAL.

24 Q AND WHEN YOU ARRIVED WHAT WAS THE FIRST THING THAT YOU  
25 BEGAN DOING?

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 A I GRABBED MY CAMERA AND BEGAN TAKING OVERALL PHOTOGRAPHS  
2 OF THE SCENE TO INCLUDE VEHICLES OR INDIVIDUALS THAT MIGHT BE  
3 IN THE IMMEDIATE AREA.

4 Q AND THAT'S PART OF THE DUTIES OF A FORENSIC TECHNICIAN  
5 WITH THE DEPARTMENT OF PUBLIC SAFETY FORENSIC DIVISION IS TO  
6 PHOTOGRAPH THIS CRIME SCENE?

7 A THAT'S CORRECT.

8 Q THAT'S A NORMAL PROCESS THAT YOU GO THROUGH?

9 A YES, SIR.

10 Q ALL RIGHT. MR. SHAW, LET ME SHOW YOU WHAT I HAVE  
11 PREVIOUSLY MARKED AS STATE'S EXHIBITS 3A THROUGH U OMITTING S  
12 AND ASK IF YOU WOULD MIND LOOKING AT THOSE PHOTOGRAPHS AND  
13 TELL ME IF YOU TOOK THOSE PHOTOGRAPHS AND IF THEY ARE AN  
14 ACCURATE REPRESENTATION OF THE SCENE AS YOU OBSERVED IT ON  
15 DECEMBER THE 6TH OF 2000.

16 A (COMPLIES) EXCLUDING 3U, YES.

17 Q ALL RIGHT. LET ME SEE 3U. ALL RIGHT. WE'LL TALK ABOUT  
18 3U IN A MOMENT.

19 SOLICITOR ARIAIL: YOUR HONOR, AT THIS TIME WE WOULD  
20 OFFER 3A THROUGH T.

21 THE COURT: SUBJECT TO THE EARLIER STATED---

22 MR. MAULDIN: I'M ASSUMING THERE IS AN OMISSION IN  
23 THERE SOMEWHERE.

24 SOLICITOR ARIAIL: OF S.

25 MR. MAULDIN: RIGHT.

1 THE COURT: THANK YOU.

2 MR. MAULDIN: NO OTHER OBJECTION, YOUR HONOR.

3 THE COURT: VERY GOOD.

4 (STATE'S EXHIBITS 3A THROUGH 3R AND 3T, PHOTOGRAPHS,  
5 MOVED INTO EVIDENCE)

6 Q LET ME GO BACK TO 3U AND ASK YOU IF -- TELL ME YOUR --  
7 YOU HAVE SEEN THAT PHOTOGRAPH PREVIOUSLY?

8 A YES, SIR, I HAVE.

9 Q ALL RIGHT. AND DID YOU TAKE THE PHOTOGRAPH ITSELF?

10 A YES, I TOOK THE ORIGINAL PHOTOGRAPH EXCLUDING THE SMALL  
11 BLOWUP THAT IS CIRCLED IN THAT.

12 Q ALL RIGHT. NOW, THE CIRCLED IN RED BLOW UP PART OF THAT  
13 IS A -- A TECHNOLOGICAL WAY OF ENHANCING THE -- A PORTION OF  
14 THE PHOTOGRAPH, CORRECT?

15 A THAT'S CORRECT.

16 Q AND DID YOU OBSERVE THAT PHOTOGRAPH BEFORE IT WAS BLOWN  
17 UP AND AFTER IT WAS BLOWN UP?

18 A YES, SIR.

19 Q ALL RIGHT. AND THAT WAS DONE BY THE DEPARTMENT OF  
20 PUBLIC SAFETY FORENSICS DIVISION?

21 A THAT'S CORRECT.

22 Q AND IN PARTICULAR LIEUTENANT PETERSON DID THAT?

23 A LIEUTENANT PETERSON.

24 Q AND DID YOU VIEW HIM DOING THAT OR VIEW IT AFTER IT WAS  
25 DONE?

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 A I VIEWED IT AFTER IT WAS DONE.

2 Q ALL RIGHT. AND IN YOUR VIEW IS IT AN ACCURATE  
3 REPRESENTATION OF THE BLOW UP?

4 A YES, SIR.

5 Q OKAY.

6 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD LIKE TO OFFER  
7 3U.

8 MR. MAULDIN: HAVING NOT ANTICIPATED THAT, I WOULD HAVE  
9 TO OBJECT AS TO THE FOUNDATION. IF THIS OFFICER DID NOT DO  
10 IT BUT ONLY OBSERVED IT BEING DONE BY SOMEBODY ELSE, I'M NOT  
11 SURE IT WOULD BE PROPER FOUNDATION AT THIS TIME, YOUR HONOR.  
12 SO ONLY ON THOSE TECHNICAL GROUNDS I HAVE TO---

13 THE COURT: IF HE OBSERVED IT AND WHAT IS REFLECTED IN  
14 THE PHOTOGRAPH ACCURATELY DEPICTS WHAT IS REPRESENTED, THAT  
15 WOULD BE APPROPRIATE IN MY JUDGMENT AND I'M GOING TO PERMIT  
16 ON THAT BASIS.

17 SOLICITOR ARIAIL: ALL RIGHT. THANK YOU VERY MUCH.

18 (STATE'S EXHIBIT NUMBER 3U, PHOTOGRAPH, MOVED INTO  
19 EVIDENCE)

20 Q WHAT I'M GOING TO DO, MR. SHAW, SO WE CAN GO OVER THESE  
21 INDIVIDUALLY, I'M GOING TO SHOW YOU OR PLACE ON THE PRESENTER  
22 PHOTOGRAPH 3A AND LET YOU, IF YOU WOULD, I'LL ASK YOU  
23 QUESTIONS AND WE'LL RUN THROUGH THESE TO SORT OF SET THE  
24 SCENE THAT YOU OBSERVED WHEN YOU ARRIVED THERE SO THE JURY  
25 CAN UNDERSTAND.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1        ALL RIGHT. DESCRIBE FOR US WHAT THE DIRECTION IN WHICH  
2        THAT PHOTOGRAPH IS TAKEN AND WHAT WE'RE LOOKING AT TO ORIENT  
3        US.

4        A     THE -- IN THE BACKGROUND WOODRUFF ROAD IS RUNNING AND  
5        THE INTERSECTION OF 85 AND WOODRUFF ROAD IS DIRECTLY BEHIND  
6        THE VEHICLE. WHEN I WAS DOING THE PHOTOGRAPH THE CONDITIONS  
7        OF THE DOOR BEING OPEN AND DAMAGE TO THE WINDOW ON THE  
8        DRIVER'S SIDE, AS I STARTED THE PHOTOGRAPHS AT A DISTANCE I  
9        MOVED CLOSER TO GET CLOSER IDENTIFICATION OF THE VEHICLE AND  
10       OTHER AREAS OF DAMAGE.

11       Q     ALL RIGHT. AND JUST TO MAKE -- LET ME GO BACK AND SHOW  
12       YOU 3B, 3B BEING A LITTLE BROADER FURTHER AWAY SHOT. SAME  
13       VEHICLE?

14       A     THAT'S CORRECT.

15       Q     LET ME GIVE YOU -- I'M HANDING YOU THIS LASER POINTER SO  
16       YOU CAN KIND OF -- WHEN YOU TALK ABOUT AN OBJECT YOU CAN TRY  
17       TO DO IT. IT'S A LITTLE DIFFICULT. SEE IF YOU CAN.

18             SHOW US THEN TROOPER NICHOLSON'S CAR AND THEN SHOW US  
19       WHERE WOODRUFF ROAD IS AND INTERSTATE 85.

20       A     THERE'S IS TROOPER NICHOLSON'S CAR. WOODRUFF ROAD RUNS  
21       THIS DIRECTION.

22       Q     OKAY.

23       A     AND THEN COMING OFF WOULD BE THE OFF RAMP OF 85 ONTO  
24       WOODRUFF ROAD AT THIS INTERSECTION.

25       Q     THEN I-85 WOULD BE OVER HERE TO THE LEFT OUT OF THE



DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 PHOTOGRAPH?

2 A THAT'S CORRECT.

3 Q OKAY. LET ME SHOW YOU 3C. THAT IS A PHOTOGRAPH ALSO OF  
4 TROOPER NICHOLSON'S CAR?

5 A YES, SIR.

6 Q ALL RIGHT. AND THAT IS AT A LATER TIME?

7 A THAT'S CORRECT.

8 Q WHEN EXACTLY WOULD THAT HAVE BEEN?

9 A AFTER I COLLECTED ALL OF THE EVIDENCE FROM THE SCENE,  
10 THE GREENVILLE POLICE DEPARTMENT WANTED TO DO A  
11 RECONSTRUCTION OF THE SCENE, AND I MARKED -- EXCUSE ME. THE  
12 AREAS IN ORANGE AT THE FRONT IN THESE AREAS HERE ARE WHERE  
13 THE CASINGS, SHELL CASINGS, WERE LOCATED. THE CAR WAS  
14 MARKED. AND THIS PHOTOGRAPH WAS TAKEN AT THE REQUEST OF  
15 OFFICER GREENWAY OF THE POLICE DEPARTMENT.

16 Q NOW, I WANT TO TALK ABOUT THESE ORANGE SPOTS JUST A  
17 MINUTE AND SHELL CASINGS BECAUSE -- EXPLAIN TO THE JURY WHAT  
18 A SHELL CASING IS.

19 A A SHELL CASING IS THE SOLID PORTION OF A BULLET. IT IS  
20 NOT THE PROJECTILE THAT IS EMITTED BUT IT IS THE SHELL CASING  
21 THE IS LEFT. IT HAS A PRIMER IN IT EXCEPT FOR A .22 CALIBER.  
22 IT HAS A PRIMER AND THAT'S WHAT EJECTS THE PROJECTILES FROM  
23 THE WEAPON.

24 Q AND THE CASING ACTUALLY HOLDS THE PROJECTILE AND THE  
25 PRIMER AND THE LEAD CORE AND THE JACKET AND EVERYTHING ELSE?

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 A THAT'S CORRECT.

2 Q WHEN THE GUN IS FIRED THE CASING STAYS AND EVERYTHING  
3 ELSE GOES?

4 A IN A REVOLVER IT STAYS. IN A SEMIAUTOMATIC IT'S EJECTED  
5 OUT OF THE EJECTION PORT.

6 Q OKAY. IN SOME GUNS IT IS EJECTED, IN OTHERS IT STAYS?

7 A THAT'S CORRECT.

8 Q AND THOSE ORANGE MARKS ARE WHERE YOU RETRIEVED THESE  
9 CASINGS WE'RE GOING TO TALK ABOUT IN A MINUTE?

10 A YES, SIR.

11 Q LET ME SHOW YOU WHAT IS MARKED AS 3E. IF YOU WOULD,  
12 ORIENT US TO THAT ONE.

13 A THIS IS JUST A REAR PORTION OF TROOPER NICHOLSON'S  
14 VEHICLE. I JUST TOOK A PHOTOGRAPH FROM THE BACK TOWARDS THE  
15 FRONT SHOWING THE DRIVEWAY WITH THE ISLAND GOING INTO THE  
16 INDUSTRIAL AREA.

17 Q AND WOODRUFF ROAD WOULD BE TO OUR BACK?

18 A NO, SIR, IT WOULD BE TO THE RIGHT.

19 Q AND 85 WOULD ALSO BE TO THE RIGHT?

20 A 85 WOULD BE FROM THE FRONT PORTION OF THE VEHICLE IF YOU  
21 WOULD GO STRAIGHT AHEAD WOULD RUN INTO 85. FROM THE  
22 PASSENGER SIDE OF THE VEHICLE, WOODRUFF WOULD BE ON THE LEFT.

23 Q OKAY. LET ME SHOW YOU THEN ANOTHER PHOTOGRAPH, NUMBER  
24 3D. WHAT DOES THAT DEPICT?

25 A THIS IS A PHOTOGRAPH, A CLOSEUP PHOTOGRAPH OF THE DAMAGE

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 TO THE DRIVER'S WINDOW.

2 Q OKAY. AND 3F?

3 A THAT IS DAMAGE TO THE REAR PASSENGER VENT WINDOW WHERE  
4 THERE'S A HOLE IN THE WINDOW. THE WINDOW WAS BROKEN, SO I  
5 PHOTOGRAPHED THE DAMAGE TO THAT.

6 Q OKAY. LET ME SHOW YOU 3H.

7 A THOSE ARE RODS THAT ARE PUT IN, AND THEY'RE CALLED  
8 TRAJECTORY RODS. IT WAS IN AN EFFORT TO FIND THE PATH OF ANY  
9 PROJECTILES THAT WENT INTO THE VEHICLE. THE RODS WERE  
10 ACTUALLY IN PROJECTILE HOLES LEADING TO A PARTICULAR AREA.

11 Q OKAY. AND THE ONE IN PARTICULAR, THE ROD IN THE MIDDLE,  
12 WHAT DOES THAT INDICATE?

13 A THIS INDICATES THE ANGLE THE PROJECTILE ENTERED THE BACK  
14 SIDE OF THE MIRROR, WHICH WOULD BE THE PLASTIC PORTION, AND  
15 THE PROJECTILE WAS ACTUALLY FOUND EMBEDDED IN THE DOOR PANEL  
16 ON THE OTHER SIDE.

17 Q OKAY. NOW, THE TRAJECTORY ROD GOING THROUGH THE MIDDLE  
18 OF THE PICTURE, WHAT DOES IT ATTACH TO?

19 A THE ROD ACTUALLY EXTENDS FROM THE OPENING IN THE  
20 WINDOW -- THERE WAS A TICKET BOOK, IT APPEARED TO BE A TICKET  
21 BOOK, ON THE FRONT SEAT, AND A MANILA ENVELOPE THAT WAS  
22 LEANING AGAINST THE FRONT OF THE PASSENGER SEAT. AND YOU CAN  
23 SEE WHERE A PROJECTILE GRAZED THE TOP OF THE TICKET BOOK,  
24 THAT METAL TICKET BOOK, WENT THROUGH THE MANILA FOLDER INTO  
25 THE FRONT PORTION OF THE PASSENGER SEAT, EXITED THE REAR

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 PORTION OF THE PASSENGER SEAT. A PROJECTILE WAS FOUND IN THE  
2 ASHTRAY ON THE REAR PASSENGER DOOR.

3 Q OKAY. WHEN WE GET TO THAT WE WILL REFER BACK TO THIS  
4 PARTICULAR PHOTOGRAPH HERE.

5 LET ME SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 3G.

6 OKAY. WHAT ARE THOSE LITTLE TENT CARDS, AS I CALL THEM?

7 A THOSE ARE PLACARDS. WHEN I FIRST ARRIVED AT THE SCENE  
8 AND OBSERVED SHELL CASINGS ON THE GROUND BECAUSE OF E.M.S.  
9 PERSONNEL AND SO MANY PEOPLE IN THE AREA IT WAS HARD TO  
10 PHOTOGRAPH THE LOCATION OF WHERE THE SHELL CASINGS WERE AT.  
11 SO AFTER SOME PEOPLE HAD MOVED OUT OF THE WAY WHERE I COULD  
12 ACCESS, I PLACED NUMBERED PLACARDS BY EACH SHELL CASING THAT  
13 I FOUND.

14 Q ALL RIGHT. AND WHEN YOU TALK ABOUT PEOPLE MOVING OUT OF  
15 THE WAY, YOU'RE TALKING ABOUT E.M.S. PEOPLE, PEOPLE WHO WERE  
16 WORKING ON TROOPER NICHOLSON?

17 A THAT'S CORRECT.

18 Q AND AT EACH ONE OF THOSE TENT CARDS DID YOU COLLECT A  
19 SHELL CASING?

20 A YES, SIR, I DID.

21 Q LET ME SHOW YOU WHAT I HAVE MARKED PREVIOUSLY AS STATE'S  
22 EXHIBITS 4 THROUGH (PAUSE) 4 THROUGH 10 AND ASK YOU IF YOU  
23 WOULD MIND LOOKING AT THOSE AND TELL ME IF YOU COLLECTED  
24 THOSE ITEMS.

25 A (COMPLIES) YES, SIR. WHAT'S MARKED AS EXHIBIT 4

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 THROUGH EXHIBIT 10, WHAT I HAVE DONE IS I HAVE PLACED MY  
2 INITIALS BESIDE EACH SHELL CASING THAT WAS COLLECTED. SO  
3 WHAT I WOULD HAVE IS DS8 THROUGH DS14, ACTUALLY SEVEN SHELL  
4 CASINGS WHICH WERE COLLECTED -- WHICH CORRESPOND WITH THE  
5 PLACARDS.

6 Q AND SO THE JURY IS NOT CONFUSED BECAUSE THIS IS -- WHEN  
7 YOU SAY DS -- YOU USE A NUMBERING SYSTEM DS, I BELIEVE YOU  
8 STARTED ON THAT WITH DS8, THAT MEANS DAR SHAW NUMBER 8?

9 A THAT'S CORRECT.

10 Q THAT'S THE WAY YOU START COLLECTING YOUR EVIDENCE?

11 A THAT'S CORRECT.

12 Q BUT IN THIS CASE AT THIS POINT THEY ARE MARKED AS  
13 STATE'S EXHIBITS 4 THROUGH 10?

14 A YES, SIR.

15 Q AND YOU COLLECTED THOSE AT THE PLACARDS?

16 A YES, SIR, I DID.

17 Q AND AFTER YOU COLLECTED THOSE --

18 SOLICITOR ARIAIL: (OFF RECORD WITH MR. MAULDIN)

19 MR. MAULDIN: NO OBJECTION FOR IDENTIFICATION ONLY AT  
20 THIS POINT, YOUR HONOR.

21 Q MR. SHAW, IN REGARD TO STATE'S EXHIBITS 4 THROUGH 10,  
22 AFTER YOU COLLECTED THEM WHAT DID YOU DO WITH THEM?

23 A THEY WERE PLACED IN THOSE COIN ENVELOPES AT THAT TIME  
24 WITH THE TIME OF COLLECTION AND THEN I PUT THOSE IN MY  
25 VEHICLE UNTIL I DID FURTHER COLLECTION OF EVIDENCE.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY. NOW, EVENTUALLY WHEN YOU LEFT THE SCENE WHERE DID  
2 YOU TAKE THESE?

3 A BACK TO THE LAW ENFORCEMENT CENTER TO THE FORENSIC  
4 DIVISION.

5 Q AND WHEN IT GOES BACK TO THE LAW ENFORCEMENT DIVISION  
6 WHERE DO YOU PLACE THEM?

7 A THOSE PARTICULAR ITEMS WE EACH HAVE OUR PERSONAL SHELVES  
8 FOR EVIDENCE TO BE PLACED ON. WE HAVE TO DO A PROPERTY AND  
9 EVIDENCE SHEET WHICH WILL CORRESPOND WITH THE ITEMS AT LEAST  
10 IDENTIFYING WHAT WAS COLLECTED AND PUT ON OUR SHELF.

11 Q AND THEN WHERE DO THEY GO?

12 A ONCE THE -- ALL THE EVIDENCE IS COLLECTED, THEN IT'S  
13 PACKAGED AND PUT INTO THE DEPARTMENT OF PUBLIC SERVICE  
14 PROPERTY AND EVIDENCE SECTION.

15 Q AND DID YOU SO PLACE THOSE IN PROPERTY AND EVIDENCE?

16 A YES, SIR, I DID.

17 Q AFTER YOU FILLED OUT THE APPROPRIATE PAPERWORK?

18 A THAT'S CORRECT.

19 Q AND UNTIL SUCH TIME AS THEY WERE PLACED IN PROPERTY AND  
20 EVIDENCE WERE THEY IN YOUR CUSTODY AND CONTROL?

21 A YES, SIR.

22 Q NOW, AFTER YOU COLLECTED THE SHELL CASINGS I WANT TO  
23 SHOW YOU SOME -- DID YOU COLLECT ANY ITEMS OF CLOTHING?

24 A YES, SIR.

25 Q ALL RIGHT. LET ME SHOW YOU WHAT HAS BEEN PREMARKED AS

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 EXHIBIT NUMBER 22. (PAUSE) I WANT TO FIRST ASK YOU IF YOU  
2 WOULD TO LOOK AT THAT, DETERMINE IF YOU IN FACT COLLECTED IT  
3 AND IF SO...

4 A YES, SIR, I DID.

5 Q AND WHAT IS THAT ITEM AND WHERE DID YOU COLLECT IT?

6 A THIS IS A BALLISTIC BULLETPROOF VEST AND IT WAS  
7 COLLECTED FROM THE REAR OF THE VEHICLE WHERE THE CLOTHING  
8 ITEMS WERE LOCATED.

9 Q AND THE CLOTHING ITEMS YOU ARE TALKING ABOUT ARE TROOPER  
10 NICHOLSON'S SHIRT, PANTS, HAT, THAT SORT OF THING?

11 A THAT'S CORRECT.

12 Q TELL US ONCE YOU COLLECTED THAT ITEM WHAT YOU DID WITH  
13 IT.

14 A THE VEST HAD BODY FLUIDS ON IT SO IT NEEDED TO BE PLACED  
15 INTO A DRYING ROOM WHERE IT COULD DRY. SO UPON MY ARRIVAL AT  
16 THE OFFICE I TOOK IT OUT OF THE BAG AND I PLACED IT INTO OUR  
17 SECURED DRYING ROOM AND HUNG IT UP IN A CUBICLE TO DRY.

18 Q ALL RIGHT. AND FOR THE JURY'S INFORMATION AND ALSO THE  
19 COURT, EXPLAIN ABOUT THE DRYING ROOM AND THE CUBICLE AND THAT  
20 SORT OF THING.

21 A IT'S A ROOM THAT IS SEPARATE FROM -- IT HAD ONE ENTRANCE  
22 WHERE TECHNICIANS HAVE KEYS TO THAT ROOM. IT'S USED TO HAVE  
23 A SPECIAL VENTILATION SYSTEM AND IT'S USED TO PUT CLOTHING  
24 ITEMS IF THEY ARE BLOODY ITEMS, BODILY FLUID ITEMS, INTO A  
25 SPECIFIC ROOM SO THAT THEY ARE ALLOWED TO AIR DRY. THERE ARE

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 CUBICLES THAT ARE SET UP WITH RODS, METAL RODS, WE USE COAT  
2 HANGERS AND HANG THEM UP. EACH CUBICLE IS NUMBERED AND THE  
3 PROPERTY AND EVIDENCE SHEET WILL CORRESPOND WITH THE NUMBER  
4 OF THE CUBICLE YOU PUT IT IN.

5 Q AND EACH CUBICLE APPLIES MAINLY TO A DIFFERENT CASE?

6 A THAT'S CORRECT.

7 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD OFFER STATE'S  
8 EXHIBIT NUMBER 22 FOR IDENTIFICATION AT THIS POINT.

9 THE COURT: FOR IDENTIFICATION OR IN EVIDENCE?

10 SOLICITOR ARIAIL: FOR IDENTIFICATION.

11 THE COURT: FOR IDENTIFICATION.

12 MR. MAULDIN: NO OBJECTION TO THAT.

13 Q NOW I WANT TO ASK YOU IF YOU ALSO HAD OCCASION TO  
14 COLLECT EVIDENCE -- ADDITIONAL EVIDENCE AT THE SCENE FROM THE  
15 INTERIOR OF THE VEHICLE.

16 A YES, SIR, I DID.

17 Q TELL US HOW YOU WENT ABOUT DOING THAT.

18 A ORIGINALLY, I HAD CHECKED THE INTERIOR OF THE VEHICLE  
19 LOOKING FOR ANY TYPE OF EVIDENCE. AND IN THIS PARTICULAR  
20 CASE IT WAS RELATING TO DISCHARGING A FIREARM, WHETHER IT BE  
21 PROJECTILES, BITS AND PIECES OF LEAD FROM COPPER JACKETING,  
22 THOSE ITEMS I LOOKED FOR THOSE THAT WERE VISIBLE AND IN PLAIN  
23 VIEW. AT THAT POINT IN TIME INVESTIGATOR SILVAGGIO AND  
24 MYSELF DISCUSSED WHAT ITEMS WERE VISIBLE. I DISCUSSED IT  
25 WITH HIM PRIOR TO DOING ANY COLLECTING SO HE WOULD KNOW WHAT



DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 I WAS LOOKING TO GET. AND IF THERE WAS OTHER EVIDENCE IT  
2 WOULD HAVE TO BE COLLECTED LATER ON BY DIFFERENT MEANS . IT  
3 WAS JUST IN VISIBLE VIEW.

4 Q ALL RIGHT. AND YOU SAY DETECTIVE SILVAGGIO, AND HE IS  
5 HERE, RIGHT HERE?

6 A THAT'S CORRECT.

7 Q HE'S WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE?

8 A YES, SIR.

9 Q WHAT WAS HIS ROLE IN THIS PARTICULAR CASE?

10 A HE WAS THE LEAD INVESTIGATOR FOR THIS CASE.

11 Q AND YOU CONSULTED WITH HIM AFTER VIEWING THE INTERIOR OF  
12 THE CAR TO DETERMINE WHAT TO COLLECT?

13 A YES, SIR.

14 Q ALL RIGHT. AND THEN DID YOU BEGIN PROCESSING THE  
15 INTERIOR OF THE CAR TO COLLECT THAT?

16 A YES, I DID.

17 SOLICITOR ARIAIL: THIS IS PROBABLY A GOOD PLACE TO  
18 STOP.

19 THE COURT: VERY GOOD.

20 LADIES AND GENTLEMEN, WE'RE GOING TO BREAK HERE FOR THE  
21 EVENING. WE'LL RESUME THE DIRECT EXAMINATION OF THE WITNESS  
22 WHEN WE START BACK IN THE MORNING. DURING THE EVENING BREAK,  
23 AS I'VE TOLD YOU THROUGHOUT, PLEASE DO NOT DISCUSS THIS CASE.  
24 WE WILL START BACK AT NINE O'CLOCK IN THE MORNING. I  
25 UNDERSTAND THAT'S WHAT Y'ALL'S PREFERENCE IS, AND I WILL

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 CERTAINLY HONOR THAT. SO WE'LL START BACK AT 9:00, AND I'LL  
2 SEE YOU THEN. HAVE A PLEASANT EVENING. THANK YOU.

3 (JURY EXITS COURTROOM AT 6:08 P.M.)

4 THE COURT: THE JURY HAS BEEN EXCUSED. YOU HAD  
5 SOMETHING, MR. MAULDIN?

6 MR. MAULDIN: ONE MOMENT, YOUR HONOR. YOUR HONOR, I  
7 WOULD LIKE TO REQUEST THAT OFFICER SHAW -- I KNOW HE KNOWS  
8 THE RULES -- BUT I WOULD LIKE FOR HIM TO BE REMINDED  
9 REGARDING THE FACT THAT HIS TESTIMONY IS BEING INTERRUPTED.

10 NUMBER TWO, YOUR HONOR, I WOULD LIKE FOR THE COURT  
11 TOMORROW MORNING BEFORE WE GET STARTED TO GIVE THE JURY AN  
12 INSTRUCTION ON THE HANDLING OF OBJECTIONS, YOU KNOW, THAT  
13 THEY ARE TECHNICAL DETERMINATIONS OF THE LEGAL ISSUES AND  
14 THAT THEY SHOULD NOT HOLD AGAINST EITHER SIDE RULINGS AND TRY  
15 TO FIGURE OUT WHAT HAPPENED. SO I ASK FOR THAT INSTRUCTION.

16 THE COURT: I DON'T SEE A PROBLEM. JUST BRING THAT TO  
17 MY ATTENTION AGAIN IN THE MORNING.

18 MR. MAULDIN: YES, SIR.

19 THE COURT: IF YOU WOULD, PLEASE, SIR.

20 AND, MR. SHAW, I KNOW YOU ARE WELL AWARE OF THE RULES,  
21 NO CONTACT OR DISCUSSION ABOUT YOUR TESTIMONY WITH ANYONE  
22 CONNECTED WITH THE CASE UNTIL YOUR TESTIMONY IS CONCLUDED.

23 WITNESS: YES, SIR.

24 THE COURT: THANK YOU, SIR. SEE YOU TOMORROW.

25 SOLICITOR ARIAIL: YOUR HONOR, WHAT TIME ARE WE

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 STARTING BACK?

2 THE COURT: NINE O'CLOCK.

3 SOLICITOR ARIAIL: 9:00 A.M.

4 THE COURT: WE'RE IN RECESS.

5 (COURT ADJOURNED FOR THE DAY AT 6:10 P.M.)

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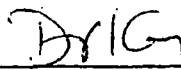
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**CERTIFICATE**

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 8TH DAY OF FEBRUARY, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 20, 2003

  
\_\_\_\_\_  
DAWN V. KOFFSKEY  
COURT REPORTER

STATE OF SOUTH CAROLINA )

IN THE COURT OF

COUNTY OF GREENVILLE )

GENERAL SESSIONS

THE STATE )  
OF SOUTH CAROLINA, )

VOLUME V

-vs-

01-GS-23-3106  
TRANSCRIPT OF RECORD  
TRIAL - GUILT PHASE  
DAY 2 (2/9/02)

JOHN RICHARD WOOD, )

DEFENDANT. )

FEBRUARY 4-16, 2002  
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

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

ROBERT M. ARIAIL, Esquire  
Solicitor of the 13th Circuit  
BETTY C. STROM, Esquire  
Deputy Solicitor  
MINDY HERVEY, Esquire  
Assistant Solicitor

JOHN I. MAULDIN, Esquire  
Public Defender  
JAMES BANNISTER, Esquire  
Co-counsel for the Defendant  
RODNEY RICHEY, Esquire  
Co-counsel for the Defendant

DAWN V. KOFFSKEY  
Court Reporter

1146A

MATTERS AND MOTIONS

1 (TRIAL RESUMED AT 9:24 A.M. ON 2/9/02)

2 THE COURT: THE DELAY IS THE RESULT OF THE JURY HAVING  
3 TO ORDER LUNCH, FINDING A RESTAURANT TO ACCOMMODATE AND  
4 DELIVER, TO SUBMIT ORDERS TO THE COURTHOUSE, MAKE COPIES AND  
5 DISPENSE THE ORDER FORMS TO MEMBERS OF THE JURY, COURT  
6 SECURITY OFFICERS AND OTHERS. WE HAVE NOW, I BELIEVE,  
7 COMPLETED THE PROCESS OF TAKING THE LUNCH ORDER. LOGISTICAL  
8 THINGS LIKE THAT NEED TO BE DONE.

9 ARE WE READY TO PROCEED?

10 SOLICITOR ARIAIL: YES, YOUR HONOR.

11 MR. MAULDIN: JUST TO REMIND YOUR HONOR REGARDING MY  
12 SUGGESTION THAT THE JURY BE GIVEN A GENERAL INSTRUCTION  
13 REGARDING THE HANDLING OF OBJECTIONS FOR EITHER SIDE.

14 THE COURT: AND THE GIST OF IT IS THAT WE'RE SIMPLY  
15 HERE TRYING TO FOLLOW THE RULES. WE'RE ALL UNDER A DUTY TO  
16 MAKE SURE THE RULES OF EVIDENCE ARE FOLLOWED AND THERE IS NO  
17 INFERENCE TO BE DRAWN FROM EITHER SIDE WHEN AN OBJECTION IS  
18 MADE. IT IS PART OF THE DUTIES THAT WE ALL OPERATE UNDER.

19 MR. MAULDIN: THAT'S RIGHT, YOUR HONOR.

20 THE COURT: IS THAT SUFFICIENT?

21 MR. MAULDIN: AND ALSO, YOUR HONOR, OBVIOUSLY, THERE IS  
22 THE POINT THAT THE COURT HAS NO -- THE RULING SHOULD NOT  
23 INDICATE HOW THE COURT FEELS ABOUT THE FACTS OF THE CASE. I  
24 THINK THAT'S ALSO PART OF IT.

25 THE COURT: OKAY.

MATTERS AND MOTIONS

1           WHEN THEY ARE READY AND HAVE TURNED ALL THE ORDERS IN,  
2 GO AHEAD AND BRING THEM.

3           WE'RE GOING TO RESUME WHERE WE LEFT OFF WITH---

4           SOLICITOR ARIAIL:   YES, SIR.

5           THE COURT:   ---OFFICER SHAW?  HE CAN COME FORWARD TO  
6 THE WITNESS STAND THEN.

7                       (JURY ENTERS COURTROOM AT 9:26 A.M.)

8           THE COURT:   GOOD MORNING, LADIES AND GENTLEMEN.  I  
9 UNDERSTAND ALL THE ORDERS HAVE BEEN TAKEN FOR LUNCH.  WE ARE  
10 READY TO PROCEED.

11           LET ME JUST MAKE A COUPLE OF COMMENTS TO YOU.  DURING  
12 THE COURSE OF A TRIAL THERE ARE NATURALLY OBJECTIONS.  WE ALL  
13 OPERATE UNDER CERTAIN RULES, THE SOUTH CAROLINA RULES OF  
14 EVIDENCE, WHICH WE ARE DUTY BOUND TO FOLLOW.  IN THE COURSE  
15 OF THAT SOMETIMES A QUESTION WILL ARISE THAT WE NEED TO  
16 DISCUSS TO MAKE SURE THAT THE RULES ARE FOLLOWED.

17           WHEN YOU HEAR AN OBJECTION TO EVIDENCE, IT'S NOTHING  
18 UNUSUAL.  IT'S SIMPLY INSURING THAT THE PROCESS MAINTAINS ITS  
19 INTEGRITY.  DO NOT INFER FROM AN OBJECTION BEING MADE  
20 ANYTHING INAPPROPRIATE IS REQUIRED.  IT'S PART OF THE TRIAL  
21 -- THE COURSE OF A TRIAL.

22           AND ALSO, WHEN I ADDRESS MOTIONS, WHEN I RULE ON A  
23 MOTION ONE WAY OR THE OTHER, PLEASE DO NOT CONSTRUE FROM ANY  
24 RULING OR ANY COMMENT IN HANDLING THAT OR ANY OTHER ASPECT OF  
25 THE CASE THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS

MATTERS AND MOTIONS

1 CASE. I MENTIONED THAT TO YOU DURING JURY QUALIFICATION. I  
2 THINK I REITERATED THAT DURING THE INDIVIDUAL QUESTIONING AS  
3 WELL. I JUST WANT TO MAKE SURE YOU UNDERSTAND THAT SO THE  
4 COLLOQUY THAT GOES ON BETWEEN ME AND THE ATTORNEYS IS SIMPLY  
5 TO INSURE THAT THE RULES OF EVIDENCE ARE FOLLOWED, AND DO NOT  
6 CONSTRUE ANY COMMENT THAT I MAKE IN THAT REGARD AS ANY  
7 OPINION OF THE FACTS OR THE WEIGHT OR VALUE OF ANY SUCH  
8 EVIDENCE.

9 SOLICITOR, YOU MAY RESUME WITH YOUR DIRECT EXAMINATION.

10 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

11 DARWIN SHAW, HAVING BEEN  
12 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION CONTINUES BY SOLICITOR ARIAIL:

14 Q MR. SHAW, YESTERDAY AT THE TIME WE SUSPENDED YOU  
15 IDENTIFIED THE SEVEN CASINGS LOCATED AROUND THE OUTSIDE OF  
16 THE VEHICLE. I BELIEVE THOSE ARE STATE'S EXHIBITS 4 THROUGH  
17 10?

18 A YES, SIR.

19 Q AND WE HAD GONE TO THE SECOND ITEM, WHICH WAS  
20 IDENTIFICATION OF THE BALLISTICS VEST WORN BY ERIC NICHOLSON  
21 THAT YOU HAD ALSO COLLECTED, WHICH IS STATE'S EXHIBIT 22.

22 A YES, SIR.

23 Q AND THEN WE HAD PROCEEDED TO THE POINT THAT YOU WERE  
24 GOING TO PROCESS THE INSIDE OF THE VEHICLE FOR POTENTIAL  
25 EVIDENCE.



DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1       NOW, DID YOU -- I BELIEVE YOU SAID YESTERDAY THAT YOU  
2       HAD CONSULTED WITH PAUL SILVAGGIO, THE LEAD INVESTIGATOR FOR  
3       THE GREENVILLE COUNTY SHERIFF'S OFFICE ABOUT HOW TO GO ABOUT  
4       PROCESSING THE CAR?

5       A     YES, SIR.

6       Q     EXPLAIN TO THE JURY THE RELATIONSHIP BETWEEN THE LEAD  
7       INVESTIGATOR AND THE FORENSIC PERSON WHO IS RESPONSIBLE FOR  
8       PROCESSING AND COLLECTING EVIDENCE.

9       A     THE -- AS FAR AS MY POSITION, IT'S TO COLLECT ANY  
10      EVIDENCE RELATING TO THE CASE.  WHAT I DID, I DID AN INITIAL  
11      WALK THROUGH OR GOING THROUGH THE VEHICLE LOOKING FOR  
12      POTENTIAL ITEMS OF EVIDENCE THAT NEEDED TO BE COLLECTED.  I  
13      SPOKE WITH INVESTIGATOR SILVAGGIO.  I EXPLAINED TO HIM THAT  
14      THERE WERE CERTAIN ITEMS THAT WERE IN PLAIN VIEW THAT WOULD  
15      BE COLLECTED FIRST.  AND THE OTHER ITEMS THAT APPEARED LIKE A  
16      PROJECTILE PENETRATED THE METAL DOOR OF THE BACK DOOR, THOSE  
17      ITEMS WOULD HAVE TO BE RETRIEVED.  WE JUST CONSULTED WITH  
18      EACH OTHER AS TO THE TYPES OF EVIDENCE THAT WOULD BE  
19      COLLECTED FROM THE VEHICLE.

20      Q     ALL RIGHT.  AND IN THE PROCESS OF COLLECTING THAT  
21      EVIDENCE YOU ARE ALSO MINDFUL OF TECHNIQUES THAT ARE  
22      NECESSARY NOT TO DESTROY POTENTIAL OTHER EVIDENCE?

23      A     THAT'S CORRECT.

24      Q     ALL RIGHT.  NOW, LET ME -- LET'S GO BACK TO, IF WE  
25      COULD, THESE PHOTOGRAPHS, AND I'M GOING TO START SHOWING

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 THESE THAT DEAL WITH THE INTERIOR OF THE VEHICLE, AND YOU CAN  
2 SHOW US -- YOU'RE GOING TO NEED YOUR LITTLE RED POINTER.  
3 I'LL GET IT FOR YOU. (PAUSE)

4 SOME OF THESE ARE GENERAL AND SOME WILL BE SPECIFIC.  
5 LET ME REFER YOU TO ONE THAT'S BEEN MARKED AS STATE'S EXHIBIT  
6 3I. IF YOU WOULD, JUST TELL THE JURY WHAT THAT REPRESENTS.

7 A THAT'S JUST A PHOTOGRAPH INSIDE OF THE DRIVER'S DOOR OF  
8 THE BROKEN GLASS ON THE RUNNING PANEL AND ALSO ON THE SEAT.

9 Q AND THAT'S TAKEN FROM THE DRIVER'S SIDE DOOR?

10 A THAT'S CORRECT.

11 Q AND THAT'S THE FRONT SEAT?

12 A YES, SIR.

13 Q AND THEN 3J?

14 A AGAIN, THAT'S JUST A PHOTOGRAPH OF THE INTERIOR OF  
15 VEHICLE. THERE WAS A PIECE OF EVIDENCE ON THE FLOOR, ON THE  
16 FLOORBOARD, I BELIEVE, SOMEWHERE IN THIS AREA, A LEAD  
17 FRAGMENT THAT WHEN THE FLASH WENT OFF IT DIDN'T PICK THAT  
18 ITEM UP. IT WAS SPECIFICALLY TO JUST FOCUS ON THE DRIVER'S  
19 SEAT AND ON THE STEERING WHEEL, IN THAT AREA.

20 Q ALL RIGHT. AND IN REGARD TO THAT PICTURE THERE, ARE YOU  
21 FAMILIAR WITH THE MICROPHONE? DID YOU NOTICE THE MICROPHONE  
22 FOR THE RADIO?

23 A YES, SIR.

24 Q SHOW THE JURY WHERE THAT IS LOCATED.

25 A THE MICROPHONE IS USUALLY ATTACHED. THIS IS THE RADIO

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 SYSTEM. AND I BELIEVE THE MICROPHONE IS THERE.

2 Q ALL RIGHT. AND LET ME SHOW YOU STATE'S EXHIBIT NUMBER  
3 3K AND ALSO ASK YOU ABOUT THE MICROPHONE AND A COUPLE OF  
4 OTHER -- WHAT'S THE DIFFERENCE BETWEEN THIS ONE AND THE  
5 PREVIOUS PHOTOGRAPH?

6 A IT'S TAKEN FROM THE OPPOSITE SIDE OF THE VEHICLE.

7 Q ALL RIGHT. AND THERE AGAIN YOU CAN SEE THE MICROPHONE?

8 A (INDICATING)

9 Q THE PHOTOGRAPH IS NOT AS CLEAR AS I WOULD LIKE IT ON  
10 THAT, BUT CAN YOU SEE ALSO THE GEAR SHIFT LEVER AND THE  
11 POSITION OF THE KEYS IN THE IGNITION?

12 A THE IGNITION WAS IN THE ON -- IS IN THE ON POSITION.  
13 FROM THIS VIEW I CAN'T SEE THE ACTUAL GEAR SELECTOR.

14 Q ALL RIGHT. LET ME SHOW YOU THEN STATE'S EXHIBIT 3T AND  
15 SEE IF WE CAN GET A BETTER SHOT OF THAT. SEE THE GEAR SHIFT  
16 THERE?

17 A YES, SIR. THE GEAR SHIFT -- THE SELECTOR DOES NOT  
18 APPEAR TO BE IN THE PARK POSITION.

19 Q OKAY. AND LET ME SHOW YOU WHAT WE HAVE MARKED AS  
20 STATE'S EXHIBIT 3U. LET ME TRY 3U. IT DEALS WITH THE GEAR  
21 SHIFT ALSO. THIS IS A LITTLE BLURRIER THAN I WOULD LIKE, BUT  
22 I CAN BRING IT TO YOU. IF I MAGNIFY IT, IT BLURS IT A LITTLE  
23 BIT. BUT THE POINT IS TO INDICATE THE MARKING OF THE GEAR  
24 SHIFT LEVER. HAVE YOU REVIEWED THIS PHOTOGRAPH  
25 INDEPENDENTLY?

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 A YES, I HAVE.

2 Q AND POINT OUT TO THE JURY WHEN THEY GET A CHANCE TO VIEW  
3 IT A LITTLE CLOSER WHAT THEY'RE GOING TO SEE IN REGARD TO THE  
4 MARKING OF THE GEAR SHIFT LEVER.

5 A IN THE ORIGINAL PHOTOGRAPH BEFORE THE MAGNIFICATION YOU  
6 CAN SEE THE SELECTOR DIAL, THE ILLUMINATED DIAL, APPEARS TO  
7 BE IN THE NEUTRAL POSITION. ALSO, IF MAGNIFIED FURTHER, IF  
8 YOU WILL LOOK, THE WHITE SELECTOR HERE AS FAR AS ILLUMINATED  
9 IS IN THE NEUTRAL POSITION.

10 Q OKAY. THANK YOU.

11 NOW, WHEN YOU BEGAN PROCESSING FOR EVIDENCE IN THE  
12 INTERIOR WHAT EXACTLY ARE YOU LOOKING FOR?

13 A IN THIS PARTICULAR CASE BECAUSE IT WAS INVOLVING A  
14 FIREARM I WAS LOOKING FOR ANY EVIDENCE REGARDING TO  
15 PROJECTILES, FRAGMENTS OF PROJECTILES, LEAD, COPPER JACKETS,  
16 ANYTHING RELATING TO THE DISCHARGE OF A WEAPON.

17 Q ALL RIGHT. AND THE END RESULT OF THAT PROCESS, WHAT ARE  
18 YOU ANTICIPATING WILL BE THE NEED FOR THAT SORT OF EVIDENCE?

19 A WELL, IF THERE ARE ANY PROJECTILES THAT ARE LOCATED THAT  
20 ARE IN SUFFICIENT SHAPE TO BE TESTED, BALLISTICS MAY BE  
21 AFFECTED BY THAT.

22 Q SO POTENTIAL BALLISTICS EXAMINATION?

23 A YES, SIR.

24 Q ALL RIGHT. NOW YOU'VE TALKED -- JUST SAID SEVERAL TERMS  
25 THERE THAT THE JURY MAY NOT BE FAMILIAR WITH. PROJECTILES,

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 WHAT IS A PROJECTILE?

2 A A PROJECTILE COULD BE ANY OBJECT THAT CAN PENETRATE SOME  
3 TYPE OF A SOLID ITEM. NORMALLY A PROJECTILE AS FAR AS A  
4 FIREARM IS CONCERNED IS THE ACTUAL BULLET, THE LEAD PORTION  
5 OF THE CARTRIDGE THAT IS FIRED THAT PENETRATES EITHER THE  
6 SEAT OR THE WINDOW OR SOMETHING TO THAT EFFECT.

7 Q AND YOU HAVE ALREADY TALKED ABOUT THE CASING BEING THE  
8 BASE WHERE THE LEAD CORE IS CONTAINED. WHAT IS A JACKET?

9 A THE LEAD PROJECTILE IS ENCASED IN A COPPER JACKET. IT  
10 IS COMPRESSED INTO THE SHELL CASING. THAT'S TO HOLD THE LEAD  
11 PIECE IN PLACE.

12 Q SO YOU ARE LOOKING FOR PROJECTILES IN THE SENSE OF A  
13 LEAD CORE AND YOU ARE LOOKING FOR A JACKET FRAGMENT OR  
14 JACKETS AND YOU ARE LOOKING FOR CASINGS. WHAT IS THE WORD  
15 FRAGMENT? WHAT DOES THAT INDICATE?

16 A WHEN A PROJECTILE STRIKES A SOLID OBJECT, IT COULD BE A  
17 SHARP OBJECT, PIECES OF LEAD COME OFF OF THE LEAD CORE. THE  
18 JACKET CAN SEPARATE AND HIT A SOLID OBJECT AND CAN SPLIT AND  
19 BREAK INTO SMALL FRAGMENTS AND THOSE ARE THE ITEMS THAT I'M  
20 LOOKING FOR.

21 Q ALL RIGHT. AND DID YOU FIND ANY SUCH ITEMS WHEN YOU  
22 PROCESSED THE VEHICLE?

23 A YES, SIR, I DID.

24 Q LET ME SHOW YOU WHAT WE HAVE MARKED AS STATE'S EXHIBITS  
25 11 THROUGH 19 AND ASK YOU IF YOU COLLECTED THOSE ITEMS?

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 A (REVIEWS EXHIBITS) YES, SIR, I DID.

2 Q ALL RIGHT. AND WHEN YOU COLLECTED EACH ONE OF THOSE,  
3 HOW DID YOU PACKAGE THEM?

4 A I PACKAGED THEM INDIVIDUALLY. I USED SMALL COIN  
5 PACKETS.

6 Q NOT IN THE CELLOPHANE OR A GLASSINE ENVELOPE?

7 A THAT'S CORRECT.

8 Q ALL RIGHT. AND ON THAT PACKAGING, THAT BROWN ENVELOPE  
9 INSIDE, DID YOU MAKE ANY PARTICULAR MARKINGS TO IDENTIFY WHAT  
10 YOU HAD COLLECTED?

11 A YES, SIR. ONCE I FOUND WHAT I COLLECTED EACH INDIVIDUAL  
12 ITEM, AS FAR PROJECTILES OR FRAGMENTS, I NOTATED THE TIME AND  
13 ALSO WHERE I COLLECTED THE FRAGMENT FROM.

14 Q AND DID YOU INITIAL THAT WITH YOUR NUMBER?

15 A THAT'S CORRECT.

16 Q ALL RIGHT. THAT WOULD BE DS WHATEVER AS YOU COLLECTED  
17 EVIDENCE AND THE NUMBERS KEPT GOING UP?

18 A YES, SIR.

19 Q ALL RIGHT. IF YOU WOULD HOLD THOSE AND WHAT I WANT TO  
20 DO IS STARTING WITH STATE'S EXHIBIT NUMBER 11 -- AND SOME OF  
21 THESE WE HAVE -- I WANT TO SHOW YOU SOME PHOTOGRAPHS  
22 CONTEMPORANEOUSLY AS WE'RE TALKING ABOUT IT, BUT LET'S TALK  
23 ABOUT STATE'S EXHIBIT 11. WHAT IS IT?

24 A IT'S A PROJECTILE INCLUDING THE COPPER JACKET. THERE IS  
25 LEAD AND ALSO THE COPPER JACKET.

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 Q WHERE WAS IT LOCATED?

2 A IT WAS IN THE ASHTRAY OF THE REAR PASSENGER DOOR.

3 Q OKAY. LET ME SHOW YOU A SERIES OF PHOTOGRAPHS. STATE'S  
4 EXHIBIT NUMBER 3N. DOES THAT RELATE TO STATE'S EXHIBIT  
5 NUMBER 11?

6 A YES, SIR. THE ASHTRAY IS LOCATED IN THIS AREA. THE  
7 LITTLE DOOR TO THE ASHTRAY WAS ACTUALLY SHATTERED, BROKEN,  
8 AND THE PROJECTILE WAS FOUND INSIDE OF THE ASHTRAY.

9 Q ALL RIGHT. LET ME BACK THAT UP JUST A LITTLE BIT.

10 ALL RIGHT. WE TALKED EARLIER ABOUT THE -- YOU WERE  
11 DOING SOME TRAJECTORY RODS?

12 A YES, SIR.

13 Q AND YOU TALKED ABOUT A HOLE IN THE TICKET BOOK AND THE  
14 SEAT. CAN YOU POINT THAT OUT, WHAT YOU'VE BEEN TALKING  
15 ABOUT?

16 A THE -- IN THIS AREA THERE IS A HOLE WHICH WAS AN EXIT  
17 HOLE. THERE WAS ALSO A PIECE OF FOAM RUBBER, WHICH IS INSIDE  
18 OF THE SEAT, A PIECE OF FOAM RUBBER LAYING ON THE SEAT  
19 CUSHION OF THE BACK SEAT. SO THAT WOULD BE THE EXIT HOLE  
20 WHICH THE PROJECTILE CAME THROUGH AND ENDED UP IN THE  
21 ASHTRAY.

22 Q LET ME SHOW YOU STATE'S EXHIBIT 30, A CLOSE UP VIEW OF  
23 THE ASHTRAY, AND LET ME ASK YOU, IS THAT YOUR PEN?

24 A YES, SIR.

25 Q AND IS THAT -- WHAT IS THAT OBJECT YOU ARE HOLDING?

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

- 1     A     THAT IS JUST A SCALE TO -- THAT WE USE WHEN WE TAKE  
2     PHOTOGRAPHS. WE TAKE USUALLY A PHOTOGRAPH WITHOUT A SCALE  
3     AND THEN ONE WITH A SCALE.
- 4     Q     AND THE PROJECTILE IS WHERE?
- 5     A     RIGHT THERE, SIR.
- 6     Q     COPPER FULLY JACKETED PROJECTILE?
- 7     A     THAT'S CORRECT.
- 8     Q     THAT ONE HAD NOT SHATTERED AND HAD NOT -- THE JACKET HAD  
9     NOT BROKEN OFF?
- 10    A     THAT'S CORRECT, SIR.
- 11    Q     ALL RIGHT. LET'S GO TO STATE'S NUMBER 12.
- 12    A     IT'S A COPPER JACKET THAT WAS COLLECTED FROM THE REAR  
13    PASSENGER DOOR AT THE BOTTOM.
- 14    Q     ALL RIGHT. THIS IS SEPARATE FROM THE ONE IN THE  
15    ASHTRAY?
- 16    A     YES, SIR.
- 17    Q     LET ME SHOW YOU TWO PHOTOGRAPHS IN REGARD TO THAT,  
18    STATE'S EXHIBIT 3Q -- AND BEFORE WE BEGIN TALKING, WAS THE  
19    DOOR IN THAT CONDITION WHEN YOU ARRIVED?
- 20    A     NO, SIR.
- 21    Q     IN COLLECTING EVIDENCE DID YOU IN FACT REMOVE THE LAYER  
22    OF DOOR TO COLLECT THAT?
- 23    A     YES, SIR, I DID.
- 24    Q     AND THAT'S THE EXTENT YOU GO TO TO COLLECT EVIDENCE?
- 25    A     YES, SIR.



DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 Q AND DID YOU SO COLLECT A PIECE OF EVIDENCE THERE?

2 A YES, I DID.

3 Q AND THAT IS STATE'S EXHIBIT NUMBER 12?

4 A YES, SIR.

5 Q WHAT DID YOU COLLECT THERE?

6 A IT WAS A COPPER JACKET OF THE INSIDE OF THE REAR  
7 PASSENGER DOOR. IT WAS AT THE BOTTOM INSIDE THE DOOR.

8 Q NOW, THE JACKET IS ON THE OUTSIDE OF THE LEAD CORE?

9 A THAT'S CORRECT.

10 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 3R  
11 AND ASK YOU IF THAT RELATES TO STATE'S EXHIBIT NUMBER 12?

12 A YES, SIR.

13 Q WHAT IS THAT?

14 A THIS IS -- IT'S A DRAIN AREA FOR WATER SO WATER DOESN'T  
15 BUILD UP INSIDE THE DOOR. AND SO IN LOOKING AT THE INSIDE OF  
16 THE DOOR, I OBSERVED THE JACKET IN THIS PORTION OF THE DRAIN  
17 AREA.

18 Q ALL RIGHT. NOW, STATE'S EXHIBIT NUMBER 13?

19 A THAT, SIR, IS A COPPER JACKET THAT WAS COLLECTED FROM  
20 THE DASH, THE FRONT DASH, BETWEEN THE WINDSHIELD AND THE  
21 STEERING WHEEL.

22 Q ALL RIGHT. LET ME SHOW YOU STATE'S EXHIBIT 3P. DOES  
23 THAT RELATE TO STATE'S EXHIBIT 13?

24 A YES, SIR. THE COPPER JACKET IS LOCATED AGAIN BETWEEN  
25 THE DASH AND THE FRONT WINDSHIELD.

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 Q THAT IS A JACKET NOT A PROJECTILE, NOT A CORE?

2 A THAT'S CORRECT.

3 Q STATE'S EXHIBIT NUMBER 14?

4 A THAT IS A COPPER JACKET COLLECTED FROM THE INTERIOR  
5 DOOR, THE DOOR PANEL ON THE INSIDE OF THE DRIVER'S DOOR.

6 Q ALL RIGHT. AND IS THAT -- THE ONE BEHIND THE SPOTLIGHT  
7 HANDLE AT THE TOP?

8 A NO, SIR. I DON'T BELIEVE IT IS. I BELIEVE THIS ONE WAS  
9 WHEN I TOOK THE DOOR PANEL OFF ON THE INSIDE IT WAS STUCK  
10 BETWEEN THE VAPOR BARRIER, THE PLASTIC VAPOR BARRIER, AND THE  
11 DOOR PANEL ITSELF.

12 Q ALL RIGHT. AND THAT'S ON THE DRIVER'S SIDE DOOR?

13 A YES, SIR.

14 Q ALL RIGHT. THE NEXT ONE?

15 A IT'S A COPPER JACKET COLLECTED FROM THE FRONT DRIVER'S  
16 DOOR -- OR THE DRIVER'S SIDE FLOOR BOARD.

17 Q OKAY. THAT WAS THE ONE YOU WERE REFERRING TO EARLIER?

18 A YES, SIR.

19 Q AND THAT WAS A FRAGMENT?

20 A YES, SIR.

21 Q HOW ABOUT STATE'S EXHIBIT NUMBER 16?

22 A THAT'S A PROJECTILE FROM THE INSIDE OF THE PASSENGER  
23 DOOR, THE REAR PASSENGER DOOR.

24 Q ALL RIGHT. IS THAT SEPARATE FROM THE ONE WE PREVIOUSLY  
25 LOOKED AT?

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 A YES, SIR, IT WOULD BE A SEPARATE -- IN A SEPARATE  
2 LOCATION.

3 Q INSIDE THE SAME DOOR THOUGH?

4 A YES, SIR. IN THE BOTTOM.

5 Q THAT WAS A -- WHEN YOU SAY A PROJECTILE, THAT WAS A PART  
6 OF A LEAD CORE?

7 A LEAD FRAGMENT, YES, SIR.

8 Q OKAY. AND THEN STATE'S EXHIBIT 17?

9 A THAT'S A COPPER JACKET COLLECTED FROM THE REAR PASSENGER  
10 DOOR AND IT ALSO INCLUDES A PROJECTILE THAT WAS ALSO TWO  
11 PIECES.

12 Q ALL RIGHT. THAT WAS IN THE REAR PASSENGER DOOR?

13 A YES, SIR. BEHIND THE VENT WINDOW.

14 Q I'M SORRY?

15 A BEHIND THE VENT WINDOW. IT WAS ACTUALLY IN THE DOOR.  
16 IT PENETRATED THE DOOR AND I HAD TO TEAR THE METAL FROM THE  
17 DOOR TO RETRIEVE IT.

18 Q SO ALONG WITH THAT CAME A PIECE OF THE DOOR?

19 A NO, SIR. IT'S ALL -- THIS IS ALL PIECES OF THE  
20 PROJECTILE.

21 Q OKAY. STATE'S EXHIBIT 18?

22 A THIS IS A COPPER JACKET FROM INSIDE OF THE DRIVER'S DOOR  
23 PANEL.

24 Q ALL RIGHT. AND WHICH ONE WOULD -- WOULD THAT BE THE ONE  
25 THAT IS VISIBLE FROM BEHIND THE MIRROR?

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

- 1 A (PAUSE) NO, SIR. EXHIBIT 18 IS A SMALLER PIECE.
- 2 Q ALL RIGHT. AND IT WAS FOUND WHERE?
- 3 A IT WAS FOUND INSIDE THE DRIVER'S DOOR PANEL.
- 4 Q FRONT DOOR, FRONT DRIVER'S DOOR PANEL?
- 5 A YES, SIR.
- 6 Q OKAY. AND NUMBER 19?
- 7 A IT'S A PROJECTILE COLLECTED FROM THE FRONT SIDE OF THE
- 8 DRIVER'S DOOR.
- 9 Q THE BOTTOM OF THE DOOR?
- 10 A NO, SIR. THIS WOULD BE THE ONE FROM INSIDE THE PANELING
- 11 AT THE TOP BEHIND THE MIRROR.
- 12 Q ALL RIGHT. LET ME SHOW YOU TWO PHOTOGRAPHS, STATE'S
- 13 EXHIBIT NUMBER 3L AND ASK YOU IF YOU WOULD LOOK AT THAT AND
- 14 SHOW US WHAT YOU ARE TALKING ABOUT.
- 15 A OKAY. THIS IS THE INSIDE DOOR PANEL.
- 16 Q UH-HUH (AFFIRMATIVE).
- 17 A AND THERE IS A PROJECTILE THAT WAS BURIED IN THIS
- 18 PANELING ON THE INSIDE.
- 19 Q ALL RIGHT. LET ME SHOW YOU 3M AND MAYBE UNDER
- 20 MAGNIFICATION IT WILL SHOW UP BETTER.
- 21 A AND THEN THIS IS THE AREA THAT IT WAS COLLECTED FROM.
- 22 Q OKAY. NOW, AFTER COLLECTING EACH ONE OF THOSE ITEMS AND
- 23 FINISHING YOUR RESPONSIBILITIES AT THE SCENE WHAT DID YOU DO
- 24 WITH STATE'S EXHIBITS 11 THROUGH 19?
- 25 A THOSE ITEMS WERE LISTED ON A PROPERTY AND EVIDENCE SHEET

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 AND PLACED ON MY SHELF.

2 Q ALL RIGHT. AND FOLLOWING BEING PLACED ON YOUR SHELF IN  
3 YOUR SECURE LOCKER WHERE DID THEY EVENTUALLY GO?

4 A THEY WERE PACKAGED AND PLACED INTO PROPERTY AND  
5 EVIDENCE.

6 Q THE PROPERTY AND EVIDENCE STORAGE ROOM AT THE LAW  
7 ENFORCEMENT CENTER?

8 A THAT'S CORRECT.

9 Q ALL RIGHT. NOW, WE TALKED EARLIER THAT YOU HAD  
10 RECOVERED SEVEN CASINGS AROUND THE EXTERIOR OF THE VEHICLE.  
11 AFTER THE SCENE WAS FULLY PROCESSED, DR. WARD, THE FORENSIC  
12 PATHOLOGIST HAD BEEN THERE, AND ALL OF THE SCENE PROCESSING  
13 WAS CONCLUDED AND THE CAR WAS MOVED, DID YOU DISCOVER AN  
14 ADDITIONAL ITEM OF EVIDENCE?

15 A YES, SIR, I DID.

16 Q WHAT DID YOU DISCOVER?

17 A I FOUND ANOTHER SHELL CASING AS THE VEHICLE WAS BEHIND  
18 PUT ONTO THE FLATBED TRUCK. I OBSERVED A SHELL CASING THAT  
19 HAD BEEN BEHIND THE DRIVER'S DOOR -- THE FRONT TIRE ON THE  
20 DRIVER'S SIDE, AND IT WAS THE SAME CASING AS THE OTHER SEVEN  
21 I HAD COLLECTED PREVIOUSLY.

22 Q LET ME SHOW YOU STATE'S EXHIBIT 3A AND ASK YOU IF YOU  
23 COULD POINT OUT WHERE THAT WAS LOCATED?

24 A IT WAS LOCATED BEHIND THE TIRE ON THE DRIVER'S SIDE.

25 Q ALL RIGHT. FRONT LEFT DRIVER'S SIDE TIRE?

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q NOW, THESE CASINGS -- WELL, LET ME SHOW YOU THIS ONE  
3 WHICH WE HAVE MARKED AS STATE'S EXHIBIT NUMBER 20 AND ASK YOU  
4 IF THAT IS THE ITEM THAT YOU COLLECTED FROM BEHIND THE  
5 DRIVER'S SIDE FRONT LEFT TIRE?

6 A YES, SIR, IT IS.

7 Q ALL RIGHT. AND LIKEWISE DID YOU PROCESS THIS THE SAME  
8 WAY WITH YOUR LOCKER, YOUR SHELF AND THEN INTO THE LAW  
9 ENFORCEMENT CENTER TO THE PROPERTY AND EVIDENCE STOREROOM?

10 A YES, SIR.

11 Q DID YOU MAKE A PHYSICAL EXAMINATION OF THE TYPE OF  
12 AMMUNITION THAT WAS STAMPED ON EACH ONE OF THESE CASINGS?

13 A YES, SIR, I DID.

14 Q AND WHAT TYPE OF AMMUNITION, MAKE, MANUFACTURER AND  
15 CALIBER WAS IT?

16 A THE HEAD STAMP WAS AN RP 9 MILLIMETER LUGER. THAT'S  
17 WHAT WAS HEAD STAMPED ON EACH SHELL CASING.

18 Q EACH SHELL CASING OF THE EIGHT YOU TALKED ABOUT HAD THE  
19 IDENTICAL MARKING, 9 MILLIMETER RP LUGER?

20 A YES, SIR.

21 Q NOW, BEFORE YOU LEFT SCENE DID YOU ALSO COLLECT WHAT HAS  
22 BEEN MARKED AS STATE'S EXHIBIT NUMBER 21?

23 A (REVIEWS EXHIBIT) YES, SIR, I DID.

24 Q AND WHAT IS STATE'S EXHIBIT NUMBER 21?

25 A THEY ARE KNOWN GLASS SAMPLES TAKEN FROM EXISTING GLASS

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 THAT WAS STILL IN THE DOOR FRAME OF THE DRIVER'S DOOR.

2 Q ALL RIGHT. YOU SAID KNOWN?

3 A YES, SIR.

4 Q MEANING YOU KNOW WHERE IT CAME FROM?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. AND LIKEWISE, WAS IT PROCESSED AND PACKAGED  
7 AND DEPOSITED INTO PROPERTY AND EVIDENCE ALSO?

8 A YES, SIR.

9 SOLICITOR ARIAIL: YOUR HONOR, ALL OF THESE EXHIBITS  
10 FROM STATE'S EXHIBIT 4 THROUGH 21 HAVE NOW BEEN MARKED FOR  
11 IDENTIFICATION AT THIS TIME.

12 THE COURT: THANK YOU, SIR.

13 Q LET ME SHOW YOU WHAT HAS BEEN PREVIOUSLY IDENTIFIED AS  
14 STATE'S EXHIBIT 1. (PAUSE) LET ME SHOW YOU WHAT HAS BEEN  
15 MARKED AS STATE'S EXHIBITS 1A FOR IDENTIFICATION, 1B FOR  
16 IDENTIFICATION, 2 FOR IDENTIFICATION. I ASK YOU DID YOU HAVE  
17 AN OCCASION TO RECEIVE THOSE FROM LIEUTENANT GIBSON WITH THE  
18 SOUTH CAROLINA HIGHWAY PATROL?

19 A YES, SIR.

20 Q AND WHAT ARE THOSE TWO ITEMS? LET'S TALK ABOUT STATE'S  
21 EXHIBIT 2 FIRST.

22 A EXHIBIT 2 IS A .38 CALIBER FIVE-SHOT REVOLVER. THIS WAS  
23 A BACKUP WEAPON THAT WAS CARRIED BY TROOPER NICHOLSON.

24 Q AND A REVOLVER, DOES IT EJECT ITS CASING?

25 A NO, SIR.

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

- 1 Q THE OTHER, STATE'S EXHIBIT 1A?
- 2 A THAT IS A .40 CALIBER GLOCK SEMI-AUTOMATIC PISTOL.
- 3 Q AND CONTAINED WITH EACH OF THOSE WAS THERE AMMUNITION?
- 4 A YES, SIR
- 5 Q ALL RIGHT. HOW WAS THE AMMUNITION IN THE GLOCK
- 6 CONTAINED? HOW DO YOU LOAD THE GLOCK?
- 7 A THE GLOCK IS CONTAINED -- THE BULLETS ARE PUT INTO A
- 8 MAGAZINE AND THE MAGAZINE IS THEN INSERTED INTO THE BOTTOM OF
- 9 THE PISTOL, THEN YOU HAVE TO PULL BACK ON THE SLIDE TO EJECT
- 10 A ROUND INTO THE CHAMBER.
- 11 Q ALL RIGHT. AND HOW MANY ROUNDS DID YOU FIND IN THE
- 12 GLOCK? DID YOU INVENTORY THOSE?
- 13 A YES, SIR.
- 14 Q ALL RIGHT.
- 15 A THERE WERE 15 ROUNDS OF .40 CALIBER AMMUNITION IN THE
- 16 MAGAZINE AND ONE IN THE CHAMBER.
- 17 Q AND IS THAT THE MAXIMUM THAT THAT GUN WILL HOLD?
- 18 A YES, SIR.
- 19 Q AND STATE'S EXHIBIT NUMBER 2, DID IT CONTAIN AMMUNITION
- 20 ALSO?
- 21 A YES, IT DID.
- 22 Q AND HOW MANY ROUNDS DID IT CONTAIN?
- 23 A THERE WERE FIVE ROUNDS IN IT.
- 24 Q AND THOSE WERE ALL UNFIRED?
- 25 A THAT'S CORRECT.



DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 Q AND WHAT DID YOU DO WITH THOSE ITEMS?

2 A I REMOVED THE CARTRIDGES FROM EACH WEAPON AND PLACED THE  
3 AMMUNITION FROM THE MAGAZINES INTO A BAGGIE. THE AMMUNITION  
4 FROM THE .38 I PUT INTO ONE OF THE SMALL MANILA ENVELOPES.

5 Q AND WAS IT PROCESSED LIKEWISE THE SAME WAY AS THE OTHERS  
6 AND LOGGED INTO PROPERTY AND EVIDENCE AT THE LAW ENFORCEMENT  
7 CENTER AFTER BEING UNDER YOUR CONSTANT CONTROL?

8 A YES, SIR, IT WAS.

9 SOLICITOR ARIAIL: YOUR HONOR, AT THIS TIME WE WOULD  
10 MOVE TO INTRODUCE STATE'S EXHIBIT 1A AND 2.

11 MR. MAULDIN: NO OBJECTION.

12 THE COURT: WITHOUT OBJECTION.

13 (STATE'S EXHIBIT NUMBER 2, .38 CALIBER REVOLVER, MOVED  
14 INTO EVIDENCE)

15 (STATE'S EXHIBIT NUMBER 1A, .40 CALIBER GLOCK HANDGUN,  
16 MOVED INTO EVIDENCE)

17 SOLICITOR ARIAIL: ACTUALLY IT'S 1A AND B.

18 MR. MAULDIN: STILL NO OBJECTION.

19 (STATE'S EXHIBIT NUMBER 1B, 15 ROUNDS AND MAGAZINE,  
20 MOVED INTO EVIDENCE)

21 Q AND EXHIBIT 1 -- STATE'S EXHIBIT 1, I FOUND IT, YOU ALSO  
22 RECEIVED THAT FROM LIEUTENANT GIBSON?

23 A YES, SIR.

24 Q THANK YOU. (PAUSE)

25 SOLICITOR ARIAIL: THAT'S ALL I HAVE OF THIS WITNESS,

DARWIN SHAW -- DIRECT CONTINUES BY SOLICITOR ARIAIL

1 YOUR HONOR, AT THIS TIME. ANSWER ANY QUESTIONS DEFENSE  
2 COUNSEL HAS.

3 CROSS EXAMINATION BY MR. MAULDIN:

4 Q OFFICER SHAW, I'M GOING TO, PRIOR TO DISPLAYING THIS TO  
5 THE JURY, I'M GOING TO SEE IF YOU CAN IDENTIFY IT FOR ME,  
6 PLEASE, SIR. HAVE YOU EVER SEEN THAT BEFORE RIGHT NOW?

7 A NO, SIR.

8 Q ALL RIGHT, SIR. I WANT YOU TO SEE IF YOU CAN ORIENT  
9 YOURSELF TO THAT DIAGRAM, AND I WILL GIVE YOU SOME ASSISTANCE  
10 SINCE YOU'VE NEVER SEEN IT. THIS IS 85 HEADING NORTH. THIS  
11 IS 385 HEADING TOWARD COLUMBIA. THIS IS WOODRUFF ROAD,  
12 HIGHWAY 146, WOODRUFF ROAD. THIS IS VERDAE BOULEVARD, ROPER  
13 MOUNTAIN ROAD CROSSING 385. THIS WOULD BE THE GREENVILLE  
14 MALL AREA. ARE YOU ORIENTED TO THAT DIAGRAM?

15 A YES, SIR.

16 Q ALL RIGHT: DOES THAT APPEAR IN YOUR OPINION TO BE A  
17 FAIR AND ACCURATE REPRESENTATION OF THE RELEVANT  
18 INTERSECTIONS AND STREETS THAT HAVE BEEN SO FAR IDENTIFIED IN  
19 THIS MATTER?

20 A YES, SIR.

21 MR. MAULDIN: ALL RIGHT. YOUR HONOR, WE WOULD AT THIS  
22 TIME OFFER DEFENDANT'S EXHIBIT NUMBER 1. I THINK THE  
23 PROSECUTOR HAS SEEN THIS.

24 SOLICITOR ARIAIL: THE ONLY OBJECTION I'VE GOT IS HE'S  
25 GOT MOTELS AND DIFFERENT THINGS MARKED ON HERE. I THINK HE

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 NEEDS TO FIND OUT OF THIS WITNESS CAN SAY THAT'S WHERE THEY  
2 ARE OR SHOW HIM.

3 MR. MAULDIN: WELL, I'LL BE GLAD TO ASK HIM, YOUR  
4 HONOR.

5 THE COURT: ALL RIGHT, SIR.

6 Q ARE YOU -- AND IF YOU ARE, YOU ARE. ARE YOU FAMILIAR  
7 WITH A -- AND I REFER YOU TO THE INTERSECTION OF I-85 AND  
8 WOODRUFF ROAD, ARE YOU FAMILIAR WITH THE LOCATION OF A  
9 LAQUINTA INN MOTEL OR HOTEL AT OR NEAR THAT INTERSECTION?

10 A YES, SIR.

11 Q AND DO YOU SEE THAT INDICATED ON THAT MAP?

12 A YES, SIR.

13 Q DOES THAT APPEAR TO BE A FAIR AND ACCURATE INDICATOR OF  
14 THE LOCATION OF THAT LAQUINTA INN?

15 A YES, SIR.

16 Q NOW, FURTHERMORE, IF YOU GO UP WOODRUFF ROAD TO THE  
17 CORNER OF VERDAE WHERE VERDAE AND WOODRUFF INTERSECT, IF YOU  
18 PROCEED IN THE DIRECTION TOWARD 385 ON VERDAE THERE IS A LEFT  
19 TURN ONTO CONGAREE ROAD. ARE YOU FAMILIAR WITH THAT  
20 INTERSECTION?

21 A YES, SIR, I AM.

22 Q AND ARE YOU FAMILIAR WITH A FAIRFIELD INN BEING LOCATED  
23 APPROXIMATELY WHERE CONGAREE ROAD INTERSECTS WITH VERDAE AND  
24 ROPER MOUNTAIN?

25 A YES, SIR.

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 Q ALL RIGHT. AND IS THAT INDICATED ON THAT DIAGRAM?

2 A YES, SIR, IT IS.

3 Q DOES IT APPEAR TO YOU TO BE A FAIR AND ACCURATE  
4 REPRESENTATION OF THE LOCATION OF THE FAIRFIELD INN IN  
5 RELATION TO THIS DIAGRAM?

6 A YES, SIR.

7 MR. MAULDIN: YOUR HONOR, WE NOW OFFER DEFENDANT'S  
8 EXHIBIT NUMBER 1 INTO EVIDENCE.

9 THE COURT: WITHOUT OBJECTION.

10 MR. MAULDIN: THANK YOU.

11 (DIAGRAM MARKED AS DEFENDANT'S EXHIBIT NUMBER 1 MOVED  
12 INTO EVIDENCE)

13 Q AND JUST SO THE JURORS NOW KNOW WHAT WE'VE BEEN TALKING  
14 ABOUT, OFFICER SHAW, STEP DOWN JUST A MOMENT.

15 A (COMPLIES)

16 Q ALL RIGHT. FOLLOW ME, OFFICER SHAW, IF YOU WILL. THIS  
17 IS INTERSTATE I-85 TRAVELING NORTH TOWARD CHARLOTTE. THIS IS  
18 HIGHWAY 385 TRAVELING SOUTHEAST TOWARD COLUMBIA. ARE YOU  
19 ORIENTED?

20 A YES, SIR.

21 Q ALL RIGHT. NOW, ON THIS MAP HIGHWAY 146 IS WOODRUFF  
22 ROAD, AND THAT WOULD BE THIS ROAD RIGHT HERE. IS THAT  
23 CORRECT?

24 A YES, SIR.

25 Q ALL RIGHT. AND AT THE INTERSECTION OF WOODRUFF ROAD AND

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 I-85 THERE IS A LAQUINTA INN HOTEL?

2 A THAT'S CORRECT.

3 Q IF YOU TAKE THE EXIT OFF OF THE INTERSTATE AT THIS  
4 INTERSECTION AND YOU COME ON WOODRUFF ROAD TOWARD GREENVILLE,  
5 TOWARD -- IN TOWARD TOWN, YOU WILL INTERSECT WITH VERDAE  
6 BOULEVARD AFTER YOU PASS THE GREENVILLE MALL; IS THAT  
7 CORRECT?

8 A YES, SIR.

9 Q AND IF YOU TURN RIGHT TO GO UP TOWARD CONGAREE ROAD  
10 THERE IS A FAIRFIELD INN AT THAT INTERSECTION?

11 A YES, SIR.

12 Q ALL RIGHT. THANK YOU. YOU CAN HAVE A SEAT.

13 A (COMPLIES)

14 Q ALL RIGHT. OFFICER SHAW, I'M GOING TO HAND YOU STATE'S  
15 EXHIBITS J, K, AND T. NOW, THE FIRST QUESTION I HAVE FOR  
16 YOU, EACH ONE OF THOSE PHOTOGRAPHS HAVE ALREADY BEEN  
17 DISPLAYED TO THE JURY. I WANT TO ASK YOU FIRST OF ALL IF YOU  
18 TOOK THOSE PHOTOGRAPHS?

19 A YES, SIR, I DID.

20 Q PRIOR TO TAKING THOSE PHOTOGRAPHS DID YOU DISTURB OR  
21 CHANGE THE POSITION OF ANYTHING DISPLAYED IN ANY ONE OF THOSE  
22 THREE PHOTOGRAPHS?

23 A YES, SIR.

24 Q YOU CHANGED THE POSITION OF SOMETHING?

25 A THE NUMBER 3, THE TRAJECTORY ROD THAT WAS PUT IN PLACE,

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 THAT HAD BEEN PLACED IN THERE. IT WAS NOT THAT I---

2 Q OKAY. ALL RIGHT. AND I -- OKAY. AND I SEE THERE IS  
3 SOMEBODY STANDING THERE. OBVIOUSLY THAT'S A CHANGE IN THE  
4 SCENE, IS IT NOT?

5 A YES, SIR.

6 Q ALL RIGHT. OKAY. WITH THE EXCEPTION OF THE EXISTENCE  
7 OF A PROJECTILE ROD IN NUMBER 3 -- ISN'T THAT NUMBER 3?

8 A THAT'S CORRECT, SIR.

9 Q ALL RIGHT. BESIDES THAT DID YOU PRIOR TO TAKING THOSE  
10 PHOTOGRAPHS MAKE ANY CHANGES IN THE LOCATION OF THE PHYSICAL  
11 ITEMS PRIOR TO MAKING THOSE PHOTOGRAPHS?

12 A NO, SIR, I DID NOT.

13 Q YOU DID NOT. THOSE PHOTOGRAPHS ACCURATELY REFLECT THE  
14 POSITION OF THE PHYSICAL EVIDENCE IN THIS CASE AT THE TIME  
15 THE PICTURES WERE TAKEN; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 MR. MAULDIN: YOUR HONOR, WE HAVE A MATTER THAT WE'D  
18 LIKE TO BE HEARD ON NOW.

19 THE COURT: LADIES AND GENTLEMEN, IF YOU WOULD, JUST  
20 BEAR WITH US AND GO TO THE JURY ROOM. DO NOT DISCUSS THE  
21 CASE. I'LL GET YOU BACK OUT HERE AS QUICKLY AS I CAN.

22 (JURY EXITS COURTROOM AT 10:08 A.M.)

23 THE COURT: THE JURY HAS BEEN EXCUSED. YES, SIR?

24 MR. MAULDIN: YOUR HONOR, I REFER THE COURT BACK TO  
25 HIGHWAY PATROL OFFICER CRAFT WHO WAS, I THINK, THE FIRST LAW

MATTERS AND MOTIONS

1 ENFORCEMENT OFFICER CALLED TO THE STAND. FURTHERMORE, IF I  
2 CAN FIND THE FILE, I THINK I'M GOING TO ALSO REFER BACK TO, I  
3 BELIEVE, OFFICER MCCAULEY, BUT SURELY OFFICER CRAFT. AND THE  
4 POINT I WANT TO MAKE IS WITH THE FOLLOWING QUESTION WITH THIS  
5 OFFICER.

6 BY MR. MAULDIN:

7 Q OFFICER SHAW, I WANT TO ASK YOU IF YOU CAN IDENTIFY FOR  
8 THE COURT THE LOCATION, THE POSITION, OF THE MICROPHONE IN  
9 THOSE THREE PHOTOGRAPHS.

10 A YES, SIR. THE MICROPHONE IS ATTACHED TO THE FRONT  
11 CONSOLE WHERE THE CUP HOLDERS ARE AT. THAT IS WHERE THE  
12 ACTUAL MICROPHONE HOLDER IS LOCATED.

13 Q ALL RIGHT. SO ON THE FRONT OF THE CUP HOLDER THERE IS A  
14 LITTLE HOOK AND THE MICROPHONE SLIPS DOWN OVER THAT LITTLE  
15 HOOK AND THAT'S WHERE IT IS, RIGHT?

16 A YES, SIR.

17 Q ALL RIGHT. AND THAT MICROPHONE IN ALL OF THREE OF THESE  
18 PICTURES IS INDICATED TO BE ON ITS HOOK ON THE CONSOLE,  
19 RIGHT?

20 A YES, SIR.

21 Q ALL RIGHT.

22 MR. MAULDIN: NOW, YOUR HONOR, THE POSITION OF THE  
23 DEFENSE IS THAT THESE THREE PHOTOGRAPHS DO NOT ACCURATELY  
24 REFLECT THE SCENE AT THE TIME THAT THE INCIDENT OCCURRED.  
25 OBVIOUSLY, SOMEONE, AND I DON'T KNOW WHO, BUT SOMEONE PUT THE

MATTERS AND MOTIONS

1 MICROPHONE ONTO THE HOOK. IT HAS ALREADY BEEN TESTIFIED AT  
2 LEAST BY ONE WITNESS, AND I THINK I BROUGHT IT OUT ON TWO  
3 WITNESSES, THAT THE MICROPHONE WAS LAYING ON THE PASSENGER  
4 SEAT. AND MR. CRAFT ACTUALLY SAID IT WAS NEAR ERIC  
5 NICHOLSON'S HAND, BECAUSE I TALKED TO HIM ABOUT IS THAT THE  
6 MICROPHONE THAT HE WOULD HAVE USED TO CALL BACK AND FORTH AND  
7 SO FORTH. NO QUESTION THAT THESE THREE PHOTOGRAPHS ARE NOT  
8 ACCURATE REPRESENTATIONS REGARDING THE SCENE OF THE CRIME.

9 NOW, WHAT THAT MEANS IS THAT FROM THE TIME THE  
10 INVESTIGATION BEGAN UNTIL OFFICER SHAW BEGAN TAKING HIS  
11 PHOTOGRAPHS, THE SCENE WAS CHANGED. THE SCENE WAS CHANGED.

12 NOW, WE BELIEVE THAT AT THIS TIME THOSE PHOTOGRAPHS HAVE  
13 TO BE WITHDRAWN. AND I DON'T KNOW -- I DID NOT -- WHAT I DID  
14 NOT DO, YOUR HONOR, IN THE PRESENCE OF THE JURY, I DID NOT  
15 ASK HIM ABOUT THE POSITION OF THE MIKE. I JUST ASKED HIM IF  
16 THAT WAS THE SCENE OF THE CRIME AND THEN I ASKED THAT THE  
17 JURY BE TAKEN OUT BEFORE I ASKED HIM THE CRITICAL QUESTION.  
18 SO I DON'T KNOW THAT THE JURY HAS ANY IDEA OF WHERE THE --  
19 WHAT THE POINT OF THIS OUT OF PRESENCE BUSINESS IS. BUT  
20 THOSE THREE PHOTOGRAPHS ARE AFTER THE SCENE HAS ESSENTIALLY  
21 BEEN TAMPERED WITH. THAT'S THE ONLY CONCLUSION THAT CAN BE  
22 DRAWN.

23 NOW, OBVIOUSLY, YOUR HONOR, IF YOU LOOK AT THOSE  
24 PHOTOGRAPHS, THERE IS SOME INDICATION OF DISCOLORING ON THAT  
25 MICROPHONE. I DON'T KNOW IF THAT'S GOING TO END UP BEING AN



MATTERS AND MOTIONS

1     ISSUE IN THIS CASE OR NOT. I DON'T KNOW ABOUT THAT. BUT IN  
2     THE ABSOLUTE ABUNDANCE OF CAUTION -- OR AT LEAST AT THIS  
3     POINT WE OBJECT TO THOSE PHOTOGRAPHS BEING ADMISSIBLE UNLESS  
4     THERE IS GOING TO BE SOME OFFER OF EXPLANATION BY SOMEBODY AS  
5     TO HOW THAT MICROPHONE GOT BACK ON ITS HOOK. AND IF THERE  
6     IS, I STILL THINK THE QUESTION OF WHETHER THE SCENE HAS BEEN  
7     TAMPERED WITH IS RELEVANT AS TO THEIR ADMISSIBILITY. AT THIS  
8     TIME WE MOVE TO HAVE THOSE PHOTOGRAPHS WITHDRAWN FROM  
9     EVIDENCE BY THE COURT.

10        **THE COURT:**     YES, SIR?

11        **SOLICITOR ARIAIL:**   OBVIOUSLY HE HAD THAT OBJECTION WHEN  
12     WE WENT OVER THE PHOTOGRAPHS. HE KNEW WHAT OFFICER CRAFT  
13     WOULD TESTIFY TO. HE KNEW AND AGREED TO THEM. HE HAS WAIVED  
14     THAT OBJECTION. THIS OFFICER'S TESTIMONY IS NO DIFFERENT.  
15     THE ONLY ISSUE THIS MAN HAS TESTIFIED TO IS THAT THESE ARE  
16     ACCURATE REPRESENTATIONS OF THE SCENE WHEN HE ARRIVED AND  
17     TOOK PHOTOGRAPHS. THESE PICTURES ACCURATELY REPRESENT WHAT  
18     HE SAW. AND IF HE WANTS TO MAKE AN ARGUMENT THAT SOMEBODY  
19     PUT THE MICROPHONE BACK ON THE HOOK, THAT'S CERTAINLY AN  
20     ARGUMENT HE CAN MAKE OUT OF THE EVIDENCE. BUT THE EVIDENCE  
21     IS THE EVIDENCE. THIS IS WHAT HE TOOK. THIS IS WHAT HE SAW.  
22     THIS IS THE CONDITION. THE PHOTOGRAPHS WERE SHOWN AND HE HAS  
23     HAD AN OPPORTUNITY TO OBJECT AND HE DIDN'T.

24        **MR. MAULDIN:**   YOUR HONOR, WITH REGARD TO SOME ADVANCE  
25     NOTICE ON OUR PART, WE HAD NO ADVANCE KNOWLEDGE THAT OFFICER

MATTERS AND MOTIONS

1 CRAFT -- WE HAD SEEN THE PHOTOGRAPHS OF THE MICROPHONE. WE  
2 KNEW IT WAS ON THE HOOK. WE HAD NO ADVANCE NOTICE THAT  
3 OFFICER CRAFT WAS GOING TO TESTIFY THAT IT WAS LAYING ON THE  
4 SEAT NEAR OFFICER NICHOLSON'S HAND. WE WOULDN'T HAVE HAD ANY  
5 IDEA OF THAT.

6 THE COURT: UNTIL HE TESTIFIED.

7 MR. MAULDIN: WHEN HE TESTIFIED. THEN IT BECOMES  
8 RELEVANT ONLY WHEN PHOTOGRAPHS THAT DO NOT ACCURATELY REFLECT  
9 THE POSITION OF THE MICROPHONE ARE IN FACT ATTEMPTING TO BE  
10 PUT INTO EVIDENCE. THEY WERE PUT INTO EVIDENCE, BUT I DIDN'T  
11 KNOW WHAT OFFICER SHAW WAS GOING TO SAY WHEN I ASKED HIM IF  
12 HE ACTUALLY PUT IT BACK. BECAUSE IF HE HAD SAID, "I PUT IT  
13 BACK," THEN IT MAY BE A DIFFERENT ISSUE. AND I'LL BE GLAD TO  
14 CLARIFY IT MORE IF YOU NEED IT.

15 WE DON'T KNOW THAT OFFICER CRAFT IS GOING TO SAY THE  
16 MICROPHONE IS ON THE SEAT UNTIL HE SAYS IT. WE DON'T KNOW  
17 WHAT OFFICER SHAW IS GOING TO SAY ABOUT HOW THE MICROPHONE  
18 GOT BACK ON THE HOOK UNTIL I ASK HIM. AND THE STATE DID NOT  
19 ASK HIM. SO UNTIL -- UP TO THAT POINT THE PHOTOS ARE, IN  
20 FACT, ADMISSIBLE. THEN I BRING OUT THE CONTRADICTION AND NOW  
21 I MOVE THAT THOSE PHOTOGRAPHS BE WITHDRAWN BECAUSE THERE IS A  
22 CLEAR ISSUE OF TAMPERING WITH THE SCENE.

23 THE COURT: THE MOTION TO REMOVE THESE EXHIBITS FROM  
24 EVIDENCE IS OVERRULED. THIS WITNESS HAS TESTIFIED THAT THIS  
25 WAS THE SCENE OF THE VEHICLE AND THE SURROUNDING AREA AT THE

MATTERS AND MOTIONS

1 TIME HE WAS THERE. YOU ARE CERTAINLY WELCOME TO POINT OUT TO  
2 THE JURY AN APPARENT INCONSISTENCY IN THE LOCATION OF THE  
3 MICROPHONE. YOU WANT TO CALL IT TAMPERING. I DO NOT BELIEVE  
4 THAT THERE IS A SUFFICIENT BASIS TO WITHDRAW THE EXHIBIT.  
5 THE RECORD WILL REFLECT YOUR EXCEPTION TO MY RULING.

6 AS MUCH AS I HATE TO DO IT, I LIKE FOR THOSE IN THE  
7 COURTROOM TO BE ON THE SAME CLOCK AS THE JURY. SO I FEEL  
8 COMPELLED THAT WE NEED TO TAKE A BREAK SO WE WILL BE IN SYNC  
9 WITH THE JURY WHEN WE RETURN.

10 LET'S TAKE A VERY SHORT BREAK, SAY, FIVE MINUTES,  
11 PLEASE. THANK YOU.

12 (A RECESS WAS TAKEN FROM 10:15 TO 10:28 A.M.)

13 (JURY REENTERS COURTROOM AT 10:29 A.M.)

14 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN, WE  
15 ARE READY TO PROCEED. THANK YOU SO MUCH FOR YOUR PATIENCE.

16 YOU MAY RESUME WITH YOUR CROSS EXAMINATION, SIR.

17 CROSS EXAMINATION BY MR. MAULDIN CONTINUES:

18 Q OFFICER SHAW, PRIOR TO THE BREAK I HAD DISPLAYED TO YOU  
19 3J, 3K AND 3T. NOW, WITH REGARD TO THOSE THREE PHOTOGRAPHS,  
20 I WANT TO ASK YOU, SIR, IF THE MICROPHONE THAT'S DISPLAYED IN  
21 THOSE PHOTOGRAPHS IS ON THE HOOK WHERE IT WOULD NORMALLY BE  
22 KEPT WHEN IT WASN'T BEING USED?

23 A YES, SIR, IT IS.

24 Q NOW, THAT'S WHAT THAT PHOTOGRAPH INDICATES?

25 A YES, SIR.

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 Q NOW, WHEN YOU GOT TO THE SCENE AND BEGAN TAKING THE  
2 PHOTOGRAPHS DID YOU PUT THAT MICROPHONE -- OR TAKE THAT  
3 MICROPHONE OFF THE PASSENGER SEAT AND PUT IT ON THE HOOK?

4 A NO, SIR, I DID NOT.

5 Q ALL RIGHT. SO THE SCENE THAT YOU HAD TAKEN THOSE AND  
6 ALL OF THESE OTHER PHOTOGRAPHS IS WHAT THE SCENE WAS WHEN YOU  
7 BEGAN TAKING YOUR PHOTOGRAPHS?

8 A THAT'S CORRECT.

9 Q ALL RIGHT. HOW -- WHETHER ANYTHING GOT MOVED OR JUST  
10 INADVERTENTLY MOVED IS IMPOSSIBLE FOR YOU TO DETERMINE?

11 A THAT'S CORRECT.

12 Q ALL RIGHT. NOW I ASK YOU TO LOOK AT A PHOTOGRAPH MARKED  
13 STATE'S EXHIBIT 3G. NOW, 3G IS THE PHOTOGRAPH THAT PURPORTS  
14 TO LOCATE THE SHELL CASINGS. IS THAT FAIR TO SAY?

15 A YES, SIR.

16 Q AND THE LOCATION OF THE CASINGS IS DEMONSTRATED IN THAT  
17 PHOTOGRAPH BY A LITTLE YELLOW PIECE OF EITHER PLASTIC OR  
18 PAPER THAT'S PUT DOWN ON TOP OF WHERE THE CASING WAS ON THE  
19 GROUND, RIGHT?

20 A YES, SIR.

21 Q ALL RIGHT. AND SO THE JURY CAN HAVE APPRECIATION FOR  
22 WHAT YOU'RE SAYING -- I'M GOING TO HAVE TO GET THIS -- LET'S  
23 SEE. (PAUSE) ALL RIGHT. SO UNDER THIS SCENARIO, WHEN YOU  
24 ARRIVE AT THE CRIME SCENE, WHAT YOU DO IS YOU -- DID YOU HAVE  
25 CONTROL OF THOSE LITTLE YELLOW THINGS BEFORE THEY ENDED UP ON

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 THE GROUND?

2 A YES, SIR, I DID.

3 Q SO PART OF YOUR RESPONSIBILITY IS TO POSITION THESE  
4 INDICATORS OR FLAGS, IF YOU WILL, OVER CERTAIN PIECES OF  
5 EVIDENCE?

6 A THAT'S CORRECT.

7 Q AND THEY ALSO HAVE A LETTER ON THEM SO THAT YOU CAN IN  
8 YOUR FILE INDICATE ON THE LITTLE ENVELOPE WHICH SHELL CASING,  
9 FOR EXAMPLE, WOULD HAVE BEEN UNDER D AND WHICH WOULD BE UNDER  
10 C AND SO ON AND SO FORTH, RIGHT?

11 A YES, SIR.

12 Q JUST LIKE THE QUESTION THAT I ASKED YOU ABOUT THE  
13 MICROPHONE INSIDE THE PATROL CAR, THIS PHOTOGRAPH  
14 DEMONSTRATES THE LOCATION OF THE SHELL CASINGS WHEN YOU WERE  
15 TAKING THE PICTURES?

16 A THAT'S CORRECT.

17 Q THE EFFORTS TO SAVE OFFICER NICHOLSON, REMOVE HIM FROM  
18 THE CAR, PUTTING HIM ON THE GROUND AND SO FORTH, ALL OF THAT  
19 HAD TAKEN PLACE PRIOR TO THIS PICTURE BEING TAKEN, AND  
20 WHETHER OR NOT THOSE EFFORTS AND THAT MOVEMENT ON THE CRIME  
21 SCENE WOULD HAVE MOVED EVIDENCE AROUND YOU HAVE NO WAY OF  
22 KNOWING, DO YOU?

23 A THAT'S CORRECT.

24 Q ALL RIGHT. NOW, WHILE WE'VE GOT POWER ON THIS MACHINE,  
25 I'M GOING TO ASK YOU A FEW MORE QUESTIONS. AND WHAT I'M

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 GOING TO DO, OFFICER SHAW, IS I'M GOING TO SHOW YOU THE  
2 PHOTOGRAPH ON THE WITNESS STAND PRIOR TO DISPLAYING IT TO THE  
3 JURY. I'M GOING TO SHOW YOU STATE'S EXHIBITS 3L AND M. NOW,  
4 THESE TWO PHOTOGRAPHS, IF I'M NOT MISTAKEN, ARE FOR THE  
5 PURPOSE OF DEMONSTRATING THE LOCATION OF A -- AND IS THAT  
6 ANOTHER JACKET OR A CORE OR WHAT OR BOTH?

7 A THAT WAS A CORE. IT WAS ACTUALLY A COMPRESSED CORE.

8 Q ALL RIGHT. NOW, AND THAT -- THOSE ARE TWO PICTURES OF  
9 THE SAME PIECE OF EVIDENCE?

10 A THAT'S CORRECT.

11 Q AND IF I'M NOT MISTAKEN, THIS RIGHT HERE, THIS THING  
12 RIGHT HERE, IS A PART OF THE REAR -- THE OUTSIDE REAR VIEW  
13 MIRROR?

14 A THAT'S THE MIRROR PORTION OF THE SIDE VIEW MIRROR, YES.

15 Q ALL RIGHT. LET ME GET OUT OF THE JURY'S WAY AND COME UP  
16 HERE. THIS RIGHT HERE IS THE INSIDE PORTION OF THE OUTSIDE  
17 REAR VIEW MIRROR; IS THAT RIGHT?

18 A YES, SIR.

19 Q THIS THING RIGHT HERE. AND THIS IS THE OUTSIDE PORTION  
20 OF THE OUTSIDE REAR VIEW MIRROR?

21 A THE PLASTIC PORTION, YES, SIR.

22 Q AND IT HAS BEEN SEPARATED?

23 A YES, SIR.

24 Q ALL RIGHT. AND THE PIECE OF EVIDENCE WAS IN THIS AREA,  
25 WHICH WOULD BE BETWEEN THE MOLDING AND THE WINDOW OF THE

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 DRIVER'S SIDE WINDOW, RIGHT?

2 A YES, SIR.

3 Q AND THIS PICTURE THEN FURTHER SHOWS A CLOSEUP OF THAT  
4 SAME ITEM, A LITTLE CLEARER VIEW?

5 A THAT WOULD BE CORRECT.

6 Q SO WHAT WE HAVE IS WE HAVE A FRAGMENT OR A PORTION OF

7 A -- AND I'M GOING TO CALL IT A BULLET---

8 A OKAY.

9 Q -----IN THE MOLDING OF THE FRONT DOOR AT THE WINDOW?

10 A YES, SIR.

11 Q OKAY. WE ALSO HAVE A 3N. THAT IS THE PICTURE OF THE  
12 REAR PASSENGER SIDE INTERIOR DOOR ASHTRAY, RIGHT?

13 A YES, SIR.

14 Q AND THERE WAS A BULLET LOCATED IN THAT POSITION RIGHT  
15 THERE RIGHT IN FRONT OF THE HANDLE THAT YOU OPEN THE DOOR  
16 WITH, RIGHT?

17 A YES, SIR.

18 Q NOW, YOU SUBSEQUENTLY -- YOU SUBSEQUENTLY AFTER  
19 RECOVERING THAT PIECE OF EVIDENCE YOU TOOK THAT DOOR MOLDING  
20 AND PANEL AND ALL OFF IN ORDER TO RECOVER THIS BULLET IN THE  
21 BOTTOM OF THE REAR PASSENGER SIDE DOOR PANEL DRAIN, RIGHT?

22 A I CAN'T TESTIFY THAT THE DOOR PANEL WAS TAKEN OFF AT  
23 THAT TIME. THAT'S THE RUBBER MOLDING FROM THE DOOR. THE  
24 DOOR PANEL MAY HAVE STILL BEEN INTACT WHEN THAT PIECE WAS  
25 COLLECTED.

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 Q ALL RIGHT. WELL, THERE'S A PICTURE IN HERE THAT SHOWS  
2 THE DOOR PANEL RIPPED OFF, RIGHT?

3 A YES, SIR.

4 Q WAS THAT -- WAS A DIFFERENT PIECE OF EVIDENCE FOUND WHEN  
5 YOU TOOK THAT DOOR PANEL OFF THAN WAS FOUND WHAT I JUST  
6 SHOWED THE JURY?

7 A YES, SIR.

8 Q ARE WE TALKING ABOUT TWO DIFFERENT PIECES?

9 A YES, SIR.

10 Q ALL RIGHT. SO WE'VE GOT ANOTHER BULLET AND IT'S IN THE  
11 BACK DOOR PANEL DOWN IN THE DOOR?

12 A YES, SIR.

13 Q AND THEN WE'VE GOT ANOTHER BULLET IN THE DRAIN?

14 A THAT'S CORRECT.

15 Q AND ANOTHER BULLET IN THE ASHTRAY?

16 A YES, SIR.

17 Q AND I SHOW YOU STATE'S EXHIBIT 3P. THAT'S A BULLET?

18 A NO, SIR.

19 Q NO, SIR?

20 A NO. THAT'S A COPPER JACKET.

21 Q I MEAN, WHEN I SAY -- ALL RIGHT. WHAT'S THE  
22 DIFFERENCE -- A BULLET HAS A JACKET ON IT. IT HAS A CASING,  
23 A JACKET AND A CORE, RIGHT?

24 A THAT IS CORRECT.

25 Q ALL RIGHT. AND THE CASINGS ARE WHAT YOU FOUND OUT ON



DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 THE STREET AND PUT THE LITTLE YELLOW TENTS OVER THEM, RIGHT?

2 A YES, SIR.

3 Q AND THE JACKET AND THE CORE GO OUT THE END OF THE GUN?

4 A YES SIR.

5 Q AND IF THEY SPLIT UP -- THEY ARE TWO DIFFERENT PIECES, I  
6 KNOW. BUT THEY'RE KIND OF CONTAINED IN THE SAME JACKET AT  
7 THE TIME?

8 A YES, SIR.

9 Q AND THEY CAN SPLIT UP IN ANY NUMBER OF PIECES, RIGHT?

10 A THAT'S CORRECT.

11 Q ALL RIGHT. SO WHEN I'M SAYING A BULLET, I'M TALKING  
12 ABOUT WHAT GOES OUT THE FRONT OF THE GUN, ALL RIGHT? BUT  
13 THIS -- YOU'RE GOING TO BREAK THAT DOWN AND SAY THAT'S THE  
14 JACKET OF A BULLET?

15 A YES, SIR.

16 Q ALL RIGHT. LET ME SHOW YOU THIS. THIS ONE -- THAT  
17 JACKET WAS FOUND BETWEEN -- IN THE SEAM WHERE THE FRONT  
18 DASHBOARD AND THE FRONT WINDSHIELD COME DOWN, RIGHT?

19 A THAT'S CORRECT.

20 Q RIGHT IN FRONT OF THE STEERING WHEEL?

21 A YES, SIR.

22 Q ALL RIGHT. AND THE LAST QUESTION I HAVE REGARDING THESE  
23 LOCATIONS IS THIS QUESTION. THIS IS STATE'S EXHIBIT 3F, AND  
24 THAT IS THE REAR PASSENGER WINDOW VENT OR VENT WINDOW?

25 A YES, SIR.

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 Q AND THERE IS A HOLE IN IT AND THE GLASS IS BROKEN. BUT  
2 THERE IS A HOLE IN IT WHICH I AM GOING TO MAKE AN ASSUMPTION  
3 THAT SOMETHING CAME OUT OF THAT WINDOW AND BROKE THAT GLASS.  
4 I MEAN, IS THAT WHY THAT PICTURE'S -- IS THAT WHAT THAT  
5 PICTURE IS SUPPOSED TO SHOW?

6 A THAT'S THE INTENT TO SHOW DAMAGE THAT A POSSIBLE  
7 PROJECTILE HAD PENETRATED IT.

8 Q ALL RIGHT. NOW, HAVING ASKED THOSE QUESTIONS, OFFICER  
9 SHAW, I'M GOING TO BE USING THAT AGAIN, SO STAND RIGHT THERE.  
10 (PAUSE)

11 ALL RIGHT. WE HAVE A SERIES OF LOCATIONS OF PIECES OF  
12 BULLETS AND WE JUST HAD THE JURY REVISIT THOSE---

13 A YES, SIR.

14 Q ---WITH THOSE PICTURES. NOW I WANT TO -- AND BY THE  
15 WAY, ON THIS PICTURE OF THIS BULLET THAT WAS UP ON THE  
16 DASHBOARD, THIS ONE THAT WAS ON THE DASHBOARD, THAT'S 3P, THE  
17 FRONT WINDSHIELD WAS NOT BROKEN, WAS IT?

18 A NO, SIR.

19 Q ALL RIGHT. AND THERE WAS -- SO -- AND THAT BULLET  
20 APPARENTLY SINCE THESE GUNS THAT OFFICER NICHOLSON HAD HAD  
21 ALL THE BULLETS IN THEM, WE'VE GOT TO ASSUME THAT BULLET CAME  
22 FROM THE OUTSIDE OF THAT CAR, RIGHT?

23 A YES, SIR.

24 Q ALL RIGHT. AND THAT BULLET SOMEHOW ENDED UP ON THE  
25 DASHBOARD -- BETWEEN THE GLASS AND THE DASHBOARD MOLDING,

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 DIDN'T IT?

2 A YES, SIR.

3 Q ALL RIGHT. A POINT, I GUESS, I'M TRYING TO MAKE,  
4 OFFICER SHAW, IS STATE'S EXHIBIT 3H, IF I CAN GET THIS MOVED  
5 RIGHT. IT'S LIKE LOOKING INTO A MIRROR. I CAN'T MAKE IT  
6 GO -- THERE WE GO. ALL RIGHT. I WANT YOU TO LOOK AT THIS.  
7 MY UNDERSTANDING OF YOUR TESTIMONY IS THAT THE PURPOSE OF  
8 SHOWING THESE YELLOW PENCIL LOOKING RODS IS TO TRY TO SOMEHOW  
9 RECONSTRUCT THE DIRECTION OF A BULLET. IS THAT THE POINT?

10 A YES, SIR.

11 Q ALL RIGHT. AND THIS PARTICULAR POINTER RIGHT HERE IS  
12 THE POINTER THAT IS SUPPOSEDLY GOING TO THE BACK ASHTRAY --  
13 THE BACK DOOR, BACK PASSENGER DOOR ASHTRAY?

14 A YES, SIR.

15 Q AND IF I HEARD YOU TESTIFY, YOUR INVESTIGATION INDICATED  
16 THAT THAT BULLET APPARENTLY HIT A METAL TICKET BOOK?

17 A YES, SIR, GRAZED THE TOP OF IT.

18 Q RIGHT?

19 A YES, SIR.

20 Q THAT BULLET THEN WENT THROUGH SOME OTHER MATERIALS THAT  
21 WERE ON THE FRONT SEAT OR LEANING ON THE FRONT SEAT?

22 A A MANILA ENVELOPE.

23 Q AND IT WENT THROUGH, APPARENTLY, THE CAR SEAT?

24 A YES, SIR.

25 Q AND YOUR IMPRESSION IS THAT IT ENDED UP IN THE ASHTRAY?

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 A THAT'S CORRECT.

2 Q ALL RIGHT. WE DON'T HAVE ANY IDEA, OFFICER SHAW,  
3 WHETHER THAT BULLET EITHER STRUCK OR WENT THROUGH OFFICER  
4 NICHOLSON, DO WE?

5 A NO, SIR.

6 Q WE DON'T KNOW THAT, RIGHT?

7 A THAT'S CORRECT.

8 Q AND WHEN YOU BRING THAT PROJECTILE DEVICE FROM THE END  
9 -- FROM WHERE THE BULLET FRAGMENT ENDED UP, WHAT YOU DO IS  
10 YOU START AT THE BACK END AND BRING IT -- WHAT YOU'RE DOING  
11 IS YOU'RE TRYING TO TAKE HALF OF A BULLET FROM WHERE IT WAS  
12 FOUND BACKWARDS IN FLIGHT, RIGHT?

13 A YES, SIR.

14 Q ISN'T THAT WHAT THAT'S SUPPOSED TO BE TRYING TO DO?

15 A YES, SIR.

16 Q THERE IS NO -- YOU HAVE NO WAY OF SPECULATING OR EVEN  
17 IMAGINING WHETHER OR NOT THAT BULLET WENT THROUGH THE  
18 VICTIM -- IT APPARENTLY WENT THROUGH THE WINDOW, RIGHT?

19 A THAT'S CORRECT.

20 Q THE WINDOW WAS GONE, IT WAS BROKEN. SO THIS IS MERELY  
21 NOTHING MORE THAN AN ABSOLUTE GUESS BECAUSE YOU CAN'T TELL  
22 THIS JURY WHAT OTHER OBSTACLES THAT BULLET MIGHT HAVE HIT,  
23 CAN YOU?

24 A THAT'S CORRECT.

25 Q AND WE'VE GOT A BULLET -- HOW ABOUT THE BULLET ON THE

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 DASHBOARD, DID YOU DO ONE OF THESE YELLOW PENCILS UP TO THE  
2 WINDSHIELD?

3 A NO, SIR.

4 Q HOW DID THAT GET THERE? HOW DID IT GET THERE?

5 A I'D HAVE TO SPECULATE.

6 Q HAVE TO SPECULATE. ALL RIGHT. WHAT ABOUT THE BULLET  
7 THAT WAS LOCATED RIGHT HERE IN THE MOLDING? YOU'D HAVE TO  
8 SPECULATE, WOULDN'T YOU?

9 A I THINK IT'S PRETTY CLEAR AS FAR AS THE DIRECTION FROM  
10 THE -- THROUGH THE MIRROR INTO---

11 Q ALL RIGHT. ALL RIGHT. SO THAT YOU FEEL PRETTY  
12 SATISFIED WITH, RIGHT?

13 A YES, SIR.

14 Q BUT A BULLET WHEN IT GOES INTO A MIRROR CASING IS GOING  
15 TO -- DON'T THINGS LIKE THAT CHANGE DIRECTIONS OF BULLETS?

16 A POTENTIALLY, IT COULD.

17 Q POTENTIALLY, IT COULD. AND I'M JUST POINTING OUT TO  
18 THIS JURY THAT THESE BULLETS THAT YOU HAVE BROUGHT IN WERE IN  
19 A NUMBER OF DIFFERENT LOCATIONS IN THIS VEHICLE?

20 A THAT'S CORRECT.

21 Q IN FACT, IT APPEARS THAT ONE OF THEM NOT ONLY CHANGED  
22 DIRECTION BUT WENT UP AND OUT OF THAT WINDOW, RIGHT?

23 A NOT NECESSARILY, SIR.

24 Q NOT NECESSARILY. ALL RIGHT. SOMETHING WENT OUT OF THE  
25 BACK WINDOW, DIDN'T IT?

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 A YES, SIR.

2 Q ALL RIGHT. NOW, -- AND THIS AGAIN, IF I CAN -- HANG ON.  
3 BEAR WITH ME, PLEASE. (PAUSE) THERE WE GO. LAST ONE I'LL  
4 LOOK AT, OFFICER. AND THIS, OFFICER SHAW, THE LOCATION --  
5 YOU SAID, I BELIEVE, THAT AFTER THE VEHICLE HAD BEEN TOWED  
6 THERE WAS AN ADDITIONAL SHELL CASING LOCATED?

7 A YES, SIR, AS THEY WERE LOADING IT UP.

8 Q AND WHERE WAS IT LOCATED?

9 A BEHIND THE FRONT DRIVER'S TIRE.

10 Q IT WOULD HAVE BEEN -- ALL RIGHT. THIS IS A -- THIS IS  
11 ONE OF THOSE LITTLE TENTS, ISN'T IT?

12 A YES, SIR.

13 Q SO WE'VE GOT ONE LOCATED HERE AND ONE UP SOMEWHERE RIGHT  
14 IN HERE? YOU DIDN'T PUT A TENT OVER IT BECAUSE YOU DIDN'T  
15 SEE IT, RIGHT?

16 A THAT'S CORRECT.

17 Q AND WHEN THE CAR GETS TOWED AWAY, YOU SEE IT?

18 A YES, SIR.

19 Q ALL RIGHT. SO IT WAS UP IN HERE SOMEWHERE?

20 A YES, SIR.

21 Q NOW LET ME ASK YOU JUST A COUPLE OF GENERAL QUESTIONS  
22 ABOUT THE GLOCK, I THINK, 9 MILLIMETER GLOCK LUGER THAT YOU  
23 TESTIFIED TO -- TESTIFIED ABOUT. A SEMIAUTOMATIC AS OPPOSED  
24 TO A REVOLVER, TALK JUST A MINUTE ABOUT THAT.

25 A REVOLVER HAS --

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1           AND YOU CAN TURN THOSE LIGHTS ON, PLEASE, MA'AM.

2           ALL RIGHT. WE'LL JUST LEAVE THAT ON. LEAVE IT ON FOR  
3 JUST A MOMENT, PLEASE.

4           A REVOLVER, YOU PUT THE BULLETS IN AND THE BULLETS HAVE  
5 GOT THE CASINGS ON THE BACK OF THEM, AND INSIDE THE CASING IS  
6 WHERE THE GUNPOWDER AND STUFF IS THAT FLAMES UP AND SHOOTS  
7 THE BULLET OUT, RIGHT?

8       A     YES, SIR.

9       Q     ALL RIGHT. WHEN YOU LOAD A REVOLVER YOU PUT THE BULLETS  
10 IN INDIVIDUALLY IN THEIR LITTLE COMPARTMENTS, AND AS THE  
11 BULLETS ARE FIRED, THAT THING, THAT CYLINDER TURNS AND GETS  
12 THE NEXT BULLET READY TO BE FIRED, RIGHT?

13      A     THAT'S CORRECT.

14      Q     AND THEN WHEN YOU'RE ALL OUT OF BULLETS, WHEN YOU FINISH  
15 FIRING YOU HAVE TO DROP THE SHELL CASINGS OUT AND PUT NEW  
16 ONES IN?

17      A     THAT'S CORRECT.

18      Q     SO IN A REVOLVER ALL THE CASINGS COME OUT AT THE SAME  
19 TIME WHEN THE OPERATOR DUMPS THEM OUT?

20      A     YES, SIR.

21      Q     ON THE OTHER HAND, A SEMIAUTOMATIC ACTUALLY EJECTS ITS  
22 BULLETS -- OR EJECTS ITS CASINGS AS EACH BULLET IS SHOT,  
23 RIGHT?

24      A     YES, SIR.

25      Q     AND LIKE A -- SOME SHOTGUNS DO THAT TOO, RIGHT?

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 A IF IT'S AN AUTOMATIC IT WOULD.

2 Q RIGHT. IN OTHER WORDS, THE SHOTGUN, THE THINGS GOES  
3 FLYING OUT OF THE SIDE -- THE LITTLE HOLE IN THE SIDE WHERE  
4 IT OPENS UP AND THROWS THE THING OUT, THE BIG SHOTGUN SHELL  
5 THING?

6 A YES, SIR.

7 Q ALL RIGHT. SAME THING WORKS WITH A SEMIAUTOMATIC, IT  
8 THROWS OUT THE SHELLS, RIGHT?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. AND THAT'S WHAT THAT -- THOSE LITTLE YELLOW  
11 TENTS ON THAT EXHIBIT ARE SHOWING WHERE THESE VARYING CASINGS  
12 LANDED OR ENDED UP WHEN YOU GOT THERE?

13 A THAT'S CORRECT.

14 Q ALL RIGHT. ONE FURTHER QUESTION, OFFICER SHAW. HOLD  
15 ON. LET ME CONSULT HERE ONE MOMENT AND THEN I KNOW IF I'VE  
16 GOT ONE MORE QUESTION. (OFF RECORD WITH CO-COUNSEL)

17 ALL RIGHT. LAST COUPLE OF QUESTIONS, PLEASE, SIR.

18 (PAUSE)

19 I WANT TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 3E  
20 AND I'M GOING TO SHOW YOU THIS FIRST ON THE WITNESS STAND  
21 BECAUSE THIS IS NOT REAL CLEAR AND I'M NOT SURE IT'S GOING TO  
22 SHOW UP AS CLEAR ON THE SCREEN AS IT DOES WHEN YOU ACTUALLY  
23 LOOK AT THE PHOTO. LOOKING AT THAT PHOTO I WANT YOU TO TELL  
24 ME IF THERE IS RIGHT TO THE LEFT -- THIS IS A PHOTO SHOWING  
25 THE REAR OF THE TROOPER'S CAR, RIGHT?



DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1     A     YES, SIR.

2     Q     AND JUST TO THE LEFT OF THE TROOPER'S CAR THERE IS A  
3     BLACK MARK ON THE PAVEMENT. DO YOU SEE THAT BLACK MARK?

4     A     YES, SIR.

5     Q     DO YOU REMEMBER SEEING THAT BLACK MARK WHEN YOU WERE  
6     TAKING THE PHOTOGRAPHS?

7     A     YES, SIR.

8     Q     WAS THAT BLACK MARK A SKID MARK?

9     A     I HAVE NO IDEA, SIR.

10    Q     I WANT YOU TO LOOK AT THE PICTURE.

11    A     I'VE LOOKED AT THE PICTURE, SIR.

12    Q     I WANT YOU TO LOOK AT THAT PICTURE. IS THAT MARK ALONG  
13    THE LEFT SIDE OF THE CAR A SKID MARK?

14           SOLICITOR ARIAIL: ASKED AND ANSWERED.

15           THE COURT: SUSTAINED.

16    Q     PARDON?

17    A     I CAN'T ANSWER THAT, SIR. I DON'T KNOW.

18    Q     NOW, WHAT I'M ASKING YOU ABOUT, OFFICER SHAW, IS THIS  
19    RIGHT HERE. LOOK -- IT HAS A LITTLE BIT OF A CURVE TO IT.  
20    IT TURNS A LITTLE BIT TOWARD THIS MEDIAN LINE ACCORDING TO  
21    THIS PHOTOGRAPH.

22    A     OKAY.

23    Q     AND YOU WERE THERE AND TOOK THE PHOTOGRAPHS?

24    A     YES, SIR.

25    Q     AND YOUR TESTIMONY IS THAT YOU'RE NOT SURE WHETHER

DARWIN SHAW -- CROSS CONTINUES BY MR. MAULDIN

1 THAT'S A SKID MARK OR NOT?

2 A NO, SIR.

3 Q ALL RIGHT. STATE'S EXHIBIT 3E?

4 A THAT'S CORRECT.

5 MR. MAULDIN: NO FURTHER, QUESTIONS, YOUR HONOR.

6 THE COURT: THANK YOU, SIR.

7 REDIRECT?

8 SOLICITOR ARIAIL: IF THEY'RE GOING TO BE LOOKING AT  
9 THE PICTURE, I'LL SUSPEND UNTIL THEY ARE DONE.

10 THE COURT: TAKE YOUR TIME, SIR.

11 (PAUSE)

12 REDIRECT EXAMINATION BY SOLICITOR ARIAIL:

13 Q NOW, MR. SHAW, MR. MAULDIN HAS ASKED YOU A SERIES OF  
14 QUESTIONS AND A NUMBER OF LEADING QUESTIONS IN AN ATTEMPT TO  
15 IDENTIFY WHAT HE WANTS YOU TO TESTIFY TO AS A SKID MARK. DID  
16 YOU SEE THE MARK ON THE PAVEMENT?

17 A YES, SIR.

18 Q WAS IT IN YOUR OPINION -- WAS IT A SKID MARK?

19 A I HAVE NO IDEA, SIR.

20 Q YOU HAVE SEEN SKID MARKS BEFORE PROCESSING CRIME SCENES?

21 A YES, SIR.

22 Q ALL RIGHT. YOU ARE ABLE TO IDENTIFY SKID MARKS?

23 A YES, SIR.

24 Q NOW, ONE OTHER ISSUE THAT MR. MAULDIN TALKED ABOUT IS  
25 THE MICROPHONE ON THE HOOK. DO YOU KNOW OR DO YOU RECALL THE

DARWIN SHAW -- REDIRECT BY SOLICITOR ARIAIL

1 NUMBER OF MICROPHONES THAT WERE IN THE TROOPER'S VEHICLE?

2 A NO, SIR, I CAN'T RECALL.

3 Q LET ME SHOW YOU THIS PHOTOGRAPH WHICH IS MARKED STATE'S  
4 EXHIBIT 3K AND ASK YOU IF UNDER THE MICROPHONE ON THE HOOK  
5 YOU KNOW WHAT THAT OBJECT IS BELOW IT?

6 A YES, SIR. THAT APPEARS TO BE A MICROPHONE FOR THE P.A.  
7 SYSTEM.

8 Q ALL RIGHT. THANK YOU VERY MUCH.

9 AND ONE LAST POINT, TALKING ABOUT BULLETS, THE NUMBER OF  
10 ITEMS THAT YOU FOUND INSIDE THE VEHICLE WERE NINE, CORRECT?

11 A I BELIEVE SO, YES, SIR.

12 Q NINE DIFFERENT PIECES. OF THOSE NINE DIFFERENT PIECES,  
13 THAT'S NOT NINE BULLETS?

14 A NO, SIR.

15 Q WHAT IS THAT?

16 A THOSE ARE -- THEY'RE FRAGMENTS, THEY'RE BITS AND PIECES  
17 FROM ANY ONE PARTICULAR BULLET THAT HAS SEPARATED. THEY ARE  
18 FRAGMENTS, FRAGMENTS OF LEAD, SMALL PIECES OF LEAD THAT GOT  
19 SHAVED OFF OF THE ORIGINAL PROJECTILE. THEY ARE PIECES OF  
20 COPPER JACKET THAT SPLIT. THEY ARE INDIVIDUAL PIECES OF  
21 EITHER PROJECTILE OR THE COPPER JACKET.

22 Q THE ITEM LOCATED IN THE MOLDING BEHIND THE MIRROR, WHAT  
23 WAS THAT EXACTLY, PROJECTILE, A FRAGMENT, THE JACKET OR WHAT?

24 A THAT WAS A PROJECTILE THAT FROM MY ESTIMATION FROM GOING  
25 THROUGH THE MIRROR DID NOT HAVE ENOUGH TIME TO SPLIT INTO.

DARWIN SHAW -- REDIRECT BY SOLICITOR ARIAIL

1 SMALLER PIECES, SO IT WAS A LARGE CORE OF A---

2 Q WAS IT STILL JACKETED?

3 A I DON'T RECALL IF IT WAS OR NOT.

4 Q LET'S TAKE A LOOK AT IT. (PAUSE) LET'S FIND IT IN THIS  
5 GROUP.

6 A NO, SIR. AS I TESTIFIED, EXHIBIT 19 IT IS A --IT'S A --  
7 JUST A LEAD PROJECTILE.

8 Q ALL RIGHT. AND IS IT JACKETED?

9 A NO, SIR, THIS IS NOT.

10 Q THE JACKET IS NO LONGER WITH IT?

11 A THAT'S CORRECT.

12 Q THE JACKET SEPARATED FROM IT?

13 A YES, SIR.

14 Q SO IF YOU FOUND A JACKET ON THE DASHBOARD, THE JACKET  
15 COULD BE CONNECTED TO THE PROJECTILE IN THE DOOR?

16 A IT'S POSSIBLE.

17 Q ALL RIGHT. BECAUSE THEY SPLIT UP AND GO DIFFERENT  
18 PLACES WHEN THEY HIT?

19 A POTENTIALLY, YES.

20 Q THANK YOU.

21 AND ONE LAST QUESTION JUST FOR CLARIFICATION. IS IT  
22 SAFE TO ASSUME THAT THE CRIME SCENE PARTICULARLY THE OUTSIDE  
23 AND POSSIBLY THE INSIDE---

24 MR. MAULDIN: YOUR HONOR. HOLD ON.

25 Q ---WAS---

1           MR. MAULDIN:   WE OBJECT THAT THERE IS NO WAY THAT  
2 QUESTION CANNOT BE CONCLUDED AS LEADING REGARDLESS OF WHERE  
3 THE QUESTION GOES.   THE PREFACE TO THE QUESTION, "IS IT SAFE  
4 TO ASSUME THAT," IS A LEADING PREFACE AND I OBJECT TO  
5 LEADING.

6           THE COURT:    SUSTAINED.

7           Q    BASED ON YOUR OBSERVATIONS AT THE CRIME SCENE, WERE THE  
8 CASINGS OUTSIDE OF THE VEHICLE MOVED AS A PART OF THE  
9 RESUSCITATION EFFORTS EXPENDED ON TROOPER NICHOLSON?

10          A    SOME OF THEM MAY HAVE BEEN.   ONE OF THE ORIGINAL  
11 PHOTOGRAPHS WAS AS SOON AS I GOT THERE, TRIED TO TAKE THE  
12 PHOTOGRAPH AS I SAW THEM BEFORE PLACARDS WERE PUT IN PLACE.  
13 SO POTENTIALLY SOME MAY HAVE BEEN -- MAY HAVE BEEN KICKED.

14          Q    ALL RIGHT.   AND IN ONE OF THE PHOTOGRAPHS TROOPER  
15 NICHOLSON IS LOCATED ON THE RIGHT-HAND SIDE OF THE -- EXCUSE  
16 ME, THE LEFT-HAND SIDE OF THE VEHICLE, CORRECT?

17          A    THAT'S CORRECT.

18          Q    AND THAT'S THE SAME AREA AS THE CASINGS?

19          A    YES, SIR.

20          Q    STATE'S EXHIBIT 3A, TAKEN BEFORE THE A, B, C, D,  
21 LABELING WAS PLACED ON THE GROUND?

22          A    YES, SIR.

23          Q    AND AS TESTIFIED PREVIOUSLY, TROOPER NICHOLSON WAS  
24 BROUGHT OUT OF THE CAR AND MOVED TO THAT LOCATION?

25          A    THAT'S CORRECT.

DARWIN SHAW -- REDIRECT BY SOLICITOR ARIAIL

1 SOLICITOR ARIAIL: THANK YOU. THAT'S ALL I HAVE.

2 MR. MAULDIN: JUST A COUPLE, YOUR HONOR.

3 THE COURT: YES, SIR.

4 RECROSS EXAMINATION BY MR. MAULDIN:

5 Q ALL RIGHT. AND THE POINT OF THAT QUESTION---

6 SOLICITOR ARIAIL: OBJECT TO THE QUESTION, FORM OF THAT  
7 QUESTION.

8 THE COURT: SUSTAINED.

9 Q THE SOLICITOR JUST ASKED YOU ABOUT THE LOCATION OF  
10 OFFICER NICHOLSON IN RELATIONSHIP TO THE LATER PLACED LITTLE  
11 TENTS AND WHETHER THESE CASINGS COULD PERHAPS HAVE BEEN MOVED  
12 AROUND?

13 A YES, SIR.

14 Q ALL RIGHT. THERE IS NO QUESTION THAT ABSOLUTELY FULL  
15 EFFORTS, EXTRAORDINARY EFFORTS WHICH NECESSARILY MUST BE MADE  
16 WITH REGARD TO ATTEMPT TO SAVE A VICTIM REGARDLESS OF WHAT  
17 EFFECT IT WOULD HAVE ON A CRIME SCENE, ISN'T THAT FAIR?

18 A THAT'S CORRECT.

19 Q IN OTHER WORDS, IF YOU'VE GOT THE CHOICE OF EITHER  
20 TRYING TO HELP SOMEBODY WHO IS HURT OR TRYING TO MAKE SURE  
21 THE CASINGS ARE ALL IN THE RIGHT PLACE, YOU GO FOR HELPING  
22 SOMEBODY WHO IS HURT FIRST, DON'T YOU?

23 A YES, SIR.

24 Q ALL RIGHT. AND THE OTHER QUESTION BROUGHT OUT ON  
25 REDIRECT RELATES TO THE JACKET OF A BULLET LOCATED IN ONE

DARWIN SHAW -- RECROSS BY MR. MAULDIN

1 PLACE AND THE CORE OF A BULLET LOCATED IN ANOTHER PLACE?

2 A YES, SIR.

3 Q THESE THINGS DON'T HAVE LIKE COLORED CODED MATCH UPS AND  
4 STUFF, RIGHT?

5 A NO, SIR.

6 Q SO THERE IS NO -- YOU'VE GOT FRAGMENTS OR NINE PIECES OF  
7 EITHER CORE OR JACKET IN VARIOUS LOCATIONS ACCORDING TO YOUR  
8 TESTIMONY AND IT IS IMPOSSIBLE, LITERALLY IMPOSSIBLE, TO MAKE  
9 AN IDENTIFICATION OF WHICH CORE BELONGS TO WHICH JACKET;  
10 ISN'T THAT RIGHT?

11 A THAT'S CORRECT.

12 MR. MAULDIN: THANK YOU.

13 SOLICITOR ARIAIL: STEP DOWN SUBJECT TO RECALL.

14 THE COURT: OFFICER SHAW, THANK YOU, SIR. WE  
15 APPRECIATE IT.

16 (WITNESS STEPS DOWN AT 11:07 A.M.)

17 THE COURT: NEXT WITNESS, PLEASE, SIR.

18 SOLICITOR ARIAIL: WE CALL ZACK OWEN.

19 ZACK D. OWEN, HAVING BEEN DULY  
20 SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

22 Q MR. OWEN, WOULD YOU PLEASE STATE YOUR NAME FOR THE  
23 RECORD?

24 A ZACHARY D. OWEN.

25 Q IF YOU WOULD, KEEP YOUR VOICE UP LIKE THAT SO THESE LAST

ZACK D. OWEN -- DIRECT BY SOLICITOR ARIAIL

1 TWO JURORS DOWN HERE AND I CAN HEAR YOU.

2 A YES, SIR.

3 Q BY WHOM ARE YOU PRESENTLY EMPLOYED?

4 A I'M PRESENTLY EMPLOYED WITH THE PICKENS CITY POLICE  
5 DEPARTMENT AS THEIR FORENSICS INVESTIGATOR.

6 Q ALL RIGHT. AND BACK ON DECEMBER THE 7TH OF THE YEAR  
7 2000 BY WHOM WERE YOU EMPLOYED?

8 A I WAS EMPLOYED WITH THE GREENVILLE COUNTY FORENSICS  
9 DIVISION.

10 Q AND IN THAT CAPACITY DID YOU HAVE OCCASION TO RESPOND TO  
11 THE DRYING ROOM AT THE FORENSICS DIVISION AT THE LAW  
12 ENFORCEMENT CENTER TO RETRIEVE CERTAIN ITEMS?

13 A YES, SIR.

14 Q AND WHAT WERE THOSE ITEMS THAT YOU WERE TO RETRIEVE?

15 A THE MAIN ITEMS WERE TROOPER NICHOLSON'S DUTY UNIFORM AS  
16 WELL AS HIS BULLETPROOF VEST.

17 Q AND WHERE WERE YOU TAKING THOSE ITEMS TO?

18 A I WAS TAKING THEM TO THE AUTOPSY ROOM FOR DR. WARD TO  
19 EXAMINE.

20 Q AND DID YOU SO TAKE THOSE ITEMS?

21 A YES, SIR.

22 Q AND DID YOU MAINTAIN CUSTODY AND CONTROL OVER THOSE  
23 ITEMS WHILE IN THE AUTOPSY WITH DR. WARD?

24 A YES, SIR.

25 Q AND THE AUTOPSY WAS CONDUCTED AT THE MEMORIAL HOSPITAL?



ZACK D. OWEN -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q WHAT TIME DID YOU PICK THESE ITEMS UP?

3 A IT WAS PROBABLY THAT MORNING WHEN I WAS DOING SOME ODD  
4 THINGS IN THE OFFICE AND I HAD THE CALL FROM THE PATHOLOGIST  
5 ROOM TO BRING THE ITEMS FOR DR. WARD TO EXAMINE.

6 Q ALL RIGHT. AND DID YOU TAKE THE ITEMS TO THE HOSPITAL?

7 A YES, SIR.

8 Q LET ME SHOW YOU IN PARTICULAR WHAT HAS BEEN MARKED FOR  
9 IDENTIFICATION AS STATE'S EXHIBIT NUMBER 22. (PAUSE) DID  
10 YOU COLLECT THAT FROM THE EVIDENCE DRYING ROOM?

11 A YES, SIR.

12 Q AND CARRIED IT TO DR. WARD?

13 A YES, SIR.

14 Q AND DID YOU BRING IT BACK?

15 A YES, SIR.

16 Q DURING THE TIME IT WAS GONE WAS IT EVER OUT OF YOUR  
17 CUSTODY OR VISUAL PRESENCE?

18 A NO, SIR.

19 Q AND WHEN YOU BROUGHT IT BACK DID YOU PLACE IT BACK IN  
20 THE DRYING ROOM?

21 A YES, SIR.

22 Q APPROXIMATELY HOW LONG WERE YOU GONE?

23 A I'D SAY ABOUT AN HOUR AND A HALF.

24 SOLICITOR ARIAIL: ALL RIGHT. ANSWER ANY QUESTIONS MR.  
25 MAULDIN MAY HAVE.

ZACK D. OWEN -- DIRECT BY SOLICITOR ARIAIL

1       MR. MAULDIN:    NO QUESTIONS.

2       THE COURT:    THANK YOU OFFICER OWEN.  WE APPRECIATE IT.  
3       NEXT WITNESS, PLEASE, SIR.

4                   (WITNESS STEPS DOWN AT 11:10 A.M.)

5       SOLICITOR ARIAIL:  WE CALL DAR SHAW.

6                               DARWIN SHAW, HAVING BEEN  
7       PREVIOUSLY SWORN TESTIFIED AS FOLLOWS:

8       THE COURT:    THE WITNESS REMAINS UNDER OATH.

9       DIRECT EXAMINATION BY SOLICITOR ARIAIL:

10      Q    MR. SHAW, I WANT TO DIRECT YOUR ATTENTION TO THE  
11      FOLLOWING DAY, DECEMBER -- EXCUSE ME, DECEMBER THE 8TH, AND  
12      ASK YOU IF YOU HAD OCCASION TO CONDUCT ANY FURTHER  
13      EXAMINATION OF STATE'S EXHIBIT NUMBER 22 FOR IDENTIFICATION.

14      A    YES, SIR.

15      Q    YOU DID?

16      A    YES, SIR, I DID.

17      Q    TELL US WHAT YOU DID IN REGARD TO THAT ITEM.

18      A    THIS WAS THE BALLISTIC VEST.  I PHOTOGRAPHED THE VEST,  
19      INSIDE OF THE VEST COVER IN ITS ORIGINAL CONDITION, AND THEN  
20      I TOOK THE INNER LINER WHICH CONTAINS THE SHEETS OF MATERIAL  
21      THAT'S TO KEEP THE PROJECTILES FROM GOING THROUGH.  I  
22      PHOTOGRAPHED THAT AREA AND I COLLECTED TWO PROJECTILES FROM  
23      INSIDE OF THE VEST.

24               (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3AA FOR  
25      PURPOSES OF IDENTIFICATION ONLY)

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3BB FOR  
2 PURPOSES OF IDENTIFICATION ONLY)

3 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3V FOR  
4 PURPOSES OF IDENTIFICATION ONLY)

5 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3W FOR  
6 PURPOSES OF IDENTIFICATION ONLY)

7 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3X FOR  
8 PURPOSES OF IDENTIFICATION ONLY)

9 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3Y FOR  
10 PURPOSES OF IDENTIFICATION ONLY)

11 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3Z FOR  
12 PURPOSES OF IDENTIFICATION ONLY)

13 Q ALL RIGHT. I WANT TO SHOW YOU THESE PHOTOGRAPHS, AND  
14 WHAT I'M GOING TO DO IS LET YOU LOOK AT THESE AND TELL ME IF  
15 YOU MADE THESE PHOTOGRAPHS AND, SECONDLY, ARE THEY ACCURATE  
16 REPRESENTATIONS OF THE VEST AS YOU SAW IT ON THAT DATE?

17 A (REVIEWS PHOTOGRAPHS) YES, SIR, I TOOK THE PHOTOGRAPHS.

18 SOLICITOR ARIAIL: YOUR HONOR, WE'D LIKE TO OFFER  
19 THESE.

20 MR. MAULDIN: (REVIEWS PHOTOGRAPHS) WE ASK IF THEY BE  
21 CONSIDERED AT THIS POINT FOR IDENTIFICATION UNTIL IT IS  
22 DETERMINED THAT THEY ARE NOT SIMPLY CUMULATIVE. I HAVEN'T  
23 HEARD HIM TESTIFY REGARDING WHETHER THERE IS A PROBATIVE  
24 ISSUE AS TO EACH PHOTOGRAPH. IF THERE IS, THE ONES THAT  
25 DON'T HAVE A PROBATIVE ISSUE, OF COURSE, SHOULD BE EXCLUDED.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 SO WE'RE ASKING THAT THEY BE LEFT FOR IDENTIFICATION UNTIL  
2 THERE IS AN ACTUAL PROBATIVE TESTIMONY ABOUT THEM.

3 SOLICITOR ARIAIL: I'M MOVING TO INTRODUCE THEM.

4 MR. MAULDIN: THEN WE ASK THAT THE COURT EXAMINE THE  
5 EXHIBITS TO SEE---

6 THE COURT: I HAVEN'T SEEN THEM.

7 MR. MAULDIN: YES, SIR.

8 SOLICITOR ARIAIL: LET ME SEE IF I CAN GET THEM BACK IN  
9 ORDER.

10 THE COURT: THE OBJECTION TO THESE DOCUMENTS IS  
11 OVERRULED. THESE SHOW VARIOUS ASPECTS AND DIFFERENT ANGLES.  
12 I CERTAINLY UNDERSTAND THE OBJECTION, BUT IT'S RESPECTFULLY  
13 OVERRULED. I'M ALLOWING IT IN EVIDENCE. AT THIS TIME THEY  
14 HAVE BEEN PROPERLY AUTHENTICATED.

15 SOLICITOR ARIAIL: AND, YOUR HONOR, THESE ARE MARKED  
16 3AA, 3BB, 3V, 3W, 3X, 3Y AND 3Z.

17 (STATE'S EXHIBITS 3AA, 3BB, 3V, 3W, 3X, 3Y AND 3Z,  
18 PHOTOGRAPHS, MOVED INTO EVIDENCE)

19 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 22 AND ASK YOU IF  
20 ON DECEMBER THE 8TH OF 2000 YOU RETURNED TO THE DRYING ROOM  
21 AND PICKED THAT ITEM UP AND BEGAN TO PROCESS IT FOR EVIDENCE?

22 A YES, SIR, I DID.

23 Q AND AFTER YOU COMPLETED YOUR PROCESSING OF ITEM 22 DID  
24 YOU THEN PLACE IT INTO PROPERTY AND EVIDENCE AT THE LAW  
25 ENFORCEMENT CENTER?

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 SOLICITOR ARIAIL: AT THIS TIME WE WOULD OFFER STATE'S  
3 EXHIBIT NUMBER 22 INTO EVIDENCE.

4 MR. MAULDIN: NO OBJECTION.

5 THE COURT: WITHOUT OBJECTION.

6 (STATE'S EXHIBIT NUMBER 22, BULLETPROOF VEST, MOVED INTO  
7 EVIDENCE)

8 Q WHAT I WOULD LIKE TO DO, IF WE COULD, IS WALK YOU  
9 THROUGH WHAT YOU DID WITH THIS VEST AND EXPLAIN TO THE JURY  
10 ABOUT WHAT THIS VEST IS AND HOW IT WAS.

11 WHAT I'LL DO IS I'LL START WITH PHOTOGRAPH 3AA AND ASK  
12 YOU TO LOOK AT THAT AND FIRST OFF ASK YOU IF THE VEST -- THIS  
13 IS TAKING PLACE IN THE DRYING ROOM?

14 A NO, SIR. THAT'S IN OUR PROCESSING AREA.

15 Q IN THE PROCESSING AREA ROOM?

16 A YES, SIR.

17 Q ALL RIGHT. AND WHAT DOES THE -- OR DESCRIBE HOW THE  
18 VEST WORKS. WHAT ARE WE LOOKING AT THERE?

19 A THIS IS THE FRONT PANEL OF THE VEST. THIS -- THE WAY IT  
20 WORKS, THIS AREA HERE, THIS IS MATERIAL THAT WHAT YOU SEE ON  
21 THE OUTSIDE IS ACTUALLY A COVER, LIKE A PILLOWCASE WHICH  
22 SLIPS OVER YOUR PILLOW, THE ACTUAL KEVLAR PANELS ARE INSIDE  
23 OF THIS AREA. THERE IS A FLAP THAT GOES ACROSS HERE THAT YOU  
24 CAN TAKE AND REMOVE THE KEVLAR PANELS SO THAT THIS OUTER AREA  
25 CAN BE WASHED.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY.

2 A AND---

3 Q AND THAT IS THE FRONT PANEL?

4 A THAT'S CORRECT.

5 Q AND LIKEWISE -- IN OTHER WORDS, IT WOULD GO IN THE FRONT  
6 ON THE CHEST?

7 A YES, SIR.

8 Q DOES IT HAVE A BACK PANEL?

9 A YES, SIR. AS YOU CAN SEE, THIS PORTION HERE IS THE SAME  
10 FLAP. YOU TUCK IT INTO YOUR PANTS TO HELP SECURE IT IN  
11 PLACE. AND THIS ACTUALLY IS THE TOP PORTION OF THE BACK  
12 PANEL.

13 Q ALL RIGHT. LOOKING AT THE FRONT PANEL, DID YOU PROCESS  
14 THE FRONT PANEL FOR ANY OBJECTS?

15 A YES, SIR, I DID.

16 Q ALL RIGHT. AND TELL US HOW YOU WENT ABOUT DOING THAT.  
17 HOW DID YOU DETERMINE THAT THERE MAY BE OBJECTS PRESENT?

18 A DUE TO THE PRESENCE OF SUSPECTED BLOOD IN THESE AREAS  
19 AND THERE WAS DAMAGE TO THE COVER ON THIS SIDE AND THERE ALSO  
20 APPEARED TO BE AN ENTRANCE HOLE ON THIS SIDE, I WANTED TO  
21 CHECK TO MAKE SURE TO SEE IF THERE WERE ANY PROJECTILES IN  
22 THE VEST ITSELF, IN THE KEVLAR PANELS.

23 Q ALL RIGHT. LET ME SHOW YOU WHAT IS MARKED AS STATE'S  
24 EXHIBIT 3W. WHAT PORTION OF THE VEST ARE WE LOOKING AT  
25 THERE?

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1     A     THIS WOULD BE THE LEFT SIDE NEAR THE RIB CAGE AREA.  
2     THAT IS THE FRONT, ACTUALLY THE FRONT PORTION OF THE COVER,  
3     THE VELCRO STRAP COMES AROUND AND ATTACHES TO THE LITTLE  
4     VELCRO AREAS HERE IN THE FRONT.  THIS MARKING -- THIS IS  
5     WHERE I COLLECTED ONE OF THE PROJECTILES FROM, AND THERE ARE  
6     LITTLE SPOTS THAT WERE -- THAT I PLACED WITH A PERMANENT  
7     MARKER TO INDICATE ON THE EXTERIOR SIDE WHERE I RETRIEVED THE  
8     PROJECTILE FROM.

9     Q     ALL RIGHT.  LET ME SHOW YOU WHAT'S BEEN MARKED AS  
10    STATE'S EXHIBIT 3X.  IS THAT THE SAME AREA?

11    A     YES, SIR, THAT'S ALSO ON THE LEFT SIDE.  AGAIN, THERE  
12    ARE MARKS THAT I PLACED WITH A PERMANENT MARKER JUST TO SHOW  
13    WHERE THE PROJECTILE WAS REMOVED FROM IN THE FRONT OF THE  
14    PANEL.  AND AS IT BECAME VISIBLE, I TOOK A PHOTOGRAPH OF IT  
15    AT THAT POINT.

16    Q     ALL RIGHT.  AND THAT IS THE PROJECTILE?

17    A     YES, SIR.

18    Q     AND THAT PROJECTILE IS ACCORDING TO YOUR LABELING MARKED  
19    DS31?

20    A     YES, SIR.

21    Q     LET ME HAND YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT  
22    22A AND ASK YOU IF THAT IS THE PROJECTILE THAT YOU REMOVED  
23    FROM INSIDE THE FRONT PANEL OF THE KEVLAR VEST?

24    A     YES, SIR, IT IS.

25    Q     OKAY.  AND DID YOU PROCESS THIS IN THE SAME MANNER AS

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 YOU TESTIFIED EARLIER AND PROCESS THIS INTO THE PROPERTY AND  
2 EVIDENCE ROOM AT THE LAW ENFORCEMENT CENTER WITHOUT IT BEING  
3 OUT OF YOUR CONTROL?

4 A YES, SIR, I DID.

5 SOLICITOR ARIAIL: ALL RIGHT. STATE'S 22A FOR  
6 IDENTIFICATION, YOUR HONOR.

7 Q OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S  
8 EXHIBIT -- LET'S LOOK AT 3V AGAIN AND -- WELL, NOT AGAIN, I'M  
9 SORRY. LET'S LOOK AT 3V. THE FIRST PROJECTILE WE JUST  
10 TALKED ABOUT, 22A, SHOW ON THAT DIAGRAM WHERE IT CAME FROM.

11 A IT CAME FROM THIS AREA HERE, SIR.

12 Q ALL RIGHT. AND DID YOU RETRIEVE ANOTHER PROJECTILE FROM  
13 THE VEST?

14 A YES, SIR, I DID.

15 Q WHAT PART DID YOU RETRIEVE IT FROM?

16 A IT WAS ACTUALLY FROM THE OPPOSITE SIDE, WHICH WOULD BE  
17 FROM THE BACK SIDE OF THE PANEL ON THE RIGHT SIDE.

18 Q OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBIT 3Y AND ASK  
19 YOU IF THAT IS A CLOSE-UP VIEW OF THE LEFT SIDE THAT YOU JUST  
20 POINTED OUT OF THE FRONT PANEL OF THE VEST?

21 A YES, SIR, IT IS.

22 Q AND THE WAY WE CAN IDENTIFY THE FRONT PANEL IS THOSE  
23 VELCRO STRAPS?

24 A THE VELCRO STRAPS AND THE V-NECK, WHICH ALLOWS IT TO  
25 MOVE IN THE FRONT.



DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY. AND THE STRAPS ACTUALLY PULL FROM THE BACK PANEL  
2 AND COME AROUND?

3 A THAT'S CORRECT.

4 Q AND THERE ARE TWO PIECES?

5 A YES, SIR. THEY ARE INDIVIDUAL PIECES ATTACHED WITH  
6 VELCRO STRAPS.

7 Q OKAY. STRAPS AT THE SHOULDER AREA AND AROUND THE BACK  
8 TO THE FRONT?

9 A THAT'S CORRECT.

10 Q OKAY. I WANT TO SHOW YOU WHAT IS NOW MARKED STATE'S  
11 EXHIBIT 3BB AND ASK IF YOU WOULD EXPLAIN HOW THAT RELATES TO  
12 THE LEFT SIDE OF THE VEST -- PART OF THE VEST WE'VE BEEN  
13 TALKING ABOUT?

14 A ACTUALLY, SIR, THIS IS ON THE RIGHT SIDE. IT IS THE  
15 RIGHT SIDE OF THE INSIDE PANEL. AGAIN, I MARKED WHERE I  
16 COLLECTED THIS PROJECTILE FROM. AS YOU CAN SEE THE LITTLE  
17 HOLES, THIS IS THE BREATHING PORTION OF THE LINER ITSELF.  
18 AND IT SHOWS THIS PROJECTILE ENTERED FROM THE BACK SIDE. IT  
19 DID NOT GO THROUGH THE KEVLAR INTO THE FRONT PORTION OF THE  
20 PANEL.

21 Q RUN THAT BY ME AGAIN SO THE JURY UNDERSTANDS THAT.

22 A THE FRONT PANEL NEAREST THE BODY IS WHERE THE PROJECTILE  
23 ENTERED. IT DID NOT GO THROUGH THE REST OF THE KEVLAR. IT  
24 DID NOT EXIT THE FRONT OF THE FRONT PANEL.

25 Q IT STAYED IN THE VEST?

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q ALL RIGHT. AND I SHOW YOU -- I SHOULD HAVE SHOWN YOU  
3 FIRST THIS PHOTOGRAPH. DOES THAT -- THAT ITEM THERE IS THE  
4 PROJECTILE?

5 A YES, SIR. WHEN IT BECAME VISIBLE, AGAIN, AS I MADE A  
6 SLIT IN THE -- TO ALLOW IT TO BE REMOVED, AND AS IT BECAME  
7 VISIBLE, I PHOTOGRAPHED IT IN A STATE JUST AS I TOOK IT FROM  
8 THE INSIDE OF THE VEST.

9 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT  
10 NUMBER 22B AND ASK YOU IF THAT IS THE PROJECTILE YOU REMOVED  
11 FROM THE VEST SHOWN ON PHOTOGRAPH 3BB?

12 A YES, SIR, IT IS.

13 Q ALL RIGHT. AND LIKEWISE, DID YOU PROCESS THAT IN SOME  
14 WAY AND CARRY IT TO THE LAW ENFORCEMENT CENTER PROPERTY AND  
15 EVIDENCE ROOM WITHOUT IT BEING OUT FROM UNDER YOUR CONTROL?

16 A YES, I DID.

17 Q TELL US A LITTLE BIT, I KIND OF SKIPPED OVER THAT PART,  
18 ABOUT HOW YOU ACTUALLY GOT THESE PROJECTILES OUT OF THE VEST.

19 A THE -- AGAIN, WHAT I DID IS I HAD ORIGINALLY MOVED --  
20 REMOVED THIS OUTSIDE SLIP TO MAKE MORE VISIBLE THE ACTUAL  
21 INSIDE KEVLAR AREAS, AND THEN I USED A RAZOR AND CUT A SLIP  
22 INTO THE MATERIAL IN ORDER FOR ME TO GET THE PROJECTILE OUT.

23 Q WAS THE PROJECTILE ITSELF EMBEDDED IN THE MATERIAL OR  
24 WAS IT LOOSE FLOATING AROUND?

25 A IT WAS EMBEDDED IN THE MATERIAL.

DARWIN SHAW -- DIRECT BY SOLICITOR ARIAIL

1 Q EXPLAIN TO THE JURY HOW THIS KEVLAR MATERIAL IS MADE AS  
2 HOW SOMETHING COULD BE THAT LIGHTWEIGHT BUT STILL HAVE -- THE  
3 BULLET CAN BECOME EMBEDDED IN IT.

4 A THERE ARE INDIVIDUAL SHEETS OF WOVEN KEVLAR. THERE MAY  
5 BE 20. THERE MAY BE 30 SEPARATE SHEETS THAT ARE COMPACTED.  
6 THEY ARE PRESSED TOGETHER TO FORM A TIGHT WOVEN OBSTACLE TO  
7 KEEP PROJECTILES FROM GOING THROUGH OR TO ELIMINATE THAT.  
8 THOSE INDIVIDUAL SHEETS ARE THEN SECURED INSIDE OF A SEWN  
9 PACKET SO THAT THOSE KEVLAR PANELS CAN'T MOVE BACK AND FORTH,  
10 SO THEY STAY INTACT.

11 Q AND THE PROJECTILE, YOU CUT AND PROBE TO GET IT OUT?

12 A IN THE ONE, SIR, YES, I DID. THE OTHER ONE WAS ON THE  
13 LEFT SIDE, HAD MUSHROOMED, AND IT WAS NOT IN AS FAR AS THE  
14 ONE ON THE RIGHT SIDE.

15 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) ANSWER  
16 ANY QUESTIONS THAT DEFENSE COUNSEL MAY HAVE.

17 CROSS EXAMINATION BY MR. MAULDIN:

18 Q ALL RIGHT. OFFICER SHAW, I WANT TO BRIEFLY GO -- MAKE  
19 SURE I UNDERSTAND HOW TO INTERPRET THE PHOTOGRAPHS. ALL  
20 RIGHT. I'LL SHOW YOU THESE TWO FIRST AND SEE IF I'M  
21 UNDERSTANDING THEM. PHOTOGRAPH 3AA AND PHOTOGRAPH 3W, I WANT  
22 TO ASK YOU IF 3AA IS TAKEN WITH THIS PILLOWCASE THAT YOU  
23 DESCRIBED ON IT AND 3W IS TAKEN AFTER THE PILLOWCASE IS TAKEN  
24 OFF.

25 A NO, SIR. IT'S ON BOTH OF THEM.

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 Q ALL RIGHT. LET ME LOOK AT IT AGAIN.

2 A THEY HAVE THE TAILS ON BOTH.

3 Q SO IN ALL OF THESE PHOTOGRAPHS WAS THAT PILLOWCASE STILL  
4 ON THIS DEVICE?

5 A I PLACED IT BACK ON. THE AREA -- WHAT I HAD DONE WAS  
6 PULLED THE CORNER OF THE KEVLAR PADS THEMSELVES OUT OF THE  
7 OUTSIDE LINER IN ORDER TO SEE WHERE I WAS GOING TO TRY TO  
8 COLLECT THE PROJECTILE FROM.

9 Q ALL RIGHT. LET ME SHOW YOU WHAT I'M ASKING HERE. ALL  
10 RIGHT. NOW I'M GOING TO SHOW YOU THESE IN KIND OF QUICK  
11 SUCCESSION SO YOU'LL UNDERSTAND. SEE THIS -- THIS IS WITH  
12 THE PILLOWCASE ON IT?

13 A THAT'S CORRECT.

14 Q AND THIS BLOOD STAIN RIGHT HERE --

15 A YES, SIR.

16 Q -- THAT IS A BLOOD STAIN -- IF I'M LOOKING AT THIS, THIS  
17 IS THE FRONT NECK, THIS WOULD BE LEFT ARM HOLE?

18 A NO, SIR. THAT WOULD BE THE RIGHT. THAT'S THE INSIDE  
19 WHICH WOULD BE CLOSEST TO THE BODY.

20 Q SO THIS THING HAS BEEN TURNED WRONG SIDE OUT?

21 A THAT'S CORRECT.

22 Q OKAY. OKAY. ALL RIGHT. NOW, SO IT'S TURNED WRONG SIDE  
23 OUT AND THIS ONE IS RIGHT SIDE OUT?

24 A THAT IS THE FRONT SIDE OF THE PANEL, YEAH, THE FRONT  
25 SIDE OF THE VEST.

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 Q SO THAT IS -- WE'RE LOOKING AT -- WHAT WE SEE THERE IS  
2 THE ACTUAL EXTERIOR SIDE OF THE VEST?

3 A THAT'S CORRECT.

4 Q AND WHAT I SHOWED YOU IN 3AA, THE PREVIOUS, WAS AFTER  
5 IT'S BEEN TURNED WRONG SIDE OUT, AND THAT EXPLAINS THE BLOOD  
6 STAIN ON THE INSIDE. IT WOULD HAVE BEEN CLOSEST TO THE SKIN?

7 A THAT'S CORRECT.

8 Q OKAY. ALL RIGHT. NOW, THIS PHOTOGRAPH, IF YOU LOOK  
9 RIGHT THERE WHERE THAT VELCRO STRIP IS LOCATED, THAT LITTLE  
10 -- HAVE YOU GOT YOUR POINTER UP THERE WITH YOU?

11 A YES, SIR.

12 Q SEE THAT LITTLE VELCRO STRIP? ALL RIGHT. SEE THAT  
13 LITTLE MARK, LITTLE THING THERE? IT LOOKS LIKE A LITTLE  
14 HOLE?

15 A THIS ONE?

16 Q RIGHT. THAT'S WHERE THIS PHOTOGRAPH SHOWS A PROJECTILE  
17 WAS ACTUALLY TAKEN FROM THE VEST?

18 A THAT'S CORRECT.

19 Q AND THAT IS ON THE EXTERIOR?

20 A THAT PHOTOGRAPH, SIR, YES. THAT'S WHERE I PULLED IT  
21 FROM.

22 Q RIGHT. IT'S FROM THE EXTERIOR?

23 A YES, SIR.

24 Q SO THAT PROJECTILE RIGHT THERE WOULD HAVE BEEN FIRED  
25 FROM A GUN AND HIT THAT KEVLAR VEST AND THE KEVLAR VEST WOULD

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 HAVE STOPPED THE PROJECTILE AT THAT POINT?

2 A THAT'S CORRECT.

3 Q OKAY. AND THEN THE OTHER ONE THAT YOU RECOVERED, WHICH  
4 IS THIS ONE, IS IN THE LOWER RIGHT BACK INTERIOR; IS THAT  
5 RIGHT? AND JUST TELL -- I KNOW THAT'S GOT A LOT OF WORDS IN  
6 IT, BUT JUST FOLLOW ME A MINUTE. YOU HAVE -- WHAT YOU HAVE  
7 DONE IS YOU HAVE FLIPPED -- YOU FLIPPED A FLAP OPEN SHOWING  
8 THE INTERIOR OF THE VEST?

9 A THAT IS THE INTERIOR SIDE OF THE FRONT PANEL, YES.

10 Q THAT'S THE INTERIOR SIDE OF THE FRONT---

11 A YES, SIR.

12 Q ---RIGHT PANEL?

13 A YES, SIR.

14 Q OKAY. ALL RIGHT. SO THE VEST WOULD COME DOWN LIKE SO.  
15 LIKE I'M DOING ON ME?

16 A YES, SIR.

17 Q AND YOU WOULD HAVE OPENED IT LIKE THAT AND THAT'S WHERE  
18 THAT PROJECTILE WAS LOCATED?

19 A THAT'S CORRECT.

20 Q ALL RIGHT. NOW, IN YOUR INSPECTION -- THANK YOU, MA'AM.  
21 IN YOUR INSPECTION OF STATE'S EXHIBIT NUMBER 22, WHICH WOULD  
22 BE THE VEST, THERE IS -- THAT -- THE PROJECTILE THAT WAS IN  
23 THE INSIDE OF THE VEST THAT WE JUST LOOKED AT A PICTURE OF,  
24 THERE WAS NO HOLE OR DAMAGE TO THE VEST THAT WOULD HAVE  
25 INDICATED WHERE THAT PROJECTILE ACTUALLY WENT INTO THE VEST;

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 IS THAT -- DO YOU UNDERSTAND THAT QUESTION?

2 A YES, SIR. THERE WAS DAMAGE TO -- THERE WAS DAMAGE WHERE  
3 EACH PROJECTILE WAS LOCATED. THERE WAS DAMAGE TO THE VEST ON  
4 THE INTERIOR SIDE CLOSEST TO THE SKIN, NOTHING ON THE  
5 OUTSIDE.

6 Q OKAY. AND SO WITH REGARD TO THE PROJECTILE THAT WAS  
7 REMOVED WHEN YOU PULLED THE RIGHT FRONT FLAP BACK, IT WAS ON  
8 THE INSIDE OF THE VEST BUT THERE WAS NO POSITION ON THE VEST  
9 THAT SHOWS WHERE THAT BULLET WENT INTO THE VEST? YOU  
10 COULDN'T -- THAT BULLET, IT APPEARS TO ME, WOULD HAVE HAD TO  
11 HAVE GONE IN THE VEST IN ONE OF THE -- WHERE THERE WAS AN  
12 OPENING, IS THAT -- I MEAN, I DON'T KNOW WHETHER YOU HAVE AN  
13 OPINION ON THAT OR NOT, BUT THERE IS NO HOLE ON THE EXTERIOR  
14 OF THE VEST SHOWING WHERE THAT BULLET WENT IN, IS THERE?

15 A NO. NOT ON THE FRONT SIDE, NO, SIR.

16 Q IS THERE ONE ON THE BACK SIDE?

17 A YES, SIR, TWO INDIVIDUAL ENTRANCE HOLES INTO THE BACK  
18 PANEL, WHICH MEANS THEY CAME FROM THE BACK SIDE, EMBEDDED IN  
19 THE KEVLAR ON THE FRONT PANEL.

20 Q DOES ONE OF THESE PICTURES SHOW THAT?

21 A THEY SHOULD ALL SHOW IT, SIR.

22 Q ALL RIGHT. LET'S -- I'LL HAND THEM TO YOU AND I WANT  
23 YOU TO...

24 A EXHIBIT 3Y SHOWS THE RIGHT FRONT PANEL.

25 Q RIGHT FRONT PANEL.

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 A THE RIGHT FRONT PANEL, WHICH WOULD BE ON THE EXTERIOR  
2 SIDE, THERE IS NO DAMAGE TO THE OUTSIDE COVERING OF THIS  
3 VEST.

4 Q OKAY. SO WE CAN GET THAT ONE OUT OF THE WAY. THERE IS  
5 NO DAMAGE TO THE OUTSIDE COVERING IN THAT PICTURE.

6 A AND THERE IS NOT AN EXHIBIT TO SHOW THE LEFT SIDE AS FAR  
7 AS ANY DAMAGE TO THE EXTERIOR SIDE OF THE -- ON THE LEFT  
8 SIDE. THE DAMAGE IS ALL TO THE INTERIOR SIDE.

9 Q OKAY. SO ONE OF THESE PHOTOGRAPHS, IF I'M LOOKING AT  
10 THEM CORRECTLY, AND I BELIEVE I UNDERSTOOD YOUR ANSWER, THESE  
11 PHOTOGRAPHS DO NOT SHOW A DAMAGED AREA OF THE VEST THAT THEN  
12 WOULD SUPPORT THE PATH OR THE TRACKING OF THE PROJECTILE THAT  
13 WAS LOCATED ON THE INSIDE PANEL? NONE OF THOSE EXHIBITS SHOW  
14 THE EXTERIOR DAMAGED PORTION OR -- OF THE VEST AS TO HOW THAT  
15 BULLET WOULD HAVE GOTTEN INSIDE THERE?

16 A THERE'S JUST DAMAGE TO SHOW WHERE THE PROJECTILES WERE  
17 COLLECTED FROM.

18 Q OKAY. ALL RIGHT. SO THERE IS THE ANSWER. THE ONLY  
19 DAMAGED AREAS OF THE VEST THAT YOU HAVE TESTIFIED TO IS WHERE  
20 THE PROJECTILES ENDED UP?

21 A THAT'S CORRECT.

22 Q ALL RIGHT. AND YOU LOOKED AT THE WHOLE VEST?

23 A YES, SIR.

24 Q AND IF THERE WAS OTHER DAMAGE TO THE VEST, YOU WOULD BE  
25 TESTIFYING TO IT?



DARWIN SHAW -- CROSS BY MR. MAULDIN

1 A THAT'S CORRECT.

2 Q AND YOU WOULD BE TELLING THE JURY THE LOCATION OF ANY  
3 OTHER DAMAGE TO THE VEST, EXTERIOR, INTERIOR, ANYWHERE?

4 A YES, SIR.

5 Q ALL RIGHT. AND THE TWO LOCATIONS, ONE WHERE THE  
6 PROJECTILE WAS STILL EMBEDDED AND THEN IN THE RIGHT FRONT  
7 INSIDE THE VEST THERE WAS AN EMBEDDED PROJECTILE THERE?

8 A THEY WERE BOTH EMBEDDED, YES, SIR.

9 Q ALL RIGHT. AND THOSE ARE THE ONLY TWO LOCATIONS?

10 A YES, SIR.

11 Q AND FINALLY, FINALLY, OFFICER, TO MAKE SURE I'M  
12 FOLLOWING THE LOCATIONS, I'LL SHOW YOU TWO MORE -- TWO OF  
13 THESE EXHIBITS ONE MORE TIME, SIR, AND MAKE SURE THAT NEITHER  
14 IS IN A BACK PANEL. THIS EMBEDDED PROJECTILE, STATE'S  
15 EXHIBIT 3BB, WAS NOT IN A BACK PANEL BUT IN THE RIGHT FRONT  
16 INTERIOR PANEL?

17 A THAT'S CORRECT.

18 Q AND THIS EMBEDDED PROJECTILE WAS NOT IN A REAR BACK  
19 PANEL BUT WAS IN THE LEFT FRONT -- AND I'M JUST -- IN THIS  
20 AREA THAT I'M DEMONSTRATING ON MY BODY -- FOR THE COURT  
21 REPORTER, I'VE GOT MY HAND OVER MY LEFT SIDE KIND OF UNDER MY  
22 ARM -- IS THAT AN APPROXIMATE LOCATION, OFFICER SHAW?

23 A DEPENDING UPON HOW HIGH THE VEST HAD RIDDEN ON HIS BODY.  
24 BUT THAT WOULD BE THE GENERAL AREA.

25 Q AND IT'S THE EXTERIOR FRONT?

DARWIN SHAW -- CROSS BY MR. MAULDIN

1 A IT WOULD BE THE INTERIOR -- I REMOVED IT FROM THE  
2 EXTERIOR, BUT IT EMBEDDED IN THE BACK SIDE OF THE FRONT PANEL  
3 ON THE LEFT.

4 MR. MAULDIN: OKAY. ALL RIGHT. THAT'S ALL.

5 REDIRECT EXAMINATION BY SOLICITOR ARIAIL:

6 Q JUST SO THERE IS NOT ANY CONFUSION, WOULD YOU STEP DOWN  
7 HERE AND PUT THIS VEST ON ME TO SHOW ME WHERE YOU GOT THE  
8 BULLETS SO THE JURY WILL UNDERSTAND HOW THIS THING WORKS?

9 A (COMPLIES) AGAIN, THIS IS THE FRONT -- THE FRONT PANEL.  
10 THIS IS THE BACK PANEL. PUT IT ON?

11 Q SURE.

12 A OKAY. WHAT IT DOES, IT SLIDES OVER. BUT AGAIN BECAUSE  
13 OF THE SIZE OF THE INDIVIDUAL IT'S GOING TO DETERMINE WHERE  
14 THE VELCRO STRAPS ARE PLACED. THESE VELCRO STRAPS COME FROM  
15 THE SIDE AND ARE ATTACHED TO THE FRONT. SO IT'S UP AGAINST  
16 THE BODY. AND AGAIN, THESE ARE MADE TO HELP HOLD THE VEST IN  
17 PLACE UNDER THE SLATS.

18 Q NOW SHOW US, LEAVING IT ON, WHERE THE TWO PROJECTILES  
19 ENTERED THE VEST.

20 A OKAY. NUMBER DS31, WHICH I TESTIFIED TO, ENTERED THE  
21 VEST FROM THE REAR. THIS IS SEVERE DAMAGE TO THIS CASING.  
22 THE PROJECTILE ENTERED THE LEFT REAR AND IT WAS EMBEDDED IN  
23 THE KEVLAR PANELING ON THE INSIDE.

24 Q AND YOU TOOK IT OUT ON THE FRONT?

25 A YES, SIR. I CIRCLED IT AND I REMOVED IT FROM THE FRONT.

DARWIN SHAW -- REDIRECT BY SOLICITOR ARIAIL

1 Q BUT IT ENTERED FROM THE BACK?

2 A THAT'S CORRECT, SIR.

3 Q SO IT CAME FROM THIS ANGLE?

4 A THAT'S CORRECT. IT CAME FROM THE INSIDE BECAUSE THERE  
5 WAS NO DAMAGE TO THE OUTSIDE AS THE PHOTOGRAPH SHOWED.

6 Q SHOW ME THE NEXT ONE.

7 A THE LEFT PANEL -- EXCUSE ME. THE RIGHT PANEL, THERE WAS  
8 NO DAMAGE TO THIS OUTSIDE. HOWEVER, THERE WAS AN ENTRANCE TO  
9 THE MATERIAL ON THE INSIDE OF THE PANEL AND THAT IS WHERE  
10 DS32 WAS RETRIEVED FROM WAS FROM THE PANELING. I WORKED IT  
11 OUT OF THE HOLE THAT I MADE. I MADE A LITTLE LARGER HOLE TO  
12 HELP ACCOMMODATE IT. I SLID IT OUT, AND IT WAS PHOTOGRAPHED  
13 IN THAT POSITION.

14 Q BUT THE ENTRANCE HOLE FOR THAT PROJECTILE IS ON THE  
15 INSIDE PORTION OF THE VEST NOT THE OUTSIDE?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. SO BOTH PROJECTILES CAME IN FROM THE  
18 BACKSIDE OF THE VEST -- THE FRONT PANEL OF THE VEST?

19 A THEY ENTERED THE PANELS FROM THE BACK SIDE.

20 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) THAT'S  
21 ALL I HAVE.

22 THE COURT: ANYTHING FURTHER, SIR?

23 MR. MAULDIN: NOTHING FURTHER.

24 THE COURT: OFFICER SHAW, THANK YOU, SIR.

25 (WITNESS STEPS DOWN AT 11:42 A.M.)

DARWIN SHAW -- REDIRECT BY SOLICITOR ARIAIL

1           **THE COURT:**   HOW LONG IS THE DIRECT OF YOUR NEXT  
2 WITNESS, PLEASE, SIR?

3           **SOLICITOR ARIAIL:**   PROBABLY 30 MINUTES.

4           **THE COURT:**   LET'S GO AHEAD AND BREAK.   WE'RE GOING TO  
5 BREAK FOR LUNCH ABOUT 1:00.   LET'S TAKE ANOTHER BREAK AND  
6 THEN MAYBE WE CAN PROCEED WITHOUT FURTHER INTERRUPTION.  
7 LET'S TAKE A SHORT BREAK AND WE'LL GET YOU BACK OUT HERE IN  
8 ABOUT FIVE OR TEN MINUTES.

9                   (JURY EXITS COURTROOM AT 11:43 A.M.)

10          **THE COURT:**   WE'LL BE IN RECESS.

11                   (A RECESS WAS TAKEN FROM 11:43 TO 11:56 A.M.)

12          **THE COURT:**   GO AHEAD AND BRING THE JURY.

13                   (JURY REENTERS COURTROOM AT 11:59 A.M.)

14          **THE COURT:**   FOLKS, WE'VE GOT SOMEBODY WORKING TO MAKE  
15 IT A LITTLE BIT WARMER IN HERE.   I GOT YOUR REQUEST.   IF WE  
16 CAN'T ACCOMPLISH THAT BEFORE THE LUNCH BREAK, WE WILL PUT AN  
17 EXTRA EFFORT INTO IT DURING LUNCH TO MAKE SURE WE CAN MAKE IT  
18 AS COMFORTABLE AS WE CAN FOR YOU.

19          NEXT WITNESS, PLEASE, SIR.

20          **SOLICITOR ARIAIL:**   WE CALL DR. MICHAEL WARD.

21                               **MICHAEL E. WARD, M.D.,** HAVING  
22 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23          **DIRECT EXAMINATION BY SOLICITOR ARIAIL:**

24          **Q**    WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE.

25          **A**    MICHAEL EUGENE WARD.

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 Q DR. WARD, IF YOU WOULD, KEEP YOUR VOICE UP SO THESE LAST  
2 TWO JURORS CAN HEAR YOU.

3 WHAT IS YOUR PRESENT OCCUPATION AND POSITION?

4 A I AM A FORENSIC PATHOLOGIST. I AM EMPLOYED BY PATHOLOGY  
5 ASSOCIATES OF GREENVILLE AS WELL AS BY GREENVILLE COUNTY AS  
6 THE CHIEF MEDICAL EXAMINER.

7 Q AND AS CHIEF MEDICAL EXAMINER WHAT ARE YOUR DUTIES?

8 A MY RESPONSIBILITIES ARE TO INVESTIGATE DEATHS THAT OCCUR  
9 IN GREENVILLE COUNTY TO DETERMINE CAUSE AND MANNER OF THOSE  
10 DEATHS.

11 Q WHAT IS YOUR EDUCATION AND BACKGROUND TRAINING FOR THAT  
12 POSITION?

13 A I HAVE A BACHELOR'S DEGREE IN BIOLOGY FROM THE  
14 UNIVERSITY OF ALABAMA. I RECEIVED MY MASTER'S DEGREE IN  
15 FORENSIC SCIENCE FROM THE UNIVERSITY OF ALABAMA IN  
16 BIRMINGHAM. I RECEIVED MY MEDICAL DEGREE FROM THE UNIVERSITY  
17 OF SOUTH ALABAMA. I DID A FOUR-YEAR ANATOMIC PATHOLOGY  
18 RESIDENCY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, AND A  
19 ONE-YEAR FORENSIC PATHOLOGY FELLOWSHIP AT THE UNIVERSITY OF  
20 NEW MEXICO IN ALBUQUERQUE. I AM BOARD CERTIFIED BY THE  
21 AMERICAN BOARD OF PATHOLOGY IN BOTH ANATOMIC AND FORENSIC  
22 PATHOLOGY.

23 Q AND HOW MUCH EXPERIENCE HAVE YOU HAD OR NUMBER OF  
24 AUTOPSIES YOU HAVE PERFORMED?

25 A I'VE DONE -- I'VE PERFORMED WELL OVER A THOUSAND

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 FORENSIC AUTOPSIES.

2 Q AND HAVE YOU QUALIFIED AS AN EXPERT IN THE FIELD OF  
3 FORENSIC PATHOLOGY IN THIS STATE?

4 A YES, I HAVE.

5 Q AND IN OTHER STATES ALSO?

6 A YES, I HAVE.

7 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD SUBMIT THAT HE  
8 IS QUALIFIED AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.

9 THE COURT: DO YOU WISH TO VOIR DIRE?

10 MR. BANNISTER: NO QUESTIONS.

11 THE COURT: IF YOU WILL GIVE ME A MOMENT TO EXPLAIN THE  
12 SIGNIFICANCE OF THAT TO THE JURY, PLEASE?

13 SOLICITOR ARIAIL: YES, SIR.

14 THE COURT: LADIES AND GENTLEMEN, UNDER THE LAW  
15 OFTENTIMES AN INDIVIDUAL WHO BY WAY OF TRAINING, EXPERIENCE  
16 OR EDUCATION ACQUIRES A CERTAIN DEGREE OF SKILL IN A  
17 PARTICULAR AREA, THEN THE LAW WILL DESIGNATE SUCH AN  
18 INDIVIDUAL AS AN EXPERT.

19 LET ME TELL YOU THE SIGNIFICANCE OF THAT EXPERT  
20 DESIGNATION. IT SIMPLY MEANS THE INDIVIDUAL IS ENTITLED TO  
21 GIVE TESTIMONY IN THE FORM OF OPINION. GENERALLY SPEAKING, A  
22 NONEXPERT DOES NOT GIVE OPINION TESTIMONY. THE LAW PERMITS  
23 EXPERTS TO GIVE OPINION TESTIMONY. THOSE OPINIONS CONSTITUTE  
24 EVIDENCE WHICH YOU MAY CONSIDER. YOU ARE TO TREAT THE  
25 OPINION TESTIMONY OF AN EXPERT JUST AS YOU DO ALL OF THE

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 OTHER EVIDENCE IN THE CASE. BY THAT I MEAN YOU MAY ACCEPT IT  
2 OR YOU MAY REJECT IT BASED ON YOUR VIEW OF THE EVIDENCE.

3 YOU MAY PROCEED, SIR.

4 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

5 Q DR. WARD, WHAT IS PATHOLOGY?

6 A PATHOLOGY IS THE STUDY OF DISEASE AND HOW THAT DISEASE  
7 AFFECTS MAN.

8 Q AND WHAT IS FORENSIC PATHOLOGY?

9 A FORENSIC PATHOLOGY IS TAKING PATHOLOGY ONE STEP FURTHER.  
10 HOW THESE DISEASE, DISEASE PROCESSES AND IN SOME CASES  
11 INJURIES AFFECT PERSONS AND HOW THEY COME TO DIE AS A RESULT  
12 OF THOSE EITHER DISEASE PROCESSES OF INJURIES.

13 Q AND IN YOUR CAPACITY AS MEDICAL EXAMINER DID YOU HAVE  
14 OCCASION TO VISIT THE SCENE OF ERIC NICHOLSON'S DEATH ON  
15 DECEMBER THE 6TH OF THE YEAR 2000?

16 A YES, I DID.

17 Q AND IS THAT A NORMAL PROCESS THAT YOU ENGAGED IN, TO  
18 VISIT CRIME SCENES?

19 A YES, IT IS.

20 Q ALL RIGHT. ON DECEMBER THE 7TH DID YOU PERFORM AN  
21 AUTOPSY ON ERIC NICHOLSON FOR THE PURPOSE OF DETERMINING HIS  
22 CAUSE OF DEATH?

23 A YES, I DID.

24 Q AS A RESULT OF THAT AUTOPSY DID YOU DETERMINE HIS CAUSE  
25 OF DEATH?

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 A YES, I DID.

2 Q AND WHAT WAS HIS CAUSE OF DEATH?

3 A ERIC NICHOLSON DIED AS THE RESULT OF GUNSHOT WOUNDS OF  
4 THE CHEST.

5 Q ALL RIGHT. AND WHEN YOU SAY THE AUTOPSY WAS CONDUCTED,  
6 WHERE WAS IT CONDUCTED?

7 A AT THE AUTOPSY FACILITY AT GREENVILLE MEMORIAL HOSPITAL.

8 Q DID YOU AS A PART OF THAT AUTOPSY OBSERVE INJURIES TO  
9 HIS BODY?

10 A YES, I DID.

11 Q AND DID YOU PREPARE A WRITTEN REPORT REGARDING YOUR  
12 FINDINGS?

13 A YES, I DID.

14 Q AND IS THAT WRITTEN REPORT WITH YOU? AND IF YOU NEED  
15 TO, FEEL FREE TO, IF YOU NEED TO, FEEL FREE TO REFER TO IT.

16 AS A PART OF THAT REPORT DID YOU ALSO PREPARE DIAGRAMS  
17 OF YOUR FINDINGS?

18 A YES, I DID.

19 Q AND AT MY REQUEST DID YOU PREPARE DIAGRAMS FOR  
20 PRESENTATION IN COURT?

21 A YES, I DID.

22 Q DO YOU HAVE THOSE WITH YOU?

23 A YES, I DO.

24 Q AND DO THESE DIAGRAMS THAT YOU HAVE PREPARED ACCURATELY  
25 REFLECT THE INJURIES THAT YOU NOTED IN THE AUTOPSY TO ERIC



MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 NICHOLSON'S BODY?

2 A YES, THEY DO.

3 Q ALL RIGHT. THESE HAVE BEEN PREMARKED AS STATE'S  
4 EXHIBITS 23A AND 23B.

5 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD OFFER THESE  
6 INTO EVIDENCE AT THIS TIME.

7 MR. BANNISTER: WITHOUT OBJECTION.

8 THE COURT: THANK YOU, SIR.

9 (STATE'S EXHIBIT NUMBER 23A, AUTOPSY DIAGRAM, MOVED INTO  
10 EVIDENCE)

11 (STATE'S EXHIBIT NUMBER 23B, AUTOPSY DIAGRAM, MOVED INTO  
12 EVIDENCE)

13 Q DOCTOR, IF YOU WOULD, LOOK AT YOUR REPORT. AND WHAT I  
14 WOULD LIKE TO DO IS FOLLOW ALONG AND DISCUSS THE VARIOUS  
15 WOUNDS THAT YOU HAVE NOTED. BUT IN GENERAL WERE YOU ABLE TO  
16 DETERMINE THE GENERAL ANGULATION OR GENERAL TRAJECTORY OF THE  
17 BULLETS, EITHER RIGHT TO LEFT, LEFT TO RIGHT, FRONT TO BACK,  
18 THAT SORT OF THING?

19 A YES, I WAS.

20 Q AND WHAT WAS THE GENERAL ANGULATION?

21 A GENERALLY THESE BULLETS THROUGH THE BODY OF MR.  
22 NICHOLSON WENT FROM HIS LEFT TO HIS RIGHT AND GENERALLY  
23 FROM -- VERY SLIGHTLY FROM BACK TOWARDS THE FRONT.

24 Q AND THE NUMBER OF GUNSHOT WOUNDS THAT YOU OBSERVED, HOW  
25 MANY WAS THAT?

1     A     FIVE.

2     Q     LET'S TAKE YOUR DIAGRAM AND START WITH STATE'S EXHIBIT  
3     23A.  23A, ARE YOU FAMILIAR WITH THAT DIAGRAM?

4     A     YES, I AM.

5     Q     WHAT INJURY DOES THAT INDICATE?

6     A     THERE ARE SEVERAL INJURIES SHOWN ON THIS HEAD DIAGRAM.  
7     THE MOST -- THE GUNSHOT WOUND THAT WE ARE REFERRING TO IS  
8     THIS WOUND HERE, WHICH IS A DEEP GRAZE GUNSHOT WOUND.  AND BY  
9     THAT I MEAN THAT THE BULLET IS BASICALLY SCRAPING ACROSS THE  
10    FACE OF MR. NICHOLSON AS IT PASSES FROM HIS LEFT TO HIS RIGHT  
11    AND UPWARD CAUSING A DEEP GUTTER-TYPE WOUND OR A GRAZE WOUND  
12    OF THE FACE.  IT PENETRATES INTO THE SKIN AND THEN IT EXITS  
13    HERE THROUGH THAT SEPARATE DEFECT JUST ADJACENT TO HIS NOSE.  
14    SO THIS WAS A SUPERFICIAL GUNSHOT WOUND OF THE FACE.  IT DID  
15    NOT PENETRATE INTO THE CRANIAL VAULT WHERE THE BRAIN IS.  IT  
16    DID NOT DISRUPT ANY UNDERLYING BONES.  IT PASSED ONLY THROUGH  
17    SOFT TISSUE.

18    Q     ALL RIGHT.  AND WERE YOU ABLE TO DETERMINE BY LOOKING AT  
19    THAT WOUND ITS COURSE OF DIRECTION?

20    A     YES, I WAS.

21    Q     AND WHAT WAS THAT?

22    A     THIS WOUND PASSES FROM MR. NICHOLSON'S LEFT TO HIS RIGHT  
23    AND FROM BELOW UPWARD.

24    Q     AND WHEN YOU SAY LEFT TO THE RIGHT, WE'RE LOOKING AT --  
25    IF YOU WOULD, JUST POINT OUT ON THE---

1 A THIS WOULD BE THE LEFT, AND IT PASSES FROM LEFT TO RIGHT  
2 IN THIS DIRECTION.

3 Q AND THE MARK IN BETWEEN THE EYEBROWS, WHAT IS THAT MARK?

4 A THAT MARK IS AN ABRASION OR A SCRATCH OF THE SKIN WHERE  
5 THE OUTER PORTION OF THE SKIN HAS BEEN RUBBED OFF. IT'S IN  
6 DIRECT LINE WITH THIS GUNSHOT WOUND, AND IT MAY BE WHERE THE  
7 BULLET SUPERFICIALLY PASSED ACROSS THE SKIN CAUSING AN  
8 ABRASION OF THE SKIN. IT MAY BE A SEPARATE ABRASION CAUSED  
9 BY SOME OTHER FASHION, I DON'T KNOW. BUT IT IS IN A DIRECT  
10 LINE WITH THAT GUNSHOT WOUND.

11 Q DID YOU NOTICE ANY OTHER -- WELL, LET'S TALK ABOUT THE  
12 ABRASION OR THE MARK BELOW, THE LOWER ONE ON THE DIAGRAM.  
13 WHAT IS THAT?

14 A THIS?

15 Q YES.

16 A THERE IS AN ABRASION HERE JUST TO THE OUTSIDE OF THE  
17 LEFT CORNER OF THE LIP, WHICH IS AGAIN AN ABRASION OF THE  
18 SKIN WHERE THE SKIN HAS BEEN RUBBED -- THE SKIN HAS BEEN  
19 RUBBED CAUSING A SCRATCH. THIS WAS NOT CAUSED BY A GUNSHOT  
20 WOUND BUT BY SOME OTHER OBJECT STRIKING THE SKIN.

21 ADJACENT TO THAT ABRASION IS A TEAR IN THE SKIN, WHAT WE  
22 CALL A LACERATION, AND THIS IS WHERE -- IT'S A BLUNT INJURY  
23 WHERE THE SKIN HAS BEEN STRETCHED AND TORN. IT'S NOT CAUSED  
24 BY A BULLET BUT WAS CAUSED BY SOME OTHER OBJECT AS IT PASSED  
25 AND IMPACTED MR. NICHOLSON'S FACE IN THAT REGION. IT'S

1 CALLED A LACERATION.

2 Q COULD IT HAVE BEEN A PART OF A BULLET, A JACKET, A  
3 FRAGMENT OF SOMETHING OF THAT NATURE?

4 A IT COULD HAVE BEEN PART OF A BULLET THAT SHEARED OFF AS  
5 IT PASSED THROUGH ANOTHER OBJECT. IT COULD HAVE BEEN A PART  
6 OF THAT OBJECT THAT A BULLET PASSED THROUGH CREATING A  
7 SHRAPNEL EFFECT WHERE A PIECE IS BROKEN OFF AND STRIKES MR.  
8 NICHOLSON'S FACE.

9 Q ALL RIGHT. NOW, THE DOTS ON THE LEFT CHEEK, WHAT ARE  
10 THOSE?

11 A THESE DOTS HERE ARE CALLED PUNCTATE ABRASIONS. THEY ARE  
12 SMALL PINPOINT ABRASIONS OF THE SKIN, AND THEY ARE THE RESULT  
13 OF AN INTERMEDIATE TARGET DEFECT. THE BULLET THAT STRUCK MR.  
14 NICHOLSON'S FACE IN THAT REGION HAD TO HAVE PASSED THROUGH  
15 SOMETHING ELSE BEFORE IT STRUCK MR. NICHOLSON'S FACE. PIECES  
16 OF WHATEVER IT PASSED THROUGH BROKE OFF, FRAGMENTED AND ALSO  
17 IMPACTED HIS FACE ADJACENT TO THE GUNSHOT WOUND, CALLED AN  
18 INTERMEDIATE TARGET,

19 Q THAT COULD BE ANY PART OF ANY OBJECT THAT PASSED  
20 THROUGH, GLASS, METAL, PLASTIC, THINGS OF THAT NATURE?

21 A YES, THAT'S CORRECT.

22 Q ALL RIGHT. ANY OTHER PARTS OF THAT EXHIBIT 23A THAT ARE  
23 SIGNIFICANT?

24 A NO, SIR.

25 Q LET ME THEN SHOW YOU STATE'S EXHIBIT 23B. IS THIS AN

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 ACCURATE REPRESENTATION OF THE WOUNDS THAT YOU FOUND?

2 A YES, IT IS.

3 Q ALL RIGHT. LET'S START THEN -- I NOTICE THAT YOU HAVE  
4 NUMBERED THESE 1, 2, 3, 4 ON THE RIGHT-HAND DIAGRAM. LET'S  
5 START WITH -- LET'S START WITH 1, ACTUALLY 1 AND 2 TOGETHER.  
6 WOULD THAT BE THE EASIEST WAY TO BEGIN?

7 A YES, IT WOULD.

8 Q ALL RIGHT. LET'S START WITH 1 AND 2 TOGETHER.

9 A ON THE LEFT UPPER ARM IN THE DELTOID REGION THERE ARE  
10 TWO GUNSHOT WOUNDS OF ENTRY. THEY ARE LABELED ARBITRARILY AS  
11 NUMBER 1 AND NUMBER 2. THESE WOUNDS PASS THROUGH THE  
12 MUSCULATURE OF MR. NICHOLSON'S LEFT UPPER ARM AND EXIT THE  
13 LEFT UPPER ARM IN THE REGION OF THE UNDERARM, IN THE AXILLA.  
14 DISSECTION OF THESE WOUNDS REVEALED THAT THEIR COURSES  
15 ESSENTIALLY MERGE AND MAY EVEN CROSS, AND SO THAT -- ALTHOUGH  
16 I DESIGNATED THEM 1 AND 2 IN THE ARM, ONCE THEY PASS THROUGH  
17 HIS ARM, I WAS UNABLE TO TELL WHICH WAS 1 AND WHICH WAS 2.  
18 AFTER THEY EXITED MR. NICHOLSON'S LEFT ARM ONE OF THESE  
19 MISSILES IMPACTED THE KEVLAR VEST THAT HE WAS WEARING AND  
20 EMBEDDED ITSELF IN THE FIBERS OF THAT VEST. THE OTHER  
21 WOUND -- OR THE OTHER MISSILE REENTERED INTO HIS LEFT CHEST  
22 CREATING THIS GUNSHOT WOUND OF REENTRY. IT PASSED INTO THE  
23 CHEST CAVITY ON THE LEFT SIDE, THROUGH THE LEFT LUNG, THROUGH  
24 THE HEART, CREATING A DEFECT IN THE RIGHT VENTRICLE OF THE  
25 HEART, AND INTO THE RIGHT LUNG AND THEN EXITED THE RIGHT SIDE

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 OF THE CHEST OVER HERE ON THIS SIDE. SO IT ENTERS HERE  
2 BENEATH THE LEFT ARM, PASSES ACROSS THE CHEST AND EXITS THE  
3 RIGHT CHEST. THIS GUNSHOT WOUND OF EXIT IS A LITTLE BIT  
4 UNUSUAL LOOKING. IT HAS AN ABRASION AROUND IT. IT IS CALLED  
5 A SHORED GUNSHOT WOUND OF EXIT. BY SHORED WE MEAN THAT  
6 SOMETHING WAS PRESSING AGAINST THE SKIN WHEN THAT BULLET  
7 EXITED THE SKIN AND CAUSED THAT SKIN TO STRIKE AGAINST  
8 SOMETHING CAUSING THAT ABRASION AROUND IT. WHAT WAS SHORING  
9 THIS SKIN WAS MR. NICHOLSON'S KEVLAR VEST. THE BULLET EXITED  
10 THE SKIN, CREATED THE SHORED ABRASION AROUND THE EXIT WOUND,  
11 AND THEN THE BULLET IMPACTED ITSELF INTO THE KEVLAR VEST.

12 Q ALL RIGHT. LET ME GO BACK. I MEANT TO ASK YOU THIS.  
13 PRIOR TO CONDUCTING THE AUTOPSY DID YOU REQUEST THAT THE  
14 KEVLAR VEST BE BROUGHT TO THE AUTOPSY?

15 A YES, I DID.

16 Q AND DO YOU USE THE VEST ALONG WITH OTHER CLOTHING IN  
17 ASSISTING YOU IN DETERMINING THE TRAJECTORY OR PATH OF THESE  
18 BULLETS?

19 A YES, I DO.

20 Q AND BASED ON YOUR TRAJECTORY WAS IT CONSISTENT WITH THE  
21 LOCATION OF THE PROJECTILE FOUND IN THE RIGHT LOWER FRONT  
22 PANEL OF THE KEVLAR VEST? THIS AREA.

23 A THAT GUNSHOT WOUND OF EXIT TO THE RIGHT CHEST AND THE  
24 BULLET RECOVERED FROM THE RIGHT FRONT PANEL OF THE KEVLAR  
25 VEST, YES, IT'S CONSISTENT THAT THEY ARE THE SAME BULLET.

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 Q ALL RIGHT. NOW, THE ENTRANCE TO THAT -- IF YOU WOULD,  
2 I'M GOING TO STEP UP HERE AND LET YOU JUST SHOW ENTRANCE 1  
3 AND 2. SHOW -- IF YOU WOULD, STEP DOWN HERE AND JUST SHOW  
4 THE JURY WHERE THEY WOULD HAVE ENTERED ON MY BODY, 1 AND 2.

5 A (COMPLIES) GUNSHOT WOUND NUMBER 1 IS THE ONE THAT'S  
6 HIGHER. IT'S ROUGHLY IN THIS REGION HERE, WITH 2 A VERY  
7 SHORT DISTANCE BUT A LITTLE BIT FURTHER BACK AND DOWN FROM  
8 GUNSHOT WOUND NUMBER 1. SO ROUGHLY, 1 HERE, 2 HERE.

9 Q ALL RIGHT. AND WHERE IS NUMBER 3 THAT WE'LL GO TO NEXT?

10 A NUMBER 3 IS MORE ONTO THE BACK AND A LITTLE BIT HIGHER.  
11 SO IN THIS REGION HERE WOULD BE 3, AND 4 WOULD BE DOWN IN  
12 THIS REGION HERE.

13 Q OKAY. NOW, IN REGARD TO GUNSHOTS 1 AND 2, DID YOU ALSO  
14 NOTICE THE INTERMEDIATE TARGET DEFECT THAT YOU TALKED ABOUT  
15 EARLIER?

16 A YES, I DID.

17 Q AND GO OVER THAT AGAIN, AS TO WHAT EVIDENCE THERE WAS OF  
18 THAT AND WHAT THAT MEANS.

19 A ON THE DIAGRAM THESE DOTS OR MARKS HERE ON THE PAPER ON  
20 THE LEFT UPPER ARM OF MR. NICHOLSON ARE AGAIN THESE PUNCTATE  
21 IRREGULAR ABRASIONS OF THE SKIN CAUSED BY AN OBJECT STRIKING  
22 THE SKIN AND CAUSING A SCRATCH OR AN ABRASION THERE. THESE  
23 ARE INTERMEDIATE TARGET DEFECTS WHERE THE BULLET HAS PASSED  
24 THROUGH SOMETHING BREAKING THAT TARGET UP AND PIECES OF THE  
25 TARGET STRIKING THE SKIN CREATING THESE SCRATCHES OR

1 ABRASIONS.

2 Q WOULD EITHER -- USING THE ARBITRARY NUMBERING, NUMBER 1,  
3 WOULD EITHER 1 OR 2 GUNSHOT WOUNDS HAVE BEEN FATAL?

4 A YES, EITHER OF THEM WOULD HAVE BEEN. THE GUNSHOT WOUND  
5 THAT PASSED THROUGH MR. NICHOLSON'S ARM, REENTERED HIS CHEST,  
6 PASSED THROUGH THE CHEST AND EXITED THE SKIN OF THE RIGHT  
7 CHEST, PASSED THROUGH BOTH LUNGS AND THE HEART, AND THIS  
8 WOULD HAVE BEEN A FATAL GUNSHOT WOUND.

9 Q ALL RIGHT. WHICHEVER ONE THAT WAS, 1 OR 2?

10 A CORRECT.

11 Q AND YOU'RE NOT ABLE TO DETERMINE BECAUSE THEY CROSSED?

12 A THAT'S CORRECT.

13 Q THE OTHER ONE LODGED IN THE INTERIOR PORTION OF THE  
14 KEVLAR VEST ALSO?

15 A IT DID.

16 Q AND DID YOU USE THAT VEST IN TRACKING THAT WOUND ALSO?

17 A I DID.

18 Q NOW LET'S GO TO NUMBER -- GUNSHOT WOUND NUMBER 3 IN THE  
19 UPPER -- THE HIGHER UPPER BACK. TELL US ABOUT THAT ONE.

20 A GUNSHOT WOUND NUMBER 3 IS LOCATED ON THE LEFT UPPER BACK  
21 JUST BELOW THE SHOULDER. AGAIN, IT IS A GUNSHOT WOUND OF  
22 ENTRY THAT PASSES THROUGH THE BACK AND INTO THE LEFT CHEST.  
23 IT PASSES THROUGH THE LEFT UPPER LOBE OF THE LUNG AND THEN IT  
24 PASSES INTO THE VERTEBRAL COLUMN AT THE LEVEL OF THE THIRD  
25 THORACIC VERTEBRAE. AS IT PASSES THROUGH THE VERTEBRAL



MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 COLUMN IT CUTS OR TRANSECTS THE SPINAL CORD AT THAT REGION.  
2 IT EXITS THE VERTEBRAL COLUMN AND INTO THE RIGHT CHEST WHERE  
3 IT BRUISES THE RIGHT LUNG AND ENTERS INTO THE MUSCULATURE OF  
4 THE RIGHT BACK.

5 Q AND UPON AUTOPSY DID YOU RECOVER THAT PROJECTILE?

6 A YES, I DID.

7 Q THE VERTEBRAL COLUMN YOU ARE TALKING ABOUT IS THE SPINAL  
8 COLUMN?

9 A IT IS.

10 Q THE SPINAL CORD. AND WOULD THAT WOUND HAVE BEEN FATAL?

11 A IT VERY POSSIBLY COULD HAVE. IT GOES THROUGH THE UPPER  
12 PORTION OF THE LEFT LUNG. IT GOES INTO AND BRUISES THE RIGHT  
13 LUNG. IT TRANSECTS THE SPINAL CORD, OR CUTS THE SPINAL CORD.  
14 AND IT MAY HAVE BEEN A POTENTIALLY FATAL WOUND.

15 Q IN REGARD TO SEVERING THE SPINAL CORD, AS A RESULT OF  
16 THAT WOUND WHAT INJURIES WOULD OFFICER NICHOLSON HAVE  
17 SUFFERED?

18 A THERE WOULD HAVE BEEN AN IMMEDIATE CESSATION OF MOTOR  
19 MOVEMENT, MUSCLE CONTROL AND SENSATION OR FEELING FROM ABOUT  
20 THE LEVEL OF THE NIPPLES DOWNWARD.

21 Q WERE YOU ABLE TO -- IN YOUR TRACKING OF THAT PARTICULAR  
22 WOUND WERE YOU ABLE TO BEST DETERMINE HOW THAT TRACK BEST  
23 ALIGNED? AND EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT.

24 A YES, I CAN. DURING THE AUTOPSY FOLLOWING DISSECTION OF  
25 THESE WOUNDS AND EXAMINING THESE WOUNDS WE THEN TRIED TO

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 DETERMINE THE COURSE OF THE WOUND OR THE DIRECTION OF THE  
2 WOUND THROUGH THE BODY. AND GUNSHOT WOUND NUMBER 3 WENT FROM  
3 MR. NICHOLSON'S LEFT TO HIS RIGHT, DOWNWARD AND VERY SLIGHTLY  
4 FORWARD. AND THIS WOUND BEST ALIGNED THROUGH THE BACK, THE  
5 VERTEBRAL COLUMN AND THE WOUND INTO THE RIGHT BACK WHERE MR.  
6 NICHOLSON'S BODY WAS ROLLED SLIGHTLY MOVING HIS LEFT SHOULDER  
7 UPWARD LIKE THIS SO THAT IT WAS -- SO THAT THE SHOULDER WAS  
8 MOVED FORWARD ALLOWING THE GUNSHOT WOUND TO PASS FROM THE  
9 BACK THROUGH THE VERTEBRAL COLUMN AND THEN INTO THE RIGHT  
10 BACK.

11 Q ALL RIGHT. GUNSHOT WOUND NUMBER 4, WHICH IS ON THE  
12 LOWER BACK.

13 A ON THE DIAGRAM GUNSHOT WOUND NUMBER 4 IS ON THE LEFT  
14 MID-BACK. IT ENTERS AGAIN THROUGH THE SKIN OF THE LEFT BACK.  
15 IT ENTERS INTO THE LEFT CHEST, AGAIN PASSING THROUGH THE LEFT  
16 UPPER LOBE. IT AGAIN ENTERS INTO THE SPINAL COLUMN AT THE  
17 LEVEL OF THE SEVENTH THORACIC VERTEBRAE DAMAGING THE CORD NOT  
18 TO THE SAME EXTENT THAT THE ONE AT THE LEVEL OF T3 DID,  
19 GUNSHOT WOUND NUMBER 3, BUT THIS DAMAGES THE SPINAL CORD AT  
20 THE LEVEL OF THE SEVENTH THORACIC VERTEBRAE. HERE THE  
21 MISSILE SPLITS. THESE WERE JACKETED BULLETS, IF YOU WILL.  
22 IT'S A LEAD CORE COVERED BY A COPPER JACKET. AS IT'S PASSING  
23 THROUGH THIS BONE THE COPPER JACKET SPLITS FROM THE LEAD  
24 CORE. THE COPPER JACKET I RECOVERED FROM THE BONE OF THE  
25 SEVENTH THORACIC VERTEBRAE. THE LEAD CORE CONTINUED INTO MR.

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 NICHOLSON'S RIGHT CHEST WHERE IT PENETRATED AND PASSED  
2 THROUGH THE UPPER LOBE OF THE RIGHT LUNG AND IMPACTED ITSELF  
3 INTO THE MUSCULATURE OF THE RIGHT BACK.

4 Q WERE YOU ABLE TO RECOVER BOTH THE JACKET THAT WAS LODGED  
5 IN THE VERTEBRAE AND THE REMAINING PART OF THE MISSILE THAT  
6 PASSED INTO MUSCULATURE?

7 A YES, I WAS.

8 Q AND DID YOU RETAIN BOTH OF THOSE ITEMS?

9 A YES, I DID.

10 Q ANY OTHER WOUND -- OR FACTORS OF SIGNIFICANCE IN REGARD  
11 TO WOUNDS 3 AND 4 THAT WE HAVE NOT TALKED ABOUT?

12 A I DON'T BELIEVE SO. THE ONLY OTHER INJURIES  
13 DEMONSTRATED ON THIS BODY DIAGRAM ARE AGAIN PUNCTATE  
14 ABRASIONS THAT ARE PRESENT ON THE FRONT PART OF THE RIGHT  
15 WRIST. THESE ARE SIMILAR INTERMEDIATE TARGET DEFECTS AS SEEN  
16 ON THE RIGHT -- I'M SORRY -- AS SEEN ON THE LEFT UPPER ARM  
17 AND ON THE LEFT FACE.

18 Q AND BASED ON YOUR EXAMINATION OR VIEWING OF THE PUNCTATE  
19 ABRASIONS ON THE RIGHT WRIST WERE YOU ABLE TO DETERMINE ANY  
20 POSITIONING OF THAT ARM IN RELATION TO THE SHOTS?

21 A WELL, YOU COULD CREATE SEVERAL SCENARIOS. ONE WOULD BE  
22 THAT IF THE RIGHT ARM IS OVER IN THE VICINITY OF THE -- I'M  
23 SORRY -- OVER IN THE VICINITY OF THE LEFT UPPER SHOULDER OR  
24 THE LEFT SIDE OF THE FACE SO THAT THE WRIST IS IN A POSITION  
25 LIKE THIS SO THAT YOU GET THIS -- THESE PUNCTATE ABRASIONS,

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 ABRASIONS TO THE WRIST AND ABRASIONS TO THE FACE ALL AT ABOUT  
2 THE SAME TIME AS IF YOUR HAND WERE IN THIS POSITION.

3 ANOTHER SCENARIO WOULD BE IF YOUR HANDS WERE -- MR.  
4 NICHOLSON'S RIGHT HAND WAS ON THE STEERING WHEEL AND A  
5 SEPARATE MISSILE PASSED THROUGH A PORTION OF THE VEHICLE  
6 CREATING DISTINCTLY SEPARATE PUNCTATE ABRASIONS.

7 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBITS  
8 24 AND 25 AND ASK IF YOU RECOGNIZE THOSE AND IF THOSE ARE THE  
9 TWO PROJECTILES THAT YOU RECOVERED FROM TROOPER NICHOLSON'S  
10 BODY DURING THE AUTOPSY?

11 A YES, I DO RECOGNIZE THEM. STATE'S EXHIBIT 24 IS -- ARE  
12 TWO FRAGMENTS OF COPPER JACKET AND A FRAGMENT OF LEAD CORE  
13 WHICH I LABELED AS BULLET FROM CHEST FROM GUNSHOT WOUND  
14 NUMBER 4. THE CONTAINER WITHIN WHICH IT WAS PLACED HAS MY  
15 INITIALS ON IT.

16 STATE'S EXHIBIT NUMBER 25 IS AN INTACT JACKETED BULLET  
17 WHICH THE CONTAINER WITHIN WHICH IT WAS PLACED IS FROM  
18 GUNSHOT WOUND NUMBER 3 RECOVERED FROM MR. NICHOLSON, AND IT  
19 HAS MY INITIALS.

20 Q AND WHAT DID YOU DO WITH THOSE TWO ITEMS?

21 A I RECEIPTED THESE ITEMS TO DETECTIVE PAUL SILVAGGIO.

22 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD LEAVE THESE FOR  
23 IDENTIFICATION AT THIS TIME.

24 Q LET ME GO BACK A MOMENT AND JUST CLARIFY ONE THING. THE  
25 TWO ARM -- SHOULDER -- UPPER ARM SHOTS, YOU SAID THAT BOTH

MICHAEL E. WARD, M.D. -- DIRECT BY SOLICITOR ARIAIL

1     EXITED UNDERNEATH THE ARM?

2     A     YES, THEY DID.

3     Q     SO THEY WERE -- THERE ARE TWO WOUNDS ON THE OUTSIDE BACK  
4     OF THE ARM, TWO WOUNDS ON THE UNDERNEATH, AND AN ADDITIONAL  
5     REENTRY INTO THE CHEST?

6     A     THAT'S CORRECT.

7     Q     ALL RIGHT. AND THEN ONE OF THOSE SHOTS -- ONE OF THOSE  
8     FIRST TWO ALSO LODGED ON THE INSIDE OF THE KEVLAR VEST?

9     A     THAT'S CORRECT.

10    Q     IN ADDITION TO THAT THERE WERE TWO ADDITIONAL WOUNDS, 3  
11    AND 4?

12    A     YES. .

13           SOLICITOR ARIAIL:   ANSWER ANY QUESTIONS THAT COUNSEL  
14    MAY HAVE.   THANK YOU.

15    CROSS EXAMINATION BY MR. BANNISTER:

16    Q     DR. WARD, LET ME JUST TAKE A MOMENT AND SEE IF I'VE GOT  
17    EXACTLY THE NUMBER OF BULLETS THAT WE'RE TALKING ABOUT AND  
18    ASK YOU TO PUT THEM INTO CONTEXT ALTOGETHER FOR JUST A  
19    MOMENT.

20           AS I UNDERSTAND IT, ONE OF THE BULLETS, AS I'M STANDING  
21    HERE, THE ONE THAT GRAZED THE FACE WOULD HAVE BEEN COMING IN  
22    THIS DIRECTION? AND I'M POINTING TO THE LOWER PART OF MY  
23    CHEEK AND COMING ACROSS GOING UPWARDS ACROSS MY FOREHEAD.  
24    WOULD THAT BE---

25    A     THAT'S CORRECT.

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 Q ALL RIGHT. AND THEN THE OTHER BULLET WOUNDS WOULD HAVE  
2 BEEN TO THE -- THE TWO -- THE TWIN BULLETS COMING THROUGH THE  
3 TRICEP OF THE LEFT ARM, AND THEN THERE IS A THIRD AND A  
4 FOURTH BULLET AS YOU HAVE NUMBERED THEM ON THE UPPER  
5 SHOULDER; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q ALL RIGHT. AND DO I UNDERSTAND IT THEN THAT YOU WOULD  
8 SAY THAT THE COMBINATION OF THOSE BULLETS -- I SAW YOU  
9 ROLLING YOUR SHOULDER A LITTLE BIT -- WOULD BE CONSISTENT  
10 WITH TROOPER NICHOLSON, WHEN THE SHOTS WERE FIRED, GOING INTO  
11 A DEFENSIVE POSTURE AND ROLLING AWAY FROM THE DIRECTION OF  
12 THE BULLETS?

13 A IT'S CONSISTENT WITH MR. NICHOLSON, YES, ROLLING AWAY  
14 FROM -- FROM WHATEVER PERCEPTION AND TRYING TO AVERT HIS HEAD  
15 AND FACE, I GUESS, FROM WHATEVER IS HAPPENING HERE IN A  
16 POSTURE LIKE THIS, SO THAT THE HEAD IS DOWN LIKE THIS COCKED  
17 TO THE SIDE A LITTLE BIT SO THAT THIS MISSILE IS ABLE TO HIT  
18 LOWER AND YET PASS UPWARD, AND THESE PASS THROUGH THE BACK  
19 SIDE OF THE ARM AND THE BACK.

20 Q ALL RIGHT. SO WE'RE NOT SAYING THAT IN TERMS OF --

21 MR. BANNISTER: COULD YOU CUT THIS ON, MINDY?

22 Q IF THIS WAS IN FACT THE POSITION THAT TROOPER  
23 NICHOLSON'S HEAD IS IN AS HE -- AS THIS IS SHOWN, WE'RE NOT  
24 SAYING THAT HE WAS SITTING UP STRAIGHT AND THAT SOMEBODY SHOT  
25 HIM FROM A LOWER DIRECTION DOWN INTO THE LOWER PART OF HIS

1 BODY?

2 A THAT'S CORRECT.

3 Q OKAY. AND WE'RE NOT SAYING THAT HE WAS STANDING UP AND  
4 SOMEBODY WAS POINTING A GUN FROM A HIGH DIRECTION COMING DOWN  
5 AT HIM THIS WAY?

6 A THAT'S CORRECT.

7 Q OKAY. THE BULLETS THAT YOU DESIGNATED AS -- WELL, LET  
8 ME ASK YOU THIS. YOU DESIGNATED A NUMBER FOR EACH OF THE  
9 BULLETS. YOU DON'T HAVE AN OPINION OR THEY'RE NOT  
10 NECESSARILY DESCRIBING WHICH BULLET CAME FIRST OR YOU ARE NOT  
11 GIVING AN OPINION AS TO WHICH ORDER THE BULLETS CAME IN?

12 A THAT'S CORRECT, I AM NOT.

13 Q OKAY. SO 1 AND 2 MAY OR MAY NOT HAVE BEEN THE FIRST TWO  
14 BULLETS THAT ENTERED TROOPER NICHOLSON?

15 A THAT'S CORRECT.

16 Q OKAY. AND AS I UNDERSTOOD BULLETS 1 AND 2, THERE WAS A  
17 SMALL BIT OF WHAT YOU CALL DEBRIS OR STIPLING UNDERNEATH  
18 THOSE TWO BULLETS?

19 A YES, THERE WAS.

20 Q SO IN OTHER WORDS, SOME OF THE DEBRIS THAT FOLLOWED  
21 EITHER BULLETS 1 OR 2 ACTUALLY STRUCK HIS TRICEP A LITTLE BIT  
22 LOWER?

23 A THAT'S CORRECT.

24 Q AND THERE WAS NOT ANY DEBRIS THAT FOLLOWED BULLET HOLES  
25 3 AND 4 ON THE UPPER SIDE OF HIS BACK?

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 A NONE THAT REACHED THE SKIN.

2 Q AND THERE WAS DEBRIS ON HIS FACIAL AREA?

3 A AND RIGHT WRIST.

4 Q ALL RIGHT. YES, AND THE STIPLING UNDERSIDE OF THE RIGHT  
5 WRIST.

6 WOULD IT BE CONSISTENT WITH DEBRIS HITTING THE UNDERSIDE  
7 OF HIS WRIST, HIS RIGHT WRIST, IF HE HAD BEEN GOING FOR -- IF  
8 HE HAD HAD HIS HAND AT OR NEAR THE GEARSHIFT OF THE CAR? IN  
9 OTHER WORDS, IF HE WAS IN THIS POSITION AND HIS HAND WAS  
10 EXPOSED ON THE GEARSHIFT OF THE CAR?

11 A THAT'S CERTAINLY A POSSIBILITY, YES.

12 Q OKAY. NOW, YOU -- I SAW WHEN YOU WERE DESCRIBING TO THE  
13 JURY THAT IT MIGHT BE DEBRIS -- THE DEBRIS ON THE UNDERSIDE  
14 OF HIS RIGHT ARM IN A DEFENSIVE POSTURE LIKE THIS. WERE YOU  
15 ABLE TO MATCH UP THE IMPACT -- THE PUNCTATE WOUNDS ON HIS  
16 FACE SO THAT YOU COULD SHOW THAT THE DEBRIS THAT CAME IN HIT  
17 THE UNDERSIDE OF THE HAND AND THEN HIT THE FACE BUT AROUND  
18 WHAT COULD BE DESCRIBED AS THE AREA THAT THE HAND WAS  
19 PROTECTING THE FACE? IF YOU UNDERSTAND MY QUESTION.

20 A I UNDERSTAND. I DID NOT DETECT ANY SORT OF A PATTERN  
21 WHERE IT LOOKED LIKE A PART -- A PORTION OF THE FACE HAD BEEN  
22 SHIELDED BY THE WRIST. THERE WAS NOT THAT MUCH INTERMEDIATE  
23 TARGET DEFECT ON THE FACE TO SAY THAT THIS WAS PRESENT AND  
24 THEN A DISTINCT LINE WHERE THE WRIST MUST HAVE BEEN. THAT  
25 WAS NOT PRESENT.



MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 Q ALL RIGHT. BACK TO BULLETS 1 AND 2, THE TWIN BULLETS.  
2 AS THEY COME IN, AS I UNDERSTAND YOUR TESTIMONY, THEY BOTH  
3 PASS THROUGH THE UNDERSIDE OF THE ARMPIT?

4 A YES.

5 Q AND THEY BOTH THEN ARE GOING TOWARDS TROOPER NICHOLSON'S  
6 LEFT UPPER SIDE OF HIS CHEST?

7 A YES.

8 Q ALL RIGHT. AND AT THAT POINT YOU CAN'T TELL WHICH  
9 BULLET IS WHICH IN TERMS OF WHERE THEY GO FROM THERE? IN  
10 OTHER WORDS, YOU KNOW YOU'VE GOT A NUMBER 1 AND A NUMBER 2  
11 VERY CLOSE TOGETHER, BUT ONCE THEY PASS OUT OF THE BICEP AND  
12 IMPACT WITH THIS AREA OF TROOPER NICHOLSON, IT'S IMPOSSIBLE  
13 TO TELL WHICH ONE IS WHICH?

14 A THAT'S CORRECT.

15 Q ALL RIGHT. AND ONE OF THOSE BULLETS, WHETHER IT IS THE  
16 FIRST OR THE SECOND ONE, ACTUALLY IMPACTS A PANEL OF THE  
17 KEVLAR VEST?

18 A THAT'S CORRECT.

19 Q AND ONE OF THE OTHER BULLETS ACTUALLY FITS BETWEEN THE  
20 SEAMS OF THE FRONT AND BACK PANEL IN ORDER TO MISS THE KEVLAR  
21 AND ENTER TROOPER NICHOLSON'S CHEST AREA?

22 A YES.

23 Q OKAY. WOULD COMMON SENSE TELL YOU CONSIDERING THAT WE  
24 THINK TROOPER NICHOLSON WAS ROLLING AWAY THAT BULLETS 1 AND 2  
25 CAME IN A VERY RAPID SUCCESSION, CONSIDERING HOW CLOSE THEY

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 WERE?

2 A YES, IT WOULD.

3 Q AND THEY BOTH IN ESSENCE FOLLOWED THE SAME TRAJECTORY AS  
4 WELL?

5 A AT LEAST THROUGH THE ARM THEY DID.

6 Q YES. AND AS FAR AS THE TRAJECTORY FROM THE UPPER LEFT  
7 SHOULDER AND INTO WHERE THEY IMPACTED THE SPINE, THOSE  
8 TRAJECTORIES ARE ROUGHLY SIMILAR IN TERMS OF UP AND DOWN AND  
9 LEFT TO RIGHT WITH BULLETS 1 AND 2 AND ULTIMATELY THE GRAZE  
10 ACROSS THE FACE?

11 A ALL OF THE -- ALL OF THE GUNSHOT WOUND TRACKS THAT  
12 PASSED THROUGH MR. NICHOLSON ARE QUITE SIMILAR, AT LEAST  
13 THROUGH HIS CHEST, IN THAT THE ONES THAT WE COULD FOLLOW WENT  
14 FROM HIS LEFT TO RIGHT AND DOWNWARD AND SLIGHTLY FROM BACK TO  
15 FRONT. YOU CAN PUT MR. NICHOLSON'S HEAD VIRTUALLY AT ANY  
16 POSITION. YOU CAN -- ALTHOUGH IT'S A VERY TWO DIMENSIONAL  
17 DIAGRAM, YOU CAN BASICALLY PUT YOUR HEAD IN VIRTUALLY ANY  
18 POSITION AND YOU COULD CREATE -- PUT YOUR HEAD IN A POSITION  
19 SO THAT THE TRACK ACROSS MR. NICHOLSON'S FACE AND THE TRACK  
20 THROUGH HIS CHEST WOULD BE SIMILAR, YES.

21 MR. BANNISTER: JUST ONE MOMENT, YOUR HONOR.

22 THE COURT: TAKE YOUR TIME, SIR.

23 (DEFENSE COUNSEL OFF RECORD)

24 MR. BANNISTER: JUDGE, COULD WE HAVE A SIDEBAR FOR A  
25 MOMENT?

1           THE COURT:     SURE.

2           (BENCH CONFERENCE OFF RECORD FROM 12:34 TO 12:35 P.M.)

3           SOLICITOR ARIAIL:    COULD WE HAVE JUST A MOMENT, YOUR  
4 HONOR?

5           THE COURT:     YES.

6                               (PAUSE)

7           MR. BANNISTER?    MAY I PROCEED?

8           THE COURT:     YOU CERTAINLY MAY, MR. BANNISTER.

9           MR. BANNISTER:    LET ME HAVE THIS MARKED AS DEFENDANT'S  
10 EXHIBIT NUMBER 2)

11           (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 2 FOR  
12 PURPOSES OF IDENTIFICATION ONLY)

13           MR. BANNISTER:    YOUR HONOR, I HAVE ALREADY SHOWN THIS  
14 TO THE SOLICITOR. LET ME SHOW IT TO DR. WARD.

15       Q     LET ME ASK YOU IF THAT IS A PICTURE THAT YOU TOOK DURING  
16 YOUR AUTOPSY?

17       A     YES, IT IS.

18       Q     IS THAT AN ACCURATE REPRESENTATION OF THAT AREA THAT IS  
19 SHOWN IN THE PICTURE DURING YOUR AUTOPSY?

20       A     YES, IT IS.

21       Q     ALL RIGHT. AND TELL ME WHAT IT DEPICTS.

22       A     THIS IS THE -- A BLACK AND WHITE PHOTOGRAPH MADE FROM A  
23 35 MILLIMETER SLIDE THAT I TOOK DURING THE TIME OF THE  
24 AUTOPSY THAT SHOWS THE LEFT BACK AND LEFT UPPER ARM OF MR.  
25 NICHOLSON. IT HAS WITHIN IT A TAG WITH THE UNIQUE AUTOPSY

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 NUMBER THAT WE ASSIGNED TO THIS CASE. IT SHOWS ENTRANCE  
2 WOUNDS FROM GUNSHOT WOUNDS 1, 2, 3 AND 4.

3 Q ALL RIGHT. AND IF YOU COULD, WHAT'S THE OVERALL AREA --  
4 IF YOU HAD TO DRAW A CIRCLE AROUND THE AREA WHERE THOSE  
5 GUNSHOT WOUNDS ARE, WHAT'S THE APPROXIMATE DISTANCE FROM ONE  
6 SIDE OF THE CIRCLE TO THE OTHER? I MEAN, WE'RE TALKING ABOUT  
7 -- JUST SHOW US WITH YOUR HANDS.

8 A OH, IT'S WITHIN SIX INCHES.

9 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 3 FOR  
10 PURPOSES OF IDENTIFICATION ONLY)

11 Q OKAY. LET ME SHOW YOU WHAT HAS BEEN MARKED AS  
12 DEFENDANT'S EXHIBIT 3. AND I ASK YOU AGAIN, IS THAT A  
13 PICTURE THAT YOU TOOK DURING THE AUTOPSY?

14 A YES, IT IS.

15 Q ALL RIGHT. DOES THAT ACCURATELY REPRESENT THE AREA THAT  
16 IS PHOTOGRAPHED?

17 A YES, IT DOES.

18 Q AND IS THIS A PICTURE OF THE UNDERSIDE OF THE RIGHT  
19 WRIST WHERE THE DEBRIS HIT THE WRIST?

20 A IT'S ACTUALLY THE FRONT SIDE OF THE RIGHT WRIST WHERE  
21 THE INTERMEDIATE TARGET DEFECT IMPACTED THE SKIN.

22 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 4 FOR  
23 PURPOSES OF IDENTIFICATION ONLY)

24 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 5 FOR  
25 PURPOSES OF IDENTIFICATION ONLY)

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 6 FOR  
2 PURPOSES OF IDENTIFICATION ONLY)

3 Q ALL RIGHT. DR. WARD, I'M GOING TO HAND YOU WHAT HAS  
4 BEEN MARKED AS DEFENDANT'S EXHIBITS 4, 5 AND 6 AND ASK YOU  
5 AGAIN IF THOSE ARE PICTURES THAT YOU TOOK AND IF THEY ARE  
6 ACCURATE REPRESENTATIONS OF THE AREAS PHOTOGRAPHED DURING  
7 YOUR AUTOPSY?

8 A (REVIEWS PHOTOGRAPHS) YES, THEY ARE.

9 Q IF I COULD HAVE THEM BACK FOR A MOMENT.  
10 AND DEFENDANT'S EXHIBIT 4 IS A PICTURE OF THE EXIT WOUND  
11 UNDER THE ARM WHERE THE TWO -- THE TWIN BULLETS COME OUT AND  
12 THEN ONE OF THEM ACTUALLY ENTERS INTO TROOPER NICHOLSON'S  
13 CHEST?

14 A YES, THEY ARE.

15 Q OKAY. AND DEFENDANT'S EXHIBIT NUMBER 5 IS A PICTURE OF  
16 THE EXIT WOUND OF EITHER BULLET 1 OR 2 WHERE IT ACTUALLY CAME  
17 OUT ON THE OTHER SIDE; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q ALL RIGHT. IN THAT PICTURE DID IT ALSO -- THERE ARE  
20 SOME STITCHES UNDER THE RIGHT CHEST. IS THAT A CUT THAT WAS  
21 MADE AS PART OF THE MEDICAL PROCEDURES PERFORMED ON TROOPER  
22 NICHOLSON OR AS PART OF YOUR AUTOPSY?

23 A NO. THAT'S A PART OF THE RESUSCITATIVE EFFORT. IT'S  
24 ALSO PRESENT ON STATE'S EXHIBIT 4.

25 Q OKAY.

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 A THIS WAS A -- IT'S CALLED A THORACOTOMY. IT'S AN  
2 INCISION THAT IS MADE TO OPEN THE CHEST TO ALLOW SURGICAL  
3 ACCESS TO THE CHEST IN AN EFFORT TO REPAIR ANY WOUNDS THAT  
4 MAY BE PRESENT.

5 Q ALL RIGHT. AND DEFENDANT'S EXHIBIT 6 IS ACTUALLY THE  
6 BACK SIDE OF TROOPER NICHOLSON'S SHIRT IN THE AREA THAT WE'VE  
7 BEEN TALKING ABOUT WHERE BULLETS 1, 2, 3, AND 4 ENTERED THE  
8 SHIRT?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. DID BULLETS 3 AND 4 ALSO MISS THE BACK PANEL  
11 OF THE KEVLAR VEST?

12 A YES, THEY DID.

13 Q ALL RIGHT.

14 MR. BANNISTER: YOUR HONOR, AT THIS TIME I WOULD LIKE  
15 TO MOVE INTO EVIDENCE DEFENDANT'S EXHIBITS 2, 3, 4, 5, AND 6.

16 THE COURT: ANY OBJECTION?

17 SOLICITOR ARIAIL: NONE.

18 THE COURT: YOU HAVE POST-ITS ON THE BACK OF THEM. I  
19 DON'T KNOW WHETHER THOSE ARE NOTES OR JUST NUMBERS. I CAN'T  
20 TELL FROM HERE. BUT JUST IN CASE THEY ARE NOTES, LET'S  
21 REMOVE THOSE.

22 WITHOUT OBJECTION.

23 (DEFENDANT'S EXHIBITS 2 THROUGH 6, AUTOPSY PHOTOGRAPHS,  
24 MOVED INTO EVIDENCE)

25 Q DR. WARD, BASED ON THE EXAMINATION THAT YOU PERFORMED --

MICHAEL E. WARD, M.D. -- CROSS BY MR. BANNISTER

1 AND I'M GOING TO TELL YOU THAT WE HAVE HEARD TESTIMONY  
2 ALREADY FROM A LAW ENFORCEMENT OFFICER THAT WITHIN A SHORT  
3 TIME OF HEARING A DISTRESS CALL FROM TROOPER NICHOLSON HE  
4 ARRIVED ON THE SCENE AND HE FOUND TROOPER NICHOLSON  
5 NONRESPONSIVE, NO PULSE AND LOSS OF COLOR. WOULD THAT BE  
6 CONSISTENT, THAT TIME FRAME AND THE DESCRIPTION OF TROOPER  
7 NICHOLSON, WITH THE WOUNDS THAT YOU HAVE DESCRIBED AND THAT  
8 YOU SAW ON YOUR AUTOPSY?

9 A YES, IT WOULD.

10 MR. BANNISTER: JUST ONE MOMENT.

11 THE COURT: TAKE YOUR TIME, SIR.

12 MR. BANNISTER: (OFF RECORD WITH CO-COUNSEL) JUDGE, I  
13 MAY HAVE ALREADY DONE THIS, BUT I THINK I MOVED THESE INTO  
14 EVIDENCE, AND I NEED TO REMOVE THESE LAST LITTLE STICKIES OFF  
15 THE BACK.

16 THE COURT: ALL RIGHT, SIR.

17 MR. BANNISTER: AND WITH THAT, THAT WOULD BE THE END OF  
18 MY CROSS EXAMINATION. (PAUSE) THANK YOU, JUDGE.

19 REDIRECT EXAMINATION BY SOLICITOR ARIAIL:

20 Q DR. WARD, BEFORE THESE PICTURES -- IF I COULD HAVE THOSE  
21 BACK PLEASE JUST ONE MOMENT. WOULD YOU STEP DOWN HERE SO  
22 THAT THE JURY BEFORE VIEWING THESE, JUST STAND UP HERE AND  
23 EXPLAIN WHAT EACH ONE -- WE'LL LOOK AT DEFENDANT'S NUMBER 6  
24 FIRST. SHOW THE JURY WHAT THESE ARE. YOU TALKED ABOUT THEM  
25 EARLIER BUT WITHOUT SHOWING THE PHOTOGRAPHS.

MICHAEL E. WARD, M.D. -- RECROSS BY SOLICITOR ARIAIL

1     A     THIS IS DEFENDANT'S EXHIBIT NUMBER 6 WHICH DEPICTS THE  
2     BACK LEFT PANEL OF TROOPER NICHOLSON'S SHIRT. THIS WOULD BE  
3     GUNSHOT WOUND NUMBER 1 -- THE HOLE IN THE SHIRT THAT  
4     CORRESPONDED TO GUNSHOT WOUND NUMBER 1, 2, 3 AND 4.

5     Q     DEFENDANT'S EXHIBIT NUMBER 5. YOU WANT TO DO THAT ONE?

6     A     YEAH.

7     Q     OKAY. EXCUSE ME, 2.

8     A     EXHIBIT NUMBER 2 IS A SIMILAR PHOTOGRAPH, IT'S JUST WITH  
9     THE SHIRT REMOVED SHOWING THE UNDERLYING SKIN OF THE LEFT  
10    UPPER BACK AND LEFT ARM OF GUNSHOT WOUNDS 1, 2, 3 AND 4. AND  
11    THESE ARE THE PUNCTATE ABRASIONS FROM THE INTERMEDIATE TARGET  
12    DEFECT ON THE SKIN BENEATH GUNSHOT WOUNDS NUMBER 1 AND 2, AND  
13    THIS IS THE SUTURE THORACOTOMY INCISION FROM THE  
14    RESUSCITATIVE EFFORTS FROM THE EMERGENCY ROOM.

15    A     NUMBER 4?

16    A     DEFENSE EXHIBIT 4 IS THE LEFT UNDERARM OF MR. NICHOLSON  
17    SHOWING THE TWO GUNSHOT WOUNDS THAT EXIT IN THE REGION OF THE  
18    AXILLA, AND A LARGE -- THIS IS AN ABRASION HERE FROM WHERE  
19    SOMETHING HAS IMPACTED THE SKIN, VERY LIKELY THE KEVLAR VEST,  
20    AS IT'S IMPACTED BY ONE BULLET AND WITHIN THAT AREA THERE IS  
21    A PENETRATING WOUND, WHICH WAS THE GUNSHOT WOUND OF REENTRY  
22    AS IT ENTERS INTO THE LEFT CHEST: AND THIS AGAIN IS THE  
23    THORACOTOMY INCISION FROM THE EMERGENCY ROOM.

24    Q     DEFENSE EXHIBIT NUMBER 5?

25    A     THIS IS THE RIGHT CHEST OF MR. NICHOLSON, AGAIN THE



MICHAEL E. WARD, M.D. -- RECROSS BY SOLICITOR ARIAIL

1 THORACOTOMY INCISION FROM THE EMERGENCY ROOM. AND THIS IS  
2 THE GUNSHOT WOUND OF EXIT FROM THE BULLET THAT REENTERED THE  
3 LEFT CHEST, PASSED ACROSS THROUGH THE HEART AND EXITS THE  
4 SKIN OF THE RIGHT CHEST. THERE IS AN ABRASION AROUND IT WITH  
5 SOME BRUISING AROUND IT WHERE THIS GUNSHOT WOUND OF EXIT WAS  
6 A SHORED EXIT CREATING THAT ABRASION AROUND IT FROM THE  
7 IMPACT WITH THE KEVLAR VEST.

8 Q AND DEFENSE EXHIBIT NUMBER 3?

9 A EXHIBIT NUMBER 3 SHOWS THE ANTERIOR RIGHT WRIST OF  
10 TROOPER NICHOLSON WITH THE THUMB AND FINGERS HERE, AND THESE  
11 ARE THE PUNCTATE ABRASIONS WHERE AN INTERMEDIATE TARGET  
12 DEFECT HAS STRUCK THE SKIN OF HIS WRIST.

13 Q THANK YOU.

14 SOLICITOR ARIAIL: NO FURTHER QUESTIONS.

15 MR. BANNISTER: JUST ONE QUICK QUESTION.

16 RECROSS EXAMINATION BY MR. BANNISTER

17 Q IF I COULD HAVE YOU COME DOWN HERE JUST ONE LAST TIME.

18 A (COMPLIES)

19 Q I NEGLECTED TO ASK YOU THIS QUESTION. ON DEFENDANT'S  
20 EXHIBIT 4, THIS WOUND HERE BELOW THE ARMPIT, IS THAT ALSO  
21 PART OF THE E.M.S. PROCEDURES?

22 A NO, THAT WOULD -- NO, IT'S NOT. THIS WOULD BE GUNSHOT  
23 WOUND NUMBER 4.

24 Q THANK YOU.

25 MR. BANNISTER: NO FURTHER QUESTIONS.

MICHAEL E. WARD, M.D. -- RECROSS BY MR. BANNISTER

1 SOLICITOR ARIAIL: YOUR HONOR, WE'D LIKE TO ASK THAT  
2 DR. WARD BE EXCUSED.

3 THE COURT: ANY OBJECTION?

4 MR. BANNISTER: NO, SIR.

5 THE COURT: NO OBJECTION, DR. WARD, THANK YOU FOR BEING  
6 HERE, SIR.

7 WITNESS: THANK YOU, SIR.

8 (WITNESS EXCUSED AT 12:47 P.M.)

9 SOLICITOR ARIAIL: WE CALL PAUL SILVAGGIO.

10 PAUL A. SILVAGGIO, HAVING BEEN  
11 DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

13 Q MR. SILVAGGIO, IF YOU WOULD, STATE YOUR NAME FOR THE  
14 RECORD.

15 A PAUL ANDREW SILVAGGIO.

16 Q AND BY WHOM ARE YOU EMPLOYED?

17 A I'M EMPLOYED WITH THE GREENVILLE COUNTY SHERIFF'S  
18 OFFICE.

19 Q AND HOW LONG -- AND IN WHAT CAPACITY ARE YOU PRESENTLY  
20 EMPLOYED?

21 A I'M AN INVESTIGATOR WITH THE HOMICIDE UNIT.

22 Q HOW LONG HAVE YOU BEEN AN INVESTIGATOR WITH THE HOMICIDE  
23 UNIT?

24 A FIVE YEARS.

25 Q HOW LONG HAVE YOU BEEN WITH THE GREENVILLE COUNTY

PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1 SHERIFF'S OFFICE?

2 A SIXTEEN YEARS, SIR.

3 Q AND ON DECEMBER THE 6TH DID YOU HAVE OCCASION, OF 2000,  
4 TO RESPOND TO THE INVESTIGATION OF THE DEATH OF TROOPER ERIC  
5 NICHOLSON AS A PART OF YOUR REGULAR DUTIES?

6 A YES, I DID, SIR.

7 Q AND AS A PART OF THAT DID YOU ALSO ATTEND THE AUTOPSY OF  
8 TROOPER NICHOLSON CONDUCTED BY DR. MICHAEL WARD ON DECEMBER  
9 THE 7TH?

10 A YES, I DID.

11 Q ALL RIGHT. LET ME ASK YOU IF YOU WOULD LOOK AT STATE'S  
12 EXHIBITS 24 AND 25 FOR IDENTIFICATION AND TELL ME IF YOU  
13 RECOGNIZE THOSE.

14 A (COMPLIES) YES, I DO, SIR.

15 Q WHERE DID YOU RECEIVE THOSE?

16 A I RECEIVED THESE, BOTH STATE EXHIBIT 24 AND 25, FROM DR.  
17 MICHAEL WARD AT THE CONCLUSION OF THE AUTOPSY OF TROOPER ERIC  
18 NICHOLSON.

19 Q ALL RIGHT. AND WHAT DID YOU DO WITH THEM?

20 A I TRANSPORTED BOTH OF THESE ITEMS TO THE GREENVILLE  
21 COUNTY LAW ENFORCEMENT CENTER WHERE I ENTERED THEM INTO  
22 EVIDENCE IN THE PROPERTY AND EVIDENCE ROOM AT THE LAW  
23 ENFORCEMENT CENTER.

24 Q AND DID THEY STAY IN YOUR CUSTODY AND CONTROL THROUGHOUT  
25 THAT TIME FROM LEAVING DR. WARD'S AUTOPSY TO MARKING THEM IN

PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1 AT A LAW ENFORCEMENT CENTER PROPERTY AND EVIDENCE?

2 A YES, THEY DID, SIR.

3 Q I WOULD ALSO REQUEST THAT YOU LOOK AT STATE'S EXHIBITS 4  
4 THROUGH 10, AND I ASK IF YOU ARE FAMILIAR WITH THOSE?

5 A (REVIEWS EXHIBITS) YES, I AM, SIR.

6 Q PLEASE LOOK AT STATE'S EXHIBITS 11 THROUGH 19 AND ARE  
7 YOU FAMILIAR WITH THOSE?

8 A (REVIEWS EXHIBITS) YES, I AM, SIR.

9 Q STATE'S EXHIBIT 20?

10 A (REVIEWS EXHIBIT) YES, I AM, SIR.

11 Q STATE'S EXHIBITS 22A AND 22B?

12 A (REVIEWS EXHIBITS) YES, I AM, SIR.

13 Q AND I'LL ASK YOU IF ON DECEMBER THE 12TH OF 2000 YOU  
14 COLLECTED ALL OF THE ITEMS THAT YOU HAVE JUST REFERRED TO,  
15 INCLUDING THE TWO STATE'S EXHIBITS 24 AND 25 THAT YOU  
16 RECEIVED FROM DR. WARD, DID YOU REMOVE THOSE FROM THE LAW  
17 ENFORCEMENT PROPERTY AND EVIDENCE ROOM?

18 A YES, I DID, SIR.

19 Q AND FOR WHAT PURPOSE?

20 A IN ORDER TO TRANSPORT THOSE TO COLUMBIA, SOUTH CAROLINA,  
21 TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION LAB.

22 Q AND WHAT WAS THE PURPOSE OF TRANSFERRING THEM TO THE  
23 LAB? WHAT WAS THE REQUESTED EXAMINATION?

24 A THE ITEMS IN FRONT OF ME AT THIS TIME, FORENSICS TESTING  
25 WAS REQUESTED ALONG WITH COMPARISON TO A SUSPECTED WEAPON IN

PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1 THIS CASE.

2 Q ALL RIGHT. AND DID YOU SO DELIVER THEM TO S.L.E.D.?

3 A YES, I DID, SIR.

4 SOLICITOR ARIAIL: ALL OF THESE ARE STILL FOR  
5 IDENTIFICATION, YOUR HONOR.

6 Q (PAUSE) AT THE TIME OF THE INCIDENT INVOLVING TROOPER  
7 NICHOLSON ON DECEMBER THE 6TH, DID YOU ACTUALLY GO TO THE  
8 SCENE?

9 A YES, I DID, SIR.

10 Q AND DID YOU COORDINATE THE ENTIRE INVESTIGATION EFFORT  
11 AT THE SCENE?

12 A YES, SIR.

13 Q DID YOU HAVE OCCASION AS PART OF THOSE DUTIES AND  
14 RESPONSIBILITIES TO LOOK INTO THE INSIDE OF TROOPER  
15 NICHOLSON'S VEHICLE?

16 A YES, I DID, SIR.

17 Q DID YOU OBSERVE THE NUMBER OF RADIO MICROPHONES THAT  
18 WERE PRESENT WITHIN THAT VEHICLE?

19 A THERE WERE THREE, SIR.

20 Q AND TELL THE JURY WHERE THOSE THREE MICROPHONES GO.

21 A THE PLACEMENT OF THE MICROPHONES. WHEN I DID AN  
22 INTERIOR ANALYSIS OF THE CAR, ONE WAS A BLACK MICROPHONE  
23 WHICH IS COMMONLY USED FOR THE PUBLIC ANNOUNCEMENT SYSTEM OR  
24 THE, P.A. SYSTEM. THE OTHER TWO MIKES, MICROPHONES, THAT  
25 WERE THERE, ONE WAS ATTACHED TO A CENTER CONSOLE OR AN ARM

PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1 REST, IF YOU WILL, THAT WAS AFFIXED TO THE BRACKET, WHITE IN  
2 COLOR WITH MOTOROLA IMPRINTED ACROSS THE SCREEN FACE OF IT,  
3 IF YOU WILL. ANOTHER ONE SIMILAR TO THE MICROPHONE THAT WAS  
4 ON THE BRACKET, WHITE IN COLOR WITH MOTOROLA IMPRINTED ACROSS  
5 THE FRONT OF THE SCREEN, WAS LAYING IN THE -- AS THE CONSOLE  
6 BETWEEN THE DRIVER'S SIDE AND THE PASSENGER'S SIDE CURVES UP  
7 IN AN UPWARD HILL, IF YOU WILL, AND DOWN A SLOPE, IT WAS  
8 RESTED ON THAT SLOPE, IF YOU WILL, IN FRONT OF THE ARM REST.

9 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT  
10 3K. LOOKING AT THAT PHOTOGRAPH, COULD YOU SHOW US -- DO YOU  
11 HAVE THE -- IS THE POINTER THERE?

12 A YES, SIR.

13 Q IF YOU WOULD, SHOW US THE TWO MICROPHONES. THE ONE --  
14 SHOW US ONE -- THE FIRST ONE THAT IS LOCATED PROPERLY IN ITS  
15 ATTACHMENT HANGER.

16 A (PAUSE) THIS AFFIXED TO THE BRACKET.

17 Q ALL RIGHT.

18 A THIS IS ANOTHER SIMILAR MICROPHONE HERE LAYING ON THAT  
19 UPWARD SLOPE THAT I EXPLAINED AND DESCRIBED. AND THE P.A. --  
20 THE BLACK MICROPHONE WHICH IS COMMONLY USED FOR THE PUBLIC  
21 ANNOUNCEMENT SYSTEM OF THE P.A. ATTACHES TO THIS DEVICE RIGHT  
22 HERE, WHICH IS THE SIREN BOX, COMBINATION OF A SIREN BOX AND  
23 P.A. SYSTEM. AND THAT MICROPHONE IS NOT DEPICTED IN THE  
24 PHOTOGRAPH, ALTHOUGH IT WAS POSITIONED -- IT WAS POSITIONED  
25 OVER ON THE SIDE OF THE P.A. SYSTEM.

PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1 Q AND WAS IT IN A PROPER HOLDING BRACKET?

2 A YES, IT WAS, SIR.

3 Q DID THE ONE LAYING IN THE BOTTOM OF THE TRAY, DID IT  
4 HAVE A HOLDING BRACKET?

5 A IT DID NOT APPEAR TO HAVE A HOLDING BRACKET IN THAT  
6 POSITION THERE, SIR.

7 Q HOW ABOUT ANYWHERE IN THE CAR?

8 A IT APPEARS THERE'S A BRACKET RIGHT HERE.

9 Q OKAY.

10 A AND THAT APPEARS TO BE A RADIO BRACKET, AND THAT RIGHT  
11 THERE IS COMMONLY USED TO FASTEN THAT MICROPHONE TO THAT  
12 BRACKET.

13 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 55 FOR  
14 PURPOSES OF IDENTIFICATION ONLY)

15 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT  
16 NUMBER 55 AND ASK IF YOU ARE FAMILIAR WITH THAT PHOTOGRAPH  
17 AND IS THAT AN ACCURATE REPRESENTATION OF THE INTERIOR VIEW  
18 OF THAT VEHICLE ON DECEMBER THE 6TH OF THE YEAR 2000 WHEN YOU  
19 CONDUCTED YOUR INVENTORY?

20 A YES, IT IS, SIR.

21 SOLICITOR ARIAIL: YOUR HONOR, WE'D LIKE TO OFFER THIS  
22 IN EVIDENCE AS STATE'S EXHIBIT 55.

23 MR. MAULDIN: YOUR HONOR, WE HAVE NO OBJECTION AT THIS  
24 TIME, ASSUMING THERE IS GOING TO BE SOME TESTIMONY AS TO  
25 RELEVANCY---

PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1           THE COURT:    SUBJECT TO---

2           MR. MAULDIN:   IF HE'S OFFERING IT NOW, WE'RE OFFERING  
3 AN OBJECTION TO RELEVANCY UNLESS HE ACTUALLY PRESENTS  
4 SOMETHING.

5           THE COURT:    YES, SIR.

6           SOLICITOR ARIAIL:   I'M OFFERING IT NOW AND I INTEND TO  
7 MAKE IT RELEVANT THROUGH THE NEXT QUESTION.

8           THE COURT:    I'LL PERMIT IT.

9           (STATE'S EXHIBIT NUMBER 55, PHOTOGRAPH, MOVED INTO  
10 EVIDENCE)

11          SOLICITOR ARIAIL:   THANK YOU.

12          Q     STATE'S EXHIBIT 55, WHAT DOES THAT SHOW?

13          A     THIS PHOTOGRAPH DEPICTS THE DRIVER'S SIDE OF THE PATROL  
14 VEHICLE, MAG LITES, A RECHARGEABLE MAG LITE HERE, OR  
15 FLASHLIGHT IF YOU WILL, BLACK MICROPHONE COMMONLY USED FOR  
16 THE PUBLIC ANNOUNCEMENT SYSTEM, OR P.A. SYSTEM, RADIO, LAW  
17 ENFORCEMENT OR TWO-WAY COMMUNICATION SYSTEM, MOBILE  
18 COMMUNICATION SYSTEM. THIS RIGHT HERE, THIS DEVICE HERE THAT  
19 YOU SEE, IS A REMOTE CONTROL FOR HIS RADAR UNIT THAT WAS  
20 INSTALLED INTO THE VEHICLE.

21          Q     SO THE MICROPHONE THAT YOU POINTED TO, THE BLACK ONE,  
22 THAT IS THE THIRD MICROPHONE IN THE VEHICLE?

23          A     THAT IS CORRECT, SIR.

24          Q     AND WAS TROOPER NICHOLSON'S VEHICLE EQUIPPED WITH ANY  
25 TYPE OF VIDEO CAMERA?



PAUL A. SILVAGGIO -- DIRECT BY SOLICITOR ARIAIL

1     A     NO, IT WAS NOT, SIR.

2           SOLICITOR ARIAIL:    THANK YOU, YOUR HONOR.   THAT'S ALL  
3     WE HAVE OF MR. SILVAGGIO.

4     CROSS EXAMINATION BY MR. MAULDIN:

5     Q     JUST A COUPLE OF QUESTIONS, OFFICER SILVAGGIO.   LET'S  
6     RUN THROUGH THE THREE MICROPHONES VERY QUICKLY, PLEASE, SIR.  
7     THERE WAS A BLACK MICROPHONE THAT WOULD HAVE BEEN ESSENTIALLY  
8     VERY CLOSE TO THE DRIVER'S RIGHT LEG?

9     A     THAT'S CORRECT.

10    Q     ALL RIGHT.   SO IT'S AT THE DRIVER'S SIDE OF THE CONSOLE  
11    CONNECTION?

12    A     THAT'S CORRECT.

13    Q     AND AT THE TIME YOU WERE THERE IT WAS -- THAT MICROPHONE  
14    WAS CONNECTED ACTUALLY CONNECTED TO ITS HOLDER?

15    A     IT WAS FASTENED AS NOTED IN THE PHOTOGRAPH.

16    Q     RIGHT.   AND THAT PHOTOGRAPH HE JUST SHOWED YOU IS THE  
17    ONE THAT SHOWS IT FASTENED TO ITS HOLDER?

18    A     THAT'S AN ACCURATE DEPICTION, YES, SIR.

19    Q     ALL RIGHT.   THEN WE HAVE THE MICROPHONE THAT WAS ALSO IN  
20    ITS HOLDER -- LET'S SEE.   YEAH, I'LL JUST USE THIS FOR  
21    SIMPLICITY HERE.   NOW, THE OTHER TWO MICROPHONES ARE SHOWN --  
22    OR COMMUNICATION DEVICES, IF YOU WILL, ARE SHOWN IN THIS  
23    PICTURE.   THIS ONE -- THIS ONE RIGHT HERE IS A HANDHELD MIKE  
24    THAT CAN BE TAKEN OFF OF THAT LITTLE CLASP AND USED TO  
25    COMMUNICATE WITH OTHER OFFICERS AND DISPATCH OR WHATEVER,

PAUL A. SILVAGGIO -- CROSS BY MR. MAULDIN

1 RIGHT?

2 A THAT'S CORRECT, SIR.

3 Q ALL RIGHT. AND IT -- WHEN YOU INVENTORIED THE SCENE AND  
4 GOT THERE IT WAS CONNECTED TO ITS HOLDER?

5 A THAT'S CORRECT, SIR.

6 Q THEN THE THIRD ONE THAT YOU HAVE IDENTIFIED IS THIS ONE  
7 THAT'S PARTIALLY OBSCURED BY THIS ONE?

8 A YES, SIR.

9 Q DOES IT CONNECT WITH A WIRE? IS IT CONNECTED TO  
10 SOMETHING WITH A WIRE OR IS IT REMOTE OR WHAT?

11 A RIGHT. BOTH OF THOSE -- MAY I LASER THE MICROPHONES,  
12 PLEASE?

13 Q YES, SIR.

14 A BOTH OF THESE MICROPHONES HERE, THE WHITE IN COLOR  
15 MICROPHONES, ALL HAVE WHAT APPEARS TO BE LIKE A SILVER SPRING  
16 THAT GOES FROM THE BASE OF THE MICROPHONE APPROXIMATELY TWO  
17 INCHES DOWN. IT THEN -- THAT WRAPS AROUND A BLACK WIRE, A  
18 VERY THICK WIRE, AND THEN COILS, IF YOU WILL, INTO THE RADIO  
19 DEVICE, AND THEY BOTH HAVE THAT SAME DESIGN, SPIRAL TYPE  
20 FASHION BLACK COIL WIRE, AFFIXED INTO THE RADIO DEVICE, THE  
21 MOBILE RADIO DEVICE.

22 Q ALL RIGHT. NOW LET ME ASK YOU A QUESTION. AND  
23 REALIZING -- WELL, LET ME JUST ASK THIS. THE BLACK  
24 MICROPHONE THAT'S AROUND BESIDE THE DRIVER'S RIGHT HAND -- OR  
25 RIGHT LEG ON THE CONSOLE, IS THAT THE ONE THAT IS USED TO

PAUL A. SILVAGGIO -- CROSS BY MR. MAULDIN

1 COMMUNICATE WITH A PERSON, FOR EXAMPLE, THAT THIS OFFICER HAD  
2 STOPPED, THAT THEY -- I MEAN, THE WORD, A BLACK P.A., IS THAT  
3 THE ONE WHERE IF AN OFFICER PULLS OVER A DRIVER AND HE WANTS  
4 TO TELL THAT DRIVER TO STEP OUT OF THEIR VEHICLE OR DO  
5 SOMETHING LIKE THAT, HE CAN ACTUALLY GET THAT BLACK  
6 MICROPHONE AND IT PROJECTS OUT OF THE GRILL OF THE CAR?

7 A IF THE CONDITION -- NINETEEN YEARS IN LAW ENFORCEMENT,  
8 SOMETIMES THE CONDITIONS DON'T -- AREN'T CONDUCIVE TO TAKE  
9 THE TIME TO GRAB AHOLD OF THE PUBLIC ANNOUNCEMENT SYSTEM, THE  
10 BLACK P.A. IF YOU WILL, AND CALL SOMEBODY DOWN OR CALL  
11 SOMEBODY OUT OF THEIR VEHICLE AS A SAFETY FACTOR.

12 Q ALL RIGHT.

13 A IN THOSE CONDITIONS WHERE IT'S CONSISTENT AND WHERE  
14 THE -- AN OFFICER HAS THAT LUXURY, IF YOU WILL, WHICH IS VERY  
15 RARE, TO CALL SOMEBODY OUT OF THE VEHICLE HE WOULD GET OUT OF  
16 HIS VEHICLE, POSITION HIMSELF IN THE APEX OF THE DOOR, AND  
17 THEN CALL THE PERSON OUT OF THEIR VEHICLE USING HIS PATROL  
18 VEHICLE FOR SELF-PROTECTION.

19 Q ALL RIGHT. SO LET ME SEE IF I'VE GOT AN ANSWER. THE  
20 QUESTION WAS, IS THE BLACK SYSTEM THAT WAS CALLED A BLACK  
21 P.A. THE SYSTEM THAT THE OFFICER WOULD USE TO COMMUNICATE  
22 WITH A PERSON HE HAD STOPPED?

23 A IN THE MANNER FOR WHICH I JUST ANSWERED YOUR QUESTION,  
24 YES.

25 Q ALL RIGHT. AND THEN THE OTHER TWO MICROPHONES THAT ARE

PAUL A. SILVAGGIO -- CROSS BY MR. MAULDIN

1 ACTUALLY SHOWN IN THIS PICTURE ARE FOR PURPOSES OF  
2 COMMUNICATING WITH OTHER PATROL, WITH DISPATCH, RADIO  
3 TRANSMISSIONS -- TWO-WAY RADIO TRANSMISSIONS ARE WHAT THOSE  
4 TWO ARE USED FOR?

5 A YES, SIR.

6 Q ALL RIGHT. NOW, FINALLY --

7 MR. MAULDIN: AND YOU CAN TURN THE LIGHTS ON FOR ME,  
8 PLEASE, MA'AM.

9 Q FINALLY, OFFICER SILVAGGIO, YOU DID SAY THAT YOU WERE  
10 PRESENT AT THE AUTOPSY?

11 A THAT IS CORRECT, SIR.

12 Q AND YOU WERE PRESENT THEN -- WERE YOU PRESENT OBSERVING  
13 THE AUTOPSY?

14 A OBSERVING PORTIONS OF THE AUTOPSY AND THERE FOR  
15 PRESERVATION OF EVIDENCE AND COLLECTION OF EVIDENCE ONCE IT  
16 WAS TURNED OVER.

17 Q WERE YOU PRESENT AT THE AUTOPSY WHEN PHOTOGRAPHS WERE  
18 TAKEN BY DR. WARD?

19 A FOR SOME OF THE PHOTOGRAPHS I WAS.

20 Q ALL RIGHT.

21 MR. MAULDIN: NO FURTHER QUESTIONS.

22 THE COURT: ANY REDIRECT?

23 SOLICITOR ARIAIL: NONE, YOUR HONOR.

24 THE COURT: INVESTIGATOR SILVAGGIO, THANK YOU, SIR.

25 (WITNESS STEPS DOWN AT 1:05 P.M.)

SOLICITOR ARIAIL: WE ARE PREPARED TO CONTINUE. I  
GUESS I NEED TO KNOW WHEN YOU WANT TO BREAK.

THE COURT: I'D LIKE TO GO AHEAD AND BREAK. IF WE HAVE PLANNED IT CORRECTLY, THE LUNCH FOR THE JURY SHOULD BE HERE. BUT TELL ME IF YOU HAVE GOT A WITNESS ISSUE THAT HAS TO BE DONE NOW BECAUSE OF SOME CONFLICT, I'LL ACCOMMODATE YOU.

**SOLICITOR ARIAIL: NO. WE'RE FLEXIBLE.**

THE COURT: I'LL JUST BE AT EASE UNTIL THE LADIES AND GENTLEMEN OF THE JURY HAVE HAD AN OPPORTUNITY TO REVIEW THOSE PHOTOGRAPHS TO THE EXTENT THEY DESIRE.

(PAUSE)

MR. MAULDIN: YOUR HONOR, COULD WE HAVE A SIDEBAR FOR JUST A MOMENT?

**THE COURT: SURE.**

(BENCH CONFERENCE OFF RECORD FROM 1:06 TO 1:09 P.M.)

THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO BREAK AT THIS TIME FOR LUNCH. HOPEFULLY YOUR LUNCH IS HERE. I NEED TO GIVE COURT OFFICIALS AND THOSE PARTICIPATING AN OPPORTUNITY TO HAVE LUNCH AS WELL, AND WE DIDN'T BRING LUNCH IN FOR THEM SO THEY NEED PROBABLY A LITTLE EXTRA TIME. SO BE A LITTLE BIT PATIENT WITH US AS WE ACCOMMODATE THAT NEED AS WELL.

AGAIN, AS ALWAYS, PLEASE DO NOT DISCUSS THE CASE DURING ANY BREAK. AND WE WILL GET YOU BACK OUT HERE WHEN WE REASSEMBLE IN PROBABLY ABOUT AN HOUR. THANK YOU.

1 (JURY EXITS COURTROOM AT 1:11 P.M.)

2 THE COURT: THE JURY HAS BEEN EXCUSED. LET'S START  
3 BACK AT 2:15. THAT GIVES US ABOUT AN HOUR. I HOPE THAT WILL  
4 BE SUFFICIENT TIME FOR EVERYONE. THANK YOU.

5 (A LUNCH RECESS WAS TAKEN FROM 1:11 TO 2:23 P.M.)

6 THE COURT: BRING THE JURY, PLEASE.

7 (JURY REENTERS COURTROOM AT 2:25 P.M.)

8 THE COURT: LADIES AND GENTLEMEN, WE'RE READY TO  
9 PROCEED.

10 SOLICITOR, IF YOU WOULD, CALL YOUR NEXT WITNESS, PLEASE,  
11 SIR.

12 SOLICITOR ARIAIL: WE CALL MR. OSWALDO HURTADO.

13 OSWALDO HURTADO, HAVING BEEN  
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE COURT: IF YOU WOULD, FOR THE BENEFIT OF THE COURT  
16 REPORTER IF YOU WOULD SPELL YOUR FIRST NAME AND LAST NAME,  
17 PLEASE, SIR.

18 WITNESS: YES, SIR. MY NAME IS OSWALDO HURTADO.

19 THE COURT: WILL YOU SPELL YOUR NAME?

20 WITNESS: SPELL IT? EXCUSE ME I CAN'T UNDERSTAND YOU.  
21 SPELL MY NAME?

22 THE COURT: YES.

23 WITNESS: O-S-W-A-L-D-O, FIRST NAME. H-U-R-T-A-D-O, MY  
24 LAST NAME.

25 THE COURT: THANK YOU, SIR.

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1           WITNESS:     SORRY.

2     DIRECT EXAMINATION BY SOLICITOR ARIAIL:

3     Q     MR. HURTADO, IF YOU WOULD, STATE YOUR NAME AGAIN FOR THE  
4     RECORD.

5     A     YES, SIR, I DO.   O-S-W-A-L-D-O, OSWALDO, FIRST NAME.   H-  
6     U-R-T-A-D-O, HURTADO, LAST NAME.

7     Q     KEEP YOUR VOICE UP JUST LIKE THAT SO THAT THESE LAST TWO  
8     JURORS CAN HEAR YOU.

9     A     YES, SIR.

10    Q     ALSO, HAVING MET WITH YOU BEFORE AND UNDERSTANDING  
11    SOMETIMES YOU MIGHT EVEN TALK FASTER THAN I TALK, WHAT I'M  
12    GOING TO DO, IF WE GET TO THAT, I'LL JUST KIND OF SLOW YOU  
13    DOWN AND WE'LL START OVER.   ALL RIGHT?

14    A     ALL RIGHT.

15    Q     I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE 6TH  
16    OF THE YEAR 2000 AROUND 12:00 NOON AND ASK YOU IF YOU WERE IN  
17    GREENVILLE COUNTY ON THAT DAY?

18    A     I DO.

19    Q     AND WHO -- DO YOU STILL RESIDE IN GREENVILLE COUNTY?   DO  
20    YOU STILL LIVE HERE?

21    A     NO, SIR.

22    Q     YOU HAVE MOVED TO WHERE?

23    A     CHARLESTON, SOUTH CAROLINA.

24    Q     AND WAS THAT AS A RESULT OF YOUR JOB CHANGE?

25    A     YES.

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 Q YOU NEED TO ANSWER YES OR NO.

2 A YES, SIR.

3 Q YOU STILL WORK FOR THE SAME COMPANY?

4 A YES, SIR.

5 Q WHO IS THE COMPANY -- WHAT IS THE COMPANY THAT YOU WORK  
6 FOR?

7 A TOBIAS (PHONETIC) INCORPORATED.

8 Q AND WHAT DOES TOBIAS INCORPORATED DO?

9 A IT IS A COMPANY WE DO CONSTRUCTION, DRYWALL.

10 Q ALL RIGHT. NOW, ON DECEMBER THE 6TH OF THE YEAR 2000,  
11 WERE YOU WORKING FOR TOBIAS?

12 A YES, SIR.

13 Q AND WHAT WERE YOU DOING AROUND THE 12:00 NOON HOUR THAT  
14 CAUSED YOU TO BE IN THE AREA OF THE OLD CELANESE FIBER  
15 INDUSTRIES PLANT? DO YOU KNOW WHERE I'M TALKING ABOUT?

16 A YES, SIR, I DO.

17 Q WHAT WERE YOU DOING IN THAT AREA?

18 A WELL, ON TUESDAYS MR. TOBIAS USED TO HAVE A MEETING WITH  
19 ALL THE MANAGERS AT THE RESTAURANT LOCATED NEAR TO THE  
20 INTERSECTION OF 385 AND WOODRUFF ROAD. THE PLACE NAME IS  
21 PRIME SIRLOIN BUFFET.

22 Q UH-HUH (AFFIRMATIVE).

23 A AND THAT RESTAURANT HAS BACK ROOMS. SO HE TOLD THE  
24 MANAGER TO LET US USE A ROOM AS OUR MEETING ROOM. SO MR.  
25 TOBIAS AND SIX OR SEVEN GUYS, SOMETIMES 12 TO 14, WOULD MEET



OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 THERE SINCE TWELVE O'CLOCK TO MAYBE 2:00, 2:30, MAYBE EVEN  
2 3:00 TO EAT LUNCH TOGETHER AND TO DISCUSS THINGS ABOUT WHAT  
3 IS GOING ON IN OUR BUSINESS, WHAT IS THE GOAL FOR NEXT WEEK,  
4 NEXT MONTH OR IF WE DO HAVE ANY PROBLEMS TO DISCUSS ALL THOSE  
5 INTERNAL THINGS, COMPANY PROBLEMS.

6 Q AND YOU WERE GOING TO THAT LUNCHEON MEETING?

7 A YES, SIR.

8 Q AND WHEN YOU AND I PREVIOUSLY MET WE LOOKED AT THIS  
9 DIAGRAM; IS THAT RIGHT?

10 A YES, SIR.

11 Q THIS MAP?

12 A YES, SIR.

13 Q ARE YOU FAMILIAR WITH THIS MAP?

14 A YES, SIR.

15 Q IF YOU WOULD, TELL US WHICH WAY YOU WERE COMING -- HOW  
16 WERE YOU GETTING TO PRIME FROM THE LOCATION OF WHERE YOU WERE  
17 COMING FROM?

18 A I'M COMING FROM -- AS YOU SEE ON THE MAP IS SOUTHWEST IS  
19 HIGHWAY 276. NEAR 276, WHICH IS LAURENS ROAD, IS A  
20 CONSTRUCTION DRYWALL DEPOSIT CALLED TUCKER'S MATERIALS.

21 Q UH-HUH (AFFIRMATIVE).

22 A IT'S NEAR TO THE BI-LO WAREHOUSES. SO I WENT TO THE  
23 TUCKER'S MATERIALS TO PICK UP SOME STUFF FOR AFTER MEETING  
24 DELIVERY. SO I TAKE MY ROAD GOING BEHIND THE TURBINE PLANT  
25 OR SOMETHING LIKE THAT.

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

- 1 Q THIS PLANT?
- 2 A THAT PLANT. SO I'M COMING -- EXCUSE ME.
- 3 Q COME DOWN HERE AND SHOW US.
- 4 A THIS IS 85.
- 5 Q UH-HUH (AFFIRMATIVE). THIS IS 85.
- 6 A AND WOODRUFF ROAD RIGHT HERE. ALL THIS WAY, COMING FROM
- 7 HERE, WHICH IS TUCKER'S MATERIAL, FOLLOW THIS ROAD, WHICH IS
- 8 FORRESTER DRIVE, GO AROUND THIS, DON'T GO TO PASS OVER 85,
- 9 TAKE A RIGHT HERE. FRONTAGE ROAD, GET OUT HERE AND STOP BY
- 10 THIS STOP SIGN. VERY HEAVILY TRAFFIC.
- 11 Q AND YOUR ULTIMATE GOAL, WHERE YOU WERE GOING TO LUNCH,
- 12 WAS WHERE?
- 13 A YOU PASS 85, IT'S GOING TO BE HOME DEPOT AND ALL THAT
- 14 STUFF, FRIDAY'S, THEN HERE ACROSS THE STREET FROM THE
- 15 GREENVILLE MALL.
- 16 Q THAT'S WHERE YOU WERE GOING?
- 17 A YES, SIR.
- 18 Q ALL RIGHT. AND YOU WERE DRIVING A TRUCK?
- 19 A AT THAT TIME I HAVE COMPANY TRUCK.
- 20 Q AND IT HAD ON IT BUILDING MATERIALS?
- 21 A YES, SIR. IT GOT SOME STUFF FROM SHERWIN WILLIAMS AND
- 22 TUCKER'S MATERIALS WAS IN MY FLAT -- FLATBED.
- 23 Q NOW, WHEN YOU CAME UP THE ROAD, FRONTAGE ROAD IN FRONT
- 24 OF FIBER INDUSTRIES, TELL THE JURY WHAT YOU SAW.
- 25 A OKAY. I STOP BECAUSE THERE IS STOP SIGN FIRST. SECOND

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 ONE, ONCOMING TRAFFIC FROM MY LEFT WAS TOO HEAVY, 12:00 MAYBE  
2 FIVE TO 12:00. I CAN'T GO STRAIGHT. I HAVE TO GAIN TWO  
3 LINES FROM MY LEFT, AND THEN IT'S NO SAFETY LANE BETWEEN --  
4 WASN'T AT THAT TIME ANY PLACE TO STOP AND PASS ONGOING  
5 TRAFFIC. SO I HAD TO STOP BY AND SAW MANY CARS. AND AFTER A  
6 LITTLE SPACE A MOPED COMING IN, WHICH IS NOT VERY -- A LOT OF  
7 TIME I DON'T SEE TOO MANY MOPEDS ON WOODRUFF ROAD, NO COLD  
8 WEATHER, NO FAMILIAR TO TOO MANY MOPEDS IN HEAVY TRAFFIC.

9 Q TOO MANY WHAT?

10 A MOPEDS. THE KIND OF MOTORCYCLE.

11 Q OH, MOPEDS?

12 A MOPEDS.

13 Q I UNDERSTAND. I SEE A MOPED COMING, AND THEN LIGHTS  
14 FROM A POLICE CAR FLASHING BEHIND THE MOPED. SO THAT WAS  
15 COMING TO MY ATTENTION, AND I SEEN THAT.

16 Q ALL RIGHT. WHICH WAY WAS THE MOPED AND THE FLASHING  
17 BLUE LIGHT -- YOU WERE ON FRONTAGE ROAD FACING WOODRUFF ROAD.  
18 WHICH WAY DID THEY COME FROM?

19 A LEFT.

20 Q THEY CAME FROM YOUR LEFT?

21 A YES, SIR.

22 Q ALL RIGHT. DID YOU WATCH THE MOPED AND THE TROOPER'S  
23 VEHICLE?

24 A I WATCHED THE MOPED.

25 Q WHERE DID THEY GO?

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1     **A**     THEY COMING FASTER.  MOPED FAST.  THE TROOPER CLOSING.  
2     AND THEY JUST TURN BEFORE ME IN A LITTLE STREET.  YOU WANT I  
3     CAN POINT IT?

4     **Q**     YES.  IF YOU WOULD, STEP DOWN THERE AND SHOW WHERE THEY  
5     TURNED AND WHERE THEY WENT.

6     **A**     YES, SIR.  I WAS HERE, FRONTAGE ROAD.  AND WOODRUFF  
7     ROAD, THERE'S THREE ISLANDS.  THERE'S THREE ISLANDS BECAUSE  
8     YOU HAVE TO TAKE -- WATCH WHERE YOU GO.  SO I STOPPED HERE TO  
9     GO THERE.  I SEEN THE CARS -- THE MOPED FIRST, COMING THIS  
10    WAY FROM MY LEFT AND JUST TURNING BESIDE ME, SAY SIX FEET  
11    ISLAND.  SO THEY COMING FROM MY LEFT, TURN RIGHT FOR THEM,  
12    LEFT FOR ME, AND GO BACK---

13    **Q**     BEHIND YOU?

14    **A**     BEHIND ME.  ABOUT, IF I DON'T MISTAKE IT, 40 FEET.

15    **Q**     I'M SORRY?

16    **A**     TWENTY TO FORTY FEET BEHIND ME MAYBE.  I'M DON'T KNOW  
17    EXACTLY HOW MANY BACK.  THEY GO BEHIND ME.

18    **Q**     AND WHEN THEY WENT BEHIND YOU DID YOU SEE THEM STOP?

19    **A**     I SEEN THE MOPED TRYING TO GAIN AGAIN, FRONTAGE ROAD OR  
20    MAYBE GOING TO 85, BUT THE TROOPER DROVE FASTER AND JUST  
21    TRIED TO PUSH -- PUSH HIM.  I SAY TRY TO PUSH HIS CAR CLOSE  
22    TO THE MOPED AGAINST THE CURB TO MAKE HIM STOP IT.

23    **Q**     THE MOPED WAS NOT STOPPING?

24    **A**     THE MOPED NEVER STOPPED UNTIL THE CAR WAS AGAINST THE  
25    CURB SO HE HAD NOWHERE TO GO.

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 Q AND DID THE MOPED STOP?

2 A YEAH.

3 Q AND DID YOU AT ANY TIME SEE THE MOPED STRIKE THE CAR OR  
4 THE CAR STRIKE THE MOPED?

5 A NO, SIR.

6 Q ALL RIGHT. NOW, WHEN THEY CAME TO A STOP AS THEY'RE  
7 GOING BEHIND YOU HOW ARE YOU LOOKING AT THEM? ARE YOU TURNED  
8 AROUND LOOKING AT THEM OR ARE YOU LOOKING IN THE MIRROR?

9 A NO, I'M TURNED.

10 Q TURNED?

11 A I TURN MY COMPLETE BODY TO WATCH.

12 Q ALL RIGHT. AND AS YOU WATCHED AND YOU SAW THEM COME TO  
13 A STOP, WHAT DID YOU SEE NEXT?

14 A I SEEN ONLY ONE PERSON. THE MOPED DRIVER TAKE THE MOPED  
15 FROM THE BAR, PUSH A LITTLE BIT BACK, AND DOING THIS ACTION  
16 TO THE SIDE WINDOW HERE ON THE MOPED -- ON THE TROOPER'S CAR.  
17 AND THEN AFTER THIS ACTION THREE TIMES, TAKE AGAIN THE MOPED  
18 FROM THE BAR, GO BACK TWO OR THREE STEPS, TURN TO THE LEFT,  
19 TURN BACK AND PASS ME ON THE RIGHT SIDE, WHICH IS ON THE  
20 ISLAND AND GOING TO WOODRUFF ROAD TOWARD 385.

21 Q OKAY. NOW, THIS PERSON ON THE MOPED THAT'S BESIDE THE  
22 POLICE CAR, THEY ARE STOPPED. HOW LONG ARE THEY STOPPED  
23 BEFORE YOU SEE THE GUN AND THE---

24 A AS TIME, THERE'S NO -- CAN SAY ONE SECOND, TWO SECONDS.  
25 IT WAS---

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY. AND DID YOU HEAR ANY GUNSHOTS?

2 A NO, SIR. THAT TIME I HAD THE RADIO A LITTLE BIT HIGH,  
3 WINDOWS UP, THAT 350 DIESEL RUNNING MOTOR MAKE TOO MUCH  
4 NOISE. I DON'T HEAR ANY SHOT.

5 Q DID YOU -- WHEN THE MOPED DRIVER STOPPED, YOU SAID, THE  
6 ARM GOES OUT AND YOU COUNTED THREE UP AND DOWN?

7 A YES, SIR.

8 Q THEN WAS THIS PERSON'S FEET ON THE GROUND OR HOW WERE  
9 THEY SITTING?

10 A YES, SIR. FEET ON THE GROUND, HOLDING THE MOPED WITH  
11 THE LEGS.

12 Q BALANCING IT WITH THE LEGS?

13 A YES.

14 Q AND DO YOU KNOW THE DIFFERENCE BETWEEN A MOPED AND A  
15 MOTOR SCOOTER -- EXCUSE ME -- MOPED AND A MOTORCYCLE?

16 A OH, OKAY. YEAH, BECAUSE THE LOOK LIKE TO ME THE SAME.  
17 BUT MOPED IS LITTLE BICYCLE OR TWO WHEELS -- HOW TO EXPLAIN  
18 TO YOU.

19 Q THAT'S OKAY.

20 A MOTORCYCLE IS BIGGER THAN A MOPED. ENGINE IS SMALLER ON  
21 A MOPED THAN A MOTORCYCLE. I USED TO DRIVE A MOTORCYCLE. I  
22 KNOW WHAT IT IS.

23 Q YOU KNOW WHAT A MOTORCYCLE IS?

24 A YES, SIR.

25 Q WAS THIS A MOTORCYCLE IN YOUR ESTIMATION?

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 A WAS A MOPED.

2 Q MOPED. ALL RIGHT. NOW, WHEN THE INDIVIDUAL ON THIS  
3 MOPED PUT HIS HANDS BACK ON THE HANDLEBAR, DID YOU SAY HE  
4 LIFTED IT UP OR HE JUST TURNED IT?

5 A NO. AFTER THE ACTION, HE PULLED BACK AND PULL IT BACK  
6 AND TRIED TO PUT IT LIKE THIS AND THEN FORWARD.

7 Q TO THE LEFT?

8 A YES, SIR.

9 Q DID HE PASS ON THE SAME ROAD -- DID HE PASS BEHIND YOU  
10 AS YOU'RE SITTING STOPPED AT THE LIGHT -- I MEAN, THE STOP  
11 SIGN? DID HE PASS BEHIND YOU?

12 A NO, SIR. NOT THE SIGN -- FRONTAGE ROAD AND WOODRUFF  
13 ROAD HAVE THREE ISLAND. SO HE DON'T TAKE -- THE ISLAND, WHEN  
14 THEY'RE COMING IN BETWEEN THE ISLAND, HIS ROAD AND MY ROAD.

15 Q OKAY. STEP DOWN HERE IF YOU WOULD AND THIS IS GOING TO  
16 BE TOO FAR. ARE THESE THE ISLANDS YOU'RE TALKING ABOUT?

17 A YES, SIR.

18 Q SO WHICH ISLAND ARE YOU IN?

19 A THE MIDDLE ONE.

20 Q THE MIDDLE ONE. ALL RIGHT.

21 A BETWEEN THE TWO ISLANDS. THE ROAD IS THE MIDDLE ONE.  
22 SO THERE IS ONE ON THE LEFT AND ONE ON THE RIGHT AND THEN  
23 ANOTHER ONE ON THE RIGHT. I WAS IN THE MIDDLE ROAD. HE  
24 TRIED TO GO BACK AND PASS RIGHT HERE.

25 Q OKAY. AND HE CAME OUT ON WOODRUFF ROAD?

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q AND DID HE GO OUT ONTO WOODRUFF ROAD?

3 A YEAH. TRAFFIC IS NOT STOP HIM. TRAFFIC IS SLOWED DOWN.  
4 MAYBE LOOKING AT WHAT HAPPENED WITH THE CAR SITTING THERE  
5 WITH THE LIGHTS ON, AND HE GO OUT EXIT VERY EASY.

6 Q ALL RIGHT. MY INTELLIGENT STAFF REMINDED ME THAT WE  
7 HAVE A BETTER DRAWING FOR YOU TO LOOK AT AND ONE BETTER FOR  
8 THE JURY TO SEE. THIS WILL BE -- THIS IS AN ENLARGEMENT,  
9 STATE'S 48A IS AN ENLARGEMENT OF A SECTION OF 48. NOW, SHOW  
10 ME AGAIN ON THIS DIAGRAM -- SHOW ME WHICH WAY THE MOPED AND  
11 THE TROOPER CAME IN.

12 A (INDICATING)

13 Q ALL RIGHT. AND WHERE WERE YOU PARKED?

14 A RIGHT HERE.

15 Q ALL RIGHT. NOW, IN COMING OUT, WHICH WAY DID THE MOPED  
16 COME OUT?

17 A THIS WAY.

18 Q ALL RIGHT. THANK YOU. AT THAT TIME WHAT DID YOU --  
19 WHAT DID YOU DO?

20 A AT THAT TIME JUST WAIT BECAUSE I SEEN THE TIME KEPT  
21 RUNNING. MY BOSS MAN WAITING FOR ME AND CO-WORKERS WAITING  
22 FOR ME. I JUST WAS WORRYING ABOUT MY MEETING.

23 Q OKAY. DID YOU SEE THE TROOPER'S VEHICLE?

24 A I SEEN THE TROOPER'S VEHICLE STOP.

25 Q DID IT MOVE -- DID YOU SEE IT MOVE AFTER THE -- AFTER IT



OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 STOPPED? DID IT TAKE OFF AFTER THE MOPED OR DID IT STAY  
2 WHERE IT WAS?

3 A IT STAYED WHERE IT WAS.

4 Q DID YOU -- AFTER LEAVING YOUR MEETING, WHERE DID YOU GO?

5 A AFTER MEETING WE DO HAVE APARTMENTS FOR THE CLEMSON  
6 STUDENTS, BUILDING IN CLEMSON AREA.

7 Q CLEMSON?

8 A CLEMSON.

9 Q YOU WERE MAKING A DELIVERY THERE?

10 A YES, SIR.

11 Q ALL RIGHT. DID YOU GO THERE?

12 A YES, SIR.

13 Q ON THE WAY THERE DID YOU STOP AND TALK WITH ANYONE?

14 A YES, SIR. COME BACK WOODRUFF ROAD, TAKE 85 SOUTH, GO  
15 OUT TO EXIT 19B. ABOUT RUN OUT OF MY DIESEL FOR THE TRUCK.  
16 SO I SEE NO DIESEL GAS STATION ON -- I REMEMBER ONE ON  
17 HIGHWAY 153, WHICH IS EXIT 40, HAS A GAS STATION. SO I WENT  
18 TO EXIT 40 SOUTH, TAKE EXIT AND JUST STOP BY GAS STATION,  
19 FILLING WITH DIESEL MY TRUCK, AND SOON TWO TROOPERS OR POLICE  
20 IS WAITING.

21 Q AT THE STATION?

22 A AT THE STATION IN BACK CORNER.

23 Q AND DID YOU HAVE A CONVERSATION WITH THEM?

24 A I DO.

25 Q AND BEFORE YOU HAD GONE THERE, WHEN YOU CAME BACK OUT

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 WOODRUFF ROAD AND GOT ON 85 SOUTH, DID YOU NOTICE ANYTHING IN  
2 THE AREA OF WHERE YOU HAD SEEN THE MOPED AND THE TROOPER CAR?

3 A YES, SIR.

4 Q WHAT---

5 A EXCUSE ME?

6 Q GO AHEAD. TELL US WHAT YOU SAW.

7 A WHAT I SEEN IS I SEEN THE CAR STOP KEEPING WITH THE  
8 LIGHTS FLASHING, AND A BUNCH OF CARS RUNNING SOUTH ON 85,  
9 HELICOPTERS, AND CARS MARKED WITH A K-9. SO I THINKING ABOUT  
10 SOMETHING IS GOING ON SOUTH.

11 Q WHEN YOU GOT DOWN TO THE EXIT 40 STATION AND YOU SAW THE  
12 TWO TROOPERS DID YOU HAVE A CONVERSATION WITH THEM ABOUT WHAT  
13 IS GOING ON?

14 A THEY SAY TO ME -- ONE OF THE GUYS SAY TO ME A TROOPER  
15 WAS KILLED ON WOODRUFF ROAD AND 85. I ASKED THEM ABOUT WHAT  
16 TIME, AND THEY SOME TIME ABOUT 12:00 OR LUNCH. AND I TALKED  
17 TO THEM, WELL, I WAS IN THAT SPOT AT THAT TIME AND I SEEN  
18 THAT. THE TROOPER SAY TO ME, CAN YOU HELP US? I ASK THEM  
19 HOW? HE TELL ME, WHAT DID YOU SEE? AND I SAY, WELL, SAME  
20 THING I JUST TOLD TO YOU. I SEEN A MOPED COMING, A TROOPER  
21 BEHIND IT. TROOPER STOP. SCOOTER OR MOPED JUST DO THIS AND  
22 GO BACK AND BY ME. HE SAY, CAN YOU PLEASE GO TO THE POLICE  
23 DEPARTMENT IN GREENVILLE? AND I SAY TO HIM, IT'S THREE  
24 SOMETHING RIGHT NOW. I HAVE TO GO OUT TO CLEMSON. I HAVE TO  
25 DELIVER MY PAINT. SO MAYBE LATER TODAY. AND HE SAY, OKAY,

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 GIVE ME YOUR DRIVER LICENSE. I SAY, OKAY. HERE MY DRIVER  
2 LICENSE, AND HE WRITE DOWN ALL MY INFORMATION. SO I SAY,  
3 WELL, MAYBE LATER TODAY. AND HE SAID, NO PROBLEM. SO I  
4 SAID, WHERE IS THE GUY? AND HE SAID, SOMEWHERE IN ANDERSON.  
5 I SAID, HUM, I'M GOING THAT WAY, TO CLEMSON AND THEN ANDERSON  
6 TO DO SOME PAINT DELIVERY. AND HE SAID, OKAY. I WENT TO  
7 CLEMSON, THEN ANDERSON, BACK TO GREENVILLE, AND I AM GOING TO  
8 CHANGE MY CAR FOR MY PERSONAL TRUCK, JUST COMING WITH THE  
9 TRUCK, COMPANY TRUCK TO THE LAW ENFORCEMENT CENTER PARKING  
10 THERE AND JUST ASKING FOR WHO IS THE PERSON IN CHARGE TO  
11 RECORD MY STATEMENT.

12 Q AND YOU WENT IN AND GAVE A STATEMENT?

13 A YES, SIR. ON THE SAME DAY.

14 Q NOW, DID YOU -- WERE YOU ABLE TO TELL ANYTHING ABOUT THE  
15 PERSON ON THE SCOOTER? COULD YOU TELL WHETHER THE PERSON WAS  
16 BLACK OR WHITE?

17 A NO, SIR.

18 Q DID YOU REMEMBER HOW THE INDIVIDUAL ON THE SCOOTER WAS  
19 DRESSED?

20 A HELMET. THE ONLY THING I SEEN ON HIM BECAUSE I DON'T  
21 REMEMBER ANYTHING WHEN HE COMING, THE DRIVER. I DON'T SEE --  
22 FIRST THING, I DON'T KNOW IF IT WAS A MAN OR A WOMAN.

23 Q YOU DON'T KNOW IF IT'S A MAN OR WOMAN.

24 A THE OTHER THING IS I DOESN'T REMEMBER STRAIGHT WHEN HE  
25 COMING KIND OF HELMET. THE ONLY THING I KNOW IS A DARK VISOR

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 AND BLACK ON THE BACK WHEN I SEE HIM PASS.

2 Q ALL RIGHT.

3 A I DON'T KNOW ABOUT THE COLOR OF THE JACKET, BUT I KNOW  
4 IT'S A JACKET. I DON'T KNOW ABOUT GLOVES. I DON'T KNOW  
5 ABOUT COLOR OF THE PANTS OR SHOES. I THINK -- I LIKE TO  
6 REMEMBER I LIKE TO SAY IT WAS BLUE, DARK GREEN, OR BLUE,  
7 BUT...

8 Q YOU'RE NOT SURE?

9 A NO, SIR.

10 Q DID YOU -- WERE YOU ABLE TO SEE ANY SKIN TO DETERMINE IF  
11 HE WAS WHITE OR BLACK?

12 A NO, SIR.

13 Q OKAY. DO YOU REMEMBER THE MOPED, WHAT IT LOOKED LIKE?

14 A THE MOPED?

15 Q UH-HUH (AFFIRMATIVE). WHAT COLOR WAS IT?

16 A THE COLOR IS SOME KIND OF BURGUNDY, RED, BURGUNDY.

17 Q I'M SORRY?

18 A RED MAYBE.

19 Q RED?

20 A YEAH.

21 Q LET ME SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT  
22 26F.

23 A YEAH, THAT'S THE MOPED I SEEN.

24 Q THAT'S THE MOPED. THAT LOOKS LIKE THE MOPED YOU SAW?

25 A LOOK LIKE THE MOPED I SEE, YES.

OSWALDO HURTADO -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY. THANK YOU.

2 SOLICITOR ARIAIL: I'M GOING TO GO AHEAD AND INTRODUCE  
3 IT.

4 MR. BANNISTER: NO OBJECTION.

5 (STATE'S EXHIBIT NUMBER 26F, PHOTOGRAPH, MOVED INTO  
6 EVIDENCE)

7 Q (PAUSE) TECHNOLOGY AT ITS FINEST. IT'S GOT TO WARM UP.  
8 DOES THAT LOOK LIKE THE MOPED YOU SAW?

9 A YES, SIR.

10 Q THANK YOU. (OFF RECORD WITH CO-COUNSEL)

11 SOLICITOR ARIAIL: THANK YOU. ANSWER ANY QUESTIONS  
12 THAT THE DEFENSE ATTORNEYS MAY HAVE.

13 CROSS EXAMINATION BY MR. BANNISTER:

14 Q GOOD AFTERNOON, MR. HURTADO.

15 A GOOD AFTERNOON, SIR.

16 Q LET ME JUST MAKE SURE THAT I HEARD YOU CORRECTLY WHEN  
17 YOU WERE TALKING ABOUT THE TROOPER, THE PATROL CAR WAS BEHIND  
18 THE MOPED AND THEY WERE TRAVELLING DOWN THE ROAD?

19 A YES.

20 Q ALL RIGHT. AND THE TROOPER'S CAR HAD HIS LIGHTS ON?

21 A YES.

22 Q AND THE TROOPER SPED UP PAST THE MOPED ON THE MOPED'S  
23 RIGHT?

24 A YOU SEE FROM POINT OF VIEW WHEN I AM TURNED, MOPED  
25 GOING, TROOPER FOLLOW, GAIN SPEED---

OSWALDO HURTADO -- CROSS BY MR. BANNISTER

- 1 Q RIGHT.
- 2 A ---RIGHT SIDE OF THE MOPED, STOP IT.
- 3 Q RIGHT. AND I THINK YOU SAID -- CORRECT ME IF I'M
- 4 WRONG -- THAT THE TROOPER'S PATROL CAR FORCED THE MOPED
- 5 TOWARD THE CURB THAT WOULD HAVE BEEN ON THE LEFT SIDE -- OR
- 6 THE LEFT SIDE OF THE MOPED?
- 7 A THE CURB WAS ON THE LEFT SIDE OF THE MOPED. THE PATROL,
- 8 RIGHT SIDE. THEY MAKE A CORNER, THE MOPED CAN GO NOWHERE.
- 9 Q ALL RIGHT. THE MOPED HAD NOWHERE ELSE TO GO?
- 10 A NOT FROM MY POINT OF VIEW.
- 11 Q FROM YOUR POINT OF VIEW?
- 12 A YES, SIR.
- 13 Q ALL RIGHT. AND THEN AFTER THE MOPED CAME TO A STOP OR
- 14 SHORTLY AFTER IT CAME TO A STOP, THAT'S WHEN YOU SAW ONE ARM
- 15 RAISE UP TOWARDS THE DRIVER'S SIDE OF THE PATROL CAR ON THE
- 16 PERSON WHO WAS SITTING ON THE MOPED?
- 17 A YES. BUT NOT LIKE YOU -- THE ARM SHORTER, LIKE THIS,
- 18 NOT THAT LONG. SHORT. IT WAS CLOSE ENOUGH SO YOU DON'T NEED
- 19 TO OPEN OR EXTEND YOUR ARM. OKAY?
- 20 Q OKAY. I THINK I UNDERSTAND. AND THAT'S WHEN YOU SAW
- 21 THE ARM MOVE TWO OR THREE TIMES?
- 22 A YES, SIR.
- 23 Q AND THEN IN ORDER TO TURN THE MOPED AROUND THE DRIVER OF
- 24 THE MOPED BACKED THE MOPED UP AND THEN TURNED TO HIS LEFT?
- 25 A YES, SIR.

OSWALDO HURTADO -- CROSS BY MR. BANNISTER

1 Q TO THEN GET BACK ON THE FRONTAGE ROAD AND THEN THAT'S  
2 WHEN HE CAME BACK UP AROUND YOUR RIGHT-HAND SIDE?

3 A YES, SIR.

4 MR. BANNISTER: NO FURTHER QUESTIONS.

5 THE COURT: ANY REDIRECT?

6 SOLICITOR ARIAIL: NO, YOUR HONOR. COULD HE BE EXCUSED  
7 TO RETURN TO HIS WORK?

8 MR. MAULDIN: ONE MOMENT, YOUR HONOR. (OFF RECORD WITH  
9 CO-COUNSEL) NO OBJECTION.

10 THE COURT: MR. HURTADO, THANK YOU, SIR. WE APPRECIATE  
11 YOU BEING HERE. YOU ARE FREE TO GO.

12 WITNESS: THANK YOU, SIR.

13 (WITNESS EXCUSED AT 2:52 P.M.)

14 SOLICITOR ARIAIL: WE CALL MIKE WALSH.

15 MICHAEL J. WALSH, HAVING BEEN

16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

18 Q STATE YOUR NAME FOR THE RECORD, PLEASE, SIR.

19 A MICHAEL JOSEPH WALSH.

20 Q AND, MR. WALSH, I WANT TO DIRECT YOUR ATTENTION BACK TO  
21 DECEMBER THE 6TH, 2000 AROUND 12:00 NOON AND ASK YOU IF YOU  
22 WOULD TO KEEP YOUR VOICE UP JUST LIKE THAT SO THAT THESE  
23 JURORS DOWN HERE CAN HEAR YOU AND I CAN HEAR YOU.

24 WERE YOU ON THAT DATE AND TIME IN THE VICINITY OF  
25 WOODRUFF ROAD AND I-85?

1     A     YES, I WAS.

2     Q     AND WHERE HAD YOU BEEN AND WHERE WERE YOU GOING AND TELL  
3     US THE DIRECTION OF TRAVEL YOU WERE GOING?

4     A     OKAY. I HAD JUST BEEN TO HOME DEPOT, AND I HAD  
5     PREPURCHASED SOME MATERIALS THAT I WAS GOING TO NEED THE  
6     FOLLOWING DAY IN MY BUSINESS. I HAD LEFT THERE AND WAS  
7     TRAVELING ON WOODRUFF ROAD, I GUESS IT WOULD BE GOING EAST,  
8     AND I WAS GOING TO GO TO MILLER ROAD, TAKE A RIGHT AND HEAD  
9     BACK TO MY OFFICE IN MAULDIN. BUT AT THE LAST MINUTE I MADE  
10    A -- I LOOKED AHEAD, SAW TRAFFIC WAS KIND OF HEAVY, AND I  
11    TOOK A RIGHT TURN ONTO THAT FRONTAGE ROAD, A SHORTCUT THAT I  
12    REALLY DON'T TAKE THAT OFTEN. I JUST, KIND OF A KNEE-JERK  
13    DECISION, DECIDED TO TURN DOWN THERE, AND THAT'S WHAT PUT ME  
14    ON THAT ROAD AT THAT TIME.

15   Q     ALL RIGHT. SO YOU TURNED RIGHT ONTO FRONTAGE ROAD. LET  
16   ME SHOW YOU -- YOU SEE THAT DIAGRAM THERE THAT'S AN  
17   ENLARGEMENT OF A SMALL AREA FROM THE BIG MAP? SHOW US, IF  
18   YOU WOULD, WHICH WAY YOU CAME INTO FRONTAGE ROAD.

19   A     SURE. RIGHT HERE ON WOODRUFF ROAD, I JUST TOOK A RIGHT,  
20   CAME DOWN THIS ROAD RIGHT HERE.

21   Q     AS YOU CAME DOWN THAT ROAD WHAT DID YOU NOTICE? YOU CAN  
22   GO AHEAD AND HAVE A SEAT.

23   A     (COMPLIES) WELL, IMMEDIATELY UPON ROUNDING THE CURVE  
24   THERE I SAW THE PATROLMAN'S CAR SITTING IN THE MEDIAN RIGHT  
25   THERE IN THE CENTER. I SAW THE LIGHTS GOING. THE FIRST



MICHAEL J. WALSH -- DIRECT BY SOLICITOR ARIAIL

1    THING THAT STRUCK ME AS ODD WAS THERE WAS NO VEHICLE STOPPED  
2    IN FRONT OF HIM.

3    Q     NO OTHER CAR WAS THERE?

4    A     THERE WAS NOTHING ELSE THERE AT THAT TIME.  HE WAS --  
5    THE CAR WAS THERE BY ITSELF.

6    Q     ALL RIGHT.

7    A     AND SO I SLOWED DOWN AND BASICALLY WAS ABLE TO GO PAST  
8    HIM JUST BY STAYING IN THE APPROPRIATE LANE WHERE I WAS.  AND  
9    AS I WENT BY, JUST OUT OF CURIOSITY, I LOOKED OVER AND I SAW  
10   THE OFFICER -- WELL, I ASSUMED IT WAS AN OFFICER.  I SAW THE  
11   DRIVER SLUMPED OVER JUST COMPLETELY OVER INTO THE PASSENGER  
12   SEAT.  AND LOOKING THROUGH -- I WAS ON THE PASSENGER SIDE.  
13   LOOKING THROUGH I NOTICED THE KIND OF A FRINGE OF FROSTED  
14   GLASS WHERE HIS WINDOW HAD BEEN -- WAS -- WAS BLOWN OUT.

15         IT WAS JUST BIZARRE.  I COULDN'T PROCESS WHAT HAD JUST  
16   HAPPENED.  MY FIRST THOUGHT WAS THAT IT WAS SOME KIND OF AN  
17   E.M.S. DRILL OR IT WAS SOMETHING STAGED.  SO I WENT POSSIBLY  
18   ANOTHER 100 OR 200 FEET AND CAME TO A STOP, AND I SAID, "NO,  
19   THAT WAS SOMEBODY WHO WAS JUST SHOT."  I REMEMBER STOPPING  
20   AND LOOKING IN MY REAR VIEW MIRROR AND THINKING, "WELL WHERE  
21   ARE ALL THE POLICE OFFICERS?"  AND THEN IT DAWNED ON ME THAT  
22   IT HAD JUST HAPPENED.

23         SO I PUT IT IN PARK AND GOT OUT AND BEGAN TO DIAL 911.  
24   AND RIGHT AT THAT TIME A -- SEVERAL -- PROBABLY HALF A MINUTE  
25   OR SO BEHIND ME, A DELIVERY TRUCK FROM CAROLINA BUILDERS ALSO

MICHAEL J. WALSH -- DIRECT BY SOLICITOR ARIAIL

1     TURNED DOWN THAT ROAD TO CUT BACK TO WHERE THEIR BUSINESS  
2     WOULD BE.   AND AS I WAS TALKING TO THE 911 DISPATCHER I  
3     FLAGGED THEM DOWN AND GOT THEM TO STOP.   I WAS TALKING TO HER  
4     AND YELLING AT THEM THAT THE TROOPER HAS BEEN SHOT.   AT THAT  
5     POINT, I WAS STILL ON THE LINE WITH THE 911 OPERATOR AND WE  
6     RAN BACK TO THE PATROL CAR.

7     Q     AND WHEN YOU GOT BACK TO THE PATROL CAR AT THAT POINT  
8     DID YOU NOTICE -- DID YOU SAY THE LIGHTS WERE ON?

9     A     YES, THEY WERE.   THE LIGHTS WERE ON.

10    Q     HOW ABOUT THE SIREN?   DO YOU REMEMBER WHETHER THE SIREN  
11    WAS ON?

12    A     YES, IT WAS.

13    Q     AND WHAT DID YOU DO WHEN YOU GOT BACK TO THE CAR, THE  
14    TROOPER'S CAR?

15    A     I LOOKED IN THE WINDOW AND SAW THIS TIME NOW FROM -- YOU  
16    KNOW, I LOOKED IN THE DRIVER'S WINDOW AND SAW HIM STILL  
17    SLUMPED OVER.   I WAS TALKING WITH THE OPERATOR.   SHE WAS  
18    ASKING ME IF I KNEW 911 -- SHE WAS ALSO -- SHE WAS -- FIRST,  
19    SHE WAS ASKING ME TO TELL WHERE THIS INCIDENT WAS.   I DIDN'T  
20    KNOW THE NAME OF THE ROAD, AND ALL I KEPT SAYING IT'S THE  
21    ROAD THAT'S OUT IN FRONT OF WHAT USED TO BE THE HOECHST  
22    CELANESE PLANT AT WOODRUFF ROAD, JUST OFF OF WOODRUFF ROAD  
23    AND 85.   IT WAS A VERY PANICKY, VERY FRUSTRATING TRYING TO  
24    EXPLAIN WHERE THIS WAS.

25           EVERY TIME I GOT CLOSE TO THE CAR I COULDN'T HEAR WHAT

1 SHE WAS SAYING, SO I HAD TO KEEP BACKING AWAY FROM THE CAR.  
2 AND I REMEMBER ASKING HER IF SHE KNEW HOW TO CUT THE SIREN  
3 OFF SO I COULD HEAR, AND SHE DIDN'T KNOW HOW TO DO THAT AND  
4 DIDN'T KNOW HOW TO TELL ME TO DO THAT. I REMEMBER LEANING IN  
5 THE CAR LOOKING OVER HIM AT THE CONSOLE TRYING TO FIGURE OUT  
6 HOW TO DO THAT ON MY OWN. I COULDN'T DO THAT. SHE THEN  
7 ASKED ME IF I KNEW CPR. I SAID NO. I HAD COURSES FOR IT  
8 YEARS AGO WHEN I WAS IN HIGH SCHOOL, BUT, NO, OFFICIALLY I  
9 DON'T KNOW IT NOW. AND SHE GOT SOMEBODY ELSE ON THE LINE AND  
10 SHE WAS GOING TO WALK ME THROUGH IT OR TALK ME THROUGH IT.  
11 AND THE FIRST THING THAT SHE HAD ME DO WAS SHE SAID TO GO UP  
12 AND OPEN THE DOOR.

13 Q WAS THE DOOR SHUT?

14 A YES, IT WAS.

15 Q ALL RIGHT.

16 A SO I WALKED UP TO THE CAR DOOR. I OPENED IT AND HAD TO  
17 STEP BACK AGAIN TO GET MY NEXT INSTRUCTIONS FROM HER. SHE  
18 SAID, "YOU'RE GOING TO HAVE TO DRAG HIM OUT." YOU KNOW,  
19 "YOU'RE GOING TO HAVE TO GET HIM OUT OF THE CAR."

20 AND RIGHT AT THAT MOMENT AS I TURNED TO GO BACK TO THE  
21 CAR OUT OF THE CORNER OF MY EYE I SAW TWO OR THREE PATROL  
22 CARS. I THINK IT WAS A MIXTURE OF EITHER ONE COUNTY DEPUTY  
23 AND TWO TROOPERS OR VICE VERSA, ONE TROOPER AND TWO COUNTY  
24 DEPUTIES, CAME SCREAMING AROUND THE CORNER. I TOLD HER, I  
25 SAID, "WELL, OTHER COPS ARE HERE NOW." AND SHE SAID, "OKAY."

MICHAEL J. WALSH -- DIRECT BY SOLICITOR ARIAIL

1 LET THEM TAKE OVER." AND I GUESS SHE GOT -- AT THAT POINT  
2 GOT MY INFORMATION, MY CELL NUMBER, NAME AND ADDRESS AND SO  
3 FORTH.

4 Q WHEN YOU OPENED THE DOOR DID YOU DO IT IN ANY UNUSUAL  
5 MANNER?

6 A I THOUGHT JUST ENOUGH -- I HAD A SWEATSHIRT ON. I  
7 PULLED MY SWEATSHIRT DOWN OVER MY HANDS AND I OPENED IT LIKE  
8 THAT JUST SO THAT I DIDN'T CONTAMINATE IT WITH ANY  
9 FINGERPRINTS.

10 Q AND WHILE YOU WERE ON THE SCENE -- WERE YOU THE FIRST  
11 PERSON ON THE SCENE?

12 A I BELIEVE THAT I WAS.

13 Q YOU WERE THERE AHEAD OF LAW ENFORCEMENT?

14 A YES, I WAS.

15 Q YOU WERE AHEAD OF ANY OTHER CIVILIANS?

16 A YES, I WAS.

17 Q NOW -- AND YOU OPENED THE DOOR?

18 A YES.

19 Q DID YOU -- WHEN YOU OPENED THE DOOR -- OR WHEN YOU WERE  
20 AROUND THE CAR DID YOU NOTICE ANYTHING ON THE GROUND?

21 A YES. THERE WERE -- I DID NOT GET AN EXACT COUNT. I  
22 WOULD SAY SOMEWHERE BETWEEN FOUR AND SIX SPENT CASINGS WERE  
23 WITHIN TWO FEET OF THE DOOR ON THE GROUND, SCATTERED ON THE  
24 GROUND.

25 Q AND YOU KNOW WHAT SPENT CASINGS ARE?

MICHAEL J. WALSH -- DIRECT BY SOLICITOR ARIAIL

1     **A**     YEAH, THEY'RE USED SHELLS. BULLET SHELLS.

2             **SOLICITOR ARIAIL:**    ANSWER ANY QUESTIONS THAT THE  
3     DEFENSE LAWYERS MAY HAVE. THANK YOU VERY MUCH.

4     **CROSS EXAMINATION BY MR. BANNISTER:**

5     **Q**     GOOD AFTERNOON, MR. WALSH. I HAVE JUST A FEW FOLLOW-UP  
6     QUESTIONS ON THE POSITION OF THE PATROL CAR AS YOU CAME DOWN  
7     FRONTAGE ROAD. I THOUGHT I HEARD YOU SAY THAT YOU WERE ABLE  
8     TO STAY IN YOUR LANE OF TRAVEL WITHOUT HAVING TO MOVE OVER  
9     AND SAY OFF TO THE SHOULDER OF THE ROAD TO GET AROUND THE CAR  
10    AT LEAST WHEN YOU INITIALLY WENT BY?

11    **A**     THAT'S CORRECT.

12    **Q**     OKAY. SO THEN THE PATROL VEHICLE WAS INTO WHAT WOULD BE  
13    FROM YOUR POSITION AT THAT POINT THE ONCOMING LANE OF  
14    TRAFFIC?

15    **A**     NO. AS I RECALL, HE WAS ACTUALLY PARKED IN A MEDIAN.  
16    IT'S ALL ONE LEVEL ROAD. THERE'S NO RAISED CONCRETE MEDIAN.  
17    BUT THERE IS A PAINTED MEDIAN RIGHT -- AS IS DEMONSTRATED  
18    THERE.

19    **Q**     OKAY.

20    **A**     HE WAS -- FOR ME TO BE ABLE TO GET BY IT WAS FINE. I  
21    DIDN'T NOT HAVE TO PULL OFF THE ROAD AT ALL.

22    **Q**     ALL RIGHT. AND THEN WHEN YOU TURNED AROUND DID YOU --  
23    OR DID YOU TURN AROUND WHEN YOU STOPPED YOUR CAR?

24    **A**     AT FIRST, I BELIEVE I JUST -- I PUT IT IN PARK. I DON'T  
25    THINK THAT I TURNED AROUND AT THAT POINT. HONESTLY, I CAN'T

MICHAEL J. WALSH -- CROSS BY MR. BANNISTER

1 REMEMBER EXACTLY WHAT I DID BECAUSE I DO KNOW THAT AT SOME  
2 POINT I HAD ACTUALLY BROUGHT MY VEHICLE BACK A LITTLE BIT  
3 CLOSER. BUT I NEVER DID GET INTO THIS LANE OVER HERE. BUT I  
4 THINK AT FIRST I THREW IT IN PARK, AND I JUMPED OUT AND WENT  
5 TO RUN BACK THERE. I THINK AFTER THE OTHER POLICE OFFICERS  
6 HAD ARRIVED AND IT WAS CLEAR -- IT WAS OBVIOUS I DIDN'T NEED  
7 TO BE RIGHT THERE, THEN I THINK I GOT OVER AND MOVED BY  
8 VEHICLE BACK A LITTLE BIT CLOSER TO THERE, BECAUSE I WAS TOLD  
9 BY THE DEPUTY THAT WAS ASSIGNED TO STAND WITH ME THAT I WAS  
10 GOING TO BE THERE FOR SOME TIME. SO...

11 Q ALL RIGHT. SO AT THE TIME WHEN YOU -- IT DAWNED IN YOUR  
12 MIND THAT SOMETHING WAS WRONG, YOU PUT THE CAR IN PARK. YOU  
13 TOOK YOUR CELL PHONE WITH YOU, DIALED 911---

14 A RIGHT.

15 Q ---GOT OUT OF YOUR CAR AND BEGAN WALKING BACK TOWARDS  
16 THE PATROL VEHICLE?

17 A YES.

18 Q ALL RIGHT. YOUR RECOLLECTION ON THAT DAY, DECEMBER THE  
19 6TH, 2000, IF WE HAD RECORDS THAT SHOWED THE 911 CALL THAT  
20 YOU MADE WAS AT EXACTLY 12:18, WOULD THAT BE CONSISTENT WITH  
21 YOUR RECOLLECTION OF THE TIME OF THE DAY?

22 A APPROXIMATE, YES.

23 Q OKAY. WHEN YOU WALKED BACK TO THE CAR AND YOU HAD THE  
24 911 OPERATOR ON THE CELL PHONE WITH YOU, I REALIZE THE OTHER  
25 LAW ENFORCEMENT PERSONNEL CAME UP THAT YOU SAW, BUT DID YOU

MICHAEL J. WALSH -- CROSS BY MR. BANNISTER

1 SEE ANY OTHER NON-LAW ENFORCEMENT PERSONNEL ON THE SCENE  
2 CLOSE TO THE CAR WHILE YOU WERE THERE ON THE CELL PHONE?

3 A YES. IN THE FEW MINUTES AFTER I HAD ARRIVED, SEVERAL  
4 OTHER PEOPLE, PEOPLE THAT I DON'T KNOW THEIR NAMES OR  
5 ANYTHING LIKE THAT, JUST SEVERAL OTHER BYSTANDERS BEGAN TO  
6 ARRIVE.

7 Q DO YOU HAVE AN APPROXIMATION OF HOW MANY OTHER PEOPLE  
8 WERE THERE JUST AS LAW ENFORCEMENT ARRIVED OR MAYBE JUST  
9 PRIOR TO LAW ENFORCEMENT?

10 A PERHAPS ANYWHERE FROM THREE TO SIX OTHERS.

11 Q AND DO YOU KNOW WHICH DIRECTION THEY WERE COMING FROM OR  
12 WERE YOU ABLE TO SEE THAT?

13 A I WAS NOT ABLE TO SEE WHERE THEY WERE COMING FROM, NO.

14 Q IT WOULD BE FAIR TO SAY, THOUGH, IN TERMS OF WHEN YOU  
15 ARRIVED AT THE PATROL CAR, THAT YOU WERE THE FIRST PERSON ON  
16 THE SCENE?

17 A YES.

18 MR. BANNISTER: LET ME SEE IF I HAVE ANY OTHER  
19 QUESTIONS. (OFF RECORD WITH CO-COUNSEL) NO FURTHER  
20 QUESTIONS.

21 THE COURT: ANY REDIRECT?

22 SOLICITOR ARIAIL: NONE, YOUR HONOR. MAY THIS WITNESS  
23 BE EXCUSED?

24 THE COURT: WITHOUT OBJECTION?

25 MR. MAULDIN: NO OBJECTION.

MICHAEL J. WALSH -- CROSS BY MR. BANNISTER

1           THE COURT:   MR. WALSH, WE APPRECIATE IT, SIR.  THANK  
2   YOU.  YOU ARE FREE TO GO.  THANK YOU.

3                       (WITNESS EXCUSED AT 3:05 P.M.)

4           THE COURT:   NEXT WITNESS.

5           SOLICITOR ARIAIL:   WE CALL RICHARD BEVERAGE.

6                               RICHARD BEVERAGE, HAVING BEEN  
7   DULY SWORN, TESTIFIED AS FOLLOWS:

8   DIRECT EXAMINATION BY SOLICITOR ARIAIL:

9   Q   MR. BEVERAGE, IF YOU WOULD, STATE YOUR NAME FOR THE  
10   RECORD, PLEASE.

11   A   RICHARD BEVERAGE.

12   Q   AND, MR. BEVERAGE, I WANT TO TAKE YOU BACK TO DECEMBER  
13   THE 6TH OF 2000, AROUND 12:00 NOON, AND ASK YOU IF ON THAT  
14   OCCASION YOU WERE IN THE VICINITY OF WOODRUFF ROAD AND I-85?

15   A   YES, I WAS.

16   Q   AND WHAT WAS YOUR PURPOSE IN BEING THERE?

17   A   I'M EMPLOYED AT EXCEL CORP., WHICH IS IN THE LARGE  
18   BUILDING THAT FRONTS WOODRUFF ROAD.

19   Q   IS THAT THE OLD FIBER INDUSTRIES BUILDING?

20   A   YES, IT IS.

21   Q   I'M GOING TO SHOW YOU -- I THINK YOU AND I HAVE MET  
22   BEFORE AND GONE OVER THIS DIAGRAM ONCE BEFORE?

23   A   UH-HUH (AFFIRMATIVE).

24   Q   EXCEL IS IN A PORTION OF THIS BUILDING?

25   A   CORRECT.  THE FRONT PORTION THAT FRONTS WOODRUFF ROAD.



1 Q THIS PORTION?

2 A YES.

3 Q ALL RIGHT. AND WERE YOU INSIDE THE BUILDING OR DID YOU  
4 GO OUTSIDE BUILDING AROUND 12:00 NOON?

5 A I WAS LEAVING FOR LUNCH. IT WAS JUST A LITTLE AFTER  
6 12:00.

7 Q OKAY. AND WHEN YOU LEFT WHICH WAY DID YOU GO?

8 A I PULLED THROUGH THE OLD PARKING LOT AND----

9 Q THIS?

10 A YES. AND I APPROACHED THE FRONTAGE ROAD THAT LEADS UP  
11 TO WOODRUFF ROAD.

12 Q ALL RIGHT. DID YOU GO OUT THIS WAY OR DID YOU COME OUT  
13 THIS WAY?

14 A THAT WAY.

15 Q YOU CAME OUT THIS WAY?

16 A TOWARDS WOODRUFF.

17 Q ALL RIGHT. I'M GOING TO SHOW YOU WHAT IS AN ENLARGEMENT  
18 OF THAT PARTICULAR WOODRUFF ROAD INTERSECTION FROM THE WAY  
19 YOU CAME OUT.

20 A CORRECT.

21 Q WHEN YOU CAME OUT WAS THE HIGHWAY PATROL VEHICLE AT THAT  
22 LOCATION AS SHOWN ON THE DIAGRAM OR WAS IT YET TO BE THERE?

23 A IT HAD -- IT WAS YET TO REACH THAT POINT.

24 Q OKAY. TELL US WHAT YOU SAW AS YOU PULLED OUT AND HEADED  
25 TO WOODRUFF REASONABLE DOUBT.

RICHARD BEVERAGE -- DIRECT BY SOLICITOR ARIAIL

1 A WHEN I WAS AT THE INTERSECTION THAT LEADS ONTO THE  
2 FRONTAGE ROAD, I SAW A HIGHWAY PATROLMAN FOLLOWING A RED  
3 SCOOTER TURN ONTO FRONTAGE ROAD.

4 Q WHERE WERE -- WHERE WERE THEY COMING FROM?

5 A I HAD SEEN THEM ON THE OFF RAMP FROM I-85, AND THEY HAD  
6 CONTINUED ON UP ONTO WOODRUFF ROAD AS I CROSSED THE PARKING  
7 LOT. AS I TURNED ONTO FRONTAGE ROAD, THEY WERE ALSO TURNING  
8 ONTO THE FRONTAGE ROAD, SO WE ACTUALLY CROSSED---

9 Q PAST EACH OTHER?

10 A -----PAST EACH OTHER. YES.

11 Q ALL RIGHT. AND DID YOU NOTICE WHICH WAY THEY CAME INTO  
12 FRONTAGE ROAD, WHICH INTERSECTION OR LANE THEY CAME IN ON?

13 A WELL, YES. THEY APPROACHED THROUGH THIS FIRST LANE.

14 Q THE U-SHAPED LOOKING ONE?

15 A THE U-SHAPED.

16 Q ALL RIGHT. WHERE APPROXIMATELY ON THAT DIAGRAM WOULD IT  
17 BE THAT THE TWO OF YOU PASSED -- OR THE THREE OF YOU PASSED?

18 A PROBABLY ABOUT HALFWAY BETWEEN THE WOODRUFF ROAD  
19 INTERSECTION AND THE PARKING LOT INTERSECTION.

20 Q AND AS YOU PASSED WERE YOU ABLE TO OBSERVE THE OCCUPANT  
21 OF THE SCOOTER OR THE COLOR OF THE SCOOTER?

22 A IT WAS A RED SCOOTER. I REMEMBER LOOKING AT IT BECAUSE  
23 IT'S NOT SOMETHING YOU SEE EVERY DAY. IT'S A FULL SCOOTER  
24 WITH A FOOT WELL AND A FRONT SHIELD. AN INDIVIDUAL RIDING IT  
25 HAD ON A LIGHT TAN JACKET OR A BEIGE AND A FULL -- AND A FULL

RICHARD BEVERAGE -- DIRECT BY SOLICITOR ARIAIL

1 BLACK HELMET.

2 Q ALL RIGHT. WHEN YOU SAY "FULL," WHAT DOES THAT MEAN?

3 A A COMPLETE FACE SHIELD.

4 Q ALL RIGHT. AND THE HELMET CAME DOWN AND AROUND  
5 UNDERNEATH?

6 A CORRECT.

7 Q DID YOU SEE ANY SKIN ON THIS PERSON TO DETERMINE IF THIS  
8 PERSON WAS BLACK OR WHITE?

9 A NO, I COULDN'T.

10 Q COULD YOU TELL WHETHER THIS PERSON WAS MALE OR FEMALE?

11 A NO, I COULDN'T.

12 Q DID YOU FORM ANY OPINION AS TO WHETHER OR NOT -- ANY  
13 OTHER OBSERVATIONS OTHER THAN IF THIS PERSON WAS MALE OR  
14 FEMALE?

15 A HE SEEMED TO BE A LITTLE STOCKY. I ASSUMED IT TO BE A  
16 LITTLE OVERSIZED FOR THE SCOOTER, SO I ASSUMED IT TO BE A  
17 MALE.

18 Q NOW, AS YOU PASSED AND YOU MADE THESE OBSERVATIONS ABOUT  
19 THE RED SCOOTER -- AND THE BEIGE COAT WAS THE COAT A LONG  
20 COAT, SHORT COAT OR...

21 A IT CAME DOWN PAST -- IT WASN'T LIKE A JACKET. IT  
22 EXTENDED PAST THE WAIST.

23 Q IT WENT PAST THE WAIST?

24 A YEAH.

25 Q ALL RIGHT. NOW, LET ME SHOW YOU WHAT HAS BEEN MARKED

1 STATE'S EXHIBIT NUMBER 26F AND ASK YOU IF THAT APPEARS TO BE  
2 THE SCOOTER OR SIMILAR TO THE SCOOTER YOU SAW?

3 A YES.

4 Q ALL RIGHT. RED IN COLOR WITH BLACK?

5 A RED IN COLOR WITH A FOOT WELL, YEAH.

6 Q FOOTWELL, WHERE YOUR FEET GO?

7 A WHERE YOUR FEET -- PLACE YOUR FEET.

8 Q NOW, TELL US WHAT YOU SAW AT THAT TIME HAPPEN.

9 A WELL, AS WE PASSED I LOOKED BACK IN MY REAR VIEW MIRROR  
10 AND SAW THE OFFICER CUT ACROSS THE LANE, YOU KNOW.  
11 APPARENTLY HE SPED PAST THE SCOOTER AND BLOCKED HIS PROGRESS.  
12 AT THAT POINT I WAS APPROACHING THE STOP SIGN AT WOODRUFF  
13 ROAD, SO I LOOKED BACK AT THE ROAD, AND WHEN I TURNED TO  
14 CHECK TRAFFIC THEY WERE IN MY FIELD OF VIEW, AND SO I COULD  
15 SEE THAT THE INDIVIDUAL ON THE SCOOTER WAS EVEN WITH THE  
16 PASSENGER -- WITH THE DRIVER'S SIDE WINDOW.

17 Q DID YOU SEE EITHER THE SCOOTER STRIKE THE VEHICLE OR THE  
18 VEHICLE STRIKE THE SCOOTER?

19 A NO, I DIDN'T. ACTUALLY, WHAT I SAW AT THAT POINT, I SAW  
20 THE INDIVIDUAL ON THE SCOOTER STAND UP AND EXTEND HIS ARM  
21 TOWARD THE DRIVER'S WINDOW, AND IT LOOKED LIKE HE WAS STILL  
22 IN CONTROL OF THE SCOOTER AT THAT TIME. SO I DON'T THINK  
23 ANYTHING STRUCK ANYTHING.

24 Q HE LOOKED LIKE HE WAS WHAT?

25 A STILL IN CONTROL OF THE SCOOTER.

1 Q OKAY. ALL RIGHT. AND AS HE STOOD UP AND EXTENDED HIS  
2 ARM TOWARDS THE WINDOW OF THE PATROL VEHICLE, WHAT ELSE DID  
3 YOU HEAR OR SEE AT THAT TIME?

4 A I DIDN'T HEAR ANYTHING AT THAT TIME. MY WINDOWS WERE  
5 UP, AND I WAS LISTENING TO THE RADIO. ALL I SAW WAS THE  
6 MOTION OF THE ARM.

7 Q AND SHOW US HOW THE MOTION OF THE ARM WAS?

8 A IT WAS FULL EXTENDED (DEMONSTRATING).

9 Q ALL RIGHT. DID IT MOVE AS IT WAS EXTENDED?

10 A IT WAS -- I WAS -- I SAW THAT.

11 Q OKAY. DID YOU SEE A GUN?

12 A I DID NOT SEE A GUN.

13 Q DID YOU HEAR ANY GUNSHOTS?

14 A I DID NOT HEAR A GUNSHOT.

15 Q ALL RIGHT. GO AHEAD.

16 A AT THAT POINT I WAS STILL CHECKING THE TRAFFIC. I WAS  
17 LOOKING BOTH WAYS. I CHECKED TO MY LEFT WHEN I HAD SEEN HIM  
18 MAKE THE MOTION, AND THEN I WAS CHECKING BACK TO THE RIGHT  
19 AND I SUDDENLY SAW THE SAME INDIVIDUAL ON THE SCOOTER MOVE  
20 OUT INTO TRAFFIC ONTO WOODRUFF ROAD NARROWLY BEING MISSED BY  
21 ONCOMING TRAFFIC. SO HE WASN'T WAITING FOR ANYTHING. AT  
22 THAT POINT IT MADE ME WONDER. AND I SAW A BREAK IN TRAFFIC,  
23 SO I PULLED OUT INTO THE MEDIAN LANE.

24 Q LET ME TAKE YOU BACK JUST A SECOND. FROM THE TIME THAT  
25 YOU SAW THE ARM EXTENDED TO THE TIME THAT YOU SAW THE SCOOTER

RICHARD BEVERAGE -- DIRECT BY SOLICITOR ARIAIL

1 GO BACK INTO TRAFFIC, DID YOU OBSERVE WHAT HAPPENED IN  
2 BETWEEN?

3 A NO. WHAT I HAD DONE -- I SAW THE ARM EXTENDED HERE,  
4 THEN I HAD TURNED MY HEAD WATCHING TRAFFIC IN THE OTHER  
5 DIRECTION.

6 Q OKAY. THEN WHEN YOU TURNED BACK, WHERE WAS THE SCOOTER?

7 A I WAS WATCHING TRAFFIC LONG ENOUGH TO MY RIGHT THAT I  
8 ACTUALLY SAW HIM COME UP ON MY RIGHT-HAND SIDE AND PROCEED  
9 OUT ON WOODRUFF ROAD.

10 Q ALL RIGHT. AND YOU SAY HE WENT INTO TRAFFIC AND ALMOST  
11 GOT HIT?

12 A CORRECT.

13 Q DO YOU REMEMBER WHAT TYPE OF VEHICLE IT WAS THAT HE  
14 ALMOST GOT HIT BY?

15 A NO, I DON'T.

16 Q WHERE DID YOU GO AT THAT POINT?

17 A AS I SAID, AT THAT POINT THERE WAS A SLIGHT BREAK IN  
18 TRAFFIC AND SO I HAD -- AT THE POINT, I'M SORT OF  
19 CONDITIONED, WHEN YOU GET A BREAK IN TRAFFIC, YOU PULL OUT,  
20 AND SO I PULLED OUT INTO THE MEDIAN LANE IN BETWEEN THE LANES  
21 OF TRAFFIC. AND AT THAT POINT I LOOKED BACK AT THE OFFICER'S  
22 CAR AND I COULD SEE -- I COULDN'T SEE A SILHOUETTE. I  
23 COULDN'T SEE ANYBODY AROUND THE CAR. THE LIGHTS WERE STILL  
24 ON. SO AT THAT POINT I DETERMINED THAT I NEEDED TO GO BACK,  
25 BUT I HAD TO WAIT FOR ONCOMING TRAFFIC BEFORE I COULD MAKE A

1 U-TURN.

2 Q WHAT WAS THE REASON THAT YOU DECIDED IN YOUR MIND YOU  
3 NEEDED TO GO BACK?

4 A I THOUGHT -- IT HAD TAKEN A SECOND TO REGISTER ON ME  
5 THAT THE OFFICER PROBABLY WAS NOT -- WOULD NOT HAVE LET THIS  
6 PERSON GO, AND THAT'S WHY I LOOKED BACK AT THE CAR AND I  
7 COULD SEE DIRECTLY THROUGH THE BACK WINDOW. I COULDN'T SEE A  
8 SILHOUETTE. I COULDN'T SEE THE OFFICER NEAR THE CAR.  
9 EVERYTHING JUST LOOKED ODD. AND SO I DECIDED I WOULD GO BACK  
10 AND CHECK.

11 Q AND DID YOU GO BACK AND CHECK?

12 A YES, I DID.

13 Q NOW, AT THE TIME THAT THE SCOOTER AND THE CAR CAME TO A  
14 STOP AND YOU SAW THE ARM GO UP, WAS THERE ANYONE ELSE IN THE  
15 VICINITY OF THAT -- OF THOSE TWO VEHICLES?

16 A I SAW NOBODY ELSE AROUND THE TWO VEHICLES. IT WAS JUST  
17 THE TWO OF THEM.

18 Q AND WHEN YOU TURNED AROUND AND WENT BACK, TELL US WHAT  
19 YOU OBSERVED.

20 A WHEN I WENT BACK -- LIKE I SAID, I HAD TO WAIT FOR  
21 TRAFFIC TO CLEAR BEFORE I COULD MAKE MY U-TURN -- I PULLED  
22 BACK UP TO THE SIDE AND BY THAT TIME THERE WAS SOMEBODY ELSE  
23 ON THE SCENE WHO WAS SPEAKING INTO A CELL PHONE. AND THEN  
24 ALSO EMPLOYEES FROM WHERE I WORK WERE APPROACHING. I ASKED  
25 THEM IF THEY HAD CALLED ANYONE, AND THEY SAID, YES, THEY HAD

RICHARD BEVERAGE -- DIRECT BY SOLICITOR ARIAIL

1 CALLED.

2 WHAT I SAW AS I DROVE UP WAS THE PATROL CAR STILL PARKED  
3 DIAGONALLY ACROSS THE LANES. THE DRIVER'S SIDE WINDOW HAD  
4 BEEN SHOT OUT WITH GLASS ALL ON THE GROUND. I APPROACHED THE  
5 CAR AND LOOKED IN AND SAW THE OFFICER SLUMPED OVER TOWARD THE  
6 PASSENGER'S SIDE OVER ON HIS SIDE.

7 Q ALL RIGHT. AND DID YOU REMAIN THERE AND GIVE A  
8 STATEMENT ON THAT DAY?

9 A I REMAINED THERE AND WAITED TO GIVE MY STATEMENT AND --  
10 I JUST WISH THERE WAS SOMETHING MORE WE COULD HAVE DONE.

11 Q NOW, YOU SAID THERE WERE SOME PEOPLE THAT WERE COMING  
12 OVER FROM WHERE YOU WORKED?

13 A CORRECT.

14 Q CIVILIANS?

15 A YES.

16 Q AND THEY HAD WALKED OVER TO THE AREA SOMEWHERE NEAR THE  
17 VEHICLE?

18 A YES. JUST AS I WAS COMING UP, THERE WAS ONE EMPLOYEE  
19 WHO WAS APPROACHING ON FOOT FROM THE WORKPLACE.

20 Q DID EVENTUALLY SOME OTHERS COME?

21 A SOME OTHERS CAME ALSO.

22 Q AND DO YOU KNOW THE PERSON WHO WAS ON -- YOU NOTICED THE  
23 PERSON WHO WAS ON THE CELL PHONE?

24 A CORRECT.

25 Q AND THEN OFFICERS BEGAN TO ARRIVE?



RICHARD BEVERAGE -- DIRECT BY SOLICITOR ARIAIL

1 A AT THAT POINT, OFFICER BEGAN TO ARRIVE. NOBODY ON,  
2 BEFORE THAT, ON THE SCENE KNEW ANYTHING ABOUT CPR. WE DIDN'T  
3 KNOW WHAT WE COULD DO TO HELP, AND SO WE JUST GAVE WAY TO  
4 SOMEBODY WHO KNEW WHAT THEY WERE DOING.

5 SOLICITOR ARIAIL: MR. BEVERAGE, ANSWER ANY QUESTIONS  
6 THAT DEFENSE COUNSEL MAY HAVE.

7 CROSS EXAMINATION BY MR. BANNISTER:

8 Q MR. BEVERAGE, I'M GOING TO TAKE YOU BACK FOR JUST A  
9 MOMENT TO YOUR DESCRIPTION OF THE HIGHWAY PATROLMAN AS HE  
10 STOPPED THE SCOOTER. DID YOU ULTIMATELY GIVE A STATEMENT TO  
11 LAW ENFORCEMENT IN THIS CASE?

12 A YES, I DID.

13 Q ALL RIGHT. AND IN THAT STATEMENT DID YOU TELL LAW  
14 ENFORCEMENT THAT, "I THEN SAW THE TROOPER PULL ALONGSIDE OF  
15 THE SCOOTER AS IF TO MAKE AN AGGRESSIVE STOP"?

16 A YES, I DID.

17 Q OKAY. SO WHAT YOU SAW AS I UNDERSTAND IT AS THE TWO  
18 VEHICLES PULLED ONTO THE FRONTAGE ROAD ON YOUR LEFT WAS THE  
19 SCOOTER IN FRONT AND THE PATROL CAR BEHIND IT, CORRECT?

20 A AS THEY TURNED ONTO THE FRONTAGE ROAD, YES.

21 Q ALL RIGHT. THE SCOOTER WAS TRAVELLING AT ONE RATE OF  
22 SPEED AND THE HIGHWAY PATROLMAN BEGAN TO SPEED UP TO OVERTAKE  
23 THE SCOOTER, CORRECT?

24 A CORRECT.

25 Q AND ULTIMATELY THE HIGHWAY PATROL VEHICLE MOVED UP

RICHARD BEVERAGE -- CROSS BY MR. BANNISTER

1 TOWARDS THE RIGHT-HAND SIDE OF THE SCOOTER SO THAT THE  
2 DRIVER'S SIDE OF THE PATROL CAR WAS ON THE RIGHT-HAND SIDE OF  
3 THE SCOOTER; IS THAT CORRECT?

4 A CORRECT.

5 Q ALL RIGHT. SO IF WE WERE GOING TO FREEZE FRAME IT THERE  
6 FOR JUST A MINUTE, THERE WOULD BE THE SHOULDER OF THE ROAD ON  
7 MY RIGHT. THEN YOU WOULD HAVE THE PATROL VEHICLE AND THEN  
8 THE SCOOTER BEING OVERTAKEN ON ITS RIGHT?

9 A YES.

10 Q OKAY. AND WHEN YOU DESCRIBED THE AGGRESSIVENESS OF THE  
11 STOP, YOU'RE REFERRING TO THE FACT THAT THE PATROL CAR PULLED  
12 EVEN FARTHER IN FRONT OF THE SCOOTER AND THEN BEGAN TO CUT  
13 LEFT IN FRONT OF THE SCOOTER. WOULD THAT BE A FAIR  
14 STATEMENT?

15 A AS I PASSED -- AS I PASSED THEM, THEY WERE STILL ONE  
16 BEHIND THE OTHER. AS I -- AFTER I -- WHAT I COULD SEE FROM  
17 THE NEXT TIME THAT I SAW THEM FROM MY REAR VIEW MIRROR THE  
18 OFFICER HAD PULLED IN FRONT AND WAS CUT---

19 Q AND PUSHED THE SCOOTER UP AGAINST THE -- I GUESS IT'S A  
20 LITTLE BUSHY MEDIAN THAT'S OVER THERE---

21 A I DON'T BELIEVE THEY EVER GOT THAT FAR.

22 Q OKAY. BUT THEY WERE GOING TOWARDS THAT AREA?

23 A YEAH. IT'S -- THERE'S A SMALL AREA THERE. IT -- BUT  
24 IT'S NOT MUCH OF A BARRIER.

25 Q RIGHT. BUT I GUESS -- LET'S USE STATE'S EXHIBIT 48A.

RICHARD BEVERAGE -- CROSS BY MR. BANNISTER

1 WHAT I'M SAYING IS THAT AS THE TROOPER PULLED -- AS THE  
2 PATROL CAR PULLED PAST THE SCOOTER AND BEGAN TO PULL IN FRONT  
3 OF THE SCOOTER, THE SCOOTER WAS BEING FORCED TO THE LEFT?

4 A I CAN'T SAY IF THE SCOOTER WAS BEING FORCED OR IF IT WAS  
5 VEERING ON ITS OWN.

6 Q OKAY. BUT THE SCOOTER WAS HEADED IN THAT DIRECTION, I  
7 GUESS, WOULD BE A BETTER WAY TO PUT IT?

8 A YES, AS IT CAME ACROSS MY FIELD OF VIEW.

9 Q WHEN YOU ULTIMATELY -- WELL, LET ME MAKE SURE I'VE GOT  
10 IT STRAIGHT. THE POINT IN TIME WHEN YOU LOOKED BACK AHEAD TO  
11 CHECK ONGOING TRAFFIC WAS AFTER YOU HAD SEEN THE ONE ARM  
12 EXTENDED -- OR AS THE ONE ARM WAS EXTENDED TOWARDS THE  
13 DRIVER'S SIDE OF THE PATROL CAR?

14 A I WAS CHECKING TRAFFIC IN BOTH DIRECTIONS. THE FIRST  
15 TIME I CHECKED TRAFFIC WAS TO MY LEFT, WHICH BROUGHT MY HEAD  
16 AROUND SO I COULD SEE THEM IN MY FIELD OF VIEW. I LOOKED  
17 BACK AND SAW THE MOTION, BUT IT'S -- I WAS LOOKING BOTH WAYS.  
18 AND SO I SAW THE MOTION AND THEN TURNED TO MY RIGHT.

19 Q SO AFTER YOU SEE THE ARM EXTENDED THE NEXT POINT IN TIME  
20 AT WHICH YOU HAVE A GOOD VIEW OF THE SCOOTER WAS AS HE CAME  
21 UP ON YOUR RIGHT-HAND SIDE LEAVING THE FRONTAGE ROAD AREA?

22 A CORRECT.

23 Q OKAY. LET ME MAKE SURE THAT WHEN BOTH THE PATROL CAR  
24 AND THE SCOOTER CAME TO THE STOP, THEY WERE BOTH STOPPED  
25 THERE?

RICHARD BEVERAGE -- CROSS BY MR. BANNISTER

1 A YES.

2 Q NO MORE MOTION FROM EITHER ONE OF THEM. THE NEXT ACTION  
3 THAT YOU SEE IS ONE ARM BEING RAISED?

4 A I SAW THE ARM EXTENDED TOWARDS THE DRIVER'S SIDE WINDOW,  
5 YES.

6 Q AND SO WHEN THE TWO -- WHEN THE PATROL CAR AND THE  
7 SCOOTER CAME TO A STOP, THE SCOOTER WAS ALREADY AT THE PATROL  
8 CAR, THE DRIVER'S SIDE WINDOW?

9 A YES.

10 Q OKAY. AND WHEN YOU ULTIMATELY TURNED AROUND AND CAME  
11 BACK TO SEE WHAT WAS GOING ON, YOU SAID THERE WERE SEVERAL  
12 EMPLOYEES FROM THE CELANESE PLANT THAT WERE AROUND THAT AREA;  
13 IS THAT RIGHT?

14 A THERE WAS AT LEAST -- THERE WAS ONE ON THE SCENE. MORE  
15 WERE COMING.

16 Q ALL RIGHT. WAS ONE OF THEM A WOMAN NAMED VICKIE  
17 SHETTERLY (PHONETIC)?

18 A SHE EVENTUALLY ARRIVED, YES.

19 Q ALL RIGHT. AND DO YOU WORK WITH HER?

20 A SHE WAS OUR RECEPTIONIST AT THE TIME.

21 Q ALL RIGHT. SO YOU KNEW HER AT THAT TIME?

22 A YES.

23 Q ALL RIGHT. AND HOW -- HAD SHE WALKED OVER FROM WHERE  
24 SHE HAD BEEN WORKING TO THE SCENE?

25 A I DON'T KNOW IF SHE WALKED OR SHE DROVE.

RICHARD BEVERAGE -- CROSS BY MR. BANNISTER

1 Q DO YOU RECALL WHETHER OR NOT SHE EVER REACHED INSIDE OR  
2 WENT INSIDE THE PATROL VEHICLE?

3 A YES, SHE DID.

4 Q ALL RIGHT. AND WHAT DID YOU SEE HER DO?

5 A I BELIEVE SHE WAS FEELING FOR A PULSE.

6 Q AND THEN SHORTLY THEREAFTER DID LAW ENFORCEMENT  
7 ARRIVE---

8 A VERY SHORTLY, YES.

9 Q ---AND EVERYBODY BACKED OUT?

10 A EVERYBODY BACKED OUT.

11 MR. BANNISTER: ONE MOMENT, YOUR HONOR. (OFF RECORD  
12 WITH CO-COUNSEL) NO MORE QUESTIONS.

13 THE COURT: ANY REDIRECT?

14 SOLICITOR ARIAIL: NONE, YOUR HONOR.

15 THE COURT: MR. BEVERAGE, THANK YOU, SIR. WE  
16 APPRECIATE IT.

17 SOLICITOR ARIAIL: MAY HE BE EXCUSED TOO, YOUR HONOR.?

18 THE COURT: NO OBJECTION?

19 MR. MAULDIN: NO OBJECTION.

20 (WITNESS EXCUSED AT 3:21 P.M.)

21 SOLICITOR ARIAIL: WE CALL TODD HAMLIN.

22 TODD HAMLIN, HAVING BEEN DULY

23 SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

25 Q MR. HAMLIN, IF YOU WOULD, STATE YOUR NAME, PLEASE, SIR.

TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

- 1 A TODD ALAN HAMLIN.
- 2 Q KEEP YOUR VOICE JUST LIKE THAT SO ALL OF US DOWN HERE
- 3 CAN HEAR YOU.
- 4 A OKAY.
- 5 Q I WANT TO TAKE YOU BACK TO DECEMBER THE 6TH OF THE YEAR
- 6 2000 AROUND 12:00 NOON ON THAT DATE AND ASK IF YOU WERE IN
- 7 THE AREA OF WOODRUFF ROAD AND I-85?
- 8 AYES, I WAS.
- 9 Q AND WHAT WERE YOU THERE FOR?
- 10 A I WAS ON MY LUNCH BREAK AT WORK.
- 11 Q AND WHERE DO YOU WORK?
- 12 A WELL, I WAS WORKING FOR EXCEL LOGISTICS.
- 13 Q AT THAT TIME YOU WERE WORKING FOR EXCEL?
- 14 A RIGHT.
- 15 Q AND MR. BEVERAGE ALSO WORKED THERE?
- 16 A YES.
- 17 Q ALL RIGHT. NOW, WHEN YOU WERE ON LUNCH BREAK WHERE WERE
- 18 YOU ON LUNCH BREAK? WERE YOU IN THE PARKING LOT, LOADING
- 19 DOCK, DRIVING AROUND OR WHAT?
- 20 A I WAS STANDING OUTSIDE THE BUILDING SMOKING A CIGARETTE.
- 21 Q BECAUSE YOU CAN'T SMOKE INSIDE?
- 22 A RIGHT.
- 23 Q NOW TELL US WHEN YOU WERE OUTSIDE SMOKING ON LUNCH BREAK
- 24 WHAT YOU SAW.
- 25 A WELL, I SAW A STATE TROOPER TRYING TO PULL OVER A

TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

1 SCOOTER-MOPED TYPE THING. AND---

2 Q AND WHAT ROAD WERE THEY ON WHEN YOU FIRST SAW THEM?

3 A THEY WERE JUST PULLING ONTO FRONTAGE ROAD OFF OF  
4 WOODRUFF.

5 Q OKAY. UP TO YOUR RIGHT?

6 A TO MY -- WHERE I WAS STANDING, ACTUALLY TO MY LEFT.

7 Q OKAY. WERE YOU STANDING FACING -- YOU WERE FACING  
8 WOODRUFF ROAD THEN?

9 A RIGHT.

10 Q OKAY. ALL RIGHT. AND WHEN YOU SAW THEM DID YOU WATCH  
11 THEM ALL THE WAY DOWN THE FRONTAGE ROAD TILL THEY CAME TO A  
12 STOP?

13 A YES, I DID.

14 Q AND WHAT HAPPENED? JUST DESCRIBE WHAT HAPPENED.

15 A I SAW THE OFFICER SPEED THE VEHICLE UP AND TRY TO PULL  
16 THE -- TO GET AHEAD OF THE SCOOTER AND GET HIM OFF OF THE  
17 ROAD.

18 Q ALL RIGHT. AND DID -- COULD YOU TELL AT THAT TIME DID  
19 THE TROOPER HAVE HIS LIGHTS ON?

20 A YES. THE LIGHTS AND SIREN WERE GOING.

21 Q SIREN ALSO?

22 A YES.

23 Q AND DID THE TROOPER -- WAS HE ABLE TO GET IN FRONT OF  
24 THE SCOOTER TO MAKE IT COME TO A STOP?

25 A YEAH. HE GOT AHEAD OF HIM AND KIND OF PULLED TRYING TO

TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

1 BLOCK HIM FROM GOING ANY FURTHER.

2 Q AND DID THAT WORK? DID THE SCOOTER STOP?

3 A YES.

4 Q WAS THERE ANY KIND OF COLLISION BETWEEN THE TWO OR---

5 A I DID NOT SEE THEM COLLIDE OR ANYTHING. FROM MY VANTAGE  
6 POINT ALL I COULD SEE WAS HE HAD GOTTEN HIM STOPPED.

7 Q NOW, DO YOU REMEMBER THE COLOR OF THE SCOOTER?

8 A IT WAS RED.

9 Q AND DO YOU REMEMBER ANYTHING ABOUT THE DRESS OF THE  
10 PERSON THAT WAS DRIVING THE SCOOTER?

11 A HE WAS WEARING A TAN -- LIKE A WINTER JACKET AND A BLACK  
12 HELMET.

13 Q AND IS THE HELMET A HALF-HELMET, A FULL HELMET?

14 A IT LOOKED LIKE A FULL HELMET.

15 Q COULD YOU SEE ANY SKIN TONE TO DETERMINE WHETHER THE  
16 PERSON WAS BLACK OR WHITE?

17 A NO, I COULD NOT.

18 Q COULD YOU TELL WHETHER THE PERSON WAS MALE OR FEMALE?

19 A NOT REALLY.

20 Q DID YOU MAKE ANY ASSESSMENT OR COME TO AN OPINION BASED  
21 ON WHAT YOU SAW AS TO WHETHER IT WAS A MALE OR FEMALE?

22 A I ASSUMED IT WAS A MALE.

23 Q AND FOR WHAT REASON?

24 A BECAUSE OF THE WAY HE TURNED THE SCOOTER AROUND AFTER  
25 THE INCIDENT.



TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY. WELL, LET'S TALK ABOUT THAT. LET'S TALK ABOUT  
2 THE INCIDENT. AS THEY COME TO A STOP, TELL US WHAT HAPPENED.

3 A I WAS JUST KIND OF WATCHING HIM BECAUSE HE HAD GOTTEN  
4 HIM STOPPED. ALL OF A SUDDEN I HEARD GUNSHOTS.

5 Q ALL RIGHT. WHEN YOU HEARD GUNSHOTS WAS THE TROOPER IN  
6 THE CAR OR OUT OF THE CAR?

7 A HE WAS IN THE CAR.

8 Q DID HE EVER GET OUT OF THE CAR?

9 A I NEVER SAW HIM GET OUT OF THE CAR.

10 Q AND WAS THE SCOOTER DRIVER ON THE SCOOTER OR OFF THE  
11 SCOOTER?

12 A IT APPEARED HE WAS STILL ON THE SCOOTER.

13 Q AND THE GUNSHOTS YOU HEARD, DESCRIBE THEM FOR US. HOW  
14 MANY WERE THERE AND---

15 A I HEARD MULTIPLE SHOTS. I COULDN'T REALLY SAY FOR SURE  
16 HOW MANY.

17 Q OKAY. AND WERE THEY CLOSE TOGETHER OR---

18 A YEAH, IT WAS RAPID FIRE.

19 Q RAPID FIRE. AND ARE YOU FAMILIAR WITH AUTOMATIC  
20 HANDGUNS?

21 A I'M FAMILIAR WITH THEM. I'VE NEVER ACTUALLY HAD ONE OR  
22 SEEN ONE.

23 Q WHEN THE -- YOU HEARD THE GUNSHOTS, WHERE WAS THE PERSON  
24 WHO WAS ON THE SCOOTER? HOW WAS HE POSITIONED IN REGARD TO  
25 WHERE YOU WERE?

TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

1 A HIS BACK WAS TO ME.

2 Q AND AFTER THE SHOTS WERE FIRED -- WELL, WHILE THE SHOTS  
3 WERE FIRED DID YOU SEE ANY MOVEMENT ON BEHALF OF THE SCOOTER  
4 DRIVER? DID HE MOVE HIS ARMS, HIS LEGS?

5 A NOT THAT I COULD SEE FROM MY VANTAGE POINT.

6 Q OKAY. NOW, HOW ABOUT AFTER THE SHOTS WERE FIRED, WHAT  
7 HAPPENED?

8 A I SEEN HIM PICK THE SCOOTER UP IN THE AIR AND TURN IT  
9 AROUND.

10 Q PICKED IT UP BY THE HANDLEBARS?

11 A RIGHT.

12 Q AND TURNED IT AROUND. AND WHICH WAY DID THE SCOOTER --  
13 DID HE GET OFF TO DO THAT?

14 A IT DIDN'T LOOK LIKE HE GOT OFF.

15 Q STILL STRADDLING THE SCOOTER?

16 A RIGHT.

17 Q OKAY. AND WHICH WAY DID HE GO?

18 A HE WENT BACK THE WAY THAT THEY HAD COME AND WENT DOWN  
19 WOODRUFF ROAD HEADING TOWARDS WOODRUFF, BEST I COULD DESCRIBE  
20 IT.

21 Q WHEN YOU SAW THIS DID YOU MAKE ANY -- DID YOU MAKE ANY  
22 OBSERVATION AS TO WHAT THE TROOPER'S VEHICLE WAS DOING?

23 A THE TROOPER'S VEHICLE WAS STILL SITTING. HIS SIREN WAS  
24 STILL GOING, LIGHTS STILL FLASHING.

25 Q AND DID HE MOVE?

TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

1 A IT DID NOT APPEAR LIKE THE VEHICLE MOVED OR DID  
2 ANYTHING.

3 Q ALL RIGHT. AND WHAT DID YOU DO AT THAT TIME?

4 A AT THAT TIME I GOT ON A PUBLIC PAY PHONE THAT'S RIGHT  
5 THERE INSIDE THE DOOR OF OUR -- OF MY PLACE OF EMPLOYMENT AT  
6 THE TIME, AND CALLED 911.

7 Q DID YOU AFTER THAT GO TO THE CAR, THE TROOPER'S VEHICLE?

8 A YES. AFTER THEY LET ME GET OFF THE PHONE, I WENT DOWN  
9 THERE TO LET HIM KNOW THAT THERE WAS HELP ON THE WAY.

10 Q TO TELL THE TROOPER THAT?

11 A RIGHT.

12 Q AND DID YOU -- WERE YOU ABLE TO COMMUNICATE WITH HIM OR  
13 DID YOU GO TO THE VEHICLE?

14 A I LOOKED INSIDE. IT LOOKED LIKE HE WAS AT THAT POINT  
15 STILL BREATHING AND HIS EYES WERE OPEN, AND I JUST TOLD HIM  
16 THAT AND BACKED OFF.

17 Q AND WHAT WAS THE CONDITION OF THE WINDOW THAT YOU LOOKED  
18 IN?

19 A THERE WAS A BIG HOLE IN IT.

20 Q ALL RIGHT. SO THE GLASS WAS OUT?

21 A THERE WAS STILL GLASS IN THE FRAME, BUT THERE WAS A HOLE  
22 ABOUT -- I'D SAY ABOUT 12 INCHES IN DIAMETER.

23 Q AND DID YOU TOUCH ANYTHING OR DISTURB ANYTHING IN THE  
24 VEHICLE?

25 A NO, I DID NOT.

TODD HAMLIN -- DIRECT BY SOLICITOR ARIAIL

1       SOLICITOR ARIAIL:   (OFF RECORD WITH CO-COUNSEL)   ANSWER  
2   ANY QUESTIONS THAT DEFENSE COUNSEL MAY HAVE.   THANK YOU.

3       MR. BANNISTER:   ONE MOMENT, YOUR HONOR.

4       THE COURT:   TAKE YOUR TIME.

5   CROSS EXAMINATION BY MR. BANNISTER:

6   Q   GOOD AFTERNOON, MR. HAMLIN.

7   A   GOOD AFTERNOON.

8   Q   LET ME TAKE YOU FOR A MOMENT TO THE POINT IN TIME WHERE  
9   YOU SAY YOU SAW THE PERSON ON THE SCOOTER PICK THE SCOOTER UP  
10   AND THEN DROP IT DOWN IN A DIFFERENT DIRECTION?

11   A   YES.

12   Q   HAVE I SAID THAT RIGHT?   I'M PICKING THE SCOOTER UP AND  
13   TURNING TO MY LEFT AND DROPPING IT DOWN.   IS THAT WHAT YOU  
14   REMEMBER?

15   A   I REMEMBER IT BEING -- GOING AWAY FROM THE VEHICLE -- OR  
16   FROM THE STATE TROOPER'S CAR.

17   Q   ALL RIGHT.   SO---

18   A   BUT I'M TRYING TO POSITION -- I WOULD GUESS TO THE LEFT.

19   Q   OKAY.   ALL RIGHT.   AND YOU SAID YOU WERE ON THE LOADING  
20   DOCK.   IS THAT FLAT WITH THE GROUND OR IS THAT UP?

21   A   IT'S UP ABOUT FOUR FOOT OFF THE GROUND, SOMEWHERE IN  
22   THERE.

23   Q   ALL RIGHT.   WAS THERE ANYTHING THAT OBSCURED YOUR FIELD  
24   OF VIEW AS YOU WERE LOOKING AT WHAT WAS HAPPENING ON FRONTAGE  
25   ROAD?

TODD HAMLIN -- CROSS BY MR. BANNISTER

1 A NOT REALLY.

2 Q WAS ANYTHING DISTRACTING YOU?

3 A NO.

4 Q SO YOU WERE FOCUSED ON THE BLUE LIGHTS THAT YOU SAW AND  
5 THE SCOOTER---

6 A I WAS WATCHING THEM BECAUSE I WAS INTERESTED AS TO WHY  
7 HE WAS RUNNING FROM HIM ON A SCOOTER.

8 Q ALL RIGHT. WHEN THE SCOOTER GOT PICKED UP TO TURN  
9 AROUND TO GO BACK THE OTHER DIRECTION, WAS IT YOUR IMPRESSION  
10 THAT THE SCOOTER COULD NOT GO ANY FARTHER FORWARD?

11 A THAT IS CORRECT.

12 Q OR WOULD IT HIT THE PATROL CAR?

13 A WHAT I COULD SEE, IT WAS LODGED BETWEEN BUSHES AND THE  
14 PATROL CAR.

15 Q ALL RIGHT. SO THE PATROL CAR TO THE SCOOTER'S RIGHT,  
16 BUSHES AND THE CURB TO THE SCOOTER'S LEFT?

17 A RIGHT.

18 Q AND THAT'S WHY THE SCOOTER HAD TO BE PICKED UP, SO THAT  
19 YOU COULD GET AWAY FROM THE BUSHES TO THEN GO BACK AROUND; IS  
20 THAT CORRECT?

21 A CORRECT. THAT'S WHAT I ASSUMED.

22 Q AND IF THE SCOOTER FROM YOUR VANTAGE POINT HAD NOT  
23 STOPPED, THE SCOOTER WAS EITHER GOING TO HIT THE BUSHES OR  
24 HIT THE PATROL CAR?

25 A CORRECT.

TODD HAMLIN -- CROSS BY MR. BANNISTER

1 WHEN YOU CALLED 911 FROM THE PAY PHONE DID YOU LOSE SIGHT  
2 MOMENTARILY OF THE PATROL VEHICLE?

3 A YES, I DID.

4 Q ALL RIGHT. FOR HOW LONG APPROXIMATELY?

5 A A MINUTE OR TWO.

6 Q AND THEN AFTER YOU HAD TALKED TO SOMEBODY ON 911 YOU RAN  
7 TO THE PATROL CAR?

8 A I -- YEAH, I WENT RIGHT TO THE PATROL CAR TO LET HIM  
9 KNOW HELP WAS ON THE WAY.

10 Q ALL RIGHT. AND AS YOU STOOD IN THE WINDOW YOU SAID YOU  
11 THOUGHT YOU SAW HIM -- HIS EYES WERE OPEN?

12 A YES.

13 Q AND YOU TOLD HIM THAT HELP WAS ON THE WAY?

14 A CORRECT.

15 Q ALL RIGHT. WERE THE EYES -- WERE HIS EYES -- DID THEY  
16 LOOK BACK AT YOU?

17 A NO, THEY DID NOT.

18 Q WERE THEY FOCUSED ON THE DASHBOARD?

19 A CORRECT.

20 Q ALL RIGHT. DID THEY MOVE AT ALL FROM WHAT YOU COULD  
21 SEE?

22 A NOT THAT I COULD SEE, BUT...

23 Q WAS THERE ANY RESPONSE FROM THE TROOPER?

24 A I DIDN'T HEAR ANYTHING BACK FROM HIM, NO.

25 Q WHEN THE SCOOTER GOT STOPPED BY THE PATROL CAR AND BOTH

TODD HAMLIN -- CROSS BY MR. BANNISTER

1 VEHICLES ARE NOW AT A COMPLETE STOP, HOW SOON IN TIME AFTER  
2 THAT DID YOU HEAR THE RAPID GUNSHOTS?

3 A I MEAN, WITHIN SECONDS.

4 Q SO ALMOST INSTANTANEOUS?

5 A PRETTY MUCH, YES.

6 Q ALL RIGHT.

7 MR. BANNISTER: NO FURTHER QUESTIONS.

8 THE COURT: ANY REDIRECT?

9 SOLICITOR ARIAIL: NONE, YOUR HONOR.

10 THE COURT: MR. HAMLIN, THANK YOU SIR.

11 WITNESS: YOU'RE WELCOME.

12 SOLICITOR ARIAIL: MAY HE BE EXCUSED?

13 THE COURT: YES, SIR. THANK YOU.

14 (WITNESS EXCUSED AT 3:33 P.M.)

15 SOLICITOR ARIAIL: WE CALL ERIN BALMER.

16 ERIN BALMER, HAVING BEEN DULY  
17 SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

19 Q MS. BALMER, HOW ARE YOU?

20 A I'M GOOD. HOW ARE YOU?

21 Q OKAY. KEEP YOUR VOICE UP SO THE LAST TWO JURORS DOWN  
22 HERE CAN HEAR YOU. WOULD YOU STATE YOUR NAME AGAIN, PLEASE,  
23 MA'AM?

24 A ERIN BALMER.

25 Q AND, MS. BALMER, I WANT TO TAKE YOU BACK TO DECEMBER THE

ERIN BALMER -- DIRECT BY SOLICITOR ARIAIL

1 6TH OF 2000 AT AROUND 12:00 NOON AND ASK YOU IF YOU WERE IN  
2 THE VICINITY OF WOODRUFF ROAD AND I-85?

3 A I WAS.

4 Q AND WHAT WAS YOUR DIRECTION OF DRIVING? WHERE HAD YOU  
5 BEEN AND WHERE WERE YOU GOING?

6 A I HAD BEEN SHOPPING AT OLD NAVY, AND I WAS HEADED BACK  
7 HOME, WHICH WAS TOWARDS I-385.

8 Q SO YOU HAD BEEN -- OLD NAVY IS ON THE GREENVILLE MALL  
9 SIDE OF I-85?

10 A CORRECT.

11 Q AND YOU WERE -- WERE YOU COMING DOWN WOODRUFF ROAD?

12 A YES.

13 Q AND YOU WERE HEADING TOWARDS I-385?

14 A YES.

15 Q OKAY. NOW, AT THE INTERSECTION OF WOODRUFF ROAD AND THE  
16 OFF RAMP FROM I-85 DID YOU STOP?

17 A I DID.

18 Q AND TELL US WHAT -- AS YOU WERE STOPPED AT THAT TRAFFIC  
19 LIGHT, TELL US WHAT YOU OBSERVED.

20 A AS I STOPPED AT THE TRAFFIC LIGHT I HEARD A SIREN. AND  
21 WHENEVER YOU HEAR A SIREN YOU LOOK TO SEE IF THERE'S AN  
22 AMBULANCE OR SOMETHING COMING, SO I LOOKED TO MY RIGHT AND I  
23 SAW A STATE TROOPER'S CAR COMING UP OFF OF 85, COMING UP THE  
24 RAMP IN PURSUIT OF A RED MOTORCYCLE. IT LOOKED LIKE A MOPED  
25 TO ME. AND HE OBVIOUSLY WAS NOT STOPPING FOR THE TROOPER, SO



ERIN BALMER -- DIRECT BY SOLICITOR ARIAIL

1 MY INTEREST WAS PIQUED AND I KEPT WATCHING. AND I SAW AS  
2 THEY GOT OFF THE RAMP AND ONTO THE FRONTAGE ROAD THAT WENT BY  
3 THE OLD HOECHST CELANESE PLANT.

4 Q AFTER THEY GOT OFF ON THE FRONTAGE ROAD WAS THERE ANY  
5 INDICATION TO YOU THAT THE SCOOTER WAS STOPPING?

6 A NO. RIGHT AROUND THAT POINT I LOOKED BACK UP AT THE  
7 TRAFFIC SIGNAL TO SEE IF IT HAD CHANGED, AND THEN WHEN I  
8 GLANCED BACK OVER TO WHAT WAS HAPPENING, THE TROOPER HAD  
9 STOPPED THE MOTORCYCLE, IT LOOKED LIKE, AT AN ANGLE. IT  
10 LOOKED LIKE HE HAD TRIED TO CUT THE MOTORCYCLE OFF IN ORDER  
11 TO STOP HIM.

12 Q OKAY. AND COULD YOU DESCRIBE FOR US THE -- YOU SAID IT  
13 WAS A RED MOTOR SCOOTER. IT LOOKED LIKE A MOPED. COULD YOU  
14 DESCRIBE THE DRIVER OF THAT MOTOR SCOOTER, WHAT HE OR SHE  
15 LOOKED LIKE?

16 A AT THAT POINT I DIDN'T HAVE A GOOD VIEW. I DID LATER ON  
17 A LITTLE BIT BETTER WHEN THE MOTORCYCLE RIDER PULLED OUT IN  
18 FRONT OF -- OR BEHIND ME INTO TRAFFIC. BUT---

19 Q LET'S GO A LITTLE FURTHER. TELL US WHAT YOU OBSERVED AT  
20 THAT TIME---

21 A OKAY.

22 Q ---AND WHEN YOU TURNED BACK AND SAW THE PATROL CAR AND  
23 THE SCOOTER STOPPED.

24 A WHEN I GLANCED BACK AROUND THE PURSUIT HAD ALREADY  
25 STOPPED, AND IT WAS AT THAT POINT THAT I SAW THE MOTORCYCLE

ERIN BALMER -- DIRECT BY SOLICITOR ARIAIL

1 RIDER'S ARMS EXTENDED AND I HEARD GUNSHOTS SIMULTANEOUSLY.

2 SO---

3 Q DO YOU KNOW HOW MANY GUNSHOTS YOU HEARD OR CAN YOU SAY?

4 A I HONESTLY COULDN'T SAY. I KNOW I HEARD MULTIPLE SHOTS.

5 Q OKAY. AFTER YOU HEARD THE GUNSHOTS, WHAT DID YOU NEXT  
6 SEE?

7 A AT THAT POINT TRAFFIC HAD STARTED TO PROCEED AGAIN ALONG  
8 WOODRUFF ROAD AND I KEPT -- I STARTED DRIVING, AND THE  
9 MOTORCYCLE RIDER PULLED BACK OUT INTO TRAFFIC ON WOODRUFF  
10 ROAD BEHIND ME. AND IT'S AT THAT POINT WHEN I WAS ABLE TO  
11 OBSERVE THE RIDER A LITTLE BIT BETTER. HE HAD ON A -- WELL,  
12 I SAY HE. I COULDN'T TELL IF IT WAS A MAN OR A WOMAN. THE  
13 MOTORCYCLE RIDER HAD ON A FULL FACE HELMET, GLOVES. LIKE I  
14 SAID, I COULDN'T TELL IF IT WAS A MAN OR A WOMAN. HE HAD ON  
15 A DARK JACKET.

16 Q OKAY. NOW, WHEN YOU -- THIS PERSON PULLED ONTO WOODRUFF  
17 ROAD THE PERSON ON THE MOTOR SCOOTER WAS BEHIND YOU?

18 A YES.

19 Q WHAT WERE YOU DOING AT THAT TIME?

20 A AT THAT POINT -- WELL, AS SOON AS I HEARD THE GUNSHOTS,  
21 I KNEW EXACTLY WHAT HAD HAPPENED. I GOT MY PHONE OUT OF MY  
22 CONSOLE AND I DIALED 911. SO WHEN THE RIDER PULLED OUT  
23 BEHIND ME, I WAS ON THE PHONE WITH 911 TO REPORT THAT I HAD  
24 SEEN A STATE TROOPER BEING SHOT.

25 Q HOW CLOSE DID THE MOTOR SCOOTER DRIVER COME TO YOUR CAR

ERIN BALMER -- DIRECT BY SOLICITOR ARIAIL

1 AS YOU WERE GOING DOWN WOODRUFF ROAD?

2 A I WOULD SAY THE RIDER WAS FAIRLY CLOSE BEHIND MY CAR.

3 Q DID HE PASS YOU OR -- DID THE MOTOR SCOOTER PASS YOU AT  
4 ANY TIME?

5 A WHEN HE -- THE RIDER FOLLOWED ME DOWN WOODRUFF ROAD  
6 UNTIL HE GOT TO THE RED ROBIN, THE GAS STATION THERE AT THE  
7 CORNER OF MILLER ROAD. TRAFFIC WAS STOPPING A LITTLE BIT  
8 BEFORE THE ENTRANCE TO THAT SERVICE STATION AND THE RIDER  
9 THEN KIND OF CUT UP BESIDE ME TO GET THROUGH THE SERVICE  
10 STATION TO MILLER ROAD.

11 Q WHAT KIND OF TRAFFIC WAS IT THAT DAY?

12 A TRAFFIC WAS -- IT WAS RIGHT AROUND LUNCHTIME. I WOULD  
13 SAY TRAFFIC WAS FAIRLY -- YOU KNOW, IT WAS MODERATE FOR THAT  
14 TIME OF DAY.

15 Q AND WHEN YOU SAY THE DRIVER OF THE SCOOTER CUT THROUGH  
16 THE RED ROBIN STATION ON THE CORNER OF MILLER ROAD AND  
17 WOODRUFF DID YOU OBSERVE WHERE HE WENT OR WHERE THE SCOOTER  
18 WENT?

19 A WELL, IT WAS OBVIOUS THAT THE RIDER WAS NOT STOPPING AT  
20 THE SERVICE STATION. SO IT WAS MY ASSUMPTION THAT THE RIDER  
21 WAS HEADED TOWARDS MILLER ROAD.

22 Q YOU DIDN'T SEE?

23 A NO.

24 Q AND THEN WHAT DID YOU DO?

25 A AT THAT POINT PROCEEDED ONTO 385 TO GO HOME.

ERIN BALMER -- DIRECT BY SOLICITOR ARIAIL

1 Q ALL RIGHT. AND DID YOU RELAY ALL THIS TO 911?

2 A YES. AS IT WAS HAPPENING I WAS TRYING TO TELL 911 WHAT  
3 WAS GOING ON.

4 Q ALL RIGHT. WHEN YOU GOT HOME WHAT DID YOU DO?

5 A WHEN I GOT HOME I TURNED ON THE NEWS BECAUSE I KNEW -- I  
6 WANTED TO FIND OUT THE CONDITION OF THE TROOPER. I REALLY  
7 KNEW AT THAT CLOSE RANGE AND WITH THAT MANY SHOTS THAT THE  
8 NEWS WOULDN'T BE GOOD. BUT I WANTED TO SEE WHAT HAPPENED AND  
9 SO I TURNED ON THE NEWS AND ON THE NEWS I HEARD---

10 MR. BANNISTER: I'LL NEED TO INTERJECT AN OBJECTION AT  
11 THIS POINT AS TO WHAT SHE HEARD ON THE NEWS.

12 THE COURT: DO YOU WISH TO BE HEARD ON THAT?

13 SOLICITOR ARIAIL: NO. I'M JUST GOING TO ASK HER WHAT  
14 SHE DID. AS A RESULT OF THAT, WHAT DID SHE DO?

15 THE COURT: SUSTAINED. GO AHEAD.

16 A ON THE NEWS I HEARD THAT---

17 MR. BANNISTER: NO. NO.

18 THE COURT: REPHRASE THE QUESTION.

19 MR. BANNISTER: I HAVE TO OBJECT AGAIN.

20 THE COURT: I SUSTAIN THE OBJECTION.

21 Q AS A RESULT OF WHAT YOU HEARD---

22 A OH, OKAY.

23 Q I'M SORRY. YOU DIDN'T UNDERSTAND. AS A RESULT OF WHAT  
24 YOU HEARD ON THE NEWS---

25 A OKAY.

ERIN BALMER -- DIRECT BY SOLICITOR ARIAIL

1 Q ---TELL US WHAT YOU DID.

2 A I CALLED THE LAW ENFORCEMENT CENTER AS A RESULT OF WHAT  
3 I HEARD BECAUSE I HEARD THEY WERE IN PURSUIT OF A---

4 MR. BANNISTER: JUDGE, I OBJECT AGAIN.

5 Q LET ME SEE---

6 A OKAY.

7 Q ---IF WE CAN GET YOU THROUGH THIS. I KNOW YOU'RE NOT  
8 USED TO THE TECHNICAL RULES OF THE LAW.

9 A OKAY.

10 Q WHAT DID YOU CALL AND TELL THEM? DON'T SAY WHAT YOU  
11 HEARD. BUT WHAT DID YOU CALL AND TELL THEM AT THE LAW  
12 ENFORCEMENT CENTER?

13 A I CALLED TO TELL THEM THAT THE RIDER -- THE SHOOTER HAD  
14 BEEN RIDING A MOTORCYCLE, A RED MOTORCYCLE.

15 Q AND FOLLOWING THAT CONVERSATION DID YOU GO TO THE LAW  
16 ENFORCEMENT CENTER AND GIVE A STATEMENT?

17 A YES, I DID.

18 SOLICITOR ARIAIL: THANK YOU, MS. BALMER. ANSWER ANY  
19 QUESTIONS DEFENSE COUNSEL MAY HAVE.

20 CROSS EXAMINATION BY MR. BANNISTER:

21 Q MS. BALMER, WAS ANYBODY ELSE IN THE CAR WITH YOU AT THE  
22 TIME?

23 A NO.

24 Q ALL RIGHT. SO -- AND YOU WERE IN TRAFFIC ON WOODRUFF  
25 ROAD AS I UNDERSTOOD IT?

ERIN BALMER -- CROSS BY MR. BANNISTER

1 A YES.

2 Q ALL RIGHT. AND YOU ALSO CALLED 911 WHILE YOU WERE  
3 WITNESSING WHAT WAS GOING ON OR SHORTLY THEREAFTER?

4 A SHORTLY THEREAFTER, YES.

5 MR. BANNISTER: I DON'T HAVE ANY FURTHER QUESTIONS.

6 THE COURT: ANY REDIRECT?

7 THE COURT: NO REDIRECT.

8 THE COURT: MS. BALMER, APPRECIATE IT, MA'AM. THANK  
9 YOU. YOU ARE FREE TO GO.

10 SOLICITOR ARIAIL: MAY SHE BE EXCUSED?

11 THE COURT: YES.

12 (WITNESS EXCUSED AT 3:43 P.M.)

13 THE COURT: NEXT WITNESS, PLEASE.

14 SOLICITOR ARIAIL: WE CALL CAROL MARTIN.

15 CAROL MARTIN, HAVING BEEN DULY  
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

18 Q STATE YOUR NAME, PLEASE, MA'AM

19 A CAROL MARTIN.

20 Q MS. MARTIN, I WANT TO DIRECT YOUR ATTENTION BACK TO  
21 DECEMBER THE 6TH OF THE YEAR 2000 AROUND 12:00 NOON, AND I  
22 WANT TO ASK YOU SOME QUESTIONS ABOUT WHAT YOU WERE DOING AND  
23 WHAT YOU HAD DONE THAT DAY.

24 A OKAY.

25 Q IF YOU WOULD, WERE YOU IN THE VICINITY OF WOODRUFF ROAD

CAROL MARTIN -- DIRECT BY SOLICITOR ARIAIL

1 AND I-85 ON THAT DAY AROUND 12:00 NOON?

2 A YES, SIR.

3 Q AND WHERE HAD YOU BEEN?

4 A I HAD BEEN SHOPPING.

5 Q ALL RIGHT. YOU NEED TO, IF YOU WOULD, KEEP YOUR VOICE  
6 UP SO I CAN HEAR YOU.

7 SAY THAT AGAIN, YOU HAD BEEN WHERE?

8 THE COURT: SPEAK RIGHT INTO THAT MICROPHONE. IT WILL  
9 HELP YOU.

10 WITNESS: OKAY. THANK YOU.

11 A I HAD BEEN SHOPPING.

12 Q AND WHERE HAD YOU BEEN SHOPPING?

13 A GREENVILLE MALL.

14 Q AND WHERE WERE YOU -- WHICH DIRECTION -- IN WHICH  
15 DIRECTION WERE YOU HEADED?

16 A TOWARD GARDEN RIDGE, WHICH IS 385.

17 Q ON THE OTHER SIDE OF 85 GOING TOWARDS 385?

18 A YES, SIR.

19 Q ON WOODRUFF ROAD?

20 A YES, SIR.

21 Q TELL US AS YOU WERE DRIVING TO GARDEN RIDGE WHAT YOU  
22 OBSERVED ON THAT DAY.

23 A I STOPPED AT THE STOPLIGHT WHERE 85 COMES INTO WOODRUFF  
24 ROAD, AND I LOOKED TO THE RIGHT AND THERE WAS A MOPED COMING  
25 UP THE EXIT RAMP FOLLOWED BY A HIGHWAY PATROLMAN WITH HIS

CAROL MARTIN -- DIRECT BY SOLICITOR ARIAIL

1 LIGHTS ON. AND THE MAN ON THE -- OR THE PERSON ON THE MOPED  
2 KEPT LOOKING AROUND, SO HE KNEW THE PATROLMAN WAS THERE, BUT  
3 HE DID NOT STOP.

4 Q WHEN YOU SAY "LOOKING AROUND," SHOW US WHAT YOU MEAN BY  
5 THAT.

6 A (DEMONSTRATING)

7 Q OKAY.

8 A HE CAME UP ONTO WOODRUFF ROAD WITH THE POLICEMAN  
9 FOLLOWING HIM, AND THEN THEY WENT DOWN FRONTAGE ROAD. AND  
10 THE MOPED WAS GOING DOWN, THE POLICEMAN WAS BEHIND HIM. THEY  
11 WENT OVER AND THE MOPED CAME UP AGAINST A CURB AND THE  
12 POLICEMAN WAS RIGHT BESIDE HIM. AND AT THAT TIME I THOUGHT,  
13 YOU KNOW, HE STOPPED HIM. THIS IS IT. AND I LOOKED BACK UP  
14 AT THE STOPLIGHT AND ABOUT THAT TIME I HEARD THREE OR FOUR  
15 LOUD NOISES, AND I LOOKED BACK---

16 Q YOU HEARD WHAT? I'M SORRY.

17 A THREE OF FOUR LOUD NOISES.

18 Q OKAY.

19 A I LOOKED BACK TO THE POLICE CAR AND THE MOPED, AND THE  
20 PERSON ON MOPED HAD THEIR RIGHT ARM EXTENDED STRAIGHT OUT  
21 TOWARD THE FRONT DRIVER WINDOW OF THE POLICE CAR.

22 Q OKAY. WHAT DID YOU DO AT THAT TIME?

23 WELL, LET ME ASK YOU ABOUT THE PERSON ON THE SCOOTER  
24 BEFORE -- OR MOPED. WHAT WAS THAT PERSON DOING WHEN THEIR  
25 ARM WAS OUT? WERE THEY SEATED ON THE SEAT OF THE MOPED OR



CAROL MARTIN -- DIRECT BY SOLICITOR ARIAIL

1 WERE THEY OFF THE MOPED OR STANDING UP?

2 A (NO RESPONSE)

3 Q DO YOU REMEMBER?

4 A I DON'T REMEMBER EXACTLY.

5 Q THAT'S FINE. IF YOU DON'T REMEMBER, THAT'S FINE.

6 DO YOU REMEMBER AT THE TIME THAT YOU SAW THE MOPED COULD  
7 YOU TELL WHETHER IT WAS A MAN OR A WOMAN OR WHETHER THE  
8 PERSON WAS BLACK OR WHITE?

9 A I COULD NOT TELL AT THAT TIME.

10 Q NOW, AS YOU OBSERVED AND -- HEARD THE LOUD POPPING  
11 SOUNDS AND OBSERVED THE ARM POINTED OUT, WHAT HAPPENED NEXT  
12 THAT YOU OBSERVED?

13 A AT THAT TIME THE LIGHT HAD CHANGED AND I DROVE ON DOWN  
14 WOODRUFF ROAD. AND I PICKED UP MY CELL PHONE AND CALLED 911  
15 AND TOLD THEM THAT I THOUGHT I HAD JUST SEEN A MAN BEING  
16 SHOT. AND THEY ASKED ME, "A POLICEMAN?" AND THEY ASKED ME  
17 IF IT WAS A DEPUTY OR A HIGHWAY PATROLMAN. AND I TOLD THEM  
18 HIGHWAY PATROLMAN. THEY PATCHED ME THROUGH TO HIGHWAY  
19 PATROL. I TOLD THEM THE SAME THING AND I ASKED THEM IF THEY  
20 HAD HAD ANY POLICEMAN WITH A DISTRESS OR ANYTHING AND THEY  
21 SAID NO. AND I SAID, OKAY. I COULDN'T BELIEVE I HAD SEEN  
22 WHAT I HAD SEEN, SO I THOUGHT, OKAY. UNDOUBTEDLY I WAS  
23 MISTAKEN. AND ABOUT THAT TIME OR SOMEWHERE IN THIS  
24 CONVERSATION I WAS STOPPED AT THE STOP LIGHT NOW WHERE  
25 WOODRUFF ROAD AND MILLER ROAD CONNECT AND I SAW THE RED MOPED

CAROL MARTIN -- DIRECT BY SOLICITOR ARIAIL

1 COMING UP BEHIND ME ON THE RIGHT-HAND SIDE OF THE EDGE OF THE  
2 ROAD AND---

3 Q IN A LANE OF TRAFFIC OR ON THE OUTSIDE?

4 A ON THE CURB.

5 Q OKAY.

6 A OUTSIDE.

7 Q ALL RIGHT.

8 A AND THE PERSON TURNED INTO THE PARKING LOT OF THAT  
9 LITTLE STRIP MALL RIGHT THERE AND HIT THE CURB AND LOST HIS  
10 BALANCE AND STRAIGHTENED BACK UP AND WENT OUT THE OTHER SIDE  
11 OVER TOWARD MILLER ROAD.

12 Q WHEN THE MOPED-SCOOTER HIT THE CURB, WERE YOU ABLE TO  
13 MAKE ANY OBSERVATION AS TO WHETHER OR NOT THAT PERSON WAS  
14 WHITE OR BLACK?

15 A YES, SIR. AT THAT TIME THE PERSON PUT THEIR FOOT DOWN.  
16 HIS PANTS LEG CAME UP AND A WHITE LEG SHOWED. SO IT WAS A  
17 WHITE PERSON.

18 Q ALL RIGHT. NOW, DO YOU REMEMBER DID THE PERSON -- WERE  
19 YOU ABLE TO SEE THE PERSON'S FACE?

20 A NO, SIR.

21 Q AND WHY WAS THAT?

22 A THEY HAD ON A HELMET WITH A FULL FACE SHIELD.

23 Q AND DO YOU REMEMBER WHAT COLOR THE HELMET WAS?

24 A NOT EXACTLY. I JUST REMEMBER IT WAS TOTALLY COVERED.

25 Q THE HEAD WAS TOTALLY COVERED?

CAROL MARTIN -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q OKAY. NOW WHILE YOU WERE AT THE MILLER ROAD  
3 INTERSECTION AND THE MOPED HAS CUT THROUGH, TELL US WHAT ELSE  
4 YOU OBSERVED AT THAT TIME.

5 A ABOUT -- IT'S EITHER ONE OR TWO CARS IN FRONT OF ME  
6 THERE WAS A BLUE JEEP WAGONEER WITH SIDING.

7 Q WITH SIDING?

8 A YES, SIR. THE PANELING-TYPE SIDING ON IT.

9 Q WOOD SIDING?

10 A YES, SIR. AND IT TURNED AND BUMPED THE CURB AND ALSO  
11 WENT INTO THAT SAME PARKING LOT AND ON OUT THROUGH THERE.

12 Q COULD YOU TELL WHAT TYPE OF PERSON WAS DRIVING THAT  
13 VEHICLE, MALE OR FEMALE?

14 A I REMEMBER THINKING, "OH, THAT WOMAN GOT TIRED OF  
15 SITTING IN TRAFFIC." SO THAT'S ALL I REMEMBER.

16 Q OKAY.

17 A I THOUGHT IT WAS A WOMAN.

18 Q DID YOU SEE THE JEEP OR THE SCOOTER AFTER THAT?

19 A NO, SIR.

20 SOLICITOR ARIAIL: OKAY. ANSWER ANY QUESTIONS DEFENSE  
21 COUNSEL MAY HAVE. THANK YOU.

22 MR. BANNISTER: ONE MOMENT.

23 CROSS EXAMINATION BY MR. BANNISTER:

24 Q MS. MARTIN, I'M JIM BANNISTER.

25 A YES, SIR.

CAROL MARTIN -- CROSS BY MR. BANNISTER

1 Q I HAVE A COUPLE QUICK QUESTIONS FOR YOU. AT SOME POINT  
2 YOU GAVE A STATEMENT TO INVESTIGATORS, CORRECT?

3 A YES, SIR.

4 Q AND IN THAT STATEMENT YOU TOLD THEM THE HIGHWAY  
5 PATROLMAN CUT THE PERSON OFF ON THE MOPED UP AGAINST THE  
6 CURB?

7 A YES, SIR.

8 Q AND SO WHAT YOU VIEWED WAS THE SCOOTER'S FRONT WHEELS UP  
9 AGAINST THE LEFT-HAND CURB ON FRONTAGE ROAD; WOULD THAT BE  
10 CORRECT?

11 A I CAN'T REMEMBER IF IT WAS THE LEFT-HAND CURB OR IF  
12 THERE WAS A LITTLE PIECE THAT STUCK OUT LIKE A LITTLE ISLAND  
13 TYPE THING. I DON'T REMEMBER.

14 Q ALL RIGHT. BUT THE SCOOTER WAS UP AGAINST THAT?

15 A YES, SIR.

16 Q OKAY. AND AS I UNDERSTOOD, I'M GOING TO TAKE YOU BACK  
17 TO WHERE YOU HEAR THE LOUD POPPING NOISES.

18 A UH-HUH (AFFIRMATIVE).

19 Q ALL RIGHT. AT THAT POINT YOU WERE LOOKING IN ANOTHER  
20 DIRECTION AWAY FROM THE SCENE?

21 A YES, SIR.

22 Q ALL RIGHT. AND THEN YOU GLANCED BACK AFTER YOU HEARD  
23 THE LOUD POPPING?

24 A YES, SIR.

25 Q AND AT LEAST FOR A MOMENT THERE WAS ONE ARM STILL

CAROL MARTIN -- CROSS BY MR. BANNISTER

1 EXTENDED?

2 A YES, SIR.

3 Q IS THAT CORRECT?

4 A YES, SIR.

5 Q ALL RIGHT.

6 A THE RIGHT ARM.

7 Q THE RIGHT ARM. AND THAT WAS IN EXACTLY THE SAME SPOT  
8 WHERE THE SCOOTER HAD STOPPED UP AGAINST THE CURB; IS THAT  
9 CORRECT?

10 A I WOULD SAY SO, YES.

11 Q OKAY.

12 A BUT I COULD NOT BE ABSOLUTELY POSITIVELY SURE THOUGH.

13 Q AT SOME POINT THE SCOOTER -- YOU SEE THE SCOOTER AGAIN  
14 IN TRAFFIC?

15 A YES, SIR.

16 Q AND THE SCOOTER TAKES OFF AROUND TOWARDS MILLER ROAD OR  
17 THAT DIRECTION?

18 A YES, SIR.

19 Q ALL RIGHT. AND THEN AT THAT POINT YOU SAID YOU SAW A  
20 JEEP WAGONEER THAT KIND OF JUMPED OVER A CURB, I THINK YOU  
21 SAID?

22 A YES, SIR.

23 Q ALL RIGHT. DID IT HEAD IN GENERALLY THE SAME DIRECTION  
24 AS THE SCOOTER?

25 A YES, SIR.

CAROL MARTIN -- CROSS BY MR. BANNISTER

1           MR. BANNISTER:   ALL RIGHT.  I DON'T HAVE ANY FURTHER  
2           QUESTIONS.

3           THE COURT:    ANY REDIRECT?

4           SOLICITOR ARIAIL:   NONE.

5           THE COURT:    MS. MARTIN, THANK YOU.  WE APPRECIATE YOU  
6           BEING HERE.

7           SOLICITOR ARIAIL:   MAY SHE BE EXCUSED?

8           THE COURT:    WITHOUT OBJECTION.

9                           (WITNESS EXCUSED AT 3:53 P.M.)

10          THE COURT:    HOW LONG IS THE DIRECT OF YOUR NEXT  
11          WITNESS?

12          SOLICITOR ARIAIL:   ABOUT AS LONG AS THE LAST ONE.

13          THE COURT:    ANYONE NEED TO TAKE A BREAK?  IF YOU NEED  
14          TO, WE'VE BEEN GOING AN HOUR AND ABOUT 30 OR 40 MINUTES.  SO  
15          IF YOU NEED TO TAKE A BREAK, JUST RAISE YOUR RIGHT HAND AND  
16          WE'LL TAKE A BREAK.  (PAUSE)  LET'S TAKE A -- WE'LL TAKE A  
17          BREAK.

18          SOLICITOR ARIAIL:   WE'RE GOING TO TAKE ONE NOW?

19          THE COURT:    YES, SIR.  WE'LL TAKE ABOUT A TEN-MINUTE  
20          BREAK, AND THEN WE'LL COME AND MAKE SOME MORE PROGRESS.  
21          THANK YOU, LADIES AND GENTLEMEN.

22                           (JURY EXITS COURTROOM AT 3:54 P.M.)

23          THE COURT:    THE JURY IS EXCUSED.  TEN-MINUTE RECESS.

24                           (A RECESS WAS TAKEN FROM 3:54 TO 4:10 P.M.)

25          THE COURT:    TO COUNSEL, FOR PLANNING PURPOSES, WE NEED

1 TO BREAK ABOUT 6:00, NOT MUCH AFTER THAT, BECAUSE OF THE  
2 SCHEDULING OF EVENTS, EATING, ET CETERA, WITH THE JURY AND  
3 THE TIME SCHEDULE THEY'RE ON. SO I JUST WANTED TO GIVE YOU A  
4 HEAD'S UP FOR WITNESS PLANNING.

5 SOLICITOR ARIAIL: THAT'S SORT OF WHAT WE HAD PLANNED  
6 ON.

7 THE COURT: VERY GOOD, SIR.

8 THE COURT: ALL RIGHT. BRING THE JURY, IF THEY'RE  
9 READY.

10 SOLICITOR ARIAIL: I UNDERSTAND TOMORROW MAY BE A  
11 LITTLE LONGER.

12 THE COURT: WE'LL, WE'RE GOING TO -- THANK YOU. I  
13 MENTIONED -- MAYBE I DIDN'T. WE'RE GOING TO START AT 1:00,  
14 COURT PERSONNEL AS WELL WE'LL START ABOUT ONE O'CLOCK AND  
15 WE'RE GOING TO GO UNTIL ABOUT 7:00. THAT'S GOING TO  
16 COMPENSATE FOR THEIR DESIRE THAT WE START AT 9:00 IN THE  
17 MORNING. SO WE'LL GO TILL ABOUT 7:00.

18 (JURY REENTERS COURTROOM AT 4:10 P.M.)

19 THE COURT: WE'RE READY TO PROCEED. CALL YOUR NEXT  
20 WITNESS, SIR.

21 SOLICITOR ARIAIL: DAVID MANCINI.

22 DAVID MANCINI, HAVING BEEN DULY  
23 SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

25 Q STATE YOUR NAME FOR THE RECORD, PLEASE, SIR.

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 A DAVID MANCINI.

2 Q KEEP YOUR VOICE UP SO THESE LAST TWO JURORS AND I CAN  
3 HEAR YOU.

4 A OKAY.

5 Q I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE 6TH  
6 OF THE YEAR 2000 AT 12:00 NOON AND ASK YOU IF ON THAT DATE  
7 AND AROUND THAT TIME YOU WERE IN THE VICINITY OF WOODRUFF  
8 ROAD AND I-85?

9 A YES, I WAS.

10 Q AND WHAT WAS YOUR PURPOSE IN BEING THERE AND WHAT  
11 DIRECTION WERE YOU IN AND FROM WHICH DIRECTION WERE YOU  
12 COMING?

13 A I HAD GONE TO HOME DEPOT TO PICK UP STORM WINDOWS FOR A  
14 HOUSE, AND I WAS DRIVING BACK ON WOODRUFF ROAD HEADED TOWARD  
15 I-385 HEADING BACK HOME TO SIMPSONVILLE.

16 Q SO YOU WERE GOING FROM ONE SIDE, THE GREENVILLE SIDE OF  
17 I-85, ACROSS I-85 GOING TO SIMPSONVILLE OR 385 SOUTH?

18 A CORRECT.

19 Q WHEN YOU CAME TO THE INTERSECTION OF THE I-85 OFF RAMP  
20 AND WOODRUFF ROAD TELL US WHAT YOU NOTICED AND WHAT YOU  
21 OBSERVED.

22 A I WAS STOPPED AT THE LIGHT WITH THE REST OF THE TRAFFIC,  
23 AND AT THAT POINT A RED SCOOTER CAME OFF THE OFF RAMP ON 385  
24 RIGHT THERE TURNING ONTO WOODRUFF ROAD HEADING IN THE  
25 DIRECTION THAT I WAS HEADED. SOON AFTER THAT A STATE TROOPER



DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 CAR PULLED OFF RIGHT BEHIND THE SCOOTER ALSO.

2 Q DID IT APPEAR THAT THE STATE TROOPER AND THE -- WAS IN  
3 PROXIMITY TO MAKE A STOP ON THE SCOOTER?

4 A YES.

5 Q ALL RIGHT. TELL US, DID THE SCOOTER STOP?

6 A NOT ON WOODRUFF ROAD. IT WENT AROUND AND PULLED INTO  
7 THE -- I GUESS IT'S A PARKING LOT OR FRONTAGE ROAD AREA RIGHT  
8 THERE.

9 Q WHAT CAUGHT YOUR ATTENTION ABOUT THE EVENT?

10 A IT WAS A RED SCOOTER CAME OFF OF I-85. THE WHOLE  
11 INCIDENT WAS OUT OF THE ORDINARY.

12 Q AND AS YOU WATCHED THE VEHICLES GO DOWN FRONTAGE ROAD  
13 DID THE SCOOTER STOP?

14 A EVENTUALLY, YES.

15 Q BUT BEFORE HE STOPPED DID YOU FORM ANY OPINION IN REGARD  
16 TO WHETHER IT INTENDED TO STOP?

17 A I HAD ASSUMED THAT IT WAS JUST LOOKING FOR A PLACE MORE  
18 CONVENIENT TO STOP THAN RIGHT SMACK THERE ON WOODRUFF ROAD IN  
19 THE MIDDLE OF LUNCH HOUR TRAFFIC.

20 Q THEN AS IT GOES DOWN AND COMES TO A STOP WHERE ARE YOU?

21 A UH...

22 Q ARE YOU STILL AT THE LIGHT OR HAVE YOU MOVED?

23 A BY THE TIME THEY STOPPED, WE HAD STARTED TO MOVE.

24 Q TELL US ONCE YOU BEGAN TO MOVE WHAT YOU OBSERVED.

25 A WHAT I HAD SEEN WAS PRETTY MUCH IN SNAPSHOT FORM. I'M

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 TRYING TO FOLLOW THE TRAFFIC AND WATCH OVER MY SHOULDER AT  
2 THE SAME TIME. BUT THE SCOOTER PULLED INTO THE PARKING LOT  
3 AND EVENTUALLY STOPPED, AND THE STATE TROOPER CAME UP RIGHT  
4 ALONG SIDE HIM.

5 Q ALL RIGHT. AND WHEN HE PULLED UP WAS -- THE TWO PULLED  
6 UP BESIDE EACH OTHER AND YOU'RE SAYING INTO A PARKING LOT AND  
7 GOING TO A PARKING LOT OR APPEARED TO GO INTO AN ENTRANCE TO  
8 A PARKING LOT?

9 A IT WAS -- I NEVER PAID MUCH ATTENTION TO THE AREA RIGHT  
10 THERE, BUT IT'S RIGHT ALONG THE---

11 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT  
12 48A AND ASK YOU IF THIS IS WOODRUFF ROAD, FRONTAGE ROAD AND  
13 THE ENTRANCE TO THE PARKING LOT?

14 A YEAH. IT MUST HAVE BEEN THE ENTRANCE AREA.

15 Q OKAY. THE ISLANDS?

16 A RIGHT.

17 Q OKAY. AND WHEN YOU SAW THEM COME TO A STOP WHAT DID YOU  
18 OBSERVE?

19 A AGAIN, IT WAS THE SNAPSHOT FORM. I LOOKED BACK OVER THE  
20 SHOULDER. THE LOWER PART OF THE SCOOTER WAS BLOCKED FROM MY  
21 VIEW FROM THE CAR. I SAW FROM HERE UP. I SAW THE ARM OF THE  
22 DRIVER OF THE SCOOTER COME UP BUT EVERYTHING FROM THERE ON  
23 DOWN WAS BLOCKED BY THE HOOD OF THE CAR.

24 Q SHOW US WHAT YOU -- WHEN THE ARM OF THE SCOOTER DRIVER  
25 CAME UP, HOW DID IT COME UP?

1 A JUST -- JUST FROM THE SIDE. I COULDN'T TELL FROM THAT  
2 POINT IF IT WAS COMING OFF THE HAND OF THE SCOOTER OR DOWN  
3 FROM AGAINST THE SIDE OF THE BODY.

4 Q OKAY. YOU COULDN'T TELL WHETHER THE HAND HAD STILL BEEN  
5 ON THE SCOOTER HANDLEBAR OR WHETHER IT WAS DOWN BY HIS SIDE?

6 A YEAH. I COULDN'T TELL. I SAW THE JUST -- THIS PART OF  
7 THE ARM COME UP MORE ON A HORIZONTAL PLANE.

8 Q AND WHERE DID IT -- WAS IT POINTED? WHAT DIRECTION?

9 A TOWARD THE DRIVER'S SIDE OF THE PATROL CAR.

10 Q OKAY. AND AT THAT TIME DID YOU HEAR ANYTHING OR SEE A  
11 GUN?

12 A NO. NO. I LIKE MY MUSIC LOUD, AND SO I---

13 Q WHAT DID YOU THINK HE WAS DOING, THE SCOOTER DRIVER?

14 MR. BANNISTER: OBJECTION, YOUR HONOR. THAT'S CALLING  
15 FOR SPECULATION AS TO WHAT HE ACTUALLY SAW.

16 Q WHAT DID IT APPEAR TO YOU HE WAS DOING?

17 A I THOUGHT HE WAS JUST FLIPPING HIM OFF OR GIVING HIM A  
18 GESTURE.

19 Q ALL RIGHT.

20 A AGAIN, I COULDN'T HEAR ANYTHING, SO I THOUGHT IT WAS  
21 JUST A FLIPPANT GESTURE BEING THROWN TO THE OFFICER.

22 Q OKAY. COULD YOU TELL AT THAT TIME WHETHER IT WAS A MAN  
23 OR A WOMAN DRIVING THE SCOOTER?

24 A NO.

25 Q DID YOU -- BASED ON OBSERVATIONS OF THE ENTIRE EVENT DID

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 YOU FORM AN OPINION AS TO WHETHER IT WAS A MAN OR A WOMAN?

2 A NOT UNTIL A LITTLE LATER ON.

3 Q OKAY. LET'S GO A LITTLE LATER ON. TELL US WHAT  
4 HAPPENED AFTER YOU SAW THE SCOOTER DRIVER'S ARM COME UP AND  
5 POINT TOWARDS THE WINDOW OF THE PATROLMAN'S CAR.

6 A I SAW THAT. I LOOKED AWAY BACK IN THE TRAFFIC. TRAFFIC  
7 HAD STARTED TO CREEP ALONG AT THAT POINT. INTEREST WAS  
8 PIQUED IN THE EVENT, SO I KEPT LOOKING BACK. AND THE SCOOTER  
9 TURNED AROUND AT THAT POINT TO LEAVE THE FRONTAGE ROAD AREA  
10 OR THE PARKING LOT AREA, AND THE PATROL CAR STARTED TO MOVE  
11 FORWARD IN THAT DIRECTION.

12 Q ALL RIGHT. SO THE PATROL CAR, BASED ON YOUR  
13 OBSERVATIONS, MOVED FORWARD SLIGHTLY?

14 A SLIGHTLY. WELL, AS FAR AS -- FOR AS LONG AS I WATCHED  
15 IT, IT WAS MOVING FORWARD.

16 Q ALL RIGHT. AND DID YOU SEE THE SCOOTER AND WHICH WAY  
17 THE SCOOTER WENT?

18 A THE SCOOTER HAD TURNED BACK AROUND HEADING TOWARD THE  
19 ENTRANCE THAT THEY HAD GONE IN OFF OF WOODRUFF ROAD.

20 Q AND WHEN IT CAME -- SHOW US, IF YOU WOULD, ON THAT  
21 DIAGRAM WHICH WAY THE SCOOTER CAME OUT.

22 A I DON'T REMEMBER IF IT WENT AROUND THE ISLAND OF JUST  
23 TURNED AROUND AND CAME BACK UP THAT WAY.

24 Q AND EXITED BACK ON WOODRUFF ROAD?

25 A YES.

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 Q NOW, WHEN THAT OCCURRED DID THE PATROLMAN'S VEHICLE MOVE  
2 AT ANY TIME FROM THAT LOCATION?

3 A NOT THAT I HAD SEEN. BY THAT POINT -- BY THE TIME I HAD  
4 SEEN THE SCOOTER TURN BACK AROUND AND THE CAR START TO MOVE  
5 FORWARD, TRAFFIC BEGAN TO MOVE ALONG AT A PRETTY GOOD CLIP  
6 AND WE JUST MOVED ALONG FURTHER FORWARD THAN WE HAD BEEN  
7 CREEPING. SO I WAS PAYING MORE ATTENTION TO THE TRAFFIC AT  
8 THAT POINT.

9 Q NOW, WHEN THE SCOOTER CAME OUT INTO THE MILLER -- EXCUSE  
10 ME -- INTO WOODRUFF ROAD, WHERE WERE YOU WHEN THE SCOOTER  
11 CAME BY?

12 A I WAS FURTHER UP. I WAS PAST THE ENTRANCE BY THAT  
13 POINT.

14 Q SO IT CAME UP BEHIND YOU?

15 A BEHIND ME.

16 Q AND WHAT DID YOU OBSERVE THE SCOOTER DO OR HOW DID IT  
17 DRIVE?

18 A JUST KIND OF -- AS I RECALL, IN AND OUT OF TRAFFIC A  
19 LITTLE BIT, JUST TRYING TO MOVE FORWARD IN TRAFFIC.

20 Q OKAY. AND DID IT PASS YOU OR STAY BEHIND YOU?

21 A IT EVENTUALLY PASSED ME.

22 Q AND IN RELATION TO THE INTERSECTION OF MILLER ROAD AND  
23 WOODRUFF ROAD, DID IT PASS YOU BEFORE THAT INTERSECTION?

24 A BEFORE THE INTERSECTION.

25 Q TELL US WHEN IT WENT BY YOU WHERE IT WENT.

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1     A     THERE WAS A LITTLE SHOPPING MART THERE AT THE CORNER,  
2     MILLER AND WOODRUFF, AND I WAS ABOUT -- I WAS EITHER ONE CAR  
3     OR TWO CARS BACK FROM THE ENTRANCE TO THAT SHOPPING CENTER  
4     CLOSEST TO THE WOODRUFF INTERSECTION THERE, AND THE SCOOTER  
5     PULLED INTO THAT ENTRANCE OF THE PARKING LOT RIGHT THERE.

6     Q     WHEN IT PULLED INTO THE ENTRANCE HOW DID IT -- HOW DID  
7     IT ACT, THE SCOOTER?

8     A     IT WAS -- IT WAS DRIVING QUICKLY. I MEAN, IT WASN'T  
9     PUTTERING ALONG AT THAT POINT, BUT IT WAS JUST, YOU KNOW, IT  
10    WASN'T -- IT DID SEEM LIKE IT WAS GOING A LITTLE BIT FAST  
11    BECAUSE THERE'S A LITTLE HILL WHEN YOU PULL IN THE PARKING  
12    LOT THERE AND THE BACK WHEEL KIND OF FISH-TAILED OUT.

13   Q     DID YOU OBSERVE WHERE IT WENT?

14   A     IT CONTINUED DIAGONALLY ACROSS THE PARKING LOT THERE,  
15   AND THAT'S THE LAST I SAW OF IT.

16   Q     BY THAT TIME HAD YOU FORMED AN OPINION AS TO WHETHER IT  
17   WAS A MAN OR A WOMAN DRIVING THE SCOOTER?

18   A     AT THAT POINT I THOUGHT IT WAS PROBABLY A MAN.

19   Q     BASED ON WHAT?

20   A     THE -- WHEN IT CAME UP INTO THE PARKING LOT AND THE BACK  
21   LEG -- BACK TIRE FISH-TAILED, THE LEGS CAME OUT FROM THE  
22   SCOOTER TO REGAIN CONTROL OF THE SCOOTER. IT HAD ON JEANS  
23   AND JUST THE WAY IT WAS STANDING AT THAT POINT, IT LOOKED  
24   LIKE A MAN AT THAT POINT.

25   Q     TELL US WHAT ELSE YOU OBSERVED WHILE YOU WERE -- AFTER

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 THE SCOOTER HAD GONE INTO THE PARKING LOT AND YOU WERE BACK A  
2 FEW CARS FROM THE INTERSECTION OF MILLER ROAD AND WOODRUFF  
3 ROAD.

4 A THE LAST THING OF ANY CONSEQUENCE I REMEMBER SEEING WAS  
5 A JEEP SEVERAL CARS UP IN FRONT OF ME. I GUESS IT MUST HAVE  
6 BEEN THE ONE RIGHT AT THE LIGHT THERE. IT COULD HAVE BEEN  
7 ONE BACK. I COULDN'T TELL. THERE WERE SEVERAL MORE CARS IN  
8 FRONT OF ME. BUT IT MADE A QUICK -- IT MADE NOT A QUICK BUT  
9 A SHARP RIGHT-HAND TURN AND CUT ACROSS THE CURB THERE AND  
10 MADE A RIGHT-HAND TURN ONTO MILLER AND DROVE DOWN THE ROAD.

11 Q YOU SAY IT CUT ACROSS THE CURB?

12 A IT DID SEEM LIKE IT CUT ACROSS. IT MADE A QUICK RIGHT  
13 TURN. IT SEEMED TO JOSTLE A BIT AS THOUGH IT WAS NOT STAYING  
14 ON THE ROAD AND JUMPED OVER THE CURB.

15 Q AND WAS THIS CAR DRIVING NORMALLY OR SLOWER THAN NORMAL  
16 OR FASTER THAN NORMAL?

17 A IT LOOKED LIKE IT WAS TAKING OFF PRETTY QUICKLY.

18 Q NOW, THE INDIVIDUAL THAT WAS ON THE SCOOTER, WERE YOU  
19 ABLE TO GET A VIEW OF THAT PERSON'S FACE OR HEAD?

20 A NOT AT ALL.

21 Q WHY NOT?

22 A HAD ON A HELMET WITH A FULL FACE MASK, A LOT OF GLARE ON  
23 THE FRONT. I COULDN'T TELL EITHER WAY.

24 Q AND DO YOU REMEMBER WHAT COLOR THE HELMET WAS?

25 A A BLUE GRAY COLOR.

DAVID MANCINI -- DIRECT BY SOLICITOR ARIAIL

1 Q DARK COLOR OR LIGHT COLOR?

2 A I DON'T THINK IT WAS BATTLESHIP GRAY. IT WAS LIGHTER  
3 THAN THAT.

4 Q DID YOU SAY WHAT COLOR THE SCOOTER WAS?

5 A RED.

6 Q LET ME SHOW YOU A PICTURE, STATE'S EXHIBIT 26F. DOES  
7 THAT RESEMBLE THE SCOOTER THAT YOU SAW?

8 A IT LOOKS SIMILAR TO IT, YES.

9 SOLICITOR ARIAIL: THANK YOU. ANSWER ANY QUESTIONS  
10 THAT DEFENSE COUNSEL MIGHT HAVE.

11 MR. BANNISTER: (OFF RECORD WITH CO-COUNSEL)

12 CROSS EXAMINATION BY MR. BANNISTER:

13 Q MR. MANCINI, LET ME MAKE SURE I UNDERSTAND WHERE YOU  
14 WERE LOCATED WHEN YOU SAW THE -- I THINK YOU PHRASED IT YOU  
15 HAD SOME "SNAPSHOTS" OF WHAT YOU WERE SEEING OF THE PATROL  
16 CAR AND THE SCOOTER; IS THAT CORRECT??

17 A RIGHT.

18 Q ALL RIGHT. AS I UNDERSTAND IT, YOU WERE TRAVELLING IN  
19 THIS DIRECTION ON WOODRUFF ROAD?

20 A YES.

21 Q HEADING THIS WAY?

22 A YES.

23 Q ALL RIGHT. AT THE TIME THAT THE PATROL CAR AND THE  
24 SCOOTER GOT ONTO THE FRONTAGE ROAD, WHERE WERE YOU IN  
25 RELATION TO WOODRUFF ROAD UP HERE?



DAVID MANCINI -- CROSS BY MR. BANNISTER

1 A I HAD GONE THROUGH THE LIGHT AND WAS JUST STARTING TO  
2 COME ALONGSIDE.

3 Q (INDICATING ON DIAGRAM)

4 A RIGHT.

5 Q SO YOU WERE GETTING READY -- YOUR VEHICLE WAS GETTING  
6 READY TO GO PAST THE ENTRANCES TO THE FRONTAGE ROAD; IS THAT  
7 CORRECT?

8 A BY THE TIME WE STOPPED, NO. WE HAD GONE PAST THE --  
9 WHERE THE OFF RAMP THAT COMES ON.

10 Q OKAY.

11 A IT COMES UP TO ABOUT THAT CORNER AREA. SO I WAS  
12 PARALLEL WITH WHERE THEY WERE.

13 Q ALL RIGHT. AND YOU WERE DRIVING YOUR VEHICLE?

14 A YES.

15 Q ALL RIGHT. AT THAT TIME WAS TRAFFIC HEAVY?

16 A YES.

17 Q SO YOU WERE WATCHING TRAFFIC IN FRONT OF YOU TO MAKE  
18 SURE THAT YOU DIDN'T HIT THE CAR IN FRONT OF YOU AND THAT YOU  
19 ALSO KEPT UP WITH THE CAR IN FRONT OF YOU AS WELL AS LOOKING  
20 OVER TO THE SIDE TO SEE WHAT WAS GOING ON WITH THE PATROLMAN?

21 A RIGHT. WE WERE CREEPING.

22 Q ALL RIGHT. AND THEN AT SOME POINT YOU SAW THE SCOOTER  
23 GO PAST WEAVING IN AND OUT OF TRAFFIC AND MAKE A RIGHT-HAND  
24 TURN BACK TOWARDS MILLER ROAD, CORRECT?

25 A CORRECT.

DAVID MANCINI -- CROSS BY MR. BANNISTER

1 Q AND YOU SAW A JEEP WAGONEER THAT SORT OF HEADED IN THAT  
2 SAME DIRECTION?

3 A RIGHT.

4 MR. BANNISTER: NO FURTHER QUESTIONS.

5 THE COURT: ANYTHING FURTHER?

6 SOLICITOR ARIAIL: NOTHING FURTHER.

7 THE COURT: ALL RIGHT. MR. MANCINI, WE APPRECIATE IT,  
8 SIR. THANK YOU.

9 WITNESS: THANK YOU.

10 SOLICITOR ARIAIL: CAN HE ALSO BE EXCUSED, YOUR HONOR?

11 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

12 (WITNESS EXCUSED AT 4:25 P.M.)

13 THE COURT: NO OBJECTION. NEXT WITNESS.

14 SOLICITOR ARIAIL: WE CALL DEBORAH WHEELER.

15 DEBORAH WHEELER, HAVING BEEN

16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

18 Q MS. WHEELER, WOULD YOU STATE YOUR NAME FOR THE RECORD,  
19 PLEASE, MA'AM.

20 A DEBORAH JO WHEELER.

21 Q THAT'S PERFECT. IF YOU KEEP YOUR VOICE JUST LIKE THAT,  
22 THESE LAST TWO JURORS AND I CAN HEAR YOU. I WANT TO TAKE YOU  
23 BACK AND DIRECT YOUR ATTENTION TO THE EVENTS THAT OCCURRED ON  
24 DECEMBER THE 6TH OF THE YEAR 2000 AROUND 12:00 NOON IN THE  
25 AFTERNOON AND I WANT TO ASK YOU FIRST IF YOU WERE IN THE AREA

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 OF I-85 AND WOODRUFF ROAD AROUND THAT TIME?

2 A YES, SIR.

3 Q AND WHO WERE YOU WITH?

4 A MY HUSBAND.

5 Q AND WHERE HAD Y'ALL BEEN?

6 A WE HAD BEEN TO TJ MAXX AND HOME DEPOT AT THAT TIME,  
7 WHICH IS NOW BJ'S ON WOODRUFF ROAD.

8 Q WHO WAS DRIVING YOUR VEHICLE?

9 A MY HUSBAND, TERRY WHEELER.

10 Q WHEN YOU LEFT TJ MAXX WHICH WAY WERE YOU GOING?

11 A WE CAME OUT OF THE -- AT THE WOODRUFF ROAD AND TURNED  
12 RIGHT TO GO OVER THE BRIDGE DOWN WOODRUFF ROAD.

13 Q GOING TOWARDS 385?

14 A ACROSS 85.

15 Q ACROSS 85 AND HEADING OUT LIKE YOU'RE GOING TO  
16 SIMPSONVILLE---

17 A AROUND THAT -- YES, SIR.

18 Q WHEN YOU CROSSED OVER THE I-85 AND CAME TO THE STOPLIGHT  
19 AT THE OFF RAMP FROM I-85, TELL US WHAT YOU SAW, WHAT YOU  
20 BEGAN TO OBSERVE AT THAT TIME. YOU'RE IN THE PASSENGER'S  
21 SEAT?

22 A UH-HUH (AFFIRMATIVE). AT THE RED LIGHT -- WELL IT WAS  
23 ACTUALLY THE SECOND RED LIGHT. IT WAS RED. AND IT WAS -- I  
24 WAS JUST LOOKING AROUND. I LOOKED DOWN TO MY RIGHT, WHICH IS  
25 85 NORTH. I SAW A HIGHWAY PATROLMAN'S CAR WITH LIGHTS ON AND

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 THE SIREN, AND IT WAS STARTING TO EXIT OFF THE EXIT TO  
2 WOODRUFF ROAD. IT WAS -- HE WAS COMING UP. HE WAS -- AND  
3 WHAT I COULD SEE, IT WAS CHASING A RED SCOOTER. HE CAME UP  
4 -- THEY CAME UP AND THEN AT THAT TIME I SAID TO MY HUSBAND, I  
5 WONDER IF HE CANNOT HEAR, THE MAN ON THE SCOOTER OR WHOEVER  
6 WAS ON THE SCOOTER, CANNOT HEAR OR SEE THE LIGHTS. AND AT  
7 THAT TIME IT FINALLY TURNED BACK DOWN TO THE RIGHT ON  
8 FRONTAGE ROAD.

9 Q AT THAT TIME WERE YOU ABLE TO OBSERVE HOW THE PERSON ON  
10 THE SCOOTER WAS DRESSED?

11 A YES, SIR. THE MAN ON THE SCOOTER -- OR THE PERSON ON  
12 THE SCOOTER THAT DAY WAS DRESSED -- WAS WEARING A BEIGE PARKA  
13 CAR COAT. IT LOOKED LIKE TO BE AT WAIST OR BELOW THE WAIST  
14 LENGTH. TO ME, A DARK PAIR OF GREEN PANTS, DARK SOCKS, BROWN  
15 ANKLE -- ABOVE ANKLE TYPE BOOTS WITH A BLACK FULL FACE  
16 HELMET, NO GLOVES.

17 Q I'M SORRY?

18 A WITH NO GLOVES ON.

19 Q AND THE BLACK FULL FACED HELMET THAT YOU'RE TALKING  
20 ABOUT HAS A SHIELD?

21 A SHIELD.

22 Q NOW, AS THEY CAME OFF AND WENT TO THE FRONTAGE ROAD WHAT  
23 -- DID THEY TURN RIGHT ONTO FRONTAGE ROAD?

24 A TURNED RIGHT ONTO FRONTAGE ROAD.

25 Q TELL US WHAT THEY DID AS YOU WATCHED THEM.

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1     A     AS I WATCHED THEM GO DOWN JUST A SMALL SPACE DOWN TO --  
2     ON WOODRUFF -- ON THE FRONTAGE OF THAT ROAD, THE OFFICER  
3     ACTUALLY HAD TO TAKE AND PUSH OVER TOWARD THE SCOOTER, THE  
4     RED SCOOTER, TO GET IT TO STOP. AND AS SOON AS THE SCOOTER  
5     IS GOING DOWN -- I WAS WATCHING AND AS I SAW THE WHEELS STOP,  
6     THE POLICE OFFICER DID THIS, THE PATROLMAN DID THIS, STOP AND  
7     THEN AT THAT SPLIT SECOND I HEARD BOOM, BOOM, BOOM, BOOM.  
8     I'M SAYING FOUR TO FIVE SHOTS FIRED.

9     Q     ONCE YOU HEARD THOSE SHOTS WHAT DID YOU DO?

10    A     I TOLD MY HUSBAND AT THAT SPLIT SECOND, I SAID, "THAT  
11    WAS GUNSHOTS FIRED." HE SAID, "SURELY NOT." I SAID, "YES,  
12    TERRY, THERE WERE SHOTS FIRED." AND THEN BETWEEN SAYING THAT  
13    AND STILL WATCHING A PERSON ON A RED SCOOTER FLIPPED AROUND  
14    AND CAME BACK OUT FROM THE EXIT OFF OF FRONTAGE ROAD COMING  
15    ONTO WOODRUFF ROAD. AT THAT POINT WE WERE ALREADY AT THE  
16    PLACE WHERE HE'S EXITING OUT. HE CAME UP ON OUR DRIVER -- MY  
17    DOOR AND FENDER AND HE COULD HAVE ACTUALLY TOOK HIS FOOT, IF  
18    HE WANTED, AND TOUCHED IT.

19    Q     THAT'S HOW CLOSE YOU WERE?

20    A     THAT'S HOW CLOSE WE WERE.

21    Q     AND AT THAT POINT WAS HE ENTERING -- THE PERSON ENTERING  
22    THE NATURAL FLOW OF TRAFFIC GOING SLOWLY OR WAS HE---

23    A     HE CAME OUT, TO ME, ON A PRETTY GOOD PACE. BUT THERE  
24    WAS A LOT OF TRAFFIC THAT DAY, DINNERTIME, CLOSE TO CHRISTMAS  
25    TIME. HE GOT INTO SOME TRAFFIC. HE WAS IN AND OUT. FINALLY

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 HE GOT UP AGAINST -- OUT ON THE SKIRTS OF THE -- AWAY LIKE  
2 FROM THE VEHICLES THEIRSELF, CLOSER TO THE EDGE WHERE HE  
3 COULD GET IN AND OUT. AND BACKING UP RIGHT BEFORE THEN, WHEN  
4 HE CAME OUT AND HE STARTED GOING IN AND OUT OF TRAFFIC AND I  
5 WAS LOOKING AT HIM -- OR HIS MOTOR SCOOTER, AND I WAS LOOKING  
6 BACK AT THE -- BACK AT THE HIGHWAY PATROL'S VEHICLE, AND I  
7 WAS LOOKING TO SEE IF THE HIGHWAY PATROL VEHICLE'S TIRES AS -  
8 - IF THE VEHICLE WAS MOVING, AND IT WAS NOT MOVING. AND  
9 THAT'S WHEN WE PICKED UP THE PHONE AND CALLED 911.

10 Q AND DID YOU DIAL 911 OR---

11 A I DIALED 911 ON THE PHONE AND I HANDED IT TO MY HUSBAND,  
12 TERRY WHEELER.

13 Q NOW, AT THAT TIME THAT YOU GOT ON THE PHONE WITH 911  
14 WHERE WAS THE SCOOTER AND THE SCOOTER DRIVER?

15 A THAT'S WHEN HE STARTED WEAVING IN AND OUT OF THE TRAFFIC  
16 RIGHT THERE. AND HE -- BEFORE HE COME TO A -- THERE IS A  
17 BUSINESS CALLED GOODYEAR RIGHT THERE ON THE RIGHT, AND HE GOT  
18 UP INTO THAT BUSINESS -- UP INTO THERE AND CAME BACK OUT  
19 TRYING TO GET BACK INTO THE ROAD TO GO ON FORWARD AND WE WERE  
20 ON 911 FROM THAT TIME ON.

21 Q WHEN YOU GOT TO THE INTERSECTION, THAT NEXT  
22 INTERSECTION, THAT'S MILLER ROAD AND WOODRUFF ROAD?

23 A YES, SIR. YES, SIR.

24 Q DID HE -- YOU SAY HE HAD LEFT THE ROAD AND GONE INTO THE  
25 PARKING LOT?

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1     A     HE LEFT THE ROAD -- AFTER HE GOT BACK OUT OF THE  
2     GOODYEAR PLACE AND CAME BACK OUT TO THE EDGE, BECAUSE HE WAS  
3     LIKE NOT BEING ABLE TO GET INTO THE TRAFFIC, SWERVING IN AND  
4     OUT, HE GOT UP INTO THE PARKING LOT OF THAT RED ROBIN STATION  
5     THERE, WHICH WAS CROWDED, AT THE GAS PUMP AREA. HE WAS IN  
6     AND OUT OF THAT AREA. AS WE APPROACHED THE RED LIGHT, THE  
7     LIGHT, IT WAS RED. WE COULD NOT TURN RIGHT BECAUSE THERE WAS  
8     ONCOMING TRAFFIC, YOU KNOW. SOMETIMES YOU CAN TURN RIGHT.  
9     BUT THERE WAS TRAFFIC COMING. WE HAD TO WAIT TILL THAT  
10    TRAFFIC MOVED. AND WE WERE STILL TRYING TO KEEP AN EYE ON  
11    HIM. WHEN WE TURNED RIGHT AT THE RED LIGHT ON MILLER ROAD WE  
12    COULD NOT SEE THE RED SCOOTER.

13   Q     LET ME ASK YOU, AT THAT POINT WERE YOU NORMALLY GOING TO  
14    TURN RIGHT ON MILLER ROAD OR DID YOU DID THAT -- DO THAT IN  
15    AN EFFORT TO FOLLOW THE SCOOTER?

16   A     SIR, WHEN WE LEFT -- WHEN WE -- BEFORE WE APPROACHED  
17    GOODYEAR, WE WAS SET TO FOLLOW THE SCOOTER. WE KNEW  
18    SOMETHING WAS WRONG.

19   Q     AND DID YOU SO FOLLOW THE SCOOTER?

20   A     YES, SIR.

21   Q     AND YOU SAY YOU LOST SIGHT OF HIM ON MILLER ROAD?

22   A     FOR A FEW SECONDS WE LOST SIGHT OF HIM, AND QUICK AS WE  
23    TURNED ON MILLER ROAD, YES, WE DID SPEED, WE ACCELERATED UP  
24    MILLER ROAD TO SEE IF WE COULD CATCH HIM.

25   Q     AND DID YOU OBSERVE HIM?

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1     A     YES, SIR.  WE FINALLY SAW A RED SCOOTER TURN RIGHT.  AND  
2     THAT'S WHEN WE ACCELERATED EVEN FASTER.  AND HE TURNED RIGHT  
3     INTO GREENVILLE GYMNASIUM INTO THE FRONT PARKING LOT WHICH  
4     HAS A SIDE ROAD BESIDE OF IT.  YOU CAN GO TO THE BACK OR  
5     FRONT OF THAT BUSINESS.

6     Q     DID YOU GO IN THE BACK PARKING LOT OF THAT BUSINESS?

7     A     YES, SIR.

8     Q     WAS THE SCOOTER IN THE BACK PARKING LOT?

9     A     YES, SIR.

10    Q     TO GET IN THE BACK PARKING LOT DID YOU HAVE TO GO IN THE  
11    FRONT AND COME AROUND OR DID YOU ACTUALLY COME OFF MILLER  
12    ROAD INTO---

13    A     WE TURNED INTO THE BUSINESS ITSELF LOT, WHICH HAS A SIDE  
14    -- SMALL SIDE ROAD BESIDE OF IT.  YOU'RE NOT -- YOU'RE STILL  
15    IN THE BUSINESS PARKING LOT.

16    Q     ALL RIGHT.  WHEN YOU PULLED IN THE PARKING LOT WHERE DID  
17    YOU SEE THE SCOOTER?

18    A     IT WAS BEHIND THE BUILDING AND IT WAS SETTING UP BEHIND  
19    THE BUILDING IN THE AREA WHERE PEOPLE PARK THEIR VEHICLES,  
20    BUT IT WAS PARKED LIKE -- FORWARD LIKE IF HE WAS GOING TO GO  
21    OUT.

22    Q     WAS ANYBODY ON THE SCOOTER?

23    A     NO, SIR.

24    Q     WAS THE SCOOTER STANDING UP OR LAYING DOWN?

25    A     STANDING UP.



1 Q DID YOU SEE ANY OTHER VEHICLES IN THAT PARKING LOT?

2 A AS SOON AS WE CAME UPON -- WHEN WE ENTERED AND CAME  
3 AROUND, THERE IS A -- WAS A OLDER MODEL GRAND JEEP CHEROKEE,  
4 NAVY BLUE, FADED, WOOD GRAIN PEELING, SITTING RIGHT IN FRONT  
5 OF US, LIKE THIS. WE COULD HAVE ACTUALLY T-BONED THE CAR IF  
6 WE HAD ACCELLED (SIC) ANY FASTER.

7 Q HOW FAR WAS THE JEEP FROM THE MOTOR SCOOTER?

8 A PROBABLY FROM HERE TO MAYBE THE END OF THAT TABLE, MAYBE  
9 A LITTLE BIT FARTHER.

10 Q ALL RIGHT. WHEN YOU GOT INTO THE PARKING LOT, YOU SAW  
11 THE SCOOTER, YOU SAW THE JEEP. WHAT ELSE DID YOU SEE?

12 A WELL, WE WERE LOOKING -- REALLY LOOKING DOWN BECAUSE WE  
13 WERE SCARED. WE'D BEEN SCARED ALL ALONG. I SAW A DOOR OPEN.  
14 I DON'T KNOW WHAT DOOR WAS OPEN ON THE JEEP. ALL I SAW, A  
15 DOOR OPEN AND A PERSON GO IN THERE AND I STILL SEE THE LIGHT-  
16 COLORED COAT. AND AS THAT HAPPENS THE DOOR CLOSES AND THE  
17 LADY IN THE JEEP TAKES ONE LOOK AROUND.

18 Q THERE'S A LADY IN THE JEEP?

19 A THERE'S A LADY IN THE JEEP DRIVING.

20 Q DRIVING?

21 A DRIVING.

22 Q OKAY.

23 A SHE TOOK ONE LOOK AROUND, LOOKED AT US. BROWN HEADED,  
24 RED TINT, HAIR TO HERE (INDICATING), TURNED HERSELF BACK  
25 AROUND AND NEVER LOOKED FORWARD TO US AGAIN. AND THEY TOOK

1 STRAIGHT OUT ACROSS.

2 Q ALL RIGHT. AND DO YOU KNOW THE NAME OF THAT ROAD?

3 A SOUTH OAK.

4 Q SOUTH OAK?

5 A UH-HUH (AFFIRMATIVE).

6 Q ALL RIGHT. AND THEN DID THEY STAY ON SOUTH OAK?

7 A THEY LEFT THE PARKING LOT OF GREENVILLE GYMNASTICS, THE  
8 REAR PARKING LOT, WENT STRAIGHT OUT. AND THEY HAD TO TURN A  
9 LITTLE LEFT AND THEN A LITTLE RIGHT AND THEN DIRECTLY BACK  
10 LEFT ON MAPLETON DRIVE.

11 Q MAPLETON DRIVE?

12 A YES, SIR.

13 Q AND DID THEY PROCEED DOWN MAPLETON DRIVE?

14 A THEY PROCEEDED DOWN MAPLETON DRIVE, AND WE WAS  
15 PROCEEDING AFTER THEM.

16 Q TO YOUR OBSERVATION WAS THERE MORE THAN ONE PERSON IN  
17 THE JEEP OTHER THAN THE LADY DRIVING?

18 A SIR, I SAW STILL IN THE PARKING LOT BEFORE IT LEFT THE  
19 BUILDING I SAW A PERSON ENTER THE JEEP WITH A COAT THAT I HAD  
20 SEEN THE PERSON ON THE SCOOTER WITH. I SAW A HEAD BOB UP  
21 TWICE.

22 Q NOW, AS YOU'RE GOING DOWN MAPLETON DRIVE TELL US WHAT  
23 YOU'RE DOING AT THAT POINT.

24 A AT THAT POINT WE'RE ON THE PHONE WITH 911, AND WE'RE  
25 TRYING TO GET A TAG NUMBER. WE'VE ALREADY GIVE A DESCRIPTION

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 OF THE VEHICLE, TRYING TO GET A TAG NUMBER SO THAT WE CAN  
2 TELL THEM. AND ALL ALONG WE'RE ASKING ABOUT, IS THERE ANY  
3 NEWS ABOUT AN OFFICER BEING DOWN OFF OF WOODRUFF ROAD? AND  
4 WE HAD TO SPEED UP FINALLY BECAUSE THEY WERE RUNNING. THE  
5 CAR WAS RUNNING FROM US. AND WHEN WE GOT THE TAG NUMBER, WE  
6 READ IT OUT TO THEM TWICE, BEST I CAN REMEMBER AS OF TODAY,  
7 AND THEY TOOK THE FIRST LEFT. 911 ASKED US WERE WE GOING TO  
8 PURSUE AFTER IT. WE TOLD THEM NO, THAT WE WERE GOING TO GO  
9 BACK TO THE POLICE OFFICER BECAUSE SHE COULD NOT TELL US AT  
10 THAT POINT IF ANYBODY WAS THERE, WAS HE OKAY, HAD ANYTHING  
11 HAPPENED.

12 Q ALL RIGHT. I'M GOING TO SHOW YOU A SERIES OF  
13 PHOTOGRAPHS AND ASK YOU IF YOU RECOGNIZE WHAT IS PHOTOGRAPH  
14 26A?

15 A THIS IS THE GREENVILLE GYMNASATIC BUILDING HERE.

16 Q ALL RIGHT. AND -- THAT'S ALL RIGHT. DO YOU RECOGNIZE  
17 THAT?

18 A YES, SIR.

19 Q ALL RIGHT. AND I WANT TO SHOW YOU 26B AND ASK YOU IF  
20 YOU RECOGNIZE THAT?

21 A STILL -- IT'S STILL THE GREENVILLE GYMNASATIC.

22 Q AND 26C?

23 A THE SAME. THE SCOOTER AND THE BUILDING.

24 Q 26D?

25 A STILL THE SAME.

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 Q AND 26E?

2 A SAME.

3 Q OKAY. GOING OUT THE BACK TO MAPLETON DRIVE?

4 A UH-HUH (AFFIRMATIVE).

5 Q 26G?

6 A YES, SIR.

7 Q AND 26H?

8 A YES, SIR.

9 SOLICITOR ARIAIL: ALL RIGHT. YOUR HONOR, WE WOULD  
10 LIKE TO OFFER THESE --

11 Q ARE THESE ACCURATE REPRESENTATIONS? DO THESE  
12 PHOTOGRAPHS ACCURATELY REPRESENT THAT AREA AS YOU SAW IT ON  
13 THAT DAY, DECEMBER 6TH?

14 A EXACTLY.

15 (COUNSEL OFF RECORD)

16 MR. BANNISTER: NO OBJECTION.

17 THE COURT: WITHOUT OBJECTION.

18 (STATE'S EXHIBITS 26A THROUGH 26E, 26G AND 26H,  
19 PHOTOGRAPHS, MOVED INTO EVIDENCE)

20 Q LET ME SHOW YOU -- AND WE'LL RUN THROUGH THIS SERIES OF  
21 PHOTOGRAPHS. I'M GOING TO SHOW YOU WHAT IS 26A AND ASK YOU  
22 IF YOU WILL TELL US WHAT WE'RE LOOKING AT. THE STOP SIGN  
23 DOWN THERE IN PARTICULAR, SEE THE STOP SIGN IN THE FAR END?

24 A YES, SIR.

25 Q AND WHAT ROAD IS THAT?

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 A SOUTH OAK.

2 Q AND WHEN YOU CAME UP THAT ROAD, IF YOU WOULD GO DOWN TO  
3 THAT STOP SIGN AND TURN LEFT, WHAT ROAD WOULD YOU BE ON?

4 A MILLER.

5 Q AND SO YOU CAME UP MILLER AND TURNED RIGHT ON SOUTH OAK?

6 A YES, SIR.

7 Q COMING TOWARDS WHERE THE PICTURE IS TAKEN FROM?

8 A WE TURNED IN THE BUILDING RIGHT THERE, WHICH IS THE  
9 GREENVILLE GYMNASIUM---

10 Q DID YOU TURN---

11 A THE ROAD FOLLOWING IT IS SOUTH OAK.

12 Q ALL RIGHT. DID YOU TURN IN RIGHT HERE BETWEEN THESE  
13 BIG TREES?

14 A INSIDE THE AREA OF THE BUILDING.

15 Q I'M SORRY?

16 A WE TURNED INTO BESIDE THE BUILDING -- SIDE OF THE  
17 BUILDING, NOT OUT IN THE ROAD. WE WAS IN THE BUILDING AREA.

18 Q RIGHT. YOU TURNED INTO THE PARKING LOT AREA?

19 A YES, SIR.

20 Q OKAY. AND WHAT I'M GOING TO SHOW YOU, 26B, IS JUST A  
21 LITTLE CLOSER SHOT. AND IS THAT THE POSITION OF THE MOTOR  
22 SCOOTER THAT YOU SAW?

23 A BEST I CAN REMEMBER, YES, SIR.

24 Q ALL RIGHT. 26C. AND WHERE WOULD YOU HAVE BEEN WHEN YOU  
25 PULLED INTO THAT PARKING LOT? THERE'S OBVIOUSLY A VAN HERE

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 NOW AND A DEPUTY SHERIFF'S CAR. BUT BEFORE THOSE WERE THERE,  
2 WHERE WOULD YOU HAVE BEEN? WOULD YOU HAVE BEEN ON THE SIDE  
3 OF THE VAN OR THE SIDE OF THE SHERIFF DEPUTY CAR?

4 A ON THE SIDE OF THE SHERIFF DEPUTY CAR.

5 Q ALL RIGHT. AND THE JEEP, WHERE WOULD IT HAVE BEEN  
6 LOCATED?

7 A ABOUT -- JUST RIGHT -- IN FRONT OF THE SCOOTER. IN  
8 FRONT OF IT.

9 Q IN FRONT OF IT?

10 A UH-HUH (AFFIRMATIVE).

11 Q NOW, IN A LONGER VIEW, 26D LOOKING BACK DOWN THE ROAD,  
12 AGAIN SHOWING THE PARKING LOT, DRIVEWAY AND THE ROAD.

13 A WHAT'S THE QUESTION?

14 Q NOTHING. JUST TO GIVE YOU A LOOK AT IT.

15 A OKAY.

16 Q NOW, LET ME SEE, THIS ONE, 26E. WHAT IS THAT ROAD OVER  
17 THERE?

18 A YOU'VE GOT TO CROSS OVER THAT LITTLE GRASS MEDIAN.  
19 YOU'RE ON SOUTH OAK, WHICH IS MAPLETON DRIVE, GOING DOWN  
20 MAPLETON DRIVE.

21 Q ALL RIGHT. SO THAT'S MAPLETON GOING THE LONG WAY?

22 A YES, SIR.

23 Q SOUTH OAK GOING ACROSS THIS WAY, AND THEN THE PARKING  
24 LOT WHERE THE SCOOTER IS?

25 A YES, SIR.

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 Q NOW, FROM THAT PICTURE WHERE WOULD THE JEEP HAVE BEEN?

2 A IT WAS IN FRONT OF THE SCOOTER, SOMEWHERE IN FRONT OF  
3 THE SCOOTER.

4 Q SO IF WE HAD TAKEN THIS PICTURE WHEN THE JEEP WAS THERE  
5 YOU WOULD NOT HAVE BEEN ABLE TO SEE THE STOP SIGN AND LOOK  
6 ACROSS THAT WAY?

7 A I DON'T THINK SO.

8 Q OKAY. 26G, IS THAT THE SCOOTER YOU SAW AND THE POSITION  
9 IT WAS IN?

10 A IT WAS SETTING UP.

11 Q JUST LIKE THAT?

12 A KICKSTAND AND ALL, YES, SIR.

13 Q AND I'LL SHOW YOU PHOTOGRAPH 26H FROM THE OTHER SIDE.  
14 IS THAT THE RELATIVE POSITION?

15 A YES, SIR.

16 Q OKAY. AND THAT'S THE WAY THE JEEP WAS SITTING WHEN YOU  
17 GOT THERE?

18 A YES, SIR, RIGHT IN FRONT OF IT. OUT FROM IT.

19 Q I'M SORRY. THAT'S THE WAY THE SCOOTER WAS SITTING?

20 A YES, SIR. YES, SIR.

21 Q WERE YOU ABLE TO GET THE TAG NUMBER OFF THE JEEP?

22 A YES, SIR, WE WAS ABLE -- WE GOT IT OFF AND READ IT OUT  
23 TO 911 TWICE.

24 Q AND THE 911 DISPATCHER STAYED ON THE RADIO -- OR ON THE  
25 PHONE WITH YOU?

DEBORAH WHEELER -- DIRECT BY SOLICITOR ARIAIL

1     A     YES, SIR.

2     Q     LET ME SHOW YOU WHAT'S BEEN MARKED -- WHAT'S BEEN MARKED  
3     44B AND ASK YOU IF THAT APPEARS TO BE THE SAME JEEP VEHICLE  
4     THAT YOU OBSERVED GOING DOWN MILLER ROAD?

5     A     YES, SIR, SAME ONE I HAD STATED THE SAME DAY.

6           SOLICITOR ARIAIL:     YOUR HONOR, WE WOULD LIKE TO OFFER  
7     THIS PHOTOGRAPH.

8           MR. BANNISTER:     WITHOUT OBJECTION.

9           (STATE'S EXHIBIT NUMBER 44B, PHOTOGRAPH, MOVED INTO  
10    EVIDENCE)

11    Q     IS THAT WHAT THE JEEP LOOKED LIKE WHEN YOU SAW IT?

12    A     YES, SIR.

13    Q     WOOD GRAIN SIDING THAT WAS PEELING?

14    A     PEELING. NAVY BLUE, WOOD GRAIN PEELING, OLDER MODEL.

15           SOLICITOR ARIAIL:     THANK YOU. THAT'S ALL I HAVE.

16    ANSWER ANY QUESTIONS THAT EITHER OF THE DEFENSE ATTORNEYS MAY  
17    HAVE.

18           MR. BANNISTER:     (OFF RECORD WITH CO-COUNSEL) THANK  
19    YOU, JUDGE. SORRY ABOUT THAT.

20    CROSS EXAMINATION BY MR. BANNISTER:

21    Q     JUST A COUPLE OF QUESTIONS, MS. WHEELER. AS YOU WERE  
22    FOLLOWING THE SCOOTER DOWN WOODRUFF ROAD AND THEN FOLLOWING  
23    IT AROUND THE CORNER ON MILLER ROAD DID YOU KEEP A PRETTY  
24    GOOD LINE OF SIGHT WITH THE SCOOTER?

25    A     WE LOST VIEW OF THE SCOOTER ONE TIME.



DEBORAH WHEELER -- CROSS BY MR. BANNISTER

1 Q AND AS I UNDERSTOOD IT, YOU LOST SIGHT OF THE SCOOTER AS  
2 IT CAME AROUND THE CORNER BEHIND THE GYMNASTICS GYMNASIUM OR  
3 WHATEVER THAT BUSINESS IS, JUST FOR A BRIEF TIME?

4 A JUST FOR A SECOND.

5 Q ALL RIGHT. AND SO FOR THAT SECOND THE PERSON ON THE  
6 SCOOTER, WE WOULD ASSUME, WAS ABLE TO STOP THE SCOOTER AND  
7 PUT THE KICK DOWN -- PUT THE KICKSTAND DOWN. YOU DIDN'T SEE  
8 THAT DONE?

9 A NO, SIR.

10 Q ALL RIGHT. AND YOU DIDN'T ACTUALLY SEE THE PERSON MOVE  
11 FROM THE SCOOTER TO THE, I GUESS, MAYBE 15 YARDS YOU'RE  
12 DESCRIBING TO THE DOOR OF THE WAGONEER? WHEN YOU CAME AROUND  
13 YOU SAW THE PERSON GETTING INTO THE WAGONEER?

14 A YES, SIR, WITH THE SAME COAT THAT WAS ON THAT I SAW ON  
15 THE SCOOTER.

16 MR. BANNISTER: THAT'S ALL THE QUESTIONS I HAVE.

17 SOLICITOR ARIAIL: NOTHING FURTHER.

18 THE COURT: MA'AM, THANK YOU. WE APPRECIATE IT.

19 WITNESS: THANK YOU.

20 THE COURT: NEXT WITNESS.

21 SOLICITOR ARIAIL: MAY SHE BE EXCUSED -- WELL, CAN SHE  
22 BE EXCUSED AFTER HER HUSBAND TESTIFIES?

23 THE COURT: WITHOUT OBJECTION.

24 SOLICITOR ARIAIL: WE CALL TERRY WHEELER.

25 TERRY WHEELER, HAVING BEEN DULY

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

3 Q MR. WHEELER, IF YOU WOULD, STATE YOUR NAME FOR THE  
4 RECORD, PLEASE.

5 A TERRY WHEELER.

6 Q AND, MR. WHEELER, I WANT TO DIRECT YOUR ATTENTION AND  
7 TAKE YOU BACK TO DECEMBER THE 6TH OF THE YEAR 2000 AROUND  
8 12:00 NOON. WERE YOU AT THE TIME IN THE VICINITY OF WOODRUFF  
9 ROAD AND I-85?

10 A YES, SIR.

11 Q AND WHAT WAS YOUR PURPOSE IN BEING THERE?

12 A WE WAS JUST OUT SHOPPING FOR A CHRISTMAS TREE FOR  
13 CHRISTMAS.

14 Q THAT WAS YOU AND YOUR WIFE?

15 A YES, SIR.

16 Q AND WHERE HAD YOU BE SHOPPING FOR THE CHRISTMAS TREE?

17 A BEEN BY TARGET'S AND HOME -- YEAH, HOME DEPOT. WE WAS  
18 LEAVING THERE AND THINKING ABOUT GETTING SOME LUNCH.

19 Q OKAY. WHEN YOU LEFT TARGET AND HOME DEPOT -- THAT'S ON  
20 THE GREENVILLE SIDE OF 85?

21 A UH-HUH (AFFIRMATIVE).

22 Q DID YOU GET ON WOODRUFF ROAD?

23 A YEAH.

24 Q WHICH WAY WERE YOU HEADED?

25 A OUT FROM GREENVILLE TOWARD -- DOWN WOODRUFF ROAD.

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 Q HEADING OUT TOWARDS 385?

2 A YES, SIR.

3 Q WHEN YOU BEGAN DRIVING OUT THAT WAY TELL US WHAT YOU  
4 OBSERVED WHEN YOU CAME TO THE INTERSECTION OF THE OFF RAMP AT  
5 I-85 WITH THE INTERSECTION WITH WOODRUFF ROAD.

6 A THE TRAFFIC WAS PRETTY HEAVY, YOU KNOW, DURING  
7 CHRISTMAS. WE WERE SETTING AT THE RED LIGHT PRETTY MUCH ON  
8 THE BRIDGE, AND IT CHANGED. WE CROSSED OVER THE BRIDGE AND  
9 AT THAT TIME WE NOTICED A PATROLMAN PURSUING A SMALL RED  
10 SCOOTER. AND I TOLD MY WIFE, YOU KNOW, "I DON'T KNOW WHY  
11 HE'S RUNNING. HE'S NOT GOING TO BE ABLE TO GET AWAY FROM HIM  
12 ON THAT LITTLE SCOOTER," YOU KNOW. SO TRAFFIC WAS STILL  
13 MOVING KIND OF SLOW. THE LIGHT CHANGED AND WE OBSERVED THE  
14 OFFICER AND THE SCOOTER TURN INTO THE OLD PHILLIPS FIBER  
15 PARKING LOT.

16 Q DID THE TROOPER HAVE HIS LIGHTS ON?

17 A YES, SIR.

18 Q AND SIREN?

19 A YES, SIR.

20 Q BOTH?

21 A YES, SIR.

22 Q OKAY. COULD YOU HEAR THE SIREN?

23 A YEAH, I HEARD THE SIREN. YEAH.

24 Q GO AHEAD. THEY TURNED INTO FRONTAGE ROAD THERE ON---

25 A YEAH. WHEN THEY TURNED IN, LIKE I SAY, THE FRONTAGE

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 ROAD THERE IS A MEDIAN, AND I NOTICED THE TROOPER KIND OF  
2 EASED TOWARD THE LEFT OF THE SCOOTER, AND THE SCOOTER --  
3 THERE'S A PYLON RIGHT THERE, LIKE A MEDIAN. IT PRETTY MUCH  
4 HAD TO STOP BECAUSE IF IT DIDN'T HE WAS GOING TO HIT THAT  
5 CURB. AND LIKE I SAY, WE WAS MOVING. WE STARTED MOVING  
6 THEN, AND MY WIFE, DEBORAH, HEARD GUNSHOTS. I DIDN'T REALLY  
7 HEAR A GUNSHOT BECAUSE I, YOU KNOW, HAD THE WINDOWS UP AND  
8 THE RADIO ON. BUT I WAS ON THE OTHER SIDE OF THE CAR. SO  
9 SHE HEARD SOME GUNSHOTS, AND HER AND I BOTH KEPT LOOKING BACK  
10 AND NOTICING THE TROOPER'S CAR WASN'T MOVING OR ANYTHING.  
11 BUT AT THAT TIME THE SCOOTER LEFT THE PATROL CAR, MADE A U-  
12 TURN AND CAME BACK OUT. WHEN HE CAME BACK OUT WE DONE MOVED  
13 ENOUGH HE CAME RIGHT UP BESIDE OF OUR TRUCK. THAT'S WHEN WE  
14 NOTICED---

15 Q HOW WAS THAT PERSON DRESSED?

16 A HE HAD KIND OF A BEIGE-TAN LOOKING LONGER COAT ON AND  
17 A -- LIKE I SAY, THE HELMET YOU COULDN'T REALLY SEE HIS FACE.  
18 HE HAD A FULL FACE HELMET, YOU KNOW.

19 Q WHAT COLOR WAS THE HELMET?

20 A BLACK.

21 Q SO HE HAD A BLACK HELMET AND A BEIGE COLORED COAT. DO  
22 YOU REMEMBER WHAT COLOR PANTS HE HAD ON?

23 A KIND OF BROWN, BROWNISH COLOR PANTS.

24 Q DARK OR LIGHT?

25 A I'D SAY THEY WERE DARK.

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 Q OKAY.

2 A AND HE HAD A -- I NOTICED HE DIDN'T HAVE NO GLOVES ON.  
3 THAT'S THE REASON I TOOK FOR GRANTED HE WAS, YOU KNOW, A  
4 WHITE MALE.

5 Q OKAY.

6 A THE WAY HE WAS BUILT AND EVERYTHING. BUT WE CAME OUT --  
7 HE CAME RIGHT UP AGAINST OUR DOOR, AND LIKE I SAY, DEBORAH  
8 KEPT SAYING SHE SWORE SHE HEARD A GUNSHOT. AND WE KEPT  
9 LOOKING AT THE CAR AND THE CAR DIDN'T MOVE. SO THEN WE  
10 NOTICED HIM. HE STARTED DODGING IN AND OUT OF TRAFFIC. AND  
11 I TOLD HER, I SAID, "HE'S RUNNING FROM SOMETHING.  
12 SOMETHING'S HAPPENED," YOU KNOW.

13 AND AT THAT TIME WE CALLED 911 AND ASKED THEM AND ASKED  
14 THEM DID THEY HAVE AN OFFICER DOWN OR ANYTHING LIKE THAT.  
15 AND AT THAT TIME THEY SAID THEY DIDN'T.

16 SO, LIKE I SAY, TRAFFIC WAS PRETTY HEAVY AND HE WAS  
17 DARTING IN AND OUT, AND HE HIT THE CURB OUT THERE KIND OF AT  
18 THE GOODYEAR STORE AND HE MADE IT ACROSS THERE AND INTO  
19 THAT -- I THINK IT'S A RED ROBIN FILLING STATION. BY THEN  
20 THE LIGHT HAD CHANGED AND WE STARTED MOVING, AND I SAID,  
21 "HE'S GOING TO PROBABLY GET AWAY BECAUSE WE CAN'T GET BY."  
22 SO---

23 Q HAD Y'ALL DECIDED YOU WERE GOING TO FOLLOW HIM?

24 A YEAH. WE DEFINITELY WAS GOING TO FOLLOW HIM BECAUSE,  
25 LIKE I SAY, THE PATROL CAR WASN'T MOVING OR NOTHING. AND HE

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 WENT AROUND RED ROBIN THERE. AND LIKE I SAY, TRAFFIC MOVED  
2 AND I WAS ABLE TO TURN. AND HE DONE -- THERE'S A RAILROAD  
3 CROSSING RIGHT THERE, AND HE DONE MADE IT PAST THAT. I TOLD  
4 DEBORAH, I SAID, "WE PROBABLY LOST HIM," YOU KNOW. BUT RIGHT  
5 AT THAT TIME I SEEN A LITTLE RED -- I SPOTTED THE SCOOTER.  
6 IT DARTED BEHIND, I THINK, IT'S A GYM THERE. WHEN WE TURNED  
7 THE CORNER THERE WAS A BLUE JEEP SITTING THERE. I JUST  
8 ASSUMED SHE WAS SITTING THERE WAITING ON HIM. AND THE  
9 SCOOTER, HE HAD ENOUGH TIME TO PARK THE SCOOTER. IT WASN'T  
10 EVEN THROWN DOWN OR NOTHING. WE SEEN HIM ENTER THE BLUE  
11 JEEP, AND THE GIRL LOOKED STRAIGHT AT US AND SHE TURNED --  
12 SHE WENT OUT AND TURNED RIGHT BACK---

13 Q WELL, LET ME GO BACK.

14 A OKAY.

15 Q THE GIRL, WHAT GIRL ARE YOU TALKING ABOUT?

16 A THE GIRL -- THERE WAS A GIRL DRIVING THE JEEP.

17 Q SHE WAS IN THE DRIVER'S SEAT OF THE JEEP?

18 A IN THE DRIVER'S SEAT.

19 Q DID YOU SEE ANYBODY ELSE EITHER GET INTO THE JEEP OR IN  
20 THE JEEP?

21 A ALL I SEEN WAS HER JUST TURN HER FACE RIGHT AT US AND  
22 LOOK AT US, YOU KNOW. AND HE ENTERED FROM THE RIGHT SIDE OF  
23 THE JEEP.

24 Q AND HE -- THE DRIVER OF THE SCOOTER?

25 A YES.

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 Q DID YOU SEE HIM GET IN THE JEEP?

2 A I SEEN -- I SEEN -- I ASSUMED IT WAS HIM BECAUSE HE  
3 HAD -- HE STILL HAD THE TAN JACKET AND EVERYTHING ON HIM,  
4 AND, YOU KNOW, I ASSUMED IT WAS HIM.

5 Q YOU SAW A PERSON GET IN THE JEEP?

6 A CORRECT.

7 Q WITH THE SAME DRESS AND THAT SORT OF THING?

8 A YES, SIR.

9 Q ALL RIGHT. AND THE SCOOTER WAS PARKED OVER TO THE SIDE?

10 A YES, SIR.

11 Q SITTING UP ON ITS KICKSTAND?

12 A YES, SIR.

13 Q WELL, LIKE I SAY, SHE TOOK OFF AND SHE GOT TURNED AND

14 EVERYTHING BEFORE WE COULD, AND WE TOOK OFF CHASING THEM.

15 AND, YOU KNOW, I HAD TO GET UP A PRETTY GOOD SPEED. AND AT

16 THAT TIME I NOTICED SOMEBODY JUMPED INTO THE BACK SEAT OF THE

17 JEEP AND BY THEN I WAS GETTING CLOSE ENOUGH TO GET THE TAG

18 NUMBER AND CALL IT IN TO 911. WHEN THEY TURNED LEFT, WE KEPT

19 GOING STRAIGHT.

20 Q AND DID YOU GET A TAG NUMBER?

21 A YES, SIR. I DON'T RECALL THE NUMBER MYSELF, BUT I GAVE  
22 IT OUT TO THE 911.

23 Q TO THE 911 OPERATOR ON THE CELL PHONE?

24 A YEAH, A COUPLE OF TIMES.

25 Q OKAY. LET ME SHOW YOU JUST A COUPLE OF PHOTOGRAPHS.

TERRY WHEELER -- DIRECT BY SOLICITOR ARIAIL

1 STATE'S EXHIBIT 44B, DOES THAT APPEAR TO BE THE JEEP THAT YOU  
2 SAW IN THE PARKING LOT BEHIND THE GREENVILLE GYMNASTICS?

3 A YES, SIR.

4 Q AND STATE'S 26F---

5 A YES, SIR.

6 Q ---DOES THAT APPEAR TO BE THE SCOOTER YOU SAW?

7 A YES, SIR.

8 Q AND IS IT IN THE RELATIVE POSITION THAT IT WAS IN AT THE  
9 TIME YOU SAW IT?

10 A YES, SIR.

11 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) THANK  
12 YOU, MR. WHEELER. ANSWER ANY QUESTIONS THE DEFENSE COUNSEL  
13 MAY HAVE.

14 CROSS EXAMINATION BY MR. BANNISTER:

15 Q MR. WHEELER, JUST A COUPLE OF QUICK QUESTIONS. WHEN YOU  
16 CAME AROUND THE CORNER OF THE GYMNASIUM THE JEEP WAS THERE  
17 BEFORE YOU WERE THERE; IS THAT CORRECT?

18 A YES, SIR.

19 Q AND WHETHER IT HAD BEEN THERE A SHORT PERIOD OF TIME OF  
20 A LONG PERIOD OF TIME YOU SIMPLY HAVE NO IDEA?

21 A NO, SIR.

22 MR. BANNISTER: I DON'T HAVE ANY FURTHER QUESTIONS.

23 SOLICITOR ARIAIL: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: MR. WHEELER, THANK YOU, SIR.

25 WITNESS: THANK YOU.



TERRY WHEELER -- CROSS BY MR. BANNISTER

(WITNESS STEPS DOWN AT 4:59 P.M.)

**SOLICITOR ARIAIL:** WE CALL MARY SWAFFORD.

(BENCH CONFERENCE OFF RECORD FROM 5:00 TO 5:01 P.M.)

**MARY SWAFFORD,** HAVING BEEN DULY

SWORN, TESTIFIED AS FOLLOWS:

**DIRECT EXAMINATION BY SOLICITOR ARIAIL:**

**Q** MS. SWAFFORD, IF YOU WOULD, PLEASE STATE YOUR NAME FOR THE RECORD.

**A** YES, SIR. MARY SWAFFORD.

**Q** AND BY WHOM ARE YOU EMPLOYED?

**A** GREENVILLE COUNTY SHERIFF'S OFFICE.

**Q** AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE?

**A** TWENTY-TWO YEARS.

**Q** AND IN WHAT CAPACITY WERE YOU EMPLOYED WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE ON DECEMBER THE 6TH OF THE YEAR 2000?

**A** COMMUNICATIONS SUPERVISOR.

**Q** AND TELL THE JURY WHAT A COMMUNICATIONS SUPERVISOR IS AND DOES.

**A** WE ARE IN THE COMMUNICATIONS ROOM. WE TAKE CALLS. WE SUPERVISE ALL THE WORKERS. I HAVE SIX DISPATCHERS THAT I SUPERVISE, AND I WATCH OVER THEIR WORK.

**Q** AND THESE PEOPLE ARE RELATED TO DISPATCHING OR FIELDING 911 CALLS AS WELL AS RADIO TRAFFIC FROM DEPUTY SHERIFFS

MARY SWAFFORD -- DIRECT BY SOLICITOR ARIAIL

1     THROUGHOUT THE COUNTY?

2     A     YES, SIR.

3     Q     YOU ANSWER CALLS FROM CIVILIANS AND DISPATCH DEPUTY  
4     SHERIFFS TO RESPOND TO THOSE CALLS?

5     A     YES, SIR.

6     Q     ALL RIGHT.  AND THIS IS A, I ASSUME, A 24-HOUR, SEVEN-  
7     DAY-A-WEEK, 365-DAY-A-YEAR JOB THAT IS MANNED AT ALL HOURS?

8     A     YES, SIR, IT IS.

9     Q     AND YOU ARE ONE OF THE SUPERVISORS AND THERE ARE OTHER  
10    SUPERVISORS ALSO?

11    A     YES, SIR.

12    Q     NOW, ON DECEMBER THE 6TH AT 12:00 NOON THAT WOULD BE THE  
13    FIRST SHIFT; IS THAT RIGHT?

14    A     YES, SIR, IT WOULD BE.

15    Q     AND WERE YOU ON DUTY AS A SUPERVISOR AT THAT TIME?

16    A     YES, SIR, I WAS.

17    Q     DID YOU HAVE OCCASION ON THAT DAY AND AROUND THAT TIME  
18    TO TAKE A 911 CALL FROM A MR. TERRY WHEELER?

19    A     YES, I DID.

20    Q     AND DURING THE COURSE OF THAT CONVERSATION DID HE  
21    DESCRIBE TO YOU CERTAIN EVENTS, AND AS AN END PRODUCT DID HE  
22    GIVE YOU A TAG NUMBER?

23    A     YES, SIR, HE DID.

24    Q     NOW, WHEN HE GAVE YOU THE TAG NUMBER WHAT DO YOU HAVE  
25    AVAILABLE TO YOU IN ORDER TO CHECK A TAG NUMBER?  HOW DO YOU

MARY SWAFFORD -- DIRECT BY SOLICITOR ARIAIL

1 DO THAT?

2 A I HAVE A COMPUTER. WE HAVE COMPUTERS AT EVERY CONSOLE.  
3 SO WHOEVER IS SITTING AT THE CONSOLE HAS ACCESS TO GO INTO  
4 THE S.L.E.D. SYSTEM AND PUT THE TAGS IN, AND WITHIN SECONDS,  
5 FOUR OR FIVE SECONDS, WE GET THE RESPONSE.

6 Q AND THE RESPONSE IS THEN ON THE SCREEN AND CAN BE  
7 PRINTED OUT?

8 A YES, SIR.

9 Q AND I WANT TO SHOW YOU THIS PARTICULAR DOCUMENT WHICH IS  
10 MARKED AS STATE'S EXHIBIT NUMBER 52. FIRST I WANT TO ASK YOU  
11 IF YOU ARE FAMILIAR WITH THAT, AND SECONDLY I WANT TO KNOW IF  
12 THAT IS YOUR HANDWRITING ON THE BOTTOM OF THAT?

13 A YES, SIR. I AM FAMILIAR WITH IT, AND IT IS MY  
14 HANDWRITING.

15 Q AND IS THAT THE ORIGINAL OF THE D.M.V. REQUEST THAT YOU  
16 PERFORMED ON DECEMBER 6TH ON THE TAG NUMBER GIVEN TO YOU BY  
17 MR. WHEELER?

18 A YES, SIR, IT APPEARS TO BE.

19 Q ALL RIGHT. AND IS THE TAG NUMBER ON THERE? CAN YOU  
20 READ TO US WHAT THE TAG NUMBER IS?

21 A IT'S 881LMB.

22 Q AND DID YOU TAKE THAT FROM HIM OVER THE TELEPHONE?

23 A YES, I DID.

24 Q AND AT THE BOTTOM DID YOU SO WRITE HIS NAME AND HIS HOME  
25 NUMBER AND CELL NUMBER?

MARY SWAFFORD -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR, I DID.

2 SOLICITOR ARIAIL: YOUR HONOR, WE'D LIKE TO OFFER THAT.

3 MR. MAULDIN: (REVIEWS EXHIBIT) THANK YOU. NO  
4 OBJECTION.

5 (STATE'S EXHIBIT NUMBER 52, TELETYPE ON LICENSE TAG  
6 881LMB, MOVED INTO EVIDENCE)

7 Q MS. SWAFFORD, I'M GOING TO PLACE THIS AND IT'S GOING TO  
8 BLOW UP ON THAT SCREEN RIGHT THERE. I'M SOMEWHAT HANDICAPPED  
9 BECAUSE MY OPERATOR IS NOT HERE. WE'RE GOING TO SEE IF WE  
10 CAN'T FOCUS A LITTLE BIT.

11 TELL ME, THE TAG NUMBER IN THE UPPER LEFT IS THE TAG  
12 NUMBER YOU READ TO ME?

13 A YES, SIR, IT IS.

14 Q IT'S A TAG ISSUED FOR 881LMB AND IT EXPIRES ON 10 OF  
15 2002, ACROSS THAT TOP LINE; IS THAT CORRECT?

16 A YES, SIR.

17 Q AND THE CAR IS A, IT SAYS, A 1975 JEEP STATION WAGON  
18 WITH A VIN NUMBER?

19 A YES, SIR.

20 Q THE NEXT LINE IS THE PERSON TO WHOM THE VEHICLE IS  
21 REGISTERED?

22 A YES, SIR, THAT'S CORRECT.

23 Q KAREN P. MCCALL?

24 A YES, SIR.

25 Q WITH AN ADDRESS OF OLD DOBBINS BRIDGE ROAD IN TOWNVILLE,

MARY SWAFFORD -- DIRECT BY SOLICITOR ARIAIL

1 SOUTH CAROLINA, ANDERSON COUNTY?

2 A YES, SIR, THAT'S CORRECT.

3 Q AND THEN ON THE BOTTOM IT HAS THE IN AND THE OUT. WHAT  
4 DOES THE IN AND THE OUT MEAN?

5 A THE IN IS WHEN IT WAS ENTERED, THE TAG WAS ENTERED. THE  
6 OUT IS WHEN WE RECEIVED THE RESPONSE ON IT.

7 Q SO IF IT WAS ENTERED ON DECEMBER THE 6TH OF 2000 AT  
8 12:19, THAT WOULD BE 19 MINUTES AFTER NOON, 19 AND 56 SECONDS  
9 -- WELL, IT WOULD BE 56 HUNDREDTHS SECONDS, I GUESS. NO,  
10 IT'S 56 SECONDS. EXCUSE ME. IT'S BEEN A LONG DAY.

11 AND THEN THE BOTTOM WOULD PRINT OUT AT THE SAME TIME?

12 A YES, SIR.

13 Q SO IT'S AN INSTANTANEOUS PRINT BACK?

14 A YES, SIR, IT IS.

15 Q OKAY. AND YOU PRINT THE HARD COPY. AND WHEN THE HARD  
16 COPY WAS PRINTED DID YOU WRITE ON THE BOTTOM THE CALLER'S  
17 NAME AND TELEPHONE NUMBER?

18 A YES, I DID.

19 Q AND IS THAT SOMETHING YOU DO AS A PART OF YOUR NORMAL  
20 EVERYDAY DUTIES?

21 A TO RUN THE TAGS OR TO WRITE THE NAME?

22 Q TO RUN THE TAGS.

23 A YES, IT IS. WE DO THAT ON EVERY OCCASION WHERE WE HAVE

24 A -- WHERE WE'RE GIVEN A TAG TO CHECK TO SEE IF IT COMES BACK  
25 TO A VEHICLE.

MARY SWAFFORD -- DIRECT BY SOLICITOR ARIAIL

1           **SOLICITOR ARIAIL:**    OKAY.   THANK YOU.   ANSWER ANY  
2   QUESTIONS THAT DEFENSE COUNSEL MAY HAVE.

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

4   **Q**     MS. SWAFFORD, I APPRECIATE THE INFORMATION YOU HAVE  
5   GIVEN US.   I WANT TO MAKE SURE THAT WE ACTUALLY KNOW WHAT  
6   12:19:56 ACTUALLY MEANS.   THAT MEANS THAT IT'S FOUR SECONDS  
7   BEFORE 12:20, RIGHT?

8   **A**     UH-HUH (AFFIRMATIVE).   RIGHT.

9   **Q**     IT'S THE HOUR OF 12:00, NINETEEN MINUTES AFTER 12:00,  
10   AND IN FOUR SECONDS IT WOULD BE 12:20?

11   **A**     UH-HUH (AFFIRMATIVE).

12           **MR. MAULDIN:**    THANK YOU.   NOTHING FURTHER.

13           **SOLICITOR ARIAIL:**   NO REDIRECT.

14           **THE COURT:**    MS. SWAFFORD, THANK YOU, MA'AM.

15           **SOLICITOR ARIAIL:**   MAY MS. SWAFFORD BE---

16           **MR. MAULDIN:**    SHE MAY, YOUR HONOR.   NO OBJECTION.

17           **THE COURT:**    YOU ARE FREE TO GO.   THANK YOU, MA'AM.

18           **WITNESS:**    ALL RIGHT.   THANK YOU.

19                               (WITNESS EXCUSED AT 5:10 P.M.)

20           **THE COURT:**    NEXT WITNESS, PLEASE.

21           **SOLICITOR ARIAIL:**   YOUR HONOR, AT THIS POINT, WE WOULD  
22   LIKE TO ENTER INTO EVIDENCE --

23                               (COUNSEL OFF RECORD DISCUSSION)

24           **SOLICITOR ARIAIL:**   YOUR HONOR, AT THIS TIME WE WOULD  
25   LIKE TO ENTER INTO THE RECORD A CERTIFIED COPY -- CERTIFIED,

MARY SWAFFORD -- CROSS BY MR. MAULDIN

1 TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT ON FILE WITH  
2 THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF SOUTH  
3 CAROLINA WHICH IS THE REGISTRATION FOR THE VEHICLE, THE SAME  
4 V.I.N. NUMBER, A 1975 JEEP STATION WAGON REGISTERED TO KAREN  
5 P. MCCALL WITH THE TAG NUMBER 881LMB AS BEING AN OFFICIAL AND  
6 CERTIFIED, TRUE AND CORRECT DOCUMENT FROM THE STATE OF SOUTH  
7 CAROLINA PURSUANT TO APPROPRIATE STATUTORY AUTHORITY AND  
8 INTRODUCE THIS INTO EVIDENCE.

9 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

10 THE COURT: THANK YOU, SIR.

11 (STATE'S EXHIBIT NUMBER 56, CERTIFIED COPY OF VEHICLE  
12 REGISTRATION, MOVED INTO EVIDENCE)

13 MR. MAULDIN: IF WE COULD GET AN EXHIBIT NUMBER.

14 THE COURT: YEAH.

15 SOLICITOR ARIAIL: STATE'S EXHIBIT 56.

16 THE COURT: THANK YOU.

17 SOLICITOR ARIAIL: FOR PURPOSES OF THE PRESENTATION TO  
18 THE JURY, I SIMPLY PLACE IT ON THE PRESENTER.

19 THE STATE'S NEXT WITNESS IS DEPUTY JEFF MCCALL.

20 JEFFREY S. MCCALL, HAVING BEEN  
21 DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

23 Q STATE YOUR NAME FOR THE RECORD, PLEASE, SIR.

24 A JEFFREY SCOTT MCCALL.

25 Q MR. MCCALL, BY WHOM ARE YOU EMPLOYED?

JEFFREY S. MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 A THE GREENVILLE COUNTY SHERIFF'S OFFICE.

2 Q AND HOW LONG HAVE YOU BEEN WITH THE GREENVILLE COUNTY  
3 SHERIFF'S OFFICE?

4 A SINCE MAY OF 1995.

5 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH THE  
6 GREENVILLE COUNTY SHERIFF'S OFFICE?

7 A I WORK FOR THE TRAFFIC SAFETY DIVISION.

8 Q AND ARE YOU FAMILIAR WITH THE INTERSECTION OF FRONTAGE  
9 ROAD AND I-85 AND 385 AND THE GENERAL AREA WHERE TROOPER  
10 NICHOLSON WAS LOCATED?

11 A YES, SIR.

12 Q IS THAT, FOR JURISDICTIONAL PURPOSES OF THIS CASE,  
13 LOCATED WITHIN GREENVILLE COUNTY?

14 A YES, SIR, IT IS.

15 Q THANK YOU VERY MUCH. I WANT TO DIRECT YOUR ATTENTION  
16 BACK TO DECEMBER THE 6TH OF THE YEAR 2000 AND ASK IF YOU WERE  
17 ON DUTY AROUND 12:00 NOON OF THAT DAY?

18 A YES, SIR, I WAS.

19 Q AND WHERE WERE YOU WHEN YOU RESPONDED TO THE AREA  
20 INVOLVING OFFICER NICHOLSON?

21 A INITIALLY I WAS 385 SOUTHBOUND GOING TOWARDS  
22 SIMPSONVILLE.

23 Q ALL RIGHT. AND WERE YOU -- HOW DID YOU LEARN ABOUT THE  
24 INCIDENT?

25 A IT CAME ACROSS OUR RADIO.



1 Q AND AS A RESULT OF THAT, WHAT DID YOU DO?

2 A I TURNED AROUND AND WENT NORTHBOUND GOING TOWARD THE  
3 WOODRUFF ROAD AREA.

4 Q AND DID YOU EXIT?

5 A YES, SIR. I GOT OFF ON THE EXIT RAMP, MADE A LEFT ON  
6 WOODRUFF.

7 Q ALL RIGHT. SO YOU WERE COMING ACTUALLY LIKE YOU WERE  
8 COMING FROM COLUMBIA. YOU EXITED UP ONTO WOODRUFF ROAD AND  
9 OFF 385 TURNED LEFT COMING UP WOODRUFF ROAD TOWARDS 85?

10 A YES, SIR, THAT'S CORRECT.

11 Q AND WHERE DID YOU GO?

12 A INITIALLY I WAS HEADING TOWARD 85 AT THE FRONTAGE ROAD  
13 AREA.

14 Q WHERE TROOPER NICHOLSON'S VEHICLE AND TROOPER NICHOLSON  
15 WERE LOCATED?

16 A YES, SIR, THAT'S CORRECT.

17 Q DID YOU GET THAT FAR?

18 A NO, SIR.

19 Q WHAT CHANGED YOUR ROUTE?

20 A ONE OF THE THINGS HEARD OVER THE RADIO WAS THE  
21 POSSIBILITY OF A -- I BELIEVE A SCOOTER OR A MOPED MIGHT BE  
22 LOCATED AT A GYM OR A GYMNASICS AREA OR BUILDING OFF OF  
23 MILLER ROAD, WHICH IS RIGHT OFF OF WOODRUFF. I'M FAMILIAR  
24 WITH WHERE IT WAS OUT AND SO I TURNED AROUND AND WENT IN THAT  
25 DIRECTION.

1 Q YOU KNEW WHERE GREENVILLE GYMNASTICS WAS ON MILLER ROAD?

2 A YES, SIR.

3 Q AND YOU WENT TO THAT AREA. AND WHEN YOU ARRIVED THERE,  
4 WAS ANYONE ELSE THERE?

5 A WHEN I APPROACHED IT THERE IS A PARKING LOT IN THE FRONT  
6 AND THERE WAS A NUMBER OF CARS PARKED. I WENT -- I MADE A  
7 RIGHT, WENT TO BACK OF THE BUILDING. NO ONE WAS THERE BUT  
8 THERE WAS A PARKED RED SCOOTER.

9 Q AND AT THAT TIME DID YOU SECURE THAT SCENE?

10 A YES, SIR.

11 Q AND BY SECURING THAT SCENE, EXPLAIN TO THE JURY WHAT YOU  
12 DID.

13 A MADE SURE THAT NO ONE MESSED WITH THE RED SCOOTER.

14 Q OKAY. AND DID ANYONE ELSE ARRIVE ON THAT SCENE AFTER  
15 YOU WERE THERE?

16 A HIGHWAY PATROL.

17 Q AND DID HE IN ANY WAY BECOME INVOLVED WITH THE SCOOTER?

18 A NO, SIR. HE NEVER DISTURBED IT.

19 Q ALL RIGHT. IT REMAINED UNDISTURBED UNTIL SUCH TIME AS  
20 FORENSIC UNITS ARRIVED TO PROCESS THE SCOOTER FOR EVIDENCE?

21 A YES, THAT'S CORRECT.

22 Q ALL RIGHT. AND WERE YOU IN CHARGE OF MAINTAINING THE  
23 SECURITY OF THAT VEHICLE?

24 A YES, THAT'S CORRECT.

25 Q AND DID YOU STAY THERE UNTIL THE FORENSICS UNIT HAD

JEFFREY S. MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 PROCESSED THE SCOOTER?

2 A YES, SIR.

3 Q WHAT FORENSIC -- DO YOU REMEMBER WHICH FORENSIC  
4 TECHNICIAN CAME TO PROCESS THE SCOOTER?

5 A I BELIEVE HIS NAME WAS CLAPP.

6 Q OKAY. MARTY CLAPP?

7 A YES, SIR.

8 Q AND WHEN THE SCOOTER HAD -- WHEN HE HAD FINISHING  
9 PROCESSING IT AND IT WAS REMOVED FROM THE SCENE, HOW WAS IT  
10 REMOVED?

11 A IT WAS TOWED AWAY.

12 Q AND WERE YOU STILL THERE WHEN IT WAS TOWED AWAY?

13 A YES, SIR, I WAS.

14 SOLICITOR ARIAIL: THANK YOU. ANSWER ANY QUESTIONS  
15 DEFENSE COUNSEL MAY HAVE.

16 CROSS EXAMINATION BY MR. BANNISTER:

17 Q OTHER THAN THE SCOOTER ITSELF WAS ANYTHING ELSE TAKEN  
18 FROM THE SCENE?

19 A TO THE BEST OF MY KNOWLEDGE, NO, SIR.

20 MR. BANNISTER: THANK YOU. NO FURTHER QUESTIONS.

21 THE COURT: ALL RIGHT. THANK YOU, DEPUTY MCCALL. WE  
22 APPRECIATE IT, SIR.

23 SOLICITOR ARIAIL: WE ASK THAT HE BE EXCUSED.

24 MR. MAULDIN: NO OBJECTION.

25 THE COURT: NO OBJECTION.

JEFFREY S. MCCALL -- CROSS BY MR. BANNISTER

(WITNESS EXCUSED AT 5:18 P.M.)

THE COURT: NEXT WITNESS, PLEASE.

SOLICITOR ARIAIL: MARTY CLAPP.

MARTY L. CLAPP, HAVING BEEN  
DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY SOLICITOR ARIAIL:

Q IF YOU WOULD, PLEASE, SIR, STATE YOUR NAME FOR THE  
RECORD.

A MARTY LYNN CLAPP.

Q MR. CLAPP, BY WHOM ARE YOU EMPLOYED?

A GREENVILLE COUNTY FORENSICS DIVISION.

Q AND IS THAT THE SAME DIVISION THAT DAR SHAW IS EMPLOYED  
WITH?

A YES, IT IS.

Q I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE 6TH  
OF THE YEAR 2000, AND ASK IF YOU HAD OCCASION TO RESPOND TO A  
LOCATION OF A RED SCOOTER OFF OF MILLER ROAD AT GREENVILLE  
GYMNASTICS FOR THE PURPOSE OF PROCESSING THAT SCOOTER FOR  
EVIDENCE COLLECTION?

A YES, I DID.

Q AND WHO WAS PRESENT WHEN YOU ARRIVED?

A DEPUTY MCCALL WAS ON SCENE. ALSO, THERE WAS A STATE  
TROOPER WAS PRESENT, BUT I'M UNSURE OF THE NAME.

Q ALL RIGHT.

A THEY LEFT SHORTLY AFTER.

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 Q AND DEPUTY MCCALL YOU ARE TALKING ABOUT IS THE ONE THAT  
2 JUST TESTIFIED?

3 A YES, SIR.

4 Q ALL RIGHT. AND WHEN YOU ARRIVED DID YOU TAKE  
5 PHOTOGRAPHS OF THE SCOOTER?

6 A YES, I DID.

7 Q AND ITS LOCATION WHERE -- WHERE IT WAS LOCATED?

8 A YES, SIR.

9 Q LET ME SHOW YOU WHAT ARE NOT MARKED STATE'S EXHIBITS  
10 26I, 26J AND 26K AND ASK IF THOSE ARE -- IF YOU TOOK THOSE  
11 PHOTOGRAPHS AND ARE THEY AN ACCURATE REPRESENTATION OF THE  
12 SCOOTER THAT YOU SAW BEHIND GREENVILLE GYMNASTICS?

13 A YES, SIR, IT IS.

14 Q THANK YOU.

15 MR. MAULDIN: (REVIEWS PHOTOGRAPHS) NO OBJECTION.

16 (STATE'S EXHIBITS 26I THROUGH 26K, PHOTOGRAPHS, MOVED  
17 INTO EVIDENCE)

18 Q I SHOW YOU PHOTOGRAPH 26J AND ASK YOU IF THAT -- IF YOU  
19 TOOK THAT PHOTOGRAPH AND IS THAT -- CAN YOU ORIENT US TO THE  
20 LOCATION OF WHERE THAT IS?

21 A DIRECTLY BEHIND THE GREENVILLE GYMNASTICS CENTER, THE  
22 BUILDING HERE. I'M NOT EXACTLY SURE WHAT THE STREET NAME IS  
23 OUT FRONT RIGHT THERE. BUT IT WAS IN THE REAR PARKING LOT AT  
24 THE REAR OF THIS BUILDING.

25 Q ALL RIGHT. AND THAT'S THE WAY IT WAS PARKED AT THE TIME

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 YOU SAW IT?

2 A YES, IT WAS.

3 Q AND I SHOW YOU 26K. IS THAT THE WAY IT WAS PARKED AND  
4 THE WAY IT LOOKED?

5 A YES, SIR.

6 Q AND 26I SHOWING THE TAG NUMBER OF ZE5721?

7 A YES, SIR, THAT'S CORRECT.

8 Q NOW, AFTER PHOTOGRAPHING -- AND I KNOW YOU TOOK OTHER  
9 PHOTOGRAPHS AND THEY ARE ALREADY PART OF THIS RECORD -- BUT  
10 IN PHOTOGRAPHING THAT SCOOTER DID YOU ALSO PROCESS THE  
11 SCOOTER FOR ANY -- COLLECTING EVIDENCE FROM IT OR PROCESS ANY  
12 TESTING ON IT?

13 A YES, SIR. AFTER I HAD PHOTOGRAPHED THE SCOOTER AND THE  
14 SCENE AROUND IT I MADE SOME OBSERVATIONS OF THE SEAT AREA OF  
15 THE SCOOTER. I WAS ABLE TO RECOVER A PIECE OF SMALL PARTICLE  
16 OF WHAT APPEARED TO BE GLASS, FRAGMENTS OF GLASS.

17 Q ALL RIGHT. AND I WANT TO HAND YOU STATE'S EXHIBIT 21 --  
18 I SHOW YOU WHAT -- I'M SORRY -- STATE'S EXHIBIT 28 AND ASK  
19 YOU -- OPEN THAT -- IF THIS IS THE GLASS THAT YOU WERE  
20 TALKING ABOUT YOU COLLECTED?

21 A (REVIEWS EXHIBIT)

22 Q IS IT LABELED ON THE OUTSIDE?

23 A IT IS LABELED WITH MY INITIALS AND A DATE AND TIME.  
24 ALSO, THE ENVELOPE THAT I PACKAGED IT IN IS ALSO LABELED.

25 Q AND YOU FILLED OUT THE CONTENTS OF THE ENVELOPE?

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q AND THE OUTSIDE OF THE PACKAGE?

3 A RIGHT. CORRECT. (REVIEWS EXHIBIT) THIS WAS THE  
4 PACKAGING---

5 Q THAT'S THE PACKAGING YOU PUT IT IN?

6 A YES.

7 Q OKAY. THAT'S ALL RIGHT. YOU CAN PUT THAT BACK.

8 A OKAY.

9 Q YOU'RE LOOKING FOR THE GLASS?

10 A YEAH. I ASSUME IT WAS SENT FOR TESTING.

11 Q IT'S NO LONGER IN THERE?

12 A NO.

13 Q BUT THAT'S YOUR CONTAINER AND YOUR PACKAGING AND YOUR  
14 WRITING?

15 A YES, IT IS.

16 SOLICITOR ARIAIL: YOUR HONOR, AT THIS TIME WE WILL  
17 MARK THIS AS STATE'S EXHIBIT 28 FOR IDENTIFICATION.

18 Q LET ME ALSO ASK YOU IF THIS IS THE EVIDENCE SHEET THAT  
19 GOES WITH IT. AND AFTER YOU COLLECTED THIS WHAT DID YOU DO  
20 WITH THESE SAMPLES?

21 A AFTER I COLLECTED THEM I BROUGHT THEM BACK TO THE OFFICE  
22 AT THE LAW ENFORCEMENT CENTER WHERE THEY WERE PACKAGED AND  
23 PLACED IN A LOCKED EVIDENCE ROOM UNTIL I TRANSPORTED THEM  
24 DOWN TO PROPERTY AND EVIDENCE.

25 Q SO THEY REMAINED IN YOUR POSSESSION AND CONTROL THE

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 ENTIRE TIME BEFORE THEY WERE PLACED IN PROPERTY AND EVIDENCE?

2 A YES, SIR, THEY DID.

3 Q AND DID YOU FILL OUT THIS PAPERWORK?

4 A YES, I DID.

5 Q THANK YOU.

6 SOLICITOR ARIAIL: FOR IDENTIFICATION ONLY AT THIS  
7 TIME, YOUR HONOR.

8 Q TELL ME HOW YOU COLLECTED -- OR TELL THE JURY HOW YOU  
9 COLLECTED OR CAME TO COLLECT SAMPLES OF GLASS FROM THE  
10 SCOOTER. WHAT MADE YOU BE LOOKING FOR THAT PARTICULAR  
11 SUBSTANCE?

12 A I HAD INITIALLY RESPONDED WHEN THIS INCIDENT HAD TAKEN  
13 PLACE RESPONDED TO THE ACTUAL INCIDENT LOCATION. I HAD HEARD  
14 VIA RADIO TRAFFIC THE LOCATION OF THE SCOOTER. THEY HAD A  
15 LOT OF HELP AT THE SCENE, SO I FIGURED I WOULD GO TO THIS  
16 OTHER LOCATION. I HAD WITNESSED GLASS ON THE GROUND AT THE  
17 PREVIOUS SCENE, AND I FIGURED THAT THERE WAS A POSSIBILITY  
18 THAT THERE MAY BE SOME ON THIS VEHICLE IF IT WAS RELATED TO  
19 THIS INCIDENT.

20 ONCE I GOT THERE, TOOK THE PHOTOGRAPHS, I MADE A VISUAL  
21 INSPECTION OF THE MOTORCYCLE ITSELF. THE GLASS FRAGMENTS  
22 WERE VISIBLE ON THE SEAT WITH THE NAKED EYE AND I PROCEEDED  
23 TO COLLECT THEM FROM THERE.

24 Q ALL RIGHT. AND HOW DID YOU COLLECT THEM? DID YOU  
25 COLLECT THEM BY HAND, HAVE TO USE A TOOL OR...



MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 A NORMALLY, WHAT WE HAVE, WE CARRY AROUND A PAIR OF  
2 TWEEZERS TO PICK UP FRAGMENTS SUCH AS THIS. AND ALSO, BEING  
3 GLASS, YOU DON'T WANT TO RISK A CHANCE OF GETTING CUT.

4 Q OKAY. ALL RIGHT. SO YOU COLLECTED THE SAMPLES OF GLASS  
5 AND PACKAGED THEM AS YOU PREVIOUSLY TESTIFIED?

6 A YES, SIR.

7 Q DID YOU ALSO CONDUCT ANY FURTHER TESTING ON THE -- LET  
8 ME GO BACK A MOMENT. GIVE US A GENERAL DESCRIPTION OF WHAT  
9 THE SCOOTER LOOKED LIKE AND WHAT YOU OBSERVED ABOUT THE  
10 SCOOTER WHEN YOU GOT THERE.

11 A I OBSERVED THE SCOOTER, HONDA HELIX, WHAT I TERM AS A  
12 SCOOTER, PARKED IN THE PARKING SPACE BEHIND THIS BUILDING. I  
13 NOTICED THAT THE IGNITION KEY WAS MISSING FROM THE SCOOTER.  
14 I LOOKED TO SEE IF MAYBE IT HAD BEEN TAMPERED WITH, POSSIBLY  
15 IT WAS STOLEN. NORMALLY, WHEN VEHICLES ARE STOLEN, THE  
16 IGNITIONS HAVE BEEN TAMPERED. I JUST MADE THE OBSERVATION.  
17 I DIDN'T NOTICE THAT IT HAD ANY TAMPERING. IT DIDN'T APPEAR  
18 TO HAVE BEEN TAMPERED WITH.

19 Q GO AHEAD.

20 A I THEN MADE THE INSPECTION OF THE VEHICLE. AFTER  
21 PHOTOGRAPHING AND COLLECTING THESE GLASS SAMPLES, I ALSO  
22 PERFORMED WHAT IS KNOWN AS THE G.S.R. KIT ON THE HANDLEBARS  
23 OF THE VEHICLE.

24 Q LET ME SHOW YOU THE G.S.R. KIT AND -- FIRST, TELL THIS  
25 JURY WHAT A G.S.R. IT IS.

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1     A     IT'S A GUNSHOT RESIDUE COLLECTION KIT, AND IT'S  
2     PERFORMED BY -- THE KIT ITSELF HAS LITTLE -- I - BEST HOW TO  
3     DESCRIBE IT, LITTLE VIALS. YOU PULL OUT PART OF IT. IT HAS  
4     A STICKY SIDE WHICH IS USED TO COLLECT ANY RESIDUE LEFT  
5     BEHIND FROM A FIREARM. AFTER A WEAPON HAS BEEN FIRED, IT  
6     LEAVES BEHIND DIFFERENT PARTICLES AND THIS PARTICULAR G.S.R.  
7     KIT PICKS THEM UP. YOU SEND IT OFF FOR ANALYSIS AND GET A  
8     READOUT ON IT.

9     Q     AND THE KIT THAT YOU USE IS A STANDARD ISSUE?

10    A     YES, IT IS.

11    Q     IT HAS HOW MANY PARTS TO IT?

12    A     IT HAS A PART FOR THE FRONT, THE PALM SIDE OF THE HAND,  
13    THE BACK SIDE OF THE HAND, BOTH HANDS FRONT AND BACK. IN  
14    THIS CASE I DID NOT USE BUT ENOUGH OF THE VIALS FOR THE  
15    HANDLEBARS. THE OTHERS WERE NOT NEEDED.

16    Q     SO YOU DIDN'T USE THE WHOLE KIT IN THIS---

17    A     NO.

18    Q     ---BECAUSE YOU WERE PROCESSING THE HANDLEBARS? BUT  
19    NORMALLY YOU ARE PROCESSING HANDS?

20    A     HANDS, SO YOU WOULD USE MORE.

21    Q     AND THE TEST THAT YOU SENT IT OFF FOR IS A GUNSHOT  
22    RESIDUE DETECTION TEST?

23    A     YES, SIR.

24    Q     ALL RIGHT. AND DID YOU SO PROCESS WHAT I'M GOING TO  
25    SHOW YOU IS STATE'S EXHIBIT NUMBER 27? IS THAT THE GUNSHOT

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 RESIDUE TEST YOU REFERRED TO AS PROCESSING ON THE MOTOR  
2 SCOOTER?

3 A (REVIEWS EXHIBIT) THE PACKAGING IS THAT WHICH I FILLED  
4 OUT. IT HAS MY NAME, UNIT NUMBER AND THE TWO G.S.R. ACTUAL  
5 APPLICATORS.

6 Q AND ARE THESE MARKED -- DID YOU MARK THESE ON---

7 A YES, SIR. THEY ARE MARKED RIGHT HANDLEBAR GRIP AND THE  
8 TIME THEY WERE SEALED WITH MY EVIDENCE TAPE, WHICH AT ONE  
9 POINT HAD MY INITIALS ON IT.

10 Q OKAY.

11 A AND THE OTHER IS MARKED LEFT.

12 Q RIGHT HANDLE GRIP AND THE LEFT HANDLE GRIP?

13 A RIGHT. AND I USED THE RIGHT AND LEFT PALMS TO DO IT  
14 WITH. AND ALL IT DOES IS THIS PIECE PULLS OUT OF THE LITTLE  
15 TUBE AND YOU USE IT TO DAB AND PUT IT BACK IN.

16 Q OKAY. YOU CAN PUT IT BACK IN THAT ENVELOPE.

17 A (COMPLIES)

18 Q AND AFTER COLLECTING WHAT HAS BEEN MARKED AS STATE'S  
19 EXHIBIT NUMBER 27, THE GUNSHOT RESIDUE KIT FROM THE  
20 HANDLEBARS OF THE SCOOTER, DID YOU KEEP THIS IN YOUR CONTROL  
21 AND DEPOSIT IT WITH THE EVIDENCE AT THE PROPERTY AND EVIDENCE  
22 ROOM?

23 A YES, SIR, I DID.

24 SOLICITOR ARIAIL: YOUR HONOR, WE WILL MARK THIS AS  
25 STATE'S EXHIBIT 27 FOR IDENTIFICATION AT THIS TIME.

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 Q NOW, FOLLOWING THE PROCESSING OF THE SCOOTER FOR GLASS  
2 AND GUNSHOT RESIDUE DID YOU THEN -- DID YOU DO ANY OTHER  
3 TESTING ON THE SCOOTER ITSELF?

4 A I ALSO PROCESSED THE PAINTED SURFACES, EXTERIOR  
5 SURFACES. I TRIED TO TAKE LATENT FINGERPRINTS.

6 Q ANY SUCCESS THERE?

7 A NO, SIR.

8 Q NOW, THE -- I WANT TO DIRECT YOUR ATTENTION TO THE NEXT  
9 DAY AND ASK YOU IF ON DECEMBER THE 7TH YOU HAD OCCASION TO  
10 ATTEND THE AUTOPSY OF ERIC NICHOLSON?

11 A YES, SIR, I DID.

12 Q AND WHAT WAS THE PURPOSE OF THAT?

13 A FOR PHOTOGRAPHIC DOCUMENTATION TO PERFORM A GUNSHOT  
14 RESIDUE OR ATOMIC ABSORPTION KIT ON MR. NICHOLSON'S HANDS TO  
15 SEE IF HE FIRED A WEAPON, ALSO TO COLLECT ANY EVIDENCE OR ANY  
16 KINDS OF TRACE EVIDENCE WHICH THE FORENSIC PATHOLOGIST MAY  
17 HAVE FOUND. I WOULD HAVE COLLECTED THOSE FROM HIM AND PLACED  
18 THEM IN PROPERTY AND EVIDENCE.

19 Q AND DID YOU SO PERFORM A GUNSHOT RESIDUE TEST ON THE  
20 HANDS OF ERIC NICHOLSON?

21 A YES, SIR, I DID.

22 Q LET ME SHOW YOU WHAT HAS BEEN PREMARKED AS STATE'S  
23 EXHIBIT 29 FOR IDENTIFICATION AND ASK YOU IF THAT IS THE  
24 GUNSHOT RESIDUE TEST AND IS THIS YOUR EVIDENCE SHEET?

25 A YES, SIR, IT IS. THIS IS AN ATOMIC ABSORPTION ANALYSIS

1 KIT.

2 Q ALL RIGHT. AND DID YOU TAKE THE SAME PROCESS USED TO  
3 COLLECT AND LOG THAT EVIDENCE INTO THE LAW ENFORCEMENT  
4 PROPERTY AND EVIDENCE ROOM?

5 A THE PROCEDURE FOR ATOMIC ABSORPTION IS A LITTLE  
6 DIFFERENT THAN THE G.S.R. BUT THE CHAIN OF CUSTODY OF THE  
7 EVIDENCE, IT WAS IN MY POSSESSION FROM THE TIME I DID IT  
8 UNTIL IT WAS PLACED INTO PROPERTY AND EVIDENCE SECTION.

9 Q ALL RIGHT. TELL US THE DIFFERENCE IN THE PROCESS  
10 BETWEEN THE ATOMIC ABSORPTION AND THE GUNSHOT RESIDUE.

11 A ATOMIC ABSORPTION USES NITRIC ACID SOLUTION, A FIVE  
12 PERCENT NITRIC ACID SOLUTION, ON SWABS. YOU PLACE THE NITRIC  
13 ACID ONTO THE SWAB AND DO THE FRONTS AND SIDE -- OUTSIDE OF  
14 EACH HAND AND A CONTROL SAMPLE AND A CARTRIDGE CASING  
15 SWABBING IF YOU HAVE ONE AVAILABLE TO YOU.

16 Q DID YOU HAVE A CARTRIDGE CASING?

17 A AT THE TIME I DO -- WITHOUT OPENING THIS, I'M NOT SURE  
18 IF THERE WAS A CARTRIDGE CASING DONE AT THAT TIME.

19 Q ALL RIGHT. BUT YOU DID BOTH THE BACK SIDE OF EACH  
20 HAND---

21 A YES, SIR.

22 Q ---AND THE PALM OF EACH HAND?

23 A YES, SIR. THERE WERE ALSO -- TROOPER NICHOLSON'S HANDS  
24 HAD BEEN BAGGED TO PRESERVE ANY TYPES OF TRACE EVIDENCE. I  
25 COLLECTED THOSE BAGS MYSELF WHEN DR. WARD REMOVED THE BAGS

MARTY L. CLAPP -- DIRECT BY SOLICITOR ARIAIL

1 FROM THE VICTIM'S HANDS. I TOOK THOSE IN POSSESSION PRIOR TO  
2 DOING A---

3 Q AND THAT'S STANDARD PROCEDURE?

4 A STANDARD PROCEDURE.

5 SOLICITOR ARIAIL: OKAY. YOUR HONOR, WE WOULD OFFER  
6 THIS AS STATE'S 28 -- 29 FOR IDENTIFICATION.

7 THE COURT: FOR IDENTIFICATION.

8 MR. MAULDIN: NO OBJECTION FOR IDENTIFICATION, YOUR  
9 HONOR

10 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) PLEASE  
11 ANSWER ANY QUESTIONS THAT DEFENSE COUNSEL HAS.

12 CROSS EXAMINATION BY MR. BANNISTER:

13 Q AM I WRONG OR IS THAT A SECOND SEAT ON THE BACK OF THAT  
14 SCOOTER?

15 A (NO RESPONSE)

16 Q IN OTHER WORDS, CAN IT HOLD TWO PEOPLE FROM WHAT YOU  
17 COULD TELL FROM LOOKING AT THE SCOOTER?

18 A YES, SIR. I BELIEVE IT COULD HOLD TWO PEOPLE.

19 MR. BANNISTER: OKAY. I DON'T HAVE ANY FURTHER  
20 QUESTIONS.

21 THE COURT: ANY REDIRECT?

22 SOLICITOR ARIAIL: NONE, YOUR HONOR.

23 THE COURT: ALL RIGHT. OFFICER CLAPP, THANK YOU, SIR.  
24 WE APPRECIATE IT.

25 NEXT WITNESS?

MARTY L. CLAPP -- CROSS BY MR. BANNISTER

1           **SOLICITOR ARIAIL:**   WE CALL DEPUTY SAYLORS.

2                               **TANGIE SAYLORS, HAVING BEEN**

3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 **DIRECT EXAMINATION BY SOLICITOR ARIAIL:**

5   **Q**     STATE YOUR NAME FOR THE RECORD, PLEASE.

6   **A**     TANGIE SAYLORS.

7   **Q**     AND BY WHOM ARE YOU EMPLOYED?

8   **A**     GREENVILLE COUNTY SHERIFF'S OFFICE.

9   **Q**     AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE GREENVILLE  
10 COUNTY SHERIFF'S OFFICE?

11 **A**     OVER TEN YEARS.

12 **Q**     AND WERE YOU SO EMPLOYED ON DECEMBER THE 20TH OF THE  
13 YEAR 2000?

14 **A**     YES, SIR.

15 **Q**     I WANT TO SHOW YOU STATE'S EXHIBIT NUMBER 27 FOR  
16 IDENTIFICATION AND STATE'S EXHIBIT NUMBER 29 FOR  
17 IDENTIFICATION AND ASK YOU IF YOU HAD OCCASION TO REMOVE  
18 THESE ITEMS FROM THE PROPERTY AND EVIDENCE ROOM AT THE LAW  
19 ENFORCEMENT CENTER AND TRANSPORT THEM TO THE SOUTH CAROLINA  
20 LAW ENFORCEMENT DIVISION FOR EXAMINATION AND TESTING?

21 **A**     YES, SIR, I DID.

22 **Q**     AND WHEN YOU REMOVED THEM AND TRANSPORTED THEM DID THEY  
23 AT ALL TIMES STAY WITHIN YOUR CONTROL AND POSSESSION?

24 **A**     YES, SIR.

25 **SOLICITOR ARIAIL:**   ALL RIGHT.  THANK YOU.  THAT'S ALL I

TANGIE SAYLORS -- DIRECT BY SOLICITOR ARIAIL

1 HAVE. ANSWER ANY QUESTIONS THAT DEFENSE COUNSEL MAY HAVE.

2 MR. BANNISTER: NO QUESTIONS, YOUR HONOR.

3 THE COURT: DEPUTY SAYLORS, THANK YOU, MA'AM.

4 WITNESS: THANK YOU.

5 THE COURT: YOU ARE FREE TO GO.

6 (WITNESS EXCUSED AT 5:40 P.M.)

7 THE COURT: NEXT WITNESS?

8 SOLICITOR ARIAIL: JEFF HOLLIFIELD.

9 JEFFREY M. HOLLIFIELD, HAVING

10 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

12 Q WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE, SIR?

13 A MY NAME IS JEFFREY MORRIS HOLLIFIELD, H-O-L-L-I-F-I-E-L-  
14 D.

15 Q AND WHAT IS YOUR PRESENT EMPLOYMENT, MR. HOLLIFIELD?

16 A I OWN AND OPERATE MICROANALYTICAL, WHICH IS A PRIVATE  
17 FORENSICS LAB HERE IN GREENVILLE. I ALSO TEACH CHEMISTRY AND  
18 FORENSIC SCIENCE AT GREENVILLE TECHNICAL COLLEGE AS AN  
19 ADJUNCT INSTRUCTOR.

20 Q WHO -- MICROANALYTICAL IS A PRIVATE BUSINESS OF YOURS.  
21 WHO ARE YOUR CLIENTS AND WHAT TYPE OF SERVICE DO YOU PERFORM  
22 FOR THEM?

23 A MY CLIENTS INCLUDE LOCAL LAW ENFORCEMENT AGENCIES THAT  
24 REQUEST FORENSIC EXAMS AND EITHER DRUG ANALYSIS OR TRACE  
25 EVIDENCE ANALYSIS. I DO CONSULTING WORK FOR ATTORNEYS, BOTH



JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 FOR THE PROSECUTION AND DEFENSE. I WORK FOR INSURANCE  
2 ADJUSTERS WHO MAY BE INVESTIGATING FRAUDULENT CLAIMS, SAY IN  
3 A HIT AND RUN ACCIDENT FOR INSTANCE. AND THEN I ALSO DO SOME  
4 SMALL PARTICLE IDENTIFICATION FOR INDUSTRY, WHICH IS  
5 TYPICALLY IDENTIFYING CONTAMINANTS THAT ARE IN PRODUCTS SO  
6 THAT THEY CAN BE IDENTIFIED AND ELIMINATED.

7 Q MANUFACTURING PROCESS?

8 A YES, SIR.

9 Q ALL RIGHT. HOW LONG HAVE YOU HAD YOUR OWN BUSINESS?

10 A FOUR AND A HALF YEARS.

11 Q AND PRIOR TO THAT, LET ME -- LET'S GO OVER YOUR  
12 EDUCATIONAL BACKGROUND. WHERE DID YOU RECEIVE YOUR  
13 EDUCATIONAL BACKGROUND AND THE DEGREES YOU HAVE?

14 A MY BACKGROUND IS IN CHEMISTRY. I RECEIVED A BACHELOR'S  
15 IN CHEMISTRY FROM FURMAN UNIVERSITY IN '84 AND A MASTER'S IN  
16 CHEMISTRY ALSO FROM FURMAN I '86.

17 Q AFTER THAT DID YOU DO ANY RESIDENCY?

18 A YES, SIR. I DID A ONE-YEAR RESIDENCY AT MCCRONE  
19 RESEARCH INSTITUTE IN CHICAGO STUDYING FORENSIC MICROSCOPY.

20 Q ALL RIGHT. AND THAT'S A BIG WORD. WHAT IS FORENSIC  
21 MICROSCOPY?

22 A MICROSCOPY IS SIMPLY USING THE MICROSCOPE TO DO CHEMICAL  
23 ANALYSES AND APPLY TO FORENSICS WORK, CRIMINAL AND CIVIL CASE  
24 WORK.

25 Q NOW, PRIOR TO YOUR PRESENT EMPLOYMENT IN YOUR OWN

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 BUSINESS, WHAT WAS YOUR PRIOR EMPLOYMENT?

2 A I WORKED FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
3 FOR TEN YEARS IN COLUMBIA AS AN ANALYST IN THE LABORATORY. I  
4 WORKED IN THE DRUG I.D. LAB FOR THREE YEARS AND TRACE  
5 EVIDENCE FOR SEVEN YEARS.

6 Q AND WHAT IS THE NUMBER OF TRACE EVIDENCE EXAMINATIONS  
7 THAT YOU HAVE PERFORMED IN YOUR TIME WITH S.L.E.D. AND ALSO  
8 IN YOUR PRIVATE BUSINESS?

9 A IT'S HARD TO SAY EXACTLY HOW MANY TRACE EXAMS. I DID  
10 TRACE EXAMS FOR SEVEN YEARS, AND I'VE DONE IT FOR FOUR AND A  
11 HALF YEARS PRIVATELY. AT LEAST SEVERAL THOUSAND TRACE EXAMS.

12 Q HOW ABOUT IN REGARDS SPECIFICALLY TO THE NUMBER OF EXAMS  
13 OF GLASS?

14 A THAT WOULD BE IN THE -- THAT WOULD BE SEVERAL HUNDRED  
15 EXAMS FOR GLASS.

16 Q OKAY. DO YOU ALSO REVIEW EVIDENCE OF EXAMINATIONS FROM  
17 OTHER STATE CRIMINAL LABORATORIES?

18 A I DO. I DO THE PEER REVIEWS FOR THE TRACE EVIDENCE  
19 DEPARTMENT AT THE MONTANA STATE CRIME LAB. STATE AND LOCAL  
20 FORENSIC LABS IN ORDER TO MAINTAIN ACCREDITATION HAVE TO HAVE  
21 CASES REVIEWED BY OTHER PEOPLE WHO ARE IN THE SAME FIELD OR  
22 SAME AREA. MONTANA HAPPENS TO ONLY HAVE ONE TRACE EXAMINER  
23 IN THEIR STATE LAB, SO I PROVIDE THAT SERVICE FOR THEM.

24 Q AND HAVE YOU PUBLISHED ANY ARTICLES IN YOUR FIELD OF  
25 TRACE EVIDENCE EXAMINATION?

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR. I PUBLISHED THREE FORENSICS ARTICLES, ONE OF  
2 WHICH PERTAINS TO GLASS ANALYSIS. I PUBLISHED SEVEN BOOK  
3 REVIEWS, AND ONE OF THOSE IS PERTINENT TO GLASS EXAMINATION.

4 Q HAVE YOU BEEN PREVIOUSLY QUALIFIED AS AN EXPERT IN THE  
5 AREA OF FORENSIC TRACE EVIDENCE EXAMINATION?

6 A I HAVE. I HAVE TESTIFIED 136 TIMES IN MAGISTRATE'S,  
7 GENERAL SESSIONS AND FEDERAL COURTS IN SOUTH CAROLINA AND  
8 GEORGIA, MOST OF WHICH ARE IN SOUTH CAROLINA.

9 Q AND HOW MANY OF THOSE RELATE TO GLASS EXAMINATION?

10 A ABOUT EIGHT TESTIMONIES IN GLASS.

11 Q ARE THERE CERTAIN STANDARDS THAT YOU MUST OBSERVE AS  
12 PART OF YOUR LAB WORK?

13 A YES, SIR. I USE THE SAME TECHNIQUES, BOTH MICROSCOPICAL  
14 TECHNIQUES AND INSTRUMENTAL TECHNIQUES THAT ANY OTHER  
15 FORENSICS LAB WOULD USE AROUND THE WORLD. THESE ARE STANDARD  
16 PROCEDURES THAT ARE USED BY ALL FORENSICS LABS. I AM  
17 LICENSED BY D.H.E.C. AND D.E.A. WITH THE RESPECT TO THE  
18 SECURITY OF EVIDENCE, EVIDENCE CONTROL, AND I TAKE  
19 PROFICIENCY EXAMS EACH YEAR IN THE VARIOUS AREAS OF ANALYSIS.

20 Q ALL RIGHT. AND THOSE PROFICIENCY EXAMS ARE REQUIRED FOR  
21 YOU TO MAINTAIN ACCREDITATION?

22 A THAT'S CORRECT.

23 Q AND IS THE TESTING THAT YOU USE PARTICULARLY IN REGARD  
24 TO GLASS IS THAT PERFORMED -- OR A WIDELY CONDUCTED FORM OF  
25 TESTING?

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1     A     IT IS.  THE TECHNIQUES, BOTH THE MICROSCOPIC AND  
2     INSTRUMENTAL AND CHEMICAL TECHNIQUES I USE ARE ACCEPTED  
3     GENERALLY AND ARE USED BY OTHER FORENSICS LABS.

4     Q     AND FOR HOW LONG HAVE THEY BEEN ACCEPTED AND WIDELY  
5     USED?

6     A     THE FORENSICS ANALYSIS OF GLASS, IN PARTICULAR, BEGAN IN  
7     THE 1930s.  THE MODERN TECHNIQUES THAT WE USE TODAY, THAT I  
8     CURRENTLY USE, HAVE BEEN AROUND SINCE THE 1970s.

9     Q     AND HAS THE RELIABILITY OF THIS TYPE OF TESTING BEEN  
10    REVIEWED BY OTHER PROFESSIONALS AND EXPERTS IN THE FIELD?

11    A     IT HAS.  THERE ARE HUNDREDS OF ARTICLES PUBLISHED IN THE  
12    FORENSICS JOURNALS CONCERNING THESE TECHNIQUES.

13    Q     RELATED TO GLASS?

14    A     YES, SIR.

15    Q     AND HAS THIS FORM OF TESTING BEEN WIDELY REVIEWED IN  
16    PROFESSIONAL JOURNALS?

17    A     IT HAS.

18    Q     AND HAVE YOU BEEN SPECIFICALLY TRAINED INCLUDING  
19    EXPERIENCE IN PERFORMING AND INTERPRETING THE RESULTS OF  
20    THESE TESTS RELATING TO GLASS?

21    A     I HAVE.  I WAS TRAINED IN GLASS ANALYSIS WHEN I WAS WITH  
22    S.L.E.D. IN COLUMBIA, AND THEN I TOOK SOME SPECIALTY COURSES  
23    AT MCCRONE IN CHICAGO, PARTICULARLY IN THE AREAS OF GLASS  
24    ANALYSIS AND TRACE ANALYSIS.

25           SOLICITOR ARIAIL:  YOUR HONOR, WE WOULD SUBMIT HIM AS

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 AN EXPERT IN THE FIELD OF FORENSIC TRACE EVIDENCE EXAMINATION  
2 SPECIFICALLY RELATING TO GLASS.

3 THE COURT: ANY VOIR DIRE OF THE WITNESS ON HIS  
4 QUALIFICATIONS?

5 MR. BANNISTER: NO, YOUR HONOR.

6 THE COURT: THE WITNESS WILL BE SO QUALIFIED.

7 LADIES AND GENTLEMEN, CONSIDER ONCE AGAIN THE EARLIER  
8 INSTRUCTION I GAVE YOU ON YOUR RECEIPT AND CONSIDERATION OF  
9 THE OPINION TESTIMONY OF ONE DESIGNATED AS AN EXPERT.

10 Q I WANT TO TALK TO YOU A LITTLE BIT -- EXPLAIN TO THE  
11 JURY THE VARIOUS TESTS YOU PERFORMED IN REGARD TO THE GLASS.

12 A WHEN GIVEN A SUSPECTED GLASS SAMPLE, THE FIRST THING IS  
13 TO DETERMINE WHETHER OR NOT IT IS GLASS. THERE ARE CERTAIN  
14 PHYSICAL AND OPTICAL PROPERTIES THAT CAN BE EXAMINED  
15 MICROSCOPICALLY TO DETERMINE WHETHER IT'S GLASS OR WHETHER  
16 IT'S SOMETHING THAT LOOKS LIKE GLASS, LIKE MAYBE A ROCK OR A  
17 PIECE OF PLASTIC.

18 ONCE IT'S IDENTIFIED AS GLASS, THEN THERE ARE OTHER  
19 TESTS THAT ARE PERFORMED. WHEN DOING A COMPARISON, SAY  
20 BETWEEN A LARGE PIECE OF A WINDOW AND A SMALL FRAGMENT OF  
21 GLASS, IT'S IMPORTANT TO BREAK OR CRUSH THE LARGER PIECE SO  
22 THAT THE GLASSES BEING COMPARED ARE COMPARABLE IN SIZE AND  
23 THICKNESS.

24 THEN THERE ARE MICROSCOPICAL TESTS THAT ARE DONE. THE  
25 THREE PRIMARY TESTS AT THAT POINT I WOULD PERFORM ON A SAMPLE

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 OF GLASS WOULD INCLUDE MEASURING THE REFRACTIVE INDEX,  
2 MEASURING THE DENSITY, AND THEN MEASURING THE ELEMENTAL  
3 COMPOSITION OF THE GLASS TO SEE WHAT IT IS COMPOSED OF.

4 Q LET'S TALK ABOUT THE REFRACTIVE TEST -- THE REFRACTIVE  
5 INDEX. HOW DO YOU GO ABOUT DOING THAT?

6 A REFRACTIVE INDEX IS A MEASURE OF THE DEGREE TO WHICH  
7 SOMETHING BENDS LIGHTS. IF LIGHT PASSES THROUGH A SUBSTANCE  
8 LIKE GLASS AND IT'S BENT A LOT, THAT'S SAID TO HAVE A HIGH  
9 REFRACTIVE INDEX. IF IT'S BENT VERY LITTLE, IT'S SAID TO  
10 HAVE A LOW REFRACTIVE INDEX. THE WAY THAT TEST IS CARRIED  
11 OUT IS TO PLACE THE SUSPECTED PIECE OF GLASS IN A SERIES OF  
12 OILS. EACH OIL HAS A SPECIFIC KNOWN REFRACTIVE INDEX VALUE.  
13 IN ONE AND ONLY ONE OF THOSE OILS THE PIECE OF GLASS WILL  
14 DISAPPEAR. IF IT DOES, THAT MEANS IT HAS THE SAME INDEX, THE  
15 SAME VALUE AS THAT OIL. SO IF WE KNOW THE VALUE OF THE OIL,  
16 THEN THE GLASS HAS THE SAME VALUE.

17 Q AND IF YOU ARE COMPARING A KNOWN SAMPLE OF GLASS WITH AN  
18 UNKNOWN SAMPLE OF GLASS THEN YOU TEST BOTH OF THEIR  
19 REFRACTIVE INDEXES?

20 A THAT'S CORRECT.

21 Q TO SEE IF THEY HAVE THE SAME?

22 A TO SEE IF THEY HAVE THE SAME OR DIFFERENT INDICES.

23 Q OKAY. LET'S GO TO THE SECOND TEST, THE DENSITY TEST.  
24 HOW DO YOU DO THAT?

25 A THE DENSITY TEST IS SIMPLY TO MEASURE THE DENSITY OF THE

1 GLASS. DENSITY IS MASS PER VOLUME. THE WAY THAT IS CARRIED  
2 OUT IS TO MIX TWO LIQUIDS. I USE METHANOL AND BROMOFORM.  
3 METHANOL IS A VERY LIGHT LIQUID. BROMOFORM IS A HEAVY  
4 LIQUID. WHEN THOSE ARE MIXED THE GLASS WILL AT SOME POINT  
5 FLOAT IN THE MIDDLE OF THAT LIQUID MIXTURE. IT DOESN'T FLOAT  
6 ON TOP AND IT WON'T SINK ALL THE WAY TO THE BOTTOM. IT STAYS  
7 SOMEWHERE IN THE MIDDLE. WHEN THE LIQUIDS ARE MIXED TO  
8 CERTAIN PROPORTIONS OR CERTAIN PERCENTAGES SO THAT THAT GLASS  
9 FLOATS IN THE MIDDLE, THEN WE KNOW THAT THE GLASS HAS THE  
10 SAME DENSITY AS THE LIQUID, AND THE DENSITY OF THE LIQUID IS  
11 MEASURED.

12 Q OKAY. AND YOU DO THE SAME WITH THE KNOWN SAMPLE AS YOU  
13 DO WITH THE UNKNOWN SAMPLE TO DETERMINE IF THEY HAVE THE SAME  
14 DENSITY?

15 A RIGHT, TO SEE IF THEY HAVE THE SAME DENSITY, THEY BOTH  
16 FLOAT AT THE SAME POINT OR IF THEY HAVE DIFFERENT DENSITIES.

17 Q AND ON THE KNOWN SAMPLE YOU DETERMINE THE DENSITY FIRST  
18 AND THEN YOU MIX UNTIL YOU GET THE DENSITY OF THE UNKNOWN  
19 SAMPLE; IS THAT CORRECT?

20 A YES. MOST OF THE EXAMS ARE PERFORMED ON THE STANDARD  
21 GLASS SAMPLE FIRST. ONE REASON IS BECAUSE YOU HAVE MORE TO  
22 WORK WITH TYPICALLY. SO YOU GET YOUR VALUES. YOU KNOW WHAT  
23 THEY ARE. AND THEN YOU KNOW HOW TO ADJUST THE PARAMETERS FOR  
24 THE UNKNOWN SAMPLE TO SEE IF IT MATCHES.

25 Q LET'S GO TO THE THIRD TEST, THE X-RAY AND ELEMENTAL

1 TEST. HOW DOES THAT WORK?

2 A THE ELEMENTAL COMPOSITION CAN ACTUALLY BE DETERMINED  
3 THROUGH A VARIETY OF TECHNIQUES. THE ONE THAT I USE IS  
4 CALLED X-RAY FLUORESCENCE OR XRF. IT BOMBARDS THE SAMPLE  
5 WITH ENERGY, AND THEN THE SAMPLE ITSELF GIVES OFF A  
6 FLUORESCENCE ENERGY, A SECONDARY ENERGY, WHICH IS MEASURED.  
7 THE GOAL HERE IS TO IDENTIFY WHAT ELEMENTS ARE PRESENT IN THE  
8 GLASS. AND IT ALSO WILL QUANTITATE. IT WILL TELL US HOW  
9 MUCH OF EACH ELEMENT IS IN THE GLASS.

10 Q WHEN YOU'RE LOOKING FOR ELEMENTS, WHAT ARE THE --  
11 PARTICULARLY IN GLASS, HOW DO THE ELEMENTS BREAK DOWN?

12 A THE ELEMENTS THAT ARE PRESENT IN A PIECE OF GLASS CAN BE  
13 DIVIDED INTO THREE GROUPS. ONE OF THOSE IS REFERRED TO AS  
14 MAJOR ELEMENTS, WHICH ARE ELEMENTS THAT ARE IN ALL GLASS. AN  
15 EXAMPLE WOULD BE SILICON. SILICON IS IN ALL GLASS.

16 THE SECOND GROUP ARE REFERRED TO AS MINOR ELEMENTS.  
17 MINOR ELEMENTS ARE ELEMENTS THAT ARE INTENTIONALLY PUT INTO A  
18 GLASS TO GIVE IT SORT OF PROPERTIES, SUCH AS COLOR, HEAT  
19 RESISTANCE, STRENGTH, THAT SORT OF THING.

20 THEN THE THIRD GROUP WOULD BE CONSIDERED TRACE ELEMENTS.  
21 THE TRACE ELEMENTS ARE PRESENT IN VERY, VERY SMALL  
22 QUANTITIES, AND THESE ARE USUALLY INCIDENTAL. THEY'RE IN  
23 THERE BY ACCIDENT. AND THOSE ARE THE ONES THAT WE CAN KEY ON  
24 TO DIFFERENTIATE GLASSES OF THE SAME TYPE.

25 Q ALL RIGHT. THE FIRST MAJOR ELEMENTS YOU CAN PRACTICALLY



JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 -- ARE PRESENT IN PRACTICALLY IN EVERY FORM OF GLASS?

2 A YES, SIR.

3 Q THEN THE MINOR ELEMENTS, ARE THOSE -- DO THOSE VARY FROM  
4 DIFFERENT TYPES OF GLASS?

5 A THEY DO. FOR INSTANCE, LABORATORY GLASS NEEDS TO BE  
6 HEAT RESISTANT, SO IT WILL HAVE A LOT OF BORON IN IT.  
7 CRYSTAL THAT GLISTENS HAS A LOT OF LEAD, LEAD CRYSTAL, IN IT.  
8 SO THE MINOR ELEMENTS WOULD GIVE IT CERTAIN PROPERTIES THAT  
9 ARE CHARACTERISTIC OF CERTAIN CLASSES OF GLASSES, LIKE BOTTLE  
10 GLASS, HEAD LAMP GLASS, WINDOW GLASS, ET CETERA.

11 Q ALL RIGHT. THOSE ARE THE TYPES OF GLASS. THEN WHEN YOU  
12 GET TO THE SAME TYPE OF GLASS YOU HAVE TWO SAMPLES OF THE  
13 SAME TYPE OF GLASS, HOW DO YOU DIFFERENTIATE IF ONE IS THE  
14 SAME AS THE OTHER OR DIFFERENT FROM IT?

15 A THAT WOULD BE DONE USING THE TRACE ELEMENTS, THE  
16 ELEMENTS THAT ARE PRESENT IN LESS THAN ONE PERCENT.

17 Q OKAY. AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS  
18 STATE'S EXHIBITS 28, WHICH HAS PREVIOUSLY BEEN IDENTIFIED BY  
19 OFFICER CLAPP AS BEING A CONTAINER WITH UNKNOWN SAMPLE OF  
20 SUSPECTED GLASS FOUND ON THE SEAT OF THE HONDA MOTORSCOOTER,  
21 AND THEN STATE'S EXHIBIT NUMBER 21, IDENTIFIED BY OFFICER DAR  
22 SHAW AS A KNOWN GLASS SAMPLE FROM THE FRONT DRIVER'S DOOR OF  
23 THE FORD CROWN VICTORIA DRIVEN BY OFFICER -- TROOPER  
24 NICHOLSON. DID YOU RECEIVE THOSE TWO ITEMS?

25 A YES, SIR, I DID. I WENT TO THE PROPERTY AND EVIDENCE

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 ROOM AT THE GREENVILLE LAW ENFORCEMENT CENTER ON FEBRUARY 7TH  
2 OF 2001 AND PICKED UP BOTH OF THESE ITEMS ON THAT DATE.

3 Q AND DID YOU CONDUCT A -- DO VARIOUS TESTS ON EXHIBIT  
4 NUMBER 21, THE GLASS FROM OFFICER -- TROOPER NICHOLSON'S  
5 VEHICLE?

6 A I DID. I PERFORMED ALL OF THE TESTS THAT I PREVIOUSLY  
7 DESCRIBED.

8 Q AND DID -- WERE THE RESULTS OF THAT TEST QUANTIFIED OR  
9 DID YOU RECEIVE CERTAIN STANDARD MEASUREMENTS THAT APPLY TO  
10 THAT PARTICULAR GLASS?

11 A THEY WERE. I OBTAINED AN ACTUAL NUMERICAL VALUE FOR THE  
12 INDEX, THE DENSITY AND THE PRESENCE OF CERTAIN ELEMENTS.

13 Q AND YOU COULD IDENTIFY THE ELEMENTS?

14 A YES, SIR.

15 Q AND DID YOU ALSO DO THE SAME TEST, IDENTICAL TEST, ON  
16 THE SAMPLE OF GLASS COLLECTED BY OFFICER CLAPP FOUND ON THE  
17 SEAT OF THE MOTORSCOOTER?

18 A YES, SIR, I DID.

19 Q OKAY. LET ME ASK YOU IF YOU CAN IDENTIFY WHAT'S BEEN  
20 MARKED AS STATE'S EXHIBITS 51 AND 51A?

21 A YES, SIR. THESE ARE TWO PHOTOMICROGRAPHS THAT I TOOK  
22 USING ONE OF MY MICROSCOPES. STATE'S EXHIBIT 51 IS A  
23 PHOTOMICROGRAPH OF THE -- OF STATE'S EXHIBIT 21, THE GLASS  
24 FROM THE VICTIM VEHICLE WINDOW. AND STATE'S EXHIBIT 51A IS A  
25 PHOTOMICROGRAPH OF STATE'S EXHIBIT 28?

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 Q THAT'S CORRECT.

2 A WHICH IS THE GLASS THAT WAS RECOVERED FROM THE SCOOTER  
3 SEAT.

4 Q OKAY.

5 SOLICITOR ARIAIL: YOUR HONOR, AT THIS TIME WE WOULD  
6 LIKE TO OFFER THESE --

7 Q WELL, FIRST, DID YOU MAKE THESE PHOTOGRAPHS ON YOUR  
8 EQUIPMENT PERSONALLY?

9 A I DID.

10 Q ALL RIGHT. AND THEY ARE ACCURATE REPRESENTATION OF THE  
11 SUBJECT MATTER?

12 A THEY ARE, YES, SIR.

13 MR. BANNISTER: NO OBJECTION, YOUR HONOR.

14 (STATE'S EXHIBITS 51 AND 51 A, PHOTOGRAPHS, MOVED INTO  
15 EVIDENCE)

16 Q LET'S LOOK AT -- THESE DON'T SHOW QUITE AS WELL ON THE  
17 PROJECTOR AS THEY DO IN ACTUALITY, BUT WHAT -- LABELED AS  
18 STATE'S EXHIBIT 21, THE SAMPLE GLASS FROM THE WINDOW OF  
19 TROOPER NICHOLSON'S CAR, IS THAT THE SUBJECT OF THIS  
20 PHOTOGRAPH?

21 A IT IS. THAT PIECE OF -- THE LARGER PIECES OF GLASS ON  
22 THE RIGHT-HAND SIDE IS THICKER THAN THE OTHER AND HAS SORT OF  
23 A GREENISH APPEARANCE TO IT, AND THAT'S DUE TO THE IRON  
24 PRESENT IN THE GLASS. THE OTHER THREE FRAGMENTS ARE  
25 FRAGMENTS THAT ARE MUCH, MUCH THINNER THAT I BROKE OFF OF

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 THAT PIECE IN ORDER TO HAVE A PIECE THAT WAS COMPARABLE I  
2 SIZE AND THICKNESS TO THE UNKNOWN GLASS.

3 Q OKAY. AND ARE THERE ANY SIGNIFICANT PROPERTIES ABOUT  
4 THOSE PIECES OF GLASS REVEALED ON THE PHOTOGRAPH, ANYTHING  
5 SIGNIFICANT TO YOU?

6 A WELL, THE WAY GLASS FRACTURES, IT'S REFERRED TO AS A  
7 CONCHOIDAL FRACTURE, THE SEMICIRCLES THAT YOU SEE IN BROKEN  
8 GLASS OR CHIPPED GLASS, THAT'S INDICATIVE OF IT BEING GLASS.  
9 THAT THICK PIECE OF GLASS ON THE RIGHT-HAND SIDE, IF YOU  
10 LOOKED AT THE EDGES OF IT, YOU CAN TELL IT IS TEMPERED GLASS,  
11 WHICH IS STRENGTHENED, STRENGTHENED GLASS.

12 Q HOW CAN YOU TELL THAT? YOU CAN TELL THAT?

13 A YOU CAN TELL -- IF YOU LOOK AT THE CROSS SECTION, YOU  
14 CAN SEE WHAT APPEAR TO BE LAYERS OF GLASS WHERE THE GLASS IS  
15 COOLED AT A DIFFERENT TEMPERATURE ON THE SURFACES THAN IT  
16 DOES IN THE CENTER. IT HAS SORT OF A LAYERED EFFECT OR  
17 LAYERED STRUCTURE. YOU CANNOT TELL THAT ON A VERY SMALL  
18 PIECE OF GLASS SUCH AS THE ONES ON THE LEFT-HAND SIDE.

19 Q OKAY. ALL RIGHT. LET ME SHOW YOU WHAT'S NOW MARKED AS  
20 STATE'S EXHIBIT 51A AND ASK YOU IF THAT'S THE GLASS TAKEN  
21 FROM THE SCOOTER SEAT?

22 A THOSE THREE FRAGMENTS ARE THE FRAGMENTS AS THEY WERE  
23 WHEN I TOOK THEM FROM THE PLASTIC CONTAINER THAT MARTY CLAPP  
24 COLLECTED.

25 Q OKAY. NOW, TAKING STATE'S EXHIBIT NUMBER 21 AND THE

1 STANDARD GLASS TAKEN FROM THE BROKEN WINDOW OF TROOPER  
2 NICHOLSON'S VEHICLE, DID YOU ESTABLISH A STANDARD AGAINST  
3 WHICH YOU COULD COMPARE ITEM 28, THE UNKNOWN GLASS TAKEN FROM  
4 THE SCOOTER SEAT?

5 A YES, SIR, I DID. I TOOK THE SMALL FRAGMENTS FROM THE  
6 STANDARD GLASS AND MADE ALL THE PERTINENT MEASUREMENTS,  
7 INDEX, DENSITY AND ELEMENTAL COMPOSITION, AND THEN I DID  
8 EXACTLY THE SAME THING WITH THE SMALL -- OR WITH THE UNKNOWN  
9 PIECES OF GLASS.

10 Q SAME TESTS ON BOTH?

11 A YES.

12 Q AND AS A RESULT OF THAT WERE YOU ABLE TO REACH AN  
13 OPINION TO A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY AS TO  
14 THE RELATIONSHIP BETWEEN EXHIBIT 21 AND EXHIBIT 28, THAT IS  
15 THE TWO SAMPLES OF GLASS?

16 A MY CONCLUSION IS THAT THE UNKNOWN OR THE SUSPECTED  
17 SAMPLE OF GLASS, EXHIBIT NUMBER 28, IS CONSISTENT WITH  
18 STATE'S EXHIBIT NUMBER 21, THE STANDARD GLASS IN REFRACTIVE  
19 INDEX VALUE, DENSITY VALUE AND IN ELEMENTAL COMPOSITION.  
20 THIS IS NOT -- THIS IS NOT A FINGERPRINT THAT INDICATES THAT  
21 GLASS CAME FROM THAT PARTICULAR WINDOW AT THE EXCLUSION OF  
22 ALL OTHER WINDOWS. WHAT IT DOES MEAN IS THAT FIRST THE  
23 VICTIM VEHICLE GLASS CANNOT BE ELIMINATED AS A SOURCE OF THAT  
24 GLASS, AND SECONDLY IT IS A VERY SMALL CHANCE THAT THE  
25 UNKNOWN GLASS CAME FROM ANOTHER GLASS BESIDES THE VICTIM

1 GLASS.

2 Q WHAT IS THE PERCENTAGE CHANCE THAT THE GLASS FROM THE  
3 SCOOTER SEAT CAME FROM TROOPER NICHOLSON'S VEHICLE, WHAT  
4 PERCENTAGE BASED ON YOUR STATISTICS?

5 A BASED ON STUDIES THAT ARE IN THE LITERATURE AND FROM MY  
6 OWN PERSONAL EXPERIENCE, IF YOU RANDOMLY PICK UP A SAMPLE OF  
7 GLASS -- IF YOU COLLECT A HUNDRED RANDOM SAMPLES OF GLASS,  
8 ONLY THREE OF THOSE WOULD COINCIDENTALLY BE THE SAME. SO  
9 THERE IS A THREE PERCENT CHANCE THAT IT'S RANDOMLY COLLECTED  
10 AND JUST HAPPENS TO MATCH THE STANDARD GLASS.

11 Q AND IT'S A 97 PERCENT CHANCE THE OTHER WAY?

12 A NINETY-SEVEN PERCENT CHANCE THAT YOU WOULD BE ABLE TO  
13 DIFFERENTIATE A RANDOMLY COLLECTED PIECE OF GLASS.

14 Q ALL RIGHT. NOW, WHEN YOU RAN THE ELEMENTAL TEST LET ME  
15 ASK YOU IF YOU PREPARED THIS DOCUMENT, WHICH IS STATE'S  
16 EXHIBIT 51B?

17 A YES, SIR, I DID.

18 Q ALL RIGHT. AND WHAT DOES THAT SHOW? WELL, I TELL YOU  
19 WHAT. LET ME SHOW IT TO MR. MAULDIN.

20 AND YOU PREPARED THIS DOCUMENT?

21 A I DID, YES, SIR.

22 MR. MAULDIN: (REVIEWS DOCUMENT WITH CO-COUNSEL)

23 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD LIKE TO OFFER  
24 AT THIS TIME STATE'S 51B.

25 MR. BANNISTER: NO OBJECTION.

1 THE COURT: WITHOUT OBJECTION.

2 (STATE'S EXHIBIT NUMBER 51B, GRAPH, MOVED INTO EVIDENCE)

3 Q LET ME JUST MAKE A QUICK REVIEW OF THAT CHART. TELL US  
4 WHAT THAT SHOWS REGARDING THE VARIOUS ELEMENTAL PROPERTIES  
5 THAT YOU DETECTED IN THE TWO DIFFERENT PIECES OF GLASS.

6 A OKAY. THE TOP GRAPH REPRESENTS THE ELEMENTAL  
7 COMPOSITION OF STATE'S EXHIBIT 21, THE STANDARD KNOWN GLASS  
8 SAMPLE FROM THE VICTIM WINDOW. THE MIDDLE GRAPH REPRESENTS  
9 THE ELEMENTAL COMPOSITION OF STATE'S EXHIBIT 28, THE GLASS  
10 OBTAINED FROM THE SCOOTER SEAT.

11 Q ARE THOSE THE MAJOR AND MINOR ELEMENTS?

12 A YES. THE BARS ON THE GRAPH DO NOT REPRESENT PERCENTAGES  
13 IN THAT GLASS.

14 Q RIGHT.

15 A THE LARGEST BARS ON THE LEFT-HAND SIDE OF BOTH OF THOSE  
16 SIMPLY INDICATE THAT THOSE ARE MAJOR COMPONENTS OF GLASS  
17 WHICH ARE PRESENT IN ALL GLASSES.

18 THE MID-SIZED BAR SIMPLY INDICATES THAT THAT IS A --  
19 WHAT'S REFERRED TO AS A MINOR COMPONENT, WHICH GIVES GLASS  
20 CERTAIN CHARACTERISTICS.

21 AND THEN THE SMALLER BARS ARE REPRESENTATIONS OF THE  
22 TRACE ELEMENTS THAT ARE PRESENT IN GLASSES.

23 Q NOW, DO THOSE BARS REPRESENT THE ELEMENTS THAT ARE  
24 ACTUALLY IN EACH ONE OF THESE TWO PIECES OF GLASS?

25 A THAT'S TRUE. THE ELEMENTS SHOWN ALONG THE BOTTOM SCALE

JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 THERE WHICH ARE SILICON, CALCIUM, OXYGEN, IRON, ET CETERA,  
2 THOSE ARE THE ELEMENTS THAT ARE ACTUALLY PRESENT IN STATE'S  
3 EXHIBIT 21. THE SAME THING WITH THE SECOND FIGURE, THOSE  
4 ELEMENTS SHOWN ON THERE ARE THE ONES THAT ARE ACTUALLY --  
5 THOSE ACTUALLY HAVE BEEN FOUND TO BE PRESENT IN STATE'S  
6 EXHIBIT 28.

7 Q WERE THERE ANY ELEMENTS PRESENT IN ONE THAT WEREN'T  
8 PRESENT IN THE OTHER?

9 A NO, SIR.

10 Q ALL ELEMENTS WERE CONSISTENT IN BOTH?

11 A THAT'S CORRECT.

12 Q AND THAT'S ONE OF THE BASES FOR YOUR CONCLUSION THAT  
13 THERE IS ONLY A THREE PERCENT CHANCE THAT STATE'S EXHIBIT 28  
14 COULD COME FROM SOME SOURCE OTHER THAN THE WINDOW OF OFFICER  
15 NICHOLSON'S CAR?

16 A YES, SIR.

17 SOLICITOR ARIAIL: AT THIS TIME WE WOULD LIKE TO MOVE  
18 INTO EVIDENCE STATE'S EXHIBITS 21 AND 28.

19 THE COURT: ANY OBJECTION?

20 MR. BANNISTER: NO OBJECTION.

21 (STATE'S EXHIBIT NUMBER 21, GLASS FROM TROOPER  
22 NICHOLSON'S CAR, MOVED INTO EVIDENCE)

23 (STATE'S EXHIBIT NUMBER 28, GLASS FROM SCOOTER SEAT,  
24 MOVED INTO EVIDENCE)

25 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) THANK



JEFFREY M. HOLLIFIELD -- DIRECT BY SOLICITOR ARIAIL

1 YOU. ANSWER ANY QUESTIONS -- WAIT A MINUTE. HOLD ON JUST A  
2 SECOND. (OFF RECORD WITH CO-COUNSEL)

3 Q WHAT IS THE BOTTOM GRAPH ON THIS EXHIBIT, STATE'S  
4 EXHIBIT 51B? I MOVED IT UP, AND I'LL SLIDE IT UP JUST A  
5 LITTLE BIT.

6 A THE BOTTOM GRAPH REPRESENTS THE ELEMENTS THAT WOULD  
7 COMMONLY BE FOUND IN VARIOUS GLASSES. THAT'S A GENERAL  
8 GRAPH. IT IS NOT SPECIFIC TO THIS CASE.

9 Q IT'S JUST A GENERAL LISTING OF ALL POTENTIAL ELEMENTS  
10 THAT COULD BE IN ANY GLASS?

11 A YES, SIR. AND AGAIN, THE THREE TALL BARS ON THE LEFT  
12 REPRESENT THOSE THREE MAJOR ELEMENTS THAT ARE IN ALL GLASSES..  
13 THE NEXT FIVE WOULD BE THE COMMON MINOR ELEMENTS, AND THE  
14 REST WOULD BE THE COMMON AND MOST LIKELY, MOST PROBABLE TRACE  
15 ELEMENTS THAT ARE GOING TO BE PRESENT IN GLASSES IN GENERAL.

16 Q AND THE TRACE ELEMENTS, THEY GET IN THERE, AS YOU SAID,  
17 BY ACCIDENT DURING THE MANUFACTURING PROCESS?

18 A THEY CAN GET THERE FROM THE MACHINERY THAT'S USED TO  
19 MAKE THE GLASS INCIDENTALLY OR THEY COULD BE A CONTAMINATION.  
20 GLASS MANUFACTURERS USE WHAT'S CALLED COLORED OR SCRAP GLASS,  
21 RECYCLED GLASS, AND SO CERTAIN ELEMENTS MAY BE PRESENT BY  
22 JUST BY HAPPENSTANCE, MANY OF THE TRACE ELEMENTS.

23 SOLICITOR ARIAIL: OKAY. THANK YOU.

24 MR. BANNISTER: THANK YOU, YOUR HONOR.

25 CROSS EXAMINATION BY MR. BANNISTER:

JEFFREY M. HOLLIFIELD -- CROSS BY MR. BANNISTER

1 Q MR. HOLLIFIELD, YOU ARE AN EXPERT IN EXAMINING AND  
2 COMPARING VERY, VERY SMALL THINGS?

3 A THAT'S VALID.

4 Q MICROSCOPICALLY SMALL THINGS?

5 A YES, SIR.

6 Q LET ME SWITCH GEARS ON YOU FOR JUST A SECOND. GIVEN THE  
7 APPROPRIATE SAMPLE WOULD YOU BE ABLE TO DETERMINE IF TRACES  
8 OF TIRE RUBBER EXISTED ON A PIECE OF ASPHALT?

9 A I COULD IDENTIFY IT AS RUBBER CERTAINLY. MAYBE NOT TIRE  
10 RUBBER, BUT AS RUBBER SURE.

11 MR. BANNISTER: THANK YOU. NO FURTHER QUESTIONS.

12 THE COURT: ANY REDIRECT?

13 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL)

14 NOTHING FURTHER.

15 THE COURT: ALL RIGHT. MR. HOLLIFIELD, THANK YOU, SIR.  
16 WE APPRECIATE IT.

17 (WITNESS STEPS DOWN AT 6:11 P.M.)

18 THE COURT: SOLICITOR, UNLESS YOU HAVE A WITNESS THAT  
19 FOR TIME AND SCHEDULING REASONS HAS TO BE DONE THIS EVENING,  
20 I'D LIKE TO BREAK AT THIS TIME.

21 MS. STROM: THAT'S OKAY.

22 THE COURT: WE'RE GOING TO BREAK AT THIS TIME, LADIES  
23 AND GENTLEMEN. AGAIN, AS I HAVE INSTRUCTED THROUGHOUT, DO  
24 NOT DISCUSS THE CASE AMONG YOURSELVES. I HOPE YOU HAVE A  
25 PLEASANT EVENING. WE'LL SEE YOU TOMORROW AT ONE O'CLOCK.

1           YOU CAN LEAVE YOUR PADS THERE OR TAKE THEM TO THE JURY  
2 ROOM, WHATEVER IS CONVENIENT FOR Y'ALL.

3                   (JURY EXITS COURTROOM AT 6:12 P.M.)

4                   (OFF RECORD DISCUSSION)

5           **THE COURT:**   DO ME A FAVOR.   WHEN AN EXHIBIT MARKED FOR  
6 IDENTIFICATION IS RECEIVED, BRING IT TO THE COURT REPORTER'S  
7 STATION SO WE CAN GET SOME THINGS DONE RATHER THAN COMING  
8 BACK LATER.   IT WOULD REALLY HELP OUT MS. KOFFSKEY TO DO  
9 THAT.   IT MIGHT TAKE JUST A FEW MORE SECONDS BUT IT WILL HELP  
10 US ON THE FRONT END.

11           WITH THAT, WE'LL BE IN RECESS, ADJOURNED TILL ONE  
12 O'CLOCK TOMORROW.

13                   (COURT ADJOURNED FOR THE DAY AT 6:15 P.M.)

**CERTIFICATE**

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF FEBRUARY, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 20, 2003



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DAWN V. KOFFSKEY  
COURT REPORTER

MATTERS AND MOTIONS

1 (TRIAL RESUMED AT 1:04 P.M. ON 2/10/02)

2 (THE FOLLOWING DISCUSSION IS AT THE COURT REPORTER'S  
3 STATION OUTSIDE EARSHOT OF THE COURTROOM)

4 THE COURT: WE ARE AT THE COURT REPORTER'S STATION TO  
5 INFORM COUNSEL OF A SITUATION THAT OCCURRED LAST NIGHT. I'M  
6 NOT GOING TO BROADCAST IT FOR MEDIA AND THE PUBLIC AT LARGE.  
7 IT GOING TO BE SUMMARIZED AND A COURT'S EXHIBIT WILL BE  
8 PLACED UNDER SEAL.

9 MS. STANCIL IS NO LONGER A MEMBER OF THE JURY. HER  
10 HUSBAND DIED LAST NIGHT. APPARENTLY HE HAD SURGERY FRIDAY,  
11 BUT NONE OF US KNEW ABOUT IT. MS. STANCILL IS THE ONE WITH  
12 THE FINGER WE HAD WORKED OUT WITH HER DOCTORS. IT WAS  
13 PERFECTLY PERMISSIBLE. SHE NEVER TOLD US ABOUT HER HUSBAND'S  
14 SITUATION. I HAVE A CALL INTO ANDREA TO FIND OUT ANYTHING IN  
15 THE RECORDS SHE HAS IF WE HAD ANY INDICATION HER HUSBAND WAS  
16 ILL. SHE DID NOT ALERT US IN COURTROOM 7 ON FRIDAY. SHE  
17 DIDN'T TELL US WHEN WE BROUGHT HER IN COURTROOM 8. HE HAD A  
18 MASSIVE HEART ATTACK AND DIED.

19 I RECEIVED A CALL FROM AGENT MCLEOD APPROXIMATELY  
20 MIDNIGHT WHO APPRISED ME OF THE SITUATION AND PERMISSION TO  
21 TAKE HER TO THE HOSPITAL. I IMMEDIATELY RELEASED HER FROM  
22 JURY DUTY. I WANT Y'ALL TO BE AWARE OF THAT.

23 THERE IS A SUMMARY OF THIS OF THE FAMILY CALLING THE  
24 FRONT DESK AT L.E.C. TO FIND OUT WHERE THEIR MOTHER WAS SINCE  
25 DAD HAD DIED. THEY CONTACTED HEAD AGENT MCLEOD WHO CONTACTED

MATTERS AND MOTIONS

1 ME IMMEDIATELY. AND THAT'S THE FLOW OF EVENTS. SHE HAS BEEN  
2 EXCUSED. MS. KESSLER, WHO IS THE FIRST ALTERNATE, WILL NOW  
3 BE A REGULAR MEMBER OF THIS JURY.

4 AS FAR AS PLANNING PURPOSES GO, WE WILL GO FROM 6:00 TO  
5 7:00 TONIGHT. TOMORROW WE'LL START AT 9:00. WE'LL BREAK AT  
6 12:00 FOR LUNCH. LUNCH WILL BE BROUGHT IN. IT JUST NEEDS TO  
7 BE HANDLED. IF YOU WANT TO FIND OUT TODAY WHERE TO EAT, YOU  
8 WANT TO GET THE MENUS TODAY. IF YOU WANT TO DO IT IN THE  
9 MORNING, WE NEED TO START ABOUT 9:00 SO WE'LL BE ABLE TO GO  
10 WITHOUT TAKING A 30- TO 45-MINUTE BREAK TO DO LUNCH ORDERS.  
11 SO WE NEED TO LOCK THAT DOWN TODAY. LUNCH WILL BE BROUGHT IN  
12 TOMORROW AT APPROXIMATELY 12:00. WE'LL BREAK FOR AN HOUR,  
13 SAY 12:00 TO 1:00. WE'LL START BACK AFTER THAT HOUR LUNCH  
14 BREAK AT APPROXIMATELY 1:00. WE WILL NOW GO UNTIL ABOUT  
15 3:30. I SAID FOUR O'CLOCK. THAT WILL GIVE US AN EXTRA TWO,  
16 TWO AND A HALF HOURS IN COURT.

17 THE REASON WHY I MENTION THAT TO YOU TODAY IS BECAUSE  
18 FROM THE BENCH CONFERENCE WE HAD THERE WAS A CONCERN ABOUT  
19 GETTING DEFENSE WITNESSES HERE AT THE CLOSE OF THE STATE'S  
20 CASE.

21 MR. MAULDIN: RIGHT.

22 THE COURT: SO THIS MAY AFFECT THAT A LITTLE BIT. I'M  
23 STILL AMENABLE TO WORKING WITH BOTH SIDES IN TERMS OF  
24 ACCOMMODATING WITNESSES AND THEIR CONFLICTS IN SCHEDULES.  
25 BUT I WANT YOU TO KNOW THAT SITUATION. AS OF TUESDAY WE

MATTERS AND MOTIONS

1 SHOULD BE ON A NORMAL SCHEDULE.

2 SOLICITOR ARIAIL: DID YOU GET MY MESSAGE?

3 MR. MAULDIN: YEAH, I GOT IT.

4 SOLICITOR ARIAIL: THE MESSAGE WAS THAT WE ANTICIPATE  
5 FINISHING TODAY.

6 MR. MAULDIN: THAT OF COURSE DOES PUT US IN A REAL  
7 TENSE SQUEEZE. WE FEEL LIKE WE CAN BE READY IN THE MORNING.  
8 BUT IF WE WERE CALLED UPON TO BE RESPONSIVE AT MID-AFTERNOON  
9 TODAY, WE WOULD NOT BE READY THIS AFTERNOON.

10 THE COURT: I WILL WORK WITH YOU ON THAT.

11 MR. MAULDIN: BUT WE CAN BE READY IN THE MORNING.

12 THE COURT: AND YOU'LL HAVE TO ANSWER THIS, ARE YOU  
13 TALKING 30 MORE MINUTES, TWO HOURS?

14 SOLICITOR ARIAIL: OH, NO. FIVE HOURS.

15 THE COURT: OKAY.

16 MR. MAULDIN: THEY'RE GOING TO USE TODAY.

17 THE COURT: IF IT'S ONLY THREE OR FOUR, DON'T WORRY  
18 ABOUT IT.

19 MR. MAULDIN: ALL RIGHT.

20 THE COURT: YOU DON'T HAVE TO WORRY ABOUT GETTING YOUR  
21 PEOPLE HERE.

22 MR. MAULDIN: LET ME ASK YOU, JUDGE, WHILE WE'RE ON  
23 THIS CONFERENCE, AND MAYBE YOU COULD ASK THE AGENT OR  
24 WHATEVER, WHEN SHE WAS INFORMED WAS ANY OTHER JUROR---

25 THE COURT: TWO JURORS SAW S.L.E.D. ESCORT HER AWAY,

MATTERS AND MOTIONS

1 THE COURT SECURITY OFFICERS. THEY WERE CURIOUS AS TO WHY SHE  
2 WAS RUSHED OUT TO WHY SHE WAS RUSHED OUT IN SUCH A HURRY.  
3 SINCE THOSE TWO KNEW, THEY TOLD EVERYBODY AT BREAKFAST.

4 MR. MAULDIN: SO THE JURY PANEL---

5 THE COURT: ALL THEY KNEW IS THERE WAS A DEATH IN THE  
6 FAMILY AND THE CASE WOULD PROCEED.

7 MR. MAULDIN: OKAY. DO THEY ACTUALLY KNOW THAT IT WAS  
8 HER HUSBAND?

9 THE COURT: I BELIEVE THEY DO. MCLEOD---

10 MR. MAULDIN: YES, SIR. GOLLY, THAT'S JUST HORRIBLE.

11 WELL, I DON'T THINK YOU OUGHT TO GIVE ANY OF THEM AN  
12 OPTION TO NOW BE EXCUSED BECAUSE YOU'RE LIABLE TO HAVE A  
13 BUNCH OF HANDS GO UP.

14 THE COURT: I WOULD SEE NO REASON TO EXCUSE THEM ON  
15 THAT BASIS.

16 MR. MAULDIN: RIGHT. RIGHT. RIGHT. DO YOU THINK --  
17 AND I REALLY -- I'VE GOT AS GOOD A CHANCE WITH THIS JURY AS  
18 I'LL EVER HAVE, SO I DON'T WANT ANYTHING TO HAPPEN WITH THIS  
19 JURY, BUT DO YOU -- SHOULD THE COURT ASK IF ANY MEMBER OF THE  
20 JURY PANEL WOULD BE AFFECTED TO THE EXTENT THEY COULDN'T GIVE  
21 THE STATE AND DEFENSE A FAIR TRIAL AS A RESULT OF -- I DON'T  
22 KNOW. I MEAN, I NEVER HAD ANYTHING LIKE THAT HAPPEN.

23 THE COURT: NO.

24 MR. MAULDIN: I DON'T KNOW HOW THE COURT FEELS---

25 THE COURT: I'M NOT GOING TO DO THAT BECAUSE I'M NOT



MATTERS AND MOTIONS

1 GOING TO INVITE SOMEONE WHO SIMPLY DOESN'T WANT TO BE HERE---

2 MR. MAULDIN: RIGHT.

3 THE COURT: BUT AT THE END OF THE DAY WHEN I TELL THEM,  
4 AS I DO EACH MEAL, BREAK, ET CETERA, NOT TO DISCUSS THE CASE,  
5 I MAY THROW SOME CAVEAT IN TONIGHT IF THERE IS ANYTHING THAT  
6 IS OF CONCERN YOU NEED TO BRING TO MY ATTENTION ABOUT YOUR  
7 SERVICE, PLEASE LET ME KNOW. THAT WILL GIVE THEM SOMETHING  
8 THEY CAN HANG THEIR HAT ON.

9 MR. MAULDIN: ALL RIGHT.

10 THE COURT: BUT I DON'T WANT TO DO IT IN AN IMMEDIATE  
11 CONTEXT OF MS. STANCIL'S HUSBAND'S DEATH.

12 MR. MAULDIN: RIGHT.

13 THE COURT: IS THAT SATISFACTORY?

14 MR. MAULDIN: THAT'S SATISFACTORY WITH US, YOUR HONOR.

15 THE COURT: HERE'S THE COURT'S EXHIBIT. YOU CAN REVIEW  
16 IT. ONCE COUNSEL REVIEWS IT, PLEASE PLACE IT UNDER SEAL, MS.  
17 KOFFSKEY. THANK YOU.

18 (INCIDENT REPORT REGARDING THE DEATH OF JUROR STANCIL'S  
19 HUSBAND MARKED AS COURT'S EXHIBIT NUMBER 18 AND PLACED UNDER  
20 SEAL BY ORDER OF THE COURT)

21 (DISCUSSION AT COURT REPORTER'S STATION ENDS)

22 THE COURT: IF ANYBODY ELSE NEEDS TO COME IN, WE'RE  
23 GETTING READY TO BEGIN, MR. JENKINS.

24 MS. STROM: YOUR HONOR, I HAVE ONE MATTER BEFORE WE  
25 BRING THE JURY.

MATTERS AND MOTIONS

1           THE COURT:   GO AHEAD.

2           MS. STROM:   YES, SIR, YOUR HONOR.  AS TO RELATING BACK  
3 TO THE PROFFER OF THE TESTIMONY OF OFFICER C.P. BLACKBURN  
4 REGARDING THE STATEMENT MADE BY THE DEFENDANT IN THE HOSPITAL  
5 -- AND NOT TO TAKE ISSUE WITH WHAT YOUR HONOR SAID REGARDING  
6 VOLUNTARINESS -- I DO THINK THAT YOUR HONOR MUST MAKE A  
7 DETERMINATION THAT THIS STATEMENT IS VOLUNTARY.  HOWEVER,  
8 THE STATE'S POSITION AS VOLUNTARINESS IS TO WHETHER THE  
9 DEFENDANT'S WILL WAS OVERBORE BY LAW ENFORCEMENT, AND I  
10 DIRECT THE COURT'S ATTENTION TO COLORADO v. CONNOLLY, AND I  
11 HAVE A COPY FOR THE COURT.

12          THE COURT:   ALL RIGHT.

13          MS. STROM:   IT'S A UNITED STATES SUPREME COURT CASE  
14 WHICH WAS CITED IN A SOUTH CAROLINA SUPREME COURT CASE, STATE  
15 v. WHITE, AND IN CONNOLLY, YOUR HONOR, THE COURT HELD THAT  
16 COERCIVE POLICE ACTIVITY IS A NECESSARY PREDICATE TO THE  
17 FINDING THAT A CONFESSION IS NOT VOLUNTARY WITHIN THE MEANING  
18 OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT.  WE SUBMIT,  
19 YOUR HONOR, THAT THIS WOULD BE A SIMILAR TYPE SITUATION IF A  
20 DEFENDANT WAS PULLED OVER FOR DRIVING UNDER THE INFLUENCE AND  
21 MAY VERY WELL BE HIGHLY INTOXICATED, GETS OUT OF THE CAR AND  
22 BEGINS SAYING, "I SHOULDN'T HAVE BEEN AT THAT BAR DRINKING  
23 THOSE 27 BEERS" NOT AS A RESULT OF ANY POLICE COERCIVE  
24 ACTIVITY OR ANY STRONG-ARMING OF THE POLICE FOR THAT  
25 STATEMENT TO BE MADE.  I THINK THE MENTAL STATE OF THE

MATTERS AND MOTIONS

1 DEFENDANT IS SOMETHING THAT NEEDS TO BE TAKEN INTO  
2 CONSIDERATION, ESPECIALLY WHEN THE POLICE ARE ATTEMPTING TO  
3 GET THE DEFENDANT TO WAIVE A CONSTITUTIONAL RIGHT. BUT HERE  
4 THERE WAS NOT AN INTERROGATION. THERE WAS NOT ANY GETTING  
5 HIM TO WAIVE ANY RIGHTS. THIS WAS A SPONTANEOUS STATEMENT ON  
6 HIS BEHALF, AND WE WOULD SUBMIT THAT TO YOUR HONOR. IF THIS  
7 IS NOT SATISFACTORY, WE WOULD ALLOW -- WE WOULD ASK THAT WE  
8 BE ALLOWED TO PROFFER ADDITIONAL TESTIMONY IF NECESSARY.

9 THE COURT: ALL RIGHT. GIVE ME AN OPPORTUNITY TO  
10 REVIEW THE CASE. I THINK YOU GAVE DEFENSE COUNSEL A COPY.

11 MS. STROM: YES, SIR.

12 THE COURT: AND WE WILL CERTAINLY REVISIT IT BEFORE THE  
13 CLOSE OF THE STATE'S CASE.

14 MS. STROM: AND I ALSO HAND UP STATE v. WHITE, WHICH  
15 CITES CONNOLLY. WHITE WAS OVERTURNED ON THE ISSUE OF  
16 OSBORN.

17 THE COURT: THANK YOU, MA'AM.  
18 BRING THE JURY.

19 (JURY ENTERS COURTROOM AT 1:16 P.M.)

20 THE COURT: GOOD AFTERNOON, MADAME FORELADY, LADIES AND  
21 GENTLEMEN. WE'RE READY TO PROCEED. IN LIGHT OF THE  
22 INABILITY OF ONE OF YOUR FELLOW JURORS TO CONTINUE SERVICE,  
23 THE FIRST ALTERNATE NOW IS A REGULAR MEMBER OF THIS JURY.

24 WE'RE READY TO PROCEED WITH THE TAKING OF ADDITIONAL  
25 EVIDENCE. SOLICITOR, YOU MAY PROCEED.

MATTERS AND MOTIONS

1           **SOLICITOR ARIAIL:**    THANK YOU, YOUR HONOR.   WE CALL ILA  
2   SIMMONS.

3                                   **ILA SIMMONS,** HAVING BEEN DULY  
4   SWORN, TESTIFIED AS FOLLOWS:

5   **DIRECT EXAMINATION BY SOLICITOR ARIAIL:**

6   **Q**     STATE YOUR NAME FOR THE RECORD, PLEASE, MA'AM.

7   **A**     ILA SIMMONS.

8   **Q**     MS. SIMMONS, IF YOU WOULD, PLEASE KEEP YOUR VOICE UP  
9   LIKE THAT SO THE LAST TWO JURORS AND I CAN HEAR YOU.

10           BY WHOM ARE YOU EMPLOYED?

11   **A**     I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT  
12   DIVISION, COMMONLY KNOWN AS S.L.E.D.

13   **Q**     AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH S.L.E.D.?

14   **A**     I AM AN ANALYST IN THE AREA OF TRACE EVIDENCE.

15   **Q**     HOW LONG HAVE YOU BEEN EMPLOYED WITH S.L.E.D IN THAT  
16   CAPACITY?

17   **A**     FOR ALMOST TWO YEARS.

18   **Q**     AND WHAT IS YOUR EDUCATION AND TRAINING AND BACKGROUND  
19   FOR THAT POSITION?

20   **A**     I RECEIVED A BACHELOR'S OF SCIENCE DEGREE FROM COLUMBIA  
21   COLLEGE, AND I'VE HAD A YEAR'S WORTH OF NOT POST-DOC BUT  
22   POST-MASTER'S DEGREE WORK AT USC, AND I'VE UNDERGONE A YEAR  
23   AND A HALF OF TRAINING AND INTENSIVE TRAINING AT S.L.E.D.

24   **Q**     ALL RIGHT.   NOW, TELL ME THE NUMBER OF -- WELL, LET ME  
25   ASK YOU ABOUT THIS.   ARE GUNSHOT RESIDUE TESTS A PART OF ONE

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 OF THE DUTIES THAT YOU PERFORM AS A TRACE EXAMINER?

2 A YES. TRACE ENCOMPASSES SEVERAL AREAS OF FORENSICS,  
3 HAIRS, FIBERS, GUNSHOT RESIDUE, PAINT ANALYSIS, EXPLOSIVE  
4 ANALYSIS.

5 Q SO YOU DEAL WITH PAINT, BLOOD---

6 A NO. PAINT, EXPLOSIVES, HAIR, FIBERS, GUNSHOT RESIDUE,  
7 GUNPOWDER RESIDUE.

8 Q ALL RIGHT. HOW MANY GUNSHOT RESIDUE ANALYSES HAVE YOU  
9 CONDUCTED IN YOUR CAREER AT S.L.E.D.?

10 A APPROXIMATELY 1500 ANALYSES.

11 Q AND HAVE YOU QUALIFIED AS AN EXPERT WITNESS IN THIS  
12 STATE IN THE AREA OF GUNSHOT RESIDUE ANALYSIS?

13 A YES, SIR, I HAVE.

14 Q ARE THERE OTHER SIMILAR EXAMINERS AT S.L.E.D.?

15 A THERE ARE FOUR OTHER EXAMINERS IN THE AREA OF TRACE  
16 EVIDENCE AT S.L.E.D.

17 Q AND DO EACH OF YOU REVIEW EACH OTHER'S CONCLUSIONS  
18 REGARDING YOUR INDIVIDUAL WORK?

19 A YES, SIR. WHEN WE GET READY TO SEND OUT A REPORT FOR  
20 EACH CASE WE HAVE ANOTHER ANALYST WHO IS QUALIFIED IN THAT  
21 AREA TO REVIEW OUR DATA AND MAKE SURE THAT THEY AGREE WITH  
22 OUR CONCLUSIONS.

23 Q AND ARE THERE CERTAIN STANDARDS THAT YOU MUST OBSERVE AS  
24 A PART OF YOUR WORK?

25 A YES, SIR. WE ARE ACCREDITED BY A.S.C.L.A.D., WHICH

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 STANDS FOR THE AMERICAN SOCIETY OF CRIMINAL LAB DIRECTORS,  
2 AND WE HAVE TO ABIDE BY THEIR RULES AND THEIR REGULATIONS.

3 Q AND ARE THOSE ACCREDITATION STANDARDS MONITORED ON A  
4 REGULAR BASIS TO MAKE SURE THAT THE LAB IS IN COMPLIANCE WITH  
5 THOSE STANDARDS?

6 A YES, SIR, THEY ARE. EVERY FOUR YEARS WE HAVE AN  
7 INSPECTION BY THE A.S.C.L.A.D. DIRECTORS, AND ALSO EVERY YEAR  
8 WE HAVE DIRECTORS FROM OTHER DEPARTMENTS COME IN  
9 INDEPENDENTLY IN S.L.E.D. AND MAKE SURE THE THAT LAB IS UP TO  
10 PAR.

11 Q IS THE GUNSHOT RESIDUE TESTING AND EXAMINATION ANALYSIS  
12 THAT WAS DONE AT S.L.E.D., IS IT A WIDELY CONDUCTED FORM OF  
13 TESTING?

14 A YES, SIR. SOME OF THE -- THERE ARE SEVERAL LABS, STATE  
15 LABS AND INDEPENDENT FORENSICS LABS IN THE UNITED STATES.  
16 ALSO, THE FBI CRIME LAB DOES GUNSHOT RESIDUE ANALYSIS AS WELL  
17 AS THE ROYAL CANADIAN MOUNTED POLICE ARE JUST A FEW OF THE  
18 LABS THAT CONDUCT THIS TEST.

19 Q IS IT DONE EXTENSIVELY THEN IN OTHER ACCREDITED LABS  
20 THROUGHOUT THE UNITED STATES?

21 A YES, SIR.

22 Q HOW LONG HAS THIS TYPE OF TESTING BEEN IN ACCEPTANCE AS  
23 AN APPROPRIATE FORM OF TESTING?

24 A THE TYPE OF TESTING WE DO IN G.S.R. HAS BEEN CONDUCTED  
25 SINCE THE EARLY '80s.

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 Q AND HAS THE RELIABILITY OF THIS TEST OR TYPE OF TESTING  
2 BEEN REVIEWED BY PERSONS WHO WORK WITHIN YOUR FIELD?

3 A YES, IT HAS.

4 Q AND HAS THIS FORM OF TESTING BEEN WIDELY REVIEWED WITHIN  
5 PROFESSIONAL JOURNALS?

6 A IT HAS.

7 Q HAVE YOU WRITTEN OR PUBLISHED ANY ARTICLES IN THE AREA?

8 A NO, I HAVE NOT.

9 Q HAVE YOU BEEN SPECIFICALLY TRAINED INCLUDING EXPERIENCE  
10 IN PERFORMING AND INTERPRETING THE RESULTS OF THE GUNSHOT  
11 RESIDUE TEST?

12 A YES, I HAVE. I UNDERWENT A TRAINING PROGRAM FOR A YEAR  
13 AND A HALF AT S.L.E.D. AT THE END OF THIS TRAINING PROGRAM I  
14 TOOK COMPETENCY EXAMS AND PASSED THEM IN THIS AREA.

15 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD SUBMIT THAT SHE  
16 IS AN EXPERT IN THE AREA OF TRACE EXAMINATION, PARTICULARLY  
17 IN THIS CASE IN REGARD TO GUNSHOT RESIDUE TESTING AND  
18 ANALYSIS.

19 THE COURT: ANY VOIR DIRE?

20 MR. BANNISTER: NO OBJECTION, YOUR HONOR.

21 THE COURT: WITHOUT OBJECTION. THIS WITNESS WILL BE SO  
22 QUALIFIED. PLEASE, ONCE AGAIN, CONSIDER MY EARLIER  
23 INSTRUCTION TO YOU ON YOUR CONSIDERATION OF THE OPINION  
24 TESTIMONY OF ONE DESIGNATED AS AN EXPERT.

25 YES, SIR.

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

2 Q WHAT ARE THE VARIOUS STEPS THAT YOU GO THROUGH IN  
3 CONDUCTING OR ANALYZING GUNSHOT RESIDUE?

4 A WHEN WE RECEIVE A KIT, IT IS IN A MANILA ENVELOPE  
5 SOMETHING LIKE THIS, AND IT IS SEALED WITH EVIDENCE TAPE. WE  
6 MAKE SURE THAT THAT EVIDENCE TAPE IS SEALED AND SIGNED BY THE  
7 DELIVERING OFFICER. AFTER WE CHECK THAT TO MAKE SURE THE  
8 INTEGRITY OF THE KIT IS INTACT, WE OPEN THAT. WE THEN BEGIN  
9 OUR ANALYSIS. WE PREP THE SAMPLES AND THEN WE PERFORM  
10 ANALYSIS ON INSTRUMENTATION AFTER THAT.

11 Q IS THE KIT A STANDARD ISSUE KIT THAT IS APPROVED BY  
12 S.L.E.D.?

13 A YES, THERE ARE STANDARD ISSUE KITS THAT ARE APPROVED BY  
14 S.L.E.D.

15 Q AND THESE HAVE CERTAIN PROPONENTS THAT YOU EXPECT TO BE  
16 IN EACH ONE?

17 A YES, SIR. THERE ARE KITS THAT -- SOME OF THE KITS  
18 CONTAIN TWO COMPONENTS. THE FIRST COMPONENT IS PARTICLE  
19 LIFTS, WHICH ARE JUST STICKY LITTLE STUBS THAT ARE DABBED  
20 ACROSS THE HANDS OF THE PERSON THOUGHT TO HAVE SHOT A WEAPON.  
21 THE SECOND PART IS SWABS THAT ARE USED TO PICK UP ANY  
22 RESIDUAL MATERIAL THAT THE STICKY STUBS DID NOT GET. SOME  
23 KITS COME IN ONE OR THE OTHER. SOMETIMES THERE IS JUST THE  
24 SWABS ARE SUBMITTED. SOMETIMES JUST THE PARTICLE LIFTS ARE  
25 SUBMITTED, DEPENDING ON WHAT IS BEING ANALYZED.



ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 Q AND ONCE YOU RECEIVE THE KIT AND BEGIN THE ANALYSIS, IS  
2 THIS A MICROSCOPIC ANALYSIS, A CHEMICAL ANALYSIS OR A  
3 COMBINATION OF TYPES OF TESTS?

4 A IT'S A COMBINATION. WHEN WE GET THE TWO -- THE  
5 COMBINATION KITS WITH BOTH THE SWABS AND THE PARTICLE LIFTS,  
6 THE PARTICLE LIFTS ARE EXAMINED MICROSCOPICALLY ON A SCAN  
7 ELECTRON MICROSCOPE, AND THE SWABS ARE ANALYZED CHEMICALLY ON  
8 ANOTHER INSTRUMENT.

9 Q ALL RIGHT. NOW I WANT TO HAND TO YOU WHAT HAS BEEN  
10 MARKED AS STATE'S EXHIBIT NUMBER 27 AND 29, PREVIOUSLY  
11 IDENTIFIED BY OFFICERS AS BEING DELIVERED TO S.L.E.D. FOR  
12 TRACE EXAMINATION, AND ASK IF YOU WOULD LOOK AT THOSE AND  
13 DETERMINE IF YOU RECEIVED AND CONDUCTED AN EXAMINATION AND  
14 ANALYSIS ON THOSE TWO KITS.

15 A (REVIEWS EXHIBITS) YES, SIR. MY INITIALS AND THE LAB  
16 NUMBER AND SOME OTHER PERTINENT INFORMATION ARE ON BOTH OF  
17 THESE KITS THAT I DID ANALYZE THESE KITS.

18 Q ALL RIGHT. AND AS A RESULT OF THAT EXAMINATION DID YOU  
19 PREPARE A WRITTEN REPORT?

20 A YES, SIR, I DID.

21 Q AND IF YOU WOULD, FEEL FREE TO CONSULT WITH YOUR WRITTEN  
22 REPORT. WHAT I WANT TO DO IS REFER TO STATE'S EXHIBIT 27,  
23 WHICH WOULD BE YOUR ITEM NUMBER 22.

24 A OKAY.

25 Q IT WOULD BE THE GUNSHOT RESIDUE KIT FROM THE 1992 HONDA

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1     HELIX MOTOR SCOOTER.

2     A     YES, SIR.

3     Q     AND DID YOU CONDUCT A TEST ON EXHIBIT NUMBER 27?

4     A     YES, SIR. ON THE PARTICLE LIFTS FROM THE HONDA MOTOR  
5     SCOOTER, YES, SIR, I DID.

6     Q     ALL RIGHT. AND WERE THERE PARTICLE LIFTS AND THE SECOND  
7     PART OF THE TEST OR JUST PARTICLE LIFTS?

8     A     JUST PARTICLE LIFTS IN THIS PARTICULAR TEST.

9     Q     AND IN LOOKING AT THE PARTICLE LIFTS AND CONDUCTING THAT  
10    TEST AND EXAMINATION, BASED ON THE RESULTS DID YOU FORM AN  
11    OPINION AS TO WHETHER GUNSHOT RESIDUE WAS FOUND ON EITHER OR  
12    BOTH OF THE HANDLEBAR GRIPS OF THE HONDA SCOOTER?

13    A     I FOUND THAT GUNSHOT RESIDUE WAS FOUND ON THE PARTICLE  
14    LIFT LABELED RIGHT HANDLEBAR GRIP AND ROUND LEAD PARTICLES  
15    WERE FOUND ON THE PARTICLE LIFT LABELED LEFT HANDLEBAR GRIP.

16    Q     ALL RIGHT. NOW, SO THE JURY WILL UNDERSTAND WHAT WE'RE  
17    TALKING ABOUT, YOU SAY GUNSHOT RESIDUE WAS FOUND ON THE RIGHT  
18    HANDLEBAR GRIP. WHAT IS GUNSHOT RESIDUE?

19    A     WHEN WE LOOK AT THE GUNSHOT RESIDUE SAMPLES, WE ARE  
20    LOOKING FOR THREE PARTICULAR COMPONENTS. WE'RE LOOKING FOR  
21    LEAD, ANTIMONY AND BARIUM, AND THESE THREE, IN COMBINATION  
22    WITH ONE ANOTHER, WERE FOUND ON THE RIGHT HANDLEBAR GRIP.

23    Q     AND THE REASON YOU ARE LOOKING FOR THOSE THREE IS WHY?

24    A     WHEN A GUN IS FIRED THERE IS -- THE FIRST PART OF THE  
25    CARTRIDGE THAT IS STRUCK IS CALLED A PRIMER, AND THESE THREE

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 COMPONENTS THAT I MENTIONED EARLIER ARE PRESENT IN THIS  
2 PRIMER, AND THEY ARE EXPELLED FROM THE GUN JUST AS THE BULLET  
3 IS. WELL, AS THEY COME OUT OF THE GUN -- THEY ARE VERY LIGHT  
4 PARTICLES -- THEY ARE HIT BY THE RESISTANCE OF THE AIR AND  
5 THEY COME BACK AND THEY GET ON THE HANDS OF THE PERSON  
6 SHOOTING THE GUN OR ANYTHING IN THE VICINITY OF THE WEAPON  
7 WHEN IT IS FIRED. AND THAT'S WHY WE'RE LOOKING FOR THESE  
8 THREE COMPONENTS.

9 Q NOW, ARE THESE ELEMENTS TRANSFERRABLE ONCE THEY'RE ON  
10 SOMEONE'S HANDS?

11 A YES, SIR, THEY ARE. THE THREE PRIMARY WAYS TO GET  
12 GUNSHOT RESIDUE ON THE HANDS OF A PERSON IS TO FIRE A WEAPON,  
13 TO HANDLE A WEAPON AFTER IT HAS BEEN FIRED OR TO BE IN THE  
14 VICINITY OF A WEAPON WHEN IT IS FIRED. AND IF YOU WERE TO  
15 GET THESE MATERIALS ON YOUR HANDS, YOU COULD TRANSFER THEM TO  
16 SOMETHING ELSE.

17 Q ALL RIGHT. AND -- OR BEING IN THE VICINITY---

18 A UH-HUH (AFFIRMATIVE).

19 Q ---SAY, FOR EXAMPLE, IF THE HANDLEBAR GRIPS WERE IN THE  
20 VICINITY OF THE GUN WHEN IT WAS FIRED, THEY WOULD ALSO  
21 RECEIVE IT BY DIRECT---

22 A YES, THEY COULD ALSO GET MATERIALS ON THEM IF THEY WERE  
23 IN THE VICINITY OF THE WEAPON WHEN IT WAS FIRED.

24 Q ALL RIGHT. AND YOU ALSO SAID THAT THE -- YOU NOTICED ON  
25 WHAT IS LABELED THE LEFT HANDLEBAR GRIP THAT YOU FOUND ROUND

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 LEAD PARTICLES. EXPLAIN TO THE JURY WHY THAT IS SIGNIFICANT  
2 TO YOU IN TERMS OF GUNSHOT RESIDUE.

3 A WHEN A WEAPON IS FIRED THERE IS MORE LEAD THAT COMES OUT  
4 OF THE WEAPON THAN THE ANTIMONY AND BARIUM WE ARE LOOKING AT  
5 BECAUSE THE LEAD NOT ONLY COMES FROM THE PRIMER BUT ALSO CAN  
6 COME FROM FRAGMENTS OF THE BULLET. WHEN A GUN IS FIRED, THE  
7 LEAD AND THESE OTHER MATERIALS THAT COME OUT OF THIS GUN ARE  
8 VERY HOT. THEY ARE UNDER PRESSURE. THEREFORE, THEY'RE IN A  
9 MOLTEN STATE. SOMETHING LIKE IF YOU WERE TO THROW WATER UP  
10 IN THE AIR YOU NOTICE THAT IT COMES OUT IN LITTLE ROUND  
11 DROPLETS. WELL, IF YOU WERE TO FREEZE IT, IT WOULD BE LITTLE  
12 ROUND PARTICLES, AND THAT'S WHAT HAPPENS TO THIS LEAD. IT  
13 COMES OUT OF THE GUN. IT'S IN THESE ROUND SPHERICAL  
14 PARTICLES. WHEN IT HITS SOMETHING AND BEGINS TO COOL, THAT'S  
15 HOW IT FREEZES, IN THESE ROUND PARTICLES, AND THAT'S WHAT  
16 GETS ON THE HANDS OR THE AREA OR IN ANYTHING IN THE VICINITY  
17 OF THE WEAPON WHEN IT IS FIRED.

18 Q SO IN YOUR OPINION ARE THE ROUND LEAD PARTICLES  
19 INDICATIVE OF GUNSHOT RESIDUE?

20 A YES, THEY ARE, BECAUSE IT HAS TO HAVE THE HEAT AND THE  
21 PRESSURE. THERE AREN'T MANY TIMES WHEN THIS LEAD IS GOING TO  
22 BE UNDER HEAT AND PRESSURE TO FORM THESE ROUND SPHERES THAT  
23 GET ON THE THINGS IN THE VICINITY OF A WEAPON BEING FIRED.

24 Q ARE THERE ANY OTHER SITUATIONS IN WHICH YOU WOULD FIND  
25 ROUND LEAD PARTICLES OTHER THAN THROUGH -- OR AFTER THE

1 FIRING OF A HANDGUN?

2 A SOMETIMES WHEN PEOPLE WORK IN A MACHINE SHOP, THEY LATHE  
3 LEAD, LIKE THEY TAKE A HARD PIECE OF METAL AND THEY KIND OF  
4 SHAPE LEAD. THESE MATERIALS ARE COMING OFF AND THEY ARE HOT  
5 AND THEY'RE ROUND, AND THAT WOULD BE ONE OTHER EXAMPLE OF A  
6 TIME WHEN YOU COULD FIND ROUND LEAD.

7 Q ANYTHING ELSE YOU CAN THINK OF?

8 A NO, IT WOULD HAVE TO BE AT A TIME WHEN THE LEAD IS HOT  
9 AND WHEN IT'S COMING OFF AND UNDER A GREAT DEAL OF PRESSURE.

10 Q ALL RIGHT. NOW, TO GO BACK TO YOUR OPINION, WHAT WAS  
11 YOUR CONCLUSION IN REGARD TO WHETHER OR NOT THE HONDA HELIX  
12 SCOOTER HAD THE PRESENCE OF GUNSHOT RESIDUE ON THE  
13 HANDLEBARS?

14 A THERE WAS GUNSHOT RESIDUE FOUND ON THE RIGHT HANDLEBAR.  
15 AND THE MOST COMMON WAY FOR THIS MATERIAL TO HAVE GOTTEN ON  
16 THE HANDLEBARS IS EITHER SOMEONE, AS I SAID, HAVING FIRED A  
17 WEAPON AND THEN PLACING THEIR HANDS ON THE HANDLEBARS OR  
18 SOMEONE HAVING FIRED NEAR THE HANDLEBARS AND HAVING A GUN  
19 NEAR THESE HANDLEBARS AND THE MATERIAL THEN GOT ON THE  
20 HANDLEBARS.

21 Q OKAY. AND HOW ABOUT THE LEFT HANDLEBAR?

22 A IT HAD THE ROUND LEAD, WHICH IT COULD BE THE SAME  
23 SCENARIO, EITHER SOMEONE HAD HANDLED A WEAPON, FIRED A  
24 WEAPON, HANDLED THE HANDLEBAR GRIP OR THE HANDLEBAR GRIP WAS  
25 IN THE VICINITY OF THE WEAPON WHEN IT WAS FIRED.

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 Q ALL RIGHT. NOW LET'S GO TO ITEM NUMBER 29, STATE'S  
2 EXHIBIT 29, WHICH WAS THE GUNSHOT RESIDUE TEST CONDUCTED ON  
3 THE HANDS OF TROOPER ERIC NICHOLSON. DID YOU CONDUCT TESTS  
4 ON THAT?

5 A YES, I DID.

6 Q AND DID YOU FIND -- OR WERE YOU ABLE TO, BASED ON THE  
7 RESULTS OF YOUR TESTING, TO FORM AN OPINION AS TO WHETHER OR  
8 NOT GUNSHOT RESIDUE WAS PRESENT ON TROOPER NICHOLSON'S HANDS?  
9 AND AT THAT TIME THAT YOU FORMED THAT OPINION, WERE YOU ABLE  
10 TO FORM AN OPINION AS TO ITS MOST PROBABLE ORIGIN?

11 AND WHAT I WOULD LIKE FOR YOU TO DO IN EXPRESSING THAT  
12 OPINION IS TO ASSUME THE FOLLOWING FACTS, AND THAT IS, THAT  
13 TROOPER NICHOLSON WAS THE VICTIM OF A SHOOTING, AND THAT  
14 TROOPER NICHOLSON DIED AS A RESULT OF THAT SHOOTING, AND THAT  
15 TROOPER NICHOLSON'S WEAPON WAS NOT FIRED.

16 A OKAY. WELL, WHAT I FOUND IS THAT METALS CONSISTENT WITH  
17 GUNSHOT RESIDUE WERE FOUND ON THE RIGHT PALM. AND I ALSO  
18 FOUND THAT METAL -- THE QUANTITIES OF METALS ON THE LEFT PALM  
19 COULD ALSO BE ASSOCIATED WITH GUNSHOT RESIDUE.

20 WHEN WE CONDUCT THIS TEST, THE FIRST PART OF THE TEST WE  
21 ANALYZE ARE THE SWABS. THEREFORE, THAT GIVES US AN IDEA OF  
22 HOW MUCH OF THESE MATERIALS ARE ON A PERSON'S -- ON THE AREAS  
23 OF A PERSON'S HANDS. WELL, I FOUND VERY HIGH LEVELS ON THE  
24 PALMS OF ERIC NICHOLSON'S HANDS, AND I FOUND NO GUNSHOT  
25 RESIDUE ON THE BACKS OF HIS HANDS.

1 Q YOU FOUND, I'M SORRY?

2 A I FOUND NO GUNSHOT RESIDUE ON THE BACKS.

3 Q NONE ON THE BACKS?

4 A NO, SIR.

5 Q HIGH LEVELS ON THE PALMS?

6 A YES, SIR.

7 Q ALL RIGHT. GO AHEAD.

8 A AND IN MY OPINION THIS IS MORE CONSISTENT WITH SOMEONE  
9 HAVING BEEN ON THE BUSINESS END OF THE GUN -- OR THE MUZZLE  
10 END OF THE GUN. AND THERE IS A SITUATION CALLED DEFENSIVE  
11 POSTURE. IF SOMEONE IS GOING TO THROW A BALL AT YOU OR A  
12 STICK OR ANYTHING OF THAT NATURE, YOU WOULD THROW YOUR HANDS  
13 UP TO CATCH IT. WELL, THIS HAPPENS INSTINCTIVELY WHEN  
14 SOMEONE -- SOME PEOPLE HAVE BEEN FIRED UPON WITH A WEAPON.  
15 THEY WILL THROW THEIR HANDS UP LIKE THIS (DEMONSTRATING),  
16 MEANING THAT ALL OF THE GUNSHOT RESIDUE IS GOING TO BE MAINLY  
17 ON THE PALMS OF THE HANDS AND IT'S GOING TO BE RATHER HIGH  
18 LEVELS BECAUSE IT'S GOING TO BE RIGHT NEAR OR CLOSE TO -- IN  
19 CLOSE PROXIMITY TO THE END OF THIS WEAPON. AND I BELIEVE  
20 THAT THAT IS WHAT OCCURRED IN THIS SITUATION.

21 Q ALL RIGHT. AND THERE WAS NONE ON THE BACKS OF THE  
22 HANDS?

23 A NO, SIR.

24 Q COULD YOU GIVE US AN ILLUSTRATION OF WHEN YOU FIRE A GUN  
25 WHAT HAPPENS WITH THE CLOUD THAT COMES FROM THE GUN?

ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1 A USUALLY WHEN A GUN IS FIRED IN A GENERAL SITUATION, THE  
2 MATERIALS ARE GOING TO COME OUT OF THE GUN LIKE THIS  
3 (DEMONSTRATING), IN A CONE-SHAPE FORM.

4 Q ALL RIGHT. AND ONCE IT HITS THE AIR---

5 A UH-HUH (AFFIRMATIVE).

6 Q ---WHAT DOES IT DO AT THAT POINT?

7 A WELL, SOME OF IT COMES BACK AROUND AND GETS ON THE HANDS  
8 OF THE PERSON SHOOTING THE GUN OR ON THINGS IN THE VICINITY  
9 OF THAT WEAPON.

10 Q WOULD YOU NORMALLY EXPECT TO FIND GUNSHOT RESIDUE ON THE  
11 BACKS OF SOMEONE'S HAND WHO HAD FIRED A GUN?

12 A YES.

13 SOLICITOR ARIAIL: THANK YOU. ANSWER ANY QUESTIONS --  
14 ONE MOMENT. (OFF RECORD WITH CO-COUNSEL) MY LAWYER HAS  
15 ADVISED ME WE NEED TO MOVE ITEMS 27 AND 29 INTO EVIDENCE.

16 THE COURT: ONE SECOND. ANY OBJECTION, COUNSEL?

17 MR. MAULDIN: I'M SORRY.

18 THE COURT: THEY ARE MOVING 27 AND 29 INTO EVIDENCE.

19 I'D LIKE TO KNOW IF THERE IS ANY OBJECTION.

20 MR. MAULDIN: NO OBJECTION.

21 THE COURT: THANK YOU.

22 (STATE'S EXHIBIT NUMBER 27, GUNSHOT RESIDUE KIT FROM  
23 SCOOTER, MOVED INTO EVIDENCE)

24 (STATE'S EXHIBIT NUMBER 29, GUNSHOT RESIDUE KIT FROM  
25 TROOPER NICHOLSON'S HANDS, MOVED INTO EVIDENCE)



ILA SIMMONS -- DIRECT BY SOLICITOR ARIAIL

1           **SOLICITOR ARIAIL:**    THANK YOU, MS. SIMMONS.   ANSWER ANY  
2   QUESTIONS DEFENSE COUNSEL MAY HAVE.

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

4   **Q**    MS. SIMMONS, JUST A COUPLE OF QUICK FOLLOW-UPS.   AS I  
5   UNDERSTOOD YOUR DESCRIPTION OF SOMEBODY WHO IS ON THE  
6   RECEIVING END OF GUNSHOTS AND HOW YOU WOULD EXPECT PERHAPS  
7   THAT THEY WOULD HAVE GUNSHOT RESIDUE ON THE PALMS OF THEIR  
8   HANDS AS OPPOSED TO THE BACK OF THEIR HANDS IS BECAUSE THEY  
9   ARE FACING TOWARDS THE GUN; IS THAT CORRECT?

10   **A**    YES, SIR.

11   **Q**    ALL RIGHT.   AND THEN SOMEBODY WHO ACTUALLY SHOT THE GUN  
12   YOU WOULD EXPECT TO HAVE GUNSHOT RESIDUE ON THE BACK OF THE  
13   HAND BUT NOT SO MUCH ON THE PALM OF THE HAND; IS THAT  
14   CORRECT?

15   **A**    NO, SIR.   THE AMOUNT OF MATERIAL IS GOING TO BE MUCH  
16   HIGHER IN A DEFENSIVE POSITION LIKE THIS (DEMONSTRATING).  
17   HOWEVER, WHEN YOU SHOOT A WEAPON, YOU ARE GOING TO GET SOME  
18   MATERIALS ON THE PALMS OF THE HAND AND SOME MATERIAL ON THE  
19   BACKS OF THE HAND.

20   **Q**    ALL RIGHT.   HOW ABOUT IF YOU'RE ON THE RECEIVING END OF  
21   THE GUNSHOT, YOU'RE NOT ACTUALLY FIRING A PISTOL, BUT YOU'VE  
22   GOT SOMETHING IN YOUR HAND?   WOULD YOU EXPECT TO SEE THE  
23   GUNSHOT RESIDUE ON THE PALM OF THE HAND IF YOU HAVE SOMETHING  
24   IN YOUR HAND?

25   **A**    IF THE HAND WAS COMPLETELY CLOSED OBSCURING THE PALM

ILA SIMMONS -- CROSS BY MR. BANNISTER

1 COMPLETELY?

2 Q WELL, IF YOU HAD AN OBJECT IN YOUR HAND THAT OBSCURED  
3 THE PALM.

4 A IF THE HAND WERE CLOSED, THEN YOU WOULDN'T EXPECT TO GET  
5 AS MUCH MATERIAL ON THE PALM OF THE HAND. YOU MAY GET SOME  
6 ON THE OUTER EDGES, BUT IT WOULDN'T BE VERY, VERY HIGH LEVELS  
7 ON THE PALM IN MOST CASES.

8 Q AND IN THIS CASE YOU HAD VERY HIGH LEVELS---

9 A YES, ON---

10 Q ---ON TROOPER NICHOLSON'S PALMS?

11 A ON THE RIGHT PALM I HAD VERY HIGH LEVELS, AND ON THE  
12 LEFT PALM I HAD SLIGHTLY LESS LEVELS, BUT THERE WERE HIGH  
13 LEVELS THERE.

14 MR. BANNISTER: NOTHING FURTHER.

15 THE COURT: ANY REDIRECT OF MS. SIMMONS?

16 SOLICITOR ARIAIL: NONE, YOUR HONOR.

17 THE COURT: MS. SIMMONS, WE APPRECIATE SO MUCH YOU  
18 BEING HERE. THANK YOU, MA'AM.

19 (WITNESS STEPS DOWN AT 1:37 P.M.)

20 THE COURT: NEXT WITNESS. AND IF I COULD SEE THE  
21 ATTORNEYS JUST OVER HERE JUST BRIEFLY FOR A MOMENT.

22 (BENCH CONFERENCE OFF RECORD FROM 1:37 TO 1:38 P.M.)

23 THE COURT: NEXT WITNESS, PLEASE.

24 SOLICITOR ARIAIL: KAREN MCCALL.

25 KAREN MCCALL, HAVING BEEN DULY

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

3 Q MS. MCCALL, IF YOU WOULD, STATE YOUR NAME FOR THE  
4 RECORD, PLEASE.

5 A KAREN MCCALL

6 Q THAT'S WONDERFUL. IF YOU WILL, KEEP YOUR VOICE UP LIKE  
7 THAT SO THESE LAST TWO JURORS CAN HEAR YOU.

8 AND WHAT I'M GOING TO BE QUESTIONING YOU OR ASKING YOU  
9 QUESTIONS ABOUT TODAY WILL BE EVENTS OF DECEMBER 6TH OF THE  
10 YEAR 2000. DO YOU REMEMBER THAT DAY?

11 A YES, SIR.

12 Q AND PRESENTLY WHERE ARE YOU CONFINED?

13 A ANDERSON COUNTY DETENTION CENTER.

14 Q AND HAVE YOU BEEN SO CONFINED IN THE ANDERSON COUNTY  
15 DETENTION CENTER SINCE DECEMBER THE 6TH OF THE YEAR 2000?

16 A YES, SIR.

17 Q AND YOU HAVE PENDING CHARGES AGAINST YOU IN ANDERSON  
18 COUNTY?

19 A YES, SIR.

20 Q AND YOU HAVE A LAWYER WHO IS REPRESENTING YOU?

21 A YES, SIR.

22 Q AND THAT LAWYER IS PRESENT IN THE COURTROOM TODAY?

23 A YES, SIR.

24 Q AND YOU AND I HAVE MET ALONG WITH MS. STROM WITH YOUR  
25 ATTORNEY ON THREE DIFFERENT OCCASIONS?

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR.

2 Q AND WE HAVE DISCUSSED -- WELL, LET ME ASK YOU: ON  
3 DECEMBER THE 6TH OF 2000 DID YOU GIVE A WRITTEN STATEMENT TO  
4 S.L.E.D. AGENTS AS TO THE EVENTS THAT OCCURRED ON THAT DAY?

5 A YES, SIR.

6 Q AND HAVE I MET WITH YOU AND YOUR ATTORNEY CONCERNING THE  
7 CONTENTS OF THAT STATEMENT?

8 A YES, SIR.

9 Q ALL RIGHT. YOU ALSO HAVE PENDING CHARGES IN GREENVILLE  
10 COUNTY?

11 A YES, SIR.

12 Q OR ONE CHARGE PENDING IN GREENVILLE COUNTY. AND YOU ARE  
13 ALSO REPRESENTED BY AN ATTORNEY IN THAT MATTER?

14 A YES, SIR.

15 Q DURING THE COURSE OF THESE DISCUSSIONS HAS ANYONE WITH  
16 EITHER MY OFFICE OR LAW ENFORCEMENT MADE ANY PROMISES TO YOU  
17 AS TO THE DISPOSITION OF THOSE CHARGES OR ANY SENTENCE THAT  
18 WOULD BE EITHER RECOMMENDED OR IMPOSED?

19 A NO, SIR.

20 Q NONE?

21 A NONE.

22 Q ALL RIGHT. NOW, IF YOU WOULD, LET'S GO BACK TO DECEMBER  
23 THE 6TH AND ASK IF YOU KNEW ON THAT DATE MR. JOHN RICHARD  
24 WOOD?

25 A YES, SIR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q AND HOW LONG HAD YOU KNOWN MR. WOOD?

2 A ABOUT SIX MONTHS.

3 Q AND WHERE HAD Y'ALL MET?

4 A WE HAD MET -- HE WAS DOING SOME WORK FOR HIS MOTHER, AND  
5 I HAD DONE SOME MOBILE HOME DEALS WITH HIS MOTHER.

6 Q AND THAT WAS IN WHAT STATE?

7 A FLORIDA.

8 Q AND PRIOR TO THAT SIX-MONTH PERIOD HAD YOU HAD ANY  
9 CONNECTION WITH MR. WOOD HIMSELF WHEN YOU FIRST MET HIM? I  
10 MEAN, WERE Y'ALL CHILDHOOD FRIENDS, GO TO HIGH SCHOOL OR  
11 ANYTHING LIKE THAT IN YOUR BACKGROUND?

12 A NO.

13 Q ALL RIGHT. AND AFTER YOU MET HIM DID YOU EVENTUALLY  
14 COME TO THE GREENVILLE-ANDERSON AREA OF SOUTH CAROLINA?

15 A YES, SIR.

16 Q HAD YOU EVER BEEN IN THIS PART OF THE COUNTRY BEFORE?

17 A NO.

18 Q DID YOU HAVE ANY RELATIVES IN THIS PART OF THE COUNTRY  
19 OR FAMILY?

20 A NO.

21 Q AND WHEN YOU MOVED TO THIS AREA WHERE DID Y'ALL LIVE?

22 A DOBBINS BRIDGE ROAD.

23 Q AND THAT'S IN ANDERSON COUNTY?

24 A AS FAR AS I KNOW.

25 Q ALL RIGHT. AND WHOSE HOME OR HOW DID YOU BECOME TO LIVE

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 IN THAT HOUSE?

2 A IT WAS A RELATIVE OF JOHN'S.

3 Q AND JOHN BEING JOHN RICHARD WOOD?

4 A YES.

5 Q ALL RIGHT. AND IN DECEMBER -- ON DECEMBER THE 6TH WERE  
6 YOU PREGNANT?

7 A YES.

8 Q HOW LONG HAD YOU BEEN PREGNANT?

9 A ABOUT FOUR AND A HALF MONTHS.

10 Q AND IS MR. WOOD THE FATHER OF THAT CHILD?

11 A AS FAR AS I KNOW.

12 Q ALL RIGHT. NOW, ON DECEMBER THE 6TH, I WANT TO START IN  
13 THE MORNING SOMETIME, WHERE WERE YOU LIVING ON THAT DAY?

14 A WE WERE IN A MOTEL.

15 Q YOU WERE NO LONGER IN THE DOBBINS BRIDGE ROAD HOUSE?

16 A NO.

17 Q AND THE REASON YOU WERE OUT OF THAT HOUSE IS WHAT?

18 A IT HAD BEEN SOLD.

19 Q DID YOU STILL HAVE ANY BELONGINGS THERE?

20 A YES, WE DID.

21 Q AND WAS IT VACANT?

22 A YES, IT WAS.

23 Q YOU WERE LIVING IN GREENVILLE COUNTY OR LIVING IN A  
24 MOTEL ROOM ON DECEMBER -- THE NIGHT OF DECEMBER THE 5TH?

25 A YES, SIR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q AND HOW LONG HAD YOU BEEN OUT OF THE DOBBINS BRIDGE ROAD  
2 HOUSE, DO YOU REMEMBER?

3 A I DON'T REMEMBER.

4 Q I MEAN, WAS IT A WEEK OR TWO WEEKS OR A COUPLE OF DAYS  
5 OR. . .

6 A A WEEK, COUPLE WEEKS.

7 Q AND IN THAT COUPLE WEEK PERIOD WHERE HAD YOU BEEN  
8 RESIDING?

9 A MOTELS.

10 Q AROUND THE GREENVILLE-ANDERSON AREA?

11 A YES, SIR.

12 Q IN THE MORNING OF DECEMBER THE 6TH WHEN YOU WERE LIVING  
13 IN THE MOTEL DO YOU REMEMBER WHICH MOTEL IT WAS?

14 A FAIRMONT -- FAIRFIELD.

15 Q AND DO YOU KNOW WHERE IT'S LOCATED?

16 A SOMEWHERE IN GREENVILLE.

17 Q DO YOU KNOW ANYTHING ABOUT GREENVILLE?

18 A NO, I DON'T.

19 Q AND WHEN YOU GOT UP THAT MORNING WHERE DID YOU GO?

20 A WE WENT TO ANDERSON.

21 Q WHEN YOU SAY "WE," THAT'S YOU AND?

22 A JOHN.

23 Q AND HOW DID YOU GO TO ANDERSON?

24 A I FOLLOWED HIM. HE WAS ON THE MOTORCYCLE. WE WERE  
25 TAKING THE MOTORCYCLE TO ANDERSON.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q AND WHAT DID YOU DRIVE?

2 A I DROVE THE JEEP.

3 Q AND WHEN YOU GOT TO ANDERSON WHERE DID YOU GO?

4 A I WENT TO A PARKING LOT AT A DAY CARE CENTER AND SAT  
5 THERE AND READ MY BOOK.

6 Q WHERE DID HE GO?

7 A HE WENT TO TRADE THE MOTORCYCLE FOR SOME PARTS FOR THE  
8 JEEP.

9 Q WHAT WAS THE REASON THAT YOU DID NOT GO WITH HIM TO THE  
10 PLACE WHERE THE MOTORCYCLE WAS GOING TO BE TRADED FOR PARTS  
11 TO REPAIR THE JEEP?

12 A THE LAST TIME WE HAD GONE TO ANY PLACE WHERE WE HAD THE  
13 MOTORCYCLE WORKED ON OR ANYTHING, THE GUYS WERE RUDE TO ME.

14 Q WAS THAT HIS IDEA FOR YOU NOT TO GO OR YOUR IDEA?

15 A HIS IDEA.

16 Q YOU STAYED IN THE PARKING LOT SOMEWHERE IN ANDERSON?

17 A YEAH.

18 Q READING A BOOK?

19 A READING A BOOK.

20 Q DO YOU REMEMBER WHAT THE BOOK WAS?

21 A ISLANDS OF THE CARIBBEAN.

22 Q HOW LONG DID YOU STAY THERE BEFORE MR. WOOD RETURNED?

23 A A COUPLE HOURS.

24 Q AND WHEN HE CAME BACK DID HE BRING THE JEEP -- I MEAN,  
25 EXCUSE ME, THE MOTORCYCLE WITH HIM?



KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 A YES, HE DID.

2 Q WHERE DID YOU -- DID YOU AND HE HAVE A DISCUSSION AT  
3 THAT TIME AS TO WHAT YOU WERE GOING TO DO?

4 A YES.

5 Q WHAT WAS THAT DISCUSSION?

6 A WE WERE GOING TO GO TO GREENVILLE TO HAVE LUNCH?

7 Q DID YOU DO THAT?

8 A WE HEADED FOR GREENVILLE, YES, SIR.

9 Q AND WHAT ROAD DID YOU GET ON?

10 A THE INTERSTATE.

11 Q WHO WAS IN FRONT AND WHO WAS IN BACK?

12 A JOHN WAS IN FRONT ON THE MOTORCYCLE, AND I WAS IN BACK  
13 ON THE JEEP.

14 Q WHEN YOU GOT TO GREENVILLE DID YOU ENCOUNTER OR SEE A  
15 HIGHWAY PATROL TROOPER GET IN BEHIND JOHN ON THE MOTORCYCLE?

16 A YES, I DID.

17 Q WHEN THAT HAPPENED WHAT DID YOU DO?

18 A WELL, I SLOWED DOWN BECAUSE THE TROOPER GOT IN BETWEEN  
19 ME AND JOHN. JOHN WENT OFF TO THE RIGHT. THE TROOPER  
20 FOLLOWED HIM. THE TRAFFIC CLOSED AROUND US, AND I COULDN'T  
21 GET THERE.

22 Q DID YOU LOSE HIM?

23 A YES.

24 Q WHEN YOU EXITED -- OR DID YOU EXIT THE INTERSTATE?

25 A I DID EXIT THE INTERSTATE, YES, SIR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q DO YOU KNOW THE NAME OF THE ROAD THAT YOU EXITED ON OR  
2 DID YOU KNOW IT AT THE TIME?

3 A I DID NOT KNOW IT AT THE TIME. I THINK IT WAS WOODRUFF,  
4 BUT I'M NOT SURE NOW.

5 Q AND WHAT WAS THE REASON YOU TOOK THAT EXIT?

6 A I HAD GOTTEN LOST PREVIOUSLY AND JOHN HAD TOLD ME, YOU  
7 KNOW, "JUST GO TO THE NEXT EXIT AND WAIT WHERE I CAN FIND  
8 YOU, AND I'LL COME AND FIND YOU."

9 Q AND DID YOU GET OFF THE NEXT EXIT?

10 A I GOT OFF THE NEXT EXIT.

11 Q WHEN YOU CAME OFF THE NEXT EXIT DID YOU SEE EITHER THE  
12 MOTORCYCLE OR THE POLICE CAR?

13 A NO.

14 Q WHAT DID YOU DO WHEN YOU GOT OFF THE EXIT?

15 A I HEADED FOR THE GAS STATION BECAUSE I NEEDED TO GO TO  
16 THE REST ROOM.

17 Q WHOSE IDEA WAS IT THAT YOU WOULD BE FOLLOWING BOTH GOING  
18 TO ANDERSON AND COMING BACK FROM ANDERSON?

19 A JOHN.

20 Q AND THE REASON FOR THAT WAS WHAT?

21 A I DROVE TOO FAST.

22 Q NOW, WHEN YOU WERE OBSERVING THE POLICE CAR BEHIND THE  
23 MOTORCYCLE WITH JOHN WOOD DRIVING DID YOU FORM ANY OPINION AS  
24 TO WHETHER OR NOT MR. WOOD WAS STOPPING FOR THE POLICE CAR?

25 A MY OPINION WAS THAT HE WAS GOING TO OUTFRAN THE POLICE

1 CAR.

2 Q AND WHEN YOU GOT OFF THE EXIT YOU DID NOT SEE HIM, YOU  
3 WENT DOWN -- OR HEADED TOWARDS THE GAS STATION. DID YOU GET  
4 TO THE GAS STATION?

5 A NO, I DID NOT.

6 Q TELL US WHAT HAPPENED.

7 A I STOPPED AT A RED LIGHT. IT WAS CONGESTED TRAFFIC. IT  
8 WAS LUNCHTIME. I WAS WAITING FOR THE RED LIGHT TO CHANGE AND  
9 JOHN PULLED UP ON MY RIGHT SIDE, BLEW THE HORN OF THE BIKE  
10 AND WAVED FOR ME TO FOLLOW HIM. I LET THE TRAFFIC EASE UP,  
11 AND I PROCEEDED TO FOLLOW HIM.

12 Q DID YOU TURN RIGHT OR TURN LEFT?

13 A TURNED RIGHT.

14 Q DID YOU GO THROUGH A PARKING LOT OR ON A ROAD?

15 A HE WENT THROUGH THE PARKING LOT OF A SERVICE STATION. I  
16 WENT AROUND THE PARKING LOT OF THE SERVICE STATION.

17 Q WHEN YOU TURNED RIGHT ON THIS ROAD WAS HE STILL IN YOUR  
18 VISIBILITY? COULD YOU STILL SEE HIM?

19 A JUST BARELY.

20 Q HE WAS AHEAD OF YOU?

21 A YES.

22 Q WHAT HAPPENED THEN? TELL US -- AS YOU GO DOWN AND TURN  
23 RIGHT ON THAT ROAD, TELL US WHAT HAPPENED THEN.

24 A I FOLLOWED HIM FOR A LITTLE WAYS. WE CAME TO A STRIP  
25 MALL TYPE SHOPPING CENTER. HE HAD GOTTEN OFF THE BIKE, AND

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 HE GOT IN THE VEHICLE WITH ME.

2 Q DID YOU PULL INTO THE PARKING AREA?

3 A YES.

4 Q DID YOU SEE THE BIKE PARKED?

5 A YES.

6 Q WHO OWNED THE BIKE?

7 A I DID.

8 Q WHO WAS THE JEEP REGISTERED TO?

9 A IT'S MINE.

10 Q WHEN YOU PULLED INTO THE PARKING LOT OF WHERE THE  
11 SCOOTER WAS -- OR THE MOTORCYCLE WAS PARKED, WAS MR. WOOD  
12 STILL ON THE SCOOTER OR WAS HE ALREADY OFF?

13 A HE HAD GOTTEN OFF.

14 Q AND WHICH VEHICLE -- WHICH SIDE OF YOUR VEHICLE DID HE  
15 GET IN?

16 A THE RIGHT-HAND SIDE.

17 Q FRONT OR BACK?

18 A FRONT.

19 Q AND WHAT DID HE SAY -- DID HE SAY ANYTHING TO YOU?

20 A HE SAID, "LET'S DRIVE NOW. DRIVE."

21 Q AND WHEN HE SAID IT, WAS THAT CASUAL CONVERSATION OR WAS  
22 IT AN INDICATION TO YOU OF DRIVE SLOW OR DRIVE FAST?

23 A LET'S HURRY.

24 Q AND DID YOU DRIVE?

25 A I DROVE.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q AND AT THAT POINT IN TIME WHAT WAS THE OPINION YOU HAD  
2 FORMED AS TO WHAT WAS GOING ON?

3 A I THOUGHT THAT HE HAD INDEED OUTRAN THE POLICEMAN AND HE  
4 WANTED ME TO DRIVE SO THAT HE COULD GET ON DOWN THE ROAD.

5 Q AND LEFT THE SCOOTER THERE -- MOTORCYCLE?

6 A (INDICATES AFFIRMATIVE RESPONSE)

7 Q ALL RIGHT. NOW, SO YOU GO DOWN -- AT THAT TIME DO YOU  
8 RECALL SEEING ANYONE IN THAT PARKING LOT, ANY VEHICLE?

9 A I SAW A TRUCK AND CAR. BUT AS FAR AS PEOPLE, NO. I  
10 MEAN, I KNOW THEY HAD PEOPLE IN THEM BECAUSE THEY WERE  
11 MOVING. BUT---

12 Q MOVING -- A MOVING TRUCK AND A MOVING CAR?

13 A (INDICATES AFFIRMATIVE RESPONSE)

14 Q WHEN YOU LEFT AND WENT OUT OF THE PARKING LOT DO YOU  
15 REMEMBER WHICH WAY YOU WENT?

16 A I THINK I WENT TO THE RIGHT.

17 Q AND DID YOU THEN MAKE A TURN?

18 A YES, I MADE SEVERAL TURNS. BUT I'M NOT SURE OF WHERE I  
19 WAS, SO. . .

20 Q HOW WERE YOU MAKING THESE TURNS? WERE YOU MAKING THEM  
21 ON YOUR OWN OR WAS MR. WOOD TELLING YOU?

22 A HE WAS TELLING ME.

23 Q DID YOU KNOW ABOUT ANY OF THIS AREA, WHERE TO GO OR  
24 WHERE THE STREETS WERE OR WHICH WAY---

25 A NO. I'M TOTALLY UNFAMILIAR WITH THE AREA.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q HOW LONG DID YOU RIDE WITH MR. WOOD APPROXIMATELY, NOT  
2 DOWN TO THE MINUTE, BEST YOU CAN RECALL, BEFORE YOU STOPPED?

3 A PROBABLY ABOUT AN HOUR.

4 Q AND IN THE PERIOD THAT YOU WERE RIDING WERE YOU DRIVING  
5 ALL THIS TIME?

6 A YES, I WAS.

7 Q WAS THERE ANY CONVERSATION GOING ON?

8 A YES. JOHN HAD SAID HE HAD A HEADACHE, BUT WE WERE STILL  
9 TALKING. WE WERE TALKING ABOUT CHRISTMAS, TALKING ABOUT  
10 MEXICO, TALKING ABOUT MY NIECES AND NEPHEWS AND HIS NIECES  
11 AND NEPHEWS.

12 Q AND TELL US ABOUT THE MEXICO, WHAT WAS THAT HAVING TO DO  
13 WITH?

14 A WE WERE SUPPOSED TO BE GOING TO BELIZE TO BUILD HOUSES,  
15 AND OBVIOUSLY MEXICO IS ON THE WAY, AND HE WANTED TO KNOW IF  
16 I WANTED TO SPEND CHRISTMAS IN MEXICO OR SPEND CHRISTMAS IN  
17 ALABAMA.

18 Q ALL RIGHT. WHO IS IN ALABAMA?

19 A MY BROTHER.

20 Q ALL RIGHT. AND HAD YOU SEEN YOUR BROTHER OR BEEN TO  
21 YOUR BROTHER'S HOUSE RECENTLY?

22 A YES, WE HAD SPENT THE MONTH OF NOVEMBER IN ALABAMA.

23 Q WITH YOUR BROTHER AND SISTER-IN-LAW?

24 A YES.

25 Q THEN YOU CAME TO THE DOBBINS BRIDGE ROAD?

1 A YES, SIR.

2 Q AS YOU WERE RIDING AND YOU'RE TALKING, WAS THERE ANY  
3 MENTION BY MR. WOOD OF WHAT HAD OCCURRED, WHAT YOU NOW KNOW  
4 HAD OCCURRED?

5 A NO, THERE WAS NOT.

6 Q WAS THERE ANY MENTION BY HIM OF ANY REASON WHY IT MAY  
7 HAVE OCCURRED?

8 A NO.

9 Q DID HE SEEM TO YOU -- OR BASED ON THE TIME YOU HAD BEEN  
10 WITH HIM FOR THE SIX MONTHS, DID HE SEEM AT THAT TIME ANY  
11 DIFFERENT THAN HE HAD SEEMED OVER THE PRIOR SIX MONTHS?

12 A HE WAS NERVOUS, BUT NOTHING MAJOR, NO.

13 Q OKAY. HE WASN'T CRYING?

14 A NO.

15 Q HE WASN'T HOSTILE?

16 A NO.

17 Q WHEN YOU DROVE FOR ABOUT THIS HOUR AND YOU STOPPED,  
18 WHERE DID YOU STOP?

19 A WE STOPPED AT A GAS STATION TO GET SOME GAS AND FOR ME  
20 TO GO TO THE BATHROOM. WE HADN'T HAD LUNCH, SO I GOT US A  
21 DRINK, AND I THINK I GOT A CHOCOLATE CHIP COOKIE.

22 Q AND WHAT WAS -- AT THAT TIME WHAT WAS YOUR PLAN OR DID  
23 YOU UNDERSTAND YOU HAD A PLAN AS TO WHAT WAS GOING ON?

24 A WE WERE GOING BACK TO TOWNVILLE TO RETRIEVE THE  
25 MOTORCYCLE TRAILER SO THAT WE COULD PICK UP THE BIKE.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q ALL RIGHT. AND TOWNVILLE IS WHERE?

2 A IT'S IN ANDERSON.

3 Q AND THAT'S WHERE -- OVER NEAR -- WHERE WAS THE TRAILER  
4 LOCATED?

5 A IT WAS ON THE OLD DOBBINS BRIDGE ROAD PROPERTY.

6 Q ALL RIGHT. WHEN YOU GOT OUT YOU HADN'T GONE TO LUNCH?

7 A NO.

8 Q DID Y'ALL -- DID YOU DISCUSS THE FACT THAT YOU WERE  
9 SUPPOSED TO BE COMING TO GREENVILLE AND GET LUNCH AND YOU NOW  
10 HAD NOT GOTTEN LUNCH?

11 A NO.

12 Q DID YOU GET YOU SOMETHING TO EAT IN THE STORE?

13 A YES, SIR.

14 Q SOMETHING TO DRINK?

15 A YES, SIR.

16 Q DID JOHN GET OUT OF THE CAR?

17 A HE DID NOT.

18 Q DID YOU GET BACK IN THE CAR ON THE SAME SIDE YOU HAD  
19 GOTTEN OUT, THAT IS, THE DRIVER'S SIDE?

20 A YES, SIR. I PUMPED THE GAS AND GOT BACK IN ON THAT  
21 SIDE.

22 Q AND PAID FOR IT?

23 A YES.

24 Q WHEN YOU GOT BACK IN THE CAR DID YOU NOTICE ANYTHING  
25 DIFFERENT THAN HAD EXISTED WHEN YOU GOT OUT OF THE CAR?



KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

- 1     A     I NOTICED AT THAT POINT THAT THE GUN WAS LAYING ON THE  
2     CONSOLE OF THE CAR.
- 3     Q     YOU SAY "THE GUN"?
- 4     A     THE GUN.
- 5     Q     "THE GUN" IS WHOSE GUN?
- 6     A     IT'S MY GUN.
- 7     Q     AND WHERE DID YOU BUY THE GUN?
- 8     A     AT A PAWN SHOP IN FLORIDA.
- 9     Q     AND AFTER YOU BOUGHT IT AT A PAWN SHOP IN FLORIDA DID  
10    YOU PAWN IT AGAIN?
- 11    A     YES, SIR.
- 12    Q     WHERE DID YOU PAWN IT?
- 13    A     A PAWN SHOP IN ANDERSON. I DON'T KNOW THE NAME.
- 14    Q     THAT'S FINE. AND AFTER YOU PAWNED IT IN ANDERSON DID  
15    YOU RETRIEVE IT FROM THAT PAWN?
- 16    A     YES, SIR, I DID.
- 17    Q     AND HOW LONG HAD YOU HAD IT BACK FROM THE PAWN?
- 18    A     PROBABLY ABOUT A MONTH AND A WEEK OR A LITTLE OVER A  
19    MONTH AND A WEEK.
- 20    Q     SO, FOUR, FIVE, SIX WEEKS, SOMEWHERE IN THERE?
- 21    A     (INDICATES AFFIRMATIVE RESPONSE)
- 22    Q     WHAT TYPE OF GUN WAS IT?
- 23    A     IT WAS A GLOCK.
- 24    Q     AND DO YOU KNOW THE CALIBER?
- 25    A     I THINK IT WAS A NINE MILLIMETER.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q AND THE COLOR?

2 A BLACK.

3 Q NOW, WHEN YOU SAW THE GUN LAYING ON THE CONSOLE OF THE  
4 JEEP DID YOU HAVE A CONVERSATION WITH MR. WOOD ABOUT THAT?

5 A NO.

6 Q WHAT WERE YOU THINKING?

7 A I WAS JUST THINKING, "THAT'S A WEIRD PLACE FOR IT TO  
8 BE."

9 Q WHERE WAS IT NORMALLY?

10 A NORMALLY IT'S INSIDE THE CONSOLE.

11 Q AND DOES IT HAVE ANY EXTRA -- WERE THERE ANY EXTRA  
12 BULLETS OR CLIPS THAT WENT WITH IT?

13 A NORMALLY THERE IS AN EXTRA CLIP AND THERE'S -- THE GUN  
14 CAME WITH TWO CLIPS, AND THERE IS USUALLY AN EXTRA BOX OF  
15 BULLETS.

16 Q ALL RIGHT. WHEN YOU LEFT THE EXXON STATION DID THE GUN  
17 STAY ON THE CONSOLE?

18 A YES.

19 Q AND WHERE DID YOU THINK WERE GOING AT THAT TIME?

20 A I'M STILL GOING TO TOWNVILLE.

21 Q WHO IS DIRECTING?

22 A JOHN.

23 Q AND DO YOU HEAD TO TOWNVILLE AS BEST YOU CAN DETERMINE?

24 A AS BEST I CAN DETERMINE. I REALLY HAVE NO IDEA WHERE  
25 I'M AT AT THIS POINT, SO. . .

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q SUBSEQUENTLY, AS YOU'RE DRIVING, EITHER BEFORE THE EXXON  
2 OR AFTER THE EXXON, DID YOU RECEIVE -- WERE ANY TELEPHONE  
3 CALLS RECEIVED?

4 A YES. WE HAD GOTTEN A CALL BEFORE WE HAD GOTTEN TO THE  
5 EXXON STATION. I PICKED IT UP AND LOOKED AT IT. I SEEN IT  
6 WAS A 275 NUMBER. I HANDED IT TO JOHN. I SAID, "IT'S YOUR  
7 SISTER." HE TALKED FOR A FEW MINUTES. HE ASKED ME WERE WE  
8 STILL GOING TO BETSY'S HOUSE FOR SUPPER, AND I SAID YES. AND  
9 HE SAID, "WELL, WHAT TIME DO YOU THINK WE'LL GET THERE?" AND  
10 I LOOKED AT HIM LIKE, WELL, WHAT TIME DO YOU THINK WE'LL GET  
11 THERE? AND SO WE DECIDED ON AROUND SEVEN O'CLOCK.

12 Q ALL RIGHT. ANY OTHER CALLS?

13 A I MADE A CALL TO ALABAMA.

14 Q TO YOUR BROTHER?

15 A NO, TO A FRIEND OF MINE. I WAS HELPING HIM DO SOME  
16 MORTGAGE WORK ON HIS HOUSE, AND I WAS SUPPOSED TO HAVE HEARD  
17 BACK FROM THE MORTGAGE COMPANY ABOUT THAT MORTGAGE AND I  
18 STILL HADN'T HEARD, AND I JUST WANTED TO TOUCH BASE WITH HIM  
19 AND LET HIM KNOW. I GOT THE ANSWERING MACHINE, SO THERE WAS  
20 NOBODY.

21 Q SO DURING THIS ENTIRE SCENARIO MR. WOOD IS TALKING ON  
22 THE PHONE SETTING A DINNER DATE FOR YOU AND HIS SISTER AT  
23 7:00 P.M. AND YOU'RE CALLING YOUR FRIEND IN ALABAMA REGARDING  
24 SOMETHING THAT YOU HAD BEEN HELPING HIM WITH PREVIOUSLY?

25 A YES, SIR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q ALL RIGHT. SO EVERYTHING WAS PROCEEDING ALONG NORMALLY?

2 A YES, SIR.

3 Q AND WAS THERE ANYTHING OTHER THAN THE GUN LAYING ON THE  
4 CONSOLE AT THIS TIME THAT WAS IN ANY WAY OUT OF ORDER FOR  
5 YOU?

6 A NOT THAT I KNOW, NO, SIR.

7 Q TELL US WHAT HAPPENED WHEN YOU CROSSED OVER I-85 GOING  
8 INTO OR TOWARDS TOWNVILLE. HAD YOU RECOGNIZED THAT'S WHERE  
9 YOU WERE AT THAT TIME?

10 A I HAD JUST RECOGNIZED WHERE I WAS.

11 Q ALL RIGHT. AND WHAT HAPPENED?

12 A WE SAW A POLICEMAN. THE BLUE LIGHTS CAME ON. I WENT TO  
13 PULL OVER. JOHN REACHED OVER ME WITH HIS FOOT AND STOMPED MY  
14 FOOT ON THE GAS PEDAL AND SAID, "DRIVE, BITCH, DRIVE. I HAVE  
15 SHOT THE S.O.B." AND HE SAID SON OF A BITCH NOT S.O.B.

16 Q ALL RIGHT. AND IN YOUR STATEMENT YOU MENTION THE WORD  
17 THAT HE SAID HE HAD KILLED THE S.O.B. DO YOU REMEMBER  
18 EXACTLY WHICH ONE HE USED?

19 A I DO NOT REMEMBER. NO, SIR.

20 Q BUT AT THAT TIME HE MADE THE STATEMENT TO YOU THAT HE  
21 HAD SHOT THE S.O.B. OR KILLED THE S.O.B.?

22 A YES, SIR.

23 Q STOMPED HIS FOOT ON THE GAS. TELL US HOW HE DID THAT.

24 A HE REACHED OVER, RETRIEVED THE GUN, CRAWLED ACROSS THE  
25 CONSOLE AND STOMPED MY FOOT ON THE ACCELERATOR AND SAID,

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 "DRIVE, BITCH. DRIVE."

2 Q AND WHAT WERE YOU GETTING READY TO DO AT THAT TIME?

3 A I WAS TRYING TO PULL OVER.

4 Q AND THE REASON YOU WERE PULLING OVER WAS WHY?

5 A BECAUSE THE POLICEMAN TURNED ON THE BLUE LIGHTS.

6 Q AND FROM THAT POINT ON, AFTER THOSE TWO STATEMENTS -- "I  
7 SHOT THE SON OF A BITCH" AND "DRIVE, BITCH. DRIVE." -- TELL  
8 THIS JURY WHAT HAPPENED TO YOU AND THAT VEHICLE.

9 A I WAS FORCED TO DRIVE.

10 Q ALL RIGHT. WAS THE GUN STILL IN THE CONSOLE OR ON THE  
11 CONSOLE?

12 A NO, SIR, HE HAD IT.

13 Q ALL RIGHT. AND TELL US WHAT HE DID WITH IT.

14 A HE WAS WAVING IT AT ME. HE BEGAN TO SHOOT AT THE  
15 POLICEMEN BEHIND US.

16 Q BEFORE YOU GO THERE, HOW WAS HE ABLE TO SHOOT OUT THE  
17 BACK OF THE VEHICLE?

18 A WELL, HE FIRST STARTED SHOOTING OUT THE SIDE WINDOW, AND  
19 HE DIDN'T THINK THAT WAS EFFECTIVE ENOUGH. HE COULDN'T  
20 KEEP -- FROM HIS ATTITUDE, HE COULDN'T KEEP AN EYE ON ME AND  
21 SHOOT AT THEM, SO HE DECIDED, I GUESS, TO ROLL DOWN THE BACK  
22 GLASS, BECAUSE HE TOLD ME, HE SAID, "LET DOWN THE BACK GLASS.  
23 LET DOWN THE BACK GLASS."

24 Q DID YOU KNOW HOW TO LET THE BACK GLASS DOWN ON THAT  
25 GRAND CHEROKEE WAGONEER?

- 1     A     NO, SIR, I DID NOT.
- 2     Q     DID HE TELL YOU OR SHOW YOU?
- 3     A     HE REACHED OVER ME AND PUSHED THE BUTTON HIMSELF.
- 4     Q     AND WHEN THE GLASS WENT DOWN WHAT POSITION DID HE TAKE?
- 5     A     HE WAS FACING BACK WITH HIS KNEES ON THE CONSOLE.
- 6     Q     FACING OUT THE BACK OF THE VEHICLE?
- 7     A     YES, SIR.
- 8     Q     AND WHAT WAS HE DOING?
- 9     A     SHOOTING AT THEM.
- 10    Q     AND WHAT WERE YOU DOING?
- 11    A     AT THIS POINT I WAS PRAYING.
- 12    Q     ALL RIGHT. LET ME GO BACK BEFORE THAT. YOU SAID
- 13    SOMETHING, HIS ATTITUDE OR -- WHAT -- DID YOU NOTICE ANY
- 14    CHANGE -- AT THE TIME THAT HE TOLD YOU TO "DRIVE, BITCH.
- 15    DRIVE," DID YOU NOTICE ANY CHANGE IN HIS PHYSICAL APPEARANCE
- 16    OR HIS ATTITUDE AT THAT TIME?
- 17    A     YES, SIR.
- 18    Q     WHAT HAPPENED THAT WAS NOTICEABLE TO YOU?
- 19    A     HE BECAME COLD, HARD AND AS IF HE WAS POSSESSED BY
- 20    SOMETHING.
- 21    Q     AND AS YOU WERE GOING DOWN THE ROAD AND FIRING OUT THE
- 22    BACK HOW FAST WERE YOU DRIVING AS BEST YOU CAN RECALL?
- 23    A     I DO NOT KNOW.
- 24    Q     WERE YOU ABLE TO GO REAL FAST AT SOME POINT?
- 25    A     SOME POINTS I WAS. SOME POINTS I WASN'T. THERE WAS

1 TRAFFIC IN FRONT OF ME. AT ONE TIME THERE WAS A BULLDOZER IN  
2 FRONT OF ME ON A TRAILER, AND I SLOWED DOWN BECAUSE I  
3 OBVIOUSLY COULD NOT RUN OVER THE BULLDOZER, AND HE HOLLERED  
4 AT ME TO GO AROUND IT, TO GO AROUND IT, AND THERE WAS NO WAY  
5 I COULD GO AROUND IT.

6 Q AND WHEN HE GOT INTO -- LET ME JUMP BACK A LITTLE BIT.  
7 WHEN HE WAS IN THE CAR HOW WAS HE DRESSED?

8 A HE HAD TWO SUITS OF CLOTHES ON BECAUSE IT HAD BEEN COLD  
9 THAT MORNING WHEN HE GOT OUT ON THE MOTORCYCLE. HE BEGAN TO  
10 CHANGE CLOTHES ONCE WE HAD GOTTEN STARTED OUT OF THE PARKING  
11 LOT.

12 Q THE PARKING LOT OF WHERE WE LEFT THE SCOOTER?

13 A YES.

14 Q HE HAD ON TWO PAIR OF PANTS?

15 A HE HAD ON TWO PAIR OF PANTS, TWO SHIRTS. HE CHANGED HIS  
16 SHOES.

17 Q ALL RIGHT. HOW ABOUT A JACKET, DID HE HAVE A JACKET ON?

18 A HE HAD A JACKET ON. HE REMOVED THE JACKET, REMOVED ONE  
19 OF THE SHIRTS AND PUT THE JACKET BACK ON.

20 Q DID HE WEAR A MOTORCYCLE HELMET?

21 A HE HAD HAD IT OFF WHEN HE GOT IN THE VEHICLE?

22 Q DID HE HAVE IT ON WHEN HE WAS RIDING THE MOTORCYCLE TO  
23 THE---

24 A YES, SIR.

25 Q AND WHAT COLOR WAS IT?

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 A BLACK.

2 Q IT WAS A FULL FACE HELMET?

3 A YES, SIR.

4 Q NOW, WHEN WE'RE GOING DOWN THE ROAD AND HE HAS, AS YOU  
5 SAY, CHANGED HIS APPEARANCE AND BECAME VERY HARD, THE  
6 BULLDOZER IS IN FRONT OF YOU, WHAT DOES HE DIRECT YOU TO DO  
7 IN REGARD TO THE BULLDOZER?

8 A GO AROUND IT.

9 Q AND DID YOU DO THAT?

10 A NO, SIR.

11 Q WHY?

12 A I COULDN'T GO AROUND IT. I COULDN'T SEE AROUND IT, AND  
13 I WAS NOT GOING TO GO AROUND IT.

14 Q DID YOU EVENTUALLY GET OUT FROM BEHIND THE BULLDOZER?

15 A I THINK IT PULLED OVER. I'M NOT SURE EXACTLY.

16 Q AND WHERE DID YOU GO THEN?

17 A WHEREVER HE SAID GO.

18 Q DID HE ACTUALLY STEER THE CAR AT ANY POINT OR MAKE YOU  
19 TURN IT TO ANY PARTICULAR WAY?

20 A HE HAD SNATCHED THE STEERING WHEEL SEVERAL TIMES, AND HE  
21 TOLD ME TO "TURN HERE, TURN HERE," SEVERAL TIMES.

22 Q YOU SAID EARLIER THAT YOU HAD BEGUN PRAYING. WHAT HAD  
23 YOU BEGUN PRAYING ABOUT?

24 A I WAS AFRAID TO DIE, AND I DIDN'T WANT MY BABY TO DIE.

25 Q AT THE TIME THAT THE -- YOU GOT AROUND THE BULLDOZER, DO



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1 YOU RECALL HOW LONG -- OR DO YOU HAVE ANY IDEA HOW LONG THIS  
2 CHASE TOOK PLACE?

3 A NO, SIR.

4 Q DID HE MAKE ANY OTHER STATEMENTS TO YOU DURING THE  
5 COURSE OF THIS CHASE?

6 A YEAH. HE SAID, "WE'RE GOING TO DIE TODAY. WE'RE GOING  
7 TO DIE TODAY."

8 Q HOW MANY TIMES DID HE SAY THAT?

9 A WELL, IT SEEMED LIKE THOUSANDS, BUT I'M SURE IT WAS ONLY  
10 SEVERAL.

11 Q AND BASED ON THAT STATEMENT AND WHAT WAS OCCURRING, WHAT  
12 DID YOU THINK WAS GOING TO HAPPEN?

13 A I THOUGHT HE WAS GOING TO KILL US AND THEN KILL HISSELF  
14 (SIC).

15 Q IS WHAT YOU THOUGHT WAS ABOUT TO HAPPEN?

16 A YES, SIR.

17 Q ALL RIGHT. NOW, AS YOU'RE GOING DOWN THE ROAD DID THE  
18 CAR THAT YOU WERE DRIVING IN -- WHAT HAPPENED TO IT?

19 A THE POLICEMEN WERE SHOOTING AT US. HE WAS SHOOTING AT  
20 THEM. THE TIRES GOT SHOT OUT. WE HAD AN ACCIDENT -- OR AT  
21 LEAST ONE THAT I KNOW OF, PROBABLY SEVERAL FROM THE WAY IT  
22 WAS GOING. IT JUST GOT TO WHERE IT WOULDN'T GO ANYMORE.

23 Q WHEN YOU SAY YOU HAD "AN ACCIDENT," YOU RAN INTO ANOTHER  
24 CAR?

25 A RAN INTO ANOTHER CAR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

- 1 Q DID YOU KEEP GOING AFTER YOU RAN INTO THAT CAR?
- 2 A YES, SIR. HE HAD SNATCHED THE WHEEL AND SNATCHED US
- 3 BACK ON THE ROAD AND REPEATED COMMANDS FOR ME TO DRIVE.
- 4 Q AND WHEN YOU FINALLY -- YOU SAY THE CAR JUST WOULDN'T
- 5 GO. WHAT DO YOU MEAN?
- 6 A IT JUST WOULD NOT GO ANYMORE.
- 7 Q YOU PUSH THE GAS, IT WOULDN'T GO?
- 8 A IT WOULDN'T GO ANYMORE.
- 9 Q AT THAT MOMENT WHAT TOOK PLACE?
- 10 A HE SAID, "I AM GOING TO GET US ANOTHER VEHICLE. WHEN I
- 11 TELL YOU TO, GET YOUR ASS UP HERE AND BRING THAT BAG."
- 12 Q OKAY. WHO IS BEHIND YOU?
- 13 A THE POLICE.
- 14 Q AND DO YOU SEE ANOTHER VEHICLE OR DO YOU SEE HIM GO TO
- 15 ANOTHER VEHICLE?
- 16 A HE GOT OUT OF THE VEHICLE AND WENT TO ANOTHER VEHICLE
- 17 AHEAD OF US, YES, SIR.
- 18 Q ALL RIGHT. AND WHERE WAS THAT VEHICLE LOCATED?
- 19 A IT WAS A GOOD WAYS AHEAD OF US.
- 20 Q IN THE ROAD?
- 21 A YES, SIR.
- 22 Q WAS IT COMING TOWARDS YOU OR---
- 23 A COMING TOWARD US.
- 24 Q AND TELL US WHAT YOU OBSERVED HIM DO IN REGARD TO THAT
- 25 VEHICLE.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 A HE WALKED UP TO THE DOOR OF IT, POINTED THE GUN AT THE  
2 GUY, SNATCHED THE GUY OUT.

3 Q AND WHAT DID HE DO?

4 A GOT IN THE VEHICLE. HE WAVED THE GUN AND SAID, "GET  
5 YOUR ASS UP HERE NOW," AND I GRABBED THE BAG AND RAN UP THERE  
6 AND GOT IN.

7 Q AND WERE ANY SHOTS FIRED DURING THAT PERIOD OF TIME?

8 A HE WAS SHOOTING AT THE POLICE AND THE POLICE WERE  
9 SHOOTING AT HIM.

10 Q DID YOU GET INTO THE TRUCK?

11 A YES, SIR.

12 Q WHICH SIDE?

13 A PASSENGER SIDE.

14 Q AND WHICH SIDE DID HE GET IN?

15 A DRIVER'S SIDE.

16 Q WHAT DID YOU DO?

17 A I DOUBLED OVER IN THE SEAT.

18 Q AND WHAT WAS THE REASON YOU WERE DOUBLING OVER?

19 A TO PROTECT MYSELF AND MY BABY.

20 Q DO YOU KNOW WHERE YOU WENT?

21 A HE TURNED THE VEHICLE AROUND AND WENT BACK DOWN THE SAME  
22 ROAD WE WERE GOING DOWN.

23 Q NOT BACK THE WAY YOU HAD COME BUT---

24 A THE OTHER WAY.

25 Q ---THE WAY YOU WERE HEADED?

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 A YEAH.

2 Q AND TELL US WHAT -- WHEN HE CAME OUT OF THE PASSENGER  
3 SIDE OF THE JEEP, DID HE TAKE THE GUN WITH HIM?

4 A YES, SIR.

5 Q WAS THE GUN IN THE UTILITY TRUCK WHEN YOU GOT INTO THE  
6 NEW VEHICLE, THE PICKUP TRUCK?

7 A AS FAR AS I KNOW IT WAS STILL IN HIS HAND.

8 Q GO AHEAD. WHEN YOU GOT IN THERE, YOU DOUBLED OVER AND  
9 THE TRUCK STARTED MOVING. DO YOU KNOW WHERE YOU WENT?

10 A WE WENT AROUND AND AROUND IN A FIELD.

11 Q FIELD?

12 A YES.

13 Q WHAT TYPE OF FIELD?

14 A A CORNFIELD. A PLACE WHERE THE GUY WAS PLOWING. A  
15 FIELD.

16 Q THERE WAS A GUY RIDING A TRACTOR, PLOWING A FIELD?

17 A YES, SIR.

18 Q AND YOU WENT OUT ACROSS THE FIELD?

19 A YES, SIR.

20 Q AND WHAT WAS HAPPENING THE ENTIRE TIME THAT YOU'RE OUT  
21 IN THIS FIELD?

22 A THE COPS ARE SHOOTING AT US, AND HE'S SHOOTING AT THE  
23 COPS, AND THERE'S HELICOPTERS FLYING OVER, AND HE'S TALKING  
24 ABOUT HOW WE'RE GOING TO DIE, AND HE'S SORRY THAT WE HAVE TO  
25 DIE, AND I'M PRAYING.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 Q ALL RIGHT. AND WHERE -- AFTER YOU GET OUT OF THE FIELD,  
2 WHERE DO YOU END UP?

3 A WELL, WE WENT DOWN THIS LITTLE ROAD, AND IT WAS A CUL-  
4 DE-SAC, AND I'M TRYING MY BEST TO TALK HIM INTO -- I SAID,  
5 "JUST GIVE UP. THEY WON'T SHOOT YOU IF YOU JUST GIVE UP.  
6 PLEASE JUST"---

7 Q YOU'RE TELLING HIM TO STOP AND GIVE UP AND THEY WON'T  
8 KILL YOU?

9 A AND "THEY WON'T KILL YOU. PLEASE, JUST STOP AND GIVE  
10 UP."

11 Q AND DID HE DO THAT?

12 A NO.

13 Q WHEN YOU GOT TO THE END OF THE CUL-DE-SAC WHERE IT WAS A  
14 DEAD END, WHAT DID YOU DO -- OR WHAT DID HE DO WITH THE  
15 TRUCK?

16 A HE SWUNG THE TRUCK AROUND AND HEADED BACK TOWARDS THE  
17 OTHER END, WHERE I ASSUMED THAT THERE WAS POLICEMEN, AND THEY  
18 WERE.

19 Q AND THERE WERE POLICEMEN THERE?

20 A YES, SIR.

21 Q DID HE STOP AS YOU HAD ASKED HIM TO DO OR DID HE  
22 CONTINUE FORWARD?

23 A HE FLOORBOARDED THE TRUCK AND HEADED FORWARD.

24 Q FLOORBOARDED?

25 A YES, SIR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

- 1 Q DID HE---
- 2 A ALL THE WAY TO THE---
- 3 Q ALL THE WAY TO THE FLOOR?
- 4 A YES, SIR.
- 5 Q DID YOU HEAR SHOTS?
- 6 A YES, SIR. HE WAS SHOOTING AT THEM, AND THEY WERE
- 7 SHOOTING AT HIM, AND I WAS PRAYING, "PLEASE DON'T LET THEM
- 8 HURT MY BABY. PLEASE DON'T LET THEM HURT MY BABY."
- 9 Q AND WHAT HAPPENED?
- 10 A I FELT HIM (INHALING) LIKE THIS AND SLUMP OVER. AND
- 11 THEY SAID, "GET OUT WITH YOUR HANDS UP," AND I GOT OUT WITH
- 12 MY HANDS UP AND LAID ON THE GROUND WHERE THEY TOLD ME TO GET
- 13 DOWN.
- 14 Q WHEN YOU HEARD THIS GASP DID THE TRUCK STOP?
- 15 A YES, SIR.
- 16 Q AND YOU GOT OUT AND LAID ON THE GROUND?
- 17 A YES, SIR.
- 18 Q DID YOU AT ANY TIME HAVE THE GUN IN YOUR HAND OR DO ANY
- 19 FIRING OR PARTICIPATE IN ANY WAY OR WERE YOU EVEN AWARE OF
- 20 THE SITUATION INVOLVING THE TROOPER?
- 21 A NO, SIR.
- 22 Q (OFF RECORD WITH CO-COUNSEL) NOW, FOLLOWING YOUR
- 23 GETTING OUT OF THE TRUCK, I ASSUME AT THAT POINT YOU WERE
- 24 ARRESTED?
- 25 A YES, SIR.

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

- 1 Q WHERE DID YOU GO THEN?
- 2 A THEY TOOK ME TO THE HOSPITAL.
- 3 Q IN WHAT TYPE OF VEHICLE?
- 4 A AN AMBULANCE.
- 5 Q AND WAS MR. WOOD ALSO IN THE AMBULANCE?
- 6 A NO, SIR.
- 7 Q DID HE LEAVE THE SCENE?
- 8 A I BELIEVE HE LEFT FIRST, BUT I'M NOT SURE.
- 9 Q DO YOU KNOW HOW HE LEFT?
- 10 A IN AN AMBULANCE.
- 11 Q ALSO. AND DID YOU GO TO THE HOSPITAL?
- 12 A YES, SIR.
- 13 Q AND THAT WAS IN ANDERSON?
- 14 A ALL I KNOW IS IT WAS A HOSPITAL.
- 15 Q THEN YOU WENT TO -- FROM THE HOSPITAL DID YOU STAY
- 16 OVERNIGHT OR DID YOU LEAVE?
- 17 A I LEFT.
- 18 Q SOMEBODY TOOK YOU SOMEWHERE?
- 19 A YEAH, THE S.L.E.D. AGENTS.
- 20 Q TOOK YOU WHERE?
- 21 A I DON'T KNOW. I MEAN, IT WAS A POLICE COMPLEX OF SOME
- 22 SORT.
- 23 Q AND IS THAT WHERE YOU GAVE YOUR STATEMENT?
- 24 A YES, SIR.
- 25 Q AND IS YOUR STATEMENT THAT YOU GAVE ON THE NIGHT OF

KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1 THOSE EVENTS ANY DIFFERENT THAN THE TESTIMONY YOU HAVE---

2 MR. MAULDIN: YOUR HONOR, I OBJECT TO THE FORM OF THAT  
3 QUESTION. HE IS ASKING THIS WITNESS -- WELL, I OBJECT TO THE  
4 FORM OF THE QUESTION.

5 THE COURT: I SUSTAIN THE OBJECTION.

6 Q HAS YOUR TESTIMONY TODAY BEEN TRUTHFUL AND IN ACCORDANCE  
7 WITH YOUR STATEMENT?

8 MR. MAULDIN: I OBJECT TO THE -- NOT AS TO THE  
9 TRUTHFULNESS BUT AS TO THE FINAL PHRASE "IN ACCORDANCE WITH  
10 THE STATEMENT." THAT IS AN IMPROPER QUESTION FOR HIS  
11 WITNESS.

12 THE COURT: SUSTAINED.

13 SOLICITOR ARIAIL: OKAY. THAT'S FINE.

14 ANSWER ANY---

15 THE COURT: ANYTHING FURTHER? ONE SECOND. ANYTHING  
16 FURTHER, SIR?

17 SOLICITOR ARIAIL: ONE SECOND. (OFF RECORD WITH CO-  
18 COUNSEL)

19 Q FOR THE RECORD, DO YOU SEE THE PERSON YOU KNOW AS JOHN  
20 RICHARD WOOD IN THIS COURTROOM TODAY?

21 A YES, SIR, I DO.

22 Q AND WHERE -- WOULD YOU POINT HIM OUT TO US?

23 A HE'S RIGHT OVER THERE (INDICATING).

24 Q ALL RIGHT.

25 THE COURT: YOUR WITNESS, SIR.



KAREN MCCALL -- DIRECT BY SOLICITOR ARIAIL

1           **MR. MAULDIN:**    THANK YOU, JUDGE.

2           **CROSS EXAMINATION BY MR. MAULDIN:**

3           **Q**     KAREN, I'M GOING TO MOVE AROUND A LITTLE BIT TO FOLLOW  
4           UP ON A FEW OF THE WHAT I CONSIDER LOOSE ENDS REGARDING THE  
5           RELATIONSHIP WITH JOHN BEFORE WE GET INTO THE INCIDENT THAT  
6           OCCURRED ON DECEMBER THE 6TH.

7           FIRST OF ALL, YOU MET JOHN WHERE?  WHERE DID YOU MEET  
8           JOHN WOOD?

9           **A**     I MET HIM WHEN I WAS DOING SOME MOBILE HOME DEALS WITH  
10          HIS MOTHER.

11          **Q**     ALL RIGHT.  AND THAT WAS IN THE OKALOOSA MOBILE HOME  
12          PARK IN FORT MYERS, FLORIDA; IS THAT RIGHT?

13          **A**     YES, SIR.

14          **Q**     AND IT WAS THE SUMMER OF THE YEAR 2000?

15          **A**     YES, SIR.

16          **Q**     YOU FIRST MET OR KNEW OF HIS MOTHER?

17          **A**     YES, SIR.

18          **Q**     WERE YOU INTRODUCED TO JOHN BY JOHN'S MOTHER?

19          **A**     YES, SIR.

20          **Q**     WAS HE INTRODUCED TO YOU BASICALLY AS A HANDYMAN-TYPE  
21          PERSON WHO COULD HELP YOU WITH REGARD TO THE RESTORATION OR  
22          REPAIR WORK THAT YOU NEEDED DONE ON THESE MOBILE HOMES?

23          **A**     YES, SIR.

24          **Q**     WAS THIS MOBILE HOME RESTORATION AND SALE THE WAY YOU  
25          MADE A LIVING?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q OR ONE OF THE WAYS -- THAT WAS PART OF YOUR BUSINESS?

3 A YES, SIR.

4 Q NOW, KAREN, YOU WERE AT THAT TIME MARRIED TO A GENTLEMAN  
5 NAMED PITTMAN; IS THAT RIGHT?

6 A NO, SIR, MCCALL.

7 Q I MEAN MCCALL. I'M SORRY. SO YOUR DIVORCE FROM MR.  
8 MCCALL WAS STILL PENDING IN THE SPRING AND EARLY SUMMER OF  
9 2000; IS THAT RIGHT?

10 A YES, SIR.

11 Q AND YOU, I BELIEVE, WERE -- YOUR DIVORCE WAS FINAL ON  
12 YOUR BIRTHDAY?

13 A YES, SIR.

14 Q AND THAT WAS WHAT DAY?

15 A AUGUST 23RD.

16 Q OF 2000?

17 A YES, SIR.

18 Q BUT YOU HAD COME TO KNOW JOHN IN THE EITHER SPRING OR  
19 EARLY SUMMER OF 2000?

20 A YES, SIR.

21 Q NOW, THERE HAS BEEN REFERENCE OR QUESTIONS BY THE  
22 PROSECUTOR CONCERNING HIS LANGUAGE TO YOU THAT DAY?

23 A YES, SIR.

24 Q THE USE OF PROFANITY, THE WAVING OF A GUN TOWARD YOU,  
25 STATEMENTS ABOUT "WE ARE GOING TO DIE." AND ALSO THE

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 PROSECUTOR ASKED YOU -- ONE MOMENT, PLEASE, MA'AM, IF YOU  
2 NOTICED A CHANGE IN JOHN, AND YOU SAID THAT HE APPEARED "COLD  
3 AND HARD AND POSSESSED BY SOMETHING"?

4 A YES, SIR.

5 Q I WANT TO GO BACK TO THE PERIOD OF TIME PRIOR TO  
6 DECEMBER THE 6TH. FROM THE EARLY SUMMER OF 2000 UNTIL THE  
7 MORNING OF DECEMBER THE 6TH, HAD JOHN WOOD EVER MISTREATED  
8 YOU?

9 A NO, SIR.

10 Q HAD HE ALWAYS TREATED YOU GOOD?

11 A YES, SIR.

12 Q IN FACT, HAD HE BEEN -- A QUOTE FROM YOU WOULD HAVE BEEN  
13 HE TREATED YOU "LIKE A QUEEN"?

14 A EVEN BETTER, YES, SIR.

15 Q WAS HE EVER VIOLENT TO YOU?

16 A NO, SIR.

17 Q DID HE EVER RAISE HIS VOICE TO YOU OR CURSE AT YOU?

18 A NO, SIR.

19 Q SO WHEN THE PROSECUTOR ASKED YOU ABOUT AN EXTRAORDINARY  
20 CHANGE THAT TOOK PLACE, IT WAS, IN YOUR OPINION, AN  
21 UNBELIEVABLY EXTRAORDINARY CHANGE, WAS IT NOT?

22 A YES, SIR.

23 Q ONE OTHER QUESTION BEFORE WE GET TO THE SPECIFICS OF THE  
24 ACTUAL INCIDENT. DURING THE SIX MONTHS PRIOR TO THIS  
25 INCIDENT, OR THEREABOUTS, THAT YOU HAD BEEN WITH JOHN, HAD

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 YOU NOTICED WHAT MIGHT BE CALLED MOOD CHANGES OR DID HE  
2 APPEAR MOODY TO YOU ON OCCASION?

3 A ON OCCASION.

4 Q WERE THERE TIMES WHEN HE WOULD NOT TALK TO YOU AS MUCH  
5 AS HE MIGHT ON ANOTHER OCCASION?

6 A YES, SIR.

7 Q AND ON THOSE OCCASIONS DID YOU FORM AN OPINION OR  
8 CONNECT THAT WITH SOMETHING THAT HAPPENED THAT HAD MADE HIM  
9 PERHAPS BE IN THAT TYPE OF MOOD, SOME INCIDENT OR SOME  
10 OCCASION THAT WOULD CHANGE HIS MOOD LIKE THAT, IN YOUR  
11 OBSERVATION? AND IF YOU DON'T UNDERSTAND THE QUESTION, I'LL  
12 BE GLAD TO REPEAT IT.

13 A TRY AND. . .

14 Q ALL RIGHT. LET ME -- LET'S PUT IT THIS WAY: WHEN JOHN  
15 GOT INTO YOUR CAR AND TOLD YOU TO DRIVE AND YOU SAID IN YOUR  
16 OPINION IT SOUNDED LIKE HE WANTED YOU TO HURRY, THE SOLICITOR  
17 THEN ASKED YOU IF OVER THE NEXT WHILE, DURING THE TIME THAT  
18 Y'ALL WERE ON THE ROADS GOING TOWARD ANDERSON, TO DESCRIBE  
19 HIM, AND YOU SAID HE SAID HE HAD A HEADACHE, AND YOU  
20 DESCRIBED THE CONVERSATIONS. WAS THAT SOMETHING THAT YOU HAD  
21 SEEN OR HEARD BEFORE?

22 A YES.

23 Q SO THAT WAS NOT SOMETHING THAT WOULD NECESSARILY HAVE  
24 ALARMED YOU THAT SOMETHING HORRIBLE HAD JUST HAPPENED?

25 A NO, SIR.

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q NOW, I'M GOING TO, I GUESS YOU MIGHT SAY, SPIN FORWARD A  
2 LITTLE BIT HERE. I'M GOING TO ASK YOU ABOUT THE OWNERSHIP OF  
3 THE MOTORCYCLE. I WANT TO ASK YOU, KAREN, IF PRIOR TO OWNING  
4 THE MOTORCYCLE THAT WE HAVE A PHOTOGRAPH OF -- I DON'T THINK  
5 THERE'S MUCH QUESTION ABOUT IT, IT'S THE RED MOTORCYCLE THAT  
6 WAS LEFT BEHIND IN THAT PARKING LOT, RIGHT?

7 A YES, SIR.

8 Q ALL RIGHT. AND YOU WERE THE OWNER OF IT?

9 A YES, SIR.

10 Q AND PRIOR TO OWNING THAT RED MOTORCYCLE YOU HAD OWNED A  
11 HONDA GOLDWING?

12 A YES, SIR.

13 Q ALL RIGHT. DID YOU TRADE YOUR HONDA GOLDWING FOR THAT  
14 RED MOTORCYCLE?

15 A YES, SIR.

16 Q WHERE DID THAT HAPPEN?

17 A FORT MYERS, FLORIDA.

18 Q ALL RIGHT. AND THEN YOU WENT -- YOU SAID THAT WHEN YOU  
19 AND JOHN LEFT FLORIDA AND WENT TO ALABAMA YOU TOOK THE  
20 MOTORCYCLE WITH YOU, DIDN'T YOU?

21 A YES, SIR.

22 Q AND YOU TOOK IT ON A TRAILER?

23 A YES, SIR.

24 Q THEN WHEN YOU CAME TO ANDERSON AND THE GREENVILLE --  
25 CAME TO ANDERSON TO STAY A WHILE WITH RELATIVES OF JOHN YOU

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 BROUGHT IT ON THE TRAILER TO ANDERSON, DID YOU NOT?

2 A YES, SIR.

3 Q WAS THAT MOTORCYCLE -- THE RED MOTORCYCLE, WAS IT EVER  
4 PROPERLY REGISTERED THAT YOU ARE AWARE OF?

5 A NO, SIR. WE HAD SOME PROBLEMS WITH THAT.

6 Q ALL RIGHT. SO THAT THE -- YOU HAD TRADED FOR IT, BUT IN  
7 TERMS OF THE ACTUAL LICENSING, REGISTRATION PROCESS THAT ONE  
8 WOULD GO THROUGH TO MAKE THIS CHANGE OF OWNERSHIP, YOU HAD  
9 NOT HAD THAT COMPLETED OR DONE; IS THAT FAIR TO SAY?

10 A THAT'S FAIR.

11 Q NEXT QUESTION, KAREN, IS IN REGARD TO THE JEEP. YOU  
12 TESTIFIED THAT YOU OWN THE JEEP AS WELL?

13 A YES, SIR.

14 Q AND THERE HAS BEEN TESTIMONY THAT THE LICENSE TAG THAT  
15 WAS PUT OUT TO LAW ENFORCEMENT WAS TRACED THROUGH THE PROPER  
16 CHANNELS TO YOU AT DOBBINS -- OLD DOBBINS BRIDGE ROAD OR  
17 WHATEVER IT'S CALLED OVER IN ANDERSON, RIGHT?

18 A YES, SIR.

19 Q WHEN DID YOU BUY THE JEEP?

20 A SOMETIME IN SEPTEMBER OR OCTOBER. I COULDN'T TELL YOU  
21 THE DATE.

22 Q SO YOU HAD OWNED THE JEEP MAYBE TWO OR THREE MONTHS AT  
23 THE TIME THAT THIS INCIDENT OCCURRED?

24 A YES, SIR.

25 Q HAD YOU BEEN HAVING MECHANICAL DIFFICULTIES WITH THE

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 JEEP PRETTY MUCH SINCE YOU BOUGHT IT?

2 A YES, SIR.

3 Q AND WAS -- YOU TESTIFIED EARLIER THAT THE REASON THAT  
4 YOU LEFT THE HOTELS -- OR THE HOTEL IN GREENVILLE AND WENT TO  
5 ANDERSON ON THE MORNING OF THE 6TH WAS TO SEE IF YOU COULD  
6 WORK OUT A TRADE OF THE MOTORCYCLE FOR REPLACEMENT PARTS FOR  
7 THE JEEP; IS THAT WHAT I UNDERSTOOD YOU TO SAY?

8 A YES, SIR.

9 Q AND IS THAT WHY YOU HAD BOTH VEHICLES?

10 A YES, SIR.

11 Q NOW, I'M GOING TO ASK YOU A COUPLE QUESTIONS ABOUT THE  
12 PLACES WHERE Y'ALL HAD BEEN STAYING. I THINK YOU TESTIFIED  
13 TO THE PROSECUTOR THAT YOU HAD STAYED AT HOTELS FOR ABOUT A  
14 WEEK OR TWO?

15 A YES, SIR.

16 Q AND YOU TESTIFIED THAT YOU STAYED AT A -- WHAT YOU SAID  
17 WAS A FAIRMONT OR A FAIRFIELD INN, YOU BELIEVE---

18 A YES, SIR.

19 Q ---THE NIGHT BEFORE THE INCIDENT? I'M GOING TO SHOW  
20 YOU, JUST FOR THE PURPOSES OF REFRESHING YOUR MEMORY, JUST TO  
21 MAKE SURE -- I WANT YOU TO LOOK AT THIS DOCUMENT, AND WITHOUT  
22 NECESSARILY PUBLISHING IT TO THE JURY I WANT YOU TO LOOK UP  
23 AT THE ARRIVAL DATE AND THE DEPARTURE DATE. DO YOU SEE THAT?

24 A YES, SIR.

25 Q ALL RIGHT. NOW I WANT YOU TO TESTIFY AS TO -- SO WE

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 WON'T HAVE ANY WONDERING WHERE YOU WERE, WHERE DID Y'ALL STAY  
2 THE NIGHT BEFORE THE INCIDENT?

3 A THE FAIRFIELD INN.

4 Q ALL RIGHT. THERE IS NO QUESTION NOW THAT'S WHERE YOU  
5 WERE, AND IT WAS FOR ONE NIGHT?

6 A YES, SIR.

7 Q PRIOR TO THE FAIRFIELD INN YOU STAYED AT A COUPLE OF  
8 OTHER HOTELS DURING THAT WEEK OR TWO PRIOR TO THIS INCIDENT;  
9 IS THAT RIGHT?

10 A YES, SIR.

11 Q ALL RIGHT. ONCE AGAIN, ONLY TO REFRESH YOUR MEMORY, I  
12 WANT TO ASK YOU TO LOOK AT THESE TWO DOCUMENTS WITH  
13 PARTICULAR REFERENCES TO THE DATES AT THE TOP AND NOTICE THE  
14 DATE FROM DECEMBER THE 1ST TO DECEMBER THE 4TH AND THE DATES  
15 DECEMBER 4TH TO DECEMBER 5TH. DO YOU SEE THAT?

16 A YES, SIR.

17 Q NOW, CAN YOU -- HAVING HAD YOUR MEMORY REFRESHED, CAN  
18 YOU TESTIFY AS TO WHERE Y'ALL STAYED FROM DECEMBER THE 1ST TO  
19 DECEMBER THE 5TH?

20 A THE SUBURBAN LODGE.

21 Q AND THAT WAS IN GREENVILLE?

22 A YES, SIR.

23 Q SO WE NOW HAVE AT LEAST DOCUMENTED THE WEEK BEFORE.  
24 WITH REGARD TO -- PRIOR TO THAT YOU HAD BEEN STAYING IN THE  
25 LOCATION IN ANDERSON; IS THAT RIGHT?



KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A WE HAD ACTUALLY STAYED IN A COUPLE OF DIFFERENT HOTELS  
2 BEFORE THAT AND THE LOCATION IN ANDERSON.

3 Q ALL RIGHT. SO YOU HAD LEFT ANDERSON AND GONE TO ANOTHER  
4 HOTEL OR TWO ?

5 A (INDICATES AFFIRMATIVE RESPONSE)

6 Q DO YOU RECALL ONE OF THOSE HOTELS ACTUALLY BEING THE LA  
7 QUINTA INN ON THE INTERSTATE IN GREENVILLE?

8 A YES, SIR.

9 Q RIGHT OFF THE INTERSTATE IN GREENVILLE? AND I BELIEVE  
10 YOU STAYED FOR THREE OR FOUR NIGHTS PRIOR TO GOING TO THE  
11 SUBURBAN LODGE?

12 A YES, SIR.

13 Q ALL RIGHT. THE REASON YOU LEFT ANDERSON AND WENT TO THE  
14 HOTELS IN GREENVILLE WAS WHAT? WHAT DID YOU TELL THE  
15 PROSECUTOR WAS THE REASON YOU WERE STAYING IN HOTELS INSTEAD  
16 OF STAYING IN ANDERSON?

17 A THE HOUSE IN ANDERSON HAD BEEN SOLD.

18 Q AND YOU HAD -- NOW, THERE WERE OTHER ITEMS STILL LEFT IN  
19 THAT HOUSE IN ANDERSON, IS THAT RIGHT, THAT BELONGED TO YOU  
20 OR JOHN?

21 A A FEW, YEAH.

22 Q AND Y'ALL -- WAS IT YOUR INTENTION TO GO BACK TO GET  
23 THAT PERSONAL PROPERTY OUT OF THAT RESIDENCE AT SOME POINT?

24 A YES, SIR.

25 Q ALL RIGHT. FINALLY, KAREN, I WANT TO ASK YOU ABOUT THE

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 GUN THAT WAS TAKEN OUT OF THE UTILITY TRUCK IN ANDERSON  
2 COUNTY AT THE TIME YOU AND JOHN WERE TAKEN INTO CUSTODY.  
3 WHERE DID YOU ORIGINALLY BUY THAT GUN?

4 A AT A PAWN SHOP IN CAPE CORAL, FLORIDA.

5 Q AND THAT PURCHASE WAS AT THE GOLDMINER, INC., PAWN SHOP  
6 IN NORTH FORT MYERS, FLORIDA, WASN'T IT?

7 A YES, SIR.

8 Q AND THE PURCHASE ACTUALLY TOOK PLACE IN THE FIRST WEEK  
9 OF JULY OF 2000?

10 A YES, SIR.

11 Q DO YOU REMEMBER WHY YOU WENT TO PURCHASE THAT GUN?

12 A YES, SIR.

13 Q AND WHY WAS IT YOU HAD -- YOU FELT LIKE YOU NEEDED TO  
14 HAVE THAT GUN?

15 A BECAUSE MY EX-HUSBAND WOULD WAKE ME UP STANDING OVER MY  
16 BED IN THE MORNING TIME.

17 Q WELL -- AND LET ME INTERRUPT. DID YOU BUY THAT GUN FOR  
18 YOUR OWN PROTECTION?

19 A YES, SIR.

20 Q ALL RIGHT. DID YOU THEN PAWN -- WHEN YOU CAME TO SOUTH  
21 CAROLINA -- AND IN PARTICULAR ON SEPTEMBER THE 13TH OF THE  
22 YEAR 2000 -- DID YOU TAKE IT TO THE MOUNTAINVIEW GUN AND PAWN  
23 SHOP IN ANDERSON?

24 A YES, SIR.

25 Q DID YOU PAWN IT?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1     A     YES, SIR.

2     Q     ABOUT A MONTH LATER, ON OCTOBER THE 21ST, DID YOU GO  
3     BACK TO GET THE GUN OUT OF PAWN?

4     A     YES, SIR.

5     Q     WHAT WERE YOU TOLD ABOUT GETTING THE GUN OUT OF PAWN  
6     WHEN YOU TOLD THEM YOU WANTED YOUR GUN BACK?

7     A     I COULDN'T HAVE IT BACK BECAUSE I HAD A FLORIDA DRIVER'S  
8     LICENSE.

9     Q     AND YOU HAD HAD THE FLORIDA DRIVER'S LICENSE WHEN YOU  
10    PAWNED IT?

11    A     YES, SIR.

12    Q     BUT THEY WOULDN'T GIVE IT BACK TO YOU UNLESS YOU HAD A  
13    SOUTH CAROLINA DRIVER'S LICENSE, RIGHT?

14    A     YES, SIR.

15    Q     THAT -- THE REASON I ASK THAT QUESTION, MS. MCCALL,  
16    IS---

17           **SOLICITOR ARIAIL:**   OBJECTION, YOUR HONOR.   THE REASON  
18    -- WHAT HIS REASONS ARE IS NOT SOMETHING FOR THE JURY'S  
19    CONCERN.

20           **THE COURT:**    SUSTAINED.

21    Q     I WANT TO ASK YOU ABOUT WHEN YOU WENT TO THE HIGHWAY  
22    DEPARTMENT IN SOUTH CAROLINA TO GET YOUR DRIVER'S LICENSE,  
23    OKAY? I WANT TO ASK YOU QUESTIONS ABOUT THAT.

24           THAT WOULD HAVE BEEN BETWEEN OCTOBER THE 21ST AND  
25    OCTOBER THE 23RD?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q DID YOU AND JOHN WOOD GO TOGETHER TO THE HIGHWAY  
3 DEPARTMENT?

4 A YES, SIR.

5 Q AND THE PURPOSE WAS TO GET YOUR -- YOU GET A DRIVER'S  
6 LICENSE?

7 A YES, SIR.

8 Q SO THAT YOU COULD THEN GET YOUR GUN OUT OF PAWN?

9 A YES, SIR.

10 Q AND WHEN YOU GOT TO THE HIGHWAY DEPARTMENT WHAT  
11 HAPPENED?

12 A HE LET ME OUT. I WENT INTO THE HIGHWAY DEPARTMENT AND  
13 GOT MY DRIVER'S LICENSE.

14 Q DID JOHN GO INTO THE HIGHWAY DEPARTMENT BUILDING WITH  
15 YOU?

16 A NO.

17 Q DID JOHN PARK THE CAR AND TURN IT OFF AND STOP AND WAIT  
18 ON YOU TO GET BACK?

19 A NO, SIR.

20 Q WHAT DID JOHN DO?

21 A RODE AROUND.

22 Q HE RODE AROUND?

23 A I ASSUME THE IMMEDIATE AREA.

24 Q AND WHEN YOU CAME OUT OF THE HIGHWAY DEPARTMENT BUILDING  
25 WAS HE OUT THERE?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A HE CAME RIGHT UP FRONT AFTER THAT, YEAH.

2 Q ALL RIGHT. SO AFTER YOU CAME OUT OF THE BUILDING HE  
3 DROVE UP?

4 A YES, SIR.

5 Q NOW, YOU WEREN'T IN THE CAR WITH HIM, SO YOU DON'T KNOW  
6 WHAT ROADS HE WOULD HAVE RIDDEN ON. DO YOU KNOW HOW LONG IT  
7 TOOK YOU TO GET YOUR DRIVER'S LICENSE?

8 A PROBABLY ABOUT 45 MINUTES.

9 Q AND AS FAR AS YOU ARE AWARE JOHN DROVE AROUND DURING  
10 THAT 45-MINUTE PERIOD?

11 A YES, SIR.

12 Q NOW, WAS THAT THE FIRST TIME HE HAD DEMONSTRATED THAT  
13 KIND OF CONDUCT AROUND -- WELL, AND LET ME GIVE YOU A COUPLE  
14 OF EXAMPLES. WHEN YOU WOULD GO TO THE GROCERY STORE WOULD  
15 JOHN GO -- STOP AND PARK AND GO INTO THE GROCERY STORE WITH  
16 YOU?

17 A NO.

18 Q WHAT WOULD HE DO?

19 A DRIVE AROUND.

20 Q DID YOU -- AND WHEN YOU WENT TO THE K-MART DISCOUNT  
21 STORE DID HE LET YOU OUT AT K-MART?

22 A YEAH.

23 Q DID HE RIDE AROUND WHILE YOU WERE SHOPPING?

24 A YES, SIR.

25 Q AND IN GROCERY STORES AND K-MART AND ANYWHERE ELSE YOU

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 WENT, AFTER YOU DID SHOPPING AND CAME OUT WITH THE BUGGY  
2 WOULD YOU WAIT UNTIL HE CAME BACK THROUGH?

3 A YES, SIR.

4 Q DID YOU EVER HAVE A CONVERSATION WITH JOHN ABOUT WHY HE  
5 WOULDN'T SIMPLY PULL THE CAR OVER, PARK AND COME IN WITH YOU?

6 SOLICITOR ARIAIL: OBJECTION. HEARSAY.

7 MR. MAULDIN: YOUR HONOR, THIS---

8 SOLICITOR ARIAIL: WOULD BE HEARSAY WOULD BE MY  
9 OBJECTION.

10 THE COURT: I'M GOING TO PERMIT IT NOT FOR THE TRUTH OF  
11 THE MATTER BUT POTENTIAL STATE OF MIND ISSUE.

12 MR. MAULDIN: YES, SIR. YES, SIR.

13 Q LISTEN TO THE QUESTION SPECIFICALLY. DID YOU HAVE  
14 CONVERSATIONS WITH JOHN DURING THE SIX MONTHS THAT YOU WERE  
15 WITH HIM ABOUT WHY HE WOULD ACT THAT WAY AT GROCERY STORES,  
16 ANY OTHER SHOPPING AND ALSO OBVIOUSLY THE SOUTH CAROLINA  
17 HIGHWAY PATROL BUILDING? DID YOU ASK HIM WHY HE WAS DRIVING  
18 AROUND INSTEAD OF JUST PARKING AND WAITING OR COMING IN?

19 A BECAUSE POLICE OFFICERS MADE HIM NERVOUS.

20 Q POLICE OFFICERS MADE HIM NERVOUS. IS THAT WHAT HE TOLD  
21 YOU?

22 A IN -- YES. IN NOT REALLY SO MANY WORDS, BUT ANYBODY  
23 WITH UNIFORMS MADE HIM NERVOUS.

24 Q WAS HE AFRAID OF THE POLICE?

25 A YES.

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q NOW, WHEN HE WOULD PULL UP AT THE GROCERY STORE OR THE  
2 K-MART OR WHEREVER YOU WERE AND PICK YOU UP, WHAT COMMENT  
3 WOULD HE MAKE TO YOU ABOUT DRIVING AROUND LIKE THAT AND THEN  
4 COMING UP AND PICKING YOU UP AND LOADING UP THE GROCERIES?

5 A DOOR-TO-DOOR SERVICE WITH A SMILE.

6 Q ALL RIGHT. NOW, KAREN, I WANT TO TALK TO YOU FOR A FEW  
7 MINUTES ABOUT YOUR TESTIMONY REGARDING DECEMBER THE 6TH.

8 A OKAY.

9 Q AND BEFORE I DO THAT, NOW, YOU SAY THAT AT THE TIME OF  
10 THIS INCIDENT YOU WERE ABOUT FOUR AND A HALF MONTHS PREGNANT?

11 A YES, SIR.

12 Q AND I ASSUME YOU HAVE HAD YOUR BABY?

13 A YES, SIR.

14 Q AND YOUR BABY IS WELL?

15 A YES, SIR.

16 Q NOW, YOU ARE STILL IN JAIL?

17 A YES, SIR.

18 Q WHEN YOU LEFT GREENVILLE ON DECEMBER THE 6TH AND WENT TO  
19 ANDERSON -- YOU WERE AT THE FAIRFIELD INN; IS THAT RIGHT?

20 A YES, SIR.

21 Q AND YOU LEFT WITH JOHN ON THE MOTORCYCLE AND YOU BEHIND  
22 HIM?

23 A YES, SIR.

24 Q WENT DOWN THE INTERSTATE TO ANDERSON; IS THAT RIGHT?

25 A YES, SIR.

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q YOU TOLD THE PROSECUTOR THAT JOHN TOLD YOU TO WAIT AT A  
2 CERTAIN INTERSECTION OR PARKING AREA NEAR A DAY CARE, I  
3 BELIEVE?

4 A YES, SIR.

5 Q AND THAT THE REASON HE TOLD YOU THAT IS BECAUSE A  
6 PREVIOUS OCCASION WHEN Y'ALL HAD TRIED TO DO THIS THAT THE  
7 GUYS WERE RUDE TO YOU?

8 A YES, SIR.

9 Q IS THAT THE REASON WHY HE WANTED YOU TO JUST -- YOU STAY  
10 HERE AND I'LL GO SEE IF I CAN WORK THE TRADE?

11 A YES, SIR.

12 Q WHEN HE CAME BACK, OBVIOUSLY, THE TRADE HAD -- I MEAN,  
13 HE WAS STILL -- HE STILL HAD THE MOTORCYCLE AND DIDN'T HAVE  
14 THE PARTS, RIGHT?

15 A YES, SIR.

16 Q AND WHAT -- DID YOU HAVE A CONVERSATION ABOUT COMING  
17 BACK TO GREENVILLE OR DID YOU -- DID HE JUST GO BY AND YOU  
18 FOLLOWED HIM OR WHAT?

19 A HE STOPPED. HE GOT IN THE VEHICLE WITH ME. WE SAT  
20 THERE AND DISCUSSED PLANS FOR THE REST OF THE DAY.

21 Q AND DID THOSE PLANS INVOLVE WHERE Y'ALL WERE GOING TO GO  
22 TO HAVE LUNCH?

23 A WE TALKED ABOUT GOING TO HAVE LUNCH. WE NEVER SAID  
24 REALLY SPECIFICALLY WHERE WE WERE GOING.

25 Q DID THE IDEA OF HAVING LUNCH IN GREENVILLE WHERE Y'ALL



KAREN MCCALL -- CROSS BY MR. MAULDIN

1 HAD STAYED FOR THE LAST WEEK AND A HALF OR TWO WEEKS, DID  
2 THAT COME AS A SURPRISE TO YOU THAT YOU WOULD COME BACK TO  
3 GREENVILLE TO HAVE LUNCH?

4 A NO, BECAUSE HE ACTUALLY SPOKE ABOUT WANTING TO MAKE SURE  
5 WE HAD SCI-FI IN THE MOTEL ROOM THAT NIGHT?

6 Q ALL RIGHT. YOU CAME DOWN THE INTERSTATE -- OR YOU WERE  
7 COMING NORTH ON I-85. AND NORTH WOULD MEAN IT WOULD FROM  
8 ANDERSON TOWARD GREENVILLE. YOU WERE COMING THAT DIRECTION  
9 AND YOU WERE CONSTANTLY IN SIGHT OF JOHN. YOU WERE FOLLOWING  
10 HIM, RIGHT?

11 A YES, SIR.

12 Q BUT YOU HAD HIM IN YOUR SIGHTS, AND A POLICE OFFICER  
13 CAME BETWEEN YOU. I WANT YOU TO DESCRIBE THAT, IF YOU WOULD.

14 A OKAY. TO GO BACK JUST A LITTLE BACK SO THAT YOU  
15 UNDERSTAND WHERE WE WERE, WE HAD BEEN IN THE RIGHT-HAND LANE  
16 AND THERE WAS A CAR WITH ITS BLINKER ON AHEAD OF US, AND IT  
17 WAS WAY SLOW. SO JOHN WENT AROUND IT, I WENT AROUND IT SO WE  
18 WERE IN THE NEXT LANE OVER. WE WERE GOING DOWN THE ROAD. I  
19 HAD SEEN OUT OF THE CORNER OF MY EYE THE STATE TROOPER BACK  
20 THERE, BUT I DIDN'T PAY IT ANY ATTENTION. WE HAD GONE DOWN  
21 THE ROAD QUITE A BIT. THE CAR COMES UP WITH THE BLUE LIGHTS  
22 ON. I SLOWED DOWN THINKING HE WAS GOING PAST US. HE GOT IN  
23 BETWEEN ME AND JOHN. JOHN WENT THE OTHER WAY AND HE WENT  
24 AFTER JOHN.

25 Q SO THERE WERE NO CARS BETWEEN YOU AND JOHN AT THE TIME

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 THE POLICEMAN CAME UP. DID HE COME UP ON YOUR RIGHT OR --  
2 HAD YOU SWITCHED OVER TO THE RIGHT LANE BY THAT TIME?

3 A NO. WE WERE STILL IN THE SECOND LANE WHEN HE CAME UP ON  
4 MY RIGHT.

5 Q AND HOW -- HE CAME ON YOUR RIGHT?

6 A (INDICATES AFFIRMATIVE RESPONSE)

7 Q HOW MANY LANES OF TRAFFIC WAS IT AT THAT POINT IN THE  
8 INTERSTATE, DO YOU REMEMBER?

9 A TWO.

10 Q TWO?

11 A WELL, THERE WAS MORE THAN TWO BUT THERE WAS TWO BETWEEN  
12 ME AND THE EXIT.

13 Q ALL RIGHT. ALL RIGHT. AND WHEN HE PULLED OVER HE WOULD  
14 HAVE PULLED TO THE LEFT TO GET BETWEEN THE TWO OF YOU?

15 A (INDICATES AFFIRMATIVE RESPONSE)

16 Q AND HIS -- DID HE HAVE HIS LIGHT ON AS HE CAME UP BESIDE  
17 YOU, THE BLINKING LIGHT?

18 A YES, SIR.

19 Q WAS THE EXIT THAT JOHN ENDED UP TAKING OFF THE HIGHWAY  
20 WAS IT VERY CLOSE THERETO?

21 A I DON'T REMEMBER.

22 Q I MEAN, THEY DIDN'T RIDE A LONG WAY BEFORE THEY  
23 PULLED---

24 A NO.

25 Q ALL RIGHT. WHEN -- DID YOU SEE THE MOTORCYCLE AND THE

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 HIGHWAY PATROL CAR CHANGE LANES TO GET INTO AN EXIT LANE ONTO  
2 WOODRUFF ROAD?

3 A THEY LEFT THE LANE THAT WE WERE IN AND THEN CARS GOT  
4 BETWEEN US. SO. . .

5 Q ALL RIGHT. ALL RIGHT. SO YOU CAN'T -- WITH ANY  
6 PARTICULARITY YOU CAN'T DESCRIBE THE CHANGING OF LANES OVER  
7 TO THE RIGHT LANE TO GET ONTO WOODRUFF ROAD?

8 A NO, SIR.

9 Q THE LANE THAT THEY TOOK TO GET ONTO WOODRUFF ROAD YOU  
10 DID NOT TAKE; IS THAT RIGHT?

11 A I DON'T KNOW.

12 Q OKAY. WHATEVER -- YOU ENDED UP ON WOODRUFF -- WELL, AND  
13 DO YOU KNOW WOODRUFF ROAD IF I SAY DID YOU---

14 A NO. I DON'T KNOW WHERE I'M AT.

15 Q DO YOU REMEMBER THE ROAD YOU WERE ON WHERE YOU WERE IN  
16 THE TRAFFIC AND YOU SAW JOHN ON THE MOTORCYCLE TO YOUR RIGHT  
17 IN THE FILLING STATION PARKING LOT?

18 A YES.

19 Q REMEMBER THAT ROAD?

20 A YES.

21 Q IS THAT THE ROAD THAT YOU CAME UP TO OFF THE INTERSTATE?

22 A I DON'T THINK SO.

23 Q ALL RIGHT.

24 A I DON'T -- I DON'T KNOW WHAT YOU'RE ASKING.

25 Q WELL, I'M JUST -- SOMEHOW YOU---

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A I WENT OFF THE NEXT EXIT.

2 Q YOU WENT OFF THE NEXT EXIT AND YOU ENDED UP ON THAT  
3 STREET?

4 A YES, SIR.

5 Q WHICH I WILL TELL YOU FROM THE TESTIMONY OF COUNTLESS  
6 WITNESSES---

7 SOLICITOR ARIAIL: I'M GOING TO OBJECT TO HIM TELLING  
8 HER WHAT IT IS.

9 MR. MAULDIN: YOUR HONOR, THIS IS CROSS EXAMINATION.

10 THE COURT: OVERRULED.

11 Q I'LL TELL YOU, KAREN, THAT IT WAS WOODRUFF ROAD. THE  
12 JEEP WAS SEEN ON WOODRUFF ROAD AT A RED LIGHT.

13 A OKAY.

14 Q ALL RIGHT. THE PROSECUTOR ASKED YOU IF YOU HAD AN  
15 OPINION AS TO WHERE -- WHETHER -- HE SAID, DO YOU HAVE AN  
16 OPINION AS TO WHETHER JOHN WAS GOING TO STOP?

17 A (INDICATES AFFIRMATIVE RESPONSE)

18 Q HAVING TESTIFIED UNDER THIS CROSS EXAMINATION TO MY  
19 QUESTIONS REGARDING JOHN'S FEAR OF LAW ENFORCEMENT  
20 DEMONSTRATED TO YOU ON NUMEROUS OCCASIONS BEFORE THIS DAY  
21 EVER HAPPENED, YOUR STATEMENT TO THE PROSECUTOR WAS, "MY  
22 OPINION WAS HE WAS GOING TO TRY TO OUTFRAN THE POLICE." DID  
23 YOU THINK THAT WAS WHAT -- DO YOU THINK JOHN WAS REALLY GOING  
24 TO TRY TO OUTFRAN AND GET AWAY FROM THE POLICE ANY WAY HE  
25 COULD?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A YES, SIR. HE ALWAYS SAID THAT HE COULD OUTRUN ANYBODY  
2 ON A MOTORCYCLE.

3 Q ALL RIGHT. YOU WENT UP TO AN EXIT AND FOUND YOURSELF --  
4 TO THE NEXT EXIT, AS Y'ALL SAID IF YOU GOT LOST, GO TO THE  
5 NEXT EXIT, AND WHEN YOU WERE IN THAT LINE OF TRAFFIC WHAT DID  
6 -- WHEN DID YOU FIRST SEE THE MOTORCYCLE AGAIN?

7 A RIGHT BEFORE THE LIGHT CHANGED.

8 Q WERE YOU THE FIRST CAR IN THE LINE OR WERE THERE OTHER  
9 CARS IN FRONT OF YOU OR---

10 A THERE WERE OTHER CARS IN FRONT OF ME.

11 Q AND WHEN THE LIGHT -- WHEN YOU SAW THE MOTORCYCLE, WAS  
12 IT IN THE ACTUAL BUSINESS AREA OR PARKING AREA OR WHAT HAVE  
13 YOU OF THE STRIP MALL AND FILLING STATION OR WAS IT ACTUALLY  
14 ON THE STRIP? JUST IF YOU RECALL.

15 A I CAN'T -- WHEN I WAS AT THE RED LIGHT AND I ACTUALLY  
16 SEEN THE MOTORCYCLE AGAIN?

17 Q RIGHT.

18 A IT WAS IN THE PARKING LOT OF A SERVICE STATION THAT WAS  
19 NEXT -- ON THE SIDE OF ME.

20 Q ALL RIGHT. AND WERE THERE ANY LANES OF TRAFFIC BETWEEN  
21 YOU AND THAT SERVICE STATION?

22 A NO. THERE WERE NO LANES OF TRAFFIC. BUT TO GET THERE,  
23 I HAD TO GO UP SOME.

24 Q ALL RIGHT. DID YOU GO UP SOME AND THEN TURN RIGHT?

25 A YES, SIR.

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q AND WAS THAT THE DIRECTION -- DID JOHN WAIT ON YOU TO  
2 TURN RIGHT OR DID YOU JUST SEE HIM GO AROUND AND GO UP WHAT  
3 WE KNOW AS MILLER ROAD?

4 A I SAW HIM GO UP.

5 Q ALL RIGHT. WHEN YOU TURNED ONTO MILLER ROAD AND LOOKED  
6 OUT YOUR WINDSHIELD YOU SAW HIM?

7 A YES, SIR.

8 Q ALL RIGHT. AND YOU HAD CONSTANT SIGHT CONNECTION WITH  
9 HIM WHILE HE -- YOU DIDN'T KNOW WHERE HE WAS GOING?

10 A (INDICATES AFFIRMATIVE RESPONSE)

11 Q DID YOU SEE THE POLICEMAN?

12 A (NO RESPONSE)

13 Q DID YOU SEE THE POLICEMAN ANYWHERE AROUND?

14 A NO.

15 Q DID YOU FORM AN OPINION AS TO WHAT HAD HAPPENED?

16 A YES, SIR.

17 Q AND WHAT WAS YOUR OPINION?

18 A MY OPINION WAS HE HAD OUTRUN THE STATE TROOPER.

19 Q DID YOU SEE JOHN TURN INTO THE AREA WHERE THE MOTORCYCLE  
20 WAS LEFT? DID YOU SEE HIM MAKE THAT TURN INTO THAT PARKING  
21 LOT WHERE THE MOTORCYCLE ENDED UP BEING FOUND?

22 A I FOLLOWED HIM IN, YES, SIR.

23 Q ALL RIGHT. AND WHEN HE GOT IN THE CAR HE SAID, "LET'S  
24 DRIVE NOW. DRIVE"?

25 A (INDICATES AFFIRMATIVE RESPONSE)

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q YOU MENTIONED DURING YOUR DIRECT EXAMINATION THAT DURING  
2 THE TIME FROM WHEN YOU PICKED JOHN UP DID YOU -- WHEN YOU  
3 PICKED HIM UP AND LEFT THE MOTORCYCLE, DID YOU ASK HIM, "ARE  
4 WE LEAVING THE MOTORCYCLE?" OR "WHAT ARE WE GOING TO DO WITH  
5 THE MOTORCYCLE?" DID YOU ASK HIM ANYTHING LIKE THAT?

6 A NO, SIR.

7 Q YOU HAD FORMED AN OPINION AT THAT POINT, HAD YOU NOT,  
8 MS. MCCALL, THAT HE HAD BEEN ABLE TO GET AWAY FROM THE  
9 POLICEMAN AND HE WANTED TO GET OFF THAT MOTORCYCLE, DIDN'T  
10 HE?

11 A YEAH.

12 Q BUT THERE WAS NO SPECIFIC REFERENCE TO ANY SHOOTING OR  
13 ANYTHING, RIGHT?

14 A NO, SIR.

15 Q WAS HE HOSTILE TO YOU?

16 A NO, SIR.

17 Q WAS HE MEAN TO YOU? DID HE CUSS YOU?

18 A (NO RESPONSE)

19 Q DID HE -- SO TO THAT EXTENT EXCEPT FOR A STATEMENT THAT  
20 HE HAD A HEADACHE, I THINK YOU SAID HE SLUMPED DOWN A COUPLE  
21 OF TIMES?

22 A WHEN HE WAS REMOVING THE TOP LAYER OF CLOTHES.

23 Q ALL RIGHT. AND YOU ALSO SAID WITH REGARD TO THAT TOP --  
24 THAT HE HAD DRESSED -- HE WAS GOING TO RIDE A MOTORCYCLE THAT  
25 DAY, RIGHT?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q SO HE HAD ON TWO LAYERS OF CLOTHING?

3 A YES, SIR.

4 Q WHEN HE GOT BACK -- WHEN HE TOOK OFF THE JACKET AND THE  
5 TOP SHIRT DID HE PUT THE SAME EXTERIOR JACKET ON THAT HE HAD  
6 HAD ON BEFORE?

7 A YES, SIR.

8 Q ALL RIGHT. YOU TESTIFIED THAT AT THAT POINT AS Y'ALL  
9 STARTED BACK ON THE ROADS TO ANDERSON THAT YOU WERE ASSUMING  
10 THAT Y'ALL WERE GOING TO GET THE TRAILER THAT WAS OVER IN  
11 TOWNVILLE?

12 A YES, SIR.

13 Q TO THEN GO BACK AND GET THE BIKE LATER?

14 A YES, SIR.

15 Q WHEN YOU GOT IN THE CAR AFTER STOPPING AT THE FILLING  
16 STATION, YOU SAW THE GUN ON THE CONSOLE. IS THAT THE FIRST  
17 TIME YOU RECALL SEEING THE GUN THAT DAY?

18 A YES, SIR.

19 Q BUT THAT ALARMED YOU, DIDN'T IT, KAREN?

20 A YES, SIR.

21 Q DID YOU PUT ANY CONNECTION AT THAT TIME WITH THE -- IN  
22 SEEING THE GUN ON THE CONSOLE, DID YOU CONNECT SEEING THE GUN  
23 ON THE CONSOLE WITH WHAT HAD HAPPENED SOMETIME PRIOR TO THAT  
24 IN GREENVILLE? DID YOU KNOW THAT THERE WAS A CONNECTION?

25 A I DIDN'T KNOW THAT ANYTHING HAPPENED.



KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q YOU DIDN'T REALLY KNOW ANYTHING HAD HAPPENED BECAUSE YOU  
2 KNEW THAT JOHN WAS AFRAID OF THE POLICE AND WAS GOING TO TRY  
3 TO DO ANYTHING HE COULD TO GET AWAY FROM THE POLICE, AND YOU  
4 THOUGHT HE HAD DONE THAT, RIGHT?

5 A YES, SIR.

6 Q YOU WERE ON A REGULAR, I'LL JUST CALL IT, A COUNTRY ROAD  
7 AND YOU WERE CROSSING FROM WEST TO EAST. YOU WERE HEADING IN  
8 AN EASTERLY DIRECTION ON A COUNTRY ROAD WHEN YOU CROSSED THE  
9 I-85 BRIDGE -- OR YOU CAME ACROSS THE INTERSTATE. AND I  
10 BELIEVE YOU SAID TO THE PROSECUTOR THAT'S WHEN YOU THOUGHT  
11 YOU KNEW WHERE YOU WERE?

12 A YES, SIR.

13 Q YOU HADN'T BEEN ON THOSE OTHER ROADS BEFORE, RIGHT?

14 A NO, SIR.

15 Q THE POLICE FELL IN BEHIND, YOU AND THEN THE REST WAS  
16 TOTAL CHAOS; ISN'T THAT CORRECT?

17 A YES, SIR.

18 Q JOHN SAID TO YOU, "DRIVE, BITCH. DRIVE." HAD HE EVER  
19 CALLED YOU A BITCH BEFORE, KAREN?

20 A NO, SIR.

21 Q HAD YOU EVER -- DURING YOUR RELATIONSHIP WITH JOHN HAD  
22 YOU EVER SEEN THE PERSON -- OR WERE YOU -- DID YOU KNOW THE  
23 PERSON THAT WAS IN THE JEEP WITH YOU AT THAT MOMENT?

24 A NO, SIR.

25 Q HE WAVED A GUN AROUND AT YOU. HAD HE EVER DONE THAT

1 BEFORE?

2 A NO, SIR.

3 Q HE LET THE BACK GLASS DOWN AND BEGAN TO SHOOT OUT THE  
4 BACK WINDOW. POLICE OFFICERS BEGAN TO SHOOT BACK. ISN'T  
5 THAT RIGHT?

6 A YES, SIR.

7 Q AND YOU BEGAN TO PRAY, I THINK YOU SAID TO MR.  
8 SOLICITOR?

9 A YES, SIR.

10 Q YOU SAW A CHANGE IN JOHN WOOD AT THAT POINT YOU HAD  
11 NEVER SEEN?

12 A YES, SIR.

13 Q "COLD, HARD, POSSESSED BY SOMETHING," I BELIEVE YOU  
14 TESTIFIED TO?

15 A YES, SIR.

16 Q WHEN JOHN SAID TO YOU, "WE ARE GOING TO DIE TODAY," I  
17 THINK YOU LATER SAID THAT YOU THOUGHT JOHN WOULD PROBABLY TRY  
18 TO KILL YOU AND THEN KILL HIMSELF. IS THAT WHAT YOU THOUGHT  
19 HE MEANT? I MEAN, DID YOU HAVE ANY -- OBVIOUSLY WE'RE ASKING  
20 QUESTIONS ABOUT WHAT SOMEBODY HAD IN THEIR MIND, BUT THE  
21 PROSECUTOR ASKED YOU AND I THINK I OUGHT TO. HE SAID, "WE'RE  
22 GOING TO DIE TODAY." AND WHAT DID YOU THINK THAT MEANT?

23 A I KNEW WE WERE GOING TO DIE TODAY, THAT HE WAS MOST  
24 LIKELY GOING TO KILL ME AND THEN KILL HISSELF (SIC).

25 Q WHEN HE PULLED IN -- OR WHEN THE JEEP COULD GO NO

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 FARTHER, IT HAD THE TIRES SHOT OUT, RIGHT?

2 A YES, SIR.

3 Q AND IT WOULDN'T -- I THINK YOU SAID IT WOULDN'T GO?

4 A IT WOULD NOT GO.

5 Q AND YOU WERE STILL DRIVING?

6 A YES, SIR.

7 Q BUT YOU WERE DRIVING IT BECAUSE YOU WERE BASICALLY BEING  
8 FORCED TO DRIVE?

9 A YES, SIR.

10 Q WHEN HE GOT OUT OF THAT JEEP AND RAN TO THAT BLUE RIDGE  
11 CO-OP TRUCK AND ORDERED THE MAN OUT OF THE TRUCK AND THEN  
12 LOOKED BACK AT YOU AND SAID, "GET YOUR ASS AND THAT BAG," HAD  
13 HE EVER TALKED TO YOU LIKE THAT BEFORE, KAREN?

14 A NO, SIR.

15 Q WHEN THE HELICOPTERS WERE FLYING OVER AND THE COPS WERE  
16 CHASING YOU IN ANDERSON THROUGH THE FIELDS AND THEN BACK OUT  
17 ON THE STREET, WAS JOHN WOOD DOING EVERYTHING HE COULD TO GET  
18 AWAY FROM THEM?

19 A YES, SIR.

20 Q AND I THINK YOU SAID HE TOLD YOU ABOUT THE TIME OF THE  
21 HELICOPTER, "I'M SORRY WE HAVE TO DIE"?

22 A YES, SIR.

23 Q YOU TOLD HIM TO GIVE UP? AND BEFORE I -- LET ME REPEAT  
24 THAT. I WASN'T REAL SURE ON YOUR DIRECT WHEN YOU SAID, "I  
25 WANTED HIM TO GIVE UP. I HOPED HE'D GIVE UP." I WANT TO

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 KNOW WHAT CAME OUT OF YOUR MOUTH. I WANT TO KNOW WHAT YOU  
2 TRIED TO SAY TO JOHN DURING THESE FEW MINUTES OR WHATEVER --  
3 HOWEVER LONG THIS HORRIBLE CHASE TOOK PLACE.

4 A I SAID, "PLEASE, PLEASE GIVE UP. THEY WON'T HURT US IF  
5 YOU GIVE UP."

6 Q WHEN YOU WENT UP TO THE DEAD-END STREET AND STARTED --  
7 ALL OF A SUDDEN WHEN IT WAS OBVIOUS YOU COULDN'T GO ANY  
8 FARTHER, TURNED AROUND AND JOHN WAS DRIVING THE CAR BACK DOWN  
9 WHERE THE POLICE WERE ROADBLOCKED THERE WAITING FOR HIM, DID  
10 YOU TELL HIM TO GIVE UP? AT THAT POINT---

11 A AT THAT POINT I WAS JUST PRAYING, "PLEASE, LORD, DON'T  
12 LET THEM HURT MY BABY" AT THE TOP OF MY LUNGS.

13 Q WERE YOU -- WERE YOU SITTING UP IN THE TRUCK OR WERE YOU  
14 DOWN IN THE SEAT OF THE TRUCK?

15 A I WAS DOWN, CROUCHED OVER.

16 Q AND YOU HEARD GUNSHOTS?

17 A YES, SIR.

18 Q YOU HAD HEARD MANY GUNSHOTS THAT -- SINCE CROSSING THAT  
19 BRIDGE ON THE INTERSTATE?

20 A YES, SIR.

21 Q AND YOU HEARD A GUNSHOT AND THEN YOU HEARD A GASP FROM  
22 JOHN?

23 A YES, SIR.

24 Q NOW -- AND DID YOU FEEL THE TRUCK STOP?

25 A YES, SIR.

KAREN MCCALL -- CROSS BY MR. MAULDIN

1 Q DID YOU LOOK TO SEE WHAT HAD HAPPENED TO HIM?

2 A NO, SIR.

3 Q COULD YOU HEAR LAW ENFORCEMENT OFFICERS GIVING YOU  
4 INSTRUCTIONS?

5 A YES, SIR.

6 Q WHAT DID THEY TELL YOU?

7 A "GET OUT WITH YOUR HANDS UP. GET OUT NOW."

8 Q DID YOU DO THAT?

9 A YES, SIR.

10 Q DID JOHN DO THAT?

11 A NO.

12 Q AND WHEN YOU GOT OUT, YOU LAID DOWN ON THE GROUND, I  
13 THINK?

14 A YES, SIR.

15 Q AND HAD JOHN BEEN HIT IN THE FACE WITH ONE OF THE  
16 BULLETS?

17 A I DON'T KNOW, SIR.

18 Q OKAY. YOU DON'T HAVE -- YOU DO NOT HAVE KNOWLEDGE AS TO  
19 WHAT NECESSARILY HAPPENED TO HIM?

20 A NO, SIR.

21 Q DID YOU EVER LOOK AT HIM OR---

22 A I WENT TO RAISE MY HEAD UP ONCE AND THE OFFICER PUSHED  
23 MY HEAD BACK DOWN AND TOLD ME NOT TO LOOK UP.

24 Q ALL RIGHT.

25 MR. MAULDIN: YOUR HONOR, COULD YOU GIVE ME A MOMENT?

KAREN MCCALL -- CROSS BY MR. MAULDIN

1           THE COURT:    YES, SIR.

2           MR. MAULDIN:   (OFF RECORD WITH CO-COUNSEL)   NO FURTHER  
3           QUESTIONS, YOUR HONOR.

4           THE COURT:    REDIRECT?

5           SOLICITOR ARIAIL:    A COUPLE, YOUR HONOR.

6           REDIRECT EXAMINATION BY SOLICITOR ARIAIL:

7           Q    KAREN,    I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S  
8           EXHIBIT NUMBER 261, WHICH IS A PHOTOGRAPH OF THE REAR OF THE  
9           SCOOTER WITH A TAG NUMBER, THAT BEING YOUR SCOOTER -- YOUR  
10          MOTORCYCLE.    AND YOUR TESTIMONY WAS IT HAD NOT BEEN  
11          REGISTERED IN THE STATE OF SOUTH CAROLINA, CORRECT?

12          A    YES, SIR.

13          Q    IS THAT YOUR TAG?

14          A    NO, SIR.

15          Q    DO YOU KNOW WHOSE TAG THAT IS?

16          A    NO, SIR.

17          Q    DO YOU KNOW WHERE THAT TAG CAME FROM?

18          A    NO, SIR.

19          Q    THAT WAS NOT YOUR TAG?

20          A    NO, SIR.

21          Q    YOU DIDN'T PUT THAT TAG ON?

22          A    NO, SIR.

23          Q    ALL RIGHT.   THE BIKE DID NOT HAVE A LEGAL SOUTH CAROLINA  
24          TAG, DID IT?

25          A    NO, SIR.

KAREN MCCALL -- REDIRECT BY SOLICITOR ARIAIL

1 Q NOW, MR. MAULDIN ASKED YOU A NUMBER OF TIME ABOUT THIS  
2 -- THAT MR. WOOD HAD NEVER TALKED TO YOU IN THIS LANGUAGE AND  
3 HAD NEVER SAID THINGS TO YOU OR NEVER APPEARED SO COLD AND  
4 POSSESSED. HAD MR. WOOD EVER, TO YOUR KNOWLEDGE, KILLED A  
5 POLICE OFFICER---

6 MR. MAULDIN: YOUR HONOR, THAT'S ARGUMENT-- THAT'S  
7 SAVED FOR ARGUMENT, YOUR HONOR. THAT'S NOT A QUESTION.

8 THE COURT: OVERRULED.

9 A NO, SIR.

10 Q ALL RIGHT. AND THIS FEAR OF POLICE OFFICERS THAT HE  
11 ASKED ABOUT, DID YOU HAVE A CONVERSATION WITH JOHN'S MOTHER  
12 ABOUT WHETHER OR NOT THIS WAS A REALISTIC CONCERN?

13 A YES, SIR.

14 Q AND WHAT DID SHE TELL YOU?

15 A SHE SAID---

16 MR. MAULDIN: WAIT. I THINK THAT'D JUST BE  
17 UNADULTERATED HEARSAY, YOUR HONOR, AND I OBJECT TO THAT.

18 Q LET ME ASK YOU ANOTHER WAY. AS A RESULT OF THE  
19 CONVERSATION DID YOU FORM AN OPINION AS TO WHETHER OR NOT  
20 JOHN'S EXPRESSED FEAR TO YOU WAS BASED UPON A TRUE FEAR OR---

21 MR. MAULDIN: WELL, NOW -- YOUR HONOR, NOW I OBJECT TO  
22 A LEADING QUESTION.

23 THE COURT: OKAY. SUSTAINED. NO. I DON'T --  
24 OVERRULED AS TO THE STATED OBJECTION.

25 SOLICITOR ARIAIL: LET ME SEE IF I CAN GO BACK AND DO

1 IT AGAIN.

2 Q AS A RESULT---

3 MR. MAULDIN: AND I'D ALSO OBJECT IF IT'S BACKDOOR  
4 HEARSAY. AND I DON'T KNOW IF I NEED TO BE MORE CLEAR THAN  
5 THAT. I'LL BE GLAD TO.

6 THE COURT: ASK THE QUESTION. I'LL RULE.

7 MR. MAULDIN: YES, SIR.

8 Q AS A RESULT OF THE CONVERSATION YOU HAD WITH HIS MOTHER  
9 REGARDING HIS EXPRESSED FEAR OF POLICE OFFICERS TO YOU, DID  
10 YOU FORM AN OPINION AS TO THE BASIS FOR HIS FEAR?

11 THE COURT: THE OBJECTION IS SUSTAINED.

12 Q WHAT DID HIS MOTHER TELL YOU WAS THE REASON HE WAS---

13 MR. MAULDIN: YOUR HONOR, THAT---

14 THE COURT: LET HIM ASK IT AND I'LL RULE. WE'LL BE  
15 FINE.

16 MR. MAULDIN: ALL RIGHT.

17 Q WHAT DID HIS MOTHER TELL YOU WAS THE REASON FOR HIS FEAR  
18 OF POLICE OFFICERS?

19 MR. MAULDIN: OBJECTION.

20 THE COURT: SUSTAINED.

21 Q HOW LONG HAD YOU BEEN IN SOUTH CAROLINA FROM FLORIDA?

22 A DO YOU MEAN CONTINUOUSLY OR DO YOU MEAN---

23 Q YEAH. YOU AND---

24 A ---ON AND OFF? BECAUSE WE WERE ON AND OFF.

25 Q WELL, YEAH, THE LONGEST SINCE YOU HAD BEEN BACK TO



KAREN MCCALL -- REDIRECT BY SOLICITOR ARIAIL

1 FLORIDA. HAD IT BEEN OVER A MONTH, TWO MONTHS?

2 A ABOUT A MONTH.

3 Q FIVE MONTHS. AND---

4 A NO. ABOUT A MONTH.

5 Q OH, ABOUT A MONTH. I'M SORRY.

6 SOLICITOR ARIAIL: YOUR HONOR, CAN WE APPROACH AT THE  
7 SIDEBAR JUST TO MAKE SURE---

8 THE COURT: SURE.

9 (BENCH CONFERENCE HELD OFF RECORD FROM 3:00 TO 3:01 P.M.)

10 THE COURT: LADIES AND GENTLEMEN, LET'S -- IT'S ABOUT  
11 TIME FOR A BREAK. LET US ADDRESS A PARTICULAR LEGAL ISSUE  
12 AND WE'LL GET YOU BACK OUT HERE IN ABOUT 10 OR 15 MINUTES AND  
13 WE'LL GO FROM THERE.

14 PLEASE DO NOT DISCUSS THE CASE. THANK YOU.

15 (JURY EXITS COURTROOM AT 3:02 P.M.)

16 THE COURT: ALL RIGHT. THE JURY HAS BEEN EXCUSED. IN  
17 LIGHT OF THE CROSS EXAMINATION AS TO THE DEFENDANT'S FEAR OF  
18 LAW ENFORCEMENT THERE IS AN EFFORT ON REDIRECT TO PURSUE  
19 THAT. AND THERE IS A QUESTION ABOUT WHAT INFORMATION SHE  
20 HAS, THE SOURCE OF THAT, AND I'M GOING TO GIVE AN OPPORTUNITY  
21 TO QUESTION OUTSIDE THE JURY'S PRESENCE AND THEN WE'LL  
22 ADDRESS THE LEGAL ISSUES THAT ARISE FROM IT.

23 BY SOLICITOR ARIAIL:

24 Q DID JOHN WOOD TELL YOU HE WAS ON PROBATION?

25 A HIS MOTHER DID.

MATTERS AND MOTIONS

1 Q DID YOU CONFIRM IT WITH HIM?

2 A YES.

3 Q AND DID YOU CONFIRM IT WITH HIM WHAT HE WAS ON PROBATION  
4 FOR?

5 A NOT REALLY.

6 Q DID YOU HAVE ANY DISCUSSION OF THE---

7 A I KNEW IT HAD SOMETHING TO DO WITH CHECKS.

8 Q I'M SORRY?

9 A SOMETHING TO DO WITH CHECKS.

10 Q OKAY. I'M NOT INTERESTED IN GOING THERE. I WANT TO  
11 JUST -- YOU RECEIVED THE INFORMATION. YOU CONFIRMED IT WITH  
12 HIM THAT HE WAS ON PROBATION. DURING THE TIME THAT YOU WERE  
13 IN SOUTH CAROLINA, WERE YOU AWARE OF HIM EVER REPORTING TO  
14 THE FEDERAL PROBATION AUTHORITIES?

15 A I UNDERSTOOD THAT HE WAS JUST SUPPOSED TO MAIL IN  
16 SOMETHING AND IT WAS BEING MAILED IN.

17 Q AND DID YOU EVER SEE HIM MAIL ANYTHING IN?

18 A NO.

19 SOLICITOR ARIAIL: (OFF RECORD WITH CO-COUNSEL) THAT'S  
20 IT.

21 THE COURT: ALL RIGHT. IF YOU WANT TO QUESTION HER  
22 ABOUT THAT, PURSUE THAT, OTHERWISE WE'LL GO TO THE LEGAL  
23 DISCUSSION.

24 MR. MAULDIN: ONE MOMENT.

25 THE COURT: TAKE YOUR TIME.

MATTERS AND MOTIONS

1           MR. MAULDIN:   (OFF RECORD WITH CO-COUNSEL)

2           THE COURT:   WE'LL TAKE A BREAK ONCE WE'RE THROUGH WITH  
3 THIS SO WE'LL BE ON THE SAME CLOCK AS THE JURY.

4           SOLICITOR ARIAIL:   THANK YOU, YOUR HONOR.

5                               (PAUSE)

6           MR. MAULDIN:   I APOLOGIZE, JUDGE.

7           THE COURT:   TAKE YOUR TIME.   TAKE YOUR TIME, SIR.

8                               (PAUSE)

9           MR. MAULDIN:   YOUR HONOR, I DON'T THINK WE'RE GOING TO  
10 HAVE QUESTIONS FOR THE WITNESS, BUT WE WOULD LIKE TO ADDRESS  
11 THE COURT.

12           THE COURT:   VERY GOOD.   IF YOU OBJECT TO WHAT THE  
13 SOLICITOR---

14           MR. MAULDIN:   THE---

15           THE COURT:   ---INTENDS TO ASK IN FRONT OF JURY, PLEASE  
16 ADVISE.

17           MR. MAULDIN:   WELL, THE PROBLEM THAT IS CAUSED IS --  
18 AND THE WITNESS HAS CONFIRMED THAT THE INFORMATION WAS  
19 OBTAINED FROM THE MOTHER AND THEN CONFIRMED -- SHE SAYS  
20 CONFIRMED BY THE DEFENDANT.   I BELIEVE -- AND FOR ALL LEGAL  
21 PURPOSES -- THAT THEN ALLOWS IT TO BE BROUGHT IN, MY HAVING  
22 QUESTIONED HER ABOUT HIS ATTITUDE ABOUT LAW ENFORCEMENT.   SO  
23 I AM NOT OBJECTING TO THAT.   BUT I DO BELIEVE THAT THE COURT  
24 SHOULD TAKE NOTE OF THE LANDSCAPE.

25           I BELIEVE THAT WHAT'S GOING TO NEED TO HAPPEN IN ORDER

MATTERS AND MOTIONS

1 FOR THE JURY NOT TO BE ESSENTIALLY MISLED ABOUT THE MOTHER,  
2 THE MOTHER'S CONNECTION, AND AS A RESULT OF ALL THESE FANCY  
3 QUESTIONS, THAT WE NOW NEED TO JUST ASK HER WHAT THE MOTHER  
4 TOLD HER ABOUT HIM BEING ON -- DID THE MOTHER ASK YOU -- OR  
5 TELL YOU HE WAS ON PROBATION?

6 THE COURT: I'M GOING TO CUT THAT OFF PURSUANT TO YOUR  
7 MOTION. I IMAGINE THE SOLICITOR WOULD GO BACK TO HIS INITIAL  
8 GAME PLAN.

9 MR. MAULDIN: AND THAT'S EXACTLY RIGHT. I -- YOU KNOW,  
10 IF THAT'S WHERE WE WERE GOING, AND I KNEW THAT IT WOULD HAVE  
11 BEEN CONFIRMED BY THE DEFENDANT, THEN I WOULDN'T HAVE  
12 OBJECTED TO THE QUESTION FROM THE MOTHER TO THE EXTENT THAT  
13 SHE TOLD HIM -- HER HE WAS ON PROBATION AND DID SHE THEN  
14 CONFIRM IT WITH JOHN. YES, HE DID. IF THAT'S WHERE WE ARE,  
15 THEN I'M NOT NECESSARILY UNCOMFORTABLE.

16 THE COURT: ALL RIGHT.

17 MR. MAULDIN: AND FINALLY, YOUR HONOR, IF THE ISSUE OF  
18 HIM BEING ON PROBATION IS GOING TO BE BROUGHT OUT AT THIS  
19 POINT PRIOR TO THE DEFENDANT'S SIDE OF THE CASE, I BELIEVE  
20 SHE'S GOING TO HAVE TO BE ASKED TO RESPOND REGARDING HER  
21 KNOWLEDGE THAT IT WAS SOMETHING ABOUT CHECKS. AND THE  
22 REASON, YOUR HONOR, IS PRETTY OBVIOUS. IF THE JURY IS AT  
23 THIS POINT TO SPECULATE REGARDING THE NATURE OF THE  
24 PROBATION, I THINK THAT'S UNFAIR PREJUDICE TO THE DEFENDANT.

25 THE COURT: VERY WELL, SIR. IF THE SOLICITOR DOESN'T

MATTERS AND MOTIONS

1 ASK IT, I'LL ALLOW YOU ON RECROSS TO RAISE THAT ISSUE.

2 MR. MAULDIN: RIGHT.

3 THE COURT: ANYTHING FURTHER, SOLICITOR?

4 SOLICITOR ARIAIL: WELL, WHILE WE'RE HERE I THINK IT'S  
5 NOW TIME FOR US TO RENEW OUR MOTION FOR THE FULL REPORT OF  
6 THE STATE HOSPITAL. THE ISSUE HAS BEEN PUT IN FRONT OF THIS  
7 JURY AS TO THIS INDIVIDUAL'S MENTAL CAPACITY.

8 SECOND, WE MAKE A MOTION AT THIS MOMENT THAT WE BE  
9 ALLOWED TO HAVE AN INDEPENDENT MENTAL EXAMINATION OF THIS  
10 DEFENDANT BEFORE ANY OF THIS STUFF IS PUT IN FRONT OF THIS  
11 JURY ON HIS BEHALF, SO THAT WE WILL BE ABLE TO, NUMBER ONE,  
12 ADEQUATELY CROSS EXAMINE, ADEQUATELY CROSS EXAMINE ANY  
13 WITNESSES HE MAY PUT UP IN REGARD TO THIS. BECAUSE AS FAR AS  
14 I'M AWARE, NONE OF THIS IS IN THE STATE HOSPITAL REPORT, BUT  
15 THERE ARE STATEMENTS MADE BY HIM THAT I THINK WE SHOULD BE  
16 ENTITLED TO GO INTO.

17 AT THIS JUNCTURE, THROUGH THIS WITNESS, IT IS NOW AN  
18 ISSUE AS TO HIS MENTAL CAPACITY. NOW, I DON'T KNOW WHERE  
19 THEY'RE GOING WITH IT BUT I WOULD LIKE TO RENEW THOSE MOTIONS  
20 AT THIS TIME AND PUT THE COURT ON NOTICE THAT WE WOULD LIKE  
21 TO AT LEAST BE HEADING TOWARDS PLANNING FOR THAT.

22 THE COURT: YES, SIR. YOUR MOTION IS NOTED. I'M NOT  
23 INCLINED TO PROVIDE IT AT THIS POINT. I CERTAINLY UNDERSTAND  
24 YOUR POSITION. I'M STILL UNCERTAIN AS TO WHAT MENTAL ISSUE,  
25 OTHER THAN THE ELEMENT OF THE OFFENSE ITSELF, WILL BE BEFORE

MATTERS AND MOTIONS

1 THIS JURY IN THE FIRST PHASE, PARTICULARLY IN LIGHT,  
2 UNBEKNOWNST TO ME IN DECEMBER, WHEN THE NOTICE UNDER RULE 5  
3 WAS GIVEN FOR ANY INSANITY OR GUILTY BUT MENTALLY ILL. SO  
4 THERE HAS BEEN NO NOTICE GIVEN; THEREFORE, CAN BE NO EVIDENCE  
5 TO THAT IN THIS PHASE AS I UNDERSTAND THAT.

6 HAVING SAID THAT, THEN WHY DO WE GO INTO HIS STATE OF  
7 MIND AT THIS STAGE TO BEGIN WITH? I UNDERSTAND THAT.

8 SOLICITOR ARIAIL: OKAY. AND MY RESPONSE TO THAT WOULD  
9 BE YOU CAN'T TAKE IT AWAY BECAUSE THEY STARTED -- THEY  
10 STARTED FROM THE VERY BEGINNING WITH TURN HIM LOOSE OR  
11 CONVICT OF SOMETHING LESSER. AND THAT'S WHERE THEY'RE GOING.  
12 AND WHEN WE GET TO THAT PHASE, I'M GOING TO BE TIED UP AND  
13 SHACKLED BECAUSE I'M NOT GOING TO BE ABLE TO RESPOND TO THAT  
14 MOTION. THAT'S WHAT THEY'RE GOING TO ASK THIS JURY TO DO,  
15 COME BACK WITH SOMETHING LESSER.

16 THE COURT: AND YOU'RE SMARTER THAN I AM, SO TELL ME  
17 WHAT THEY'RE GOING TO ASK ME SO I CAN BE THINKING ABOUT IT.

18 SOLICITOR ARIAIL: WHAT THEY'RE GOING TO ASK YOU?

19 THE COURT: YEAH.

20 SOLICITOR ARIAIL: THEY'RE GOING TO AS YOU TO GIVE SOME  
21 CHARGE TO A LESSER INCLUDED OFFENSE.

22 THE COURT: WELL, I UNDERSTAND THAT BUT PUT SOME MEAT  
23 ON THOSE BONES.

24 SOLICITOR ARIAIL: YOU MEAN AS TO HOW THEY'RE GOING TO  
25 ASK IT?

MATTERS AND MOTIONS

1       **THE COURT:**   WELL, YOU KNOW, WHAT IT IS PARTICULARLY --  
2       WHAT YOU BELIEVE THE REASONS WILL BE GIVEN FOR IT.

3       I'LL BACK UP AND SAY THIS.  I'M NOT COMFORTABLE RIGHT  
4       NOW WITH WHAT LITTLE BIT I'VE BEEN ABLE TO DISCERN TO SIMPLY  
5       THROW THE STATE PSYCHIATRIST'S REPORT AT YOU AND OPEN IT UP  
6       TO YOU.  WE'RE MOVING IN THAT DIRECTION AND I FULLY  
7       UNDERSTAND IT.  BUT UNTIL -- I DON'T KNOW WHAT THE ORDER OF  
8       YOUR WITNESSES ARE.  WE ALL, OF COURSE, DON'T HAVE A RIGHT TO  
9       KNOW WHAT THE DEFENSE IS GOING TO PRESENT.  SO WHERE I AM ON  
10      THE LEARNING CURVE, I'M NOT AT A POSITION WHERE I CAN SIMPLY  
11      GIVE YOU ALL THAT INFORMATION AT THIS TIME.

12      BY THEIR OPENING STATEMENT, BY THEIR CROSS EXAMINATION  
13      OF WITNESSES, PARTICULARLY BY THE CROSS EXAMINATION OF THIS  
14      WITNESS, ARE WE GOING DOWN THE SLOPE IN THIS CASE?  YES.  ARE  
15      WE AT THE POINT THAT IT REQUIRES FULL DISCLOSURE OF  
16      EVERYTHING TO YOU?  I'M NOT CONFIDENT OF THAT AND I HESITATE  
17      TO DO IT AT THIS TIME.  BUT YOUR MOTION IS NOTED FOR THE  
18      RECORD, SIR.

19      **SOLICITOR ARIAIL:**  I JUST WANT TO AVOID THE OLD JACK  
20      SWERLING-DARRELL HOLMES SITUATION OF WHERE I'VE BEEN  
21      PROHIBITED FROM -- SOMETHING HAS BEEN PROHIBITED FROM BEING  
22      IN THIS RECORD AND WHEN WE GET TO CLOSING ARGUMENT AND IT'S  
23      TOO LATE AND THEY START THAT ARGUMENT, THEN I'M DEFENSELESS  
24      AND THERE'S NOTHING THE COURT CAN DO FOR ME AT THAT POINT.  
25      THAT'S WHY I BRING IT UP AT THIS JUNCTURE.

MATTERS AND MOTIONS

1           **THE COURT:**    AND I'M SENSITIVE TO YOUR CONCERN.

2           **SOLICITOR ARIAIL:**    I KNOW YOU ARE.    YOU'VE BEEN THERE.  
3    I APPRECIATE THAT.

4           **THE COURT:**    ALL RIGHT.    LET'S TAKE A BREAK.    AND I  
5    DON'T WANT EITHER SIDE TALKING TO THE WITNESS DURING THE  
6    BREAK BECAUSE I KNOW THAT SHE HAS TESTIFIED FOR ONE SIDE AND  
7    WAS RESPONSIVE TO CROSS EXAMINATION.    NEITHER SIDE WILL BE  
8    PERMITTED TO SPEAK WITH THE WITNESS DURING THE BREAK.

9           MA'AM, DO YOU UNDERSTAND THAT?

10          **WITNESS:**       YES, SIR.

11          **THE COURT:**    THANK YOU.    LET'S TAKE A TEN-MINUTE BREAK.

12          **SOLICITOR ARIAIL:**    SHE'LL BE BACK IN ONE OF THESE  
13    HOLDING CELLS, I ASSUME, SEPARATE?

14          **THE COURT:**    VERY GOOD.

15          **MS. STROM:**    AND, YOUR HONOR, FOR PLANNING PURPOSES, THE  
16    STATE'S NEXT WITNESS AT THIS POINT IS SCHEDULED TO BE C.P.  
17    BLACKBURN, THE OFFICER FROM THE HOSPITAL.

18          **THE COURT:**    ALL RIGHT.    OKAY.    WELL, LET ME TELL YOU  
19    THIS.    I'VE READ THE CASES.

20          IF Y'ALL WANT TO LEAVE THE COURTROOM, YOU CAN.    THAT'S  
21    FINE.    JUST BE QUIET AND I APPRECIATE YOUR UNDERSTANDING.

22          I'VE READ THESE CASES.    AND TRUST ME, I UNDERSTAND WHERE  
23    YOU'RE COMING FROM AND WHAT YOU SAY.    NO ONE ASKED A  
24    QUESTION, NOT ANY INTERROGATION AND THEY MAKE NO CLAIM OF ANY  
25    INTERROGATION OR THE FUNCTIONAL EQUIVALENT OF INTERROGATION.



MATTERS AND MOTIONS

1 IT'S NOT AN ISSUE HERE. A T.V. PROGRAM WAS ON AND HE  
2 RESPONDED TO IT. IT WAS RESPONSIVE TO THE VERY ALLEGATION  
3 MADE. I UNDERSTAND THAT. BUT AS I LOOK AT THESE CASES, FOR  
4 EXAMPLE, THE SOUTH CAROLINA SUPREME COURT, WHEN THEY WENT  
5 THROUGH THE ANALYSIS TO PERMIT IT AND FIND IT WAS PROPERLY  
6 ADMITTED, THEY INDICATED THAT WHITE, THE DEFENDANT, WAS  
7 ALERT, HE SPOKE COHERENTLY, HE COOPERATED. THERE WAS A  
8 SERIES OF CONTACTS BETWEEN THE INDIVIDUAL IN RESTRAINTS IN  
9 THE HOSPITAL UNDER DRUGS, BUT THERE WAS SUBSEQUENT EVIDENCE  
10 OFFERED EXPLAINING THE SITUATION IN THE CONTEXT THAT RAISED  
11 THOSE BITS OF EVIDENCE ON WHICH THE COURT RELIED. AND I  
12 WOULD NEED SOMETHING FURTHER.

13 SOLICITOR ARIAIL: CAN WE ADDRESS ONE POINT THERE?

14 THE COURT: YES.

15 SOLICITOR ARIAIL: AND THE POINT IS, THERE IS NO WAY WE  
16 CAN GIVE IT TO YOU BECAUSE IT IS LOCKED AWAY FROM US. HE HAS  
17 IT. IT'S ALL MEDICAL PEOPLE. WE'RE NOT ALLOWED TO GET TO  
18 THOSE PEOPLE TO BRING THE EVIDENCE TO YOU BECAUSE THEY WON'T  
19 CONSENT TO THE RELEASE OF THE RECORDS. SO WE DON'T KNOW WHO  
20 TO CALL TO BRING THAT EVIDENCE. AND FROM THAT BASIS WE THINK  
21 THAT THAT RULING WOULD NOT BE CORRECT IF HE'S GOT CONTROL OF  
22 THE EVIDENCE AND HE'S PROHIBITING US FROM USING IT. IT'S  
23 THERE. IT'S THERE. IT'S JUST THAT WE CAN'T GET TO IT  
24 BECAUSE THERE IS NO MEDICAL RECORDS CONSENT THAT WE CAN---

25 MR. MAULDIN: YOUR HONOR, IF I COULD OFFER A COMPROMISE

MATTERS AND MOTIONS

1 SOLUTION REGARDING THAT TYPE OF MEDICAL RECORD. WE DID  
2 OBVIOUSLY SEND OUR RELEASE FROM OUR CLIENT, HIS MEDICAL  
3 RECORDS REGARDING THE TREATMENT FOR THE GUNSHOT WOUND. IF IT  
4 WOULD ASSIST THE COURT IN DECIDING THIS ISSUE, WE WILL PASS  
5 THOSE RECORDS UP TO YOU. AND TO THE EXTENT YOU FEEL LIKE THE  
6 STATE WOULD BE ENTITLED TO KNOW THE IDENTITY OF SOMETHING, IT  
7 WOULD BE UP TO YOU TO DETERMINE IF YOU---

8 THE COURT: I APPRECIATE THAT.

9 MR. MAULDIN: I'LL BRING THOSE RECORDS TO YOU. I'LL  
10 HAVE TO GO TO MY OFFICE AND GET THEM.

11 THE COURT: WELL, ALL RIGHT. AND THOSE RECORDS MAY BE  
12 VERY HELPFUL TO ME IN DETERMINING HIS ABILITY TO RESPOND TO  
13 NURSES AND OTHERS, VARIOUS VISITS, AND THAT MAY BE VERY  
14 RELEVANT. I APPRECIATE THAT.

15 MR. MAULDIN: YES, SIR. AND I HOPE I'M NOT GETTING  
16 MYSELF IN TROUBLE AS HIS LAWYER TO MAKE THAT KIND OF  
17 DISCLOSURE. BUT I'M GIVING THEM TO YOU UNDER SEAL, AND THEN  
18 YOU WILL HAVE TO BE THE ONE TO DECIDE WHERE THEY GO FROM  
19 THERE, YOUR HONOR.

20 THE COURT: THANK YOU.

21 (A RECESS WAS TAKEN FROM 3:17 TO 3:30 P.M.)

22 THE COURT: DEFENSE COUNSEL HAS GIVEN ME THE RECORDS OF  
23 THE HOSPITAL IN CONNECTION WITH MR. WOOD DURING HIS STAY IN  
24 GREENVILLE MEMORIAL HOSPITAL. I WILL REVIEW THEM. AND ONCE  
25 I CAN MAKE AN ASSESSMENT BASED ON THIS INFORMATION, I'LL

MATTERS AND MOTIONS

1 ADVISE BOTH SIDES.

2 SOLICITOR ARIAIL: AND WHAT WE'LL DO IS WE'LL PUT OFF  
3 THE PRESENTATION OF DEPUTY BLACKBURN TO GIVE YOU TIME TO  
4 REVIEW THAT. ALTHOUGH I THINK THERE IS -- WE COULD GO AHEAD.  
5 THERE IS ONE OTHER WITNESS WE COULD PUT UP THAT WE MAY AT  
6 LEAST EASE SOME OF THAT -- MAYBE EASE SOME OF YOU HAVING TO  
7 READ THAT. SOMETIMES WE DON'T THINK ALIKE. AND I KNOW WHERE  
8 YOU'RE COMING FROM, AND BETTY AND I HAVE TALKED ABOUT IT AND  
9 I JUST WANT TO MAKE SURE THAT -- AND I THINK THERE IS A  
10 WITNESS THAT MIGHT EASE SOME OF THAT.

11 NUMBER TWO, YOU ASKED ME TO FLESH OUT A LITTLE BIT, YOU  
12 WANTED TO KNOW WHERE THEY'RE GOING. AND I ASSUME WHAT YOU  
13 WERE THINKING ABOUT, WHAT IS THE LESSER OFFENSE? THAT'S NOT  
14 THE ISSUE.

15 THE COURT: YEAH. I KNOW WHERE WE'RE GOING AND I'M  
16 GOING TO DEAL WITH IT---

17 SOLICITOR ARIAIL: OKAY.

18 THE COURT: ---VERY DIRECTLY AT THE CLOSE OF THE  
19 STATE'S CASE.

20 SOLICITOR ARIAIL: OKAY. IT'S INTENT. THAT'S WHERE  
21 THEY'RE GOING.

22 THE COURT: WELL, I'M---

23 SOLICITOR ARIAIL: OKAY.

24 THE COURT: IF IT'S JUST INTENT AS TO THE ELEMENT OF  
25 THE OFFENSE, ONE RESULT. IF IT'S OSTENSIBLY INTENT BUT A

MATTERS AND MOTIONS

1 BACKDOOR EFFORT TO INTRODUCE TO THE JURY MENTAL ISSUES THAT  
2 ARE NOT PROPER BEFORE THE COURT, THEN I HAVE ANOTHER MATTER  
3 BEFORE ME IN TERMS OF DISCLOSURE.

4 SOLICITOR ARIAIL: OKAY. THE ISSUE I'M CONCERNED ABOUT  
5 IS TRYING TO CREATE A DOUBT IN ONE JUROR'S MIND OR TWELVE  
6 JURORS' MINDS AS TO HIS INTENT, HAVING THE REQUISITE INTENT  
7 FOR THE STATE TO PROVE THE ELEMENTS OF THE CASE. I THINK  
8 IT'S GOING TO THE BASIC ELEMENTS OF THE CASE IS WHERE WE'RE  
9 GOING, AND I THINK THAT'S THE ARGUMENT WE'RE GOING TO HEAR.  
10 ALL RIGHT.

11 THE COURT: THANK YOU.

12 SOLICITOR ARIAIL: THANK YOU.

13 MR. BANNISTER: YOU'RE WELCOME, JUDGE.

14 (LAUGHTER)

15 THE COURT: BRING THE JURY.

16 (JURY REENTERS COURTROOM AT 3:34 P.M.)

17 THE COURT: LADIES AND GENTLEMEN, WE'RE READY TO RESUME  
18 WITH THE REDIRECT EXAMINATION.

19 YOU MAY PROCEED, SIR.

20 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

21 REDIRECT EXAMINATION OF MS. MCCALL CONTINUES:

22 Q MS. MCCALL, WE WERE AT THE JUNCTURE I WAS ASKING YOU  
23 ABOUT -- WE WERE BACK INTO THE DEFENDANT'S PURPORTED FEAR OF  
24 LAW ENFORCEMENT OFFICERS, AND I ASKED YOU IF YOU HAD A  
25 CONVERSATION WITH THE DEFENDANT'S MOTHER IN REGARD TO THAT

KAREN MCCALL -- REDIRECT BY SOLICITOR ARIAIL

1 SUBJECT.

2 A YES, SIR.

3 Q AND DID YOU ASK HER ABOUT HIS STATED FEAR OR PURPORTED  
4 FEAR EXPRESSED TO YOU OF LAW ENFORCEMENT?

5 A YES, SIR.

6 Q WHAT DID SHE TELL YOU -- WHAT WAS HER RESPONSE TO THAT?

7 A OH, HE'S JUST ON PROBATION.

8 Q JUST ON PROBATION?

9 A YES, SIR.

10 Q AND DID YOU SUBSEQUENTLY -- OR DID YOU CONFIRM WITH HIM  
11 THAT, IN FACT, HE WAS ON PROBATION?

12 A YES, SIR.

13 Q AND THAT HE WAS ON FEDERAL PROBATION?

14 A YES, SIR. SOMETHING ABOUT SOME CHECKS.

15 Q SOMETHING ABOUT SOME CHECKS. AND WHEN EXACTLY WAS THAT,  
16 APPROXIMATELY?

17 A AUGUST.

18 Q AUGUST OF 2000?

19 A YES, SIR.

20 SOLICITOR ARIAIL: THANK YOU.

21 MR. MAULDIN: COUPLE OF QUESTIONS REGARDING THAT  
22 MATTER.

23 RECROSS EXAMINATION BY MR. MAULDIN:

24 Q MS. MCCALL, YOU SAID THAT IT WAS "ABOUT SOME CHECKS,"  
25 AND I WANT TO MAKE SURE I UNDERSTAND WHAT YOU MEAN BY THAT.

KAREN MCCALL -- RECROSS EXAMINATION BY MR. MAULDIN

1 WHEN YOU SAY THAT IT WAS CONFIRMED BY JOHN THAT HE WAS ON  
2 PROBATION FOR CHECKS, YOU UNDERSTOOD THAT TO MEAN IT WAS A  
3 FINANCIAL MATTER THAT -- OR -- AS OPPOSED TO SOME OTHER TYPE  
4 OF INCIDENT THAT HAD PUT HIM ON PROBATION; IS THAT RIGHT?

5 A YES, SIR.

6 Q AND HE, AS FAR AS YOU WERE AWARE, WAS SENDING REPORTS BY  
7 MAIL AND RESTITUTION PAYMENTS BY MAIL TO THE PROBATION  
8 OFFICE?

9 A YES, SIR.

10 MR. MAULDIN: NOTHING FURTHER.

11 THE COURT: ANYTHING FURTHER?

12 SOLICITOR ARIAIL: NO, SIR.

13 THE COURT: THE WITNESS MAY STEP DOWN.

14 SOLICITOR ARIAIL: AND MAY SHE BE EXCUSED TO RETURN TO  
15 ANDERSON?

16 MR. MAULDIN: YOUR HONOR, WE REQUEST THAT MS. MCCALL BE  
17 RETAINED FOR FURTHER PROCEEDINGS. WE UNDERSTAND THAT SHE IS  
18 IN THE CUSTODY OF ANDERSON COUNTY, AND IT BEING CLOSE BY I'VE  
19 GOT NO OBJECTION TO HER BEING TRANSPORTED TO ANDERSON. BUT  
20 WE DO WANT THE COURT TO RETAIN THE AUTHORITY TO RECALL HER.

21 THE COURT: VERY WELL, SIR.

22 MR. MAULDIN: YES, SIR.

23 SOLICITOR ARIAIL: ALSO, CAN HER ATTORNEY BE EXCUSED  
24 AND LEAVE THE COURTROOM?

25 THE COURT: NO OBJECTION.