

VOLUME III OF V

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2019-000839

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S.C. SUPREME COURT

Chris A. Liverman,

Petitioner,

v.

State of South Carolina,

Respondent

APPENDIX

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1 A ACTUALLY, I NEED TO INVERT IT SO I CAN SEE MY
2 MARKINGS.

3 Q ALL RIGHT.

4 A IF I CAN GET SOMETHING TO CUT THIS BAND, SOME
5 SCISSORS OR SOMETHING.

6 (PAUSE).

7 THANK YOU.

8 (WHEREUPON, THE FIREARM WAS REMOVED FROM ITS
9 PROTECTIVE BOX.)

10 I HAVE SEEN THIS BEFORE.

11 Q AND WHAT IS THAT?

12 A THIS IS A RUGER MODEL TEN -- EXCUSE ME. MODEL 1022,
13 .22 LONG RIFLE CALIBER CARVING.

14 Q NOW, I'M GOING TO ASK YOU TO REMOVE IT FROM THAT BOX,
15 IF YOU WOULD.

16 A YES.

17 Q IF YOU WOULD, DID YOU BRING A TRIGGER LOCK WITH YOU?

18 A I DID.

19 Q WOULD YOU PLEASE PUT THAT ON THERE RIGHT NOW FOR US?

20 (COMPLIES.)

21 AND WHILE YOU'RE DOING THAT, EXPLAIN TO THE JURY WHAT
22 YOU'RE DOING.

23 A WHAT I'M DOING IS I'M FIXING TO INSERT THIS CABLE
24 LOCK THROUGH THE EJECTION PORT OF THIS FIREARM SO THAT ITS
25 BOLT WILL NOT BE ABLE TO CLOSE. BY SO DOING, IT'S NOT

1 ABLE TO FIRE.

2 Q NOW, STATE'S EXHIBIT NUMBER 64 YOU CAME IN CONTACT
3 WITH IN NOVEMBER OF 2004?

4 A I GAVE MY ANALYSIS IN NOVEMBER OF 2004.

5 Q ALL RIGHT. AND TELL THE JURY WHAT YOU FOUND WHEN YOU
6 LOOKED AT STATE'S EXHIBIT NUMBER 64.

7 A I OBSERVED THAT THE RIFLE APPEARED TO HAVE BEEN
8 WEATHERED FOR SOME PERIOD OF TIME. IT APPEARED TO HAVE
9 BEEN EXPOSED TO THE ELEMENTS; THAT THERE WAS -- THE BORE
10 WAS PARTIALLY OBSTRUCTED BY A MIXTURE OF RUST AND SOIL OR
11 SAND LIKE DEBRIS THAT WAS PRINCIPALLY LOCATED AT ITS
12 MUZZLE AND JUST FORWARD OF ITS CHAMBER. THE CHAMBER IS
13 ITS ENLARGED AREA AT THE REAR OF THE BARREL INTO WHICH THE
14 CARTRIDGE FITS.

15 I OBSERVED THAT THE MIDPORTION OF THE BORE WAS FAIRLY
16 UNOBSTRUCTED AND FAIRLY UNDAMAGED, BUT IT WAS SEVERELY
17 DAMAGED AT THE VERY FRONT AND NEAR THE VERY REAR OF THE
18 RIFLE.

19 Q AND AS AN EXPERT IN THIS AREA, WHAT IF ANYTHING, DID
20 THAT TELL YOU?

21 A WELL, IT TELLS ME THAT MY CHANCES OF BEING ABLE TO
22 IDENTIFY BULLETS FIRED THROUGH THIS BARREL WITH BULLETS
23 THAT WERE FIRED BY THIS GUN BEFORE THIS DAMAGE OCCURRED
24 WERE GOING TO BE VERY, VERY LIMITED.

25 Q AND WHY IS THAT?

1 A THE BULLETS THAT ARE FIRED BY A GUN, THE BASIS OF OUR
2 IDENTIFICATION OF THOSE BULLETS ARE THE MARKINGS THAT ARE
3 LEFT ON THOSE BULLETS AS THEY'RE FORCED DOWN AND OUT OF
4 THE BARREL.

5 BECAUSE THE INSIDE OF THE BARREL OF A RIFLED FIREARM,
6 WHICH INCLUDES RIFLES, PISTOLS AND REVOLVERS BUT NOT
7 GENERALLY SHOTGUNS, HAS A SERIES OF SPIRALLING GROVES, AND
8 THE BULLETS ARE SIZED SO THAT THE BULLETS ARE FORCED INTO
9 THE GROVES TO PUT A TWIST ON THE BULLET TO MAKE THE BULLET
10 STABLE IN FLIGHT, MUCH IN THE SAME WAY THAT A QUARTERBACK
11 SPINS A FOOTBALL AS IT LEAVES HIS HAND TO KEEP IT FROM
12 TUMBLING END OVER END, THE RIFLING IS THERE TO IMPART A
13 SPIN TO THE BULLET TO MAKE IT STABLE IN FLIGHT.

14 THE TOOL MARKS WHICH ARE LEFT AS A RESULT OF THE
15 MACHINING OF THIS RIFLING, TOGETHER WITH THE WEAR, THE USE
16 AND ABUSE THAT THE GUN UNDERGOES IN THE REAL WORD, CREATES
17 CERTAIN MARKS IN THE BARREL THAT CAN BE IMPARTED TO EACH
18 BULLET FIRED THROUGH THAT BARREL.

19 WHEN YOU DO SOMETHING LIKE PROVIDE EXTREMELY HEAVY
20 RUSTING, YOU CHANGE THOSE MARKINGS BECAUSE THE PORTION OF
21 THE BARREL AT THAT POINT IS TOTALLY DIFFERENT THAN WHAT IT
22 WAS BEFORE.

23 Q SO ANY BULLET FIRED FROM STATE'S EXHIBIT NUMBER 63 AT
24 THIS POINT AFTER THE RUSTING THAT YOU SAW, THE MARKINGS
25 WOULD BE DIFFERENT FROM ANY BULLET FIRED PRIOR TO THE

1 RUSTING?

2 A CORRECT.

3 Q NOW, HAVING SEEN THAT AND HAVING SEEN THE RUST AND
4 HAVING SEEN THE MUD, WHATEVER ELSE YOU HAVE TESTIFIED TO
5 ON STATE'S EXHIBIT NUMBER 63, WHAT IF ANYTHING, DID YOU
6 DO?

7 A WELL, THE FIRST THING THAT WAS NECESSARY TO DO, IT --
8 THE GUN WAS NOT SAFE TO FIRE.

9 Q AND WHY IS THAT?

10 A BECAUSE THERE WAS SO MUCH DEBRIS, SO MUCH RUST AND
11 SOIL IN THE BORE, I HAD TO REMOVE IT BEFORE I COULD
12 PREPARE THE GUN TO BE TEST FIRED.

13 I DIDN'T WANT THE SAND OR THE GRIT AND THE DEBRIS TO
14 PROVIDE ADDITIONAL EXTRANEIOUS MARKINGS TO THE BULLETS, SO
15 I DISMOUNTED THE BARREL FROM THE GUN'S RECEIVER, FROM THE
16 FRAME OF THE GUN, AND I CLEANED THE BARREL AS BEST I
17 COULD. AFTER THAT, I TEST FIRED THE GUN AND SUCCESSFULLY
18 TEST FIRED IT MANY TIMES.

19 Q AFTER YOU HAD CLEANED IT?

20 A YES, SIR.

21 Q AND BEFORE WE MOVE ON, EXPLAIN TO THE JURY HOW THAT
22 WEAPON WORKS.

23 A THIS IS A SEMIAUTOMATIC FIREARM OR A SELF-LOADING
24 FIREARM. IT WILL FIRE ONE TIME FOR EACH PULL OF THE
25 TRIGGER. IT IS NOT A MACHINE GUN. IT DOESN'T CONTINUE TO

1 FIRE WHEN THE TRIGGER IS DEPRESSED.

2 IT HAS A RECIPROCATING BOLT, THE HANDLE AT WHICH IS
3 AT MY FINGER. IT HAS A MAGAZINE WHICH IS NORMALLY LOCATED
4 WHERE THE CABLE LOCK IS IN THE BOTTOM OF THE FIREARM. THE
5 MAGAZINE IS A LITTLE SMALL BLOCK-LIKE DEVICE THAT HAS A
6 SPOOL THAT CONTAINS AS MANY AS TEN CARTRIDGES AT ONE TIME.

7 Q AND BEFORE WE MOVE ON, I SHOW YOU STATE'S EXHIBIT
8 NUMBER 64. CAN YOU IDENTIFY THAT?

9 A YES, SIR. STATE'S EXHIBIT 64 IS THE MAGAZINE
10 ASSEMBLY WHICH I RECEIVED WITH STATE'S EXHIBIT NUMBER 63.

11 Q AND SHOW THE JURY HOW THAT WILL FIT.

12 A NORMALLY, IT WILL FIT LIKE THIS. I CAN'T PUT IT IN
13 THERE NOW BECAUSE THE CABLE LOCK IS PRESENT, BUT IT
14 NORMALLY FITS INTO THIS. IT NORMALLY WILL FIT SO THAT IT
15 IS FLUSH WITH THE BOTTOM OF THE FIREARM.

16 Q SO YOU WOULD NOT SEE THAT NECESSARILY?

17 A NO. THIS MAGAZINE DOES NOT PROJECT DOWN FROM THE
18 BOTTOM OF THE LEVEL OF THE FIREARM.

19 Q AND, IN FACT, HOW MANY ROUNDS DOES THAT CARTRIDGE
20 HOLD?

21 A THAT MAGAZINE WILL HOLD A MAXIMUM OF TEN CARTRIDGES.
22 YOU CAN PUT AS MANY AS 11 CARTRIDGES IN THE GUN TOTAL.
23 YOU CAN PUT ONE IN THE CHAMBER AND TEN IN THE MAGAZINE.

24 Q AND WE'LL GET BACK TO THIS IN A MINUTE, BUT IF YOU
25 WOULD NOW EXPLAIN TO THE JURY HOW THAT WORKS.

1 A IF I HAD A FULLY LOADED MAGAZINE, I WOULD INSERT THE
2 MAGAZINE INTO THE FIREARM, AND IT WOULD LOCK IN PLACE. I
3 COULD THEN PERMIT THE BOLT TO GO FORWARD WHICH WOULD CAUSE
4 THE TOP CARTRIDGE IN THE MAGAZINE TO BE FED INTO THE
5 CHAMBER. THE CHAMBER IS THE ENLARGED AREA AT THE REAR OF
6 THE BARREL. IT'S CUT OUT TO ACCOMMODATE THE CARTRIDGE.

7 THIS WOULD LEAVE THE HAMMER, THIS GUN HAS AN INTERNAL
8 HAMMER, COCKED BY PRESSING THE SAFETY IN THIS DIRECTION.
9 IT WOULD PERMIT THE TRIGGER TO BE PULLED, THE HAMMER TO
10 MOVE FORWARD. THE HAMMER WOULD STRIKE THE FIRING PIN.
11 THE FIRING PIN WOULD STRIKE THE CARTRIDGE. THAT WOULD
12 INITIATE THE BURNING OF THE PROPELLANT POWDER IN THE
13 CARTRIDGE AND CREATE A HIGH PRESSURE. THE PRESSURE IS
14 SEEKING THE PATH OF LEAST RESISTANCE, WHICH IS INITIALLY
15 TO FORCE THE BULLET DOWN AND OUT OF THE BARREL.

16 A SHORT TIME LATER, THE BREACH BOLT WHICH IS BEING
17 HELD IN PLACE ONLY BY ITS OWN INERTIA AND THE RECOIL
18 SPRING WILL MOVE TO THE REAR UNDER THE INFLUENCE OF THE
19 PRESSURE IN THE CARTRIDGE.

20 THE CARTRIDGE WILL, WHEN THE BREACH BOLT MOVES
21 SUFFICIENTLY FAR TO THE REAR, THE CARTRIDGE WILL STRIKE A
22 STRUCTURE CALLED AN INJECTOR. IT WILL BE TIPPED OUT OF
23 THE ACTION. IT WILL COME OUT OF THIS EJECTION PORT WHERE
24 MY LITTLE FINGER IS.

25 THIS WILL LEAVE THE BREACH BOLT NEAR THE REAR OF ITS

1 TRAVEL. THIS WHOLE TIME IT'S BEEN COMPRESSING A SPRING.
2 AT THAT POINT, THE SPRING WILL FORCE THE BREACH BOLT BACK
3 CLOSED AGAIN.

4 IT WILL MOVE FORWARD. IT WILL GRAB THE NEXT
5 CARTRIDGE AT THE TOP OF THE MAGAZINE AND WILL LOAD IT INTO
6 THE CHAMBER, AND WE'RE PREPARED FOR THE FIRING OF THE NEXT
7 ROUND. ALL OF THIS OCCURS IN JUST THE BLINK OF AN EYE.
8 IT OCCURS REALLY SO FAST THAT IT'S VERY HARD TO EVEN SEE
9 THE BREACH BOLT MOVE.

10 Q SO WHEN THE TRIGGER IS PULLED, THE PROJECTILE GOES
11 OUT, A SHELL CASING -- AM I SAYING THAT CORRECTLY?

12 A FIRED CARTRIDGE CASINGS.

13 Q FIRED CARTRIDGE CASING FLIES OUT, CORRECT?

14 A CORRECT.

15 Q AND ANOTHER BULLET IS INSERTED?

16 A RIGHT, ANOTHER CARTRIDGE, AN UNFIRED CARTRIDGE.

17 Q AN UNFIRED CARTRIDGE IS INSERTED.

18 A CORRECT.

19 Q AND THAT CAN HAPPEN UP TO TEN TIMES WITH THIS WEAPON?

20 A IT CAN HAPPEN ACTUALLY UP TO 11, IF I HAVE MANUALLY
21 LOADED ONE CARTRIDGE, BUT IT CAN HAPPEN TEN TIMES JUST IN
22 THE MAGAZINE.

23 Q TEN TIMES, AS IN WHAT'S IN STATE'S EXHIBIT 64?

24 A CORRECT.

25 Q AND THAT'S THE SEMIAUTOMATIC TITLE THAT IT GETS, IS

1 THAT FROM THE PROCEDURE YOU JUST SAID?

2 A IT IS. SEMIAUTOMATIC DENOTES THAT IT FIRES ONE TIME
3 FOR EACH PULL OF THE TRIGGER VERSUS FULLY AUTOMATIC IN
4 WHICH THE CARTRIDGES ARE FIRED AS LONG AS THE TRIGGER IS
5 DEPRESSED.

6 Q SO --

7 A FULLY AUTOMATIC MEANING A MACHINE GUN; SEMIAUTOMATIC
8 MEANING SELF-LOADED.

9 Q SEMIAUTOMATIC MEANS TO FIRE TEN SHOTS. HOW MANY
10 TIMES DO YOU HAVE TO PULL THE TRIGGER?

11 A TEN TIMES.

12 Q TO FIRE TWO SHOTS WITH AN AUTOMATIC, HOW MANY TIMES
13 DO YOU HAVE TO PULL THE TRIGGER?

14 A WELL, AN AUTOMATIC IS -- ONE PULL OF THE TRIGGER WILL
15 FIRE ANY NUMBER SO LONG AS AMMUNITION IS PRESENT.

16 Q AND THAT ALSO EJECTS A SHELL, DOESN'T IT?

17 A IT DOES. IT HAS TO EJECT THE FIRED CARTRIDGE CASE OR
18 THERE'S NO ROOM FOR THE NEXT CARTRIDGE TO BE LOADED.

19 Q NOW, YOU HAVE EXPLAINED HOW THAT WEAPON WORKS. I
20 ALSO ASK YOU TO LOOK AT STATE'S EXHIBIT NUMBER 64 AGAIN.
21 YOU SAID THERE WAS A CARTRIDGE. WHAT ELSE DID YOU FIND IN
22 THERE?

23 A THERE WERE UNFIRED CARTRIDGES THAT WERE RECEIVED WITH
24 THIS MAGAZINE. THEY WEREN'T IN THE MAGAZINE, BUT THEY
25 WERE RECEIVED IN THE SAME CONTAINER WITH THEM.

1 THERE WERE FIVE .22 LONG RIFLE CALIBER CARTRIDGES
2 THAT WERE LOADED WITH COPPER PLATED HOLLOW POINT BULLETS,
3 AND THEY ALL BORE THE SUPER X HEAD STAMP, WHICH IS A HEAD
4 STAMP PUT ON THERE BY THE WINCHESTER COMPANY.

5 Q NOW, YOU SAY THEY WERE HOLLOW POINTS.

6 A YES.

7 Q EXPLAIN TO THE JURY WHAT A HOLLOW POINT IS AND WHAT
8 IT DOES.

9 A HOLLOW POINTS BULLETS ARE BULLETS THAT ARE DESIGNED
10 TO EXPAND MORE SO THAN SOLID POINT BULLETS. WHEN THEY
11 STRIKE AN OBJECT, THEIR NOSE IS WEAKENED BY THE HOLLOW
12 POINT IN THE NOSE SO THAT THEY MUSHROOM TO A GREATER
13 EXTENT, OR THEY'RE INTENDED TO MUSHROOM TO A GREATER
14 EXTENT, TO PRESENT A SOMEWHAT LARGER FRONTAL AREA. BY
15 DOING THAT, THEY IMPART MORE OF THE ENERGY OF THE BULLET'S
16 FORWARD MOTION INTO THE TARGET.

17 Q MEANING IT'S A MORE POWERFUL BULLET?

18 A WELL, MEANING IT'S INTENDED TO IMPART MORE ENERGY AND
19 TO PENETRATE LESS. IT'S MEANT TO EXPAND MORE AND
20 PENETRATE LESS THAN A COMPARABLE SOLID POINT BULLET WOULD
21 UNDER THE SAME CIRCUMSTANCES.

22 Q AND THAT WAS FOUND IN -- OR ALONG WITH THAT, STATE'S
23 EXHIBIT 64?

24 A CORRECT. IT WAS FOUND IN THE SAME CONTAINER WITH
25 ITEM 64, WITH THE ITEM 64 MAGAZINE.

1 Q WHAT ELSE CAN YOU TELL US ABOUT THOSE BULLETS?

2 A THEY ARE, OF COURSE, THE CORRECT CALIBER TO USE IN
3 STATE'S EXHIBIT 63. THEY ARE CONSISTENT IN THEIR
4 CONSTRUCTION WITH THE OTHER EVIDENCE SPECIMENS THAT I
5 RECEIVED IN THE CASE.

6 Q ARE THEY ALL SIMILAR?

7 A YES.

8 Q IS THERE ANY DAMAGE TO ANY OF THEM?

9 A YES. THEY ARE DAMAGED -- THEY ARE SOMEWHAT
10 WEATHERED, AND ONE OF THEM IS RATHER EXTREMELY DAMAGED,
11 THE BULLET BEING BENT AND THE CARTRIDGE CASE BEING
12 SIGNIFICANTLY BENT.

13 Q YOU SAY THEY ARE SOMEWHAT WEATHERED, IN WHAT WAY?

14 A THEY WERE -- WHEN I FIRST RECEIVED THEM, THEY HAD
15 KIND OF A FROSTY OXIDATION TO THEM. IN HANDLING THAT,
16 SOME OF IT HAS COME OFF. THE NOSES ARE SOMEWHAT BLUNTED
17 AND FLATTENED.

18 Q AND THAT DAMAGE COULD POSSIBLY COME FROM WHAT,
19 MOISTURE?

20 A YES.

21 Q THANK YOU.

22 A NOW, OF COURSE, THE BENDING OF THAT ONE CARTRIDGE WAS
23 -- LOOKS LIKE IT WAS DELIBERATELY DONE.

24 Q I WANT TO DRAW YOUR ATTENTION TO STATE'S EXHIBIT
25 NUMBER 52 WHICH IS MARKED THREE PROJECTILES, ■■■ T.S.

1 MARTIN DRIVE. COULD YOU TAKE A LOOK AT THOSE, AND I ASK
2 YOU IF YOU CAME IN CONTACT WITH THOSE.

3 A YES, SIR, I HAVE.

4 Q AND HOW CAN YOU TELL YOU CAME IN CONTACT WITH THOSE?

5 A BY BOTH THEIR CONTAINERS AND THE MARKINGS IN WHICH I
6 PLACED ON THE EVIDENCE ITEMS THEMSELVES.

7 Q SO YOU ACTUALLY PLACED MARKINGS ON THEM YOURSELF?

8 A YES, I DID.

9 Q WHY DID YOU DO THAT?

10 A SO I CAN IDENTIFY THEM WHEN I SEE THEM LATER.

11 Q IF YOU WOULD PUT THEM UP ON TOP HERE, YOUR TEN, YOUR
12 11, AND YOUR 12.

13 A YES, SIR.

14 Q ALL RIGHT. LET ME SEE THE PACKAGE AGAIN. THAT'S
15 STATE'S EXHIBIT, FOR THE RECORD, NUMBER 52, THREE
16 PROJECTILES, ■ T.S. MARTIN DRIVE. THESE ARE -- YOUR
17 MARKINGS ARE TEN, 11, AND 12?

18 A YES. THEY ARE MY ITEM NUMBERS TEN, 11, AND 12.

19 Q THAT'S HOW YOU KEEP TRACK OF EACH ONE?

20 A YES, SIR. WE ASSIGN OUR OWN ARBITRARY ITEM NUMBERS
21 TO EACH ITEM OF EVIDENCE RECEIVED IN THE CASE. THEY ARE
22 SOMETIMES THE SAME AS THE SUBMITTING AGENCIES AND
23 SOMETIMES NOT.

24 Q AS TO NUMBER TEN, COULD YOU TELL THE JURY WHAT YOU
25 FOUND OR DID NOT FIND?

1 A WELL, IN THE CASE OF ITEM NUMBER TEN, I FOUND A FIRED
2 BULLET FRAGMENT THAT WAS A .22 CALIBER BULLET FRAGMENT,
3 AND IT'S A COPPER PLATED LEAD BULLET. ITS NOSE WAS RATHER
4 COMPLETELY EXPANDED. ITS BASE WAS INTACT. I COULDN'T
5 TELL FROM LOOKING AT IT WHETHER IT WAS THE REMNANTS OF A
6 .22 LONG RIFLE HALLOW POINT, OR A .22 LONG RIFLE, OR A
7 SMALLER .22 BULLET.

8 Q SO WAS IT -- SO YOU'RE SAYING IT WAS DAMAGED?

9 A IT WAS VERY BADLY DAMAGED.

10 Q COULD IT HAVE BEEN FIRED BY A .22?

11 A OH YES. IT WAS DEFINITELY FIRED BY A .22. IN FACT,
12 IT COULD HAVE BEEN FIRED BY THIS FIREARM, BUT IT COULD
13 HAVE BEEN FIRED BY ANOTHER SIMILAR FIREARM.

14 IT WAS SO BADLY DAMAGED THAT THE MARKINGS WHICH
15 REMAINED ON IT WOULD NOT HAVE BEEN SUFFICIENT TO IDENTIFY
16 IT WITH ANY PARTICULAR FIREARM, BUT IT HAD THE REMNANTS OF
17 ONE LAND IMPRESSION THAT WERE CLEARLY PRESENT, AND THE
18 WIDTH OF THAT LAND IMPRESSION WAS CONSISTENT WITH THAT OF
19 TEST BULLETS THAT I FIRED FROM STATE'S EXHIBIT 63.

20 Q NOW, DID YOU ALSO FIND ANY DEBRIS ON YOUR NUMBER TEN?

21 A I FOUND WHITE COLORED DEBRIS THAT WAS CONSISTENT WITH
22 EITHER SMEARED PAINT OR DRYWALL SHEET ROCK MATERIAL ON IT.

23 Q THAT IT COULD HAVE TRAVELED THROUGH?

24 A YES'. IT COULD HAVE STRUCK THAT.

25 Q NOW, IF YOU WOULD, GO TO YOUR BULLET 11, BULLET

1 FRAGMENT NUMBER 11.

2 A MY ITEM 11 IS ALSO A COPPER PLATED LEAD BULLET
3 FRAGMENT WHICH COULD BE THAT OF A .22 CALIBER. IT COULD
4 BE A .22 CALIBER SHORT, LONG, OR LONG RIFLE, OR A LONG
5 RIFLE HOLLOW POINT.

6 IT WAS RATHER EXTREMELY DAMAGED AND DISTORTED. THERE
7 WERE PARTS OF THREE LAND AND GROOVE IMPRESSIONS THAT
8 REMAINED THAT WERE CONSISTENT IN THEIR OVERALL SIZE WITH
9 THE LAND AND GROOVE IMPRESSIONS NOTED ON TEST BULLETS THAT
10 I FIRED BY THIS RIFLE, STATE'S EXHIBIT 63.

11 THIS BULLET FRAGMENT COULD HAVE BEEN FIRED BY STATE'S
12 EXHIBIT 63, BUT I COULD NOT IDENTIFY IT WITH STATE'S
13 EXHIBIT 63 TO THE EXCLUSION OF OTHER FIREARMS.

14 Q AND WHY IS THAT, AGAIN?

15 A BECAUSE OF ITS DAMAGED CONDITION AND ALSO THE DAMAGED
16 CONDITION OF STATE'S EXHIBIT 63.

17 Q THAT YOU TALKED ABOUT BEFORE, THE RUST?

18 A THE COMBINATION OF RUST AND DETERIORATION, SAND, WHAT
19 HAVE YOU, THAT WAS IN THE BARREL OF STATE'S EXHIBIT 63.

20 Q NOW, ALSO NUMBER 12, I BELIEVE, IS THE FINAL?

21 A RIGHT.

22 Q TELL US WHAT YOU FOUND WITH NUMBER 12 AND WHETHER IT
23 RELATES TO NUMBER 11.

24 A STATE'S EXHIBIT NUMBER 12 WAS A .22 LONG RIFLE
25 CALIBER BULLET. IT WAS ALSO A COPPER PLATED LEAD BULLET.

1 IT HAD MOST OF THE WEIGHT I WOULD EXPECT A .22 LONG RIFLE
2 HOLLOW POINT BULLET WOULD HAVE.

3 I COMPARED THE BULLET IN WHAT I CALLED MY ITEM NUMBER
4 12 WITH BOTH OF THESE OTHER BULLETS. THE ONE OTHER
5 BULLET, OF COURSE, WAS TOO BADLY DAMAGED TO TELL ANYTHING
6 ABOUT IT, BUT I FOUND SUFFICIENT MATCHING MARKINGS ON MY
7 ITEM 11 AND ITEM 12 TO CONCLUDE THAT THEY WERE BOTH FIRED
8 BY THE SAME GUN, BUT AS IN THE CASE WITH NUMBER 11, I WAS
9 NOT ABLE TO IDENTIFY MY ITEM 12 AS BEING FIRED BY STATE'S
10 EXHIBIT 63 TO THE EXCLUSION OF OTHER .22 CALIBER FIREARMS.
11 IT COULD HAVE BEEN FIRED BY STATE'S EXHIBIT 63 OR BY
12 ANOTHER GUN.

13 Q ONCE AGAIN, BECAUSE OF THE DAMAGE OF THE RUST IN
14 STATE'S EXHIBIT NUMBER 63?

15 A YES, SIR. BOTH THE DAMAGE THAT THE BULLET ITSELF HAD
16 SUSTAINED AND THE DAMAGED CONDITION OF STATE'S EXHIBIT 63.

17 Q IT WAS CONSISTENT WITH BEING FIRED FROM STATE'S
18 EXHIBIT 63?

19 A IT COULD HAVE BEEN FIRED FROM THAT GUN, YES, SIR. I
20 ALSO FOUND DEBRIS THAT WAS CONSISTENT IN ITS APPEARANCE
21 WITH WOOD FIBERS THAT WERE TRAPPED IN THE HOLLOW POINT
22 CAVITY OF THAT BULLET.

23 Q AND ONCE AGAIN, THESE WERE HOLLOW POINTS?

24 A THAT BULLET I COULD TELL WAS A HOLLOW POINT. NOW,
25 THE OTHER TWO WERE SO BADLY DAMAGED THAT A NOSE SECTION

1 WAS LARGELY MISSING, SO I JUST COULDN'T TELL.

2 Q NOW, I'D LIKE TO MOVE ON TO STATE'S EXHIBIT
3 NUMBER 51, WHICH IS MARKED "DESCRIPTION AND/OR LOCATION,
4 TEN .22 CALIBER SHELL CASINGS, ■■■ T.S. MARTIN DRIVE".
5 IT'S STATE'S EXHIBIT 51. CAN YOU IDENTIFY THOSE?

6 A YES, SIR. I CAN IDENTIFY THEM ALL.

7 Q AND WHAT ARE THOSE?

8 A THOSE ARE TEN FIRED .22 LONG OR LONG RIFLE CALIBER
9 CARTRIDGE CASES.

10 Q NOW, IF YOU WOULD, TELL THE JURY WHAT YOU DID WITH
11 THOSE.

12 A I FIRST COMPARED THEM WITH EACH OTHER TO SEE IF THEY
13 HAD SUFFICIENT MATCHING MARKINGS PRESENT TO CONCLUDE THAT
14 THEY WERE ALL FIRED BY THE SAME GUN OR WHETHER THEY MIGHT
15 HAVE BEEN FIRED BY ONE OR MORE GUNS.

16 I FOUND MATCHING MARKINGS THAT ARE IMPARTED ON THOSE
17 CARTRIDGE CASES BY THE CHAMBER OF THE FIREARM IN WHICH
18 THEY WERE FIRED WHICH ALLOWED ME TO CONCLUDE THAT THEY
19 WERE ALL FIRED BY ONE AND THE SAME GUN.

20 Q OKAY. NOW, REPEAT THAT AGAIN ABOUT THE CHAMBER, AND
21 EXPLAIN TO THE JURY ON STATE'S EXHIBIT NUMBER 63 WHAT
22 YOU'RE TALKING ABOUT.

23 A THERE ARE A NUMBER OF SURFACES WITHIN THE
24 SEMIAUTOMATIC FIREARM THAT COME INTO CONTACT WITH THE
25 CARTRIDGE DURING ITS LOADING AND FIRING SEQUENCE.

1 Q WHEN YOU'RE TALKING ABOUT THE CARTRIDGE, YOU'RE
2 TALKING ABOUT THE WHOLE CARTRIDGE?

3 A RIGHT, THE ENTIRE ROUND. SOME OF THOSE MARKS WOULD
4 INDICATE IF THEY MATCHED, THAT THE CARTRIDGE WAS MERELY
5 LOADED INTO THE GUN AND MAY OR MAY NOT HAVE BEEN FIRED IN
6 THE GUN.

7 OTHER MARKINGS, SUCH AS THE BREACH FACE MARKING, THE
8 FIRING PIN MARKING, AND CHAMBER MARKINGS, WOULD ALLOW ME
9 TO CONCLUDE THAT THEY WERE FIRED IN A GIVEN GUN.

10 Q NOW, SHOW THE JURY ON STATE'S EXHIBIT NUMBER 63 WHAT
11 YOU'RE TALKING ABOUT, 63, THE WEAPON.

12 A OH, EXCUSE ME.

13 Q THE BOLT AND THAT TYPE OF THING.

14 A ON THE FACE OF THE BOLT, THE RECIPROCATING BREACH
15 BOLT IN THIS FIREARM.

16 Q THAT YOU TALKED ABOUT EARLIER?

17 A YES. THERE'S A SURFACE THAT COMES INTO CONTACT WITH
18 THE BACK OF THE CARTRIDGE CASE. THE CARTRIDGE CASE WOULD
19 BE IN THIS ORIENTATION WITH THE RIM TO THE REAR. THAT
20 PORTION THAT HOLDS THE BACK OF THE CARTRIDGE CASE INTO THE
21 REAR OF THE BARREL, INTO THE CHAMBER, IS THE BREACH BOLT.

22 THE FACE OF THE BROACH BOLT IS WHAT WE CALL THE
23 BREACH FACE. WHEN THE FIRING OF THE CARTRIDGE OCCURS AND
24 THE PRESSURE BUILDS IN THE CARTRIDGE THAT CAUSES THE
25 BULLET TO BE EXPELLED, IT CAUSES THE SIZE OF THE CARTRIDGE

1 CASE TO BE VERY TIGHTLY COMPRESSED AGAINST THE INSIDE
2 SURFACE OF THE BARREL AND AGAINST THE BREACH FACE. THE
3 BREACH FACE IS WHAT HOLDS THE BACK END OF THE CARTRIDGE.

4 THIS WILL IMPART THE MICROSCOPIC MARKS THAT ARE
5 PRESENT IN THE CHAMBER AND ON THE BREACH FACE ONTO THE
6 CARTRIDGE, SO IT'S LITERALLY LIKE BEING FORCED FROM INSIDE
7 OUT AGAINST THE CARTRIDGE.

8 ALSO, IN ORDER TO FIRE THE CARTRIDGE, THE CARTRIDGE
9 HAS TO BE STRUCK BY THE FIRING PIN. IN THIS CASE, THE
10 FIRING PIN STRIKES THE EDGE OF THE RIM OF THE CARTRIDGE.
11 IT DOESN'T HIT THE PRIMER IN THE MIDDLE. THE PRIMER IS
12 LOCATED INSIDE THE HOLLOW RIM OF THE CARTRIDGE, SO THE
13 IMPERFECTIONS THAT MIGHT BE PRESENT ON THE FIRING PIN
14 ITSELF ARE LITERALLY HAMMERED OR DRIVEN INTO THE BACK OF
15 THE CARTRIDGE.

16 IF I FOUND A MATCHING FIRING PIN OR I FOUND MATCHING
17 BREACH FACE IMPRESSION MARKS, OR IF I FOUND MATCHING
18 CHAMBER MARKS, THOSE COULD HAVE ONLY RESULTED FROM THE
19 CARTRIDGES HAVING BEEN FIRED IN THE GUN.

20 OTHER MARKS THAT THE GUN MIGHT CREATE, SUCH AS AN
21 EXTRACTOR MARK OR AN EJECTOR MARK OR PARTS OF ITS FEED
22 MECHANISM COMING INTO CONTACT WITH THE CARTRIDGE, WOULD
23 ONLY INDICATE THAT THE CARTRIDGE HAD BEEN LOADED INTO A
24 GUN.

25 Q AND SPECIFICALLY ON THESE TEN THAT YOU HAVE IN FRONT

1 OF YOU, WHICH PART DID YOU MATCH TO EACH OTHER?

2 A I COULD ONLY MATCH THE CHAMBER MARKS. THE CHAMBER
3 MARKS WILL BE PRESENT ON THE SIDE WALL OF THE CARTRIDGE
4 CASE.

5 I COULD NOT MATCH THE BREACH FACE IMPRESSIONS OR THE
6 FIRING PIN IMPRESSIONS OF THE TEST CARTRIDGES FIRED IN
7 STATE'S EXHIBIT 63 WITH EACH OTHER. IT JUST DID NOT HAVE
8 ENOUGH DETAIL IN THEM TO PERMIT ME TO EVEN CONCLUDE THAT
9 THE TEST CARTRIDGE CASES WERE FIRED BY THE SAME GUN.

10 I FOUND A SIMILAR LACK OF INDIVIDUAL MARKINGS IN THE
11 FIRING PIN AND BREACH FACE IMPRESSIONS ON THESE FIRED
12 CARTRIDGE CASES, SO THEY JUST DIDN'T PROVIDE ANY
13 INFORMATION FROM THE POINT OF VIEW OF IDENTIFICATION, BUT
14 I FOUND THE CHAMBER MARKS DID.

15 Q NOW, THOSE CHAMBER MARKS, ARE THOSE UNIQUE TO THAT
16 SPECIFIC GUN?

17 A THE CHAMBER MARKS THAT ARE PRESENT ON ALL OF THESE
18 FIRED CARTRIDGE CASES ARE UNIQUE TO THE GUN IN WHICH THEY
19 WERE FIRED AT THE TIME THAT THEY WERE FIRED.

20 SIMILARLY, THE CHAMBER MARKS THAT ARE PRESENT ON
21 FIRED CARTRIDGE CASES FIRED BY THIS GUN, STATE'S
22 EXHIBIT 63, ARE UNIQUE TO STATE'S EXHIBIT 63 RIGHT NOW IN
23 THE CONDITION IT WAS IN AT THE TIME IT WAS RECOVERED.

24 Q NOW, ONCE YOU DETERMINED THAT ALL TEN OF THESE WERE
25 FIRED FROM THE SAME WEAPON, WHAT DID YOU DO?

1 A THEN I ATTEMPTED TO IDENTIFY EACH ONE OF THEM IN TURN
2 WITH TEST CARTRIDGE CASES THAT I FIRED IN STATE'S
3 EXHIBIT 63.

4 Q AND YOU TESTIFIED TO THAT EARLIER WHERE YOU CLEANED
5 THE GUN AND THEN TEST FIRED SOME CARTRIDGES OUT OF THE
6 GUN?

7 A CORRECT.

8 Q TELL THE JURY WHAT YOU FOUND WHEN YOU COMPARED THEM.

9 A WELL, I COULD NOT IDENTIFY THE CHAMBER MARKS ON ALL
10 TEST CARTRIDGE CASES FIRED BY STATE'S EXHIBIT 63 WITH ALL
11 OTHER TEST CARTRIDGE CASES. THERE WERE SOME VARIATIONS IN
12 THEIR MARKINGS BUT NOT APPRECIABLE.

13 I TRIED TO IDENTIFY EACH OF THESE FIRED CARTRIDGE
14 CASES WITH TEST CARTRIDGES AND COULD ONLY DO SO IN THE
15 CASE OF THIS CARTRIDGE, THE ONE THAT I IDENTIFIED AS ITEM
16 NUMBER 13.

17 I COULD IDENTIFY THIS PARTICULAR CARTRIDGE CASE AS
18 HAVING BEEN FIRED IN STATE'S EXHIBIT 63 TO THE EXCLUSION
19 OF ALL OTHER FIREARMS.

20 NOW, THERE WERE A NUMBER OF MARKINGS THAT WERE
21 SIMILAR ON THE REST OF THEM TO TEST CARTRIDGE CASES FIRED
22 BY THIS RIFLE, BUT THEY JUST WEREN'T SUFFICIENT FOR
23 IDENTIFICATION.

24 Q NOW, THE FACT THAT YOU FOUND THAT THIS, I'M JUST
25 GOING TO CALL IT A BULLET, WAS FIRED BY STATE'S EXHIBIT

1 NUMBER 63, AND THE OTHER NINE THAT YOU FOUND MATCHED THIS
2 BULLET, WHAT DID YOU DETERMINE?

3 A I WAS ABLE TO CONCLUDE FROM THAT THAT THEY WERE ALL
4 FIRED BY THIS FIREARM. EVEN THOUGH I WASN'T ABLE TO
5 IDENTIFY THE MARKINGS ON EACH AND EVERY ONE OF THEM, DUE
6 TO THE FACT THAT I HAD IDENTIFIED THE ENTIRE GROUP AS
7 BEING FIRED BY ONE GUN, IF I IDENTIFIED ANY ONE OR MORE, I
8 COULD SAY THAT IT WAS FIRED BY STATE'S EXHIBIT 63.

9 Q AND HOW MANY YEARS HAVE YOU BEEN AN EXPERT IN THE
10 FIELD OF FIREARMS?

11 A FOR 39.

12 Q AND YOU'VE BEEN AN EXPERT HOW MANY TIMES?

13 A I DON'T KNOW, SIX OR 700.

14 Q YOU'RE SAYING THAT THESE CASINGS, THESE BULLETS, WERE
15 FIRED OUT OF STATE'S EXHIBIT NUMBER 63?

16 A YES, SIR.

17 Q YOU CAN PUT THEM BACK IN FOR ME, IF YOU WOULD.

18 I HAND YOU TWO OTHER ITEMS, STATE'S EXHIBIT NUMBER 50
19 AND STATE'S EXHIBIT NUMBER 53 AND ASK YOU IF YOU CAN
20 IDENTIFY THOSE.

21 A YES, SIR. I CAN IDENTIFY THESE.

22 Q AND WHAT ARE THEY?

23 A THEY ARE TWO FIRED BULLET FRAGMENTS, ONE OF THEM
24 RECEIVED IN A CONTAINER MARKED " [REDACTED] T.M. [REDACTED] ", AND
25 THE OTHER ONE RECEIVED IN A CONTAINER MARKED " [REDACTED] C.D. [REDACTED] "

1 ██████". THEY ARE COPPER PLATED LEAD BULLET FRAGMENTS.

2 Q WHAT, IF ANYTHING, DID YOU DO WITH STATE'S EXHIBIT
3 NUMBER 50 AND NUMBER 53?

4 A WELL, I EXAMINED THEM, AND I DETERMINED THAT BOTH OF
5 THEM WERE TOO BADLY DAMAGED TO BE IDENTIFIED WITH ANY
6 PARTICULAR FIREARM, THAT THE MARKINGS WHICH REMAINED ON
7 THEM COULD HAVE -- THOSE BULLET FRAGMENTS COULD HAVE BEEN
8 FIRED BY STATE'S EXHIBIT 63, OR THEY COULD HAVE BEEN FIRED
9 BY ANOTHER FIREARM.

10 Q THEY WERE TOO DAMAGED TO MAKE A POSITIVE
11 IDENTIFICATION TO ANY GUN?

12 A CORRECT. THEY WOULD BE TOO DAMAGED TO IDENTIFY WITH
13 ANY FIREARM, EVEN IF THE FIREARM WERE RECOVERED IN GOOD
14 CONDITION.

15 MR. GIESE: BEG THE COURT'S INDULGENCE.

16 THE COURT: ALL RIGHT.

17 (PAUSE).

18 MR. GIESE: THAT'S ALL I HAVE. THANK YOU.

19 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
20 GENTLEMEN, WE'LL TAKE A SHORT RECESS BEFORE
21 CROSS-EXAMINATION. STRETCH YOUR LEGS, USE THE RESTROOM.
22 WE'LL TAKE ABOUT TEN MINUTES. YOU'RE EXCUSED.

23 EVERYONE ELSE STAY SEATED, PLEASE.

24 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
25 10:58 A.M.)

1 THE COURT: WE'LL TAKE ABOUT TEN MINUTES.

2 AGENT, YOU CAN STEP DOWN. DON'T DISCUSS YOUR
3 TESTIMONY AT THE BREAK.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

5 THE COURT: ALL RIGHT. IS THE DEFENSE READY?

6 MS. FRANKLIN: YES, SIR, YOUR HONOR.

7 THE COURT: IS THE STATE READY?

8 MR. GIESE: YES, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. GET THE JURY BACK, PLEASE.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
11 APPROXIMATELY 11:18 A.M.)

12 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

13 THE COURT: MS. FRANKLIN?

14 MS. FRANKLIN: THANK YOU, YOUR HONOR. MAY IT PLEASE
15 THE COURT.

16 CROSS-EXAMINATION:

17 BY MS. FRANKLIN

18 Q I JUST HAVE A COUPLE OF REAL QUICK QUESTIONS FOR YOU.
19 WHEN YOU RECEIVED THESE ITEMS, WHEN YOU RECEIVED THE GUN,
20 THE SCOPE, THE MAGAZINE, AND THE BULLETS, CORRECT?

21 A YES.

22 Q AND THOSE BULLETS THAT YOU RECEIVED, WERE THEY THE
23 SAME MAKE AS WERE FOUND ON THE SHELL CASINGS?

24 A THE UNFIRED CARTRIDGES, THE FIVE UNFIRED CARTRIDGES,
25 WERE THE SAME CALIBER, THE SAME BRAND, THE SAME TYPE OF

1 AMMUNITION, YES.

2 Q OKAY. THANK YOU.

3 AND THE LENGTH OF THIS GUN, YOU SAY IN YOUR REPORT
4 YOU GIVE THE LENGTH OF IT. I BELIEVE THAT YOU SAY IT'S
5 37 INCHES. IS THAT ACCURATE?

6 A IT'S JUST UNDER 37. I MEASURED IT AT LIKE
7 36-AND-SEVEN-EIGHTHS INCHES OVERALL LENGTH WITH AN
8 18-AND-A-HALF INCH BARREL.

9 Q OKAY. JUST TO BE CLEAR ON THE CONVERSION, I MEAN,
10 THAT WOULD BE THREE FEET ROUGHLY.

11 A JUST A LITTLE OVER THREE FEET.

12 MS. FRANKLIN: OKAY. THANK YOU, YOUR HONOR. NO MORE
13 QUESTION.

14 THE COURT: ANY REDIRECT?

15 MR. GIESE: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

17 ANY OBJECTION TO HIM BEING EXCUSED?

18 MS. FRANKLIN: NO OBJECTION.

19 THE COURT: YOU ARE EXCUSED. ALL RIGHT, SIR.

20 MS. CAMPBELL: THE STATE CALLS INVESTIGATOR O'CAIN.

21 EDWARD O'CAIN, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
24 FOR THE RECORD.

25 THE WITNESS: LEWIS EDWARD O'CAIN.

1 MS. FRANKLIN: YOUR HONOR, AT THIS POINT I THINK I
2 NEED TO RENEW MY OBJECTION, ALL PREVIOUS OBJECTIONS.

3 THE COURT: FROM PREVIOUS MATTERS WE'VE HEARD; IS
4 THAT CORRECT?

5 MS. FRANKLIN: YES.

6 THE COURT: ALL RIGHT. THE RULING REMAINS THE SAME.
7 OVERRULED.

8 MS. FRANKLIN: THANK YOU, YOUR HONOR.

9 MS. CAMPBELL: YOUR HONOR, MAY WE APPROACH ON
10 SOMETHING ELSE?

11 THE COURT: SURE.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
13 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

14 DIRECT EXAMINATION:

15 BY MS. CAMPBELL

16 Q INVESTIGATOR O'CAIN, WHERE ARE YOU EMPLOYED?

17 A THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

18 Q AND WHAT DO YOU DO THERE, SIR?

19 A I'M BRANCH CHIEF OVER SPECIAL INVESTIGATIONS.

20 Q AND CAN YOU TELL THIS JURY WHAT YOUR DUTIES INCLUDE
21 AS BRANCH CHIEF OVER SPECIAL INVESTIGATIONS?

22 A IT INCLUDES SECURITY THREAT GROUPS, WHICH IS GANGS,
23 ANY CONTRABAND COMING INTO THE INSTITUTIONS, INTELLIGENCE,
24 ESCAPES, FUGITIVES.

25 Q CAN YOU TELL THE JURY A LITTLE BIT ABOUT YOUR

1 EDUCATION AND YOUR TRAINING, SPECIFICALLY AS RELATED TO
2 GANG ACTIVITY OR GANG RECOGNITION?

3 A I WAS PUT OVER THE SECURITY THREAT GROUPS GANGS IN
4 LATE 1998. SINCE THEN I HAVE NUMEROUS TRAININGS ACROSS
5 THE EAST COAST THROUGH THE GANG ASSOCIATIONS AND THE
6 DIFFERENT STATES THROUGH TRAININGS THAT'S BEING PUT ON
7 THROUGH THE STATE AS PART OF GANG RECOGNITION.

8 I'M RECOGNIZED AS AN INSTRUCTOR THROUGH THE INSTITUTE
9 FOR COMMUNITY POLICING IN THE UPSTATE WHICH IS RECOGNIZED
10 THROUGH THE CRIMINAL JUSTICE ACADEMY TO TEACH LAW
11 ENFORCEMENT. I AM CO-FOUNDER OF THE SOUTH CAROLINA GANG
12 INVESTIGATORS ASSOCIATION, CURRENT PRESIDENT OF THAT.

13 Q HAVE YOU BEEN QUALIFIED BEFORE AS AN EXPERT IN GANG
14 ACTIVITY AND/OR RECOGNITION OF GANGS?

15 A YES, MA'AM.

16 Q AND IN THE COURTS OF SOUTH CAROLINA?

17 A YES, MA'AM.

18 MS. CAMPBELL: YOUR HONOR, AT THIS TIME I OFFER HIM
19 AS AN EXPERT IN GANG AFFILIATION AND GANG RECOGNITION?

20 MS. FRANKLIN: IF I COULD VOIR DIRE, YOUR HONOR?

21 THE COURT: YOU MAY, ONLY ON QUALIFICATIONS AT THIS
22 TIME.

23 MS. FRANKLIN: AND HOW MANY TIMES HAVE YOU TESTIFIED
24 IN COURT?

25 THE WITNESS: I'M SORRY?

1 MS. FRANKLIN: HOW MANY TIMES HAVE YOU TESTIFIED IN
2 COURT?

3 THE WITNESS: ONE TIME, LAST YEAR.

4 MS. FRANKLIN: AND AT THAT TIME YOU TESTIFIED FOR THE
5 PROSECUTION?

6 THE WITNESS: YES, MA'AM.

7 MS. FRANKLIN: WERE YOU QUALIFIED AS AN EXPERT AT
8 THAT TIME?

9 THE WITNESS: YES, MA'AM.

10 MS. FRANKLIN: ANY NATIONAL SOCIETIES DEDICATED TO
11 THIS LINE OF WORK?

12 THE WITNESS: I'M SORRY?

13 MS. FRANKLIN: ANY NATIONAL SOCIETIES THAT ARE
14 DEDICATED TO THIS LINE OF WORK?

15 THE WITNESS: NATIONAL?

16 MS. FRANKLIN: UH-HUH.

17 THE WITNESS: THERE'S A NATIONAL MAJOR GANG TASK
18 FORCE.

19 MS. FRANKLIN: ARE YOU A MEMBER OF THAT?

20 THE WITNESS: YES, MA'AM.

21 MS. FRANKLIN: DOES ANYONE SUPERVISE YOUR WORK?

22 THE WITNESS: YES, MA'AM.

23 MS. FRANKLIN: WHO?

24 THE WITNESS: IT'S SUPERVISED THROUGH MS. DEBBIE
25 BARNWELL WHO IS DIRECTOR OF INVESTIGATIONS AND A DANIEL

1 MURPHY WHO IS THE INSPECTOR GENERAL FOR THE DEPARTMENT OF
2 CORRECTIONS.

3 MS. FRANKLIN: WHAT SOURCES DO YOU RELY ON IN BASING
4 YOUR OPINIONS?

5 THE WITNESS: I'M SORRY? I DIDN'T HEAR YOU.

6 MS. FRANKLIN: WHAT KIND OF SOURCES DO YOU USE IN
7 BASING YOUR OPINIONS?

8 THE WITNESS: INFORMATION WE GET FROM LAW ENFORCEMENT
9 AGENCIES, THE INTERNET, INTERVIEWS WITH INMATES WHO ARE
10 COMING INTO THE DEPARTMENT OF CORRECTIONS, AND ALSO STREET
11 INVESTIGATIONS.

12 MS. FRANKLIN: OKAY. NO MORE VOIR DIRE, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MS. FRANKLIN: I GUESS WE CONSENT TO HAVING HIM
15 QUALIFIED, SUBJECT TO MY PREVIOUS OBJECTIONS.

16 THE COURT: ALL RIGHT. THE WITNESS IS FOUND TO BE AN
17 EXPERT IN THE FIELD OF GANG ACTIVITY AND GANG RECOGNITION.

18 YOU MAY CONTINUE.

19 BY MS. CAMPBELL

20 Q TO FOLLOW UP ON THAT, YOU ACTUALLY LECTURE FREQUENTLY
21 IN THIS AREA?

22 A YES, MA'AM.

23 Q AND YOU HAVE DONE THAT ON MULTIPLE OCCASIONS?

24 A YES, MA'AM.

25 Q YOU ARE UNDER SUBPOENA HERE TODAY. YOU AREN'T

1 GETTING PAID ANY EXTRA MONEY FOR YOUR TESTIMONY?

2 A NO, MA'AM.

3 Q I WANT TO REVIEW -- YOU RECEIVED CERTAIN INFORMATION
4 CONCERNING CHRIS LIVERMAN IN THIS CASE? LET ME LIMIT THAT
5 TO A "YES" OR A "NO".

6 A YES, MA'AM.

7 Q AND ARE YOU AWARE OF CLAIMS MADE BY THE DEFENDANT TO
8 BE A GANG MEMBER?

9 A YES, MA'AM.

10 Q AND DID YOU ALSO LAST WEEK, ACTUALLY HERE IN THIS
11 COURTHOUSE, HAVE AN OPPORTUNITY TO LOOK AT SOME TATTOOS ON
12 MR. LIVERMAN'S BODY?

13 A YES, MA'AM, I DID.

14 Q AND THAT WAS PURSUANT TO A COURT ORDER?

15 A YES, MA'AM.

16 Q TELL ME, WHAT IS A GANG?

17 A THERE'S DIFFERENT DEFINITIONS ACROSS THE COUNTRY.
18 IT'S LOOKED AT AS ANY THREE OR MORE INDIVIDUALS WHO ARE
19 GATHERED TOGETHER TO COMMIT A CRIME.

20 Q AND I WANT TO TURN YOU SPECIFICALLY, YOU MENTIONED
21 THERE ARE NATIONALS LEVELS OF GANGS; IS THAT CORRECT?

22 A YES, MA'AM.

23 Q AND I WANT TO BASE OUR TALKING HERE TODAY ON THE
24 STATE LEVEL BECAUSE IT'S A LITTLE BIT DIFFERENT. EXPLAIN
25 THAT TO THE JURY.

1 A THERE IS AN EVOLUTION GOING ON IN SOUTH CAROLINA. A
2 LOT OF THE GANGS ARE STILL COMING FORWARD, STILL TRYING TO
3 FIGURE OUT WHAT PART THEY'RE PLAYING IN THIS STATE. A LOT
4 OF THE GROUPS ARE STILL TRYING TO HIDE WHAT THEY'RE DOING
5 FROM LAW ENFORCEMENT BECAUSE OF WHAT'S BEEN LEARNED IN
6 OTHER STATES.

7 IN THIS STATE, AS I MENTIONED, AN EVOLUTION. IT'S
8 EVER CHANGING HERE. ONCE THEY FIGURE OUT THAT LAW
9 ENFORCEMENT KNOWS WHAT THEY'RE LOOKING AT, SUCH AS COLORS,
10 HAND SIGNS, TATTOOS, THEY'LL CHANGE IT UP AND CREATE
11 SOMETHING NEW.

12 Q AND YOU MENTIONED THAT THEY HAVE COLORS. TYPICALLY,
13 CAN YOU NAME SEVERAL OF THE GANGS, THE LARGER GANGS IN
14 SOUTH CAROLINA?

15 A THE LARGER GANGS IN THE STATE RIGHT NOW ARE THE
16 BLOODS, CRIPS, AND FOLK NATION.

17 Q ARE THOSE THREE SEPARATE GROUPS?

18 A YES, MA'AM.

19 Q AND HISTORICALLY, AND IN THIS STATE, BETWEEN THE
20 BLOODS AND THE FOLK, IS THERE -- DO THEY GET ALONG?

21 A NO, MA'AM.

22 Q WHAT IS IT -- YOU MENTION COLORS. TYPICALLY, WHAT
23 ARE THE COLORS ASSOCIATED WITH FOLK NATION?

24 A FOLK NATION IS BLACK, BUT THEY DO HAVE AN ASSOCIATION
25 WITH THE CRIPS IN A LOT OF PARTS OF THE STATE. THEY'RE

1 VERY CLOSE TO THE CRIPS, SO THERE COULD BE A VERY DARK
2 BLUE COLOR BEING USED.

3 Q AND WE'VE HEARD TERMINOLOGY HERE DURING THIS TRIAL,
4 AND YOU HAVE BEEN ABLE TO OBSERVE, WHERE SOME PEOPLE TALK
5 ABOUT "PUTTING ON A FLAG" OR A BANDANNA IS BEING INVOLVED.
6 TELL THE JURY WHAT THAT MEANS.

7 A A FLAG IS WHAT THE GANG MEMBER IS GOING TO HAVE ON
8 THEM TO SHOW THEIR COLORS, THEIR REPRESENTATION. THEY
9 WANT EITHER A RIVAL GANG OR FELLOW MEMBERS TO KNOW THAT
10 THEY'RE REPRESENTING THEIR PARTICULAR GROUP.

11 Q HOW DOES A PERSON, SAY TYPICALLY WITH THE FOLK OR THE
12 BLOODS, GAIN RANK?

13 A BY GOING ON A MISSION, BY COMPLETING SOMETHING THAT
14 WAS GIVEN TO THEM TO DO, WHETHER IT'S STEALING CARS,
15 ASSAULTING, MURDERS. IT'S WHAT THEY WERE GIVEN AS A
16 MISSION.

17 Q ARE YOU FAMILIAR WITH THE TERM "FOLKS"?

18 A YES, MA'AM.

19 Q AND DOES THAT STAND FOR ANYTHING, IN YOUR EXPERIENCE?

20 A DEPENDING ON THE GROUP YOU'RE DEALING WITH AND WHAT
21 PART OF THE STATE OR COUNTRY, IT HAS SEVERAL. ONE WOULD
22 BE "FOR OUR LOVE OF KILLING SLOBS". IT'S RECOGNIZED OR
23 USED A LOT AROUND THE STATE.

24 Q AROUND THIS STATE?

25 A YES, MA'AM.

1 Q YOU SAY "FOR OUR LOVE, KILLING SLOBS". WHAT IS A
2 "SLOB"? WHAT DOES THAT TERM MEAN?

3 A IT'S A DISRESPECT FOR THE BLOODS WHICH IS A RIVAL
4 GANG.

5 Q HERE IN SOUTH CAROLINA WITHIN THE FOLK GANG OVERALL,
6 IT'S STATEWIDE; IS THAT CORRECT?

7 A YES, MA'AM.

8 Q ARE THERE CERTAIN SUBDIVISIONS IN DIFFERENT AREAS?

9 A YES, MA'AM, SETS.

10 Q IT'S A SET?

11 A YES, MA'AM.

12 Q AND ARE THERE FOLK SETS HERE IN RICHLAND COUNTY IN
13 THIS AREA?

14 A YES, MA'AM.

15 Q RECENTLY HAVE YOU BECOME AWARE OF TERMINOLOGY CALLING
16 "STRIKE KING", I BELIEVE IT IS?

17 A YES, MA'AM.

18 Q AND WHAT DOES THAT -- WHAT DOES THAT INVOLVE AND MEAN
19 TODAY?

20 A A SET KING STRIKE OR ONE STRIKE, TWO STRIKE.
21 SOMETHING THAT'S JUST RECENTLY COME UP IN THE LAST FEW
22 YEARS AROUND THE STATE. THAT IS SOMEONE WHO IS GAINING
23 RANK TO BECOME A SET KING.

24 Q DO TATTOOS PLAY A ROLE IN GANG MEMBERS REPRESENTING
25 THEMSELVES?

1 A YES, MA'AM.

2 Q CAN YOU TELL THE JURY HOW TATTOOS PLAY A ROLE IN THE
3 GANGS?

4 A IT'S A WAY FOR THEM TO IDENTIFY THEIR GROUP. ONE WAY
5 IS BY PUTTING THE TATTOO ON THEIR BODY THEY'RE COMMITTING
6 THEMSELVES AS PART OF THE GROUP. IT'S A LIFELONG
7 COMMITMENT.

8 THE TATTOOS TELL A STORY IN A LOT OF CASES.
9 DEPENDING ON THE TYPE OF TATTOO, HOW IT IS ON THE BODY,
10 WHAT PART OF THE BODY. THESE ARE THINGS THAT THEY USE AS
11 IDENTIFICATION FOR OTHER GANG MEMBERS TO KNOW THEY'RE PART
12 OF THAT GROUP OR FOR RIVAL GANG MEMBERS TO KNOW THEY'RE
13 PART OF THAT GROUP.

14 Q AND IN FACT, IF YOU PUT A GANG SYMBOL, AND I'LL GET
15 TO THOSE IN A MINUTE, IS THAT IMPORTANT, SAY IN
16 REPRESENTING OR ADVERTISING?

17 A YES, MA'AM.

18 Q DO GANG MEMBERS ALSO GET WHAT'S CALLED A "BRAND"?

19 A YES, MA'AM. THEY WILL BRAND THEMSELVES, WHICH IN MY
20 OPINION IS EVEN MORE OF THE DEFINITION OF BEING A PART OF
21 SOMETHING. YOU'RE GOING THROUGH A LOT MORE, PAYING A LOT
22 MORE TROUBLE PUTTING THAT BRANDING ON YOUR BODY. YOU ARE
23 REPRESENTING, AND THAT'S BIG.

24 Q AND HOW IS A BRAND INFLICTED?

25 A WE'VE SEEN IT DIFFERENT WAYS ACROSS THE STATE.

1 NORMALLY, DEPENDING ON THE STRUCTURE OF THE GROUP AND HOW
2 ADVANCED THEY ARE, WE'VE SEEN IT AS SIMPLE AS TAKING A
3 PAPER CLIP, TAKING IT APART, FORMING IT INTO SOMETHING.
4 YOU HEAT IT UP WITH FIRE, MATCHES, WHATEVER FIRE YOU HAVE,
5 AND THEN IT'S CONSISTENTLY TOUCHED TO THE SKIN UNTIL YOU
6 HAVE BURNT THE SKIN TO SHOW WHAT YOU WANT IT TO LOOK LIKE.

7 Q I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
8 EXHIBIT 69, 68, 70, AND 71. LET ME FIRST ASK DO YOU
9 RECOGNIZE THOSE?

10 A YES, MA'AM.

11 Q AND ARE THOSE PHOTOGRAPHS OF TATTOOS FROM CHRIS
12 LIVERMAN'S BODY THAT YOU ACTUALLY OBSERVED LAST WEEK?

13 A YES, MA'AM.

14 Q AND I WANT TO TAKE IT THROUGH. WHEN YOU WERE ABLE TO
15 OBSERVE CHRIS LIVERMAN'S ARMS, I BELIEVE HIS CHEST, HIS
16 LEGS, AND DIFFERENT PARTS OF HIS BODY, STARTING WITH THE
17 LEG AREA, WERE YOU ABLE TO ACTUALLY OBSERVE ANY TATTOOS ON
18 HIS LEGS?

19 A NO, MA'AM.

20 Q DO YOU KNOW WHETHER OR NOT THERE ARE SOME THERE?

21 A WE LOOKED AT THE UPPER LEGS, BUT BECAUSE OF THE
22 LIGHTING IN THE ROOM AND HE DIDN'T STRIP COMPLETELY, I'M
23 NOT SURE WHETHER HE DID OR DID NOT HAVE TATTOOS ON HIS
24 LEGS.

25 Q OKAY. NOW I'M GOING TO TALK ABOUT THE TATTOOS YOU

1 WERE ABLE TO OBSERVE ON HIS UPPER BODY.

2 A YES, MA'AM.

3 Q STARTING WITH HIS -- OR STARTING WHEREVER YOU WANT
4 TO, HIS ARMS OR WHEREVER, CAN YOU TALK ABOUT WHAT TATTOOS
5 YOU OBSERVED ON HIS BODY?

6 A GOING BY MY NOTES OR THE PICTURES?

7 Q WHATEVER COMBINATION YOU WANT. YOU MADE NOTES WHEN
8 YOU OBSERVED THE TATTOOS?

9 A YES, MA'AM.

10 Q OKAY. FIRST WHAT DID YOU SEE?

11 A THE FIRST THING THAT STANDS OUT IS THE TATTOOS ON THE
12 FACE. ON THE RIGHT SIDE OF THE FACE UNDERNEATH THE EYE
13 YOU HAVE TWO TEARDROPS.

14 Q OKAY. CAN I GET BACK TO THE FACE IN A LITTLE BIT?

15 A YES, MA'AM.

16 Q CAN I START WITH THE BODY?

17 A SURE.

18 Q WHAT WAS THE FIRST ONE YOU NOTICED ON HIS BODY?

19 A THE FIRST THINGS ARE NOTICED ON HIS CHEST. HE HAS
20 THE LETTERS "B.O.S." AND "S.O.S." ON HIS CHEST.

21 Q IS THAT NOTED, ACTUALLY, IN ONE OF THE PHOTOGRAPHS
22 THAT I HANDED YOU?

23 A YES, MA'AM.

24 Q I'M LOOKING AT STATE'S EXHIBIT NUMBER 68, THE FIRST
25 ONE YOU NOTED SAYS WHAT?

1 A B.O.S. AND S.O.S.

2 Q AND ARE THOSE SIGNIFICANT AS FAR AS IDENTIFICATION OF
3 BEING IN A GANG OR ANYTHING OF THAT NATURE?

4 A YES, MA'AM. THOSE ARE NORMAL LETTERS WE SEE
5 ASSOCIATED WITH THE FOLK NATION, GANGSTER DISCIPLES,
6 INSANE GANGSTER DISCIPLES, REFERENCES TO THEIR CAUSE, IF
7 YOU WILL.

8 Q AND AS AN EXPERT IN THIS AREA, WHAT DOES "B.O.S."
9 STAND FOR?

10 A BROTHERS OF THE STRUGGLE.

11 Q IS THAT A TERMINOLOGY UNIQUE TO THE FOLK NATION OR TO
12 ANOTHER GANG?

13 A WE SEE IT PROMINENTLY THROUGH FOLK NATION, I.G.D.

14 Q I.G.D.?

15 A INSANE GANGSTER DISCIPLES, GANGSTER DISCIPLES.

16 Q JUST FOR CLARIFICATION, WHEN YOU'RE TALKING ABOUT
17 FOLKS AND THEN YOU'RE TALKING ABOUT I.G.D. OR INSANE
18 GANGSTER DISCIPLES, HOW DO THOSE TWO INTERPLAY?

19 A THEY'RE A SET OF FOLK NATION.

20 Q SO INSANE GANGSTER DISCIPLES IS A SET WITHIN THE FOLK
21 NATION?

22 A YES, MA'AM.

23 Q SO IT'S A SUBDIVISION WITHIN THE FOLK?

24 A YES, MA'AM.

25 Q AND YOU MENTIONED THAT STATE'S EXHIBIT 69, AND YOU

1 ACTUALLY OBSERVED THESE ON HIS BODY LAST WEEK?

2 A YES, MA'AM.

3 Q THERE'S ALSO A SECOND SET OF LETTERS; IS THAT CORRECT
4 HERE, "S.O.S."?

5 A S.O.S., WHICH IS SISTERS OF THE STRUGGLE.

6 Q AND IS THERE A DIFFERENCE BETWEEN B.O.S. AND S.O.S.?

7 A THEY'RE BOTH THE SAME AS FAR AS REPRESENTING THE
8 GROUP. IT'S A SUBSET, SET, OF FOLK NATION.

9 Q WHAT WAS THE NEXT TATTOO YOU OBSERVED ON HIS BODY?

10 A THE NEXT THING WOULD HAVE BEEN ON THE RIGHT ARM, A
11 PITCH FORK, TWO DOTS, AND A SIX-POINT STAR.

12 Q AND DO WE HAVE A PHOTOGRAPH OF THAT?

13 A NO, MA'AM.

14 Q OKAY. AND CAN YOU DRAW FOR THE JURY KIND OF HOW THIS
15 APPEARED ON HIS ARM?

16 A YES, MA'AM.

17 MS. CAMPBELL: YOUR HONOR, MAY THE WITNESS STEP DOWN?

18 THE COURT: YOU MAY.

19 BY MS. CAMPBELL

20 Q BE CAREFUL. THAT'S A PRETTY BIG STEP.

21 A (COMPLIES). PLEASE, THAT'S SUPPOSED TO BE MY STAR.

22 Q IS THAT THE TATTOO YOU OBSERVED ON HIS ARM?

23 A YES, MA'AM.

24 Q WHAT IS THAT? IS THAT SIGNIFICANT IN THE FOLK?

25 A YES, MA'AM. THE PITCHFORK IS A NORMAL TATTOO WE SEE

1 REPRESENTATIVE OF THE FOLK NATION.

2 Q UH-HUH.

3 A THE TWO DOTS IS PART OF THEIR -- YOU CAN READ ABOUT
4 THE DOTS IN THEIR BOOKS OF KNOWLEDGE. DEPENDING ON THE
5 GROUP YOU'RE DEALING WITH, IT COULD MEAN MONEY, MAC,
6 MURDER, MONEY, MONOPOLY AS FAR AS THE DOTS GO.

7 Q WHAT WERE THE FIRST TWO THINGS YOU SAID, MONEY?

8 A MONEY, MAC, MURDER.

9 Q MONEY, MAC, MURDER?

10 A WHICH IS REFERENCING THE TWO POINTS OF THE PITCHFORK.

11 Q WHAT DOES THE OTHER MEAN?

12 A MONEY, MAC, MONOPOLY. IT DEPENDS ON WHAT BOOK OF
13 KNOWLEDGE YOU'RE LOOKING AT, AND THE SIX-POINT STAR IS THE
14 SIX POINTS OF FOLK NATION DEALING WITH THE GROUP ITSELF.
15 THAT'S ANOTHER IDENTIFIER.

16 Q AND IS SIX SIGNIFICANT TO THE FOLK?

17 A YES, MA'AM.

18 Q AND HOW IS THAT?

19 A IN THEIR RULES, IN THEIR BOOKS OF KNOWLEDGE, THE
20 NUMBER SIX IS THEIR NUMBER THAT THEY ASSOCIATE WITH, SUCH
21 AS THE BLOODS USE THE NUMBER FIVE.

22 Q OKAY. SO BASED ON YOUR EXPERT OPINION IN OBSERVING
23 THAT TATTOO ON HIS ARM, WHAT WOULD YOU CONCLUDE?

24 A THAT HE IS A MEMBER OF THE FOLK NATION.

25 Q DID YOU NOTICE ANY OTHER TATTOOS ON HIS ARMS?

1 A YES, MA'AM. ON HIS RIGHT FOREARM HE HAS THE LETTER
2 "M", AND THIS IS GOING DOWN HIS ARM, "M" WITH A DOT AND
3 THEN A "C".

4 Q AND IS THAT SIGNIFICANT, IN YOUR EXPERTISE?

5 A THAT, I DON'T KNOW WHAT THAT MEANS.

6 Q OKAY. DID HE HAVE ANY OTHER TATTOOS THAT YOU
7 OBSERVED ON HIS ARMS?

8 A ON HIS RIGHT HAND, THE TOP OF HIS RIGHT HAND, HE HAS
9 SOME SORT OF TATTOO THAT LOOKS TO BE A COVER-UP OF SOME
10 KIND. I'M NOT SURE WHAT THAT MEANS. ON HIS LEFT UPPER
11 ARM, HE HAS THE LETTERS "D-R-I-C-A" DOWN HIS ARM. I'M NOT
12 SURE WHAT THAT MEANS.

13 Q COULD THAT BE THE NAME OF SOMEONE?

14 A YES, MA'AM. IT COULD BE THE NAME OF A LOVED ONE, A
15 FALLEN SOLDIER, COULD BE ANYTHING.

16 Q LET ME BACK UP FOR A MINUTE. YOU MENTIONED ON HIS
17 HAND THAT HE HAD SOMETHING COVERED UP?

18 A IT APPEARED TO BE A COVER-UP TATTOO.

19 Q AND WHAT IS THAT? TELL THE JURY. EXPLAIN THAT.

20 A THAT'S WHEN YOU HAVE A TATTOO THAT'S ALREADY THERE,
21 AND THEN YOU PUT ANOTHER TATTOO OVER IT TO COVER-UP
22 WHATEVER THAT IS. YOU NO LONGER LIKE IT, SOMETHING YOU
23 DON'T WANT TO BE SEEN. IT'S JUST -- YOU PUT ANOTHER
24 TATTOO OVER A TATTOO.

25 Q AND WAS THAT THE EXTENT OF THE TATTOOS YOU OBSERVED

1 ON HIS ARMS AND HIS CHEST?

2 A I'M SORRY?

3 Q WERE THOSE ALL THE TATTOOS YOU OBSERVED ON HIS ARMS?

4 A NO, MA'AM.

5 Q WHAT ELSE DID YOU SEE?

6 A ON THE LEFT INNER FOREARM HE HAS THE LETTERS C.T.C.

7 WE BELIEVE THAT TO MEAN "COLUMBIA TO CHARLESTON".

8 Q AND IS THAT SIGNIFICANT?

9 A THAT'S, BASED ON WHAT IS BEING TOLD AND THROUGH
10 INTERVIEWS, IT'S BELIEVED TO BE A CONNECTION BETWEEN FOLK
11 NATION, COLUMBIA FOLK NATION AND CHARLESTON.

12 Q WERE THERE ANY OTHER TATTOOS ON HIS ARMS OR HANDS?

13 A NOTHING ELSE ON HIS -- LET'S SEE. NOTHING ELSE ON
14 HIS ARMS. THEN WE GO TO -- THERE'S A TATTOO ON HIS NECK,
15 THE RIGHT SIDE OF HIS NECK, THE NAME "DEBORAH PALMER". I
16 BELIEVE FROM WHAT I'M BEING TOLD IS HIS MOTHER. THEN THE
17 NEXT TATTOO -- WELL, ACTUALLY A BRANDING. IF I COULD BACK
18 UP, THIS ON HIS ARM IS NOT A TATTOO. IT'S A BRANDING, I'M
19 SORRY.

20 Q OKAY. THE PITCHFORK WITH THE SIX STAR?

21 A IT APPEARS TO BE A BRANDING ON HIS RIGHT ARM.

22 Q OKAY. AND NOW WE'RE GOING INTO THE BACK AREA. IT
23 HAD A BRANDING ON IT ALSO?

24 A YES, MA'AM, ON HIS LEFT UPPER BACK IT IS.

25 Q I SHOW YOU STATE'S EXHIBIT 68.

1 A YES, MA'AM.

2 Q AND HAVE YOU HAD A CHANCE TO OBSERVE THAT?

3 A YES, MA'AM.

4 Q AND IS THAT THE TATTOO YOU SAW ON HIS BACK?

5 A YES, MA'AM.

6 Q THAT'S THE BRANDING YOU SAW ON HIS BACK?

7 A RIGHT.

8 Q WHAT DOES THIS DEPICT IN STATE'S EXHIBIT 68?

9 A IT IS A PITCHFORK. IT IS A BRANDED PITCHFORK.

10 THERE'S A LOT OF SCARRING WITH THIS PARTICULAR BRANDING.

11 IT HAS WHAT LOOKS LIKE TWO HASH MARKS THAT COME OUT TO THE

12 RIGHT SIDE OF THE PITCHFORK, WHICH COULD BE RANK. IT

13 COULD BE ANY NUMBER OF REASONS THOSE HASH MARKS ARE THERE.

14 Q AND SPECIFICALLY AT THE BOTTOM OF THE PITCHFORK IS

15 THIS THERE A SYMBOL?

16 A THERE'S A LOT OF SCARRING AT THE BOTTOM OF THE

17 BRANDING. IT LOOKS LIKE IT COULD HAVE BEEN AN UPSIDE DOWN

18 FIVE.

19 Q WHY WOULD THAT BE SIGNIFICANT TO HAVE AN UPSIDE DOWN

20 FIVE INTENTIONALLY?

21 A THAT IS A DISRESPECT TO THE BLOODS IN THOSE

22 REPRESENTING THE NUMBER FIVE.

23 Q YOU MENTION THAT TO THE RIGHT OF THAT THERE ARE NOW

24 TWO SLASH MARKS?

25 A .YES, MA'AM.

1 Q IS THAT SIGNIFICANT?

2 A THAT VERY WELL COULD BE RANK OR GAINING RANK. IT
3 COULD GIVE SOME CLUE AS TO WHAT RANK HE'S HOLDING RIGHT
4 NOW.

5 Q AND IN YOUR EXPERT OPINION, WHAT RANK WOULD HE HAVE
6 ON HIS BACK?

7 A THAT WOULD GO ALONG WITH WHAT I'M BEING TOLD ABOUT
8 SET KING, STRIKE ONE, STRIKE TWO. HE HAS PUT ON HIS BODY
9 THAT HE'S NOW A SET -- EXCUSE ME, A SET KING, STRIKE TWO.

10 Q AND IN THAT SAME VEIN, IS THAT SIGNIFICANT TO YOU AS
11 FAR AS IS THERE A CERTAIN THING YOU HAVE TO DO TO GET TO
12 SET KING, STRIKE TWO?

13 A WHAT I'M BEING TOLD FROM THE STREETS AND INTERVIEWS,
14 TO GET THE STRIKE SERIES OF THAT RANK, YOU HAVE TO HAVE
15 BODIES ATTRIBUTED TO YOU.

16 MS. FRANKLIN: YOUR HONOR, I HAVE TO OBJECT AT THIS
17 POINT. I THINK WE NEED TO BE HEARD.

18 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
19 GENTLEMEN, LET ME TAKE UP THIS MATTER OF LAW. PLEASE STEP
20 BACK TO YOUR JURY ROOM AND DON'T DISCUSS THE CASE AT THIS
21 TIME, PLEASE. YOU'RE EXCUSED.

22 EVERYONE ELSE STAY SEATED.

23 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
24 11:42 A.M.)

25 THE COURT: ALL RIGHT. MS. FRANKLIN?

1 MS. FRANKLIN: YOUR HONOR, MY UNDERSTANDING IS WHEN
2 THIS OFFICER JUST GOT ON THE STAND TO SAY THAT THE TWO
3 HASH MARKS BESIDES MY CLIENT'S PITCHFORK TATTOO MEANS THAT
4 HE HAS BODIES ASSOCIATED WITH THAT.

5 I'M ASKING FOR A MISTRIAL AT THIS POINT, YOUR HONOR.
6 IT'S A COMPLETELY OUTRAGEOUS CLAIM, ABSOLUTELY NO SUPPORT
7 AT ALL.

8 YOU KNOW, WE'VE HAD DISCUSSIONS WITH THE SOLICITOR'S
9 OFFICE ABOUT WHAT THEY WERE TRYING TO DO WITH THE TEARDROP
10 TATTOOS. NOW THEY'RE TRYING TO ALSO BRING IN THIS OTHER
11 TATTOO ON THE BACK.

12 IT'S INCREDIBLY INFLAMMATORY. IT'S WITHOUT ANY BASIS
13 THAT THEY'VE BEEN ABLE TO PROVIDE, AND I JUST DON'T KNOW
14 THAT THAT IS A BELL THAT CAN BE UNRUNG AT THIS POINT.

15 THE COURT: ALL RIGHT. SOLICITOR?

16 MS. CAMPBELL: YOUR HONOR, I BELIEVE HE INDICATED
17 THAT THE BASIS OF HIS INFORMATION IS FROM INFORMATION THAT
18 IS BEING CONSTRUED FROM INTERVIEWS. WE WENT THROUGH ALL
19 OF THAT.

20 BASED ON THAT INFORMATION, HIS INFORMATION IS THE
21 SLASH MARKS COULD MEAN THIS. HE HAS ALREADY TESTIFIED IT
22 COULD MEAN OTHER THINGS, TOO.

23 IN ADDITION TO THAT, WE'RE GOING INTO THE TESTIMONY
24 ABOUT HOW THE TEARDROPS COULD MEAN BODIES. I MEAN, THIS
25 IS ALL SUBJECT TO CROSS-EXAMINATION.

1 AS FAR AS NO BASIS FOR IT, I MEAN, HE JUST TESTIFIED
2 TO WHAT THE BASIS FOR HIS KNOWLEDGE WAS. SHE COULD
3 CLEARLY CROSS-EXAMINE HIM AS FAR AS, YOU KNOW, AS IT COULD
4 MEAN OTHER THINGS, TOO.

5 MS. FRANKLIN: YOUR HONOR, IN RESPONSE TO THAT, I
6 MEAN, HE SAID -- HE SAID HE HEARD IT FROM THE STREETS. I
7 MEAN, NOW WE'RE RUNNING INTO HEREBY ISSUES, CONFRONTATION
8 ISSUES.

9 UNTIL THEY CAN BRING SOMEBODY IN HERE WHO ACTUALLY
10 SAYS THAT THAT'S WHAT THE TATTOO ON MY CLIENT'S BACK
11 MEANS, THEN I DON'T HAVE THE RIGHT TO CONFRONT MY CLIENT.
12 I DON'T HAVE THE RIGHT TO CONFRONT THE WITNESS WHO IS
13 PUTTING THIS INTO THE GANG EXPERT'S MIND.

14 I MEAN, IT'S NOT ENOUGH THAT I HAD THE OPPORTUNITY TO
15 CROSS-EXAMINE THIS PARTICULAR PERSON, BUT WHOEVER IS
16 MAKING THAT SORT OF A CLAIM ABOUT MY CLIENT, MY CLIENT HAS
17 THE RIGHT TO HAVE THAT PERSON IN FRONT OF HIM, AS WELL.

18 MS. CAMPBELL: AND I THINK, YOUR HONOR, SHE CAN BRING
19 ALL OF THAT OUT IN CROSS-EXAMINATION, THE BASIS OF HIS
20 KNOWLEDGE, THAT IT COULD MEAN OTHER THINGS. I MEAN,
21 CLEARLY HE HAS TESTIFIED AT THE VERY BEGINNING AS TO THE
22 BASIS FOR HIS KNOWLEDGE. HE'S AN EXPERT ALLOWED TO RENDER
23 AN OPINION.

24 MS. FRANKLIN: BUT IF HE'S RELYING ON HIS OPINIONS,
25 YOUR HONOR, I MEAN, HEARSAY EVIDENCE, AGAIN, IT INVOKES

1 CONFRONTATION ISSUES. IT BRINGS US RIGHT BACK INTO STATE
2 V. PRICE WHEREIN THAT CASE THE TESTIMONY ENDED UP
3 RESULTING IN A MISTRIAL BECAUSE THE EXPERT WASN'T RELYING
4 ON HIS OWN PERSONAL KNOWLEDGE BUT ON WHAT HE WAS HEARING
5 FROM OTHER PEOPLE.

6 MS. CAMPBELL: I BELIEVE, YOUR HONOR, AS LONG AS IT'S
7 OPINION TESTIMONY BY AN EXPERT, HE CAN BASE IT ON ANYTHING
8 THAT HIS KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, EDUCATION
9 MAY TESTIFY TO FORM AN OPINION.

10 MS. FRANKLIN: BUT YOUR HONOR, HE SAID THAT HE HEARD
11 IT FROM THE STREETS. HE DIDN'T SAY THAT HE HEARD IT FROM
12 SOME FEDERAL DATABASE OR FROM SOME LAW, YOU KNOW, OTHER
13 CASES THAT HAVE BEEN LITIGATED. HE DIDN'T SAY THAT HE
14 KNOWS IT BECAUSE HE'S CONSULTING WITH THE F.B.I. HE SAID
15 HE KNOWS IT BECAUSE HE HEARD IT FROM THE STREET.

16 MS. CAMPBELL: HE TESTIFIED THAT THE BASIS OF HIS
17 KNOWLEDGE IS INFORMATION HE HAS ACCUMULATED THROUGH
18 INTERVIEWS WITH PEOPLE, THROUGH HIS EXPERIENCE IN THE
19 SYSTEM, THROUGH ALL OF THAT. EVEN IN A DATABASE, IT'S
20 JUST HEARSAY ALL COMPILED INTO A DATABASE.

21 MS. FRANKLIN: BUT HE JUST MADE THE CLAIM THAT THESE
22 STRIKE MARKS, THESE HASH MARKS, MEAN THAT MY CLIENT HAS
23 BODIES ATTACHED TO THEM, AND HE HEARS THAT FROM THE
24 STREET.

25 MS. CAMPBELL: WHICH IS PART OF THE BASIS OF HIS

1 EXPERTISE, THE INFORMATION HE GATHERS FROM INTERVIEWS FROM
2 PEOPLE ON THE STREET AND OTHER AREAS.

3 THE COURT: DO YOU HAPPEN TO HAVE A COPY OF THE PRICE
4 CASE? I'D LIKE TO TAKE A LOOK AT IT.

5 MS. FRANKLIN: YOUR HONOR, I WILL TAKE US JUST ONE
6 MOMENT.

7 (PAUSE).

8 YOUR HONOR, MS. GRIPP IS GOING TO RUN DOWN AND GET A
9 COPY OF THAT CASE AND BRING IT BACK TO YOUR HONOR.

10 THE COURT: DO YOU HAVE A CITE?

11 MS. CAMPBELL: YOUR HONOR, WE RELY ON 703.

12 THE COURT: I'VE GOT THE RULE. I WANT TO SEE THE
13 PRICE CASE.

14 MS. FRANKLIN: MS. GRIPP WILL BE RIGHT HERE, YOUR
15 HONOR. I'M SORRY.

16 (PAUSE).

17 MS. FENT: I HAVE A COPY OF STATE V. PRICE.

18 THE COURT: YOU DO?

19 MS. FENT: I DO.

20 (PAUSE).

21 THE COURT: THE OBJECTION IS OVERRULED BASED ON
22 PRICE. IT IS DISTINGUISHABLE, FIRST OF ALL, AS FAR AS
23 EXPERT'S TESTIMONY IS CONCERNED UNDER 702, 703.
24 SPECIFICALLY, 703, "THE FACTS THAT ARE MADE IN A
25 PARTICULAR CASE UPON WHICH AN EXPERT BASES AN OPINION OR

1 INFERENCE MAY BE KNOWN, PERCEIVED BY, OR MAY BE KNOWN TO
2 THE EXPERT AT THE POINT OF HEARING. IT'S RELAYED UPON BY
3 EXPERTS IN THAT PARTICULAR FIELD, CAN FORM OPINIONS OF
4 INFERENCES ON A SUBJECT. FACTS NEED NOT BE ADMISSIBLE
5 INTO EVIDENCE," AND THE NOTE INDICATES THAT THE DATA AND
6 FACTS GIVEN TO AN EXPERT THAT ARE THE BASIS OF OPINION
7 THAT ARE NOT ADMITTED INTO EVIDENCE OR MAYBE EVEN ARE NOT
8 ADMISSIBLE INTO EVIDENCE.

9 IN OTHER WORDS, EXPERTS CAN RELY ON HEARSAY, BUT THE
10 PRICE CASE IS TOTALLY DIFFERENT WHERE THE EXPERT SAID, AND
11 TESTIFIED, THAT THE DEFENDANT IN THAT CASE WAS A MEMBER OF
12 A PARTICULAR GANG, AND NOT ONLY THAT WAS AN OFFICER WITHIN
13 THAT GANG. THAT WAS BASED TOTALLY ON INFORMATION FROM AN
14 INFORMANT. THAT'S NOT WHAT WE HAVE HERE.

15 THIS WITNESS HAS TESTIFIED AS TO HIS OPINION AS TO
16 WHAT DIFFERENT SYMBOLS OR TATTOOS OR OTHER SIGNIFICATION
17 OR SYMBOLS SIGNIFY, AND I WOULD OVERRULE BASED ON THE FACT
18 THAT THIS IS PART OF HIS OPINION.

19 ~~MS. FRANKLIN:~~ YOUR HONOR, IF I COULD JUST BE CLEAR
20 FOR THE RECORD, I AM ALSO -- ~~IN ADDITION TO THE HEARSAY~~
21 ~~OBJECTION, I'M ALSO INCORPORATING A CONFRONTATION CLAUSE~~
22 ~~ISSUE.~~

23 I BELIEVE THAT WITHOUT MY CLIENT'S BEING ABLE TO
24 CONFRONT WHOEVER IT IS THAT MADE THIS PARTICULAR CLAIM
25 FROM THE STREETS THAT MY CLIENT IS BEING DENIED HIS RIGHT

1 TO A FAIR TRIAL AND THE RIGHT TO CONFRONT WITNESSES
2 AGAINST HIM.

3 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED.
4 ALL RIGHT. BRING THE JURY BACK, PLEASE.
5 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
6 APPROXIMATELY 11:56 A.M.)

7 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

8 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY CONTINUE.
9 BY MS. CAMPBELL

10 Q MAY IT PLEASE THE COURT.

11 INVESTIGATOR, WHEN WE LEFT, YOU MENTIONED THAT THE
12 SLASHES NEXT TO THE -- ON THE TATTOO IN STATE'S EXHIBIT
13 NUMBER 68. ARE THOSE ABLE TO BE SEEN CLEARLY HERE?

14 A YES, MA'AM; YES, MA'AM.

15 Q AND CAN YOU POINT MY FINGER TO WHERE IT SHOULD POINT
16 TO?

17 A THE HASH MARKS?

18 Q YES.

19 A THEY SHOULD BE JUST TO THE RIGHT OF THE PITCHFORK
20 RIGHT IN HERE.

21 Q RIGHT IN HERE, RIGHT ABOVE IT?

22 A YES, MA'AM, JUST TO THE RIGHT OF THE POINT.

23 Q IT'S SOMEWHAT HARD TO SEE ON HERE.

24 A YES, MA'AM.

25 Q BUT YOU OBSERVED THOSE CLEARLY?

1 A YES, MA'AM.

2 Q AND IN YOUR EXPERT OPINION, WHAT DO THOSE -- WHAT
3 COULD THOSE SIGNIFY?

4 A BASED ON THE INFORMATION I'M GETTING FROM INTERVIEWS
5 AND INMATES --

6 Q JUST --

7 A -- THAT WE ARE INTERVIEWING, AND WHAT I'M BEING TOLD
8 FROM FELLOW LAW ENFORCEMENT ON THE STREET...

9 Q AND IN YOUR EXPERT OPINION?

10 A IT REPRESENTS A RANK STRUCTURE, AND THAT IT COULD
11 REPRESENT BODIES ATTRIBUTED TO THAT INDIVIDUAL.

12 Q AND WHEN YOU SAY "BODIES ATTRIBUTED TO THAT
13 INDIVIDUAL", WOULD THAT BE THE PERSON WEARING THE TATTOOS?

14 A YES, MA'AM.

15 Q AND WHEN YOU SAY "BODIES", WHAT DO YOU MEAN?

16 A THAT THEY HAVE COMMITTED SOME SORT OF ACT OR MURDER
17 WHERE BODIES -- DEAD PEOPLE.

18 Q I WANT TO TURN YOUR ATTENTION NOW TO THE FACE AREA.
19 YOU MENTIONED IT EARLIER. ARE THERE ALSO SOME TATTOOS
20 THAT YOU CAN SEE CLEARLY ON HIS FACE?

21 A YES, MA'AM.

22 Q AND I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
23 EXHIBIT NUMBER 70 FIRST. DO YOU RECOGNIZE THAT?

24 A YES, MA'AM.

25 Q AND WHAT DOES THAT SHOW?

1 A ON THE LEFT CHEEK UNDERNEATH THE EYE, THE NUMBERS
2 GOING DOWN, "424".

3 Q IS THAT SIGNIFICANT, IN YOUR EXPERTISE, IN GANG
4 ACTIVITY?

5 A YES, MA'AM.

6 Q AND WHAT DOES THAT MEAN?

7 A A LOT OF THE GANGS HAVE THEIR OWN CODED SYSTEM. MOST
8 OF THEM USE THE SIMPLE SYSTEM OF THE ALPHABET, "A" EQUALS
9 ONE. WHAT THAT IS, IS "D.B.D." WHICH IS DEATH BEFORE
10 DISHONOR.

11 Q SO THE 424, "D" IS THE FOURTH LETTER OF THE ALPHABET?

12 A YES, MA'AM.

13 Q AND THEN "B" IS THE SECOND LETTER IN THE ALPHABET?

14 A YES, MA'AM.

15 Q AND THEN "D" AGAIN, AND IT MEANS WHAT?

16 A DEATH BEFORE DISHONOR.

17 Q FINALLY ON HIS FACE ALSO IS ANOTHER TATTOO; IS THAT
18 CORRECT?

19 A YES, MA'AM.

20 Q AND I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
21 EXHIBIT NUMBER 71. DO YOU RECOGNIZE THAT?

22 A YES, MA'AM.

23 Q DOES THIS CLEARLY SHOW THE TATTOOS THAT ARE ON HIS
24 CHEEK OR IS IT A LITTLE...

25 A THAT'S HARD TO SEE IN THAT PHOTOGRAPH, BUT HE DOES

1 HAVE TWO.

2 Q DOES HE STILL HAVE THEM AS HE SITS THERE TODAY?

3 A YES, MA'AM.

4 Q AND WHAT'S IN THE PHOTOGRAPH IN STATE'S EXHIBIT 71.
5 WHAT IS THIS TATTOO?

6 A IT'S TWO TEARDROPS WHICH ARE RIGHT ABOVE THE RIGHT
7 EYE.

8 Q AND IF YOU CAN, CAN I GET BACK THE MAGIC MARKER?

9 YOUR HONOR, CAN THE WITNESS STEP DOWN?

10 THE COURT: ALL RIGHT. KEEP YOUR VOICE UP, PLEASE.

11 BY MS. CAMPBELL

12 Q YOU MENTIONED THERE WERE TWO TEARDROPS. CAN YOU DRAW
13 THEM CLEARLY?

14 A I'M NOT AN ARTIST.

15 Q AND I NOTICED THAT ONE YOU FILLED IN, AND ONE IS AN
16 OPEN TEARDROP; IS THAT CORRECT?

17 A YES, MA'AM.

18 Q AND IS THAT SIGNIFICANT THAT THEY ARE DIFFERENT FROM
19 EACH OTHER?

20 A YES, MA'AM. THERE IS A SIGNIFICANCE BETWEEN THE TWO.

21 Q CAN YOU TELL THE JURY WHAT THAT IS?

22 A ONCE AGAIN, FROM EXPERIENCE AND WHAT WE'RE BEING
23 TOLD, IT CAN REPRESENT QUITE A FEW THINGS, DEPENDING ON
24 WHO YOU'RE TALKING TO.

25 UNDER THE RULES OF THE GANGS, WHAT THIS IS SUPPOSED

1 TO REPRESENT IS OPEN TEARDROPS MEANS THAT A FAMILY MEMBER
2 HAS DIED. A FAMILY MEMBER COULD BE A FELLOW GANG MEMBER.
3 IT COULD BE A RELATIVE. IT COULD BE -- AND WE'VE EVEN
4 HEARD IT TOLD THAT'S WHEN SOMEBODY IS KILLED BY MISTAKE,
5 AN INNOCENT KILLING, AN INNOCENT.

6 Q THE FILLED IN TEARDROP, WHAT DOES THAT MEAN?

7 A THE FILLED IN TEARDROP IS SUPPOSED TO REPRESENT THAT
8 THERE HAS BEEN A RETRIBUTION; THAT SOMEONE HAS DIED, AND
9 YOU ARE RESPONSIBLE FOR THAT KILLING.

10 Q AND HYPOTHETICALLY, IF SOMEONE HAD KILLED SOMEONE
11 THAT WAS IN THE BLOOD OR AFFILIATED OR KNEW BLOODS OR HUNG
12 OUT WITH BLOODS, WOULD THAT BE A RETALIATION?

13 A YES, MA'AM, THAT YOU WERE RESPONSIBLE FOR THAT IS THE
14 REASON IT'S FILLED IN.

15 Q CAN IT MEAN OTHER THINGS?

16 A YES, MA'AM.

17 Q BUT THE FACT THAT THEY ARE DIFFERENT MAKES IT MORE
18 SIGNIFICANT?

19 A YES, MA'AM.

20 Q JUST A FEW MORE QUESTIONS. WHAT DOES THE TERM "GOING
21 TO DO A LICK" MEAN TO THE FOLK?

22 A IN THE GANG TERMINOLOGY, THAT MEANS THEY ARE GOING TO
23 TAKE SOMEBODY OUT, KILL SOMEONE. THEY'RE GOING TO DO
24 SOMETHING FOR THE GANG.

25 Q YOU HAVE REFERRED TO WHAT'S CALLED A BOOK OF

1 KNOWLEDGE.

2 A YES, MA'AM.

3 Q CAN YOU EXPLAIN TO THE JURY WHAT THAT IS?

4 A A BOOK OF KNOWLEDGE IS SOMEONE IN THE GROUP IS
5 RESPONSIBLE FOR HAVING ON PAPER WHAT THEIR RULES AND
6 REGULATIONS ARE AND THE HISTORY OF THE GANG.

7 A LOT OF THEM WILL GO BACK TO THE BEGINNING AND TALK
8 ABOUT WHO THE ORIGINAL FOUNDERS OF THAT PARTICULAR GANG
9 WERE, SOME OF THE HISTORY ON HOW THEY GOT TO BECOME WHAT
10 COLORS THEY'RE USING, WHAT, HOW THEY REPRESENT THAT
11 PARTICULAR GANG, SIMILAR TO A BIBLE OR KORAN. THEY FOLLOW
12 IT, AND EACH SET IS SUPPOSED TO FOLLOW IT FOR THEIR RULES
13 AND REGULATIONS.

14 Q AND THE FOLK GANG HERE IN SOUTH CAROLINA, DO THEY
15 HAVE CERTAIN RULES AND REGULATIONS THAT THEY ENFORCE?

16 A YES, MA'AM, AND WE SEE DIFFERENT RULES AND
17 REGULATIONS, DEPENDING ON WHICH SET YOU'RE TALKING ABOUT.

18 Q I WANT TO TALK TO YOU A LITTLE BIT, WHEN A PERSON IS
19 A GANG MEMBER, MAYBE INTERVIEWED BY LAW ENFORCEMENT, COULD
20 THEY EXAGGERATE THEIR RANK?

21 A YES, MA'AM.

22 Q HOWEVER, IF A PERSON PUTS TATTOOS ON THEIR FACE
23 CLAIMING KILLS -- YOU'RE FAMILIAR WITH THE TERM "FALSE
24 CLAIMING"?

25 A YES, MA'AM.

1 Q WHAT WOULD HAPPEN TO A PERSON WHO IS FALSE CLAIMING
2 OR PUTTING TEARDROPS JUST ON THEIR FACE FOR FUN?

3 A THEY ARE GOING TO -- IN A LOT OF CASES, THEY'RE GOING
4 TO BE QUESTIONED ABOUT THESE TATTOOS. THEY HAVE TO BE
5 ABLE TO ANSWER CERTAIN QUESTIONS BASED ON THE BOOKS OF
6 KNOWLEDGE. THEY HAVE TO HAVE THE KNOWLEDGE, NUMBER ONE.
7 THEY HAVE GOT TO BE ABLE TO BACK UP WHY THEY HAVE THESE
8 PARTICULAR THINGS, SUCH AS THE TEARDROPS. THAT IS
9 RECOGNIZED BETWEEN THE GANG MEMBERS.

10 THEY TELL LAW ENFORCEMENT COMPLETELY DIFFERENT
11 STORIES BECAUSE THEY DON'T WANT YOU TO KNOW WHAT ALL THE
12 RULES ARE, BUT TO THEM, IT'S ALSO A WAY OF ADVERTISING.

13 YOU KNOW, IN SOME OF THE GROUPS, THEY HAVE PEOPLE WHO
14 HAVE SPECIFIC DUTIES, SUCH AS ENFORCERS. THESE FOLKS ARE
15 THE ONES WHO DO THE DAMAGE WHEN IT COMES TO ASSAULTS,
16 MURDERS, WHATEVER IT MAY BE, SO THEY'RE GOING TO BE
17 ADVERTISING THEIR SKILLS.

18 Q AND WHAT WOULD HAPPEN TO A PERSON WHO HADN'T DONE
19 WHAT THEY SAY THEY DID ON THEIR FACE?

20 A THROUGH OUR PRISON SYSTEM, NOT JUST HERE IN SOUTH
21 CAROLINA BUT ACROSS THE COUNTRY, FALSE CLAIMING, IT CAN
22 BE -- YOU CAN BE BEAT. WE HAVE SEEN WHERE THEY'VE EVEN
23 GONE IN AND TRIED TO REMOVE THE TATTOO.

24 MS. CAMPBELL: BEG THE COURT'S INDULGENCE.

25 (PAUSE).

1 THANK YOU, SIR.

2 THE COURT: ALL RIGHT. CROSS-EXAMINE?

3 MS. FRANKLIN: THANK YOU, YOUR HONOR. MAY IT PLEASE
4 THE COURT.

5 CROSS-EXAMINATION:

6 BY MS. FRANKLIN

7 Q OKAY. SO YOU'RE ESSENTIALLY A LAW ENFORCEMENT
8 OFFICER, RIGHT?

9 A YES, MA'AM.

10 Q YOU HAVE NEVER TESTIFIED FOR THE DEFENSE?

11 A NO, MA'AM.

12 Q AND YOU HAVE BEEN IN YOUR POSITION FOR HOW LONG NOW?

13 A AS FAR AS BRANCH CHIEF OR WHICH POSITION?

14 Q BEING A GANG PERSON.

15 A I ASSUMED THESE DUTIES IN LATE 1998, EARLY 1999.

16 Q OKAY. AND HOW MANY TATTOOS HAVE YOU TAKEN A LOOK AT?

17 A HAVE I?

18 Q UH-HUH.

19 A THOUSANDS.

20 Q AND HAVE YOU EVER TAKEN ANY PICTURES?

21 A YES, MA'AM.

22 Q AND DO YOU KEEP A PHOTO LOG OF THE TATTOOS THAT YOU
23 HAVE LOOKED AT?

24 A WE HAVE A DATABASE WITH PHOTOS IN THEM, YES, MA'AM.

25 Q AND DO YOU KEEP ANY JOURNALS, DOCUMENT ANY OF THE

1 TATTOOS THAT YOU HAVE SEEN IN YOUR CONCLUSIONS REGARDING
2 THEM?

3 A MYSELF?

4 Q YEAH.

5 A NO, MA'AM.

6 Q AND DO YOU REFER TO ANY FEDERAL DATABASES OR JOURNALS
7 IN BASING YOUR CONCLUSIONS?

8 A YES, MA'AM.

9 Q AND WHICH ONES DO YOU REFER TO?

10 A PRESENTLY, WE ARE INPUTTING INTO THE V.G.T.O.F.
11 FILES, WHICH IS PART OF N.C.I.C.

12 Q I'M SORRY, INTO THE WHAT?

13 A ~~WHICH IS~~, V-G-T-O-F, VIOLENT GANG TERRORIST
14 ORGANIZATION FILE, PART OF N.C.I.C.

15 Q AND YOU'RE INPUTTING THAT INFORMATION INTO THAT
16 DATABASE?

17 A I AM AND MY COWORKERS, YES, MA'AM.

18 Q MY QUESTION IS ARE YOU REFERRING TO ANY OTHER FEDERAL
19 AGENCIES IN DRAWING YOUR CONCLUSIONS, LIKE THE F.B.I.?

20 A THE F.B.I., WE -- I'M ASSIGNED TO THE F.B.I.
21 TERRORIST TASK FORCE, AND THERE'S CONSTANT CONVERSATIONS
22 BETWEEN THEM AND SOME OTHER AGENCIES, YES, MA'AM.

23 Q AND SO HAVE YOU CONSULTED WITH THE F.B.I. REGARDING
24 ANYTHING THAT YOU'RE TESTIFYING ABOUT HERE TODAY?

25 A NO, MA'AM. A LOT OF TIMES THEY'RE CALLING US ASKING

1 FOR INFORMATION.

2 Q THAT'S MY QUESTION. DID YOU TALK TO THE F.B.I.

3 BEFORE YOU --

4 A CONCERNING THIS, NO, MA'AM.

5 Q OKAY. AND DID YOU CONSULT THE BUREAU, FEDERAL BUREAU
6 OF PRISONS, ANY OF THEIR INFORMATION?

7 A I HAVE, YES, MA'AM. I'VE GONE --

8 Q RIGHT. DID YOU DO THAT BEFORE YOU TESTIFIED TODAY?

9 A NOT FOR THIS, NO, MA'AM.

10 Q AND HAVE YOU READ ANY LEGAL CASES, ANY CASE LAW,
11 REGARDING WHAT SOME OF THESE -- WHAT THESE TATTOOS MAY
12 MEAN?

13 A CASE LAW?

14 Q YES.

15 A NO, MA'AM.

16 Q AND YOU HAVE NEVER SPOKEN TO CHRIS ABOUT WHAT HIS
17 TATTOOS MEAN, HAVE YOU?

18 A NO, MA'AM.

19 Q AND DO YOU HAVE ANY TATTOOS?

20 A ME?

21 Q UH-HUH?

22 A YES, MA'AM.

23 Q HOW MANY TATTOOS DO YOU HAVE?

24 A JUST ONE.

25 Q AND WHAT DOES IT MEAN?

1 A IT IS A TATTOO OF AN EAGLE OVERLOOKING THE TWIN
2 TOWERS WHEN THEY WERE BLOWN UP.

3 Q AND ARE YOU AWARE THAT LARRY HUGHES, A FAMOUS N.B.A.
4 STAR HAS A TEARDROP TATTOO?

5 A NO, MA'AM.

6 Q YOU DON'T THINK HE'S A MURDERER, DO YOU?

7 A I WOULDN'T KNOW.

8 Q ARE YOU AWARE THAT DAVID BOWIE, THE ROCK STAR FROM
9 THE 1970S, HAD A TEARDROP TATTOO?

10 A UH-HUH.

11 Q YOU DID KNOW THAT?

12 A NO, I DIDN'T KNOW THAT. IF YOU'RE TELLING ME HE
13 DOES.

14 Q AND ARE YOU AWARE THAT THERE'S SOME RAP STARS OUT
15 THERE RIGHT NOW WHO ALSO HAVE TEARDROP TATTOOS?

16 A YES, MA'AM.

17 Q AND TO THE BEST OF YOUR KNOWLEDGE, HAS ANYONE EVER
18 BEEN CHARGED WITH MURDER BECAUSE THEY HAVE TEARDROP
19 TATTOOS ON THEIR FACE?

20 A NOT THAT I'M AWARE OF.

21 Q AND THAT'S BECAUSE THEY'RE NOT CONFESSIONS TO MURDER,
22 ARE THEY?

23 A IN A TRIAL, PROBABLY NOT, NO, MA'AM.

24 Q SO YOU HAVE BEEN SITTING HERE THROUGHOUT THIS TRIAL,
25 HAVEN'T YOU?

1 A YES, MA'AM.

2 Q AND SO YOU HAVE HEARD FROM THE STATE'S WITNESSES.

3 A YES, MA'AM.

4 Q DO YOU THINK ANY OF THE STATE'S WITNESSES ARE GANG
5 MEMBERS?

6 A FROM THE TESTIMONY I'VE HEARD, THEY'VE ADMITTED SO,
7 YES, MA'AM.

8 Q DO YOU THINK THAT CARL SMITH, POOH, IS A GANG MEMBER?

9 A CARL SMITH?

10 Q UH-HUH, THE FIRST YOUNG MAN WHO TESTIFIED.

11 A OTHER THAN WHAT I'VE HEARD, I CAN'T SAY ONE WAY OR
12 THE ANOTHER. I DON'T KNOW.

13 Q SO YOU DON'T REMEMBER?

14 A NO, MA'AM.

15 Q DO YOU REMEMBER MR. DIEGO THOMPSON?

16 A I BELIEVE SO, YES, MA'AM.

17 Q AND DO YOU BELIEVE HE'S IN A GANG?

18 A LIKE I SAID, IF HE SAID HE WAS, THEN I HAVE TO
19 BELIEVE THAT.

20 Q AND MS. SHANTE BETHEL HAS A TATTOO. DO YOU RECALL
21 HER TESTIFYING TO THAT?

22 A YES, MA'AM.

23 Q DO YOU REMEMBER WHAT HER TATTOO IS?

24 A IT WAS ALSO "B.O.S", I BELIEVE.

25 Q AND AGAIN THAT MEANS WHAT?

1 A BROTHERS OF STRUGGLE.

2 Q OKAY. AND I THINK MS. CAMPBELL ASKED YOU WHETHER OR
3 NOT YOU WERE GETTING PAID ANYTHING IN ADDITION TO
4 TESTIFYING HERE?

5 A YES, MA'AM.

6 Q AND YOU'RE NOT, ARE YOU?

7 A JUST MY S.C.D.C. SALARY.

8 Q BUT YOU'RE PAID. YOU RECEIVE A SALARY.

9 A YES, MA'AM.

10 Q AND YOU'RE STILL GETTING YOUR SALARY EVEN THOUGH
11 YOU'RE HERE IN COURT TESTIFYING?

12 A YES, MA'AM. IT'S PART OF MY DUTIES. I AM TO APPEAR
13 IN COURT WHEN SUBPOENAED.

14 Q AND THIS TATTOO THAT ALLEGEDLY IS ON MY CLIENT'S
15 BACK, THE ONE THAT YOU DREW THE PICTURE OF.

16 A WELL, THIS IS THE ONE THAT'S ON HIS ARM.

17 Q OR ON HIS ARM?

18 A YES, MA'AM.

19 Q YOU DIDN'T TAKE A PICTURE OF THAT, DID YOU?

20 A ON HIS ARM?

21 Q UH-HUH.

22 A NO, MA'AM. I HAVEN'T TAKEN PICTURES OF HIM.

23 Q SO THIS COULD BE INACCURATE?

24 A YES, IT COULD BE.

25 Q AND YOU TESTIFIED TO A TATTOO ON THE RIGHT ARM, THE

1 "M.C.", AND YOU HAVE NO IDEA WHAT THAT MEANS, DO YOU?

2 A NO, MA'AM.

3 Q AND I THINK YOU SAID ABOUT HIS RIGHT HAND, THAT IT
4 APPEARED TO BE A COVER-UP?

5 A YES, MA'AM.

6 Q COULD YOU TELL WHAT WAS UNDERNEATH IT?

7 A NO, MA'AM, NOT IN THE LIGHTING IN THAT ROOM, NO,
8 MA'AM.

9 Q BUT YOU WERE DOWN THERE TO LOOK AT THE TATTOOS,
10 RIGHT?

11 A YES, MA'AM.

12 Q I MEAN, YOU WERE DOWN THERE TO FUNCTION AS AN EXPERT
13 TO MAKE A DETERMINATION ABOUT THESE THINGS, RIGHT?

14 A UNDER THE CONDITIONS I WAS PUT UNDER, THAT IS THE
15 BEST I CAN TELL YOU. THE LIGHTING WAS VERY POOR. I COULD
16 NOT TALK TO HIM. I COULD NOT DO ANYTHING LIKE I NORMALLY
17 WOULD.

18 Q BUT DID YOU ASK FOR BETTER LIGHTING?

19 A NO, MA'AM.

20 Q I MEAN, DID IT APPEAR TO YOU TO LOOK LIKE A PANTHER?

21 A I WASN'T SURE WHAT IT WAS, MA'AM. I DON'T KNOW WHAT
22 IT WAS.

23 Q OKAY. BUT YOU TESTIFIED TO THIS JURY THAT IT
24 APPEARED TO BE A COVER-UP.

25 A JUST FROM MY EXPERIENCE IN LOOKING AT TATTOOS, IT

1 APPEARS TO ME TO BE A COVER-UP.

2 Q BUT YOU DIDN'T GET A GOOD VIEW OF IT?

3 A NO.

4 Q AND YOU CAN'T TELL ME RIGHT NOW WHETHER OR NOT IT
5 ACTUALLY LOOKS LIKE A PANTHER?

6 A NO.

7 Q AND AGAIN, THE D.R.I.C.A. DOWN HIS ARM.

8 A YES, MA'AM.

9 Q AND THAT COULD MEAN ANYTHING ALSO, RIGHT?

10 A YES, MA'AM.

11 Q AND YOU DON'T KNOW?

12 A I'M SORRY?

13 Q AND YOU DON'T KNOW. YOU DON'T KNOW?

14 A NO, MA'AM, I DON'T KNOW.

15 Q AND THE "C-2-C" OR "C.T.C.", YOU SAID YOU THINK IT
16 MEANS COLUMBIA TO CHARLESTON.

17 A THAT'S WHAT WE'RE BEING TOLD THROUGH INTERVIEWS. IT
18 VERY WELL COULD MEAN COLUMBIA TO CHARLESTON AS PART OF
19 THEIR GROUP.

20 Q AND IT COULD MEAN A LOT OF OTHER THINGS, TOO?

21 A YES, MA'AM. IT COULD MEAN ANY NUMBER OF THINGS.

22 Q OKAY. ~~AND REGARDING THE PITCHFORK ON HIS BACK, AND~~
23 ~~YOU REFERRED SPECIFICALLY TO HASH MARKS, YOU TESTIFIED~~
24 ~~THAT THIS COULD MEAN EITHER RANK, OR IT COULD MEAN TWO~~
25 ~~BODIES, RIGHT?~~

1 A IT COULD, YES, MA'AM.

2 Q OKAY. BUT YOU DON'T KNOW.

3 A AS TO WHAT IT MEANS ON HIM SPECIFICALLY?

4 Q YEAH, YOU DON'T KNOW.

5 A WITHOUT INTERVIEWING HIM, WITHOUT CHECKING INTO HIS
6 PAST, I COULDN'T TELL YOU FOR SURE WHAT IT MEANS. I
7 DON'T --

8 Q BUT YOU'RE JUST -- YOU'RE UP HERE SPECULATING ABOUT
9 WHAT THAT TATTOO MEANS, ARE YOU NOT?

10 A BASED ON MY EXPERIENCE, YES, MA'AM.

11 Q AND AGAIN, YOU HAVEN'T ASKED HIM.

12 A RIGHT.

13 Q AND WHEN YOU TESTIFIED TO WHAT THAT TATTOO MEANS, DO
14 YOU HAVE ANY DOCUMENTATION TO SUPPORT THAT AT ALL?

15 A WHICH PART, MA'AM?

16 Q ABOUT THE HASH MARKS, WHETHER IT MEANS RANK OR
17 WHETHER IT MEANS BODY.

18 A NO, MA'AM, I DON'T. THIS IS FROM INTERVIEWS. THIS
19 IS WHAT WE'RE BEING TOLD.

20 Q WELL, FROM INTERVIEWS. SO YOU DON'T HAVE ANYTHING
21 FROM THE FEDERAL BUREAU OF PRISONS SAYING THAT THAT'S WHAT
22 THAT MEANS, DO YOU?

23 A NO, MA'AM.

24 Q AND YOU DON'T HAVE ANY CASE LAW THAT SAYS THAT'S WHAT
25 THAT MEANS, DO YOU?

1 A NO, MA'AM.

2 Q AND THERE ARE A NUMBER OF BOOKS OUT ABOUT GANG
3 TATTOOS THESE DAYS, ARE THERE NOT?

4 A THERE ARE, YES, MA'AM.

5 Q OKAY. AND YOU HAVEN'T BROUGHT IN ANY BOOKS TO
6 SUPPORT YOUR CONCLUSION IN THIS RESPECT?

7 A NO, MA'AM.

8 Q SO IN SHORT, YOU HAVE NO LITERATURE TO SUPPORT THAT
9 CONCLUSION.

10 A NO, MA'AM, NOT WITH ME I DON'T.

11 Q AND THESE TEARDROPS ON HIS FACE, I MEAN THEY'RE
12 DIFFERENT, AREN'T THEY?

13 A YES, MA'AM.

14 Q AND SO ONE MIGHT MEAN THAT HE'S KILLED SOMEBODY
15 RETRIBUTION. THE OTHER ONE MIGHT MEAN THAT HE'S LOST A
16 LOVED ONE, BUT AGAIN, YOU DON'T KNOW.

17 A JUST FROM INTERVIEWS AND KNOWLEDGE OF WORKING GANGS
18 IS WHAT THE MAJORITY OF THEM BELIEVE IT TO MEAN.

19 Q BUT YOU HAVEN'T BROUGHT ANYTHING FROM THE FEDERAL
20 BUREAU OF PRISONS, ANY LITERATURE FROM THE FEDERAL BUREAU
21 OF PRISONS?

22 A NO, MA'AM.

23 Q NO. YOU HAVEN'T BROUGHT ANY LITERATURE FROM THE
24 F.B.I.?

25 A NO, MA'AM.

1 Q YOU HAVEN'T BROUGHT ANY LITERATURE FROM SOME OF THESE
2 BOOKS THAT ARE OUT THERE?

3 A NO, MA'AM.

4 Q SO AGAIN, IT'S CONJECTURE AND SPECULATION, IS IT NOT?

5 A BASED ON EXPERIENCE, YES, MA'AM.

6 Q SO WHEN YOU TESTIFIED THAT THIS CLOSED TATTOO YOU
7 THINK MEANS RETRIBUTION THAT SOMEBODY DIED AND YOU'RE
8 RESPONSIBLE FOR THAT, YOU DON'T HAVE ANYTHING TO SUPPORT
9 THAT, DO YOU?

10 A OTHER THAN EXPERIENCE AND INTERVIEWS --

11 Q OTHER THAN --

12 A AND FELLOW LAW ENFORCEMENT AND TRAINING.

13 Q OKAY. OTHER LAW ENFORCEMENT, AND THEN PEOPLE I THINK
14 YOU SAID YOU SPEAK TO IN PRISON.

15 A YES, MA'AM.

16 Q YES. SO I THINK YOU SAID THAT A LOT OF THESE GANG
17 MEMBERS DON'T REALLY WANT TO TALK TO LAW ENFORCEMENT ABOUT
18 THEIR ACTIVITIES, RIGHT?

19 A A LOT OF TIMES, YES, MA'AM.

20 Q BUT YOU'RE TALKING TO THEM ABOUT THEIR TATTOOS,
21 RIGHT?

22 A YES, MA'AM.

23 Q SO YOU'RE HOPING THAT YOU'RE GETTING ACCURATE
24 INFORMATION ABOUT THE MEANING OF THESE TATTOOS?

25 A YES, MA'AM.

1 Q AREN'T YOU? AND YOU TESTIFIED THAT TO DO A LICK NOW
2 MEANS TO KILL SOMEBODY. YES?

3 A IT COULD MEAN THAT, OR IT COULD BE THAT THEY'VE GONE
4 TO RETRIBUTION FOR THE GANG. ONCE AGAIN, IT COULD MEAN A
5 LOT OF DIFFERENT THINGS.

6 Q IT COULD MEAN A LOT OF THINGS.

7 A DEPENDING ON WHO YOU'RE TALKING TO.

8 Q RIGHT, AND ARE YOU AWARE OF A CASE IN THIS COURTROOM,
9 I THINK MAYBE A YEAR AGO, TWO YEARS AGO, WHERE PEOPLE FROM
10 THAT LAW ENFORCEMENT AGENCY, THE COLUMBIA POLICE
11 DEPARTMENT, PUT AN EXPERT UP HERE TO SAY THAT IT MEANT A
12 ROBBERY?

13 A NO, MA'AM, I'M NOT AWARE OF THAT.

14 Q SO YOU NEVER --

15 A ONCE AGAIN, IT COULD MEAN THAT IT'S A REPRESENTATION
16 OF A GANG, GOING TO REPRESENT THE GANG. WHETHER IT'S A
17 DEATH, A ROBBERY, STEALING A CAR, THEY'RE ON A MISSION.

18 Q SO YOU NEVER HEARD BEFORE THAT TO COMMIT A LICK
19 ACTUALLY MEANS A ROBBERY?

20 A LIKE I JUST SAID, IT COULD MEAN ANYTHING.

21 Q OKAY. IT COULD MEAN ANYTHING. DO YOU RECALL CARL
22 SMITH, POOH, TESTIFYING ON THE STAND THAT IT MEANT TO GET
23 MONEY?

24 A IF YOU SAY THAT'S WHAT HE SAID, YES, MA'AM.

25 Q OKAY. BUT YOU WERE SITTING HERE DURING THE

1 TESTIMONY, WERE YOU NOT?

2 A YES, MA'AM, I WAS HERE.

3 Q AND YOU DON'T RECALL THAT?

4 A NOT SPECIFICALLY, NO.

5 Q AND NOW YOU'RE TESTIFYING TO THIS JURY THAT YOU THINK
6 THAT THAT MEANS THAT HE HAS KILLED SOMEBODY?

7 A I BELIEVE THAT I SAID IT COULD MEAN SEVERAL THINGS, A
8 BODY, ANY NUMBER OF THINGS. THEY ARE DOING A MISSION FOR
9 THE GANG.

10 Q OKAY. SO IT MEANS ANY NUMBER OF THINGS, NONE OF
11 WHICH -- OR YOU DON'T KNOW. AGAIN, YOU'RE SPECULATING,
12 AREN'T YOU?

13 A NO, MA'AM, I DON'T KNOW. I WASN'T THERE.

14 Q BUT YOU'RE HERE TESTIFYING TODAY?

15 A YES, MA'AM.

16 Q SO AGAIN, YOU HAVE BEEN SITTING HERE THROUGHOUT THIS
17 ENTIRE TRIAL, HAVE YOU NOT?

18 A YES, MA'AM.

19 Q AND YOU ARE, IN ESSENCE, A LAW ENFORCEMENT OFFICER,
20 ARE YOU NOT?

21 A YES, MA'AM.

22 Q AND YOU'RE WORKING FOR THE STATE, RIGHT?

23 A I WORK FOR THE STATE, YES, MA'AM.

24 MS. FRANKLIN: AND I HAVE NO FURTHER QUESTIONS AT
25 THIS TIME, YOUR HONOR.

1 THE COURT: ALL RIGHT. REDIRECT?

2 MS. CAMPBELL: YES, SIR.

3 REDIRECT EXAMINATION:

4 BY MS. CAMPBELL

5 Q SHE ASKED YOU SPECIFICALLY -- YOU HAVE BEEN QUALIFIED
6 BEFORE AS AN EXPERT IN THIS AREA.

7 A YES, MA'AM.

8 Q AND WHEN SHE USED THE WORD "SPECULATION", YOU'RE
9 MERELY TELLING THIS JURY WHAT THESE TATTOOS CAN SIGNIFY.

10 A YES, MA'AM.

11 Q IT'S NOT SPECULATION. IT'S BASED ON YOUR DATABASE,
12 OTHER DATABASES, AND THE INFORMATION YOU HAVE GATHERED
13 OVER THE LAST EIGHT YEARS?

14 A YES, MA'AM, AND OTHER LAW ENFORCEMENT AGENCIES, AND
15 INTERVIEWS WITH INMATES WHAT WHO ARE COMING IN, AND ALSO
16 ASSISTING ON THE STREET.

17 Q AND YOU MENTIONED YOU'RE ACTUALLY ASSIGNED TO A
18 FEDERAL TASK FORCE?

19 A YES, MA'AM.

20 Q AND YOU USE THAT AS PART OF YOUR INFORMATION IN
21 COMING TO ANY CONCLUSIONS; IS THAT CORRECT?

22 A YES, MA'AM.

23 Q SHE ASKED YOU ABOUT THE FEDERAL BUREAU OF PRISONS.
24 DO YOU USE THAT INFORMATION TO COME TO YOUR CONCLUSIONS?

25 A YES, MA'AM. WE ASSIST THEM. THEY ASSIST US.

1 Q AND IN FACT, YOU HAVE GONE TO HOW MANY TRAININGS IN
2 THE FIELD OF GANG ACTIVITY INCLUDING THE USE OF TATTOOS,
3 DO YOU KNOW?

4 A I DON'T KNOW HOW MANY IT WOULD HAVE BEEN IN THE TIME
5 THAT I'VE BEEN DOING IT.

6 Q DO YOU ACTUALLY TEACH IN THIS AREA?

7 A YES, MA'AM; YES, MA'AM.

8 Q SO YOUR CONCLUSIONS AND YOUR INFORMATION FOR THIS
9 JURY IS NOT SPECULATION, IS IT?

10 A IT'S BASED ON EXPERIENCE AND WHAT I HAVE GAINED OVER
11 THE YEARS THAT I'VE BEEN IN CHARGE OF WITH THE DEPARTMENT
12 OF CORRECTIONS, YES, MA'AM.

13 Q AND JUST FOR REFERENCE, SHE SAID, "WELL, YOU DIDN'T
14 TALK TO CHRIS LIVERMAN." YOU WEREN'T ALLOWED TO SPEAK TO
15 CHRIS LIVERMAN, WERE YOU?

16 A NO, MA'AM; NO, MA'AM.

17 MS. FRANKLIN: YOUR HONOR, I HAVE AN OBJECTION. I
18 THINK I NEED TO BE HEARD.

19 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
20 GENTLEMEN, STEP OUT TO YOUR JURY ROOM FOR A FEW MINUTES.
21 PLEASE DON'T DISCUSS THE CASE.

22 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
23 12:22 P.M.)

24 THE COURT: ALL RIGHT. MS. FRANKLIN?

25 ~~MS. FRANKLIN:~~ YOUR HONOR, AT THIS POINT ~~THE COURT IS MAKING~~

1 ANOTHER MOTION FOR A MISTRIAL. IT'S AN IMPERMISSIBLE
2 REMARK ON MY CLIENT'S RIGHT TO REMAIN SILENT.

3 LAW ENFORCEMENT WAS DOWN THERE TALKING TO HIM. OF
4 COURSE, HIS ATTORNEY WAS THERE TELLING HIM NOT TO ANSWER
5 ANY QUESTIONS TO THAT.

6 MY QUESTION TO HIM WAS JUST, "DID YOU SPEAK TO HIM
7 ABOUT IT TO DETERMINE WHETHER OR NOT HE HAD ANY PERSONAL
8 KNOWLEDGE." THAT WAS ALL THE POINT OF THAT, AND NOW
9 MS. CAMPBELL HAS JUST ELICITED FROM HIM THE FACT THAT HE
10 EXERCISED HIS RIGHT TO REMAIN SILENT IN FRONT OF A LAW
11 ENFORCEMENT AGENCY.

12 THE COURT: WHAT'S THE DIFFERENCE BETWEEN THAT
13 QUESTION AND THE QUESTION THAT YOU ASKED AND THE RESPONSE
14 THAT WAS GIVEN? WHAT'S THE DIFFERENCE ON THAT?

15 MS. FRANKLIN: WELL, BECAUSE ALL I -- WHAT I WAS
16 TRYING TO DO IS REMARK ON THE FACT THAT HE DID NOT HAVE
17 PERSONAL KNOWLEDGE.

18 THE COURT: RIGHT.

19 MS. FRANKLIN: WHICH I DON'T THINK CAME OUT DURING
20 THE COURSE OF DIRECT, BUT NOW THE STATE IS REMARKING ON MY
21 CLIENT'S RIGHT TO REMAIN SILENT.

22 MS. CAMPBELL: AND JUDGE, I SPECIFICALLY DIDN'T GO
23 INTO IT BECAUSE I DIDN'T WANT TO. SHE IS THE ONE WHO
24 CHOSE TO GO INTO, "YOU DIDN'T EVEN TALK TO HIM, DID YOU,
25 SO YOU HAVE NO KNOWLEDGE."

1 MS. FRANKLIN: WHICH I THINK -- I MEAN, I THINK IT'S
2 LEGITIMATE FOR ME TO GO TO ONE OF THE STATE'S WITNESSES TO
3 DETERMINE THAT THEY DON'T HAVE ANY PERSONAL KNOWLEDGE
4 ABOUT THE TATTOOS THAT THEY'RE NOW TESTIFYING TO, BUT IT
5 IS IMPERMISSIBLE FOR THE STATE TO THEN REMARK ON MY
6 CLIENT'S RIGHT TO REMAIN SILENT, NOT TO INCRIMINATE
7 HIMSELF.

8 THE COURT: ALL RIGHT. HOLD ON ONE SECOND.

9 (PAUSE).

10 FROM MY NOTES AND FROM THE COURT REPORTER'S NOTES,
11 THE QUESTION ASKED ON CROSS-EXAMINATION WAS WHETHER THE
12 WITNESS HAD EVER SPOKEN TO MR. LIVERMAN ABOUT THE MEANING
13 OF THE TATTOOS ON HIS BODY, AND THE RESPONSE TO THAT WAS
14 NO.

15 THEN THE QUESTION BY THE SOLICITOR WAS, YOU WEREN'T
16 ALLOWED TO SPEAK TO THE DEFENDANT. THAT'S NOT COMMENTING
17 ON HIS RIGHT TO REMAIN SILENT. THE STATE IS ENTITLED TO
18 GO TO THAT EXTENT AND NOTHING ELSE, SO THE MOTION FOR A
19 MISTRIAL IS DENIED.

20 ALL RIGHT. BRING THE JURY BACK, PLEASE.

21 NOTHING ELSE ON THAT POINT, SOLICITOR.

22 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
23 APPROXIMATELY 12:27 P.M.)

24 MS. CAMPBELL: YOUR HONOR, MAY WE APPROACH?

25 THE COURT: YES.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

3 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

4 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY CONTINUE.

5 BY MS. CAMPBELL

6 Q THANK YOU, YOUR HONOR.

7 I'M SORRY TO INTERRUPT. WERE YOU ALLOWED TO SPEAK TO
8 THE DEFENDANT?

9 A NO, MA'AM.

10 Q SHE ALSO ASKED YOU IF THIS WAS -- THIS TATTOO WHICH
11 WAS LOCATED ON AN ARM, I BELIEVE.

12 A YES, MA'AM.

13 Q IF THAT WAS A MISREPRESENTATION?

14 A I BELIEVE IT WASN'T EXACT. UNDER THE CONDITIONS THAT
15 I WAS GIVEN TO LOOK AT THE TATTOOS, THERE COULD BE SOME
16 VARIATIONS TO THAT. THAT'S WHAT I WROTE DOWN THAT I SAW.
17 THERE COULD BE SOME CHANGES TO THAT.

18 Q SO YOU WEREN'T MISREPRESENTING ANYTHING TO THE JURY.
19 YOU'RE JUST SAYING THAT'S WHAT YOU OBSERVED.

20 A YES, MA'AM.

21 Q AND YOU HAVE READ BOOKS, ATTENDED SEMINARS?

22 A YES, MA'AM.

23 Q YOU HAVE TRAINING IN THIS FIELD?

24 A YES, MA'AM.

25 Q AND ALL YOUR INFORMATION, YOUR TRAINING, YOUR ACCESS

1 TO THE FEDERAL SYSTEM, ALL OF THAT IS KNOWLEDGE YOU USE IN
2 COMING TO CONCLUSIONS; IS THAT RIGHT?

3 A YES, MA'AM.

4 Q AND IN YOUR EXPERT OPINION HERE TODAY AND YOUR
5 INTERPRETATION OF THESE TATTOOS, THAT'S WHAT IT MEANS?

6 A YES, MA'AM.

7 Q WHAT YOU TESTIFIED TO?

8 A YES, MA'AM.

9 Q AND AGAIN, YOU SAID, LIKE WITH THE TEARDROPS, IT
10 COULD MEAN LIKE AN OPEN TEARDROP, SEVERAL THINGS; IS THAT
11 CORRECT?

12 A YES, MA'AM. WE GET -- IN INTERVIEWING, BOTH ON THE
13 STREET AND INMATES, YOU WILL GET DIFFERENT STORIES
14 DEPENDING ON WHETHER THEY WANT TO COOPERATE OR WHETHER
15 THEY DON'T WANT TO COOPERATE.

16 IN USING THAT INFORMATION, WE WILL ALSO CHECK WITH
17 OUTSIDE LAW ENFORCEMENT TO SEE WHAT THEY'VE HEARD, WHAT DO
18 THEY KNOW. WE DON'T TAKE WHAT WE'RE TOLD AT FACE VALUE A
19 LOT OF TIMES BECAUSE IT CAN MEAN MULTIPLE THINGS.

20 Q AND AS IN THE -- TO GET A -- SOMETHING A LICK, TO DO
21 A LICK?

22 A YES, MA'AM.

23 Q WHAT CAN THAT MEAN?

24 A IT CAN MEAN THAT THEY'VE GONE ON A MISSION. THEY'VE
25 BEEN GIVEN AN ORDER, OR THEY THEMSELVES HAVE DECIDED TO DO

1 SOMETHING. IT COULD BE A MURDER. IT COULD BE STEALING A
2 CAR. IT COULD BE ANY NUMBER OF THINGS, BUT THEY'RE
3 REPRESENTING THEIR GANG.

4 Q AND IT COULD MEAN TO GO TO A SHOOTING?

5 A YES, MA'AM.

6 MS. CAMPBELL: BEG THE COURT'S INDULGENCE.

7 (PAUSE).

8 BEG THE COURT'S INDULGENCE. I APOLOGIZE.

9 (PAUSE).

10 BY MS. CAMPBELL

11 Q FINALLY INVESTIGATOR, DO YOU SEE A MR. WALKER IN THE
12 COURTROOM?

13 A YES, MA'AM.

14 Q AND WHERE IS HE? CAN YOU POINT HIM OUT?

15 A HE'S THE GENTLEMAN SITTING BEHIND THE DEFENDANT.

16 Q THE GENTLEMAN IN THE LIGHT BLUE SHIRT?

17 A YES, MA'AM.

18 Q DOES HE HAVE A WEBSITE?

19 A YES, MA'AM.

20 Q AND WHAT IS HIS WEBSITE CALLED?

21 A GANGSORUS.

22 Q ON THAT WEBSITE, DOES HE TALK ABOUT TATTOOS?

23 A YES, MA'AM.

24 Q AND SPECIFICALLY, DOES HE TALK ABOUT TEARDROPS?

25 A YES, MA'AM.

1 Q AND WHAT DOES HE ON -- MR. WALKER, WHAT DOES HE
2 REPRESENT THOSE TEARDROPS TO MEAN?

3 A I BELIEVE FROM WHAT I WAS LOOKING AT THE OTHER DAY,
4 IT IS ACTUALLY REVERSED FROM WHAT I HAVE ON THERE. THE
5 CLOSED IN TEARDROP REPRESENTS A FAMILY MEMBER; THE OPEN
6 TEARDROP REPRESENTS FAMILY MEMBERS, OR A KILLING.

7 Q A KILLING?

8 A YES, MA'AM.

9 Q AND THAT WOULD INCLUDE A RETALIATION KILLING?

10 A YES, MA'AM.

11 Q BUT HE ALSO ATTRIBUTES DIFFERENT MEANINGS TO THE TWO
12 DIFFERENT COLORED TEARDROPS?

13 A YES, MA'AM.

14 Q JUST LIKE YOU TESTIFIED. THANK YOU.

15 THE COURT: ANY RECROSS?

16 MS. FRANKLIN: YES, YOUR HONOR.

17 RECROSS-EXAMINATION:

18 BY MS. FRANKLIN

19 Q SO WHEN YOU WENT TO MR. WALKER'S WEBSITE, DO YOU
20 RECALL THE EXACT LANGUAGE?

21 A NOT EXACTLY, NO, MA'AM.

22 Q SO YOU DON'T RECALL THAT IT SAID -- SUPPOSED TO MEAN?

23 A SUPPOSED TO MEAN, YES, MA'AM.

24 Q SO YOU REALIZE IT WAS NOT PUT IN THE CATEGORICAL?

25 A NO, MA'AM; NO, MA'AM.

1 Q RIGHT.

2 A NOTHING IS A DEFINITE IN THE GANG BUSINESS.

3 Q ALL RIGHT. SO ALL OF THESE RESOURCES THAT YOU HAVE
4 REFERRED TO FOR PURPOSES OF PREPARING YOUR TESTIMONY FOR
5 TODAY, DO YOU HAVE ANY NOTES FROM ANY OF THESE INTERVIEWS?

6 A WITH ME? NO, MA'AM.

7 Q OR ANY NOTES IN PREPARATION FOR WHAT YOU TESTIFIED
8 TODAY?

9 A NO, MA'AM.

10 Q SO YOU HAVE ANY --

11 A I HAVEN'T TAKEN ANY NOTES ON THIS.

12 Q SO YOU DON'T HAVE ANY DOCUMENTATION?

13 A CONCERNING WHAT?

14 Q CONCERNING YOUR TESTIMONY TODAY.

15 A NO, MA'AM.

16 Q OR CONCERNING ANY OF --

17 A OTHER THAN THE TATTOOS WHERE I WAS ALLOWED TO GO LOOK
18 AT HIS TATTOOS FRIDAY.

19 Q AND SO THAT'S THE ONLY THING THAT YOU HAVE BROUGHT
20 INTO COURT BY WAY OF SUBSTANTIATING WHAT YOU TESTIFIED TO
21 HERE TODAY?

22 A I HAVE OTHER THINGS IN THAT FILE THAT I BROUGHT HERE,
23 YES, MA'AM, BUT I'M NOT SUPPOSED TO TALK ABOUT.

24 MS. FRANKLIN: OKAY. NO FURTHER QUESTIONS, YOUR
25 HONOR.

1 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE
2 STATE?

3 MS. CAMPBELL: NO, SIR.

4 THE COURT: SIR, YOU MAY STEP DOWN.

5 MS. CAMPBELL: THE STATE CALLS OFFICER MAHONEY.

6 WALTER MAHONEY, AFTER BEING DULY
7 SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
9 FOR THE RECORD.

10 THE WITNESS: MY NAME IS WALTER R. MAHONEY.

11 DIRECT EXAMINATION:

12 BY MS. CAMPBELL

13 Q WALTER MAHONEY?

14 A YES, MA'AM.

15 Q WHERE ARE YOU EMPLOYED?

16 A COLUMBIA POLICE DEPARTMENT.

17 Q OKAY. YOU HAVE TO BACK OFF OF IT JUST A LITTLE.

18 A OKAY.

19 Q WHERE ARE YOU EMPLOYED?

20 A COLUMBIA POLICE DEPARTMENT.

21 Q AND WHAT DO YOU DO THERE, SIR?

22 A I WORK WITH THE GANG TASK FORCE.

23 Q AND CAN YOU TELL THIS JURY A LITTLE BIT ABOUT THE
24 GANG TASK FORCE AND WHAT ITS PURPOSES IS?

25 A THE GANG TASK FORCE IN THE COLUMBIA POLICE DEPARTMENT

1 STARTED ABOUT TWO YEARS AGO TO MONITOR THE GANG ACTIVITY
2 IN THE CITY OF COLUMBIA BECAUSE THE GANGS WERE GETTING OUT
3 OF HAND.

4 Q AND HAVE YOU HAD ANY TRAINING IN THE AREA OF GANG
5 ACTIVITY?

6 A YES, I HAVE. BACK IN 1995 AND 1996, I'VE BEEN
7 TRACKING THESE GANGBANGERS FOR TEN YEARS. BACK IN THE
8 YEAR 2000, I DID AN INTERVIEW WITH MATTHEW GORSKI
9 (PHONETIC), THE STATE NEWSPAPER, AS FAR AS THE GANG
10 ACTIVITY IN THE CITY OF COLUMBIA. I'VE BEEN TO NUMEROUS
11 CONFERENCES, AND I'VE WORKED WITH THE F.B.I. AND D.E.A. OF
12 THESE GANG MEMBERS.

13 Q SO YOU'RE ACTUALLY AFFILIATED WITH THE F.B.I. AND THE
14 D.E.A. IN HELPING THEM --

15 A I'VE WORKED -- I'VE WORKED WITH THEM. I JUST WORK
16 WITH THEM, SEVERAL AGENCIES ASSISTING THEM.

17 Q OKAY. ASSISTING AGENCIES AS FAR AS GANG WORK?

18 A YES, MA'AM.

19 Q AND ARE YOU AWARE OF HOW LONG THE GANG ACTIVITY HAS
20 BEEN PRESENT IN COLUMBIA?

21 A SINCE '95, '96, PROBABLY A LITTLE BIT BEFORE THAT,
22 BUT I WOULD SAY, YES, PRIOR TO THAT TIME.

23 Q AND YOU ARE CURRENTLY ASSIGNED TO THE GANG TASK
24 FORCE?

25 A YES, MA'AM.

1 Q AND DURING THE COURSE OF YOUR LAW ENFORCEMENT CAREER,
2 HAVE YOU GAINED SPECIFIC KNOWLEDGE ABOUT GANGS, GANG
3 ACTIVITY AND GANG TATTOOS?

4 A YES, MA'AM, I HAVE.

5 Q AND YOU MENTIONED YOU HAD SOME TRAINING, AND YOU ALSO
6 HAVE KNOWLEDGE ON THE STREET?

7 A YES, MA'AM. I'VE BEEN A COP FOR 14 YEARS IN THE CITY
8 OF COLUMBIA.

9 Q YOUR HONOR, AT THIS TIME WE'D OFFER HIM AS AN EXPERT
10 IN GANG ACTIVITY.

11 THE COURT: ANY OBJECTION TO CROSS-EXAMINATION OR
12 QUALIFICATIONS?

13 MR. SHARDT: YOUR HONOR, JUST A CONTINUING OBJECTION.

14 THE COURT: I CAN'T HEAR YOU.

15 MR. SHARDT: YOUR HONOR, JUST THE CONTINUING
16 OBJECTION.

17 THE COURT: ALL RIGHT. OVERRULED. I FIND HIM TO BE
18 QUALIFIED IN THE FIELD OF GANG ACTIVITY AND -- GANG
19 ACTIVITY.

20 GO AHEAD.

21 BY MS. CAMPBELL

22 Q THANK YOU, YOUR HONOR.

23 OFFICER, I WANT TO FIRST TALK ABOUT THE GANG ACTIVITY
24 HERE IN THE COLUMBIA AREA. ARE YOU FAMILIAR WITH THE FOLK
25 NATION?

1 A YES, MA'AM, I AM.

2 Q AND DO THEY HAVE A GROUP THEY CONSIDER A RIVAL GROUP,
3 FOR THE MOST PART?

4 A BLOODS.

5 Q ARE YOU FAMILIAR WITH THE BETHEL BISHOP APARTMENT
6 COMPLEX?

7 A BETHEL BISHOP APARTMENT COMPLEX IS CALLED BEDROCK OR
8 THE BIG SIX NOW.

9 Q OKAY. EXCUSE ME. BEDROCK?

10 A OR THE BIG SIX. IT'S TOTAL FOLK NATION TERRITORY.

11 Q AND THE COLONY APARTMENTS WHICH ARE RIGHT ADJACENT TO
12 IT, WHAT IS --

13 A THAT'S ALSO FOLK NATION.

14 Q ARE YOU FAMILIAR WITH THE T.S. MARTIN AREA?

15 A THAT'S BLOOD TERRITORY.

16 Q AND EXPLAIN TO THIS JURY HOW THE TERRITORIES ARE SET
17 UP.

18 A THE TERRITORIES ARE SET UP BY THE TRAIN TRACKS
19 BETWEEN THE BETHEL BISHOP AREA GOING ACROSS BELTLINE.
20 IT'S FOLK NATION ON ONE SIDE AND JUMPS TO BLOODS ON THE
21 OTHER SIDE. BELVEDERE AND T.S. MARTIN ARE BLOOD
22 TERRITORY.

23 Q AND YOU MENTIONED THAT T.S. MARTIN IS MORE OF A BLOOD
24 AREA; IS THAT CORRECT?

25 A YES, MA'AM.

1 Q WHEN A GANG MEMBER PUTS ON A FLAG --

2 A YES, MA'AM.

3 Q -- DO YOU KNOW WHAT THAT MEANS? AND GOES INTO AN
4 AREA KNOWN TO BE A BLOOD AREA, WHAT IS THE PURPOSE OF
5 PUTTING ON A FLAG AND GOING INTO THAT AREA?

6 A PUTTING ON THE FLAG MEANS HE'S REPRESENTING HIS SET,
7 AND HE'S LETTING THE OTHER RIVAL GANG MEMBERS KNOW THAT
8 HE'S FROM THE OPPOSING GANG.

9 Q AND WHY WOULD HE BE GOING INTO A KNOWN BLOOD AREA?

10 A HE'S GOING THERE TO DO SOMETHING. HE'S GOING THERE
11 TO DO SOMETHING.

12 Q ARE YOU FAMILIAR WITH THE TERM "SLOBS"?

13 A YES, MA'AM.

14 Q WHAT DOES IT MEAN?

15 A DISRESPECT FOR THE BLOODS. IT'S JUST BLOODS FLIPPED
16 BACKWARDS, THE WAY THEY WOULD SPELL IT.

17 Q AND IS THERE A -- WITHIN THE FOLK NATION, IS THERE
18 WHAT'S CALLED SETS?

19 A YES, MA'AM.

20 Q AND EXPLAIN THAT TO THE JURY. WHAT'S A SET?

21 A FOLK NATION COMES UNDER 74-GD-9, GANGSTER DISCIPLES,
22 BUT THERE'S DIFFERENT SUBSETS IN THAT ORGANIZATION.

23 Q ARE YOU FAMILIAR WITH THE TERM "SET STRIKE KING ONE
24 AND TWO"?

25 A FROM THE INFORMATION WE'RE GETTING, AND THAT'S BEEN

1 THE LAST COUPLE OF YEARS WITH THAT SITUATION, AS FAR AS
2 THE STRIKE KING GANGBANG, HERE AGAIN, IT MEANS THAT
3 THEY'VE DONE SOMETHING OR THERE'S A POSSIBILITY OF BEING
4 BODIES ON THAT TERMINOLOGY.

5 ~~MR. SHARDT:~~ OBJECTION, YOUR HONOR. WE'D LIKE TO
6 RENEW OUR PREVIOUS OBJECTIONS.

7 THE COURT: SAME BASIS?

8 ~~MR. SHARDT:~~ YES, SIR.

9 THE COURT: OVERRULED. ALL RIGHT.

10 BY MS. CAMPBELL

11 Q I WANT TO TURN YOUR ATTENTION, DID YOU HAVE AN
12 OCCASION LAST WEEK HERE IN THIS COURTHOUSE TO OBSERVE SOME
13 TATTOOS ON THE DEFENDANT'S BODY?

14 A YES, MA'AM.

15 Q AND WERE YOU ABLE TO ACTUALLY SEE THE TATTOOS ON HIS
16 LEGS?

17 A NO, MA'AM.

18 Q OKAY.

19 A WE DID NOT SEE ANY TATTOOS ON HIS LEGS.

20 Q OKAY. I WANT TO THEN TALK ABOUT -- COULD YOU SEE
21 WHETHER OR NOT HE MAY HAVE HAD A TATTOO ON HIS LEG OR WHAT
22 WAS THAT?

23 A IT WAS HARD TO TELL. THE LIGHTING WAS BAD.

24 Q OKAY. DID YOU OBSERVE SOME TATTOOS ON HIS CHEST?

25 A YES, MA'AM.

1 Q I'M SHOWING YOU STATE'S EXHIBIT 69. DO YOU RECOGNIZE
2 THAT?

3 A YES, MA'AM.

4 Q AND DID YOU OBSERVE THOSE TATTOOS LAST WEEK?

5 A YES, MA'AM.

6 Q AND WHAT DO THOSE LETTERS SYMBOLIZE?

7 A "B.O.S." MEANS BROTHERS OF STRUGGLE, "S.O.S." MEANS
8 SISTERS OF STRUGGLE, ALL PART OF FOLK NATION.

9 Q DID YOU HAVE AN OPPORTUNITY TO OBSERVE HIS ARMS, AS
10 WELL?

11 A YES, MA'AM.

12 Q DID YOU NOTICE ANY TATTOOS OF SIGNIFICANCE ON HIS
13 ARMS?

14 A YES, I DID.

15 Q AND WHAT WERE THOSE? YOU'RE REFERRING TO YOUR NOTES
16 NOW?

17 A YES, MA'AM.

18 Q OKAY.

19 A OKAY. ON HIS RIGHT UPPER ARM, THERE WAS THE
20 PITCHFORK WITH THE TWO DOTS AND THE STAR RIGHT THERE, THE
21 SIX-POINTED STAR. FOLK NATION MEMBERS WEAR THAT TO
22 RESPECT DAVID BARKSDALE WHO STARTED THE FOLK NATION GROUP
23 UP IN CHICAGO.

24 Q OKAY. AND SO WHAT DOES THAT TATTOO MEAN TO YOU IN
25 YOUR EXPERT OPINION?

1 A THAT TATTOO MEANS HE'S A GANG MEMBER. YOU DON'T WEAR
2 THAT UNLESS YOU'RE A GANG MEMBER.

3 Q DID YOU OBSERVE ANY OTHER TATTOOS ON HIS ARMS OR HIS
4 HANDS?

5 A YES, MA'AM. ON HIS RIGHT FOREARM, HE HAD M.C. I
6 CAN'T TELL YOU WHAT THAT IS.

7 Q UH-HUH.

8 A THE LEFT UPPER ARM HE HAD THE WORD "DRICA",
9 D-R-I-C-A. I CAN'T TELL YOU WHAT THAT IS.

10 NOW, THE UPPER LEFT ARM ON THE INSIDE FOREARM HE HAD
11 C-2-C. FROM THE INFORMATION THAT WE GET ON THE STREET AND
12 FROM WHAT I'M BEING TOLD, AND I'VE TALKED TO FOLK -- I
13 MEAN O.G.'S AND SET KINGS.

14 Q IS THAT PART OF THE BASIS --

15 A RIGHT, IT'S --

16 Q -- AS WELL AS YOUR EXPERT OPINION?

17 A IT COULD BE, YES, MA'AM, COLUMBIA TO CHARLESTON.

18 NOW, HE ALSO HAD ON HIS RIGHT HAND WHAT LOOKED LIKE A
19 COVERED UP TATTOO.

20 Q WHAT DOES THAT MEAN?

21 A IT MEANS THAT IF A PERSON HAS A TATTOO, A GANG
22 MEMBER, ESPECIALLY, IF THEY WANT TO COVER SOMETHING UP,
23 THEN THEY WILL PUT ANOTHER TATTOO OVER THAT.

24 Q OKAY. DID YOU HAVE AN OPPORTUNITY TO OBSERVE A
25 BRAND, ACTUALLY, ON HIS BACK?

1 A YES, MA'AM.

2 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 68. DO YOU
3 RECOGNIZE THAT?

4 A YES, MA'AM.

5 Q AND IS THAT SIGNIFICANT?

6 A YES, MA'AM.

7 Q FOR --

8 A THE BRAND IS A PITCHFORK WITH AN UPSIDE DOWN FIVE.
9 THAT'S WHAT IT LOOKED LIKE TO ME, OKAY. IF IT'S AN UPSIDE
10 DOWN FIVE, HE'S DISRESPECTING THE BLOODS BECAUSE THE
11 BLOODS ARE PEOPLE NATION, HIM BEING FOLK NATION.

12 Q AND FIVE IS A NUMBER THAT'S ASSOCIATED WITH THE
13 BLOODS?

14 A YES, MA'AM.

15 Q THE SIX, THAT'S A SIX POINT -- OR SUPPOSED TO BE A
16 SIX-POINT STAR.

17 A THAT'S A SIX-POINT STAR. THE BLOODS USE A
18 FIVE-POINTED STAR.

19 Q DID YOU ALSO NOTICE SOME HASH MARKS NEAR THE TATTOOS?

20 A YES, MA'AM, THAT'S --

21 Q IS THAT --

22 A THAT'S THE HASH MARKS ACROSS A STRIKER. THE STRIKER
23 SET THING WHERE HE COULD POSSIBLY -- IT COULD MEAN A LOT
24 OF THINGS. IT COULD MEAN BODIES. IT COULD MEAN OTHER
25 THINGS.

1 Q AND WHAT ARE SOME OF THE OTHER THINGS IT COULD MEAN,
2 AS WELL?

3 A IT COULD MEAN AS FAR AS HIM ROBBING SOMEBODY, AS FAR
4 AS HIM BREAKING INTO VEHICLES OR WHATEVER. IT COULD MEAN
5 A LOT OF DIFFERENT THINGS BECAUSE LIKE I SAID, IN SOUTH
6 CAROLINA, THIS IS THE LAST COUPLE OF YEARS THAT STRIKER
7 THING HAS BEEN COMING. IT'S BEEN FAIRLY NEW.

8 Q BUT IT WOULD BE SOMETHING HE DID ON BEHALF OF THE
9 GANG --

10 A YES, MA'AM.

11 Q -- SUCH AS A --

12 A YES, MA'AM.

13 Q -- MURDER --

14 A YES, MA'AM.

15 THE COURT REPORTER: I'M SORRY, YOUR HONOR.

16 THE WITNESS: I'M SORRY, YES, MA'AM.

17 THE COURT: HOLD ON.

18 THE WITNESS: OH I'M SORRY.

19 THE COURT: JUST SLOW UP A BIT.

20 THE WITNESS: OKAY.

21 THE COURT REPORTER: AND THEY'RE TALKING OVER EACH
22 OTHER.

23 THE COURT: ALL RIGHT.

24 THE WITNESS: OKAY.

25 MS. CAMPBELL: SORRY.

1 THE WITNESS: SORRY.

2 BY MS. CAMPBELL

3 Q DID YOU ALSO OBSERVE A TATTOO, I BELIEVE ON HIS NECK?

4 A YES, MA'AM. WE BELIEVE THAT'S THE DEBORAH PALMER
5 TATTOO COULD BE HIS MOTHER.

6 Q THAT'S HER NAME?

7 A YES, MA'AM.

8 Q STATE'S EXHIBIT 70, DO YOU RECOGNIZE THAT?

9 A YES, MA'AM, I DO, 424. THAT'S IN THE FOLK NATION
10 CODE. THAT MEANS DEATH BEFORE DISHONOR.

11 Q AND FINALLY, STATE'S EXHIBIT NUMBER 71, I BELIEVE.

12 A YES, MA'AM.

13 Q WHAT DOES THAT SHOW?

14 A THE TEARDROPS. THE OPEN TEARDROP COULD REPRESENT A
15 LOST SOLDIER OR SOMEBODY THAT COULD BE AN INNOCENT. THE
16 CLOSED TEARDROP IS A BODY.

17 Q SO THE OPEN TEARDROP COULD MEAN, IN YOUR EXPERT
18 OPINION?

19 A IT COULD BE SOMEBODY HE LOST IN -- LIKE ONE OF HIS
20 FELLOW SOLDIERS HE LOST, OR IT COULD BE --

21 Q YOU SAY A FELLOW SOLDIER. THAT WOULD BE A FELLOW
22 GANG MEMBER?

23 A A FELLOW GANG MEMBER, YES. A FELLOW GANG MEMBER, OR
24 IT COULD BE SOME INNOCENT PERSON THAT MIGHT HAVE BEEN
25 TAKEN OUT BY MISTAKE. THE CLOSED TEARDROP IS THE BODY.

1 HE IS A GANG MEMBER THAT TOOK SOMEBODY OUT.

2 Q ARE YOU FAMILIAR WITH THE TERM "GOING TO DO A LICK"?

3 A YES, MA'AM. THAT'S A VIOLENT ACT FOR A GANG. THAT
4 MEANS -- IT COULD BE ANYTHING. BASICALLY, IT COULD BE
5 THAT THEY'RE RIDING ON SOMEBODY. WHEN THEY'RE GOING TO DO
6 A LICK, THEY'RE RIDING ON SOMEBODY. WHEN THE BLOODS GO TO
7 DO THEIR DRIVE BYS, IT'S CALLED "PUTTING IN WORK".

8 Q ARE YOU FAMILIAR WITH THE TERM "FALSE CLAIMING" --

9 A YES, MA'AM.

10 Q -- IN TATTOOS?

11 A YES, MA'AM, I AM.

12 Q WOULD THERE BE ANY RAMIFICATIONS IF A PERSON JUST PUT
13 TEARDROPS ON HIS FACE AND HE DIDN'T HAVE ANYTHING TO BACK
14 IT?

15 A IF THERE -- IF THIS PERSON HAS THOSE KIND OF TATTOOS
16 ON HIM, OKAY, WHETHER HE'S IN THE STREET, INCARCERATED OR
17 WHATEVER, HE HAS GOT A PROBLEM. THEY HAD A SIMILAR
18 SITUATION UP IN UTICA, NEW YORK WITH A BLOOD THAT DID THAT
19 TWO YEARS AGO. THEY STUCK AN ICE PICK IN HIS EAR. IT
20 KILLED HIM.

21 Q AND THAT'S BECAUSE HE FALSE CLAIMED?

22 A IT WAS BECAUSE HE WAS FALSE CLAIMING, YES.

23 MR. SHARDT: YOUR HONOR, WE'RE GOING TO OBJECT AT
24 THIS TIME.

25 MS. CAMPBELL: I'LL MOVE ON.

1 THE COURT: WELL, I OVERRULE.

2 MOVE ALONG, SOLICITOR.

3 BY MS. CAMPBELL

4 Q I AM, YOUR HONOR. I'M ALMOST THROUGH.

5 HOW DO YOU GANG RANK?

6 A THEY GIVE YOU -- AS FAR AS WHEN YOU COME IN, WHEN YOU
7 PERFORM THOSE DUTIES TO THE BEST OF YOUR ABILITY, IF YOU
8 DON'T PERFORM THOSE DUTIES, WHETHER IT'S CAR JACKING,
9 WHETHER IT'S PURSE SNATCHING, WHATEVER THEY WANT YOU TO
10 DO, IF YOU DON'T DO IT, YOU HAVE A PROBLEM.

11 MS. CAMPBELL: THANK YOU, SIR.

12 THE WITNESS: YES, MA'AM.

13 MS. CAMPBELL: PLEASE ANSWER ANY QUESTIONS THE
14 DEFENSE MAY HAVE.

15 THE COURT: ALL RIGHT. MR. SCHARDT?

16 MR. SHARDT: THANK YOU, YOUR HONOR. MAY IT PLEASE
17 THE COURT.

18 CROSS-EXAMINATION:

19 BY MR. SHARDT

20 Q GOOD MORNING.

21 A GOOD MORNING.

22 Q OFFICER, YOU'RE WITH THE COLUMBIA POLICE DEPARTMENT?

23 A YES, SIR.

24 Q ~~YOU'RE IN GANG INTELLIGENCE?~~

25 A YES, SIR, ~~GANG TASK FORCE.~~

- 1 Q GANG TASK FORCE. THOMAS O'BRIEN WILLIAMS.
- 2 A O.B., I KNOW O.B.
- 3 Q O.B. HE'S IN A GANG?
- 4 A YES, HE IS, FOLK NATION.
- 5 Q HE'S THE LEADER.
- 6 A HE'S THE LEADER, HE'S AN O.G.
- 7 Q YOU'RE AWARE THAT HE HAS BEEN INCARCERATED?
- 8 A HE'S OUT.
- 9 Q YOU'RE AWARE THAT --
- 10 A HE WAS INCARCERATED, YES, HE WAS, UP IN KERSHAW
- 11 COUNTY.
- 12 Q SO HE WAS IN THE DETENTION CENTER?
- 13 A RIGHT.
- 14 Q AT KERSHAW COUNTY?
- 15 A YES, HE WAS.
- 16 Q NOW, YOU HAVE TESTIFIED TO WHAT SOME OF THE THESE
- 17 TATTOOS COULD MEAN.
- 18 A YES, SIR.
- 19 Q YOU SAID THAT -- AND YOU HAD AN OPPORTUNITY TO VIEW
- 20 THESE.
- 21 A YES, SIR.
- 22 Q OKAY. YOU SAID THAT CHRIS HAS A "C-2-C"?
- 23 A C.T.C.
- 24 Q C.T.C.?
- 25 A RIGHT.

1 Q OKAY. SO I BELIEVE IN DIRECT YOU JUST SAID C-2-C.
2 A NO, I MEAN C.T.C. ON HIS ARM.
3 Q OKAY.
4 A CHARLESTON TO COLUMBIA, C.T.C.
5 Q SO C-2-C AND C.T.C. COULD MEAN THE SAME THING?
6 A NO. IT'S C.T.C. IF I SAID "TWO", IT WAS SUPPOSED TO
7 HAVE BEEN A "C.T.C."
8 THE PICTURES ARE RIGHT HERE. THERE YOU GO.
9 Q AND YOU'VE HAD AN OPPORTUNITY TO VIEW THIS PICTURE?
10 A YES, SIR.
11 Q OF THE BRAND --
12 A YES, SIR.
13 Q -- MY CLIENT'S BACK? AND YOUR TESTIMONY IS THAT IT'S
14 AN UPSIDE DOWN FIVE?
15 A LOOKS LIKE AN UPSIDE DOWN FIVE, YES.
16 Q IT LOOKS LIKE AN UPSIDE DOWN FIVE.
17 A YES, SIR.
18 Q OKAY. AND YOUR TESTIMONY WOULD BE -- IS THAT WOULD
19 BE A DISRESPECT TO BLOODS?
20 A YES, SIR.
21 Q AND IF IT WERE NOT AN UPSIDE DOWN FIVE, IF IT WERE
22 JUST A MARK, IT WOULD MEAN NOTHING, CORRECT?
23 A IT'S STILL A GANG TATTOO.
24 Q BUT IT -- IF THERE'S NOT, IN FACT, AN UPSIDE DOWN
25 FIVE ON HIS BACK --

1 A WELL, THAT'S WHAT IT LOOKED LIKE.

2 Q -- IT WOULD NEGATE EVERYTHING YOU JUST SAID.

3 A IT'S STILL A GANG TATTOO, SIR.

4 Q RIGHT. I'M SPEAKING TO THE UPSIDE DOWN FIVE.

5 A OKAY.

6 Q OKAY. AND YOUR TESTIMONY --

7 A RIGHT, THE FIVE WAS --

8 THE COURT REPORTER: I'M SORRY.

9 THE COURT: HOLD ON.

10 THE WITNESS: I'M SORRY.

11 THE COURT: DON'T TALK OVER ONE ANOTHER. SHE CAN

12 ONLY GET ONE OF YOU AT A TIME.

13 BY MR. SHARDT

14 Q AND YOUR TESTIMONY IS THAT YOU SEE AN UPSIDE FIVE IN

15 THIS PICTURE?

16 A YES.

17 Q A "LICK" CAN MEAN ANY NUMBER OF THINGS?

18 A IT'S A VIOLENT ACT AS FAR AS FOLK NATION MEMBERS ARE

19 CONCERNED, YES, IT COULD BE.

20 Q IT --

21 A A "LICK" COULD MEAN A NUMBER OF THINGS. IT COULD --

22 Q A LICK COULD MEAN A NUMBER OF THINGS.

23 A IT COULD MEAN A NUMBER OF THINGS.

24 Q AND PEOPLE WHO ARE IN GANGS AND PEOPLE WHO ARE NOT IN

25 GANGS USE THE TERM "LICK".

1 A OKAY, IF YOU SAY SO.

2 Q I'M ASKING YOU.

3 A I GUESS.

4 Q I'M NOT TRYING TO -- YOU'RE THE EXPERT.

5 A YEAH.

6 Q PEOPLE THAT ARE NOT IN GANGS USE THE TERM "LICK".

7 A OKAY.

8 Q IT WOULDN'T NECESSARILY BE A VIOLENT ACT. IT COULD
9 MEAN ANYTHING.

10 A IT DEPENDS ON WHO IS USING IT.

11 Q OKAY. AND IT -- IN THOSE TWO LINES, THEY COULD MEAN
12 A NUMBER OF THINGS.

13 A LIKE I SAID, THE LAST COUPLE OF YEARS WE'VE SEEN THAT
14 STRIKE OR TWO THING. IT COULD MEAN SOME THINGS. ONE OF
15 THEM COULD BE THE FACT OF SOMEBODY HAVING A BODY ON THEM
16 OR COMMITTING A MURDER, SOMETHING ELSE THAT --

17 Q ONE OF THEM COULD MEAN THAT.

18 A COULD BE, YES, IT COULD.

19 Q AND TEARDROP TATTOOS COULD MEAN MANY DIFFERENT
20 THINGS.

21 A THE CLOSED TEARDROP MEANS YOU HAVE A BODY ON YOU,
22 OKAY. NOW, LET ME EXPLAIN, OKAY. LIKE I SAID BEFORE, THE
23 OPEN TEARDROP MEANS A LOST SOLDIER, ON THE INFORMATION
24 WE'RE GETTING ON THE STREET, OKAY.

25 I JUST DON'T TALK TO FOOT SOLDIERS. I TALK TO O.G.'S

1 ~~AND-SET-KINGS~~. THEY ALL KNOW ME, AND I'M TELLING YOU WHAT
2 THEY'RE SAYING. THE CITY WHERE I'M FROM, THAT MEANS THE
3 SAME THING, BUT IN THIS SITUATION, THAT'S WHAT IT MEANS AS
4 FAR AS MY EXPERIENCE IS CONCERNED.

5 Q AS FAR AS YOUR EXPERIENCE.

6 A YES.

7 Q OKAY. AND DID YOU BRING ANY NOTES OF ANY OF THESE
8 CONVERSATIONS YOU'VE HAD WITH THESE INDIVIDUALS?

9 A I DON'T -- NO, I DON'T. I DON'T HAVE THEM.

10 Q SO THERE IS NO DOCUMENTATION?

11 A NO, THERE ISN'T.

12 Q OKAY. AND YOU WOULD ACKNOWLEDGE THAT SOME PEOPLE
13 TEND TO BE EVASIVE.

14 A SOME DO.

15 Q THAT YOU HAVE TALKED TO.

16 A SOME DO.

17 MR. SHARDT: BEG THE COURT'S INDULGENCE.

18 (PAUSE).

19 I HAVE NO FURTHER QUESTIONS OF THIS WITNESS, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT. ANY REDIRECT?

22 MS. CAMPBELL: NO, SIR.

23 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

24 SOLICITOR, WE'RE AT A GOOD BREAKING POINT. WE'LL GO
25 AHEAD AND BREAK FOR LUNCH UNLESS YOU HAVE A SHORT, SHORT

1 WITNESS. WE'RE AT TEN TO ONE.

2 MR. GIESE: WE CAN BREAK.

3 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
4 GENTLEMEN, WE WILL BREAK FOR LUNCH. AGAIN, DON'T DISCUSS
5 THE CASE WITH ANYONE. WE'LL START BACK AT 2:15. IF
6 YOU'LL PLEASE BE IN YOUR JURY ROOM AT 2:15. HAVE A GOOD
7 LUNCH. WE'LL SEE YOU AT THAT TIME.

8 EVERYONE ELSE STAY SEATED.

9 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
10 12:51 P.M.)

11 THE COURT: WE'LL BREAK UNTIL 2:15.

12 LET ME SEE COUNSEL UP HERE.

13 MS. FRANKLIN: YOUR HONOR, I WOULD LIKE TO PUT A
14 COUPLE OF OBJECTIONS ON THE RECORD.

15 THE COURT: OKAY. LET'S GO AHEAD. LET'S GO AHEAD
16 AND DO THAT.

17 MS. FRANKLIN: IF I MAY DO THAT VERY BRIEFLY.

18 THE COURT: LET'S GO AHEAD.

19 HAVE A SEAT, PLEASE. WE'RE STILL ON THE RECORD.
20 HAVE A SEAT, PLEASE.

21 ALL RIGHT. GO AHEAD, MS. FRANKLIN.

22 MS. FRANKLIN: I MEAN, AT THIS POINT, AGAIN, I'M
23 GOING TO MOVE FOR A MISTRIAL BASED ON OFFICER MAHONEY'S
24 TESTIMONY. THE REMARK ABOUT ICE PICKS IN EARS, THE
25 TESTIMONY ABOUT HOW THESE STRIKES ON THE BACK MEAN OTHER

1 THINGS LIKE CAR JACKINGS AND AUTO BREAKINGS AND THOSE
2 SORTS OF THINGS, IT'S JUST IMPUTING A WHOLE LOT OF OTHER
3 BAD ACTS INTO THIS TRIAL.

4 IT'S COMPLETELY IRRELEVANT TO THE MOTIVE THAT THE
5 STATE INITIALLY TOLD YOUR HONOR THAT THEY WERE GOING TO BE
6 USING THIS INFORMATION FOR.

7 I THINK I MADE THIS ARGUMENT AT THE BEGINNING OF THIS
8 TRIAL, THAT I FEEL LIKE THIS TESTIMONY IS CHARACTER
9 ASSASSINATION. I THINK IT'S PROPENSITY EVIDENCE,
10 CHARACTER PROPENSITY EVIDENCE, THEY'RE MOVING IN AT THIS
11 POINT.

12 CERTAINLY IN LIGHT OF MR. -- OFFICER MAHONEY'S
13 TESTIMONY ABOUT ALL THESE OTHER CRIMES, ALL OF THESE OTHER
14 VIOLENT ACTS THAT WERE COMPLETELY IRRELEVANT TO THE CASE
15 THAT WE'RE HERE TO TRY, YOUR HONOR, I THINK IT'S
16 EXCEEDINGLY PREJUDICIAL. I THINK IT'S UNDULY PREJUDICIAL.

17 I THINK THAT THE ONLY WAY TO CURE IT AT THIS POINT IS
18 A MISTRIAL, AND I'M RENEWING MY MOTION FOR A MISTRIAL AT
19 THIS POINT.

20 THE COURT: ALL RIGHT. SOLICITOR?

21 MS. CAMPBELL: MAY IT PLEASE THE COURT, YOUR HONOR.
22 I THINK THAT SHE ELICITED IN CROSS-EXAMINATION OF
23 INVESTIGATOR O'CAIN THAT THE SLASH MARKS COULD MEAN OTHER
24 THINGS.

25 I THINK WE HAVE TRIED TO LIMIT OUR EXAMINATION TO

1 RELEVANT TO HERE. SHE BROUGHT OUT ALL THE OTHER THINGS IT
2 COULD MEAN. ONCE THAT WAS BROUGHT OUT, YOUR HONOR, I
3 DON'T THINK WE'RE TRYING TO SHOW THAT HE HAD ANY
4 PROPENSITY TO COMMIT ANY KIND OF ACT OR ANYTHING OF THAT
5 NATURE.

6 HE WAS JUST ASKED THE QUESTION OF WHAT IT COULD MEAN.
7 IT COULD MEAN ANY NUMBER OF DIFFERENT THINGS. SHE IS THE
8 ONE WHO FIRST ELICITED THAT TESTIMONY FROM THE WITNESS
9 PRIOR TO THAT.

10 MS. FRANKLIN: WE HAVE TO ELICIT THAT THERE ARE OTHER
11 MEANINGS TO THESE TATTOOS. OFFICER MAHONEY TOOK IT UPON
12 HIMSELF TO SAY THAT THESE OTHER MEANINGS ARE ALL INCLUDING
13 CRIMINAL ACTS. YOU KNOW, HE COULD HAVE JUST STOPPED THERE
14 AND SAID THERE ARE OTHER MEANINGS, BUT INSTEAD THEY COULD
15 HAVE -- THEY WENT FURTHER.

16 I MEAN, THE JURY AT THIS POINT IS LEFT WITH THE
17 IMPRESSION THAT THE ONLY THING IT COULD MEAN IS SOMETHING
18 OF A CRIMINAL NATURE, YOU KNOW, AND CRIMINAL ACTS THAT ARE
19 NOT AT ALL RELATED TO THIS CASE.

20 YOU KNOW, I'M CONCERNED THAT THE JURY IS NOW
21 WONDERING, "WELL, YOU KNOW, IF HE DIDN'T COMMIT THESE
22 MURDERS, WELL, HE'S PROBABLY DONE A CAR JACKING. HE'S
23 PROBABLY KILLED SOMEBODY ELSE, ET CETERA, ET CETERA."

24 THIS IS WHAT THIS TESTIMONY HAS LED TO, AND I THINK
25 THAT THE ONLY APPROPRIATE REMEDY IS A MISTRIAL.

1 THE COURT: ALL RIGHT. ANYTHING FURTHER, SOLICITOR,
2 ON THE RECORD?

3 MS. CAMPBELL: NO, SIR.

4 THE COURT: ALL RIGHT. AT THIS TIME, THE MOTION IS
5 DENIED. I'LL GIVE IT THOUGHT DURING LUNCH, AND WE'LL HAVE
6 THE RIGHT TO RECONSIDER MY OWN RULING WHEN WE COME BACK.

7 ALL RIGHT. WE'LL START BACK AT 2:15.

8 MS. FRANKLIN: DO YOU STILL WANT TO SEE US, YOUR
9 HONOR?

10 THE COURT: YES. LET ME TALK TO YOU UP HERE.

11 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

12 THE COURT: YES, SIR, MR. SCHARDT.

13 MR. SHARDT: YOUR HONOR, MAY I APPROACH FOR A MINUTE?

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
15 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

16 THE COURT: ALL RIGHT. IS THE STATE READY TO
17 PROCEED?

18 MR. GIESE: YES, SIR.

19 THE COURT: IS THE DEFENSE READY?

20 MS. FRANKLIN: YES, YOUR HONOR.

21 THE COURT: ALL RIGHT. BRING THE JURY BACK IN,
22 PLEASE.

23 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
24 APPROXIMATELY 2:24 P.M.)

25 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

1 THE COURT: ALL RIGHT. THANK YOU MR. FOREMAN, LADIES
2 AND GENTLEMEN, WE WILL CONTINUE.

3 SOLICITOR, CALL YOUR NEXT WITNESS, PLEASE.

4 MR. GIESE: MAY IT PLEASE THE COURT, YOUR HONOR. THE
5 STATE CALLS DR. CLAY NICHOLS.

6 CLAY NICHOLS, AFTER BEING DULY SWORN,
7 TESTIFIED AS FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
9 FOR THE RECORD.

10 DIRECT EXAMINATION:

11 BY MR. GIESE

12 Q STATE YOUR NAME.

13 A CLAY ALLEN NICHOLS, N-I-C-H-O-L-S.

14 Q DR. NICHOLS, WHERE ARE YOU EMPLOYED?

15 A AT THE DEPARTMENT OF PATHOLOGY AT RICHLAND MEMORIAL
16 HOSPITAL.

17 Q WHAT IS YOUR POSITION THERE?

18 A I AM THE FORENSIC PATHOLOGIST FOR THE GROUP. I ALSO
19 COVER ALL THE HOSPITAL AUTOPSIES. IN ADDITION TO MY
20 DUTIES, I AM ALSO THE CHIEF MEDICAL EXAMINER FOR RICHLAND
21 COUNTY.

22 Q NOW, IF YOU WOULD, YOU SAID A BUNCH RIGHT THERE. IF
23 YOU WOULD, TELL THE JURY WHAT A MEDICAL EXAMINER IS.

24 A A MEDICAL EXAMINER IS A PHYSICIAN WHO HAS STATUTORY
25 RESPONSIBILITY FOR DEATH INVESTIGATION WITHIN A GIVEN

1 AREA. WITHIN RICHLAND COUNTY, THAT AREA IS THE COUNTY
2 ITSELF, AND I HAVE RESPONSIBILITY TO OVERSEE MY PART OF
3 THE DEATH INVESTIGATION.

4 Q AND HOW MANY MEDICAL EXAMINERS ARE THERE IN SOUTH
5 CAROLINA, TO YOUR KNOWLEDGE?

6 A THERE ARE ONLY TWO CHIEF MEDICAL EXAMINERS, MYSELF
7 AND DR. MICHAEL WARD IN GREENVILLE.

8 Q YOU ALSO MENTIONED THAT YOU ARE A FORENSIC
9 PATHOLOGIST. TELL THE JURY WHAT THAT IS.

10 A TO BEGIN WITH, PATHOLOGY IS A BRANCH OF MEDICINE,
11 LIKE ANY OTHER BRANCH OF MEDICINE. YOU GO TO MED. SCHOOL
12 FOR FOUR YEARS, GET YOUR DEGREE. RATHER THAN SPECIALIZING
13 IN PATIENT CARE AS PART OF YOUR PRACTICE, WE SPECIALIZE IN
14 THE USE OF LABORATORY METHODS FOR DIAGNOSING DISEASE,
15 ANYTIME TISSUE IS REMOVED FROM SURGERY WHERE IT'S SENT TO
16 A PATHOLOGIST WHERE IT'S LOOKED AT, LOOKING FOR THE
17 PRESENCE OR ABSENCE OF DISEASE, THEY ALSO USUALLY RUN THE
18 CLINICAL LABORATORIES. SO IN THE MEANTIME, ANY BLOOD OR
19 URINE IS SENT FOR ANALYSIS. THE PATHOLOGIST OVERSEES
20 THAT.

21 THE PATHOLOGIST ALSO HAS TRAINING IN DOING AUTOPSIES.
22 THERE ARE TWO BASIC TYPES OF AUTOPSIES. ONE IS AN AUTOPSY
23 UNDER HOSPITAL CONDITIONS WHERE A PERSON COMES IN WITH A
24 DISEASE PROCESS AND DIES. IT'S USUALLY A NATURAL DISEASE,
25 AND THE PERSON IS AUTOPSIED LOOKING FOR THE EXTENT AND

1 CORRECT DIAGNOSIS OF THE DISEASE.

2 THE OTHER IS A FORENSIC AUTOPSY WHERE A PERSON DIES A
3 SUSPICIOUS OR UNNATURAL DEATH IN WHICH CASE A FORMAL
4 INVESTIGATION IS CONDUCTED AND AN AUTOPSY PERFORMED, NOT
5 ONLY TO DETERMINE CAUSE OF DEATH BUT ALSO TO AID IN THE
6 MANNER OF DEATH.

7 Q NOW, THE TRAINING AND BACKGROUND THAT YOU HAVE IN THE
8 AREA GO SPECIFICALLY TO FORENSIC PATHOLOGY. TELL THE JURY
9 WHAT THAT IS.

10 A FORENSIC PATHOLOGY, ONCE AGAIN, IS THE BRANCH OF
11 PATHOLOGY. IN ORDER TO OBTAIN THAT DEGREE, YOU NEED AT
12 LEAST A FOUR-YEAR DEGREE FROM COLLEGE. I WENT TO THE
13 UNIVERSITY OF OKLAHOMA, GOT MY B.S. IN 1981. AFTER THAT,
14 I ENTERED MEDICAL SCHOOL, ALSO IN OKLAHOMA, COMPLETING
15 THAT IN '85. THEN I HAD A FIVE-YEAR RESIDENCY IN BOTH
16 ANATOMIC AND FORENSIC PATHOLOGY AT M.U.S.C. IN CHARLESTON.
17 AFTER THAT, I WAS ON THE FACULTY FOR TEN YEARS TEACHING
18 PATHOLOGY TO STUDENTS AND OTHER RESIDENTS.

19 IN 2000, I LEFT M.U.S.C. AND CAME TO RICHLAND
20 MEMORIAL, BASICALLY, IN PRIVATE PRACTICE. I HOLD AN
21 UNRESTRICTED LICENSE TO PRACTICE MEDICINE AND SURGERY IN
22 THE STATE OF SOUTH CAROLINA, PLUS I'M ALSO BOARD CERTIFIED
23 BY THE AMERICAN BOARD OF PATHOLOGY IN BOTH ANATOMIC AND
24 FORENSIC PATHOLOGY.

25 Q AND HOW MANY TIMES HAVE YOU BEEN QUALIFIED IN THE

1 AREA OF FORENSIC PATHOLOGY IN THE COURTS OF SOUTH CAROLINA
2 AS AN EXPERT?

3 A A COUPLE HUNDRED TIMES.

4 MR. GIESE: WE WOULD OFFER HIM AT THIS TIME, YOUR
5 HONOR.

6 MS. FRANKLIN: NO OBJECTION, YOUR HONOR.

7 THE COURT: WITHOUT OBJECTION, THE WITNESS IS FOUND
8 TO BE AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.
9 BY MR. GIESE

10 Q YOU ALSO MENTIONED DURING YOUR QUALIFICATIONS THERE
11 THAT YOU ARE BOARD CERTIFIED. WHAT DOES THAT MEAN?

12 A THAT MEANS I HOLD ALL THE OFFICIAL CERTIFICATIONS FOR
13 MY TRAINING. THERE ARE NO MORE DEGREES OR CERTIFICATIONS
14 AFTER THAT.

15 Q AND THERE ARE VERY FEW OF THOSE IN SOUTH CAROLINA,
16 AREN'T THERE?

17 A LESS THAN TEN.

18 Q THAT ARE ACTUALLY BOARD CERTIFIED IN FORENSIC
19 PATHOLOGY?

20 A I THINK RIGHT AROUND TEN, YES, SIR.

21 Q NOW, YOU SAID AS A FORENSIC PATHOLOGIST THAT YOU
22 PERFORM AUTOPSIES; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q I WANT TO DRAW YOUR ATTENTION TO AN AUTOPSY THAT YOU
25 PERFORMED ON AUGUST 30TH, 2004 AT 9:30 ON ONE T.M.

1 ██████████ DO YOU REMEMBER THAT AUTOPSY?

2 A YES, I DO.

3 Q IF YOU WOULD, TELL THE JURY JUST VERY BRIEFLY IN AN
4 AUTOPSY SUCH AS THIS, WHAT'S THE FIRST THING YOU DO AND
5 HOW DO YOU PROCEED?

6 A THE FIRST THING ABOUT AUTOPSIES IS THAT IT STARTS
7 USUALLY WITH A PHONE CALL. THE PHONE CALL PROVIDES
8 INFORMATION OF WHAT HAPPENED TO THE DECEASED. THE
9 INFORMATION MIGHT BE AS LITTLE AS THE PERSON FOUND DEAD OR
10 IT MIGHT ALREADY BE THE PRELIMINARY PART OF FORMAL
11 INVESTIGATION.

12 AFTER THAT, THE BODY IS RECEIVED AT OUR MORGUE
13 FACILITIES WHERE WE LOOK AT THE BODY, LOOKING FOR THE
14 PRESENCE OR ABSENCE OF ANY SORT OF TRAUMA WHICH MAY HAVE
15 CAUSED THE DEATH.

16 FOLLOWING THAT, AN INTERNAL DISSECTION IS PERFORMED
17 WHERE ALL THE MAJOR ORGAN SYSTEMS ARE REMOVED. THEY'RE
18 WEIGHED, THEY'RE INVENTORIED, AND SMALL PIECES OF TISSUE
19 ARE REMOVED AT THAT TIME FOR LATER MICROSCOPIC
20 EXAMINATION. ALSO, AS NECESSARY FLUIDS MAY BE COLLECTED
21 FOR TOXICOLOGIC EVALUATION, AND A REPORT IS GENERATED.
22 HOPEFULLY WITHIN 30 DAYS EVERYTHING IS SIGNED OUT.

23 Q SPECIFICALLY IN THIS CASE TELL THE JURY WHAT YOU DID.

24 A WELL, SAME SITUATION. RECEIVED A PHONE CALL THAT
25 THERE WAS A MR. ██████████ T.M. ██████████. I BELIEVE HE WAS A

1 16-YEAR-OLD BLACK MALE WHO HAD DIED OF A SUSPECTED
2 HOMICIDAL GUNSHOT WOUND.

3 THE AUTOPSY WAS STARTED AND AN EXTERNAL EXAMINATION
4 WAS PERFORMED LOOKING FOR THE PRESENCE OR ABSENCE OF ANY
5 INJURY WHICH MAY HAVE CAUSED HIS DEATH, AND THE INTERNAL
6 DISSECTION WAS ALSO PERFORMED.

7 Q AND WHEN YOU DID THIS EXTERNAL INVESTIGATION OF HIS
8 BODY, TELL THE JURY WHAT YOU FOUND.

9 A ESSENTIALLY, THE EVIDENCE OF INJURY WAS A DISTANT
10 GUNSHOT WOUND TO THE RIGHT FOREHEAD AT A DISTANCE OF THREE
11 INCHES FROM THE TOP OF THE HEAD AND 3.5 INCHES TO THE
12 RIGHT OF THE MIDLINE.

13 Q LET ME STOP YOU THERE. THAT FIRST SENTENCE YOU SAID
14 WAS A DISTANT GUNSHOT WOUND. EXPLAIN THAT TO THE JURY.

15 A A DISTANT GUNSHOT WOUND MEANS THAT THE GUN WAS FAR
16 AWAY ENOUGH FROM THE PERSON THAT WHEN THE TRIGGER WAS
17 PULLED ONLY THE BULLET ENTERED [REDACTED] T.M. 'S BODY.

18 ANY UNBURNED GUNPOWDER OR SOOT WAS DISSIPATED BEFORE
19 IT STRUCK THE BODY. DEPENDING ON THE TYPE OF AMMUNITION
20 USED AND THE GUN USED, THAT DISTANCE CAN BE A FEW INCHES
21 ALL THE WAY UP TO MAYBE TWO FEET.

22 SO IN THIS PARTICULAR CASE, I'M NOT SURE ABOUT THE
23 PARTICULARS OF THAT PARTICULAR WEAPON BEING USED, BUT THE
24 GUN WAS FAR ENOUGH AWAY SO THAT WHEN THE TRIGGER WAS
25 PULLED, ONLY THE BULLET ENTERED HIS FOREHEAD.

1 Q SO WHEN YOU SAY A DISTANT -- YOU DON'T MEAN A LONG
2 DISTANCE. YOU JUST SAY A DISTANCE ESTIMATED --

3 A MORE THAN AN ESTIMATED 24 INCHES. IT COULD BE A
4 LITTLE MORE. IT COULD BE A LITTLE LESS. IT CERTAINLY
5 COULD BE A LONG DISTANCE, CORRECT.

6 Q NOW, YOU SAID THAT YOU FOUND A WOUND ON HIS FOREHEAD;
7 IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q IF YOU COULD -- YOUR HONOR, MAY HE STEP DOWN?

10 THE COURT: SURE. KEEP YOUR VOICE UP, PLEASE.

11 THE WITNESS: YES, SIR.

12 BY MR. GIESE

13 Q COME ON DOWN.

14 IF YOU WOULD, DOCTOR, SHOW ON ME WHERE YOU FOUND THE
15 WOUND AND THE PATH OF THE WOUND OR THE PATH OF THE BULLET
16 INSIDE THE BRAIN.

17 A OKAY. THE BULLET ENTERED APPROXIMATELY HERE
18 TRAVELING BACKWARDS, DOWNWARDS INTO THE LEFT. THE BULLET
19 WAS RECOVERED FROM THIS AREA OF THE BRAIN.

20 Q SO YOU SAID THE WOUND IS HERE.

21 A YES, SIR.

22 Q BACKWARD?

23 A YES.

24 Q DOWNWARD?

25 A YES.

1 Q AND LODGED BACK HERE?

2 A ESSENTIALLY, YES.

3 Q NOW, ON ITS PATH, I GUESS, AFTER YOU DO THE EXTERNAL
4 EXAMINATION YOU DID AN INTERNAL EXAMINATION.

5 A THAT'S CORRECT.

6 Q ON ITS PATH, WHAT DID YOU FIND?

7 A WHEN A BULLET ENTERS THE SKULL, THE FIRST THING THAT
8 HAPPENS IS THAT YOU HAVE A SKULL FRACTURE. THE SKULL
9 ACTUALLY FRACTURES, AND THE BULLET ENTERS THE BRAIN. IT
10 GOES THROUGH SEVERAL COVERINGS OF THE BRAIN. IT RIPS A
11 HOLE THROUGH THE CEREBRAL TISSUE, THE BRAIN SUBSTANCE
12 ITSELF.

13 ON ITS WAY, IT NOT ONLY CAUSES THAT DAMAGE TO THE
14 BRAIN TISSUE, BUT IT ALSO GRABS ONTO THE BLOOD VESSELS OF
15 BRAIN AND STARTS TUGGING ON THEM, WORKING THEM OUT LIKE A
16 FISH NET. THEY START PULLING, PULLING, PULLING AND BLOOD
17 VESSELS THAT ARE DISTANT FROM THAT AREA ARE ALSO DAMAGED.
18 SO NOT ONLY DO YOU GET THE DAMAGE FROM THE ACTUAL HOLE
19 FROM THE BULLET, BUT YOU ALSO GET A LARGER AREA OF INJURY
20 AS A RESULT OF THESE BLOOD VESSELS BEING TORN OUT. THEN
21 YOU GET HEMORRHAGE OR BLEEDING, DEPENDING ON WHERE THE
22 BULLET WENT THROUGH. YOU CAN HAVE IMMEDIATE DEATH OR LIVE
23 ON REFLEXES FOR A FEW HOURS OR HAVE SUCCESSFUL RECOVERY.

24 IN THIS PARTICULAR CASE, T.M. DIED AS A
25 RESULT OF HIS GUNSHOT WOUND.

1 Q NOW, THIS PATH THAT YOU SAY IT TRAVELED, YOU SAY IT
2 LODGED IN THE BACK OF HIS HEAD?

3 A CORRECT.

4 Q AND DID YOU RECOVER THAT BULLET?

5 A YES, I DID.

6 Q WHEN YOU SAY YOU RECOVERED THAT BULLET, YOU TURNED IT
7 OVER TO THE CITY OF COLUMBIA; IS THAT RIGHT?

8 A YES.

9 Q NOW, WHEN A BULLET ENTERS THE BRAIN LIKE THAT
10 FRACTURING THE SKULL AND TRAVELING THAT WAY, WHAT ARE
11 THE -- WHAT -- CAN THE VICTIM IN THIS CASE STAY CONSCIOUS
12 FOR ANY PERIOD OF TIME?

13 A IN THIS PARTICULAR CASE TO SOME DEGREE, YES. IN
14 FACT, HE WAS -- I DON'T WANT TO SAY -- USE THE WORD
15 "ALIVE". HE WAS DECLARED BRAIN DEAD AND LEFT ON LIFE
16 SUPPORT IN ORDER TO HAVE HIS ORGANS HARVESTED. HIS
17 PARENTS MADE A VERY GENEROUS DONATION SO THAT HIS ORGAN
18 SYSTEMS COULD BE DONATED. AT LEAST SOME GOOD COULD COME
19 OF THIS.

20 Q BUT HE NEVER REGAINED CONSCIOUSNESS?

21 A NOT THAT I KNOW OF.

22 Q FOR THE RECORD, DOCTOR, IF YOU WOULD, TELL THE JURY
23 WHAT THE CASE OF DEATH WAS IN THIS CASE.

24 A CEREBRAL LACERATION DUE TO A GUNSHOT WOUND TO THE
25 HEAD.

1 Q NOW, DOCTOR, I WANT TO DRAW YOUR ATTENTION TO A
2 SECOND AUTOPSY WHICH YOU DID IN THIS CASE, SPECIFICALLY ON
3 AUGUST 28TH OF 2004 AT 10:30. THE NAME OF THE VICTIM IN
4 THE CASE WAS [REDACTED] C.D. .

5 A THAT'S CORRECT.

6 Q DO YOU REMEMBER DOING THAT AUTOPSY?

7 A I DO. SHE WAS A 12-YEAR-OLD BLACK FEMALE.

8 Q TWELVE YEARS OF AGE?

9 A THAT'S WHAT I HAVE LISTED, YES.

10 Q TELL THE JURY WHAT YOU DID IN THIS CASE.

11 A SAME SCENARIO, RECEIVED A PHONE CALL. [REDACTED] C.D. WAS
12 THE APPARENT VICTIM OF A HOMICIDAL SHOOTING. I WAS TOLD
13 IT WAS ABOUT THE SAME TIME, IF NOT EXACTLY THE SAME TIME,
14 AS [REDACTED] T.M. . SHE WAS SHOT IN THE BACK OF THE HEAD,
15 LIVED ABOUT 24 HOURS AND THEN WAS DECLARED DEAD.

16 Q NOW, WHEN YOU SAY SHE WAS SHOT IN THE BACK OF THE
17 HEAD, IF YOU WOULD STEP DOWN HERE ONE MORE TIME. SHOW THE
18 JURY EXACTLY ON ME WHERE SHE WAS SHOT.

19 A SHE WAS SHOT IN THE BACK OF THE HEAD RIGHT ABOUT
20 HERE, JUST A LITTLE BIT TO THE RIGHT OF YOUR SPINAL
21 COLUMN.

22 Q LET ME STOP YOU THERE. SO THE BULLET ENTERED FROM
23 BEHIND?

24 A THAT'S CORRECT.

25 Q ALL RIGHT.

1 A AND AS IT TRAVELED, IT DIDN'T TRAVEL VERY FAR BECAUSE
2 WHAT HAPPENED, IT LODGED IN THE CERVICAL VERTEBRAE. YOUR
3 SPINE IS MADE UP OF A SERIES OF VERTEBRAE OR BONES THAT
4 FORM YOUR BACKBONE. ALSO WITHIN THAT BACKBONE IS A HOLLOW
5 COLUMN THAT YOUR SPINAL CORD COMING FROM YOUR BRAIN
6 ACTUALLY RUNS DOWN, AND AS IT COMES DOWN, IT SENDS OUT
7 BRANCHES TO HAVE SENSORY PERCEPTION TO YOUR BODY AND ALSO
8 ALLOWS YOUR MUSCLES TO MOVE AND CONTROLS THE REST OF YOUR
9 MAJOR ORGAN SYSTEMS..

10 Q SO IT'S THE CONDUIT FOR YOUR THOUGHT TO GET YOUR BODY
11 TO MOVE?

12 A THAT'S CORRECT.

13 Q ALL RIGHT. TELL THE JURY WHAT HAPPENED.

14 A THE BULLET THEN LODGED IN THE FIRST CERVICAL
15 VERTEBRAE AND ESSENTIALLY CUT THE SPINAL CORD OFF AT THE
16 LEVEL OF THE BRAIN, WHAT'S KNOWN AS THE BRAIN STEM.
17 ESSENTIALLY, EVERYTHING FROM HERE DOWN, THE BACK OF THE
18 HEAD DOWN, WAS DISCONNECTED FROM HER BRAIN.

19 Q WHEN YOU SAY DISCONNECTED FROM HER BRAIN, THAT MEANS
20 THAT HER BRAIN COULDN'T TALK TO THE REST OF HER BODY?

21 A THAT'S CORRECT.

22 Q AND WHAT DOES THAT TELL YOU?

23 A SHE IS GOING TO DIE. THIS IS ESSENTIALLY LIKE BEING
24 DECAPITATED, EXCEPT THE BLOOD VESSELS IN YOUR NECK ARE
25 STILL INTACT, BUT THE FUNCTIONAL PART OF YOUR BRAIN THAT

1 CONTROLS THE REST OF YOUR BODY IS REMOVED.

2 IF ANYBODY HAS HAD ANY EXPERIENCE IN BIOLOGY CLASS
3 WHERE THEY PIT FROGS, IT'S THE SAME PHENOMENON. IN ORDER
4 TO ALLOW THE FROG TO LIVE UNDER REFLEX CONDITIONS FOR A
5 PERIOD OF TIME, THE SPINAL CORD ITSELF WAS DESTROYED.

6 Q BECAUSE OF THAT DESTRUCTION, SHE WOULDN'T BE ABLE TO
7 BREATHE ON HER OWN?

8 A OH NO. REFLEXES -- YOU NEED INTENSIVE MEDICAL CARE
9 IN ORDER TO JUST STAY ALIVE FOR 24 HOURS.

10 Q YOUR HEART WOULDN'T -- YOUR BRAIN WOULDN'T TELL YOUR
11 HEART TO PUMP?

12 A IT WOULD TRY TO, AND ONCE AGAIN, IT WOULD RUN ON
13 REFLEXES FOR AWHILE, BUT OVER A SHORT PERIOD OF TIME, THAT
14 WOULD ALSO CEASE TO FUNCTION.

15 Q THANK YOU.

16 I BELIEVE IN THAT CASE, ALSO, YOU RECOVERED A BULLET?

17 A IT WOULD BE BULLET FRAGMENTS.

18 Q NOW, I NOTICE ON YOUR FINAL ANATOMICAL DIAGNOSIS THAT
19 YOU HAVE SOMETHING ON THERE CALLED AGONAL ASPIRATION OF
20 BLOOD. DID I SAY THAT CORRECT?

21 A AGONAL ASPIRATION OF BLOOD.

22 Q AGONAL. TELL THE JURY WHAT THAT IS.

23 A THAT, AS A RESULT OF THE GUNSHOT WOUND TO THE BACK OF
24 THE HEAD, THERE WAS BLEEDING ESSENTIALLY DOWN THE BACK OF
25 THE THROAT, AND SHE WAS INHALING HER OWN BLOOD DURING THE

1 DEATH PROCESS.

2 Q SO BECAUSE OF THE WOUND, SHE IS INHALING HER OWN
3 BLOOD. AT THE POINT AFTER YOU GET THAT SEVERING OF THE
4 SPINAL COLUMN AT THE C-1, CAN THE VICTIM REMAIN CONSCIOUS
5 AT THAT TIME?

6 A IT'S POSSIBLE A PERSON COULD BE CONSCIOUS. I'M NOT
7 EXACTLY SURE WHAT HER LEVEL OF CONSCIOUSNESS WAS, BUT
8 DEATH IS PRETTY MUCH ASSURED IN A SHORT PERIOD OF TIME
9 WITHOUT MEDICAL CARE.

10 Q AND EVEN WITH MEDICAL CARE?

11 A SHE WAS DEAD WITHIN 24 HOURS.

12 Q AND DR. NICHOLS, FOR THE RECORD, THE DEATH CAUSE OF
13 DEATH IN THE CASE INVOLVING [REDACTED] C.D., AGE 12,
14 WAS WHAT?

15 A SPINAL CORD LACERATION DUE TO A DISTANT GUNSHOT WOUND
16 TO THE BACK OF THE HEAD.

17 MR. GIESE: THAT'S ALL I HAVE.

18 THE COURT: CROSS-EXAMINE?

19 MS. FRANKLIN: I HAVE NO QUESTIONS FOR THIS WITNESS.

20 THE COURT: DOCTOR, YOU MAY STEP DOWN.

21 THE WITNESS: MAY I BE EXCUSED, YOUR HONOR?

22 MR. GIESE: ANY OBJECTION?

23 MS. FRANKLIN: NO OBJECTION.

24 THE COURT: DOCTOR, YOU MAY BE EXCUSED.

25 MR. GIESE: BEG THE COURT'S INDULGENCE.

1 THE COURT: ALL RIGHT.

2 (PAUSE).

3 MS. FENT: YOUR HONOR, AT THIS TIME THE STATE RESTS
4 ITS CASE.

5 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
6 GENTLEMEN, AT THIS TIME THE STATE HAS RESTED, MEANING THAT
7 THEY HAVE INTRODUCED THE EVIDENCE THAT THEY WILL INTRODUCE
8 IN THEIR CASE IN CHIEF.

9 THERE ARE MATTERS OF LAW THAT I'M REQUIRED TO TAKE UP
10 AT THIS TIME AND TAKE THEM UP OUTSIDE OF YOUR PRESENCE.
11 IN ADDITION, THE ATTORNEYS HAVE NOTIFIED ME THAT THERE MAY
12 BE SOME OTHER ISSUES THAT I NEED TO DEAL WITH BEFORE WE
13 CONTINUE ON WITH THE TRIAL. THAT IS PROBABLY GOING TO
14 TAKE MOST OF THE AFTERNOON.

15 RATHER THAN HAVE YOU COOPED UP BACK HERE TO SEE IF WE
16 CAN GET THAT DONE AND CONTINUE OR NOT, I'M GOING TO GO
17 AHEAD AND LET YOU GO FOR THE DAY.

18 DON'T DISCUSS THE CASE WITH ANYONE, DON'T WATCH
19 ANYTHING, LISTEN TO ANYTHING OR READ ANYTHING ABOUT THE
20 CASE. BE BACK IN THE JURY ROOM AT 9:30 TOMORROW MORNING.

21 AGAIN, WE'LL CONTINUE WORKING ON THE CASE HERE, BUT
22 YOU'RE EXCUSED THE REST OF THE AFTERNOON. IF YOU WILL
23 STEP BACK TO YOUR JURY ROOM AND THEN YOU'RE EXCUSED.
24 WE'LL SEE YOU IN THE MORNING.

25 EVERYONE ELSE STAY SEATED.

1 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
2 2:42 P.M.)

3 ~~THE COURT~~: ALL RIGHT. MOTIONS?

4 ~~CMS. FRANKLIN~~: YES, YOUR HONOR, MAY IT PLEASE THE
5 COURT. AT THIS TIME, ~~THE DEFENSE WOULD RENEW ALL PRIOR~~
6 ~~OBJECTIONS, SPECIFICALLY SOME HEARSAY OBJECTIONS.~~

7 WE ARE AT THIS POINT -- THE DEFENDANT MOVES FOR A
8 DIRECTED VERDICT. CONSIDERING THE EVIDENCE PRESENTED IN
9 THE LIGHT MOST FAVORABLE TO THE STATE, WE BELIEVE THE
10 STATE DID NOT PROVE THE IDENTITY OF THE SHOOTER.

11 WE BELIEVE THAT THERE IS PLENTY OF TESTIMONY THAT THE
12 YOUNG BOYS WHO WERE IN THE WHITE FORD ESCORT WERE PROVOKED
13 BY SOME BLOODS WHO WERE ON T.S. MARTIN. WE BELIEVE THAT,
14 YOU KNOW, WE KNOW THAT MR. LIVERMAN WAS NOT IN THAT CAR.
15 WE BELIEVE THAT THEY HAVE NOT SHOWN THAT MR. LIVERMAN IS
16 THE SHOOTER.

17 WE'RE ALSO -- ~~WE WOULD LIKE TO RENEW OUR OBJECTIONS,~~
18 ~~ESPECIALLY OUR DENIAL OF THE RIGHT TO THE FULL NEAL V.~~
19 ~~BIGGERS PRETRIAL. WE ARE RENEWING OUR OBJECTION TO~~
20 ~~ADMITTING TESTIMONY AS TO ANY GANG EXPERT TESTIMONY,~~
21 ~~ESPECIALLY ANY REFERENCES TO THE TATTOOS.~~

22 I'M RENEWING MY OBJECTION TO THE DENIAL OF MY
23 MISTRIAL MOTIONS -- AGAIN, BASED ON IMPROPER REMARK ON MY
24 CLIENT'S RIGHT NOT TO INCRIMINATE HIMSELF, THE FIFTH
25 AMENDMENT.

1 WE BELIEVE ~~THE TESTIMONY GIVEN BY THE EXPERTS GOES~~
2 ~~BEYOND THE SCOPE OF MOTIVE, WHICH IS MY UNDERSTANDING OF~~
3 ~~WHY THIS TESTIMONY EVIDENCE WAS GOING TO BE ADMISSIBLE IN~~
4 ~~THE FIRST INSTANCE. I THINK THEY WENT WELL BEYOND THAT.~~

5 WE BELIEVE THAT ~~IT'S BEEN USED TO INTRODUCE~~
6 ~~INADMISSIBLE CHARACTER PROPENSITY EVIDENCE. I THINK IT'S~~
7 ~~A CLEAR CHARACTER ASSASSINATION. IT LEADS TO CONFUSION OF~~
8 ~~THE ISSUES. I THINK IT'S IRRELEVANT TO THE IDENTITY OF~~
9 ~~THE PERSON WHO COMMITTED THIS CRIME.~~

10 I BELIEVE THAT IT'S UNDULY PREJUDICIAL. I BELIEVE
11 THAT THE CUMULATIVE EFFECT OF THESE ERRORS HAS DENIED MY
12 CLIENT THE RIGHT TO A FAIR TRIAL AS GUARANTEED UNDER BOTH
13 STATE AND FEDERAL CONSTITUTIONS. I AM ALSO OBJECTING TO
14 THE EXPERT TESTIMONY BECAUSE SOME OF THIS TESTIMONY CAME
15 FROM TALKING TO PEOPLE ON THE STREETS.

16 MY CLIENT HAS THE RIGHT TO CONFRONT THESE PEOPLE, AS
17 WELL. WE'RE ALSO ALLEGING A CONFRONTATION ISSUE AS
18 GUARANTEED BY THE STATE AND FEDERAL CONSTITUTIONS. AGAIN,
19 IN ADDITION TO THE DIRECTED VERDICT MOTION, I'M ALSO
20 ASKING YOU AGAIN FOR A MISTRIAL FOR THE REASONS THAT I
21 JUST ARTICULATED.

22 THE COURT: THE LAST ONE, AGAIN? I DIDN'T HEAR QUITE
23 WHAT YOU SAID.

24 MS. FRANKLIN: I'M SORRY, YOUR HONOR. I WAS JUST --
25 IN ADDITION TO THE DIRECTED VERDICT MOTION, I AM RENEWING

1 MY MOTION FOR A MISTRIAL BASED ON THE REASONS THAT I JUST
2 ARTICULATED.

3 THE COURT: ALL RIGHT. SOLICITOR, MS. FENT?

4 MS. FENT: YOUR HONOR, WITH REGARD TO THE MOTION FOR
5 A DIRECTED VERDICT, THE STANDARD BEING THE LIGHT MOST
6 FAVORABLE TO THE STATE, WE HAVE PRESENTED SUFFICIENT
7 EVIDENCE IN TERMS OF THE MANNER IN WHICH THESE INDIVIDUALS
8 DIED, THE DATE, THE LOCATION.

9 AS TO THE IDENTITY OF THE SHOOTER, MR. TYRONE SMITH
10 TESTIFIED HE LOOKED OUT THE WINDOW, KNOWS HIM, SAW HIM.
11 DIEGO THOMPSON IDENTIFIES THE DEFENDANT AS THE SHOOTER.
12 SHANTE BETHEL OVERHEARS STATEMENTS OF THE DEFENDANT
13 INCRIMINATING HIMSELF AS THE SHOOTER, AND THEN FINALLY,
14 THE DEFENDANT'S OWN STATEMENTS.

15 SO CLEARLY, IN THE LIGHT MOST FAVORABLE TO THE STATE,
16 WE BELIEVE WE'VE OVERCOME THE BURDEN FOR A DIRECTED
17 VERDICT.

18 WITH REGARD TO THE ADMISSION OF THE GANG MOTIVATION,
19 MEMBERSHIP OF A GANG MOTIVATION, THE TATTOOS, THE NEAL V.
20 BIGGERS, ALL OF THAT WE RELY ON THE COURT'S PREVIOUS
21 RULINGS, AND WE STAND BY OUR ARGUMENTS IN THOSE MOTIONS.

22 WITH REGARD TO, I GUESS, THE FINAL MISTRIAL MOTION IN
23 TERMS OF WHAT WE HAVE ALREADY PREVIOUSLY ARGUED IS THESE
24 TWO EXPERTS TESTIFIED AS EXPERTS, AND GATHERING THEIR
25 INFORMATION FROM LAW ENFORCEMENT FROM ACTUAL INTERVIEWS,

1 FROM INFORMATION THAT IS HOW EXPERTS GAIN THEIR
2 INFORMATION, GAIN THEIR KNOWLEDGE, AND AS WAS ALLOWED OR
3 AS IS REPRESENTED IN STATE V. PRICE, THEY TESTIFIED AS
4 EXPERTS AND NOT JUST CLEARLY ON HEARSAY, BUT WITHOUT
5 HAVING AN EXPERTISE AS EXPERTS AND WERE QUALIFIED AS SUCH.

6 MS. FRANKLIN: AND YOUR HONOR, I'M SORRY. IF I COULD
7 ADD TWO OTHER THINGS BRIEFLY?

8 THE COURT: SURE.

9 MS. FRANKLIN: I ALSO WANT TO STATE OUR OBJECTION,
10 AGAIN, TO THE POSTER BOARD THAT INCLUDES THE "MURDER TIMES
11 TWO" SCRIPT ON THE TOP OF IT, AND I ALSO WANT TO
12 REINCORPORATE ALL OF THE OBJECTIONS MADE IN PRETRIAL,
13 ESPECIALLY WITH RESPECT TO THE STATEMENTS, THE MIRANDA
14 ISSUE, THE RIGHT TO COUNSEL.

15 I JUST WANT TO GO AHEAD AND INCORPORATE THE PRETRIAL
16 OBJECTIONS --

17 THE COURT: ALL RIGHT.

18 MS. FRANKLIN: -- TO OUR MOTION AT THIS POINT.

19 THANK YOU, YOUR HONOR.

20 THE COURT: ALL RIGHT. THE DEFENDANT'S MOTION FOR A
21 MISTRIAL IS DENIED. THERE IS SUFFICIENT EVIDENCE, IF
22 BELIEVED BY THE JURY, TO SUPPORT THE CHARGES THAT HAVE
23 BEEN BROUGHT AGAINST THE DEFENDANT.

24 AS TO THE OTHER RENEWING OBJECTIONS AND MOTIONS FOR
25 MISTRIAL, THE COURT'S RULINGS REMAIN THE SAME, AND THOSE

1 OBJECTIONS WOULD BE OVERRULED. THE MOTIONS WOULD BE
2 DENIED.

3 I HAD INDICATED TO COUNSEL WE WOULD START WITH
4 DEFENSE WITNESSES TOMORROW MORNING. THE SOLICITOR HAS
5 INDICATED THERE MAY BE AN ISSUE TO DEAL WITH THIS
6 AFTERNOON; IS THAT CORRECT?

7 MS. CAMPBELL: YOUR HONOR, YES. I THINK THERE IS AN
8 ISSUE WE CAN DEAL WITH, WITH SOME GUIDANCE FROM THE COURT.
9 I HAVE HANDED UP TO YOUR HONOR, ADDED TO THEIR LIST IS A
10 NUMBER OF PEOPLE.

11 BASED ON THEIR CROSS-EXAMINATION OF DIEGO THOMPSON,
12 THEY ADDED A NUMBER OF PEOPLE WHO WERE WORKING AT D.J.J.
13 AND INTERVIEWED MR. THOMPSON. ONE MAY HAVE INTERVIEWED --
14 I DON'T KNOW THE WORDS, BUT I THINK THEY ARE ATTEMPTING TO
15 IMPEACH MR. THOMPSON ABOUT SOME STATEMENTS ABOUT WHETHER
16 OR NOT HE WAS IN A GANG. I THINK THEY WENT SO FAR BEFORE
17 YOU WERE ABLE TO REALIZE WHERE THEY WERE GOING, YOUR
18 HONOR, TO ASK ABOUT THE SHOOTING UP PEOPLE.

19 THAT INFORMATION, YOUR HONOR, I DO BELIEVE THEY GOT
20 FROM A REPORT THAT WAS ISSUED BY D.J.J. IN WHICH HE --
21 ACCORDING TO THIS REPORT ADMITTED TO -- EXCUSE ME, YOUR
22 HONOR, WHILE I FIND THE PLACE WHERE HE SAID THAT.

23 (PAUSE).

24 I'M SORRY, YOUR HONOR, THAT HE REPORTED PARTICIPATED
25 IN A NUMBER OF CRIMINAL AND DANGEROUS ACTS WITH THE FOLK

1 GANG OF WHICH HE IS A MEMBER. THAT SAME SENTENCE HE
2 ADMITS TO SHOOTING AT MEMBERS.

3 I DON'T KNOW IF THEY INTEND TO OFFER THESE PEOPLE FOR
4 PURPOSES OF IMPEACHING HIM WITH THAT.

5 YOUR HONOR, OUR POSITION WOULD BE PURSUANT TO -- I'VE
6 HANDED UP STATE VS. MECKLER, STATE VS. GERALD, AND STATE
7 VS. BECKHAM, CASES ABOUT IMPEACHMENT AND COLLATERAL
8 ISSUES.

9 OUR POSITION, AND I DON'T MEAN TO ASSUME THEY'RE
10 GOING TO DO THIS, I JUST DON'T KNOW OF ANY OTHER REASON
11 THEY WOULD PUT THESE PEOPLE ON THEIR WITNESS LIST OR ADD
12 THEM TO THEM.

13 WE WOULD SAY THAT IS A COLLATERAL MATTER AND JUST
14 WOULD HAND UP THE CASE LAW. I DON'T KNOW IF YOU'D DO IT
15 NOW OR TAKE IT UP IN THE MORNING, BUT I JUST WANTED TO
16 PROVIDE IT TO YOU SO WE DIDN'T DELAY THE TRIAL IN THE
17 MORNING.

18 THE COURT: ALL RIGHT. DOES THE DEFENSE WISH TO BE
19 HEARD?

20 MS. FRANKLIN: YES, YOUR HONOR, MAY IT PLEASE THE
21 COURT. WE ARE NOW RECEIVING THESE THREE CASES. I'VE NOT
22 HAD TIME TO REVIEW THESE CASES AT THIS POINT. THE
23 STATEMENTS MADE BY DIEGO TO MEMBERS OF THE MIDLANDS
24 EVALUATION CENTER WERE MADE A COUPLE OF MONTHS AFTER THESE
25 EVENTS OCCURRED.

1 AT THAT TIME, YOUR HONOR, HE ADMITS TO FIRING WEAPONS
2 TO RIVAL GANG MEMBERS. HE DOESN'T KNOW WHETHER OR NOT HE
3 HAS EVER ACTUALLY SHOT SOMEBODY.

4 OUR PURPOSE FOR GETTING INTO THIS IS A THIRD-PARTY
5 GUILT ISSUE, YOUR HONOR. WE BELIEVE THAT A JURY SHOULD BE
6 ALLOWED TO WEIGH THAT EVIDENCE AND TO DETERMINE WHETHER OR
7 NOT MR. DIEGO MIGHT NOT, IN FACT, BE REFERRING
8 SPECIFICALLY TO THIS EVENT.

9 I THINK THAT UNDER STATE V. HOLMES WE'VE GOT A GOOD
10 BASIS FOR MAKING THIS ARGUMENT. I MEAN, DIEGO THOMPSON
11 HAS CLEARLY PUT HIMSELF THERE AT THE SCENE OF THE CRIME.
12 HE HAS GIVEN VERY CONTRADICTORY TESTIMONY AT THIS POINT.

13 HE DOES HAVE CLEAR MOTIVE TO REDUCE HIS OWN
14 PARTICIPATION IN EVENTS. WE BELIEVE THAT THIS IS A
15 QUESTION THAT PROPERLY -- COULD PROPERLY GO BEFORE THE
16 JURY SO THEY COULD DRAW THEIR OWN CONCLUSIONS AS TO THE
17 MEANING OF THOSE STATEMENTS MADE TO PROFESSIONALS.

18 FOR THOSE REASONS, YOUR HONOR, WE DON'T BELIEVE THAT
19 THIS IS A COLLATERAL ISSUE AT ALL.

20 THE COURT: ALL RIGHT. SOLICITOR?

21 MS. CAMPBELL: YOUR HONOR, JUST SO THAT YOU HAVE A
22 FULL UNDERSTANDING OF WHAT HE SAYS IN THE REPORT, HE
23 ADMITTED TO SHOOTING AT MEMBERS OF OTHER GANGS, AS WELL AS
24 STRANGERS. HE CLAIMS HE SHOT AT STRANGERS WHO HAD SHOT AT
25 HIM. HE DOESN'T KNOW IF BULLETS STRUCK ONE OF THEM OR

1 NOT. THAT'S THE COMPLETE RECITATION. I WOULD HAND IT UP
2 TO THE COURT.

3 CLEARLY, HIS TESTIMONY HERE IN THE COURTROOM TODAY
4 WAS THAT HE WAS THERE AND HE BECAME AWARE THAT BOTH
5 VICTIMS IN THIS CASE HAD BEEN SHOT.

6 MS. FRANKLIN: BUT ADDITIONALLY, YOUR HONOR -- WELL,
7 TWO POINTS: FIRST OF ALL, WE THINK THAT THAT SPECIFIC
8 QUESTION WOULD BE A QUESTION FOR THE JURY, BUT
9 ADDITIONALLY, I MEAN THE STATE HAS SET UP GANG AFFILIATION
10 AS BEING A MOTIVE FOR THE CRIME IN THIS CASE.

11 IN ADDITION TO THESE PARTICULAR STATEMENTS, THERE ARE
12 ALSO STATEMENTS MADE BY DIEGO THOMPSON REGARDING HIS GANG
13 AFFILIATION.

14 NOW, I BELIEVE WHEN HE TOOK THE STAND HERE, HE DENIED
15 HE WAS IN A GANG. SO TO THE EXTENT THAT THE STATE WANTS
16 TO RELY ON GANG MEMBERSHIP AS A MOTIVE IN THIS CASE, THEN
17 I WOULD ARGUE THAT IT CUTS BOTH WAYS. IT'S SOMETHING THAT
18 OUGHT TO BE BROUGHT TO THE JURY'S ATTENTION WITH RESPECT
19 TO DIEGO THOMPSON.

20 YOUR HONOR, IF I COULD CONTINUE. I MEAN, THERE ARE
21 REALLY ONLY A FEW STATEMENTS THAT WE'RE INTERESTED IN
22 GETTING OUT DURING WITNESS TESTIMONY. WE DO NOT INTEND TO
23 GO THROUGH THIS ENTIRE REPORT, JUST SOME OF THESE
24 STATEMENTS THAT HAVE BEEN ADDRESSED JUST NOW.

25 THE COURT: WHICH IS AT THE BOTTOM OF PAGE FOUR OF

1 THIS REPORT?

2 MS. FRANKLIN: I BELIEVE SO, YOUR HONOR.

3 YOUR HONOR, WE'RE NOT INTERESTED INTO GOING INTO HIS
4 FAMILY HISTORY OR I.Q. OR ANY OF THESE OTHER MATTERS.
5 JUST THOSE STATEMENTS.

6 THE COURT: I'LL TAKE A LOOK AT THE CASES.

7 LET ME ASK, IS THE STATE OBJECTING TO THE DEFENSE
8 USING THIS FOR IMPEACHMENT PURPOSES FOR ANY PURPOSE? IN
9 OTHER WORDS, SUCH AS IMPEACHING HIM ON THE QUESTION OF
10 WHETHER OR NOT HE IS A GANG MEMBER?

11 MS. CAMPBELL: WE WOULD SAY THAT THEY HAVE A MUCH
12 STRONGER ARGUMENT AS TO THAT, JUST TO THAT EXTENT. I
13 THINK CLEARLY THEY SHOULD NOT BE ALLOWED TO GET INTO THE
14 SHOOTING THING.

15 OF COURSE, I'M ASSUMING THAT THEY COULD PRODUCE THE
16 PERSON THAT HE SAID IT TO.

17 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT THESE
18 CASES BEFORE I --

19 MS. CAMPBELL: THANK YOU. I WANTED TO BRING THAT TO
20 THE COURT'S ATTENTION.

21 THE COURT: ALL RIGHT. ANYTHING FURTHER?

22 MS. FRANKLIN: NOTHING FROM THE DEFENSE.

23 THE COURT: ALL RIGHT. AND YOU FOLKS WILL BE READY
24 TO GO FIRST THING IN THE MORNING?

25 MS. FRANKLIN: YES, YOUR HONOR.

1 THE COURT: ALL RIGHT. SOLICITOR, YOU CAN GET THIS
2 COPY OF THE REPORT BACK. I WILL NOT NEED THAT FOR
3 PURPOSES OF MY RULING. WE'LL STAND IN RECESS UNTIL 9:30
4 IN THE MORNING.

5 MS. FRANKLIN: THANK YOU, YOUR HONOR.

6 (THERE WAS AN OVERNIGHT RECESS.)

7 THE COURT: I'VE NOT YET HAD AN OPPORTUNITY TO GO
8 OVER THE CASES THE DEFENSE BROUGHT BY. THE FIRST FEW
9 WITNESSES, IT'S MY UNDERSTANDING, WE'LL NOT NEED TO GO
10 INTO THAT.

11

12 MS. FRANKLIN: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT THAT
14 BEFORE WE LOOK AT ANY WITNESSES.

15 MS. FRANKLIN: MAY WE APPROACH ONE MOMENT, YOUR
16 HONOR?

17 THE COURT: SURE.

18 (WHEREUPON, THERE WAS A BENCH CONFERENCE.)

19 THE COURT: ALL RIGHT. THE DEFENSE SAYS THERE ARE
20 SEVERAL MATTERS YOU WANTED TO TAKE UP BEFORE WE GET
21 STARTED.

22 MS. FRANKLIN: YES, YOUR HONOR, MAY IT PLEASE THE
23 COURT. I AM AT THIS POINT RENEWING MY REQUEST FOR A
24 MISTRIAL IN THIS CASE. I'M REQUESTING IT BASED -- BECAUSE
25 OF AN ARTICLE THAT WAS POSTED ON WISTV.COM WEBSITE

1 YESTERDAY.

2 IT'S MY UNDERSTANDING THAT THAT ARTICLE WAS SHOWN ON
3 TELEVISION, AND I'M NOT SURE IF IT WAS SHOWN ON TELEVISION
4 LAST NIGHT OR THE NIGHT BEFORE. I'M HANDING THE STATE A
5 COPY OF WHAT HAS BEEN POSTED TO THE WEBSITE THAT I HAVE
6 THIS MORNING. I'LL GIVE YOU A COPY, AS WELL.

7 THE NAME OF THIS PARTICULAR SEGMENT THAT WAS ON
8 TELEVISION WAS CALLED "DISRESPECTING GANG VIOLENCE". IT'S
9 A REPORT THAT HAS BEEN CREATED BY REPORTER CRAIG MELVIN.

10 THERE ARE SOME STATEMENTS IN THIS REPORT THAT I'M
11 CONCERNED ABOUT. THERE ARE QUESTIONS WITH A PURPORTED
12 GANG MEMBER ABOUT HOW GIRLS GET INTO THE GANG. THE
13 RESPONSE OF THE ALLEGED GANG MEMBER WAS, "YOU CAN BE BEAT
14 DOWN HARD BY A BUNCH OF GIRLS, OR THEY CAN TAKE IT THE
15 HARD WAY."

16 "WHAT IS THE HARD WAY?"

17 "YOU GET SEXED IN." YOU'VE GOT A DOT, DOT, DOT, SIX,
18 "DUES".

19 "SOME GIRLS, LIKE THE 17 YEAR OLD WE'RE CALLING KATIE
20 AREN'T SEXED IN OR BEAT IN BUT BLESSED IN. THAT'S WHEN
21 GANG LEADERS LET YOU IN IF YOU COMMIT A CERTAIN KIND OF
22 CRIME. YOU CAN DO ROBBERIES. YOU CAN DO SHOOTINGS. YOU
23 CAN SELL DRUGS. ANYTHING TO PUT WORK IN."

24 THESE STATEMENTS ARE INCREDIBLY INFLAMMATORY. I'M
25 SORRY. ADDITIONALLY, ON PAGE THREE OF THIS REPORT THIS

1 CASE IS REFERENCED. AT THE VERY BOTTOM IT SAYS,
2 "PROSECUTORS SAY CHRIS LIVERMAN KILLED TWO CHILDREN WHILE
3 TRYING TO SHOOT AT RIVAL GANG MEMBERS WHO HAD DISRESPECTED
4 HIS SET."

5 IN WATCHING THIS VIDEO FOOTAGE, THERE -- IT APPEARS
6 TO BE SOME SORT OF A BEATING IN OF A GANG MEMBER WHERE
7 THEY SHOW SIX GUYS JUST JUMPING ON THIS ONE GUY, JUST
8 REALLY BEATING HIM AROUND HARD.

9 THE PICTURES ASSOCIATED WITH THIS ARTICLE SHOW GANG
10 MEMBERS WEARING BANDANNAS ON THEIR FACE AND ON THEIR HEAD,
11 SO REALLY THERE'S NOTHING BUT A LITTLE SLIT SO THEIR EYES
12 WOULD SHOW.

13 IF THIS IS SOMETHING THAT ANY OF OUR JURORS HAVE
14 SEEN, I'M CONCERNED THAT IT WILL COLOR THEIR PERCEPTIONS
15 OF THIS CASE GIVEN THAT MUCH OF WHAT HAS OCCURRED IN THIS
16 COURTROOM HAS INVOLVED GANG AND GANG VIOLENCE AND
17 INFORMATION SPECIFICALLY REGARDING THE FOLK NATION.

18 I WOULD POINT OUT THAT THE INFORMATION THAT WAS
19 CONTAINED IN THE REPORT WAS ALMOST EXCLUSIVELY ABOUT THE
20 FOLK NATION.

21 I'M CONCERNED THAT THIS HAS HAD THE EFFECT OF
22 TAINTING THE JURY POOL. I KNOW THAT'S BEEN AN ONGOING
23 CONSIDERATION. I KNOW THAT YOUR HONOR HAS ADVISED THEM
24 NOT TO WATCH ANYTHING RELATED TO THIS CASE.

25 THIS -- ONE COULD NOT HAVE KNOWN THAT THIS IN ANY WAY

1 REFERENCED THE CASE UNTIL YOU WERE ABOUT TWO-THIRDS OF THE
2 WAY THROUGH WATCHING THIS SEGMENT. AGAIN, YOU KNOW, IT'S
3 BEEN SORT OF THE SUBJECT OF MANY OF MY OBJECTIONS, YOUR
4 HONOR, BUT I THINK THAT THIS SORT OF INFORMATION IN FRONT
5 OF THE JURY IS GOING TO HAVE THE EFFECT OF PROVIDING AN
6 IMPROPER BASIS FOR THEIR DELIBERATIONS. I'M ASKING FOR A
7 MISTRIAL.

8 YOUR HONOR, I WOULD ALSO ASK THAT YOU MAKE SOME
9 INQUIRIES TO THE JURORS ABOUT WHETHER OR NOT THEY'VE
10 ACTUALLY SEEN THIS. IT'S MY UNDERSTANDING IT WAS ON
11 SIX O'CLOCK.

12 THE COURT: WHAT DAY?

13 MS. FRANKLIN: I BELIEVE THAT -- I FOUND IT ON THE
14 WEBSITE LAST NIGHT, AND I DON'T KNOW IF IT WAS ON THE
15 WEBSITE AFTER IT HAD ALREADY BEEN RUN ON THAT NIGHT'S T.V.
16 FEED OR WHETHER IT WAS LAST NIGHT. MY CO-COUNSEL TELLS ME
17 THAT IT WAS ON TELEVISION YESTERDAY EVENING. THAT'S MY
18 UNDERSTANDING, YOUR HONOR.

19 THE COURT: ALL RIGHT. SOLICITOR?

20 MR. GIESE: MAY IT PLEASE THE COURT, YOUR HONOR.
21 THIS IS THE FIRST I'VE SEEN OF IT. I DON'T PARTICULARLY
22 WATCH THE NEWS ANYMORE AROUND HERE. OBVIOUSLY, THE STATE
23 HAD NOTHING TO DO WITH THIS ARTICLE OR WHATEVER YOU WANT
24 TO CALL IT.

25 MS. FRANKLIN: AND I'M NOT ACCUSING YOU OF THAT.

1 MR. GIESE: I KNOW YOU'RE NOT, BUT FOR THE RECORD, WE
2 HAD NOTHING TO DO WITH IT. THERE IS A MENTION OF CHRIS
3 LIVERMAN ON PAGE THREE OF THE FOUR, THREE OF THE FOUR.
4 IT'S ONE SENTENCE.

5 I THINK THE REMEDY, YOUR HONOR, IS FOR YOU TO ASK THE
6 JURY WHETHER OR NOT THEY VIEWED THIS CLIP, AND IF SO, HAS
7 IT AFFECTED THEM.

8 MS. FRANKLIN: YOU KNOW, I WILL SAY THAT WHAT I FIND
9 OF PARTICULAR CONCERN IS THIS -- ARE THESE STATEMENTS
10 THAT -- I MEAN, THE WAY THAT YOU GET INTO THE GANG IS BY
11 COMMITTING THESE OTHER CRIMES.

12 I STATED THE GROUNDS FOR THIS OBJECTION EARLIER, THAT
13 I THINK THIS, YOU KNOW, SORT OF INVITES THE JURORS TO
14 SUPPOSE THAT MY CLIENT HAS COMMITTED OTHER CRIMES. I
15 THINK THAT'S IMPROPER. THAT'S AN IMPROPER INFERENCE, BUT
16 I'M CONCERNED WITH THE MEDIA ATTENTION THIS CASE HAS
17 GARNERED THAT THAT'S SORT OF THE INEVITABLE INFERENCE MADE
18 BY THE JURORS.

19 THE COURT: I WILL MAKE INQUIRY TO THE JURY, AND
20 DEPENDING ON WHAT THE RESPONSE IS MAKE A DETERMINATION OF
21 WHAT, IF ANYTHING, TO DO ABOUT IT, AS TO WHETHER OR NOT
22 THEY HAVE SEEN OR BEEN EXPOSED TO THIS.

23 I'M GOING TO SPECIFICALLY REFERENCE AN ARTICLE OR A
24 PIECE ON W.I.S. T.V. THAT WE THINK MAY HAVE BEEN AIRED
25 YESTERDAY, MAY HAVE BEEN THE DAY BEFORE AND SEE IF ANY OF

1 THEM HAVE EITHER SEEN IT, HEARD ABOUT IT, OR BEEN EXPOSED
2 TO IT IN ANY WAY.

3 MS. FRANKLIN: OKAY. THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. SO AT THIS TIME, I'M NOT
5 GOING TO RULE ON YOUR MOTION FOR A MISTRIAL UNTIL I GET
6 SOME RESPONSE FROM THEM ON THAT, ON THAT INQUIRY.

7 MS. FRANKLIN: THANK YOU, YOUR HONOR.

8 THE COURT: ANYTHING ELSE BEFORE WE BRING THE JURY
9 IN?

10 MS. FRANKLIN: YOUR HONOR --

11 THE COURT: IF THERE IS NO RESPONSE TO IT, THEN YOUR
12 MOTION IS GOING TO BE DENIED. I'LL JUST INDICATE THAT
13 AGAIN ON THE RECORD AGAIN AFTER I TALK TO THE JURY.

14 IF THERE IS SOME POSITIVE RESPONSE TO IT, THEN I MAY
15 SEND THEM OUT AND HEAR WHATEVER ELSE, OTHER ARGUMENTS YOU
16 WANT TO MAKE, BUT IF THERE IS NO RESPONSE AND WE CONTINUE,
17 IF THERE'S ANYTHING ELSE WE NEED TO TAKE UP AT THIS TIME,
18 LET'S GO AHEAD AND DO IT.

19 MS. FRANKLIN: YOUR HONOR, IF I CAN JUST HAND OVER TO
20 THE STATE AND TO YOUR HONOR WHAT WE DISCUSSED AT THE
21 BENCH, THE DEFENDANT'S REVISED WITNESS LIST, ADDING ONE
22 DEFENDANT, MR. MARK BORDEAUX, IF I MAY APPROACH, YOUR
23 HONOR.

24 THE COURT: ALL RIGHT.

25 MS. FRANKLIN: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE STATE
2 BEFORE WE GET STARTED?

3 MR. GIESE: NO, YOUR HONOR.

4 THE COURT: BRING THE JURY IN, PLEASE.

5 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
6 APPROXIMATELY 9:59 A.M.)

7 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

8 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
9 GENTLEMEN, BEFORE WE GET STARTED THIS MORNING, YOU KNOW,
10 THROUGHOUT THE TRIAL I HAVE GIVEN YOU INSTRUCTIONS NOT TO
11 DISCUSS THE CASE WITH ANYONE OR READ ANYTHING OR WATCH
12 ANYTHING OR LISTEN TO ANYTHING ABOUT THE CASE.

13 IT HAS COME TO THE COURT'S ATTENTION THAT EITHER I
14 THINK YESTERDAY BUT IT MAY HAVE BEEN THE DAY BEFORE, I
15 THINK YESTERDAY, THERE WAS AN ARTICLE OR A PIECE RUN ON
16 W.I.S. TELEVISION DEALING WITH GANGS.

17 I NEED TO KNOW WHETHER ANY MEMBER OF THIS JURY
18 OBSERVED THAT OR HAS SEEN ANYTHING ABOUT IT OR TALKED TO
19 ANYONE ABOUT IT OR IN ANY WAY HAS BEEN EXPOSED TO THE
20 ARTICLE THAT APPARENTLY WAS ON W.I.S. T.V. EITHER
21 YESTERDAY OR THE DAY BEFORE. IF SO, WOULD YOU SIMPLY
22 RAISE YOUR HAND FOR ME, PLEASE.

23 (THERE WAS NO RESPONSE).

24 ALL RIGHT. THERE IS NO RESPONSE.

25 MS. FRANKLIN, YOUR MOTION WOULD BE DENIED.

1 NOW, BEFORE WE DO HEAR FROM THE NEXT WITNESS, THERE
2 IS AN ADDITIONAL WITNESS. YESTERDAY I ASKED YOU THE SAME
3 QUESTIONS I DID LAST WEEK ABOUT A FEW OTHER POTENTIAL
4 WITNESSES. THERE IS ANOTHER POTENTIAL WITNESS WHO MAY BE
5 CALLED TO TESTIFY IN THIS CASE. HIS NAME IS MARK
6 BORDEAUX.

7 IF ANYONE ON THIS JURY IS RELATED BY BLOOD OR
8 CONNECTED BY MARRIAGE TO THAT INDIVIDUAL OR IF YOU HAVE
9 ANY OTHER KIND OF BUSINESS, PERSONAL, OR PROFESSIONAL
10 RELATIONSHIP WITH THAT INDIVIDUAL, WOULD YOU PLEASE RAISE
11 YOUR HAND FOR ME.

12 (THERE WAS NO RESPONSE.)

13 IF THAT INDIVIDUAL IS CALLED TO TESTIFY AS A WITNESS
14 IN THIS CASE, IS THAT GOING TO AFFECT ANY MEMBER OF THIS
15 JURY'S ABILITY TO BE FAIR AND IMPARTIAL? IF SO, WOULD YOU
16 PLEASE RAISE YOUR HAND.

17 (THERE WAS NO RESPONSE.)

18 ALL RIGHT. THE JURY HAS BEEN QUESTIONED. THERE IS
19 NO RESPONSE.

20 MS. FRANKLIN, READY TO PROCEED?

21 MS. FRANKLIN: YES WE ARE, YOUR HONOR.

22 THE COURT: ALL RIGHT. MR. SCHARDT?

23 MR. SHARDT: THE DEFENSE CALLS TYNISHA ROBINSON.

24 THE COURT: ALL RIGHT. WHILE THE WITNESS IS COMING
25 IN, YOU FOLKS MADE A REASONABLE REQUEST THAT LUNCH BE

1 BROUGHT IN TODAY. WE'RE TRYING TO ACCOMMODATE THAT. I
2 TRY TO ADOPT REASONABLE REQUESTS.

3 THIS WILL BE MADE A COURT'S EXHIBIT. I'LL PUT IT IN
4 THE RECORD.

5 (WHEREUPON, COURT'S EXHIBIT NO. 3 WAS MARKED FOR
6 IDENTIFICATION ONLY.)

7 TYNISHA ROBINSON, AFTER BEING DULY
8 SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
10 FOR THE RECORD.

11 THE WITNESS: MY NAME IS TYNISHA ROBINSON.

12 THE COURT: YOU CAN BACK OFF THAT MICROPHONE. THAT'S
13 GOOD RIGHT THERE.

14 THE WITNESS: OKAY.

15 THE COURT: THANK YOU.

16 DIRECT EXAMINATION:

17 BY MR. SHARDT

18 Q GOOD MORNING, MS. ROBINSON.

19 A GOOD MORNING.

20 Q MS. ROBINSON, HOW OLD ARE YOU?

21 A TWENTY-ONE.

22 Q AND WHERE DO YOU LIVE?

23 A [REDACTED].

24 Q DO YOU WORK?

25 A YES, SIR.

1 Q WHAT TYPE OF WORK DO YOU DO?

2 A JANITOR WORK.

3 Q MS. ROBINSON, ON AUGUST 26TH, 2004, TWO YEARS AGO --

4 A UH-HUH.

5 Q -- WHERE WERE YOU LIVING?

6 A ■ T.S. MARTIN.

7 Q MS. ROBINSON, DO YOU RECOGNIZE THIS MAP?

8 A YES, SIR.

9 Q AND WHAT IS THIS MAP OF?

10 A IT'S T.S. MARTIN.

11 Q OKAY. AND THIS WOULD BE...

12 A YEAH.

13 Q THESE HOUSES WOULD BE ON WHAT STREET?

14 A TURN IT AROUND.

15 Q WOULD THIS BE T.S. MARTIN COURT?

16 A UH-HUH.

17 Q WHAT HOUSE WERE YOU LIVING IN AT THE TIME?

18 A HOLD ON.

19 MR. SHARDT: YOUR HONOR, MAY THE WITNESS STEP DOWN?

20 I'M SORRY.

21 THE COURT: YES. KEEP YOUR VOICE UP SO WE CAN HEAR
22 WHAT YOU HAVE GOT TO SAY, PLEASE.

23 THE WITNESS: OKAY. YEAH, RIGHT HERE. I WAS STAYING
24 RIGHT HERE IN THIS HOUSE RIGHT HERE (INDICATING).

25

1 BY MR. SHARDT

2 Q SHOW THEM WHAT HOUSE. THIS HOUSE?

3 A UH-HUH.

4 Q IF YOU COULD HAVE A SEAT AGAIN, MS. ROBINSON.

5 A (COMPLIES).

6 Q NOW, THAT EVENING, WHERE WERE YOU? THE EVENING OF

7 AUGUST 26TH, ONCE IT GOT DARK, WHERE WERE YOU?

8 A I WAS IN THE DIXON'S HOUSE.

9 Q OKAY. [REDACTED] C.D. 'S HOUSE. WOULD THIS BE THE HOUSE

10 YOU WERE AT, [REDACTED] T.S. MARTIN DRIVE?

11 A YES, SIR.

12 Q OKAY. AND YOU WERE HANGING OUT OVER THERE?

13 A YES, SIR.

14 Q OKAY. NOW, WHO WAS WITH YOU OVER THERE?

15 A BRIAN DIXON, [REDACTED] C.D. CHRISTOPHER ROBINSON,

16 AND [REDACTED] T.M.

17 Q OKAY. BRIAN DIXON, [REDACTED] C.D., WHO ELSE?

18 A CHRISTOPHER ROBINSON.

19 Q CHRISTOPHER ROBINSON?

20 A AND [REDACTED] T.M.

21 Q YOU WERE JUST HANGING OUT?

22 A YES, SIR.

23 Q HOW LONG HAD [REDACTED] T.M. BEEN THERE?

24 A HE WASN'T -- NO, HE WASN'T THERE THAT LONG.

25 Q BUT HE WAS HANGING OUT?

1 A YES, SIR.

2 Q OKAY. WERE YOU THERE AT THE TIME THAT A SHOOTING
3 OCCURRED?

4 A YES, SIR.

5 Q OKAY. AND YOU WERE AT ■■■ T.S. MARTIN AT THIS TIME?

6 A YES, SIR.

7 Q WHERE WERE YOU?

8 A STANDING ON THE PORCH.

9 Q OUTSIDE?

10 A YES, SIR.

11 Q WERE YOU OUTSIDE WHEN THE SHOTS -- YOU HEARD SHOTS?

12 A NO, SIR. I DIDN'T HEAR NO SHOTS.

13 Q OKAY. DID YOU GO INSIDE?

14 A NOT THE FIRST TIME.

15 Q OKAY. WHAT DID YOU DO WHEN YOU REALIZED THAT PEOPLE
16 WERE SHOOTING?

17 A I RAN IN THE HOUSE.

18 Q BEFORE YOU RAN IN THE HOUSE, YOU SAID YOU WERE
19 OUTSIDE. DID YOU SEE ANY BOYS ON THE STREET?

20 A YEAH, I SEEN A COUPLE OF GUYS.

21 Q OKAY. DID YOU RECOGNIZE ANY OF THE BOYS?

22 A I COULDN'T SEE THEIR FACE BECAUSE IT WAS DARK.

23 Q OKAY. DID YOU RECOGNIZE -- YOU NEVER SAW WHO THE
24 SHOOTER WAS, CORRECT?

25 A NO, SIR.

1 Q DID YOU KNOW CHRIS LIVERMAN?

2 A YES, SIR.

3 Q DID YOU KNOW CHRISTOPHER LIVERMAN AT THAT TIME?

4 A YES, SIR.

5 Q HOW DID YOU KNOW CHRISTOPHER LIVERMAN?

6 A I WENT TO W.A. PERRY MIDDLE SCHOOL WITH HIM AND C.A.
7 JOHNSON HIGH SCHOOL WITH HIM.

8 Q OKAY. DO YOU SEE CHRIS LIVERMAN IN THE COURTROOM?

9 A YEAH.

10 Q COULD YOU POINT HIM OUT?

11 A (INDICATING).

12 Q ALL RIGHT. SO YOU WENT TO MIDDLE SCHOOL WITH HIM AND
13 HIGH SCHOOL WITH HIM. HOW MANY YEARS OF SCHOOL DID YOU GO
14 WITH HIM? HOW MANY YEARS OF SCHOOL IS THAT?

15 A SEE, I REALLY CAN'T TELL.

16 Q ABOUT FIVE MAYBE, SOMETHING LIKE THAT?

17 A WELL, YOU SAID SOMETHING LIKE THAT.

18 Q OKAY. HOW OFTEN DO YOU SEE HIM? YOU SAID YOU WERE
19 GOING TO SCHOOL. HOW OFTEN DID YOU SEE HIM?

20 A SOMETIMES I MIGHT SEE HIM IN THE HALLWAY OR SOMETHING
21 LIKE THAT, YOU KNOW.

22 Q OKAY. SO YOU KNEW WHO HE WAS?

23 A YES, SIR.

24 Q OKAY. DID YOU EVER SEE CHRIS LIVERMAN THAT NIGHT?

25 A NO, SIR.

1 Q OKAY. DID YOU EVER HEAR CHRISTOPHER LIVERMAN'S VOICE
2 THAT NIGHT?

3 A NO, SIR.

4 Q NOW, YOU TESTIFIED THAT -- I JUST HAVE ONE MORE
5 QUESTION FOR YOU. YOU TESTIFIED YOU WERE IN THE HOUSE AT
6 ■■■ T.S. MARTIN AT THE TIME OF THIS SHOOTING. YOU WERE IN
7 THE HOUSE?

8 A OH YES, SIR.

9 Q OKAY. WHEN WAS THE FIRST TIME YOU TALKED TO THE
10 POLICE ABOUT THIS?

11 A LIKE -- I THINK IT WAS THE NEXT MONTH.

12 Q WOULD IT HELP YOU IF I SHOWED YOU YOUR STATEMENT?

13 A IT DOESN'T MATTER.

14 Q OKAY. WHEN YOU SAY NEXT MONTH, YOU'RE TALKING ABOUT
15 SEPTEMBER?

16 A YES, SIR.

17 Q SO IT HAD BEEN ABOUT A MONTH BEFORE YOU TALKED TO THE
18 POLICE?

19 A UH-HUH.

20 MR. SHARDT: OKAY. I HAVE NO FURTHER QUESTIONS FOR
21 THIS WITNESS.

22 THE COURT: ALL RIGHT. CROSS EXAMINE.

23 CROSS-EXAMINATION:

24 BY MS. CAMPBELL

25 Q HE ASKED YOU ABOUT THE GROUP OF BOYS YOU SAW; IS THAT

1 CORRECT?

2 A YES. YES, MA'AM.

3 Q WERE THEY THREE OR FOUR HOUSES DOWN THE STREET?

4 A NO, MA'AM.

5 Q HOW MANY HOUSES DOWN THE STREET WERE THEY?

6 A LIKE, CAN I...

7 Q THAT'S OKAY. I'LL MOVE ON. LET ME ASK YOU THIS:

8 YOU TESTIFIED JUST A SECOND AGO THAT YOU COULDN'T SEE

9 ANYBODY'S FACES THAT NIGHT BECAUSE IT WAS TOO DARK.

10 A UH-HUH.

11 Q SO YOU COULDN'T SEE ANYBODY TO RECOGNIZE THEM BECAUSE

12 YOU SIMPLY COULDN'T SEE THEIR FACES?

13 A YEAH, I COULDN'T SEE THEIR FACES.

14 MS. CAMPBELL: THANK YOU, MA'AM.

15 THE WITNESS: YES, MA'AM.

16 THE COURT: ANY REDIRECT?

17 MR. SHARDT: NOTHING, YOUR HONOR.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

19 THE BAILIFF: WATCH YOUR STEP. WATCH YOUR STEP DOWN,

20 OKAY.

21 THE COURT: ALL RIGHT. YOUR NEXT WITNESS?

22 MR. SHARDT: THE DEFENSE CALLS ASHLEY BANKS.

23 THE COURT: ALL RIGHT.

24 ASHLEY BANKS, AFTER BEING DULY SWORN,

25 TESTIFIED AS FOLLOWS:

1 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
2 FOR THE RECORD.

3 THE WITNESS: ASHLEY YOLONDA BANKS.

4 DIRECT EXAMINATION:

5 BY MR. SHARDT

6 Q GOOD MORNING, MS. BANKS.

7 A HEY.

8 Q HOW OLD ARE YOU, MS. BANKS?

9 A EIGHTEEN.

10 THE COURT: YOU'RE GOING TO NEED TO SPEAK UP, PLEASE.

11 THE WITNESS: EIGHTEEN.

12 BY MR. SHARDT

13 Q OKAY. AND WHERE DO YOU LIVE?

14 A [REDACTED] [REDACTED].

15 Q DO YOU WORK?

16 A YES, I DO.

17 Q WHAT DO YOU DO?

18 A WHAT DO I DO? I'M A CASHIER AT MCDONALD'S.

19 Q ON AUGUST 26TH, 2004 WHERE WERE YOU LIVING?

20 A T.S. MARTIN.

21 Q OKAY. WERE YOU STAYING IN HOUSE [REDACTED]?

22 A [REDACTED].

23 Q IS THAT WHERE YOU WERE STAYING?

24 A THAT'S WHERE I WAS STAYING.

25 Q WHO DID YOU LIVE WITH IN [REDACTED], BACK IN 2000?

- 1 A ME AND MY TWO SISTERS, MY SON, MY NEPHEW, AND MY MOM.
- 2 Q OKAY. IT WAS YOURSELF, YOUR TWO SISTERS. WHAT ARE
- 3 THEIR NAMES?
- 4 A NATASHA BANKS, AND DARESHA BANKS.
- 5 Q AND YOUR SON?
- 6 A MY SON AND MY NEPHEW.
- 7 Q OKAY. YOUR SON AND YOUR NEPHEW. OKAY. WAS TYRONE
- 8 SMITH LIVING WITH YOU AT THAT TIME?
- 9 A HE WAS OVER THERE.
- 10 Q HE WAS OVER THERE THAT DAY?
- 11 A YEAH.
- 12 Q BUT HE WASN'T LIVING WITH YOU?
- 13 A NO.
- 14 Q ON AUGUST 26TH, 2004, DID YOU BECOME AWARE OF ANY
- 15 SUSPICIOUS CARS IN THE AREA?
- 16 A NO.
- 17 Q SO YOU DIDN'T SEE ANY CARS?
- 18 A THAT DAY?
- 19 Q THAT EVENING.
- 20 A NO.
- 21 Q OKAY. DID YOU EVER SEE ANYONE PULL A GUN ON TYRONE?
- 22 A NO.
- 23 Q THAT EVENING, DID YOU HAPPEN TO COME IN CONTACT WITH
- 24 THE COLUMBIA POLICE DEPARTMENT?
- 25 A THAT NIGHT?

1 Q YES.

2 A YES.

3 Q AND YOU CAME IN CONTACT WITH THEM TWICE, CORRECT?

4 A YES.

5 Q OKAY. LET'S TALK ABOUT THAT FIRST TIME. WHO CALLED
6 THE POLICE THAT FIRST TIME?

7 A I GUESS SOMEONE DID BECAUSE WHEN WE CAME OUTSIDE,
8 THEY WAS OUT THERE.

9 Q SO NO ONE IN ■■■ CALLED THE POLICE?

10 A NOT THE FIRST TIME.

11 Q SO TYRONE DID NOT CALL THE POLICE?

12 A NOT THAT I KNOW OF.

13 Q AND HOW MANY OFFICERS RESPONDED?

14 A TO THE FIRST TIME?

15 Q TO THE FIRST TIME.

16 A TWO.

17 Q OKAY. WHERE WERE THESE OFFICERS?

18 A NEXT DOOR.

19 Q OKAY. WHEN YOU SAY NEXT DOOR, YOU'RE TALKING ABOUT
20 104?

21 A 104.

22 Q OKAY. AND WHERE WERE THEY? WHERE WERE THE OFFICERS?

23 A STANDING OUTSIDE OF 104.

24 Q OKAY. YOU SAID THERE WERE TWO OFFICERS?

25 A TWO OFFICERS.

1 Q OKAY. SO WHAT DID YOU DO?

2 A TOLD THE OFFICERS -- WHAT DID I SAY?

3 Q DID YOU WALK OVER THERE?

4 A I WALKED OVER.

5 Q OKAY. WHO WENT OVER THERE WITH YOU?

6 A I KNOW TYRONE WAS THERE. I'M TRYING TO REMEMBER. I

7 CAN'T REMEMBER IF ANY OFFICERS WAS BEHIND US OR NOT, BUT I

8 KNOW TYRONE WAS.

9 Q DID YOU SPEAK TO THE POLICE?

10 A YEAH.

11 Q DID OTHER PEOPLE THAT WERE WITH YOU SPEAK TO THE

12 POLICE, AS WELL?

13 A I CAN'T REMEMBER BUT I THINK.

14 Q OKAY.

15 A I THINK TYRONE DID TALK TO THE POLICE.

16 THE COURT: I CAN'T HEAR WHAT YOU'RE SAYING. YOU'RE

17 GOING TO NEED TO SPEAK INTO THE MICROPHONE SO EVERYONE CAN

18 HEAR WHAT YOU'RE SAYING, PLEASE.

19 BY MR. SHARDT

20 Q DID OTHER PEOPLE SPEAK TO THE POLICE?

21 A I CAN'T REMEMBER. I THINK TYRONE DID SPEAK TO THE

22 POLICE.

23 Q AND WHAT DID YOU TELL THE POLICE?

24 A I THINK I TOLD THE POLICE -- I CAN'T REALLY REMEMBER,

25 BUT I THINK I TOLD THEM ABOUT -- MY COUSIN TOLD ME THAT

1 SOMEBODY POINTED GUN AT HIM.

2 MS. CAMPBELL: OBJECTION, YOUR HONOR, AS TO HEARSAY.

3 THE COURT: I OVERRULE ON THE ANSWER TO THAT
4 QUESTION, BUT YOU CAN'T GO INTO THAT CONVERSATION, ALL
5 RIGHT.

6 BY MR. SHARDT

7 Q COULD YOU JUST FINISH THAT ANSWER?

8 A WHAT DID I SAY?

9 Q YES.

10 A WELL, I WAS TELLING THEM THAT MY COUSIN TOLD ME
11 EARLIER THAT SOMEONE POINTED A GUN AT THEM. AS WE WAS
12 SPEAKING TO THE OFFICER, THE CAR ROLLED PAST.

13 Q WE'LL GET TO THAT. WHILE TALKING TO THE POLICE --
14 AND YOU'RE STILL AT 104 T.S. MARTIN AT THIS TIME?

15 A (NODS IN THE AFFIRMATIVE).

16 Q OKAY. DID YOU HAPPEN TO SEE THAT WHITE CAR AGAIN?

17 A UH-HUH.

18 MR. SHARDT: YOUR HONOR, MAY THE WITNESS STEP DOWN?

19 THE COURT: SHE'LL HAVE TO KEEP HER VOICE UP. I'M
20 RELYING ON COUNSEL TO BE SURE THE WITNESSES DO THIS.

21 YOU CAN STEP DOWN, BUT KEEP YOUR VOICE UP SO IT CAN
22 BE HEARD, PLEASE.

23 THE BAILIFF: TALK REAL LOUD. WATCH YOURSELF.

24 BY MR. SHARDT

25 Q ARE YOU OKAY? OKAY. STAND THERE.

1 WHERE WERE YOU STANDING WHEN YOU WERE TALKING TO THE
2 POLICE?

3 A BACK HERE.

4 Q ALL RIGHT. WHILE YOU WERE TALKING, DID YOU HAPPEN TO
5 SEE THE WHITE CAR?

6 A (NODS IN THE AFFIRMATIVE).

7 Q A WHITE CAR?

8 A YES.

9 Q AND WHERE WAS THIS WHY?

10 A (INAUDIBLE).

11 THE COURT REPORTER: I'M SORRY, I CAN'T HEAR.

12 THE WITNESS: THIS IS THE MAIN STREET, AND THEY WERE
13 COMING ACROSS THE TOP OF THE STREET.

14 BY MR. SHARDT

15 Q OKAY. SO THE WHITE CAR WAS GOING IN THIS DIRECTION?

16 A YES.

17 Q OKAY. HOW FAST WAS THE WHITE CAR TRAVELING?

18 A SLOW.

19 Q IT WAS CRAWLING?

20 A YEAH.

21 Q AND LET ME ASK YOU A QUICK QUESTION, APPROXIMATELY
22 HOW FAR?

23 A WAS THE CAR?

24 Q WHERE YOU WERE.

25 A WELL, I WAS RIGHT HERE, AND THE CAR WAS COMING RIGHT

1 HERE ON THE STREET.

2 Q APPROXIMATELY HOW MANY FEET?

3 A I CAN'T ESTIMATE.

4 Q IS IT A GREAT DISTANCE, OR WAS IT CLOSE?

5 A A GREAT -- NOT THAT CLOSE, BUT IT WAS KIND OF JUST --

6 Q OKAY. TWO HOUSES?

7 A YEAH.

8 Q TWO HOUSES AND THE POLICE WERE WITH YOU?

9 A YEAH, THEY WAS STANDING OUT THERE.

10 Q OKAY. YOU CAN HAVE A SEAT.

11 A (COMPLIES).

12 Q DID ANYONE POINT THE CAR OUT TO THE POLICE?

13 A YES.

14 Q AND WHAT WAS SAID?

15 A IT WAS LIKE, "THERE GOES THE CAR RIGHT THERE."

16 Q OKAY. DID YOU ASK THE POLICE TO DO ANYTHING ABOUT

17 IT?

18 A THEY SAID THEY COULDN'T GO BEHIND THE CAR. THAT'S

19 THE ONLY THING. I CAN'T REMEMBER.

20 Q DID THEY RESPOND? CAN YOU SPEAK UP, PLEASE. I'M

21 SORRY.

22 A THEY RESPONDED TO IT.

23 Q DID THEY DO ANYTHING ABOUT THE CAR?

24 A THEY SAID THEY COULDN'T GO BEHIND THE CAR.

25 Q DID THEY GIVE YOU A REASON?

1 A YEAH, BUT I CAN'T REMEMBER.

2 Q AND AFTER THE WHITE CAR TRAVELED BY ON THE STREET,
3 HOW MUCH LONGER DID THE POLICE STAY?

4 A WE WENT BACK IN THE HOUSE AFTER WE SAW WHAT HAPPENED.
5 I CAN'T REMEMBER, BUT THEY SAID THEY WAS GOING TO HAVE A
6 CAR OUT THERE PATROL THE AREA.

7 Q SO THEY TOLD YOU THEY WERE GOING TO HAVE A CAR OUT
8 THERE?

9 A UH-HUH.

10 Q TO MAKE SURE NOTHING HAPPENED?

11 A (NODS IN THE AFFIRMATIVE).

12 Q ALL RIGHT. DID YOU SEE THE POLICE AGAIN BEFORE THE
13 SHOOTING?

14 A AGAIN, BEFORE THE SHOOTING?

15 Q YES.

16 A NO.

17 Q OKAY. WERE YOU PRESENT AT T.S. MARTIN WHEN THE
18 SHOOTING OCCURRED?

19 A YES.

20 Q OKAY. WHERE WERE YOU?

21 A WHEN THE SHOOTING HAPPENED OR --

22 Q YES.

23 A IN THE HOUSE.

24 Q AND WHO WAS WITH YOU?

25 A IN THE HOUSE?

1 Q YEAH.

2 A ME, MY COUSIN TYRONE, MY SISTER NATASHA, MY OTHER
3 SISTER DARESHA, AND A CLOSE FRIENDS SHANTE, MY SON, AND MY
4 NEPHEW.

5 Q DID YOU SEE ANY BOYS ON THE STREET PRIOR TO THE
6 SHOOTING?

7 A WHILE THEY WERE SHOOTING? I SEEN THEM WHEN THEY
8 APPROACHED T.S. MARTIN, BUT I DIDN'T SEE THEM WHILE THEY
9 WERE SHOOTING.

10 Q OKAY. SO WHERE WERE YOU WHEN YOU SAW THEM
11 APPROACHING?

12 A ON THE PORCH.

13 Q ON THE PORCH. AND WHAT DID YOU DO?

14 A WE RAN IN THE HOUSE.

15 Q OKAY. DID YOU LOOK OUT ANY WINDOWS WHEN YOU RAN IN
16 THE HOUSE?

17 A WE WENT TO THE DOWNSTAIRS WINDOW, AND THEN WE RAN
18 UPSTAIRS AND LOOKED IN THE UPSTAIRS WINDOW. THEN WE RAN
19 BACK OVER.

20 Q AND YOU SAW THE BOYS EACH TIME?

21 A UH-HUH.

22 Q OKAY. AND WHERE WERE THEY?

23 A BEHIND THE PORCH ACROSS THE STREET FROM US.

24 Q THEY WERE ACROSS THE STREET?

25 A UH-HUH.

1 Q OKAY. SO YOU SAW THEM WHEN YOU'RE SITTING ON THE
2 PORCH?

3 A UH-HUH.

4 Q WHEN YOU LOOKED OUT THE WINDOW?

5 A UH-HUH.

6 Q ON THE BOTTOM, AND THEN WHEN YOU LOOKED OUT THE
7 WINDOW ON TOP?

8 A YES.

9 Q OKAY. YOU GAVE A STATEMENT TO THE POLICE, RIGHT?

10 A YES.

11 Q AND WHEN DID YOU GIVE THAT STATEMENT?

12 A THE NIGHT OF THE SHOOTING.

13 Q OKAY. AFTER THE SHOOTING, HOW MANY OFFICERS ARRIVED?

14 A AFTER THE SHOOTING, THERE WERE A LOT OF OFFICERS OUT
15 THERE.

16 Q OKAY. WERE THERE TWO OFFICERS?

17 A THE LADY WAS OUT THERE. I CAN'T REMEMBER, AND THE
18 MAN. HE WAS OUT THERE, BUT I SAW THE LADY.

19 Q WHEN YOU SAY THE LADY, YOU'RE TALKING ABOUT THE LADY
20 FROM THE FIRST INCIDENT?

21 A YEAH.

22 Q WOULD HAVE BEEN THERE A FEW MINUTES EARLIER?

23 A YEAH.

24 Q OKAY. WHO -- HOW DID YOU END UP GIVING A STATEMENT?
25 DID ANYONE COME UP TO YOU, OR HOW DID THAT HAPPEN?

1 A I WAS SITTING ON THE PORCH, AND I CAN'T REMEMBER WHO
2 GAVE ME THE PAPER, BUT SOMEBODY HANDED ME THE PAPER AND
3 TOLD ME TO WRITE WHAT I SEEN OR WHAT HAPPENED.

4 Q AND BEFORE YOU BEGAN TO WRITE WHAT HAPPENED, DID YOU
5 HAVE ANY CONVERSATIONS WITH ANY OTHER OFFICERS?

6 A THE LADY OFFICER.

7 Q THE LADY?

8 A YEAH.

9 Q AND YOU'RE TALKING ABOUT THE LADY WHO HAD BEEN THERE
10 EARLIER?

11 A UH-HUH.

12 Q OKAY. AND WHAT DID SHE TELL YOU?

13 A I WAS ASKING HER HOW I WAS SUPPOSED TO WRITE THE
14 STATEMENT. SHE SAID, "GIVE EVERY DETAIL." I WAS LIKE,
15 "DO YOU WANT ME TO START FROM THE FIRST TIME?" SHE SAID
16 NOT FROM THERE, BUT START FROM WHERE THEY CAME BACK.

17 Q SO SHE TOLD YOU NOT TO WRITE ABOUT THE FIRST TIME?

18 A NOT TO WRITE ABOUT THE FIRST TIME.

19 Q OKAY. DID YOU END UP WRITING ABOUT THE FIRST TIME?

20 A I BELIEVE SO.

21 Q OKAY. WHY DID YOU WRITE ABOUT THE FIRST TIME?

22 A BECAUSE MY MOM TOLD ME TO.

23 Q YOUR MOTHER CAME UP TO YOU?

24 A SHE WAS STANDING BESIDE ME WHEN THE OFFICER WAS
25 THERE. SHE TOLD ME TO DO IT.

1 Q OKAY. AND DO YOU REMEMBER WRITING YOUR STATEMENT?

2 A UH-HUH.

3 MR. SHARDT: OKAY. MAY I APPROACH THE WITNESS?

4 THE COURT: THAT' ALL RIGHT.

5 BY MR. SHARDT

6 Q ON THIS FIRST PAGE WITH THE HEADINGS?

7 A UH-HUH.

8 Q WHAT INCIDENT DID YOU WRITE ABOUT?

9 A WHEN THEY CAME BACK?

10 Q WHEN THEY CAME BACK.

11 A UH-HUH.

12 Q OKAY. SO YOU STARTED OFF YOUR STATEMENT?

13 A WHEN THEY CAME BACK.

14 Q OKAY. AND THEN ON THE SECOND PAGE, YOU ADDED WHAT?

15 A ON AUGUST 24TH, THE TIME, WHEN THEY CAME OUT THE

16 FIRST TIME.

17 Q WHEN THEY CAME OUT THE FIRST TIME. SO YOU ADDED THAT

18 AT THE END?

19 A UH-HUH.

20 Q AND THAT WAS BECAUSE YOUR MOTHER TOLD YOU TO?

21 A (THERE WAS NO RESPONSE).

22 Q AND THAT WAS BECAUSE YOUR MOTHER TOLD YOU TO?

23 A YES, SIR.

24 Q MS. BANKS, YOU TESTIFIED YOU SAW THE BOYS THREE

25 TIMES.

1 A I DID WHAT?

2 Q YOU SAW THE BOYS THREE TIMES.

3 A YES.

4 Q NOW, CAN YOU -- COULD YOU EVER IDENTIFY ANY OF THEM?

5 A NO.

6 Q AND WHY COULDN'T YOU?

7 A BECAUSE THEY HAD BANDANNAS ON, AND IT WAS DARK.

8 Q AND IT WAS DARK?

9 A YEAH.

10 Q IN THE T.S. MARTIN NEIGHBORHOOD, IS THERE A BASEBALL

11 FIELD AROUND THERE?

12 A YES.

13 Q DOES THAT BASEBALL FIELD HAVE LIGHTS?

14 A YES.

15 Q OKAY. IT'S RIGHT ACROSS THE STREET?

16 A YES.

17 Q OKAY. THAT NIGHT AND THAT -- DOES THAT PROVIDE LIGHT

18 TO THE NEIGHBORHOOD?

19 A YES.

20 Q OKAY. THAT NIGHT WAS THERE A BASEBALL GAME BEING

21 PLAYED?

22 A I DON'T THINK SO.

23 Q WERE THE LIGHTS ON?

24 A NO.

25 Q NO. YOU SAID THAT YOU COULDN'T MAKE OUT ANY OF THE

1 FACES. DID YOU KNOW CHRISTOPHER LIVERMAN AT THE TIME?

2 A I KNEW OF HIM.

3 Q IF YOU SAW HIM --

4 A BY FACE, YES.

5 Q BY FACE YOU KNEW HIM. DID YOU SEE CHRISTOPHER
6 LIVERMAN THERE THAT NIGHT?

7 A NO.

8 MR. SHARDT: I HAVE NO FURTHER QUESTIONS FOR THIS
9 WITNESS.

10 THE COURT: CROSS-EXAMINE?

11 MS. CAMPBELL: THANK YOU, YOUR HONOR.

12 CROSS-EXAMINATION:

13 BY MS. CAMPBELL

14 Q MS. BANKS, I JUST HAVE A FEW QUESTIONS. YOU PUT IN
15 YOUR STATEMENT THE FIRST TIME THAT YOU WERE ABLE TO SEE
16 THE BOYS IN THE CAR, BUT YOU COULDN'T SEE THEIR FACES; IS
17 THAT CORRECT?

18 A THAT'S WHAT I HAD HEARD. I DIDN'T SEE THEM.

19 Q OH, SO WHAT YOU PUT IN YOUR STATEMENT IS JUST WHAT
20 YOU HEARD?

21 A YES, MA'AM.

22 Q SO YOU HEARD THAT THEY WERE THE BOYS IN THE CAR, AND
23 YOU WROTE IN YOUR STATEMENT THAT YOU SAW THEM BUT YOU
24 DIDN'T?

25 A YEAH.

1 Q YOU MENTIONED THAT YOU DID SEE SOME BOYS APPROACHING,
2 THOUGH, AFTER THE POLICE HAD COME AND LEFT; IS THAT
3 CORRECT?

4 A YEAH.

5 Q IS THAT JUST PRIOR TO THE SHOOTING?

6 A WHEN THE SHOOTING HAPPENED?

7 Q RIGHT BEFORE THE SHOOTING.

8 A RIGHT BEFORE THE SHOOTING.

9 Q AND YOU ALSO TESTIFIED THAT YOU DIDN'T GET CLOSE
10 ENOUGH TO THEM OR ANYTHING TO SEE ANY OF THEIR FACES.

11 A HUH-UH.

12 Q YOU ALSO MENTIONED THAT WHEN YOU RAN INTO THE HOUSE,
13 THAT YOU WERE ABLE TO LOOK OUT THE WINDOW FOR A SECOND?

14 A UH-HUH.

15 Q BUT YOU DIDN'T LOOK OUT THAT WINDOW VERY LONG, DID
16 YOU?

17 A WHAT DO YOU MEAN?

18 Q WHEN YOU WERE STANDING NEXT TO TYRONE.

19 A WE WAS DOWNSTAIRS.

20 Q YOU WERE DOWNSTAIRS?

21 A YEAH. HE RAN UPSTAIRS.

22 Q AND YOU JUST TESTIFIED THAT WHEN YOU LOOKED OUT THE
23 WINDOW, AND I'M SORRY, ACROSS THE STREET, THEY WERE OVER
24 KIND OF BEHIND THE BRICK HOUSE?

25 A YES.

1 Q SO YOU COULDN'T REALLY SEE THEM AT THAT POINT EITHER?

2 A I COULD SEE THEM, BUT I COULDN'T LIKE MAKE OUT THEIR
3 FACES.

4 Q MAKE OUT THEIR FACES. DID YOU END UP GOING UPSTAIRS
5 WITH TYRONE?

6 A ALL OF US DID.

7 Q AT THAT POINT EITHER YOU OR YOUR SISTERS CALLED 911?

8 A I CALLED THEM THE FIRST TIME DOWNSTAIRS.

9 Q AND THEN YOU ALL CONTINUED UPSTAIRS?

10 A UH-HUH.

11 Q AND AT THAT POINT WHEN YOU WERE UPSTAIRS, WHERE WAS
12 TYRONE SMITH?

13 A HE WAS LOOKING OUT THE WINDOW.

14 Q AND WHEN YOU LOOKED OUT THE WINDOW TYRONE SMITH WAS
15 LOOKING OUT, TOO, WHAT DO YOU LOOK DOWN ON?

16 A WHAT DO YOU MEAN?

17 Q WHAT DO YOU SEE WHEN YOU LOOKED OUT THAT WINDOW?

18 A HE SAW EVERYTHING.

19 Q OKAY. SO THE PERSON WHO WAS IN YOUR HOUSE WHO WAS
20 ACTUALLY ABLE TO SEE EVERYTHING WAS WHO?

21 A TYRONE SMITH.

22 Q AND THE REST OF YOU WERE BACK IN THE HOUSE AND NOT
23 LOOKING OUT THEN?

24 A YES.

25 Q SO MR. SMITH IS THE ONE THAT ACTUALLY SAW THE

1 SHOOTING?

2 A YES.

3 Q AND RELAYED THAT INFORMATION BACK TO YOU?

4 A YEAH.

5 MS. CAMPBELL: THANK YOU VERY MUCH.

6 THE COURT: ANY REDIRECT?

7 MR. SHARDT: VERY BRIEFLY, YOUR HONOR.

8 REDIRECT EXAMINATION:

9 BY MR. SHARDT

10 Q TO BE CLEAR, THOUGH, WHEN YOU SAY TYRONE SMITH
11 RELAYED THIS INFORMATION, YOU DID -- YOU DID SEE THE BOYS,
12 CORRECT?

13 A WHEN I FIRST RAN IN THE HOUSE?

14 Q RIGHT.

15 A I LOOKED OUT THE WINDOW, YEAH, THEN TYRONE SMITH
16 LOOKED OUT THE WINDOW.

17 Q SO YOU'RE NOT RELYING ON TYRONE SMITH FOR THAT
18 INFORMATION. YOU SAW THE BOYS THREE SEPARATE TIMES,
19 CORRECT?

20 A WHEN I RAN IN THE HOUSE, AND THEN WHEN I WENT
21 UPSTAIRS. HE SAW EVERYTHING. HE WAS TELLING US
22 EVERYTHING.

23 Q AND WHEN YOU WERE OUTSIDE?

24 A WHEN I WAS OUTSIDE, I SAW HIM WALK UP.

25 MR. SHARDT: NO FURTHER QUESTIONS.

1 THE COURT: ANYTHING FURTHER?

2 (THERE WAS NO RESPONSE.)

3 ALL RIGHT. YOU MAY STEP DOWN. WATCH YOUR STEP.

4 ALL RIGHT. CALL YOUR NEXT WITNESS, PLEASE.

5 MR. SHARDT: THE DEFENSE CALLS DARESHA BANKS.

6 DARESHA BANKS, AFTER BEING DULY SWORN,
7 TESTIFIED AS FOLLOWS:

8 THE COURT: HAVE A SEAT UP HERE AND STATE YOUR NAME,
9 PLEASE.

10 THE BAILIFF: TALK LOUD. STATE YOUR FULL NAME FOR
11 THE RECORD.

12 THE WITNESS: MY NAME IS DARESHA BANKS.

13 THE COURT: SLIDE UP CLOSER TO THOSE MICROPHONES AND
14 SPEAK INTO THEM PLEASE. LET ME ASK YOU ONE OTHER THING.
15 WHEN I SWORE YOU IN, YOU NODDED YOUR HEAD. THIS LADY HAS
16 TO TAKE DOWN EVERYTHING YOU HAVE TO SAY. SHE NEEDS TO
17 HEAR YOUR ANSWER RATHER THAN JUST NODDING YOUR HEAD, OKAY.

18 THE WITNESS: YES, SIR.

19 THE COURT: THANK YOU, MR. DEFENSE COUNSEL.

20 MR. SHARDT: THANK YOU, YOUR HONOR. MAY IT PLEASE
21 THE COURT.

22 DIRECT EXAMINATION:

23 BY MR. SHARDT

24 Q GOOD MORNING, MS. BANKS.

25 A GOODS MORNING.

1 Q HOW OLD ARE YOU, MS. BANKS?

2 A SEVENTEEN.

3 Q DO YOU WORK?

4 A I USED TO, BUT I DON'T NO MORE.

5 Q AND WHERE DO YOU LIVE?

6 A [REDACTED].

7 Q COULD YOU SPEAK UP A LITTLE BIT SO EVERYONE CAN HEAR

8 YOU?

9 A [REDACTED].

10 Q OKAY. THANK YOU. BACK ON AUGUST 26TH, 2004 WHERE

11 WERE YOU LIVING?

12 A [REDACTED] T.S. MARTIN DRIVE.

13 Q DO YOU RECOGNIZE THIS MAP AS T.S. MARTIN?

14 A YES, SIR.

15 Q AND THIS IS THE HOUSE YOU WERE STAYING IN?

16 A YES, SIR.

17 Q DID YOU SEE ANY SUSPICIOUS CARS DRIVING AROUND THE

18 NEIGHBORHOOD THAT DAY?

19 A YES, SIR.

20 Q OKAY. WHAT TIME, APPROXIMATELY, WOULD THIS HAVE

21 BEEN?

22 A IT WAS NIGHTFALL, SO IT WAS AROUND LIKE NINE.

23 Q MAYBE A LITTLE AFTER NINE?

24 A (NODS IN THE AFFIRMATIVE).

25 Q COULD YOU DESCRIBE THAT CAR?

1 A IT WAS A WHITE FOUR-DOOR CAR WITH TINTED WINDOWS.

2 Q OKAY. AND WHERE -- COULD YOU -- YOUR HONOR, MAY THE
3 WITNESS STEP DOWN?

4 THE COURT: SHE'S GOING TO NEED TO KEEP HER VOICE UP.

5 MR. SHARDT: PLEASE KEEP YOUR VOICE UP FOR US.

6 THE BAILIFF: TALK REAL LOUD, MA'AM. MATCH YOUR
7 STEP.

8 THE WITNESS: OKAY.

9 BY MR. SHARDT

10 Q AND MOVE TO THIS SIDE.

11 WHERE DID THAT WHITE CAR DRIVE? WHERE DID IT TRAVEL?

12 A IT CAME INSIDE T.S. MARTIN.

13 Q UH-HUH.

14 A THIS WAY. IT CAME IN, WENT THROUGH THE BACK OF THE
15 NEIGHBORHOOD.

16 THE BAILIFF: STEP ASIDE SO THE JURY CAN SEE.

17 THE WITNESS: WENT TO THE BACK OF THE NEIGHBORHOOD.

18 IS THIS -- OH THAT'S THE COURT. IT WENT BACK, BUT YOU

19 DON'T HAVE THE REST OF IT ON HERE. IT WENT AROUND, CAME

20 BACK UP THIS WAY, WENT OUT, TURNED LEFT TO BELTLINE.

21 BY MR. SHARDT

22 Q OKAY. DID IT PARK?

23 A YEAH, IT STOPPED.

24 Q OKAY. WHERE DID IT PARK?

25 A RIGHT HERE, LIKE RIGHT THERE (INDICATING).

1 Q OKAY. YOU CAN HAVE A SEAT AGAIN.

2 OKAY. YOU TESTIFIED THAT THE CAR PARKED.

3 A YES, SIR.

4 Q OKAY. DID YOU SEE ANYONE GET OUT OF THE CAR?

5 A YES, SIR.

6 Q OKAY. HOW MANY PEOPLE WERE IN THE CAR?

7 A ONE.

8 Q ONE. COULD THERE HAVE BEEN MORE?

9 A I CAN'T REMEMBER IF IT WAS MORE THAN ONE BUT I SEEN

10 ONE.

11 Q OKAY. WHAT WAS THAT PERSON WEARING?

12 A ALL BLACK WITH A BLACK BANDANNA.

13 Q OVER HIS FACE?

14 A YES, SIR.

15 Q AND WHO WAS OUT THERE WITH YOU WHEN THIS HAPPENED?

16 A MY COUSIN, TYRONE SMITH, AND ME.

17 Q AND WHAT HAPPENED?

18 A WHEN THE BLACK MALE GOT OUT OF THE CAR WITH A BLACK

19 BANDANNA ON HIS FACE, TYRONE WENT OUT ON THE PORCH AND I

20 WAS STANDING IN THE DOORWAY. THEY YELLED OUT

21 "BBBRRRAAATTT KILLER" AND POINTED THE GUN AT MY COUSIN

22 AND --

23 Q WHY DID TYRONE GO OUT ON THE PORCH?

24 A BECAUSE SHANTE SEEN THIS CAR AT THE HOUSE, AND SHE

25 SAID THAT SHE SEEN -- WELL, AFTER I SEEN THE WHITE CAR,

1 SHE SAID SHE SEEN THE WHITE CAR AND THE BOYS HAD BEEN DOWN
2 IN THEIR FACE, SO BE CAREFUL AND MAKE SURE THERE IS NO ONE
3 ON YOUR PORCH.

4 Q OKAY. SO HE STEPPED OUT, AND YOU TESTIFIED THAT
5 SOMEONE POINTED A GUN AT HIM?

6 A YES.

7 Q AND IT WAS DEFINITELY A GUN?

8 A YES.

9 Q OKAY. WHERE WAS THE PERSON -- LOOKING AT THE HOUSE
10 NUMBERS, WHERE WAS THE PERSON POINTING THE GUN STANDING?

11 A AT THE 100 HOUSE.

12 Q RIGHT AROUND HERE?

13 A WELL, GOING -- NO. GO BACK TO THE STREET RIGHT
14 THERE.

15 Q RIGHT AROUND HERE?

16 A YEAH.

17 Q OKAY. AND TYRONE WAS STANDING RIGHT HERE, OKAY. DID
18 YOU RECOGNIZE THE PERSON WHO POINTED THE GUN AT TYRONE?

19 A NO, SIR.

20 Q WHAT HAPPENED AFTER THAT, AFTER THE GUN WAS POINTED
21 AT TYRONE?

22 A WHEN WE WENT INSIDE THE HOUSE AND MY SISTER ASHLEY
23 RAN UPSTAIRS AND ASKED MY OTHER SISTER NATASHA COULD SHE
24 CALL THE POLICE. WELL, BY THAT TIME, THE PEOPLE NEXT CAR
25 HAD ALREADY CALLED THE POLICE, AND ME AND MY SISTER,

1 ASHLEY, WENT OUTSIDE.

2 Q OKAY. WHERE DID YOU GO?

3 A OUTSIDE.

4 Q OKAY. AND DID YOU HAVE -- COME INTO CONTACT WITH ANY
5 POLICE OFFICERS WHILE YOU WERE OUTSIDE?

6 A YES, SIR. THERE WERE TWO POLICE OFFICERS NEXT DOOR
7 AT 104.

8 Q 104, OKAY. WHERE WERE THEY AT 104? WERE THEY IN THE
9 YARD?

10 A YES, SIR.

11 Q OKAY. AND DID YOU WALK OVER HERE?

12 A YES, SIR.

13 Q OKAY. WELL, DID YOU -- DID YOU TALK TO THE POLICE
14 OFFICERS?

15 A NO, SIR. MY SISTER, ASHLEY -- WELL, TASHA WAS
16 TALKING TO THE POLICE FIRST, AND THEN MY SISTER, ASHLEY,
17 ADDED THAT IT WAS A CAR, A WHITE CAR, THAT CAME BY
18 EARLIER. THEN THE CAR ROLLED PAST, AND MY SISTER POINTED
19 THE CAR TO THEM.

20 Q OKAY. WE'LL GET TO THAT. SO -- AND YOU SAID TASHA
21 WAS TALKING TO THE POLICE?

22 A YES, SIR.

23 Q AND THAT WOULD BE YOUR OTHER SISTER?

24 A NO. TASHA IS THE PERSON FROM 104.

25 Q OKAY, THE PERSON AT 104. SO TASHA WAS TALKING TO THE

1 POLICE?

2 A (NODS IN THE AFFIRMATIVE).

3 Q AND ASHLEY WENT OVER THERE, AND SHE TALKED TO THE
4 POLICE?

5 A YES.

6 Q AND WHAT DID SHE TELL THE POLICE ABOUT?

7 A THE WHITE CAR AND WHAT HAPPENED.

8 Q WHAT HAPPENED MEANING?

9 A ABOUT THE GUN.

10 Q TYRONE?

11 A YEAH.

12 Q AND WHILE YOU ALL WERE WITH THE POLICE, DID YOU
13 HAPPEN TO SEE THE WHITE CAR AGAIN?

14 A YES, SIR.

15 Q OKAY. COULD YOU PLEASE STEP DOWN AGAIN FOR ME?
16 WHAT -- YOU WERE STANDING HERE?

17 A YES.

18 Q OKAY. AND WHERE DID YOU SEE THE WHITE CAR?

19 A WHERE'S THAT THING GOING UP TO -- THIS, OH, THIS --

20 Q THIS WOULD BE...

21 A OH, OKAY, THIS WAY, GOING DOWN TO BELTLINE.

22 THE COURT REPORTER: I'M SORRY.

23 THE COURT: SPEAK UP. I CAN'T, THE COURT REPORTER
24 CAN'T, HEAR WHAT YOU'RE SAYING.

25 THE WITNESS: OH, I'M SORRY.

1 BY MR. SHARDT

2 Q SO YOU SAW THE WHITE CAR ON THIS STREET?

3 A ON EDISON STREET COMING FROM BELTLINE ON DOWN.

4 Q OKAY.

5 A TOWARDS W.A. PERRY MIDDLE SCHOOL.

6 Q OKAY. SO IT WAS TRAVELLING THIS WAY. HOW FAST WAS

7 IT TRAVELING?

8 A ABOUT TEN TO 15 MILES PER HOUR.

9 Q WAS IT GOING SLOW?

10 A YES, SIR.

11 Q OKAY. DID IT LOOK LIKE THEY WERE LOOKING FOR

12 SOMEONE?

13 A (THERE WAS NO RESPONSE.)

14 Q DID IT LOOK LIKE THEY WERE LOOKING FOR SOMEONE?

15 A YES, SIR.

16 Q OKAY. DID YOU -- DID ANYONE IN YOUR GROUP SHOW THE

17 POLICE?

18 A YES, SIR.

19 Q OKAY. HOW DID YOU SHOW THE POLICE?

20 A MY SISTER POINTED THE CAR.

21 Q OKAY.

22 A SHE SAID, "THERE IS THE CAR RIGHT THERE."

23 Q OKAY. AND HOW DID THE POLICE RESPOND?

24 A THEY SAID THAT THEY COULDN'T CHASE BEHIND THE CAR.

25 ALL THEY COULD DO WAS ASK QUESTIONS, BECAUSE THEY DON'T

1 KNOW -- I MEAN -- YEAH, BECAUSE THEY DON'T KNOW WHAT THEY
2 HAVE OR SOMETHING LIKE THAT.

3 Q THEY SAID SOMETHING ABOUT THEY DIDN'T KNOW IF THEY
4 HAD --

5 A GUNS OR ANYTHING IN THE CAR BECAUSE IT WOULD INJURE
6 THEM OR PUT THEM IN DANGER OR SOMETHING LIKE THAT.

7 Q THEY SAID IT WOULD PUT THEM IN DANGER TO CHASE BEHIND
8 THE CAR?

9 A YEAH.

10 Q AFTER THE WHITE CAR DROVE BY, HOW MUCH LONGER WERE
11 THE POLICE THERE?

12 A ABOUT FIVE OR TEN MINUTES.

13 Q OKAY. AND WHAT DID YOU DO?

14 A I WENT DOWN TO SHANTE'S HOUSE AND TOLD HER TO COME
15 BACK UP TO MY HOUSE.

16 Q WHY DID YOU DO THAT?

17 A BECAUSE WE WERE SCARED.

18 Q BECAUSE YOU WERE SCARED?

19 A AND MY MAMA WAS THERE.

20 Q OKAY. AND WHEN, YOUR HONOR TALKING ABOUT SHANTE,
21 WHAT'S HER LAST NAME?

22 A SHANTE SIMMONS.

23 Q OKAY. WHAT NUMBER DID SHE STAY IN?

24 A 114 OR 116.

25 Q ONE OF THESE HOUSES?

1 A YES.

2 Q SO YOU WALKED DOWN THERE?

3 A (NODS IN THE AFFIRMATIVE).

4 Q AND YOU ASKED HER TO COME OVER BECAUSE YOU WERE
5 SCARED?

6 A YES.

7 Q YOU WERE -- WHEN THE ACTUAL SHOOTING OCCURRED, WHAT
8 HOUSE WERE YOU?

9 A IN MY HOUSE, AT [REDACTED]

10 Q OKAY. AND WHO ELSE WAS THERE WITH YOU?

11 A MY SISTER ASHLEY, AND MY SISTER NATASHA, AND MY
12 COUSIN TYRONE, AND SHANTE.

13 Q SHANTE. AND HOW LONG -- DID YOU SEE THE BOYS ON THE
14 STREET?

15 A YES, SIR.

16 Q AND HOW LONG AFTER THE POLICE LEFT DID YOU SEE THE
17 GROUP OF BOYS?

18 A ABOUT -- AFTER THE POLICE LEFT, THE BOYS CAME BACK,
19 PROBABLY ABOUT FIVE OR TEN MINUTES LATER.

20 Q OKAY. AND IF -- DID YOU SEE THE BOYS ON THE STREET?

21 A YES, SIR.

22 Q AND WHERE WERE YOU WHEN YOU SAW THE BOYS?

23 A SITTING ON MY PORCH.

24 Q AT [REDACTED]?

25 A YES.

1 Q AND WHERE WERE THEY?

2 A HUH?

3 Q WHERE WERE THEY?

4 A ACROSS THE STREET.

5 Q OKAY. SO THEY WERE --

6 A RIGHT THERE.

7 Q RIGHT THERE?

8 A YEAH.

9 Q OKAY. AT 9:45, WAS IT DARK?

10 A YES, SIR.

11 Q ALL RIGHT. WERE YOU ABLE TO SEE THE BOYS?

12 A YES.

13 Q WERE YOU ABLE TO SEE THAT THERE WERE BOYS THERE?

14 A YES, SIR.

15 Q OKAY. WERE YOU ABLE TO MAKE OUT THEIR FACES?

16 A NO, SIR.

17 Q OKAY.

18 A THEY HAD BANDANNAS AROUND THEIR FACES.

19 Q THEY ALL HAD BANDANNAS AROUND THEIR FACES?

20 A (NODS IN THE AFFIRMATIVE).

21 Q OKAY. AND WHAT DID YOU DO WHEN YOU SAW THE BOYS?

22 A ALL OF THEM WAS AROUND THE HOUSE.

23 Q I'M GOING TO GO BACK TO AUGUST OF 2004, OKAY, AT T.S.

24 MARTIN. DID YOU OBSERVE ANY OTHER PROBLEMS IN THE DAYS

25 BEFORE THAT?

1 A YES, SIR.

2 Q OKAY.

3 A THE DAY BEFORE, THERE WAS A GROUP OF BOYS ACROSS THE
4 STREET FROM THE T.S. MARTIN COMMUNITY IN THE BALLPARK.

5 Q OKAY. SO HOW MANY DAYS BEFORE?

6 A PROBABLY THE DAY BEFORE THE SHOOTING OR THE DAY
7 BEFORE THAT.

8 Q OKAY. THE DAY BEFORE THE SHOOTING THERE WAS A GROUP
9 OF BOYS?

10 A YES, SIR.

11 Q OKAY. LET ME SEE IF I CAN FIND YOU A GOOD MAP. DO
12 YOU RECOGNIZE THIS MAP? DO YOU RECOGNIZE WHAT THIS IS A
13 MAP OF?

14 A NO, SIR.

15 Q WOULD THIS BE T.S. MARTIN?

16 A OH, OKAY.

17 Q AND THIS WOULD BE?

18 A THE BALLPARK.

19 Q OKAY. NOW, THAT INCIDENT THAT YOU'RE TALKING ABOUT
20 THAT HAPPENED THE DAY BEFORE, YOU THINK HAPPENED THE DAY
21 BEFORE, YOU SAID THERE WAS A GROUP OF BOYS.

22 A UH-HUH.

23 Q OKAY. HOW MANY BOYS ARE WE TALKING ABOUT?

24 A ABOUT TEN OR 15.

25 Q TEN OR 15, AND WHERE WERE THEY STANDING?

1 A RIGHT THERE.

2 Q RIGHT WHERE?

3 A HERE.

4 Q RIGHT HERE ON THE FIELD?

5 A UH-HUH, OR A LITTLE BIT CLOSER TO THE STREET.

6 Q RIGHT AROUND HERE?

7 A YEAH, SPREAD OUTDOORS.

8 Q AND YOU WERE IN YOUR HOUSE AT YOUR PORCH?

9 A I WAS ON MY PORCH.

10 Q AT [REDACTED]?

11 A UH-HUH.

12 Q OKAY. THAT GROUP OF BOYS, WHAT WERE THEY DOING?

13 A THE GROUP OF BOYS AND DELSHAWN PRESCOTT, THEY GOT
14 INTO IT.

15 MS. FENT: YOUR HONOR, I'LL OBJECT TO THE RELEVANCE
16 AND ANY HEARSAY SHE IS ABOUT TO TESTIFY TO, OF COURSE, NOT
17 TALKING ABOUT HERSELF.

18 MR. SHARDT: YOUR HONOR, I BELIEVE SHE IS SAYING SHE
19 WAS THERE AND WITNESSED THE ENTIRE INCIDENT.

20 THE COURT: HOW ABOUT HEARSAY?

21 THE WITNESS: I DIDN'T WITNESS ANYTHING.

22 THE COURT: WHOA, LET ME TALK TO THE LAWYERS.

23 WHAT ABOUT HEARSAY?

24 MR. SHARDT: I BELIEVE -- MY UNDERSTANDING IS THAT

25 SHE --

1 MS. FENT: MAY WE APPROACH?

2 THE COURT: SURE.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
4 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

5 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, LET ME
6 TAKE THIS UP. IF YOU WILL STEP BACK TO YOUR JURY ROOM,
7 I'LL HAVE YOU BACK IN A FEW MINUTES. DON'T DISCUSS THE
8 CASE.

9 EVERYONE ELSE STAY SEATED.

10 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
11 10:44 A.M.)

12 THE COURT: MR. SHARDT, GO AHEAD AND ASK THE QUESTION
13 YOU WANT TO AND LET ME HEAR WHAT THE WITNESS HAS TO SAY,
14 AND I'LL HEAR YOUR ARGUMENTS.

15 MR. SHARDT: WHEN YOU WERE ON THE COURTS, DID YOU
16 OBSERVE THESE BOYS?

17 THE WITNESS: THERE WERE A GROUP OF BOYS.

18 MR. SHARDT: THERE WAS A GROUP OF BOYS, AND YOU SAW
19 THEM?

20 THE WITNESS: YEAH. I SEEN A GROUP OF BOYS, BUT I
21 CAN'T SAY WHO WAS WHO.

22 MR. SHARDT: RIGHT. BUT YOU SAW A GROUP OF BOYS?

23 THE WITNESS: YES, SIR.

24 MR. SHARDT: OKAY. AND DID YOU HEAR WHAT THEY WERE
25 SAYING?

1 THE WITNESS: ALL I HEARD WAS THEY SAID IF DELSHAWN
2 SHOWED HIS FACE, THEN THEY WOULD BLOW HIS HEAD OFF.

3 MR. SHARDT: SO THERE WERE A GROUP OF BOYS SCREAMING?

4 THE WITNESS: THAT I JUST HEARD ONE BOY SAY THAT.

5 MR. SHARDT: YOU HEARD ONE BOY SAY IF DELSHAWN SHOWED
6 HIS FACE, THEY'D BLOW HIS BRAINS OUT?

7 THE WITNESS: YEAH.

8 MR. SHARDT: AND YOUR HONOR, WE WOULD -- THERE WOULD
9 BE A COUPLE OF FOLLOW-UP QUESTIONS ABOUT THIS INFORMATION,
10 WHAT HAPPENED WITH THIS INFORMATION, WHETHER SHE TALKED TO
11 THE POLICE ABOUT IT.

12 YOUR HONOR, SHE WAS THERE. SHE HAS FIRSTHAND
13 KNOWLEDGE OF THE FACT THAT THERE WAS A GROUP OF BOYS OUT
14 ON T.S. MARTIN WHO -- AND AT LEAST ONE OF THESE
15 INDIVIDUALS SAID, "DELSHAWN, IF YOU SHOW YOUR FACE, WE'RE
16 GOING TO BLOW YOUR BRAINS OUT."

17 NOW, WE'RE USING IT -- TRYING TO USE IT TO PROVE THAT
18 DELSHAWN HAD HIS BRAINS BLOWN OUT. THIS WAS WHAT AN
19 INDIVIDUAL SAID. SHE HAS FIRSTHAND KNOWLEDGE OF IT, AND
20 IT'S VERY RELEVANT TO THIS CASE. THE STATE, IN THEIR
21 OPENING STATEMENT, TRIED TO ESTABLISH A MOTIVE.

22 THE COURT: WELL, THE FACT THAT SHE IS PRESENT OR SHE
23 WITNESSES IT AND THEN TESTIFIES TO WHAT SOMEBODY ELSE
24 SAID, THEN PRETTY MUCH ALL HEARSAY WOULD ALWAYS COME IN
25 BECAUSE IT WAS SOMEBODY WHO HAD WITNESSES AND HEARD WHAT

1 SOMEBODY HAD TO SAY, RIGHT?

2 MR. SHARDT: YOUR HONOR, RESPECTFULLY, I WOULD
3 DISTINGUISH THAT. WE'RE NOT USING IT -- IT'S SOMEONE
4 ELSE'S STATEMENT, BUT WE'RE NOT USING A STATEMENT TO GET
5 TO THE TRUTH OF THE MATTER ASSERTED. THAT'S WHAT HEARSAY
6 IS.

7 WE'RE MERELY USING THE STATEMENT TO ESTABLISH THAT
8 THE STATEMENT WAS MADE, AND WE THINK THAT'S
9 DISTINGUISHABLE FROM HEARSAY.

10 IF THE INDIVIDUAL SAID, "DELSHAWN, I KNOW YOU'RE IN
11 THE HOUSE," AND WE WERE TRYING TO PROVE THAT DELSHAWN WAS
12 IN THE HOUSE AND MS. BANKS HAD NO PERSONAL KNOWLEDGE THAT
13 DELSHAWN WAS IN THE HOUSE, THAT WOULD BE ONE THING.

14 WE ARE JUST USING IT TO SHOW THAT THAT STATEMENT WAS
15 MADE; THAT THERE WERE, IN FACT, INDIVIDUALS AT T.S. MARTIN
16 THAT WERE THREATENING DELSHAWN, AND SHE HAS FIRSTHAND
17 KNOWLEDGE OF WHAT -- THE POINT WE'RE TRYING TO MAKE, THAT
18 THERE WERE INDIVIDUALS AT T.S. MARTIN THREATENING
19 DELSHAWN.

20 MS. FENT: WITH ALL DUE RESPECT, THE VERY STATEMENT
21 THAT THEY'RE TRYING TO ADMIT, THEY'RE TRYING TO ADMIT IT
22 FOR THE TRUTH OF THE MATTER ASSERTED, THAT SOMEONE ELSE
23 SAYS, "I WILL KILL YOU, DELSHAWN, IF I SEE YOUR FACE
24 AGAIN."

25 NOW, IF THE PERSON HAD SAID, YOU KNOW, "I DID KILL

1 DELSHAWN," THAT, YOU KNOW, IS A DIFFERENT STATEMENT THAN
2 "WE WILL." WHAT THEY'RE TRYING TO SAY IS THERE WAS
3 SOMEONE ELSE OUT THERE ASSERTING A MOTIVE --

4 THE COURT: WHAT --

5 MS. FENT: -- TO KILL DELSHAWN, AND THAT IS THE TRUTH
6 OF THE MATTER ASSERTED.

7 MR. SHARDT: YOUR HONOR, RESPECTFULLY, WE'RE TRYING
8 TO ASSERT THAT THERE WAS AN INDIVIDUAL WHO THREATENED
9 DELSHAWN, AND SHE HAS FIRSTHAND KNOWLEDGE.

10 THE COURT: WELL, IF THAT'S WHAT YOU'RE TRYING TO
11 ESTABLISH, THEN YOU'RE ASSERTING IT FOR THE TRUTH OF WHAT
12 THE STATEMENT WAS.

13 MR. SHARDT: BUT, YOUR HONOR, SHE HAS FIRSTHAND
14 KNOWLEDGE. THAT'S NOT THE TRUTH OF -- I'M ASKING --

15 THE COURT: WAIT, WAIT, WAIT. WHAT DO YOU MEAN
16 "FIRSTHAND KNOWLEDGE"? THAT MEANS SHE HEARD IT, RIGHT?

17 MR. SHARDT: YES, SIR.

18 THE COURT: THAT'S WHAT'S PRESENT IN EVERY HEARSAY
19 STATEMENT, IS IT NOT, THAT SOMEBODY HEARD SOMEBODY ELSE
20 SAY SOMETHING?

21 MR. SHARDT: YES, BUT IN HEARSAY, THE ARGUMENT
22 AGAINST HEARSAY -- OR WHAT MAKES SOMETHING HEARSAY IS THE
23 CONTENTS OF THAT STATEMENT MADE REFERENCE TO ANOTHER FACT
24 THAT WE ARE TRYING TO SHOW. FOR INSTANCE, IF THEY SAID,
25 "DELSHAWN DID THIS," AND WE WERE TRYING TO SHOW THAT

1 DELSHAWN DID, IN FACT, DO SOMETHING BY THAT SCREAM --
2 HERE, WE'RE NOT TRYING TO PROVE ANYTHING -- ANY FACTS IN
3 THAT STATEMENT. WE ARE MERELY JUST ASSERTING THAT THE
4 STATEMENT, IN THIS CASE A YELL, WAS MADE.

5 YOUR HONOR, YOUR HONOR, ALSO -- WE WOULD ALSO ARGUE
6 THAT THIS GETS TO THE QUALITY OF THE INVESTIGATION, AS
7 WELL, BECAUSE IN MY FOLLOW UP, I'M GOING TO ASK -- BECAUSE
8 SHE DID GIVE THAT STATEMENT TO THE POLICE THAT NIGHT, I'M
9 GOING TO ASK IF ANYONE EVER TALKED TO HER AGAIN ABOUT THAT
10 STATEMENT.

11 WELL, YOUR HONOR, WE WOULD ARGUE THAT THIS IS NOT
12 HEARSAY BECAUSE SHE HAS FIRSTHAND KNOWLEDGE OF WHAT SHE
13 HAS TESTIFIED TO.

14 THE COURT: SHE HAS FIRSTHAND KNOWLEDGE OF WHAT SHE
15 HEARD, RIGHT?

16 MR. SHARDT: RIGHT. BUT YOUR HONOR, IF SHE HAD -- IF
17 THE POINT THAT WE WERE TRYING TO GET ACROSS WAS, FOR
18 INSTANCE, THAT DELSHAWN HAD SHOT JOE AND IF THE PERSON
19 YELLED, "WE'RE GOING TO GET YOU, DELSHAWN, BECAUSE YOU
20 SHOT JOE", AND I TRIED TO GET THROUGH HER THAT DELSHAWN
21 HAD MURDERED JOE, THAT WOULD BE HEARSAY BECAUSE SHE HAS NO
22 FIRSTHAND KNOWLEDGE OF WHAT DELSHAWN DID TO JOE, AND SHE
23 WOULD BE EXTRAPOLATING THAT FROM ANOTHER STATEMENT OR
24 SOMEONE ELSE'S STATEMENT.

25 IN THIS CASE, THERE IS NO FACT THAT WE'RE ASSERTING.

1 WE'RE JUST ASSERTING THAT THE STATEMENT WAS MADE.

2 WE WOULD ARGUE THAT -- OUR POINT IS THAT THERE WAS
3 SOMEONE YELLING, AND THEY WERE YELLING ABOUT DELSHAWN. WE
4 WOULD ARGUE IT'S NO DIFFERENT THAN HER OBSERVING SOMEONE
5 RUNNING TOWARDS DELSHAWN'S HOUSE OR ANY OTHER THING THAT
6 SHE COULD OBSERVE SOMEONE DOING, BECAUSE THERE'S NO FACT
7 THAT WE'RE TRYING TO PROVE THROUGH THIS STATEMENT.

8 MS. FENT: THE HEARSAY GOES DIRECTLY TO STATEMENTS
9 AND NOT PEOPLE'S PHYSICAL ACTIONS, SO SHE COULD CLEARLY
10 TESTIFY PEOPLE WERE RUNNING AROUND, PLAYING WERE BASEBALL
11 ON THE FIELD, WHATEVER. HEARSAY IS STATEMENTS.

12 MR. SHARDT: YOUR HONOR.

13 MS. FENT: THEY'RE OFFERING A THREAT TO PROVE THE
14 TRUTH OF A THREAT -- OF SOMEONE ELSE THREATENING HIM.
15 THAT IS --

16 MR. SHARDT: WE'RE OFFERING IT --

17 MS. FENT: -- THE HEART OF THE TRUTH OF THE MATTER
18 ASSERTED.

19 MR. SHARDT: WE'RE OFFERING EYEWITNESS TESTIMONY OF A
20 THREAT TO PROVE THAT THREAT OCCURRED. WE'RE OFFERING
21 EYEWITNESS TESTIMONY TO WHAT THE PERSON SAW TO SHOW THAT
22 THAT THING DID, IN FACT, HAPPEN.

23 THE COURT: WE'LL TAKE A SHORT BREAK. IF YOU CAN
24 FIND A CASE THAT SAYS A THREAT MADE BY A THIRD PARTY IS AN
25 EXCEPTION TO THE HEARSAY RULE, I'LL CONSIDER IT. I DON'T

1 BELIEVE YOU'RE GOING TO FIND THAT CASE. I CAN'T FIND IT.
2 I DON'T BELIEVE IT EXISTS.

3 WE'LL TAKE ABOUT TEN MINUTES.

4 YOU CAN STEP DOWN FROM THE WITNESS STAND DURING THE
5 BREAK, BUT YOU CAN'T TALK TO ANYBODY ABOUT YOUR TESTIMONY
6 WHILE WE'RE TAKING THIS BREAK. WE'LL BE BACK IN ABOUT TEN
7 MINUTES. YOU WILL BE BACK ON THE WITNESS STAND.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 (WHEREUPON, DEFENDANT'S EXHIBITS NOS. 6, 7 WERE
10 MARKED FOR IDENTIFICATION ONLY.)

11 THE COURT: YES, SIR, MR. SCHARDT?

12 MR. SHARDT: YOUR HONOR, MAY I APPROACH? I'VE HANDED
13 THE STATE A COPY OF THIS CASE.

14 THE BAILIFF: WHERE IS THE WITNESS?

15 WHERE IS YOUR WITNESS, MR. SCHARDT?

16 (THE WITNESS WAS BROUGHT INTO THE COURTROOM.)

17 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR ANY
18 OTHER ARGUMENT.

19 MR. SCHARDT?

20 MR. SHARDT: YOUR HONOR, YOU KNOW, WE WOULD ARGUE
21 THAT THIS, FIRST OF ALL, IS NOT BEING USED FOR THE TRUTH
22 OF THE MATTER ASSERTED.

23 IN ADDITION, WE WOULD ARGUE THAT THIS WOULD FALL
24 UNDER THE EXCITED UTTERANCE EXCEPTION. CERTAINLY, FROM
25 THE FACTS SURROUNDING THIS STATEMENT, THERE IS EVIDENCE

1 THAT THE DECLARANT IN THIS CASE WOULD HAVE BEEN EXCITED,
2 CERTAINLY, UNDER THE SENSE OF EXCITEMENT WHEN YELLING OUT,
3 AND WE DID HEAR THAT THEY WERE YELLS, OUT -- THESE
4 STATEMENTS, AS WELL, AS PRESENT SENSE -- I MEAN, EXCUSE
5 ME, AS WELL AS 803(3) THEN EXISTING MENTAL OR EMOTIONAL
6 PHYSICAL CONDITION, WHICH WE BELIEVE THAT THIS CASE
7 CODIFIED.

8 THE COURT: NOW, THIS CONVERSATION WE'RE TALKING
9 ABOUT WAS THE DAY BEFORE THE SHOOTING; IS THAT RIGHT?

10 MR. SHARDT: YES, YOUR HONOR, I THINK THE TESTIMONY
11 WAS A DAY OR TWO.

12 THE COURT: OKAY. GO AHEAD.

13 MR. SHARDT: IT WASN'T SO MUCH -- AGAIN, IT WASN'T SO
14 MUCH A CONVERSATION THAT THE WITNESS OBSERVED A GROUP OF
15 BOYS, AND AT LEAST ONE OF THE BOYS WAS YELLING.

16 WE HAVE SAID THAT IT FALLS UNDER 803"3", THEN
17 EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION, WHICH
18 AGAIN, WE BELIEVE THAT THIS CASE, STATE V. LEWIS, FROM
19 1987 WAS WRITTEN PRIOR TO THIS EXCEPTION BEING CODIFIED,
20 BUT THE STATEMENT OF THE DECLARANT'S THEN EXISTING STATE
21 OF MIND, EMOTION, SENSATION, OR PHYSICAL CONDITION SUCH AS
22 INTENT, PLAN, MOTIVE, DESIGN, MENTAL FEELING, PAIN, OR
23 BODILY HEALTH.

24 WE WOULD ARGUE THAT THIS STATEMENT GETS TO THE INTENT
25 AND TO THE PLAN OF THE DECLARANT WHEN HE YELLED THESE

1 THREATS. THEREFORE, WE WOULD ARGUE THAT -- AGAIN, THAT
2 IT'S -- IT WOULD NOT BE USED TO PROVE THE TRUTH OF THE
3 MATTER ASSERTED BUT ADDITIONALLY, IT FALLS UNDER EXCITED
4 UTTERANCE, AS WELL AS 803(3), THEN EXISTING MENTAL,
5 EMOTIONAL, AND PHYSICAL CONDITION AS DISCUSSED IN STATE V.
6 LEWIS.

7 THE COURT: ALL RIGHT. SOLICITOR?

8 MS. FENT: WELL, THE TWO THEORIES THAT HE'S TRYING TO
9 PRESENT ACTUALLY CONTRADICT EACH OTHER. HE HAS ALREADY
10 SAID, "WE WANT TO OFFER THIS THREAT. WE ARE OFFERING THIS
11 THREAT TO PROVE THAT A THREAT WAS MADE," SO THAT IS THE
12 TRUTH OF THE MATTER ASSERTED.

13 WITH REGARD TO 803(3), I MEAN, HE'S NOW SAYING THAT
14 HE WANTS TO OFFER IT FOR -- TO PROVE THE INTENT OR THE
15 THEN EXISTING STATE OF MIND, BUT WE DON'T KNOW WHO THIS
16 PERSON WAS. SHE SAID, "I HAVE NO IDEA WHO SAID THIS
17 STATEMENT. I JUST HEARD THIS OUT."

18 IN ADDITION, I DON'T BELIEVE, IN TERMS OF EXCITED
19 UTTERANCE, THAT A PROPER FOUNDATION WAS MADE. SHE DIDN'T
20 INDICATE ANY TYPE OF FOUNDATION, THAT THERE WAS SOME TYPE
21 OF STRESSFUL OR EMOTIONAL SITUATION GOING ON WHEN THE
22 STATEMENT WAS MADE BY THIS UNIDENTIFIED PERSON.

23 MR. SHARDT: YOUR HONOR, I THINK THE FACTS BEHIND THE
24 STATEMENT, AS WELL AS IT BEING A SCREAM OR A YELL, I WOULD
25 INDICATE IT WAS AN EXCITED UTTERANCE.

1 AS FAR AS THE 803(3), WE DO BELIEVE THAT IT DOES SHOW
2 INTENT AND MOTIVE. THE SOLICITOR IS CORRECT, WE DON'T
3 KNOW WHO THE DECLARANT IS, AND THAT'S KIND OF THE POINT,
4 BUT WE DON'T SEE ANYWHERE IN THE RULES THAT WE HAVE TO
5 KNOW EXACTLY WHO THE DECLARANT IS, AT LEAST I'M NOT AWARE
6 OF ANYTHING THAT SAYS THAT.

7 AND YOUR HONOR, IF I MAY POINT OUT ONE OTHER -- WE
8 ALSO BELIEVE THAT THIS GETS TO THE INVESTIGATION, AND I DO
9 PLAN ON ASKING FOLLOW-UP QUESTIONS WITH THE WITNESS ABOUT
10 SUBSEQUENT INVESTIGATION INTO HER KNOWLEDGE OF THIS EVENT,
11 WHICH WE BELIEVE WOULD GET TO THE QUALITY OF THE
12 INVESTIGATION IN THIS CASE, AND THIS -- THIS ISSUE IS VERY
13 RELEVANT.

14 THE STATE ASSERTED IN OPENING THAT, YOU KNOW,
15 DELSHAWN PRESCOTT WAS PROBABLY THE INTENDED TARGET. WE
16 ARE THROWING IN FRONT OF THE JURY THE POSSIBILITY OF
17 DELSHAWN PRESCOTT AND WHO WOULD HAVE WANTED TO HARM
18 DELSHAWN PRESCOTT. THIS IS JUST SOMETHING THAT WE FEEL
19 THE JURY SHOULD HEAR.

20 THE COURT: NUMBER ONE, THE STATEMENT IS HEARSAY.
21 YOU HAVE ARGUED IT BOTH WAYS, AND YOU SAID -- YOU ARGUED,
22 FIRST, IT'S NOT HEARSAY BECAUSE YOU'RE NOT OFFERING IT FOR
23 THE TRUTH OF THE MATTER ASSERTED. IN FACT, THAT IS WHAT
24 IT'S BEING OFFERED FOR.

25 YOU'RE OFFERING IT TO PROVE THAT A THREAT WAS MADE,

1 SO IT'S BEING OFFERED FOR THE TRUTH OF THE MATTER
2 ASSERTED, SO THEN IT MUST COME WITHIN ONE OF THE
3 EXCEPTIONS OF THE HEARSAY RULE. I FIND THAT IT DOES NOT.

4 SPECIFICALLY AS TO THE EXCITED UTTERANCE, I'M RELYING
5 PRIMARILY ON STATE VS. HILL, A 1998 CASE. IT WAS TRIED
6 WHEN JUDGE ANDERSON WAS STILL ON THE TRIAL BENCH.

7 IN THAT CASE, THERE WAS A GROUP OF PEOPLE. THERE WAS
8 A SHOOTING, I THINK IN GEORGETOWN COUNTY, AND THAT SOMEONE
9 IN THE CROWD -- THE CROWD GATHERED AROUND TEN OR 15
10 MINUTES AFTER THE SHOOTING, AND SOMEONE, "AN
11 UNIDENTIFIABLE PERSON IN THE CROWD STATED THAT THERE WERE
12 TWO SUSPECTS." THAT WAS DISALLOWED AS HEARSAY, AND I
13 THINK THAT'S AS CLOSE TO WHAT I CAN FIND ON ANY OF THE
14 LAW. FOR THAT REASON, THE PARTICULAR STATEMENT THAT THIS
15 WITNESS WAS ABOUT TO TESTIFY TO IS NOT ALLOWED UNDER THE
16 HEARSAY RULE.

17 MR. SHARDT: YOUR HONOR, JUST TO BE CLEAR, YOUR
18 RULING IS THAT I CANNOT GET INTO EXACTLY WHAT WAS SAID,
19 BUT I CAN GET INTO THE FACT THERE WAS SOMETHING SAID.
20 JUST NOT WHAT --

21 THE COURT: LET'S GO AHEAD AND SEE WHERE YOU'RE
22 GOING. I WANT TO KNOW EXACTLY WHAT YOUR QUESTION IS SO
23 ONCE I BRING THE JURY IN, I DON'T HAVE TO SEND THEM BACK
24 OUT. WHAT'S THE QUESTION GOING TO BE?

25 MR. SHARDT: DID SHE OBSERVE ANYONE SCREAMING OR

1 YELLING?

2 THE COURT: SHE CAN TESTIFY AS TO WHAT SHE OBSERVED.
3 SHE CANNOT TESTIFY AS TO WHAT SHE HEARD. THAT IS THE
4 HEARSAY.

5 MR. SHARDT: THANK YOU, YOUR HONOR. AT THIS POINT,
6 COULD WE JUST PUT OUR OBJECTIONS ON THE RECORD?

7 THE COURT: YOUR OBJECTIONS ARE ON THE RECORD.

8 MR. SHARDT: I WOULD --

9 THE COURT: EVERYTHING THAT'S SAID IN HERE IS ON THE
10 RECORD, I GUARANTEE YOU, YES.

11 MR. SHARDT: THANK YOU, YOUR HONOR.

12 CAN THE WITNESS COME BACK, PLEASE?

13 THE BAILIFF: SHE IS UP HERE.

14 THE COURT: SHE IS UP HERE. ALL RIGHT. THANK YOU.

15 ALL RIGHT. GET THE JURY IN, PLEASE.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 11:43 A.M.)

18 MS. FRANKLIN: CAN WE APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
21 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

22 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

23 THE COURT: ALL RIGHT. MR. SHARDT, YOU MAY CONTINUE.

24 BY MR. SHARDT

25 Q THANK YOU, YOUR HONOR MAY IT PLEASE THE COURT.

1 MS. BANKS, WE WERE TALKING ABOUT AN INCIDENT THAT YOU
2 OBSERVED PREVIOUSLY BEFORE THE SHOOTING. HOW MANY DAYS --
3 AGAIN, HOW MANY DAY BEFORE THE SHOOTING DID THIS OCCUR?

4 A ABOUT -- IT WAS EITHER THE DAY BEFORE THE SHOOTING OR
5 THE DAY BEFORE THAT.

6 Q AND WHAT DID YOU OBSERVE? WITHOUT GETTING INTO
7 EXACTLY WHAT WAS SAID, WHAT DID YOU OBSERVE?

8 A A GROUP OF BOYS.

9 Q OKAY. A GROUP OF BOYS AND HOW MANY BOYS?

10 A ABOUT TEN OR 15 BOYS.

11 Q OKAY. WHERE WERE YOU WHEN THIS HAPPENED?

12 A OUTSIDE ON MY PORCH.

13 Q OKAY. WOULD THIS HAVE BEEN WHERE YOU WERE?

14 A YES, SIR.

15 Q OUTSIDE OF YOUR PORCH ON T.S. MARTIN?

16 A YES, SIR.

17 Q AND WHERE WAS THIS GROUP OF BOYS?

18 A RIGHT THERE BY THE -- IN THE YARD OF THE BASEBALL
19 FIELD.

20 Q OKAY.

21 A WELL, CLOSER TO THE STREET.

22 Q NOW, WITHOUT GETTING INTO EXACTLY WHAT WAS SAID, DID
23 THEY -- WERE THEY YELLING?

24 A YES, SIR.

25 Q OKAY. THEY WERE YELLING. OKAY. AND WERE THEY

1 MOVING?

2 A NO, SIR.

3 Q OKAY. WHAT DIRECTION WERE THEY YELLING?

4 A TOWARDS T.S. MARTIN.

5 Q OKAY. WHAT HOUSE IN PARTICULAR?

6 A I DON'T KNOW.

7 Q OKAY. WERE THEY YELLING AT ANY INDIVIDUALS?

8 A YES, SIR.

9 Q WHO WERE THEY YELLING AT?

10 A DELSHAWN PRESCOTT, I GUESS.

11 Q OKAY. AND WHAT TIME OF DAY DID THIS OCCUR?

12 A DAYTIME, DAYLIGHT.

13 Q SO IT WAS DAYLIGHT?

14 A (NODS IN THE AFFIRMATIVE).

15 Q OKAY. NOW, THIS EPISODE THAT YOU -- AND YOU

16 WITNESSED THIS?

17 A YES.

18 Q OKAY.

19 A I SEEN A GROUP OF BOYS.

20 Q OKAY. NOW, DID YOU TELL THE POLICE ABOUT THIS?

21 A NO.

22 Q ABOUT WHAT YOU HAD SEEN?

23 A DO YOU MEAN THE DAY IT HAPPENED?

24 Q NOT AT THE TIME. WHEN YOU WERE TALKING TO THE POLICE

25 ABOUT THE SHOOTING, DID YOU TELL THE POLICE ABOUT WHAT YOU

1 HAD SEEN?

2 A YES.

3 Q YOU TOLD THE POLICE THAT YOU HAD SEEN BOYS YELLING AT
4 DELSHAWN?

5 A YES.

6 Q THE GROUP OF BOYS?

7 A YES.

8 Q OKAY. DID YOU GIVE THAT TO YOUR STATEMENT -- YOUR
9 STATEMENT TO THE POLICE?

10 A YES.

11 Q OKAY. AND YOU GAVE THAT STATEMENT THAT NIGHT, THE
12 NIGHT OF THE SHOOTING?

13 A YES.

14 Q OKAY. AND YOU WOULD -- YOU WOULD AGREE THAT IT'S
15 BEEN PROBABLY TWO YEARS, OVER TWO YEARS, SINCE YOU HAVE
16 GIVEN THIS STATEMENT?

17 A YES, SIR.

18 Q ALL RIGHT. IN THE LAST TWO YEARS, HAS ANY LAW
19 ENFORCEMENT COME UP TO YOU AND ASKED YOU ABOUT --

20 A NO, SIR.

21 Q -- WHO YOU MAY HAVE SEEN OUT THERE?

22 A NO.

23 Q DO YOU KNOW CHRISTOPHER LIVERMAN?

24 A YES, SIR.

25 Q OKAY. DID YOU KNOW CHRISTOPHER LIVERMAN BACK IN

1 2004?

2 A YES, SIR.

3 Q COULD YOU POINT HIM OUT FOR ME?

4 A RIGHT THERE (INDICATING).

5 Q ALL RIGHT. HOW DID YOU KNOW CHRISTOPHER LIVERMAN?

6 A WE ATTENDED C.A. JOHNSON TOGETHER.

7 Q OKAY. DID YOU EVER SPEND TIME WITH HIM OUTSIDE OF
8 SCHOOL?

9 A NO, SIR.

10 Q DID YOU EVER WALK WITH HIM?

11 A ONCE, MAYBE ONCE.

12 Q OKAY. WALKING TO SCHOOL?

13 A NO, WALKING FROM SCHOOL.

14 Q OKAY.

15 A BUT HE NEVER ONCE WALKED TO MY HOUSE.

16 Q OKAY. WHEN YOU WERE AT SCHOOL, DID YOU HAVE ANY --
17 AT THAT TIME, DID YOU HAVE ANY PARTICULAR REASON TO PAY
18 CLOSE ATTENTION TO CHRISTOPHER LIVERMAN?

19 A NO, SIR.

20 Q DID YOU HAVE A CRUSH ON HIM?

21 A A LONG TIME AGO.

22 Q OKAY. SO YOU KNEW WHO HE WAS?

23 A YES, SIR.

24 Q ALL RIGHT. YOU KNEW THE WAY HE LOOKED?

25 A YES, SIR.

1 Q OKAY. AND YOU KNEW THE WAY HIS VOICE SOUNDED?

2 A YES, SIR.

3 Q OKAY. NOW, YOU TESTIFIED THAT A COUPLE OF DAYS
4 BEFORE THE SHOOTING YOU SAW A GROUP OF BOYS YELLING AT
5 DELSHAWN ON T.S. MARTIN IN THE BASEBALL FIELD. YOU WERE
6 WATCHING FROM A DISTANCE, CORRECT?

7 A YES, SIR.

8 Q AND IT WAS TOUGH TO MAKE PEOPLE OUT, CORRECT?

9 A HUH?

10 Q YOU COULDN'T -- IT WAS TOUGH TO SEE FACES, CORRECT?

11 A RIGHT.

12 Q BUT THAT BEING SAID, DID YOU EVER SEE CHRISTOPHER
13 LIVERMAN THERE --

14 A NO, SIR.

15 Q -- A COUPLE OF DAYS BEFORE THE SHOOTING YELLING AT
16 DELSHAWN?

17 A NO, SIR.

18 Q OKAY. DID YOU EVER HEAR CHRISTOPHER LIVERMAN'S VOICE
19 YELLING AT DELSHAWN?

20 A NO, SIR.

21 Q OKAY. THAT NIGHT, THE NIGHT OF THE SHOOTING, YOU SAW
22 THE GROUP OF BOYS OUT AT T.S. MARTIN?

23 A YES, SIR.

24 Q OKAY. DID YOU EVER SEE CHRISTOPHER LIVERMAN?

25 A NO, SIR.

1 Q OKAY. DID YOU EVER HEAR CHRISTOPHER LIVERMAN'S VOICE
2 THAT NIGHT?

3 A NO, SIR.

4 MR. SHARDT: I HAVE NO FURTHER QUESTIONS.

5 THANK YOU, MS. BANKS.

6 THE COURT: ALL RIGHT. CROSS-EXAMINE?

7 CROSS-EXAMINATION:

8 BY MS. FENT

9 Q MS. BANKS, YOU NEVER SAW ANYBODY'S FACE. EITHER IN
10 THE CAR INCIDENT OR THE SECOND TIME WHEN THE BOYS WALKED
11 UP, YOU NEVER SAW ANYBODY'S FACE, CORRECT?

12 A RIGHT.

13 Q NOT ENOUGH TO IDENTIFY ANYBODY OUT THERE, CORRECT?

14 A RIGHT.

15 Q OKAY. WHEN THE CAR DROVE UP THE FIRST TIME, YOU SAID
16 THAT THAT PERSON THAT GOT OUT OF THE CAR HAD A BANDANNA
17 OVER HIS FACE, CORRECT?

18 A YES, MA'AM.

19 Q AND THE WINDOWS WERE TINTED IN THE CAR, CORRECT?

20 A YES, MA'AM.

21 Q SO YOU DON'T HAVE ANY IDEA WHO WAS IN THAT CAR,
22 CORRECT?

23 A I DON'T HAVE ANY IDEA.

24 Q AND YOU DON'T KNOW WHO THAT PERSON WAS WITH THE
25 BANDANNA OVER THE FACE, CORRECT?

- 1 A RIGHT.
- 2 Q YOU SAID THAT WHEN THE CAR DROVE UP, YOU STEPPED
3 INSIDE THE HOUSE, CORRECT?
- 4 A RIGHT.
- 5 Q JUST INSIDE THE DOOR?
- 6 A RIGHT.
- 7 Q AND YOU SAID THAT THE PERSON WITH THE BLACK BANDANNA
8 THAT GOT OUT OF THE CAR WAS DOWN NEAR AROUND 100 T.S.
9 MARTIN.
- 10 A RIGHT.
- 11 Q SO FROM INSIDE THE DOOR, TYRONE IS OUT ON THE PORCH,
12 CORRECT?
- 13 A RIGHT, BUT THE SCREEN DOOR IS STILL OPEN.
- 14 Q OKAY. BUT YOU'RE ON THE INSIDE OF THE HOUSE ON THAT
15 SIDE OF THE DOOR, NOT OUT ON THE PORCH. YOU STEPPED
16 INSIDE?
- 17 A RIGHT.
- 18 Q AND TYRONE IS OUT ON THE PORCH?
- 19 A RIGHT.
- 20 Q AND THAT PERSON HAS THE BANDANNA OVER HIS FACE,
21 CORRECT?
- 22 A RIGHT.
- 23 Q OKAY. THEN THE POLICE COME, CORRECT?
- 24 A RIGHT.
- 25 Q AND THEN YOU GO INSIDE THE HOUSE?

1 A I CAME OUTSIDE WHEN THE POLICE CAME.

2 Q OKAY. YOU CAME OUTSIDE AND TALKED TO THE POLICE?

3 A ME AND MY SISTER, ASHLEY.

4 Q OKAY. AND TOLD THEM WHAT YOU SAW WITH THE CAR, ALL
5 THAT SORT OF THING, RIGHT?

6 A RIGHT.

7 Q AND THEN THE POLICE LEFT?

8 A RIGHT.

9 Q OKAY. AND THEN YOU WENT INSIDE WITH SHANTANE?

10 A WHO?

11 Q AND SHANTANE, JUST TO MAKE SURE WE'VE HAD A -- WE'VE
12 HAD A SHANTE BETHEL. THIS IS NOT SHANTE BETHEL, CORRECT?
13 SHANTANE SIMMONS.

14 A RIGHT.

15 Q OKAY. AND SHE ALSO LIVED ON THAT STREET, OR SHE WAS
16 VISITING?

17 A SHE STAYED WITH HER AUNT FOR A WHILE --

18 Q OKAY.

19 A -- ON T.S. MARTIN.

20 Q OKAY. AND AFTER THE POLICE CAME, SHE COMES DOWN TO
21 YOUR HOUSE, AND THEN YOU GO INSIDE THE HOUSE.

22 A AFTER A FEW MINUTES ON THE PORCH. WELL, WHEN WE SEEN
23 THE BOYS WALK UP, THAT'S WHEN WE WALKED IN THE HOUSE.

24 Q OKAY. SO YOU SEE THE BOYS WALK UP, AND YOU TURN AND
25 GO INSIDE THE HOUSE.

1 A SHANTANE, TASHA, ASHLEY, TYRONE, ALL OF US WENT IN
2 THE HOUSE.

3 Q OKAY. YOU SAID ASHLEY GOT ON THE PHONE TO 911?

4 A RIGHT.

5 Q AT SOME POINT, YOU'RE ALSO ON THE PHONE WITH 911,
6 CORRECT?

7 A NO, MA'AM.

8 Q OKAY.

9 A SHANTE.

10 Q SHANTE ALSO PICKS UP THE PHONE?

11 A RIGHT.

12 Q AND SOMEONE HAD GOTTEN ALL OF YOU TO GET TO THE BACK
13 OF THE HOUSE, CORRECT?

14 A RIGHT.

15 Q SO YOU'RE HUDDLED DOWN WITH THE KIDS?

16 A RIGHT.

17 Q AND THEY'RE PASSING THE PHONE BACK AND FORTH WITH
18 911?

19 A RIGHT.

20 Q TYRONE IS AT THE WINDOW, CORRECT?

21 A RIGHT.

22 Q AND TYRONE IS TELLING YOU ALL WHAT HE SEES?

23 A UH-HUH.

24 Q YOU TESTIFIED ON DIRECT EXAMINATION TO SOME THINGS
25 THAT YOU SAID THAT YOU SAW WHEN THIS GROUP COMES WALKING

1 UP, CORRECT?

2 A RIGHT.

3 Q BUT IN YOUR STATEMENT, YOU BASICALLY SAID TYRONE IS
4 OUT ON THE PORCH, AND YOU'RE INSIDE THE HOUSE.

5 A RIGHT.

6 Q YOU NEVER GAVE ANY DESCRIPTIONS OF ANY INDIVIDUALS,
7 CORRECT?

8 A RIGHT.

9 Q YOU COULD NOT IDENTIFY ANY OF THOSE PEOPLE'S FACES?

10 A RIGHT.

11 Q THAT WALKED UP?

12 A NO, MA'AM, I CAN'T.

13 Q AND YOU HEARD FROM THE INSIDE OF THE HOUSE TEN SHOTS?

14 A RIGHT.

15 Q THE WHOLE TIME THAT Y'ALL ARE ON THE PHONE WITH 911,
16 TYRONE IS AT THE WINDOW, CORRECT?

17 A RIGHT.

18 Q AND THAT LASTED FROM THE TIME -- JUST BEFORE YOU
19 CALLED 911 TO WHEN THE SHOTS WERE FIRED. HE'S STANDING AT
20 THE WINDOW. THAT'S ABOUT FOUR TO FIVE MINUTES, CORRECT?

21 A PROBABLY ABOUT THAT, YES.

22 Q SOUNDS ABOUT RIGHT?

23 A YES.

24 MS. FENT: OKAY. NO FURTHER QUESTIONS.

25 THE COURT: ANY REDIRECT?

1 MR. SHARDT: YOUR HONOR, JUST A COUPLE.

2 REDIRECT EXAMINATION:

3 BY MR. SHARDT

4 Q YOU WERE JUST ASKED ABOUT WHEN TYRONE HAD A GUN
5 PULLED ON HIM, OKAY. YOU TESTIFIED THAT YOU WERE IN THE
6 HOUSE, OKAY. YOU WERE LOOKING THROUGH A SCREEN DOOR.

7 A (NODS IN THE AFFIRMATIVE).

8 Q OKAY. HOW LONG WERE YOU LOOKING?

9 A ABOUT -- IT DIDN'T TAKE THAT -- PROBABLY ABOUT TWO TO
10 THREE MINUTES, MAYBE FOUR AT THE MOST.

11 Q SO YOU LOOKED AT THE BOY THAT PULLED A GUN ON TYRONE
12 FOR ABOUT TWO TO THREE MINUTES?

13 A OH NO. I LOOKED AT HIM FOR LIKE A MINUTE OR TWO,
14 BECAUSE THEY JUST SAID ONE THING AND GOT READY TO GO.
15 SOMEBODY SAID, "COME ON, GET BACK IN THE CAR."

16 Q OKAY.

17 A THAT'S WHEN ME AND TYRONE WENT BACK INSIDE THE HOUSE.

18 Q SO YOU LOOKED AT HIM FOR A MINUTE OR TWO?

19 A (NODS IN THE AFFIRMATIVE).

20 Q OKAY. NOW, YOU -- CAN YOU IDENTIFY THAT INDIVIDUAL
21 AS CHRISTOPHER LIVERMAN?

22 A NO.

23 MR. SHARDT: NO FURTHER QUESTIONS, YOUR HONOR.

24 THE COURT: ALL RIGHT. ANYTHING FURTHER?

25 MS. FENT: NOTHING FURTHER, YOUR HONOR.

1 THE COURT: ALL RIGHT. YOU CAN STEP DOWN.

2 THE BAILIFF: WATCH YOUR STEP DOWN NOW, OKAY. WATCH
3 YOUR STEP DOWN.

4 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS,
5 PLEASE.

6 MR. SHARDT: THE DEFENSE CALLS PRECIOUS SAMUELS DEAN.
7 PRECIOUS DEAN, AFTER BEING DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
10 FOR THE RECORD.

11 THE BAILIFF: WATCH YOUR STEP. STEP UP. NOW, YOU
12 NEED TO SPEAK UP LOUDER THAN THAT LAST PERSON. WE NEED TO
13 HEAR YOU. STATE YOUR LAST NAME, YOUR FIRST NAME, FOR THE
14 RECORD.

15 THE WITNESS: PRECIOUS MICHELLE DEAN.

16 DIRECT EXAMINATION:

17 BY MR. SHARDT

18 Q GOOD MORNING, MS. DEAN. WHAT TYPE OF WORK DO YOU DO?

19 A I WORK FOR THE DEPARTMENT OF MENTAL HEALTH.

20 Q OKAY. AND WHERE DO YOU LIVE?

21 A SAY IT AGAIN.

22 Q WHERE DO YOU LIVE?

23 A YOU NEED MY EXACT ADDRESS?

24 Q GENERALLY.

25 A IN COLUMBIA.

1 Q YOU LIVE IN COLUMBIA. ON AUGUST OF 2004 WHERE WERE
2 YOU LIVING?

3 A T.S. MARTIN WITH AN AUNT.

4 Q OKAY. WHO WERE YOU LIVING WITH?

5 A ERIKA OSBORNE.

6 Q OKAY. AND WHAT HOUSE WERE YOU LIVING IN?

7 A [REDACTED]

8 Q OKAY. DO YOU RECOGNIZE THIS MAP?

9 A YES.

10 Q OKAY. AND YOU WERE STAYING IN THIS HOUSE?

11 A YES.

12 Q OKAY DID YOU -- WERE YOU AT T.S. MARTIN ON
13 AUGUST 26TH, 2004?

14 A YES.

15 Q WERE YOU THERE THAT EVENING?

16 A YES.

17 Q OKAY. DID YOU HAPPEN TO SEE ANY CARS, SUSPICIOUS
18 CARS, DRIVING AROUND T.S. MARTIN THAT EVENING?

19 A THAT EVENING, EARLIER THAT DAY? PROBABLY NOT BECAUSE
20 I WORKED AND WENT HOME AND TOOK A NAP, BUT THAT NIGHT,
21 YES.

22 Q THAT NIGHT. OKAY. WHAT KIND OF CAR DID YOU SEE?

23 A I WASN'T ABLE TO IDENTIFY THE CAR THEN. I KNOW IT
24 WAS WHITE, LOOKED ALMOST LIKE A NISSAN SENTRA BUT I'M NOT
25 SURE.

1 Q BUT IT WAS A SMALL CAR?

2 A YES.

3 Q AND IT WAS WHITE?

4 A (THERE WAS NO RESPONSE).

5 Q IT WAS WHITE?

6 A YES.

7 Q OKAY. AND WHAT TIME WAS THAT WHEN YOU SAW THIS CAR?

8 A MAYBE AROUND 9ISH.

9 Q OKAY.

10 A COULD HAVE BEEN.

11 Q OKAY. AND WHERE WAS THIS CAR DRIVING, GENERALLY?

12 A SAY IT AGAIN.

13 Q WHERE WAS THIS CAR DRIVING?

14 A WHERE WAS IT GOING?

15 Q YEAH. WHERE WAS IT GOING?

16 A COMING OUT OF THE NEIGHBORHOOD AT T.S. MARTIN.

17 Q OKAY. DID YOU -- WHEN THE CAR WAS TRAVELING DOWN

18 T.S. MARTIN, DID YOU SEE ANY PEOPLE IN THE CAR?

19 A YEAH. I SAW SOME GENTLEMEN IN THE CAR.

20 Q COULD YOU IDENTIFY -- WHEN IT WAS DRIVING, COULD YOU

21 IDENTIFY ANY OF THESE INDIVIDUALS? DO YOU KNOW WHO --

22 WHEN YOU SAW THE CAR DRIVING, COULD YOU TELL WHO WAS IN

23 THE CAR?

24 A NO.

25 Q OKAY.

1 A NO, NOT UNTIL -- NO. I COULDN'T TELL.

2 Q OKAY. DID THE CAR PARK?

3 A IT STOPPED IN THE MIDDLE OF THE ROAD.

4 Q OKAY. SO DID YOU SEE ANY PEOPLE GET OUT?

5 A I SAW ONE PERSON GET OUT.

6 Q OKAY. WHAT DID THIS PERSON DO?

7 A HE GOT OUT OF THE CAR, AND HE CAME AROUND AND STOOD
8 IN FRONT OF 104. AT THAT POINT, HE WAS ARGUING WITH
9 SOMEONE AT 104.

10 Q OKAY. SO WHERE WAS HE STANDING AT THIS POINT?

11 A IN FRONT OF 104.

12 Q RIGHT HERE?

13 A HE WAS STANDING ON THE ROAD. HE WASN'T ON THE
14 SIDEWALK. HE WAS IN THE ROAD.

15 Q RIGHT HERE?

16 A YES.

17 Q AND THIS INDIVIDUAL, WHAT DID HE DO? WHAT HAPPENED?

18 A HE JUST -- HE GOT OUT OF THE CAR, AND HE STARTED
19 ARGUING WITH ONE OF THE RESIDENTS IN 104.

20 Q OKAY. WAS HE ARMED?

21 A YES.

22 Q WHAT DID HE HAVE ON?

23 A HE HAD -- FROM WHAT I COULD TELL, IT WAS A HANDGUN,
24 BUT IT WAS TUCKED IN HIS PANTS.

25 Q OKAY. HOW DID YOU SEE IN HIS PANTS? HOW COULD YOU

1 SEE A HANDGUN IN HIS PANTS?

2 A BECAUSE HE LIFTED HIS SHIRT.

3 Q OKAY. HOW DID HE -- DID HE WALK UP AND JUST LIFT HIS
4 SHIRT?

5 A IN THE MIDDLE OF ARGUING, HE LIFTED HIS SHIRT JUST
6 LIKE THAT.

7 Q WAS IT TO SHOW THAT HE HAD A GUN?

8 A YES.

9 Q OKAY. DID HE -- WAS HE DOING ANYTHING ELSE? WAS HE
10 DISPLAYING ANY GANG SIGNS?

11 A NOT THAT I CAN RECALL.

12 Q OKAY. DID YOU RECOGNIZE THIS PERSON?

13 A YES, I DID.

14 Q OKAY. WHO WAS THIS PERSON THAT YOU SAW WITH A GUN ON
15 T.S. MARTIN?

16 A CARL SMITH, AND THEY CALL HIM POOH.

17 Q OKAY. HIS NICKNAME IS POOH. HOW LONG DID IT TAKE
18 YOU TO RECOGNIZE HIM?

19 A ACTUALLY, WHEN HE STARTED TALKING, I COULD RECOGNIZE
20 HIM.

21 Q OKAY. NOW, YOU STATED THAT HE WAS RIGHT HERE?

22 A IN FRONT OF 104, YES.

23 Q AND WHERE WERE YOU?

24 A I WAS ON THE PORCH AT [REDACTED]

25 Q SO YOU WERE RIGHT HERE?

1 A YES.

2 Q OKAY. DID YOU KNOW CARL SMITH?

3 A NOT PERSONALLY, BUT JUST FROM WORKING WITH HIM.

4 Q YOU WORKED WITH HIM?

5 A YES.

6 Q OKAY. WHERE WERE YOU WORKING?

7 A SUBSTATION II.

8 Q OKAY. DID HE WORK WITH YOU?

9 A YES.

10 Q OKAY. HOW MANY DAYS DID YOU WORK WITH HIM?

11 A MAYBE ABOUT -- MAYBE THREE, FOUR WEEKS AT THE MOST.

12 Q OKAY. DID YOU WORK WITH HIM LIKE EVERY DAY OR --

13 A JUST ABOUT EVERY DAY.

14 Q OKAY.

15 A ABOUT THREE OUT OF FIVE DAYS.

16 Q SO YOU KNEW THE WAY HE LOOKED?

17 A YES.

18 Q OKAY. AND YOU KNEW THE WAY HIS VOICE SOUNDED?

19 A YES.

20 Q AND THAT WAS DEFINITELY CARL SMITH?

21 A YES.

22 Q OKAY. WHEN CARL SMITH SHOWED THE GUN AND WAS

23 ARGUING, WHAT DID YOU DO? DID YOU SPEAK TO HIM?

24 A YEAH. I TOLD HIM, "YOU NEED TO GO SOMEWHERE WITH

25 THAT MESS." HE WAS IN FRONT OF MY AUNT'S HOUSE.

1 Q DID YOU CALL HIM BY HIS NAME?

2 A I CALLED HIM POOH.

3 Q OKAY. SO YOU SAID, "POOH, GO ON WITH THAT"?

4 A YES.

5 Q "YOU NEED TO GET AWAY FROM MY HOUSE"?

6 A YES.

7 Q OKAY. AND THIS WAS ALL OUTSIDE THE WHITE FORD
8 ESCORT?

9 A YES.

10 Q AND THIS WAS AROUND 9:10, 9:15? THIS IS BEFORE THE
11 SHOOTING?

12 A YES.

13 Q OKAY. DID YOU SEE THE SHOOTING AT ALL?

14 A NO, I DIDN'T.

15 MS. FENT: THANK YOU, YOUR HONOR. I HAVE NO FURTHER
16 QUESTIONS.

17 THE COURT: CROSS-EXAMINE?

18 CROSS-EXAMINATION:

19 BY MS. FENT

20 Q MS. DEAN, SO YOU LIVED IN [REDACTED] WITH ERIKA, CORRECT?

21 A YES.

22 Q AND TARSHA OSBORNE LIVED IN [REDACTED] ?

23 A YES.

24 Q AND HOW ARE ERIKA AND TARSHA RELATED?

25 A THEY'RE SISTERS.

1 Q AND TARSHA, ERIKA, AND YOU ARE RELATED TO DELSHAWN,
2 CORRECT?

3 A YES.

4 Q OKAY. AND THAT WAS THE HOUSE THAT WAS ■■■ THAT YOU
5 SAID POOH WAS STANDING IN FRONT OF?

6 A YES.

7 Q OKAY. AND WHEN HE FIRST GETS OUT OF THE CAR -- WHEN
8 HE GETS OUT OF THE CAR, HE HAS A BANDANNA ON HIS FACE?

9 A YES.

10 Q OKAY. BUT YOU RECOGNIZED, BASICALLY, HIS VOICE, HIS
11 EYES, AND THE WAY THAT HE WALKED?

12 A I WOULDN'T SAY HIS EYES. IT WAS NIGHTTIME.

13 Q OKAY. SO HIS VOICE AND WHAT ELSE? HOW ELSE DID YOU
14 KNOW IT WAS POOH?

15 A BASICALLY HIS VOICE, THE WAY HE WALKED. YOU JUST
16 KNOW HIM.

17 Q OKAY. AND YOU CALLED OUT HIS NAME, YOU KNOW, "POOH,
18 GET ON WITH THIS MESS," RIGHT?

19 A YES.

20 Q DID YOU RECOGNIZE OR SEE ANYBODY ELSE THAT WAS IN
21 THAT CAR?

22 A I DIDN'T RECOGNIZE ANYONE BECAUSE I DIDN'T KNOW THEM,
23 BUT I DID SEE OTHER GUYS IN THE CAR.

24 Q OKAY. YOU COULD TELL THERE WERE OTHER PEOPLE IN THE
25 CAR BUT CAN'T SAY WHO THEY ARE?

1 A YES.

2 Q OKAY. THEN YOU BASICALLY -- AFTER THE POLICE COME,
3 AFTER THIS FIRST TIME, THE CAR COMES, YOU TALKED TO THE
4 POLICE? DID YOU PERSONALLY TALK TO THE POLICE?

5 A I WAS OUT THERE FOR MAYBE A BRIEF SECOND WHEN THE
6 POLICE WAS CALLED THE FIRST TIME WITH MY AUNT BECAUSE WE
7 CALLED, BECAUSE THEY CAME OUT THERE THE FIRST TIME, BUT
8 THE ONLY THING I COULD BASICALLY SAY TO THE POLICE WAS --

9 Q WELL, BUT DID YOU JUST TALK TO THEM? DID YOU GIVE
10 THEM THE INFORMATION OF WHAT YOU SAW?

11 A NO, MA'AM.

12 Q OKAY. DID YOU GIVE THEM POOH'S NAME?

13 A NO.

14 Q THEN WHEN THE ACTUAL SHOOTING HAPPENED, THIS WAS HOW
15 MUCH TIME LATER, LIKE 30 MINUTES LATER, 20 MINUTES LATER?

16 A MAYBE BETWEEN 30 MINUTES LATER.

17 Q OKAY. YOU DIDN'T SEE ANY OF THE SHOOTING, CORRECT?

18 A NO, I DID NOT.

19 Q YOU WERE INSIDE YOUR HOUSE?

20 A YES, I WAS.

21 Q YOU HEARD MULTIPLE SHOTS?

22 A YES.

23 Q AND THEN YOU WENT TO SHUT YOUR DOOR?

24 A YES.

25 Q TAKE CARE OF YOUR KIDS?

1 A YES.

2 Q AFTER YOU CALLED OUT POOH'S NAME, HOW MUCH LONGER DID
3 THAT CAR STAY?

4 A MAYBE ABOUT A GOOD TWO, MAYBE THREE MINUTES. IT
5 WASN'T LONG, TOO MUCH LONGER AFTER THAT.

6 Q HE GETS BACK IN THAT CAR AND LEAVES T.S. MARTIN?

7 A YES.

8 Q POOH DOES?

9 A YES.

10 Q THEY LEFT? THE CAR LEFT?

11 A THE CAR LEFT.

12 MS. FENT: NO FURTHER QUESTIONS.

13 THE COURT: ANY REDIRECT?

14 MR. SHARDT: NONE, YOUR HONOR.

15 THE COURT: YOU MAY STEP DOWN.

16 THE BAILIFF: WATCH YOUR STEP DOWN. DON'T FALL.

17 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS,
18 PLEASE.

19 MR. SHARDT: YOUR HONOR, MAY THE WITNESS BE EXCUSED?

20 THE COURT: WHY DON'T WE DO THIS, ALL WITNESSES ARE
21 EXCUSED UNLESS SOMEONE OBJECTS AFTER A WITNESS IS
22 DISMISSED FROM THE WITNESS STAND, ALL RIGHT? OKAY.

23 MR. SHARDT: THE DEFENSE CALLS OFFICER MELRON KELLY.

24 THE COURT: ALL RIGHT.

25 MELRON KELLY, AFTER BEING DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
3 FOR THE RECORD.

4 THE WITNESS: MY NAME IS MELRON KELLY.

5 DIRECT EXAMINATION:

6 BY MR. SHARDT

7 Q GOOD MORNING, OFFICER KELLY. WHERE DO YOU WORK?

8 A COLUMBIA POLICE DEPARTMENT.

9 Q OKAY. HOW LONG HAVE YOU WORKED WITH THEM?

10 A SEVEN YEARS.

11 Q OKAY. SO IN AUGUST OF 2004, YOU WERE WITH THE
12 COLUMBIA POLICE DEPARTMENT?

13 A YES, SIR.

14 Q OKAY. WHAT WAS YOUR RANK, OR WHAT WERE YOUR JOB
15 DUTIES?

16 A DURING THAT TIME, I WAS A NARCOTIC'S INVESTIGATOR. I
17 WAS THE NIGHT SHIFT ON CALL PERSON.

18 Q DID YOU HAPPEN TO BECOME INVOLVED IN A CASE, A
19 SHOOTING AT T.S. MARTIN?

20 A YES, I DID.

21 Q OKAY. AND DO YOU RECALL -- THIS WAS ON AUGUST 26TH,
22 2004?

23 A YES, SIR.

24 Q OKAY. WHEN DID YOU ARRIVE ON THE SCENE?

25 A IT WAS AFTER TEN O'CLOCK. I CALLED INVESTIGATOR GRAY

1 BY PHONE AND ASKED IF HE NEEDED ANY HELP. I UNDERSTOOD
2 THERE WAS A SHOOTING CALL THAT HAD GONE OUT. I SPOKE WITH
3 HIM BY PHONE. HE SAID THAT HE DID NEED SOME HELP AS FAR
4 AS RESPONDING ON THE SCENE.

5 Q OKAY. WHAT DID YOU DO?

6 A I MADE CONTACT WITH INVESTIGATOR GRAY AT THE SCENE.
7 HE TOLD ME TO GO START CANVASSING SOME HOUSES ADJACENT TO
8 THE SCENE. I DID THAT AND SPOKE WITH SOME PEOPLE WHO I
9 WAS FAMILIAR WITH AT T.S. MARTIN.

10 Q AND JUST TO BE CLEAR, YOU WEREN'T AT T.S. MARTIN THE
11 FIRST TIME THAT THE POLICE WERE THERE. YOU WERE THERE
12 AFTER THE SHOOTING?

13 A YES, SIR.

14 Q OKAY. DID YOU HAVE THE OPPORTUNITY TO TALK TO ANY
15 WITNESSES? DID YOU FIND ANY WITNESSES?

16 A YES, SIR.

17 Q DO YOU REMEMBER WHO THESE WITNESSES WERE?

18 A I SPOKE WITH TASHA OSBORNE. I SPOKE WITH A YOUNG
19 LADY BY THE FIRST NAME OF PRECIOUS. I DON'T KNOW HER LAST
20 NAME, AND ANOTHER YOUNG LADY. I GOT A GENERALIZATION FROM
21 ALL OF THEM SEPARATELY OF WHAT HAD HAPPENED.

22 ONCE I DETERMINED THAT THEY DID HAVE SOMETHING
23 PERTINENT, I WENT AND GOT SOME STATEMENT FORMS. I
24 SEPARATED THEM AND HAD THEM WRITE STATEMENTS.

25 Q OKAY. THOSE THREE INDIVIDUALS, YOU SAID TASHA

1 OSBORNE, PRECIOUS SAMUELS -- COULD IT HAVE BEEN PRECIOUS
2 SAMUELS DEAN?

3 A YES.

4 Q AND THE THIRD INDIVIDUAL, COULD THAT HAVE BEEN ASHLEY
5 BANKS?

6 A YES.

7 Q AND YOU HANDED THEM STATEMENT FORMS?

8 A STATEMENT FORMS, UH-HUH.

9 Q ALL RIGHT. FROM THE INFORMATION YOU GATHERED, WHAT
10 DID YOU FIND OUT?

11 A I IN TURN -- ONCE THEY COMPLETED THEIR STATEMENTS, I
12 GAVE THE STATEMENTS BACK TO INVESTIGATOR GRAY. I BEGAN TO
13 SPEAK WITH ANOTHER FEMALE THAT I WAS FAMILIAR WITH. I
14 KNEW HER BY NAME AND SIGHT BY THE NAME OF ERIKA OSBORNE.
15 SHE WAS THE SISTER OF TASHA OSBORNE. SHE INFORMED ME
16 THAT --

17 MS. CAMPBELL: OBJECTION, YOUR HONOR, HEARSAY.

18 THE COURT: SUSTAINED.

19 BY MR. SHARDT

20 Q OKAY. YOU SPOKE TO ERIKA OSBORNE?

21 A UH-HUH.

22 Q OKAY.

23 A I DID.

24 Q AND AFTER SPEAKING TO HER, WHAT DID YOU DO?

25 A AFTER SPEAKING WITH HER, I RESPONDED TO -- I DON'T

1 KNOW THE NUMERICAL ADDRESS, BUT IT WAS SOME APARTMENTS ON
2 WAVERLEY STREET.

3 Q OKAY. YOU WENT TO WAVERLEY STREET?

4 A YES.

5 Q OKAY. WHO DID YOU GO WITH?

6 A I WENT ALONE.

7 Q OKAY. OKAY. WHY DID YOU GO TO WAVERLEY STREET?

8 A I RECEIVED SOME INFORMATION THAT SOMEONE THAT MAY
9 HAVE SOME FURTHER INFORMATION IN REFERENCE TO THE SHOOTING
10 INCIDENT WAS LOCATED THERE.

11 Q OKAY. AND THIS SOMEONE, WHO WERE YOU LOOKING FOR?

12 A I ONLY KNEW A NICKNAME OF POOH.

13 Q OKAY. WOULD THAT HAVE BEEN CARL SMITH?

14 A IT WAS LATER DETERMINED TO BE MR. SMITH.

15 Q OKAY. AND DID YOU COME IN CONTACT WITH MR. SMITH?

16 A I DID.

17 Q OKAY. YOUR HONOR, MAY I APPROACH THE WITNESS?

18 THE COURT: SURE.

19 BY MR. SHARDT

20 Q OFFICER KELLY, I'M SHOWING YOU WHAT'S MARKED
21 DEFENDANT'S EXHIBIT 7 AND DEFENDANT'S EXHIBIT 6. DO YOU
22 RECOGNIZE THE INDIVIDUAL IN THESE PHOTOGRAPHS?

23 A YES, SIR. IT'S THE SAME INDIVIDUAL.

24 Q THIS IS CARL SMITH?

25 A YES, SIR.

1 Q OKAY. AND THIS IS HOW HE LOOKED THE NIGHT THAT YOU
2 WENT AND PICKED HIM UP?

3 A YES, SIR.

4 MR. SHARDT: OKAY. YOUR HONOR, WE WOULD ASK THAT
5 THESE PHOTOS, DEFENDANT'S EXHIBIT 6 --

6 THE COURT: HAS THE STATE SEEN THEM?

7 MS. CAMPBELL: YES.

8 THE COURT: ANY OBJECTION?

9 MS. CAMPBELL: NO OBJECTION.

10 THE COURT: DEFENDANT'S SIX AND DEFENDANT'S SEVEN ARE
11 ADMITTED.

12 (WHEREUPON, DEFENDANT'S EXHIBITS NOS. 6, 7 WERE
13 ADMITTED INTO EVIDENCE.)

14 BY MR. SHARDT

15 Q SO AFTER YOU PICKED UP CARL SMITH, WHERE DID YOU
16 BRING HIM?

17 A I TOOK MR. SMITH TO THE COLUMBIA POLICE DEPARTMENT
18 HEADQUARTERS. I TOOK HIM TO THE INVESTIGATIONS DIVISION.

19 Q OKAY. DID YOU GO HOME AT THAT POINT?

20 A DID I GO HOME?

21 Q YEAH.

22 A NO, SIR.

23 Q OKAY. WHAT ELSE DID YOU DO?

24 A I RESPONDED BACK TO THE CRIME SCENE AND HELPED
25 MAINTAIN THE PERIMETER OF THE SCENE.

- 1 Q OKAY. AFTER --
- 2 A AFTER TAKING --
- 3 Q AT SOME POINT, DID YOU LEAVE THE CRIME SCENE?
- 4 A I LEFT THE CRIME SCENE TO TAKE THE GENTLEMAN TO
- 5 HEADQUARTERS, AND THEN I RETURNED TO THE CRIME SCENE. AT
- 6 SOME POINT, I RECEIVED A CALL TELLING ME TO GO BACK TO
- 7 HEADQUARTERS. I WENT BACK TO HEADQUARTERS AND WENT OUT TO
- 8 AN ADDRESS OFF OF BARNERVILLE ROAD. I BELIEVE IT WAS
- 9 LOUISA STREET.
- 10 Q OKAY. YOU WENT TO LOUISA STREET, OKAY. WHO ELSE
- 11 WENT WITH YOU TO LOUISA STREET, DO YOU RECALL?
- 12 A IT WAS OFFICER MURPHY.
- 13 Q OFFICER MURPHY. ANYONE ELSE?
- 14 A WE WERE ALONE AT FIRST AND THE REMAINDER -- A COUPLE
- 15 OF OTHER INVESTIGATORS CAME OUT.
- 16 Q DO YOU REMEMBER WHO THEY WERE?
- 17 A SERGEANT WILKERSON WAS ONE OF THEM.
- 18 Q SERGEANT WILKERSON?
- 19 A INVESTIGATOR -- I BELIEVE IT WAS MEAD.
- 20 Q INVESTIGATOR MEAD?
- 21 A INVESTIGATOR BURNS. I DON'T REMEMBER WHO ELSE WAS
- 22 WITH US.
- 23 Q OKAY. INVESTIGATOR BURNS, OKAY. AND WHAT TIME IS
- 24 THIS?
- 25 A IT WAS WELL AFTER 1:00 A.M.

1 Q OKAY. AND WHY DID YOU GO TO LOUISA STREET?

2 A I WAS INFORMED THAT IT WAS POSSIBLY ANOTHER PERSON

3 THAT KNEW SOME INFORMATION ABOUT THE SHOOTING INCIDENT.

4 Q OKAY. AND AT LOUISA STREET, WHO DID YOU FIND THERE?

5 A I DIDN'T KNOW THE PERSON'S NAME. I ONLY KNEW THAT

6 THEY WERE SUPPOSED TO HAVE A WHITE ESCORT IN THE YARD.

7 Q HAVE YOU SINCE COME TO --

8 A I'VE COME TO KNOW THAT HE WAS A STUDENT AT C.A.

9 JOHNSON HIGH SCHOOL, PLAYED FOOTBALL. I DON'T RECALL HIS

10 NAME.

11 Q WAS THAT INDIVIDUAL BRADY BROWN, PERHAPS?

12 A LAST NAME?

13 Q BRADY BROWN.

14 A YES, SIR.

15 Q OKAY. SO YOU FOUND HIM ON LOUISA STREET. DID YOU

16 FIND A CAR THERE?

17 A THE ESCORT WAS THERE.

18 Q THE WHITE FORD ESCORT?

19 A WHITE ESCORT, YES, SIR.

20 Q ALL RIGHT. NOW, THAT CAR -- NOW, WE'RE TALKING EARLY

21 THE NEXT MORNING, CORRECT, AT THIS POINT?

22 A YES.

23 Q THAT YOU WERE AT LOUISA STREET. ALL RIGHT. TO YOUR

24 KNOWLEDGE, WAS ANY FORENSIC WORK EVER DONE ON THIS CAR?

25 A NOT IN MY PRESENCE. I WAS CALLED AWAY.

1 Q OKAY. SO YOU DON'T KNOW OF ANY?

2 A I WAS CALLED AWAY TO ANOTHER CALL.

3 Q ALL RIGHT. DO YOU DON'T KNOW IF ANY FINGERPRINTS
4 WERE LIFTED?

5 A NOT IN MY PRESENCE.

6 Q ATTEMPTED TO BE LIFTED OR ANY D.N.A.?

7 A I LEFT THE SCENE, SIR.

8 Q OKAY. TO YOUR KNOWLEDGE, WAS THE CAR IMPOUNDED?

9 A NOT IN MY PRESENCE. I LEFT THE SCENE.

10 MR. SHARDT: OKAY. I HAVE NO FURTHER QUESTIONS, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. CROSS-EXAMINE?

13 MS. CAMPBELL: NO QUESTIONS.

14 THE COURT: SIR, YOU MAY STEP DOWN.

15 THE WITNESS: THANK YOU.

16 MR. SHARDT: THE DEFENSE CALLS OFFICER T.L. MOORE.

17 TAMMY MOORE, AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
20 FOR THE RECORD.

21 THE BAILIFF: PULL YOUR CHAIR UP TO THE MICROPHONE.
22 SPEAK INTO THE MICROPHONE. STATE YOUR FULL NAME FOR THE
23 RECORD.

24 THE WITNESS: MY NAME IS M.P.L. TAMMY L. DAVIS-MOORE.

25 DIRECT EXAMINATION:

1 BY MR. SHARDT

2 Q OFFICER MOORE, I GUESS I HAVE TO SAY "GOOD AFTERNOON"
3 NOW. WHO DO YOU WORK FOR?

4 A I WORK FOR THE CITY OF COLUMBIA POLICE DEPARTMENT.

5 Q OKAY. IN AUGUST OF 2004 -- IN 2004, WHERE WERE YOU
6 WORKING?

7 A I WAS WORKING WITH THE CITY OF COLUMBIA POLICE
8 DEPARTMENT.

9 Q OKAY. AND WHAT WAS YOUR RANK OR YOUR POSITION?

10 A I WAS JUST A REGULAR PATROL OFFICER.

11 Q DID YOU HAVE THE OPPORTUNITY TO RESPOND TO A CALL ON
12 SEPTEMBER 14TH OF 2004?

13 A YES.

14 Q AND WHAT WAS THE NATURE OF THIS CALL?

15 A IT WAS A CALL IN REFERENCE TO A GUN THAT WAS FOUND BY
16 ONE OF THE CITIZENS.

17 Q WOULD IT HELP YOU IF I GIVE YOU THE NOTES FROM --

18 A YES, PLEASE.

19 Q AT WHAT TIME DID YOU RESPOND TO THIS CALL?

20 A APPROXIMATELY 10:15.

21 Q OKAY. AND WHAT DATE WAS THIS?

22 A SEPTEMBER 14TH OF 2004.

23 Q AND WHAT WAS THE NATURE OF THIS CALL?

24 A WE RECEIVED A CALL FROM AN INDIVIDUAL STATING THAT HE
25 FOUND THE GUN LAYING IN THE BUSHES, AND HE WANTED SOMEBODY

1 TO COME PICK IT UP.

2 Q DID YOU FIND A GUN?

3 A YES, WE DID.

4 Q OKAY. WHERE WAS THE GUN FOUND?

5 A IT WAS FOUND LAYING IN SOME SHRUBBERY NEAR THE
6 ROADWAY AT THE RESIDENCE OF 2111 SURREY STREET HERE IN
7 COLUMBIA.

8 Q AND WHAT TYPE OF GUN WAS THIS?

9 A IT WAS A .38 CALIBER HANDGUN.

10 Q WHAT CONDITION WAS THIS GUN IN, DO YOU RECALL?

11 A AS IN?

12 Q DID IT APPEAR TO BE OPERATING?

13 A YES, YES.

14 Q NOW, YOU WENT AND YOU LOCATED THIS GUN AT 2111 SURREY
15 STREET.

16 A YES.

17 Q OKAY.

18 A IN THE SHRUBBERY ON THE PROPERTY OF 2111 SURREY
19 STREET.

20 Q DID YOU EVER IDENTIFY WHOSE GUN THAT WAS?

21 A WE RAN IT THROUGH N.C.I.C. IT DIDN'T COME BACK
22 REGISTERED TO ANYONE.

23 Q OKAY.

24 A THAT'S HOW IT CAME BACK WHEN I RAN IT THROUGH
25 N.C.I.C.

1 Q OKAY. SO I'M ASSUMING YOU DIDN'T JUST PUT THE GUN
2 BACK ON THE STREET?

3 A NO, SIR.

4 Q WHAT DID YOU DO WITH THE GUN?

5 A WE TURNED IT IN AND TAGGED IT TO THE PROPERTY ROOM.

6 Q YOU TURNED IT INTO THE PROPERTY ROOM. YOU'RE TALKING
7 ABOUT AT THE COLUMBIA POLICE DEPARTMENT?

8 A YES.

9 Q OKAY. SO TO YOUR KNOWLEDGE, IT'S STILL IN THE
10 COLUMBIA POLICE DEPARTMENT'S PROPERTY ROOM?

11 A AS I KNOW OF IT'S STILL THERE, BECAUSE THEY HAVE TO
12 CONTACT ME FOR DISPOSAL OF IT, AND I HAVEN'T BEEN
13 CONTACTED FOR DISPOSAL.

14 Q OKAY. NOW, YOU INDICATED THAT THE ADDRESS WAS 2111
15 SURREY STREET.

16 A YES, SIR.

17 Q OKAY. NOW, YOU DONE FOLLOW-UP INVESTIGATION ON THIS
18 CASE, CORRECT?

19 A YES.

20 Q OKAY. IN FACT, YOU WENT BACK OUT TO THE LOCATION TO
21 THAT.

22 A YES, I WENT BACK TO THE LOCATION.

23 Q BEFORE YOU WENT BACK OUT TO THE LOCATION, DID YOU
24 HAVE ANY RECOLLECTION OF WHERE 2111 SURREY STREET WAS?

25 A NOT OFF THE TOP OF MY HEAD. I DIDN'T KNOW THE EXACT

1 HOUSE. I KNOW WHERE SURREY STREET IS.

2 Q OKAY. DID YOU -- WHY DID YOU GO BACK OUT THIS
3 MORNING?

4 A YOU ASKED ME TO.

5 Q I ASKED YOU TO GO BACK OUT THERE?

6 A YES. YOU ASKED ME TO GO BACK OUT THERE.

7 Q NOW, AND I ASKED YOU TO DETERMINE EXACTLY WHERE 2111
8 SURREY STREET IS.

9 A YES, SIR.

10 Q OKAY.

11 A I WENT TO THE HOUSE.

12 Q DID I ASK YOU TO DETERMINE HOW FAR IT WAS FROM 1931
13 SURREY STREET?

14 A YES, YOU DID.

15 Q OKAY. AND HOW FAR DID YOU DETERMINE 2111 SURREY
16 STREET WAS FROM 1931 SURREY STREET?

17 A ROUGHLY SPEAKING, ABOUT A BLOCK-AND-A-HALF TO A BLOCK
18 AND THREE-QUARTERS AWAY.

19 Q OKAY. HOW MANY MINUTES WOULD IT TAKE YOU TO WALK
20 THERE?

21 A I WOULD ESTIMATE THE AVERAGE PERSON COULD GET THERE
22 ANYWHERE FROM TWO TO FIVE MINUTES, DEPENDING ON THE
23 TRAFFIC COMING DOWN COLONIAL, BECAUSE THAT'S A BUSY
24 ROADWAY.

25 Q OKAY. TO YOUR KNOWLEDGE, THIS GUN THAT YOU FOUND AT

1 2111 SURREY STREET, TO YOUR KNOWLEDGE HAS ANYONE DONE ANY
2 FINGERPRINT ANALYSIS ON THE GUN, TO YOUR KNOWLEDGE?

3 A I HAVE NO KNOWLEDGE OF THAT.

4 Q DO YOU HAVE ANY IDEA IF ANYONE HAS TRIED TO EXTRACT
5 D.N.A. OR OTHER FORENSIC MATERIALS FROM THE GUN?

6 A I HAVE NO KNOWLEDGE OF THAT.

7 Q AND AGAIN, ONE MORE TIME. WHAT DATE WAS THAT GUN
8 FOUND AT 2111 SURREY STREET?

9 A 9/14/04.

10 MR. SHARDT: OKAY. THANK YOU. I HAVE NO FURTHER
11 QUESTIONS.

12 THE COURT: ALL RIGHT. CROSS-EXAMINE?

13 MR. GIESE: MAY IT PLEASE THE COURT, YOUR HONOR.

14 CROSS-EXAMINATION:

15 BY MR. GIESE

16 Q GOOD MORNING, OFFICER MOORE.

17 A GOOD AFTERNOON.

18 Q WE'VE NEVER MET, HAVE WE?

19 A NO, SIR, NOT THAT I KNOW OF.

20 Q I DON'T THINK SO. JUST A COUPLE OF QUESTIONS. YOU
21 SAID THAT YOU RECEIVED A CALL ON, I THINK, 9/14/04 --

22 A YES, I DID.

23 Q -- ABOUT A GUN. DO YOU HAVE ANY IDEA WHAT DATE THIS
24 DOUBLE HOMICIDE TOOK PLACE THAT YOU'RE TESTIFYING IN TRIAL
25 FOR?

1 A I HAVE NO IDEA, SIR.

2 Q SOMETIME IN AUGUST?

3 A I DON'T KNOW. THAT'S NOT EVEN IN MY REGION. I HAVE
4 NO IDEA.

5 Q SO WOULD IT SURPRISE YOU THAT IT HAD HAPPENED
6 SOMETIME IN LATE AUGUST?

7 A I HAVE NO IDEA, SIR. I DON'T KNOW WHAT DAY IT WAS.

8 Q NOW, YOU ALSO SAID THAT YOU FOUND THIS GUN ON 9/14.

9 A YES, SIR.

10 Q AND IT WAS A PHONE CALL THAT YOU RECEIVED.

11 A YES, SIR.

12 Q BECAUSE SOME PEOPLE HAD FOUND THE GUN?

13 A YES, SIR.

14 Q AND THAT WAS AT 2111 SURREY STREET?

15 A YES, SIR.

16 Q AND AT THE DEFENSE'S REQUEST, YOU WENT AND LOOKED AT
17 TODAY WHAT ADDRESS?

18 A 2111 SURREY STREET.

19 Q WHAT'S THE OTHER ADDRESS?

20 A I WENT TO 2111 SURREY STREET. I DIDN'T GO TO ANOTHER
21 ADDRESS.

22 Q I MEANT TODAY, OR YESTERDAY, WHEN THEY ASKED YOU TO
23 GO?

24 A HE ASKED ME TO GO TODAY, AND I WENT TO 2111 SURREY
25 STREET. I DID --

1 Q BUT DID YOU ALSO GO TO 1935 SURREY STREET?

2 A NO, I DIDN'T.

3 Q TO GET TO 1935 SURREY STREET TO 2111 SURREY STREET,
4 YOU HAVE TO CROSS COLONIAL DRIVE, DON'T YOU?

5 A YOU HAVE TO CROSS COLONIAL DRIVE.

6 Q IS THAT A BUSY ROAD OR NOT A BUSY ROAD?

7 A COLONIAL DRIVE IS A VERY BUSY ROAD.

8 Q NOW, BACK ON 9/14/04, YOU WENT TO 2111 SURREY STREET
9 AND YOU FOUND THE .38 CALIBER HANDGUN?

10 A YES, I DID.

11 Q AND TELL THE JURY WHETHER OR NOT YOU HAD A SUSPECT ON
12 THAT DAY.

13 A THE GENTLEMAN THAT POINTED OUT THE HANDGUN TO US --
14 MR. SHARDT: YOUR HONOR, I'M GOING TO OBJECT AT THIS
15 TIME.

16 THE COURT: ON WHAT BASIS?

17 MR. SHARDT: HEARSAY.

18 THE COURT: WELL, COME UP.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
20 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

21 THE COURT: TO THAT EXTENT, THE OBJECTION IS
22 SUSTAINED.

23 YOU MAY CONTINUE, SOLICITOR.

24 BY MR. GIESE

25 Q PURSUANT TO YOUR CONVERSATION WITH THE WITNESSES AT

1 2111 SURREY STREET, DID YOU DEVELOP A SUSPECT IN THE CASE?

2 A THE GENTLEMAN THAT POINTED THE WEAPON OUT TO US
3 POINTED TOWARD A YOUNG MAN THAT WAS WALKING UP AND DOWN
4 THE STREET. HE SAID THE YOUNG MAN HAD WALKED BY SEVERAL
5 TIMES, AND HE WAS -- SEEMED TO BE NERVOUS. IN MY REPORT I
6 SAID HE WAS NERVOUS AND ACTING IN A SUSPICIOUS MANNER. AT
7 THAT POINT, I GOT THE YOUNG MAN'S IDENTIFICATION.

8 Q AND HIS NAME WAS WHAT?

9 A DAVID WESLEY ROLLINSON (PHONETIC).

10 Q AND, IN FACT, ON YOUR INCIDENT REPORT, YOU MARK BY
11 HIS NAME "SUSPECT" WITH A STAR.

12 A YES, I DO.

13 Q THE SUSPECT FOR THE .38 CALIBER PISTOL FOUND AT 2111
14 SURREY STREET?

15 A NO, SIR. HE WAS THE GENTLEMAN THAT WAS -- THAT
16 CALLED TO SEE -- THAT WAS WALKING BY. HE WALKED BY
17 SEVERAL TIMES AND WAS ACTING NERVOUS. THAT'S THE REASON
18 WHY I PUT HIS NAME DOWN ON THE PAPER.

19 Q AND YOU PUT --

20 A I DIDN'T KNOW WHETHER HE HAD ANYTHING TO DO WITH IT
21 OR NOT.

22 Q AND PUT "SUSPECT" WITH A STAR BY IT.

23 A YES, PROTOCOL.

24 Q YOU FOUND THIS ON 9/14/04, AND THE DOUBLE HOMICIDE
25 TOOK PLACE ON AUGUST 26TH, 2004; IS THAT RIGHT?

1 A I DON'T KNOW THAT DATE OF THE OFFENSE, SIR. I WOULD
2 HAVE TO LOOK AT THE DATE THAT THIS OFFENSE HAPPENED.

3 Q WELL, HYPOTHETICALLY SPEAKING, IF IT DID HAPPEN ON
4 8/26/04, HOW LONG AFTER 8/26/04 IS 9/14/04?

5 A WELL, IT WOULD BE A COUPLE OF WEEKS.

6 Q TWO-AND-A-HALF WEEKS?

7 A SOMETHING LIKE THAT.

8 Q ALMOST THREE WEEKS.

9 THAT'S ALL I HAVE. THANK YOU.

10 THE WITNESS: THANK YOU.

11 THE COURT: ALL RIGHT. REDIRECT?

12 REDIRECT EXAMINATION:

13 BY MR. SHARDT

14 Q BRIEFLY, YOUR HONOR.

15 ALL RIGHT. YOU TESTIFIED THAT THIS GUN WAS FOUND.

16 A YES, SIR, 2111 SURREY STREET.

17 Q WAS IT FOUND IN THE BUSHES?

18 A IT WAS IN THE BUSHES. IT WAS IN THE SHRUBBERY. IT
19 WAS IN THE SHRUBBERY.

20 Q SO IT WAS HIDDEN IN THE SHRUBBERY?

21 A YES.

22 Q OKAY. ALSO THIS MR. ROLLINSON WHO THIS -- I BELIEVE
23 WAS STATED AS A SUSPECT, WAS THERE ANY INVESTIGATION INTO
24 HIM REGARDING THIS GUN?

25 A ANY --

1 Q ANY SUBSEQUENT INVESTIGATION DONE INTO MR. ROLLINSON?

2 A NO MORE THAN CHECKING HIM FOR N.C.I.C.

3 Q OKAY.

4 A SEEING IF HE'S A WANTED PERSON.

5 Q YOU DID TURN -- I'M SORRY.

6 A WE DID FIND HIM.

7 Q AND YOU DETERMINED THAT HE WASN'T, IN FACT, GUILTY OF
8 POSSESSING THIS GUN.

9 A NO.

10 MR. GIESE: OBJECTION, YOUR HONOR, LEADING.

11 THE COURT: SUSTAINED.

12 BY MR. SHARDT

13 Q DID YOU EVER DETERMINE THAT HE WAS GUILTY OF THIS
14 GUN?

15 MR. GIESE: OBJECTION, YOUR HONOR.

16 THE COURT: SUSTAINED. THAT'S A LEADING QUESTION.

17 BY MR. SHARDT

18 Q AS A RESULT -- DID YOU EVER DETAIN ANYONE AS A RESULT
19 OF THIS INVESTIGATION INTO THIS GUN?

20 MR. GIESE: OBJECTION.

21 BY MR. SHARDT

22 Q WAS ANYONE EVER DETAINED?

23 A NO.

24 MR. GIESE: JUST ONE MATTER, YOUR HONOR.

25 RE-CROSS-EXAMINATION:

1 BY MR. GIESE

2 Q HE READ OFF YOUR INCIDENT REPORT, DID HE NOT?

3 A YES, SIR.

4 Q HE HAS BEEN READING OFF OF IT FOR THIS LAST TEN
5 MINUTES?

6 A YES, SIR.

7 Q I HAND YOU THIS. IS THAT A COPY OF IT?

8 A YES, SIR.

9 MR. GIESE: WE'D OFFER IT AT THIS TIME.

10 THE COURT: ANY OBJECTION?

11 MR. SHARDT: NO OBJECTION, YOUR HONOR.

12 THE COURT: ALL RIGHT. THAT'S GOING TO BE STATE'S --
13 WHAT'S THE NEXT NUMBER?

14 THE COURT REPORTER: I'M GOING TO HAVE TO LOOK.

15 THE COURT: ALL RIGHT.

16 (PAUSE).

17 (OFF THE RECORD.)

18 (PAUSE).

19 (WHEREUPON, STATE'S EXHIBIT NO. 72 WAS MARKED FOR
20 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

21 THE COURT: ANY REDIRECT -- OR RE-REDIRECT?

22 MR. SHARDT: NOTHING ELSE.

23 THE COURT: ALL RIGHT. OFFICER, YOU MAY STEP DOWN.

24 MR. SHARDT: THE DEFENSE CALLS OFFICER EDMONDS.

25 T.L. EDMONDS, AFTER BEING DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
3 FOR THE RECORD.

4 THE WITNESS: TYLISA L. EDMONDS.

5 DIRECT EXAMINATION:

6 BY MR. SHARDT

7 Q GOOD AFTERNOON, OFFICER EDMONDS. WHERE DO YOU WORK?

8 A I WORK FOR THE COLUMBIA POLICE DEPARTMENT.

9 Q HOW LONG HAVE YOU WORKED FOR THEM?

10 A SIXTEEN YEARS.

11 Q OKAY. SO YOU WERE WORKING FOR THE POLICE DEPARTMENT
12 BACK IN 2004?

13 A YES, SIR.

14 Q AND AT THAT TIME, WHAT WAS YOUR RANK? WHAT WAS YOUR
15 JOB TITLE?

16 A PATROL OFFICER.

17 Q OKAY. DID YOU HAVE THE OPPORTUNITY TO RESPOND TO A
18 CASE ON JUNE 14TH, 2004?

19 A YES, I DID.

20 Q OKAY. DID YOU WRITE A REPORT REGARDING THAT CASE?
21 DID YOU WRITE A REPORT?

22 A YES, I DID WRITE A REPORT.

23 Q IF I WERE TO ASK -- THIS IS A LONG TIME AGO. IF I
24 WERE TO ASK YOU QUESTIONS, WOULD IT HELP IF YOU HAD YOUR
25 REPORT IN FRONT OF YOU?

1 A YES, IT WOULD.

2 Q IS THIS YOUR REPORT?

3 A YES, THIS IS MY REPORT.

4 Q THIS CASE ON JUNE 14TH, 2004, WHAT WAS THE NATURE OF
5 THE CASE?

6 A THE NATURE OF THE CASE WAS AN AUTO BREAKING, GRAND
7 LARCENY.

8 Q OKAY. AND WHO WAS THE VICTIM IN THIS CASE?

9 A THE VICTIM IN THIS CASE WAS TIMOTHY F. FLOREA.

10 Q OKAY. AND WHAT WAS THE LOCATION?

11 A THE LOCATION WAS 2715 BLOSSOM STREET.

12 Q AND WHEN YOU SAY AUTO BREAKING, LARCENY, GENERALLY
13 WHAT WAS THIS CASE ABOUT?

14 A GENERALLY, THIS CASE WAS ABOUT -- I RESPONDED TO AN
15 AUTO BREAKING, LARCENY THAT HAD JUST OCCURRED -- WELL,
16 THAT HAD OCCURRED.

17 ONCE I ARRIVED, THE VICTIM REPORTED THAT A SUBJECT
18 DID REMOVE ONE .22 CALIBER RUGER RIFLE, A SILVER MONEY
19 CLIP, AND \$500 IN U.S. CURRENCY.

20 Q OKAY. SO A RUGER RIFLE, .22 RUGER RIFLE WAS
21 RECOVERED? I MEAN, IT WAS REMOVED FROM HIS CAR?

22 A IT WAS REPORTED THAT IT WAS REMOVED, YES.

23 Q OKAY. WERE YOU GIVEN ANY MEANS OF IDENTIFYING THE
24 GUN? DID THE INDIVIDUAL GIVE YOU ANY MEANS OF IDENTIFYING
25 THE GUN?

1 A NOT THAT I CAN RECALL.

2 Q DID HE GIVE YOU A SOCIAL SECURITY THAT WOULD BE
3 ENGRAVED ON THE GUN?

4 A YES.

5 Q OKAY.

6 (PAUSE).

7 A THE VICTIM REPORTED TO ME THAT HIS SOCIAL SECURITY
8 NUMBER WAS ENGRAVED ON THE RIFLE AS FOLLOWS: 275-34-8524.

9 Q JUST LOOK AT THIS GUN. IS THIS A RUGER .22 CALIBER
10 RIFLE?

11 A IT APPEARS TO BE.

12 Q OKAY. AND DO YOU SEE ANY ENGRAVINGS ON THE GUN? IF
13 YOU LOOK HERE, DO YOU SEE ANY ENGRAVINGS WITH NUMBERS ON
14 IT? DO YOU SEE ANY ENGRAVINGS RIGHT THERE?

15 A OH YES.

16 Q DO YOU SEE NUMBERS? DO YOU SEE NUMBERS?

17 A I DO SEE NUMBERS.

18 Q OKAY. YOU CAN'T READ THEM?

19 A I CAN'T READ THEM.

20 Q OKAY. AND THIS GUN THAT WAS REPORTED STOLEN, WHERE
21 WAS THE ALLEGED INCIDENT LOCATION?

22 A THE ALLEGED INCIDENT LOCATION WAS 2715 BLOSSOM
23 STREET.

24 Q AND THIS WAS IN COLUMBIA?

25 A COLUMBIA.

1 Q OKAY. AND WHEN DID -- NOW, YOU RESPONDED ON
2 JUNE 14TH OF '04?

3 A (NODS IN THE AFFIRMATIVE).

4 Q OKAY. WHEN DID THIS TAKE PLACE?

5 A THIS INCIDENT --

6 Q WHEN WAS THE GUN STOLEN?

7 A THE REPORT REFLECTS THAT THE GUN WAS STOLEN SOMEWHERE
8 BETWEEN JUNE 14TH, 2004, 02:00 HOURS, AND JUNE 14TH, 2004,
9 45:15 HOURS.

10 Q OKAY. SO THE OWNER REPORTED THAT THE GUN WAS STOLEN
11 IN THE EARLY MORNING OF JUNE 14TH OF 2004?

12 A YES.

13 Q OKAY. OKAY. YOU WERE THE RESPONDING OFFICER?

14 A I WAS THE RESPONDING OFFICER.

15 Q OKAY. WERE YOU ABLE TO DETERMINE HOW THE CAR WAS
16 ENTERED?

17 A NO, SIR.

18 Q WELL, LET ME BACK UP, I'M SORRY. LET ME BACK UP.
19 THIS LARCENY -- WHERE WAS THE GUN KEPT BEFORE IT WAS
20 STOLEN, ACCORDING TO YOUR REPORT?

21 A ACCORDING TO MY REPORT, THE WEAPON WAS -- THE GUN WAS
22 IN THE VEHICLE, INSIDE THE VEHICLE.

23 Q AND WHAT TYPE OF VEHICLE IS THAT?

24 A A 2000 TOYOTA TUNDRA TRUCK.

25 Q SO THE GUN WAS STOLEN OUT OF THIS 2000 TOYOTA TUNDRA

1 IN THE MIDDLE OF THE NIGHT?

2 A YES.

3 Q OKAY. AS RESPONDING OFFICER, DID YOU CONDUCT ANY
4 SORT OF INVESTIGATION?

5 A NO, SIR.

6 Q OKAY. DID YOU DETERMINE HOW THE INDIVIDUALS GOT TO
7 THE TRUCK?

8 A I DID NOT.

9 Q OKAY. AND AFTER YOU TOOK THE REPORT, WHAT DID YOU
10 DO?

11 A AFTER I TOOK THE REPORT, I CALLED FOR AN I.D.
12 TECHNICIAN TO COME OUT AND PROCESS THE SCENE.

13 Q OKAY. SO YOU CALL SOMEONE ELSE TO PROCESS THE SCENE
14 AND DO AN INVESTIGATION?

15 A YES.

16 Q AND WHO WAS THAT I.D. TECH?

17 A I.D. TECH ROSS.

18 Q OKAY. BEG THE COURT'S INDULGENCE.

19 (PAUSE).

20 AGAIN, IS THIS THE REPORT?

21 A YES.

22 Q OKAY. THIS IS YOUR COMPLETE REPORT?

23 A YES.

24 Q OKAY. THIS PAGE I TORE OFF IS NOT YOUR REPORT?

25 A IT'S NOT MY REPORT.

1 Q OKAY.

2 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 8 WAS MARKED FOR
3 IDENTIFICATION ONLY.)

4 MR. SHARDT: YOUR HONOR, AT THIS POINT WE WOULD ASK
5 TO MOVE DEFENSE EXHIBITS -- WHAT'S MARKED AS DEFENSE
6 EXHIBIT EIGHT INTO EVIDENCE.

7 THE COURT: HAVE YOU SEEN IT?

8 MR. GIESE: LET ME LOOK AT IT, YOUR HONOR. I WANT TO
9 MAKE SURE IT'S WHAT WE HAVE.

10 (PAUSE).

11 NO OBJECTION.

12 THE COURT: WITHOUT OBJECTION DEFENDANT'S EIGHT IS
13 ADMITTED.

14 (WHEREUPON, DEFENDANT, EXHIBIT NO. 8 WAS ADMITTED
15 INTO EVIDENCE.)

16 MR. SHARDT: THANK YOU, YOUR HONOR. I HAVE NO
17 FURTHER QUESTIONS OF THIS WITNESS.

18 THANK YOU.

19 THE COURT: CROSS-EXAMINE?

20 MR. GIESE: OFFICER, THANK YOU FOR COMING. WE HAVE
21 NO QUESTIONS.

22 THE COURT: OFFICER, YOU MAY STEP DOWN.

23 THE WITNESS: THANK YOU.

24 MR. SHARDT: AT THIS TIME, THE STATE WOULD -- EXCUSE
25 ME. AT THIS TIME, THE DEFENSE WOULD CALL M.P.O. ROSS.

1 THE BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE,
2 RAISE YOUR RIGHT HAND, PLEASE.

3 GLENN ROSS, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
6 FOR THE RECORD.

7 THE WITNESS: OFFICER GLENN ROSS, CRIME SCENE
8 INVESTIGATIONS, CITY OF COLUMBIA.

9 DIRECT EXAMINATION:

10 BY MR. SHARDT

11 Q GOOD AFTERNOON, OFFICER ROSS. WHERE DO YOU WORK?

12 A CITY OF COLUMBIA POLICE DEPARTMENT.

13 Q ALL RIGHT. HOW LONG HAVE YOU BEEN WORKING THERE?

14 A SINCE 1995.

15 Q SO IN 2004, YOU WERE WORKING AT THE CITY?

16 A YES, SIR.

17 Q CITY OF COLUMBIA POLICE DEPARTMENT. ON JUNE 14TH OF
18 2004, DID YOU HAPPEN TO BECOME INVOLVED IN A CASE?

19 A YES, SIR.

20 Q OKAY. DID YOU HAVE A REPORT?

21 A YES, SIR, I HAVE IT HERE.

22 Q WHAT WAS THE NATURE OF THIS CASE?

23 A IT WAS AN AUTO BREAKING AT 2715 BLOSSOM STREET.

24 Q OKAY. AND THE RESPONDING OFFICER WAS?

25 A I BELIEVE OFFICER EDMONDS.

1 Q OKAY. AND WHAT TIME DID YOU RESPOND TO THE SCENE?

2 A I DON'T HAVE THE EXACT TIME. I HAVE THE TIME THAT
3 SHE RESPONDED, AND MY EXACT TIME OF THE RESPONSE IS NOT
4 WRITTEN DOWN. SOMETIME AFTERWARDS -- SOMETIMES OUR TIMES
5 OF RESPONSES IS DIFFERENT BECAUSE OF OTHER CALLS.

6 Q AND GENERALLY, WHAT WAS THIS CASE ABOUT?

7 A I BELIEVE FROM OFFICER EDMONDS' REPORT IS THE VEHICLE
8 WAS UNSECURED AND HAD BEEN ENTERED INTO WITHOUT PERMISSION
9 AND SOME ITEMS HAD BEEN TAKEN. I RESPONDED FROM THERE TO
10 PROCESS THE VEHICLE.

11 Q OKAY. AND WHAT ITEMS WERE MISSING?

12 A I BELIEVE A WEAPON WAS MISSING.

13 Q WAS IT A .22 RUGER RIFLE?

14 A I'M NOT SURE AT THE TIME SHE TOLD ME EXACTLY WHICH
15 WEAPON. SHE SAID A WEAPON WAS MISSING, AND SO WE
16 PROCESSED IT.

17 Q YOU ARRIVED AT THE SCENE. WHAT WORK DID YOU DO IN
18 THIS CASE?

19 A WE USUALLY LOOK FOR AN ENTRY POINT. WE DIDN'T REALLY
20 HAVE ONE BECAUSE THERE WAS NO FORCED ENTRY, SO WE
21 PROCESSED USUALLY AROUND THE DOORS, OUTSIDE OF THE DOORS,
22 AND LOOKED FOR GOOD SURFACES INSIDE THE VEHICLE, SUCH AS
23 REAR VIEW MIRRORS, THINGS SUCH AS THAT.

24 Q AND WHEN YOU SAY LOOKED FOR THINGS SUCH AS REAR VIEW
25 MIRRORS, LOOKED FOR WHAT PURPOSE?

1 A LATENT PRINTS, LOOKED FOR LATENT FINGERPRINTS.

2 Q SO YOU'RE LOOKING FOR FINGERPRINTS?

3 A NO, SIR.

4 Q OKAY. DID YOU FIND ANY?

5 A NO. NO, I DID NOT.

6 Q OKAY. DID YOU SEARCH FOR D.N.A.?

7 A NO, I DID NOT.

8 Q OKAY. AT THE COLUMBIA POLICE DEPARTMENT, IS IT

9 STANDARD TO SEARCH FOR D.N.A. ON AN AUTO BREAKING?

10 A USUALLY IT IS NOT. IF YOU HAVE BODILY FLUIDS THAT

11 ARE VISIBLE, SOME TYPE OF BODILY FLUID DEPENDING UPON THE

12 TYPE OF CRIME THAT YOU HAVE, YOU WOULD COLLECT THOSE

13 BODILY FLUIDS. THERE WAS NOTHING TO INDICATE ANY BODILY

14 FLUIDS THERE ON THE SCENE. WE DIDN'T SEE ANY BLOOD. WE

15 DIDN'T SEE ANYTHING THAT WOULD INDICATE THAT WE NEEDED TO

16 SWAB.

17 Q IF THIS HAD BEEN A MURDER, WOULD THAT HAVE LIKELY

18 TAKEN PLACE?

19 A IF WE HAD SEEN THE BODILY FLUIDS, WE WOULD SWAB THE

20 BODILY FLUIDS, YES, SIR.

21 Q DID YOU TAKE ANY EVIDENCE?

22 A YES, SIR.

23 Q FROM THIS CASE.

24 A YES, SIR.

25 Q OKAY. NOW, YOU DIDN'T FIND ANY FINGERPRINTS?

1 A NO, SIR.

2 Q OKAY. NOW, WHAT EVIDENCE DID YOU TAKE?

3 A IT WAS A PAIR OF SUN SHADES AND A FLASHLIGHT.

4 Q OKAY. NOW, EXPLAIN TO THE JURY WHERE WERE THESE SUN
5 SHADES AND FLASHLIGHT LOCATED.

6 A I'M NOT EXACTLY SURE WHERE THEY WERE LOCATED IN THE
7 TRUCK.

8 Q WHERE THEY WERE --

9 A THEY WERE COLLECTED BECAUSE THE OWNER SAID THAT THEY
10 WERE NOT HIS.

11 Q SO THEY WERE IN THE TRUCK, THOUGH?

12 A YES.

13 Q AND THE OWNER SAID THEY WEREN'T HIS?

14 A YES, SIR.

15 Q YOU DETERMINED THAT THEY LIKELY BELONGED TO THE
16 PEOPLE WHO DID THE CRIME --

17 MS. CAMPBELL: OBJECTION AS TO THE LEADING, YOUR
18 HONOR.

19 THE COURT: SUSTAINED AS TO FORM OF THE QUESTION.

20 BY MR. SHARDT

21 Q WHAT WAS YOUR CONCLUSION, BASED ON THAT INFORMATION?

22 A THAT THEY WERE NOT THE OWNER'S.

23 Q OKAY.

24 A AND THAT HE HAD NOT PLACED THEM THERE, SO WE
25 COLLECTED THEM.

1 Q OKAY. AND WHEN YOU SAY YOU COLLECTED THEM INTO
2 EVIDENCE, WHAT HAPPENED TO THESE ITEMS?

3 A WE COLLECTED THEM INTO EVIDENCE. THEY ARE BAGGED.
4 WE PUT A CASE NUMBER AND INFORMATION ON THEM, AND THEY
5 WERE PLACED INTO EVIDENCE.

6 Q OKAY. AND TO BE FAIR, BEFORE YOU PLACE THEM INTO
7 EVIDENCE, DID YOU DO ANY TESTING ON THEM?

8 A I THINK I DUSTED THEM FOR FINGERPRINTS JUST LIKE I
9 DID THE VEHICLE, AND WE DIDN'T GET ANY LATENT PRINTS.

10 Q OKAY. YOU DUSTED THE EXTERIOR OF THE FLASHLIGHT?

11 A YES, SIR, THE EXTERIOR AND THE SUN SHADES AROUND THE
12 VISUAL AREA OF THE EYES THERE.

13 Q DID YOU DO ANY -- DID YOU ATTEMPT TO FIND ANY D.N.A.
14 ON IT?

15 A NO, SIR, I DID NOT.

16 Q AND SO WHEN WERE THEY PLACED INTO EVIDENCE?

17 A THE EVIDENCE REPORT -- I BELIEVE IT WAS THE SAME DAY.

18 Q OKAY. SO THEY WERE PLACED INTO EVIDENCE ON JUNE 14TH
19 OF '04?

20 A I BELIEVE THAT'S WHAT THE EVIDENCE CARD SAYS.

21 Q OKAY. AND DO YOU KNOW WHERE THOSE ITEMS ARE NOW?

22 A THEY WERE DESTROYED.

23 Q THEY WERE DESTROYED?

24 A YES, SIR.

25 Q BY WHOM?

1 A I HAD TO SIGN OFF ON THEM TO BE DESTROYED, AND THE
2 EVIDENCE ROOM TAKES CARE OF DESTROYING THOSE ITEMS.

3 Q OKAY. DO YOU KNOW WHAT DATE THEY WERE DESTROYED?

4 A I BELIEVE THEY HAVE HERE 1/19 OF '05. NOW, THAT --
5 IT'S WITNESSED BY BOTH OF THEM AS 1/19 OF '05 ON OUR
6 EVIDENCE CARD.

7 Q OKAY. SO JANUARY 19TH '05. THESE SUNGLASSES THAT
8 WERE FOUND IN THE TRUCK AND THE FLASHLIGHT WERE DESTROYED?

9 A YES, SIR.

10 Q TO YOUR KNOWLEDGE, HAS ANYONE EVER BEEN PROSECUTED
11 FOR THIS CASE?

12 A NO, THEY HAVE NOT.

13 Q SO THIS IS AN UNSOLVED CASE?

14 A YES, SIR.

15 MR. SHARDT: BEG THE COURT'S INDULGENCE.

16 THE COURT: SURE.

17 (PAUSE).

18 MR. SHARDT: I HAVE NO FURTHER QUESTIONS FOR THIS
19 WITNESS.

20 THE COURT: ALL RIGHT. CROSS-EXAMINE?

21 MS. CAMPBELL: THANK YOU, OFFICER. WE DON'T HAVE ANY
22 QUESTIONS.

23 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

24 THE BAILIFF: WATCH YOUR STEP DOWN, SIR.

25 MR. SHARDT: YOUR HONOR, MAY WE APPROACH?

1 THE COURT: SURE. IF YOU'RE GOING TO TELL ME IT'S A
2 GOOD TIME TO BREAK FOR LUNCH, THAT'S FINE. IS THAT WHAT
3 YOU'RE GOING TO TELL ME?

4 MR. SHARDT: SURE. THAT'S WHAT WE'RE GOING TO DO
5 THEN.

6 THE COURT: GO BACK AND SIT DOWN.

7 HOPEFULLY YOUR LUNCH WILL BE HERE SHORTLY, IF IT'S
8 NOT ALREADY HERE. DON'T DISCUSS THE CASE. WE'LL BREAK
9 UNTIL TWO O'CLOCK AND HAVE YOU BACK IN AT THAT TIME,
10 TWO O'CLOCK.

11 EVERYONE STAY SEATED, PLEASE, WHILE THE JURY IS
12 EXCUSED.

13 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
14 12:53 P.M.)

15 THE COURT: ALL RIGHT. WE'LL BREAK UNTIL TWO. LET
16 ME SEE COUNSEL UP HERE JUST A MINUTE, PLEASE.

17 (A BENCH CONFERENCE WAS HELD.)

18 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

19 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 9 WAS MARKED FOR
20 IDENTIFICATION ONLY.)

21 THE COURT: ALL RIGHT. THE DEFENDANT IS READY.

22 ALL RIGHT. WE NEED TO PUT ON THE RECORD THE ISSUE
23 THAT WE DEALT WITH BRIEFLY YESTERDAY CONCERNING SOME
24 POTENTIAL TESTIMONY THAT THE STATE IS OBJECTING TO, AND
25 AGAIN, MR. SHARDT, IF YOU WILL BRIEFLY EXPLAIN WHAT THE

1 TESTIMONY -- WHAT THE PROFFER WOULD BE THAT THE DEFENSE IS
2 SEEKING TO INTRODUCE.

3 MR. SHARDT: YES, YOUR HONOR. ON APPROXIMATELY MARCH
4 18TH, 2005.

5 THE COURT: MARCH 15TH, '05?

6 MR. SHARDT: MARCH 18TH, 2005 ONE OF THE STATE'S
7 WITNESSES, DIEGO THOMPSON, SPOKE TO THE TEAM -- A TEAM
8 BEING TWO INDIVIDUALS, A SOCIAL WORKER, AND A PSYCHOLOGIST
9 WITH THE STATE THROUGH D.J.J. TO DISCUSS -- BASICALLY FOR
10 AN EVALUATION. TESTS WERE RUN ON THE INDIVIDUAL TO TALK
11 ABOUT THE INDIVIDUAL'S PROBLEMS, WHAT WAS GOING ON IN THE
12 INDIVIDUAL'S LIFE FOR THE PURPOSE OF ASSESSMENT AND FOR
13 PURPOSES, I WOULD ASSUME, OF A TREATMENT PLAN.

14 THROUGH THIS CONVERSATION, DIEGO THOMPSON ADMITTED --
15 STATED TO BOTH INDIVIDUALS THAT WERE PRESENT -- IN THIS
16 CASE, WE INTEND ON CALLING STEVEN FINKELSTEIN WHO WAS A
17 PSYCHOLOGIST PRESENT THAT HE WAS, IN FACT, IN A GANG, AND
18 HE HAS IN THE PAST ENGAGED IN CRIMINAL ACTIVITY.

19 AMONG THOSE THINGS THAT HE LISTED AS CRIMINAL
20 ACTIVITY WAS SHOOTING AT BOTH GANG MEMBERS AND STRANGERS.
21 HE ALSO STATED THAT HE WASN'T SURE -- THAT THE STRANGERS
22 HE HAD SHOT AT, HE WASN'T SURE IF HE HIT THEM OR NOT.

23 THIS IS -- WE WOULD LIKE TO POINT OUT TO THE COURT
24 THAT THIS CONVERSATION OCCURRED AFTER THE EVENTS THAT
25 BRING US HERE TODAY, APPROXIMATELY SEVEN MONTHS

1 AFTERWARDS.

2 YOUR HONOR, IT'S OUR POSITION THAT THIS IS ADMISSIBLE
3 AS THIRD-PARTY GUILT. STATE V. HOLMES, WE DO BELIEVE
4 GIVES US -- CERTAINLY, IF IT IS JUST THEIR SUSPICION, THAT
5 WOULD NOT BE THIRD-PARTY GUILT.

6 IN THIS CASE, I THINK THERE ARE MANY INDICATIONS THAT
7 DIEGO THOMPSON MAY BE THE SHOOTER IN THIS CASE. WE THINK
8 IT SHOULD GO TO THE JURY. REALLY, THE STRONGEST
9 EYEWITNESS, IN OUR OPINION, AGAINST OUR CLIENT IS DIEGO
10 THOMPSON.

11 WE HAVE THE NEGATIVE GUNSHOT RESIDUE ON MR. LIVERMAN.
12 DIEGO THOMPSON NEVER WAS SUBMITTED TO A GUNSHOT RESIDUE
13 TEST. MR. THOMPSON GAVE CONTRADICTIONARY STATEMENTS.
14 MR. THOMPSON HAS ADMITTED TO BEING AT THE SCENE.
15 MR. THOMPSON, WE BELIEVE AS THIS TRIAL PROGRESSES AND IT
16 HAS BEEN SHOWN ALREADY, MR. THOMPSON LIED TO THE POLICE
17 SEVERAL TIMES ABOUT WHAT HAS OCCURRED.

18 THE COURT: CAN YOU REPEAT THAT?

19 MR. SHARDT: WE BELIEVE AS THE TRIAL PROCESSES AND
20 ALREADY, AS IT HAS BEEN SHOWN, MR. THOMPSON TOLD LIES TO
21 THE POLICE AT SEPARATE TIMES THROUGHOUT THIS INVESTIGATION
22 IN BLAMING CHRIS. WE ALSO HAVE HEARD FROM TYRONE SMITH
23 THE STATE'S EYEWITNESS WHO STATED THAT IN HIS OPINION, THE
24 SHOOTER WAS CALLED "THE INDIVIDUAL THAT WAS THERE".

25 THE STATE STANDS FROM THE BEGINNING THAT CHRISTOPHER

1 LIVERMAN WAS THE SHOOTER IN THIS CASE, AND WE BELIEVE THAT
2 THERE ARE MANY INDICATIONS OF DIEGO THOMPSON'S GUILT.

3 REALLY, THE ONLY THING THAT'S SEPARATING DIEGO
4 THOMPSON FROM THIS DEFENDANT'S CHAIR IS HIS OWN
5 STATEMENTS. WE THINK THAT THAT CLEARLY MEETS THE
6 REQUIREMENTS OF THIRD-PARTY GUILT AS SET OUT IN STATE V.
7 HOLMES AND THE CASES BEFORE IT. SECONDLY, WE THINK IT'S
8 ADMISSIBLE AS A PRIOR INCONSISTENT STATEMENT.

9 STATE V. FOSSICK, WHICH I BELIEVE IS A 1998 CASE,
10 THEY LOOKED AT THIS ISSUE, AND FROM MY INTERPRETATION,
11 THEY THEN BEGAN TO TACKLE THE ISSUE AS A THIRD-PARTY GUILT
12 ISSUE, BUT KNOWING THAT THE DEFENSE DID NOT RAISE A
13 THIRD-PARTY GUILT ISSUE AT THIS TIME AND LOOKED AT IT AS A
14 PRIOR INCONSISTENT STATEMENT UNDER 6-13(B).

15 THE COURT: YOU'RE SAYING PRIOR CONSISTENT OR
16 INCONSISTENT?

17 MR. SHARDT: INCONSISTENT.

18 THE COURT: OKAY.

19 MR. SHARDT: WHERE EXTRINSIC EVIDENCE IS ALLOWED.
20 THEY FOUND THAT IT'S HARMLESS ERROR, BUT THEY DID FIND
21 THOSE ERRORS TO EXCLUDE THESE STATEMENTS, THESE PRIOR
22 INCONSISTENT STATEMENTS SEPARATE FROM THE THIRD-PARTY
23 GUILT ISSUE.

24 WE THINK IT'S ADMISSIBLE AS TO THIRD-PARTY GUILT. WE
25 THINK IT'S ADMISSIBLE AS A PRIOR INCONSISTENT STATEMENT.

1 FINALLY -- NOW, THE THIRD REASON WE THINK IT'S
2 INADMISSIBLE IS IT GOES TO MOTIVE AND PREJUDICE AND BIAS.

3 IN THE CASE STATE V. MECKLER, WHICH THE STATE HAS
4 HANDED UP, THEY FOUND THAT 608(C) -- THEY DID NOT CONSIDER
5 608(C) AS EVIDENCE, WHICH IS PREJUDICE OR BIAS, AND
6 ANALYZE IT UNDER 608(B) WHICH IT GETS CREDIBILITY.

7 THE RULES FOR THOSE TWO, FOR CREDIBILITY VERSUS BIAS
8 AND MOTIVE TO LIE ARE SEPARATE RULES. ONE STRICTLY
9 PROHIBITS EXTRINSIC EVIDENCE FROM COMING IN. THE OTHER
10 ONE ALLOWS FOR EVIDENCE OTHERWISE ADDUCED.

11 I THINK IT'S THE WORDS IN THE RULE, SO WE THINK
12 THAT'S ANOTHER REASON IT SHOULD GET IN BECAUSE DIEGO
13 THOMPSON CLEARLY HAS A MOTIVE TO LIE, AND WE THINK THAT
14 THESE PRIOR STATEMENTS TO MR. FINKELSTEIN GET TO HIS
15 MOTIVE TO LIE.

16 WE BELIEVE THAT ALL THREE OF THOSE ARE INDEPENDENT
17 REASONS WHY THIS TESTIMONY SHOULD GET TO THE JURY, AND WE
18 THINK THAT THE JURY SHOULD HEAR THIS IN THE CASE.
19 ESPECIALLY WHEN SO MUCH OF THE STATE'S CASE IS BASED UPON
20 THIS WITNESS'S TESTIMONY.

21 THE COURT: ALL RIGHT. WHO WILL BE ARGUING FOR THE
22 STATE?

23 MS. CAMPBELL: I WILL, YOUR HONOR. JUST SO WE DON'T
24 MISCHARACTERIZE ANYTHING, PART OF THE STATEMENTS THAT WERE
25 MADE BY MR. DIEGO THOMPSON WHERE HE MENTIONED THAT HE WAS

1 IN THE FOLK GANG, WHICH HE IS A MEMBER, AND THEN IT GOES
2 ON THAT "HE ADMITTED HE SHOT AT MEMBERS OF OTHER GANGS, AS
3 WELL AS STRANGERS. HE SHOT AT STRANGERS WHO HAD SHOT AT
4 HIM. HE DOES NOT KNOW IF A BULLET STRUCK ONE OF THEM OR
5 NOT."

6 CLEARLY, IT IS NOT REFERENCING, AND I ASSUME THEY ARE
7 TRYING TO GET THIRD-PARTY GUILT HERE, BECAUSE HE
8 IMMINENTLY DECLARED THAT TWO PEOPLE HAD BEEN STRUCK WITH
9 THESE BULLETS PRIOR TO THAT NIGHT.

10 I BELIEVE THE TESTIMONY IN THIS CASE IS CLEAR THAT TO
11 BE -- THERE WAS ONE PERSON OUT THERE SHOOTING THAT NIGHT,
12 AND I UNDERSTAND THAT IDENTIFICATION IS THE ISSUE HERE.

13 IF HE'S TRYING TO DO IT UNDER A -- TRYING TO GET
14 AROUND THE CASE I HANDED UP, YOUR HONOR, WHICH IS MECKLER,
15 UNDER A 608(C) ANALYSIS, YOU HAVE TO SHOW EVIDENCE OF
16 BIAS, PREJUDICE, OR OTHER MOTIVE TO MISREPRESENT.

17 JUST BECAUSE HE'S CHARACTERIZING THAT'S WHAT HIS
18 ARGUMENT IS DOES NOT MAKE IT THAT. CLEARLY, HE'S JUST
19 TRYING TO IMPEACH HIM AND DIRTY THE WATER SAYING THAT
20 DIEGO HAS CLAIMED IN THE PAST TO HAVE SHOT PEOPLE. IT'S
21 NOT ADMISSIBLE, YOUR HONOR, UNDER ANY WAY THAT I KNOW OF
22 AS IS HELD IN MECKLER.

23 IN THE OTHER CASES I'VE HANDED UP, SPECIFICALLY ONE
24 OF THOSE CASES, I BELIEVE GERALD, ADDRESSES THAT WHEN THEY
25 TRIED TO GET IN THE FACT THAT ONE OF THE WITNESSES WAS

1 UNDER INVESTIGATION FOR AN ARMED ROBBERY OR SOMETHING OF
2 THAT NATURE, EVIDENCE OF OTHER BAD ACTS, UNLESS IT'S
3 SUBJECT TO CONVICTION, YOUR HONOR, AND THAT DIRECTLY BEARS
4 ON THIS, IS SIMPLY -- OR NEVER HAS BEEN ADMISSIBLE.

5 IN ADDITION TO THAT, YOUR HONOR, WE WOULD SUBMIT THAT
6 IT IS A COLLATERAL ISSUE AS TO THE GUILT OR INNOCENCE.
7 WHETHER OR NOT HE CAN ASK THE WITNESS DID HE CLAIM TO BE A
8 MEMBER OF A GANG, YOUR HONOR, I BELIEVE IS ONE THING.
9 THAT DOES GO TO THE CRUX OF THIS CASE.

10 FOR THEM JUST TO TRY TO BACK DOOR IN STATEMENTS HE
11 MADE ABOUT OTHER CRIMINAL ACTIVITY, CLEARLY, WE CANNOT DO
12 THAT TO THEM, AND OUR POSITION IS THEY SHOULD NOT BE ABLE
13 TO UNDER THE CASE LAW WE HANDED UP, AND THE RULES OF
14 EVIDENCE, YOU KNOW, JUST TO BACK DOOR THAT IN AT THIS
15 POINT.

16 MR. SHARDT: YOUR HONOR.

17 MS. CAMPBELL: IN ADDITION, YOUR HONOR, IF THEY WANT
18 TO DO IT UNDER 613, THEY DIDN'T EVEN SET THAT UP
19 CORRECTLY. I MEAN, IN ORDER TO ADMIT EXTRINSIC EVIDENCE,
20 YOU HAVE TO ADVISE THEM OF WHEN IT WAS MADE, WHERE IT WAS
21 MADE AND THINGS OF THAT NATURE.

22 MR. SHARDT: YOUR HONOR, IF I COULD RESPOND. FIRST
23 OF ALL, RULE 613, I DID -- I SET THAT UP AS A PRIOR
24 INCONSISTENT STATEMENT. I DID THAT "IF HE MET THESE
25 PEOPLE, WHEN HE MET WITH THESE PEOPLE," AND I ASKED HIM --

1 I READ THE STATEMENT AND ASKED HIM IF HE MADE THAT
2 STATEMENT.

3 AS FAR AS THIRD-PARTY GUILT GOES, THE STATE IS
4 ESSENTIALLY ARGUING THAT THIS COULD BE A SEPARATE
5 INSTANCE, AND IT COULD BE. I DON'T KNOW HOW MANY
6 INSTANCES MR. THOMPSON MAY OR MAY NOT HAVE BEEN IN WHERE
7 SHOOTING PEOPLE HAS OCCURRED.

8 AT THIS POINT, HE MADE THE STATEMENT SEVEN MONTHS
9 AFTER THIS SHOOTING, SO I DON'T -- I CANNOT SPEAK TO
10 WHETHER HE WAS SHOOTING OTHER PEOPLE OR NOT, BUT I WOULD
11 POINT OUT TO THE COURT THAT IN STATE V. FOSSICK, AGAIN, I
12 DON'T THINK IT NEEDS TO BE CRYSTAL CLEAR THAT THIS IS THE
13 EVENT THAT'S BEING REFERENCED. I THINK THAT'S A QUESTION
14 FOR JURY.

15 YOUR HONOR, STATE V. FOSSICK, AND I'M GOING TO TEMPER
16 MY LANGUAGE, THE STATEMENT IN QUESTION WAS THAT, "I KILLED
17 THAT "B", AND IN THAT CASE THERE WAS NEVER AN ISSUE OF WHO
18 COULD THE DECLARANT BE REFERRING TO WHEN HE SAID, "I
19 KILLED THAT B."

20 IT WAS ASSUMED THAT THAT WOULD BE A QUESTION FOR THE
21 JURY, AND CERTAINLY, THE STATE COULD ARGUE THAT DIEGO
22 THOMPSON MAY HAVE BEEN SHOOTING OTHER PEOPLE. HE MAY NOT
23 HAVE BEEN REFERRING TO THAT.

24 THEY CAN ARGUE THAT MR. FINKELSTEIN IS MAKING IT ALL
25 UP, BUT WE THINK IT'S SOMETHING THAT A JURY SHOULD HEAR.

1 ESPECIALLY IN THIS CASE WHEN THERE IS SO MUCH REASON FOR
2 DIEGO THOMPSON FOR LYING WHEN THEY'RE RELYING SO MUCH ON
3 DIEGO THOMPSON'S TESTIMONY.

4 MS. CAMPBELL: YOUR HONOR, IF I MIGHT BE HEARD ON THE
5 OTHER POINT.

6 THE COURT: ALL RIGHT.

7 MS. CAMPBELL: "UNDER 608(B), SPECIFIC INSTANCES OF
8 CONDUCT OF A WITNESS FOR PURPOSES OF ATTACKING ONE'S
9 CREDIBILITY, OTHER THAN A CONVICTION OF A CRIME, AS
10 PROVIDED UNDER RULE 609 MAY NOT BE PROVED BY EXTRINSIC
11 EVIDENCE. HOWEVER, IT IS IN THE DISCRETION OF THE COURT
12 IF IT'S CONCERNING THE WITNESS'S CHARACTER FOR
13 TRUTHFULNESS OR UNTRUTHFULNESS. THEN IT'S EVEN A
14 BALANCING TEST."

15 MR. SHARDT: AND YOUR HONOR, I DON'T BELIEVE I EVER
16 ARGUED 608(B). I BELIEVE I STATED 608(C) WHEN I WAS
17 MAKING THAT ARGUMENT. THAT WAS, AGAIN, OUR THIRD
18 ARGUMENT.

19 (PAUSE).

20 THE COURT: READ TO ME THE STATEMENT AS TO THESE
21 PEOPLE, THE PORTION, THAT YOU WANT TO INTRODUCE OR
22 QUESTION THEM ABOUT.

23 MR. SHARDT: YOUR HONOR, IT'S TWO STATEMENTS. AGAIN,
24 FOR THOSE OF OTHER STRANGERS, MY RECOLLECTION -- IT
25 CERTAINLY WAS NOT MY INTENTION -- I DIDN'T EVEN, TO MY

1 RECOLLECTION, ASK DIEGO THOMPSON ABOUT THE STRANGERS.

2 I ASKED HIM SPECIFICALLY ABOUT BEING IN A GANG AND
3 WHETHER HE ADMITTED THAT HE WAS IN A GANG, SO THAT WOULD
4 BE THE FIRST STATEMENT. THE SECOND STATEMENT WAS ABOUT
5 SHOOTING AT GANG MEMBERS.

6 THE COURT: I WAS THINKING YESTERDAY SOMEBODY HANDED
7 ME UP A WRITTEN COPY OR A SUMMARY OF THE STATEMENT THAT HE
8 MADE IS THE STATEMENT THAT YOU WANT TO USE FOR HIS
9 IMPEACHMENT PURPOSES. DID SOMEBODY NOT HAND THAT UP TO ME
10 YESTERDAY?

11 MS. FENT: YES, YOUR HONOR. IT'S ON PAGE FOUR OF THE
12 REPORT DOWN NEAR THE YELLOW TAB.

13 MR. SHARDT: AND YOUR HONOR AGAIN, I THINK THAT'S --
14 THE STATE IS ASSUMING THAT I WAS GOING TO ASK ABOUT THAT,
15 AND THOSE TWO PARTICULAR STATEMENTS IS WHAT I INTEND ON
16 ASKING, AND I DO PLAN ON ASKING.

17 THE COURT: IS THERE ANYTHING THAT YOU HAVE THAT IN
18 ANY WAY CONNECTS THIS STATEMENT -- WHEN I SAY "THIS
19 STATEMENT", THE STATEMENT THAT HE GAVE THE PSYCHOLOGIST OR
20 THE COUNSELOR, SOCIAL WORKER OR WHOEVER, TO THE EVENTS IN
21 THIS CASE THAT ARE BEING TRIED RIGHT NOW.

22 MR. SHARDT: YOUR HONOR, THERE'S SEVERAL THINGS.
23 DIEGO THOMPSON'S ADMITTED PRESENCE ON THE SCENE, AS WE
24 HEARD IN COURT; THE TIME ELEMENT OF WHEN THESE STATEMENTS
25 WERE MADE. AGAIN, IT WAS MADE ABOUT FIVE, SIX, SEVEN

1 MONTHS AFTER THE SHOOTING ON T.S. MARTIN.

2 THE COURT: WELL, IT WAS SEVEN MONTHS AFTER WHICH --
3 I MEAN, THAT'S WHAT I'M ASKING. DO YOU HAVE ANY
4 INDICATION BECAUSE A STATEMENT MADE SEVEN MONTHS
5 AFTERWARDS COULD BE REFERRING TO AN EVENT THAT OCCURRED IN
6 THOSE SEVEN MONTHS ON AUGUST 26TH OR ANYTIME PRIOR TO
7 THAT. THAT'S WHAT I'M ASKING YOU.

8 MR. SHARDT: CERTAINLY, YOUR HONOR.

9 THE COURT: IS THERE ANYTHING THAT NARROWS IT DOWN TO
10 AUGUST 26TH?

11 MR. SHARDT: WELL, YOUR HONOR, DIEGO THOMPSON'S OWN
12 STATEMENT AND THE STATE'S THEORY ON THIS CASE HAS BEEN
13 THAT THE INTENDED TARGETS WERE GANG MEMBERS. HE STATED
14 THAT HE SHOT AT GANG MEMBERS.

15 THE TIME, HIS ADMITTED PRESENCE AT THE SHOOTING AND
16 THE FACT THAT THE INTENDED TARGETS, ACCORDING TO WHAT HIS
17 STATEMENT INDICATED, AS WELL AS THE STATE'S THEORY OF THE
18 CASE, MATCHES WHAT THIS STATEMENT IS ITSELF.

19 YOUR HONOR, I UNDERSTAND THAT, YOU KNOW, SOME THINGS
20 CAN BE REPEATED SEVERAL TIMES, BUT I WILL POINT OUT THAT
21 WE'VE NOT HEARD ANY INDICATION OR ANY POLICE REPORTS HAVE
22 COME IN OR ANYTHING ELSE THAT INDICATES THAT THERE WAS A
23 SEPARATE SHOOTING.

24 SEVEN MONTHS, YOU KNOW, THERE'S CERTAIN THINGS THAT
25 YOU PROBABLY DO A LOT OF TIMES OVER SEVEN MONTHS.

1 SHOOTING AT GANG MEMBERS PROBABLY WOULD NOT BE ONE OF
2 THOSE.

3 CERTAINLY, WE DON'T SEE ANY VERIFICATION OR ANY
4 POLICE REPORTS THAT INDICATE THIS HAD BEEN GOING ON OR
5 THAT DIEGO THOMPSON HAS EVER BEEN CHARGED WITH ANYTHING
6 REVOLVING AROUND THIS.

7 DIEGO THOMPSON'S NAME NEVER CAME UP IN ANY SHOOTINGS
8 DURING THAT TIME PERIOD. AND YOUR HONOR, AGAIN, I THINK
9 THAT THAT'S -- THE QUESTION, YOUR HONOR, RESPECTFULLY MAY
10 BE A VALID QUESTION, BUT THAT'S ALSO SOMETHING THAT I
11 THINK THE JURORS CAN CONSIDER.

12 THE COURT: WELL, IN GOING OVER THE HOLMES CASE, AND
13 THAT WAS A MURDER CASE I BELIEVE IN SOUTH CAROLINA THAT
14 THE SUPREME COURT REVERSED --

15 MR. SHARDT: YES, SIR.

16 THE COURT: -- BECAUSE THE TRIAL COURT HAD NOT
17 ADMITTED SOME EVIDENCE OF THIRD-PARTY GUILT.

18 MR. SHARDT: YES, YOUR HONOR.

19 THE COURT: APPLIED A RULE THAT THE U.S. SUPREME
20 COURT SAID WAS ARBITRARY. IT GOES ON TO SAY THAT "IN
21 CERTAIN INSTANCES, EVIDENCE OF THIRD-PARTY GUILT IS
22 INADMISSIBLE."

23 MR. SHARDT: YES, YOUR HONOR.

24 THE COURT: AND IT SAYS THAT "IT STILL HAS TO RAISE A
25 REASONABLE DOUBT OF THE DEFENDANT'S GUILT." IT THEN SAYS

1 THAT "FREQUENTLY MATTERS OFFERED INTO EVIDENCE FOR THIS
2 PURPOSE ARE SO REMOTE AND LACK SUCH CONNECTION WITH THE
3 CRIME THAT THEY ARE EXCLUDED, AND THAT SUCH EVIDENCE MAY
4 BE EXCLUDED WHERE IT DOES NOT SUFFICIENTLY CONNECT THE
5 OTHER PERSON TO THE CRIME, AS FOR EXAMPLE, WHEN THE
6 EVIDENCE IS SPECULATIVE OR REMOTE OR DOES NOT TEND TO
7 PROVE OR DISPROVE THE MATERIAL FACT AT ISSUE AT THE
8 DEFENDANT'S TRIAL. IN OTHER WORDS, THE EXCLUSION OF SOME
9 THIRD-PARTY GUILT IS STILL PROPER."

10 WHAT I'M TRYING TO DETERMINE IS WHAT CONNECTION, AND
11 OBVIOUSLY IT'S NOT BLACK AND WHITE. IF IT WAS BLACK AND
12 WHITE, IT WOULD BE AN EASY CALL, BUT THERE'S AN AREA WHERE
13 THERE IS OR IS NOT SUFFICIENT CONNECTION BETWEEN WHATEVER
14 THE EVIDENCE IS OF THE THIRD-PARTY GUILT AND WHEN IT IS
15 SUFFICIENTLY CONNECTED AND WHEN IT'S NOT. THAT'S WHAT I'M
16 ASKING.

17 MR. SHARDT: WELL, YOUR HONOR, FROM MY READING LAST
18 NIGHT, I LOOKED AT SOME OF THOSE THIRD-PARTY GUILT CASES,
19 AND THEY LOOK AT SOME OF THE EVIDENCE THAT MIGHT BE
20 BROUGHT FORWARD, THE PROPOSED EVIDENCE IN QUESTION. MANY
21 OF THOSE CASES ALSO LOOKED AT WHAT OTHER EVIDENCE THERE
22 WAS.

23 IF I MIGHT, WHETHER THERE WAS ANY OTHER INDICATION
24 THAT THIS THIRD PARTY MAY BE GUILTY, AND I THINK THAT
25 COMES INTO PLAY WHEN YOU TALK ABOUT CREATING BARE

1 SUSPICION, WHETHER IT'S BARE SUSPICION OR WHETHER IT'S
2 REAL THIRD-PARTY GUILT.

3 YOU KNOW, IN CASES, THEY TALKED ABOUT SOMEONE BEING
4 PRESENT AT THE SCENE OR SOMEONE BEING ANOTHER PERSON'S
5 ROOMMATE AND NO REAL OTHER INDICIA OF THAT THIRD PARTY'S
6 GUILT BEYOND MERE SPECULATION, SAYING "OH, IF HE WAS ON
7 THE SCENE, THEORETICALLY, HE COULD HAVE DONE IT," OR "THIS
8 INDIVIDUAL IS WHITE AND 5'8", AND HE WAS AT THE SCENE SO,
9 YOU KNOW, TECHNICALLY, HE COULD HAVE BEEN THE PERSON THAT
10 SOMEONE SAW."

11 IN THIS CASE, I THINK THE BARE SUSPICION, WE'VE BLOWN
12 PAST THAT ALREADY JUST BY WHAT'S COME OUT IN THIS CASE. I
13 THINK THERE'S SUSPICION. I THINK THERE'S PLENTY OF
14 SUSPICION ON DIEGO THOMPSON AS IT IS, AND I THINK THE JURY
15 NEEDS TO HEAR THIS, TOO, BECAUSE IT CASTS MORE SUSPICION
16 ON DIEGO THOMPSON.

17 DIEGO THOMPSON IS PUTTING HIMSELF AT THE SCENE.
18 DIEGO THOMPSON SAID -- AND AGAIN, THIS IS GOING TO BE FOR
19 THE JURY, HE SAID WHAT MAY BE CHARACTERIZED AS A PRETTY
20 INCREDIBLE STORY WHEN HE TESTIFIED; TYRONE SMITH'S
21 IDENTIFICATION THAT HE WAS THE TALLEST, THE SHOOTER WAS
22 THE TALLEST INDIVIDUAL; WE HAVE A NEGATIVE GUNSHOT
23 RESIDUE; DIEGO THOMPSON WAS NEVER TESTED.

24 DIEGO THOMPSON, AND I THINK THAT THIS IS GOING TO
25 COME OUT, CONTINUES TO COME OUT THAT HE'S LIED SEVERAL

1 TIMES TO THE POLICE. I THINK THAT THERE'S SUSPICION.
2 THERE IS ALREADY BARE SUSPICION.

3 WE'RE JUST ASKING FOR THE OPPORTUNITY TO PRESENT A
4 COMPLETE DEFENSE, AS UNDER HOLMES, FOR OUR CLIENT. WE
5 THINK THAT THIS IS RELEVANT. WE DON'T THINK WE'RE CASTING
6 A BARE SUSPICION ON MR. THOMPSON. THIS IS JUST ANOTHER
7 BRICK IN THAT WALL.

8 THE COURT: ALL RIGHT. LET ME HEAR FROM THE STATE,
9 AND I'LL GIVE THE DEFENSE A CHANCE TO RESPOND.

10 MS. CAMPBELL: YOUR HONOR, I THINK IN THAT STATEMENT,
11 AND I THINK WHAT DOES MAKE IT EVEN MORE REMOTE OR NOT
12 APPLICABLE TO THE CASE HERE, IT'S UNDISPUTED DIEGO
13 THOMPSON GAVE A STATEMENT RIGHT AFTER AND THEN ABOUT A
14 WEEK LATER TO THE POLICE.

15 AT THAT POINT, IT'S UNDISPUTED HE KNEW THAT TWO
16 PEOPLE HAD BEEN SHOT. WHEN REFERRING TO WHETHER OR NOT HE
17 HAD SHOT AT OTHER GANG MEMBERS OR OTHER PEOPLE, HE
18 INDICATES IN THE STATEMENT BEFORE YOU THAT THEY ARE TRYING
19 TO LINK UP WHAT THEY'RE SAYING THE POLICE SAID.

20 I UNDERSTAND THEY'RE LIMITING IT TO WHAT THEIR
21 THOUGHT PATTERN IS, THAT HE DOESN'T KNOW WHETHER OR NOT
22 ANYONE WAS SHOT. THAT COMPLETELY CONTRADICTS THE FACT
23 SCENARIO WE HAVE HERE.

24 I DON'T THINK ANYBODY IS GOING TO GET UP HERE AND
25 ARGUE THAT DIEGO THOMPSON DIDN'T KNOW THAT TWO PEOPLE HAD

1 BEEN SHOT AND KILLED. I JUST DON'T THINK THAT'S IN THE
2 TESTIMONY.

3 AS FAR AS THE HOLMES CASE, IT IS TRUE, YOUR HONOR, AS
4 YOU POINTED OUT, THAT THERE ARE INSTANCES WHERE JUST MERE
5 SPECULATION ARE TRYING TO TIE UP SOMETHING BASICALLY TO
6 GET IN SOME OTHERWISE NOT ADMISSIBLE ALLEGATIONS UNDER A
7 THIRD-PARTY GUILT THEORY, THEY STILL HAVE GOT TO SHOW SOME
8 KIND OF TIE BETWEEN THE TWO EVENTS. I THINK THE STATEMENT
9 WHEN YOU LOOK AT IT AS A WHOLE DISTANCES ITSELF FROM THIS
10 CASE HERE IN THIS COURTROOM.

11 I UNDERSTAND THAT THEY WANT TO TAKE OUT THAT PART AND
12 USE IT AGAINST HIM, BUT YOU KNOW, I MEAN, I JUST THINK
13 THEY'RE TRYING TO BOOTSTRAP INTO GETTING INTO PRIOR
14 INSTANCES OF BAD BEHAVIOR SINCE THEY CAN'T GET INTO IT ANY
15 OTHER WAY.

16 MR. SHARDT: YOUR HONOR, IF I CAN RESPOND, I JUST
17 WANT TO BE CLEAR, THE STATEMENT AS I UNDERSTAND IT, IS HE
18 HAS ADMITTED THAT HE SHOT AT MEMBERS OF OTHER GANGS, AS
19 WELL AS STRANGERS.

20 DIEGO CLAIMED THAT HE SHOT -- HE SHOT AT STRANGERS
21 WHO HAD SHOT AT HIM. HE DOES NOT KNOW IF THE BULLET
22 STRUCK ONE OF THEM OR NOT. SPEAKING ABOUT THE STRANGERS,
23 HE DOES NOT SAY THAT BULLETS DID NOT HIT THOSE GANG
24 MEMBERS OR WHAT HE PERCEIVED TO BE GANG MEMBERS.

25 TO ME, THAT MEANS THAT WE'RE TALKING ABOUT TWO

1 DIFFERENT THINGS: THE STRANGERS HE MAY OR MAY NOT HAVE
2 KNOWN IF BULLETS HIT, STRANGERS WHEN HE SHOT AT THEM, BUT
3 AT GANG MEMBERS OR WHEN HE PERCEIVED HE SHOT AT GANG
4 MEMBERS IS A DIFFERENT ISSUE ALTOGETHER.

5 SECONDLY, YOUR HONOR, I'LL JUST POINT OUT THAT IN MY
6 HUMBLE OPINION, DIEGO THOMPSON COULD EASILY BE SITTING IN
7 THIS CHAIR TODAY, AND IF HE WERE SITTING IN THIS CHAIR
8 TODAY, STATEMENTS THAT HE MADE COULD BE USED AGAINST HIM.
9 STATEMENTS THAT HE MADE COULD BE USED AGAINST HIM, AND
10 BECAUSE MY CLIENT IS SITTING IN THIS CHAIR AND DIEGO
11 THOMPSON IS NOT SITTING IN THE CHAIR, NOW THEY ARE TRYING
12 TO KEEP US FROM BEING ABLE TO USE THE STATEMENTS THAT HE
13 MADE WHEN REALLY, THE ONLY THING THAT'S KEEPING DIEGO
14 THOMPSON OUT OF THIS CHAIR IS HIS OWN STATEMENT HE MADE TO
15 THE POLICE, THE SECOND STATEMENT HE MADE TO THE POLICE
16 WHERE HE SAID MY GUY DID IT.

17 THE COURT: IN GOING BACK THROUGH THE TESTIMONY, THE
18 WITNESS IN QUESTION, AND WHAT WAS HIS NAME, THOMPSON,
19 DIEGO THOMPSON, WAS ASKED ON CROSS-EXAMINATION, "DO YOU
20 RECALL TALKING TO A TEAM OF PEOPLE ON MARCH 15TH, '05, THE
21 LOCATION WHERE THAT STATEMENT WAS MADE, AND THAT WAS
22 SEVERAL PEOPLE, FOR A PSYCHOLOGICAL EVALUATION AND A
23 TREATMENT PLAN, DID YOU ADMIT TO THOSE PEOPLE THAT YOU
24 WERE A GANG MEMBER?" HE SAID NO.

25 "DID YOU ADMIT TO THOSE PEOPLE THAT YOU SHOT AT

1 OTHERS?" AND HE INDICATED NO.

2 FOR THAT REASON, THE STATEMENT WILL BE ADMITTED. YOU
3 CAN CROSS-EXAMINE IF YOU LIKE.

4 MR. SHARDT: THANK YOU, YOUR HONOR.

5 THE COURT: I NEED TO ALSO GET ON THE RECORD ON AN
6 OBJECTION THAT WAS MADE THAT I RULED ON CONCERNING -- I
7 FORGET WHAT IT WAS NOW.

8 MS. FRANKLIN, YOU WANT TO BE SURE, MR. SHARDT, 803...

9 MS. FRANKLIN: 803(3), YOUR HONOR. I BELIEVE THAT --
10 THE COURT: THREE.

11 MS. FRANKLIN: -- MR. SHARDT MADE THE ARGUMENT.

12 THE COURT: THAT WAS ON THE STATEMENT, THE ALLEGED
13 STATEMENT, OF THE GROUP OF PEOPLE AT THE BALLPARK, AND THE
14 COURT DID NOT PERMIT IT. I ALSO CONSIDERED 803(3). THE
15 ARGUMENT WAS MADE, AND THAT STATEMENT WAS NOT ADMITTED,
16 BUT I DID CONSIDER THAT IN MAKING A RULING.

17 MR. SHARDT: YOUR HONOR, JUST FOR THE RECORD, I DON'T
18 KNOW IF WE EVER PROFFERED WHAT THAT STATEMENT WAS GOING TO
19 BE.

20 THE COURT: YESTERDAY --

21 MS. FENT: WE TALKED ABOUT IT OVER AND OVER AGAIN.
22 IT WAS THE TRANSFER MADE ABOUT DELSHAWN OR IF DELSHAWN
23 SHOWS HIS FACE --

24 THE COURT: WELL, THE STATEMENT, AS I UNDERSTAND IT,
25 WAS IF DELSHAWN SHOWS HIS FACE AGAIN, WE'RE GOING TO --

1 SOMEBODY IS GOING TO BLOW HIS BRAINS OUT.

2 MR. SHARDT: THANK YOU, YOUR HONOR.

3 THE COURT: WASN'T THAT THE STATEMENT?

4 MR. SHARDT: IT'S BEEN A LONG MORNING.

5 THE COURT: YES, SIR. IT HAS BEEN.

6 ALL RIGHT. ANYTHING FURTHER? ANYTHING FURTHER FROM
7 THE STATE BEFORE WE PROCEED?

8 MR. GIESE: NO.

9 MS. FRANKLIN: NO.

10 THE COURT: ALL RIGHT. GET THE JURY IN PLEASE.

11 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
12 APPROXIMATELY 3:01 P.M.)

13 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

14 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. I
15 APOLOGIZE FOR THE DELAY IN GETTING BACK STARTED. WE HAD A
16 COUPLE OF MATTERS THAT NEEDED TO BE DISCUSSED AND TAKE UP
17 WITH THE ATTORNEYS.

18 CALL YOUR NEXT WITNESS, PLEASE.

19 MS. GRIPP: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
20 COURT. THE DEFENDANT WOULD CALL MS. MARGARITE RICE.

21 THE BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE,
22 RAISE YOUR RIGHT AND FACE THE CLERK.

23 MARGARITE RICE, AFTER BEING DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25

1 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
2 FOR THE RECORD.

3 THE BAILIFF: WATCH YOUR STEP FOR ME. WATCH YOUR
4 STEP FOR ME. WATCH YOUR STEP. KEEP IT LOUD INTO THE
5 MICROPHONE NOW.

6 THE WITNESS: OKAY.

7 THE BAILIFF: THEY NEED TO HEAR YOU ALL THE WAY IN
8 THE BACK, OKAY.

9 STAY YOUR FULL NAME FOR THE RECORD.

10 THE WITNESS: MY NAME IS MARGARITE RICE.

11 THE BAILIFF: GOOD.

12 DIRECT EXAMINATION:

13 BY MS. GRIPP

14 Q HI, MS. RICE. HOW ARE YOU DOING?

15 A GOOD.

16 Q OKAY. MS. RICE, WHERE DO YOU LIVE?

17 A [REDACTED].

18 Q ALL RIGHT. AND HOW LONG HAVE YOU LIVED THERE?

19 A FIVE YEARS.

20 Q AND WHO LIVES THERE WITH YOU NOW?

21 A MY SON.

22 Q DO YOU REMEMBER WHO LIVED WITH YOU AT THE TIME OF
23 THIS INCIDENT?

24 A GRANDCHILD, CHRIS LIVERMAN.

25 Q HOW MANY CHILDREN DO YOU HAVE?

1 A TWENTY-ONE -- I MEAN FIVE -- I MEAN SIX.

2 Q SO YOU HAVE SIX CHILDREN?

3 A YES.

4 Q AND HOW MUCH GRANDCHILDREN DO YOU HAVE?

5 A TWENTY-ONE.

6 Q ALL RIGHT. AND YOU JUST SAID THAT CHRIS IS ONE OF
7 THOSE GRANDCHILDREN?

8 A YES, HE IS.

9 Q ALL RIGHT. WE'RE GOING TO TALK ABOUT THE NIGHT OF
10 AUGUST 26TH, OKAY. DO YOU REMEMBER THAT NIGHT?

11 A YES.

12 Q DO YOU REMEMBER SEEING CHRIS THAT NIGHT AT ALL?

13 A WELL, I SEEN HIM THAT NIGHT WHEN HE CAME, AND I GAVE
14 HIM A PEPSI-COLA AND A DONUT.

15 Q AND WHO ELSE WAS THERE WITH YOU, ANYBODY ELSE?

16 A NO ONE ELSE.

17 Q DO YOU RECALL WHAT HE WAS WEARING THAT NIGHT?

18 A I SURE DON'T.

19 Q DO YOU REMEMBER HOW HE WAS ACTING, HIS BEHAVIOR OR
20 ANYTHING LIKE THAT?

21 A NO. HE WAS ALWAYS NORMAL, NOTHING DIFFERENT.

22 Q ALWAYS NORMAL. WHAT, IF ANYTHING, DID YOU ALL TALK
23 ABOUT?

24 A HUH?

25 Q WHAT, IF ANYTHING, DID YOU GUYS TALK ABOUT?

1 A TO WHO?

2 Q YOU AND CHRISTOPHER.

3 A SAME THING, THAT'S ALL.

4 Q DO YOU REMEMBER TALKING TO HIM ABOUT --

5 MS. FENT: OBJECTION, HEARSAY.

6 THE WITNESS: OH.

7 THE COURT: WAIT A MINUTE. WHAT'S THE QUESTION?

8 DON'T ANSWER THIS QUESTION. LET ME HEAR THE

9 QUESTION.

10 MS. GRIPP: THE QUESTION, YOUR HONOR, IS "DO YOU
11 REMEMBER TALKING TO HIM ABOUT GOING TO HIS AUNT'S HOUSE?"

12 THE WITNESS: OH.

13 THE COURT: WAIT, WAIT, WAIT. DON'T ANSWER THAT
14 QUESTION.

15 (PAUSE).

16 WELL, COME HERE.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
18 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

19 THE COURT: ALL RIGHT. MS. GRIPP, YOU MAY ASK YOUR
20 NEXT QUESTION.

21 BY MS. GRIPP

22 Q THANK YOU, YOUR HONOR.

23 ALL RIGHT. DO YOU REMEMBER WHAT TIME OF DAY THAT WAS
24 THAT YOU SAW CHRISTOPHER?

25 A I SURE DON'T. I DON'T REMEMBER. I WON'T TELL NO

1 LIE.

2 Q DO YOU REMEMBER WHETHER IT WAS DAYTIME, NIGHTTIME?

3 A NIGHT.

4 Q IT WAS NIGHT?

5 A YES.

6 Q HOW DO YOU KNOW IT WAS NIGHTTIME?

7 A HUH?

8 Q HOW DO YOU REMEMBER IT WAS NIGHTTIME?

9 A HE CAME IN MY APARTMENT.

10 Q DO YOU REMEMBER BEING SPECIFICALLY THAT DAY, THAT YOU

11 SAW HIM THAT NIGHT?

12 A LIKE I TOLD YOU, HE CAME THAT NIGHT. I GAVE HIM A

13 PEPSI-COLA AND A DONUT.

14 Q ALL RIGHT. DO YOU REMEMBER -- HOW DO YOU KNOW THAT

15 IT WAS THAT NIGHT IN PARTICULAR?

16 A HOW DO I KNOW THAT NIGHT? LET'S SEE.

17 Q AFTER THAT NIGHT, WHAT HAPPENED?

18 A WELL, I HAVEN'T SEEN HIM SINCE THAT NIGHT.

19 Q SO THAT WAS THE LAST NIGHT YOU SAW HIM?

20 A HUH?

21 Q SO THAT WAS THE LAST NIGHT YOU SAW HIM?

22 A YES. YES, IT IS.

23 Q AND YOU LOVE YOUR GRANDSON?

24 A YES, I DO.

25 Q WOULD YOU LIE FOR YOUR GRANDSON?

1 A HUH?

2 Q WOULD YOU LIE FOR HIM?

3 A NO, I SURE WOULDN'T.

4 Q ALL RIGHT.

5 A I CAN'T TELL YOU NO MORE, BUT I AM TELLING YOU NOW.

6 Q BEG THE COURT'S INDULGENCE.

7 A BUT I DO LOVE HIM.

8 THE COURT: ALL RIGHT. CROSS-EXAMINATION?

9 MS. GRIPP: NOTHING FURTHER, YOUR HONOR.

10 MS. FENT: I HAVE NO QUESTIONS, YOUR HONOR.

11 THE COURT: ALL RIGHT. MA'AM, YOU MAY STEP DOWN.

12 WATCH YOUR STEP, PLEASE, MA'AM.

13 THE WITNESS: THANK YOU, SIR, VERY MUCH.

14 THE BAILIFF: OKAY. YOU GOT IT NOW? NOW GET YOUR

15 CANE. HERE IS YOUR POCKETBOOK. WATCH YOUR STEP DOWN

16 HERE.

17 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

18 MR. SHARDT: THE DEFENSE CALLS STEPHEN FINKELSTEIN.

19 STEPHEN FINKELSTEIN, AFTER BEING DULY

20 SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: THANK YOU. PLEASE HAVE A SEAT IN THE

22 WITNESS STAND. STATE YOUR FULL NAME FOR THE RECORD.

23 THE BAILIFF: WATCH YOUR STEP.

24 THE WITNESS: STEPHEN FINKELSTEIN.

25 MS. FRANKLIN: BEG THE COURT'S INDULGENCE.

1 (PAUSE).

2 DIRECT EXAMINATION:

3 BY MR. SHARDT

4 Q GOOD AFTERNOON, MR. FINKELSTEIN.

5 A GOOD AFTERNOON.

6 Q COULD YOU TELL THE JURY WHAT YOUR JOB IS? YOU'RE A
7 PSYCHOLOGIST IN THIS STATE?

8 A YES.

9 Q AND YOU MEET WITH YOUTH TO DISCUSS ISSUES GOING ON
10 WITH THEM IN THEIR LIVES?

11 A AMONG OTHER THINGS.

12 Q AND HOW LONG HAVE YOU BEEN DOING THIS JOB?

13 A WELL, THIS PARTICULAR JOB I'VE BEEN DOING FOR
14 SIX-AND-A-HALF YEARS. I'VE BEEN A PSYCHOLOGIST FOR
15 APPROXIMATELY 30 YEARS.

16 Q OKAY. AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

17 A I HAVE A MASTER'S DEGREE IN PSYCHOLOGY AND A
18 BACHELOR'S DEGREE IN PSYCHOLOGY.

19 Q NOW, IS PART OF THIS JOB, YOU SAID, FOR THE LAST SIX
20 YEARS?

21 A YES, SIX-AND-A-HALF.

22 Q YOU MEET WITH YOUTH AND TRY TO DEVELOP GAME PLANS FOR
23 THEIR LIVES. IS THAT FAIR TO SAY?

24 A KIDS ARE SENT TO US BY THE FAMILY COURT AFTER
25 BREAKING THE LAW, AND ME AND A SOCIAL WORKER INVITE THE

1 YOUTH ON A MISSION --

2 MS. CAMPBELL: OBJECTION, YOUR HONOR. MAY WE
3 APPROACH?

4 THE COURT: SURE.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
6 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY)

7 THE COURT: THE OBJECTION IS SUSTAINED.

8 YOU MAY CONTINUE, MR. SHARDT.

9 BY MR. SHARDT

10 Q THANK YOU, YOUR HONOR.

11 AS PART OF YOUR JOB, HAVE YOU HAD THE OPPORTUNITY TO
12 MEET A DIEGO THOMPSON?

13 A YES.

14 Q OKAY. DID YOU SIT DOWN AND TALK WITH DIEGO THOMPSON?

15 A YES.

16 Q OKAY. DID YOU WRITE A REPORT AND RECOMMENDATIONS FOR
17 DIEGO THOMPSON?

18 A I WAS COAUTHOR OF A REPORT, YES.

19 Q ALL RIGHT. AND WHEN YOU MET WITH DIEGO THOMPSON...

20 THE COURT: MR. SHARDT, CAN YOU SPEAK UP? I'M HAVING
21 TROUBLE HEARING YOU, TOO.

22 BY MR. SHARDT

23 Q YES, YOUR HONOR.

24 WHEN YOU MET WITH DIEGO THOMPSON, WAS IT A ONE-ON-ONE
25 MEETING, WAS THERE ANOTHER INDIVIDUAL THERE?

1 A JUST THE TWO OF US.

2 Q AND WHEN YOU SPOKE TO DIEGO THOMPSON ABOUT HIS
3 PROBLEMS, DID YOU ASK HIM ABOUT PEOPLE HE HUNG OUT WITH?

4 A YES.

5 Q OKAY. AND DID YOU ASK HIM ABOUT CERTAIN THINGS THAT
6 HE MIGHT BE DOING IN THE COMMUNITY, CERTAIN LAWS HE MAY BE
7 BREAKING? DID YOU TALK TO HIM ABOUT THINGS LIKE THAT?

8 MS. CAMPBELL: OBJECTION, YOUR HONOR. MAY WE
9 APPROACH?

10 THE COURT: SURE.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
12 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY)

13 THE COURT: GO AHEAD, MR. SHARDT.

14 BY MR. SHARDT

15 Q OKAY.

16 IN YOUR STATEMENTS TO DIEGO THOMPSON -- DID HE MAKE
17 CERTAIN STATEMENTS TO YOU? DID HE SPEAK TO YOU?

18 A YES, HE SPOKE TO ME.

19 Q AND WHEN HE WAS SPEAKING TO YOU -- WHEN DID THIS
20 OCCUR? WHEN DID YOU HAVE THIS CONVERSATION?

21 A I DON'T KNOW THE EXACT DATE, BUT IT WAS MARCH OF
22 2005.

23 Q MARCH OF 2005. WHEN HE SPOKE TO YOU, DID HE ADMIT TO
24 YOU THAT HE WAS A MEMBER OF A GANG?

25 A HE REPORTED TO ME THAT YES, HE WAS IN A GANG.

1 Q SO HE REPORTED TO YOU THAT HE WAS IN A GANG?

2 A CORRECT.

3 Q OKAY. DIEGO THOMPSON WAS TALKING TO YOU. DID HE
4 REPORT TO YOU THAT IN THE PAST HE HAD SHOT AT OTHER GANG
5 MEMBERS?

6 A YES, HE DID.

7 MR. SHARDT: BEG THE COURT'S INDULGENCE.

8 (PAUSE).

9 I HAVE NO FURTHER QUESTIONS OF THIS WITNESS.

10 THE COURT: ALL RIGHT.

11 CROSS-EXAMINATION:

12 BY MS. CAMPBELL

13 Q AND JUST FOR THE RECORD, THAT WAS IN MARCH OF 2005?

14 A YES.

15 MS. CAMPBELL: THANK YOU.

16 THE COURT: ANYTHING FURTHER?

17 REDIRECT EXAMINATION:

18 BY MR. SHARDT

19 Q I JUST HAVE ONE QUESTION.

20 DID HE EVER INDICATE TO YOU WHEN --

21 MS. CAMPBELL: OBJECTION, YOUR HONOR. I THINK THAT'S
22 OUTSIDE OF THE SCOPE OF WHAT I ASKED.

23 THE COURT: I DON'T KNOW WHAT THE QUESTION IS, BUT IT
24 HAS GOT TO BE LIMITED TO WHAT WAS GOING ON IN
25 CROSS-EXAMINATION.

1 MR. SHARDT: I HAVE NO QUESTION, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, SIR.

3 ALL RIGHT.

4 MS. FRANKLIN: THE DEFENSE WOULD CALL WILLIAM BOWMAN.

5 THE COURT: ALL RIGHT.

6 MS. CAMPBELL: YOUR HONOR, MAY WE APPROACH ON THIS
7 ONE?

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
9 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

10 THE BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE,
11 RAISE YOUR RIGHT. FACE THE CLERK, SIR.

12 WILLIAM BOWMAN, AFTER BEING DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
15 FOR THE RECORD.

16 THE BAILIFF: STATE YOUR FULL NAME FOR THE RECORD.

17 THE WITNESS: MY NAME IS WILLIAM M. BOWMAN. I'M A
18 CAPTAIN AT ALVIN S. GLENN DETENTION CENTER.

19 DIRECT EXAMINATION:

20 BY MS. FRANKLIN

21 Q HEY, CAPTAIN BOWMAN. COULD YOU PLEASE TELL THE JURY
22 WHAT SOME OF YOUR DUTIES AND RESPONSIBILITIES ARE DOWN AT
23 ALVIN S. GLENN?

24 A I'M OVER THE OPERATIONS DIVISION WHICH IS RESPONSIBLE
25 FOR THE RECORD KEEPING AND FOR THE ADMISSIONS AND

1 DISCHARGE OF DETAINEES.

2 Q OKAY. AND ARE YOU AWARE, SIR, OF A TIME IN JUNE OF
3 2004 THAT CHRISTOPHER LIVERMAN WAS INCARCERATED?

4 A YES, MA'AM.

5 Q AND COULD YOU PLEASE PROVIDE THE JURY THE DATES THAT
6 HE WAS INCARCERATED DURING THAT MONTH?

7 A HE WAS INCARCERATED FROM JUNE 2ND, 2004 UNTIL
8 JUNE 28TH OF 2004.

9 MS. FRANKLIN: I HAVE NO FURTHER QUESTIONS, YOUR
10 HONOR.

11 THANK YOU.

12 THE COURT: ALL RIGHT. CROSS EXAMINE?

13 MS. CAMPBELL: THANK YOU, YOUR HONOR. WE HAVE NO
14 QUESTIONS.

15 THE COURT: SIR, YOU MAY STEP DOWN. WATCH YOUR STEP,
16 PLEASE.

17 THE BAILIFF: WATCH YOUR STEP. WATCH YOUR STEP.

18 THE COURT: ALL RIGHT. YOUR NEXT WITNESS?

19 MR. SHARDT: THE DEFENSE CALLS LIEUTENANT MONTJOY.

20 CHRISTOPHER MONTJOY, AFTER BEING DULY
21 SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
23 FOR THE RECORD.

24 THE WITNESS: IT'S CHRISTOPHER EDWARD MONTJOY.

25 DIRECT EXAMINATION:

1 BY MR. SHARDT

2 Q GOOD AFTERNOON, LIEUTENANT MONTJOY.

3 A GOOD AFTERNOON.

4 Q WHERE DO YOU WORK?

5 A THE ALVIN S. GLENN DETENTION CENTER.

6 Q AND WHAT DO YOU DO AT THE ALVIN S. GLENN?

7 A I'M LIEUTENANT OF THE PROFESSIONAL STANDARDS

8 DIVISION.

9 Q OKAY. AS LIEUTENANT OF THE PROFESSIONAL STANDARDS

10 DIVISION, ARE YOU IN CHARGE OF PHONE CALLS FROM THE JAIL?

11 A YES, SIR.

12 Q AND THE TAPES OF PHONE CALLS FROM THE JAIL?

13 A YES, SIR.

14 Q OKAY. EXPLAIN TO ME HOW CALLS ARE TAPED FROM THE

15 JAIL?

16 A THEY'RE TAPED ON A SYSTEM. BASICALLY, WE TAPE 24

17 HOURS A DAY, SEVEN DAYS A WEEK, AS LONG AS THE PHONES ARE

18 ON. THEY'RE TAPED ON A COMPUTER SYSTEM WHICH IS THEN

19 BURNED TO SOMETHING SIMILAR TO A V.H.S. TAPE.

20 Q OKAY. NOW, HOW LONG HAVE YOU BEEN TAPING PHONE CALLS

21 AT THE JAIL?

22 A APPROXIMATELY ABOUT EIGHT YEARS.

23 Q SO IF AN INMATE MAKES A CALL FROM THE JAIL, IT WILL

24 BE TAPED?

25 A YES, SIR.

1 Q AND YOU SAID -- I'M SORRY, YOU SAID FIVE YEARS?

2 A APPROXIMATELY FIVE -- PROBABLY FIVE TO EIGHT YEARS.

3 Q FIVE TO EIGHT YEARS?

4 A YEAH.

5 Q SO IN 2004, YOU WOULD HAVE BEEN TAPING PHONE CALLS?

6 A CORRECT.

7 Q ALL PHONE CALLS?

8 A YES, SIR.

9 Q OKAY. AND WHAT DO YOU DO WITH THESE -- YOU SAID

10 THEY'RE STORED ON TAPES. THE PHONE CALLS ARE TAPED, AND

11 THEY'RE ON V.H.S. LIKE TAPE?

12 A SOMETHING SIMILAR TO A V.H.S. TAPE, YES, SIR.

13 Q OKAY. AND WHAT DO YOU DO WITH THOSE V.H.S. BLANK

14 TAPES?

15 A THEY'RE MAINTAINED IN MY OFFICE.

16 Q IN YOUR OFFICE?

17 A YES, SIR.

18 Q ARE THEY EVER THROWN OUT?

19 A DO THEY EVER COME OUT?

20 Q ARE THEY EVER THROWN OUT?

21 A THROWN OUT, NO. THEY ARE KEPT INDEFINITELY.

22 Q OKAY. SO YOU WOULD HAVE -- RIGHT NOW IN YOUR OFFICE

23 YOU WOULD HAVE PHONE CALLS DATING BACK TO 2000, 1999,

24 SOMEWHERE AROUND THERE?

25 A CORRECT.

1 Q OKAY. AND THIS WOULD BE ALL THE PHONE CALLS MADE
2 FROM THE JAIL?

3 A CORRECT.

4 Q OKAY. TO HELP THE JURY UNDERSTAND, ON THESE TAPES,
5 HOW MANY PHONE CALLS WOULD BE ON THE V.H.S. TAPES?

6 A THERE WOULD BE APPROXIMATELY SOMEWHERE BETWEEN 30 AND
7 40,000 PHONE CALLS ON ONE TAPE.

8 Q AND NOW THEY'RE STORED -- HOW ARE THEY STORED,
9 CHRONOLOGICALLY?

10 A YES, SIR.

11 Q OKAY. NOW, IF ONE WAS TO SEARCH THE TAPES FOR A
12 SPECIFIC CALL, WHAT WOULD BE THE MOST LIKELY WAY OF DOING
13 THIS?

14 A THE MOST LIKELY WAY OF DOING THIS IS BY THE PHONE
15 NUMBER THAT THE PERSON CALLED.

16 Q BY THE RECEIVER'S PHONE CALL?

17 A BY THE RECEIVER'S NUMBER, YES, SIR.

18 Q OKAY. AND IF ONE WAS TO LOOK AT THE TAPES BY THE
19 RECEIVER'S PHONE CALL, HOW WOULD THAT BE HELPFUL? WOULD
20 YOU HAVE TO LISTEN TO ALL OF THE TAPES?

21 A NO, SIR.

22 Q WHAT WOULD YOU DO?

23 A JUST PULL IT UP BY THAT PARTICULAR PHONE NUMBER.

24 Q AND YOU COULD LISTEN?

25 A CORRECT.

1 Q IS THERE A WAY THAT THESE -- THAT SYSTEM CAN BE
2 BYPASSED?

3 A IT CAN BE BYPASSED BY WHAT THEY CALL A THREE-WAY
4 PHONE CALL. THAT'S WHERE AN INDIVIDUAL CALLS ANOTHER
5 INDIVIDUAL AND THAT INDIVIDUALS CALLS A THIRD PARTY AND
6 THEN GETS OFF THE LINE.

7 Q OKAY. IF THAT HAPPENED, WHAT NUMBER WOULD IT BE?

8 A THAT WOULD BE UNDER THE NUMBER THAT RECEIVED THE
9 CALL. THE PARTY THAT RECEIVED THE CALL THAT DID THE
10 THREE-WAY CALL.

11 Q THE MIDDLE?

12 A THE MIDDLE PERSON, CORRECT.

13 Q OKAY. NOW, IF I WANT TO -- IF SOMEONE WANTED TO
14 LOOK, TRY TO FIND A PHONE CALL BUT WASN'T SURE OF THE
15 RECEIVING NUMBER, IS THERE ANOTHER WAY THAT IT CAN BE
16 SEARCHED?

17 A IT CAN BE SEARCHED BY THE DORM, THE PARTICULAR DORM
18 THAT THAT PARTICULAR PERSON WOULD BE IN, THAT TIMEFRAME,
19 DATE.

20 Q SO IF YOU KNEW THE DATE IN THE DORM, YOU COULD SEARCH
21 THAT WAY?

22 A IT'S POSSIBLE, YES, SIR.

23 Q IF YOU WANTED TO, YOU COULD PUT IN THE DATE IN A
24 DORM, AND YOU COULD SEARCH THAT WAY, CORRECT?

25 A NO, SIR. I WOULDN'T BE ABLE TO PUT THAT DATE AND THE

1 DORM NUMBER IN. I WOULD HAVE TO PHYSICALLY GO BACK AND
2 PICK EACH -- THAT PARTICULAR DORM AND LISTEN TO EACH PHONE
3 CALL --

4 Q OKAY.

5 A -- IN THAT TIMEFRAME.

6 Q RIGHT, BUT IF I WANTED TO FIND IT, YOU WOULD DO THAT
7 FOR ME?

8 A CORRECT.

9 Q OKAY. HOW MANY CALLS COME FROM THE JAIL IN AN
10 AVERAGE DAY?

11 A AVERAGE IS ABOUT 1,000.

12 Q AND HOW MANY DORMS ARE IN THE JAIL?

13 A IT SHOULD BE AROUND 15.

14 Q OKAY. SO WOULD YOU SAY, ROUGH MATH PER DORM THAT
15 WOULD BE...

16 A EIGHTY TO 100 PHONE CALLS.

17 Q EIGHTY TO 100 PER DAY?

18 A YES, SIR.

19 Q SO IF YOU KNEW -- LET ME ASK YOU THIS: IS -- HOW --
20 DO YOU KEEP RECORDS IN THE JAIL OF WHERE AN INMATE --
21 WHICH DORM HE'S IN?

22 A YES, SIR.

23 Q OKAY. SO THOSE ARE AVAILABLE?

24 A YES, SIR.

25 Q AND YOU KEEP RECORDS OF WHICH DORM AN INMATE IS ON

1 CERTAIN DAYS?

2 A YES, SIR.

3 Q AND YOU KEEP TRACK OF THOSE, AND YOU KEEP THOSE
4 RECORDS?

5 A CONSTANTLY, YES, SIR.

6 Q OKAY. SO IF I WAS LOOKING FOR A PHONE CALL FROM A
7 CERTAIN INDIVIDUAL, YOU WOULD KNOW WHAT DORM HE WAS IN ON
8 A CERTAIN DAY?

9 A YES, SIR.

10 Q AND IF I WAS LOOKING FOR A CALL MADE BY AN INDIVIDUAL
11 ON THAT DAY, YOU COULD SEARCH BY THE DORM?

12 A YES, SIR.

13 Q OKAY. AND YOU SAID YOU WOULD HAVE TO LISTEN TO ABOUT
14 80 TO 100 --

15 A CORRECT.

16 Q -- PHONE CALLS TO FIND THAT PHONE CALL?

17 A CORRECT.

18 Q OKAY. AND YOU WOULD DO THAT?

19 A YES, SIR.

20 MR. SHARDT: I HAVE NO FURTHER QUESTIONS FOR THIS
21 WITNESS.

22 THE COURT: ALL RIGHT. CROSS EXAMINE?

23 CROSS-EXAMINATION:

24 BY MS. CAMPBELL

25 Q DO YOU REMEMBER BACK IN SEPTEMBER OF 2004 WHEN

1 INVESTIGATOR JOBY GRAY CONTACTED YOU IN REGARD TO THIS
2 CASE?

3 A YES, MA'AM.

4 Q AND I BELIEVE HE WAS INITIALLY ABLE TO PROVIDE YOU
5 THE NUMBER HE WAS INTERESTED IN; IS THAT CORRECT?

6 A CORRECT.

7 Q AND YOU WERE UNABLE TO FIND ANYTHING ON THAT NUMBER?

8 A THAT'S CORRECT.

9 Q YOU MENTIONED THIRD PARTY CALLING. IS THAT COMMON OR
10 AN UNCOMMON PRACTICE BY INMATES AT THE RICHLAND COUNTY
11 DETENTION CENTER?

12 A IT'S A VERY COMMON PRACTICE.

13 Q ESPECIALLY BY THOSE WHO KNOW THE SYSTEM AND HAVE BEEN
14 THERE?

15 A YES, MA'AM.

16 Q AND WHAT DOES A THIRD-PARTY CALL DO THAT A DIRECT
17 CALL WON'T?

18 A IT KEEPS THAT PERSON FROM HAVING TO PAY, THE THIRD
19 PARTY FROM HAVING TO PAY THE FEE THAT IT COSTS TO MAKE
20 THAT PHONE CALL.

21 Q OKAY. SO IF I'M IN THE DETENTION CENTER AND I MAKE A
22 PHONE CALL, SAY, TO MY SISTER, HOW IS THAT PHONE CALL
23 GOING TO BE RECEIVED INTO HER HOME IF I CALL HER HOME
24 NUMBER?

25 A IT WOULD BE FROM THE SECOND PARTY MAKING THE PHONE

1 CALL.

2 Q AND HOW WOULD IT BE ANNOUNCED BEFORE SHE PICKS UP THE
3 PHONE?

4 A THE SECOND PERSON OR THE THIRD PERSON?

5 Q I'M DOING A DIRECT CALL NOW. I'M NOT DOING A THIRD
6 PARTY. IT'S LIKE ME DIRECTLY TO A FRIEND OF MINE.

7 A IT WOULD STATE, "THE ALVIN S. GLENN DETENTION CENTER.
8 DETAINEE SO AND SO IS TRYING TO CONTACT YOU," YOU KNOW.
9 IT WILL GO THROUGH A WHOLE SEQUENCE OF THINGS AND
10 BASICALLY TELL YOU THAT YOUR PHONE CALL IS BEING MONITORED
11 AND CAN BE TAPED AT ALL TIMES.

12 Q AND IS THERE AN ACTUAL CHARGE FOR THAT?

13 A YES, MA'AM.

14 Q DOES THE PERSON THEN HAVE AN OPTION OF WHETHER OR NOT
15 TO TAKE THAT PHONE CALL?

16 A YES, MA'AM.

17 Q AND IF THEY DON'T TAKE THAT PHONE CALL, THEN IT'S NOT
18 RECORDED?

19 A THAT'S CORRECT.

20 Q BUT THEN IF A PERSON CAN'T GET THROUGH THAT WAY AND
21 THEY CALL BACK AND MAKE IT THROUGH, YOU SAY A THIRD PARTY,
22 HOW DOES THAT WORK?

23 A THE SECOND PARTY ACTUALLY ACCEPTS THE PHONE CALL,
24 ACCEPTS THE CHARGE. THE THIRD -- WHEN THEY CALL THE THIRD
25 PARTY, THEY CAN ELIMINATE THE SECOND PARTY CAUSING THEM

1 NOT TO HAVE TO SUSTAIN THE COST OF THE PHONE CALL.

2 Q SO IF I WANT TO TALK TO A FRIEND OF MINE NAMED JOE,
3 COULD I CALL SALLY FIRST AND THEN SALLY PLACES A CALL TO
4 JOE WHILE I'M STILL ON THE LINE; IS THAT CORRECT?

5 A YES, MA'AM.

6 Q AND THEN IT WON'T HAVE THAT ANNOUNCEMENT AND THAT
7 THIRD PARTY WON'T GET CHARGED FOR IT?

8 A THAT'S CORRECT.

9 Q YOU GET THOUSANDS OF PHONE CALLS A WEEK?

10 A YES, MA'AM.

11 Q WHEN INVESTIGATOR GRAY CONTACTED YOU INITIALLY, HE
12 GAVE YOU THAT ADDITIONAL NUMBER, AT THAT TIME DID HE
13 REQUEST THAT YOU DO SOME FURTHER SEARCHING? DID YOU
14 INDICATE YOU COULDN'T GET HIM ANY MORE INFORMATION?

15 A CORRECT.

16 Q AND WHAT INFORMATION WAS HE REQUESTING OF YOU THAT
17 YOU COULD NOT PROVIDE?

18 A BASICALLY A CONVERSATION BETWEEN TWO PARTIES.

19 Q AND WAS HE ABLE TO NARROW DOWN THE TIME PERIOD AT
20 ALL?

21 A NOT TO MY KNOWLEDGE, NO, MA'AM.

22 Q COULD HE NARROW DOWN THE WEEK?

23 A I DON'T RECALL THAT, MA'AM.

24 Q AND IS IT POSSIBLE FOR YOU, IN YOUR BUSINESS, TO GO
25 BACK AND REVIEW -- A WEEK'S WORTH OF PHONE CALLS IS HOW

1 MANY?

2 A A WEEK WOULD BE ABOUT 5,000, 7,000 PHONE CALLS.

3 Q AND EVEN IF YOU KNEW THE DORM THEY WERE IN, WOULD YOU
4 STILL HAVE TO HAVE ADDITIONAL INFORMATION IN ORDER TO
5 POSITIVELY IDENTIFY WHICH PHONE CALL YOU'RE TALKING ABOUT?

6 A YES, MA'AM.

7 Q DID YOU HAVE TO KNOW THAT PERSON'S VOICE?

8 A KNOW THEIR VOICE, YES, MA'AM.

9 Q IS IT UNCOMMON, TOO, WHEN A PERSON IS AN INMATE AT
10 THE ALVIN S. GLENN DETENTION CENTER THEY MAY TALK IN SOME
11 KIND OF SLANG OR HAVE SOME KIND OF CODE BETWEEN --

12 A YES, MA'AM, THAT'S VERY COMMON.

13 Q SO THEY MAY HAVE A SLANG WORD FOR A GUN THAT YOU
14 WOULDN'T RECOGNIZE?

15 A CORRECT.

16 Q THEY MAY HAVE A SLANG TERM FOR MOVING A STASH THAT
17 YOU WOULDN'T RECOGNIZE?

18 A CORRECT.

19 Q AND YOU ACTUALLY JUST TOLD INVESTIGATOR GRAY BACK
20 WHEN HE REQUESTED ALL OF THIS INFORMATION THAT YOU COULD
21 NOT PROVIDE IT?

22 A CORRECT, YES, MA'AM.

23 Q AND ALL THE INMATES KNOW ABOUT THIRD-PARTY CALLING
24 AND ROUTING AROUND YOUR --

25 A PREDOMINANTLY, YES, MA'AM.

1 MS. CAMPBELL: THANK YOU, SIR.

2 THE COURT: REDIRECT?

3 MR. SHARDT: YES, YOUR HONOR. I HAVE A FEW
4 QUESTIONS.

5 REDIRECT EXAMINATION:

6 BY MR. SHARDT

7 Q SO INVESTIGATOR GRAY, DID HE ASK YOU TO SEARCH FOR
8 THE TAPE?

9 A A TAPE?

10 Q DID HE ASK YOU TO SEARCH FOR A PHONE CALL?

11 A A PARTICULAR PHONE NUMBER, YES, SIR.

12 Q AND YOU DIDN'T FIND IT?

13 A NO, SIR.

14 Q AND YOU JUST SAID HE ASKED YOU TO DO IT THE OTHER
15 WAY?

16 A CORRECT.

17 Q OKAY. CHRONOLOGICALLY BY THE DORM?

18 A BY WHAT -- WELL, THE TIMEFRAME.

19 Q OKAY. AND THE TIMEFRAME HE GAVE WAS ONE WEEK?

20 A THAT WOULD BE AROUND APPROXIMATELY THE TIME, YEAH.

21 Q OKAY. SO HE DIDN'T NARROW IT DOWN TO A DAY?

22 A NOT TO MY KNOWLEDGE. NOT THAT I RECALL, NO.

23 MR. SHARDT: I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

25 THE WITNESS: THANK YOU, SIR.

1 THE COURT: ALL RIGHT.

2 MS. FRANKLIN: THE DEFENSE WOULD CALL MR. MARK
3 BORDEAUX.

4 MARK BORDEAUX, AFTER BEING DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
7 FOR THE RECORD.

8 THE BAILIFF: PLEASE HAVE A SEAT IN THE WITNESS STAND
9 AND STATE YOUR FULL NAME FOR THE RECORD.

10 THE WITNESS: MARK BORDEAUX.

11 DIRECT EXAMINATION:

12 BY MS. FRANKLIN

13 Q MR. BORDEAUX, COULD YOU PLEASE TELL THE JURORS WHAT
14 YOUR OCCUPATION IS?

15 A I'M VICE PRESIDENT OR BROWDER ELECTRONICS. WE
16 INSTALL VIDEO SECURITY.

17 Q OKAY. CAN YOU TELL THE JURY WHAT YOU KNOW ABOUT THE
18 VIDEO CAMERAS LOCATED IN BETHEL BISHOP AND COLONY
19 APARTMENTS AREA?

20 A THERE'S 13 HAND-HELD ZOOM CAMERAS WITH DIGITAL
21 RECORDING, ALL IN OPERATION.

22 Q NOW, IS THAT BETHEL BISHOP AND COLONY OR IS THAT JUST
23 BETHEL BISHOP?

24 A BETHEL BISHOP HAS 13; COLONY HAS 19 AT THE MOMENT.

25 Q AND YOU KNOW ABOUT THESE BECAUSE DO YOU DESIGN THE

1 SOFTWARE, DO YOU BUILD THEM?

2 A WE INSTALL THE SYSTEMS, DESIGN, BUILD, INSTALL.

3 Q OKAY. SO YOU'RE FAMILIAR WITH THE INSTALLATION OF
4 THE CAMERAS IN THESE TWO AREAS?

5 A CORRECT.

6 MS. FRANKLIN: YOUR HONOR, I WOULD ASK THAT THE
7 WITNESS BE ALLOWED TO STEP DOWN.

8 THE COURT: SURE.

9 SIR, WHEN YOU'RE AWARE FROM THE MICROPHONE, YOU NEED
10 TO SPEAK UP SO THAT EVERYONE IS ABLE TO HEAR.

11 THE WITNESS: OKAY.

12 BY MS. FRANKLIN

13 Q OKAY. I AM GOING TO FIRST MAKE SOME ROOM. I'M GOING
14 TO SHOW YOU WHAT IS MARKED AS DEFENDANT'S EXHIBIT 2.

15 A OKAY.

16 THE COURT: WHAT NUMBER WAS THAT, MS. FRANKLIN?

17 MR. SHARDT: EXHIBIT NUMBER TWO, YOUR HONOR.

18 THE COURT: DEFENDANT'S TWO?

19 MS. FRANKLIN: LET ME GET THE BEST WAY TO SORT OF
20 SHOW IT.

21 THE COURT: THERE'S AN EASEL OVER THERE. I DON'T
22 KNOW IF YOU NEED IT OR NOT.

23 BY MS. FRANKLIN

24 Q I THINK I NEED TO USE THAT, YOUR HONOR. I THINK THAT
25 WILL WORK, YES.

1 I'M GOING TO SHOW YOU THIS. IT MAY TAKE YOU A FEW
2 MINUTES TO ORIENT YOURSELF --

3 A RIGHT.

4 Q -- TO WHAT IT IS THAT I'M SHOWING, BUT DO YOU
5 RECOGNIZE THESE TWO AREAS HERE?

6 A YEAH, COLONY APARTMENTS THAT'S UP SOMEWHERE IN THIS
7 VICINITY AND BETHEL BISHOP.

8 Q AND BETHEL BISHOP IS UP HERE?

9 A UH-HUH.

10 Q AND WOULD THIS BE BAYBERRY?

11 A BAYBERRY, RIGHT.

12 Q DO YOU HAVE CAMERAS UP THERE?

13 A NO, WE DO NOT.

14 Q OKAY. SO YOU JUST HAVE CAMERAS IN THESE TWO AREAS?

15 A RIGHT.

16 Q AND I KNOW THAT YOU KNOW EXACTLY WHERE THE CAMERAS IN
17 BETHEL BISHOP ARE LOCATED, CORRECT?

18 A RIGHT.

19 Q AND YOU ARE MAKING REFERENCE TO A MAP THAT YOU HAVE
20 OF THAT PARTICULAR AREA?

21 A CORRECT.

22 Q AND CAN YOU HELP ME SORT OF PLACE THESE LITTLE
23 STICKERS --

24 A SURE.

25 Q -- ON THIS MAP THAT WOULD REFLECT WHERE THOSE CAMERAS

1 ARE LOCATED?

2 A YES.

3 Q OKAY.

4 A I HAVE ONE CAMERA IN THIS LOCATION.

5 Q I'M SORRY. COULD YOU SHOW THAT AGAIN?

6 (COMPLIES).

7 RIGHT THERE, OKAY.

8 A AND WE HAVE ANOTHER CAMERA SORT OF BACK BEHIND THESE

9 TWO.

10 Q SO LIKE --

11 A THESE BUILDINGS.

12 Q SO RIGHT NEXT TO THE WOOD LINE?

13 A CORRECT.

14 Q CAN YOU HEAR HIM?

15 THE COURT REPORTER: I'M STRAINING TO HEAR.

16 BY MS. FRANKLIN

17 Q OKAY. YOU MAY NEED TO SPEAK UP A LITTLE BIT.

18 A OKAY. ANOTHER CAMERA HERE.

19 Q THERE. OKAY.

20 A AND ONE CAMERA RIGHT HERE.

21 Q AGAIN NEXT TO THE WOOD LINE?

22 A CORRECT.

23 Q AM I GETTING THESE COMPLETELY ACCURATE? I MEAN TO --

24 A YES.

25 Q OKAY. AND WHERE ELSE?

1 A WE'VE GOT -- AT THAT POINT, THERE'S AN OFFICE THAT'S
2 HERE, AND WE'RE ACTUALLY ON THAT OFFICE.

3 Q OKAY. SO YOU HAVE A CAMERA ON TOP OF THE OFFICE?

4 A CORRECT.

5 Q AND THAT'S THE RENTAL OFFICE IN BETHEL BISHOP?

6 A CORRECT.

7 Q OKAY.

8 A AND WE'VE GOT A CAMERA HERE.

9 Q OKAY. AGAIN, SORT OF CLOSE TO THE WOOD LINE?

10 A CORRECT.

11 Q OKAY.

12 A AND HERE.

13 Q AND THERE, OKAY.

14 A ONE AS YOU ENTER INTO BETHEL BISHOP.

15 Q RIGHT AS YOU ENTER INTO BETHEL BISHOP, INTO THE
16 COLONY APARTMENTS YOU HAVE A CAMERA?

17 A CORRECT.

18 Q OKAY.

19 A ONE DIRECTLY ACROSS FROM THAT HERE.

20 Q SO I'M SORRY?

21 A BETWEEN THESE TWO BUILDINGS.

22 Q BETWEEN THESE TWO?

23 A CORRECT.

24 Q SO AGAIN UP THERE BY THE -- WHERE COLONY GOES INTO
25 BETHEL BISHOP?

1 A CORRECT.

2 Q OKAY.

3 A AND WE'VE GOT IN HERE.

4 Q IN THAT AREA, OKAY.

5 A ONE DIRECTLY BEHIND HERE.

6 Q OKAY.

7 A ONE HERE.

8 Q AND WHERE --

9 A THIS IS THE BRIDGE, DRAWBRIDGE CROSSING.

10 Q SO THIS IS THE DRAWBRIDGE, AND THE CAMERA IS RIGHT

11 NEXT TO THE DRAWBRIDGE?

12 A CORRECT.

13 Q OKAY.

14 A AND THERE'S A PEDESTRIAN BRIDGE RIGHT NEXT TO THAT.

15 Q PEDESTRIAN BRIDGE.

16 A RIGHT.

17 Q OKAY. AND THIS IS RIGHT NEXT TO THAT?

18 A CORRECT.

19 Q OKAY.

20 A AND I BELIEVE THAT'S ALL OF THEM.

21 Q OKAY. SO THAT'S IT, ALL RIGHT. AND I THINK YOU CAN

22 TAKE THE WITNESS STAND AGAIN.

23 A OKAY.

24 Q THANK YOU.

25 OKAY. NOW, DID YOU HAVE OCCASION TODAY TO REVIEW THE

1 VIDEOTAPES OF THE BETHEL BISHOP APARTMENTS FROM AUGUST
2 26TH, 2004?

3 A YES.

4 Q OKAY. AND WHERE DID YOU DO THAT?

5 A IN THE PUBLIC DEFENDER'S OFFICE.

6 Q OKAY. SO YOU SHOWED UP EARLIER --

7 A CORRECT.

8 Q -- TO REVIEW THOSE TAPES?

9 A CORRECT.

10 Q AND IN REVIEWING THOSE TAPES, WHAT CAN YOU SAY ABOUT
11 THE WORKING ORDER OF THOSE CAMERAS THAT YOU SAW?

12 A OH, THE CAMERAS WERE WORKING PROPERLY.

13 Q OKAY. SO THERE WERE 13 CAMERAS?

14 A CORRECT.

15 Q AND ALL OF THEM WERE WORKING PROPERLY?

16 A CORRECT.

17 Q AND CAN YOU EXPLAIN TO THE JURY HOW IT IS, SORT OF
18 THE MECHANICS OF HOW THESE CAMERA WORK?

19 A ALL THE CAMERAS ARE PAN/TILT/ZOOM CAMERAS, WHICH
20 BASICALLY MEANS THEY HAVE THE CAPABILITY TO PAN LEFT AND
21 RIGHT, TILT UP AND DOWN, ZOOM IN AND OUT.

22 SOME OF THE CAMERAS ARE SET TO RUN PATTERNS THAT
23 BASICALLY ARE PRESET LOCATIONS THAT ARE OF INTEREST TO THE
24 PROPERTY OWNER OR MANAGEMENT COMPANY, SO THEY HAVE THESE
25 CAMERAS SET TO RUN THESE PRESET PATTERNS. SOME CAMERAS

1 ARE SET TO BE STATIONARY TO WATCH JUST SPECIFIC AREAS THAT
2 ARE OF CONCERN.

3 Q OKAY. AND SO WHEN YOU'RE LOOKING AT IT, I MEAN, THIS
4 SORT OF LOOKS LIKE IT'S ZOOMING AROUND?

5 A CORRECT.

6 Q AND THEN SOMETIMES IT WILL FOCUS?

7 A CORRECT.

8 Q AND THAT'S IT. I MEAN, HOW LONG HAVE YOU HAD CAMERAS
9 UP THERE?

10 A THEY'VE BEEN THERE SINCE OCTOBER '02 WAS WHEN WE
11 FINISHED THAT INSTALLATION.

12 Q AND THEY'RE STILL THERE, CORRECT?

13 A CORRECT.

14 MS. FRANKLIN: AND I BEG THE COURT'S INDULGENCE, YOUR
15 HONOR.

16 THE COURT: SURE.

17 BY MS. FRANKLIN

18 Q AND THERE ARE A NUMBER OF CAMERAS ALSO IN THE COLONY;
19 IS THAT CORRECT?

20 A CORRECT.

21 Q OKAY. BUT YOU HAVEN'T SEEN ANY OF THE VIDEO CAMERAS
22 FROM THE COLONY?

23 A RIGHT.

24 Q SO YOU CAN'T MAKE A DETERMINATION REGARDING HOW WELL
25 THOSE WERE WORKING?

1 A CORRECT.

2 Q OKAY. BUT YOU ARE CONFIDENT ABOUT WHAT YOU STATED
3 ABOUT BETHEL BISHOP?

4 A ABSOLUTELY.

5 MS. FRANKLIN: OKAY. I HAVE NO MORE QUESTIONS, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT. CROSS EXAMINE?

8 CROSS-EXAMINATION:

9 BY MS. FENT

10 Q NOW, WHEN YOU PUT THESE -- THESE ARE IN THE FORM OF
11 EITHER A C.D. OR A D.V.D.?

12 A A C.D. CORRECT.

13 Q IT'S BURNED ONTO?

14 A THAT'S CORRECT.

15 Q OKAY. WHEN YOU LOAD THAT ONTO YOUR COMPUTER, ONE OF
16 THE SCREENS SHOWS ALL THE CAMERAS POSSIBLE, CORRECT?

17 A CORRECT.

18 Q AND THERE'S A TOTAL NUMBER OF 16 CAMERA SPOTS,
19 CORRECT?

20 A CORRECT.

21 Q OKAY. BUT YOU SAID THAT THE BETHEL BISHOP ONLY --
22 THEY ONLY PURCHASED 13?

23 A CORRECT.

24 Q OKAY. SO WHEN I PUT IN A C.D. AND I TAKE A LOOK AT
25 THE SCREEN, THERE ARE 16 SPACES?

1 A CORRECT.

2 Q BUT ONLY 13 HAVE VIDEO ON THEM?

3 A THAT'S RIGHT.

4 Q THREE OF THEM ARE BLACK?

5 A THAT'S CORRECT.

6 Q OKAY. THE CAMERAS THAT ARE THERE, FOR INSTANCE THE
7 CAMERA THAT'S UP THERE ON THAT WALL, I CAN BE IN THE
8 BETHEL BISHOP, CAMERAS UP THERE ON THE SIDE OF THE
9 BUILDING?

10 A UH-HUH.

11 Q ARE THEY ON POLES OR THE SIDE OF THE BUILDING?

12 A THERE'S SOME ON THE SIDE OF THE BUILDINGS. THERE ARE
13 SOME ON POLES. THE MAJORITY ARE ON POLES.

14 Q OKAY. I'M STANDING RIGHT HERE, BUT THAT CAMERA IS
15 NOT RECORDING ME, CORRECT?

16 A CORRECT.

17 Q IT'S SPACED OUT ACROSS -- TO THE END OF THE
18 COURTROOM, MAYBE?

19 A THAT'S CORRECT.

20 Q AND THE IMAGES THAT YOU SEE ARE REALLY VERY SMALL,
21 CORRECT?

22 A DEPENDING ON THE ANGLE OF VIEW THAT YOU HAVE THE
23 CAMERA SET AT, IT WOULD BE RELATIVELY SMALL.

24 Q OKAY. WHEN YOU WERE LOOKING AT ALL OF THESE CAMERAS,
25 YOU COULDN'T IDENTIFY ANYBODY'S FACES?

1 A IT WOULD BE REAL DIFFICULT.

2 Q OKAY. AND WHEN YOU LOOKED AT THEM, YOU NOTED LOTS OF
3 ACTIVITY AT THE BETHEL BISHOP?

4 A RIGHT.

5 Q LOTS OF INDIVIDUALS?

6 A THERE WERE A LOT.

7 Q COMING, GOING, GATHERING?

8 A RIGHT, TYPICALLY SUMMERTIME IS A BUSY TIME FOR PEOPLE
9 TO BE OUT AND ABOUT.

10 Q OKAY. AND THIS IS, YOU KNOW, LATE AT NIGHT, THE
11 HOURS THAT YOU VIEWED?

12 A CORRECT.

13 Q OKAY. AND IN TERMS OF THE QUALITY OF THE, I GUESS
14 CAMERAS, YOU HAD SAID -- EARLIER YOU DESCRIBED THEM AS LOW
15 LEVEL LIGHTING?

16 A RIGHT, LOW LIGHT LEVEL.

17 Q LOW LIGHT LEVEL. WHAT DOES THAT MEAN?

18 A IT BASICALLY MEANS THAT THEY HAVE TECHNOLOGY BUILT
19 INTO THE CAMERA THAT ALLOWS THEM TO SEE IN LOW LIGHT
20 CONDITIONS. SOMETIMES IT'S NOT PRACTICAL TO PUT OUT,
21 ESPECIALLY IN A HOUSING DEVELOPMENT, BRIGHT LIGHTS TO GIVE
22 THE CAMERAS VIEWING CAPABILITY, SO WE INSTALL CAMERAS THAT
23 CAN SEE IN LOWER LIGHT LEVELS.

24 Q OKAY. AND WITH THAT, AND GIVEN THE ANGLE THAT THESE
25 CAMERAS ARE SHOWING, YOU CAN'T REALLY MAKE OUT INDIVIDUAL

1 FACES?

2 A RIGHT. IT GETS A LITTLE BIT GRAINY WITH THAT
3 TECHNOLOGY.

4 Q OKAY. AND TAKING THAT VERY SMALL IMAGE AND BLOWING
5 IT UP TO A LARGER IMAGE IS NOT GOING TO LET US SEE ANY
6 BETTER?

7 A RIGHT. IT BASICALLY EXPANDS THOSE PIXELS IN THAT
8 VIEWING AREA.

9 Q SO ENLARGING ONE OF THESE STILL PHOTOS, IF YOU TOOK
10 THAT VIDEO AND MADE A STILL OUT OF IT, IT'S NOT GOING TO
11 MAKE THE IMAGE ANY BETTER?

12 A IT'S NOT GOING TO IMPROVE IT.

13 Q OKAY. IT MIGHT EVEN MAKE IT WORSE?

14 A SOMETIMES IT CAN.

15 Q OKAY. AND THE CAMERAS, AS YOU SAID, THAT THERE IS AN
16 ABILITY TO ZOOM IN AND ZOOM OUT, CORRECT?

17 A CORRECT.

18 Q AND THE ABILITY TO GO LEFT AND GO RIGHT, CORRECT?

19 A CORRECT.

20 Q BUT THAT REQUIRES AN INDIVIDUAL, A HUMAN BEING TO MAN
21 THAT CAMERA?

22 A IT CAN DO AN AUTOMATIC PATTERN, WHICH MOST OF THE
23 CAMERAS ARE DOING, BUT IF THERE'S AN AREA OF INTEREST, IT
24 REQUIRES SOMEONE TO MANUALLY TAKE OVER THE CAMERA AND USE
25 A JOYSTICK TO FOLLOW THAT.

1 Q SO TO ZOOM IN AND TO ZOOM OUT, A PERSON HAS TO BE
2 WATCHING THE CAMERAS AND HAVE AN AREA OF INTEREST?

3 A IT CAN ZOOM IN AND ZOOM OUT, BUT TO HAVE -- TO FOLLOW
4 SOMETHING OF INTEREST, YOU WOULD NEED SOMEBODY MANUALLY TO
5 DO IT.

6 Q OKAY. AND IN LOOKING AT THESE CAMERAS, THERE WAS NOT
7 A HUMAN BEING OPERATING THESE CAMERAS?

8 A IT DIDN'T APPEAR TO BE.

9 Q OKAY. THEY WERE SET AT THE PRESET PATTERNS?

10 A PATTERNS, THAT'S RIGHT.

11 Q OKAY. AND IN ADDITION, IT LOOKS LIKE SOME OF THE
12 CAMERAS ALMOST TURNED OFF. THEY'RE NOT RECORDING A
13 CONSTANT SPACE, A CONSTANT PLACE.

14 A RIGHT. THE CAMERAS ACTUALLY HANDLED BY THE DIGITAL
15 RECORDER ARE SET TO RECORD JUST MOTION, SO IF THERE'S NO
16 MOTION IN FRONT OF A CAMERA THAT'S PART -- LOOKING AT A
17 SPECIFIC LOCATION, UNLESS THERE'S MOTION IN FRONT OF IT,
18 IT'S NOT GOING TO RECORD THAT CAMERA.

19 Q OKAY. AND THAT MOTION COULD BE AS FAR BACK AS THE
20 COURTROOM?

21 A IT COULD BE.

22 Q A VERY SMALL IMAGE.

23 A RIGHT.

24 Q IN FACT, SOME OF THESE PEOPLE, IT'S DIFFICULT TO TELL
25 IF IT'S EVEN A MALE OR A FEMALE THAT'S BEING RECORDED,

1 CORRECT?

2 A SOMETIMES IT IS DIFFICULT AT A DISTANCE.

3 Q AND ALL YOU DID WAS JUST REVIEW THE VIDEOS IN TERMS
4 OF SEEING IF THE 13 CAMERA AND THE THREE BLANK SPACES WERE
5 ALL OPERATING CORRECTLY?

6 A CORRECT.

7 MS. FENT: NO FURTHER QUESTIONS.

8 THE COURT: MS. FRANKLIN?

9 MS. FRANKLIN: THANK YOU, YOUR HONOR. MAY IT PLEASE
10 THE COURT.

11 THE COURT: YES.

12 REDIRECT EXAMINATION:

13 BY MS. FRANKLIN

14 Q OKAY. SO IT MAY BE A LITTLE DIFFICULT TO IDENTIFY
15 SORT OF SPECIFIC INDIVIDUALS, BUT YOU CAN TELL THE NUMBER
16 OF INDIVIDUALS THAT MIGHT BE IN A PARTICULAR AREA?

17 A CORRECT.

18 Q CORRECT? AND YOU CAN DETECT PARTICULAR KINDS OF CARS
19 TO SOME DEGREE OF PRECISION.

20 A CORRECT.

21 Q RIGHT? AND I JUST WANT TO BE SORT OF CLEAR ABOUT
22 THIS, THE AUTOMATIC PATTERNS.

23 A UH-HUH.

24 Q MOST OF THE VIDEO CAMERAS THAT YOU SAW WERE ON THE
25 AUTOMATIC PATTERN, WERE THEY NOT?

1 A CORRECT.

2 Q I BELIEVE THERE WAS ONE IN SPECIFIC THAT WAS FOCUSED
3 DIRECTLY ON ONE PARTICULAR APARTMENT?

4 A CORRECT.

5 Q AND I THINK YOU MENTIONED THIS. I SORT OF WANT TO
6 MAKE SURE WE'RE ALL ON THE SAME PAGE. IF THERE IS MOTION
7 THAT COMES WITHIN THE FIELD OF VISION OF ONE OF THESE
8 CAMERAS, IT'S RECORDED, CORRECT?

9 A CORRECT.

10 Q SO IT DOES RECORD MOTION?

11 A CORRECT.

12 Q SO IT'S WHEN NOTHING IS GOING ON IN ONE PARTICULAR
13 AREA THAT A SCREEN SORT OF STAYS STILL?

14 A THAT'S CORRECT, AND THAT TECHNOLOGY IS HANDLED BY THE
15 RECORDER SO THE CAMERAS THAT WERE MOVING, IT'S DETECTING
16 THAT AS MOTION, SO THOSE WOULD BE RECORDING ALL THE TIME.

17 Q CAN YOU TELL ME WHY THESE CAMERAS WERE INITIALLY
18 INSTALLED?

19 A I BELIEVE IT WAS THROUGH DRUG ELIMINATION, TRYING TO
20 PREVENT FUTURE PROBLEMS THAT THEY WERE HAVING ON SITE.

21 Q SO IT HAS SORT OF A LAW ENFORCEMENT FUNCTION, DOES IT
22 NOT?

23 A CORRECT.

24 Q AND TO SORT OF CATCH ILLEGAL ACTIVITY?

25 A CORRECT.

1 Q CORRECT? AND THAT'S THE PURPOSE OF THE CAMERAS.

2 ALL RIGHT. THANK YOU VERY MUCH.

3 THE COURT: ANY FURTHER CROSS?

4 MS. FENT: NO, YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN, SIR.

6 ALL RIGHT. CALL YOUR NEXT WITNESS, PLEASE.

7 MS. FRANKLIN: THE DEFENSE WOULD CALL MR. ROBERT
8 WALKER, YOUR HONOR.

9 ROBERT WALKER, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
12 FOR THE RECORD.

13 THE WITNESS: ROBERT C. WALKER, W-A-L-K-E-R.

14 DIRECT EXAMINATION:

15 BY MS. FRANKLIN

16 Q MR. WALKER, WHAT IS YOUR PROFESSIONAL BACKGROUND?

17 A I BEGAN MY CAREER 50 YEARS AGO THIS MONTH, IN 1956
18 WITH THE STATE OF MARYLAND DEPARTMENT OF CORRECTIONS. I
19 WORKED FOR THE DEPARTMENT FOR THE NEXT EIGHT YEARS
20 BECOMING A SUPERVISORY LIEUTENANT WITH THE DEPARTMENT IN
21 1961 AND LEAVING THE DEPARTMENT OF CORRECTIONS, THE
22 MARYLAND DEPARTMENT OF CORRECTIONS, IN 1964.

23 AT THAT POINT, I BEGAN MY LAW ENFORCEMENT CAREER WITH
24 THE FEDERAL GOVERNMENT, AND IN PARTICULAR WITH THE U.S.
25 BORDER PATROL STATIONED ON THE MEXICAN BORDER IN THE STATE

1 OF CALIFORNIA.

2 FOR THE NEXT FIVE YEARS, I WORKED A VARIETY OF JOBS,
3 ALL ASSIGNED WITHIN THE BORDER PATROL. IN ADDITION TO MY
4 ADDITIONAL -- MY DUTIES AS A TRACKER AND AN APPREHENDER OF
5 ILLEGAL ALIENS BEHIND THE STATES, I ALSO WAS A TRAINING
6 OFFICER FOR ABOUT 18 MONTHS TEACHING IMMIGRATION LAW AND
7 SPANISH.

8 I ALSO, DURING MY CAREER WITH THE BORDER PATROL, MADE
9 A SIGNIFICANT NUMBER OF MARIJUANA AND OTHER NARCOTIC
10 SEIZURES, AND THAT SORT OF GAVE ME A REPUTATION FOR HAVING
11 A LOT OF KNOWLEDGE ABOUT NARCOTICS. SUBSEQUENTLY, THE
12 U.S. CUSTOMS AGENCY CONTACTED ME BECAUSE I WORKED WITH
13 THEM DAY-TO-DAY AND ASKED ME IF I WOULD COME ALONG WITH
14 THE CUSTOMS AGENCY.

15 IN 1970, I TRANSFERRED TO THE U.S. CUSTOMS AGENCY AS
16 A SPECIAL AGENT WORKING NARCOTICS AND WORKED THAT POSITION
17 FOR THE NEXT THREE YEARS, AND IN JULY OF 1973 AS AN ACT OF
18 CONGRESS THE DRUG ENFORCEMENT ADMINISTRATION BECAME
19 EFFECTIVE, AND THAT WAS A RESULT OF A MERGER WITH THOSE OF
20 US WHO WERE WORKING NARCOTICS IN CUSTOMS, AND THE FORMER
21 BUREAU OF NARCOTICS AND DANGEROUS DRUGS.

22 FOR THE NEXT -- WELL, FROM 1973 UNTIL 1983, I WORKED
23 THREE DIFFERENT OFFICES IN CALIFORNIA, AND IN 1983 I
24 TRANSFERRED HERE TO SOUTH CAROLINA AS THE AGENT IN CHARGE
25 OF THE COLUMBIA OFFICE OF THE DRUG ENFORCEMENT

1 ADMINISTRATION.

2 I RETIRED IN 1986, AND I WORKED AT SECURITY FOR A
3 MAJOR FORTUNE 500 COMPANY FOR AWHILE, BUT PRIMARILY I WAS
4 BASICALLY RETIRED UNTIL 1992 WHEN AN ACQUAINTANCE OF MINE
5 WORKING UPPER MANAGEMENT FOR THE SOUTH CAROLINA DEPARTMENT
6 OF CORRECTIONS ASKED ME IF I WOULD BE INTERESTED IN TAKING
7 A POSITION WITH THE DEPARTMENT.

8 I TOOK THAT POSITION AS A CRIMINAL INVESTIGATOR WITH
9 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND THAT WAS
10 1992. I HELD THAT POSITION UNTIL 1995 WHEN ONE OF THE
11 FACILITIES ON BROAD RIVER HAD A MAJOR DISTURBANCE, AND
12 THERE WERE HOSTAGES TAKEN AND WHAT HAVE YOU.

13 OUR NEW DIRECTOR AT THAT POINT WHO HAD JUST COME FROM
14 TEXAS, MR. MICHAEL MOORE, WHO HAD CONSIDERABLE KNOWLEDGE
15 OF GANGS IN THE TEXAS SYSTEM, HE SAID THAT WE WERE GOING
16 TO CREATE A GOING UNIT, A SECURITY THREAT GROUP UNIT.
17 THIS WAS IN APRIL OF 1995.

18 IN JULY, ABOUT JULY 1995, I WAS APPOINTED AND
19 SELECTED TO THE POSITION OF SECURITY THREAT GROUP
20 COORDINATOR, AND IT WAS MY RESPONSIBILITY TO TAKE WHAT HAD
21 ALREADY BEEN FORMED IN SEVERAL MONTHS AND MAKE
22 ADVANCEMENTS ON THAT, SUCH AS GANG IDENTIFICATION, GANG
23 TRACKING. I LAID OUT THE PROGRAMS FOR THE COMPUTER
24 SYSTEM, NOT THAT I DID THE ACTUAL PROGRAMMING. I'M NOT A
25 COMPUTER WHIZ, AS MOST OF US AREN'T.

1 I DID LAY OUT THE PROGRAMS THAT WE NEEDED TO TRACK
2 THE GANGS WITHIN THIS SYSTEM. I ALSO DEVELOPED TRAINING
3 FOR THE EMPLOYEES AND TRAINED MOST OF THE EMPLOYEES,
4 INCLUDING THOSE NEW ARRIVALS, THOSE NEW OFFICERS AT THE
5 TRAINING ACADEMY.

6 I ALSO TRAVELED AS A RESULT OF PROVIDING TRAINING TO
7 OUR DEPARTMENT, OTHER DEPARTMENTS REALIZED THAT WE HAD A
8 PROGRAM TO TRAIN, AND I BEGAN TRAINING PERSONNEL OVER THE
9 STATE OF SOUTH CAROLINA BOTH AT THE STATE, LOCAL, AND
10 FEDERAL LEVELS.

11 IN 1998, I RETIRED FROM THE DEPARTMENT AND BEGAN MY
12 CRIMINAL JUSTICE CONSULTING FIRM, GANGS OR US. THAT'S NOT
13 TOYS 'R US, THAT'S GANGS OR, O-R, US.

14 SINCE 1998, I HAVE BEEN TRAVELLING THE COUNTRY AS A
15 TRAINER PROVIDING TRAINING TO LAW ENFORCEMENT, CORRECTIONS
16 PERSONNEL, SCHOOLS, THE SCHOOL PERSONNEL, AS A MATTER OF
17 FACT. DECEMBER 5TH I'M ATTENDING, OR WILL BE A PRESENTER,
18 AT A STATEWIDE CONFERENCE FOR THE BOARD OF EDUCATION FOR
19 PRINCIPALS WITHIN THE STATE.

20 I HAVE A WEBSITE THAT IS VISITED BY LAW ENFORCEMENT
21 PERSONNEL ALL AROUND THE WORLD. CORRECTIONS PERSONNEL,
22 COUNSELORS, RESEARCHERS, EXPERTS FROM ALL OVER THE COUNTRY
23 VISIT MY WEBSITE.

24 Q SO YOU HAD SOME PRETTY EXTENSIVE LAW ENFORCEMENT
25 EXPERIENCE, RIGHT?

1 A YES, MA'AM.

2 Q OKAY. AND HOW MANY TIMES HAVE YOU TESTIFIED IN
3 COURT?

4 A HUNDREDS.

5 Q AND HOW MANY TIMES HAVE YOU BEEN QUALIFIED AS AN
6 EXPERT IN THE GANG AREA?

7 A IN THE GANG AREA I'VE TESTIFIED AND BEEN QUALIFIED
8 SEVEN TIMES IN SIX STATES.

9 Q AND CAN YOU LIST THOSE STATES FOR ME, PLEASE?

10 A YES, MA'AM, THE STATES OF VIRGINIA, NORTH CAROLINA,
11 SOUTH CAROLINA ON TWO OCCASIONS, GEORGIA, FLORIDA, AND
12 TEXAS.

13 Q AND WHAT -- AT THIS VERY MOMENT WHAT IS YOUR
14 OCCUPATION?

15 A AT THIS MOMENT, I'M A PRIVATE CONSULTANT SPECIALIZING
16 IN GANG IDENTIFICATION.

17 MS. FRANKLIN: AND YOUR HONOR, AT THIS TIME THE
18 DEFENSE WOULD TENDER MR. ROBERT WALKER AS AN EXPERT IN THE
19 FIELD OF GANG IDENTIFICATION.

20 THE COURT: ANY OBJECTION, CROSS-EXAMINATION AS TO
21 QUALIFICATIONS?

22 MR. GIESE: NO VOIR DIRE, NO OBJECTION.

23 THE COURT: ALL RIGHT. THE WITNESS IS FOUND TO BE
24 QUALIFIED AS AN EXPERT IN THE FIELD OF GANG
25 IDENTIFICATION.

1 BY MS. FRANKLIN

2 Q THANK YOU, YOUR HONOR.

3 NOW, YOU HAD THE OPPORTUNITY TO ANALYZE
4 MR. CHRISTOPHER LIVERMAN'S TATTOOS, HAVE YOU NOT?

5 A YES, MA'AM, I HAVE.

6 Q AND YOU SPOKE TO HIM ABOUT THESE TATTOOS, HAVE YOU
7 NOT?

8 A YES, MA'AM. VERY BRIEFLY, BUT I HAVE SPOKEN WITH
9 HIM.

10 Q BUT BEFORE WE GET INTO THAT, ARE YOU FAMILIAR WITH
11 SORT OF THE CORPUS OF LITERATURE ON THE SUBJECT OF GANG
12 TATTOOS THAT'S OUT THERE?

13 A YES, MA'AM. THERE'S MULTITUDES OF IT.

14 Q AND WHAT SORT OF RESOURCES DO YOU RELY ON IN DRAWING
15 YOUR CONCLUSIONS?

16 A I RELY ON PERSONAL EXPERIENCE FROM INTERVIEWS IN THE
17 PAST WHEN I WAS WITH THE DEPARTMENT. I RELY ON MANUALS
18 PRESENTED AND PUBLISHED BY EXPERTS, ONE OF WHICH IS THE
19 FEDERAL BUREAU OF PRISONS GANG IDENTIFICATION MANUAL. I
20 RELY ON THE INTERNET HEAVILY. THERE IS TONS OF
21 INFORMATION ON THE INTERNET. I ALSO HAVE A NETWORK OF
22 PEOPLE THAT I AM, ALTHOUGH NOT IN DIRECT CONTACT BUT I AM
23 IN CONTACT WITH THEM ALMOST ON A DAILY BASIS THROUGH THE
24 INTERNET, AND THESE ARE PEOPLE THAT ARE EXPERTS IN THE
25 FIELD OR WHO ARE S.R.O. OFFICERS IN SCHOOLS, TEACHERS,

1 RESEARCHERS AND WHAT HAVE YOU, AND THE INFORMATION IS
2 TRADED BACK AND FORTH ON A DAILY BASIS.

3 Q SO YOU KEEP UP WITH ALL THE SORT OF RECENT
4 DEVELOPMENTS IN THIS FIELD, AND YOU'RE PRETTY AWARE OF
5 EVERYTHING THAT'S GOING ON?

6 A YES, MA'AM. I TRY TO BE, NOT EVERYTHING. NO ONE
7 PERSON CAN BE AWARE OF EVERYTHING.

8 Q OKAY. MR. WALKER, ARE YOU FAMILIAR WITH THE GENERAL
9 HISTORY OF THE TEARDROP TATTOO?

10 A YES, MA'AM, I AM.

11 Q WOULD YOU PLEASE EXPLAIN THAT TO THE JURY?

12 A THE TEARDROP TATTOO IS BELIEVED TO HAVE ORIGINATED --
13 BEEN ORIGINATED BY THE HISPANIC RACE IN CALIFORNIA AT
14 ABOUT 1940S, SOMEWHERE IN THAT AREA.

15 IT ORIGINALLY MEANT THAT THE INDIVIDUAL HAD LOST A
16 LOVED ONE OR A FRIEND. SINCE THEN IT HAS BECOME KNOWN TO
17 MEAN -- HAVE SEVERAL OTHER MEANINGS. THE TEARDROP TATTOO
18 COULD MEAN THAT THE INDIVIDUAL HAS KILLED SOMEONE. THE
19 TEARDROP TATTOO CAN MEAN THAT THE INDIVIDUAL HAS LOST A
20 FRIEND, A LOVED ONE, A MEMBER OF HIS GANG. IT CAN MEAN
21 THAT HE HAS SERVED TIME. THAT MEANING VARIES ANYWHERE
22 FROM ONE YEAR TO TEN YEARS FOR EACH TATTOO. IT COULD ALSO
23 HAVE A NON-MEANING.

24 YOUTH OF TODAY ARE PICKING UP ON EVERYTHING THAT THE
25 GANGBANGERS ARE DOING OUT ON THE STREET, AND THEY WANT TO

1 EMULATE THESE GANGBANGERS. THERE ARE LOTS OF OUR YOUTH
2 OUT ON THE STREET TODAY THAT ARE USING THE TEARDROP TATTOO
3 AS A FASHION STATEMENT. IT'S NOT THE WISEST THING THAT
4 THEY COULD DO. IT COULD BE HAZARDOUS TO THEIR HEALTH FOR
5 DOING THAT, BUT NONETHELESS, THEY ARE OF THERE WEARING A
6 TATTOO FOR ABSOLUTELY NO REASON WHATSOEVER.

7 Q AND GANG MEMBERS WEAR TATTOOS THAT REFLECT THEIR
8 ASSOCIATION, DO THEY NOT?

9 A YES, MA'AM, THEY DO.

10 Q AND CHRIS IS AFFILIATED WITH THE FOLK NATION, IS HE
11 NOT?

12 A YES, MA'AM. WELL, THE FOLK NATION IS AN ALLIANCE OF
13 GANGS, BUT HE IS AFFILIATED WITH IT, YES, MA'AM.

14 Q AND THAT'S WHAT I WAS GOING TO ASK YOU. I MEAN,
15 COULD YOU PLEASE TELL THE JURY WHAT IT MEANS TO BE A
16 MEMBER OF FOLK NATION?

17 A FOLK NATION IS AN ALLIANCE OR AN UMBRELLA OF MANY
18 GANGS. IT WAS FORMED IN THE LATE '70S OR EARLY '70S IN
19 ILLINOIS, THE STATE OF ILLINOIS PRISON SYSTEM, AND DAVID
20 BARKSDALE AND LARRY HOOVER, WHO WERE FOUNDERS OF THE FOLK
21 NATION, WANTED TO CREATE A MONOPOLY AND HAVE CONTROL OF
22 MANY, MANY GANGS. AS A RESULT OF THEIR WANTING TO CONTROL
23 ALL THE GANGS, ANOTHER NATION WAS FORMED CALLED THE PEOPLE
24 NATION. THAT'S, YOU KNOW, IT SERVES THE SAME PURPOSE, BUT
25 THEY USE DIFFERENT IDENTIFIERS.

1 TO COMPARE THE TWO, THE PEOPLE NATION AND THE FOLK
2 NATION AND THE FOLK NATION, YOU MIGHT COMPARE THEM TO THE
3 NATIONAL BASEBALL LEAGUE AND THE AMERICAN FOOTBALL LEAGUE.
4 WE JUST HAD THE WORLD SERIES. WITHIN THE NATIONAL LEAGUE,
5 THERE ARE TEAMS SUCH AS THE SAN FRANCISCO GIANTS, THE
6 CHICAGO CUBS, THE ATLANTA BRAVES, WHICH I'M SURE MANY OF
7 YOU MAY BE FAMILIAR WITH, AND THE TEAM THAT PARTICIPATED
8 IN THE WORLD SERIES WAS THE ST. LOUIS CARDINALS. THEY ALL
9 FELL -- OR FALL UNDER THE UMBRELLA OF THE NATIONAL
10 BASEBALL LEAGUE. THAT WOULD BE, LET'S SAY THE FOLK NATION
11 IN THIS CASE. ON THE OTHER HAND, THE PEOPLE NATION COULD
12 BE THE AMERICAN BASEBALL LEAGUE. THEY WOULD BE THE TEAM
13 OF THE NEW YORK YANKEES, THE BOSTON RED SOXS, THE CHICAGO
14 WHITE SOX, AND THE TEAM THAT LOST IN THE SERIES, THE
15 DETROIT TIGERS.

16 OKAY, SO THE FOLK NATION, THE PEOPLE NATION ARE
17 UMBRELLAS. THEY ARE ALLIANCES WITH MEMBERS WHO
18 PARTICIPATE IN THEIR GANGS UNDER THESE UMBRELLAS.

19 Q OKAY. AND -- ALL RIGHT. AS YOU PREVIOUSLY
20 MENTIONED, I MEAN, YOU HAD AN OPPORTUNITY TO SPEAK TO
21 MR. LIVERMAN ABOUT HIS TATTOOS. IS TALKING TO GANG
22 MEMBERS ABOUT THEIR TATTOOS ONE WAY THAT YOU COME TO
23 DRAWING YOUR CONCLUSIONS?

24 A YES, MA'AM.

25 Q OKAY. AND WAS THE LIGHTING OKAY WHEN YOU LOOKED AT

1 MR. LIVERMAN'S TATTOOS?

2 A IT'S ABOUT LIKE THE LIGHTING IN HERE, NOT THE
3 BRIGHTEST, NOT THE DIMMEST.

4 Q OKAY. BUT YOU TOOK A LOOK AT HIS TATTOOS, AND YOU
5 SPOKE TO HIM ABOUT HIS TATTOOS?

6 A YES, MA'AM, I DID.

7 Q AND WHICH TATTOOS DID YOU OBSERVE?

8 A I OBSERVED MANY, BUT I PAID PARTICULAR ATTENTION TO
9 THOSE THAT WERE, IN MY OPINION, GANG RELATED. HE HAD THE
10 TATTOO OF A PITCHFORK, AND OVER THE PITCHFORK IF YOU LOOK
11 AT IT CLOSELY, IF YOU TAKE THE SKIN AND SEPARATE IT, YOU
12 WILL SEE THREE SIX-POINT STARS, ONE OVER EACH PRONG OF THE
13 PITCHFORK.

14 THE COURT: MR. WALKER, MR. WALKER?

15 THE WITNESS: YES?

16 THE COURT: CAN YOU BACK OFF ABOUT SIX INCHES FROM
17 THAT MICROPHONE, PLEASE?

18 THE WITNESS: FOR YOU YOUR HONOR, YES, SIR.

19 THE COURT: I DIDN'T MEAN TO INTERRUPT. GO AHEAD.

20 BY MS. FRANKLIN

21 Q SORRY. YOU WERE TALKING ABOUT SOME OF THE TATTOOS
22 THAT YOU OBSERVED, AND YOU SAW THE PITCHFORK.

23 A YES, MA'AM.

24 Q BUT WERE ALL OF THE TATTOOS THAT HE HAD ON HIS BODY
25 GANG TATTOOS?

1 A NO, MA'AM. SEVERAL OF THEM WERE -- IS THIS OKAY,
2 YOUR HONOR?

3 THE COURT: YES, SIR, THAT'S FINE.

4 THE WITNESS: SEVERAL OF THEM WERE NAMES AND SEVERAL
5 OF THEM WERE NON-MEANING OR HAD NO MEANING TO ME
6 WHATSOEVER.

7 BY MS. FRANKLIN

8 Q OKAY. ALL RIGHT. AND YOU SAT THROUGH THE TESTIMONY
9 OF THE STATE'S GANG EXPERTS?

10 A YES, SIR -- YES, MA'AM, I'M SORRY.

11 Q OKAY. AND DID YOU HAVE AN OCCASION TO NOTICE THE TWO
12 HASH MARKS THAT WERE NEXT TO THE PITCHFORK ON
13 MR. LIVERMAN'S BACK?

14 A YES, MA'AM, I DID.

15 Q AND WHAT DO YOU THINK THAT MEANS OR WHAT -- WHAT
16 COULD THAT MEAN?

17 A WELL, THE SLASH MARKS TO ME ARE NEW, AND I HAD NO
18 KNOWLEDGE OF THE SLASH MARKS WHATSOEVER. IT'S NOT
19 SOMETHING THAT'S COMMON. IT'S NOT SOMETHING THAT'S
20 RUNNING RAMPANT AS FAR AS IDENTIFIERS OUT IN THE FIELD.
21 I'VE HEARD, AND HAVE BEEN TOLD, THAT THEY SIGNIFY RANK.

22 Q OKAY. AND SO WHEN THE STATE'S EXPERTS TESTIFIED THAT
23 IT MIGHT HAVE MEANT THAT THERE WERE BODIES ATTACHED TO
24 THAT, HAD YOU HEARD ABOUT THAT OR READ ABOUT THAT IN ANY
25 OF THE LITERATURE?

1 A NO, MA'AM; NO, MA'AM. I --

2 Q HAVE YOU SEEN THAT MENTIONED IN ANY CONFERENCE THAT

3 YOU ATTENDED?

4 A NO, MA'AM.

5 Q IS THAT IN ANY FEDERAL BUREAU OF PRISONS MANUAL THAT

6 YOU HAVE?

7 A NO, MA'AM, NOT TO MY KNOWLEDGE.

8 Q SO THAT WAS INFORMATION THAT YOU HAD NEVER HEARD

9 BEFORE?

10 A THAT'S CORRECT.

11 Q AND LET'S TALK SPECIFICALLY ABOUT THE TEARDROP

12 TATTOOS ON CHRIS' FACE.

13 A YES, MA'AM.

14 Q OKAY. AND YOU NOTICED THESE.

15 A YES, MA'AM.

16 Q AND CAN YOU DESCRIBE THEM BRIEFLY FOR THE JURY?

17 A DESCRIBE THE TATTOOS?

18 Q YES, PLEASE.

19 A HE HAS THEM ON HIS RIGHT CHEEK, TWO TATTOOS. ONE IS

20 REFERRED TO AS AN OPEN TEARDROP TATTOO AND THE OTHER ONE,

21 THE ONE BELOW THAT, IS A CLOSED OR A FILLED IN OR SOLID

22 TEARDROP TATTOO.

23 Q OKAY. AND HAVE YOU SPOKEN TO CHRIS ABOUT WHAT THESE

24 TATTOOS MEAN?

25 A YES, MA'AM, I HAVE.

1 Q AND WHAT IS YOUR UNDERSTANDING OF THE TATTOO?

2 MR. GIESE: OBJECTION.

3 THE COURT: SUSTAINED.

4 BY MS. FRANKLIN

5 Q WAS THE MEANING ATTRIBUTED TO THESE TATTOOS ONE THAT
6 YOU WOULD CONSIDER A REASONABLE MEANING FOR THESE TATTOOS?

7 A ACTUALLY, THE ONLY PERSON --

8 MR. GIESE: OBJECTION, YOUR HONOR.

9 THE COURT: WAIT JUST A MINUTE.

10 THE WITNESS: YES, SIR.

11 MR. GIESE: SAME OBJECTION.

12 THE COURT: COME HERE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
14 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

15 THE COURT: YOU MAY CONTINUE, MS. FRANKLIN.

16 MS. FRANKLIN: THANK YOU, YOUR HONOR.

17 BY MS. FRANKLIN

18 Q BASED ON YOUR KNOWLEDGE, ALL OF THE VARIOUS RESOURCES
19 THAT YOU HAVE CONSULTED REGARDING WHAT THESE TEARDROP
20 TATTOOS MEAN, CAN YOU PLEASE ARTICULATE, AGAIN, TO THE
21 VARIOUS MEANINGS ATTRIBUTED TO THESE TATTOOS?

22 A WELL, THERE ARE MANY MEANINGS FOR THE TATTOOS AND NO
23 ONE PERSON, NO ONE EXPERT, COULD LOOK AT ANYONE WEARING A
24 TEARDROP TATTOO OF ANY DESCRIPTION AND SAY SPECIFICALLY
25 THAT IT HAS A SPECIFIC MEANING. ONLY THE PERSON WEARING

1 THE TATTOO CAN SAY SPECIFICALLY WHAT THEY INTENDED WHEN
2 THEY PUT THE TATTOO ON.

3 HAVING SAID THAT, THE TATTOOS COULD HAVE A MEANING OF
4 HAVING KILLED SOMEONE. AS I SAID ORIGINALLY, THE OPEN
5 TEARDROP TATTOO ORIGINALLY MEANT THAT THE INDIVIDUAL HAD
6 KILLED SOMEONE.

7 THE CLOSED TATTOO ORIGINALLY MEANT THAT THEY HAD LOST
8 A LOVED ONE, A FRIEND, A HOMEBOY, A FELLOW GANG MEMBER,
9 WHAT HAVE YOU, BUT OVER THE YEARS MEANINGS HAVE BEEN --
10 HAVE BECOME PERVERTED. THEY HAVE TAKEN ON THE OPPOSITE
11 MEANING, WHEREAS NOW THE CLOSED TATTOO MAY MEAN THAT THE
12 INDIVIDUAL HAS KILLED SOMEONE. THE OPEN MAY MEAN THAT HE
13 HAS LOST A HOMEBOY OR A FRIEND OR A RELATIVE. ALSO, IT
14 COULD MEAN THAT THEY HAVE SERVED TIME IN THE PENITENTIARY,
15 AND SO THERE'S NO WAY TO LOOK AT A TEARDROP TATTOO AND SAY
16 THIS MEANS -- THIS HAS A SPECIFIC MEANING, BECAUSE IT
17 DOESN'T.

18 Q SO IT IS NOT AN UNUSUAL INTERPRETATION TO GIVE TO
19 THESE TATTOOS THAT IT WOULD REPRESENT SOMEBODY, A CLOSE
20 FRIEND, WHO HAS DIED?

21 A THAT'S CORRECT.

22 Q AND SOMETIMES PEOPLE DRAW DISTINCTIONS IN TERMS OF
23 WHETHER IT'S GOING TO BE FILLED IN OR OPEN BASED ON
24 WHETHER THAT PERSON MAY BE A FAMILY MEMBER OR A GANG
25 MEMBER. ARE THESE SORT OF THE DISTINCTIONS THAT ARE

1 DRAWN?

2 A THEY THEMSELVES -- THE PERSON HAVING WEARING THE
3 TATTOO OR IS GETTING THE TATTOO IS THE ONE THAT DECIDES
4 WHAT HE'S GOING TO HAVE OPEN, CLOSED, OR BOTH.

5 Q AND THESE MEANINGS, YOU WOULD AGREE, ARE STILL
6 INFLUX?

7 A YES, MA'AM, DEFINITELY.

8 Q OKAY. CAN YOU EXPLAIN TO THIS JURY SOME OF THE WAYS
9 IN WHICH SOMEONE WHO IS A MEMBER OF A GANG MIGHT BECOME A
10 LEADER?

11 A WELL, THERE'S SEVERAL WAYS THAT ONE COULD. TODAY'S
12 GANG CULTURE THAT WE HAVE TOO MANY OF WHAT WE CALL HIGH
13 RANK GANGS. THESE ARE GANGS' HYBRID OR COPYCAT. THESE
14 ARE GANGS THAT ARE FORMED MAYBE AT THE LOCAL LEVEL HERE IN
15 COLUMBIA, WHAT HAVE YOU, OR CHARLESTON, GREENVILLE,
16 SPARTANBURG.

17 THE KIDS, THROUGH THE RAP INDUSTRY, THROUGH MOVIES,
18 THROUGH T.V. AND EVEN THROUGH WEBSITES SUCH AS MY OWN CAN
19 LEARN ABOUT GANGS. MY WEBSITE DEFINITELY IS NOT INTENDED
20 TO TEACH YOUTH HOW TO BECOME A GANG MEMBER. IT'S THERE
21 FOR LAW ENFORCEMENT, PARENTS, TEACHERS, CONCERNED
22 CITIZENS, BUT KIDS ARE GOING TO GO INTO MY WEBSITE, AND I
23 HAVE NO WAY TO CONTROL THAT.

24 SO THE KID FORMS A GANG WITHIN THE COMMUNITY. HE
25 CALLS IT THE "X-Y-Z GANG" OR HE MAY HAVE BEEN MOVED DOWN

1 HERE FROM CHICAGO BY HIS MOTHER TO COME LIVE WITH HIS
2 GRANDMOTHER, AND HE LOOKS AROUND AND HE SEES NO GANGS IN
3 SOUTH CAROLINA, NO GANGS IN COLUMBIA, SO HE FORMS A GANG
4 HIMSELF. HE BECOMES THE O.G., THE LEADER OF THE GANG.

5 IF A GANG IS ALREADY ESTABLISHED AND THE LEADER OF
6 THE GANG IS INCARCERATED OR SENT TO PRISON, SENT TO JAIL,
7 THEN JUST LIKE ANY GROUP, ANY ORGANIZATION, THE NEXT LEVEL
8 OR THE NEXT HIGHEST PERSON, AS A RULE, IS GOING TO MOVE UP
9 TO TAKE HIS POSITION. THAT PERSON THEN BECOMES THE
10 LEADER, THE O.G., OF THE GANG. IF THEY REFER TO HIM AS
11 THE KING OF THE SET, HE MIGHT BECOME KING.

12 THEN, TOO, IF THE LEADER IS KILLED FOR WHATEVER
13 REASON OR DIES ABRUPTLY FOR WHATEVER REASON, THE
14 INDIVIDUAL BELOW HIM CAN ALSO MOVE UP, AND AGAIN THROUGH
15 ATTRITION BECOME THE LEADER OF THE GANG.

16 MS. FRANKLIN: YOUR HONOR, PERMISSION TO APPROACH THE
17 WITNESS, PLEASE?

18 THE COURT: SURE.

19 BY MS. FRANKLIN

20 Q I'M SHOWING YOU WHAT HAS BEEN MARKED AS DEFENDANT'S
21 EXHIBIT 9.

22 A OKAY.

23 Q I'D LIKE FOR YOU TO READ THAT.

24 A OLD PEOPLE HAVE TO HAVE THEIR GLASSES.

25 Q TAKE A LOOK AT THAT.

1 A YES, MA'AM.

2 Q AND DO YOU KNOW WHAT THIS IS THAT I JUST HANDED UP TO
3 YOU?

4 A YES, MA'AM. THIS IS A COPY OF A BOOK OF KNOWLEDGE
5 WHICH IS CODES, CREEDS, SIGNS, SYMBOLS, PRAYERS, AND WHAT
6 HAVE YOU OF A PARTICULAR SET.

7 Q AND WHAT ALL IS INCLUDED IN GANG OF -- OR IN A BOOK
8 OF KNOWLEDGE?

9 A WHAT ALL IS INCLUDED?

10 Q YEAH, WHAT IS IT?

11 A THE THINGS I JUST MENTIONED, CODES, CREEDS, PLEDGES,
12 SIGNS THAT THEY WILL USE, RANKS EVEN.

13 Q ALL RIGHT. I'M GOING TO HAND UP TO YOU WHAT HAS
14 ALREADY BEEN MARKED AS STATE'S EXHIBIT 49.

15 A YES, MA'AM.

16 Q AND DO YOU KNOW WHAT THAT IS?

17 A YES, MA'AM. IT'S -- THE THAT HEADING ON IT IS
18 "COLUMBIA, SOUTH CAROLINA POLICE DEPARTMENT STATEMENT
19 FORM".

20 Q AND CAN YOU TELL ME WHO WROTE THAT STATEMENT?

21 A PARDON?

22 Q CAN YOU TELL ME WHO WROTE THAT STATEMENT?

23 A WHO WROTE THIS?

24 Q RIGHT HERE.

25 A "IDENTIFIED HIMSELF AS INVESTIGATOR C.D.D." OR --

1 Q DO YOU SEE UP AT THE TOP WHERE IT MAY SAY, "I AM"?

2 A OH, "I AM LIEASO -- LIEGO THOMPSON?"

3 Q IT MAY BE HARD TO READ. IF YOU'D LOOK AT THE
4 SIGNATURE LINE.

5 A OH, OKAY. DIEGO THOMPSON, OKAY.

6 Q BUT DOES IT APPEAR TO YOU, LOOKING AT THAT STATEMENT,
7 LOOKING AT THAT BOOK OF KNOWLEDGE, THERE MAY BE
8 SIMILARITIES IN THE HANDWRITING?

9 A YES, MA'AM. I LOOKED AT THIS THE OTHER DAY --
10 MR. GIESE: OBJECTION, YOUR HONOR.

11 THE WITNESS: -- IN YOUR OFFICE.

12 MR. GIESE: OBJECTION.

13 THE COURT: HOLD ON ONE SECOND.

14 MR. GIESE: THIS IS OUT OF HIS FIELD OF EXPERTISE.

15 MS. FRANKLIN: MAY WE BE HEARD? YOUR HONOR, MAY WE
16 APPROACH?

17 THE COURT: SURE.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
19 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

20 THE COURT: I'LL TAKE THIS UP OUTSIDE OF YOUR
21 PRESENCE. MR. FOREMAN, IT'S A GOOD TIME TO TAKE A BREAK.
22 STEP BACK TO YOUR JURY ROOM. DON'T DISCUSS THE CASE.
23 EVERYONE ELSE STAY SEATED.

24 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
25 4:11 P.M.)

1 THE COURT: ALL RIGHT. SOLICITOR?

2 MR. GIESE: IT'S CLEARLY OUT OF HIS FIELD OF
3 EXPERTISE. HE'S NOW GOING INTO HANDWRITING ANALYSIS,
4 WHICH I DON'T BELIEVE HE'S QUALIFIED TO GET INTO.

5 THE COURT: ALL RIGHT. MS. FRANKLIN?

6 MS. FRANKLIN: YOUR HONOR, IT'S ONLY THAT -- IT'S MY
7 UNDERSTANDING THAT EVEN A LAY WITNESS CAN MAKE A
8 COMPARISON BETWEEN HANDWRITINGS, SO LONG AS THOSE ARE NOT
9 MADE IN EXPECTATION OR IN PREPARATION OF LITIGATION.

10 I BELIEVE THAT YOU DON'T NEED A HANDWRITING EXPERT TO
11 DETERMINE OR TO MAKE A DETERMINATION OF WHETHER OR NOT
12 THOSE HANDWRITING SAMPLES ARE SIMILAR. I MEAN, I BELIEVE,
13 IN FACT, THAT I COULD JUST MOVE THE BOOK OF KNOWLEDGE INTO
14 EVIDENCE, AND THEN THE JURY COULD MAKE THE DETERMINATION
15 AS TO WHETHER OR NOT THE HANDWRITING SAMPLES WERE SIMILAR.

16 MR. GIESE: YOUR HONOR, I BELIEVE --

17 THE COURT: I KNOW THERE ARE CASES WHERE A WITNESS,
18 SUCH AS A CHILD, WAS PERMITTED TO IDENTIFY THE HANDWRITING
19 OF A PARENT, THINGS OF THAT NATURE, BUT I DON'T KNOW THAT
20 THERE ARE ANY CASES THAT SAY A LAYPERSON CAN COMPARE TWO
21 HANDWRITINGS OF PEOPLE THAT THEY DON'T KNOW AND ARE NOT
22 FAMILIAR WITH.

23 IF DURING THE BREAK YOU CAN FIND SOMETHING ALONG
24 THOSE LINES, FINE. IF THE DOCUMENT YOU'RE TALKING ABOUT
25 COMES IN, YOU CAN ARGUE ALL YOU WANT TO. YOU HAVE TWO

1 DOCUMENTS. THE JURY CAN DRAW WHATEVER CONCLUSIONS THEY
2 WANT, BUT I DON'T KNOW IF IT WOULD PERMIT THE WITNESS TO
3 TESTIFY TO A COMPARISON.

4 MS. FRANKLIN: OKAY.

5 THE COURT: SO DURING THE BREAK IF YOU CAN FIND A
6 CASE, THAT'S FINE.

7 SOLICITOR, I DIDN'T MEAN TO CUT YOU OFF.

8 MR. GIESE: NO, SIR. I WAS GOING TO SAY I BELIEVE
9 THAT CASE LAW -- MY UNDERSTANDING WAS YOU HAD TO -- THE
10 PERSON TESTIFYING HAD TO HAVE KNOWLEDGE OF WHOSE
11 HANDWRITING IT ORIGINALLY WAS. THAT'S WHAT I WAS GOING TO
12 SAY.

13 THE COURT: IF YOU CAN FIND A CASE, I'LL BE GLAD TO
14 TAKE A LOOK AT IT.

15 WE'LL TAKE ABOUT 10, 15 MINUTES.

16 MS. FRANKLIN: THANK YOU, YOUR HONOR.

17 THE COURT: SIR, YOU CAN STEP DOWN. DON'T DISCUSS
18 YOUR TESTIMONY DURING THE BREAK, PLEASE.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 THE COURT: ALL RIGHT. MS. FRANKLIN?

22 SOLICITOR?

23 MR. GIESE: YOUR HONOR, JUST BEFORE THE JURY COMES
24 BACK IN, SO THAT I DON'T HAVE TO APPROACH THE BENCH, MY
25 QUESTION IS WHETHER OR NOT THEY'RE GOING TO TRY AND ENTER

1 DEFENSE EXHIBIT NUMBER 9 INTO EVIDENCE.

2 THE STATE'S POSITION IS THEY HAVEN'T LAID A
3 FOUNDATION AS TO WHERE THEY GOT IT, WHO DID IT, ET CETERA.
4 PRIOR TO THEM PUTTING IT IN, THE STATE WOULD LIKE TO HAVE
5 SOME TESTIMONY ABOUT THAT.

6 THE COURT: MS. FRANKLIN?

7 MS. FRANKLIN: AND YOUR HONOR, OUR ARGUMENT RELATING
8 TO THAT WOULD BE THAT, YOU KNOW, MR. WALKER IS A QUALIFIED
9 GOING EXPERT. I BELIEVE HE CAN MAKE A SHOWING THAT THAT
10 DOCUMENT IS WHAT IT PURPORTS TO BE IN THAT IT IS A BOOK OF
11 KNOWLEDGE.

12 I BELIEVE AT THAT POINT, YOUR HONOR, THAT -- MY
13 UNDERSTANDING IS THAT A WITNESS COULD TESTIFY, A LAY
14 WITNESS COULD TESTIFY AS TO WHETHER OR NOT THEY BELIEVE
15 THE TWO HANDWRITINGS WERE SIMILAR, WHETHER OR NOT IT'S THE
16 SAME HANDWRITING.

17 I DO CONCEDE MR. GIESE'S POINT THAT I DON'T BELIEVE
18 THAT MR. WALKER COULD SAY THAT THAT IS DIEGO'S
19 HANDWRITING, BUT I DO THINK THAT A LAY WITNESS WOULD BE
20 ABLE TO SAY THAT YES, THESE HANDWRITINGS LOOK SIMILAR TO
21 HIM.

22 THE COURT: SOLICITOR?

23 MR. GIESE: YOUR HONOR, THEY STILL HAVE NO -- THEY
24 HAVE LAID NO FOUNDATION AS TO WHERE THEY GOT THIS BOOK OF
25 KNOWLEDGE, NOR WHO WROTE IT OR HOW THEY GOT IT. I WILL

1 ADD THAT THEY NEVER GAVE THAT TO US --

2 MS. FRANKLIN: WE DID, TOO.

3 MR. GIESE: -- UNTIL JUST A MINUTE AGO.

4 (PAUSE).

5 THE COURT: MS. FRANKLIN?

6 MS. FRANKLIN: YOUR HONOR, MY APOLOGIES IF THAT
7 WASN'T HANDED OVER. MY UNDERSTANDING IS THAT IT WAS.

8 AGAIN, YOU KNOW, I WOULD JUST SAY THAT FOR PURPOSES
9 OF LAYING THE FOUNDATION WITH THE BOOK OF KNOWLEDGE, I
10 THINK IT'S ENOUGH THAT AN EXPERT COULD SAY THAT IT IS WHAT
11 IT PURPORTS TO BE. IT IS, IN FACT, THE BOOK OF KNOWLEDGE.
12 I MEAN, THAT IS ALL THE FOUNDATION THAT WOULD NEED TO BE
13 LAID. I DON'T THINK I WOULD NEED TO SAY --

14 THE COURT: WELL, THEN WOULDN'T YOU WANT TO ASK HIM
15 IF HANDWRITING IN THIS, IN THIS EXHIBIT, IS SIMILAR TO
16 HANDWRITING ON A PARTICULAR STATEMENT --

17 MS. FRANKLIN: I MEAN, IF --

18 THE COURT: -- WITHOUT ANY EVIDENCE ON WHERE IT CAME
19 FROM OR WHEN IT CAME FROM?

20 MS. FRANKLIN: YOUR HONOR, I THINK THAT INTRODUCING
21 THE BOOK OF KNOWLEDGE AS A GANG DOCUMENT, AND THEN I THINK
22 NOT AS AN EXPERT BUT AS A LAY WITNESS AT THAT POINT, HE
23 WOULD BE ABLE TO SAY WHETHER OR NOT THOSE HANDWRITINGS ARE
24 SIMILAR.

25 THE COURT: BEFORE THE JURY IS BROUGHT IN, I WANT YOU

1 TO ASK QUESTIONS TO ESTABLISH WHATEVER FOUNDATION YOU'D
2 LIKE TO ESTABLISH BEFORE IT'S MOVED INTO EVIDENCE, PLEASE.

3 MS. FRANKLIN: MR. WALKER, THAT DOCUMENT THAT I
4 HANDED UP TO YOU, THAT IS A DEFENSE EXHIBIT.

5 THE WITNESS: I HAVE TWO, NINE AND 49.

6 MS. FRANKLIN: OKAY. DEFENSE NUMBER NINE FOR
7 PURPOSES OF IDENTIFICATION.

8 THE WITNESS: NINE, YES.

9 MS. FRANKLIN: DO YOU KNOW WHAT THAT IS?

10 THE WITNESS: YES, MA'AM.

11 MS. FRANKLIN: AND WHAT IS THAT?

12 THE WITNESS: IT IS A BOOK OF KNOWLEDGE FOR THE FOLK
13 NATION.

14 MS. FRANKLIN: AND HAVE YOU SEEN OTHER BOOKS OF
15 KNOWLEDGE?

16 THE WITNESS: YES, MA'AM.

17 MS. FRANKLIN: SO YOU FEEL CONFIDENT TO SAY THAT IS
18 WHAT THAT IS?

19 THE WITNESS: YES, MA'AM.

20 MS. FRANKLIN: AND YOUR HONOR, I THINK THAT'S ALL
21 THAT WOULD BE NECESSARY FOR ESTABLISHING THAT THIS IS WHAT
22 IT PURPORTS TO BE.

23 I MEAN, I WOULD AGREE THAT MR. WALKER WOULD NOT BE
24 ALLOWED TO SAY, "OH, THAT'S DIEGO THOMPSON'S BOOK OF
25 KNOWLEDGE." I MEAN, I THINK THAT WOULD BE SOMETHING

1 BEYOND WHAT HE WOULD BE ALLOWED TO TESTIFY TO.

2 MR. GIESE: YOUR HONOR. YOUR HONOR, MAY I BE HEARD?

3 I THINK THE QUESTION IS, "WHOSE IS IT? WHERE DID YOU
4 GET IT? HOW LONG HAVE YOU HAD IT?"

5 MS. FRANKLIN: BUT YOUR HONOR, I DON'T THINK THAT
6 THAT'S NECESSARY FOR ESTABLISHING THAT IS WHAT IT PURPORTS
7 TO BE, WHICH IS A BOOK OF KNOWLEDGE.

8 MR. GIESE: YOUR HONOR --

9 THE COURT: BEFORE I CAN RULE, I NEED TO HAVE THAT
10 INFORMATION. I NEED YOU TO ASK THOSE QUESTIONS, OR I'LL
11 ASK HIM THAT IN CROSS-EXAMINATION IN THE IN CAMERA
12 HEARING.

13 ASK THE QUESTIONS ALONG WHAT THE SOLICITOR JUST
14 INDICATED.

15 MR. WALKER, WHERE DID THAT DEFENSE NINE COME FROM, DO
16 YOU KNOW?

17 THE WITNESS: NO, SIR, I DO NOT. IT WAS GIVEN TO ME.

18 THE COURT: BY?

19 THE WITNESS: MS. FRANKLIN.

20 THE COURT: BY COUNSEL?

21 THE WITNESS: YES, SIR.

22 THE COURT: WHEN WAS THAT?

23 THE WITNESS: SUNDAY.

24 MS. FRANKLIN: I BELIEVE.

25 THE WITNESS: I BELIEVE IT WAS SUNDAY. I CAME DOWN

1 ON A SUNDAY AND MET WITH MS. FRANKLIN.

2 MS. FRANKLIN: YES. YES, YOUR HONOR. I BELIEVE
3 THAT'S ACCURATE.

4 THE COURT: LET ME TAKE A LOOK AT IT, PLEASE.

5 MS. FRANKLIN: OKAY.

6 THE COURT: MR. WALKER, LET ME ASK YOU THIS: THIS
7 DOCUMENT, EXHIBIT NINE, WHICH YOU HAVE IDENTIFIED AS A
8 BOOK OF KNOWLEDGE FOR FOLK NATION, IS THIS A DOCUMENT THAT
9 IS COMMON TO MEMBERS OF THAT GANG, OR IS THIS SOMETHING
10 THAT -- I MEAN, IT'S GOT QUESTIONS AND ANSWERS AND TATTOOS
11 AND SYMBOLS AND WHAT THEY STAND FOR AND ALPHABET AND WHAT
12 LETTERS STAND FOR.

13 THE WITNESS: IT IS KNOWLEDGE THAT MEMBERS ARE
14 EXPECTED TO LEARN AND BE ABLE TO RECITE WHEN ASKED, SUCH
15 AS THE PLEDGE, THE OATH, CREEDS. I FORGET EVERYTHING
16 THAT'S IN THERE, BUT THE MEMBERS THEMSELVES ARE EXPECTED
17 TO KNOW ALL OF THAT, AND THAT'S WHY IT'S CALLED THE BOOK
18 OF KNOWLEDGE.

19 THE COURT: ALL RIGHT. YOU CAN HAND THAT BACK TO
20 HIM.

21 ANY ADDITIONAL ARGUMENT?

22 MR. GIESE: YOUR HONOR, JUST FOR THE RECORD, THE
23 STATE SUBMITS THERE ARE ALL SORTS OF DIFFERENT BOOKS OF
24 KNOWLEDGE. WHERE THEY COME FROM, WHAT SET THEY'RE FROM,
25 WHAT STATE THEY'RE FROM, WHAT CITY THEY'RE FROM.

1 THEY HAVE PUT NO FOUNDATION AS TO HOW THE DEFENSE GOT
2 THIS BOOK OF KNOWLEDGE. WE HAVE NO IDEA WHERE IT COMES
3 FROM OTHER THAN IT COMES FROM MS. FRANKLIN.

4 NOW, IF YOUR HONOR -- I MEAN, I GUESS THE NEXT STEP
5 WOULD BE TO HAVE TO CALL MS. FRANKLIN TO FIND OUT WHERE
6 SHE GOT IT FROM TO PUT SOME KIND OF FACTUAL BASIS ON THE
7 RECORD AS TO WHERE IT CAME FROM.

8 THE COURT: ALL RIGHT. MS. FRANKLIN?

9 MS. FRANKLIN: YOUR HONOR, YOU KNOW, I DO NOT INTEND
10 TO HAVE THIS EXPERT SAY, "OH, IT IS DIEGO THOMPSON'S BOOK
11 OF KNOWLEDGE. IT WAS IN HIS FAMILY COURT FILE, AND
12 BECAUSE IT WAS IN HIS FAMILY COURT FILE, I HAVE TO DRAW A
13 CONCLUSION ABOUT WHETHER DIEGO IS IN A GANG." THAT'S NOT
14 WHERE I'M LEADING.

15 WHAT I INTENT TO DO IS MOVE THE BOOK OF KNOWLEDGE
16 INTO EVIDENCE BECAUSE THIS EXPERT CAN TESTIFY THAT IT IS
17 WHAT IT PURPORTS TO BE.

18 I BELIEVE THAT, NOT IN THE CAPACITY AS AN EXPERT, BUT
19 AS A LAY WITNESS A PERSON CAN SAY WHETHER OR NOT THEY
20 BELIEVE THOSE HANDWRITINGS ARE SIMILAR OR DISSIMILAR.

21 YOU KNOW, I THINK THAT'S FERTILE GROUND FOR
22 CROSS-EXAMINATION, IF THAT'S WHAT THE STATE WOULD LIKE TO
23 DO, BUT I DON'T BELIEVE THAT WE NEED TO ESTABLISH ALL OF
24 THESE OTHER FACTS ABOUT DIEGO THOMPSON FOR PURPOSES OF
25 ADMITTING A FOLK BOOK OF KNOWLEDGE.

1 THE COURT: ALL RIGHT. LET ME ASK YOU ALL TO COME UP
2 JUST A SECOND.

3 (WHEREUPON, THERE WAS A BENCH CONFERENCE.)

4 MS. FRANKLIN: CAN YOU BE HERE TOMORROW MORNING?

5 THE WITNESS: YEAH.

6 MS. FRANKLIN: THERE'S NO PROBLEM WITH MR. WALKER
7 SHOWING UP FOR COURT TOMORROW MORNING, YOUR HONOR.

8 THE COURT: NO PROBLEM.

9 ALL RIGHT. I'M GOING TO BRING THE JURY IN AND
10 DISMISS THEM FOR THE DAY. WE'LL CONTINUE WITH THIS IN THE
11 MORNING.

12 MR. WALKER, ONCE YOU COME DOWN FROM THE STAND, YOU
13 CANNOT DISCUSS YOUR TESTIMONY DURING THE BREAK.

14 THE WITNESS: I UNDERSTAND, YOUR HONOR.

15 THE COURT: ALL RIGHT. GET THE JURY IN, PLEASE.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 4:52 P.M.)

18 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

19 THE COURT: THANK YOU, SIR. MR. FOREMAN, LADIES AND
20 GENTLEMEN, I HAD HOPED TO SEND YOU FOLKS HOME A LITTLE BIT
21 EARLIER TODAY TO GIVE THOSE OF YOU WHO HAVE NOT VOTED AN
22 OPPORTUNITY TO VOTE BEFORE THE POLLS CLOSE AT
23 SEVEN O'CLOCK.

24 THE MATTER THAT I'M DISCUSSING WITH THE ATTORNEYS AT
25 THIS TIME IS GOING TO TAKE A LITTLE MORE TIME, SO I'M

1 GOING TO GO AHEAD AND LET YOU GO FOR THE DAY. IF YOU
2 HAVEN'T VOTED AND ARE ELIGIBLE TO VOTE, I HOPE YOU WILL
3 VOTE.

4 I DO NEED TO GO BACK OVER AND REITERATE AND
5 REEMPHASIZE TO YOU MY PREVIOUS INSTRUCTIONS NOT TO READ OR
6 WATCH OR LISTEN TO ANYTHING ABOUT THE CASE, NOT TO DISCUSS
7 IT WITH ANYONE. I WOULD NOW EXPAND THAT TO INCLUDE NOT TO
8 CONDUCT ANY KIND OF RESEARCH.

9 THERE'S BEEN TESTIMONY IN THE CASE ABOUT WEBSITES AND
10 WHATNOT. IT WOULD BE IMPROPER FOR YOU TO DO ANY KIND OF
11 RESEARCH.

12 I ASKED YOU EARLIER TODAY SPECIFICALLY ABOUT A NEWS
13 PROGRAM ON WHAT I THOUGHT WAS LAST NIGHT'S W.I.S. T.V.
14 I'M ADVISED THAT THERE MAY BE A SECOND SEGMENT ON
15 TONIGHT'S NEWS. I WOULD ORDER YOU AND INSTRUCT YOU NOT TO
16 WATCH THAT CHANNEL OR ANY OTHER CHANNEL THAT MIGHT HAVE
17 ANY KIND OF PROGRAMMING ON THAT.

18 I HAVE RECEIVED A QUESTION FROM ONE OF THE JURORS
19 CONCERNING ACTIVITIES ON THURSDAY NIGHT. I WILL RESPOND
20 TO THAT AT THE APPROPRIATE TIME. DON'T THINK I'M IGNORING
21 IT. I WILL ADDRESS THAT AT THE APPROPRIATE TIME.

22 HAVE A GOOD EVENING. BE BACK AT 9:30 TOMORROW
23 MORNING, PLEASE.

24 EVERYONE ELSE STAY SEATED.

25

1 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
2 4:54 P.M.)

3 THE COURT: WE WILL START BACK IN HERE AT 9:30. ANY
4 CASE LAW, I'D LIKE IN MY OFFICE AT NINE O'CLOCK, PLEASE.

5 MS. FRANKLIN: THANK YOU, YOUR HONOR.

6 THE COURT: WE'RE IN RECESS UNTIL 9:30.

7 (WHEREUPON, COURT'S EXHIBIT NO. 4 WAS MARKED FOR
8 IDENTIFICATION ONLY.)

9 THE COURT: ALL RIGHT. ANY MORE ARGUMENTS OR POINTS
10 OR CASES THAT ANYONE WANTS TO CITE ON THE ISSUE WE LEFT
11 WITH YESTERDAY CONCERNING THE HANDWRITING AND THE EXHIBIT
12 THAT IS BEING TENDERED BY THE DEFENSE? ANYTHING FURTHER?

13 MS. FRANKLIN: YOUR HONOR, I JUST WANT TO REITERATE
14 THAT WE BELIEVE THAT OUR BASIS FOR ALLOWING MR. WALKER TO
15 DRAW THE CONCLUSION REGARDING THE SIMILARITY OF THE
16 HANDWRITINGS, WE'RE RELYING ON RULE 901(2) AND -- I'M
17 SORRY, RULE 901(A)(2), NONEXPERT OPINION ON HANDWRITING,
18 NONEXPERT AS TO THE GENUINENESS OF THE HANDWRITING, BASED
19 ON THE FAMILIARITY NOT REQUIRED FOR PURPOSES OF
20 LITIGATION.

21 LOOKING AT THE NOTE THAT CORRESPONDS WITH THAT STATES
22 THAT THERE DOES NOT APPEAR TO BE ANY SOUTH CAROLINA LAW
23 THAT STATES THAT FAMILIARITY NEED NOT HAVE BEEN REQUIRED
24 FOR THE PURPOSES OF LITIGATION.

25 SO AGAIN, WE ARE SEEKING TO ADMIT THE BOOK OF

1 KNOWLEDGE BECAUSE OUR EXPERT COULD TESTIFY THAT IT IS --
2 PURPORTS TO BE, AND WE DO BELIEVE THAT THERE IS ENOUGH
3 AUTHORITY THAT ALLOWS US TO ASK HIM, NOT AS AN EXPERT, AS
4 A LAY WITNESS, WHETHER OR NOT HE BELIEVES THOSE
5 HANDWRITINGS LOOK SIMILAR TO HIM.

6 MR. GIESE: YOUR HONOR, MAY I BE HEARD VERY BRIEFLY?

7 THE COURT: HOLD ON ONE SECOND.

8 MR. GIESE: ALL RIGHT.

9 (PAUSE).

10 THE COURT: THE FAMILIARITY, THOUGH, UNDER THE RULE
11 CANNOT BE ACQUIRED FOR PURPOSES OF LITIGATION. THIS IS
12 JUST SAYING THERE IS NO REPORTED CASE IN SOUTH CAROLINA ON
13 THAT POINT. IT DOESN'T SAY THAT PART OF THE RULE DOESN'T
14 APPLY IN SOUTH CAROLINA.

15 MS. FRANKLIN: NO. I MEAN, WHEN YOU LOOK AT THE B
16 SECTION OF RULE 901, I MEAN, THIS OFFERS BY WAY OF
17 ILLUSTRATION ONLY AND NOT BY WAY OF LIMITATION.

18 THE COURT: RIGHT.

19 MS. FRANKLIN: I MEAN, IT LOOKS TO ME THAT THE PLAIN
20 LANGUAGE OF THE RULE SEEMS TO SUGGEST THAT IT WOULD SORT
21 OF BE MORE INCLUSIVE IN THESE SORTS OF SITUATIONS.

22 THE COURT: ALL RIGHT.

23 MS. FRANKLIN: AGAIN, I THINK THAT, YOU KNOW,
24 MR. WALKER SHOULD BE ALLOWED TO SAY THEY LOOK SIMILAR TO
25 HIM, AS A LAY WITNESS.

1 IF THE STATE WANTS TO DISAGREE WITH THAT, IF THEY
2 WANT TO IMPEACH HIM ON THAT, IF THEY WANT TO MAKE THAT
3 SUBJECT TO CROSS-EXAMINATION, I THINK THAT THAT WOULD BE
4 THE WAY THAT SHOULD BE ADDRESSED.

5 THE COURT: ALL RIGHT. LET ME HEAR FROM THE
6 SOLICITOR.

7 SOLICITOR?

8 MR. GIESE: YOUR HONOR, I JUST AGREE WITH YOUR HONOR
9 ON RULE 901(B)(2), NONEXPERT OPINION ON HANDWRITING.
10 "NONEXPERT OPINION AS TO THE GENUINENESS OF HANDWRITING
11 BASED UPON FAMILIARITY NOT ACQUIRED FOR PURPOSES OF
12 LITIGATION." CLEARLY, THIS IS.

13 THE COURT: ALL RIGHT. THIS IS WHAT I'M GOING TO
14 RULE. I HAVE CONSIDERED WHAT YOU HAVE BOTH SAID THIS
15 MORNING: NUMBER ONE, GOING TO THE ADMISSIBILITY OF
16 DEFENSE NINE, I THINK IS THE NUMBER. HE'S IDENTIFIED IT.
17 IF IT'S MOVED IN, I WILL PERMIT THAT.

18 AS TO ANY COMPARISON OF HANDWRITING, MY UNDERSTANDING
19 FROM THE TESTIMONY, THE FAMILIARITY THAT HE HAD ACQUIRED
20 HAS BEEN FOR PURPOSES OF THIS LITIGATION. I AM AWARE OF
21 THE CASES THAT SAY THAT IT DOES NOT HAVE TO BE AN EXPERT
22 WITNESS.

23 UNDER THE DEFENSE'S THEORY, YOU COULD GO GET SOMEBODY
24 OFF THE STREET. YOU COULD TO COME IN AND TAKE TWO
25 EXHIBITS THAT HAVE BEEN PUT INTO EVIDENCE AND ASK HIM, "DO

1 THESE LOOK SIMILAR?" I DON'T THINK THAT'S WHAT EVIDENCE
2 ALLOWS.

3 HE HAS BEEN QUALIFIED AS AN EXPERT. IT WOULD BE AN
4 OPINION OF HIS, AND AGAIN, I'M AWARE OF THE LAY OPINION AS
5 TO HANDWRITING, BUT USUALLY WHEN YOU SEE THAT, IF NOT
6 EVERY TIME YOU SEE THAT, IT'S SOMEBODY WHO HAS HAD A
7 BUSINESS RELATIONSHIP, FAMILY RELATIONSHIP, SOME OTHER
8 BASIS FOR KNOWING WHOSE HANDWRITING IT IS. FOR THAT
9 REASON, I WILL NOT PERMIT HIM TO TESTIFY TO THE
10 COMPARISON, EITHER SIMILAR OR THE SAME OR BELONGING TO ONE
11 PERSON.

12 MS. FRANKLIN: OKAY. THANK YOU, YOUR HONOR.

13 MR. GIESE: THANK YOU.

14 THE COURT: ALL RIGHT. AND I THINK YOU WENT AHEAD
15 YESTERDAY, MS. FRANKLIN, AND MOVED DEFENDANT'S NINE.
16 THERE WAS AN OBJECTION TO THAT; IS THAT RIGHT?

17 MS. FRANKLIN: THAT'S WHERE WE WERE.

18 THE COURT: OKAY. THAT OBJECTION IS OVERRULED, AND
19 I'LL SIMPLY TELL THE JURY THAT THAT EXHIBIT IS NOW IN
20 EVIDENCE.

21 MS. FRANKLIN: IS NOW EVIDENCE.

22 THE COURT: ALL RIGHT. ARE YOU READY TO PROCEED?

23 MR. GIESE: YES.

24 THE COURT: MR. WALKER, IF YOU WILL COME BACK UP ON
25 THE STAND, PLEASE.

1 (COMPLIES).

2 ALL RIGHT. BRING THE JURY IN PLEASE.

3 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
4 APPROXIMATELY 9:55 A.M.)

5 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 9 WAS ADMITTED
6 INTO EVIDENCE.)

7 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

8 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
9 GENTLEMEN, WE WILL CONTINUE. I DO NEED TO ADVISE YOU THAT
10 DEFENDANT'S EXHIBIT NINE, WHICH WAS OFFERED YESTERDAY, HAS
11 NOW BEEN ADMITTED INTO EVIDENCE.

12 MS. FRANKLIN, YOU MAY CONTINUE WITH YOUR DIRECT
13 EXAMINATION.

14 BY MS. FRANKLIN

15 Q YES, YOUR HONOR MAY IT PLEASE THE COURT.

16 BACK TO WHERE WE LEFT OFF YESTERDAY, MR. WALKER.

17 A YES, MA'AM.

18 Q ARE YOU FAMILIAR WITH THE TERM "COMMITTING A LICK"?

19 A YES, MA'AM.

20 Q AND WHAT IS YOUR UNDERSTANDING OF THAT TERM'S
21 MEANING?

22 A TO COMMIT A ROBBERY OR TO ROB SOMEONE FOR THE PURPOSE
23 OF OBTAINING MONEY.

24 Q AND HOW DO YOU COME TO KNOW THAT MEANING?

25 A WITH 50 YEARS LAW ENFORCEMENT EXPERIENCE. I LEARNED

1 THAT MANY, MANY YEARS AGO. THAT'S THE ONLY TERM THAT I'VE
2 EVER HEARD IT USED AS, "TO HIT A LICK", OR TO "DO A LICK"
3 OR "HE DIDN'T HIT A LICK", MEANING HE DIDN'T DO ANYTHING.

4 Q SO IN YOUR PAST AS A GOING EXPERT, I MEAN, HAVE YOU
5 EVER HEARD IT IN RELATION TO KILLING SOMEBODY?

6 A NO, MA'AM.

7 Q OKAY. AND YOU HAVE BEEN IN LAW ENFORCEMENT FOR ABOUT
8 50 YEARS?

9 A YES, MA'AM, IN VARIOUS CAPACITIES.

10 Q AND ARE YOU AWARE OF ANY CELEBRITIES WHO HAVE THESE
11 TEARDROP TATTOOS?

12 A YES, MA'AM.

13 Q CAN YOU NAME SOME OF THEM?

14 A ONE IS A RAP ARTIST BY THE NAME OF LIL, L-I-L, WAYNE.
15 HE'S A YOUNG MAN IN HIS EARLY 20S, I THINK. HE RECENTLY
16 OBTAINED SEVERAL TEAR MARK -- ONE, I BELIEVE, TEARDROP
17 TATTOOS.

18 ALSO, A PROFESSIONAL BASKETBALL PLAYER BY THE NAME OF
19 LARRY HUGHES. HIS BROTHER RECENTLY DIED AS A RESULT OF A
20 HEART PROBLEM, AS I RECALL. HE HAS TWO TEARDROP TATTOOS
21 HE PUT ON HIS FACE. I'M NOT SURE OF ALL OF THEM.

22 Q OKAY. SO SOME PEOPLE ARE WEARING THESE TATTOOS AS
23 FASHION STATEMENTS NOW?

24 A YES, MA'AM, PARTICULARLY THE YOUNG PEOPLE. THERE ARE
25 EVEN COSMETIC JEWELRY TYPE TATTOOS FOR THE LADIES THAT

1 THEY CAN JUST ATTACH IN VARIOUS COLORS AND WEAR THEM AS A
2 FASHION FAD.

3 Q SO YOU CAN ACTUALLY BUY LIKE TEARDROP TATTOOS TO
4 PLACE ON YOUR FACE --

5 A YES, MA'AM.

6 Q -- FOR PURPOSES OF CHANGING YOUR APPEARANCE?

7 A YES, MA'AM.

8 MS. FRANKLIN: OKAY. YOUR HONOR, I HAVE NO MORE
9 QUESTIONS FOR THIS WITNESS.

10 THE COURT: ALL RIGHT. CROSS-EXAMINE?

11 MR. GIESE: MAY IT PLEASE THE COURT, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 CROSS-EXAMINATION:

14 BY MR. GIESE

15 Q GOOD MORNING, MR. WALKER.

16 A GOOD MORNING, MR. GIESE.

17 Q HOW ARE YOU?

18 A I'M FINE. GOOD TO SEE YOU AGAIN.

19 Q YOU, TOO.

20 I JUST HAVE A COUPLE OF QUESTIONS FOR YOU. FIRST
21 OFF, WE KNOW EACH OTHER.

22 A YES, SIR, MANY YEARS.

23 Q YES, SIR. I BELIEVE YOU TESTIFIED IN THE 1995 BROAD
24 RIVER ROAD RIOT CASE THAT I TRIED; IS THAT RIGHT?

25 A NO, SIR. I DON'T RECALL TESTIFYING IN THAT ONE. IT

1 WAS A MURDER INVOLVING ANOTHER DEFENDANT FOR A LOCAL -- A
2 SERIES OF MURDERS IN THE COLUMBIA AREA.

3 Q AND THAT WAS WHILE YOU WERE WORKING FOR THE
4 DEPARTMENT OF CORRECTIONS, WASN'T IT?

5 A YES, SIR, IT WAS.

6 Q AND, IN FACT, YOU STATED EARLIER, OR YESTERDAY I
7 GUESS, THAT THE BROAD RIVER ROAD RIOT OF 1995 IS WHY THE
8 DEPARTMENT OF CORRECTIONS CREATED THIS GANG, FOR LACK OF A
9 BETTER TERM, "TASK FORCE" IN THE DEPARTMENT OF CORRECTIONS
10 THAT THEY PUT YOU IN CHARGE OF?

11 A YES, SIR.

12 Q AND THAT WAS IN 1995?

13 A YES, SIR. THE DISTURBANCE WAS AT THE BROAD RIVER
14 CORRECTIONAL FACILITY IN APRIL, APRIL 19TH, 1995. THEY
15 IMMEDIATELY AS A RESULT OF MR. MOORE BEING HERE AT THAT
16 TIME CREATED A POSITION.

17 THEY TEMPORARILY WROTE SOME RULES AND REGULATIONS FOR
18 LOCKING UP A NUMBER OF PERSONS WHO WERE SUSPECTED OF BEING
19 A MEMBER OF A PARTICULAR GROUP, AND THEN THEY CREATED THE
20 POSITION WHICH I SUBSEQUENTLY TOOK OVER, I BELIEVE IN JULY
21 OF THAT YEAR.

22 Q AND YOU LEFT THERE IN 1998, I THINK?

23 A YES, SIR, I DID.

24 Q SO FOR THOSE THREE YEARS, YOU INTERVIEWED GANG
25 MEMBERS?

1 A YES, SIR.

2 Q YOU COLLECTED EVIDENCE?

3 A YES, SIR.

4 Q AND YOU COLLATED ALL OF THAT; IS THAT RIGHT?

5 A YES, SIR.

6 Q AND THAT IS WHERE YOU HAVE GOTTEN SOME OF YOUR
7 INFORMATION THAT YOU'RE TESTIFYING ON TODAY, CORRECT?

8 A YES, SIR, AS PART OF MY EXPERIENCE OVERALL.

9 Q AND THAT'S IMPORTANT TO DO IS TO TALK TO GANG
10 MEMBERS?

11 A YES, SIR.

12 Q COLLECT EVIDENCE?

13 A YES, SIR.

14 Q PHOTOGRAPH TATTOOS?

15 A YES, SIR.

16 Q AND PUT THEM IN A DATABASE?

17 A YES, SIR.

18 Q AND, IN FACT, WHEN YOU LEFT IN 1998, EDDIE O'CAIN,
19 WHO YOU SAW TESTIFY, TOOK YOUR POSITION OVER.

20 A NOT IMMEDIATELY. THERE WAS AN INTERIM POSITION. I
21 DON'T RECALL THE GENTLEMAN'S NAME, BUT HE WAS APPOINTED TO
22 TAKE MY PLACE, AND THEN SOMETIME SUBSEQUENT TO THAT, AND I
23 DON'T KNOW EXACTLY WHEN MR. O'CAIN CAME UP. I'VE BEEN
24 FAMILIAR WITH THAT, WITH HIM BEING IN THAT POSITION, FOR
25 QUITE SOME TIME.

1 Q SO FROM, JUST SAY 1998 TO TODAY, 2006, MR. O'CAIN HAS
2 DONE THE EXACT SAME THING YOU DID FOR THOSE THREE YEARS,
3 WHICH WAS INTERVIEW GANG MEMBERS, COLLECT EVIDENCE, PUT
4 THEM IN A DATABASE?

5 A I'M ASSUMING THAT'S CORRECT, YES, SIR.

6 Q AND WHILE HE WAS DOING THAT FOR THOSE EIGHT YEARS,
7 YOU WERE OUT IN PRIVATE PRACTICE?

8 A THAT'S CORRECT, SIR.

9 Q AND LIKE I SAID, IT'S VERY IMPORTANT TO TALK TO
10 MEMBERS OF GANGS?

11 A YES, SIR.

12 Q NOW, OFFICER MAHONEY, WHO YOU WATCHED TESTIFY ALSO,
13 YOU WOULD ADMIT THAT WORKING ON A LOCAL LEVEL, IT WOULD BE
14 IMPORTANT FOR OFFICER MAHONEY TO INTERVIEW GANG MEMBERS?

15 A ABSOLUTELY.

16 Q AND HE DOES THAT, I BELIEVE HE TESTIFIED, JUST ABOUT
17 EVERY DAY.

18 A I WOULD ASSUME THAT HE DOES IN HIS CAPACITY OR IN HIS
19 POSITION; THAT'S CORRECT, SIR.

20 Q SO OFFICER MAHONEY, IT'S YOUR TESTIMONY, WOULD BE A
21 LOCAL EXPERT IN THE AREA?

22 A ABSOLUTELY.

23 Q BECAUSE HE WORKS WITH THEM EVERY DAY?

24 A ABSOLUTELY.

25 Q IT'S HIS JOB. ONE QUESTION ABOUT STATE'S -- OR

1 DEFENSE EXHIBIT NUMBER NINE, THE BOOK OF KNOWLEDGE. DO
2 YOU HAVE IT UP THERE?

3 A YES, SIR.

4 Q THANKS, MR. WALKER.

5 A YES, SIR.

6 Q THIS BOOK OF KNOWLEDGE, YOU WOULD ADMIT THAT THERE
7 ARE PROBABLY HUNDREDS OF DIFFERENT BOOKS OF KNOWLEDGE?

8 A YES, SIR.

9 Q IN FACT, EACH SET OR -- WHICH IS, I GUESS, A SUBSET
10 OF A GANG, A LOCAL PART OF A GANG, MIGHT HAVE THEIR OWN
11 BOOK OF KNOWLEDGE?

12 A TO SOME DEGREE, THAT'S CORRECT. MOST OF THE
13 KNOWLEDGE IS PASSED ON AND THE SAME WITHIN EACH INDIVIDUAL
14 SET. HOWEVER, THEY LIKE TO CHANGE DIFFERENT NUMBERS FOR
15 THEIR CODES, ADD DIFFERENT THINGS TO THEIR SYMBOLS AND
16 WHATNOT TO DISTINGUISH THEM FROM ALL OTHER SETS.

17 Q RIGHT. SO WHAT YOU'RE SAYING THERE WOULD BE SOME
18 BASIC SIMILARITIES.

19 A YES, SIR.

20 Q LIKE IN THE FOLK NATION, A SIX-POINT STAR WOULD BE
21 SOMETHING YOU WOULD FIND IN JUST ABOUT EVERY ONE?

22 A JUST ABOUT.

23 Q JUST ABOUT EVERY BOOK OF KNOWLEDGE IN THE FOLK
24 NATION.

25 A YES, SIR.

1 Q BUT THEN THEY MIGHT HAVE LITTLE DIFFERENT
2 IDIOSYNCRASIES --

3 A YES, SIR.

4 Q -- FOR THAT SPECIFIC SET.

5 A YES, SIR.

6 Q BUT GENERALLY, THEY'RE ABOUT THE SAME.

7 A YES, SIR.

8 Q BUT YOU WOULD SAY THERE ARE HUNDREDS OF THEM?

9 A PROBABLY THOUSANDS BY THIS TIME, MR. GIESE.

10 Q NOW, YOU HAVE GIVEN, OVER THE YEARS -- I THINK YOU
11 TESTIFIED YOU HAVE GIVEN NUMEROUS -- YOU TALKED AT
12 NUMEROUS CONFERENCES.

13 A YES, SIR, I HAVE.

14 Q GIVEN POWER POINT PRESENTATIONS AND THAT TYPE THING?

15 A YES, I HAVE.

16 Q I'D LIKE TO GO OVER A COUPLE OF THINGS THAT YOU SAID
17 IN THOSE POWER POINTS. JUST SEE IF YOU STILL AGREE WITH
18 WHAT YOU SAID IN THOSE POWER POINTS.

19 A OKAY.

20 Q I'D LIKE TO FIRST TALK TO YOU ABOUT STREET GANGS.

21 A OKAY, SIR.

22 Q AND WHEN YOU TALK ABOUT STREET GANGS, YOU'RE TALKING
23 ABOUT FOLK NATION, BLOODS, CRIPS. WHAT ELSE?

24 A LATIN KINGS, INSANE MANIAC DISCIPLES, MEMBERS OF THE
25 SURENOS, AND NURETANEOUS, THE MARA SALVATRUCHA 13,

1 HISPANIC GANGS, YOU KNOW.

2 Q RIGHT. THERE ARE A LOT OF THEM.

3 A ALL OVER THE COUNTRY, YES, SIR, TOO MANY.

4 Q CERTAINLY THE BLOODS AND THE CRIPS AND THE FOLK ARE
5 THREE OF THE MAJOR STREET GANGS.

6 A AND THE PEOPLE NATION. WELL, YOU REFERRED TO THE
7 FOLK NATION AS A GANG. IT IS AN ALLIANCE, AS I EXPLAINED
8 EARLIER, OF GANGS. THE GANGS FALL UNDER THE UMBRELLA OF
9 THE FOLK NATION OR OF THE PEOPLE NATION, BUT TO TAKE
10 THE -- UNLESS SOME OF THE LOCALS HAVE FORMED A HYBRID
11 GANG, A COPY CAT GANG, CALLING THEMSELVES THE FOLK NATION
12 GANG, IT'S NOT A GANG PER SE, NOT LIKE THE BLOODS OR THE
13 CRIPS.

14 Q BUT IT'S ALMOST EVEN A SUBSET OF THE CRIPS THAT BROKE
15 OFF OF THE CRIPS, CORRECT?

16 A THE --

17 Q THE FOLK NATION.

18 A THE FOLK NATION, NO, SIR; NO, SIR. IT HAD NOTHING TO
19 DO WITH THE CRIPS. AS FAR AS I KNOW, IT WAS FORMED BY
20 LARRY HOOVER IN THE ILLINOIS DEPARTMENT OF CORRECTIONS IN
21 THE LATE -- AND DAVID BARKSDALE IN THE LATE '70S, EARLY
22 '80S.

23 Q AND THESE STREET GANGS, THEY WERE ORIGINALLY CREATED
24 TO PROTECT THE NEIGHBORHOOD.

25 A THAT'S CORRECT.

1 Q AND I BELIEVE THAT YOU GO ON TO SAY -- AND YOU STILL
2 AGREE WITH THAT? ORIGINALLY, THEY WERE TO PROTECT THE --

3 A THAT WAS THE ORIGINAL INTENT OF THE STREET GANG WAS
4 TO PROTECT THE NEIGHBORHOOD FROM OUTSIDERS COMING INTO
5 THAT NEIGHBORHOOD AND THREATENING OR EXTORTING THE MEMBERS
6 OF THE NEIGHBORHOOD.

7 Q RIGHT. NOW -- AND YOU SAY ALSO -- YOU CONTINUE THAT
8 "NOW, THOSE SAME GANGS PREY ON RESIDENTS OF THEIR OWN
9 NEIGHBORHOODS, AS WELL AS OTHER NEIGHBORHOODS AND
10 COMMUNITIES." DO YOU STILL AGREE WITH THAT?

11 A YES, SIR.

12 Q AND IN FACT, YOU GO ON TO SAY THAT THEY NOW --
13 MS. FRANKLIN: YOUR HONOR, I WOULD OBJECT AT THIS
14 POINT. THE POINT IS RELEVANCE. MAY WE APPROACH ON THIS?

15 THE COURT: YES.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
17 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

18 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED.

19 BY MS. FRANKLIN

20 Q IN FACT, YOU GO ON TO SAY -- AND I'M SORRY. LET ME
21 STEP BACK. YOU SAID, "THEY NOW PREY ON RESIDENTS OF THEIR
22 OWN NEIGHBORHOODS, AS WELL AS OTHER NEIGHBORHOODS AND
23 COMMUNITIES." DO YOU AGREE WITH THAT?

24 A YES, SIR, I DO.

25 Q AND YOU GO ON TO SAY THAT THEY NOW EXIST TO FURTHER

1 CRIMINAL INTEREST.

2 A THAT'S CORRECT, SIR.

3 Q NOW, LET'S MOVE ON TO ANOTHER AREA THAT YOU TALK
4 ABOUT, WHICH IS REPUTATION OR REP, AS YOU CALL IT.

5 A I DON'T RECALL TALKING ABOUT REPUTATION YESTERDAY,
6 BUT I MAY HAVE.

7 Q WELL, LET ME JUST ASK YOU THESE QUESTIONS --

8 A OKAY.

9 Q -- TO SEE IF YOU STILL AGREE WITH IT.

10 A OKAY.

11 Q "REP EXTENDS TO THE MEMBER OF THE GANG AND THE GANG
12 AS A WHOLE"?

13 A THAT'S CORRECT.

14 Q EXPLAIN THAT.

15 A GANGS THEMSELVES WANT TO BE KNOWN AS THE BIGGEST,
16 BEST, AND IN MANY CASES, THE MOST VIOLENT THAT THEY CAN
17 BE.

18 CONSEQUENTLY, IN ORDER FOR THE GANG TO BE AS VIOLENT
19 AS THEY POSSIBLY CAN BE, THE MEMBERS OF THE GANG HAVE TO
20 ESTABLISH A REPRESENTATION TO PROMOTE THAT VIOLENCE OR THE
21 GOALS OF THE GANG, SO CONSEQUENTLY, THE GANG MEMBERS WILL
22 GO OUT AND COMMIT CRIMES. THEY WILL ROB PEOPLE. THEY
23 WILL ASSAULT PEOPLE. THEY WILL STEAL CARS. THEY WILL
24 HAVE HOME INVASIONS. THEY WILL EVEN MURDER PEOPLE WHEN
25 CALLED UPON TO DO SO.

1 Q OKAY. NOW, YOU GO ON TO SAY ALSO THAT "GANG STATUS
2 OR RANK MAY BE GAINED BY HAVING JUICE, WHICH IS BASED ON
3 REPUTATION"?

4 A THAT'S CORRECT, SIR.

5 Q SO WHAT YOU'RE SAYING THERE IS THAT YOUR STATUS IN A
6 GANG IS DETERMINED BY "JUICE"?

7 A THAT'S CORRECT, SIR.

8 Q AND "JUICE", YOU GO ON TO SAY "IS ACQUIRED THROUGH
9 CRIMES, SUCH AS ACTS OF VIOLENCE" --

10 A CORRECT.

11 Q -- "WHICH INCLUDE MURDER"?

12 A CORRECT, SIR.

13 Q "ROBBERY"?

14 A CORRECT, SIR.

15 Q "OR GOING TO PRISON"?

16 A THAT'S CORRECT, SIR.

17 Q SO JUICE, JUICE, IS HOW YOU BECOME HIGHER IN THE
18 GANG?

19 A YES, SIR.

20 Q BECAUSE THAT HELPS YOUR REPUTATION?

21 A THAT'S CORRECT, SIR.

22 Q AND BY COMMITTING THESE VIOLENT ACTS, YOUR REPUTATION
23 GETS BETTER --

24 A CORRECT, SIR.

25 Q -- IN THE GANG. NOW, HYPOTHETICALLY, IF A GANG

1 MEMBER COMMITS A DOUBLE MURDER FOR HIS OR HER GANG, WOULD
2 THAT GANG MEMBER ACQUIRE "JUICE"?

3 A IF IT WAS COMMITTED FOR THE GANG?

4 Q EXACTLY.

5 A YES, SIR.

6 Q AND, IN FACT, THAT WOULD BE A LOT OF JUICE OR RANK OR
7 STATUS IN THAT GANG.

8 A IN MOST CASES, THAT'S CORRECT, SIR.

9 Q HYPOTHETICALLY, THIS PERSON WHO HAS COMMITTED THE
10 DOUBLE MURDER, IF THE GANG MEMBERS IN HIS GANG KNOW THAT
11 HE'S COMMITTED THESE MURDERS, HIS RANK WOULD NATURALLY
12 RISE IN THE GANG.

13 A TO A DEGREE, YES, SIR. I THINK HIS REPUTATION WOULD
14 RISE MORE THAN RANK, IN MOST CASES.

15 Q BUT THAT REPUTATION IS SOMETHING THAT THEY'RE LOOKING
16 FOR?

17 A YES, SIR, ABSOLUTELY.

18 Q AND, IN FACT, THAT GANG MEMBER MIGHT WANT TO
19 ADVERTISE THE FACT THAT HE HAS COMMITTED A MURDER OR TWO,
20 CORRECT?

21 A YES, SIR; YES, SIR.

22 Q AND, IN FACT, WHEN SOMEONE SAYS THAT "THEY HAVE A
23 BODY OUT THERE", WHAT DOES THAT MEAN TO YOU?

24 A IN ALL PROBABILITY, IT MEANS THAT THEY HAVE KILLED
25 SOMEONE.

1 Q AND NOW, BY ADVERTISING, HE WOULD INCREASE HIS JUICE
2 OR RANK OR STANDING IN THE GANG.

3 A CORRECT, SIR. IN MOST CASES, I WOULD SAY THAT WOULD
4 BE CORRECT.

5 Q AND IT WOULD ALSO SHOW OTHER GANGS IN THE COMMUNITY
6 THAT HE HAD COMMITTED THESE OFFENSES?

7 A THAT IS CORRECT, SIR.

8 Q AND THAT, IN FACT, WOULD HELP HIS STANDING OR HIS
9 REPUTATION OR REP IN THE GANG COMMUNITY, WOULD IT NOT?

10 A YES, SIR, IT WOULD.

11 Q NOW, ISN'T IT TRUE THAT THIS ADVERTISING CAN TAKE THE
12 FORM, HYPOTHETICALLY, OF TATTOOING?

13 A YES, SIR.

14 Q BRANDING?

15 A DEPENDS ON THE BRAND. YOU KNOW, AS WITH THE TATTOO,
16 IT DEPENDS ON THE TATTOO OR THE BRAND AS TO WHETHER OR
17 NOT, YOUR HONOR, IT WOULD BE SIGNIFICANT OR NOT.

18 Q ALL RIGHT. AND NOW I'D LIKE TO -- THAT'S NOT THE --
19 THAT IS HOW SOME GANG MEMBERS ADVERTISE?

20 A YES, SIR. THAT'S WHY IT'S IMPORTANT FOR THE YOUTH OF
21 TODAY NOT TO ADVERTISE THAT THEY'RE WEARING TEARDROP
22 TATTOOS BECAUSE IT GIVES A FALSE IMPRESSION.

23 Q ALL RIGHT. WE'LL GET TO THAT IN A MINUTE.

24 A OKAY, SIR.

25 Q NOW, YOU HAVE A WEB PAGE CALLED GANGSORUS, RIGHT?

1 A YES, SIR.

2 Q NOW, I'D LIKE TO -- SINCE WE'RE TALKING ABOUT
3 TATTOOING OR BRANDING, GO TO YOUR WEB PAGE AND WHAT'S
4 WRITTEN ON IT IN CERTAIN SPOTS.

5 A YES, SIR.

6 Q I'LL ASK YOU IF THIS IS ON THERE WHETHER YOU STILL
7 AGREE WITH IT, OKAY.

8 A WELL, I HAVE 62 PAGES AND OVER 1200 LINKS, BUT I DO
9 REMEMBER MOST OF IT.

10 Q YES, SIR. WE'LL HELP YOU ALONG.

11 NOW, FIRST, AND I'M TALKING SPECIFICALLY ABOUT YOUR
12 TATTOO PAGE ON YOUR WEB PAGE, IT'S ENTITLED "TATTOOS". AS
13 LATE AS NOVEMBER 5TH, WHICH WOULD BE THREE DAYS AGO, 2006,
14 I'M GOING TO ASK YOU IF YOU RECALL THIS BEING ON THERE.
15 YOU FIRST SAY THAT, "TATTOOS ARE AN EXCELLENT TOOL FOR LAW
16 ENFORCEMENT AND CORRECTION OFFICERS TO USE TO IDENTIFY
17 KNOWN OR SUSPECTED GANG MEMBERS"?

18 A YES, SIR.

19 Q THAT'S TRUE, AND THAT'S WHAT THESE TWO GENTLEMEN
20 TESTIFIED TO, CORRECT?

21 A YES, SIR.

22 Q AND YOU GO ON TO SAY, "OF COURSE, THE BEST METHOD OF
23 DOING THIS IS TO PHOTOGRAPH THE TATTOOS" --

24 A YES, SIR.

25 Q -- "AND EITHER STORE THEM IN A DATABASE OR A HARD

1 FILE"?

2 A THAT'S CORRECT, SIR.

3 Q WHICH IS WHAT THESE TWO GENTLEMAN, MR. O'CAIN AND
4 OFFICER MAHONEY, DO ON A REGULAR BASIS.

5 A YES, SIR.

6 Q YOU GO ON TO SAY THAT GANG MEMBERS USE TATTOOS FOR
7 SEVERAL REASONS. IT COULD BE ADVERTISING. IT COULD BE
8 JUST TO SHOW WHAT GANG THEY'RE IN, WHAT SET THEY'RE IN,
9 THOSE TYPE THINGS.

10 A YES, SIR.

11 Q AND YOU GO ON TO SAY THAT THESE TATTOOS MAY INCLUDE
12 ONE OR MORE SYMBOLS THAT THE GANG HAS ADOPTED AS SOMETHING
13 UNIQUE TO IDENTIFY THE GANG AND ITS MEMBERS.

14 A THAT'S CORRECT, SIR.

15 Q SUCH AS IN THE CASE OF A FOLK NATION OR A FOLK, IT
16 MIGHT BE A PITCHFORK?

17 A THAT'S CORRECT.

18 Q BECAUSE THAT IS A TATTOO THAT THE FOLK USE?

19 A YES, SIR.

20 Q AND YOU THEN GO ON TO SAY THAT, "TATTOOS ARE WORN AND
21 USED FOR INTIMIDATION"?

22 A THAT'S CORRECT, SIR.

23 Q AND THEY ARE.

24 A YES, SIR.

25 Q THEY WEAR THOSE TATTOOS TO INTIMIDATE OTHER GANG

1 MEMBERS, CORRECT?

2 A YES, SIR.

3 Q AND THE PUBLIC?

4 A YES, SIR.

5 Q AND OUR COMMUNITY?

6 A (THERE WAS NO RESPONSE.)

7 Q THEN YOU GO ON TO SAY, "MANY MEMBERS, PARTICULARLY IF
8 THE GANG HAS A PROPENSITY FOR VIOLENCE, WILL HAVE THE GANG
9 NAME TATTOOED IN LARGE BOLD LETTERS SO THAT OTHER PERSONS
10 OR GANG MEMBERS WILL KNOW WHAT GANG THE PERSON
11 REPRESENTS," CORRECT?

12 A YES, SIR.

13 Q AND THEN YOU GO ON TO SAY, FINALLY, ON THIS PAGE THAT
14 "WEARING AN AUTHORIZED GANG TATTOO COULD BE HAZARDOUS TO A
15 PERSON'S HEALTH"?

16 A YES, SIR.

17 Q SO IN OTHER WORDS, IF A GANG MEMBER WERE TO PUT ON A
18 TATTOO THAT HE'S NOT -- HE OR SHE IS NOT ENTITLED TO PUT
19 ON, THAT IS LOOKED UPON VERY, VERY BADLY BY THE OTHER
20 MEMBERS OF THAT GANG?

21 A YES, SIR, THAT IS CORRECT. HOWEVER, THAT'S
22 PREDOMINATELY TRUE WITHIN THE PRISON GANGS, AND SOME OF
23 THEM ARE MUCH MORE VIOLENT THAN THE STREET GANGS AND HAVE
24 BEEN KNOWN TO ACTUALLY CUT OFF AN UNAUTHORIZED TATTOO
25 WITH, YOU KNOW, WHATEVER KNIFE MIGHT BE AVAILABLE WITHIN

1 THE PRISON SYSTEM, BUT THAT IS ABSOLUTELY CORRECT, WHAT
2 YOU JUST STATED.

3 Q I'M GOING TO TALK ABOUT SOME TATTOOS IN JUST A
4 SECOND. I'M GOING TO NEED SOME HELP HERE.

5 (PAUSE).

6 NOW, SPECIFICALLY IF SOMEONE HAS, HYPOTHETICALLY,
7 B.O.S. TATTOOED ON THEIR CHEST, WHAT WOULD THAT TELL YOU?

8 A THAT WOULD SIGNIFY THAT HE IS A SUPPORTER OF THE
9 BROTHERS OF STRUGGLE, WHICH BEGAN AS A PRISON GANG WITHIN
10 THE ILLINOIS DEPARTMENT OF CORRECTIONS, STATESVILLE,
11 ILLINOIS IN 1983, AND HE IS A SUPPORTER OF THE B.O.S.,
12 WHICH IS A FACTION OF THE FOLK NATION.

13 Q AND IT STANDS FOR WHAT?

14 A BROTHERS OF THE STRUGGLE.

15 Q S.O.S., WHAT DOES THAT STAND FOR?

16 A SISTERS OF THE STRUGGLE. THAT'S PRIMARILY LIKE A
17 FRATERNITY FOR THE FOLLOWERS OF THE FOLK NATION MEMBERS,
18 THE GIRLFRIENDS, WIVES, WHAT HAVE YOU, BUT IT COULD ALSO
19 MEAN IF THEY HAD BEEN INCARCERATED THEY COULD BE SISTERS
20 OF THE STRUGGLE.

21 Q AND THAT ALSO IS ATTACHED TO WHAT, WHICH GANG, I
22 MEAN?

23 A FOLK NATION.

24 Q FOLK NATION. NOW, I CAN'T DRAW THIS, BUT IF SOMEONE
25 HAS ON THEIR BACK A BRAND OF A PITCHFORK ON IT, WHAT DOES

1 THAT SIGNIFY TO YOU?

2 A THAT HE IS A MEMBER OF THE FOLK NATION.

3 Q NOW, YOU ALSO TESTIFIED EARLIER THAT IF, IN FACT,
4 THEY HAD THAT BRAND, HE'S A MEMBER OF THE FOLK NATION, AND
5 IF IN FACT, HE HAS TWO SLASHES NEAR THAT, IT'S YOUR
6 TESTIMONY THAT YOU'RE NOT SURE WHAT THAT MEANS?

7 A THAT IS RELATIVELY NEW, AND I HAVE HEARD THAT IT
8 MEANS RANK, BUT IT'S NOT BEING PROMOTED ANYWHERE IN MY
9 RESOURCES, ANY OF MY RESEARCH. IT'S NOT BEING PROMOTED AS
10 THAT.

11 Q RIGHT. NOW, WHEN YOU TALK ABOUT RANK -- WE TALKED
12 ABOUT RANK EARLIER, STATUS, RANK, REP. YOU GET THAT BY
13 COMMITTING VIOLENT ACTS FOR THE GANG?

14 A THAT'S CORRECT.

15 Q SO THOSE TWO SLASHES MIGHT MEAN, AND THIS IS ON
16 ANYBODY, BUT THOSE TWO SLASHES MEAN THAT THAT PERSON COULD
17 HAVE A HIGHER RANK IN THAT GANG, CORRECT?

18 A IT COULD SHOW THAT IT HAS HELD RANK, BUT I DON'T KNOW
19 THAT WE CAN SAY WHETHER IT'S A HIGHER RANK OR MUCH HIGHER.
20 I DON'T KNOW. THE MORE SLASHES YOU HAVE, THE MORE RANK
21 YOU HAVE, I DON'T KNOW, BUT THAT COULD INDICATE THAT HE
22 DOES HOLD A RANK.

23 Q BUT YOU HAVEN'T SEEN IT?

24 A NO, SIR, NOR HAVE I HEARD OF IT IN ANY OF MY
25 RESEARCH.

1 Q BUT YOU HAVEN'T BEEN IN THE DEPARTMENT OF CORRECTIONS
2 WORKING WITH THE GANG MEMBERS EVERY DAY FOR THE LAST EIGHT
3 YEARS LIKE EDDIE O'CAIN HAS, CORRECT?

4 A NO, SIR, I HAVE NOT.

5 Q NOR HAVE YOU WORKED ON THE STREET LIKE OFFICER
6 MAHONEY HAS?

7 A NO, SIR, I HAVE NOT, AND GOD BLESS THEM FOR DOING
8 WHAT THEY'RE DOING.

9 Q THANK YOU FOR SAYING THAT.

10 IF SOMEONE HAS -- WELL, I'LL DO IT UP HERE. I HOPE
11 YOU CAN SEE IT. IF A PERSON HAS "424" TATTOOED ON THEIR
12 FACE, WHAT DOES THAT STAND FOR?

13 A MANY GANGS USE AN ALPHABETIC NUMERIC CODE. I CALL IT
14 THE A.B.C., 1-2-3 CODE, ONE REPRESENTING "A", TWO
15 REPRESENTING 'B', THREE REPRESENTING "C", SO ON AND SO
16 FORTH THROUGH THE LETTER "Z".

17 IN THIS CASE AND THE FOLK NATION, THE GANGSTER
18 DISCIPLES, LOVE TO USE THE NUMERIC ALPHABETIC CODE. IN
19 THIS CASE, THAT'S BELIEVED TO MEAN -- THE FOURTH LETTER OF
20 THE ALPHABET WHICH IS "D", SECOND LETTER OF THE ALPHABET
21 WHICH IS "B", FOURTH LETTER OF THE ALPHABET AGAIN WHICH IS
22 "D". THAT IS, IN THE GANG TERMINOLOGY, 424. 424 REFERS
23 TO DEATH BEFORE DISHONOR WHICH IS A TATTOO THAT HAS BEEN
24 USED FOR MANY, MANY YEARS.

25 MANY MEMBERS OF THE MARINE CORPS., ARMY, MILITARY

1 PERSONNEL WILL USE THAT VERY SAME TATTOO, BUT NOT IN THE
2 NUMBER CODE. THEY WILL ACTUALLY WRITE "DEATH BEFORE
3 DISHONOR" AS OPPOSED TO A CODE.

4 Q BUT THAT IS CODE, OR COULD BE CODE, FOR THE FOLK TO
5 SAY "DEATH BEFORE DISHONOR"?

6 A THAT'S CORRECT, SIR.

7 Q D-B-D?

8 A AND IT'S ACCEPTED PRIMARILY FOR THE FOLK NATION. I
9 DON'T KNOW WHETHER OTHERS ARE USING 424 AS PART OF
10 THEIR --

11 Q NOW, SPECIFICALLY ALSO, THIS PITCHFORK -- I GUESS
12 IT'S A PITCHFORK.

13 A YES, SIR, IT'S REPRESENTED.

14 Q WITH A SIX-POINT STAR?

15 A THAT'S NOT QUITE SIX, I DON'T BELIEVE.

16 Q AND THE TWO DOTS. WHAT IS THAT INDICATIVE OF WHEN
17 SOMEONE WEARS THAT?

18 A I HAVE NO KNOWLEDGE. THAT'S NOT THE TATTOO THAT I
19 OBSERVED ON MR. LIVERMAN.

20 Q WHAT DID YOU OBSERVE ON HIM?

21 A I OBSERVED THAT VERY SAME DRAWING DEPICTING A
22 PITCHFORK, BUT THE -- WHERE THE TWO DOTS ARE, THEY ARE
23 ACTUALLY SIX-POINT STARS, AS IS THE CENTER PRONG.

24 Q SO --

25 A SO HE HAS THREE SIX-POINT STARS AS OPPOSED TO A STAR

1 AND TWO DOTS.

2 Q AND THE SIX-POINT STAR IS INDICATIVE OF WHAT GANG?

3 A MEMBERSHIP WITHIN THE FOLK NATION AND THE GANGSTER
4 DISCIPLES.

5 Q SO YOUR TESTIMONY IS THAT THERE ARE THREE SIX-POINT
6 STARS --

7 A YES, SIR.

8 Q -- INSTEAD OF TWO DOTS?

9 A YES, SIR.

10 Q FAIR ENOUGH.

11 YOUR HONOR, MAY WE APPROACH?

12 THE COURT: SURE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
14 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).

15 BY MR. GIESE

16 Q I'M JUST ABOUT DONE. WE'RE STILL TAKING ABOUT
17 TATTOOS, AND I BELIEVE YOU TESTIFIED ON DIRECT
18 EXAMINATION, I WANT TO MAKE SURE I'VE GOT THIS RIGHT, THAT
19 A TEARDROP ON THE FACE OF A GANG MEMBER COULD MEAN, COULD
20 MEAN.

21 A COULD.

22 Q AND I'M TALKING HYPOTHETICALLY, COULD MEAN THAT A
23 PERSON, THE PERSON WEARING IT, HAD KILLED SOMEONE?

24 A COULD MEAN.

25 Q SO WHEN YOU HAVE THESE TWO TEARDROPS, AND YOU'VE GOT

1 WHAT YOU CALL AN OPEN TEARDROP.

2 A YES, SIR.

3 Q AND THAT'S WITH NOTHING IN IT?

4 A THAT'S CORRECT, SIR.

5 Q IT'S JUST THE TEARDROP?

6 A IT'S JUST THE OUTLINE OF THE TATTOO.

7 Q RIGHT. AND THEN A CLOSED ONE. YOU SAY CLOSED, YOU
8 MEAN COLORED IN?

9 A FILLED IN.

10 Q AND WHICH ONE OF THOSE ARE YOU SAYING COULD MEAN THAT
11 A PERSON HAD MURDERED SOMEONE OR KILLED SOMEONE?

12 A BOTH.

13 Q BOTH COULD?

14 A YES, SIR.

15 Q OKAY, BOTH COULD.

16 A BECAUSE THE ORIGINAL CONCEPT OF THE TEARDROP TATTOO
17 HAD CHANGED OVER THE YEARS, AS I TESTIFIED TO YESTERDAY,
18 WITH GANGS DOING WHAT THEY'RE DOING NOW PERVERTING
19 EVERYTHING, CHANGING THE CULTURE COMPLETELY.

20 SOME OF THEM DON'T HAVE ANY IDEA WHAT THE ORIGINAL
21 MEANING WAS, BUT EITHER ONE OF THOSE COULD MEAN THAT AN
22 INDIVIDUAL HAD KILLED SOMEONE, ALONG WITH THE FACT THAT HE
23 HAD SPENT TIME IN PRISON OR AS A FASHION STATEMENT, AS I
24 STATED EARLIER.

25 Q NOW, THE FACT -- JUST HYPOTHETICALLY, IF SOMEONE HAD

1 AN OPEN ONE AND A CLOSED ONE ON HIS OR HER FACE, WOULD
2 THAT TELL YOU THAT THAT PERSON HAS GIVEN A DIFFERENT
3 SIGNIFICANCE TO EACH TEARDROP SINCE ONE IS OPEN AND ONE IS
4 CLOSED?

5 A IT VERY WELL COULD, YES, SIR.

6 Q FINALLY IF I COULD, I BELIEVE YOU TESTIFIED TO THIS
7 BUT I WANT TO MAKE SURE WE'RE ON THE SAME PAGE, ON YOUR
8 WEBSITE UNDER -- IN THAT SAME CATEGORY OF TATTOOS, YOU
9 WRITE THAT TEARDROP TATTOOS ARE NOT USED EXCLUSIVELY BY
10 ASIAN GANG MEMBERS. THE OPEN AND CLOSED TEARDROPS ARE
11 ALSO USED BY WHITE, HISPANIC, AND BLACK GANG MEMBERS. DO
12 YOU AGREE WITH THAT?

13 A YES, SIR.

14 Q AND THEN YOU GO ON TO SAY THAT THE OPEN TEARDROP, THE
15 OPEN TEARDROP -- THAT'S THE OPEN TEARDROP?

16 A YES, SIR.

17 Q IS SUPPOSED TO INDICATE THAT THE WEARER HAS KILLED
18 SOMEONE, CORRECT?

19 A YES, SIR, AND I USED THE WORDS "SUPPOSED TO MEAN".

20 MR. GIESE: YES, SIR. THANK YOU, MR. WALKER.

21 THE COURT: ALL RIGHT. REDIRECT?

22 MS. FRANKLIN: YES, YOUR HONOR, JUST A COUPLE OF
23 QUESTIONS.

24 REDIRECT EXAMINATION:

25

1 BY MS. FRANKLIN

2 Q I MEAN, YOU CONTINUE TO KEEP UP WITH THE LITERATURE,
3 ATTEND CONFERENCES, CONSULT FEDERAL LAW ENFORCEMENT
4 SOURCES AND SPEAK TO OTHERS IN THE FIELD SINCE YOU LEFT
5 THE DEPARTMENT OF CORRECTIONS; IS THAT CORRECT?

6 A THAT'S CORRECT, ALMOST DAILY.

7 Q AND SO YOU HAVE CONTINUED TO CONSULT WITH SOURCES
8 THROUGHOUT THE WHOLE COUNTRY?

9 A YES, MA'AM.

10 Q AND THAT'S WHAT YOU RELY ON. YOU RELY ON SOURCES
11 FROM SOUTH CAROLINA, CALIFORNIA, NATIONALLY?

12 A NATIONALLY, YES, MA'AM.

13 Q AND I THINK YOU SAID SOME GANG MEMBERS MAY ADVERTISE
14 WITH THEIR TATTOOS, CORRECT?

15 A CORRECT.

16 Q BUT NOT ALL OF THEM?

17 A NO.

18 Q AND JUST BECAUSE YOU HAVE TEARDROP TATTOOS, EITHER
19 OPEN OR CLOSED, THAT DOESN'T MEAN THAT YOU KILLED ANYONE,
20 DOES IT?

21 A NO, NOT WITH THE OTHER MEANINGS THAT THEY COULD HAVE.
22 IT DOESN'T -- IT'S NOT PROOF POSITIVE THAT THEY HAVE.

23 Q RIGHT.

24 A IT COULD HAVE, SO NO ONE COULD LOOK AT THE TATTOO AND
25 SAY THAT'S EXACTLY WHAT IT MEANS.

1 Q BECAUSE THESE MEANINGS ARE UNIQUE TO INDIVIDUALS,
2 RIGHT?

3 A THAT'S CORRECT.

4 Q AND NOW THAT YOU CORRECTED THE SOLICITOR ABOUT WHAT
5 IS ACTUALLY ON CHRIS' BACK, CAN YOU JUST EXPLAIN TO THE
6 JURY AGAIN WHAT YOU VIEWED ON CHRIS' BACK?

7 A WELL, COULD I --

8 MR. GIESE: YOUR HONOR, I OBJECT TO THAT
9 CHARACTERIZATION.

10 THE COURT: SUSTAINED.

11 JUST ASK THE QUESTION, COUNSEL.

12 THE WITNESS: DO YOU WANT ME TO DRAW IT?

13 THE COURT: JUST A MINUTE. WAIT JUST A MINUTE. SHE
14 IS GOING TO REPHRASE THE QUESTION.

15 THE WITNESS: OKAY.

16 BY MS. FRANKLIN

17 Q OKAY. ALL RIGHT, MR. WALKER.

18 A YES, MA'AM.

19 Q YOU HAVE HAD AN OPPORTUNITY TO LOOK AT CHRIS'
20 TATTOOS?

21 A YES, MA'AM.

22 Q AND IS THIS AN ACCURATE REPRESENTATION OF THE TATTOO
23 ON HIS BACK?

24 A NO, MA'AM, IT'S NOT.

25 MS. FRANKLIN: OKAY. YOUR HONOR, MAY I HAVE THE

1 WITNESS STEP DOWN?

2 THE COURT: SURE.

3 MS. FRANKLIN: OKAY.

4 THE COURT: KEEP YOUR VOICE UP, PLEASE.

5 THE WITNESS: YES, SIR.

6 BY MS. FRANKLIN

7 Q CAN YOU DRAW THE TATTOO THAT YOU SAW?

8 A YES, MA'AM. DO I HAVE A MARKING PEN?

9 MR. GIESE: THERE YOU GO.

10 MS. FRANKLIN: THANKS.

11 THE WITNESS: I'M GOING TO CORRECT THIS ONE, FIRST OF
12 ALL. THAT IS A SIX-POINT STAR, AND INSTEAD OF A DOT, THAT
13 SAME STAR IS HERE AND HERE.

14 THE SIX-POINT STAR IN THE CENTER IS PLAINLY VISIBLE,
15 AND I HAVE POOR EYESIGHT WHEN IT COMES TO CLOSE-UP WORK,
16 BUT I HAD ANY GLASSES ON, AND I TOOK THE SKIN AND I
17 TOUCHED IT. I SPREAD IT A LITTLE BIT.

18 THESE SIX-POINT STARS ARE PLAINLY VISIBLE, IF YOU
19 LOOK CLOSELY. IT MAY NOT BE NECESSARY TO SPREAD THE SKIN
20 SO THAT THEY DO TAKE THAT SHAPE AND FORM, BUT DEFINITELY,
21 THERE ARE THREE SIX-POINT STARS OVER THOSE PRONGS.

22 Q AND IN YOUR EXPERIENCE AS A GANG EXPERT, DO YOU HAVE
23 ANY CONCLUSIONS REGARDING WHAT THAT MAY MEAN?

24 A HE'S JUST EMPHASIZING THE FACT THAT HE IS A MEMBER OF
25 THE FOLK NATION.

1 Q OKAY. AND THAT'S YOUR UNDERSTANDING OF WHAT THAT
2 TATTOO MEANS?

3 A YES, MA'AM.

4 Q AND JUST BECAUSE SOMEBODY HAS A PITCHFORK TATTOO WITH
5 A COUPLE OF HASH MARKS NEXT TO IT, THAT DOESN'T MEAN THAT
6 PERSON KILLED ANYONE, DOES IT?

7 A NOT TO MY KNOWLEDGE.

8 Q AND YOUR UNDERSTANDING IS IT COULD MEAN RANK?

9 A IT COULD MEAN RANK, YES, MA'AM.

10 Q BUT IT COULD HAVE OTHER MEANINGS?

11 A I DON'T KNOW OF ANY OTHER MEANINGS. IT'S -- LIKE I
12 SAID, THOSE SLASHES ARE NEW TO ME AS FAR AS RANK ARE
13 CONCERNED, AND SO, YOU KNOW, OTHER THAN WHAT I HAVE HEARD,
14 I HAVE NO DIRECT KNOWLEDGE.

15 MS. FRANKLIN: OKAY. THANK YOU VERY MUCH.

16 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

17 THE COURT: RE-CROSS?

18 MR. GIESE: JUST TWO QUESTIONS TO CLEAR SOMETHING UP.

19 RE-CROSS-EXAMINATION:

20 BY MR. GIESE

21 Q YOU SAID TWO SLASHES COULD MEAN RANK.

22 A YES, SIR, IT COULD.

23 Q AND YOU TESTIFIED EARLIER, I BELIEVE, THAT RANK CAN
24 BE ACQUIRED BY COMMITTING A MURDER FOR THE GANG?

25 A OR ANY OTHER CRIMES.

1 Q FINALLY, THOSE TWO STARS ON THE SIDE, YOU HAD TO
2 SPREAD THE SKIN?

3 A NO, SIR. I DIDN'T HAVE TO, BUT I DID IN ORDER TO SEE
4 MORE CLEARLY.

5 MR. GIESE: OKAY. THANK YOU. THANK YOU, MR. WALKER.

6 THE WITNESS: YES, SIR.

7 THE COURT: ANYTHING FURTHER?

8 MS. FRANKLIN: NOTHING FURTHER.

9 THE COURT: YOU MAY STEP DOWN, MR. WALKER.

10 THE WITNESS: THANK YOU, YOUR HONOR.

11 MS. FRANKLIN: THANK YOU, YOUR HONOR. FOR PURPOSES
12 OF THE RECORD, IF I COULD JUST HAVE MY CONTINUING
13 OBJECTION NOTED.

14 THE COURT: ALL RIGHT, IT IS.

15 ALL RIGHT. CALL YOUR NEXT WITNESS, PLEASE.

16 MR. SHARDT: THE DEFENSE CALLS BRADY BROWN.

17 BRADY BROWN, AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME
20 FOR THE RECORD.

21 THE BAILIFF: STATE YOUR FULL NAME.

22 THE WITNESS: BRADY SANFORD BROWN, II.

23 DIRECT EXAMINATION:

24 BY MR. SHARDT

25 Q GOOD MORNING, MR. BROWN.

- 1 A GOOD MORNING.
- 2 Q MR. BROWN, WHAT IS YOUR OCCUPATION?
- 3 A I'M A RECRUIT IN THE MARINE CORPS.
- 4 Q IN THE MARINE CORPS.?
- 5 A YES, SIR.
- 6 Q AND HOW OLD ARE YOU?
- 7 A EIGHTEEN, SIR.
- 8 Q ALL RIGHT. MR. BROWN, I'M GOING TO TRY TO BRING YOU
- 9 BACK TO AUGUST 26TH, 2004, OKAY. ON AUGUST 26TH, 2004,
- 10 WHERE WERE YOU LIVING?
- 11 A 3109 LOUISA STREET, COLUMBIA, SOUTH CAROLINA.
- 12 THE COURT: CAN YOU SPEAK UP JUST A LITTLE BIT SO I
- 13 CAN HEAR OVER HERE, PLEASE, SIR?
- 14 THE WITNESS: 3109 LOUISA STREET, COLUMBIA, SOUTH
- 15 CAROLINA.
- 16 BY MR. SHARDT
- 17 Q OKAY. AT THAT TIME, WHAT WAS YOUR OCCUPATION?
- 18 A I WAS A STUDENT AT C.A. JOHNSON HIGH SCHOOL.
- 19 Q NOW, AT THAT TIME, DID YOU HAVE A CAR?
- 20 A YES, I DID.
- 21 Q OKAY. AND WHAT KIND OF CAR WAS THAT?
- 22 A IT WAS A 1994 FORD ESCORT.
- 23 Q WHAT COLOR WAS THAT FORD ESCORT?
- 24 A WHITE.
- 25 Q DO YOU REMEMBER THE AFTERNOON OF AUGUST 26TH, 2004?

1 A YES, SIR.

2 Q OKAY. WHERE WERE YOU THAT AFTERNOON?

3 A THAT AFTERNOON I WAS COMING -- I WENT TO CICI'S. I

4 WAS COMING FROM FOOTBALL PRACTICE.

5 Q OKAY. SO YOU WERE AT FOOTBALL PRACTICE THAT

6 AFTERNOON. AFTER FOOTBALL PRACTICE, WHERE DID YOU GO?

7 A CICI'S WITH A COUPLE OF FOOTBALL TEAMMATES.

8 Q WAS CHRISTOPHER LIVERMAN ON THE FOOTBALL TEAM?

9 A NO, SIR.

10 Q OKAY. HOW LONG WERE YOU AT CICI'S PIZZA?

11 A FOR ABOUT TWO HOURS.

12 Q ABOUT TWO HOURS?

13 A YES, SIR.

14 Q WHERE WAS THIS?

15 A OFF OF GARNER'S FERRY.

16 Q OKAY. NOW, YOU SAID YOU WERE WITH TEAMMATES.

17 A YES, SIR.

18 Q HOW MANY TEAMMATES WERE YOU WITH?

19 A THREE TEAMMATES.

20 Q OKAY. AFTER YOU ATE AT CICI'S, WHERE DID YOU GO?

21 A WE WAS ON OUR WAY BACK TO BETHEL BISHOP.

22 Q OKAY. AND WHEN YOU SAY "WE", WHO ARE YOU REFERRING

23 TO?

24 A MYSELF, TRAVIS WOOTEN, TRAVIS BANNER, AND DEMETRIUS

25 BOUCHER (PHONETIC).

1 Q OKAY. WAS PARIS ALEXANDER WITH YOU?

2 A YES, SIR.

3 Q SO THERE'S FOUR TEAMMATES?

4 A NO, SIR. THERE WERE THREE, INCLUDING MYSELF.

5 Q OKAY. COULD YOU LIST THE PEOPLE THAT WERE IN THE CAR
6 AGAIN?

7 A TRAVIS WOOTEN, TRAVIS BANNER, DEMETRIUS BOUCHER, AND
8 MYSELF.

9 Q AND PARIS ALEXANDER?

10 A PARIS ALEXANDER WAS WITH TRAVIS WOOTEN.

11 THE COURT REPORTER: I'M SORRY, CAN YOU SLOW DOWN?

12 THE WITNESS: TRAVIS WOODARD, TRAVIS BANNER,
13 DEMETRIUS BOUCHER, AND PARIS ALEXANDER, SO THERE WERE FOUR
14 OF THEM.

15 BY MR. SHARDT

16 Q AND YOURSELF?

17 A YES, SIR.

18 Q SO THERE WAS FIVE PEOPLE IN THE CAR?

19 A YES, SIR.

20 Q AND WHAT KIND OF CAR WERE YOU IN?

21 A A WHITE FORD ESCORT.

22 Q WHAT WAS DRIVING?

23 A I WAS.

24 Q OKAY. YOU WERE DRIVING, ALL RIGHT.

25 ON THE WAY BACK, YOU SAID YOU WERE GOING BACK TO THE

1 BETHEL BISHOP?

2 A WE WERE GOING BACK TO THE BETHEL BISHOP.

3 Q RIGHT, FROM CICI'S. DID YOU PASS BY T.S. MARTIN?

4 A YES, SIR.

5 Q OKAY. EXPLAIN TO ME WHAT HAPPENED WHEN YOU WERE
6 GOING BY T.S. MARTIN?

7 A I WAS GOING BY T.S. MARTIN. I IDENTIFIED A PERSON.
8 HE WAIVED US DOWN, AND WE STOPPED THE CAR. WE WAS LIKE --
9 WE WERE TRYING TO FIGURE OUT WHY HE STOPPED US, YOU KNOW.
10 HE DIDN'T STOP US. HE JUST KEPT MOVING HIS HANDS.

11 WE WERE LIKE, "WHAT'S UP?" HE'S LIKE, "FUCK YOU
12 ALL."

13 SO WE TURNED AROUND AND WE ASKED HIM AGAIN. HE SAID
14 THE SAME THING, SO WE SAID, "ALL RIGHT."

15 SO THEN HE WENT BEHIND THE BUSHES LIKE HE WAS GOING
16 TO GET SOMETHING, SO WE HAD LEFT.

17 MR. SHARDT: OKAY. LET'S TAKE IT SLOW.

18 YOUR HONOR, COULD I ASK PERMISSION FOR THE WITNESS TO
19 STEP DOWN?

20 THE COURT: SURE. KEEP YOUR VOICE UP SO THAT
21 EVERYONE IS ABLE TO HEAR WHAT YOU'RE TESTIFYING TO,
22 PLEASE.

23 THE WITNESS: YES, SIR.

24 BY MR. SHARDT

25 Q NOW, DO YOU RECOGNIZE THIS MAP?

1 A YES, SIR.

2 Q OKAY. THIS IS THE T.S. MARTIN NEIGHBORHOOD?

3 A YES, SIR.

4 Q OKAY. AND WHERE WOULD BETHEL BISHOP BE?

5 A BETHEL BISHOP WOULD BE ABOUT RIGHT IN THIS VICINITY.

6 Q IT WOULD BE UP HERE?

7 A YES, SIR.

8 Q WERE YOU TRAVELING ON EDISON AVENUE IN THE WHITE FORD

9 ESCORT?

10 A YES, SIR.

11 Q OKAY. NOW, YOU SAID SOMEONE STOPPED YOU, OKAY, AND

12 YOU STOPPED YOUR CAR?

13 A YES, SIR.

14 Q NOW, WHERE DID YOU STOP THE CAR?

15 A WE STOPPED THE CAR ABOUT RIGHT HERE...

16 Q RIGHT THERE, OKAY. AND NOW, THE INDIVIDUAL WHO

17 STOPPED YOU, WHAT DID THEY SAY?

18 A THEY -- WE REALLY COULDN'T HEAR WHAT THEY WERE

19 SAYING. THAT'S WHY WE STOPPED.

20 MS. FENT: OBJECTION. IF HE CAN -- FIRST, HEARSAY.

21 ALSO, IF HE CAN SPEAK UP SO EVERYBODY CAN HEAR HIM.

22 THE COURT: ALL RIGHT.

23 MS. FENT: BUT I BELIEVE HE'S ABOUT TO TESTIFY TO

24 HEARSAY.

25 THE COURT: IS HE GOING TO BE POINTING OUT ANYTHING

1 ELSE ON HERE?

2 MR. SHARDT: NO, YOUR HONOR.

3 THE COURT: IF NOT, I'M GOING TO GET HIM BACK UP HERE
4 SO HIS VOICE IS UP.

5 MR. SHARDT: NOT AT THIS TIME, YOUR HONOR.

6 THE COURT: YOU CAN GET BACK ON THE WITNESS STAND,
7 AND YOU CAN REPEAT YOUR QUESTION.

8 THE OBJECTION IS OVERRULED.

9 MR. SHARDT: THANK YOU.

10 BY MR. SHARDT

11 Q WHEN YOU STOPPED THE CAR, WHAT DID THIS PERSON SAY?

12 A THEY SAID, "FUCK YOU ALL. FUCK THE BISHOP. FUCK THE
13 ROCK," WHICH IS BETHEL BISHOP.

14 Q OKAY. SO HE CURSED YOU OUT AND CURSED YOUR
15 NEIGHBORHOOD?

16 A YES, SIR.

17 Q OKAY. DID YOU RESPOND? DID ANYONE IN THE CAR
18 RESPOND?

19 A NO, SIR. NO, SIR. WE WAS TRYING TO FIGURE OUT WHO
20 HE WAS.

21 Q OKAY. DID YOU EVER FIGURE OUT WHO HE WAS?

22 A I FIGURED OUT WHO HE WAS ABOUT TWO MONTHS AGO.

23 Q AND WHO WAS IT?

24 A SOMEONE THAT GOES BY THE NAME OF TYRONE.

25 Q OKAY. SO THAT WAS TYRONE?

1 A YES, SIR.

2 Q OKAY. AFTER HE CURSED YOU OUT, WHAT HAPPENED NEXT?

3 A WE SEEN HIM GO AROUND THE BUSHES, SO WE PULLED OFF.

4 Q OKAY. WHEN YOU'RE SAYING YOU SEEN HIM GO BEHIND THE
5 BUSHES, WHICH DIRECTION DID HE -- WHERE WAS HE STANDING
6 WHEN HE CURSED YOU OUT?

7 A WHERE I STOPPED THE CAR, IT WAS LIKE --

8 Q RIGHT HERE?

9 A YEAH.

10 Q OKAY.

11 A HE WENT BEHIND -- LIKE ALMOST BACK BEHIND THE HOUSE.

12 Q BEHIND THE HOUSES?

13 A NO, THE OTHER WAY.

14 Q THIS WAY?

15 A UP.

16 Q OH, UP HERE?

17 A YES, SIR.

18 Q OKAY. AND SO HE -- DID HE RUN OR WALK?

19 A NO, HE WAS WALKING REAL FAST.

20 Q OKAY. AND WHAT DID HE DO?

21 A I DON'T KNOW. WE PULLED OFF.

22 Q OKAY. DID YOU OBSERVE HIM DO ANYTHING BEFORE YOU
23 PULLED OFF?

24 A NO, SIR; NO, SIR.

25 Q OKAY. WHAT DID YOU THINK HE WAS GOING TO DO?

1 A I GUESS HE WAS GOING TO --
2 MS. FENT: OBJECTION, SPECULATION.
3 THE COURT: SUSTAINED.
4 BY MR. SHARDT
5 Q WHY DID YOU PULL OFF?
6 A WE PULLED OFF BECAUSE WE THOUGHT HE WAS GOING TO GET
7 A WEAPON. HE BENT DOWN BEHIND THE BUSHES.
8 Q YOU THOUGHT HE WAS GOING TO GET A WEAPON.
9 A YES, SIR.
10 Q THAT'S WHY YOU LEFT.
11 A YES, SIR, YES, SIR.
12 Q OKAY. WHEN YOU LEFT T.S. MARTIN, WHERE DID YOU GO?
13 A TO BETHEL BISHOP.
14 Q OKAY. WERE THOSE -- AS YOU DROVE TOWARDS BETHEL
15 BISHOP, WERE THOSE FOUR FOOTBALL PLAYERS STILL IN THE CAR?
16 A YES, SIR.
17 Q OKAY. NOW, WHEN YOU ARRIVED AT BETHEL BISHOP, DID
18 YOU PARK?
19 A YES, SIR.
20 Q DO YOU REMEMBER PARKING SOMEWHERE?
21 A YES, SIR.
22 Q OKAY. WHERE DID YOU STOP THE CAR?
23 A I STOPPED THE CAR IN THE MIDDLE, PARKED IN THE
24 MIDDLE.
25 Q CAN YOU REPEAT THE ANSWER?

1 A I PARKED THE CAR IN THE MIDDLE OF BETHEL BISHOP.

2 Q OKAY, IN THE MIDDLE OF BETHEL BISHOP. DID YOU TALK
3 TO ANYONE AFTER YOU PARKED THE CAR?

4 A YES, SIR.

5 Q WHO DID YOU TALK TO?

6 A I TALKED TO PRAYLOW AND POOH.

7 Q OKAY. WHAT ABOUT PARIS?

8 A PARIS WAS WITH ME WHEN THE INCIDENT HAPPENED.

9 Q WAS PARIS TALKING TO POOH AND PRAYLOW?

10 A YES, SIR, ALL OF US WERE.

11 Q OKAY. DID YOU TALK TO CHRISTOPHER LIVERMAN?

12 A NO, SIR.

13 MS. FENT: OBJECTION, LEADING AND CALLS FOR HEARSAY.

14 THE COURT: ALL RIGHT. YOU CAN'T GO INTO ANY

15 CONVERSATION. I'LL PERMIT HIM TO ANSWER THE LAST

16 QUESTION. YOU CAN REPEAT IT.

17 BY MR. SHARDT

18 Q DID YOU TALK TO CHRISTOPHER LIVERMAN?

19 A NO, SIR.

20 Q ALL RIGHT. HOW MANY PEOPLE WERE OUTSIDE WHEN YOU
21 PULLED UP?

22 A IT WAS A BIG GROUP OF ABOUT 30.

23 Q ABOUT 30 PEOPLE?

24 A YES, SIR.

25 Q OKAY. WAS CHRISTOPHER LIVERMAN OUTSIDE?

1 A COULD HAVE BEEN, I'M NOT SURE.

2 Q OKAY. AFTER YOU TALKED TO POOH AND PRAYLOW AND
3 PARIS, WHAT HAPPENED?

4 A ME, POOH, PARIS, AND PRAYLOW GOT IN THE CAR.

5 Q OKAY.

6 A AND WE WENT BACK TO T.S. MARTIN.

7 Q ALL RIGHT. YOU WENT BACK TO T.S. MARTIN?

8 A YES, SIR.

9 Q DID YOU PICK UP ANYONE ALONG THE WAY?

10 A NO, SIR.

11 Q OKAY. SO WHO WAS IN THE CAR WHEN YOU WENT UP TO T.S.
12 MARTIN?

13 A ME, POOH, PRAYLOW, AND PARIS.

14 Q WHO WAS IN THE CAR WHEN YOU ARRIVED AT T.S. MARTIN?

15 A ME, POOH, PRAYLOW, AND PARIS.

16 Q OKAY. WAS CHRISTOPHER LIVERMAN IN THE CAR?

17 A NO, SIR.

18 Q DID CHRISTOPHER LIVERMAN EVER TRY TO GET INTO THE
19 CAR?

20 A NO, SIR.

21 Q WHY DID THE FOUR OF YOU GO BACK TO T.S. MARTIN?

22 A WE WENT BACK TO T.S. MARTIN TO FIGURE OUT WHO HE WAS
23 AND WHAT HE WAS GOING TO DO.

24 Q WHEN YOU SAY "HE" YOU'RE REFERRING TO?

25 A TYRONE.

1 Q THE PERSON WHO --

2 A YES, SIR.

3 MR. SHARDT: ALL RIGHT. YOUR HONOR, I ASK PERMISSION
4 FOR THE WITNESS TO STEP DOWN AGAIN.

5 THE COURT: ALL RIGHT.

6 MR. SHARDT: PLEASE KEEP YOUR VOICE UP.

7 THE COURT: KEEP YOUR VOICE UP, PLEASE.

8 THE WITNESS: OKAY.

9 BY MR. SHARDT

10 Q WHEN YOU WENT BACK TO T.S. MARTIN, CAN YOU CHART YOUR
11 PATH OF THE WHITE CAR?

12 A (INAUDIBLE.)

13 THE COURT REPORTER: I'M SORRY, I CAN'T HEAR A WORD
14 HE'S SAYING.

15 THE COURT: THE COURT REPORTER CAN'T HEAR. SWITCH
16 SIDES SO SHE CAN SEE.

17 MR. SHARDT: OKAY.

18 THE COURT: AND AGAIN, KEEP YOUR VOICE UP SO EVERYONE
19 IN THE COURTROOM CAN HEAR WHAT YOU'RE TESTIFYING TO.

20 THE WITNESS: I SAID WE CAME DOWN AND WE TURNED IN
21 T.S. MARTIN AND WENT DOWN THE STREET AND SEEN A LITTLE
22 GIRL. I ASKED HER DID SHE KNOW THE BOY THAT WE STOPPED
23 FOR. SHE SAID, "FUCK YOU ALL." WE TOLD HER TO GO BACK IN
24 THE HOUSE AND GET READY FOR SCHOOL.

25 WE TURNED BACK AROUND, CAME DOWN THE STREET TO THE

1 STOP SIGN, MADE A RIGHT, PARKED THE CAR, GOT OUT OF THE
2 CAR, WALKED DOWN THE STREET. NO ONE WAS OUTSIDE.
3 EVERYONE WAS CLOSING THEIR DOORS, SO WE WALKED BACK, GOT
4 IN THE CAR. THEN WE LEFT.

5 Q OKAY. YOU JUST GAVE US A LOT OF INFORMATION. YOU
6 CAN HAVE A SEAT AGAIN.

7 YOU SAID YOU PULLED INTO T.S. MARTIN?

8 A YES, SIR.

9 Q OKAY. AND WHO DID -- AS YOU WERE DRIVING DOWN T.S.
10 MARTIN, WHO DID YOU ENCOUNTER?

11 A A LITTLE GIRL.

12 Q HOW OLD WAS THIS LITTLE GIRL?

13 A SHE LOOKED LIKE SHE WAS ABOUT 12 YEARS OLD.

14 Q ABOUT 12?

15 A YES, SIR.

16 Q COULD SHE HAVE BEEN YOUNGER OR OLDER?

17 A SHE COULD HAVE BEEN YOUNGER. SHE COULD HAVE BEEN
18 YOUNGER.

19 Q OKAY. SO SHE LOOKED 12 OR YOUNGER?

20 A YES, SIR.

21 Q OKAY. AND WHAT DID YOU SAY?

22 A WE ASKED HER --

23 Q WHAT DID YOU ASK HER?

24 A WE ASKED HER DID SHE SEE --

25 MS. FENT: OBJECTION, HEARSAY.

1 THE COURT: YOU CAN ASK -- YOU CAN TESTIFY TO WHAT HE
2 ASKED THAT PERSON. IT'S OVERRULED TO THAT EXTENT, WHAT HE
3 ASKED THAT PERSON. THAT'S ALL I'M RULING ON AT THAT POINT
4 IN TIME.

5 THE WITNESS: WE ASKED HER DID SHE SEE THE BOY WE WAS
6 LOOKING FOR WHO WAS TYRONE. SHE TOLD US, "FUCK YOU ALL".

7 MS. FENT: OBJECTION, HEARSAY.

8 THE COURT: ALL RIGHT. IT'S ALREADY BEEN TESTIFIED
9 TO TWICE.

10 CONTINUE, MR. SHARDT.

11 BY MR. SHARDT

12 Q OKAY. WHAT WAS YOUR RESPONSE?

13 A WE TOLD HER, "GO IN THE HOUSE AND GET READY FOR
14 SCHOOL, LITTLE GIRL."

15 Q OKAY. OKAY. THEN WHAT DID YOU DO AFTER THAT? WHAT
16 DID YOU DO AFTER THAT?

17 A WE TURNED AROUND, AND WE DROVE TO THE STOP SIGN. WE
18 MADE A RIGHT IN FRONT OF THE FIRST -- BETWEEN THE FIRST
19 AND SECOND HOUSE.

20 Q IS THIS WHERE THE STOP SIGN IS?

21 A YES, SIR.

22 Q YOU'RE TALKING ABOUT AT THE CORNER?

23 A YES, SIR.

24 Q OKAY. DID YOU PARK THE CAR?

25 A YES, SIR. WE MADE A RIGHT TO PARK THE CAR BETWEEN

1 THE FIRST AND SECOND HOUSE.

2 Q RIGHT AROUND HERE?

3 A YES, SIR.

4 Q OKAY. WHAT HAPPENED AFTER YOU PARKED THE CAR?

5 A WE GOT OUT OF THE CAR, AND WE WALKED DOWN THE STREET.

6 Q OKAY.

7 A TO GO TO PARK.

8 Q WHO GOT OUT OF THE CAR?

9 A ME, PRAYLOW, PARIS, AND POOH.

10 Q OKAY. AND WHAT WERE YOU WEARING? WERE YOU WEARING

11 ANYTHING OVER YOUR FACE?

12 A NO, SIR.

13 Q OKAY. WHAT ABOUT THE OTHERS? WERE THEY WEARING

14 ANYTHING OVER THEIR FACE?

15 A YES, SIR.

16 Q OKAY. WHAT WAS POOH WEARING OVER HIS FACE?

17 A A SCARF, BANDANNA.

18 Q OKAY. WHAT ABOUT PARIS?

19 A SAME THING.

20 Q WHAT ABOUT PRAYLOW?

21 A SAME THING.

22 Q DID YOU HAVE A GUN?

23 A NO, SIR.

24 Q OKAY. DID ANYONE ELSE HAVE A GUN, TO YOUR KNOWLEDGE?

25 A NO, SIR.

1 Q HOW LONG WERE YOU THERE?

2 A WE WERE THERE ABOUT FIVE OR TEN MINUTES.

3 Q OKAY. AFTER FIVE TO TEN MINUTES, WHAT DID YOU DO?

4 A WELL, WE WAS WALKING UP THE STREET. EVERYONE STARTED
5 CLOSING THEIR DOORS, SO WE GOT BACK IN THE CAR AND GOT IN
6 AND LEFT.

7 Q OKAY. SO WHERE DID YOU GO?

8 A I DROPPED PRAYLOW, PRAYLOW AND POOH, OFF IN BELVEDERE
9 SO THEY COULD WALK BACK TO THE CUT TO GO BACK INTO BETHEL
10 BISHOP. THEN I TOOK PARIS HOME.

11 Q DID YOU EVER HAVE A -- COME INTO CONTACT WITH THE
12 POLICE REGARDING THIS CASE?

13 A YES. THE POLICE CAME TO MY HOUSE THAT NEXT MORNING
14 AROUND -- BETWEEN THREE AND FOUR O'CLOCK.

15 Q OKAY. IN THE MORNING?

16 A YES, SIR.

17 Q OKAY. HOW MANY OFFICERS CAME, APPROXIMATELY?

18 A ABOUT TEN.

19 Q ABOUT TEN, OKAY. WHY WERE THEY THERE?

20 A THEY SAID THAT MY CAR WAS SEEN AT THE SCENE OF A
21 MURDER AND THAT THEY MIGHT NEED TO CHECK OUT MY ROOM AND
22 MY CAR.

23 Q OKAY. WHAT WERE THEY GOING TO SEARCH FOR?

24 A THEY SAID THEY WAS LOOKING FOR ANY TYPE OF BULLETS OR
25 A GUN.

1 Q OKAY. DID YOU TELL THEM ABOUT ANY POSSIBLE
2 AMMUNITION?

3 A YES, I DID.

4 Q OKAY. WHAT DID YOU TELL THEM?

5 A I TOLD THEM THAT THERE MIGHT BE A .380 BULLET INSIDE
6 OF THE DOOR.

7 Q INSIDE OF THE DOOR.

8 A OF THE CAR.

9 Q OF THE CAR, MEANING THE WHITE ESCORT?

10 A YES, SIR.

11 Q OKAY. AND WHERE WAS YOUR CAR AT THIS TIME?

12 A PARKED IN FRONT OF MY HOUSE.

13 Q WHAT HAPPENED AFTER THAT? WHERE DID YOU GO AFTER
14 THAT?

15 A AFTER THAT THEY TOLD ME THAT -- AFTER THAT, THEY TOLD
16 ME THAT THEY DIDN'T FIND ANYTHING, BUT I STILL WOULD NEED
17 TO GO THERE, DOWN TO THE COURTHOUSE, THE NEXT DAY.

18 Q AND WHERE DID YOU GO? DO YOU REMEMBER WHERE THEY
19 TOOK YOU?

20 A I REMEMBER THE BUILDING, BUT I CAN'T REMEMBER WHICH
21 STREET IT WAS ON.

22 Q COULD IT HAVE BEEN THE POLICE STATION?

23 A COULD HAVE BEEN, YES, SIR.

24 Q WHEN YOU ARRIVED THERE, DID THEY ASK YOU TO WRITE A
25 STATEMENT?

1 A YES, SIR.

2 Q OKAY. DID THEY -- DO YOU REMEMBER GIVING A
3 STATEMENT?

4 A YES, SIR.

5 Q DO YOU REMEMBER EXACTLY WHAT WAS IN YOUR STATEMENT?

6 A YES, SIR.

7 Q WOULD YOU LIKE A COPY OF YOUR STATEMENT?

8 A YES, SIR.

9 MR. SHARDT: PERMISSION TO APPROACH THE WITNESS?

10 THE COURT: ALL RIGHT.

11 BY MR. SHARDT

12 Q WHAT TIME DID YOU GIVE THIS STATEMENT?

13 A I GAVE THAT STATEMENT AROUND 3:30.

14 Q OKAY. WHO DID YOU GIVE THIS STATEMENT TO, DO YOU
15 REMEMBER?

16 A I GAVE THE STATEMENT TO -- I CAN'T REMEMBER THE --

17 Q WAS IT THAT GENTLEMAN SEATED RIGHT THERE WITH THE
18 MAROON TIE?

19 A YES, SIR.

20 Q DID YOU TALK TO ANY OTHER OFFICERS THAT DAY?

21 A NO, SIR.

22 Q OKAY. BEFORE YOU GAVE THE STATEMENT, DID YOU TALK TO
23 ANY POLICE OFFICERS ABOUT THE CASE?

24 A NO, SIR.

25 Q DID ANY OFFICERS SAY ANYTHING TO YOU BEFORE YOU GAVE

1 THE STATEMENT?

2 A YES, SIR. THEY TOLD ME THAT THEY ALREADY HAD CHRIS
3 LIVERMAN, AND THERE WAS NO NEED TO LIE.

4 Q SO BEFORE YOU GAVE THE STATEMENT, THEY TOLD YOU THAT
5 THEY HAD ARRESTED CHRIS?

6 A YES, SIR.

7 Q LET'S TALK ABOUT THAT STATEMENT FOR A MINUTE. YOU
8 SAID YOU GAVE THAT STATEMENT AT 3:30 A.M.?

9 A YES, SIR.

10 Q ON THE MORNING AFTER, SO WE'RE TALKING ABOUT
11 FIVE-AND-A-HALF HOURS AFTER THE SHOOTING?

12 A YES, SIR.

13 Q OKAY. DID THE POLICE ASK YOU TO SEARCH THE WHITE
14 FORD ESCORT?

15 A YES, SIR.

16 Q OKAY. IN YOUR STATEMENT WHEN YOU TALKED ABOUT IT THE
17 FIRST TIME, THE FIRST TIME YOU WERE GOING BY T.S. MARTIN,
18 ACCORDING YOUR STATEMENT, WHO WAS IN THE WHITE FORD
19 ESCORT?

20 A TRAVIS WOODARD, TRAVIS BANNER, DEMETRIUS BOUCHER, AND
21 PARIS ALEXANDER.

22 Q OKAY. IN YOUR STATEMENT, DO YOU NAME THEM BY NAME?

23 A NO.

24 Q YOU REFER TO THEM AS FOUR FOOTBALL PLAYERS?

25 A YES, SIR.

1 Q OKAY. BUT THAT'S WHO YOU WERE TALKING ABOUT?

2 A YES, SIR.

3 Q OKAY. IN YOUR STATEMENT, DO YOU TALK ABOUT WHO WAS

4 IN THE CAR THE SECOND TIME?

5 A YES, SIR.

6 Q OKAY. WHAT NAMES DID YOU GIVE INVESTIGATOR GRAY THAT

7 SECOND TIME?

8 A POOH, PRAYLOW, PARIS ALEXANDER, AND MYSELF.

9 Q IN THAT STATEMENT, WHEN YOU GAVE THAT STATEMENT, DID

10 INVESTIGATOR GRAY ASK YOU IF CHRISTOPHER LIVERMAN WAS IN

11 THE WHITE FORD ESCORT?

12 A YES, SIR.

13 Q WHAT DID YOU TELL HIM?

14 A NO, SIR.

15 Q AND THAT'S THE TRUTH?

16 A YES, SIR.

17 Q IN THAT STATEMENT, DID INVESTIGATOR GRAY ASK YOU IF

18 CHRISTOPHER LIVERMAN WAS IN YOUR CAR AT ALL THAT NIGHT?

19 A YES, SIR.

20 Q OKAY. WHAT DID YOU TELL HIM?

21 A NO, SIR.

22 Q IS THAT THE TRUTH?

23 A YES, SIR.

24 Q DID INVESTIGATOR GRAY EVER TELL YOU HE DIDN'T BELIEVE

25 YOU?

1 A NO, SIR.

2 Q OKAY. YOU TALK ABOUT WHEN THE POLICE, TEN POLICE
3 OFFICERS, APPROXIMATELY TEN, CAME TO YOUR HOUSE AND THEY
4 ENDED UP PICKING YOU UP, WAS THE WHITE ESCORT -- WHERE WAS
5 THE WHITE ESCORT AT THE TIME?

6 A THE WHITE ESCORT WAS PARKED IN FRONT OF MY YARD.

7 Q AND THE POLICE WERE AWARE OF WHERE IT WAS?

8 A YES, SIR. THEY CHECKED THE CAR ALSO, SIR.

9 Q ARE YOU AWARE OF ANY TESTS THAT WERE DONE ON THE CAR?

10 A NO, SIR.

11 Q DID THEY EVER ENCOUNTER THE CAR?

12 A NO, SIR.

13 Q THEY LEFT IT AT YOUR HOUSE?

14 A YES, SIR.

15 Q BRADY, DO YOU KNOW A PERSON NAMED ROBERT MORRIS?

16 A YES, SIR.

17 Q OKAY. DO YOU KNOW HIS NICKNAME?

18 A WE CALL HIM JUNE.

19 Q OKAY. WHERE IS ROBERT MORRIS NOW?

20 A HE PASSED AWAY ABOUT TWO YEARS AGO.

21 Q HOW OLD WOULD HE BE NOW?

22 A ABOUT 16, 17.

23 MS. FENT: OBJECTION, YOUR HONOR, RELEVANCE.

24 MAY WE APPROACH?

25 THE COURT: SURE.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE, BUT NOT WITHIN THE HEARING, OF THE JURY).
3 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, LET ME
4 TAKE THIS MATTER UP OUTSIDE OF YOUR PRESENCE. DON'T
5 DISCUSS THE CASE. STEP BACK TO YOUR JURY ROOM.

6 EVERYONE ELSE STAY SEATED, PLEASE.

7 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
8 10:55 A.M.)

9 THE COURT: THE QUESTION WAS ASKED, AN OBJECTION WAS
10 MADE.

11 CONTINUE WITH YOUR QUESTIONING, MR. SHARDT, AND THEN
12 I'LL HEAR ARGUMENTS ON THE ISSUE OF RELEVANCY. THAT'S THE
13 BASIS FOR THE OBJECTION.

14 MR. SHARDT: WHERE IS ROBERT MORRIS NOW?

15 THE WITNESS: ROBERT MORRIS PASSED AWAY ABOUT TWO
16 YEARS AGO.

17 MR. SHARDT: OKAY. HOW OLD WOULD HE BE AT THIS TIME?

18 THE WITNESS: SIXTEEN, 17.

19 MR. SHARDT: OKAY. DO YOU KNOW HOW ROBERT MORRIS
20 PASSED AWAY?

21 THE WITNESS: HE WAS KILLED AT THE FAIR IN THE YEAR
22 2004.

23 THE COURT: OKAY. AND ROBERT MORRIS, BEFORE HE
24 PASSED AWAY, WHERE WAS HE STAYING? WHERE DID HE LIVE?

25 THE WITNESS: BETHEL BISHOP.

1 MR. SHARDT: OKAY. WAS HE IN A GANG?

2 THE WITNESS: I DON'T KNOW.

3 MR. SHARDT: WHAT DO YOU KNOW ABOUT THE SHOOTING?
4 WAS THE SHOOTING GANG RELATED?

5 THE WITNESS: FROM WHAT I HEARD IT WAS.

6 MR. SHARDT: DO YOU KNOW AN INDIVIDUAL BY THE NAME OF
7 GREGORY ISAAC?

8 THE WITNESS: YES, SIR.

9 MR. SHARDT: DO YOU KNOW HIS NICKNAME?

10 THE WITNESS: YES, SIR.

11 MR. SHARDT: WHAT IS HIS NICKNAME?

12 THE WITNESS: BEAR.

13 MR. SHARDT: NOW, MR. ISAAC, WHERE IS HE NOW?

14 THE WITNESS: HE ALSO PASSED AWAY.

15 MR. SHARDT: HOW OLD WOULD HE BE NOW?

16 THE WITNESS: HE WOULD BE ABOUT 19 OR 20.

17 MR. SHARDT: OKAY. AND HOW DID HE PASS AWAY?

18 THE WITNESS: HE WAS KILLED IN A CAR ACCIDENT.

19 MR. SHARDT: DO YOU KNOW THE CIRCUMSTANCES OF THAT
20 ACCIDENT?

21 THE WITNESS: HE RAN AWAY FROM THE POLICE.

22 MR. SHARDT: OKAY. AND WHEN DID THIS OCCUR?

23 THE WITNESS: THIS OCCURRED IN THE YEAR 2005.

24 MR. SHARDT: WAS HE IN A GANG?

25 THE WITNESS: I DON'T KNOW.

1 MR. SHARDT: WHERE DID HE STAY?

2 THE WITNESS: BETHEL BISHOP.

3 MR. SHARDT: DO YOU KNOW AN INDIVIDUAL NAMED GREG
4 ISAAC?

5 THE WITNESS: YES, SIR.

6 MR. SHARDT: WHO WAS THAT?

7 THE WITNESS: THAT WAS GREGORY ISSAC'S BROTHER, TWIN
8 BROTHER.

9 MR. SHARDT: OKAY. SO GREGORY ISAAC'S TWIN BROTHER
10 IS GREG ISAAC?

11 THE WITNESS: YES, SIR.

12 MR. SHARDT: DO YOU KNOW OF ANY TATTOOS HE HAS ON HIS
13 BODY?

14 THE WITNESS: YES, SIR.

15 MR. SHARDT: COULD YOU DESCRIBE THAT TATTOO?

16 THE WITNESS: HE HAS A TATTOO OF ROBERT MORRIS AND --
17 HALF OF ROBERT MORRIS AND HALF OF GREGORY ISAAC ON HIS
18 RIGHT ARM.

19 MR. SHARDT: DESCRIBE IT.

20 THE WITNESS: HALF OF THE PICTURE IS HALF OF ROBERT
21 MORRIS'S FACE, AND THE OTHER HALF IS GREGORY ISAAC'S FACE.

22 MR. SHARDT: OKAY. AND WHEN DID HE GET THIS TATTOO
23 PUT ON HIS ARM?

24 THE WITNESS: AFTER HE PASSED AWAY.

25 MR. SHARDT: YOUR HONOR, THAT WOULD BE --

1 THE COURT: AND WHAT ARE YOU SAYING IS THE RELEVANCE
2 TO THE CASE THAT'S BEING TRIED IN THIS COURTROOM?

3 MR. SHARDT: BECAUSE YOUR HONOR, THE STATE HAS
4 BROUGHT WITNESSES UP TO THE JURY, IN FRONT OF THE JURY,
5 THAT HAVE STATED, THAT HAVE PUT IT OUT THERE, THAT
6 CHRISTOPHER LIVERMAN HAS PUT THESE TATTOOS ON HIS FACE
7 OVER THIS TIMEFRAME TO -- AS AN ADMISSION, AS BOASTING,
8 HOWEVER THEY CHARACTERIZE IT, ABOUT THIS SHOOTING THAT
9 HE'S ACCUSED OF.

10 THEY HAVE MADE IT CLEAR THAT THEY GAVE A TIMEFRAME,
11 AND THEY MADE IT CLEAR THAT THEY FELT IT HAPPENED AFTER
12 THE SHOOTING; AND THEREFORE, IT'S RELEVANT.

13 YOUR HONOR, WE ARE PROVIDING AN ALTERNATE EXPLANATION
14 FOR HIS TEARDROPS. ALSO, THESE TEARDROPS ARE AFTER THE
15 DEATH OF THESE INDIVIDUALS WHO LIVED IN HIS NEIGHBORHOOD.

16 WE'VE HEARD TESTIMONY FROM OUR EXPERT. I CAN'T
17 REMEMBER -- I'M ASSUMING WE HEARD IT FROM THE STATE'S
18 EXPERTS, AS WELL, THAT TEARDROP TATTOOS CAN HAVE MANY
19 MEANINGS, ONE OF WHICH WOULD BE TO COMMEMORATE HOMEBOYS,
20 FRIENDS WHO HAVE PASSED AWAY.

21 WE THINK THAT IF THESE TATTOOS ARE RELEVANT TO BE
22 LABELED AS AN ADMISSION TO THE CRIME, THE JURY SHOULD AT
23 LEAST HEAR OTHER EXPLANATIONS FOR WHAT THEY COULD BE AND
24 HEAR THAT THERE WAS, IN FACT, INDIVIDUALS THAT WERE LIVING
25 IN HIS NEIGHBORHOOD THAT WERE HIS AGE THAT ONE WAS --

1 WE'VE HEARD ABOUT CHRIS' CRIMINAL HISTORY, AND WE'VE HEARD
2 THAT GANGS ARE RELATED TO CRIMINAL -- YOU KNOW, LINKED TO
3 CRIMINAL ELEMENT.

4 BOTH OF THEM WERE -- DIED IN VIOLENT MANNERS RELATED
5 TO CRIMES, POSSIBLY GANG RELATED, AND THAT'S SOMETHING --

6 THE COURT: WHERE DOES THAT COME FROM? HE JUST SAID
7 HE DIDN'T KNOW EITHER ONE OF THESE VICTIMS IN THESE OTHER
8 INCIDENTS.

9 MR. SHARDT: THE --

10 THE COURT: ONE WAS FROM A CAR ACCIDENT, I BELIEVE HE
11 SAID?

12 MR. SHARDT: RUNNING FROM THE POLICE.

13 THE COURT: I SUSTAIN THE OBJECTION BASED ON
14 RELEVANCE.

15 ALL RIGHT. BRING THE JURY BACK, PLEASE.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 11:00 A.M.)

18 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

19 THE COURT: ALL RIGHT. YOU MAY CONTINUE, MR. SHARDT.

20 BY MR. SHARDT

21 Q THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

22 BRADY, I JUST HAVE A COUPLE MORE QUESTIONS. DO YOU
23 KNOW CHRISTOPHER LIVERMAN?

24 A YES, SIR.

25 Q OKAY. WHERE IS CHRISTOPHER LIVERMAN? CAN YOU POINT

1 HIM OUT?

2 A HE'S RIGHT THERE (INDICATING).

3 Q HOW DO YOU KNOW HIM?

4 A I KNOW LIVERMAN. HE ATTENDED THE SAME SCHOOL I DID.

5 THE COURT REPORTER: I'M SORRY, I DIDN'T HEAR THE
6 ANSWER.

7 THE WITNESS: I SAID I KNOW CHRIS LIVERMAN. I KNOW
8 CHRIS LIVERMAN. WE'RE FROM THE SAME NEIGHBORHOOD, AND HE
9 ATTENDED THE SAME SCHOOL I DID.

10 BY MR. SHARDT

11 Q DESCRIBE YOUR RELATIONSHIP.

12 A ASSOCIATE.

13 Q OKAY. IS HE A FRIEND?

14 A NOT REALLY, NO.

15 MR. SHARDT: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

16 THE COURT: ALL RIGHT. CROSS-EXAMINE?

17 CROSS-EXAMINATION:

18 BY MS. FENT

19 Q AFTER YOU WENT OVER TO T.S. MARTIN WITH PARIS
20 ALEXANDER, SHEROD PRAYLOW, AND POOH, YOU LEFT DRIVING THAT
21 WHITE ESCORT, DIDN'T YOU?

22 A YES, MA'AM.

23 Q YOU DID NOT RETURN TO T.S. MARTIN IN THAT WHITE
24 ESCORT?

25 A MA'AM?

1 Q DID YOU RETURN TO T.S. MARTIN IN THE WHITE ESCORT?

2 A NO, MA'AM.

3 Q YOU DIDN'T RETURN WITH PARIS ALEXANDER, SHEROD
4 PRAYLOW, OR POOH?

5 A YES, MA'AM. THAT WAS THE SAME TIME, MA'AM.

6 Q ONCE YOU LEFT, AFTER YOU WERE LOOKING FOR THESE TWO
7 BOYS, THE WOMAN IN THE HOUSE YELLS OUT SOMETHING AT POOH,
8 CORRECT?

9 A I DIDN'T HEAR IT.

10 Q YOU DON'T REMEMBER THAT?

11 A NO, MA'AM.

12 Q YOU GET BACK IN THE CAR AND YOU DRIVE BACK OVER TO
13 THE BETHEL BISHOP AREA, CORRECT?

14 A NO, I WENT TO BELVEDERE.

15 Q BELVEDERE. THEN YOU LEFT AND WENT HOME?

16 A NO. I DROPPED PARIS OFF, AND THEN I WENT HOME.

17 Q OKAY. YOU WERE NOT ON T.S. MARTIN DURING THE
18 SHOOTING?

19 A NO, MA'AM.

20 Q YOUR CAR WAS NOT ON T.S. MARTIN DURING THE SHOOTING?

21 A NO, MA'AM.

22 Q AND THAT NIGHT YOU SAW CHRIS LIVERMAN AT THE BETHEL
23 BISHOP?

24 A HE COULD HAVE BEEN THERE.

25 Q IT COULD HAVE BEEN?

1 A HE COULD HAVE BEEN.

2 Q YOU GAVE A STATEMENT TO THE POLICE, RIGHT?

3 A YES, MA'AM.

4 Q YOU SIGNED IT. THAT'S YOUR SIGNATURE ON THE BOTTOM?

5 A YES, MA'AM.

6 Q QUESTION: "DID YOU SEE CHRIS LIVERMAN LAST NIGHT?"

7 AND YOUR ANSWER IS?

8 A YES.

9 Q "HE WAS IN THE BISHOP WITH SIX OTHER PEOPLE." THAT
10 WAS YOUR ANSWER?

11 A YES.

12 MS. FENT: NO FURTHER QUESTIONS.

13 THE COURT: ANY REDIRECT?

14 MR. SHARDT: YES, YOUR HONOR.

15 REDIRECT EXAMINATION:

16 BY MR. SHARDT

17 Q BRADY, WHEN YOU GAVE THIS STATEMENT, WHAT -- DID YOU
18 GIVE -- WAS IT A QUESTION ANSWER FIRST, OR DID YOU GIVE A
19 WRITTEN STATEMENT FIRST?

20 A I GAVE A WRITTEN STATEMENT FIRST.

21 Q OKAY. IN YOUR WRITTEN STATEMENT, WHAT WERE YOU
22 DESCRIBING?

23 A I WAS DESCRIBING WHAT HAPPENED.

24 Q OKAY. WHAT YOU THOUGHT MIGHT BE RELEVANT?

25 A YES, SIR.

1 Q OKAY. IN YOUR WRITTEN STATEMENT, DID YOU EVER
2 MENTION SEEING CHRISTOPHER LIVERMAN?

3 A YES, SIR.

4 Q AND WHEN YOU WROTE THE STATEMENT, DID YOU EVER
5 MENTION IT?

6 A NO, SIR.

7 Q OKAY. YOU JUST LOOKED AT YOUR STATEMENT WHERE YOU
8 SAID YOU SAW CHRIS LIVERMAN?

9 A YES, SIR.

10 Q WAS THAT PART OF YOUR WRITTEN STATEMENT OF WHEN
11 INVESTIGATOR GRAY WAS ASKING QUESTIONS?

12 A THAT WAS WHEN HE WAS ASKING QUESTIONS.

13 Q AND WHAT QUESTIONS DID HE ASK THAT PROMPTED THAT
14 RESPONSE?

15 A "DID I SEE CHRISTOPHER LIVERMAN? DID I SEE
16 CHRISTOPHER LIVERMAN?" I STATED YES.

17 Q OKAY. DID HE ASK YOU SPECIFICALLY IF YOU HAD SEEN
18 ANY OTHER PEOPLE?

19 A NO, SIR.

20 Q OKAY. SO CHRISTOPHER LIVERMAN WAS THE ONLY PERSON HE
21 ASKED ABOUT?

22 A YES, SIR.

23 Q OKAY. AND YOU THINK YOU SAW CHRISTOPHER LIVERMAN IN
24 THE BISHOP?

25 A YES, SIR.

1 Q OKAY. DID HE GET IN THE CAR WITH YOU?

2 A NO, SIR.

3 Q DID HE EVER TRY TO GET IN THE CAR WITH YOU?

4 A NO, SIR.

5 Q DID YOU EVER TRY TO TALK TO HIM?

6 A NO, SIR.

7 MR. SHARDT: I HAVE NO FURTHER QUESTIONS.

8 THE COURT: ANYTHING FURTHER?

9 MS. FENT: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

11 MR. FOREMAN, LADIES AND GENTLEMEN, I KNOW I JUST SENT
12 YOU OUT A FEW MINUTES. WE HAVE NOT HAD A BREAK. WE'RE
13 GOING TO TAKE ABOUT A TEN-MINUTE RECESS. STEP BACK TO
14 YOUR JURY ROOM. DON'T DISCUSS THE CASE. WE'LL GET YOU
15 BACK IN ABOUT TEN MINUTES.

16 EVERYONE ELSE STAY SEATED, PLEASE.

17 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
18 11:07 A.M.)

19 THE COURT: WE'LL RECESS ABOUT TEN MINUTES. LET ME
20 SEE COUNSEL UP HERE FOR SCHEDULING PURPOSES, PLEASE.

21 (WHEREUPON, THERE WAS A BENCH CONFERENCE.)

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: IS THE DEFENSE READY TO PROCEED?

24 MS. FRANKLIN: YES, YOUR HONOR.

25 THE COURT: IS THE STATE READY?

1 MS. CAMPBELL: THE STATE IS READY.

2 THE COURT: ALL RIGHT. GET THE JURY IN PLEASE.

3 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT

4 APPROXIMATELY 11:26 A.M.)

5 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MS. FRANKLIN, YOU MAY CALL YOUR NEXT WITNESS, PLEASE.

8 MS. FRANKLIN: THANK YOU, YOUR HONOR. MAY IT PLEASE

9 THE COURT.

10 THE COURT: YES, MA'AM.

11 MS. FRANKLIN: THE DEFENSE WOULD CALL MR. JEFF

12 HOLLIFIELD.

13 JEFFERY HOLLIFIELD, AFTER BEING DULY

14 SWORN, TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME

16 FOR THE RECORD.

17 THE WITNESS: MY NAME IS JEFFERY MORRIS HOLLIFIELD,

18 H-O-L-L-I-F-I-E-L-D.

19 DIRECT EXAMINATION:

20 BY MS. FRANKLIN

21 Q MR. HOLLIFIELD, COULD YOU PLEASE EXPLAIN TO THE JURY

22 WHAT YOUR OCCUPATION IS?

23 A I OWN AND OPERATE MICROANALYTICAL, WHICH IS A PRIVATE

24 FORENSICS LAB IN GREENVILLE. I DO WORK FOR LOCAL LAW

25 ENFORCEMENT AGENCIES, ATTORNEYS, INSURANCE ADJUSTORS WHO

1 ARE INVESTIGATING FRAUDULENT CLAIMS, AND I ALSO DO
2 CONTAMINATION ANALYSIS AND SMALL PARTICLE IDENTIFICATION
3 FOR THE INDUSTRY. I ALSO TEACH CHEMISTRY AND FORENSIC
4 SCIENCE AT GREENVILLE TECHNICAL COLLEGE AS AN ADJUNCT
5 INSTRUCTOR.

6 Q OKAY. AND COULD YOU PLEASE DESCRIBE YOUR BACKGROUND
7 IN THE AREA OF FORENSIC CHEMISTRY AND TRACE EVIDENCE
8 ANALYSIS?

9 A MY COLLEGE DEGREES ARE IN CHEMISTRY. I FINISHED A
10 BACHELORS IN CHEMISTRY IN '84 AT FURMAN UNIVERSITY, A
11 MASTERS IN CHEMISTRY, ALSO AT FURMAN IN '86. I WORKED AT
12 THE S.L.E.D. CRIME LAB FOR TEN YEARS, FROM '86 TO '96, IN
13 TWO DEPARTMENTS. ONE WAS THE DRUG ANALYSIS DEPARTMENT FOR
14 THREE YEARS AND THE OTHER WAS THE TRACE EVIDENCE
15 DEPARTMENT FOR SEVEN YEARS.

16 I THEN ATTENDED MERCOR RESEARCH INSTITUTE IN CHICAGO
17 FOR ONE YEAR, AND I STUDIED CHEMICAL MICROSCOPY. THAT'S
18 HOW TO USE A MICROPHONE TO DO CHEMICAL ANALYSIS. I EARNED
19 A MASTER'S DEGREE IN CHEMICAL MICROSCOPY. FOR THE LAST
20 NINE YEARS, I'VE DONE PRIVATE FORENSICS WORK IN
21 GREENVILLE.

22 Q OKAY. AND WHAT PROFESSIONAL ASSOCIATIONS DO YOU
23 BELONG TO?

24 A I'M A CIRCUIT SPEAKER FOR THE AMERICAN CHEMICAL
25 SOCIETY AND ALSO A STATE MICROSCOPIC SOCIETY IN ILLINOIS.

1 Q OKAY. AND FOR HOW MANY YEARS HAVE YOU WORKED IN THIS
2 PARTICULAR FIELD?

3 A OVER 20 YEARS.

4 Q HOW MANY TIMES HAVE YOU TESTIFIED AS AN EXPERT?

5 A OVER 150.

6 Q AND IN WHAT COURTS HAVE YOU TESTIFIED?

7 A MAGISTRATE'S COURTS, GENERAL SESSIONS COURTS, AND
8 ALSO FEDERAL COURTS. MOST OF THOSE WOULD BE IN GENERAL
9 SESSIONS.

10 MS. FRANKLIN: OKAY. AND YOUR HONOR, AT THIS TIME
11 THE DEFENSE WOULD TENDER MR. JEFF HOLLIFIELD AS AN EXPERT
12 IN THE FIELD OF TRACE EVIDENCE ANALYSIS.

13 THE COURT: ANY OBJECTION OR CROSS-EXAMINATION TO
14 QUALIFICATIONS?

15 MS. CAMPBELL: NO, SIR.

16 THE COURT: THE WITNESS IS FOUND TO BE QUALIFIED AS
17 AN EXPERT IN THE FIELD OF TRACE EVIDENCE ANALYSIS.

18 YOU MAY CONTINUE.

19 BY MS. FRANKLIN

20 Q NOW, ARE GUNSHOT RESIDUE TESTS A GENERALLY ACCEPTED
21 METHOD IN THE FORENSICS COMMUNITY?

22 A THEY ARE.

23 Q AND HOW LONG HAVE THESE TESTS BEEN AROUND FOR?

24 A ONE FORM OR ANOTHER OF THE TEST HAS BEEN USED FOR
25 OVER 40 YEARS. THE TESTS HAVE METHODS WHERE TESTING

1 TECHNIQUES HAVE CHANGED OVER THE YEARS AND OVER THE
2 DECADES. THE CURRENT TECHNIQUES THAT ARE USED, AND THERE
3 ARE TWO PRIMARY ONES, HAVE BEEN USED SINCE THE LATE '80S.

4 Q AND ARE THESE TESTS PARTICULARLY SENSITIVE?

5 A ONE IS MORE SENSITIVE THAN THE OTHER, BUT YES. ONE
6 TEST CALLED THE I.C.P. TEST IS EXTREMELY SENSITIVE. IT
7 CAN DETECT PARTS PER TRILLION.

8 Q OKAY. OKAY. AND HAVE YOU HAD OCCASION TO REVIEW THE
9 MATERIALS IN RELATION TO THIS PARTICULAR CASE?

10 A I HAVE. YOUR OFFICE CONTACTED ME ROUGHLY A YEAR AGO
11 AND SUBMITTED TO ME DOCUMENTATION, MOSTLY FROM THE
12 S.L.E.D. LAB: S.L.E.D. LAB REPORTS, DATA SHEETS THAT ARE
13 GENERATED BY THE INSTRUMENTATION; WORKSHEETS; INCIDENT
14 REPORTS, AND THAT SORT OF THING.

15 Q OKAY. SO YOU HAVE HAD THE OPPORTUNITY TO REVIEW THE
16 RAW DATA, AS WELL AS THE CONCLUSIONS?

17 A YES. I'VE SEEN NOT JUST THE FORMAL REPORTS THAT ARE
18 GENERATED AND PUBLISHED BUT ALSO THE RAW DATA FROM THE
19 LABORATORY ON WHICH THOSE REPORTS ARE BASED.

20 Q OKAY. COULD YOU PLEASE EXPLAIN TO THE JURY A BIT
21 ABOUT GUNSHOT RESIDUE LIKE WE'RE TALKING ABOUT HERE?

22 A SURE. WHEN A WEAPON IS DISCHARGED, OBVIOUSLY, A LOT
23 OF SMOKE AND DEBRIS IS GOING TO COME OUT OF THE GUN. A
24 LOT OF THAT IS GOING TO COME OUT THE END OF THE BARREL OF
25 THE GUN, BUT IT'S ALSO GOING TO COME OUT ANY OPENING IN

1 THE GUN, WHETHER IT'S AROUND THE TRIGGER OR WHERE THE
2 EJECTION PORT IS OR AROUND THE CYLINDER, IF IT'S A
3 REVOLVER.

4 ANY OPENING OF THE GUN IS GOING TO EMIT SMOKE AND
5 DUST AND WHAT WE CALL GUNSHOT RESIDUE, GUNPOWDER --
6 GUNPOWDER -- GUN PRIMER RESIDUE. THAT'S GOING TO BE
7 DEPOSITED ON ANYTHING THAT'S EITHER TOUCHING THE GUN OR IN
8 CLOSE VICINITY OF THE GUN, SUCH AS THE SHOOTER'S HANDS.

9 SO THE GUN PRIMER AND GUNPOWDER DEPOSITED ON
10 SOMEONE'S HANDS OR CLOTHING, PERHAPS, AND THEN THERE ARE
11 TECHNIQUES TO COLLECT THIS MATERIAL FROM THE HANDS AND
12 THEN SUBJECTED TO LABORATORY TESTING.

13 WHAT THE TESTS ARE FOR IS TO -- THE TESTS ARE
14 DESIGNED TO DETECT THE METALS THAT ARE PRESENT IN THE GUN
15 PRIMER MATERIAL. THREE PREDOMINANT METALS THAT ARE
16 PRESENT ARE LEAD, BARIUM, AND ANTIMONY, AMONG OTHER
17 THINGS.

18 Q OKAY. AND WHAT ARE THE GENERAL G.S.R. THRESHOLDS
19 THAT S.L.E.D. USES?

20 A WELL, THERE ARE TWO. THERE ARE TWO SEPARATE TESTS
21 THAT ARE USED. WHEN SAMPLES ARE COLLECTED, THEY USE BOTH
22 AN ADHESIVE STUB LIFT, AND THAT'S SWABBED ACROSS THE
23 VARIOUS AREAS OF THE HANDS AND COLLECTED. THAT'S
24 SUBMITTED TO -- OR THAT'S ANALYZED BY ONE PARTICULAR
25 INSTRUMENT, A SCANNING ELECTRON MICROPHONE.

1 THEN THERE ARE ALSO SOME Q-TIPS IN THE KIT. THOSE
2 ARE USED TO SWAB THE INDIVIDUAL'S HANDS, BOTH PALMS AND
3 BACKS. THOSE ARE TESTED BY ANOTHER TECHNIQUE, ANOTHER
4 INSTRUMENT, AND THAT'S THE TECHNIQUE THAT WAS USED IN THIS
5 CASE WITH THE Q-TIPS. THOSE WERE TESTED BY THE I.C.P.
6 METHOD. IT IS A VERY SENSITIVE TEST.

7 THE LEVELS THAT YOU'RE ASKING ABOUT THAT HAVE TO BE
8 PRESENT TO INDICATE THAT IT'S MOST LIKELY COMING FROM A
9 WEAPON, A FIRED WEAPON, ARE 200 PARTS PER BILLION FOR
10 LEAD, 200 PARTS PER BILLION FOR BARIUM, AND 20 PARTS PER
11 BILLION FOR ANTIMONY.

12 Q OKAY. AND HOW ARE THESE THRESHOLDS DEVELOPED? I
13 MEAN, HOW ARE THEY DEVELOPED?

14 A THOSE THRESHOLDS, AS I SUGGESTED, ARE DISTINGUISHED
15 FROM ENVIRONMENTAL LEVELS. THESE METALS ARE FOUND IN
16 COMMERCIAL AND CONSUMER PRODUCTS, AND SOME OF THOSE METALS
17 ARE GOING TO BE IN COMMON EVERYDAY OBJECTS THAT ALL OF US
18 HANDLE, SO SOME OF US WOULD HAVE SOME OF THESE METALS ON
19 OUR HANDS.

20 THOSE METALS ARE IN THINGS LIKE MATCHES, COSMETICS,
21 WOOD, PHARMACEUTICAL PRODUCTS, AUTOMOBILE PARTS LIKE CAR
22 BATTERIES, BRAKE PADS, BALL BEARINGS, PAINTS.

23 BECAUSE THOSE THINGS ARE IN COMMON EVERYDAY OBJECTS,
24 THERE HAS TO BE A THRESHOLD ESTABLISHED BY THE LABORATORY,
25 AS I SAID, TO INDICATE THAT IT'S FROM GUN PRIMER AND NOT

1 SOME COMMON EVERYDAY OBJECT.

2 IF IT'S COMING FROM GUN PRIMER, THEN THE LEVELS ARE
3 GOING TO BE EXPECTED TO BE MUCH HIGHER. THE LEVELS THAT
4 ARE ESTABLISHED ARE BASED ON IN-HOUSE TESTING WHERE THE
5 S.L.E.D. ANALYSTS TEST FIRE KNOWN WEAPONS, KNOWN CALIBER
6 WEAPONS, KNOWN AMMUNITION, AND THEN TEST THEIR HANDS AND
7 SEE WHAT THOSE RESULTS ARE.

8 IT'S ALSO BASED ON DATA FROM CASE WORK, JUST OVER THE
9 LAST SEVERAL DECADES OF CASE WORK, CASE HISTORY, AND
10 PARTICULARLY SUICIDES WHERE IT'S 99 PERCENT CERTAIN THAT
11 THE PERSON DID FIRE A WEAPON.

12 Q OKAY. AND WHEN THEY'VE DEVELOPED THESE STANDARDS, I
13 MEAN, ARE THEY TAKING INTO CONSIDERATION BOTH RIFLES AND
14 PISTOLS?

15 A IT WOULD INCLUDE BOTH, YEAH, HANDGUNS, AND LONG ARM
16 GUNS, SHOTGUNS, RIFLES, REVOLVERS, SEMIAUTOMATIC WEAPONS,
17 ALL TYPES OF WEAPONS.

18 Q OKAY. SO WHEN YOU'RE LOOKING AT THIS 200 PARTS PER
19 BILLION OR THIS 20 PARTS PER BILLION, THAT IS FOR BOTH
20 RIFLES AND PISTOLS?

21 A I DON'T -- I'M NOT AWARE OF ANY PROTOCOL OR POLICY
22 THAT S.L.E.D. HAS THAT DIFFERENTIATES THE THRESHOLD LEVELS
23 FROM ONE GUN TO ANOTHER.

24 Q OKAY. AND CAN YOU TELL THE JURY HOW WHAT YOU
25 ANALYZED WITH RESPECT TO THIS CASE RELATES TO THOSE

1 S.L.E.D. THRESHOLDS?

2 A THE DATA GENERATED IN THIS CASE FOR MR. LIVERMAN, THE
3 METALS THAT I MENTIONED ARE PRESENT ON SOME OF THE AREAS
4 OF HIS HANDS; HOWEVER, THEY ARE EXTREMELY LOW. THEY ARE
5 WELL BELOW WHAT WOULD BE CONSIDERED THE THRESHOLD TO
6 INDICATE THAT A PERSON FIRED A WEAPON.

7 AS I SAID, THE LEAD THRESHOLD IS 200 PARTS PER
8 BILLION. THE HIGHEST ONE THAT HE EXHIBITS IS 117. THE
9 OTHERS WERE LOWER. THE BARIUM THRESHOLD OF 200 PARTS PER
10 BILLION, IF YOU SUBTRACT THE CONTROL SAMPLE WHICH IS A
11 SAMPLE TAKEN FROM SOME PART OF THE BODY OTHER THAN THE
12 HANDS TO INDICATE ENVIRONMENTAL LEVELS, IF YOU SUBTRACT
13 THAT, THERE'S NO BARIUM AT ALL ON THE HANDS. THEN THE
14 ANTIMONY LEVELS ARE THREE, THREE, THREE, AND ONE. THE
15 THRESHOLD IS 20 TO INDICATE IF SOMEONE HAS FIRED A WEAPON
16 OR IF IT'S FROM GUNSHOT RESIDUE.

17 Q AND WHEN THE THRESHOLD IS THE 200 PARTS PER BILLION,
18 THE STANDARD, WHAT SORTS OF THINGS ARE TAKEN INTO
19 CONSIDERATION WHEN THOSE STANDARDS ARE DEVELOPED?

20 A AS I SAID, THOSE THRESHOLDS ARE BASED ON CASE
21 HISTORIES, AND ONE OF THE THINGS THAT THE ANALYST LOOKS AT
22 IN THE CASE HISTORIES ARE HOW RECENTLY OR HOW TIMELY THE
23 SAMPLES WERE COLLECTED, BECAUSE ON A LIVING INDIVIDUAL,
24 THE RESIDUE LEVELS DO DECREASE, JUST THROUGH BODY
25 FUNCTIONS LIKE PERSPIRATION AND GENERAL EVERYDAY ACTIVITY,

1 EATING, DRIVING A CAR, CHANGING CLOTHES. IT IS GOING TO
2 DIMINISH.

3 THOSE THINGS ARE TAKEN INTO CONSIDERATION WHEN THE
4 THRESHOLD IS ESTABLISHED AND THE TIMEFRAME IS ESTABLISHED.
5 AS FAR AS --

6 Q AND WHAT IS THE TIMEFRAME?

7 A AS FAR AS I KNOW, THE TIMEFRAME THAT S.L.E.D. STILL
8 USES, OR AT LEAST USED TO USE, IS SIX HOURS, WHICH MEANS
9 THAT THE SAMPLES ARE ONLY GOING TO BE TESTED IF THEY'RE
10 TAKEN WITHIN SIX HOURS FROM THE TIME OF THE INCIDENT.

11 IF THEY'RE TAKEN BEYOND THAT TIMEFRAME, CHANCES ARE A
12 LOT HIGHER THAT THE RESIDUE WOULD BE LOST OR DIMINISHED
13 OVER TIME ON A LIVING INDIVIDUAL. THAT'S NOT TRUE WITH A
14 DECEASED INDIVIDUAL.

15 Q OKAY. SO WHEN THIS INITIAL -- THESE INITIAL
16 THRESHOLDS WERE DEVELOPED, THE 200 PARTS PER BILLION AND
17 THE SIX HOURS, THEY WERE TAKING INTO CONSIDERATION
18 EXTERNAL FACTORS, THINGS LIKE SWEATING OR BASICALLY JUST
19 RUBBING OFF ON YOUR POCKETS. WERE THESE THINGS TAKEN INTO
20 CONSIDERATION?

21 A THAT'S MY UNDERSTANDING, YES.

22 Q SO MIGHT YOU STILL CONTINUE TO FIND G.S.R. ON
23 SOMEBODY'S HANDS, SAY, AFTER SIX HOURS?

24 A YES. THERE'S NOTHING MAGICAL ABOUT SIX HOURS.
25 IT'S -- LIKE I SAID, IT'S BASED ON CASE HISTORIES,

1 IN-HOUSE STUDIES. YES, IT'S POSSIBLE TO TAKE PRIMER
2 RESIDUE BEYOND SIX HOURS. IT COULD BE -- IT'S GOING TO BE
3 DIMINISHED MORE IN SOME CASES THAN OTHERS.

4 THAT IS NOT A STANDARDIZED TIMEFRAME, AND THEY ARE
5 NOT STANDARDIZED NATIONALLY. VARIOUS STATES USE DIFFERENT
6 THRESHOLDS AND DIFFERENT TIMEFRAMES. THE F.B.I. MIGHT USE
7 A DIFFERENT TIME FRAME. AGAIN, THEY'RE BASED ON CASE
8 HISTORIES AND IN-HOUSE STUDIES AND ARE INCORPORATED INTO
9 POLICIES AND PROCEDURES OF FORENSIC LABORATORIES.

10 Q OKAY. AND COULD SOMEBODY HAS A POSITIVE G.S.R.
11 LEVEL, EVEN IF THAT PERSON HAD HANDLED A WEAPON THAT HAD
12 ALREADY BEEN FIRED?

13 A YES. IF A WEAPON IS FIRED, OF COURSE, THERE'S GOING
14 TO BE A LOT OF RESIDUE ON THE GUN ITSELF. IF YOU TOUCH
15 THAT, WHETHER IT'S DURING THE ACT OR AFTERWARDS, YOU
16 CERTAINLY ARE GOING TO PICK UP A SIGNIFICANT AMOUNT OF
17 GUNSHOT RESIDUE.

18 YOU WILL ONLY SEE IT, THOUGH, ON THE PALMS OF THE
19 HANDS AS OPPOSED TO THE BACKS OF THE HANDS, AND THOSE
20 SAMPLES ARE TAKEN SEPARATELY.

21 IF SOMEONE FIRES A WEAPON, YOU'RE GOING TO EXPECT TO
22 FIND IT ON THE BACKS OF THE HANDS, OR HAND, IN ADDITION TO
23 BOTH PALM AND BACK, BUT IF IT'S JUST ON -- IF IT'S JUST
24 FROM HANDLING A FIRED WEAPON OR A DIRTY WEAPON, YOU WOULD
25 TYPICALLY EXPECT TO SEE THAT ONLY ON THE PALMS AND NOT ON

1 THE BACKS.

2 Q OKAY. BUT -- SO SOMEBODY WHO HAS HANDLED A RECENTLY
3 FIRED WEAPON, YOU WOULD STILL POSSIBLY EXPECT TO SEE SOME
4 ELEVATED G.S.R. LEVELS?

5 A SURE, AT LEAST ON THE PALM, YES.

6 Q WHAT ABOUT SWEATY HANDS? WILL SWEATY HANDS REDUCE
7 THE LEVEL OF G.S.R. THAT'S PRESENT ON THESE HANDS?

8 A YES, PERSPIRATION, BODY FUNCTIONS, BLOOD, WHICH IS
9 MOSTLY WATER, COULD POTENTIALLY DISSOLVE MOST OF THE
10 RESIDUE OR DIMINISH IT, AS IT'S WIPED OFF. AGAIN, THAT --
11 MY UNDERSTANDING IS THAT'S TAKEN INTO ACCOUNT WHEN THESE
12 THRESHOLDS ARE ESTABLISHED.

13 Q AND IF SOMEBODY WERE TO REMOVE A SHIRT AFTER THEY
14 FIRED A RIFLE TEN TIMES, WOULD THAT ALSO REMOVE THE TRACES
15 OF G.S.R.?

16 A IT WOULD REMOVE SOME. ANYTIME YOU TOUCH YOUR HANDS
17 OR ANOTHER OBJECT, THERE'S THE POTENTIAL TO TRANSFER
18 WHATEVER RESIDUE IS ON YOUR HANDS TO THAT OTHER OBJECT.
19 OBVIOUSLY, THE MORE ACTIVITY, THE MORE IS GOING TO BE
20 TRANSFERRED.

21 Q OKAY. BUT YOU WOULD STILL EXPECT TO SEE LEVELS
22 CONSISTENT WITH POSITIVE G.S.R. TESTS?

23 A IF THE SAMPLES ARE TAKEN IN A TIMELY MANNER, THEN
24 YEAH, THAT'S THE KEY. I WOULD EXPECT TO SEE ELEVATED
25 LEVELS, ESPECIALLY ON A MULTIPLE-SHOT INCIDENT WITHIN THAT

1 TIMEFRAME.

2 Q SO IF SOMEBODY FIRES A WEAPON, SAY, TEN TIMES, I
3 MEAN, WOULD YOU EXPECT TO SEE MORE G.S.R. THAN IF SOMEBODY
4 FIRED IT TWICE OR ONCE?

5 A IT'S CUMULATIVE, YES.

6 Q SO IT IS CUMULATIVE. DO YOU HAVE ANY OPINION
7 REGARDING WHETHER CHRISTOPHER LIVERMAN WASHED HIS HANDS IN
8 THE HOURS BEFORE HE WAS DETAINED?

9 MS. CAMPBELL: OBJECTION, YOUR HONOR. I BELIEVE
10 THAT'S OUTSIDE THE SCOPE OF EXPERTISE.

11 MS. FRANKLIN: YOUR HONOR, I THINK THAT'S EXACTLY
12 WITHIN HIS FIELD OF EXPERTISE. HE'S SEEN ALL THE RAW DATA
13 AND THE DATA INCLUDED -- PROVIDED TO US BY THE SOLICITOR'S
14 OFFICE.

15 THE COURT: OVERRULED. HE MAY ANSWER THE QUESTION.

16 THE WITNESS: I DO HAVE AN OPINION ABOUT THE HAND
17 WASHING. IN MY OPINION, HE HAD NOT WASHED HIS HANDS
18 IMMEDIATELY PRIOR TO THE TAKING OF THE SAMPLES. THE
19 REASON IS BECAUSE THERE ARE SOME LEVELS, SOME SMALL
20 LEVELS, OF ANTIMONY AND LEAD ON THE HANDS.

21 IF SOMEONE WASHES THEIR HANDS, THE RESIDUE WOULD BE
22 COMPLETELY GONE. YOU WOULD LITERALLY SEE ZEROS IN THE RAW
23 DATA.

24 BY MS. FRANKLIN

25 Q AND THE METAL LEVELS THAT YOU DO FIND ON

1 MR. LIVERMAN'S HANDS, I MEAN WHAT ARE THEY CONSISTENT
2 WITH?

3 A THESE LEVELS ARE WELL BELOW THE THRESHOLD LEVELS, AND
4 IN MY OPINION ARE CONSISTENT WITH WHAT YOU WOULD EXPECT TO
5 FIND ON A PERSON'S HANDS WHO HAS BEEN EXPOSED TO EVERYDAY
6 OBJECTS, THE ENVIRONMENT, BUT NOT NECESSARILY HAVING FIRED
7 A WEAPON.

8 Q AND IF THE STATE HAD ANY CONCERN ABOUT THE LEAD
9 LEVELS ON CHRISTOPHER LIVERMAN'S LEFT PALM, IS THERE ANY
10 ADDITIONAL TESTS THAT THEY COULD HAVE RUN?

11 A THE LEAD LEVEL ON THE LEFT PALM IS THE HIGHEST LEAD
12 LEVEL. YES, THE SECOND TEST, THE ADDITIONAL TEST THAT I
13 MENTIONED PREVIOUSLY, THE MICROSCOPE TEST, COULD BE
14 PERFORMED.

15 I DON'T KNOW THAT THOSE SAMPLES WERE TAKEN IN THIS
16 CASE. I ASSUME THEY WERE. MOST AGENCIES USE A
17 COMBINATION KIT, BOTH THE ADHESIVE LIFT AND THE Q-TIP.

18 IF THEY WERE BOTH TAKEN, THEN THE ADHESIVE SAMPLE,
19 YES, COULD BE SUBJECTED TO THE MICROSCOPICAL TEST FOR
20 FURTHER ANALYSIS. THE PURPOSE OF DOING THAT WOULD BE
21 BECAUSE THAT TEST IS MORE DEFINITIVE. IT'S NOT AS
22 SENSITIVE, SO YOU MAY MISS IT. IF YOU DO DETECT IT THERE,
23 IT'S MORE DEFINITIVE.

24 THE REASON IS BECAUSE YOU'RE ACTUALLY LOOKING
25 MICROSCOPICALLY AT THE PARTICLE. WHAT YOU'RE LOOKING FOR

1 IS A PARTICULAR SIZED PARTICLE THAT IS SPHERICAL OR ROUND
2 IN SHAPE, AND THEN PARTICLE IS X-RAYED. YOU HAVE ALL
3 THREE METALS PRESENT IN ONE SINGLE ENTITY, ONE SINGLE
4 PARTICLE. THAT IS DEFINITIVE FOR GUNSHOT RESIDUE.

5 Q BUT IN THIS CASE, I MEAN, WOULD YOU EVER RUN THAT
6 SECOND TEST IF YOU HAD A NEGATIVE G.S.R. ON THE FIRST
7 TEST?

8 A USUALLY NOT. IT DEPENDS ON THE CASE. IF YOU HAVE A
9 SUSPECTED SUICIDE, FOR INSTANCE, AND YOU RUN THE Q-TIP
10 TEST AND IT'S NEGATIVE, THEN YOU DEFINITELY ARE GOING TO
11 WANT TO RUN THE ADHESIVE TEST TO LOOK FOR GUNSHOT RESIDUE.

12 IF YOU GET A POSITIVE ON THE Q-TIP TEST, YOU CAN
13 PROCEED WITH THE SECOND TEST BECAUSE IT'S MORE DEFINITIVE,
14 BUT TYPICALLY, WHEN YOU DO NOT FIND IT OR DEFECT THE
15 GUNSHOT RESIDUE WITH THE Q-TIP TEST, CHANCES ARE YOU'RE
16 NOT GOING TO FIND ANYTHING ON THE ADHESIVE TEST. IT'S NOT
17 AS SENSITIVE.

18 Q BASED ON THE G.S.R. TEST IN YOUR POSSESSION AND THE
19 ACCOMPANYING DATA, WHAT IS YOUR CONCLUSION?

20 A BASED ON THE RAW DATA, THE LEVELS FOR ALL THREE
21 METALS ARE WELL BELOW THE THRESHOLD LEVELS, AND THIS
22 PARTICULAR SET OF SAMPLES WAS TAKEN WELL WITHIN THE
23 SIX-HOUR TIMEFRAME. THEY WERE TAKEN WITHIN THREE HOURS.

24 THE DEFENDANT WAS ACTUALLY IN A CONTROLLED
25 ENVIRONMENT LESS THAN 30 MINUTES AFTER THE INCIDENT. SO

1 HE'S EITHER IN A CONTROLLED ENVIRONMENT OR THE SAMPLES ARE
2 TAKEN WELL WITHIN THE SIX-HOUR TIMEFRAME.

3 BASED ON THAT INFORMATION AND THE DATA GENERATED BY
4 THE LAB INSTRUMENTATION, MY CONCLUSION IS THAT IT'S
5 CONSISTENT WITH ENVIRONMENTAL LEVELS. IT IS NOT
6 CONSISTENT WITH SOMEONE WHO HAS RECENTLY FIRED A WEAPON.
7 IN OTHER WORDS, I AGREE WITH THE S.L.E.D. REPORT THAT
8 THESE LEVELS DO NOT INDICATE THAT THIS PERSON FIRED A
9 WEAPON.

10 MS. FRANKLIN: OKAY. I HAVE NO FURTHER QUESTIONS,
11 YOUR HONOR.

12 THE COURT: ALL RIGHT. CROSS-EXAMINE?

13 MS. CAMPBELL: YES, SIR.

14 CROSS-EXAMINATION:

15 BY MS. CAMPBELL

16 Q MR. HOLLIFIELD, YOU LEFT S.L.E.D., I THINK YOU SAID
17 TEN YEARS AGO?

18 A '96, UH-HUH.

19 Q AND YOU LEFT TO DO PRIVATE PRACTICE?

20 A THAT'S CORRECT.

21 Q SO YOU'RE NOW HIRED TO TESTIFY IN CERTAIN CASES?

22 A YES.

23 Q AND YOU'RE PAID?

24 A I'M HIRED TO -- OF COURSE, THAT'S MY PROFESSION. I'M
25 HIRED TO REVIEW INFORMATION ON CASE FILES, CASE WORK, AND

1 THEN TESTIFY ON MY OPINIONS, INCLUDING WORK THAT I DO FOR
2 THE MONTANA STATE CRIME LAB.

3 Q OKAY. AS YOU SIT HERE TODAY, YOU ARE GETTING PAID,
4 WILL BE PAID?

5 A I'VE BEEN ON THIS CASE FOR A YEAR AND TO DATE HAVE
6 NOT RECEIVED ONE PENNY.

7 Q YOU HAVEN'T BILLED THEM YET. YOU WILL BE PAID; IS
8 THAT CORRECT?

9 A THE WAY THE PAY WORKS IS THAT --

10 Q CAN YOU ANSWER THE QUESTION, AND THEN YOU CAN
11 EXPLAIN?

12 A WHEN I COMPLETE A CASE, I SUBMIT AN INVOICE TO THE --
13 MS. CAMPBELL: YOUR HONOR.

14 THE WITNESS: -- TO THE ATTORNEY.

15 THE COURT: WAIT JUST A MINUTE. ANSWER THE QUESTION
16 AND THEN YOU CAN EXPLAIN.

17 BY MS. CAMPBELL

18 Q YES OR NO?

19 A I AM BEING PAID FOR MY SERVICES, ABSOLUTELY. THIS IS
20 MY PROFESSION.

21 Q OKAY. AND IT'S BEEN TEN YEARS SINCE YOU HAVE BEEN IN
22 A FORENSIC LABORATORY AT S.L.E.D.?

23 A IT'S BEEN TEN YEARS SINCE I WAS AN EMPLOYEE AT THE
24 S.L.E.D. LABORATORY, YES.

25 Q OKAY. AND DO YOU KNOW AGENT ILA SIMMONS?

1 A I HAVE RUN INTO HER IN COURT. I HAVE NOT BEEN
2 FORMALLY INTRODUCED TO HER.

3 Q AND YOU DIDN'T DO ANY TESTING ON THESE KITS, DID YOU?

4 A NO. I DID NOT DO THE LABORATORY TESTING. I REVIEWED
5 THE DATA THAT THE S.L.E.D. LAB HAD TESTED AND RENDERED AN
6 OPINION ON THAT.

7 Q OKAY. AND WHEN YOU JUST TESTIFIED, YOU TESTIFIED TO
8 WHAT IT'S CONSISTENT WITH, BUT YOU AREN'T GOING TO STAND
9 BEFORE THIS JURY AND SAY THAT CHRIS LIVERMAN DIDN'T SHOOT
10 A GUN ON THAT NIGHT, ARE YOU?

11 A NO. I'M NOT GOING TO SIT HERE AND SAY THAT HE
12 ABSOLUTELY DID NOT FIRE A GUN. THERE ARE 30 MINUTES THAT
13 ARE UNACCOUNTED FOR. I DON'T KNOW, AND I HAVE NO WAY OF
14 KNOWING, WHAT THE ACTIVITY WAS DURING THAT 30 MINUTES.

15 WHAT I DO KNOW IS THAT THE TIMEFRAME IN WHICH THESE
16 SAMPLES WERE COLLECTED WAS AN EXTREMELY -- THEY WERE
17 COLLECTED WITHIN AN EXTREMELY TIMELY MANNER, AND THE TEST
18 IS NEGATIVE.

19 Q OKAY. AND THAT'S WHAT WE KNOW. YOU JUST TESTIFIED
20 IN YOUR DIRECT TESTIMONY THAT ONCE A PERSON GETS -- MAY
21 GET GUNSHOT RESIDUE ON THEIR HANDS, THAT EVEN JUST WITH
22 GENERAL ACTIVITY, AS EVERY MOMENT PASSES, IT DIMINISHES.

23 A ON A LIVING INDIVIDUAL, IT'S GOING TO GRADUALLY
24 DECREASE FROM THE POINT OF THE INCIDENT TO THE TIME
25 THEY'RE COLLECTED, SURE.

1 Q AND IN THIS CASE -- FIRST OF ALL, LET ME GO -- THERE
2 ARE FACTORS THAT ARE INVOLVED IN WHETHER OR NOT SOMEONE IS
3 GOING TO HAVE GUNSHOT RESIDUE ON THEIR HANDS IF THEY FIRED
4 A GUN. IS THAT TRUE?

5 A THAT THERE ARE FACTORS?

6 Q YES.

7 A WELL, ONE IS WHETHER OR NOT THEY FIRED A GUN. THAT'S
8 ONE FACTOR, AND THEN THE ENVIRONMENT, THE ENVIRONMENTAL
9 CONDITIONS I ASSUME IS WHAT YOU'RE REFERRING TO, ARE
10 ADDITIONAL FACTORS THAT ARE ALSO CONSIDERED. THAT'S
11 EXACTLY WHY S.L.E.D. HAS ESTABLISHED THESE THRESHOLD
12 LEVELS TO DIFFERENTIATE POSITIVE AND POSITIVE. THAT'S
13 EXACTLY WHY THEY ESTABLISHED THE SIX-HOUR TIMEFRAME,
14 BECAUSE THERE ARE CERTAIN CONDITIONS THAT ARE UNKNOWN.
15 THE ENVIRONMENT IS UNKNOWN. THE ACTIVITY IS UNKNOWN UP
16 UNTIL THOSE SAMPLES ARE COLLECTED.

17 Q I WANT TO TALK ABOUT SOME KNOWN ACTIVITIES. IF A
18 PERSON IS SWEATING PROFUSELY, WOULD THAT AFFECT WHETHER OR
19 NOT GUNSHOT RESIDUE MIGHT COME OFF OF THEIR HANDS?

20 A IF SOMEONE PERSPIRES, YES, THAT IS GOING TO AFFECT
21 IT, AND THAT'S TAKEN INTO ACCOUNT.

22 Q IF A PERSON IS RUNNING THROUGH A WOODED AREA, WOULD
23 THAT AFFECT WHETHER OR NOT THERE'S GUNSHOT RESIDUE STILL
24 ON THEIR HANDS THREE HOURS LATER?

25 A ANY ACTIVITY ON A LIVING INDIVIDUAL IS GOING TO

1 DIMINISH THROUGH THE AMOUNT OF RESIDUE.

2 Q IF A PERSON REMOVES A SHIRT OVER THEIR HEAD AND PULLS
3 IT DOWN OVER THEIR HANDS, WOULD THAT AFFECT WHETHER OR NOT
4 THERE IS GUNSHOT RESIDUE ON THEIR HANDS?

5 A I DON'T KNOW THAT THAT WOULD AFFECT IT SIGNIFICANTLY.
6 THAT'S -- JUST TAKING THE SHIRT OFF IS GOING TO AFFECT IT
7 LESS SIGNIFICANTLY THAN, SAY, WIPING THEIR HANDS ON A
8 SHIRT OR TOWEL REAL HARD.

9 Q AND I'LL GET TO THAT IN A MINUTE. IT COULD AFFECT
10 WHETHER OR NOT THEY HAVE GUNSHOT RESIDUE?

11 A IT COULD.

12 Q AND WOULD GETTING DOWN ON THE GROUND AND THE PERSON
13 BEING HANDCUFFED, THE POLICE TOUCHING THEIR HANDS, COULD
14 THAT REMOVE GUNSHOT RESIDUE?

15 A NOT ONLY CAN IT REMOVE RESIDUE, IT CAN ALSO
16 CONTAMINATE THE INDIVIDUAL. IF AN OFFICER CUFFS A
17 SUSPECT -- OFFICERS TYPICALLY WEAR WEAPONS. THEY MAY HAVE
18 LOADED A WEAPON OR HOLSTERED A WEAPON EARLIER THAT DAY OR
19 HANDLED THAT WEAPON, SO YOU COULD HAVE CONTAMINATION, AS
20 WELL AS RESIDUE BEING TRANSFERRED FROM THE SUSPECT TO THE
21 OFFICER. THAT COULD WORK BOTH WAYS.

22 Q AND IF THE PERSON JUST TAKES THEIR HANDS AND WIPES
23 THEM ON THEIR PANTS, THAT COULD REMOVE IT?

24 A AS I SAID, ANYTHING YOU TOUCH, THERE'S POTENTIAL
25 TRANSFER. ANY ACTIVITY FROM THE TIME OF THE INCIDENT TO

1 THE TIME THE SAMPLES ARE COLLECTED CAN DIMINISH THE
2 SAMPLES. THAT'S WHY THE THRESHOLDS ARE ESTABLISHED.

3 Q AND YOU WORK IN THE CRIMINAL AREA, RIGHT?

4 A I DO CRIMINAL AND CIVIL CASE WORK.

5 Q AND WOULD YOU AGREE WITH ME THAT PEOPLE, ESPECIALLY
6 MEMBERS OF GANGS, ARE FAMILIAR WITH THE GUNSHOT RESIDUE
7 TEST AND WHAT IT MAY SHOW?

8 A I HAVE NO IDEA. PROBABLY JUST WHAT'S SEEN ON T.V.

9 Q AND WHETHER A PERSON FIRES A GUN ONCE OR TWICE OR TEN
10 TIMES, IF SOMETHING REMOVES THAT GUNSHOT RESIDUE FROM
11 THEIR HANDS, THEY STILL COULD HAVE FIRED THAT GUN AND
12 STILL COME UP WITH THIS NEGATIVE G.S.R.?

13 A IF SOMEONE FIRES A WEAPON AND THEN THEY WIPE THEIR
14 HANDS CLEAN OR WASH THEIR HANDS, THEN YES, THE TEST CAN BE
15 NEGATIVE.

16 Q OR SWEATS PROFUSELY OR REMOVES THEIR SHIRT. THERE
17 ARE MANY FACTORS YOU JUST TESTIFIED TO.

18 A THERE ARE MANY FACTORS THAT DIMINISH THOSE LEVELS.
19 THAT'S WHY THESE TIMEFRAMES ARE HERE, TO TAKE INTO ACCOUNT
20 FOR THAT.

21 Q YOU HAVE TALKED ABOUT THE PISTOL VERSUS THE RIFLE.
22 THE MAJORITY, YOU TESTIFIED, OF THE GUNSHOT RESIDUE COMES
23 OUT FROM THE END OF THE BARREL OR WHATEVER WEAPON IT IS?

24 A A LOT OF IT DOES, YES.

25 Q THE MAJORITY OF IT?

1 A DEPENDING ON THE WEAPON. I WOULD SAY MOST OF IT
2 USUALLY DOES, BUT IT'S GOING TO COME OUT ANY OPENING IN
3 THE WEAPON.

4 Q AND IS IT MORE LIKELY TO GET GUNSHOT RESIDUE ON A
5 PERSON'S HANDS FIRING A PISTOL, OR A HANDGUN VERSUS A
6 RIFLE?

7 A I WOULD EXPECT TO SEE HIGHER LEVELS ON HANDGUNS THAN
8 A RIFLE.

9 Q AND YOU'RE AWARE THAT CHRIS LIVERMAN IS HERE TODAY
10 CHARGED WITH TWO COUNTS OF MURDER?

11 A I DON'T KNOW HIM. I ASSUME HE'S AT THE DEFENSE
12 TABLE.

13 Q WELL, YOU REVIEWED THE DATA ON THE GUNSHOT RESIDUE
14 KIT BELONGING TO CHRIS LIVERMAN, DID YOU NOT?

15 A THAT'S HOW IT'S LABELED, YES.

16 Q AND ON AUGUST 26TH, CAN YOU SAY WHETHER OR NOT CHRIS
17 LIVERMAN SHOT A GUN?

18 A I CANNOT CONCLUSIVELY SAY ONE WAY OR ANOTHER AS TO
19 WHETHER OR NOT HE FIRED A GUN. WHAT I CAN SAY IS THAT THE
20 DATA, AND AS A SCIENTIST I BASE MY CONCLUSIONS ON THE DATA
21 AND THE FACTUAL INFORMATION, AND BASED ON THAT DATA, THERE
22 IS NOTHING HERE TO INFER THAT HE FIRED THAT WEAPON.

23 Q AS AN EXPERT, CAN YOU SAY WHETHER OR NOT CHRIS
24 LIVERMAN FIRED A GUN?

25 MS. FRANKLIN: YOUR HONOR, I THINK HE JUST ANSWERED

1 THAT QUESTION. I THINK HE ANSWERED IT.

2 THE COURT: I DON'T KNOW THAT IT WAS THE EXACT
3 QUESTION. I OVERRULE.

4 ANSWER THE QUESTION IF YOU'RE ABLE, PLEASE.

5 THE WITNESS: I CANNOT SAY DEFINITELY WHETHER OR
6 NOT HE FIRED A GUN, NO.

7 BY MS. CAMPBELL

8 Q AND ALL THE FACTORS WE'VE BEEN INTO WOULD PLAY ON
9 WHETHER OR NOT HE STILL WOULD HAVE GUNSHOT RESIDUE ON HIS
10 HANDS?

11 A SURE. ALL OF THOSE THINGS ARE GOING TO AFFECT THE
12 LEVELS, YES.

13 Q AND BACK WHEN YOU WERE AN AGENT FOR S.L.E.D. AND
14 TESTIFIED FOR THE STATE, YOU TESTIFIED ON MANY OCCASIONS
15 THAT GUNSHOT RESIDUE DOESN'T MEAN -- A NEGATIVE GUNSHOT
16 RESIDUE DOESN'T MEAN WHETHER OR NOT A PERSON FIRED A GUN.

17 A I DON'T KNOW THAT I EVER TESTIFIED TO THAT.

18 Q AND YOU CAN'T SAY WHETHER OR NOT CHRIS LIVERMAN, BACK
19 ON AUGUST 26TH, BASED ON THIS GUNSHOT RESIDUE KIT, SHOT A
20 GUN ONCE, A RIFLE ONCE, OR TEN TIMES, CAN YOU?

21 A NO.

22 Q AND FINALLY, IF SOMEONE STOOD IN THIS COURTROOM AND
23 SAID THAT A NEGATIVE G.S.R. KITS MEANS THAT CHRIS LIVERMAN
24 IS INNOCENT, THAT'S NOT A TRUE STATEMENT.

25 MS. FRANKLIN: YOUR HONOR, I THINK THAT -- I THINK

1 THAT'S AN IRRELEVANT QUESTION.

2 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

3 MS. CAMPBELL: THANK YOU, SIR.

4 THE COURT: ANY REDIRECT?

5 MS. FRANKLIN: YES, YOUR HONOR, JUST A COUPLE OF
6 QUESTIONS. MAY IT PLEASE THE COURT.

7 REDIRECT EXAMINATION:

8 BY MS. FRANKLIN

9 Q WOULD YOU PLEASE EXPLAIN TO THE JURY WHAT IT IS WE
10 HIRED YOU TO DO?

11 A I WAS HIRED TO REVIEW THE DATA THAT WAS GENERATED BY
12 S.L.E.D. I LOOKED NOT ONLY AT THE FORMAL LAB REPORT BUT
13 ALSO THE RAW DATA FROM THE LABORATORY INSTRUMENTATION, THE
14 WORK SHEETS, THE CALIBRATION FROM THE INSTRUMENT, THE
15 COLLECTION SHEETS WHICH STATE THE TIME THE SAMPLES WERE
16 COLLECTED AND WHAT THE CALIBER OF THE WEAPON WAS, HOW MANY
17 SHOTS WERE FIRED AND THAT TYPE OF INFORMATION, INCLUDING
18 THE CONDITIONS OF THE HANDS.

19 IT WAS INDICATED ON THE COLLECTION SHEET THAT THERE
20 WAS NO BLOOD ON THE HANDS. IN FACT, THE ONLY ACTIVITY
21 LISTED ON THE COLLECTION SHEET WAS THAT THE SUBJECT WAS
22 TRANSPORTED FROM THE ARREST SITE TO THE LAW ENFORCEMENT
23 CENTER.

24 Q OKAY. AND SO WE'RE NOT PAYING YOU FOR YOUR
25 TESTIMONY, ARE WE?

1 A I'M PAID THE SAME WHETHER I TESTIFY OR DON'T TESTIFY.
2 I DO WORK ON MANY CASES IN WHICH I -- AFTER CONSULTATION
3 WITH THE ATTORNEYS, INCLUDING DEFENSE ATTORNEYS, THEY
4 DON'T CALL ME AS A WITNESS. IT DEPENDS ON WHAT MY
5 FINDINGS ARE.

6 Q AND CAN YOU PLEASE EXPLAIN TO THE JURY WHY IT IS AS A
7 SCIENTIST YOU CANNOT MAKE AN ABSOLUTE, A CATEGORICAL
8 STATEMENT, REGARDING WHETHER OR NOT MR. LIVERMAN SHOT A
9 GUN THAT NIGHT?

10 A WELL, UNFORTUNATELY WITH GUNSHOT RESIDUE, THERE ARE A
11 LOT OF VARIABLES AND A LOT OF UNKNOWNNS. THE BIGGEST
12 UNKNOWN IS THE ACTIVITY BETWEEN THE TIME OF THE INCIDENT
13 WHEN THE SAMPLES ARE COLLECTED. THERE'S NO WAY THAT
14 ANYBODY HAS ANY WAY OF KNOWING THAT, SO WHAT WE DEPEND ON
15 IS A TIMELY COLLECTION TECHNIQUE, GOOD EVIDENCE COLLECTION
16 TECHNIQUE. THE OFFICERS ARE TRAINED ON HOW TO COLLECT THE
17 SAMPLES. THE TEST IS ONLY AS GOOD AS THE COLLECTION, AND
18 THEN WE RELY ON THE LABORATORY DATA.

19 BASED ON WHEN THE SAMPLES WERE COLLECTED, BASED ON
20 THE CONDITIONS OF THE HANDS. IN THIS CASE, THERE WAS NO
21 MARKING ON THE COLLECTION SHEET THAT THE HANDS WERE IN ANY
22 UNUSUAL CONDITION, AND BASED ON THE DATA FROM THE THREE
23 METALS IN GUN PRIMER RESIDUE, WE COME TO A CONCLUSION
24 BASED ON THE EVIDENCE, BASED ON THE DATA.

25 THERE'S NOT -- THERE'S NOT SIGNIFICANT OR SUFFICIENT

1 AMOUNTS OF METALS IN THIS CASE TO PROVE TO ME, OR TO
2 INFER, THAT THIS PERSON FIRED A WEAPON. IT'S SIMPLY --
3 THE DATA IS SIMPLY ABSENT.

4 Q AND AS A SCIENTIST, YOU DON'T ENGAGE IN ANY
5 CONJECTURE OR SPECULATION, DO YOU?

6 A I TRY NOT TO SPECULATE. I TRY TO BASE MY CONCLUSION
7 ON THE FACTS AND THE DATA.

8 Q SOLELY ON THE DATA. AGAIN, I MEAN, THESE THRESHOLDS
9 THAT WERE DEVELOPED BY S.L.E.D., I MEAN THEY HAVE BEEN
10 AROUND FOR A WHILE, HAVE THEY NOT?

11 A YES.

12 Q AND THESE THRESHOLDS, WHEN THEY WERE DESIGNED,
13 INCLUDED ANALYSES OF BOTH PISTOLS AND RIFLES?

14 A YES.

15 Q I HAVE NO MORE QUESTIONS, YOUR HONOR.

16 WELL, ONE LAST ONE. SO IN YOUR OPINION
17 MR. LIVERMAN -- HIS REPORT IS INCONSISTENT WITH HIS FIRING
18 A WEAPON THAT NIGHT?

19 A BASED ON THIS DATA, I CANNOT CONCLUDE, AND I AM NOT
20 GOING TO CONCLUDE, THAT HE FIRED A WEAPON.

21 MS. FRANKLIN: THANK YOU. NO FURTHER QUESTIONS.

22 THE COURT: ANY RECROSS?

23 MS. CAMPBELL: NO, SIR.

24 THE COURT: YOU MAY STEP DOWN.

25 THE BAILIFF: WATCH YOUR STEP, SIR.

1 ALL RIGHT.

2 MS. FRANKLIN: AND AT THIS TIME, YOUR HONOR, THE
3 DEFENSE RESTS.

4 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE
5 STATE? DO YOU NEED A MINUTE TO TALK ABOUT IT?

6 MS. CAMPBELL: JUST ONE.

7 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, LET ME
8 JUST SEND YOU OUT WHILE THE STATE DECIDES WHETHER THERE
9 WILL BE ANY ADDITIONAL TESTIMONY. PLEASE DON'T DISCUSS
10 THE CASE. STEP BACK TO YOUR JURY ROOM AT THIS TIME,
11 PLEASE.

12 EVERYONE ELSE STAY SEATED.

13 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
14 11:59 A.M.)

15 THE COURT: WE'LL TAKE A SHORT BREAK, ABOUT FIVE
16 MINUTES.

17 MS. FRANKLIN: THANK YOU, YOUR HONOR.

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 THE COURT: SOLICITOR, HAVE YOU HAD ENOUGH TIME?
20 WHERE DID MS. FENT GO? DO WE NEED TO WAIT ON HER?

21 MS. CAMPBELL: NO, SIR.

22 THE COURT: OH, WE NEED TO WAIT ON THE DEFENDANT.

23 (PAUSE).

24 (WHEREUPON, THE DEFENDANT WAS BROUGHT INTO THE
25 COURTROOM.)

1 ALL RIGHT.

2 MR. GIESE: YOUR HONOR, THE ONLY THING, THE STATE AT
3 THIS POINT WOULD LIKE TO MOVE THIS FIRST PAGE OF THAT INTO
4 EVIDENCE.

5 DO YOU WANT ME TO DO IT IN FRONT OF THE JURY?

6 THE COURT: WELL, LET ME SEE IF THERE'S GOING TO BE
7 AN OBJECTION.

8 THIS PAGE RIGHT HERE, AND THAT'S WHAT -- ALL RIGHT.
9 SOME OF THAT WAS PUT ON BY COUNSEL AND SOME OF IT BY THE
10 WITNESS, AS I RECALL; IS THAT RIGHT?

11 MR. GIESE: YES, SIR.

12 THE COURT: ANY OBJECTION TO THAT DRAWING?

13 MS. FRANKLIN: JUST A MOMENT, YOUR HONOR.

14 (PAUSE).

15 YOUR HONOR, WE'RE GOING TO OBJECT AT THIS POINT. YOU
16 KNOW, THE JURY HAS HEARD PLENTY OF TESTIMONY ABOUT EXACTLY
17 WHAT THESE THINGS MEAN. I KNOW THAT THEY'VE EACH TAKEN
18 THEIR OWN PERSONAL NOTES.

19 AT THIS POINT, WE'RE OBJECTING ON THE BASIS THAT, YOU
20 KNOW, IT'S MORE OF THIS COLLATERAL ISSUE OF HIS GANG
21 MEMBERSHIP, SUBJECT TO THESE SAME OBJECTIONS THAT I'VE
22 BEEN MAKING ALL ALONG, ABOUT THIS BEING OVERLY PREJUDICIAL
23 AND IRRELEVANT TO THE CASE. WE'RE GOING TO OBJECT TO
24 THIS.

25 THE COURT: WELL, I KNOW THERE HAS BEEN AN OBJECTION,

1 A GENERAL OBJECTION TO ANYTHING ALONG THE LINES THAT YOU
2 HAVE JUST DESCRIBED, BUT IS IT ANY MORE -- I DON'T KNOW
3 THAT IT'S PREJUDICIAL AT ALL. IT'S BEEN TESTIFIED TO.
4 IT'S SITTING HERE IN FRONT OF THE JURY. THEY'VE SEEN IT,
5 AND THE WITNESSES HAVE TESTIFIED TO WHAT'S ON THE JURY --
6 WHAT'S ON THE DRAWING. IS THAT ANY MORE PREJUDICIAL THAN
7 WHAT THEY'VE ALREADY BEEN EXPOSED TO?

8 MS. FRANKLIN: WELL, YOUR HONOR, I MEAN I WOULD ARGUE
9 THAT IT'S CUMULATIVE AT THIS POINT. I MEAN, THE PREJUDICE
10 SEEMS TO BE STACKING UP, AND THAT'S WHY WE -- YOU KNOW,
11 IT'S JUST MORE OF THE SAME GANG STUFF, AND WE'RE OBJECTING
12 TO IT.

13 THE COURT: ALL RIGHT. I OVERRULE THE OBJECTION. IT
14 HAS BEEN TESTIFIED TO, I BELIEVE BY THE DEFENSE WITNESS.

15 HE MADE SOME OF THE NOTATIONS THAT ARE ON THE
16 EXHIBIT, AND IT'S NO DIFFERENT FROM -- AS FAR AS IT COMING
17 INTO EVIDENCE, IT'S NO DIFFERENT FROM THAT DEFENDANT'S
18 EXHIBIT NINE, WHATEVER IT WAS.

19 FOR THAT REASON, THE OBJECTION IS OVERRULED. I'LL
20 ADVISE THE JURY -- WE'LL GET THIS MARKED. WILL THAT BE --

21 THE COURT REPORTER: SEVENTY-THREE.

22 THE COURT: SEVENTY-THREE, STATE'S 73.

23 (WHEREUPON, STATE'S EXHIBIT NO. 73 WAS MARKED FOR
24 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

25

1 WILL THERE BE ANYTHING ELSE FROM THE STATE?

2 MR. GIESE: NO, YOUR HONOR.

3 THE COURT: AS I INDICATED TO COUNSEL YESTERDAY, IF
4 WE BROKE AT THIS TIME FOR AN HOUR, AN HOUR-AND-15 MINUTES
5 AND ARGUED AND CHARGED, THE JURY WOULD NOT GET THE CASE
6 UNTIL PROBABLY LATE THIS AFTERNOON.

7 I DON'T THINK THAT WOULD BE FAIR TO ANYONE INVOLVED
8 IN THE CASE, SO WE WILL -- I'LL SEND THE JURY HOME FOR THE
9 DAY AND TELL THEM THAT THE ARGUMENTS AND CHARGE WILL BE
10 TOMORROW. WE CAN HAVE OUR CONFERENCE ON CHARGES IN JUST A
11 FEW MINUTES, AND THEN COME BACK REFRESHED AND READY TO
12 MAKE YOUR ARGUMENTS. THEN I'LL CHARGE THE JURY TOMORROW,
13 SO WE'LL STOP AT THIS TIME.

14 BRING THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
16 APPROXIMATELY 12:10 P.M.)

17 THE BAILIFF: THE JURY IS SEATED, YOUR HONOR.

18 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
19 GENTLEMEN.

20 THE BAILIFF: WAIT, I'M SORRY, SIR.

21 THE COURT: WE STILL HAVE GOT ONE OUT.

22 THE BAILIFF: THERE SHE COMES.

23 (PAUSE).

24 THE JURY IS SEATED, YOUR HONOR.

25 THE COURT: ALL RIGHT. THE ONLY ADDITIONAL MATTER I

1 NEED TO ADVISE YOU OF IS THAT DURING THE BREAK THE COURT
2 HAS ADMITTED STATE'S EXHIBIT 73, WHICH WAS THE DRAWING ON
3 THIS BOARD HERE. THAT IS NOW AN EXHIBIT AND IS IN
4 EVIDENCE. THAT WILL CONCLUDE ALL THE TESTIMONY AND OTHER
5 EVIDENCE TO BE PRESENTED IN THIS CASE.

6 IF YOU WILL THINK BACK TO LAST WEEK WHEN YOU WERE
7 SELECTED AND I GAVE YOU SOME BRIEF REMARKS BEFORE WE
8 STARTED, I TOLD YOU THAT AFTER THE EVIDENCE HAD ALL BEEN
9 PRESENTED, THE ATTORNEYS WOULD COME BACK AND MAKE CLOSING
10 ARGUMENTS TO YOU, AND THEN I WOULD INSTRUCT YOU IN THE
11 LAW. THAT IS WHERE WE ARE IN THE CASE.

12 I'M REQUIRED BY LAW TO HAVE A CONFERENCE WITH THE
13 ATTORNEYS AND TO GO OVER WITH THEM THE INSTRUCTIONS THAT
14 I'M GOING TO BE GIVING TO YOU, SO I'VE GOT TO DO THAT
15 BEFORE WE GET TO THE ARGUMENTS AND THE INSTRUCTIONS.

16 IF WE STOP NOW AND TAKE OUR NORMAL TIME FOR LUNCH AND
17 THEN I HAVE THAT CONFERENCE, THE BOTTOM LINE IS THAT I
18 COULD NOT GET THE CASE SUBMITTED TO YOU BEFORE LATE THIS
19 AFTERNOON.

20 I ALWAYS -- I SORT OF HAVE A PERSONAL RULE AGAINST
21 DOING THAT, PARTICULARLY IN A CASE THAT'S TAKEN EIGHT OR
22 NINE DAYS TO TRY, SO WE'RE GOING TO DO THAT TOMORROW
23 MORNING. I'LL HAVE MY CONFERENCE WITH THE ATTORNEYS.
24 WE'LL GET ALL OF THAT STRAIGHT. WE'LL STOP, AS FAR AS
25 YOU'RE CONCERNED, AT THIS POINT IN TIME.

1 WHEN YOU COME BACK IN THE MORNING, YOU WILL HEAR THE
2 CLOSING ARGUMENTS OF THE ATTORNEYS, AND THEN I'LL INSTRUCT
3 YOU IN THE CASE, AND THEN YOU WILL BE SENT BACK TO
4 DELIBERATE IN THE CASE.

5 WE WILL BE PROVIDING YOU WITH LUNCH TOMORROW WHEN YOU
6 GET HERE, SO DON'T WORRY ABOUT THAT.

7 LET ME AGAIN AT THIS TIME INSTRUCT YOU, AND ORDER
8 YOU, NOT TO DISCUSS THE CASE WITH ANYBODY INSIDE OR
9 OUTSIDE THE COURTHOUSE, NOT WITH FAMILY OR FRIENDS OR WITH
10 ANYONE ELSE. DO NOT WATCH ANYTHING ON TELEVISION ABOUT
11 THIS CASE OR ANY SIMILAR MATTER. DO NOT READ ANYTHING OR
12 LISTEN TO ANYTHING ABOUT THE CASE.

13 I ADVISED YOU YESTERDAY ABOUT A PARTICULAR T.V.
14 STATION THAT WAS RUNNING SOME SORT OF SERIES. AGAIN, I
15 DON'T KNOW IF IT'S STILL RUNNING OR NOT. DON'T WATCH THAT
16 STATION AGAIN OR ANY SIMILAR TYPE PROGRAM ON ANY
17 TELEVISION STATION.

18 AGAIN, WHEN YOU COME BACK TOMORROW, YOU WILL HEAR
19 FROM THE ATTORNEYS, AND THEN I'LL INSTRUCT YOU ON THE LAW.

20 HAVE A GOOD REST OF YOUR DAY, AND I'LL BE DEALING
21 WITH THE MATTERS WE NEED TO DEAL WITH HERE IN THE
22 COURTROOM. WE'LL SEE YOU AT NINE -- LET'S SAY
23 NINE O'CLOCK IN THE MORNING. DOES THAT CREATE ANY
24 PARTICULAR PROBLEM FOR ANYBODY?

25 (THERE WAS NO RESPONSE.)

1 I DON'T SEE ANY HANDS GOING UP. NINE O'CLOCK IN THE
2 MORNING IF YOU WILL BE HERE, WE SHOULD BE IN THE POSITION
3 TO BEGIN AT THAT TIME. YOU ARE EXCUSED. WE'LL SEE YOU IN
4 THE MORNING.

5 EVERYONE ELSE STAY SEATED, PLEASE.

6 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
7 12:14 P.M.)

8 THE COURT: ALL RIGHT. ANY OTHER MATTERS AT THIS
9 TIME?

10 MR. GIESE: NOT FROM THE STATE, YOUR HONOR.

11 MS. FRANKLIN: YOUR HONOR, AT THIS TIME THE DEFENSE
12 RENEWS ITS MOTION FOR THE DIRECTED VERDICT.

13 WE WOULD ALSO RENEW ALL OBJECTIONS THAT HAVE ARISEN
14 FROM THE TIME THE STATE RESTED THEIR CASE. ALSO, YOUR
15 HONOR, IT'S MY UNDERSTANDING WHEN WE STARTED THE TRIAL
16 THAT THERE ARE A COUPLE OF DOCUMENTS RELATED TO THE
17 EARLIER BRADY ISSUE THAT I RAISED. I BELIEVE THAT WE WERE
18 GOING TO MAKE THESE A PART OF THE COURT RECORD AT SOME
19 POINT.

20 THE COURT: WE WILL -- AFTER WE'RE DONE WITH THE JURY
21 WE'LL PUT EVERYTHING IN WE NEED TO.

22 MS. FRANKLIN: OKAY. SO I'LL HOLD ONTO THAT.

23 THE COURT: ALL RIGHT. THE COURT'S RULINGS ON THE
24 OBJECTIONS AND THE MOTION FOR A DIRECTED VERDICT WILL
25 REMAIN THE SAME, BUT YOU MADE YOUR MOTION.

1 MS. FRANKLIN: YES, SIR.

2 THE COURT: LET'S GO AHEAD AND MEET IN CHAMBERS AND
3 TALK ABOUT CHARGES, AND THEN YOU FOLKS WILL HAVE THE
4 AFTERNOON AND EVENING TO GET READY FOR TOMORROW.

5 ALL RIGHT. WE'LL STAND IN RECESS IN THE CASE UNTIL
6 9:00 A.M. TOMORROW MORNING.

7 (THERE WAS AN OVERNIGHT RECESS.)

8 (AFTER RECEIVING A NOTE FROM ONE OF THE JURORS, THE
9 FOLLOWING DISCUSSION WAS HELD IN A PRIVATE ROOM IN
10 THE PRESENCE OF HIS HONOR, THE ATTORNEYS, THE LAW
11 CLERK, AND THE COURT REPORTER.)

12 THE COURT: COME RIGHT IN, HAVE A SEAT. YOU'RE NOT
13 IN ANY TROUBLE, OKAY.

14 SEATED JUROR: OH, NO PROBLEM.

15 THE COURT: WHEN I RECEIVED THE MESSAGE YESTERDAY.
16 YOU'RE JUROR 97; IS THAT RIGHT?

17 (NODS IN THE AFFIRMATIVE).

18 I JUST HAD SOME QUESTIONS TO SORT OF FOLLOW UP WHAT
19 WAS IN THE NOTE. AS I UNDERSTAND IT, SOMETIME YESTERDAY,
20 MAYBE THE NIGHT BEFORE LAST, SOME SORT OF SYMBOL WAS
21 PUT -- WAS IT ON THE STREET OUTSIDE YOUR HOME?

22 SEATED JUROR: YES.

23 THE COURT: IS THAT RIGHT?

24 SEATED JUROR: UH-HUH.

25 THE COURT: DO YOU KNOW WHAT THE SYMBOL WAS OR WHAT

1 IT STOOD FOR OR ANYTHING?

2 SEATED JUROR: AFTER -- WHEN THEY WERE DOING IN THE
3 COURTROOM THE PITCHFORK --

4 THE COURT: YES.

5 SEATED JUROR: THAT'S WHAT WAS IN THE STREET.

6 THE COURT: THAT'S WHAT WAS IN THE STREET. WAS IT
7 RIGHT IN FRONT OF YOUR HOME OR DOWN THE STREET OR --

8 SEATED JUROR: NO. I WOULD SAY WHERE YOU'RE SITTING
9 IS THE STREET LIGHT, AND MY PROPERTY STARTS THERE. WHERE
10 YOU'RE SITTING IS THE SYMBOL.

11 THE COURT: OKAY. SO IT WAS ON YOUR PROPERTY SIDE OF
12 THE STREET LIGHT THEN; IS THAT RIGHT?

13 SEATED JUROR: RIGHT, UH-HUH.

14 THE COURT: AND THE NOTE SAID THAT THERE WERE SOME
15 OTHER SYMBOLS IN THE NEIGHBORHOOD?

16 SEATED JUROR: YEAH, FURTHER DOWN THE STREET. I
17 NOTICED THAT WHEN I GOT HOME FROM HERE, BECAUSE I WENT TO
18 GO VOTE, AND I GUESS WHAT DREW IT TO MY ATTENTION IS
19 BECAUSE IT WAS THE SYMBOL THAT WAS DRAWN IN THE COURTROOM.

20 AS I LEFT TO JUST GO AROUND -- I LIVE IN THE
21 BRIARWOOD SUBDIVISION --

22 THE COURT: YES.

23 SEATED JUROR: -- AROUND BY E.L. WRIGHT, AND I WENT
24 TO VOTE. THEN WHEN I CAME BACK THROUGH, THERE WAS THE
25 COUNTY'S PEOPLE WITH THE ORANGE TRUCKS CALLED AS-FAT

1 (PHONETIC) AS-MAT --

2 THE COURT: OKAY.

3 SEATED JUROR: -- AND THEY WERE POURING OIL AND A
4 SQUEEGEE ACROSS IT.

5 THE COURT: OKAY.

6 SEATED JUROR: BUT GOING FURTHER DOWN INTO MY
7 NEIGHBORHOOD THAT GOES INTO WINDSOR LAKE, THERE WAS THE
8 "C.T.C." ALL CONNECTED.

9 THE COURT: OKAY.

10 SEATED JUROR: AND THEY WERE WRITTEN IN BLACK.

11 THE COURT: ON THE STREET?

12 SEATED JUROR: YES.

13 THE COURT: HAD THEY BEEN THERE BEFORE THIS TRIAL OR
14 DO YOU KNOW? HAD YOU NOTICED THEM BEFORE THE TRIAL, ANY
15 OF THEM?

16 SEATED JUROR: MY STREET IS NOT A STREET WITH ANY
17 TYPE OF MARKINGS OR ANYTHING ON IT.

18 THE COURT: OKAY.

19 SEATED JUROR: I ASKED MY SON DID HE NOTICE THE
20 SYMBOL THAT WAS IN THE STREET --

21 THE COURT: YES.

22 SEATED JUROR: -- AND HE SAID HE NOTICED IT MONDAY.

23 THE COURT: OKAY. THE ONE THAT YOU NOTICED
24 YESTERDAY?

25 SEATED JUROR: RIGHT.

1 THE COURT: IS THAT RIGHT?

2 SEATED JUROR: THE ONE THAT I NOTICED ON ELECTION
3 DAY.

4 THE COURT: OKAY. LET ME ASK YOU THIS: DO YOU IN
5 ANY WAY FEEL LIKE THIS WAS TARGETED TOWARD YOU OR JUST
6 SOMETHING THAT SOMEONE DID, OR DO YOU HAVE ANY WAY OF
7 KNOWING?

8 SEATED JUROR: I'M NOT REALLY SURE. WHEN I FIRST SAW
9 IT -- I WENT TO GO OUT LAST NIGHT TO TAKE A PICTURE OF IT,
10 AND THERE WERE PEOPLE COMING AROUND PUTTING NOTICES IN
11 PEOPLE'S MAILBOX. THEY POSTED A SIGN SAYING THAT THERE IS
12 A MEETING AT THE WINDSOR LAKE METHODIST CHURCH TONIGHT AT
13 SEVEN P.M.

14 THE COURT: OKAY.

15 SEATED JUROR: SO I'M THINKING IT'S JUST NOT FOR ME.
16 IT MAY BE JUST MY NEIGHBORHOOD NOW IS GETTING WHATEVER
17 ATTENTION.

18 THE COURT: OKAY.

19 SEATED JUROR: YOU KNOW, THAT IS THERE FOR IT.

20 THE COURT: WELL, LET ME ASK YOU THIS: DO YOU FEEL
21 LIKE THE FACT THAT THAT HAS OCCURRED DURING THIS TRIAL IS
22 GOING TO AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN
23 THE CASE?

24 I SIMPLY NEED AN HONEST ANSWER FROM YOU. THERE'S NOT
25 A RIGHT OR WRONG ANSWER, BUT DO YOU FEEL LIKE IT'S GOING

1 TO HAVE ANY IMPACT AT ALL ON YOUR ABILITY TO SIT AS A FAIR
2 AND IMPARTIAL JUROR?

3 SEATED JUROR: NO. I'M FINE WITH IT. I THINK I
4 WOULD BE MORE DISTURBED IF WHEN THEY -- AFTER THE COUNTY
5 CAME OUT AND, YOU KNOW, CLEANED IT OUT OF THE STREET OR
6 COVERED IT OVER THAT IT APPEARED AGAIN.

7 THE COURT: OKAY.

8 SEATED JUROR: BUT IT HAS NOT APPEARED AGAIN.

9 THE COURT: SO YOU DON'T IN ANY WAY FEEL INTIMIDATED
10 BY IT OR THREATENED BY IT?

11 SEATED JUROR: NOT AT THIS POINT. IF IT APPEARS
12 AGAIN, THEN I -- IF IT APPEARS AGAIN IN THE SAME AREA,
13 THEN I WOULD -- I WOULD HAVE SOME CONCERNS.

14 THE COURT: OKAY. OKAY. WHAT I'M GOING TO DO -- MY
15 CLERK IS GOING TO PUT YOU IN ONE OF THESE CHAIRS RIGHT OUT
16 HERE.

17 SEATED JUROR: UH-HUH.

18 THE COURT: AND THE REASON ALL THE LAWYERS ARE IN
19 HERE, ANY TIME I TALK TO A JUROR, IT HAS TO BE ON THE
20 RECORD.

21 SEATED JUROR: OKAY, THAT'S NO PROBLEM.

22 THE COURT: SO I HAVE THE COURT REPORTER IN HERE AND
23 THE LAWYERS IN HERE.

24 SEATED JUROR: I JUST THOUGHT YOU SHOULD KNOW.

25 THE COURT: WELL, AND I APPRECIATE YOUR --

1 SEATED JUROR: YOU KNOW.

2 THE COURT: -- BRINGING THAT TO OUR ATTENTION. IF
3 YOU WILL JUST HAVE A SEAT RIGHT OUT HERE IN ONE OF THESE
4 CHAIRS.

5 SARAH, YOU CAN STAY WITH HER JUST A MINUTE.

6 THE CLERK: YES, SIR.

7 (WHEREUPON, THE JUROR LEFT THE ROOM.)

8 THE COURT: YOU WILL REMEMBER I HAD A NOTE FROM A
9 JUROR A DAY OR TWO AGO TALKING ABOUT A MEETING ONE NIGHT.
10 AS A MATTER OF FACT, IT WAS GOING TO BE TONIGHT. I DON'T
11 KNOW, QUITE FRANKLY, IF IT WAS...

12 (PAUSE).

13 IT WAS NOT HER, NOT HER, BUT ANYWAY, I'M OPEN TO
14 QUESTIONS, SUGGESTIONS, OR ANYTHING ELSE.

15 MS. FRANKLIN: MY SENSE OF IT IS THAT IT'S OKAY
16 UNLESS ANOTHER PITCHFORK, YOU KNOW, SHOWS UP IN FRONT OF
17 HER HOUSE.

18 MS. CAMPBELL: WHEN SHE MADE THAT STATEMENT, I BECAME
19 CONCERNED. SHE SAID, "IF ANOTHER ONE SHOWS UP."

20 THE COURT: YES.

21 MS. CAMPBELL: SO IN HER MIND, SHE IS ALREADY
22 PERCEIVING IT MAY BE DIRECTED AT HER. I MEAN, I'M JUST
23 SOMEWHAT CONCERNED, AND SINCE SHE THOUGHT IT WAS
24 SIGNIFICANT ENOUGH TO BRING TO THE COURT'S ATTENTION,
25 OBVIOUSLY IT BOTHERED HER.

1 SHE EVEN WENT OUT LAST NIGHT AND TRIED TO TAKE A
2 PICTURE OF IT. I JUST THINK THAT, YOU KNOW --

3 MR. GIESE: YOUR HONOR, ALSO THAT C.T.C. IN HER
4 NEIGHBORHOOD, I MEAN I WORRY ABOUT -- I JUST WORRY ABOUT
5 HER --

6 MS. CAMPBELL: I MEAN, SHE HAS AVOIDED THE SCRUTINY
7 FROM THE PUBLIC, BUT SHE IS GETTING GANG SYMBOLS ON THE
8 STREET, AND THEY'RE FOLK GANG SYMBOLS.

9 MS. FRANKLIN: BUT SHE HAS NO INDICATION THAT IT'S
10 DIRECTED TOWARDS HER. SHE DOESN'T FEEL THREATEN BY IT.
11 SHE JUST SAID THAT IF IT REAPPEARED, SHE MIGHT HAVE SOME
12 CONCERN. SHE DIDN'T NECESSARILY SAY SHE WOULD HAVE
13 CONCERN.

14 I MEAN, SHE SEEMS PRETTY OPEN ABOUT IT. SHE BROUGHT
15 IT TO THE COURT'S ATTENTION. PROBABLY SORT OF ERRING ON
16 THE SIDE OF CAUTION.

17 SHE APPEARS TO ME TO NOT -- IT MAY BE THAT SHE IS
18 JUST MORE SENSITIVE TO IT BECAUSE OF THIS TRIAL. I MEAN,
19 I DON'T KNOW WHETHER OR NOT SHE HAS SEEN THESE THINGS
20 BEFORE, BUT SHE DOESN'T BELIEVE THAT IT IS DIRECTED
21 TOWARDS HER. SHE CLAIMS SHE CAN STILL BE AN IMPARTIAL
22 JUROR.

23 MS. CAMPBELL: AND I THINK YOUR INSTRUCTIONS HAVE
24 BEEN JUST TO MAKE SURE THEY DON'T GET EXPOSURE TO ANY GANG
25 INFORMATION OR ANYTHING OF THAT NATURE. OF COURSE, WE

1 COULDN'T ANTICIPATE THIS TYPE OF THING.

2 MS. FRANKLIN: WELL, NO EXPOSURE IN THE MEDIA BY WAY
3 OF LOOKING OUT FOR IT AND TRYING TO SELF-EDUCATE.

4 THE COURT: WELL, MY -- I REALLY HAVE TWO CONCERNS
5 WITH IT: NUMBER ONE, IT WAS SIGNIFICANT ENOUGH FOR HER TO
6 BRING IT TO THE COURT'S ATTENTION, WHICH IS THE RIGHT
7 THING TO DO. SHE SHOULD HAVE.

8 THEN THE FACT THAT SHE DID GO OUT LAST NIGHT TO TAKE
9 A PICTURE OF IT, IT'S OBVIOUSLY ON HER MIND, AND THEN SHE
10 INDICATED -- SHE DID ANSWER THE COURT'S QUESTION ABOUT
11 FAIR AND IMPARTIAL, THAT SHE DIDN'T FEEL LIKE IT WOULD
12 PROHIBIT HER OR INHIBIT HER FROM BEING FAIR AND IMPARTIAL.

13 SHE MADE THE COMMENT ABOUT "IF ANOTHER ONE SHOWED UP,
14 THEN I WOULD BE MORE CONCERNED," WHICH TELLS ME THAT SHE
15 IS CONCERNED TO SOME DEGREE AT THIS POINT IN TIME.

16 I THINK I'M GOING TO STAND HER ASIDE, AND WE'LL
17 SELECT ONE OF THE ALTERNATES. I BELIEVE THE PROCEDURE FOR
18 THAT IS TO DRAW THEM OUT OF A HAT. THEY DON'T GO IN THE
19 ORDER THAT THEY WERE SELECTED.

20 MR. GIESE: THAT'S CORRECT.

21 THE COURT: I THINK THE STATUTE IS PRETTY CLEAR ON
22 THAT.

23 MR. GIESE: THAT'S CORRECT.

24 THE COURT: SO I'LL DIRECT PAT, WITH THE CLERK'S
25 OFFICE, TO GO AHEAD AND DO THAT. I WILL SIMPLY TELL THE

1 JURY WHEN THEY COME IN THAT THAT ALTERNATE HAS BEEN
2 SEATED; THAT THAT JUROR HAS BEEN EXCUSED AND WE'LL --
3 THAT'S ALL I'M GOING TO SAY ABOUT IT.

4 MS. FRANKLIN: IF I COULD JUST PUT AN OBJECTION ON
5 THE RECORD, YOUR HONOR.

6 THE COURT: THAT'S FINE.

7 MS. FRANKLIN: THAT'S IT. I MEAN, PART OF MY CONCERN
8 IS THAT TO REMOVE A JUROR SORT OF AT THIS LATE POINT IN
9 THE GAME, I DON'T KNOW THAT SHE'S BONDED WITH SOME OF
10 THESE OTHER JURORS. I DON'T KNOW IF MAYBE THEY'RE --

11 MS. CAMPBELL: THE ALTERNATES HAVE BEEN IN THERE,
12 TOO.

13 MS. FRANKLIN: I MEAN, IT'S TRUE BUT, YOU KNOW, JUST
14 TO SEE -- YOU KNOW, THEY'VE BEEN TOGETHER FOR TWO WEEKS.
15 NOW ONE IS SORT OF BEING PLUCKED ASIDE.

16 THE COURT: WELL, THAT'S WHY WE HAVE ALTERNATES SO
17 THEY CAN BE SEATED. I THINK WE'VE EVEN HAD ALTERNATES WHO
18 WERE KEPT WHEN THE JURY \STARRED\STARTED DELIBERATING
19 AND A JUROR HAD TO BE DISMISSED DURING DELIBERATIONS.

20 I THINK THE JURY WAS INSTRUCTED TO START OVER AND PUT
21 THE ALTERNATE IN AND THEY KEPT ON GOING, BUT ANYWAY, YOUR
22 OBJECTION IS NOTED.

23 MS. FRANKLIN: THANK YOU, YOUR HONOR.

24 (THE JUROR WAS BROUGHT BACK INTO THE ROOM.)

25 THE COURT: I'M GOING TO REMOVE YOU AS A JUROR, NOT

1 BECAUSE YOU DID ANYTHING WRONG.

2 THE WITNESS: OKAY.

3 THE COURT: BUT JUST BECAUSE I DON'T WANT IN ANY WAY
4 ANYONE TO FEEL LIKE THEY HAVE BEEN SINGLED OUT OR
5 INTIMIDATED BY IT OR ANYTHING ELSE, SO I'M GOING TO
6 DISMISS YOU.

7 SEATED JUROR: OKAY.

8 THE COURT: THAT'S WHY WE HAVE ALTERNATE JURORS, SO
9 IF SOMETHING COMES UP, WE'LL SIT ONE OF THEM IN YOUR SEAT.

10 SEATED JUROR: OKAY.

11 THE COURT: I'M GOING TO HAVE THE LADY FROM THE
12 CLERK'S OFFICE COME OUT AND TALKING TO YOU ABOUT YOUR
13 JUROR PAY AND THINGS LIKE THAT.

14 SEATED JUROR: OKAY.

15 THE COURT: ONCE SHE GETS THROUGH WITH THAT, THEN
16 YOU -- HAS THE JURY PANEL BEEN EXCUSED FOR THE WEEK? I'M
17 SURE THEY HAVE.

18 THE BAILIFF: YES, YOUR HONOR.

19 THE COURT: AND THEN YOU'RE FREE TO GO. YOU WILL
20 HAVE TO TURN YOUR BADGE IN THERE.

21 SEATED JUROR: OKAY.

22 THE COURT: BUT YOU'RE FREE TO GO. LET ME THANK YOU,
23 LIKE I'M GOING TO THANK ALL THE OTHER JURORS.

24 IT'S UNUSUAL, FROM MY PERSPECTIVE, TO HAVE A CASE
25 THAT'S GONE ON FOR NEARLY TWO WEEKS, AND EVERYBODY HAS

1 BEEN HERE. WE DIDN'T HAVE TO EXCUSE ANYBODY. EVERYBODY
2 HAS BEEN HERE AND BEEN ON TIME. AS A JUDGE, I REALLY
3 APPRECIATE THAT.

4 SEATED JUROR: OKAY.

5 THE COURT: IT SHOWS ME THAT FOLKS ARE TAKING JURY
6 SERVICE SERIOUSLY, AND I HOPE, IF KNOWING ELSE, IT HAS
7 BEEN A LEARNING EXPERIENCE.

8 SEATED JUROR: IT HAS. I JUST -- I THOUGHT IT WAS
9 SOMETHING I SHOULD LET EVERYBODY KNOW BECAUSE IT -- WHEN I
10 SAW THE SYMBOL ON THE BOARD, AND I NOTICED IT WHEN I GOT
11 HOME THAT NIGHT FROM -- WELL, WHEN I GOT HOME FROM HERE, I
12 DIDN'T THINK ANYTHING OF IT AT FIRST.

13 WHEN I CAME BACK AROUND THE CORNER, WHEN I WENT TO GO
14 TO THE GYM, I SAW THE SECOND SYMBOL.

15 THE COURT: RIGHT.

16 SEATED JUROR: AND I WAS LIKE I THINK I NEED TO SAY
17 SOMETHING ABOUT IT BECAUSE I WASN'T SURE. I MEAN, NOBODY
18 KNOWS IN MY NEIGHBORHOOD THAT I AM ON THE JURY, BUT YOU
19 JUST -- I JUST THOUGHT IT WAS SOMETHING PEOPLE SHOULD
20 KNOW.

21 THE COURT: OKAY. THAT'S FINE.

22 NOW, DO ME A FAVOR.

23 SEATED JUROR: UH-HUH.

24 THE COURT: IF YOU WILL STAY HERE FOR A SECOND UNTIL
25 WE GET STARTED BACK.

1 SEATED JUROR: OKAY.

2 THE COURT: ON THE TRIAL, AND THEN -- I TELL YOU
3 WHAT, JUST HAVE A SEAT. I'LL GO GET PAT AND LET HER TALK
4 TO YOU, AND YOU CAN BE ON YOUR WAY.

5 SEATED JUROR: OKAY.

6 THE COURT: KAREN, THAT'S ALL I NEED. THANK YOU.

7 (THE FOLLOWING TOOK PLACE IN OPEN COURT.)

8 THE COURT: ALL RIGHT. WE WILL HAVE AN ALTERNATE
9 JUROR SEATED, MADAM CLERK. IF YOU WILL DRAW RANDOMLY
10 BETWEEN THE TWO ALTERNATES AND TELL ME WHAT NUMBER HAS
11 BEEN SELECTED, PLEASE.

12 (PAUSE).

13 THE CLERK: NUMBER 223.

14 THE COURT: 220?

15 THE CLERK: THREE.

16 THE COURT: WHEN THE JUROR IS BROUGHT IN, JUROR
17 NUMBER 223, THE ALTERNATE, WILL BE SEATED WITH THE REST OF
18 THE JURY.

19 THE BAILIFF: THANK YOU, YOUR HONOR.

20 THE COURT: IS THERE ANYTHING FURTHER PRIOR TO
21 CLOSING ARGUMENTS? ANYTHING FROM THE STATE?

22 MR. GIESE: NO, YOUR HONOR.

23 THE COURT: FROM THE DEFENSE?

24 MS. FRANKLIN: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

1 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
2 APPROXIMATELY 9:34 A.M.)

3 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU.

5 LADIES AND GENTLEMEN, AS YOU'RE ALREADY AWARE, ONE OF
6 YOUR MEMBERS OF THE JURY HAS BEEN EXCUSED FROM THE REST OF
7 THE CASE AND AN ALTERNATE HAS BEEN SEATED.

8 THE ALTERNATE IS SELECTED RANDOMLY BETWEEN THE TWO
9 ALTERNATES, AND ALTERNATE NUMBER 223 WILL NOW BE A
10 FULL-FLEDGED MEMBER OF THE JURY. YOU'RE NOT GOING TO HEAR
11 THE CLOSING ARGUMENTS FROM THE ATTORNEYS.

12 I'M SURE THAT THE ATTORNEYS, IN MAKING THEIR
13 ARGUMENTS TO YOU, THEY'RE GOING TO GO OVER AND REVIEW WITH
14 YOU THEIR RECOLLECTION OF WHAT THE TESTIMONY AND EVIDENCE
15 HAS BEEN. THEY HAVE A RIGHT TO DO THAT. I WOULD SIMPLY
16 POINT OUT TO YOU THAT IF YOUR MEMORY DIFFERS WITH THEM,
17 THEN YOU RELY ON YOUR MEMORY.

18 I'VE ALREADY INDICATED TO YOU THAT ALL OF THE
19 EXHIBITS THAT HAVE BEEN ADMITTED INTO EVIDENCE ARE GOING
20 TO BE WITH YOU IN THE JURY ROOM.

21 PROCEDURALLY, YOU WILL FIRST HEAR FROM THE STATE AND
22 THEN YOU WILL HEAR FROM THE DEFENSE, AND THEN THE STATE
23 WILL HAVE THE RIGHT TO MAKE THE FINAL ARGUMENT TO YOU.

24 AFTER THE ATTORNEYS HAVE MADE THESE ARGUMENTS, THEN I
25 WILL CHARGE OR INSTRUCT YOU ON THE LAW THAT APPLIES IN

1 THIS CASE, AND THEN YOU WILL BE EXCUSED AND SENT BACK TO
2 DELIBERATE AND TO REACH A VERDICT IN THE CASE.

3 I WOULD ASK YOU TO GIVE ALL OF THE ATTORNEYS YOUR
4 FULL ATTENTION. WE WILL PROBABLY TAKE A BREAK OR TWO
5 DURING THE ARGUMENTS. I'LL JUST SORT OF KEEP TRACK OF HOW
6 WE'RE GOING AS FAR AS TIME IS CONCERNED ON THAT.

7 IF ANY OF YOU GET TO THE POINT WHERE YOU NEED TO TAKE
8 A BREAK AND IT DOESN'T LOOK LIKE I'M ABOUT TO, AGAIN, GET
9 MY ATTENTION. WE'LL TAKE A BREAK AT THAT POINT IN TIME.

10 PLEASE GIVE ALL OF THE ATTORNEYS YOUR FULL ATTENTION
11 AS THEY MAKE THEIR CLOSING ARGUMENTS TO YOU.

12 ALL RIGHT, MS. CAMPBELL?

13 MS. CAMPBELL: MAY IT PLEASE THE COURT.

14 CLOSING STATEMENT:

15 MS. CAMPBELL: GOOD MORNING. THE FIRST THING I WANT
16 TO DO IS TAKE THIS OPPORTUNITY ON BEHALF OF THE STATE OF
17 SOUTH CAROLINA, ON BEHALF OF THE FAMILIES OF [REDACTED] T.M.
18 [REDACTED] AND [REDACTED] C.D. [REDACTED] WHO HAVE SAT IN HERE, I WANT
19 TO THANK YOU FOR YOUR SERVICE IN THIS CASE.

20 I KNOW THIS IS NOT WHAT YOU CHOSE TO DO, BUT AS
21 CITIZENS IN OUR COUNTY, YOU WERE CALLED FORWARD AND YOU
22 HAVE SERVED. THIS CASE HAS GONE ON FOR ALMOST TWO WEEKS
23 NOW.

24 THANK YOU FOR BEING WILLING TO SERVE IN THIS CASE.
25 AS IT HAS BECOME EVIDENT, THIS IS A VERY IMPORTANT CASE,

1 NOT ONLY TO THE DEFENDANT, CHRIS LIVERMAN, BUT TO THE
2 FAMILY OF [REDACTED] C.D. [REDACTED], TO THE FAMILY OF [REDACTED] T.M.
3 [REDACTED] AND TO OUR COMMUNITY.

4 NOW, AS THE JUDGE JUST TOLD YOU, I'M GOING TO TALK TO
5 YOU A LITTLE BIT ABOUT IT. I'M GOING TO TALK TO YOU ABOUT
6 THE LAW, SOME LEGAL ISSUES THAT MAY COME UP.

7 AS I'M TALKING ABOUT THE LAW, IF I SAY ANYTHING
8 DIFFERENT THAN WHAT THE JUDGE TELLS YOU THE LAW IS,
9 BECAUSE HE'S THE ONE THAT GIVES YOU THE LAW, THEN YOU TAKE
10 IT AS THE JUDGE GIVES TO IT YOU. IT'S NOT INTENTIONAL ON
11 MY PART.

12 IN THAT SAME VEIN, LADIES AND GENTLEMEN, AS THE JUDGE
13 JUST MENTIONED, IF EITHER SIDE MISCHARACTERIZES THE FACTS
14 IN THIS CASE, YOU REMEMBER THEM, BECAUSE THE MOST
15 IMPORTANT ROLE IN THIS COURTROOM, LADIES AND GENTLEMEN, IS
16 YOURS, EACH OF YOU INDIVIDUALLY AND ULTIMATELY WHEN YOU GO
17 BACK TO REACH A VERDICT COLLECTIVELY, BECAUSE YOU MUST
18 DETERMINE WHAT THE FACTS ARE, WHAT HAPPENED ON THE NIGHT
19 OF AUGUST 26TH. THAT IS YOUR ROLE.

20 NOW, YOU HAVE HEARD ALL OF THE EVIDENCE THAT YOU CAN
21 CONSIDER IN THIS CASE. THE EVIDENCE, LADIES AND
22 GENTLEMEN, IS THE SWORN TESTIMONY FROM WITNESSES AND THE
23 PHYSICAL EVIDENCE THAT HAS BEEN ENTERED THAT WILL GO BACK
24 WITH YOU TO YOUR JURY ROOM WHEN YOU GO BACK TO DELIBERATE.

25 IT'S NOT QUESTIONS BY THE ATTORNEYS, FISHING

1 EXPEDITIONS. IT'S NOT SPECULATION, INNUENDO, CONJECTURE
2 OR JUST PLAIN WISHFUL THINKING. THE EVIDENCE IS THE
3 TESTIMONY AND THE EXHIBITS.

4 NOW, I WANT TO TAKE THIS OPPORTUNITY TO APOLOGIZE IF
5 I HAVE DONE ANYTHING, ANYBODY ON BEHALF OF THE STATE HAS
6 DONE ANYTHING, TO OFFEND ANYONE IN THIS CASE.

7 THERE'S BEEN A LOT OF LEGAL WRANGLING IN THIS CASE.
8 YOU HAVE BEEN SENT OUT OF THE COURTROOM CONSISTENTLY. YOU
9 HAVE SEEN US UP AT THE BENCH ARGUING. IF WE HAVE DONE
10 ANYTHING -- AT TIMES MY QUESTIONING HAS BEEN INARTFUL,
11 EVEN SLOPPY. ON BEHALF OF THE VICTIMS IN THIS CASE,
12 PLEASE DON'T HOLD THAT AGAINST THE STATE.

13 NOW, YOU HAVE ALSO HEARD THAT THERE WERE A NUMBER OF
14 WITNESSES THAT YOU HAVEN'T HEARD FROM IN THIS CASE, OTHER
15 POLICE OFFICERS AT CRIME SCENES, OTHER WITNESSES WHO MAY
16 HAVE BEEN ON THE PORCH, OTHER UNNAMED PEOPLE THAT MAY HAVE
17 BEEN WITH THE DEFENDANT THE NIGHT HE DID THIS SHOOTING.

18 THE STATE HAS BROUGHT FORTH EVERYONE THAT HAS
19 SOMETHING RELEVANT OR DIFFERENT TO SAY. WE CAN'T BRING IN
20 THE SAME PERSON TO SAY THE SAME THING OVER AND OVER AND
21 OVER.

22 IF THEY WEREN'T ABLE TO SEE THE DEFENDANT'S FACE,
23 THEY JUST WEREN'T ABLE TO SEE THE DEFENDANT'S FACE. WE
24 HAVE BROUGHT FORTH -- WE CANNOT BRING FORTH UNIDENTIFIED
25 PEOPLE THAT WERE WITH THE DEFENDANT, AND WE CAN'T BRING

1 FORTH PEOPLE WHO SIMPLY WON'T COOPERATE. THAT'S THE
2 REASON YOU MAY HAVE HEARD OFFICER'S NAMES OR SOMEONE ELSE
3 BEING ON THE PORCH AND YOU HAVEN'T HEARD FROM THEM. WE
4 HAVE BROUGHT FORTH EVERYONE WHO HAS RELEVANT EVIDENCE AS
5 FAR AS WHO MURDERED TWO CHILDREN ON THE NIGHT OF AUGUST
6 26TH.

7 NOW, IN CRIMINAL CASES IT'S SOMEWHAT UNIQUE, BECAUSE
8 IN A CRIMINAL CASE YOU HAVE TO HAVE LIVE TESTIMONY. THE
9 DEFENDANT HAS, AS HE SHOULD, THE ABSOLUTE RIGHT TO
10 CONFRONT EACH AND EVERY WITNESS AGAINST HIM.

11 SO THAT'S WHY YOU HEARD FROM HIM, INSTEAD OF SEEING
12 THE PATHOLOGIST REPORT, HE ISSUED THE REPORT, BUT YOU
13 HEARD FROM THE PATHOLOGIST HIMSELF, DR. NICHOLS. IT'S ALL
14 LIVE TESTIMONY.

15 YOU HAVE HEARD ABOUT HOW EACH OF THESE WITNESSES GAVE
16 SEVERAL STATEMENTS. YOU WILL NOTICE YOU HAVEN'T HEARD
17 ABOUT ANY DEPOSITIONS, ANY VIDEOS, OR AUDIOTAPES BECAUSE
18 IN CRIMINAL CASES, THE STATE AND THE DEFENSE MUST PUT UP
19 LIVE TESTIMONY.

20 WITNESSES MUST APPEAR, AND THE REASON FOR THAT,
21 LADIES AND GENTLEMEN, IS VERY SIMPLE. YOU MUST BE ABLE TO
22 SEE THEM, TO OBSERVE THEM, AND TO ULTIMATELY JUDGE THEIR
23 CREDIBILITY, WHETHER OR NOT THEY ARE CORROBORATED BY THE
24 OTHER TESTIMONY, WHETHER OR NOT THEY'RE CORROBORATED BY
25 THE PHYSICAL EVIDENCE. THAT'S THE PURPOSE IN THAT.

1 ONLY OCCASIONALLY WHEN BOTH THE STATE AND THE
2 DEFENSE -- NOTICE THERE WERE A FEW STATEMENTS THAT WERE
3 PUT IN, JUST A COUPLE, ONLY IF THE STATE AND THE DEFENSE
4 AGREE TO THAT IS THAT EVIDENCE ACTUALLY PUT BEFORE YOU.

5 NOW, THE DEFENSE DOES NOT AND SHOULD NOT AND HAS NO
6 BURDEN. THE STATE HAS THE BURDEN OF PROVING THE CASE.
7 THEY DON'T HAVE TO PUT UP ANYTHING. HOWEVER, LADIES AND
8 GENTLEMEN, ONCE THEY CHOOSE TO PUT UP A CASE, YOU JUDGE IT
9 IN THE SAME MANNER AS YOU WOULD THE STATE'S CASE.

10 WHEN YOU LOOK AT THEIR CASE, WHAT HAVE THEY BROUGHT
11 BEFORE YOU? THEY TOLD YOU THAT SOMETIME IN SEPTEMBER,
12 ABOUT THREE WEEKS AFTER THIS, THAT THERE WAS A .38 FOUND
13 ON SURREY STREET TWO BLOCKS FROM WHERE DIEGO LIVES.

14 THEY HAVE PUT UP EVIDENCE ABOUT HOW THE CAMERAS WORK
15 IN THE BISHOP AND HOW YOU CAN'T SEE ANYONE'S FACES. YOU
16 CAN'T IDENTIFY THEM. YOU CAN'T EVEN TELL IF THEY ARE MEN
17 OR WOMEN.

18 THEY HAVE PUT FORTH BEFORE YOU THAT AN AUTO BREAKING,
19 JUST AS WE PUT UP, HAPPENED IN JUNE AND THAT'S WHERE THIS
20 GUN CAME FROM AND THAT WE DON'T KNOW WHO DID THAT AUTO
21 BREAKING. THEN THEY HAVE PUT UP SOME EVIDENCE ABOUT A
22 PHONE CALL THAT DIEGO MADE, AND SOMEHOW THAT WOULD BE THE
23 KEY TO THIS CASE?

24 THAT IS WHAT THEY HAVE PUT UP BEFORE YOU, AND WHEN
25 YOU THINK ABOUT WHAT THEY PUT UP, I SUBMIT, LADIES AND

1 GENTLEMEN, IT BRINGS TO MIND AN OLD JOKE I LEARNED IN LAW
2 SCHOOL, WHICH HAS BEEN A WHILE. IT WENT KIND OF LIKE
3 THIS: BASICALLY, THERE'S A PREACHER AND A LAWYER WALKING
4 DOWN THE STREET. THEY'RE WALKING DOWN THE SIDEWALK, AND
5 ON EITHER SIDE OF THE SIDEWALK, THERE'S DIRT. IT HAD
6 RAINED THE NIGHT BEFORE, SO THERE'S A PUDDLE. THE
7 PREACHER LOOKS DOWN AND HE LOOKS DOWN INTO THE PUDDLE AND
8 HE SAYS, "LOOK, THERE'S A SILVER DOLLAR." THE ATTORNEY
9 REACHES DOWN AND PICKS UP THE STICK AND HE STIRS UP THE
10 WATER, AND THE MUD AND THE SILT CLOUDS IT OVER. YOU CAN'T
11 SEE THE SILVER DOLLAR. HE LOOKS AT THE PREACHER, AND HE
12 SAYS, "WHAT SILVER DOLLAR?"

13 LADIES AND GENTLEMEN, SEE THROUGH THE SMOKE SCREEN.
14 LOOK AT THE FACTS AS TO WHO DID THIS SHOOTING. THAT'S ALL
15 THE STATE ASKS. WE AREN'T ASKING YOU TO CONVICT HIM JUST
16 BECAUSE HE HAS A TATTOO ON HIS FACE. THAT'S ONLY ONE
17 PIECE OF EVIDENCE YOU CAN CONSIDER ALONG WITH EVERY OTHER
18 PIECE OF EVIDENCE IN THIS CASE.

19 I WANT TO TALK ABOUT THAT A LITTLE BIT. NOW, AS I
20 JUST SAID, THE BURDEN OF PROOF IS ON THE STATE TO PROVE
21 THIS DEFENDANT BEYOND A REASONABLE DOUBT, AND LADIES AND
22 GENTLEMEN, I SUBMIT IN THIS CASE WITH THESE FACTS, THAT IS
23 A BURDEN THE STATE WELCOMES. THAT'S WHERE THE BURDEN
24 SHOULD BE.

25 WHAT IS PROOF BEYOND A REASONABLE DOUBT? THE LAW HAS

1 DEFINED IT IN MANY WAYS. PERHAPS THE SIMPLEST WAY TO
2 DEFINE IT IS PROOF BEYOND A REASONABLE DOUBT. A
3 REASONABLE DOUBT WOULD BE THE TYPE OF DOUBT THAT WOULD
4 MAKE A RATIONAL MAN HESITATE TO ACT, BUT IN ITS WISDOM,
5 THE COURTS HAVE HANDED OUT THIS DEFINITION.

6 VERY SIMPLY, WHAT DOES IT SAY? PROOF BEYOND A
7 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED
8 OF THE DEFENDANT'S GUILT. I WANT TO REPEAT THAT. PROOF
9 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
10 CONVINCED OF THE DEFENDANT'S GUILT.

11 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW
12 WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES, THE LAW
13 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
14 DOUBT.

15 IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU
16 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
17 CRIME CHARGED, YOU MUST FIND HIM GUILTY.

18 IF ON THE OTHER HAND, YOU THINK THAT THERE IS A REAL
19 POSSIBILITY THAT HE DIDN'T DO THIS, THEN YOU MUST FIND HIM
20 NOT GUILTY.

21 THE LEVEL OF PROOF, FIRMLY CONVINCED. THERE ARE
22 DOUBTS NO MATTER WHAT WE DO IN LIFE. ALL THE STATE HAS TO
23 PROVE IS THAT WE REACHED THE LEVEL.

24 I SUBMIT, LADIES AND GENTLEMEN, AFTER THE LAST TWO
25 WEEKS AND THE TESTIMONY YOU HAVE HEARD, WE HAVE GONE

1 BEYOND JUST FIRMLY CONVINCED, BUT THAT IS THE LEVEL WE
2 MUST REACH.

3 NOW, IN THIS CASE WHEN YOU GO BACK THERE, THE JUDGE
4 WILL SEND BACK TWO VERDICT FORMS. THERE ARE TWO
5 INDICTMENTS IN THIS CASE. THEY ARE BOTH FOR THE SAME
6 CHARGE. THIS IS THE CHARGE OF MURDER.

7 VERY SIMPLY, LADIES AND GENTLEMEN, EVEN THOUGH IT'S
8 THE MOST HEINOUS CRIME THAT CAN BE COMMITTED IN OUR
9 SOCIETY, IT HAS PERHAPS THE SHORTEST DEFINITION. VERY
10 SIMPLY, UNDER OUR CODE OF LAWS, MURDER IS THE UNLAWFUL
11 KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER
12 EXPRESSED OR INFERRED.

13 VERY SIMPLY, LADIES AND GENTLEMEN, YOU WILL NOTICE
14 THE STATE DOES NOT HAVE TO PROVE IN THAT DEFINITION, AND
15 I'LL GET BACK TO MOTIVE, ALTHOUGH WE HAVE IT, THE STATE
16 DOES NOT HAVE TO PROVE THAT IT WAS PREMEDITATED, ALTHOUGH
17 IT WAS.

18 THOSE ARE SIMPLY FACTORS THAT YOU CAN USE IN
19 DETERMINING WHETHER OR NOT MALICE EXISTS, SO IT'S AN
20 UNLAWFUL KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT.

21 WHAT DOES THAT MEAN? THE TERM MALICE HAS BEEN
22 DEFINED IN MANY DIFFERENT WAYS. THE JUDGE WILL GIVE YOU
23 HIS DEFINITION. IN OUR COURTS, IN ITS POPULAR SENSE, THE
24 TERM MALICE CONVEYS THE MEANING OF HATRED, ILL WILL, OR
25 HOSTILITY TOWARD ANOTHER.

1 THE WORD MALICIOUS IS THE EASIEST WAY FOR ME TO
2 UNDERSTAND IT. MALICE IS A TERM IMPORTING WICKEDNESS,
3 EXCLUDING JUST CAUSE OR EXCUSE. IT'S SOMETHING THAT
4 SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM A HEART
5 DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.
6 LISTEN CAREFULLY TO THE JUDGE AS HE CHARGES YOU WHAT
7 MALICE IS.

8 MALICE MAY BE INFERRED FROM THE WILLFUL, DELIBERATE
9 AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST
10 CAUSE OR EXCUSE AND WITH THE USE OF A DEADLY WEAPON.

11 NOW, THE JUDGE IS GOING TO INSTRUCT YOU THAT
12 EXPRESSED OR INFERRED MALICE ARE SIMPLY TWO WAYS OF
13 CONVEYING IT. IT'S NOT A DIFFERENT TYPE OF MALICE.

14 IF A PERSON WALKS UP TO ANOTHER PERSON, LOOKS THEM
15 DEAD IN THE EYE, PULLS OUT A GUN AND SAYS, "I AM GOING TO
16 KILL YOU," THAT IS EXPRESSED MALICE, THROUGH THE WORDS,
17 LYING IN WAIT, SOME TYPE OF EXPRESSED MALICE.

18 THE LAW RECOGNIZES IN MOST CASES, WHEN A MURDER
19 OCCURS, MALICE MAY NOT BE EXPRESSED THROUGH WORDS FROM THE
20 DEFENDANT'S MOUTH, OR THERE MAY BE NO ONE THAT CAN HEAR
21 WHAT WAS EXPRESSED FROM THE DEFENDANT'S MOUTH.

22 THEY SAY YOU CAN LOOK AT THE CIRCUMSTANCES
23 SURROUNDING THE EVENT AND FIGURE OUT WHETHER OR NOT MALICE
24 EXISTED IN THE MIND OF THE DEFENDANT.

25 THE JUDGE WILL ALSO TELL YOU -- YOU HEARD THE TERM

1 MALICE AFORETHOUGHT. THAT DOESN'T MEAN THAT HE HAS TO
2 THINK ABOUT IT FOR DAYS, THAT HE HAS TO PLAN AHEAD FOR
3 MONTHS, IN ORDER TO MAKE IT A MURDER. IT IS A MURDER VERY
4 SIMPLY, LADIES AND GENTLEMEN, IF THE TIME THE FATAL BLOW
5 IS STRUCK, IF THERE IS MALICE IN HIS HEART, THEN IT IS
6 MURDER.

7 NOW, ALSO INFERRED MALICE, THE LAW HAS SAID THAT
8 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
9 DISREGARD FROM HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE
10 WHEN THE DEED IS DONE WITH A DEADLY WEAPON.

11 LADIES AND GENTLEMEN, I MAY BE WRONG, BUT NO ONE IS
12 GOING TO GET UP HERE AND ARGUE THAT THIS ISN'T A MURDER.
13 A DOUBLE HOMICIDE OF TWO CHILDREN WHO WERE DOING THEIR
14 HOMEWORK NEXT TO THEIR HOUSE, THAT IS MURDER.

15 NOW, WHEN CONSIDERING EVIDENCE IN THE CASE, THE JUDGE
16 WILL ALSO INSTRUCT YOU THERE ARE TWO KINDS OF EVIDENCE.
17 THERE IS CIRCUMSTANTIAL EVIDENCE, AND THERE IS DIRECT
18 EVIDENCE. WHAT IS DIRECT EVIDENCE? IT'S EYEWITNESS
19 TESTIMONY.

20 YOU HAVE HEARD FROM AT LEAST TWO EYEWITNESSES WHO SAW
21 WHAT HAPPENED. YOU HAVE HEARD FROM OTHER PEOPLE WHO ALSO
22 SAW WHAT HAPPENED WHO JUST COULDN'T SEE WELL ENOUGH TO SEE
23 THE FACE OF THE SHOOTER. THAT'S EYEWITNESS TESTIMONY.
24 IT'S EVIDENCE THAT'S PERCEIVED THROUGH THE SENSES; SMELL,
25 TOUCH, SIGHT, FEEL, THAT'S DIRECT EVIDENCE.

1 THERE'S ANOTHER KIND OF EVIDENCE, TOO:
2 CIRCUMSTANTIAL EVIDENCE. WHAT IS CIRCUMSTANTIAL EVIDENCE?
3 VERY SIMPLY, CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
4 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF
5 ANOTHER FACT.

6 CIRCUMSTANTIAL EVIDENCE IN THIS CASE, IF A PERSON IS
7 RUNNING FROM A CRIME SCENE, FROM THE SCENE OF A MURDER OR
8 A SHOOTING TRYING TO GET AWAY, THAT IS CIRCUMSTANTIAL
9 EVIDENCE. AGAIN, JUST ONE PIECE OF EVIDENCE, THAT YOU CAN
10 CONSIDER WHEN DETERMINING THE DEFENDANT'S GUILT,
11 CIRCUMSTANTIAL EVIDENCE.

12 THERE IS ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT
13 OR VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL
14 EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
15 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

16 THE JUDGE IS GOING TO TELL YOU TO WEIGH BOTH OF THEM.
17 YOU GIVE THEM THE WEIGHT YOU FIND IT DEEMS IN THIS CASE.
18 YOU HAVE DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE, AND
19 IN THIS CASE, LUCKILY, BOTH CORROBORATE EACH OTHER, BUT
20 THOSE ARE THE TWO TYPES OF EVIDENCE. THEY AREN'T
21 DIFFERENT. THEY'RE JUST DIFFERENT INFERENCES FROM THEM.

22 THE WEIGHT YOU GIVE ONE IS WHAT YOU CHOOSE. NO
23 GREATER WEIGHT IS AFFORDED ONE THAN TO THE OTHER. THERE
24 IS, HOWEVER, IN THIS CASE A LOT OF DIRECT EVIDENCE.

25 IN EVERY CASE, TOO, THE STATE MUST PROVE WHAT'S

1 CALLED CRIMINAL INTENT. THE SIMPLEST DEFINITION OF
2 CRIMINAL INTENT IS WAS THERE A CONSCIOUS WRONGDOING ON
3 BEHALF OF THE DEFENDANT IN THIS CASE.

4 THE LAW ALSO RECOGNIZES THAT WE CAN'T DISSECT
5 SOMEONE'S BRAIN AND OPEN IT UP AND DETERMINE TO A
6 MATHEMATICAL CERTAINTY WHAT WAS GOING ON INSIDE HIS MIND.
7 SO AGAIN, YOU LOOK AT THE FACTS AND CIRCUMSTANCES
8 SURROUNDING WHAT CHRIS LIVERMAN WAS DOING WHEN HE WENT
9 OVER TO BLOOD TERRITORY ON THE NIGHT OF AUGUST 26TH.

10 LADIES AND GENTLEMEN, THERE IS NO QUESTION ABOUT
11 CRIMINAL INTENT IN THIS CASE. YOU HAVE ALSO HEARD FROM A
12 NUMBER OF EXPERT WITNESSES, AND THE REASON THAT THEY ARE
13 QUALIFIED AS EXPERTS IS NORMAL WITNESSES, SAY I, AM NOT AN
14 EXPERT, COULD NOT TESTIFY TO AN OPINION. HOWEVER, IF A
15 PERSON HAS A CERTAIN AMOUNT OF TRAINING AND QUALIFICATIONS
16 IN CERTAIN AREAS, THEN THE JUDGE CAN QUALIFY THEM AS AN
17 EXPERT AND THEN THEY ARE ABLE TO GIVE YOU AN OPINION.

18 AGAIN, YOU GIVE THAT WITNESS THE SAME AMOUNT OF
19 CONSIDERATION AND ANALYZE HIM THE SAME WAY AS ANY LAY
20 WITNESS OR ANYONE ELSE. DO THEY HAVE A BASIS FOR KNOWING
21 WHAT THEY'RE TESTIFYING FOR? DO THEY HAVE A BIAS?
22 ANYTHING OF THAT NATURE? ARE THEY TRYING TO MAKE IT
23 BETTER THAN IT SHOULD BE, THINGS LIKE THAT WHEN
24 CONSIDERING EXPERT TESTIMONY. USE YOUR COMMON SENSE THAT
25 YOU BROUGHT WITH YOU TO ANALYZE THEIR TESTIMONY AS YOU DO

1 WITH ANYONE ELSE.

2 NOW, IN THIS CASE YOU HAVE ALSO HEARD ABOUT A NUMBER
3 OF STATEMENTS THAT ARE GIVEN BY THE DEFENDANT. BEFORE YOU
4 CAN CONSIDER ANY STATEMENTS OF A DEFENDANT, YOU MUST
5 DETERMINE WHETHER OR NOT HE GAVE THE STATEMENTS
6 VOLUNTARILY.

7 IN THOSE CASES YOU CONSIDER WHAT'S DONE IN THIS CASE,
8 WHICH IS WHETHER OR NOT THE DEFENDANT WAS AWARE AND WAIVED
9 HIS MIRANDAS. YOU HEARD FROM INVESTIGATOR GRAY AT
10 12:30 -- EXCUSE ME, 1:25 -- I HAVE GOT THAT WRONG. AT
11 12:17 ON THE NIGHT OF AUGUST 27TH, JUST AFTER MIDNIGHT.

12 AFTER CHRIS LIVERMAN HAD BEEN CAUGHT RUNNING FROM THE
13 CUT AT THE BETHEL BISHOP APARTMENTS, HE WAS ADVISED OF HIS
14 RIGHTS. HE WENT THROUGH THEM. WHAT'S VERY IMPORTANT, IF
15 YOU LOOK AT THIS FORM, HE EVEN ASKED HIM BACKGROUND
16 QUESTIONS TO MAKE SURE HE UNDERSTOOD. THAT'S ALL ON THIS
17 FORM. HE WENT THROUGH IT. HE TOLD CHRIS LIVERMAN WHAT
18 HIS RIGHTS ARE.

19 IN THIS CASE, LADIES AND GENTLEMEN, IN THIS
20 COURTROOM, THERE IS ABSOLUTELY NO EVIDENCE OF ANY
21 MISCONDUCT. THE POLICE JUMPED THROUGH EACH AND EVERY HOOP
22 THEY SHOULD TO MAKE SURE HIS CONSTITUTIONAL RIGHTS WERE
23 PROTECTED.

24 THE DEFENSE IS GOING TO GET UP HERE AND SAY THAT
25 THESE STATEMENTS ARE THE RESULT OF POLICE MISCONDUCT.

1 THERE IS NO EVIDENCE IN THIS CASE OF ANY POLICE
2 MISCONDUCT. THERE IS EVIDENCE THEY DID EVERYTHING BY THE
3 BOOK, AND THAT'S HIS SIGNATURE.

4 THE POLICE WENT THROUGH HIS RIGHTS. HE GAVE HIS
5 FIRST STATEMENT AT 12:30 THAT NIGHT. HE EVEN -- WE KNOW
6 IT'S VOLUNTARY. HE EVEN WENT BACK AND CORRECTED IT AND
7 INITIALED HIS CORRECTION TO MAKE SURE THAT'S EXACTLY WHAT
8 HE WANTED TO PUT DOWN ON PAPER AT 12:30 ON THE NIGHT OF
9 THE 27TH, SOME THREE HOURS AFTER HE KILLED TWO CHILDREN.

10 THE POLICE THEN GAVE HIM HIS STATEMENT OR COPIED IT.
11 THEY SENT HIM BACK. THE NEXT DAY THEY BROUGHT HIM BACK,
12 AND AGAIN, THE SECOND TIME, THEY ADVISED HIM OF HIS
13 RIGHTS, TELLING HIM BEFORE HE MAKES ANY STATEMENTS, "THESE
14 ARE YOUR RIGHTS." HE AGAIN SIGNED OFF ON THEM INDICATING
15 HE UNDERSTOOD THEM. THEN THEY ASKED HIM THE QUESTION,
16 BECAUSE THEY'RE NOT THERE PICKING ON HIM, "IS THERE
17 ANYTHING YOU WANT TO ADD?" THAT WAS HIS OPPORTUNITY.

18 HE HAD BEEN THINKING ALL NIGHT ABOUT WHAT HE SAID THE
19 NIGHT BEFORE AND WHETHER HE NEEDED TO ADD SOME STUFF TO
20 EXPLAIN AWAY SOME EVIDENCE HE THOUGHT MIGHT BE NEEDED.
21 JOBY GRAY MADE SURE THAT HIS CONSTITUTIONAL RIGHTS WERE
22 PROTECTED. THE DEFENDANT WANTED TO EXPLAIN AWAY SOME
23 STUFF.

24 NOW, AT ISSUE IN THIS CASE, THIS IDENTIFICATION, AND
25 THE JUDGE WILL INSTRUCT YOU, YOU MUST DETERMINE IF A

1 PERSON'S IDENTIFICATION OF SOMEONE IS ACCURATE, AND HE IS
2 GOING TO CHARGE YOU THAT THERE ARE SEVERAL FACTORS THAT
3 YOU CAN CONSIDER WHEN DETERMINING WHETHER OR NOT A PERSON
4 HAS MADE A CORRECT IDENTIFICATION.

5 IN THIS CASE, ACTUALLY, THERE IS NO IDENTIFICATION
6 PROCEDURE DONE WITH SOME OF THE WITNESSES BECAUSE THEY
7 KNEW THE DEFENDANT. SHANTE BETHEL KNEW HIM. POOH KNEW
8 HIM. DIEGO KNEW HIM. THEY ALL RAN AT THE BISHOP
9 TOGETHER, RAN WITH THE GANGS.

10 TYRONE SMITH DIDN'T KNOW HIS REAL NAME. HE HAD SEEN
11 HIM BEFORE, KNEW HIM, AND HE EXPLAINED TO YOU HOW HE KNEW
12 HIM, KNEW HIM AS A LITTLE BOY, SEEN HIM AT MCDONALD'S
13 WHERE HE WORKS, AND I EVEN THINK THAT'S ON THE STATEMENT.

14 WITH FACTORS YOU CAN CONSIDER, EYEWITNESS TESTIMONY,
15 THE OPPORTUNITY TO VIEW THE CRIMINAL AT THE TIME OF THE
16 CRIME, HIS DEGREE OF ATTENTION, THE ACCURACY OF THE
17 WITNESS'S PRIOR DESCRIPTION OF THE CRIMINAL, THE LEVEL OF
18 CERTAINTY DEMONSTRATED FROM THE WITNESS AT THE
19 CONFRONTATION, WAS TYRONE SMITH SURE WHEN HE WENT TO THE
20 CUT THAT NIGHT THAT THAT WAS THE PERSON HE SAW SHOOTING,
21 THE PERSON WHOSE WHOLE FACE HE GOT TO SEE, THE LENGTH OF
22 TIME BETWEEN THE CRIME AND THE TIME OF THE CONFRONTATION.

23 AS YOU HEARD OVER AND OVER, IT WAS ABOUT A 30,
24 40-MINUTE LENGTH OF TIME, SOMETHING MAYBE LESS. YOU
25 REMEMBER THE FACTS. DON'T LET ME MISQUOTE.

1 TYRONE SMITH CONSIDERED HIS IDENTIFICATION. HE IS
2 THE ONE PERSON IN THIS CASE OF THE EYE WITNESSES OR THE
3 PEOPLE THAT HE CHOSE TO PROVIDE THAT WASN'T AFFILIATED
4 WITH THE FOLK GANG.

5 HE WAS A MEMBER OF THE BLOODS, OR HE WAS FLASHING THE
6 BLOOD SIGNS. HE WAS THERE WHEN THE FIRST GROUP OF PEOPLE
7 CAME UP, REMEMBER? ACCORDING TO HIM, ABOUT ONE-AND-A-HALF
8 TO TWO HOUSES DOWN, HE WAS ABLE TO SEE SOMEONE WITH A
9 BANDANNA OVER THEIR FACE, BUT HE REMEMBERED THE BRAIDS.

10 THE FIRST TROUPE LEAVES IN THE CAR. MINUTES LATER,
11 THE SECOND GROUP ON FOOT COMES UP. AT THAT POINT, HE IS
12 THEN ABLE TO GET AN IDENTIFICATION BECAUSE THEY ALL RAN
13 INTO THE HOUSE.

14 YOU HEARD FROM HIS SISTERS. HIS SISTERS ARE VERY
15 IMPORTANT BECAUSE THEY ACTUALLY WERE ABLE TO CORROBORATE
16 WHO WAS BEST ABLE TO SEE WHAT WAS GOING ON THAT NIGHT, AT
17 LEAST FROM INSIDE THEIR HOUSE. IT WAS TYRONE SMITH.

18 HE GOES UPSTAIRS AND HE LOOKS OUT THE WINDOW. HE IS
19 AT THE WINDOW FOR FOUR TO FIVE MINUTES WATCHING WHAT'S
20 GOING ON. HIS SISTERS -- EXCUSE ME, NOT HIS SISTERS, HIS
21 COUSINS, THEY'RE SISTERS, WERE ON THE PHONE WITH THE 911
22 DISPATCHER CALLING FOR THE POLICE OR PEOPLE OUTSIDE.

23 HE IS RELYING BACK TO THEM, YOU HEARD FROM THE BANKS,
24 INFORMATION AS HE'S OBSERVING THEM. HE LOOKS DOWN. HE
25 WATCHES THE PERSON THAT COMES FORWARD FROM AROUND --

1 REMEMBER, INITIALLY THEY WERE AROUND, KIND OF BEHIND THE
2 HOUSE, BEHIND THE CORNER.

3 HE SEES THE FACE OF THE PERSON WHO ULTIMATELY PULLS
4 OUT WHAT HE DESCRIBES AS A RIFLE THAT SOUNDS LIKE A .22,
5 AND IT'S DETAILS LIKE THAT THAT MAKE TYRONE SMITH
6 CREDIBLE. HE CAN'T SAY THAT HE COULD SEE IT WAS A .22.
7 IT SOUNDED LIKE A .22. UNFORTUNATELY, WHEN YOU LIVE ON
8 T.S. MARTIN, YOU KNOW WHAT A .22 SOUNDS LIKE.

9 THE DEFENSE EVEN WILL GET UP HERE AND TRY TO SAY,
10 "OH, WELL, THERE WAS NO LIGHTING OUT THERE. YOU COULDN'T
11 SEE ANYTHING." HE WAS ABSOLUTELY SURE. HE HAD TOLD THEM
12 AND TOLD THEM BACK IN AUGUST, TOO, WHEN THEY DIDN'T WANT
13 TO HEAR IT, ABOUT THE LIGHT THAT WAS ON THE STREET.

14 HE HAD THE OPPORTUNITY. HE PAID ATTENTION. HE WAS
15 ACCURATE. WHAT REALLY MAKES HIM BELIEVABLE? THE POLICE
16 RESPOND AND THE FIRST WORDS OUT OF TYRONE SMITH'S MOUTH
17 BEFORE ANYBODY IS CAUGHT AT THE CUT, BEFORE ANYBODY KNOWS
18 WHAT KIND OF GUN IT IS, THE FIRST WORDS OUT OF HIS MOUTH,
19 "BABY JESUS".

20 THE POLICE DIDN'T KNOW THAT THAT WAS CHRIS LIVERMAN.
21 CERTAINLY, SERGEANT AULD HADN'T KNOWN ABOUT THAT
22 INFORMATION. OFFICER WHITTLE, THEY DIDN'T KNOW THAT THE
23 PERSON THEY NEEDED TO STOP RUNNING OUT OF THE CUT WAS BABY
24 JES. THEY JUST KNEW THEY NEEDED TO STOP THE PERSON
25 RUNNING OUT OF THE CUT BEFORE ANYONE IS EVER STOPPED.

1 LO AND BEHOLD, IT'S CHRIS LIVERMAN WHOSE NICKNAME IS
2 "BABY JES." HE GOES TO THE CUT, AND HE POSITIVELY
3 IDENTIFIES. HE'S JUST WITNESSED THE MURDER OF TWO
4 CHILDREN. DO YOU THINK HE DOESN'T CARE?

5 IF HE'S GOING TO MAKE IT UP, THE PEOPLE THAT WERE
6 SUPPOSEDLY FLASHING GUNS AT HIM EARLIER WAS POOH AND
7 BRADY. CHRIS LIVERMAN WAS NOT WITH THAT GROUP. HE SAID
8 WHO IT WAS BECAUSE THAT'S WHO HE SAW SHOOT.

9 IT'S JUST UNBELIEVABLE, UNFORTUNATE FOR HIM, THAT HE
10 STOPPED TO BRAG TO HIS FRIENDS ABOUT HOW HE HAD BEEN
11 SPRAYING, HOW HE HAD SHOT HIM IN THE STOMACH AND THE HEAD.

12 THAT ALSO GOES ALONG WITH WHAT SHANTE TELLS YOU.
13 WHEN SHE GOES AND GIVES HER STATEMENT, SHE KNOWS THEY BOTH
14 HAD BEEN SHOT IN THE HEAD, BUT SHE TELLS YOU WHAT HE WAS
15 BRAGGING ABOUT, WHAT HE THOUGHT HE HAD DONE.

16 IF HE HADN'T GONE THROUGH THE CUT, HE WOULDN'T HAVE
17 BEEN STOPPED BY THE POLICE, BUT THAT'S THE NATURE OF THE
18 ADVERTISING BUSINESS.

19 CREDIBILITY, THIS IS THE FINAL THING I REALLY WANT TO
20 TALK TO YOU ALL ABOUT, AND THEN I'LL SIT DOWN.

21 BELIEVABILITY: AS I LISTENED TO THE OPENING ARGUMENTS IN
22 THIS CASE, IT WAS ALMOST LIKE THEY WERE TWO DIFFERENT
23 CASES.

24 I HEARD MR. SHARDT GET UP BEFORE YOU, AND FIRST HE
25 TOLD YOU HOW THESE CHILDREN WERE MURDERED, AND IT WAS THE

1 POLICE'S FAULT; THAT ERNEST REYNOLDS HAD NOT DONE HIS JOB,
2 BUT FOR ERNEST REYNOLDS, THESE CHILDREN WOULDN'T BE
3 MURDERED.

4 HE GOT UP HERE AND TOLD YOU THIS WAS THE POLICE'S
5 FAULT; THAT THE COLUMBIA POLICE DEPARTMENT WAS RESPONSIBLE
6 FOR THIS? ERNEST REYNOLDS DID HIS JOB. HE WENT TO FIND
7 DELSHAWN PRESCOTT, WHO EVERYONE SAID WAS THE TARGET OF
8 THAT FIRST GROUP. HE WAS TRYING TO PROTECT YET ANOTHER
9 CITIZEN IN THIS COMMUNITY, AND THAT MAKES IT THE POLICE'S
10 FAULT?

11 THEN HE SAID THAT SINCE THEY HAD MESSED UP SO BADLY,
12 THAT THEY JUST HAD TO FIND A SCAPEGOAT; THAT CHRIS
13 LIVERMAN IS JUST A SCAPEGOAT.

14 SO HE WENT INTO THIS ELABORATE SCHEME, I GUESS, ABOUT
15 HOW THE COLUMBIA POLICE DEPARTMENT -- BECAUSE THEY HAD
16 MESSED UP, THIS WAS THE THEORY, HAD THEN BEEN ABLE TO GET
17 THESE FOLK GANG MEMBERS AND TYRONE SMITH AND ALL THESE
18 PEOPLE IN THIS ELABORATE SCHEME TO FRAME CHRIS LIVERMAN
19 WHO HAPPENED TO BE CAUGHT RUNNING FROM THE SCENE?

20 IT'S AMAZING THEY WERE EVEN ABLE TO GET TYRONE SMITH
21 TO SPIT OUT THE NAME "BABY JESUS" BEFORE THEY KNEW WHO
22 THEY CAUGHT FROM THE SCENE AND WHO TO FRAME, ACCORDING TO
23 THEIR THEORY. DOES THAT MAKE SENSE? IS THAT REASONABLE?

24 THEN THEY TALKED ABOUT HOW THE STATE HAD MALICIOUSLY
25 PROSECUTED CHRIS LIVERMAN FOR THE LAST 26 MONTHS, HOW WE

1 KNEW HE WAS INNOCENT, BECAUSE ACCORDING TO HIM, A NEGATIVE
2 GUNSHOT RESIDUE KIT MEANS HE IS INNOCENT. HE MUST HAVE
3 SAID THAT SIX TIMES.

4 AND LADIES AND GENTLEMEN, THEIR OWN PAID EXPERT GOT
5 UP HERE AND TOLD YOU HE CAN'T SAY WHETHER OR NOT CHRIS
6 LIVERMAN SHOT ONE GUN, TEN GUNS, ONE TIME, TEN TIMES.
7 THEIR OWN EXPERT COULDN'T EVEN SAY THAT, THE ONE THEY
8 HIRED.

9 THEN HE TALKED ABOUT THE WITNESSES THE STATE WAS
10 GOING TO BRING BEFORE YOU, AND HE SNEERED. POOH, SHANTE,
11 DIEGO, MINIMIZED THEIR INVOLVEMENT. ONE EVEN CLAIMED TO
12 HAVE SHOT AT OTHER GANG MEMBERS. HOW CAN YOU BELIEVE
13 WITNESSES LIKE THAT? NO JURY WOULD BELIEVE THESE LOW
14 LIFES.

15 IT'S SOMEWHAT IRONIC THAT THE DEFENSE IS GETTING UP
16 HERE AND SAYING CHRIS LIVERMAN IS INNOCENT BECAUSE YOU
17 CAN'T BELIEVE HIS CONFIDANTS, HIS FRIENDS, HIS FELLOW GANG
18 MEMBERS.

19 HE PICKED THE WITNESSES. HE CHOSE TO STRIKE UNDER A
20 SHROUD OF DARKNESS. HE WAS ON A MISSION. HE PICKED THE
21 KILLING FIELD. HE BRAGGED TO POOH. HE BRAGGED IN FRONT
22 OF SHANTE, BECAUSE THOSE WERE HIS PEOPLE.

23 HE RECRUITED DIEGO BECAUSE HE WOULD NEVER RAT ON HIM,
24 AND THEN WHEN THESE PEOPLE ACTUALLY COME FORWARD AND TELL
25 WHAT THEY KNOW ABOUT WHAT HAPPENED THAT NIGHT, YOU CAN'T

1 BELIEVE THEM? EVEN WHEN THEY'RE TOTALLY CORROBORATED
2 ABOUT THE ESSENTIAL FACTS, ABOUT TYRONE SMITH?

3 THERE IS NOT A SINGLE WITNESS, OR ANY EVIDENCE IN
4 THIS CASE, THAT POINTS TO ANYONE OTHER THAN CHRIS LIVERMAN
5 AS BEING THE SHOOTER, THE MURDERER, OF [REDACTED] C.D. [REDACTED] AND
6 [REDACTED] T.M. .

7 CREDIBILITY: THE JUDGE IS GOING TO INSTRUCT YOU THAT
8 WHEN CONSIDERING CREDIBILITY, YOU CONSIDER THEIR DEMEANOR.
9 WERE THEY FORTHRIGHT OR HESITANT, WHETHER OR NOT THEIR
10 TESTIMONY IS CORROBORATED BY OTHER TESTIMONY, IS
11 CORROBORATED BY THE PHYSICAL EVIDENCE. YOU CAN CONSIDER
12 IF THEY HAVE A BIAS OR A PREJUDICE, SOMETHING TO GAIN OR
13 TO LOOSE.

14 THE JUDGE WILL TELL YOU, YOU CAN BELIEVE ALL OF A
15 WITNESS, NONE OF A WITNESS, PART OF A WITNESS. THAT IS
16 YOUR PROVINCE. YOU MAKE THAT DETERMINATION. HE WILL ALSO
17 TELL YOU, YOU CAN BELIEVE MANY WITNESSES AGAINST ONE OR
18 ONE AGAINST MANY.

19 YOU HAVE HEARD FROM A NUMBER OF WITNESSES WHO
20 WITNESSED, PRIMARILY TYRONE SMITH AND DIEGO, WHO WITNESSED
21 WHAT HAPPENED AND WERE ABLE TO SEE THE MOST THAT NIGHT.
22 DIEGO WAS RIGHT BEHIND THE DEFENDANT AT THE TIME HE GOT
23 THE GUN AND STARTED SHOOTING. TYRONE WAS LOOKING DOWN. HIS
24 VANTAGE POINT WAS A LITTLE DIFFERENT.

25 ONE WITNESS DESCRIBED A SAWED OFF SHOTGUN AND ANOTHER

1 GUN. I THINK TYRONE SMITH SAID HE SAW A PISTOL, WHAT HE
2 THOUGHT WAS A PISTOL THAT NIGHT.

3 LADIES AND GENTLEMEN, YOU BETTER HOPE THERE IS SOME
4 INCONSISTENCIES IN THEIR TESTIMONY. BECAUSE OTHERWISE,
5 THEY'RE RIGHT. IT IS A SCRIPT. IT'S A FRAME UP. IT'S
6 LIKE WHEN TWO PEOPLE WITNESS A CAR RUNNING THROUGH AN
7 INTERSECTION AND BARELY MISSING A PERSON WALKING THROUGH
8 THAT INTERSECTION. ONE FROM A BUILDING ON THE CORNER
9 LOOKING DOWN AND ONE ACROSS THE STREET ON A DIFFERENT
10 CORNER. ONE DESCRIBES THE CAR AS BROWN; THE NEXT ONE SAYS
11 IT WAS GRAY. ONE SAYS IT HAS TWO DOORS. ONE SAYS IT HAS
12 FOUR DOORS. ONE PERSON SAYS THE LIGHT WAS YELLOW. THE
13 OTHER PERSON SAYS THE LIGHT WAS RED.

14 NO ONE IS GETTING UP THERE AND INTENTIONALLY LYING,
15 BUT BECAUSE OF ANGLES, LIKE LOOKING DOWN, IT'S HARDER TO
16 TELL HEIGHTS, WHERE IT IS AS FAR AS THE RED LIGHT, ANGLES,
17 PERCEPTION. THAT'S WHAT MAKES THIS TESTIMONY CREDIBLE,
18 BECAUSE THIS IS REAL LIFE, LADIES AND GENTLEMEN. THIS
19 ISN'T A GANG. THIS ISN'T A MAZE. IT DOESN'T GET ANY MORE
20 REAL THAN THIS.

21 TYRONE SMITH AND DIEGO THOMPSON, IF YOU CONSIDER BOTH
22 THEIR TESTIMONIES AND COMPARE, THEY CORROBORATE EACH
23 OTHER, AND THE INCIDENTAL THINGS AS FAR AS DESCRIBING THE
24 GUNS BEING A LITTLE BIT DIFFERENT, THAT MAKES IT REAL.
25 THAT'S REAL LIFE.

1 THE STATE JUST ASKS WHEN YOU GO BACK TO YOUR JURY
2 ROOM, CONSIDER ALL OF THE EVIDENCE. YOU KNOW, THEY MAY
3 PICK ONE THING OR ANOTHER THING, BUT WHEN YOU LOOK AT ALL
4 THE EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN, AND IT'S
5 OVERWHELMING, AND IT'S TAKEN US TWO WEEKS TO GET IT BEFORE
6 YOU, IT ALL POINTS RIGHT HERE.

7 ALL THE STATE ASKS, WHEN YOU GO BACK TO YOUR JURY
8 ROOM, THE JUDGE IS GOING TO TELL YOU, YOU ARE GOING TO
9 HAVE TO DELIBERATE AND REACH A VERDICT. THE WORD VERDICT
10 COMES FROM A LATIN PHRASE, VEREDICTO. VERY SIMPLY, LADIES
11 AND GENTLEMEN, IT'S TO SPEAK THE TRUTH.

12 ALL THE STATE ASKS IN THIS CASE IS THAT WHEN YOU GO
13 BACK TO YOUR JURY ROOM THAT YOU DELIBERATE. ON BEHALF OF
14 THE CITIZENS OF RICHLAND COUNTY, THIS COMMUNITY, THAT YOU
15 REACH A VERDICT THAT SPEAKS THE TRUTH.

16 HOLD HIM RESPONSIBLE FOR HIS CHOICES. THANK YOU.

17 THE COURT: ALL RIGHT. MS. FRANKLIN?

18 CLOSING STATEMENT:

19 MS. FRANKLIN: THANK YOU, YOUR HONOR. MAY IT PLEASE
20 THE COURT.

21 GOOD MORNING. I WANT TO GIVE A QUICK WORD BEFORE I
22 START OFF. I WANT YOU TO KNOW THAT I'M GOING TO BE
23 RELYING PRETTY HEAVILY ON MY NOTES IN THIS CASE.

24 I JUST WANT YOU TO REALIZE THAT I'M DOING THIS SO I
25 CAN BE CLEAR AND CONCISE, SO THAT I CAN HIT MY POINTS AND

1 MOVE ON WITHOUT GETTING LOST IN THE MATERIALS.

2 IT HAS BEEN A VERY FACTUALLY COMPLEX CASE, SO I'D
3 LIKE TO SORT OF LAY OUT MY UNDERSTANDING OF WHAT THE
4 EVIDENCE SAYS AND WHY I THINK IT POINTS TO MY CLIENT'S
5 INNOCENCE.

6 LET'S START OFF WITH WHAT WE KNOW ABOUT WHAT HAPPENED
7 ON T.S. MARTIN THAT NIGHT. WE KNOW THAT BRADY BROWN HAD
8 BEEN THERE WITH A GROUP OF BOYS FROM HIS FOOTBALL TEAM.
9 THEY HAD GONE THERE AND GOTTEN INTO A FIGHT WITH TYRONE
10 SMITH AND DELSHAWN PRESCOTT.

11 THE BOYS IN THAT CAR WERE ANGRY, AND SO THEY WENT
12 BACK TO BETHEL BISHOP. AT THAT POINT, SOME OF THESE BOYS
13 WERE DROPPED OFF, AND THEY PICKED UP TWO MORE. THEY
14 PICKED UP SHEROD PRAYLOW. PARIS ALEXANDER WAS STILL IN
15 THE CAR. THEY PICKED UP POOH, AND THEN BRADY BROWN WAS
16 DRIVING THAT CAR.

17 THEY WENT BACK TO T.S. MARTIN ON THAT DAY, AND AS
18 THEY WERE THERE, POOH GETS OUT OF THE CAR AND HE POINTS A
19 GUN AT TYRONE SMITH. WE KNOW THAT. WE KNOW THAT THE
20 PEOPLE AT THAT HOUSE CALLED THE POLICE BECAUSE THEY WERE
21 SCARE, CONCERNED. THERE'S SOMEBODY OUT THERE ON THE
22 STREET WITH A WEAPON.

23 WE KNOW THAT THE POLICE CAME OUT THERE. WE KNOW THAT
24 THEY STAYED FOR ROUGHLY 20 MINUTES, A LITTLE BIT UNDER.
25 WE KNOW THAT THEY LEFT, AND WE KNOW THAT WITHIN 12 MINUTES

1 OF THEIR LEAVING, TWO CHILDREN LAY DYING. THEY WERE SHOT.

2 THE STATE NOW CLAIMS THAT CHRISTOPHER LIVERMAN WAS
3 THE SHOOTER, AND OUR POSITION EMPHATICALLY IS THAT HE
4 ISN'T.

5 HERE IS WHAT THE STATE HAS BROUGHT YOU IN ORDER TO
6 GET YOU TO CONVICT CHRISTOPHER LIVERMAN: THEY BROUGHT YOU
7 THEIR WITNESSES. LET'S START OFF WITH POOH. THEY BROUGHT
8 HIM IN HERE TO TRY TO SHOW YOU THAT CHRISTOPHER LIVERMAN
9 WAS GOING TO COMMIT A LICK. HE WAS GOING OVER TO T.S.
10 MARTIN TO CAUSE SOME TROUBLE.

11 HERE IS WHAT WE KNOW: WE KNOW THAT HE WAS IN THAT
12 WHITE CAR. WE KNOW THAT TYRONE SMITH HAS FLASHED GANG
13 SIGNS AT HIM EARLIER AND THAT HE WAS ANGRY ABOUT THAT --
14 AT HIS FRIEND, EXCUSE ME.

15 WE KNOW THAT TYRONE SMITH HAD FLASHED GANG SIGNS AT
16 HIS FRIEND, BRADY BROWN, EARLIER AND THAT HE CAME BACK
17 BECAUSE HE WAS ANGRY. WE KNOW THAT HE HAD GONE BACK TO
18 T.S. MARTIN FOR THE PURPOSES OF FINDING TYRONE AND
19 DELSHAWN.

20 WE KNOW THAT HE WAS PART OF THE TROUBLE THAT HAPPENED
21 ON T.S. MARTIN THAT NIGHT. HERE IS WHAT HE TOLD US: HE
22 TOLD US THAT CHRISTOPHER LIVERMAN HAD THREE OR FOUR
23 BULLETS ON HIM; THAT THESE BULLETS SUPPOSEDLY WENT TO A
24 DEUCE DEUCE. HE SAYS THAT HE NEVER SAW A GUN. HE SAID
25 THAT CHRIS WAS HEADING TO T.S. MARTIN TO COMMIT A LICK,

1 WHICH IS SLANG FOR GETTING MONEY, AND HE NEVER SAW CHRIS
2 SHOOTING ANYONE.

3 BUT IMPORTANTLY, HERE IS WHAT HE HAS DENIED ON THE
4 STAND: UNDER OATH HE DENIED -- HE LIED ABOUT BEING IN A
5 GANG. HE DENIED IT WHEN MS. CAMPBELL ASKED HIM, ALTHOUGH
6 I THINK HE MAY HAVE ADMITTED IT WHEN I GOT UP THERE AND
7 STARTED ASKING HIM ABOUT IT.

8 HE TURNED TO YOU AND HE SWORE THAT HE DID NOT HAVE A
9 GUN ON T.S. MARTIN THAT NIGHT. REMEMBER THAT I ASKED HIM,
10 I WAS LIKE, "ARE YOU TELLING THIS JURY THAT YOU DIDN'T
11 HAVE A GUN?" THAT'S WHEN HE TURNED AROUND AND LOOKED AT
12 YOU AND SAID THIS: HE SAID HE HAD BRASS KNUCKLES INSTEAD,
13 IF YOU WILL REMEMBER THAT. WE KNOW THAT HE LIED BECAUSE
14 OF WHAT OTHER WITNESSES HAVE TOLD US. WE KNOW THAT
15 PRECIOUS SAMUELS SAW HIM THERE. SHE KNEW HIM. I MEAN,
16 THEY WORKED TOGETHER. SHE KNEW HIM BY NICKNAME. SHE KNEW
17 HIM BY SIGHT. SHE SAID SHE KNEW HIM BY THE WAY HE WALKED,
18 AND WE KNOW THAT TYRONE SMITH SAID THAT SOMEBODY POINTED A
19 GUN AT HIM. EVEN DIEGO THOMPSON SAID THAT POOH RAN INTO
20 HIM LATER, AND HE SAID, "WE HAD TO PULL SOME GUNS OUT ON
21 SOME BLOODS AND SHOOT."

22 CARL SMITH IS A LIAR. HE HAS LIED IN HIS STATEMENTS
23 TO THE POLICE, AND HE HAS GIVEN THREE STATEMENTS TO THE
24 POLICE, IN ADDITION TO THE TESTIMONY THAT HE HAS PROVIDED
25 HERE ON THE STAND TO YOU. HE'S SIMPLY NOT A CREDIBLE

1 WITNESS.

2 IF SOMEBODY IS A LIAR, YOU NEED TO TREAT THEM LIKE A
3 LIAR. YOU DON'T BELIEVE WHAT THEY HAVE TO SAY. HE MADE A
4 VERY BIG SHOW OUT OF REFUSING TO IDENTIFY MY CLIENT AS
5 SOMEBODY THAT HE KNOWS, BUT DON'T BUY IT.

6 THE KID IS STREET SMART. HE KNOWS WHAT HE NEEDS TO
7 DO IN ORDER TO LOOK CREDIBLE, AND THAT'S WHAT HE DID. HE
8 THOUGHT HE WOULD PULL THAT STUNT AND MAKE HIMSELF LOOK
9 CREDIBLE, BUT OATHS DON'T MEAN ANYTHING TO CARL SMITH.
10 COURTRROOMS DON'T MEAN ANYTHING TO CARL SMITH. THIS WHOLE
11 PROCESS MEANS NOTHING TO CARL SMITH. ALL THAT MATTERS TO
12 HIM IS THAT HE IS FREE.

13 AFTER HE GAVE HIS THIRD STATEMENT TO THE POLICE, HIS
14 THIRD STATEMENT, WHEN HE FINALLY STARTS TALKING ABOUT
15 CHRIS LIVERMAN, THEN HE GETS TO WALK OUT THE DOOR. TO
16 DATE, HE HAS NEVER BEEN CHARGED WITH ANY CRIME THAT
17 HAPPENED. WE KNOW ABSOLUTELY THAT HE COMMITTED SOME THAT
18 NIGHT.

19 ADDITIONALLY, HE MET WITH THE SOLICITORS THREE TIMES
20 BEFORE HE CAME IN AND TESTIFIED IN THIS COURTROOM, AND I
21 THINK YOU HAVE TO ASK YOURSELF WHY DO YOU HAVE TO PRACTICE
22 IF YOU'RE GOING TO TELL THE TRUTH.

23 THE NEXT, THEY BRING YOU MISS SHANTE BETHEL. WHAT
24 WAS HER PURPOSE? THE STATE INTRODUCED HER TO TRY TO SHOW
25 YOU, TRY TO PROVE TO YOU, THAT CHRIS LIVERMAN GAVE A

1 CONFESSON ON THE NIGHT OF THE SHOOTINGS; THAT SHE WAS
2 HANGING OUT SOMEWHERE AT BETHEL BISHOP AND THAT CHRIS CAME
3 RUNNING UP, CONFESSED TO THE CRIME AND THEN WENT RUNNING
4 BACK.

5 HERE IS WHAT WE KNOW ABOUT SHANTE BETHEL: WE KNOW
6 THAT SHE INITIATED CONTACT WITH JOBY GRAY TWO DAYS AFTER
7 THE SHOOTING; THAT SHE HAD BEEN ARRESTED ON AN ASSAULT
8 WITH INTENT TO KILL CHARGE JUST SIX WEEKS EARLIER AND THAT
9 JOBY GRAY WAS THE LEAD INVESTIGATOR ON THAT CASE, AS WELL.

10 WE KNOW THAT THAT ASSAULT WITH INTENT TO KILL CHARGE
11 IS STILL OUTSTANDING. IT'S STILL PENDING. WE KNOW THAT
12 SHE DOESN'T EVEN HAVE A COURT DATE. WE ALSO KNOW THAT SHE
13 IS CURRENTLY WORKING WITH THE SOLICITOR'S OFFICE ON YET
14 ANOTHER MURDER CASE.

15 WE KNOW FROM HER STORY CHRIS WAS RUNNING FROM THE
16 COLONY INTO THE BETHEL BISHOP, AND HE JUST STOPPED, JUST
17 STOPPED. STOPPED TO, I GUESS, CONFESS TO MURDER AND THEN
18 JUST WENT RUNNING IN THE OTHER DIRECTION.

19 NOW, SHE IS THE ONLY PERSON WHO SAYS THIS. WE KNOW
20 THAT SHE SAID SHE OVERHEARD IT, BUT WE HAVE ABSOLUTELY NO
21 IDEA WHO SHE SUPPOSEDLY SAID THIS TO OR EXACTLY WHAT WAS
22 SAID OR WHO ELSE WAS THERE OR EXACTLY WHERE IN THE BETHEL
23 BISHOP THESE CONVERSATIONS OCCURRED.

24 WE ALSO KNOW THAT SHE DIDN'T WANT TO ANSWER ANY OF MY
25 QUESTIONS ABOUT WHO ELSE WAS THERE, AND I JUST WANTED TO

1 KNOW, TO SEE, IF ANY OF THIS COULD BE CORROBORATED BY
2 ANYONE ELSE.

3 WE ALSO KNOW, BECAUSE INVESTIGATOR GRAY ADMITTED THIS
4 TO US, THAT WHEN SHE CALLED HIM TWO DAYS AFTER THE
5 SHOOTING THAT SHE TOLD HIM COOCHIE, MIRAGE, AND PARIS DID
6 THE SHOOTING. THAT'S WHAT'S WRITTEN IN INVESTIGATOR
7 GRAY'S NOTES, AND THAT'S WHAT HE ADMITTED TO.

8 WE KNOW THAT SHE HAS TRIED TO CHANGE HER STORY ON THE
9 STAND, BUT THIS NEW VERSION OF EVENTS DOES NOT FIT WITH
10 WHAT IS CONTAINED IN INVESTIGATOR GRAY'S NOTES. THEN SHE
11 MAKES AN APPOINTMENT TO MEET WITH INVESTIGATOR GRAY IN
12 ORDER TO GIVE A STATEMENT AND BAM, NOW SHE HAS OVERHEARD A
13 CONFESSION.

14 HERE IS WHAT'S KEY: SHE TOLD INVESTIGATOR GRAY THAT
15 SHE HEARD THE CONFESSION ON THE VERY NIGHT THAT IT
16 HAPPENED. OF COURSE, SHE DIDN'T CALL THE NEXT DAY, AND OF
17 COURSE, WHEN SHE DID CALL, SHE GAVE THREE COMPLETELY
18 DIFFERENT NAMES. BY THE TIME THAT SHE GAVE THIS
19 STATEMENT, SHE HAD HEARD THIS CONFESSION.

20 NOW, WHAT ELSE DO WE KNOW ABOUT MISS BETHEL? WE KNOW
21 THAT SHE IS TIGHT WITH POOH, AND I THINK THAT'S THE WORD
22 THAT SHE USED ON THE STAND. WE KNOW THAT POOH ADMITS THAT
23 HE HAD BEEN RIDING AROUND T.S. MARTIN EARLIER THAT DAY
24 WITH A SHANTE. SHE DENIED THIS, OF COURSE, BUT WE DID
25 FIND OUT FROM MISS BETHEL THAT SHE OWNED FOUR CARS AT THE

1 TIME, AND THEN SHE TOLD US THAT EVERYONE STICKS TOGETHER
2 IN THE BISHOP.

3 I THINK THAT'S IMPORTANT BECAUSE I THINK THAT'S HER
4 MOTIVE. SHE KNEW CHRIS WAS ARRESTED. SHE KNEW THAT HE
5 WAS GOING TO BE THE FALL GUY AND THAT SHE WAS GOING TO
6 PROTECT HER FRIENDS. WE KNOW BECAUSE SHE ADMITTED SHE
7 DIDN'T REALLY PARTICULARLY LIKE CHRIS LIVERMAN. SHE
8 ADMITTED THAT SHE HAD NEVER REALLY EVEN SPOKEN TO HIM. WE
9 KNOW THAT THEY NEVER ACTUALLY SPOKE THAT NIGHT.

10 REMEMBER, SHE TESTIFIED SHE JUST OVERHEARD THIS
11 STUFF. SHE IS NOT SAYING THAT CHRISTOPHER LIVERMAN SAID
12 THIS TO HER, AND WE ALSO KNOW THAT SHE HAS PRACTICED HER
13 STATEMENT WITH THE SOLICITOR'S OFFICE ON THREE SEPARATE
14 OCCASIONS. AGAIN, YOU HAVE TO ASK YOURSELF IF YOU'RE
15 GOING TO TELL THE TRUTH, THEN WHY DO YOU HAVE TO PRACTICE.

16 THEN I GOT TO CROSS-EXAMINE HER, IF YOU WILL REMEMBER
17 THAT. I ASKED ABOUT THE DETAILS. I ASKED ABOUT THE
18 THINGS THAT WERE NOT CONTAINED IN HER STATEMENT, AND I
19 TRIED TO HELP HER OUT BY PROVIDING A MAP FOR HER.

20 I PULLED OUT THIS MAP RIGHT HERE. IT'S A SATELLITE
21 PICTURE OF HER NEIGHBORHOOD. I SHOWED HER A MAP OF HER
22 NEIGHBORHOOD. SHE SAID SHE HAD NO IDEA WHAT I WAS SHOWING
23 HER, NOT A CLUE.

24 WE KNOW THAT SHE DIDN'T WANT TO ANSWER ANY OF MY
25 QUESTIONS. SHE DIDN'T WANT TO PROVIDE ANY DETAILS AT ALL.

1 SHE WOULDN'T EVEN TELL ME WHERE SHE WAS STANDING WHEN ALL
2 OF THIS WAS OCCURRING, ALLEGEDLY OCCURRING.

3 FINALLY, SHE DID GIVE THREE NAMES OF PEOPLE, WHO THEY
4 ARE. MAYBE YOU WILL REMEMBER, I ASKED HER THE QUESTION.
5 SHE PAUSED AND THEN FINALLY SHE SAID, "OH, PEACHES,
6 SOMEBODY NAMED TILLY." I THINK THAT'S THE NAME SHE GAVE,
7 SOMETHING LIKE TILLY, AND POOH.

8 NOW, OF COURSE, POOH HASN'T SAID ANYTHING ABOUT THIS
9 AT ALL, AND THE SOLICITORS HAVE HAD PLENTY OF TIME TO ASK
10 HIM ABOUT THIS.

11 OF COURSE, WE'VE NEVER HEARD ANYTHING FROM ANYONE
12 ELSE WHO SUPPOSEDLY WAS THERE WHEN THIS CONVERSATION WAS
13 OCCURRING. HER STATEMENT IS COMPLETELY UNCORROBORATED,
14 AND YOU NEED TO TAKE THAT INTO CONSIDERATION WHEN YOU'RE
15 EVALUATING HER CREDIBILITY.

16 AGAIN, SHE IS A LIAR. TREAT LIARS THE WAY THEY
17 DESERVE TO BE TREATED. IGNORE WHAT THEY SAID, ESPECIALLY
18 IF IT CANNOT BE CORROBORATED BY A SINGLE OTHER FACT.

19 YOU CANNOT TRUST A LIAR. YOU WOULDN'T IN YOUR NORMAL
20 EVERYDAY LIVES. I MEAN, IF YOU KNEW SOMEBODY WAS A
21 CHRONIC LIAR, DO YOU TRUST THEM? NO. SO WHY WOULD YOU
22 TRUST SOMEBODY WHO IS LIAR JUST BECAUSE THE STATE CALLS
23 THEM AND PUTS THEM ON THE STAND? AGAIN, OATHS MEAN
24 NOTHING TO HER. COURTROOMS MEANS NOTHING TO HER. THIS
25 WHOLE PROCESS MEANS NOTHING TO HER.

1 REMEMBER WHEN I HAD TO HAVE THE JUDGE INSTRUCT HER TO
2 ANSWER MY QUESTIONS? SHE DIDN'T WANT ANY PART OF IT. SHE
3 DIDN'T WANT ANYONE TO QUESTION THE VERSION OF EVENTS THAT
4 SHE HAD PROVIDED TO THE SOLICITOR'S OFFICE. IF SHE IS
5 TELLING THE TRUTH, WHY WOULD SHE PRACTICE HER STATEMENT?

6 NOW LET'S TALK ABOUT DIEGO THOMPSON. NOW, THE
7 PURPOSE OF THE STATEMENT COMING UP IS BECAUSE HE CLAIMS
8 THAT HE ACTUALLY SAW CHRISTOPHER LIVERMAN SHOOTING THE
9 VICTIMS.

10 HE IS A KEY WITNESS FOR THE STATE, BUT HIS VERSION OF
11 EVENTS INCLUDES SO MANY LIES AND INCONSISTENCIES YOU
12 CANNOT BELIEVE A WORD THAT HE SAYS. HE IS YET ANOTHER
13 LIAR THAT THE STATE HAS OFFERED TO YOU HOPING THAT YOU
14 WILL CONVICT MY CLIENT, MR. LIVERMAN.

15 FIRST, HERE IS WHAT WE KNOW: DIEGO THOMPSON IS AN
16 INCREDIBLY CAPABLE AND ACCOMPLISHED LIAR. HE IS VERY GOOD
17 AT IT. HE HAS GIVEN TWO STATEMENTS TO THE POLICE. YOU
18 ONLY HAVE HIS SECOND STATEMENT IN EVIDENCE, BUT DON'T
19 FORGET THE FACT THAT HE ACTUALLY GAVE A FIRST STATEMENT.

20 INVESTIGATOR GRAY KNEW THAT HE LIED COMPLETELY IN
21 THAT FIRST STATEMENT, AND THAT'S THE STATEMENT THAT HE
22 GAVE THE DAY AFTER THE SHOOTING. IN THAT STATEMENT, IF
23 YOU WILL RECALL BECAUSE WE GOT SOME TESTIMONY ON THIS, THE
24 STATEMENT SAYS THAT HE WAS HANGING OUT AT COPPERFIELD
25 APARTMENTS; THAT HE WAS NOWHERE NEAR T.S. MARTIN DRIVE.

1 HE SAID THAT HE WAS HOME WATCHING COMIC VIEW ON THE BLACK
2 ENTERTAINMENT TELEVISION NETWORK. HE REMEMBERS IT SO
3 WELL, AND THAT'S WHY WE HAVE THIS QUOTE UP HERE, BECAUSE
4 HE RECALLS THE FIRST COMIC WAS STILL ON STAGE WHEN HE GOT
5 HOME THAT NIGHT.

6 SEE, DIEGO KNOWS THE POLICE ARE LOOKING FOR
7 CORROBORATION. THAT'S WHY HE SAID THAT, BUT IT'S STILL A
8 COMPLETE LIE.

9 WE KNOW THAT INVESTIGATOR GRAY DIDN'T BUY IT AND
10 DIDN'T BUY ANY OF IT, AND HE LET HIM LEAVE THE POLICE
11 HOUSE ANYWAY.

12 WE KNOW THAT THE POLICE WANTED TO TALK TO HIM AGAIN,
13 BUT THEY WENT TO HIS HOUSE LOOKING FOR HIM, BUT HIS MOTHER
14 SAID THAT HE HAD JUST LEFT ON FOOT. WE KNOW THAT THEY
15 THEN WENT ON AND TRIED TO FIND HIM, AND THEY COULDN'T
16 LOCATE HIM ANYWHERE.

17 FINALLY, THEY WENT BACK TO HIS MOTHER AND CALLED, AND
18 THEY SET UP AN INTERVIEW BECAUSE THEY WANTED ANOTHER
19 STATEMENT FROM DIEGO. THEY HAD SOME CONCERNS AT THIS
20 POINT. HIS MOTHER TOOK HIM DOWN THERE, BUT SHE WOULDN'T
21 LET HIM WAIVE HIS RIGHTS. NO INTERVIEW WAS CONDUCTED AT
22 THAT POINT.

23 WE KNOW THAT THEN SHE WENT OUT AND HIRED A VERY
24 INFLUENTIAL AND VERY GOOD ATTORNEY, TODD RUTHERFORD, ALSO
25 A STATE LEGISLATOR, BEFORE SHE ALLOWED THE POLICE TO SPEAK

1 TO HER SON AGAIN.

2 WE KNOW THAT THEY WERE THERE FOR ABOUT 45 -- WE KNOW
3 THAT DIEGO'S MOTHER, DIEGO AND TODD RUTHERFORD WERE AT
4 POLICE HEADQUARTERS. WE KNOW THAT THEY WERE SPEAKING
5 ABOUT 45 MINUTES BEFORE THEY EVER STARTED TAKING A
6 STATEMENT FROM DIEGO, AND DURING THAT TIME, TODD
7 RUTHERFORD WAS WORKING OUT A WAY TO KEEP HIS CLIENT FROM
8 BEING CHARGED WITH MURDER.

9 WHEN DIEGO GAVE A SECOND STATEMENT, MR. RUTHERFORD
10 WAS SITTING RIGHT THERE IN THE ROOM AS IT WAS HAPPENING,
11 AND INVESTIGATOR GRAY SAID THAT HE BELIEVED THAT
12 STATEMENT, THE SECOND STATEMENT THAT YOU WILL HAVE IN
13 EVIDENCE.

14 YOU HAVE TO LOOK AT THAT STATEMENT LONG AND HARD.
15 THE INVESTIGATOR SHOULD HAVE KNOWN THAT HIS STATEMENT WAS
16 FULL OF LIES.

17 WHILE YOU'RE TAKING A LOOK AT THAT STATEMENT, TAKE
18 ANOTHER HARD LOOK AT WHAT WE'VE INTRODUCED AS A BOOK OF
19 KNOWLEDGE, A BOOK OF KNOWLEDGE OF GANG LITERATURE. I WANT
20 YOU TO LOOK AT THOSE HANDWRITINGS, AND I WANT YOU TO LOOK
21 CLOSELY AT THOSE HANDWRITINGS.

22 IF YOU WILL REMEMBER, DIEGO TOOK THE STAND, DENIED
23 EVER BEING IN A GANG UNDER OATH TO YOU. AGAIN, LYING TO
24 YOU.

25 NOW, LET'S TALK ABOUT THE STATEMENT, THE STATEMENT

1 THAT INVESTIGATOR GRAY THOUGHT WAS SO BELIEVABLE. NOW,
2 THE SECOND STATEMENT, DIEGO GAVE SEVEN DAYS AFTER THE
3 SHOOTING. HE GAVE IT ON SEPTEMBER 2ND.

4 HE HAD PLENTY OF TIME TO FIGURE OUT WHAT HIS STORY
5 WAS GOING TO BE. HE KNEW THAT CHRISTOPHER LIVERMAN HAD
6 BEEN ARRESTED. HE KNEW THAT HE WAS THE ONLY PERSON WHO
7 WAS ARRESTED, AND HE KNEW THAT THE POLICE WERE LOOKING TO
8 BUILD A CASE AGAINST CHRISTOPHER LIVERMAN.

9 HE TOLD JOBY GRAY THAT HE WAS WITH A NUMBER OF YOUNG
10 BOYS: ERIC, TY, LITTLE CHRIS, 50, PICCOLO, TROY, JEROD,
11 AND LITTLE C, PEOPLE WHO LAW ENFORCEMENT STILL HAVE NO
12 IDEA WHO THESE PEOPLE ARE AND HOW HARD IT COULD HAVE BEEN
13 TO FIND THESE PEOPLE. I BET IF YOU FOUND ONE, YOU
14 PROBABLY WOULD HAVE FOUND THE REST.

15 DIEGO SAID HE WAS INNOCENT, SAID HE HAD NO IDEA WHAT
16 WAS GOING TO HAPPEN ON T.S. MARTIN THAT NIGHT, SAYS HE
17 DIDN'T SEE ANY GUNS AT ALL.

18 THIS THING IS 38 INCHES LONG, NEARLY 38 INCHES LONG,
19 SLIGHTLY OVER THREE FEET. WHEN MAXWELL ASKED HIM, GAVE
20 HIM A CHANCE TO EXPLAIN HOW IT IS HE COULD HAVE GONE TO
21 THE SCENE OF THESE MURDERS AND NOT KNOWN THE PERSON HE'S
22 WALKING WITH IS CARRYING A RIFLE THIS LARGE, HE SAID, "I
23 GUESS HE STUCK IT IN HIS BELT," AS IF THAT PROVIDED ANY
24 EXPLANATION AT ALL. IT MADE ABSOLUTELY NO SENSE.

25 SO THEN HE HEADS OVER TO THE RAILROAD TRACKS NEXT TO

1 THE COLONY. HE SAYS THAT HE SEES CHRIS PULLING OUT A
2 BANDANNA, HIS FLAG, GETTING READY TO REP HIS SET. OF
3 COURSE, THE STATE HAS NEVER BROUGHT IN A BANDANNA THAT
4 ANYBODY HAS EVER SAID BELONGED TO CHRIS.

5 THEY DETAINED HIM 20 MINUTES AFTER THE SHOOTING.
6 YOU'RE TALKING ABOUT A VERY COMPRESSED TIMEFRAME HERE.
7 THEN ONCE THEY GET THERE, DIEGO SAYS THAT CHRIS PULLS OUT
8 A RIFLE AND THEN GOO PULLS OUT A SHOTGUN, BUT THIS IS THE
9 FIRST WE'VE EVER HEARD ABOUT ANY SHOTGUN. AGAIN, IT'S A
10 COMPLETELY TOTALLY UNCORROBORATED FACT.

11 TYRONE SMITH, AS CONFUSED AS HE IS ABOUT A LOT OF
12 THINGS, NEVER PUTS TWO LARGE WEAPONS THERE AT THE SCENE OF
13 THE CRIME.

14 WE CERTAINLY DON'T HAVE ANY SHELL CASINGS OR ANYTHING
15 ELSE THAT WOULD BACK THAT UP, BUT THEN HE SAYS THAT HE
16 STARTS SPRINTING, SEES SOMEBODY PULL OUT A GUN AND STARTS
17 SPRINTING. HE CLAIMS THAT HE SEES CHRIS THROW DOWN THE
18 RIFLE AND THEN PICKS UP THAT SHOTGUN.

19 ASK YOURSELF HOW IT IS THAT IF HE'S SPRINTING IN THE
20 OTHER DIRECTION TRYING TO GET AWAY FROM ALL THIS, THAT HE
21 THEN SEES THIS GO ON.

22 WE KNOW THAT THE LIGHTING WAS NOT PARTICULARLY GOOD
23 THAT NIGHT. IF HE'S SPRINTING, HE SHOULD HAVE BEEN TOO
24 FAR AWAY TO SEE ANYTHING THAT WAS GOING ON DOWN THERE.

25 THEN HE GOES ON TO TELL INVESTIGATOR GRAY THAT HE

1 HEARD FROM SOME BOYS THAT CHRISTOPHER LIVERMAN SHOT, I
2 GUESS THE SHOTGUN OR THE RIFLE, OFF ON THE TRACKS.

3 HE FEEDS JOBY GRAY THIS INFORMATION BECAUSE HE KNOWS
4 IT'S GOING TO POINT TO CHRISTOPHER LIVERMAN'S GUILT, AND
5 THEN HE TELLS INVESTIGATOR GRAY THAT HE ACTUALLY SEES, HE
6 WITNESSES, CHRISTOPHER LIVERMAN TAKE OFF HIS SHIRT, WRAP
7 UP TWO GUNS AND STICK THEM UNDER LOG.

8 WE HEARD FROM SERGEANT AULD AND OFFICER WHITTLE THAT
9 THOSE GUNSHOTS ON THE TRACK HAPPENED 25 MINUTES AFTER
10 CHRISTOPHER LIVERMAN WAS IN CUSTODY. THOSE GUNS WERE
11 STILL OUT THERE; THAT THEY WERE IN SOMEBODY ELSE'S HANDS,
12 AND THEY WERE NOT IN CHRISTOPHER LIVERMAN'S HANDS.

13 SOMEBODY PUT THAT RIFLE IN A PLASTIC BAG AND STUCK IT
14 OUT IN THE MIDDLE OF A DRAINAGE DITCH, PUT IT OUT IN A
15 DRAINAGE DITCH. THIS IS THE COLONY. THIS IS THE BISHOP.
16 THIS IS RIGHT OVER THE TRACKS. OVER HERE. THIS IS WHERE
17 OFFICER DUTTON TELLS YOU THAT THIS GUN WAS RECOVERED, WAY
18 DOWN HERE.

19 UP HERE IS BETHEL BISHOP, BUT SOMEBODY PUT THE RIFLE
20 IN A PLASTIC BAG AND THREW IT IN THAT DRAINAGE DITCH, AND
21 IT'S NOT MY CLIENT.

22 DIEGO THOMPSON WAS CLEARLY LYING, BUT THEN IT GETS
23 BETTER. HE TELLS INVESTIGATOR GRAY THAT HE GETS A PHONE
24 CALL FROM CHRISTOPHER LIVERMAN ASKING ABOUT THE GUNS, A
25 TELEPHONE CALL THAT MUST HAVE COME FROM THE JAIL BECAUSE

1 THAT'S WHERE MY CLIENT WAS WHEN ALL OF THIS HAPPENED.

2 DO YOU REMEMBER I ASKED INVESTIGATOR GRAY, "DO YOU
3 KNOW IF THOSE TELEPHONE CALLS ARE RECORDED?" HE ANSWERED,
4 "I DON'T KNOW," BUT THEN WHEN MS. FENT ASKED HIM ABOUT
5 THREE-WAY CALLS AND THAT SORT OF THING, HE ADMITTED THAT
6 HE LOOKED FOR THE TELEPHONE CALLS. HE LOOKED AND HE
7 COULDN'T FIND IT.

8 INVESTIGATOR GRAY LIED ABOUT THAT, AND OVER SUCH A
9 MINOR POINT, TOO. I MEAN, WHY NOT JUST ADMIT THAT YOU
10 LOOKED FOR THE TAPES AND COULDN'T FIND IT? WE KNOW THEY
11 NEVER FOUND THE TAPE BECAUSE IF THEY HAD FOUND THE TAPE,
12 YOU CERTAINLY WOULD HAVE HEARD IT IN THIS TRIAL. THEY
13 LOOKED AND THEY LOOKED, AND THEY LIED ABOUT IT.

14 THEN DIEGO TELLS YOU ALSO THAT HE SAW CHRIS WITH THAT
15 GUN SEVERAL MONTHS EARLIER, AND HE TELLS YOU THAT CHRIS
16 TOLD HIM THAT HE HAD STOLEN THAT GUN, AND WE KNOW THAT
17 THAT'S A LIE ALSO.

18 YOU MAY HAVE WONDERED WHY IN OUR CASE WE WERE PUTTING
19 UP SOME OF THESE OFFICERS TO TESTIFY TO SOME OF THESE
20 NUMBERS AND INCARCERATION DAYS AND THAT SORT OF THING, BUT
21 I'LL TELL YOU WHY: THE GUN WAS STOLEN ON JUNE 14TH OF
22 2004. CHRISTOPHER LIVERMAN WAS IN JAIL AT THE TIME THAT
23 THAT GUN WAS STOLEN. CHRIS WAS THERE FROM JUNE 2ND TO
24 JUNE 28TH.

25 I WONDER WHERE DIEGO THOMPSON WAS WHEN THAT GUN WAS

1 STOLEN? DON'T FORGET THE PACT THAT DIEGO SAYS HE AND
2 CHRIS TOOK WITH THAT RIFLE, AND I GUESS GOO'S SHOTGUN
3 ALSO.

4 DIEGO AND MAXWELL WANTED TO GET THIS OUT FROM HIM,
5 WANTED TO BE CLEAR ABOUT IT, SO THEY WALKED DOWN THROUGH
6 THE BISHOP, THROUGH THE COLONY, TOOK THE CUT IN THE COLONY
7 TO HERE. THIS IS WEST BELTLINE, AND THEN THEY WENT
8 WALKING DOWN WEST BELTLINE WITH THOSE RIFLES UNTIL THEY
9 CAME OVER HERE AND MADE IT TO T.S. MARTIN DRIVE.

10 DIEGO THOMPSON WANTS EVERYONE TO BELIEVE THAT THEY
11 WERE CARRYING THOSE WEAPONS, THOSE HUGE WEAPONS, DOWN A
12 VERY BUSY STREET IN THE MIDDLE OF THE DAY AND NO ONE
13 STOPPED THEM AND NO ONE SAID ANYTHING. IT WAS ANOTHER
14 LIE, ANOTHER LIE BY ONE OF THE STATE'S KEY WITNESSES.

15 OF COURSE, HE ALSO SAYS THAT HE KNOWS THAT CHRIS USES
16 HOLLOW POINTS, AND I THINK THAT IS A VERY INTERESTING
17 POINT.

18 ALL OF THIS INFORMATION THAT DIEGO IS GIVING TO
19 INVESTIGATOR GRAY, AND INVESTIGATOR GRAY WAS BUYING
20 WITHOUT QUESTION, BUT THINK ABOUT IT, DIEGO SHOWS ENOUGH
21 FAMILIARITY, ENOUGH FACTS ABOUT THE SCENE, THAT
22 INVESTIGATOR GRAY REALLY SHOULD HAVE WONDERED WHETHER OR
23 NOT HE DIDN'T KNOW MORE ABOUT WHAT WAS GOING ON THAN WHAT
24 HE SAID HE DID.

25 INVESTIGATOR GRAY MUST HAVE HAD SOME SUSPICIONS

1 BECAUSE HE PLACED A HOLD ON A GUN THAT WAS FOUND ON SURREY
2 STREET, THAT'S THE GUN THAT WE WERE TALKING ABOUT, THE GUN
3 ON SURREY STREET THAT WAS FOUND RIGHT DOWN THE STREET FROM
4 WHERE DIEGO WAS LIVING.

5 YOU WILL HAVE THAT REPORT WITH YOU IN EVIDENCE. LOOK
6 AT IT CLOSELY. IF YOU LOOK AT THE TOP OF IT, YOU WILL SEE
7 THAT INVESTIGATOR JOBY GRAY IS THE PERSON WHO PUT THE HOLD
8 ON THAT. HE WOULDN'T HAVE DONE IT UNLESS HE THOUGHT IT
9 WAS RELEVANT TO THIS CASE.

10 THE GUN TRACE. THAT GUN TRACE WAS ULTIMATELY RUN.
11 IF IT HAD BEEN RUN BACK IN 2004, BACK WHEN THIS CASE HAD
12 JUST RECENTLY HAPPENED, MAYBE THEY WOULD HAVE REALIZED
13 THAT MY CLIENT WAS IN JAIL AT THAT TIME. MAYBE THEY WOULD
14 HAVE REALIZED THAT THEY COULD INVESTIGATE THAT AUTO
15 BREAKING MORE, SEE IF THEY COULD FINDING SOMETHING ON --
16 SOME FINGERPRINTS, SOME D.N.A., SOMETHING ON WHAT WAS
17 COLLECTED DURING THAT AUTO BREAKING, BUT WE KNOW NOW THAT
18 THE EVIDENCE IN THAT CASE, AND THERE WAS A PAIR OF
19 SUNGLASSES. THERE WAS A FLASHLIGHT THAT WAS ALSO TAKEN
20 INTO EVIDENCE. WE KNOW THAT THAT EVIDENCE HAS SINCE BEEN
21 DESTROYED. IT'S GONE.

22 THERE ARE OTHER THINGS THAT WE KNOW ABOUT DIEGO. WE
23 KNOW THAT DIEGO RAN INTO O.B. RIGHT AFTER THIS INCIDENT;
24 THAT O.B. TOLD HIM TO JUST STAND THERE AND LOOK INNOCENT
25 WHILE THE POLICE CAME BY, AND THEN ONCE THEY SAW HIS FACE

1 THEN TO LEAVE. WE KNOW THAT AFTERWARDS HE WENT TO SOME
2 GUY'S HOUSE UP IN BAYBERRY AND SAT AROUND AND WATCHED THE
3 NEWS.

4 INVESTIGATOR GRAY TOLD YOU THAT HE LOOKED FOR O.B.,
5 WANTED TO TALK TO O.B., HAD TWO YEARS TO FIND HIM. THIS,
6 BY THE WAY, IS THE SAME O.B. THAT OFFICER DUTTON WAS
7 CHASING DOWN THROUGH THE COLONY THAT NIGHT WHEN SHE
8 DISCOVERED THE MURDER WEAPON WRAPPED IN A PLASTIC BAG
9 THERE IN THE DRAINAGE DITCH.

10 REMEMBER, IT'S THE SAME O.B. THAT OFFICER MAHONEY
11 TESTIFIED IS NOW THE CURRENT LEADER OF THE FOLK. HE'S THE
12 O.G. OF THE FOLK. WE ALSO KNOW THAT DIEGO THOMPSON WAS
13 NEVER TESTED FOR G.S.R. WE KNOW THAT HE LIED ABOUT BEING
14 IN A GANG, AND WE KNOW THAT INVESTIGATOR GRAY BELIEVED
15 THIS KID, BELIEVED THE STATEMENTS.

16 DO YOU THINK HE STILL CONTINUES TO BELIEVE HIM? DO
17 YOU THINK THE SOLICITORS BELIEVE HIS STATEMENTS? REMEMBER
18 MR. FINKELSTEIN, THE COUNSELOR FROM MIDLANDS EVALUATION
19 CENTER, HE PROVIDED THE TESTIMONY THAT DIEGO HAD TOLD HIM
20 IN MARCH OF 2005, SEVEN MONTHS AFTER THIS HAPPENED, THAT
21 HE HAD SHOT AT PEOPLE AND THAT HE WAS A MEMBER OF THE
22 FOLK. OF COURSE, DIEGO DENIED BOTH OF THESE STATEMENTS
23 WHEN HE WAS ON THE STAND. MR. FINKELSTEIN UNDER OATH,
24 DIEGO THOMPSON UNDER OATH. WHO ARE YOU GOING TO BELIEVE?

25 HE MET WITH THE SOLICITORS ON THREE OCCASIONS, AS

1 WELL, INCLUDING THE MORNING THAT HE TESTIFIED. WHY DO YOU
2 HAVE TO PRACTICE IF YOU'RE GOING TO TELL THE TRUTH?

3 DIEGO KNEW AFTER THAT SECOND STATEMENT THAT HE GAVE
4 TO INVESTIGATOR GRAY KEPT HIM FROM BEING CHARGED WITH
5 MURDER THE FIRST TIME. HE'S HOPING THAT IT WILL KEEP HIM
6 FROM BEING CHARGED WITH MURDER NOW. IT WORKED THE FIRST
7 TIME, AND IT WORKED LIKE A CHARM.

8 AGAIN, NOW HE HAS ANOTHER ATTORNEY LOOKING OUT FOR
9 HIM. RIGHT NOW HE'S SITTING DOWN AT THE ALVIN S. GLENN
10 DETENTION CENTER LOOKING AT A POSSIBLE 20-YEAR SENTENCE ON
11 A BURGLARY AND GRAND LARCENY. HE'S A LIAR. YOU SHOULD
12 TREAT HIM LIKE A LIAR. DON'T BELIEVE WHAT HE HAS TO SAY.
13 SEE IF ANYTHING IN HIS STATEMENT CAN BE CORROBORATED.

14 POOH, SHANTE, DIEGO. WHAT A CROWD. WHEN CHRIS WAS
15 ARRESTED, THEY WERE ALL STILL EITHER LIVING OR HANGING OUT
16 AROUND BETHEL BISHOP APARTMENTS.

17 CHRIS BECAME THE FALL GUY, AND THESE GUYS ARE
18 COVERING FOR ONE ANOTHER. DO YOU REMEMBER SHANTE'S
19 STATEMENT? THE PEOPLE IN THE BISHOP LOOK OUT FOR ONE
20 ANOTHER, STICK TOGETHER. MAYBE THEY FIGURED IF THEY JUST
21 PUT CHRIS IN IT, THE POLICE WOULD STOP COMING AROUND
22 ASKING QUESTIONS.

23 WE KNEW THAT CHRIS WAS THE FIRST DETAINED. HE WAS
24 THERE. THEY KNEW THAT HE WAS ON THE HOOK. THEY HAD HIM
25 ARRESTED, AND THE POLICE DIDN'T SEEM PARTICULARLY

1 INTERESTED IN ARRESTING ANYONE ELSE.

2 SO REALLY, WHAT DID THEY HAVE TO LOSE. GUESS WHAT?
3 IT WORKED BECAUSE THE POLICE STOPPED COMING AROUND, AND
4 THEY STOPPED ASKING QUESTIONS.

5 LET'S TALK ABOUT TYRONE SMITH. NOW, THE REASON WHY
6 THEY PUT HIM ON THE STAND IS BECAUSE HE'S THE EYEWITNESS.
7 HE SAW THESE EVENTS, SAYS HE RECOGNIZED BABY JESUS AS
8 BEING THE PERSON WHO MURDERED THESE TWO VICTIMS, AND
9 THAT'S WHY THE STATE PUT HIM ON THE STAND.

10 HERE IS WHAT WE KNOW: THAT HE IS AT LEAST PARTIALLY
11 RESPONSIBLE FOR STARTING TROUBLE ON T.S. MARTIN THAT
12 NIGHT. ACCORDING TO HIM, HE AND DELSHAWN WERE THROWING UP
13 GANG SIGNS TO THIS WHITE FORD ESCORT THAT WAS DRIVING BY.

14 THOSE BOYS IN THE WHITE FORD ESCORT, THOSE WERE THE
15 GUYS WHO WERE DISRESPECTED, NOT MY CLIENT. HE WASN'T
16 THERE. WE KNOW THAT THE WHITE FORD ESCORT HAD DRIVEN BY
17 AT LEAST THREE TIMES THAT DAY. WE KNOW THAT TYRONE SMITH
18 MUST BE WRACKED WITH GUILT ABOUT WHAT HAPPENED.

19 HE HAS A CHILD'S LOGIC BECAUSE HE WAS A REAL YOUNG
20 MAN AT THAT TIME, AND HE'S GOT TO FEEL BAD. HE TOLD YOU
21 BEFORE HE'S HERE FOR **C.D.**'S FAMILY. I KNOW THAT HE
22 LIKES THOSE PEOPLE, CARES ABOUT THEM. WE ALSO KNOW THAT
23 HE BELIEVES THAT CHRISTOPHER LIVERMAN WAS IN THAT WHITE
24 FORD ESCORT WHEN IT FIRST CAME BY.

25 WE KNOW THAT HE TOLD THE INVESTIGATORS THAT

1 CHRISTOPHER LIVERMAN IS THE PERSON WHO GOT OUT OF THAT CAR
2 AND WENT AND PUT A GUN IN HIS FACE. WE KNOW THAT HE
3 TESTIFIED THAT IT WAS THAT SAME PERSON WHO GOT OUT OF THE
4 CAR, PUT THAT GUN IN HIS FACE, WHO THEN CAME BACK ON FOOT
5 MINUTES LATER, AND THAT'S WHEN THE SHOOTING HAPPENED. WE
6 KNOW THAT THE PEOPLE IN THAT WHITE CAR WAS CARL SMITH,
7 SHEROD PRAYLOW, BRADY BROWN, AND PARIS ALEXANDER.

8 AND THESE, YOU WILL HAVE THESE BACK IN EVIDENCE, BUT
9 THESE ARE PICTURES OF CARL SMITH ON THAT NIGHT, ON THE
10 NIGHT THAT HE WAS ARRESTED, ON THE NIGHT THAT MY CLIENT
11 WAS ARRESTED.

12 WE KNOW ABSOLUTELY THAT CHRIS WAS NOT THERE, SO WE
13 KNOW ABSOLUTELY THAT WHEN HE WAS GIVING THESE STATEMENTS
14 TO INVESTIGATOR GRAY SAYING HOW IT IS THAT HE RECOGNIZED
15 THE PERSON WHO CAME BACK AND SHOT THE KIDS THAT HE WAS
16 WRONG.

17 THE STATE KNEW THAT, TOO, AND WE KNOW THAT LAW
18 ENFORCEMENT MUST HAVE KNOWN THAT HE WAS WRONG ALSO, WHICH
19 IS WHY THEY BROUGHT HIM BACK A COUPLE OF DAYS LATER TO SEE
20 HOW IT IS THAT HE REALLY CAME TO BELIEVE THIS. THEY
21 WANTED TO GIVE HIM AN OPPORTUNITY TO CORRECT HIS STATEMENT
22 IF HE WAS WRONG, BUT HE CONTINUED TO MAINTAIN IN BOTH OF
23 THOSE STATEMENTS THAT IT WAS CHRISTOPHER LIVERMAN WHO GOT
24 OUT OF THE CAR AND POINTED THE GUN AT HIM AND CONTINUED TO
25 MAINTAIN, EVEN NOW, THAT HE STILL BELIEVES CHRISTOPHER

1 LIVERMAN WAS IN THAT FIRST WHITE CAR, BUT WE KNOW IT'S NOT
2 TRUE.

3 IT'S ONLY NOW, ONLY THIS YEAR, TWO YEARS AFTER THE
4 KILLINGS, THE MURDERS, THAT TYRONE SMITH EVER SAID THAT HE
5 RECOGNIZED HIM FROM TWO OR THREE DAYS THAT THEY SPENT
6 TOGETHER BACK AS CHILDREN OR WHEN HE SAW HIM AT MCDONALD'S
7 BACK IN 2003 OR THAT THERE WERE MOTION DETECTOR LIGHTS ON
8 THE SIDE OF THE HOUSE THAT DAY. HE NEVER SAID THAT BACK
9 IN 2004. WE'RE ONLY HEARING ABOUT IT THIS YEAR.

10 HERE IS WHAT ELSE WE ALSO KNOW: THAT TYRONE SMITH
11 WAS GIVEN TWO PHOTO LINEUPS; THAT IN THOSE PHOTO LINEUPS
12 WAS CONTAINED A PICTURE OF CARL SMITH, AND THEN THEY GAVE
13 HIM ANOTHER PHOTO LINEUP THAT INCLUDED SHEROD PRAYLOW AND
14 THAT HE FAILED TO IDENTIFY EITHER ONE OF THEM AS HAVING
15 BEEN THERE THAT NIGHT, BUT WE KNOW THAT BOTH OF THEM WORK.

16 TYRONE SMITH'S IDENTIFICATION WAS COMPLETELY WRONG
17 BACK IN 2004, AND THE STATE KNEW IT. THEY'RE STILL
18 PUTTING HIM ON THE STAND HOPING THAT YOU WILL OVERLOOK HIS
19 MISTAKEN IDENTIFICATION. THEY'RE HOPING THAT YOU WILL
20 THINK IT'S GOOD ENOUGH TO CONVICT A YOUNG MAN OF TWO
21 COUNTS OF MURDER. IT'S NOT.

22 IT'S A MISTAKE ABOUT TOO MANY THINGS TO TRUST HIS
23 IDENTIFICATION, AND YOU HAVE GOT TO TAKE THAT INTO
24 CONSIDERATION WHEN YOU'RE DELIBERATING THIS CASE.

25 LET'S TALK ABOUT WHEN CHRIS WAS DETAINED IN THE

1 BETHEL BISHOP CUT. WE KNOW THAT IT WAS DARK. WE KNOW
2 THAT THE AREA IS HEAVILY WOODED.

3 WE KNOW IT'S HEAVILY WOODED. WE KNOW THAT IT WAS
4 LATE AUGUST WHEN ALL OF THIS OCCURRED, AND THAT'S A VERY
5 HOT TIME OF THE YEAR HERE IN SOUTH CAROLINA. WE KNOW THAT
6 SERGEANT, THEN CORPORAL AULD, SAID THEY WENT TO THE CUT
7 BECAUSE THEY WERE TOLD BY DISPATCH THAT THERE WERE BOYS
8 RUNNING DOWN THE TRACK.

9 HE THOUGHT THEY WOULD BE RUNNING DOWN IN THE
10 DIRECTION AWAY FROM T.S. MARTIN.

11 (PAUSE).

12 MY APOLOGIES.

13 (PAUSE).

14 ALL RIGHT. HERE IS THE RAILROAD TRACK. HERE IS
15 WHERE THE CUT IS RIGHT HERE. OFFICER WHITTLE AND CORPORAL
16 AULD SAID THAT THEY WERE HERE BECAUSE THEY HAD HEARD THAT
17 THERE WERE BOYS RUNNING ON THE RAILROAD TRACKS. HERE IS
18 T.S. MARTIN. THEY MUST HAVE THOUGHT THEY WERE RUNNING UP
19 THIS WAY, WANTED TO CUT THEM OFF.

20 WE KNOW THAT WHEN CHRISTOPHER LIVERMAN WAS DETAINED,
21 HE TOLD, BECAUSE CORPORAL AULD AND WHITTLE TESTIFIED TO
22 THIS, THAT HE WAS COMING UP FROM THE BETHEL BISHOP SIDE.
23 HE WAS WALKING UP TOWARDS THE RAILROAD TRACKS. HE WASN'T
24 RUNNING THIS WAY. HE WAS WALKING UP TOWARDS THIS AREA.

25 AT THE TIME THAT CHRISTOPHER LIVERMAN WAS DETAINED,

1 HE WAS ACTUALLY HEADED BACK TOWARDS WHERE ALL OF THESE
2 EVENTS HAPPENED. IF HE HAD GONE THIS WAY, HE WOULD HAVE
3 BEEN DOWN THERE. IF HE HAD GONE ACROSS HERE, HE WOULD
4 HAVE GONE OVER THERE, BUT HE WASN'T RUNNING DOWN HERE. HE
5 WASN'T JUST STOPPED HERE COMING FROM DOWN HERE. HE WAS
6 WALKING UP TOWARDS THE TRACKS.

7 IT SEEMS LIKE IF YOU'RE GUILTY OF SOMETHING, YOU'RE
8 TRYING TO RUN AWAY AS FAR AS POSSIBLE FROM WHERE THESE
9 EVENTS HAPPENED, LIKE HIDING IN HIS GRANDMOTHER'S HOUSE.
10 THAT APARTMENT WAS CLOSE BY, OR MAYBE RUNNING IN THE
11 OPPOSITE DIRECTION, OR RUNNING DOWN THE RAILROAD TRACKS
12 AWAY FROM T.S. MARTIN, BUT INSTEAD, HE'S OUTSIDE.

13 WE KNOW THAT THE OFFICERS TESTIFIED THAT THEY
14 DETAINED HIM ABOUT A MINUTE AFTER THEY GOT THERE. WE KNOW
15 THAT SERGEANT AULD TOLD HIM TO STOP AND HE DID. HE JUST
16 STOPPED. WHEN HE DID, THEY WENT THROUGH HIS POCKETS.
17 THEY FOUND A DOO-RAG IN HIS POCKET, NOT A BANDANNA OF ANY
18 SORT.

19 WE KNOW FROM OFFICER DUTTON, AS WELL AS OFFICER
20 REYNOLDS, THAT THESE ARE VERY WELL TRAFFICKED AREAS. I
21 MEAN, THESE ARE WORN AREAS. PEOPLE IN THESE AREAS USE
22 THEM.

23 THINK ABOUT IT. IF YOU'RE LIVING UP IN BETHEL BISHOP
24 OR YOU'RE LIVING UP HERE IN BAYBERRY AND YOU NEED TO GET
25 OUT, YOU HAVE GOT TO GO THROUGH ALL OF THIS TO MAKE IT TO

1 WEST BELTLINE, OR YOU CAN TAKE THESE TRACKS -- YOU CAN
2 TAKE THESE CUTS. THEY'RE SHORT CUTS. A LOT OF THEM USE
3 THEM. OFFICER DUTTON SAID THAT MOST OF THE PEOPLE THERE
4 USE THEM, AND SHE WOULD KNOW. SHE HAS WORKED IN THAT AREA
5 FOR SEVEN YEARS.

6 I KNOW THAT CORPORAL AULD HAS TESTIFIED THAT CHRIS
7 WAS RUNNING UP TO THE RAILROAD TRACKS, BUT LOOK AT THE
8 PICTURE. LOOK CLOSELY AT THAT PICTURE BECAUSE THAT'S
9 WHERE IT COMES OUT RIGHT BEFORE HE GETS ONTO THE RAILROAD
10 TRACKS. THERE'S ACTUALLY A BIT OF A MOUND HERE. YOU HAVE
11 TO RUN UP TO GET ONTO THE RAILROAD TRACKS.

12 LOOK HOW DENSELY WOODED IT IS. CONSIDER HOW DARK IT
13 WAS. THERE WERE NO LIGHTS OUT THERE. THERE ARE NO LIGHTS
14 ON THE RAILROAD TRACKS. THEY TESTIFIED THEY DIDN'T HAVE
15 ANY FLASHLIGHTS BECAUSE THEY DIDN'T WANT TO ALERT ANYONE
16 THAT THEY WERE THERE SORT OF LYING IN WAIT, WAITING FOR
17 SOMEONE WHO WAS INVOLVED IN THIS TO COME RUNNING UP.

18 PURPOSELY, THEY DID NOT HAVE THESE FLASHLIGHTS. I
19 SUBMIT THAT THEY WOULD NOT HAVE BEEN ABLE TO TELL WHETHER
20 HE HAD BEEN RUNNING OR NOT, AND THEN OFFICER AULD SAID
21 SOMETHING CURIOUS. HE SAID, "I COULD TELL HE HAD BEEN
22 RUNNING BECAUSE I COULD FEEL HIS BEATING HEART IN HIS
23 BANG." CONSIDERING THAT CHRIS HAD JUST BEEN SURPRISED
24 WITH A SHOTGUN. HE HAD JUST BEEN CUFFED. HE HAD JUST
25 BEEN THROWN TO THE GROUND. HOW WOULD YOUR HEART HAVE BEEN

1 BEATING IF THAT JUST HAPPENED TO YOU? WHOSE HEART WOULD
2 NOT BE RACING UNDER THESE CIRCUMSTANCES?

3 THEN WHILE HE'S THERE, WHILE HE'S DETAINED, THAT'S
4 WHEN THE OFFICERS HEAR THE GUNSHOTS IN THE DISTANCE. THEY
5 HEAR THEM ON THE RAILROAD TRACK, AND THEY HEAR THEM UP
6 HERE, EXACTLY WHERE THE PEOPLE WERE COMING FROM T.S.
7 MARTIN RUNNING AROUND -- OR RUNNING AWAY ON THE RAILROAD
8 TRACK. THEY WOULD LEAVE.

9 SO NOW WE'RE HEARING THAT HE HAD BEEN RUNNING UP TO
10 THE CUT OR RUNNING UP TO THE RAILROAD TRACKS, AND WE'RE
11 HEARING THIS NOW THAT MY COLLEAGUES ARE TRYING TO CONVICT
12 MY CLIENT OF TWO COUNTS OF MURDER. THEY MADE TWO NOTES AT
13 THE TIME. THERE WAS NO INCIDENT REPORT. THEY HAVEN'T
14 PROVIDED ANY DOCUMENTATION FOR THIS. IT HAPPENED TWO
15 YEARS AGO.

16 THEY CERTAINLY HAVE HAD HUNDREDS OF ARRESTS SINCE
17 THEN, BUT YET TO HEAR THEM TALK ABOUT IT, IT'S LIKE IT
18 HAPPENED YESTERDAY. IT'S NOT UP HERE.

19 WE KNOW THAT CHRIS GAVE TWO STATEMENTS TO THE POLICE.
20 WE KNOW THAT CHRIS GAVE TWO STATEMENTS TO THE POLICE, AND
21 YOU HAVE THESE STATEMENTS IN YOUR POSSESSION. YOU WILL
22 HAVE THEM BACK IN THE JURY ROOM: ONE ON THE NIGHT OF THE
23 SHOOTING; ONE ON THE DAY AFTER.

24 THE QUESTION TO ASK IS, "WHY DO INNOCENT PEOPLE
25 IMPLICATE THEMSELVES IN CRIMES THEY DIDN'T COMMIT?" BUT I

1 WANT TO BE PERFECTLY CLEAR, THESE STATEMENTS ARE NOT
2 CONFESSIONS. CHRIS NEVER CONFESSES TO THIS CRIME. HE IS
3 SITTING HERE IN THIS COURTROOM BECAUSE HE IS TELLING THE
4 WORLD THAT HE IS INNOCENT.

5 AT BEST, HE CAN BE SAID TO HAVE MADE A SERIES OF
6 DISJOINTED STATEMENTS THAT SEEM TO SHOW SOME LEVEL OF
7 FAMILIARITY OF WHAT HAPPENED ON T.S. MARTIN, BUT
8 CONSIDERING THE CIRCUMSTANCES OF THESE STATEMENTS, FIRST
9 OF ALL, WE HAVE NO VIDEOTAPE. WE HAVE NO AUDIOTAPE, AND
10 THE SOLICITOR IS GOING TO ARGUE THAT THIS IS STANDARD
11 OPERATING PROCEDURE. INDEED IT IS, BUT AS OFFICER GRAY --
12 AS INVESTIGATOR GRAY ALSO ADMITS, WHILE IT IS STANDARD
13 OPERATING PROCEDURE HERE, IT ISN'T IN OTHER PLACES.

14 IF THOSE INTERVIEWS WERE TAPED, THERE REALLY WOULD BE
15 NO QUESTION ABOUT HOW THESE STATEMENTS WERE TAKEN.
16 INSTEAD, WE HAVE TO RELY ON THE WORD OF THE LEAD
17 INVESTIGATOR IN THIS CASE BECAUSE HE'S THE ONLY PERSON WHO
18 WAS EVER IN THE ROOM WITH CHRIS ON EITHER OCCASION WHEN HE
19 GAVE THESE STATEMENTS.

20 YOU HAVE TO IMAGINE WHAT CHRIS WAS GOING THROUGH AT
21 THAT TIME. HE HAD A SHOTGUN PULLED ON HIM AT THE CUT,
22 IDENTIFIED BY SOMEBODY AS BEING A DOUBLE MURDERER. HE WAS
23 WHISKED AWAY TO POLICE HEADQUARTERS, BEING ACCUSED OF
24 BEING A DOUBLE MURDERER BY AN INVESTIGATOR WHO MUST HAVE
25 KNOWN AT THAT POINT THAT THE POLICE MADE A MISTAKE THAT

1 NIGHT.

2 I HAVE NO DOUBT THAT INVESTIGATOR GRAY BELIEVED THAT
3 HE HAD THE RIGHT GUY. I DON'T DOUBT THAT AT ALL, BUT
4 CHRISTOPHER LIVERMAN WAS CHAINED TO A CHAIR. HE WAS
5 ATTACKED WITH REPEATED QUESTIONS BY AN INVESTIGATOR WHO AT
6 THAT POINT HAD ABOUT AS MUCH EXPERIENCE EXTRACTING
7 CONFESSIONS FROM GUILTY DEFENDANTS AS CHRIS HAD SPENT
8 YEARS ON THE EARTH.

9 INVESTIGATOR GRAY HAD BEEN AN INVESTIGATOR FOR 15
10 YEARS AT THIS POINT. CHRIS WAS 19. HE WAS EXPERIENCED.
11 HE GETS STATEMENTS FROM PEOPLE.

12 CHRIS WANTED TO GO HOME. HE WAS LIKE A YOUNG MAN IN
13 A BEAR TRAP DOING ANYTHING BUT BITING OFF HIS ARM TO BE
14 FREE.

15 THE STATE WANTS TO SAY THAT HE WAS GUILTY BECAUSE HE
16 SAID SOMETHING IN HIS STATEMENT ABOUT THE SCOPE ON THE
17 GUN. WELL, THEY ALSO SAID IT WAS SAWED OFF, AND THAT'S
18 CLEARLY NOT TRUE. HE ALSO MADE A LOT OF OTHER STATEMENTS
19 THAT DIDN'T ADD UP. LOOK AT HIS STATEMENTS. WE INVITE
20 YOU TO. THEY'RE NOT RELIABLE BECAUSE THEY'RE NOT
21 ACCURATE.

22 WE'RE NEVER GOING TO KNOW THE CONDITIONS UNDER WHICH
23 THOSE STATEMENTS WERE GIVEN. I MEAN, WE HAVE TO CONCEDE,
24 AS DEFENSE ATTORNEYS, THAT THERE ARE REASONS WHY MY CLIENT
25 IS THE DEFENDANT IN THIS CASE, BUT JUST BECAUSE THERE ARE

1 SOME FACTORS THAT MAKE IT LOOK LIKE HE WAS THE GUILTY
2 PARTY ON THE NIGHT THIS HAPPENED, IT DOESN'T MEAN THAT HE
3 IS. THAT'S WHY A THOROUGH INVESTIGATION IS SO IMPORTANT.

4 YOU DON'T GET STATEMENTS LIKE THE ONE THAT CHRIS GAVE
5 AND THINK YOU'VE SOLVED A DOUBLE HOMICIDE. AT THAT POINT
6 THERE ARE STILL JUST TOO MANY UNANSWERED QUESTIONS, BUT
7 AGAIN, WE'LL NEVER KNOW EXACTLY THE CIRCUMSTANCES UNDER
8 WHICH THOSE STATEMENTS WERE TAKEN.

9 LET'S MOVE ON TO THE ACTUAL INVESTIGATION THAT TOOK
10 PLACE IN THIS CASE FOR -- WE SHOULD SAY FOR LACK OF A
11 THOROUGH INVESTIGATION THAT TOOK PLACE. HERE IS WHAT WE
12 KNOW: THAT CHRIS WAS THE VERY FIRST SUSPECT THAT THE
13 POLICED HAD. HE WAS THE FIRST ARRESTED. HE WAS THE ONLY
14 ONE ARRESTED. HE WAS DETAIN ABOUT 20 MINUTES AFTER THESE
15 SHOOTINGS OCCURRED. HE HAS BEEN IN CUSTODY EVER SINCE.
16 THIS INVESTIGATION FOCUSED ON THE SUSPECT, NOT FOCUSED ON
17 THE EVIDENCE.

18 WE KNOW THAT THIS WAS AN EXCEEDINGLY HIGH PROFILE
19 CASE. IT'S UPSETTING TO THE COMMUNITY. IT CONTINUES TO
20 BE UPSETTING TO THE COMMUNITY. PEOPLE WERE UPSET
21 EVERYWHERE.

22 WE KNOW THAT THE POLICE HAD BEEN ON T.S. MARTIN
23 EARLIER, THAT THEY HAD LEFT. WE KNOW THAT THEY HAD
24 RETURNED IN 12 MINUTES. BY THE TIME THEY RETURNED, THE
25 VICTIM WAS SHOT.

1 YOU REMEMBER THE TESTIMONY OF THE BANKS GIRLS. THEY
2 HAD POINTED OUT THE WHITE CAR TO THE POLICE, BUT THE
3 POLICE DID NOT GO AND FOLLOW THAT WHITE CAR. WE KNOW THAT
4 DIEGO THOMPSON WAS FIRST ASKED TO GIVE A STATEMENT ABOUT
5 BABY JESUS.

6 NOW, AGAIN, THAT'S NOT THE STATEMENT THAT YOU HAVE IN
7 EVIDENCE, BUT THE FIRST STATEMENT, IT WAS TESTIMONY. THE
8 FIRST STATEMENT, "I WANT TO KNOW ABOUT BABY JESUS."

9 WE KNOW THAT BRADY BROWN WAS INTERVIEWED THAT NIGHT
10 BEFORE HE GAVE A STATEMENT TO INVESTIGATOR GRAY.
11 INVESTIGATOR GRAY TOLD HIM, "WE ALREADY HAVE CHRIS. DON'T
12 LIE TO US."

13 WE KNOW THAT THERE WERE PROBLEMS WITH TYRONE SMITH'S
14 I.D. ALMOST IMMEDIATELY AFTER THE CASE
15 \STARRED\STARTEDTED, WHICH IS WHY THEY WENT ON TO TAKE THE
16 SECOND STATEMENT FROM HIM.

17 TYRONE SMITH MAINTAINS TO THIS DAY THAT CHRIS WAS IN
18 THAT FIRST CAR. THAT'S SIMPLY NOT TRUE. WE KNOW HE IS
19 WRONG, AND LAW ENFORCEMENT KNEW HE WAS WRONG. THEY KNEW
20 IT ALMOST IMMEDIATELY.

21 WE KNOW THAT SHANTE BETHEL INITIALLY CALLED
22 INVESTIGATOR GRAY AND GAVE HIM THREE OTHER NAMES, BUT
23 INVESTIGATOR GRAY STILL TOOK THE STATEMENT IMPLICATING
24 CHRIS.

25 WE STILL HAVE NO IDEA TO THIS DAY WHO COOCHIE OR

1 MIRAGE ARE. WE KNOW THEY NEVER PROCESSED BRADY BROWN'S
2 CAR FOR FINGERPRINTS OR D.N.A. NEITHER JOBY GRAY NOR
3 ANYONE FROM THE COLUMBIA POLICE DEPARTMENT SPOKE TO
4 MR. ALEXANDER, NEVER LOOKED FOR HIM BACK IN 2004.

5 THEY DIDN'T SPEAK TO SHEROD PRAYLOW FOR DAYS. THEY
6 NEVER SPOKE TO O.B., THIS SHADOWY FIGURE THAT KEEPS
7 POPPING UP IN THIS CASE. THEY NEVER FOLLOWED UP ON THE
8 INCREDIBLE INCONSISTENCIES IN DIEGO'S STORY. THEY NEVER
9 CONFIRMED HIS ACCOUNT OF EVENTS OF ANY OTHER PERSON WHO
10 ALLEGEDLY WAS THERE.

11 THEY GAVE THE POLICE THE NAME OF ABOUT SEVEN OTHER
12 YOUNG MEN, AND THEY NEVER TRACKED DOWN A SINGLE ONE OF
13 THEM. YOU CAN SEE THOSE NAMES IN THE STATEMENT. I MEAN,
14 WHERE ARE THEY? WHERE ARE THEIR STATEMENTS? WHERE ARE
15 THEY? THEY ARE CORROBORATING WHAT DIEGO HAS SAID.

16 THEY NEVER SPOKE TO SHANTE'S ASSOCIATES TO SEE IF HER
17 STORY WAS CORROBORATED. WE KNOW THAT INVESTIGATOR GRAY
18 ONLY HAS SIX TYPEWRITTEN PAGES OF NOTES IN CONNECTION WITH
19 THIS CASE. APPARENTLY, NO HANDWRITTEN ONES AT ALL. IF
20 NOT, I'VE NOT SEEN THEM.

21 WE KNOW THAT HE NEVER PLACED A HOLD ON THE VIDEOTAPES
22 FROM THE COLONY APARTMENTS, EVEN THOUGH WE KNOW THAT THERE
23 WAS SOME COMMUNICATION ABOUT BOYS POSSIBLY RUNNING OFF THE
24 TRACKS AND INTO THE COLONY, AND DIEGO SAID THAT CHRIS
25 WALKED DOWN THROUGH THE COLONY.

1 WHEN YOU'RE DEALING WITH A PERSON LIKE DIEGO,
2 WOULDN'T YOU WANT TO SEE THE VIDEOTAPES TO SEE IF WHAT
3 HE'S TELLING YOU IS THE TRUTH? WE KNOW THAT THEY NEVER
4 PERFORMED A GUNSHOT RESIDUE ON ANY OF CHRIS' CLOTHES. WE
5 KNOW THAT THERE'S A LOT OF INVESTIGATION THAT THEY COULD
6 HAVE DONE. WE KNOW THAT INVESTIGATOR GRAY HAD CHRIS'
7 NEGATIVE G.S.R. BACK IN OCTOBER OF 2004.

8 SO LET'S TALK ABOUT THE INVESTIGATION THAT CONTINUED
9 AFTER THAT POINT, BECAUSE THIS MUST HAVE BEEN QUITE A
10 SURPRISE TO INVESTIGATOR GRAY. TWO THINGS HAVE HAPPENED
11 SINCE THEN: THEY RAN A GUN TRACE ON OUR REQUEST, AND
12 THEY'VE HAD PEOPLE LOOK AT CHRIS' TATTOOS.

13 LET'S TAKE EACH OF THESE IN TURN. THE GUN TRACE:
14 INVESTIGATOR GRAY ADMITTED THAT THEY RAN THIS GUN TRACE ON
15 MY REQUEST, ME, DEFENSE COUNSEL. IT WAS REQUESTED BY US
16 THIS YEAR.

17 WHEN IT WAS FINALLY RUN, IT CAME BACK TO MR. TIMOTHY
18 FLOREA. ONCE THE INFORMATION WAS PROCESSED, THEN WE FOUND
19 THE INCIDENT REPORT THAT GAVE US HIS NAME. THEN WE FOUND
20 OUT IT WAS STOLEN BACK ON JUNE 14TH, 2004. THEN THAT LED
21 US TO GO SEE WHAT WE COULD FIND OUT. WE FOUND OUT THAT MY
22 CLIENT WAS DOWN AT ALVIN S. GLENN DETENTION CENTER FOR
23 ABOUT A MONTH, AND SO THERE'S NO WAY HE COULD HAVE STOLEN
24 THAT GUN.

25 INVESTIGATOR GRAY ADMITTED ON THE STAND THAT HE WOULD

1 HAVE CONSIDERED IMPORTANT TO THE INVESTIGATION THE
2 IDENTITY OF THE PERSON WHO STOLE THAT GUN. IT COULD HAVE
3 BEEN DONE BACK IN 2004. BECAUSE THEY WAITED, THE EVIDENCE
4 THAT WAS COLLECTED, THE FLASHLIGHT AND THE SUNGLASSES HAVE
5 BEEN DESTROYED. IT'S GONE. IT'S COMPLETELY GONE. WHO
6 KNOWS IF IT COULD HAVE PROVIDED A LEAD. WE'LL NEVER KNOW.
7 THOSE ITEMS WERE DESTROYED ON JANUARY 19TH, 2005,
8 ACCORDING TO OFFICER ROSS.

9 NOW, THE GUYS WHO LOOKED AT CHRIS' TATTOOS. THE
10 PURPOSE THERE IN INTRODUCING THIS TESTIMONY IS TO TRY TO
11 TERRIFY YOU. THEY WANT YOU TO HATE HIM BECAUSE HE'S IN A
12 GANG, BUT LET'S BE CLEAR HERE: I MEAN, IF THIS TRIAL IS
13 ABOUT WHETHER MY CLIENT IS IN A GANG OR NOT, WE PLEAD
14 GUILTY TO THE CHARGE. HE IS ASSOCIATED WITH THE LOCAL SET
15 OF THE FOLK NATION. NOW, WHETHER HE USED TO LEAD 1300
16 OTHER FOLK MEMBERS, WHICH IS OF SOME CONSIDERABLE DEBATE,
17 I REMIND YOU THAT MY CLIENT USED TO SLEEP ON HIS
18 GRANDMOTHER'S COUCH, NOT WHAT YOU WOULD EXPECT OF A HIGH
19 RANKING INFLUENTIAL GANG MEMBER. BEING IN A GANG, THOUGH,
20 DOES NOT MAKE HIM GUILTY OF TWO COUNTS OF MURDER.

21 IT IS FOUNDATIONAL TO OUR SYSTEM OF CRIMINAL JUSTICE
22 THAT A PERSON BE CONVICTED ONLY BECAUSE OF WHAT HE HAS
23 DONE AND NOT BECAUSE OF WHO HE IS. OTHERWISE, THIS
24 BECOMES AN INSTITUTION NOT OF TRUTH, LIBERTY, AND JUSTICE
25 BUT A POLITICAL INSTITUTION BASED ON BIGOTRY AND FEAR.

1 THIS ISN'T PAKISTAN. THAT'S NOT HOW IT WORKS HERE.

2 HERE IS WHAT WE KNOW: THE STATE'S EXPERTS ARE BOTH
3 LAW ENFORCEMENT OFFICERS. THEY ARE NOT INDEPENDENT
4 EXPERTS. THEY ARE WORKING FOR THE STATE, AND THEIR JOB IS
5 TO HELP THE STATE MAKE THEIR CASE.

6 WE KNOW THAT THEY MADE EXTREMELY BOLD CLAIMS ABOUT MY
7 CLIENT'S TATTOOS, AND TO LISTEN TO THESE GUYS, MY CLIENT
8 HAS NOT ONE BUT TWO CONFESSIONS WRITTEN ON HIS BODY, THE
9 TEARDROP TATTOOS AND THE HASH MARKS NEXT TO THE BRAND ON
10 HIS BACK.

11 THEY DON'T KNOW MY CLIENT. THEY NEVER SPOKE TO HIM
12 ABOUT THE MEANINGS OF THOSE TATTOOS. WE KNOW THEY DON'T
13 REALLY WANT TO SEE, YOU KNOW, WHAT HE HAS TO SAY ABOUT
14 THEM. THEY COULDN'T PROVIDE ANY DOCUMENTATION AS TO THESE
15 CLAIMS.

16 YOU KNOW, OFFICER MAHONEY, HE SAID, "YOU KNOW, I
17 DON'T JUST TALK TO FOOT SOLDIERS. I TALK TO THE LEADERS.
18 I TALK TO THE O.G.'S. I TALK TO THE SET KINGS." WELL, HE
19 NEVER OFFERED ANY NOTES ABOUT EXACTLY WHO HE TALKED TO
20 ABOUT MY CLIENT'S TATTOOS. HE OFFERED, IN SHORT, A WHOLE
21 BUNCH OF SPECULATION AND CONJECTURE. RUMORS MORE
22 FITTINGLY FOUND IN A HIGH SCHOOL HALLWAY THAN A COURT OF
23 LAW. I THINK THEY DID IT TO SCARE YOU.

24 THEN THEY TOLD YOU THAT MY CLIENT HAD GONE AND
25 COMMITTED A LICK, AND THAT "COMMITTING A LICK" IS SOME

1 SORT OF GANG LINGO FOR GANG RETALIATION THAT INVOLVES
2 KILLING." O'CAIN SAID THAT UNDER OATH. THAT'S NOT TRUE.

3 AS OUR EXPERT TESTIFIED, FRANKLY AS EVERYONE IN THIS
4 LINE OF BUSINESS KNOWS, IT MEANS A ROBBERY. IT MEANS TO
5 GET MONEY BY AN ILLEGAL MEANS.

6 MR. WALKER HAD NEVER HEARD THAT DEFINITION BEFORE,
7 AND OF COURSE, THEIR EXPERTS COULDN'T PROVIDE ANY
8 DOCUMENTATION ABOUT WHERE THEY GOT THAT CLAIM FROM.

9 THESE GUYS ARE WORKING FOR THE STATE. THEY'RE HERE
10 TO TRY TO HELP THEM CONVICT MY CLIENT. THEY HAVE CLEAR
11 AGENDAS.

12 I'M ASKING YOU NOT TO FEED INTO THE FEAR THAT THEY'RE
13 TRYING TO CREATE. BEING IN A GANG IS NOT THE MOST
14 SOCIALLY DESIRABLE THING THAT A PERSON CAN DO. I THINK WE
15 ALL AGREE WITH THAT, BUT IT IS A LONG WAY FROM BEING A
16 DOUBLE MURDERER.

17 CONSIDER OUR GANG EXPERT, ROBERT WALKER, WHOSE
18 WEBSITE IS CALLED GANGSORUS. HE'S GOT 50 YEARS OF LAW
19 ENFORCEMENT EXPERIENCE. HE IS NOT PARTICULARLY
20 SYMPATHETIC TO GANG MEMBERS. I THINK YOU PROBABLY PICKED
21 UP ON THAT. HE HAS ACTUALLY TESTIFIED IN COURT FOR THIS
22 VERY SOLICITOR'S OFFICE. MR. O'CAIN HAS TESTIFIED ONCE.

23 MR. WALKER TESTIFIED THAT HE REFERS TO MANY SOURCES
24 IN DRAWING HIS CONCLUSIONS: BETWEEN FEDERAL SOURCES, CASE
25 LAW, LAW ENFORCEMENT RESOURCES, CONFERENCES AROUND THE

1 COUNTRY, CORRESPONDING WITH OTHERS IN THE FIELD.

2 HE IS INCREDIBLY KNOWLEDGEABLE ABOUT THE SUBJECT
3 MATTER, AND I THINK WE SHOULD BE CLEAR THAT IT DOES NOT
4 SHADE HIS TESTIMONY IN ANY WAY. REALLY, IT'S JUST ANOTHER
5 EXAMPLE OF CONJECTURE AND SPECULATION THAT THE STATE HAS
6 ENGAGED IN, IN THIS CASE.

7 I'M GOING TO TALK ABOUT THE PHYSICAL EVIDENCE. THERE
8 WASN'T A WHOLE LOT OF PHYSICAL EVIDENCE THAT WAS PROVIDED
9 IN THIS CASE, BUT WHAT WAS PRESENTED SPEAKS THE TRUTH TO
10 MY CLIENT'S INNOCENCE: FIRST THE GUN. THE GUN WAS
11 RECOVERED IN OCTOBER OF 2004. IT WAS FOUND IN THE
12 DRAINAGE DITCH IN THE COLONY. IT WAS LOCATED -- WHEN IT
13 WAS LOCATED, FIVE BULLETS WERE FOUND IN IT.

14 MY CLIENT EMPTIED THE CHAMBER ON T.S. MARTIN DRIVE,
15 AND HE CERTAINLY RELOADED IT IN A HURRY AS HE WAS RUNNING.
16 LOOK AT YOUR COMMON -- USE YOUR COMMON SENSE.

17 LOOK AT YOUR WEAPON AND THE MAGAZINE, THE BULLETS.
18 THE MAGAZINE HERE AND THE BULLETS AND HOW YOU LOAD ONE OF
19 THESE. IT'S NOT AN EASY THING TO DO. IT'S ALMOST
20 IMPOSSIBLE TO DO. I WOULD ARGUE COMPLETELY IMPOSSIBLE TO
21 DO WHILE YOU'RE RUNNING. WHOEVER THE SHOOTER IS MUST HAVE
22 RELOADED THAT MAGAZINE LATER, AND WE KNOW IT'S NOT CHRIS.

23 THE STATE CANNOT ACCOUNT FOR HOW MY CLIENT WOULD EVER
24 HAVE COME INTO POSSESSION OF THE GUN THAT WAS USED IN THIS
25 CASE, ALL RIGHT. HE WAS INCARCERATED AT THE TIME THAT IT

1 HAPPENED. THEN WE KNOW THAT SOMEBODY ELSE HAD THE GUN
2 AFTERWARDS BECAUSE THAT SOMEBODY ELSE LOADED THAT MAGAZINE
3 AND PUT IT BACK IN THAT RIFLE. IT COULD NOT HAVE BEEN MY
4 CLIENT.

5 LET'S TALK ABOUT THE G.S.R. CHRIS' G.S.R. LEVELS ARE
6 COMPLETELY INCONSISTENT WITH HIS HAVING FIRED A GUN. THAT
7 IS AN INCONTROVERTIBLE FACT.

8 CHRIS WAS DETAINED 20 MINUTES AFTER THE SHOOTING. HE
9 WAS IN POLICE CUSTODY FROM THAT TIME ON. HIS LEVELS ARE
10 NOT CONSISTENT WITH HAVING WASHED HIS HANDS. AS
11 MR. HOLLIFIELD EXPLAINED, IF YOU'RE WASHING YOUR HANDS,
12 THEN YOUR LEVELS ARE GOING TO BE ZERO ACROSS THE BOARD.
13 THAT'S NOT WHAT CHRIS' LEVELS WERE.

14 HIS LEVELS WERE CONSISTENT WITH ENVIRONMENTAL
15 CONTAMINATION, PROBABLY THE SAME LEVELS WE WOULD HAVE ON
16 OUR HANDS. AND OF COURSE, THE SOLICITOR ASKED ABOUT
17 SWEATING AND ABOUT RUBBING OFF ON THE SHIRT. THEY ASKED
18 THEIR OWN EXPERT, ILA SIMMONS, ABOUT THAT. THEY ASKED
19 JEFF HOLLIFIELD ABOUT THAT.

20 THIS IS THE EXPLANATION. THIS IS WHAT THEY WERE
21 LOOKING FOR IN TRYING TO DETERMINE WHY THESE LEVELS WERE
22 WHAT THEY WERE. IF THEY PULL FORTH A DIFFERENT REASON IN
23 CLOSING FOR WHY THEY THINK THOSE LEVELS ARE WHAT THEY ARE,
24 I THINK YOU NEED TO BE AWARE. I THINK YOU NEED TO BE
25 SUSPICIOUS IF IT'S SOMETHING THEY WEREN'T WILLING TO RUN

1 BY THEIR OWN EXPERTS OR MY EXPERTS.

2 MR. HOLLIFIELD EXPLAINED THE THRESHOLDS. HE
3 EXPLAINED THE SIX-HOUR TIMEFRAME, THE 200 PARTS PER
4 BILLION THRESHOLDS COUNT FOR EXACTLY THESE SORTS OF
5 THINGS. IT ACCOUNTS FOR SWEATING, ACCOUNTS FOR TAKING OFF
6 SHIRTS. THAT'S WHY THESE LEVELS ARE WHAT THEY ARE, THESE
7 SPECIAL LEVELS ARE. IT'S BACKED UP BY SCIENCE.

8 YOU HAVE TO BELIEVE THAT S.L.E.D. AT LEAST KNOWS WHAT
9 THEY ARE DOING WHEN THEY CREATE THESE THRESHOLDS. IT'S
10 CRAZY THAT THE STATE NOW WANTS TO EXPLAIN AWAY THESE
11 TESTS. THEY WANT TO EXPLAIN AWAY THEIR OWN TESTS.

12 DON'T YOU KNOW IF THAT TEST HAD COME BACK POSITIVE,
13 WE PROBABLY WOULD NOT BE HEARING ABOUT ANYTHING ELSE IN
14 THIS TRIAL, BUT NOW THEY WOULD RATHER ATTACK SCIENCE,
15 THEIR SCIENCE, THAN SUSPECT THAT MAYBE THEIR WITNESSES ARE
16 LYING TO THEM. THERE'S JUST NO PHYSICAL EVIDENCE
17 CONNECTING CHRISTOPHER LIVERMAN TO THIS CRIME AT ALL.

18 LET'S TALK A LITTLE BIT ABOUT WHO THE STATE DIDN'T
19 CALL AS WITNESSES IN THEIR CASE. YOU SHOULD ASK YOURSELF
20 WHY. PRECIOUS SAMUELS, LET'S START WITH HER. WE CALLED
21 HER. THEY DIDN'T CALL HER BECAUSE SHE CONFIRMS THAT KID,
22 THAT POOH, WAS THE KID IN THE WHITE CAR WHO PULLED THE GUN
23 ON TYRONE SMITH. SHE KNOWS THAT BECAUSE SHE WORKED WITH
24 HIM AT THE TIME. SHE KNEW HIM BY NAME AND NICKNAME. SHE
25 KNEW HIM BY THE WAY HE WALKED.

1 MAYBE THE STATE WOULD PREFER THAT YOU NOT KNOW ABOUT
2 HER AT ALL. THE BANKS GIRLS, ASHLEY AND DARESHA, AGAIN,
3 WE CALLED THEM BECAUSE WE THOUGHT IT WAS IMPORTANT THAT
4 YOU UNDERSTAND HOW BADLY THE POLICE MESSED UP THAT NIGHT.

5 MAYBE THE SOLICITORS DON'T WANT TO EMBARRASS ONE OF
6 THEIR LAW ENFORCEMENT AGENCIES. THEY ONLY BROUGHT ONE OF
7 THEIR LAW ENFORCEMENT AGENTS FROM THAT FIRST ENCOUNTER.

8 I DON'T KNOW. I DON'T KNOW IF SHE DOESN'T WANT TO
9 STAND BY HER WORK THAT NIGHT. WE DON'T KNOW. OF COURSE,
10 WE HAVE NO NOTES. WE HAVE NO INCIDENT REPORTS. WE HAVE
11 NO INFORMATION FROM THAT FIRST ENCOUNTER. THEY DIDN'T DO
12 ANYTHING.

13 WE ONLY KNOW WHAT WAS DONE AFTER THE SHOOTING, AND
14 DON'T FORGET WHAT ASHLEY BANKS TOLD YOU; THAT WHEN THE
15 SECOND OFFICER RETURNED AFTER THE SHOOTING AND THEY WERE
16 HANDING OUT STATEMENT FORMS, THAT THE OFFICER TOLD HER
17 JUST TO WRITE ABOUT WHEN THEY CAME BACK.

18 THAT OFFICER MUST HAVE KNOWN THEY MESSED UP. SHEROD
19 PRAYLOW, PARIS ALEXANDER, MAYBE THEY WANTED YOU TO BE
20 UNCERTAIN ABOUT WHO WAS IN THE WHITE CAR, BUT WE BROUGHT
21 IN BRADY BROWN BECAUSE WE WANTED JUST TO CONFIRM THAT
22 THERE WAS NO WAY THAT CHRISTOPHER LIVERMAN WAS IN THAT
23 FIRST CAR. THEN HE WENT ON TO SAY THAT HE HADN'T EVEN
24 SPOKEN TO CHRIS THAT NIGHT.

25 DELSHAWN PRESCOTT: THEY DID NOT BRING IN DELSHAWN

1 PRESCOTT. THE STATE TOLD YOU THAT CHRIS WAS THERE TO
2 SHOOT DELSHAWN PRESCOTT. THAT'S THEIR MOTIVE. THAT'S
3 WHAT THEY TOLD YOU IN OPENING STATEMENT; THAT HE WENT ON A
4 HUNT LOOKING FOR DELSHAWN, BUT I GUESS HE WASN'T GOING TO
5 SAY THAT HE AND CHRIS HAD HAD ANY PROBLEMS.

6 IF YOU WILL RECALL WHAT TYRONE SMITH SAID ON THE
7 STAND, HE SAW CHRIS AND DELSHAWN SPEAKING ON THE VERY DAY
8 OF THE SHOOTINGS.

9 WE KNOW FROM DARESHA BANKS THERE WERE BOYS IN THAT
10 AREA, AT LEAST THE DAY BEFORE OR POSSIBLY TWO DAYS BEFORE,
11 WHO WERE SCREAMING OUT THREATS AGAINST DELSHAWN. I MEAN,
12 THERE WERE PEOPLE OUT THERE WHO WERE LOOKING TO HURT
13 DELSHAWN, BUT NOT MY CLIENT.

14 MY CLIENT WAS TALKING TO HIM, AND THEY WERE FINE.
15 THEY DIDN'T BRING IN DELSHAWN PRESCOTT BECAUSE IT WOULD
16 HAVE DESTROYED THEIR MOTIVE IN THIS CASE.

17 OFFICER MONTJOY: WE BROUGHT HIM IN BECAUSE HE KNEW
18 ABOUT THE TAPED PHONE CALLS FROM THE JAIL. DO YOU
19 REMEMBER WHEN INVESTIGATOR GRAY SAID HE DIDN'T KNOW IF
20 THEY MADE TAPES. THEN IT CAME OUT THAT NOT ONLY DOES
21 INVESTIGATOR GRAY KNOW ABOUT THE TAPES BUT THAT HE
22 ACTIVELY SEARCHED FOR THE TAPES. THEN WE GOT INTO ALL
23 THIS BUSINESS ABOUT THREE-WAY PHONE CALLS.

24 HERE IS MOST IMPORTANT ABOUT WHAT OFFICER MONTJOY
25 SAID, "IF YOU KNOW THE DORM AND YOU KNOW THE DATE, THEN

1 YOU CAN LISTEN TO EACH CALL MADE OUT OF THAT DORM."

2 MS. CAMPBELL ASKED A LOT ABOUT CODE WORDS. WHY
3 DIDN'T THEY JUST ASK DIEGO WHAT HE SAID? IT'S PURE
4 SPECULATION ON THE PART OF THE SOLICITORS.

5 MR. MARK BORDEAUX: HE'S THE GUY, IF YOU WILL
6 REMEMBER, WHO IS THE VICE PRESIDENT OF BROWDER
7 ELECTRONICS. THEY'RE THE ONES WHO SET UP THE CAMERAS IN
8 THE COLONY AND THE BETHEL BISHOP.

9 HE SAW THESE CAMERAS AND KNOWS EXACTLY WHERE THEY ARE
10 AND HOW THEY WORK. INVESTIGATOR GRAY THOUGHT THAT MOST OF
11 THEM WERE WORKING. THEY WERE, ALL OF THEM.

12 IT DOESN'T SEEM LIKE INVESTIGATOR GRAY EVEN CONTACTED
13 HIM TO GET A BETTER UNDERSTANDING OF HOW IT WORKED, IF HE
14 WAS CONCERNED ABOUT IT. IN FACT, YOU STILL HAVEN'T EVEN
15 SEEN THE TAPES.

16 DON'T YOU THINK THAT IF ANY OF THIS WAS CORROBORATED,
17 THIS WALK WITH CHRIS AND DIEGO DOWN THROUGH THESE AREAS,
18 THIS GROUP OF PEOPLE THAT SHANTE BETHEL IS TAKING ABOUT,
19 DON'T YOU THINK IF THOSE THINGS WERE CORROBORATED ON THOSE
20 TAPES, THEY WOULD HAVE BROUGHT THEM IN FOR YOU TO SEE?

21 I KNOW THE SOLICITOR IS GOING TO SAY THE QUALITY ON
22 THOSE TAPES WERE NOT GREAT, BUT THINK ABOUT WHAT
23 MR. BORDEAUX SAID ABOUT THE PURPOSE OF THESE TAPES. IT'S
24 A LAW ENFORCEMENT PURPOSE. IT'S THERE FOR DRUG ACTIVITY,
25 I THINK IS WHAT HE SAID, DRUG ACTIVITY WHICH USUALLY

1 INVOLVES SOME HAND-TO-HAND TRANSACTION. THE QUALITY IS
2 NOT THAT BAD.

3 THEY THINK THAT THEY'RE LOOKING OUT TO PREVENT CRIME,
4 MAKE CASES WITH THOSE TAPES. THE QUALITY IS NOT THAT BAD.
5 THAT'S WHY WE BROUGHT THESE PEOPLE IN, BECAUSE WE THOUGHT
6 IT WAS VERY IMPORTANT THAT YOU HEARD WHAT THEY HAD TO SAY.

7 WHAT HAS THE STATE BROUGHT YOU? THREE LYING WITNESS
8 AND A YOUNG CONFUSED KID, SOME GANG EXPERTS WHO THINK THEY
9 CAN SOLVE MURDERS BY LOOKING AT TATTOOS.

10 MS. FENT PROMISED YOU A LOT IN OPENING. SHE SAID
11 THAT CHRIS HAD GONE ON A HUNT. HE WAS LOOKING FOR
12 DELSHAWN PRESCOTT, AND IN AN ATTEMPT TO MURDER HIM, HE
13 SHOT THOSE VICTIMS INSTEAD. SHE IS SO INCREDIBLY WRONG.

14 CHRIS WAS NEVER DISRESPECTED BY THOSE KIDS ON T.S.
15 MARTIN. HE WASN'T THERE WHEN THE KIDS IN THE WHITE FORD
16 ESCORT WERE DISRESPECTED. HE DIDN'T HAVE ANY PROBLEMS
17 WITH DELSHAWN THAT WE KNOW ABOUT, CERTAINLY DIDN'T HEAR
18 ANYTHING ABOUT IT. IT WOULD BE PURE SPECULATION AT THIS
19 POINT TO SAY THAT HE DID.

20 THEY SIMPLY HAVEN'T BEEN ABLE TO PROVIDE A MOTIVE FOR
21 WHY THIS WOULD HAVE HAPPENED. THEY OFFERED YOU ONE, BUT
22 IT HASN'T BORNE OUT IN COURT.

23 MS. FENT SAID HE'S WEARING THE SUCCESS OF THE HUNT ON
24 HIS FACE? AGAIN, THAT'S NOT TRUE. ALL OF THE GANG EXPERT
25 TESTIMONY HAD TO CONCEDE THE FACT THAT THESE TATTOOS HAVE

1 DIFFERENT MEANINGS, INCLUDING THE LOSS OF FRIENDS AND
2 FAMILY MEMBERS.

3 THERE IS NO WAY THEY CAN SAY THOSE TATTOOS MEAN THAT
4 HE KILLED ANYONE, AND YOU HAVE TO WONDER WHY THE STATE IS
5 ASKING YOU TO RELY ON SUCH CONJECTURE IN TRYING TO MAKE
6 THEIR CASE.

7 THEY'RE ASKING YOU ROUTINELY, ESSENTIALLY -- THIS IS
8 A COURT OF LAW. THEY HAVE TO COME IN, AND THEY HAVE TO
9 PROVE THAT MY CLIENT COMMITTED THESE MURDERS, AND THEY
10 HAVE DONE NOTHING OF THAT SORT.

11 THE STANDARD HERE IS BEYOND A REASONABLE DOUBT. THE
12 JUDGE IS GOING TO INSTRUCT YOU ON THAT STANDARD. I'M NOT
13 GOING TO REPEAT WHAT YOU HAVE ALREADY HEARD AND ARE ABOUT
14 TO HEAR AGAIN.

15 IT'S THE HIGHEST THAT YOU WILL FIND IN ANY COUNTRY,
16 ANY COURT. IT IS THE GREAT GUARANTOR OF JUSTICE IN THIS
17 COUNTRY BECAUSE IF YOU'RE GOING TO DENY A CITIZEN HIS
18 LIBERTY, THEN YOU BETTER BE SURE WHAT YOU'RE DOING.

19 IF YOU'RE GOING TO CONVICT SOMEBODY, YOU BETTER KNOW
20 THAT HE DID IT. YOU BETTER HAVE NO RESERVATIONS OR
21 HESITATIONS. IF YOU DO, THEN YOUR VERDICT IS NOT GUILTY.

22 IN TAKING ON THIS BURDEN -- THEY USUALLY SAY THEY
23 "EMBRACE THIS BURDEN". HOLD THEM TO THEIR BURDEN, BECAUSE
24 THEY'RE THE ONES WHO ASKED FOR IT.

25 THEY'RE NOT GOING TO COME ANYWHERE CLOSE. THEY

1 OFFERED YOU A MOTIVE. THEY COULDN'T DELIVER. THEY
2 OFFERED YOU LYING WITNESSES. HOW CAN YOU CONVICT ON THAT?
3 THEY HAVE GIVEN YOU A MISTAKEN IDENTIFICATION. HOW CAN
4 YOU CONVICT ON THAT?

5 WE HAVE GOT A SCIENTIFIC REPORT THAT SAYS THERE IS NO
6 EVIDENCE SHOWING THAT CHRISTOPHER LIVERMAN FIRED A GUN
7 THAT NIGHT.

8 THE STATE HAS GIVEN YOU AN INVESTIGATION THAT
9 FOLLOWED THE SUSPECT AND NOT THE EVIDENCE. THAT'S NOT THE
10 WAY IT SHOULD BE. IT'S WHAT HAPPENS. WHEN THAT HAPPENS,
11 YOU DON'T FIND THE TRUTH IN THE CASE. THAT'S WHEN YOU
12 FIND YOURSELF IN THE MAZE THAT MAXWELL BROUGHT UP TO YOU
13 LAST MONDAY.

14 THE STATE HAS TRIED TO MAKE THIS CASE ABOUT GANGS BUT
15 IT'S NOT. IT'S ABOUT TWO YOUNG VICTIMS WHO WERE MURDERED.
16 MY CLIENT STANDS ACCUSED OF IT.

17 AS I MENTIONED EARLIER, IT'S FOUNDATIONAL TO OUR
18 SYSTEM OF JUSTICE TO CONVICT SOLELY ON WHAT THE EVIDENCE
19 IS AND NOT BECAUSE OF WHO SOMEBODY IS.

20 CHRISTOPHER LIVERMAN IS A 21-YEAR-OLD MAN WHO HAS A
21 FAMILY WHO LOVES HIM, AND HIS FRIENDS CARE ABOUT HIM.
22 HE'S A YOUNG MAN WHO HAS BEEN FALSELY ACCUSED OF TWO
23 HORRENDOUS CRIMES. HE'S JUST NOT GUILTY.

24 THE MORE THEY TRY TO SCARE YOU WITH THE GANG
25 INFORMATION, THE MORE YOU NEED TO ASK YOURSELF WHY. IF

1 THEY HAD A SOLID CASE, WHY WOULD IT MATTER WHETHER HE HAD
2 TATTOOS OR WAS IN A GANG? WHY NOT JUST TREAT IT LIKE ANY
3 OTHER CASE?

4 THEY KNOW THEY HAVE PROBLEMS WITH THIS CASE. THEY'RE
5 MAKING IT SUCH AN ISSUE, TRYING TO SHIFT THE FOCUS, NOT ON
6 WHAT THEY THINK MY CLIENT HAS DONE BUT ON WHO HE IS.
7 THAT'S NOT WHAT JUSTICE IS ABOUT.

8 MS. FENT TOLD YOU ABOUT THE PLAQUE THAT IS
9 DOWNSTAIRS, THE ONE THAT READS "JUSTICE WILL DIRECT OUR
10 COURSE." YES, IT WILL, BECAUSE JUSTICE IS NOT ABOUT
11 CONVICTING SOMEBODY JUST BECAUSE YOU DON'T LIKE THEM.
12 JUSTICE ISN'T ABOUT CONVICTING SOMEBODY JUST BECAUSE YOU
13 DON'T APPROVE OF THEIR LIFESTYLE.

14 JUSTICE IS WHEN RATIONAL MEMBERS OF THE COMMUNITY,
15 THEMSELVES, GET TOGETHER, AND YOU WEIGH THE EVIDENCE. YOU
16 LOOK AT THE FACTS. YOU EVALUATE THE CREDIBILITY OF
17 WITNESSES. YOU THINK THROUGH THE EVIDENCE PRESENTED, AND
18 YOU MAKE A FINDING THAT THE STATE HAS EITHER MET THEIR
19 BURDEN OR HAS NOT MET THEIR BURDEN. THAT'S JUSTICE.
20 THAT'S WHY WE'RE ALL HERE, AND THAT'S WHY YOU'RE SO
21 INCREDIBLY IMPORTANT.

22 YOU ARE THE JURY TO DECIDE THIS CASE. THERE IS NO
23 REASON TO BELIEVE THAT ANY OTHER SET OF MEMBERS OF OUR
24 COMMUNITY COULD DECIDE THIS CASE ANY BETTER, AND FROM THIS
25 POINT ON, I'M HANDING THE CASE OVER TO YOU. LATER, SO

1 WILL THE STATE AND THEN SO WILL THE JUDGE, AND THEN IT
2 WILL BE YOUR CASE. THAT'S AS IT SHOULD BE.

3 THIS CASES SCREAMS NOT GUILTY. THE STATE HAS FAILED
4 TO MEET ITS BURDENS. CHRISTOPHER LIVERMAN IS NOT GUILTY
5 OF THESE MURDERS. HE'S JUST NOT, AND THERE'S ONLY ONE
6 VERDICT THAT SPEAKS THE TRUTH IN THIS CASE. THAT'S THAT
7 CHRIS IS NOT GUILTY. I'M ASKING YOU JUST TO SEND HIM BACK
8 HOME.

9 THE COURT: ALL RIGHT. THANK YOU.

10 MR. FOREMAN, LADIES AND GENTLEMEN, WE'LL TAKE ABOUT A
11 TEN-MINUTE BREAK. PLEASE DON'T DISCUSS THE CASE AT THIS
12 TIME. IF YOU WILL STEP BACK TO YOUR JURY ROOM.

13 EVERYONE ELSE STAY SEATED, PLEASE.

14 (WHEREUPON, THE JURY LEFT OPEN COURT AT APPROXIMATELY
15 11:18 A.M.)

16 THE COURT: WE'LL TAKE A TEN MINUTE BREAK.

17 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

18 THE COURT: ALL RIGHT. IS THE STATE READY?

19 MR. GIESE: YES, YOUR HONOR.

20 THE COURT: IS THE DEFENSE READY?

21 MS. FRANKLIN: YES, YOUR HONOR.

22 THE COURT: BRING THE JURY IN, PLEASE.

23 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
24 APPROXIMATELY 11:39 A.M.)

25 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR HONOR.

1 THE COURT: ALL RIGHT. THANK YOU.

2 ALL RIGHT, SOLICITOR.

3 MR. GIESE: MAY IT PLEASE THE COURT.

4 CLOSING STATEMENT:

5 MR. GIESE: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
6 JURY, I'M BARNEY GIESE. I WAS INTRODUCED, OR I INTRODUCED
7 MYSELF TO YOU AT THE BEGINNING OF LAST WEEK.

8 I'M THE SOLICITOR HERE IN THE FIFTH JUDICIAL CIRCUIT.
9 TODAY IT'S MY JOB TO PROSECUTE AND GIVE THE CLOSING
10 STATEMENT IN THE CASE AGAINST THE DEFENDANT.

11 I, TOO, WANT TO THANK ALL OF YOU, AS MS. CAMPBELL
12 DID, FOR YOUR SERVICE HERE. I KNOW THAT THESE LAST NINE
13 DAYS HAVE BEEN VERY DIFFICULT. I KNOW THAT IT'S VERY
14 DIFFICULT TO PAY ATTENTION FOR NINE DAYS. WE APPRECIATE
15 THAT YOU HAVE, AND WE APPRECIATE YOUR BEING AWAY FROM YOUR
16 JOBS.

17 YOU KNOW, I SAT HERE IN THAT CHAIR FOR NINE DAYS JUST
18 LIKE YOU ALL SAT RIGHT THERE. I SAT THERE, AND I WATCHED
19 AS THE DEFENSE ATTORNEYS ATTACKED EVERY SINGLE PERSON,
20 EVERY SINGLE ENTITY, EVERYBODY IN THIS CASE, IN THIS
21 COURTROOM.

22 THEY ATTACKED LAW ENFORCEMENT, DIDN'T THEY? THEY
23 ATTACKED MY OFFICE, DIDN'T THEY? MY OFFICE, MY JOB WAS
24 JUST TO SEEK JUSTICE, BY THE WAY. THEY ATTACKED WITNESS
25 AFTER WITNESS AFTER WITNESS. THEY ATTACKED THESE TWO

1 EXPERTS RIGHT HERE BECAUSE THEY DIDN'T LIKE WHAT THEY
2 SAID. ATTACK, ATTACK, ATTACK. THERE IS ONE REASON FOR
3 THAT AND ONE REASON ONLY, AND THAT IS BECAUSE THEY DO NOT
4 WANT YOU, THE JURY, TO FOCUS IN ON WHAT THIS MAN DID, THIS
5 MAN (INDICATING), TO THESE TWO FAMILY'S CHILDREN
6 (INDICATING). SO THEY ATTACK, ATTACK, AND ATTACK.

7 HOW MANY TIMES IN HER CLOSING STATEMENT DID THE
8 DEFENSE ATTORNEY USE THIS WORD: "LIAR"? HOW MANY TIMES?
9 I LOST TRACK. THE STATE DOES NOT USE THAT WORD. WE USE
10 "THE TRUTH".

11 YOU KNOW, FOR ALL THOSE TIMES SHE USED THE WORD
12 "LIAR", I WANT YOU TO REMEMBER, TOO, THAT SHE STOOD UP
13 HERE AND SAID -- AND I WROTE THEM DOWN, I STOPPED AT TWO.
14 WE CALL WHAT SHE DID "MISCHARACTERIZATION". WE DON'T USE
15 THE WORD "LIAR".

16 REMEMBER WHEN SHE GOT UP HERE AND SAID, WHEN SHE WAS
17 TALKING ABOUT DIEGO, THAT DIEGO TOLD HIS PSYCHOLOGIST THAT
18 HE SHOT AT PEOPLE? DO YOU REMEMBER WHEN SHE SAID THAT?

19 WELL, LADIES AND GENTLEMEN, I ASK YOU GO BACK, THINK
20 ABOUT WHAT THAT PSYCHOLOGIST REALLY SAID, BECAUSE HE
21 DIDN'T SAY HE SHOT AT PEOPLE. HE SAID HE SHOT AT GANG
22 MEMBERS, AND THERE IS A HUGE DIFFERENCE IN THIS CASE.

23 THEY WANT YOU TO BELIEVE THAT WHEN SHE SAYS, NOT THE
24 WITNESS, SHE SAYS "HE SHOT AT PEOPLE," THAT YOU, THE JURY,
25 WOULD THINK THAT DIEGO HAD ADMITTED TO SHOOTING THOSE TWO

1 CHILDREN. THAT'S EXACTLY WHY SHE SAID THAT.

2 YOU KNOW, THE OTHER MISCHARACTERIZATION? DO YOU
3 REMEMBER WHEN TYRONE TESTIFIED, HOW SHE KEPT TRYING TO GET
4 TYRONE TO SAY THAT THE PERSON THAT CAME TO T.S. MARTIN THE
5 FIRST TIME AND HAD A GUN, STUCK IT IN HIS FACE, WAIVED IT
6 IN HIS FACE?

7 TYRONE, TO THIS DAY, SAID HE WAS TWO-AND-A-HALF
8 HOUSES AWAY, BUT THAT'S JUST A LITTLE MISCHARACTERIZATION
9 THAT SHE GAVE YOU. IF YOU DON'T BELIEVE IT, GO BACK AND
10 LISTEN TO IT.

11 ALSO, I SAT HERE FOR THOSE NINE DAYS, AND I LISTENED
12 TO THEIR DEFENSES. CAN I GO OVER A COUPLE OF THEM WITH
13 YOU, BECAUSE IT'S CHANGED?

14 IN THEIR OPENING STATEMENT, THE DEFENSE ATTORNEY GOT
15 UP HERE AND TOLD YOU, THE JURY, THAT IT WAS FIRST OFF, THE
16 POLICE'S FAULT. DO YOU REMEMBER THAT? SURE, BUT HE ALSO
17 TOLD YOU IN HIS OPENING STATEMENT THAT THE REAL KILLER WAS
18 SOMEONE IN THE WHITE ESCORT; THAT THE WHITE ESCORT HAD
19 BEEN THERE; THAT THE WHITE ESCORT HAD LEFT; THAT THE WHITE
20 ESCORT CAME BACK AND PARKED, AND THOSE SAME FOUR PEOPLE IN
21 THE WHITE ESCORT GOT OUT OF THE ESCORT, WALKED DOWN THE
22 STREET AND COMMITTED THIS CRIME.

23 ALMOST TWO WEEKS AGO THE DEFENSE WAS THE PEOPLE IN
24 THE WHITE ESCORT DID IT. NOW WE'VE GONE FROM THAT TO IT'S
25 A POLICE FRAME UP. IT'S A PROSECUTOR'S FRAME UP.

1 EVERYONE IS LYING, AND HERE IS THE BIG ONE. HERE IS THE
2 BIG ONE THAT I, UP UNTIL A DAY-AND-A-HALF AGO, HAD NEVER
3 HEARD: DIEGO DID IT.

4 THEY WANT YOU TO BELIEVE THAT DIEGO THOMPSON
5 COMMITTED THIS OFFENSE. WHY ELSE WOULD THEY PUT UP THE
6 PSYCHOLOGIST? WHY ELSE WOULD THEY PUT UP THE .38 CALIBER
7 PISTOL THAT, LADIES AND GENTLEMEN, HAS NOTHING TO DO WITH
8 THIS CASE. IT WAS FOUND TWO-AND-A-HALF BLOCKS FROM HIS
9 HOUSE, YET THEY WANT YOU TO SOMEHOW MAKE A CONJECTURE THAT
10 BECAUSE IT'S FOUND TWO-AND-A-HALF BLOCKS FROM HIS HOUSE,
11 THAT HE SOMEHOW COMMITTED THIS OFFENSE.

12 NO, LADIES AND GENTLEMEN, THIS IS A MISHMASH DEFENSE.
13 THIS IS, "LET'S THROW EVERYTHING WE CAN UP AGAINST THE
14 WALL AND SEE IF ANYTHING STICKS" DEFENSE. THAT'S ALL THIS
15 IS. THAT'S ALL THIS IS.

16 THERE'S A REASON, LIKE I SAID, BECAUSE THEY DON'T
17 WANT YOU TO LOOK AND SEE EXACTLY WHAT HE DID, BECAUSE WHAT
18 HE DID IS HEINOUS. IT'S HORRIBLE. HE TAKES A .22 GUN,
19 AND HE LITERALLY GOES TO T.S. MARTIN TO HUNT PEOPLE DOWN.

20 HE'S A FOLK. HE'S GOING TO T.S. MARTIN, AS OFFICER
21 MAHONEY SAID, WHICH IS BLOOD TERRITORY. HE TAKES THIS
22 RIFLE WITH HIM. HE WALKS WITH HIS FELLOW COMPATRIOTS OR
23 WHOEVER DIEGO OR WHOEVER ELSE WOULD WALK WITH HIM. HE
24 GOES TO T.S. MARTIN. HE GOES TO T.S. MARTIN.

25 THEY MAKE A BIG POINT ABOUT HOW COULD IT FIT IN

1 THERE? YOU TRY IT. YOU STATE IT UNDERNEATH YOUR ARM AND
2 UNDERNEATH YOUR SHIRTS, AND IN YOUR PANTS, WHICH ARE
3 BAGGY, BY THE WAY, IF YOU LOOK AT THE PICTURES.

4 HE WALKS OVER THERE. HE GOES TO T.S. MARTIN. HE
5 CONFRONTS [REDACTED] C.D. [REDACTED] ON HER OWN FRONT PORCH, ON HER
6 OWN FRONT PORCH. HE BACKS UP AND OPENS FIRE. HE OPENS
7 FIRE IN T.S. MARTIN.

8 DO YOU KNOW WHAT T.S. MARTIN IS NAMED AFTER, WHO IT'S
9 NAMED AFTER? DR. THOMAS MARTIN, EDUCATOR, EDUCATOR FROM
10 BOOKER T. WASHINGTON HIGH SCHOOL WHO WENT ON TO WORK AT
11 THE UNIVERSITY OF SOUTH CAROLINA AS A PROFESSOR. HE'S
12 DECEASED NOW.

13 THESE PEOPLE, THESE GOOD FAMILIES, LIVE IN T.S.
14 MARTIN. THEY'RE TRYING TO RAISE THEIR FAMILY IN T.S.
15 MARTIN, AND THIS IS WHAT THEY GET? THIS IS WHAT THEY GET?
16 A SHOT IN THE BACK OF THE HEAD FOR [REDACTED] C.D. [REDACTED], A SHOT
17 IN THE FRONT OF THE HEAD FOR [REDACTED] T.M. [REDACTED]? THAT'S
18 WHAT THEY GET?

19 NO, LADIES AND GENTLEMEN. THEY DON'T WANT YOU TO
20 FOCUS ON WHAT HE DID. THEY DON'T.

21 YOU KNOW A COUPLE OF THINGS THAT THE DEFENSE TALKED
22 ABOUT, BEFORE I GET ON TO OUR EVIDENCE, THE EVIDENCE THAT
23 WE PRESENTED, THAT I PROBABLY NEED TO GO OVER WITH YOU:
24 WHO STOLE THE GUN? WHO STOLE THE GUN? DOES IT MATTER WHO
25 STOLE THE GUN? THE STATE SUBMITS IT DOES NOT, MONTHS

1 BEFORE THE SHOOTING. WHAT MATTERS IS WHO HAD THE GUN ON
2 AUGUST 26TH, 2004. THAT IS THE QUESTION. WHO HAD THE GUN
3 THAT DAY? SMOKE SCREEN.

4 WHAT'S A LICK? YOU HEARD THE GANG EXPERTS TESTIFY,
5 THE PEOPLE ON THE STREET, OFFICER MAHONEY. A LICK NOW
6 MEANS IN GANG TERMS "A SHOOTING". THEY DON'T WANT YOU TO
7 BELIEVE THAT.

8 BULLETS -- HOW MANY BULLETS DID HE HAVE? I'LL GET TO
9 THAT IN A MINUTE. PRECIOUS SAMUELS? WHY DIDN'T WE PUT UP
10 PRECIOUS SAMUELS? BECAUSE SHE DIDN'T SEE ANYTHING. SHE
11 DIDN'T SEE THE SHOOTING.

12 THE BANKS SISTERS. DO YOU REMEMBER WHEN SHE SAID WHY
13 DIDN'T WE PUT THE BANKS SISTERS UP? I WISH WE HAD NOW,
14 AFTER I SEE WHAT THEY'RE GOING TO SAY, BUT THE BANKS
15 SISTERS DIDN'T TESTIFY, BECAUSE THEY DIDN'T SEE THE
16 SHOOTING. THEY COULDN'T IDENTIFY THIS MAN. NO ONE COULD,
17 EXCEPT FOR TYRONE, AND GUESS WHAT THE BANKS SISTERS SAID,
18 THEIR OWN WITNESS? ONE OF THE BANKS SISTERS SAID, "I
19 DIDN'T SEE ANYTHING. QUOTE, TYRONE SAW EVERYTHING." DO
20 YOU REMEMBER TYRONE? THE EYEWITNESS THEY DON'T WANT YOU
21 TO BELIEVE, SAW EVERYTHING.

22 WELL, LADIES AND GENTLEMEN, YOU KNOW, THE STATE IS
23 RELYING ON THE EVIDENCE WE PRESENTED. THE FIRST FACT I'D
24 LIKE TO SHOW YOU IS WHERE I'M GOING TO GO.

25 POOH, DIEGO, SHANTE, ALL AT THE CUT; TYRONE; FIRST

1 STATEMENT OF THE DEFENDANT; SECOND STATEMENT BY THE
2 DEFENDANT; THIRD STATEMENT BY THE DEFENDANT; PHYSICAL
3 EVIDENCE, AND TWO TEARDROP TATTOOS. THAT'S WHERE WE'RE
4 GOING.

5 POOH: POOH GOT UP HERE. DO YOU THINK -- THE STATE
6 SUBMITS DO YOU THINK POOH WANTED TO BE UP HERE? HE
7 WOULDN'T EVEN IDENTIFY THE DEFENDANT. THE STATE SUBMITS
8 HE WAS SO SCARED OF HIM. POOH.

9 THE DEFENDANT -- FIRST OFF, POOH, DID GO TO THE
10 SCENE. BY THE WAY, THEY WANT YOU TO FOCUS ON THAT FIRST
11 TRIP TO T.S. MARTIN IN THE WHITE ESCORT. I MEAN, WE SPENT
12 DAYS ON THE FIRST TRIP TO T.S. MARTIN, DIDN'T WE? THAT
13 FIRST TRIP HAD NOTHING TO DO WITH THE KILLING, THESE
14 MURDERS, NOTHING. ALL THAT, SMOKE SCREEN.

15 POOH: HE GOES TO T.S. MARTIN THE FIRST TIME OR MAYBE
16 EVEN TWICE IN THAT WHITE CAR. HE DIDN'T GO BACK THE LAST
17 TIME, BUT FOR A WHILE, THEY WANTED YOU TO BELIEVE THAT HE
18 DID. HE WAS THE SUSPECT LAST MONDAY THEY WERE POINTING
19 AT. THE DEFENDANT, CHRIS LIVERMAN, TELLS POOH HE IS GOING
20 TO DO A LICK.

21 NOW, THEY WANT YOU TO BELIEVE A LICK MEANS A ROBBERY.
22 IF A LICK MEANS A ROBBERY, WHY IS HE SHOWING THEM BULLETS?
23 DEFENDANT TELLS POOH HE IS GOING OVER TO T.S. MARTIN.
24 DEFENDANT SAYS HE HAS A .22 RIFLE, SHOWS THE WITNESS .22
25 CALIBER BULLETS.

1 DO YOU REMEMBER? POOH SAID HE HAD THEM IN HIS HAND,
2 HAD THEM IN HIS HAND. I DON'T REMEMBER IF HE SAID HALLOW
3 POINTS OR NOT, HAD THEM IN HIS HAND, THAT JUST SO HAPPENED
4 TO FIT A .22 RIFLE, A MURDER WEAPON, HAD THEM IN HIS HAND.

5 WHAT DOES POOH DO? POOH SAYS, "I TOLD HIM NOT TO GO.
6 IT'S TOO HOT OVER THERE. I WAS JUST OVER THERE." YET
7 LIVERMAN GOES. LIKE I SAID, I'M GOING TO GO BACK TO THESE
8 BULLETS WHEN WE TALK ABOUT TYRONE, TYRONE, THE EYEWITNESS.

9 DIEGO: DEFENDANT ASKS OR TAKES DIEGO WITH HIM TO
10 T.S. MARTIN. HE ACTUALLY ASKED HIM, "COULD YOU COME ON
11 OVER? I'M GETTING READY TO DO SOMETHING OVER AT T.S.
12 MARTIN." DIEGO SEES THE DEFENDANT PULL OUT A .22 RIFLE.
13 DID DIEGO SEE HIM PULL OUT THE .22 RIFLE BEFORE? HE SAYS
14 NOT.

15 I KNOW THIS: FROM THE POINT THAT THE DEFENDANT SHOWS
16 POOH THE .22 CALIBER BULLETS, THERE IS NO TESTIMONY THAT
17 HE PUT THOSE BULLETS AT THAT TIME INTO THAT GUN, NONE.

18 DIEGO SEES THE DEFENDANT SHOOT THE .22 RIFLE. THAT'S
19 A CHARACTERIZATION. WHAT HE ACTUALLY SAYS IS HE SEES HIM
20 PULL IT OUT, POINT IT. WHEN THE FIRST SHOT IS FIRED, HE
21 RUNS. HE GETS DOWN, A LITTLE WAYS DOWN THE STREET. HE
22 HEARS THE SHOTS. HE LOOKS BACK. HE SEES THE DEFENDANT
23 PUT THE GUN DOWN, HE SAYS PICKED UP A SHOTGUN. COULD BE
24 RIGHT ABOUT THAT, COULD BE WRONG, BUT THAT IT JAMMED.

25 HE RUNS, THE DEFENDANT TURNS AND RUNS WITH DIEGO.

1 DIEGO SEES THE DEFENDANT HIDE THE RIFLE UNDER A LOG, IN
2 HIS SHIRT THAT HE TOOK OFF AND WRAPPED UP AND STUCK UNDER
3 A LOG. THAT'S WHAT DIEGO SAYS. NOW, WHAT IS DIEGO?
4 DIEGO IS AN EYEWITNESS TO THE MURDER. DIEGO SEES THE
5 DEFENDANT COMMIT THE OFFENSE.

6 THEY KNEW DIEGO WAS CONDEMNING THAT MAN, SO THEY HAVE
7 TO ATTACK DIEGO. NOW THEY'RE SAYING DIEGO WAS THE
8 SHOOTER, SO THE DEFENSE HAS CHANGED. DIEGO SEES THE
9 DEFENDANT SHOOT THIS GUN OR A GUN LIKE IT AND KILL THOSE
10 TWO CHILDREN. THE STATE SUBMITS THAT IS ENOUGH AT THIS
11 POINT TO CONVICT THAT MAN.

12 YOU TAKE POOH AND DIEGO, AND THAT IS ENOUGH TO
13 CONVICT THAT MAN, BUT IT DOESN'T END THERE. THE STATE'S
14 CASE DID NOT END THERE. OUR CASE DOES NOT END THERE,
15 BECAUSE WE THEN HAD SHANTE.

16 NOW, SHANTE, THEY SAID, "OH, SHANTE MADE THIS UP."
17 SHANTE, WHO THEY SAY SAID, "EVERYBODY STICKS TOGETHER IN
18 BETHEL BISHOP," THE SAME SHANTE THAT THEY CLAIM WATCHES
19 OUT FOR PEOPLE IN BETHEL BISHOP WHERE HE ALSO LIVES,
20 SHANTE SAYS SHE HEARS THE DEFENDANT SAY HE IS GOING TO
21 T.S. MARTIN TO ROUSE SOME SLOBS.

22 WE KNOW WHAT SLOBS ARE. IT'S A DETRIMENTAL TERM FOR
23 BLOODS. HE'S GOING TO T.S. MARTIN TO ROUSE SOME SLOBS.
24 HE SEES THE DEFENDANT COME RUNNING FULL SPEED LATER ON,
25 SWEATING, OVERHEARS THE DEFENDANT SAY, "I WAS SPRAYING."

1 NOT "I WAS SHOOTING." I WAS SPRAYING, SPRAYING.

2 THE DEFENDANT -- AND THIS IS WHAT GIVES SHANTE SO
3 MUCH CREDIBILITY, THE STATE SUBMITS. THE DEFENDANT SAYS
4 HE SHOT ONE IN THE HEAD AND ONE IN THE STOMACH.

5 SHANTE KNEW WHEN SHE GAVE THIS STATEMENT THAT BOTH OF
6 THE CHILDREN WERE SHOT IN THE HEAD, YET SHE IS TELLING YOU
7 AND THE POLICE THAT HE SAID "SHOT ONE IN THE HEAD AND ONE
8 IN THE STOMACH."

9 IF SHANTE IS GOING TO MAKE THIS UP, ISN'T SHE GOING
10 TO SAY, "HE SAID HE SHOT THEM BOTH IN THE HEAD?" SURE,
11 BUT SHE IS NOT MAKING IT UP, AND THAT'S WHY HER TESTIMONY
12 IS SO BELIEVABLE.

13 SHE IS WRONG, BUT HE WAS WRONG. HE SAID IT. HE
14 THOUGHT HE HAD SHOT THEM IN THE STOMACH. IT WAS TWO HEAD
15 WOUNDS.

16 LADIES AND GENTLEMEN, DIEGO, PLUS POOH, PLUS SHANTE,
17 THE STATE SUBMITS, YOU COULD CONVICT RIGHT THERE. SHE
18 KNOWS CHRIS LIVERMAN, BABY JESUS. SHE SAW HIM SAY THESE
19 THINGS. SHE HEARD HIM SAY THESE THINGS FROM HIS OWN
20 MOUTH.

21 THEY WANT YOU TO DISBELIEVE THESE THREE AND LET HIM
22 GO, BUT IT DOESN'T END THERE. IT GETS WORSE FOR CHRIS
23 LIVERMAN BECAUSE CHRIS LIVERMAN, 20 MINUTES AFTER THE
24 SHOOTING, IS CAUGHT BY OFFICER AULD AT THE CUT, THE BETHEL
25 BISHOP CUT.