

VOLUME FOUR OF NINE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

KEVIN MERCER,

PETITIONER/RESPONDENT

v.

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

APPENDIX

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1 Q. BUT IN THIS PHOTOGRAPH---

2 A. UH-HUH.

3 Q. ---IT APPEARS THAT MR. MERCER HAS BEEN HANDCUFFED IN
4 THE FRONT. AND I DON'T KNOW IF YOU WERE HERE FOR DEPUTY
5 STAZER'S TESTIMONY, BUT WHEN HE MADE THE ARREST, MR. MERCER
6 HAD BEEN HANDCUFFED FROM BEHIND. DO YOU THINK IT'S POSSIBLE
7 OR DO YOU RECALL IF HE WAS UNHANDCUFFED AT SOME POINT AND
8 THEN RECUFFED?

9 A. YES, MA'AM. ONCE HE GOT---

10 Q. WOULD THAT BE COMMON?

11 A. YEAH. ONCE HE GOT BACK TO THE INTERVIEW ROOM AND
12 THERE WAS NO HOSTILITY, HE MAY HAVE BEEN ALLOWED TO SIT WITH
13 HIS HANDCUFFS UP FRONT JUST FROM A COMFORT STANDPOINT
14 DEPENDING ON HOW LONG HE'S GOING TO BE SEATED THERE.

15 Q. OKAY. SO IT'S NOT UNCOMMON IN AN ARREST FOR SOMEONE
16 TO BE CUFFED, UNCUFFED, AND RECUFFED DEPENDING ON THE
17 SITUATION.

18 A. YES, MA'AM. THERE MAY BE IN A SITUATION WHERE HE'S
19 CUFFED TO THE FRONT FOR AN OCCASION. THAT HAS HAPPENED
20 BEFORE AND WILL HAPPEN AGAIN, I'M SURE.

21 Q. OKAY. THANK YOU VERY MUCH.

22 A. YES, MA'AM.

23 REDIRECT EXAMINATION

24 BY MR. HUBBARD:

25 Q. JUST A FEW QUESTIONS, LIEUTENANT. YOU WERE ASKED

1 ABOUT WHAT YOU CHARGED BOTH MERCER AND THOMPSON WITH, AND YOU
2 SAID THE SAME THING?

3 A. YES, SIR.

4 Q. AND YOU MENTIONED THE HAND OF ONE IS THE HAND OF
5 ALL.

6 A. YES, SIR.

7 Q. YOUR BASIS FOR CHARGING KEVIN MERCER - DID YOU
8 BELIEVE HIM TO BE THE SHOOTER?

9 A. YES, SIR, I DID ABSOLUTELY.

10 MS. KIMBROUGH: OBJECTION, YOUR HONOR.

11 MR. MYERS: SHE OPENED THE DOOR.

12 MR. HUBBARD: YOUR HONOR, I'M JUST FOLLOWING UP HER
13 QUESTION. SHE ASKED ABOUT THOSE CHARGES.

14 THE COURT: I UNDERSTAND.

15 MR. HUBBARD: IT'S THE SAME THING---

16 THE COURT: I DON'T -- I'LL LET YOU KNOW IF I NEED
17 ANY ARGUMENT.

18 MR. HUBBARD: YES, SIR, YOUR HONOR.

19 THE COURT: Y'ALL APPROACH THE BENCH FOR A SECOND,
20 PLEASE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
23 GOING TO HAVE TO TAKE A MATTER OF LAW UP. IT'S A GOOD TIME
24 FOR A BREAK ANYWAY. WE'LL STOP FOR 10 MINUTES OR SO, AND
25 THEN WE'LL TRY TO GET IN ANOTHER 45 MINUTES TO AN HOUR WORTH

1 OF TESTIMONY TODAY BEFORE WE BREAK. SO Y'ALL GO BACK INTO
2 THE JURY ROOM. WE'LL HAVE YOU BACK OUT HERE SHORTLY.

3 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
4 5:01 P.M.)

5 THE WITNESS: DO I NEED TO STEP DOWN, SIR?

6 THE COURT: YES, SIR. ALL RIGHT. I'M GOING TO TAKE
7 A SHOT AT PUTTING ON THE RECORD WHAT WE JUST---

8 MR. LITTLEJOHN: YOUR HONOR, COULD I ASK THAT THE
9 WITNESS BE EXCUSED DURING THIS DISCUSSION?

10 MR. MYERS: STEP OUT THERE.

11 THE WITNESS: YES, SIR.

12 (WITNESS SCOTTIE FRIER LEAVES THE COURTROOM.)

13 THE COURT: ALL RIGHT. AND Y'ALL MAKE SURE THAT I
14 DON'T MISSTATE WHAT WAS -- WHAT WAS SAID, BUT IN ANY EVENT,
15 WE CAN -- WE CAN RE -- REARGUE IT, RE-ADDRESS IT NOW. BUT
16 BASICALLY WHEN Y'ALL APPROACHED THE BENCH, I EXPLAINED THAT I
17 WAS OF THE OPINION THAT THIS IS A MATTER THAT HAD FIRST BEEN
18 RAISED BY THE DEFENDANT BOTH IN HER OPENING STATEMENT AND
19 ALSO IN HER QUESTIONING OF THIS WITNESS AS TO WHAT ARE THE
20 CONSIDERATIONS THAT MIGHT OR MIGHT NOT HAVE LED THE STATE
21 AND/OR LAW ENFORCEMENT TO CHOOSE TO ADDRESS THE CHARGES AND
22 THE OTHER SITUATIONS RELATED TO THE CHARGES OF THE TWO
23 DEFENDANTS DIFFERENTLY.

24 SPECIFICALLY, THERE WERE -- THERE WERE QUESTIONS
25 THAT WERE ASKED OF THIS WITNESS AS TO HOW THIS WITNESS VIEWED

1 THE EVIDENCE AND THE CONCLUSIONS TO BE DRAWN FROM THAT
2 EVIDENCE RELATED TO THE TWO DEFENDANTS AT THE TIME THE
3 CHARGES WERE ORIGINALLY FILED WITH -- WITH THE APPARENT POINT
4 THAT AT THE TIME THE CHARGES WERE FILED BOTH OF THESE
5 DEFENDANTS' CULPABILITY WAS -- WAS VIEWED AS BEING SIMILAR
6 AND THEN THAT HAVING CHANGED OVER TIME IS APPARENTLY FROM THE
7 OPENING STATEMENT AND ALSO FROM THAT QUESTIONING ONE -- A
8 PART OF THE THEME OF THE DEFENDANT'S APPROACH TO THE CASE.

9 THE QUESTION THAT WAS ASKED WAS BASICALLY: WAS IT
10 AT THAT TIME YOUR OPINION THAT MR. MERCER WAS THE ONE WHO
11 FIRED THE SHOT? AN OBJECTION WAS MADE, AND I THINK THAT THE
12 DOOR, SO TO SPEAK, TO THE SUBJECT OF WHY LAW ENFORCEMENT DID
13 WHAT IT DID, WHY THE STATE HAS DONE WHAT IT HAS DONE IN TERMS
14 OF CHANGING THE CHARGES, IN TERMS OF HOW THEY VIEWED THE
15 EVIDENCE, IN TERMS OF HOW THEY VIEWED THE INFERENCES TO BE
16 DRAWN FROM THE EVIDENCE AND THE CONCLUSIONS AND WHAT WAS THE
17 APPROPRIATE CHARGE, THAT DOOR HAS CLEARLY BEEN OPENED. AND
18 SO THAT RAISES THE QUESTION THEN OF HOW FAR THIS GOES, AND I
19 EXPLAINED THAT I FEEL THERE IS A DIFFERENCE BETWEEN: ALL
20 RIGHT. WHY DID YOU DO THIS? WHAT IS THE EVIDENCE THAT LED
21 THIS PARTICULAR OFFICER TO MAKE THIS PARTICULAR STEP?
22 THERE'S A DIFFERENCE BETWEEN SOMETHING ALONG THAT LINE TO --
23 FROM: WHO DO YOU THINK FIRED THE SHOT?

24 AND SO EVEN THOUGH THE DOOR TO ALL OF THESE -- I
25 MEAN, I'M NOT SAYING THAT THIS WAS A MISTAKE BECAUSE YOU

1 CLEARLY HAVE TAKEN THE APPROACH THAT THEY MADE THE WRONG
2 CHOICE IN DECIDING WHO PULLED THE TRIGGER, AND THERE'S
3 NOTHING WRONG WITH THAT. I'M NOT SAYING THAT THERE'S
4 ANYTHING WRONG WITH THAT. I'M SIMPLY SAYING THAT HAVING MADE
5 THAT CHOICE NOW, WE'RE GOING TO HAVE TO LITIGATE IT AND WE'RE
6 GOING TO HAVE TO LITIGATE WHY THEY MADE THE CHOICE THEY MADE,
7 AND THAT OPENS THE DOOR TO THE STATE INTRODUCING EVIDENCE IN
8 RESPONSE TO THE POINTS THAT YOU HAVE MADE.

9 THAT DOES NOT TURN THIS CASE INTO A BATTLE OF LAW
10 ENFORCEMENT OFFICERS AND EXPERTS AS TO WHAT THEIR OPINIONS
11 ARE AS TO WHO FIRED THE SHOT. SO REALIZING THAT THAT'S NOT
12 NECESSARILY AN EASY LINE TO DRAW, WE'RE GOING TO -- THAT'S
13 WHERE I THINK WE HAVE TO DRAW THE LINE. DOES THAT -- IS THAT
14 BASICALLY WHAT WE SAID IN THE -- IN THE SIDE BAR CONFERENCE?

15 MR. MYERS: YES, SIR.

16 MS. KIMBROUGH: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. SO I THINK THAT THE
18 QUESTION, "WHO DO YOU THINK FIRED THE SHOT?" IS AN
19 OBJECTIONABLE QUESTION. SO I SUSTAIN THE OBJECTION TO THAT
20 QUESTION.

21 MR. HUBBARD: YES, SIR.

22 THE COURT: BUT -- BUT IN OTHER WAYS YOU CAN ADDRESS
23 THE SAME ISSUE.

24 MR. MYERS: YES, SIR.

25 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

1 MS. KIMBROUGH: AND, YOUR HONOR, IN THAT REGARD WE'D
2 ALSO MOVE TO STRIKE THE ANSWER WHEN THE JURY IS BACK IN.

3 THE COURT: DID HE ANSWER THE QUESTION?

4 MR. LITTLEJOHN: YES, SIR.

5 MS. KIMBROUGH: YES, SIR.

6 THE COURT: I DIDN'T HEAR IT BUT -- BUT...

7 MR. LITTLEJOHN: YOUR HONOR, PERHAPS WE CAN CHECK
8 WITH THE COURT REPORTER DURING THE BREAK.

9 COURT REPORTER: I DON'T REMEMBER---

10 THE COURT: MA'AM?

11 COURT REPORTER: I DON'T REMEMBER AN ANSWER, BUT I
12 CAN LOOK BACK AND SEE. I THINK THEY WERE TALKING ON TOP OF
13 EACH OTHER.

14 THE COURT: IT WAS A RIGHT FORCEFUL OBJECTION. IT
15 MAY HAVE -- IT MAY HAVE SORT OF DROWNED OUT THE ANSWER.

16 MS. KIMBROUGH: MR. LITTLEJOHN MAY BE HEARING
17 THINGS.

18 THE COURT: ALL RIGHT. WELL, CHECK AND SEE IF --
19 WHAT YOU CAN COME UP WITH.

20 COURT REPORTER: OKAY.

21 THE COURT: WE'LL TAKE A SHORT BREAK.

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: BE SEATED, PLEASE.

24 MR. MYERS: I DIDN'T HEAR HOW LONG YOU SAID YOU WERE
25 GOING TO GO WITH THE JURY.

1 THE COURT: 6:00, 6:15, 6:30 MAYBE.

2 MR. MYERS: WHAT TIME ARE YOU GOING TO START BACK IN
3 THE MORNING?

4 THE COURT: 9:00. ANY TIME Y'ALL HAVE A SCHEDULING
5 CONCERN OR PREFERENCE, LET ME KNOW THAT.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD. THE JURY
7 WAS BROUGHT INTO OPEN COURT AT 5:15 P.M.)

8 THE COURT: COME BACK UP, SIR.

9 THE WITNESS: YES, SIR.

10 BY MR. HUBBARD:

11 Q. LIEUTENANT?

12 A. YES, SIR.

13 Q. TALK WAS MENTIONED OF MR. MERCER AND MR. THOMPSON
14 AND WHAT THEY WERE CHARGED WITH.

15 A. YES, SIR.

16 Q. WERE THEY CHARGED WITH THE SAME THINGS?

17 A. YES, SIR, THEY WERE.

18 Q. IS THAT MURDER, ARMED ROBBERY, AND POSSESSION OF A
19 PISTOL DURING THE COMMISSION OF A VIOLENT CRIME?

20 A. THOSE ARE THE ORIGINAL CHARGES; YES, SIR.

21 Q. YOU MENTIONED HAND OF ONE/HAND OF ALL.

22 A. YES, SIR.

23 Q. IF YOU -- BEING A DETECTIVE, YOU'RE THE ONE WHO
24 TRIES TO GET THE WARRANTS; RIGHT?

25 A. THAT'S CORRECT.

1 Q. AND THEN YOU HAVE TO TAKE THEM TO A MAGISTRATE?

2 A. THAT'S CORRECT:

3 Q. BUT YOU GET TO CHOOSE BASICALLY IN YOUR MIND WHAT
4 WARRANT YOU'RE GOING TO TRY TO TAKE TO A MAGISTRATE; CORRECT?

5 A. YES, SIR. IF I HAVE THE ELEMENTS THAT FIT THE
6 CRIME, I PRESENT THAT CRIME TO THE MAGISTRATE.

7 Q. NOW, IF -- IF YOU'VE GOT ONE SHOOTER---

8 A. YES, SIR.

9 Q. ---BUT TWO PEOPLE, WHY ARE YOU CHARGING BOTH WITH
10 THE SAME THING?

11 A. SOUTH CAROLINA LAW WORKS UNDER THE PRINCIPLE OF THE
12 HAND OF ONE IS THE HAND OF ALL. ANY PERSON THAT'S INVOLVED
13 IN THE---

14 MS. KIMBROUGH: OBJECTION, YOUR HONOR. I'M NOT SURE
15 HE'S QUALIFIED TO DISCUSS WHAT SOUTH CAROLINA LAW IS.

16 MR. HUBBARD: I'LL REPHRASE THE QUESTION. THAT WILL
17 PROBABLY REPHRASE HIS ANSWER.

18 THE COURT: ALL RIGHT.

19 BY MR. HUBBARD:

20 Q. NOT SO MUCH WHAT THE LAW IS, BUT WHY DID YOU PURSUE
21 THAT, BASED ON YOUR TRAINING? WHAT ARE YOU TRAINED TO DO IN
22 A SITUATION LIKE THIS?

23 A. ALL PERSONS THAT PARTICIPATE IN AN EVENT ARE
24 CULPABLE AND RESPONSIBLE FOR THE ENTIRE SCOPE OF THAT EVENT.
25 A PRIME EXAMPLE WOULD BE IF TWO GUYS GO TO ROB A STORE AND

1 ONE GUY GOES IN THE STORE AND SHOOTS THE CLERK AND THE OTHER
2 GUY IS OUT IN THE CAR. THAT DRIVER OF THAT CAR, EVEN THOUGH
3 HE DID NOT ENTER THAT STORE, IS STILL RESPONSIBLE FOR THAT
4 WHOLE EVENT BECAUSE HE WAS A PART OF IT, AND HE CAN BE
5 CHARGED EQUALLY WITH THE SHOOTER BECAUSE HE'S A PRINCIPAL TO
6 THE EVENT THAT -- THAT THAT WHOLE THING IS ENCOMPASSED AND
7 THEY'RE EACH CULPABLE FOR THE ENTIRE EVENT.

8 Q. AND THAT -- THAT'S ONE RATIONALE FOR WHY YOU MIGHT
9 GET THE SAME CHARGES ON BOTH -- BOTH INDIVIDUALS.

10 A. THAT'S CORRECT, SIR.

11 Q. NOW, USING YOUR SAME ANALOGY, YOU HAVE TWO PEOPLE GO
12 IN A STORE.

13 A. YES, SIR.

14 Q. ONE HAS A GUN; ONE DOES THE SHOOTING.

15 A. YES, SIR.

16 Q. THEY GO IN TO COMMIT A ROBBERY, BUT THERE'S A
17 SHOOTING. SOMEONE DIES.

18 A. THAT'S CORRECT.

19 Q. DO YOU CHARGE JUST THE ONE SHOOTER OR---

20 MS. KIMBROUGH: OBJECTION, YOUR HONOR. LEADING.

21 MR. HUBBARD: I'M SETTING UP THE SCENARIO FOR HIM TO
22 ANSWER.

23 THE COURT: I OVERRULE THE OBJECTION.

24 BY MR. HUBBARD:

25 Q. HOW DO YOU MAKE CHARGES IN THAT CASE, LIEUTENANT?

1 A. LET ME MAKE SURE I UNDERSTAND. WE'VE GOT EVIDENCE
2 THAT TWO PEOPLE GO INTO THE STORE. THEY'RE BOTH GOING IN TO
3 ROB THE STORE. ONE SHOOTS THE CLERK. THE OTHER IS JUST
4 THERE TO BE PART OF THE ROBBERY?

5 Q. CORRECT.

6 A. THEY WOULD BOTH BE -- IF THE CLERK WERE TO DIE, THEY
7 WOULD BOTH BE CHARGED WITH MURDER. THEY'RE BOTH RESPONSIBLE
8 FOR THE ENTIRE EVENT.

9 Q. NOW, YOU CAN ONLY GET WARRANTS; CORRECT?

10 A. THAT'S CORRECT.

11 Q. YOU DON'T GET INDICTMENTS.

12 A. I MAY PRESENT IT TO THE GRAND JURY, BUT THE INDICTED
13 CHARGE IS -- THAT'S BASED ON THE SOLICITOR'S DECISION WHO'S
14 GOING TO PROSECUTE THE CASE.

15 Q. BUT THE GRAND JURY MAKES THE ULTIMATE DECISION, DO
16 THEY NOT?

17 A. THAT'S CORRECT, BASED ON THE FACTS THAT THEY'RE
18 GIVEN. YES, SIR.

19 Q. AND DO YOU HAVE ANY KNOWLEDGE AS TO WHAT THE GRAND
20 JURY DID IN THIS CASE, OR MR. THOMPSON'S CASE RATHER?

21 A. I KNOW THAT THERE WERE SOME OTHER CHARGES PRESENTED,
22 BUT I DO NOT KNOW THE OUTCOME OF THOSE CHARGES.

23 Q. BASED ON YOUR EXPERIENCE, DO WE HAVE TO HAVE AN
24 INDICTMENT BEFORE WE CAN GET IN THIS COURTROOM?

25 A. YES, WE DO.

1 MR. HUBBARD: THANK YOU, LIEUTENANT.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

3 THE COURT: WAIT. Y'ALL COME HERE A SECOND.

4 (THE FOLLOWING BENCH CONFERENCE TOOK PLACE IN THE
5 PRESENCE OF THE COURT, THE ATTORNEYS, AND THE COURT REPORTER
6 AND OUT OF THE HEARING OF THE JURY.)

7 THE COURT: WHEN WE BROKE, MR. LITTLEJOHN MADE A
8 MOTION TO STRIKE THE LAST ANSWER, AND THAT MOTION IS NOT --
9 -- YOU'RE NO LONGER PURSUING THAT MOTION; CORRECT?

10 MR. LITTLEJOHN: THAT'S CORRECT.

11 (THIS CONCLUDES THE BENCH CONFERENCE.)

12 RECROSS EXAMINATION

13 BY MS. KIMBROUGH:

14 Q. JUST ONE QUESTION.

15 A. YES, MA'AM.

16 Q. DETECTIVE FRIER, TO YOUR KNOWLEDGE, IS MARCUS
17 THOMPSON STILL CHARGED WITH MURDER?

18 A. I DO NOT KNOW THE ANSWER TO THAT.

19 MS. KIMBROUGH: OKAY. THANK YOU.

20 MR. HUBBARD: THAT'S ALL WE HAVE FOR LIEUTENANT
21 FRIER.

22 THE COURT: YOU CAN STEP DOWN, SIR.

23 THE WITNESS: THANK YOU, YOUR HONOR.

24 MR. GRAHAM: THE STATE CALLS JIMMY GLEATON.

25 JAMES GLEATON, AFTER BEING DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 THE CLERK: STATE YOUR NAME AND SPELL YOUR FIRST AND
3 LAST NAMES.

4 THE WITNESS: SPELL IT, YOU SAID?

5 THE CLERK: YES.

6 THE WITNESS: MY NAME IS DETECTIVE JAMES GLEATON OF
7 THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT. J-A-M-E-S
8 G-L-E-A-T-O-N.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q. MR. GLEATON, WHERE ARE YOU EMPLOYED?

12 A. LEXINGTON COUNTY SHERIFF'S OFFICE.

13 Q. WHAT DO YOU DO THERE?

14 A. I'M A NARCOTICS DETECTIVE.

15 Q. IS THAT WHY YOU'RE NOT IN UNIFORM TODAY?

16 A. YES, SIR.

17 Q. HOW LONG HAVE YOU BEEN WITH THE NARCOTICS UNIT?

18 A. ABOUT SEVEN AND A HALF MONTHS NOW.

19 Q. PRIOR TO THAT, WERE YOU ALSO EMPLOYED WITH THE
20 LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

21 A. YES, SIR.

22 Q. WHAT DID YOU DO AT THAT TIME?

23 A. I WAS A MASTER DEPUTY BEFORE THAT FOR ABOUT THREE
24 YEARS AND A REGULAR DEPUTY BEFORE THAT.

25 Q. SO YOUR TITLE---

1 MR. LITTLEJOHN: YOUR HONOR, COULD I ASK THE WITNESS
2 TO SPEAK UP A LITTLE BIT OR MAYBE PULL THE MICROPHONE...

3 BY MR. GRAHAM:

4 Q. IF YOU COULD PULL THE MICROPHONE A LITTLE BIT CLOSER
5 TO YOU AND SIT A LITTLE CLOSER IN THE CHAIR. HOW LONG HAVE
6 YOU BEEN IN LAW ENFORCEMENT OVERALL?

7 A. APPROXIMATELY NINE, ALMOST TEN YEARS.

8 Q. MAY 16TH, MAY 17TH, 2002, WERE YOU ON DUTY AND
9 WORKING?

10 A. YES, SIR, I BELIEVE SO.

11 Q. THE NIGHT OF THE -- THE NIGHT OF THE 16TH AND THE
12 MORNING OF THE 17TH YOU WERE ON SHIFT?

13 A. YES, SIR.

14 Q. AND DID YOU RESPOND TO I-20 WEST, MILE MARKER 54, IN
15 REFERENCE TO A WHITE NAVIGATOR?

16 A. YES, SIR, AS BACK-UP.

17 Q. AND WHEN YOU GOT ON THE SCENE, WAS DETECTIVE FRIER
18 THERE?

19 A. YES, SIR, HE WAS.

20 Q. AND DID DETECTIVE FRIER GIVE YOU SOME INSTRUCTIONS
21 IN REGARDS TO THAT VEHICLE?

22 A. YES, SIR. WHEN I ARRIVED, HE GAVE ME AN ORDER TO
23 WATCH THE VEHICLE, MAKE SURE NOBODY WENT INSIDE IT OR OUTSIDE
24 OF IT, AND TO FOLLOW IT TO HEADQUARTERS AND DROP IT OFF.

25 Q. WHILE YOU WERE ON THE SCENE AFTER DETECTIVE FRIER

1 GAVE YOU THAT INFORMATION AND THAT ORDER, DID ANYBODY GO IN
2 THAT VEHICLE?

3 A. NO, SIR, THEY DID NOT.

4 Q. OKAY. AND DID A TOW TRUCK EVENTUALLY TAKE THAT CAR
5 TO THE SHERIFF'S DEPARTMENT?

6 A. YES, SIR, THEY DID.

7 Q. AND DID YOU FOLLOW IT ALL THE WAY?

8 A. YES, SIR, I DID.

9 Q. DID YOU EVER LOSE SIGHT OF IT?

10 A. NO, SIR, NOT ONE TIME.

11 Q. ONCE YOU GOT TO THE SHERIFF'S DEPARTMENT, WERE THERE
12 OTHER OFFICERS WAITING FOR YOU THERE?

13 A. YES, SIR. I BELIEVE SERGEANT COLLINS WAS WAITING
14 FOR ME AT THE SHERIFF'S OFFICE.

15 Q. SERGEANT NATHANIEL COLLINS? HE IS ONE OF THE I.D.
16 TECHS, I BELIEVE?

17 A. YES, SIR.

18 Q. AND DID YOU THEN TURN THAT CAR OVER TO SERGEANT
19 COLLINS?

20 A. YES, SIR.

21 Q. AND THEN PRIOR TO YOU TURNING IT OVER TO SERGEANT
22 COLLINS WHEN YOU WERE AT THE SHERIFF'S DEPARTMENT, DID
23 ANYBODY GO IN THE CAR?

24 A. NO, SIR.

25 MR. GRAHAM: NO FURTHER QUESTIONS.

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CROSS-EXAMINATION

BY MR. LITTLEJOHN:

Q. DETECTIVE GLEATON, ONE QUESTION. DID YOU NOTICE ANY FLAT TIRES ON THAT VEHICLE?

A. NO, SIR. I DON'T REMEMBER SEEING ANY FLAT TIRES.

MR. LITTLEJOHN: THANK YOU.

MR. GRAHAM: NOTHING ELSE, YOUR HONOR.

THE COURT: YOU CAN STEP DOWN, SIR.

THE WITNESS: THANK YOU, SIR.

MR. MYERS: WE'RE AT THAT POINT. THE NEXT ONE WOULD BE A LONG ONE. WE TALKED ABOUT IT. MAYBE WE BETTER START OFF WITH THAT ONE TOMORROW MORNING.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, AS IT TURNS OUT, THE NEXT SEVERAL WITNESSES THAT THE STATE WOULD BE CALLING ARE GOING TO BE LENGTHY, AND SO IN CONSULTATION WITH THE ATTORNEYS I HAVE DECIDED THAT IT WOULD BE BEST TO GO AHEAD AND BREAK NOW FOR THE DAY AND START TOMORROW MORNING BACK AT 9:00. SO I'M GOING TO -- IN JUST A FEW MINUTES I'M GOING TO DISMISS YOU FOR THE DAY AND LOOK FORWARD TO SEEING YOU AT 9 IN THE MORNING.

NOW, EVERY NIGHT WHEN WE GET READY TO BREAK, I'M GOING TO REMIND YOU THAT YOU MAY NOT DISCUSS THIS CASE AND YOU MAY NOT ALLOW ANYONE TO DISCUSS IT WITH YOU. TOMORROW MORNING WHEN YOU GET HERE I'M GOING TO ASK YOU WHETHER OR NOT ANYBODY HAS TRIED TO TALK TO YOU ABOUT THE CASE. ALSO WITH

1 REGARD TO THE PRESS -- NOW, YOU SAW THAT THERE WERE T.V.
2 CAMERAS IN HERE TODAY. THERE'S GOING TO BE SOMETHING ON THE
3 NEWS TONIGHT. IT'S BEST IF YOU WATCH C.N.N. IF YOU INSIST ON
4 WATCHING THE NEWS, AND IF SOMEBODY IN YOUR HOUSEHOLD WANTS TO
5 WATCH SOMETHING LOCAL, THEN IT WOULD BE A GOOD TIME FOR YOU
6 TO TAKE A WALK OUTSIDE. BUT TOMORROW MORNING I WILL ALSO ASK
7 YOU WHETHER OR NOT YOU SAW OR HEARD ANY NEWSCASTS ABOUT THE
8 CASE.

9 NOW, A COUPLE MORE THINGS THAT I WANT TO MENTION.
10 SOMETIMES WE HEAR THAT JURORS MIGHT SAY, "WELL, I THINK I
11 KNOW WHAT THAT SPOT LOOKS LIKE. I'M JUST GOING TO RIDE OUT
12 THERE AND TAKE A LOOK AT IT," OR THEY MIGHT SAY, "YOU KNOW,
13 SOMEBODY MENTIONED THIS -- THIS HAND OF ONE/HAND OF ALL. I
14 THINK I MIGHT JUST LOOK THAT UP ON THE INTERNET." PLEASE
15 DON'T DO ANYTHING LIKE THAT. PLEASE JUST RELY ON ME AND RELY
16 ON THE LAWYERS TO MAKE SURE THAT ALL OF THE APPROPRIATE
17 EVIDENCE AND ALL OF THE APPROPRIATE LAW IS EXPLAINED TO YOU.

18 YOU ALL HAVE A RELAXING EVENING AND GO HOME AND
19 DON'T THINK ABOUT THIS CASE. CERTAINLY DON'T TALK ABOUT IT.
20 I LOOK FORWARD TO SEEING YOU ALL IN THE MORNING. NOW, DID
21 YOU ALL GET YOUR CARS INTO YOUR PARKING SPOT OKAY? ANYBODY
22 HAVE ANY PROBLEMS WITH THAT? WHEN YOU COME IN IN THE
23 MORNING, YOU JUST GO STRAIGHT THERE. YOU DON'T NEED TO PARK
24 OUTSIDE OR ANYTHING LIKE THAT. THESE GENTLEMEN AND OTHERS
25 WILL BE DOWN THERE TO MAKE SURE THAT YOU GET IN SAFELY, AND

1 YOU'LL BE BROUGHT IN -- YOU'LL BE BROUGHT ON UP TO THE
2 COURTROOM.

3 NOW, I INTEND TO TRY TO START TOMORROW MORNING AT 9
4 AND THEN TO TRY TO BE VERY REGULAR ABOUT WHEN WE START AND
5 WHEN WE BREAK DURING THE COURSE OF THIS WEEK. BUT IT'S NOT
6 ALWAYS POSSIBLE FOR ME TO RUN A COURT LIKE YOU FOLKS MIGHT
7 RUN YOUR HOMES OR RUN YOUR BUSINESSES. THERE ARE THINGS THAT
8 COME UP OVERNIGHT SOMETIMES OR ON THE SPUR OF THE MOMENT THAT
9 REQUIRE US TO DEAL WITH THEM OUTSIDE YOUR PRESENCE. THERE
10 WILL BE TIMES DURING THE COURSE OF THIS WEEK WHEN YOU'LL BE
11 SITTING BACK IN THE JURY ROOM AFTER I'VE TOLD YOU WE WERE
12 GOING TO BE READY TO BEGIN AND YOU WILL PROBABLY BE
13 WONDERING, "WELL, WHY ARE WE SITTING BACK HERE WAITING ON
14 THEM TO GET READY?" BUT I ASSURE YOU THAT IF YOU'RE SITTING
15 IN THE JURY ROOM, THEN I'M SITTING IN THIS CHAIR WAITING --
16 TRYING TO GET READY TO HAVE YOU BROUGHT BACK INTO THE
17 COURTROOM.

18 SO I HOPE THAT WE WILL START AT 9. I CERTAINLY WANT
19 YOU ALL TO BE IN THE JURY ROOM BEFORE 9 SO THAT IF WE -- IF
20 NOTHING COMES UP WE CAN BEGIN RIGHT AT 9:00. Y'ALL HAVE A
21 NICE NIGHT.

22 JUROR: AND LEAVE YOUR NOTES?

23 THE COURT: AND LEAVE YOUR NOTES DEFINITELY. THE
24 BAILIFFS WILL TAKE THEM UP AND HAND THEM BACK OUT TO YOU IN
25 THE MORNING. YOU CAN LEAVE THEM SITTING IN YOUR CHAIR.

1 BAILIFF: PUT YOUR NAME ON THEM.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
3 THE DAY AT 5:29 P.M.)

4 THE COURT: OKAY. ALL RIGHT. IS THERE ANYTHING
5 THAT WE NEED TO TAKE UP NOW BEFORE WE BREAK FOR THE DAY?

6 MR. LITTLEJOHN: NOTHING FROM THE DEFENSE, YOUR
7 HONOR.

8 MR. MYERS: NOTHING.

9 THE COURT: ALL RIGHT. LET'S -- LET'S GO BACK INTO
10 MY OFFICE JUST FOR A MINUTE AND TALK FOR JUST A SECOND ABOUT
11 SCHEDULING.

12 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 5:30
13 P.M. AND RESUMED THE FOLLOWING DAY, APRIL 18, 2006, AS
14 FOLLOWS:)

15 THE COURT: GOOD MORNING. BE SEATED, PLEASE. DO
16 Y'ALL NEED TO TAKE UP ANYTHING BEFORE WE BRING THE JURY IN?

17 MR. MYERS: NO, SIR.

18 MR. LITTLEJOHN: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. BRING THEM IN.

20 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
21 9:00 A.M.)

22 THE COURT: GOOD MORNING. I HOPE YOU ALL HAD A NICE
23 NIGHT, AND AS I PROMISED YOU I WOULD, THE VERY FIRST THING
24 I'M GOING TO DO THIS MORNING IS TO ASK YOU ALL IF ANY OF YOU
25 HAVE TALKED ABOUT THIS CASE IN ANY WAY WITH ANYONE OR HAS

1 ANYONE ATTEMPTED TO TALK ABOUT THE CASE WITH YOU. IF YOU
2 HAVE, THEN JUST RAISE YOUR HAND AND WE'LL -- WE'LL TALK ABOUT
3 IT PRIVATELY. YOU HAVE?

4 JUROR BOUYE: WELL, I HAVEN'T DISCUSSED IT. MY
5 HUSBAND ATTEMPTED---

6 THE COURT: OKAY.

7 JUROR BOUYE: ---JUST TO QUESTION WHAT IT WAS ABOUT.

8 THE COURT: MS. BOUYE?

9 JUROR BOUYE: YES.

10 THE COURT: AND YOU -- YOU WOULDN'T LET HIM?

11 JUROR BOUYE: I WOULDN'T LET HIM AND, IN FACT, HE
12 SAID, "WELL, I CAN LOOK IT UP ON THE INTERNET." I SAID,
13 "WELL, THEN YOU DO THAT." I SAID, "I CAN'T DISCUSS IT. IF I
14 DID, I MIGHT GO TO JAIL, AND YOU'D BE WITH TWO KIDS," AND HE
15 SHUT UP.

16 THE COURT: OKAY. ALL RIGHT. SO IN THE COURSE OF
17 THOSE DISCUSSIONS, DID HE SAY ANYTHING ABOUT THE CASE?

18 JUROR BOUYE: HUH-UH.

19 THE COURT: AND DID YOU TELL HIM ANYTHING ABOUT THE
20 CASE?

21 JUROR BOUYE: NO.

22 THE COURT: WELL, YOU DID VERY WELL. THANK YOU.
23 NOW, AS FAR AS -- ANYBODY ELSE? AS FAR AS PRESS COVERAGE IS
24 CONCERNED, DID ANYBODY SEE OR HEAR ANY PRESS COVERAGE ABOUT
25 THE CASE? ALL RIGHT. NOBODY IS RAISING THEIR HAND, SO THANK

1 YOU ALL. CALL YOUR NEXT WITNESS.

2 MR. HUBBARD: YES, SIR. YOUR HONOR, THE STATE CALLS
3 NATHANIEL COLLINS.

4 NATHANIEL COLLINS, AFTER BEING DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE COURT: ALL RIGHT. HAVE A SEAT.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q. SERGEANT COLLINS, WHERE DO YOU WORK?

10 A. I'M EMPLOYED BY THE LEXINGTON COUNTY SHERIFF'S
11 DEPARTMENT.

12 Q. HOW LONG HAVE YOU BEEN THERE?

13 A. TWENTY YEARS.

14 Q. AND WHAT ARE YOUR DUTIES?

15 A. CURRENTLY I SUPERVISE A SHIFT IN THE COURT SERVICES
16 DIVISION.

17 Q. AND WERE YOU WORKING WITH LEXINGTON COUNTY BACK IN
18 MAY OF 2002?

19 A. YES, SIR, I WAS. I WAS A SUPERVISOR OVER THE CRIME
20 SCENE AND EVIDENCE ROOM.

21 Q. DO YOU RECALL THE LATE NIGHT OF MAY 16TH, EARLY
22 MORNING HOURS OF MAY 17TH, 2002?

23 A. YES, SIR.

24 Q. WERE YOU ON DUTY AT THE TIME OR WHERE WERE YOU?

25 A. NO, I WAS AT HOME. I GOT A PHONE CALL TELLING ME

1 WHAT HAD KIND OF EXPIRED OR HAD HAPPENED, AND I WAS ASKED TO
2 COME OUT. AND I LEFT MY HOME AND I WAS ROUTED OR TOLD TO GO
3 TO THE HEADQUARTERS AND WAIT FOR A VEHICLE TO BE BROUGHT IN
4 SO I COULD PUT IT INTO EVIDENCE.

5 Q. ALL RIGHT. THAT WAS PART OF YOUR JOB IS COLLECTING
6 EVIDENCE AND MAINTAINING IT?

7 A. YES, SIR.

8 Q. NOW, THE VEHICLE YOU TALKED ABOUT OR JUST MENTIONED,
9 WHAT TYPE OF VEHICLE WAS THAT THAT CAME IN THAT NIGHT?

10 A. IT WAS A WHITE LINCOLN NAVIGATOR.

11 Q. AND DO YOU REMEMBER WHO BROUGHT IT IN OR WHAT
12 OFFICER RODE IN WITH IT?

13 A. THE VEHICLE WAS ACTUALLY BROUGHT IN ON A WRECKER.

14 Q. OKAY.

15 A. AND THE OFFICER THAT CAME WITH IT WAS OFFICER
16 GLEATON.

17 Q. DO YOU REMEMBER ABOUT WHAT TIME THAT WAS?

18 A. AROUND 1:15 IN THE MORNING.

19 MR. HUBBARD: YOUR HONOR, I DON'T KNOW IF THEY'VE
20 GOTTEN THE OTHER EVIDENCE OUT YET. WE COULD USE IT.

21 THE CLERK: I DIDN'T WANT TO MAKE ANY NOISE.

22 BY MR. HUBBARD:

23 Q. THIS VEHICLE, HOW DID YOU GET IT OFF THE WRECKER
24 INTO THE -- THE SHERIFF'S DEPARTMENT?

25 A. THE BUILDING THAT WE STORE THE VEHICLE IN IS OUR

1 EVIDENCE BUILDING. ON ONE END OF IT WE HAVE A GARAGE DOOR
2 AND A BAY AREA THAT WE CAN LOCK THE VEHICLES INSIDE. IN
3 ORDER TO GET THE VEHICLE -- THE VEHICLE IS IN PARK. IN ORDER
4 TO GET IT OFF OF THE WRECKER AND INTO -- IN THROUGH THAT
5 DOORWAY, IT HAD TO BE PLACED INTO NEUTRAL SO THAT IT WOULD
6 ROLL BACK INTO THE SHED THROUGH THE GARAGE DOOR. SO WE HAD
7 TO TAKE THE KEY AND OPEN UP THE DOOR, PLACE THE VEHICLE IN
8 NEUTRAL, ROLL IT BACK INTO THE BUILDING, AND THEN RE-SECURE
9 EVERYTHING.

10 Q. IS THIS THE NAVIGATOR THAT WE'RE TALKING ABOUT?

11 A. YES, SIR, THAT'S -- THAT'S THE NAVIGATOR INSIDE THE
12 BUILDING. YES, SIR.

13 Q. THESE ARE STATE'S 4 AND 5. THAT IS THE BUILDING IT
14 WAS STORED IN?

15 A. YES, SIR.

16 Q. OKAY. AND LET ME ASK YOU: ON THE BACK WINDOW OF
17 THIS NAVIGATOR---

18 A. UH-HUH.

19 Q. ---THESE LINES HERE, IS THAT SOMETHING IN THE
20 VEHICLE OR IS THAT THE LIGHT FROM THE FLUORESCENT LIGHTS?

21 A. THAT'S A REFLECTION OF THE FLUORESCENT LIGHTS
22 OVERHEAD.

23 Q. AND WHAT DO YOU SEE IN THAT CORNER?

24 A. I SEE A MASONIC EMBLEM.

25 Q. OKAY. SO THAT'S THE VEHICLE YOU SECURED?

1 A. YES, SIR.

2 Q. AND, AGAIN, THE LINES IN THE BACK WINDOW ARE
3 FLUORESCENT LIGHTS? IS THAT CORRECT?

4 A. YES. THEY'RE HUNG OVERHEAD IN THE BUILDING TO LIGHT
5 UP THE ROOM.

6 Q. THIS BUILDING, IS THIS WHERE YOU BRING IN EVIDENCE
7 AND STORE PARTICULARLY LIKE VEHICLES AND THINGS LIKE THAT?

8 A. YES. THAT'S THE WHOLE PURPOSE OF THAT GARAGE DOOR
9 THERE AND THAT ROOM IS IF WE HAVE A VEHICLE THAT, YOU KNOW,
10 IS SENSITIVE IN NATURE FROM AN IMPORTANT CASE, THEN THAT --
11 WE WILL AUTOMATICALLY PUT IT INTO THAT ROOM AND KEEP IT SAFE.

12 Q. WHEN YOU ROLLED IT OFF THE BED OF THE TOW TRUCK, DID
13 YOU HAVE TO PUT IT IN NEUTRAL?

14 A. YES.

15 Q. SO YOU HAD TO ENTER THE VEHICLE TO DO THAT.

16 A. WELL, I TRIED TO REACH IN AND DO IT WITH -- I DON'T
17 WANT TO PHYSICALLY GET MY WHOLE BODY IN THERE.

18 Q. RIGHT.

19 A. JUST REACH IN AND PLACE IT IN NEUTRAL AND...

20 Q. IT'S A BIG VEHICLE, ISN'T IT?

21 A. YES.

22 Q. WHEN YOU GOT IT IN THE BAY AREA IN THE GARAGE, DID
23 YOU LOCK IT UP?

24 A. YES, SIR. BEFORE I LEFT IT, YES, SIR, EVERYTHING
25 WAS SECURED BACK.

1 Q. LET ME ASK YOU: WHEN YOU WERE REACHING IN, DID YOU
2 NOTICE ANYTHING INSIDE THAT VEHICLE?

3 A. YEAH. I KIND OF GLANCED, YOU KNOW, BEFORE I -- I
4 WANTED TO MAKE SURE I WASN'T GOING TO DISTURB ANYTHING, SO I
5 LOOKED AROUND AND I OBSERVED A PISTOL UNDER THE FRONT
6 DRIVER'S SEAT.

7 Q. OKAY. NOW, DID YOU RETRIEVE IT OR LEAVE IT AT THAT
8 TIME?

9 A. AT THAT POINT IN TIME I LEFT IT BECAUSE---

10 Q. AND WHY WAS THAT?

11 A. WELL, THEY HAD BROUGHT SUSPECTS IN AND THEY HAD
12 THEM -- THIS BUILDING IS LOCATED RIGHT IN THE BACK OF THE
13 SHERIFF'S DEPARTMENT. THE SUSPECTS WERE INSIDE THE SHERIFF'S
14 DEPARTMENT, AND THEY WERE WANTING ME TO COME UP THERE AND
15 PHOTOGRAPH THEM AND---

16 Q. SO YOU HAD TO DEAL WITH THEM AND LEAVE THE TRUCK.

17 A. RIGHT. AND I KNEW THAT COLLECTING THE GUN OUT OF
18 THE VEHICLE NEEDED TO BE DONE -- IT NEEDED TO BE DONE A
19 CERTAIN WAY, CAREFULLY, AND IT NEEDED TO BE DOCUMENTED
20 PROPERLY, AND I DIDN'T HAVE TIME TO DO IT RIGHT THEN. I KNEW
21 THAT IF I SECURED EVERYTHING, LOCKED EVERYTHING UP -- I WAS
22 THE ONLY PERSON OUT WORKING THAT NIGHT THAT HAD ACCESS TO
23 THAT BUILDING OR THAT VEHICLE, SO ONCE I LOCKED EVERYTHING
24 UP, TOOK THE KEYS TO THE VEHICLE, SECURED THEM IN THE OTHER
25 EVIDENCE ROOM INSIDE THE SHERIFF'S DEPARTMENT -- AND I KNEW

1 IT WOULD BE THERE WHEN I WENT BACK.

2 Q. OKAY. SO THE NAVIGATOR IS IN A GARAGE BAY AREA.

3 A. OUT BACK.

4 Q. BUT THE KEYS ARE IN A SEPARATE EVIDENCE ROOM IN
5 ANOTHER AREA.

6 A. INSIDE THE HEADQUARTERS BUILDING, YES, SIR.

7 Q. NOW, THE TWO SUSPECTS, ARE WE TALKING ABOUT MERCER
8 AND THOMPSON?

9 A. YES, SIR.

10 Q. AND WERE THEY TOGETHER OR SEPARATED WHEN YOU --
11 WHEN YOU SAW THEM?

12 A. THEY WERE IN TWO SEPARATE INTERVIEW ROOMS.

13 Q. AND AS TO MERCER, WHAT DID YOU DO FIRST?

14 A. WELL, THE FIRST THING I DID WAS TAKE SOME PICTURES
15 OF HIM.

16 Q. OKAY.

17 A. AND THE CLOTHES HE WAS WEARING.

18 Q. LET ME SHOW YOU---

19 A. AND HOW HE WAS DRESSED.

20 Q. LET ME SHOW YOU THIS PHOTOGRAPH AND SEE IF YOU
21 RECOGNIZE IT.

22 A. YES, SIR, I DO.

23 Q. IS THIS A PHOTOGRAPH YOU TOOK OF MR. MERCER THAT
24 NIGHT?

25 A. YES, IT IS.

1 Q. THESE WERE THE CLOTHES HE HAD ON?

2 A. YES, SIR, THEY ARE.

3 MR. HUBBARD: YOUR HONOR, I OFFER THIS INTO
4 EVIDENCE.

5 MR. LITTLEJOHN: NO OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (STATE'S EXHIBIT 13 WAS RECEIVED IN EVIDENCE.)

8 BY MR. HUBBARD:

9 Q. AT SOME POINT AFTER THE PHOTOGRAPHING PROCESS -- I
10 KNOW YOU DID SOME OTHER THINGS, BUT DID YOU ALSO SEIZE HIS
11 CLOTHES?

12 A. YES, SIR.

13 Q. OKAY. AND DID YOU ALSO TAKE A PICTURE LATER THAT
14 NIGHT OF MARCUS THOMPSON?

15 A. YES, SIR, I DID.

16 Q. I SHOW YOU -- IF YOU RECOGNIZE THIS PHOTOGRAPH.

17 A. THAT'S A PHOTOGRAPH OF MR. THOMPSON IN THE INTERVIEW
18 ROOM THAT I TOOK.

19 MR. HUBBARD: I OFFER THIS INTO EVIDENCE, YOUR
20 HONOR.

21 MR. LITTLEJOHN: NO OBJECTION.

22 THE COURT: IT'S ADMITTED.

23 (STATE'S EXHIBIT 14 WAS RECEIVED IN EVIDENCE.)

24 BY MR. HUBBARD:

25 Q. OFFICER COLLINS, AS FAR AS THE CLOTHING IS

1 CONCERNED, WERE EITHER OF THESE INDIVIDUALS WEARING DENIM?

2 A. MR. MERCER HAD ON A PAIR OF DENIM PANTS AND A DENIM
3 TOP.

4 Q. OF THE TWO INDIVIDUALS, WHO HAD A HAT?

5 A. MR. MERCER HAD A HAT WITH HIM.

6 Q. OF THE TWO INDIVIDUALS, WHO WAS THE LARGER?

7 A. MR. MERCER.

8 Q. HOW WOULD YOU DESCRIBE MR. THOMPSON'S SIZE? WAS HE
9 BIG OR THIN? TALL? WIDE? HOW WOULD YOU DESCRIBE HIM?

10 A. HE WAS THINNER THAN MR. MERCER WAS.

11 Q. OKAY. AFTER YOU TOOK THESE PHOTOGRAPHS, DID YOU
12 ATTEMPT TO COLLECT WHAT WE CALL GUNSHOT RESIDUE EVIDENCE?

13 A. YES, SIR, I DID.

14 Q. HOW DO YOU GO ABOUT DOING THAT?

15 A. WELL, I COLLECTED FIRST FROM MR. MERCER. I USE A
16 KIT. THE KIT IS---

17 Q. DO YOU HAVE A SAMPLE KIT WITH YOU?

18 A. YES, I DO.

19 Q. AND BEFORE WE EVEN SHOW THE JURY THAT, WHAT IS
20 GUNSHOT RESIDUE OR G.S.R.?

21 A. WELL, THE SCIENCE BEHIND IT, WHAT LITTLE I CAN TELL
22 YOU, IS BASICALLY WHEN A GUN GOES OFF IT LEAVES POWDER
23 RESIDUE---

24 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT
25 UNLESS HE QUALIFIES THIS WITNESS TO TESTIFY ABOUT GUNSHOT

1 RESIDUE.

2 MR. HUBBARD: THAT'S FINE. I'LL PUT SOMEBODY ELSE
3 UP.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 BY MR. HUBBARD:

6 Q. WHAT ARE YOU LOOKING FOR AS SOMEONE WHO'S THE
7 TECHNICIAN TAKING THE EVIDENCE?

8 A. WELL, WHAT I DO IS JUST COLLECT WHAT COULD POSSIBLY
9 BE THERE, AND AFTER I DO THE COLLECTION, THEN THE KIT IS SENT
10 TO S.L.E.D. TO BE ANALYZED BY AN ANALYST.

11 Q. OKAY. DO YOU HAVE A SAMPLE KIT WITH YOU?

12 A. YES, SIR, I DO.

13 Q. CAN YOU SHOW THAT TO THE JURY? I TELL YOU WHAT.
14 AND IF I CAN, WITH THE COURT'S PERMISSION, CAN I HAVE YOU
15 COME DOWN HERE AND SHOW THE JURY WHAT YOU DO, BRINGING THAT
16 KIT?

17 THE COURT: YES, SIR.

18 BY MR. HUBBARD:

19 Q. NOW, SERGEANT COLLINS, I'M GOING TO ASK YOU TO STAND
20 RIGHT HERE. I'M GOING TO GET ON THIS SIDE OF YOU AND JUST
21 KEEP YOUR VOICE UP, AND IF YOU WOULD, THE WHITE ENVELOPE
22 YOU'RE HOLDING, IS THAT HOW THE KIT COMES?

23 A. YES, THIS IS -- YES, THIS IS A KIT THAT WE USE
24 CURRENTLY. THE KIT IS ACTUALLY -- S.L.E.D. MAKES UP THESE
25 KITS. THEY DECIDE WHAT GOES IN THEM AND EVERYTHING. THE

1 KITS COME PRE-SEALED WITH TAPE.

2 Q. SERGEANT, I'M GOING TO ASK YOU TO TURN A LITTLE BIT
3 SO EVERYBODY CAN SEE YOU.

4 A. IT COMES PRE-SEALED WITH TAPE. IT TELLS YOU, YOU
5 KNOW, IF THE SEAL IS BROKE NOT TO USE THIS KIT. SO YOU CHECK
6 THAT FIRST, IF THE SEAL IS IN PLACE. THEN YOU OPEN UP THE
7 KIT.

8 Q. WHICH MAY NOT BE EASY.

9 A. RIGHT. IT'S LIKE IT'S SEALED WITH TAPE, SO YOU HAVE
10 TO OPEN IT UP. THEN INSIDE THE KIT---

11 Q. WOULD YOU JUST LAY THE CONTENTS OUT---

12 A. RIGHT.

13 Q. ---RIGHT HERE?

14 A. THERE'S SOME PAPERWORK, AND IT COMES WITH A SET OF
15 GLOVES. (THE WITNESS PLACES ITEMS FROM THE KIT IN FRONT OF
16 THE JURY BOX.)

17 Q. OKAY. SERGEANT, NOW YOU SAY THERE'S SOME PAPERWORK
18 IN HERE. IS THIS A SHEET THAT YOU FILL OUT---

19 A. YES, SIR.

20 Q. ---BEFORE YOU START?

21 A. YES, SIR.

22 Q. NOW, WHAT -- UP AT THE TOP IT HAS COLLECTING
23 OFFICER'S NAME AND COLLECTING AGENCY'S NAME. WHO FILLS THAT
24 OUT?

25 A. I DO.

1 Q. IT SAYS, "HOMICIDE, SUICIDE, ASSAULT, DRIVE-BY OR
2 OTHER." WHO FILLS THAT OUT?

3 A. I DO.

4 Q. SUSPECT'S OR SUBJECT'S FULL NAME. DO YOU FILL THAT
5 OUT?

6 A. YES, SIR.

7 Q. SUBJECT IS LIVING OR DEAD. YOU FILL THAT OUT?

8 A. YES, SIR.

9 Q. SUBJECT IS RIGHT HANDED, LEFT HANDED, UNKNOWN. YOU
10 FILL THAT OUT.

11 A. YES, SIR.

12 Q. HOW DO YOU KNOW THAT?

13 A. I ASK -- I ASKED MR. MERCER WHEN I WAS DOING THE KIT
14 ON HIM.

15 Q. IS HE RIGHT OR LEFT HANDED?

16 A. HE INDICATED TO ME THAT HE WAS LEFT HANDED.

17 Q. OKAY. AND YOU FILL OUT THE REST OF THIS INFORMATION
18 AS WELL.

19 A. YES, SIR.

20 Q. OKAY. YOU PUT HOBBIES? OCCUPATION?

21 A. YES, SIR, WHATEVER INFORMATION I HAVE. YES, SIR.

22 Q. AND THEN YOU TALK DOWN HERE ABOUT THE TYPE OF
23 FIREARM.

24 A. YES.

25 Q. THAT'S STANDARD FOR EVERY TEST YOU DO?

1 A. YES.

2 Q. IN EVERY KIT?

3 A. YES, SIR.

4 Q. WHAT DO YOU DO NEXT?

5 A. WELL, I USE THE GLOVES THAT THEY PROVIDE. THE FIRST
6 THING YOU DO IS A PARTICLE COLLECTION.

7 THE COURT: SIR, LET ME JUST REMIND YOU THAT YOU'RE
8 NOT HAVING -- YOU DON'T HAVE THE BENEFIT OF A MICROPHONE OVER
9 THERE---

10 THE WITNESS: OKAY.

11 THE COURT: ---SO JUST MAKE SURE YOU KEEP YOUR VOICE
12 UP.

13 THE WITNESS: ALL RIGHT. THE FIRST THING YOU DO IS
14 A PARTICLE COLLECTION. YOU START AT THE BACK OF THEIR HANDS.
15 THESE LITTLE CONTAINERS COME APART, AND ON THE UNDERNEATH
16 SIDE THERE'S A STICKY SURFACE HERE AND YOU PAT IT ACROSS THE
17 BACK OF THE PERSON'S HAND. AND ONCE YOU'RE FINISHED, BEING
18 CAREFUL THAT YOU DON'T CONTAMINATE THIS WITH ANY OTHER
19 SURFACE OR ANY OTHER -- COME IN CONTACT WITH ANYTHING ELSE,
20 YOU CLOSE IT BACK UP HERE IN THE CAPSULE.

21 BY MR. HUBBARD:

22 Q. I SEE YOU HAVE FOUR OF THEM.

23 A. RIGHT.

24 Q. DOES EACH ONE HAVE A DIFFERENT LABEL?

25 A. YES, SIR. YOU DO THE BACK OF ONE HAND. THEN YOU DO

1 THE PALM OF THE SAME HAND. CLOSE IT UP. MOVE TO THE
2 OPPOSITE HAND AND, AGAIN, START WITH THE BACK, DO THE BACK OF
3 THE HAND, THEN THE PALM. ONCE YOU'VE APPLIED THIS TO THE
4 BACK AND THE PALM OF EACH ONE, CLOSE THEM UP. THEN YOU MOVE
5 TO THE SWABS.

6 Q. BEFORE YOU SWAB THE HANDS OR ANYTHING, DO YOU DO A
7 TEST OR A CONTROL SWAB?

8 A. YEAH. THAT'S THE FIRST ONE YOU TAKE.

9 Q. AND WHY DO YOU DO A CONTROL SWAB?

10 A. WELL, THE MAIN REASON I DO IT IS THE INSTRUCTIONS
11 TELL ME TO DO IT.

12 Q. WELL, I ASKED YOU THAT. THAT'S PROBABLY NOT FAIR TO
13 ASK YOU THAT---

14 A. YEAH.

15 Q. ---BUT IS THAT PART OF THE PROTOCOL?

16 A. THAT IS PART OF THE PROTOCOL THAT THEY -- THEY
17 REQUIRE IS---

18 Q. AND WHERE -- ON WHAT PART OF THE BODY ARE YOU
19 LOOKING FOR? ARE YOU LOOKING FOR SOMETHING THAT'S ALSO
20 EXPOSED OR COVERED?

21 A. YOU GO FOR SOMETHING THAT WOULD NOT HAVE BEEN
22 EXPOSED AT THE TIME THAT THE GUN WENT OFF AND SHOULD NOT BE
23 CONTAMINATED ON YOUR BODY. I ALWAYS LIFTED A PERSON'S SHIRT
24 AND RUBBED AROUND THEIR TORSO AREA.

25 Q. IS THAT WHAT YOU DID WITH MR. MERCER---

1 A. YES.

2 Q. ---AND MR. THOMPSON?

3 A. YES.

4 Q. OKAY. THEN WHAT DID YOU DO NEXT? AND I GUESS LET
5 ME SAY A SWAB -- YOU HAVE THESE Q-TIP-LOOKING THINGS?

6 A. LITTLE Q-TIPS.

7 Q. IS THAT WHAT YOU USE?

8 A. YES, SIR.

9 Q. HOW DO YOU SWAB?

10 A. YOU OPEN THESE UP. YOU TAKE A SWAB OUT. YOU WET
11 THE TIP OF THE SWAB WITH TWO OR THREE DROPS OF A SOLUTION
12 THAT COMES IN THE PACK THAT'S MARKED NITRIC ACID. YOU DROP
13 TWO OR THREE DROPS ON THE SWAB. AGAIN, START WITH THE BACK
14 OF THE HAND. SWAB THE HAND FOR ABOUT 30 SECONDS. AND THEN
15 IF YOU'RE DOING THE BACK OF THE RIGHT HAND, THEN YOU WOULD
16 OPEN UP...

17 Q. THAT'S WHAT I WAS GOING TO ASK YOU.

18 A. RIGHT.

19 Q. IS THERE ONE FOR THE FRONT AND BACK OF EACH HAND?

20 A. THAT'S RIGHT. AND EACH TIME YOU SWAB ONE, YOU SWAB
21 -- YOU SWAB THE BACK OF THE LEFT HAND. THEN THAT SWAB GOES
22 IN THE TUBE MARKED BACK LEFT, AND YOU SEAL IT UP.

23 Q. YOU DID THAT WITH MR. THOMPSON AND MR. MERCER.

24 A. YES.

25 Q. LET ME ASK YOU ABOUT THE KIT THAT YOU USED THERE.

1 DID YOU ALSO HAVE AN ADDITIONAL SET FOR TESTING FOREARMS?

2 A. YES. THERE WAS -- THAT KIT WAS SLIGHTLY DIFFERENT
3 FROM -- FROM THIS KIT. SOMETIMES WHAT THEY SEND YOU ARE --
4 ASK FOR CHANGES, WHAT THEY SHIP OUT, AND WHATEVER IS IN THE
5 KIT IS WHAT I -- WHATEVER THE KIT ASKS FOR, I GIVE; I
6 COLLECT.

7 Q. AFTER YOU HAVE COLLECTED ALL OF THIS STUFF AND
8 YOU'VE PUT THE SWABS INSIDE THESE TUBES AND YOU'VE GOT THE
9 PARTICLE LIFTERS AND THEY'RE ALL CLOSED UP, WHAT DO YOU DO
10 WITH ALL THIS MATERIAL HERE?

11 A. ALL THIS STUFF I PUT BACK IN THE ENVELOPE. I PUT IT
12 BACK IN THE ENVELOPE, THE PAPERWORK AND EVERYTHING, AND I
13 TOOK ALL THIS STUFF -- BECAUSE I HAD DONE MR. MERCER. I TOOK
14 THIS BACK, SECURED IT IN THE EVIDENCE ROOM, GOT ANOTHER
15 G.S.R. KIT FROM THERE AND WENT TO GO DO MR. THOMPSON.

16 Q. OKAY. SO ALL OF THIS GOES BACK IN HERE.

17 A. YES, SIR.

18 Q. ANY PARTICULAR WAY?

19 A. AS BEST YOU CAN GET IT IN THERE AND SEAL IT BACK UP
20 CAREFULLY. YOU JUST WANT TO MAKE SURE EVERYTHING IS CLOSED
21 UP GOOD SO THAT IT DOESN'T COME OPEN. YOU RETURN IT BACK IN
22 HERE. ONCE EVERYTHING IS -- YOUR PAPERWORK AND ALL IS DONE,
23 THEN YOU SEAL THE ENVELOPE BACK UP WITH A PIECE OF EVIDENCE
24 TAPE AND PUT YOUR INITIALS ON THE TAPE AS THE PERSON WHO
25 SEALED IT.

1 Q. OKAY.

2 A. YOU FILL OUT THE FRONT OF IT THAT YOU'RE THE PERSON
3 WHO DID IT.

4 Q. I'LL HANG ON TO YOUR SAMPLE, AND YOU CAN GO AHEAD
5 AND TAKE A SEAT.

6 A. OKAY.

7 Q. NOW, DO YOU HAVE YOUR NOTES WITH YOU---

8 A. I HAVE SOME---

9 Q. ---OR YOUR REPORT?

10 A. YES, SIR. YES, SIR.

11 Q. OKAY. DO YOU KNOW WHAT TIME YOU TOOK THIS G.S.R.
12 KIT ON MR. MERCER?

13 A. THAT WAS AROUND 1:30.

14 Q. I SHOW YOU A COUPLE OF KITS. DO YOU RECOGNIZE WHAT
15 I'M HANDING YOU RIGHT NOW?

16 A. YES, SIR, I DO.

17 Q. OKAY. AND WHAT ARE THESE?

18 A. THIS IS THE G.S.R. KIT, THE ENVELOPE THAT I GOT OR
19 THAT I FILLED OUT AND PUT THE STUFF IN ON MR. KEVIN MERCER.

20 Q. OKAY. AND DO YOU SEE ANOTHER ONE HERE?

21 A. YES, SIR. THIS IS THE KIT I DID ON MR. THOMPSON.

22 Q. OKAY. AND THIS GOLD ENVELOPE, IS THIS THE BAG
23 THEY'RE PUT IN AT S.L.E.D.?

24 A. YES, SIR.

25 Q. AND THAT'S DONE IN THE PRESENCE OF WHATEVER OFFICER

1 IS TAKING IT?

2 A. YES, SIR.

3 Q. I SEE YELLOW TAPE ACROSS THE RED TAPE. IS THAT PUT
4 ON AT S.L.E.D. AS WELL?

5 A. YES, SIR.

6 MR. HUBBARD: YOUR HONOR, IF THERE'S NO OBJECTION,
7 I'D OFFER THESE INTO EVIDENCE.

8 MR. LITTLEJOHN: YOUR HONOR, I HAVE NO OBJECTION
9 ASSUMING HE'S GOING TO CONNECT IT UP WITH OTHER TESTIMONY.

10 MR. HUBBARD: YES, SIR, YOUR HONOR. I'M JUST
11 OFFERING THE EVIDENCE, NOT CONCLUSIONS YET, YOUR HONOR. SO
12 ALL I'M OFFERING RIGHT NOW IS THE PHYSICAL EVIDENCE.

13 MR. LITTLEJOHN: PERHAPS HE SHOULD MARK IT FOR I.D.
14 AND THEN WE CAN---

15 MR. HUBBARD: I MEAN, I CAN---

16 MR. LITTLEJOHN: ---PUT IT IN ONCE THE CHAIN IS
17 COMPLETE---

18 MR. HUBBARD: IF IT GOES IN EVIDENCE, I'M NOT
19 GETTING AN OPINION UNTIL I GET MY AGENT PUT UP. BUT IF -- IF
20 HE WANTS ME TO MARK IT I.D., I'LL BE HAPPY TO DO THAT.

21 THE COURT: I'LL JUST WAIT TO ADMIT IT WHEN YOU HAVE
22 COMPLETED THE FOUNDATION FOR IT.

23 MR. HUBBARD: YES, SIR, YOUR HONOR. I'M GOING TO GO
24 AHEAD AND MARK IT I.D. IF YOUR HONOR IS---

25 THE COURT: YES, SIR, THAT'S FINE.

1 (STATE'S EXHIBITS 15 AND 16 WERE MARKED FOR
2 IDENTIFICATION ONLY.)

3 BY MR. HUBBARD:

4 Q. SERGEANT COLLINS, AFTER YOU COLLECTED THESE -- AFTER
5 YOU COLLECTED THESE KITS AND PUT THEM IN ENVELOPES AND PUT
6 THE TAPE ON THEM, WHAT DID YOU DO WITH THESE KITS?

7 A. THEY WERE SECURED INSIDE THE EVIDENCE ROOM INSIDE
8 THE SHERIFF'S DEPARTMENT.

9 Q. AND, AGAIN, YOU WERE IN CHARGE OF THE EVIDENCE ROOM.

10 A. YES, SIR.

11 Q. NOW, JUMPING AROUND, SOMETIME LATER AFTER YOU DID
12 ALL THIS, DID YOU RETURN TO THE NAVIGATOR?

13 A. YES, SIR, I DID.

14 Q. AND DO YOU REMEMBER IF IT WAS THE SAME DAY,
15 MAY 17TH?

16 A. YES, SIR, IT WAS.

17 Q. WHAT DID YOU DO WITH THE NAVIGATOR AT THAT TIME?

18 A. I TOOK SOME ADDITIONAL PHOTOGRAPHS OF THE NAVIGATOR.
19 THEN I WENT IN AND TOOK PICTURES OF THE GUN WHERE IT WAS
20 LAYING, WHERE I OBSERVED IT AT THE NIGHT BEFORE. IT WAS
21 STILL IN THE SAME PLACE IT WAS, AND I PHOTOGRAPHED WHERE IT
22 WAS AT. I PHOTOGRAPHED THE GUN ITSELF AFTER I REMOVED IT
23 FROM THE NAVIGATOR.

24 Q. LET ME ASK YOU THIS: WHEN YOU CAME BACK TO THE
25 NAVIGATOR, WAS IT STILL SECURED?

1 A. YES, SIR.

2 Q. DID YOU HAVE TO GET KEYS OUT OF EVIDENCE---

3 A. YES, SIR.

4 Q. ---TO COME BACK---

5 A. YES, SIR.

6 Q. ---TO GET INTO IT?

7 A. YES, SIR.

8 Q. YOU'RE THE ONE THAT TOOK THE PHOTOGRAPHS OF THE
9 NAVIGATOR?

10 A. YES, SIR.

11 Q. THAT ARE ALREADY IN EVIDENCE MARKED STATE'S 4 AND 5?

12 A. YES, SIR, I DID.

13 Q. AND THEN YOU SAY YOU WENT INSIDE THE NAVIGATOR.

14 A. YES, SIR.

15 Q. YOU TOOK PHOTOGRAPHS INSIDE THE NAVIGATOR AS WELL?

16 A. YES, SIR.

17 Q. IS THIS ONE OF THE PHOTOGRAPHS YOU TOOK OF THE
18 DRIVING AREA?

19 A. IT APPEARS TO BE A FAIR AND ACCURATE REPRESENTATION
20 OF THE PICTURES THAT I TOOK; YES, SIR.

21 Q. NOW, I WANT TO SHOW YOU ANOTHER PHOTOGRAPH. IS THAT
22 WHAT YOU SAW WHEN YOU---

23 A. YES, SIR.

24 Q. ---LOOKED UNDER THE SEAT?

25 A. YES, SIR.

1 Q. AND YOU PHOTOGRAPHED THAT.

2 A. YES, SIR. THE GUN---

3 Q. IS THAT THE PISTOL YOU SAW?

4 A. THAT'S THE SAME PISTOL I SAW; YES, SIR. IT'S A
5 PHOTOGRAPH OF THE PISTOL I SAW.

6 Q. IN THE SAME POSITION IT WAS IN?

7 A. SAME POSITION, UNDISTURBED, SAME CONFIGURATION,
8 STILL LOADED.

9 MR. HUBBARD: ALL RIGHT. YOUR HONOR, I OFFER THESE
10 INTO EVIDENCE AT THIS TIME.

11 MR. LITTLEJOHN: NO OBJECTION.

12 THE COURT: THEY'RE ADMITTED.

13 (STATE'S EXHIBITS 17 AND 18 WERE RECEIVED IN
14 EVIDENCE.)

15 MR. LITTLEJOHN: WHAT ARE YOUR NUMBERS, PLEASE?

16 COURT REPORTER: 17 AND 18.

17 BY MR. HUBBARD:

18 Q. SERGEANT COLLINS, I HAVE ANOTHER PHOTOGRAPH AS WELL
19 OF THAT PISTOL, STATE'S 12. DID YOU ALSO TAKE THIS
20 PHOTOGRAPH?

21 A. YES, SIR.

22 Q. NOW, THIS PISTOL UNDER THE SEAT, YOU SEE THE BUTT OF
23 THE PISTOL AND THEN THE BARREL.

24 A. YES, SIR.

25 Q. IS THE BARREL POINTING TO THE DOOR OR AWAY FROM THE

1 DOOR?

2 A. THE BARREL IS POINTED TOWARD THE DOOR, TOWARD THE
3 DRIVER'S SIDE DOOR OF THE VEHICLE. THE PISTOL GRIP IS KIND
4 OF PARALLEL WITH THE CONSOLE---

5 Q. OKAY.

6 A. ---THAT SEPARATES THE DRIVER'S SEAT. IT'S ACTUALLY
7 UP UNDER THE FRONT OF THE DRIVER'S SEAT.

8 Q. AND THE OBJECT OR DEVICE WE SEE BEHIND THE PISTOL,
9 IS THAT THE---

10 A. SEAT CARRIAGE.

11 Q. ---MOTOR? THE SEAT MOTOR?

12 A. YES.

13 Q. IS THAT PISTOL TUCKED UP NEXT TO THAT?

14 A. IT'S PRETTY -- IT'S CLOSE, YEAH. IT'S ON THE LITTLE
15 LEDGE OF THE FLOORBOARD.

16 Q. OKAY. SO IT'S RIGHT IN THERE.

17 A. YES, SIR.

18 Q. AND, AGAIN, THAT'S HOW YOU SAW IT WHEN THE TRUCK WAS
19 DELIVERED TO YOU?

20 A. THAT'S HOW I OBSERVED IT THE NIGHT BEFORE -- WELL,
21 EARLIER THAT SAME MORNING IT WAS...

22 Q. YOUR HONOR, THIS IS SEALED, JUST FOR YOUR HONOR'S
23 INFORMATION. IF I MAY APPROACH THE WITNESS WITH THIS.
24 SERGEANT COLLINS, DO YOU RECOGNIZE THIS?

25 A. YES, SIR.

1 Q. AND WHAT IS THIS?

2 A. THIS IS THE SAME GUN THAT I REMOVED FROM THE
3 VEHICLE, SAME PISTOL.

4 MR. HUBBARD: YOUR HONOR, I OFFER IT INTO EVIDENCE
5 AT THIS TIME.

6 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

7 THE COURT: ALL RIGHT. I'M ASSUMING THAT SOMEBODY
8 HAS SECURED THE WEAPON.

9 MR. HUBBARD: YES, SIR.

10 THE COURT: IT'S NOT LOADED AND IT'S NOT FIREABLE.

11 MR. HUBBARD: YES, SIR. I WILL ASK---

12 THE COURT: ALL RIGHT.

13 MR. HUBBARD: ---SERGEANT COLLINS.

14 BY MR. HUBBARD:

15 Q. SERGEANT COLLINS, IS THIS WEAPON UNLOADED?

16 A. LET ME LOOK AT IT JUST... I... I...

17 Q. IF YOUR HONOR PREFERS, I CAN OPEN IT AND HAVE A
18 SAFETY PUT ON IT OR I CAN LEAVE IT IN THE HEAT-SEALED BAG.

19 A. IT'S UNLOADED.

20 Q. OKAY.

21 THE COURT: DO YOU INTEND TO LEAVE IT IN THAT BAG
22 THE WHOLE TIME?

23 MR. HUBBARD: YES, SIR. YES, SIR.

24 THE COURT: ALL RIGHT. YOU CAN MARK IT LIKE THAT
25 THEN.

1 MR. HUBBARD: OKAY.

2 (STATE'S EXHIBIT 19 WAS RECEIVED IN EVIDENCE.)

3 MR. HUBBARD: IF I MAY?

4 THE COURT: YES, SIR.

5 BY MR. HUBBARD:

6 Q. NOW, SERGEANT COLLINS, WHEN YOU FOUND THIS PISTOL,
7 WAS IT LOADED OR UNLOADED?

8 A. IT WAS LOADED.

9 Q. AND AS PART OF YOUR COLLECTION PROCESS, DO YOU
10 UNLOAD THE PISTOLS?

11 A. YES, SIR.

12 Q. DO YOU EVER STORE A LOADED PISTOL IN EVIDENCE?

13 A. NO, SIR.

14 Q. BEFORE YOU UNLOADED THAT PISTOL, WHAT DID YOU DO?

15 A. I PHOTOGRAPHED THE CYLINDER AS HOW I FOUND THE GUN
16 LOADED.

17 Q. I'M GOING TO SHOW YOU A PHOTOGRAPH, SEE IF YOU
18 RECOGNIZE THIS.

19 A. YES, SIR. THIS IS A PHOTOGRAPH THAT REPRESENTS THE
20 BACK OF THE CYLINDER AS IF, YOU KNOW, YOU HAD THE BARREL
21 FACING AWAY FROM YOU. LOOKING AT THE BACK OF THE CYLINDER,
22 THIS SHOWS THE BULLETS AND SPENT SHELL CASING THAT'S LOCATED
23 INSIDE THE CYLINDER OF THE GUN.

24 Q. HOW MANY BULLETS DID THIS PISTOL HOLD?

25 A. IT WOULD HOLD SIX. IT HAD FIVE LIVE ROUNDS IN IT

1 AND ONE SPENT SHELL CASING INSIDE.

2 Q. AND THIS IS HOW YOU FOUND IT?

3 A. YES, SIR. THAT'S EXACTLY HOW I FOUND IT---

4 Q. YOUR HONOR, I OFFER THIS IN EVIDENCE.

5 A. ---WHEN I REMOVED IT FROM THE VEHICLE.

6 MR. HUBBARD: I OFFER THIS IN EVIDENCE.

7 MR. LITTLEJOHN: NO OBJECTION.

8 THE COURT: IT'S ADMITTED.

9 (STATE'S EXHIBIT 20 WAS RECEIVED IN EVIDENCE.)

10 BY MR. HUBBARD:

11 Q. SERGEANT, IF I COULD, I'M GOING TO ASK YOU TO STEP
12 DOWN AGAIN SO WE CAN EXPLAIN THIS PHOTOGRAPH WHICH IS STATE'S
13 EXHIBIT 20. IN THIS PHOTOGRAPH, SERGEANT, YOU SAY THIS IS
14 THE CYLINDER OF THE PISTOL?

15 A. YES, SIR.

16 Q. WE'RE LOOKING AT THE BULLETS FROM WHICH SIDE? TOP
17 OR BOTTOM?

18 A. WE'RE LOOKING AT THE BOTTOM OR THE BACK SIDE OF EACH
19 BULLET.

20 Q. THERE ARE SIX BULLETS?

21 A. YES, SIR. WELL, SIX WERE ORIGINALLY LOADED.
22 THERE'S FIVE THAT ARE STILL LIVE. ONE, THIS ONE, WITH THE
23 PRIMER INDENTION ON IT IS AN EMPTY SHELL CASING. THE BULLET
24 OR PROJECTILE HAS ALREADY BEEN FIRED OUT OF THAT.

25 Q. LET ME ASK YOU THIS WHILE YOU'RE STILL THERE. THESE

1 BULLETS -- THAT SMALL RING INSIDE EACH BULLET, WHAT IS THAT
2 PORTION OF THE BULLET?

3 A. THAT'S CALLED -- COMMONLY REFERRED TO AS THE PRIMER.

4 THE COURT: SIR, JUST MAKE SURE YOU KEEP YOUR VOICE
5 UP, ESPECIALLY WHEN YOU'RE ON THAT SIDE. I'M HAVING A LITTLE
6 TROUBLE HEARING YOU.

7 MR. HUBBARD: I'M SORRY. WHY DON'T YOU STAND OVER
8 HERE? I'M SORRY. I'M KIND OF LEADING YOU AROUND.

9 COURT REPORTER: I DIDN'T HEAR HIS LAST ANSWER.
10 BY MR. HUBBARD:

11 Q. OKAY. THE LITTLE CIRCLE INSIDE OF THE BULLET IS
12 WHAT?

13 A. IT'S COMMONLY REFERRED TO AS THE PRIMER.

14 Q. ONE INDENTION ON ONE OF THESE BULLETS, WHAT IS THAT?

15 A. THAT'S WHERE THE FIRING PIN MECHANISM OF THE
16 REVOLVER STRUCK THAT PRIMER CAUSING THAT ROUND TO BE FIRED.

17 Q. SO THAT'S AN EMPTY CASING?

18 A. YES, SIR, THAT'S THE SPENT SHELL CASING.

19 Q. OKAY. YOU CAN HAVE A SEAT. SERGEANT, AFTER YOU
20 TOOK THAT PHOTOGRAPH, IS THAT WHEN YOU COLLECTED THE BULLETS
21 AND---

22 A. YES.

23 Q. ---THE CASING?

24 A. YES, SIR.

25 Q. AND WHAT DID YOU DO WITH THEM?

1 A. SEALED THEM UP AND SECURED THEM INTO EVIDENCE.

2 Q. I WANT TO SHOW YOU THIS BOX AND THE BAG INSIDE THE
3 BOX.

4 A. YES, SIR.

5 Q. CAN YOU TELL ME WHAT THIS BOX IS FIRST?

6 A. THE BOX -- THIS IS -- THIS BOX IS THE BOX THAT I
7 PLACED THE BULLETS, THE SPENT SHELL CASING, AND THE REVOLVER
8 INSIDE THIS BOX AND SEALED IT UP.

9 Q. ALL RIGHT. AND THAT'S THE REVOLVER THAT WE JUST
10 SAW.

11 A. YES, SIR.

12 Q. STATE'S 19.

13 A. YES, SIR.

14 Q. THIS BAG INSIDE HERE, WHAT -- DO YOU RECOGNIZE THAT?

15 A. YES, SIR. THIS IS THE BAG THAT THE BULLETS -- IT
16 CONTAINS THE BULLETS THAT I SEALED THE BULLETS IN THAT I
17 REMOVED FROM THE PISTOL.

18 Q. DO YOU ALSO HAVE THE CASING IN THERE, THE EMPTY --
19 THE EMPTY SHELL?

20 A. YES, SIR. IT'S A LITTLE HARD TO SEE. IT'S AT THE
21 BACK BUT, YES, SIR, IT'S RIGHT THERE. THE SPENT CASING IS
22 THERE, AND THE OTHER ROUNDS ARE RIGHT HERE.

23 MR. HUBBARD: YOUR HONOR, I OFFER BOTH THE BOX AND
24 BULLETS IN AT THIS TIME.

25 MR. LITTLEJOHN: YOUR HONOR, NO OBJECTION ASSUMING

1 THE STATE'S GOING TO CONNECT THEM UP.

2 MR. HUBBARD: YES, SIR. YES, SIR.

3 THE COURT: AS FAR AS THE BOX AND THE BULLETS?

4 MR. HUBBARD: YES, SIR. MY NEXT WITNESS WILL -- ONE
5 OF THE WITNESSES WILL NEED TO IDENTIFY THE BOX AS WELL, YOUR
6 HONOR. THAT'S HOW THAT WITNESS RECEIVED IT. AND THE
7 BULLETS, SERGEANT, ARE THEY HEAT-SEALED OR NOT?

8 THE WITNESS: HEAT-SEALED IN PLASTIC CONTAINERS,
9 YES.

10 MR. LITTLEJOHN: YOUR HONOR, I THINK IT WOULD BE
11 BETTER MARKING THEM FOR IDENTIFICATION AT THIS POINT. I
12 DON'T KNOW THAT---

13 MR. HUBBARD: I'LL BE HAPPY TO DO THAT.

14 MR. LITTLEJOHN: ---IT'S BEEN HEAT-SEALED SINCE HE
15 HANDLED THAT EXHIBIT.

16 MR. HUBBARD: I'LL BE HAPPY TO DO THAT.

17 MR. LITTLEJOHN: RE-SEALED.

18 MR. HUBBARD: HE IS THE EVIDENCE CUSTODIAN THOUGH
19 AND THE COLLECTOR OF EVIDENCE.

20 THE COURT: WELL, YOU HAVE ESSENTIALLY ASSERTED AN
21 OBJECTION TO THE LACK OF FOUNDATION FOR THE -- FOR LACK OF
22 COMPLETION OF THE CHAIN OF CUSTODY---

23 MR. LITTLEJOHN: THAT'S CORRECT.

24 THE COURT: ---FOR THE BULLETS. THE BULLETS.

25 MR. LITTLEJOHN: TECHNICALLY, YES.

1 THE COURT: THE BOX -- THE BOX NEEDS NO CHAIN OF
2 CUSTODY, IF YOU'RE OFFERING THE BOX. IS THERE AN OBJECTION
3 TO THE BOX?

4 MR. LITTLEJOHN: NO OBJECTION TO THE BOX, YOUR
5 HONOR.

6 THE COURT: THE BOX HAS UNIQUE IDENTIFYING
7 CHARACTERISTICS. I ADMIT IT. THE BULLETS, HE COLLECTED THEM
8 AND SEALED THEM---

9 MR. HUBBARD: YES, SIR.

10 THE COURT: ---AND TURNED THEM OVER TO?

11 MR. HUBBARD: THAT'S GOING TO BE MY FOLLOW-UP
12 WITNESS.

13 THE COURT: NEXT WITNESS.

14 MR. HUBBARD: YES, SIR.

15 THE COURT: ALL RIGHT. SO MARK -- MARK THE BULLETS
16 AND WE'LL TAKE THAT UP LATER.

17 (STATE'S EXHIBIT 21 WAS RECEIVED IN EVIDENCE.
18 STATE'S EXHIBIT 22 WAS MARKED FOR IDENTIFICATION ONLY.)
19 BY MR. HUBBARD:

20 Q. NOW, AGAIN, THAT BOX, IS THAT WHERE THE PISTOL AND
21 THOSE BULLETS WE WERE JUST TALKING ABOUT WENT?

22 A. YES, SIR.

23 Q. AFTER YOU COLLECTED THAT PISTOL AND SECURED IT, WHAT
24 DID YOU DO?

25 A. I WENT TO THE VICTIM'S AUTOPSY. AFTER LEAVING THE

1 AUTOPSY, I TURNED THE BOX WITH THE GUN AND THE BULLETS IN IT
2 OVER TO S.L.E.D.

3 Q. OKAY. LET'S BREAK THAT DOWN. WHEN YOU WENT TO THE
4 AUTOPSY, DID YOU ACTUALLY TAKE THE PISTOL -- THAT BOX WITH
5 THE PISTOL AND THE BULLETS AND ROUNDS IN IT?

6 A. YES.

7 Q. IS THAT PROTOCOL FOR GOING TO AN AUTOPSY INVOLVING A
8 SHOOTING?

9 A. YES, SIR.

10 Q. ONCE YOU WERE AT THE AUTOPSY, DID YOU TAKE
11 PHOTOGRAPHS?

12 A. WHILE AT THE AUTOPSY, YES, SIR, I TOOK SOME
13 PHOTOGRAPHS.

14 Q. IS THAT STANDARD AS WELL?

15 A. YES, SIR.

16 Q. AND DID YOU SECURE THE VICTIM'S BELONGINGS AS WELL?

17 A. YES, SIR.

18 Q. ALL RIGHT. AND YOU OBSERVED THE AUTOPSY, DID YOU?

19 A. YES, SIR, I DID.

20 Q. OKAY. SO YOU WERE THERE THE WHOLE TIME.

21 A. YES, SIR.

22 Q. AND DR. ROSS AND DR. SEXTON ARE THE PERFORMING
23 DOCTORS IN THIS CASE?

24 A. YES, SIR, THEY WERE.

25 Q. WAS ANYTHING RECOVERED FROM THE VICTIM IN YOUR

1 PRESENCE WHILE YOU WERE AT THE AUTOPSY?

2 A. THERE WAS A SPENT PROJECTILE AND SOME BULLET
3 FRAGMENTS THAT WERE RECOVERED FROM HIS BODY.

4 Q. DID YOU MAKE A PHOTOGRAPH OF THAT?

5 A. YES, SIR.

6 Q. DO YOU RECOGNIZE THIS PHOTOGRAPH?

7 A. YES, SIR. IT'S A PHOTOGRAPH THAT FAIRLY ACCURATELY
8 DEPICTS THE BULLET OR PROJECTILE AND THE FRAGMENTS THAT WAS
9 TAKEN ON THE DAY OF THE AUTOPSY.

10 MR. HUBBARD: I OFFER THIS INTO EVIDENCE AT THIS
11 TIME, YOUR HONOR.

12 MR. LITTLEJOHN: NO OBJECTION.

13 THE COURT: IT'S ADMITTED.

14 (STATE'S EXHIBIT 23 WAS RECEIVED IN EVIDENCE.)

15 BY MR. HUBBARD:

16 Q. OFFICER COLLINS, DID YOU SEE WHAT PART OF THE BODY
17 THE BULLET FRAGMENTS WERE TAKEN FROM?

18 A. YES, SIR.

19 Q. WHAT PART?

20 A. IT CAME -- IT CAME FROM HIS HEAD, OUT OF HIS HEAD,
21 OUT OF THE VICTIM'S HEAD.

22 Q. THIS WAS TRACY DAVIS?

23 A. YES.

24 Q. DID YOU ALSO COLLECT THE BULLET AND THE FRAGMENTS?

25 A. YES, SIR. I TOOK THE -- I TRANSPORTED THE BULLET --

1 THE SPENT PROJECTILE AND THE FRAGMENTS FROM THE AUTOPSY TO
2 S.L.E.D.

3 Q. LET ME SEE IF YOU RECOGNIZE WHAT I'M HANDING YOU
4 HERE IN A GOLD ENVELOPE WITH PLASTIC. IS THAT THE SPENT
5 ROUND?

6 A. YES. THIS IS THE BULLET -- THE FRAGMENTS AND THE
7 SPENT PROJECTILE THAT WAS REMOVED FROM THE VICTIM, MR. DAVIS,
8 AND TURNED OVER TO S.L.E.D.

9 MR. HUBBARD: OKAY. YOUR HONOR, I'D OFFER IT UNLESS
10 HE JUST WANTS ME TO MARK IT FOR I.D. I'D BE HAPPY TO DO THAT
11 AS WELL.

12 MR. LITTLEJOHN: YOUR HONOR, IN ORDER TO BE
13 CONSISTENT, I THINK HE SHOULD MARK IT FOR IDENTIFICATION.

14 MR. HUBBARD: THAT'S QUITE ALL RIGHT.

15 (STATE'S EXHIBIT 24 WAS MARKED FOR IDENTIFICATION
16 ONLY.)

17 BY MR. HUBBARD:

18 Q. NOW, YOU MENTIONED GOING TO S.L.E.D. FROM THE
19 AUTOPSY?

20 A. YES, SIR.

21 Q. DID YOU HAVE THE PISTOL, THE BULLETS FROM THE
22 PISTOL, THAT CASING, AND THOSE FRAGMENTS WHEN YOU WENT TO
23 S.L.E.D.?

24 A. YES, SIR.

25 Q. AND WHAT DID YOU DO WITH ALL OF THOSE ITEMS?

1 Q. OKAY. SO YOU WERE THE PERSON WHO WAS IN CHARGE OF,
2 ONCE EVIDENCE CAME IN, MAINTAINING IT FOR THE SHERIFF'S
3 DEPARTMENT, SENDING IT TO S.L.E.D., OR KEEPING IT THERE OR
4 WHATEVER THE SITUATION WARRANTED.

5 A. WHATEVER -- RIGHT, WHATEVER WAS DESIGNATED TO BE
6 DONE WITH IT.

7 Q. ALL RIGHT, SIR. NOW, YOU TOLD US ABOUT -- WELL,
8 FIRST OFF, DID YOU GO TO THE -- DID YOU GO TO THE CRIME
9 SCENE?

10 A. YES, SIR.

11 Q. YOU WENT TO RAINTREE APARTMENTS?

12 A. YES, SIR.

13 Q. ABOUT WHAT TIME DID YOU GET THERE?

14 A. PROBABLY AROUND 3:15, 3 -- A LITTLE AFTER 3:15,
15 3:17, SOMEWHERE IN THERE.

16 Q. OKAY. DID YOU TALK TO ANY OF THE WITNESSES, ANY OF
17 THE PEOPLE THAT LIVED IN THE APARTMENTS THERE?

18 A. NO, SIR.

19 Q. YOU DIDN'T.

20 A. NO, SIR.

21 Q. DID THE OTHER DEPUTIES DO THAT?

22 A. I WOULD ASSUME SO; YES, SIR.

23 Q. OKAY. DID YOU DO ANY SORT OF CHART OR ANY SORT OF
24 MEASUREMENTS OF DISTANCES BETWEEN BUILDINGS OR WHERE THE---

25 A. NO, SIR.

1 Q. ---WHERE MR. DAVIS WAS FOUND?

2 A. I DIDN'T -- I DID NOT WORK THE SCENE; NO, SIR.

3 Q. YOU DID NOT WORK THE SCENE.

4 A. NO, I JUST WENT OVER THERE.

5 Q. OKAY. WAS THAT DONE, TO YOUR KNOWLEDGE?

6 A. YES, SIR.

7 Q. IT WAS DONE.

8 A. YES, SIR.

9 Q. ALL RIGHT. DID YOU DO ANY SORT OF -- DID YOU DO ANY
10 SORT OF DETERMINATION AS TO WHAT THE LIGHTING CONDITIONS
11 WERE?

12 A. IT WAS -- IT WAS EARLY MORNING AT THE TIME I WAS
13 THERE. IT WAS -- IT WAS -- THE SUN WAS STARTING TO COME UP,
14 BUT IT WAS STILL VERY DIMLY LIT AT THE TIME I WAS THERE. YOU
15 KNOW, LIKE I SAID, I GOT THERE ABOUT 3:15---

16 Q. UH-HUH.

17 A. ---AND THEN WHEN I LEFT, THE SUN WAS COMING UP---

18 Q. OKAY.

19 A. ---YOU KNOW, BUT IT WAS STILL---

20 Q. BUT WHEN YOU ARRIVED---

21 A. ---STILL DARK---

22 Q. ---ON THE SCENE---

23 COURT REPORTER: I CAN'T TAKE YOU BOTH AT THE SAME
24 TIME.

25 THE WITNESS: I'M SORRY.

1 BY MR. LITTLEJOHN:

2 Q. GO AHEAD. I DIDN'T MEAN TO INTERRUPT.

3 A. IT WAS STILL DARK WHEN I GOT THERE.

4 Q. OKAY. AND YOU HAD TO USE SOME SORT OF ILLUMINATION
5 TO SEE WHAT YOU WERE DOING? DID YOU USE A FLASHLIGHT?
6 HEADLIGHTS?

7 A. YES, SIR, THAT WE HAVE -- WE WERE ASSISTED WITH
8 FLASHLIGHTS OR HEADLIGHTS OR WHATEVER TO LOOK AT WHAT WE WERE
9 DOING.

10 Q. ALL RIGHT. NOW, SERGEANT COLLINS, YOU TOLD US ABOUT
11 THE LINCOLN NAVIGATOR BEING BROUGHT IN TO THE SHERIFF'S
12 DEPARTMENT.

13 A. YES, SIR.

14 Q. ON THE TOW TRUCK?

15 A. YES, SIR.

16 Q. I BELIEVE YOU SAID IT WAS FOLLOWED BY ONE OF THE
17 DEPUTIES. I BELIEVE IT WAS DEPUTY GLEATON?

18 A. YES, SIR.

19 Q. OKAY. AND YOU AT THAT TIME SECURED THE LINCOLN
20 NAVIGATOR?

21 A. YES, SIR.

22 Q. OKAY. NOW, DURING THE COURSE OF THE INVESTIGATION
23 THAT NIGHT, ANOTHER VEHICLE WAS LOCATED, WAS IT NOT?

24 A. I BELIEVE SO; YES, SIR.

25 Q. AND I BELIEVE THAT WAS A 1989 BUICK?

1 A. IT WAS A BUICK. I COULDN'T QUOTE YOU ON THE YEAR,
2 BUT I REMEMBER IT BEING A BUICK; YES, SIR.

3 Q. OKAY. AND WHERE WAS THAT VEHICLE SEIZED?

4 A. I DON'T -- I DON'T KNOW WHERE THEY ACTUALLY SEIZED
5 IT FROM.

6 Q. OKAY.

7 A. I KNOW IT WAS -- IT WAS BROUGHT IN TO THE SHERIFF'S
8 DEPARTMENT AND PLACED IN THE IMPOUND.

9 Q. ALL RIGHT. DO YOU RECALL IT BEING SEIZED AT THE
10 ECONOMY INN ON BROAD RIVER ROAD?

11 A. THAT'S POSSIBLE.

12 Q. POSSIBLE.

13 A. POSSIBLE. I WASN'T THERE WHEN IT WAS DONE, AND I
14 DON'T HAVE PERSONAL KNOWLEDGE OF -- OF THAT, BUT I JUST KNOW
15 THAT IT WAS BROUGHT IN AND PUT AND PLACED INTO EVIDENCE.

16 Q. OKAY. DID YOU LEARN THROUGH YOUR INVENTORY
17 PROCEDURE WHO OWNED THAT VEHICLE?

18 A. NO, SIR. I DON'T HAVE PERSONAL KNOWLEDGE OF WHO --
19 WHO THAT VEHICLE BELONGED TO.

20 Q. DO YOU KNOW WHETHER THE VEHICLE WAS OWNED BY THE
21 DEFENDANT---

22 MR. MYERS: WAIT A MINUTE. WAIT A MINUTE. WAIT A
23 MINUTE. HE JUST SAID HE DIDN'T KNOW.

24 THE WITNESS: YEAH, I DON'T KNOW.

25 MR. MYERS: NOW THE ATTORNEY IS TRYING TO TESTIFY.

1 MR. LITTLEJOHN: I BELIEVE WE HAD A RULE ABOUT
2 OBJECTIONS.

3 THE COURT: WELL, LISTEN. I'M GOING TO OVERRULE THE
4 OBJECTION. PROCEED.

5 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.
6 BY MR. LITTLEJOHN:

7 Q. SERGEANT COLLINS, DID YOU LEARN THAT THAT BUICK WAS
8 REGISTERED TO KEVIN MERCER AND HIS WIFE?

9 A. I DON'T THINK SO, NO, SIR, NOT PERSONALLY, NOT...

10 Q. OKAY. AS I UNDERSTOOD IT, YOUR JOB WAS TO MAINTAIN
11 VEHICLES AND EVIDENCE AND THINGS?

12 A. YES, SIR.

13 Q. THAT VEHICLE WAS ACTUALLY BROUGHT TO THE SHERIFF'S
14 DEPARTMENT, WAS IT NOT?

15 A. YES, SIR.

16 Q. DO YOU KNOW IF IT WAS LATER TURNED OVER TO NAOMI
17 MERCER, KEVIN'S WIFE?

18 A. I CAN'T TESTIFY TO THAT AT THIS TIME. I DON'T -- AT
19 THE TIME THE VEHICLE WAS RELEASED I MAY HAVE NOT BEEN THE
20 PERSON THAT PERSONALLY DID THAT. THERE WERE OTHER EMPLOYEES.

21 Q. UH-HUH.

22 A. BUT I DON'T KNOW -- I CAN'T TELL YOU WHO -- WHO
23 ACTUALLY CAME AND PICKED THAT VEHICLE UP.

24 Q. ALL RIGHT. BUT YOU WERE IN CHARGE OF THAT VEHICLE
25 ALONG WITH OTHER EVIDENCE.

1 A. AS LONG AS IT WAS AT THE SHERIFF'S DEPARTMENT, YES.

2 Q. ALL RIGHT. DO YOU KNOW IF THAT VEHICLE WAS
3 PROCESSED?

4 A. I BELIEVE IT WAS PROCESSED, YES, SIR.

5 Q. AS A MATTER OF FACT, IT WAS PROCESSED BASED ON A
6 SEARCH WARRANT THAT WAS ISSUED FOR THAT VEHICLE, WAS IT NOT?

7 A. I CAN'T TESTIFY TO THAT BECAUSE I'M NOT THE OFFICER
8 THAT PROCESSED THE VEHICLE.

9 Q. OKAY. DO YOU KNOW WHETHER DETECTIVE FRIER, SCOTTIE
10 FRIER, GOT A SEARCH WARRANT FOR THAT VEHICLE?

11 MR. HUBBARD: YOUR HONOR, I'M GOING TO OBJECT AT
12 THIS TIME. HE'S ASKING QUESTIONS ABOUT A VEHICLE HE'S
13 ALREADY SAID HE DIDN'T PROCESS. HE DOESN'T HAVE KNOWLEDGE OF
14 WHO DID WHAT.

15 THE COURT: THE QUESTION IS -- IS -- THERE'S NOTHING
16 WRONG WITH THE QUESTION. HE'S JUST ASKING HIM A QUESTION --
17 ASKING HIM WHETHER HE HAS PERSONAL KNOWLEDGE ABOUT A SPECIFIC
18 SUBJECT. THE WITNESS CAN ANSWER IT YES OR NO.

19 MR. HUBBARD: I GUESS MY OBJECTION IS HE'S ASKED HIM
20 AND HE SAID HE DOESN'T HAVE KNOWLEDGE ABOUT THIS PROCESS WITH
21 THIS VEHICLE.

22 THE COURT: HE ASKED A GENERAL QUESTION ABOUT WHAT
23 HE KNEW. THE OFFICER SAID HE DOESN'T KNOW MUCH, AND NOW HE'S
24 ASKING SPECIFIC QUESTIONS. THE OBJECTION IS OVERRULED.

25

1 BY MR. LITTLEJOHN:

2 Q. DO YOU REMEMBER THE QUESTION?

3 A. COULD YOU REPEAT IT, PLEASE?

4 Q. YES, SIR. DO YOU KNOW WHETHER OR NOT SCOTTIE FRIER,
5 THE INVESTIGATOR IN THIS CASE, GOT A SEARCH WARRANT FOR KEVIN
6 MERCER'S BUICK?

7 A. I CAN'T TESTIFY TO THAT. I DON'T -- I DON'T -- NO,
8 SIR.

9 Q. OKAY. SO IF SOMEBODY UNDER YOUR SUPERVISION HAD
10 DONE THAT, YOU'RE NOT AWARE OF IT - PROCESSED THAT VEHICLE,
11 THAT IS.

12 A. THAT IS CORRECT. I DO KNOW THE VEHICLE WAS
13 PROCESSED.

14 Q. UH-HUH.

15 A. BUT I DON'T -- I DON'T KNOW ALL THE DETAILS OF THE
16 PROCESSING OF THE VEHICLE.

17 Q. OKAY. DO YOU KNOW -- WAS THERE ANYTHING FOUND IN
18 THAT VEHICLE THAT PERTAINS TO THIS CASE, TO YOUR KNOWLEDGE?

19 A. NOT -- NOT THAT I KNOW OF, NO, SIR.

20 Q. ALL RIGHT.

21 A. I MEAN, THERE MAY HAVE BEEN STUFF FOUND IN IT, BUT I
22 CAN'T TESTIFY BECAUSE I DIDN'T COLLECT IT OR I DON'T HAVE ANY
23 FIRST-HAND PERSONAL KNOWLEDGE OF WHAT WAS TAKEN FROM THE
24 VEHICLE.

25 Q. OKAY. NOW, SERGEANT COLLINS, YOU TOLD US ABOUT THE

1 GUNSHOT RESIDUE SWABS THAT YOU TOOK FROM MR. MERCER AND MR.
2 THOMPSON.

3 A. YES, SIR.

4 Q. OKAY. AND I BELIEVE YOU INDICATED THAT INSOFAR AS
5 MR. MERCER WAS CONCERNED, YOU TOOK THOSE -- YOU TOOK THAT
6 TEST ABOUT 1:30 A.M.?

7 A. YES, SIR.

8 Q. OKAY. NOW, AT THE TIME, THAT WOULD HAVE BEEN
9 APPROXIMATELY TWO HOURS AFTER THE INITIAL CALL CAME IN, THE
10 9-1-1 CALL, OR DO YOU KNOW WHAT TIME THE CALL CAME IN?

11 A. I DON'T KNOW THE EXACT TIME THAT THE INITIAL CALL
12 CAME IN.

13 Q. ALL RIGHT, SIR. WELL, IT'S IN THE RECORD. SERGEANT
14 COLLINS, YOU SAID ON SEVERAL OCCASIONS THAT IT WAS VERY
15 IMPORTANT IN TAKING THESE SAMPLES THAT THERE NOT BE
16 CONTAMINATION. THAT'S VERY IMPORTANT, IS IT NOT---

17 A. YES, SIR, IT'S IMPORTANT.

18 Q. ---IN COLLECTING THIS EVIDENCE?

19 A. YES, SIR. YES, SIR.

20 Q. AND IT'S VERY IMPORTANT TO MAKE SURE THAT WHATEVER
21 THE CONDITION OF THE AREA BEING SWABBED IS MAINTAINED IN ITS
22 ORIGINAL CONDITION. ISN'T THAT CORRECT?

23 A. YES, SIR.

24 Q. OKAY. THAT'S COMMON KNOWLEDGE AMONG THE POLICE
25 COMMUNITY.

1 A. I WOULD THINK SO; YES, SIR.

2 Q. SO, IN OTHER WORDS, YOU DON'T WANT THE DEFENDANT OR
3 THE SUSPECT WASHING THEIR HANDS OR DOING ANYTHING THAT MIGHT
4 CONTAMINATE THAT EVIDENCE OR DISTURB THAT EVIDENCE. ISN'T
5 THAT RIGHT?

6 A. CORRECT. I WOULDN'T -- YOU WOULDN'T WANT THAT TO
7 HAPPEN.

8 Q. YOU WOULDN'T RUN THE TEST IF THAT HAD HAPPENED.
9 ISN'T THAT RIGHT?

10 A. I WOULD PROBABLY RUN THE TEST ANYWAY JUST WITH THE
11 POSSIBILITY OF MAYBE SOMETHING WAS LEFT BEHIND.

12 Q. OKAY.

13 A. BUT...

14 Q. BUT YOU TRY AND ASSURE YOURSELF THAT THAT DIDN'T
15 HAPPEN BEFORE THIS TEST IS TAKEN.

16 A. TO THE BEST -- YES. YES, SIR.

17 Q. OKAY. OTHERWISE, IT COULD -- IT COULD AFFECT THE
18 RESULTS, COULD IT NOT?

19 A. THERE'S A POSSIBILITY; YES, SIR.

20 Q. OKAY. NOW, WHEN YOU TOOK THE TEST FROM MR. MERCER,
21 I BELIEVE YOU SAID THAT WAS IN ONE OF THE INTERVIEW --
22 INTERVIEW ROOMS AT THE SHERIFF'S DEPARTMENT?

23 A. YES, SIR.

24 Q. OKAY. WAS MR. MERCER HANDCUFFED AT THE TIME?

25 A. I DON'T BELIEVE SO, NO, SIR, NOT WHILE I WAS

1 ACTUALLY DOING THE TEST ON HIM.

2 Q. OKAY. SO HE HAD BEEN UNHANDCUFFED AT THAT TIME.

3 A. YES, SIR.

4 Q. ALL RIGHT. YOU DON'T KNOW HOW MANY TIMES HE HAD
5 BEEN HANDCUFFED DURING THE COURSE OF THE EVENING AND EARLY
6 MORNING HOURS UNTIL YOU DID THE TEST AT 1:30.

7 A. NO, SIR.

8 Q. ALL RIGHT.

9 A. I DON'T. WHEN I---

10 Q. YOU DON'T KNOW WHO HAD HANDLED...

11 A. SEEING MR. MERCER IN THE INTERVIEW ROOM WAS THE
12 FIRST TIME I OBSERVED MR. MERCER.

13 Q. I UNDERSTAND. OKAY. NOW, YOU INDICATED TO US THAT
14 IN TAKING THESE TESTS YOU HAVE THIS STANDARD KIT THAT YOU'VE
15 IDENTIFIED AS BEING THE ONES YOU DID FOR KEVIN MERCER, AND I
16 BELIEVE THAT'S STATE'S EXHIBIT NUMBER 15 FOR IDENTIFICATION
17 PURPOSES AND FOR MARCUS THOMPSON WHICH IS STATE'S EXHIBIT 16
18 FOR IDENTIFICATION PURPOSES.

19 A. YES, SIR.

20 Q. AND YOU SAY THESE -- THESE KITS COME WITH A PAIR OF
21 GLOVES?

22 A. YES, SIR.

23 Q. OKAY. AND YOU AS THE PERSON COLLECTING EVIDENCE PUT
24 ON THE GLOVES?

25 A. YES, SIR.

1 Q. AND THAT'S TO AVOID CONTAMINATION, AS YOU INDICATED.

2 A. YES, SIR.

3 Q. AND ANOTHER THING YOU WERE TRYING TO PREVENT IS ANY
4 SORT OF TRANSFER FROM YOUR HANDS TO THE SUSPECT'S HANDS.

5 A. YES, SIR.

6 Q. IF THERE WAS ANYTHING ON YOUR HANDS, IT COULD BE
7 TRANSFERRED TO THE SUSPECT'S HANDS AND AFFECT THE RESULTS OF
8 THE TEST. ISN'T THAT RIGHT?

9 A. WELL, YOU DON'T DO A GUNSHOT RESIDUE COLLECTION ON A
10 LIVING PERSON AFTER SIX HOURS BECAUSE AFTER SIX HOURS THEY
11 BELIEVE -- THEY SAY THAT THE EVIDENCE YOU'RE LOOKING FOR
12 THERE'S A POSSIBILITY IT COULD NOT BE THERE. SO ONCE THE
13 SIX-HOUR TIME LAPSE GOES BY, CONSIDERING I HADN'T HANDLED A
14 GUN OR ANYTHING THAT COULD POSSIBLY CONTAMINATE MY HANDS WITH
15 GUNSHOT RESIDUE---

16 Q. UH-HUH.

17 A. ---LONGER THAN THAT, I DON'T SEE WHERE THAT -- THAT
18 WOULD BE A CONCERN. BUT THEY DO -- THAT'S -- THAT'S -- THE
19 PROTOCOL IS TO WEAR THE GLOVES, SO YOU WEAR THE GLOVES.

20 Q. OKAY. YOU WEAR THE GLOVES BECAUSE YOU DON'T WANT
21 SOME SORT OF TRANSFER HAD YOU HANDLED A GUN.

22 A. CORRECT.

23 Q. CORRECT. OKAY. AND SO YOU PUT ON THE GLOVES TO DO
24 THESE TESTS, AND I BELIEVE YOU INDICATED YOU TOOK THE -- THE
25 STICKY---

1 A. THE PARTICLE LIFTERS.

2 Q. ---MATERIAL FIRST.

3 A. YES, SIR.

4 Q. THAT'S FOR ONE KIND OF TEST? IS THAT YOUR
5 UNDERSTANDING?

6 A. I DON'T UNDERSTAND THE DIFFERENCE IN THE TWO TESTS.

7 Q. OKAY.

8 A. I KNOW IT'S TWO DIFFERENT COLLECTION SYSTEMS.

9 Q. ALL RIGHT.

10 A. ONE DEALING WITH PARTICLE LIFTS AND THE CAPSULES.

11 THE OTHER ONE DEALING WITH THE LIQUID AND THE SWAB, THE Q-TIE
12 SWABS.

13 Q. OKAY. SO THERE ARE---

14 A. THEY'RE DONE---

15 Q. ---TWO DIFFERENT TYPES OF COLLECTION---

16 A. COLLECTION, YES, SIR.

17 Q. ---MODEMS.

18 A. CORRECT.

19 Q. FOR WHATEVER TEST S.L.E.D. DOES.

20 A. CORRECT.

21 Q. OKAY. AND PRIOR TO DO THIS -- PRIOR TO DOING THIS,
22 YOU TOOK A CONTROLLED -- A CONTROLLED SAMPLE FROM, I BELIEVE
23 YOU SAID, KEVIN'S TORSO?

24 A. OF THE SWAB, YES, SIR.

25 Q. JUST THE SWAB.

1 A. ON THE SWAB, RIGHT.

2 Q. OKAY. AND THAT'S SO THAT S.L.E.D. HAS SOME SORT OF
3 CONTROL THAT THEY CAN COMPARE AND GET AN ACCURATE RESULT. IS
4 THAT YOUR UNDERSTANDING?

5 A. THAT'S MY UNDERSTANDING. YOU'D BE BETTER TO ASK THE
6 S.L.E.D. TECHNICIAN FOR THAT. I DON'T...

7 Q. I CERTAINLY WILL.

8 A. I CAN'T TELL YOU ABOUT THAT STUFF.

9 Q. NOW, SERGEANT COLLINS, NOT ONLY DID YOU TAKE SWABS
10 FROM KEVIN MERCER, BUT YOU ALSO TOOK SWABS FROM MARCUS
11 THOMPSON. ISN'T THAT RIGHT?

12 A. YES, I DID A KIT ON EACH -- EACH MAN.

13 Q. OKAY. AND IN ORDER TO FURTHER THE INVESTIGATION,
14 DID YOU ALSO RECEIVE TEST KITS ON TRACY DAVIS?

15 A. I DID A TEST KIT ON THE VICTIM AT THE AUTOPSY --
16 WELL, LET ME REPHRASE THAT. DR. SEXTON DID A KIT ON TRACY
17 DAVIS.

18 Q. OKAY.

19 A. I OBSERVED HIM DO THE KIT ON MR. DAVIS AT THE
20 AUTOPSY. I LATER TRANS -- TRANSPORTED THAT KIT FROM THE
21 AUTOPSY TO S.L.E.D.

22 Q. ALL RIGHT. AND ALSO A KIT WAS DONE ON CLIFTON
23 MAGWOOD. ISN'T THAT RIGHT?

24 A. YES, SIR. I BELIEVE SO.

25 Q. OKAY. AND THAT WAS HANDLED IN THE SAME WAY AS THESE

1 OTHER -- OTHER COLLECTION KITS.

2 A. I CAN'T -- I DIDN'T DO THE KIT ON MR. MAGWOOD---

3 Q. OKAY.

4 A. ---SO I CAN'T, YOU KNOW...

5 Q. ALL RIGHT, SIR. FAIR ENOUGH. NOW, SERGEANT
6 COLLINS, YOU TOLD US ABOUT THE PISTOL WHICH HAS BEEN MARKED
7 STATE'S EXHIBIT NUMBER 19 THAT YOU FOUND UNDER THE SEAT?

8 A. YES, SIR.

9 Q. OKAY. AND I BELIEVE YOU SAID THIS PISTOL WAS ON A
10 LITTLE PLATFORM UNDER THE DRIVER'S SEAT, CARPETED PLATFORM?

11 A. YES, SIR.

12 Q. IT WAS ON A HORIZONTAL SURFACE THAT WAS CARPETED?

13 A. YES, SIR.

14 Q. NO QUESTION ABOUT THAT, IS THERE?

15 A. NO, SIR.

16 Q. OKAY. DID YOU DUST THIS PISTOL FOR PRINTS?

17 A. NO, SIR.

18 Q. DID YOU DO ANYTHING TO PROCESS IT OTHER THAN JUST
19 COLLECT IT AND TAKE THE SHELLS OUT OF IT?

20 A. I PHOTOGRAPHED IT, REMOVED THE SHELLS, AND TOOK IT
21 TO S.L.E.D.

22 Q. OKAY. SO YOU DIDN'T DO ANY SORT OF FINGERPRINT
23 ANALYSIS OR---

24 A. NO, SIR.

25 Q. ---ATTEMPT TO COLLECT ANY LATENT PRINTS.

1 A. I DID NOT; NO, SIR.

2 Q. YOU DID NOT. ALL RIGHT. SERGEANT COLLINS, JUST A
3 FEW MORE QUESTIONS. IN THE PROCESS OF THIS INVESTIGATION, I
4 BELIEVE THE CLOTHING OF KEVIN MERCER WAS -- WAS SEIZED AND
5 PUT IN EVIDENCE?

6 A. YES, SIR, THE CLOTHES THAT HE HAD ON THAT NIGHT IN
7 THE INTERVIEW ROOM. YES, SIR.

8 Q. OKAY. THE CLOTHES THAT MARCUS THOMPSON WAS WEARING,
9 THOSE WERE ALSO SEIZED AND PUT IN EVIDENCE, WERE THEY NOT?

10 A. YES, SIR.

11 Q. OKAY. THOSE CLOTHES WERE INVENTORIED, WEREN'T THEY?

12 A. YES, SIR.

13 Q. AND FOUND IN MR. THOMPSON'S CLOTHES WERE A NUMBER OF
14 GLOVES. ISN'T THAT CORRECT?

15 A. I DID NOT FIND ANY GLOVES. I DIDN'T -- I JUST
16 COLLECTED WHAT HE HAD, DOCUMENTED WHAT HE WAS WEARING, PUT IT
17 IN A BAG, PUT IT INTO EVIDENCE.

18 Q. OKAY. ARE YOU---

19 A. I DIDN'T GO THROUGH ANY POCKETS OR ANYTHING. I JUST
20 SQUEEZED IT TO MAKE SURE THERE WASN'T ANY KIND OF LIKE HARD
21 ITEMS OR ANYTHING THAT MIGHT -- AND PUT IT IN A BAG AND TOOK
22 IT TO THE EVIDENCE ROOM.

23 Q. OKAY. WHO AT THE SHERIFF'S DEPARTMENT TOOK THE
24 GLOVES OUT OF MARCUS THOMPSON'S CLOTHES?

25 A. I -- I CAN'T TELL YOU THAT. I DON'T -- I DON'T HAVE

1 PERSONAL KNOWLEDGE OF THAT, OF WHO DID THAT. I DON'T KNOW.

2 Q. SERGEANT COLLINS---

3 A. I UNDERSTAND IT WAS LATER DONE.

4 Q. YES, SIR.

5 A. BUT I CAN'T -- I DON'T KNOW -- PERSONALLY I CAN'T
6 TELL YOU RIGHT NOW WHO DID IT.

7 Q. WELL, NOW, DIDN'T YOU TELL US YOU WERE IN CHARGE OF
8 ALL THIS?

9 A. YES, SIR. I WAS IN CHARGE OF THE EVIDENCE ROOM. I
10 WAS---

11 Q. AND WHOEVER WAS COLLECTING THE EVIDENCE WOULD HAVE
12 BEEN UNDER YOUR SUPERVISION.

13 A. WHOEVER COLLECTED?

14 Q. YES, SIR.

15 A. NO, SIR, NOT -- NO, SIR, THAT'S NOT TRUE. ANY
16 OFFICER CAN COLLECT EVIDENCE AT A SCENE, BRING THAT EVIDENCE
17 TO THE SHERIFF'S DEPARTMENT---

18 Q. RIGHT.

19 A. ---AND SUBMIT IT TO EVIDENCE. ONCE IN THE PROCESS
20 OF HIM SUBMITTING THAT EVIDENCE TO US, I WAS IN CHARGE OF THE
21 PEOPLE WHO MAINTAIN THE EVIDENCE ROOM. WE LOG THAT EVIDENCE
22 IN. WE STORE IT; WE KEEP IT. IF SOMEONE WANTS TO HAVE A
23 PIECE OF EVIDENCE TAKEN OUT TO EXAMINE IT OR HAVE IT -- A
24 TEST RUN ON IT BY S.L.E.D., THEN THEY COME THROUGH US TO DO
25 IT.

1 Q. OKAY. SO MAINTAINING THE EVIDENCE WOULD HAVE BEEN
2 YOUR RESPONSIBILITY.

3 A. KEEPING IT, YES, SAFE IN THE -- IN THE EVIDENCE ROOM
4 UNTIL AN INVESTIGATOR OR SOMEONE CAME AND WANTED SOMETHING
5 DONE WITH IT.

6 Q. OKAY.

7 A. OR UNTIL IT'S TO BE BROUGHT TO COURT.

8 Q. CAN YOU TELL US WHO WAS RESPONSIBLE FOR THE GLOVES
9 THAT CAME OUT OF MARCUS THOMPSON'S CLOTHES?

10 A. NO. I -- I'M NOT ALWAYS THERE WHEN PEOPLE COME AND
11 EXAMINE EVIDENCE. I'M NOT THERE ALL THE TIME. THERE ARE
12 OTHER PEOPLE WHO WORK IN THE EVIDENCE ROOM BESIDES ME WHO
13 WOULD ALLOW SOMEONE OR HAVE THE AUTHORITY TO HAVE SOMEONE
14 SIGN OUT A PIECE OF EVIDENCE AND EXAMINE IT IN OUR PRESENCE
15 OR HAVE THAT PIECE OF EVIDENCE. SO THERE ARE -- THERE'S
16 PROCESSES THAT GO ON WHEN I'M NOT PRESENT, SO I DON'T HAVE
17 PERSONAL KNOWLEDGE OF SOMEONE -- I WAS NOT PRESENT AT ANY
18 TIME OR HAVE PERSONAL KNOWLEDGE OF AN OFFICER -- AND I'M NOT
19 SAYING IT DIDN'T HAPPEN. I'M JUST SAYING I WASN'T THERE AND
20 I DON'T -- I CAN'T TELL YOU. YOU KNOW, IF THAT HAPPENED, I
21 WASN'T THERE WHEN IT HAPPENED, SO I CAN'T TELL YOU WHO DID
22 IT.

23 Q. CAN YOU TELL ME WHO WOULD HAVE MARCUS THOMPSON'S
24 GLOVES RIGHT NOW?

25 A. THEY WOULD BE IN EVIDENCE.

1 Q. AND WHO WOULD BE RESPONSIBLE FOR THAT RIGHT NOW?

2 A. THE LADY THAT IS NOW IN CHARGE OF THE EVIDENCE ROOM.
3 THE SUPERVISOR OVER THAT IS SERGEANT BARBARA MCMULLEN.

4 Q. OKAY. SERGEANT COLLINS, WERE YOU FAMILIAR WITH THE
5 17 BULLETS THAT WERE SEIZED FROM MARCUS THOMPSON ON THE NIGHT
6 OF MAY 16TH, 2002?

7 A. YES, SIR.

8 Q. OKAY. DID YOU TAKE THOSE AND MAINTAIN THEM AS
9 EVIDENCE, ACCORDING TO YOUR POSITION AS SUPERVISOR IN THAT
10 CAPACITY?

11 A. I'M PRETTY SURE THAT, YEAH, THOSE WERE TURNED OVER
12 TO ME. LET ME CHECK. (PAUSE WHILE THE WITNESS LOOKS AT
13 DOCUMENTS.) OKAY. I DO -- I DO REMEMBER A DISCUSSION ABOUT
14 SOME BULLETS THAT WERE TAKEN FROM MARCUS, BUT THEY WERE NOT
15 TURNED OVER TO ME, I DON'T BELIEVE. NO, SIR. I DO REMEMBER
16 SOMEBODY TALKING ABOUT THEM, BUT THEY WEREN'T TURNED -- THEY
17 WEREN'T TURNED IN TO ME.

18 Q. WERE THEY MAINTAINED BY THE EVIDENCE SECTION OVER
19 WHICH YOU WERE THE SUPERVISOR?

20 A. IF THEY WERE TURNED IN -- YES, SIR. IF THEY WOULD
21 HAVE BEEN TURNED IN TO EVIDENCE, THEN THEY WOULD HAVE BEEN
22 KEPT BY THE EVIDENCE ROOM.

23 Q. OKAY. AND YOUR RECORDS INDICATE THOSE WERE
24 SEVENTEEN 357 BULLETS, 357 CALIBER?

25 A. I DON'T HAVE RECORDS WITH ME. I ONLY HAVE RECORDS

1 WITH ME ON THE STUFF THAT I PERSONALLY HANDLED OR HAD
2 KNOWLEDGE OF. I DON'T HAVE RECORDS ON STUFF THAT OTHER
3 OFFICERS DEALT WITH OR SIGNED FOR OR ACCEPTED OR... I ONLY
4 HAVE THE RECORDS ON STUFF THAT I PERSONALLY...

5 Q. SERGEANT COLLINS, AS SUPERVISOR OF THE EVIDENCE
6 SECTION, WAS IT YOUR UNDERSTANDING THOSE WERE 357 CALIBER
7 BULLETS?

8 A. I DO NOT KNOW, SIR.

9 Q. ALL RIGHT. AND THE GUN THAT'S BEEN MARKED STATE'S
10 EXHIBIT 19, THAT'S A 357 CALIBER GUN.

11 A. YES, SIR.

12 Q. ISN'T THAT RIGHT?

13 A. IT'S A SMITH AND WESSON 357.

14 Q. AND, SERGEANT COLLINS, DID YOU BRING THE 17 BULLETS
15 TO COURT?

16 A. NO, SIR.

17 Q. DID ANYBODY BRING THEM TO THE COURT, TO YOUR
18 KNOWLEDGE?

19 A. I DON'T HAVE KNOWLEDGE OF...

20 Q. DO YOU KNOW WHO I COULD ASK ABOUT WHO'S GOT THE 17
21 BULLETS?

22 A. YOU COULD ASK THE EVIDENCE CUSTODIAN OF THE
23 SHERIFF'S -- MS. BARBARA MCMULLEN. THAT'S WHERE THEY WOULD
24 BE.

25 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST ONE

1 MINUTE. THOSE ARE ALL THE QUESTIONS I HAVE AT THIS TIME,
2 YOUR HONOR.

3 MR. HUBBARD: NO QUESTIONS, YOUR HONOR.

4 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN. ALL
5 RIGHT. LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A SHORT
6 BREAK RIGHT NOW. WE'LL GET YOU BACK OUT HERE IN THE
7 COURTROOM IN ABOUT 10 OR 15 MINUTES.

8 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
9 10:06 A.M.)

10 MR. MYERS: COULD I ASK SOME GUIDANCE OF THE COURT?

11 THE COURT: YES, SIR.

12 MR. MYERS: ONE OF OUR LAST WITNESSES IS FROM OUT OF
13 TOWN, AND I DON'T KNOW WHETHER WE'LL GET TO HER BEFORE LUNCH
14 OR NOT. WE MAY NEED HER AT 12:30, MAY NEED HER AT 1:15. I
15 WOULD LIKE TO PUT HER UP AFTER LUNCH, IF WE HAVE TO BREAK A
16 LITTLE EARLY. I COULD GET HER HERE BY 1:30, IF THAT'S
17 AGREEABLE WITH THE COURT.

18 THE COURT: THAT'S FINE. IF WE -- IF WE -- IF
19 YOU'RE DONE WITH -- SHE'S YOUR LAST WITNESS?

20 MR. MYERS: YES, SIR.

21 THE COURT: IF WE'RE DONE WITH EVERYBODY EXCEPT HER
22 AND WE'RE DONE EARLY, YOU'RE ASKING FOR PERMISSION TO BREAK
23 EARLY---

24 MR. MYERS: YES, SIR.

25 THE COURT: ---AND CALL HER AT A SET TIME.

1 MR. MYERS: AND WE MAY NOT HAVE TO BREAK EARLY. I
2 JUST DON'T KNOW HOW FAR WE'RE GOING TO GO ON BUT---

3 THE COURT: THAT'S FINE WITH ME.

4 MR. MYERS: THANK YOU, SIR.

5 MR. LITTLEJOHN: JUDGE, ALONG THOSE SCHEDULING
6 MATTERS, IF WE COULD -- IF WE COULD JUST PLAN ON STARTING
7 ABOUT 2:00 WITH OUR CASE?

8 MR. MYERS: YES, SIR.

9 MR. LITTLEJOHN: WOULD THAT BE APPROPRIATE?

10 THE COURT: ALL RIGHT. KEEP ME POSTED ON HOW YOU'RE
11 LOOKING BECAUSE THE CLERK IS ORDERING LUNCH FOR THE JURY, AND
12 I WANT TO MAKE SURE SHE HAS GOOD INFORMATION ABOUT WHEN TO
13 HAVE THAT LUNCH HERE.

14 MR. MYERS: OKAY.

15 (WHEREUPON, A SHORT BREAK WAS TAKEN. COURT'S
16 EXHIBIT 3 WAS MARKED FOR IDENTIFICATION ONLY.)

17 THE COURT: BE SEATED. BRING IN THE JURY.

18 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
19 10:23 A.M.)

20 MR. GRAHAM: THE STATE CALLS VICKI HALLMAN.

21 VICKI HALLMAN, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE CLERK: HAVE A SEAT, PLEASE, MA'AM. STATE YOUR
24 FULL NAME ON THE RECORD. SPEAK UP LOUD AND CLEAR, PLEASE.

25 THE WITNESS: MY NAME IS VICKI HALLMAN. V-I-C-K-I

VOLUME FOUR OF SIX

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN MERCER,

APPELLANT

RECORD ON APPEAL

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COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS
2003-GS-32-0409

THE STATE OF SOUTH CAROLINA
-VS-
KEVIN J. MERCER

:
:
: TRANSCRIPT OF RECORD
: VOLUME 4
: PAGES 1500 - 1999

APRIL 10 - 13, 2006
APRIL 17 - 22, 2006
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN FEW, JUDGE, AND JURY.

A P P E A R A N C E S:

DONALD V. MYERS, ESQUIRE
S. RICK HUBBARD, III, ESQUIRE
D. SHAWN GRAHAM, ESQUIRE
MARION MOSES, ESQUIRE
ATTORNEYS FOR THE STATE

CAMERON B. LITTLEJOHN, JR., ESQUIRE
MELISSA J. KIMBROUGH, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

1 H-A-L-L-M-A-N.

2 DIRECT EXAMINATION.

3 BY MR. GRAHAM:

4 Q. MS. HALLMAN, WHERE ARE YOU CURRENTLY EMPLOYED?

5 A. I'M EMPLOYED WITH S.L.E.D. WHICH IS THE SOUTH
6 CAROLINA LAW ENFORCEMENT DIVISION.

7 Q. AND WHAT DO YOU DO THERE?

8 A. I'M A SPECIAL AGENT ASSIGNED TO THE LATENT PRINTS
9 CRIME SCENE UNIT.

10 Q. AND HOW LONG HAVE YOU WORKED FOR S.L.E.D.?

11 A. TWO YEARS.

12 Q. PRIOR TO WORKING FOR S.L.E.D., WHERE DID YOU WORK?

13 A. I WORKED FOR THE LEXINGTON COUNTY SHERIFF'S OFFICE.

14 Q. AND HOW LONG DID YOU WORK FOR THE LEXINGTON COUNTY
15 SHERIFF'S DEPARTMENT?

16 A. THIRTEEN YEARS.

17 Q. AND WHAT WAS YOUR LAST JOB AT THE LEXINGTON COUNTY
18 SHERIFF'S DEPARTMENT?

19 A. I WAS ASSIGNED TO THE CRIME SCENE UNIT AS A SENIOR
20 INVESTIGATOR.

21 Q. AND THAT'S WHERE YOU WERE WORKING ON MAY 21ST OF
22 2002?

23 A. YES.

24 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
25 EXHIBIT NUMBER 15 FOR IDENTIFICATION. DO YOU RECOGNIZE THAT?

1 A. YES.

2 Q. AND WHAT IS THAT?

3 A. IT'S A GUNSHOT RESIDUE COLLECTION KIT FROM KEVIN
4 MERCER.

5 Q. AND DID YOU TAKE POSSESSION OF THAT ON MAY 21ST,
6 2002, FROM THE EVIDENCE LOCKER AT S.L.E.D. -- I MEAN AT THE
7 LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

8 A. YES, I DID.

9 Q. AND THE CONDITION WAS A LITTLE DIFFERENT SOMEHOW
10 THAN IT IS RIGHT NOW. CAN YOU TELL THE JURY WHAT THE
11 DIFFERENCE WAS?

12 A. WHEN I RECEIVED IT, IT HAD -- IT FEELS LIKE IT
13 PROBABLY HAD A FEW MORE THINGS IN IT. THIS YELLOW TAPE
14 THAT'S SEALING IT NOW WAS NOT THERE. IT WAS JUST THE RED
15 STRIP---

16 Q. OKAY.

17 A. ---WAS THERE.

18 Q. COULD YOU STEP DOWN HERE IN FRONT AND SHOW THE JURY?

19 A. SURE. THERE'S YELLOW TAPE NOW, AND WHEN I RECEIVED
20 IT, IT ONLY HAD THE RED STRIP GOING UP IN THERE.

21 Q. AND THE RED STRIP -- THE RED STRIP THAT GOES UP AND
22 DOWN, WHAT'S THE PURPOSE OF THAT RED STRIP?

23 A. THAT IS PUT ON THERE BY THE OFFICER WHO TAKES THE
24 GUNSHOT RESIDUE KIT TO SEAL IT TO CONTAIN ALL THE EVIDENCE SO
25 NOTHING IS TAKEN OUT OR PUT BACK IN.

1 Q. AND WAS THAT SEAL INTACT WHEN YOU RECEIVED THAT
2 ENVELOPE?

3 A. YES, IT WAS.

4 Q. AND IF IT WOULDN'T HAVE BEEN, WOULD YOU HAVE NOTED
5 IT?

6 A. YES.

7 Q. YOU CAN HAVE A SEAT. THE SAME DATE THAT YOU
8 RECEIVED THAT OUT OF THE EVIDENCE LOCKER AT THE LEXINGTON
9 COUNTY SHERIFF'S DEPARTMENT, DID YOU ALSO TAKE OUT WHAT'S
10 MARKED AS STATE'S EXHIBIT NUMBER 16 FOR IDENTIFICATION?

11 A. YES, I DID.

12 Q. AND CAN YOU DESCRIBE THE CONDITION THAT THAT KIT WAS
13 IN?

14 A. IT WOULD HAVE BEEN BASICALLY IN THE IDENTICAL
15 CONDITION OF THIS ONE. IT WOULD HAVE HAD THE RED STRIP THAT
16 YOU CAN SEE UNDERNEATH UP AND DOWN HERE WITHOUT THE YELLOW.

17 Q. AND WITH THAT RED STRIP SEALING IT INTACT.

18 A. YES, IT WAS.

19 Q. AND WHO WAS THAT KIT FOR?

20 A. THIS ONE WOULD BE FOR MARCUS A. THOMPSON.

21 Q. AND YOU TOOK BOTH OF THOSE KITS IN YOUR POSSESSION
22 ON MAY 21ST, 2002.

23 A. YES, I DID.

24 Q. AND WHAT WAS THE PURPOSE OF YOU TAKING THOSE INTO
25 YOUR POSSESSION?

1 A. I SIGNED THEM OUT OF THE EVIDENCE ROOM AT THE
2 SHERIFF'S OFFICE AND TOOK THEM TO S.L.E.D. SO THEY COULD BE
3 ANALYZED BY THE TRACE DEPARTMENT.

4 Q. AND CAN YOU EXPLAIN TO THE JURY HOW YOU TOOK THOSE
5 TO S.L.E.D. AND HOW THEY WERE PUT INTO S.L.E.D.'S CUSTODY?

6 A. I WOULD HAVE HAD PAPERWORK REQUESTING FROM S.L.E.D.
7 WHAT NEEDED TO BE DONE. I WOULD HAVE GONE INTO LOG-IN, AND
8 ONE OF THE LADIES WHO'S EMPLOYED IN LOG-IN WOULD HAVE HANDED
9 ME A MANILA ENVELOPE OR SHE WOULD HAVE PLACED THESE TWO KITS
10 AS THEY ARE INTO A MANILA ENVELOPE.

11 Q. LET ME SHOW YOU A MANILA ENVELOPE AND ASK YOU IF
12 THAT'S THE ENVELOPE THAT THOSE ITEMS WERE PLACED IN.

13 A. YES, IT IS. WHAT WOULD HAVE HAPPENED IS SHE WOULD
14 HAVE DONE THIS IN MY PRESENCE. SHE WOULD HAVE SLIPPED THE
15 KITS DOWN IN HERE, CLOSED IT, AND SHE WOULD HAVE PUT ONE
16 STRIP OF THE YELLOW TAPE WHICH IS THE S.L.E.D. EVIDENCE TAPE
17 ACROSS IT, AND I WOULD HAVE INITIALED THAT TAPE WITH MY
18 INITIALS AND THE DATE THAT I SEALED IT.

19 Q. IN LOOKING ON THAT PACKAGE, DO YOU SEE EVIDENCE OF
20 YOUR INITIALS OVER THE TAPE---

21 A. YES.

22 Q. ---ON THAT?

23 A. YES, I DO.

24 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THE
25 MANILA ENVELOPE INTO EVIDENCE.

1 THE COURT: JUST THE ENVELOPE?

2 MR. GRAHAM: JUST THE ENVELOPE.

3 MR. LITTLEJOHN: NO OBJECTION.

4 THE COURT: IT'S ADMITTED.

5 (STATE'S EXHIBIT 25 WAS RECEIVED IN EVIDENCE.)

6 MR. LITTLEJOHN: NUMBER, PLEASE?

7 COURT REPORTER: 25.

8 BY MR. GRAHAM:

9 Q. ONCE THOSE TWO -- ONCE EXHIBITS 15 AND 16 WERE
10 PLACED IN THIS ENVELOPE IN YOUR PRESENCE AND IT WAS SEALED,
11 WHAT DID YOU DO WITH THAT ENVELOPE?

12 A. LIKE I SAID, I WOULD HAVE INITIALED IT, AND THEN IN
13 LOG-IN AT S.L.E.D. AT THAT TIME THEY HAD WHAT WE CALL DROP
14 BOXES, AND EACH DEPARTMENT HAD A DROP BOX. AND WHAT I WOULD
15 HAVE DONE IS I WOULD HAVE PLACED THAT EVIDENCE INTO THE DROP
16 BOX FOR TRACE.

17 Q. AND CAN YOU -- WHAT KIND OF -- WHEN YOU SAY A DROP
18 BOX, CAN YOU DESCRIBE TO THE JURY WHAT THAT BOX IS?

19 A. WELL, THE BOX AT THAT TIME WAS LIKE A ROLL-TOP MAIL
20 SLOT WHERE YOU ACTUALLY ROLL THE HANDLE DOWN AND YOU PLACE
21 THE EVIDENCE IN AND YOU PUSHED IT BACK UP, AND THEN THE
22 EVIDENCE FELL DOWN INTO THE BOX. IT'S SECURED BY A PADLOCK,
23 AND ONLY THE PEOPLE FROM THAT DEPARTMENT HAVE ACCESS THROUGH
24 THE PADLOCK INTO THAT BOX.

25 Q. DID YOU EVER ALTER OR CHANGE THOSE WHITE G.S.R.

1 KITS?

2 A. NO, SIR.

3 Q. DID YOU EVER GO INTO THEM?

4 A. NO, SIR.

5 Q. WERE THEY EVER OUT OF YOUR PRESENCE FROM THE TIME

6 THAT YOU TOOK THEM FROM THE LEXINGTON COUNTY SHERIFF'S

7 DEPARTMENT EVIDENCE ROOM TO THE TIME THAT YOU PUT THEM IN THE

8 DROP BOX AT S.L.E.D.?

9 A. NO.

10 MR. GRAHAM: PLEASE ANSWER ANY QUESTIONS THE DEFENSE

11 HAS.

12 MR. LITTLEJOHN: NO QUESTIONS, YOUR HONOR.

13 THE COURT: YOU CAN STEP DOWN, MA'AM.

14 MR. HUBBARD: THE STATE CALLS JENNIFER STONER.

15 JENNIFER M. STONER, AFTER BEING DULY SWORN,

16 TESTIFIED AS FOLLOWS:

17 THE CLERK: STATE YOUR FULL NAME.

18 THE WITNESS: JENNIFER M. STONER.

19 DIRECT EXAMINATION

20 BY MR. HUBBARD:

21 Q. AND, AGENT STONER, WHERE DO YOU WORK?

22 A. I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT

23 DIVISION IN THE TRACE EVIDENCE SECTION.

24 Q. HOW LONG HAVE YOU BEEN WITH S.L.E.D.?

25 A. I'VE BEEN WITH S.L.E.D. FOR APPROXIMATELY NINE.

1 YEARS.

2 Q. AND HOW LONG HAVE YOU BEEN IN THE TRACE DIVISION?

3 A. I'VE BEEN IN TRACE EVIDENCE FOR EIGHT YEARS.

4 Q. WHAT IS TRACE AND WHAT DO YOU DO THERE?

5 A. TRACE EVIDENCE -- OUR FIELD ENCOMPASSES A VARIETY OF
6 EXAMINATIONS. WE DON'T DO JUST ONE THING. WE ACTUALLY
7 ANALYZE -- WE ANALYZE GUNSHOT RESIDUE KITS. WE ANALYZE GUN
8 POWDER EXAMINATIONS WHICH IS AN EXAMINATION PERFORMED ON THE
9 CLOTHING OF A SHOOTING VICTIM TO POSSIBLY SEE HOW FAR THEY
10 WERE FROM THE GUN WHEN THEY WERE SHOT. WE DO COMPARISONS AND
11 IDENTIFICATIONS FOR FIBER EVIDENCE. WE DO GLASS COMPARISONS
12 AND IDENTIFICATIONS IN HIT-AND-RUN ACCIDENTS OR BREAKING AND
13 ENTERINGS.

14 WE ANALYZE EXPLOSIVE RESIDUE AND BOMBS TO FIND OUT
15 WHAT THEY WERE MADE OF AND TO SEE IF IT WAS ACTUALLY AN
16 EXPLOSIVE DEVICE. AND WE ALSO ANALYZE -- WE DO DUCT TAPE
17 COMPARISONS. WE HAVE DONE BASIC IDENTIFICATIONS. IF THEY
18 FIND SOMETHING AT A CRIME SCENE AND THEY'RE NOT SURE WHAT IT
19 IS, THEY'LL BRING IT IN AND WE ATTEMPT TO IDENTIFY IT. AND
20 WE ALSO ANALYZE PAINT EXAMINATIONS. WE DO PAINTS FROM
21 BREAKING AND ENTERINGS OR FROM VEHICLES VERSUS PEDESTRIANS OR
22 A VEHICLE VERSUS SOMEONE ON A BICYCLE. WE'LL MATCH PAINT
23 THAT'S FOUND AT THE SCENE TO THE SUSPECT VEHICLE.

24 Q. WHAT'S YOUR EDUCATIONAL BACKGROUND FOR THIS?

25 A. I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY

1 WHICH I OBTAINED FROM CALIFORNIA UNIVERSITY OF PENNSYLVANIA
2 IN 1997. UPON COMPLETION OF MY DEGREE, I PERFORMED A FOUR-
3 MONTH INTERNSHIP IN THE TRACE EVIDENCE DEPARTMENT AT S.L.E.D.
4 AFTER THAT MUCH COMPLETION, I WAS HIRED IN THE DRUG ANALYSIS
5 DEPARTMENT.

6 WHEN I STARTED MY TRAINING THERE, I ATTENDED THE
7 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY. I BECAME A
8 CERTIFIED POLICE OFFICER, AND THEN I BEGAN MY IN-HOUSE DRUG
9 TRAINING PROGRAM SO THAT I COULD IDENTIFY CONTROLLED
10 SUBSTANCES AND POISON EXAMINATION. UPON COMPLETION OF THAT,
11 I WAS IN THAT DEPARTMENT FOR APPROXIMATELY A YEAR, AND I
12 TRANSFERRED INTO TRACE EVIDENCE.

13 ONCE I TRANSFERRED INTO TRACE EVIDENCE, I BEGAN
14 ANOTHER IN-HOUSE TRAINING PROGRAM UNDER THE SUPERVISOR OF
15 THAT DEPARTMENT AND UNDER OTHER SENIOR ANALYSTS. WE GO
16 THROUGH A TRAINING PROGRAM. EACH MODULE WE GO THROUGH WE'LL
17 COMPLETE IT, DO A MOCK COURT, AND THEN WE'RE CERTIFIED TO
18 PERFORM CASE WORK IN THAT AREA. THE FIRST MODULE THAT I
19 PERFORMED WAS GUNSHOT RESIDUE AND GUN POWDER.

20 AFTER THAT I ATTENDED NUMEROUS COURSES AND CLASSES
21 OFFERED BY DIFFERENT ASSOCIATIONS WITHIN THE FORENSIC FIELD
22 JUST TO MAKE SURE THAT WE'RE STILL UP TO DATE ON THE
23 TECHNIQUES THAT ARE BEING USED OUT THERE. I'VE TAKEN
24 DIFFERENT COURSES FROM THE INSTRUMENT MANUFACTURERS THAT
25 PROVIDE OUR INSTRUMENTATION THAT WE USE SO THAT I KNOW HOW TO

1 PROPERLY OPERATE THE INSTRUMENTS, TO TROUBLESHOOT THEM, TO
2 REPAIR THEM, TAKE THEM DOWN, PUT THEM BACK TOGETHER, AND I
3 ALSO GO TO -- TRY TO GO TO CONFERENCES EVERY YEAR WITHIN THE
4 FIELD.

5 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN TRACE
6 EVIDENCE OR GUNSHOT RESIDUE ANALYSIS?

7 A. YES, I HAVE.

8 Q. AND HAVE YOU TESTIFIED AS AN EXPERT IN A COURT OF
9 LAW?

10 A. YES, I HAVE.

11 Q. STATE AND FEDERAL?

12 A. I'VE TESTIFIED IN STATE, FEDERAL, AND MAGISTRATE
13 LEVEL COURT.

14 Q. CAN YOU GIVE AN APPROXIMATE NUMBER OF JUST HOW MANY
15 TIMES YOU'VE TESTIFIED AS AN EXPERT IN THIS FIELD?

16 A. I'VE TESTIFIED -- THIS WILL BE MY 49TH TESTIMONY.

17 MR. HUBBARD: YOUR HONOR, AT THIS TIME I OFFER HER
18 AS AN EXPERT IN TRACE EVIDENCE AND GUNSHOT RESIDUE ANALYSIS.

19 MR. LITTLEJOHN: YOUR HONOR, MAY I CROSS-EXAMINE?

20 THE COURT: CERTAINLY.

21 CROSS-EXAMINATION

22 BY MR. LITTLEJOHN:

23 Q. MS. STONER, YOU INDICATED TO US -- MS. STONER, YOU
24 INDICATED TO US THAT YOU HAVE A B.S. DEGREE FROM? WHAT
25 COLLEGE WAS IT?

1 A. CALIFORNIA UNIVERSITY OF PENNSYLVANIA.

2 Q. CALIFORNIA UNIVERSITY?

3 A. IT'S A STATE SCHOOL IN CALIFORNIA, PENNSYLVANIA.

4 Q. OH, OKAY. CALIFORNIA, PENNSYLVANIA.

5 A. YES.

6 Q. SO IT'S NAMED AFTER THE CITY IN PENNSYLVANIA.

7 A. YES. YES.

8 Q. AND YOU GOT A B.S. DEGREE IN CHEMISTRY?

9 A. YES, SIR.

10 Q. OKAY. DID YOU DO ANY FURTHER COLLEGE STUDIES IN
11 CHEMISTRY OR ANY RELATED FIELDS?

12 A. I DID NOT. AT THE COMPLETION OF MY DEGREE, I
13 STARTED MY INTERNSHIP AT S.L.E.D., AND THEN I WAS HIRED
14 THERE. AND INSTEAD OF GOING ON TO GRADUATE SCHOOL, I DECIDED
15 TO TAKE THE POSITION AT S.L.E.D., SO I DID NOT DO ANY---

16 Q. YOU NEVER WENT -- YOU NEVER WENT TO GRADUATE SCHOOL.

17 A. I DID NOT GO TO GRADUATE SCHOOL, NO.

18 Q. AND YOU SAID YOU DID A FOUR-MONTH INTERNSHIP AT
19 S.L.E.D. AFTER GRADUATING FROM COLLEGE?

20 A. YES.

21 Q. OKAY. AND I BELIEVE YOU INDICATED TO US THE REST OF
22 YOUR TRAINING WAS EITHER THERE AT S.L.E.D. OR THROUGH SOME
23 RELATED LAW ENFORCEMENT ENTITY?

24 A. NOT NECESSARILY LAW ENFORCEMENT. LIKE THE SOUTHERN
25 ASSOCIATION OF FORENSIC SCIENTISTS, IT'S NOT ACTUALLY A LAW

1 ENFORCEMENT AGENCY, BUT A LOT OF THE FORENSIC SCIENTISTS IN
2 THE FIELD ARE IN LAW ENFORCEMENT, BUT THE AGENCY ITSELF IS
3 NOT A LAW ENFORCEMENT AGENCY.

4 Q. OKAY.

5 A. BUT SEVERAL OF THE COURSES WERE FROM LEHIGH
6 UNIVERSITY WHICH IS IN PENNSYLVANIA, AND THAT'S JUST A
7 UNIVERSITY. IT'S NOT A LAW ENFORCEMENT ENTITY. IT'S IN
8 BETHLEHEM, PENNSYLVANIA, AND THE -- SOME OF THE
9 INSTRUMENTATION COURSES THAT I'VE TAKEN WERE GIVEN BY THE
10 INSTRUMENT VENDORS IN THE TRAINING OF THE INSTRUMENTS, AND
11 THAT'S NOT LAW ENFORCEMENT RELATED. THE CRIMINAL JUSTICE
12 ACADEMY WAS---

13 Q. OBVIOUSLY. RIGHT. OKAY.

14 A. ---WHEN I TOOK THAT, SO...

15 Q. AND -- ALL RIGHT. AND SO MOST OF YOUR TRAINING HAS
16 COME FROM IN-HOUSE WORKING THERE AT S.L.E.D.

17 A. IN-HOUSE---

18 Q. WOULD THAT BE A SAFE ASSESSMENT?

19 A. THE MAJORITY OF THE TRAINING, YES, OTHER THAN THE
20 OUTSIDE COURSES THAT I'VE TAKEN.

21 Q. OKAY. HAVE YOU EVER PUBLISHED ANY ARTICLES ABOUT
22 FORENSIC SCIENCE OR TRACE EVIDENCE?

23 A. NO.

24 MR. LITTLEJOHN: OKAY. YOUR HONOR, WE DON'T HAVE
25 ANY OBJECTION.

1 MR. HUBBARD: YOUR HONOR, I AGAIN OFFER HER AS AN
2 EXPERT IN TRACE EVIDENCE AND GUNSHOT RESIDUE ANALYSIS.

3 THE COURT: LADIES AND GENTLEMEN, I'M QUALIFYING
4 THIS WITNESS AS AN EXPERT IN TRACE EVIDENCE AND GUNSHOT
5 RESIDUE ANALYSIS. ORDINARILY A WITNESS IS NOT PERMITTED TO
6 GIVE OPINIONS WHEN THEY TESTIFY. THEIR TESTIMONY IS LIMITED
7 TO FACTS OR OBSERVATIONS THAT ARE WITHIN THEIR PERSONAL --
8 PERSONAL KNOWLEDGE.

9 THERE'S AN EXCEPTION FOR EXPERT WITNESSES WHO BY
10 EDUCATION OR TRAINING OR EXPERIENCE HAVE GAINED AN EXPERTISE
11 IN A CERTAIN FIELD OR PROFESSION. THOSE EXPERTS ARE ALLOWED
12 TO GIVE OPINIONS, TO TESTIFY TO THEIR OPINIONS WITHIN THEIR
13 AREAS OF EXPERTISE. NOW, JUST LIKE WITH ALL OTHER WITNESSES
14 WHO TESTIFY, IT IS YOUR RESPONSIBILITY TO JUDGE THE
15 CREDIBILITY OR THE BELIEVABILITY OF THESE WITNESSES AND TO
16 DELIBERATE ABOUT THIS TESTIMONY JUST AS YOU WOULD ANY OTHER
17 TESTIMONY THAT HAS BEEN OFFERED BEFORE YOU. YOU MAY ACCEPT
18 OR REJECT THESE OPINIONS OF THESE -- OF EXPERTS, AND YOU ARE
19 NOT BOUND TO ACCEPT THE OPINION AS TRUE EVEN IF IT IS
20 UNCONTRADICTED.

21 MR. HUBBARD: THANK YOU, YOUR HONOR.

22 REDIRECT EXAMINATION

23 BY MR. HUBBARD:

24 Q. AGENT STONER, WHAT IS GUNSHOT RESIDUE?

25 A. GUNSHOT REDUCE IS A TERM THAT WE USE TO DESCRIBE A

1 CLOUD THAT FORMS AROUND A WEAPON UPON ITS DISCHARGE, AND THIS
2 CLOUD WILL CONTAIN ANY OF THE METALLIC RESIDUE FROM THE
3 PRIMER COMPOSITION OF THE BULLET---

4 MR. LITTLEJOHN: YOUR HONOR, I HATE -- I HATE TO
5 INTERRUPT, BUT I'M HAVING A HARD TIME HEARING THE WITNESS.
6 IF SHE COULD PULL UP TO THE MICROPHONE---

7 THE COURT: OKAY.

8 MR. LITTLEJOHN: THANK YOU.

9 THE WITNESS: AS I SAID, IT CONTAINS ANY OF THE
10 METALLIC RESIDUE FROM THE BARREL OF THE GUN, FROM THE BULLET,
11 FROM THE PRIMER COMPOSITION THAT EXITS THE GUN WHENEVER IT IS
12 FIRED, AND THIS RESIDUE WILL DEPOSIT ON ANYTHING THAT IS
13 AROUND THAT WEAPON AT THE TIME OF DISCHARGE.

14 BY MR. HUBBARD:

15 Q. HOW IS IT ACTUALLY FORMED?

16 A. BASICALLY THE GUNSHOT RESIDUE THAT WE ANALYZE FOR IS
17 FORMED -- WHENEVER YOU FIRE A WEAPON, A SMALL EXPLOSION WILL
18 TAKE PLACE. AS YOU KNOW, WHEN THE FIRING PIN HITS THE HEAD
19 OF THE PRIMER IN THE CARTRIDGE OR THE BULLET, IT'S GOING TO
20 SET OFF A MINI EXPLOSION. YOU HAVE LEAD STYPHNATE, ANTIMONY
21 SULFIDE, AND BARIUM NITRATE ENCOMPASSED IN THIS PRIMER
22 COMPOSITION. IT'S SOMEWHAT OF A SLURRY, AND IT'S ALL MIXED
23 TOGETHER.

24 THE INORGANICS THAT WE LOOK FOR ARE THE BARIUM AND
25 THE ANTIMONY AND THE LEAD. ONCE THE FIRING PIN HITS THIS,

1 THE LEAD STYPHNATE IS CALLED AN INITIATING EXPLOSIVE WHICH
2 MEANS THAT IT'S SET OFF WITH A BANG OR A TAP. SO THE FIRING
3 PIN, WHEN IT HITS THIS, WILL TAP IT AND SET OFF THAT
4 EXPLOSION. YOUR ANTIMONY SULFIDE IS YOUR FUEL WHICH NEEDS TO
5 BURN TO CAUSE THE BURN THAT YOU NEED, AND THE BARIUM NITRATE
6 PROVIDES YOUR OXYGEN FOR IT TO BURN.

7 ONCE THIS HAPPENS, A SMALL SPARK WILL GO INTO THE
8 CHAMBER OF THE CARTRIDGE AND IGNITE YOUR SMOKELESS POWDER.
9 AS YOUR SMOKELESS POWDER IGNITES, IT WILL BURN. IT IS NOT A
10 PRIMARY EXPLOSIVE. IT'S JUST -- IT'S CALLED A LOW EXPLOSIVE
11 WHICH MEANS IT DOESN'T BLOW UP; IT BURNS. IT BURNS AND IT
12 BUILDS IN HEAT AND PRESSURE BECAUSE AS IT'S BURNING, ALL THIS
13 HEAT AND PRESSURE IS ENCOMPASSED IN THAT CARTRIDGE.
14 EVENTUALLY IT REACHES A POINT WHERE IT HAS TO EXIT THAT GUN.

15 THE POINT THAT THAT IS IS WHEN IT SHOOTS THE BULLET
16 OUT OF THE GUN. ALL THAT HEAT AND PRESSURE IS RELEASED, AND
17 THE INORGANIC COMPOUNDS IN THAT PRIMER COMPOSITION ARE
18 VAPORIZED BY THAT INTENSE HEAT AND PRESSURE THAT ARE
19 GENERATED. ONCE THEY EXIT THE GUN, THEY CONDENSE WHEN THEY
20 HIT THE AIR AND FORM INTO SMALL DROPLETS. THESE DROPLETS ARE
21 WHAT ARE IN THIS CLOUD OF GUNSHOT RESIDUE AND WHICH DEPOSIT
22 ON THE HANDS OR THE GUN OR THE PERSON THAT'S BEING SHOT.

23 Q. WHAT MAKES GUNSHOT RESIDUE OR THE LEAD THEREIN
24 UNIQUE?

25 A. BASICALLY THE HIGH PRESSURE AND TEMPERATURE THAT

1 CAUSES THESE PARTICLES TO FORM MAKE IT UNIQUE BECAUSE THE
2 PRIMER COMPOSITION WE FOUND THAT THE BARIUM AND THE ANTIMONY
3 AND THE LEAD USED IN COMBINATION, IT IS A UNIQUE COMBINATION
4 WHEN YOU FIND THESE THREE TOGETHER. IF YOU HAVE -- IF YOU'VE
5 EVER PUT UP CHRISTMAS LIGHTS AND YOU SEE THE LITTLE WARNING
6 LABEL ON IT THAT SAYS, "WASH YOUR HANDS AFTER YOU USE THESE;
7 IT MAY CONTAIN LEAD," THERE IS LEAD IN THE ENVIRONMENT, BUT
8 THEY'RE TRYING TO TAKE IT OUT OF THE ENVIRONMENT BECAUSE IT'S
9 NOT GOOD FOR YOU. VACUUM CORDS. CHRISTMAS LIGHTS. WHEEL
10 WEIGHTS. IF YOU FISH AND USE LEAD SINKERS, THOSE ARE MADE OF
11 LEAD. BUT WHEN YOU LOOK AT THIS LEAD, WHICH I'VE TESTED
12 THEM, THE LEAD IS CHUNKY AND IT'S HUGE PARTICLES.

13 WITH GUNSHOT RESIDUE, THAT HEAT AND PRESSURE THAT'S
14 GENERATED CAUSES IT TO CONDENSE INTO TINY MICROSCOPIC
15 PARTICLES THAT ARE SPHERICAL IN NATURE WHICH MEANS THEY'RE
16 ROUND, AND THAT IS WHAT WE LOOK FOR IN GUNSHOT RESIDUE
17 BECAUSE WE DON'T SEE THAT IN THE OTHER PRODUCTS THAT HAVE
18 LEAD.

19 Q. SO BASICALLY YOU CAN LOOK AT THAT AND DETERMINE IT'S
20 NOT ENVIRONMENTAL CONTAMINATION OR OTHER FORMS OF LEAD?

21 A. WE CAN LOOK AT IT -- WHENEVER WE HAVE AN
22 ENVIRONMENTAL CONTAMINATION AND I'VE HAD SEVERAL CASES WITH
23 THAT, YOU HAVE A CONSISTENCY ON ALL AREAS OF THE HAND BECAUSE
24 IT'S A CONTAMINATION THAT YOU'RE PICKING UP IN THE
25 ENVIRONMENT AND YOU'RE IN IT EVERY DAY. AND ALSO THE

1 PARTICLES ARE HUGE AND THEY'RE CHUNKS. WHEN YOU LOOK AT IT
2 UNDER A MICROSCOPE -- IT'S A HIGH-POWERED MICROSCOPE. THE
3 PARTICLES HAVE NO -- NO ROUND FORMATION TO THEM. WITH
4 GUNSHOT RESIDUE, YOU DO FIND CHUNKS FROM IT, BUT THE MAJORITY
5 OF THE PARTICLES ARE ROUND, SPHERICAL PARTICLES.

6 Q. AND THAT'S HOW IT'S UNIQUE.

7 A. THAT'S HOW IT'S UNIQUE, YES.

8 Q. NOW, HOW FRAGILE IS THIS EVIDENCE?

9 A. GUNSHOT RESIDUE -- I'D LIKE TO EXPLAIN IT. IT'S
10 SOMEWHAT LIKE FLOUR, IF YOU'RE BAKING AND YOU GET IT ON YOUR
11 HANDS. IF YOU WASH YOUR HANDS, YOU'RE GOING TO REMOVE IT.
12 GUNSHOT RESIDUE IS THE SAME. YOU CAN'T SEE IT, BUT ANYTHING
13 YOU DO WILL TAKE IT OFF OF YOUR HANDS. IF YOU'RE SWEATING,
14 PUT YOUR HANDS IN YOUR POCKET, IF YOU EAT, WASH YOUR HANDS,
15 ANYTHING YOU DO WILL REMOVE THAT RESIDUE BECAUSE IT'S JUST A
16 LIGHT COATING ON YOUR HANDS. ONCE YOU WASH YOUR HANDS, THAT
17 RESIDUE WILL BE GONE. SO IT'S EXTREMELY FRAGILE EVIDENCE.

18 Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED STATE'S I.D.
19 15, 16, AND 25. DO YOU RECOGNIZE THESE?

20 A. THESE ARE THE -- THIS IS THE OUTER ENVELOPE THAT THE
21 EVIDENCE COMES IN WHENEVER WE RECEIVE THE EVIDENCE. BEFORE I
22 OPEN IT, I PUT A LAB NUMBER, A DATE, AND MY INITIALS ON THE
23 ENVELOPE, AND THESE ARE THE ACTUAL GUNSHOT RESIDUE KITS THAT
24 I ANALYZED BECAUSE THEY HAVE THE LAB NUMBER, THE ITEM NUMBER,
25 INITIALS, AND THE DATE.

1 Q. WHERE DID YOU GET THESE -- THESE ITEMS?

2 A. THESE ITEMS I RECEIVED FROM THE TRACE EVIDENCE BOX
3 WHICH WAS A SECURE EVIDENCE BOX THAT WE HAD IN THE LOG-IN
4 DEPARTMENT. IT LOOKED LIKE A LARGE MAILBOX THAT HAD A
5 PADLOCK ON THE FRONT. THE OFFICERS WOULD LOG IN THE EVIDENCE
6 AND THEN DROP IT INTO THIS BOX, AND THEN WHENEVER WE WOULD
7 HAVE SO MANY CASES DOWN THERE, WE WOULD GO DOWN AND REMOVE
8 THE LOCK AND TAKE THE CASES OUT OF THE BOX.

9 Q. I'M GOING TO SHOW YOU TWO DOCUMENTS. DID THESE COME
10 WITH THE KITS?

11 A. YES. THESE ARE THE GUNSHOT RESIDUE INFORMATION
12 FORMS THAT THE OFFICER FILLS OUT WHEN THEY COLLECT THE KIT,
13 AND THEY PUT IT INSIDE THE KIT WITH THE EVIDENCE AND SEAL IT.
14 IT'S SUBMITTED TO THE LAB.

15 Q. AND ALL OF THAT PERTAINS TO KEVIN MERCER AND MARCUS
16 THOMPSON?

17 A. YES, THESE DO.

18 Q. ONCE YOU GOT THESE KITS, WHAT DID YOU DO?

19 A. WHENEVER WE GET THE KITS IN, WE LOOK AT GUNSHOT
20 RESIDUE. WE CALL IT IN A BATCH BECAUSE THE INSTRUMENT THAT
21 WE USE -- WE RUN THEM OVERNIGHT. WE GET THE SAMPLES. I OPEN
22 THE KIT UP. I DOCUMENT WHAT I HAVE, AND I LOOK AT THE
23 INFORMATION KIT. THE FIRST THING I LOOK AT IS THE TIME FRAME
24 AND WHETHER OR NOT THE PERSON THE KIT WAS TAKEN ON WAS ALIVE
25 OR DEAD. IF THE PERSON WAS ALIVE, THE KIT HAD TO HAVE BEEN

1 COLLECTED WITHIN SIX HOURS OF THE SHOOTING, AND THIS IS DUE
2 TO THE FRAGILE NATURE OF THE EVIDENCE AND THE FACT THAT AFTER
3 SIX HOURS WE DON'T EXPECT TO SEE ANY EVIDENCE ON THE HANDS.
4 SO, THEREFORE, WE DO NOT ANALYZE THOSE KITS.

5 SO THE FIRST THING I DO IS MAKE SURE THAT IT WAS
6 COLLECTED WITHIN THE TIME FRAME, AND THEN I DOCUMENT ANYTHING
7 THAT I FIND ON THE KIT. LIKE ON THIS CASE, MY CONTROL HAD
8 TWO SWABS IN IT WHICH JUST MEANS THEY USED TWO COTTON SWABS
9 TO COLLECT IT. I JUST DOCUMENT WHAT I SEE. IF THERE'S
10 ANYTHING EXTRA IN THE KIT THAT WE DON'T NORMALLY HAVE, I'LL
11 DOCUMENT THAT.

12 I THEN DO WHAT WE CALL PREP THE KITS. I'LL TAKE THE
13 -- THE EVIDENCE WILL COME IN THESE LITTLE TUBES, AND EACH
14 TUBE IS MARKED EITHER RIGHT PALM, RIGHT BACK, LEFT PALM, LEFT
15 BACK, OR CONTROL, AND THAT'S FROM THE DIFFERENT AREAS OF THE
16 HANDS WHERE THEY COLLECTED IT. THERE WILL BE SWABS IN HERE
17 THAT I PREP THEM USING AN ACID SOLUTION. I FILTER THEM AND
18 THEN SET THEM UP ON A RUN ON THE INSTRUMENT SO THAT IT CAN
19 ANALYZE AND TELL ME WHAT IT FOUND ON THE SWABS.

20 Q. AND DID YOU CONDUCT THESE TESTS?

21 A. I DID.

22 Q. AND WHAT RESULTS DID YOU FIND?

23 A. ON WHICH?

24 Q. LET'S START WITH MARCUS THOMPSON.

25 A. ON MARCUS THOMPSON I LOOKED AT THE SAMPLES FROM THE

1 HANDS, AND I ALSO LOOKED AT A SAMPLE LABELED RIGHT FOREARM
2 AND LEFT FOREMAN, AND THE QUANTITIES OF METALS DETECTED ON
3 THESE AREAS DID NOT INDICATE THE PRESENCE OF GUNSHOT RESIDUE
4 WHICH MEANS THE LEVELS OF BARIUM, ANTIMONY, AND LEAD THAT I
5 FOUND DID NOT INDICATE THAT THERE WAS GUNSHOT RESIDUE PRESENT
6 ON THAT PERSON'S HANDS.

7 Q. SO BASICALLY IT WAS NEGATIVE?

8 A. THEY WERE NEGATIVE, YES.

9 Q. WHAT ABOUT MARCUS -- I MEAN KEVIN MERCER?

10 A. ON KEVIN MERCER I ANALYZED THE FOUR SAMPLES FROM THE
11 HANDS, AND THERE WERE ALSO TWO ADDITIONAL SAMPLES LABELED
12 RIGHT FOREARM AND LEFT FOREMAN. ON HIS KIT I FOUND ROUND
13 LEAD PARTICLES ON THE LEFT PALM, AND I FOUND NOTHING ELSE ON
14 THE REST OF THE KIT. AND ROUND LEAD PARTICLES WE CONSIDER
15 ONE OF THE COMPONENTS OF GUNSHOT RESIDUE.

16 MR. HUBBARD: YOUR HONOR, AT THIS TIME I'D LIKE TO
17 OFFER BOTH -- BOTH KITS ON MARCUS THOMPSON AND KEVIN MERCER
18 AND THIS FORWARDING DOCUMENTATION THAT WAS WITH THESE KITS.

19 MR. LITTLEJOHN: NO OBJECTION.

20 THE COURT: THEY'RE ADMITTED.

21 (STATE'S EXHIBITS 15, 16, 26, AND 27 WERE RECEIVED
22 IN EVIDENCE.)

23 THE COURT: JUST RECITE FOR THE RECORD, PLEASE,
24 AFTER YOU'VE MARKED THEM HOW YOU'VE MARKED THEM.

25 MR. HUBBARD: YES, SIR, YOUR HONOR. FOR THE RECORD,

1 YOUR HONOR, THE G.S.R. KIT ON MARCUS THOMPSON IS STATE'S 16.
2 THE G.S.R. KIT ON KEVIN MERCER IS 15, AND THE SUPPORTING
3 DOCUMENTATION AS TO KEVIN MERCER IS 27. THE SUPPORTING
4 DOCUMENTATION AS TO MR. THOMPSON IS 26.

5 BY MR. HUBBARD:

6 Q. SO TO RECAP, AS TO MR. MERCER YOU FOUND LEAD
7 PARTICLES ON HIS LEFT PALM.

8 A. THAT'S CORRECT.

9 Q. IS WHAT YOU FOUND CONSISTENT WITH WHAT YOU SEE WHEN
10 YOU TEST FOR G.S.R.?

11 A. IT IS.

12 Q. AS OPPOSED TO ENVIRONMENTAL SOURCES?

13 A. IT WAS. YES, IT IS.

14 Q. AND IT IS -- IS WHAT YOU FOUND CONSISTENT WITH
15 ENVIRONMENTAL CONTAMINATION?

16 A. NO.

17 Q. SO BETWEEN THE TWO, THIS IS WHAT YOU WOULD FIND WITH
18 G.S.R.

19 A. THIS IS NORMALLY WHAT WE SEE WHENEVER WE LOOK AT
20 GUNSHOT RESIDUE; YES, IT IS.

21 MR. HUBBARD: THANK YOU. NO FURTHER QUESTIONS AT
22 THIS TIME.

23 RECROSS EXAMINATION

24 BY MR. LITTLEJOHN:

25 Q. MS. STONER, HOW MANY OF THESE ROUND LEAD PARTICLES

1 DID YOU FIND?

2 A. I FOUND TWO.

3 Q. TWO.

4 A. YES.

5 Q. WHAT WERE THE SIZE OF THESE ROUND LEAD PARTICLES?

6 A. THEY ARE LESS THAN TEN MICRONS IN SIZE. THEY'RE
7 APPROXIMATELY ONE TO TWO MICRONS.

8 Q. ONE TO TWO MICRONS.

9 A. UH-HUH.

10 Q. THAT'S THE DIAMETER OF THESE TWO ROUND LEAD
11 PARTICLES?

12 A. YES.

13 Q. OKAY. WHAT IS THE DIAMETER OF THE AVERAGE HUMAN
14 HAIR?

15 A. THE AVERAGE HUMAN HAIR? OH, GOSH. I DON'T EVEN DO
16 HAIR ANALYSIS, SO I COULDN'T TELL YOU.

17 Q. HOW WOULD YOU COMPARE THESE TO A HUMAN HAIR?

18 A. DEPENDING ON THE HAIR, IF IT'S FINE HAIR OR THIN
19 HAIR, THESE ARE MUCH SMALLER BECAUSE YOU'RE NOT EVEN GOING TO
20 SEE THEM ON YOUR HANDS. YOU CAN'T SEE THEM, BUT YOU CAN SEE
21 A HAIR. SO THEY'RE GOING TO BE -- THEY'RE MICROSCOPIC. YOU
22 CAN'T SEE THEM, SO THEY'RE MUCH SMALLER THAN A HAIR.

23 Q. ACTUALLY, IT WOULD BE ABOUT AN EIGHTH OF THE SIZE OF
24 THE DIAMETER OF A HUMAN HAIR, WOULD IT NOT?

25 A. AS I SAID, I DON'T DO HAIR ANALYSIS, SO I COULDN'T

1 TESTIFY.

2 Q. OKAY. ALL RIGHT. NOW, MS. STONER, IN ORDER TO DO A
3 DEFINITIVE TEST FOR G.S.R., THERE HAVE TO BE THREE ELEMENTS
4 PRESENT, DO THEY NOT?

5 A. FOR A DEFINITIVE TEST FOR G.S.R., YES. YOU HAVE --
6 FOR ME TO CALL IT GUNSHOT RESIDUE, THERE HAS TO BE BARIUM,
7 ANTIMONY, AND LEAD IN ONE SPHERICAL PARTICLE. BUT WE ALSO
8 HAVE PARTICLES -- IF WE FIND LEAD PARTICLES OR IF WE FIND
9 LEAD ANTIMONY OR LEAD BARIUM, WE CONSIDER THEM ONE OF THE
10 COMPONENTS OF GUNSHOT RESIDUE.

11 Q. ONE OF THE COMPONENTS?

12 A. THAT'S CORRECT.

13 Q. MY QUESTION IS: IN ORDER TO DO A DEFINITIVE TEST IN
14 ORDER TO MAKE A DEFINITIVE CONCLUSION THAT THERE IS GUNSHOT
15 RESIDUE PRESENT, YOU HAVE TO HAVE ALL THREE ELEMENTS
16 PRESENT---

17 A. YES, YOU DO.

18 Q. ISN'T THAT CORRECT?

19 A. YES, YOU DO.

20 Q. OKAY. AND YOUR REGULATIONS AND PROTOCOL, ET CETERA
21 -- YOU HAVE THRESHOLD AMOUNTS OF EACH OF THESE ELEMENTS, DO
22 YOU NOT?

23 A. FOR THE I.C.P.M.S. WHICH IS THE INSTRUMENT WE USE
24 FOR THAT PART, YES, WE DO HAVE THRESHOLD AMOUNTS.

25 Q. OKAY. AND THOSE THRESHOLD AMOUNTS HAVE TO BE

1 REACHED AS TO EACH OF THOSE THREE ELEMENTS BEFORE YOU CAN
2 DEFINITELY SAY YOU HAVE GUNSHOT RESIDUE; ISN'T THAT
3 CORRECT?

4 A. NO. ON THE I.C.P.M.S., IF WE REACH THOSE---

5 Q. WHAT IS I.C.P.M.S.?

6 A. INDUCTIVELY COUPLED -- INDUCTIVELY COUPLED PLASMA
7 MASS SPECTROMETER. ON THIS INSTRUMENT WE DO HAVE THRESHOLDS,
8 BUT IF I HAVE THE THRESHOLDS FOR ALL THREE ELEMENTS ON THAT
9 INSTRUMENT, I STILL CAN'T SAY IT IS GUNSHOT RESIDUE. I CAN
10 SAY IT'S CONSISTENT WITH GUNSHOT RESIDUE. IN ORDER FOR ME TO
11 SAY IT IS GUNSHOT RESIDUE, I HAVE TO USE THE SCANNING
12 ELECTROMICROSCOPE AND VERIFY THE PARTICULATE MATTER THAT I
13 SEE. SO THERE ARE LEVELS THAT I NEED TO REACH TO SAY IT'S
14 CONSISTENT WITH, BUT OFF OF THAT INSTRUMENT I CANNOT
15 DEFINITELY SAY IT IS.

16 Q. OKAY. AND IN THIS TEST CONCERNING KEVIN MERCER, YOU
17 DEFINITELY CANNOT SAY IT WAS GUNSHOT RESIDUE, CAN YOU?

18 A. I CAN SAY THAT I FOUND ROUND LEAD---

19 Q. OKAY.

20 A. ---WHICH IS A COMPONENT OF GUNSHOT RESIDUE, BUT I
21 CANNOT TELL YOU THAT IT IS GUNSHOT RESIDUE.

22 Q. YOU CANNOT TELL US THAT IT IS GUNSHOT RESIDUE.

23 A. THAT'S CORRECT.

24 Q. OKAY. BECAUSE YOU DIDN'T HAVE THE THRESHOLD LEVELS
25 OF ANTIMONY. YOU DIDN'T HAVE THE THRESHOLD METAL -- METALS

1 OF BARIUM, DID YOU?

2 A. NO, BECAUSE THE PARTICLE THAT I FOUND DID NOT
3 CONTAIN ALL THREE ELEMENTS. IT'S NOT A THRESHOLD ON THIS.
4 ON THE OTHER INSTRUMENT IT IS A THRESHOLD TO SAY IT'S
5 CONSISTENT WITH GUNSHOT RESIDUE. ON THIS INSTRUMENT I LOOK
6 FOR ALL THREE ELEMENTS PRESENT IN THAT PARTICLE.

7 Q. OKAY. SO WHAT YOU'RE TELLING US IS THESE TWO ROUND
8 LEAD BALLS THAT ARE MUCH SMALLER THAN A HUMAN HAIR, THAT'S
9 ALL YOU FOUND IS TWO OF THEM.

10 A. I FOUND TWO OF THEM, YES.

11 Q. OKAY. AND BESIDES THAT, YOU DIDN'T FIND THE
12 THRESHOLD LEVEL FOR ANTIMONY OR THE THRESHOLD LEVEL OF
13 BARIUM.

14 A. ON WHICH INSTRUMENT? ON THE FIRST INSTRUMENT?

15 Q. ON THE KEVIN MERCER SWABS.

16 A. ON THE LEFT PALM I DID FIND THE THRESHOLD, ON THE
17 LEFT PALM, AND THAT IS WHY I TOOK IT TO THE SECOND STEP AND
18 RAN THE S.E.M. THAT IS OUR PROTOCOL. IF IT'S A HOMICIDE
19 CASE AND THE SUSPECT HAS ELEVATED LEVELS THAT MEET THE
20 THRESHOLD, WE HAVE TO CONFIRM IT ON THE SECOND INSTRUMENT---

21 Q. OKAY.

22 A. ---WHICH IS WHAT I DID. SO THE LEFT PALM DID MEET
23 THE THRESHOLD THAT YOU'RE TALKING ABOUT ON THE I.C.P., AND I
24 TOOK IT TO THE S.E.M. AND I FOUND ROUND LEAD.

25 Q. IT MET THE THRESHOLD OF LEAD.

1 A. IT MET THE THRESHOLD TO RUN IT ON -- IT MET OUR
2 THRESHOLD THAT WE HAVE IN OUR PROTOCOL TO TAKE IT TO THE NEXT
3 STEP.

4 Q. IT MET THE -- IT MET THE THRESHOLD FOR LEAD ONLY.
5 ISN'T THAT CORRECT, MS. STONER?

6 A. YES. IT WAS POSITIVE FOR LEAD ON THE I.C.P.M.S.

7 Q. WAS NOT POSITIVE FOR ANTIMONY AND WAS NOT POSITIVE
8 FOR BARIUM; ISN'T THAT RIGHT?

9 A. THE BARIUM AND THE LEAD. THE ANTIMONY -- YES, IT
10 DID. ONCE WE SUBTRACTED THE CONTROL OUT, THE ANTIMONY LEVEL
11 WAS 11 WHICH OUR THRESHOLD---

12 Q. THE THRESHOLD IS 20, IS IT NOT?

13 A. NO. THEY USED TO BE. OUR LEVELS HAVE CHANGED
14 CONSIDERABLY. RIGHT NOW WE HAVE A THRESHOLD OF 10 AND 170
15 FOR -- 10 FOR BARIUM AND -- OR 10 FOR ANTIMONY AND 170 FOR
16 LEAD AND 170 FOR BARIUM.

17 Q. SO S.L.E.D. LOWERED THE THRESHOLD.

18 A. WE DID LOWER THE THRESHOLD, YES.

19 Q. OKAY. IS THAT CONSISTENT WITH OTHER POLICE AGENCIES
20 AND OTHER FORENSIC LABORATORIES?

21 A. DIFFERENT AGENCIES -- A LOT OF AGENCIES DON'T RUN
22 THE I.C.P.M.S. THEY DON'T HAVE THE CAPABILITY TO RUN IT.
23 THEY ONLY RUN S.E.M. SO WE -- SEVERAL OTHER AGENCIES THAT DO
24 HAVE IT HAVE DROPPED THEM DOWN. THIS WAS DUE TO IN-HOUSE
25 STUDIES THAT WE DID. WE TESTED OUR HANDS. WE WOULD WAIT SO

1 LONG AFTERWARD AND SEE WHAT WE SAW ON OUR HANDS, AND WE
2 DECIDED THAT WE ARE FINDING EVIDENCE ON G.S.R. KITS WHEN WE
3 WEREN'T MEETING THE THRESHOLDS ON THE FIRST AREA. SO WE
4 DECIDED TO DROP IT DOWN TO MAKE SURE WE WEREN'T MISSING
5 ANYTHING.

6 Q. OKAY. NOW, THE THRESHOLD LEVELS ARE IMPORTANT
7 BECAUSE IN THE ENVIRONMENT YOU'RE LIABLE TO COME IN CONTACT
8 WITH THESE THREE ELEMENTS THAT COMPRISE GUNSHOT RESIDUE.
9 ISN'T THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY.

12 A. BECAUSE YOU COULD HAVE IT ON YOUR BODY NOW. THAT'S
13 WHY WE TAKE A CONTROL AND WHY WE HAVE THE THRESHOLD ELEMENT,
14 THE LEVELS THAT WE LOOK AT.

15 Q. AND, IN FACT, IF SOMEBODY IS EXPOSED TO SOME PAINTS
16 OR BATTERIES OR PIPES, SOLDER, GLASS, GASOLINE, THEY COULD
17 HAVE LEAD -- BE EXPOSED TO LEAD.

18 A. THEY COULD BE.

19 Q. OKAY.

20 A. AND THAT'S WHY WE HAVE THE SECOND PART OF THE TEST
21 BECAUSE WE LOOK FOR THESE PARTICLES.

22 Q. OKAY.

23 A. BECAUSE IF YOU'RE EXPOSED TO LEAD IN PAINT, IT'S NOT
24 GOING TO BE ROUNDED, SMALL, PARTICULATE LEAD. IT'S GOING TO
25 BE CHUNKIER AND IT'S NOT GOING TO HAVE THIS MORPHOLOGY THAT

1 WE LOOK FOR.

2 Q. OKAY.

3 A. SO THAT IS WHY WE DO THIS. WE DO HAVE THE
4 THRESHOLDS, AND IF ALL I HAD DONE ON THIS TEST WAS THE FIRST
5 PART WHICH YOU'RE TALKING ABOUT THE THRESHOLDS, IT COULD HAVE
6 BEEN FROM ANYTHING BECAUSE I DON'T KNOW. BUT SINCE I LOOKED
7 AT IT AND I TOOK IT TO THE NEXT STEP -- I LOOKED AT THESE
8 PARTICLES. I USED THE SCANNING ELECTROMICROSCOPE, AND I
9 LOOKED AT THE SIZE AND THE COMPOSITION OF THESE PARTICLES
10 WHICH IS WHAT WE LOOK FOR TO SEE IF IT'S CONSISTENT WITH
11 GUNSHOT RESIDUE.

12 Q. AND THAT'S BECAUSE YOU FOUND TWO LEAD PARTICLES.

13 A. THAT'S CORRECT.

14 Q. OKAY.

15 A. BECAUSE HE SHOULDN'T HAVE THEM---

16 Q. AND LET ME GET BACK ON THE SUBJECT, MS. STONER. ON
17 THE BARIUM, IF SOMEBODY IS EXPOSED TO PAINTS, COSMETICS,
18 WOOD, MATCHES, THEY COULD HAVE---

19 A. OH, YEAH. BARIUM IS EVERYWHERE. IF YOU PUT
20 POWDERED MAKE-UP ON, YOU'RE GOING TO HAVE IT ON YOUR HANDS.

21 Q. RIGHT.

22 A. THAT'S WHY WHENEVER WE TELL THEM TO COLLECT THE KIT,
23 THEY CAN'T USE POWDERED GLOVES, AND WE DON'T USE POWDERED
24 GLOVES IN THE LAB BECAUSE BARIUM IS EVERYWHERE.

25 Q. SAME THING WITH ANTIMONY. IT'S ON A NUMBER OF

1 DIFFERENT THINGS.

2 A. ANTIMONY IS NOT---

3 Q. IT'S ON---

4 A. IT'S NOT AS---

5 Q. I MEAN---

6 A. ---PREVALENT AS BARIUM.

7 Q. IF I COULD FINISH MY QUESTION, IF YOU WOULD, PLEASE.

8 THE COURT: LET ME -- LET ME WARN BOTH OF YOU,

9 PLEASE. YOU LET HER FINISH HER ANSWER, AND YOU MAKE SURE

10 BEFORE YOU ANSWER THAT YOU LET HIM FINISH THE QUESTION.

11 THE WITNESS: OKAY.

12 BY MR. LITTLEJOHN:

13 Q. ANTIMONY IS ALSO FOUND ON A NUMBER OF THINGS THAT
14 ARE COMMON IN THE ENVIRONMENT; ISN'T THAT CORRECT?

15 A. ANTIMONY IS USED IN LEAD AS A LEAD HARDENER. IT'S
16 USED AS A FIRE RETARDANT IN LEATHER JACKETS, BUT IT'S NOT --
17 I MEAN, YOU'RE NOT GOING TO PICK IT UP ON WOOD OR ON THE
18 DESK. IT'S NOT AS PREVALENT AS BARIUM, BUT IT IS IN THE
19 ENVIRONMENT.

20 Q. WAS THAT A YES ANSWER, MS. STONER?

21 A. YES, IT IS PREVALENT IN THE ENVIRONMENT.

22 Q. AND WHAT YOU'RE TRYING TO ASCERTAIN IS IF THERE IS A
23 LARGER AMOUNT OF THESE THREE ELEMENTS THAT COMPRISE G.S.R.
24 BEFORE YOU CAN DEFINITELY SAY THERE'S G.S.R. AND, ERGO,
25 SOMEONE HAS FIRED A GUN. IS THAT NOT CORRECT?

1 A. I THINK YOU'RE CONFUSED ON -- THE LEVELS THAT WE
2 LOOK AT, THAT'S THE SCREENING TEST THAT WE PERFORM BECAUSE IF
3 YOU DON'T HAVE ANY OF THOSE LEVELS PRESENT ON YOUR HAND, I'M
4 NOT GOING TO LOOK AT THE MICROSCOPE. IF YOU HAVE ELEVATED
5 LEVELS, I DON'T KNOW WHAT IT'S FROM. IT COULD BE FROM A GUN;
6 IT COULD BE FROM THE ENVIRONMENT. AND THAT'S WHY IF YOU HAVE
7 ELEVATED LEVELS WHICH MEET OUR THRESHOLD, WE LOOK AT IT ON
8 THE S.E.M., AND I REPORT THE RESULTS FROM THE SCANNING
9 ELECTROMICROSCOPE. I USE THE THRESHOLD TO SEE IF IT'S -- IF
10 I NEED TO LOOK AT IT FURTHER BECAUSE IF ALL I LOOKED AT AND
11 FOUND WERE SOME ELEVATED LEVELS, ALL I COULD SAY WAS THE
12 QUANTITY OF METALS MAY BE ASSOCIATED WITH GUNSHOT RESIDUE,
13 BUT THEY COULD BE ASSOCIATED WITH SOMETHING ELSE. SO THAT'S
14 WHY WE HAVE THOSE LEVELS.

15 Q. YOU'RE LOOKING FOR ELEVATED LEVELS WHICH WOULD
16 INDICATE GUNSHOT RESIDUE OF THESE THREE ELEMENTS. IS THAT --
17 IS THAT A SHORT STATEMENT?

18 A. THAT'S WHAT WE'RE LOOKING FOR TO---

19 Q. CAN YOU SAY YES OR NO AND THEN EXPLAIN?

20 A. YES.

21 MR. HUBBARD: YOUR HONOR, IF SHE WISHES TO EXPLAIN,
22 I THINK SHE SHOULD BE ABLE TO.

23 MR. LITTLEJOHN: I GAVE HER EVERY OPPORTUNITY, YOUR
24 HONOR. I'M JUST -- I THINK THE WITNESS CAN ANSWER YES OR NO
25 AND THEN EXPLAIN ALL SHE WANTS TO, BUT I'M JUST ASKING FOR A

1 YES OR NO.

2 BY MR. LITTLEJOHN:

3 Q. MS. STONER, IT'S IMPORTANT THAT YOU FIND THE
4 COMBINATION OF THE THREE METALS, IS IT NOT?

5 A. THAT IS IMPORTANT, YES.

6 Q. OKAY. BECAUSE IT TAKES THE THREE METALS TO COMPRISE
7 G.S.R.

8 A. IT TAKES THE THREE METALS FOR ME TO CALL IT GUNSHOT
9 RESIDUE EXCLUSIVELY.

10 Q. OKAY. AND IN THIS CASE YOU'VE NOT CALLED IT GUNSHOT
11 RESIDUE.

12 A. I HAVE NOT.

13 Q. OKAY. AND WOULD YOU FIND THE THRESHOLD LEVELS OF
14 THESE THREE ELEMENTS ON SOMEONE TYPICALLY WHO HAS NOT FIRED A
15 FIREARM?

16 A. I HAVE, YES.

17 Q. IN COMBINATION?

18 A. I HAVE FOUND THEM ON THE INDUCTIVE -- ON THE
19 I.C.P.M.S. I HAVE FOUND ELEVATED LEVELS OF THOSE THREE
20 METALS ON A PERSON WHO DID NOT FIRE A WEAPON.

21 Q. OKAY. IS THAT TYPICAL?

22 A. NO.

23 Q. OKAY. NOW, YOU INDICATED THE SAMPLES IN THIS CASE
24 WERE TAKEN WITHIN THE SIX-HOUR TIME PERIOD THAT S.L.E.D.
25 ADHERES TO?

1 A. YES.

2 Q. THAT'S PART OF THEIR PROTOCOL.

3 A. YES.

4 Q. OKAY. AND THIS WAS WITHIN TWO HOURS?

5 A. YES.

6 Q. OKAY. AND WOULDN'T YOU EXPECT, MS. STONER, TO SEE
7 ELEVATED LEVELS OF THESE THREE ELEMENTS ON A SHOOTER'S HAND
8 AFTER FIRING A 357 HANDGUN?

9 A. IT DEPENDS. I DO EXPECT TO SEE IT, BUT I HAVE NO
10 KNOWLEDGE OF WHAT HAPPENED IN THOSE TWO HOURS. YOU CAN
11 REMOVE THAT RESIDUE VERY EASILY. IF I FIRE A 357 AND I SIT
12 HERE AND DON'T DO ANYTHING, I WOULD EXPECT TO FIND IT ON MY
13 HANDS.

14 Q. OKAY.

15 A. BUT DEPENDING ON WHAT I DO, IF I WASH MY HANDS, IF
16 I'M SWEATING, IF MY HANDS ARE IN MY POCKETS, IF I'M DRIVING A
17 VEHICLE, IF I'M RIDING A BICYCLE, ANYTHING I DO WILL REMOVE
18 THAT RESIDUE. SO I CAN'T SAY WHAT HAPPENED TO THAT RESIDUE
19 IF IT WAS THERE.

20 Q. WELL, THE PURPOSE OF THE TEST IS TO DETERMINE IF
21 THERE ARE ELEVATED LEVELS OF THESE THREE ELEMENTS, IS IT NOT?

22 A. THAT'S CORRECT.

23 Q. THAT'S WHAT YOU'RE AFTER.

24 A. THAT'S WHAT I'M AFTER.

25 Q. AND YOU WOULD EXPECT TO SEE ELEVATED LEVELS OF ALL

1 THREE ELEMENTS IF SOMEONE HAD FIRED A HANDGUN WITHIN -- AND
2 THE TEST WAS TAKEN WITHIN THE TWO HOURS AND NOTHING ELSE WAS
3 DONE TO REMOVE THE GUNSHOT RESIDUE.

4 A. IF NOTHING REMOVED THE GUNSHOT RESIDUE, YES, I WOULD
5 EXPECT TO SEE IT.

6 Q. AND, MS. STONER, REFERRING TO STATE'S EXHIBIT NUMBER
7 19, THAT'S A 357 REVOLVER.

8 A. I'LL TAKE YOUR WORD FOR IT.

9 Q. DO YOU WANT TO LOOK AT IT?

10 A. UH-HUH.

11 Q. DO YOU AGREE WITH ME IT'S A 357?

12 A. YES, SIR.

13 Q. OKAY. AND THAT TYPE OF WEAPON WOULD, WHEN FIRED,
14 CREATE -- I BELIEVE IT'S ALSO CALLED A BLOWBACK, IS IT NOT?

15 A. WE DON'T REFER TO IT AS BLOWBACK, BUT I HAVE HEARD
16 IT REFERRED TO AS THAT. IT WILL PRODUCE GUNSHOT RESIDUE IN
17 THE CLOUD.

18 Q. GUNSHOT RESIDUE.

19 A. YEAH.

20 Q. OKAY. AND THE GUNSHOT RESIDUE WOULD ESCAPE WHEN THE
21 BULLET IS FIRED FROM AROUND THE CYLINDER?

22 A. FROM THE CYLINDER GAP, THE TRIGGER GUARD, AND FROM
23 THE BARREL OF THE GUN.

24 Q. OKAY. AND NORMALLY WOULD LIGHT ON THE PERSON'S
25 HAND.

1 A. IT WILL DEPOSIT ON ANYTHING IN THAT AREA. SO IF THE
2 PERSON'S HAND IS ON THAT GUN, IT SHOULD DEPOSIT ON THAT
3 PERSON'S HAND.

4 Q. OKAY. AND YOU INDICATED IN THIS PARTICULAR
5 CIRCUMSTANCE THAT THE TWO MICROSCOPIC ROUND LEAD PARTICLES
6 WERE FOUND ON THE PALM---

7 A. THAT'S CORRECT.

8 Q. ---OF KEVIN MERCER'S HAND.

9 A. YES, ON THE LEFT PALM.

10 Q. THE TEST THAT WAS DONE ON THE BACK OF HIS HAND
11 DIDN'T -- DIDN'T MEET THE THRESHOLD.

12 A. THAT'S CORRECT.

13 Q. NO FURTHER TESTING WAS DONE.

14 A. THAT'S CORRECT.

15 Q. SO YOU CANNOT SAY THAT THERE WAS G.S.R. ON THE BACK
16 OF HIS HAND.

17 A. I CANNOT BECAUSE IT DID NOT MEET THE THRESHOLD.

18 Q. ALL RIGHT. NOW, MS. STONER, THE TWO ROUND LEAD
19 MICROSCOPIC PARTICLES THAT YOU FOUND ON THE PALM---

20 A. UH-HUH.

21 Q. ---YOU INDICATED THESE WERE EXTREMELY SMALL TO THE
22 EXTENT THAT YOU -- THE HUMAN EYE CAN'T SEE THEM. IS THAT
23 RIGHT?

24 A. THAT'S CORRECT.

25 Q. THEY'RE MICROSCOPIC.

1 A. YES, THEY ARE.

2 Q. OKAY. AND THESE PARTICLES CAN -- THEY CAN BE
3 TRANSFERRED, CAN THEY NOT?

4 A. YES, THEY CAN.

5 Q. THEY CAN BE TRANSFERRED FROM ONE PERSON TO ANOTHER?

6 A. POTENTIALLY, YES.

7 Q. THEY COULD BE TRANSFERRED FROM EQUIPMENT THAT WAS IN
8 SOMEONE'S HAND SUCH AS A FIREARM?

9 A. A FIREARM, YES, IF IT HAS BEEN FIRED -- IF IT HAS
10 BEEN FIRED AND NOT CLEANED, YOU CAN PICK UP GUNSHOT RESIDUE
11 OFF OF THAT WEAPON.

12 Q. OKAY.

13 A. IF IT HAS BEEN CLEANED THOROUGHLY, YOU CAN'T PICK IT
14 UP BECAUSE IT'S NO LONGER THERE.

15 Q. OKAY. LET'S ASSUME IT HAD NOT BEEN CLEANED
16 THOROUGHLY.

17 A. OKAY.

18 Q. IT COULD BE TRANSFERRED, WHETHER THE GUN IS FIRED OR
19 NOT.

20 A. YES.

21 Q. IT COULD BE TRANSFERRED FROM ONE HAND -- FROM THE
22 GUN TO ONE PERSON'S HAND, COULD IT NOT?

23 A. YES.

24 Q. IT COULD BE TRANSFERRED FROM THAT PERSON'S HAND TO
25 ANOTHER PERSON'S HAND.

1 A. YOU CAN BUT---

2 Q. ISN'T THAT POSSIBLE?

3 A. ---NOT NORMALLY IS IT GOING TO TRANSFER THAT FAR,
4 BUT IT CAN BE. I CAN'T SAY YOU CAN'T, SO, YES.

5 Q. YOU CAN'T SAY YOU CAN'T.

6 A. THAT'S CORRECT.

7 Q. MS. STONER, REFERRING TO THE TEST THAT WAS DONE ON
8 MARCUS THOMPSON'S SWABS---

9 A. OKAY. YES.

10 Q. ---DID YOU FIND LEAD IN THOSE SAMPLES ON HIS PALM
11 AND ON THE BACK OF HIS HAND?

12 A. ON MARCUS THOMPSON?

13 Q. YES, MA'AM.

14 A. THERE WAS SOME PRESENT BUT NOT ANYTHING NEAR THE
15 THRESHOLD THAT WE USE TO CALL IT A POSITIVE.

16 Q. DID YOU RUN ANY -- DID YOU RUN THE S.E.M. TEST TO
17 DETERMINE IF THOSE WERE ROUND PARTICLES?

18 A. NO, BECAUSE I DIDN'T -- I DON'T EVEN KNOW IF THEY
19 WERE PARTICLES OR WHAT THEY WERE BECAUSE THIS IS THE
20 I.C.P.M.S. WHICH LOOKS AT LEVELS OF METALS PRESENT. SINCE
21 THEY WEREN'T NEAR OUR THRESHOLD, WE DON'T TAKE IT ANY FURTHER
22 TO LOOK AT IT.

23 Q. SO YOU DIDN'T LOOK TO SEE IF THOSE WERE ROUND
24 PARTICLES.

25 A. NO.

1 Q. HOW ABOUT THE SAMPLE THAT WAS TAKEN FROM MR. DAVIS?

2 A. MR. WHO?

3 Q. DAVIS.

4 A. TRACY DAVIS?

5 Q. YES, MA'AM. DID THAT HAVE LEAD ON IT?

6 A. THERE WAS A FEW COUNTS OF LEAD BUT NOTHING NEAR OUR
7 THRESHOLD THAT WARRANTS THAT WE TAKE IT ANY FURTHER.

8 Q. WAS AN S.E.M. TEST RUN?

9 A. NO.

10 Q. HOW ABOUT MR. MAGWOOD?

11 A. SAME THING FOR HIM. THERE WAS SOME LEAD THERE WHICH
12 WE SEE ON PEOPLES' HANDS BUT NOTHING NEAR THE THRESHOLD THAT
13 MAKES US THINK IT'S ELEVATED.

14 Q. GOING BACK TO MR. THOMPSON, HOW ABOUT THE LEVELS OF
15 BARIUM ON HIS SAMPLE? WAS THAT ELEVATED?

16 A. ON THOMPSON? NOT REALLY, NO.

17 Q. YOU SAY IT WASN'T---

18 A. ON THE RIGHT PALM THERE WAS A LITTLE BIT OF BARIUM
19 THERE, BUT THAT'S JUST THE LEAST INDICATIVE ELEMENT THAT WE
20 LOOK FOR. SO IF WE HAVE ELEVATED BARIUM, WE DON'T -- IF IT
21 DOESN'T MEET THE OTHER REQUIREMENTS, WE DON'T DO ANYTHING
22 ELSE WITH IT.

23 Q. THAT WAS ABOVE THE THRESHOLD, WAS IT NOT?

24 A. JUST FOR THE BARIUM BUT IT DIDN'T MEET -- TO BE
25 ABOVE THE THRESHOLD, ALL THREE HAVE TO BE ABOVE THE

1 THRESHOLD. SO IT WASN'T ABOVE THE THRESHOLD IN COMBINATION
2 WITH THE OTHER TWO.

3 Q. BEFORE YOU CAN SAY IT'S GUNSHOT RESIDUE, ALL THREE
4 LEVELS HAVE TO BE ABOVE THE THRESHOLD.

5 A. ALL THREE LEVELS HAVE TO BE ABOVE THE THRESHOLD
6 BEFORE I CAN TAKE IT ANY FURTHER AND LOOK FOR GUNSHOT
7 RESIDUE.

8 Q. HOW MUCH ROUND LEAD PARTICLES ARE NECESSARY TO
9 INDICATE THAT A PARTICULAR INDIVIDUAL FIRED A WEAPON?

10 A. OUR POLICY IS WE HAVE TO HAVE TWO PARTICLES TO
11 ACTUALLY CALL IT A POSITIVE.

12 Q. TWO.

13 A. BECAUSE WE TRY TO RULE OUT TRANSFER FROM ONE
14 PARTICLE AND WE LOOK FOR TWO PARTICLES. WE -- NORMALLY WE
15 SEE MORE OR WE SEE LESS. IT DOESN'T -- IT DEPENDS. BUT TWO
16 IS OUR CUT-OFF THAT WE HAVE TO HAVE TO CALL IT.

17 Q. TO CALL IT POSITIVE FOR LEAD.

18 A. TO CALL IT POSITIVE FOR LEAD. IF WE HAVE TO CALL IT
19 POSITIVE FOR GUNSHOT RESIDUE, I HAVE TO HAVE A GUNSHOT
20 RESIDUE PARTICLE PLUS ANOTHER SUPPORTING PARTICLE TO CALL
21 THAT.

22 Q. YOU ALSO HAVE TO HAVE BARIUM AND ANTIMONY.

23 A. FOR THE GUNSHOT RESIDUE PARTICLE, IT HAS TO BE
24 BARIUM, ANTIMONY, AND LEAD IN ONE PARTICLE.

25 Q. MS. STONER, CAN YOU CONCLUSIVELY SAY THAT THE LEAD

1 ON KEVIN MERCER'S HANDS CAME FROM GUNSHOT RESIDUE?

2 A. AS I STATED EARLIER, I CANNOT. I CAN SAY THAT IT
3 DOESN'T LOOK LIKE THE ENVIRONMENTAL CONTAMINATIONS THAT I'VE
4 SEEN, BUT I CAN'T TELL YOU A HUNDRED PERCENT THAT IT IS FROM
5 GUNSHOT RESIDUE. IT'S CONSISTENT WITH WHAT I SEE WHEN I SEE
6 GUNSHOT RESIDUE, BUT IT WOULD BE SCIENTIFICALLY AN ERROR FOR
7 ME TO SAY THAT IT IS WHEN IT DOESN'T MEET MY REQUIREMENTS TO
8 CALL IT GUNSHOT RESIDUE, BUT IT IS SOMETHING THAT WE SEE.
9 WHEN I HAVE GUNSHOT RESIDUE, WE HAVE ROUND LEAD WITH IT ALL
10 THE TIME, AND THESE PARTICLES LOOK LIKE THE PARTICLES THAT I
11 SEE WHEN I LOOK AT GUNSHOT RESIDUE.

12 Q. AND THESE PARTICLES CAN BE TRANSFERRED.

13 A. YES, THEY CAN BE TRANSFERRED.

14 Q. MS. STONER, DO YOU KNOW WHETHER THERE WERE ANY
15 GLOVES INVOLVED IN THIS CASE?

16 A. ANY GLOVES?

17 Q. YES, MA'AM.

18 A. AS IN TO COLLECT THE KIT OR FROM THE CASE ITSELF?

19 Q. DID YOU ANALYZE ANY GLOVES?

20 A. I DID NOT ANALYZE ANY GLOVES.

21 Q. WERE YOU GIVEN ANY GLOVES TO ANALYZE?

22 A. I WAS NOT.

23 Q. CAN GLOVES BE TESTED FOR GUNSHOT RESIDUE?

24 A. YES, THEY CAN.

25 Q. AND YOU WERE NEVER PRESENTED WITH ANY GLOVES TO

1 ANALYZE.

2 A. I WAS NEVER GIVEN ANY GLOVES TO ANALYZE.

3 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
4 MOMENT, YOUR HONOR. THOSE ARE ALL THE QUESTIONS I HAVE, YOUR
5 HONOR.

6 MR. HUBBARD: NO FOLLOW-UP, YOUR HONOR. THE STATE
7 CALLS---

8 THE COURT: YOU CAN STEP DOWN.

9 THE WITNESS: THANK YOU.

10 MR. GRAHAM: ERNESTINE MCDANIELS.

11 ERNESTINE MCDANIELS, AFTER BEING DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
14 FIRST AND LAST NAMES.

15 THE WITNESS: OKAY. MY NAME IS ERNESTINE FAVOR
16 MCDANIELS. E-R-N-E-S-T-I-N-E M-C-D-A-N-I-E-L-S.

17 DIRECT EXAMINATION

18 BY MR. GRAHAM:

19 Q. MS. MCDANIELS, WHERE ARE YOU EMPLOYED?

20 A. LEXINGTON COUNTY SHERIFF'S DEPARTMENT, DETENTION
21 CENTER PORTION.

22 Q. AND WHAT IS YOUR RANK THERE?

23 A. I'M A LIEUTENANT.

24 Q. HOW LONG HAVE YOU WORKED WITH THE LEXINGTON COUNTY
25 SHERIFF'S DEPARTMENT IN THE DETENTION CENTER AREA?

1 A. TWENTY-ONE YEARS.

2 Q. AS PART OF YOUR JOB, ARE YOU THE KEEPER OF THE
3 RECORDS FOR THE LEXINGTON COUNTY DETENTION CENTER?

4 A. YES, I AM.

5 Q. CAN YOU EXPLAIN WHAT A BOOKING SHEET IS?

6 A. THE BOOKING SHEET IS INFORMATION GENERATED FROM
7 QUESTIONS ASKED ON THE INMATES THAT COME TO JAIL.

8 Q. AND HOW IS THAT INFORMATION KEPT TRACK OF?

9 A. THEY ASK THE QUESTIONS AND THEY'RE ENTERED IN THE
10 COMPUTER.

11 Q. SO THERE'S A BOOKING OFFICER ASKING THE QUESTIONS OF
12 THE INMATE SUSPECT WHO IS BEING BROUGHT IN?

13 A. YES, AND THEY ENTER THAT INFORMATION BASED ON THE
14 ANSWERS THAT THEY GIVE THEM.

15 Q. AND WHEN THEY ENTER THAT INFORMATION IN THE
16 COMPUTER, IS THAT INFORMATION STORED?

17 A. IT'S STORED IN THE COMPUTER, YES.

18 Q. AND IS IT KEPT IN THE REGULAR COURSE OF BUSINESS
19 WITH THE DETENTION CENTER?

20 A. YES, IT IS.

21 Q. AND ARE YOU THE CUSTODIAN OF THOSE RECORDS?

22 A. YES, I AM.

23 Q. AND DID I ASK YOU TO BRING A BOOKING SHEET WITH YOU
24 TODAY?

25 A. YES, YOU DID.

1 Q. WHOSE BOOKING SHEET DID YOU BRING WITH YOU?

2 A. KEVIN MERCER.

3 Q. AND THAT'S HIS BOOKING SHEET FROM BEING BROUGHT IN
4 ON THE MURDER CHARGE THAT HE HAS ON MAY 17TH OF 2002?

5 A. THAT'S CORRECT.

6 Q. WHAT, IF ANY, INFORMATION DID MR. MERCER SUPPLY AS
7 TO WHETHER HE WAS LEFT OR RIGHT HANDED?

8 A. HE STATED LEFT HANDED.

9 MR. GRAHAM: NO FURTHER QUESTIONS. PLEASE ANSWER
10 ANY QUESTIONS THE DEFENSE HAS.

11 CROSS-EXAMINATION

12 BY MR. LITTLEJOHN:

13 Q. GOOD MORNING, MS. MCDANIELS.

14 A. GOOD MORNING.

15 Q. YOU BROUGHT KEVIN MERCER'S BOOKING SHEET?

16 A. YES, I DID.

17 Q. AND WHAT IS THE DATE ON THAT?

18 A. MAY 17TH, 2002.

19 Q. OKAY. WERE YOU ASKED TO BRING THE BOOKING SHEET FOR
20 MARCUS THOMPSON?

21 A. YES, I WAS.

22 Q. DID YOU BRING IT?

23 A. I DID.

24 Q. DO YOU HAVE IT WITH YOU?

25 A. NO, SIR.

1 Q. OKAY. DID THE SOLICITOR ASK YOU TO BRING IT UP HERE
2 ON THE STAND WITH YOU?

3 A. NO.

4 Q. INDULGE ME JUST ONE MOMENT, YOUR HONOR. LIEUTENANT
5 MCDANIELS, I SHOW YOU THIS DOCUMENT AND ASK YOU IF YOU CAN
6 IDENTIFY IT, THAT COPY.

7 A. THIS IS THE BOOKING SHEET ON MARCUS THOMPSON.

8 Q. OKAY. WAS THAT THE SAME -- WAS THAT ENTERED THE
9 SAME DAY AS THE BOOKING SHEET FOR KEVIN MERCER?

10 A. YES, IT WAS.

11 MR. LITTLEJOHN: OKAY. YOUR HONOR, I'D MOVE TO
12 INTRODUCE THAT AS I BELIEVE DEFENSE EXHIBIT 3.

13 MR. GRAHAM: NO OBJECTION, YOUR HONOR.

14 THE COURT: IT'S ADMITTED.

15 (DEFENDANT'S EXHIBIT 3 WAS RECEIVED IN EVIDENCE.)

16 MR. LITTLEJOHN: THAT'S ALL I HAVE FOR LIEUTENANT
17 MCDANIELS.

18 MR. GRAHAM: YOUR HONOR, I WOULD ASK THAT THE
19 WITNESS BE EXCUSED.

20 THE COURT: YOU'RE EXCUSED---

21 MR. LITTLEJOHN: NO OBJECTION.

22 THE COURT: ---MA'AM.

23 MR. GRAHAM: SHE MAY BE RECALLED ON ANOTHER MATTER,
24 YOUR HONOR, BUT WE WOULD RESERVE THAT RIGHT.

25 MR. HUBBARD: YOUR HONOR, THE STATE CALLS TERRY

1 BROWN TO THE STAND.

2 TERRY BROWN, AFTER BEING DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
5 FIRST AND LAST FOR THE RECORD, PLEASE.

6 THE WITNESS: TERRY BROWN. T-E-R-R-Y B-R-O-W-N.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q. MR. BROWN, I SEE YOU HAVE AN ORANGE JUMPSUIT ON.
10 HAVE YOU BEEN STAYING AT THE LEXINGTON COUNTY DETENTION
11 CENTER?

12 A. YES, SIR.

13 Q. BUT ARE YOU CURRENTLY SERVING A SENTENCE?

14 A. A THREE-YEAR SENTENCE AT ALLENDALE CORRECTIONAL
15 FACILITY.

16 Q. OKAY. SO YOU'RE -- ACTUALLY YOUR REAL RESIDENCE
17 RIGHT NOW IS WITH THE DEPARTMENT OF CORRECTIONS.

18 A. YES, SIR.

19 Q. TERRY, I WANT TO JUMP RIGHT INTO YOUR RAP SHEET IF
20 WE CAN. ALL RIGHT? YOU HAVE A BURGLARY THIRD AND POSSESSION
21 OF COCAINE FROM '94?

22 A. YES, SIR.

23 Q. FAILURE TO STOP FOR A BLUE LIGHT IN '96.

24 A. YES, SIR.

25 Q. POSSESSION OF CRACK FROM 2001?

1 A. YES, SIR.

2 Q. AND YOU'RE CURRENTLY SERVING THREE YEARS ON A BURG
3 SECOND, AGGRAVATED ASSAULT, AND A ROBBERY FROM 2005.

4 A. YES, SIR.

5 Q. YOU'RE IN ORANGE TODAY BECAUSE YOU'VE BEEN BROUGHT
6 OVER HERE FOR TESTIMONY?

7 A. YES, SIR.

8 Q. NOW, BACK IN DECEMBER OF '03 AND JANUARY OF '04,
9 WHERE WERE YOU RESIDING?

10 A. LEXINGTON COUNTY.

11 Q. AT THE DETENTION CENTER?

12 A. YES, SIR.

13 Q. DID YOU HAVE ANY ROOMMATES?

14 A. I HAD TWO.

15 Q. WHO WERE YOUR ROOMMATES?

16 A. DARYL WILLIAMS AND KEVIN MERCER.

17 Q. DID AT ANY TIME YOU HAVE A CONVERSATION OR DID KEVIN
18 MERCER HAVE A CONVERSATION WITH YOU ABOUT A MURDER?

19 A. YES, SIR.

20 Q. WHO WAS PRESENT DURING THAT CONVERSATION?

21 A. ME, MR. MERCER, AND DARYL WILLIAMS.

22 Q. CAN YOU TELL ME WHAT TIME OF DAY OR NIGHT THIS TOOK
23 PLACE?

24 A. IT WAS LATE ONE NIGHT, ABOUT 11 OR 12:00.

25 Q. DO YOU KNOW IF DARYL WILLIAMS WAS AWAKE OR ASLEEP?

1 A. THE LIGHTS WAS OUT; I COULDN'T RECALL.

2 Q. DID HE PARTICIPATE IN THE CONVERSATION AT ALL?

3 A. NO, HE DID NOT.

4 Q. CAN YOU TELL ME AND THIS JURY WHAT KEVIN MERCER TOLD
5 YOU THAT NIGHT?

6 A. HE TOLD ME A GUY CAME TO HIM LOOKING FOR -- TO GET A
7 TRUCK, AN S.U.V., AND ON THAT NIGHT HE SAID THE GUY CAME TO
8 HIM, YOU KNOW, "DO YOU KNOW HOW TO GET A TRUCK?" SO KEVIN
9 SAID, "I THINK I KNOW WHERE ONE'S AT." SO THEY WENT RIDING
10 AROUND AND RIDING AROUND, AND THEY PARKED AT AN APARTMENT
11 COMPLEX. I THINK IT WAS AN APARTMENT COMPLEX. HE SAID A
12 COMPLEX.

13 Q. OKAY.

14 A. HE SAID HE RODE UP AND HE PARKED AND WAITED. SO
15 AFTER HE WAITED, WHOEVER WAS SUPPOSED TO COME AND GOT IT CAME
16 WITH THE TRUCK. THEY GOT OUT AND APPROACHED THE GUY AND
17 ASKED HIM FOR THE KEYS; YOU KNOW WHAT I'M SAYING? "LET ME
18 GET THE KEYS TO THE TRUCK." HE TOLD ME THE GUY GAVE HIM THE
19 KEYS TO THE TRUCK, AND HE TOLD THE GUY TO GET ON HIS KNEES HE
20 SAID WHEN HE GOT -- WHEN HE GOT THE KEYS. SO THE GUY GOT ON
21 HIS KNEES, AND HIS OTHER PARTNER GOT IN ON THE PASSENGER
22 SIDE. HE TURNED AROUND AND SHOT THE GUY IN THE HEAD AND GOT
23 IN THE TRUCK.

24 Q. SO LET ME BACK YOU UP. SOMEBODY COMES TO KEVIN
25 MERCER ASKING ABOUT AN S.U.V.?

1 A. YEAH.

2 Q. AND WHAT IS KEVIN'S RESPONSE AS HE RELAYS THE STORY
3 TO YOU?

4 A. HE WENT, "YEAH, I'LL TAKE YOU TO GO GET A TRUCK."

5 Q. DID HE SAY HE KNEW WHERE ONE WAS---

6 A. YEAH.

7 Q. ---OR HE WAS GOING TO LOOK FOR ONE?

8 A. HE KNEW WHERE ONE WAS; HE SAW IT.

9 Q. AND THEN WHAT DID HE SAY? HE -- THEY RODE AROUND?

10 A. THEY RODE AROUND.

11 Q. DID HE SAY WHAT THEY WERE RIDING AROUND IN?

12 A. ONE OF HIS CARS. HE SAID HE HAD QUITE A FEW CARS;
13 IT WAS ONE OF HIS CARS. I WANT TO SAY EITHER A BONNEVILLE OR
14 A CADILLAC BECAUSE THEM ARE THE ONLY TWO CARS HE WAS TALKING
15 ABOUT HE HAD.

16 Q. OKAY. AND WHAT DID HE SAY WHEN HE SAW THIS TRUCK OR
17 THIS S.U.V.?

18 A. HE SAID, "THAT'S IT. THAT'S THE ONE RIGHT THERE."
19 HE SAID THEY APPROACHED THE GUY, AND WHEN THE GUY GOT OUT,
20 THEY APPROACHED THE GUY, ASKED HIM, "LET ME GET THE KEYS."
21 TOLD THE GUY TO GET ON HIS KNEES.

22 Q. DID HE TELL YOU WHO HAD A WEAPON?

23 A. HE SAID HE'S THE ONLY ONE THAT HAD A GUN.

24 Q. KEVIN MERCER SAID HE WAS THE ONLY ONE---

25 A. THAT'S RIGHT.

1 Q. ---THAT HAD A GUN. HE TAKES THE KEYS FROM THE GUY?

2 A. UH-HUH.

3 Q. WHERE IS HIS PARTNER?

4 A. GETTING IN THE TRUCK.

5 Q. THEN WHAT DOES KEVIN MERCER DO?

6 A. TELL THE GUY TO GET ON HIS KNEES. WHEN THE GUY GOT

7 ON HIS KNEES, HE SHOT HIM IN THE BACK OF THE HEAD, AND THEN

8 HE LOOKED AT HIS PARTNER AND SAID, "NOW YOU'RE DOWN."

9 Q. "NOW YOU'RE DOWN"?

10 A. YOU'RE DOWN. THAT MEANS YOU'RE WITH ME ON THIS,

11 REGARDLESS OF WHAT YOU SAY. SO IF I GO DOWN, YOU GO DOWN.

12 Q. WE'RE IN THIS TOGETHER?

13 A. EXACTLY.

14 Q. HE SAID THAT TO HIS PARTNER.

15 A. YEAH.

16 Q. DID HE TELL YOU WHERE THEY WERE HEADING?

17 A. HE SAID ATLANTA.

18 Q. ATLANTA?

19 A. YEAH, A.T.L. IT'S A FREAK NEAK.

20 Q. WHAT IS FREAK NEAK?

21 A. IT'S A WEEKEND WITH A BUNCH OF --- COLLEGE AND HIGH

22 SCHOOL KIDS GET TOGETHER AND JUST HAVE A WILD TIME.

23 Q. DID HE TELL YOU IF HE MADE IT?

24 A. NO, SAID -- SAID HE CAUGHT A FLAT TIRE ON THE

25 INTERSTATE, AND WHILE HE HAD THE FLAT TIRE, HE SAID THE COPS

1 GOT BEHIND HIM.

2 Q. OKAY. AND THAT'S WHEN HE WAS ARRESTED?

3 A. YEAH.

4 Q. NOW, WHEN YOU WERE IN THE SAME CELL WITH KEVIN
5 MERCER, HAD ANYBODY ASKED YOU TO TALK TO KEVIN MERCER ABOUT
6 THIS?

7 A. NO.

8 Q. DID YOU EVEN KNOW INITIALLY WHAT HE WAS IN THAT CELL
9 FOR?

10 A. NO, NOT UNTIL THAT NIGHT.

11 Q. DO YOU KNOW IF THE FACTS HE TOLD YOU ARE TRUE OR NOT
12 TRUE?

13 A. STILL DON'T KNOW TO THIS DAY.

14 Q. DO YOU KNOW THE FACTS OF THIS CASE?

15 A. NO.

16 Q. HAS ANYBODY EVER TOLD YOU WHAT HAPPENED IN THIS
17 CASE?

18 A. NO, THEY HAVEN'T.

19 Q. ALL YOU KNOW IS WHAT YOU WERE TOLD?

20 A. THAT'S IT.

21 Q. AND WHO IS THE PERSON THAT TOLD YOU THESE THINGS?

22 A. KEVIN MERCER.

23 Q. AT SOME POINT DID YOU TALK TO MY OFFICE ABOUT THIS?

24 A. YES.

25 Q. DID YOU ALSO TALK TO SOME OTHER PEOPLE THAT CAME TO

1 YOU IN ALLENDALE?

2 A. YES, I DID.

3 Q. WERE THEY WITH MY OFFICE?

4 A. NO, THEY WERE NOT.

5 Q. DO YOU KNOW WHO THEY WERE WITH?

6 A. SOME INVESTIGATE -- I DON'T KNOW.

7 Q. DID KEVIN MERCER HAVE ANY OF HIS PAPERWORK IN HIS
8 CELL AS TO -- AS FAR AS THESE CHARGES?

9 A. NO. THE ONLY THING HE HAD IN HIS CELL WAS AN
10 INVENTION HE HAD MADE UP.

11 Q. A WHAT?

12 A. AN INVENTION.

13 Q. INVENTION.

14 A. YEAH. THAT'S THE -- HE GOT A PATENT INVENTION HE
15 GOT MADE, SO THAT'S THE ONLY KIND OF PAPERWORK HE HAD IN
16 THERE.

17 Q. JUST THAT PAPERWORK.

18 A. THE ONLY PAPERWORK.

19 Q. RIGHT NOW DO YOU HAVE ANY PENDING CHARGES ON YOU?

20 A. NO, SIR.

21 Q. WERE ANY DEALS EVER MADE ON YOUR CHARGES PERTAINING
22 TO YOUR TESTIMONY ON THIS CASE?

23 A. NO, SIR.

24 Q. BACK WHEN YOU PLED GUILTY OR WERE CONVICTED AND GOT
25 THAT THREE-YEAR SENTENCE, HAD ANYONE FROM MY OFFICE EVER

1 DISCUSSED THIS MURDER CASE WITH YOU?

2 A. NO, SIR.

3 Q. WHEN -- WERE YOU ALREADY IN PRISON ON THAT CHARGE
4 WHEN YOU TALKED WITH US?

5 A. YES, SIR.

6 Q. EVERYTHING YOU HAD PENDING WAS DISPOSED OF.

7 A. THAT'S RIGHT. EXACTLY.

8 Q. YOU HAD ALREADY BEEN SENTENCED.

9 A. THAT'S RIGHT.

10 Q. AND THEN WE TALKED TO YOU?

11 A. YES, SIR.

12 Q. WHEN IS YOUR MAX-OUT DATE?

13 A. FEBRUARY OF NEXT YEAR.

14 Q. OKAY. BEG THE COURT'S INDULGENCE. JUST TO BE CLEAR
15 ON THIS, WHO DID KEVIN MERCER SAY SHOT THE MAN IN THE BACK OF
16 THE HEAD?

17 A. HE SAID HE DID IT HISSELF.

18 Q. KEVIN SAID HE DID IT.

19 A. THAT'S RIGHT.

20 MR. HUBBARD: NO FURTHER QUESTIONS AT THIS TIME,
21 YOUR HONOR.

22 CROSS-EXAMINATION

23 BY MR. LITTLEJOHN:

24 Q. MR. BROWN, I DIDN'T CATCH IT ALL. WHAT ALL HAVE YOU
25 BEEN CONVICTED OF?

1 MR. HUBBARD: YOUR HONOR, THAT'S AN IMPROPER
2 QUESTION. HE'S GOT A -- AS YOUR HONOR KNOWS, THERE'S A
3 SPECIFIC WAY TO ASK IT.

4 THE COURT: SUSTAINED.

5 MR. LITTLEJOHN: HAVE YOU GOT HIS RAP SHEET?

6 MR. HUBBARD: IT'S RIGHT THERE IF YOU WANT IT, BUT
7 I'D LIKE IT BACK.

8 BY MR. LITTLEJOHN:

9 Q. MR. BROWN, YOU WENT THROUGH IT SO FAST THAT I DIDN'T
10 QUITE CATCH IT, BUT YOU WERE CONVICTED OF BURGLARY THIRD AND
11 POSSESSION OF COCAINE IN JUNE OF 1994?

12 A. YES, SIR.

13 Q. FAILURE TO STOP FOR A BLUE LIGHT IN JUNE OF '96?

14 A. YES, SIR.

15 Q. POSSESSION OF CRACK COCAINE IN APRIL OF 2001?

16 A. YES, SIR.

17 Q. THEN YOU WERE CONVICTED OF BURGLARY SECOND AND
18 AGGRAVATED ASSAULT AND BATTERY IN MAY OF 2005?

19 A. YES, SIR.

20 Q. AND YOU WERE CONVICTED OF ROBBERY IN SEPTEMBER OF
21 '05.

22 A. YES, SIR.

23 Q. OKAY. AND THEN I BELIEVE MR. HUBBARD ASKED YOU THAT
24 YOU PRESENTLY ARE SERVING A THREE-YEAR SENTENCE?

25 A. YES, SIR.

1 Q. THAT'S FOR BURGLARY SECOND, AGGRAVATED ASSAULT, AND
2 ROBBERY.

3 A. YES, SIR.

4 Q. THOSE ARE THE ONES WE JUST WENT OVER.

5 A. YES, SIR.

6 Q. OKAY. NOW, MR. BROWN, YOU SAY -- WHEN DID THIS
7 CONVERSATION THAT YOU'VE TOLD US ABOUT -- WHEN DID THIS TAKE
8 PLACE?

9 A. DECEMBER OF 2003 -- OF, YEAH, 2003.

10 Q. DECEMBER 2003.

11 A. YEAH.

12 Q. OKAY. DID YOU GO TO ONE OF THE C.O.'S AT THAT TIME?

13 A. NO, SIR.

14 Q. DID YOU CALL FOR ONE OF THE INVESTIGATORS OR ONE OF
15 THE DETECTIVES TO TALK TO YOU?

16 A. NO, SIR.

17 Q. OKAY. YOU DIDN'T REPORT IT TO ANYBODY.

18 A. NO, SIR.

19 Q. DID YOU TAKE ANY NOTES?

20 A. NO, SIR.

21 Q. YOU DIDN'T WRITE IT DOWN.

22 A. NO, SIR.

23 Q. AND IT WASN'T UNTIL FEBRUARY 17TH, 2006, THAT YOU
24 TOLD AN INVESTIGATOR ABOUT THIS. IS THAT RIGHT?

25 A. YES, SIR.

1 Q. OKAY. AND IN THE MEANTIME, THAT'S WHEN YOU CAUGHT
2 THE THREE-YEAR SENTENCE.

3 A. WELL, I CAUGHT IT BEFORE THAT BUT---

4 Q. CAUGHT IT BEFORE.

5 A. YEAH.

6 Q. THAT'S WHAT I SAID.

7 A. YEAH.

8 Q. IN THE MEANTIME---

9 A. YEAH.

10 Q. ---YOU CAUGHT THE THREE-YEAR SENTENCE.

11 A. EXACTLY.

12 Q. AND THAT WAS FOR ROBBERY.

13 A. YEAH.

14 Q. AGGRAVATED ASSAULT.

15 A. YEAH.

16 Q. AND BURGLARY.

17 A. YEAH.

18 Q. THREE YEARS IS ALL YOU GOT.

19 A. YEAH.

20 Q. OKAY. NOW, MR. BROWN, THIS CONVERSATION YOU RELATED
21 TO US, THIS HAD OCCURRED, IF MY ADDITION IS CORRECT, MORE
22 THAN TWO YEARS BEFORE YOU TOLD THE SOLICITOR'S OFFICE ABOUT
23 IT.

24 A. YES, SIR.

25 Q. IT'S BEEN MORE THAN TWO YEARS SINCE THE CONVERSATION

1 TOOK PLACE.

2 A. YES, SIR.

3 Q. AND YOU DECIDED OUT OF THE GOODNESS OF YOUR HEART TO
4 REPORT IT?

5 A. SOMEBODY ASKED ME ABOUT IT. I DIDN'T EVEN REPORT---

6 Q. SOMEBODY ASKED YOU ABOUT IT?

7 A. EXACTLY.

8 Q. UH-HUH.

9 A. I DIDN'T OFFER NO INFORMATION. SOMEBODY ASKED ME
10 ABOUT IT.

11 Q. OKAY. SO OUT OF THE GOODNESS OF YOUR HEART YOU
12 OFFERED IT UP.

13 A. WHY NOT? YES, SIR.

14 Q. WHY NOT? OKAY. MR. HUBBARD ASKED YOU ABOUT YOUR
15 MAX-OUT DATE. ARE YOU COMING UP FOR PAROLE?

16 A. NO, I MAX OUT FEBRUARY NEXT YEAR.

17 Q. ARE YOU COMING UP FOR PAROLE?

18 A. NO, SIR.

19 Q. NOT AT ALL.

20 A. AT ALL.

21 Q. OKAY. ARE YOU ELIGIBLE FOR PAROLE?

22 A. NO, I'M NOT. IT'S A SUSPENDED SENTENCE.

23 Q. SO, MR. BROWN, WHAT YOU'RE TELLING US IS THIS
24 CONVERSATION YOU HAD SOME TWO YEARS LATER YOU TOLD THE
25 SOLICITOR'S OFFICE ABOUT IT, AND IN THERE YOU RECOUNT THAT

1 KEVIN TOLD YOU THAT HE HAD MADE THIS GUY GET ON HIS KNEES?
2 MADE THE MAN GET ON HIS KNEES?

3 A. YES, SIR.

4 Q. AND SHOT HIM WHILE HE WAS STANDING UP OVER HIM?

5 A. YES, SIR.

6 Q. IS THAT WHAT YOU'RE TELLING US?

7 A. YES, SIR.

8 Q. AND YOU ALSO INDICATED THAT KEVIN SAID THE REASON
9 THEY HAD TO STOP IS BECAUSE HE HAD A FLAT TIRE?

10 A. THAT'S WHAT HE SAID.

11 Q. HOW LONG HAD YOU BEEN IN THE LEXINGTON COUNTY
12 DETENTION CENTER WHEN THIS CONVERSATION TOOK PLACE?

13 A. ABOUT THREE OR FOUR MONTHS.

14 Q. THREE OR FOUR MONTHS?

15 A. YEAH.

16 Q. OKAY. AND WHICH -- WHICH UNIT WERE YOU IN?

17 A. THIRD FLOOR.

18 Q. THIRD FLOOR.

19 A. UH-HUH.

20 Q. OKAY. THAT'S IN THE OLD PART OF THE JAIL.

21 A. YES, SIR.

22 Q. OKAY. AND IN THE THIRD FLOOR, ABOUT EVERY DAY YOU
23 AND THE OTHER GUYS GO OUT ON THE YARD, DON'T YOU?

24 A. YES, SIR.

25 Q. OKAY. EVERYBODY TALKS?

1 A. YES.

2 Q. NOT A WHOLE LOT TO TALK ABOUT EXCEPT OTHER PEOPLES'
3 BUSINESS, IS THERE?

4 A. THAT'S RIGHT.

5 Q. SO YOU TALKED TO OTHER PEOPLE ABOUT THEIR CASES.
6 YOU GUYS TALK ABOUT OTHER PEOPLES' CASES. DOESN'T---

7 A. THAT'S ONE---

8 Q. ---THAT HAPPEN?

9 A. EXCUSE ME. BUT THAT IS ONE THING -- YOU DON'T ASK
10 NOBODY ABOUT THEIR CASE. DO YOU KNOW WHAT I'M SAYING? I
11 MEAN, IF THEY OFFER IT, THEY OFFER IT. IF I WANT TO TELL
12 YOU, I'LL TELL YOU. IF I DON'T, I'M NOT GOING TO TELL YOU.

13 Q. OKAY. YOU HAVEN'T EVER TALKED TO SOME GUY ABOUT
14 SOMEBODY ELSE'S CASE?

15 A. YEAH.

16 Q. AND THEY TOLD YOU INFORMATION ABOUT THE OTHER GUY'S
17 CASE?

18 A. YEAH, THAT HAPPENS SOMETIMES.

19 Q. HAPPENS ALL THE TIME, DOESN'T IT?

20 A. YEAH, IT HAPPENS SOMETIMES.

21 Q. BECAUSE YOU AIN'T GOT ANYTHING ELSE TO DO, DO YOU?

22 A. THAT'S IT. EXACTLY.

23 MR. LITTLEJOHN: THAT'S ALL I HAVE FOR MR. BROWN,
24 YOUR HONOR.

25 MR. HUBBARD: THAT'S ALL WE HAVE, YOUR HONOR.

1 THE COURT: YOU CAN STEP DOWN, SIR. DO YOU WANT HIM
2 TO GO BACK THROUGH THERE?

3 MR. HUBBARD: YES, SIR, YOUR HONOR, HE CAN COME
4 THROUGH HERE. THE STATE CALLS AL STUCKEY.

5 MR. MYERS: DO YOU WANT US TO TELL YOU ABOUT THE
6 LUNCH THING FOR MEALS AND STUFF? CAN WE APPROACH?

7 THE COURT: YES, SIR. YOU CAN GO AHEAD AND SWEAR
8 HIM.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

10 AL STUCKEY, AFTER BEING DULY SWORN, TESTIFIED
11 AS FOLLOWS:

12 THE CLERK: STATE YOUR NAME, SPELLING YOUR FIRST AND
13 LAST, PLEASE.

14 THE WITNESS: AL STUCKEY. S-T-U-C-K-E-Y.

15 DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q. AGENT STUCKEY, WHERE DO YOU WORK?

18 A. I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
19 DIVISION BETTER KNOWN AS S.L.E.D.

20 Q. HOW LONG HAVE YOU BEEN THERE?

21 A. APPROXIMATELY EIGHT AND A HALF YEARS.

22 Q. WHAT SECTION DO YOU WORK IN?

23 A. I WORK IN THE LATENT PRINT CRIME SCENE DEPARTMENT.

24 Q. WHAT IS LATENT PRINT CRIME SCENE DEPARTMENT?

25 A. LATENT PRINT CRIME SCENE DEPARTMENT IS A DEPARTMENT

1 THAT HAS TWO FUNCTIONS. OUR FIRST FUNCTION IS A FIELD
2 FUNCTION IN THAT WE RESPOND TO CRIME SCENES THROUGHOUT THE
3 STATE OF SOUTH CAROLINA TO ASSIST LOCAL, STATE, AND FEDERAL
4 AUTHORITIES IN THE PROCESSING OF CRIME SCENES FOR THE PURPOSE
5 OF GATHERING FORENSIC EVIDENCE.

6 OUR SECOND FUNCTION IS THAT WE HAVE -- WE WORK IN
7 THE LAB IN THAT WE PROCESS EVIDENCE AND ANALYZE EVIDENCE FOR
8 LATENT FINGERPRINTS, FOOTWEAR, TIRE TREAD, BLOOD SPATTER
9 RECONSTRUCTION, FABRIC IMPRESSION ANALYSIS, AND GENERAL CRIME
10 SCENE RECONSTRUCTION.

11 Q. DO YOU HAVE SPECIAL TRAINING OR EDUCATION IN ORDER
12 TO DO YOUR JOB?

13 A. I HAVE A BACHELOR OF SCIENCE DEGREE FROM THE
14 UNIVERSITY OF SOUTH CAROLINA IN CRIMINAL JUSTICE. I HAVE
15 BEEN CERTIFIED AS BASIC LAW ENFORCEMENT FROM THE SOUTH
16 CAROLINA CRIMINAL JUSTICE ACADEMY. I'VE BEEN THROUGH THE
17 S.L.E.D. TWO-YEAR ON-THE-JOB TRAINING PROGRAM. I ALSO HAVE
18 APPROXIMATELY AN ADDITIONAL 152 HOURS TRAINING IN THE FIELD
19 OF LATENT PRINT PROCESSING AND CRIME SCENE EVALUATION.

20 Q. HAVE YOU EVER TESTIFIED IN A COURT OF LAW AS A
21 LATENT PRINT EXPERT?

22 A. I SURE HAVE; YES, SIR.

23 Q. FEDERAL AND STATE OR JUST STATE?

24 A. FEDERAL AND STATE.

25 Q. APPROXIMATE NUMBER OF TIMES YOU'VE BEEN IN COURT AS

1 AN EXPERT?

2 A. I'VE BEEN APPROXIMATELY 20 TIMES.

3 MR. HUBBARD: YOUR HONOR, AT THIS TIME I OFFER
4 SPECIAL AGENT AL STUCKEY AS A LATENT PRINT EXPERT.

5 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT. HE'S QUALIFIED AS AN EXPERT
7 IN LATENT PRINTS.

8 BY MR. HUBBARD:

9 Q. AGENT STUCKEY, I'M GOING TO SHOW YOU A BOX WHICH IS
10 STATE'S EVIDENCE 21 WITH A BAG OF BULLETS, STATE'S I.D. 22,
11 AND A REVOLVER, STATE'S 19. DO YOU RECOGNIZE THESE ITEMS?

12 A. YES, SIR, I DO.

13 Q. BASED ON YOUR PAPERWORK, DO YOU KNOW WHO BROUGHT
14 THAT -- THOSE ITEMS TO YOU OR DO YOU KNOW WHERE THEY CAME
15 FROM?

16 A. I RECEIVED THESE ITEMS DIRECTLY FROM NATHANIEL
17 COLLINS OF THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

18 Q. SO HE GAVE THEM TO YOU.

19 A. YES, SIR. I RECEIVED THEM FROM HIM IN THE S.L.E.D.
20 LOG-IN DEPARTMENT OF THE FORENSIC SERVICES LABORATORY AT
21 S.L.E.D. ON BROAD RIVER ROAD.

22 Q. WHAT, IF ANY, ANALYSIS DID YOU DO ON BOTH THE PISTOL
23 AND THOSE BULLETS?

24 A. I PROCESSED BOTH OF THESE ITEMS FOR LATENT
25 FINGERPRINTS.

1 Q. OKAY. AND IF YOU WOULD, JUST TELL US WHAT YOU DID.

2 A. WE SEPARATE THE ITEMS THAT WE PROCESS INTO TWO
3 CATEGORIES: POROUS AND NONPOROUS. YOUR POROUS ITEMS ARE
4 GOING TO BE THINGS LIKE PAPER, CARDBOARD, UNFINISHED WOOD,
5 THAT IS GOING TO LET WATER SEEP INTO IT. YOUR NONPOROUS
6 ITEMS ARE GOING TO BE LIKE METAL, GLASS, PLASTICS, THINGS
7 LIKE THAT. WHEN WE PROCESS THINGS LIKE METAL OR A GUN, WE
8 USE A PROCESS CALLED CYANOACRYLATE FUMING. DO I NEED TO
9 SPELL THAT?

10 COURT REPORTER: YES.

11 THE WITNESS: C-Y-A-N-O-A-C-R-Y-L-A-T-E. WHICH IS A
12 SCIENTIFIC NAME FOR SUPER GLUE. WE HEAT THE SUPER GLUE UP.
13 IT FORMS A CLOUD. THAT CLOUD ADHERES TO THE MOISTURE OF A
14 FINGERPRINT, AND NOT ONLY DOES IT MAKE A FINGERPRINT VISIBLE,
15 BUT IT ALSO MAKES IT A LOT -- A LOT LESS FRAGILE. SO WE'RE
16 ABLE TO DO A FEW MORE THINGS WITH IT ONCE WE -- ONCE WE'RE
17 DONE WITH THAT PROCESS. AFTER I FINISH FUMING THESE ITEMS, I
18 LOOK AT IT UNDER A CRIME SITE SCOPE WHICH IS BASICALLY AN
19 ALTERNATE LIGHT SOURCE LOOKING AT IT UNDER A NIGHT VISION
20 GOGGLE LIKE YOU'D SEE IN THE ARMY.

21 AFTER I FINISHED DOING THAT, I TRANSFERRED THE GUN
22 TO OUR S.L.E.D. PHOTOGRAPHY DEPARTMENT. AND AFTER I
23 RETRIEVED IT FROM THE S.L.E.D. PHOTOGRAPHY DEPARTMENT, I
24 PROCESSED THEM WITH BLACK POWDER AND THEN DID A LAST VISUAL
25 EXAM ON THESE ITEMS.

1 BY MR. HUBBARD:

2 Q. DID YOU FIND ANYTHING ON THE PISTOL?

3 A. I DID FIND ONE LATENT IMPRESSION ON THE PISTOL WHICH
4 I DID HAVE PHOTOGRAPHED BY OUR S.L.E.D. PHOTOGRAPHY
5 DEPARTMENT. UPON ANALYSIS OF THAT LATENT IMPRESSION, I
6 DETERMINED IT TO BE OF NO VALUE FOR IDENTIFICATION.

7 Q. HOW ABOUT THE BULLETS? DID YOU TEST THEM AS WELL?

8 A. I DID TEST THOSE, AND THERE WAS NO RIDGE DETAIL
9 DEVELOPED ON ANY OF THE BULLETS IN THIS CASE.

10 Q. SO NO FINGERPRINTS WERE FOUND AND NO FINGER -- ON
11 THE BULLETS AND NO FINGERPRINTS OF VALUE ON THE WEAPON?

12 A. THAT IS CORRECT. YES, SIR.

13 MR. HUBBARD: THAT'S ALL I HAVE, YOUR HONOR.

14 THE WITNESS: YOUR HONOR, MAY I GET A DRINK OF
15 WATER, PLEASE?

16 THE COURT: CERTAINLY.

17 THE WITNESS: THANK YOU. SORRY.

18 CROSS-EXAMINATION

19 BY MR. LITTLEJOHN:

20 Q. NO PROBLEM. GOOD MORNING, AGENT STUCKEY.

21 A. GOOD MORNING.

22 Q. AGENT STUCKEY, THE -- WHEN YOU TALK ABOUT LATENT
23 IMPRESSIONS OR LATENT PRINTS, YOU'RE TALKING ABOUT THE
24 IMPRESSION THAT'S CAUSED BY THE PADS OF THE FINGERS THAT ARE
25 LEFT ON NONPOROUS ITEMS?

1 A. YES, SIR.

2 Q. OKAY. AND ACTUALLY IN ORDER TO PICK UP A PRINT AND
3 IDENTIFY IT WITH SOMEONE, IT HAS TO BE A PRINT FROM A FINGER,
4 DOES IT NOT?

5 A. NO, SIR, IT COULD BE A---

6 Q. OR A TOE.

7 A. WELL, IT COULD BE A PRINT FROM THE -- ANYWHERE YOU
8 LOOK ON YOUR HANDS AND IT LOOKS LIKE A MOUNTAIN RANGE, WE CAN
9 IDENTIFY THAT AREA FROM ABOUT HERE ALL THE WAY UP TO THE
10 FINGERTIPS. SO ANYWHERE ON YOUR PALMS OR ON THE SOLES OF
11 YOUR FEET.

12 Q. OKAY. BUT THE THING THAT YOU'RE EXAMINING HAS TO
13 HAVE COME IN CONTACT WITH THE SKIN.

14 A. THAT IS CORRECT. YES, SIR.

15 Q. OKAY. SO IF SOMEONE WAS WEARING GLOVES, THAT
16 WOULDN'T LEAVE A LATENT IMPRESSION.

17 A. NO, SIR. THAT IS CORRECT.

18 Q. OKAY. AND IN THIS CASE YOU ONLY FOUND ONE -- WAS IT
19 A PRINT OR ACTUALLY A SMUDGE?

20 A. IT WAS -- THERE WAS RIDGE DETAIL THERE, BUT I COULD
21 NOT TELL -- DETERMINE WHETHER IT WAS A FINGER, A PALM, OR
22 WHAT BECAUSE IT WAS INSUFFICIENT FOR IDENTIFICATION.

23 Q. AND THAT'S THE ONLY THING YOU FOUND ON THAT WHOLE
24 GUN.

25 A. YES, SIR.

1 MR. LITTLEJOHN: THAT'S ALL I HAVE. THANK YOU, YOUR
2 HONOR.

3 MR. HUBBARD: ONE FOLLOW-UP.

4 REDIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q. DID YOU PLACE THOSE ITEMS IN FIREARM STORAGE WHEN
7 YOU WERE DONE?

8 A. I DID. YES, SIR.

9 MR. HUBBARD: THANK YOU. NO FURTHER QUESTIONS.

10 THE COURT: YOU'RE FREE TO GO, SIR.

11 THE WITNESS: THANK YOU, SIR.

12 MR. HUBBARD: THE STATE CALLS KENNETH WHITLER TO THE
13 STAND.

14 KENNETH H. WHITLER, AFTER BEING DULY SWORN,
15 TESTIFIED AS FOLLOWS:

16 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
17 FIRST AND YOUR LAST FOR THE RECORD.

18 THE WITNESS: MY NAME IS KENNETH H. WHITLER, AND
19 THAT'S SPELLED K-E-N-N-E-T-H W-H-I-T-L-E-R.

20 DIRECT EXAMINATION

21 BY MR. HUBBARD:

22 Q. AGENT WHITLER, WHERE DO YOU WORK?

23 A. FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN
24 THEIR FORENSIC LABORATORY.

25 Q. HOW LONG HAVE YOU BEEN WORKING AT S.L.E.D.?

1 A. SINCE 1997.

2 Q. WHERE DID YOU WORK BEFORE THAT?

3 A. THE F.B.I.

4 Q. AND WHAT SECTION OF S.L.E.D. DO YOU WORK IN?

5 A. THE FIREARMS SECTION.

6 Q. AND WHEN YOU WERE WITH THE F.B.I., DID YOU WORK
7 FIREARMS WITH THEM AS WELL?

8 A. YES, I DID.

9 Q. CAN YOU TELL US YOUR EDUCATION, BACKGROUND, FOR YOUR
10 JOB?

11 A. I HAVE GRADUATE AND UNDERGRADUATE DEGREES FROM THE
12 UNIVERSITY OF SOUTH CAROLINA. THERE IS NO DEGREE IN FIREARMS
13 IDENTIFICATION. YOU HAVE TO LEARN THAT ON THE JOB FROM OTHER
14 QUALIFIED EXAMINERS, AND WHEN I WAS WITH THE F.B.I.
15 LABORATORY THAT'S WHERE I WAS QUALIFIED AND TRAINED. IT'S
16 BASICALLY APPROXIMATELY A YEAR-AND-A-HALF TO TWO-YEAR
17 TRAINING PERIOD WHERE YOU WORK WITH QUALIFIED EXAMINERS AND
18 WORK ON CASES AND YOU DO STUDIES AND TESTING.

19 AT THE CONCLUSION OF THE TRAINING PERIOD, THEY GIVE
20 YOU A SERIES OF TESTS, AND IF YOU PASS THEM SUCCESSFULLY THEY
21 CERTIFY YOU AS BEING A FIREARMS EXAMINER FOR THEM. I
22 SUCCESSFULLY PASSED THAT TRAINING COURSE AND DID A NUMBER OF
23 CASES FOR THE F.B.I., AND THEN IN 1997 I RETIRED FROM THE
24 F.B.I. LABORATORY AND CAME TO WORK FOR S.L.E.D. DOING
25 BASICALLY THE SAME JOB.

1 Q. HAVE YOU BEEN OFFERED AS AN EXPERT AND TESTIFIED AS
2 AN EXPERT IN STATE AND FEDERAL COURT?

3 A. YES, I HAVE.

4 Q. DO YOU KNOW HOW MANY TIMES?

5 A. THE LAST TIME I COUNTED IT WAS ABOUT 150 IN VARIOUS
6 STATE, FEDERAL, AND TERRITORIAL COURTS.

7 MR. HUBBARD: YOUR HONOR, AT THIS TIME I OFFER AGENT
8 WHITLER AS AN EXPERT IN THE FIELD OF FIREARMS IDENTIFICATION.

9 MS. KIMBROUGH: NO OBJECTION.

10 THE COURT: HE'S QUALIFIED IN THE FIELD OF FIREARMS
11 IDENTIFICATION.

12 MR. HUBBARD: AGENT WHITLER---

13 MR. LITTLEJOHN: YOUR HONOR, EXCUSE ME.

14 MR. HUBBARD: ---I WANT TO SHOW YOU A NUMBER OF
15 ITEMS.

16 MR. LITTLEJOHN: EXCUSE ME, YOUR HONOR. CAN I
17 APPROACH THE BENCH?

18 THE COURT: YES, SIR.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

20 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
21 GOING TO TAKE A SHORT BREAK BEFORE WE BEGIN WITH -- OR BEFORE
22 WE RESUME WITH THIS WITNESS'S TESTIMONY. I'M GOING TO SEND
23 YOU BACK INTO THE JURY ROOM NOW.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
25 11:38 A.M.)

1 THE COURT: BEFORE WE BREAK, YESTERDAY WHEN THE
2 INVESTIGATOR WAS ON THE STAND -- WHAT WAS HIS LAST NAME?

3 MR. HUBBARD: FRIER, YOUR HONOR. SCOTTIE FRIER.

4 THE COURT: SCOTTIE FRIER WAS ON THE STAND. IN
5 REDIRECT MR. HUBBARD ASKED HIM A QUESTION, SOMETHING ALONG
6 THE LINES OF: DO YOU THINK MR. MERCER IS THE ONE WHO FIRED
7 THE WEAPON? MS. KIMBROUGH MADE AN IMMEDIATE OBJECTION, AND
8 THE QUESTION -- IT WAS UNCERTAIN TO SOME OF US AS TO WHETHER
9 OR NOT MR. FRIER HAD ANSWERED THE QUESTION. I THINK THAT THE
10 LAWYERS SAID -- MANY OF THE LAWYERS SAID THEY DID NOT HEAR AN
11 ANSWER. MR. LITTLEJOHN LATER BROUGHT UP THAT HE THOUGHT HE
12 HAD HEARD AN ANSWER, BUT I DON'T BELIEVE YOU WERE SURE WHAT
13 IT WAS.

14 MR. LITTLEJOHN: YOUR HONOR, HE DID ANSWER IN THE
15 AFFIRMATIVE. I CHECKED WITH THE COURT REPORTER AND SHE---

16 THE COURT: I KNOW THAT. WE FOUND THAT OUT, BUT I'M
17 JUST -- I'M GOING TO ASK YOU A QUESTION IN A MINUTE, AND I'M
18 GETTING AROUND TO ASKING YOU A QUESTION. BUT AT THE TIME
19 THAT THE ANSWER WAS GIVEN, DID YOU HEAR IT?

20 MR. LITTLEJOHN: YES, YOUR HONOR.

21 THE COURT: DID YOU HEAR WHAT IT WAS?

22 MR. LITTLEJOHN: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. LITTLEJOHN: I DIDN'T -- I DON'T REMEMBER
25 VERBATIM, BUT IT WAS AN AFFIRMATIVE ANSWER.

1 **THE COURT:** ALL RIGHT. WELL, I HAD NOT HEARD THE
2 ANSWER AND I THINK SOME OF THE OTHER FOLKS REMARKED THAT THEY
3 HAD NOT HEARD IT. ONE OF THE BAILIFFS TOLD ME THAT HE HAD
4 HEARD IT, AND THE COURT REPORTER CHECKED AND SHE HAD HEARD
5 IT. WE HAD A BREAK AT THAT TIME. WE HAD A DISCUSSION; IT
6 WAS ON THE RECORD. WE HAD A BREAK, AND AFTER THE BREAK YOU
7 -- OR SOMETIME DURING THE BREAK YOU ASKED ME TO INSTRUCT THE
8 JURY TO DISREGARD THE ANSWER.

9 WHEN WE CAME BACK IN, WE HAD ANOTHER DISCUSSION
10 ABOUT IT AND YOU WITHDREW YOUR REQUEST TO ASK ME TO INSTRUCT
11 THE JURY TO DISREGARD THAT ANSWER. AFTER I THOUGHT ABOUT
12 THAT, IT OCCURRED TO ME THAT YOUR REASONS FOR ASKING ME TO
13 WITHDRAW THE -- YOUR REASONS FOR WITHDRAWING THE REQUEST TO
14 HAVE ME INSTRUCT THE JURY MIGHT NEED TO BE PUT ON THE RECORD.
15 NOW, I ASSUME THAT YOU HAD MADE THAT AS A STRATEGIC DECISION
16 BECAUSE YOU DID NOT WANT THE JURY'S ATTENTION DRAWN TO AN
17 ANSWER THAT THEY MAY NOT HAVE EVEN HEARD.

18 **MR. LITTLEJOHN:** THAT'S CORRECT, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. AND SO IT WAS A STRATEGIC
20 DECISION ON YOUR PART NOT TO -- NOT TO BRING ATTENTION TO IT.

21 **MR. LITTLEJOHN:** YOUR HONOR, I'VE FOUND IF YOU GO
22 BACK AND STRIKE IT, YOU EMPHASIZE IT AND IT JUST BRINGS THAT
23 MUCH GREATER ATTENTION TO IT.

24 **THE COURT:** WELL, ANTICIPATING PERHAPS THAT THIS
25 MIGHT BECOME THE SUBJECT OF LITIGATION LATER, I THOUGHT IT

1 MIGHT NEED TO BE ON THE RECORD, AND I THOUGHT THAT I WOULD GO
2 AHEAD AND RECORD THE FACT THAT I DIDN'T EVEN HEAR THE ANSWER.
3 SO I THINK PROBABLY THERE WERE A GOOD MANY JURORS WHO DIDN'T
4 HEAR THE ANSWER, BUT I DON'T KNOW THAT, OF COURSE.

5 MR. LITTLEJOHN: I UNDERSTAND.

6 THE COURT: ALL RIGHT.

7 MR. LITTLEJOHN: THANK YOU.

8 THE COURT: WE'LL TAKE A SHORT BREAK.

9 MR. HUBBARD: YOUR HONOR, DO YOU WANT THE WITNESS TO
10 STAY ON THE STAND OR STEP DOWN IF HE NEEDS TO USE THE REST
11 ROOM---

12 THE COURT: YOU CAN TAKE A BREAK IF YOU NEED TO,
13 SIR. HE KNOWS HE CAN'T DISCUSS THE SUBSTANCE OF HIS
14 TESTIMONY.

15 MR. HUBBARD: YES, SIR. YES, SIR. I JUST WANTED TO
16 LET YOU KNOW. I'M SORRY.

17 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

18 THE COURT: BE SEATED. BRING IN THE JURY.

19 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
20 11:47 A.M.)

21 BY MR. HUBBARD:

22 Q. AGENT WHITLER, I BELIEVE BEFORE WE BROKE I WAS
23 SHOWING YOU SOME ITEMS TO SEE IF YOU RECOGNIZED THEM. ONE IS
24 A BOX - STATE'S 21; A PISTOL OR A REVOLVER WHICH IS STATE'S
25 I.D. 19; A BAG OF BULLETS - STATE'S I.D. 22; AND THEN STATE'S

1 I.D. 24 WHICH WAS ALSO IN THIS BAG, I BELIEVE. DO YOU
2 RECOGNIZE THESE ITEMS?

3 MR. LITTLEJOHN: YOUR HONOR, FOR THE RECORD, I
4 BELIEVE 19 IS IN EVIDENCE.

5 THE WITNESS: YES, I DO.

6 BY MR. HUBBARD:

7 Q. DID YOU RETRIEVE THOSE ITEMS FROM THE FIREARMS
8 EVIDENCE LOCKER?

9 A. YES, I DID. THEY WERE SUBMITTED FOR EXAMINATION.

10 Q. OKAY. AND WHAT TYPE OF EXAMINATION DID YOU CONDUCT
11 ON THOSE ITEMS?

12 A. I BASICALLY COMPARED THE FIRED CARTRIDGE CASE AND
13 BULLET THAT WAS SUBMITTED WITH THE TEST-FIRED BULLETS THAT I
14 OBTAINED BY TEST-FIRING THE REVOLVER THAT WAS SUBMITTED.

15 Q. AND DID YOU COME TO A CONCLUSION AFTER TEST-FIRING
16 THAT WEAPON AND ANALYZING YOUR -- THE BULLETS YOU FIRED WITH
17 THE BULLET YOU HAD SUBMITTED AND WITH THE CASING SUBMITTED?

18 A. YES, I DID.

19 Q. AND WHAT RESULTS DID YOU COME TO?

20 A. THE CONCLUSION WAS THAT THE CARTRIDGE CASE AND THE
21 BULLET FRAGMENT WERE FIRED BY THE STATE'S EXHIBIT 19
22 REVOLVER.

23 MR. HUBBARD: YOUR HONOR, I OFFER -- I KNOW THE
24 PISTOL IS ALREADY IN, BUT I OFFER STATE'S I.D. 22 AND STATE'S
25 I.D. 24 INTO EVIDENCE.

1 MS. KIMBROUGH: NO OBJECTION.

2 THE COURT: THEY'RE ADMITTED.

3 (STATE'S EXHIBITS 22 AND 24 WERE RECEIVED IN
4 EVIDENCE.)

5 THE COURT: NOW, 24 IS THE FIRED CARTRIDGE THAT WAS
6 RETRIEVED DURING THE AUTOPSY? I MEAN THE---

7 MR. HUBBARD: YES, SIR, YOUR HONOR.

8 THE COURT: ---THE PROJECTILE.

9 MR. HUBBARD: YES, SIR.

10 THE COURT: AND 22 IS?

11 MR. HUBBARD: IS THE---

12 THE COURT: LET ME SEE 22, PLEASE.

13 MR. HUBBARD: IT'S THE BAG OF BULLETS AND THE SPENT
14 CASING.

15 BY MR. HUBBARD:

16 Q. AGENT WHITLER, WHAT YOU'RE SAYING IS THIS PISTOL
17 PRODUCED THE CASING FOUND IN STATE'S EVIDENCE 22 WHEN IT
18 FIRED?

19 A. YES. HERE'S -- YEAH, THIS IS THE FIRED CARTRIDGE
20 CASE RIGHT THERE.

21 Q. OKAY. THIS CARTRIDGE CASE CAME FROM THIS PISTOL
22 AFTER IT WAS FIRED.

23 A. YES.

24 Q. AND THIS SPENT BULLET WHICH IS STATE'S EXHIBIT 24
25 WAS FIRED FROM THIS PISTOL.

1 A. THAT'S CORRECT.

2 Q. DID YOU DO A REPORT---

3 A. YES, I DID.

4 Q. ---DOCUMENTING YOUR FINDINGS?

5 A. YES, I DID.

6 Q. DO YOU HAVE THAT REPORT WITH YOU?

7 A. I'VE GOT A COPY. THE ORIGINAL WAS SENT TO THE
8 LEXINGTON COUNTY SHERIFF'S OFFICE.

9 Q. LET ME SEE. MAY I SEE YOUR COPY, PLEASE, SIR? YOU
10 PUT ON THAT COPY YOUR ORIGINAL -- YOUR FINDINGS?

11 A. THAT'S CORRECT. THIS IS A PHOTOCOPY OF WHAT WAS
12 SENT TO THE SHERIFF'S DEPARTMENT.

13 MR. HUBBARD: THANK YOU. I HAVE NO FURTHER
14 QUESTIONS AT THIS TIME.

15 CROSS-EXAMINATION

16 BY MS. KIMBROUGH:

17 Q. GOOD AFTERNOON. HOW ARE YOU?

18 A. GOOD.

19 Q. GOOD. IN YOUR REPORT YOU REFERENCE RECEIVING ITEM
20 NUMBER 10 WHICH WAS THE 357 AND THEN THERE WERE -- ITEM 11
21 WAS THE 357 CALIBER CARTRIDGE CASE, AND THEN ITEMS 12 THROUGH
22 16 WERE THE UNFIRED BULLETS AND 17 WOULD HAVE BEEN THE JACKET
23 FRAGMENT. THAT'S CORRECT?

24 A. THAT'S CORRECT.

25 Q. OKAY. WERE YOU EVER PROVIDED WITH THE BULLETS FOUND

1 IN MARCUS THOMPSON'S POCKET?

2 A. NO. THIS IS ALL I RECEIVED.

3 Q. OKAY. SO, IN OTHER WORDS, YOU WERE NEVER PROVIDED
4 WITH THE ADDITIONAL BULLETS THAT WERE FOUND FOR PURPOSES OF
5 COMPARING THOSE WITH THE BULLETS THAT WERE ACTUALLY CHAMBERED
6 IN THE 357?

7 A. IT DEPENDS ON WHAT YOU'RE CALLING BULLETS. THE
8 BULLET IS ACTUALLY THE PROJECTILE PART OF A CARTRIDGE. IN
9 THIS CASE THERE WERE FIVE UNFIRED CARTRIDGES AND ONE FIRED
10 CARTRIDGE CASE SUBMITTED. IF THE OTHER WHAT YOU'RE CALLING
11 BULLETS WERE, IN FACT, CARTRIDGES, THEN THERE'S NO WAY TO
12 COMPARE THOSE TO THE GUN TO SEE IF THEY WERE FIRED BECAUSE
13 THEY WEREN'T FIRED IN THE GUN. CARTRIDGES ARE UNFIRED. THE
14 CARTRIDGE CASES, IF THEY'VE BEEN FIRED IN THE GUN, WILL HAVE
15 MARKS. BULLETS THAT ARE FIRED WILL HAVE MARKS ON THEM, BUT
16 THE CARTRIDGES DON'T. SO IF YOU HAVE A HAND FULL OF
17 CARTRIDGES THAT ARE, IN EFFECT, UNFIRED, THERE'S NOT ANYTHING
18 TO COMPARE AGAINST.

19 Q. YOU CAN'T TELL IF IT'S THE SAME BRAND AND THE
20 SAME...

21 A. YOU COULD TELL THE SAME BRAND, BUT IT REALLY MEANS
22 VERY LITTLE BECAUSE YOU CAN CHANGE BRANDS OF AMMUNITION AND
23 IT DOESN'T MAKE A LOT OF DIFFERENCE. IT JUST DEPENDS ON WHAT
24 YOU PUT IN THE GUN.

25 MS. KIMBROUGH: OKAY. THANK YOU.

1 MR. HUBBARD: NOTHING ELSE, YOUR HONOR.

2 THE COURT: STEP DOWN, SIR.

3 THE WITNESS: THANK YOU.

4 THE COURT: DO YOU HAVE ANYBODY ELSE TO CALL AT THIS
5 TIME, SOLICITOR?

6 MR. MYERS: THE NEXT ONE IS THE OUT-OF-TOWN WITNESS
7 WE TOLD YOU ABOUT.

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
9 GOING TO BREAK NOW FOR LUNCH. WE ARE PERHAPS A LITTLE BIT
10 AHEAD OF THE SCHEDULE THAT WE HAD THOUGHT WE WOULD BE ON FOR
11 TODAY, SO THAT MAY LEAD US INTO A LITTLE BIT LONGER THAN WE
12 HAD -- THAN WE WOULD NORMALLY HAVE LUNCH HOUR. YOUR -- SO
13 I'M GOING TO SEND YOU BACK INTO THE JURY ROOM NOW. I'M NOT
14 SURE EXACTLY WHAT THE -- WHEN YOUR LUNCH WILL BE HERE, BUT
15 HOPEFULLY IT WILL BE SHORTLY, AND WE WILL SEE YOU ALL AFTER
16 EVERYBODY HAS EATEN. HAVE A NICE LUNCH.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO
18 GO TO LUNCH.)

19 THE COURT: ALL RIGHT. WELL, YOU JUST HAVE ONE MORE
20 WITNESS, AS I UNDERSTAND IT.

21 MR. MYERS: YES, SIR.

22 THE COURT: WELL, CAN YOU -- CAN YOU TRY TO GET HER
23 HERE MORE LIKE 1:30 INSTEAD OF 1:45?

24 MR. MYERS: YES, SIR.

25 THE COURT: ALL RIGHT. THEN WE'LL BREAK UNTIL 1:30.

1 AND YOU ALL ARE GOING TO BE READY TO GO AT 2:00.

2 MR. LITTLEJOHN: YES, SIR.

3 MS. KIMBROUGH: YES, YOUR HONOR.

4 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

5 THE COURT: BE SEATED. GO AHEAD AND GET THE JURY.

6 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
7 1:31 P.M.)

8 THE COURT: CALL YOUR NEXT WITNESS.

9 MR. GRAHAM: THE STATE CALLS DR. JANICE ROSS.

10 DR. JANICE E. ROSS, AFTER BEING DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: STATE YOUR FULL NAME ON THE RECORD.

13 THE WITNESS: JANICE EDWARDS ROSS. R-O-S-S.

14 DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q. IT'S ACTUALLY DR. ROSS, ISN'T IT?

17 A. YES, SIR.

18 Q. DR. ROSS, CAN YOU TELL THE JURY WHAT FORENSIC
19 PATHOLOGY IS?

20 A. YES. FORENSIC PATHOLOGY IS A DISCIPLINE OF
21 MEDICINE. I HAVE AN M.D. DEGREE AND TRAINING IN PATHOLOGY
22 WHICH IS THE STUDY OF DISEASE, SO THAT ANYTHING THAT COMES
23 OUT OF YOU FROM SURGERY OR GOES THROUGH THE LAB -- A
24 PATHOLOGIST HELPS IDENTIFY AND DIAGNOSE CANCERS OR OTHER
25 DISEASES. FORENSIC PATHOLOGY -- THE WORD FORENSIC MEANS

1 LEGAL, SO FORENSIC PATHOLOGISTS USE THE KNOWLEDGE OF
2 PATHOLOGY FOR LEGAL MATTERS SUCH AS SUICIDES, HOMICIDES,
3 ACCIDENTS, RAPE CASES. A PATHOLOGIST IS TRAINED TO DO AN
4 AUTOPSY.

5 Q. AND WOULD YOU TELL THE JURY WHAT YOUR EDUCATIONAL
6 BACKGROUND IS?

7 A. I HAVE A BACHELOR'S DEGREE FROM THE UNIVERSITY OF
8 SOUTH CAROLINA AND AN M.D. FROM UPSTATE MEDICAL CENTER IN
9 SYRACUSE, NEW YORK, AND I HAVE FURTHER RESIDENCY TRAINING IN
10 SYRACUSE, NEW YORK, AND FORENSIC TRAINING THERE. I'M BOARD
11 CERTIFIED IN THREE AREAS OF PATHOLOGY.

12 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

13 A. NEWBERRY PATHOLOGY ASSOCIATES IN NEWBERRY, SOUTH
14 CAROLINA.

15 Q. WHAT DO YOU DO THERE?

16 A. WE DO HOSPITAL PATHOLOGY AND WE DO AUTOPSIES FOR
17 CORONERS AROUND THE STATE.

18 Q. AND AS PART OF YOUR EMPLOYMENT THERE, YOU DO DO
19 AUTOPSIES?

20 A. YES.

21 Q. HOW MANY AUTOPSIES HAVE YOU DONE?

22 A. APPROXIMATELY 5,000.

23 Q. AND HAVE YOU EVER TESTIFIED BEFORE AS AN EXPERT IN
24 FORENSIC PATHOLOGY?

25 A. YES.

1 Q. HOW MANY TIMES IN THE STATE OF SOUTH CAROLINA?

2 A. ABOUT 32.

3 Q. AND OUTSIDE THE STATE OF SOUTH CAROLINA, HAVE YOU
4 ALSO BEEN QUALIFIED AS AN EXPERT IN FORENSIC PATHOLOGY?

5 A. YES.

6 Q. APPROXIMATELY HOW MANY TIMES?

7 A. TEN OR TWELVE TIMES.

8 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER DR.
9 JANICE ROSS AS AN EXPERT IN FORENSIC PATHOLOGY.

10 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

11 THE COURT: SHE'S QUALIFIED IN FORENSIC PATHOLOGY.

12 BY MR. GRAHAM:

13 Q. CAN YOU TELL THE JURY IN GENERAL TERMS HOW AN
14 AUTOPSY IS PERFORMED?

15 A. YES. FIRST OF ALL, WE ARE CALLED BY THE CORONER AND
16 EXPLAINED THE SITUATION OF HOW THE PERSON WAS FOUND DEAD OR
17 DIED. THE BODY IS BROUGHT TO US AT NEWBERRY COUNTY MEMORIAL
18 HOSPITAL WHERE WE PERFORM THE AUTOPSY IN THE MORGUE. WE DO A
19 THOROUGH EXTERNAL EXAMINATION, AND THEN WE DO A THOROUGH
20 INTERNAL EXAMINATION. WE DO PHOTOGRAPHS, AND WE COLLECT
21 SPECIMENS FOR DOCUMENTATION AND FOR TOXICOLOGY.

22 Q. AND IS THAT THE GENERAL PROCEDURE THAT YOU USED TO
23 DO AN AUTOPSY ON THE VICTIM IN THIS CASE, TRACY DAVIS?

24 A. YES.

25 Q. AND WHAT DATE DID YOU PERFORM THAT AUTOPSY ON HIM?

1 A. MAY 17TH, 2002.

2 Q. AND DID YOU BEGIN BY PERFORMING AN EXTERNAL
3 EXAMINATION OF TRACY DAVIS?

4 A. YES.

5 Q. AND WOULD YOU TELL THE JURY WHAT YOU FOUND DURING
6 YOUR EXTERNAL EXAMINATION?

7 A. I JUST FOUND AN ENTRANCE GUNSHOT WOUND IN THE BACK
8 OF HIS HEAD.

9 Q. AND CAN YOU SHOW THE JURY, USING YOUR OWN HEAD,
10 WHERE THAT ENTRANCE WOUND WAS?

11 A. IN THE BACK OF THE HEAD TOWARDS THE LEFT, BEHIND THE
12 LEFT EAR.

13 Q. AND WHAT, IF ANYTHING, OF SIGNIFICANCE DID YOU
14 NOTICE ABOUT THE ENTRANCE WOUND?

15 A. THE -- IT WAS NICE AND ROUND. IT HAD NO SOOT OR
16 POWDER STIPPLING AROUND IT INDICATING -- THAT HELPS US
17 INDICATE HOW FAR AWAY THE GUN WAS FROM THE PERSON.

18 Q. LET ME STOP YOU FOR JUST A SECOND. WHEN YOU SAY
19 SOOT, WHAT IS SOOT?

20 A. WHEN A BULLET COMES OUT OF THE GUN, SOOT OR SMOKE
21 COMES OUT ALONG WITH IT AS WELL AS GUN POWDER PARTICLES, AND
22 THE SOOT WILL ONLY GO A CERTAIN DISTANCE AND THE GUN POWDER
23 PARTICLES WILL ONLY GO A CERTAIN DISTANCE WHERE THE BULLET
24 GOES QUITE A FURTHER DISTANCE. SO IF YOU HAVE SOOT OR
25 EVIDENCE OF POWDER INJURIES AROUND THE ENTRANCE WOUND ON THE

1 SKIN, IT INDICATES -- IT'S AN INDICATION OF HOW CLOSE THE GUN
2 WAS TO THE PERSON WHEN IT WENT OFF.

3 Q. AND DID YOU FIND ANY EVIDENCE OF SOOT OR POWDER
4 INJURY TO THE SKIN AROUND THE WOUND?

5 A. NO, I DID NOT.

6 Q. IN YOUR OPINION, WHAT DOES THAT TELL YOU?

7 A. IT TELLS ME THAT THE -- WHAT WAS THE WOUND IS THE
8 GUNSHOT WOUND IS WHAT WE CALL A DISTANT WOUND WHICH MEANS --
9 WHICH WILL VARY FROM -- WITH GUNS AND WITH DIFFERENT
10 CALIBERS, BUT IT MEANS THAT THE GUN WAS AT LEAST TWO FEET
11 AWAY FROM THE SKIN OF THE VICTIM.

12 Q. DURING THE EXTERNAL EXAMINATION, DID YOU NOTICE ANY
13 EVIDENCE OF A -- WHAT'S TERMED AS AN ABRASION COLLAR?

14 A. YES. THE -- WHEN THE BULLET GOES THROUGH SKIN, IT
15 PUSHES THE SKIN IN AND ABRADES THE EDGE OF THE HOLE IN THE
16 SKIN. IF THE BULLET IS GOING AT SOMEWHAT OF AN ANGLE, THAT
17 ABRASION COLLAR - IS WHAT WE CALL IT - WILL BE WIDER AT THAT
18 POINT. AND WE DID IN HIS WOUND -- IF YOU LOOK AT THE WOUND,
19 IT'S A ROUND HOLE. IF YOU IMAGINE IT BEING A CLOCK, THEN
20 THAT ABRASION THICKENING WAS IN THE AREA OF WHERE 7 TO 9:00
21 WOULD BE ON A CLOCK. AND THAT JUST FURTHER INDICATES --
22 HELPS US SHOW THE DIRECTION OF THE BULLET.

23 Q. AND WITH THE THICKER ABRASION COLLAR AT 7 TO 9:00,
24 WHAT DOES THAT TELL YOU REGARDING THE DIRECTION OF THE
25 BULLET?

1 A. THAT THE BULLET WAS IN THIS CASE GOING UPWARD.

2 Q. AFTER THE EXTERNAL EXAMINATION, DID YOU THEN MOVE ON
3 TO AN INTERNAL EXAMINATION?

4 A. YES.

5 Q. AND DID YOU DO AN INTERNAL EXAMINATION INCLUDING THE
6 HEAD AND THE BRAIN OF THE VICTIM IN THIS CASE?

7 A. YES.

8 Q. AND WERE YOU ABLE TO RECOVER A BULLET?

9 A. YES.

10 Q. AND ALSO SOME FRAGMENTS?

11 A. YES.

12 Q. LET ME SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
13 NUMBER 24 AND ASK YOU IF THOSE ARE THE BULLET AND THE
14 FRAGMENTS THAT YOU RECOVERED DURING THE AUTOPSY OF TRACY
15 DAVIS.

16 A. YES, IT IS.

17 Q. AND LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
18 EXHIBIT 23 AND ASK YOU IF THAT IS A PHOTOGRAPH OF THE BULLET
19 AND THE FRAGMENTS THAT YOU TOOK FROM THE SKULL OF TRACY
20 DAVIS.

21 A. YES, IT IS.

22 Q. I WANT TO ASK YOU TO LOOK AT THIS DIAGRAM, DOCTOR,
23 AND ASK IF YOU RECOGNIZE THIS.

24 A. YES, I DO.

25 Q. AND IS THAT BASED OFF OF SOME DRAWINGS THAT YOU MADE

1 DURING THE AUTOPSY OF TRACY DAVIS?

2 A. YES.

3 Q. AND WOULD IT ASSIST YOU IN TESTIFYING TODAY IN FRONT
4 OF THE JURY?

5 A. YES, IT WOULD.

6 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THIS
7 INTO EVIDENCE.

8 MR. LITTLEJOHN: NO OBJECTION.

9 THE COURT: IT'S ADMITTED.

10 (STATE'S EXHIBIT 28 WAS RECEIVED IN EVIDENCE.)

11 BY MR. GRAHAM:

12 Q. DOCTOR, IF I COULD ASK YOU TO STEP DOWN. USING THIS
13 DIAGRAM, DOCTOR, WOULD YOU EXPLAIN TO THE JURY WHAT YOU FOUND
14 REGARDING THE PATH OF THE BULLET?

15 A. YES. THIS IS FROM A DIAGRAM THAT WE DO AT THE
16 AUTOPSY JUST TO SHOW THE DIRECTION OF THE BULLET PATH, AND I
17 CAN TELL YOU THE BULLET WAS GOING INTO THE LEFT SIDE OF THE
18 BACK OF THE HEAD GOING TOWARDS THE FRONT, SOMEWHAT UPWARD,
19 AND SOME TOWARDS THE RIGHT. SO WHAT THIS SHOWS: IF YOU'RE
20 LOOKING AT THE BACK OF THE HEAD, THE ENTRANCE WOUND IS ON THE
21 LEFT BACK OF THE HEAD GOING UPWARD AND TOWARDS THE RIGHT.
22 THEN IF YOU LOOK AT THE SIDE OF THE HEAD, THIS JUST IS --
23 FURTHER INDICATES THAT THE BULLET IS GOING UPWARD.

24 Q. THANK YOU, DOCTOR. YOU CAN HAVE A SEAT. CAN YOU
25 DESCRIBE TO THE JURY THE INJURIES THAT THAT BULLET CAUSED

1 GOING THROUGH TRACY DAVIS'S HEAD?

2 A. YES. WHEN THE BULLET GOES THROUGH THE BRAIN, IT
3 LACERATES IT ACTUALLY AND CUTS THE TISSUE, THE BRAIN TISSUE,
4 AND CAUSES SOME HEMORRHAGE AROUND IT OR ACTUAL BRUISING WHICH
5 IS CALLED CONTUSION.

6 Q. SO YOU HAVE THE LACERATION FROM THE ACTUAL PATH OF
7 THE BULLET CUTTING THROUGH THE BRAIN TISSUE, AND YOU HAVE
8 CONTUSIONS WHICH ARE THE BRUISING AND THE BLEEDING
9 SURROUNDING THE PATH?

10 A. YES.

11 Q. IN YOUR EXPERT OPINION, WHAT WAS THE CAUSE OF TRACY
12 DAVIS'S DEATH?

13 A. THE CAUSE OF DEATH IS LACERATION AND CONTUSION OF
14 THE BRAIN DUE TO THE GUNSHOT WOUND TO THE HEAD.

15 Q. AND HOW DOES THAT -- HOW DOES THAT CAUSE DEATH?

16 A. THE LACERATION INJURY TO THE BRAIN CAUSES IT TO STOP
17 FUNCTIONING SO THE BRAIN IS -- DOESN'T TELL THE HEART AND
18 LUNGS TO KEEP GOING.

19 MR. GRAHAM: PLEASE ANSWER ANY QUESTIONS THAT THE
20 DEFENSE HAS.

21 CROSS-EXAMINATION

22 BY MR. LITTLEJOHN:

23 Q. GOOD AFTERNOON, DR. ROSS.

24 A. GOOD AFTERNOON.

25 Q. VERY BRIEFLY, THE -- YOU TESTIFIED THAT THE ANGLE OF

1 THE BULLET WAS AN UPWARD ANGLE?

2 A. YES, SIR.

3 Q. IF THE DECEDENT WAS STANDING UP, WOULD THAT INDICATE
4 THAT THE MUZZLE OF THE GUN WAS AT SOME POSITION LOWER THAN
5 THE HEAD?

6 A. YES.

7 Q. ALL RIGHT. AND THEN THE POSITION OF THE GUN WOULD
8 HAVE BEEN SOMEWHERE TO -- YOU SAID THE GUN -- THE BULLET
9 TRAVELED FROM THE LEFT SIDE TO THE RIGHT SIDE?

10 A. CORRECT.

11 Q. OKAY. YOU DON'T KNOW AT WHAT POSITION THE DECEDENT
12 WAS IN COMPARED TO THE PERSON WHO SHOT THE GUN.

13 A. NO, I DO NOT.

14 MR. LITTLEJOHN: THANK YOU, MA'AM. THAT'S ALL I
15 HAVE, YOUR HONOR.

16 MR. GRAHAM: NO FURTHER QUESTIONS.

17 THE COURT: ALL RIGHT, MA'AM. YOU CAN STEP DOWN.

18 MR. HUBBARD: YOUR HONOR, THE STATE RESTS AT THIS
19 TIME.

20 THE COURT: LADIES AND GENTLEMEN, I WILL HAVE SOME
21 MATTERS OF LAW THAT I NEED TO TAKE UP AT THIS TIME, SO I'M
22 GOING TO ASK YOU TO GO BACK INTO THE JURY ROOM FOR JUST A FEW
23 MINUTES.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
25 1:43 P.M.)

1 MR. LITTLEJOHN: YOUR HONOR, AT THIS TIME THE
2 DEFENSE WOULD MOVE FOR A DIRECTED VERDICT OF NOT GUILTY AS TO
3 ALL CHARGES. YOUR HONOR, I THINK IT'S CLEAR FROM VIEWING THE
4 EVIDENCE EVEN IN THE LIGHT MOST FAVORABLE TO THE STATE THAT
5 IT IS MERELY CIRCUMSTANCE UPON CIRCUMSTANCE AND THERE ARE SO
6 MANY VARIABLES THAT HAVE BEEN LEFT OUT AND UNACCOUNTED FOR
7 THAT THE QUANTUM OF PROOF PRESENTED BY THE STATE DOES NOT GET
8 THEM PAST A DIRECTED VERDICT. THERE ARE JUST SO MANY HOLES
9 IN THE STATE'S CASE THAT WE FEEL THAT THE EVIDENCE IS NOT
10 SUFFICIENT TO TAKE THIS CASE FORWARD TO THE JURY.

11 THE COURT: I -- I RESPECTFULLY DENY THOSE MOTIONS.

12 MR. LITTLEJOHN: ALL RIGHT, SIR.

13 THE COURT: ON ALL THREE COUNTS. ALL RIGHT. NOW, I
14 UNDERSTAND YOU'RE GOING TO PUT UP EVIDENCE.

15 MR. LITTLEJOHN: YES, YOUR HONOR.

16 THE COURT: IF THE DEFENDANT CHOOSES TO TESTIFY,
17 WOULD YOU PUT HIM UP FIRST OR AFTER YOU HAVE PUT UP SOME
18 OTHER EVIDENCE?

19 MR. LITTLEJOHN: YOUR HONOR, IT WOULD BE AFTER WE
20 PUT UP SOME OTHER EVIDENCE.

21 THE COURT: ALL RIGHT. WELL, THEN WE'LL GO AHEAD
22 AND GET THE JURY BACK IN HERE AND LET YOU BEGIN. WHEN YOU
23 GET TO THE POINT TO WHERE YOU -- WHERE YOU NEED TO CONSIDER
24 PUTTING THE DEFENDANT UP, JUST TELL ME THAT YOU NEED TO TAKE
25 A BREAK AND WE'LL TAKE A BREAK.

1 MR. LITTLEJOHN: ALL RIGHT. YOUR HONOR, WE MOVED SO
2 FAST ON THIS FINAL WITNESS. COULD WE HAVE JUST A MINUTE TO
3 JUST MAKE SURE WE'VE GOT EVERYBODY LINED UP?

4 THE COURT: ALL RIGHT.

5 MR. LITTLEJOHN: BECAUSE WE WERE SHOOTING FOR 2:00,
6 QUITE FRANKLY.

7 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK
8 THEN.

9 MR. LITTLEJOHN: YOUR HONOR, FOR THE RECORD, COULD I
10 ALSO RENEW ALL PRIOR MOTIONS THAT WE'VE MADE?

11 THE COURT: WHICH WOULD BE WHAT?

12 MR. LITTLEJOHN: JUST THE OBJECTIONS WE HAD DURING
13 VOIR DIRE AND OBJECTIONS TO EVIDENCE. I'M JUST BEING -- OUT
14 OF AN ABUNDANCE OF PRECAUTION. MY LEGAL ADVISOR TOLD ME TO
15 DO THAT.

16 THE COURT: IF THERE ARE ANY MOTIONS THAT NEED TO BE
17 RENEWED, WHICH I DON'T THINK THERE ARE, THEN I CAN ASSURE YOU
18 THAT I WOULD RULE THE SAME WAY NOW AS I DID BEFORE.

19 MR. LITTLEJOHN: ALL RIGHT, SIR. THANK YOU, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT.

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: ARE YOU READY?

24 MR. LITTLEJOHN: YES, YOUR HONOR.

25 THE COURT: BRING IN THE JURY, PLEASE.

1 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
2 1:55 P.M.)

3 THE COURT: IS THE DEFENSE READY TO PROCEED?

4 MR. LITTLEJOHN: YES, YOUR HONOR.

5 THE COURT: CALL YOUR FIRST WITNESS.

6 MR. LITTLEJOHN: SCOTTIE FRIER.

7 THE COURT: LIEUTENANT, YOU'RE STILL UNDER OATH.

8 THE WITNESS: YES, SIR. THANK YOU.

9 SCOTTIE FRIER, HAVING BEEN PREVIOUSLY SWORN AND
10 REMAINING UNDER OATH, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. LITTLEJOHN:

13 Q. INVESTIGATOR FRIER---

14 A. YES, SIR.

15 Q. ---VERY BRIEFLY. YOU INDICATED TO US EARLIER THAT
16 YOU WERE THE LEAD INVESTIGATOR IN THIS CASE?

17 A. YES, SIR. THAT'S CORRECT.

18 Q. OKAY. PART OF YOUR INVESTIGATION WOULD BE -- YOU
19 FOUND A VEHICLE AT THE ECONOMY INN ON THE NIGHT OF MAY 16TH
20 OR MAY 17TH?

21 A. NO, SIR, I DIDN'T FIND IT. I SENT SOME INFORMATION
22 FOR SOME -- SOME DEPUTIES RESPONDED TO THAT LOCATION AND
23 LOCATED IT.

24 Q. OKAY. YOU WERE THE LEAD INVESTIGATOR.

25 A. THAT'S CORRECT.

1 Q. ALL RIGHT. IT'S YOUR UNDERSTANDING SOME DEPUTIES
2 FOUND IT AT THE ECONOMY INN?

3 A. THAT'S CORRECT.

4 Q. OKAY. IT WAS TOWED FROM THE ECONOMY INN?

5 A. YES, SIR.

6 Q. AND WHERE WAS IT TAKEN?

7 A. IT WAS TAKEN -- IF I REMEMBER CORRECTLY, BROUGHT TO
8 OUR FACILITY.

9 Q. ALL RIGHT. AND WHO DID THIS VEHICLE BELONG TO?

10 A. KEVIN MERCER.

11 Q. AND WAS IT ALSO REGISTERED IN HIS WIFE'S NAME?

12 A. I BELIEVE THAT'S CORRECT, SIR.

13 Q. OKAY. AND YOU WENT TO A MAGISTRATE AND APPLIED FOR
14 A SEARCH WARRANT FOR THIS VEHICLE, DID YOU NOT?

15 A. YES, SIR, I DID.

16 Q. DID YOU SEARCH THE VEHICLE THOROUGHLY PURSUANT TO
17 THAT SEARCH WARRANT?

18 A. I DID NOT. THE VEHICLE WAS SEARCHED, HOWEVER, BUT I
19 -- I WAS NOT A PARTICIPANT IN THE SEARCH.

20 Q. ALL RIGHT. YOU DIDN'T PERSONALLY PARTICIPATE IN THE
21 SEARCH.

22 A. I DID NOT, SIR. NO.

23 Q. WERE THE RESULTS OF THE SEARCH BROUGHT TO YOUR
24 ATTENTION AS THE LEAD INVESTIGATOR IN THIS CASE?

25 A. YES, SIR, I'M SURE THAT THEY WERE.

1 Q. OKAY. WAS THERE ANY EVIDENCE PRODUCED AS A RESULT
2 OF THAT SEARCH WARRANT THAT WE HAVE HERE IN COURT?

3 A. I WOULD HAVE TO SEE THE RETURN ON THAT SEARCH
4 WARRANT, SIR, AND I DON'T HAVE IT WITH ME.

5 MR. MYERS: YOUR HONOR, HE CAN SHOW HIM, BUT I HAVE
6 NO OBJECTION. BUT I DO HAVE AN OBJECTION AS TO ANYTHING ON
7 THERE THAT HE DIDN'T PUT ON THERE. THAT WOULD BE HEARSAY BY
8 SOMEBODY ELSE. THEY HAVE TO CALL THAT PERSON THAT DID IT.

9 THE COURT: ARE YOU OBJECTING TO HIM USING THAT
10 DOCUMENT TO REFRESH THE WITNESS'S RECOLLECTION?

11 MR. MYERS: IT DOESN'T REFRESH IT BECAUSE HE DIDN'T
12 FILL IT OUT.

13 THE COURT: WELL, WE DON'T KNOW THAT. IF THAT'S
14 YOUR OBJECTION, THEN THERE'S A FOUNDATION THAT YOU LAY FOR --
15 FOR USING THE DOCUMENT TO REFRESH HIS RECOLLECTION.
16 BY MR. LITTLEJOHN:

17 Q. ALL RIGHT. INVESTIGATOR FRIER, YOU SAID YOU DIDN'T
18 -- YOU DIDN'T RECALL WHAT WAS PRODUCED AS A RESULT OF THE
19 SEARCHING OF THE BUICK AUTOMOBILE?

20 A. NOT OFF THE TOP OF MY HEAD, SIR.

21 Q. YOU INDICATED THAT YOU WOULD LIKE TO LOOK AT THE
22 INVENTORY OF THE SEARCH WARRANT?

23 A. THAT WOULD BE THE ONLY WAY THAT I WOULD KNOW WHAT
24 WAS TAKEN OUT OF THE VEHICLE.

25 Q. OKAY. IF I SHOWED YOU A COPY OF THE SEARCH WARRANT

1 AND THE INVENTORY, WOULD THAT REFRESH YOUR MEMORY?

2 A. IT WOULD SHOW ME WHAT SOMEONE ELSE REMOVED FROM THE
3 VEHICLE.

4 Q. OKAY.

5 A. I HAVE NO IDEA -- I WAS NOT PRESENT WHEN THAT
6 VEHICLE WAS SEARCHED AND DID NOT HAVE ANYTHING TO DO WITH THE
7 RETURN OF THE SEARCH WARRANT.

8 Q. OKAY. DID YOU BECOME AWARE OF WHAT CAME OUT OF THE
9 CAR?

10 A. AT SOME POINT IN TIME I WOULD HAVE SEEN THAT
11 DOCUMENT; YES, SIR.

12 Q. TO YOUR KNOWLEDGE, DID ANYTHING THAT CAME OUT OF THE
13 CAR HAVE YOU BROUGHT TO COURT TO PUT INTO EVIDENCE TODAY?

14 A. I HAVE NOT; NO, SIR.

15 Q. INVESTIGATOR FRIER, WHERE WAS THE VEHICLE FOUND?

16 A. MY UNDERSTANDING IS AT THE ECONOMY INN OR ECONOMY
17 LODGE ON BROAD RIVER ROAD.

18 Q. AND WHERE IS THAT LOCATED IN RELATION TO I-20?

19 A. I THINK IT'S FAIRLY CLOSE TO I-20 OFF OF BROAD RIVER
20 ROAD.

21 Q. IT'S RIGHT AT THE INTERSECTION OF I-20, IS IT NOT?

22 A. I BELIEVE IT'S VERY CLOSE; YES, SIR.

23 Q. DO YOU KNOW WHAT MILE MARKER THAT WOULD BE?

24 A. OFF OF 20, NO, SIR, I DON'T OFF THE TOP OF MY HEAD.

25 Q. YOU DON'T KNOW.

1 A. NO, SIR.

2 MR. LITTLEJOHN: ALL RIGHT, SIR. THAT'S ALL I HAVE,
3 YOUR HONOR.

4 CROSS-EXAMINATION

5 BY MR. MYERS:

6 Q. AND, OF COURSE, THAT'S CLOSE TO THE RAINTREE
7 APARTMENTS.

8 A. YES, SIR, IT IS.

9 Q. YES, SIR. NOW, YOU WERE AT I-20 WHEN THE NAVIGATOR
10 WAS STOPPED.

11 A. YES, SIR, I WAS.

12 Q. AND THOMPSON AND THE DEFENDANT WERE THERE.

13 A. YES, THEY WERE.

14 Q. AND YOU OBSERVED THEIR DEMEANOR AND ACTIONS.

15 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT.

16 THIS IS NOT IN RESPONSE TO DIRECT EXAMINATION.

17 MR. MYERS: DOESN'T HAVE TO BE. IT'S CROSS-
18 EXAMINATION.

19 MR. LITTLEJOHN: YOUR HONOR, THEN HE'S ADOPTED THE
20 WITNESS AS HIS OWN AND HE CAN'T LEAD HIM.

21 MR. MYERS: NO, SIR. I'M CROSS-EXAMINING.

22 THE COURT: LET ME -- LET ME ASK YOU ALL TO STEP
23 BACK IN THE JURY ROOM FOR JUST A SECOND.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
25 2:01 P.M.)

1 THE COURT: YOU TAKE THE POSITION THAT BECAUSE THIS
2 WITNESS WAS CALLED BY THE STATE IN ITS CASE IN CHIEF THAT ANY
3 EXAMINATION OF THE WITNESS BEYOND THE SCOPE OF YOUR DIRECT
4 WOULD BE RESTRICTED TO THE REQUIREMENTS OF A DIRECT
5 EXAMINATION AS IF THEY HAD CALLED THE WITNESS.

6 MR. LITTLEJOHN: YES, YOUR HONOR. I THINK IN THE
7 DISCRETION OF THE COURT THAT'S THE WAY IT SHOULD BE.

8 THE COURT: WELL, THAT WAS GOING TO BE MY NEXT
9 QUESTION. I MEAN, IS THERE ANYTHING OTHER THAN MY EXERCISE
10 OF MY DISCRETION THAT GOVERNS MY DECISION?

11 MR. LITTLEJOHN: YOUR HONOR, I DON'T BELIEVE THAT
12 THE STATE RULE IS THE SAME AS THE FEDERAL RULE WHICH IS THE
13 ONE I THINK I WAS REFERRING TO SPECIFICALLY WHICH---

14 THE COURT: WELL, THE STATE RULE IS CLEAR -- CLEARLY
15 THAT THE CROSS-EXAMINATION CAN BE ON ANY MATTER THAT RELATES
16 TO THE CASE. SO THE SCOPE OF SOLICITOR MYERS' CROSS-
17 EXAMINATION CAN'T BE -- WILL NOT BE RESTRICTED BUT -- SO I'M
18 SIMPLY LOOKING AT IT FROM THE STANDPOINT AS TO WHETHER OR NOT
19 I WILL ALLOW HIM TO USE LEADING QUESTIONS DURING THE
20 EXAMINATION. AND IS THERE ANYTHING THAT YOU KNOW OF THAT
21 GOVERNS MY DECISION IN THAT RESPECT OTHER THAN JUST THE
22 EXERCISE OF SOUND DISCRETION?

23 MR. LITTLEJOHN: YOUR HONOR, I THINK THE EXERCISE OF
24 SOUND DISCRETION WOULD LEAD THE COURT TO THAT CONCLUSION AND
25 THAT IT SHOULD BE HANDLED THAT WAY.

1 THE COURT: I'M GOING TO SAY THAT I -- I DON'T KNOW
2 EXACTLY WHAT I'M ABOUT TO SEE, SO I DON'T THINK IT'S THE
3 APPROPRIATE POINT IN TIME FOR THE SOLICITOR TO MAKE AN
4 ARTICULATE CLOSING ARGUMENT, BUT NEVERTHELESS I'M NOT
5 INCLINED TO JUST AUTOMATICALLY RESTRICT THE USE OF LEADING
6 QUESTIONS. SO I'LL LISTEN TO IT AND I WILL EXERCISE MY
7 DISCRETION ON A CASE-BY-CASE BASIS, ON A QUESTION-BY-QUESTION
8 BASIS.

9 I DON'T WANT TO PUT YOU NECESSARILY IN THE POSITION
10 OF HAVING TO JUMP UP AND OBJECT EVERY TIME. I GUESS WHAT I'M
11 SAYING IS I'M GOING TO ALLOW HIM TO LEAD TO SOME EXTENT, BUT
12 I DOUBT THAT HE INTENDS TO TRY TO MAKE THIS INTO A CLOSING
13 ARGUMENT. BUT IF IT GETS TO THAT POINT, THEN I WOULD
14 CONSIDER RESTRICTING IT.

15 MR. LITTLEJOHN: YOUR HONOR, I WOULD ALSO OBJECT TO
16 HIM JUST GETTING UP AND JUST REITERATING WHAT THE WITNESS HAD
17 PREVIOUSLY TESTIFIED TO WHEN CALLED BY THE STATE.

18 MR. MYERS: WELL, I CAN ANSWER THAT.

19 THE COURT: IT'S JUST DIFFICULT FOR ME TO SIT HERE
20 RIGHT NOW NOT KNOWING WHAT HE'S PLANNING ON DOING.

21 MR. LITTLEJOHN: YES, SIR. I UNDERSTAND.

22 THE COURT: I DON'T -- I DON'T EVER LIKE TO RESTRICT
23 WHAT COUNSEL DOES IN ADVANCE OF THEIR DOING IT, ESPECIALLY ON
24 CROSS-EXAMINATION. AND SO I'M GOING TO DO WHAT I ALWAYS DO
25 IN A SITUATION LIKE THIS AND THAT IS TO JUST LISTEN VERY

1 CAREFULLY AND---

2 MR. LITTLEJOHN: ALL RIGHT, SIR.

3 THE COURT: ---TAKE IT AS IT COMES UP.

4 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

5 THE COURT: I'M NOT -- I'M NOT GOING TO SAY THAT I'M
6 GOING TO PREVENT THE USE OF LEADING QUESTIONS. BRING IN THE
7 JURY. HOLD THEM RIGHT THERE FOR JUST A SECOND. AND I ALSO
8 DON'T WANT TO -- I DON'T WANT TO PUT EITHER ONE OF YOU IN A
9 POSITION OF NOT KNOWING WHAT I'VE JUST SAID, NOT
10 UNDERSTANDING WHAT I JUST SAID. I THINK THAT THE USE OF
11 LEADING QUESTIONS IS -- AND I'M GOING TO PERMIT IT HERE.
12 BUT, SOLICITOR, I THINK YOU UNDERSTAND THERE ARE BOUNDS TO
13 THAT, AND I THINK YOU UNDERSTAND WHAT I'M SAYING.

14 MR. MYERS: YES, SIR.

15 THE COURT: ALL RIGHT, SIR. BRING THEM IN.

16 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
17 2:06 P.M.)

18 BY MR. MYERS:

19 Q. DETECTIVE FRIER, I WAS ASKING YOU IF YOU WERE OUT AT
20 I-20 WHEN THE NAVIGATOR WAS STOPPED BY DETECTIVE STAZER.

21 A. YES, SIR, I WAS.

22 Q. YOU WERE OUT THERE WHEN BOTH THE DEFENDANT MERCER
23 WAS THERE AND THOMPSON WAS THERE.

24 A. YES, SIR, I WAS.

25 Q. YOU WERE ABLE TO OBSERVE THEM.

1 A. YES, SIR.

2 Q. AND YOU OBSERVED THEIR ACTIONS AND THEIR Demeanors.

3 A. YES, SIR, I DID.

4 Q. OKAY. WHICH WAS THE LEADER AND WHICH WAS THE
5 FOLLOWER?

6 MR. LITTLEJOHN: YOUR HONOR, I OBJECT. THAT CALLS
7 FOR A CONCLUSION.

8 MR. MYERS: BASED ON THEIR---

9 THE COURT: SUSTAINED.

10 BY MR. MYERS:

11 Q. WHICH ONE DEALT -- YOU DEALT WITH BOTH OF THEM?

12 A. I DEALT WITH BOTH OF THEM ON THE SIDE OF THE ROAD;
13 YES, SIR.

14 Q. NOW, GOING BACK TO THE JAIL, WHEN YOU WENT BACK TO
15 THE JAIL, WHO DID YOU TAKE?

16 A. I TOOK THOMPSON BACK TO THE JAIL, MARCUS THOMPSON.

17 Q. AND WHO TOOK THE DEFENDANT, MERCER, BACK?

18 A. HE WAS TRANSPORTED BY DEPUTY STAZER.

19 Q. OKAY. NOW, DID YOU COME IN CONTACT WITH MERCER BACK
20 AT THE SHERIFF'S DEPARTMENT?

21 A. YES, SIR, I DID.

22 Q. DID YOU TOUCH HIM?

23 A. NO, SIR, I DID NOT.

24 Q. DIDN'T TOUCH HIS HANDS OR ANYTHING ELSE.

25 A. NO, SIR.

1 MR. MYERS: THANK YOU. NO FURTHER QUESTIONS.

2 THE COURT: ANY REDIRECT?

3 MR. LITTLEJOHN: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 MR. LITTLEJOHN: THE NEXT WITNESS IS RIGHT OUTSIDE
7 THE DOOR.

8 MR. MYERS: COULD WE HAVE A NAME, PLEASE?

9 MR. LITTLEJOHN: DAVID FARRELL.

10 MR. MYERS: WE HAVE A MATTER OF LAW.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
12 GOING TO GO AHEAD AND SEND YOU BACK INTO THE JURY ROOM FOR
13 JUST A FEW MINUTES, PLEASE.

14 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
15 2:09 P.M.)

16 MR. MYERS: DAVID FARRELL IS THE ATTORNEY WHO WAS
17 APPOINTED TO REPRESENT MARCUS THOMPSON. MARCUS THOMPSON IS
18 NOT A WITNESS FOR THE STATE. THE DEFENSE HAD HIM ON THEIR
19 WITNESS LIST. DAVID FARRELL WAS NOT PART OF THE
20 INVESTIGATION. THOMPSON IS NOT ON TRIAL, SO THERE CAN BE
21 NOTHING AT ALL RELEVANT AS TO WHAT DAVID FARRELL WOULD
22 TESTIFY TO, AND I WOULDN'T WANT HIM TO GET UP THERE WITH THE
23 ATTORNEY ASKING LEADING QUESTIONS OR SOMETHING TO TRY TO
24 THROW IN AN ARBITRARY, IRRELEVANT, INADMISSIBLE FACT BEFORE
25 THE JURY BEFORE WE COULD OBJECT. SO THERE WOULD BE NOTHING

1 ABSOLUTELY RELEVANT THAT MR. FARRELL WOULD HAVE TO OFFER IN
2 THIS CASE AS IT RELATES TO THIS TRIAL.

3 MR. LITTLEJOHN: YOUR HONOR, OF COURSE, IT'S THE
4 STATE'S OPINION NOTHING ABOUT MARCUS THOMPSON HAS ANYTHING TO
5 DO WITH THIS CASE, BUT WE CERTAINLY THINK IT'S RELEVANT THE
6 WAY THAT MARCUS THOMPSON HAS BEEN TREATED FROM THE STANDPOINT
7 OF THE INVESTIGATION AND THE MANNER IN WHICH HE'S BEEN
8 PROSECUTED. WE DO NOT INTEND ON ASKING MR. FARRELL ANYTHING
9 ABOUT A STATEMENT MADE BY MR. THOMPSON OR ANYTHING OF THAT
10 NATURE.

11 MR. MYERS: HOW MR. THOMPSON HAS BEEN TREATED BY
12 ANYBODY IS NOT RELEVANT TO THE FACTS OF THE TRIAL OF THE
13 STATE VERSUS KEVIN MERCER. THAT IS FOR ANOTHER DAY WHEN WE
14 CALL THE CASE OF THE STATE VERSUS MARCUS THOMPSON WHICH WE
15 WILL, AND THAT HAS NOTHING TO DO WITH THIS.

16 THE COURT: EXPLAIN -- EXPLAIN IT TO ME BECAUSE I
17 WILL SAY THAT I -- IF MARCUS THOMPSON HAD TESTIFIED, THEN HOW
18 THE STATE HAD CHOSEN TO ADDRESS HIS PROSECUTION WOULD RELATE
19 TO THINGS LIKE BIAS AND MOTIVE BUT -- IT WOULD RELATE TO THE
20 CREDIBILITY OF THE TESTIMONY OF MARCUS THOMPSON. BUT IT
21 SEEMS TO ME THAT IF THE STATE CHOOSES TO TREAT HIS CASE
22 DIFFERENTLY, THE FACT OF HAVING THAT CHOICE IS NOT
23 RELEVANT -- OF HAVING MADE THAT CHOICE IS NOT RELEVANT. THE
24 REASONS FOR HAVING MADE THAT CHOICE MIGHT BE RELEVANT, BUT
25 THEY CONSTITUTE AN OPINION CONCERNING WHO IS GUILTY AND WHO'S

1 NOT GUILTY OF WHAT CRIME. AND SO I DON'T SEE HOW THAT WOULD
2 COME INTO EVIDENCE.

3 MR. LITTLEJOHN: YOUR HONOR, THE MATTER OF HOW THEY
4 TREATED MARCUS THOMPSON DIRECTLY RELATES ON HOW THEY'VE
5 TREATED KEVIN MERCER HERE BECAUSE THEY HAVE JUST CHOSEN TO
6 TOTALLY IGNORE MARCUS THOMPSON'S ROLE IN THE CRIME THAT
7 OCCURRED, AND THE FACT THAT MARCUS THOMPSON WAS ORIGINALLY
8 CHARGED AND THEN HIS CHARGES WERE REDUCED TO OTHER CHARGES
9 AND THEN HE WAS ALLOWED OUT ON BOND... AND THE STATE HAS
10 DONE NOTHING ABOUT HIS BOND EVEN THOUGH HE'S GOTTEN IN
11 TROUBLE SINCE THEN AND THE FACT THAT HE IS JUST -- THEY'VE
12 JUST TOTALLY FOCUSED ON MARCUS - I MEAN, EXCUSE ME - ON KEVIN
13 MERCER AND JUST IGNORED MARCUS THOMPSON.

14 THE COURT: WELL, SO WHAT I'M HEARING IS YOU, I
15 THINK, ARTICULATING SOME ARGUMENT THAT WOULD SUPPORT YOUR
16 OFFERING THIS TESTIMONY AS EVIDENCE OF THIRD-PARTY GUILT
17 WHICH IN ORDER TO BE -- IN ORDER FOR IT TO BE ADMISSIBLE MUST
18 TEND TO EXONERATE THE DEFENDANT WHO IS ON TRIAL, AND UNDER
19 THE LAW THAT WE HAVE BEEN -- WE'VE BEEN DISCUSSING AND WILL
20 DISCUSS AGAIN, I'M SURE, BEFORE THE DAY IS OVER THAT IF TWO
21 PEOPLE JOINTLY SET OUT TO COMMIT A CRIME AND ANOTHER CRIME IS
22 COMMITTED PURSUANT TO THAT FIRST CRIME, THEN BOTH WOULD BE
23 GUILTY AS PRINCIPALS UNDER THE CONCEPT OF THE HAND OF ONE IS
24 THE HAND OF ALL.

25 AND SO EVEN IF IT WERE TRUE THAT MARCUS THOMPSON WAS

1 A PARTICIPANT IN THIS CRIME AND WAS, IN FACT, THE ONE WHO
2 PULLED THE TRIGGER, THAT WOULD NOT TEND TO EXONERATE THE
3 DEFENDANT AT LEAST ON THE MURDER AND THE ARMED ROBBERY. NOW,
4 IT MIGHT ON THE POSSESSION OF A FIREARM BUT -- IT MIGHT ON
5 THE POSSESSION OF A FIREARM. I'M NOT POSITIVE ABOUT THAT.
6 I'D HAVE TO -- WOULD -- BUT ON THE OTHER TWO IT WOULD NOT.

7 MR. LITTLEJOHN: WITH ALL DUE RESPECT, THE STATE'S
8 THEORY OF THIS CASE -- AND THEY GOT UP IN OPENING STATEMENT
9 AND SAID IT. THEY SAID KEVIN MERCER WAS THE TRIGGERMAN. HE
10 WAS THE ONE THAT SHOT THE GUN. THEY TOTALLY IGNORED MARCUS
11 THOMPSON. THEIR THEORY ALL ALONG HAS NOT BEEN HAND OF ONE IS
12 THE HAND OF ALL OR THAT TWO DEFENDANTS WERE INVOLVED IN THE
13 SHOOTING. THEIR THEORY IS KEVIN MERCER WAS THE SOLE GUNMAN,
14 AND THAT'S THE WAY THEY'VE TREATED THIS CASE.

15 MR. MYERS: AND THAT WOULD NECESSITATE US GETTING
16 INTO ALL THE EVIDENCE WE HAVE AND DON'T HAVE AGAINST MARCUS
17 THOMPSON WHO IS NOT ON TRIAL. THIS IS A SMOKE SCREEN. IT IS
18 NOT RELEVANT, AND IT IS NOT ADMISSIBLE. WE CAN TREAT MARCUS
19 THOMPSON HOW EVER WE WANT TO. THAT HAS NOTHING TO DO WITH
20 THE GUILT OR INNOCENCE ON KEVIN MERCER WHEN MARCUS THOMPSON
21 IS NOT A WITNESS FOR US, NOT PART OF THE STATE'S CASE OR
22 ANYTHING ELSE. IT'S NATURAL TO TRY TO SHIFT THE BLAME TO AN
23 ABSENT CO-DEFENDANT, BUT THE CO-DEFENDANT IS NOT ON TRIAL.
24 HE'S NOT BEEN USED BY US.

25 THE COURT: IT'S MY INFERENCE FROM ALL THIS THAT YOU

1 ARE CALLING THIS WITNESS TO TESTIFY AS TO WHAT THE STATE HAS
2 DONE IN REGARDS TO THE CHARGES OF -- THAT WERE MADE AGAINST
3 MARCUS THOMPSON, THAT HE WAS NOT INDICTED FOR MURDER, NOT
4 INDICTED FOR ARMED ROBBERY, BUT WAS INDICTED FOR ACCESSORY
5 AFTER THE FACT.

6 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR, AND HIS
7 BOND SITUATION.

8 THE COURT: I SUSTAIN THE OBJECTION.

9 MR. MYERS: THANK YOU.

10 THE COURT: DO YOU WISH TO MAKE AN OFFER OF PROOF?

11 MR. LITTLEJOHN: YOUR HONOR, OUT OF AN ABUNDANCE OF
12 PRECAUTION, FOR THE RECORD, PERHAPS WE SHOULD PROFFER THE
13 TESTIMONY. I THINK IT WILL BE VERY BRIEF.

14 THE COURT: WELL, YOU'RE WELCOME TO DO THAT, BUT IF
15 THE SCOPE OF HIS TESTIMONY WAS JUST THAT, THEN YOU ALL OUGHT
16 TO BE ABLE TO AGREE IN TWO OR THREE SENTENCES HERE ON THE
17 RECORD AS TO WHAT IT WOULD BE WITHOUT THE NECESSITY OF
18 CALLING HIM AS A WITNESS, BUT IF YOU WANT TO, YOU CAN. I
19 MEAN, IT'S BASICALLY THAT HE WAS NOT CHARGED WITH MURDER; HE
20 WAS NOT CHARGED WITH ARMED ROBBERY. HE WAS CHARGED WITH
21 ACCESSORY AFTER THE FACT. HE WAS RELEASED ON BOND, AND HE --
22 APPARENTLY, BY WHAT YOU HAVE SAID, THERE'S EVIDENCE THAT HE
23 MIGHT HAVE VIOLATED THE CONDITIONS OF THAT BOND AND YET THE
24 STATE HAS NOT MOVED TO HAVE THE BOND REVOKED.

25 MR. LITTLEJOHN: THAT WOULD BE THE SUMMARY OF IT,

1 YOUR HONOR.

2 THE COURT: ALL RIGHT. IS THAT ALL TRUE, SOLICITOR?

3 MR. MYERS: I DIDN'T KNOW HE VIOLATED THE CONDITIONS
4 OF HIS BOND. THAT'S NEWS TO ME. IF THEY PUT FARRELL UP, I'D
5 JUST ASK HIM. I DIDN'T KNOW ANYTHING ABOUT IT.

6 THE COURT: OKAY. OKAY. DO YOU NEED TO PUT HIM UP
7 FOR AN OFFER OF PROOF?

8 MR. LITTLEJOHN: YOUR HONOR, FOR -- AS LONG AS THE
9 RECORD IS PRESERVED, WE THINK IT IS BASED ON -- ON THAT.

10 THE COURT: SO THAT WOULD BE THE SUBSTANCE OF HIS
11 TESTIMONY.

12 MR. LITTLEJOHN: YES, SIR.

13 THE COURT: WHAT I JUST SAID.

14 MR. LITTLEJOHN: RIGHT. AND IT'S MY CLEAR
15 UNDERSTANDING HE WAS CONVICTED OF POSSESSION OF DRUGS IN
16 RICHLAND COUNTY WHILE HE WAS OUT ON BOND AND PLED GUILTY.

17 THE COURT: OKAY. ALL RIGHT. LET'S TAKE A VERY
18 SHORT BREAK, ABOUT TWO OR THREE MINUTES, AND WE'LL BE BACK
19 AND BRING THE JURY IN.

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 THE COURT: BE SEATED. BRING IN THE JURY.

22 MR. LITTLEJOHN: YOUR HONOR, MS. KYZER, OUR NEXT
23 WITNESS, I THINK WAS OVER IN THE SOLICITOR'S OFFICE. SHE'S
24 SUPPOSED TO BE HERE MOMENTARILY.

25 MR. HUBBARD: SHE'S AT THE SHERIFF'S DEPARTMENT

1 RIGHT NOW, I THINK. WHAT DO YOU WANT HER...

2 THE COURT: HOLD ON A SECOND BEFORE YOU ACTUALLY
3 BRING THEM IN. DO YOU HAVE A WITNESS?

4 MR. LITTLEJOHN: YOUR HONOR, WE'VE GOT ONE WITNESS,
5 MS. KYZER, WHO'S AN EVIDENCE CUSTODIAN AT THE SHERIFF'S
6 DEPARTMENT. WE HAD ASKED HER BEFORE LUNCH TO BE HERE AFTER
7 LUNCH WITH THE EXHIBITS, AND IT WAS OUR UNDERSTANDING SHE WAS
8 GOING TO BE HERE, BUT APPARENTLY SHE'S ON THE WAY NOW,
9 ACCORDING TO MR. HUBBARD.

10 THE COURT: ALL RIGHT. DO YOU HAVE ANYBODY ELSE?

11 MR. LITTLEJOHN: YOUR HONOR, WE'VE GOT ONE OTHER
12 WITNESS I WAS GOING TO CALL LAST, BUT WE CAN GO AHEAD AND
13 CALL HIM.

14 THE COURT: WOULD IT PREJUDICE YOU TO CALL THE
15 WITNESS OUT OF THE ORDER THAT YOU HAD ORIGINALLY INTENDED?

16 MR. LITTLEJOHN: NOT GREATLY, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR. BRING IN THE JURY.

18 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
19 2:20 P.M.)

20 MR. LITTLEJOHN: MAY IT PLEASE THE COURT? WE CALL
21 JEFF HOLLIFIELD.

22 JEFFREY M. HOLLIFIELD, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME,
25 SPELLING YOUR FIRST AND LAST NAMES.

1 THE WITNESS: MY NAME IS JEFFREY MORRIS HOLLIFIELD.
2 FIRST NAME IS J-E-F-F-R-E-Y. LAST NAME H-O-L-L-I-F-I-E-L-D.

3 DIRECT EXAMINATION

4 BY MR. LITTLEJOHN:

5 Q. MR. HOLLIFIELD, WHERE DO YOU LIVE, PLEASE, SIR?

6 A. I LIVE IN GREENVILLE, SOUTH CAROLINA.

7 Q. WHAT IS YOUR OCCUPATION?

8 A. I OWN AND OPERATE MICRO ANALYTIC WHICH IS A PRIVATE
9 FORENSICS LAB. I DO WORK FOR LOCAL LAW ENFORCEMENT AGENCIES,
10 ATTORNEYS, INSURANCE ADJUSTERS WHO ARE INVESTIGATING
11 FRAUDULENT CLAIMS AND INDUSTRY. I ALSO TEACH AT GREENVILLE
12 TECHNICAL COLLEGE CHEMISTRY AND FORENSIC SCIENCE AS AN
13 ADJUNCT INSTRUCTOR.

14 Q. MR. HOLLIFIELD, WOULD YOU TELL THE JURY, PLEASE,
15 SIR, WHAT YOUR EDUCATIONAL BACKGROUND IS?

16 A. I RECEIVED A BACHELOR'S IN CHEMISTRY FROM FURMAN
17 UNIVERSITY IN '84, A MASTER'S IN CHEMISTRY ALSO FROM FURMAN
18 IN '86. I WORKED AT THE S.L.E.D. CRIME LAB FOR TEN YEARS
19 FROM '86 TO '96 AS A TRACE ANALYST AND DRUG ANALYST. THEN I
20 RECEIVED A MASTER'S IN CHEMICAL MICROSCOPY FROM MCCRONE
21 RESEARCH INSTITUTE IN CHICAGO IN '97 AND THEN SINCE THEN HAVE
22 DONE PRIVATE FORENSICS WORK.

23 Q. WOULD YOU TELL US WHAT KIND OF CONTINUING EDUCATION
24 YOU'VE GONE THROUGH DURING YOUR CAREER?

25 A. WELL, WHILE AT S.L.E.D. I WAS -- I WENT THROUGH THE

1 POLICE ACADEMY IN COLUMBIA AND FROM TIME TO TIME WAS SENT BY
2 S.L.E.D. TO VARIOUS ONE-WEEK COURSES IN VARIOUS AREAS OF
3 ANALYSIS AND INSTRUMENTATION WHICH INCLUDED MOSTLY FIBER
4 ANALYSIS, EXPLOSIVES ANALYSIS, AND GUNSHOT RESIDUE ANALYSIS.

5 Q. AND HOW LONG WERE YOU WITH S.L.E.D.?

6 A. TEN YEARS.

7 Q. OKAY. AND YOUR DUTIES AT S.L.E.D. CONSISTED OF
8 WHAT?

9 A. PROCESSING CRIME SCENES. MOST OF THE TIME I WAS
10 DOING ANALYTICAL CHEMICAL TESTING IN THE LABORATORY AND THEN
11 TESTIFYING IN COURT.

12 Q. OKAY. DID YOU BECOME FAMILIAR WITH THE TESTS FOR
13 GUNSHOT RESIDUE?

14 A. YES, SIR.

15 Q. WOULD YOU TELL US BASICALLY HOW YOU BECAME
16 PROFICIENT AT THAT?

17 A. WELL, I WORKED IN THE TRACE EVIDENCE LAB AT S.L.E.D.
18 FOR SEVEN YEARS AND DURING THAT TIME DID A LOT OF GUNSHOT
19 RESIDUE ANALYSIS AND TESTING. THERE'S BOTH IN-HOUSE TRAINING
20 AND SPECIALTY SCHOOLS TO LEARN THE INSTRUMENTATION THAT'S
21 USED FOR THE VARIOUS TYPES OF TESTING, BOTH ON INDIVIDUALS'
22 HANDS TO CHECK FOR GUN PRIMER RESIDUE ON HANDS AND ALSO
23 CLOTHING.

24 Q. MR. HOLLIFIELD, HAVE YOU BEEN PREVIOUSLY QUALIFIED
25 IN COURT AS AN EXPERT IN THE FIELD OF TRACE ANALYSIS AND THE

1 DETECTION OF GUNSHOT RESIDUE?

2 A. I HAVE.

3 Q. HOW MANY TIMES? DO YOU KNOW?

4 A. OVER 150 TIMES.

5 Q. IS THAT IN STATE AND FEDERAL COURT?

6 A. YES, SIR. MAGISTRATE'S, STATE, AND FEDERAL COURT.

7 Q. OKAY. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT ON
8 BEHALF OF THE ELEVENTH CIRCUIT SOLICITOR'S OFFICE HERE IN
9 LEXINGTON?

10 A. I HAVE.

11 MR. LITTLEJOHN: YOUR HONOR, I'D OFFER HIM AS AN
12 EXPERT IN THE FIELD OF GUNSHOT RESIDUE---

13 MR. HUBBARD: NO OBJECTION.

14 MR. LITTLEJOHN: ---TESTING AND TRACE ANALYSIS.

15 THE COURT: HE'S SO QUALIFIED.

16 BY MR. LITTLEJOHN:

17 Q. MR. HOLLIFIELD, DID YOU HAVE OCCASION TO EXAMINE
18 SOME G.S.R. TEST RESULTS IN THIS CASE INVOLVING KEVIN MERCER?

19 A. I DID. YES, SIR.

20 Q. ALL RIGHT. DID YOU HAVE ALL THE MATERIAL THAT YOU
21 NEEDED TO -- TO REVIEW THAT PROCEDURE THAT WAS DONE?

22 A. I DID. YES, SIR. I USUALLY RECEIVE THE FORMAL
23 WRITTEN REPORT BY THE ANALYST AND THEN ALSO ANY INSTRUMENT OF
24 GENERATED DATA FROM THE LABORATORY. IN THIS CASE THERE WERE
25 TWO INSTRUMENTS THAT WERE USED, AND I HAVE THE DATA FROM BOTH

1 INSTRUMENTS.

2 Q. ALL RIGHT. MR. HOLLIFIELD, WOULD YOU TELL THE JURY,
3 PLEASE, SIR, WHAT IS NECESSARY IN ORDER TO MAKE A
4 DETERMINATIVE TEST FOR -- WELL, LET ME BACK UP. WHAT IS
5 GUNSHOT RESIDUE?

6 A. WHEN A BULLET IS FIRED AND THE BULLET IS DISCHARGED,
7 THERE'S BOTH GUN POWDER AND GUN PRIMER INSIDE THE BULLET, AND
8 THOSE CHEMICALS WHICH ARE MOSTLY HEAVY METAL SALTS AND
9 NITRATES, GUN POWDER, ARE DISCHARGED AND THEY'RE GOING TO
10 COME OUT ANY OPENING OF THE GUN, WHETHER IT'S THE END OF THE
11 BARREL OR AROUND THE TRIGGER OR AROUND THE HAMMER OR AROUND
12 THE CYLINDER IN THE REVOLVER. ANY OPENING -- THOSE METAL
13 SALTS AND GUN POWDER AND DEBRIS, SOOT, ARE GOING TO COME OUT
14 OF THE OPENINGS AND BE DEPOSITED ON ANYTHING IN THE CLOSE
15 VICINITY: THE GUN, THE PERSON'S HANDS THAT ARE AROUND THE
16 GUN, OR ANYTHING ELSE THAT'S WITHIN A FOOT OR TWO OF THE
17 WEAPON.

18 Q. OKAY. IS THIS -- IS THIS TRUE FOR VIRTUALLY ANY
19 KIND OF FIREARM?

20 A. YES, SIR, WHETHER IT'S A HANDGUN, A REVOLVER,
21 SEMIAUTOMATIC, AUTOMATIC, OR RIFLES OR SHOTGUNS. ANY OPENING
22 IN THE GUN, THERE'S GOING TO BE A DISCHARGE OF GUN POWDER,
23 GUN PRIMER, SOOT, AND DEBRIS.

24 Q. IS THERE A DIFFERENCE BETWEEN THE TYPE OF GUN AND
25 THE CALIBERS OF GUN?

1 A. THERE ARE SOME DIFFERENCES. 22 CALIBERS, FOR
2 INSTANCE -- CERTAIN MANUFACTURERS OF THE 22 CALIBER
3 AMMUNITION DON'T ALWAYS INCLUDE THE SAME INGREDIENTS, THE
4 SAME METALS, THAT ARE PRESENT IN SOME OF THE LARGER CALIBERS.
5 SO THAT'S A SIGNIFICANT DIFFERENCE. TYPICALLY, LARGER
6 CALIBER WEAPONS ARE GOING TO HAVE MORE GUN POWDER OR MORE GUN
7 PRIMER PRESENT THAN THE SMALLER CALIBER AMMUNITION SIMPLY
8 BECAUSE OF THE SIZE.

9 VARIIOUS GUNS, OF COURSE, HAVE VARIOUS OPENINGS IN
10 DIFFERENT PLACES. A RIFLE OR A SHOTGUN, FOR INSTANCE, THE
11 END OF THE BARREL IS GOING TO BE FURTHER AWAY FROM THE
12 SHOOTER WHEREAS WITH A HANDGUN THE DEBRIS THAT COMES OUT OF
13 THE BARREL OF THE GUN IS GOING TO SURROUND THE ENTIRE GUN
14 COMPLETELY TYPICALLY. BUT THERE ARE SOME DIFFERENCES, YES.

15 Q. OKAY. IS THERE A DIFFERENCE BETWEEN, SAY, A
16 REVOLVER AND A SEMIAUTOMATIC PISTOL?

17 A. THERE ARE PROBABLY MORE OPENINGS WITH A REVOLVER,
18 MORE -- OTHER THAN -- OTHER THAN THE END OF THE BARREL, THERE
19 ARE PROBABLY MORE OPENINGS OR CREVICES AROUND A REVOLVER OR
20 FOR GUN PRIMER AND GUN POWDER TO BE DISPERSED AS OPPOSED TO A
21 SEMIAUTOMATIC WEAPON. IT'S A LITTLE MORE TIGHTLY DESIGNED.

22 Q. WOULD YOU EXPECT -- YOU INDICATED THERE MIGHT BE A
23 DIFFERENCE BETWEEN A LARGER CALIBER AND A SMALLER CALIBER?

24 A. SOME.

25 Q. WHAT DO YOU CONSIDER A 357 CALIBER?

1 A. I WOULD CONSIDER A 357, 40 CALIBER, 45 CALIBERS,
2 THOSE TO BE RELATIVELY LARGER CALIBER WEAPONS AS OPPOSED TO A
3 22 OR A 25 CALIBER.

4 Q. OKAY. MR. HOLLIFIELD, LET ME SHOW YOU WHAT'S
5 PREVIOUSLY BEEN MARKED STATE'S EXHIBIT 19, AND I WOULD
6 REPRESENT TO YOU THAT'S A 357. DOES THAT APPEAR TO BE
7 CORRECT?

8 A. YES, SIR, A REVOLVER. UH-HUH.

9 Q. OKAY. AND COULD YOU MAYBE STAND UP AND SHOW THE
10 JURY WHAT YOU'RE TALKING ABOUT FROM THE STANDPOINT OF THE
11 G.S.R. BEING DISCHARGED FROM THAT WEAPON WHEN IT IS FIRED?

12 A. OKAY.

13 Q. MAYBE YOU CAN COME DOWN HERE; IT MIGHT HELP.

14 A. WHEN THE WEAPON IS FIRED, AS I SAID, THE GUN PRIMER
15 AND GUN POWDER PARTICLES, RESIDUE, ARE GOING TO BE -- ARE
16 GOING TO EXIT THE WEAPON AT A LOT OF DIFFERENT PLACES, BUT
17 THE BULK OF IT IS GOING TO COME OUT THE END OF THE BARREL,
18 BUT THERE IS A LOT OF PRIMER AND POWDER THAT ALSO COMES OUT
19 AROUND THE CYLINDER. THERE'S A GAP, AS YOU CAN SEE, BETWEEN
20 THE CYLINDER AND THE FRAME OF THE GUN HERE AND ALSO A LITTLE
21 BIT OF A GAP BETWEEN THE BACK OF THE CYLINDER AND THE FRAME
22 OF THE GUN. THIS IS THE HAMMER. THERE'S AN OPENING AROUND
23 THERE WHERE SOME OF THE PRIMER WOULD BE DISCHARGED AND ALSO
24 AROUND THE TRIGGER RIGHT THERE WHERE THE TRIGGER GUARD IS.
25 THERE'S GOING TO BE PRIMER AND POWDER EXITING THE GUN THERE

1 AS WELL.

2 Q. OKAY. IF YOU COULD COME DOWN HERE AND SHOW MAYBE
3 THIS HALF OF THE JURY WHERE -- THOSE AREAS YOU'RE SPEAKING
4 OF.

5 A. JUST AGAIN THE PRIMARY OPENINGS IN THE WEAPON ARE
6 THE END OF THE BARREL, OF COURSE, RIGHT AROUND THE HAMMER IN
7 THIS AREA WHERE THE FIRING PIN STRIKES THE PRIMER, IN FRONT
8 OF THE CYLINDER, BEHIND THE CYLINDER, AND THEN AROUND THE
9 TRIGGER. ANY OPENING IN THE GUN IS TO BE A SOURCE OF GUN
10 PRIMER.

11 Q. OKAY. ALL RIGHT. THANK YOU, SIR. MR. HOLLIFIELD,
12 THE G.S.R. THAT'S DISCHARGED WHEN A GUN IS FIRED, WHAT AREA
13 OF THE BODY WOULD THAT TEND TO BE THE HEAVIEST
14 CONCENTRATIONS?

15 A. WITH RESPECT TO A SHOOTER, IT'S TYPICALLY GOING TO
16 BE ON THE HANDS BECAUSE THE HANDS ARE EITHER -- ARE TOUCHING
17 THE WEAPON AND, OF COURSE, VERY CLOSE TO THE WEAPON.
18 OCCASIONALLY YOU'LL FIND GUN PRIMER ON THE SLEEVES OF A
19 SHOOTER BECAUSE THOSE ARE ALSO CLOSE TO THE WEAPON. IN
20 EUROPE THEY TAKE SAMPLES FROM THE NOSTRILS BECAUSE THE FACE
21 IS TYPICALLY ABOVE OR RIGHT BEHIND THE WEAPON, SO THERE'S
22 GOING TO BE DEBRIS DEPOSITED ON THE FACE AND IT'S GOING TO
23 REMAIN FOR SOME LENGTH OF TIME IN THE NOSTRILS. SO THEY TAKE
24 PRIMER SAMPLES FROM THERE. FOR A VICTIM IT'S GOING TO BE
25 TYPICALLY THE FRONT OF THE SHIRT OR JACKET OR FRONT OF THE

1 BODY.

2 Q. OKAY.

3 A. BECAUSE THEY'RE RIGHT IN FRONT OF THE BARREL OF THE
4 GUN WHERE A LOT OF THE GUN PRIMER IS COMING OUT.

5 Q. FROM THE STANDPOINT OF THE SHOOTER'S HAND, WHERE
6 WOULD YOU FIND THE HIGHEST CONCENTRATIONS OF GUNSHOT RESIDUE?

7 A. FROM A -- ON A SHOOTER'S HANDS THERE IS GOING TO BE
8 GUN PRIMER DEPOSITED ON BOTH THE PALMS AND THE BACKS OF THE
9 HANDS. USUALLY YOU SEE A LITTLE BIT MORE ON THE BACKS OF THE
10 HANDS THAN THE PALMS. THE ENTIRE GUN IS, AS I SAID,
11 SURROUNDED BY A CLOUD OF GUN PRIMER AND GUN POWDER DEBRIS, SO
12 IT IS DEPOSITED ON THE BACKS OF THE HANDS AS WELL AS THE
13 PALMS AND TYPICALLY A LITTLE BIT MORE BECAUSE THE PALMS ARE
14 PROTECTED TO A CERTAIN DEGREE BECAUSE THEY'RE AGAINST THE
15 WEAPON.

16 Q. OKAY. NOW, WHAT ARE THE DIFFERENT METALS THAT MUST
17 BE DETECTED IN ORDER TO CONCLUDE THAT GUNSHOT RESIDUE IS ON
18 AN INDIVIDUAL'S HANDS?

19 A. THERE ARE -- THERE ARE A LOT OF METALS THAT ARE IN
20 GUN PRIMER AND GUN POWDER. THE MOST PREDOMINANT ONES ARE
21 LEAD, BARIUM, AND ANTIMONY. ALL THREE OF THOSE ARE HEAVY
22 METALS AND THEY'RE PRESENT AS SALTS INITIALLY. AFTER THE
23 GUN'S FIRED, THE METALS BECOME MOLTEN AND THEY FORM TINY
24 SPHERES AND THEN THEY COOL; THEY CONDENSE. AND THEN THEY'RE
25 GOING TO FALL AND BE DEPOSITED ON EITHER THE GUN OR THE HANDS

1 OR CLOTHING AS SPHERICAL PARTICLES COMPOSED OF PRIMARILY
2 THOSE THREE METALS: LEAD, BARIUM, AND ANTIMONY.

3 Q. NOW, IN ORDER TO MAKE A DETERMINATION OF WHETHER
4 SOMEONE HAS GUNSHOT RESIDUE ON THEIR HANDS SUFFICIENT TO
5 CONCLUDE THEY FIRED A GUN, ARE THERE LEVELS THAT ARE
6 INVOLVED, LEVELS OF THESE PARTICULAR METALS?

7 A. YES, SIR. IT'S IMPORTANT WHEN THE GUNSHOT RESIDUE
8 TEST IS DONE THAT TWO CRITERIA BE MET. ONE IS THAT CERTAIN
9 LEVELS OF EACH METAL IS DETECTED, AND THE REASON FOR THAT IS
10 BECAUSE THESE METALS INDIVIDUALLY OCCUR IN CONSUMER AND
11 COMMERCIAL PRODUCTS. FOR INSTANCE, BARIUM IS IN COSMETICS.
12 IT'S IN PAINTS; IT'S IN WOOD. LEAD IS IN LEAD CELL BATTERIES
13 LIKE CAR BATTERIES, FISHING WEIGHTS, LEAD SOLDER. ANTIMONY
14 IS IN A LOT OF CAR COMPONENTS LIKE BRAKE PADS, BALL BEARINGS
15 AS WELL AS LEAD CELL BATTERIES. SO BECAUSE THESE ELEMENTS
16 ARE FOUND IN THE ENVIRONMENT, IT'S NOT SUFFICIENT TO SIMPLY
17 DETECT THE METALS BUT TO DETECT CERTAIN AMOUNTS.

18 ALL OF OUR HANDS HAVE SOME AMOUNTS OF THOSE LEVELS
19 OF METALS ON THEM FROM HANDLING EVERYDAY OBJECTS. IF YOU
20 FIRE A WEAPON OR YOU'RE IN FRONT OF A WEAPON WHEN IT'S
21 DISCHARGED, HOWEVER, YOU WILL HAVE EXTREMELY HIGH LEVELS OF
22 THOSE METALS. AND SO CRIME LABS AROUND THE COUNTRY, STATE
23 LABS, COUNTY LABS, F.B.I., SET CERTAIN THRESHOLDS FOR THE
24 VARIOUS METALS. IF IT'S BELOW THAT THRESHOLD, IT'S
25 CONSIDERED ENVIRONMENTAL LEVELS. IF IT'S ABOVE THE

1 THRESHOLD, THEN IT'S CONSIDERED BEING CONSISTENT WITH HAVING
2 COME FROM AN EXPLOSIVE DEVICE SUCH AS A FIREARM.

3 THE SECOND THING THAT HAS TO BE MET, SECOND
4 CRITERION THAT HAS TO BE MET, IS THAT ALL THREE METALS HAVE
5 TO BE FOUND, AGAIN FOR THE SAME REASON. LEAD CAN COME FROM
6 ONE SOURCE. BARIUM CAN COME FROM ANOTHER SOURCE, AND
7 ANTIMONY COULD COME FROM A THIRD SOURCE. SO IT'S IMPORTANT
8 TO DETECT ALL THREE OF THE METALS AND IN ELEVATED LEVELS.

9 Q. CAN SOME OF THESE METALS BE FOUND ON SOMEONE'S HAND
10 WHO HAS NOT FIRED A FIREARM?

11 A. THEY CAN.

12 Q. OKAY.

13 A. JUST FROM HANDLING CONSUMER OR COMMERCIAL PRODUCTS,
14 YES, SIR.

15 Q. OKAY. WOULD IT NORMALLY REACH THE THRESHOLD LEVELS
16 THAT WE'VE TALKED ABOUT?

17 A. USUALLY NOT, NO.

18 Q. OKAY.

19 A. UNLESS SOMEBODY WORKS IN A METALS FACTORY WHERE
20 THEY'RE HANDLING LEAD ALL DAY, YOU WOULD HAVE EXTREMELY HIGH
21 LEVELS, BUT THE TYPICAL CONSUMER IS NOT GOING TO HAVE
22 ELEVATED LEVELS OF THE METALS.

23 Q. NOW, DID YOU REVIEW THE LEVELS THAT WERE FOUND IN
24 THE TESTS THAT WERE RUN ON KEVIN MERCER IN THIS CASE?

25 A. I DID.

1 Q. AND WOULD YOU TELL THE JURY ABOUT THE LEVELS AND
2 WHERE THEY STAND FROM THE -- FROM THE -- WHERE THEY STAND
3 FROM THE PERSPECTIVE OF MEETING THE THRESHOLD LEVELS?

4 A. OKAY. . THE SAMPLES THAT ARE SUBMITTED FROM AN
5 INDIVIDUAL ARE SUBMITTED AS FOUR SEPARATE SAMPLES. THEY DO
6 COLLECT SAMPLES SEPARATELY FROM THE PALM OF THE LEFT HAND,
7 THE BACK OF THE LEFT HAND, THE PALM OF THE RIGHT HAND, AND
8 THE BACK OF THE RIGHT HAND. SO FOR ONE INDIVIDUAL YOU HAVE
9 FOUR SAMPLES AS WELL AS A CONTROL SAMPLE.

10 EACH OF THOSE FOUR SAMPLES THEN IS TESTED FOR ALL
11 THREE METALS: LEAD, BARIUM, AND ANTIMONY. ON MERCER'S
12 HANDS---

13 Q. LET ME STOP -- I HATE TO INTERRUPT.

14 A. SURE.

15 Q. EXPLAIN TO US ABOUT THE CONTROL BECAUSE I THINK YOU
16 NEED TO EXPLAIN THAT BEFORE WE GET INTO THE OTHER. WHAT IS A
17 CONTROL SAMPLE TAKEN FOR?

18 A. A CONTROL SAMPLE IS A SAMPLE TAKEN FROM AN
19 INDIVIDUAL SOMEWHERE OTHER THAN THE HANDS, AWAY FROM THE
20 HANDS. IT MAY BE THE BACK OF THE NECK. IT MAY BE THE KNEE
21 OR THE ELBOW. THE PURPOSE OF THAT CONTROL SAMPLE IS TO SEE
22 IF THAT INDIVIDUAL HAS SOME LEVELS OF THOSE METALS ON THEIR
23 BODY THAT'S NOT RELATED TO FIRING THE WEAPON, AND THEN THOSE
24 CONTROL LEVEL SAMPLES WHICH ARE TYPICALLY SMALL ARE
25 SUBTRACTED FROM THE LEVELS FOUND ON THE HANDS, AND THEN THE

1 REMAINING AMOUNT IS WHAT'S INTERPRETED AS EITHER BEING
2 ELEVATED OR NOT ELEVATED.

3 Q. OKAY. GIVEN THAT EXPLANATION, IF YOU WOULD DISCUSS
4 WITH US THE LEVELS THAT WERE FOUND IN THE KEVIN MERCER
5 SAMPLES.

6 A. OKAY. ON KEVIN MERCER, YOU HAVE FOUR AREAS OF THE
7 HANDS THAT WERE SAMPLED, AND YOU'RE LOOKING FOR THREE METALS
8 ON EACH AREA. SO THAT'S 12 SAMPLES, 12 NUMBERS, THAT WE'RE
9 -- THAT WE'RE INTERESTED IN. FROM THOSE 12 NUMBERS, ONLY TWO
10 OF THOSE ARE ELEVATED. ONE OF THEM IS THE LEAD LEVEL ON THE
11 LEFT PALM AND THEN THE BARIUM LEVEL ON THE BACK OF THE LEFT
12 HAND. ELEVATED BARIUM ON THE BACK OF THE LEFT HAND.
13 ELEVATED LEAD ON THE PALM OF THE LEFT HAND.

14 Q. OKAY.

15 A. THERE WERE NOT ELEVATED LEVELS OF ANTIMONY ON EITHER
16 SIDE OF THAT HAND, AND THERE WERE NOT ELEVATED LEVELS OF ANY
17 OF THE METALS ON THE RIGHT HAND.

18 Q. OKAY. AND IN ORDER TO DETERMINE THAT G.S.R. IS
19 PRESENT, YOU HAVE TO HAVE ALL THREE OF THOSE METALS PRESENT
20 IN COMBINATION. IS THAT RIGHT?

21 A. TO BE -- TO BE INDICATIVE OF GUNSHOT RESIDUE, ALL
22 THREE METALS, ACCORDING TO CRIME LAB POLICIES, HAVE TO BE
23 DETECTED AND THEY HAVE TO BE PRESENT ABOVE THRESHOLD VALUES.

24 Q. OKAY. TELL US ABOUT THE ELEVATED LEAD LEVEL THAT
25 WAS ON KEVIN MERCER'S LEFT PALM.

1 A. THE CONCENTRATION OF LEAD ON MERCER'S' LEFT PALM WAS
2 430. THE CONTROL SAMPLE HAD 31, SO WHEN YOU SUBTRACT THE 31,
3 THAT BRINGS IT DOWN TO 399. SO HIS -- THE LEAD ON HIS LEFT
4 PALM IS ELEVATED. IT'S 399 PARTS PER BILLION. THE THRESHOLD
5 CUT-OFF FOR THAT IS -- AT THE TIME OF THIS EXAM WAS 200 PARTS
6 PER BILLION. SO IT'S ALMOST DOUBLE THE LEAD AMOUNT, ALMOST
7 DOUBLE THE THRESHOLD VALUE OF LEAD ON THE LEFT PALM. ALL THE
8 OTHER LEVELS -- WELL, THE LEFT BACK IS ABOVE THE ELEVATED
9 LEVEL FOR BARIUM, AND THEN ALL THE OTHERS ARE BELOW, BELOW
10 THRESHOLD.

11 Q. SO OTHER THAN THOSE TWO, EVERYTHING ELSE IS BELOW
12 THRESHOLD.

13 A. RIGHT. YES, SIR.

14 Q. WHAT DID THE LEAD CONSIST OF THAT WAS FOUND ON THE
15 LEFT PALM?

16 A. THE -- WELL, FROM ONE OF THE TESTS, THE Q-TIP TEST,
17 WHERE THEY TAKE A SWAB AND DILUTE ACID AND SWAB THE HANDS,
18 THAT INDICATED SIMPLY A QUANTITATIVE AMOUNT, A CERTAIN AMOUNT
19 OF LEAD, PERIOD, AND THAT'S THE 399 PARTS PER BILLION WHICH
20 IS A CONCENTRATION TERM.

21 Q. THAT'S PARTS PER?

22 A. PARTS PER BILLION. OUT OF A BILLION COMPONENTS, A
23 BILLION PARTS, 399 OF THEM ARE LEAD.

24 Q. OKAY. AND WHAT DID -- WAS THERE FURTHER TESTING
25 DONE?

1 A. YES. IN THE CASE OF MERCER THE -- BECAUSE THE LEAD
2 WAS ELEVATED AND ABOVE THRESHOLD, A SUBSEQUENT TEST WAS
3 PERFORMED WITH A DIFFERENT INSTRUMENT WHERE THEY LOOK AT THE
4 SHAPE AND SIZE OF THE PARTICLES, AND THE PURPOSE OF THAT IS
5 TO SEE IF THEY'RE SPHERICALLY SHAPED. IF THEY'RE ROUND AND
6 SPHERICAL, THAT MEANS THAT THEY ARE -- WERE AT ONE TIME
7 MOLTEN OR HOT, AND THAT IS -- THAT IS AN INDICATION THAT IT
8 COULD HAVE COME FROM EITHER GUN PRIMER RESIDUE OR SOME SORT
9 OF EXPLOSIVE DEVICE, FIREWORKS, FOR INSTANCE, OR LEAD SOLDER
10 WHERE IT'S GOING TO BE HOT ENOUGH TO BE MOLTEN.

11 Q. WHAT WOULD THE SIZE -- WHAT WOULD BE THE SIZE OF
12 THOSE LEAD PARTICLES?

13 A. THEY RANGE, BUT TYPICALLY THREE TO FIVE MICROMETERS
14 WHICH IS ONE -- THAT'S ONE MILLIONTH OF A METER. JUST TO
15 GIVE YOU AN IDEA OF HOW SMALL THAT IS, A HUMAN HAIR OR A
16 SINGLE TEXTILE FIBER IS 20 TO 30 MICROMETERS THICK IN
17 DIAMETER. SO WE'RE TALKING ABOUT ONE-TENTH OF THE THICKNESS
18 OF A HUMAN HAIR.

19 Q. OKAY. AND THERE WERE ONLY TWO OF THEM.

20 A. TWO PARTICLES.

21 Q. BASED ON THE LEVELS THAT YOU SAW IN THE S.L.E.D.
22 REPORT, COULD YOU RENDER AN OPINION AS TO WHETHER MR.
23 MERCER'S HANDS HAD BEEN WASHED?

24 A. IN MY OPINION, MERCER'S HANDS WERE NOT WASHED. WHEN
25 SOMEONE'S HANDS ARE WASHED, YOU TYPICALLY SEE LITERALLY ZERO

1 LEVELS OF LEAD, BARIUM, AND ANTIMONY.

2 Q. OKAY.

3 A. AND HE HAS WHAT I WOULD CONSIDER TO BE CONSISTENT
4 WITH ENVIRONMENTAL LEVELS ON TEN OF THE AREAS, TEN OF THE
5 TWELVE AREAS, AND THEN ELEVATED LEVELS ON TWO OF THOSE AREAS.
6 SO I WOULD -- IN MY OPINION, HE DID NOT WASH HIS HANDS.

7 Q. OKAY. WHAT ABOUT THE TIME FRAME IN WHICH THE
8 SAMPLES WERE TAKEN, ASSUMING THE INCIDENT OCCURRED
9 APPROXIMATELY 11:30 P.M.?

10 A. THESE SAMPLES WERE TAKEN OR MERCER'S SAMPLES WERE
11 TAKEN WITHIN APPROXIMATELY TWO HOURS. THE S.L.E.D. PROTOCOL
12 IS SIX HOURS. IT'S NECESSARY TO COLLECT THOSE SAMPLES AS
13 SOON AS POSSIBLE BECAUSE THE GUN PRIMER PARTICLES WILL
14 EVENTUALLY WEAR AWAY, BE WIPED AWAY OR WASHED AWAY, AS TIME
15 PROGRESSES. SIX HOURS -- AFTER SIX HOURS, S.L.E.D. WILL NOT
16 RUN A SAMPLE IF IT'S COLLECTED AFTER A SIX-HOUR TIME PERIOD.
17 THESE WERE COLLECTED AFTER TWO HOURS WHICH IS WELL WITHIN THE
18 ALLOTTED TIME.

19 Q. OKAY. DO OTHER LABORATORIES AND OTHER FORENSIC
20 UNITS -- DO THEY USE DIFFERENT TIME FRAMES AND DIFFERENT
21 THRESHOLDS?

22 A. THEY DO. IT VARIES FROM STATE TO STATE. F.B.I.,
23 FOR INSTANCE, WILL NOT ANALYZE SAMPLES AFTER ABOUT THREE
24 HOURS, BUT THEY ARE LOOKING AT HIGHER THRESHOLDS. THEY ONLY
25 -- THEY ONLY RUN SAMPLES WITHIN A TWO OR THREE-HOUR TIME

1 FRAME, BUT THEY EXPECT TO FIND 500 PARTS PER BILLION ON THE
2 HANDS AS OPPOSED TO 200. S.L.E.D. SAYS SIX HOURS, BUT THEY
3 ONLY LOOK FOR 200 BECAUSE THERE'S GOING TO BE LESS AND LESS
4 AS THE TIME -- AS THE TIME GOES ON.

5 Q. OKAY. SO THE F.B.I. THRESHOLD WOULD BE MORE, GIVEN
6 THE SAME TIME FRAME.

7 A. WELL, IN A SHORTER -- IN A SHORTER TIME FRAME THEY
8 EXPECT TO FIND HIGHER LEVELS.

9 Q. THAT'S WHAT I MEAN. OKAY.

10 A. YEAH.

11 Q. MR. HOLLIFIELD, WHAT SORT OF LEVELS OF THE DIFFERENT
12 COMPONENTS OF G.S.R. WOULD YOU EXPECT TO SEE ON A PERSON'S
13 HAND AFTER FIRING ONE ROUND FROM A 357?

14 A. WHAT LEVELS?

15 Q. YEAH.

16 A. WITH A CALIBER AS LARGE AS A 357, I WOULD -- I WOULD
17 EXPECT TO SEE ELEVATED LEVELS, IN OTHER WORDS, LEVELS ABOVE
18 THE THRESHOLD FOR ALL THREE METALS ON AT LEAST ONE HAND, THE
19 HAND THAT FIRED THE WEAPON.

20 Q. OKAY.

21 A. IT COULD BE THAT THEY FIRED WITH ONE HAND AND THE
22 OTHER HAND IS BY THEIR SIDE, SO YOU ONLY FIND IT ON ONE HAND.
23 BUT I WOULD EXPECT IT TO BE ABOVE ELEVATED LEVELS OF ALL
24 THREE METALS, CERTAINLY ON THE BACK OF THE HAND AND THE PALM
25 AS WELL, ON THE SHOOTING HAND.

1 Q. DID YOU SEE THAT IN THIS CASE?

2 A. I DO NOT.

3 Q. JUST A FEW FINAL THINGS. MR. HOLLIFIELD, WE'VE HAD
4 SOME DISCUSSION HERE ABOUT CONTAMINATION OR TRANSFERENCE.
5 GIVEN A SITUATION WHERE YOU'RE TAKING A G.S.R. OR YOU'RE
6 TAKING SAMPLES FOR DETERMINATION OF WHETHER THERE IS G.S.R.,
7 HOW DOES -- HOW DOES CONTAMINATION ENTER INTO THAT -- THAT
8 TESTING PROCESS AND HOW DOES TRANSFER ENTER INTO IT?

9 A. IT IS IMPORTANT THAT THE SAMPLES ARE NOT
10 CONTAMINATED. FOR INSTANCE, PLASTIC Q-TIP SHAFTS MUST BE
11 USED AS OPPOSED TO WOODEN Q-TIP SHAFTS BECAUSE THERE'S BARIUM
12 PRESENT IN WOOD. THE PERSON COLLECTING THE SAMPLES IS TO PUT
13 ON RUBBER GLOVES OR PLASTIC GLOVES THAT DO NOT HAVE BARIUM IN
14 THEM WHEN THEY COLLECT THE SAMPLES. IF SOMEONE TOUCHES A
15 WEAPON OR AMMUNITION AND THEN HANDLES OR TOUCHES A PERSON'S
16 HANDS, THERE IS, OF COURSE, THE POSSIBILITY OF TRANSFER OR OF
17 CONTAMINATION.

18 Q. COULD TRANSFER OCCUR INSOFAR AS MAYBE HANDCUFFS ARE
19 CONCERNED?

20 A. YES, SIR. IF AN OFFICER, FOR INSTANCE, WHO IS
21 TYPICALLY WEARING A WEAPON OR HANDLING A WEAPON PLACES
22 HANDCUFFS ON AN INDIVIDUAL'S HANDS, THERE'S CERTAINLY THE
23 POSSIBILITY OF TRANSFER, YES.

24 Q. OKAY. WOULD THAT INCREASE -- WOULD THAT -- WOULD
25 THAT POSSIBILITY INCREASE THE MORE TIMES THE INDIVIDUAL WAS

1 HANDCUFFED AND UNHANDCUFFED?

2 A. IT WOULD.

3 Q. OKAY. COULD THE TWO -- COULD THE LEAD THAT WAS
4 FOUND, THE TWO LEAD PARTICLES THAT WERE FOUND, ON KEVIN
5 MERCER'S HANDS, COULD THAT HAVE COME FROM TRANSFER?

6 A. IF -- IF THE OFFICER TAKING THE SAMPLES DID NOT WEAR
7 PLASTIC OR RUBBER GLOVES OR IF THEY TOUCHED THEIR WEAPON AND
8 THEN TOUCHED THE HANDCUFFS OR THEN TOUCHED THE SUSPECT'S
9 HANDS, IT COULD BE A POSSIBLE SOURCE OF CONTAMINATION; YES,
10 SIR.

11 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
12 MOMENT, YOUR HONOR. THANK YOU, YOUR HONOR. MR. HOLLIFIELD,
13 PLEASE ANSWER ANY QUESTIONS THE STATE MAY HAVE.

14 CROSS-EXAMINATION

15 BY MR. HUBBARD:

16 Q. MR. HOLLIFIELD, I JUST HAVE A FEW QUESTIONS. YOU
17 DON'T -- YOU'RE NOT DISPUTING TODAY THAT THERE WERE ELEVATED
18 LEVELS OF LEAD ON MR. MERCER'S LEFT PALM.

19 A. THAT'S CORRECT.

20 Q. MR. LITTLEJOHN KEPT ASKING YOU ABOUT CONCLUSIVE
21 G.S.R. NOW, TO BE CONCLUSIVE YOU DO NEED THOSE THREE METAL
22 ELEMENTS; CORRECT?

23 A. THAT'S RIGHT.

24 Q. BUT NOW LEAD, ROUND LEAD, THAT'S CON -- THAT IS A
25 CHARACTERISTIC OF LEAD ONCE IT'S FIRED FROM A WEAPON;

1 CORRECT? ROUND LEAD PARTICLES?

2 A. YES. THE SPHERICAL SHAPE OF IT IS INDICATIVE OF
3 HAVING BEEN MOLTEN LIKE YOU WOULD EXPECT TO COME FROM A
4 WEAPON.

5 Q. AND SO IF YOU FIND LEAD ON SOMEONE'S PALM OR HANDS
6 OR SOMEWHERE ON A PERSON AND YOU ANALYZE THOSE AND YOU SEE
7 LEAD - ROUND, SPHERICAL LEAD - AND NO OTHER ENVIRONMENTAL
8 CONTAMINATION, ISN'T THAT CONSISTENT WITH G.S.R.?

9 A. IT'S CONSISTENT WITH A -- WITH SOME OF WHAT YOU FIND
10 IN G.S.R., BUT THERE'S -- THERE ARE ALSO SPHERICAL PARTICLES
11 FROM G.S.R. THAT HAVE ALL THREE METALS PRESENT IN ONE SINGLE
12 ENTITY AND THAT'S -- THAT'S REALLY THE PURPOSE OF THE S.E.M.
13 TEST IS TO DETECT ALL THREE METALS PRESENT IN ONE SINGLE
14 ENTITY SO YOU KNOW THEY COME FROM THE SAME SOURCE.

15 Q. RIGHT. I UNDERSTAND THAT ONE TEST DOES THAT TO
16 DETERMINE THAT. BUT ROUND LEAD PARTICLES CAN BE CONSISTENT
17 WITH GUNSHOT RESIDUE, WITH THE LEAD FOUND IN GUNSHOT RESIDUE?

18 A. YES. IT'S CONSISTENT WITH GUNSHOT RESIDUE BUT NOT
19 LIMITED TO GUNSHOT RESIDUE.

20 Q. CORRECT.

21 A. RIGHT.

22 Q. AND THAT'S WHY WE SAY CONSISTENT.

23 A. YES. EXACTLY.

24 Q. NOW, HAVE YOU EVER TESTIFIED AS AN EXPERT THAT ROUND
25 LEAD PARTICLES ON A PERSON'S HANDS WERE FROM FIRING A GUN?

1 A. NOT DEFINITELY, NO.

2 Q. HAVE YOU EVER SAID THEY WERE CONSISTENT WITH?

3 A. YES. YES.

4 Q. OKAY. NOW, YOU WERE TALKING -- I THINK YOU WERE
5 TALKING ABOUT A PERSON FIRING, SAY, THIS LARGE CALIBER PISTOL
6 RIGHT HERE AND HOW THE GUN POWDER RESIDUE OR THE GUN RESIDUE
7 CAN ESCAPE THE VARIOUS CHAMBERS.

8 A. RIGHT.

9 Q. IF SOMEBODY IS HOLDING IT WITH TWO HANDS, YOU WOULD
10 EXPECT TO SEE TWO HANDS, CORRECT, PERHAPS ON TWO HANDS?

11 A. PRIMER ON BOTH HANDS?

12 Q. YES.

13 A. YES.

14 Q. IF SOMEONE IS JUST HOLDING IT WITH ONE HAND OUT-
15 STRETCHED, PROBABLY JUST ONE HAND.

16 A. MORE THAN LIKELY.

17 Q. NOW, YOU'VE ALSO TALKED ABOUT CONTAMINATION, HOW AN
18 OFFICER COULD POSSIBLY, I THINK YOU SAID, TRANSFER WHAT'S ON
19 HIS HANDS ONTO A SUSPECT'S HANDS WHEN HE'S CUFFING HIM.

20 A. THAT'S CORRECT.

21 Q. AND -- BUT I THINK YOU ENDED UP SAYING IN THIS CASE
22 IF AN OFFICER IS TAKING SAMPLES WITHOUT WEARING GLOVES,
23 THAT'S UNLIKELY. ARE YOU TALKING ABOUT THE PERSON TAKING THE
24 G.S.R. TEST ITSELF?

25 A. YEAH, THE PERSON -- THE PERSON WHO'S ACTUALLY

1 COLLECTING THE SAMPLE, THE PROTOCOL IS THAT THEY WEAR RUBBER
2 GLOVES OR PLASTIC GLOVES WHILE THEY'RE TAKING THE SAMPLES.

3 Q. SO IF AN OFFICER DID FOLLOW THE PROPER PROTOCOL AND
4 WEAR THOSE RUBBER GLOVES, IT WOULD BE HIGHLY UNLIKELY, IF NOT
5 IMPOSSIBLE, FOR HIM TO TRANSFER G.S.R. TO A SUSPECT; CORRECT?

6 A. IT WOULD BE -- IT WOULD BE UNLIKELY TO TRANSFER --
7 VERY UNLIKELY TO TRANSFER ELEVATED LEVELS TO A SUSPECT. IT
8 WOULD BE VERY LIKELY TO TRANSFER ONE OR TWO SINGLE THREE-
9 MICROMETER PARTICLES. THOSE ARE EXTREMELY SMALL PARTICLES
10 AND THEY CAN BE AIRBORNE.

11 Q. CORRECT. BUT AS FAR AS SOMEONE, LIKE YOU SAID,
12 ELEVATED LEVELS, SAY, ON AN INDIVIDUAL LIKE KEVIN MERCER,
13 WHAT WAS ON HIS PALM, HIGHLY UNLIKELY THAT AN OFFICER IF HE'S
14 WEARING RUBBER GLOVES WOULD HAVE TRANSFERRED THOSE PARTICLES
15 TO HIM.

16 A. THE ROUND PARTICLES, POSSIBLY. BUT THE ELEVATED
17 LEVELS, MORE THAN LIKELY NOT.

18 Q. RIGHT.

19 A. RIGHT.

20 Q. SINCE THEY'RE ELEVATED, AS AN EXPERT YOU CAN SAY
21 IT'S MORE THAN LIKELY THAT DIDN'T HAPPEN, AS AN EXPERT.

22 A. THE ELEVATED -- THE ELEVATED AMOUNT OF LEAD ON THE
23 LEFT PALM OF MERCER IS NOT LIKELY TO BE TRANSFERRED.

24 Q. OKAY.

25 A. THE TWO -- TWO ROUND PARTICLES COULD VERY WELL BE

1 TRANSFERRED.

2 Q. AND YOU TALKED ABOUT -- GOING BACK TO AN OFFICER, I
3 BELIEVE YOU WERE ASKED AN OFFICER, IF HE CUFFED SOMEBODY, HE
4 COULD TRANSFER G.S.R. TO A SUSPECT'S HANDS.

5 A. THAT'S POSSIBLE. SURE.

6 Q. THAT'S -- THAT'S A POSSIBILITY. BUT ISN'T IT TRUE
7 THAT IT CAN ALSO RUB OFF PARTICLES FROM A PERSON'S HANDS?

8 A. THAT'S TRUE AS WELL.

9 Q. IT'S FRAGILE EVIDENCE.

10 A. IT'S -- WELL, IT'S FRAGILE IN SOME WAYS AND NOT
11 OTHERS. LEAD -- LEAD, BARIUM, AND ANTIMONY ARE ALL HEAVY
12 METALS, SO THEY'RE NOT -- THEY'RE NOT EASILY WATER-SOLUBLE.
13 THE SALTS ARE, BUT THE METALS AREN'T. SO IN THAT SENSE,
14 THEY'RE NOT FRAGILE, BUT THEY ARE SMALL, AND SMALL PARTICLES
15 OVER TIME ARE GOING TO BE WORN AND WIPED AWAY AND EASILY,
16 EASILY LOST OVER TIME, YEAH.

17 Q. SO IF SOMEONE HAS THEIR HANDS BEHIND THEIR BACK IN A
18 SQUAD CAR, SITS IN THE SEAT, IS RECUFFED, THINGS THAT ARE ON
19 THEIR HANDS, THE G.S.R., COULD COME OFF OR COULD BE
20 DISSIPATED.

21 A. OVER TIME. AND THAT'S WHY IT'S SIGNIFICANT THAT
22 THESE WERE COLLECTED WITHIN TWO HOURS, WELL WITHIN THE TIME
23 FRAME THAT YOU WOULD EXPECT TO SEE ELEVATED LEVELS OF ALL
24 THREE METALS.

25 Q. ALSO, THOUGH, YOU HAVE TO CONSIDER OTHER

1 ENVIRONMENTAL FACTORS; CORRECT?

2 A. SURE.

3 Q. I MEAN, IT'S NOT A VACUUM. IT'S NOT THE SAME---

4 A. RIGHT.

5 Q. ---SAY IN MAY WHEN SOMEBODY MAY BE HOT AND SWEATY.

6 AND FROM THE TENSION AND NERVOUSNESS OF BEING ARRESTED, THAT
7 COULD HAVE AN EFFECT, WETTING UP THOSE HANDS, AND THEN THOSE
8 HANDS RUBBING AGAINST SEATS, CUFFS, OR HEAVEN KNOWS WHAT
9 ELSE.

10 A. SURE. THERE ARE -- THERE ARE A LOT OF VARIABLES
11 BETWEEN THE TIME OF THE INCIDENT AND THE TIME OF THE
12 COLLECTION, SOME OF WHICH WE KNOW, SOME OF WHICH WE DON'T
13 KNOW.

14 Q. ALL RIGHT. AND PLEASE CLARIFY SOMETHING ELSE.
15 YOU'RE SAYING -- YOU SEEM TO BE SAYING, TOO, THAT IT'S
16 READILY OR EASILY TRANSFERRABLE, BUT IT'S NOT SO EASY TO WIPE
17 IT OFF.

18 A. IT CAN BE WIPED OFF. IF SOMEONE WASHES THEIR HANDS,
19 IT'S COMPLETELY GONE. IF THEY'RE BLEEDING - BLOOD'S MOSTLY
20 WATER - IT'S GOING TO WASH MOST OF IT AWAY. OVER TIME AS YOU
21 TOUCH THINGS AND WIPE YOUR HANDS ON THINGS - PANTS, TOWELS -
22 YEAH, IT'S GOING TO GRADUALLY DECREASE OVER TIME, BUT THAT'S
23 -- THAT'S THE WHOLE PURPOSE OF HAVING A TIME LIMIT. THAT'S
24 GOING TO BE WIPED AWAY UNTIL IT'S BELOW THRESHOLD LEVELS IF
25 IT'S BEYOND SIX HOURS. IF THEY'RE COLLECTED WITHIN SIX

1 HOURS, IN THIS CASE TWO HOURS, YOU WOULD EXPECT TO SEE
2 ELEVATED LEVELS, NOT JUST THE PRESENCE OF, BUT ELEVATED
3 LEVELS OF ALL THREE METALS. THAT'S WHY THOSE TIME FRAMES ARE
4 ESTABLISHED. IT'S EXACTLY FOR THAT REASON BECAUSE THEY'RE
5 WIPED AWAY GRADUALLY OVER THE COURSE OF THE DAY.

6 Q. AS AN EXPERT, HAVE YOU EVER SEEN ELEVATED LEVELS OF
7 LEAD ONLY?

8 A. THERE ARE ELEVATED LEVELS OF LEAD ONLY HERE.

9 Q. I'M TALKING ABOUT OTHER CASES.

10 A. SURE.

11 MR. HUBBARD: OKAY. NO FURTHER QUESTIONS.

12 REDIRECT EXAMINATION

13 BY MR. LITTLEJOHN:

14 Q. MR. HOLLIFIELD, JUST TO CLARIFY IT, IF AN OFFICER
15 WAS NOT WEARING GLOVES, HANDLED A WEAPON, AND THEN HANDCUFFED
16 A DEFENDANT, IS THAT A POSSIBLE SOURCE OF TRANSFER OF ONE OF
17 THESE ELEMENTS OR MORE?

18 A. IF THE -- IF THE OFFICER HAS HANDLED HIS WEAPON OR
19 AMMUNITION, IT WOULD BE.

20 Q. OKAY.

21 A. YES, SIR. AND, AGAIN, IF YOU'RE TALKING ABOUT JUST
22 A FEW PARTICLES, THOSE TWO ROUND PARTICLES, THOSE COULD
23 EASILY BE TRANSFERRED. THEY COULD BE AIRBORNE. THEY'RE
24 VERY, VERY TINY AND IT'S A SMALL AMOUNT. IT'S -- AS I SAID
25 ON CROSS-EXAMINATION, IT'S UNLIKELY THAT YOU WOULD TRANSFER

1 HIGH LEVELS TO SOMEONE ELSE'S HAND, ELEVATED LEVELS, BUT TWO
2 SMALL, TINY ROUND PARTICLES COULD VERY EASILY BE TRANSFERRED.

3 Q. COULD IT BE TRANSFERRED FROM THE BACK SEAT OF A
4 PATROL CAR IF THERE HAD BEEN GUNS THERE OR OTHER EQUIPMENT?

5 A. SURE.

6 Q. CAN YOU TEST CLOTH FOR G.S.R.?

7 A. YOU CAN.

8 Q. CLOTH GLOVES? CAN THAT BE TESTED?

9 A. THEY CAN.

10 Q. OKAY. AND, AGAIN, MR. HOLLIFIELD, IN ORDER TO MAKE
11 A DETERMINATION THAT GUNSHOT RESIDUE IS PRESENT, YOU HAVE TO
12 HAVE ELEVATED LEVELS OF ALL THREE ELEMENTS. IS THAT NOT
13 RIGHT?

14 A. TO DEFINITELY SAY THAT SOMETHING CAME FROM GUNSHOT
15 RESIDUE---

16 Q. YES, SIR.

17 A. ---YOU HAVE TO HAVE THE PRESENCE OF ALL THREE
18 METALS, AND THEN THE CONCLUSIVE TEST IS THAT IT'S SPHERICAL.

19 Q. OKAY.

20 A. IF YOU'VE GOT A SPHERICAL PARTICLE THAT HAS ALL
21 THREE METALS PRESENT IN ONE SINGLE PARTICLE, THAT'S GUNSHOT
22 RESIDUE, COULDN'T HAVE COME FROM ANY OTHER SOURCE, BUT IF YOU
23 HAVE A SINGLE METAL SPHERICAL, IT COULD HAVE COME FROM
24 GUNSHOT RESIDUE OR ANOTHER SOURCE. BUT YOU HAVE TO HAVE ALL
25 THREE METALS IN HIGH LEVELS TO CONCLUSIVELY SAY THAT IT'S

1 INDEED GUN PRIMER---

2 Q. OKAY.

3 A. ---OR EXPLOSIVE RESIDUE.

4 Q. THAT WOULD BE KIND OF LIKE PUTTING A PIECE OF
5 LETTUCE BETWEEN TWO PIECES OF BREAD AND CALLING IT A B.L.T.,
6 WOULDN'T IT?

7 A. IT'S -- WELL, IT'S A COMPONENT -- RIGHT. IT'S A
8 COMPONENT OF GUNSHOT RESIDUE.

9 MR. LITTLEJOHN: THANK YOU, SIR.

10 RE-CROSS EXAMINATION

11 BY MR. HUBBARD:

12 Q. AND, AGAIN, THAT'S FOR A CONCLUSIVE G.S.R.---

13 A. YES, SIR.

14 Q. ---ANALYSIS.

15 A. YES, SIR.

16 Q. WE TALKED ABOUT AN OFFICER AGAIN. NOW, YOU SAID IT
17 WOULD BE HIGHLY UNLIKELY FOR AN OFFICER JUST CUFFING SOMEONE
18 TO TRANSFER HIGH LEVELS OF LEAD TO SOMEONE ELSE.

19 A. THAT'S MY OPINION. RIGHT..

20 Q. UNLESS THAT OFFICER HAD FIRED HIS WEAPON.

21 A. YEAH, THAT'S ANOTHER STORY. IF THE OFFICER FIRES A
22 WEAPON, HIS HANDS, OF COURSE, ARE GOING TO HAVE WHAT WE'RE
23 CONSIDERING ELEVATED LEVELS OF THE METALS, AND THEN THAT
24 OBVIOUSLY COULD BE TRANSFERRED.

25 Q. AND IF HE HAS NOT FIRED HIS WEAPON IN SOME TIME, HAS

1 CLEANED HIS WEAPON SOMETIME BACK, YOU WOULD NOT EXPECT THAT
2 ELEVATED TRANSFER OF LEAD, HIGH ELEVATION OF LEAD TRANSFERRED
3 FROM ONE HAND TO ANOTHER.

4 A. IT WOULDN'T -- YOU WOULD NOT SEE THE HIGH ELEVATED
5 TRANSFER LEVELS. IF IT WAS CLEANED, OF COURSE, IT WOULD BE
6 MUCH LESS LIKELY.

7 MR. HUBBARD: THANK YOU.

8 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN.

9 THE WITNESS: THANK YOU.

10 THE COURT: CALL YOUR NEXT WITNESS.

11 MS. KIMBROUGH: THANK YOU, YOUR HONOR. MR. MERCER
12 CALLS CANDY KYZER.

13 CANDY KYZER, AFTER BEING DULY SWORN, TESTIFIED
14 AS FOLLOWS:

15 THE CLERK: STATE YOUR NAME, SPELLING YOUR FIRST AND
16 LAST NAMES.

17 THE WITNESS: MY NAME IS CANDY, C-A-N-D-Y, KYZER,
18 K-Y-Z-E-R.

19 DIRECT EXAMINATION

20 BY MS. KIMBROUGH:

21 Q. GOOD AFTERNOON, MS. KYZER. HOW ARE YOU?

22 A. FINE.

23 Q. GOOD. AND WHERE ARE YOU EMPLOYED?

24 A. LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

25 Q. AND WHAT DO YOU DO FOR THE LEXINGTON COUNTY

1 SHERIFF'S DEPARTMENT?

2 A. I'M AN EVIDENCE CUSTODIAN.

3 Q. AND AS PART OF YOUR JOB, WERE YOU ASSIGNED THE TASK
4 OF LOGGING IN CERTAIN PIECES OF EVIDENCE IN THE CASE OF STATE
5 VERSUS KEVIN MERCER?

6 A. AT THE BEGINNING, NO.

7 Q. OKAY. AT SOME POINT DID YOU COME TO HANDLE EVIDENCE
8 ASSOCIATED WITH THIS CASE?

9 A. YES.

10 Q. OKAY. I'M GOING TO SHOW YOU THESE TWO ITEMS.

11 A. UH-HUH.

12 Q. DO YOU RECOGNIZE THOSE?

13 A. YES, I DO. YES.

14 Q. OKAY. ALL RIGHT. MS. KYZER, DID YOU BRING ITEM
15 NUMBER 67 FROM THIS CASE WITH YOU TODAY?

16 A. YES, I DID.

17 Q. OKAY. AND WHAT IS ITEM 67?

18 A. TWO GLOVES, BLACK. ONE INSIDE GREY. ONE BLACK
19 MARKED LADIES ONE SIZE.

20 Q. OKAY. AND REFERRING BACK TO YOUR PROPERTY RECORD,
21 DO YOU SHOW WHERE THAT ITEM WAS RETRIEVED FROM?

22 A. FROM THE POCKETS OF ITEM NUMBER 22.

23 Q. OKAY. AND DO YOU HAVE A SHEET THAT INDICATES WHAT
24 ITEM 22 WAS OR IS?

25 A. ITEM 22 IS ONE PAIR OF BLUE PANTS.

1 MS. KIMBROUGH: OKAY. YOUR HONOR, I'D LIKE TO HAVE
2 THIS EXHIBIT MARKED.

3 THE COURT: SURE.

4 MS. KIMBROUGH: THANK YOU. WE'D LIKE TO ENTER IT
5 INTO EVIDENCE.

6 MR. MYERS: RELEVANCY.

7 THE COURT: SIR?

8 MR. MYERS: RELEVANCY.

9 THE COURT: WHAT'S THE EXHIBIT NUMBER?

10 MS. KIMBROUGH: 67 IS THE---

11 THE COURT: NO. WHAT'S YOUR -- YOU'RE GOING TO MARK
12 IT AS AN EXHIBIT.

13 MS. KIMBROUGH: YES, YOUR HONOR. DEFENDANT'S
14 EXHIBIT NUMBER 4.

15 THE COURT: I SUSTAIN THE OBJECTION AT THIS TIME.

16 MS. KIMBROUGH: OKAY.

17 (DEFENDANT'S EXHIBIT 4 WAS MARKED FOR IDENTIFICATION
18 ONLY.)

19 MS. KIMBROUGH: BEG THE COURT'S INDULGENCE. YOUR
20 HONOR, I BELIEVE WE HAVE A MATTER OF LAW WE WOULD LIKE TO
21 TAKE UP OUTSIDE THE PRESENCE OF THE JURY.

22 THE COURT: IS IT REGARDING THE RELEVANCE OF THAT
23 EXHIBIT?

24 MS. KIMBROUGH: YES, YOUR HONOR.

25 THE COURT: I DON'T THINK IT'S NECESSARY AT THIS

1 TIME. LET ME SEE Y'ALL AT THE BENCH.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

3 BY MS. KIMBROUGH:

4 Q. JUST ONE FINAL QUESTIONS -- QUESTION. DO YOUR
5 RECORDS INDICATE WHO LOGGED IN THIS EVIDENCE WITH YOUR
6 DEPARTMENT?

7 A. AS FAR AS THE ITEM NUMBER 67?

8 Q. YES, MA'AM. ALL OF THESE -- ITEMS 60 THROUGH 69
9 CAME FROM ITEM 22.

10 A. I DID.

11 Q. OKAY. SO YOU LOGGED IT IN?

12 A. UH-HUH.

13 Q. AND DO YOU RECALL WHO GAVE YOU THE ITEMS TO LOG IN,
14 WHERE YOU GOT THEM FROM?

15 A. WE WERE ACTUALLY -- I WAS SHOWING THE EVIDENCE TO
16 THE SOLICITOR'S OFFICE AND WE FOUND THEM.

17 Q. OKAY. DO YOU KNOW INITIALLY HOW YOU CAME TO BE IN
18 POSSESSION OF THESE ITEMS, WHAT OFFICER BROUGHT THEM TO YOU?

19 A. THEY WERE ACTUALLY FOUND IN THE POCKETS. WE FOUND
20 THEM.

21 Q. YOU FOUND THEM.

22 A. UH-HUH.

23 Q. SO DO YOU KNOW WHO BROUGHT YOU THE PANTS THAT HAD
24 THE POCKETS THAT YOU FOUND THEM IN?

25 A. THE -- WELL, ACTUALLY WHENEVER I WAS SHOWING THE

1 EVIDENCE, I HAD ALL THE EVIDENCE WITH ME AT THAT TIME AND
2 THAT'S HOW I HAD THE PANTS WITH ME AT THAT -- WHENEVER I WAS
3 SHOWING THEM.

4 Q. OKAY. WHO BROUGHT YOU THE PANTS?

5 A. ORIGINALLY AT THE BEGINNING?

6 Q. YES, MA'AM.

7 A. OKAY. ACCORDING TO THE PROPERTY SHEET, NATHANIEL
8 COLLINS IS THE ONE THAT IT SAYS THAT IT WAS RECOVERED BY.

9 Q. OKAY. THANK YOU. JUST ONE FINAL QUESTION. DO YOUR
10 RECORDS INDICATE WHOSE PANTS ITEM 22 BELONG TO?

11 A. MARCUS THOMPSON.

12 MS. KIMBROUGH: THANK YOU. PLEASE ANSWER ANY
13 QUESTIONS---

14 MR. MYERS: NO QUESTIONS.

15 MS. KIMBROUGH: ---THE STATE MAY HAVE.

16 THE COURT: YOU CAN STEP DOWN, MA'AM.

17 MR. LITTLEJOHN: YOUR HONOR, WE MAY HAVE TO CALL ONE
18 MORE WITNESS BEFORE RESTING. I THINK THERE'S ALSO ONE OTHER
19 MATTER THE COURT NEEDS TO TAKE UP.

20 THE COURT: ALL RIGHT. AND YOU NEED A BREAK TO TRY
21 TO FIGURE OUT WHERE THIS WITNESS IS?

22 MR. LITTLEJOHN: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. ALL RIGHT. LADIES AND
24 GENTLEMEN, I'M GOING TO SEND YOU BACK INTO THE JURY ROOM FOR
25 JUST A FEW MINUTES, PLEASE.

1 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
2 3:10 P.M.)

3 THE COURT: ALL RIGHT. AT THE -- AT THE SIDE BAR
4 CONFERENCE THAT WE HAD, I EXPLAINED THE BASIS FOR MY
5 SUSTAINING THE OBJECTION TO THE ADMISSIBILITY OF STATE'S
6 EXHIBIT -- I MEAN OF DEFENSE EXHIBIT 4. ISN'T THAT THE ONE
7 THAT'S RIGHT THERE, DEFENSE EXHIBIT 4?

8 COURT REPORTER: (NODDED HEAD UP AND DOWN.)

9 THE COURT: AND THAT THERE WAS NO EVIDENCE IN THE
10 RECORD AT THAT TIME THAT CONNECTED DEFENDANT'S EXHIBIT 4 TO
11 THIS EVENT, TO THIS CASE, IN ANY WAY OTHER THAN THAT WITNESS
12 WHO WAS JUST ON THE STAND TESTIFIED THAT IT WAS IN EVIDENCE.
13 THERE WAS NO WITNESS WHO HAD TESTIFIED THOSE GLOVES HAD BEEN
14 REMOVED FROM THE SCENE, THAT THEY WERE IN ANY WAY CONNECTED
15 TO MR. THOMPSON OR WHATEVER. AND SO UNTIL THAT CONNECTION IS
16 MADE, THE EVIDENCE IS NOT RELEVANT. THE REMARK I MADE WAS
17 THAT FOR ALL SHE KNOWS, THIS WITNESS WHO JUST TESTIFIED,
18 THOSE GLOVES WERE PURCHASED AT WAL-MART YESTERDAY AFTERNOON.
19 SHE -- OR IT WOULDN'T HAVE BEEN YESTERDAY, BUT THEY WERE
20 PURCHASED AT WAL-MART SOMETIME BEFORE SHE HAD THIS
21 CONVERSATION WITH THE SOLICITOR AND THEY FOUND THEM IN THE
22 POCKET.

23 BUT NOW SINCE SHE READ OFF OF HER EVIDENCE SHEET
24 THAT THE PANTS BELONGED TO MARCUS THOMPSON AND THAT THEY WERE
25 TAKEN OUT OF THE -- OUT OF THOSE PANTS, I'M NOT SO SURE THAT

1 SITUATION HASN'T CHANGED. AND SO IT MAY BE THAT THE -- THE
2 STATE'S -- THE DEFENDANT'S EXHIBIT 4 IS NOW SUFFICIENTLY
3 CONNECTED WITH THE CASE IN ORDER FOR IT TO BE RELEVANT IN
4 THAT SENSE. NOW, YOUR -- YOUR OBVIOUS POINT HERE IS THAT --
5 IS TO SHOW THAT THE REASON MARCUS THOMPSON DIDN'T SHOW ANY
6 GUNSHOT RESIDUE ON HIS HANDS IS BECAUSE HE WAS WEARING
7 GLOVES.

8 NOW -- SO I THINK THE STATE HAS AN OBJECTION TO
9 RELEVANCE THAT IS ON THAT LEVEL ALSO. SO I'M GOING TO TAKE A
10 SHORT BREAK WHILE YOU ATTEMPT TO LOCATE THIS WITNESS. WHEN
11 WE COME BACK, I'LL HEAR WHATEVER MOTIONS THERE MAY BE TO
12 ADMIT EVIDENCE OR WHATEVER.

13 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

14 THE COURT: BE SEATED.

15 MR. LITTLEJOHN: YOUR HONOR, IT'S MY UNDERSTANDING
16 THAT STATE HAS AGREED TO OUR ADMITTING THE GLOVES AS
17 DEFENDANT'S EXHIBIT 4.

18 MR. HUBBARD: THAT'S CORRECT, YOUR HONOR.

19 THE COURT: OKAY.

20 MR. LITTLEJOHN: YOUR HONOR, IF YOU WANT TO MAKE
21 THAT INQUIRY OF THE DEFENDANT, IF YOU COULD GIVE ME LIKE 30
22 SECONDS, I THINK WE CAN DO THAT NOW.

23 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN
24 MR. LITTLEJOHN AND MR. MERCER.)

25 THE COURT: YES, SIR.

1 MR. LITTLEJOHN: JUDGE, I HAVE CONSULTED WITH THE
2 DEFENDANT, AND HE'S PREPARED TO RECEIVE THE COURT'S
3 INSTRUCTIONS.

4 THE COURT: ALL RIGHT. LET ME ASK YOU AND/OR MRS.
5 KIMBROUGH A FEW -- A FEW QUESTIONS. HAVE YOU EACH OR HAVE
6 ONE OF YOU DISCUSSED WITH THE DEFENDANT, NOT ONLY TODAY BUT
7 IN THE DAYS AND WEEKS BEFORE TODAY, HIS RIGHT TO TESTIFY ON
8 THE ONE HAND AND HIS RIGHT TO REMAIN SILENT ON THE OTHER
9 HAND?

10 MR. LITTLEJOHN: YES, YOUR HONOR.

11 THE COURT: AND HAVE YOU BEEN SATISFIED, NOT ONLY
12 TODAY BUT IN THE DAYS AND WEEKS BEFORE TODAY, THAT HE
13 UNDERSTANDS BOTH OF THOSE RIGHTS?

14 MR. LITTLEJOHN: YES, YOUR HONOR.

15 THE COURT: AND SO ARE YOU ALSO SATISFIED THAT HE'S
16 NOW PREPARED TO MAKE AN INTELLIGENT DECISION AS TO WHETHER OR
17 NOT HE WISHES TO TESTIFY?

18 MR. LITTLEJOHN: WE ARE, YOUR HONOR.

19 THE COURT: ALL RIGHT. MR. MERCER, PLEASE STAND AND
20 RAISE YOUR RIGHT HAND, SIR.

21 KEVIN J. MERCER, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS IN CAMERA:

23 EXAMINATION BY THE COURT

24 Q. ALL RIGHT, SIR. YOU CAN PUT YOUR HAND DOWN. YOU'RE
25 GOING TO HAVE TO SPEAK UP A LITTLE BIT.

1 A. ALL RIGHT.

2 Q. ALL RIGHT. NOW, YOU'VE HEARD ME DISCUSSING WITH MR.
3 LITTLEJOHN THAT YOU HAVE THE RIGHT TO TESTIFY IN THIS CASE
4 AND THAT YOU ALSO HAVE THE RIGHT TO REMAIN SILENT. HAVE YOU
5 DISCUSSED THESE ISSUES WITH MR. LITTLEJOHN AND MS. KIMBROUGH
6 BEFORE TODAY?

7 A. YES, SIR.

8 Q. AND DO YOU UNDERSTAND -- DO YOU THINK YOU UNDERSTAND
9 WHAT WE'RE TALKING ABOUT?

10 A. YES, SIR.

11 Q. ALL RIGHT. NOW, I'M GOING TO GO OVER IT WITH YOU
12 MYSELF SO THAT I CAN MAKE SURE THAT YOU UNDERSTAND WHAT
13 YOU'RE -- WHAT WE'RE TALKING ABOUT. YOU HAVE THE RIGHT TO
14 REMAIN SILENT. THAT MEANS THAT NO ONE CAN COMPEL YOU TO
15 TESTIFY IN THIS CASE. THAT RIGHT COMES TO YOU BY WAY OF THE
16 FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION. ON THE
17 OTHER HAND, YOU HAVE THE RIGHT TO TESTIFY IF YOU CHOOSE TO.
18 IF YOU CHOOSE TO TESTIFY, THEN JUST LIKE ALL OF THE OTHER
19 WITNESSES WHO HAVE TESTIFIED, YOU BECOME SUBJECT TO CROSS-
20 EXAMINATION ON ANY SUBJECT THAT MIGHT BE RELEVANT TO THIS
21 CASE INCLUDING YOUR CREDIBILITY WHICH WOULD ALSO INCLUDE ANY
22 OTHER -- IT MIGHT INCLUDE ANY CRIMINAL CONVICTIONS THAT YOU
23 HAVE. DO YOU UNDERSTAND ALL THAT?

24 A. YES, SIR.

25 Q. NOW, IF YOU CHOOSE NOT TO TESTIFY, IF YOU CHOOSE TO

1 REMAIN SILENT, THEN I WILL EXPLAIN TO THE JURY VERY CLEARLY
2 THAT YOU HAVE A CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND I
3 WILL MAKE IT CLEAR TO THEM THAT THEY MAY NOT HOLD THE
4 EXERCISE OF THAT CONSTITUTIONAL RIGHT AGAINST YOU. I WILL
5 NOT EVEN ALLOW THEM TO DISCUSS THIS IN THE JURY ROOM. DO YOU
6 UNDERSTAND THAT?

7 A. I DO, SIR.

8 Q. DO YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHT TO
9 TESTIFY OR YOUR RIGHT TO REMAIN SILENT THAT YOU WOULD LIKE TO
10 ASK ME AT THIS TIME?

11 A. NO, YOUR HONOR.

12 Q. DO YOU -- DO YOU UNDERSTAND THAT YOU ARE THE ONE WHO
13 MUST MAKE THE DECISION AS TO WHETHER OR NOT YOU'RE GOING TO
14 TESTIFY?

15 A. YES, SIR.

16 Q. NOW, YOU SHOULD -- YOU SHOULD LISTEN TO THOSE WHOSE
17 ADVICE YOU TRUST SUCH AS YOUR LAWYERS, SUCH AS FAMILY MEMBERS
18 OR WHOEVER, BUT IN THE END YOU ARE THE ONE WHO HAS TO MAKE
19 THE DECISION AS TO WHETHER OR NOT YOU'RE GOING TO TESTIFY.
20 DO YOU UNDERSTAND?

21 A. I FULLY UNDERSTAND THAT, YOUR HONOR.

22 Q. DO YOU -- DO YOU NEED ANY MORE TIME NOW TO DISCUSS
23 THIS WITH YOUR LAWYERS OR TO THINK ABOUT IT BEFORE YOU DECIDE
24 WHETHER OR NOT YOU ARE GOING TO TESTIFY?

25 A. NO, SIR, YOUR HONOR.

1 Q. ALL RIGHT. WHAT'S YOUR DECISION?

2 A. I PLEAD THE FIFTH.

3 Q. YOU'RE NOT GOING TO TESTIFY?

4 A. NOT GOING TO TESTIFY.

5 THE COURT: ALL RIGHT, SIR. ALL RIGHT. YOU CAN BE

6 SEATED. SO OTHER THAN MOVING DEFENDANT'S EXHIBIT 4 INTO

7 EVIDENCE, AM I CORRECT THAT THE DEFENDANT IS ABOUT TO REST?

8 MR. LITTLEJOHN: YOUR HONOR, WE HAVE ONE SHORT

9 WITNESS, VERY SHORT.

10 THE COURT: ALL RIGHT.

11 MR. LITTLEJOHN: THAT WOULD -- THEN WE WOULD REST.

12 THE COURT: WHO IS THAT WITNESS?

13 MR. LITTLEJOHN: THAT WOULD BE DIANE MERCER.

14 THE COURT: ALL RIGHT. DO YOU ANTICIPATE ANY REPLY

15 TESTIMONY?

16 MR. MYERS: YES, SIR.

17 THE COURT: DO YOU ANTICIPATE THAT IT WILL BE

18 LENGTHY?

19 MR. MYERS: NO, SIR.

20 THE COURT: ALL RIGHT. WELL, WE'LL HEAR THIS ONE

21 WITNESS. WE'LL GO AHEAD -- YOU CAN GO AHEAD AND REST AND

22 THEN WE'LL MOVE STRAIGHT INTO THE REPLY. DOES THAT SUIT

23 EVERYBODY?

24 MR. MYERS: YES, SIR.

25 THE COURT: BRING IN THE JURY. AND THEN WHEN WE'RE

1 DONE, I 'M GOING TO DISMISS THE JURY FOR THE AFTERNOON AND WE
2 WILL DEAL WITH SOME MATTERS OF LAW.

3 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
4 3:27 P.M.)

5 MS. KIMBROUGH: YOUR HONOR, THE DEFENSE CALLS DIANE
6 MERCER .

7 DIANE MERCER, AFTER BEING DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 THE CLERK: STATE YOUR NAME, SPELLING YOUR FIRST AND
10 LAST NAMES.

11 THE WITNESS: DIANE MERCER. D-I-A-N-E M-E-R-C-E-R.

12 DIRECT EXAMINATION

13 BY MS. KIMBROUGH:

14 Q. GOOD AFTERNOON, MS. MERCER.

15 A. GOOD AFTERNOON TO YOU.

16 Q. WHAT IS YOUR RELATIONSHIP TO KEVIN?

17 A. I'M HIS MOTHER.

18 Q. OKAY. ARE YOU FAMILIAR WITH WHICH HAND KEVIN USES
19 TO WRITE?

20 A. KEVIN IS RIGHT HANDED.

21 Q. HOW DO YOU KNOW THAT?

22 A. I KNOW BECAUSE KEVIN HAD DIFFICULTY WRITING. HE'S A
23 SPECIAL ED, MILDLY -- SPECIAL ED, MILDLY RETARDED, AND TESTED
24 BECAUSE---

25 MR. MYERS: THAT'S NOT RESPONSIVE TO THE QUESTION.

1 THE COURT: SUSTAINED. AND I THINK THAT---

2 THE WITNESS: I'M SORRY.

3 THE COURT: LET ME -- LET ME -- YOU CAN COME RIGHT
4 DOWN HERE A SECOND.

5 (THE FOLLOWING BENCH CONFERENCE TOOK PLACE IN THE
6 HEARING OF THE COURT AND THE ATTORNEYS ONLY:)

7 THE COURT: THE QUESTION OF WHY -- OF HOW SHE KNOWS
8 THAT, THAT'S FINE, BUT SHE WAS REVEALING THE CONTENT OF WHAT
9 OTHER PEOPLE HAVE SAID AT SOME POINT IN TIME, AND THAT'S
10 CLEARLY HEARSAY. AND IT'S ALSO, AS THE SOLICITOR POINTED
11 OUT, NOT SPECIFICALLY RESPONSIVE TO THE QUESTION, SO THAT'S
12 THE BASIS.

13 (THE BENCH CONFERENCE CONCLUDED.)

14 BY MS. KIMBROUGH:

15 Q. WITHOUT ELABORATING BEYOND THE QUESTION---

16 A. OKAY.

17 Q. ---HOW ARE YOU FAMILIAR WITH THE -- WITH WHETHER OR
18 NOT KEVIN IS RIGHT OR LEFT HANDED?

19 A. OKAY. I'M HIS MOTHER. HE IS RIGHT HANDED BECAUSE I
20 HELPED HIM WITH HIS HOMEWORK. HE WAS IN SPECIAL ED CLASSES.

21 MR. MYERS: OBJECTION AGAIN, YOUR HONOR.

22 THE WITNESS: WELL, THAT'S WHY I HAD TO HELP HIM
23 OUT. I HAD FOUR CHILDREN; I DIDN'T HAVE TO HELP THEM. HE
24 HAD---

25 MR. MYERS: THAT'S NOT RESPONSIVE. IT'S HEARSAY.

1 THE WITNESS: THAT'S OKAY.

2 THE COURT: I SUSTAIN THE OBJECTION.

3 THE WITNESS: UMM...

4 THE COURT: HOLD ON, MA'AM. IF YOU'LL JUST WAIT
5 JUST A SECOND, SHE'LL ASK YOU ANOTHER QUESTION---

6 THE WITNESS: OKAY.

7 THE COURT: ---AND YOU CAN ANSWER THAT.

8 BY MS. KIMBROUGH:

9 Q. SO YOU'RE FAMILIAR BECAUSE?

10 A. BECAUSE I HELPED HIM WITH HIS HOMEWORK.

11 Q. OKAY.

12 A. I WATCHED HIM DO DIFFERENT THINGS. HE'S NEVER, EVER
13 USED HIS LEFT HAND.

14 MS. KIMBROUGH: OKAY. THANK YOU. THAT'S ALL THE
15 QUESTIONS I HAVE. THE SOLICITOR MAY FOLLOW UP---

16 CROSS-EXAMINATION

17 BY MR. MYERS:

18 Q. MS. MERCER, WERE YOU IN COURT YESTERDAY SEATED RIGHT
19 OUT HERE?

20 A. YES, I WAS.

21 Q. WERE YOU IN COURT TODAY SEATED RIGHT OUT HERE?

22 A. YES, I...

23 Q. THANK YOU, MA'AM.

24 A. YEAH.

25 THE COURT: MA'AM, YOU CAN STEP DOWN.

1 THE WITNESS: THANK YOU.

2 MR. LITTLEJOHN: YOUR HONOR, WITH THAT WITNESS, THE
3 DEFENSE RESTS.

4 THE COURT: ANY -- I WILL AT THIS TIME GRANT THE
5 MOTION TO ADMIT DEFENSE EXHIBIT 4.

6 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

7 (DEFENDANT'S EXHIBIT 4 WAS RECEIVED IN EVIDENCE.)

8 THE COURT: ANY REPLY?

9 MR. MYERS: YES, SIR. DENNIS STAZER.

10 THE COURT: YOU'RE STILL UNDER OATH FROM YESTERDAY,
11 SIR.

12 MR. STAZER: YES, SIR. I UNDERSTAND THAT.

13 THE COURT: YOU CAN BE SEATED.

14 MR. STAZER: THANK YOU.

15 DENNIS STAZER, HAVING BEEN PREVIOUSLY SWORN AND
16 REMAINING UNDER OATH, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. MYERS:

19 Q. DENNIS, WHEN YOU WERE WITH THE SHERIFF'S DEPARTMENT
20 PRIOR TO THIS INCIDENT HAPPENING IN MAY OF 2002, WHEN WAS THE
21 LAST TIME BEFORE THAT DATE THAT YOU FIRED YOUR WEAPON?

22 A. THE LAST TIME THE WEAPON WAS FIRED WAS DURING THE
23 STANDARD QUALIFICATION WITH THE SHERIFF'S DEPARTMENT, AND
24 THAT WAS ON MAY 4TH OF 2001.

25 Q. ABOUT A YEAR BEFORE.

1 A. YES.

2 Q. AND WHY DID YOU SHOOT YOUR GUN A YEAR BEFORE?

3 A. IT WAS A STANDARD QUALIFICATION THAT WE GO THROUGH
4 EVERY YEAR AS PART OF THE -- TO QUALIFY WITH THE SHERIFF'S
5 DEPARTMENT IN ORDER TO CARRY THAT FIREARM.

6 Q. AFTER YOU FIRED YOUR GUN A YEAR BEFORE IN MAY OF
7 2001, WHAT DID YOU DO WITH THAT GUN AFTERWARDS?

8 A. AFTER QUALIFICATION, WHICH USUALLY LASTED ALL DAY,
9 AFTER RETURNING HOME, I GOT IT STRIPPED DOWN AND CLEANED IT
10 EXTENSIVE. FOR ONE, IT WAS A MATTER OF POLICY THAT WE HAD TO
11 DO IT. WE WERE INSPECTED THE NEXT DAY TO MAKE SURE THE GUN
12 WAS CLEAN, AND NUMBER TWO, I'M A BIT ANAL ABOUT MY WEAPONS
13 BEING CLEANED SINCE THEY MAY SAVE MY LIFE SOMEDAY.

14 Q. YOU'RE WHAT?

15 A. I'M SORRY. I'M A LITTLE ANAL -- A LITTLE -- I'M
16 VERY CAUTIOUS. I'M VERY SUPERFICIAL ABOUT THESE THINGS.

17 Q. OKAY. AND AFTER MAY OF 2001, DID YOU EVER CLEAN
18 THAT GUN AGAIN EVEN THOUGH YOU HADN'T FIRED IT?

19 A. BRIEFLY TO REMOVE THE DUST, ANY DUST ACCUMULATION,
20 NOT A FULL CLEANING LIKE YOU WOULD AFTER FIRING IT.

21 Q. DID YOU EVER FIRE THAT GUN ANY MORE AFTER MAY OF
22 2001 UP UNTIL MAY OF 2002 WHEN THIS HAPPENED?

23 A. NO. IN AUGUST OF 2001 I WAS STRUCK BY A DRUNK
24 DRIVER AND I WAS ON LIGHT DUTY FOR SIX TO SEVEN MONTHS, AND I
25 JUST RETURNED TO FULL DUTY ABOUT THREE WEEKS BEFORE THIS

1 INCIDENT. SO THE GUN WAS NOT FIRED.

2 Q. WHAT ABOUT YOUR HANDCUFFS? WERE YOU ANAL ABOUT
3 THOSE, TOO?

4 A. YES, SIR.

5 Q. TELL THE JURY HOW.

6 A. WITH THE HANDCUFFS, SINCE I DEALT WITH A LOT OF
7 PEOPLE AND NOT ALWAYS VERY CLEAN PEOPLE, AFTER EVERY ARREST
8 WE HAD A SANITIZING SPRAY. I'M NOT SURE WHAT IT'S CALLED
9 NOW; I DON'T REMEMBER. BUT IT WAS LIKE AN ALCOHOL BASE AND I
10 SPRAYED THOSE HANDCUFFS DOWN BECAUSE I JUST DIDN'T WANT TO
11 SPREAD ANY GERMS TO MYSELF OR... I'M JUST KIND OF WARY ABOUT
12 THESE THINGS SOMETIMES.

13 Q. AND YOU'RE THE ONE THAT PUT THE HANDCUFFS ON THE
14 DEFENDANT THAT NIGHT.

15 A. THAT IS CORRECT.

16 Q. THANK YOU. AND THEN YOU TURNED HIM OVER TO THE
17 SHERIFF'S DEPARTMENT, I THINK TO OFFICER COLLINS, OR THOSE
18 PEOPLE IN THERE.

19 A. YES. UPON ARRIVAL AT THE SHERIFF'S DEPARTMENT,
20 OFFICER COLLINS TOOK CHARGE OF HIM.

21 MR. MYERS: THANK YOU. NOTHING FURTHER.

22 CROSS-EXAMINATION

23 BY MR. LITTLEJOHN:

24 Q. MR. STAZER, DID YOU FIRE ANY OTHER GUN?

25 A. NO, SIR.

1 Q. NOT AT ALL?

2 A. NO, SIR. I DON'T HAVE...

3 Q. DID OTHER PEOPLE USE YOUR PATROL CAR WHILE YOU WERE
4 OUT ON LEAVE?

5 A. THAT I CANNOT ATTEST TO. I DON'T KNOW.

6 Q. YOU DON'T KNOW.

7 A. NO.

8 MR. LITTLEJOHN: ALL RIGHT, SIR. NO FURTHER
9 QUESTIONS.

10 REDIRECT EXAMINATION

11 BY MR. MYERS:

12 Q. DID YOU HAVE ANY WEAPONS IN THE BACK SEAT OR THE
13 BACK SEAT OF YOUR CAR?

14 A. NO.

15 MR. MYERS: THANK YOU. NOTHING ELSE.

16 THE COURT: YOU CAN STEP DOWN.

17 MR. MYERS: THAT'S ALL WE WOULD HAVE IN REPLY, YOUR
18 HONOR.

19 THE COURT: LADIES AND GENTLEMEN, THAT'S GOING TO BE
20 ALL OF THE TESTIMONY AND THE EVIDENCE THAT YOU'RE GOING TO
21 HEAR IN THIS PHASE, AND BECAUSE OF THE LATE HOUR, WE ARE
22 GOING TO ADJOURN FOR THE DAY. WE WILL COME BACK TOMORROW
23 MORNING FOR CLOSING ARGUMENTS, AND THEN I WILL CHARGE YOU ON
24 THE LAW AND THEN YOU CAN DELIBERATE.

25 REMEMBER, AS I KNOW YOU DO, THAT YOU MAY NOT DISCUSS

1 THIS CASE WITH ANYONE NOR ALLOW ANYONE TO DISCUSS IT WITH
2 YOU. PLEASE BE CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED
3 TO ANY MEDIA COVERAGE ABOUT THE CASE. Y'ALL GO HAVE A NICE
4 NIGHT. PLEASE BE IN THE JURY ROOM TOMORROW MORNING BY 9:00,
5 AND I LOOK FORWARD TO SEEING YOU AT THAT TIME.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
7 THE DAY AT 3:36 P.M.)

8 THE COURT: ALL RIGHT. I WANT TO HAVE A BRIEF
9 DISCUSSION, HOPEFULLY A BRIEF DISCUSSION, ABOUT THE JURY
10 CHARGE TO SEE IF -- FIRST OF ALL, DO EITHER OF YOU HAVE ANY
11 SPECIAL REQUESTS FOR CHARGE?

12 MR. MYERS: THE STATE DOES NOT.

13 MR. LITTLEJOHN: YOUR HONOR, WE DO NOT HAVE ANYTHING
14 SPECIFIC THAT WE'D PRESENT TO THE COURT.

15 THE COURT: ALL RIGHT. THEN I WILL RAISE A FEW
16 QUESTIONS. DO EITHER OF YOU BELIEVE THAT I SHOULD CHARGE THE
17 CONCEPT OF THE HAND OF ONE IS THE HAND OF ALL?

18 MR. MYERS: YES, SIR.

19 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK THERE'S
20 ANY BASIS IN THE RECORD FOR THAT. THE STATE'S THEORY ALL
21 ALONG HAS BEEN KEVIN MERCER WAS THE SHOOTER BY HIMSELF.
22 THAT'S WHAT THEY SAID IN THEIR OPENING STATEMENT. I DON'T
23 THINK THEY CAN NOW SAY, "WELL, MAYBE THERE WAS AN ACCOMPLICE
24 OUT THERE."

25 THE COURT: SO YOU'RE NOT GOING TO ARGUE TO THE JURY

1 THAT KEVIN MERCER DIDN'T SHOOT THE WEAPON?

2 MR. LITTLEJOHN: YES, YOUR HONOR. I'M GOING TO
3 ARGUE THAT.

4 THE COURT: AND THAT ARGUMENT WOULD BE BASED ON
5 EVIDENCE THAT HE DIDN'T SHOOT THE WEAPON, I WOULD ASSUME.

6 MR. LITTLEJOHN: YES, SIR.

7 THE COURT: THEN -- THEN IF THERE'S EVIDENCE THAT HE
8 WAS A PARTICIPANT IN THE ROBBERY BUT DID NOT SHOOT THE
9 WEAPON, THEN WOULDN'T THAT BE EVIDENCE THAT WOULD SUPPORT HIS
10 GUILT UNDER THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL?

11 MR. LITTLEJOHN: YOUR HONOR, UNDER THE STATE'S
12 THEORY THERE'S NO -- THERE'S NO CO-DEFENDANT TO BE---

13 THE COURT: I KNOW.

14 MR. LITTLEJOHN: ---HAND OF ONE IS THE HAND OF ALL.

15 THE COURT: YOU'RE HAVING A GOOD TIME ASKING YOUR
16 QUESTION, AND I WANT YOU TO ANSWER MY QUESTION.

17 MR. LITTLEJOHN: ALL RIGHT, SIR. I'LL TRY.

18 THE COURT: I THINK THERE'S CLEARLY EVIDENCE TO
19 SUPPORT THIS, AND THE -- THE EVIDENCE IS -- FIRST OF ALL IS
20 CLEAR -- FIRST OF ALL, THERE'S EVIDENCE THAT THERE WAS AN
21 ARMED ROBBERY IN PROGRESS. THERE'S CLEARLY EVIDENCE THAT A
22 MAN WAS MURDERED IN THE COURSE OF THE ARMED ROBBERY.

23 MR. LITTLEJOHN: YES, SIR.

24 THE COURT: THERE IS CONFLICTING EVIDENCE AS TO WHO
25 FIRED THE GUN, AND ON THAT BASIS EITHER ONE OF THESE PEOPLE

1 WHO WERE PARTICIPANTS IN THE ROBBERY COULD BE GUILTY OF
2 MURDER UNDER THE CONCEPT OF THE HAND OF ONE IS THE HAND OF
3 ALL. IS THAT NOT CORRECT?

4 MR. LITTLEJOHN: YOUR HONOR, IF THERE'S EVIDENCE
5 THAT THERE WERE TWO OR MORE PARTICIPANTS, I AGREE WITH THE
6 COURT.

7 THE COURT: THERE ARE -- I'M SATISFIED -- WELL, DO
8 YOU THINK THERE'S NOT EVIDENCE THAT THERE WERE TWO OR MORE
9 PARTICIPANTS?

10 MR. LITTLEJOHN: YOUR HONOR, THE STATE'S THEORY HAS
11 BEEN THAT THERE WAS ONE SHOOTER AND THAT'S KEVIN MERCER. OUR
12 THEORY HAS BEEN THERE'S BEEN ONE SHOOTER AND THAT'S MARCUS
13 THOMPSON.

14 THE COURT: WELL... WELL, I'M GOING TO FASHION MY
15 CHARGE BASED ON EVIDENCE THOUGH AND NOT BASED ON WHAT Y'ALL'S
16 THEORY OF THE CASE IS. AT A MINIMUM YOU GOT TERRY BROWN WHO
17 TESTIFIED THAT MR. MERCER SAID THAT WHILE HE WAS TELLING THE
18 VICTIM TO GET ON HIS HANDS AND KNEES, THE OTHER GUY WAS
19 RUNNING AROUND TO THE OTHER SIDE OF THE CAR. YOU'VE ALSO GOT
20 THE CIRCUM -- THE RATHER -- I MEAN, YOU'VE GOT CIRCUMSTANTIAL
21 EVIDENCE THAT THAT -- THAT THE TWO MEN WERE ARRESTED IN THE
22 CAR SHORTLY AFTER THE ROBBERY OCCURRED AND THE MURDER
23 OCCURRED. I THINK THERE'S -- I THINK THERE'S EVIDENCE TO
24 SUPPORT THE CONCLUSION, IF THAT'S WHAT THE JURY FINDS, THAT
25 THERE WERE TWO PEOPLE IN THE CRIME -- IN THE -- WHO

1 PARTICIPATED IN THE ARMED ROBBERY.

2 I ASKED THE QUESTION BECAUSE -- BECAUSE I
3 ANTICIPATED THAT THERE WAS A STRATEGIC BATTLE GOING ON AS TO
4 WHETHER OR NOT THIS CONCEPT WOULD BE CHARGED. YOU'RE DOING A
5 GOOD JOB OF ARGUING STRATEGIC CONCERNS, AND I'M TRYING TO
6 FOCUS MY INQUIRY AS TO WHAT THE EVIDENCE IS. AND I THINK
7 THERE'S SUFFICIENT EVIDENCE TO SUPPORT THAT CHARGE, SO I WILL
8 CHARGE IT.

9 MR. LITTLEJOHN: ALL RIGHT.

10 THE COURT: ALL RIGHT. SO -- NOW, I HAVE A -- AS
11 FAR AS THE STATEMENTS THAT THE -- I BELIEVE IT WAS OFFICER
12 STAZER TESTIFIED THAT MR. MERCER MADE A COUPLE OF STATEMENTS
13 AT THE -- AT THE TIME THAT HE STOPPED HIM ON THE HIGHWAY.
14 NOW, IT'S MY BELIEF THAT HAVING -- MY HAVING FOUND THAT
15 THOSE -- BY THE PREPONDERANCE OF THE EVIDENCE THAT THE
16 STATEMENT WAS MADE AND THE STATEMENT WAS MADE VOLUNTARILY,
17 NEVERTHELESS, THE JURY MUST FIND BEYOND A REASONABLE DOUBT
18 THAT THE ANSWER TO THOSE TWO QUESTIONS IS YES BEFORE THEY CAN
19 CONSIDER THE STATEMENT, SO I'LL CHARGE THAT.

20 I'M ALSO GOING TO CHARGE THAT IF A KILLING -- IF
21 SOMEONE IS KILLED DURING THE COURSE OF THE COMMISSION OF A
22 FELONY THAT AN INFERENCE MAY ARISE FROM THAT THAT THE KILLING
23 WAS MADE -- WAS DONE WITH MALICE. I MEAN, I THINK EVERYTHING
24 IS PRETTY STANDARD. IF Y'ALL -- I'M GOING TO FINALIZE THIS
25 IN DRAFT FORM NOW AND GIVE YOU ALL A COPY OF IT, AND YOU ALL

1 CAN STUDY IT OVERNIGHT. WE CAN HAVE A DISCUSSION ABOUT IT IN
2 THE MORNING AND FINALIZE IT, AND THEN WE'LL BE READY TO GO.
3 ALL RIGHT? SO ANYTHING FURTHER FROM THE STATE?

4 MR. MYERS: NO, SIR.

5 THE COURT: FROM THE DEFENSE?

6 MR. LITTLEJOHN: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. WE'LL BREAK HERE FOR THE
8 DAY. Y'ALL HANG AROUND FOR A FEW MINUTES, 20 MINUTES OR SO.
9 I'LL GIVE YOU A COPY OF THIS CHARGE, AND Y'ALL CAN STUDY IT
10 OVERNIGHT.

11 MR. MYERS: I DIDN'T HEAR WHAT TIME YOU TOLD THE
12 JURY TO COME BACK. WHAT TIME DO YOU WANT TO START?

13 THE COURT: I TOLD THEM 9. WE'LL JUST PLAN ON DOING
14 THIS AT 9. I DON'T THINK IT WILL TAKE US LONG TO FINALIZE
15 THE CHARGE.

16 MR. MYERS: THANK YOU, SIR.

17 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 3:43
18 P.M. AND RESUMED THE FOLLOWING DAY, APRIL 19TH, 2006.)

19 THE COURT: GOOD MORNING. BE SEATED, PLEASE. OKAY.
20 I ASSUME Y'ALL HAD A CHANCE TO LOOK OVER THE DRAFT OF THE
21 JURY CHARGE THAT I PROVIDED TO YOU ALL LAST NIGHT? SO IF
22 THERE ARE ANY OBJECTIONS OR COMMENTS OR SUGGESTIONS, LET'S
23 DISCUSS THOSE NOW.

24 MR. MYERS: NOTHING FROM THE STATE.

25 MR. LITTLEJOHN: YOUR HONOR, JUST A FEW THINGS, AND

1 YOU MAY HAVE ALREADY CAUGHT THIS, THE PART ABOUT THE ROLE OF
2 THE COURT OR THE JUDGE WHICH IS ON PAGE 4. THAT SEEMS LIKE
3 THAT WOULD MORE LOGICALLY FOLLOW SECTION ONE.

4 THE COURT: I -- I AGREE THAT THERE IS SOME REASON
5 TO QUESTION THAT, BUT THE WAY I'VE USUALLY DONE IT IS THIS
6 WAY---

7 MR. LITTLEJOHN: THAT'S FINE.

8 THE COURT: ---BECAUSE AFTER TELLING THE JURY THAT
9 THEY ARE THE EXCLUSIVE FINDERS OF THE FACT, I THEN DISCUSS
10 THE EVIDENTIARY ISSUES SUCH AS CREDIBILITY AND CIRCUMSTANTIAL
11 EVIDENCE AND THEN TURN INTO DISCUSSING THE LAW.

12 MR. LITTLEJOHN: THANK YOU.

13 THE COURT: I'M SURE IT COULD BE BETTER ORGANIZED
14 BUT...

15 MR. LITTLEJOHN: THAT'S FINE.

16 THE COURT: OKAY.

17 MR. LITTLEJOHN: JUDGE, IN THE SECTION ON
18 CREDIBILITY, WE WOULD ASK THE COURT TO INCLUDE AN INSTRUCTION
19 ON A WITNESS WHO HAS A PRIOR RECORD AND WHAT THE---

20 THE COURT: OH. OH, OKAY. I WILL. I FORGOT THAT
21 THE WITNESS -- THE INMATE TESTIFIED.

22 MR. LITTLEJOHN: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. I'LL INCLUDE THAT.

24 MR. LITTLEJOHN: YOUR HONOR, ON THE SECTION DEALING
25 WITH CIRCUMSTANTIAL EVIDENCE IN THE SECOND PARAGRAPH, FOURTH

1 LINE, WE WOULD ASK THAT THE COURT CHANGE THE LANGUAGE OF
2 "CRIME COMMITTED" TO "EVENT."

3 THE COURT: LET ME -- ALL RIGHT. WHERE NOW? SECOND
4 PARAGRAPH?

5 MR. LITTLEJOHN: YES, SIR, FOURTH LINE.

6 THE COURT: OKAY. ALL RIGHT. OKAY.

7 MR. LITTLEJOHN: THAT'S ALL WE HAVE, YOUR HONOR.

8 THE COURT: DID YOU GET THE JURY?

9 BAILIFF: YES, SIR, THEY'RE HERE.

10 THE COURT: IS THERE ANYTHING ELSE BEFORE WE BRING
11 THE JURY IN FOR CLOSING ARGUMENTS?

12 MR. LITTLEJOHN: YOUR HONOR, THE ONLY THING WE WERE
13 GOING TO INQUIRE: IF THE COURT WAS GOING TO TAKE A SHORT
14 BREAK BETWEEN THE STATE'S CLOSING ARGUMENT AND OUR CLOSING
15 ARGUMENT SO WE COULD MOVE THE CHARTS AND EVERYTHING AND GET
16 THEM OUT OF THE WAY. IF NOT, WE'LL JUST DO IT AFTER MR.
17 HUBBARD FINISHES.

18 THE COURT: HOW LONG DO YOU THINK YOU'LL TAKE?

19 MR. HUBBARD: THIRTY MINUTES.

20 THE COURT: IS THAT IN THE FIRST PART?

21 MR. HUBBARD: JUST ALL AT ONE TIME, YOUR HONOR. I'M
22 NOT SURE I UNDERSTAND YOUR QUESTION.

23 THE COURT: ARE YOU GOING TO MAKE A REPLY ARGUMENT?

24 MR. HUBBARD: NO, SIR. I'M JUST GOING TO LAY IT ALL
25 OUT IN ONE SHOT.

1 MR. LITTLEJOHN: YOUR HONOR, I BELIEVE WE GET THE
2 LAST ARGUMENT.

3 MR. MYERS: THEY GET THE LAST ARGUMENT.

4 THE COURT: OKAY.

5 MR. MYERS: AND ALSO, YOUR HONOR, BEFORE YOU BRING
6 THE JURY IN OR WHATEVER YOU DO, AT SOME POINT WE REQUEST THAT
7 YOU ADVISE THE DEFENDANT OF HIS RIGHT TO MAKE A STATEMENT IN
8 THIS PHASE TO THE JURY ALSO.

9 THE COURT: IN THE GUILT PHASE?

10 MR. MYERS: OH, YEAH. THEY GOT A BUNCH OF THEM SENT
11 BACK FOR THAT. THEY'VE CHANGED THE LAW NOW, BUT YOU STILL
12 HAVE TO ADVISE THEM OF THEIR RIGHTS---

13 THE COURT: ALL RIGHT. WELL---

14 MR. MYERS: ---TO MAKE A STATEMENT TO THE JURY IN
15 THE GUILT PHASE. STATE VERSUS TONY COOPER WAS ABOUT THE LAST
16 CASE THEY SENT BACK FOR A RETRIAL. THEY HAVE NOW SAID YOU'VE
17 GOT TO SHOW SOME PREJUDICE, BUT IN ALL PRECAUTION WE WOULD
18 REQUEST THAT YOU SO ADVISE THE DEFENDANT OF HIS RIGHT.

19 THE COURT: MR. LITTLEJOHN, HAVE YOU DISCUSSED THIS
20 WITH MR. MERCER?

21 MR. LITTLEJOHN: YOUR HONOR, I HAVE NOT. I WILL, IF
22 YOU'LL GIVE ME JUST A MOMENT.

23 THE COURT: ALL RIGHT. WE'LL TAKE A BREAK AND YOU
24 CAN TAKE ALL THE TIME YOU NEED TO DISCUSS IT WITH HIM. DO
25 YOU NEED -- DO WE NEED TO DISCUSS IT ANY FURTHER BEFORE

1 YOU...

2 MR. LITTLEJOHN: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. HUBBARD: YOUR HONOR, MAY I GO AHEAD AND KIND OF
5 SET THINGS UP?

6 THE COURT: YES, SIR.

7 (PAUSE IN PROCEEDINGS WHILE MR. LITTLEJOHN TALKS
8 WITH MR. MERCER.)

9 THE COURT: MR. LITTLEJOHN?

10 MR. LITTLEJOHN: YES, YOUR HONOR.

11 THE COURT: JUST SO THE RECORD IS CLEAR, MAKE SURE
12 THAT YOUR CLIENT UNDERSTANDS THE LINE BETWEEN TESTIFYING AND
13 ARGUING BECAUSE HE WOULD NOT BE ALLOWED TO TESTIFY. HE WOULD
14 BE ALLOWED TO ARGUE OR COMMENT, BUT HE WOULD NOT BE ALLOWED
15 TO ADD ADDITIONAL EVIDENCE.

16 MR. LITTLEJOHN: YES, SIR. I WAS JUST GETTING TO
17 THAT.

18 THE COURT: ALL RIGHT.

19 (PAUSE IN PROCEEDINGS WHILE MR. LITTLEJOHN TALKS
20 WITH MR. MERCER.)

21 THE COURT: BE SEATED. MR. LITTLEJOHN, HAVE YOU
22 DISCUSSED MR. MERCER'S RIGHT TO SPEAK TO THE JURY?

23 MR. LITTLEJOHN: I HAVE, YOUR HONOR.

24 THE COURT: AND DOES HE UNDERSTAND THAT HE HAS THAT
25 RIGHT?

1 MR. LITTLEJOHN: YES, YOUR HONOR.

2 THE COURT: DOES HE WISH TO EXERCISE THAT RIGHT?

3 MR. LITTLEJOHN: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. MR. MERCER, DO YOU
5 UNDERSTAND WHAT WE'RE TALKING ABOUT?

6 MR. MERCER: YES, SIR.

7 THE COURT: YOU HAVE THE RIGHT TO SPEAK TO THE JURY
8 IN A WAY OF AN ARGUMENT BUT NOT IN THE WAY OF TESTIFYING.
9 AND YOU DON'T HAVE TO, BUT YOU HAVE THE RIGHT TO. DO YOU
10 UNDERSTAND THE RIGHT?

11 MR. MERCER: YES, SIR.

12 THE COURT: HAVE YOU TALKED TO MR. LITTLEJOHN AND
13 MS. KIMBROUGH ABOUT IT?

14 MR. MERCER: YES, SIR.

15 THE COURT: DO YOU HAVE ANY QUESTIONS YOU WANT TO
16 ASK ME ABOUT IT NOW OR DO YOU NEED TO TALK -- MORE TIME TO
17 TALK TO THEM?

18 MR. MERCER: I UNDERSTAND NOW.

19 THE COURT: ARE YOU SATISFIED THAT YOU UNDERSTAND
20 IT?

21 MR. MERCER: YES, SIR.

22 THE COURT: AND YOU WANT TO GIVE UP THAT RIGHT FOR
23 THIS CLOSING ARGUMENT.

24 MR. MERCER: YES, SIR.

25 THE COURT: ALL RIGHT, SIR. ALL RIGHT. WE'LL -- SO

1 YOU THINK YOU'LL TAKE ABOUT 30 MINUTES?

2 MR. HUBBARD: YES, SIR.

3 THE COURT: AND HOW LONG DO YOU THINK YOU'LL TAKE?

4 MR. LITTLEJOHN: ABOUT THE SAME, YOUR HONOR.

5 THE COURT: WE'LL TAKE A SHORT BREAK AFTER EACH ONE
6 AND GIVE EVERYBODY A CHANCE TO GET YOUR STUFF ORGANIZED, AND
7 THEN -- AND THEN WE WILL BEGIN THE NEXT PART. ALL RIGHT.
8 ARE YOU READY?

9 MR. LITTLEJOHN: READY.

10 MR. HUBBARD: YES, SIR, YOUR HONOR.

11 THE COURT: BRING THEM IN.

12 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
13 9:23 A.M.)

14 THE COURT: GOOD MORNING. LADIES AND GENTLEMEN,
15 FOLLOWING OUR MORNING ROUTINE HERE, HAVE ANY OF YOU DISCUSSED
16 THIS CASE WITH ANYONE OR HAS ANYONE ATTEMPTED TO DISCUSS THIS
17 CASE WITH YOU SINCE YOU LEFT HERE YESTERDAY? IF YOU HAVE,
18 JUST RAISE YOUR HAND. HAS ANYONE BEEN EXPOSED TO ANY PRESS
19 OR MEDIA COVERAGE ABOUT THIS CASE? IF YOU HAVE, THEN PLEASE
20 RAISE YOUR HAND. ALL RIGHT. AGAIN, I THANK YOU ALL. WE'RE
21 READY FOR CLOSING ARGUMENTS. MR. HUBBARD.

22 MR. HUBBARD: MAY IT PLEASE THE COURT, YOUR HONOR?

23 THE COURT: YES, SIR.

24 MR. HUBBARD: WHAT'S THE PRICE OF A 1998 NAVIGATOR?
25 WHAT WOULD YOU PAY FOR A 1998 NAVIGATOR? ALMOST NEW. KEVIN

1 MERCER IS WILLING TO BUY THIS THING; HE'S WILLING TO PAY.
2 BUT HE WASN'T GOING TO PAY IN MONEY; HE WAS GOING TO PAY IN
3 BLOOD. HE WAS WILLING TO DO WHATEVER IT TOOK TO GET THAT
4 NAVIGATOR. HE KNEW WHAT HE WANTED. HE KNEW WHERE TO GET IT,
5 AND HE KNEW HOW TO GET IT. HE WAS WILLING TO DO WHATEVER IT
6 TOOK TO GET IT.

7 HE MAY HAVE HAD ROBBERY IN HIS MIND, BUT HE HAD
8 MURDER IN HIS HEART. MALICE. WHATEVER IT TOOK. HE WAS NOT
9 GOING TO BE DENIED THIS NAVIGATOR. THAT NIGHT, THAT
10 HORRIBLE, HORRIBLE NIGHT, MAY 16TH, 2002, WILL LIVE FOREVER
11 ON THE TAPE, THE VOICE, THE HAUNTING, HAUNTING VOICE OF
12 CLIFTON MAGWOOD BEGGING FOR HELP, KNOWING HIS FRIEND'S IN
13 TROUBLE, KNOWING HE'S IN TROUBLE, RUNNING INTO HIS BEDROOM.
14 WHERE IS HIS GUN? WHERE IS THE PHONE? I GOT TO CALL 9-1-1.
15 KNOWING HE'S IN TROUBLE. IT'S ON THIS TAPE FOREVER. FOREVER
16 ON THIS TAPE YOU WILL HEAR THE HAUNTING SOUND WHEN YOU HEAR
17 MAGWOOD, CLIFTON MAGWOOD, REALIZE HIS FRIEND IS SHOT. YOU
18 HEARD WHAT HE SAID GOING DOWN THE STEPS ON THIS TAPE.

19 LADIES AND GENTLEMEN, WHAT'S ON THAT TAPE IS NOTHING
20 COMPARED TO WHAT IS IN CLIFTON MAGWOOD'S MIND. IT IS FOREVER
21 SEALED AND SEARED INTO THAT MEMORY. HE WILL NEVER FORGET
22 WHAT HAPPENED. HE WILL NEVER FORGET THE HORROR OF IT. HE
23 WILL NEVER FORGET LOSING HIS FRIEND, HOLDING HIS HEAD IN HIS
24 HANDS. "COME ON, TRACY. COME ON, TRACY. HANG IN THERE,
25 TRACY. HANG IN THERE, TRACY. COME ON, TRACY. SOMEBODY GET

1 HELP. GET THAT AMBULANCE HERE. SOMEBODY. COME ON, TRACY.
2 COME ON." IN HIS HEAD FOREVER.

3 SOMETHING ELSE IS IN THAT HEAD. IT'S THE IMAGE OF
4 THE PERSON WHO TOOK HIS LIFE. Y'ALL HEARD HIM TESTIFY. HE
5 WASN'T A MAN OF MALICE, A MAN WHO WAS RUTHLESS AND WANTED
6 REVENGE. HE LOST HIS FRIEND. AND WHAT HE SAID ON THAT
7 STAND, HOW HE DESCRIBED THE PERSON THAT TOOK HIS FRIEND'S
8 LIFE, IS THE SAME TODAY AS IT WAS FOUR YEARS AGO: MALE,
9 BROAD SHOULDERS, HEAVY BUILD, MUSCULAR, 215 TO 225, DARK
10 SKIN, DARK CLOTHING, LOOSE-FITTING DENIM OR JEAN, DARK
11 BASEBALL CAP. HE NAILED IT.

12 HIS SENSES WERE HEIGHTENED. HE LOOKED OUT THAT
13 WINDOW AND FEAR LOCKED THAT PICTURE IN HIS HEAD. YOU HEARD
14 HIM. HE HAS NEVER SEEN A PHOTOGRAPH OF KEVIN MERCER IN
15 CLOTHING FROM THAT NIGHT. HE'S NEVER BEEN TOLD WHAT KEVIN
16 MERCER WAS WEARING THAT NIGHT. HE HAS AN IMAGE IN HIS HEAD,
17 NOT A PHOTOGRAPH, NOT A STORY GIVEN TO HIM BY A COP OR
18 SOMEONE ELSE. THE IMAGE IS FOREVER THERE.

19 HIS SENSES WERE HEIGHTENED. HE RELAYED THAT
20 INFORMATION TO LAW ENFORCEMENT, AND BUT FOR CLIFTON MAGWOOD,
21 THIS VEHICLE WOULD NOT HAVE BEEN STOPPED 17 MINUTES LATER.
22 HE EVEN GAVE THE LITTLE MASON SIGN, THAT DETAIL, THAT LITTLE
23 DETAIL. THAT'S WHAT KIND OF MAN YOU HAVE WITH CLIFTON
24 MAGWOOD. IT'S FOREVER IN HIS MIND.

25 SEVENTEEN MINUTES LATER WHAT DID WE FIND, LADIES AND

1 GENTLEMEN? SEVENTEEN MINUTES LATER A CAR IS STOPPED. BUT
2 FOR CLIFTON MAGWOOD WE WOULDN'T KNOW WHAT TO LOOK FOR.
3 THEY'RE GOING TO TALK ABOUT BAD POLICE WORK, I GUARANTEE YOU.
4 SEVENTEEN MINUTES ON A MURDER CASE. SEVENTEEN MINUTES TO
5 CAPTURE THE PERSON WHO DID IT. AND WHO DO THEY FIND IN THAT
6 CAR? THEY FIND A MAN WHO IS WEARING DENIM, WHO'S BROAD-
7 SHOULDERS, WHO WEIGHS 220, A BIG MAN, DARK DENIM CLOTHING, A
8 BASEBALL HAT. THAT'S A PRETTY GOOD FIT, ISN'T IT? AND THEY
9 FIND HIS NAME. WHY, IT'S KEVIN MERCER. RIGHT ON HERE YOU
10 CAN SEE: 5'10", 220. KEVIN MERCER.

11 WHAT'S HE DOING IN A STOLEN CAR? WHAT'S HE DOING IN
12 TRACY DAVIS'S NAVIGATOR 17 MINUTES AFTER THIS KILLING? AND
13 WHY IS A PISTOL, NOT JUST A PISTOL, WHY IS THIS PISTOL UNDER
14 HIS SEAT? THIS IS THE PISTOL THAT KILLED TRACY DAVIS. WHY
15 IS IT UNDER HIS SEAT? IS IT A COINCIDENCE? JUST A
16 COINCIDENCE KEVIN MERCER SOMEHOW ENDED UP IN THIS CAR. JUST
17 A COINCIDENCE THE MURDER WEAPON JUST HAPPENS TO BE UNDER HIS
18 FEET. IT'S JUST A COINCIDENCE HE HAPPENS TO BE AS BIG AS THE
19 DESCRIPTION THAT MAGWOOD GAVE AND JUST A COINCIDENCE THAT
20 HE'S WEARING THE SAME CLOTHING, WEARING THE SAME HAT. IS IT
21 JUST A COINCIDENCE OR DID MAGWOOD HAVE IT RIGHT?

22 AND WHAT DID KEVIN MERCER SAY WHEN HE WAS STOPPED?
23 "OFFICER, DID I DO SOMETHING WRONG?" SEVENTEEN MINUTES LATER
24 YOU'RE ASKING THAT QUESTION? YOU JUST PUT A ROUND IN
25 SOMEONE'S HEAD AND YOU'RE ASKING WHAT YOU DID WRONG? WHAT

1 KIND OF MAN IS THAT? MALICE. COLD-HEARTED, COLD-BLOODED
2 MALICE.

3 HE HANDS HIM -- THE OFFICER HIS DRIVER'S LICENSE.
4 THE OFFICER SAYS, "I NEED YOUR REGISTRATION AND PROOF OF
5 INSURANCE." HE FUMBLES AROUND. THE OFFICER REALIZES --
6 REMEMBER STAZER? I KNEW THIS GUY WAS FUMBLING. SOMETHING'S
7 UP. HE'S FUMBLING AROUND LOOKING IN HIS VISOR, LOOKING IN,
8 YOU KNOW, THE CONSOLE. FINALLY HE COMES OUT WITH A RECEIPT
9 AND SAYS, "HERE, OFFICER. HERE." WHOSE NAME IS ON THAT
10 RECEIPT? TRACY DAVIS. TRACY DAVIS.

11 AFTER THE ARREST, YOU HEARD THAT KEVIN MERCER WAS
12 TAKEN TO THE SHERIFF'S DEPARTMENT, AND YOU HEARD THAT THE
13 G.S.R. TEST WAS DONE ON HIM. WE NEVER SAID IT WAS CONCLUSIVE
14 G.S.R. WE SAID IT'S CONSISTENT WITH G.S.R., AND THAT'S
15 ALWAYS BEEN THE TESTIMONY OF THE STATE. HIGH LEVELS OF LEAD
16 CONSISTENT WITH A FIREARM WAS FOUND ON HIS LEFT PALM.
17 SIGNIFICANT FOR TWO REASONS: ONE, THERE'S JUST BEEN A
18 MURDER. TWO, A MURDER WEAPON IS UNDER HIS FEET. THREE, HE
19 TOLD TWO PEOPLE THAT NIGHT BEFORE HE KNEW THE RESULTS, "I'M
20 LEFT HANDED." BOOKING OFFICER. G.S.R. OFFICER. TWO PEOPLE:
21 I'M LEFT HANDED. HE DIDN'T KNOW WHAT THE RESULTS WERE.

22 THE DEFENSE IS GOING TO TRY TO DISTRACT YOU. THEY
23 WANT YOU TO LOOK AWAY, LOOK AWAY FROM KEVIN MERCER. FOCUS ON
24 SOMEONE ELSE. DON'T LOOK AT MERCER. DISTRACT. THEY WANT
25 YOU TO LOOK AT THIS MAN, MARCUS THOMPSON. LOOK AT THIS MAN.

1 HE'S NOT BROAD-SHOULDERED. DOES THIS DESCRIPTION MEET HIM?
2 VERY SLENDER? DOES THAT MEET MAGWOOD'S DESCRIPTION OF THE --
3 THE ONE EYEWITNESS WHO SAW WHAT HAPPENED? VERY SLENDER? NO.
4 HE'S 150 TO 155 POUNDS. IS HE BROAD-SHOULDERED? NO. YOUNG
5 BLACK MALE DOESN'T SOUND LIKE MERCER. DESCRIBES HIS HAIR.
6 ANY HAT? NO. NO HAT AT ALL? WHAT DOES HE HAVE ON? A BLACK
7 TEE SHIRT WITH A WHITE TEE SHIRT UNDERNEATH IT, ALMOST LIKE A
8 SKUNK STRIPE. YOU COULD SEE THAT STRIPE A GOOD WAYS AWAY;
9 THAT WHITE STANDS OUT.

10 NOW, THAT'S NOT WHAT THE SUSPECT HAD. DID HE HAVE
11 COTTON DICKIE WORK PANTS? NOT THE SUSPECT. THE SUSPECT WAS
12 WEARING WHAT? DENIM. THAT GETS PRETTY TOUGH. IF YOU WANT
13 TO KNOW THE ACTUAL HEIGHT AND WEIGHT OF THIS MAN, I WANT YOU
14 TO LOOK AT THIS. IT WILL TELL YOU HE IS 5'8" AND 150. JUST
15 LOOK AT THIS. LOOK AT THIS. 5'8" AND 150.

16 THEY HAVE TO DISTRACT YOU. THEY'RE GOING TO HAVE TO
17 DISCREDIT MAGWOOD. THEY'RE GOING TO HAVE TO DISTRACT YOU
18 SOMEHOW, AND THE FIRST THING THEY'RE GOING TO DO IS SAY,
19 "WHERE WAS THIS THOMPSON? WHERE IS HE? WHY DIDN'T THE STATE
20 CALL HIM?" WELL, LADIES AND GENTLEMEN, HE'S NOT ON TRIAL
21 TODAY. BUT SOON ENOUGH THERE WILL BE 12 PEOPLE JUST LIKE YOU
22 SITTING IN THESE SAME CHAIRS, AND THERE WILL BE A JUDGE ROBED
23 IN BLACK, JUST LIKE JUDGE FEW, BUT OVER IN THAT CHAIR,
24 INSTEAD OF KEVIN MERCER, IT'S GOING TO BE MARCUS THOMPSON.
25 THAT WILL BE HIS DAY IN COURT. THAT JURY WILL BE SWORN TO

1 DEAL WITH HIS CASE.

2 YOU'VE BEEN SWORN TO DEAL WITH KEVIN MERCER, BUT
3 THEY'RE GOING TO TRY -- THEY'RE GOING TO TRY TO PUT MARCUS
4 THOMPSON ON TRIAL. THEY'RE GOING TO TRY HARD. THEY MAY SAY,
5 "LOOK, HE WAS SITTING IN THE PASSENGER'S SEAT. WHEN THEY GOT
6 KEVIN MERCER OUT OF THAT CAR, HE COULD HAVE PUT THE GUN UNDER
7 THAT SEAT." COULD HE? COULD HE? YOU HEARD STAZER'S
8 TESTIMONY HOW HIS LIGHTS SHINE IN THAT CAR. THEY'RE BUILT
9 SOLELY AND PURPOSEFULLY TO LIGHT UP A CAR. LOOK AT THE BACK
10 BIG WINDOW ON THIS THING. IT WOULD MAKE IT LIGHT UP LIKE A
11 FOOTBALL FIELD AT NIGHT. NO MOVEMENT, HE SAID. BUT COULD
12 HE?

13 LET'S TAKE A LOOK AT THIS CAR. LOOK AT THE CONSOLE
14 IN THIS VEHICLE, THE NAVIGATOR. IT'S A BIG CONSOLE. THERE'S
15 DRINKS ON IT. NOTHING'S DISTURBED. YOU'D HAVE TO REACH OVER
16 THAT, WOULDN'T YOU, PARTICULARLY IF YOU WANT TO PUT IT AND
17 TUCK IT UNDER THE SEAT. I'M GOING TO ASK Y'ALL WHEN Y'ALL GO
18 BACK IN THE JURY ROOM TO LOOK AT THESE. LOOK AT THE FLOOR
19 MATS AND THEN SEE HOW TUCKED THAT GUN IS.

20 HE DIDN'T JUST TOSS IT, BUT YOU KNOW WHAT? HE
21 DIDN'T HAVE TO. REMEMBER STAZER SAID HE TAPPED ON THE
22 PASSENGER WINDOW. MARCUS THOMPSON ROLLED IT DOWN, AND THEN
23 WHEN HE WENT TO A FELONY STOP, THAT WINDOW WAS STILL DOWN.
24 IF HE WANTED TO GET RID OF THAT GUN, IF HE HAD THAT GUN, HE
25 COULD HAVE TOSSED IT OUT THE WINDOW, MAYBE HUNG HIS ARM OUT,

1 JUST AS LITTLE MOVEMENT AS POSSIBLE. HE DIDN'T BECAUSE THE
2 GUN WAS ALREADY THERE.

3 BUT THEY'RE GOING TO LOOK AT OTHER DISTRACTIONS.
4 THEY'RE GOING TO TALK ABOUT MARCUS THOMPSON HAD GLOVES.
5 YEAH, HE DID, AND WHEN HE WAS STOPPED HE WAS BARE-HANDED.
6 BUT THEY'RE GOING TO SAY WHEN HE COMMITTED THE MURDER HE WAS
7 WEARING GLOVES. SO THERE SHOULD BE G.S.R. ON THOSE GLOVES
8 AND IT WASN'T TESTED.

9 WELL, I WANT Y'ALL TO THINK ABOUT THIS. THE
10 TESTIMONY IS THAT THE GLOVES -- THERE WAS A GLOVE WITHIN A
11 GLOVE IN EACH POCKET. HOW DID THEY GET IN HIS POCKET? IF HE
12 PULLED THAT TRIGGER, IF THAT BIG CALIBER GUN WENT OFF BLOWING
13 G.S.R. EVERYWHERE, ALL OVER THOSE GLOVES, HOW DID HE GET
14 THOSE GLOVES OFF AND INTO HIS POCKETS WITHOUT GETTING G.S.R.
15 ON HIS HANDS? IT'S A RED HERRING. WHO CARES? IT'S A
16 DISTRACTION. THEY WANT YOU TO FOCUS ON THE SCENE, THE SCENE
17 OF THE STOP. FOCUS ON MARCUS THOMPSON. FORGET -- PLEASE
18 FORGET THE APARTMENT COMPLEX. PLEASE FORGET MAGWOOD. PLEASE
19 FORGET THIS; IT'S A DISTRACTION.

20 BUT THE BEST STORY, THE BIG HERRING -- THE BIG ONE'S
21 GOING TO BE -- SEE, THEY CAN'T LEAVE IT LIKE THAT. IF TWO
22 PEOPLE ARE AT THAT SCENE, IF KEVIN MERCER IS AT THAT SCENE
23 AND IT'S MARCUS THOMPSON PULLING THAT TRIGGER, WHY, HE'S
24 STILL GUILTY OF MURDER. DO YOU REMEMBER SCOTTIE FRIER? HAND
25 OF ONE IS THE HAND OF ALL. THE JUDGE IS GOING TO TELL YOU

1 THAT'S THE LAW. IF MARCUS THOMPSON PULLS THAT TRIGGER AND
2 KEVIN MERCER IS THERE HELPING TO STEAL THAT CAR, YOU'VE GOT
3 TWO MURDERERS. NOT ONE. TWO.

4 SO THEY'VE GOT TO GET -- THEY'VE GOT TO GET KEVIN
5 MERCER AWAY FROM THE SCENE. THEY'VE GOT TO PUSH HIM FAR AWAY
6 AND HAVE A GOOD STORY. THEY'RE GOING TO SAY MARCUS THOMPSON
7 COMMITTED THIS ROBBERY BY HIMSELF. THEY'RE GOING TO SAY HE
8 SHOT AND KILLED TRACY DAVIS BY HIMSELF, THAT HE GOT IN THE
9 NAVIGATOR, DROVE ON DOWN THE ROAD. AND THAT BUICK -- DO YOU
10 REMEMBER MERCER'S BUICK THAT MR. LITTLEJOHN WAS TALKING
11 ABOUT? PICKED HIM UP AND THEN IT WAS TO ATLANTA AND FREAK
12 NEAK.

13 BUT YOU KNOW YOU COULD ALSO TURN THAT STORY AROUND.
14 ISN'T IT JUST AS POSSIBLE THAT THEY WERE TOGETHER OR MAYBE
15 NOT? MAYBE MARCUS THOMPSON IS HOLDING BACK IN THE CAR. WE
16 DO KNOW THIS IS THE INDIVIDUAL THAT CAME UP -- THAT CAME UP
17 ON THE VICTIM. WE DO KNOW THAT. WE DO KNOW HE WAS SHOT.
18 KEVIN MERCER'S GOT THAT GUN UNDER HIS SEAT. THEY'VE GOT TO
19 IGNORE ALL THAT. THEY'VE GOT TO IGNORE ALL OF THAT, BUT
20 ISN'T IT JUST AS POSSIBLE KEVIN MERCER PULLED THAT TRIGGER
21 EVEN ALONE AND THEN HE PICKED UP HIS BUDDY WHO'S HIDING BACK
22 WITH THE BUICK AND THEY DRIVE ON DOWN TO ECONOMY INN AND DROPE
23 THAT CAR OFF AND THEN THEY'RE SET? KEVIN MERCER GOT WHAT HE
24 WANTED. ISN'T IT JUST AS POSSIBLE TO SAY IT HAPPENED THAT
25 WAY?

1 THEY'RE GOING TO THROW SOME OTHER THINGS OUT AT YOU.
2 I CAN'T EVEN BEGIN TO THINK OF THEM ALL. THOSE ARE JUST SOME
3 THAT COME TO MIND. BUT YOU KNOW WHAT? IT WOULD ALSO REQUIRE
4 SOMETHING ELSE. THIS IS THE MAN CLIFTON MAGWOOD SAW, THIS
5 LARGE MAN. MARCUS THOMPSON WOULD HAVE TO BE HOUDINI TO BE
6 THAT MAN. MARCUS THOMPSON IS BUILT LIKE BARNEY FIFE. HE
7 WOULD HAVE TO LOSE 70 -- GAIN 70 POUNDS TO BE THIS MAN AND
8 THEN LOSE 70 POUNDS. IT GETS BETTER THOUGH.

9 HE'D HAVE TO WEAR MR. MERCER'S CLOTHES AND THEN
10 SWITCH BACK INTO HIS. HE WOULD HAVE TO CONVINCER MERCER:
11 "YOU DRIVE." HE WOULD HAVE TO PUT THE GUN UNDER THE SEAT
12 JUST IN CASE. THE BIGGY THOUGH? HE'D HAVE TO PUT LEAD, HIGH
13 ELEVATIONS OF LEAD, ON MR. MERCER'S HANDS. HOUDINI. I DON'T
14 THINK HE COULD DO THAT. REMEMBER THAT HOUDINI -- WHEN THEY
15 TELL YOU THAT STORY, HOUDINI.

16 REMEMBER YOUR COMMON SENSE, TOO. IF A MAN IS GOING
17 TO KILL IN ORDER TO STEAL, IF HE'S GOING TO TAKE THE LIFE OF
18 SOMEONE TO TAKE THE MAN'S TRUCK, THEN HE BOUGHT IT. HE
19 BOUGHT IT AND HE'S DRIVING IT, AND THIS IS HIS RECEIPT. AND
20 OLD BARNEY CAN SIT IN THE PASSENGER SEAT; HE CAN RIDE
21 SHOTGUN. BARNEY CAN HOLD THE BULLETS. THAT'S ALL BARNEY
22 GETS TO DO.

23 COLD-BLOODED MURDER. COLD-BLOODED MURDER. WHO WAS
24 THE LEADER OF THESE TWO? LOOK AT THESE TWO MEN; LOOK AT
25 THEM. NOW, THIS IS A DISTANT SHOT OF MERCER SO HE LOOKS

1 SMALLER HERE, BUT Y'ALL CAN FIGURE THAT OUT. WHO LOOKS
2 SCARED AND AFRAID? WHO LOOKS LIKE, "OH, MAN, I AM IN THIS"?
3 WHO LOOKS TOUGH? WHO LOOKS LIKE THE LEADER? THAT'S FOR YOU
4 TO FIGURE OUT, LADIES AND GENTLEMEN, BUT IT'S RIGHT THERE.

5 NOW, THEY'RE GOING TO BRING UP OTHER DISTRACTIONS.
6 THOMPSON'S ONE. G.S.R. IS ANOTHER. THEY'VE GOT TO EXPLAIN
7 HOW THOMPSON DIDN'T---

8 MR. LITTLEJOHN: YOUR HONOR, I OBJECT. THAT'S AN
9 IMPROPER ARGUMENT.

10 MR. HUBBARD: I'LL REPHRASE IT.

11 THE COURT: I SUSTAIN THE OBJECTION.

12 MR. HUBBARD: I'LL REPHRASE IT, YOUR HONOR. MERCER
13 HAS G.S.R. -- SOMETHING CONSISTENT WITH G.S.R. ON HIS HANDS.
14 HOW DO THEY DEAL WITH THAT TALKING TO YOU, LADIES AND
15 GENTLEMEN? THAT TESTIMONY THAT'S IN, THE EVIDENCE THAT'S IN,
16 THIS EVIDENCE, HOW DO THEY DEAL WITH THIS? WELL, FIRST OF
17 ALL, YOU KNOW THERE'S A PROBLEM. THOMPSON DOESN'T HAVE IT ON
18 HIS HANDS. MAGWOOD AND THE VICTIM DIDN'T EITHER - TRACY
19 DAVIS. THEY TESTED THEM, JUST BEING GOOD POLICE OFFICERS.

20 BUT THEY'RE GOING TO ATTACK IT AND FIRST -- THE
21 FIRST ROUND OF ATTACK IS GOING TO BE: IT'S TOO SMALL. IT'S
22 JUST TOO SMALL. WELL, IT'S MICROSCOPIC. IF YOU WANT TO GET
23 SMALLER, LOOK AT D.N.A. IT'S TOO SMALL. THERE'S ONLY TWO
24 PARTICLES. PROBLEM. FOR S.L.E.D. IT MEETS S.L.E.D.'S
25 CRITERIA FOR HIGH ELEVATIONS OF LEAD WHICH IS CONSISTENT

1 WITH, NOT CONCLUSIVE, BUT CONSISTENT WITH G.S.R.

2 THEY'RE GOING TO SAY MAYBE IT WAS TRANSFERRED.

3 MAYBE IT WAS TRANSFERRED FROM AN OFFICER TO KEVIN MERCER.

4 PROBLEM: TWO OFFICERS TOUCHED KEVIN MERCER THAT NIGHT. THE
5 FIRST ONE, STAZER, YOU HEARD HOW PARTICULAR HE IS. HE HAD
6 NOT FIRED HIS WEAPON FOR OVER A YEAR PRIOR TO THIS, CLEANED
7 IT THOROUGHLY THE LAST TIME HE HAD FIRED IT, AND HAD CLEANED
8 IT SUBSEQUENTLY SEVERAL TIMES. NO G.S.R. ON HIS PISTOL. AND
9 HE SAID HE'S VERY PARTICULAR ABOUT HIS CUFFS. CLEANS THEM
10 BECAUSE HE HAS TO PUT THEM ON DIRTY PEOPLE. NO G.S.R. BEING
11 TRANSFERRED FROM HIM TO MERCER. AND WHAT ABOUT NATHANIEL
12 COLLINS? RUBBER GLOVES. PROTOCOL FOR G.S.R. TRANSFER?
13 IT'S PRETTY THIN.

14 THEY MAY COME BACK AND TRY TO HIT THE GLOVES AGAIN,
15 BUT SO WHAT? IF THE GLOVES WERE HOT WITH G.S.R., WHY WASN'T
16 THOMPSON? WHY WASN'T THOMPSON? SO THEY BROUGHT A MAN IN
17 FROM GREENVILLE. YOU'LL NOTICE ALL THE QUESTIONING FOR HIM
18 WAS: IS IT CONCLUSIVE G.S.R.? WELL, THE ANSWER IS NO.
19 JENNIFER STONER FROM S.L.E.D. WOULD SAY THE SAME THING. NO,
20 IT'S NOT CONCLUSIVE FOR G.S.R. BECAUSE YOU'VE GOT TO HAVE THE
21 THREE ELEMENTS, BUT THAT DOESN'T MATTER.

22 THE NEXT LEVEL DOWN IS: WELL, IS IT CONSISTENT WITH
23 G.S.R.? THE ANSWER IS A RESOUNDING YES. AND YOU KNOW WHO
24 ELSE SAID THAT? NOT JUST JENNIFER STONER. THEIR EXPERT.
25 IT'S CONSISTENT WITH G.S.R., CONSISTENT BECAUSE THEY SAY,

1 WELL, COULD IT HAVE COME FROM OTHER SOURCES? AND BECAUSE
2 IT'S NOT CONCLUSIVE, THEY HAVE TO JUST SIMPLY SAY CONSISTENT.

3 BUT HERE'S WHY JENNIFER STONER CAN SAY SHE BELIEVES
4 AS AN EXPERT THAT G.S.R., THAT LEAD, CAME FROM A PISTOL:
5 THERE'S NO ENVIRONMENTAL FACTORS THAT WOULD -- WOULD ADD LEAD
6 TO HIS HAND. HE WASN'T FISHING. HE HADN'T BEEN PLAYING WITH
7 CHRISTMAS LIGHTS. HE HADN'T BEEN PLAYING WITH A TOY FROM
8 CHINA. BUT YOU KNOW WHAT HE DID HAVE? AGAIN, HE HAD A
9 PISTOL.

10 SO THEN THE NEXT ARGUMENT IS: WELL, THIS PISTOL
11 PUTS OUT A LOT OF G.S.R. JENNIFER STONER EXPLAINED THAT,
12 TOO. EVERY TIME YOU TOUCH SOMETHING, YOU'RE WIPING IT OFF.
13 WHEN YOU'RE CUFFED, YOUR HANDS ARE -- YOU'RE IN THE BACK SEAT
14 OF A CAR. YOU'RE WIPING IT OFF EVERY TIME YOU MOVE YOUR
15 HANDS AND BRUSH AGAINST SOMETHING.

16 NOW, THEIR EXPERT SAID IF YOU WASH YOUR HANDS,
17 YOU'LL WASH IT ALL THE WAY OFF. MOISTURE TAKES IT OFF. WHAT
18 ABOUT SWEAT? DON'T YOU THINK THIS WAS A TENSE MOMENT?
19 SWEAT. BUT EVEN AFTER TWO HOURS OF SWEATING, BEING BOOKED OR
20 BEING TAKEN IN, HE STILL HAS G.S.R. ON HIS PALM. LEAD.

21 THE NEXT LINE OF ATTACK MIGHT BE, I DON'T KNOW,
22 TERRY BROWN. (THE ELECTRICITY IN THE COURTROOM WENT OFF.)
23 TERRY DIDN'T HAVE ANYTHING TO HIDE. MAYBE I DO. TERRY BROWN
24 - WE BROUGHT HIM IN THAT DOOR, LADIES AND GENTLEMEN, AND YOU
25 SAW HONESTY WALKING BY BECAUSE HE WAS IN SHACKLES AND HIS

1 CLOTHING. (THE ELECTRICITY IN THE COURTROOM WENT OFF AGAIN.)
2 WE PROBABLY ALL NEED THAT RIGHT NOW.

3 TERRY BROWN, WHEN HE SAT UP ON THAT STAND, HE DIDN'T
4 SAY -- HE DIDN'T SAY HE KNEW WHAT HAPPENED THAT NIGHT. HE
5 DIDN'T SAY THAT. HE'S NEVER READ ABOUT THIS INCIDENT. I
6 DON'T KNOW IF TERRY BROWN READS THE NEWSPAPER. BUT WHAT IS
7 SIGNIFICANT ABOUT WHAT TERRY BROWN HAD TO SAY IS IT CAME FROM
8 THE MOUTH OF KEVIN MERCER. AND OF ALL THE THINGS KEVIN
9 MERCER COULD SAY, KEVIN MERCER SAYS HE WAS THE ONE THAT
10 PULLED THAT TRIGGER, THAT HE WAS THE ONE. REMEMBER THAT
11 STORY? REMEMBER IT?

12 HE SAID HIS FRIEND, PRESUMABLY THOMPSON -- TERRY
13 BROWN DOESN'T KNOW WHO -- CAME UP AND SAID, "KEVIN, HELP ME
14 FIND AN S.U.V." KEVIN SAID, "SURE, I'LL HELP YOU DO THAT.
15 IN FACT, I THINK I KNOW WHERE ONE IS. I KNOW WHERE WE CAN
16 GET ONE." THEY GO THERE, AND WHAT DO THEY DO?

17 THEY CONFRONT TRACY DAVIS. "GIVE ME YOUR KEYS.
18 GIVE ME YOUR KEYS." HE GETS THE KEYS. BARNEY FIFE GETS IN
19 THE PASSENGER SIDE. MERCER, SHOWING HE'S THE BIG MAN, THE
20 TOUGH MAN, THE LEADER, COULD WALK AWAY AT THIS POINT: "ALL
21 RIGHT. I'LL GIVE IT TO YOU. ALL RIGHT. I'LL GIVE IT TO
22 YOU. TAKE IT." HE COULD WALK AWAY.

23 KEVIN MERCER WANTS TO TAKE SOMETHING ELSE. I DON'T
24 WANT THE TRUCK, NOT JUST YOUR TRUCK. I WANT YOU, YOUR LIFE.
25 THAT'S WHAT I WANT. AND BEING THE BIG MAN, HE SHOWS HIS

1 BUDDY HOW TO DO IT. BOOM. THAT'S THE STORY. THEY RIDE OFF.
2 THERE'S A STORY OF THE TIRE GOING OUT. I'M SURE YOU'LL HEAR
3 ABOUT THAT. THE TIRE DOESN'T MATTER. THE TIRE DOESN'T
4 MATTER BECAUSE WHAT'S IMPORTANT ABOUT WHAT WAS SAID IS THAT
5 KEVIN MERCER SAID IT. HE CHOSE THE DETAILS. IF THE DETAILS
6 ARE WRONG, THEY CAME FROM KEVIN MERCER'S MOUTH. HE MIGHT
7 HAVE WANTED TO COVER UP AND EXPLAIN HOW HE GOT STOPPED, BUT
8 THE DETAILS CAME FROM KEVIN MERCER'S MOUTH.

9 AND THE ONE THING TERRY BROWN IS CONSISTENT WITH IS
10 MAGWOOD. HE DIDN'T HAVE TO KILL TRACY DAVIS TO GET THAT
11 VEHICLE; HE WANTED TO. HE PROWLED ABOUT LIKE A LION TO SEE
12 WHO HE COULD FIND TO STEAL A VEHICLE FROM, AND HE DEVOURED
13 HIM.

14 I'M SURE THERE WILL BE OTHER DISTRACTIONS. OTHER
15 PEOPLE WILL BE BLAMED. LAW ENFORCEMENT WILL BE BLAMED FOR
16 SLOPPY WORK. OTHER FACTORS WILL COME UP. I, YOU KNOW, CAN'T
17 EVEN STAND HERE AND THINK OF EVERYTHING THAT MIGHT BE
18 ATTACKED IN THIS CASE. BUT, YOU KNOW, NO MATTER HOW HARD THE
19 DEFENSE TRIES TO STIR THE EVIDENCE UP TO MURKY UP THOSE
20 WATERS, NO MATTER HOW -- HOW HARD THEY TRY TO GET YOU TO
21 FOCUS AWAY AND MAKE THOSE WATERS MURKY, IT KEEPS COMING UP
22 MERCER. THE MORE YOU STIR, THE MORE YOU DIG, THE CLEARER IT
23 GETS. MERCER.

24 BUT THEY'RE NOT GOING TO STOP, LADIES AND GENTLEMEN.
25 BUT YOU CAN'T SHAKE THIS: THIS DESCRIPTION, THIS MAN. YOU

1 CAN'T SHAKE THIS; YOU CAN'T STIR THIS AWAY. YOU CAN ONLY
2 CHOOSE TO LOOK AWAY. FOCUS. FOCUS LIKE MAGWOOD. YOU CAN'T
3 STIR THIS AWAY. YOU CAN'T SHAKE IT AWAY. FOCUS. FOCUS LIKE
4 MAGWOOD. FOCUS.

5 AT THE BEGINNING OF THIS TRIAL MS. KIMBROUGH STOOD
6 UP AND SAID KEVIN MERCER IS A SCAPEGOAT. SHE SAID HE IS, IN
7 EFFECT, AN INNOCENT LAMB. IS HE? IS THIS AN INNOCENT LAMB?
8 A SCAPEGOAT? OR, LADIES AND GENTLEMEN, IS HE A LION, A
9 ROARING LION, SEEKING WHOM HE MAY DEVOUR? LADIES AND
10 GENTLEMEN, KEEP YOUR EYE ON THE EVIDENCE AND FOCUS, JUST LIKE
11 CLIFTON MAGWOOD, AND YOU'LL KNOW THE ANSWER.

12 THE COURT: LADIES AND GENTLEMEN, BEFORE WE HEAR
13 FROM DEFENSE COUNSEL, WE'RE GOING TO TAKE A VERY SHORT BREAK
14 AND WE'LL HAVE YOU BACK OUT HERE IN THE COURTROOM FOR JUST A
15 FEW -- IN JUST A FEW MINUTES.

16 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
17 9:54 A.M.)

18 THE COURT: ALL RIGHT. GO AHEAD.

19 (PAUSE IN PROCEEDINGS.)

20 THE COURT: BE SEATED. READY TO PROCEED?

21 MR. LITTLEJOHN: YES, YOUR HONOR.

22 THE COURT: I'M PROBABLY JUST GOING TO GO RIGHT INTO
23 CLOSING -- INTO CHARGING AFTER YOU FINISH INSTEAD OF TAKING
24 ANOTHER BREAK.

25 MR. MYERS: YOUR HONOR, I DIDN'T SEE IT IN YOUR

1 CHARGE AND IT WOULDN'T BE IN THERE, BUT WILL YOU APPOINT THE
2 FOREMAN AFTER YOUR CHARGE OR WHAT?

3 THE COURT: I NORMALLY WILL JUST ALLOW THEM TO GO
4 BACK AND SELECT A FOREPERSON WHEN I -- WHEN I AM TAKING UP
5 OBJECTIONS TO THE CHARGE WHICH HOPEFULLY WE'VE ALREADY TAKEN
6 THAT UP, BUT THAT'S THE FIRST THING I DO AND USUALLY DON'T
7 SEND THE EVIDENCE BACK UNTIL THEY TELL ME WHO THE FOREPERSON
8 IS. ALL RIGHT. BRING THEM IN.

9 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
10 10:01 A.M.)

11 MR. LITTLEJOHN: IF IT PLEASE THE COURT?

12 THE COURT: YES, SIR.

13 MR. LITTLEJOHN: MR. HUBBARD? LADIES AND GENTLEMEN,
14 I WANT TO THANK YOU FOR BEING HERE THIS WEEK AND LAST WEEK.
15 I KNOW THIS IS AN INCONVENIENCE INSOFAR AS YOUR PERSONAL
16 LIVES ARE INVOLVED, YOUR WORK, YOUR FAMILIES, BUT IT'S VERY
17 IMPORTANT THAT YOU BE HERE. IT'S VERY IMPORTANT THE DUTY
18 THAT YOU HAVE AS JURORS IN THIS CASE.

19 WINSTON CHURCHILL ONCE SAID THAT THE MOST IMPORTANT
20 DUTY THAT A CITIZEN CAN HAVE DURING PEACETIME - AND I THINK
21 THIS IS PEACETIME IN THE UNITED STATES - IS THAT OF JURY
22 DUTY. AND IT'S EXTREMELY IMPORTANT THAT WE HAVE CITIZENS,
23 JURORS OF OUR PEERS IS WHAT WE REFER TO IT, PEOPLES, TO
24 DETERMINE WHETHER THE STATE HAS PROVEN THE GUILT OF SOMEONE
25 OR NOT.

1 BASED ON THE NATURE OF THE CHARGES IN THIS CASE, THE
2 MOST SERIOUS CHARGE THAT'S IN THE SOUTH CAROLINA CODE, IT'S
3 VERY IMPORTANT THAT YOU LISTEN TO THE EVIDENCE WHICH YOU
4 HAVE, LISTEN TO THE ARGUMENTS WHICH YOU HAVE, AND LISTEN TO
5 THE LAW THAT HIS HONOR WILL GIVE YOU. I CAN'T STRESS UPON
6 YOU HOW IMPORTANT THE JOB THAT YOU WILL DO TODAY IS.

7 I'VE GOT SOME NOTES HERE AND I'M GOING TO REFER TO
8 MY NOTES BECAUSE I THINK WHAT I HAVE TO DO IS MUCH TOO
9 IMPORTANT TO FORGET SOMETHING, AND I WANT TO SAY FIRST OFF
10 THAT IT IS A TRAGEDY THAT SERGEANT TRACY DAVIS DIED. IT IS
11 REPREHENSIBLE THE WAY THAT HE WAS KILLED. THERE'S NO GETTING
12 AROUND THAT.

13 UNFORTUNATELY, THERE'S NOTHING THIS COURT CAN DO.
14 THERE'S NOTHING YOU CAN DO TO BRING SERGEANT DAVIS BACK, BUT
15 YOUR JOB IS TO MAKE SURE THAT THE WRONG MAN IS NOT CONVICTED
16 FOR THIS CRIME. THAT'S YOUR JOB AS JURORS, AND HIS HONOR IS
17 GOING TO INSTRUCT YOU AT THE END OF THIS THE LAW THAT YOU ARE
18 TO APPLY AND THE BURDEN OF PROOF THAT THE STATE MUST MEET
19 BEFORE YOU CAN SAY GUILTY. AND, LADIES AND GENTLEMEN, I
20 STRESS ONCE AGAIN HOW IMPORTANT YOUR JOB IS BECAUSE IF THE
21 WRONG MAN GETS CONVICTED, WE'RE JUST GOING TO HAVE ONE
22 TRAGEDY ON TOP OF ANOTHER TRAGEDY.

23 NOW, I WAS INTERESTED IN MR. HUBBARD'S CLOSING
24 REMARKS. IT SEEMED LIKE HE SPENT MOST OF HIS TIME FOCUSING
25 ON WHAT I WAS GOING TO ARGUE TO YOU AND COUNTERING THOSE

1 THINGS, AND I DON'T KNOW WHETHER TO BE FLATTERED OR -- I
2 DON'T KNOW EXACTLY HOW TO TAKE THAT. BUT I THINK IT'S
3 IMPORTANT IN THIS CASE THAT YOU AS A JURY GET TO SEE
4 EVERYTHING ABOUT IT, ALL THE CIRCUMSTANCES, ALL THE EVIDENCE
5 THAT'S PERTINENT. I WOULD THINK YOU'D WANT TO DO THAT. AND
6 I THINK YOU'RE GOING TO HAVE TO ASK YOURSELF WHEN YOU GET
7 BACK IN THAT JURY ROOM: DID THE STATE HELP US WITH THAT?
8 DID THEY TRY AND PRESENT EVERYTHING THAT WE NEEDED TO RENDER
9 A TRUE VERDICT OR DID THE STATE HAVE TUNNEL VISION IN THIS
10 CASE?

11 YOU KNOW, THE SENIOR ASSISTANT SOLICITOR GOT UP IN
12 HIS OPENING AND HE SAID, "KEVIN MERCER WAS THE MAN WITH THE
13 GUN. HE POINTED THE GUN. HE'S THE ONE THAT SHOT TRACY
14 DAVIS." INVESTIGATOR FRIER WHEN HE WAS ON THE STAND -- DO
15 YOU REMEMBER WHEN HE ANSWERED A QUESTION? HE SAID, "IN MY
16 OPINION, KEVIN MERCER WAS THE SHOOTER," AND THAT'S THE WAY
17 THEY HAVE APPROACHED THIS CASE. TUNNEL VISION. THEY'RE
18 LOOKING RIGHT DOWN A TUNNEL, AND ALL THEY SEE IS KEVIN
19 MERCER. THEY DON'T WANT TO LOOK RIGHT. THEY DON'T WANT TO
20 LOOK LEFT. THEY DON'T WANT TO LOOK UP. THEY DON'T WANT TO
21 LOOK DOWN. AND THE PROBLEM IS, LADIES AND GENTLEMEN, THEY
22 WANT YOU TO HAVE TUNNEL VISION, TOO, AND WE'RE GOING TO TALK
23 ABOUT THAT.

24 THEY DON'T WANT TO TALK ABOUT MARCUS THOMPSON. THEY
25 DIDN'T EVEN MENTION HIM IN THE OPENING STATEMENT AS WE BEGAN

1 THIS CASE. YOU KNOW, WE HAD TO DIG AND BRING OUT THE THINGS
2 ABOUT MARCUS THOMPSON. THEY DIDN'T WANT TO SHOW YOU ANY
3 EVIDENCE ABOUT HIM. THEY WANTED TO IGNORE ANYTHING ABOUT HIM
4 THAT WOULD GIVE YOU THE FULL PICTURE OF WHAT HAPPENED ON
5 MAY 16TH, 2002. IT WAS LIKE PULLING EYETEETH. WE HAD TO
6 PULL IT OUT OF THEM. AND WHY IS IT IMPORTANT? WELL,
7 OBVIOUSLY, LADIES AND GENTLEMEN, MARCUS THOMPSON WAS IN THE
8 NAVIGATOR. MARCUS THOMPSON HAD GLOVES. WE'RE GOING TO TALK
9 ABOUT THAT, TOO. WHY WASN'T IT IMPORTANT TO THEM? BECAUSE
10 THEY HAD TUNNEL VISION.

11 WE THINK YOU NEED THE FULL PICTURE. THAT'S WHY WE
12 KEPT TRYING TO BRING THOSE THINGS OUT. SEEMS LIKE THAT'S
13 BEEN THE ATTITUDE THROUGHOUT THIS WHOLE CASE TO YOU AS A
14 JURY. DON'T BE CURIOUS. DON'T LOOK AT ANYTHING ELSE OTHER
15 THAN THE INFORMATION WE'RE GOING TO FEED YOU. IGNORE
16 ANYTHING THAT MIGHT BE BENEFICIAL TO KEVIN MERCER. IGNORE
17 ANYTHING THAT MIGHT POINT AWAY FROM HIS GUILT. IS THAT THE
18 WAY TO PROVE A CASE BEYOND A REASONABLE DOUBT? I WAS A
19 PROSECUTOR AT ONE TIME. I WOULD SUBMIT TO YOU, NO, THAT'S
20 NOT THE WAY TO PROVE IT.

21 YOU HAVE THE RIGHT AND DUTY TO EXPECT MORE FROM THE
22 STATE OF SOUTH CAROLINA, ESPECIALLY WITH WHAT THEY ARE ASKING
23 YOU TO DO TODAY. JUDGE FEW'S GOING TO TELL YOU IN JUST A
24 LITTLE BIT ABOUT THE BURDEN OF PROOF THAT THE STATE HAS IN
25 THIS CASE, AND YOU'VE HEARD THAT TERM. WE USED IT WHEN WE

1 QUESTIONED YOU INDIVIDUALLY. AND THE BURDEN OF PROOF IS
2 BEYOND A REASONABLE DOUBT. IT'S A VERY HEAVY BURDEN. IT'S
3 NOT BY A PREPONDERANCE OF THE EVIDENCE OR JUST TIPPING THE
4 SCALES SLIGHTLY TOWARD GUILT. IT'S A HEAVY, HEAVY BURDEN
5 THAT THE STATE HAS, ESPECIALLY IN A CASE LIKE THIS WHERE THE
6 STAKES ARE SO HIGH. AND I SUBMIT TO YOU, LADIES AND
7 GENTLEMEN, THE STATE HAS GOT TO GIVE YOU EVIDENCE THAT'S NOT
8 JUST CONSISTENT, AND I'M GOING TO TALK ABOUT THAT IN A LITTLE
9 BIT.

10 LET'S LOOK AT WHAT THEY PRESENTED AND WHAT THEY
11 COULD HAVE PRESENTED, AND I THINK THERE ARE REALLY ABOUT
12 SEVEN PARTS TO THIS CASE, EVEN THOUGH THE CASE WAS NOT VERY
13 LONG. THE STATE PUT UP THEIR EVIDENCE IN A DAY AND A HALF,
14 VERY SHORT FOR THIS KIND OF CASE. BUT THERE WERE SEVEN PARTS
15 TO THIS AND IF I CAN DISCUSS THEM BRIEFLY. FIRST, THE CRIME
16 SCENE: RAINTREE APARTMENTS LOCATED DOWN HERE - EXCUSE ME -
17 LOCATED UP HERE RIGHT OFF OF I-26 CLOSE TO BROAD RIVER ROAD.
18 THEY PRESENTED TO YOU A COUPLE OF CHARTS, SOME PHOTOS, TWO OR
19 THREE PHOTOS, AND THE TESTIMONY OF SERGEANT MAGWOOD, BUT I
20 NOTICE THERE WERE A LOT OF THINGS THEY DIDN'T PRESENT TO YOU.

21 THEY DIDN'T PRESENT ANY EVIDENCE TO YOU ABOUT THE
22 LIGHTING AT THE CRIME SCENE. WERE THERE STREETLIGHTS? WERE
23 THERE PORCH LIGHTS? WERE THERE LIGHTS THAT WOULD GIVE
24 SERGEANT MAGWOOD THE ABILITY TO -- TO SEE WHAT HE SAW? WE
25 HAD TO BRING THAT OUT THROUGH DEPUTY LEWIS AND SERGEANT

1 COLLINS. THEY HAD TO USE FLASHLIGHTS. THEY HAD TO USE OTHER
2 ILLUMINATIONS BECAUSE COLLINS SAID IT WAS DIMLY LIT. DID
3 THEY PRESENT THAT TO YOU? NO. THEY DIDN'T EVEN TALK ABOUT
4 IT.

5 HOW ABOUT DISTANCE, THE DISTANCE THAT SERGEANT
6 MAGWOOD HAD BETWEEN HIS APARTMENT WINDOW AND WHERE HE SAYS
7 THIS EVENT TOOK PLACE? COULDN'T THEY HAVE MEASURED IT?
8 COULDN'T THEY HAVE LET YOU KNOW? HOW ABOUT THE OTHER
9 WITNESSES? DEPUTY LEWIS SAID, "YEAH, WE INTERVIEWED OTHER
10 PEOPLE THAT WERE THERE." I'M SURE THEY GOT THEIR NAMES AND
11 ADDRESSES. COULD THEY HAVE SHED SOME LIGHT ON THIS? COULD
12 THEY HAVE SHOWN YOU SOMETHING OUTSIDE THE TUNNEL? WE DON'T
13 KNOW. WHY DIDN'T THEY JUST TAKE A PHOTOGRAPH FROM SERGEANT
14 MAGWOOD'S WINDOW DOWN TO WHERE HE SAID THE LINCOLN NAVIGATOR
15 WAS? THEN WE'D KNOW WHAT HIS VIEW WAS. THEY DIDN'T EVEN DO
16 THAT. THIS IS A MURDER CASE.

17 HOW ABOUT THE E.M.S. PERSONNEL THAT GOT THERE? THEY
18 DIDN'T CALL THEM. HOW ABOUT THE ITEMS THAT WERE FOUND ON THE
19 GROUND? YOU NEVER SAW THOSE. APPARENTLY THERE WAS A
20 TELEPHONE. WE DON'T KNOW WHETHER HE WAS TALKING TO SOMEBODY
21 ON THE PHONE. THAT'S JUST KIND OF THE APPROACH THAT THEY'VE
22 USED THROUGHOUT THIS CASE, LADIES AND GENTLEMEN.

23 NOW, SERGEANT MAGWOOD -- LET'S TALK ABOUT SERGEANT
24 MAGWOOD. CAREER ARMY MAN, ROOMMATE OF SERGEANT DAVIS, THE
25 DECEASED. YOU HEARD THE 9-1-1 TAPE. OBVIOUSLY SERGEANT

1 MAGWOOD WAS EXTREMELY EXCITED, DISTRAUGHT. I'M SURE WHEN HE
2 LOOKED OUT THROUGH THOSE BLINDS INTO THE DARK AFTER HEARING
3 THE VOICES AND SAW WHAT HE SAW HE IMMEDIATELY WENT TO CALL
4 9-1-1, IMMEDIATELY WENT TO GET SERGEANT DAVIS'S GUN. HE SAID
5 HIS VIEW WAS A FEW SECONDS LOOKING INTO WHAT APPARENTLY WAS A
6 VERY DARK AREA.

7 THEY NEVER ASKED HIM HOW FAR IT WAS THAT HE SAW
8 THESE EVENTS. HE DIDN'T SEE THE FACE OF THE MAN WHO HE SAYS
9 WAS HOLDING A WEAPON. AND HE SAID IT WAS A WEAPON; HE
10 COULDN'T TELL WHAT IT WAS. HE DIDN'T IDENTIFY KEVIN MERCER
11 AS BEING THAT PERSON. HE SAID THE PERSON HAD ON LOOSE-
12 FITTING, BAGGY CLOTHES AND THEY WERE DARK. AND HE SAID THEY
13 WERE DENIM, AND THEN I ASKED HIM WERE -- "DID YOU ASSUME THEY
14 WERE DENIM BECAUSE IT WAS DARK, THE CLOTHING WAS DARK?" AND
15 HE SAID, "YEAH." YOU'LL HAVE THE PICTURES.

16 MARCUS THOMPSON HAD ON DARK CLOTHES. YOU'LL HAVE TO
17 DETERMINE WHETHER THEY WERE BAGGY OR LOOSE-FITTING. YOU'LL
18 HAVE THAT PICTURE AS PART OF YOUR JOB. HE ALSO SAID THE MAN
19 HOLDING THE WEAPON HAD ON DARK PANTS. PANTS. NOT SHORTS.
20 AND THERE WAS SOME TIME BETWEEN WHEN SERGEANT MAGWOOD LOOKED
21 THROUGH THE BLINDS FOR A FEW SECONDS AND WHEN HE WENT TO FIND
22 THE GUN. IF YOU RECALL, HE SAID HE HAD TO LOOK THROUGH THREE
23 DIFFERENT DRAWERS AND TWO DIFFERENT DRESSERS. HE HEARD THE
24 SHOT, AND THEN HE WENT OUTSIDE AND THE NAVIGATOR WAS GONE.
25 AND THERE WAS SOME PERIOD OF TIME IN THERE WHICH IS SOMETHING

1 YOU'LL HAVE TO TAKE INTO CONSIDERATION.

2 HE SAYS HE TALKED TO THE POLICE SOMETIME AFTER THAT,
3 AND OBVIOUSLY THE POLICE KNEW WITHIN AN HOUR OR SO WHAT KEVIN
4 MERCER WAS WEARING. THAT'S SOMETHING ELSE YOU'LL HAVE TO
5 FACTOR INTO THIS. BUT DO WE KNOW THAT IT WASN'T MARCUS
6 THOMPSON WITH GLOVES ON THAT PULLED THAT TRIGGER IN THAT
7 DIMLY-LIT PARKING LOT?

8 LET'S TALK ABOUT THE SECOND PART OF THE CASE, AND I
9 CALL THAT THE ARREST SCENE. KEVIN MERCER WAS DRIVING THE
10 LINCOLN. THAT'S NOT IN DISPUTE. THE GUN, WHICH IS STATE'S
11 EXHIBIT 19, WAS LAYING UNDER THE DRIVER'S SEAT WHERE KEVIN
12 MERCER WAS. THAT'S NOT IN DISPUTE. KEVIN MERCER HAD ON DARK
13 CLOTHES. YOU'LL SEE HIM IN THE PICTURES. KEVIN MERCER HAS
14 BROAD SHOULDERS, AND THAT'S NOT IN DISPUTE. KEVIN MERCER
15 DIDN'T HAVE BARIUM ON HIS HANDS AND HE DIDN'T HAVE ANTIMONY
16 ON HIS HANDS, AND THAT'S NOT IN DISPUTE.

17 MR. HUBBARD SAID I WAS GOING TO TALK ABOUT MARCUS
18 THOMPSON, AND HE WAS EXACTLY RIGHT. YOU NOTICE THEY KIND OF
19 -- THEY NOT ONLY GLOSSED OVER MARCUS THOMPSON IN THE OPENING,
20 BUT MR. STAZER WANTED TO KIND OF GLOSS OVER MARCUS THOMPSON.
21 THEY DID, HOWEVER, BRING OUT THAT MARCUS THOMPSON DROPPED ONE
22 OF HIS FOUR GLOVES GETTING OUT OF THE CAR. DID THEY PUT IT
23 INTO EVIDENCE FOR YOU? NO. DID THEY MENTION THE OTHER THREE
24 GLOVES HE HAD IN HIS POCKET? NO. STAZER DID MENTION,
25 MENTION, MARCUS THOMPSON HAD SEVENTEEN 357 ROUNDS THAT WOULD

1 FIT IN THAT GUN RIGHT THERE IN A PLASTIC BAG IN HIS PANTS
2 LEG, AND THAT FELL OUT AS HE WAS GETTING OUT OF THE CAR.
3 THEY MENTIONED THAT.

4 DID THEY BRING THOSE 17 BULLETS TO COURT? THEY'VE
5 GOT ALL THE EVIDENCE. WE DON'T HAVE THE EVIDENCE; THEY'VE
6 GOT IT. DID THEY BRING THE 17 BULLETS INTO COURT SO YOU
7 COULD CONSIDER THAT? DID THEY EVEN BOTHER SENDING THEM TO
8 S.L.E.D. FOR S.L.E.D. TO LOOK AT THEM? NO. AND THAT SORT OF
9 ATTITUDE IS A BIG PROBLEM WITH THIS CASE, I SUBMIT TO YOU.

10 THE GUN WAS THERE, LADIES AND GENTLEMEN, AND THE
11 STATE WANTS TO GET UP AND SAY, WELL, IT'S POSSIBLE THIS
12 HAPPENED, IT WAS POSSIBLE THAT HAPPENED, AND IT'S POSSIBLE
13 THIS HAPPENED. I AGREE WITH THEM. IT WAS POSSIBLE THAT
14 MARCUS THOMPSON PUT THAT GUN UNDER THERE AFTER HE FIRED IT
15 WITH HIS GLOVED HAND AND KILLED SERGEANT DAVIS. IT WAS
16 POSSIBLE THAT HE THEN WENT UP HERE AT BROAD RIVER ROAD AND
17 I-20 WHERE KEVIN MERCER'S CAR WAS AND PICKED HIM UP. IT WAS
18 POSSIBLE THAT MARCUS THOMPSON HANDED THE GUN TO KEVIN MERCER
19 AFTER HE GOT HIM TO DRIVE, AND I SUBMIT IT WAS POSSIBLE
20 MARCUS THOMPSON COULD HAVE PUT THAT GUN UNDER THE SEAT AFTER
21 KEVIN MERCER WAS PULLED OUT OF THAT CAR BY DEPUTY STAZER.

22 WE DON'T DEAL IN WHAT'S CONSISTENT OR WHAT'S
23 POSSIBLE; WE DEAL IN PROOF IN THIS COURTROOM. AND THEY WANT
24 TO TALK ABOUT HOW MR. STAZER WAS -- I BELIEVE THEY USED THE
25 TERM ANAL ABOUT HIS GUN AND HIS HANDCUFFS AND EVERYTHING. OF

1 COURSE , THEY DON'T TALK ABOUT HOW KEVIN MERCER WAS HAND-
2 CUFFED , PUT IN THE BACK SEAT OF THE PATROL CAR, TAKEN TO THE
3 SHERIFF'S DEPARTMENT, UNHANDCUFFED, RE-HANDCUFFED IN FRONT,
4 UNHANDCUFFED AGAIN SO THE G.S.R. SWABS COULD BE TAKEN. AND
5 APPARENTLY HE WAS HANDLED TO THE EXTENT THAT, I SUBMIT TO
6 YOU, LADIES AND GENTLEMEN, TWO MICROSCOPIC LEAD PARTICLES
7 WHICH CAN BE AIRBORNE COULD HAVE GOTTEN ON HIS PALM, BUT
8 WE'RE GOING TO TALK ABOUT THAT IN JUST A LITTLE BIT.

9 THAT LEADS US TO THE THIRD PART OF THIS CASE, AND I
10 CALL THIS AT THE SHERIFF'S DEPARTMENT. THEY TAKE PICTURES
11 WHICH YOU HAVE IN EVIDENCE OF KEVIN MERCER. THEY TAKE THE
12 PICTURES OF MARCUS THOMPSON, AND YOU'LL SEE THEY'RE
13 HANDCUFFED IN FRONT. THAT'S WHAT I WAS TALKING ABOUT. HE
14 WAS HANDCUFFED IN THE REAR ON THE ROAD, HANDCUFFED IN FRONT
15 AND THEN UNHANDCUFFED.

16 AND THEY SEIZE KEVIN MERCER'S CLOTHES. DID THEY
17 BRING THEM TO COURT SO YOU COULD SEE THEM? WAS IT TOO MUCH
18 TROUBLE FOR THEM TO DO THAT? AND HOW ABOUT MARCUS THOMPSON?
19 THEY SEIZED HIS CLOTHES, TOO. WAS IT TOO MUCH TROUBLE FOR
20 THEM TO BRING THEM INTO COURT SO YOU COULD SEE THEM SO YOU
21 COULD MAKE A FULLY-INFORMED DECISION? THEY DIDN'T.

22 AND IT'S FUNNY -- YOU KNOW, THEY -- MS. KYZER -- I
23 HAD NEVER HEARD THIS, DIDN'T KNOW THIS UNTIL SHE GOT ON THE
24 STAND. SHE SAID MARCUS THOMPSON HAD THREE GLOVES IN HIS
25 POCKET. WE DISCOVERED THEM WHEN WE WERE GETTING READY TO TRY

1 THIS CASE. THEY DIDN'T EVEN BOTHER LOOKING IN MARCUS
2 THOMPSON'S POCKETS. FOUR GLOVES TOTAL. YOU COULD HAVE SEEN
3 THAT MARCUS THOMPSON'S CLOTHES WERE DARK, PROBABLY BAGGY ON
4 HIM, AND HE HAD ON DARK PANTS. CONSISTENT WITH DENIM. I'LL
5 USE THEIR... AND THE GLOVES. WHY ON EARTH THEY WOULDN'T
6 SHOW YOU THE GLOVES I DO NOT KNOW. WELL, I DO KNOW; I TAKE
7 THAT BACK.

8 THEY DIDN'T SHOW YOU THE GLOVES BECAUSE IT POINTS
9 DIRECTLY TO MARCUS THOMPSON BEING THE SHOOTER. WHY ELSE
10 WOULD THE MAN HAVE TWO PAIRS OF GLOVES ON MAY -- IN MAY OF
11 2002? DID YOU THINK HE NEEDED THEM FOR THE WINTER WEATHER?
12 YOU KNOW, IT'S FUNNY. WE WERE TRYING TO FIND OUT WHERE THESE
13 EXHIBITS WERE AND TRYING TO BRING OUT THINGS THAT WE THOUGHT
14 WERE IMPORTANT TO THE CASE, IMPORTANT FOR YOU TO CONSIDER,
15 AND I FELT LIKE THE SHERIFF'S DEPARTMENT WAS JUST STONE-
16 WALLED.

17 YOU HAD THE GUY UP THERE THAT WAS IN CHARGE OF ALL
18 THE EVIDENCE, ALL THE EVIDENCE, ALL THE PEOPLE THAT HANDLED
19 THE EVIDENCE EXCEPT FOR THOSE THINGS WE WANTED TO ASK ABOUT.
20 I DIDN'T KNOW ABOUT THOSE. SOMEBODY ELSE MUST HAVE DONE
21 THAT. SOMEBODY ELSE COULD HAVE SUBMITTED IT TO S.L.E.D. WHY
22 ARE THEY SCARED OF IT? IS IT BECAUSE ALL THAT EVIDENCE
23 POINTS TO MARCUS THOMPSON BEING THE SHOOTER? IS THAT WHAT IT
24 IS? THAT'S A QUESTION YOU'RE GOING TO HAVE TO DECIDE. AND
25 WE'D KNOW, LADIES AND GENTLEMEN, IF THEY HAD SENT THOSE

1 GLOVES TO THE S.L.E.D. LAB. WE'D KNOW IF THEY WERE FULL OF
2 BARIUM, ANTIMONY, AND LEAD. WE'D KNOW THAT.

3 AND MR. HUBBARD SAYS, "WELL, HOW DID HE GET THEM OFF
4 WITHOUT GETTING IT ON HIS HANDS?" HOW DO YOU TAKE GLOVES
5 OFF? YOU TAKE THEM OFF WITH YOUR FINGERS. THEY SWABBED THE
6 PALMS. THEY SWABBED THE BACK OF THE HANDS. WE'RE GOING TO
7 TALK ABOUT THE BACK OF THE HANDS IN A MINUTE. I KNOW I'VE
8 GOT A LOT OF THINGS I SAY I'M GOING TO TALK ABOUT, BUT I'M
9 GOING TO GET TO THEM.

10 LET'S TALK ABOUT THE FOURTH PART, THE FOURTH PART
11 THAT THEY DIDN'T EVEN WANT TO BRING UP: KEVIN MERCER'S BUICK
12 AT THE ECONOMY INN. THEY FIND KEVIN MERCER'S BUICK DOWN HERE
13 AT BROAD RIVER ROAD AND I-20, NOT AT RAINTREE APARTMENTS, BUT
14 DOWN HERE IN THIS MOTEL. THE STATE DIDN'T EVEN MENTION IT.
15 WOULDN'T THAT BE IMPORTANT? WOULDN'T IT BE SOMETHING YOU
16 SHOULD CONSIDER? BUT IT'S OUTSIDE THE TUNNEL. MAYBE THAT'S
17 IT. BUT IT BEGS THE QUESTION: IF THEIR NOW THEORY - AND
18 WE'RE GOING TO TALK ABOUT THAT IN A MINUTE - IS THAT TWO OF
19 THEM WERE AT RAINTREE, WELL, HOW DID THEY GET THERE FROM THE
20 ECONOMY INN? DO YOU THINK THEY LEFT THE CAR THERE AND WALKED
21 ALL THE WAY DOWN TO RAINTREE? THAT'S SOMETHING YOU'RE GOING
22 TO HAVE TO CONSIDER. ARE THERE MORE PLAUSIBLE EXPLANATIONS?
23 MAYBE KEVIN WAS WITH HIS CAR. MAYBE MARCUS THOMPSON WITH HIS
24 GLOVES ON SHOT SERGEANT DAVIS AND THEN WENT AND GOT KEVIN.
25 IT'S UP TO THE STATE TO PROVE IT, AND THEY HAVEN'T DONE IT.

1 LADIES AND GENTLEMEN, I'M TRYING NOT TO DIVERT YOU
2 FROM THE TRUTH AS I'VE BEEN ACCUSED OF. I WANT YOU TO SEE
3 THE WHOLE PICTURE. THE FIFTH PART OF THIS CASE: THE
4 AUTOPSY. YOU HEARD THE TESTIMONY ABOUT THE AUTOPSY, AND I
5 JUST WANTED TO ASK THE PATHOLOGIST JUST ONE QUESTION. WHAT
6 WAS THE ANGLE OF THE BULLET? AND THE REASON I ASKED ABOUT
7 THAT IS BECAUSE OF PART SIX, AND I CALL PART SIX OF THIS CASE
8 JAILHOUSE SNITCH.

9 TERRY BROWN. IT WAS TOO IMPORTANT TO SMILE, BUT
10 WHEN THE STATE SAID HONESTY WALKED INTO THE COURTROOM, WAS
11 THAT AN HONEST MAN? LADIES AND GENTLEMEN, IF I RECALL SINCE
12 1991 OR IT MAY HAVE BEEN 1994, HE'S BEEN FOUND GUILTY OF
13 ROBBERY, BURGLARY, ILLEGAL DRUGS, AGGRAVATED ASSAULT. DO YOU
14 THINK HEDGING THE TRUTH OR PERJURY IS ABOVE THIS GUY? I
15 SUBMIT TO YOU THAT'S THE WORST KIND OF EVIDENCE.

16 MR. BROWN TELLS YOU THAT SOME TWO YEARS AND TWO
17 MONTHS BEFORE HE SAYS ANYTHING TO ANYBODY KEVIN MERCER TOLD
18 HIM THIS STORY. HE DOESN'T EVEN TELL YOU WHY KEVIN MERCER
19 WOULD CONFESS TO THIS GUY. DO YOU REMEMBER HE SAID, YOU
20 KNOW, PEOPLE IN JAIL DON'T TALK ABOUT WHAT THEY'RE CHARGED
21 WITH? BUT THEY WANT YOU TO BELIEVE THAT KEVIN MERCER JUST
22 CAME UP AND CONFESSED TO THIS GUY. NO NOTES, NO
23 CORROBORATION.

24 LET ME ASK YOU THIS: IF TERRY BROWN CAME UP TO YOU
25 AND SAID, "I WANT TO BORROW \$50. I'LL PAY YOU BACK IN A

1 WEEK, " DO YOU THINK YOU'D DO THAT? IF YOU WOULDN'T, THEN YOU
2 HAVE TO TAKE HIS TESTIMONY WITH A GRAIN OF SALT. AND WHAT'S
3 THIS VERSION HE GIVES YOU? HE SAYS THAT KEVIN MAKES THE MAN
4 KNEEL DOWN AND THEN SHOTS HIM. WELL, WE KNOW THAT DIDN'T
5 HAPPEN BECAUSE THE PATHOLOGIST TOLD US IT DIDN'T HAPPEN.
6 MAYBE MR. BROWN THOUGHT THAT WOULD SOUND BETTER TO TELL THE
7 STATE. AND HE SAYS KEVIN TOLD HIM HE HAD A FLAT TIRE. WHERE
8 DID HE GET THAT FROM? I BET Y'ALL THOUGHT I WAS CRAZY. I
9 WAS ASKING EVERYBODY IF THE NAVIGATOR HAD A FLAT TIRE.
10 THAT'S WHAT IT WAS. IT DIDN'T HAVE A FLAT TIRE. AND THEN HE
11 SAID KEVIN TOLD HIM THAT HE WAS THE ONE THAT DID THE
12 SHOOTING. WELL, LADIES AND GENTLEMEN, GUNSHOT RESIDUE -- I
13 SUBMIT TO YOU THAT GUNSHOT RESIDUE TESTS DON'T LIE, SO WE
14 KNOW THAT'S NOT TRUE. A GRAIN OF SALT IS NOT BEYOND A
15 REASONABLE DOUBT.

16 SEVENTH PART AND LAST: THE SCIENTIFIC TESTS. AND
17 I'LL TALK ABOUT THEM KIND OF IN REVERSE ORDER. FIRST WAS THE
18 BALLISTICS EXPERT, AGENT WHITLER. THE STATE CALLED HIM AND
19 HE VERIFIED THAT THE BULLET THAT KILLED SERGEANT DAVIS CAME
20 FROM THAT GUN. AND WE DIDN'T DISPUTE THAT, BUT I THOUGHT IT
21 WAS INTERESTING THAT THE STATE DIDN'T EVEN ASK HIM WHAT KIND
22 OF TEST HE DID. DID HE LOOK UNDER A MICROSCOPE? DID HE LOOK
23 AT THE BULLET WITH HIS NAKED EYE? WHAT DID HE DO? IT'S KIND
24 OF THE SAME CAVALIER ATTITUDE THAT THEY'VE HAD DURING THIS
25 WHOLE PROCEEDING. THEY WANT TO JUST FEED YOU A LIMITED

1 AMOUNT OF INFORMATION SO YOU CAN STAY IN THE TUNNEL.

2 THEY NEVER ASKED HIM TO LOOK AT MARCUS THOMPSON'S 17
3 BULLETS. MAYBE YOU WOULDN'T HAVE FOUND ANYTHING, BUT HE
4 COULD HAVE SAID THOSE ARE THE SAME KIND OF BULLETS THAT GO IN
5 THAT GUN. THIS IS A MURDER CASE, LADIES AND GENTLEMEN.
6 AREN'T THEY SUPPOSED TO LOOK EVERYWHERE? AREN'T THEY
7 SUPPOSED TO LOOK UNDER EVERY STONE TO FIND EVERY BIT OF
8 EVIDENCE THEY CAN SO YOU CAN BE SATISFIED?

9 NOW, MR. STUCKEY, HE WAS THE FINGERPRINT EXAMINER.
10 IF YOU RECALL, HE SAID THERE WAS ONE UNKNOWN PRINT THAT CAME
11 FROM THE 357 MAGNUM, AND THE PRINT WAS SO BAD THAT HE
12 COULDN'T COMPARE IT TO ANY KNOWN PRINTS. ONE PRINT. AND I
13 ASKED HIM -- I SAID, "SIR, YOU'VE GOT TO HAVE A BARE FINGER
14 TO LEAVE A PRINT." "RIGHT." "IF SOMEBODY'S WEARING GLOVES,
15 THEY DON'T LEAVE ANY PRINTS. ISN'T THAT RIGHT?" "YES."
16 GLOVES, NO PRINTS. MARCUS THOMPSON, FOUR GLOVES, MAY 2002.
17 WHO WAS THE SLY ONE? WHO WAS THE ONE THAT KNEW WHAT HE WAS
18 DOING?

19 G.S.R. BOTH THE EXPERTS AGREE IN ORDER FOR THEM TO
20 SAY THAT G.S.R. IS PRESENT ON SOMEONE'S HAND THERE MUST BE
21 ELEVATED LEVELS IN A COMBINATION OF LEAD, BARIUM, AND
22 ANTIMONY, ALL THREE. THAT WAS NOT THE CASE WITH KEVIN
23 MERCER. WITHOUT ALL THREE, THERE'S NOT GUNSHOT RESIDUE.

24 NOW, I FEEL KIND OF IN THE REVERSE HERE. USUALLY
25 IT'S THE STATE SAYING, WELL, THIS IS THE SCIENTIFIC EVIDENCE.

1 THIS PROVES IT FOR SURE OR CONCLUSIVELY. THERE'S NO DOUBT
2 ABOUT IT, SCIENTIFIC EVIDENCE, BUT NOT IN THIS CASE. WE
3 CALLED JEFF HOLLIFIELD, AND YOU HEARD MR. HOLLIFIELD. YOU
4 HEARD HIS CREDENTIALS. HE WAS A S.L.E.D. AGENT FOR 10 YEARS,
5 TWO MASTER'S DEGREES, NUMEROUS TRAINING COURSES, AND
6 QUALIFIED AS AN EXPERT NUMEROUS TIMES IN FEDERAL AND STATE
7 COURT AND QUALIFIED AS AN EXPERT WITH THIS SOLICITOR'S
8 OFFICE.

9 HE TOLD YOU HOW IF KEVIN MERCER HAD FIRED A GUN HE
10 WOULD HAVE EXPECTED TO SEE ELEVATED LEVELS OF BARIUM,
11 ANTIMONY, AND LEAD ON HIS HAND AND ESPECIALLY ON THE BACK OF
12 HIS HAND. AND HE TOLD YOU, LADIES AND GENTLEMEN, WHEN YOU
13 FIRE A GUN, THERE'S A BALLOON OF THESE THREE ELEMENTS THAT
14 SURROUND THAT GUN. THE PALM OF YOUR HAND IS GOING TO BE UP
15 AGAINST THE STOCK OF THE GUN, THE HANDLE. THE BACK OF YOUR
16 HAND AND THE BACK OF YOUR FINGERS IS WHERE THE GUNSHOT
17 RESIDUE IS GOING TO BE PRIMARILY.

18 ON THE BACK OF KEVIN'S LEFT HAND AND ON THE BACK OF
19 KEVIN'S RIGHT HAND: NO ELEVATED LEVELS OF ANY OF THOSE
20 THREE. IT WAS ONLY ON THE PALM OF HIS LEFT HAND THAT THEY
21 FOUND 399 PARTS PER BILLION, AND IT CONSISTED OF TWO
22 MICROSCOPICALLY - AND YOU HEARD HOW SMALL THEY WERE - LEAD
23 PARTICLES.

24 MR. HOLLIFIELD DESCRIBED TO YOU HOW THOSE PARTICLES
25 COULD HAVE BEEN TRANSFERRED IN ANY NUMBER OF WAYS INCLUDING

1 IN THE AIR, INCLUDING BEING HANDED A GUN BY MARCUS THOMPSON,
2 INCLUDING BEING HANDCUFFED, INCLUDING BEING UNHANDCUFFED.
3 MS. STONER SAYS, WELL, THESE ARE CONSISTENT. WELL, WHAT DOES
4 THAT MEAN? THAT'S NOT PROOF BEYOND A REASONABLE DOUBT. WHAT
5 DOES CONSISTENT MEAN? I MEAN, IF I COME HOME FROM THE
6 GROCERY STORE AND I'VE GOT A SIX-PACK OF BEER IN MY CAR GOING
7 HOME, ARE THEY GOING TO SAY, "WELL, HE'S D.U.I.," BECAUSE
8 HAVING BEER IS CONSISTENT? OR IF I'M WALKING DOWN THE STREET
9 AND I'VE GOT A SCREWDRIVER IN MY CAR -- IN MY POCKET BECAUSE
10 I'VE BEEN WORKING ON SOMETHING, THEY'LL SAY, "WELL, HE MUST
11 BE GUILTY OF ATTEMPTED BURGLARY BECAUSE THAT'S CONSISTENT."

12 LADIES AND GENTLEMEN, IT'S JUST ANOTHER WAY OF
13 TALKING AROUND THE EVIDENCE THAT THE STATE DOESN'T HAVE. AND
14 YOU'RE GOING TO HAVE TO ASK YOURSELF: IS THAT AN ATTEMPT BY
15 THEM TO FOOL YOU? ARE THEY TRYING TO SELL YOU A PIECE OF
16 LETTUCE BETWEEN TWO SLICES OF BREAD AND SAY, "WELL, THAT'S
17 CONSISTENT WITH A B.L.T., SO IT MUST BE A B.L.T."?

18 THEY KNOW, LADIES AND GENTLEMEN, THAT WITHOUT THE
19 G.S.R. BEING CONCLUSIVE THEIR THEORY OF KEVIN MERCER BEING A
20 SHOOTER MISERABLY FAILS. IF IT FAILS, THEN THAT CAN ONLY
21 LEAD TO ONE CONCLUSION AND THAT WAS MARCUS THOMPSON WAS THE
22 SHOOTER. THEY DIDN'T TEST THE GLOVES. FOR ALL WE KNOW,
23 THEY'RE FULL OF BARIUM, LEAD, ANTIMONY AND THEN WE'D KNOW,
24 BUT THEY NEVER ANALYZED THEM, SO YOU DON'T KNOW. THAT'S A
25 DOUBT. THAT'S A REASONABLE DOUBT. I SUBMIT TO YOU THAT'S A

1 REASONABLE DOUBT WITH A CAPITAL R. AND A CAPITAL D.

2 LADIES AND GENTLEMEN, THEY COME UP HERE TODAY AND
3 THEY WANT TO CHANGE HORSES IN MIDSTREAM AND THEY TALK ABOUT,
4 "WELL, MAYBE IT'S POSSIBLE MARCUS THOMPSON DID THE SHOOTING.
5 SO MAYBE KEVIN MERCER SHOULD BE GUILTY UNDER ANOTHER THEORY
6 OTHER THAN THE ONE WE TOLD YOU ABOUT IN OUR OPENING
7 STATEMENT." HIS HONOR WILL TELL YOU WHAT THAT THEORY IS.
8 IT'S CALLED THE HAND OF ONE IS THE HAND OF ALL, AND LEGALLY
9 THERE HAS TO BE PROOF THAT TWO OR MORE PEOPLE ARE PRESENT AND
10 ACTING TOGETHER. DID THEY PROVE TO YOU THAT TWO PEOPLE WERE
11 THERE UNDER THEIR ALTERNATE THEORY? DID THEY PROVE THAT
12 THERE WERE TWO PEOPLE SO THE HAND OF ONE IS THE HAND OF ALL
13 COULD APPLY? NO. YOU KNOW, THEY CHANGED THEIR THEORY HERE
14 IN CLOSING ARGUMENT, LADIES AND GENTLEMEN. IF THEY DON'T
15 KNOW WHAT HAPPENED, HOW CAN THEY EXPECT YOU TO KNOW?

16 I'M GOING TO FINISH UP. AND I TELL YOU RIGHT NOW:
17 KEVIN MERCER SHOULDN'T HAVE BEEN IN THAT CAR THAT NIGHT. HE
18 HAD NO BUSINESS BEING IN THAT CAR. HE'S NOT AN INNOCENT MAN.
19 I DON'T THINK WE MEANT TO IMPLY THAT AT ALL. BUT, LADIES AND
20 GENTLEMEN, HE'S NOT CHARGED WITH POSSESSION OF A STOLEN MOTOR
21 VEHICLE. HE'S NOT CHARGED WITH ACCESSORY AFTER THE FACT OF
22 MURDER OR ARMED ROBBERY. THAT'S NOT IN THIS TRIAL. THE
23 STATE CHOSE THE CHARGES THAT THEY WANTED TO PURSUE, AND THEY
24 CHOSE MURDER, ARMED ROBBERY, AND POSSESSION OF A FIREARM
25 DURING THE COMMISSION OF A VIOLENT FELONY. THEY CHOSE THE

1 CHARGES, AND THEY CHOSE TO BE INDIFFERENT ABOUT THE EVIDENCE
2 AND ABOUT WHAT THEY PRESENTED TO YOU.

3 THEY CHOSE TO DECLARE KEVIN MERCER THE SHOOTER AND
4 IGNORE THE OTHER EVIDENCE, IGNORE THE OTHER POSSIBILITIES,
5 IGNORE MARCUS THOMPSON AND HIS GLOVES. THAT WAS THEIR
6 DECISION. I SUBMIT TO YOU, LADIES AND GENTLEMEN, THEY DIDN'T
7 PROVE THESE CHARGES BEYOND A REASONABLE DOUBT, AND WHEN YOU
8 GO BACK AND WEIGH THE EVIDENCE, YOU'RE GOING TO HAVE TO COME
9 TO THE CONCLUSION BASED ON YOUR JOB AS JURORS AND YOUR DUTY
10 TO FIND THAT KEVIN MERCER IS NOT GUILTY. I THANK YOU FOR
11 YOUR TIME.

12 **THE COURT:** LADIES AND GENTLEMEN, NOW THAT YOU HAVE
13 HEARD ALL OF THE EVIDENCE AND THE ARGUMENTS OF THE LAWYERS,
14 IT BECOMES MY RESPONSIBILITY TO EXPLAIN THE LAW THAT IS
15 APPLICABLE TO THIS CASE. UNDER THE SOUTH CAROLINA
16 CONSTITUTION AND CODE OF LAWS, AS I MENTIONED TO YOU IN THE
17 BEGINNING OF THE TRIAL, ONLY THE JURY CAN MAKE THE FINDINGS
18 OF FACT IN THIS CASE, AND I AM NOT PERMITTED TO INDICATE TO
19 YOU HOW I MIGHT FEEL ABOUT THE FACTS OR THE EVIDENCE. SO IF
20 I HAVE SAID ANYTHING OR DONE ANYTHING DURING THE COURSE OF
21 THIS TRIAL THAT LEADS YOU TO BELIEVE THAT I HAVE AN OPINION
22 ABOUT THE FACTS, THEN YOU MUST DISREGARD THAT BECAUSE THIS
23 JURY MUST INDEPENDENTLY WEIGH THE TESTIMONY AND THE EVIDENCE
24 THAT HAS BEEN PRESENTED AND RENDER A VERDICT THAT IS BASED
25 SOLELY ON THAT TESTIMONY AND EVIDENCE AND IN LIGHT OF THE LAW

1 AS I NOW EXPLAIN IT TO YOU.

2 TO DETERMINE THE FACTS IN THIS CASE, YOU WILL HAVE
 3 TO EVALUATE CREDIBILITY WHICH, OF COURSE, MEANS THE
 4 BELIEVABILITY OF THE WITNESSES WHO HAVE BEEN CALLED ON TO
 5 TESTIFY. AND SOME OF THE THINGS THAT YOU MIGHT WISH TO
 6 CONSIDER AS YOU DECIDE WHETHER TO BELIEVE A PARTICULAR
 7 WITNESS'S TESTIMONY INCLUDE THE FOLLOWING: THE MANNER AND
 8 APPEARANCE OF THE WITNESS WHO TESTIFIED. WAS HE OR SHE
 9 STRAIGHTFORWARD OR HESITANT IN ANSWERING QUESTIONS? IS THE
 10 TESTIMONY OF A WITNESS CONSISTENT OR INCONSISTENT? HOW DID
 11 THE WITNESS COME TO KNOW THE FACTS THAT HE OR SHE WAS
 12 TESTIFYING TO, AND WHAT IS THAT WITNESS'S ABILITY TO KNOW
 13 THOSE FACTS? IS THERE SOME REASON THAT A WITNESS MIGHT WANT
 14 TO GIVE TESTIMONY THAT WOULD HELP OR HURT ONE SIDE OR THE
 15 OTHER? IS THE TESTIMONY OF A WITNESS STRENGTHENED OR
 16 WEAKENED BY OTHER TESTIMONY AND EVIDENCE?

17 YOU HAVE HEARD EVIDENCE THAT A WITNESS HAS BEEN
 18 CONVICTED OF A CRIME THAT IS NOT THE CRIME FOR WHICH THE
 19 DEFENDANT IS NOW ON TRIAL. YOU MAY CONSIDER THIS EVIDENCE IN
 20 DECIDING WHETHER OR NOT THAT WITNESS'S TESTIMONY IS
 21 BELIEVABLE.

22 YOU CAN BELIEVE AS MUCH OR AS LITTLE OF EACH
 23 WITNESS'S TESTIMONY AS YOU THINK IT IS APPROPRIATE TO DO.
 24 YOU CAN BELIEVE THE TESTIMONY OF A SINGLE WITNESS AGAINST ALL
 25 OF THE REST OF THEM OR YOU MAY DO JUST THE OPPOSITE, AND YOU

1 ARE NOT REQUIRED TO ACCEPT TESTIMONY AS TRUE EVEN IF IT IS
2 UNCONTRADICTED.

3 THERE ARE TWO TYPES OF EVIDENCE FROM WHICH THE JURY
4 MAY PROPERLY FIND THE TRUE FACTS IN A CASE: DIRECT EVIDENCE
5 AND CIRCUMSTANTIAL EVIDENCE. BY THE TERM DIRECT EVIDENCE,
6 THE LAW MEANS THE TESTIMONY OF A PERSON WHO HAS PERCEIVED
7 FACTS BY MEANS OF HIS OR HER OWN SENSES AS WHERE A PERSON
8 SEES AN EVENT AND COMES INTO COURT TO TESTIFY AS TO WHAT HE
9 OR SHE SAW. IN OTHER WORDS, IT COMES FROM A PERSON WHO BY
10 HIS OR HER OWN SENSES HAD ACTUAL PERSONAL KNOWLEDGE THAT AN
11 EVENT HAS OCCURRED OR NOT OCCURRED OR THAT A FACT DOES OR
12 DOES NOT EXIST.

13 CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, INVOLVES
14 TESTIMONY OR EVIDENCE OF A CHAIN OF FACTS OR CIRCUMSTANCES
15 FROM WHICH ONE MAY INFER THAT AN EVENT SEPARATE FROM THAT
16 CHAIN OF FACTS OR CIRCUMSTANCES HAS OCCURRED OR THAT A FACT
17 HAS BEEN ESTABLISHED. AND THE LAW MAKES ABSOLUTELY NO
18 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER
19 CIRCUMSTANTIAL EVIDENCE OR DIRECT EVIDENCE NOR IS THERE A
20 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
21 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF
22 THE EVIDENCE IN THIS CASE, AND AFTER DOING SO, IF YOU ARE NOT
23 CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT,
24 THEN YOU MUST FIND THE DEFENDANT NOT GUILTY.

25 NOW, THE SAME CONSTITUTION AND CODE OF LAWS THAT

1 MAKE YOU THE EXCLUSIVE JUDGES OF THE FACTS ALSO MAKE ME THE
2 EXCLUSIVE JUDGE OF THE LAW. SO IF YOU HAVE SOME IDEA AS TO
3 WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IF THAT DIFFERS
4 FROM WHAT I NOW TELL YOU THE LAW IS, THEN YOU ARE OBLIGATED
5 UNDER THE OATH THAT YOU HAVE TAKEN AS JURORS TO ACCEPT AND
6 APPLY THE LAW PRECISELY AS I NOW EXPLAIN IT TO YOU.

7 THE FACT THAT THE DEFENDANT WAS ARRESTED AND CHARGED
8 AND INDICTED IN THIS CASE IS NOT EVIDENCE AND CANNOT BE
9 CONSIDERED BY YOU IN ANY WAY AS EVIDENCE OF THE DEFENDANT'S
10 GUILT NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF
11 GUILT. THE INDICTMENT IS SIMPLY THE FORMAL INSTRUMENT THAT
12 CONTAINS THE CHARGES THAT HAVE BEEN MADE AGAINST THE
13 DEFENDANT, AND THE INDICTMENT SERVES TO PROCESS THIS CASE AND
14 BRING IT INTO THIS COURT FOR TRIAL.

15 THE DEFENDANT HAS PLED NOT GUILTY TO ALL THREE
16 COUNTS OF THIS INDICTMENT, AND THE PLEA OF NOT GUILTY CASTS
17 THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND
18 A REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A CRIME
19 IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE THEMSELVES
20 INNOCENT.

21 NOW, IT IS A VERY IMPORTANT RULE OF LAW IN OUR
22 COUNTRY THAT A PERSON CHARGED WITH A CRIME WILL ALWAYS BE --
23 WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THAT CRIME UNLESS
24 AND UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE THAT
25 SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS

1 PRESUMPTION OF INNOCENCE IS NOT MERELY LEGAL THEORY. IT'S
2 NOT JUST A LEGAL PHRASE THAT WE USE. IT IS A SUBSTANTIAL
3 CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED.
4 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM
5 THE TIME HE IS CHARGED, THROUGHOUT THE TRIAL, AND INTO THE
6 JURY ROOM UNTIL YOU REACH A VERDICT OF GUILT THAT'S BASED ON
7 EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE
8 DOUBT.

9 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU NOW AND I
10 EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT DID NOT
11 TESTIFY IN THIS CASE CANNOT BE CONSIDERED BY YOU IN ANY WAY
12 DURING YOUR DELIBERATIONS. THE DEFENDANT HAS A
13 CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE EXERCISE OF
14 THAT RIGHT CANNOT AND MUST NOT BE HELD AGAINST THE DEFENDANT.
15 UNDER THE OATH THAT YOU HAVE TAKEN AS JURORS, YOU ARE TO DRAW
16 NO INFERENCE AND NO CONCLUSION WHATSOEVER FROM THE FACT THAT
17 THE DEFENDANT DID NOT TESTIFY. DO NOT EVEN DISCUSS THIS IN
18 THE JURY ROOM. THE DEFENDANT IS NOT REQUIRED TO PROVE OR TO
19 EXPLAIN ANYTHING. THE BURDEN OF PROOF REMAINS ON THE STATE
20 TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

21 A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST,
22 SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE
23 CASE TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT
24 MUST, THEREFORE, BE PROOF OF SUCH A CONVINCING CHARACTER THAT
25 A REASONABLE PERSON WOULD NOT HESITATE TO RELY ON IT AND ACT

1 ON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS. PROOF
2 BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS PROOF THAT
3 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

4 NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE
5 KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW
6 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
7 IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE
8 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
9 CHARGED, THEN YOU MUST FIND HIM GUILTY. BUT, ON THE OTHER
10 HAND, IF YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT
11 GUILTY, THEN YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND
12 FIND HIM NOT GUILTY.

13 NOW, I HAVE ADMITTED INTO EVIDENCE IN THIS CASE A
14 STATEMENT THAT IS ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT.
15 BEFORE YOU CAN CONSIDER THIS STATEMENT AS EVIDENCE FOR ANY
16 PURPOSE, YOU MUST ANSWER TWO QUESTIONS. THE STATE MUST HAVE
17 PROVEN BEYOND A REASONABLE DOUBT THAT THE ANSWER IS YES TO
18 BOTH OF THESE QUESTIONS BEFORE YOU MAY CONSIDER THE STATEMENT
19 FOR ANY REASON. IF THE STATE HAS FAILED TO PROVE THAT BOTH
20 OF THE ANSWERS IS YES, THEN YOU MAY NOT CONSIDER THE
21 STATEMENT FOR ANY PURPOSE WHATSOEVER. THE QUESTIONS ARE:
22 DID THE DEFENDANT MAKE THE STATEMENT AND WAS THE STATEMENT
23 MADE VOLUNTARILY?

24 NOW, I'M GOING TO GO OVER THESE IN JUST A LITTLE
25 MORE DETAIL. THE FIRST QUESTION IS WHETHER THE DEFENDANT

1 MADE THE STATEMENT. YOU MAY CONSIDER THIS STATEMENT ONLY IF
2 YOU FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
3 THAT THE DEFENDANT DID MAKE THE STATEMENT. THE SECOND
4 QUESTION IS: DID THE DEFENDANT MAKE THE STATEMENT
5 VOLUNTARILY? THE WORD VOLUNTARILY, OF COURSE, MEANS THAT HE
6 FREELY CHOSE TO MAKE THE STATEMENT AND THAT IT WAS NOT
7 INDUCED BY PRESSURE OR FORCE OR INTIMIDATION. IF THE
8 STATEMENT WAS VOLUNTARILY GIVEN, IT MAY BE USED AGAINST HIM.
9 IF THE STATEMENT WAS NOT VOLUNTARILY -- VOLUNTARY, IT CANNOT
10 BE USED AGAINST HIM. IN DETERMINING WHETHER OR NOT THE
11 STATEMENT OF THE DEFENDANT WAS VOLUNTARY, YOU MAY CONSIDER
12 ALL OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE STATEMENT.

13 THE DEFENDANT HAS BEEN CHARGED WITH MURDER. MURDER
14 IS THE INTENTIONAL AND UNLAWFUL KILLING OF A PERSON WITH
15 MALICE AFORETHOUGHT, AND THIS IS WHAT THE STATE MUST HAVE
16 PROVEN BEYOND A REASONABLE DOUBT IN ORDER TO CONVICT THE
17 DEFENDANT OF MURDER: THAT THE DEFENDANT DID KILL A PERSON
18 AND THAT THE KILLING WAS DONE WITH MALICE AFORETHOUGHT.
19 MALICE IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT
20 JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT INJURY.
21 MALICE IS A WORD THAT SUGGESTS A WICKEDNESS OR A HATRED OR A
22 DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG WITHOUT JUST
23 CAUSE OR EXCUSE OR LEGAL PROVOCATION.

24 AFORETHOUGHT IS A WORD THAT WE DON'T NORMALLY USE.
25 IT MEANS THOUGHT OF BEFORE OR PREVIOUSLY IN MIND. IT MEANS

1 THAT THE INTENTION TO DO THE UNLAWFUL ACT WAS CONCEIVED OR
2 PLANNED SOMETIME BEFORE THE ACTUAL COMMISSION OF THE UNLAWFUL
3 ACT. HOWEVER, MALICE NEED NOT BE IN THE MIND OF THE ONE
4 DOING THE KILLING FOR ANY PARTICULAR LENGTH OF TIME BEFORE
5 THE ACT OF KILLING IN ORDER TO RENDER THE KILLING MURDER. IF
6 MALICE IS PRESENT IN THE MIND OF THE ONE DOING THE KILLING
7 FOR ANY LENGTH OF TIME BEFORE THE ACT, THEN ITS PRESENCE
8 WOULD BE SUFFICIENT TO RENDER THE KILLING A MURDER.

9 MALICE MAY BE INFERRED WHERE ONE INTENTIONALLY AND
10 DELIBERATELY DOES AN UNLAWFUL ACT WHICH HE OR SHE KNOWS TO BE
11 WRONG AND IN VIOLATION OF HIS DUTY TO ANOTHER. MALICE MAY BE
12 INFERRED WHERE NO EXCUSE OR LEGAL PROVOCATION FOR THE KILLING
13 APPEARS. THE LAW PROVIDES ALSO THAT THE INFERENCE OF MALICE
14 MAY ARISE IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY
15 WEAPON. A DEADLY WEAPON IS ANY OBJECT OR SUBSTANCE WHICH
16 REASONABLY COULD BE USED TO CAUSE DEATH OR GREAT BODILY HARM.
17 ALSO, IF ONE KILLS ANOTHER DURING THE COMMISSION OF A FELONY,
18 THEN THE INFERENCE OF MALICE MAY ARISE.

19 IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT
20 SUFFICIENT TO RAISE ANY OF THESE INFERENCES OF MALICE, THE
21 INFERENCE WOULD SIMPLY BE ONE EVIDENTIARY FACT TO BE TAKEN
22 INTO CONSIDERATION BY YOU ALONG WITH ALL OF THE OTHER
23 EVIDENCE IN THE CASE BEARING ON THE ISSUE OF MALICE, AND YOU
24 MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.
25 YOU MAY ACCEPT OR REJECT THESE INFERENCES. REMEMBER THAT THE

1 STATE BEARS THE BURDEN OF PROVING MALICE. THE DEFENDANT IS
2 NOT REQUIRED TO PROVE THE ABSENCE OF MALICE.

3 NOW, REGARDING THE CHARGE OF MURDER, IF THE STATE
4 PROVES BEYOND A REASONABLE DOUBT THAT TWO OR MORE PERSONS ARE
5 PRESENT AND ACTING TOGETHER WITH A COMMON PLAN OR PURPOSE IN
6 COMMITTING A CRIME AND THAT IN THE COURSE OF THAT FIRST CRIME
7 ONE PARTICIPANT COMMITS A SECOND CRIME, THEN ALL PARTICIPANTS
8 ARE GUILTY OF THE SECOND CRIME SO LONG AS THE ACT DONE BY THE
9 OTHER PERSON IS A NATURAL CONSEQUENCE OF THEIR COMMON PLAN OR
10 PURPOSE IN COMMITTING THE FIRST CRIME. THIS IS COMMONLY
11 REFERRED TO AND YOU HAVE HEARD IT REFERRED TO AS THE HAND OF
12 ONE IS THE HAND OF ALL.

13 IN ORDER TO CONVICT THE DEFENDANT UNDER THIS
14 DOCTRINE, THE STATE MUST HAVE PROVEN THAT THE DEFENDANT HAD
15 THE INTENT TO COMMIT THE FIRST CRIME AND THAT THE ACT
16 CONSTITUTING THE SECOND CRIME WAS COMMITTED BY ANOTHER
17 PARTICIPANT IN THE FIRST CRIME AS A NATURAL CONSEQUENCE OF
18 THEIR COMMON PLAN OR PURPOSE IN COMMITTING THE FIRST CRIME.
19 HOWEVER, THE MERE PRESENCE AT THE SCENE OF A CRIME IS NOT
20 SUFFICIENT TO CONVICT SOMEONE UNDER THIS DOCTRINE, AND MERE
21 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED WITHOUT
22 MORE IS NOT SUFFICIENT TO CONVICT SOMEONE UNDER THIS DOCTRINE
23 OF THE HAND OF ONE IS THE HAND OF ALL.

24 THE DEFENDANT IS ALSO CHARGED WITH ARMED ROBBERY.
25 IN ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE

1 MUST PROVE FIVE ESSENTIAL ELEMENTS, EACH BEYOND A REASONABLE
2 DOUBT. FIRST, THE STATE MUST PROVE THAT THE DEFENDANT TOOK
3 THE PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER
4 PERSON. SECOND, THE STATE MUST PROVE THAT THE DEFENDANT
5 CARRIED THE PROPERTY AWAY. THIRD, THE STATE MUST PROVE THAT
6 THE DEFENDANT INTENDED TO PERMANENTLY DEPRIVE THE OWNER OF
7 THE PROPERTY AND TO KEEP THE PROPERTY FOR THE DEFENDANT'S OWN
8 USE. FOURTH, THE TAKING AND CARRYING AWAY OF THE PROPERTY
9 MUST HAVE BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF
10 THE PROPERTY IN FEAR OF VIOLENCE. AND, FINALLY, THE STATE
11 MUST PROVE THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON
12 DURING THE ROBBERY.

13 NOW, PROPERTY IS IN THE PRESENCE OF A PERSON IF IT
14 IS WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION, OR
15 CONTROL SO THAT IT -- SO THAT THE PERSON COULD, IF NOT
16 OVERCOME WITH VIOLENCE OR PREVENTED BY FEAR, KEEP POSSESSION
17 OF THE PROPERTY. THE SLIGHTEST REMOVAL OF THE PROPERTY OR
18 THE COMPLETE POSSESSION OF THE PROPERTY, EVEN FOR AN INSTANT,
19 BY THE DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND A
20 CARRYING AWAY OF THE PROPERTY.

21 THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF A
22 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. IN ORDER
23 TO CONVICT THE DEFENDANT OF THIS CRIME, YOU MUST FIRST FIND
24 THE DEFENDANT GUILTY OF MURDER OR ARMED ROBBERY, BOTH OF
25 WHICH ARE CLASSIFIED AS VIOLENT CRIMES UNDER SOUTH CAROLINA

1 LAW. IN ADDITION, YOU MUST FIND THAT THE STATE HAS PROVEN
2 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT POSSESSED A
3 FIREARM DURING THE COMMISSION OF EITHER ONE OF THESE CRIMES.

4 NOW, LADIES AND GENTLEMEN, YOUR VERDICT IN THIS CASE
5 MUST BE UNANIMOUS. ALL 12 OF YOU MUST AGREE BEFORE YOU CAN
6 WRITE A VERDICT. IN JUST A FEW MINUTES I'M GOING TO SEND YOU
7 BACK INTO THE JURY ROOM, BUT I'M GOING TO ASK YOU NOT TO
8 BEGIN YOUR DELIBERATIONS BECAUSE I MAY HAVE SOME MATTERS OF
9 LAW THAT I NEED TO TAKE UP WITH THE LAWYERS.

10 NOW, WHILE I'M DOING THAT, I WOULD LIKE FOR YOU TO
11 SELECT A FOREPERSON TO SERVE THE JURY. THE JOB OF THE
12 FOREPERSON IS TO PRESIDE OVER THE DELIBERATIONS AND TO
13 COMMUNICATE WITH THE COURT WHENEVER THAT BECOMES NECESSARY.
14 NOW, ONE OF THE TIMES WHEN THE FOREPERSON WILL HAVE TO
15 COMMUNICATE WITH THE COURT IS WHEN YOU'RE FILLING OUT THE
16 VERDICT FORM, AND YOU WILL HAVE WITH YOU IN THE JURY ROOM THE
17 INDICTMENT. AND YOU CAN SEE -- YOU WILL SEE THAT THE
18 INDICTMENT IS THREE PAGES. EACH COUNT OF THE INDICTMENT IS
19 SET FORTH ON A SEPARATE PAGE, AND ON THE BACK OF EACH PAGE IN
20 THE BOTTOM LEFT-HAND CORNER THERE IS THE WORD VERDICT, AND
21 BELOW THAT THERE ARE FOUR BLANK LINES.

22 THE FOREPERSON -- AFTER THE JURY HAS UNANIMOUSLY
23 REACHED A VERDICT, THE FOREPERSON WOULD WRITE THE VERDICT AS
24 TO EACH COUNT ON THE BACK OF THAT PAGE OF THE INDICTMENT ON
25 ONE OF THOSE FOUR BLANK LINES. THEN SIGN BELOW THAT AND DATE

1 IT, AND WHEN YOU'VE REACHED A VERDICT ON ALL THREE COUNTS,
2 NOTIFY THE BAILIFF THAT YOU HAVE REACHED A VERDICT AND WE'LL
3 GET YOU BACK OUT HERE INTO THE COURTROOM TO RECEIVE THAT
4 VERDICT. NOW, ON EACH COUNT THE OPTIONS THAT YOU HAVE FOR
5 VERDICT ARE EITHER GUILTY OR NOT GUILTY.

6 NOW, I WANT TO GO BACK JUST A SECOND AND I WANT TO
7 TALK TO YOU A LITTLE MORE ABOUT THE FOREPERSON. NOW, YOU
8 SHOULD THINK CAREFULLY ABOUT WHO IS GOING TO BE THE
9 FOREPERSON TO SERVE THIS JURY. IF ONE OF YOU ARE INTERESTED
10 IN SERVING AS FOREPERSON, THEN I WOULD ENCOURAGE YOU TO LET
11 THE OTHER MEMBERS OF THE JURY KNOW THAT YOU ARE WILLING TO
12 SERVE AS FOREPERSON. YOU ALL SEE HOW MANY PEOPLE ARE
13 WILLING, AND THEN PROBABLY WHAT YOU SHOULD DO IS TO CONDUCT A
14 BALLOT TO DETERMINE WHO IS GOING TO BE THE FOREPERSON. YOU
15 ALL HAVE BEEN TOGETHER NOW FOR LONG ENOUGH TO SORT OF KNOW
16 EACH OTHER. YOU KNOW WHO ARE THE RESPONSIBLE PEOPLE ON THE
17 JURY OR, OF COURSE, ALL OF YOU ARE RESPONSIBLE PEOPLE, BUT
18 YOU KNOW WHO WOULD BE A BETTER CANDIDATE FOR SERVING AS
19 FOREPERSON.

20 AND SO ONCE THOSE PEOPLE WHO ARE WILLING TO SERVE
21 HAVE LET THAT WILLINGNESS BE KNOWN, THEN THE REST OF THE JURY
22 CAN SELECT THE PERSON THAT YOU BELIEVE TO BE THE BEST PERSON
23 TO SERVE. IF YOU HAVE ANY DIFFICULTY IN SELECTING A
24 FOREPERSON, THEN YOU LET ME KNOW THAT AND I'LL BE GLAD TO
25 SELECT SOMEONE MYSELF.

1 NOW, IN THE BEGINNING OF THE TRIAL I MENTIONED TO
2 YOU THAT THERE WERE RESTRICTIONS ON THE WAYS IN WHICH THOSE
3 OF YOU WHO HAVE TAKEN NOTES CAN USE THOSE NOTES DURING YOUR
4 DELIBERATIONS, AND I WANT TO REMIND YOU OF THOSE RESTRICTIONS
5 NOW. THE NOTES THAT YOU MIGHT HAVE TAKEN AS AN INDIVIDUAL
6 JUROR ARE SOLELY FOR YOUR OWN USE IN HELPING YOU TO RECALL
7 THE TESTIMONY AND THE EVIDENCE THAT WAS PRESENTED BEFORE YOU.
8 IT WOULD BE IMPROPER FOR YOU TO ALLOW SOME OTHER MEMBER OF
9 THE JURY TO USE YOUR NOTES IN HELPING THEM TO RECALL THE
10 TESTIMONY. IF YOU HAVE SOMETHING WRITTEN DOWN, YOU USE IT TO
11 RECALL THE TESTIMONY, BUT YOU DO NOT LET THAT BECOME THE
12 SUBJECT OF DISCUSSION DURING YOUR DELIBERATIONS. THOSE NOTES
13 ARE SOLELY FOR YOUR OWN USE.

14 NOW, YOU WILL ALSO HAVE WITH YOU IN THE JURY ROOM
15 ALL OF THE EXHIBITS, AND THOSE EXHIBITS CONTAIN THE FIREARM
16 THAT IS INVOLVED IN THIS CASE AND ALSO SOME LIVE AMMUNITION.
17 NOW, I'M NOT GOING TO SEND BOTH OF THOSE EXHIBITS BACK TO THE
18 JURY ROOM AT THE SAME TIME, AND ALSO THOSE EXHIBITS ARE
19 CONTAINED IN SEALED BAGS. IF -- I'M GOING TO -- I'LL SEND
20 ONE OR THE OTHER BACK THERE. IF YOU ALL FEEL THAT YOU NEED
21 TO INSPECT THE OTHER ONE, SIMPLY LET THE BAILIFF KNOW THAT.
22 WE WILL RETRIEVE ONE FROM YOU AND SEND BACK THE OTHER ONE.
23 THE REASON FOR DOING THAT IS OBVIOUS. IT'S NOT AT ALL THAT I
24 DON'T TRUST YOU ALL IN THE JURY ROOM. IT'S JUST THAT THAT'S
25 JUST A SAFETY PRECAUTION THAT I ALWAYS TAKE IN A CASE WHEN

1 THERE IS A FIREARM INVOLVED.

2 NOW, IF YOU DO FEEL THAT YOU NEED TO INSPECT BOTH OF
3 THEM AT THE SAME TIME, LET ME KNOW THAT AND I WILL
4 ACCOMMODATE THAT REQUEST ALSO. IF ANY ONE OF YOU FEELS THAT
5 YOU NEED TO OPEN THE SEALED BAGS IN WHICH THOSE EXHIBITS ARE
6 CONTAINED, LET ME KNOW THAT. WE'LL GET YOU OUT HERE INTO THE
7 COURTROOM TO DO THAT UNDER THE SUPERVISION OF THE COURT, BUT
8 DON'T DO THAT BACK IN THE JURY ROOM.

9 NOW, MS. DAY AND MR. BURRIS AND MS. JOYE, YOU ALL
10 WILL NOT BE GOING BACK INTO THE JURY ROOM. WE WILL HAVE
11 ANOTHER ROOM BACK THERE THAT WE'RE GOING TO PUT YOU IN. IF
12 YOU HAVE ANYTHING IN THE JURY ROOM, THEN THE BAILIFFS WILL
13 GET THAT OUT FOR YOU AS SOON AS THE JURY IS SENT BACK.
14 DURING THE TIME THAT THE REST OF THE JURY IS DELIBERATING, I
15 WANT YOU ALL TO CONTINUE TO OBSERVE THE RULE THAT I HAVE
16 IMPOSED WHICH IS THAT YOU MAY NOT DISCUSS THIS CASE.

17 NOW, THE CLERK OF COURT AGAIN HAS ORDERED YOU LUNCH.
18 THAT LUNCH, AS I UNDERSTAND IT, IS SUPPOSED TO BE HERE AROUND
19 11:30. IF THERE'S ANYTHING ELSE THAT YOU ALL NEED, YOU MAY
20 -- YOU MAY -- YOU JUST SIMPLY LET ME KNOW THAT. I'M GOING TO
21 SEND YOU BACK INTO THE JURY ROOM NOW. I REALIZE THAT SOME OF
22 YOU WANT TO -- MAY WANT TO TAKE A BREAK. YOU MAY WANT TO
23 TAKE A SMOKE BREAK. I'M GOING TO TELL THE BAILIFFS THAT THEY
24 CAN GO AHEAD AND TAKE YOU ON THAT BREAK NOW. BUT DO NOT
25 BEGIN YOUR DELIBERATIONS UNTIL I HAVE SENT BACK INTO THE JURY

1 ROOM THE INDICTMENTS AND THE EXHIBITS, AND WITH THAT THERE
2 WILL BE AN INSTRUCTION THAT YOU MAY BEGIN YOUR DELIBERATION.

3 NOW, ONE MORE THING ABOUT THE INDICTMENTS. YOU WILL
4 NOTICE THAT ON THE BACK OF EACH PAGE OF THE INDICTMENT THERE
5 IS SOME EXTRANEIOUS INFORMATION THAT HAS BEEN WRITTEN ON
6 THERE. SOME OF IT IS HANDWRITTEN; SOME OF IT IS TYPEWRITTEN.
7 NONE OF THAT HAS ANYTHING TO DO WITH YOUR JOB IN THIS CASE
8 WHICH IS TO DETERMINE WHETHER OR NOT THE STATE HAS MET ITS
9 BURDEN OF PROOF. SO YOU CAN DISREGARD ANYTHING IN THE
10 INDICTMENT THAT IS WRITTEN ON THE BACK. THE BODY OF THE
11 ALLEGATIONS OF THE INDICTMENTS AND THE VERDICT FORM ARE
12 ESSENTIALLY ALL YOU NEED TO CONCERN YOURSELVES WITH WITH
13 REGARD TO THE INDICTMENT.

14 ALL RIGHT. THE JURY CAN GO TO THE JURY -- BACK TO
15 THE JURY ROOM. YOU THREE REMAIN SEATED FOR JUST A SECOND AND
16 THEN WE'LL HAVE ANOTHER ROOM TO PUT YOU IN.

17 BAILIFF: JUDGE, DO YOU WANT US TO LET THEM VOTE
18 BEFORE WE TAKE THEM OUTSIDE?

19 THE COURT: IF THEY WANT TO DO THAT, YEAH.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT,
21 WITH THE ALTERNATES REMAINING IN THE COURTROOM, AT 11:02
22 A.M.)

23 THE COURT: ALL RIGHT. ISN'T THERE ANOTHER JURY
24 ROOM THAT'S RIGHT NEXT -- THAT'S LIKE TWO DOORS DOWN?

25 THE CLERK: (NODDED HEAD UP AND DOWN.)

1 THE COURT: ALL RIGHT. AND IT'S -- BUT IT'S NOT
2 RIGHT NEXT DOOR; RIGHT? ALL RIGHT. TAKE THESE THREE
3 ALTERNATES DOWN THERE, AND Y'ALL -- WE'LL GET YOU SOME
4 READING MATERIAL. WE'LL -- WE WANT TO MAKE YOU ALL
5 COMFORTABLE DURING THIS PERIOD OF TIME, BUT YOU'RE STILL
6 ELIGIBLE TO BE -- TO SERVE ON THE JURY AND SO IT'S VERY
7 IMPORTANT THAT YOU NOT DISCUSS THIS CASE IN ANY WAY WHEN
8 YOU'RE BACK IN THE JURY ROOM. THANK YOU.

9 (WHEREUPON, THE ALTERNATES WERE EXCUSED FROM OPEN
10 COURT AT 11:03 A.M.)

11 THE COURT: ANY EXCEPTIONS TO THE CHARGE?

12 MR. MYERS: NOT FROM THE STATE.

13 MR. LITTLEJOHN: YOUR HONOR, WE WOULD RESPECTFULLY
14 RENEW OUR EXCEPTION TO THE COURT CHARGING THE-HAND-OF-ONE-IS-
15 THE-HAND-OF-ALL DOCTRINE AS INDICATED IN THE RECORD.

16 THE COURT: ALL RIGHT. BUT AS FAR AS ONCE I HAVE
17 MADE THE DECISION TO CHARGE THAT SUBJECT, ANY EXCEPTION TO
18 THE CHARGE?

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. I UNDERSTAND YOU DISAGREE
21 THAT I -- THAT I WOULD CHARGE THAT CONCEPT, BUT HAVING MADE
22 THE DECISION THAT I WOULD, THE CHARGE YOU HAVE NO EXCEPTION
23 TO.

24 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR, AND I
25 THINK TECHNICALLY I NEEDED TO OBJECT AFTER THE CHARGE WAS

1 RENDERED.

2 THE COURT: RIGHT.

3 MR. LITTLEJOHN: YOUR HONOR, ALSO FOR THE RECORD I
4 RENEW ANY MOTIONS MADE FOR DIRECTED VERDICT.

5 THE COURT: I DENY THOSE MOTIONS.

6 MR. LITTLEJOHN: THANK YOU.

7 THE COURT: I WOULD LIKE FOR YOU ALL TO COME UP HERE
8 AND AGREE ON THE PROPER SET OF EXHIBITS TO GO BACK TO THE
9 JURY ROOM. THE EXHIBIT THAT I BELIEVE IS -- IT'S EITHER 22
10 OR 24 THAT HAS THE LIVE AMMUNITION IN IT.

11 MR. HUBBARD: YES, SIR.

12 THE COURT: I'M GOING TO HOLD THAT EXHIBIT IN THE
13 JURY ROOM -- I MEAN IN THE COURTROOM UNLESS THE JURY REQUESTS
14 IT. SO EXCEPT FOR WHICHEVER EXHIBIT THAT IS, THE REST OF IT
15 Y'ALL AGREE ON WHAT THE EXHIBITS ARE AND LET ME KNOW WHEN YOU
16 HAVE REACHED AN AGREEMENT AND WE'LL SEND THEM BACK.

17 (PAUSE IN PROCEEDINGS.)

18 THE COURT: BE SEATED. ALL RIGHT. HAVE YOU ALL
19 AGREED ON THE PROPER SET OF EXHIBITS?

20 MR. LITTLEJOHN: YES, YOUR HONOR.

21 MR. GRAHAM: YES, YOUR HONOR.

22 THE COURT: THEY'RE IN THAT BOX?

23 MR. LITTLEJOHN: YES, SIR, AND THE CHARTS.

24 MR. GRAHAM: AND THE CHARTS.

25 THE COURT: OKAY. HERE IS THE INDICTMENT. AS SOON

1 AS THE JURY TELLS US WHO THE FOREPERSON IS AND THEY HAVE
2 COMPLETED THEIR BREAK, WE'LL SEND ALL THIS BACK AND TELL THEM
3 THAT THEY CAN BEGIN THEIR DELIBERATIONS. Y'ALL JUST WANT TO
4 GO BACK ON THE RECORD WHEN THEY'RE DONE WITH THEIR BREAK?

5 MR. GRAHAM: FINE WITH US.

6 THE COURT: ALL RIGHT. WE'LL -- WE'LL JUST TAKE A
7 SHORT BREAK UNTIL WE HEAR THAT THE JURY HAS COMPLETED THEIR
8 SELECTION OF THE FOREPERSON AND THEN COMPLETED THEIR BREAK
9 AND THEN WE'LL COME BACK.

10 (PAUSE IN PROCEEDINGS.)

11 THE COURT: BE SEATED. OKAY. THE JURY HAS SELECTED
12 TIM LEITNER WHO IS JUROR NUMBER 177 TO BE THE FOREMAN. IT'S
13 MY UNDERSTANDING THAT YOU ALL HAVE AGREED ON THE PROPER SET
14 OF EXHIBITS TO GO BACK TO THE JURY. DID ONE -- DID SOMEBODY
15 SAY SOMETHING ABOUT PUTTING A COPY OF THE JURY CHARGE IN
16 THERE?

17 MR. LITTLEJOHN: NO, SIR.

18 THE COURT: THAT'S NOT IN THERE; RIGHT?

19 MR. LITTLEJOHN: NO, SIR.

20 THE COURT: ALL RIGHT. AND SO YOU CAN SEND THOSE
21 BACK WITH THE INDICTMENT AND TELL THE JURY THAT THEY CAN
22 BEGIN THEIR DELIBERATIONS. WHERE IS THE INDICTMENT?

23 THE CLERK: HERE IS THE INDICTMENT.

24 THE COURT: ALL RIGHT. I'LL BE IN MY OFFICE.

25 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 11:30

1 A.M.)

2 THE COURT: BE SEATED, PLEASE. HAVE YOU HAD A
3 CHANCE TO REVIEW THE PRINTED VERSION?

4 MR. LITTLEJOHN: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. LITTLEJOHN: I DIDN'T REVIEW IT WORD FOR WORD,
7 BUT I'M SURE IT'S THE EXACT SAME THING THAT THE COURT
8 CHARGED.

9 THE COURT: HOW ABOUT GET THAT NOTE OFF OF MY DESK
10 BACK THERE, THE NOTE THAT CAME FROM THE JURY, SITTING RIGHT
11 THERE IN MY OFFICE? OKAY. THE JURY HAS SENT A NOTE ASKING
12 FOR A COPY OF WHAT I SAID AT THE END, REFERRING, WE BELIEVE,
13 OF COURSE, TO THE JURY CHARGE. WE DISCUSSED IT WITH THE
14 LAWYERS IN BOTH SIDES IN MY OFFICE, AND I HAVE PREPARED A
15 CLEAN COPY OF THE JURY CHARGE. WE'RE GOING TO -- I'M GOING
16 TO SEND IT BACK TO THE JURY ROOM. IS THERE ANY OBJECTION TO
17 THAT FROM EITHER SIDE?

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

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: AND I'M GOING TO -- I WAS PLANNING ON
21 DOING THAT WITHOUT ANY -- WITHOUT BRINGING THEM IN HERE AND
22 JUST SEND IT BACK THERE. IT WILL BE -- IT WILL HAVE THE
23 CAPTION OF THE CASE ON IT. WE'LL MARK IT AS A COURT'S
24 EXHIBIT AND SEND IT BACK. SO BRING IT UP TO THE COURT
25 REPORTER, IF YOU DON'T MIND, AND LET HER GO AHEAD AND MARK

1 IT. DO YOU HAVE IT, THE ONE THAT I JUST PRINTED FOR YOU, MR.
2 LITTLEJOHN?

3 MR. LITTLEJOHN: YES, SIR. I WANTED TO MAKE SURE I
4 HAD THAT ONE INSTEAD OF THE ORIGINAL.

5 THE COURT: ARE YOU SURE THAT'S NOT THE ONE I MARKED
6 ON? SURE YOU ARE.

7 MR. LITTLEJOHN: JUDGE, ARE YOU TALKING ABOUT WHERE
8 YOU ELIMINATED PART OF IT?

9 THE COURT: RIGHT.

10 MS. KIMBROUGH: CAM, I HAVE THE MARKED COPY.

11 MR. LITTLEJOHN: YOU HAVE IT.

12 MS. KIMBROUGH: (NODDED HEAD UP AND DOWN.)

13 THE COURT: OKAY.

14 MR. LITTLEJOHN: I THINK THAT'S OUR ORIGINAL THAT WE
15 GOT FROM YESTERDAY.

16 MS. KIMBROUGH: OH, I STAND CORRECTED.

17 THE COURT: LOOK IN THE---

18 MR. LITTLEJOHN: JUDGE---

19 THE COURT: LOOK IN THE MURDER SECTION RIGHT NEAR
20 THE END AND MAKE SURE THAT THE -- TALKING ABOUT INFERENCES,
21 INFERENCES OF MALICE.

22 MR. LITTLEJOHN: RIGHT. THIS ONE IS NOT MARKED UP.

23 THE COURT: OKAY. MARK THAT AS AN EXHIBIT AND
24 HERE'S THE NOTE. MARK THAT AS AN EXHIBIT. SEND THE JURY
25 CHARGE BACK TO THE JURY.

1 (COURT'S EXHIBITS 4 AND 5 WERE MARKED FOR
2 IDENTIFICATION ONLY.)

3 THE COURT: BE SEATED, PLEASE. ALL RIGHT. I
4 UNDERSTAND THE JURY HAS REACHED A VERDICT. I SUPPOSE WE NEED
5 TO BRING ALTERNATES OUT HERE FOR THE PUBLISHING OF THE
6 VERDICT. JUST SIT THEM IN THE JURY BOX.

7 MR. MYERS: NO OBJECTION.

8 THE COURT: ANY OBJECTION TO THAT?

9 MR. MYERS: NO, SIR.

10 MR. LITTLEJOHN: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. JUST BRING THEM OUT AS YOU
12 HAVE BEEN DOING WITH THE LAST -- THE LAST THREE SPOTS IN LINE
13 AND THEY CAN SIT WHERE THEY'VE BEEN SITTING. NOW, IF THERE'S
14 ANYBODY IN THE COURTROOM WHO IS NOT VERY SURE THAT YOU CAN'T
15 CONTAIN YOUR EMOTIONS WHEN THE VERDICT IS ANNOUNCED, THEN I
16 WOULD LIKE FOR YOU TO LEAVE THE COURTROOM NOW BECAUSE I WILL
17 NOT TOLERATE ANY OUTBURSTS.

18 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A
19 VERDICT AT 1:40 P.M., AND THE ALTERNATES WERE BROUGHT INTO
20 OPEN COURT AT THIS TIME AS WELL.)

21 THE COURT: MR. FOREMAN, HAS THE JURY REACHED A
22 VERDICT?

23 FOREMAN: WE HAVE, YOUR HONOR.

24 THE COURT: PASS THE VERDICTS TO THE BAILIFF,
25 PLEASE. YOU CAN PUBLISH THE VERDICTS.

1 **THE CLERK:** THANK YOU, YOUR HONOR. INDICTMENT
2 NUMBER 2003-GS-32-409, THE STATE VERSUS KEVIN J. MERCER,
3 INDICTED FOR COUNT 1, MURDER, THE VERDICT IS GUILTY.
4 INDICTED FOR COUNT 2, ARMED ROBBERY, THE VERDICT IS GUILTY.
5 INDICTED FOR COUNT 3, POSSESSION OF A FIREARM IN THE
6 COMMISSION OF A VIOLENT CRIME, THE VERDICT IS GUILTY. MR.
7 FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IS THIS YOUR
8 VERDICT? PLEASE INDICATE SO BY RAISING YOUR RIGHT HAND.
9 YOUR HONOR, ALL HANDS ARE RAISED.

10 **THE COURT:** THANK YOU. ALL RIGHT. LADIES AND
11 GENTLEMEN, I AM GOING TO TAKE A BREAK RIGHT NOW. WE'RE -- WE
12 ONLY HAVE A LITTLE BIT MORE TO DO TODAY. I'M GOING TO SEND
13 YOU BACK INTO THE JURY ROOM. I'M GOING TO ASK YOU AGAIN TO
14 NOT DISCUSS ANYTHING ABOUT THE PUBLISHING OF THE VERDICT OR
15 ABOUT THE CASE, AND I'LL BE RIGHT BACK WITH YOU IN JUST A FEW
16 MINUTES. ALL OF YOU MAY -- THE THREE ALTERNATES, YOU JUST
17 REMAIN IN YOUR SEATS FOR A FEW MINUTES, AND THEN THE REST OF
18 YOU GO INTO THE JURY ROOM.

19 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
20 1:42 P.M.)

21 **THE COURT:** ALL RIGHT. ART, WILL YOU TAKE THE THREE
22 ALTERNATES INTO THE HALLWAY BUT NOT INTO THE JURY ROOM JUST
23 YET? TAKE THEM INTO THE HALLWAY RIGHT BEHIND THE COURTROOM,
24 NOT IN THE JURY ROOM.

25 (WHEREUPON, THE ALTERNATE JURORS WERE EXCUSED FROM

1 OPEN COURT AT 1:42 P.M.)

2 THE COURT: OKAY. ANYTHING FROM EITHER SIDE BEFORE
3 I EXCUSE THE JURY FOR THE REST OF TODAY?

4 MR. MYERS: NOTHING FROM THE STATE.

5 MS. KIMBROUGH: NO, YOUR HONOR, BUT AT THIS TIME WE
6 DO NEED TO RENEW OUR MOTION -- ALL THE PREVIOUS MOTIONS AND
7 REQUEST A NEW TRIAL.

8 THE COURT: ALL RIGHT. THE MOTIONS ARE DENIED, AND
9 THE REQUEST FOR A NEW TRIAL IS DENIED.

10 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

11 THE COURT: NOW, I'M GOING TO BRING THEM BACK IN
12 HERE AND JUST EXPLAIN TO THEM THAT WE'RE GOING TO HAVE A -- A
13 TIME OFF OF 24 HOURS AND THAT WE WILL RESUME ON THURSDAY
14 AFTERNOON AT 2:00. ANY OBJECTION TO THAT?

15 MR. MYERS: NO, SIR.

16 THE COURT: IT'S NOW A QUARTER OF 2.

17 MR. LITTLEJOHN: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. ALL RIGHT. BRING THEM ALL
19 IN.

20 (WHEREUPON, THE JURY AND ALTERNATES WERE BROUGHT
21 INTO OPEN COURT AT 1:44 P.M.)

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE
23 LAW PROVIDES THAT AT THIS POINT IN THIS CASE WE OBSERVE A
24 24-HOUR WAITING PERIOD. SO WE'RE GOING TO TAKE A BREAK NOW,
25 AND WE WILL NOT BE DOING ANYTHING BETWEEN RIGHT NOW AND 2:00

1 TOMORROW AFTERNOON. SO IN JUST FEW MINUTES I'M GOING TO
2 EXCUSE YOU, AND YOU'LL BE FREE TO GO HOME OR TO GO AND DO
3 WHATEVER YOU CHOOSE TO DO BUT TO BE BACK HERE TOMORROW
4 AFTERNOON AND BE IN THE JURY ROOM READY TO PROCEED AT 2:00.

5 AND WHEN YOU COME BACK, YOU'LL FOLLOW THE SAME
6 PROCEDURE THAT YOU -- THAT YOU HAVE BEEN FOLLOWING. YOU COME
7 INTO THE SAME PARKING AREA DOWN BELOW, AND THE BAILIFFS WILL
8 BE THERE TO GREET YOU AND THEY'LL BRING YOU UPSTAIRS JUST AS
9 YOU HAVE BEEN DOING ALL WEEK.

10 THERE'S NOTHING IN PARTICULAR THAT YOU CAN OR CAN'T
11 DO DURING THE WAITING PERIOD, OF COURSE, EXCEPT THAT YOU
12 CANNOT DISCUSS THIS CASE IN ANY WAY. NOW, I REALIZE THAT
13 WHEN YOU WERE DELIBERATING YOU WERE ALLOWED TO DISCUSS THIS
14 CASE. THAT HAS ENDED NOW. DO NOT DISCUSS THIS CASE EITHER
15 AMONG YOURSELVES OR WITH ANY MEMBERS OF YOUR FAMILY OR
16 ANYONE. IF ANYBODY TRIES TO DISCUSS THIS CASE WITH YOU, JUST
17 AS YOU HAD BEEN DOING BEFORE, STOP THEM. AND TOMORROW
18 AFTERNOON WHEN YOU RETURN, I'LL ASK YOU THAT SAME QUESTION
19 THAT I'VE ASKED YOU SEVERAL TIMES BEFORE, AND I'M CONFIDENT
20 THAT THE ANSWER WILL BE THAT YOU HAVE NOT DISCUSSED THIS CASE
21 NOR HAS ANYONE DISCUSSED IT WITH YOU.

22 THE SAME RULE APPLIES TO PRESS COVERAGE. NOW, I CAN
23 ASSURE YOU THAT THERE WILL BE PRESS COVERAGE ABOUT THIS THIS
24 AFTERNOON. IT WILL BE ON THE T.V. NEWS. IT'LL BE IN THE
25 NEWSPAPER TOMORROW. PLEASE BE VERY CAREFUL NOT TO ALLOW

1 YOURSELF TO BE EXPOSED TO ANY OF THIS PRESS COVERAGE. JUST
2 RELAX AND ENJOY YOURSELF OVER THE NEXT 24 HOURS, AND I WILL
3 SEE YOU TOMORROW AFTERNOON AT 2:00. DOES ANYBODY HAVE ANY
4 QUESTION OR ANY CONCERN? ANYTHING ELSE THAT EITHER OF YOU
5 WOULD LIKE FOR ME TO DISCUSS WITH THE JURY AT THIS TIME
6 BEFORE WE BREAK?

7 MR. MYERS: NO, SIR.

8 MR. LITTLEJOHN: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. YOU'RE FREE TO GO. WE'LL
10 SEE YOU TOMORROW AT 2:00. ALSO, THE ALTERNATES ALSO COME
11 BACK AT 2:00.

12 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
13 THE DAY AT 1:47 P.M.)

14 THE COURT: ALL RIGHT. ANYTHING FURTHER AT THIS
15 TIME?

16 MR. MYERS: NOTHING FROM THE STATE.

17 MR. LITTLEJOHN: NOTHING AT THIS TIME, YOUR HONOR.

18 THE COURT: ALL RIGHT. I, OF COURSE, EXPECT THAT
19 YOU ALL WILL ALL BE ANTICIPATING SOME OF THE ISSUES THAT MAY
20 COME UP DURING THE SENTENCING PHASE. WE HAVE ALREADY BEEN
21 DISCUSSING SEVERAL OF THE IMPORTANT ISSUES THAT WILL COME UP.
22 I'M GOING TO COME ON DOWN HERE IN THE MORNING, MID -- MID
23 MORNING, AND I'LL BE HERE AT LEAST BY 11. I'M GOING TO GO
24 BACK TO GREENVILLE TONIGHT. Y'ALL BOTH KNOW HOW TO GET IN
25 TOUCH WITH ME IF YOU NEED ME, BUT I WILL BE HERE BY 11 AND WE

1 PROBABLY OUGHT TO GO ON THE RECORD SOMETIME IN THE NOON --
2 NOON RANGE TO DISCUSS WHATEVER IT IS THAT WE NEED TO CLEAR UP
3 BEFORE WE GET STARTED AT 2. IS THAT FINE WITH Y'ALL?

4 MR. MYERS: YES, SIR.

5 MS. KIMBROUGH: YES, SIR.

6 THE COURT: ALL RIGHT. THEN I'LL SEE Y'ALL AROUND
7 NOON.

8 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 1:49
9 P.M. AND RESUMED THE FOLLOWING DAY, APRIL 20TH, 2006, AS
10 FOLLOWS:)

11 THE COURT: BE SEATED. OKAY. IS THERE ANYTHING
12 THAT Y'ALL NEED TO TAKE UP BEFORE WE HAVE THE JURY COME IN?

13 MR. MYERS: NOTHING FROM THE STATE.

14 MR. LITTLEJOHN: YOUR HONOR, JUST A COUPLE OF
15 THINGS. FIRST OFF FROM A SCHEDULING MATTER, I DISCUSSED IT
16 WITH SOLICITOR MYERS YESTERDAY THAT WE HAVE ONE WITNESS WHO
17 IS SCHEDULED TO GO OUT OF TOWN IN THE MORNING, GO TO IOWA FOR
18 A TRAINING SEMINAR, AND WE WOULD LIKE TO CALL HIM THIS
19 AFTERNOON. I BELIEVE THAT'S ALL RIGHT WITH THE SOLICITOR
20 EVEN THOUGH THAT WOULD BE OUT OF ORDER AND---

21 THE COURT: OKAY.

22 MR. LITTLEJOHN: ---I WOULD ANTICIPATE HIS TESTIMONY
23 WOULD TAKE ABOUT 45 MINUTES.

24 THE COURT: ALL RIGHT.

25 MR. LITTLEJOHN: YOUR HONOR, THE SECOND THING: I

1 DISCUSSED WITH MR. HUBBARD SEQUESTRATION INsofar AS THIS
2 PHASE OF THE TRIAL, AND I THINK WE'RE IN AGREEMENT WITH THE
3 STATE THAT WE WOULD -- BOTH SIDES WOULD SEQUESTER THE
4 WITNESSES EXCEPT FOR FAMILY MEMBERS OF THE VICTIM AND FAMILY
5 MEMBERS OF THE DEFENDANT.

6 MR. MYERS: IT DOESN'T BOTHER ME IF EVERYBODY STAYS
7 IN UNLESS THEY WANT TO KEEP THEM OUT. WHATEVER THE COURT
8 DECIDES IS...

9 THE COURT: WELL, IF Y'ALL AGREE ON IT, IT'S JUST
10 LIKE IN THE OPENING PHASE. NOW, IF Y'ALL AGREE ON IT, THAT'S
11 FINE, BUT IF YOU --- IF YOU DON'T, THEN I THINK I'VE GOT TO
12 ADDRESS IT AS IT SHOULD BE ADDRESSED UNDER -- UNDER OUR LAW.

13 MR. LITTLEJOHN: YOUR HONOR, I UNDERSTOOD THAT WAS
14 THE AGREEMENT WITH MR. HUBBARD. YOU CORRECT ME IF I'M WRONG.

15 MR. MYERS: THAT'S -- WHATEVER YOUR HONOR DECIDES IS
16 FINE WITH US. I DON'T SEE ANY REASON TO SEQUESTER THEM IN
17 THE PENALTY PHASE, BUT IF THEY WANT TO DO THAT, IT DOESN'T
18 MAKE A BIT OF DIFFERENCE TO ME. IT'S JUST GETTING PEOPLE IN
19 AND OUT OF HERE IS A LITTLE MORE CUMBERSOME, AND WE'LL HAVE
20 MORE WITNESSES IN THIS PHASE THAN WE HAD IN THE GUILT PHASE.

21 THE COURT: WELL, I -- Y'ALL DECIDE -- WHEN WE BREAK
22 IN A MINUTE, Y'ALL DECIDE WHETHER OR NOT THERE'S AN AGREEMENT
23 TO SEQUESTER.

24 MR. LITTLEJOHN: ALL RIGHT, SIR.

25 THE COURT: AND IF THERE'S NOT, THEN I'LL TAKE IT

1 UP.

2 MR. LITTLEJOHN: OKAY.

3 THE COURT: NOW, WHAT ABOUT ANYTHING -- ANYTHING
4 ELSE FROM THE DEFENSE?

5 MR. LITTLEJOHN: YOUR HONOR, I GUESS THERE IS ONE
6 ISSUE THAT WE -- WE WOULD ANTICIPATE AND I MAY BE WRONG AS TO
7 THE STATE'S PRESENTATION, BUT IN THE DISCOVERY THERE WERE A
8 NUMBER OF INCIDENTS RELATING TO THE DEFENDANT WHERE HE HAD
9 BEEN ARRESTED FOR CHARGES, VARIOUS KINDS, BUT THE CASES HAD
10 ULTIMATELY BEEN DISMISSED OR NOL PROSSED. YOUR HONOR, BASED
11 ON THAT DISPOSITION OF A CASE, WE WOULD TAKE THE POSITION
12 THAT SUCH EVIDENCE SHOULD NOT BE ADMISSIBLE. I DON'T KNOW IF
13 THEY ANTICIPATE GOING INTO THOSE PARTICULAR INCIDENTS; MAYBE
14 THEY DON'T. BUT YOU ASKED ME IF THERE'S ANYTHING WE CAN TAKE
15 UP AT THIS JUNCTURE AND I WOULD JUST POINT TO THAT AS AN
16 ISSUE AS COMING UP.

17 MR. MYERS: ANY CASE WHERE THE DEFENDANT WAS
18 ARRESTED AND FROM THAT SINGULAR CASE THE WHOLE THING WAS
19 THROWN OUT, NATURALLY WE WOULDN'T BRING THAT THING OUT. THE
20 ONLY EXCEPTION TO THAT IS THERE WAS ONE CASE IN WHICH HE WAS
21 ARRESTED AND CHARGED WITH POSSESSION WITH INTENT TO
22 DISTRIBUTE MARIJUANA, I BELIEVE IT WAS, AND A PISTOL CHARGE.
23 HE WAS CONVICTED OR PLED GUILTY ON THE MARIJUANA. THE PISTOL
24 CHARGE WAS DISMISSED. WE HAD INTENDED TO BRING OUT THE
25 CONVICTION ON THE MARIJUANA, NOT TO SAY HE WAS CHARGED ON THE

1 PISTOL OR ANYTHING AS TO CHARGES, BUT BRING IT IN UNDER THE
2 RES GESTAE THING BECAUSE IT ALL HAPPENED UNDER ONE
3 CIRCUMSTANCE, BUT THERE WOULD BE NO TESTIMONY ABOUT BEING
4 CHARGED FOR THE PISTOL VIOLATION.

5 THE COURT: SO YOU WOULD BRING OUT EVIDENCE THAT HE
6 HAD A PISTOL.

7 MR. MYERS: YES, SIR.

8 THE COURT: BUT NOT THAT HE WAS CHARGED.

9 MR. MYERS: NOT THAT HE WAS CHARGED.

10 THE COURT: AND YOU WOULD DO THAT THROUGH THE
11 OFFICER WHO MADE THE ARREST.

12 MR. MYERS: YES, SIR.

13 MR. LITTLEJOHN: YOUR HONOR, OF COURSE, WE WOULD
14 TAKE THE POSITION IF -- IF HE HAD A PISTOL BUT HE WAS NOT
15 CONVICTED OF UNLAWFUL POSSESSION OF A PISTOL, THEN THAT
16 EVIDENCE SHOULD NOT BE ADMISSIBLE. AND I'M FAMILIAR SOMEWHAT
17 WITH THAT CASE, BUT I THINK TO -- IF WE'RE GOING TO RE-
18 LITIGATE IT, THAT COULD TAKE SOME TIME THAT WE DESPERATELY
19 NEED.

20 MR. MYERS: IT WOULD GO TO HIS CHARACTER, WE SUBMIT,
21 AND CLEARLY THERE IS A CASE THAT'S TALKING ABOUT IF YOU -- IF
22 YOU HAD A CHARGE AND THAT CHARGE WAS DISMISSED STANDING
23 ALONE, THAT WOULD NOT BE ADMISSIBLE. BUT WE THINK WHERE YOU
24 HAVE TWO INCIDENTS INVOLVED AND THERE WAS A CONVICTION ON THE
25 ONE THAT WE SHOULD BE ABLE TO BRING OUT THAT HE HAD A PISTOL.

1 WILLIAMS VERSUS NEW YORK IS A UNITED STATES SUPREME
2 COURT OPINION. IT WAS A 1949 DEATH PENALTY CASE. THE
3 SUPREME COURT SAID THE SENTENCER CAN TAKE INTO CONSIDERATION
4 CRIMINAL CONDUCT FOR WHICH THE DEFENDANT HAS NOT BEEN
5 CONVICTED. AND THEN THAT CASE WAS SUBSEQUENTLY CITED BY THE
6 SUPREME COURT IN U.S. VERSUS WATTS IN 1997 WHERE THEY
7 REFERRED TO WILLIAMS AND STATED, "WE HOLD THAT A JURY VERDICT
8 OF ACQUITTAL DOES NOT PREVENT THE SENTENCING COURT FROM
9 CONSIDERING CONDUCT UNDERLYING THE ACQUITTED CHARGE SO LONG
10 AS THAT CONDUCT HAS BEEN PROVED BY A PREPONDERANCE OF THE
11 EVIDENCE." IN THIS CASE WE WOULDN'T EVEN BRING OUT THERE WAS
12 A CHARGE ON THE PISTOL. IT WOULD BE INTRODUCED SOLELY FOR
13 THE DEFENDANT'S CHARACTER.

14 MS. KIMBROUGH: YOUR HONOR, IN REVIEWING THE CASE
15 LAW RELEVANT TO THIS ISSUE, WE WOULD SIMPLY RELY ON STATE
16 VERSUS ARTHUR AT 290 SOUTH CAROLINA 291. IT'S A 1986 CASE,
17 AND I BELIEVE THE COURT HELD THAT, "WHILE INFORMATION
18 CONCERNING PRIOR CRIMINAL CONVICTIONS IS ADMISSIBLE AS
19 ADDITIONAL EVIDENCE DURING THE SENTENCING PHASE, INFORMATION
20 REGARDING A FORMAL CHARGE THAT WAS ULTIMATELY DISMISSED IS
21 IRRELEVANT." AND SO WE WOULD TAKE THE POSITION THAT THIS
22 ISN'T REALLY CHARACTER EVIDENCE. I MEAN, THE FACT THAT
23 WHETHER OR NOT HE OWNED A GUN I'M -- MAYBE I'M JUST MISSING A
24 STEP SOMEWHERE IN THE THOUGHT PROCESS, BUT WHETHER OR NOT HE
25 OWNED A GUN ISN'T NECESSARILY---

1 THE COURT: STATE VERSUS WHAT?

2 MS. KIMBROUGH: ARTHUR. IT'S A 1986 CASE. IT WAS A
3 CAPITAL CASE.

4 THE COURT: WELL, I DON'T HAVE THAT CASE IN FRONT OF
5 ME, BUT I'LL BET YOU THAT THE EVIDENCE THAT THEY SAID WAS
6 INADMISSIBLE WAS THE CHARGE, NOT THE UNDERLYING FACTS. AND
7 IT WOULD BE -- IT WOULD BE JUST LIKE ANY -- JUST LIKE THE
8 ABWIK CONVICTION THAT WE WERE DISCUSSING EARLIER. IF THEY
9 DIDN'T HAVE A CONVICTION FOR ABWIK, THEY COULD STILL PROVE
10 THE UNDERLYING FACTS AND THEY STILL CAN EVEN WITH A
11 CONVICTION. BUT I'M INCLINED TO BELIEVE THAT THE FACT THAT
12 THE DEFENDANT WAS IN POSSESSION OF A PISTOL AT THE SAME TIME
13 THAT HE WAS -- COMMITTED THE CRIME OF EITHER P.W.I.D. OR
14 SIMPLE POSSESSION OF MARIJUANA, WHICHEVER IT WAS, WOULD BE
15 RELEVANT TO HIS CHARACTER AND THAT IT WOULD BE ADMISSIBLE. I
16 MEAN, THAT'S WHAT I'M INCLINED TO BELIEVE.

17 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

18 THE COURT: WE'LL TAKE IT UP---

19 MR. MYERS: SHE'S RIGHT. THAT'S WHAT ARTHUR SAYS,
20 BUT ARTHUR SAYS THIS: "INFORMATION REGARDING THE FORMAL
21 CHARGE THAT WAS ULTIMATELY DISMISSED BY THE PROSECUTOR IS
22 IRRELEVANT," AND THAT'S WHAT HAPPENED IN THAT CASE. WE DON'T
23 INTEND TO SAY ANYTHING ABOUT BEING CHARGED. IT'S JUST THAT
24 HE HAD A PISTOL, AND IT GOES TO HIS CHARACTER. THAT'S WITH
25 THE UNDERLYING FACTS; PARTICULARLY RIGHT NEXT TO IT IS

1 MARIJUANA WHICH THERE WAS A CONVICTION.

2 THE COURT: OKAY. WELL, I'M NOT RULING, BUT I'M --
3 I'M PROBABLY GOING TO LET THAT IN. ANYTHING ELSE?

4 MS. KIMBROUGH: NOT AT THIS TIME, YOUR HONOR.

5 THE COURT: DO WE NEED TO DISCUSS WHAT PARAMETERS
6 THERE MAY BE ON THE LINGERING QUESTION AS TO WHETHER -- IF IT
7 IS SUCH AS TO WHETHER OR NOT MR. MERCER IS THE ONE WHO FIRED
8 THE WEAPON?

9 MR. MYERS: WE CAN GET TO THAT AND I CAN GET SOME
10 STUFF LATER ON TODAY, BUT I THINK THAT EDMONDS (SIC) VERSUS
11 FLORIDA AND TYSON VERSUS ARIZONA -- THAT THOSE LANGUAGES
12 SHOULD BE CHARGED.

13 THE COURT: RIGHT. I MEAN, NOW BUT IN TERMS OF HOW
14 YOU ALL PRESENT THE EVIDENCE AND WHAT -- PARTICULARLY IN
15 TERMS OF ARGUMENT, I SUPPOSE, WHICH WE'RE NOT THERE YET, BUT
16 THAT'S -- THAT'S THE REASON I RAISED THE QUESTION NOW, NOT SO
17 MUCH IN TERMS OF THE JURY CHARGE, BUT IS THAT GOING TO BE A
18 PROBLEM? BECAUSE, I MEAN, THERE IS A -- A -- A DIFFERENCE
19 BETWEEN ARGUING OR -- THAT HE'S NOT GUILTY OF MURDER AND
20 ARGUING OR PROVING THAT HE DIDN'T PULL THE TRIGGER, AND I
21 JUST WONDER IF WE NEED TO DISCUSS THAT NOW.

22 MR. MYERS: I THINK THE UNITED STATES SUPREME COURT
23 CLEARLY RULED ON THAT THIS YEAR IN MCGUFFEY VERSUS OREGON
24 (PHONETIC) WHEN THEY UPHELD THAT RESIDUAL DOUBT IS NOT AN
25 ISSUE. GUILT'S OVER WITH AND YOU CAN'T GO BACK INTO THAT.

1 THE COURT: AND THAT'S WHY I BRING IT UP BECAUSE ON
2 THE FACTS OF THIS CASE, THE CONCEPT OF RESIDUAL DOUBT AND
3 WHETHER OR NOT HE PULLED THE TRIGGER OVERLAP OR AT LEAST THEY
4 HAD THE POTENTIAL TO. AND SO I THOUGHT IT MIGHT BE USEFUL TO
5 -- I DON'T THINK THERE'S GOING TO BE ANY PROBLEM WITH IT.

6 MR. MYERS: I DON'T THINK SO.

7 THE COURT: BUT I JUST WANTED TO BRING IT UP IN
8 CASE -- JUST TO SEE WHAT Y'ALL THOUGHT.

9 MR. LITTLEJOHN: YOUR HONOR, I DON'T ANTICIPATE IT
10 BEING A PROBLEM. I REVIEWED I BELIEVE IT'S INGRAM VERSUS
11 FLORIDA LAST NIGHT, AND I THINK IT EXACTLY STANDS FOR THE
12 PROPOSITION THAT THE COURT HAS INDICATED AND IT WOULD BE A
13 MATTER THAT I THINK THAT THE JURY IS ENTITLED TO ARGUMENT
14 ABOUT AS TO WHETHER, YOU KNOW, THE DEFENDANT WAS -- IF THEY
15 FIND HE WAS THE TRIGGERMAN, THAT'S ONE THING. IF THEY
16 BELIEVE THAT HE WAS GUILTY BECAUSE THE HAND OF ONE IS THE
17 HAND OF ALL, THEN THAT'S ANOTHER THING.

18 THE COURT: OKAY. ALL RIGHT. IS THE JURY ALL HERE?
19 ALL RIGHT. WE'LL TAKE A SHORT BREAK, AND WE DISCUSSED
20 SCHEDULING YESTERDAY. HAVE Y'ALL -- HAVE Y'ALL'S THOUGHTS ON
21 SCHEDULING CHANGED? WE -- I GUESS I SAID OR WE SAID THAT WE
22 THOUGHT IF WE WORKED UNTIL 7 OR 7:30 WE WOULD HAVE PERHAPS A
23 CHANCE OF GETTING ALL THE EVIDENCE IN BY TOMORROW NIGHT AND,
24 IF NOT, MAYBE A COUPLE OF HOURS ON SATURDAY MORNING BEFORE WE
25 DO ARGUMENTS AND CHARGE, BUT IN ANY EVENT, TRY OUR BEST TO

1 PUT OURSELVES IN A POSITION OF BEING DONE WITH A VERDICT BY
2 SATURDAY NIGHT AND NOT HAVE TO COME BACK ON SUNDAY. SO WE
3 MIGHT PUSH A LITTLE HARDER THAN WE NORMALLY WOULD IN ORDER TO
4 TRY TO AVOID COMING IN HERE ON SUNDAY. DO Y'ALL STILL THINK
5 WE CAN ACCOMPLISH THAT?

6 MR. MYERS: I THINK WE CAN.

7 MR. LITTLEJOHN: WE BELIEVE WE CAN, YOUR HONOR.

8 THE COURT: ALL RIGHT. I'LL BE BACK IN A FEW
9 MINUTES.

10 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

11 THE COURT: BE SEATED.

12 MR. LITTLEJOHN: YOUR HONOR, I BELIEVE WE NOW HAVE
13 AN AGREEMENT AS TO SEQUESTRATION.

14 THE COURT: ALL RIGHT.

15 MR. LITTLEJOHN: NOT IN WRITING OR ANYTHING. WE'VE
16 AGREED THAT THE -- THE ONLY WITNESSES THAT WILL BE
17 SEQUESTERED -- IF THE STATE HAS MULTIPLE WITNESSES CONCERNING
18 ONE INCIDENT, THEY'VE AGREED TO SEQUESTER THE WITNESSES
19 TESTIFYING AS TO THAT ONE INCIDENT UNTIL THEY'RE CALLED INTO
20 THE COURTROOM. AS I UNDERSTAND, MOST OF THE INCIDENTS HAVE
21 JUST ONE WITNESS.

22 MR. MYERS: AND THERE ARE ONLY TWO OF THOSE. FOR
23 EACH ONE, THE SECOND WITNESS WILL NOT BE IN THE COURTROOM
24 WHEN THE FIRST ONE IS TESTIFYING.

25 THE COURT: SO AS TO ALL OTHER WITNESSES, THE

1 COURTROOM IS OPEN.

2 MR. MYERS: YES, SIR.

3 MR. LITTLEJOHN: YES, SIR.

4 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
5 2:01 P.M.)

6 THE COURT: GOOD AFTERNOON. I HOPE YOU ALL HAD A
7 NICE TWO HALF-DAYS OFF. I KNOW I DID. I GOT TO GO BACK TO
8 GREENVILLE AND WENT TO A TRACK MEET UP AT BLUE RIDGE HIGH
9 SCHOOL YESTERDAY AFTERNOON, SAW MY DAUGHTER RUN IN THE --
10 FINISH LAST WITH HER TEAM IN THE 800 -- FOUR BY 800 METER
11 RELAY, BUT NEVERTHELESS SHE WAS THE STAR.

12 NOW, I WANT TO ASK YOU AGAIN AS I HAVE EACH TIME YOU
13 HAVE COME TO THE COURTROOM OR COME TO THE COURTHOUSE WHETHER
14 OR NOT ANY OF YOU MEMBERS OF THE JURY HAVE DISCUSSED THIS
15 CASE WITH ANYONE SINCE YOU LEFT HERE YESTERDAY AFTERNOON OR
16 HAS ANYONE ATTEMPTED TO DISCUSS THIS CASE WITH YOU. IF YOU
17 HAVE, JUST RAISE YOUR HAND AND REMEMBER THAT YOU CAN DISCUSS
18 THIS WITH ME PRIVATELY. YOU NEED NOT STAND UP IN FRONT OF
19 THIS WHOLE COURTROOM AND TELL WHAT HAPPENED. SO IF YOU HAVE,
20 JUST RAISE YOUR HAND. ALL RIGHT. AND HAS ANY MEMBER OF THE
21 JURY SEEN OR HEARD OR READ ANY PRESS COVERAGE ABOUT THIS
22 CASE? IF YOU HAVE, THEN PLEASE RAISE YOUR HAND. GOOD.
23 NOBODY HAS RAISED THEIR HAND IN RESPONSE TO EITHER ONE OF
24 THOSE QUESTIONS.

25 NOW, LADIES AND GENTLEMEN, BECAUSE KEVIN MERCER WAS

PENALTY PHASE - OPENING COMMENTS BY THE COURT TO THE JURY 1723

1 FOUND GUILTY OF MURDER YESTERDAY, IT IS NECESSARY THAT WE
2 BEGIN THIS SECOND PHASE OR THIS SENTENCING PHASE OF THE
3 TRIAL. THE SOUTH CAROLINA CODE PROVIDES THAT IF THE STATE
4 PROVES AN AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT
5 IN THIS SECOND PHASE, THEN IT WOULD BE UP TO THE JURY TO
6 RECOMMEND WHETHER OR NOT THE SENTENCE SHOULD BE A LIFE
7 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE OR THE DEATH
8 PENALTY.

9 NOW, THE STATUTE USES THE WORD RECOMMEND, AND AS I
10 TOLD YOU THOUGH DURING JURY QUALIFICATION, MOST OF YOU I TOLD
11 THIS, IT'S NOT REALLY A RECOMMENDATION. IT IS A FINAL
12 DECISION. WHEN THE JURY DECIDES TO IMPOSE A LIFE SENTENCE OR
13 TO IMPOSE THE DEATH PENALTY, IT IS A FINAL DECISION, AND I AM
14 BOUND UNDER LAW TO FOLLOW YOUR DECISION. IF AT THE END OF
15 THIS YOU WERE TO DETERMINE THAT THE STATE HAS FAILED TO PROVE
16 AN AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT, THEN
17 THAT WOULD BE THE END OF YOUR WORK, AND THEN IT WOULD BE UP
18 TO ME TO DECIDE THE SENTENCE IN THIS CASE.

19 NOW, THE SENTENCING PHASE, JUST LIKE THE GUILT PHASE
20 AND JUST LIKE THE STRUCTURE OF ANY OTHER CASE WE TRY, HAS
21 FIVE BASIC STEPS OR FIVE BASIC COMPONENTS TO IT, AND IT'S
22 JUST LIKE YESTERDAY OR JUST LIKE EARLIER THIS WEEK. THE
23 FIRST OF THOSE PHASES IS THE OPENING STATEMENTS; WE'LL HAVE
24 THOSE IN JUST A SECOND.

25 AND THEN WE'LL GO THROUGH ANOTHER EVIDENTIARY PHASE,

1 THE SECOND PHASE. WITNESSES AGAIN WILL COME HERE, AND YOU'LL
2 LISTEN TO THE TESTIMONY THAT THOSE WITNESSES WILL OFFER, AND
3 THAT'S THE EVIDENTIARY PHASE. THEN AGAIN WE WILL HAVE
4 CLOSING ARGUMENTS, AND THEN I WILL GIVE YOU ANOTHER CHARGE ON
5 THE LAW. THAT'S THE FOURTH PHASE. AND THEN YOU WILL GO BACK
6 INTO THE JURY ROOM AND YOU AGAIN WILL DELIBERATE.

7 NOW, JUST AS I TOLD YOU IN THE FIRST PHASE, PLEASE
8 DO NOT BEGIN TO MAKE UP YOUR MIND OR TO THINK ABOUT A
9 DECISION IN THIS CASE UNTIL YOU'VE BEEN THROUGH ALL FIVE OF
10 THOSE PHASES, INCLUDING THAT FIFTH PHASE WHEN YOU'LL HAVE A
11 CHANCE TO DISCUSS THIS WITH THE OTHER MEMBERS OF THE JURY.
12 ONLY THEN WILL YOU BE IN THE RIGHT POSITION TO BEGIN TO MAKE
13 UP YOUR MIND ABOUT THE DECISION THAT YOU MUST MAKE IN THIS
14 SECOND PHASE OF THE TRIAL.

15 AND THEN, OF COURSE, YOU MAY NOT DISCUSS THIS CASE
16 AMONG YOURSELVES WHEN YOU ARE BACK IN THE JURY ROOM, AND I
17 KNOW THAT MIGHT SEEM A LITTLE ODD THAT YOU WERE AT ONE TIME
18 ABLE TO DISCUSS IT AND NOW ALL OF A SUDDEN YOU CANNOT. SO
19 UNTIL I HAVE GIVEN YOU PERMISSION TO BEGIN AGAIN YOUR
20 DELIBERATIONS, DO NOT DISCUSS THIS CASE.

21 NOW, FROM A SCHEDULING STANDPOINT WE'RE GOING TO TRY
22 TO MOVE THROUGH THIS AS EFFICIENTLY AS POSSIBLE, BUT
23 NEVERTHELESS WE WANT TO MAKE SURE THAT WE TAKE THE TIME THAT
24 IS NECESSARY FOR BOTH SIDES TO BE ABLE TO OFFER THE EVIDENCE
25 THAT THEY FEEL NEEDS TO BE OFFERED. AFTER TALKING WITH THE

1 LAWYERS AND AFTER CONSIDERING THE SCHEDULE FOR THE REST OF
2 THE WEEK, IT APPEARS TO ME THAT IT WILL TAKE US THE REST OF
3 TODAY AND ALL DAY TOMORROW TO COMPLETE THE EVIDENTIARY PHASE
4 OF THIS SENTENCING PHASE OF THE TRIAL. IT IS MY HOPE THAT WE
5 CAN -- THAT I CAN ALLOW THE LAWYERS TO MAKE THEIR CLOSING
6 ARGUMENTS ON SATURDAY MORNING. THEN I WOULD CHARGE YOU ON
7 THE LAW, AND THEN YOU WOULD BE ALLOWED TO BEGIN YOUR
8 DELIBERATIONS.

9 IF THINGS DON'T GO QUITE THAT WELL, THEN WE MAY BE A
10 LITTLE BIT LATER IN THE DAY ON SATURDAY BEFORE WE CAN BEGIN
11 CLOSING ARGUMENTS. I'M GOING TO WORK HARD AND I KNOW THE
12 LAWYERS ARE GOING TO WORK HARD TO TRY TO BE EFFICIENT ABOUT
13 THIS AND TO TRY TO MOVE ALONG AS EFFICIENTLY AS WE CAN.

14 WE'RE GOING TO WORK A LITTLE BIT LATER TONIGHT AND
15 TOMORROW NIGHT THAN WE NORMALLY WOULD. I'M THINKING THAT
16 WE'RE PROBABLY GOING TO WORK UNTIL ABOUT 7 OR 7:30 BOTH
17 NIGHTS. I WANT TO MAKE SURE YOU KNOW THAT NOW SO THAT IF ANY
18 OF YOU NEED TO MAKE PHONE CALLS OR TO DO ANYTHING TO LET
19 ANYBODY KNOW WHAT YOUR SCHEDULE IS, THEN WE'LL TAKE A BREAK
20 IN AN HOUR OR SO AND YOU CAN MAKE THOSE PHONE CALLS. Y'ALL
21 JUST LET THE BAILIFFS KNOW IF YOU NEED TO DO THAT. ALL
22 RIGHT. SOLICITOR?

23 MR. MYERS: THANK YOU, YOUR HONOR. MR. FOREMAN,
24 LADIES AND GENTLEMEN, ALL OF YOU WERE TOLD AT THE BEGINNING
25 ABOUT TWO PHASES IN THIS CASE, AND THE FIRST PART IS OVER

1 WITH. THE DEFENDANT'S BEEN FOUND GUILTY OF MURDER, ARMED
2 ROBBERY, POSSESSION OF A FIREARM DURING THE COMMISSION OF A
3 VIOLENT CRIME. AND HE MURDERED TRACY DAVIS; HE SHOT HIM IN
4 THE BACK OF THE HEAD WITH THAT AWFUL PISTOL. AND THERE WERE
5 CERTAIN THINGS WE COULD INTRODUCE IN THE FIRST PHASE AND
6 THERE WERE CERTAIN THINGS WE COULDN'T INTRODUCE IN THE FIRST
7 PHASE. THAT'S WHY WE HAVE THE SECOND PART. AND YOU HAVE
8 LISTENED EXTREMELY CLOSE - I'VE WATCHED YOU - AND YOU HAVE
9 GIVEN THIS CASE YOUR UNDIVIDED ATTENTION WHICH I KNOW YOU'RE
10 GOING TO DO IN THIS PART, THE PENALTY PART.

11 THE PENALTY PART: YOU'VE HEARD THE WORDS
12 AGGRAVATING EVIDENCE, MITIGATING EVIDENCE. WE'VE GOT TO
13 PROVE A STATUTORY AGGRAVATING CIRCUMSTANCE. WHAT THAT SIMPLY
14 MEANS IS IN THOSE LAW BOOKS BEHIND THE JUDGE THERE, THERE ARE
15 STATUTES IN THERE, THE LAW, AND AGGRAVATING CIRCUMSTANCES ARE
16 LISTED IN OUR LAW AND WE'VE GOT TO PROVE ONE TO YOU. I
17 SUBMIT TO YOU WE'VE ALREADY DONE THAT BECAUSE OUR AGGRAVATING
18 CIRCUMSTANCE IS ARMED ROBBERY. IF YOU COMMIT A MURDER DURING
19 THE COMMISSION OF AN ARMED ROBBERY, THEN THE DEATH PENALTY
20 CAN BE IMPOSED.

21 WE'VE GOT TO PROVE THAT TO YOU, FIRST OF ALL, AND I
22 SUBMIT WE'VE ALREADY DONE THAT. THEN WE CAN SHOW OTHER
23 THINGS. THIS PART OF THE TRIAL THEY REFER TO AS TALKING
24 ABOUT THE CHARACTER OF THE DEFENDANT, HIS CHARACTERISTICS AND
25 CIRCUMSTANCES SURROUNDING HIM. WE'RE GOING TO SHOW YOU HIS

1 CHARACTER. WE'RE GOING TO HAVE ABOUT THREE TIMES AS MANY
2 WITNESSES IN THIS PHASE AS WE HAD IN THE GUILT PHASE. WE'RE
3 GOING TO SHOW YOU THE PRIOR CRIMES HE COMMITTED, THE PRIOR
4 SENTENCES HE GOT. WE'RE GOING TO SHOW YOU HOW HE ACTED WHEN
5 HE WAS IN JAIL AND HOW HE WAS INCARCERATED AND COMMITTED A
6 CRIME WHILE HE WAS IN JAIL THAT HE WAS CONVICTED OF: ASSAULT
7 AND BATTERY WITH INTENT TO KILL ON ANOTHER INMATE.

8 WE'RE GOING TO SHOW YOU HIS CHARACTER, AND THAT'S
9 ADMISSIBLE IN THIS PHASE TO GIVE YOU MORE INFORMATION OF WHAT
10 SENTENCE, BASED ON HIS CHARACTER AND THE CRIME, IS WARRANTED.
11 AND, OF COURSE, WE'RE SAYING THE DEATH PENALTY IS WARRANTED.
12 YOU'RE GOING TO HEAR A LOT OF WITNESSES, OVER 40, BETWEEN 40
13 AND 50. THEY'LL BE QUICK; THEY WON'T BE TOO LONG. AND I'VE
14 TRIED ENOUGH OF THESE CASES THAT, YOU KNOW, I CAN KIND OF
15 FIGURE OUT WHAT'S GOING ON. IT'S JUST LIKE WHEN SOMEBODY IS
16 CAUGHT WITH THEIR HAND IN THE COOKIE JAR. WHEN YOU SHOOT
17 SOMEBODY AND YOU'RE ARRESTED 17 MINUTES LATER AND YOU'VE GOT
18 THE MURDER WEAPON, YOU KIND OF KNOW WHAT THE DEFENSE IS.

19 IN THIS PART I KIND OF KNOW WHAT THE MITIGATION IS
20 GOING TO BE. THE MITIGATION, OF COURSE, IS THINGS SUPPOSEDLY
21 GOOD FOR HIM, SOME GOOD STUFF, BUT THEY'VE GOT TO COME UP
22 WITH SOMETHING ELSE. SO I SUBMIT TO YOU IF YOU'RE CAUGHT
23 RED-HANDED FOR COLD-BLOODED MURDER, THEN YOU'VE GOT TO COME
24 UP WITH SOMETHING.

25 MS. KIMBROUGH: OBJECTION, YOUR HONOR.

1 THE COURT: SUSTAINED. DON'T ARGUE IN YOUR OPENING
2 STATEMENT, SOLICITOR.

3 MR. MYERS: THE MITIGATION YOU LISTEN TO; YOU LISTEN
4 TO ALL THAT. AND I DON'T KNOW HOW MANY WITNESSES THERE WILL
5 BE IN MITIGATION, BUT THERE ARE CERTAIN THINGS IN THOSE LAW
6 BOOKS THAT TALKS ABOUT MITIGATING STATUTORY CIRCUMSTANCES.
7 AND THEN THERE'S A THING IN OUR LAW THAT SAYS ANYTHING NOT IN
8 THOSE LAW BOOKS YOU CAN SHOW IF IT'S BENEFICIAL TO THE
9 DEFENDANT. ANYTHING IN HIS FAVOR THEY CAN SHOW YOU. YOU
10 TAKE ALL THAT INTO CONSIDERATION BECAUSE JUST AS YOU WERE THE
11 JUDGES OF THE GUILT PHASE, YOU ARE NOW THE JUDGES FOR THE
12 SENTENCE. AND I KNOW IT'S NOT AN EASY DECISION, BUT I KNOW
13 YOU'LL GIVE IT YOUR UNDIVIDED ATTENTION AS YOU HAVE IN THE
14 PAST. SO LISTEN TO THE AGGRAVATION. LISTEN TO HIS CRIMINAL
15 BACKGROUND, HIS CRIMINAL HISTORY, HIS CONDUCT.

16 WE'LL SHOW YOU WHAT ELSE HE DID TO TRACY DAVIS MORE
17 VIVIDLY. LISTEN TO THINGS THAT THEY'LL INTRODUCE IN HIS
18 BEHALF AND TAKE THAT INTO YOUR GOOD OLD COMMON SENSE
19 COLLECTION. IN THE END THERE ARE TWO CHOICES: LIFE
20 IMPRISONMENT OR THE DEATH PENALTY. YOU ARE THE SENTENCERS.
21 YOU CAN IMPOSE THE LIFE SENTENCE OR YOU CAN IMPOSE THE DEATH
22 PENALTY. TO IMPOSE THE DEATH PENALTY, AS I SAID TO Y'ALL,
23 WE'VE GOT TO SHOW THAT HE COMMITTED AN ARMED ROBBERY. THAT'S
24 BEEN SHOWN.

25 SO YOU HAVE TO TAKE ALL THIS OTHER STUFF ALONG WITH

1 IT, AND WHEN YOU COME DOWN TO IT, YOU'LL HAVE SOME PAPERS
2 THAT THE JUDGE IS GOING TO GIVE TO YOU WHEN HE CHARGES YOU.
3 HE'LL GIVE YOU SOMETHING IN WRITING ABOUT AGGRAVATING
4 CIRCUMSTANCES. HE'LL GIVE YOU SOMETHING IN WRITING ABOUT
5 MITIGATING CIRCUMSTANCES. HE'LL GIVE YOU SOME FORMS OF THE
6 VERDICT: LIFE IMPRISONMENT AND ONE WITH 12 LINES ON IT FOR
7 THE DEATH PENALTY.

8 I SUBMIT TO YOU WHEN YOU'VE HEARD ALL OF THIS, EACH
9 ONE OF YOU, AS YOU SAID YOU ALL COULD DO, WILL PUT YOUR NAMES
10 ON THOSE LINES BECAUSE FOR THIS PERSON FOR THIS CRIME FOR HIS
11 CHARACTER, THE DEATH PENALTY IS THE APPROPRIATE SENTENCE.

12 MS. KIMBROUGH: GOOD AFTERNOON. SOLICITOR. JUDGE
13 FEW. THIS TRIAL HAS NOW BEEN GOING ON FOR 10 DAYS, AND THE
14 DEFENSE, EVERYBODY IN THIS COURTROOM, THANKS YOU FOR BEING
15 HERE. IT'S BEEN A LONG PROCESS. IN THE FIRST PHASE YOU HAD
16 TO TAKE THAT WITNESS STAND AND ANSWER CERTAIN QUESTIONS, AND
17 WE DETERMINED THAT ALL 12 OF YOU, ACTUALLY 15 OF YOU, COULD
18 SERVE AS FAIR AND IMPARTIAL JURORS, AND WE BELIEVE YOU'VE
19 UPHELD THAT. IT'S BEEN VERY OBVIOUS TO EVERYONE SITTING IN
20 THIS COURTROOM THAT Y'ALL PAID VERY CLOSE ATTENTION TO ALL
21 THE FACTS AND ALL THE EVIDENCE.

22 AND WHILE WE'VE PRESENTED THE DEFENSE AS WE BELIEVE
23 THE EVIDENCE SHOWED AND WHILE WE URGED YOU IN THAT FIRST
24 PHASE TO HOLD THE STATE TO ITS BURDEN TO PRODUCE EVIDENCE OF
25 GUILT BEYOND A REASONABLE DOUBT, WE DO NOT NOW TAKE ISSUE

1 WITH YOUR VERDICT. WE'RE PAST THAT PHASE, AND WE ACCEPT IT.
2 IN YOUR OWN JUDGMENT, BEING FAIR AND CONSCIENTIOUS, YOU FOUND
3 THAT THE STATE HAD PROVED ITS CASE BEYOND A REASONABLE DOUBT.
4 IN THIS PHASE WE ANTICIPATE THAT YOU'LL HEAR
5 ESSENTIALLY THREE TYPES OF EVIDENCE. THERE ARE OBVIOUSLY TWO
6 SIDES TO EVERY TRIAL, TWO SIDES IN THIS TRIAL. HOWEVER, THE
7 PENALTY PHASE IS A VERY DIFFERENT CREATION, AND WE'RE NOT
8 JUST GOING TO HAVE AGGRAVATING EVIDENCE AND MITIGATING
9 EVIDENCE. WE'RE ALSO GOING TO HAVE EVIDENCE THAT CONCERNS
10 VICTIM IMPACT.

11 NOW, VICTIM IMPACT, I CAN TELL YOU RIGHT NOW THAT NO
12 ONE ON THE DEFENSE TEAM, NOT MR. MERCER, NOT MR. LITTLEJOHN
13 NOR I, ARE GOING TO IN ANY WAY QUESTION THE TESTIMONY THAT
14 WILL COME FROM THE VICTIMS IN THIS CASE. THIS IS A TRAGIC
15 CASE. ALL MURDERS ARE TRAGIC, AND THIS ONE WAS VERY SAD AND
16 AFFECTED A LOT OF PEOPLE.

17 I DON'T KNOW MUCH ABOUT TRACY DAVIS, BUT I DO KNOW
18 THAT HE WAS A FATHER, THAT HE WAS A SON. HE MAY HAVE BEEN
19 SOMEONE'S BROTHER. I ALSO KNOW THAT HE WAS A FRIEND TO MANY
20 PEOPLE AND THAT HE WAS A SOLDIER. MAKE NO MISTAKE ABOUT IT:
21 WE DO NOT WANT TO MINIMIZE THE LOSS OF TRACY DAVIS. IT IS
22 VERY SAD; IT IS VERY HEARTBREAKING. AND WE ANTICIPATE THAT
23 YOU'LL HEAR TESTIMONY THAT WILL BE VERY, VERY DISTURBING, AND
24 YOU WILL NOT BE ALONE IN BEING DISTURBED.

25 NOW, NEXT - AND I BELIEVE THE SOLICITOR'S COVERED

1 THIS FAIRLY WELL - THE STATE IN GOING FIRST WILL PRESENT
2 EVIDENCE IN AGGRAVATION AND CHARACTER EVIDENCE. AS YOU'RE
3 VERY FAMILIAR BY NOW, AGGRAVATION MEANS THINGS THAT THE STATE
4 ESSENTIALLY WILL ALLEGE TO YOU MAKE THIS CRIME WORSE AND THAT
5 MAKE MR. MERCER MORE DESERVING OF THE DEATH PENALTY.

6 NOW, LADIES AND GENTLEMEN, AGAIN WE'RE NOT GOING TO
7 LIE TO YOU. THE DEFENSE IS NOT GOING TO SAY THAT KEVIN
8 MERCER HAS LIVED A SAINTLY LIFE. HE HAS BEEN IN TROUBLE.
9 YOU'RE GOING TO HEAR EVIDENCE THAT THE STATE'S GOING TO
10 PRESENT THAT HE'S BEEN IN TROUBLE WITH THE LAW. HE'S DONE
11 BAD THINGS AND HE'S MADE MISTAKES, AND YOU'RE GOING TO HEAR
12 ABOUT IT. WE DON'T DENY IT.

13 HOWEVER, IT'S ALSO IMPORTANT TO BEAR IN MIND WHEN
14 YOU CONSIDER THE FATE OF ANOTHER HUMAN BEING THAT THERE ARE
15 OTHER THINGS BEYOND THE BAD THINGS THAT SOMEONE HAS DONE.
16 THERE ARE GOOD THINGS IN EVERY LIFE. KEVIN MERCER HAS DONE
17 GOOD THINGS IN HIS LIFE, AND HE, TOO, IS A PERSON WHO IS A
18 FATHER, A BROTHER, A SON, A HUSBAND, AND A FRIEND. HE'S A
19 REAL HUMAN BEING. THAT'S -- THAT'S WHAT WE'RE HERE TO
20 PRESENT TO YOU WITH THE TESTIMONY THAT WE'RE GOING TO
21 INTRODUCE DURING THIS PHASE: EVIDENCE ABOUT HIS LIFE.

22 NOW, SOME OF IT WILL COME FROM SIMPLE -- JUST SIMPLE
23 PEOPLE WHO HAVE HAD CONTACT WITH HIM IN HIS LIFE: FRIENDS,
24 FAMILY, SPECIAL ED TEACHER, BUT WE'RE ALSO GOING TO INTRODUCE
25 EVIDENCE FROM EXPERTS. AND I'M NO PSYCHIATRIST OR

1 NEUROLOGIST OR ANY OTHER OLOGIST OF ANY KIND. HOWEVER, WE
2 THINK IT'S REALLY IMPORTANT THAT YOU CONSIDER EVIDENCE ABOUT
3 THE DIFFICULTIES THAT KEVIN HAS HAD AND HOW THOSE
4 DIFFICULTIES MAY HAVE IMPACTED HIS BEHAVIORS IN THE PAST AND
5 PARTICULARLY HOW THEY MAY HAVE COME TO BEAR ON HIS DECISION-
6 MAKING ON MAY 16TH OF 2002.

7 NOW, AT THE END OF THE DAY YOUR DECISION ABOUT LIFE
8 OR DEATH WILL HAVE TO BE ONE THAT YOU INDIVIDUALLY CONSIDER
9 AND COLLECTIVELY COME TO DECIDE. HOWEVER, THE JUDGE WILL
10 INSTRUCT YOU THAT NO MATTER WHAT TYPE OF BAD EVIDENCE IS
11 BROUGHT TO THIS WITNESS STAND ABOUT THE THINGS KEVIN HAS
12 DONE, NO MATTER THE AMOUNT OF AGGRAVATION, OUR SYSTEM
13 EMBRACES THE CONCEPT OF MERCY AND THAT'S WHAT WE'RE GOING TO
14 ASK FOR. YOU CAN GIVE A LIFE SENTENCE FOR ANY REASON OR NO
15 REASON AT ALL.

16 LADIES AND GENTLEMEN, THAT'S -- THAT'S WHAT WE'RE
17 GOING TO ASK YOU TO DO. WE'RE GOING TO ASK YOU TO CONSIDER
18 IT, AND WE'RE GOING TO PRESENT TO YOU EVIDENCE THAT WE THINK
19 SUPPORTS OUR REQUEST FOR MERCY. WE APPRECIATE YOU BEING
20 HERE, BEING FAIR AND CONSCIENTIOUS, AND THANK YOU.

21 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, AS YOU
22 CAN SEE, THE BAILIFF IS HANDING OUT NOTE PADS TO ANYONE WHO
23 MIGHT WANT TO USE NOTES DURING THE TESTIMONY IN THIS PHASE.
24 AND JUST AS I EXPLAINED TO YOU BEFORE, THOSE NOTES ARE SOLELY
25 FOR YOUR OWN USE AND NOT TO BE SHARED AMONG OTHER MEMBERS OF

1 THE JURY, AND I NEED FOR YOU TO BE VERY CAREFUL, AS I KNOW
2 YOU WERE IN THE FIRST PHASE, TO MAKE SURE THAT YOUR TAKING OF
3 NOTES DOES NOT INTERFERE WITH YOUR ABILITY TO SEE AND LISTEN
4 TO THE EVIDENCE THAT IS BEING OFFERED BEFORE YOU TODAY AND
5 TOMORROW AND PERHAPS SATURDAY.

6 MR. GRAHAM: THE STATE CALLS---

7 MR. MYERS: BEFORE WE DO THAT, YOUR HONOR, I DON'T
8 THINK IT'S NECESSARY, BUT WE MOVE TO INCORPORATE EVERYTHING
9 FROM THE GUILT PHASE INTO THE PENALTY PHASE FOR THE RECORD.

10 MS. KIMBROUGH: NO OBJECTION.

11 THE COURT: IT'S DONE.

12 MR. GRAHAM: THE STATE CALLS MARIE WEARING.

13 MARIE WEARING, AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE STATE YOUR FIRST AND LAST NAME,
16 SPELLING YOUR LAST NAME.

17 THE WITNESS: MARIE WEARING, W-E-A-R-I-N-G.

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q. MS. WEARING, WHERE ARE YOU EMPLOYED?

21 A. AT SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES.

22 Q. AND WHAT DO YOU DO THERE?

23 A. I'M A CUSTODIAN OF THE RECORDS.

24 Q. AND HOW LONG HAVE YOU WORKED FOR THE DEPARTMENT OF
25 MOTOR VEHICLES?

1 A. SEVENTEEN YEARS.

2 Q. AND IN YOUR JOB AS A CUSTODIAN, ARE YOU RESPONSIBLE
3 FOR MAINTAINING DRIVING RECORDS, INCLUDING CITATIONS AND
4 SUSPENSIONS, FOR THE DEPARTMENT OF MOTOR VEHICLES?

5 A. YES.

6 Q. AND DID I ASK YOU TO BRING SOME DOCUMENTS TODAY?

7 A. YES.

8 Q. AND ARE THOSE THE DOCUMENTS RELATING TO THE DRIVING
9 HISTORY OF KEVIN MERCER?

10 A. CORRECT.

11 Q. AND WOULD THOSE RECORDS HAVE BEEN MADE AT OR NEAR
12 THE TIME THE EVENT OCCURRED?

13 A. YES.

14 Q. AND WOULD SOMEONE WHO HAD KNOWLEDGE OF THAT EVENT BE
15 THE ONE WHO RECORDED THAT INFORMATION?

16 A. YES.

17 Q. AND IS IT -- IS IT THE PRACTICE AND THE POLICY OF
18 THE DEPARTMENT OF MOTOR VEHICLES TO KEEP THOSE RECORDS AND
19 MAINTAIN THEM?

20 A. YES.

21 Q. I BELIEVE I ASKED YOU TO BRING HIS CERTIFIED 10-YEAR
22 DRIVING RECORD AS WELL AS SOME TICKETS AND A LETTER. DO YOU
23 HAVE THOSE WITH YOU?

24 A. YES.

25 Q. REFERRING TO THE FIRST ONE, DO YOU HAVE A TRAFFIC

1 CITATION THAT IS U-499474?

2 A. CORRECT.

3 Q. WHAT IS THAT CITATION FOR?

4 A. IT'S OPERATING UNINSURED VEHICLES.

5 Q. WHAT IS THE DATE OF THE VIOLATION?

6 A. 11/17/1996.

7 Q. AND WHERE DID THE VIOLATION OCCUR?

8 A. RICHLAND COUNTY.

9 Q. AND WAS MR. MERCER CONVICTED OF THAT?

10 A. YES.

11 Q. AND DO YOU KNOW THE DATE OF CONVICTION?

12 A. 12/17/1996..

13 Q. AND WAS THERE A FINE IMPOSED FOR THAT VIOLATION?

14 A. YES.

15 Q. AND WHAT WAS THAT FINE, MS. WEARING?

16 A. \$235.

17 MR. GRAHAM: YOUR HONOR, AT THIS TIME THE STATE

18 WOULD OFFER THAT TICKET INTO EVIDENCE.

19 MS. KIMBROUGH: WITHOUT OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 (STATE'S EXHIBIT 29 WAS RECEIVED IN EVIDENCE.)

22 BY MR. GRAHAM:

23 Q. DID MR. MERCER PAY THAT TRAFFIC TICKET?

24 A. YES.

25 Q. I'M SORRY. WAS HIS LICENSE SUSPENDED FOR THE

1 VIOLATION ITSELF?

2 A. YES.

3 Q. AND DID THAT SUSPENSION BEGIN ON WHAT DATE?

4 A. 12/17/1996.

5 Q. AND WHEN DID THE SUSPENSION END?

6 A. 1/15/1997.

7 Q. AND WERE THE REINSTATEMENT REQUIREMENTS MET?

8 A. YES.

9 Q. AND WHAT WAS THE DATE OF THAT?

10 A. 10/17/1998.

11 Q. LET ME SHOW YOU THIS AND ASK YOU IF THIS IS A FAIR

12 REPRESENTATION OF YOUR TESTIMONY. NOVEMBER 17TH, 1996,

13 RICHLAND COUNTY TRAFFIC CITATION FOR OPERATING UNINSURED

14 VEHICLE, CONVICTED ON DECEMBER 17TH, 1996, \$235 FINE,

15 DRIVER'S LICENSE SUSPENDED. SUSPENSION BEGAN DECEMBER 17TH,

16 1996. SUSPENSION ENDED JANUARY 15TH, '97. REINSTATEMENT

17 REQUIREMENTS MET OCTOBER 7TH, 1998.

18 A. YES.

19 MR. GRAHAM: YOUR HONOR, AT THIS TIME THE STATE

20 WOULD OFFER THIS INTO EVIDENCE.

21 MR. LITTLEJOHN: YOUR HONOR, I WOULD OBJECT TO THE

22 FORM OF THAT BEING INTRODUCED IN EVIDENCE.

23 MR. GRAHAM: THIS IS LIKE A---

24 MR. LITTLEJOHN: THE COURT---

25 MR. GRAHAM: ---SUMMARY, YOUR HONOR. I'M SORRY?

1 MR. LITTLEJOHN: THE COURT OBVIOUSLY HAS THE
2 WITNESS'S TESTIMONY AND---

3 THE COURT: I'M GOING TO ALLOW YOU TO USE IT DURING
4 THE TRIAL AND ARGUMENTS FOR DEMONSTRATIVE PURPOSES, AND THEN
5 I WILL RULE AFTER I'VE HAD A CHANCE TO EVALUATE WHETHER OR
6 NOT IT IS REASONABLY NECESSARY AS EVIDENCE ITSELF. I'LL RULE
7 LATER ON ITS ADMISSIBILITY.

8 MR. GRAHAM: YOUR HONOR, OBVIOUSLY WE'RE GOING TO
9 HAVE SEVERAL OF THESE. DO I NEED TO---

10 THE COURT: YOU CAN---

11 MR. GRAHAM: CAN WE JUST OPERATE UNDER THAT RULING
12 THE ENTIRE TRIAL?

13 THE COURT: YOU CAN BECAUSE I'M GOING TO RULE THE
14 SAME WAY, AND THEN IT WILL BE CLOSER TO THE END OF THIS PHASE
15 OF THE TRIAL WHEN I RULE ON THEIR ADMISSIBILITY.

16 MR. LITTLEJOHN: YOUR HONOR, WAS THE COURT GOING TO
17 ALLOW THE STATE TO PUBLISH THIS BY LEAVING IT UP THERE ON THE
18 CHART THAT'S NOT IN EVIDENCE?

19 THE COURT: DO YOU HAVE ANY OBJECTION TO THAT?

20 MR. LITTLEJOHN: YES, YOUR HONOR.

21 THE COURT: ON WHAT BASIS?

22 MR. LITTLEJOHN: YOUR HONOR, IF IT'S NOT IN
23 EVIDENCE, I JUST TAKE THE POSITION THAT IT SHOULDN'T BE
24 PUBLISHED.

25 THE COURT: WELL, I MEAN, I THINK HE CAN -- HE CAN

1 USE IT IN THE WAY THAT HE HAS PROPOSED TO USE IT: TO
2 HIGHLIGHT THE TESTIMONY AND TO... I DON'T SEE ANY -- I DON'T
3 -- I DON'T FIND THAT OBJECTIONABLE. I'LL ALLOW THAT.
4 BY MR. GRAHAM:

5 Q. MS. WEARING, DO YOU ALSO HAVE ANOTHER CITATION,
6 V-767060?

7 A. CORRECT.

8 Q. AND WHAT IS THAT CITATION FOR?

9 A. A SEAT BELT VIOLATION.

10 Q. AND WHAT WAS THE DATE OF THAT VIOLATION?

11 A. 12/8/1998.

12 Q. AND WHERE DID THAT VIOLATION OCCUR?

13 A. RICHLAND COUNTY.

14 Q. AND WAS MR. MERCER CONVICTED OF THAT VIOLATION?

15 A. YES.

16 Q. AND WHAT DATE WAS HE CONVICTED OF THAT VIOLATION?

17 A. 3/19/2002. I'M SORRY. 2/16/1990.

18 Q. COULD IT BE FEBRUARY 16TH, 1999?

19 A. YES. I'M SORRY. YES.

20 Q. AND WAS THERE A FINE IMPOSED FOR THAT?

21 A. YES.

22 Q. AND WHAT WAS THE FINE ON THAT?

23 A. \$20.

24 Q. IN ADDITION, DID I ASK YOU TO -- WELL, YOUR HONOR,
25 I'LL INTRODUCE THAT TICKET AT THIS TIME.

1 MS. KIMBROUGH: WITHOUT OBJECTION.

2 THE COURT: IT'S ADMITTED.

3 (STATE'S EXHIBIT 30 WAS RECEIVED IN EVIDENCE.)

4 BY MR. GRAHAM:

5 Q. IN ADDITION TO THAT TICKET, MS. WEARING, DID I ALSO
6 ASK YOU TO BRING A LETTER?

7 A. YES.

8 Q. AND IT'S A LETTER DATED APRIL 20TH, 1999?

9 A. YES.

10 Q. WHAT IS THE PURPOSE OF THAT LETTER?

11 A. TO NOTIFY HIM THAT HE WAS GOING UNDER SUSPENSION AS

12 A...

13 Q. THE LETTER STATES THAT IT WOULD BE SUSPENDED FOR
14 WHAT REASON?

15 A. FOR FAILURE TO PAY HIS TRAFFIC TICKET.

16 Q. AND WAS HIS LICENSE, IN FACT, SUSPENDED?

17 A. YES.

18 Q. WHEN DID HIS SUSPENSION END?

19 A. 5/9/2001.

20 Q. LET ME ASK IF THAT'S A FAIR REPRESENTATION OF YOUR
21 TESTIMONY: DECEMBER 8TH, 1998, RICHLAND COUNTY TRAFFIC
22 CITATION FOR SEAT BELT VIOLATION, CONVICTED ON FEBRUARY 16TH,
23 1999, \$20 FINE. D.M.V. SENT LETTER APRIL 20TH, 1999, STATING
24 DRIVER'S LICENSE WILL BE SUSPENDED FOR FAILURE TO PAY THIS
25 TICKET. SUSPENSION ENDED MAY 11TH, 1999.

- 1 A. CORRECT.
- 2 Q. DO YOU ALSO HAVE A CITATION 63006-BL?
- 3 A. REPEAT THAT, PLEASE.
- 4 Q. 63006-BL.
- 5 A. YES.
- 6 Q. AND WHAT IS THAT CITATION FOR?
- 7 A. FOR SPEEDING.
- 8 Q. AND WHAT WAS THE DATE OF THE VIOLATION?
- 9 A. 3/19/2000.
- 10 Q. AND WHERE DID THAT INCIDENT OCCUR?
- 11 A. RICHLAND COUNTY.
- 12 Q. AND WAS MR. MERCER CONVICTED OF THAT VIOLATION?
- 13 A. YES.
- 14 Q. AND WHAT WAS THE FINE ON THAT VIOLATION?
- 15 A. \$130.
- 16 Q. AND WHEN WAS THAT DATE OF THE CONVICTION?
- 17 A. 4/6/2000.
- 18 Q. AND WAS THERE A SUSPENSION RELATED TO THAT
- 19 VIOLATION?
- 20 A. YES.
- 21 Q. WHAT WAS THE SUSPENSION FOR?
- 22 A. FAILURE TO PAY TRAFFIC TICKET, SPEEDING.
- 23 Q. AND WHEN DID THAT SUSPENSION BEGIN?
- 24 A. 7/23/2000.
- 25 Q. AND WHEN DID IT END?

1 A. (PAUSE).

2 Q. IF YOU LOOK ON THE -- IF YOU'LL LOOK ON THE
3 10-YEAR...

4 A. OKAY. I'M SORRY. 5/9/2001.

5 MR. GRAHAM: YOUR HONOR, AT THIS TIME I WOULD OFFER
6 THAT TICKET INTO EVIDENCE.

7 MR. LITTLEJOHN: NO OBJECTION.

8 THE COURT: IT'S ADMITTED.

9 (STATE'S EXHIBIT 31 WAS RECEIVED IN EVIDENCE.)

10 BY MR. GRAHAM:

11 Q. WHAT WAS THE RANGE OF THE SPEEDING? IT SAYS
12 SPEEDING, BUT WHAT WAS THE ACTUAL MILES PER HOUR ON THAT?

13 A. IT'S 62 IN A 40-MILE ZONE.

14 Q. LET ME ASK YOU, MS. WEARING, IF THIS IS AN ACCURATE
15 STATEMENT: MARCH 19TH, 2000, RICHLAND COUNTY TRAFFIC
16 CITATION FOR SPEEDING, CONVICTED OF SPEEDING - 62 IN A 40-
17 MILE-PER-HOUR ZONE ON APRIL 6TH, 2000. \$130 FINE. DRIVER'S
18 LICENSE SUSPENDED FOR FAILURE TO PAY TRAFFIC TICKET.
19 SUSPENSION BEGAN JULY 23RD, 2000. SUSPENSION ENDED MAY 9,
20 2001.

21 A. THAT'S CORRECT.

22 Q. MS. WEARING, LOOKING AT THE 10-YEAR DRIVER'S RECORD
23 OF MR. MERCER, IS THERE ALSO A SUSPENSION FOR A CONTROLLED
24 SUBSTANCE VIOLATION?

25 A. YES.

1 Q. AND WHEN -- WHEN DID THAT SUSPENSION BEGIN?

2 A. 4/11/2001.

3 Q. AND WHEN DID THAT SUSPENSION END?

4 A. OCTOBER 11TH, 2001.

5 Q. AND WERE THE REINSTATEMENT REQUIREMENTS MET?

6 A. YES.

7 Q. AND WHEN WERE THEY MET?

8 A. NOVEMBER 20TH, 2001.

9 Q. LET ME ASK YOU IF THIS IS AN ACCURATE STATEMENT:

10 APRIL 11TH, 2001, DRIVER'S LICENSE SUSPENDED FOR CONTROLLED

11 SUBSTANCE VIOLATION. SUSPENSION ENDED OCTOBER 11TH, 2001.

12 REINSTATEMENT REQUIREMENTS MET NOVEMBER 20TH, 2001.

13 A. CORRECT.

14 Q. AND DID YOU ALSO BRING A TRAFFIC TICKET? A-186443?

15 A. YES.

16 Q. AND WHAT WAS THAT TICKET FOR?

17 A. NO VEHICLE LICENSE IN POSSESSION.

18 Q. AND WHAT WAS THE DATE OF THAT VIOLATION?

19 A. 4/11/2002.

20 Q. AND IN WHAT COUNTY DID THAT VIOLATION OCCUR IN?

21 A. RICHLAND COUNTY.

22 Q. AND WAS MR. MERCER CONVICTED OF THAT VIOLATION?

23 A. YES.

24 Q. AND WHAT WAS THE RESULTING FINE?

25 A. \$100.

1 Q. AND WHAT WAS THE DATE OF THE CONVICTION?

2 A. 5/9/2002.

3 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THAT
4 TICKET INTO EVIDENCE AT THIS TIME.

5 MR. LITTLEJOHN: NO OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (STATE'S EXHIBIT 32 WAS RECEIVED IN EVIDENCE.)

8 BY MR. GRAHAM:

9 Q. MS. WEARING, WAS THERE A SUSPENSION THAT
10 CORRESPONDED WITH THAT FAILURE TO PAY THAT TICKET?

11 A. YES.

12 Q. AND WHEN DID THAT SUSPENSION BEGIN?

13 A. 10/21/2002.

14 Q. AND WHEN DID THAT SUSPENSION END?

15 A. INDEFINITE.

16 Q. LET ME ASK YOU IF THIS IS AN ACCURATE STATEMENT:

17 APRIL 11TH, 2002, RICHLAND COUNTY TRAFFIC CITATION FOR NO

18 VEHICLE LICENSE, CONVICTED ON MAY 9TH, 2002. \$100 FINE.

19 DRIVER'S LICENSE SUSPENDED FOR FAILURE TO PAY TRAFFIC TICKET.

20 SUSPENSION BEGAN OCTOBER 21ST, 2002. INDEFINITE SUSPENSION.

21 A. CORRECT.

22 MR. GRAHAM: YOUR HONOR, AT THIS TIME THE STATE
23 WOULD OFFER THE ACTUAL 10-YEAR DRIVING RECORD INTO EVIDENCE.

24 MS. KIMBROUGH: WITHOUT OBJECTION.

25 THE COURT: IT'S ADMITTED.

1 (STATE'S EXHIBIT 33 WAS RECEIVED IN EVIDENCE.)

2 MR. GRAHAM: MS. WEARING, PLEASE ANSWER ANY
3 QUESTIONS THE DEFENSE HAS.

4 CROSS-EXAMINATION

5 BY MR. LITTLEJOHN:

6 Q. GOOD AFTERNOON, MS. WEARING.

7 A. GOOD AFTERNOON.

8 Q. I JUST HAVE ONE QUESTION. IS THIS THE WORST DRIVING
9 RECORD YOU'VE EVER SEEN? NOT---

10 A. NO, SIR.

11 Q. ---BY A LONG SHOT, IS IT?

12 A. NO, SIR.

13 Q. I NEED TO GET YOU TO ANSWER SO THE COURT REPORTER...

14 A. NO, SIR.

15 MR. LITTLEJOHN: ALL RIGHT. THANK YOU, MA'AM.

16 MR. GRAHAM: THANK YOU, MS. WEARING.

17 MR. HUBBARD: THE STATE CALLS HUGH HENDERSON.

18 HUGH HENDERSON, AFTER BEING DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. HUBBARD:

22 Q. MR. HENDERSON, HOW ARE YOU TODAY?

23 A. FINE.

24 Q. DID YOU ONCE WORK IN RICHLAND COUNTY?

25 A. YES, SIR.

1 Q. FOR THE SHERIFF'S DEPARTMENT?

2 A. YES, SIR.

3 Q. AND WHEN WAS THAT?

4 A. FOR 30 YEARS FROM '70 OR '71 TO '98.

5 Q. SO YOU'RE RETIRED NOW.

6 A. YES, SIR.

7 Q. DO YOU RECALL AN INCIDENT BACK ON JANUARY 13TH,
8 1997, INVOLVING COLUMBIA HIGH SCHOOL?

9 A. YES, SIR, I DO.

10 Q. AND WHAT WAS -- WHAT WAS THAT ABOUT?

11 A. IT WAS AN AUTO TAMPERING CASE AT COLUMBIA HIGH
12 SCHOOL IN RICHLAND COUNTY. A REPORT WAS MADE WHERE TWO
13 SUSPECTS WERE IDENTIFIED BY FIVE EYEWITNESSES IN THE PARKING
14 LOT OF COLUMBIA HIGH SCHOOL REMOVING -- TRYING TO STEAL A
15 TIRE OFF A CAR.

16 Q. AND WERE YOU ABLE TO IDENTIFY WHO ONE OF THOSE
17 SUSPECTS WAS?

18 A. YES, SIR.

19 Q. AND WHO WAS THAT?

20 A. KEVIN MERCER.

21 Q. AND DID YOU MAKE AN ARREST?

22 A. YES, WE DID.

23 Q. WHAT DATE WAS THAT?

24 A. THE DAY AFTER THE INCIDENT, ON THE 14TH OF JANUARY,
25 1997.

1 Q. OKAY. AND WAS HE PUT INTO RICHLAND COUNTY DETENTION
2 CENTER AT THAT TIME?

3 A. YES, SIR. HE WAS LOCKED UP.

4 Q. AND WAS HE CONVICTED OF THAT INCIDENT?

5 A. YES, SIR, HE WAS.

6 Q. AND DO YOU HAVE THE DATE FOR THAT, SIR?

7 A. IT WAS APRIL THE 2ND, 1997.

8 Q. DO YOU KNOW WHAT HE GOT ON THAT SENTENCE?

9 A. GUILTY, \$375 OR 30 DAYS IN JAIL.

10 Q. I WANT TO SEE IF THIS IS AN ACCURATE REFLECTION OF
11 WHAT YOU JUST SAID: JANUARY 13TH, 1997, RICHLAND COUNTY,
12 AUTO TAMPERING AT COLUMBIA HIGH?

13 A. THAT'S CORRECT.

14 Q. AND THIS AS WELL: APRIL 2ND, 1997, CONVICTED OF
15 AUTO TAMPERING, \$375 FINE OR 30 DAYS?

16 A. THAT'S CORRECT.

17 Q. AND IF I CAN GET YOU TO, SIR, I WANT TO SEE IF YOU
18 WOULD STEP DOWN, WITH THE COURT'S PERMISSION.

19 THE COURT: THAT WOULD BE FINE.

20 BY MR. HUBBARD:

21 Q. AND IF YOU CAN WITH THIS MAP THAT'S ALREADY MARKED
22 IN EVIDENCE, STATE'S NUMBER 8, IF YOU CAN USE THIS STICKY,
23 COLUMBIA HIGH SCHOOL AUTO TAMPERING, AND PLEASE -- LET ME
24 PEEL OFF THE BACK, SIR. IF YOU CAN USE THAT ARROW ON THE
25 STICKY AND POINT TO THE DIRECTION WHERE THIS INCIDENT

1 OCCURRED.

2 A. AROUND HERE IN RICHLAND COUNTY OFF BROAD RIVER ROAD.

3 Q. OKAY. OFF OF BROAD RIVER ROAD IN RICHLAND COUNTY.

4 A. YES, SIR.

5 MR. HUBBARD: YOU CAN RETURN TO YOUR SEAT. THANK
6 YOU, MR. HENDERSON. NO FURTHER QUESTIONS.

7 CROSS-EXAMINATION

8 BY MR. LITTLEJOHN:

9 Q. MR. HENDERSON, JUST ONE QUESTION. YOU SAID THIS WAS
10 AUTO TAMPERING?

11 A. YES, SIR.

12 Q. NOBODY WAS HURT, WERE THEY?

13 A. NO.

14 MR. LITTLEJOHN: THANK YOU, SIR.

15 MR. HUBBARD: NO FURTHER QUESTIONS.

16 THE COURT: YOU CAN STEP DOWN, SIR.

17 MR. HUBBARD: THE STATE CALLS KATHY JARVIS.

18 KATHY JARVIS, AFTER BEING DULY SWORN, TESTIFIED
19 AS FOLLOWS:

20 THE CLERK: PLEASE STATE YOUR FULL NAME, SPELLING
21 YOUR FIRST AND LAST NAMES.

22 THE WITNESS: KATHY JARVIS. K-A-T-H-Y J-A-R-V-I-S.

23 DIRECT EXAMINATION

24 BY MR. HUBBARD:

25 Q. MS. JARVIS, WHERE DO YOU WORK?

1 A. RICHLAND COUNTY SHERIFF'S DEPARTMENT.

2 Q. HOW LONG HAVE YOU BEEN THERE?

3 A. THIRTEEN YEARS.

4 Q. AND WHAT ARE YOUR DUTIES WITH THE RICHLAND COUNTY
5 SHERIFF'S DEPARTMENT?

6 A. I AM A CORPORAL OVER THE CANINE DIVISION. I'M ALSO
7 A BOMB TECHNICIAN, AND I DO UNDERWATER RECOVERY.

8 Q. AND BACK IN DECEMBER OF 1999, DO YOU REMEMBER AN
9 INCIDENT ON DECEMBER 12TH, 1999, INVOLVING KEVIN MERCER?

10 A. YES, I DO.

11 Q. AND CAN YOU PLEASE TELL ME WHAT THAT INCIDENT WAS?

12 A. A CALL HAD COME OUT ABOUT SOME TYPE OF CIVIL
13 DISTURBANCE WHERE THREATS WERE BEING MADE. I RESPONDED TO
14 THE CALL. A VEHICLE DESCRIPTION WAS GIVEN OUT ABOUT A BLACK
15 FORD AND WITH TWO BLACK MALES IN IT. AS I WAS PULLING INTO
16 THE APARTMENT COMPLEX AT 716 ZIMALCREST DRIVE, WHICH IS
17 CROSSROADS APARTMENTS, I SAW THE VEHICLE LEAVING THE SCENE.

18 I TURNED MY PATROL CAR AROUND, PULLED THE VEHICLE
19 OVER, AND INSIDE THE VEHICLE WAS MR. MERCER AND A MR. GAINES.
20 AT THAT TIME I WALKED UP TO THE VEHICLE, STARTED ASKING THEM
21 SOME QUESTIONS. NEITHER ONE OF THEM WERE VERY COOPERATIVE.
22 THEY DID NOT WANT TO SPEAK TO ME AT ALL. I FINALLY GOT THE
23 COMPLAINANT OF THE ORIGINAL CALL OVER THAT IDENTIFIED BOTH
24 SUSPECTS AS---

25 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO

1 ANY HEARSAY.

2 BY MR. HUBBARD:

3 Q. OKAY. I'LL PICK UP FROM HERE. LET ME ASK YOU THIS:
4 ONCE YOU IDENTIFIED KEVIN MERCER, DID HE HAVE ANY I.D. ON
5 HIM?

6 A. HE DID NOT HAVE ANY I.D. ON HIM.

7 Q. DID HE GIVE YOU A NAME?

8 A. HE GAVE ME I BELIEVE ABOUT THREE DIFFERENT NAMES
9 BEFORE I FINALLY FIGURED OUT WHO HE WAS.

10 Q. AT SOME POINT DID YOU GET BOTH MR. MERCER AND MR.
11 GAINES OUT OF THE VEHICLE?

12 A. YES, I DID.

13 Q. AND AT SOME POINT DID YOU ALSO GET CONSENT TO SEARCH
14 THAT VEHICLE FROM MR. GAINES?

15 A. YES, I DID.

16 Q. AND WHAT DID YOU FIND IN THAT VEHICLE?

17 A. I FOUND A BLACK BOOK BAG ON THE PASSENGER
18 FLOORBOARD. INSIDE THAT BOOK BAG I FOUND A LITTLE OVER FIVE
19 OUNCES OF MARIJUANA.

20 Q. OKAY: AND DID YOU CHARGE HIM WITH MARIJUANA?

21 A. YES, I DID.

22 Q. WHAT WAS THE CHARGE YOU CHARGED HIM WITH FOR THAT
23 MARIJUANA?

24 A. POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA AND
25 ALSO POSSESSION WITH INTENT---

1 Q. NO, NO, NO, NO. I'M TALKING ABOUT JUST THE CHARGE
2 THAT HE ENDED UP GETTING. I'M NOT TALKING ABOUT ANY OTHER
3 CHARGES; OKAY? I'M TALKING ABOUT THE MARIJUANA, THE
4 MARIJUANA IN THE BAG. I'M GETTING MYSELF CONFUSED HERE, YOUR
5 HONOR. JUST TALK ABOUT THE BAG AND THE CHARGE. WHAT CHARGE
6 DID YOU BRING?

7 A. POSSESSION WITH INTENT TO DISTRIBUTE.

8 Q. OKAY. MARIJUANA.

9 A. MARIJUANA.

10 Q. OKAY. IF I COULD HAVE YOU LOOK AT THIS. IT'S BEEN
11 A LONG DAY ALREADY. I'M SORRY. DOES THIS ACCURATELY REFLECT
12 THE CHARGE YOU BROUGHT: DECEMBER 12TH, 1999, RICHLAND
13 COUNTY, POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA?

14 A. YES.

15 Q. OKAY. NOW, WAS HE CONVICTED OF THAT CHARGE?

16 A. YES, HE WAS.

17 Q. AND DO YOU HAVE A RECORD TO SHOW WHAT HIS SENTENCE
18 WAS ON THAT CHARGE?

19 A. HIS SENTENCE, I BELIEVE, WAS ON APRIL 11TH OF 2001,
20 FIVE YEARS, TIME SERVED.

21 Q. DID HE GET PROBATION FOR THAT SENTENCE?

22 A. I BELIEVE HE DID, YES.

23 Q. FIVE YEARS?

24 A. UH-HUH.

25 Q. DOES THIS ACCURATELY REFLECT THAT SENTENCE:

1 CONVICTED OF POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA,
2 SENTENCED TO FIVE YEARS PROVIDED UPON TIME SERVED, CREDIT
3 SINCE MARCH 22ND, 2000. BALANCE IS SUSPENDED WITH PROBATION
4 FOR FIVE YEARS?

5 A. YES.

6 Q. NOW, IF I CAN GET YOU TO STEP DOWN ONE MOMENT, IF
7 YOU DON'T MIND, AND POINT OUT ON THE MAP WHERE THIS ARREST
8 OCCURRED.

9 A. APPROXIMATELY IN THIS AREA RIGHT HERE WOULD BE
10 ZIMALCREST DRIVE.

11 Q. WOULD YOU PLEASE USE THIS STICKY AND INDICATE WHERE
12 THE INCIDENT OCCURRED?

13 A. (THE WITNESS COMPLIES.)

14 Q. THANK YOU. YOU CAN RETURN TO THE SEAT. DEPUTY
15 JARVIS, THE BAG OF MARIJUANA -- WHAT, IF ANYTHING ELSE, DID
16 YOU FIND IN THAT BAG?

17 A. I FOUND A, I BELIEVE, 38 REVOLVER.

18 MR. HUBBARD: THANK YOU. NO FURTHER QUESTIONS.
19 PLEASE ANSWER ANY QUESTIONS OF THE DEFENSE.

20 CROSS-EXAMINATION

21 BY MR. LITTLEJOHN:

22 Q. DEPUTY JARVIS, JUST A FEW QUESTIONS. OUT OF THIS
23 INCIDENT, HE WAS CONVICTED OF POSSESSION WITH INTENT TO
24 DISTRIBUTE MARIJUANA? LET ME GET YOU TO ANSWER UP SO THE
25 COURT REPORTER... I SAID HE WAS CONVICTED OF POSSESSION WITH

1 INTENT TO DISTRIBUTE MARIJUANA.

2 A. YES, HE WAS.

3 Q. THAT WAS THE ONLY CHARGE OUT OF THIS INCIDENT.

4 A. IT'S THE ONLY ONE HE WAS CONVICTED OF.

5 Q. ALL RIGHT. YOU SAID HE HAD THE MARIJUANA IN HIS
6 BAG?

7 A. YES.

8 Q. WAS ANYBODY HURT DURING THIS INCIDENT?

9 A. NO.

10 MR. LITTLEJOHN: THANK YOU, MA'AM.

11 THE COURT: YOU CAN STEP DOWN, MA'AM.

12 MR. GRAHAM: CAPTAIN ELLIS PEARSON.

13 ELLIS R. PEARSON, AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
16 FIRST NAME AND LAST FOR THE RECORD.

17 THE WITNESS: MY NAME IS ELLIS RAY PEARSON. THE
18 SPELLING OF MY LAST NAME IS P-E-A-R-S-O-N.

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q. CAPTAIN PEARSON, WHERE ARE YOU EMPLOYED?

22 A. I'M EMPLOYED RIGHT NOW AT THE RICHLAND COUNTY
23 SHERIFF'S DEPARTMENT.

24 Q. AND I SAID YOUR RANK OF CAPTAIN.. WHAT ARE YOU
25 RESPONSIBLE FOR?

1 A. RIGHT NOW I'M A RETIRED CAPTAIN. I'M STILL WORKING
2 AT THE SHERIFF'S DEPARTMENT. I'M WORKING IN CODE ENFORCEMENT
3 AT THIS TIME.

4 Q. HOW LONG HAVE YOU WORKED FOR THE RICHLAND COUNTY
5 SHERIFF'S DEPARTMENT?

6 A. I'VE BEEN EMPLOYED THERE FOR ABOUT 14 YEARS.

7 Q. AND WERE YOU EMPLOYED THERE ON MARCH 20TH OF 2000?

8 A. THAT IS CORRECT.

9 Q. AND DID YOU RESPOND TO A ROBBERY AND BURGLARY CALL?

10 A. THAT IS CORRECT.

11 Q. AND WHAT WAS THE ADDRESS OF THE LOCATION THAT YOU
12 RESPONDED TO?

13 A. IT'S GOING TO BE 1317 ELLERBE STREET.

14 Q. AND THAT'S IN COLUMBIA?

15 A. THAT'S IN COLUMBIA IN RICHLAND COUNTY.

16 Q. AND THE VICTIMS ON THAT CASE, WAS THAT JOHN GOODWIN,
17 EARTHALENE GOODWIN, AND SOME OF THEIR FAMILY?

18 A. THAT'S CORRECT.

19 Q. WHEN YOU RESPONDED AND TOOK A REPORT, DID YOU
20 ULTIMATELY TURN THAT INFORMATION OVER TO AN INVESTIGATOR?

21 A. THAT IS CORRECT.

22 Q. AND YOU'RE AWARE THAT WARRANTS WERE OBTAINED AGAINST
23 MR. MERCER ON THAT?

24 A. THAT'S CORRECT, ALSO.

25 Q. AND I BELIEVE YOU HAVE COPIES OF THE SENTENCING

1 SHEET UP THERE WITH YOU. IS IT FAIR TO SAY THAT ON
2 APRIL 11TH, 2001, MR. MERCER WAS CONVICTED OF BURGLARY IN THE
3 SECOND DEGREE?

4 A. FROM READING THIS SHEET, THAT'S CORRECT.

5 Q. AND THAT HE RECEIVED A SENTENCE OF SEVEN YEARS
6 PROVIDED THAT UPON THE SERVICE OF TIME SERVED, CREDIT SINCE
7 3/22/00, THAT THE BALANCE WAS SUSPENDED FOR PROBATION FOR
8 FIVE YEARS.

9 A. THAT'S ALSO CORRECT.

10 Q. IN ADDITION TO THE BURGLARY SECOND CHARGE, WAS MR.
11 MERCER ALSO CONVICTED OF A STRONG ARM ROBBERY ON THE SAME
12 DATE?

13 A. THAT'S CORRECT ALSO.

14 Q. AND HE RECEIVED THE SAME SENTENCE.

15 A. THAT'S CORRECT.

16 Q. LET ME SHOW YOU TWO STATEMENTS AND ASK YOU IF THEY
17 ACCURATELY REFLECT YOUR TESTIMONY. MARCH 20TH, 2000, IN
18 RICHLAND COUNTY, BURGLARY AND ROBBERY OF THE GOODWIN
19 RESIDENCE.

20 A. THAT'S GOING TO BE CORRECT.

21 Q. APRIL 11TH, 2001, RICHLAND COUNTY, CONVICTED OF
22 BURGLARY AND ROBBERY, SENTENCED TO SEVEN YEARS FOR BURGLARY
23 AND SEVEN YEARS FOR ROBBERY, PROVIDED UPON TIME SERVED,
24 CREDIT SINCE MARCH 22ND, 2000, BALANCE IS SUSPENDED WITH
25 PROBATION FOR FIVE YEARS.

1 A. THAT'S ALSO CORRECT.

2 Q. CAPTAIN, IF I COULD ASK YOU TO STEP DOWN. I'VE GOT
3 A STICKER HERE THAT SAYS, "GOODWIN RESIDENCE, BURGLARY AND
4 ROBBERY," AND I BELIEVE THE ADDRESS THAT YOU TESTIFIED TO WAS
5 1317 ELLERBE STREET IN COLUMBIA. IF YOU COULD POINT THAT
6 ARROW AT ROUGHLY THE APPROXIMATE LOCATION OF WHERE THAT
7 RESIDENCE WAS.

8 A. IT'S GOING TO BE SOMEWHERE RIGHT IN HERE IN BETWEEN
9 ARCADIA LAKES AND THIS AREA HERE.

10 MR. GRAHAM: THANK YOU. YOU CAN HAVE A SEAT.
11 CAPTAIN, PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS.

12 CROSS-EXAMINATION

13 BY MR. LITTLEJOHN:

14 Q. CAPTAIN PEARSON, JUST A COUPLE OF QUESTIONS.

15 A. YES, SIR.

16 Q. THERE WERE A NUMBER OF INDIVIDUALS INVOLVED IN THIS
17 INCIDENT, WEREN'T THERE?

18 A. ACCORDING TO MY REPORT, I BELIEVE I LISTED ONE, TWO,
19 THREE, FOUR, FIVE... I THINK IT WAS SIX SUBJECTS THAT WERE
20 INVOLVED IN THIS INCIDENT.

21 Q. OKAY. AND MR. MERCER PLED GUILTY.

22 A. YES, SIR, ACCORDING...

23 Q. OKAY. THAT'S ALL I HAVE.

24 A. YES, SIR.

25 MR. LITTLEJOHN: THANK YOU.

1 MR. GRAHAM: THAT'S ALL. THANK YOU, CAPTAIN.

2 THE COURT: YOU CAN STEP DOWN, SIR.

3 MR. GRAHAM: EARTHALENE GOODWIN.

4 EARTHALENE GOODWIN, AFTER BEING DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
7 FIRST AND YOUR LAST, PLEASE.

8 THE WITNESS: MY NAME IS EARTHALENE GOODWIN. DID
9 YOU SAY SPELL IT?

10 THE CLERK: YES, MA'AM.

11 THE WITNESS: E-A-R-T-H-A-L-E-N-E G-O-O-D-W-I-N.

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q. MS. GOODWIN, YOU'VE GOT A SOFT VOICE. IF YOU COULD
15 SPEAK INTO THAT MICROPHONE AND MOVE THE MICROPHONE A LITTLE
16 BIT CLOSER TO YOU. MS. GOODWIN, YOU LIVE OVER IN COLUMBIA?

17 A. YES.

18 Q. AND HOW LONG HAVE YOU LIVED IN RICHLAND COUNTY?

19 A. ALL MY LIFE.

20 Q. BACK ON MARCH 20TH OF 2000 WHERE DID YOU LIVE?

21 A. 1317 ELLERBE STREET.

22 Q. AND WHO DID YOU LIVE WITH AT THAT TIME?

23 A. MY HUSBAND.

24 Q. DO YOU REMEMBER THAT DAY?

25 A. YEAH, I REMEMBER THAT DAY.

1 Q. WHAT HAPPENED THAT DAY THAT MAKES YOU REMEMBER IT?

2 A. IT WAS A SCARY DAY. BUT I REMEMBER MY GRANDDAUGHTER
3 CAME FROM SCHOOL ONE DAY AND I LET HER IN. AND SO I TURNED
4 THE T.V. ON FOR CARTOONS. SO I WENT UPSTAIRS TO GO RUN MY
5 WATER AND TAKE A BATH. THEN BEFORE I KNEW IT, MY SON STARTED
6 HOLLERING THAT THERE WERE TWO MENS IN MY HOUSE WITH A SHOTGUN
7 AND BASEBALL BATS AND---

8 Q. AND DID SOMEBODY COME INTO YOUR BATHROOM?

9 A. YES. TWO DUDES CAME IN MY BATHROOM WITH A SAWED-OFF
10 SHOTGUN.

11 Q. AND ONE OF THEM HAD A SHOTGUN?

12 A. YEAH.

13 Q. THE ONE WITH THE SHOTGUN, WHAT DID HE SAY?

14 A. HE SAY HE -- HE DEMANDED SOME MONEY, AND I TOLD HIM
15 I AIN'T HAD NOTHING BUT \$20 SO HE---

16 Q. DID HE -- DID HE TOUCH YOU?

17 A. YEAH, HE JACKED MY CLOTHES UP.

18 Q. AND AFTER HE JACKED YOUR CLOTHES UP, WHAT HAPPENED
19 NEXT?

20 A. I TOLD HIM I GOT TO GO IN MY ROOM TO GET THE MONEY,
21 AND THEN HE JACKED ME UP OFF THE -- OFF THE BATHTUB AND TOOK
22 ME ON DOWN AND STUFF TO MY BEDROOM. I WAS REALLY TAKING SO
23 LONG THAT HE SAY HE STUCK THE GUN AGAIN TO MY HEAD.

24 Q. HE STUCK THE SHOTGUN TO YOUR HEAD?

25 A. UH-HUH.

1 Q. AND AFTER HE STUCK THE SHOTGUN TO YOUR HEAD, WHAT
2 HAPPENED?

3 A. I HURRIED UP AND GAVE HIM THE \$20. THEN HE RAN OUT
4 OF THE ROOM AND PICKED UP MY HUSBAND'S SPEAKER AND FLEW OUT
5 THE DOOR.

6 Q. AND WERE YOU LATER SHOWN A PHOTO LINE-UP?

7 A. YEAH.

8 Q. AND DID YOU PICK OUT KEVIN MERCER?

9 A. YES, I DID.

10 Q. MR. MERCER WAS THE ONE THAT HAD THE SHOTGUN TO YOUR
11 HEAD?

12 A. YEAH.

13 Q. AND HE WAS THE ONE WHO ENDED UP BEING CONVICTED OF
14 BURGLARY AND STRONG ARMED ROBBERY?

15 A. YES.

16 Q. DO YOU KNOW HOW MANY PEOPLE TOTAL CAME IN YOUR
17 HOUSE?

18 A. THERE WAS SIX OF THEM.

19 Q. WAS HE THE ONLY ONE THAT WAS CONVICTED?

20 A. YEAH, HE WAS THE ONLY ONE.

21 MR. GRAHAM: THANK YOU, MS. GOODWIN.

22 MR. LITTLEJOHN: IF YOU WOULD INDULGE ME JUST A
23 MOMENT, YOUR HONOR.

24

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CROSS-EXAMINATION1
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BY MR. LITTLEJOHN:

Q. MS. GOODWIN, JUST A COUPLE OF QUESTIONS. IT'S YOUR UNDERSTANDING THAT MR. MERCER WAS THE ONLY ONE CONVICTED?

A. YEAH.

Q. OKAY. THE OTHER ONES WERE NOT CONVICTED---

A. NO.

Q. ---TO YOUR KNOWLEDGE?

A. NO.

Q. OKAY. AND YOU DON'T KNOW WHAT HAPPENED BEFORE THE SIX MEN GOT TO YOUR HOUSE.

A. NO.

Q. YOU DON'T KNOW WHAT KIND OF PLAN THEY HAD OR ANYTHING.

A. NO.

Q. THANK YOU, MA'AM.

A. ALL RIGHT.

MR. GRAHAM: YOU CAN STEP DOWN, MS. GOODWIN. THANK YOU.

THE WITNESS: ALL RIGHT.

THE COURT: LET'S TAKE A SHORT BREAK BEFORE WE CALL THE NEXT WITNESS. LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO GO BACK IN THE JURY ROOM FOR JUST A FEW MINUTES, PLEASE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 2:58 P.M.)

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

2 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

3 THE COURT: BE SEATED, PLEASE. BRING THE JURY IN.

4 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT

5 3:04 P.M.)

6 THE COURT: CALL YOUR NEXT WITNESS.

7 MR. GRAHAM: THE STATE CALLS JACIE WESTON TO THE

8 STAND.

9 JACIE WESTON, AFTER BEING DULY SWORN, TESTIFIED

10 AS FOLLOWS:

11 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR

12 FIRST AND YOUR LAST NAME.

13 THE WITNESS: JACIE WESTON. J-A-C-I-E W-E-S-T-O-N.

14 DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q. MR. WESTON, WHERE ARE YOU EMPLOYED RIGHT NOW?

17 A. I AM RETIRED, SIR.

18 Q. OKAY. WHERE DID YOU LAST WORK?

19 A. ALVIN S. GLENN DETENTION CENTER.

20 Q. THAT'S ALSO WHAT'S KNOWN -- USED TO BE KNOWN AS THE

21 RICHLAND COUNTY DETENTION CENTER?

22 A. YES, SIR.

23 Q. AND HOW LONG DID YOU WORK FOR THEM?

24 A. FIVE YEARS SEVEN MONTHS.

25 Q. AND IN WHAT CAPACITY DID YOU WORK WITH THE RICHLAND

1 COUNTY DETENTION CENTER?

2 A. DETENTION OFFICER.

3 Q. AND PRIOR TO YOUR EMPLOYMENT THERE, WERE YOU IN THE
4 ARMY RESERVES?

5 A. YES, SIR.

6 Q. AND HOW LONG WERE YOU IN THE ARMY?

7 A. TWENTY-FIVE YEARS.

8 Q. DO YOU REMEMBER AN INCIDENT THAT HAPPENED AT THE
9 RICHLAND COUNTY DETENTION CENTER ON DECEMBER 13TH OF 2000?

10 A. YES, SIR.

11 Q. AND I BELIEVE IT WAS A DISTURBANCE?

12 A. YES, SIR.

13 Q. CAN YOU TELL THE JURY WHAT -- WHAT HAPPENED?

14 A. ON THAT MORNING JUST ABOUT 7:00 I WAS A DORM OFFICER
15 IN UNIT INDIA, HOUSING APPROXIMATELY 60 INMATES. AND IN AN
16 ATTEMPT TO DO AN ORIENTATION, THE MORNING ORIENTATION, I WAS
17 CONSTANTLY INTERRUPTED, VERY LOUD NOISES, AND I WAS UNABLE TO
18 DO SO. AND AT THAT TIME I REQUESTED ASSISTANCE FROM THE
19 SERGEANT.

20 Q. DID YOU ORDER EVERYONE TO LOCKDOWN?

21 A. YES, SIR.

22 Q. WHAT DOES THAT MEAN?

23 A. LOCKDOWN MEAN THAT EVERYONE GO TO THEIR CELL BLOCK
24 UNTIL FURTHER NOTICE.

25 Q. AND DID EVERYBODY COMPLY WITH YOUR ORDER?

1 A. NO, SIR.

2 Q. AFTER YOU REQUESTED -- AFTER YOU REQUESTED BACK-UP,
3 WHAT HAPPENED NEXT?

4 A. SOME OF THE DETAINEES WENT TO THEIR BLOCKS; SOME DID
5 NOT. SOME BEGAN TO CONGREGATE AROUND THE DESK. AND AFTER I
6 HAD CALLED FOR THE ASSISTANCE, SERGEANT SCOTT REPORTED, AND
7 UPON HIS ARRIVAL SOME OF THE OTHERS THAT WAS LEFT OUT WENT
8 IN, BUT THERE WAS SEVEN STILL LEFT OUT WHEN HE GOT THERE.

9 Q. AND WAS MR. MERCER ONE OF THOSE INDIVIDUALS WHO
10 DIDN'T OBEY YOUR ORDER AND STAYED OUT?

11 A. YES, SIR.

12 MR. GRAHAM: PLEASE ANSWER ANY QUESTIONS THE DEFENSE
13 HAS.

14 CROSS-EXAMINATION

15 BY MS. KIMBROUGH:

16 Q. GOOD AFTERNOON, MR. WESTON. HOW ARE YOU?

17 A. FINE, MA'AM.

18 Q. SO ON DECEMBER 13TH THERE WERE A NUMBER OF INMATES
19 WHO WERE TOLD TO GO BACK INTO THEIR CELLS AND THEY FAILED TO
20 COMPLY?

21 A. YES, MA'AM.

22 Q. SO THIS WOULD HAVE BEEN A VIOLATION OF THE RULES?

23 A. YES, MA'AM.

24 Q. OKAY. AND FOR FAILURE TO COMPLY, I GATHER THEY
25 WOULD HAVE BEEN PUNISHED?

1 A. TO SOME EXTENT.

2 Q. YES, SIR. OKAY. AND SO MR. MERCER AND SIX OTHER
3 INDIVIDUALS WERE WRITTEN UP FOR THIS INCIDENT.

4 A. YES, MA'AM.

5 Q. AND NO ONE WAS HURT.

6 A. NO, MA'AM.

7 MS. KIMBROUGH: THANK YOU, SIR.

8 MR. GRAHAM: YOU CAN STEP DOWN, MR. WESTON. THANK
9 YOU. KENNETH SCOTT.

10 KENNETH SCOTT, AFTER BEING DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
13 FIRST AND YOUR LAST FOR THE RECORD.

14 THE WITNESS: MY NAME IS KENNETH SCOTT.
15 K-E-N-N-E-T-H, FIRST NAME. LAST NAME, S-C-O-T-T.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q. MR. SCOTT, WHERE ARE YOU EMPLOYED?

19 A. I'M EMPLOYED WITH THE ALVIN S. GLENN DETENTION
20 CENTER, RICHLAND COUNTY.

21 Q. AND WHAT RANK DO YOU HOLD THERE?

22 A. I'M A SERGEANT.

23 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE
24 RICHLAND COUNTY DETENTION CENTER?

25 A. ELEVEN YEARS.

1 Q. DO YOU REMEMBER RESPONDING TO A DISTURBANCE INCIDENT
2 ON DECEMBER 13TH OF 2000?

3 A. YES.

4 Q. AND THAT WAS TO BACK UP DETENTION OFFICER WESTON?

5 A. YES.

6 Q. WHAT HAPPENED WHEN YOU ARRIVED?

7 A. OKAY. AS I WAS ENTERING THE SALLY PORT TO THE UNIT,
8 LOOKING THROUGH THE GLASS DOOR TO THE UNIT, I COULD SEE SOME
9 OF THE INMATES RUNNING BACK TO THEIR ROOMS. AS I GOT INTO
10 THE UNIT, THERE WERE SEVERAL INMATES THAT STAYED OUT OF THEIR
11 ROOMS, AND AS I ORDERED THEM TO GO TO THEIR ROOMS, THEY DID.

12 Q. SO ONCE YOU ORDERED THEM TO GO TO THEIR ROOM, THEY
13 COMPLIED?

14 A. YES.

15 Q. WAS MR. MERCER ONE OF THE INMATES THAT YOU HAD TO
16 COME UP AND ORDER TO GO TO HIS ROOM?

17 A. YES, HE WAS.

18 Q. DID MR. MERCER RECEIVE ANY PUNISHMENT---

19 A. YES.

20 Q. ---FOR THAT DISTURBANCE?

21 A. YES, HE DID.

22 Q. AND DO YOU KNOW WHAT IT WAS?

23 A. TWENTY-FOUR HOURS LOCKDOWN.

24 Q. LET ME ASK YOU IF THIS IS AN ACCURATE STATEMENT OF
25 YOUR TESTIMONY: DECEMBER 13TH, 2002, RICHLAND COUNTY

1 DETENTION CENTER DISTURBANCE, 24-HOUR LOCKDOWN.

2 A. YES, IT IS.

3 MR. GRAHAM: THANK YOU, SERGEANT. PLEASE ANSWER ANY
4 QUESTIONS THE DEFENSE HAS.

5 CROSS-EXAMINATION

6 BY MR. LITTLEJOHN:

7 Q. GOOD AFTERNOON, SERGEANT SCOTT.

8 A. GOOD AFTERNOON.

9 Q. HOW ARE YOU?

10 A. JUST FINE. THANK YOU.

11 Q. SERGEANT SCOTT, YOU SAID THERE WERE ABOUT SEVEN OF
12 THESE GUYS?

13 A. I SAID SEVERAL.

14 Q. SEVERAL?

15 A. YES.

16 Q. DO YOU REMEMBER HOW MANY?

17 A. FROM THE INCIDENT REPORT THERE WAS EIGHT.

18 Q. EIGHT OF THEM.

19 A. YES.

20 Q. AND MERCER WAS ONE OF THEM?

21 A. YES, HE WAS.

22 Q. AND AS SOON AS YOU CAME IN THE DORM, THEY ALL WENT
23 TO THEIR ROOMS, DIDN'T THEY?

24 A. NO, SIR.

25 Q. DIDN'T YOU TELL THEM TO?

1 A. THE INMATES STARTED TO GO TO THEIR ROOMS WHEN---

2 Q. UH-HUH.

3 A. AFTER THE LOCKDOWN WAS DONE FOR THE ONES THAT
4 SCATTERED, EIGHT OF THEM WAS LEFT, AND MR. MERCER WAS ONE OF
5 THE EIGHT THAT WAS LEFT.

6 Q. OKAY. AND---

7 A. AND THEN I INSTRUCTED THEM -- THOSE EIGHT TO GO TO
8 THEIR ROOM AND THEY DID.

9 Q. AND THEY DID---

10 A. YES.

11 Q. ---AFTER YOU TOLD THEM TO.

12 A. YES.

13 Q. OKAY. THANK YOU, SIR.

14 A. OKAY.

15 MR. GRAHAM: STEP DOWN, SERGEANT. THANK YOU.

16 SERGEANT CHARLES DEVAUX.

17 CHARLES M. DEVAUX, AFTER BEING DULY SWORN,

18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE TAKE A SEAT IN THE CHAIR. STATE
20 YOUR FULL NAME, SPELLING YOUR FIRST AND YOUR LAST FOR THE
21 RECORD, PLEASE.

22 THE WITNESS: OKAY. HEY, YOUR HONOR. MY NAME IS
23 CHARLES MICHAEL DEVAUX. C-H-A-R-L-E-S D-E-V-A-U-X.

24

25

DIRECT EXAMINATION

1
2 BY MR. GRAHAM:

3 Q. MR. DEVAUX, WHERE ARE YOU EMPLOYED?

4 A. I'M EMPLOYED AT ALVIN S. GLENN DETENTION CENTER,
5 RICHLAND COUNTY.

6 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

7 A. BE SIX YEARS NEXT MONTH, THE FIRST.

8 Q. WHAT RANK DO YOU HOLD?

9 A. SERGEANT.

10 Q. AND PRIOR TO YOUR SERVICE WITH THE RICHLAND COUNTY
11 DETENTION CENTER, WHAT DID YOU DO?

12 A. I SPENT A LITTLE TIME IN THE MILITARY, ABOUT 15
13 YEARS. SOME ODD JOBS AFTER THAT.

14 Q. WERE YOU WORKING ON THE DAY OF APRIL 6TH OF 2001?

15 A. I WAS.

16 Q. AND DID YOU HAVE AN OCCASION TO RUN INTO MR. KEVIN
17 MERCER?

18 A. YES, SIR, I DID.

19 Q. WOULD YOU TELL THE JURY ABOUT WHAT HAPPENED THAT
20 DAY?

21 A. I WAS SUPERVISING THE UNIT, THE HOUSING UNIT, THAT
22 KEVIN MERCER WAS HOUSED IN. AND THE RULE IS THAT EVERYONE IS
23 TO BE PROPERLY DRESSED TO INCLUDE TUCKING IN YOUR TEE SHIRT
24 BEFORE COMING OUT ON REC. WHEN MY GUYS CAME OUT ON REC, I
25 NOTICED THAT HIS TEE SHIRT WAS NOT IN. I SPOKE WITH HIM

1 ABOUT IT, ASKED HIM TO TUCK IT IN. HE REFUSED. I TALKED
2 WITH HIM A COUPLE MORE TIMES. I TOLD HIM A COUPLE MORE
3 TIMES, GIVING HIM DIRECT ORDERS, BECAUSE THOSE ARE THE RULES.
4 HE STILL REFUSED TO TUCK HIS TEE SHIRT IN.

5 Q. AFTER HE REFUSED, WHAT DID YOU DO?

6 A. I SENT THE UNIT TO LOCKDOWN. I CALLED SERGEANT
7 JARVIS, WHICH WAS MY SUPERVISOR AT THE TIME, TO COME DOWN AND
8 GIVE ME ASSISTANCE WITH HIM.

9 Q. AND DID SERGEANT JARVIS ARRIVE DOWN ON THE UNIT?

10 A. HE DID, SIR.

11 Q. AND DID SERGEANT JARVIS ATTEMPT TO TALK TO MR.
12 MERCER?

13 A. SERGEANT JARVIS TALKED -- TRIED VERY HARD TO TALK TO
14 HIM TO GET HIM TO COMPLY.

15 Q. AND DID MR. MERCER COMPLY?

16 A. NO, HE DID NOT.

17 Q. AND WHAT WAS MR. MERCER'S ATTITUDE?

18 A. IT WAS SELFISH. HE DIDN'T CARE ANYTHING ABOUT
19 ANYBODY BUT HIMSELF.

20 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO
21 THE OPINION TESTIMONY.

22 THE COURT: I SUSTAIN THE OBJECTION, SIR, AS TO WHAT
23 YOUR CONCLUSIONS WERE FROM WHAT YOU SAW, FROM WHAT YOU
24 OBSERVED.

25 THE WITNESS: YES, SIR.

1 THE COURT: I'LL ALLOW YOU TO ASK HIM ABOUT WHAT HE
2 OBSERVED AT THAT MOMENT ABOUT MR. MERCER'S BEHAVIOR AND HIS
3 Demeanor.

4 MR. GRAHAM: YES, YOUR HONOR.

5 BY MR. GRAHAM:

6 Q. SERGEANT, HOW WAS -- NOT YOUR OPINION OF HOW HE WAS
7 ACTING BUT WAS HE TALKING QUIETLY? WAS HE ANIMATED? WAS HE
8 IN A LOUD VOICE? DESCRIBE IT IN THAT WAY.

9 A. HE WAS -- I DESCRIBED IT IN MY REPORT AS VERBALLY
10 COMBATIVE WITH SERGEANT JARVIS, CURSING, YOU KNOW.

11 Q. AFTER -- I'M SORRY. DID YOU HAVE ANYTHING ELSE TO
12 SAY, SERGEANT?

13 A. NO, SIR, I'M DONE.

14 Q. AFTER HE FAILED TO COMPLY WITH SERGEANT JARVIS'S
15 ORDER, WHAT HAPPENED WITH MR. MERCER?

16 A. SERGEANT JARVIS CALLED THE HALL OFFICER, AND HE WAS
17 ESCORTED UP TO THE SUPERVISOR'S OFFICE WHICH WAS CAPTAIN
18 BOWMAN.

19 Q. LIEUTENANT -- LIEUTENANT BOWMAN AT THE TIME, NOW
20 CAPTAIN.

21 A. HE WAS LIEUTENANT BOWMAN AT THE TIME, SIR.

22 MR. GRAHAM: THANK YOU. PLEASE ANSWER ANY QUESTIONS
23 THE DEFENSE HAS, SERGEANT.

24

25

CROSS-EXAMINATION

1
2 BY MR. LITTLEJOHN:

3 Q. VERY BRIEFLY. SERGEANT DEVAUX, THE PROBLEM WAS
4 DEALT WITH BY YOU, YOU AND THE OTHER OFFICERS, WAS IT NOT?

5 A. YES, SIR.

6 Q. AND HE WAS PUNISHED FOR IT?

7 A. YES, SIR.

8 MR. LITTLEJOHN: THANK YOU, SIR.

9 MR. GRAHAM: THANK YOU, SERGEANT. YOU CAN STEP
10 DOWN. THE STATE CALLS WILLIAM BOWMAN.

11 WILLIAM BOWMAN, AFTER BEING DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
14 FIRST AND LAST FOR THE RECORD, PLEASE, SIR.

15 THE WITNESS: MY NAME IS WILLIAM BOWMAN.

16 W-I-L-L-I-A-M B-O-W-M-A-N.

DIRECT EXAMINATION

17
18 BY MR. GRAHAM:

19 Q. I BELIEVE IT'S CAPTAIN BOWMAN?

20 A. YES, SIR.

21 Q. WHERE ARE YOU EMPLOYED, SIR?

22 A. AT THE ALVIN S. GLENN DETENTION CENTER IN RICHLAND
23 COUNTY.

24 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

25 A. EIGHTEEN YEARS.

1 Q. AS CAPTAIN, WHAT ARE YOUR RESPONSIBILITIES THERE?

2 A. I'M THE DIVISION MANAGER OF OPERATIONS, RESPONSIBLE
3 FOR TRANSPORTATION, INTAKE, RECORDS, DISCHARGE.

4 Q. BACK ON APRIL 6TH OF 2001, I BELIEVE YOU WERE A
5 LIEUTENANT AT THAT TIME?

6 A. YES, SIR.

7 Q. WHAT WOULD YOUR JOB RESPONSIBILITIES HAVE BEEN AT
8 THAT TIME?

9 A. I WAS THE WATCH COMMANDER IN CHARGE OF THE SECURITY
10 SHIFT.

11 Q. AND AS WATCH COMMANDER ON APRIL 6TH, 2001, DO YOU
12 REMEMBER MR. MERCER BEING BROUGHT TO YOU FOR DISOBEYING
13 DIRECT ORDERS?

14 A. YES, SIR, I DO.

15 Q. AND WOULD YOU TELL THE JURY WHAT HAPPENED?

16 A. MR. MERCER WAS BROUGHT TO THE SHIFT WATCH
17 COMMANDER'S OFFICE AFTER HE HAD REFUSED TO OBEY DIRECT ORDERS
18 FROM THE OFFICER IN THE UNIT, OFFICER DEVAUX, AND FROM
19 SERGEANT JARVIS WHO WAS THE ASSISTANT WATCH COMMANDER. HE
20 HAD BEEN INFORMED THAT HE WAS WEARING HIS UNIFORM IMPROPERLY
21 AND HE NEEDED TO COMPLY WITH THE FACILITY RULE TO PLACE HIS
22 TEE SHIRT ON THE INSIDE OF HIS UNIFORM. HE REFUSED OFFICER
23 DEVAUX AND HE ALSO REFUSED SERGEANT JARVIS.

24 SERGEANT JARVIS BROUGHT HIM TO THE OFFICE SO THAT I
25 COULD TRY TO TALK TO HIM, TO REASON WITH HIM. I TRIED TO

1 EXPLAIN TO HIM THAT THIS IS A VIOLATION OF FACILITY RULES,
2 AND IT WAS REALLY A MAJOR INFRACTION FOR DISOBEYING THE
3 ORDERS OF AN OFFICER AND AN ASSISTANT WATCH COMMANDER. AND
4 -- AND HE INFORMED ME THAT HE DIDN'T NEED TO OBEY THE RULES,
5 THAT HE WAS GOING TO BE RELEASED. HE WAS A FREE MAN. AND HE
6 REFUSED MY ORDER TO PUT HIS TEE SHIRT IN.

7 Q. SO YOU GAVE HIM A DIRECT ORDER, TOO?

8 A. YES, SIR.

9 Q. AND HE REFUSED THAT ORDER.

10 A. YES, SIR.

11 Q. AFTER HIS REFUSAL TO OBEY THE ORDERS OF SERGEANT
12 JARVIS, OFFICER DEVAUX, AND YOURSELF, DID YOU PLACE HIM IN
13 PRE-HEARING DETENTION?

14 A. YES, SIR, I DID.

15 Q. AND WHAT IS PRE-HEARING DETENTION?

16 A. PRE-HEARING DETENTION IS A SPECIAL HOUSING UNIT
17 WHERE DETAINEES ARE PLACED TO AWAIT ADJUDICATION BY A HEARING
18 OFFICER TO DETERMINE WHETHER THE CHARGES THAT THE STAFF HAD
19 BROUGHT AGAINST HIM TO BE VALID OR TRUE.

20 Q. LET ME SHOW YOU A -- LET ME SHOW YOU THIS AND ASK
21 YOU IF IT'S AN ACCURATE REFLECTION OF YOUR TESTIMONY:
22 APRIL 6TH, 2001, RICHLAND COUNTY DETENTION CENTER, DISOBEYING
23 DIRECT ORDER, PRE-HEARING DETENTION.

24 A. YES, SIR.

25 MR. GRAHAM: THANK YOU, CAPTAIN. PLEASE ANSWER ANY

1 QUESTIONS THE DEFENSE HAS.

2 CROSS-EXAMINATION

3 BY MR. LITTLEJOHN:

4 Q. GOOD AFTERNOON, CAPTAIN.

5 A. GOOD AFTERNOON.

6 Q. CAPTAIN, JUST A FEW QUESTIONS. WHEN AN INMATE
7 REFUSES TO OBEY AN ORDER OR VIOLATES ONE OF THE RULES, THE
8 GUARDS TAKE CARE OF THAT PROBLEM, DON'T THEY?

9 A. NORMALLY IF THE INMATE OBEYS THE RULE, THAT SHOULD
10 HAVE BEEN HANDLED AT THAT LEVEL, BUT WHEN AN INMATE REFUSES
11 TO OBEY THE ORDER, THEN IT'S GENERALLY PASSED UP THE CHAIN OF
12 COMMAND TO TRY TO RESOLVE THE SITUATION.

13 Q. OKAY. MY QUESTION IS: DETENTION OFFICERS,
14 CORRECTIONAL OFFICERS, THEY TAKE CARE OF THE PROBLEM AND THEY
15 HANDLE IT IF THE INMATE'S DISOBEYING THE RULES. ISN'T THAT
16 RIGHT?

17 A. SIR, IF THE INMATE OBEYS THE RULE, THEN THEY HANDLE
18 IT. IF THE INMATE REFUSES TO OBEY THE RULE, THEN THEY HAVE
19 TO PASS IT UP THE CHAIN OF COMMAND TO TRY TO HAVE THE
20 SITUATION RESOLVED. THAT'S LEFT TOTALLY TO THE INMATE. THE
21 INMATE IS THE ONE TO DETERMINE WHETHER IT'S ESCALATED OR NOT.
22 IF HE OBEYS THE OFFICER, THEN THAT'S THE END OF IT. IF HE
23 CHOOSES NOT TO OBEY THE OFFICER, THEN THE OFFICER HAS TO USE
24 THE NEXT APPROPRIATE STEPS IN ORDER TO TRY TO RESOLVE THE
25 SITUATION.

1 Q. OKAY. AND THE OFFICERS GENERALLY RESOLVE THE
2 SITUATION.

3 A. SIR, I GUESS GENERALLY---

4 Q. CAN YOU JUST SAY YES OR NO, CAPTAIN, AND THEN PLEASE
5 EXPLAIN YOUR ANSWER?

6 A. GENERALLY AN OFFICER CAN RESOLVE A SITUATION.

7 Q. OKAY. AND IF AN INMATE MESSES UP, HE GETS PUNISHED.
8 ISN'T THAT THE WAY IT WORKS?

9 A. NO, SIR, IT'S NOT -- WE'RE NOT ALLOWED TO PUNISH
10 PEOPLE. THEY'RE SANCTIONED FOR VIOLATIONS THAT THEY MAKE,
11 AND THE OFFICER CHOOSES WHATEVER IS APPROPRIATE, HE FEELS, IF
12 HE'S HANDLING THE SITUATION, GIVEN THE GUIDELINES OF THE
13 FACILITY.

14 Q. ALL RIGHT. I'M TALKING ABOUT THE FACILITY OVERALL,
15 NOT JUST THE INDIVIDUAL OFFICER. YOU AT THE -- AT THE
16 DETENTION CENTER, IF AN INMATES MESSES UP, YOU TAKE CARE OF
17 IT. AND SOMETIMES THEY'RE PUNISHED FOR VIOLATING THE RULES,
18 AREN'T THEY?

19 A. YES, SIR. THEY'RE NOT -- AS I SAID, THEY'RE NOT
20 PUNISHED. THEY'RE SANCTIONED. THEY HAVE A HEARING. THAT'S
21 WHY HE WAS PLACED ON PRE-HEARING DETENTION TO DETERMINE
22 WHETHER IT WAS VALID OR NOT. WE DON'T CHOOSE TO TAKE AND SAY
23 THAT WE PUNISH SOMEONE. THAT IS A HEARING. THE HEARING
24 OFFICER DETERMINES WHETHER WE HAVE ACTED APPROPRIATELY WHEN
25 WE PUT A SANCTION ON SOMEONE OR IF IT'S INAPPROPRIATE. WE'RE

1 NOT THE DETERMINERS. WE SIMPLY PLACE IT BEFORE SOMEONE WHO
2 MAKES THAT DECISION.

3 Q. ALL RIGHT. CAPTAIN BOWMAN, WAS KEVIN MERCER
4 PUNISHED FOR THIS INFRACTION?

5 A. SIR, HE WAS PLACED ON PRE-HEARING DETENTION. IF I
6 RECALL CORRECTLY, HE MAY HAVE GOTTEN OUT BEFORE HIS HEARING
7 WAS HELD.

8 Q. AND PRE-HEARING DETENTION, THAT'S IN ZULU?

9 A. THAT'S IN THE SPECIAL HOUSING UNIT; YES, SIR.

10 Q. WHICH IS CALLED ZULU.

11 A. IT'S THE -- THE FORMAL NAME OF IT IS UNIT ZULU; YES,
12 SIR.

13 Q. UNIT ZULU. OKAY. AND THAT'S SUPER MAXIMUM
14 SECURITY.

15 A. THAT IS OUR MAXIMUM LOCK-UP IN THE FACILITY, SIR.

16 Q. OKAY. SO HE DISOBEYED AN ORDER BY HAVING HIS SHIRT
17 OUT, AND HE ENDED UP IN MAXIMUM SECURITY.

18 A. YES, SIR, HE DID.

19 MR. LITTLEJOHN: THANK YOU, SIR.

20 MR. GRAHAM: THANK YOU, CAPTAIN. YOU CAN STEP DOWN.

21 MR. HUBBARD: THE STATE CALLS MARCUS BROWN.

22 MARCUS BROWN, AFTER BEING DULY SWORN, TESTIFIED
23 AS FOLLOWS:

24 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME FOR
25 THE RECORD, SPELLING YOUR FIRST AND LAST NAMES.

1 THE WITNESS: MARCUS BROWN. M-A-R-C-U-S B-R-O-W-N.

2 DIRECT EXAMINATION

3 BY MR. HUBBARD:

4 Q. DEPUTY BROWN, WHERE DO YOU WORK?

5 A. THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

6 Q. HOW LONG HAVE YOU BEEN THERE?

7 A. APPROXIMATELY SIX YEARS.

8 Q. AND BEFORE THAT WHERE DID YOU WORK?

9 A. TWO YEARS IN ORANGEBURG, CITY.

10 Q. AND BEFORE THAT?

11 A. A YEAR IN OHIO UNDERCOVER.

12 Q. AND BEFORE THAT WHERE DID YOU WORK?

13 A. I WAS IN SCHOOL IN -- I WAS IN THE MARINE CORPS

14 EIGHT YEARS.

15 Q. EIGHT YEARS?

16 A. UH-HUH.

17 Q. ON DECEMBER 5TH OF 2001 YOU WERE WORKING IN RICHLAND

18 COUNTY AS A DEPUTY?

19 A. YES, I WAS.

20 Q. AND DO YOU REMEMBER MAKING A TRAFFIC STOP ON THAT

21 VERY DAY, DECEMBER 5TH OF 2001?

22 A. YES, I DO.

23 Q. DO YOU KNOW WHAT KIND OF VEHICLE YOU STOPPED OR DO

24 YOU REMEMBER WHAT KIND OF VEHICLE?

25 A. IT WAS A FOUR-DOOR GRAY BUICK.

1 Q. AND WHY DID YOU STOP THAT BUICK?

2 A. THE VEHICLE WAS APPROACHING ME ON FLAMINGO WHICH IS
3 A STREET IN RICHLAND COUNTY. AS IT APPROACHED ME, HE FAILED
4 TO USE A TURN SIGNAL TO TURN ONTO SHORE CREST. AND AT THAT
5 POINT I STOPPED THE VEHICLE OR CUT ON MY BLUE LIGHTS TO STOP
6 THE VEHICLE.

7 Q. AND DID IT STOP?

8 A. THE VEHICLE DIDN'T STOP IMMEDIATELY. IT -- IT WAS
9 ON THE RIGHT SIDE OF THE ROADWAY. WHEN I CUT ON MY BLUE
10 LIGHTS, HE MOVED TO THE CENTER OF THE ROAD. IT'S A TWO-WAY
11 STREET WITH NO MARKERS DIVIDING THE STREET. WHEN HE PULLED
12 INTO THE CENTER, THAT GOT MY SUSPICIONS UP THAT SOMETHING WAS
13 WRONG. HE CONTINUED ON A LITTLE FARTHER AND THEN PULLED ALL
14 THE WAY OVER TO THE LEFT SIDE OF THE ROAD INTO THE DARK -- TO
15 A DARK AREA IN THE SHADOWS AND THEN STOPPED.

16 Q. NOW, WERE YOU ALONE IN YOUR CAR?

17 A. YES, I WAS.

18 Q. DID YOU HAVE A PARTNER IN ANOTHER VEHICLE?

19 A. YES, I HAD -- DEPUTY TONDA SCOTT WAS IN ANOTHER
20 VEHICLE BEHIND ME.

21 Q. ONCE THIS VEHICLE STOPPED, WHAT DID YOU DO?

22 A. I SAT THERE, CUT ON MY BRIGHT LIGHTS AND THE TAKE-
23 DOWN LIGHTS ON THE LIGHT BAR TO LIGHT UP THE INSIDE OF THE
24 VEHICLE. I SAT THERE A FEW MINUTES BECAUSE HIS ACTIONS
25 HEIGHTENED MY SUSPICIONS, AND I JUST SAT THERE JUST WATCHING

1 HIM, WATCHING THE PASSENGER. IN THE MILITARY THERE'S A
2 POSITION CALLED SITTING AT POSITION. HIS HEAD WAS STRAIGHT
3 AHEAD. HIS ARMS DIDN'T MOVE AND HE WASN'T TALKING AT ALL
4 WHICH IS KIND OF STRANGE, WHEN USUALLY DURING TRAFFIC STOPS
5 THE TWO OCCUPANTS ARE TALKING AMONGST EACH OTHER LIKE, "WHY
6 ARE THEY STOPPING US?" AND THAT SORT OF THING. THE DRIVER,
7 MR. MERCER, WAS DOING QUITE THE OPPOSITE. HE KEPT WATCHING
8 THE SIDE MIRROR AND THE REAR-VIEW MIRROR TRYING TO FIND OUT
9 WHERE I WAS APPROACHING THE VEHICLE.

10 Q. SO THERE ARE TWO OCCUPANTS. THE DRIVER IS SITTING
11 STILL AND THEN MR. MERCER WHO YOU IDENTIFIED TO BE THE
12 DRIVER?

13 A. NO. THE DRIVER WAS MR. MERCER---

14 Q. EXCUSE ME.

15 A. ---NOT THE PASSENGER.

16 Q. OKAY. I'M GOING TO CONFUSE YOU WITH MY QUESTIONS.

17 MR. MERCER IS DRIVING, LOOKING IN THE MIRROR. THE PASSENGER
18 IS SITTING STILL, NOT MOVING.

19 A. CORRECT.

20 Q. WHEN YOU APPROACH THE CAR, DOES YOUR PARTNER
21 APPROACH WITH YOU?

22 A. YES. AFTER WE'RE SITTING IN THE VEHICLE AND I'M
23 WATCHING THEM, MY PARTNER APPROACHES THE PASSENGER SIDE OF MY
24 VEHICLE AND HE STOOPS DOWN AND HE'S TALKING TO ME THROUGH THE
25 WINDOW THAT I HAD ROLLED DOWN, AND HE'S ASKING ME, "WHAT'S

1 GOING ON? WHAT'S UP?" AND I TOLD HIM THAT HE'S ACTING
2 STRANGE BECAUSE HE MOVED FROM ONE SIDE OF THE STREET TO
3 ANOTHER AND PARKED INTO THE DARK AREA INSTEAD OF RIGHT THERE
4 ON THE OTHER SIDE WHERE THAT STREETLIGHT WAS. AND I SAID --
5 I WAS EXPLAINING TO HIM WHAT I OBSERVED THEM DOING SITTING
6 THERE AND SAID ONE IS NOT MOVING AND IS LOOKING KIND OF
7 SUSPICIOUS, AND I SAID, "JUST BE CAREFUL WHEN WE COME UP TO
8 THE VEHICLE." AND THAT'S WHEN I EXITED MY VEHICLE AND WE
9 BEGAN WALKING UP TO THE -- TO THE VEHICLE THAT WE HAD JUST
10 STOPPED.

11 Q. WHICH SIDE OF THE VEHICLE DID YOU WALK UP ON?

12 A. I WALKED UP TO THE DRIVER'S SIDE.

13 Q. WHERE MR. MERCER WAS.

14 A. YES.

15 Q. AND HOW ABOUT YOUR PARTNER?

16 A. HE WALKED TOWARDS THE PASSENGER SIDE OF THE VEHICLE.

17 Q. AND WHEN YOU GOT TO THE WINDOW, WHAT DID YOU ASK MR.
18 MERCER?

19 A. I ASKED HIM THE STANDARD QUESTIONS: DRIVER'S
20 LICENSE, REGISTRATION, PROOF OF INSURANCE. WHEN WE MADE THE
21 STOP AND WE WAS APPROACHING THE -- I WAS KIND OF SPOOKED OF
22 THE WHOLE SITUATION JUST FROM HIM MOVING FROM ONE SIDE OF THE
23 STREET TO THE OTHER INTO THE SHADOWS, THAT I DID SOMETHING
24 THAT I RARELY DO EVEN THOUGH WE'RE TRAINED TO, WHEN WE MAKE A
25 TRAFFIC STOP, TO TOUCH THE BACK OF THE VEHICLE, MAKE SURE THE

1 TRUNK IS CLOSED.

2 Q. WHY DO YOU DO THAT?

3 A. WE DO THAT IN CASE SOMETHING BAD HAPPENS OR TO GET
4 OUR FINGERPRINTS ON THE VEHICLE SO IF THE VEHICLE SPEEDS AWAY
5 AND WE STOP THE VEHICLE LATER ON THAT NIGHT OR ANOTHER TIME;
6 OUR FINGERPRINTS CAN PUT THAT PERSON AT THE SCENE OF THE
7 INCIDENT. SO I TOUCHED THE BACK OF THE VEHICLE TO MAKE SURE
8 THE TRUNK WAS DOWN OR LOCKED AND APPROACHED THE DRIVER'S SIDE
9 OF THE VEHICLE. AND WHILE I WAS TALKING TO MR. MERCER, I
10 STOPPED JUST AT THE DOORJAMB TO WHERE HE'D HAVE TO TURN BACK
11 TOWARDS ME TRYING TO -- SO THAT HE WOULDN'T HAVE A CLEAR VIEW
12 OF ME. AND I SHINED MY FLASHLIGHT INTO THE VEHICLE AND ASKED
13 HIM FOR HIS DRIVER'S LICENSE AND REGISTRATION AND PROOF OF
14 INSURANCE.

15 Q. WHAT DID YOU NOTICE AT THAT TIME?

16 A. THAT'S WHEN I NOTICED THAT MR. MERCER WAS -- HAD HIS
17 SHOULDERS TURNED AND WAS REACHING DOWN WITH HIS RIGHT HAND TO
18 THE FLOOR AND---

19 Q. LET ME -- LET ME INTERRUPT YOU. WHEN HE'S REACHING
20 DOWN, WHERE IS HE REACHING?

21 A. BETWEEN HIS LEGS.

22 Q. OKAY.

23 A. TO THE FLOOR.

24 Q. ALL RIGHT. YOU CAN CONTINUE.

25 A. AT THAT TIME DEPUTY SCOTT, WHO WAS ON THE PASSENGER

1 SIDE, WALKED JUST AHEAD OF THE PASSENGER, SHINED HIS LIGHT
2 DOWN IN BETWEEN MR. MERCER'S LEGS, AND THAT'S WHEN HE SAW THE
3 HANDLE OF A PISTOL. AND HE TOLD -- THAT'S WHEN HE ADVISED ME
4 OF A GUN, AND I IMMEDIATELY DREW MY WEAPON AND STUCK IT INTO
5 THE WINDOW OF THE CAR AT MR. MERCER'S HEAD.

6 Q. AND THEN WHAT DID YOU DO?

7 A. I TOLD HIM TO PUT HIS -- TO PUT HIS HANDS ON TOP OF
8 THE STEERING WHEEL. HE BEGAN LAUGHING AND PUT HIS HANDS ON
9 THE STEERING WHEEL, AND DEPUTY SCOTT HAD THE OTHER PERSON,
10 THE PASSENGER, AT GUNPOINT AND I ASKED DID HE HAVE -- COULD
11 HE COVER BOTH OF THEM. HE SAID, "YES," AND THEN AT THAT TIME
12 I OPENED THE DOOR AND I PULLED HIM OUT, HOLSTERED MY WEAPON,
13 AND GOT HIM ON THE GROUND AND HANDCUFFED HIM.

14 Q. YOU SAID AT THIS TIME WHAT WAS HIS Demeanor?

15 A. HE WAS LAUGHING.

16 Q. WHAT ABOUT THE PASSENGER?

17 A. HE WAS STILL NOT MOVING, NOT SAYING A WORD, LOOKING
18 STRAIGHT AHEAD LIKE HE KNEW SOMETHING WAS---

19 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO
20 THE CONCLUSION.

21 THE COURT: SUSTAINED.

22 MR. HUBBARD: OKAY.

23 THE COURT: YOU CAN DESCRIBE WHAT YOU OBSERVED, BUT
24 DON'T TRY TO PREDICT WHAT HE WAS THINKING.

25 THE WITNESS: YES, SIR. HE WAS LOOKING STRAIGHT

1 AHEAD, STILL HANDS ON HIS KNEES AND NOT MOVING.

2 BY MR. HUBBARD:

3 Q. WHAT, IF ANYTHING, DID YOU CHARGE MR. MERCER WITH?

4 A. UNLAWFUL CARRYING OF A PISTOL.

5 Q. OKAY. I'M GOING TO SHOW YOU THIS STRIP. IT SAYS
6 DECEMBER 5TH, 2001, RICHLAND COUNTY, UNLAWFUL CARRYING OF A
7 PISTOL. IS THAT CORRECT?

8 A. YES.

9 Q. WHAT WAS NAME OF THE PASSENGER IN THAT CAR?

10 A. THE PASSENGER -- I DON'T REMEMBER -- EXACTLY
11 REMEMBER HIS NAME.

12 Q. DO YOU REMEMBER HIS LAST NAME?

13 A. I BELIEVE IT WAS MOHAMMED OR SOMETHING TO THAT
14 EFFECT.

15 Q. I TELL YOU WHAT; LET ME SHOW YOU SOMETHING HERE.
16 LET ME SEE IF I'VE GOT IT HERE. LET ME SEE IF I HAVE YOUR
17 OTHER PAPERWORK HERE. WAS IT MAJAHEE (PHONETIC) GAINES?

18 A. YES.

19 Q. DOES THAT SOUND RIGHT? NOW, AS FAR AS THIS CHARGE,
20 WAS MR. MERCER CONVICTED OF THAT CHARGE?

21 A. YES, HE WAS.

22 Q. DO YOU HAVE A DATE WHEN HE WAS CONVICTED?

23 A. I DON'T HAVE THE DATE WITH ME, NO.

24 Q. AGAIN, LET ME HAND YOU YOUR NOTES. PERHAPS I SHOULD
25 GIVE YOU YOUR FILE INSTEAD OF HAVING IT AT MY DESK. IF YOU

1 WILL, DO YOU SEE A DATE HE WAS CONVICTED?

2 A. YES. IT WAS JULY 11TH, 2002.

3 Q. THAT'S IN RICHLAND COUNTY?

4 A. YES, IT IS.

5 Q. AND DOES THAT SAY HE WAS CONVICTED OF UNLAWFULLY
6 CARRYING A PISTOL?

7 A. YES, IT DOES.

8 Q. WAS HE SENTENCED TO TIME SERVED, ABOUT TWO MONTHS?

9 A. YES.

10 Q. DID Y'ALL RECOVER THAT PISTOL?

11 A. YES, WE DID.

12 Q. AND WHERE WAS IT?

13 A. IT WAS UNDER THE DRIVER'S SEAT, THE HANDLE STICKING
14 OUT.

15 Q. OKAY. UNDER MR. MERCER'S SEAT?

16 A. UNDER MR. MERCER'S SEAT.

17 Q. AND THE VISIBLE PART OF THAT PISTOL WAS THE HANDLE.

18 A. YES.

19 Q. OKAY. IF YOU COULD, I'M GOING TO ASK YOU TO STEP
20 DOWN AND APPROACH THIS MAP. IF YOU COULD TAKE THIS STICKY
21 THAT SHOWS THE UNLAWFUL PISTOL ON SHORE CREST, WILL YOU
22 PLEASE POINT TO SHORE CREST WITH THAT STICKY?

23 A. I THINK IT'S DOWN... (THE WITNESS COMPLIES.)

24 Q. RETURN TO YOUR SEAT. DEPUTY BROWN, THIS STOP, WAS
25 IT A USUAL STOP FOR YOU?

1 A. NO.

2 Q. WAS THERE SOMETHING ABOUT THIS STOP THAT YOU STILL
3 REMEMBER?

4 A. YES. IN MY LAW ENFORCEMENT CAREER THERE'S A FEW
5 INSTANCES THAT STRUCK ME AS---

6 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO -- I'M
7 GOING TO OBJECT TO THIS LINE OF QUESTIONING. I THINK HE'S
8 GOING BEYOND THE FACTS OF THE STOP HERE.

9 MR. HUBBARD: OKAY. YOUR HONOR, THIS IS CHARACTER
10 AND IT SHOWS HOW HE -- HOW MR. MERCER MADE ANOTHER MAN FEEL
11 WHEN HE COMMITTED A CRIME. THE POSITION HE PUT ANOTHER
12 INDIVIDUAL IN IS WHAT I'M ARGUING, YOUR HONOR. I THINK
13 THAT'S APPROPRIATE IN THIS PHASE. IN A TYPICAL TRIAL IT
14 WOULDN'T BE.

15 THE COURT: THE WITNESS CAN TESTIFY AS TO WHAT HE
16 OBSERVED, AND HE CAN TESTIFY AS TO HOW HE FELT THE WITNESS
17 FELT.

18 MR. HUBBARD: YES, SIR.

19 THE COURT: BUT I'M NOT SURE EXACTLY HOW FAR, IF AT
20 ALL PAST THAT, HE WAS GOING, BUT THAT'S PROBABLY THE EXTENT
21 OF IT SO...

22 MR. HUBBARD: YES, SIR.

23 THE COURT: ANY OBJECTION TO THAT, MR. LITTLEJOHN?

24 MR. LITTLEJOHN: YOUR HONOR, AS LONG AS HE'S NOT
25 GOING TO SPECULATE OR GIVE US SOME SORT OF CONCLUSION. IF

1 HE'S GOING TO TESTIFY ABOUT WHAT HE SAW...

2 THE COURT: ALL RIGHT.

3 MR. LITTLEJOHN: AND THE RESULT OF THAT AND WHAT HE
4 DID.

5 THE COURT: PROCEED.

6 BY MR. HUBBARD:

7 Q. DEPUTY BROWN, HOW DID YOU FEEL DURING THIS STOP?

8 A. THIS IS ONE OF THE FEW TIMES THAT I FELT THAT MY
9 LIFE WAS IN DANGER DURING THE STOP.

10 Q. BECAUSE OF THAT PISTOL BEING UNDER THAT SEAT.

11 A. BECAUSE OF THE PISTOL BEING UNDER THE SEAT AND HIS
12 Demeanor AND THE WHOLE CIRCUMSTANCE BEHIND IT.

13 MR. HUBBARD: OKAY. THANK YOU, DEPUTY BROWN.

14 PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS.

15 CROSS-EXAMINATION

16 BY MR. LITTLEJOHN:

17 Q. DEPUTY BROWN, WHEN YOU STOPPED THIS VEHICLE, YOU
18 SAID IT WAS ORIGINALLY BECAUSE HE DIDN'T GIVE A TURN SIGNAL?

19 A. YES, SIR.

20 Q. AND WHEN YOU CUT ON THE BLUE LIGHT, THE VEHICLE
21 PULLED OVER?

22 A. NO, NOT IMMEDIATELY. NO.

23 Q. HE PULLED OVER AFTER A LITTLE BIT?

24 A. AFTER -- YEAH, AFTER A LITTLE BIT.

25 Q. YOU DIDN'T CHARGE HIM WITH FAILURE TO STOP FOR A

1 PURSUING LAW ENFORCEMENT VEHICLE, DID YOU?

2 A. NO.

3 Q. YOU DIDN'T CHARGE HIM FOR A BLUE LIGHT OFFENSE.

4 A. NO, I DID NOT.

5 Q. OKAY. AFTER HE PULLED OVER, DID YOU RUN HIS TAG?

6 A. HE HAD A PAPER TAG ON THE VEHICLE.

7 Q. OKAY. SO YOU -- YOU AND THE OTHER DEPUTY APPROACHED

8 THE VEHICLE? DID YOU RADIO IN THAT YOU HAD STOPPED HIM

9 BEFORE YOU APPROACHED THIS VEHICLE?

10 A. NO, WE DID NOT.

11 Q. YOU DID NOT? YOU JUST APPROACHED THE VEHICLE?

12 A. WE TALKED AMONGST EACH OTHER.

13 Q. UH-HUH.

14 A. THAT'S A COMMON PRACTICE WITH THE C.A.T. TEAM.

15 WE'RE A SPECIALIZED UNIT AND---

16 Q. OKAY. JUST TELL US WHAT YOU DID.

17 A. OKAY. BASICALLY I RADIOED TO DEPUTY TONDA SCOTT

18 THAT I'M GOING TO STOP THIS VEHICLE. HE DIDN'T USE HIS TURN

19 SIGNAL. AND THEN WHEN HE MADE THE TURN, I GOT IN BEHIND

20 HIM---

21 Q. OKAY.

22 A. TURNED MY LIGHTS ON.

23 Q. OKAY. YOU TURNED THE LIGHTS ON AND THEN YOU -- YOU

24 APPROACHED THE VEHICLE. YOU SAID YOU STOPPED AT THE -- AT

25 THE REAR OF THE VEHICLE AND PUT YOUR FINGERPRINTS ON IT?

1 A. CORRECT.

2 Q. OKAY. AND THEN YOU APPROACHED THE DRIVER'S SIDE?

3 A. CORRECT.

4 Q. OKAY. SO IT TOOK YOU A FEW SECONDS TO GET FROM YOUR
5 CAR UP TO WHERE THE DRIVER WAS?

6 A. YES.

7 Q. OKAY. NOTHING HAPPENED DURING THOSE FEW SECONDS?

8 A. NO.

9 Q. OKAY. AND YOU SAID WHEN YOU APPROACHED MR. MERCER
10 WHO WAS DRIVING THE VEHICLE, YOU SAID HE DID SOME SORT OF --
11 HE REACHED DOWN OR SOMETHING?

12 A. CORRECT.

13 Q. OKAY. YOU DIDN'T PUT THAT IN YOUR REPORT THOUGH,
14 DID YOU?

15 A. NO, I DID NOT.

16 Q. OKAY. AND YOU DIDN'T PUT ANYTHING IN YOUR REPORT
17 ABOUT YOU BEING AFRAID FOR YOUR LIFE, DID YOU?

18 A. NO, I DIDN'T.

19 Q. ANYBODY GET HURT THAT NIGHT?

20 A. NO.

21 Q. AND YOU SAID MR. MERCER WAS WITH SOMEBODY ELSE?

22 A. YES, HE WAS.

23 Q. AND HE EVENTUALLY ENTERED A GUILTY PLEA TO UNLAWFUL
24 CARRYING OF A PISTOL.

25 A. YES, HE DID.

1 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

2 MR. HUBBARD: NO MORE QUESTIONS.

3 THE COURT: YOU CAN STEP DOWN, SIR.

4 THE WITNESS: THANK YOU.

5 MR. HUBBARD: THE STATE CALLS TONDA SCOTT.

6 TONDA SCOTT, AFTER BEING DULY SWORN, TESTIFIED
7 AS FOLLOWS:

8 THE CLERK: HAVE A SEAT. WILL YOU PLEASE STATE YOUR
9 NAME AND SPELL YOUR FIRST NAME, PLEASE?

10 THE WITNESS: INVESTIGATOR TONDA SCOTT, RICHLAND
11 COUNTY SHERIFF'S DEPARTMENT.

12 DIRECT EXAMINATION

13 BY MR. HUBBARD:

14 Q. INVESTIGATOR SCOTT, HOW LONG HAVE YOU BEEN WITH
15 RICHLAND COUNTY?

16 A. APPROXIMATELY 10 YEARS.

17 Q. HAVE YOU WORKED IN LAW ENFORCEMENT PRIOR TO THAT?

18 A. NO, SIR.

19 Q. BACK IN DECEMBER OF 2001, DO YOU REMEMBER MAKING A
20 STOP ALONG WITH DEPUTY BROWN?

21 A. YES, SIR, I DO.

22 Q. AND CAN YOU PLEASE TELL US ABOUT THAT STOP?

23 A. THAT INCIDENT OCCURRED ON DECEMBER THE 5TH OF 2001.

24 Q. YES, SIR.

25 A. WE WERE -- WELL, AT THAT TIME I WAS A MEMBER OF THE

1 COMMUNITY ACTION TEAM OF THE SHERIFF'S DEPARTMENT, MYSELF AND
2 DEPUTY BROWN. BASICALLY THAT'S A GROUP OF OFFICERS THAT WE
3 GO OUT AND WE DO A LOT OF DRUG SUPPRESSION. WE DO COMMUNITY
4 SERVICE AND THINGS LIKE THAT IN DIFFERENT AREAS OF
5 COMPLAINTS. ON THAT PARTICULAR NIGHT WE WERE IN THE BLUFF
6 ESTATES SUBDIVISION BECAUSE THEY'VE HAD A LOT OF COMPLAINTS,
7 AND A LOT DIFFERENT CRIMES HAVE KIND OF INCREASED IN THAT
8 AREA. THE VEHICLE, A DARK-COLORED BUICK, WAS TRAVELING DOWN
9 FLAMINGO DRIVE, AND DEPUTY BROWN DID A TRAFFIC STOP ON THE
10 VEHICLE, TURNED IT AROUND, AND I ASSISTED HIM IN THE TRAFFIC
11 STOP.

12 Q. OKAY. SO YOU WERE BEHIND DEPUTY BROWN?

13 A. THAT'S CORRECT.

14 Q. DID YOU GET OUT IN ADDITION TO DEPUTY BROWN?

15 A. YES, I DID. DEPUTY BROWN HAD PULLED UP BEHIND THE
16 VEHICLE. I PULLED MY VEHICLE DIRECTLY BEHIND HIS. I EXITED
17 MY VEHICLE AND WALKED UP TO HIS PASSENGER SIDE WINDOW.
18 DEPUTY BROWN WAS STILL SITTING INSIDE OF HIS VEHICLE JUST
19 WATCHING THE VEHICLE IN FRONT OF US. AT THAT TIME DEPUTY
20 BROWN EXITED HIS VEHICLE, WALKED UP TOWARD THE DRIVER'S SIDE
21 OF THE STOPPED VEHICLE, AND I WALKED UP TOWARD THE PASSENGER
22 SIDE BECAUSE IT WAS OCCUPIED TWO TIMES OR TWO PERSONS WERE
23 INSIDE THE VEHICLE.

24 Q. AND WHAT WAS YOUR ROLE IN THIS STOP?

25 A. I WAS SIMPLY THE BACK-UP OFFICER, AND BASICALLY THE

1 BACK-UP OFFICERS JUST PRETTY MUCH WATCH THE SCENE AND JUST
2 KIND OF BASICALLY MAKE SURE THE SAFETY ASPECT OF THE STOP
3 IS -- IS PAID ATTENTION TO.

4 Q. AT SOME POINT DID YOU HAVE TO RESPOND TO DEPUTY
5 BROWN OR GIVE DEPUTY BROWN INFORMATION?

6 A. THAT'S -- THAT'S CORRECT. MY ATTENTION AT THAT
7 POINT WAS TOWARD THE PASSENGER. THE VEHICLE DID HAVE TWO
8 OCCUPANTS INSIDE. THE PASSENGER OF THE VEHICLE WAS SITTING
9 JUST STRAIGHT UP LOOKING STRAIGHT OUT THE FRONT WINDOW. HE
10 WAS BASICALLY MOTIONLESS AND DIDN'T SAY A WORD, AND I WAS
11 BASICALLY WATCHING HIM. OF COURSE, THAT WAS ONE FLAG THAT
12 POPPED UP IN MY HEAD BECAUSE MOST PEOPLE ARE USUALLY KIND OF
13 INQUISITIVE AS FAR AS A STOP OR THEY'RE TALKATIVE OR
14 SOMETHING TO THAT EFFECT.

15 SO AS I WAS WATCHING THE PASSENGER, DEPUTY BROWN WAS
16 TALKING TO THE DRIVER ON THE OTHER SIDE OF THE VEHICLE.
17 BECAUSE OF AN INCIDENT I'D HAD A COUPLE OF WEEKS BEFORE WHERE
18 A DEPUTY BACKED ME UP AND SAW A WEAPON---

19 MS. KIMBROUGH: OBJECTION, YOUR HONOR. THIS IS
20 BEYOND THE SCOPE OF THIS INCIDENT.

21 THE COURT: I SUSTAIN THE OBJECTION.

22 MR. HUBBARD: YES, SIR, YOUR HONOR.

23 BY MR. HUBBARD:

24 Q. LET'S NOT TALK ABOUT ANY OTHER INCIDENTS, BUT WHAT
25 HAPPENED AT THIS INCIDENT?

1 A. AT THAT POINT I TOOK MY FLASHLIGHT AND I LOOKED IN
2 THE FRONT WINDOW OF THE VEHICLE, LOOKING TOWARD THE BOTTOM OF
3 THE DRIVER'S SEAT. I SAW A WEAPON, THE BUTT OF A WEAPON
4 STICKING OUT FROM UNDER THE DRIVER'S SIDE SEAT.

5 Q. AND WHAT DID YOU DO WHEN YOU DETERMINED THAT THERE
6 WAS A WEAPON UNDER THE SEAT?

7 A. I ALERTED DEPUTY BROWN THAT THERE WAS A 1059 WHICH
8 IS A TERM FOR A WEAPON IN THE VEHICLE, AND AT THAT TIME I
9 COVERED THE PASSENGER WHILE DEPUTY BROWN DEALT WITH THE
10 DRIVER.

11 Q. NOW, LET ME ASK YOU THIS, AND THIS MAY SOUND LIKE A
12 SILLY QUESTION. BUT WHERE ARE YOU SUPPOSED TO KEEP A PISTOL,
13 IF YOU HAVE A PISTOL, IN AN AUTOMOBILE?

14 A. IN THE LOCKED COMPARTMENT OF THE VEHICLE, A GLOVE
15 BOX OR THE TRUNK AREA.

16 Q. AND IT WAS WHERE?

17 A. IT WAS UNDER THE DRIVER'S SIDE SEAT.

18 Q. AND WHO WAS THE DRIVER OF THAT VEHICLE?

19 A. MR. MERCER.

20 MR. HUBBARD: THANK YOU. PLEASE ANSWER ANY
21 QUESTIONS THE DEFENSE HAS.

22 CROSS-EXAMINATION

23 BY MS. KIMBROUGH:

24 Q. GOOD AFTERNOON, OFFICER SCOTT. HOW ARE YOU?

25 A. FINE. HOW ARE YOU DOING TODAY?

1 Q. MR. MERCER WAS CHARGED WITH UNLAWFUL WEAPON,
2 CARRYING OF A WEAPON?

3 A. THAT'S CORRECT.

4 Q. WAS ANYONE HURT DURING THIS INCIDENT?

5 A. NO, MA'AM.

6 MS. KIMBROUGH: THANK YOU.

7 MR. HUBBARD: NO FURTHER QUESTIONS.

8 THE COURT: YOU CAN STEP DOWN, SIR.

9 MR. GRAHAM: THE STATE WOULD CALL JOLI RISH.

10 JOLI RISH, AFTER BEING DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 THE CLERK: HAVE A SEAT. PLEASE STATE YOUR FULL
13 NAME, AND SPELL YOUR FIRST AND LAST NAMES.

14 THE WITNESS: MY FIRST NAME IS JOLI, J-O-L-I. LAST
15 NAME IS RISH, R-I-S-H.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q. MS. RISH, WHERE ARE YOU EMPLOYED?

19 A. ALVIN S. GLENN DETENTION CENTER, OTHERWISE KNOWN AS
20 RICHLAND COUNTY DETENTION CENTER.

21 Q. AND AS PART OF YOUR JOB THERE, ARE YOU THE CUSTODIAN
22 OF THE RECORDS FOR THE INMATES AT THE DETENTION CENTER?

23 A. THAT'S CORRECT.

24 Q. AND DID I ASK YOU TO BRING SOME INFORMATION
25 REGARDING DATES THAT MR. MERCER WAS BOOKED IN AND RELEASED

1 FROM THE RICHLAND COUNTY JAIL?

2 A. CORRECT.

3 Q. AND DO YOUR RECORDS REFLECT THAT MR. MERCER WAS
4 BOOKED INTO THE RICHLAND COUNTY JAIL ON JANUARY 14TH, 1997?

5 A. THAT IS CORRECT.

6 Q. AND WHEN WAS HE RELEASED?

7 A. JANUARY 22ND OF 1997.

8 Q. LET ME ASK YOU IF THAT IS A FAIR STATEMENT OF YOUR
9 TESTIMONY: BOOKED INTO RICHLAND COUNTY DETENTION CENTER,
10 R.C.D.C., ON JANUARY 14TH, 1997?

11 A. THAT IS CORRECT.

12 MS. KIMBROUGH: OBJECTION, YOUR HONOR. RELEVANCE.

13 THE COURT: HOLD ON A MINUTE, SIR. IS THAT FOR
14 ONE -- WHAT WAS THAT FOR? APPROACH THE BENCH, PLEASE.

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

16 THE COURT: I OVERRULE THE OBJECTION.

17 BY MR. GRAHAM:

18 Q. MS. RISH, AGAIN, WAS HE BOOKED INTO THE RICHLAND
19 COUNTY DETENTION CENTER ON DECEMBER 12TH, 1999?

20 A. THAT IS CORRECT.

21 Q. AND IS THAT A FAIR STATEMENT ABOUT BOOKED INTO
22 RICHLAND COUNTY DETENTION CENTER DECEMBER 12TH, 1999?

23 A. CORRECT.

24 Q. AND WHEN WAS HE RELEASED ON THAT TIME?

25 A. DECEMBER 31ST OF 1999.

1 Q. AND WAS HE BOOKED INTO THE RICHLAND COUNTY DETENTION
2 CENTER AGAIN ON MARCH 22ND, 2000?

3 A. THAT IS CORRECT.

4 Q. AND WHEN WAS HE RELEASED FROM THAT INCARCERATION?

5 A. APRIL 13TH OF 2001.

6 Q. AND HIS RELEASE DATE WAS APRIL 13TH, 2001, YOU SAID?

7 A. THAT'S CORRECT.

8 Q. AND FINALLY, MS. RISH, WAS HE BOOKED INTO THE
9 RICHLAND COUNTY DETENTION CENTER ON DECEMBER 6TH, 2001?

10 A. THAT IS CORRECT.

11 Q. AND HE WAS RELEASED ON THE FOLLOWING DAY,
12 DECEMBER 7TH, 2001?

13 A. CORRECT.

14 MR. GRAHAM: THANK YOU, MS. RISH. PLEASE ANSWER ANY
15 QUESTIONS THE DEFENSE HAS FOR YOU.

16 MS. KIMBROUGH: NO QUESTIONS, YOUR HONOR.

17 THE COURT: YOU CAN STEP DOWN, MA'AM.

18 MR. GRAHAM: THE STATE WOULD CALL LISA MCGILL.

19 LISA MCGILL, AFTER BEING DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q. MS. MCGILL, WHERE ARE YOU EMPLOYED?

24 A. AT THE DEPARTMENT OF PROBATION AND PAROLE.

25 Q. WHAT DO YOU DO FOR THE DEPARTMENT OF PROBATION AND

1 PAROLE?

2 A. WHAT I DO IS DO INTAKES.

3 Q. CAN YOU TELL THE JURY WHAT AN INTAKE IS?

4 A. WHAT AN INTAKE IS IS WHERE WE HAVE TO PROCESS THE
5 INDIVIDUAL AND WHERE WE DO FINGERPRINTS, DRUG TESTS, AND
6 INTERVIEWS AND GO OVER THE CONDITIONS AND SUPERVISIONS WITH
7 THEM.

8 Q. YOU HAVE SUCH A SOFT VOICE. COULD YOU SCOOT A
9 LITTLE CLOSER TO THE MICROPHONE OR MOVE THE MICROPHONE
10 TOWARDS YOU A LITTLE BIT? ON APRIL 13TH, 2001, DID YOU HAVE
11 AN OPPORTUNITY TO DO A PROBATION INTAKE ON MR. KEVIN MERCER?

12 A. YES, I DID.

13 Q. AND DURING THAT INTAKE DID YOU HAVE AN OPPORTUNITY
14 TO REVIEW THE STANDARD CONDITIONS OF PROBATION WITH HIM?

15 A. YES, I DID.

16 Q. AND WOULD YOU -- DO YOU HAVE A DOCUMENT THAT ASSISTS
17 YOU IN EXPLAINING WHAT THOSE STANDARD CONDITIONS ARE?

18 A. I DO.

19 Q. AND WOULD YOU READ THOSE CONDITIONS OUT, PLEASE, TO
20 THE JURY SO THEY CAN HEAR THEM?

21 A. SURE. NUMBER ONE STATES, "I SHALL REPORT IN PERSON
22 TO THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND
23 PARDON SERVICES' OFFICE ON THE DAY OF MY SENTENCING OR
24 RELEASE AND AS INSTRUCTED BY THE DEPARTMENT, AND I SHALL MAKE
25 COMPLETE AND TRUTHFUL REPORTS TO THE AGENT." NUMBER TWO, "I

1 SHALL NOT CHANGE MY RESIDENCE OR EMPLOYMENT WITHOUT THE
2 CONSENT OF MY AGENT. FURTHER, I SHALL ALLOW MY AGENT TO
3 VISIT MY HOME, AT MY PLACE OF EMPLOYMENT, OR ELSEWHERE ANY
4 TIME."

5 NUMBER THREE, "I SHALL NOT USE CONTROLLED SUBSTANCES
6 EXCEPT WHEN PROPERLY PRESCRIBED BY THE LICENSED PHYSICIAN NOR
7 CONSUME ALCOHOLIC BEVERAGES TO EXCESS OR ENTER ESTABLISHMENTS
8 WHOSE PRIMARY BUSINESS IS THE SALE AND DRINKING OF ALCOHOLIC
9 BEVERAGES. FURTHER, I SHALL SUBMIT TO A URINALYSIS, BLOOD
10 TEST, OR PROVIDE FORENSIC EVIDENCE WHEN INSTRUCTED BY AGENTS
11 BY THE DEPARTMENT, AND I AGREE THAT ANY OF THESE TEST RESULTS
12 MAY BE USED AS EVIDENCE IN ANY HEARING FOR THE VIOLATIONS OF
13 THE CONDITIONS OF MY SUPERVISION." NUMBER FOUR, "I SHALL NOT
14 POSSESS OR PURCHASE ANY FIREARMS OR ANY DANGEROUS WEAPONS AND
15 SHALL NOT ASSOCIATE WITH ANY PERSON WHO HAS A CRIMINAL RECORD
16 OR ANY PERSONS WHO MY AGENT HAS INSTRUCTED ME TO AVOID."

17 NUMBER FIVE, "I SHALL WORK DILIGENTLY AT A LAWFUL
18 OCCUPATION. FURTHER, I SHALL NOTIFY MY AGENT IF I BECOME
19 UNEMPLOYED." NUMBER SIX, "I SHALL NOT VIOLATE ANY FEDERAL,
20 STATE, OR LOCAL LAW, AND I SHALL IMMEDIATELY CONTACT MY AGENT
21 IF I'M EVER ARRESTED OR QUESTIONED BY A LAW ENFORCEMENT
22 OFFICIAL FOR ANY REASONS WHATSOEVER." NUMBER SEVEN, "I SHALL
23 PAY A SUPERVISION FEE AS DETERMINED BY THE DEPARTMENT."
24 NUMBER EIGHT, "I SHALL NOT LEAVE THE STATE WITHOUT PERMISSION
25 FROM MY AGENT. FURTHER, IF I AM EVER ARRESTED IN ANOTHER

1 STATE FOR VIOLATION OF THESE CONDITIONS, I HEREBY IRREVOCABLY
2 WAIVE ALL EXTRADITION RIGHTS I MAY OTHERWISE HAVE BEEN
3 ENTITLED TO AND AGREE TO RETURN TO SOUTH CAROLINA WHEN
4 DIRECTED BY MY AGENT, THE COURT, OR BY A WARRANT."

5 NUMBER NINE, "I SHALL OBEY ALL CONDITIONS OF
6 SUPERVISION SET FORTH IN THIS ORDER INCLUDING THE PAYMENTS OF
7 FINES, RESTITUTION, OR OTHER PAYMENTS AND THE SERVICES OF ANY
8 PERIOD OF INCARCERATION." NUMBER TEN, "I SHALL FOLLOW THE
9 ADVICE AND INSTRUCTIONS OF MY AGENT, AND I AGREE TO COMPLY
10 WITH ANY FURTHER CONDITIONS IMPOSED BY THE DEPARTMENT OR ITS
11 AGENTS." NUMBER ELEVEN, "I AGREE TO PAY RESTITUTION,
12 STATUTORY COLLECTION FEE, PAYABLE TO THE DEPARTMENT OF
13 PROBATION, PAROLE, AND PARDON SERVICES DIRECTED BY AGENTS OF
14 THE DEPARTMENT, 20 PERCENT COLLECTION FEE CHARGE." THOSE ARE
15 THE CONDITIONS.

16 Q. AND YOU REVIEWED THOSE CONDITIONS WITH MR. MERCER ON
17 APRIL 13TH, 2001?

18 A. I DID.

19 Q. AND WAS THAT OVER IN RICHLAND COUNTY?

20 A. YES.

21 Q. IN ADDITION TO REVIEWING THOSE CONDITIONS WITH HIM,
22 DID YOU ALSO PROVIDE HIM A SOUTH CAROLINA OFFENDER HANDBOOK?

23 A. I SURE DID.

24 Q. AND WHAT'S THE PURPOSE OF GIVING AN INDIVIDUAL ON
25 PROBATION AN OFFENDER HANDBOOK?

1 A. SO THAT WAY IF THEY SAY THEY DON'T HAVE EXTRA
2 CONDITIONS, THEY HAVE THE HANDBOOKS. THEY'RE ALSO INCLUDED
3 IN THE HANDBOOKS, THE SOUTH CAROLINA OFFENDER HANDBOOK.

4 Q. DO YOU REMEMBER WHETHER MR. MERCER HAD ANY QUESTIONS
5 ABOUT ANY OF THOSE CONDITIONS THAT YOU JUST EXPLAINED?

6 A. NO. WHENEVER I GO OVER THE CONDITIONS, I ASK THEM
7 QUESTIONS. GIVEN THE OPPORTUNITY, HE DIDN'T.

8 Q. LET ME ASK IF THIS IS A FAIR STATEMENT OF YOUR
9 TESTIMONY: APRIL 13TH, 2001, RICHLAND COUNTY PROBATION
10 INTAKE. MERCER ADVISED OF STANDARD CONDITIONS OF PROBATION
11 AND PROVIDED SOUTH CAROLINA OFFENDER HANDBOOK.

12 A. RIGHT.

13 MR. GRAHAM: THANK YOU, MS. MCGILL. PLEASE ANSWER
14 ANY QUESTIONS THE DEFENSE HAS FOR YOU.

15 MR. LITTLEJOHN: NO QUESTIONS, YOUR HONOR.

16 THE COURT: YOU CAN STEP DOWN, MA'AM.

17 THE WITNESS: THANK YOU.

18 MR. GRAHAM: THE STATE CALLS MICHAEL GARRIS.

19 MICHAEL GARRIS, AFTER BEING DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
22 FIRST AND LAST, PLEASE.

23 THE WITNESS: MY NAME IS MICHAEL GARRIS. MY NAME IS
24 SPELLED M-I-C-H-A-E-L G-A-R-R-I-S.

25

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. MR. GARRIS, WHERE ARE YOU CURRENTLY EMPLOYED?

A. STATE OFFICE OF VICTIM ASSISTANCE.

Q. WHAT DO YOU DO THERE?

A. RESTITUTION COORDINATOR.

Q. CAN YOU SCOOT UP A LITTLE CLOSER TO THE MICROPHONE
OR PULL THE MICROPHONE TOWARD YOU? I'M SORRY. WHAT DO YOU
DO FOR THE SOUTH CAROLINA OFFICE OF VICTIM ASSISTANCE?

A. RESTITUTION COORDINATOR.

Q. HOW LONG HAVE YOU WORKED THERE?

A. I'VE BEEN THERE SINCE APRIL OF LAST YEAR.

Q. PRIOR TO THAT JOB, WHERE WERE YOU EMPLOYED?

A. STATE OFFICE OF PROBATION AND PAROLE.

Q. SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND
PARDON SERVICES?

A. YES, SIR.

Q. WHEN YOU WERE EMPLOYED WITH THEM, WERE YOU THE
INITIAL AGENT TO SUPERVISE KEVIN MERCER?

A. YES, SIR.

Q. AND FOR WHAT CHARGES WAS MR. MERCER ON PROBATION?

A. MR. MERCER WAS ON PROBATION FOR P.W.I.D. MARIJUANA
AND BURGLARY SECOND AND STRONG ARM ROBBERY.

Q. THOSE WERE CHARGES THAT STEMMED FROM HIS CONVICTION
ON APRIL 11TH, 2001?

1 A. YES, SIR.

2 Q. AND WAS THERE ANY SPECIAL CONDITIONS ON THE
3 POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA CHARGE THAT
4 WAS IMPOSED BY THE JUDGE?

5 A. YES, SIR. MR. MERCER WAS ORDERED TO ATTEND
6 SUBSTANCE ABUSE COUNSELING AND HAVE DRUG SCREENS.

7 Q. ON MAY 2ND, 2001, WHAT, IF ANY, INFORMATION DID YOU
8 HAVE REGARDING MR. MERCER BEING REFERRED FOR DRUG COUNSELING?

9 A. I RECEIVED A LETTER FROM VOCATIONAL REHABILITATION
10 INDICATING THAT MR. MERCER HAD KEPT HIS APPOINTMENT AND THAT
11 HE WAS REFERRED TO INSIGHTS SUBSTANCE ABUSE PROGRAM.

12 Q. AND WHAT IS INSIGHTS?

13 A. IT'S A SUBSTANCE ABUSE COUNSELING PROGRAM IN WEST
14 COLUMBIA.

15 Q. AND HE WAS REFERRED THERE PURSUANT TO THE SPECIAL
16 CONDITION ON THE POSSESSION WITH INTENT TO DISTRIBUTE
17 MARIJUANA CHARGE?

18 A. YES.

19 Q. LET ME ASK YOU IF THIS IS AN ACCURATE REFLECTION OF
20 YOUR TESTIMONY SO FAR: MAY 2ND, 2001, KEVIN MERCER WAS
21 REFERRED TO DRUG COUNSELING AT INSIGHTS PURSUANT TO JUDGE'S
22 SENTENCE FOR P.W.I.D. MARIJUANA ON APRIL 11TH, 2001.

23 A. YES, SIR.

24 Q. AND DID YOU HAVE AN OFFICE VISIT ON FEBRUARY 5TH OF
25 2002 WITH MR. MERCER?

1 A. YES, SIR.

2 Q. THAT'S MOVING OVER INTO YOUR TYPED REPORT.

3 A. YES, SIR.

4 Q. AND AN OFFICE VISIT -- WHAT IS AN OFFICE VISIT?

5 A. IT'S WHEN THE OFFENDER COMES IN AND HE REPORTS. HE
6 PROVIDES INFORMATION AS FAR AS HIS ADDRESS, CURRENT
7 EMPLOYMENT, WHAT HE'S DOING IN THE COMMUNITY.

8 Q. WHAT, IF ANY, INFORMATION DID MR. MERCER SUPPLY YOU
9 AT THAT TIME REGARDING WHETHER HE HAD COMPLETED COUNSELING AT
10 INSIGHTS?

11 A. HE STATED THAT HE HAD COMPLETED INSIGHTS AS
12 INSTRUCTED BUT HADN'T PAY THE FEE REQUIRED FOR THE COMPLETION
13 LETTER.

14 Q. SO DID HE -- WAS HE ABLE TO PROVIDE YOU A COMPLETION
15 LETTER?

16 A. AT THAT PARTICULAR MOMENT, NO, SIR.

17 Q. WHAT, IF ANYTHING, DID HE TELL YOU ABOUT BEING
18 ARRESTED FOR AN UNLAWFUL CARRYING OF A PISTOL?

19 A. OFFENDER SAID THAT HE WAS ARRESTED ON 12/5/01 FOR
20 UNLAWFUL CARRYING OF A PISTOL.

21 Q. WHEN A PERSON YOU'RE SUPERVISING IS ARRESTED, ARE
22 THEY SUPPOSED TO WAIT TWO MONTHS BEFORE THEY TELL YOU? WHEN
23 ARE THEY SUPPOSED TO TELL YOU?

24 A. IT'S SUPPOSED TO BE AS SOON AS IT HAPPENS.

25 Q. OKAY. WAS THAT THE FIRST TIME THAT YOU HAD HEARD

1 ANYTHING ABOUT MR. MERCER BEING ARRESTED?

2 A. YES, SIR.

3 Q. IN ADDITION TO THAT, DID YOU ALSO RUN A DRUG SCREEN
4 ON MR. MERCER THAT DAY?

5 A. YES, SIR. MR. MERCER WAS TESTED FOR MARIJUANA AND
6 COCAINE AND TESTED POSITIVE FOR BOTH MARIJUANA AND COCAINE.

7 Q. HE WAS POSITIVE FOR BOTH MARIJUANA AND COCAINE.

8 A. YES, SIR.

9 Q. BASED ON THAT, WHAT DID YOU DO AS FAR AS SUBSTANCE
10 ABUSE COUNSELING?

11 A. MR. MERCER WAS REFERRED BACK TO INSIGHTS FOR
12 SUBSTANCE ABUSE COUNSELING, AND HIS SUPERVISION LEVEL WAS
13 SWITCHED TO HIGH SUPERVISION.

14 Q. AND WHAT DOES HIGH SUPERVISION MEAN?

15 A. HE REPORTS MONTHLY AND WE HAVE MONTHLY CONTACTS IN
16 THE FIELD AT HIS HOUSE.

17 Q. AND WAS HE TOLD TO REPORT BACK FOR ANOTHER OFFICE
18 VISIT?

19 A. YES, SIR. HE WAS ADVISED TO REPORT BACK ON MAY
20 THE - I'M SORRY - MARCH THE 4TH, 2002.

21 Q. LET ME ASK YOU IF THIS IS AN ACCURATE REFLECTION OF
22 YOUR TESTIMONY: FEBRUARY 5TH, 2002, DURING PROBATION OFFICE
23 VISIT MERCER CLAIMS THAT HE COMPLETED DRUG COUNSELING AT
24 INSIGHTS BUT FAILED TO PROVIDE COMPLETION LETTER. ADMITS HE
25 WAS ARRESTED DECEMBER 5TH, 2001, FOR UNLAWFUL CARRYING OF A

1 PISTOL. TESTS POSITIVE FOR T.H.C. AND COCAINE. REFERRED
2 BACK TO INSIGHTS. PLACED ON HIGH SUPERVISION. TOLD TO
3 REPORT BACK MARCH 4TH, 2002..

4 A. YES, SIR.

5 Q. T.H.C. IS THE COMPONENT IN MARIJUANA. THAT'S WHAT
6 THAT MEANT; RIGHT?

7 A. YES, SIR.

8 Q. AND WAS THERE ANOTHER OFFICE VISIT FOLLOWING THAT UP
9 ON MARCH 4TH OF 2002?

10 A. YES, SIR, THERE WAS.

11 Q. AND DURING THAT OFFICE VISIT, WHAT, IF ANYTHING, DID
12 MR. MERCER TELL YOU ABOUT HIS PARTICIPATION IN INSIGHTS, WHEN
13 HE WOULD START, AND HOW MUCH LONGER HE HAD LEFT TO GO?

14 A. MR. MERCER ADVISED ME THAT HE HAD STARTED INSIGHTS,
15 AND HE STATED THAT HE HAD TWO MORE MONTHS TO REPORT.

16 Q. LET ME SHOW YOU THIS AND ASK IF THIS IS ACCURATE:
17 MARCH 4TH, 2002, DURING PROBATION OFFICE VISIT, MERCER CLAIMS
18 HE HAS STARTED INSIGHTS AND STATES THAT HE HAS TWO MORE
19 MONTHS AT INSIGHTS.

20 A. YES, SIR.

21 Q. AND DID YOU HAVE ANOTHER OFFICE VISIT WITH MR.
22 MERCER ON APRIL 1ST OF 2002?

23 A. YES, SIR.

24 Q. AND DURING THAT OFFICE VISIT, WHAT, IF ANYTHING, DID
25 MR. MERCER SAY ABOUT STARTING INSIGHTS?

1 A. MR. MERCER ADVISED ME THAT HE STARTED INSIGHTS ON
2 APRIL THE 3RD, WHICH WAS TWO DAYS FROM THE REPORT DATE.

3 Q. SO ON MARCH 4TH, 2002, HE ADVISED YOU THAT HE HAS
4 ALREADY STARTED INSIGHTS?

5 A. YES, SIR.

6 Q. AND THEN ON APRIL 1ST HE COMES AROUND AND TELLS YOU
7 THAT HE'S JUST GETTING READY TO START.

8 A. YES, SIR.

9 Q. IS THIS AN ACCURATE REFLECTION OF YOUR TESTIMONY:
10 APRIL 1ST, 2002, DURING PROBATION OFFICE VISIT, MERCER CLAIMS
11 THAT HE STARTS INSIGHTS ON APRIL 3RD, 2002?

12 A. YES, SIR.

13 Q. MR. GARRIS, DID YOU EVENTUALLY MOVE ON AND PASS THAT
14 FILE OFF TO A DIFFERENT AGENT?

15 A. YES, SIR.

16 Q. PLEASE ANSWER ANY QUESTIONS THE -- OH, EXCUSE ME. I
17 DO HAVE ONE MORE THING FOR YOU. WAS MR. MERCER SUPPOSED TO
18 BE ABLE TO OWN ANY HANDGUNS DURING THE TIME HE WAS ON
19 PROBATION?

20 A. NO, SIR.

21 Q. LET ME SHOW YOU A DOCUMENT AND ASK IF YOU RECOGNIZE
22 THAT. HAVE YOU SEEN THAT BEFORE?

23 A. EARLIER TODAY.

24 MR. GRAHAM: YOUR HONOR, THAT IS A CERTIFIED COPY OF
25 A DOCUMENT FROM S.L.E.D. THAT WE WOULD LIKE TO INTRODUCE AT

1 THIS TIME.

2 MR. LITTLEJOHN: I'D LIKE TO SEE IT, PLEASE. (MR.
3 LITTLEJOHN LOOKS AT THE DOCUMENT.) YOUR HONOR, I OBJECT ON
4 THE GROUNDS OF RELEVANCY. I WOULD OBJECT TO IT BASED ON THE
5 AUTHENTICATION.

6 THE COURT: MAY I SEE IT, PLEASE? (THE COURT LOOKS
7 AT THE DOCUMENT.) THE OBJECTION ON THE BASIS OF RELEVANCE IS
8 OVERRULED.

9 (STATE'S EXHIBIT 34 WAS RECEIVED IN EVIDENCE.)
10 BY MR. GRAHAM:

11 Q. MR. GARRIS, COULD YOU PUBLISH THAT DOCUMENT TO THE
12 JURY, PLEASE?

13 A. YES, SIR. IT SAYS, "SEARCH FOR A CONCEALABLE WEAPON
14 PERMIT AND AN ARMED GUARD PERMIT WAS DONE. S.L.E.D. FOUND NO
15 EVIDENCE OF PERMIT BEING ISSUED BY THE STATE LAW ENFORCEMENT
16 REGULATORY UNIT." IT'S SIGNED BY BEN L. MOORE, LIEUTENANT AT
17 S.L.E.D.

18 Q. AND THAT'S FOR KEVIN MERCER.

19 A. YES, SIR.

20 MR. GRAHAM: MR. GARRIS, PLEASE ANSWER ANY QUESTIONS
21 THE DEFENSE HAS FOR YOU.

22 CROSS-EXAMINATION

23 BY MR. LITTLEJOHN:

24 Q. MR. GARRIS, THE SENTENCE WHICH YOU TOLD US ABOUT
25 THAT KEVIN WAS PLACED ON PROBATION FOR, OBVIOUSLY THE JUDGE

1 THAT SENTENCED HIM DECIDED HE NEEDED -- HE NEEDED SOME SORT
2 OF DRUG COUNSELING?

3 A. YES, SIR.

4 Q. THAT WAS A CONDITION OF HIS PROBATION.

5 A. YES, SIR.

6 Q. SO THE JUDGE FELT THAT THAT WAS NECESSARY TO BE A
7 PART OF HIS PROBATION. IS THAT RIGHT?

8 A. YES, SIR.

9 Q. OKAY. AND I BELIEVE YOU INDICATED THAT DURING YOUR
10 VISIT ON MAY 2ND, 2005, YOU ALSO REFERRED HIM TO THE INSIGHTS
11 DRUG COUNSELING PROGRAM?

12 A. MAY THE 2ND, 2005?

13 Q. NO, SIR, 2001.

14 A. NO, SIR, I DIDN'T REFER HIM. HE WAS REFERRED TO --
15 BY OUR INTAKE PERSON, VOCATIONAL REHABILITATION.

16 Q. OKAY.

17 A. I RECEIVED A LETTER FROM VOCATIONAL REHABILITATION
18 INDICATING THAT HE HAD BEEN REFERRED TO SUBSTANCE ABUSE
19 COUNSELING AT INSIGHTS.

20 Q. OKAY.

21 A. AND WHAT HAPPENS IS WHEN THEY COME THROUGH THE
22 INTAKE, SINCE IT'S GOING TO BE A -- SINCE THEY'RE GOING
23 THROUGH THAT REFERRAL SERVICE, THEY USUALLY ALLOW THEM TO DO
24 THAT REFERRAL.

25 Q. SO -- BUT THE BOTTOM LINE IS THE COURT FELT THAT HE

1 NEEDED DRUG COUNSELING.

2 A. YES, SIR.

3 Q. PROBATION THOUGHT HE NEEDED DRUG COUNSELING.

4 A. YES, SIR.

5 Q. AND HE, IN FACT, TESTED POSITIVE FOR MARIJUANA AND
6 COCAINE DURING ONE OF YOUR VISITS THERE?

7 A. YES, SIR.

8 MR. LITTLEJOHN: THAT'S ALL I HAVE.

9 MR. GRAHAM: YOU CAN STEP DOWN. THANK YOU. THE
10 STATE WOULD CALL CHERYL COOPER.

11 CHERYL COOPER, AFTER BEING DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
14 FIRST AND LAST NAMES.

15 THE WITNESS: MY NAME IS CHERYL COOPER. C-H-E-R-Y-I
16 C-O-O-P-E-R.

17 DIRECT EXAMINATION

18 BY MR. GRAHAM:

19 Q. MS. COOPER, WHERE ARE YOU EMPLOYED?

20 A. I'M WITH STATE PROBATION AND PAROLE, RICHLAND.

21 Q. WHAT'S YOUR JOB THERE?

22 A. I'M WITH THE RICHLAND COUNTY OFFICE, ASSISTANT AGENT
23 IN CHARGE.

24 Q. AND HOW LONG HAVE YOU WORKED FOR THE DEPARTMENT OF
25 PROBATION AND PAROLE?

1 A. ALMOST 15 YEARS.

2 Q. WERE YOU THE LAST AGENT WHO HANDLED MR. MERCER'S

3 CASE--

4 A. YES, SIR, I WAS.

5 Q. ---ON PROBATION?

6 A. YES, SIR.

7 Q. AND, IN FACT, SINCE THAT CASE WAS CLOSED, HAVE YOU
8 MAINTAINED IT IN YOUR POSSESSION AND CUSTODY AND KEPT IT AND
9 BROUGHT IT HERE TODAY WITH YOU?

10 A. YES, I HAVE.

11 Q. I ASKED YOU, I BELIEVE, TO BRING AN ORIGINAL COPY OF
12 THE STANDARD CONDITIONS OF PROBATION THAT MR. MERCER HAD. DO
13 YOU HAVE THAT WITH YOU?

14 A. YES, SIR, I DO.

15 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THAT
16 INTO EVIDENCE AT THIS TIME.

17 MS. KIMBROUGH: NO OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 (STATE'S EXHIBIT 35 WAS RECEIVED IN EVIDENCE.)

20 BY MR. GRAHAM:

21 Q. MS. COOPER, THAT IS THE CONDITIONS OF PROBATION THAT
22 EVERYONE ON PROBATION HAS TO APPLY -- OR HAS TO ABIDE BY. IS
23 THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. AT SOME POINT DID YOU FILE PAPERWORK TO HAVE MR.

1 MERCER'S PROBATION REVOKED?

2 A. YES, SIR, I DID.

3 Q. AND, IN FACT, WAS THAT PROBATION REVOKED?

4 A. IT WAS REVOKED IN FULL.

5 Q. I HAVE THREE CERTIFIED COPIES OF ORDERS. DO YOU
6 RECOGNIZE THOSE?

7 A. YES, SIR, I DO.

8 Q. ARE THOSE THE DOCUMENTS YOU PREPARED?

9 A. YES, SIR.

10 Q. AND THAT'S THE PAPERWORK FOR THE REVOCATION OF
11 PROBATION ON THE POSSESSION WITH INTENT TO DISTRIBUTE
12 MARIJUANA?

13 A. YES, SIR, THAT'S ONE.

14 Q. ANOTHER ONE IS FOR THE PROBATION FOR THE STRONG ARM
15 ROBBERY?

16 A. YES, SIR.

17 Q. AND THE LAST ONE IS FOR THE PROBATION ON THE
18 BURGLARY SECOND.

19 A. THAT'S CORRECT.

20 Q. WHAT DATE DID THE -- WERE THOSE SENTENCES REVOKED?

21 A. JANUARY 30TH, 2006.

22 Q. AS TO THE REVOCATION ON THE BURGLARY, WHAT WAS THE
23 SENTENCE?

24 A. THE BALANCE OF THE SUSPENDED SENTENCE WHICH WAS FIVE
25 YEARS AND SIX MONTHS.

1 Q. AND HE WAS ORDERED TO SERVE THAT IN THE SOUTH
2 CAROLINA DEPARTMENT OF CORRECTIONS?

3 A. YES, SIR.

4 Q. AS TO THE ROBBERY CHARGE, WHAT WAS THE SENTENCE?

5 A. THE BALANCE OF THE SUSPENDED SENTENCE WHICH WAS FIVE
6 YEARS AND SIX MONTHS.

7 Q. AND AS TO THE REVOCATION ON THE POSSESSION WITH
8 INTENT TO DISTRIBUTE MARIJUANA?

9 A. THE BALANCE WHICH WAS THREE YEARS AND SIX MONTHS,
10 ALL RUNNING CONCURRENTLY.

11 Q. AND WHAT WAS THE BASIS FOR YOUR PREPARING THAT
12 PAPERWORK? WHAT CONDITIONS HAD MR. MERCER VIOLATED?

13 A. I ISSUED A CITATION, GIVEN THAT HE WAS IN THE
14 DEPARTMENT OF CORRECTIONS AND...

15 Q. LET ME SHOW THESE TO YOU.

16 A. SURE.

17 MR. GRAHAM: YOUR HONOR, I WOULD LIKE TO INTRODUCE
18 THE ORDERS OF REVOCATION; THERE ARE THREE. AND I WOULD ASK
19 THEY BE INTRODUCED AT THIS TIME.

20 THE COURT: ANY OBJECTION?

21 MS. KIMBROUGH: NO OBJECTION.

22 THE COURT: THEY'RE ADMITTED.

23 (STATE'S EXHIBITS 36 THROUGH 38 WERE RECEIVED IN
24 EVIDENCE.)

25

1 BY MR. GRAHAM:

2 Q. NOW, MS. COOPER, I'M GOING TO GIVE YOU THOSE BACK.
3 THE ORDER THAT THE JUDGE SIGNED, WHAT CONDITIONS WERE
4 VIOLATED?

5 A. CONDITIONS OF PROBATION ONE, THREE, FOUR, SIX,
6 SEVEN, TEN, AND THE SPECIAL CONDITIONS.

7 Q. AND WOULD YOU EXPLAIN TO THE JURY ON THE OTHER
8 DOCUMENTS THAT YOU HAVE IN YOUR HAND WHAT WERE THE BASIS OF
9 THOSE VIOLATIONS?

10 A. BASICALLY FAILING TO REPORT, FAILING TO REFRAIN FROM
11 USING CONTROLLED SUBSTANCES BY TESTING POSITIVE FOR T.H.C.,
12 WHICH IS MARIJUANA, AND COCAINE AND FAILING TO COMPLETE THE
13 SUBSTANCE ABUSE COUNSELING AS ORDERED. HE FAILED TO REFRAIN
14 FROM VIOLATING THE LAW AS EVIDENCED BY HIS CONVICTION ON
15 JULY THE 11TH, 2002, FOR UNLAWFUL CARRYING OF A PISTOL. THAT
16 WAS IN RICHLAND COUNTY COURT OF GENERAL SESSIONS.

17 ADDITIONALLY, HE FAILED TO REPORT, BEING ARRESTED ON
18 OR ABOUT MAY 17TH, '02, BY THE LEXINGTON COUNTY SHERIFF'S
19 DEPARTMENT WITH THE CHARGES OF MURDER, ROBBERY, CONSPIRACY,
20 POSSESSION OF A FIREARM DURING A CRIME. HE FAILED TO PAY OUR
21 FEE, THE SUPERVISION FEES, AND THOSE CONDITIONS VIOLATE THE
22 -- CONSTITUTE THE VIOLATION OF FAILING TO ADVISE -- FOLLOW
23 THE ADVICE AND INSTRUCTION OF HIS AGENT.

24 Q. AND YOU HAVE THREE DOCUMENTS THERE. ONE, AGAIN, IS
25 FOR THE POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

1 CHARGE . ONE IS FOR THE BURGLARY SECOND CHARGE, AND ONE IS
2 FOR THE STRONG ARM ROBBERY CHARGE?

3 A. ACTUALLY, THE COMBINATION, ALL OF THE INDICTMENTS
4 LISTED ON THE CITATION. THERE'S JUST THREE COPIES. THEY'RE
5 ALL---

6 Q. SO ACTUALLY WE CAN JUST INTRODUCE ONE---

7 A. THAT'S CORRECT.

8 Q. ---AND NOT ALL OF THEM.

9 A. YES, SIR.

10 MR. GRAHAM: YOUR HONOR, WE WOULD INTRODUCE THAT
11 INTO EVIDENCE AT THIS TIME.

12 MS. KIMBROUGH: NO OBJECTION.

13 THE COURT: IT'S ADMITTED.

14 (STATE'S EXHIBIT 39 WAS RECEIVED IN EVIDENCE.)

15 BY MR. GRAHAM:

16 Q. MS. COOPER, LET ME ASK IF THIS IS AN ACCURATE
17 STATEMENT OF YOUR TESTIMONY: JANUARY 30TH, 2006, IN RICHLAND
18 COUNTY, PROBATION REVOKED ON BURGLARY, SENTENCED TO FIVE
19 YEARS AND SIX MONTHS IN PRISON. PROBATION REVOKED ON
20 ROBBERY, SENTENCED TO FIVE YEARS AND SIX MONTHS IN PRISON.
21 PROBATION REVOKED ON POSSESSION WITH INTENT TO DISTRIBUTE
22 MARIJUANA, SENTENCED TO THREE YEARS AND SIX MONTHS IN PRISON.
23 VIOLATION OF CONDITIONS OF PROBATION ONE, THREE, FOUR, SIX,
24 SEVEN, TEN, AND SPECIAL CONDITIONS. IS THAT ACCURATE?

25 A. THAT'S ACCURATE.

1 MR. GRAHAM: I THINK THAT'S IT, MS. COOPER. PLEASE
2 ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

3 CROSS-EXAMINATION

4 BY MS. KIMBROUGH:

5 Q. GOOD AFTERNOON, MS. COOPER. HOW ARE YOU?

6 A. JUST FINE. THANK YOU.

7 Q. GOOD. JUST ONE QUICK QUESTION. SO PART OF THE
8 BASIS FOR KEVIN MERCER'S PROBATION BEING REVOKED WAS THE FACT
9 THAT HE HAD ONGOING SUBSTANCE ABUSE PROBLEMS?

10 A. THAT HE---

11 Q. TESTING POSITIVE---

12 A. THAT HE TESTED POSITIVE, YES.

13 Q. YES, MA'AM. OKAY. THANK YOU.

14 A. UH-HUH.

15 MR. GRAHAM: YOU CAN STEP DOWN, MS. COOPER.

16 THE WITNESS: THANK YOU.

17 MR. GRAHAM: THE STATE CALLS LIEUTENANT MCDANIELS.

18 ERNESTINE F. MCDANIELS, AFTER BEING DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
21 FIRST AND LAST NAMES.

22 THE WITNESS: MY NAME IS ERNESTINE FAVOR MCDANIELS.
23 E-R-N-E-S-T-I-N-E M-C-D-A-N-I-E-L-S.

24
25

1 OBJECTION AS ON THE PREVIOUS CUSTODIAN AT RICHLAND COUNTY.

2 THE COURT: RELEVANCE?

3 MR. LITTLEJOHN: YES, SIR.

4 THE COURT: OVERRULED AS TO RELEVANCE.

5 BY MR. GRAHAM:

6 Q. LET ME ASK YOU IF THAT'S ACCURATE: MAY 17TH, 2002,
7 LEXINGTON COUNTY; ARRESTED FOR MURDER OF TRACY DAVIS AND HELD
8 AT THE LEXINGTON COUNTY DETENTION CENTER.

9 A. THAT'S CORRECT.

10 Q. NOW, LIEUTENANT, WAS MR. MERCER MOVED FROM THE
11 LEXINGTON COUNTY DETENTION CENTER TO THE SOUTH CAROLINA
12 DEPARTMENT OF CORRECTIONS?

13 A. YES, HE WAS.

14 Q. AND WHEN DID THAT OCCUR?

15 A. APRIL 13TH, 2004.

16 Q. AND WHAT WAS THE PURPOSE OF HIM BEING MOVED?

17 A. WE REQUESTED THAT HE BE MOVED AND HELD THERE AS A
18 SAFEKEEPER FOR THE DETENTION CENTER.

19 Q. WHAT IS -- WHAT IS SAFEKEEPING?

20 A. SAFEKEEPING IS A REQUEST THAT WE MAKE TO THE
21 GOVERNOR'S OFFICE THROUGH S.C.D.C. TO HOUSE INMATES FOR US
22 UNTIL COURT FOR PROBLEMS THAT THEY -- PROBLEMS THAT THEY
23 CAUSE IN THE DETENTION CENTER.

24 Q. AND WERE SOME OF THOSE PROBLEMS RELATED TO HIS
25 ASSAULT ON ANOTHER INMATE?

1 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT
2 UNLESS THIS WITNESS HAS FIRSTHAND KNOWLEDGE.

3 THE COURT: LEADING. SUSTAINED AS TO LEADING.
4 BY MR. GRAHAM:

5 Q. LIEUTENANT, WHAT, IF ANY, AFFIDAVIT DID YOU PREPARE
6 REGARDING SAFEKEEPING?

7 A. I PREPARED AN AFFIDAVIT OF SAFEKEEPING WITH SPECIFIC
8 AS TO THE REASON WE WANTED HIM TRANSFERRED THERE.

9 Q. AND WAS ONE OF THOSE REASONS FOR THE ASSAULT ON AN
10 INMATE?

11 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT
12 AGAIN.

13 THE COURT: SUSTAINED.

14 MR. GRAHAM: IF I CAN APPROACH, YOUR HONOR?

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

16 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IT
17 SEEMS TO ME LIKE A GOOD TIME TO TAKE A SHORT BREAK. SO I'M
18 GOING TO SEND YOU BACK IN THE JURY ROOM FOR RIGHT NOW.

19 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
20 4:24 P.M.)

21 THE COURT: ALL RIGHT. SO YOU'RE TRYING TO PROVE
22 NOW THAT AT THIS PARTICULAR POINT IN TIME MERCER WAS
23 TRANSFERRED OR THAT THEY -- THAT THE DETENTION CENTER ASKED
24 THAT HE BE TRANSFERRED TO THE DEPARTMENT OF CORRECTIONS
25 BECAUSE OF THE INCIDENT THAT LATER BECAME THE SUBJECT OF HIS

1 CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL.

2 MR. GRAHAM: CORRECT, YOUR HONOR.

3 THE COURT: AND YOUR OBJECTION TO HER -- SO YOUR
4 QUESTION TO HER IS WHY WAS HE -- WHY DID YOU REQUEST THE
5 TRANSFER?

6 MR. GRAHAM: CORRECT.

7 THE COURT: AND YOUR OBJECTION IS THAT SHE DOESN'T
8 HAVE PERSONAL KNOWLEDGE ABOUT THE INCIDENT THAT LED TO THE
9 REQUEST FOR TRANSFER.

10 MR. LITTLEJOHN: YOUR HONOR, I'VE GOT NO PROBLEM
11 WITH HER TESTIFYING THAT BECAUSE OF AN INCIDENT THAT OCCURRED
12 ON SUCH AND SUCH A DATE THAT WE REQUESTED THAT HE BE
13 TRANSFERRED TO THE SAFEKEEPING UNIT, BUT SHE DOESN'T HAVE, AS
14 FAR AS I KNOW, ANY PERSONAL KNOWLEDGE OF THAT PARTICULAR
15 INCIDENT AND---

16 THE COURT: WELL, THAT'S LIKE A LONG VERSION OF YES,
17 I THINK, ISN'T IT?

18 MR. LITTLEJOHN: YES, YOUR HONOR.

19 THE COURT: OKAY. SO -- BUT THE -- BUT YOU WANT TO
20 GO BEYOND THAT. YOU WANT TO GO BEYOND THE QUESTION OF THE
21 REFERENCE TO THE INCIDENT ON A CERTAIN DATE. YOU WANT HER TO
22 TELL WHAT THE INCIDENT WAS.

23 MR. GRAHAM: NO. I WAS TRYING TO ASK A LEADING
24 QUESTION, AS I INDICATED, YOUR HONOR, TO AVOID THE WORD
25 LYNCHING BECAUSE I DIDN'T WANT HER TO READ IT OFF OF HER

1 AFFIDAVIT THAT SHE PREPARED SINCE MR. MERCER GOT A DIRECTED
2 VERDICT ON THAT CHARGE. SO MY QUESTION WAS LEADING SAYING
3 BECAUSE OF THE ASSAULT ON ANOTHER INMATE...

4 THE COURT: ALL RIGHT. WE'RE DEALING WITH TWO
5 DIFFERENT OBJECTIONS. ONE WAS TO LEADING WHICH I UNDERSTAND
6 WHY YOU WERE LEADING THE WITNESS, BUT THEN WE GET BACK TO
7 WHETHER OR NOT YOU WERE LEADING THE WITNESS INTO TESTIFYING
8 ABOUT THE DETAILS OF THAT EVENT ON THAT DATE.

9 MR. GRAHAM: I WAS NOT GOING -- THAT WAS THE LAST
10 QUESTION I WAS GOING TO ASK ON THAT SUBJECT. I WAS NOT GOING
11 TO GO INTO THE DETAILS OF THAT ASSAULT.

12 THE COURT: ALL RIGHT.

13 MR. GRAHAM: NOT WITH THIS WITNESS.

14 THE COURT: THAT SHOULD TAKE CARE OF, SHOULDN'T IT?

15 MR. LITTLEJOHN: JUDGE, IF HE'S NOT GOING INTO ANY
16 DETAILS, THEN I DON'T HAVE ANY OBJECTION, BUT AS I UNDERSTOOD
17 THE QUESTION HE WAS GOING TO... TO ANSWER THE COURT'S
18 QUESTION, YES.

19 THE COURT: I DIDN'T MEAN TO BE SARCASTIC; I'M
20 SORRY.

21 MR. LITTLEJOHN: YOU WEREN'T. I WAS JUST -- I JUST
22 REFLECTED ON MY ANSWER WAS TOO LONG.

23 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: BE SEATED. BRING THEM IN. ALL RIGHT.

1 WE GOT THIS UNDERSTOOD NOW, THIS PROBLEM WORKED OUT?

2 MR. LITTLEJOHN: (NODDED HEAD UP AND DOWN.)

3 THE COURT: THAT'S A SHORT VERSION OF YES?

4 MR. MYERS: YES, SIR.

5 MR. LITTLEJOHN: IT'S A VERY SHORT VERSION OF YES.

6 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
7 4:48 P.M.)

8 THE COURT: YOU MAY RESUME.

9 MR. GRAHAM: THANK YOU, YOUR HONOR.

10 BY MR. GRAHAM:

11 Q. LIEUTENANT MCDANIELS, BEFORE WE BROKE WE WERE
12 DISCUSSING SAFEKEEPING, AND I ASKED YOU IF ONE OF THE REASONS
13 THAT MR. MERCER WAS MOVED FOR SAFEKEEPING WAS AS A RESULT OF
14 HIS ASSAULT ON ANOTHER INMATE.

15 A. THAT'S CORRECT.

16 Q. LET ME ASK YOU IF THIS IS A FAIR STATEMENT:
17 APRIL 13TH, 2004, LEXINGTON COUNTY DETENTION CENTER TO SOUTH
18 CAROLINA DEPARTMENT OF CORRECTIONS. MOVED FROM LEXINGTON
19 COUNTY DETENTION CENTER TO SOUTH CAROLINA DEPARTMENT OF
20 CORRECTIONS FOR SAFEKEEPING.

21 A. YES.

22 Q. AND, LIEUTENANT, AT SOME POINT WAS MR. MERCER
23 BROUGHT BACK TO THE LEXINGTON COUNTY DETENTION CENTER?

24 A. YES, HE WAS.

25 Q. AND WHAT DATE WAS THAT?

1 A. APRIL THE -- I'M SORRY. JANUARY THE 11TH, 2006.

2 Q. JANUARY THE 11TH, 2006?

3 A. YES.

4 Q. RETURNED TO THE LEXINGTON COUNTY DETENTION CENTER?

5 A. YES.

6 Q. THAT'S A FAIR AND ACCURATE STATEMENT OF YOUR

7 TESTIMONY?

8 A. YES.

9 Q. THANK YOU, LIEUTENANT. PLEASE ANSWER ANY QUESTIONS
10 THE DEFENSE HAS FOR YOU.

11 A. OKAY.

12 MR. LITTLEJOHN: NO QUESTIONS, LIEUTENANT.

13 THE COURT: YOU CAN STAND DOWN, MA'AM. YOU CAN STEP
14 DOWN.

15 MR. HUBBARD: THE STATE CALLS BRADY NIMMONS.

16 MICHAEL BRADY NIMMONS, AFTER BEING DULY SWORN,
17 TESTIFIED AS FOLLOWS:

18 THE CLERK: PLEASE STATE YOUR FULL NAME, SPELLING
19 YOUR FIRST AND LAST NAMES.

20 THE WITNESS: MY NAME IS MICHAEL BRADY NIMMONS.
21 M-I-C-H-A-E-L. LAST NAME NIMMONS, N-I-M-M-O-N-S.

22 DIRECT EXAMINATION

23 BY MR. HUBBARD:

24 Q. MR. NIMMONS, WHERE DO YOU WORK?

25 A. PRESENTLY FOR RICHLAND COUNTY SHERIFF'S DEPARTMENT.

1 Q. HOW LONG HAVE YOU BEEN WITH THEM?

2 A. TWO YEARS.

3 Q. AND WHAT DO YOU DO WITH THE RICHLAND COUNTY
4 SHERIFF'S DEPARTMENT?

5 A. ROAD PATROL.

6 Q. PRIOR TO BEING EMPLOYED WITH THEM, WHERE DID YOU
7 WORK?

8 A. LEXINGTON COUNTY DETENTION CENTER.

9 Q. AND DID YOU WORK SOMEWHERE ELSE PREVIOUSLY BEFORE
10 THAT?

11 A. THE DEPARTMENT OF CORRECTIONS.

12 Q. NOW, BACK IN MAY OF 2002 WHERE WERE YOU WORKING?

13 A. LEXINGTON COUNTY DETENTION CENTER.

14 Q. AND WERE YOU WORKING ON THE DAY OF MAY 26TH, 2002?

15 A. I WAS.

16 Q. ON THAT DATE DO YOU RECALL RECEIVING AN ORDER TO
17 CONDUCT A SHAKEDOWN?

18 A. YES, I DO.

19 Q. AND WHAT IS A SHAKEDOWN?

20 A. IT'S WHERE WE GO INTO AN INMATE'S ROOM AND TRY TO
21 LOOK THROUGH EVERYTHING TO TRY TO FIND ANY KIND OF ARTICLES
22 OF CONTRABAND, CONTRABAND BEING THINGS THEY SHOULDN'T HAVE,
23 AND WE SEARCHED THROUGH THE WHOLE ROOM.

24 Q. OKAY. AND ON THAT DATE, MAY 26TH, 2002, WHOSE CELL
25 WERE YOU ORDERED TO SHAKE DOWN?

1 A. INMATE KEVIN MERCER.

2 Q. WHEN YOU WENT IN THE CELL, WHAT HAPPENED?

3 A. THE TIME I OPENED THE DOOR HE IMMEDIATELY GRABBED
4 THE INHALER, PUT IT IN HIS MOUTH, BUT I NOTICED HE DID NOT
5 SPRAY IT. THEN HE PUT IT BACK DOWN. I TOLD HIM TO PUT IT
6 DOWN, WHICH HE DID.

7 Q. OKAY. WHEN YOU WALKED IN, HE PICKED UP AN INHALER?

8 A. HE PICKED UP AN INHALER IMMEDIATELY WHEN I WALKED
9 IN.

10 Q. PUT IT TO HIS MOUTH. WHAT DID YOU NOTICE AT THAT
11 TIME?

12 A. WELL, THEN I IMMEDIATELY HAD HIM OPEN HIS MOUTH, AND
13 I SAW A GREEN LEAFY SUBSTANCE ALL IN HIS MOUTH WHICH I
14 BELIEVED TO BE MARIJUANA.

15 Q. LET ME ASK YOU THIS: DO YOU REMEMBER WHAT TIME OF
16 DAY THIS WAS?

17 A. IT WAS ABOUT 4:30.

18 Q. WHAT TIME IS THE LUNCH SERVED AT THE JAIL?

19 A. ABOUT NOON. ABOUT 12.

20 Q. WHAT ABOUT DINNER?

21 A. ABOUT 6:30.

22 Q. SO THIS IS 4:30?

23 A. YES.

24 Q. AND BASED ON YOUR EXPERIENCE, YOU THOUGHT IT WAS
25 WHAT?

1 A. I BELIEVED IT WAS MARIJUANA.

2 Q. OKAY. DOES THIS ACCURATELY REFLECT YOUR TESTIMONY:
3 MAY 26TH, 2002, AT THE LEXINGTON COUNTY DETENTION CENTER
4 POSSIBLE DRUG POSSESSION?

5 A. YES, IT DOES.

6 MR. HUBBARD: NO FURTHER QUESTIONS. PLEASE ANSWER
7 ANY QUESTIONS OF THE DEFENSE.

8 CROSS-EXAMINATION

9 BY MR. LITTLEJOHN:

10 Q. MR. NIMMONS, JUST BRIEFLY. THE MATERIAL YOU WERE
11 TALKING ABOUT, WAS IT EVER ANALYZED?

12 A. IT WAS NOT. HE SWALLOWED IT.

13 Q. HE SWALLOWED IT?

14 A. YES.

15 Q. OKAY. AND YOU THINK IT WAS MARIJUANA?

16 A. I BELIEVE IT WAS.

17 Q. OKAY. WAS HE DISCIPLINED FOR THAT?

18 A. I BELIEVE HE WAS SENT TO CONFINEMENT.

19 Q. OKAY. SO IT WAS HANDLED BY THE DETENTION CENTER.

20 A. YES.

21 Q. OKAY. WAS ANYBODY HURT OUT OF THIS INCIDENT?

22 A. NO.

23 MR. LITTLEJOHN: THANK YOU, SIR.

24 MR. HUBBARD: NO FURTHER QUESTIONS. YOU MAY STEP
25 DOWN. VALERIE SCIPIO.

1 VALERIE SCIPIO, AFTER BEING DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
4 NAME, SPELLING YOUR FIRST AND LAST NAMES.

5 THE WITNESS: VALERIE SCIPIO. V-A-L-E-R-I-E. LAST
6 NAME SCIPIO, S-C-I-P-I-O.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q. MS. SCIPIO, WHERE DO YOU CURRENTLY WORK?

10 A. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

11 Q. AND HOW LONG HAVE YOU BEEN THERE?

12 A. APPROXIMATELY TWO AND A HALF, THREE MONTHS.

13 Q. PRIOR TO BECOMING EMPLOYED THERE, WHERE DID YOU
14 WORK?

15 A. AT VERIZON.

16 Q. AND AT SOME POINT PRIOR TO THAT DID YOU WORK---

17 A. LEXINGTON COUNTY SHERIFF'S DEPARTMENT, YES, SIR.

18 Q. AND DID YOU WORK IN THE DETENTION CENTER?

19 A. I DID.

20 Q. HOW LONG DID YOU WORK IN THE DETENTION CENTER?

21 A. APPROXIMATELY FOUR YEARS.

22 Q. YOU STARTED BACK AROUND 2001?

23 A. YES, SIR.

24 Q. DO YOU REMEMBER AN INCIDENT ON AUGUST 13TH, 2002,
25 INVOLVING KEVIN MERCER?

1 A. YES, SIR.

2 Q. CAN YOU PLEASE TELL US WHAT THAT WAS?

3 A. BASICALLY I WAS WORKING FIRST FLOOR WITH ANOTHER
4 OFFICER. THIRD FLOOR CALLED DOWN TO HAVE US BRING UP SOME
5 UNIFORMS FOR SOME OTHER INMATES. I ARRIVED ON THE THIRD
6 FLOOR, HANDED THE UNIFORMS TO THE OFFICER THAT WAS PRESENT.
7 UPON MY TURNING AROUND TO LEAVE, MR. MERCER KIND OF LIKE
8 LIFTED HIS PRIVATE AREA. YOU KNOW, IN OTHER WORDS, HE
9 SUMMONSED ME TO LOOK HIS WAY AND THEN HE LIFTED HIS AREA SO
10 THAT I LOOKED, LIKE IN A DIRECT MANNER.

11 Q. LET ME ASK YOU THIS: WHEN YOU GO UP TO RELIEVE A
12 GUARD---

13 A. YES, SIR.

14 Q. ---ARE THE GUARDS OUT FREE WITH THE INMATES, I MEAN,
15 OR ARE THE GUARDS IN A SEPARATE AREA?

16 A. THEY CAN BE EITHER UP IN THE TOWER OR ON THE FLOOR.
17 AT THIS TIME THEY WERE IN THE TOWER.

18 Q. AND THE TOWER, IS THAT A CONTAINED AREA?

19 A. IT IS.

20 Q. INMATES CAN'T GET IN THERE?

21 A. THAT'S CORRECT.

22 Q. NOW, ARE THERE FOUR WALLS OR HOW IS IT STRUCTURED?

23 A. THERE'S FOUR GLASS -- WELL, THERE'S THREE GLASS
24 WINDOWS AND ONE DOORWAY.

25 Q. OKAY. SO BASICALLY THE GUARDS CAN SEE ALL AROUND?

1 A. THAT'S CORRECT.

2 Q. BUT INMATES CAN'T GET IN.

3 A. THAT'S CORRECT.

4 Q. AND INMATES CAN SEE IN AS WELL?

5 A. YES. YES, SIR.

6 Q. NOW, WHEN YOU TOOK THESE UNIFORMS UP TO THIS OTHER

7 GUARD---

8 A. YES.

9 Q. ---INMATES WERE OUT?

10 A. YES, SIR.

11 Q. AND YOU WENT INTO THE TOWER.

12 A. YES, SIR.

13 Q. SO YOU WERE IN THAT CONTAINED AREA.

14 A. YES, SIR.

15 Q. AND THE INMATES OBVIOUSLY WERE ON THE OUTSIDE OF

16 THAT CONTAINED AREA.

17 A. THAT'S CORRECT.

18 Q. NOW, THE GUARD THAT WAS THERE WITH YOU---

19 A. UH-HUH.

20 Q. ---WHERE WAS HE IN THIS TOWER?

21 A. INITIALLY, WHEN I WALKED IN, HE WAS SITTING TO THE
22 DESK. HE WAS IN A SWIVEL CHAIR, AND WHEN I WALKED IN HE
23 SWIRLED AROUND FACING ME WHICH MEANS THE INMATES -- HIS BACK
24 WAS TURNED TO THE INMATES.

25 Q. OKAY. SO HE'S FACING YOU JUST LIKE YOU'RE FACING

1 ME?

2 A. YES, SIR.

3 Q. AND YOU CAN LOOK OUT AND SEE BEHIND HIM ALL THE
4 INMATES?

5 A. YES, SIR.

6 Q. AND THEN WHO CAME UP TO THE WINDOW?

7 A. KEVIN MERCER.

8 Q. AND WHAT DID HE DO?

9 A. KIND OF LIKE PUT HIS PENIS IN AN ERECT MANNER,
10 TAPPED ON THE WINDOW, AND TOLD ME TO LOOK.

11 Q. SO HE GOT YOUR ATTENTION.

12 A. YES, SIR.

13 Q. DID THE OTHER GUARD STILL -- WAS THE OTHER GUARD
14 STILL LOOKING AT YOU?

15 A. HE WAS STILL LOOKING AT ME AT THE TIME; YES, SIR.

16 Q. KEVIN MERCER, DID HE MAKE EYE CONTACT WITH YOU?

17 A. YES, SIR.

18 Q. DID HE MOTION YOU?

19 A. YES, SIR.

20 Q. AND THEN WHERE DID HIS HANDS GO?

21 A. NEAR HIS PRIVATE AREA, HIS PENIS.

22 Q. OKAY. AND DID HE DO ANYTHING WITH THE JUMPSUIT HE
23 WAS WEARING?

24 A. JUST LIFTING IT UP TO SHOW THAT HIS PENIS WAS ERECT.

25 Q. OKAY. AND WAS HE AGAINST THE GLASS OR AWAY FROM THE

1 GLASS?

2 A. RIGHT BESIDE IT, NOT PRESSED AGAINST IT BUT RIGHT
3 BESIDE IT.

4 Q. AND THAT WAS CLEARLY DIRECTED TO YOU.

5 A. YES, SIR.

6 Q. WHAT, IF ANY, INFRACTIONS WERE BROUGHT AGAINST HIM
7 FOR THAT BEHAVIOR?

8 A. USUALLY AN INMATE IS WRITTEN UP AND PLACED ON 14-DAY
9 CONFINEMENT.

10 Q. OKAY. DO YOU KNOW WHAT INFRACTIONS WERE BROUGHT?
11 DO YOU HAVE YOUR REPORT WITH YOU?

12 A. I DON'T.

13 Q. ON YOUR REPORT ARE THESE THE INFRACTIONS?

14 A. THAT'S CORRECT.

15 Q. CAN YOU PLEASE READ THEM ON OUT?

16 A. YES, SIR. "DISRESPECT TO AN OFFICER, INDECENT
17 EXPOSURE, AND OBSCENITY."

18 Q. SO DOES THIS ACCURATELY REFLECT YOUR TESTIMONY:
19 AUGUST 13, 2002, AT THE LEXINGTON COUNTY DETENTION CENTER,
20 DISRESPECT TO OFFICER, INDECENT EXPOSURE, AND OBSCENITY?

21 A. YES, SIR.

22 Q. MS. SCIPIO, PLEASE ANSWER ANY QUESTIONS THE DEFENSE
23 HAS.

24 A. YES, SIR.

25

CROSS-EXAMINATION

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BY MS. KIMBROUGH:

Q. GOOD AFTERNOON, OFFICER. HOW ARE YOU?

A. GOOD.

Q. GOOD. IN LOOKING AT YOUR REPORT, I NOTICE THAT YOU INDICATED THAT YOU NEVER SAW ANY FLESH. THERE WAS NO FLESH EXPOSED.

A. THAT'S CORRECT.

Q. OKAY. IT WAS AN INAPPROPRIATE, RUDE GESTURE.

A. YES, MA'AM.

Q. HE WAS CHARGED WITH IT?

A. YES, MA'AM.

Q. AND HE WAS PUNISHED FOR IT.

A. YES, MA'AM.

Q. OKAY. AND NO INJURIES?

A. NO, MA'AM.

Q. THANK YOU.

A. YOU'RE WELCOME.

MS. KIMBROUGH: I APPRECIATE IT.

MR. HUBBARD: NOTHING FURTHER FOR THIS OFFICER.

THAT'S ALL. YOU CAN STEP DOWN NOW. THE STATE CALLS MICHAEL SMILEY.

MICHAEL J. SMILEY, AFTER BEING DULY SWORN,

TESTIFIED AS FOLLOWS:

THE CLERK: HAVE A SEAT IN THAT CHAIR. STATE YOUR

1 FULL NAME, SPELLING YOUR FIRST AND LAST FOR THE RECORD.

2 THE WITNESS: MICHAEL JOHN SMILEY. S-M-I-L-E-Y.

3 DIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q. DEPUTY SMILEY?

6 A. YES, SIR.

7 Q. HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S

8 DEPARTMENT?

9 A. APPROXIMATELY FIVE AND A HALF YEARS.

10 Q. BACK ON AUGUST 13TH, 2002, WHAT WERE YOUR DUTIES

11 WITH THE SHERIFF'S DEPARTMENT?

12 A. I WAS WORKING IN THE LEXINGTON COUNTY DETENTION

13 CENTER.

14 Q. DO YOU RECALL AN INCIDENT INVOLVING KEVIN MERCER?

15 A. YES, SIR.

16 Q. CAN YOU PLEASE TELL US ABOUT THAT INCIDENT?

17 A. YES, SIR. I WAS STATIONED ON THE FIRST FLOOR WHICH

18 IS OUR HIGH SECURITY UNIT, AND THERE ARE TWO OFFICERS ON THAT

19 FLOOR. IF THE OFFICER ON THIRD FLOOR CALLS FOR ASSISTANCE OR

20 BACK-UP WHERE -- ONE OF THE OFFICERS ON THE FIRST FLOOR IS

21 THE FIRST RESPONDER TO THE SCENE.

22 Q. THAT'S ONE OF THEIR RESPONSIBILITIES?

23 A. YES, SIR.

24 Q. OKAY.

25 A. IT WAS AT MEALTIME, AND I HEARD OFFICER STEWART CALL

1 FOR ASSISTANCE ON THIRD FLOOR. SO I WENT UP THE EMERGENCY
2 STAIRWELL THAT WE HAVE, AND WHEN I ARRIVED ON THE SCENE,
3 THERE WERE FOOD TRAYS ALL OVER THE PLACE. THE FOOD CART WAS
4 THROWN OVER AGAINST THE WALL. THE CART WITH I THINK IT WAS
5 ABOUT 30 GALLONS OF TEA WAS THROWN OVER IN THE FLOOR. IT WAS
6 A MESS. I ASKED OFFICER STEWART---

7 Q. LET ME ASK YOU THIS BEFORE YOU CONTINUE.

8 A. YES, SIR.

9 Q. WHEN Y'ALL ARE FEEDING INMATES, ARE THEY IN THEIR
10 CELLS?

11 A. YES, SIR.

12 Q. THEY'RE NOT FREE AND ABOUT.

13 A. NO, SIR.

14 Q. A FOOD CART -- HOW MANY TRAYS DOES A FOOD CART HAVE?

15 A. THERE SHOULD HAVE BEEN 102 ON THAT FOOD CART, SIR.

16 Q. SO ONE FOR EACH INMATE?

17 A. YES, SIR.

18 Q. OKAY. SO 102 INMATES---

19 A. YES, SIR.

20 Q. ---GET FOOD OFF OF ONE TRAY.

21 A. OFF OF THE -- OFF OF THE FOOD CART.

22 Q. OFF ONE FOOD CART. ONE FOOD CART.

23 A. YES, SIR.

24 Q. NOW, WHAT'S THE PROCEDURE? IS THERE AN OFFICER BY
25 HIMSELF OR IS THERE AN EMPLOYEE? WHO DOES -- HOW DOES THIS

1 WORK?

2 A. THE WAY THE PROCEDURE WORKS IS AN OFFICER OPENS THE
3 DOOR, AND THE INMATE WORKER HANDS THE FOOD TRAYS WITH THE
4 DRINKS TO THE INMATES IN THE ROOM. THE OFFICER INSPECTS THE
5 FOOD ON THE TRAYS TO MAKE SURE THAT IT'S ALL THERE AND
6 NOTHING IS MISSING OR THE TRAY IS NOT MESSED UP. IF IT IS,
7 WE CAN TAKE CARE OF IT. BUT WE'RE NOT GOING TO ALLOW CONS TO
8 TAKE ADVANTAGE OF THE SYSTEM AND GET EXTRA FOOD.

9 Q. ALL RIGHT. AND YOU FEED THEM IN THEIR ROOMS---

10 A. YES, SIR.

11 Q. SO YOU GO CELL TO CELL?

12 A. YES, SIR.

13 Q. THEY'RE NOT ALLOWED TO COME OUT.

14 A. NO, SIR, THEY'RE NOT.

15 Q. WHEN YOU GOT THERE, YOU SAY FOOD WAS EVERYWHERE?

16 A. YES, SIR.

17 Q. WHERE WAS THE FOOD CART?

18 A. TIPPED OVER AGAINST THE WALL.

19 Q. WHERE WAS MR. MERCER?

20 A. MR. MERCER WAS IN THE REC AREA, THE BREAK AREA.

21 Q. OKAY. DO YOU HAVE HALLWAYS---

22 A. YES, SIR.

23 Q. ---THAT COME INTO A COMMON AREA?

24 A. YES, SIR.

25 Q. AND THAT'S THE REC AREA?

1 A. YES, SIR, THE -- WE HAVE AN INSIDE REC AREA AND AN
2 OUTSIDE REC AREA.

3 Q. WAS HE ON THE INSIDE OR OUTSIDE REC AREA?

4 A. THE INSIDE REC AREA.

5 Q. OKAY. WAS -- WERE THERE ANY OTHER INMATES OUT?

6 A. EXCEPT FOR THE TWO INMATE WORKERS, NO, SIR.

7 Q. WHEN YOU SAY INMATE WORKERS, DO WE OFTEN CALL THEM
8 TRUSTEES?

9 A. YES, SIR.

10 Q. WHEN YOU GOT THERE, WHAT DID YOU HAVE TO DO?

11 A. I TRIED TO FIND OUT WHAT WAS GOING ON. THE OFFICER
12 RUNNING THE FLOOR WAS SPEECHLESS. HE---

13 Q. I TELL YOU WHAT -- AND LET'S NOT TALK ABOUT WHAT
14 THEY SAID.

15 A. YES, SIR.

16 Q. BUT WHAT DID YOU END UP DOING? DID YOU END UP
17 APPREHENDING MR. MERCER?

18 A. YES, SIR. MR. MERCER SAW ME WALKING OVER TOWARDS
19 HIM, AND HE TURNED AROUND AND PUT HIS HANDS BEHIND HIS BACK,
20 AND I RESTRAINED HIM WITH HANDCUFFS AND DOUBLE-LOCKED HIM.
21 BY THAT TIME, OTHER OFFICERS WERE ON THE SCENE, AND HE WAS
22 ESCORTED TO THE HIGH SECURITY UNIT ON FIRST FLOOR.

23 Q. AGAIN, THIS IS AUGUST 13TH.

24 A. YES, SIR.

25 Q. AND DID HE TELL YOU WHY HE DID WHAT HE DID?

1 A. YES, SIR. I ASKED HIM WHY, AND I WAS INFORMED THAT
2 HE HAD BEEN LOCKED DOWN BY THE DAY SHIFT OFFICER, AND HE SAID
3 THAT HE WASN'T GIVEN ANY REASON WHY HE WAS LOCKED DOWN.

4 Q. OKAY. AND WHAT, IF ANY, INFRACTIONS WAS HE CHARGED
5 WITH? DO YOU HAVE THAT ON YOUR PAPERWORK?

6 A. YES, SIR.

7 Q. CAN YOU PLEASE TELL ME WHAT INFRACTIONS HE HAD?

8 A. INTERFERING WITH TRUSTEES' DUTIES, INTERFERING WITH
9 JAIL OPERATIONS, INTERFERING WITH OFFICER PERFORMING DUTIES,
10 THE DESTRUCTION OF COUNTY PROPERTY AND---

11 Q. WAS HE ALSO CHARGED WITH LEAVING CELL WITHOUT
12 PERMISSION?

13 A. YES, SIR, LEAVING CELL WITHOUT PERMISSION AND HE WAS
14 ALSO CHARGED WITH BEING OUT OF PLACE.

15 Q. OKAY. LET ME ASK IF THIS ACCURATELY REFLECTS YOUR
16 TESTIMONY: AUGUST 13TH, 2002, LEXINGTON COUNTY DETENTION
17 CENTER, DISRUPTION OF FLOOR OPERATIONS, DESTROYING JAIL
18 PROPERTY? IS THAT THE FOOD CART?

19 A. YES, SIR.

20 Q. OUT OF PLACE?

21 A. YES, SIR.

22 Q. WHICH YOU MENTIONED. INTERFERING WITH TRUSTEES'
23 DUTIES AND INTERFERING WITH OFFICERS' DUTIES, LEAVING CELL
24 WITHOUT PERMISSION.

25 A. YES, SIR.

1 MR. HUBBARD: OFFICER, THAT'S ALL I HAVE FOR YOU
2 RIGHT NOW. PLEASE ANSWER ANY QUESTIONS OF THE DEFENSE.

3 CROSS-EXAMINATION

4 BY MR. LITTLEJOHN:

5 Q. GOOD AFTERNOON, DEPUTY SMILEY.

6 A. YES, SIR.

7 Q. JUST A COUPLE OF THINGS. YOU INDICATED WHEN KEVIN
8 SAW YOU COMING HE TURNED AROUND AND PUT HIS HANDS BEHIND HIS
9 BACK?

10 A. YES, SIR.

11 Q. OKAY. HE GAVE UP.

12 A. YES, SIR.

13 Q. OKAY. AND YOU SAID THAT HE WAS PUNISHED FOR THIS?

14 A. YES, SIR.

15 Q. OKAY. AND I BELIEVE THE DESTRUCTION OF COUNTY
16 PROPERTY WAS A WHEEL WAS DAMAGED ON THE CART?

17 A. YES, SIR.

18 Q. AND THAT WAS THE EXTENT OF THE DAMAGE TO THE CART?

19 A. YES, SIR, AND ALL THE FOOD AND TEA THAT WAS WASTED.

20 Q. RIGHT. OKAY. AND HE INDICATED THAT HE WAS MAD
21 BECAUSE HE HAD BEEN LOCKED DOWN AND NOBODY WOULD TELL HIM
22 WHY? IS THAT BASICALLY WHAT HE TOLD YOU?

23 A. THAT'S WHAT HE SAID; YES, SIR.

24 Q. OKAY. AND I BELIEVE YOU SAID THAT THE REASON Y'ALL
25 DO THE FOOD TRAY LIKE THAT IS SO THAT NONE OF THE INMATES CAN

1 HAVE MORE FOOD THAN THEY'RE SUPPOSED TO?

2 A. AND TO MAKE SURE THEY GET THE FOOD THAT THEY'RE
3 SUPPOSED TO GET, SIR.

4 Q. OKAY. AND I THINK YOU MADE THE STATEMENT THAT THE
5 CONS DON'T GET TO TAKE ADVANTAGE OF THE SYSTEM.

6 A. YES, SIR.

7 Q. AND THAT'S TRUE, ISN'T IT?

8 A. IF WE CAN HELP IT, YES, SIR.

9 MR. LITTLEJOHN: THANK YOU, DEPUTY.

10 MR. HUBBARD: NO FURTHER QUESTIONS. YOU CAN STEP
11 DOWN. THE STATE CALLS MACK BROOKER.

12 MACK BROOKER, AFTER BEING DULY SWORN, TESTIFIED
13 AS FOLLOWS:

14 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
15 FIRST AND LAST NAMES.

16 THE WITNESS: YES. MY NAME IS MACK BROOKER, AND
17 IT'S SPELLED M-A-C-K B-R-O-O-K-E-R.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q. MR. BROOKER, WHERE DO YOU CURRENTLY WORK?

21 A. WITH COLUMBIA CARE CENTER.

22 Q. BACK IN DECEMBER, DECEMBER 10TH OF 2002, WHERE WERE
23 YOU WORKING?

24 A. LEXINGTON COUNTY DETENTION CENTER.

25 Q. WHAT WERE YOUR DUTIES THERE?

1 A. I WAS A CORRECTIONAL OFFICER.

2 Q. OKAY. DO YOU RECALL ON THAT DATE HAVING AN INCIDENT
3 WITH KEVIN MERCER?

4 A. CORRECT, SIR.

5 Q. CAN YOU PLEASE TELL ME ABOUT THAT?

6 A. YES, SIR. WELL, ON DECEMBER THE 10TH, WELL,
7 BASICALLY WE WERE GETTING READY TO, WELL, LET THE INMATES OUT
8 FOR THEIR RECREATION THAT MORNING. I WENT AROUND. I WAS
9 GIVING OUT UNIFORMS, BUT WHEN I GOT TO MR. MERCER'S ROOM, I
10 TOLD HIM -- BASICALLY I SAW THAT HE WAS IN BLACK AND WHITE
11 WHICH IS CONFINEMENT. I TOLD MR. MERCER FOR NO REASON THAT
12 HE IS TO COME OUT WHILE HE'S ON CONFINEMENT BECAUSE I KNOW
13 THEY PLAY GAMES SOMETIMES. THEY MAKE GAMES.

14 Q. OKAY. LET ME ASK YOU THIS.

15 A. YES, SIR.

16 Q. YOU'RE TALKING ABOUT BLACK AND WHITE ON CONFINEMENT.

17 A. YES, SIR.

18 Q. WHAT IS THE NORMAL OUTFIT THAT AN INMATE WEARS?
19 WHAT IS IT FOR THE TYPICAL INMATE?

20 A. AN ORANGE -- ORANGE UNIFORM, SIR.

21 Q. IF SOMEONE FOR SOME REASON IS ON CONFINEMENT, AS YOU
22 SAY---

23 A. YES, SIR.

24 Q. ---CONFINEMENT IS TO THEIR CELL TYPICALLY?

25 A. CORRECT, SIR.

1 Q. OR SOMETIMES TO ANOTHER PLACE?

2 A. TO THEIR ROOM BASICALLY.

3 Q. OKAY. AND WHEN THEY'RE ON CONFINEMENT, DO Y'ALL
4 GIVE THEM A DIFFERENT UNIFORM?

5 A. YES, SIR. SOMETIMES WE ISSUE THEM BLACK AND WHITE.

6 Q. OKAY. BLACK AND WHITE STRIPES?

7 A. CORRECT, SIR.

8 Q. DOES THAT ALLOW A GUARD LIKE YOURSELF TO KNOW THIS
9 ONE IS ON CONFINEMENT?

10 A. YES, SIR, EASY IDENTIFICATION.

11 Q. ON THIS DAY MR. MERCER WAS ON CONFINEMENT.

12 A. CORRECT, SIR.

13 Q. AS A MATTER OF COURSE AND PRACTICE WITH YOU, WHEN
14 YOU WOULD COME ON SHIFT, WOULD YOU GO AND CHECK WHO IS ON
15 CONFINEMENT?

16 A. YES, SIR, THAT I WOULD.

17 Q. OKAY. AND THAT'S WHAT YOU WERE DOING THIS MORNING?

18 A. YES, SIR.

19 Q. OKAY. PLEASE GO AHEAD.

20 A. OKAY. WELL, ONCE I GOT BY MR. MERCER'S ROOM, I TOLD
21 HIM THAT FOR NO REASON HE IS TO COME OUT. I WENT BACK AND
22 WHEN I WENT BACK, WELL, FOR ABOUT 30 MINUTES LATER -- WELL,
23 WITHIN 30 MINUTES I WOULD HAVE TO GO BACK AND DO ANOTHER
24 SECURITY CHECK. I CAME BACK, AND ONCE I STARTED TO MAKE MY
25 SECURITY CHECK, I SAW MR. MERCER. HE WAS IN THE DAY AREA

1 PLAYING CARDS, WATCHING TELEVISION. I ASKED MR. MERCER AT
2 THAT TIME FOR WHAT REASON DID HE COME OUT OF HIS CELL AND HE
3 KNOWS THAT HE'S ON CONFINEMENT. HE SAID THAT HE THOUGHT HE
4 CAME OFF CONFINEMENT. I TOLD HIM, NO, HE DID NOT.

5 SO BASICALLY WE TALKED FOR AWHILE. THEN INMATE
6 MERCER, HE APOLOGIZED AND SAID HE WAS SORRY. COULD I GIVE
7 HIM ANOTHER CHANCE? BUT I TOLD HIM I GAVE HIM SEVERAL
8 WARNINGS PRIOR TO HIM COMING OUT OF THE CELL AND HE CAME OUT.
9 SO BASICALLY I SENT HIM TO THE FIRST FLOOR.

10 Q. AND WAS HE CHARGED WITH INFRACTIONS OF OUT OF PLACE
11 AND DISOBEYING A DIRECT ORDER?

12 A. CORRECT, SIR.

13 Q. AND IF I CAN, DOES THIS ACCURATELY REFLECT YOUR
14 TESTIMONY: DECEMBER 10TH, 2002, LEXINGTON COUNTY DETENTION
15 CENTER, OUT OF PLACE, DISOBEYING DIRECT ORDER?

16 A. CORRECT, SIR.

17 MR. HUBBARD: NO FURTHER QUESTIONS AT THIS TIME.
18 PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS.

19 CROSS-EXAMINATION

20 BY MR. LITTLEJOHN:

21 Q. MR. BROOKER, VERY BRIEFLY. YOU SAID AFTER YOU FOUND
22 KEVIN OUTSIDE HIS CELL, YOU TALKED TO HIM FOR A LITTLE BIT?

23 A. YES, SIR.

24 Q. AND HE APOLOGIZED TO YOU?

25 A. THAT HE DID, SIR.

1 Q. AND THEN YOU SENT HIM TO ANOTHER ROOM?

2 A. NO, SIR. I TOLD HIM AT THAT TIME HE WOULD BE PLACED
3 ON LOCKUP BECAUSE I TOLD HIM PRIOR TO COMING OUT OF HIS CELL
4 THAT HE WAS NOT TO COME OUT AND WHICH HE DID.

5 Q. I UNDERSTAND. HE WAS SENT TO ANOTHER PLACE IN THE
6 JAIL?

7 A. CORRECT, SIR.

8 Q. THE PROBLEM WAS HANDLED.

9 A. CORRECT, SIR.

10 Q. OKAY. ANYBODY HURT?

11 A. NO, SIR.

12 MR. LITTLEJOHN: THANK YOU, SIR.

13 THE COURT: YOU CAN STEP DOWN.

14 MR. HUBBARD: NO FURTHER QUESTIONS, SIR. YOU CAN
15 STEP DOWN.

16 MR. GRAHAM: DARLENE DRAYTON.

17 DARLENE DRAYTON, AFTER BEING DULY SWORN,

18 TESTIFIED AS FOLLOWS:

19 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR LAST
20 NAME.

21 THE WITNESS: IT'S DARLENE DRAYTON. D-R-A-Y-T-O-N.

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. MS. DRAYTON, WHERE ARE YOU EMPLOYED NOW?

25 A. EAU CLAIRE FAMILY -- EAU CLAIRE COOPERATIVE AT

1 MIDWAY FAMILY PRACTICE.

2 Q. AND WHAT DO YOU DO THERE?

3 A. I'M A NURSE.

4 Q. PRIOR TO WORKING THERE, DID YOU HAVE OCCASION TO BE
5 A NURSE UNDER CONTRACT WITH THE LEXINGTON COUNTY DETENTION
6 CENTER?

7 A. YES, I DID.

8 Q. AND DO YOU REMEMBER AN INCIDENT THAT OCCURRED ON
9 MAY 27TH, 2003, AT THE LEXINGTON COUNTY DETENTION CENTER
10 INVOLVING MR. MERCER?

11 A. YES.

12 Q. AND WOULD YOU TELL THE JURY WHAT HAPPENED? WHAT
13 WERE YOU DOING THAT NIGHT?

14 A. I WAS MAKING MY MED PASS. I WAS PASSING MEDS TO THE
15 INMATES.

16 Q. WHEN YOU ARE DOING A MED PASS AND PASSING MEDICINE,
17 CAN YOU DESCRIBE HOW THAT WORKS AND WHAT YOU WERE DOING?

18 A. I BRING THE CART INTO THE POD, AND THE INMATES LINE
19 UP AND I'LL CALL THEM UP ONE BY ONE, FIND THEIR MEDICATION
20 AND GIVE THEM MEDICATION THAT THEY ARE PRESCRIBED.

21 Q. AND WAS THERE -- WERE YOU BY YOURSELF OR WAS THERE
22 AN OFFICER WITH YOU?

23 A. THERE WAS AN OFFICER THERE.

24 Q. AND AT SOME POINT DID MR. MERCER DO SOMETHING?

25 A. YES. AS I -- HE CAME AROUND TO MY RIGHT SIDE BEHIND

1 ME AND AS I OPENED MY CART, HE GRABBED MEDS OUT OF THE CART.

2 Q. AND IS AN INMATE SUPPOSED TO BE BEHIND YOU?

3 A. NO.

4 Q. AND IS AN INMATE SUPPOSED TO GRAB ANYTHING OUT OF
5 YOUR CART?

6 A. NO, SIR.

7 Q. DO YOU KNOW -- HOW ARE THE -- HOW ARE THE MEDICINES
8 PACKAGED THAT YOU DISTRIBUTED?

9 A. THEY COME IN BUBBLE PACKETS. USUALLY THERE'S --
10 MOST OF THE TIMES THERE'S 30 PILLS IN A PACK, BUT IT DEPENDS
11 ON WHAT WAS ORDERED.

12 Q. WHEN YOU SAY A BUBBLE PACK, IS THAT KIND OF LIKE
13 SUDAFED WHERE THERE'S A -- LIKE AN---

14 A. YES, IT'S IN A CARDBOARD WITH A BUBBLE -- CLEAR
15 BUBBLE PACKING OVER IT AND YOU PRESS IT OUT.

16 Q. YOU POP THEM OUT?

17 A. YES.

18 Q. DO YOU KNOW HOW MANY BUBBLE PACKS MR. MERCER TOOK
19 FROM THE CART?

20 A. ANYWHERE FROM FIVE TO TEN. FIVE TO TEN.

21 Q. DO YOU KNOW WHAT KIND OF MEDICINE IT WAS?

22 A. MOSTLY IT WAS -- I COULDN'T SAY DEFINITE, BUT MOSTLY
23 THERE WAS BLOOD PRESSURE MEDICINES IN THAT DRAWER THAT I
24 OPENED.

25 Q. DO YOU KNOW APPROXIMATELY HOW MANY PILLS HE WOULD

1 HAVE TAKEN?

2 A. NO, SIR, I COULDN'T TELL YOU THAT.

3 Q. AFTER HE TOOK THE PILLS, WHAT DID HE DO?

4 A. HE GRABBED THE PILLS AND RAN UP THE STAIRS TO HIS
5 ROOM.

6 Q. AND WHEN HE RAN UP TO HIS CELL, WHAT HAPPENED NEXT?

7 A. HE CLOSED THE DOOR AND THE OFFICERS RAN UP BEHIND
8 HIM.

9 Q. AND WAS THE OFFICER ABLE TO OPEN THE DOOR?

10 A. NOT RIGHT AWAY, NO.

11 Q. DID OTHER OFFICERS EVENTUALLY ARRIVE?

12 A. YES. HE HAD -- THE OFFICER CALLED FOR BACK-UP AS HE
13 WAS RUNNING, AND OTHER OFFICERS CAME INTO THE POD, TOO.

14 Q. AND EVENTUALLY DID THE OFFICERS GET THE DOOR OPEN?

15 A. YES.

16 Q. AND WHAT HAPPENED WITH MR. MERCER?

17 A. THEY GOT HIM OUT AND TOOK HIM UP TO BOOKING.

18 Q. LET ME ASK YOU IF THIS IS AN ACCURATE REFLECTION OF
19 YOUR TESTIMONY. MAY 27TH, 2003, LEXINGTON COUNTY DETENTION
20 CENTER, GRABS PILLS AND RUNS TO CELL?

21 A. YES.

22 MR. GRAHAM: MS. DRAYTON, PLEASE ANSWER ANY
23 QUESTIONS THE DEFENSE HAS FOR YOU.

24

25

1 DETENTION CENTER WHEN YOU LEFT?

2 A. I WAS THE MASTER CORRECTIONAL OFFICER.

3 Q. AND HOW LONG HAD YOU WORKED IN THE DETENTION FIELD
4 FOR THE LEXINGTON COUNTY DETENTION CENTER?

5 A. SIX YEARS.

6 Q. DO YOU REMEMBER AN INCIDENT ON MAY 27TH, 2003,
7 INVOLVING MR. MERCER?

8 A. YES, I DO.

9 Q. AND AT SOME POINT WAS HE BROUGHT DOWN INTO THE
10 BOOKING AREA?

11 A. YES.

12 Q. BASED ON YOUR UNDERSTANDING OF THE SITUATION, WHAT,
13 IF ANYTHING, DID YOU DO?

14 A. MADE SURE HE WAS SAFE, HAD A LITTLE CONVERSATION
15 WITH HIM.

16 Q. BEFORE THAT WAS HE -- DID HE GET TRANSPORTED TO THE
17 HOSPITAL?

18 A. YES.

19 Q. AND THAT WAS RELATED TO SOME PILLS THAT HE HAD
20 TAKEN?

21 A. YES.

22 Q. AND HOW WAS HE TRANSPORTED TO THE HOSPITAL?

23 A. BY E.M.S.

24 Q. AND WERE THERE ANY---

25 A. AND THERE WAS TWO ARMED DEPUTIES WITH HIM.

1 Q. AND THAT SAME SHIFT THAT YOU WERE WORKING THAT NIGHT
2 WHEN HE WAS TRANSPORTED TO THE HOSPITAL, DID HE COME BACK?

3 A. YES.

4 Q. DO YOU KNOW APPROXIMATELY HOW LONG HE WAS GONE?

5 A. JUST A FEW HOURS.

6 Q. WHEN HE CAME BACK, DID YOU HAVE AN OPPORTUNITY TO
7 HAVE A CONVERSATION WITH MR. MERCER?

8 A. YES, I DID.

9 MR. LITTLEJOHN: YOUR HONOR, WE HAVE A MATTER WE
10 NEED TO TAKE UP.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
12 GOING TO ASK YOU TO STEP BACK IN THE JURY ROOM FOR JUST A
13 SECOND.

14 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
15 5:18 P.M.)

16 THE COURT: ALL RIGHT.

17 MR. LITTLEJOHN: YOUR HONOR, I HAD MENTIONED TO THE
18 COURT SOMETIME AGO THAT THERE WERE TWO POSSIBLE STATEMENTS
19 THAT WOULD -- THAT WOULD NEED A JACKSON V. DENNO HEARING. I
20 BELIEVE THIS IS A SECOND ONE. IT WAS OBVIOUSLY NOT GONE INTO
21 DURING THE FIRST PHASE OF THE TRIAL, BUT I ANTICIPATE THE
22 STATE'S GOING TO TRY AND ELICIT A STATEMENT FROM -- THAT WAS
23 ATTRIBUTED TO MR. MERCER AS A RESULT OF QUESTIONS ASKED TO
24 HIM BY THE C.O.

25 THE COURT: OKAY.

1 **MR. MYERS:** JACKSON HEARINGS AREN'T APPLICABLE IN
2 THE PENALTY PHASE BECAUSE WE DON'T HAVE TO PROVE THAT -- WE
3 DON'T HAVE TO SHOW A BURDEN OF PROOF, MAYBE BY A
4 PREPONDERANCE, BUT BEYOND A REASONABLE DOUBT - THAT DOESN'T
5 APPLY IN THE PENALTY PHASE. IT GOES TO CHARACTER.

6 **MR. LITTLEJOHN:** YOUR HONOR, STILL, IF IT WAS A
7 STATEMENT THAT WAS TAKEN IN VIOLATION OF THE MAN'S
8 CONSTITUTIONAL RIGHT TO BE REPRESENTED BY COUNSEL AND UNDER
9 THE FIFTH AMENDMENT, I DON'T THINK IT MATTERS WHAT STAGE
10 WE'RE IN, AND I DON'T SEE WHERE THE BURDEN OF PROOF HAS
11 ANYTHING TO DO WITH IT.

12 **MR. MYERS:** IT HAS EVERYTHING TO DO WITH IT BECAUSE
13 WE BRING OUT STUFF ON CHARACTER, AND THIS IS NOT GUILT OR
14 INNOCENCE AND, NOT ONLY THAT, HE WASN'T ARRESTED AND CHARGED
15 WITH ANY CRIMES, SO MIRANDA DOESN'T HAVE ANYTHING TO DO WITH
16 THIS.

17 **THE COURT:** WELL, WHAT'S THE -- WHAT'S THE
18 STATEMENT?

19 **MR. GRAHAM:** HIS RESPONSE, YOUR HONOR, WOULD BE -- I
20 DON'T KNOW EXACTLY THE WORDS I CAN ASK HIM.

21 **THE COURT:** ASK HIM. WELL, LET'S BACK UP. GO OVER
22 -- JUST START FROM THE BEGINNING AS TO HOW THIS BEGAN, THIS
23 ENCOUNTER BEGAN.

24 **MR. GRAHAM:** DO YOU WANT ME TO DO THE TESTIMONY FROM
25 HIM FROM THE BEGINNING?

1 THE COURT: RIGHT.

2 DIRECT EXAMINATION (IN CAMERA)

3 BY MR. GRAHAM:

4 Q. MR. RANKIN, WERE YOU ON DUTY ON MAY 27TH OF 2003 AT
5 THE LEXINGTON COUNTY DETENTION CENTER IN THE BOOKING AREA?

6 A. YES.

7 Q. AND AT SOME POINT WAS MR. MERCER BROUGHT DOWN THERE
8 TO THE BOOKING AREA?

9 A. YES.

10 Q. AND BASED ON INFORMATION YOU HEARD, DID YOU CALL AN
11 AMBULANCE AND HAVE MR. MERCER TRANSPORTED TO THE HOSPITAL?

12 A. YES.

13 Q. AND WHEN MR. MERCER WAS TRANSPORTED TO THE HOSPITAL,
14 WERE THERE OTHER OFFICERS WHO WENT WITH HIM?

15 A. YES.

16 Q. AND DID MR. MERCER EVENTUALLY COME BACK A COUPLE OF
17 HOURS LATER?

18 A. YES.

19 Q. WHEN HE CAME BACK, DID YOU HAVE AN OPPORTUNITY TO
20 HAVE A CONVERSATION WITH MR. MERCER?

21 A. YES.

22 Q. OKAY. WHAT, IF ANY, QUESTIONS DID YOU ASK HIM?

23 A. JUST, "WHY WOULD YOU WANT TO DO SOMETHING LIKE
24 THIS?"

25 Q. AND WHAT WAS HIS RESPONSE?

1 A. "FOR WHAT I DID I'M GOING TO DIE ANYWAY."

2 Q. WHY DID YOU ASK HIM THAT QUESTION?

3 A. WE'RE RESPONSIBLE FOR THE SAFETY OF THE INMATES AS
4 WELL AS KEEPING THEM IN THERE, THEIR PROTECTION AND THEIR
5 SAFETY, AND THAT WAY WE CAN SEEK FURTHER HELP FROM THEM IF
6 THERE'S ANOTHER KIND OF PROBLEM OR SOMETHING HE MAY HAVE
7 THAT... WE HAVE MENTAL HEALTH PEOPLE THERE. WE HAVE OTHER
8 PEOPLE, OTHER AGENCIES, THAT COULD FURTHERMORE GIVE HIM SOME
9 ASSISTANCE.

10 Q. WERE YOU TRYING TO ELICIT ANY TYPE OF INCRIMINATING
11 RESPONSE FROM MR. MERCER REGARDING HIS CHARGES FOR THE
12 MURDER?

13 A. I DIDN'T CARE WHAT HE WAS CHARGED WITH, NO.

14 Q. BUT WERE YOU EVEN TRYING TO ELICIT ANY KIND OF
15 INCRIMINATING RESPONSES?

16 A. NO.

17 Q. AND AS -- AS PART OF BEING A CORRECTIONAL OFFICER,
18 IS THAT KIND OF QUESTION THAT YOU ASKED, HAVE YOU ASKED THAT
19 QUESTION TO OTHER INMATES IN THE PAST?

20 A. YES, I HAVE.

21 Q. AND WOULD YOU SAY THAT THAT QUESTION IS A NORMAL
22 QUESTION THAT IS ATTENDANT TO YOUR JOB AS A CORRECTIONAL
23 OFFICER?

24 A. YES, IT IS.

25 MR. GRAHAM: THAT'S WHAT THE STATE WOULD OFFER, YOUR

1 HONOR.

2 THE COURT: ANY CROSS-EXAMINATION?

3 MR. LITTLEJOHN: YOUR HONOR, THE ONLY THING, JUST
4 FOR THE RECORD...

5 CROSS-EXAMINATION (IN CAMERA)

6 BY MR. LITTLEJOHN:

7 Q. MR. RANKIN, YOU, OF COURSE, DIDN'T GIVE HIM THE
8 MIRANDA WARNINGS BEFORE YOU ASKED HIM THAT QUESTION.

9 A. NO, SIR.

10 Q. YOU DIDN'T GIVE HIM ANY KIND OF WARNINGS, DID YOU?

11 A. NO, SIR.

12 Q. AND YOUR PURPOSE IN ASKING THAT QUESTION WAS TO FIND
13 OUT WHAT HIS MENTAL STATE WAS?

14 A. TO FIND OUT -- NOT HIS MENTAL STATE BECAUSE I'M NOT
15 -- I'M NOT A PSYCHIC TYPE PERSON. MY -- THE REASONING WAS TO
16 SEEK FURTHER TREATMENT---

17 Q. OKAY.

18 A. ---AND FOR HIS SAFETY.

19 Q. OKAY. AND THAT WAS THE REASON YOU ASKED THE
20 QUESTION?

21 A. YES, FOR HIS SAFETY.

22 MR. LITTLEJOHN: OKAY. YOUR HONOR, THAT'S ALL I
23 HAVE BUT...

24 THE COURT: ALL RIGHT. ANYTHING IN REPLY?

25 MR. GRAHAM: NOT AS FAR AS QUESTIONING, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. OKAY. WELL, IT SEEMS TO ME
2 THAT EVEN THOUGH THE DEFENDANT WAS IN CUSTODY AT THE TIME
3 THAT THIS QUESTIONING -- THIS WAS NOT QUESTIONING THAT
4 RELATED TO THE INCIDENT. I MEAN, IT WOULD BE RIDICULOUS TO
5 SUGGEST THAT AN OFFICER IN THE CORRECTIONAL -- IN THE LOCAL
6 DETENTION CENTER COULDN'T ASK HIM A QUESTION THAT IS A NORMAL
7 QUESTION THAT NEEDS TO BE ASKED DURING THE COURSE OF THEIR
8 BUSINESS SUCH AS, "WHAT WOULD YOU LIKE FOR SUPPER?" AND IF HE
9 BLURTS OUT SOME INCRIMINATING RESPONSE, THAT WOULD NOT RENDER
10 IT AN UNCONSTITUTIONAL QUESTION.

11 IT SEEMS TO ME THAT THIS IS NOT A CUSTODIAL
12 INTERROGATION. IF ANYTHING, THE STATE WOULD HAVE TO PROVE TO
13 ME BY A PREPONDERANCE OF THE EVIDENCE THAT HE MADE THE
14 STATEMENT AND THAT HE MADE THE STATEMENT VOLUNTARILY BUT NOT
15 THAT HE MADE THE STATEMENT AFTER HAVING HAD HIS MIRANDA
16 RIGHTS ADMINISTERED OR GIVEN AND HAVING VOLUNTARILY WAIVED
17 THOSE MIRANDA RIGHTS. THAT'S WHAT IT SEEMS TO ME.

18 **MR. GRAHAM:** YOUR HONOR, IF I COULD FOLLOW UP WITH A
19 FEW QUESTIONS THEN OF THE WITNESS?

20 **THE COURT:** SURE.

21 REDIRECT EXAMINATION (IN CAMERA)

22 BY MR. GRAHAM:

23 Q. DID YOU -- IN ASKING THAT QUESTION AND GETTING THAT
24 RESPONSE, MR. RANKIN, DID YOU DO ANYTHING TO FORCE MR. MERCER
25 TO GIVE YOU THAT RESPONSE?

1 A. NO, I DIDN'T.

2 Q. WERE YOU WEARING A WEAPON AT THE TIME?

3 A. NO, I WASN'T.

4 Q. DID YOU USE ANY TYPE OF FORCE OR COERCION ON HIM?

5 A. NO.

6 Q. DID HE MAKE THAT STATEMENT OF HIS OWN FREE WILL,
7 VOLUNTARILY?

8 A. YES.

9 MR. GRAHAM: I WOULD FOLLOW UP WITH THOSE QUESTIONS,
10 YOUR HONOR, BASED ON YOUR COMMENTS.

11 THE COURT: ANY...

12 MR. LITTLEJOHN: MAY I ASK HIM A COUPLE OF
13 QUESTIONS, YOUR HONOR?

14 THE COURT: SURE.

15 RE-CROSS EXAMINATION (IN CAMERA)

16 BY MR. LITTLEJOHN:

17 Q. MR. RANKIN, DID YOU WRITE DOWN WHAT KEVIN MERCER
18 SAID?

19 A. I'M SURE I DID. I CAN'T FIND IT.

20 Q. DID YOU WRITE IT?

21 A. I'VE GONE THROUGH A DIVORCE AND MOVED AND A LOT OF
22 MY DOCUMENTS HAVE BEEN REPLACED OR DESTROYED.

23 Q. OKAY. DO YOU REMEMBER THE EXACT WORDS HE USED?

24 A. EXACTLY WORD FOR WORD, NO.

25 Q. YOU DON'T.

1 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

2 Q. AND, OF COURSE, HE DIDN'T SIGN A STATEMENT OR
3 ANYTHING. THIS IS JUST -- YOU'RE JUST GOING OFF MEMORY?

4 A. I WAS -- I'M GOING OFF OF MEMORY, AND HE DIDN'T HAVE
5 TO SIGN A STATEMENT BECAUSE I WASN'T---

6 Q. I UNDERSTAND.

7 A. THIS WAS JUST FOR HIS PERSONAL PROTECTION.

8 MR. LITTLEJOHN: YOUR HONOR, I WOULD ASK -- I WOULD
9 ADD AS AN ADDITIONAL GROUND THAT APPARENTLY THE WITNESS DOES
10 NOT -- HE SAYS HE IS GOING OFF MEMORY. HE DOES NOT RECALL
11 THE EXACT WORDS THAT MR. MERCER SAID. WE'RE TALKING ABOUT A
12 STATEMENT THAT'S SUBJECT TO MANY INTERPRETATIONS, AND IF HE
13 CAN'T REMEMBER THE EXACT WORDAGE, I WOULD SUBMIT IT SHOULDN'T
14 BE ADMITTED.

15 THE COURT: ALL RIGHT. ANYTHING FURTHER?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 THE COURT: WELL, I THINK -- ANYTHING FROM THE
18 STATE?

19 MR. GRAHAM: NO, YOUR HONOR.

20 THE COURT: I THINK THAT THE FACT THAT THIS IS THE
21 SENTENCING PHASE DOES NOT AFFECT THE LAW THAT A DEFENDANT'S
22 STATEMENT CANNOT BE USED AGAINST HIM UNLESS IT WAS A
23 VOLUNTARY STATEMENT. THIS IS CLEARLY NOT A CUSTODIAL
24 STATEMENT. I MEAN, IT'S NOT A STATEMENT THAT IS MADE
25 PURSUANT TO OR IN RESPONSE TO CUSTODIAL INTERROGATION, SO

1 IT'S NOT NECESSARY FOR HIM TO HAVE BEEN GIVEN HIS MIRANDA
2 WARNINGS AND THEN WAIVED THOSE.

3 SO IT'S MY TASK TO DETERMINE WHETHER OR NOT -- TO
4 DETERMINE BY A PREPONDERANCE OF THE EVIDENCE WHETHER OR NOT
5 HE MADE THE STATEMENT AND WHETHER OR NOT HE MADE THE
6 STATEMENT VOLUNTARILY. AND IN DECIDING WHETHER OR NOT HE
7 MADE THE STATEMENT, THE WITNESS HAS TESTIFIED TO THE GIST OR
8 THE SUBSTANCE OR THE EFFECT OF THE STATEMENT, AND IT SEEMS TO
9 ME THAT IT WOULD BE VERY DIFFICULT TO MISINTERPRET A
10 STATEMENT WITH THAT GIST, THAT -- AND SO THAT THE EXACT
11 WORDING OF THE STATEMENT -- THE FACT THAT THE WITNESS DOESN'T
12 REMEMBER THE EXACT WORDING OF IT IN MY MIND DOES NOT -- DOES
13 NOT CAUSE ME ANY CONCERN ABOUT WHETHER HE ACTUALLY MADE THE
14 STATEMENT. AND SO I FIND THAT BY A PREPONDERANCE OF THE
15 EVIDENCE HE DID MAKE THE STATEMENT AND -- AND THAT THE
16 STATEMENT WAS -- I'M AWARE OF NO CIRCUMSTANCES OTHER -- AT
17 ALL THAT WOULD HAVE RENDERED THIS STATEMENT INVOLUNTARY, AND
18 SO I FIND THAT HE ALSO MADE THE STATEMENT VOLUNTARILY. SO IS
19 THERE ANYTHING ELSE THAT I NEED TO ADDRESS FROM A LEGAL
20 STANDPOINT CONCERNING THE ADMISSIBILITY OF THIS STATEMENT
21 FROM EITHER SIDE?

22 MR. MYERS: NO, SIR.

23 MR. LITTLEJOHN: I DON'T BELIEVE SO, YOUR HONOR.

24 THE COURT: ALL RIGHT. BRING IN THE JURY. WHILE
25 THEY'RE GETTING THE JURY, LET ME ASK Y'ALL WHERE YOU THINK

1 YOU STAND IN TERMS OF SCHEDULING.

2 MR. MYERS: WE CAN GO AS LONG AS YOU WANT US TO GO.
3 WE HAVE---

4 THE COURT: ARE WE AHEAD OF, ABOUT THE SAME AS, OR
5 BEHIND WHERE YOU HOPED WE WOULD BE?

6 MR. MYERS: I'D LIKE TO PUT UP ABOUT 10 MORE
7 WITNESSES IF WE COULD.

8 THE COURT: OKAY.

9 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
10 5:31 P.M.)

11 DIRECT EXAMINATION (RESUMED)

12 BY MR. GRAHAM:

13 Q. MR. RANKIN, MAY 27TH, 2003, BEFORE WE BROKE YOU
14 TESTIFIED THAT MR. MERCER HAD BEEN BROUGHT TO THE BOOKING
15 AREA?

16 A. YES.

17 Q. AND HAD YOU BEEN MADE AWARE THAT MR. MERCER MIGHT
18 HAVE INGESTED SOME PILLS?

19 A. YES.

20 Q. BASED ON THAT INFORMATION, DID YOU ASK FOR AN
21 AMBULANCE TO BE SENT?

22 A. YES.

23 Q. AND AN AMBULANCE ARRIVED. OFFICERS ESCORTED THE
24 AMBULANCE, AND A FEW HOURS LATER MR. MERCER WAS BROUGHT BACK
25 TO THE DETENTION CENTER.

1 A. YES.

2 Q. IS THAT CORRECT?

3 A. YES.

4 Q. WHEN MR. MERCER WAS BROUGHT BACK TO THE DETENTION
5 CENTER ---

6 THE COURT: LET ME -- LET ME -- LET ME SEE Y'ALL FOR
7 A SECOND.

8 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS IN
9 THE HEARING OF THE COURT REPORTER, THE COURT, AND THE
10 ATTORNEYS AND OUT OF THE HEARING OF THE JURY:)

11 THE COURT: I RAISED THE QUESTION AT THE SIDE BAR AS
12 TO WHETHER OR NOT THERE WAS ANY EVIDENCE THAT THE PILLS THAT
13 HE INGESTED MIGHT HAVE BEEN SOMETHING OTHER THAN BLOOD
14 PRESSURE MEDICATION PILLS, AND AS I UNDERSTAND IT, NEITHER
15 SIDE IS AWARE OF ANY SUCH EVIDENCE AND NO EVIDENCE HAS BEEN
16 OFFERED THAT THOSE PILLS MIGHT HAVE HAD ANY EFFECT ON HIS
17 ABILITY TO THINK CLEARLY OR TO UNDERSTAND WHAT HE WAS DOING
18 OR SAYING, AND SO MY RULING THAT THE STATEMENT WAS MADE BY
19 HIM AND THAT IT WAS MADE VOLUNTARILY IS THE SAME.

20 (THIS CONCLUDES THE BENCH CONFERENCE.)

21 BY MR. GRAHAM:

22 Q. MR. RANKIN, WHAT, IF ANY, QUESTION DID YOU ASK MR.
23 MERCER UPON HIS RETURN TO THE DETENTION CENTER?

24 A. I JUST ASKED HIM WHY HE'D WANT TO DO SOMETHING LIKE
25 THAT.

1 Q. AND WHAT, IF ANYTHING, DID HE RESPOND?

2 A. HE SAID, "I'M GOING TO DIE FOR WHAT I DONE, AND I
3 MIGHT AS WELL DO IT THIS WAY."

4 Q. WERE YOU ATTEMPTING TO ELICIT THAT STATEMENT?

5 A. NO. I WAS LOOKING FOR HIS WELL-BEING.

6 Q. WAS HE UNDER ANY PRESSURE WHEN YOU MADE THAT
7 STATEMENT?

8 A. NO.

9 Q. DID YOU COERCE HIM IN ANY WAY?

10 A. NO.

11 Q. DID YOU THREATEN HIM IN ANY WAY?

12 A. NO.

13 Q. DID HE MAKE THE STATEMENT BOTH FREELY AND
14 VOLUNTARILY?

15 A. YES.

16 Q. LET ME SHOW YOU A STATEMENT AND ASK IF THIS
17 ACCURATELY REFLECTS YOUR TESTIMONY: MERCER TELLS C.O.
18 RANKIN, "I'M GOING TO DIE FOR WHAT I DID. I MIGHT AS WELL DO
19 IT THIS WAY"?

20 A. YES.

21 Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS, MR.
22 RANKIN.

23 A. YES.

24 THE COURT: LET ME -- WITH YOUR PERMISSION, I HAVE
25 SOMETHING I NEED TO PUT ON THE RECORD.

1 MR. LITTLEJOHN: YES, SIR.

2 THE COURT: AND I CAN DO IT AFTER YOUR CROSS-
3 EXAMINATION IF YOU---

4 MR. LITTLEJOHN: WHATEVER YOU WANT TO DO, JUDGE.

5 THE COURT: I'D PREFER TO DO IT RIGHT NOW.

6 MR. LITTLEJOHN: SURE.

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
8 GOING TO SEND YOU BACK INTO THE JURY ROOM FOR JUST A FEW
9 MINUTES, PLEASE.

10 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
11 5:37 P.M.)

12 THE COURT: ALL RIGHT. NOW, THINKING THROUGH
13 THIS -- THIS QUESTION AS TO WHETHER OR NOT IT WOULD BE
14 NECESSARY FOR THE DEFENDANT IN THE CONTEXT OF THIS STATEMENT
15 TO HAVE BEEN GIVEN HIS MIRANDA WARNINGS AND THEN VOLUNTARILY
16 AND INTELLIGENTLY WAIVED THOSE MIRANDA WARNINGS BEFORE THE
17 STATEMENT COULD BE USED, I'M GOING TO -- I BELIEVE THAT
18 WHEN -- I'VE HEARD NO EVIDENCE SO FAR THAT THE DEFENDANT WAS
19 EVER GIVEN HIS MIRANDA WARNINGS WHEN HE WAS TAKEN INTO
20 CUSTODY BECAUSE THE STATEMENT THAT I PREVIOUSLY ADMITTED
21 DURING THE GUILT PHASE I RULED WAS MADE BEFORE HE WAS TAKEN
22 INTO CUSTODY.

23 AS I'M THINKING IT THROUGH, I BELIEVE THAT PERHAPS I
24 WAS -- I MIGHT HAVE BEEN MISTAKEN, BUT IN ANY EVENT, OUT OF
25 AN ABUNDANCE OF CAUTION, I BELIEVE THAT THE STATE SHOULD

1 OFFER EVIDENCE CONCERNING WHEN HE WAS ARRESTED AND WHEN HE
2 WAS GIVEN HIS MIRANDA WARNINGS AND WHETHER OR NOT HE
3 UNDERSTOOD THOSE MIRANDA WARNINGS AT THE TIME THEY WERE
4 GIVEN.

5 MR. MYERS: DO YOU WANT US TO DO THAT IN FRONT OF
6 THE JURY?

7 THE COURT: NO, SIR.

8 MR. MYERS: OKAY.

9 THE COURT: WELL, YOU MIGHT -- YOU MIGHT HAVE TO
10 LATER, BUT FOR NOW I THINK CONCERNING THIS STATEMENT, I'M
11 CONCERNED THAT I MIGHT BE MISTAKEN ABOUT THAT.

12 MR. MYERS: WE CAN GET THE OFFICER HERE THAT GAVE
13 HIM THE WARNINGS. WE CAN DO IT TONIGHT OR EITHER WE CAN DO
14 IT IN THE MORNING.

15 THE COURT: ALL RIGHT. IT WOULD BE BETTER IF WE
16 COULD DO IT NOW.

17 MR. MYERS: CALL SCOTTIE. IT MIGHT BE AWHILE BEFORE
18 HE CAN GET HERE.

19 MS. KIMBROUGH: IF I MAY, YOUR HONOR, I WOULD ALSO
20 NOTE THAT -- I DON'T HAVE THE MIRANDA LAW WITH ME RIGHT NOW,
21 BUT IT'S MY UNDERSTANDING THAT SIMPLY GIVING SOMEONE THEIR
22 MIRANDA WARNINGS IN MAY OF 2002 DOESN'T MEAN YOU CAN -- YOU
23 CAN QUESTION THEM EIGHT, NINE, TEN MONTHS LATER WITHOUT
24 GIVING THEM THE MIRANDA WARNINGS AGAIN. I DON'T THINK---

25 THE COURT: I'VE ALREADY RULED THAT THE STATEMENT

1 WAS NOT GIVEN IN RESPONSE TO A QUESTION. IT IS SIMPLY MY
2 CONCERN THAT WHILE HE'S IN CUSTODY HE HAS TO BE -- HE HAS TO
3 HAVE BEEN GIVEN HIS MIRANDA WARNINGS. I DON'T KNOW. THIS
4 CAME UPON ME A LITTLE BIT BY SURPRISE, AND I HAVEN'T HAD A
5 CHANCE TO THINK IT THROUGH. AND WHEN I ASKED A FEW MINUTES
6 AGO DURING THE BREAK ABOUT -- AND I GAVE MY IMPRESSION THAT
7 THERE WERE TWO QUESTIONS THAT I NEEDED TO ANSWER: DID HE
8 MAKE THE STATEMENT? DID HE MAKE IT VOLUNTARILY? AND I MAY
9 HAVE ERRONEOUSLY DRAWN THE CONCLUSION THAT YOU ALL DIDN'T
10 DISAGREE WITH THAT, BUT AS I SAT HERE AND THOUGHT ABOUT IT,
11 I'M CONCERNED ABOUT IT.

12 SO WE'VE GOT SEVERAL OPTIONS. I COULD BRING THE
13 JURY OUT HERE RIGHT NOW AND TELL THEM THAT I AM GOING TO ASK
14 THEM TO DISREGARD THAT STATEMENT WHILE WE STUDY THIS. NOW,
15 THAT PROBABLY IS GOING TO HAVE THE EFFECT OF SORT OF
16 CEMENTING IT IN THEIR MINDS IF I EVENTUALLY ALLOW IT BACK IN.
17 IT GIVES IT PERHAPS A MORE -- MORE EMPHASIS OR WE CAN JUST
18 CONTINUE TO MOVE FORWARD, AND THEN AS SOON AS THE STATE GETS
19 THE WITNESS HERE, THEN WE CAN HEAR ABOUT THE ADMINISTERING OF
20 THE MIRANDA WARNINGS, IF THAT WAS WHAT WAS DONE. SO WHICH DO
21 YOU PREFER?

22 MR. MYERS: WE'VE GOT SOME WITNESSES WHO ARE FROM
23 OUT OF TOWN, AND I'D LIKE TO GET THEM UP TODAY. I WOULD
24 PREFER TO MOVE ON, AND THEN AS SOON AS THE OFFICER GETS HERE
25 WE CAN PUT HIM UP.

1 MR. LITTLEJOHN: YOUR HONOR, WE DON'T SEE ANY -- ANY
2 DIFFERENCE FROM THE STANDPOINT OF THE RECORD OR WHAT THE JURY
3 PERCEIVES IF THE COURT STRIKES IT NOW AND THEN GOES BACK IN
4 LATER OR IF THE COURT DECIDES TO STRIKE IT LATER. I MEAN, IF
5 YOU'RE GOING TO STRIKE IT ONE TIME, IT DOESN'T -- IT DOESN'T
6 REALLY MATTER WHETHER WE DO IT NOW OR DO IT LATER. SO WE'D
7 JUST AS SOON GO AHEAD WITH THE PRESENTATION OF THE EVIDENCE.

8 THE COURT: ALL RIGHT. LET'S GO THEN.

9 MR. LITTLEJOHN: YOUR HONOR, ONE THING I MIGHT NOTE
10 FOR THE RECORD. OBVIOUSLY MR. MERCER WAS REPRESENTED BY
11 COUNSEL AT THE TIME THIS STATEMENT WAS MADE AND WHICH IS NOT
12 SOMETHING THAT I PUT ON THE RECORD, BUT MAYBE I SHOULD HAVE.

13 THE COURT: NO, THAT'S FINE. THAT'S FINE TO PUT IT
14 ON THE RECORD. IN MY VIEW THAT'S AN INSIGNIFICANT FACT.

15 MR. LITTLEJOHN: RIGHT.

16 THE COURT: BECAUSE OF THE FACT THAT THIS STATEMENT
17 WAS MADE NOT IN RESPONSE TO ANY QUESTIONS FROM THE GOVERNMENT
18 THAT RELATED TO THIS CASE. THERE'S -- THERE'S NO EVIDENCE
19 THAT THIS OFFICER ASKED MR. MERCER WHY HE TOOK THOSE PILLS IN
20 AN EFFORT TO ELICIT INCRIMINATING INFORMATION ABOUT THE
21 MURDER CASE. SO THAT WOULDN'T MAKE ANY DIFFERENCE.

22 MR. LITTLEJOHN: I UNDERSTAND. I JUST WANTED THAT
23 ON THE RECORD.

24 THE COURT: NOW, BECAUSE HE WAS REPRESENTED BY
25 COUNSEL, IF THEY SENT SOMEBODY IN WHO WAS TRYING TO ELICIT---

1 MR. LITTLEJOHN: RIGHT.

2 THE COURT: ---INCRIMINATING EVIDENCE ABOUT THE
3 MURDER CASE, THEY WOULD HAVE HAD TO NOTIFY COUNSEL OR GET
4 ANOTHER WAIVER.

5 MR. LITTLEJOHN: YES, SIR.

6 THE COURT: SO -- ALL RIGHT. BRING IN THE JURY.

7 MR. GRAHAM: BEFORE YOU BRING THE JURY IN, CAN I GO
8 TO THE BATHROOM?

9 THE COURT: YES, SIR.

10 MR. GRAHAM: THANK YOU.

11 THE COURT: ALL RIGHT. LET'S TAKE ABOUT A THREE-OR-
12 FOUR-MINUTE BREAK.

13 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

14 THE COURT: ALL RIGHT. SO YOU STILL THINK THAT IF
15 WE KEEP ON PLUGGING YOU CAN BE DONE WITH YOUR -- THE NUMBER
16 OF WITNESSES YOU WANT TO GET UP TONIGHT IN ABOUT 45 MINUTES.

17 MR. MYERS: REST MY CASE?

18 THE COURT: NO, SIR. YOU SAID YOU HAD A CERTAIN
19 NUMBER OF WITNESSES YOU WANTED TO GET DONE TODAY.

20 MR. MYERS: YES, SIR. YES, SIR.

21 THE COURT: JUST THE ONES YOU WANT TO GET DONE
22 TODAY.

23 MR. MYERS: YES, SIR.

24 THE COURT: 30 TO 45 MINUTES?

25 MR. MYERS: THEY'RE GOING TO BE SIMILAR TO THESE

1 OTHER ONES. COMING IN, IT WON'T BE LONG AT ALL, ABOUT 30, 45
2 MINUTES.

3 THE COURT: OKAY. AND THEN YOUR WITNESS YOU WANT TO
4 GET UP IS GOING TO TAKE ABOUT 45 MINUTES.

5 MR. LITTLEJOHN: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. SO WE'RE STILL IN PRETTY
7 GOOD POSITION TO BE DONE WITH ALL THIS AND BE OUT OF HERE BY
8 7:30.

9 MR. LITTLEJOHN: I THINK SO; YES, SIR.

10 THE COURT: ALL RIGHT. BRING THEM IN, PLEASE.

11 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
12 5:50 P.M.)

13 THE COURT: CROSS-EXAMINATION.

14 CROSS-EXAMINATION

15 BY MR. LITTLEJOHN:

16 Q. MR. RANKIN, YOU KNEW AT THE TIME OF THIS INCIDENT
17 THAT MR. MERCER WAS LOOKING AT MURDER CHARGES?

18 A. YES.

19 Q. YOU KNEW IT WAS A CAPITAL CASE?

20 A. NO.

21 Q. YOU DIDN'T KNOW?

22 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

23 Q. OKAY. YOU DIDN'T WRITE DOWN EXACTLY WHAT KEVIN
24 SAID, DID YOU?

25 A. NOT EXACTLY.

1 Q. OKAY. DO YOU REMEMBER EXACTLY WHAT THE WORDS WERE
2 HE USED?

3 A. AS I ANSWERED EARLIER, NOT EXACTLY. THERE COULD
4 HAVE BEEN AN A., IF, OR MAYBE OR SOMETHING IN THERE. I DON'T
5 KNOW EXACTLY WORD FOR WORD.

6 Q. YOU DON'T REMEMBER WORD FOR WORD.

7 A. NOT EXACTLY.

8 MR. LITTLEJOHN: ALL RIGHT, SIR. NO FURTHER
9 QUESTIONS.

10 MR. GRAHAM: YOU CAN STEP DOWN. THANK YOU. NO
11 FURTHER QUESTIONS.

12 THE COURT: THIS WITNESS IS NOT EXCUSED. YOU'RE
13 FREE TO GO NOW.

14 THE WITNESS: OKAY.

15 THE COURT: BUT YOU'RE STILL UNDER SUBPOENA, AND YOU
16 CAN GO ON ABOUT YOUR BUSINESS. BUT IF WE CALL YOU, IF
17 SOMEBODY CALLS YOU, YOU BE READY TO COME BACK.

18 THE WITNESS: OKAY. THANK YOU.

19 THE COURT: THANK YOU.

20 MR. GRAHAM: THE STATE CALLS CHAD REDDING.

21 CHAD REDDING, AFTER BEING DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME,
24 SPELLING YOUR FIRST AND LAST NAME FOR THE RECORD, PLEASE.

25 THE WITNESS: CHAD REDDING. C-H-A-D R-E-D-D-I-N-G.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. MR. REDDING, WHERE ARE YOU EMPLOYED?

A. LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

Q. AND HOW LONG HAVE YOU BEEN WITH THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

A. APPROXIMATELY TWO AND A HALF YEARS.

Q. AND WHAT DO YOU DO FOR THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

A. I'M A CORRECTIONAL OFFICER ASSIGNED TO THE TRANSPORTATION DIVISION AT THE DETENTION BUREAU.

Q. DO YOU REMEMBER AN INCIDENT THAT OCCURRED NOVEMBER 24TH OF 2003 INVOLVING MR. MERCER?

A. I DO.

Q. ON NOVEMBER 24TH, 2003, AT APPROXIMATELY 11:00 P.M., WHAT WERE YOU DOING AT THAT TIME?

A. LOCKING DOWN THE HOUSING UNIT.

Q. AND WHAT DOES THAT MEAN?

A. REC TIME WAS OVER FOR THE EVENING AND FOR THAT DAY. EVERYBODY WHO WAS OUT TO REC HAD TO RETURN TO THEIR CELLS.

Q. FOR THE EVENING AND UNTIL THE NEXT DAY?

A. YES, SIR.

Q. AND IN THE COURSE OF YOUR LOCKDOWN, DID YOU GO TO CELL 3-B-2?

A. I DID.

1 Q. WHEN YOU CAME TO CELL 3-B-2 AND WERE LOCKING THAT
2 DOOR DOWN, WHAT DID YOU FIND?

3 A. THAT CELL HOUSED THREE INMATES. THERE WERE ONLY TWO
4 PRESENT WHEN I LOCKED IT DOWN.

5 Q. OKAY. DID YOU THEN COMPLETE YOUR LOCKDOWN OF THE
6 UNIT?

7 A. I DID.

8 Q. AND AFTER YOU WERE FINISHED WITH THE LOCKDOWN OF THE
9 UNIT, WHAT DID YOU FIND ABOUT THE MISSING INMATE IN CELL
10 3-B-2?

11 A. THE MISSING INMATE, KEVIN MERCER, HE WAS STILL IN
12 THE DAY ROOM WHERE THEY WATCH T.V. AND SPEND THEIR REC TIME.

13 Q. AND WHEN YOU FOUND MR. MERCER, WHAT DID YOU SAY TO
14 HIM?

15 A. WELL, I HAD HEARD FROM OUR VISITATION OFFICER
16 EARLIER THAT EVENING THAT HE HAD HAD A BAD VISIT. I ASKED
17 HIM WHAT WAS WRONG SINCE HE DIDN'T RETURN TO HIS ROOM.

18 Q. AND WHAT DID HE TELL YOU?

19 A. HE SAID THAT HIM AND HIS ROOMMATES WERE NOT GETTING
20 ALONG. HE HAD HAD A BAD VISIT, AND HE COULDN'T GO BACK IN
21 THERE.

22 Q. AT SOME POINT DID YOU ORDER HIM TO GO BACK INTO HIS
23 CELL?

24 A. I DID.

25 Q. AND WHAT DID HE DO?

1 A. HE STATED, "NO."

2 Q. AND AFTER HE REFUSED YOUR ORDER, WHAT DID YOU DO?

3 A. CALLED THE SERGEANT. THE SERGEANT SAID, "SEND HIM
4 TO FIRST FLOOR." SO I HAD HIM PACK UP HIS PROPERTY, AND I
5 ESCORTED HIM DOWN THE ELEVATOR TO FIRST FLOOR.

6 Q. LET ME ASK YOU IF THIS IS -- IN ADDITION TO AN
7 INFRACTION FOR DISOBEYING A DIRECT ORDER, DID YOU ALSO HAVE
8 INFRACTIONS WRITTEN UP FOR DISRUPTION OF FLOOR OPERATIONS AND
9 INTERFERING WITH AN OFFICER'S DUTY?

10 A. YES.

11 Q. IS THIS AN ACCURATE STATEMENT OF YOUR TESTIMONY:
12 NOVEMBER 24TH, 2003, LEXINGTON COUNTY DETENTION CENTER,
13 DISOBEYING DIRECT ORDER, DISRUPTION OF FLOOR OPERATIONS,
14 INTERFERING WITH OFFICER'S DUTY?

15 A. YES, SIR.

16 MR. GRAHAM: PLEASE ANSWER ANY QUESTIONS THE DEFENSE
17 HAS, OFFICER.

18 CROSS-EXAMINATION

19 BY MS. KIMBROUGH:

20 Q. GOOD AFTERNOON, OFFICER REDDING. HOW ARE YOU?

21 A. FINE. HOW ARE YOU?

22 Q. GOOD. WAS ANYBODY HURT DURING THIS INCIDENT?

23 A. I'M SORRY, MA'AM?

24 Q. WAS ANYONE INJURED DURING THIS INCIDENT?

25 A. NO, MA'AM.

1 Q. OKAY. AND MR. MERCER SAID HE HAD HAD A DIFFICULT
2 VISIT AND HE WAS UPSET ABOUT IT AND THAT'S WHY HE DID NOT
3 WANT TO GO BACK TO HIS ROOM?

4 A. THAT AND HE WASN'T GETTING ALONG WITH HIS ROOMMATES.
5 YES, MA'AM.

6 Q. SO HE WAS HAVING TROUBLE GETTING ALONG WITH HIS
7 ROOMMATES.

8 A. YES, MA'AM.

9 Q. OKAY. AND HE WAS UPSET ABOUT IT. AND HE WAS
10 PUNISHED FOR THIS? DO YOU RECALL WHAT THE PUNISHMENT WAS?

11 A. ALL I DO IS WHEN THE SERGEANT SAYS, "SEND THEM DOWN
12 TO FIRST FLOOR," I SEND THEM DOWN THERE AND THEY HANDLE IT
13 FROM THAT POINT ON.

14 Q. OKAY. SO HE WAS SENT TO LOCK-UP FOR THIS.

15 A. YES, MA'AM.

16 Q. OKAY. ANY PROBLEM GETTING HIM TO LOCK-UP?

17 A. NO, MA'AM.

18 MS. KIMBROUGH: OKAY. THANK YOU.

19 MR. GRAHAM: NO OTHER QUESTIONS, YOUR HONOR.

20 THE COURT: YOU CAN STEP DOWN, SIR.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 MR. GRAHAM: THE STATE CALLS SHAWN MISNER.

23 SHAWN MISNER, AFTER BEING DULY SWORN, TESTIFIED

24 AS FOLLOWS:

25 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR

1 FIRST AND LAST NAME FOR THE RECORD, PLEASE.

2 THE WITNESS: MY NAME IS SHAWN MISNER. S-H-A-W-N.

3 LAST NAME MISNER, M-I-S-N-E-R.

4 DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q. MR. MISNER, WHERE ARE YOU CURRENTLY EMPLOYED?

7 A. CITY OF WEST COLUMBIA POLICE DEPARTMENT.

8 Q. AND HOW LONG HAVE YOU WORKED THERE?

9 A. APPROXIMATELY A YEAR AND NINE MONTHS.

10 Q. AND YOU'RE AN OFFICER THERE?

11 A. YES, SIR.

12 Q. PRIOR TO BEING WITH THE WEST COLUMBIA POLICE
13 DEPARTMENT, DID YOU WORK FOR THE LEXINGTON COUNTY DETENTION
14 CENTER?

15 A. YES, I DID.

16 Q. AND APPROXIMATELY HOW LONG DID YOU WORK THERE?

17 A. ROUGHLY A YEAR AND A HALF.

18 Q. AND WHAT WERE YOUR RESPONSIBILITIES THERE?

19 A. I WAS A CORRECTIONAL OFFICER PROVIDING SECURITY FOR
20 INMATES, JUST FEEDING THEM, WATCHING THEM, MAKING SURE THEY
21 HAD THE THINGS THEY NEEDED.

22 Q. DO YOU REMEMBER -- WELL, WERE YOU -- WERE YOU
23 WORKING ON FEBRUARY 4TH OF 2004?

24 A. YES, I WAS.

25 Q. AT APPROXIMATELY 12:50 A.M. THAT MORNING WERE YOU

1 INVOLVED IN DOING A SHAKEDOWN ON THE C. WING OF THE FIRST
2 FLOOR?

3 A. YES, SIR.

4 Q. AND DID YOU DO ONE ON ROOM A. ON THE FIRST FLOOR?

5 A. YES, I DID.

6 Q. AND DO YOU REMEMBER THE INMATES THAT WERE HOUSED
7 THERE?

8 A. YES, I DO.

9 Q. WHO -- CAN YOU PULL THE MICROPHONE A LITTLE BIT
10 CLOSER TO YOU AND SPEAK UP? I'M SORRY.

11 A. YES, I DO REMEMBER WHO WAS IN THAT ROOM.

12 Q. WHO WERE THE INMATES THAT WERE HOUSED IN THAT CELL?

13 A. JOHNNY FRAZIER, KEVIN MERCER, AND ELVIS MEGGETT.

14 Q. AND DO YOU KNOW WHETHER MR. MEGGETT HAD BEEN STAYING
15 THERE LONG OR WHETHER HE HAD JUST MOVED THERE THAT NIGHT?

16 A. I DON'T BELIEVE HE HAD BEEN STAYING THERE VERY LONG.

17 Q. CAN YOU EXPLAIN HOW THAT -- THE SHAKEDOWN ON THAT
18 CELL OCCURRED?

19 A. WE HAD GOT WORD THAT SOME INMATES WAS POSSIBLY---

20 MR. LITTLEJOHN: I'M GOING TO OBJECT TO THE HEARSAY,
21 YOUR HONOR.

22 MR. GRAHAM: IT'S NOT OFFERED FOR THE TRUTH OF THE
23 MATTER. IT GOES TO EXPLAIN WHY THE ACTIONS -- WHY THE
24 SHAKEDOWN OCCURRED.

25 THE COURT: LET ME SEE Y'ALL FOR A SECOND.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

2 BY MR. GRAHAM:

3 Q. WHEN YOU -- WHEN YOU -- DID YOU DO A SHAKEDOWN ON
4 THAT ROOM?

5 A. YES, SIR.

6 Q. WHEN YOU WENT IN THE CELL, WHAT DID YOU FIND?

7 A. I FOUND THAT THE BUNK THAT WAS IN THE ROOM WHICH IS
8 -- THERE'S A BUNK IN THE ROOM AND A MATTRESS ON THAT BUNK FOR
9 AN INMATE TO SLEEP ON. THE BUNK WAS PULLED LOOSE FROM THE
10 GROUND. IT HAS FOUR LEGS ON IT. THE BOLTS -- ALL FOUR BOLTS
11 WERE MISSING FROM EACH LEG. WHERE THE BOLTS HAD BEEN IN THE
12 HOLES, YOU COULD TELL THAT THEY HAD BEEN FRESHLY REMOVED. IN
13 FACT, THERE WAS NO RUST ON THE HOLES. THERE WAS SHINY METAL
14 THERE. YOU COULD EASILY MOVE THE BUNK IN THE ROOM. THE BUNK
15 WAS TAKEN FROM THE ROOM AND PLACED IN A SECURED AREA AWAY
16 FROM THE INMATES THAT WERE HOUSED IN THAT ROOM.

17 Q. WHOSE BUNK WAS IT? WHO SLEPT ON THAT BUNK?

18 A. KEVIN MERCER.

19 Q. NOW, THERE WERE TWO OTHER PEOPLE. THEY DIDN'T HAVE
20 ANOTHER BUNK, SO WHERE DID THEY SLEEP?

21 A. THEY SLEPT ON THE FLOOR ON MATTRESSES.

22 Q. WHEN THAT BUNK WAS REMOVED FROM THE CELL, WHAT, IF
23 ANYTHING, DID YOU SEE IN THE CELL?

24 A. AT THE FOOT OF THE BUNK, WELL, NEXT TO THE -- I
25 GUESS ACTUALLY TO WHERE THE TOILET IS AT THERE'S A SMALL

1 SECTION OF WALL. IT'S LIKE IN AN L. SHAPE. IN FRONT OF THAT
2 BUNK THERE WAS A HOLE IN THE WALL, IN THE CONCRETE,
3 APPROXIMATELY FIVE OR SIX INCHES IN DIAMETER.

4 Q. AND WHAT DID THAT HOLE ACCESS? WHAT WAS THE ACCESS?
5 WHERE DID THAT LEAD TO?

6 A. YOU COULD SEE PIPES IN THERE. I'M GUESSING IT WAS
7 TO A -- TO THE PIPES FOR THE SINK AND FOR THE TOILET.

8 Q. WOULD THAT BE THE -- I'VE HEARD IT REFERRED AS A
9 PLUMBING CHASE.

10 A. YES, SIR, WATER CHASE, PLUMBING CHASE.

11 Q. SO THE PIPES FROM THE DIFFERENT FLOORS RAN UP AND
12 DOWN IN THAT AREA?

13 A. YES, SIR.

14 Q. WAS THERE -- IF THE HOLE HAD BEEN ENLARGED, THEN
15 WOULD THERE HAVE BEEN ROOM ENOUGH FOR SOMEBODY TO GO IN
16 THERE?

17 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO
18 THE SPECULATIVE NATURE OF THE QUESTION AND THE LEADING
19 QUESTION.

20 THE COURT: WELL, I -- HOW ABOUT REPHRASE THE
21 QUESTION? BECAUSE I'M NOT -- I'M NOT SURE I UNDERSTOOD.
22 BY MR. GRAHAM:

23 Q. WHAT, IF ANYTHING, COULD AN INMATE DO IF THE HOLE
24 HAD BEEN ENLARGED?

25 A. THEY COULD HAVE GOT IN THAT WATER CHASE.

1 Q. AND IF THEY GOT INTO THE WATER CHASE, WHERE, IF
2 ANYWHERE, COULD THEY HAVE GONE?

3 A. THEY COULD GO ANYWHERE FROM THE SECOND FLOOR UP TO
4 THE THIRD FLOOR OR FROM THE FIRST FLOOR DOWN INTO WHEREVER
5 THAT GOES.

6 Q. IN ADDITION ON YOUR SHAKEDOWN, DID YOU FIND THE
7 BOLTS?

8 A. NO.

9 Q. AS PART OF THE SHAKEDOWN, DID YOU DO STRIP SEARCHES
10 OF ALL THE INMATES IN THAT CELL: MR. MERCER, MR. FRASIER,
11 AND MR. MEGGETT?

12 A. YES, SIR.

13 Q. DID YOU FIND ANY CONTRABAND OR ANYTHING ON ANY OF
14 THOSE PEOPLE AT THAT TIME?

15 A. NO, SIR.

16 Q. DID YOU NOTICE ANYTHING UNUSUAL ABOUT THE LIGHT
17 FIXTURE IN THE ROOM?

18 A. NO, I DID NOT.

19 Q. IF YOU WOULD HAVE NOTICED ANYTHING UNUSUAL, WOULD
20 YOU HAVE -- WOULD YOU HAVE LOOKED THERE, TOO?

21 A. YES, SIR.

22 Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.
23 THANK YOU, OFFICER.

24 A. UH-HUH.
25

CROSS-EXAMINATION1
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BY MR. LITTLEJOHN:

Q. OFFICER MISNER, YOU SAID THERE WERE THREE INMATES IN THIS CELL?

A. YES, SIR.

Q. ONE BUNK. THREE INMATES.

A. YES, SIR.

Q. OKAY. AND I BELIEVE YOU INDICATED THERE WAS A HOLE IN THE WALL ABOUT FOUR TO FIVE INCHES IN DIAMETER?

A. YES, SIR, ROUGHLY.

Q. IT'S NOT BIG ENOUGH THAT A PERSON COULD GET THROUGH.

A. YOU COULD PROBABLY PUT YOUR FIST IN IT.

Q. PUT YOUR FIST IN IT?

A. UH-HUH.

Q. HIDE STUFF IN IT?

A. POSSIBLY.

Q. INMATES HIDE STUFF FROM TIME TO TIME?

A. I'M SURE THEY DO.

MR. LITTLEJOHN: NO FURTHER QUESTIONS, JUDGE.

MR. GRAHAM: NOTHING ELSE FROM THE STATE, YOUR HONOR.

THE COURT: YOU CAN STEP DOWN, SIR.

THE WITNESS: THANK YOU.

MR. GRAHAM: THE STATE CALLS ELVIS MEGGETT.

ELVIS MEGGETT, AFTER BEING DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
3 FIRST AND LAST NAMES FOR THE RECORD.

4 THE WITNESS: MY NAME IS ELVIS MEGGETT. E-L-V-I-S
5 M-E-G-G-E-T-T.

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. YOU CAN HAVE A SEAT. MR. MEGGETT, FEBRUARY 4TH OF
9 2004, WERE YOU AN INMATE IN THE LEXINGTON COUNTY DETENTION
10 CENTER?

11 A. YES.

12 Q. AND WHAT WERE YOU IN THERE FOR?

13 A. CHILD SUPPORT.

14 Q. IS THAT -- SO YOU WERE HELD IN CONTEMPT BY A FAMILY
15 COURT JUDGE FOR FAILURE TO PAY CHILD SUPPORT?

16 A. YES. YES.

17 Q. ON THE NIGHT OF FEBRUARY 4TH, 2004, WERE YOU MOVED
18 FROM ONE CELL TO ANOTHER CELL?

19 A. YES, I WAS MOVED FROM A TRUSTEE CELL TO FIRST FLOOR.

20 Q. AND WHY WERE YOU MOVED FROM A TRUSTEE CELL? YOU HAD
21 BEEN A TRUSTEE?

22 A. YES, I WAS A TRUSTEE.

23 Q. WHY HAD YOU MOVED TO THE FIRST -- WHY WERE YOU MOVED
24 TO THE FIRST FLOOR?

25 A. FROM GUILTY OF ASSOCIATION. THEY THOUGHT I WAS

1 SMOKING IN THE BATHROOM.

2 Q. AND SO AFTER THEY THOUGHT YOU WERE SMOKING IN THE
3 BATHROOM, THEY TOOK OFF YOUR TRUSTEE STATUS AND THEY PUT YOU
4 ON CONFINEMENT?

5 A. FIRST FLOOR, 14 DAYS.

6 Q. WHEN YOU WERE PUT ON CONFINEMENT, WHO WERE YOUR CELL
7 MATES ON FEBRUARY 4TH, 2004?

8 A. JOHNNY FRAZIER AND KEVIN MERCER.

9 Q. SOON AFTER YOU WERE THERE, WHAT, IF ANYTHING,
10 HAPPENED REGARDING THE SHAKEDOWN?

11 A. EXCUSE ME, SIR? SAY IT AGAIN.

12 Q. YOU CAME IN ON THE NIGHT OF FEBRUARY 4TH, 2004.

13 A. YEAH.

14 Q. SOON AFTER YOU CAME IN, WAS THERE A SHAKEDOWN OF
15 YOUR CELL?

16 A. YES, WE WAS -- YES, WE WAS TAKEN OUT AND STRIP-
17 SEARCHED.

18 Q. WHAT, IF ANYTHING, WAS FOUND REGARDING A BED BEING
19 LOOSE IN THE CELL?

20 A. A RAZOR IN THE LIGHT KIT THE NEXT NIGHT.

21 Q. LET'S BACK UP TO THE NIGHT OF THE ORIGINAL
22 SHAKEDOWN.

23 A. UH-HUH.

24 Q. WHEN THE OFFICERS CAME IN -- WHEN YOU CAME BACK FROM
25 BEING STRIP-SEARCHED, WAS THE BUNK STILL IN THE ROOM OR HAD

1 THEY TAKEN THE BUNK OUT?

2 A. I THINK THEY HAD TAKEN IT OUT. I THINK RANKIN HAD
3 TAKEN IT OUT.

4 Q. AND AFTER THEY TOOK THE BUNK OUT, HOW LONG DID
5 JOHNNY FRASIER STAY IN THAT CELL WITH YOU?

6 A. MAYBE TWO HOURS, TO GO TO THE P.C. SIDE.

7 Q. SO AFTER ABOUT TWO HOURS, AT AROUND 2 OR 3 IN THE
8 MORNING, HE LEFT THAT CELL AND WENT SOMEWHERE ELSE.

9 A. YES. HE WENT TO THE P.C. SIDE.

10 Q. SO AFTER HE LEFT, THE ONLY PEOPLE IN THAT CELL WERE
11 YOU---

12 A. AND KEVIN.

13 Q. ---AND MR. MERCER.

14 A. UH-HUH.

15 Q. WHAT, IF ANYTHING, DID MR. MERCER SAY TO YOU
16 REGARDING THAT BUNK?

17 A. HE TOLD ME THEY HAD KICKED IT LOOSE. BOTH OF THEM
18 KICKED IT LOOSE AND RAMMED IT AGAINST THE WALL A COUPLE OF
19 TIMES, SAYING THEY WAS GOING TO ESCAPE THROUGH THIS
20 COURTHOUSE, THE BACK PART OF THE COURTHOUSE.

21 Q. WHEN THEY SAID THEY WERE -- WHEN HE SAID THEY KICKED
22 IT LOOSE, WHO WAS HE TALKING ABOUT?

23 A. HIM AND JOHNNY FRASIER.

24 Q. SO HE STATED THAT HE AND MR. FRASIER KICKED THE BUNK
25 LOOSE, AND AFTER THEY KICKED THE BUNK LOOSE, WHAT DID THEY

1 DO?

2 A. RAMMED IT INTO THE WALL TOWARDS THE COURTROOM.

3 Q. IS THERE A WALL IN THAT CELL THAT BACKS UP TO A
4 COURTROOM?

5 A. YEAH.

6 Q. AND HE TOLD YOU THAT THEIR PURPOSE IN DOING THAT WAS
7 TO ESCAPE.

8 A. TO LEAVE. UH-HUH.

9 Q. LET ME SHOW YOU THIS AND ASK IF THIS IS AN ACCURATE
10 REFLECTION OF YOUR TESTIMONY: FEBRUARY 4TH, 2004, LEXINGTON
11 COUNTY DETENTION CENTER, ESCAPE PLANNED. DOES THAT
12 ACCURATELY REFLECT WHAT MR. MERCER DISCUSSED WITH YOU?

13 A. IT WASN'T A PLAN. THEY SAID THAT'S WHAT THEY WAS
14 DOING. WELL, I RECKON THAT'S A PLAN.

15 Q. DID HE SAY THEY PLANNED OR THEY TRIED?

16 A. THEY TRIED.

17 Q. LET ME TRY THIS. FEBRUARY 4TH, 2004, LEXINGTON
18 COUNTY DETENTION CENTER, TRIED TO ESCAPE.

19 A. YEAH.

20 Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS, MR.
21 MEGGETT. ACTUALLY I DID FORGET ONE QUESTION. AND YOU HAD
22 ACTUALLY SAID IT BEFORE I ASKED YOU. YOU SAID THE NEXT DAY
23 OR A COUPLE OF DAYS LATER THAT A RAZOR BLADE WAS FOUND?

24 A. THE NEXT -- THE NEXT NIGHT THEY SHOOK US DOWN AGAIN,
25 AND THEY FOUND A RAZOR BLADE IN THE LIGHT FIXTURE.

1 Q. WHEN YOU CAME INTO THAT CELL, WAS -- DID YOU KNOW
2 ANYTHING ABOUT A RAZOR BLADE BEING IN THE LIGHT FIXTURE?

3 A. NO.

4 Q. DID YOU KNOW ANYTHING ABOUT THE LIGHT FIXTURE---

5 A. HANGING DOWN, NOTHING, NO.

6 Q. ---HANGING DOWN OR ANYTHING LIKE THAT?

7 A. NO.

8 MR. GRAHAM: THANK YOU.

9 CROSS-EXAMINATION

10 BY MR. LITTLEJOHN:

11 Q. MR. MEGGETT, YOU GAVE A STATEMENT ABOUT THIS
12 INCIDENT---

13 A. YEAH.

14 Q. ---A MONTH AFTER IT HAPPENED, DIDN'T YOU?

15 A. MAYBE A MONTH.

16 Q. IS THAT WHEN THEY QUESTIONED YOU ABOUT IT?

17 A. YEAH.

18 Q. WHERE WERE YOU THEN?

19 A. BACK IN TRUSTEE STATUS.

20 Q. SO YOU WERE A TRUSTEE AT THE DETENTION CENTER.

21 A. AT THE DETENTION CENTER.

22 Q. AND YOU WERE TRYING TO FINISH UP YOUR SENTENCE?

23 A. YEAH, I WAS FINISHING UP.

24 Q. AND YOU WANTED TO REMAIN A TRUSTEE, DIDN'T YOU?

25 A. I RETURNED BACK FROM THE FIRST FLOOR TO TRUSTEE.

1 Q. AND YOU WANTED TO REMAIN A TRUSTEE, DID YOU NOT?

2 A. YES.

3 Q. YOU DIDN'T WANT TO BE LOCKED DOWN.

4 A. NO.

5 Q. OKAY. AND YOU DIDN'T SEE MERCER OR FRASIER DO

6 ANYTHING WITH THAT BED, DID YOU?

7 A. NO.

8 Q. YOU DIDN'T SEE THEM KNOCKING A HOLE IN IT?

9 A. NO.

10 Q. YOU DON'T KNOW HOW THE HOLE GOT THERE OF YOUR OWN

11 PERSONAL KNOWLEDGE.

12 A. NO.

13 Q. AND I BELIEVE IT WAS DESCRIBED THE HOLE WAS ABOUT

14 FOUR INCHES IN DIAMETER? FOUR OR FIVE INCHES? DOES THAT

15 SOUND RIGHT?

16 A. THAT WASN'T THE HOLE -- WELL, THAT HOLE WAS THERE

17 WHEN I GOT THERE BUT, NO, I DIDN'T SEE THEM DO IT. IT WAS

18 ABOUT...

19 Q. SO IT WAS BIGGER THAN FOUR OR FIVE INCHES.

20 A. YEAH.

21 Q. AND THE HOLE WAS ALREADY THERE.

22 A. YEAH.

23 Q. AND YOU NEVER TALKED TO MR. FRAZIER ABOUT IT.

24 A. NO.

25 Q. ABOUT HOW THE HOLE GOT THERE.

1 A. NO.

2 Q. AND HE WAS IN THE CELL BEFORE YOU GOT THERE.

3 A. YEAH.

4 MR. LITTLEJOHN: THAT'S ALL I HAVE FOR THIS WITNESS,
5 YOUR HONOR.

6 MR. GRAHAM: I HAVE NO FURTHER QUESTIONS, YOUR
7 HONOR.

8 THE COURT: YOU CAN STEP DOWN, SIR.

9 MR. GRAHAM: THE STATE CALLS KENNY ISENHOWARD.

10 KENNETH W. ISENHOWARD, AFTER BEING DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR
13 FIRST AND LAST FOR THE RECORD, PLEASE.

14 THE WITNESS: KENNETH WAYNE ISENHOWARD.
15 K-E-N-N-E-T-H I-S-E-N-H-O-W-A-R-D.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q. OFFICER ISENHOWARD, WHERE ARE YOU EMPLOYED?

19 A. LEXINGTON COUNTY DETENTION CENTER.

20 Q. AND HOW LONG HAVE YOU BEEN THERE?

21 A. FOUR YEARS AND ONE MONTH.

22 Q. AND WHAT DO YOU DO AT THE DETENTION CENTER?

23 A. I'M A DETENTION CENTER OFFICER.

24 Q. FEBRUARY 6TH OF 2004 AT APPROXIMATELY 11:45 IN THE
25 MORNING, DID YOU HAVE AN OCCASION TO GO TO THE CELL 1-C-8?

1 A. YES, SIR.

2 Q. WHAT WAS YOUR PURPOSE OF GOING THERE THAT DAY?

3 A. ME AND THE MAINTENANCE SUPERVISOR AND AN INMATE
4 WORKER WAS GOING TO MAKE REPAIRS ON THAT CELL.

5 Q. COULD YOU PULL YOUR -- PULL THE MICROPHONE A LITTLE
6 CLOSER TO YOU, PLEASE, AND TALK JUST A LITTLE BIT LOUDER.

7 WHAT WAS YOUR PURPOSE IN GOING TO THE CELL THAT DAY?

8 A. ME AND THE MAINTENANCE SUPERVISOR AND AN INMATE
9 WORKER WAS GOING TO DO REPAIRS ON THE CELL.

10 Q. WHOSE CELL WAS THAT?

11 A. IT WAS MR. MERCER'S AND I BELIEVE MEGGETT.

12 Q. ELVIS MEGGETT?

13 A. I BELIEVE SO.

14 Q. WHEN YOU GOT TO THAT CELL, WHAT, IF ANYTHING, DID
15 YOU SEE WHEN YOU WALKED IN?

16 A. I SEEN THE LIGHT FIXTURE HANGING, AND MR. PRICE, A
17 PREVIOUS EVENT, HAD ALREADY KNOWN THAT THERE WAS A HOLE IN
18 THE WALL AND THAT THE BED WAS AJAR.

19 Q. SO YOUR PURPOSE IN GOING THERE WAS TO WATCH OVER MR.
20 PRICE AND THE TRUSTEE AS THE HOLE WAS FIXED AND THAT THE BED
21 WAS RE-SECURED?

22 A. YES, SIR.

23 Q. AND WHEN YOU CAME IN, YOU SAW -- YOU SAID SOMETHING
24 ABOUT A LIGHT FIXTURE. WHAT DID YOU SEE WITH THE LIGHT
25 FIXTURE?

1 A. IT WAS HANGING DOWN, I THINK. THE LEFT SIDE OF IT,
2 I BELIEVE, WAS HANGING DOWN.

3 Q. IS THAT HOW IT'S SUPPOSED TO BE?

4 A. NO.

5 Q. WHEN YOU SAW IT HANGING DOWN, WHAT DID YOU DO?

6 A. I INFORMED MR. PRICE, AND HE TOLD ME IT WASN'T ON
7 THE WORK ORDER. SO I CHECKED IT OUT AND MADE SURE THAT THE
8 BOLTS AND STUFF WERE STILL THERE.

9 Q. WHEN YOU CHECKED THE LIGHT FIXTURE, WHAT, IF
10 ANYTHING, DID YOU NOTICE?

11 A. THERE WAS SOME TOILET PAPER WRAPPED UP IN IT.

12 Q. AND WHAT WAS INSIDE THE TOILET PAPER?

13 A. WELL, AFTER WE BROUGHT THE TOILET PAPER DOWN AND
14 UNWRAPPED IT, THERE WAS A RAZOR BLADE IN IT.

15 Q. AND BASED ON THAT, WAS THERE AN INFRACTION FOR
16 POSSESSION OF CONTRABAND AND DESTRUCTION OF COUNTY PROPERTY?

17 A. YES, SIR.

18 Q. THE POSSESSION OF CONTRABAND IS THE RAZOR BLADE.
19 DESTRUCTION OF COUNTY PROPERTY WOULD BE DAMAGE TO THE---

20 A. THE LIGHT FIXTURE.

21 Q. ---THE LIGHT FIXTURE? AND THAT OCCURRED

22 FEBRUARY 6TH, 2004.

23 A. TO THE BEST OF MY KNOWLEDGE.

24 Q. DO YOU HAVE YOUR REPORT WITH YOU?

25 A. NO, SIR.

1 Q. IS THAT YOUR REPORT?

2 A. YES, SIR.

3 Q. AND THE DATE ON THAT WAS -- THIS INCIDENT IS
4 FEBRUARY 6TH, 2004?

5 A. YES, SIR.

6 Q. LET ME ASK IF THIS AN ACCURATE STATEMENT:
7 FEBRUARY 6TH, 2004, LEXINGTON COUNTY DETENTION CENTER,
8 POSSESSION OF CONTRABAND, DESTRUCTION OF COUNTY PROPERTY.

9 A. YES, SIR.

10 Q. OFFICER ISENHOWARD, PLEASE ANSWER ANY QUESTIONS THAT
11 THE DEFENSE HAS FOR YOU.

12 A. OKAY.

13 CROSS-EXAMINATION

14 BY MS. KIMBROUGH:

15 Q. GOOD AFTERNOON, OFFICER ISENHOWARD.

16 A. GOOD AFTERNOON.

17 Q. IN LOOKING AT YOUR INCIDENT REPORT, IT WOULD APPEAR
18 THAT WHEN YOU ENTERED THE CELL, THE LIGHT WAS ALREADY
19 HANGING? IT WAS HANGING DOWN AT THAT TIME?

20 A. YES, MA'AM.

21 Q. WERE YOU THERE WHEN IT WAS FIRST DISCOVERED THAT THE
22 LIGHT WAS HANGING DOWN OR DID YOU ENTER AND OTHER PEOPLE WERE
23 ALREADY THERE?

24 A. NO, MA'AM.

25 Q. OKAY. WHEN YOU ENTERED THE CELL, A REPAIR WAS BEING

1 DONE TO A HOLE IN THE WALL? IS THAT CORRECT?

2 A. THAT'S WHAT WE WAS GOING THERE FOR WAS THE REPAIR.

3 Q. OKAY. AND AT THAT TIME ON FEBRUARY 6TH YOU SAID
4 THERE WERE TWO INMATES THAT WERE HOUSED IN THAT PARTICULAR
5 CELL?

6 A. YES, MA'AM.

7 Q. OKAY. WAS IT EVER DETERMINED WHEN THE RAZOR WAS
8 PLACED IN THE LIGHT FIXTURE?

9 A. TO MY KNOWLEDGE, NO, MA'AM.

10 Q. YES, SIR. THAT'S WHAT I'M REFERRING TO. OBVIOUSLY
11 YOU DON'T KNOW IT UNLESS IT'S TO YOUR PERSONAL KNOWLEDGE. DO
12 YOU KNOW IF -- I SEE HERE THAT KEVIN WAS CHARGED WITH THIS
13 VIOLATION. DO YOU KNOW IF HE WAS EVER CONVICTED OR PUNISHED
14 FOR IT OR FOUND GUILTY OF IT?

15 A. THAT IS UP TO THE SUPERVISORS. THEY HANDLE THE
16 CHARGING OF IT AND THE CONVICTION.

17 Q. OKAY. SO, TO YOUR KNOWLEDGE, YOU DON'T KNOW WHETHER
18 OR NOT HE WAS EVER FOUND TO BE RESPONSIBLE FOR THIS -- FOR
19 THIS DAMAGE. HE WAS CHARGED WITH IT.

20 A. YES, HE WAS.

21 Q. BECAUSE HE WAS IN THE ROOM.

22 A. YES, HE WAS.

23 Q. ALONG WITH MR. MEGGETT.

24 A. YES.

25 MS. KIMBROUGH: OKAY.

1 MR. GRAHAM: NO QUESTIONS. THANK YOU, OFFICER.

2 MR. HUBBARD: THE STATE CALLS BUDDY WILLIAMS.

3 FELIX WILLIAMS, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME FOR
6 ME AND SPELL YOUR FIRST AND LAST FOR THE RECORD, PLEASE.

7 THE WITNESS: MY FULL NAME IS FELIX WILLIAMS.

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. CAPTAIN WILLIAMS, DID YOU -- WERE YOU ONCE EMPLOYED
11 WITH THE LEXINGTON COUNTY DETENTION CENTER?

12 A. YES, I WAS, UNTIL DECEMBER OF 2004. I RETIRED.

13 Q. YOU RETIRED. SO YOU'VE BEEN RETIRED SINCE THEN.
14 ARE YOU WORKING NOW OR ARE YOU---

15 A. NO, I'VE BEEN RETIRED SINCE THAT TIME.

16 Q. JUST ENJOYING LIFE.

17 A. ABSOLUTELY.

18 Q. NOW, WHAT WERE YOUR DUTIES AT THE SHERIFF'S
19 DEPARTMENT?

20 A. WELL, I WAS EMPLOYED THERE FOR ABOUT 10 YEARS, AND
21 IT RANGED FROM BEING THE JAIL ADMINISTRATOR 'TIL WE INCREASED
22 STAFF, AND MY FINAL POSITION TITLE WAS OPERATIONS CAPTAIN.

23 Q. AND AS OPERATIONS CAPTAIN, WHAT DID YOUR DUTIES
24 ENTAIL?

25 A. BASICALLY THE DAILY SECURITY, OPERATION, AND JUST

1 THE OVERALL EVERYTHING THAT HAPPENED WITHIN THE JAIL.

2 Q. WERE PART OF YOUR DUTIES SIGNING OFF ON ALL
3 INFRACTION PUNISHMENTS AND DISCIPLINARY ACTIONS TAKING PLACE
4 IN THE JAIL?

5 A. THAT'S CORRECT. I WAS THE FINAL SIGNATURE AUTHORITY
6 ON ALL ADMINISTRATIVE ACTIONS FOR ADMINISTRATIVE PUNISHMENT.

7 Q. ANY APPEALS BASICALLY WITHIN THE JAIL STOPPED WITH
8 YOU.

9 A. BASICALLY, UNLESS THEY DISAGREED WITH MY DECISION
10 AND AT WHICH TIME THEY COULD THEN ADDRESS IT TO THE SHERIFF
11 IF THEY DIDN'T LIKE MY DECISION.

12 Q. OKAY. BUT YOU REVIEWED ALL DISCIPLINARY DECISIONS
13 WITHIN THE JAIL.

14 A. THAT'S CORRECT.

15 Q. AND YOU'RE AWARE -- YOU WERE AWARE OF ALL
16 DISCIPLINARY ACTIONS AS PART OF YOUR JOB.

17 A. YES. I HAD TO SIGN OFF ON EVERY ONE OF THEM MYSELF.

18 Q. OKAY. I WANT TO TALK ABOUT A FEW DIFFERENT
19 INFRACTIONS THAT YOU WERE FACED WITH. I WANT TO BEGIN WITH
20 ONE AUGUST 13TH, 2002. ARE YOU AWARE OF AN INCIDENT
21 INVOLVING C.O. SCIPIO?

22 A. YES, OFFICER SCIPIO, I WAS. SHE WAS UP ON THIRD
23 FLOOR DURING THE INCIDENT.

24 Q. AND DO YOU KNOW WHAT THAT INCIDENT INVOLVED?

25 A. BASICALLY IT INVOLVED DISRESPECT AND INDECENT

1 EXPOSURE.

2 Q. OKAY. AND DID YOU SIGN OFF ON PUNISHMENT ON THAT
3 PARTICULAR CASE?

4 A. YES, I DID. I SIGNED OFF ON SIX DAYS' CONFINEMENT
5 FOR THOSE TWO CHARGES.

6 Q. SO FOR THOSE CHARGES, AUGUST 13TH OF THAT YEAR, SIX
7 DAYS' CONFINEMENT ACTUALLY -- ACCURATELY REFLECTS WHAT YOU
8 DID.

9 A. THAT'S CORRECT.

10 Q. ARE YOU AWARE OF ANOTHER INCIDENT THAT TOOK PLACE
11 INVOLVING KEVIN MERCER AUGUST 13TH -- AND LET ME BACK UP.
12 THIS ONE THAT -- THE SIX DAYS' CONFINEMENT, DID THAT INVOLVE
13 KEVIN MERCER?

14 A. YES, THAT DID.

15 Q. OKAY. AUGUST 13TH, DID YOU HAVE A SEPARATE INCIDENT
16 INVOLVING KEVIN MERCER?

17 A. YES, WE DID. THE EARLIER INCIDENT HAPPENED EARLIER
18 IN THE DAY, AND THE LAST ONE HAPPENED AT -- BASICALLY THE
19 TIME IS SHOWING AT 16 -- AT 6:33 IN THE EVENING WHICH WAS
20 DINNER TIME.

21 Q. WAS THAT WHEN THE FOOD CART WAS OVERTURNED?

22 A. THAT'S CORRECT. THERE WAS A FOOD CART OVERTHROWN,
23 DISRUPTING THE FLOOR AND JAIL OPERATIONS, LEAVING HIS CELL
24 WITHOUT PERMISSION. THERE WAS QUITE A FEW CHARGES ON THAT
25 ONE.

1 Q. WHAT, IF ANY, PUNISHMENT WAS ISSUED ON THAT
2 PARTICULAR -- ON THOSE LIST OF CHARGES?

3 A. ON THOSE IT WAS 10 DAYS' CONFINEMENT IN ADDITION TO
4 THE SIX FOR THE PREVIOUS OFFENSE.

5 Q. SO WOULD THIS BE AN ACCURATE STATEMENT: 10 DAYS'
6 CONFINEMENT TO BEGIN AT THE END OF PREVIOUS PUNISHMENT?

7 A. THAT'S CORRECT.

8 Q. OR CONFINEMENT?

9 A. THAT'S CORRECT.

10 Q. ARE YOU AWARE OF ANOTHER INCIDENT INVOLVING KEVIN
11 MERCER, DECEMBER 7TH, 2002?

12 A. YES.

13 Q. AND CAN YOU PLEASE TELL US ABOUT THAT INCIDENT?

14 A. THAT WAS AN INCIDENT WHERE HE WAS PLAYING CARDS WHEN
15 HE WAS SUPPOSED TO BE ON LOCKDOWN. THE OFFICER INVOLVED
16 INSTRUCTED HIM THAT HE WAS TO REMAIN ON LOCKDOWN. HOWEVER,
17 HE HAD COME OUT AND WENT TO A -- WE HAVE A ROOM, MULTI-
18 PURPOSE ROOM IN EACH ONE OF THE AREAS WHERE THEY CAN PLAY
19 CARDS OR DO DIFFERENT THINGS AT, AND HE WAS PLAYING CARDS IN
20 THAT MULTI-PURPOSE ROOM WHEN THE OFFICER CAUGHT HIM THERE.

21 Q. WHAT, IF ANY, CHARGES WERE BROUGHT?

22 A. THERE WAS BEING OUT OF PLACE AFTER LOCKDOWN AND
23 INTERFERING WITH AN OFFICER'S DUTIES, AND HE WAS CONFINED FOR
24 THREE DAYS FOR THAT OFFENSE.

25 Q. AND, AGAIN, THIS IS DECEMBER 7, 2002, LEXINGTON

1 COUNTY DETENTION CENTER, BEING OUT OF PLACE AFTER LOCKDOWN,
2 INTERFERING WITH OFFICER'S DUTIES, THREE DAYS' CONFINEMENT?

3 A. THAT'S CORRECT.

4 Q. OKAY. DECEMBER 10TH, 2002, DID YOU HAVE ANOTHER
5 INCIDENT INVOLVING KEVIN MERCER?

6 A. YES, THE SAME SORT OF THING: DISOBEYING A DIRECT
7 ORDER AND BEING OUT OF PLACE.

8 Q. OKAY. AND WHAT WAS -- WHAT, IF ANY, PUNISHMENT WAS
9 ISSUED?

10 A. THERE WAS SIX DAYS' CONFINEMENT ADMINISTERED AT THAT
11 TIME FOR THAT -- FOR THOSE TWO OFFENSES AS WELL.

12 Q. SIX DAYS' CONFINEMENT AND THAT WAS DECEMBER 10TH?

13 A. THAT'S CORRECT, OF '02.

14 Q. OKAY. NOVEMBER 24TH OF 2003, ARE YOU AWARE OF AN
15 INCIDENT AT THAT TIME?

16 A. YES, I AM.

17 Q. AND WHAT INCIDENT WAS THAT?

18 A. THERE WAS THREE CHARGES PLACED AT THE TIME. IT WAS
19 DISOBEYING A DIRECT ORDER, DISRUPTING FLOOR OPERATIONS, AND
20 INTERFERING WITH AN OFFICER'S DUTIES.

21 Q. AND WHAT PUNISHMENT, IF ANY, WAS ISSUED AT THAT
22 TIME?

23 A. HE WAS BASICALLY PUT ON CONFINEMENT AND SERVED EIGHT
24 DAYS OF THAT CONFINEMENT AND WAS RELEASED OFF CONFINEMENT
25 AFTER THOSE EIGHT DAYS.

1 Q. EIGHT DAYS' CONFINEMENT IS ACCURATE?

2 A. THAT'S CORRECT.

3 Q. WHEN YOU SAY CONFINEMENT, CAPTAIN WILLIAMS, WHAT
4 DOES THAT MEAN?

5 A. BASICALLY IF AN INMATE BREAKS OUR RULES OR
6 REGULATIONS, HE'S PLACED IN CONFINEMENT WHICH RESTRICTS HIS
7 DAILY ACTIVITIES. WHAT THAT INVOLVES IS BASICALLY WEARING A
8 BLACK-AND-WHITE-STRIPE UNIFORM, ONLY BEING ABLE TO COME OUT
9 OF HIS CELL FOR APPROXIMATELY ONE HOUR, AND THAT ONE HOUR
10 COULD BE ANY TIME DURING THE DAY. HE LOSES HIS RIGHTS TO
11 CANTEEN PRIVILEGES SUCH AS SNACKS OR THOSE SORT OF THINGS,
12 AND HE'S VERY LIMITED IN WHAT HE CAN DO.

13 Q. SO EACH OF THESE INCIDENTS THAT WE'VE DISCUSSED SO
14 FAR INVOLVING CONFINEMENT INVOLVE WEARING THE BLACK-AND-WHITE
15 SUIT?

16 A. THAT'S CORRECT.

17 Q. AND LOSS OF ALL THOSE PRIVILEGES?

18 A. THAT'S CORRECT.

19 Q. NOW, ARE YOU AWARE OF ANOTHER INCIDENT,
20 JANUARY 14TH, 2004?

21 A. YES.

22 Q. AND WHAT WAS THAT? LET ME ASK YOU THIS. LET ME ASK
23 YOU THIS. WHAT CHARGES WERE BROUGHT AT THAT TIME?

24 A. THE CHARGES WERE AT THAT TIME SMOKING, INCITING A
25 FIGHT, AND FIGHTING WITH ANOTHER INMATE, INCITING OR

1 PARTICIPATING IN A RIOT, HAVING A WEAPON OR ANY OBJECT THAT'S
2 BEEN ALTERED AS A WEAPON.

3 Q. OKAY. AND WHAT, IF ANY, PUNISHMENT WAS ISSUED AT
4 THAT TIME?

5 A. AT THAT TIME HE WAS GIVEN A 30-DAY CONFINEMENT, AND
6 WE CONTACTED THE GOVERNOR'S OFFICE TO TRANSFER HIM TO
7 S.C.D.C. SAFEKEEPING BECAUSE OF HIM BEING IN SO MUCH PROBLEMS
8 OR SO MANY PROBLEMS. I'M SORRY.

9 Q. SO 30 DAYS' CONFINEMENT WAS THE ACTUAL CONFINEMENT
10 HE SERVED WHILE AT LEXINGTON COUNTY?

11 A. THAT'S CORRECT.

12 MR. HUBBARD: OKAY. THANK YOU, CAPTAIN WILLIAMS.
13 PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS.

14 CROSS-EXAMINATION

15 BY MR. LITTLEJOHN:

16 Q. GOOD AFTERNOON, CAPTAIN WILLIAMS.

17 A. GOOD AFTERNOON.

18 Q. CAPTAIN, JUST A COUPLE OF THINGS. KEVIN WAS SENT TO
19 SAFEKEEPING, I BELIEVE, ON APRIL 13TH, 2004?

20 A. THAT'S PROBABLY CORRECT. LIEUTENANT MCDANIELS WAS
21 THE ONE THAT DID THE PAPERWORK ON IT.

22 Q. AND I BELIEVE HE REMAINED THERE UNTIL JANUARY 11TH,
23 2006?

24 A. I'M NOT FOR SURE. I WAS RETIRED IN 2004.

25 Q. OKAY. CAPTAIN WILLIAMS, SHARE THIS WITH US. IF

1 SOMEBODY IS SENTENCED TO A LIFE SENTENCE, THEY DON'T SERVE IT
2 AT THE LEXINGTON COUNTY DETENTION CENTER, DO THEY?

3 A. NEGATIVE. THEY DO NOT.

4 Q. THEY SERVE IT AT THE SOUTH CAROLINA DEPARTMENT OF
5 CORRECTIONS.

6 A. THAT IS CORRECT.

7 Q. AND THEY WOULD SERVE IT IN A -- IN A MAXIMUM
8 SECURITY UNIT, WOULD THEY NOT?

9 A. DEPENDING ON THE CHARGE, THAT'S CORRECT.

10 Q. OKAY. AND THAT WOULD BE LIKE THE S.K.U. UNIT?
11 THAT'S MAXIMUM SECURITY?

12 A. IT'S S.M.U. OR I -- WE CALL IT SPECIAL MANAGEMENT
13 UNIT; YES, SIR.

14 MR. LITTLEJOHN: OKAY. ALL RIGHT, SIR. THANK YOU.

15 MR. HUBBARD: THAT'S ALL WE HAVE OF CAPTAIN
16 WILLIAMS.

17 THE COURT: YOU'RE EXCUSED, SIR.

18 THE WITNESS: THANK YOU.

19 MR. HUBBARD: THE STATE CALLS NORBERTO GORDON.

20 NORBERTO J. GORDON, AFTER BEING DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME FOR
23 THE RECORD AND SPELL YOUR NAME.

24 THE WITNESS: NORBERTO J. GORDON.
25

DIRECT EXAMINATION

1
2 BY MR. HUBBARD:

3 Q. MR. GORDON, WHERE DO YOU CURRENTLY WORK?

4 A. LEE CORRECTIONAL INSTITUTE.

5 Q. IS THAT PART OF THE DEPARTMENT OF CORRECTIONS?

6 A. CORRECTIONS, YES, SIR.

7 Q. AND HOW LONG HAVE YOU BEEN THERE?

8 A. OFF AND ON I'VE BEEN THERE RIGHT ABOUT EIGHT TO NINE
9 YEARS.

10 Q. AND WHAT -- WHAT'S YOUR TITLE THERE?

11 A. I'M A SHIFT SERGEANT.

12 Q. NOW, WHAT -- DO YOU RECALL INMATE KEVIN MERCER?

13 A. YES, SIR.

14 Q. WHAT SECTION OF LEE'S FACILITY WAS HE KEPT IN?

15 A. HE'S IN OUR SECOND UNIT. HE'S ON THE NORTH WING.
16 HE'S IN A SAFEKEEPER ROOM. WE KEEP SAFEKEEPERS AWAY FROM
17 EVERYBODY ELSE.

18 Q. OKAY. SAFEKEEPER MEANS HE'S BEEN SENT FROM ANOTHER
19 INSTITUTION FOR Y'ALL TO HOLD?

20 A. YES, SIR.

21 Q. DO YOU RECALL AN INCIDENT INVOLVING KEVIN MERCER ON
22 MAY 6TH, 2005?

23 A. YES, SIR.

24 Q. AND PLEASE TELL US ABOUT THAT INCIDENT.

25 A. WE HAD GONE UP THERE TO FIND OUT WHAT THE PROBLEM

1 WAS. HE HAD -- HE HAD SOME COMPLAINTS. WE ENDED UP GOING
2 INTO HIS ROOM. I DID A STRIP-SEARCH, AND THAT'S WHEN I FOUND
3 THE CONTRABAND IN HIS ROOM, MYSELF AND ANOTHER SERGEANT.

4 Q. OKAY. WHEN YOU SAY YOU WENT UP TO SEE WHAT THE
5 PROBLEM WAS, WAS KEVIN MERCER -- DID HE HAVE A PROBLEM OR WAS
6 THERE ANOTHER PROBLEM INVOLVING KEVIN MERCER?

7 A. NO. HE HAD A PROBLEM. HE WAS YELLING AND SCREAMING
8 AND BANGING AT THE DOOR AND, YOU KNOW, WE TRY -- WE TRY TO
9 SEE WHAT THE INMATES -- YOU KNOW, WHAT THE PROBLEM IS. IF
10 IT'S SOMETHING WE CAN HELP THEM WITH, WE'LL HELP THEM.

11 Q. OKAY. WHY DON'T YOU PULL THAT MICROPHONE UP? SO
12 YOU WENT UP AND ONCE YOU GOT UP THERE AND TRIED TO HELP HIM,
13 DID HE CALM DOWN OR DID HE CONTINUE TO---

14 A. HE CONTINUED.

15 Q. OKAY. SO WHAT DID YOU DO?

16 A. WE BACKED -- WE DIRECTED HIM TO BACK UP TO THE DOOR.
17 WE CUFFED HIM, PULLED HIM OUT OF THE ROOM. I WENT INSIDE THE
18 ROOM AND BEGAN DOING THE SHAKEDOWN WHICH IS WE JUST SHAKE
19 EVERYTHING DOWN AND THEN TAKE OUT ALL HIS PERSONAL
20 BELONGINGS.

21 Q. WHEN YOU SAY TAKE THEM OUT, DO YOU JUST GO THROUGH
22 THEM OR DO YOU ACTUALLY REMOVE EVERYTHING---

23 A. WE REMOVE -- WE GO THROUGH THEM AND REMOVE THEM.

24 Q. OKAY. ONCE THOSE ITEMS ARE REMOVED, WHAT HAPPENS TO
25 THE INMATE WHEN YOU DO THAT?

1 A. HE GOES BACK IN THE ROOM.

2 Q. HE GOES INTO AN EMPTY ROOM.

3 A. YES, SIR.

4 Q. OKAY. NOW, DID HE HAVE ANY OTHER CELL MATES IN WITH
5 HIM AT THAT TIME?

6 A. NO, SIR. THEY'RE IN A CELL BY THEMSELVES.

7 Q. SO HE'S REMOVED -- ALL HIS ITEMS WERE REMOVED AND
8 HE'S---

9 A. PLACED BACK INTO THE CELL.

10 Q. ---PLACED BACK IN THAT ROOM. WHEN YOU WERE REMOVING
11 THOSE ITEMS, WHAT, IF ANYTHING, DID YOU FIND?

12 A. FOUND A -- WE CALL IT A SHANK. IT WAS A KNIFE WITH
13 CUT UP PIECES OF SHEET AROUND ONE END OF IT WITH THE OTHER
14 END WHERE YOU COULD PUT IT AROUND YOUR WRIST. IT'S A WEAPON.

15 Q. LET ME ASK YOU---

16 A. WE CALL IT A SHANK.

17 Q. ---THIS. AND WHAT WERE THE ALTERNATIVE CHARGES THAT
18 COULD BE BROUGHT AGAINST KEVIN MERCER AT THAT TIME?

19 A. WE COULD HAVE CHARGED HIM WITH POSSESSION OF A
20 WEAPON, AND THEN THE OTHER CHARGE IS WHAT HE GOT WHICH WAS
21 POSSESSION OF CONTRABAND.

22 Q. WHICH IS A LESSER CHARGE?

23 A. LESSER CHARGE.

24 Q. AND HE WAS CHARGED WITH THAT?

25 A. YES, SIR.

1 Q. DOES THIS ACCURATELY REFLECT YOUR TESTIMONY, SIR:
2 MAY 6TH, 2005, S.C.D.C., POSSESSION OF CONTRABAND?

3 A. YES, SIR.

4 Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS.

5 A. YES, SIR.

6 CROSS-EXAMINATION

7 BY MR. LITTLEJOHN:

8 Q. C.O. GORDON, THIS -- THIS WEAPON YOU DESCRIBED, WAS
9 THAT A NAIL?

10 A. YES, SIR.

11 Q. OKAY. IT WAS -- IT WAS A TWO-AND-A-HALF-INCH NAIL?

12 A. YES.

13 Q. AND WHERE WAS IT FOUND?

14 A. UNDER HIS MATTRESS.

15 Q. UNDER THE MATTRESS. OKAY. AND DID Y'ALL DEAL WITH
16 THAT SITUATION?

17 A. YES, SIR.

18 Q. ANYBODY GET HURT?

19 A. NO, SIR.

20 Q. WAS HE PUNISHED?

21 A. YES, SIR.

22 MR. LITTLEJOHN: OKAY. THAT'S ALL WE HAVE, YOUR
23 HONOR.

24 MR. HUBBARD: THE STATE CALLS BARBARA RICKETSON.

25 BARBARA RICKETSON, AFTER BEING DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME,
3 SPELLING YOUR LAST NAME.

4 THE WITNESS: MY NAME IS BARBARA RICKETSON,
5 R-I-C-K-E-T-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q. MS. RICKETSON, WHERE DO YOU WORK?

9 A. LEE CORRECTIONAL INSTITUTION.

10 Q. HOW LONG HAVE YOU WORKED THERE?

11 A. EVER SINCE 1999.

12 Q. AND WHAT ARE YOUR DUTIES?

13 A. MAIL ROOM SUPERVISOR.

14 Q. WHAT DOES THAT ENTAIL?

15 A. IT -- WE PICK UP -- PROCESS INMATE MAIL IN THE
16 MORNINGS AND SEND IT OUT TO THE POST OFFICE. THEN WE RECEIVE
17 INMATE MAIL AND THEN PROCESS IT AND TAKE IT BACK TO THE
18 INMATES.

19 Q. WHAT IS S.M.U.?

20 A. IT'S A SPECIAL MANAGEMENT UNIT.

21 Q. IS THAT WHERE INMATES FROM SAFE -- INCLUDING
22 SAFEKEEPERS ARE KEPT?

23 A. YES.

24 Q. INMATES IN THAT UNIT, ARE THEY PROVIDED ENVELOPES
25 FOR PERSONAL REASONS---

1 A. THEY'RE PROVIDED---

2 Q. ---FOR PERSONAL LETTERS AND THINGS?

3 A. PROVIDED FOUR A MONTH.

4 Q. JUST FOUR.

5 A. FOUR A MONTH FOR PERSONAL REASONS, YES.

6 Q. IS IT AN INFRACTION IF AN INMATE TAKES ANOTHER
7 INMATE'S ENVELOPE?

8 A. YES, IT IS.

9 Q. WHAT, IF ANY, PROBLEM DID YOU DISCOVER
10 SEPTEMBER 12TH, 2005?

11 A. WELL, AS I WAS PROCESSING THE MAIL, WE KEEP A RECORD
12 OF EVERY INDIGENT ENVELOPE EVERY INMATE USED, SO WE WRITE IT
13 DOWN BY THEIR NAME, AND WE REALIZED THAT KEVIN MERCER HAD
14 USED ALL HIS ENVELOPES. SO WHEN I LOOKED AT THE TOP OF THE
15 -- ALSO, BEFORE THAT, I DISCOVERED AN ENVELOPE - I CAN'T
16 REMEMBER THE INMATE'S NAME RIGHT NOW WHO HE WAS USING - BUT
17 IT DIDN'T HAVE HIS I.D. NUMBER ON THERE. AND SO WHEN THEY --
18 THEY HAVE TO HAVE THEIR I.D. NUMBER AND THEIR ROOM NUMBER SO
19 THAT MAIL CAN COME BACK INTO THE INSTITUTION AND WE KNOW
20 WHERE TO DELIVER IT. AND -- BUT WHEN I LOOKED AT IT, I SAW
21 NAOMI MERCER'S NAME ON THE ENVELOPE. SO I REALIZED THEN THAT
22 KEVIN MERCER'S PROBABLY USING SOMEONE ELSE'S ENVELOPES TO GET
23 HIS MAIL OUT. SO I PASSED ALL THAT ON TO THE CONTRABAND -
24 LIEUTENANT HODGES - SO THEY COULD INVESTIGATE IT FURTHER.

25 Q. WAS IT NAOMI OR DIANE MERCER?

1 A. DIANE MERCER. I'M SORRY.

2 Q. AND BASED ON YOUR ACTIVITIES IN THE MAIL ROOM AND
3 SEEING MAIL COME AND GO, WERE YOU AWARE OF KEVIN MERCER?

4 A. YES, SIR, I KNOW KEVIN MERCER.

5 Q. WERE YOU AWARE OF WHO HIS MOTHER WAS?

6 A. I KNEW HE WROTE DIANE MERCER A LOT, YES.

7 Q. AND THAT'S HIS MOTHER?

8 A. YES.

9 Q. NOW, ARE Y'ALL ALLOWED TO GO INTO THE MAIL?

10 A. IF NEED BE. THEY HAVE TO -- THEY ARE ALLOWED TO
11 SEAL THEIR LEGAL MAIL, BUT ANYTHING THAT'S PERSONAL HAS TO BE
12 LEFT OPEN FOR INSPECTION. BUT I PASSED IT ON TO THE
13 CONTRABAND PEOPLE BECAUSE THEY CAN, YOU KNOW, DIG DEEPER THAN
14 I CAN. I WOULD HAVE TO HAVE PERMISSION, YOU KNOW, FROM THE
15 WARDEN TO GO IN AND REALLY SEARCH IT OUT, BUT CONTRABAND
16 DON'T. SO THAT'S THE REASON I PASSED THE LETTER ON TO
17 CONTRABAND.

18 Q. SO HE USED UP HIS FOUR FREE ENVELOPES.

19 A. YES.

20 Q. YOU DISCOVERED A FIFTH ENVELOPE?

21 A. RIGHT.

22 Q. IN ANOTHER INMATE'S NAME?

23 A. RIGHT.

24 Q. BUT BEING MAILED TO HIS MAMA.

25 A. RIGHT.

1 Q. AND WHO DID YOU TAKE THAT UP WITH?

2 A. TO LIEUTENANT HODGES WHO WAS OVER THE CONTRABAND.

3 Q. OKAY. THANK YOU. PLEASE ANSWER ANY QUESTIONS---

4 A. SURE.

5 Q. ---THE DEFENSE HAS.

6 CROSS-EXAMINATION

7 BY MS. KIMBROUGH:

8 Q. GOOD AFTERNOON, MS. RICKETSON.

9 A. HI.

10 Q. HOW ARE YOU? SO YOU'RE AWARE THAT KEVIN MERCER
11 WOULD CORRESPOND WITH HIS MOTHER A GOOD BIT?

12 A. YES.

13 Q. OKAY. AND THE FACT THAT HE USED THE FIFTH ENVELOPE
14 WAS A VIOLATION OF Y'ALL'S POLICY.

15 A. RIGHT.

16 Q. OKAY. AND HE WAS WRITTEN UP FOR THAT?

17 A. I THINK HE WAS GIVEN AN INFORMAL -- HE WAS WRITTEN
18 UP, BUT HE WAS GIVEN AN INFORMAL RESOLUTION. RIGHT.

19 Q. OKAY. ANY PROBLEMS BETWEEN YOU AND KEVIN OVER THIS
20 INCIDENT?

21 A. NO. I NEVER EVEN REALLY COME IN CONTACT WITH HIM.

22 MS. KIMBROUGH: OKAY. THANK YOU.

23 MR. HUBBARD: NO FURTHER QUESTIONS. PLEASE STEP
24 DOWN.

25 THE WITNESS: OKAY.

1 MR. HUBBARD: THE STATE CALLS LUCINDA HODGES.

2 THE COURT: WHILE SHE'S COMING AROUND, LET ME SEE
3 Y'ALL AT THE BENCH FOR A SECOND.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

5 LUCINDA HODGES, AFTER BEING DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR FULL NAME.

8 THE WITNESS: LUCINDA HODGES.

9 DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q. LIEUTENANT HODGES, WHERE DO YOU WORK?

12 A. LEE CORRECTIONAL INSTITUTION.

13 Q. AND HOW LONG HAVE YOU WORKED THERE?

14 A. THIRTEEN YEARS.

15 Q. BACK SEPTEMBER 12TH OF 2005, DID YOU HAVE A
16 COMPLAINT INVOLVING KEVIN MERCER?

17 A. YES, SIR.

18 Q. AND WHO BROUGHT THAT TO YOUR ATTENTION?

19 A. BARBARA RICKETSON, POSTAL SERVICE.

20 Q. YOU MIGHT PULL THAT MICROPHONE UP JUST A LITTLE BIT
21 IF YOU DON'T MIND. AND WHAT DID THE COMPLAINT INVOLVE?

22 A. SHE BROUGHT ME A LETTER THAT SOMEBODY HAD -- WAS
23 TRYING TO SEND OUT IN SOMEBODY ELSE'S ENVELOPE. IT WAS A
24 CHARGE.

25 Q. OKAY. AND DID YOU BRING A CHARGE BASED ON THAT?