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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Dorchester County
The Honorable Diane S. Goodstein, Circuit Court Judge

TIMOTHY DION ROGERS,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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WOULD ALWAYS VOTE FOR THE DEATH PENALTY, KIND OF LIKE AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH.

A. TOOTH, YES, SIR.

Q. THAT'S JUROR NUMBER ONE. JUROR NUMBER TWO WOULD BE JUST THE OPPOSITE. THEY WOULD TAKE THE POSITION, NO MATTER HOW HORRIBLE THE MURDER MIGHT HAVE BEEN OR AGGRAVATED, THEY WOULD NEVER VOTE FOR THE DEATH PENALTY. SO THEY LIKEWISE WOULDN'T BE INTERESTED IN THAT SECOND TRIAL. THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON.

AND THEN THERE'S A THIRD JUROR THAT COULD GO EITHER WAY. IF THEY FOUND HIM GUILTY OF MURDER, THEN THEY WOULD LISTEN TO THE GOOD THINGS, THE BAD THINGS, THE AGGRAVATING CIRCUMSTANCES, AND THEN DEPENDING UPON WHAT THEY HEARD, IF THEY DECIDED THAT LIFE IN PRISON WAS THE PROPER PUNISHMENT, THEY COULD VOTE FOR LIFE IN PRISON. AND IF THEY DECIDED THAT DEATH WAS THE PROPER SENTENCE, THEY COULD SIGN THEIR NAME TO A PIECE OF PAPER THAT SAID DEATH, KNOWING THAT I WOULD SENTENCE HIM TO DIE IN THE ELECTRIC CHAIR. WHICH DO YOU THINK OF THOSE THREE YOU BEST FIT?

A. THE LAST CATEGORY. I WOULD RATHER HEAR ALL THE INFORMATION THAT WAS NECESSARY BEFORE PASSING JUDGMENT ON SOMEBODY.

Q. IN OTHER WORDS, IF YOU WERE ON A JURY AND YOU

DECIDED THAT SOMEONE WAS GUILTY OF MURDER, IT'S NOT NECESSARILY YOUR VIEW THAT EVERY PERSON WHO COMMITS A MURDER SHOULD DIE NOR EVERY PERSON WHO COMMITS A MURDER SHOULD HAVE LIFE IN PRISON, BUT YOU COULD VOTE EITHER WAY?

A. YES.

THE COURT: ALL RIGHT. THEY'RE GOING TO ASK YOU SOME QUESTIONS. JUST ANSWER THEM AS BEST YOU CAN.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. SAMUEL, I'M WALTER BAILEY AND I WANT TO FOLLOW UP A LITTLE BIT ON SOME OF JUDGE BROWN'S QUESTIONS.

A. OKAY.

Q. IF WE, YOU KNOW, FORGET ABOUT THIS CASE THAT YOU'RE HERE ON AS FAR AS BEING A POTENTIAL JUROR AND JUST TALK ABOUT IN GENERAL, IF I HAD ASKED YOU A MONTH AGO BEFORE YOU GOT YOUR JURY SUMMONS JUST TO TELL ME IN YOUR OWN WORDS WHAT YOU THOUGHT ABOUT THE DEATH PENALTY, WHAT DO YOU THINK YOU MIGHT HAVE TOLD ME THEN?

A. WELL, I WOULD SAY THAT THE DEATH PENALTY -- YOU KNOW, IF A PERSON IS ACCUSED OF COMMITTING A CRIME AND THIS PERSON IS BEING SOUGHT FOR THE DEATH PENALTY, I THINK THAT ANY OTHER PERSON THAT WOULD COMMIT THE CRIME THE SAME WOULD HAVE THE -- SHOULD BE THE SAME,

SOME CONTINUITY IN IT. AND, YOU KNOW, IF ONE PERSON IS GOING TO GET THE DEATH PENALTY FOR COMMITTING THAT CERTAIN CRIME, THEN ANYONE ELSE THAT DOES THAT TOO SHOULD ALSO HAVE THAT.

Q. SO, YOU BELIEVE IN THE DEATH PENALTY, BUT YOU THINK IT SHOULD BE IMPOSED FAIRLY.

A. YES.

Q. KIND OF ACROSS THE BOARD?

A. (NO RESPONSE.)

Q. OKAY. HAVE YOU EVER HAD OCCASION TO, YOU KNOW, MAYBE IN A COLLEGE CLASS OR TALKING WITH YOUR FAMILY OR FRIENDS TO EXPRESS THAT VIEW BEFORE OR IS THAT JUST A THOUGHT THAT YOU---

A. THAT'S JUST A THOUGHT.

Q. OKAY. I NOTICE IN YOUR QUESTIONNAIRE THAT YOU GO TO SAINT JAMES UNITED METHODIST CHURCH IN DARLINGTON?

A. YES.

Q. OKAY. AND YOU LIVE IN SUMMERVILLE?

A. IN SUMMERVILLE.

Q. DO YOU GO TO DARLINGTON FOR CHURCH?

A. YES, I GO -- I GO TWO WEEKENDS OUT OF THE MONTH.

Q. OKAY. AND YOU TRY TO ATTEND THAT PRETTY REGULARLY?

A. YES.
Q. OKAY. DOES THAT CHURCH HAVE ANY PARTICULAR TEACHINGS ON THE DEATH PENALTY THAT YOU KNOW OF?
A. NOT THAT I KNOW OF.
Q. YOU DON'T RECALL---
A. I DON'T KNOW, YOU KNOW, IF THERE IS. I'M NOT SAYING THAT THERE IS NOT BUT NOT THAT I KNOW OF.
Q. OKAY. SO, NOTHING AS FAR AS YOUR CHURCH AFFILIATION WOULD AFFECT YOUR ABILITY TO SIT ON THIS JURY?
A. RIGHT. UH-HUH.
Q. OKAY. NOW, JUDGE BROWN TOLD YOU THAT IT'S POSSIBLY A TWO-PART PROCESS. THE FIRST PART IS LIKE ANY OTHER TRIAL WHERE THE JURY DETERMINES GUILT OR INNOCENCE BASED ON THE PROOF THAT THE STATE COMES UP WITH. AND IF THE DEFENDANT'S FOUND GUILTY OF MURDER IN THAT FIRST PHASE, THEN AND ONLY THEN DO WE GO INTO THE SECOND PHASE WHICH IS THE PENALTY PHASE AND YOU WOULD HEAR ADDITIONAL EVIDENCE. YOU WOULD HEAR ADDITIONAL INSTRUCTIONS FROM THE JUDGE ON THE LAW AND THE JURY WOULD GO BACK AND DELIBERATE AND ALL TWELVE OF THE JURORS WOULD HAVE TO AGREE ONE WAY OR THE OTHER: ALL TWELVE FOR LIFE IN PRISON, ALL TWELVE FOR THE DEATH PENALTY.
IF YOU WERE ON A JURY IN THAT SECOND PHASE

AND YOU AND THE OTHER ELEVEN JURORS DECIDED THAT AFTER HEARING EVERYTHING THE DEATH PENALTY WAS THE APPROPRIATE PUNISHMENT, THEN IN ORDER TO PUT THAT DEATH PENALTY INTO EFFECT EACH JUROR WOULD HAVE TO SIGN THEIR NAME TO A DEATH VERDICT FORM AND THE RESULT OF SIGNING THAT FORM WOULD BE THAT DEFENDANT WOULD ACTUALLY BE EXECUTED. IT'S NOT A RECOMMENDATION LIKE JUDGE BROWN TOLD YOU. IT IS WHAT WILL HAPPEN. COULD YOU SIGN YOUR NAME TO A FORM LIKE THAT?

A. WELL, IT'S KIND OF HARD TO SAY WITHOUT, I MEAN, HYPOTHETICALLY WITHOUT -- YOU KNOW, I DON'T THINK I COULD ANSWER THAT JUST BASED UPON A HYPOTHETICAL QUESTION.

Q. OKAY. WELL, LET ME -- LET ME TRY IT A DIFFERENT WAY MAYBE. WE'RE TALKING ABOUT A SITUATION WHERE YOU HAVE ALREADY MADE UP YOUR MIND AND YOU VOTED. ALL TWELVE OF YOU VOTE FOR THE DEATH PENALTY. OKAY. IN ORDER TO CARRY OUT THAT VOTE AND MAKE THAT DEATH PENALTY GO INTO EFFECT, COULD YOU SIGN THAT FORM?

A. IF THE INFORMATION THAT WE HAD WAS APPROPRIATE, YES.

Q. OKAY. AND COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE THAT THAT WAS YOUR VERDICT ALONG WITH THE OTHER ELEVEN JURORS?

A. POSSIBILITY.

Q. OKAY.

A. I'M NOT, YOU KNOW, EXACTLY ONE HUNDRED PERCENT SURE.

Q. OKAY. AGAIN, WE'RE TALKING ABOUT A SITUATION WHERE YOU HAVE CONSIDERED ALL THE EVIDENCE AND ALL THE LAW AND ALL TWELVE JURORS HAVE VOTED FOR THE DEATH PENALTY AND ALL TWELVE HAVE VOTED TO SIGN THAT -- HAVE ACTUALLY SIGNED THAT DEATH VERDICT FORM. IS THERE ANYTHING ABOUT COMING OUT INTO COURT AND SAYING THAT ONCE YOU HAVE MADE THAT DECISION THAT YOU THINK WOULD CAUSE YOU A SERIOUS PROBLEM?

A. WELL, IT WOULDN'T CAUSE A SERIOUS PROBLEM, BUT I THINK THAT, YOU KNOW, IF THERE'S ANYTHING PAPER -- ON PAPER EVEN THOUGH YOU HAVE SIGNED YES ON PAPER, ACTUALLY SAYING IT WOULD PROBABLY BE, YOU KNOW, A LITTLE DIFFERENT.

Q. OKAY.

A. YOU KNOW, VERBALLY -- ACTUALLY VERBALLY SAYING IT.

Q. ALL RIGHT. WELL, DO YOU THINK YOU WOULD HAVE DIFFICULTY IN COMING OUT INTO COURT AND SAYING THAT?

A. I'M NOT SURE.

Q. OKAY.

A. I'M JUST. . .

Q. I'M NOT ASKING YOU WHAT YOU -- TO COMMIT TO

WHAT YOU WOULD OR WOULDN'T DO AS FAR AS A SENTENCE.

THE COURT: PERHAPS IT WOULD BE EASIER IF I EXPLAIN TO HER A LITTLE BIT. SUPPOSE A JURY DECIDED THAT THE DEATH PENALTY WAS APPROPRIATE. EACH JUROR WOULD SIGN THEIR NAME AND THEY WOULD ANNOUNCE THAT VERDICT. SOMETIMES THE PARTIES WANT TO POLL THAT JURY TO BE SURE THAT THAT WAS THEIR VOTE, AND SO THE CLERK WOULD HAVE EACH JUROR STAND UP AND THEY WOULD ASK THEM THIS QUESTION: WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT? AND THEN THE JURY WOULD ANSWER YES AND SIT DOWN. HIS QUESTION IS: IF YOU DECIDED THAT DEATH WAS THE APPROPRIATE PUNISHMENT AND IF YOU SIGNED YOUR NAME TO THE DEATH PENALTY AND IT HAD ALREADY BEEN ANNOUNCED IN COURT, COULD YOU THEN STAND UP AND WHEN THE CLERK ASKED YOU WAS THIS YOUR VERDICT, COULD YOU ANSWER YES? THAT'S THE QUESTION.

JUROR SAMUEL: WELL, YES, IF I'VE ALREADY SIGNED. YES.

BY MR. BAILEY:

Q. OKAY. ALL RIGHT. I THINK I UNDERSTAND, MS. SAMUEL. I APPRECIATE THAT. LET ME ASK YOU ONE OTHER TYPE OF QUESTION HERE AND I'M TRYING NOT TO KEEP GOING TOO MUCH LONGER BECAUSE YOU HAVE ANSWERED MY QUESTIONS AND I APPRECIATE THAT. YOU HAD INDICATED THAT YOU FELT LIKE IN CONSIDERING THE DEATH PENALTY THAT YOU WOULD

WANT, YOU KNOW, ALL SIMILAR CASES TREATED IN A SIMILAR WAY. AM I CORRECT?

A. YES.

Q. AM I QUOTING YOU CORRECTLY? THE EVIDENCE THAT YOU'RE GOING TO HEAR IN THE PENALTY PHASE, IF WE GET TO THE PENALTY PHASE, IS GOING TO BE LIMITED TO THE CIRCUMSTANCES OF THE CRIME AND THE CHARACTERISTICS OF THIS PARTICULAR ACCUSED.

MR. RUNYON: YOUR HONOR, I OBJECT TO THE FORM OF THIS QUESTION.

THE COURT: WELL, I DON'T KNOW. HE'S STILL STATING JUST WHAT HE SAYS. I'LL ALLOW IT SO FAR.

BY MR. BAILEY:

Q. OKAY. THERE WOULD NOT BE ANY EVIDENCE COMING OUT ABOUT ANY OTHER CRIMES THAT YOU COULD COMPARE THIS TO.

A. RIGHT. I UNDERSTAND. YES, SIR.

Q. OKAY. SO, HOW WOULD YOU MAKE -- HOW WOULD YOU DECIDE WHETHER OR NOT OTHER PEOPLE THAT MIGHT BE CHARGED WITH SIMILAR CRIMES RECEIVED THE DEATH PENALTY OR DIDN'T RECEIVE THE DEATH PENALTY?

A. WELL, YOU'RE JUST ASKING ME MY OPINION OF THE DEATH PENALTY AND I JUST STATED THAT, YOU KNOW, THAT'S WHAT -- THAT'S WHAT I WOULD GO FOR. BUT IF I COULD ONLY GO WITH WHAT INFORMATION THAT I HAD, THEN I WOULD

JUST HAVE TO BASE IT ON WHAT I HAD.

Q. OKAY. ALL RIGHT. MS. SAMUEL, I THINK THAT'S ALL I HAVE. THANK YOU VERY MUCH.

A. THANK YOU.

MR. RUNYON: GOOD AFTERNOON, MS. SAMUEL. I HAVE NO QUESTIONS OF THIS WITNESS, YOUR HONOR.

THE COURT: ANY MOTIONS?

MR. RUNYON: NONE FROM THE DEFENSE, YOUR HONOR.

MR. BAILEY: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. WE ALL THINK YOU'D MAKE A GOOD JUROR, MS. SAMUEL. DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY, BUT IT MEANS YOU'RE QUALIFIED. SO, I'M GOING TO SEND YOU ABOUT YOUR BUSINESS.

JUROR SAMUEL: OKAY.

THE COURT: AND I'M GOING TO ASK THAT WHILE YOU'RE GONE DON'T TALK ABOUT THE CASE WITH ANYONE. DON'T READ THE NEWSPAPER OR WATCH T.V. ABOUT IT. AND WHEN YOU COME BACK, BRING CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS. I DON'T THINK IT WILL TAKE THAT LONG AND I HAVE ALL THESE NUMBERS HERE. CAN I REACH YOU ON REASONABLY SHORT NOTICE? I'LL GIVE YOU PLENTY OF TIME TO GET HERE.

JUROR SAMUEL: YES.

THE COURT: AND I WOULD HOPE TO CALL YOU TONIGHT BUT MIGHT NOT. IT MIGHT BE IN THE MORNING SOMETIME AND THEN I'LL GIVE YOU WHATEVER TIME IT TAKES TO GET HERE. I HOPE YOU HAVE A GOOD AFTERNOON.

JUROR SAMUEL: OKAY. THANK YOU.

THE COURT: ALL RIGHT.

(JUROR SHEILA SAMUEL WAS EXCUSED FROM THE COURTROOM.)

THE COURT: ALFREDA ADDISON.

(JUROR ALFREDA L. ADDISON ENTERED THE COURTROOM.)

ALFREDA L. ADDISON, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. ADDISON, HOW ARE YOU THIS AFTERNOON?

A. FINE.

Q. I'M SORRY I KEPT YOU WAITING SO LONG.

A. THAT'S OKAY.

Q. I, ALONG WITH THE ATTORNEYS, ARE GOING TO ASK YOU SOME QUESTIONS AND IT'S NOT THE TYPE TEST YOU CAN FLUNK. IT'S JUST INFORMATION WE WANT AND JUST ANSWER IT AS BEST YOU CAN.

A. OKAY.

Q. I NOTICE YOU'VE NEVER SERVED ON A JURY BEFORE. IS THAT CORRECT?

A. RIGHT.

Q. BUT YOU KNOW, OF COURSE, THAT A PERSON IS ALWAYS PRESUMED TO BE INNOCENT IF HE'S CHARGED WITH A CRIME.

A. RIGHT.

Q. AND THAT THE STATE MUST PROVE TO TWELVE JURORS OF HIS GUILT BEYOND A REASONABLE DOUBT. DO YOU KNOW THAT?

A. UH-HUH.

Q. WELL, MR. ROGERS WHO SITS IN THE CENTER THERE BETWEEN HIS ATTORNEYS IS CHARGED WITH MURDER.

A. UH-HUH.

Q. AND ON YOUR RIGHT SITTING NEXT TO HIM IS MR. LEIENDECKER. HE IS ONE OF THE ATTORNEYS AND ON THIS SIDE IS MR. RUNYON.

A. OKAY.

Q. AND THE GENTLEMAN AT THE DESK RIGHT HERE, THE FIRST ONE, IS THE SOLICITOR OF THE STATE AND HE IS MR. BAILEY.

A. OKAY.

Q. AND WE'RE ALL GOING TO ASK YOU SOME QUESTIONS.

A. OKAY.

Q. NOW, YOU'VE TOLD ME YOU ALREADY KNOW THE BASICS OF THE JUDICIAL PROCEDURE ABOUT THE INNOCENCE

AND BEYOND A REASONABLE DOUBT. WELL, ON YESTERDAY I TOLD YOU ALL THAT IN AN ORDINARY CASE A JURY IS JUST CONCERNED WITH ONE THING, THAT IS, GUILT OR INNOCENCE. WELL, IN THIS CASE, AS I TOLD YOU YESTERDAY, IN WHICH THE STATE IS SEEKING THE DEATH PENALTY, THE JURY DOES BOTH.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. IN AN ORDINARY CASE THE JUDGE SENTENCES A PERSON. SO, IT GOES -- AND INCIDENTALLY BEFORE I ASK YOU THAT, I NOTICED ON YESTERDAY WHEN I ASKED THE JURY DID THEY KNOW ANYTHING ABOUT THIS PARTICULAR CASE YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT IT?

A. NO.

Q. DO YOU KNOW THE DEFENDANT OR ANY OF HIS FAMILY?

A. NO.

Q. WELL, YOU DON'T KNOW OF ANYTHING THAT WOULD KEEP YOU FROM GIVING---

A. NO.

Q. ---BOTH SIDES A FAIR TRIAL, DO YOU?

A. I WASN'T EVEN HERE WHEN IT WAS. . .

Q. WHEN IT HAPPENED?

A. WHEN IT HAPPENED.

Q. WHERE ARE YOU FROM?

A. HARLEYVILLE.

Q. OH.

A. I WAS IN SCHOOL.

Q. I GOT YOU. HAVE YOU LIVED IN -- HOW LONG HAVE YOU LIVED IN THIS COUNTY?

A. ALL MY LIFE.

Q. IN ANY EVENT, HOW WE GO ABOUT THIS TYPE CASE IS FIRST WE'LL HAVE A TRIAL AND THE JURY HAS ONLY TO DECIDE ONE THING, THAT IS, IS HE GUILTY OR NOT GUILTY. IF THEY FIND THAT HE'S NOT GUILTY, THAT ENDS EVERYTHING.

A. UH-HUH.

Q. BUT IF THEY FIND THAT HE'S GUILTY OF THE MURDER AS THE STATE CHARGED HIM WITH, THEN THERE'S A SECOND PROCEEDING AND THAT SECOND PROCEEDING IS DESIGNED TO HELP THE JURY DECIDE WHAT THE PROPER PUNISHMENT IS, LIFE OR DEATH, BECAUSE THAT'S THE ONLY TWO THINGS TO CONSIDER. AND SO THAT JURY MIGHT HEAR GOOD THINGS AND BAD THINGS ABOUT MR. ROGERS. THEY MIGHT HEAR AGGRAVATED CIRCUMSTANCES ABOUT THE CRIME OR MITIGATING CIRCUMSTANCES, ALL OF THAT. THEN WHEN IT'S OVER WITH, THE JURY IS TO RECOMMEND TO ME WHAT THE PROPER SENTENCE IS, LIFE OR DEATH.

A. UH-HUH.

Q. AND WHEN I USE THOSE WORDS RECOMMEND, I MUST DO BY LAW EXACTLY WHAT THE JURY TELLS ME TO DO. I

CAN'T CHANGE IT.

A. UH-HUH.

Q. SO, IF THE JURY WERE TO DECIDE THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THE FOREMAN WOULD STAND UP AND HE'D HAVE A PIECE OF PAPER WHICH HE HAD SIGNED AND IT WOULD SAY, WE, THE JURY, DECIDE THAT THE PROPER SENTENCE IS LIFE IN PRISON AND THAT'S WHAT I'D SENTENCE HIM TO.

A. UH-HUH.

Q. ON THE OTHER HAND, IF THE JURY DECIDED THAT BECAUSE OF THIS PARTICULAR MURDER THAT THE PROPER SENTENCE WAS DEATH, IT'S A LITTLE DIFFERENT. THEN EACH JUROR, ALL TWELVE OF THEM, WOULD SIGN A PIECE OF PAPER AND IT WOULD SAY, IN ESSENCE -- THEY'D SIGN THEIR NAME. WE, THE FOLLOWING JURORS, DETERMINE THAT THE PROPER SENTENCE IS DEATH AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND?

A. RIGHT.

Q. NOW, WHEN PEOPLE COME IN HERE AND THEY'RE ASKED QUESTIONS LIKE YOU ARE ABOUT JURIES GENERALLY, NOT ALWAYS, BUT GENERALLY THEY FALL IN ONE OF THREE CATEGORIES.

A. UH-HUH.

Q. AND SO I'M GOING TO EXPLAIN THOSE CATEGORIES TO YOU AND I'M GOING TO ASK THAT YOU TELL ME WHICH ONE

YOU THINK YOU BEST FIT IN.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. NUMBER ONE JUROR WOULD BE THAT TYPE OF JUROR THAT WOULD TAKE THE POSITION AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH. IN OTHER WORDS, THEY BELIEVE THAT EVERY TIME YOU COMMIT MURDER YOU OUGHT TO DIE, AND SO THEY WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL BECAUSE THEIR MIND WOULD BE MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY.

AND THEN THE SECOND TYPE OF JUROR, NUMBER TWO, WOULD BE JUST THE OPPOSITE. THEY WOULD TAKE THE POSITION THAT NO MATTER HOW TERRIBLE A MURDER MIGHT BE, THEY WOULD NEVER VOTE FOR THE DEATH PENALTY AND, LIKEWISE, THEY WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL. AND THEN THE THIRD TYPE OF JUROR IS THE TYPE OF JUROR THAT COULD VOTE EITHER WAY. DEPENDING UPON WHAT THEY HEARD AT THAT SECOND TRIAL, IF THEY FELT THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THEY COULD VOTE THAT WAY. AND, LIKEWISE, IF THEY DECIDED THAT THE PROPER SENTENCE WAS DEATH, THEY COULD SIGN THEIR NAME TO A PIECE OF PAPER WHICH WOULD SAY DEATH. WHICH ONE OF THOSE DO YOU THINK YOU BEST FIT?

A. (PAUSE) I PROBABLY WOULD FIT IN THE THIRD CATEGORY.

Q. IN OTHER WORDS, IS IT YOUR BELIEF THAT SOME

MURDERERS DESERVE LIFE IN PRISON AND SOME MURDERERS DESERVE TO DIE DEPENDING UPON THE CIRCUMSTANCES?

A. YES. SOME THINGS ARE TO THE EXTREME, THEN SOME ARE NOT. I THINK IT DEPENDS ON THE FACTS THAT ARE BEING. . .

Q. ALL RIGHT. I CAN UNDERSTAND. NOW, THEY'RE GOING TO ASK YOU SOME QUESTIONS. I'M GOING TO ASK THAT YOU ANSWER THEM AS BEST YOU CAN..

A. OKAY.

THE COURT: THANK YOU.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. ADDISON, I'M WALTER BAILEY. I WANT TO ASK YOU JUST A FEW MORE QUESTIONS.

A. OKAY.

Q. KIND OF FOLLOWING UP ON WHAT JUDGE BROWN HAD ASKED YOU. I'VE LOOKED OVER THE QUESTIONNAIRE THAT YOU AND THE OTHER JURORS FILLED OUT. I JUST WANT TO ASK YOU A COUPLE OF QUESTIONS ON THAT. YOU INDICATED YOUR RELIGIOUS AFFILIATION IS HOUSE OF GOD HOLINESS?

A. YES.

Q. WHERE IS THAT CHURCH LOCATED?

A. IT'S IN HARLEYVILLE.

Q. OKAY. DO YOU GO THERE ON A REGULAR BASIS LIKE EVERY SUNDAY OR HOW OFTEN?

A. I HAVEN'T GONE THERE IN A WHILE.
Q. OKAY. DOES THAT CHURCH HAVE ANY TEACHINGS OI THE DEATH PENALTY THAT YOU'RE AWARE OF?
A. NO. I HAVE NEVER HEARD IT BEEN DISCUSSED.
Q. YOU HAVEN'T HEARD A SUNDAY SCHOOL LESSON---
A. NO.
Q. ---OR A SERMON ABOUT THE DEATH PENALTY?
A. NOT ON THE DEATH PENALTY, NO.
Q. DO YOU HAVE ANY PERSONAL RELIGIOUS BELIEFS ON THE DEATH PENALTY THAT WOULD HAVE ANY BEARING ON YOUR ABILITY TO SIT IN A CASE LIKE THIS?
A. NO.
Q. OKAY. AND I THINK YOU TOLD THE JUDGE THAT YOU DIDN'T HAVE ANY PRIOR CONTACT OR KNOWLEDGE---
A. RIGHT.
Q. ---WITH THE DEFENDANT'S FAMILY. IS THAT RIGHT?
A. RIGHT.
Q. OKAY. HAVE YOU TALKED TO ANYBODY ABOUT THIS CASE?
A. NO. I -- HONEST TO GOODNESS, I DIDN'T KNOW ANYTHING. . . I DIDN'T EVEN REMEMBER ANYTHING ABOUT THE CASE UNTIL IT WAS MENTIONED AGAIN HERE YESTERDAY.
Q. OKAY. ALL RIGHT. NOW, THE JUDGE EXPLAINED TO YOU ABOUT THE TWO-PART PROCESS WHERE THE FIRST STAGE

IS THE GUILT PHASE AND ONLY IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THAT FIRST STAGE DO WE GET INTO THE SECOND STAGE.

A. UH-HUH.

Q. IN THAT SECOND STAGE YOU'VE GOT TWO CHOICES, LIFE IN PRISON OR THE DEATH PENALTY.

A. RIGHT.

Q. OKAY. NOW, IN THE SECOND STAGE ALL TWELVE JURORS HAVE TO AGREE ONE WAY OR THE OTHER: LIFE IN PRISON OR THE DEATH PENALTY.

A. UH-HUH.

Q. IF THAT JURY DECIDES THAT AFTER HEARING ALL OF THE FACTS AND ALL THE LAW FROM THE JUDGE THAT THE DEATH PENALTY IS THE APPROPRIATE SENTENCE, IN ORDER TO PUT THAT DEATH PENALTY INTO EFFECT, EACH ONE OF THOSE JURORS HAS TO SIGN THEIR NAME ON A FORM, A PAPER, LIKE THE JUDGE TOLD YOU ABOUT.

A. RIGHT.

Q. THE RESULT OF SIGNING THAT PAPER IS THAT THE DEFENDANT WILL BE PUT TO DEATH.

A. UH-HUH.

Q. COULD YOU SIGN YOUR NAME ALONG WITH THE OTHER JURORS IF YOU HAD REACHED THAT DECISION?

A. I DON'T THINK I CAN ANSWER THAT QUESTION NOW BECAUSE I REALLY DON'T KNOW ANY -- I CAN'T GO ON

ANYTHING. I CAN'T SAY IF I WOULD SIGN THAT PAPER. I MEAN, IF AT THAT TIME IF EVERYTHING WAS PROVEN TO WHERE THAT WAS THE CASE WHERE -- IF IT'S SAID HE WAS GUILTY AND EVERYTHING, I GUESS THEN I WOULD BUT---

Q. OKAY.

A. ---RIGHT NOW I CAN'T---

Q. I'M NOT ASKING YOU NOW IF YOU WOULD SIGN THE PAPER IN THIS CASE OR NOT.

A. RIGHT.

Q. I'M ASKING IF JUST ASSUMING---

A. OKAY. IF I WAS ON THE JURY AND I'VE DONE MY JOB AND I'VE GONE THROUGH THE ENTIRE TRIAL AND THAT WAS THE CASE THEN, YES, I WOULD.

Q. OKAY. IN OTHER WORDS, THERE'S NOTHING ABOUT SIGNING THE PAPER ITSELF---

A. RIGHT.

Q. ---THAT WOULD CAUSE YOU A PROBLEM ONCE YOU HAD ALREADY REACHED THAT DECISION?

A. RIGHT.

Q. AND THE NEXT THING THAT HAPPENS IS THE JURY WOULD COME OUT AND THEY WOULD ANNOUNCE THAT DECISION IN OPEN COURT.

A. UH-HUH.

Q. AND THEN PROBABLY EACH JUROR WOULD BE ASKED TO STAND AND SAY THAT WAS THEIR VERDICT.

A. RIGHT.

Q. IF THAT WAS YOUR VERDICT, WOULD YOU HAVE A PROBLEM DOING THAT?

A. NO.

Q. OKAY. IS THERE ANY OTHER REASON THAT WE MAYBE HAVEN'T ASKED YOU ABOUT THAT YOU THINK WOULD PREVENT YOU FROM SITTING AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

A. NO.

Q. OKAY. MS. ADDISON, I THINK THAT'S ALL I HAVE. I APPRECIATE YOU ANSWERING MY QUESTIONS.

A. OKAY. UH-HUH.

MR. RUNYON: GOOD AFTERNOON, MS. ADDISON.

THE WITNESS: HELLO.

MR. RUNYON: WE HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: ANY MOTIONS?

MR. RUNYON: NONE FROM THE DEFENSE, YOUR HONOR.

MR. BAILEY: NO, SIR.

THE COURT: WE ALL THINK YOU'D MAKE A GOOD JUROR, MS. ADDISON. DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY. IT JUST MEANS THAT YOU'RE QUALIFIED AND I'M HOPING I'LL GET ENOUGH JURORS THIS AFTERNOON. IF NOT, IT WILL BE EARLY IN THE MORNING.

JUROR ADDISON: YEAH.

THE COURT: AND SO I'M GOING TO SEND YOU ABOUT YOUR BUSINESS. I'M GOING TO ASK THAT YOU NOT WATCH T.V. OR READ THE NEWSPAPER OR DISCUSS THE CASE, AND WHEN YOU COME BACK I'M GOING -- WE'LL CALL YOU. I'VE GOT THESE NUMBERS. THEY'RE STILL YOUR NUMBERS HERE.

JUROR ADDISON: UH-HUH. YES.

THE COURT: AND I'LL GIVE YOU PLENTY OF TIME TO GET HERE.

JUROR ADDISON: OKAY.

THE COURT: AND BRING ENOUGH CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS. I DON'T THINK IT WILL TAKE IT BUT TO BE ON THE SAFE SIDE.

JUROR ADDISON: OKAY. OKAY.

THE COURT: HOPE YOU HAVE A GOOD AFTERNOON.

JUROR ADDISON: SAME TO YOU.

(JUROR ALFREDA ADDISON WAS EXCUSED FROM THE COURTROOM.)

THE COURT: JENNINGS (SIC). JENNIFER BROOKS.

(JUROR JENNIFER G. BROOKS ENTERED THE COURTROOM.)

JENNIFER G. BROOKS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. BROOKS, HOW ARE YOU THIS AFTERNOON?

A. I'M FINE.

Q. I KNOW Y'ALL ARE TIRED OF STAYING IN THAT ROOM. LET ME TELL YOU -- ARE YOU NERVOUS?

A. MAYBE JUST A LITTLE BIT.

Q. WELL, YOU DON'T HAVE TO BE. I NOTICE YOU HAVEN'T SERVED ON A JURY BEFORE, BUT I WAS LOOKING AT YOUR RECORD HERE AND I KNOW THAT YOUR VOCATION WOULDN'T LET YOU BE NERVOUS. YOU HAVE TO DEAL WITH THE PUBLIC TOO MUCH.

A. RIGHT.

Q. WE GOT YOU IN HERE JUST TO TALK TO YOU A LITTLE BIT ABOUT IT AND ASK YOU SOME QUESTIONS ABOUT YOUR FEELINGS ON THE DEATH PENALTY AND YOUR SERVICE AS A JUROR. I NOTICE YOU HAVEN'T SERVED ON A JURY BEFORE. AND YESTERDAY WHEN I ASKED ANYBODY IF THEY KNEW ANYTHING ABOUT THIS CASE -- AS YOU KNOW, MR. ROGERS WHO SITS WITH HIS ATTORNEYS THERE IS CHARGED WITH MURDER. IT'S ALLEGED IN THE INDICTMENT THAT HE SHOT A CHILD IN THE BACK OF THE HEAD AND HE PLEADS NOT GUILTY AND THE STATE WOULD HAVE TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. YOU KNOW THAT.

A. UH-HUH.

Q. NOW, ON YESTERDAY I ASKED IF ANYBODY KNEW

ANYTHING ABOUT THE CASE AND YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT IT?

A. NO, I DON'T.

Q. SO, YOU DON'T KNOW OF ANYTHING THAT WOULD KEEP YOU FROM GIVING BOTH SIDES A FAIR TRIAL IF YOU WERE CHOSEN AS A JUROR.

A. THAT'S CORRECT.

Q. NOW, AS YOU KNOW, IN AN ORDINARY CASE A JURY DECIDES GUILT OR INNOCENCE AND THEY'RE NOT CONCERNED WITH ANYTHING ELSE BECAUSE THE JUDGE DOES THE SENTENCING.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. WELL, IN THIS TYPE CASE, THAT IS, A CASE IN WHICH THE STATE IS SEEKING THE DEATH PENALTY, IT'S DIFFERENT. THE JURY DOES BOTH. DID YOU KNOW THAT BEFORE I TOLD YOU ON YESTERDAY?

A. NO, I DID NOT.

Q. WELL, THAT'S HOW THAT GOES -- HOW IT COMES ABOUT IN THIS TYPE CASE. TO GIVE YOU AN EXAMPLE WHEN A PERSON IS CHARGED LIKE -- AND INCIDENTALLY LET ME INTRODUCE -- THAT GENTLEMAN ON YOUR RIGHT THERE WITH MR. ROGERS IS MR. LEIENDECKER. MR. RUNYON IS ON THE OTHER SIDE OF HIM AND THIS IS THE SOLICITOR, MR. BAILEY. AND AS I TOLD YOU, WE'RE ALL GOING TO ASK YOU SOME QUESTIONS, BUT YOU CAN'T FLUNK THIS TEST. JUST

GIVE US THE BEST ANSWER YOU CAN. WHAT'LL HAPPEN IS THERE WILL BE A FIRST TRIAL AND THE ONLY THING THE JURY HAS GOT TO DECIDE IS IF HE'S GUILTY OF MURDER OR NOT.

A. UH-HUH.

Q. AND IF THE JURY DECIDES HE'S NOT GUILTY, THEN THAT STOPS EVERYTHING. BUT IF THEY DECIDE HE'S GUILTY OF MURDER, THEN THAT JURY ALSO MUST DECIDE WHAT IS THE PROPER SENTENCE, LIFE OR DEATH, AND SO THEY'LL RECOMMEND TO ME WHICH SENTENCE TO GIVE.

A. UH-HUH.

Q. AND I MUST DO EXACTLY WHAT THE JURY TELLS ME TO DO. EVEN THOUGH I USE THOSE WORDS RECOMMEND, WHATEVER THE JURY TELLS ME TO DO I MUST DO. SO, IF THE JURY DECIDES HE'S GUILTY OF THIS MURDER, THEN WE HOLD A SECOND PROCEEDING AND IT'S DESIGNED TO HELP THE JURY DETERMINE WHAT THE PROPER SENTENCE IS, LIFE OR DEATH. AND THAT JURY MIGHT HEAR GOOD THINGS ABOUT HIM, MIGHT HEAR BAD THINGS, MIGHT HEAR THE CIRCUMSTANCES OF THE MURDER, AGGRAVATION OR MITIGATION, SOME REASON, PARTICULAR REASON FOR IT, ALL THOSE THINGS. AND IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS LIFE, THEN THE FOREMAN WOULD STAND UP AND HE OR SHE WOULD SAY, WE, THE JURY, DETERMINE THAT THE PROPER SENTENCE IS LIFE AND I WOULD SENTENCE HIM TO LIFE IN PRISON. DO YOU UNDERSTAND?

A. UH-HUH.

Q. ON THE OTHER HAND, IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS DEATH, IT'S A LITTLE DIFFERENT. THEN EACH JUROR WOULD SIGN THEIR NAME TO A PIECE OF PAPER THAT WOULD SAY, WE, THE FOLLOWING JURORS, RECOMMEND THAT THE PROPER SENTENCE IS DEATH AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND?

A. OKAY.

Q. NOW, JURORS LIKE YOURSELF WHEN THEY COME IN AND THEY ANSWER THESE QUESTIONS GENERALLY FALL IN ONE OF THREE CATEGORIES. SO, I'M GOING TO TELL YOU THOSE CATEGORIES AND THEN I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU BEST FIT IN.

A. OKAY.

Q. THE FIRST TYPE JUROR IS THAT TYPE JUROR THAT REALLY WOULDN'T WANT TO HEAR THAT SECOND TRIAL. IF THEY FOUND HIM GUILTY OF MURDER, THEY WOULD TAKE THE POSITION THAT IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF AND THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY, ALWAYS. THAT'S JUROR NUMBER ONE. NUMBER TWO IS JUST THE OPPOSITE. THAT JUROR MIGHT FIND A PERSON GUILTY OF MURDER, BUT THEY WOULD TAKE THE POSITION NO MATTER HOW HORRIBLE THE MURDER MIGHT HAVE BEEN, THEY WOULD NEVER VOTE FOR THE DEATH PENALTY AND THEY ALSO

WOULDN'T WANT TO HEAR THAT SECOND TRIAL. THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON. THAT'S NUMBER TWO.

THEN THE THIRD TYPE JUROR WOULD REALLY, IN ESSENCE, BE ABLE TO VOTE EITHER WAY. THEY WOULD -- IF THEY FOUND HIM GUILTY OF MURDER, THEY COULD LISTEN TO THE GOOD THINGS AND THE BAD THINGS, THE CIRCUMSTANCES, AND THEN DEPENDING UPON WHAT THEY HEARD IF THEY DECIDED THAT LIFE WAS THE PROPER SENTENCE THEY COULD LET THE FOREMAN ANNOUNCE THAT. AND IF THEY DECIDED THAT DEATH WAS THE PROPER SENTENCE, THEY COULD SIGN THEIR NAME TO A PIECE OF PAPER THAT SAID DEATH. WHICH ONE OF THOSE THREE DO YOU FEEL LIKE YOU CLOSER FALL IN?

A. I WOULD HAVE TO SAY NUMBER THREE.

Q. IN OTHER WORDS, IS IT YOUR BELIEF THAT EVERY MURDERER DOES NOT DESERVE TO DIE OR EVERY MURDERER DESERVES TO LIVE, BUT THERE WOULD BE CIRCUMSTANCES THAT YOU COULD VOTE EITHER WAY?

A. THAT'S RIGHT.

Q. ALL RIGHT. EVERYBODY'S GOT THEIR OPINION. THEY'RE GOING TO ASK YOU SOME QUESTIONS, AND JUST LIKE YOU DID FOR ME JUST ANSWER THEM AS BEST YOU CAN.

A. OKAY.

THE COURT: THANK YOU.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. BROOKS, I'M WALTER BAILEY. I WANT TO ASK YOU JUST A FEW QUESTIONS HERE. OKAY?

A. OKAY.

Q. AND THEY'LL BE SORT OF ON THE LINES OF WHAT JUDGE BROWN'S ALREADY ASKED YOU. IF WE FORGET ABOUT THIS PARTICULAR CASE THAT YOU'RE HERE TODAY ON AS A POSSIBLE JUROR AND JUST TALK IN GENERAL TERMS, IF I HAD ASKED YOU A MONTH AGO JUST IN A CASUAL CONVERSATION WHAT YOU THOUGHT ABOUT THE DEATH PENALTY, WHAT WOULD YOU HAVE SAID THEN?

A. THAT'S A HARD QUESTION. I FEEL LIKE THAT THERE ARE SOME PEOPLE THAT DO DESERVE THE DEATH PENALTY, BUT THERE ARE SOME THAT CAN BE REFORMED.

Q. OKAY. AND YOU'RE WILLING TO LISTEN TO ALL THE FACTS AND LAW THE JUDGE WOULD GIVE YOU.

A. THAT'S RIGHT.

Q. AND KEEP AN OPEN MIND IF WE GET TO THAT SECOND STAGE.

A. UH-HUH.

Q. AND COME BACK ONE WAY OR THE OTHER?

A. THAT'S RIGHT.

Q. AND THE JUDGE MENTIONED THAT THERE WAS A FORM THAT IF THE JURY DECIDES TO VOTE FOR THE DEATH PENALTY

EACH JUROR WOULD HAVE TO SIGN THAT FORM. OKAY? IF YOU WERE ON A JURY AND YOU REACHED THAT DECISION WITH THE ELEVEN OTHER JURORS, WOULD THERE BE ANYTHING ABOUT SIGNING THAT FORM THAT WOULD CAUSE YOU TO HOLD BACK?

A. NO, SIR.

Q. AND COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE YOUR VERDICT?

A. YES.

Q. IF THAT WAS YOUR VERDICT?

A. IF THAT WAS MY DECISION.

Q. OKAY. DO YOU HAVE ANY RELIGIOUS BELIEFS IN THE DEATH PENALTY ONE WAY OR THE OTHER THAT WOULD INFLUENCE YOUR ABILITY TO SIT IN THIS CASE?

A. NO, SIR.

Q. OKAY. DO YOU HAVE ANY OTHER -- I NOTICE IN THE QUESTIONNAIRE THAT YOU FILLED OUT YOU INDICATED SOME PROBLEM WITH YOUR WORK, THAT YOU'RE A ONE-PERSON OFFICE AND THAT THERE MAY BE SOME PROBLEMS IF YOU WERE ON THE JURY FOR A PERIOD OF TIME.

A. UH-HUH.

Q. HAS THAT BEEN WORKED OUT?

A. RIGHT.

Q. OKAY.

A. I HAD SOMEBODY TO COME IN AND TAKE MY PLACE.

Q. OKAY. SO, YOU WOULDN'T BE OVERLY WORRIED

ABOUT THE OFFICE AND DISTRACT YOU FROM THE TRIAL.

A. RIGHT.

Q. IS THAT RIGHT? OKAY. THAT'S ALL I HAVE. THANK YOU VERY MUCH.

A. UH-HUH.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. GOOD AFTERNOON, MS. BROOKS.

A. HI.

Q. MS. BROOKS, LIKEWISE AS MR. BAILEY POINTED OUT, YOU INDICATED SOME POSSIBLE DIFFICULTIES WITH YOUR BUSINESS IF YOU HAD TO SIT ON THE JURY FOR AN EXTENDED PERIOD OF TIME AND BE AWAY FROM YOUR BUSINESS.

A. UH-HUH.

Q. WOULD IT BE MORE CONVENIENT AND MORE TO YOUR INTEREST TO BE AT YOUR BUSINESS THAN SITTING ON THE JURY?

A. I DON'T THINK SO. LIKE I SAID, I HAVE SOMEBODY THAT REPLACES ME NOW AND THEY'RE GOING TO BE THERE THE WHOLE TIME THAT I'M GONE, HOWEVER LONG THAT MAY BE.

Q. OKAY. AND THEY'RE AS EQUALLY SKILLED AT THAT JOB AS YOU ARE?

A. YES.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Honorable Luke N. Brown, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY D. ROGERS,

APPELLANT.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
93-GS-18-101

THE STATE

-VS-

TIMOTHY D. ROGERS

TRANSCRIPT OF RECORD
VOLUME 2
PAGES 401 - 800

FEBRUARY 28, 1994
THROUGH MARCH 5, 1994
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LUKE N. BROWN, JR., JUDGE, AND JURY.

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

WALTER BAILEY, ESQUIRE
HARRISON BELL, ESQUIRE
ATTORNEY FOR THE STATE

WILLIAM RUNYON, ESQUIRE
MARK LEIENDECKER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. VANN
CIRCUIT COURT REPORTER

HONOR.

THE COURT: ANY MOTIONS?

MR. BAILEY: NO, SIR, YOUR HONOR.

THE COURT: MS. BROOKS, I NOTICE YOU WERE BORN IN NEW BERN, NORTH CAROLINA. THAT'S CLOSE TO BEAUFORT THEY CALL IT UP THERE.

JUROR BROOKS: UH-HUH.

THE COURT: WHEN YOU GOT DOWN HERE, WHAT DO YOU THINK ABOUT THE NAME BEAUFORT SPELLED THE SAME WAY?

JUROR BROOKS: WELL, WE ALWAYS MAKE FUN OF THEM WHEN WE'RE UP THERE.

THE COURT: A LITTLE DIFFERENT.

JUROR BROOKS: YEAH.

THE COURT: WE ALL THINK YOU'D MAKE A GOOD JUROR. THAT DOESN'T MEAN THAT YOU'RE GOING TO BE ON THE JURY, BUT IT MEANS YOU'RE QUALIFIED. SO, I'M GOING TO SEND YOU ABOUT YOUR BUSINESS AND I'M GOING TO CALL YOU WHEN I WANT YOU TO COME BACK. THIRTY-SIX OR THIRTY-EIGHT PEOPLE I'LL BRING BACK.

JUROR BROOKS: OKAY.

THE COURT: AND THEN WE'LL CHOOSE A JURY FROM THAT. IN THE MEANTIME, I'LL ASK THAT YOU NOT WATCH T.V. OR READ THE NEWSPAPERS ABOUT THE CASE AND THAT YOU DON'T DISCUSS THE CASE WITH ANYONE.

JUROR BROOKS: OKAY.

THE COURT: AND WHEN YOU COME BACK, BRING ENOUGH CLOTHES FOR ABOUT FIVE DAYS. I DON'T THINK IT WILL TAKE THAT LONG BUT JUST TO BE ON THE SAFE SIDE.

JUROR BROOKS: UH-HUH.

THE COURT: AND I HAVE THOSE TELEPHONE NUMBERS. DON'T GO OUT OF TOWN. AND I CAN ALWAYS REACH YOU IN SOME REASONABLE TIME AT THOSE PLACES, I SUPPOSE.

JUROR BROOKS: THAT'S CORRECT.

THE COURT: ALL RIGHT. I HOPE YOU HAVE A GOOD AFTERNOON.

JUROR BROOKS: ALL RIGHT. THANK YOU.

(JUROR JENNIFER BROOKS WAS EXCUSED FROM THE COURTROOM.)

THE COURT: CHERYL HUTTO.

(JUROR CHERYL L. HUTTO ENTERED THE COURTROOM.)

CHERYL L. HUTTO, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. HUTTO, HOW ARE YOU TODAY?

A. OKAY.

Q. WERE YOU BORN AND REARED AROUND HERE?

A. NO, I'VE BEEN HERE SINCE I WAS NINE.

Q. WHERE DO YOU COME FROM ORIGINALLY?

A. GEORGIA.

Q. OH. THERE ARE A LOT OF HUTTOS AROUND HERE, YOU KNOW.

A. UH-HUH.

Q. WELL, I'M JUDGE BROWN. I INTRODUCED MYSELF EARLIER THIS WEEK AND, OF COURSE, YOU KNOW THAT MR. ROGERS WHO SITS IN THE CENTER THERE WITH HIS ATTORNEYS IS CHARGED WITH MURDER AND YOU KNOW HE'S PRESUMED TO BE INNOCENT. AND REMEMBER I TOLD Y'ALL ON YESTERDAY SITTING AT THAT TABLE HE'S JUST AS INNOCENT AS YOU AND I UNLESS THE STATE CAN SATISFY TWELVE JURORS OF HIS GUILT BEYOND A REASONABLE DOUBT. YOU KNOW THAT, DON'T YOU?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. YOU HAVE TO SPEAK OUT LOUD. I'VE GOT A MACHINE---

A. YES.

Q. ---DOWN THERE THAT WANTS TO LISTEN TO YOU.

A. OKAY.

Q. THAT'S MR. LEIENDECKER, THE ONE ON THE RIGHT THERE, ONE OF HIS ATTORNEYS, AND MR. RUNYON ON YOUR LEFT THERE AND THIS IS SOLICITOR BAILEY, WALTER BAILEY. WE ALL WANT TO ASK YOU SOME QUESTIONS, AND AS I TOLD ONE OF THE TEACHERS, IT'S NOT THE KIND OF QUESTIONS THAT YOU CAN FLUNK BECAUSE THERE ARE NO RIGHT

OR WRONG ANSWERS. SO, JUST ANSWER AS BEST YOU CAN FOR US IF YOU WILL.

A. OKAY.

Q. I TOLD YOU THE RUDIMENTS OF OUR JUDICIAL SYSTEM, BUT I TOLD YOU ON YESTERDAY THAT A PERSON CHARGED WITH A CRIME -- GENERALLY THE JURY DECIDES WHETHER THEY'RE GUILTY OR NOT AND THE JUDGE DOES THE SENTENCING. YOU UNDERSTAND THAT?

A. YES, SIR.

Q. WELL, IN THIS TYPE CASE IN WHICH THEY'RE SEEKING THE DEATH PENALTY IT'S DIFFERENT. I TOLD YOU YESTERDAY THAT THE JURY DOES BOTH IN THIS TYPE CASE. DID YOU KNOW THAT?

A. NO.

Q. NOT UNTIL YESTERDAY.

A. RIGHT.

Q. WELL, HOW WE PROCEED IS THIS: WE DRAW TWELVE JURORS AND I'LL DRAW A COUPLE OF ALTERNATES IN CASE SOME OF THEM BECOME INCAPACITATED AND THEN WE'LL HAVE THE TRIAL. HE'S CHARGED WITH MURDER AND IF THE JURY FINDS THAT HE'S INNOCENT THAT ENDS THE PROCEEDINGS. BUT IF THEY FIND THAT HE'S GUILTY OF THIS MURDER THAT THE STATE IS TALKING ABOUT, THEN WE HAVE ANOTHER PROCEEDING. IT'S CALLED THE SENTENCING PHASE AND IT'S DESIGNED SO THAT THE INFORMATION CAN BE GIVEN THE

JURORS TO HELP THEM MAKE UP THEIR MIND WHAT THE PROPER PUNISHMENT OUGHT TO BE, DEATH OR LIFE, THAT IS, LIFE IN PRISON OR DEATH BY ELECTROCUTION.

AND SO THAT JURY, IF THEY GOT THAT FAR, MIGHT HEAR GOOD THINGS ABOUT MR. ROGERS, BAD THINGS. THEY MIGHT HEAR THE CIRCUMSTANCES THAT MIGHT BE MITIGATED, AGGRAVATED CIRCUMSTANCES, AND WHEN IT'S COMPLETED WE WOULD EXPECT THE JURY TO ANNOUNCE THEIR FINDINGS. IF THEY DECIDED THAT THE PROPER PUNISHMENT WAS LIFE IN PRISON, THEN THE FOREMAN WOULD SIGN A PIECE OF PAPER AND ANNOUNCE THAT THE PROPER PUNISHMENT WAS LIFE IN PRISON AND THAT THEY RECOMMEND THAT AND THAT'S WHAT I'D SENTENCE HIM TO. BUT I WANT TO TELL YOU EVEN THOUGH I SAID RECOMMENDATION, I MUST BY LAW -- I CAN'T CHANGE IT. I MUST DO WHAT THE JURY TELLS ME TO DO. DO YOU UNDERSTAND?

A. YES.

Q. ON THE OTHER HAND, IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS DEATH, THEN IT'S A LITTLE DIFFERENT. EACH JUROR SIGNS THEIR NAME TO A PIECE OF PAPER AND IT WOULD SAY, WE, THE FOLLOWING JURORS, RECOMMEND THAT THE PROPER PUNISHMENT IS DEATH AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND?

A. UH-HUH. YES.

Q. BEFORE I GO ANY FURTHER, ON YESTERDAY I ASKED THE JURORS IF THEY KNEW ANYTHING ABOUT THIS CASE. DO YOU REMEMBER I TOLD YOU THAT THE STATE SAYS HE SHOT A CHILD IN THE BACK OF THE HEAD?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. AND HE PLEADS NOT GUILTY TO THAT. AND I ASKED THE JURORS IF THEY KNEW ANYTHING ABOUT THIS CASE OR READ IT OR WATCHED IT ON T.V. AND SOME OF THEM STOOD UP AND YOU WASN'T WITHIN OF THEM. DO YOU KNOW ANYTHING ABOUT THIS CASE THAT YOU CAN REMEMBER?

A. I DIDN'T RECALL IT. I DIDN'T REALLY KNOW WHAT THE CASE WAS, YOU KNOW, EXACTLY ABOUT, BUT I DID SEE IT ON THE NEWS.

Q. AND DID YOU SEE IT BACK WHEN IT HAPPENED OR LATELY?

A. WHEN IT HAPPENED.

Q. WHEN IT HAPPENED?

A. IT'S BEEN AWHILE. UH-HUH.

Q. WELL, AS I TOLD YOU AND I'VE TOLD ALL THE REST OF THE JURY, VERY OFTEN THE NEWS MEDIA CAN'T GET ALL THE FACTS AND SO I WOULD BE TELLING MY JURY TO LAY ASIDE WHAT SOMEBODY MIGHT HAVE SAID OR WHAT THEY MIGHT HAVE HEARD OR WATCHED ON T.V. AND JUST DECIDE THE CASE ON WHAT THEY HEAR FROM THIS STAND, FROM THESE WITNESSES.

A. RIGHT.
Q. DO YOU FEEL YOU COULD DO THAT?
A. YES.
Q. DO YOU KNOW OF ANYTHING THAT YOU MIGHT HAVE HEARD ABOUT THIS CASE THAT WOULD KEEP YOU FROM GIVING BOTH MR. ROGERS AND THE STATE A FAIR AND IMPARTIAL TRIAL?
A. NO.
Q. NOW, WHEN PEOPLE COME IN AND THEY'RE ASKED QUESTIONS LIKE YOURSELF ABOUT THE JURY -- SERVING ON A JURY, GENERALLY IN A DEATH PENALTY CASE OF THIS TYPE JURORS FALL IN ONE OF THREE CLASSES. SO, I'M GOING TO TELL YOU THOSE THREE CLASSES - JUROR NUMBER ONE, TWO, AND THREE - AND I WANT YOU TO TELL ME WHICH YOU FEEL YOU BEST FIT INTO.
A. (JUROR NODDED HEAD UP AND DOWN.)
Q. JUROR NUMBER ONE IS THAT JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF AND HE WOULDN'T BE INTERESTED IN THAT SECOND TRIAL. HE WOULD ALWAYS VOTE FOR THE DEATH PENALTY IF HE WERE CONVICTED OF MURDER. AND THEN THAT SECOND JUROR, NUMBER TWO, WOULDN'T WANT TO HEAR THAT TRIAL EITHER BECAUSE THEY WOULD TAKE THE POSITION REGARDLESS OF HOW TERRIBLE A MURDER MIGHT BE, HOW HEINOUS IT MIGHT BE, THEY WOULD NEVER VOTE FOR THE DEATH PENALTY. THEY

WOULD ALWAYS VOTE FOR LIFE IN PRISON.

AND THEN THE THIRD TYPE JUROR WOULD BE THAT TYPE JUROR THAT WOULD NOT BE WEDDED TO EITHER TYPE VERDICT. IF THEY FELT THAT THE APPROPRIATE SENTENCE WAS LIFE IN PRISON, THEY COULD VOTE THAT WAY. IF THEY FELT THAT THE APPROPRIATE SENTENCE WAS DEATH, THEY COULD SIGN THEIR NAME TO A PIECE OF PAPER THAT SAID DEATH. WHICH ONE OF THOSE DO YOU THINK YOU BEST FIT INTO?

A. CATEGORY THREE.

Q. IN OTHER WORDS, IS IT YOUR BELIEF THAT NOT EVERY MURDERER DESERVES DEATH OR LIFE, BUT YOU WOULD WANT TO HEAR EVERYTHING AND THEN WHEN YOU HEARD IT YOU COULD MAKE UP YOUR MIND WHETHER TO VOTE FOR LIFE OR DEATH?

A. UH-HUH.

THE COURT: THEY'RE GOING TO ASK YOU SOME QUESTIONS, AND JUST LIKE YOU ANSWERED MINE JUST ANSWER THEM AS BEST YOU CAN. THANK YOU. SOLICITOR?

MR. BAILEY: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. HUTTO, HAVE YOU EVER HAD OCCASION TO SIT DOWN AND TALK TO YOUR HUSBAND OR FRIENDS OR ANYBODY ABOUT THE DEATH PENALTY?

A. MAYBE ONCE OR TWICE, YES.

Q. OKAY. AND DO YOU RECALL WHAT YOU MIGHT HAVE SAID OR THOUGHT AT THAT TIME JUST IN GENERAL TERMS OF THE DEATH PENALTY?

A. NOT REALLY. I HAVEN'T REALLY GIVEN IT A LOT OF THOUGHT.

Q. OKAY. BUT YOU'VE HAD -- SINCE YOU KNEW THE NATURE OF THIS CASE, YOU'VE HAD A CHANCE TO THINK ABOUT IT. AS I UNDERSTAND WHAT YOU TOLD JUDGE BROWN, YOU'RE PRETTY WELL CONVINCED YOU'RE THE THIRD TYPE OF JUROR THAT COULD VOTE FOR EITHER LIFE OR DEATH DEPENDING ON THE CIRCUMSTANCES?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. AND HE TOLD YOU THAT IF -- YOU KNOW, IF WE GET INTO THE SECOND PHASE WHERE THE JURY DECIDES ON LIFE IN PRISON OR THE DEATH PENALTY, IF THE JURY VOTES FOR THE DEATH PENALTY THERE'S A FORM THAT EVERY JUROR WOULD HAVE TO SIGN IN ORDER FOR THAT DEATH PENALTY TO BE PUT INTO EFFECT. COULD YOU SIGN YOUR NAME ALONG WITH THE OTHER JURORS TO A FORM LIKE THAT IF YOU HAD ALREADY REACHED THAT DECISION?

A. WHAT DO YOU MEAN IF I HAD ALREADY REACHED THAT DECISION?

Q. WELL, IF YOU WERE IN THE SECOND PHASE OF THE TRIAL WHICH WOULD MEAN THE DEFENDANT -- YOU HAD BEEN

THROUGH THE FIRST TRIAL. THE DEFENDANT HAD BEEN FOUND GUILTY OF MURDER AND THEN YOU'RE IN THE SECOND PHASE AND THE DECISION THERE IS WHETHER OR NOT TO IMPOSE LIFE IN PRISON OR THE DEATH PENALTY AND YOU AND THE OTHER ELEVEN JURORS AFTER HEARING ALL OF THE EVIDENCE DECIDE ON THE DEATH PENALTY. COULD YOU THEN SIGN YOUR NAME TO THAT DEATH VERDICT FORM WHICH WOULD RESULT IN THE IMPOSITION OF THE DEATH PENALTY?

A. I DON'T KNOW.

Q. OKAY.

THE COURT: LET ME EXPLAIN SOMETHING TO YOU. IF A JURY DECIDED THAT DEATH WAS THE APPROPRIATE SENTENCE, THEN EACH JUROR WOULD SIGN THEIR NAME AND SAY THAT THAT'S THE APPROPRIATE SENTENCE AND THEN IT WOULD COME OUT AND IT WOULD BE ANNOUNCED THAT THAT WAS THE SENTENCE OF THAT JURY. THEN SOMETIMES SOMEONE ASKS THAT EACH JUROR BE POLLED, THAT IS, THAT THEY ASK THIS QUESTION TO THE JURY: WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT? AND THEN THAT JUROR WOULD ANSWER THAT. HIS QUESTION IS: IF IT HAD ALREADY BEEN ANNOUNCED THAT IT WAS THE DEATH PENALTY, THEN WOULD YOU HAVE ANY PROBLEM STANDING UP IN FRONT OF THE COURT AND SAYING THAT WAS YOUR DEATH PENALTY -- WAS YOUR SENTENCE?

THE WITNESS: NO, I WOULDN'T HAVE A PROBLEM.

THE COURT: ALL RIGHT.

BY MR. BAILEY:

Q. OKAY. THANK YOU. THE REASON I WAS ASKING THAT IS SOME PEOPLE CAN VOTE ON SOMETHING AND REACH AN OPINION, BUT SIGNING THEIR NAMES OR SAYING THAT IN OPEN COURT KIND OF IS AN OBSTACLE TO THEM. DO YOU THINK THAT WOULD BE AN OBSTACLE TO YOU, EITHER ONE OF THOSE SITUATIONS, SIGNING YOUR NAME OR COMING OUT INTO COURT AND ANNOUNCING THE VERDICT?

A. I DON'T THINK I WOULD LIKE TO ANNOUNCE THE VERDICT. AS FAR AS SIGNING MY NAME, YES, IF IT CAME TO THAT.

Q. OKAY. WELL, WOULD YOUR HESITATION TO ANNOUNCE THE VERDICT HAVE ANY EFFECT ON YOUR ABILITY TO REACH THAT VERDICT?

A. NO.

Q. AND DELIBERATION?

A. NO.

Q. ALL RIGHT. MS. HUTTO, DO YOU HAVE ANY RELIGIOUS BELIEFS ON THE DEATH PENALTY?

A. NO.

Q. DO YOU KNOW OF ANY REASON THAT WE MAY NOT HAVE ASKED YOU ABOUT THAT WOULD PREVENT YOU FROM SITTING AS A FAIR AND IMPARTIAL JUROR BOTH FOR THE DEFENDANT AND FOR THE STATE OF SOUTH CAROLINA?

A. NO, NOT THAT I CAN THINK OF.

MR. BAILEY: THAT'S ALL I HAVE. THANK YOU.

MR. RUNYON: GOOD AFTERNOON, MS. HUTTO.

THE WITNESS: HI.

MR. RUNYON: NO QUESTIONS, YOUR HONOR.

THE COURT: ANY MOTIONS?

MR. BAILEY: NO, SIR.

MR. RUNYON: NONE FROM THE DEFENSE.

THE COURT: MS. HUTTO, WE ALL THINK YOU'D MAKE A FAIR JUROR. IT DOESN'T MEAN YOU'RE DRAWN. IT JUST MEANS YOU'RE QUALIFIED.

JUROR HUTTO: OKAY.

THE COURT: AND SO I'M GOING TO SEND YOU ABOUT YOUR BUSINESS AND I'LL BE CALLING YOU TONIGHT OR IN THE MORNING AND TELL YOU WHEN TO COME IN. IN THE MEANTIME, I'LL ASK THAT YOU NOT READ THE NEWSPAPER OR WATCH T.V. OR ANYTHING ABOUT THIS AND, OF COURSE, DON'T DISCUSS IT WITH ANYONE. AND WHEN YOU COME BACK, JUST TO BE ON THE SAFE SIDE - I DON'T THINK IT WILL TAKE THAT LONG TO TRY IT - BUT BRING CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS. NOW, YOU'VE GIVEN ME SOME TELEPHONE NUMBERS HERE. ARE THOSE STILL THE ONES WE CAN REACH YOU?

JUROR HUTTO: YES. UH-HUH.

THE COURT: AND BE SURE NOT TO GO OUT OF

TOWN. HAVE A GOOD AFTERNOON.

JUROR HUTTO: THANK YOU.

THE COURT: THANK YOU.

(JUROR CHERYL HUTTO WAS EXCUSED FROM THE COURTROOM.)

THE COURT: JOYCE NORRIS. THAT'S TWENTY-EIGHT; CORRECT?

MR. RUNYON: THAT'S CORRECT, YOUR HONOR.

(JUROR JOYCE F. NORRIS ENTERED THE COURTROOM.)

JOYCE F. NORRIS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. NORRIS, HOW ARE YOU THIS AFTERNOON?

A. JUST FINE. HOW ABOUT YOU, SIR?

Q. HOW DID YOU GET DOWN HERE FROM ROANOKE, VIRGINIA?

A. I WAS BORN AND RAISED IN ROANOKE.

Q. OH.

A. AND MY HUSBAND -- MY EX-HUSBAND WAS MILITARY.

Q. OH, THAT'S HOW YOU GOT HERE.

A. RIGHT.

Q. WELL, I NOTICE ALSO YOU GOT SOME EXPERIENCE IN BOTH CIVIL AND CRIMINAL COURT.

A. I SURE DO.

Q. THEN, WAS THAT IN THIS COUNTY OR ANOTHER?
A. THAT WAS IN -- THAT WAS IN FORT PIERCE, FLORIDA.
Q. FORT PIERCE?
A. RIGHT.
Q. I WAS TRYING TO THINK OF A LAWYER I KNOW DOWN THERE.
A. SAINT LUCIE COUNTY.
Q. YEAH. NICE TOWN. WELL, YOU KNOW A LITTLE BIT ABOUT THE SYSTEM. YOU KNOW, OF COURSE, THAT A PERSON CHARGED WITH A CRIME IS ALWAYS PRESUMED TO BE INNOCENT.
A. UNTIL FOUND GUILTY.
Q. AND THAT THE STATE MUST PROVE HIM GUILTY BEYOND A REASONABLE DOUBT---
A. UH-HUH.
Q. ---BEFORE TWELVE JURORS. YOU KNOW THAT.
A. (JUROR NODDED HEAD UP AND DOWN.)
Q. WELL, OF COURSE, YOU KNOW THAT MR. ROGERS WHO SITS IN THE CENTER THERE WITH HIS ATTORNEYS IS CHARGED WITH MURDER, AND HIS ATTORNEYS FROM YOUR RIGHT OVER THERE, MR. LEIENDECKER, AND ON THIS SIDE MR. RUNYON. THEY REPRESENT MR. ROGERS. ON THIS SIDE REPRESENTING THE STATE IS SOLICITOR WALTER ROGERS (SIC) SITTING ON THE END RIGHT THERE AND, OF COURSE, I'M JUDGE BROWN.

WHAT DID I SAY?

MR. RUNYON: ROGERS, YOUR HONOR. I THINK HIS NAME IS BAILEY.

THE COURT: OH, I SAID. . .

MR. RUNYON: AT LEAST THAT'S WHAT WAS ON THE BALLOT.

BY THE COURT:

Q. I'VE BEEN GRINDING THIS OUT SO LONG; I'M GETTING ALL CONFUSED. FORGIVE ME, PLEASE, AND I'LL ASK MR. ROGERS TO FORGIVE ME ALSO. IN ANY EVENT, MS. NORRIS, IN AN ORDINARY CASE, AS YOU KNOW FROM HAVING BEEN IN COURT, JURORS ARE JUST CONCERNED WITH ONE THING: GUILT OR INNOCENCE. THE JUDGE DOES THE SENTENCING.

A. RIGHT.

Q. WELL, IN A CASE IN WHICH THE STATE IS SEEKING DEATH PENALTY, AS THIS ONE, IT'S DIFFERENT. JURIES DO BOTH. DID YOU KNOW THAT UNTIL I TOLD YOU ON YESTERDAY?

A. I DID NOT, NO, SIR.

Q. ALL RIGHT. DOES IT COME AS SOMEWHAT OF A SHOCK TO YOU?

A. I WAS SURPRISED, YES, SIR.

Q. YEAH. WELL, HERE'S HOW IT OPERATES. IN A CASE OF THIS TYPE THE FIRST THING WE'LL DO IS HAVE A TRIAL AND THE JURY'S ONLY CONCERNED WITH ONE THING: IS

HE GUILTY OR NOT? AND, OF COURSE, IF THEY FIND HIM NOT GUILTY THAT ENDS EVERYTHING. BUT IF THEY FIND HIM GUILTY, THEN WE HAVE A SECOND PROCEEDING. IT'S CALLED A SENTENCING PHASE AND THAT PHASE IS TO ASSIST THE JURY IN DECIDING WHAT IS THE PROPER PUNISHMENT. SO, THAT JURY, IF THEY FIND HIM GUILTY OF MURDER, MIGHT HEAR GOOD AND BAD THINGS ABOUT HIM. THEY MIGHT HEAR THE CIRCUMSTANCES OF THE MURDER DIFFERENT -- NOT DIFFERENT BUT MORE THAN YOU COULD HEAR IN A REGULAR TRIAL IN AGGRAVATION AND IN MITIGATION.

A. UH-HUH.

Q. AND WHEN IT'S ALL OVER, THE JURY WOULD RECOMMEND TO ME WHAT WOULD BE THE PROPER SENTENCE. AND WHEN I SAY THE WORD RECOMMEND, IT'S KIND OF A MISNOMER. I MUST DO WHAT THE JURY TELLS ME TO DO, BE IT LIFE OR DEATH. SO, IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THEN THE FOREMAN WOULD STAND UP AND HE WOULD HAVE SIGNED A PIECE OF PAPER AND IT WOULD SAY, WE, THE JURY, DETERMINE THAT THE PROPER SENTENCE IS LIFE AND I WOULD SENTENCE HIM TO LIFE IN PRISON. DO YOU UNDERSTAND?

A. UH-HUH.

Q. NOW, SPEAK OUT LOUD FOR ME. I'VE GOT A MACHINE OVER THERE THAT'S DYING TO HEAR YOU.

A. OH, I'M SORRY.

Q. THAT'S ALL RIGHT. ON THE OTHER HAND, IF THE JURY DECIDED THAT THE PROPER SENTENCE FOR THAT PARTICULAR MURDER WAS DEATH, THEN IT'S A LITTLE DIFFERENT. EACH JUROR WOULD SIGN THEIR NAME TO A PIECE OF PAPER, TWELVE NAMES, AND IT WOULD SAY IN ESSENCE, WE, THE FOLLOWING JURORS, DETERMINE THAT THE PROPER SENTENCE IS DEATH AND I WOULD AGAIN DO WHAT I WOULD HAVE TO DO. I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION BECAUSE, AS I SAID, I MUST DO EXACTLY WHAT THE JURY TELLS ME TO DO.

NOW, ON YESTERDAY WHEN I DISCUSSED THE MATTER WITH YOU ALL AND TOLD YOU ABOUT THIS CASE -- THIS IS A CASE IN WHICH THE STATE ALLEGES THAT MR. ROGERS SHOT A CHILD IN THE BACK OF THE HEAD. I ASKED YOU ALL IF YOU KNEW ANYTHING ABOUT THIS PARTICULAR CASE AND YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT IT AT ALL?

A. VAGUELY. I DID READ IN THE NEWSPAPER ON THAT, BUT I HONESTLY COULD NOT TELL YOU THE CIRCUMSTANCES OR ANYTHING CONCERNING IT.

Q. ALL RIGHT.

A. I MEAN, I READ THOSE THINGS.

Q. WELL, WOULD IT BE FAIR TO SAY THAT THERE'S NOTHING YOU HEARD OR DISCUSSED THAT WOULD KEEP YOU FROM GIVING BOTH SIDES---

A. NO.

Q. ---A FAIR TRIAL?

A. NO, SIR, IT WOULD NOT.

Q. ALL RIGHT. NOW, WHEN PEOPLE COME IN JUST LIKE YOU AND WE ASK QUESTIONS OF THEM ABOUT SERVING ON A JURY, THEY GENERALLY FALL IN ONE OF THREE CATEGORIES. SO, I'M GOING TO TELL YOU THOSE CATEGORIES AND THEN I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU BEST FIT.

A. OKAY.

Q. NUMBER ONE, NUMBER TWO, OR NUMBER THREE. NUMBER ONE TYPE JUROR IS THAT TYPE JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF AND THEY WOULDN'T BE INTERESTED IN LISTENING TO THAT SECOND TRIAL BECAUSE THEIR MIND WOULD HAVE ALREADY BEEN MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY. JUROR NUMBER TWO WOULD BE JUST THE OPPOSITE. IT WOULD BE THAT TYPE JUROR THAT WOULD TAKE THE POSITION: NO MATTER HOW HORRIBLE A MURDER IT MIGH HAVE BEEN, THEY WOULD NEVER VOTE FOR THE DEATH PENALTY. THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON.

AND THEN THERE'S A THIRD TYPE JUROR THAT REALLY COULD DO BOTH OR EITHER. THAT IS, IF THEY FOUI HIM GUILTY OF MURDER, BEFORE THEY SENTENCED HIM THEY WOULD WANT TO KNOW ALL THE GOODS THINGS AND THE BAD THINGS, THE CIRCUMSTANCES PERHAPS, AND DEPENDING UPON

WHAT THEY HEARD THEY COULD EITHER VOTE FOR LIFE IN PRISON OR THEY COULD SIGN THEIR NAME TO THAT PIECE OF PAPER THAT SAID DEATH. WHICH ONE OF THOSE THREE DO YOU THINK YOU BEST FIT?

A. NUMBER THREE.

Q. ARE YOU TELLING ME THAT YOU FEEL THAT NOT ALL MURDERERS DESERVE TO LIVE LIFE OR ALL MURDERERS DESERVE TO DIE, BUT YOU WOULD WANT TO HEAR ALL THE TESTIMONY? DEPENDING UPON WHAT YOU HEARD, YOU COULD VOTE EITHER WAY?

A. CERTAINLY BECAUSE UNTIL YOU'VE HEARD ALL THE CIRCUMSTANCES OF ANYTHING I DON'T FEEL IT'S FAIR TO JUDGE ONE WAY OR THE OTHER.

Q. ALL RIGHT. BUT YOU UNDERSTAND THAT WHEN YOU GET TO THAT SECOND TRIAL YOU WILL HAVE ALREADY HAVE FOUND---

A. RIGHT.

Q. ---THAT PERSON GUILTY OF MURDER.

A. YES, SIR.

Q. BUT THEN YOU COULD VOTE EITHER WAY.

A. UH-HUH.

Q. ALL RIGHT. I UNDERSTAND. THE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS, SO JUST ANSWER THEM AS BEST YOU CAN FOR US.

A. OKAY.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. NORRIS, I'M WALTER BAILEY. I WANT TO ASK YOU A COUPLE OF QUESTIONS HERE AND THEN I'LL SIT DOWN.

A. YES, SIR.

Q. YOU HAD INDICATED ON YOUR QUESTIONNAIRE THAT YOU HAD SOME TRANSPORTATION PROBLEMS?

A. I DO. RIGHT NOW MY CAR IS NOT WORKING AND WE HAD HAD AN ACCIDENT RIGHT BEFORE -- RIGHT AFTER CHRISTMAS. AND SO WE'RE -- WE HAVE ONE VEHICLE AMONG THREE PEOPLE RIGHT NOW.

Q. OKAY. SO, IF YOU WERE PICKED ON THE JURY YOU WOULD NEED A WAY TO GET HERE?

A. BASICALLY.

Q. OKAY. AND SINCE THE JURY WILL BE PUT IN A MOTEL FOR THE DURATION OF THE TRIAL, TRANSPORTATION WOULDN'T REALLY BE A PROBLEM.

A. NO.

Q. IS THAT RIGHT? YOU UNDERSTAND THAT'S WHAT WOULD HAPPEN IN THIS CASE?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. OKAY. ALL RIGHT. NOW, MS. NORRIS, HAVE YOU EVER HAD OCCASION IN THE PAST, YOU KNOW, IN TALKING TO YOUR HUSBAND OR YOUR FRIENDS OR ANYBODY TO EXPRESS YOUR VIEWS ON THE DEATH PENALTY IN GENERAL TERMS?

A. NO, I DON'T THINK WE'VE EVER REALLY DISCUSSE- THAT ONE WAY OR THE OTHER.

Q. JUST SOMETHING THAT REALLY HASN'T COME UP?

A. RIGHT.

Q. OKAY. IF I WAS TO HAVE MET YOU SOMEWHERE A MONTH AGO, LET'S SAY, BEFORE YOU GOT YOUR JURY SUMMONS---

A. UH-HUH.

Q. ---AND ASKED YOU IN GENERAL TERMS WHAT YOU THOUGHT ABOUT THE DEATH PENALTY BACK THEN, WHAT DO YOU THINK YOU WOULD HAVE TOLD ME?

A. I REALLY DON'T HAVE A VIEW ONE WAY OR THE OTHER. I USUALLY KEEP AN OPEN MIND ON SOMETHING LIKE THAT. I DON'T -- I DON'T LIKE TO JUDGE ANYONE UNTIL I'VE HEARD ALL THE CIRCUMSTANCES.

Q. OKAY.

A. AFTER THAT, I COULD PROBABLY MAKE A DECISION ONE WAY OR THE OTHER, BUT I CERTAINLY DON'T MAKE A JUDGMENT BEFOREHAND.

Q. RIGHT. OKAY. AND DO YOU HAVE ANY RELIGIOUS FEELINGS OR BELIEFS IN THE DEATH PENALTY---

A. NO.

Q. ---THAT MIGHT INTERFERE---

A. NO, SIR.

Q. ---WITH YOUR ABILITY---

A. I DON'T.

Q. ---TO MAKE ONE DECISION OR THE OTHER? OKAY. NOW, IF WE GET INTO THAT SECOND PHASE WHICH IS THE PENALTY PHASE WHERE THE JURY IS FACED WITH THOSE TWO CHOICES, LIFE IN PRISON OR THE DEATH PENALTY---

A. UH-HUH.

Q. ---IF THE JURY VOTES FOR THE DEATH PENALTY, THEN IN ORDER TO PUT THAT INTO EFFECT, ALL TWELVE JURORS HAVE TO SIGN A DEATH VERDICT FORM. IF YOU HAD ALREADY REACHED THAT DECISION WITH THE OTHER JURORS, IS THERE ANYTHING ABOUT SIGNING YOUR NAME TO THAT PAPER THAT WOULD CAUSE YOU TO HOLD BACK OR NOT?

A. IF I HAD REACHED THAT DECISION AND BELIEVED IN MY HEART THAT HE WAS GUILTY, I WOULD HAVE NO PROBLEM SIGNING MY NAME.

Q. AND YOU UNDERSTAND THAT YOU WOULD NOT EVEN GET INTO THE SECOND PHASE UNLESS HE WAS GUILTY OF MURDER IN THE FIRST PHASE.

A. UH-HUH. YES, SIR.

Q. BUT YOU WOULD STILL KEEP AN OPEN MIND ON THE SENTENCE?

A. YES, SIR.

Q. AND THERE'S ALSO A PROCEDURE WHERE THE JURY COMES OUT AND THEY CAN BE ASKED BY EITHER SIDE TO BE POLLED. THAT MEANS EACH JUROR IS ASKED WHETHER OR NOT

THAT'S THEIR VERDICT OUT HERE IN OPEN COURT.

A. YES, SIR.

Q. WOULD THAT CAUSE A PROBLEM WITH YOU IF YOU HAD ALREADY REACHED THAT DECISION?

A. IF I HAD ALREADY REACHED THAT DECISION, NO, SIR.

MR. BAILEY: MS. NORRIS, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

MR. RUNYON: GOOD AFTERNOON, MA'AM.

THE WITNESS: HI.

MR. RUNYON: NO QUESTIONS, YOUR HONOR, AND NO MOTION.

THE COURT: STATE?

MR. BAILEY: NO, SIR, YOUR HONOR.

THE COURT: WE ALL THINK YOU'D MAKE A GOOD JUROR, MS. NORRIS, AND SO IT DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY. IT JUST MEANS YOU'RE QUALIFIED. SO, I'M GOING TO SEND YOU ABOUT YOUR BUSINESS AND I'M GOING TO ASK THAT YOU COME BACK WHEN I CALL YOU. I WOULD LIKE TO CALL YOU TONIGHT. I'M NOT SURE I'LL GET THAT FAR. I NEED TO GET ABOUT 36 OR 37 PEOPLE. IT MIGHT BE TOMORROW MORNING, BUT WHEN I CALL YOU YOU CAN STILL BE REACHED AT ONE OF THESE NUMBERS.

JUROR NORRIS: YES, SIR.

THE COURT: AND IN THE MEANTIME, I'M GOING TO

ASK THAT YOU NOT DISCUSS THE CASE WITH ANYONE OR READ THE NEWSPAPER OR WATCH T.V. ABOUT THE CASE. AND WHEN YOU COME BACK, BRING ENOUGH CLOTHES -- DON'T GET WORRIED BECAUSE I DON'T THINK IT WILL TAKE THAT LONG, BUT BRING ENOUGH CLOTHES FOR ABOUT FIVE DAYS. LET ME ASK YOU: IF I CALLED YOU TONIGHT, FOR INSTANCE, AND TOLD YOU TO GET HERE TOMORROW MORNING, DO YOU HAVE A WAY OR WOULD YOU LIKE TO---

JUROR NORRIS: YES, I COULD GET---

THE COURT: YOU COULD GET HERE ONE TIME.

JUROR NORRIS: YES.

THE COURT: ALL RIGHT. WELL, WE'LL TAKE CARE OF YOU. IF YOU FIND THAT YOU CAN'T WHEN THEY CALL, YOU JUST TELL US AND WE'LL GET YOU HERE.

JUROR NORRIS: OKAY.

THE COURT: SO, DON'T BE CONCERNED ABOUT IT. YOU LIVE WHERE?

JUROR NORRIS: I LIVE IN OAK BROOK, PART OF DORCHESTER COUNTY.

THE COURT: ALL RIGHT. I HOPE YOU HAVE A GOOD AFTERNOON.

JUROR NORRIS: OKAY. AND THERE IS AN ANSWERING MACHINE IF I'M NOT HOME.

THE COURT: WELL, BE SURE TO MONITOR THAT BECAUSE I MIGHT CALL YOU TONIGHT AND TELL YOU WHAT TIME

TO BE HERE TOMORROW MORNING.

JUROR NORRIS: OKAY.

THE COURT: OR I MIGHT CALL YOU IN THE MORNING AND TELL YOU TO BE HERE AT TWELVE OR ELEVEN O'CLOCK OR SO. WE'LL LET YOU KNOW.

JUROR NORRIS: OKAY.

THE COURT: GO ON AND PACK YOUR BAG, THOUGH, SO YOU. . .

JUROR NORRIS: THANK YOU, SIR.

THE COURT: THANK YOU VERY MUCH.

MR. RUNYON: YOUR HONOR, BEFORE YOU GET TO THE NEXT ONE, COULD I ASK---

THE COURT: PULL THAT DOOR SHUT. YEAH, YOU'RE GOING TO ASK ME HOW I'M GOING TO LET YOU DRAW THE JURY?

MR. RUNYON: NO, SIR.

THE COURT: WHAT ARE YOU GOING TO ASK ME?

MR. RUNYON: I'M JUST ASKING BECAUSE YOU ANNOUNCED THAT YESTERDAY. I WOULD LIKE---

THE COURT: NO, I ANNOUNCED I WAS LEANING THAT WAY.

MR. RUNYON: IN ESSENCE YOU'RE LEANING THAT WAY. MY QUESTION AT THIS POINT IN TIME IS A SIMPLE HOUSEKEEPING ONE. WHAT'S THE COUNT THAT WE HAVE?

MR. BAILEY: I'VE GOT 29.

THE COURT: WELL, I HAVE 29. MS. NORRIS WAS THE 29TH. IS THAT CORRECT?

MR. BAILEY: THAT'S WHAT I'VE GOT.

MR. RUNYON: THAT'S CORRECT. I JUST WANTED TO MAKE SURE WE'RE ALL. . .

THE COURT: YES, SIR.

MR. BAILEY: YOUR HONOR, SINCE MR. RUNYON BROACHED THE SUBJECT OF HOW WE'RE DRAWING THE JURY, MY UNDERSTANDING WAS THAT YOU WERE GOING TO TAKE THAT UNDER ADVISEMENT.

THE COURT: WELL, I TOOK IT UNDER ADVISEMENT.

MR. BAILEY: OKAY.

THE COURT: BUT LET ME TELL YOU: I NEVER HAVE HAD ANY GUIDANCE THIS WAY REALLY. I HAD NEVER BEEN ASKED TO DO IT LIKE YOU ARE TALKING ABOUT. I'VE ALWAYS DRAWN THEM -- FOR INSTANCE, EVERY JUROR GENERALLY KNOWS WHAT THEIR NUMBER IS. DOES THAT CREATE A PROBLEM?

MR. BAILEY: YOUR HONOR, THE REASON I WANTED TO DO IT THE WAY I SAID I WANTED TO DO IT, TO DO IT IN THE ORDER THAT THEY HAVE BEEN QUALIFIED IN, IS BECAUSE THEY'VE ALREADY BEEN PUT IN RANDOM ORDER ONE TIME AND I DIDN'T SEE ANY REAL LOGICAL REASON TO SCRAMBLE THEM UP AGAIN. IF WE STRIKE IN THE ORDER THAT WE KNOW THEY'RE COMING UP IN, THEN WE CAN COMPARE EACH JUROR AGAINST

EVERY OTHER JUROR AND MORE OR LESS KIND OF PRECONCEIVE WHO WE'RE GOING TO STRIKE. IF WE'RE STRIKING AT RANDOM AND THEY'RE JUMBLED UP, WE DON'T KNOW WHO'S COMING UP NEXT. AND I USE FOUR STRIKES AND I'M HOLDING ONE BACK FOR A JUROR THAT I REALLY THINK I NEED TO GET RID OF, THEN THE STANDARDS I'M EMPLOYING TOWARDS THE END THEY'RE GOING TO BE DIFFERENT PERHAPS THAN WHAT I STARTED OUT WITH. BUT I CAN AVOID THAT IF I KNOW WHO'S COMING UP NEXT AND I THINK MR. RUNYON WOULD BE IN THE SAME POSITION.

MR. RUNYON: I DON'T THINK -- I DON'T HAVE AN OBJECTION.

MR. BAILEY: IT WOULD ELIMINATE---

THE COURT: WHAT DO YOU WANT?

MR. RUNYON: JUDGE, I WANT TO DO IT THE WAY YOU SAID. I'VE ASKED JUDGE FIELDS TO DO IT THAT WAY IN THE PAST, THE OTHER JUDGES, AND I HAVE A VERY LEGITIMATE REASON FOR ASKING THAT. MY COMPUTER EXPERT HERE HAS ANALYZED THE JURY PANEL AND HAS CHECKED IT AGAINST THE VOTING RECORDS OF THIS COUNTY. THE VOTING RECORDS IN THIS COUNTY AND THE JURY RECORDS INDICATE THAT THE POPULATION OF THE -- OF DORCHESTER COUNTY ON THE BASIS OF RACE IS TWENTY-NINE PERCENT BLACK, THAT AS A PRACTICAL MATTER THE METHOD THAT THE SOLICITOR ADVOCATES, THE WAY THAT THE BREAKOUT HAS OCCURRED IN

THE EXCUSED JURORS THAT WE HAVE WOULD NOT ENABLE THE--
WOULD NOT GIVE THE DEFENDANT AN OPPORTUNITY TO HAVE
MEMBERS OF HIS OWN RACE EVEN REPRESENTED FAIRLY
PROPORTIONATE TO THE POPULATION ON THE JURY. NOW, I'M
NOT SUGGESTING---

THE COURT: BEFORE YOU GET ANY FURTHER, LET
ME JUST TELL YOU: SOLICITOR, YOU WOULD GET TO DO
SOMETHING YOU WOULDN'T BE ABLE TO DO IN AN ORDINARY
CASE BECAUSE YOU'D HAVE ALL YOUR JURORS SITTING IN
FRONT OF YOU AND YOU'D KNOW HOW MANY TO HOLD BACK,
WOULDN'T YOU?

MR. BAILEY: YOUR HONOR, THAT IS THE WAY --
THAT'S THE WAY I DID IT.

THE COURT: WELL, I DON'T CARE HOW YOU DID
IT, BUT I'M SAYING THIS: YOU'D BE ABLE TO DO SOMETHIN(
YOU WOULDN'T BE ABLE TO DO IN AN ORDINARY CASE,
WOULDN'T YOU?

MR. BAILEY: TO A CERTAIN EXTENT I WOULD,
YES, SIR.

THE COURT: WELL, NOT ONLY TO A CERTAIN
EXTENT, FOR SURE, BECAUSE YOU NEVER GET A CHANCE TO
LOOK AT A LIST OF WHO THEY'RE GOING TO BE IN THE ORDEF
THAT THEY ARE ACCEPTED IN A CASE OF THIS TYPE. WELL,
YOU KNOW, I HAD A GOOD WISE JUDGE TOLD ME IF THERE'S
ANY DOUBT IN MY MIND TO GIVE IT TO THE DEFENDANT AND

I'M GOING TO DRAW IT LIKE THEY WANT.

MR. BAILEY: ALL RIGHT.

THE COURT: ALL RIGHT. ALL RIGHT. THE NEXT ONE IS -- LET'S SEE. LASHONE ROLACK.

(JUROR LASHONE ROLACK ENTERED THE COURTROOM.)

LASHONE D. ROLACK, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. ROLACK, ARE YOU CALLED DENISE OR LASHONE?

A. LASHONE.

Q. LASHONE?

A. UH-HUH.

Q. ALL RIGHT. IN LOOKING OVER THIS THAT YOU SENT IN THIS INFORMATION, I SEE WHERE YOU ARE A CASHIER AND THAT YOU'VE NEVER SERVED ON A JURY.

A. NO, SIR.

Q. ARE YOU NERVOUS?

A. UH-HUH. YES.

Q. WELL, YOU DON'T HAVE TO BE. WE'RE JUST GOING TO ASK YOU SOME QUESTIONS AND I'LL TELL YOU IT'S NOT LIKE SOME OF THOSE TESTS YOU HAD BEFORE YOU GOT HERE. YOU CAN'T FLUNK THIS ONE.

A. OKAY.

Q. JUST ANSWER THEM AS BEST YOU CAN.

A. ALL RIGHT.

Q. NOW, YOU HAVEN'T SERVED ON A JURY BEFORE AND ON YESTERDAY I ASKED THE JURY IF THEY KNEW ANYTHING ABOUT THIS CASE, THIS PARTICULAR CASE, AND YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT IT?

A. NO.

Q. DO YOU KNOW THE DEFENDANT OR ANY OF HIS FAMILY OR ANYTHING?

A. NO, SIR.

Q. SO, YOU DON'T KNOW ANYTHING THAT WOULD KEEP YOU FROM GIVING BOTH THE STATE AND MR. ROGERS A FAIR AND IMPARTIAL TRIAL, DO YOU?

A. NO, SIR.

Q. ALL RIGHT. NOW, YOU KNOW YOU ALREADY KNOW MR. ROGERS. HE SITS THERE AND MR. LEIENDECKER IS ON HIS LEFT, ON YOUR RIGHT, AND ON YOUR LEFT THERE IS MR. RUNYON. THEY ARE HIS ATTORNEYS. ON THIS SIDE, THAT'S MR. WALTER BAILEY. HE'S THE SOLICITOR AND HE REPRESENTS THE STATE, AND SO WE'RE ALL GOING TO ASK YOU QUESTIONS.

A. OKAY.

Q. YOU JUST ANSWER THEM AS BEST YOU CAN. YOU KNOW, OF COURSE, THAT A PERSON CHARGED WITH A CRIME IS PRESUMED TO BE INNOCENT AND THE STATE WOULD HAVE TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. YOU KNOW THAT, DON'T YOU?

A. YES, SIR.

Q. AND IN AN ORDINARY CASE IF YOU'RE DRAWN ON A JURY, THERE'S ONLY ONE THING THAT THE JURY IS CONCERNED WITH, THAT IS, WAS HE GUILTY OR NOT GUILTY? THEY DETERMINE GUILT AND THE JUDGE DOES THE SENTENCING. DO YOU UNDERSTAND?

A. UH-HUH.

Q. WELL, ON YESTERDAY I TOLD Y'ALL THAT IN A TRIAL LIKE THIS IN WHICH THE STATE IS SEEKING THE DEATH PENALTY IT'S DIFFERENT. THE JURY DOES BOTH. THEY DO BOTH THE FINDING OF GUILTY OR NOT GUILTY, AND IF THEY FIND HIM GUILTY THEY DECIDE WHETHER HE LIVES OR DIES. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. SO, IN THE CASE THE FIRST TRIAL WOULD BE WHETHER OR NOT HE WAS GUILTY, AND IF THE JURY FOUND HE WAS NOT GUILTY THAT WOULD END EVERYTHING. BUT IF THE JURY FOUND THAT HE WAS GUILTY, THEN WE HAVE A SECOND PROCEEDING AND THAT IS TO DETERMINE WHAT THE SENTENCE OUGHT TO BE. IN THAT SECOND PROCEEDING YOU MIGHT HEAR A LOT OF TESTIMONY, GOOD AND BAD ABOUT HIM. YOU MIGHT HEAR ABOUT EXTENUATING OR MITIGATING CIRCUMSTANCES. YOU MIGHT HEAR AGGRAVATING CIRCUMSTANCES, AND IT'S DESIGNED TO HELP THE JURY DECIDE WHAT THE PROPER PUNISHMENT IS. AND AFTER LISTENING TO THAT SECOND

TRIAL, IF THEY FOUND HIM GUILTY OF MURDER, THEN THE JURY WOULD BE EXPECTED TO COME BACK AND RECOMMEND SOMETHING TO ME. NOW, I USE THE WORD RECOMMEND. I REALLY MEAN THE JURY, WHATEVER THEY RECOMMEND, I MUST BY LAW DO. I CAN'T CHANGE.

SO, IF THE JURY RECOMMENDED LIFE IN PRISON, THEN THE FOREMAN WOULD STAND UP AND HE WOULD SIGN A PIECE OF PAPER THAT WOULD SAY, WE, THE JURY, DETERMINE THAT THE PROPER SENTENCE IS LIFE IN PRISON. THAT'S WHAT I'D GIVE HIM. DO YOU UNDERSTAND?

A. UH-HUH.

Q. ON THE OTHER HAND, IF THE JURY DECIDED THAT DEATH WAS THE APPROPRIATE SENTENCE FOR MURDER, THEN IT'S A LITTLE DIFFERENT. THEN IN THAT CASE EACH JUROR WOULD SIGN THEIR NAME TO A PIECE OF PAPER AND IT WOULD SAY IN ESSENCE, WE, THE FOLLOWING JURORS, DETERMINE THAT THE PROPER SENTENCE IS DEATH. AND SO, HERE AGAIN, I MUST DO WHAT THE JURY TELLS ME TO DO AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND?

A. YES, SIR.

Q. NOW, WHEN PERSONS LIKE YOURSELF COME IN AND ARE ASKED QUESTIONS ABOUT SERVING ON A DEATH PENALTY JURY, AS A GENERAL RULE THEY FALL IN ONE OF THREE CATEGORIES AND I'M GOING TO TELL YOU WHAT THOSE

CATEGORIES ARE AND THEN I WANT YOU TO TELL ME WHICH TYPE JUROR YOU FEEL LIKE YOU BEST FIT IN. THE FIRST TYPE JUROR IS THAT TYPE JUROR THAT WOULD TAKE THE POSITION THAT IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF, AND SO THAT PERSON WOULD ALWAYS VOTE FOR THE DEATH PENALTY. HE WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL ABOUT THE GOOD AND THE BAD. HE WOULD BELIEVE THAT EVERY MURDERER DESERVES THE DEATH PENALTY.

THE SECOND TYPE JUROR, NUMBER TWO, WOULD BE THAT TYPE JUROR WHO WOULD BE JUST THE OPPOSITE. THEY WOULD TAKE THE POSITION THAT REGARDLESS OF HOW HORRIBLE A MURDER MIGHT BE OR HOW HEINOUS IT MIGHT BE THEY COULD NEVER VOTE FOR THE DEATH PENALTY. SO, THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON. AND THEN THE THIRD TYPE OF JUROR IS THAT TYPE OF JUROR THAT COULD VOTE EITHER WAY. IF THE CIRCUMSTANCES REQUIRED IT, THEY COULD VOTE FOR LIFE IN PRISON. ON THE OTHER HAND, IF THEY FELT LIKE DEATH WAS THE PROPER SENTENCE FOR THAT PARTICULAR MURDER, THEY COULD SIGN THEIR NAME TO THAT PIECE OF PAPER THAT SAID DEATH. NOW, OF THOSE THREE WHICH DO YOU FEEL YOU NEAREST FIT IN?

A. THE THIRD.

Q. IN OTHER WORDS, IS IT YOUR BELIEF THAT NOT ALL MURDERERS ARE ALIKE, THAT SOME SHOULD HAVE THE

DEATH PENALTY AND SOME SHOULD HAVE LIFE IN PRISON?

A. YES.

Q. ALL RIGHT. I CAN UNDERSTAND THAT. AND DEPENDING UPON IT, YOU COULD VOTE EITHER WAY.

A. (JUROR NODDED HEAD UP AND DOWN.)

THE COURT: ALL RIGHT. I'M GOING TO LET YOU -- SHE INDICATED YES. I'M GOING TO LET YOU ASK THE QUESTIONS, ALL OF YOU. SOLICITOR, START WITH YOU.

MR. BAILEY: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. ROLACK, WAS ROBERT ROLACK YOUR FATHER OR. . .

A. NO, HE'S MY UNCLE.

Q. YOUR UNCLE. OKAY. I NOTICE THAT YOU -- ON THE BACK OF YOUR FORM YOU HAD INDICATED YOU HAD A RELATIVE IN LAW ENFORCEMENT IN ST. GEORGE. YOU WERE REFERRING TO ROBERT ROLACK THERE?

A. HE'S MY UNCLE.

Q. AND HAVE YOU EVER HAD THE OCCASION IN THE PAST IN TALKING TO YOUR FAMILY OR FRIENDS TO TALK ABOUT THE DEATH PENALTY?

A. NO, SIR.

Q. JUST SOMETHING THAT HASN'T REALLY COME UP?

A. HUH-UH.

Q. IF I WAS TO ASK YOU A MONTH AGO BEFORE YOU GOT YOUR JURY SUMMONS AND BEFORE YOU KNEW ANYTHING ABOUT THIS TRIAL WHAT YOU THOUGHT ABOUT THE DEATH PENALTY JUST IN GENERAL TERMS, WHAT DO YOU THINK YOU MIGHT HAVE TOLD ME THEN?

A. I WOULD THINK -- REALLY, I WOULD THINK A CRIMINAL SHOULD HAVE LIFE OR SHOULD HAVE DEATH. DEPENDS ON WHAT THE SITUATION IS.

Q. OKAY. YOU WOULD KEEP AN OPEN MIND---

A. UH-HUH.

Q. ---AND LISTEN TO ALL OF THE FACTS AND ALSO LISTEN TO WHAT THE JUDGE TOLD YOU THE LAW WAS AND THEN MAKE A DECISION BASED ON THAT?

A. YES, SIR.

Q. OKAY. THE JUDGE TOLD YOU ABOUT, YOU KNOW, IN A CASE LIKE THIS THAT IT WOULD BE A TWO-PART PROCESS WHERE YOU'D GO THROUGH A REGULAR TRIAL LIKE ANY OTHER CRIMINAL TRIAL AND IF THE DEFENDANT IS FOUND GUILTY OF MURDER, ONLY THEN WOULD YOU GO INTO THE SECOND PHASE. AND THAT SAME JURY IS FACED WITH TWO CHOICES: LIFE IN PRISON OR THE DEATH PENALTY.

A. UH-HUH.

Q. IF THE JURY DECIDES AFTER HEARING ALL OF THE FACTS THAT THE DEATH PENALTY IS THE APPROPRIATE SENTENCE AND ALL TWELVE OF THEM HAVE TO AGREE, THEN IN

ORDER TO PUT THAT SENTENCE INTO EFFECT EACH JUROR WOULD HAVE TO SIGN THEIR NAME ON A PAPER CALLED A DEATH VERDICT FORM. DO YOU FEEL LIKE YOU COULD SIGN YOUR NAME TO A PAPER LIKE THAT KNOWING THAT IT WOULD RESULT IN SOMEBODY BEING PUT TO DEATH BY ELECTROCUTION?

A. NO.

Q. SO, IS WHAT YOU'RE TELLING ME THAT YOU COULD VOTE FOR THE DEATH PENALTY, BUT WHEN IT COMES RIGHT DOWN TO PUTTING YOUR NAME ON THE LINE MEANING THAT IT WOULD BE CARRIED OUT THAT YOU COULD NOT DO THAT?

A. NO.

Q. AND IS THAT BECAUSE YOU DON'T FEEL LIKE IN GOOD CONSCIENCE YOU COULD TAKE PERSONAL RESPONSIBILITY FOR CAUSING SOMEBODY'S ELECTROCUTION?

A. HUH-UH.

Q. THERE'S ALSO A PROCEDURE WHERE IF THE JURY VOTES ON THE DEATH PENALTY AND THEY COME OUT INTO OPEN COURT THEY CAN BE ASKED TO STAND UP IN FRONT OF EVERYBODY OUT HERE AND SAY THAT'S YOUR VERDICT. COULD YOU DO THAT?

A. YES.

Q. OKAY. BUT WHERE YOU WOULD DRAW THE LINE, AS I UNDERSTAND IT, WOULD BE SIGNING THE DEATH VERDICT FORM?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. YOU COULD NOT SIGN THAT UNDER ANY CIRCUMSTANCES.

A. NO, UNLESS I HAD DECIDES. . .

Q. OKAY. I MIGHT HAVE MISSTATED. . . LET ME TRY TO ASK IT A DIFFERENT WAY. WE'RE TALKING ABOUT A SITUATION WHERE THE JURY, INCLUDING YOU, HAS HEARD ALL THE FACTS AND HAVE VOTED FOR THE DEATH PENALTY. OKAY? YOU HAVE DECIDED THE DEATH PENALTY IS THE APPROPRIATE SENTENCE.

A. YES.

Q. OKAY. COULD YOU THEN TAKE THAT NEXT STEP AND SIGN YOUR NAME TO THAT DEATH VERDICT FORM WHICH WOULD RESULT IN THE ELECTROCUTION OF THAT DEFENDANT?

A. YES.

Q. YOU COULD DO THAT?

A. UH-HUH.

Q. OKAY. AND WHEN YOU TOLD ME EARLIER THAT YOU COULDN'T DO IT, WAS THAT BECAUSE MAYBE YOU DIDN'T UNDERSTAND THE WAY I ASKED THE QUESTION?

A. UH-HUH.

Q. THE CHURCH THAT YOU GO TO, JERICHO BAPTIST CHURCH, IS THAT IN ST. GEORGE?

A. YES, THAT'S IN REEVESVILLE.

Q. REEVESVILLE? OKAY. DOES THAT CHURCH HAVE ANY PARTICULAR TEACHINGS IN REGARD TO THE DEATH

PENALTY?

A. NO.

Q. YOU DON'T RECALL A SERMON OR SUNDAY SCHOOL LESSON?

A. HUH-UH.

Q. DO YOU HAVE ANY PERSONAL RELIGIOUS FEELINGS ABOUT THE DEATH PENALTY THAT WOULD HAVE ANY EFFECT ON YOUR ABILITY TO MAKE THAT DECISION ONE WAY OR THE OTHER?

A. NO.

Q. DO YOU KNOW OF ANY OTHER REASON THAT WE MAY NOT HAVE EVEN TALKED ABOUT THAT YOU THINK WOULD CAUSE YOU NOT TO BE A FAIR AND IMPARTIAL JUROR BOTH TO THE STATE AND TO THE DEFENDANT IN A CASE OF THIS NATURE?

A. HUH-UH.

Q. I WANT TO MAKE SURE I'M -- I'M PROBABLY ASKING THE SAME QUESTION TWICE---

A. OKAY.

Q. ---OR MAYBE THREE TIMES AND I APOLOGIZE, BUT I JUST WANT TO MAKE SURE I UNDERSTAND. IS IT MY UNDERSTANDING THAT YOU COULD SIGN THE DEATH VERDICT FORM IF YOU HAD ALREADY MADE THE DECISION WITH THE OTHER JURORS THAT THE DEATH PENALTY WAS APPROPRIATE?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. YOU'RE NODDING YOUR HEAD YES?

A. YES.
Q. THANK YOU, MS. ROLACK. THAT'S ALL I HAVE.
A. UH-HUH.
MR. RUNYON: GOOD AFTERNOON, MS. ROLACK.
THE WITNESS: GOOD AFTERNOON.
MR. RUNYON: NO QUESTIONS. NO MOTIONS, YOUR HONOR.
THE COURT: ANY MOTIONS?
MR. BAILEY: NO, SIR.
THE COURT: ALL RIGHT. MS. MERRIMAN (SIC), WE THINK YOU WOULD BE A -- MS. ROLACK. FORGIVE ME. WE THINK YOU WOULD BE A FAIR JUROR AND IMPARTIAL, ALL OF US. IT DOESN'T MEAN YOU'RE GOING TO SIT ON THE JURY. IT JUST MEANS YOU'RE QUALIFIED. SO, I'M GOING TO SEND YOU ABOUT YOUR BUSINESS. CAN YOU STILL BE REACHED AT THESE SAME NUMBERS YOU GAVE US, [redacted]?
JUROR ROLACK: UH-HUH. THAT'S AT WORK.
THE COURT: THAT'S YOUR BUSINESS?
JUROR ROLACK: THAT'S AT WORK.
THE COURT: WELL, HOW WOULD I GET IN TOUCH WITH YOU IF I DECIDED TO CALL YOU TONIGHT?
JUROR ROLACK: WELL, MY GRANDMOTHER'S PHONE NUMBER IS -- I THINK IT'S [redacted]--
THE COURT: [redacted].
JUROR ROLACK: [redacted].

THE COURT: [redacted]?

JUROR ROLACK: UH-HUH.

THE COURT: AND WHAT'S HER NAME?

JUROR ROLACK: VIRGINIA BUTLER.

THE COURT: IS IT IN HER NAME?

JUROR ROLACK: YES, SIR.

THE COURT: AND SHE'S YOUR GRANDMOTHER?

JUROR ROLACK: UH-HUH.

THE COURT: IN ALL PROBABILITY, I'M GOING TO CALL YOU TONIGHT AND TELL YOU TO BE HERE TOMORROW MORNING AT TEN O'CLOCK.

JUROR ROLACK: OKAY.

THE COURT: IF YOU DON'T GET A TELEPHONE CALL TONIGHT AT TEN O'CLOCK -- HOW LONG DOES IT TAKE YOU TO GET HERE?

JUROR ROLACK: IT DOESN'T TAKE LONG. I JUST LIVE AROUND THE CORNER.

THE COURT: OH. WELL, THEN, YOU CALL. IF YOU DON'T HEAR FROM US TONIGHT, YOU CALL HERE AT NINE O'CLOCK IN THE MORNING. OKAY?

JUROR ROLACK: OKAY.

THE COURT: AND BE READY AND PACKED TO COME AND TO BE HERE BY TEN. NOW, DON'T TALK ABOUT THE CASE. IN CASE YOU'RE DRAWN ON THE JURY, BRING -- JUST DON'T TALK ABOUT THE CASE WITH ANYONE OR WATCH T.V. OR

READ THE NEWSPAPERS. AND WHEN YOU COME - I DON'T THINK IT WILL TAKE THAT LONG - BRING ENOUGH CLOTHES FOR ABOUT FIVE DAYS AND TOILET ARTICLES.

JUROR ROLACK: OKAY.

THE COURT: HOPE YOU HAVE A GOOD AFTERNOON.

JUROR ROLACK: ALL RIGHT. DO YOU HAVE A NUMBER THAT I CAN REACH TONIGHT?

THE COURT: OH, SHE'LL GIVE YOU THE NUMBER RIGHT NOW. I SAID IF I DIDN'T CALL YOU, YOU CALL HERE TOMORROW MORNING AT NINE O'CLOCK AT THAT NUMBER.

JUROR ROLACK: OKAY.

THE COURT: THANK YOU, HERE.

(JUROR LASHONE ROLACK WAS EXCUSED FROM THE COURTROOM.)

THE COURT: BONNIE MERRIMAN.

(JUROR BONNIE B. MERRIMAN ENTERED THE COURTROOM.)

BONNIE B. MERRIMAN, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. MERRIMAN, HOW DID YOU GET ALL THE WAY DOWN HERE FROM MISSOURI?

A. I KNOW; THAT'S AMAZING. NO, I'VE BEEN HERE TWENTY YEARS. I ACTUALLY CAME HERE FROM INDIANA.

Q. OH, DID YOU?

A. BUT I WAS BORN IN MISSOURI.

Q. OH, I WAS CURIOUS. A COUPLE OF SUMMERS AGO I WAS GOING THROUGH MISSOURI AND JUST WANDERING AROUND ON A NICE VACATION. I SAW A LITTLE SIGN THAT SAID A HUNDRED MILES AWAY WAS THE HOME OF JESSE JAMES AND I SAID, GOSH, I'VE NEVER BEEN THERE. SO, I JUST TURNED AROUND AND WENT OVER THERE TO LOOK AT THE HOLE IN THE WALL WHERE HE WAS SHOT. I HOPE ALL THIS IS NOT ON THE RECORD. I DON'T KNOW WHAT THE CHIEF JUSTICE IS GOING TO SAY WHEN HE FINDS OUT I'VE BEEN TO THAT HOME. WHATEVER. MS. MERRIMAN---

MR. RUNYON: THAT'S A NATIONAL HISTORIC MONUMENT, YOUR HONOR.

THE COURT: I REALIZE THAT.

MR. RUNYON: SO IT'S PERFECTLY LEGAL FOR A JUDGE TO GO THERE.

BY THE COURT:

Q. MS. MERRIMAN, I KNOW YOU'RE NOT NERVOUS EVEN THOUGH I'M LOOKING ON HERE AND YOU SAID YOU SERVED ON A CIVIL CASE BUT NEVER ON A CRIMINAL CASE. WHEN DID YOU SERVE ON A CIVIL CASE?

A. WHERE? HERE.

Q. WAS I LUCKY ENOUGH TO HAVE YOU FOR A JUROR?

A. NO.

Q. DID YOU ENJOY IT?

A. YEAH. UH-HUH.

Q. I NEVER SERVED ON A JURY BEFORE. WELL, WE BROUGHT YOU IN HERE TODAY JUST TO ANSWER SOME QUESTIONS AND TO HELP US DRAW A PANEL OF JURORS ON A DEATH PENALTY CASE, AND SO IT'S NOT THE KIND OF TEST YOU CAN FLUNK. THERE ARE NO RIGHT OR WRONG ANSWERS. SO, JUST GIVE US YOUR BEST ANSWER AND WE'LL ACCEPT IT.

A. ALL RIGHT.

Q. ALSO ASKING THE QUESTIONS ARE GOING TO BE THE ATTORNEYS. NOW, AS YOU KNOW, MR. ROGERS WHO SITS IN THE MIDDLE THERE WITH HIS ATTORNEYS IS CHARGED WITH MURDER. AND IT'S ALLEGED THAT HE SHOT A CHILD IN THE BACK OF THE HEAD AND UNDER OUR LAW IT SAYS THAT HE CAN BE SENTENCED TO DEATH. SO, THE SOLICITOR -- THAT'S MR. WALTER BAILEY OVER THERE. HE'S OUR SOLICITOR. WHEN I SAY OUR SOLICITOR, I'M TALKING ABOUT THAT -- ALL THE SOLICITORS. HE'S SEEKING THE DEATH PENALTY.

A. UH-HUH.

Q. NOW, MR. ROGERS IS REPRESENTED ON MR. ROGERS' LEFT, ON YOUR RIGHT, BY MR. LEIENDECKER, ONE OF THE ATTORNEYS, AND ON THIS SIDE BY MR. RUNYON AND THEY'LL ALSO BE ASKING YOU SOME QUESTIONS. WHEN I ASKED ON YESTERDAY DID ANYBODY KNOW ANYTHING ABOUT THIS PARTICULAR CASE, I NOTICED YOU STOOD UP.

A. UH-HUH.

Q. AND YOU SAID YOU KNEW SOMETHING ABOUT IT, SO WOULD YOU TELL ME WHAT IT WAS -- HOW YOU FOUND OUT AND WHAT YOU KNOW ABOUT IT?

A. WHAT I KNOW IS SECOND HAND. ONE OF THE LADIES WHO WORKS DIRECTLY FOR ME WAS AT THE TIME OF THE INCIDENT A FRIEND OF THE FAMILY.

Q. OF THE VICTIM?

A. YES.

Q. OH, ALL RIGHT.

A. UH-HUH. AND SHE TOLD ME THAT, IN FACT, SHE WAS PLAYING BASKETBALL JUST, YOU KNOW, SHOOTING BASKETS WITH THE LITTLE GIRL JUST A HALF AN HOUR OR AN HOUR BEFORE IT HAPPENED AND LET'S SEE. SHE TOLD ME THAT SHE WAS DOWN AT THE HOSPITAL AND SHE WENT ON TO TELL ME, YOU KNOW, HOW -- EVERYBODY'S REACTION, THE GRANDPARENTS. THE GRANDMOTHER USED TO WORK AT THE SAME PLACE WHERE I WORK. I DID NOT KNOW HER, BUT SHE USED TO WORK THERE AND SEVERAL PEOPLE THERE STILL KNOW HER. AND JUST, YOU KNOW, DAILY FOR SEVERAL DAYS THE PERSON THAT WORKS FOR ME WOULD COME IN AND, YOU KNOW, TELL ME---

Q. GIVE YOU A REPORT?

A. ---WHAT WAS GOING ON, RIGHT. UH-HUH.

Q. I UNDERSTAND.

A. SO, THAT'S HOW I KNOW ABOUT IT.

Q. OTHER THAN THAT---

A. OTHER THAN THE NEWSPAPER AND T.V.

Q. WELL, VERY OFTEN WHEN YOU HEAR A THIRD SOURCE, SECOND SOURCE, INCLUDING THE NEWS MEDIA, VERY OFTEN YOU CAN'T GET ALL THE FACTS OF THE CASE. AND SO I WOULD BE TELLING MY JURY -- IF YOU WERE CHOSEN ON MY JURY, I'D BE INSTRUCTING YOU ALONG WITH THE REST OF THEM THAT -- TO DECIDE THIS CASE, LAY THAT ASIDE, AND JUST LISTEN TO THE TESTIMONY.

A. UH-HUH.

Q. AND BRING IN A VERDICT ONLY FROM THAT AND DISABUSE YOUR MIND OF WHAT YOU MIGHT HAVE HEARD OR. . . DO YOU FEEL THAT YOU COULD LAY THAT ASIDE? IS THERE ANYTHING YOU'VE HEARD OR DISCUSSED WITH ANYONE THAT YOU FEEL WOULD INTERFERE WITH YOUR DUTY TO GIVE BOTH THE DEFENDANT, MR. ROGERS, AND THE STATE A FAIR TRIAL?

A. (PAUSE) NO.

Q. WELL, LET ME TELL YOU THIS. YOU SERVED ON A CIVIL TRIAL, BUT IN A DEATH PENALTY CASE IT'S DIFFERENT FROM AN ORDINARY CASE. IN OTHER WORDS, IN AN ORDINARY CASE WHERE SOMEONE IS CHARGED WITH A CRIME, THE JURY DECIDES GUILTY OR NOT GUILTY. IF THEY FIND HIM GUILTY, THE JUDGE DOES THE SENTENCING. WELL, IN THIS TYPE CASE, A DEATH PENALTY CASE WE CALL IT, IT'S DIFFERENT.

THE JURY DOES BOTH. DID YOU KNOW THIS---

A. YES.

Q. ---UNTIL I TOLD YOU? OH, YOU KNEW IT.

A. WELL, I BELIEVE YOU MENTIONED THAT.

Q. I DID YESTERDAY.

A. YESTERDAY.

Q. DID YOU KNOW IT BEFORE THEN?

A. NO.

Q. OH.

A. NO.

Q. SO, HOW WE WOULD PROCEED: WE WOULD FIRST HAVE A TRIAL ONLY ON THE GUILT PHASE. THAT'S THE ONLY THING THE JURY WOULD HAVE TO DECIDE IS WHETHER HE WAS GUILTY OR NOT.

A. UH-HUH.

Q. AND IF THE JURY DECIDED THAT HE WAS NOT GUILTY, THAT WOULD END THE PROCEEDINGS. IF THE JURY DECIDED HE WAS GUILTY OF THE MURDER, THEN THE JURY WOULD LISTEN TO THE NEXT PHASE OF THE TRIAL AND THAT PHASE WOULD BE DESIGNED TO HELP THE JURY DECIDE WHAT THE PROPER SENTENCE WAS. THERE WOULD BE INFORMATION PERHAPS GOOD AND BAD ABOUT THE DEFENDANT. THERE MIGHT BE TESTIMONY ABOUT AGGRAVATION, ABOUT THE CIRCUMSTANCES. THERE MIGHT BE MITIGATION OR AN EXCUSABLE CAUSE FOR IT. THERE MIGHT BE ALL KIND OF

THINGS, THINGS THAT PROBABLY COULDN'T COME UP IN THE FIRST TRIAL, AND IT WOULD BE DESIGNED AS I TOLD YOU TO HELP THE JURY DECIDE WHAT THE PROPER SENTENCE WOULD BE.

IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS LIFE, THEN THEY WOULD -- THE FOREMAN WOULD GET UP AND SAY IN ESSENCE, WE, THE JURY, RECOMMEND THAT THE PROPER SENTENCE IN THIS CASE WOULD BE LIFE IN PRISON, AND WHEN I SAY RECOMMEND, I MUST BY LAW DO WHATEVER THE JURY TELLS ME EVEN THOUGH IT SAYS RECOMMEND. I CAN'T CHANGE IT. SO, IF THE JURY DETERMINED THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THEN I WOULD SENTENCE HIM TO LIFE IN PRISON. ON THE OTHER HAND, IF THE JURY DECIDED THAT BECAUSE OF THIS PARTICULAR MURDER THAT THE PROPER SENTENCE WAS DEATH, THEN IT'S DIFFERENT. THEN EACH JUROR WOULD SIGN THEIR NAME TO A PIECE OF PAPER AND IT WOULD SAY, WE, THE FOLLOWING JURORS, DETERMINE IN THIS CASE THAT THE PROPER SENTENCE WOULD BE DEATH AND AS I MUST DO I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND THAT?

A. UH-HUH. YES, I DO.

Q. NOW, JURORS LIKE YOURSELF WHEN THEY COME IN THE COURTROOM AND THEY FIRST ARE APPROACHED WITH THE IDEA OF ABOUT THE DEATH PENALTY, THEY GENERALLY FALL WITHIN ONE OF THREE CATEGORIES. SO, I'M GOING TO TELL

YOU WHAT THOSE CATEGORIES ARE AND THEN I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU BEST FIT. THE FIRST TYPE JUROR WOULD BE THE TYPE JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF, AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH, SO TO SPEAK, AND SO THEY WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL. THEIR MIND WOULD ALREADY BE MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY IF HE WERE FOUND GUILTY OF MURDER.

THEN THERE WOULD BE JUROR NUMBER TWO THAT WOULD BE EXACTLY THE OPPOSITE. THAT JUROR ALSO WOULDN'T BE INTERESTED IN LISTENING TO THAT SECOND TRIAL. THEY WOULD TAKE THE POSITION THAT NO MATTER HOW HORRIBLE A MURDER MIGHT BE THEY WOULD NEVER VOTE FOR THE DEATH PENALTY, AND SO THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON. AND THEN THERE WOULD BE THE THIRD TYPE JUROR, NUMBER THREE, THAT COULD DO EITHER ONE. THEY COULD UNDER THE PROPER CIRCUMSTANCES SIGN THEIR NAME WHERE IT SAID DEATH AND UNDER OTHER CIRCUMSTANCES THEY MIGHT DECIDE AND VOTE AND SAY THAT THIS PARTICULAR MURDERER DOESN'T DESERVE DEATH BUT DESERVES LIFE. WHICH ONE DO YOU THINK BEST FITS YOU?

A. BEST FITS ME, HUH? THAT'S A HARD ONE FOR ME. I GUESS THE ONE THAT WOULD BEST FIT ME WOULD BE -- WOULD BE THE THIRD ONE.

Q. IN OTHER WORDS, IS IT YOUR POSITION THAT NOT ALL MURDERERS DESERVE DEATH NOR ALL MURDERERS DESERVE LIFE, BUT THERE CAN BE CIRCUMSTANCES WHICH WOULD LEAD YOU TO VOTE DIFFERENT WAYS IN DIFFERENT CASES?

A. I'M SURE THAT IT WOULD HAPPEN A SMALL PERCENTAGE OF THE TIME. YOU KNOW, I WOULD HATE TO SAY THAT I WOULD ALWAYS SAY DEATH, BUT ON THE OTHER HAND, I GUESS I LEAN MORE THAT WAY, BUT I COULDN'T SAY THAT FOR EVERY TIME.

Q. I UNDERSTAND. IN OTHER WORDS, YOU COULD VOTE EITHER WAY DEPENDING ON THE CIRCUMSTANCES.

A. RIGHT.

THE COURT: ALL RIGHT. NOW, THEY'RE GOING TO ASK YOU SOME QUESTIONS, AND JUST LIKE YOU DID FOR ME ANSWER THEM.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. MERRIMAN, I'M WALTER BAILEY. I JUST WANT TO ASK YOU A FEW QUESTIONS HERE---

A. SURE.

Q. ---TO MAKE SURE I UNDERSTAND WHAT YOUR POSITION IS.

A. SURE.

Q. AS FAR AS THOSE THREE TYPE JURORS - AND YOU CORRECT ME IF I'M WRONG - BUT MY UNDERSTANDING IS THAT

YOU KIND OF LEAN TOWARDS THE DEATH PENALTY, BUT BY THE SAME TOKEN YOU WOULD KEEP AN OPEN MIND AND YOU COULD VOTE FOR LIFE DEPENDING ON THE CIRCUMSTANCES.

A. THAT'S CORRECT.

Q. IS THAT RIGHT?

A. THAT'S CORRECT.

Q. AND YOU WOULD NOT MAKE ANY DECISION ONE WAY OR THE OTHER DESPITE YOUR LEANINGS TILL YOU'D HEARD ALL THE FACTS---

A. ABSOLUTELY.

Q. ---FROM BOTH SIDES AND IN ADDITION HEARD THE JUDGE INSTRUCT YOU WHAT THE LAW WAS.

A. ABSOLUTELY.

Q. OKAY. AND THERE'S A PROCEDURE THE JUDGE MENTIONED TO YOU WHERE IF WE GET INTO THE SECOND STAGE AND HEAR THAT ADDITIONAL TESTIMONY AND THE JURY DECIDES ON THE DEATH PENALTY, THEN EACH JUROR IS REQUIRED TO SIGN THEIR NAME TO A FORM, A DEATH VERDICT FORM, IN ORDER TO IMPOSE THAT PUNISHMENT. WOULD THE SIGNING OF THAT FORM CREATE ANY OBSTACLE FOR YOU IN BEING ABLE TO PUT YOUR NAME DOWN LIKE THAT?

A. NO.

Q. THERE'S ALSO A PROCEDURE WHERE THE JURY COMES OUT INTO OPEN COURT AND CAN BE POLLED BY THE JUDGE OR BY THE CLERK OF COURT AND THEY'RE ASKED EACH

INDIVIDUALLY IS THAT YOUR VERDICT AND DO YOU ASSENT THERETO? COULD YOU DO THAT AFTER YOU'D MADE THAT DECISION---

A. YES.

Q. ---FOR THE DEATH PENALTY IF THAT WAS YOUR CHOICE?

A. YES.

Q. DO YOU KNOW OF ANY REASON WHY YOU COULD NOT SIT AS A FAIR AND IMPARTIAL JUROR IN EITHER THE GUILT PHASE OR THE PENALTY PHASE IF WE GET THERE IN THIS CASE?

A. NO.

Q. OKAY. AND I THINK YOU INDICATED THAT ALTHOUGH YOU HAD HEARD SOME TALK ABOUT THIS AND SEEN SOME STUFF ON TELEVISION, READ SOMETHING IN THE NEWSPAPER, THAT YOU COULD PUT THAT ASIDE AND BASE YOUR DECISION STRICTLY ON THE FACTS AS YOU HEAR IT FROM THE WITNESS STAND? IS THAT CORRECT?

A. THAT'S CORRECT.

Q. MS. MERRIMAN, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

A. UH-HUH.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MS. MERRIMAN, GOOD AFTERNOON.

A. HELLO.

Q. NOW, IT'S MY UNDERSTANDING THAT BASICALLY WHAT YOU'RE SAYING IS IS THAT YOUR POSITION ON THE DEATH PENALTY IS IS THAT IT SHOULD BE IMPOSED EXCEPT IN THOSE SMALL NUMBER OF CASES THAT SOMEONE MAY PRESENT SOMETHING TO YOU THAT CONVINCES YOU THAT IT SHOULD NOT BE IMPOSED?

A. THAT'S RIGHT.

Q. OKAY. AND IS IT YOUR POSITION THAT IT WOULD BE, SAY, FOR EXAMPLE, THE DEFENDANT'S RESPONSIBILITY TO GIVE YOU SOME REASON TO SPARE THEIR LIFE?

A. YES.

Q. OKAY. NOW, AS IT RELATES TO THE INFORMATION, I ASSUME THAT THIS LADY STILL WORKS FOR YOU.

A. YES.

Q. AND SHE APPARENTLY IS VERY CLOSE TO THE FAMILY OF THE VICTIM IN THIS CASE.

A. WELL, SHE TOLD ME AT THAT TIME SHE WAS. I DON'T KNOW WHETHER SHE STILL IS.

Q. WELL, WOULD YOUR SERVICE ON THIS JURY PRESENT ANY DIFFICULTIES IN WORKING WITH HER IF YOUR DECISION, WHATEVER THAT DECISION WOULD BE, WAS NOT NECESSARILY WHAT MAYBE SHE WAS INTERESTED IN SEEING OCCUR?

A. NO, I DON'T THINK SO.

Q. OKAY. NOW, YOU -- AS I UNDERSTAND WHAT YOU

TOLD HIS HONOR IS THAT YOU THROUGH THIS COWORKER---

A. UH-HUH.

Q. AND I TAKE IT THAT AT HERITAGE TRUST Y'ALL WORK PRETTY CLOSELY TOGETHER. IT'S NOT THE LARGEST CORPORATION IN THE WORLD, IS IT?

A. RIGHT.

Q. AND Y'ALL GET ALONG AND RELY UPON ONE ANOTHER'S ACTIVITIES AND WORD?

A. THERE ARE THIRTEEN PEOPLE IN MY BRANCH.

Q. RIGHT.

A. UH-HUH.

Q. AND SO AS A PRACTICAL MATTER YOU PLACE A LOT OF STOCK IN WHAT YOUR EMPLOYEES TELL YOU.

A. SURE.

Q. YEAH. NOW, SO WHEN SHE REPORTED TO YOU WHATEVER THE FACTS WERE THAT SHE REPORTED, YOU HAD NO REASON TO DOUBT THE ACCURACY OF THOSE FACTS, DID YOU?

A. THAT'S CORRECT.

Q. AND THOSE FACTS WERE TAKEN BY YOU AS FACTS.

A. UH-HUH.

Q. AND YET YOU SAY YOU COULD LAY THAT ASIDE IN DECIDING UPON, FIRST OF ALL, THE GUILT OR INNOCENCE OF THE DEFENDANT AND THEN ULTIMATELY IN DECIDING THE FATE OF THE DEFENDANT?

A. I BELIEVE SO. UH-HUH.

Q. OKAY. NOW, HAVE YOU -- I REALIZE, YOU KNOW, YOU'RE BROUGHT IN HERE AND WE ASK YOU THESE QUESTIONS AND WHAT HAVE YOU AND WE REALIZE THAT YOU HAVEN'T SAT DOWN AND THOUGHT ABOUT THIS FOR DAYS ON END OR MAYBE EVEN MONTHS OR WHAT HAVE YOU. BUT HAVE YOU FORMULATED ANY CONCEPT OF ANY NOTIONS UNDER WHAT CIRCUMSTANCES YOU WOULD NOT IMPOSE THE DEATH PENALTY?

MR. BAILEY: YOUR HONOR, I WOULD OBJECT TO THAT.

THE COURT: SUSTAINED.

BY MR. RUNYON:

Q. BUT IT'S A FAIR STATEMENT OF YOUR POSITION THAT THE DEATH PENALTY SHOULD ALWAYS BE IMPOSED UNLESS THE DEFENDANT PROVES TO YOU SOME REASON NOT TO IMPOSE IT.

A. YES, THAT WOULD BE WHAT I THINK I SAID.

MR. RUNYON: THANK YOU.

MR. BAILEY: YOUR HONOR, MAY I FOLLOW UP ON THAT?

THE COURT: OF COURSE.

<u>REDIRECT EXAMINATION</u>

BY MR. BAILEY:

Q. MS. MERRIMAN, YOU UNDERSTAND THAT ONE OF THE JUDGE'S FUNCTIONS HERE IS TO INSTRUCT THE JURY ON WHAT THE LAW IS.

A. YES.
Q. IS THAT CORRECT?
A. YES.
Q. AND YOU ALSO UNDERSTAND THAT, YOU KNOW, JURORS MAY HAVE A PRECONCEIVED IDEA OF WHAT THE LAW IS THAT MAY NOT BE CORRECT.
A. RIGHT.
Q. AND IF YOU THINK THE LAW IS ONE WAY AND THE JUDGE TELLS YOU IT'S ANOTHER WAY, WHICH LAW ARE YOU GOING TO APPLY?
A. THE JUDGE.
Q. OKAY. AND IF THE JUDGE TELLS YOU THAT THE DEFENDANT HAS NO BURDEN TO PROVE ANYTHING AS FAR AS THE FIRST STAGE OF THE TRIAL OR THE SECOND STAGE OF THE TRIAL, WILL YOU FOLLOW THAT LAW AS HE GIVES IT TO YOU?
A. CERTAINLY.
Q. OKAY. AND COULD YOU THEN BASE A DECISION EITHER FOR LIFE OR DEATH IN THAT SECOND PHASE, IF WE GET THERE, BASED ON THE EVIDENCE AND BASED ON THE LAW THAT YOU HEAR FROM THE JUDGE?
A. YES.
MR. BAILEY: OKAY. THAT'S ALL I HAVE.
MR. RUNYON: EXCEPT FOR THE BURDEN OF PROOF, THOUGH, YOUR POSITION STILL IS IS THAT EXCEPT FOR THOSE SMALL NUMBER OF CASES---

THE COURT: LET ME STRAIGHTEN THIS OUT.

MR. RUNYON: ALL RIGHT.

RE-EXAMINATION BY THE COURT

Q. I WILL BE TELLING THE JURY THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING. HE COULD SIT RIGHT THERE AT THAT TABLE AND HIS ATTORNEYS NEVER GET UP AND IT WOULDN'T LESSEN THE OBLIGATION OF THE STATE TO PROVE HIM GUILTY FIRST AND THEN SATISFY A JURY, IF THEY CAN, THAT THE PROPER SENTENCE WAS DEATH. IN OTHER WORDS, THEY DON'T HAVE TO DO ANYTHING.

A. OKAY.

Q. SO, I WILL BE TELLING YOU TO MAKE YOUR DECISION -- ASSUME THE JURY FOUND HIM GUILTY. I WOULD TELL THAT JURY TO MAKE THEIR DECISION ON WHETHER TO VOTE FOR LIFE OR DEATH ON THE TESTIMONY THAT THEY HEARD, BE WHEREVER IT CAME FROM.

A. UH-HUH.

Q. COULD YOU FOLLOW THAT?

A. YES, SIR?

THE COURT: ALL RIGHT. NOW YOU CAN ASK WHATEVER QUESTIONS YOU WANT TO ASK, MR. RUNYON.

RECROSS EXAMINATION

BY MR. RUNYON:

Q. I'M GOING TO ASK PROBABLY THE SAME QUESTION BUT A DIFFERENT WAY JUST SO I CAN GET CLEAR IN MY

MIND. BUT YOUR BASIC PHILOSOPHY STILL IS IS THAT THE DEATH PENALTY SHOULD BE IMPOSED EXCEPT IN A VERY SMALL MINORITY OF CASES.

A. YES.

Q. AT ALL TIMES.

A. YES.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. WHY DON'T YOU STEP OUT THAT DOOR FOR JUST A MINUTE FOR ME? I'LL BRING YOU RIGHT BACK IN.

(JUROR BONNIE MERRIMAN WAS EXCUSED FROM OPEN COURT.)

THE COURT: ANY MOTIONS FROM THE DEFENSE?

MR. RUNYON: YES, YOUR HONOR. WE WOULD MOVE TO EXCUSE HER.

THE COURT: WHAT'S YOUR GROUNDS?

MR. RUNYON: GROUNDS ARE THAT, A., SHE SAYS THAT THE DEATH PENALTY SHOULD ALWAYS BE IMPOSED EXCEPT IN SOME SMALL MINORITY OF CASES WHICH SHE HASN'T IDENTIFIED. SO, I THINK SHE'S REALLY JUROR NUMBER TYPE -- JUROR NUMBER ONE, BUT MORE IMPORTANT, YOUR HONOR, THIS LADY -- AND I REALLY DO BELIEVE THAT SHE WOULD TRY TO BE FAIR, BUT THE SIMPLE FACT IS IS SHE'S HEARD MATTERS ABOUT THE FAMILY, STAY IN THE HOSPITAL, THINGS

WHICH QUITE FRANKLY MAY NOT EVEN BE ADMISSIBLE UNDER PAYNE (PHONETIC), JUDGE, BECAUSE SHE'S NOT SURE JUST EXACTLY WHAT SHE'S HEARD AND I THINK THAT CERTAINLY IF SHE'S NO. . . AS A MATTER OF FACT, SHE'S IN A CLOSER POSITION TO THIS CASE THAN PERHAPS THE LADY WHO KNEW, QUOTE, THE BRYANTS, SO TO SPEAK, AND I REALLY THINK THAT DESPITE HER PROTESTATIONS TO THE CONTRARY IT WOULD BE EXTREMELY DANGEROUS TO ALLOW SOMEONE WITH THAT CLOSE CONTACT WITH THE -- EVEN BY HEARSAY WITH THE ACTUAL VICTIM'S FAMILY AND THE STAY IN THE HOSPITAL AND WHAT HAVE YOU TO BE IN THE POOL, YOUR HONOR.

THE COURT: WELL, THIS WASN'T THE VICTIM'S FAMILY. THIS WAS SOMEONE WHO SHE WORKED WITH THAT KNEW SOME OF THE FAMILY. WASN'T THE VICTIM'S FAMILY.

MR. RUNYON: BUT THAT SHE GOT -- SHE GOT DAILY REPORTS ABOUT THE CHILD STAYING IN THE HOSPITAL.

THE COURT: OH, OF COURSE. I UNDERSTAND.

MR. RUNYON: AND WHAT HAVE YOU.

THE COURT: DENIED. I THINK THIS LADY IS TRYING TO BE FAIR. SHE'S HONESTLY SAID THAT SHE LEANS TOWARD THE DEATH PENALTY, BUT IN THE PROPER CASE SHE FELT LIKE SHE COULD VOTE FOR LIFE IN PRISON. BRING THE JUROR IN. BRING THAT JUROR IN. I DENY YOUR MOTION.

(JUROR BONNIE MERRIMAN WAS BROUGHT BACK INTO OPEN COURT.)

THE COURT: MS. MERRIMAN, WE WERE ALL SITTING HERE DISCUSSING IT AND WE ALL THINK YOU'D MAKE A FINE JUROR. DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY. IT JUST MEANS YOU'RE GOING TO BE ON THE PANEL. SO, I'M GOING TO SEND YOU ABOUT YOUR BUSINESS. AND ARE THESE STILL THE TELEPHONE NUMBERS THAT I CAN REACH YOU?

JUROR MERRIMAN: YES, SIR.

THE COURT: I MIGHT CALL YOU TONIGHT OR HAVE SOMEONE CALL YOU TO TELL YOU TO BE HERE TOMORROW ABOUT TEN O'CLOCK. IT MIGHT BE A LITTLE LATER DEPENDING UPON HOW FAR I CAN GO. AND SO I'M GOING TO ASK YOU NOT TO TALK ABOUT THE CASE WITH ANYONE. DON'T READ THE NEWSPAPER OR WATCH T.V. ABOUT THE CASE. AND WHEN I CALL YOU AND TELL YOU TO COME, BRING ENOUGH CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS. I DON'T THINK IT WILL TAKE THAT LONG BUT JUST TO BE ON THE SAFE SIDE. I HOPE YOU HAVE A GOOD AFTERNOON.

JUROR MERRIMAN: THANK YOU VERY MUCH.

THE COURT: COURT'S IN RECESS FIVE MINUTES.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: BE SEATED. THANK YOU VERY MUCH. MELVA JENNINGS.

(JUROR MELVA R. JENNINGS ENTERED THE COURTROOM.)

MELVA R. JENNINGS, AFTER BEING DULY

SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. JENNINGS, HOW ARE YOU?

A. FINE.

Q. I NOTICED YOU'VE NEVER SERVED ON A JURY BEFORE, HAVE YOU?

A. NO, SIR.

Q. ARE YOU NERVOUS?

A. A LITTLE.

Q. YOU DON'T HAVE TO BE. WE ALL, THAT MEANS THE ATTORNEYS AND MYSELF, JUST WANT TO ASK YOU SOME QUESTIONS AND THERE ARE NO RIGHT OR WRONG ANSWERS AND YOU CAN'T FLUNK THIS TEST.

A. YES, SIR.

Q. JUST GIVE US INFORMATION AS BEST YOU CAN IF YOU WILL FOR US.

A. OKAY.

Q. YOU KNOW, OF COURSE, THAT MR. ROGERS WHO SIT IN THE CENTER THERE WITH HIS ATTORNEYS IS CHARGED WITH MURDER AND HE'S REPRESENTED BY HIS ATTORNEYS. AND HIS ATTORNEYS, THE ONE ON THE RIGHT THERE, YOUR RIGHT, IS MR. LEIENDECKER AND THE ONE ON THE LEFT THERE IS MR. RUNYON. THEY REPRESENT HIM AND THEN THE STATE IS REPRESENTED BY THE SOLICITOR, MR. WALTER BAILEY, THIS YOUNG MAN SITTING RIGHT HERE AND I'M JUDGE BROWN, OF

COURSE. NOW, ON YESTERDAY WHEN I TALKED TO THE JURY AND I ASKED THEM IF THEY KNEW ANYTHING ABOUT THIS CASE, YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT THE CASE?

A. NO, SIR.

Q. DO YOU KNOW THE DEFENDANT OR HIS FAMILY OR ANYTHING?

A. NO, SIR.

Q. DO YOU KNOW OF ANYTHING THAT WOULD KEEP YOU FROM HAVING AN OPEN MIND AND GIVING BOTH THE STATE AND THE DEFENSE A FAIR TRIAL?

A. NO, SIR.

Q. ALL RIGHT. NOW, NOT HAVING SERVED ON A JURY BEFORE YOU KNOW, OF COURSE, THAT MR. ROGERS IS PRESUMED TO BE INNOCENT AND, IF THEY CAN, THE STATE MUST PROVE HIM GUILTY OF THIS MURDER THAT HE'S CHARGED WITH BEYOND A REASONABLE DOUBT. DO YOU KNOW THAT?

A. YES, SIR.

Q. AND IN AN ORDINARY CASE THE JURY DECIDES WHETHER A PERSON IS GUILTY OR NOT AND THE JUDGE DOES THE SENTENCING. YOU KNOW THAT.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. WELL, IN THIS TYPE CASE IN WHICH THE STATE IS SEEKING THE DEATH PENALTY, IT'S DIFFERENT. THE JURY DOES BOTH AND I TOLD YOU SO ON YESTERDAY. DID YOU KNOW

IT BEFORE I TOLD YOU?

A. NO, SIR.

Q. WELL, HERE'S WHAT HAPPENS. WHEN THE STATE IS SEEKING THE DEATH PENALTY FOR IN THIS CASE MURDER, THERE WILL BE A TRIAL AND THE ONLY THING THE JURY WILL HAVE TO DECIDE IS WHETHER HE'S GUILTY OR NOT. AND, OF COURSE, IF THE JURY FINDS HE'S NOT GUILTY, THEN THAT ENDS THE PROCEEDINGS.

A. UH-HUH.

Q. IF THEY FIND HE'S GUILTY, THEN WE HAVE A SECOND PROCEEDING AND THAT SECOND PROCEEDING IS DESIGNED TO HELP THE JURY DECIDE WHAT THE PROPER SENTENCE IS, LIFE OR DEATH.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. AND WHEN YOU NOD YOUR HEAD, THAT MACHINE I GOT DOWN THERE CAN'T HEAR YOU.

A. YES, SIR.

Q. THANK YOU VERY MUCH. SO, IN ANY EVENT, IF W HAD THIS SECOND TRIAL, IF THEY FOUND HIM GUILTY, YOU MIGHT HEAR GOOD THINGS ABOUT HIM. YOU MIGHT HEAR BAD THINGS AND YOU MIGHT HEAR AGGRAVATING CIRCUMSTANCES ABOUT THE MURDER. YOU MIGHT HAVE MITIGATING, THAT IS REASONS THAT MIGHT BE GIVEN FOR THE MURDER. THEN WHE IT'S COMPLETED, THE JURY WOULD BE ASKED WHAT TO RECOMMEND TO ME, LIFE OR DEATH. AND THOSE WORDS

RECOMMEND ARE REALLY A MISNOMER BECAUSE WHATEVER THE JURY TELLS ME TO DO I MUST DO. I CAN'T CHANGE IT. IF THEY SAY LIFE, I MUST SENTENCE HIM TO LIFE. IF THEY SAY DEATH, I MUST SENTENCE HIM TO DEATH.

SO, IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THEN THE FOREMAN WOULD STAND UP AND HE WOULD ANNOUNCE THE VERDICT. HE WILL HAVE SIGNED A LITTLE PIECE OF PAPER THAT SAYS, WE, THE JURY, DECIDE THAT THE PROPER SENTENCE WAS LIFE IN PRISON. ON THE OTHER HAND, IF THEY DECIDED THAT DEATH WAS THE PROPER SENTENCE FOR THE MURDER, IT'S A LITTLE DIFFERENT. THEN EACH JUROR WOULD SIGN THEIR NAME TO A PIECE OF PAPER. THERE WOULD BE TWELVE NAMES AND IT WOULD SAY, WE, THE FOLLOWING JURORS, HAVE DETERMINED THAT DEATH IS THE PROPER SENTENCE AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. NOW, WHEN JURORS LIKE YOURSELF, MS. JENNINGS, COME IN THE COURTROOM AND ARE ASKED THESE QUESTIONS ABOUT THE DEATH PENALTY, THEY GENERALLY, NOT ALWAYS, BUT GENERALLY FALL IN ONE OF THREE CATEGORIES. AND SO I'M GOING TO TELL YOU THOSE CATEGORIES AND THEN I WANT YOU TO TELL ME WHETHER OR NOT YOU FIT IN ONE OF THOSE AND, IF SO, WHICH ONE AS CLOSE AS YOU CAN.

A. YES, SIR.

Q. THE FIRST TYPE JUROR IS THAT TYPE JUROR THAT WOULDN'T BE INTERESTED IN THAT SECOND TRIAL IF THEY FOUND HIM GUILTY OF MURDER BECAUSE THAT JUROR WOULD BELIEVE THAT IF YOU KILL SOMEBODY YOU OUGHT TO GET KILLED YOURSELF AND THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY REGARDLESS. AND THEN THERE'S A SECOND TYPE JUROR, NUMBER TWO, WHO'S JUST THE OPPOSITE. THEY WOULD TAKE THE POSITION, EVEN THOUGH IT WAS A HORRIBLE MURDER, THAT THEY WOULD NEVER VOTE FOR THE DEATH PENALTY. THEY JUST COULDN'T DO THAT AND SO THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON.

AND THEN THERE WOULD BE THE THIRD TYPE OF JUROR THAT COULD VOTE EITHER WAY. DEPENDING UPON THE CIRCUMSTANCES, IF THEY FOUND HIM GUILTY, THAT THEY COULD VOTE -- IF THEY FELT THAT THE PROPER SENTENCE FC THAT PARTICULAR MURDER WAS LIFE IN PRISON, THEY COULD VOTE FOR THAT. AND ON THE OTHER HAND, IF THEY DECIDE THAT DEATH WAS THE PROPER SENTENCE FOR THAT PARTICULA MURDER, THEY COULD SIGN THEIR NAME TO A PIECE OF PAPE AND RECOMMEND DEATH. WHICH DO YOU THINK YOU BEST FIT INTO?

A. THE SECOND.

Q. SECOND. WELL, THE SECOND IS THE JUROR WHO TAKES THE POSITION, REGARDLESS OF HOW TERRIBLE A MUR MIGHT BE, THEY COULD NEVER VOTE FOR THE DEATH PENALT

IS THAT YOUR POSITION?

A. YES, SIR.

Q. ALL RIGHT. AND WE RESPECT ANYBODY'S POSITION, SO YOU DON'T HAVE TO BE EMBARRASSED BY IT. NOW, THE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS AND, IF YOU WILL, JUST ANSWER THEM AS BEST YOU CAN JUST LIKE YOU DID FOR ME.

A. YES, SIR?

THE COURT: THANK YOU. SOLICITOR?

MR. BAILEY: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. JENNINGS, I'M WALTER BAILEY AND I WANT TO ASK YOU A FEW QUESTIONS HERE.

A. SURE.

Q. AND LIKE JUDGE BROWN TOLD YOU, THERE ARE NO RIGHT OR WRONG ANSWERS AND WE RESPECT YOUR OPINION.

A. YES, SIR.

Q. WE JUST HAVE TO KNOW EXACTLY HOW YOU FEEL. YOU INDICATED YOU WERE THE NUMBER TWO TYPE JUROR THAT JUST DID NOT BELIEVE IN THE DEATH PENALTY UNDER ANY CIRCUMSTANCES?

A. YES, SIR.

Q. SO, WOULD I UNDERSTAND YOU TO -- IF YOU WERE ON A JURY AND WE GOT INTO THE SECOND PHASE OF THE

TRIAL, YOU WOULD BE ABLE TO LISTEN TO THE FACTS AND THE LAW, BUT NO MATTER WHAT THOSE FACTS WERE YOU WOULD STILL ALWAYS COME BACK WITH A LIFE SENTENCE?

A. YES, SIR.

Q. BECAUSE YOU JUST DON'T BELIEVE IN THE DEATH PENALTY?

A. RIGHT.

Q. IS THAT A FEELING THAT YOU'VE HAD FOR SOME TIME?

A. YES, SIR.

Q. OKAY. DOES THAT COME FROM YOUR PERSONAL FEELINGS OR FROM---

A. PERSONAL.

Q. ---RELIGIOUS TEACHINGS?

A. PERSONAL.

Q. OKAY. AND ARE THOSE DEEP-FELT FEELINGS, I MEAN, SOMETHING YOU FEEL STRONGLY ABOUT?

A. YES, SIR.

Q. MS. JENNINGS, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

A. YOU'RE WELCOME.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MS. JENNINGS, GOOD AFTERNOON.

A. GOOD AFTERNOON.

Q. OR ALMOST GOOD EVENING.

A. GOOD EVENING.

Q. AS IT RELATES TO THESE FEELINGS THAT YOU HAVE AGAINST THE DEATH PENALTY, WOULD THERE BE EVEN A SMALL NUMBER OF CASES THAT YOU COULD CONSIDER IMPOSING THE DEATH PENALTY IN?

A. NO, SIR.

Q. NONE WHATSOEVER?

A. (JUROR SHOOK HEAD FROM SIDE TO SIDE.)

Q. UNDER NO CIRCUMSTANCES?

A. NO, SIR.

Q. EXCUSE ME ONE MOMENT, YOUR HONOR. (PAUSE) ALL RIGHT. NOW, IF YOU CAN'T HEAR ME, JUST TELL ME TO SPEAK UP BECAUSE THE TRAIN IS GOING BY.

A. YES, SIR.

Q. YOU, OF COURSE, UNDERSTAND THAT THE JUDGE WOULD INSTRUCT YOU IF YOU WERE ON THE JURY ON WHAT THE LAW IS THAT APPLIES TO THE CASE.

A. YES, SIR.

Q. AND IF THE JUDGE INSTRUCTED YOU THAT -- AND YOU WERE ON THE JURY THAT YOU WERE TO CONSIDER ALL THE FACTS AND WHAT HAVE YOU AND HE INSTRUCTED YOU ON WHAT THE LAW WAS, COULD YOU CONSIDER IMPOSING THE DEATH PENALTY?

A. NO, SIR.

Q. UNDER NO CIRCUMSTANCES.

A. NO, SIR.

Q. SO, IS IT YOUR TESTIMONY YOU COULDN'T FOLLOW THE LAW EVEN AS THE COURT GAVE IT TO YOU?

A. YES, I CAN FOLLOW THE LAW.

Q. OKAY. AND IF THE COURT TOLD YOU THAT ALL YOU HAD TO DO WAS CONSIDER AND IF YOU FELT IT WAS THE APPROPRIATE SENTENCE BRING BACK YOUR VERDICT, COULD YOU, IN FACT, THEN DO THAT?

A. REPEAT THAT AGAIN, PLEASE.

Q. ALL RIGHT. COULD YOU BRING BACK THE DEATH PENALTY -- COULD YOU BRING BACK THE DEATH SENTENCE, ASSUMING SOMEONE HAD BEEN CONVICTED OF MURDER, UNDER ANY SET OF CIRCUMSTANCES?

A. NO, SIR.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU. ANY MOTIONS?

MR. BAILEY: YES, SIR.

THE COURT: ALL RIGHT. MS. JENNINGS, WE ALL FEEL YOU'D MAKE A GOOD JUROR, BUT WE WANT SOMEBODY WHO COULD VOTE EITHER WAY---

JUROR JENNINGS: YES, SIR.

THE COURT: ---DEPENDING ON THE CIRCUMSTANCES. WE RESPECT YOUR FEELINGS. SO, I'M

GOING TO EXCUSE YOU. I'M GOING TO JUST ASK YOU ONE THING: JUST DON'T DISCUSS THIS WITH ANYONE---

JUROR JENNINGS: RIGHT.

THE COURT: ---UNTIL CASE IS OVER. WILL YOU DO THAT FOR ME?

JUROR JENNINGS: YES, SIR.

THE COURT: ALL RIGHT. WE'RE GOING TO MAIL YOU A LITTLE CHECK, BUT DON'T GET EXCITED.

JUROR JENNINGS: OKAY. THANK YOU.

THE COURT: THANK YOU.

(JUROR MELVA JENNINGS WAS EXCUSED FROM THE COURTROOM.)

THE COURT: ALL RIGHT. I'LL HEAR YOUR MOTION, SOLICITOR.

MR. BAILEY: YES, SIR. YOUR HONOR, OF COURSE, THE MOTION WOULD BE TO DISQUALIFY HER.

THE COURT: I THINK SO. DO YOU HAVE ANYTHING TO SAY ABOUT THAT?

MR. RUNYON: JUDGE, I WAS TRYING TO GET HER UNDER THE MERRIMAN STANDARD BUT COULDN'T DO IT.

THE COURT: NO, SIR. ALL RIGHT. THE NEXT ONE IS SANDRA BOYD.

(JUROR SANDRA BOYD ENTERED THE COURTROOM.)

SANDRA BOYD, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. BOYD, HOW ARE YOU?

A. FINE.

Q. SORRY TO KEEP YOU WAITING IN THERE. YOU KNOW, OF COURSE, WE'RE JUST GOING TO ASK YOU SOME QUESTIONS ABOUT YOUR VIEWS ON THE DEATH PENALTY AND THEY ARE NOT THE TYPE TESTS THAT YOU'VE GOT TO PASS OR FAIL. JUST GIVE US THE BEST ANSWER YOU CAN IF YOU WILL FOR US. YOU KNOW, OF COURSE, THAT MR. ROGERS IS CHARGED WITH MURDER. HE SITS THERE BETWEEN HIS ATTORNEYS. HIS ATTORNEY ON THE RIGHT IS MR. LEIENDECKER AND ON THE LEFT, MR. RUNYON, AND THE YOUNG MAN UP HERE IS MR. WALTER BAILEY. HE REPRESENTS THE STATE. AND I'M JUDGE BROWN, OF COURSE. NOW, WHEN I ASKED THE JURY ON YESTERDAY IF THEY KNEW ANYTHING ABOUT THIS CASE -- MR. ROGERS IS CHARGED WITH SHOOTING A CHILD IN THE BACK OF THE HEAD AND HE PLEADS NOT GUILTY. YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT THE CASE?

A. I DON'T -- I MAYBE SEEN IT ON THE NEWS ABOUT ONCE, BUT I DON'T REALLY -- I NEVER PAID IT MUCH ATTENTION BECAUSE DURING THE TIME I WAS WORKING.

Q. DO YOU KNOW HE OR THE FAMILY IN ANY WAY?

A. NO, I DON'T KNOW HIS FAMILY.

Q. SO, IS IT SAFE TO SAY THAT THERE'S NOTHING

YOU KNOW OF THAT WOULD KEEP YOU FROM GIVING BOTH SIDES A FAIR TRIAL?

A. THERE'S NOTHING.

Q. ALL RIGHT. NOW, I NOTICE YOU SERVED ON CRIMINAL COURT JURY BEFORE. WHERE WAS THAT?

A. RIGHT HERE.

Q. REALLY? AND WAS I THE JUDGE?

A. THIS IS MY THIRD. . . WITH A JUDGE, YEAH. I THINK THIS IS MY THIRD TIME SERVING.

Q. OH. HAVE YOU EVER REALLY SAT ON A JURY OR YOU JUST WERE DRAWN?

A. TWICE.

Q. WHAT TYPE CASES WERE THEY?

A. I THINK IT WAS LIKE CIVIL, I THINK.

Q. WAS WHAT KIND?

A. IT WAS LIKE CIVIL COURT, I THINK.

Q. OH, CIVIL COURT.

A. YES.

Q. LIKE A MONEY JUDGMENT.

A. YES.

Q. OH. YOU HAD CHECKED CRIMINAL, SO THAT'S WHY I ASKED ABOUT IT. BUT BE THAT AS IT MAY, YOU KNOW HE'S ALWAYS PRESUMED TO BE INNOCENT; EVERYBODY IS. AND HE DOESN'T HAVE TO DO ANYTHING UNLESS HE WANTS TO NOR HIS ATTORNEYS AND THE STATE WOULD HAVE TO PROVE HIM GUILTY

BEYOND A REASONABLE DOUBT. DO YOU KNOW THAT?

A. YES, I UNDERSTAND.

Q. ORDINARILY, JURIES JUST DECIDE GUILT OR INNOCENCE, AND WHEN THEY DO THAT THEY ARE THROUGH. THE JUDGE DOES THE SENTENCING. BUT AS I TOLD YOU ON YESTERDAY, IN THIS TYPE CASE IN WHICH THEY'RE ASKING FOR THE DEATH PENALTY THE JURY DOES BOTH. DID YOU KNOW THAT BEFORE I TOLD YOU?

A. YES, I HAD THAT IDEA.

Q. YOU HEARD ABOUT IT? ALL RIGHT. WELL, IN ANY EVENT WHAT WE DO IS WE'LL HAVE A TRIAL FIRST TO DETERMINE WHETHER OR NOT THE STATE PROVES HIM GUILTY OF MURDER AND, OF COURSE, IF THEY FIND HIM NOT GUILTY THAT ENDS EVERYTHING. BUT IF THEY FIND HIM GUILTY OF THE MURDER THAT THE STATE IS TALKING ABOUT, THEN WE GO INTO A SECOND TRIAL AND THAT SECOND TRIAL IS DESIGNED TO HELP THE JURY DECIDE WHAT THE PROPER PUNISHMENT IS, LIFE OR DEATH. AND SO THERE MIGHT BE AT THAT PORTION OF THE TRIAL GOOD THINGS ABOUT HIM, BAD THINGS ABOUT HIM, MIGHT BE THE CIRCUMSTANCES OF THE KILLING THAT COULDN'T BE INTRODUCED TO BEGIN WITH, BAD AND GOOD. AND THEN IF THE JURY DECIDED THAT THE PROPER PUNISHMENT WAS LIFE IN PRISON, THEN THE FOREMAN WOULD GET UP AND SIGN A PIECE OF PAPER AND IT WOULD SAY WE RECOMMEND THAT THE JURY -- WE RECOMMEND A LIFE SENTENCE. AND

EVEN THOUGH I SAY RECOMMEND, WHATEVER THE JURY TELLS ME TO DO I MUST DO. I CAN'T CHANGE IT. AND SO IF THEY SAID THEY RECOMMEND LIFE, I WOULD SENTENCE HIM TO LIFE IN PRISON.

ON THE OTHER HAND, IF THEY DECIDED THAT DEATH WAS THE PROPER PUNISHMENT, THEN IT'S A LITTLE DIFFERENT. EACH JUROR THEN WOULD SIGN A PIECE OF PAPER - THERE WOULD BE TWELVE SIGNATURES - AND IT WOULD SAY IN ESSENCE, WE, THE FOLLOWING JURORS, RECOMMEND THAT FOR THIS MURDER THE DEFENDANT BE SENTENCED TO DEATH AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND?

A. YES.

Q. JURORS LIKE YOURSELF, MS. BOYD, WHEN THEY COME INTO COURT GENERALLY FALL IN ONE OF THREE CATEGORIES. SO, I'M GOING TO EXPLAIN THOSE THREE CATEGORIES TO YOU AND YOU TELL ME WHICH TYPE JUROR BEST FITS YOU. THE FIRST TYPE JUROR WOULD BE THE TYPE JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF, AND SO THAT JUROR WOULDN'T BE INTERESTED IN THAT SECOND TRIAL BECAUSE THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY. THAT'S NUMBER ONE.

NUMBER TWO IS JUST THE OPPOSITE. IT WOULD BE THAT JUROR THAT WOULD TAKE THE POSITION, EVEN THOUGH IT MIGHT BE A HORRIBLE MURDER, THEY COULD FIND THAT PERSON

GUILTY OF MURDER BUT THEY COULD NEVER IMPOSE THE DEATH PENALTY AND SO THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON. AND THEN THE THIRD TYPE JUROR WOULD BE THAT TYPE JUROR THAT COULD VOTE EITHER WAY DEPENDING UPON THE CIRCUMSTANCES. IF THEY FELT THAT IT WAS PROPER, THEY COULD VOTE FOR LIFE IN PRISON. ON THE OTHER HAND, IF THEY FELT THAT DEATH WAS THE PROPER SENTENCE, THEY COULD SIGN THEIR NAME TO THAT PIECE OF PAPER WHICH SAID DEATH. WHICH ONE OF THOSE THREE DO YOU THINK YOU FIT?

A. THE SECOND ONE.

Q. IN OTHER WORDS, ARE YOU TELLING ME THAT REGARDLESS OF HOW BAD THE MURDER MIGHT BE YOU WOULD ALWAYS VOTE FOR LIFE IN PRISON?

A. ARE YOU TALKING ABOUT IN THIS SITUATION OR ANY OTHER SITUATION?

Q. OH, NO. I'M TALKING ABOUT ANY SITUATION, NOT THIS. I'M NOT ASKING ABOUT THIS CASE.

A. WELL, I THINK I WOULD PROBABLY BE THE THIRD.

Q. THIRD ONE.

A. YES, SIR.

Q. IN OTHER WORDS, YOU FEEL THAT SOME MURDERERS UNDER SOME CIRCUMSTANCES DESERVE DEATH AND SOME MURDERERS UNDER SOME CIRCUMSTANCES DESERVE LIFE AND YOU COULD VOTE EITHER WAY?

A. YES.

THE COURT: ALL RIGHT. THEY'RE GOING TO ASK YOU SOME QUESTIONS, SO JUST LISTEN TO THEM AND ANSWER THEM AS BEST YOU CAN AS YOU DID FOR ME, PLEASE. SOLICITOR?

MR. BAILEY: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. BOYD, I JUST WANTED TO MAKE SURE I UNDERSTAND SOME OF THE ANSWERS YOU GAVE TO JUDGE BROWN. AND LIKE HE SAID, THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED TO KNOW HOW YOU FEEL SINCE THIS CASE IS SO IMPORTANT TO EVERYBODY HERE IN THE COURTROOM. YOU HAD INDICATED AT FIRST THAT YOU WERE NUMBER TWO TYPE JUROR. THAT'S THE JUROR THAT COULD NOT UNDER ANY CIRCUMSTANCES IMPOSE THE DEATH PENALTY.

A. YES.

Q. EXCUSE ME A SECOND. AND THEN I THINK THERE WAS SOME FURTHER QUESTIONS BY THE JUDGE AND YOU SAID SOMETHING ABOUT, YOU KNOW, "IN THIS CASE OR SOME OTHER CASE?" AND THEN YOU SAID THAT YOU WERE THE NUMBER THREE TYPE JUROR THAT COULD VOTE FOR EITHER LIFE IN PRISON OR THE DEATH PENALTY.

A. YES, SIR.

Q. IS THERE ANYTHING ABOUT THIS PARTICULAR CASE THAT WOULD MAKE YOU A NUMBER TWO JUROR OR A NUMBER

THREE JUROR WHEN YOU WOULD BE THE OTHER ONE IN ANOTHER KIND OF CASE?

A. WELL, TO TELL YOU THE TRUTH, I DON'T -- YOU CAN'T REALLY JUDGE A SITUATION UNLESS YOU KNOW WHAT REALLY HAPPENED.

Q. OKAY. OF COURSE, THAT'S THE PURPOSE OF THE TRIAL.

A. YES.

Q. TO HAVE TESTIMONY SO THE JURORS WOULD KNOW---

A. BECAUSE, SEE---

Q. ---WHAT HAPPENED.

A. ---I CAN'T REALLY SAY BECAUSE I DON'T REALLY KNOW WHAT HAPPENED.

Q. OKAY.

A. UNLESS I KNOW THE WHOLE DETAIL OF THE SITUATION, THEN THAT WOULD GIVE ME---

Q. OKAY.

A. ---WOULD BE ABLE TO GIVE AN ANSWER TOWARDS IT.

Q. I UNDERSTAND AND I'M NOT TRYING TO GET YOU TO TELL ME RIGHT NOW WHAT YOU WOULD DO IN THIS CASE.

A. YES.

Q. OKAY. WE'RE JUST TRYING TO FIND OUT IN GENERAL TERMS WHETHER OR NOT YOU WOULD ALWAYS BRING BACK THE DEATH PENALTY OR ALWAYS BRING BACK LIFE IN

PRISON OR COULD BRING BACK EITHER LIFE IN PRISON OR THE DEATH PENALTY. OKAY. AND CAN YOU TELL ME WHICH ONE OF THOSE THREE TYPE JURORS YOU ARE AGAIN?

A. I WOULD BE NUMBER THREE.

Q. NUMBER THREE. OKAY. NOW, AGAIN, I HATE TO REPEAT MYSELF, BUT YOU SAID SOMETHING ABOUT -- YOU QUESTIONED THE JUDGE ABOUT WHETHER HE WAS TALKING ABOUT THIS CASE OR ANY OTHER CASE. IS THERE ANYTHING ABOUT THIS CASE THAT WOULD GIVE YOU A DIFFERENT OUTLOOK THAN POSSIBLY SOME OTHER CASE IN THE FUTURE?

A. COULD YOU REPEAT YOURSELF?

Q. IS THERE ANYTHING ABOUT THIS CASE THAT YOU'RE CONCERNED ABOUT?

A. NO.

Q. OKAY. OKAY. YOU HAD INDICATED THAT YOU DON'T KNOW MR. ROGERS PERSONALLY. IS THAT RIGHT?

A. NO.

Q. DO YOU KNOW ANYBODY IN HIS FAMILY?

A. NO, I DON'T KNOW ANYBODY IN HIS FAMILY.

Q. OKAY. THERE WAS SOME-- DO YOU KNOW ANYBODY IN ST. GEORGE WITH THE LAST NAME BRYANT?

A. NO.

Q. OKAY. AND THE JUDGE EXPLAINED TO YOU ABOUT THE TWO-PART PROCESS WHERE THE FIRST STAGE IS A CRIMINAL TRIAL JUST LIKE ANY OTHER CASE WHERE THE JURY

DETERMINES GUILT OR INNOCENCE BASED ON THE EVIDENCE.

A. YES.

Q. IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST STAGE, ONLY THEN DO WE GO INTO THE SECOND STAGE WHERE THE JURY HAS TWO CHOICES: EITHER LIFE IN PRISON OR THE DEATH PENALTY. ALL TWELVE JURORS HAVE TO AGREE ON ONE OR THE OTHER.

A. YES. I UNDERSTAND THAT.

Q. NOW, IF YOU WERE ON A JURY IN THIS KIND OF A CASE, YOU GET INTO THE SECOND STAGE AND YOU AND THE OTHER ELEVEN JURORS VOTED FOR THE DEATH PENALTY, THEN EACH JUROR WOULD HAVE TO SIGN THEIR NAME ON A PIECE OF PAPER, THE DEATH VERDICT FORM. THE RESULT OF SIGNING THAT PAPER WOULD BE THE EXECUTION OF THAT DEFENDANT.

A. YES, SIR.

Q. COULD YOU SIGN YOUR NAME ONTO A PAPER LIKE THAT?

A. YES.

Q. OKAY. AND COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE THAT AS BEING YOUR VERDICT IF IT WAS YOUR VERDICT?

A. YES.

Q. OKAY. MS. BOYD, DO YOU HAVE ANY RELIGIOUS FEELINGS IN REGARD TO THE DEATH PENALTY ONE WAY OR THE OTHER, ANYTHING THAT, YOU KNOW, YOU MIGHT HAVE HEARD IN

CHURCH OR SUNDAY SCHOOL THAT WOULD INFLUENCE YOUR DECISION IN A CASE LIKE THIS?

A. YES.

Q. OKAY. WHAT IS THAT?

A. ONE OF THE TEN COMMANDMENTS: THOU SHALT NOT KILL.

Q. OKAY. AND WHAT DOES THAT MEAN TO YOU IN THE CONTEXT OF SITTING AS A JUROR ON A DEATH PENALTY CASE?

A. IT'S WRONG TO TAKE ANOTHER PERSON'S LIFE.

Q. OKAY. BEARING THAT IN MIND THAT YOU FEEL LIKE BASED ON YOUR RELIGIOUS BELIEFS THAT IT'S WRONG TO TAKE ANOTHER PERSON'S LIFE, COULD YOU UNDER ANY CIRCUMSTANCES AS A JUROR BRING BACK A VERDICT OF THE DEATH PENALTY?

A. YES.

Q. OKAY. WOULD YOUR RELIGIOUS BELIEFS THAT IT'S WRONG TO TAKE SOMEBODY'S LIFE BASED ON THE TEN COMMANDMENTS SUBSTANTIALLY IMPAIR YOUR ABILITY TO SIT AS A FAIR AND IMPARTIAL JUROR IN THE PENALTY PHASE IF WE GOT TO THE PENALTY PHASE?

A. YES.

Q. OKAY. IN WHAT WAY?

A. RIGHT NOW I CAN'T. . .

Q. I'M NOT TRYING TO CONFUSE YOU.

A. I KNOW YOU'RE NOT, BUT I AM AT THIS MOMENT.

Q. OKAY. ALL RIGHT. YOUR HONOR, COULD YOU BEAR WITH ME ONE MINUTE, PLEASE?

THE COURT: SURE.

BY MR. BAILEY:

Q. MS. BOYD, WOULD YOUR BELIEF IN THE TEN COMMANDMENTS, THE COMMANDMENT THAT SAYS THOU SHALT NOT KILL, PREVENT YOU FROM BRINGING BACK A DEATH PENALTY VERDICT UNDER ANY CIRCUMSTANCES?

A. I THINK IT WOULD.

MR. BAILEY: THANK YOU. THAT'S ALL I HAVE.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MS. BOYD, SO I CAN UNDERSTAND, I THINK YOU INDICATED THAT YOU'RE THE THIRD TYPE OF JUROR WHO WANTED TO HEAR ALL THE CIRCUMSTANCES BEFORE YOU MADE A DECISION. IS THAT CORRECT, MA'AM?

A. YES, SIR.

Q. AND THAT DEPENDING UPON THE CASE AND ONCE YOU HEARD EVERYTHING YOU THOUGHT THAT YOU COULD VOTE FOR THE DEATH PENALTY IF YOU THOUGHT IT WAS APPROPRIATE UNDER THE CIRCUMSTANCES. ISN'T THAT CORRECT?

A. YES.

Q. AND IN ANSWER TO MR. BAILEY'S QUESTION ABOUT YOUR RELIGIOUS BELIEFS, YOU INDICATED THAT YOU'RE A VERY RELIGIOUS PERSON. IS THAT CORRECT, MA'AM?

A. YES.
Q. AND THAT YOU WOULD VIEW YOUR ROLE AS A JUROR IN THE LIGHT OF YOUR RELIGIOUS OBLIGATIONS.
A. YES.
Q. IS THAT CORRECT? AND IN ANSWER TO HIS QUESTION -- HE SAID, CAN YOU VISUALIZE ANY CIRCUMSTANCES OR WOULD YOUR RELIGIOUS BELIEFS PREVENT YOU FROM BRINGING BACK A VERDICT OF DEATH UNDER ANY CIRCUMSTANCES? HE DIDN'T IDENTIFY THE CIRCUMSTANCES TO YOU, DID HE?
A. (JUROR SHOOK HEAD FROM SIDE TO SIDE.)
Q. DID MR. BAILEY TELL YOU ABOUT WHAT CIRCUMSTANCES HE WAS TALKING ABOUT?
A. NOT EXACTLY.
Q. OKAY. SO THAT -- ARE WE STILL IN THE SAME POSITION THAT IT DEPENDS UPON THE CIRCUMSTANCES OF THE CASE AS TO WHETHER OR NOT YOU WOULD VOTE FOR OR AGAINST THE DEATH PENALTY?
A. YES.
Q. OKAY. AND CERTAINLY YOU HAVE SOME SERIOUS RESERVATIONS ABOUT THIS WHOLE PROCESS.
A. I DO.
Q. AND CERTAINLY YOU WANT TO BE FAIR TO BOTH THE STATE AND THE DEFENDANT. ISN'T THAT CORRECT?
A. YES.

Q. AND CERTAINLY YOU HAVE A SINCERE DESIRE TO BE TRUE TO YOUR BELIEFS. ISN'T THAT CORRECT?

A. I DO.

Q. AND YOU ALSO HAVE A SINCERE DESIRE TO FOLLOW THE LAW AS HIS HONOR GIVES IT TO YOU. ISN'T THAT CORRECT?

A. CORRECT.

MR. RUNYON: NO FURTHER QUESTIONS.

MR. BAILEY: COULD I ASK ONE FINAL QUESTION, YOUR HONOR?

THE COURT: SURE.

REDIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. BOYD, IS IT STILL YOUR POSITION THAT YOUR RELIGIOUS FEELINGS IN REGARD TO THE TEN COMMANDMENTS WOULD SUBSTANTIALLY IMPAIR YOUR ABILITY TO BRING BACK THE DEATH PENALTY?

A. YES, IT WOULD.

MR. BAILEY: THANK YOU.

RE-EXAMINATION BY THE COURT

Q. LET ME ASK YOU THIS QUESTION. YOU SAID SUBSTANTIAL REPAIR (SIC). WOULD YOUR RELIGIOUS BELIEFS KEEP YOU FROM BRINGING IN THE DEATH PENALTY IF YOU THOUGHT IT WAS APPROPRIATE?

A. YES.

Q. IN OTHER WORDS, YOU COULD NEVER BRING IN A DEATH PENALTY?

A. LIKE I WAS SAYING, IN CERTAIN SITUATIONS, IN CERTAIN. . .

Q. IN OTHER WORDS, UNDER CERTAIN CIRCUMSTANCES YOU COULD SIGN YOUR NAME TO A PIECE OF PAPER THAT WOULD BRING DEATH TO SOMEONE?

A. YES.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ANY MOTIONS FROM THE STATE?

MR. BAILEY: YES, SIR.

THE COURT: WOULD YOU STEP OUT THAT DOOR FOR JUST A MINUTE FOR ME? I'LL BRING YOU BACK IN JUST A SECOND.

(JUROR SANDRA BOYD WAS EXCUSED FROM OPEN COURT.)

MR. BAILEY: YOUR HONOR, I THINK THIS JUROR WAS REALLY GRASPING TO TRY TO GIVE AN ANSWER TO PLEASE WHOEVER WAS ASKING HER THE QUESTION. I HONESTLY DON'T BELIEVE SHE FITS THE WAYNEWRIGHT VERSUS WITT STANDARD. THAT STANDARD, AS I UNDERSTAND IT, IS THAT A JUROR IS DISQUALIFIED FOR CAUSE WHEN THEIR BELIEFS, THEIR VIEWS TOWARD THE DEATH PENALTY, WOULD PREVENT OR SUBSTANTIALLY IMPAIR THE PERFORMANCE OF THEIR DUTIES AS A JUROR AND ACCORDING TO THE INSTRUCTIONS AND OATH.

CLEARLY THIS JUROR'S BELIEFS WOULD.

THE COURT: YOU ASKED THE QUESTION EXACTLY LIKE THE CASE HOLDS.

MR. BAILEY: YES, SIR..

THE COURT: BUT THIS JUROR, DON'T YOU THINK REALLY, IS HAVING A DIFFICULT TIME?

MR. BAILEY: YES, SIR, I AGREE WITH THAT.

THE COURT: SHE BELIEVES IN THE DEATH PENALTY. SHE BELIEVES SHE COULD DO IT, BUT THEN WHEN SHE THINKS ABOUT HER RELIGIOUS BELIEFS SHE'S NOT SURE. BUT, YOU KNOW, EVERYBODY, INCLUDING MYSELF, WOULD HESITATE TO SIGN MY NAME ON A PIECE OF PAPER THAT I KNEW WAS GOING TO MEAN DEATH FOR SOMEONE, BUT IT DOESN'T MEAN SHE CAN'T DO IT.

MR. BAILEY: YOUR HONOR---

THE COURT: IN MY EXAMINATION AT THE END OF IT SHE SAID UNDER THE RIGHT CIRCUMSTANCES I COULD. DON'T YOU THINK SHE'S HAVING A TOUGH TIME, BUT SHE COULD UNDER THE PROPER CIRCUMSTANCES?

MR. BAILEY: YOUR HONOR, I AGREE SHE'S HAVING A TOUGH TIME. I DON'T THINK THE STANDARD IS WHETHER OR NOT THERE'S ANY CONCEIVABLE CIRCUMSTANCE SUCH AS MAY BE THE DEATH OF YOUR OWN CHILD WHERE YOU COULD POSSIBLY EVER BRING BACK A DEATH PENALTY. I THINK THE STANDARD NOW UNDER WAYNEWRIGHT IS WHETHER OR NOT YOUR VIEWS

AGAINST THE DEATH PENALTY WOULD SUBSTANTIALLY IMPAIR YOUR ABILITY TO BRING BACK THE DEATH PENALTY, AND I THINK CLEARLY THIS JUROR'S VIEWS, RELIGIOUS VIEWS---

THE COURT: YOUR MOTION IS WHAT?

MR. BAILEY: THAT SHE'S DISQUALIFIED FOR CAUSE UNDER WAYNEWRIGHT VERSUS WITT.

THE COURT: JUST GIVE ME A YES OR NO. DO YOU AGREE WITH HIM?

MR. RUNYON: NO, SIR, YOUR HONOR.

THE COURT: MOTION IS DENIED, SOLICITOR. BRING THAT JUROR IN.

(JUROR SANDRA BOYD WAS BROUGHT BACK INTO OPEN COURT.)

THE COURT: MS. BOYD, WE RESPECT YOUR FEELINGS AND WE ALL THINK YOU'D MAKE A GOOD JUROR EVEN THOUGH YOU FEEL PERHAPS THE WAY YOU FEEL. BUT YOU SAID THAT YOU FELT LIKE YOU COULD BRING IN EITHER WAY, THAT YOU WERE JUROR NUMBER THREE. SO, WE CHOSE YOU TO BE ON THE PANEL. DOESN'T MEAN YOU'RE GOING TO SERVE ON THE JURY, BUT I'M GOING TO SEND YOU HOME AND I'LL PROBABLY CALL YOU. . . CAN I REACH YOU AT THESE NUMBERS? IS THAT YOUR HOME TELEPHONE NUMBER?

JUROR BOYD: YES, SIR.

THE COURT: AND I SEE WHERE YOU WORK HERE.

JUROR BOYD: I WAS FORMERLY EMPLOYED THERE.

THE COURT: OH, YOU'RE NOT WORKING AT THE TIME?

JUROR BOYD: NO, I'M NOT WORKING.

THE COURT: ALL RIGHT. SO, DON'T GO AWAY FROM THE TELEPHONE FOR ANY LENGTH OF TIME BECAUSE I'LL PROBABLY -- AS A MATTER OF FACT, LET'S SEE. IT'S TWENTY MINUTES AFTER FIVE AND I'VE GOT 32. WHY DON'T YOU JUST BE HERE TOMORROW MORNING AT TEN O'CLOCK? DON'T TALK ABOUT THE CASE OR DON'T -- OR DON'T WATCH THE NEWSPAPERS OR T.V. OR ANYTHING AND BRING ENOUGH CLOTHES AND TOILET ARTICLES JUST IN CASE YOU ARE DRAWN - I DON'T THINK IT WILL TAKE THAT LONG - FOR ABOUT FIVE DAYS. JUST MEET ME HERE AT TEN O'CLOCK TOMORROW MORNING.

JUROR BOYD: OKAY.

THE COURT: OKAY? HOPE YOU HAVE A GOOD NIGHT.

JUROR BOYD: ARE YOU FINISHED WITH ME?

THE COURT: UH-HUH. SURE AM. THANK YOU VERY MUCH.

(JUROR SANDRA BOYD WAS EXCUSED FROM THE COURTROOM.)

THE COURT: HARVEY M. FERRELL.

(JUROR HARVEY M. FERRELL ENTERED THE COURTROOM.)

HARVEY M. FERRELL, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MR. FERRELL, HOW ARE YOU?

A. ALL RIGHT, SIR.

Q. SORRY I KEPT YOU WAITING SO LONG. I KNOW MOST OF US WOULD RATHER BE SOMEPLACE ELSE. AND I NOTICED ON YOUR SHEET THAT YOU SENT IN FOR US HERE THAT YOU NEVER SERVED ON A CRIMINAL CASE BEFORE. IS THAT CORRECT?

A. CORRECT.

Q. BUT YOU KNOW THAT ANYBODY CHARGED WITH A CRIME IS PRESUMED TO BE INNOCENT. YOU KNOW THAT.

A. YES, SIR.

Q. AND IF THEY'RE CONVICTED THE STATE MUST SATISFY TWELVE JURORS OF THEIR GUILT BEYOND A REASONABLE DOUBT. DO YOU KNOW THAT?

A. YES, SIR.

Q. NOW, ON YESTERDAY I ASKED IF ANYBODY KNEW ABOUT THIS CASE. MR. ROGERS, WHO SITS IN THE CENTER THERE WITH HIS ATTORNEYS -- AND THE ONE ON THE RIGHT IS MR. LEIENDECKER AND THE ONE ON THE LEFT IS MR. RUNYON. THEY REPRESENT HIM, AND THEN THE STATE IS REPRESENTED BY THE SOLICITOR, MR. BAILEY, MR. WALTER BAILEY, THE YOUNG MAN SITTING RIGHT THERE ON THE END. HE'S CHARGED

WITH MURDER, AND I ASKED THE JURY YESTERDAY IF THEY KNEW ANYTHING ABOUT THIS PARTICULAR CASE. HE'S CHARGED WITH SHOOTING A CHILD IN THE BACK OF THE HEAD WHICH HE PLEADS NOT GUILTY AND YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT THE CASE?

A. NO, SIR.

Q. DO YOU KNOW THE FAMILY OR FRIENDS WITH ANYBODY OR DISCUSSED IT WITH ANYBODY?

A. NO, SIR.

Q. ALL RIGHT. SO, YOU HAVEN'T READ OR HEARD ANYTHING THAT WOULD KEEP YOU FROM GIVING BOTH SIDES A FAIR TRIAL, HAVE YOU?

A. WELL, I HEARD IT ON THE NEWS ONCE, BUT I DIDN'T GET THE WHOLE STORY.

Q. WELL, THAT'S WHEN IT WAS SUPPOSED TO HAVE FIRST HAPPENED?

A. YEAH.

Q. ALL RIGHT. BUT WOULD THAT INTERFERE WITH YOUR ABILITY TO RENDER A FAIR TRIAL TO BOTH SIDES?

A. NO, SIR.

Q. ALL RIGHT. IN AN ORDINARY CASE, MR. FERRELL, THE JURY DECIDES WHETHER THEY'RE GUILTY OR NOT AND THE JUDGE SENTENCES THEM. YOU KNOW THAT.

A. YES, SIR.

Q. WELL, IN THIS TYPE CASE IT'S DIFFERENT. IN

OTHER WORDS, YOU RECALL I TOLD YOU ON YESTERDAY THAT WHEN THE STATE IS SEEKING THE DEATH PENALTY THEN THE JURY DOES BOTH. DID YOU KNOW THAT BEFORE I TOLD YOU YESTERDAY?

A. NO, SIR.

Q. WHAT WILL HAPPEN IS WE DRAW A JURY AND THEN THE STATE WILL ATTEMPT TO CONVICT HIM OF MURDER, AND IF THE JURY DECIDES HE'S NOT GUILTY, THAT ENDS EVERYTHING. IF THEY DECIDE THAT HE'S GUILTY, THEN WE'VE GOT TO GO FURTHER BECAUSE THE JURY IS GOING TO HAVE TO SENTENCE HIM EITHER TO LIVE OR DEATH. AND SO THEY WOULD HAVE A PROCEEDING WHICH WOULD BE DESIGNED TO HELP THE JURY DECIDE WHAT THE PROPER SENTENCE OUGHT TO BE, AND IT MIGHT BE GOOD THINGS AND BAD THINGS ABOUT HIM. IT MIGHT BE THE EXTENUATING OR MITIGATING CIRCUMSTANCES. IT MIGHT BE THE AGGRAVATED CIRCUMSTANCES, EVERYTHING, AND THEN WHEN IT'S OVER THE JURY SHOULD RECOMMEND TO ME WHAT THE SENTENCE OUGHT TO BE, LIFE OR DEATH. AND WHATEVER THE JURY TELLS ME, I MUST DO BECAUSE I CAN'T CHANGE IT. IF THEY SAY DEATH, IT'S DEATH. IF THEY SAY LIFE, IT'S LIFE.

SO, IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THEN THE FOREMAN WOULD STAND UP AND HE WOULD SIGN A PIECE OF PAPER WHICH SAYS, WE, THE JURY, DETERMINE THAT THE PROPER SENTENCE IS

LIFE IN PRISON AND THAT'S WHAT I'D SENTENCE HIM TO. ON THE OTHER HAND, IF THEY DECIDED THAT THIS PARTICULAR MURDER WAS THE PROPER SENTENCE FOR DEATH, THEN IT WOULD BE DIFFERENT. EACH JUROR WOULD SIGN THEIR NAME TO A PIECE OF PAPER WHICH WOULD SAY, WE, THE FOLLOWING JURORS, DETERMINE THAT FOR THIS MURDER WE THINK THE DEFENDANT OUGHT TO BE PUT TO DEATH. AND I MUST DO WHAT THEY TELL ME TO DO, SO I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. NOW, JURORS LIKE YOURSELF WHEN THEY COME IN HERE, MR. FERRELL, GENERALLY FALL IN ONE OF THREE CATEGORIES. SO, I'M GOING TO TELL YOU ABOUT THOSE THREE TYPES OF JURORS AND I WANT YOU TO TELL ME WHICH ONE YOU FEEL LIKE YOU BEST FIT. THE FIRST JUROR WOULD BE THE TYPE JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF AND THEY WOULDN'T BE INTERESTED IN THAT SECOND TRIAL BECAUSE THEIR MIND WOULD ALREADY BE MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY. THAT'S NUMBER ONE.

NUMBER TWO IS JUST THE OPPOSITE. THAT'S THE PERSON THAT COULD FIND SOMEONE GUILTY OF MURDER BUT WOULD TAKE THE POSITION, REGARDLESS OF HOW HORRIBLE IT MIGHT BE, THEY WOULD NEVER VOTE FOR THE DEATH PENALTY AND THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON. THAT'S

NUMBER TWO. AND NUMBER THREE IS THE JUROR THAT COULD VOTE EITHER WAY. IF THE CIRCUMSTANCES WERE SUCH THAT THEY FELT THAT LIFE WAS PROPER, THEY COULD VOTE THAT WAY. ON THE OTHER HAND, IF AFTER LISTENING TO EVERYTHING THEY DECIDED THAT DEATH WAS THE PROPER SENTENCE FOR THAT PARTICULAR MURDER, THEY COULD SIGN THEIR NAME TO THAT PIECE OF PAPER THAT SAID DEATH. NOW, WHICH DO YOU FEEL YOU BEST FIT?

A. LIFE.

Q. NUMBER TWO?

A. YES, SIR.

Q. ARE YOU TELLING ME THAT REGARDLESS OF HOW SERIOUS OR, RATHER, HOW HORRIBLE A MURDER MIGHT BE YOU COULD NEVER VOTE FOR THE DEATH PENALTY?

A. NO, SIR.

Q. IN OTHER WORDS, YOU COULD NEVER SIGN A PIECE OF PAPER THAT SAID THAT YOU KNEW THAT SOMEBODY WAS GOING TO BE PUT TO DEATH?

A. NO, SIR.

Q. WELL, WE RESPECT YOUR VIEW. YOU DON'T HAVE TO APOLOGIZE TO ANYONE. BUT THE ATTORNEYS WANT TO ASK YOU SOME QUESTIONS, SO JUST ANSWER IT AS BEST YOU CAN.

A. OKAY.

Q. WILL YOU?

A. ALL RIGHT.

THE COURT: SOLICITOR?

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. FERRELL, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW QUESTIONS HERE JUST TO FOLLOW UP ON WHAT THE JUDGE HAD ASKED YOU ABOUT. LIKE THE JUDGE SAID, EVERYBODY HERE RESPECTS YOUR OPINION. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED TO SEE EXACTLY HOW YOU FEEL ABOUT THE DEATH PENALTY BECAUSE THIS CASE IS SO IMPORTANT TO EVERYBODY HERE. YOU'VE INDICATED YOU'RE THE NUMBER TWO TYPE JUROR THAT JUST DOES NOT BELIEVE IN THE DEATH PENALTY?

A. RIGHT.

Q. IS THAT RIGHT?

A. UH-HUH.

Q. SO, NO MATTER WHAT CIRCUMSTANCES CAME OUT IN THE TRIAL, NO MATTER WHAT LEGAL INSTRUCTIONS YOU GOT, YOU WOULD ALWAYS VOTE FOR LIFE IN PRISON AS OPPOSED TO THE DEATH PENALTY?

A. RIGHT.

Q. OKAY. IS THAT A FEELING THAT YOU'VE HAD FOR A LONG PERIOD OF TIME?

A. YES, SIR.

Q. YOU'VE HAD OCCASION TO THINK ABOUT IT BEFORE YOU GOT YOUR JURY SUMMONS HERE?

A. YES.

Q. IS THAT A PERSONAL BELIEF OR DOES IT COME FROM YOUR RELIGIOUS TRAINING OR WHAT?

A. THAT'S MY PERSONAL BELIEF.

Q. OKAY. SO, ALTHOUGH YOU COULD SIT IN A JURY IN THE GUILT PHASE AND COME BACK WITH GUILTY OR NOT GUILTY, IF THE VERDICT IN THE FIRST STAGE WAS GUILTY AND YOU GOT INTO THE SECOND PHASE, YOU COULD LISTEN TO THE TESTIMONY, BUT NO MATTER WHAT THAT TESTIMONY WOULD BE, YOU WOULD ALWAYS COME BACK FOR LIFE IN PRISON. IS THAT CORRECT?

A. RIGHT.

Q. NO MATTER WHAT THE CIRCUMSTANCES.

A. RIGHT.

MR. BAILEY: THANK YOU VERY MUCH.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. GOOD EVENING, SIR.

A. HI.

Q. MR. FERRELL, I BELIEVE IN ANSWER TO MR. BAILEY'S QUESTIONS YOU INDICATED THERE WERE ABSOLUTELY NO CIRCUMSTANCES UNDER WHICH YOU WOULD EVER CONSIDER VOTING FOR THE DEATH PENALTY.

A. RIGHT.

Q. AND THAT'S A SINCERELY-HELD BELIEF ON YOUR

PART?

A. RIGHT.

Q. AND YOU'VE HAD THAT FOR A LONG TIME?

A. RIGHT.

Q. AND THERE'S NO WAY THAT WILL CHANGE IN THE NEXT---

A. RIGHT.

Q. ---TWO OR THREE WEEKS.

A. RIGHT.

Q. AND SO, AS A PRACTICAL MATTER, THERE'S NOT A SINGLE WAY THAT YOU CAN CONSIDER LISTENING TO BOTH SIDES AND WEIGHING BOTH ALTERNATIVES AND THEN MAKING A DECISION.

A. RIGHT.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. FERRELL, WE THINK -- WE APPRECIATE YOUR BELIEF AND WE THINK YOU'D MAKE A GOOD JUROR BUT NOT IN THIS PARTICULAR CASE. WE'RE TRYING TO FIND SOMEBODY THAT COULD CONSIDER AND VOTE EITHER WAY DEPENDING UPON THE CIRCUMSTANCES. SO, I'M GOING TO SEND YOU HOME. WE'RE GOING TO MAIL YOU A LITTLE CHECK, SO DON'T GET TOO EXCITED. YOU DON'T HAVE TO COME BACK ANYMORE AND I'M GOING TO JUST -- I'M GOING TO ASK YOU ONE THING. DON'T DISCUSS THIS WITH ANYONE UNTIL THE

CASE IS OVER. WILL YOU DO THAT FOR ME?

JUROR FERRELL: YES, SIR.

THE COURT: HOPE YOU HAVE A GOOD DAY.

(JUROR HARVEY FERRELL WAS EXCUSED FROM THE COURTROOM.)

THE COURT: THOMAS BRIGHT. ANY OBJECTION EXCEPT YOUR STANDARD FORM?

MR. RUNYON: EXCEPT THE STANDARD OBJECTION WHICH WOULD RUN THROUGHOUT, YOUR HONOR, WHICH WE WOULD---

THE COURT: THANK YOU VERY MUCH. ALL RIGHT.

(JUROR THOMAS J. BRIGHT ENTERED THE COURTROOM.)

THOMAS J. BRIGHT, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MR. BRIGHT, HOW IN THE WORLD DID YOU GET DOWN HERE FROM NEW HAMPSHIRE?

A. THE LONG WAY.

Q. I BET IT IS.

A. IT TOOK THE MILITARY TO DO IT.

Q. OH, THAT'S RIGHT. YOU WERE IN THE MILITARY, WEREN'T YOU?

A. YES, SIR.

Q. I WAS LOOKING AT WHAT YOU GAVE ME HERE AND

YOU SAID YOU HAD NEVER SERVED ON A CRIMINAL CASE BEFORE. AS A MATTER OF FACT, NEVER SERVED ON A JURY BEFORE, HAVE YOU?

A. NO, SIR.

Q. AND ON THIS FORM YOU DIDN'T TELL ME WHAT YOU DID FOR A LIVING. YOU SAID YOU WERE RETIRED, BUT I BELIEVE WHEN YOU TALKED TO ME---

A. AIR FORCE.

Q. ---IN FRONT YOU TOLD ME YOU RETIRED OUT OF THE AIR FORCE, WASN'T IT?

A. YES, SIR.

Q. BUT YOU ALSO TOLD ME WHEN I ASKED THE JURY IF THEY KNEW ANYTHING ABOUT THIS PARTICULAR CASE -- YOU KNOW THAT MR. ROGERS IS CHARGED WITH MURDER. THEY'RE ALLEGING THAT HE SHOT A CHILD IN THE BACK OF THE HEAD.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. AND HE'S FLANKED THERE BY HIS ATTORNEYS. ON YOUR RIGHT THERE IS MR. LEIENDECKER AND ON YOUR LEFT IS MR. RUNYON, AND OVER HERE IS THE SOLICITOR, MR. WALTER BAILEY, WHO REPRESENTS THE STATE. AND WE JUST WANT TO ASK YOU SOME QUESTIONS AND THERE ARE NO RIGHT OR WRONG ANSWERS, JUST AS BEST YOU CAN TELL US. WHAT DID YOU DO IN THE AIR FORCE?

A. I WAS A NAVIGATOR INSTRUCTOR.

Q. A NAVIGATOR. I WAS A NAVIGATOR IN THE NAVY.

WHEN I ASKED THE JURY IF THEY KNEW ANYTHING ABOUT THIS PARTICULAR CASE, YOU STOOD UP. COULD YOU TELL ME WHAT YOU HEARD OR KNEW OR TALKED ABOUT?

A. WELL, ABOUT TWO YEARS AGO WE WERE INTERESTED IN THAT AREA OF TOWN. WE GO BY IT EVERY TIME WHEN WE THROUGH -- TO ROUTE 78. IT'S A SHORT CUT. AND SO, THEREFORE, WE WERE MORE INTERESTED IN THAT THAN WE. . . I MEAN, THERE'S A MILLION MURDERS DOWN IN CHARLESTON. THAT'S THIRTY MILES AWAY, SO YOU DON'T REALLY PAY MUCH ATTENTION TO THOSE. BUT THIS ONE UP HERE, WE NOTICED THAT WE WERE KIND OF FAMILIAR WITH IT. SO, WE WERE READING THE PAPER AND THE T.V. AND I DISCUSSED WITH MY WIFE. . . LIKE I SAY, WE'RE LOOKING AT A SUBDIVISION UP THERE AND DECIDED, WELL, I GUESS WE DON'T WANT TO. . .

Q. WELL, I WOULD BE TELLING MY JURY, AS I WOULD TELL IN ANY CASE, IF YOU WERE DRAWN ON A JURY I WOULD TELL YOU TO LAY ASIDE WHAT YOU MIGHT HAVE HEARD OR READ OR WATCHED ON T.V. AND JUST BRING IN A VERDICT FROM WHAT YOU HEAR IN THIS COURTROOM BECAUSE VERY OFTEN PEOPLE -- SECONDHAND INFORMATION THAT THE NEWS MEDIA MIGHT NOT GET IT CORRECT AND THERE MIGHT BE MATTERS OF LAW WHICH A JURY WOULD HAVE TO LISTEN TO. IS THERE ANYTHING THAT YOU HAVE HEARD OR READ THAT YOU FEEL WOULD INTERFERE WITH YOUR ABILITY TO RENDER BOTH TO MR.

ROGERS AND THE STATE A FAIR TRIAL?

A. YESTERDAY'S PAPER.

Q. JUST WHAT YOU READ IN THE PAPER?

A. YESTERDAY'S PAPER, YESTERDAY MORNING'S PAPER.

Q. YESTERDAY MORNING. THAT WAS BEFORE YOU CAME.

A. YES, SIR.

Q. ALL RIGHT. HERE AGAIN, AS I TOLD YOU -- I DIDN'T READ THE PAPER. I ASSUME IT'S A CHARLESTON PAPER AND SO I DON'T KNOW WHAT WAS IN THE PAPER. I'VE WATCHED T.V. BUT---

A. IT SAID THAT.

Q. WHAT YOU READ IN THE PAPER MIGHT NOT BE TRUE. I DON'T KNOW. BUT WHAT IS IT YOU READ IN THE PAPER?

A. IT SAID THAT I BELIEVE THAT HE HAD PLEADED GUILTY AND THEN CHANGED HIS MIND AND IT ALSO TOLD ABOUT PRIOR ARRESTS.

Q. AND DO YOU FEEL THAT WOULD INTERFERE WITH YOUR ABILITY TO RENDER A FAIR VERDICT?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. YOU DON'T FEEL LIKE YOU COULD LAY IT ASIDE? YOU FEEL THAT IT WOULD INTERFERE WITH YOUR ABILITY TO RENDER A FAIR VERDICT?

A. I KNOW YOU'RE SUPPOSED TO BE ABLE TO LAY

THESE THINGS ASIDE, BUT I THINK IT STILL MUST BE IN THE BACK OF YOUR MIND. I DON'T THINK IT WOULD. . .

Q. I APPRECIATE THAT. YOU KNOW THAT THERE'S TWO PHASES TO THE TRIAL THAT -- I TELL YOU, STEP OUT JUST A MINUTE AND LET ME TALK TO THE ATTORNEYS JUST A SECOND. WOULD YOU JUST FOLLOW THE BAILIFF OUT JUST A SECOND?

(JUROR THOMAS BRIGHT WAS EXCUSED FROM OPEN COURT.)

MR. RUNYON: I'D LIKE HIM TO TALK TO MS. MERRIMAN IF WE COULD, JUDGE. OBVIOUSLY I'D MOVE FOR CAUSE.

THE COURT: WELL, I REALIZE THAT I THOUGHT I MIGHT BE SWIMMING UPSTREAM. SOLICITOR, DO YOU HAVE ANY OBJECTION TO EXCUSING THIS JUROR?

MR. BAILEY: NO, SIR, NOT AT ALL, YOUR HONOR.

THE COURT: BRING HIM IN.

(JUROR THOMAS BRIGHT WAS BROUGHT BACK INTO OPEN COURT.)

THE COURT: MR. BRIGHT, I APPRECIATE YOU BEING SO HONEST WITH US. AND I'VE DISCUSSED IT WITH THE ATTORNEYS AND TRULY THEY BOTH FEEL LIKE YOU'D BE A FAIR JUROR, BUT YOU HAVE INDICATED THAT IT WOULD BE HARD TO LAY IT ASIDE AND SO I'M GOING TO EXCUSE YOU FROM THIS CASE. I JUST ASK YOU ONE THING: DON'T DISCUSS IT WITH ANYBODY TILL THE CASE IS OVER AND

YOU'RE WELCOME TO COME IN THE COURTROOM AND LISTEN ANY TIME YOU WANT TO, OF COURSE. WE'RE GOING TO MAIL YOU A LITTLE CHECK, BUT DON'T GET EXCITED. IT'S NOT MUCH MONEY. YOU DON'T HAVE TO COME BACK. THANK YOU VERY MUCH FOR YOUR SERVICE.

JUROR BRIGHT: THANK YOU.

(JUROR THOMAS BRIGHT WAS EXCUSED FROM THE COURTROOM.)

THE COURT: HELENE FLOYD.

(JUROR HELENE P. FLOYD ENTERED THE COURTROOM.)

HELENE P. FLOYD, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. WELL, MS. FLOYD, YOU'RE REALLY FROM COLLETON COUNTY, AREN'T YOU?

A. NO, SIR.

Q. WERE YOU BORN THERE?

A. YES, SIR.

Q. OH. AND HOW LONG HAVE YOU BEEN IN THIS COUNTY?

A. FOR THIRTEEN YEARS.

Q. OH. I NOTICED WHEN YOU -- WHEN I ASKED THE JURORS IF THEY KNEW ANYTHING ABOUT THIS CASE YOU DIDN'T STAND UP.

A. NO, SIR.
Q. DO YOU KNOW ANYTHING ABOUT THE CASE?
A. JUST A VERY LITTLE. I DON'T HAVE TIME TO LOOK AT NEWS. I HAVE THREE SMALL CHILDREN AND THAT DOES NOT GIVE ME MUCH TIME TO WATCH TELEVISION.
Q. SO, WOULD IT BE FAIR TO SAY YOU DON'T KNOW ANYTHING THAT WOULD KEEP YOU IF YOU WERE A JUROR FROM BRINGING IN A VERDICT AND BEING FAIR TO BOTH SIDES?
A. YES, SIR, THAT'S. . .
Q. CORRECT?
A. YES, SIR.
Q. I NOTICE IN WHAT YOU'VE SENT IN HERE THAT YOU'VE NEVER SERVED ON A JURY EITHER. IS THAT CORRECT?
A. I WAS SUMMONSED, SIR, BUT I WAS RELEASED BECAUSE MY HUSBAND WAS PARALYZED AND IT HAD RECENTLY HAPPENED. AND WITH THREE SMALL CHILDREN, THEY DISMISSED ME BECAUSE OF THAT.
Q. HOW IS HE GETTING ALONG NOW?
A. HE'S IN THE HOSPITAL RIGHT NOW, BUT HE'S DOING OKAY. THEY -- YOU KNOW, THEY'RE GIVING HIM PAIN MEDICATION, MORPHINE IN HIS BACK, BUT I HAVE -- HE TOLD ME NOT TO BE COMING DOWN THERE BECAUSE HE DIDN'T WANT ME TO BE DOWN THERE. BUT MY CHILDREN ARE WITH HIS MOTHER RIGHT NOW. MY MOTHER -- IF I WAS CHOSEN TO BE ON THE JURY, MY MOTHER IS COMING TO STAY WITH MY

CHILDREN. SO, THAT WOULD BE NO PROBLEM, YOU KNOW, ME WORRYING ABOUT SOMEBODY TAKING CARE OF MY KIDS.

Q. OH, THAT'S GOOD. YOU WOULD BE -- YOU WOULD BE WITH OTHER JURORS. IT MIGHT TAKE THREE OR FOUR DAYS TO TRY THE CASE.

A. YES, SIR. THEY KNOW THAT.

Q. YOU UNDERSTAND THAT.

A. UH-HUH.

Q. NOT HAVING TRIED THE CASE, YOU KNOW, OF COURSE, THAT THE STATE WOULD ALWAYS HAVE TO PROVE SOMEONE GUILTY BEYOND A REASONABLE DOUBT. DO YOU KNOW THAT?

A. YES, SIR.

Q. NOW, MR. ROGERS IN THE CENTER THERE WHO'S CHARGED WITH MURDER IS FLANKED BY HIS ATTORNEYS. ON YOUR RIGHT---

A. UH-HUH.

Q. ---IS MR. LEIENDECKER. HE'S ONE OF THE ATTORNEYS AND ON YOUR LEFT IS MR. RUNYON. AND THE STATE IS REPRESENTED BY MR. WALTER BAILEY, THE SOLICITOR, OVER HERE ON MY LEFT. NOT HAVING SERVED ON A CRIMINAL CASE, YOU KNOW THAT IN AN ORDINARY CASE A JURY DECIDES WHETHER A PERSON IS GUILTY OR NOT. IF THEY FIND HIM GUILTY, THEN THE JUDGE SENTENCES THAT PERSON. DO YOU KNOW THAT?

A. YES, SIR.

Q. WELL, ON YESTERDAY I TOLD YOU THAT IN A CASE OF THIS TYPE IN WHICH THE STATE IS SEEKING THE DEATH PENALTY IT'S DIFFERENT. JURIES DO BOTH. DID YOU KNOW THIS UNTIL I TOLD YOU YESTERDAY?

A. NO, SIR.

Q. DID IT SURPRISE YOU?

A. NO, SIR. MY SISTER-IN-LAW IS INTO LAW ENFORCEMENT. SHE TOOK FOUR YEARS. SHE WORKS IN CHARLESTON COUNTY AND I KNOW A LITTLE BIT ABOUT THE LAW.

Q. WHAT DOES SHE DO?

A. SHE'S A DETENTION OFFICER RIGHT NOW, BUT SHE'S PREGNANT. SO, RIGHT NOW THEY HAD TO GIVE HER AN OFFICE JOB.

Q. IN ANY EVENT, IN THIS CASE IT'S A LITTLE DIFFERENT. IN OTHER WORDS, IN THIS PARTICULAR CASE WE WOULD HAVE THE FIRST TRIAL AND THE ONLY THING THE JURY WOULD HAVE TO DECIDE IS WHETHER OR NOT THE STATE WOULD PROVE HIM GUILTY.

A. YES, SIR.

Q. IF THE JURY SAID HE WAS INNOCENT, THEN, OF COURSE, THAT WOULD STOP EVERYTHING. IF THE STATE SAID -- IF THE JURY DECIDED THAT HE WAS GUILTY OF MURDER, THEN WE WOULD HAVE ANOTHER PROCEEDING.

A. YES, SIR.

Q. IT'S CALLED A SENTENCING PROCEEDING AND AT THAT PORTION OF THE TRIAL THE JURY -- IT'S KIND OF AIMED TOWARD GIVING THE JURY ALL THE INFORMATION SO THEY CAN DECIDE WHAT THE PROPER SENTENCE IS, LIFE OR DEATH. AND YOU MIGHT HEAR GOOD THINGS ABOUT HIM, BAD THINGS ABOUT HIM. YOU MIGHT HEAR MITIGATING CIRCUMSTANCES, AGGRAVATING CIRCUMSTANCES, AND WHEN IT'S COMPLETED---

A. UH-HUH.

Q. ---THE JURY WOULD RECOMMEND TO ME WHAT TO SENTENCE HIM. AND WHEN I SAY RECOMMEND, I TELL YOU THAT WHATEVER THE JURY TELLS ME TO DO I MUST BY LAW DO. I CAN'T CHANGE THAT.

A. YES, SIR.

Q. SO, IF THE JURY RECOMMENDED LIFE IN PRISON, THEN THE FOREMAN WOULD STAND UP AND HE WILL HAVE SIGNED THE PIECE OF PAPER THAT SAYS, WE, THE JURY, DETERMINE THAT THE PROPER SENTENCE IS LIFE IN PRISON AND THAT'S WHAT I'D SENTENCE HIM TO.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. ON THE OTHER HAND, IF THE JURY DECIDED THAT THE PROPER SENTENCE WAS DEATH FOR THAT PARTICULAR MURDER, THEN IT'S A LITTLE DIFFERENT. EACH SIDE -- I MEAN, EACH JUROR SIGNS THEIR NAME TO A PIECE OF PAPER

AND IT WOULD SAY, WE, THE FOLLOWING JURORS, RECOMMEND THAT THE PROPER SENTENCE IS DEATH AND, HERE AGAIN, I WOULD DO WHAT THE JURY TOLD ME TO DO. I'D SENTENCE HIM TO DEATH. NOW, PEOPLE LIKE YOURSELF, MS. FLOYD, WHEN THEY COME IN HERE AND THEY HAVE NEVER BEEN CONFRONTED ABOUT THE DEATH PENALTY AND THEY'RE ASKED QUESTIONS GENERALLY FALL IN ONE OF THREE CATEGORIES. SO, I'M GOING TO TELL YOU WHAT THOSE CATEGORIES ARE AND THEN I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU BEST FIT.

A. OKAY.

Q. JUROR NUMBER ONE IS THAT TYPE JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF LIKE AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH, AND HE WOULDN'T BE INTERESTED IN THAT SECOND PHASE OF THE TRIAL BECAUSE HIS MIND WOULD ALREADY BE MADE UP. HE WOULD ALWAYS VOTE FOR THE DEATH PENALTY. WELL, THEN THERE'S JUROR NUMBER TWO THAT WOULD TAKE THE POSITION THAT EVEN THOUGH THEY COULD FIND A PERSON GUILTY OF MURDER, THEY COULD NEVER SENTENCE ANYONE TO DEATH AND SO THEY WOULDN'T BE INTERESTED IN THAT SECOND TRIAL EITHER. THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON NO MATTER HOW HORRIBLE THE MURDER MIGHT HAVE BEEN. AND THEN THERE'S A THIRD JUROR THAT REALLY COULD VOTE EITHER WAY.

A. YES, SIR.

Q. IF THEY FOUND SOMEONE GUILTY, THEN THEY WOULD LISTEN TO THAT OTHER TESTIMONY AND THAT OTHER INFORMATION. AND DEPENDING UPON WHAT THEY HEARD, IF THEY THOUGHT THE PROPER SENTENCE WAS LIFE IN PRISON, THEY COULD VOTE THAT WAY. AND IF THEY THOUGHT THE PROPER SENTENCE WAS DEATH, THEY COULD SIGN THEIR NAME TO A PIECE OF PAPER THAT SAID DEATH. WHICH ONE OF THOSE THREE DO YOU THINK YOU BEST FIT?

A. YOUR HONOR, I THINK THE THIRD CATEGORY WOULD FIT ME BEST.

Q. IN OTHER WORDS, YOU DON'T FEEL THAT EVERY MURDERER DESERVES DEATH.

A. NO, SIR.

Q. OR EVERY MURDERER DESERVES LIFE.

A. NO, SIR.

Q. BUT DEPENDING UPON WHAT YOU HEARD, YOU COULD VOTE EITHER WAY?

A. UPON THE EVIDENCE THAT I HAD TO HEAR AND THOSE TYPE THINGS.

Q. ALL RIGHT. YOU UNDERSTAND THAT WHEN YOU GET TO DECIDING WHAT THE SENTENCE IS, HE WILL ALREADY HAVE BEEN CONVICTED OF MURDER. YOU KNOW THAT.

A. YES, SIR.

Q. THE SECOND PHASE IS ONLY TO HELP YOU DECIDE WHAT THE PROPER SENTENCE WOULD BE. ALL RIGHT. THE

ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS AND THERE ARE NO RIGHT OR WRONG ANSWERS. JUST ANSWER THEM AS BEST YOU CAN.

A. OKAY.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. FLOYD, I'M WALTER BAILEY. I WANT TO ASK YOU JUST A FEW QUESTIONS.

A. OKAY.

Q. I'LL TRY TO HOLD THESE AS SHORT AS I CAN BECAUSE IT'S GETTING LATE.

A. YES, SIR.

Q. HAVE YOU EVER HAD OCCASION BEFORE YOU GOT YOUR JURY SUMMONS TO THINK ABOUT THE DEATH PENALTY OR TALK ABOUT IT WITH YOUR FAMILY AND FRIENDS?

A. YES, SIR. I'M SURE EVERYONE HAS.

Q. OKAY. AND DO YOU RECALL WHAT YOUR POSITION ON IT WAS WHEN YOU TALKED TO PEOPLE ABOUT IT?

A. THE SAME AS I TOLD THE JUDGE. I FEEL THAT, YOU KNOW, IT DEPENDS UPON THE CASE AND THE EVIDENCE THAT IS SHOWN, YOU KNOW, AND WHETHER A PERSON SHOULD GET THE DEATH PENALTY. YOU KNOW, IF HE'S FOUND GUILTY, WHETHER HE SHOULD GET THE DEATH PENALTY OR, YOU KNOW, WHAT PENALTY HE SHOULD GET.

Q. AND YOU WOULD KEEP AN OPEN MIND---

A. OPEN MIND.

Q. ---AND LISTEN TO EVERYTHING?

A. YES, SIR.

Q. AND MAKE YOUR DECISION ONE WAY OR THE OTHER BASED UPON WHAT YOU HEARD FROM THE WITNESS STAND?

A. YES, SIR.

Q. AND THE JUDGE EXPLAINED TO YOU THAT IF WE GET INTO THE SECOND PHASE THERE'S A DEATH VERDICT FORM THAT THE JURY WOULD HAVE TO SIGN IF THEY REACHED THAT DECISION TO BRING BACK THE DEATH PENALTY.

A. UH-HUH.

Q. WOULD YOU HAVE ANY PROBLEM SIGNING YOUR NAME TO A FORM LIKE THAT---

A. NO, SIR.

Q. ---IF YOU HAD ALREADY MADE THAT DECISION?

A. NO, SIR. I WOULD HAVE NO PROBLEM WITH THAT.

Q. AND ALSO IF THAT DECISION IS MADE THEN YOU'D COME OUT INTO OPEN COURT. THE FOREMAN WOULD ANNOUNCE THE VERDICT AND THEN EACH JUROR MAY BE ASKED -- IT'S CALLED POLLING THE JURY.

A. WHETHER YOU VOTE---

Q. TO STATE IN OPEN COURT IF THAT'S THEIR DECISION.

A. YES, SIR.

Q. COULD YOU DO THAT?

A. I COULD DO THAT.

Q. DO YOU HAVE ANY RELIGIOUS BELIEFS IN THE DEATH PENALTY THAT MIGHT INTERFERE---

A. NO, SIR.

Q. ---WITH YOUR ABILITY TO BRING BACK EITHER VERDICT?

A. NO, SIR.

Q. OR ANY OTHER REASON WHY YOU FEEL LIKE YOU MAY HAVE A PROBLEM WITH THIS CASE?

A. NO, SIR.

Q. MS. BOYD, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

A. THANK YOU.

MR. RUNYON: NO QUESTIONS. NO MOTIONS, JUDGE.

THE COURT: THANK YOU. MS. FLOYD, WE ALL THINK YOU'D MAKE A GOOD JUROR. IT DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY, BUT IT JUST MEANS YOU'RE GOING TO BE AMONG ABOUT 35 PEOPLE WHICH WE'LL DRAW THE JURY FROM.

JUROR FLOYD: YES, SIR.

THE COURT: SO, I'M GOING TO SEND YOU HOME NOW. I'M GOING TO ASK THAT YOU NOT READ THE NEWSPAPER OR WATCH T.V.

JUROR FLOYD: OKAY.

THE COURT: AND I'M GOING TO ASK THAT YOU DON'T DISCUSS THE CASE WITH ANYONE.

JUROR FLOYD: OKAY.

THE COURT: AND MEET ME HERE TOMORROW MORNING AT TEN O'CLOCK AND BRING ENOUGH CLOTHES. I DON'T THINK IT WILL TAKE THAT LONG. BRING ENOUGH CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS.

JUROR FLOYD: YES, SIR.

THE COURT: AND HAVE A GOOD NIGHT.

JUROR FLOYD: THANK YOU SO MUCH.

(JUROR HELENE FLOYD WAS EXCUSED FROM THE COURTROOM.)

THE COURT: BONNIE DAN.

(JUROR BONNIE J. DAN ENTERED THE COURTROOM.)

BONNIE J. DAN, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MS. DAN, I'M SORRY TO KEEP YOU SO LATE AND YOU'RE JUST ABOUT GETTING DOWN TO THE END OF IT.

A. JUST ABOUT.

Q. I NOTICE YOU'RE A SECRETARY FOR A TREE ENGINEERING SURVEYING FIRM?

A. TRI-CO (PHONETIC).

Q. TRI-CO?

A. UH-HUH.

Q. AND IS THAT A PRETTY BIG FIRM?
A. QUITE BIG.
Q. AND I ALSO NOTICE THAT IN THIS INFORMATION THAT YOU SENT IN YOU NEVER SERVED ON A JURY BEFORE, HAVE YOU?
A. NO.
Q. BUT I ALSO NOTICE THAT WHEN I ASKED THE JURY IF THEY KNEW ANYTHING ABOUT THIS CASE YOU DIDN'T STAND UP. DO YOU KNOW ANYTHING ABOUT THE CASE?
A. IF I DO, I DON'T KNOW THAT I DO.
Q. I CAN UNDERSTAND THAT. SO, IT WOULD BE SAFE TO SAY THAT AS FAR AS YOU KNOW YOU DON'T KNOW ANYTHING, IF YOU WERE DRAWN AS A JUROR, THAT WOULD INTERFERE WITH YOUR ABILITY TO BRING IN A TRUE VERDICT.
A. NO, SIR.
Q. ALL RIGHT. NOW, I TOLD YOU ALL ON YESTERDAY THAT IN AN ORDINARY CASE THE JURY DECIDES GUILT OR INNOCENCE AND THE JUDGE SENTENCES THEM. DO YOU UNDERSTAND THAT?
A. YES.
Q. THIS CASE IS DIFFERENT. AS I TOLD YOU YESTERDAY, THE JURY DOES BOTH IN A DEATH PENALTY CASE. DID YOU KNOW THAT?
A. NOT UNTIL YESTERDAY.
Q. WERE YOU SURPRISED BY THAT?

A. RATHER SO.

Q. WELL, IN ANY EVENT, MR. ROGERS WHO SITS IN THE CENTER THERE WITH HIS ATTORNEYS ON EITHER SIDE IS CHARGED WITH MURDER. THE STATE ALLEGES THAT HE SHOT A CHILD IN THE BACK OF THE HEAD. ON THAT SIDE, ON YOUR RIGHT, IS MR. LEIENDECKER. HE'S ONE OF THE ATTORNEYS. ON THE LEFT THERE IS MR. RUNYON. HE'S ONE OF THE ATTORNEYS. AND THE STATE IS REPRESENTED BY MR. WALTER BAILEY, THE YOUNG MAN SITTING ON THE END OF THE COUNTER THERE. AND SO WE ALL ARE GOING TO ASK YOU A FEW QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS. JUST GIVE US YOUR INFORMATION AS BEST YOU CAN.

A. OKAY.

Q. YOU ALREADY TOLD ME YOU DIDN'T SERVE ON A JURY BEFORE, BUT YOU KNOW THE CRIMINAL SYSTEM. AND IN THIS CASE THE WAY WE WOULD PROCEED IS FIRST WE'D HAVE A TRIAL AND THE STATE WOULD BE ATTEMPTING TO PROVE THE DEFENDANT GUILTY OF THAT MURDER. IF THE JURY DECIDED HE WAS NOT GUILTY, THAT WOULD END EVERYTHING. BUT IF THE JURY DECIDED HE WAS GUILTY OF THAT MURDER, THEN WE'D HAVE A SECOND PROCEEDING. IT WOULD BE AIMED AT TRYING TO GIVE THE JURY INFORMATION SO THAT THEY COULD SENTENCE HIM TO LIFE OR DEATH INTELLIGENTLY.

AT THAT HEARING THERE MIGHT BE GOOD THINGS ABOUT HIM, MIGHT BE BAD THINGS. THERE MIGHT BE

MITIGATING CIRCUMSTANCES, PERHAPS HOW IT CAME ABOUT. IT MIGHT BE AGGRAVATING CIRCUMSTANCES. AND WHEN IT'S OVER, THE JURY WOULD BE ASKED TO RECOMMEND TO ME WHAT THE PROPER SENTENCE WOULD BE, LIFE OR DEATH. AND WHEN I USE THOSE WORDS RECOMMEND, THAT'S JUST WHAT -- THAT'S NOT REALLY WHAT IT MEANS BECAUSE WHATEVER THE JURY TELLS ME TO DO I MUST DO. I CAN'T CHANGE IT.

IF AT THE END OF THAT PORTION OF THE TRIAL THE JURY DECIDED THAT THE PROPER SENTENCE WAS LIFE, THEN THE FOREMAN WOULD SIGN A PIECE OF PAPER AND IT WOULD SAY, WE, THE JURY, DETERMINE THAT THE PROPER SENTENCE IS LIFE AND I WOULD SENTENCE HIM TO LIFE IN PRISON. DO YOU UNDERSTAND?

A. YES.

Q. ON THE OTHER HAND, IF THEY DECIDED THAT FOR THIS PARTICULAR MURDER THE PROPER SENTENCE WAS DEATH, THEN IT'S A LITTLE DIFFERENT. EACH JUROR THEN WOULD SIGN THEIR NAME TO A PIECE OF PAPER AND IT WOULD SAY, WE, THE FOLLOWING JURORS, RECOMMEND THAT FOR THIS PARTICULAR MURDER THE PROPER SENTENCE IS DEATH. AND HERE AGAIN, I WOULD DO WHAT THE JURY WOULD TELL ME TO DO AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND?

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. NOW, YOU'RE NODDING YOUR HEAD. I'VE GOT A

MACHINE OVER THERE THAT WANTS TO PICK YOU UP.

A. YES, SIR, I UNDERSTAND.

Q. THANK YOU. JURORS LIKE YOURSELF WHEN THEY COME IN THE COURTROOM AND LISTEN TO THIS AND HAVEN'T HAD A CHANCE TO THINK ABOUT IT GENERALLY FALL WITHIN ONE OF THREE CATEGORIES. I'M GOING TO TELL YOU THOSE CATEGORIES AND THEN I WANT YOU TO TELL ME WHICH ONE Y(THINK YOU BEST FIT. THE FIRST CATEGORY IS THAT JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF, KIND OF LIKE AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH, SO TO SPEAK, AND THAT JUROR WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL BECAUSE THEIR MIND WOULD BE MADE UP. THEY WOULD ALWAY: VOTE FOR THE DEATH PENALTY.

AND THEN THERE WOULD BE THE NEXT TYPE OF JUROR WHICH WOULD BE EXACTLY THE OPPOSITE. THAT JUROR COULD FIND SOMEONE GUILTY OF MURDER, BUT THEY COULD NEVER AND WOULD NEVER INVOKE THE DEATH PENALTY. THEY JUST WOULD NEVER SIGN THEIR NAME TO THAT PIECE OF PAPER AND SO THEY WOULD ALWAYS VOTE FOR LIFE. AND THEN THERE'S THE THIRD TYPE OF JUROR THAT REALLY COULD DO EITHER. THEY COULD FIND -- IF THEY FOUND A PERSON GUILTY, THEY WOULD LISTEN TO THAT SECOND TRIAL AND IF THEY FELT THAT THAT PARTICULAR MURDERER DESERVED LIFE IN PRISON, THEY COULD VOTE THAT WAY. ON THE OTHER

HAND, IF THEY FELT THAT THAT PARTICULAR MURDERER DESERVED THE DEATH PENALTY, THEN THEY COULD SIGN THAT PIECE OF PAPER THAT SAID DEATH. WHICH OF THOSE THREE DO YOU THINK YOU'D NEARER FIT?

A. I WOULD THINK THE LATTER.

Q. NUMBER THREE. IN OTHER WORDS, IS IT YOUR POSITION THAT YOU FEEL THAT NOT EVERY MURDER THE MURDERER DESERVES LIFE OR DEATH, BUT YOU COULD VOTE EITHER WAY DEPENDING UPON WHAT THE CIRCUMSTANCES ARE?

A. I BELIEVE SO.

Q. ALL RIGHT. THE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS. JUST ANSWER THEM AS BEST YOU CAN AS YOU DID FOR ME. THANK YOU.

A. OKAY.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. DAN, I'M WALTER BAILEY. I NEED TO ASK YOU JUST A FEW QUESTIONS HERE AND I'LL TRY TO HOLD IT AS SHORT AS I CAN BECAUSE IT'S GETTING LATE. YOU HAD INDICATED ON YOUR QUESTIONNAIRE, THE JUROR RESPONSE FORM, THAT YOU HAD SOME PROBLEMS LEAVING YOUR OFFICE BECAUSE Y'ALL WERE KIND OF SHORT-STAFFED?

A. WE'VE JUST MOVED OVER THE WEEKEND INTO NEW OFFICE SPACES AND WE'VE KIND OF COMBINED NOW, SO IT'S A LITTLE BIT BETTER THAN IT WAS.

Q. OKAY. SO, THAT PROBLEM IS REALLY NO LONGER THERE?

A. IT'S ALLEVIATED A LITTLE BIT, YES.

Q. OKAY. AND IT'S NOT SERIOUS ENOUGH WHERE IT WOULD CAUSE YOU TO BE THINKING ABOUT THE OFFICE IF YOU WERE ON THE JURY?

A. NO.

Q. OKAY. JUDGE BROWN TOLD YOU ABOUT THE TWO-PART PROCESS WE MAY BE GOING THROUGH IN THIS TRIAL.

A. UH-HUH.

Q. AND THE SECOND PHASE, THE PENALTY PHASE, WE WOULD ONLY GET THERE IF THE DEFENDANT WAS FOUND GUILTY OF MURDER IN THE FIRST PHASE. OKAY?

A. YES.

Q. NOW, IF THE JURY AFTER HEARING ALL OF THE EVIDENCE AND ALL OF THE LAW THE JUDGE WOULD INSTRUCT YOU ON DECIDES THAT OUT OF THOSE TWO CHOICES, LIFE IN PRISON OR THE DEATH PENALTY, THAT THE DEATH PENALTY IS THE APPROPRIATE SENTENCE, THEN EACH JUROR WOULD HAVE TO SIGN THEIR NAME TO A DEATH VERDICT FORM. THE RESULT OF THAT WOULD BE THE IMPOSITION OF THE DEATH PENALTY ON THE DEFENDANT. COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT IF YOU HAD MADE THAT DECISION ALONG WITH THE OTHER JURORS?

A. I BELIEVE I COULD, YES.

Q. OKAY. AND THERE'S ALSO A PROCEDURE WHERE AFTER IF YOU REACH THAT DECISION ON THE DEATH PENALTY OR LIFE IN PRISON FOR THAT MATTER THAT YOU'D COME IN -- THE JURY COMES INTO OPEN COURT. THE FOREMAN WOULD ANNOUNCE THE VERDICT AND THEN EACH JUROR MAY BE CALLED UPON TO STATE THAT THAT'S HIS VERDICT INDIVIDUALLY. THAT'S CALLED POLLING THE JURY.

A. UH-HUH.

Q. COULD YOU DO THAT IF YOUR DECISION WAS THE DEATH PENALTY?

A. I WOULD HOPE I COULD, YES.

Q. OKAY. DO YOU HAVE ANY RELIGIOUS FEELINGS IN REGARD TO THE DEATH PENALTY THAT MIGHT HAVE ANY IMPACT ON YOUR JURY SERVICE IN A CASE LIKE THIS?

A. NO, SIR.

Q. AND DO YOU KNOW OF ANY OTHER REASON THAT WE MAY NOT HAVE EVEN TALKED ABOUT THAT YOU THINK MIGHT PREVENT YOU FROM SERVING AS A JUROR IN A CASE OF THIS NATURE?

A. NOT TO MY KNOWLEDGE.

Q. OKAY. HAVE YOU EVER IN THE PAST IN TALKING TO FAMILY OR FRIENDS EXPRESSED YOUR THOUGHTS IN GENERAL TERMS ON THE DEATH PENALTY?

A. I DON'T BELIEVE SO.

Q. OKAY. HAVE YOU EVER JUST THINKING TO YOURSELF CONSIDERED, YOU KNOW, WHAT YOUR THOUGHTS WERE ON THE DEATH PENALTY, WHETHER YOU THINK IT'S GOOD OR BAD THAT WE HAVE A DEATH PENALTY IN SOUTH CAROLINA?

A. HERE AGAIN, I FEEL THAT IT WOULD, YOU KNOW, BE BASED ON THE CIRCUMSTANCES.

Q. OKAY. AND DEPENDING ON THOSE CIRCUMSTANCES, YOU COULD VOTE FOR EITHER LIFE OR DEATH. IS THAT CORRECT?

A. I BELIEVE SO, YES.

MR. BAILEY: THANK YOU. THAT'S ALL I HAVE.

MR. RUNYON: NO QUESTIONS. NO MOTIONS, YOUR HONOR.

THE COURT: THANK YOU. WE ALL THINK YOU'D MAKE A GOOD JUROR, MS. DAN. THAT DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY. IT JUST MEANS YOU'VE BEEN QUALIFIED. SO, I'M GOING TO SEND YOU HOME. I'M GOING TO ASK YOU: DON'T WATCH T.V. OR READ THE NEWSPAPER ABOUT THE CASE AND DON'T DISCUSS THE CASE WITH ANYONE AND MEET ME HERE TOMORROW MORNING AT TEN O'CLOCK. I DON'T KNOW HOW MANY DAYS IT WILL TAKE. I DON'T THINK IT WILL TAKE THAT MANY, BUT BRING ENOUGH CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS. HOPE YOU HAVE A GOOD NIGHT.

JUROR DAN: THANK YOU.

THE COURT: ALL RIGHT.

JUROR DAN: GOOD NIGHT.

THE COURT: GOOD NIGHT.

(JUROR BONNIE DAN WAS EXCUSED FROM THE COURTROOM.)

THE COURT: GENTLEMEN, I DON'T KNOW WHAT I WAS THINKING ABOUT. I DON'T KNOW HOW WE ARRIVED AT THE FIGURE, BUT I HAVE TO HAVE 35 NOT 33.

MR. BAILEY: YES, SIR.

MR. RUNYON: YES, SIR.

THE COURT: I DON'T KNOW HOW WE WAS -- I THINK WE WERE TALKING ABOUT THREE STRIKES EACH, BUT WHATEVER. . . I'VE GOT 34. I'D LIKE TO HAVE 36.

MR. BAILEY: THAT'S WHAT I'VE GOT, JUDGE. NEITHER ONE OF US HAS A QUESTIONNAIRE ON MS. MUCKENFUSS WHO IS THE NEXT JUROR.

THE COURT: ALL RIGHT. IS THERE A DUPLICATOR ON THE FLOOR?

MR. BAILEY: YES, SIR.

THE COURT: IS IT ON THE FLOOR?

MR. BAILEY: YES, SIR, IT'S RIGHT BACK THERE.

THE COURT: ALL RIGHT. HERE, GIVE HER ONE ON EACH ONE OF THEM RIGHT QUICK. BRING IN MARJORIE MUCKENFUSS.

(JUROR MARJORIE MUCKENFUSS ENTERED THE

COURTROOM.)

MARJORIE MUCKENFUSS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. HAVE A SEAT. THE ATTORNEYS DIDN'T GET A COPY OF WHAT YOU SENT IN, SO I'VE JUST SENT BACK THERE THE CLERK TO PHOTOSTAT IT FOR ME.

A. BECAUSE I DIDN'T GET IT UNTIL FRIDAY.

Q. OH. WELL, THAT'S ALL RIGHT. BUT EVEN SO---

A. BEFORE I WAS DUE HERE ON MONDAY.

Q. EVEN SO, I SHOULD HAVE GOT -- THEY SHOULD HAVE GOTTEN SOME COPIES. SO, YOU'RE GOING TO HAVE TO BEAR WITH ME JUST A MINUTE.

A. ALL RIGHT.

Q. AS YOU KNOW, EACH OF YOU, I MEAN -- LET'S SEE. YOU'RE NUMBER 163, AREN'T YOU?

A. 163.

Q. ON YESTERDAY WHEN I ASKED YOU ALL IF YOU KNEW ANYTHING ABOUT THE CASE, YOU STOOD UP AND SAID YES AND I DON'T WANT YOU TO TELL ME WHAT YOU KNOW ABOUT IT YET. BUT, AS YOU KNOW, MR. ROGERS WHO SITS AT THAT TABLE IS CHARGED WITH MURDER. IT'S ALLEGED IN THE INDICTMENT THAT HE SHOT A CHILD IN THE BACK OF THE HEAD AND TO THE INDICTMENT HE PLEADS NOT GUILTY. AND WHAT WE'RE GOING TO HAVE TO GO THROUGH IS LET A JURY

DETERMINE WHETHER HE'S GUILTY OR NOT AND THEN IF HE'S FOUND GUILTY THEN FOR A JURY TO DETERMINE WHAT THE PROPER PUNISHMENT IS, LIFE OR DEATH. NOW, HE SITS WITH HIS ATTORNEYS. ON YOUR RIGHT IS MR. LEIENDECKER AND ON YOUR LEFT THERE IS MR. RUNYON.

A. HI.

Q. AND THE STATE IS REPRESENTED BY MR. WALTER BAILEY. HE'S THE YOUNG MAN THERE AT THE END OF THE TABLE AND I'M JUDGE BROWN, OF COURSE. WE WANT TO ASK YOU SOME QUESTIONS AND THERE ARE NO RIGHT OR WRONG ANSWERS, JUST AS BEST YOU CAN ANSWER THEM.

A. YES, SIR.

Q. NOW, I NOTICED ON YESTERDAY WHEN I ASKED THE JURY IF THEY KNOW ANYTHING ABOUT THE CASE, AS I SAID, YOU STOOD UP. COULD YOU TELL ME WHAT YOU HEARD OR WHAT YOU MIGHT KNOW ABOUT THE CASE OR THINK YOU KNOW?

A. WELL, THE REASON I STOOD UP IS I THINK EARLIER YOU HAD CALLED OUT A LIST OF WITNESSES THAT WERE GOING TO BE USED IN THE TRIAL. AND I JUST -- I KNEW ONE OF THOSE PEOPLE THROUGH HIS FAMILY AND I FELT LIKE THAT YOU SHOULD KNOW THAT.

Q. OH, I APPRECIATE THAT. WHAT WAS THE NAME OF HIM?

A. JAMES ROBINSON.

Q. ROBINSON. I DON'T KNOW. WHICH ONE WAS

THAT? IS THAT ONE OF THE STATE'S WITNESSES?

MR. BAILEY: YES, SIR.

THE WITNESS: AND HIS WIFE DOES WORK FOR ME AND I KNOW THEM.

BY THE COURT:

Q. OKAY.

A. AND SO I FELT LIKE THAT YOU SHOULD KNOW THAT.

Q. OH, I APPRECIATE THAT. OTHER THAN KNOWING ONE OF THE WITNESSES THROUGH HIS WIFE, DO YOU KNOW ANYTHING ABOUT THE CASE?

A. ONLY OTHER -- ONLY WHAT WAS PUBLISHED IN THE PAPER AND OVER THE TELEVISION AT THE TIME THAT IT HAPPENED.

Q. OKAY. SO, YOU HAVEN'T SEEN ANYTHING SINCE.

A. NO, SIR.

Q. WELL, DO YOU REMEMBER THE DETAILS?

A. NO, SIR, NOT REALLY, NOT ALL THE DETAILS. THE ONLY THING, YOU KNOW, IS MORE OR LESS THAT THE CHILD WAS SHOT IN THE BACK OF THE HEAD.

Q. OKAY. WELL, AS I TOLD YOU AND THE REST OF THE JURY YESTERDAY, YOU CAN'T RELY ALWAYS ON THE NEWS MEDIA OR ANYBODY ELSE FOR THAT MATTER BECAUSE THEY MIGHT HAVE IT WRONG.

A. RIGHT.

Q. OR YOU MIGHT NOT KNOW ALL THE FACTS. SO, I'D

BE TELLING MY JURY TO LAY THAT ASIDE AND JUST LISTEN TO WHAT GOES ON IN THE COURTROOM AND WHAT THEY HEAR AND THE LAW AS I GIVE YOU AND THEN BRING IN A VERDICT FROM THAT.

A. RIGHT.

Q. SO, I ASK YOU: HAVE YOU HEARD OR SEEN OR READ OR SAW ANYTHING THAT YOU FELT WOULD INTERFERE WITH YOU GIVING BOTH MR. ROGERS AND THE STATE A FAIR TRIAL?

A. NO, SIR, I DON'T THINK I HAVE. I ONLY KNOW HOW I WOULD FEEL IF, YOU KNOW, IF IT WERE MY CHILD.

Q. OH, I UNDERSTAND.

A. YOU KNOW THAT, BUT I HAVEN'T SEEN OR READ ANYTHING.

Q. I UNDERSTAND.

A. NO.

Q. WELL, I THINK ALL OF US WOULD SHARE THAT FEELING.

A. RIGHT.

Q. BUT WHAT WE'RE TRYING TO DO NOW IS TO FIND JURORS WHO WOULD LISTEN TO THE FACTS---

A. RIGHT.

Q. ---ONLY.

A. RIGHT.

Q. AND LISTEN TO THE LAW AND THEN BRING IN A VERDICT THAT SPOKE THE TRUTH.

A. RIGHT. YES, SIR.

Q. REGARDLESS OF HOW THEY FELT.

A. RIGHT.

Q. NOW, IN AN ORDINARY CASE, AS I TOLD YOU ALL, PEOPLE -- JURIES JUST DECIDE GUILT OR INNOCENCE AND THEN THE JUDGE DOES THE SENTENCING. BUT AS I TOLD YOU ALL ON YESTERDAY, IN THIS TYPE CASE WHERE THEY'RE SEEKING THE DEATH PENALTY THE JURY DOES BOTH. DID YOU KNOW THAT UNTIL I TOLD YOU YESTERDAY?

A. NO, SIR, I DID NOT KNOW THAT UNTIL YESTERDAY.

Q. DID IT SURPRISE YOU?

A. YES, SIR, IT DID.

Q. WELL, HERE'S HOW IT WORKS. THE FIRST THING WE'LL DO IS DRAW A JURY. I'LL DRAW A COUPLE OF ALTERNATES IN CASE SOMEONE BECOMES INCAPACITATED AND THEN THE STATE WILL ATTEMPT TO PROVE MR. ROGERS GUILTY. IF THEY FIND HE'S NOT GUILTY BEYOND A REASONABLE DOUBT, THAT ENDS IT. BUT IF THEY FIND HE'S GUILTY OF THE MURDER, THEN WE GO FURTHER.

A. RIGHT.

Q. WE HAVE ANOTHER PROCEEDING AND AT THAT PROCEEDING IT'S AIMED TOWARD ASSISTING THE JURY IN DECIDING WHAT IS THE PROPER PUNISHMENT, LIFE OR DEATH. AND THE JURY MIGHT HEAR GOOD THINGS ABOUT HIM, BAD THINGS ABOUT HIM, AGGRAVATING CIRCUMSTANCES ABOUT THE

PARTICULAR MURDER. THEY MIGHT HEAR MITIGATING CIRCUMSTANCES, AN EXCUSE FOR IT, OR WHAT THEY CONTEND IS AN EXCUSE, SOMETHING TO MITIGATE THE SENTENCE, AND AT THE END OF IT THE JURY WOULD BE EXPECTED TO BRING IN A VERDICT TO SPEAK THE TRUTH.

AND SO IF THEY DECIDED THAT THE PROPER SENTENCE WAS LIFE IN PRISON FOR THAT PARTICULAR MURDER, THEN THE FOREMAN WOULD STAND UP AND HE OR SHE WOULD SAY, WE, THE JURY, FIND THAT THE PROPER SENTENCE IS LIFE IN PRISON. ON THE OTHER HAND, IF THE JURY DECIDED THAT THE PROPER SENTENCE FOR THAT PARTICULAR MURDER WAS DEATH, THEN IT'S A LITTLE DIFFERENT. EACH JUROR WOULD THEN SIGN THEIR NAME TO A PIECE OF PAPER AND IT WOULD SAY IN ESSENCE, WE, THE FOLLOWING JURORS, DETERMINE THAT THE PROPER SENTENCE IN THIS MURDER IS DEATH. AND I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION BECAUSE WHATEVER THE JURY TELLS ME THAT THEY RECOMMEND I MUST DO. I CAN'T CHANGE IT.

A. RIGHT.

Q. NOW, WHEN JURORS LIKE YOURSELF COME INTO COURT, MS. MUCKENFUSS, GENERALLY THEY FALL IN ONE OF THREE CATEGORIES IN THIS PARTICULAR CASE. I'M GOING TO TELL YOU THOSE CATEGORIES AND THEN I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU FALL IN. THE FIRST TYPE JUROR IS THAT TYPE JUROR THAT WOULD TAKE THE POSITION

IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF, AND SO THEY WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL. THEIR MIND WOULD BE MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY. THAT'S NUMBER ONE.

NUMBER TWO JUROR WOULD BE THE OPPOSITE. IT WOULD BE A JUROR THAT COULD SIT ON THERE AND FIND THE PERSON GUILTY, BUT THEN UNDER NO CIRCUMSTANCES COULD THEY EVER VOTE FOR THE DEATH PENALTY AND THEY ALSO WOULDN'T BE INTERESTED IN HEARING THAT SECOND TRIAL. THEY WOULD ALWAYS VOTE FOR LIFE IN PRISON. AND THEN THERE'S A THIRD TYPE OF JUROR THAT REALLY COULD VOTE EITHER WAY. DEPENDING UPON WHAT THEY HEARD ABOUT THE CIRCUMSTANCES AND THE OTHER THINGS, IF THEY FELT IT PROPER THEY COULD VOTE FOR LIFE IN PRISON. ON THE OTHER HAND, IF THEY THOUGHT IT PROPER THEY COULD SIGN THAT PIECE OF PAPER THAT SAID DEATH. WHICH DO YOU THINK YOU BEST FIT?

A. WELL, I TRUTHFULLY MUST SAY I WOULD HAVE TO LISTEN TO EVERYTHING. I PROBABLY WOULD FIT IN THE THIRD CATEGORY. I WOULD HAVE TO HEAR EVERYTHING BEFORE I COULD---

Q. IN OTHER WORDS---

A. ---SENTENCE ANYBODY TO LIFE IN PRISON OR SENTENCE---

Q. DEATH.

A. ---THEM TO DEATH.

Q. IN OTHER WORDS, IS IT YOUR POSITION THAT YOU FEEL THAT NOT EVERY MURDERER DESERVES DEATH NOR EVERY MURDERER DESERVES LIFE? DEPENDING UPON THE CIRCUMSTANCES, YOU COULD VOTE EITHER WAY?

A. YES, SIR.

Q. ALL RIGHT. NOW, THE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS. JUST ANSWER AS BEST YOU CAN JUST LIKE YOU DID FOR ME.

A. ALL RIGHT.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. MUCKENFUSS, THE JUDGE EXPLAINED TO YOU BRIEFLY ABOUT THE TWO-PART PROCESS WHERE YOU HAVE A GUILT PHASE AND THEN IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THAT FIRST PHASE WE WOULD THEN MOVE INTO THE SECOND PHASE WHICH IS THE PENALTY PHASE AND THE JURY THEN HAS TWO CHOICES, LIFE IN PRISON OR THE DEATH PENALTY.

A. YES, SIR.

Q. OKAY. IF WE MAKE IT TO THAT SECOND STAGE, AND AFTER LISTENING TO ALL OF THE EVIDENCE AND THE LAW THE JUDGE INSTRUCTS YOU ON, YOU AND THE OTHER ELEVEN JURORS - IF YOU'RE ON THE JURY - DETERMINE THAT THE DEATH PENALTY IS THE APPROPRIATE PUNISHMENT---

A. UH-HUH.

Q. ---THEN IN ORDER TO CARRY THAT DECISION INTO -- PUT THAT INTO EFFECT, ALL TWELVE OF Y'ALL WOULD HAVE TO SIGN A DEATH VERDICT FORM. COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT IF YOU HAD ALREADY REACHED THAT DECISION?

A. YES, I COULD.

Q. AND COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE THAT AS BEING YOUR DECISION---

A. YES.

Q. ---IF YOU WERE ASKED TO DO SO?

A. I COULD DO THAT.

Q. AND DO YOU HAVE ANY RELIGIOUS OR PERSONAL FEELINGS THAT WOULD INTERFERE WITH YOUR ABILITY TO BRING BACK EITHER LIFE IN PRISON OR THE DEATH PENALTY?

A. NO.

MR. BAILEY: THANK YOU. THAT'S ALL I HAVE.

MR. RUNYON: GOOD EVENING, MS. MUCKENFUSS.

THE WITNESS: GOOD EVENING. HOW ARE YOU?

MR. RUNYON: NO QUESTIONS. NO MOTIONS, JUDGE.

THE COURT: ALL RIGHT. WE ALL THINK YOU'D MAKE A GOOD JUROR. IT DOESN'T MEAN YOU'RE GOING TO BE CHOSEN, MS. MUCKENFUSS, BUT JUST MEANS YOU'RE ON THE PANEL ALONG WITH 34 OR 35 OTHERS. I'M GOING TO SEND

YOU HOME. I'M GOING TO ASK THAT YOU NOT WATCH T.V. OR READ THE NEWSPAPER ABOUT THE CASE AND DON'T DISCUSS IT WITH ANYONE AND MEET ME HERE TOMORROW MORNING AT TEN O'CLOCK.

JUROR MUCKENFUSS: TEN O'CLOCK?

THE COURT: AND I DON'T THINK IT WILL TAKE THAT LONG, SO DON'T GET TOO WORRIED, BUT BRING ENOUGH CLOTHES FOR ABOUT FIVE DAYS.

JUROR MUCKENFUSS: OKAY.

THE COURT: AND TOILET ARTICLES AND I'LL SEE YOU TOMORROW AT TEN O'CLOCK.

JUROR MUCKENFUSS: ALL RIGHT.

(JUROR MARJORIE MUCKENFUSS WAS EXCUSED FROM THE COURTROOM.)

THE COURT: ALL RIGHT. JAMES HOWELL. DO YOU WANT TO DRAW ONE EXTRA ONE OR TWO EXTRA ONES?

MR. RUNYON: ONE, JUDGE.

THE COURT: ONE WILL BE ALL RIGHT?

MR. RUNYON: YES, SIR.

THE COURT: WE MIGHT DRAW TWO.

(JUROR JAMES R. HOWELL ENTERED THE COURTROOM.)

JAMES R. HOWELL, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. HAVE A SEAT, PLEASE, SIR. MR. HOWELL, I WANT TO APOLOGIZE FOR KEEPING YOU BACK THERE SO LONG.

A. THAT'S ALL RIGHT.

Q. YOU'VE GOT AN OCCUPATION THAT I ENVY. YOU'RE RIGHT THERE IN THE MIDDLE -- YOU'RE HEAD WAITER, AREN'T YOU?

A. YES, I AM.

Q. AND WHERE IS IT?

A. MIDDLETON PLACE GARDENS.

Q. OH. OH, I KNOW WHERE THE MIDDLETON GARDENS ARE. IS THAT WHERE IT IS?

A. ON HIGHWAY 61.

Q. OH, IT OUGHT TO BE A GOOD PLACE TO WORK.

A. IT'S EXCELLENT IN THE SPRING.

Q. ALL MY KIDS -- ALL MY CHILDREN WERE WAITRESSES AT TIMES GOING TO SCHOOL, YOU KNOW.

A. UH-HUH.

Q. IN ANY EVENT, I NOTICE HERE THAT YOU'VE NEVER SERVED ON A JURY BEFORE. IS THAT CORRECT?

A. THAT'S RIGHT.

Q. AND I NOTICE ALSO THAT WHEN I ASKED THE PEOPLE -- THE JURY YESTERDAY WHETHER OR NOT THEY KNEW ANYTHING ABOUT THIS PARTICULAR CASE THAT YOU DIDN'T STAND UP. IS THAT CORRECT?

A. THAT'S RIGHT.

Q. YOU DIDN'T KNOW ANYTHING ABOUT THE CASE.

A. NO.

Q. ALL RIGHT. WELL, YOU KNOW MR. ROGERS WHO SITS IN THE MIDDLE THERE BETWEEN HIS ATTORNEYS -- AND, INCIDENTALLY, ON THE RIGHT IS MR. LEIENDECKER, ONE OF HIS ATTORNEYS, AND ON THE LEFT IS MR. RUNYON, ONE OF HIS ATTORNEYS. I DON'T KNOW WHETHER YOU'RE FAMILIAR WITH ANY OF THEM. THIS IS SOLICITOR WALTER BAILEY OVER HERE. HE REPRESENTS THE STATE AND, OF COURSE, I'M JUDGE BROWN. WE'RE GOING TO ASK YOU SOME QUESTIONS AND THERE ARE NO RIGHT OR WRONG ANSWERS. JUST GIVE ME THE BEST YOU CAN FOR THE ANSWER. AND IF YOU WILL, I'VE GOT A MACHINE DOWN THERE THAT WANTS TO PICK UP YOUR VOICE, SO IF YOU'D SPEAK OUT LOUD FOR ME.

A. I SURE WILL.

Q. ALL RIGHT. NOT HAVING SERVED ON A CRIMINAL CASE YOU KNOW, OF COURSE, THOUGH, THAT EVERY PERSON CHARGED WITH A CRIME IS PRESUMED TO BE INNOCENT.

A. CORRECT.

Q. AND BEFORE THEY CAN BE FOUND GUILTY, THE STATE MUST PROVE THAT BY -- BEYOND A REASONABLE DOUBT. YOU KNOW THAT.

A. YES, SIR.

Q. AND IN AN ORDINARY CASE THE JURY DECIDES

GUILT OR INNOCENCE AND THE JUDGE DOES THE SENTENCING. YOU KNOW THAT?

A. UH-HUH.

Q. WELL, ON YESTERDAY I TOLD YOU THAT IT WAS A LITTLE DIFFERENT IN THIS CASE. WHEN THE STATE IS ASKING FOR THE DEATH PENALTY, AS THEY ARE IN THIS CASE, THE JURY DOES BOTH. DID YOU KNOW IT BEFORE I TOLD YOU YESTERDAY?

A. I DID NOT.

Q. DID IT COME AS A SURPRISE?

A. NOT TOO MUCH OF A SURPRISE.

Q. LET ME TELL YOU HOW IT GOES. IN THE FIRST PLACE WE'RE GOING TO DRAW 12 JURORS OUT OF ABOUT 35 OR 36 PEOPLE AND A COUPLE OF ALTERNATES IN CASE SOMETHING OCCURS, AND THEN THE STATE WILL PRESENT WITNESSES TO DETERMINE WHETHER HE'S GUILTY OR NOT. AND IF THE JURY FINDS THAT HE'S NOT GUILTY, THAT STOPS EVERYTHING. IF THE JURY FINDS THAT HE'S GUILTY OF THIS PARTICULAR MURDER, THEN WE HAVE A SECOND PROCEEDING AND IT'S AIMED TO ASSIST THE JURY IN DETERMINING WHAT THE PROPER SENTENCE IS.

AND SO THE JURY MIGHT HEAR GOOD THINGS ABOUT MR. ROGERS, BAD THINGS. THEY MIGHT HEAR AGGRAVATING CIRCUMSTANCES OR PERHAPS MITIGATING CIRCUMSTANCES, EVERYTHING, AND WHEN IT'S COMPLETED THE JURY IS GOING

TO BE ASKED TO RECOMMEND TO ME WHAT THE SENTENCE IS, LIFE OR DEATH. AND EVEN THOUGH I USE THE WORDS RECOMMEND, I MUST SENTENCE THAT PERSON WHATEVER THE JURY TELLS ME TO DO. SO IF THEY SAY DEATH, I MUST DO THAT. IF THEY SAY LIFE, I ALSO MUST DO THAT. I CAN'T CHANGE IT.

SO, IF THE JURY DECIDED THAT THE PROPER PUNISHMENT WAS LIFE IN PRISON, THE FOREMAN WOULD SIGN A PIECE OF PAPER AND HE WOULD ANNOUNCE THAT THE PROPER SENTENCE WAS LIFE IN PRISON. THAT'S WHAT I'D SENTENCE HIM. ON THE OTHER HAND, IF THE JURY DECIDED THAT FOR THIS PARTICULAR MURDER THAT THE PROPER SENTENCE WAS DEATH, THEN IT'S A LITTLE DIFFERENT. EACH JUROR THEN WOULD SIGN INDIVIDUALLY THEIR NAMES ON A PIECE OF PAPER AND IT WOULD SAY, WE, THE FOLLOWING JURORS, DETERMINE THAT THE PROPER SENTENCE IS DEATH. AND IF THAT WERE SO, I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND THAT?

A. YES, I DO.

Q. NOW, JURORS LIKE YOURSELF WHEN THEY COME IN THE COURTROOM AND THEY ARE FACED WITH THE PROSPECT OF A JURY, NEVER HAVING THOUGHT ABOUT IT, GENERALLY FALL IN ONE OF THREE CATEGORIES. SO, I'M GOING TO TELL YOU THOSE CATEGORIES AND I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU BEST FIT IN. THE FIRST CATEGORY IS THAT

TYPE JUROR THAT TAKES THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO ALSO DIE, AND THAT JUROR WOULDN'T BE INTERESTED IN THAT SECOND PROCEEDING BECAUSE THEIR MIND WOULD HAVE ALREADY BEEN MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. JUROR NUMBER TWO WOULD BE THAT TYPE JUROR THAT WOULD BE THE OPPOSITE.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. THEY COULD FIND A PERSON GUILTY OF MURDER, BUT THEY WOULD NEVER VOTE FOR THE DEATH PENALTY AND SO THEY ALSO WOULD NOT BE INTERESTED IN THAT SECOND TRIAL.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. AND JUROR NUMBER THREE WOULD BE THAT TYPE JUROR THAT COULD DO EITHER WAY.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. THEY COULD FIND A PERSON GUILTY OF MURDER AND THEN THEY COULD LISTEN TO THESE CIRCUMSTANCES I TOLD YOU ABOUT AND OTHER THINGS AND DEPENDING UPON WHAT THEY HEARD COULD EITHER VOTE FOR LIFE IN PRISON OR SIGN THEIR NAME TO A PIECE OF PAPER THAT SAID DEATH. WHICH OF THOSE THREE DO YOU THINK YOU BEST FIT?

A. THE THIRD GROUP.

Q. THE THIRD ONE. IN OTHER WORDS, YOU TAKE THE

POSITION THAT NOT EVERY MURDERER DESERVES DEATH OR LIFE. DEPENDING UPON WHAT YOU HEARD, YOU COULD VOTE EITHER WAY?

A. RIGHT.

THE COURT: ALL RIGHT. THOSE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS. AS I TOLD YOU, THERE ARE NO WRONG OR RIGHT ANSWERS. JUST ANSWER THEM AS BEST YOU CAN.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. OKAY. MR. HOWELL, I JUST WANT TO ASK YOU A FEW QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE HAD ASKED YOU ABOUT YOUR BELIEFS IN THE DEATH PENALTY.

A. UH-HUH.

Q. LIKE HE SAID, THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST NEED TO KNOW HOW YOU REALLY FEEL ABOUT THE DEATH PENALTY. IN GENERAL ABSTRACT TERMS, NOT THINKING ABOUT THIS CASE IN PARTICULAR, BUT IF I HAD ASKED YOU BEFORE YOU GOT YOUR JURY SUMMONS HOW YOU FELT ABOUT THE DEATH PENALTY, WHAT WOULD YOUR ANSWER -- WHAT WOULD YOU HAVE TOLD ME THEN?

A. I HAD NOT EVEN THOUGHT ABOUT IT.

Q. YOU NEVER, YOU KNOW, TALKED TO FAMILY OR FRIENDS ABOUT THE DEATH PENALTY?

A. NO.

Q. OR FORMULATED YOUR OWN OPINION ABOUT IT?

A. NO.

Q. BUT AT THIS POINT YOU FEEL LIKE THAT YOU COULD VOTE FOR THE DEATH PENALTY OR FOR LIFE IN PRISON.

A. YES.

Q. DEPENDING ON THE FACTS AND CIRCUMSTANCES?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND I BELIEVE THE JUDGE MENTIONED THIS, BUT IF WE GET INTO THE SECOND PHASE, THE PENALTY PHASE, ALL OF THE JURORS WOULD HAVE TO HAVE A UNANIMOUS DECISION ONE WAY OR THE OTHER. ALL TWELVE OF YOU WOULD HAVE TO AGREE.

A. RIGHT.

Q. IF EVERYONE AGREED ON THE DEATH PENALTY AFTER HEARING ALL THE EVIDENCE, IN ORDER TO PUT THAT DEATH PENALTY INTO EFFECT EACH JUROR HAS -- WOULD HAVE TO SIGN THEIR NAME ON A DEATH VERDICT FORM.

A. RIGHT.

Q. WOULD YOU BE ABLE TO SIGN YOUR NAME TO A FORM LIKE THAT?

A. YES, SIR.

Q. OKAY. AND COULD YOU COME OUT INTO OPEN COURT IF THAT WAS YOUR DECISION AND ANNOUNCE THAT IF ASKED TO?

A. CERTAINLY.

Q. I NOTICE IN YOUR QUESTIONNAIRE THAT YOU HAD WORKED FOR A PENTECOSTAL HOLINESS CHURCH?

A. YES.

Q. AS A COMPUTER OPERATOR?

A. YES.

Q. WERE YOU A MEMBER OF THE CHURCH---

A. YES.

Q. ---AT THAT TIME?

A. YES, I WAS.

Q. OKAY. DID THAT CHURCH HAVE ANY PARTICULAR DOCTRINE ON THE DEATH PENALTY?

A. NOT TO MY KNOWLEDGE.

Q. DO YOU HAVE ANY PERSONAL RELIGIOUS BELIEFS IN THE DEATH PENALTY?

A. NOT REALLY. MY BELIEFS AS FAR AS THE DEATH PENALTY ARE CONCERNED ARE MAINLY CONCERNED WITH THE STATE OF THE LAW OF THE STATE OF SOUTH CAROLINA, NOT ANY RELIGIOUS BELIEFS.

Q. OKAY.

A. IN OTHER WORDS, I'M GUIDED BY THE LAW, NOT THE RELIGION.

Q. OKAY. SO, TO ANSWER MY QUESTION: YOU WOULD HAVE NO RELIGIOUS BELIEFS THAT WOULD INTERFERE WITH YOUR ABILITY---

A. NO.

Q. ---TO MAKE THAT DECISION?

A. NO, SIR.

Q. OKAY. I BELIEVE THAT'S ALL I HAVE, MR. HOWELL. THANK YOU VERY MUCH.

A. YOU'RE WELCOME.

MR. RUNYON: GOOD EVENING, MR. HOWELL.

THE WITNESS: YES, SIR.

MR. RUNYON: NO QUESTIONS AND NO MOTIONS, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. MR. HOWELL, WE THINK YOU'D MAKE A GOOD JUROR. DOESN'T MEAN YOU'RE GOING TO BE ON THE JURY, BUT IT JUST MEANS THAT YOU'RE QUALIFIED TO ANSWER. DO YOU WORK FULL-TIME? ARE YOU GOING TO COLLEGE OR JUST WHAT ARE YOU DOING?

JUROR HOWELL: I DO WORK FULL-TIME.

THE COURT: YOU DO WORK FULL TIME? I'M GOIN TO SEND YOU HOME AND ABOUT YOUR BUSINESS. I'VE GOT YOUR TELEPHONE NUMBERS HERE, BUT I THINK I'VE JUST GOT TO DRAW ONE MORE REALLY. AND SO I'M GOING TO ASK YOU THAT WHEN YOU GO HOME TONIGHT OR GO TO WORK, WHICHEVEF YOU'RE GOING TO DO, YOU DON'T READ THE NEWSPAPERS OR WATCH T.V. ABOUT THE CASE AND DON'T DISCUSS IT WITH ANYONE. AND WHEN YOU COME BACK TOMORROW MORNING, I'M GOING TO ASK YOU TO BE HERE AT TEN O'CLOCK. IT WON'T

TAKE THAT LONG, I DON'T THINK, BUT BRING ENOUGH CLOTHES AND TOILET ARTICLES FOR ABOUT FIVE DAYS---

JUROR HOWELL: OKAY.

THE COURT: ---IF YOU WILL AND I HOPE YOU HAVE A GOOD NIGHT.

JUROR HOWELL: THANK YOU SO MUCH.

THE COURT: UH-HUH. (JUROR JAMES HOWELL WAS EXCUSED FROM THE COURTROOM.)

THE COURT: GENTLEMEN, I'M GOING TO DO ONE MORE. BERGEN BERKAW. DON'T YOU THINK I'D BE SAFE WITH JUST TWO ALTERNATES?

MR. RUNYON: YES, SIR.

THE COURT: ALL RIGHT. MAJOR, WOULD YOU, WHEN I GET THIS JUROR, GO BACK THERE AND TELL THOSE JURORS I APPRECIATE THEIR PATIENCE? I WON'T NEED THEM. THEY DON'T HAVE TO REPORT BACK ANY MORE AND WE'RE GOING TO MAIL THEM A LITTLE CHECK, BUT REMIND THEM DON'T SPEND MUCH MONEY.

BAILIFF: ALL RIGHT.

THE COURT: AND THANK THEM VERY MUCH FOR ME.

BAILIFF: ALL RIGHT.

THE COURT: AND TELL THEM THEY'RE FREE TO COME WATCH THE TRIAL IF THEY WANT TO.

(JUROR BERGEN F. BERKAW, JR., ENTERED THE COURTROOM.)

BERGEN F. BERKAW, JR., AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

Q. MR. BERKAW, I NOTICED ON THIS THAT YOU HAD SERVED ONE TIME ON A CRIMINAL CASE. WAS IT IN THIS COURT?

A. YES, IT WAS.

Q. WAS I LUCKY ENOUGH TO GET YOU FOR A JUROR?

A. NO, SIR, YOU WERE NOT.

Q. SOME OTHER JUROR (SIC)?

A. IT WAS JUDGE SMITH.

Q. OH. JUDGE JOHN HAMILTON. THIS WAS HIS CIRCUIT. HE'S OUT THERE MAKING A LOT MORE MONEY THAN I. WHAT TYPE CASE WAS IT?

A. IT WAS A MURDER CASE.

Q. MURDER?

A. UH-HUH.

Q. WELL, YOU KNOW A LITTLE BIT ABOUT THE SYSTEM AND HOW IT WORKS. WHEN I ASKED THE JURORS YESTERDAY IF THEY KNEW ABOUT THE CASE, YOU DIDN'T STAND UP. DID YOU KNOW ANYTHING ABOUT THE CASE? HAD YOU HEARD ANYTHING ABOUT THE CASE?

A. NO, I HAD NOT.

Q. YOU HADN'T. WELL, YOU KNOW, OF COURSE, BY NOW THAT MR. ROGERS WHO SITS IN THE CENTER THERE IS

CHARGED WITH MURDER.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. AND IT'S ALLEGED THAT HE SHOT A CHILD IN THE BACK OF THE HEAD.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. SITTING NEXT TO HIM IS MR. RUNYON, ONE OF THE ATTORNEYS, AND HIS OTHER ATTORNEY IS OUT. MR. LEIENDECKER IS OUT OF THE ROOM FOR THE PRESENT. AND OVER HERE REPRESENTING THE STATE IS MR. WALTER BAILEY AND, OF COURSE, I'M JUDGE BROWN. WE WANT TO ASK YOU A FEW QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS AND IT'S JUST INFORMATION WE ARE ATTEMPTING TO GET TO TRY TO DRAW A JURY THAT IS IMPARTIAL. YOU KNOW, HAVING SERVED ON A JURY BEFORE, THAT GENERALLY JURIES DECIDE GUILT OR INNOCENCE AND THE JUDGE DOES THE SENTENCING.

A. (JUROR NODDED HEAD UP AND DOWN.)

Q. WHEN YOU SPEAK, I WANT YOU TO SPEAK OUT LOUD---

A. YES, SIR.

Q. ---BECAUSE I GOT A MACHINE DOWN THERE, IF YOU WOULD FOR ME. THANK YOU. WELL, IN THIS CASE IT'S DIFFERENT. AS I TOLD YOU, IN A CASE WHERE THEY'RE SEEKING THE DEATH PENALTY THE JURY DOES BOTH. SO, WHAT WE WOULD DO IS WE WOULD -- WE WOULD FIRST HAVE A TRIAL TO DETERMINE GUILT OR INNOCENCE.

A. YES, SIR.

Q. AND, OF COURSE, IF THE STATE WERE UNABLE TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT, THAT WOULD END THE PROCEEDING. BUT IF THE JURY DECIDED HE WAS GUILTY OF MURDER, THEN WE'D HAVE A SECOND PROCEEDING TO DETERMINE WHAT THE PROPER SENTENCE WOULD BE, AND THAT SECOND PROCEEDING WOULD BE AIMED TOWARD ASSISTING THE JURY IN MAKING THAT DECISION. FOR INSTANCE, YOU MIGHT HEAR GOOD AND BAD THINGS ABOUT MR. ROGERS. YOU MIGHT HEAR AGGRAVATING CIRCUMSTANCES ABOUT THIS PARTICULAR MURDER. YOU MIGHT HEAR MITIGATING CIRCUMSTANCES, CIRCUMSTANCES THAT YOU WOULD THINK PERHAPS WOULD MITIGATE THE PENALTY FROM LIFE -- FROM DEATH TO LIFE. AND AT THE END OF THE PROCEEDINGS, THEN THE JURY WOULD BE ASKED TO DETERMINE WHAT THE PROPER SENTENCE WOULD BE, AND IF THAT JURY DECIDED THAT UNDER THIS PARTICULAR MURDER THAT THE PROPER SENTENCE WAS LIFE IN PRISON, THEN THE FOREMAN WOULD SIGN A PIECE OF PAPER AND THE JURY WOULD GET UP AND SAY, WE, THE JURY, RECOMMEND THAT THE DEFENDANT BE SENTENCED TO LIFE IN PRISON. AND EVEN THOUGH I USE THE WORDS RECOMMEND, I CAN'T CHANGE WHAT THE JURY TELLS ME. I MUST DO WHAT THEY TELL ME, AND SO I WOULD SENTENCE HIM TO LIFE IN PRISON.

ON THE OTHER HAND, IF THE JURY DECIDED THAT UNDER THIS PARTICULAR MURDER THAT THE PROPER SENTENCE

WAS DEATH, THEN IT WOULD BE A LITTLE DIFFERENT. EACH JUROR THEN WOULD SIGN THEIR NAME TO A PIECE OF PAPER AND IT WOULD SAY IN ESSENCE, WE, THE FOLLOWING JURORS, DETERMINE THAT THE PROPER SENTENCE IS DEATH. AND HERE AGAIN, I MUST DO WHAT THEY TELL ME. SO, I WOULD SENTENCE HIM TO DEATH BY ELECTROCUTION. DO YOU UNDERSTAND THAT?

A. YES, SIR, I DO.

Q. NOW, JURORS, WHEN THEY COME INTO COURT LIKE YOU AND ARE FACED WITH DEATH PENALTY CASES, GENERALLY FALL IN ONE OF THREE CATEGORIES. AND SO I'M GOING TO EXPLAIN THOSE CATEGORIES TO YOU AND THEN I WANT YOU TO TELL ME WHICH ONE YOU THINK YOU FIT BEST. THE FIRST CATEGORY IS THAT TYPE JUROR THAT WOULD TAKE THE POSITION IF YOU KILL SOMEBODY YOU OUGHT TO DIE YOURSELF, SUCH AS AN EYE FOR AN EYE AND A TOOTH FOR A TOOTH, AND THAT JUROR WOULDN'T BE INTERESTED IN THAT SECOND TRIAL BECAUSE THEIR MIND WOULD ALREADY BE MADE UP. THEY WOULD ALWAYS VOTE FOR THE DEATH PENALTY.

THEN THERE IS THE SECOND TYPE JUROR, NUMBER TWO, THAT'S EXACTLY THE OPPOSITE. THEY WOULD TAKE THE POSITION THAT, YES, I COULD FIND HIM GUILTY OF MURDER, BUT UNDER NO CIRCUMSTANCES WOULD I EVER VOTE FOR THE DEATH PENALTY AND THEY ALSO WOULDN'T BE INTERESTED IN THAT SECOND TRIAL. THEY WOULD ALWAYS VOTE FOR LIFE IN

PRISON. AND THEN THERE'S A THIRD TYPE JUROR THAT COULD GO EITHER WAY. DEPENDING UPON THE CIRCUMSTANCES, THEY COULD, IF THEY THOUGHT IT PROPER, VOTE FOR LIFE IN PRISON. ON THE OTHER HAND, IF THEY FELT THAT DEATH WAS THE PROPER SENTENCE UNDER THAT PARTICULAR MURDER, THEY COULD SIGN THEIR NAME THAT SAID DEATH. WHICH OF THOSE THREE DO YOU THINK YOU NEARER FIT?

A. I WOULD PROBABLY FIT CLOSEST TO JUROR NUMBER THREE.

Q. IN OTHER WORDS, IS IT YOUR POSITION THAT YOU FEEL THAT NOT EVERY MURDER REQUIRES SOMEONE DIE IN THE ELECTRIC CHAIR NOR EVERY MURDER REQUIRE THAT THAT PERSON RECEIVE LIFE?

A. THAT'S CORRECT.

Q. IN OTHER WORDS, DEPENDING UPON THE CIRCUMSTANCES YOU COULD VOTE EITHER WAY?

A. YES, SIR?

THE COURT: ALL RIGHT. I APPRECIATE THAT AN THE ATTORNEYS ARE GOING TO ASK YOU SOME QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS, SO JUST GIVE IT YOUR BEST GUESS.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. HAVE YOU EVER HAD OCCASION PRIOR TO BEING SUMMONSED ON THIS CASE AND BEING QUESTIONED BY THE

JUDGE TO -- YOU KNOW, IN TALKING TO YOUR WIFE OR FRIENDS OR POSSIBLY COLLEGE OR SOMEWHERE TO EXPRESS YOUR VIEWS ON THE DEATH PENALTY TO ANYBODY ELSE?

A. I GUESS I HAVE.

Q. OKAY. AND DO YOU RECALL WHAT THOSE VIEWS WERE?

A. BASICALLY THAT THE CRIME WOULD HAVE TO BE VERY HEINOUS FOR ME TO GO WITH A DEATH PENALTY, BUT THAT, YOU KNOW, IF IT WERE, THEN I DO BELIEVE IN THE DEATH PENALTY.

Q. OKAY. NOW, THE JUDGE EXPLAINED TO YOU A LITTLE BIT ABOUT THE TWO-PART PROCESS WHERE THE FIRST PHASE IS JUST LIKE ANY OTHER MURDER TRIAL OR. . . I THINK YOU SAT ON A MURDER JURY BEFORE---

A. THAT'S CORRECT.

Q. ---IN 1988. THE FIRST PHASE WOULD BE ALMOST EXACTLY LIKE THAT AS FAR AS THE PROCEDURE. IF THE DEFENDANT IS FOUND GUILTY IN THAT FIRST STAGE, WE WOULD THEN GO TO A SECOND PHASE, THE PENALTY PHASE, WHERE THE JURY HAS THOSE TWO CHOICES, LIFE IN PRISON OR THE DEATH PENALTY, AND YOU WOULD HEAR ADDITIONAL EVIDENCE IN AGGRAVATION FROM THE STATE, EVIDENCE IN MITIGATION FROM THE DEFENDANT. THEN THE JURY WOULD MAKE A DECISION -- ONE OF TWO DECISIONS, LIFE IN PRISON OR THE DEATH PENALTY. IF YOU AND THE OTHER ELEVEN JURORS, IF YOU

WERE ON THE JURY, DETERMINED AFTER HEARING ALL OF THE EVIDENCE THAT THE DEATH PENALTY WAS APPROPRIATE, THEN EACH JUROR WOULD HAVE TO SIGN THEIR NAME ONTO A DEATH VERDICT FORM. THE RESULT OF SIGNING THAT FORM WOULD BE THE IMPOSITION OF THE DEATH PENALTY.

A. UH-HUH.

Q. THAT THE JUDGE TOLD YOU, THAT HE DOES WHAT THE JURY SAYS TO DO. EVEN THOUGH HE USED THE WORD RECOMMENDATION, IT'S REALLY NOT A RECOMMENDATION. THAT'S WHAT WILL HAPPEN. COULD YOU SIGN YOUR NAME ONTO A FORM LIKE THAT?

A. YES, I COULD.

Q. COULD YOU COME OUT INTO OPEN COURT AND ANNOUNCE, IF ASKED, WHAT YOUR DECISION WAS?

A. YES, I COULD STATE THAT.

Q. DO YOU HAVE ANY RELIGIOUS BELIEFS -- I KNOW YOU'RE VERY ACTIVE IN THE CHURCH. DO YOU HAVE ANY RELIGIOUS BELIEFS THAT WOULD IMPACT ON YOUR ABILITY TO SIT AS A FAIR AND IMPARTIAL JUROR IN THE PENALTY PHASE?

A. NO, I DO NOT.

Q. OKAY. I THINK THAT'S ALL I'VE GOT. THANK YOU VERY MUCH.

A. THANK YOU.

MR. RUNYON: GOOD EVENING, MR. BERKAW.

THE WITNESS: GOOD EVENING.

MR. RUNYON: NO QUESTIONS. NO MOTIONS, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. WE THINK, MR. BERKAW, THAT YOU'D MAKE A GOOD JUROR. THAT DOESN'T MEAN YOU'RE GOING TO SERVE ON THE JURY, BUT IT JUST MEANS YOU ALONG WITH 36 MORE ARE QUALIFIED. SO, I ASKED THOSE 36 AND I'M GOING TO ASK YOU THAT YOU MEET ME HERE TOMORROW MORNING AT TEN O'CLOCK. AT THAT TIME WE'LL DRAW TWELVE JURORS AND TWO ALTERNATES. IN THE MEANTIME, I'M GOING TO ASK THAT YOU NOT WATCH T.V. OR READ THE NEWSPAPER ABOUT THE CASE AND DON'T DISCUSS IT, OF COURSE, WITH ANYONE. AND EVEN THOUGH I DON'T THINK IT WILL TAKE THAT LONG, BRING ENOUGH CLOTHES FOR ABOUT FIVE DAYS AND TOILET ARTICLES. I HOPE YOU HAVE A GOOD NIGHT.

JUROR BERKAW: THANK YOU, SIR.

THE COURT: ALL RIGHT.

JUROR BERKAW: GO OUT THIS WAY?

THE COURT: EITHER WAY YOU WANT TO GO WITH THEM. THEY HAVE A DOOR DOWN THERE OPENED FOR YOU.

(JUROR BERGEN F. BERKAW, JR., WAS EXCUSED FROM THE COURTROOM.)

THE COURT: IS THERE ANYTHING ELSE, GENTLEMEN, THAT YOU KNOW OF? I ASK YOU FOR THE STATE: DO YOU HAVE ANY EXCEPTIONS OR ADDITIONS OR OBJECTIONS

OTHER THAN THOSE MADE DURING THE TRIAL TO ANY OF THE JURORS?

MR. BAILEY: NO, SIR.

THE COURT: AND YOU?

MR. RUNYON: LIKEWISE, YOUR HONOR, NOTHING OTHER THAN THOSE STATED ALREADY ON THE RECORD.

THE COURT: ALL RIGHT. ALL RIGHT. THANK YOU VERY MUCH. WE'VE GOT PLENTY OF JURORS. WE'LL MEET HERE AT TEN O'CLOCK. DON'T FORGET WHEN YOU GET HERE TOMORROW MORNING TO -- IF YOU'VE GOT SOME EXHIBITS THAT YOU NEED TO SHOW EACH OTHER, SHOW EACH OTHER THE EXHIBITS. THAT MIGHT SHORTEN THINGS UP. AND WHEN I GET HERE -- I'LL BE HERE AHEAD OF TIME. IF YOU KNOW OF ANYTHING I CAN DO TO ASSIST EITHER ONE OF YOU, LET ME KNOW.

MR. BAILEY: YOUR HONOR, WHEN WE STRIKE TOMORROW I DON'T ANTICIPATE ANY BATSON PROBLEMS, BUT SINCE WE'VE ALREADY SEEN ALL OF THE WITNESSES AND INTERVIEWED THEM, I MEAN, ALL THE JURORS, COULD WE ELIMINATE POSSIBLY HAVING THEM COME UP AND STRIKE THEM WHERE THEY KNOW THEY'RE BEING STRUCK? I'M JUST CONCERNED, IF THERE IS A BATSON PROBLEM, HAVING THE WHOLE POOL TAINTED AND TO DO THIS OVER AGAIN. IF WE COULD STRIKE -- JUST HAVE THE JURORS STAY IN THE BACK AND STRIKE THEM BY, YOU KNOW, OUT HERE WITHOUT THEM

KNOWING.

THE COURT: WHAT'S YOUR POSITION?

MR. RUNYON: I UNDERSTAND WHERE MR. BAILEY IS COMING FROM, BUT I WOULDN'T ANTICIPATE MR. BAILEY IS GOING TO BE STRIKING ON THE BASIS OF RACE AND I GUARANTEE YOU THAT THIS IS ONE TIME WHEN I THINK BOTH SIDES CAN ARTICULATE REASONS BASED ON QUESTIONING OF THE JURORS. SO, I DON'T SEE WHERE IT PRESENTS A PROBLEM AND I THINK IT WOULD PROBABLY GO FASTER IF WE SIMPLY STRIKE THEM AS WE USUALLY DO. AND I WOULD SAY THIS---

THE COURT: WELL, DON'T FORGET THIS.

MR. RUNYON: YES, SIR.

THE COURT: FOR WHAT IT'S WORTH TO THE TWO OF YOU. YOU LET ME KNOW HOW YOU WANT TO DO IT IN THE MORNING. I DON'T KNOW THAT WE'D HAVE A BATSON MOTION; I DON'T HAVE ANY IDEA. BUT IF WE DO HAVE A BATSON MOTION, IT WOULD APPLY TO BOTH OF YOU.

MR. BAILEY: YES, SIR.

MR. RUNYON: YES, SIR.

THE COURT: YOU KNOW, THE JURY IS GOING TO KNOW. NOW, WHAT I WOULD DO, I'D JUST TAKE ALL THE JURORS AND PUT THEM BACK IN THE THING AND WE'D DRAW AGAIN AND WE'D STRIKE AGAIN.

MR. BAILEY: THAT'S WHAT I'M---

THE COURT: SO, JUST KEEP THAT IN MIND. I DON'T -- I JUST NEVER HAVE DRAWN WITHOUT THE JURY BEING IN THE ROOM. A LOT OF TIMES BOTH SIDES WANTS TO LOOK AT THE JUROR AND REFRESH THEIR MEMORY ON WHAT THEY LOOK LIKE. I DON'T HAVE ANY IDEA. BUT Y'ALL THINK ABOUT IT AND LET ME KNOW TOMORROW MORNING.

MR. RUNYON: YOUR HONOR, I WOULD HAVE ONE SUGGESTION THAT MIGHT BE A MIDDLE GROUND. WE DID THIS IN FEDERAL COURT WITH JUDGE BLATT. WE DREW THE -- JURORS WERE DRAWN AND CAME IN, STATED OUR POSITION, SWEAR THE JUROR OR NOT, AND THEN PLACED THE JUROR IN THE JURY ROOM AND BROUGHT IN THE NEXT ONE. THAT WOULD BE---

THE COURT: I DON'T QUITE UNDERSTAND. IN OTHER WORDS, IF THE CLERK REACHES IN THERE AND DRAWS OUT A JUROR, WE WOULD BRING THE JUROR IN HERE. LET YOU LOOK AT THAT JUROR. TAKE THE JUROR OUT AND THEN Y'ALL WOULD STRIKE?

MR. RUNYON: NO. WE WOULD STRIKE IN THE USUAL MANNER AND THEN THE JUROR WOULD BE -- COULD LEAVE THE ROOM AND IF THERE WAS A BATSON MOTION WE WOULD MAKE THE BATSON MOTION. THE JUROR WOULD NOT BE EXPOSED TO IT NOR ANY OF THE OTHER JURORS.

THE COURT: WELL, NO JUROR IS EXPOSED TO A BATSON MOTION.

MR. RUNYON: WELL, I UNDERSTAND.

MR. BAILEY: HE WOULD KNOW WHO STRUCK HIM AND THAT WAY IT WOULD BE TAINTED AND THEN HE COULDN'T BE THROWN BACK INTO THE POOL.

MR. RUNYON: I'VE BEEN DOING THAT FOR 27 YEARS, JUDGE, AND FOR 27 YEARS JURORS HAVE KNOWN I STRUCK THEM OR TRIED TO STRIKE THEM AND SOMETIMES THEY'VE BEEN FOR ME IN THE FINAL ANALYSIS. I JUST DON'T SEE WHERE IT'S PROPER.

THE COURT: I'LL THINK ABOUT IT. IN THE MEANTIME, Y'ALL CAN THINK ABOUT IT. SOLICITOR, I'M LEANING NOT TO ALLOW YOU TO DO IT. SO, KEEP THAT IN MIND. WE'LL TALK ABOUT IT TOMORROW MORNING.

MR. BAILEY: YES, SIR. YOUR HONOR, A POSSIBLE MIDDLE GROUND MIGHT BE WHAT YOU SUGGESTED IS TO HAVE THEM COME OUT, THEN LOOK AT THEM, REFRESH YOUR MEMORIES ON, YOU KNOW, WHO THEY ARE AND WHAT THEY SAID, THEN HAVE THEM GO BACK AND STRIKE AND THEY WOULDN'T KNOW WHO STRUCK THEM.

THE COURT: WELL, THAT WOULD BE FAIRER.

MR. BAILEY: I DON'T SEE ANY PREJUDICE TO EITHER SIDE.

THE COURT: I THINK -- I DON'T SEE ANY PREJUDICE TO THAT, BUT WE'LL TALK ABOUT IT TOMORROW MORNING. BE THINKING ABOUT IT. IT MIGHT BE THE BEST

THING. YOU KNOW, THERE'S NOTHING MORE SURPRISING THAN A BATSON MOTION WHEN YOU DON'T EXPECT IT FROM EITHER SIDE.

MR. RUNYON: YES, SIR.

THE COURT: FOR WHAT IT'S WORTH. HAVE A GOOD NIGHT.

MR. BAILEY: YES, SIR.

THE COURT: TEN O'CLOCK.

(WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AND RESUMED THE NEXT DAY, MARCH 2, 1994.)

THE COURT: THANK YOU VERY MUCH. BE SEATED, PLEASE. ALL RIGHT. MEMBERS OF THE JURY PANEL, AS YOU KNOW, LAST NIGHT WE FINALLY QUALIFIED I THINK 37. WAS THAT THE AMOUNT? I BELIEVE 37---

MR. BAILEY: UH-HUH.

THE COURT: ---NAMES AND NOW WE'RE GOING TO DRAW A JURY OF TWELVE REGULAR JURORS AND TWO ALTERNATE JURORS. THAT'S IN CASE SOMEONE BECOMES INCAPACITATED DURING THE TRIAL. NOW, HOW WE'RE GOING TO WORK IT IS THIS: THE CLERK HAS ALREADY CALLED THE ROLL, SO I KNOW YOU ALL ARE HERE. I'M GOING TO SEND ALL OF YOU IN THE ROOMS BACK OF ME AND WE'RE GOING TO BRING IN THE JURORS ONE AT A TIME. THAT'S SO WE CAN REFRESH OURSELVES. I GOT ALL THE INFORMATION AND I'M SURE THE ATTORNEYS HAVE, TOO, ABOUT YOU, BUT I JUST WANT YOU TO COME OUT

AND LET ME LOOK AT YOU AGAIN. SOMETIMES I MIGHT NOT EXACTLY FIT THE FACE TO THE INFORMATION I HAVE.

SO, IT'S KIND OF A SCREENING FOR ME TO SEE WHAT YOU LOOK LIKE, TO SEE IF I'VE GOT ALL THE INFORMATION. THEN I'M GOING TO SEND YOU BACK AND THEN THE ATTORNEYS WILL ACCEPT YOU OR REJECT YOU. I CAN TELL YOU THAT IF ANY OF YOU ARE REJECTED IT'S NOT BECAUSE ALL OF US DON'T THINK YOU WOULD MAKE GOOD JURORS. I TOLD EACH ONE OF YOU THAT EACH ONE OF YOU WOULD MAKE GOOD AND FAIR JURORS. IT'S JUST THAT EACH SIDE AND EVEN MYSELF PERHAPS MIGHT FAVOR ONE JUROR OVER ANOTHER FOR SOME TECHNICAL REASON. SO, YOU DON'T HAVE TO WORRY ABOUT IT IF FOR ANY REASON YOU'RE NOT DRAWN ON THIS. SOME OF YOU MIGHT HEAVE A SIGH OF RELIEF.

I ALWAYS ASK MY JURORS JUST TO SEE HOW THE SYSTEM WORKS WHETHER OR NOT I HAVE ANY VOLUNTEERS. DO I HAVE FOURTEEN VOLUNTEERS? WELL, SEE, YOU KNOW, I NEVER SERVED ON A JURY BEFORE, AS I TOLD YOU ALL. I ALWAYS WANTED TO. I ALWAYS WANTED TO FIND OUT WHAT REALLY GOES ON BACK IN THE JURY ROOM. BUT AFTER THIRTY YEARS OF PRACTICING - I'VE BEEN A JUDGE NOW FOURTEEN YEARS - I NEVER WAS ACCEPTED. I DON'T KNOW WHETHER IT WAS BECAUSE I WAS AN ATTORNEY OR BECAUSE THEY JUST DIDN'T LIKE ME. I DON'T KNOW.

BE THAT AS IT MAY, THAT'S HOW WE'RE GOING TO

OPERATE. SO, I'M GOING TO ASK -- THE CLERK'S HAS ALREADY CALLED YOUR NAME. I'M GOING TO ASK THAT ALL OF YOU NOW -- AND LET ME GO A LITTLE FURTHER. ALL OF YOU BROUGHT SOME CLOTHES WITH YOU. THOSE WHO WE CHOOSE, IN ALL PROBABILITY I'LL RECESS COURT LONG ENOUGH FOR YOU TO TAKE YOUR CLOTHES OVER TO YOUR ROOM AND THEN COME BACK, BUT WE'LL WORK THAT OUT SOME WAY THAT WILL BE CONVENIENT TO YOU.

I'M GOING TO ASK ALL THE JURORS NOW TO VACATE THE COURTROOM AND GO IN THE ROOMS BACK OF ME, IF YOU WILL. THERE WILL BE SOME BAILIFFS THERE. YOU CAN GO THROUGH BOTH DOORS.

(WHEREUPON, ALL JURORS WERE EXCUSED FROM OPEN COURT.)

THE COURT: ANY JURORS LEFT IN THE COURTROOM? ALL RIGHT. LET THE RECORD SHOW THAT THERE ARE NONE. DO YOU HAVE ANY OBJECTION IF THE CLERK - THE CLERK HAS THE 37 NAMES HERE - IF THE CLERK DRAWS THE NAMES OUT OF THAT?

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

MR. RUNYON: NONE FROM THE DEFENSE, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. YOU MAY PROCEED.

THE CLERK: JUROR NUMBER 195, RICARDO RIVERA.

THE COURT: YES, SIR, PLEASE BRING THAT JUROR IN AND JUST BRING HIM IN THROUGH THAT SAME DOOR.

(JUROR RICARDO RIVERA WAS BROUGHT INTO OPEN COURT.)

THE COURT: YOU JUST STAND RIGHT THERE, MR. RIVERA. THANK YOU VERY MUCH. AS I TOLD YOU, WE WANT TO KIND OF FIT THE FACE WITH WHAT WE'VE WRITTEN DOWN ABOUT YOU AND ALL OF US HAVE WRITTEN SOME THINGS DOWN ABOUT YOU. I BELIEVE, IF I'M NOT MISTAKEN, I HAD MADE SOME MISTAKES IN DISCUSSING PANAMA CANAL WITH YOU, DIDN'T I?

JUROR RIVERA: NO, IT WAS ANNAPOLIS.

THE COURT: WAS THAT WHERE IT WAS? FOR SOME REASON I HAD YOU IN THE SERVICE IN THE CANAL ZONE. WAS THAT. . .

JUROR RIVERA: THAT'S WHERE I GREW UP.

THE COURT: THAT'S WHERE YOU GREW UP. WAS YOUR FATHER IN THE SERVICE?

JUROR RIVERA: HE WAS IN CIVIL SERVICE.

THE COURT: CIVIL SERVICE. ALL RIGHT. THANK YOU VERY MUCH. YOU CAN GO ON BACK THERE. THANK YOU SO MUCH.

(JUROR RICARDO RIVERA WAS EXCUSED FROM OPEN COURT.)

THE COURT: WHAT SAY THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. GIVE ME THE NEXT ONE.

THE CLERK: JUROR NUMBER 31, JENNIFER G. BROOKS.

(JUROR JENNIFER G. BROOKS WAS BROUGHT INTO OPEN COURT.)

THE COURT: MS. BROOKS, HOW ARE YOU THIS MORNING?

JUROR BROOKS: GOOD.

THE COURT: WE JUST WANTED TO KIND OF SEE WHAT YOU LOOK LIKE. I RECALL THAT YOU WERE A BOOKKEEPER, WERE YOU NOT?

JUROR BROOKS: THAT'S CORRECT.

THE COURT: AND SOMETIMES WE CAN'T FIT THE FACE WITH ALL THE INFORMATION WE HAVE. SO, NOW THAT WE KNOW WHO YOU ARE, I'LL LET YOU GO ON BACK THERE.

JUROR BROOKS: ALL RIGHT.

THE COURT: THANK YOU SO MUCH.

JUROR BROOKS: THANK YOU.

THE CLERK: WHAT SAYS THE STATE?

THE COURT: JUST A MINUTE. JUST WAIT TILL

THE DOOR CLOSES.

(JUROR JENNIFER G. BROOKS WAS EXCUSED FROM OPEN COURT.)

THE COURT: ALL RIGHT.

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: EXCUSE THE JUROR, PLEASE, YOUR HONOR.

THE COURT: ALL RIGHT.

THE CLERK: JUROR NUMBER 126, NANCY J. LANGENSTEIN.

(JUROR NANCY J. LANGENSTEIN WAS BROUGHT INTO OPEN COURT.)

THE COURT: WHY DON'T YOU HAVE A SEAT THERE FOR JUST A SECOND FOR US IF YOU WILL?

JUROR LANGENSTEIN: SURE.

THE COURT: SOMETIMES WE WRITE ALL THIS INFORMATION ABOUT JURORS AND THEN ALL OF A SUDDEN I FIND I DON'T REALLY MATCH THE FACE TO ALL THE INFORMATION I DID, BUT I'M NOT HAVING ANY TROUBLE WITH YOU.

JUROR LANGENSTEIN: THANK YOU.

THE COURT: AND THE ATTORNEYS HAVE HAD A CHANCE TO SEE YOU. SO, IF YOU'LL JUST GO RIGHT ON BACK THERE, WE'RE GOING TO LET EVERYBODY KNOW IN JUST A FEW

MINUTES.

(JUROR NANCY J. LANGENSTEIN WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: EXCUSE ME ONE MOMENT. SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 238, LAURA E. TYSON.

(JUROR LAURA E. TYSON WAS BROUGHT INTO OPEN COURT.)

THE COURT: MS. TYSON, HAVE A SEAT. AS I WAS TELLING THE OTHER JURORS, SOMETIMES WE DON'T MATCH UP THE FACE WITH ALL THIS INFORMATION WE GOT. SO THAT'S WHY WE BROUGHT YOU BACK OUT JUST TO LOOK AT YOU. I RECALL THAT YOU WERE A SECRETARY, I BELIEVE, WERE YOU NOT?

JUROR TYSON: YES, SIR.

THE COURT: AND SO HAVING SEEN YOU AND ABLE TO MATCH UP OUR INFORMATION, I'M GOING TO SEND YOU BAC THERE.

JUROR TYSON: OKAY.

(JUROR LAURA E. TYSON WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 76, RICHARD C. GARRETT.

THE COURT: WHAT NUMBER?

THE CLERK: 76.

(JUROR RICHARD C. GARRETT WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT RIGHT THERE, MR. GARRETT.

JUROR GARRETT: YES, SIR.

THE COURT: EVERY TIME I THINK OF YOU -- I'M TRYING TO MATCH UP EVERYTHING I SAW, BUT I REALLY DIDN'T HAVE ANYTHING -- ANY PROBLEM MATCHING YOU UP BECAUSE I ALWAYS THINK OF GARRETT -- ISN'T THERE A GARRETT TOBACCO?

JUROR GARRETT: LEVY GARRETT, SIR.

THE COURT: I WASN'T ASKING YOU WHETHER YOU CHEWED OR NOT.

JUROR GARRETT: NO, SIR.

THE COURT: I DIDN'T HAVE ANY TROUBLE MATCHING IT UP WITH YOU. BUT HAVING SEEN YOU NOW, WE'LL BE ABLE TO MATCH YOU UP. SO, JUST HAVE A SEAT

BACK THERE.

JUROR GARRETT: OKAY.

THE COURT: THANK YOU VERY MUCH.

(JUROR RICHARD C. GARRETT WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 6, PATRICIA BALCERZAK.

(JUROR PATRICIA BALCERZAK WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. BALCERZAK. HOW ARE YOU THIS MORNING?

JUROR BALCERZAK: I'M PRETTY GOOD. HOW ABOUT YOU?

THE COURT: I WAS TELLING MY OTHER JURORS SOMETIMES WE CAN'T MATCH FACES, BUT I DIDN'T HAVE ANY PROBLEM WITH YOU. I RECALL YOU WERE A NURSE, WERE YOU NOT?

JUROR BALCERZAK: YES, I AM.

THE COURT: AND THEY'VE HAD A CHANCE TO LOOK AT YOU AND I'VE HAD A CHANCE TO LOOK AT YOU. SO, WE'RE

GOING TO CHOOSE OUR JURORS A LITTLE LATER, BUT YOU CAN GO ON AND HAVE A SEAT BACK THERE WITH THE REST OF THEM.

JUROR BALCERZAK: OKAY. THANK YOU.

THE COURT: THANK YOU SO MUCH.

JUROR BALCERZAK: YOU'RE WELCOME.

(JUROR PATRICIA BALCERZAK WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: NUMBER 120 MILDRED E. KNIGHT.

(JUROR MILDRED E. KNIGHT WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. KNIGHT. HOW ARE YOU THIS MORNING?

JUROR KNIGHT: FINE.

THE COURT: I WAS TELLING MY OTHER JURORS SOMETIMES I CAN'T MATCH UP THE FACE, BUT I RECALL YOU WERE A TEACHER, WERE YOU NOT?

JUROR KNIGHT: RIGHT.

THE COURT: SO NOW THAT THEY'VE HAD A CHANCE TO LOOK AT YOU AND I'VE HAD A CHANCE TO LOOK AT YOU AND MATCH UP WHAT WE'VE WRITTEN DOWN, YOU CAN GO ON BACK.

WE'RE GOING TO PICK THE JURY A LITTLE LATER. WE JUST WANT TO KIND OF REFRESH OURSELVES.

JUROR KNIGHT: OKAY.

(JUROR MILDRED E. KNIGHT WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 16, BERGEN F. BERKAW.

(JUROR BERGEN F. BERKAW WAS BROUGHT INTO OPEN COURT.)

THE COURT: MR. BERKAW, HAVE A SEAT THERE. I WAS TELLING MY OTHER JURORS SOMETIMES I CAN'T MATCH UP A FACE, BUT I REMEMBER YOU. YOU HAD, I BELIEVE -- DIDN'T YOU GO TO PORTER MILITARY ACADEMY?

JUROR BERKAW: YES, I DID.

THE COURT: AND THE CITADEL AND. . .

JUROR BERKAW: DIDN'T GO TO THE CITADEL.

THE COURT: SOMEHOW OR ANOTHER I SEE THE CITADEL'S NAME IN THERE IN MY -- PERHAPS I MISSED IT, BUT I REMEMBER PORTER. IN ANY EVENT, HAVING SEEN YOU AND BEING ABLE TO MATCH YOUR FACE UP WITH WHAT

INFORMATION I GOT, WE'RE GOING TO DRAW OUR JURY. BUT GO ON AND HAVE A SEAT BACK THERE. WE JUST WANTED TO SEE WHAT YOU LOOK LIKE.

JUROR BERKAW: THANK YOU, SIR.

THE COURT: TO REFRESH OURSELVES.

(JUROR BERGEN F. BERKAW WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 179, JOHN H. PHILLIPS, JR.

THE COURT: IS THAT FIVE WE'VE GOT SO FAR?

MR. RUNYON: YES, SIR.

MR. BAILEY: YES, SIR.

(JUROR JOHN H. PHILLIPS, JR., WAS BROUGHT INTO OPEN COURT.)

THE COURT: MR. PHILLIPS, HAVE A SEAT THERE.

JUROR PHILLIPS: YES, SIR.

THE COURT: WE BROUGHT YOU OUT HERE SO WE WILL KIND OF REFRESH THE INFORMATION WE HAVE TO MATCH UP WITH WHAT -- WITH YOUR FACE TO KIND OF MATCH YOU UP. I BELIEVE YOU WERE A MANAGER OF FOOD LION, WERE

YOU NOT?

JUROR PHILLIPS: YES, SIR.

THE COURT: ALL RIGHT. HAVING BEEN ABLE TO MATCH UP WHAT WE'VE GOT, I'LL LET YOU GO ON BACK THERE. WE'RE GOING TO PICK A JURY, BUT WE JUST WANTED TO REFRESH OURSELVES.

JUROR PHILLIPS: YES, SIR.

THE COURT: THANK YOU SO MUCH.

JUROR PHILLIPS: YES, SIR.

(JUROR JOHN H. PHILLIPS, JR., WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: EXCUSE THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 117, VICKIE T. KASPAR.

THE COURT: 117?

THE CLERK: YES, SIR.

(JUROR VICKIE T. KASPAR WAS BROUGHT INTO OPEN COURT.)

THE COURT: MS. KASPAR, HAVE A SEAT THERE. I KEEP TELLING THESE JURORS AS THEY COME OUT JUST LIKE YOU THAT I WANT TO MATCH UP THEIR FACE WITH ALL THE

INFORMATION THAT I HAVE. YOU WERE AN ACCOUNTANT?

JUROR KASPAR: NO, I'M A HOUSEWIFE.

THE COURT: HOUSEWIFE. WELL, I DON'T KNOW WHERE I HAD THE INFORMATION. . . SO, I'M GLAD I BROUGHT YOU OUT. IN ANY EVENT, HAVING SEEN YOU I'LL BE ABLE TO MATCH UP WHAT I HAVE HERE.

JUROR KASPAR: OKAY.

THE COURT: AND SO YOU CAN GO ON BACK. THANK YOU SO MUCH.

JUROR KASPAR: OKAY.

(JUROR VICKIE T. KASPAR WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 4, REBADELL B. AHL.

(JUROR REBADELL B. AHL WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT THERE, MS. AHL. I'M TRYING TO MATCH UP EVERYTHING THAT I WROTE DOWN ABOUT EVERY JUROR AND SOMETIMES I MADE A MISTAKE. I REMEMBER YOU WERE A BUYER.

JUROR AHL: UH-HUH.

THE COURT: YOU WERE A BUYER FOR WHO?

JUROR AHL: AMERICAN YARN IN ORANGEBURG.

THE COURT: AND WHAT IS THAT? WHAT KIND OF---

JUROR AHL: PURCHASING.

THE COURT: PURCHASING?

JUROR AHL: UH-HUH.

THE COURT: AND WHAT KIND OF BUSINESS IS THAT?

JUROR AHL: LAWN AND TRACTOR.

THE COURT: LAWN AND TRACTOR.

JUROR AHL: UH-HUH.

THE COURT: OH. WELL, THAT'S GOOD TO KNOW. IN ANY EVENT, HAVING MATCHED YOU UP WITH MY INFORMATION, YOU CAN GO ON BACK THERE.

JUROR AHL: THANK YOU.

THE COURT: WE'RE GOING TO DRAW A JURY IN JUST A FEW MINUTES.

(JUROR REBADELL B. AHL WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 30, JAMES M. BROOKS.

(JUROR JAMES B. BROOKS WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT THERE, MR. BROOKS. I DIDN'T HAVE ANY TROUBLE MATCHING IT UP BECAUSE I REMEMBER YOU WERE IN THE AIR FORCE, WASN'T YOU?

JUROR BROOKS: YES, SIR.

THE COURT: YEAH. SO, HAVING SEEN YOU JUST TO REFRESH MY MEMORY, I'LL LET YOU GO ON BACK AND I'LL BE ABLE TO -- WE'LL BE ABLE TO DRAW A JURY IN JUST A FEW MINUTES. I JUST WANTED TO SEE WHAT YOU LOOK LIKE---

JUROR BROOKS: OKAY, SIR.

THE COURT: ---TO SEE IF YOU MATCHED UP WITH WHAT I HAD WRITTEN DOWN.

JUROR BROOKS: ALL RIGHT, SIR.

THE COURT: THANK YOU SO MUCH.

JUROR BROOKS: YOU'RE WELCOME.

(JUROR JAMES M. BROOKS WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 3, ALFREDA L. ADDISON.

(JUROR ALFREDA L. ADDISON WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. ADDISON. HOW ARE YOU THIS MORNING?

JUROR ADDISON: FINE.

THE COURT: I WANTED TO MATCH UP WHAT I HAD WRITTEN DOWN ABOUT PEOPLE.

JUROR ADDISON: OKAY.

THE COURT: AND SO JUST SEEING YOU HELPS ME DO THAT. BUT I RECALL YOU WORK FOR T.J. MAXX. WHAT DID YOU DO FOR THEM?

JUROR ADDISON: I'M AN ASSOCIATE. I DO RETURNS AND REFUNDS AND CONDUCT INCOME COSTS.

THE COURT: OH, I GOT YOU. WELL, HAVING REFRESHED OUR MEMORY, I'M GOING TO SEND YOU ON BACK AND WE'LL -- WE'RE GOING TO DRAW OUR JUROR IN A FEW MINUTES.

JUROR ADDISON: OKAY.

THE COURT: I JUST WANTED TO SEE WHAT YOU LOOK LIKE TO SEE IF YOU MATCHED WHAT I WROTE DOWN.

JUROR ADDISON: ALL RIGHT.

THE COURT: THANK YOU SO MUCH.

JUROR ADDISON: UH-HUH.

(JUROR ALFREDA L. ADDISON WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 124, LESLIE B. LANE.

THE COURT: 124?

(JUROR LESLIE B. LANE WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT THERE, MS. LANE. HOW ARE YOU THIS MORNING?

JUROR LANE: FINE. THANK YOU.

THE COURT: I DON'T KNOW WHY I WOULDN'T HAVE MATCHED YOUR FACE TO WHAT I HAD WRITTEN DOWN. I BELIEVE YOU'RE A PURCHASING AGENT, WERE YOU NOT?

JUROR LANE: ASSISTANT.

THE COURT: ASSISTANT PURCHASING AGENT?

JUROR LANE: YEAH, AN ASSISTANT.

THE COURT: WELL, YOUR FACE DOES MATCH UP WITH WHAT I HAVE, AND HAVING SEEN YOU TO REFRESH OUR MEMORY, I'M GOING TO SEND YOU ON BACK. BUT WE'RE STILL GOING TO DRAW A JUROR, SO THANK YOU VERY MUCH.

JUROR LANE: THANK YOU.

(JUROR LESLIE B. LANE WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE SWEAR THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 70, HELENE P. FLOYD.

(JUROR HELENE P. FLOYD WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. FLOYD.

JUROR FLOYD: OKAY.

THE COURT: I THINK I ASKED IF YOU WERE FROM COLLETON COUNTY, IF I REMEMBER CORRECTLY.

JUROR FLOYD: YOU SURE DID.

THE COURT: AND I HAVE THIS INFORMATION. WE WANTED TO BRING ALL THE JURORS OUT TO KIND OF MATCH UP THE INFORMATION WE HAD.

JUROR FLOYD: OKAY.

THE COURT: AND SO HAVING SEEN YOU AND YOU DO MATCH UP WITH WHAT I WROTE, I'LL SEND YOU BACK.

JUROR FLOYD: OKAY.

THE COURT: AND WE'RE GOING TO DRAW A JURY IN JUST A FEW MINUTES.

JUROR FLOYD: ALL RIGHT.

(JUROR HELENE P. FLOYD WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 218, MARY E. SMITH.

(JUROR MARY E. SMITH WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. SMITH. AS I TELL SOME OF MY JURORS, WE WANT TO BRING YOU OUT TO MATCH YOU UP ON THE INFORMATION WE HAD. AND I DON'T KNOW WHY I DIDN'T REMEMBER YOU BECAUSE I REMEMBER YOU WERE A BEAUTY OPERATOR.

JUROR SMITH: YES, SIR.

THE COURT: WERE YOU NOT?

JUROR SMITH: YES, SIR.

THE COURT: AND I'M SURE THEY WROTE THE SAME THING DOWN. SO HAVING MATCHED UP YOUR FACE WITH THE INFORMATION WE HAVE, I'M GOING TO SEND YOU BACK.

JUROR SMITH: OKAY.

THE COURT: IT'S JUST TO KIND OF REFRESH US.

JUROR SMITH: OKAY.

THE COURT: THANK YOU VERY MUCH.

(JUROR MARY E. SMITH WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE SWEAR THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 105, CHERYL L. HUTTO.

(JUROR CHERYL L. HUTTO WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. HUTTO. I'VE BEEN TELLING MY JURORS I'M TRYING TO MATCH UP FACES WITH EVERYTHING WE WROTE DOWN AND THEY TRY TO DO THE SAME THING. WE ARE GENERALLY SURE OF WHAT WE WRITE DOWN. SO, JUST TO REFRESH US WE BROUGHT YOU OUT SO WE COULD LOOK AT YOU ONE MORE TIME.

JUROR HUTTO: OKAY.

THE COURT: ALMOST LIKE A. . . BE THAT AS IT MAY, JUST GO ON BACK THERE WITH THE BAILIFFS AND WE'LL BE IN TOUCH WITH ALL OF YOU IN JUST A FEW MINUTES HERE.

JUROR HUTTO: ALL RIGHT.

(JUROR CHERYL L. HUTTO WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE CLERK: JUROR NUMBER 25, SANDRA BOYD.

THE COURT: I BELIEVE THAT'S ELEVEN WE'VE GOT, ISN'T IT?

MR. RUNYON: YES, SIR.

MR. BAILEY: YES, SIR.

THE COURT: WHAT NUMBER IS BOYD?

MR. RUNYON: 25.

(JUROR SANDRA BOYD WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. BOYD. I BELIEVE YOU WERE A NURSE'S ASSISTANT, WERE YOU NOT?

JUROR BOYD: YES, SIR.

THE COURT: AND WHEN WE WRITE DOWN ALL THIS INFORMATION AND WE HAVE SO MANY JURORS COME OUT, SOMETIMES WE CAN'T MATCH UP FACES WITH THE INFORMATION WE HAVE. SO, WE JUST BROUGHT YOU OUT TO KIND OF REFRESH OUR MEMORY. SO, YOU CAN GO BACK NOW AND WE'RE GOING TO BE DRAWING A JURY IN A FEW MINUTES. WE JUST WANTED TO CHECK WHAT WE HAVE.

JUROR BOYD: YES, SIR.

THE COURT: THANK YOU VERY MUCH.

(JUROR SANDRA BOYD WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: EXCUSE THE JUROR.

THE CLERK: JUROR NUMBER 163, MARJORIE MUCKENFUSS.

THE COURT: WHAT NUMBER WAS IT?

MR. RUNYON: 163.

(JUROR MARJORIE MUCKENFUSS WAS BROUGHT INTO OPEN COURT.)

THE COURT: SIT DOWN. HOW ARE YOU DOING THIS MORNING, MS. MUCKENFUSS?

JUROR MUCKENFUSS: I'M FINE. THANK YOU.

THE COURT: AS I WAS TELLING MY JURORS, WE'RE REALLY TRYING TO MATCH UP ALL THE LITTLE NOTES WE WROTE ABOUT ALL THE JURORS TO THEIR FACE AND SOMETIMES IT HELPS US IF WE BRING JURORS BACK AND WE LOOK AT THE FACE AGAIN AND PERHAPS WE SEE LITTLE IDIOSYNCRASIES AND THINGS. SO HAVING SEEN YOU, IT MATCHES UP TO EVERYTHING THAT I WROTE DOWN. SO, YOU CAN GO ON BACK THERE.

JUROR MUCKENFUSS: ALL RIGHT, SIR.

THE COURT: AND WE'RE GOING TO BE DRAWING A JURY IN JUST A FEW MINUTES.

JUROR MUCKENFUSS: ALL RIGHT, SIR.

THE COURT: THANK YOU VERY MUCH.

JUROR MUCKENFUSS: UH-HUH.

(JUROR MARJORIE MUCKENFUSS WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 85, RICHARD A. GRUBER.

(JUROR RICHARD A. GRUBER WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MR. GRUBER. I DON'T KNOW WHY I BROUGHT YOU OUT BECAUSE YOU MATCH UP WITH EVERYTHING THAT I WROTE DOWN. YOU DRIVE A BUD TRUCK. SO, HAVING SEEN YOU, I KNOW YOU MATCH UP WITH WHAT I WROTE DOWN. YOU CAN GO ON BACK.

JUROR GRUBER: OKAY.

THE COURT: AND WE'RE GOING TO PICK A JURY IN A FEW MINUTES.

JUROR GRUBER: ALL RIGHT.

THE COURT: BUT WE JUST WANTED TO REFRESH OUR MEMORIES.

(JUROR RICHARD A. GRUBER WAS EXCUSED FROM

OPEN COURT.)

THE COURT: I OUGHT TO REMEMBER THAT ONE.

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: SWEAR THE JUROR, PLEASE, MADAM CLERK.

THE COURT: ALL RIGHT. NOW, IT WILL BE TWELVE AND TWELVE -- I MEAN TWO AND ONE FOR THE FIRST ALTERNATE.

MR. RUNYON: CAN WE GO WITH YOUR FIRST RULING, JUDGE?

THE COURT: WHAT WAS THAT?

MR. RUNYON: TWELVE AND TWELVE.

THE COURT: I'M GLAD I DON'T HAVE THAT MANY.

THE CLERK: JUROR NUMBER 118, REGINA H. KING.

MR. RUNYON: THE NUMBER AGAIN, MADAM CLERK?

THE CLERK: 118.

(JUROR REGINA H. KING WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. KING. I WAS TELLING MY JURORS WE BRING YOU OUT TO KIND OF SEE IF YOU MATCH UP TO EVERYTHING WE WROTE DOWN. I REMEMBER THAT YOU WERE A TEACHER AND I DIDN'T RECALL WHAT GRADE IT WAS.

JUROR KING: KINDERGARTEN.

THE COURT: KINDERGARTEN. OH, ALL RIGHT. HAVING MATCHED UP YOUR FACE TO MY NOTES, I'LL SEND YOU ON BACK. WE'RE GOING TO DRAW A JURY IN A FEW MINUTES, BUT WE JUST WANTED TO REFRESH OUR MEMORY.

JUROR KING: OKAY.

THE COURT: THANK YOU SO MUCH.

JUROR KING: THANK YOU.

(JUROR REGINA H. KING WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 251, DOTTIE A. WHATLEY.

(JUROR DOTTIE A. WHATLEY WAS BROUGHT INTO OPEN COURT.)

THE COURT: MS. WHATLEY, HAVE A SEAT. I DO REMEMBER THAT YOU MATCH UP WITH MY NOTES, BUT IT'S ALWAYS -- WE ALWAYS LIKE TO REFRESH OURSELVES AND SEE THAT THE FACES MATCH UP. I REMEMBER YOU WERE A RETIREL PSYCHOLOGIST.

JUROR WHATLEY: YES, SIR.

THE COURT: AND I WAS VERY MUCH INTERESTED IN YOUR CAREER. SO HAVING MATCHED YOU UP TO OUR NOTES AND REFRESHED OUR MEMORY, I'M GOING TO SEND YOU ON BACK. WE'RE STILL DRAWING A JURY SO. . . JUST FOLLOW THE BAILIFF. THANK YOU SO MUCH.

(JUROR DOTTIE A. WHATLEY WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: PLEASE EXCUSE THE JUROR, MADAM CLERK.

THE CLERK: JUROR NUMBER 170, JOYCE F. NORRIS.

(JUROR JOYCE F. NORRIS WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. NORRIS. HOW AR YOU THIS MORNING?

JUROR NORRIS: JUST FINE. HOW ARE YOU?

THE COURT: IF YOU'RE DRAWN ON THE JURY, AR THEY GOING TO MISS YOU UP THERE DO YOU THINK?

JUROR NORRIS: ARE THEY GOING TO MISS ME? THEY PROBABLY WILL MISS ME.

THE COURT: YOU WERE A CASHIER, I BELIEVE, WERE YOU NOT?

JUROR NORRIS: YES, I AM.

THE COURT: YEAH. I'M JUST -- WE'RE JUST TALKING. WE WANTED TO REFRESH OUR MEMORY AND MATCH UP FACES. SO, HAVING DONE THAT, WE'RE STILL DRAWING A JURY. SO, JUST HAVE A SEAT BACK THERE WITH THE OTHERS---

JUROR NORRIS: OKAY.

THE COURT: ---FOR THE TIME BEING. THANK YOU.

JUROR NORRIS: THANK YOU.

(JUROR JOYCE F. NORRIS WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: NO CHALLENGE FOR CAUSE.

THE COURT: ANY STRIKES FOR CAUSE?

MR. RUNYON: NO STRIKES FOR CAUSE, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

THE CLERK: JUROR NUMBER 161, VIRGINIA MORRIS.

(JUROR VIRGINIA MORRIS WAS BROUGHT INTO OPEN COURT.)

THE COURT: HAVE A SEAT, MS. MORRIS. WE'RE

TRYING TO MATCH UP FACES WITH ALL OUR NOTES. I RECALL THAT YOU WORK FOR A CREDIT UNION, DID YOU NOT?

JUROR MORRIS: THAT'S CORRECT.

THE COURT: WHAT WAS THE NAME OF THAT UNION?

JUROR MORRIS: CHARLESTON NAVAL SHIPYARD FEDERAL CREDIT UNION.

THE COURT: SHIPYARD. ALL RIGHT. HAVING THEM HAVE A CHANCE TO LOOK AT YOU AND ME TOO, IF YOU'LL JUST GO ON AND. . . WE'RE STILL DRAWING A JURY, SO JUST GO ON BACK WITH THE OTHERS FOR THE TIME BEING.

JUROR MORRIS: OKAY.

THE COURT: I APPRECIATE VERY MUCH YOU COMIN OUT.

JUROR MORRIS: SURE.

(JUROR VIRGINIA MORRIS WAS EXCUSED FROM OPEN COURT.)

THE CLERK: WHAT SAYS THE STATE?

MR. BAILEY: PRESENT THE JUROR.

THE CLERK: DEFENSE?

MR. RUNYON: NO CHALLENGE FOR CAUSE.

THE COURT: WELL, WE'RE ON THE SECOND ALTERNATE, SO YOU GOT THREE.

MR. RUNYON: THEN SWEAR THE JUROR, PLEASE, YOUR HONOR.

THE COURT: ALL RIGHT. SO, THAT'S NUMBER

TWO. I HAVE NORRIS FOR ALTERNATE NUMBER ONE AND MORRIS FOR ALTERNATE NUMBER TWO. AND WOULD YOU CALL THE NAMES OF THOSE THAT WERE CHOSEN AS JURORS?

THE CLERK: RICARDO RIVERA, NUMBER 195. NANCY J. LANGENSTEIN, NUMBER 126. LAURA TYSON, NUMBER 238. MILDRED E. KNIGHT, NUMBER 120. BERGEN F. BERKAW, JR., NUMBER 16. VICKIE T. KASPAR, NUMBER 117. ALFREDA L. ADDISON, NUMBER 3. LESLIE B. LANE, NUMBER 124. HELENE P. FLOYD, NUMBER 70. MARY E. SMITH, NUMBER 218. CHERYL L. HUTTO, NUMBER 105. RICHARD A. GRUBER, NUMBER 85. ALTERNATE NUMBER ONE, JOYCE F. NORRIS, NUMBER 170. NUMBER TWO, VIRGINIA MORRIS, NUMBER 161.

THE COURT: IS THAT CORRECT, GENTLEMEN?

MR. BAILEY: CORRECT, YOUR HONOR.

THE CLERK: ARE THERE ANY OBJECTIONS---

MR. RUNYON: AS USUAL, THE CLERK'S VERY EFFICIENT, YOUR HONOR.

THE COURT: ANY OBJECTION FROM THE STATE IN THE WAY THE JURY WAS DRAWN?

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

THE COURT: ARE THERE ANY OBJECTIONS FROM THE DEFENSE OTHER THAN THOSE THAT WERE MADE DURING THE VOIR DIRE?

MR. RUNYON: NONE WHATSOEVER, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

LET THE RECORD SHOW THAT THE WAY WE DREW THIS BY SENDING THE JURY OUT WAS AGREED UPON BY BOTH THE STATE AND THE DEFENSE. ALL RIGHT. NOW, I WANT---

MR. RUNYON: THAT'S CORRECT, YOUR HONOR.

THE COURT: I WANT ALL MY JURY NOW TO COME IN AND SIT ON THOSE FIRST SEATS AND, IF YOU WILL, THOSE PEOPLE THERE -- I DON'T KNOW WHETHER I'VE GOT ENOUGH ROOM FOR ALL OF THEM. WOULD YOU MOVE BACK JUST A LITTLE BIT, THESE PEOPLE ON THE ENDS THERE, FOR JUST A MOMENT OR TWO? IT WILL JUST BE FOR A FEW MINUTES AND THEN YOU'LL BE ABLE TO COME TO THE FRONT IF YOU'D LIKE A LITTLE LATER ON. I JUST WANT TO BE SURE MY JURY -- I HAVE ENOUGH FOR MY JURY.

(WHEREUPON, ALL JURORS ARE BROUGHT INTO OPEN COURT.)

THE COURT: JUST HAVE A SEAT ON THE FRONT ROWS. IF YOU WILL, JUST FILL UP THOSE ROWS AS YOU GO. GO RIGHT DOWN TO THE END. NOW, MEMBERS OF THE JURY PANEL, I WANT TO TELL YOU HOW MUCH I APPRECIATE YOUR WILLINGNESS TO COME UP HERE AND PERFORM SUCH AN IMPORTANT DUTY. AND SO ON BEHALF OF MR. ROGERS, HIS ATTORNEYS, AND THE SOLICITOR AND THE COURT PERSONNEL, THE STATE AND THE COUNTY, I WANT TO TELL YOU HOW MUCH WE APPRECIATE THIS.

AS WE WERE REFRESHING OUR MEMORY ON THE

JURORS, THE ATTORNEYS HAD A HARD TIME CHOOSING TWELVE JURORS AND TWO ALTERNATES BECAUSE WE ALL THOUGHT YOU WOULD ALL MAKE FAIR JURORS. AND WHEN I'M USING THE WORD FAIR, I'M TALKING ABOUT FAIR TO BOTH SIDES AND BRING IN A VERDICT THAT SPEAKS THE TRUTH. BUT WE'VE DRAWN A JURY NOW AND I'M GOING TO ASK THE CLERK TO CALL YOUR NAME. WHEN YOUR NAME IS CALLED, I WANT YOU TO COME UP HERE. I HAVE TWO ALTERNATES AND I'LL BE DISCUSSING THE MATTER WITH YOU IN A MOMENT OR TWO. AND WHEN MY JURORS ARE DRAWN HERE, AS SOON AS WE FINISH WITH DRAWING THE JURY, THE REST OF THE JURORS CAN GO BACK IN THE GRAND JURY ROOM AND THE CLERK -- I THINK SHE HAS -- DON'T YOU HAVE THEIR CHECKS?

THE CLERK: NO, SIR. I HAVE TO MAIL THEM.

THE COURT: OH, YOU'RE GOING TO HAVE TO MAIL THEM. OH, MY GOODNESS. I THOUGHT THEY WERE GOING TO PAY YOU RIGHT NOW, BUT KEEP IN MIND NOT TO SPEND MUCH MONEY BECAUSE IT WON'T BE MUCH MONEY. THIS COUNTY IS NO DIFFERENT FROM THE REST OF THE COUNTIES. THE LAW DOESN'T PROVIDE THAT YOU GET PAID VERY MUCH ANYWAY AS YOU ALREADY KNOW.

BUT BE THAT AS IT MAY, THOSE JURORS WHOSE NAMES ARE NOT CALLED NOW CAN LEAVE. YOU CAN FEEL FREE TO STAY IN THE COURTROOM. YOU CAN WATCH THE PROCEEDINGS. YOU CAN COME AND GO AS YOU LIKE DURING

THE PROCEEDINGS, BUT YOU'RE EXCUSED FROM COURT FOR AT LEAST THREE YEARS. IF YOUR NAME WAS CALLED, IT WOULD BE A COMPUTER ERROR AND ALL YOU HAVE TO DO IS TELL OUR CLERK AND SHE'D BE GLAD TO TAKE YOU OFF THE JURY. DOESN'T MEAN YOU CAN'T SERVE. IT JUST MEANS YOU DON'T HAVE TO SERVE. SO, AT THIS TIME I'M GOING TO ASK THE CLERK TO CALL THE NAMES OF JURORS AND YOU JUST COME FORWARD IF YOU WILL AND HAVE A SEAT RIGHT OVER HERE.

THE CLERK: RICARDO RIVERA, NANCY J. LANGENSTEIN, LAURA E. TYSON, MILDRED E. KNIGHT, BERGEN F. BERKAW, JR., VICKIE T. KASPAR, ALFREDA L. ADDISON, LESLIE B. LANE, HELENE P. FLOYD, MARY E. SMITH, CHERYL L. HUTTO, RICHARD A. GRUBER. ALTERNATE---

THE COURT: LET THOSE TWO THERE MOVE ON DOWN IF YOU WILL.

THE CLERK: JOYCE F. NORRIS AND VIRGINIA MORRIS.

THE COURT: NOW, MS. NORRIS, YOU'RE GOING TO BE MY FIRST ALTERNATE AND YOU'LL ALWAYS SIT IN ONE OF THOSE CHAIRS. MS. MORRIS, YOU'RE GOING TO BE MY SECOND ALTERNATE. YOU'RE GOING TO ALWAYS SIT IN ONE OF THOSE TWO CHAIRS, AND IT'S SO IMPORTANT - I HOPE YOU UNDERSTAND - BECAUSE IF SOMEONE BECOMES INCAPACITATED MS. NORRIS WOULD TAKE THAT PERSON'S PLACE AND YOU'LL BE IN THE JURY ROOM DURING ALL THE PROCEEDINGS UNTIL AT

THE END IF WE STILL HAVE OUR ORIGINAL TWELVE JURORS I'LL HAVE YOU ALL SEPARATE. SO, IT'S VERY IMPORTANT THAT WE HAVE AND SO YOU'LL ALSO NEED TO BE VERY CAREFU AND LISTEN TO MY INSTRUCTIONS BECAUSE YOU'LL BE A JUROR UNTIL I DISCHARGE YOU.

NOW, I'M GOING TO SEND YOU BACK TO YOUR ROOM. YOU CAN HAVE COFFEE OR COLD DRINKS OR ANYTHING YOU NEED TO REFRESH YOURSELF. WE NEED TO GET SOME LITTLE LEGAL DETAILS IRONED OUT AND THEN WE'LL BEGIN THE TRIAL. AND WHEN YOU COME BACK OUT, YOU ALL CAN SI ANYWHERE YOU WANT TO WITH THE EXCEPTION. . . MR. BERKAW, HAVE YOU SERVED ON A JURY BEFORE?

JUROR BERKAW: YES, SIR.

THE COURT: I THOUGHT YOU HAD HAD SOME EXPERIENCE. SO, IF YOU DON'T MIND, WOULD YOU BE MY FOREMAN?

JUROR BERKAW: YES, SIR.

THE COURT: ALL RIGHT. SO, YOU'LL ALWAYS -- YOU'LL TAKE THIS SEAT HERE WHERE MY TRUCK DRIVER SITS AND YOU'LL SIT SOMEWHERE ELSE IF YOU WILL FOR ME, PLEASE. SO JUST FOLLOW THE BAILIFFS IF YOU WILL FOR ME.

(WHEREUPON, THE JURY WAS IMPANELED AT 10:50 A.M. AND THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: ALL RIGHT. NOW, THOSE NOT

CONNECTED WITH THIS CASE, YOU'RE EXCUSED. HOPE YOU HAVE A GOOD DAY, A GOOD WEEK. FEEL FREE TO STAY IN THE COURTROOM OR COME AND GO AS YOU WANT. THANK YOU SO MUCH. COURT'S GOING TO BE IN RECESS FIVE MINUTES, ONLY FIVE MINUTES.

(WHEREUPON, A SHORT BREAK WAS TAKEN).

THE COURT: THANK YOU SO MUCH. BE SEATED, PLEASE. ALL RIGHT. READY TO GO FORWARD, SOLICITOR?

MR. BAILEY: YOUR HONOR, AT THIS TIME I'D LIKE TO CONDUCT A BLAIR HEARING.

THE COURT: ALL RIGHT, SIR. DO YOU HAVE YOUR DOCTOR?

MR. BAILEY: WE CALL DR. BEHRMANN.

THE COURT: ALL RIGHT. COME AROUND, DOCTOR. COME RIGHT OVER HERE, PLEASE, SIR, AND PUT YOUR LEFT HAND ON THE BIBLE FOR ME RIGHT THERE AND RAISE YOUR RIGHT HAND.

THOMAS W. BEHRMANN, M.D., AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS OUT OF THE PRESENCE OF THE JURY:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. YOU'RE THOMAS W. BEHRMANN?

A. THAT IS CORRECT.

Q. ALL RIGHT, SIR. ARE YOU A PHYSICIAN?

A. YES, I AM.

Q. AND BRIEFLY WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I GRADUATED FROM THE UNIVERSITY OF MICHIGAN MEDICAL SCHOOL IN 1973.

MR. RUNYON: STIPULATE AS TO QUALIFICATION AS A LICENSED MEDICAL DOCTOR AND AS A PSYCHIATRIST.

BY MR. BAILEY:

Q. ALL RIGHT, SIR. YOU ARE A PSYCHIATRIST AT THE PRESENT TIME?

A. THAT IS CORRECT.

Q. LICENSED BY THE STATE OF SOUTH CAROLINA?

A. YES, SIR.

Q. WHERE ARE YOU EMPLOYED?

A. I'M CURRENTLY EMPLOYED AT WILLIAM S. HALL PSYCHIATRIC INSTITUTE IN THE DEPARTMENT OF FORENSIC SERVICES.

Q. ALL RIGHT, SIR. AND WHAT ARE YOUR SPECIFIC DUTIES AT THE WILLIAM HALL INSTITUTE?

A. MY DUTIES ARE TO PERFORM FORENSIC EVALUATIONS FOR PATIENTS WHO ARE AWAITING TRIAL AND ALSO TO MANAGE PSYCHIATRIC CONDITIONS IN PATIENTS WHO ARE ALSO CURRENTLY JAILED AND AWAITING TRIAL.

Q. ALL RIGHT, SIR. AND THE PURPOSE OF YOUR EVALUATIONS, WOULD THAT BE TO DETERMINE COMPETENCY TO

STAND TRIAL?

A. THAT'S CORRECT.

Q. UNDER THE -- TO DETERMINE CRIMINAL RESPONSIBILITY UNDER THE M'NAGHTEN RULE?

A. YES, SIR.

Q. AND WHAT ABOUT THE CAPACITY TO CONFORM THEIR CONDUCT UNDER THE GUILTY BUT MENTALLY ILL STANDARD?

A. YES, SIR, THAT ALSO.

Q. ALL RIGHT, SIR. AND WOULD YOU STATE WHETHER OR NOT YOU HAD OCCASION TO EVALUATE THE DEFENDANT IN THIS CASE, TIMOTHY D. ROGERS?

A. YES, I DID.

Q. WHEN WAS THAT EVALUATION CONDUCTED?

A. MR. ROGERS WAS ADMITTED TO THE FORENSIC SERVICES ON FEBRUARY 14TH AND DISCHARGED ON FEBRUARY 22ND. A FORMAL INTERVIEW WAS CONDUCTED WITH MR. ROGERS ON THE 22ND OF FEBRUARY OF 1994.

Q. WOULD YOU STATE WHETHER OR NOT A SERIES OF STANDARDIZED TESTS WERE ADMINISTERED TO MR. ROGERS?

A. YES, THEY WERE.

Q. AND WHO ADMINISTERED THOSE TESTS?

A. HE UNDERWENT PSYCHOLOGICAL TESTING UNDER THE DIRECTION OF DR. JEFFREY VIDDICK (PHONETIC), PH.D, WHO IS A LICENSED CLINICAL PSYCHOLOGIST.

Q. HE'S ALSO EMPLOYED BY THE HALL INSTITUTE?

A. THAT IS CORRECT.

Q. AND DO YOU WORK WITH HIM IN THESE TYPE EVALUATIONS?

A. YES, I DO.

Q. AND DID YOU HAVE ACCESS TO THE TEST RESULTS THAT WERE OBTAINED?

A. YES, I DID.

Q. AND DID YOU PERSONALLY INTERVIEW MR. ROGERS YOURSELF?

A. YES, I DID.

Q. DID YOU ALSO SPEAK TO HIM A FEW MINUTES AGO BEFORE COURT STARTED?

A. YES, I DID.

Q. BEFORE YOU WERE CALLED AS A WITNESS? ALL RIGHT, SIR. BASED ON YOUR CONTACT WITH MR. ROGERS AT THE HALL INSTITUTE AND IN COURT HERE TODAY AND YOUR REVIEW OF THE RECORD INCLUDING STANDARDIZED TESTS, DID YOU FORM AN OPINION WITH RESPECT TO HIS COMPETENCY TO STAND TRIAL?

A. YES, I DID.

Q. ALL RIGHT, SIR. WHAT IS THAT OPINION?

A. IT WAS OUR OPINION THAT MR. ROGERS IS COMPETENT TO STAND TRIAL.

Q. ALL RIGHT, SIR. AND WITH RESPECT TO THE CRIMINAL RESPONSIBILITY UNDER THE M'NAGHTEN RULE TO

KNOW THE DIFFERENCE BETWEEN MORAL RIGHT -- LEGAL RIGHT AND WRONG?

A. YES, SIR.

Q. AND WHAT IS YOUR OPINION IN THAT RESPECT?

A. IT WAS OUR OPINION THAT MR. ROGERS WAS CRIMINALLY RESPONSIBLE PURSUANT TO THE M'NAGHTEN RULE.

Q. OKAY. AND THAT WOULD HAVE BEEN AS OF NOVEMBER 25TH, 1992?

A. THAT'S CORRECT, WITH RESPECT TO THE DATE OF THE ALLEGED OFFENSE.

Q. AND WITH RESPECT TO HIS CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW UNDER THE GUILTY BUT MENTALLY ILL STANDARD?

A. YES, SIR. WE FELT THAT MR. ROGERS DID POSSESS THE CAPACITY TO CONFORM HIS BEHAVIOR TO THE REQUIREMENTS OF THE LAW ON THE DATE OF THE ALLEGED OFFENSE.

MR. BAILEY: ALL RIGHT, SIR. THAT'S ALL I HAVE. THANK YOU VERY MUCH. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE.

MR. RUNYON: NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. I HAD A CHANCE TO READ THAT REPORT, SOLICITOR. SO, I'LL JUST GO ON AND MAKE MY RULING. IT'S MY OPINION -- I AGREE WITH THE DOCTOR THAT THE DEFENDANT HAD THE CAPACITY TO CONFORM

HIS CONDUCT TO THE LAW, THAT HE KNEW LEGAL RIGHT AND WRONG, THAT HE'S COMPETENT TO STAND TRIAL AND TO ASSIST HIS ATTORNEYS IN HIS DEFENSE. THANK YOU VERY MUCH, DOCTOR.

THE WITNESS: THANK YOU.

MR. BAILEY: THANK YOU, YOUR HONOR. COULD THE DOCTOR BE EXCUSED AT THIS TIME?

THE COURT: YES, PLEASE.

THE WITNESS: THANK YOU.

THE COURT: HAVE A GOOD DAY. ALL RIGHT. COUNSELOR, I BELIEVE I'VE ASKED YOU THIS QUESTION BEFORE, BUT WHAT IS YOUR CONTENTION AS FAR AS MY RULING?

MR. RUNYON: YOUR HONOR, WE NEVER HAVE RAISED THE ISSUE THAT MR. ROGERS WAS EITHER MENTALLY ILL OR THAT HE WAS NOT COMPETENT TO STAND TRIAL NOR ASSIST IN HIS OWN DEFENSE.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

MR. RUNYON: AND, FRANKLY, HE'S BEEN ACTIVELY -- OR HE'S BEEN ACTIVE IN ASSISTING COUNSEL WITH HIS OWN DEFENSE.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. READY TO GO FORWARD?

MR. BAILEY: YES, SIR. YOUR HONOR, JUST FOR THE RECORD, THE REASON I ASKED FOR THE BLAIR HEARING

WAS THAT HE HAD BEEN UP THERE FOR AN EVALUATION PURSUANT TO COURT ORDER.

THE COURT: OF COURSE. THAT'S ALL RIGHT, SOLICITOR. ANYTHING FURTHER?

MR. RUNYON: YES, YOUR HONOR. WE WOULD MOVE FOR AT LEAST -- WE WOULD MOVE FOR SEQUESTRATION OF WITNESSES DURING THE GUILT PHASE OF THIS TRIAL AND, FRANKLY, OUR PRIMARY---

THE COURT: DO YOU HAVE ANY OBJECTION, SOLICITOR?

MR. BAILEY: YOUR HONOR, I HAVE NO OBJECTION AT ALL. THE ONLY THING I NEED TO DISCUSS WITH MR. B , THE VICTIM'S FATHER, IS THAT HE'LL BE MY FIRST WITNESS BUT THAT---

THE COURT: WELL, HE WOULDN'T HAVE TO LEAVE THE COURTROOM BECAUSE---

MR. BAILEY: WELL, I'M CONCERNED ABOUT THERE BEING SOME REBUTTAL TESTIMONY AND IF I COULD HAVE A MINUTE TO EXPLAIN THAT TO HIM LATER.

THE COURT: I'LL BE GLAD TO AND ALSO DO YOU HAVE YOUR CHIEF INVESTIGATOR? WHO DO YOU WANT TO KEEP AT THE TABLE, IF ANYONE, TO ASSIST YOU IN THE PROSECUTION?

MR. BAILEY: YOUR HONOR, I DON'T THINK I'VE GOT ANYBODY THAT WAS INVESTIGATING THE CASE AT THAT

TIME THAT I NEED AT THE TABLE.

THE COURT: ALL RIGHT, SIR. WELL, IT DOESN'T HAVE TO BE AN OFFICER. IT COULD BE ANYONE THAT YOU CHOOSE, BUT BE THAT AS IT MAY YOU CAN CHOOSE WHATEVER YOU WANT TO AND PLEASE NOTIFY YOUR WITNESSES THEN. AND WHERE DO YOU INTEND FOR THEM TO STAY? ARE THEY GOING TO BE---

MR. BAILEY: JUDGE, THEY'RE IN THE GRAND JURY ROOM, YOUR HONOR.

THE COURT: OH, ALL RIGHT. SO YOU CAN NOTIFY THEM AND ALSO NOTIFY THEM AND BE SURE TO KEEP THEM OUT OF THE COURTROOM IF YOU THINK YOU'RE GOING TO NEED THEM IN REBUTTAL.

MR. BAILEY: YES, SIR.

THE COURT: DOESN'T NECESSARILY MEAN I WOULDN'T ALLOW IT BUT AS A PRECAUTION. NOW, THE SAME THING WOULD APPLY, COUNSELOR, AS FAR AS YOUR WITNESSES ARE CONCERNED IF YOU HAVE ANY FACT WITNESSES.

MR. RUNYON: THERE ARE NO FACT WITNESSES IN THE COURTROOM NOR ARE THERE ANY FACT WITNESSES THAT WE WOULD ANTICIPATE BEING IN THE COURTHOUSE DURING THE GUILT PHASE, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. IF YOU WOULD, IF YOU SEE SOME FACT WITNESSES---

MR. RUNYON: YES, SIR.

THE COURT: ---THAT YOU THINK YOU INTEND TO USE, ABIDE BY THE SAME RULE.

MR. RUNYON: WE'LL CONSULT WITH THE CLERK ABOUT IT. YES, SIR.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: YOUR HONOR, IF I COULD HAVE A MOMENT TO TALK TO MR. B .

THE COURT: THAT'S FINE. TAKE YOUR TIME AND YOU CAN TALK TO YOUR WITNESSES, IF YOU HAVEN'T ALREADY TALKED TO THEM, IN THE GRAND JURY ROOM.

(AN OFF-THE-RECORD DISCUSSION TOOK PLACE BETWEEN MR. BAILEY AND MR. B .)

THE COURT: SOLICITOR, AS I SAID, YOUR CHIEF ASSISTANT AT TRIAL DOESN'T HAVE TO NECESSARILY BE AN OFFICER.

MR. BAILEY: YES, SIR.

THE COURT: IT COULD BE ANYBODY YOU WANT TO ASSIST YOU.

MR. BAILEY: WELL, YOUR HONOR, IN FACT, IT WOULD BE MR. B AND I CAN KEEP HIM IN THE ROOM.

THE COURT: VERY OFTEN THE OFFICER WHO'S ASSISTING YOU IS A WITNESS ALSO. SO, I MERELY GIVE YOU THAT INFORMATION. YOU CAN BE GUIDED BY WHATEVER YOU FEEL.

MR. BAILEY: YES, SIR. YOUR HONOR, MR.

B KNOWS MORE ABOUT WHAT HAPPENED THAN ANY OFFICER INVOLVED IN IT.

THE COURT: ALL RIGHT, SIR. YOU WANT TO USE HIM AS YOUR CHIEF ASSISTANT?

MR. BAILEY: YES, SIR.

THE COURT: ALL RIGHT. LET HIM HAVE A SEAT. BUT BE SURE TO -- YOUR OTHER WITNESSES -- LET THEM NOTIFY THEM THAT THEY---

MR. BAILEY: YES, SIR. YOUR HONOR, THEY'VE BEEN ADVISED.

THE COURT: YOU ALREADY ADVISED THEM?

MR. BAILEY: THEY'RE ALREADY IN THE ROOM.

THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE WE START, SOLICITOR?

MR. BAILEY: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: MR. RUNYON?

MR. RUNYON: NOTHING FROM THE DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. BRING MY JURY.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT. MADAM CLERK?

THE CLERK: LADIES AND GENTLEMEN, PLEASE STAND AND RAISE YOUR RIGHT HAND TO BE SWORN.

(WHEREUPON, THE JURY WAS SWORN AT 11:16 A.M.)

THE COURT: THANK YOU. HAVE A SEAT. NOW, MR. FOREMAN, MEMBERS OF THE JURY, I ASKED EACH ONE OF YOU INDIVIDUALLY WHETHER YOU HAD SERVED ON A JURY BEFORE, BUT TO REFRESH MY MEMORY: HOW MANY HAVE NEVER SERVED ON A JURY BEFORE? A GOOD MANY OF YOU.

LET ME TELL YOU WHAT'S ABOUT TO HAPPEN. THE STATE CHARGES THE DEFENDANT, TIMOTHY ROGERS, WHO SITS HERE AT THAT TABLE WITH HIS ATTORNEYS WITH THE CRIME OF MURDER. MURDER IS THE FELONIOUS KILLING OF ONE HUMAN BEING BY ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT. AND TO THIS INDICTMENT HE PLEADS NOT GUILTY. AND AS I TOLD YOU ALL AND REMIND YOU AT THIS TIME THAT SITTING AT THAT TABLE WITH HIS ATTORNEYS HE'S JUST AS INNOCENT AS YOU AND I UNLESS AND UNTIL THE STATE CAN SATISFY TWELVE OF YOU OF HIS GUILT BEYOND A REASONABLE DOUBT.

WELL, WHAT'S A REASONABLE DOUBT? USE THOSE WORDS REASONABLE DOUBT JUST LIKE YOU WOULD IN YOUR EVERYDAY AFFAIRS. IT'S SAID THAT A REASONABLE DOUBT IS A DOUBT WHICH WOULD MAKE A REASONABLE PERSON HESITATE TO ACT. NOW, WHAT'S GOING TO HAPPEN IN THIS CASE IS THE SOLICITOR IS GOING TO GET UP AND MAKE AN OPENING REMARK OR REMARKS. IT'S CALLED AN OPENING STATEMENT. IT'S NOT GOING TO BE BY WAY OF ANY KIND OF ARGUMENT OR ANYTHING. HE'S JUST GOING TO TELL YOU WHAT HE CONTENDS

HAPPENED AT THIS PARTICULAR TIME.

FOLLOWING HIS REMARKS, EITHER MR. ROGERS OR HIS ATTORNEYS OR ALL OF THEM CAN GET UP AND MAKE SOME OPENING REMARKS IF THEY WANT TO. THEY DON'T HAVE TO IF THEY DON'T WANT TO. REMEMBER I TOLD YOU THEY DON'T HAVE TO DO ANYTHING. NEITHER MR. ROGERS NOR HIS ATTORNEYS HAS TO PROVE ANYTHING TO YOU. IT MIGHT BE THAT THEY WON'T PUT UP ANY WITNESSES. IT MIGHT BE THAT THEY WON'T TESTIFY. I DON'T HAVE ANY IDEA. BUT IF THEY DECIDED TO DO THAT, THAT WOULD JUST BE EXERCISING A RIGHT BECAUSE THEY DON'T HAVE TO PROVE ANYTHING.

THE STATE HAS THE BURDEN OF PROVING SOMEONE GUILTY BECAUSE A PERSON IS PRESUMED TO BE INNOCENT UNDER OUR CONSTITUTION. BUT IF THEY DECIDED TO MAKE SOME OPENING REMARKS, AFTER THAT IS COMPLETED, THEN THE STATE PUTS UP THEIR WITNESSES AND THEN EACH SIDE WILL EXAMINE THOSE WITNESSES. WHEN THAT'S DONE, THEN THE DEFENSE WILL HAVE A RIGHT TO PUT UP THEIR WITNESSES IF THEY WANT TO, AND I REMIND YOU IF THEY WANT TO BECAUSE THEY DON'T HAVE TO PUT UP ANYTHING.

WHEN THAT'S COMPLETED, EACH SIDE THEN GETS A RIGHT TO MAKE THEIR -- WHAT WE CALL ARGUMENTS. I HEARD AN ATTORNEY ONE TIME SAY HE SURE DIDN'T WANT THE JURY TO THINK THEY WERE ARGUING WITH THEM, BUT THEY'RE ABLE TO MAKE CLOSING REMARKS AND MOST OF THOSE ARE AIMED AT

REMINDING YOU OF THEIR PARTICULAR SIDE OF THIS CASE. AND WHEN THAT'S COMPLETED, BOTH SIDES, THEN I'LL GIV YOU SOME INSTRUCTIONS ON THE LAW BECAUSE THAT'S MY JO IN THIS COURTROOM. I WILL TELL YOU WHAT THE LAW IS A IT MIGHT DISAGREE WITH WHAT YOU THOUGHT IT WAS OR IT MIGHT DISAGREE WITH WHAT SOMEBODY ELSE TELLS YOU IT IS. YOU'LL JUST TAKE THE LAW AS I GIVE YOU EVEN THOU YOU MIGHT DISAGREE WITH IT.

NOW, WHAT'S YOUR FUNCTION IN THIS PROCEEDING? IT'S THE MOST IMPORTANT FUNCTION BECAUSE JURIES BY OUR CONSTITUTION DECIDE FACTS, AND IN DECIDING FACTS YOU MUST DETERMINE THE BELIEVABILITY OF THE WITNESSES. SO, YOU CAN SEE HOW IMPORTANT IT IS FO YOU TO PAY CAREFUL ATTENTION WHEN THESE WITNESSES TESTIFY BECAUSE YOU'VE GOT TO DECIDE WHAT WEIGHT YOU'R GOING TO GIVE THAT TESTIMONY, WHETHER TO BELIEVE IT OR NOT, WHETHER TO NOT BELIEVE IT, WHAT PORTION TO BELIEVE OR DISBELIEVE. I CAN'T INTIMATE IN ANY WAY HOW I THINK YOU OUGHT TO -- WHO YOU OUGHT TO BELIEVE OR NOT BELIEVE. AND YOU MIGHT GET THAT IMPRESSION DURING THE TRIAL THAT I'M TRYING TO DO THAT BECAUSE AS THE JUDGE OF THE LAW I'LL MOVE -- I'LL RULE ON CERTAIN FACTS.

FOR INSTANCE, ONE OF THE ATTORNEYS MIGHT GET UP AND SAY, "I OBJECT." AND I'LL SEND YOU OUT TO YOUR ROOM AND SOMETIMES YOU MIGHT FEEL LIKE YOU'RE UP AND

DOWN LIKE A JACK-IN-THE-BOX, BUT IT'S THE ONLY WAY WE CAN OPERATE BECAUSE I MIGHT BE RULING ON A MATTER OF LAW. SUPPOSE ONE OF THE ATTORNEYS SAYS, "JUDGE, I OBJECT. I DON'T THINK THAT TESTIMONY OUGHT TO COME IN." AND IF YOU SAT RIGHT THERE AND LISTENED TO IT AND LATER ON I SAID IT COULDN'T COME IN, YOU SEE YOU WILL HAVE ALREADY HEARD IT AND SO THAT'S WHY I SEND YOU OUT.

AND IF DURING THE TRIAL -- I WON'T LET ANYBODY COME IN OR GO OUT WHILE A WITNESS IS ON THE STAND. I'LL TRY NOT TO DO THAT. SOMETIMES THERE IS AN EMERGENCY. BUT IT'S SO YOU CAN CONCENTRATE ON THESE WITNESSES AND YOU WON'T HAVE TO TURN AROUND AND LOOK TO SEE WHO'S COMING IN THE COURTROOM. WE ALL CAN DO THAT, YOU KNOW. IF THROUGHOUT THE TRIAL ANY OF YOU WANT TO TAKE A BREAK, JUST TELL THE FOREMAN. MR. FOREMAN, YOU TELL ME AND WE'LL TAKE A BREAK. I'LL TAKE A BREAK MID MORNING ALWAYS AND MID AFTERNOON ALWAYS. BUT IF FOR ANY REASON YOU WANT TO TAKE A BREAK, JUST TELL ME AND WE'LL TAKE A BREAK. AND FOR THAT MATTER, IF I SEND YOU OUT AND TELL YOU TO COME IN AND YOU'RE NOT READY, JUST WAIT UNTIL YOU ALL ARE READY AND WE'LL BE GLAD TO WAIT ON YOU.

NOW, THERE ARE A FEW THINGS I WANT YOU TO REMEMBER. FIRST, WHEN I SEND YOU TO YOUR JURY ROOM OR

WHEN WE RECESS FOR THE DAY, I DON'T WANT YOU TO DISCU THIS CASE, NOT EVEN AMONG YOURSELVES. AND YOU MIGHT SAY, WELL, JUDGE, WHY CAN'T WE TALK ABOUT IT? WE'VE GOT TO DECIDE IT. AND MY ANSWER TO THAT OBVIOUSLY IS YOU CAN'T REALLY DISCUSS ANYTHING UNTIL YOU KNOW BOTH SIDES. SO, DON'T TALK ABOUT THE CASE UNTIL I TELL YOU UNTIL ALL THE WITNESSES HAVE TESTIFIED, UNTIL THE ATTORNEYS HAVE A CHANCE TO SUMMARIZE THEIR CASE TO YOU AND UNTIL I TELL YOU WHAT THE LAW IS. SO, DON'T DISCUSS THE CASE.

I THINK THAT'S ABOUT ALL THAT I CAN THINK OF. KEEP IN MIND -- NOW, YOUR ONLY CONCERN IN THIS PROCEEDING -- I'VE TOLD YOU HOW DEATH PENALTY CASES OCCUR. THE ONLY THING YOU'VE GOT TO DECIDE IN THIS CASE IS IF THE STATE SATISFIES TWELVE OF YOU OF HIS GUILT BEYOND A REASONABLE DOUBT. IF YOU FIND -- THAT'S THE ONLY THING YOU NEED TO CONCENTRATE ON AT THIS PROCEEDING. SOLICITOR?

MR. BAILEY: MAY IT PLEASE THE COURT, YOUR HONOR? I INTRODUCED MYSELF TO EACH ONE OF Y'ALL INDIVIDUALLY DURING THE QUALIFICATION PROCESS, BUT I'M WALTER BAILEY. I'M THE SOLICITOR OF THE FIRST CIRCUIT WHICH COVERS ORANGEBURG, CALHOUN, AND DORCHESTER COUNTY AND I'LL BE HANDLING THE PROSECUTION OF THIS CASE. AT THE TABLE WITH ME, THE FIRST MAN HERE WITH THE BLUE

BLAZER IS HARRISON BELL WHO IS AN ASSISTANT SOLICITOR IN MY OFFICE. BESIDE HIM IS VIRGIL DEAS WHO'S ALSO AN ASSISTANT SOLICITOR IN MY OFFICE. BESIDE HIM IS JODY HORTMAN WHO WORKS IN MY OFFICE, AND BESIDE MRS. HORTMAN IS MELINDA B AND BESIDE HER IS MIKE B .

MELINDA AND MIKE B WERE THE PARENTS OF STEPHANIE B WHO IS THE MURDER VICTIM IN THIS CASE. STEPHANIE WAS NINE YEARS OLD WHEN SHE WAS SHOT IN THE HEAD BACK ON NOVEMBER THE 25TH OF 1992. AND AS Y'ALL KNOW BY THIS -- AT THIS POINT, TIMOTHY ROGERS WHO IS SEATED HERE IN THE MIDDLE OF THE DEFENSE TABLE IS CHARGED WITH THAT MURDER. THAT'S WHY WE'RE HERE TODAY. THIS IS THE MOST SERIOUS CASE THAT ANY OF Y'ALL ARE EVER GOING TO SIT IN JUDGMENT ON, AND WHEN I SAY JUDGMENT YOU ARE ACTING AS JUDGES OF THE FACTS IN THIS CASE. SO, IT BEARS YOUR UTMOST COMPLETE ATTENTION THROUGHOUT THE TRIAL AND I ASK THAT YOU PAY CLOSE ATTENTION TO ALL THE WITNESSES AND TO THE JUDGE WHEN HE INSTRUCTS YOU ON THE LAW AT THE END OF THE CASE.

NOW, THIS ACTION WAS INITIATED BY MY OFFICE PREPARING AN INDICTMENT. THAT INDICTMENT IS NOT EVIDENCE. THAT'S THE FORMAL CHARGE THAT BRINGS THIS MATTER BEFORE YOU FOR TRIAL. AND THAT INDICTMENT CHARGING TIMOTHY D. ROGERS WITH MURDER STATES THAT TIMOTHY D. ROGERS DID IN DORCHESTER COUNTY ON OR ABOUT

NOVEMBER 25TH, 1992, FELONIOUSLY, WILLFULLY, AND WITH MALICE AFORETHOUGHT KILL ONE STEPHANIE B BY MEANS OF SHOOTING HER IN THE BACK OF THE HEAD WITH A 38 CALIBER PISTOL AND THE SAID STEPHANIE B DID DIE IN CHARLESTON AS A PROXIMATE RESULT THEREOF ON OR ABOUT THE 26TH DAY OF NOVEMBER, 1992.

JUDGE BROWN EXPLAINED TO YOU THE TRIAL PROCEDURE WHERE, FIRST OF ALL, YOU HEAR TESTIMONY. WITNESSES ARE CALLED. THEY'RE THEN SUBJECT TO CROSS-EXAMINATION. WHEN YOU'VE HEARD ALL OF THE EVIDENCE, THE JUDGE WILL INSTRUCT YOU WHAT THE LAW IS AT THE END OF THE CASE. MY OPENING REMARKS, ANY OTHER OPENING REMARKS OR CLOSING REMARKS THAT MAY BE GIVEN TO YOU FROM THIS PODIUM DIRECTED TO THE JURY IS NOT EVIDENCE. THE EVIDENCE YOU BASE THE DECISION ON WILL COME FROM THE WITNESSES THAT YOU HEAR THAT ARE SWORN TO TESTIFY UNDER OATH FROM THAT WITNESS STAND PLUS ANY EXHIBITS THAT COME INTO EVIDENCE.

NOW, WHEN I READ THAT INDICTMENT TO YOU, IT DEFINED MURDER AS MALICE AFORETHOUGHT. JUDGE BROWN EXPLAINED TO YOU -- TOLD YOU THAT MURDER HAS TO BE WITH MALICE AFORETHOUGHT AND HE WILL INSTRUCT YOU IN DETAIL AT THE END OF THE CASE ON THE LAW INCLUDING THE DEFINITION OF MURDER. BUT JUST VERY GENERALLY AND BRIEFLY, MALICE -- JUST TO DEFINE MALICE AND MALICE

AFORETHOUGHT, MALICE IS AN EVIL STATE OF MIND, A DEPRAVED HEART. AFORETHOUGHT MEANS THAT STATE OF MIND THAT MALICIOUS STATE OF MIND, HAS TO OCCUR AT SOME POINT IN TIME BEFORE THE ACT THAT RESULTS IN THE DEATH OCCURS. IT COULD BE A SPLIT SECOND OR A MINUTE OR A WEEK OR A MONTH, BUT AT SOME POINT, HOW EVER SHORT, BEFORE THAT ACT IS COMMITTED THERE HAS TO BE THAT MALICE AFORETHOUGHT, THAT STATE OF MIND WHICH WOULD SEPARATE MURDER FROM SOME OTHER DEGREE OF HOMICIDE.

THAT MALICE MAY BE EITHER EXPRESSED MALICE OI IMPLIED MALICE. IF I GO UP TO MR. HARRISON BELL OVER HERE AND PUT A GUN TO HIS HEAD AND SAY, "I'M GOING TO KILL YOU," AND THEN I KILL HIM, THAT'S EXPRESSED MALICE. MALICE CAN BE IMPLIED WITHOUT SOMEBODY COMING UP -- EXPRESSING THAT IN A VARIETY OF WAYS. ONE WAY, FOR EXAMPLE, WOULD BE THAT YOU CAN INFER MALICE BY THE USE OF A DEADLY WEAPON IN A HOMICIDE. MALICE CAN ALSO BE SPECIFIC OR GENERAL AS FAR AS THE INTENT THAT CONSTITUTES MALICE AFORETHOUGHT.

AN EXAMPLE OF SPECIFIC MALICE WOULD BE AGAIN, USING MR. BELL AS AN EXAMPLE, IF I WALK UP TO HIM AND I SAY, "I'M GOING TO KILL YOU," AND I SHOOT HIM AND I HIT HIM AND HE DIES, THAT'S A SPECIFIC INTENT TO KILL MR. BELL WITH MALICE AFORETHOUGHT. BUT LET'S ASSUME THAT WITH THE INTENT TO KILL MR. BELL I SHOOT AT HIM AND I

MISS AND INSTEAD HIT MR. DEAS AND KILL HIM. THAT IS ALSO MALICE AFORETHOUGHT BECAUSE THAT'S CALLED THE DOCTRINE OF TRANSFERRED INTENT. MY INTENT TO KILL MR. BELL IS TRANSFERRED TO THE ACTUAL DEATH OF MR. DEAS AND THAT IS STILL MALICE AFORETHOUGHT EVEN THOUGH I DIDN'T INTEND TO KILL MR. DEAS.

ANOTHER FORM OF MALICE COULD BE A GENERAL MALICE. LET'S ASSUME THAT I DIDN'T INTEND TO KILL ANYBODY IN PARTICULAR. LET'S ASSUME THAT I TURN MY BACK, FIRE INTO THE AUDIENCE OUT HERE NOT KNOWING OR CARING IF I HIT ANYBODY OR NOT AND I DO HIT SOMEBODY AND THEY DIE. THAT STATE OF MIND, THAT EXPOSING THESE PEOPLE TO AN UNREASONABLE DEGREE OF RISK AND NOT KNOWING OR CARING IF I KILLED SOMEBODY OR NOT, THAT GENERAL INTENT IS SUFFICIENT TO CONSTITUTE MALICE AFORETHOUGHT IN SOUTH CAROLINA. BUT, AGAIN, THE JUDGE WILL INSTRUCT YOU IN DETAIL ON THE LAW. I JUST MENTION THIS TO YOU BECAUSE THAT'S PART AND PARCEL OF THE LAW OF MURDER IN SOUTH CAROLINA.

NOW, EVERYBODY IN THIS COURTROOM HAS A JOB TO DO, AN IMPORTANT JOB, AND WE ALL HAVE OUR SEPARATE JOBS TO DO. MY JOB AS THE SOLICITOR FOR THE STATE OF SOUTH CAROLINA IS TO CALL WITNESSES, TO PRODUCE EVIDENCE CONCERNING THE MURDER OF STEPHANIE B , TO ATTEMPT TO CONVINCE YOU BEYOND A REASONABLE DOUBT THAT A MURDER

WAS COMMITTED AND THAT TIMOTHY D. ROGERS COMMITTED THAT MURDER. MR. RUNYON AND MR. LEIENDECKER, OF COURSE, REPRESENT THE DEFENDANT. JUDGE BROWN PRESIDES OVER THE TRIAL. HE MAKES THE EVIDENTIARY RULINGS. AT THE END OF THE CASE HE WILL TELL YOU WHAT THE LAW IS, AND IT WILL BE YOUR DUTY TO FOLLOW THE LAW AS HE GIVES IT TO YOU WHETHER YOU AGREE WITH IT OR NOT. YOU'RE SWORN TO ACCEPT THE LAW AS HE GIVES IT TO YOU, NOT ANY PRECONCEIVED IDEA OF WHAT THE LAW -- WHAT YOU THINK THE LAW IS OR SHOULD BE.

YOUR JOB IS THE MOST IMPORTANT JOB OF ANYBODY IN THE COURTROOM. YOU'RE JUDGES, TOO. JUDGE BROWN IS THE JUDGE OF THE LAW. HE TELLS YOU WHAT THE LAW IS. YOU ARE THE JUDGES OF THE FACTS. YOU AND ONLY YOU CAN DETERMINE WHAT THE TRUE FACTS ARE AND THE WAY YOU DO THAT IS YOU LISTEN TO THE TESTIMONY. YOU LISTEN TO EACH WITNESS AS THEY TESTIFY AND YOU SIZE THESE PEOPLE UP. THERE'S NO REAL TECHNICAL SECRET TO IT. YOU USE YOUR COMMON SENSE THAT YOU DEVELOPED IN YOUR EVERYDAY LIVES WHEN YOU'RE TALKING TO SOMEBODY, DEALING WITH PEOPLE IN BUSINESS OR AT WORK OR HOWEVER AND USE THOSE SKILLS THAT YOU DEVELOPED IN DECIDING WHETHER OR NOT THIS PERSON IS COMING CLEAN WITH ME, WHETHER OR NOT HIS TESTIMONY OR HIS STATEMENTS HAVE THE RING OF TRUTH ABOUT IT, AND THEN YOU JUDGE THAT PERSON. YOU SIZE

THEM UP. YOU JUDGE THE CREDIBILITY OR BELIEVABILITY OF THAT WITNESS AND YOU MAKE THE DECISION ACCORDINGLY.

NOW, AGAIN, WHAT I'M GOING TO TELL Y'ALL ABOUT THE FACTS OF THE CASE IS NOT EVIDENCE. IT'S JUST A PREVIEW OF WHAT I EXPECT THE EVIDENCE TO SHOW TO KIND OF GIVE YOU MORE OR LESS A ROAD MAP OF WHAT'S GOING TO COME OUT IN THIS CASE. AND I'M GOING TO TELL Y'ALL RIGHT OFF THE BAT THAT IN A CASE OF THIS MAGNITUDE THAT HAPPENED IN LATE 1992 THAT'S BEING TRIED IN 1994 WE'VE GOT A GOOD BIT OF TIME THAT'S GONE BY SINCE THIS HAPPENED. DIFFERENT WITNESSES SEE THINGS FROM DIFFERENT PERSPECTIVES. THEIR MEMORIES ARE DIFFERENT AND YOU CAN EXPECT SOME MINOR VARIATIONS IN SOME OF THE TESTIMONY FROM THE STATE'S OWN WITNESSES.

BUT ALL IN ALL IN THE PRESENTATION OF MY CASE, IT'S GOING TO SHOW THAT ON THE EVENING OF NOVEMBER 25TH, 1992, WHICH WAS A WEDNESDAY - IT WAS THANKSGIVING WEEKEND - MIKE B , STEPHANIE'S FATHER, AND A FRIEND OF HIS NAMED JAMES ALLEN CARVER ALONG WITH MR. B 'S DAUGHTER, STEPHANIE, WHO WAS NINE YEARS OLD AT THAT TIME WERE SPENDING THE WEEKEND AT ONE OF THE SANTEE COOPER LAKES IN A HOUSEBOAT THAT BELONGED TO MR. B 'S IN-LAWS.

MIKE B HAD BEEN TO THE LAKE AND HAD COME BACK BECAUSE STEPHANIE WAS GETTING OUT OF SCHOOL

THAT AFTERNOON FOR THE THANKSGIVING HOLIDAYS, AND THE PLAN WAS TO PICK STEPHANIE UP FROM WORK (SIC), THEN TO PICK JIMMY CARVER UP, AND THE THREE OF THEM WOULD THEN GO ON BACK TO THE LAKE FOR THE THANKSGIVING WEEKEND. THEY PLANNED ON FISHING. THEY PLANNED ON DOING SOME SQUIRREL HUNTING WHEN THEY GOT THERE. AND THEY WERE DRIVING MR. B 'S PICKUP TRUCK WHICH IS A SORT OF OLDER MODEL FULL-SIZE FORD F-100 PICKUP TRUCK. THERE WILL BE SOME PHOTOGRAPHS OF THE TRUCK THAT I'LL SHOW YOU LATER ON.

BUT, FIRST OF ALL, MIKE PICKED STEPHANIE UP AFTER SCHOOL AROUND 3:00 OR SO AND WENT OUT TO MR. CARVER'S PLACE OF BUSINESS AND THEY STAYED THERE FOR AWHILE, AND THE TESTIMONY IS GOING TO BE THAT AT SOME POINT MIKE B DRANK A COUPLE OF BEERS. THEY THEN LEFT MR. CARVER'S PLACE OF BUSINESS AND HEADED -- THEY'RE GOING TO HEAD OUT TOWARDS THE LAKE. MIKE B WAS DRIVING HIS TRUCK. CARVER WAS SITTING AS A PASSENGER IN THE EXTREME RIGHT HAND OF THE TRUCK. STEPHANIE WAS SITTING IN THE MIDDLE.

ON THE WAY OUT OF TOWN, STEPHANIE BECAME HUNGRY AND THEY DECIDED TO STOP AT SPELL'S STORE WHICH IS A SMALL STORE RIGHT OUTSIDE THE TOWN LIMITS OF SUMMERVILLE. AS YOU APPROACH ST. GEORGE FROM SUMMERVILLE, YOU WOULD PASS SPELL'S STORE ON YOUR

LEFT. BUT AT ANY RATE, SOMETIME BETWEEN ROUGHLY 6:00 AND 6:30 MIKE B , STEPHANIE, AND JIMMY CARVER PULLED INTO SPELL'S STORE TO GET THE CHILD SOMETHING TO EAT. AND ASSUMING THE STORE IS UP HERE, MIKE B PULLED THE TRUCK SIDEWAYS, THE FRONT OF THE TRUCK HEADING TOWARDS ST. GEORGE, THE REAR OF THE TRUCK TOWARD SUMMERVILLE.

MIKE GOT OUT OF THE TRUCK; STEPHANIE GOT OUT. THEY WENT IN THE STORE. ON THE WAY INTO THE STORE, MIKE SAW A FRIEND OF HIS THAT YOU'LL HEAR FROM LATER ON, ANTHONY RILEY, WHO WAS JUST GETTING OFF THE PAY PHONE OUTSIDE THE STORE. HE NODDED TO MR. RILEY, WENT ON IN THE STORE AND BOUGHT A BEER, CAME OUT OF THE STORE BEFORE STEPHANIE DID. STEPHANIE STAYED IN THE STORE WHILE THEY FIXED A SANDWICH. WHEN MIKE CAME OUT OF THE STORE, HE WALKED TO THE BACK OF THE TRUCK, HIS PICKUP TRUCK, AND STRUCK UP A CONVERSATION WITH ANTHONY RILEY.

AS THEY WERE TALKING, A GROUP OF THREE PEOPLE CAME WALKING DOWN PIGEON BAY ROAD. PIGEON BAY ROAD INTERSECTS WITH RICHARDSON AVENUE EXTENSION AND SPELL'S STORE IS ON THE CORNER OF PIGEON BAY ROAD AND RICHARDSON AVENUE EXTENSION. IF YOU GO ON DOWN RICHARDSON, YOU RUN INTO HIGHWAY 78 COMING TOWARDS ST. GEORGE. BUT AT ANY RATE, WHILE THEY WERE BEHIND THE

TRUCK NEAR THE CORNER OF THE STORE A GROUP OF PEOPLE WALKED UP TO THE STORE. ONE OF THOSE PEOPLE WAS TIMOTHY ROGERS. ANOTHER ONE WAS A GUY NAMED DAXTON PATTERSON, AND THE THIRD PERSON WAS A GIRL NAMED [assault victim] WHO WAS A TEEN-AGE GIRL AT THAT TIME.

THE EVIDENCE WILL SHOW THAT THIS GROUP OF PEOPLE WERE DRINKING, THAT ROGERS AND DAXTON PATTERSON WERE HIGHLY INTOXICATED, AND AS THEY APPROACHED MIKE B AND ANTHONY RILEY WHILE THEY WERE TALKING, THEY MADE SOME REMARKS TO THEM TO TRY TO PROVOKE A CONFRONTATION. B AND ANTHONY RILEY CONTINUED THEIR CONVERSATION, TRIED TO IGNORE THESE PEOPLE. ROGERS WENT OVER TO THE PAY PHONE IN FRONT OF THE STORE AND PATTERSON KIND OF HUNG AROUND GOING BACK AND FORTH BETWEEN THE PAY PHONE AND THE CORNER OF THE STORE WHERE ANTHONY RILEY AND MIKE B WERE TALKING.

THE TESTIMONY IS GOING TO BE THAT AT ONE POINT DAXTON PATTERSON LIT A CIGARETTE, TOOK A FEW PUFFS AND FLICKED IT OVER ONTO ANTHONY RILEY'S SHOE. AND RILEY REALIZED THAT, YOU KNOW, THEY DIDN'T WANT A CONFRONTATION. IT WAS BEST FOR HIM TO GET ON HOME. RILEY LIVED A SHORT DISTANCE DOWN ROAD, SO HE LEFT. HE SAID, "MIKE, I GOT TO GO." SO HE KIND OF JOGGED ON DOWN THE ROAD TOWARDS HIS HOUSE, AND MIKE B DECIDED IT WAS A GOOD TIME TO LEAVE ALSO. SO,

HE STARTED WALKING TOWARD HIS TRUCK.

IN THE MEANTIME, STEPHANIE HAD GOTTEN HER SANDWICH, COME OUT OF THE STORE, GOT INTO THE TRUCK, IN THE MIDDLE OF THE TRUCK. THE DOOR WAS OPEN, THE DRIVER'S SIDE DOOR. SO, CARVER WAS STILL IN THE TRUCK. HE HAD NEVER GOTTEN OUT. STEPHANIE GOT IN THE TRUCK AND WAS EATING HER SANDWICH. MIKE WALKED FROM THE CORNER OF THE STORE TO THE TRUCK AND TRIED TO GET IN. AT THAT POINT DAXTON PATTERSON GRABBED THE DOOR. MIKE'S TRYING TO GET IN AND LEAVE. PATTERSON IS TRYING TO HOLD THE DOOR OPEN SO HE CAN'T GET IN AND THEY'RE PUSHING AND PULLING AGAINST THE DOOR.

AS THAT'S HAPPENING, CARVER GOT OUT OF THE TRUCK. MIKE B GOT OUT OF THE TRUCK AND MIKE HELD UP HIS HANDS TO PATTERSON AND SAYS, "LOOK, I DON'T WANT ANY PROBLEM. I JUST WANT TO LEAVE." AT THAT POINT ROGERS DROPPED THE TELEPHONE AND SAID SOMETHING TO THE EFFECT THAT, "I'LL TAKE CARE OF THIS FELLOW," PULLED OUT A SEMIAUTOMATIC PISTOL AND PUT IT TO MIKE B 'S HEAD AND THREATENED TO KILL HIM. HE THEN SPIT IN B 'S FACE. STEPHANIE IS STILL SITTING THERE. SHE BEGAN TO CRY LOUDLY.

HE THEN DROPPED THE GUN DOWN AND FIRED ONE SHOT INTO THE LEFT REAR WHEEL OF THE PICKUP TRUCK. WHEN THAT HAPPENED, MIKE B PUT THE TRUCK IN GEAR

AND TRIED TO LEAVE. HE WAS GOING TO MAKE KIND OF A SWEEPING TURN AND HEAD BACK IN TOWARD SUMMERVILLE. AS HE PULLED OUT, ROGERS STEPPED BEHIND THE TRUCK, FIRED A SECOND SHOT INTO THE BACK OF THE TRUCK WINDOW. IT STRUCK STEPHANIE IN THE BACK OF THE HEAD, CAME OUT ABOUT AN INCH OR TWO ABOVE HER LEFT EYE, AND THE SHOT WENT ON THROUGH THE FRONT WINDSHIELD OF THE TRUCK. SHI DIED THE NEXT DAY AS A RESULT OF THOSE INJURIES.

MIKE -- WHEN HE REALIZED HIS DAUGHTER HAD BEEN SHOT, SHE SLUMPED OVER ON HIM. HE PULLED THE TRUCK BACK INTO THE PARKING LOT, GOT OUT, YELLED AT THIS GROUP OF PEOPLE THAT, "YOU SHOT MY DAUGHTER." THEY ALL RAN OFF. HE WENT IN THE STORE. THEY CALLED THE AMBULANCE AND, AS I SAID, SHE WAS CARRIED TO THE HOSPITAL, BUT SHE DIED THE NEXT DAY OF A GUNSHOT WOUND TO THE HEAD. ROGERS WAS CAPTURED SEVERAL DAYS LATER IN ALABAMA AND BROUGHT BACK TO SOUTH CAROLINA.

NOW, YOU MAY FIND FROM THE EVIDENCE THAT ROGERS INTENDED TO SHOOT STEPHANIE. IF YOU FIND THAT, THAT'S MALICE AFORETHOUGHT. THAT'S MURDER. YOU MAY FIND THAT HE DID NOT INTEND TO SHOOT STEPHANIE, THAT HI INTENDED TO SHOOT MIKE B AND MISSED AND HIT STEPHANIE. THAT IS STILL MALICE AFORETHOUGHT. YOU MAY FIND THAT ROGERS DIDN'T INTEND TO SHOOT ANYONE IN PARTICULAR, THAT HE JUST FIRED A SHOT INTO THE TRUCK

KNOWING THERE WERE THREE PEOPLE THERE, NOT KNOWING OR CARING WHO HE HIT. IF YOU FIND THAT, THAT'S ALSO MURDER. THAT'S MALICE AFORETHOUGHT. ANY ONE OF THESE CASES, ROGERS WOULD BE GUILTY OF MURDER.

YOU'RE GOING TO HEAR FROM SEVERAL WITNESSES FROM THE STATE. I ANTICIPATE ROUGHLY MAYBE THIRTEEN TO FIFTEEN WITNESSES. EACH ONE OF THESE WITNESSES HAS SOMETHING TO SAY. THERE WILL BE LAW ENFORCEMENT OFFICERS FROM HERE AND FROM ALABAMA. THERE WILL BE A PATHOLOGIST. THERE WILL BE A BALLISTICS EXPERT FROM S.L.E.D. AND PRIVATE CITIZENS WHO WERE SUBPOENAED HERE BECAUSE THEY HAVE SOME KNOWLEDGE OF WHAT HAPPENED HERE. AND I'M CONFIDENT AT THE END OF THIS CASE YOU'LL FIND THE STATE HAS PROVEN TIMOTHY D. ROGERS GUILTY OF THE MURDER OF STEPHANIE B BEYOND A REASONABLE DOUBT.

THIS TRIAL IS NOT GOING TO BE LIKE TELEVISION. YOU CAN'T GET ALL THIS STUFF IN IN HALF AN HOUR OR AN HOUR. NO ONE WITNESS CAN GIVE Y'ALL THE WHOLE STORY OF WHAT HAPPENED. PEOPLE KNOW BITS AND PIECES AND Y'ALL HAVE TO LISTEN TO EVERYBODY AND PUT IT TOGETHER. SO, AGAIN, I ASK YOU TO PLEASE LISTEN CLOSELY TO EVERYBODY WHO TESTIFIES AND THEN USE YOUR COMMON SENSE. THERE'S NO TECHNICAL, DIFFICULTY LEGAL CONCEPT. YOU JUST USE YOUR COMMON SENSE TO DETERMINE

WHETHER OR NOT YOU BELIEVE THESE WITNESSES AND, IF YOU BELIEVE THEM, WHETHER OR NOT THE ACCUMULATION OF THEIR TESTIMONY IS ENOUGH TO CONVINCE YOU BEYOND A REASONABLE DOUBT THAT TIMOTHY ROGERS MURDERED STEPHANIE B ON NOVEMBER 25TH, 1992. MY SOLE PURPOSE IS TO PRESENT THE TRUTH TO YOU, AND VERDICT IS A LATIN WORD MEANING TO SPEAK THE TRUTH. SO, THAT'S WHAT WE'RE ASKING YOU TO DO. LET YOUR VERDICT SPEAK THE TRUTH IN THIS CASE. THANK YOU VERY MUCH.

THE COURT: ALL RIGHT. THANK YOU. MR. RUNYON---

MR. RUNYON: YES, SIR.

THE COURT: ---YOU AND THE ATTORNEYS AND MR. ROGERS, IF THEY LIKE, CAN MAKE AN OPENING STATEMENT. YOU'RE NOT REQUIRED.

MR. RUNYON: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, MY NAME IS BILL RUNYON. I PRACTICE LAW IN CHARLESTON, AND MR. LEIENDECKER AND I HAVE BEEN APPOINTED TO REPRESENT MR. ROGERS AND HE'S SEATED AT THE TABLE. AT THIS POINT IN TIME YOU DON'T KNOW THE FACTS OF THIS CASE. THE SOLICITOR HAS TAKEN A LONG TIME TO EXPLAIN TO YOU CERTAIN THINGS, SOME LEGAL PRINCIPALS, AND THEN HE'S TAKEN A SUBSTANTIAL PERIOD OF TIME HERE TO TRY TO OUTLINE WHAT HE INTENDS TO SHOW.

WE DON'T SUBSTANTIALLY DISAGREE WITH WHAT HE

SAYS THE LAW IS. SIMPLE FACT OF THE MATTER IS IS THE QUESTION IN THIS CASE IS: WHAT TYPE OF HOMICIDE IS THIS? THE STATE CHARGES THAT IT'S MURDER. WE THINK THAT THE EVIDENCE WILL SHOW -- THE STATE'S OWN EVIDENCE WILL SHOW - AND I NOTICED HOW HE GLOSSED OVER THIS - THAT ON THE EVENING IN QUESTION MR. B , MR. CARVER, MR. ROGERS, MR. PATTERSON ALL HAD BEEN DRINKING AND THERE WAS, IN FACT, A CONFRONTATION BETWEEN MR. PATTERSON AND MR. B AND THAT LATER ON AFTER THIS MATTER ESCALATED, MR. ROGERS LEFT THE TELEPHONE, AS THE SOLICITOR SAID, AND INTERVENED.

MR. ROGERS HAD A GUN THAT NIGHT. YOU'RE ALSO GOING TO HEAR THAT THERE WERE WEAPONS IN THE TRUCK. THERE WAS A HANDGUN. THERE WAS A SHOTGUN. AND SOMETHING VERY STUPID AND TRAGIC HAPPENED THAT NIGHT TO SOMEONE WHO DIDN'T HAVE ANYTHING TO DO WITH ANY OF THIS WHOLE SITUATION, ANY PART OF THIS ARGUMENT. AT THE END OF ALL THE EVIDENCE THE STATE'S THEN GOING TO ASK YOU TO FIND MR. ROGERS GUILTY OF MURDER, AND WE WILL BE BACK AND TALK TO YOU IN GREATER LENGTH ABOUT OUR VIEW OF THE EVIDENCE AND OUR VIEW OF WHAT OCCURRED.

THIS IS A HOMICIDE CASE. THAT MEANS THE UNLAWFUL -- THAT MEANS THE KILLING OF A HUMAN BEING. WHAT TYPE OF HOMICIDE IS THE ISSUE. IS IT MURDER OR IS IT SOME OTHER FORM OF HOMICIDE? THE STATE HAS GOT TO

PROVE THOSE ELEMENTS WHICH MR. BAILEY HAS OUTLINED TO YOU. I THINK YOU'LL FIND -- AND HE'S TALKED ABOUT INTENT AND HE'S TALKED ABOUT INTENT TO SHOOT THIS ONE OR THAT ONE OR WHAT HAVE YOU. I THINK YOU'RE GOING TO FIND AFTER YOU HEAR ALL THE EVIDENCE A SERIOUS QUESTION AS TO WHETHER OR NOT THERE WAS ANY INTENTION TO SHOOT ANYONE THAT NIGHT. WHAT OCCURRED IS A TRAGIC ACCIDENT. IT IS, IN FACT, A HOMICIDE, BUT IT IS NOT A MURDER.

THERE'S ABSOLUTELY NO SENSE IN US STANDING UP HERE GOING ON AND ON AND ON ABOUT WHAT YOU HAVEN'T HEARD ABOUT YET. SO, IN A FEW MOMENTS I'M GOING TO SIT DOWN AND LET THE STATE BEGIN. I WANT TO START OUT BY THANKING YOU FOR YOUR JURY SERVICE. WITHOUT YOU THE SYSTEM DOESN'T WORK. BOTH MR. LEIENDECKER AND MYSELF AND I'M SURE MR. BAILEY CAN ONLY ASK OF YOU ONE THING AND THAT IS THAT YOU GIVE YOUR UNDEVOTED (SIC) ATTENTION TO THE EVIDENCE THAT'S PRESENTED AND THEN LISTEN TO THAT EVIDENCE AND THEN LATER ON WE'LL BE ABLE TO DISCUSS - WHETHER YOU WANT TO CALL IT AN ARGUMENT, FINAL SUMMATION, OR WHAT HAVE YOU - WE'LL BE ABLE TO DISCUSS MORE INTELLIGENTLY OUR RESPECTIVE VIEWS OF WHAT THE EVIDENCE REALLY SHOWS.

I WANT YOU TO LISTEN AND JUST MAKE NOTE OF THE FACT THAT WHAT WE HAVE HERE IS NOT YOUR -- THE

STATE IS NOT GOING TO BE ABLE TO PRESENT YOUR HEINOUS MURDER CASE. THIS IS A SITUATION IN WHICH GUNS WHICH ARE THE BANE OF OUR EXISTENCE TODAY APPARENTLY, EVEN THOUGH I KNOW WE HAVE THEM IN OUR HOUSE, BUT GUNS AND ALCOHOL PLAYED A SIGNIFICANT ROLE INVOLVING EVERYONE AND I MEAN EVERYONE EXCEPT MISS B .

NOW, I'M GOING TO SIT DOWN. I WANT TO THANK YOU FOR YOUR ATTENTION. I WANT TO THANK YOU FOR ALL THE CONSIDERATION YOU GIVE AND ALL THE HARD WORK YOU'RE GOING TO DO IN THIS CASE IN ADVANCE REGARDLESS OF WHAT YOUR VERDICT IS ULTIMATELY. ALL I ASK OF YOU AND ALL THE DEFENDANT AND ALL THE STATE CAN ASK OF YOU IS THAT YOU LISTEN, TAKE IN ALL THE EVIDENCE, AND THEN ULTIMATELY MAKE A DECISION. WE DON'T CONTEND THAT THERE WASN'T A HOMICIDE HERE. WE DO ARGUE ABOUT THE TYPE OF HOMICIDE LEGALLY THAT IT WAS AND WE'LL BE ABLE TO ADDRESS THAT AT GREATER LENGTH LATER ON. THANK YOU VERY MUCH.

THE COURT: CALL YOUR FIRST WITNESS.

MR. BAILEY: YOUR HONOR, COULD WE APPROACH THE BENCH BRIEFLY?

THE COURT: YES, SIR.

(WHEREUPON, A BENCH CONFERENCE WAS HELD.)

MR. BAILEY: I CALL MIKE B .

THE CLERK: I NEED YOU TO RAISE YOUR RIGHT

HAND. PLACE YOUR LEFT HAND ON THE BIBLE AND STATE YOUR FULL NAME.

MR. BI : MICHAEL GEORGE B .

MICHAEL GEORGE B , AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MIKE, I WANT YOU TO TRY TO SPEAK UP SO I CAN HEAR YOU WAY DOWN HERE AND IF I CAN HEAR YOU THEN ALL THE JURORS CAN HEAR YOU. OKAY?

A. YES, SIR.

Q. YOU'RE MIKE B ?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND WHERE DO YOU LIVE NOW?

A. STREET, SUMMERVILLE.

Q. OKAY. AND WHAT IS YOUR MARITAL STATUS AT THIS TIME?

A. LEGALLY SEPARATED.

Q. OKAY. ARE YOU LEGALLY SEPARATED FROM MELINDA B WHO IS SEATED OVER HERE IN THE FAR END OF THE TABLE?

A. YES, SIR, I AM.

Q. OKAY. NOW, BACK IN NOVEMBER OF 1992, WHAT WAS YOUR MARITAL STATUS?

A. I WAS MARRIED.

Q. OKAY. AND HOW OLD ARE YOU AT THIS TIME?
A. THIRTY-SIX.
Q. AND HOW LONG HAVE YOU LIVED IN SUMMERVILLE?
A. HOW LONG? TWENTY, TWENTY-ONE YEARS.
Q. ARE YOU EMPLOYED NOW?
A. YES, SIR.
Q. WHERE DO YOU WORK?
A. FULL-TIME CONSTABLE FOR DORCHESTER COUNTY MAGISTRATE'S OFFICE.
Q. OKAY. IF YOU COULD PULL YOUR CHAIR FORWARD JUST A LITTLE BIT, MAYBE WE COULD HEAR YOU BETTER. OKAY. BACK IN NOVEMBER OF 1992 WERE YOU EMPLOYED AS A CONSTABLE AT THAT TIME, TOO?
A. YES, SIR, I WAS.
Q. OKAY. AND IN NOVEMBER 1992 DID YOU AND MELINDA HAVE A DAUGHTER?
A. YES, SIR.
Q. AND WHAT WAS HER NAME?
A. STEPHANIE DENISE B .
Q. DID SHE LIVE WITH YOU AND YOUR WIFE?
A. YES, SIR.
Q. AND HOW OLD WAS SHE---
A. NINE.
Q. ---IN NOVEMBER OF '92?
A. NINE YEARS OLD.

Q. DO YOU HAVE A FRIEND NAMED JIMMY CARVER?
A. YES, SIR, I DO.
Q. AND HOW LONG HAVE YOU KNOWN MR. CARVER?
A. FOR AT LEAST THIRTEEN OR FOURTEEN YEARS.
Q. DO YOU RECALL WHAT DAY OF THE WEEK NOVEMBER 25TH, 1992 WAS?
A. YES, SIR, I DO.
Q. WHAT DAY OF THE WEEK WAS IT?
A. IT WAS THE DAY THAT TIMOTHY ROGERS SHOT MY DAUGHTER.
Q. ALL RIGHT, SIR. BUT DO YOU RECALL IF THAT WAS LIKE A WEDNESDAY OR. . .
A. WEDNESDAY.
Q. IT WAS WEDNESDAY, NOVEMBER 25TH?
A. YES, SIR.
Q. AND WHAT WAS GOING ON THAT WEEKEND AS FAR AS YOU AND YOUR FAMILY?
A. WELL, THE FRIDAY BEFORE THAT, ME AND MELINDA AND HER PARENTS HAD LEFT AND WENT UP TO SANTEE RESORT TO STAY A WEEK ON THE HOUSEBOAT.
Q. OKAY. AND HOW ABOUT STEPHANIE? DID SHE GO WITH YOU WHEN YOU FIRST WENT TO THE HOUSEBOAT?
A. SHE WENT WITH US AND I WAS COMING BACK AND FORTH BRINGING HER TO SCHOOL AND COMING BACK TO GET HER TO CARRY HER BACK THAT EVENING.

Q. ALL RIGHT. DID STEPHANIE GO TO SCHOOL THAT WEDNESDAY MORNING?

A. YES, SIR, SHE DID.

Q. HOW DID SHE GET THERE?

A. I CARRIED HER.

Q. OKAY. NOW, WHAT TIME DID SCHOOL LET OUT WEDNESDAY AFTERNOON?

A. SHE GOT TO MY HOUSE ABOUT 3:30 THAT AFTERNOON OFF THE BUS. ME AND HER LEFT. I WENT TO PIGGLY WIGGLY RIGHT THERE AT MR. K'S IN SUMMERVILLE. SHE WANTED SOME DOUGHNUTS AND SHE WANTED SOME COOKIES. SO, I GOT THEM AND I GOT A TWELVE-PACK OF BUSCH LIGHT.

Q. OKAY. WAS THAT A HOT TWELVE-PACK OR A COLD TWELVE-PACK?

A. THEY WERE COLD.

Q. OKAY. NOW, WHEN YOU GOT THE BEER DID YOU DRINK ANY OF IT?

A. I DRANK ONE AT THE TIME.

Q. OKAY. ABOUT WHAT TIME OF THE DAY WAS IT?

A. PROBABLY ABOUT 4:00.

Q. OKAY. NOW, AFTER STEPHANIE GOT HOME FROM SCHOOL, WHAT DID Y'ALL DO?

A. WE WENT OUT TO WHERE JIMMY CARVER WORKED AT FREDDIE MYERS' LOGGING.

Q. WHERE IS THAT?

A. IT'S OUT ON CENTRAL AVENUE ACROSS FROM THE SUMMERVILLE SPEEDWAY.

Q. OKAY. AND WHY WERE YOU GOING OUT TO WHERE JIMMY CARVER WORKED?

A. I WAS GOING THERE TO PICK HIM UP BECAUSE HE WAS GOING TO THE HOUSEBOAT WITH US.

Q. OKAY. AND WHAT WERE YOU AND JIMMY CARVER ANI STEPHANIE PLANNING TO DO ONCE Y'ALL GOT TO THE LAKE?

A. WE WAS GOING TO FISH AND SQUIRREL HUNT.

Q. HAD YOU SQUIRREL HUNTED THERE BEFORE?

A. NO, SIR, BUT THE MAN THAT MANAGES THE RESORT SAID THAT WE COULD GO ACROSS FROM WHERE THE HOUSEBOATS IS AND THERE WAS WOODS OVER THERE WITH SQUIRRELS IN IT.

Q. ALL RIGHT.

A. AND TOLD US WE WAS WELCOME TO GO OVER THERE AND DO IT.

Q. ALL RIGHT. AND WHAT KIND OF GUN DO YOU USE TO SQUIRREL HUNT WITH?

A. WE HAD A 410 SHOTGUN.

Q. WHOSE GUN WAS IT?

A. JIMMY CARVER'S.

Q. OKAY. NOW, WHEN Y'ALL GOT TO THE LOGGING COMPANY WHERE JIMMY CARVER WORKED, DID YOU GET THE 410 SHOTGUN?

A. NOT UNTIL WE WAS GETTING READY TO LEAVE

BECAUSE WE WAS THERE AT LEAST TWO, TWO AND A HALF HOURS AFTER WE GOT THERE BECAUSE JIMMY HAD NOT COME IN ON HIS LOG TRUCK YET, AND WHEN HE COME IN HE HAD A FLAT TIRE ON IT. SO, WE HAD TO HANG AROUND AND I HELPED HIM FIX THAT.

Q. ALL RIGHT.

A. AND STEPHANIE WAS RIDING THE GOLF CART BACK THERE.

Q. OKAY. AND WHEN Y'ALL GOT READY TO LEAVE, DID Y'ALL PUT THE GUN IN THE TRUCK, THE SHOTGUN?

A. STEPHANIE HAD CARRIED THE SHOTGUN AND PUT IT BEHIND THE SEAT.

Q. OKAY. WAS THE SHOTGUN LOADED OR EMPTY?

A. NO, SIR, IT WAS NOT.

Q. OKAY. AND WHAT ELSE DID Y'ALL CARRY WITH YOU WHEN YOU LEFT JIMMY CARVER'S PLACE?

A. JIMMY HAD A CLOTHES BASKET OF CLOTHES AND THERE WAS A 9 MILLIMETER PISTOL IN THE -- UNDERNEATH ALL THE CLOTHES.

Q. OKAY. AND WHERE WAS THE CLOTHES BASKET PUT?

A. IN THE BED OF THE TRUCK.

Q. OKAY. NOW, OUT OF THIS -- THE TWELVE-PACK OF BUSCH THAT YOU SAID YOU HAD---

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. ---OUT OF THAT TWELVE-PACK, DID YOU DRINK

ANYTHING ELSE WHILE YOU WERE AT JIMMY CARVER'S PLACE?

A. PROBABLY HAD DRANK ONE OR TWO MORE.

Q. OKAY. AND DID JIMMY CARVER DRINK ANYTHING?

A. NO, SIR, HE HAD NOT.

Q. OKAY. DO YOU RECALL ABOUT WHAT TIME IT WAS WHEN Y'ALL LEFT CARVER'S PLACE TO HEAD OFF TOWARDS THE LAKE?

A. IT WAS PROBABLY AROUND 5:55.

Q. OKAY. DID YOU GO -- WHERE DID YOU GO FIRST?

A. LEFT THERE AND COME STRAIGHT DOWN CENTRAL AVENUE TO PARSON ROAD AND COME DOWN PARSON ROAD -- I MEAN, TO PARSON ROAD AND THEN TURNED IN SPELL'S GROCERY.

Q. ALL RIGHT. NOW, WHAT WAS THE REASON THAT Y'ALL WENT TO SPELL'S STORE?

A. FOR STEPHANIE TO GET A SANDWICH.

Q. OKAY. AND WHO WAS DRIVING THE TRUCK WHEN Y'ALL WENT OVER THERE?

A. I WAS DRIVING THE TRUCK.

Q. WHERE WAS STEPHANIE SITTING?

A. SHE WAS SITTING RIGHT IN THE MIDDLE BY ME.

Q. OKAY. AND WHERE WAS JIMMY CARVER SITTING?

A. HE WAS SITTING ON THE PASSENGER SIDE.

Q. MR. B , ABOUT WHAT TIME OF THE DAY WAS IT WHEN YOU GOT TO SPELL'S STORE?

A. PROBABLY 6:00 OR A LITTLE AFTER.

Q. OKAY. THIS WAS IN NOVEMBER. DO YOU RECALL WHETHER IT WAS LIGHT OR DARK OUTSIDE?

A. IT WAS -- IT USUALLY GETS DARK IN NOVEMBER AROUND 6:00.

Q. OKAY.

A. 5:30, 6:00.

Q. IS THERE ANY LIGHTING OUTSIDE THE STORE IN THE PARKING LOT?

A. THERE'S LIGHTING THERE, BUT IT'S NOT THAT GOOD.

Q. LET ME SHOW YOU A PHOTOGRAPH OF A TRUCK AND ASK IF YOU CAN IDENTIFY THAT AS BEING YOUR TRUCK.

A. YES, SIR.

MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS. MR. RUNYON HAS SEEN ALL THE PHOTOGRAPHS.

THE COURT: ANY OBJECTION?

MR. RUNYON: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

MR. RUNYON: THAT WILL BE STATE'S EXHIBIT NUMBER 1?

MR. BAILEY: YEAH.

MR. RUNYON: ARE YOU GOING TO DO THEM AS A GROUP?

THE COURT: JUST A MINUTE. LET HER -- LET

HER GET IT MARKED AND THEN Y'ALL CAN TALK.

(STATE'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

MR. RUNYON: HE'S GOT THEM IN SUCCESSIVE NUMBERS?

MR. BAILEY: YEAH. DO THEM SEPARATELY.

BY MR. BAILEY:

Q. LET ME SHOW YOU THE SECOND PHOTOGRAPH AND ASK IF THAT'S THE REAR VIEW OF THAT SAME TRUCK.

A. YES, SIR, IT IS.

MR. BAILEY: OFFER THIS AS NUMBER 2.

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

THE COURT: GO AHEAD.

BY MR. BAILEY:

Q. MR. B , AT THE TIME THAT YOU WENT TO SPELL'S STORE, WAS THERE ANY DAMAGE TO THE REAR GLASS IN THE TRUCK OR THE FRONT WINDSHIELD?

A. NO, SIR, THERE WASN'T.

Q. TO YOUR KNOWLEDGE, WAS THERE ANY DAMAGE TO THE LEFT REAR WHEEL?

A. NO, SIR.

Q. NOW, WAS THERE A TAILGATE ON THE PICKUP TRUCK?

A. NO, SIR.

Q. OKAY. AND WHAT COLOR WAS THE TRUCK?

A. IT'S A SILVERISH GRAY.

Q. SILVER-GRAY? AND THAT'S A FULL-SIZE PICKUP TRUCK?

A. FULL-SIZE F-150.

Q. WHAT'S YOUR BEST ESTIMATE - I MIGHT HAVE ASKED YOU THIS BEFORE - THE BEST ESTIMATE OF THE TIME Y'ALL GOT TO SPELL'S STORE?

A. ANYWHERE FROM FIVE TILL SIX OR FIVE AFTER SIX.

Q. OKAY. I'M GOING TO SHOW YOU ANOTHER PHOTOGRAPH WHICH IS A PICTURE OF SPELL'S STORE AND ASK YOU, WITH THE EXCEPTION OF THIS TAPE, THIS YELLOW TAPE THAT'S ACROSS THERE, IF THAT'S AN ACCURATE DEPICTION OF SPELL'S STORE AS IT LOOKED THAT NIGHT OR THAT AFTERNOON.

A. THAT'S A PICTURE OF SPELL'S STORE, YEAH, AND THAT'S HOW IT LOOKED.

MR. BAILEY: ALL RIGHT, SIR. YOUR HONOR, I'D OFFER THIS AS STATE'S NUMBER 3.

MR. RUNYON: NO OBJECTION, YOUR HONOR.

MR. BAILEY: YOUR HONOR, BEAR WITH ME ONE SECOND, PLEASE.

(STATE'S EXHIBIT 3 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. MR. B , LET ME GET YOU TO TAKE A LOOK AT THIS. THIS IS A NOT-TO-SCALE DRAWING OF SPELL'S

STORE.

A. YES, SIR.

THE COURT: SOLICITOR, IF YOU'D TURN IT AROUND JUST A LITTLE BIT, YOU GOT AT LEAST ONE WITNESS (SIC) WHO CAN'T SEE IT.

MR. BAILEY: OKAY.

THE COURT: JUST ANGLE THAT OUT JUST A LITTLE. ALL RIGHT. THANK YOU.

BY MR. BAILEY:

Q. CAN ALL Y'ALL SEE THAT? COME ON AROUND HERE AND TRY TO KIND OF STAY TO THE SIDE SO YOU DON'T BLOCK THE VIEW. TAKE A LOOK AT THAT AND KIND OF ORIENT YOURSELF. DO YOU RECOGNIZE THAT AS BEING A NOT-TO-SCALE SKETCH OF SPELL'S STORE?

A. NO.

Q. OKAY. THIS IS SPELL'S GROCERY STORE. PIGEON BAY ROAD HERE AND RICHARDSON AVENUE.

A. ALL RIGHT.

Q. OKAY. WOULD YOU TELL THE JURY - JUST ONE SECOND - WHEN YOU PULLED YOUR TRUCK INTO SPELL'S STORE HOW YOU PARKED AND I'LL GET YOU TO GO AHEAD AND USE THIS MARKER HERE AND JUST DRAW YOUR TRUCK IN THE WAY YOU PARKED.

A. I PULLED THE TRUCK IN OFF OF PARSON ROAD, PULLED IT RIGHT HERE.

Q. THIS IS THE SIDEWALK OUT HERE. OKAY? THIS IS THE---

A. THE TRUCK WAS PARKED---

COURT REPORTER: I'M SORRY. I CAN'T HEAR THE WITNESS.

THE COURT: LET HIM DRAW IT FIRST AND THEN LET HIM TALK.

THE WITNESS: THE SIDEWALK IS HERE. THE TRUCK WAS RIGHT IN HERE.

BY MR. BAILEY:

Q. THIS IS THE EDGE OF THE SIDEWALK HERE.

A. ALL RIGHT. WELL, THE TRUCK WAS PARKED RIGHT OUT -- THIS IS WHERE IT WAS.

Q. OKAY. DRAW AN ARROW WHERE THE FRONT OF THE TRUCK WAS.

A. THE FRONT OF THE TRUCK -- THE FENDERS IS PROBABLY RIGHT AROUND IN HERE.

Q. THE TRUCK WAS HEADING THIS WAY?

A. YES, SIR, TOWARD 78.

Q. OKAY. ALL RIGHT. GO AHEAD AND HAVE A SEAT IF YOU WOULD. MIKE, WHEN YOU PULLED YOUR TRUCK UP PARALLEL IN FRONT OF SPELL'S STORE IN FRONT OF THE TELEPHONES YOU HAVE DRAWN UP THERE, WHAT DID YOU DO NEXT?

A. THAT'S WHEN ME AND STEPHANIE HAD GOT OUT THE

TRUCK, WENT INTO SPELL'S GROCERY FOR HER TO GET A SANDWICH---

Q. OKAY. NOW---

A. ---BECAUSE SHE WAS HUNGRY.

Q. ALL RIGHT. WHAT DID JIMMY CARVER DO, IF ANYTHING, WHEN YOU AND STEPHANIE GOT OUT OF THE TRUCK?

A. JIMMY STAYED AND SAT IN THE TRUCK.

Q. OKAY. WHEN YOU GOT OUT OF THE TRUCK, DID YOU LEAVE THE DOOR OPEN OR SHUT IT?

A. I LEFT THE DOOR OPEN ON THE TRUCK AND I SEEN ANTHONY RILEY ON THE PHONE.

Q. OKAY.

A. AND I HAILED TO HIM AND HE HAILED BACK.

Q. ALL RIGHT. TELL THE JURY WHO ANTHONY RILEY IS.

A. HE'S A BLACK FRIEND OF MINE.

Q. HOW LONG HAD YOU KNOWN MR. RILEY?

A. I'VE KNOWN HIM FOR ABOUT TEN YEARS.

Q. AND HOW DID YOU KNOW HIM?

A. HE GOT INTO LAYING CARPET WITH ME AND MY EX-BROTHER-IN-LAW AND THAT'S HOW I GOT TO KNOW HIM.

Q. OKAY. NOW, DO YOU RECALL WHETHER OR NOT ANYBODY ELSE WAS IN FRONT OF THE STORE WHEN YOU STOPPED YOUR TRUCK THERE BESIDES ANTHONY RILEY?

A. HE WAS THERE AND THERE WERE OTHER PEOPLE THAT

WALKED AROUND THE STORE, BUT I DIDN'T VAGUELY PAY ATTENTION TO THEM.

Q. ALL RIGHT. NOW, AFTER YOU AND STEPHANIE WENT IN THE STORE, WHAT DID Y'ALL DO?

A. SHE WENT IN THE STORE AND I ASKED IF MR. SPELL WOULD FIX HER A SANDWICH. SO, SHE STAYED IN THERE AND WAITED AND THEN I WENT BACK OUT. ME AND ANTHONY WAS TALKING.

Q. OKAY. DID YOU BUY ANYTHING IN THE STORE?

A. I DIDN'T AT THAT TIME. I WENT BACK IN BECAUSE I WAS WONDERING WHERE SHE WAS AT.

Q. ALL RIGHT.

A. WHAT WAS TAKING HER SO LONG. AND THEN WHEN I WENT BACK IN IS WHEN I BOUGHT ONE MORE BEER.

Q. ALL RIGHT. AND HOW MANY BEER WOULD THAT HAVE MADE? YOU SAID YOU DRANK ONE---

A. I DID NOT -- I NEVER GOT A CHANCE TO DRINK THAT ONE. I THREW IT IN THE TRASH AFTER THIS HAPPENED TO HER.

Q. OKAY. AT THAT POINT IN TIME WHEN YOU GOT THERE YOU SAID YOU HAD HAD ONE BEER WHEN YOU GOT THE TWELVE-PACK; RIGHT?

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. AND THEN I THINK YOU SAID YOU DRANK MAYBE A COUPLE OF BEERS AT. . .

A. I HAD THREE OR FOUR AT THE MOST.

Q. OKAY. WELL, WHAT KIND OF SHAPE WERE YOU INSOFAR AS---

A. I WAS IN GOOD SHAPE.

Q. OKAY. NOW, AFTER YOU CAME OUT OF THE STORE THE SECOND TIME, DID STEPHANIE STAY IN THE STORE?

A. STEPHANIE HAD COME OUT AND GOT IN THE TRUCK.

Q. OKAY. AND---

A. AND ME AND ANTHONY HAD STOOD ON THE CORNER OF PIGEON BAY ROAD RIGHT THERE AT THE EDGE OF THE SIDEWALK TALKING TO EACH OTHER.

Q. GO UP THERE, IF YOU WOULD, TO THE CHART AGAIN AND GET THAT MAGIC MARKER AND DRAW AN X. AT ABOUT THE LOCATION WHERE YOU AND ANTHONY RILEY---

THE COURT: SOLICITOR, HERE'S A RED PEN IF YOU WANT. IT'S A SOFT PEN IF YOU. . .

BY MR. BAILEY:

Q. ALL RIGHT. HOLD ON A SECOND. WE CAN USE -- THANK YOU, YOUR HONOR. JUST DRAW A RED X. THERE, RED X., WHERE Y'ALL WERE TALKING.

A. THE SIDEWALK IS HERE AND ONE HERE. WE WAS RIGHT IN HERE TALKING THERE AT THAT SIDEWALK.

Q. OKAY. ALL RIGHT. YOU CAN HAVE A SEAT AGAIN. SO, YOU AND ANTHONY RILEY ARE TALKING IN THE CORNER AND YOU'VE TESTIFIED STEPHANIE HAD GOTTEN BACK

INTO THE TRUCK WITH MR. CARVER; RIGHT?

A. YES, SIR.

Q. WHAT OCCURRED NEXT?

A. WELL, THAT'S WHEN ME AND ANTHONY WAS AT THE CORNER OF -- AT THE EDGE OF THAT SIDEWALK ON INTO PIGEON BAY ROAD WHEN TIMOTHY ROGERS---

Q. DO YOU SEE TIMOTHY ROGERS IN COURT?

A. YEAH, THAT'S HIM RIGHT THERE.

Q. YOU'RE POINTING TO THE MAN IN THE MIDDLE OF THIS TABLE?

A. YES, SIR.

Q. OKAY.

A. TIMOTHY ROGERS AND DEXTER (SIC) PATTERSON AND [assault victim] HAD COME. ME AND ANTHONY WAS STANDING THERE. THEY COME BEHIND US.

Q. WHAT DIRECTION DID THEY COME FROM?

A. FROM PIGEON BAY ROAD TO THE STORE.

Q. GO OVER AGAIN, MR. B , REFERRING TO THAT CHART AND SHOW THE JURY WHAT DIRECTION THEY CAME FROM.

A. THEY WERE COMING FROM PIGEON BAY -- THEY HAD -- INTO PIGEON BAY RIGHT UP HERE.

Q. OKAY. NOW, THIS IS RICHARDSON AVENUE.

A. RIGHT.

Q. PIGEON BAY RUNS INTO RICHARDSON. THIS IS IN FRONT OF SPELL'S. WHERE WERE THEY COMING FROM?

A. PIGEON BAY ROAD DEAD-ENDS.
Q. INTO RICHARDSON?
A. DEAD-ENDS ALL TO -- FROM SPELL'S GROCERY DOWN. IT DEAD-ENDS.
Q. ALL RIGHT.
A. THEY WAS COMING FROM THE DEAD-END PART UP TO WHERE SPELL'S WAS.
Q. OKAY. WERE THEY COMING FROM BEHIND THE STORE OR FROM THE FRONT OF THE STORE?
A. THEY WAS COMING DOWN THE SIDE OF THE STORE WHERE PIGEON BAY ROAD WAS.
Q. OKAY. ALL RIGHT. GO AHEAD AND HAVE A SEAT. HAD YOU EVER SEEN ANY OF THESE THREE PEOPLE BEFORE - TIMOTHY ROGERS, DAXTON PATTERSON, OR [assault victim] ?
A. NEVER SEEN NEITHER THREE OF THEM ALL MY LIFE.
Q. OKAY. AND AS THEY APPROACHED YOU AND ANTHONY RILEY, WHAT, IF ANYTHING, OCCURRED?
A. I REMEMBER ROGERS OR EITHER PATTERSON ONE SAYING, "DON'T FUCK WITH THEM CRACK-HEAD-MOTHER-FUCKERS," AND THAT'S WHAT WAS SAID. AND THEN THEY -- ROGERS WENT TO THE PHONE AND ME AND ANTHONY STOOD THERE AND TALKED AND DEXTER PATTERSON KEPT PACING BACK AND FORTH.
Q. BACK AND FORTH -- BACK AND FORTH WHERE?
A. FROM THE PHONE TO US SAYING WORDS BACK AND

FORTH.

Q. OKAY. DO YOU REMEMBER SPECIFICALLY WORDS HE WAS USING?

A. SAYING COME ON YOU WHITE SON OF A BITCH AND THIS AND THAT. COME ON SO I CAN BEAT YOUR ASS.

MR. RUNYON: YOUR HONOR, I'M GOING TO OBJECT TO THIS LINE OF HEARSAY. I MEAN, MR. PATTERSON IS NOT ON TRIAL. WE DON'T EVEN KNOW IF HE'S GOING TO BE A WITNESS.

THE COURT: SOLICITOR, WAS -- DETERMINE WHETHER OR NOT ROGERS WAS THERE.

BY MR. BAILEY:

Q. WAS ROGERS PRESENT WHEN THIS WAS GOING ON?

A. YES, SIR, HE WAS.

Q. OKAY. WHAT WAS HE DOING?

A. ROGERS WAS ON THE PHONE.

Q. OKAY. AND HOW -- ROUGHLY HOW FAR IS THE PHONE FROM THE PLACE WHERE Y'ALL WERE STANDING THERE TALKING?

A. FROM WHERE ME AND ANTHONY WAS COULD HAVE BEEN ANYWHERE FROM TWENTY TO TWENTY-FIVE FOOT.

Q. OKAY. ALL RIGHT. NOW, WOULD YOU STATE WHETHER OR NOT YOU AND ANTHONY RILEY WERE RESPONDING TO DAXTON PATTERSON?

A. NO, SIR, WE WERE NOT.

Q. OKAY. WHAT DID Y'ALL DO WHEN---
A. WE JUST STOOD THERE AND IGNORED HIM.
Q. OKAY. AND WHAT HAPPENED THEN?
A. THEN HE KEPT PACING BACK---
Q. DON'T SAY "HE." USE A NAME.
A. DEXTER KEPT PACING BACK AND THEN THAT'S WHEN HE FLIPPED THE CIGARETTE ON ANTHONY'S SHOE.
Q. OKAY. AFTER DAXTON PATTERSON FLICKED THE CIGARETTE ON ANTHONY'S SHOE, WHAT HAPPENED?
A. WE JUST STOOD THERE AND IGNORED IT. WE JUST STOOD IT OFF, AND THEN ANTHONY SAID, "WELL, I'M GOING HOME." SO, HE LEFT AND WENT HOME.
Q. WHERE DOES ANTHONY LIVE?
A. ON ROAD NOT EVEN HARDLY A BLOCK FROM THE STORE.
Q. ALL RIGHT. AND HOW DID HE LEAVE?
A. HE LEFT ON FOOT.
Q. OKAY. WHAT DID YOU DO AFTER ANTHONY RILEY LEFT?
A. I WENT TO APPROACH TO GET IN THE TRUCK TO LEAVE AND DEXTER PATTERSON KEPT PULLING MY DOOR AND WOULDN'T LET ME CLOSE IT AND KEPT GETTING IN KARATE STANDS WANTING TO FIGHT ME AND ALL THIS.
Q. ALL RIGHT. NOW, AT THAT POINT IN TIME WHERE WAS JIMMY CARVER?

A. JIMMY HAD GOT OUT OF THE TRUCK ONE TIME.
Q. WHEN Y'ALL WERE STRUGGLING WITH THE DOOR, WHERE WAS HE?
A. JIMMY WAS SITTING IN THE TRUCK.
Q. WHERE WAS STEPHANIE?
A. SHE WAS IN THE TRUCK.
Q. OKAY. WHAT HAPPENED AS Y'ALL STRUGGLED WITH THE DOOR?
A. KEPT STRUGGLING THERE FOR A FEW MINUTES AND THEN TIMOTHY ROGERS TOOK THE GUN OUT AND PULLED IT UP TO MY FOREHEAD RIGHT THERE.
Q. ALL RIGHT. NOW, WHEN HE DID THAT, WHERE WERE YOU?
A. I WAS SITTING IN THE SEAT OF THE TRUCK.
Q. OKAY. HAD YOU GOTTEN OUT OF THE TRUCK AT ANY POINT IN TIME BEFORE ROGERS CAME UP WITH THE GUN?
A. I HAD GOT OUT ONE TIME AND HELD MY HANDS UP AND TOLD HIM I DIDN'T WANT NO PROBLEMS.
Q. TOLD WHO?
A. TOLD TIMOTHY ROGERS.
Q. OKAY. THAT YOU DIDN'T WANT ANY PROBLEMS?
A. RIGHT.
Q. OKAY. THEN WHAT HAPPENED?
A. I GOT BACK IN THE TRUCK AND THEN DEXTER STARTED PULLING AGAIN AND THEN THAT'S WHEN I GOT THE

GUN HERE.

Q. ALL RIGHT. YOU SAID YOU GOT THE GUN HERE. YOU'RE INDICATING---

A. FOREHEAD.

Q. ---THE MIDDLE OF YOUR FOREHEAD?

A. YES, SIR. FOREHEAD.

Q. WHO PUT THE GUN TO YOUR FOREHEAD?

A. TIMOTHY ROGERS.

Q. OKAY. WOULD YOU STATE WHETHER OR NOT ANYTHING WAS SAID BY ANYBODY AT THE TIME THAT GUN WAS PLACED TO YOUR FOREHEAD?

A. HE JUST -- SOMETHING LIKE THAT I'LL KILL YOU. THAT'S ALL THAT I CAN REMEMBER.

Q. WHO SAID THAT?

A. HE DID.

Q. OKAY. WHEN YOU SAY HE, YOU'RE POINTING TO TIMOTHY ROGERS.

A. YES, SIR.

Q. OKAY. UP UNTIL THAT POINT IN TIME, HAD YOU DONE ANYTHING TO ANTAGONIZE OR PROVOKE TIMOTHY ROGERS, DAXTON PATTERSON, OR THE GIRL THAT WAS WITH THEM?

A. NO, SIR, I DIDN'T.

Q. WHAT WERE YOU WANTING TO DO?

A. ALL I WANTED TO DO WAS LEAVE SO I COULD GET BACK TO THE LAKE TO THE BOATHOUSE (SIC).

Q. OKAY. NOW, AFTER TIMMY ROGERS PUT THAT GUN TO YOUR HEAD -- WITHDRAW THAT. DID YOU SEE THE KIND GUN IT WAS?

A. IT LOOKED LIKE TO ME IT WAS A 380 CALIBER PISTOL.

Q. OKAY. DO YOU RECALL WHETHER IT WAS A SEMIAUTOMATIC OR A REVOLVER?

A. I THINK IT WAS A SEMIAUTOMATIC.

Q. OKAY. NOW, HE PUT THIS GUN TO YOUR HEAD AND SAID SOMETHING TO YOU ABOUT KILLING YOU.

A. RIGHT.

Q. RIGHT? THEN WHAT HAPPENED? WHAT WAS STEPHANIE DOING WHEN THIS HAPPENED?

A. STEPHANIE WAS IN THE TRUCK LOOKING AT HIM AND HE LOOKED DOWN AT HER AND SHE WAS IN A HARD CRY. FOR SOME GODLY REASON HE DROPPED THAT GUN DOWN AND FIRED AND IT HIT THE HUB ON THE TRUCK.

Q. OKAY. THEN WHAT HAPPENED, MR. B ?

A. FINALLY AFTER THAT HAPPENED I FINALLY GOT MY DOOR CLOSED, AND BEFORE I COULD GET IT CLOSED HE CLEARED HIS THROAT AND HE SPIT RIGHT IN MY FACE RIGHT HERE AND IT JUST RUN DOWN---

Q. WHEN YOU SAY HE. . .

A. TIMOTHY ROGERS.

Q. ALL RIGHT. SPIT IN YOUR FACE. THEN WHAT DID

YOU DO?

A. FINALLY I GOT THE DOOR CLOSED AND I WAS IN A WIDE SWING TO PULL OUT ONTO RICHARDSON AVENUE TO CARRY JIMMY TO O.K. GROCERY TO GET HIS CHECK CASHED.

Q. OKAY. AND AS YOU PULLED OUT---

A. IN THE MEANTIME OF THE WIDE SWING AND PULLING OUT, THE ANGLE THAT IT WAS ON, ALL I COULD HEAR WAS BACK GLASS (WITNESS INDICATED A SOUND) AND THAT WAS IT. I HEARD ANOTHER SHOT.

Q. OKAY. WHEN THAT SECOND SHOT TOOK PLACE, WHERE WAS YOUR TRUCK?

A. I WAS IN THE SWING GETTING READY TO GET ON RICHARDSON.

Q. OKAY. COULD YOU COME BACK UP TO THE CHART AGAIN WITH THAT RED PENCIL AND THIS IS LABELED RICHARDSON AVENUE AND INDICATE ABOUT WHERE THE TRUCK WAS?

A. THE TRUCK WAS HERE TO START WITH.

Q. I DON'T THINK ANYBODY -- KIND OF MOVE OVER. OKAY.

A. I SWUNG THE STEERING WHEEL HARD ENOUGH SO I COULD COME OUT TO GET ON RICHARDSON HERE---

Q. OKAY.

A. ---TO COME BACK TO SUMMERVILLE.

Q. ALL RIGHT. DRAW ANOTHER BLUE MARK WHERE YOUR

TRUCK -- APPROXIMATELY WHERE THE TRUCK WAS WHEN THE SECOND SHOT WAS FIRED.

A. THE TRUCK WAS -- THE TRUCK WAS KIND OF A STRAIGHT STILL ON AN ANGLE LIKE THAT.

Q. ALL RIGHT.

A. AND ALL I REMEMBER IS HEARING THE SHOT COME THROUGH THE BACK.

Q. DRAW A DARK LINE ABOUT WHERE THE TRUCK WAS.

A. ABOUT IN THE SWING RIGHT HERE.

Q. OKAY. GO AHEAD AND SIT DOWN AGAIN IF YOU WOULD. MIKE, WERE YOU STILL IN THE PARKING LOT WHEN THAT SECOND SHOT WAS FIRED?

A. YES, SIR, I WAS.

Q. WHEN YOU HEARD THE SHOT AND HEARD THE GLASS BREAK, WHAT HAPPENED NEXT?

A. WHAT HAPPENED NEXT? I JUST STAYED IN THE SWING AND PULLED RIGHT INTO THE FRONT PLATE GLASS OF WHERE SPELL'S GROCERY IS IN THE FRONT.

Q. AND YOU PULLED BACK INTO THE STORE; RIGHT?

A. RIGHT AT THE FRONT OF THE PLATE GLASS.

Q. OKAY. AND WHERE WAS THE FRONT OF YOUR TRUCK POINTED WHEN YOU PULLED BACK IN?

A. THE VERY FRONT HOOD AND THE HEADLIGHTS WAS POINTED RIGHT AT THAT PLATE GLASS.

Q. OKAY. NOW, WHEN YOU STOPPED YOUR TRUCK, WHAT

HAPPENED?

A. WHEN I STOPPED THE TRUCK AND GOT OUT, I HOLLERED. YOU KNOW, I SAID, "YOU JUST SHOT MY DAUGHTER." AND THEY STOOD THERE AND LAUGHED AT ME.

Q. WHEN YOU SAY THEY, WHO IS THEY?

A. TIMOTHY ROGERS AND DEXTER PATTERSON.

Q. WERE YOU INSIDE OR OUTSIDE OF THE TRUCK WHEN THAT HAPPENED?

A. I WAS OUTSIDE THE TRUCK.

Q. WHERE WAS STEPHANIE?

A. SHE WAS IN THE TRUCK AND THEN AFTER I SAID THAT I WENT INTO SPELL'S GROCERY TO GET THEM TO CALL FOR HELP.

Q. OKAY. DID YOU SEE WHAT HAPPENED TO TIMOTHY ROGERS AND DAXTON PATTERSON AND THE GIRL?

A. NO, SIR, I DIDN'T. ALL I KNOW IS THEY RAN.

Q. OKAY. YOU POINTED TIMOTHY ROGERS OUT AND I'D LIKE THE RECORD TO SHOW YOU POINTED TO THE DEFENDANT. DID HE LOOK THEN LIKE HE LOOKS NOW?

A. NO, SIR, HE DIDN'T.

Q. WHAT DID HE LOOK LIKE BACK THEN?

A. HE HAD DREADLOCKS IN HIS HAIR.

Q. DO YOU RECALL HOW HE WAS DRESSED?

A. HE HAD JUST REGULAR STREET CLOTHES ON LIKE A BLACK JACKET OR SOMETHING LIKE THAT.

Q. OKAY. AND DO YOU RECALL HOW TIMOTHY ROGERS AND DAXTON PATTERSON WERE ACTING WHEN THEY CAME UP THERE?

A. YEAH, THEY ALL HAD ATTITUDES.

Q. COULD YOU TELL WHETHER OR NOT THEY HAD BEEN DRINKING?

A. KIND OF FIGURED THEY'D BEEN DOING SOMETHING.

MR. RUNYON: OBJECTION, YOUR HONOR. THERE'S NO FOUNDATION FOR THAT CONCLUSION.

MR. BAILEY: I'LL WITHDRAW THAT, YOUR HONOR.

THE COURT: ALL RIGHT. JUST DISREGARD THAT, PLEASE, MR. FOREMAN AND MEMBERS OF THE JURY.

BY MR. BAILEY:

Q. HOW DID YOU KNOW YOUR DAUGHTER HAD BEEN SHOT, MIKE?

A. BECAUSE AS SOON AS SHE WAS SHOT SHE FELL RIGHT ALL OVER ON MY RIGHT SIDE AND I FELT THE BLOOD COMING DOWN MY TEE SHIRT AND MY FLANNEL SHIRT.

Q. AND I THINK I ASKED YOU WHETHER OR NOT YOU HAD SAID ANYTHING TO ANY OF THESE THREE PEOPLE.

A. NO, SIR, I DID NOT.

Q. WHAT ABOUT JIMMY CARVER? DID HE SAY ANYTHING TO THEM?

A. HE MAY HAVE SAID THE SAME THING I DID, THAT HE DIDN'T WANT -- WE DIDN'T WANT NO PROBLEMS AND WE

DIDN'T.

Q. DID YOU AT ANY POINT IN TIME OR ANTHONY CARVER AT ANY POINT IN TIME TRY TO GET THAT SHOTGUN FROM BEHIND THE SEAT?

A. NO, SIR.

Q. WAS THAT GUN LOADED OR UNLOADED?

A. IT WAS -- THE SHOTGUN WAS UNLOADED BECAUSE STEPHANIE CARRIED IT TO THE TRUCK UNLOADED BECAUSE WE HAD EVEN, BEFORE IT WAS PUT IN THERE, CHECKED TO MAKE SURE IT WAS UNLOADED.

Q. OKAY. WHAT ABOUT THE PISTOL THAT WAS UNDER THE LAUNDRY -- IN THE LAUNDRY BASKET IN THE BED OF THE TRUCK? DID EITHER ONE OF Y'ALL MAKE A MOVE FOR THAT PISTOL?

A. NO, SIR.

Q. MIKE, DID STEPHANIE DIE FROM THAT SHOTGUN -- FROM THAT GUNSHOT WOUND TO THE HEAD?

MR. RUNYON: OBJECTION. IT CALLS FOR A MEDICAL CONCLUSION, YOUR HONOR.

THE COURT: YES, SIR. I'LL SUSTAIN THAT, SOLICITOR. REPHRASE YOUR QUESTION.

BY MR. BAILEY:

Q. DID STEPHANIE DIE THE FOLLOWING DAY?

A. YES, SIR.

Q. BEAR WITH ME ONE SECOND, PLEASE, YOUR HONOR.

YOUR HONOR, NO FURTHER QUESTIONS OF MR. B AT TH TIME. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. B , Y'ALL RENTED A HOUSEBOAT OVER C THE LAKE, DIDN'T YOU?

A. YES, SIR, MY MOTHER AND FATHER-IN-LAW.

Q. OKAY. AND WHERE WAS -- WHEN DID Y'ALL KIND OF MOVE TO THE LAKE FOR THE THANKSGIVING WEEKEND? WAS IT THAT FRIDAY?

A. FRIDAY A WEEK -- FRIDAY BEFORE.

Q. OKAY. AND I ASSUME YOU AND YOUR WIFE -- YOU GATHERED UP CLOTHING. YOU GATHERED UP AND YOU STOPPED AT THE GROCERY STORE, THE SAME PIGGLY WIGGLY YOU USUALLY GO TO SHOP AT AT THAT TIME, WASN'T IT?

A. DO WHAT NOW?

Q. YOU GATHERED UP YOUR CLOTHING AND YOU WENT TO SHOP FOR GROCERIES AND WHAT HAVE YOU BEFORE YOU WENT TO THE LAKE, DIDN'T YOU?

A. NO, SIR, I DIDN'T GO SHOPPING BEFORE I WENT TO THE LAKE.

Q. YOU DIDN'T TAKE ANY GROCERIES DOWN THERE.

A. I TOOK SOME FROM THE HOUSE BUT, NO, I DON'T REMEMBER GOING SHOPPING BEFORE I WENT.

Q. OKAY. BUT YOU WERE DRIVING BACK AND FORTH TO WORK THAT WEEK.

A. NO, I WAS OFF THAT WEEK BECAUSE I HAD DONE MADE ARRANGEMENTS THROUGH MY JOB TO BE OFF.

Q. OKAY. SO, YOU WERE OFF THE ENTIRE WEEK. YOU WERE DRIVING BACK AND FORTH FOR STEPHANIE FOR SCHOOL.

A. EXCEPT FOR ONE DAY.

Q. EXCEPT FOR ONE DAY. NOW, EARLIER THAT DAY YOU HAD -- DID YOU DRIVE STEPHANIE IN THAT MORNING, THAT WEDNESDAY MORNING?

A. YES, SIR, BECAUSE I STOPPED IN HOLLY HILL.

Q. YOU STOPPED IN HOLLY HILL?

A. AND SHE GOT SOME RICE PUDDING.

Q. OKAY. AND YOU CAME BACK TO THE LAKE?

A. YES, SIR.

Q. OR DID YOU STAY IN TOWN?

A. I COME BACK TO THE LAKE AND THEN WENT BACK TO THE HOUSE BECAUSE I TOLD HER TO RIDE THE BUS TO THE HOUSE AND I WOULD PICK HER UP FROM THERE.

Q. AND THAT DAY WHAT DID YOU DO? DID YOU JUST KIND OF. . .

A. I JUST WENT UP THERE AND FISHED OFF THE BOAT.

Q. ALL RIGHT. AND IT WAS A FAIRLY NICE DAY FOR FISHING.

A. YES, SIR, IT WAS.

Q. OKAY. AND SO -- AND FISHING IS THE KIND OF ACTIVITY THAT YOU -- YOU KIND OF -- YOU'RE NOT NECESSARILY INTERESTED IN WHETHER YOU CATCH ANYTHING. YOU'RE JUST FISHING; RIGHT?

A. RIGHT.

Q. AND I ASSUME THAT YOU -- YOU FISH A LOT, DON'T YOU, SIR, OR LIKE TO FISH?

A. I LIKE TO FISH, YEAH. I'D LIKE TO FISH MORE THAN I GET TO.

Q. RIGHT. AND DURING THAT DAY YOU FISHED OFF THE DOCK.

A. FISHED OFF THE HOUSEBOAT BECAUSE IT'S GOT---

Q. FISHED OFF THE HOUSEBOAT. I'M SORRY. AND YOU HAD A FEW BEERS THAT DAY WHILE YOU WERE FISHING; RIGHT?

A. I DIDN'T HAVE -- I CAN'T RECALL HAVING NO BEERS ON THE HOUSEBOAT THAT DAY.

Q. OKAY. SO, YOU DIDN'T HAVE ANY BEER UNTIL YOU GOT BACK TO TOWN.

A. THAT'S RIGHT.

Q. ALL RIGHT. AND YOU GOT A TWELVE-PACK, I BELIEVE YOU SAID.

A. FROM MR. K.'S PIGGLY WIGGLY.

Q. FROM THE PIGGLY WIGGLY. AND YOU -- YOU HAD THREE OR FOUR THAT DAY. YOU SAID YOU HAD THREE OR

FOUR, BUT THE ONE YOU GOT AT SPELL'S YOU DIDN'T GET A CHANCE TO DRINK.

A. NO, SIR.

Q. OKAY. AT THE TIME YOU PULLED INTO SPELL'S GROCERY STORE, HOW MANY BEERS WERE LEFT OUT OF THAT TWELVE-PACK, SIR?

A. I HAVE NO IDEA BECAUSE THEY WERE HOT.

Q. THEY WERE HOT BY THAT TIME?

A. THEY WERE HOT BECAUSE I HAD LEFT THEM IN THE TRUCK WHEN I WAS BACK THERE AT JIMMY'S AND THAT'S WHY I HAD WENT IN SPELL'S AND GOT THAT ONE BEFORE I WAS LEAVING.

Q. OKAY. WELL, THE BEER WASN'T IN THE BED OF THE TRUCK, WAS IT, SIR? THE BEER WAS NOT IN THE BED OF THE TRUCK, WAS IT, SIR?

A. NO, SIR.

Q. OKAY. WHERE WAS IT IN THE CAB?

A. IT WAS SITTING ON THE HUMP WHERE HER DOUGHNUTS HAD BEEN SITTING, TOO.

Q. OKAY. AND SO AT THAT POINT IN TIME YOU PULLED INTO SPELL'S. STEPHANIE WANTED SOMETHING TO EAT AND YOU WANTED TO PICK UP ANOTHER BEER.

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. AND YOU WENT INSIDE AND YOU HAD MR. SPELL START MAKING HER A SANDWICH.

A. RIGHT.

Q. AND YOU WERE STANDING DOWN WHERE YOU INDICATED ON THE CHART TALKING TO ANTHONY RILEY AND THREE PEOPLE CAME WALKING BY; ISN'T THAT RIGHT?

A. YES, SIR.

Q. AND SOMEBODY SAID SOMETHING, BUT YOU'RE NOT SURE WHO SAID IT. IS THAT A CORRECT STATEMENT?

A. TIMOTHY OR EITHER DEXTER DID SAY SOMETHING TO ME AND HIM BECAUSE I KNOW THAT THEY WERE THE ONLY THREE THAT COME UP BEHIND US.

Q. OKAY. WELL, THEY WERE WALKING PAST YOU. ARE YOU SURE THEY---

A. THEY WALKED BEHIND -- WE WAS STANDING THERE. THEY WALKED IN BEHIND US.

Q. OKAY. WALKED UP TO YOU?

A. THEY DIDN'T WALK UP TO US. THEY WALKED IN BEHIND OUR BACKS.

Q. OKAY. AND THEY WERE GOING OVER TOWARDS TO WHERE THE TELEPHONE WAS.

A. RIGHT.

Q. AND SOMETHING WAS SAID BUT -- AND YOU'RE JUST ABSOLUTELY POSITIVE THAT THAT WAS DIRECTED AT YOU.

A. I CAN'T POSITIVELY SAY IT WAS DIRECTED TO ME OR ANTHONY, BUT WE WERE THE ONLY TWO STANDING THERE.

Q. OKAY. MR. ROGERS WENT OVER AND HE GOT ON THE

TELEPHONE, DIDN'T HE, SIR?

A. YES, SIR, HE DID.

Q. ALL RIGHT. AND HE DIDN'T HAVE A CROSS WORD WITH YOU, DID HE, AT THAT POINT IN TIME?

A. HE DID -- HE DID SAY SOMETHING BEFORE HE WENT TO THE PHONE, YEAH.

Q. WELL -- AND IT'S YOUR CONCLUSION THAT IT WAS DIRECTED AT YOU.

A. I KIND OF FIGURED IT WAS BEING IT WAS -- BECAUSE I MEAN I HAD TURNED MY HEAD AND THAT'S WHEN IT WAS SAID, BUT I CAN'T SAY THAT HE DID.

Q. OKAY.

A. BUT SOMETHING WAS SAID TO ME OR EITHER ANTHONY.

Q. AND NOW YOU'RE CERTAIN THAT IT WAS SAID BY TIMOTHY ROGERS.

A. YES, IT WAS.

Q. OKAY. SO, DAXTON PATTERSON DIDN'T SAY ANYTHING WHEN THEY WALKED BEHIND YOU.

A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.) DAXTON DIDN'T SAY NOTHING UNTIL HE GOT ON THE PHONE.

Q. OKAY. SO, UP TO THAT POINT TIMOTHY ROGERS WAS THE ONLY ONE WHO WAS SAYING ANYTHING AND IT WAS DIRECTED TOWARDS YOU.

A. KIND OF THOUGHT IT WAS.

Q. OKAY. HE THEN WENT ON, HE BEING MR. ROGERS, WENT ON AND GOT OVER AND GOT ON THE TELEPHONE.

A. YES, SIR.

Q. DID HE ASK -- DO YOU RECALL WHETHER OR NOT HE ASKED ANYBODY FOR A QUARTER?

A. NO, SIR.

Q. OKAY. AND THEN YOU GOT INTO SOME SORT OF A ROW WITH DAX PATTERSON, DIDN'T YOU, SIR?

A. NO, SIR.

Q. WELL, WHAT OCCURRED? I MEAN, WHAT HAPPENED AT THAT POINT IN TIME?

A. ME AND ANTHONY WAS THERE AT THE PIGEON BAY ROAD TALKING AND DAXTER (SIC) KEPT PACING BACK AND FORTH SAYING THINGS TO US.

Q. OKAY. WELL---

A. WHILE TIMOTHY WAS ON THE PHONE.

Q. ALL RIGHT. WELL, HE -- YOU DIDN'T SEE TIMOTHY ROGERS TELL DAX PATTERSON TO GO OVER AND TALK TO YOU, DID YOU?

A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

Q. AND SO DAX PATTERSON WAS COMING OVER SAYING THINGS TO YOU. WHAT WAS HE SAYING TO YOU IF YOU -- IN GENERAL, IF YOU KNOW?

A. I CAN'T REMEMBER EVERYTHING HE WAS SAYING.

Q. BUT WHATEVER THE CONVERSATION WAS, IT WAS

BETWEEN -- IT WAS BEING DIRECTED AT YOU BY DAX PATTERSON.

A. RIGHT.

Q. ALL RIGHT. AND THIS CONVERSATION GOT TO BE MORE AND MORE BELLIGERENT, DIDN'T IT, SIR, FROM MR. PATTERSON?

A. YES, IT DID.

Q. AND MR. RILEY DECIDED HE WAS GOING TO GO ON HOME?

A. YES, SIR.

Q. YOU THEN WALKED TO YOUR TRUCK?

A. YES, SIR. I WALKED TO MY TRUCK, GOT IN THE TRUCK, AND DAXTER KEPT PULLING MY DOOR AND WOULDN'T LET ME CLOSE IT AND I GOT -- THAT'S WHEN ONE TIME I GOT OUT AND PUT MY HANDS UP AND SAID, "LOOK, I DON'T WANT NO TROUBLE."

Q. ALL RIGHT.

A. "ALL I WANT TO DO IS LEAVE."

Q. THAT TRUCK WAS IN PROXIMITY TO OR NEAR THE AREA OF THE TELEPHONE?

A. YES, SIR, IT WAS.

Q. ALL RIGHT. AND SO YOU AND DAX PATTERSON -- FOR WHATEVER REASON, THERE WAS THIS ALTERCATION, THIS ARGUMENT, THIS PROBLEM WITH DAX PATTERSON.

A. I DON'T KNOW WHAT KIND OF PROBLEM HE HAD

TOWARDS ME BECAUSE I DON'T KNOW HIM.

Q. OKAY. AND AT SOME POINT IN TIME MR. CARVER GOT OUT OF THE TRUCK. IS THAT CORRECT, SIR?

A. JIMMY DID GET OUT OF THE TRUCK ONE TIME AND WALKED TO THE BACK CORNER OF THE TRUCK AND THAT WAS IT.

Q. OKAY. AND UP TO THIS POINT IN TIME MR. ROGERS WAS ON THE TELEPHONE. ISN'T THAT RIGHT?

A. MR. ROGERS WAS ON THE PHONE AND THEN WHEN I GOT OUT THE TRUCK AND KEPT TRYING TO GET BACK -- WHEN I GOT BACK IN IT, DAXTER KEPT PULLING THE DOOR STILL AND THEN THAT'S WHEN TIMOTHY ROGERS LAID THE PHONE DOWN FROM WHO HE WAS TALKING TO, HANGING, AND COME TO THAT DOOR OF THAT TRUCK AND STUCK THAT GUN TO MY HEAD RIGHT THERE.

Q. ALL RIGHT.

A. AND TOLD ME THAT HE WOULD KILL ME. AND MY DAUGHTER IS LAYING IN THE SEAT CRYING AS HARD AS SHE COULD CRY, LOOKING HIM IN HIS EYES AND HE LOOKED IN HERS. AND THEN THAT'S WHY I SAY FOR SOME UNGODLY REASON HE DIDN'T SHOOT ME. HE DROPPED THE GUN DOWN AND HIT THE TRUCK.

Q. DIDN'T TELL YOU TO LEAVE OR DIDN'T TELL YOU TO BREAK IT UP OR ANYTHING OF THAT SORT.

A. NO.

Q. SHOT DOWN INTO THE GROUND.

A. HE SHOT AT THE GROUND AND IT HIT THE HUB ON THE TRUCK.

Q. OKAY. WELL, YOU WEREN'T AWARE THAT IT HIT THE HUB ON THE TRUCK AT THAT POINT IN TIME, WERE YOU?

A. NO. THIS WAS FROM WHAT I FOUND OUT THROUGH THE SHERIFF'S DEPARTMENT AND ALL.

Q. OKAY. AND SO YOU STARTED TO LEAVE.

A. YES, SIR, I DID.

Q. ALL RIGHT. NOW, WHERE WAS MR. ROGERS STANDING WHEN YOU STARTED TO LEAVE, SIR?

A. WHERE WAS HE STANDING? HE HAD GOT BACK -- WENT TO THE PHONE AND WHEN I WENT ON THE ANGLE I DID TO LEAVE, JIMMY WAS THE ONE THAT SEEN THE REST. I COULDN'T SEE IT, BUT I DID HEAR THE GUN FIRE AGAIN AND THAT'S WHEN IT SHATTERED THE BACK GLASS ON THE TRUCK BECAUSE IT LIKED TO HAVE BLOWED MY EAR OUT.

Q. DID YOU DRIVE TOWARDS THE PHONE OR DID YOU BACK TOWARDS THE PHONE?

A. I DID NOT -- I PULLED OUT LIKE I WAS LEAVING AND PULLED BACK IN FRONT OF SPELL'S GROCERY WHERE THE PLATE GLASS IS.

Q. YOU SAY YOU DID A CIRCLE IN THE---

A. RIGHT.

Q. ---IN THE PARKING LOT. BUT WHEN YOU STARTED TO LEAVE, DID YOU BACK YOUR TRUCK UP AT ANY TIME?

A. I SURE DID NOT.

Q. OR DID YOU DRIVE FORWARD?

A. I PULLED IN A COMPLETE CIRCLE AND PULLED TO THAT GLASS BECAUSE THAT'S HOW WIDE A SWING I HAD.

Q. I UNDERSTAND THAT. THE QUESTION TO YOU IS: WHERE WAS MR. ROGERS AT THE TIME THAT YOU STARTED YOUR AUTOMOBILE IN MOTION?

A. HE WAS ON THE PHONE WHERE THE BACK OF THE TRUCK WHERE I MADE THE SWING WHERE HE COULD RUN BEHIND AND SHOOT THROUGH THE WINDOW.

Q. OKAY. SO, HE WENT BACK TO THE PHONE, TO YOUR RECOLLECTION.

A. AS FAR AS I KNOW. I DON'T KNOW BECAUSE I WAS IN THE TRUCK AND COULD NOT SEE.

Q. OKAY. AND YOU STARTED TO GO AND TOWARDS RICHARDSON AVENUE.

A. RIGHT.

Q. AND YOU HEARD A LOUD REPORT OR SOMETHING OF THAT SORT, A SHOT, SOMETHING THAT SOUNDED LIKE A SHOT, WHATEVER IT WAS. IS THAT CORRECT?

A. YES, SIR.

Q. MR. ROGERS WAS, IN FACT, BEHIND THE TRUCK.

A. FROM WHAT I GET FROM JIMMY, HE HAD RUN BEHIND THE TRUCK. I DON'T KNOW. I COULDN'T SEE. I WAS NOT ABLE TO SEE. I WAS LOOKING OUT THE WINDSHIELD BECAUSE

I WAS TRYING TO DRIVE OFF.

Q. OKAY. YOU NEVER BACKED THE TRUCK UP IN ANY WAY?

A. NO, SIR, I DID NOT NEVER BACK THAT TRUCK UP.

Q. OKAY. AND YOU NEVER DROVE THE TRUCK TOWARDS THE AREA THAT MR. ROGERS WAS IN.

A. NO, SIR.

Q. AND YOU WERE GOING TO, QUOTE, LEAVE. THEN THE SHATTERING OF THE WINDOW, YOUR DAUGHTER IS HIT AND. . .

A. SHE FELL RIGHT DEAD ON ME.

Q. YOU JUST PULLED RIGHT AROUND IN FRONT OF SPELL'S.

A. PULLED RIGHT IN FRONT OF THAT PLATE GLASS WINDOW.

Q. OKAY. AND AT THAT POINT IN TIME THE THREE PEOPLE LEFT.

A. THEY -- THE THREE PEOPLE LEFT? TIMOTHY ROGERS AND DEXTER DID NOT LEAVE UNTIL I HAD PULLED UP IN FRONT OF THAT STORE AND HOLLERED AND SAID THEY HAD SHOT MY DAUGHTER AND THEN THEY LAUGHED IN MY FACE. THEY STOOD THERE FOR A FEW MINUTES BEFORE THEY LEFT.

Q. AND SO THEY WERE STANDING RIGHT UP THERE NEXT TO YOU AND LAUGHED IN YOUR FACE.

A. YES, SIR.

Q. WHAT WAS SAID?

A. THERE WASN'T NOTHING SAID. AFTER I SAID THAT, THEY WAS GONE.

Q. WELL, NOW, MR. B , DO YOU REMEMBER GIVING A STATEMENT TO THE BERKELEY COUNTY - EXCUSE ME - THE DORCHESTER COUNTY SHERIFF'S OFFICE?

A. I NEVER GIVE NO STATEMENT TO DORCHESTER COUNTY SHERIFF'S DEPARTMENT.

Q. WHO DID YOU GIVE A STATEMENT TO?

A. MY STATEMENT WAS DONE THROUGH WALTER. I NEVER DONE A STATEMENT THROUGH THE SHERIFF'S DEPARTMENT.

Q. IS THAT YOUR STATEMENT?

A. THE STATEMENT THAT I WROTE THAT I GIVE TO WALTER AND THEM, BUT I NEVER DONE ONE THROUGH THE SHERIFF'S DEPARTMENT.

Q. OKAY. SO, THAT WAS THE STATEMENT THAT YOU MADE UPON REASONABLE CONTEMPLATION ABOUT EVERYTHING THAT HAPPENED. ISN'T THAT RIGHT? THAT STATEMENT RIGHT THERE.

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. CORRECT?

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. YOU'VE GOT TO ANSWER OUT, SIR.

A. YES, SIR.

Q. I CAN'T -- OKAY. THE MACHINE HAS GOT TO. . . DID YOU SAY ANYWHERE IN THAT STATEMENT THAT MR. ROGERS OR ANYONE ELSE CAME UP AND LAUGHED IN YOUR FACE?

A. (WITNESS READS STATEMENT.) NO, SIR.

Q. OKAY. NOW, AS A MATTER OF FACT, YOU DIDN'T SAY ANYONE LAUGHED IN YOUR FACE UNTIL YOU GOT UP HERE AND SAT ON THE STAND. ISN'T THAT RIGHT, SIR?

A. NO, SIR.

Q. WHO DID YOU EVER TELL THAT THEY LAUGHED IN YOUR FACE?

A. I'VE TOLD WALTER AND THEM THAT.

Q. OKAY. BUT YOU DIDN'T PUT IT IN YOUR STATEMENT THAT YOU DREW UP FOR HIM, DID YOU?

A. NO, SIR.

Q. OKAY. MR. B , FOR WHATEVER REASON -- AND IT'S UNCONTRADICTED, YOU DIDN'T KNOW MR. PATTERSON AND MR. PATTERSON DIDN'T KNOW YOU. ISN'T THAT RIGHT?

A. NO, SIR.

Q. OKAY. AND FOR WHATEVER REASON YOU GOT IN SOME SORT OF ALTERCATION WITH DAXTON PATTERSON THAT EVENING, DIDN'T YOU?

A. NO, SIR, I DID NOT.

Q. WELL, HE WAS HOLLERING AT YOU AND CARRYING ON AND WHAT HAVE YOU, WASN'T HE?

A. HE WAS TO ME. I WASN'T DOING NOTHING TO HIM.

Q. OKAY. AND MR. ROGERS INTERVENED TO BREAK Y'ALL UP. ISN'T THAT CORRECT?

A. NO, SIR, HE DIDN'T INTERVENE TO BREAK US UP, NOT WHEN SOMEBODY STICK NO GUN TO MY HEAD. THAT'S NOT BREAKING NOTHING UP BECAUSE WE WAS NOT EVEN ATTEMPTING TO FIGHT.

Q. WELL, MR. CARVER GOT OUT OF THE TRUCK, DIDN'T HE?

A. HE GOT OUT OF THE TRUCK, BUT THERE WAS NOBODY TOUCHED NOBODY.

Q. THERE WAS -- AND HE WAS ON THE RIGHT-HAND SIDE OF THE TRUCK. ISN'T THAT RIGHT? HE WAS ON THE RIGHT-HAND SIDE OF THE TRUCK, MR. CARVER. ISN'T THAT CORRECT?

A. YES, SIR, HE WAS ON THE PASSENGER'S SIDE OF THE TRUCK.

Q. DRAWING YOUR ATTENTION TO STATE'S EXHIBIT NUMBER 2, IN THE BED OF THAT TRUCK IS THE LAUNDRY BASKET WITH MR. CARVER'S CLOTHES AND A 9 MILLIMETER WEAPON RIGHT THERE, ISN'T IT?

A. NO, SIR, NOT TO MY RECOLLECTION. THAT'S -- THE GUN IS IN THE BOTTOM OF THAT BASKET AND HIS CLOTHES, YEAH.

Q. THAT'S ON THE RIGHT-HAND SIDE OF THE BED OF

THE TRUCK, ISN'T IT, SIR?

A. YES, SIR, IT IS.

Q. I MEAN, THAT'S WHAT'S IN STATE'S EXHIBIT NUMBER 2; CORRECT?

A. YES, SIR.

Q. AND MR. CARVER GOT OUT OF THE TRUCK TO GET SOME HELP, DIDN'T HE?

A. TO DO WHAT?

Q. HE GOT OUT OF THE TRUCK TO GIVE YOU SOME ASSISTANCE, DIDN'T HE, SIR?

A. HE GOT OUT OF THE TRUCK AND SAID HE DIDN'T WANT NO TROUBLE JUST LIKE I DID.

Q. OKAY. AND HE WAS SAYING THAT TO DAX PATTERSON.

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. OKAY. AND HE WAS RIGHT THERE AT THE LAUNDRY BASKET WHERE HIS CLOTHES AND GUN WAS, WASN'T HE?

A. I HAVE NO IDEA WHERE HE WAS AT. I KNEW HE WAS OUTSIDE THE TRUCK. I KNEW WHERE HE WAS AT. I SEEN HIM AT THE BACK CORNER OF THE RIGHT SIDE OF THE TRUCK, BUT THAT WAS IT.

Q. HOW CLOSE WERE YOU TO THE TWO INDIVIDUALS, DAXTON PATTERSON AND TIMOTHY ROGERS, AFTER YOU PULLED YOUR TRUCK BACK AROUND?

A. HOW CLOSE WAS I?

Q. YES, SIR. HOW CLOSE WERE YOU TO THEM?
A. I WASN'T NOWHERE CLOSE TO THEM AFTER SHE GOT SHOT.
Q. AND SO HE DIDN'T COME UP IN YOUR FACE AND LAUGH IN YOUR FACE, DID HE, SIR?
A. I SEEN HIM LAUGHING FROM A DISTANCE THAT I COULD SEE.
Q. SO, HE WAS AT A DISTANCE AND YOU---
A. PROBABLY ABOUT FIVE OR SIX FOOT.
Q. HE WAS FIVE OR SIX FEET AWAY FROM YOU.
A. YEAH.
Q. AND YOU SAY HE WAS LAUGHING AT YOU.
A. YES, SIR.
Q. OKAY. YOU'D ONLY HAD THREE OR FOUR BEERS THAT AFTERNOON IN ABOUT TWO HOURS?
A. PROBABLY THREE.
Q. OKAY. THREE OR FOUR BEERS IN ABOUT THREE HOURS. IS THAT CORRECT?
A. YES, SIR.
Q. AND YOU FELT OKAY TO DRIVE.
A. YES, SIR, I DID.
Q. AND WHEN Y'ALL WERE OUT THERE STRUGGLING WITH THAT FLAT TIRE ON THAT LOG TRUCK, DID Y'ALL HAVE ANY BEER AT THAT TIME?
A. NO, SIR.

Q. NONE WHATSOEVER.
A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)
Q. AND -- EXCUSE ME ONE MOMENT, YOUR HONOR. YOU KNEW THE GUN WAS IN THE BASKET, DIDN'T YOU, SIR, THE HANDGUN?
A. NO, SIR, I DID NOT KNOW NO GUN WAS IN THAT BASKET.
Q. BUT JIMMY CARVER KNEW THE GUN WAS IN THE BASKET.
A. YEAH, JIMMY DID, BUT I DIDN'T.
Q. WHY DID HE HAVE A 9 MILLIMETER PISTOL IN THE BASKET TO GO TO THE LAKE TO GO FISHING?
A. I HAVE NO IDEA.
Q. OKAY. MR. B , FOR WHATEVER REASON IT OCCURRED THAT EVENING, MR. ROGERS CAME OVER AND INTERVENED IN WHATEVER WAS GOING ON BETWEEN YOU AND DAXTON PATTERSON, DIDN'T HE?
A. HE INTERVENED JUST LIKE DAXTER WAS. HE WAS JUST THE SAME SMART ALECK AS HE WAS.
Q. OKAY. AND WHEN MR. ROGERS CAME OVER THERE, WHERE WAS MR. CARVER?
A. JIMMY WAS IN THE TRUCK STILL.
Q. STILL? WHEN DID HE GET OUT OF THE TRUCK?
A. I CAN'T REMEMBER EXACTLY WHEN HE GOT OUT OF THE TRUCK.

Q. SO, YOU CAN'T REMEMBER WHETHER HE GOT OUT OF THE TRUCK BEFORE MR. ROGERS CAME OVER THERE OR AFTER MR. ROGERS CAME OVER THERE.

A. NO, SIR, I CAN'T.

Q. OKAY. BUT IF MR. ROGERS FIRED AT THE GROUND AND YOU STARTED TO LEAVE, MR. CARVER WAS ALREADY IN THE TRUCK, WASN'T HE?

A. YES, SIR, HE WAS IN THE TRUCK.

Q. OKAY. SO, AT LEAST PRIOR TO THAT TIME -- PRIOR TO FIRING THE SHOT INTO THE GROUND, MR. CARVER HAD RE-ENTERED THE TRUCK, HADN'T HE?

A. HE'D BEEN IN THE TRUCK FOR PROBABLY AT LEAST FIVE OR TEN MINUTES.

Q. FIVE OR TEN MINUTES.

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. SO, THIS ARGUMENT BETWEEN YOU AND MR. PATTERSON OR WHATEVER IT WAS WAS GOING ON FOR FIVE OR TEN MINUTES?

A. I CAN'T EXACTLY REMEMBER HOW LONG IT WAS.

Q. MR. B , YOU DON'T REMEMBER IT BECAUSE YOU HAD HAD A LITTLE BIT TOO MUCH BEER---

A. NO.

Q. ---THAT AFTERNOON?

A. NO, SIR, I DID NOT. NO, SIR, I DID NOT HAVE TOO MUCH.

Q. OKAY. WELL, THEN, WHY IS IT YOU DON'T REMEMBER, SIR, ROUGHLY THE LENGTH OF TIME?

A. I KNOW IT WAS A MINUTE OR TWO MINUTES BETWEEN EACH SHOT.

Q. YOU'RE TALKING ABOUT THE FACT THAT ALL THIS HAPPENED REAL FAST, DIDN'T IT?

A. YES, SIR.

Q. I MEAN, WHATEVER DAX PATTERSON WAS DOING FOR WHATEVER STUPID REASON, THAT ALL STARTED KIND OF REAL FAST, DIDN'T IT?

A. YEAH. IT HAPPENED FROM PROBABLY ABOUT FIVE AFTER 6:00 TO TWENTY MINUTES AFTER EVERYTHING WAS DONE.

Q. OKAY. AND BUT THE ALTERCATION WITH PATTERSON, ANTHONY RILEY LEAVING, THE MOVEMENT TO THE TRUCK, THE PROBLEM WITH THE DOOR AND DAXTON PATTERSON, MR. CARVER GETTING OUT OF THE TRUCK FOR WHATEVER REASON AND THEN MAYBE GETTING BACK IN, MR. ROGERS COMING UP, THAT ALL OCCURRED REAL FAST, DIDN'T IT?

A. YES, SIR, IT DID.

Q. AND IN JUST A MATTER OF A COUPLE OF MINUTES THIS WHOLE THING ERUPTED.

A. RIGHT.

Q. AND YOU NEVER BACKED YOUR CAR OR TRUCK TOWARDS MR. ROGERS.

A. NO, SIR.

Q. AND MR. CARVER NEVER SAID ANYTHING TO ANYBODY, DID HE?

A. NO, SIR.

Q. AND YOU NEVER DROVE YOUR TRUCK TOWARDS ANYONE, DID YOU, SIR?

A. NO, SIR.

Q. YOU WERE JUST, QUOTE, TRYING TO LEAVE THERE.

A. YEP. THAT'S EXACTLY WHAT I WAS DOING.

Q. AND, FRANKLY, IN THE SPACE OF PROBABLY TWO OR THREE MINUTES THIS WHOLE THING WAS OVER WITH WITH A TRAGIC ENDING.

A. YES, SIR.

Q. WERE YOU EVER OUT OF THE TRUCK WHEN MR. ROGERS CAME OVER THERE?

A. THE ONLY TIME I GOT OUT OF THE TRUCK WHEN ROGERS WAS THERE IS WHEN I STUCK MY HANDS UP AND SAID I DIDN'T WANT NO TROUBLE. THAT WAS THE ONLY TIME, PLUS WHEN I HAD PULLED TO THE FRONT PLATE GLASS OF THE STORE AFTER IT HAD HAPPENED.

Q. OKAY. NOW, LET'S GO OVER THAT ONE MORE TIME. YOU GOT OUT OF THE TRUCK AND WHATEVER CONFRONTATION OR JOINING UP WITH MR. ROGERS WHEN HE CAME OVER THERE?

A. HE WAS ON THE PHONE WHEN ALL -- WHEN IT ALL WAS STILL BEING ARGUED.

Q. RIGHT.

A. AND I GOT OUT WITH MY HANDS UP AND SAID I DIDN'T WANT NO TROUBLE OR I WAS GOING TO CALL THE LAW.

Q. WHERE WAS HE AT THAT POINT IN TIME?

A. HE WAS AT THE PHONE.

Q. HE WAS AT THE PHONE.

A. YES, SIR.

Q. ALL RIGHT. WERE YOU STILL OUT OF THE TRUCK WHEN HE CAME OVER TO THE TRUCK?

A. THAT'S WHEN I HAD GOT BACK IN THE TRUCK AND GOT THE GUN STUCK THERE.

Q. OKAY. WAS THE DOOR CLOSED AT THAT POINT IN TIME?

A. NO, BECAUSE THE GUN WAS STUCK IN BETWEEN WHERE THE DOOR OPENS AND RIGHT IN THAT CRACK THERE AT MY FOREHEAD.

Q. SO, HE WAS STANDING KIND OF BEHIND YOU IF YOU WERE -- TURN SIDEWAYS LIKE YOU WERE THE DRIVER OF THE TRUCK THERE IF YOU CAN IN THAT CHAIR.

A. HERE'S THE DOOR---

Q. YES, SIR.

A. ---IN THE VEHICLE. THE DOOR IS SWUNG OUT. THERE'S A GAP THERE.

Q. RIGHT. AND HE WAS SUPPOSED TO BE STANDING IN THAT GAP.

A. HE WAS STANDING RIGHT THERE WITH THAT GUN STUCK TO MY HEAD.

Q. WITH THE GUN STUCK TO YOUR HEAD.

A. RIGHT.

Q. DID HE SAY ANYTHING TO YOU AT THAT TIME?

A. HE SAID HE'D KILL ME.

Q. IF YOU DIDN'T GET OUT OF THERE OR IF Y'ALL DIDN'T BREAK IT UP. ISN'T THAT RIGHT?

A. HE SAID HE'D KILL ME. THERE WASN'T NOTHING TO BREAK UP. I DIDN'T START NOTHING.

Q. I NEVER SAID YOU STARTED ANYTHING, BUT THERE WAS SOMETHING GOING ON, WASN'T THERE?

A. YEAH, DEXTER WAS THE ONE THAT STARTED IT.

Q. AND THERE WAS A LOT OF ANGER. I MEAN, THIS WAS MAKING YOU ANGRY, WASN'T IT?

A. YES, SIR, KIND OF IT WAS, BUT, I MEAN, I WAS NOT GOING TO DO NOTHING BECAUSE OF MY POSITION ON MY JOB.

Q. I'M NOT SUGGESTING YOU WERE, MR. B . LET'S FACE FACTS. THIS WHOLE SITUATION - YOU WERE ANGRY BECAUSE YOU WERE GETTING ASSAILED BY SOME CRAZY MAN THAT YOU DIDN'T HAVE ANYTHING TO DO WITH THAT YOU DIDN'T KNOW; ISN'T THAT RIGHT?

A. RIGHT.

Q. MR. CARVER HAD WORKED HARD ALL DAY.

A. RIGHT.
Q. DRIVING A LOG TRUCK. THAT'S HARD WORK, ISN'
IT?
A. YES, SIR, IT IS.
Q. YOU'VE GOT TO GO OUT IN THE WOODS AND WRESTL
WITH TREES GETTING ON HIS TRUCK AND YOU'VE GOT TO DRAG
THAT TRUCK OUT OF THE WOODS AND GET THE TREES TO THE
MILL AND ALL THAT SORT OF. . . THAT'S HARD WORK.
A. YES, SIR, IT IS.
Q. AND HE WAS TIRED AND YOU WERE TIRED AND Y'AL
WERE READY TO GET BACK TO THE LAKE AND JUST RELAX;
RIGHT?
A. (WITNESS NODDED HEAD UP AND DOWN.)
Q. ISN'T THAT CORRECT?
A. YEAH, I WANTED TO FISH.
Q. ALL RIGHT. AND YOU CERTAINLY DIDN'T WANT TO
MESS WITH SOMEBODY LIKE DAXTON PATTERSON.
A. NO, SIR, I DIDN'T.
Q. AND FOR WHATEVER SCREW-BALL REASON, DAXTON
PATTERSON STARTED THIS WHOLE THING.
A. YES, SIR, HE DID.
Q. AND YOU WERE ANGRY ABOUT IT; CORRECT?
A. I WAS ANGRY, BUT I NEVER THROUGH MY HAND OR
NOTHING UP.
Q. I NEVER SAID YOU DID. DAX PATTERSON KEPT

CARRYING ON.

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. AND JIMMY CARVER WAS CERTAINLY MAD ABOUT IT; RIGHT?

A. WELL, I WAS TALKING TO ANTHONY AND HIM. I NEVER DID REALLY GET IN THE TRUCK UNTIL I WAS GETTING READY TO LEAVE AND HAD THE CONFRONTATION WITH DAXTER WITH THE DOOR. ME AND JIMMY HAD NO CHANCE TO TALK.

Q. NO. I'M TALKING ABOUT MR. CARVER WAS---

A. WELL, I DON'T KNOW HOW---

Q. ---CERTAINLY GOT AGITATED WITH DAX PATTERSON, DIDN'T HE?

A. I DON'T KNOW HOW AGITATED HE WAS. HE DIDN'T SAY NOTHING TO ME.

Q. HE WAS AGITATED ENOUGH TO GET OUT OF THE TRUCK AND GET TO THE LAUNDRY BASKET, WASN'T HE?

MR. BAILEY: I OBJECT. HE CAN'T SPEAK FOR MR. CARVER'S TESTIMONY.

THE COURT: NO, SIR.

MR. BAILEY: MR. CARVER WILL TESTIFY.

THE COURT: I SUSTAIN THAT. GO AHEAD.

BY MR. RUNYON:

Q. NOW, AS IT RELATES TO THE TIME LIMIT -- THIS DIDN'T TAKE PLACE -- YOUR CONFRONTATION, YOUR CONNECTION WITH MR. ROGERS DIDN'T TAKE PLACE OVER FIVE

OR TEN MINUTES. THAT WAS A VERY SHORT PERIOD OF TIME, WASN'T IT?

A. (WITNESS NODDED HEAD UP AND DOWN.)

Q. ISN'T THAT CORRECT, SIR? YOU'VE GOT TO ANSWER OUT SO THE MACHINE---

A. YES, SIR.

Q. OKAY. AND HE TOLD YOU -- HE PULLED -- PRODUCED A WEAPON, SAID "LET'S BREAK THIS UP. LET'S GET OUT OF HERE. I'LL SHOOT YOU IF I HAVE TO. LET'S STOP ALL THIS, EVERYBODY," DIDN'T HE?

A. NO, I CAN'T REMEMBER THAT.

Q. YOU CAN'T REMEMBER THAT.

A. I DON'T THINK THAT WAS SAID.

Q. YOU DON'T THINK THAT WAS SAID. AND THEN YOU ATTEMPTED TO DRIVE OFF.

A. ATTEMPTED TO DRIVE OFF AND GOT SPIT IN MY FACE BY HIM.

Q. OKAY. WHERE WAS HE STANDING WHEN YOU STARTEI YOUR VEHICLE IN MOTION?

A. SAME ANGLE HE WAS WHEN HE HAD THE GUN ON MY HEAD BUT LONG ENOUGH FOR HIM TO CLEAR HIS THROAT AND SPIT IN MY FACE.

Q. WAS HE STANDING VERY NEAR THE TRUCK?

A. YES, SIR, HE WAS.

Q. AND DROVE OFF TO JUST -- YOU DROVE THAT TRUCK

KIND OF TOWARDS HIM, DIDN'T YOU?

A. NO, I DID NOT.

Q. HE WAS STANDING RIGHT THERE?

A. HE WAS STANDING ON THIS SIDE OF THE TRUCK AND I DROVE -- WAS PULLING OUT ON AN ANGLE LIKE THERE. NO, SIR, I DID NOT DRIVE THAT TRUCK TOWARDS HIM.

Q. WAS HE STANDING TO THE FRONT OF THE TRUCK OR TO THE BACK OF THE TRUCK?

A. HE WAS STANDING TO THE FRONT OF THE TRUCK WHERE THE DOOR IS.

Q. HE WAS STANDING TO THE FRONT OF THE TRUCK AND YOU LURCHED THE TRUCK FORWARD. ISN'T THAT CORRECT?

A. I PULLED THE TRUCK FORWARD AND, NO, HE WAS NOT STANDING WHERE HE WOULD HAVE GOT HIT.

Q. OKAY. AT LEAST YOU WERE SURE HE WOULDN'T GET HIT. ISN'T THAT CORRECT?

A. I KNEW HE WOULDN'T.

Q. YOU KNEW HE WOULDN'T BECAUSE YOU KNEW HE WAS -- YOU KNEW WHERE HE WAS AND YOU KNEW---

A. YES, SIR, I DID KNOW WHERE HE WAS.

Q. AND YOU KNEW YOU WEREN'T GOING TO DRIVE OVER HIM.

A. HE WAS STANDING AT THE DOOR IN BETWEEN THE FENDERS WHERE THE FENDERS JOIN THE DOOR.

MR. RUNYON: EXCUSE ME ONE MOMENT, YOUR

HONOR, VERY BRIEFLY. (PAUSE) NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. IT'S A GOOD TIME TO TAKE A BREAK. YOU CAN COME DOWN. MR. FOREMAN AND MEMBERS OF THE JURY, WE'RE GOING TO SEND YOU TO LUNCH. NOW, EVERYONE ELSE REMAIN SEATED, PLEASE. JUST REPORT BACK TO YOUR ROOM AND THE BAILIFFS WILL TAKE OVER. I DON'T KNOW WHERE THEY'RE GOING TO TAKE YOU TO LUNCH. I TOLD THEM TO TAKE YOU ANYWHERE YOU WANTED TO GO WITHIN REASON. IN THE MEANTIME, REMEMBER DON'T TALK ABOUT THE CASE AND ALSO FEEL FREE TO ORDER ANYTHING YOU WANT. NO ALCOHOL. HAVE A GOOD LUNCH. EVERYONE ELSE REMAIN SEATED, PLEASE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO TO LUNCH.)

THE COURT: GIVE ME MY BAILIFFS. I WANT TO SWEAR MY BAILIFFS.

BAILIFF: THEY'RE GOING TO TAKE THEM TO LUNCH.

THE COURT: YES, SIR. I WANT TO SWEAR MY BAILIFFS. BRING THEM OUT HERE. MADAM CLERK, HAVE YOU GOT THE OATH?

THE CLERK: SIR?

THE COURT: DO YOU HAVE. . .

(OFF THE RECORD WHILE THE COURT AND THE CLERK TALK.)

THE COURT: I WANT MY BAILIFFS THAT'S GOING TO HANDLE MY JURY THIS WEEK.

BAILIFF: THEY'RE HERE, YOUR HONOR.

THE COURT: JUST COME RIGHT DOWN THERE FOR ME, PLEASE. RAISE YOUR RIGHT HAND, IF YOU WILL. YOU WILL WELL AND TRULY TAKE THIS JURY IN CHARGE DURING THIS TRIAL. YOU'RE TO ALLOW NO ONE TO TALK TO THEM OR ALLOW THEM TO TALK AMONG THEMSELVES ABOUT THIS CASE. YOU'LL TRANSPORT THEM TO AND FROM THEIR LIVING QUARTERS AND THEIR MEALS, SO HELP YOU GOD.

(ALL FOUR BAILIFFS RESPONDED AFFIRMATIVELY.)

THE COURT: NOW, I'M AIMING FOR 2:30, BUT, OF COURSE, IT TAKES LONGER TO FEED THE JURY. THAT WILL GIVE YOU ABOUT AN HOUR AND 35 MINUTES. IF YOU CAN MAKE IT, FINE. IF YOU DON'T, WE'LL BE HERE WHEN YOU GET BACK. EVERYONE ELSE REMAIN SEATED, PLEASE. Y'ALL CAN GO AHEAD. NOW, WHO'S IN CHARGE OF THE DEFENDANT?

MAJOR MOULTRIE: AL LAPOLLA. I'LL GET HIM.

THE COURT: ALL RIGHT, SIR. I WANT HIM TO LEAVE NEXT, ALWAYS. EVERYONE ELSE REMAIN SEATED, PLEASE. ALWAYS I WANT THE DEFENDANT TO LEAVE BEFORE ANYBODY ELSE IN THE COURTROOM AFTER THE JURY.

MR. LEIENDECKER: AFTER THE JURY HAS LEFT?

THE COURT: YES, SIR. AND FOLLOW THAT SAME PROCEDURE IF YOU WILL FOR ME.

FROM THE COURTROOM: YES, SIR.

THE COURT: ALL RIGHT. HAVE A GOOD LUNCH. COURT'S IN RECESS UNTIL 2:30.

(WHEREUPON, A LUNCH BREAK WAS TAKEN.)

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. PLEASE BE SEATED. ALL RIGHT. ANYTHING BEFORE I BRING THE JURY OUT, SOLICITOR?

MR. BAILEY: NO, SIR.

THE COURT: MR. RUNYON?

MR. RUNYON: NO, SIR. WE CAN HANDLE OUR OBJECTIONS TO SOME OF HIS CHARGES LATER ON WHEN THE TIME COMES.

THE COURT: OF COURSE. I JUST WOULD LIKE TO GET ANYTHING THAT YOU CAN GIVE ME AHEAD OF TIME.

MR. RUNYON: YES, SIR.

THE COURT: THANK YOU VERY MUCH. BRING THE JURY IN.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

MR. BAILEY: THE STATE CALLS DR. CLAY NICHOLS.

THE COURT: ALL RIGHT, SIR.

CLAY A. NICHOLS, M.D., AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. DR. NICHOLS, HOW ARE YOU EMPLOYED?

A. I'M EMPLOYED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WHERE I'M A FORENSIC PATHOLOGIST.

Q. WHAT IS A FORENSIC PATHOLOGIST IN LAYMEN'S TERMS?

A. IT'S A PERSON WHO DOES AUTOPSIES ON INDIVIDUALS WHO DIE OF SUSPICIOUS OR VIOLENT DEATHS.

Q. ALL RIGHT, SIR. HOW LONG HAVE YOU BEEN DOING AUTOPSIES?

A. EIGHT YEARS.

Q. AND APPROXIMATELY HOW MANY AUTOPSIES HAVE YOU PERFORMED?

A. APPROACHING A THOUSAND.

Q. ALL RIGHT, SIR. AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

A. I RECEIVED MY BACHELOR OF SCIENCE DEGREE FROM THE UNIVERSITY OF OKLAHOMA---

MR. RUNYON: YOUR HONOR -- I'M SORRY, DOCTOR.

THE WITNESS: YES, SIR.

MR. RUNYON: I KNOW DR. -- WE STIPULATE AS TO HIS QUALIFICATIONS AS A FORENSIC PATHOLOGIST, THAT HE'S LICENSED TO PRACTICE MEDICINE IN THE STATE OF SOUTH CAROLINA. HE'S TESTIFIED NUMEROUS TIMES AND BEEN ACCEPTED AS AN EXPERT IN HIS FIELD WHICH IS FORENSIC PATHOLOGY.

THE COURT: THANK YOU.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

BY MR. BAILEY:

Q. DR. NICHOLS, ARE YOU TRAINED TO DETERMINE THE CAUSE OF DEATH IN THE CASE OF PEOPLE THAT YOU'RE DOING AUTOPSIES ON?

A. YES, I AM.

Q. IS THAT BASICALLY WHAT YOU DO?

A. YES, SIR.

Q. ALL RIGHT, SIR. I CALL YOUR ATTENTION TO NOVEMBER THE 27TH, 1992, AND WOULD ASK YOU TO STATE WHETHER OR NOT YOU HAD OCCASION TO PERFORM AN AUTOPSY ON THE BODY OF A NINE-YEAR-OLD GIRL IDENTIFIED TO YOU AS STEPHANIE B .

A. YES, I DID.

Q. ALL RIGHT, SIR. AND BASED ON YOUR AUTOPSY, DID YOU DETERMINE THE CAUSE OF DEATH?

A. YES, I DID.

Q. AND WHAT WAS THAT CAUSE OF DEATH?

A. CEREBRAL LACERATION AND SKULL FRACTURE DUE TO A DISTANT GUNSHOT WOUND TO THE HEAD.

Q. ALL RIGHT, SIR. WHEN YOU SAY DISTANT GUNSHOT WOUND, WHAT DO YOU MEAN BY THAT?

A. I MEAN THAT THERE WAS NO EVIDENCE THAT THE GUN WAS PLACED CLOSELY TO THE VICTIM. FOR EVIDENCE OF THAT WE LOOK FOR EVIDENCE OF MAYBE THE GUN MUZZLE BEING DIRECTLY AGAINST THE SKIN OR POSSIBLY WHEN THE MUZZLE IS PULLED BACK A LITTLE FURTHER WE CAN SEE EVIDENCE OF SOOT OR UNBURNED GUN POWDER THAT'S DEPOSITED ON THE SKIN. AT SOME DISTANCE BACK FROM THE VICTIM WHEN THE TRIGGER IS PULLED, SOOT AND GUN POWDER NO LONGER DEPOSIT ON THE SKIN. AT THAT POINT WE CALL THAT DISTANT. THAT POINT COULD BE SEVERAL INCHES AWAY FROM THE VICTIM, DEPENDING ON THE GUN AND THE TYPE OF AMMUNITION, TO BACK AS FAR AS SEVERAL THOUSAND YARDS OR WHATEVER THE MAXIMUM FIRING RANGE OF THAT WEAPON IS.

Q. ALL RIGHT, SIR. ASSUMING THERE'S AN INTERVENING OBJECT SUCH AS GLASS BETWEEN THE SHOOTING VICTIM AND THE MUZZLE OF THE GUN---

A. UH-HUH.

Q. ---WOULD YOU FIND ANY RESIDUE OR ANYTHING OF THAT NATURE?

A. NO. AN INTERVENING OBJECT WOULD FILTER OUT

THE SOOT OR UNBURNED GUN POWDER MAKING A CLOSER WOUND LOOK LIKE A DISTANT WOUND.

Q. IN THAT SITUATION WOULD THERE BE ANY WAY FOR YOU TO ESTIMATE THE DISTANCE?

A. NO, SIR. IT WOULD BE CALLED A DISTANT WOUND.

Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT THE BULLET WOUND YOU OBSERVED PASSED THROUGH THE CHILD'S HEAD?

A. YES, IT DID.

Q. AND DID YOU PREPARE A SKETCH SHOWING THE ENTRANCE WOUND AND THE EXIT WOUND?

A. YES, I DID.

Q. SIR, LET ME ASK YOU IF THIS IS A BLOWUP OR AN ENLARGEMENT OF THE SKETCH THAT YOU PREPARED.

A. YES, IT IS.

MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS AS STATE'S NUMBER 4.

MR. RUNYON: NO OBJECTION, YOUR HONOR.

THE COURT: WITHOUT OBJECTION. THANK YOU.

(STATE'S EXHIBIT 4 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. DR. NICHOLS, IF YOU WOULD, JUST STEP AROUND HERE TO THE BLACKBOARD AND I WOULD ASK YOU TO POINT OUT TO THE JURY THE ENTRANCE WOUNDS.

A. THE ENTRANCE WOUND IS LOCATED ON THE LEFT

BACK PART OF THE HEAD AT A POINT TWO INCHES FROM THE TOP OF THE HEAD AND ONE INCH TO THE LEFT OF THE MIDLINE RIGHT IN THIS AREA. YOU CAN TELL THAT'S AN ENTRANCE WOUND BECAUSE WHEN A BULLET ENTERS A PERSON'S BODY IT DOESN'T JUST MAKE A HOLE. IT DOESN'T PIERCE IN BUT, INSTEAD, IT'S ACTUALLY TWISTING A LITTLE BIT AND IT GRINDS ITS WAY INTO THE SKIN.

WHEN A BULLET ENTERS A SKIN AREA SUCH AS THAT, IT ACTUALLY LEAVES A LITTLE ABRASION WHERE THE BULLET GRINDS ITSELF IN. WE CAN IDENTIFY THAT. AS OPPOSED TO AN EXIT WOUND, WHEN THE BULLET EXITS, THE SKIN EDGES ARE RIPPED AND TORN APART KNOWN AS LACERATION. SO, USUALLY IT'S A RATHER EASY METHOD OF DIFFERENTIATING BETWEEN THE ENTRANCE WOUND AND EXIT WOUND WHICH IS ABOVE THE LEFT EYE.

Q. WAS THERE ANY OTHER WAY YOU COULD DETERMINE WHETHER OR NOT THE WOUND ABOVE THE LEFT EYE WAS AN EXIT WOUND?

A. THAT WOULD BE THE BEST WAY, SIR.

Q. ALL RIGHT.

A. NOW, WHEN WE DID EXAMINE THE WOUND, IT WAS SUTURED. WE HAD TO REMOVE THE SUTURES AT WHICH POINT WE SAW EVIDENCE OF INJURY, SWELLING. IN THIS PARTICULAR CASE THERE WAS A SMALL AMOUNT OF BRAIN TISSUE ACTUALLY PROTRUDING FROM THIS WOUND HERE. THAT

DOESN'T MAKE IT AN EXIT WOUND. THAT'S JUST AN INDICATION OF INJURY AND THAT THE PERSON SURVIVED FOR A PERIOD OF TIME, ALLOWING FOR INFLAMMATION TO OCCUR.

Q. ALL RIGHT, SIR. THE FACT THAT BRAIN TISSUE WAS PROTRUDING IS AN INDICATION OF SURVIVAL FOR A PERIOD OF TIME?

A. YES, SIR. IT INDICATES SWELLING AND INFLAMMATION.

Q. ALL RIGHT, SIR. COULD YOU ESTIMATE THE AMOUNT OF TIME INVOLVED?

A. APPROXIMATELY 24 HOURS, BUT WE HAD A WELL-DOCUMENTED HISTORY WHICH WE -- WE KNOW SHE WAS SHOT WHEN SHE PASSED AWAY.

Q. ALL RIGHT, SIR. AND WHAT PORTION OF THE BRAIN DID THE BULLET PASS THROUGH?

A. IT PASSED THROUGH HER CEREBELLUM WHICH IS - EXCUSE ME - THE CEREBRAL HEMISPHERE WHICH IS THE PART THAT CONTROLS YOUR MOTOR FUNCTIONS AND YOUR THINKING FUNCTIONS, THIS PART HERE.

Q. ALL RIGHT, SIR. AND WITH RESPECT TO THE EXACT LOCATION OF THE ENTRANCE WOUND, DID YOU PERFORM SOME MEASUREMENTS IN RELATION TO THE TOP AND SIDE OF THE HEAD?

A. YES, SIR. IT WAS TWO INCHES FROM THE TOP OF THE HEAD AND ONE INCH TO THE LEFT OF MIDLINE.

Q. ALL RIGHT, SIR.

A. AND WITH THE EXIT WOUND, THAT WAS LOCATED THREE INCHES FROM THE TOP OF THE HEAD AND ONE POINT FIVE INCHES TO THE LEFT OF THE MIDLINE. SO, THERE WAS A SLIGHTLY DOWN TOWARD TRAJECTORY DROPPING FROM TWO INCHES IN THE BACK TO EXITING THREE INCHES IN THE FRONT.

Q. ALL RIGHT, SIR. IN TERMS OF DEGREE, WHAT WAS THE DEGREE OF DOWN ANGLE BETWEEN THE ENTRANCE WOUND AND THE EXIT WOUND?

A. IT WAS ESTIMATED APPROXIMATELY TEN DEGREES, A RATHER SHALLOW ANGLE, BUT IT WAS GOING DOWN.

Q. ALL RIGHT, SIR. THE BULLET WAS PASSING IN A DOWNWARD TRAJECTORY?

A. YES, SIR.

THE COURT: YOU CAN HAVE A SEAT HERE, DOCTOR.

THE WITNESS: THANK YOU.

THE COURT: THANK YOU.

BY MR. BAILEY:

Q. WERE YOU ABLE TO DETERMINE THE SIZE OF THE BULLET THAT PASSED THROUGH HER BRAIN?

A. THE BULLET WAS NOT RECOVERED. THE BEST WE CAN DO IS ESTIMATE THAT THIS IS A HANDGUN WOUND.

MR. BAILEY: ALL RIGHT, SIR. BEAR WITH ME ONE SECOND, PLEASE. (PAUSE) THANK YOU, DOCTOR.

THAT'S ALL I HAVE PLEASE ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE.

MR. RUNYON: VERY BRIEFLY.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. DR. NICHOLS, SO IT'S YOUR TESTIMONY THAT WITH REASONABLE MEDICAL CERTAINTY THE DECEASED, STEPHANIE B , DIED OF A DISTANT GUNSHOT WOUND MOST PROBABLY A HANDGUN WITHIN ROUGHLY 24 HOURS OF THE TIME THAT THE WOUND WAS INFLICTED.

A. ROUGHLY, YES, SIR.

Q. ALL RIGHT, SIR. AND THE DOWNWARD ANGLE -- STRIKE THAT. NOW, AS IT RELATES TO THE ANGLES OF BULLETS, CERTAINLY OBJECTS CAN CAUSE DEFLECTIONS AND THINGS OF THAT SORT. IS THAT NOT CORRECT, SIR?

A. IT'S POSSIBLE, YES, SIR.

Q. OKAY. BUT AS IT RELATES TO THIS PARTICULAR WOUND, THERE -- AS IT RELATES TO THE TYPE OF WOUND, THE ENTRY AND THE EXIT, CERTAINLY NOTHING ON MS. B HERSELF CAUSED A DEFLECTION OF THIS BULLET, DID IT, SIR?

A. NO, SIR.

Q. ALL RIGHT. THIS WAS A FAIRLY -- WHEN I SAY STRAIGHT TRAJECTORY, IT WAS ON A DOWNWARD ANGLE, BUT IT WAS A FAIRLY STRAIGHT TRAJECTORY ON THAT ANGLE. IS

THAT NOT CORRECT?

A. YES, SIR. YES, SIR.

Q. AND BASED ON THAT TRAJECTORY -- AND YOU CORRECT ME IF I'M WRONG.

A. OKAY.

Q. I'VE BEEN WRONG MORE TIMES, I GUESS, THAN I HAVE BEEN RIGHT. BUT THAT WOULD HAVE PLACED THE WEAPON THAT FIRED THIS GUN SOMEWHERE AT LEAST ON A LINE ABOVE THE OR SLIGHTLY ABOVE THE HEAD OF THE DECEASED?

A. THAT'S CORRECT.

Q. ALL RIGHT. AND OBVIOUSLY FROM THE REAR.

A. YES, SIR.

Q. BECAUSE THERE WAS GLASS OR WHAT HAVE YOU, YOUR HISTORY SHOWS THAT SHE WAS IN A TRUCK.

A. YES, SIR.

Q. AND THAT A BULLET PASSED THROUGH A PIECE OF GLASS. YOU CAN'T SAY, ASSUMING THAT SOMEONE WAS RIGHT BEHIND HER, THAT GLASS WOULD HAVE SHIELDED THE SO-CALLED TATTOOING, WOULD IT NOT?

A. YES, IT WOULD HAVE. IT WOULD HAVE ACTED AS A FILTER.

Q. ALL RIGHT. NOW, IN THE COURSE OF -- STRIKE THAT. IN THE -- IN YOUR FUNCTIONS AS A MEDICAL EXAMINER, IS IT -- DON'T YOU HAVE CERTAIN RULES OF THUMB AS IT RELATES TO WHAT IS DEFINED AS A DISTANT OR

CLOSE GUNSHOT WOUND?

A. YES, WE DO.

Q. ALL RIGHT. ISN'T IT YOUR EXPERIENCE THAT A DISTANT GUNSHOT WOUND, ASSUMING THERE WASN'T ANY INTERVENING THINGS SUCH AS GLASS, WOULD BE SOMEWHERE WITH MOST WEAPONS IN EXCESS OF THREE AND A HALF FEET?

A. NOT NECESSARILY. IT COULD BE -- ONCE AGAIN, IT DEPENDS ON THAT GUN AND THAT TYPE OF AMMUNITION.

Q. ALL RIGHT.

A. AND THERE'S A GREAT DEAL OF VARIABILITY IN THAT ESTIMATE.

Q. OKAY. ROUGHLY HOW MANY -- HOW MUCH VARIABILITY DO YOU HAVE WHEN YOU COME TO HANDGUNS AND AMMUNITION?

A. THERE COULD BE A COUPLE OF INCHES BACK TO A COUPLE OF FEET, SIR.

Q. OKAY. SO, CERTAINLY IT WOULD BE A FAIR STATEMENT BASED -- YOU COULD CONCLUDE THAT THIS WEAPON WAS SOMEWHERE BETWEEN TWO INCHES AND TWO FEET OR MORE AWAY FROM MS. B WHEN IT WAS FIRED.

A. THE BEST I CAN SAY, IT WAS A DISTANT WOUND, SIR.

Q. OKAY.

A. THERE WAS NO SOOT -- I CANNOT ESTIMATE EXACTLY WHERE THAT GUN WAS WHEN THE TRIGGER WAS PULLED.

Q. AND IT WAS -- AND IT WAS FROM BEHIND AND ABOVE.

A. YES, SIR.

Q. OKAY. BASED UPON YOUR EXAMINATION OF THE DECEASED, WOULD YOUR -- WOULD THE WAY IN WHICH THE DECEASED HELD HER HEAD HAVE AFFECTED THE ANGLE OF THE WOUNDS?

A. IT'S POSSIBLE THAT -- OUR MEASUREMENTS ARE TAKEN WITH THE PERSON IN WHAT'S KNOWN AS THE ANATOMIC POSITION WHICH MEANS THAT THE PERSON IS CONSIDERED TO BE ERECT OR UPRIGHT. ANY TILTING OF THE HEAD, OF COURSE, WOULD AFFECT THE ANGLE OF TRAJECTORY. ONCE AGAIN YOU HAVE THE WINDOW ITSELF WHICH WOULD ACT AS END POINTS FOR THE TRAJECTORY. YOU COULD SEE WHERE THE BULLET WENT THROUGH THE REAR WINDOW AS IT PASSED THROUGH HER HEAD AND WHERE IT EXITED OUT THE FRONT WINDOW, AND THAT WOULD PROVIDE FOUR POINTS TO DETERMINE THE STRAIGHT LINE OF THE TRAJECTORY.

Q. ALL RIGHT. SO, BECAUSE OF THAT, WE KNOW THAT THE BULLET WOUND WAS FROM BEHIND, DISTANT, WHATEVER THAT MEANS WITHIN THE CONTEXT OF THE EVIDENCE.

A. YES, SIR.

Q. AND FROM A DOWNWARD ANGLE, EVEN A SLIGHT TEN-DEGREE DOWNWARD ANGLE.

A. YES, SIR.

MR. RUNYON: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BAILEY:

Q. ONE QUESTION, DOCTOR. WHEN WE SAY DISTANT IN THE CONTEXT OF THIS PARTICULAR CASE---

A. UH-HUH.

Q. ---ASSUMING GLASS INTERVENED BETWEEN THE BULLET AND THE BACK OF THE HEAD, WOULDN'T IT BE TRUE THAT ALL YOU CAN TELL IS THAT THE BULLET WAS FIRED BEHIND THE GLASS?

A. ALL I SAID IS THAT IT WAS DISTANT, THAT IT COULD BE FROM RIGHT BEHIND THE GLASS TO WHEREVER BACK.

Q. ALL RIGHT, SIR. THANK YOU. THAT'S---

A. SEVERAL THOUSAND YARDS, YES, SIR.

MR. BAILEY: THANK YOU VERY MUCH. CAN HE BE EXCUSED?

THE COURT: YOU CAN BE EXCUSED.

MR. RUNYON: NO OBJECTION, YOUR HONOR.

THE COURT: HAVE A GOOD DAY.

THE WITNESS: THANK YOU, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS.

MR. BAILEY: YOUR HONOR, THERE'S A POINT OF LAW INVOLVING THE NEXT WITNESS THAT I'D LIKE TO TAKE UP WITH THE COURT.

THE COURT: OH, ALL RIGHT. MR. FOREMAN, MEMBERS OF THE JURY, GO TO YOUR ROOM FOR JUST A MOMENT OR TWO IF YOU WILL FOR ME, PLEASE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: WE CALL ANTHONY RILEY.

THE COURT: ALL RIGHT. ANTHONY RILEY. I'M GOING TO NEED TO HAVE SOMEBODY INSIDE HERE. I PREFER TO HAVE SOMEBODY OVER HERE IF POSSIBLE.

(ANTHONY RILEY WAS BROUGHT INTO THE COURTROOM.)

ANTHONY RILEY, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS OUT OF THE PRESENCE OF THE JURY:

THE COURT: COME RIGHT AROUND.

THE CLERK: WOULD YOU GIVE US YOUR NAME AND SPELL YOUR LAST NAME, PLEASE?

THE WITNESS: ANTHONY RILEY, R-I-L-E-Y.

MR. BAILEY: YOUR HONOR, MR. RILEY IS A SUBPOENAED WITNESS FOR THE STATE AND I HAVE RECEIVED CERTAIN INFORMATION THAT MR. RILEY HAD BEEN APPROACHED BY AN INDIVIDUAL THIS PAST SUNDAY AND INTIMIDATED. I'VE ADVISED MR. RUNYON OF THAT SITUATION AND I WANTED TO EXPLORE WHAT OCCURRED OUT OF THE PRESENCE OF THE JURY IN ORDER TO ASSURE THAT HIS TESTIMONY HAS NOT BEEN

INFLUENCED ONE WAY OR THE OTHER.

THE COURT: ALL RIGHT, SIR. GO AHEAD.

MR. BAILEY: ALL RIGHT, SIR.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. RILEY, CALLING YOUR ATTENTION TO THIS PAST SUNDAY, DID YOU HAVE SOMEONE CONTACT YOU AT YOUR HOME?

A. YES, SIR.

Q. DO YOU KNOW THAT PERSON'S NAME?

A. NO.

Q. OKAY. DO YOU KNOW HIS RELATIONSHIP, IF ANY, TO ANY OF THE PARTIES INVOLVED HERE?

A. HE'S RELATED TO MIKE B .

Q. OKAY.

A. EX-WIFE.

Q. OKAY. HE'S AN IN-LAW OF MIKE B ?

A. AS FAR AS I KNOW.

Q. OKAY. AND CAN YOU DESCRIBE THIS INDIVIDUAL?

A. HE'S A WHITE MALE.

Q. OKAY. ABOUT HOW OLD?

A. ABOUT 47, 50.

Q. ALL RIGHT, SIR. OKAY. AND YOU LIVE WHERE ROUGHLY, NOT YOUR EXACT ADDRESS BUT. . .

A. ON .

Q. OKAY. NOW, DID THIS PERSON -- INDIVIDUAL COME TO ROAD TO YOUR HOUSE?

A. YES, SIR.

Q. DID HE COME INTO THE HOUSE OR DID THIS OCCUR IN THE YARD OR WHAT?

A. PULLED UP IN MY YARD.

Q. OKAY. AND COULD YOU TELL WHETHER OR NOT THE PERSON HAD BEEN DRINKING?

A. YEAH, HE WAS.

Q. OKAY. WHAT OCCURRED WHEN HE CAME TO YOUR HOUSE?

A. WELL, HE WAS BLOWING THE HORN AND I WAS IN THE BACKYARD, AND I WALKED UP TO THE TRUCK AND ASKED HIM COULD I HELP HIM AND HE SAID HE WANTED THE MAN OF THE HOUSE AND I TOLD HIM, "WELL, YOU'RE LOOKING AT HIM." AND THEN HE ASKED ME TO COME AND GO WITH HIM AND I SAID, "GO WHERE?" AND HE SAID, "JUST COME ON AND GO WITH ME." I SAID, "WELL, I'M NOT GOING WITH YOU NO PLACE BECAUSE I'M GETTING READY TO GO TO WORK." AND THEN HE SAID, "I HATE ALL Y'ALL BLACK NIGGERS AND I OUGHT TO BLOW YOUR SO-AND-SO HEAD OFF." AND HE OPENED THE TRUCK DOOR AND I BACKED UP A LITTLE BIT BECAUSE HE SAID HE WAS GOING TO GET OUT AND KICK MY BEHIND. SO, HE TOOK AND KICKED THE TRUCK DOOR ON ME, AND WHEN HE GOT OUT HE TOOK AND WRAPPED HIS ARM AROUND MY NECK AND

PUT A FIST UP TO MY FACE AND SAID, "I'LL KILL YOUR BLACK SO-AND-SO."

THE COURT: PUT A WHAT UP TO YOUR FACE?

THE WITNESS: HIS FIST.

THE COURT: ALL RIGHT.

BY MR. BAILEY:

Q. ALL RIGHT. MR. RILEY, DID HE SAY ANYTHING TO LEAD YOU TO BELIEVE THAT HIS VISIT TO YOUR HOUSE WAS IN ANY WAY CONNECTED WITH THIS CASE?

A. YEAH. HE SAID BECAUSE IT WAS STEPHANIE. I'M THE REMEMBER WHY STEPHANIE IS NOT HERE.

Q. OKAY. AND AT THAT TIME HAD YOU BEEN SUBPOENAED AS A STATE'S WITNESS?

A. YES.

Q. AND HAD YOU GIVEN A STATEMENT TO A DORCHESTER COUNTY DEPUTY SHERIFF?

A. YES, SIR.

Q. AND HAD YOU ALSO BEEN INTERVIEWED BY ME ON TWO OCCASIONS?

A. YES, SIR.

Q. AND BEEN SERVED WITH A SUBPOENA---

A. YES, SIR.

Q. ---FOR APPEARANCE THIS WEEK? ALL RIGHT, SIR. DID THAT CONTACT WITH THAT INDIVIDUAL INTIMIDATE YOU?

A. YES, SIR.

THE COURT: LET HIM EXPLAIN IT.

THE WITNESS: YEAH, IT BOTHERED ME.

THE COURT: HE SAID IT BOTHERED HIM.

BY MR. BAILEY:

Q. IT PLACED YOU IN FEAR?

A. YEAH.

Q. ALL RIGHT, SIR. DO YOU FEEL THAT DESPITE THAT CONTACT YOU'RE ABLE TO TESTIFY TRUTHFULLY---

A. YES, SIR.

Q. ---HERE UNDER OATH?

A. YES, SIR.

Q. AND YOU'RE WILLING AND PREPARED TO TESTIFY DESPITE WHAT HAD HAPPENED.

A. YES, SIR.

Q. THE TRUTH, TO THE BEST OF YOUR RECOLLECTION.

A. YES, SIR?

MR. BAILEY: ALL RIGHT, SIR. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

MR. RUNYON: YOUR HONOR, I DON'T HAVE ANY DIRECT QUESTIONS FOR MR. RILEY AT THIS STAGE, BUT AS IT RELATES TO THIS PARTICULAR MATTER IN THE COURSE OF CROSS-EXAMINATION I'D LIKE TO KNOW WHETHER OR NOT WE WOULD BE PROHIBITED FROM GOING INTO THIS MATTER OF THIS ALLEGED---

THE COURT: WELL, THIS WITNESS SAYS THAT HE CAN STILL TESTIFY.

MR. RUNYON: I UNDERSTAND.

THE COURT: AS TO THE -- I UNDERSTOOD AND TESTIFY AS TO THE TRUTH OF THE MATTER EVEN THOUGH IT WORRIED HIM AND HE WAS AFRAID AT THE TIME. I'LL TAKE UP THAT WHEN WE FINISH THE TESTIMONY. I'LL LET YOU MAKE WHATEVER MOTIONS YOU WANT TO MAKE DEPENDING UPON WHAT HIS TESTIMONY IS. YOU CAN ASK HIM ANY QUESTIONS NOW IF YOU WANT BUT NOT ABOUT THE CASE BECAUSE I DON'T WANT TO HAVE TO TRY THIS CASE TWICE.

MR. RUNYON: ALL RIGHT.

CROSS-EXAMINATION

Q. MR. RILEY, JUST VERY BRIEFLY. MR. RILEY, THIS WAS -- DID YOU SPEAK TO ANY STATE'S WITNESSES ABOUT THIS PARTICULAR MATTER?

A. NO, SIR, NOT UNTIL TODAY. I TALKED TO MR. MOULTRIE.

Q. YOU TALKED TO MAJOR MOULTRIE.

A. YES, SIR.

Q. AND DID YOU SPEAK WITH ANYBODY ELSE -- MR. B , STEPHANIE'S FATHER?

A. YEAH, I WENT OVER THAT SUNDAY AND TOLD HIM WHAT HAPPENED.

Q. WHY DID YOU GO TO MR. B ?

A. INSTEAD OF CALLING THE POLICE?
Q. YES, SIR.
A. BECAUSE MY WIFE IS UPSET NOW ABOUT WHAT'S GOING ON AND SHE WAS ABOUT TO GO TO CHURCH, AND IF I HAD WENT IN THERE AND TOLD HER WHAT HAPPENED IT JUST WOULD HAVE MADE THINGS WORSER (SIC) AT HOME.
Q. AND SO YOU WENT TO SEE MR. B , STEPHANIE'S FATHER.
A. YES, SIR.
Q. AND YOU DISCUSSED THIS MATTER WITH HIM.
A. YES, SIR.
Q. DID YOU DISCUSS YOUR TESTIMONY WITH HIM?
A. TESTIMONY?
Q. WHAT YOU'RE GOING TO. . .
A. NO. HUH-UH. NO, SIR.
Q. DID YOU -- DID YOU ADVISE HIM THAT THEY HAD NO REASON TO FEAR ABOUT WHAT YOUR TESTIMONY WOULD BE?
A. NO, SIR, I DIDN'T.
Q. OKAY. WHY SPECIFICALLY DID YOU GO TALK TO MR. B ?
A. BECAUSE HE TOLD -- WHEN HE CAME, HE SAID, "YOU KNOW WHO I AM," AND I SAID, "YEAH, I KNOW WHO YOU ARE." AND HE SAID, "WELL, I'M RELATED TO MIKE," AND I SAID, "YEAH, I KNOW." SO, LIKE I SAID, INSTEAD OF FOR ME TO CALL THE POLICE AND MAKE A BIG SCENE, I WENT AND

TALKED TO MIKE BECAUSE I FIGURED THAT HE CAN GO AND TALK TO THAT PERSON.

Q. AND CALL OFF THE DOG?

A. SIR?

Q. AND CALL OFF THE DOGS, SO TO SPEAK?

A. NO, SIR.

Q. CALL OFF THE---

A. NO, SIR, THERE WASN'T NO DOGS. THERE WASN'T---

Q. NO. WHAT I'M TRYING TO SAY IS YOU WENT TO TALK TO MR. B SO THAT HE COULD MAKE SURE THIS PERSON DIDN'T HARM YOU?

A. NO, JUST MAKE SURE HE DON'T COME BACK TO MY HOUSE.

Q. OKAY.

A. THAT'S ALL.

Q. AND WERE YOU ASSURED THAT HE WOULDN'T COME BACK TO YOUR HOUSE?

A. YEAH.

Q. WAS YOUR TESTIFYING EVER MENTIONED WHEN YOU SPOKE WITH MR. B ?

A. WAS MY TESTIFYING?

Q. YOUR COMING TO COURT TO TESTIFY, WAS THAT EVER MENTIONED? WAS THAT EVER DISCUSSED WITH MR. MIKE B THIS PAST SUNDAY?

A. NO. HUH-UH.

THE COURT: ALL RIGHT. YOU CAN COME DOWN NOW. JUST STAND RIGHT OVER THERE AND BRING MY JURY OUT. I WANT HIM RE-SWORN AFTER THE JURY GETS IN HERE.

THE CLERK: OKAY.

THE COURT: THANK YOU. YOU CAN JUST STAND RIGHT OVER THERE, BE ALL RIGHT, AND THEN THE SOLICITOR WILL CALL YOU. THANK YOU VERY MUCH.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

MR. BAILEY: I CALL ANTHONY RILEY.

THE COURT: ALL RIGHT. COME AROUND, MR. RILEY.

ANTHONY RILEY, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. RILEY, WHERE DO YOU LIVE?

A.

Q. OKAY. THAT'S ROAD?

A. YES.

Q. OKAY. AND WHAT IS YOUR MARITAL STATUS?

A. I'M MARRIED.

Q. OKAY. AND DO YOU HAVE CHILDREN?
A. FIVE.
Q. OKAY. DO YOU LIVE AT HOME WITH YOUR WIFE AND FIVE CHILDREN?
A. YES, SIR.
Q. OKAY. WHERE ARE YOU EMPLOYED NOW?
A. I WORK FOR MCDONALD'S IN OAK BROOK AND I INSTALL CARPET.
Q. HOW LONG HAVE YOU WORKED AT MCDONALD'S?
A. ABOUT TWO AND A HALF MONTHS.
Q. DO YOU KNOW MIKE B WHO'S SEATED OVER HERE IN THE KIND OF TAN-COLORED COAT?
A. YES, SIR.
Q. HOW LONG HAVE YOU KNOWN MIKE B ?
A. ABOUT THIRTEEN YEARS.
Q. OKAY. AND HOW DO YOU HAPPEN TO KNOW HIM?
A. WELL, HE STARTED ME OUT IN THE CARPET BUSINESS.
Q. ALL RIGHT. AND DID YOU KNOW HIS DAUGHTER, STEPHANIE B ?
A. YES, SIR.
Q. AND HOW DID YOU KNOW HER?
A. WELL, I USED TO STAY NEXT DOOR TO MIKE AND HIS LITTLE GIRL USED TO PLAY WITH MY FOUR GIRLS AND I BABY-SAT STEPHANIE SEVERAL TIMES.

Q. ALL RIGHT.
A. THEY USED TO PLAY TOGETHER.
Q. DO YOU KNOW A MAN NAMED JIMMY CARVER?
A. YES.
Q. HOW DO YOU KNOW MR. CARVER?
A. THROUGH MIKE B .
Q. AND HOW LONG HAVE YOU KNOWN JIMMY CARVER?
A. ABOUT SEVEN YEARS.
Q. I WANT TO CALL YOUR ATTENTION TO NOVEMBER 25TH, 1992, WHICH WAS A WEDNESDAY LATE IN THE AFTERNOON AND ASK WHETHER OR NOT YOU HAD OCCASION TO GO TO SPELL'S STORE THAT DAY.
A. YES, SIR, I DID.
Q. AND HOW FAR IS SPELL'S STORE FROM YOUR HOUSE?
A. ABOUT TWO MINUTES.
Q. TWO MINUTES?
A. YES.
Q. OKAY. AND WHEN YOU WENT TO THE STORE, HOW DID YOU GET THERE?
A. I WALKED.
Q. AND WHAT WAS THE REASON YOU WENT TO SPELL'S?
A. TO GET A BEER AND A LOAF OF BREAD AND A BOX OF SALT.
Q. OKAY. AND DO YOU RECALL ABOUT WHAT TIME YOU GOT TO SPELL'S THAT DAY?

A. IT WAS ALMOST 6:30. I CAN'T BE SPECIFIC, BUT IT WAS CLOSE TO 6:30.

Q. DID YOU GO DOWN THERE BY YOURSELF?

A. YES, SIR.

Q. AND DO YOU RECALL WHETHER OR NOT IT WAS LIGHT OR DARK OR DUSK-DARK OR. . .

A. IT WAS DUSK-DARK.

Q. IS THERE ANY LIGHTING OUTSIDE OF THE STORE?

A. YES. WHEN THE STORE IS OPEN, THERE'S LIGHTS OUT THERE.

Q. NOW, WHEN YOU GOT TO THE STORE, WHAT DID YOU DO?

A. I WENT INTO THE STORE AND GOT WHAT I WANTED AND CAME BACK OUT AND USED THE TELEPHONE.

Q. OKAY. NOW, AS YOU WERE ON THE PAY PHONE OUTSIDE OF THE STORE, WHAT, IF ANYTHING, TOOK PLACE?

A. WELL, AFTER I GOT OFF THE PHONE I TURNED AROUND AND MIKE PULLED UP IN HIS PICKUP TRUCK -- WELL, HIS FATHER-IN-LAW'S PICKUP TRUCK.

Q. YOU'RE TALKING ABOUT MIKE B ?

A. YES.

Q. HOLD ON JUST A SECOND. I'M GOING TO GET A DRAWING UP HERE. MR. RILEY, COME ON -- JUST STEP OVER HERE IF YOU WOULD, PLEASE. THIS IS A DRAWING SOMEBODY ELSE HAS MADE AND THIS IS SPELL'S GROCERY STORE UP

HERE. IT SHOWS THE ICE MACHINE, THE TELEPHONE, THE FRONT DOOR, PIGEON BAY ROAD, AND RICHARDSON AVENUE.

A. YES, SIR.

Q. OKAY. DOES THAT LOOK LIKE HOW SPELL'S STORE LOOKED, HOW IT WAS LAID OUT AT THAT TIME?

A. THAT IS IT. THAT IS IT.

Q. AND WHAT DIRECTION DID YOU COME ON PIGEON BAY ROAD TO GET TO SPELL'S?

A. I CAME UP THIS WAY.

Q. OKAY. AND AS YOU WERE ON THE TELEPHONE, YOU TESTIFIED THAT MIKE B 'S TRUCK PULLED INTO THE PARKING LOT?

A. YES, SIR.

Q. OKAY. HOW DID -- DID THE TRUCK STOP?

A. YEAH. HE STOPPED AND STEPHANIE AND HIM GOT OUT OF THE TRUCK.

Q. BEFORE WE GET TO THAT, WHERE DID THE TRUCK PARK?

A. RIGHT HERE. IT WAS CLOSER TO RICHARDSON AND THE FRONT OF SPELL'S POINTING TOWARD HIGHWAY 78. YOU KEEP THIS ROAD, RICHARDSON, IT WILL TAKE YOU TO HIGHWAY 78.

Q. OKAY. ALL RIGHT. WELL, WAS THE TRUCK PULLED IN STRAIGHT TO THE STORE OR TURNED SIDEWAYS TO THE STORE?

A. IT WAS TURNED -- IT WAS ON AN ANGLE OF THE STORE.

Q. OKAY. DO YOU SEE THIS BLUE MARK HERE?

A. UH-HUH. OKAY. THAT COULD BE THE FRONT OF THE TRUCK.

Q. OKAY.

A. AND THAT COULD BE THE BACK OF THE TRUCK.

Q. OKAY. SO, THE TRUCK WAS HEADING TOWARDS ST. GEORGE?

A. YES, SIR.

Q. AND THE TAIL OF THE TRUCK WAS HEADING BACK TOWARD SUMMERVILLE.

A. YES, SIR.

Q. OKAY. AND ABOUT HOW FAR FROM THE PAY PHONE WAS THAT TRUCK PARKED?

A. ABOUT FROM HERE TO ABOUT WHERE THAT CARVING IS AT OVER THERE, THE DIVIDER.

Q. THE DIVIDER THERE?

A. YES, SIR.

Q. ALL RIGHT. YOU CAN GO AHEAD AND HAVE A SEAT NOW, MR. RILEY. YOU WERE ON THE PAY PHONE. THE TRUCK PULLED UP AND STOPPED. WHAT HAPPENED THEN?

A. AND THEN AFTER I HANG UP THE PHONE I TURNED AROUND AND MIKE AND STEPHANIE WAS GETTING OUT OF THE TRUCK, AND MIKE TOLD ME HI AND STEPHANIE TOLD ME HI.

AND HE SAID, "WELL, WAIT A MINUTE. I'LL BE RIGHT BACK OUT." SO, I WENT ON THE CORNER OF---

Q. LET ME ASK YOU SOMETHING FIRST. NOW, WAS THERE ANYBODY ELSE OUT IN THAT PARKING LOT AT THAT TIME?

A. NO, NOT AT THAT TIME. THERE WERE CARS OUT THERE.

Q. ANY PEOPLE THAT YOU CAN REMEMBER BEING OUTSIDE?

A. NO, NOT AT THAT TIME.

Q. ALL RIGHT. MIKE AND STEPHANIE WENT INSIDE THE STORE AND THEN WHAT HAPPENED?

A. AND THEN MIKE CAME OUT AND HE STARTED TALKING TO ME AND ASKING ME WHY -- WILL I COME AND HELP HIM SUNDAY TO WORK ON HIS TRUCK AND I TOLD HIM, YEAH, AND HE WAS TRYING TO GET ME TO GO TO SANTEE WITH THEM, BUT HE KNOW I DON'T LIKE TO GET ON BOATS. SO, STEPHANIE CAME OUT OF THE STORE AND SHE WAVED AT ME AND SAID, "HI, ANTHONY," AND SHE GOT IN THE TRUCK.

Q. ALL RIGHT. AND WHERE WERE Y'ALL AT THAT TIME?

A. RIGHT ON THE CORNER OF PIGEON BAY AND SPELL'S GROCERY STORE.

Q. CAN YOU COME BACK OVER HERE AGAIN AND SHOW THE JURY WHERE YOU WERE?

A. OKAY. THIS IS PIGEON BAY. THERE IS A TRASH CAN RIGHT ON THE CORNER.

Q. ALL RIGHT. THERE'S SOMETHING THAT SAYS T. C. THERE. IS THAT THE TRASH CAN?

A. YEAH.

Q. ALL RIGHT.

A. BECAUSE IT'S RIGHT ON THE WALL.

Q. OKAY. AND SO WHERE WERE Y'ALL?

A. STANDING RIGHT HERE BETWEEN THE TRASH CAN.

Q. ALL RIGHT. DO YOU SEE THE RED X. THERE?

A. UH-HUH. THAT WAS MIKE AND I WAS RIGHT NEXT THERE TO HIM.

Q. ALL RIGHT. GO AHEAD AND HAVE A SEAT. SO, Y'ALL ARE STANDING THERE TALKING. WHERE WAS MR. CARVER?

A. HE WAS IN THE TRUCK.

Q. DID HE GET OUT OF THE TRUCK---

A. NO.

Q. ---WHILE YOU WERE THERE?

A. NO, SIR.

Q. OKAY. AND WHEN STEPHANIE CAME OUT OF THE STORE AND SAID HELLO TO YOU, WHAT DID SHE DO?

A. SHE GOT IN THE TRUCK.

Q. OKAY. WHAT HAPPENED THEN?

A. AND THEN THE PERSON RIGHT THERE, TIMOTHY

AND---

Q. WHEN YOU SAY THE PERSON RIGHT THERE---

A. TIMOTHY.

Q. ---ARE YOU POINTING TO THE DEFENDANT---

A. THE MIDDLE PERSON.

Q. ---SITTING IN THE MIDDLE THERE?

A. THE MIDDLE PERSON.

Q. ALL RIGHT.

A. AND THERE WAS A WHITE PERSON AND A BLACK GIRL THAT CAME UP.

Q. NOW, THE WHITE PERSON, IS THAT A MAN OR A WOMAN?

A. A MAN.

Q. OKAY. ABOUT HOW OLD WAS HE?

A. ABOUT 20, 21.

Q. OKAY. HAD YOU EVER SEEN EITHER THE GIRL OR THE WHITE FELLOW BEFORE?

A. BEFORE?

Q. YEAH.

A. NO, SIR.

Q. HOW ABOUT TIMOTHY ROGERS?

A. YES, SIR.

Q. YOU'VE SEEN HIM AROUND?

A. UH-HUH.

Q. ALL RIGHT. WHAT HAPPENED THEN AS THEY WALKED

UP?

A. WELL, WHEN THEY CAME UP, I WENT CLOSER TO MIKE SO THEY COULD WALK BEHIND US INSTEAD OF WALKING BETWEEN US. AND THEN THE WHITE PERSON, HE WAS LIKE DRUNK OR WHATEVER. HE WAS LEANING ALL OVER THE TRASH CAN. THEN TIMOTHY WENT TO THE PHONE AND HE SAID, "WELL, STAND RIGHT THERE AND TAKE---

Q. WHEN YOU SAY HE, YOU NEED TO GIVE A NAME.

A. TIMOTHY.

Q. TIMOTHY. OKAY.

A. OKAY. HE TOLD THE DUDE TO WAIT RIGHT THERE. HE WAS GOING TO MAKE A PHONE CALL AND HE WENT TO THE PHONE AND PICKED UP THE PHONE AND HE REALIZED HE DIDN'T HAVE A QUARTER. SO, HE CAME BACK OVER TO WHERE ME AND MIKE AND THE WHITE PERSON WAS STANDING AT AND SAID, "GIVE ME A QUARTER AND---

Q. WHO DID HE SAY "GIVE ME A QUARTER" TO?

A. TO THE WHITE DUDE.

Q. ALL RIGHT.

A. AND THEN HE SAID, "STAND RIGHT THERE AND LISTEN TO THEM AND SEE IF THEY SAY ANYTHING ABOUT US BECAUSE I'LL TAKE CARE OF THEIR M. F."

Q. I WANT YOU TO REPEAT WHAT PEOPLE SAID THAT NIGHT, WHETHER IT'S A CUSS WORD OR NOT, AS LONG AS IT'S SOMETHING YOU HEARD. WHAT DID TIMOTHY ROGERS SAY TO

THE OTHER FELLOW?

A. HE SAID, "STAND RIGHT THERE AND LISTEN TO THEM, AND IF THEY TALK ABOUT US I'LL TAKE CARE OF THE MOTHER FUCKERS."

Q. OKAY. AND WHO WAS HE REFERRING TO?

A. TO ME AND MIKE.

Q. WAS THERE ANYBODY ELSE THERE HE COULD HAVE BEEN TALKING ABOUT?

A. NO.

Q. OKAY. AND UP UNTIL THAT TIME, HAD EITHER YOU OR MIKE B SAID OR DONE ANYTHING TO ANY OF THESE THREE PEOPLE?

A. NO, SIR.

Q. OKAY. AND AFTER THAT WAS SAID, WHAT HAPPENED?

A. AFTER THAT WAS SAID, THEN TIMOTHY, LIKE I SAID, HE GOT ON THE PHONE AND THE WHITE PERSON -- HE WAS STANDING THERE IN MY FACE AND MIKE'S FACE AND HE HAD A CIGARETTE LIT AND HE TOOK IT AND THROW IT AT MY FEET. AND MIKE LOOKED AT ME AND I LOOKED AT MIKE, AND I TOLD MIKE -- I SAID, "MIKE, WE DON'T NEED THIS BECAUSE, YOU KNOW, IT'S A HOLIDAY." SO I SAID, "WELL, I'M GOING TO GO AHEAD AND LEAVE BEFORE -- YOU KNOW, WHILE I'VE GOT A CHANCE TO GO BECAUSE," I SAID, "THEY CAME FROM DOWN THAT STREET WHERE I CAME FROM." AND

MIKE SAID, "WELL, DO YOU WANT TO GET A RIDE IN THE BACK OF THE TRUCK?" I SAID, "NO, BECAUSE," I SAID, "THE TIME IT TAKE YOU TO TURN AROUND I COULD BE DONE RUN HOME."

Q. OKAY. SO, DID YOU LEAVE AT THAT POINT?

A. I LEFT.

Q. ALL RIGHT. NOW, WHAT'S THE LAST THING YOU SAW MIKE B -- AS YOU LEFT TO GO DOWN PIGEON BAY ROAD?

A. WALKING TOWARDS THE TRUCK.

Q. OKAY. AND WHAT ABOUT THE OTHER PEOPLE? DID YOU SEE THEM?

A. WELL, THE WHITE DUDE, HE WAS STILL STANDING THERE LOOKING AT MIKE AND LOOKING AT ME AS I WAS WALKING OFF.

Q. ALL RIGHT. NOW, WHEN YOU WALKED OFF, HOW DID YOU WALK OFF?

A. WELL, ONCE I STEPPED DOWN OFF THE CURB FROM SPELL'S GROCERY STORE, I STARTED JOGGING, HURRY UP AND GET HOME.

Q. OKAY. WHY WAS THAT?

A. BECAUSE WHEN THEY CAME UP THERE AND THEY SOUNDED LIKE THEY WAS LOOKING FOR TROUBLE AND I KNOW I HAD TO WALK BACK DOWN THE DARK ROAD BY MYSELF, I WANTED TO GET HOME BEFORE THEY COME BY.

Q. OKAY. ALL RIGHT. NOW, YOU SAID YOUR HOUSE WAS LIKE A COUPLE OF MINUTES AWAY FROM THE STORE?

A. ABOUT TWO MINUTES.

Q. AS FAR AS, YOU KNOW, YARDS OR FEET OR BLOCKS, CAN YOU GIVE US AN IDEA HOW FAR DOWN IT WAS?

A. WELL, IT'S ABOUT THE LENGTH OF THIS BUILDING TO BE EXACT BECAUSE THERE'S A GRAVEYARD AND A HOUSE ON THE CORNER AND AFTER THAT GRAVEYARD THERE'S A DITCH AND THERE'S MY HOUSE, SO. . .

Q. OKAY. NOW, WHAT OCCURRED WHEN YOU GOT ABOUT TO WHERE THE GRAVEYARD IS?

A. I HEARD A SHOT.

Q. OKAY. AND DID YOU KEEP ON GOING?

A. YEAH.

Q. OKAY. WHAT DID YOU DO THEN?

A. WELL, WHEN I -- I WENT HOME AND I OPENED THE DOOR AND I HEARD ANOTHER SHOT AND THE -- WELL, AFTER I HEARD THE FIRST SHOT I THOUGHT IT WAS -- MIKE MIGHT HAVE SHOT IN THE AIR, YOU KNOW, BECAUSE LIKE I SAID THEY WERE STARTING SOMETHING BECAUSE AFTER THE WHITE DUDE FLICKED THE CIGARETTE ON ME NORMALLY I WOULD HAVE FIGHT HIM BECAUSE HE DIDN'T KNOW ME AND THAT WAS INFLICTING PAIN TO ME, EVEN THOUGH IT DIDN'T BURN, BUT THE FACT HE DON'T KNOW ME AND HE'S GOING TO THROW FIRE AT ME.

Q. OKAY.
A. CIGARETTE.
Q. ALL RIGHT. SO, WHEN YOU GOT TO YOUR HOUSE YOU SAY YOU HEARD A SECOND SHOT?
A. YES, SIR.
Q. OKAY. BETWEEN THE TIME YOU LEFT SPELL'S STORE AND RAN DOWN TO YOUR HOUSE, DID YOU PASS ANYBODY ELSE, ANY OTHER PEOPLE---
A. NO, SIR.
Q. ---IN THE ROAD OR ANYTHING?
A. NO, SIR.
Q. OKAY. NOW, AFTER YOU HEARD THE SECOND SHOT WHAT DID YOU DO?
A. I WALKED IN MY HOUSE.
Q. OKAY. DID YOU STAY IN THE HOUSE?
A. NO. I CAME BACK OUT ON THE PORCH.
Q. OKAY.
A. BECAUSE MY KIDS HAVE ASTHMA, SO I CAN'T SMOKE CIGARETTES IN THE HOUSE. SO, I HAVE TO ALWAYS GO OUTSIDE TO SMOKE.
Q. ALL RIGHT. AND AFTER YOU CAME BACK OUT ON THE PORCH, WHAT OCCURRED?
A. TWO PEOPLE CAME RUNNING DOWN THE ROAD AND ONE OF THEM SAID---
MR. RUNYON: OBJECTION, YOUR HONOR, UNLESS

HE'S GOING TO IDENTIFY---

THE COURT: I SUSTAIN THAT UNLESS HE CAN IDENTIFY THEM.

BY MR. BAILEY:

Q. ALL RIGHT. COULD YOU IDENTIFY THE TWO PEOPLE---

A. NO.

Q. ---THAT CAME DOWN THE ROAD?

A. NO.

Q. WHAT DIRECTION DID THEY COME FROM?

A. CAME FROM SPELL'S GROCERY STORE.

Q. OKAY. COULD YOU TELL WHETHER THEY WERE MEN OR WOMEN?

A. THEY WERE TWO MALE.

MR. BAILEY: OKAY. YOUR HONOR, I'D LIKE TO BE HEARD ON THAT IF I COULD.

THE COURT: ALL RIGHT. GO TO YOUR ROOM JUST A MINUTE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: I SUPPOSE IT'S AN EXCEPTION TO THE HEARSAY RULE, SOLICITOR. IS THAT WHAT YOU ARE. . .

MR. BAILEY: YOUR HONOR, I THINK IT'S RES GESTAE AND I THINK THE CIRCUMSTANCES WOULD SHOW THE TWO

PEOPLE COMING DOWN THE ROAD---

THE COURT: WELL, WHY DON'T YOU FIRST TELL M WHAT YOU HEARD. HE SAID HE DOESN'T KNOW WHO SAID IT.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: BUT HE HEARD TWO -- THERE WERE TWO PEOPLE. SO, GO AHEAD.

BY MR. BAILEY:

Q. OKAY. DID YOU HEAR ANYTHING SAID AS THE TWO PEOPLE RAN PAST -- CAME PAST YOUR -- LET ME WITHDRAW THAT. HOW DID THE PEOPLE COME PAST YOUR HOUSE? WERE THEY RUNNING OR WALKING?

A. THEY WERE RUNNING.

Q. OKAY. AND YOU TESTIFIED THAT THEY WERE MEN?

A. YES.

Q. OKAY. COULD YOU TELL ANYTHING ABOUT THE RAC OR ANYTHING OF THE MEN?

A. NO.

Q. OKAY. ALL RIGHT. NOW, WHAT DID YOU HEAR THEM SAY?

A. I HEARD ONE OF THEM SAY -- DID YOU SAY HOW THEY SAID IT OR. . .

Q. YEAH.

A. ONE OF THEM SAID, "DID YOU GET THE MOTHER FUCKER?" AND THEN THE OTHER ONE SAID, "YEAH, I GOT HI ASS."

Q. OKAY. AND DID ANYBODY ELSE ABOUT THAT TIME COME BY YOUR HOUSE?

A. AND ABOUT TWO OR THREE MINUTES LATER I HEARD THE BUSHES STARTED TO RATTLE. I DON'T KNOW WHETHER IT WAS A RABBIT OR WHAT, BUT I WAS STILL STANDING ON THE PORCH AND THEN I SAW THE GIRL CAME THROUGH THE WOODS BECAUSE THERE'S A PIECE OF WOODS BETWEEN THE GRAVEYARD AND THE DITCH AND MY HOUSE.

Q. OKAY.

A. AND A LITTLE FIELD. THERE'S A FIELD -- WELL, COMING FROM RICHARDSON ON PIGEON BAY THERE'S A BRICK HOUSE ON THE CORNER AND THEN THERE'S THE GRAVEYARD AND THEN THERE'S A DITCH AND THEN THERE'S A BUNCH OF TREES AND THEN I HAVE A LITTLE FIELD ON THE SIDE OF MY HOUSE.

Q. ALL RIGHT.

A. ABOUT ALMOST LIKE A YARD.

Q. HOW DO YOU KNOW IT WAS A GIRL YOU SAW?

A. BECAUSE SHE HAD TO COME THROUGH MY YARD TO GET OUT ON PIGEON BAY ROAD.

Q. YOU SAW HER; RIGHT?

A. YES, SIR.

Q. WAS SHE A BLACK GIRL OR WHITE GIRL?

A. SHE WAS BLACK. HOW SHE LOOK, I DON'T KNOW THAT.

Q. OKAY. BUT SHE WAS A BLACK FEMALE?

A. YES.
Q. AND WAS SHE RUNNING TOWARDS SPELL'S STORE OR AWAY FROM SPELL'S STORE?
A. SHE WAS RUNNING FROM SPELL'S.
Q. AND THE TWO MEN, WERE THEY RUNNING AWAY FROM SPELL'S STORE---
A. YES, SIR.
Q. ---OR TOWARDS SPELL'S STORE?
A. FROM SPELL'S.
Q. FROM SPELL'S.
A. YES, SIR.
MR. BAILEY: YOUR HONOR, IF I COULD BE HEARD ON THAT.
THE COURT: GO AHEAD.
MR. BAILEY: I THINK IT'S PART OF THE RES GESTAE. THIS MAN HAD LEFT THE SCENE WITH THESE PEOPLE THERE WHO HAD MADE ANTAGONISTIC REMARKS AND GESTURES TOWARD THESE PEOPLE. HE RAN TO HIS HOUSE. HE HEARD TWO SHOTS. TWO PEOPLE CAME RUNNING BY HIS HOUSE AND MADE THE UTTERANCES THAT HE'S TESTIFIED TO. I CONTEND THAT'S RES GESTAE. IT'S ALSO A STATEMENT AGAINST INTEREST.
THE COURT: WELL, HE SAID HE DOESN'T KNOW WHO IT IS.
MR. BAILEY: HE DIDN'T KNOW WHO IT WAS, BUT

HE ALSO SAID, YOUR HONOR, HE DIDN'T PASS ANYBODY ELSE.

THE COURT: ALL RIGHT.

MR. BAILEY: ON THE ROAD BETWEEN SPELL'S AND THERE.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: AND I JUST THINK IN THE CONTEXT OF WHAT OCCURRED HERE THAT IT WOULD BE ADMISSIBLE AND IT'S PROBATIVE.

THE COURT: GO AHEAD.

MR. RUNYON: YOUR HONOR, FRANKLY THE SIMPLE FACT OF THE MATTER IS IS HE HASN'T IDENTIFIED WHO SAID IT. HE DIDN'T IDENTIFY WHETHER OR NOT. . . THERE WERE OTHER PEOPLE AT SPELL'S GROCERY STORE; EVEN HE TESTIFIED TO THAT. AND WHILE I UNDERSTAND THAT THE CIRCUMSTANCES MAKE IT -- A PERSON CAN LOGICALLY CONCLUDE THAT IT MUST HAVE BEEN THESE TWO FOLKS, IT COULD HAVE BEEN TWO OTHER PEOPLE. IT COULD HAVE BEEN ANY NUMBER OF PEOPLE AND THE -- AND INSOFAR AS RES GESTAE AND WHAT YOU, THAT'S FINE IF HE CAN IDENTIFY WI SAID WHAT.

NOW, I MEAN THE SIMPLE FACT IS IS THAT -- QUITE FRANKLY, YOUR HONOR, IF THIS WERE A NORMAL MURD CASE OR A REGULAR MURDER CASE, NON-CAPITAL, I THINK I WOULD BE PROBABLY A CLOSE CALL, BUT SINCE THIS IS A CAPITAL CASE I'D HAVE SERIOUS OBJECTIONS TO

NON-IDENTIFICATION OF THE DEFENDANT OR ANYONE ELSE IN ATTRIBUTING AN ALLEGED RES GESTAE STATEMENT TO SOMEBODY THAT THIS GENTLEMAN CANNOT EVEN IDENTIFY.

THE COURT: ALL RIGHT, SIR. ANYTHING ELSE?

MR. RUNYON: THAT'S ABOUT IT, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. I'M GOING TO ALLOW IT. I THINK IT IS RES GESTAE AND NOT FOR THE TRUTH OF IT ALSO WHAT OCCURRED. IT MIGHT BE IN YOUR FAVOR FOR THAT MATTER, COUNSELOR.

MR. RUNYON: IT MIGHT BE. THE SECOND POINT AND I THINK THIS IS WHERE WE GET TO THE POINT ABOUT THE CONTACT, YOUR HONOR. WITH ALL DUE RESPECT, MR. RILEY'S STATEMENT IS -- TRACKS PRETTY WELL. HIS TESTIMONY TRACKS PRETTY WELL WITH HIS STATEMENT. THAT PORTION IS NOT CONTAINED IN HIS WRITTEN STATEMENT.

THE COURT: THAT'S ALL RIGHT. YOU'LL BE ABLE TO EXAMINE HIM ON THAT.

MR. RUNYON: AND I'D LIKE TO BE ABLE TO CROSS-EXAMINE INCLUDING ABOUT THE CONTACT ON SUNDAY.

MR. BAILEY: YOUR HONOR, I'VE GOT A PROBLEM WITH HIM GETTING INTO THAT CONTACT IN THE PRESENCE OF THE JURY. I'VE GOT NO PROBLEM AT ALL IF HE WANTS TO EXPLORE THAT AT THIS POINT. I WOULD LIKE TO ASK HIM A COUPLE OF OTHER QUESTIONS TO KIND OF PUT IT IN CONTEXT IF WE'RE GOING TO BE GETTING INTO THAT.

THE COURT: I'M NOT GOING TO TRY THIS CASE TWICE. IF HE'S MADE A PRIOR STATEMENT, HE CERTAINLY WOULD BE ABLE ON CROSS-EXAMINATION TO EXPLORE THAT. I'D ALLOW THAT ANYWAY. HE WILL BE ON CROSS-EXAMINATION AND IF HE'S MADE A STATEMENT THAT HE DIDN'T TELL THAT IN THE STATEMENT, HE'S GOT A RIGHT TO EXAMINE HIM ON IT UNLESS YOU KNOW SOMETHING I DON'T KNOW.

MR. BAILEY: NO, SIR. LET ME ASK THE ONE WITNESS THIS IF I MIGHT.

BY MR. BAILEY:

Q. MR. RILEY, BEFORE YOU HAD THIS INCIDENT ON THIS PAST SUNDAY, DID YOU INFORM ME WHAT THESE PEOPLE HAD SAID?

A. NO. WHICH PEOPLE?

Q. THE TWO PEOPLE THAT RAN PAST YOUR HOUSE.

A. YEAH, I TOLD YOU THAT.

Q. OKAY. HOW MANY TIMES DID I MEET WITH YOU BETWEEN THE TIME THIS THING HAPPENED AND THIS PAST SUNDAY?

A. TWICE.

Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT Y TOLD ME ABOUT WHAT YOU HEARD WHILE YOU WERE ON YOUR PORCH---

A. YES, SIR.

Q. ---ON BOTH OF THOSE OCCASIONS?

THE COURT: SIR, WHAT'S THE POINT IN THAT?

MR. BAILEY: THAT THIS IS NOT SOMETHING THAT HE FABRICATED AFTER THIS SUNDAY.

THE COURT: OH, WELL, YOU CAN ASK HIM THAT QUESTION ON DIRECT.

MR. BAILEY: YES, SIR.

THE COURT: OR ON REDIRECT, WHICHEVER. YES, SIR.

MR. RUNYON: JUDGE, I JUST -- JUST FOR THE RECORD, IF WE GET PERILOUSLY CLOSE TO THE SOLICITOR BECOMING A WITNESS IN THIS CASE, YOU KNOW, WE MIGHT HAVE TO GET US A MISTRIAL IF HE'S GOING TO MAKE HIMSELF A WITNESS.

THE COURT: OH, HE'S NOT TESTIFYING. HE'S GOT A RIGHT TO ASK THIS WITNESS WHAT HE TOLD HIM, BUT HE CAN'T TESTIFY, YOU KNOW.

MR. RUNYON: ALL RIGHT. ALL RIGHT, SIR.

THE COURT: THERE'S NO DIFFERENCE BETWEEN THIS CASE AND SOME OTHER CASE. IF IT'S PROPER TESTIMONY, IT'S PROPER. GET ME THE JURY. THANK YOU.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT, SIR. YOU MAY PROCEED.

BY MR. BAILEY:

Q. MR. RILEY, I THINK WHEN WE BROKE -- WHEN THE JURY WENT OUT, YOU WERE TESTIFYING THAT YOU HAD GOTTEN TO YOUR HOUSE.

A. YES, SIR.

Q. AND GONE INSIDE AND THEN STEPPED BACK OUT ON THE FRONT PORCH?

A. YES, SIR.

Q. ALL RIGHT. WHAT, IF ANYTHING, DID YOU OBSERVE WHEN YOU WENT TO THE FRONT PORCH?

A. I OBSERVED TWO PEOPLE RUNNING BY MY HOUSE.

Q. ALL RIGHT. AND WHAT DIRECTION WERE THEY RUNNING FROM?

A. FROM SPELL'S GROCERY STORE SIDE.

Q. OKAY. AND HAD YOU PASSED ANY PEOPLE BETWEEN SPELL'S AND YOUR HOUSE WHEN YOU HAD COME DOWN THERE?

A. NO, SIR.

Q. OKAY. AND WERE THESE PEOPLE FOLLOWING THE SAME ROUTE THAT YOU HAD FOLLOWED?

A. YES, SIR.

Q. DOWN PIGEON BAY ROAD?

A. YES, SIR.

Q. OKAY. COULD YOU TELL WHETHER OR NOT THE TWO PEOPLE WERE MALE OR FEMALE?

A. THE TWO PEOPLE THAT WERE COMING BACK DOWN?

Q. THAT CAME DOWN THE ROAD.

A. YES, SIR. THEY WERE MALE.
Q. THEY WERE MALE?
A. YES.
Q. WERE THEY WALKING OR RUNNING?
A. THEY WERE RUNNING.
Q. WOULD YOU STATE WHETHER OR NOT YOU HEARD THEM SAY ANYTHING?
A. ONE OF THEM SAID THAT DID YOU GET THE -- EXCUSE ME. ONE OF THEM SAID, "DID YOU GET THE MOTHER FUCKER?"
Q. OKAY.
A. AND THE OTHER ONE SAID, "YEAH, I GOT THE MOTHER FUCKER."
Q. ALL RIGHT. DID YOU SEE ANYBODY ELSE AT ABOUT THAT SAME TIME?
A. ABOUT MAYBE A MINUTE OR A LITTLE WHILE LATER SOMEBODY CAME OUT THE TREES. WELL, THERE'S A GRAVEYARD AND A DITCH AND THEN THERE'S A LITTLE FIELD AND THEN YOU GET TO MY HOUSE. AND THIS GIRL CAME RUNNING ACROSS -- AND HOW I KNOW IT WAS A GIRL BECAUSE SHE HAD TO COME ON MY PROPERTY IN ORDER TO GET ON PIGEON BAY ROAD.
Q. OKAY. AND WAS SHE RUNNING TOWARD OR AWAY FROM THE DIRECTION OF SPELL'S STORE?
A. FROM SPELL'S.

Q. NOW, WHEN YOU SAW TIMOTHY ROGERS ON NOVEMBER 25TH AT SPELL'S STORE, DID HE LOOK LIKE HE LOOKS NOW?

A. NO, SIR.

Q. HOW DID HE LOOK THEN?

A. HE HAD DREADLOCKS.

Q. WAS HE DRESSED LIKE HE'S DRESSED NOW?

A. NO, SIR.

Q. HOW WAS HE DRESSED THEN?

A. HE HAD ON A BEIGE-LOOKING COAT, OVERCOAT.

Q. NOW, DURING THE ENTIRE TIME YOU WERE AT SPELL'S STORE, DID EITHER YOU OR MIKE B SAY OR DO ANYTHING TO ANTAGONIZE DAXTON PATTERSON OR TIMOTHY ROGERS---

A. NO, SIR.

Q. ---OR THE GIRL? ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

A. YES, SIR.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. RILEY, I TAKE IT -- YOU INDICATED IN YOU DIRECT TESTIMONY -- YOU SAID THAT WHEN YOU HEARD WHAT AT FIRST YOU THOUGHT WAS FIREWORKS, LATER ON YOU THOUGHT IT MIGHT BE A GUNSHOT. YOU THOUGHT, WELL, THA MIKE MIGHT HAVE BEEN FIRING IN THE AIR?

A. YEAH.

Q. ALL RIGHT. MIKE MEANING MIKE B ?
A. YES.
Q. ALL RIGHT. NOW, YOU'VE KNOWN MIKE B FOR HOW LONG NOW, SIR?
A. THIRTEEN YEARS.
Q. AND YOU KNOW THAT HE'S ARMED.
A. SIR?
Q. YOU KNOW THAT HE'S USUALLY ARMED.
A. I KNOW HE'S QUALIFIED TO TOTE A GUN.
Q. OKAY.
A. BUT I KNOW HE HAVE A SHORT PATIENT (SIC) AND I ALWAYS TELL HIM IF HE COME AROUND ON ME DON'T -- I DON'T WANT HIM TO BRING NO GUN AROUND ME.
Q. AND YOU JUST FIGURED PATIENCE HAD RUN OUT AND THAT MIKE WAS FIRING IN THE AIR.
A. YES, SIR.
Q. OKAY. NOW, MR. RILEY, ON OR ABOUT NOVEMBER 28TH, 1992, DID YOU SIT DOWN AND WRITE A STATEMENT FOR THE BERKELEY COUNTY SHERIFF'S DEPARTMENT?
A. YES, SIR, INSIDE THE DORCHESTER COUNTY OFFICE.
Q. ALL RIGHT, SIR. IN THE COURSE OF WRITING THAT STATEMENT -- THEY GAVE YOU A PIECE OF PAPER AND SAID PLEASE WRITE UP WHAT HAPPENED. ISN'T THAT CORRECT, SIR?

A. YES, SIR, THAT'S ALL.

Q. OKAY. NOW, NOWHERE IN THAT STATEMENT DID YOU TELL -- DID YOU PUT ABOUT THESE TWO UNKNOWN PEOPLE RUNNING BY AND SAYING THIS THING, DID YOU?

A. NO, I DIDN'T, AND THE REASON WHY BECAUSE I HAVE TROUBLE SPELLING WORDS AND WHEN THEY SAT ME DOWN IN THAT OFFICE THEY DIDN'T SIT THERE AND TALK TO ME. THEY LEFT ME IN THE OFFICE BY MYSELF.

Q. OKAY.

A. AND I WAS UPSET BECAUSE STEPHANIE WAS CLOSE TO ME.

Q. OKAY. ALL RIGHT. AND WHEN DID YOU REMEMBER ABOUT THE TWO MEN RUNNING BY WHOM YOU COULDN'T IDENTIFY?

A. WHEN?

Q. WHEN DID YOU REMEMBER THAT, SIR?

A. AFTER I GAVE THIS STATEMENT TO THE OFFICER.

Q. WELL, LET ME ASK YOU THIS: DID YOU EVER DISCUSS THIS -- YOUR STATEMENT WITH MR. B OR ANYBODY FROM THE B FAMILY?

A. NO, SIR.

Q. LONG ABOUT WHAT TIME -- DO YOU RECALL WHEN YOU MIGHT HAVE REMEMBERED THIS? IT'S AFTER NOVEMBER 28TH, 1992. BUT WAS IT SIX MONTHS LATER, A YEAR LATER?

A. NO, IT WAS ABOUT A WEEK LATER.

Q. OH, SO IT WAS A WEEK LATER.
A. UH-HUH.
Q. AND SO LATER ON YOU TOLD THE AUTHORITIES ABOUT THIS -- THESE TWO PEOPLE WHO SAID WHAT YOU SAID YOU HEARD.
A. YES, SIR.
Q. BUT YOU COULDN'T IDENTIFY THEM.
A. NO, SIR, BECAUSE IT WAS DARK.
Q. OKAY. AND YOU DON'T KNOW WHETHER THEY WERE WHITE OR BLACK.
A. NO.
Q. ALL RIGHT. NOW, INSOFAR AS MR. ROGERS, WAS THERE ANYTHING UNUSUAL ABOUT MR. ROGERS' DRESS THAT PARTICULAR DAY?
A. WELL, LIKE I SAID, HE HAD DREADLOCKS---
Q. WELL, HOW DID---
A. ---AND HE HAD A BEIGE COAT ON.
Q. OKAY. HOW MANY PEOPLE IN THE BLACK COMMUNIT WEAR DREADLOCKS?
A. I HAVE A BROTHER THAT HAVE DREADLOCKS.
Q. OKAY. SO, IT'S NOT UNUSUAL TO HAVE YOUR HAI IN DREADLOCKS, IS IT?
A. RIGHT.
Q. WHEN YOU WERE STANDING THERE TALKING TO MR. B , YOU TRIED TO PREVAIL UPON HIM NOT TO LET HIS

SHORT TEMPER GET AWAY WITH HIM, DIDN'T YOU?

A. NO, I DID NOT. I DID NOT TRY TO PREVAIL. HE LOOKED AT ME BECAUSE THE WHITE PERSON SHOT THE CIGARETTE AT MY FEET.

Q. OKAY.

A. AND I HAVE SHORT PATIENCE, TOO. IF I WASN'T MARRIED AND WHEN THAT PERSON FLICKED THAT CIGARETTE AT ME, I WOULD HAVE THROWN HIM THROUGH THE WINDOW. BUT I HAVE A WIFE AND FAMILY, SO I CAN'T GET IN -- AFFORD TO GET IN TROUBLE LIKE THAT.

Q. RIGHT. I UNDERSTAND THAT. AND I BELIEVE YOU TOLD MR. B SOMETHING TO THE EFFECT OF JUST IGNORE THAT.

A. YEAH. WE DON'T NEED THAT.

Q. OKAY. AND THE PROBLEM, AS IT WAS DEVELOPING WHEN YOU LEFT, WAS FROM THIS WHITE MALE, WASN'T IT, SIR?

A. YES, SIR.

Q. OKAY. AND DID MR. B SEEM TO BE -- STRIKE THAT. HOW LONG HAVE YOU KNOWN MIKE B ?

A. THIRTEEN YEARS.

Q. OKAY. IN THE COURSE OF THAT TIME, YOU HAVE WORKED WITH HIM.

A. YES, SIR.

Q. IN THE COURSE OF THAT TIME YOU HAVE

SOCIALIZED WITH HIM.

A. YES.

Q. AND YOUR KIDS USED TO PLAY TOGETHER BECAUSE YOU USED TO LIVE RIGHT NEXT DOOR.

A. YES.

Q. AND YOU'VE SEEN HIM LOSE HIS TEMPER.

A. NO, I HAVE NEVER SEEN HIM, BUT I'VE HEARD ABOUT IT.

Q. OH, OKAY. SO, YOU'VE NEVER SEEN HIM LOSE HIS TEMPER.

A. NO.

Q. THE TRUCK, AS IT RELATES TO THE TELEPHONE, WAS APPROXIMATELY, WHAT, FIVE OR TEN PACES FROM THE TELEPHONE?

A. NO, SIR, IT WAS FARTHER THAN THAT.

Q. FARTHER THAN THAT.

A. YES, SIR.

Q. AND YOU DON'T KNOW WHAT HAPPENED AFTER THAT.

A. NO, SIR, I DON'T.

Q. AND WHEN YOU WERE THERE, MR. CARVER WAS STILL IN THE TRUCK?

A. YES.

Q. AND WHEN YOU LEFT, STEPHANIE HAD ALREADY GOTTEN IN THE TRUCK.

A. YES, SIR.

Q. AND WHEN YOU LEFT, MR. B WAS WALKING TOWARDS THE TRUCK?

A. YES, SIR.

Q. AND YOU DON'T KNOW WHAT HAPPENED AFTER THAT.

A. NO, SIR.

Q. AND NOW IN THE COURSE OF -- STRIKE THAT. WHEN YOU WERE -- YOU WERE SUBPOENAED TO COME TO COURT FOR THIS WEEK, WEREN'T YOU, SIR?

A. YES, SIR.

Q. YOU WERE SUBPOENAED WHEN, LAST WEEK?

A. EITHER LAST WEEK OR THE WEEK BEFORE. I DON'T REMEMBER.

Q. OKAY. DID YOU -- DID YOU HAVE A CONTACT FROM THE B FAMILY THIS PAST SUNDAY?

A. YES. WELL, I DON'T KNOW IF IT'S HIS FAMILY. I KNOW IT'S RELATED TO HIS EX-WIFE'S FAMILY.

Q. AND AS A RESULT OF THAT CONTACT, DID YOU GO TALK TO MR. MIKE B ABOUT IT?

A. WHAT HAPPENED? YES, SIR.

Q. DID THAT CONTACT UPSET YOU?

A. YES, SIR.

Q. AND BUT YOU WENT TO SEE MR. MIKE B [AND YOU WERE ASSURED THAT EVERYTHING'S GOING TO BE OKAY.

A. NO. ALL I DID WAS WENT AND TOLD HIM WHAT HAPPENED AND I WALKED OFF AND HE TOLD ME, "WELL, THANK

YOU AND I'LL TAKE CARE OF IT." AND LIKE I SAID, I JUST WALKED OFF.

Q. OKAY. AND SO, TO YOUR KNOWLEDGE, HE'S TAKEN CARE OF IT.

A. I DON'T KNOW. THIS PERSON HAVEN'T COME BACK TO MY HOUSE, SO EVIDENTLY HE DID.

MR. RUNYON: ALL RIGHT. NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN COME DOWN. THANK YOU VERY MUCH.

THE WITNESS: CAN I BE EXCUSED?

THE COURT: ANY OBJECTION?

MR. RUNYON: NONE FROM THE DEFENSE, YOUR HONOR.

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

THE COURT: HAVE A GOOD DAY.

THE WITNESS: THANK YOU.

THE COURT: YOU CAN GO RIGHT OUT THAT DOOR THERE IF YOU LIKE. ALL RIGHT. CALL YOUR NEXT WITNESS.

MR. BAILEY: [Assault Victim] .

Assault Victim , AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. [Assault Victim] , YOU'RE HERE UNDER SUBPOENA FROM THE STATE. IS THAT CORRECT?

A. YES, SIR.

Q. OKAY. HOW OLD ARE YOU?

A. SEVENTEEN.

Q. OKAY. AND WHERE DO YOU LIVE?

A. (PHONETIC) CIRCLE.

Q. I NEED TO GET YOU TO TALK UP A LITTLE LOUDER SO THIS LADY OVER HERE ON THE END CAN HEAR YOU; OKAY? NOW, DO YOU KNOW A FELLOW NAMED DAXTON PATTERSON?

A. YES, SIR.

Q. OKAY. AND HOW LONG HAVE YOU KNOWN DAXTON PATTERSON?

A. NOT THAT LONG.

Q. OKAY. BACK IN NOVEMBER OF '92, HOW LONG HAD YOU KNOWN HIM?

A. PROBABLY A MONTH AND A HALF, SIR.

Q. ALL RIGHT. NOW, IN NOVEMBER 1992 DID YOU KNOW THE DEFENDANT IN THIS CASE, TIMOTHY ROGERS?

A. YES, SIR.

Q. AND DO YOU SEE MR. ROGERS IN THE COURTROOM HERE?

A. SIR?

Q. DO YOU SEE MR. ROGERS IN THE COURTROOM?
A. YES, SIR.
Q. OKAY. AND IS THAT THE YOUNG MAN HERE IN THE MIDDLE ON THIS TABLE IN THE BLUE BLAZER?
A. YES, SIR.
Q. OKAY. [Assault Victim], WHAT -- IN NOVEMBER 1992 WHAT WAS YOUR RELATIONSHIP WITH TIMOTHY ROGERS?
A. WE WERE GOING TOGETHER, SIR.
Q. ALL RIGHT. AND HAVE YOU HAD A CHILD SINCE THEN?
A. YES, SIR.
Q. OKAY. AND WHO IS THE FATHER OF THAT CHILD?
A. TIMOTHY ROGERS.
Q. NOW, I CALL YOUR ATTENTION TO NOVEMBER 25TH, 1992. THAT WAS A WEDNESDAY. WOULD YOU STATE WHETHER OR NOT YOU WERE WITH TIMOTHY ROGERS AND DAXTON PATTERSON THAT DAY?
A. YES, SIR, I WAS.
Q. OKAY. WHAT WERE Y'ALL DOING DURING THE DAYTIME, DAYLIGHT HOURS?
A. WORKING ON THE CHARGER.
Q. ON THE CHARGER?
A. YES, SIR.
Q. THAT'S SOMEBODY'S AUTOMOBILE?
A. YES, SIR.

Q. AND WHERE WERE Y'ALL WORKING ON THE CAR AT?
A. ON THE BAY, SIR.
Q. WHEN YOU SAY THE BAY, YOU'RE TALKING ABOUT PIGEON BAY; IS THAT RIGHT?
A. YES, SIR.
Q. OKAY. NOW, DO YOU RECALL ABOUT WHAT TIME Y'ALL WERE DOWN ON PIGEON BAY WORKING ON THE CAR?
A. ALL AFTERNOON, SIR.
Q. ALL RIGHT. AND WOULD YOU STATE WHETHER OR NOT ANY ALCOHOL WAS BEING DRUNK DOWN THERE?
A. YES, SIR.
Q. OKAY. WHO WAS DRINKING?
A. ALL OF US.
Q. OKAY. WHEN YOU SAY ALL OF US, WHO ARE YOU REFERRING TO?
A. DAX, ME, AND TIM.
Q. ALL RIGHT. HOW MUCH DID YOU HAVE TO DRINK THAT AFTERNOON?
A. A FEW DRINKS, SIR.
Q. DO YOU RECALL WHAT Y'ALL WERE DRINKING?
A. WHITE LIQUOR.
Q. OKAY. AND WHO HAD THE LIQUOR?
A. DAX.
Q. OKAY. WAS IT VODKA OR GIN OR WHAT WAS IT?
A. I DON'T KNOW EXACTLY WHAT IT WAS, SIR.

Q. WOULD YOU STATE WHETHER OR NOT THERE WAS ANY BEER BEING DRUNK, TOO?
A. YES, SIR.
Q. WHO WAS DRINKING BEER?
A. ALL OF US.
Q. OKAY. HOW MUCH DID YOU SEE DAXTON PATTERSON DRINK?
A. QUITE A BIT, SIR.
Q. OKAY. AND HOW ABOUT TIMOTHY ROGERS? HOW MUCH DID YOU SEE HIM DRINK?
A. QUITE A BIT, SIR.
Q. ALL RIGHT. AND WAS THERE A POINT IN TIME THAT EVENING WHEN Y'ALL WENT TO SPELL'S STORE?
A. YES, SIR.
Q. HOW DID YOU GET TO SPELL'S STORE?
A. WE WALKED.
Q. OKAY. AND WHAT CONDITION WERE YOU IN AFTER HAVING THE ALCOHOL THAT YOU HAD HAD WHEN YOU WALKED DOWN TO SPELL'S STORE?
A. I WASN'T THAT DRUNK, SIR.
Q. OKAY. AND WHAT WAS YOUR OBSERVATION OF THE CONDITION DAXTON PATTERSON WAS IN?
A. DRUNK, SIR.
Q. OKAY. WHAT ABOUT TIMOTHY ROGERS?
A. SORT OF DRUNK, SIR.

Q. OKAY. NOW, AT THAT TIME WHEN Y'ALL WERE GOING DOWN PIGEON BAY ROAD, WAS THERE A WEAPON THAT ANYBODY HAD WITH THEM?

A. YES, SIR.

Q. OKAY. WHO HAD THE WEAPON?

A. TIMOTHY, SIR.

Q. OKAY. AND WHAT KIND OF WEAPON WAS IT?

A. A 380, SIR.

Q. A 380 CALIBER?

A. YES, SIR.

Q. HOW DO YOU KNOW -- HOW DO YOU KNOW WHAT CALIBER IT WAS?

A. I SAW IT, SIR.

Q. OKAY. AND WAS IT A REVOLVER OR A SEMIAUTOMATIC?

A. A SEMIAUTOMATIC, SIR.

Q. ALL RIGHT. AND DO YOU RECALL ANYTHING ELSE ABOUT IT, WHETHER IT WAS NICKEL-PLATED OR BLUE STEEL (ANYTHING?

A. NO, SIR.

Q. OKAY. WHEN DID YOU FIRST SEE THE GUN THAT DAY?

A. EARLY THAT AFTERNOON, SIR.

Q. OKAY. WHERE WERE Y'ALL AT WHEN YOU SAW IT?

A. ON THE BAY, SIR.

Q. OKAY. AND WHO HAD THE GUN THEN?
A. TIMOTHY, SIR.
Q. OKAY. AND AS Y'ALL WERE WALKING DOWN TOWARDS SPELL'S STORE, WHERE WAS THE GUN?
A. ON HIS SIDE, SIR.
Q. WHOSE SIDE?
A. TIM'S.
Q. OKAY. NOW, IF YOU WOULD, [Assault Victim], TAKE A LOOK AT THIS CHART OVER HERE. YOU CAN STAND UP IF YOU WOULD. THAT'S THE SKETCH THAT SAYS SPELL'S GROCERY, RICHARDSON AVENUE DOWN HERE AND PIGEON BAY ROAD. DOES THAT LOOK LIKE WHAT THE STORE LOOKED LIKE BACK THEN?
A. YES, SIR.
Q. AS FAR AS THE LOCATION AND EVERYTHING?
A. YES, SIR.
Q. WHAT DIRECTION WERE Y'ALL COMING FROM?
A. THIS WAY.
Q. OKAY. YOU CAN GO AHEAD AND HAVE A SEAT.
THE COURT: AND WHAT WAY IS THAT? I DIDN'T HEAR THAT.
THE WITNESS: WE WERE COMING UP TO THE STORE.
THE COURT: FROM WHERE?
THE WITNESS: PIGEON BAY.
THE COURT: ALL RIGHT. THANK YOU.
BY MR. BAILEY:

Q. [Assault Victim], AS THE THREE OF Y'ALL APPROACHED THE STORE, WHAT HAPPENED?

A. SIR?

Q. AS THE THREE OF Y'ALL APPROACHED THE STORE, WHAT DID YOU SEE?

A. TIM WENT TO THE PHONE AND DAX WAS STANDING THERE ARGUING WITH THE PEOPLE.

Q. OKAY. NOW, WHEN DID YOU FIRST SEE THE PEOPLE?

A. WHEN WE ARRIVED.

Q. OKAY. AND WHERE WERE THEY? CAN YOU GO BACK TO THE PAPER AGAIN OVER HERE AND SHOW ME WHERE THE PEOPLE WERE WHEN Y'ALL GOT THERE.

A. OKAY. ONE OF THEM WAS STANDING HERE.

THE COURT: I CAN'T HEAR, SOLICITOR.

BY MR. BAILEY:

Q. YOU'VE GOT TO SPEAK OUT LOUD SO EVERYBODY CAN HEAR YOU, [Assault Victim]

A. ONE OF THEM WAS STANDING ON THE SIDE OF THE TRUCK AND THE OTHER ONE WAS ON THE OTHER SIDE OF THE TRUCK.

Q. OKAY. WERE THEY IN FRONT OF THE TRUCK OR BEHIND THE TRUCK?

A. ON THE SIDE OF THE TRUCK.

Q. ALL RIGHT. NOW, WHEN Y'ALL GOT THERE, WAS

THE TRUCK ALREADY THERE?

A. YES, SIR.

Q. OKAY. AND WHERE WAS THE TRUCK PARKED IN RELATION TO WHERE THE TELEPHONE IS?

A. LIKE THIS.

Q. OKAY. AND YOU'RE INDICATING IT'S ANGLING KIND OF OUT TOWARDS THE STREET?

A. YES, SIR.

Q. AND HOW FAR AWAY FROM THE PHONE WAS IT? IF YOU CAN USE THE COURTROOM JUST TO MAYBE LOOK BACK HERE AND SHOW ME ABOUT HOW FAR IT WAS. I'LL WALK BACK AND YOU TELL ME TO STOP WHEN I'M AS FAR FROM THE SIDEWALK OR THE TELEPHONE AS THE TRUCK WAS. OKAY?

A. STOP.

Q. OKAY. IT'S ABOUT THIS FAR AWAY?

A. UH-HUH.

Q. OKAY. GO AHEAD AND HAVE A SEAT AGAIN, PLEASE. NOW, THE TWO PEOPLE THAT Y'ALL SAW THERE BEHIND THE TRUCK OR AROUND THE TRUCK, CAN YOU DESCRIBE THEM?

A. NO, SIR.

Q. WELL, WERE THEY MEN OR WOMEN?

A. MEN, SIR.

Q. WERE THEY BLACK OR WHITE?

A. WHITE, SIR.

Q. OKAY. WERE THEY BOTH WHITE?
A. YES, SIR.
Q. YOU SAW TWO WHITE MEN THERE.
A. YES, SIR.
Q. ALL RIGHT. WAS THERE A BLACK MAN OUT THERE ALSO?
A. I DIDN'T SEE A BLACK MAN, SIR.
Q. ALL RIGHT. NOW, TELL THE JURY WHAT OCCURRED WHEN Y'ALL GOT TO THE STORE.
A. DAX STARTED ARGUING WITH THE PEOPLE AND HE SPIT ON THEM.
Q. OKAY. NOW, WHERE WERE THE PEOPLE WHEN HE WAS ARGUING WITH THEM?
A. ON THE SIDE OF THE TRUCKS -- THE TRUCK.
Q. OKAY. NOW, AT THE TIME DAX WAS ARGUING WITH THE PEOPLE AND HE SPIT ON SOMEBODY, WHERE WAS TIMOTHY ROGERS?
A. ON THE PHONE, SIR.
Q. OKAY. AND WHERE WERE YOU?
A. STANDING IN THE MIDDLE OF DAX AND TIM.
Q. OKAY. AND AFTER DAX HAD SPIT ON THE MAN, WHAT HAPPENED NEXT?
A. I WENT BY THE PHONE AND TIM TURNED AROUND A THEY GOT INTO AN ARGUMENT. HE GOT INTO THE ARGUMENT WITH THEM.

Q. WITH WHO?
A. THE TWO PEOPLE.
Q. OKAY. NOW, UP UNTIL THE TIME TIM GOT OFF THE TELEPHONE, DID YOU SEE THE OTHER PEOPLE THAT DAXTON WAS ARGUING WITH FIGHTING WITH DAXTON OR CUSSING HIM OR DOING ANYTHING TO MAKE HIM MAD?
A. NO, SIR.
Q. OKAY. WHO WAS STARTING THE ARGUMENT?
A. DAX.
Q. NOW, YOU SAID TIMOTHY ROGERS GOT OFF THE TELEPHONE.
A. YES, SIR.
Q. OKAY. AND WHAT DID YOU DO WHEN HE GOT OFF THE PHONE?
A. I WALKED OVER TO THE PHONE, PICKED IT UP, AND STARTED TALKING.
Q. NOW, WHEN YOU WERE TALKING ON THE PHONE, WAS YOUR BACK TOWARD THE TRUCK?
A. SORT OF.
Q. OKAY. WHAT HAPPENED AFTER YOU PICKED THE PHONE UP?
A. THEY GOT -- THEY WERE ARGUING AND THEN I HEARD A GUNSHOT AND I TURNED AROUND.
Q. ALL RIGHT. NOW, TELL THE JURY EXACTLY WHAT YOU SAW WHEN YOU HEARD THE GUNSHOT AND TURNED AROUND.

A. TIM WAS FACING THE TRUCK WITH THE GUN POINTED AT THE BOTTOM.

Q. THE BOTTOM?

A. OF THE TRUCK.

Q. THE BOTTOM OF THE TRUCK?

A. YES, SIR.

Q. OKAY. AND WHERE WAS THE GUN?

A. IN HIS HAND.

Q. WHEN YOU SAY HIS HAND, WHO ARE YOU TALKING ABOUT?

A. TIM'S HAND.

Q. ALL RIGHT. WHAT HAPPENED AFTER THAT, [Assault Victim] ?

A. I TURNED BACK AROUND ON THE PHONE.

Q. OKAY. AND THEN WHAT HAPPENED?

A. A COUPLE OF MINUTES I HEARD A SECOND GUNSHOT AND I TURNED AROUND. THEY WERE GONE.

Q. YOU SAY THEY WERE GONE. WHO WAS GONE?

A. TIM AND DAX WAS GONE AND THE TWO GUYS WERE YELLING AND I SAW THE BLOOD AND I GOT SCARED AND RUN.

Q. OKAY. [Assault Victim] , WHEN THE SECOND SHOT WE OFF, WHAT WAS THE TRUCK DOING?

A. IT WAS PULLING OFF.

Q. OKAY. WERE THE PEOPLE INSIDE THE TRUCK OR OUTSIDE THE TRUCK WHEN THE SECOND SHOT WENT OFF?

A. INSIDE THE TRUCK.

Q. OKAY. WHAT DIRECTION WAS THE TRUCK PULLING OFF IN?

A. FRONTWARDS.

Q. FRONTWARDS? OKAY. AND WHERE WAS TIMOTHY ROGERS AT THE TIME THE TRUCK PULLED OFF FRONTWARDS AND THAT SECOND SHOT WAS FIRED?

A. STANDING THERE.

Q. STANDING WHERE?

A. IN THE BACK OF THE TRUCK.

Q. BEHIND THE TRUCK?

A. YES, SIR.

Q. OKAY. AND WHERE WAS THE GUN?

A. IN HIS HAND.

Q. DID YOU AT ANY POINT -- WERE YOU AT ANY POINT THREATENED BY EITHER OF THESE MEN THAT YOU SAW OUTSIDE THE TRUCK FIRST?

A. NO, SIR.

Q. WAS DAXTON PATTERSON THREATENED BY THEM?

A. NO, SIR.

Q. WAS TIMOTHY ROGERS THREATENED BY THEM?

A. NO, SIR.

[Assault Victim]

Q. OKAY. NOW, , YOU HAD FAMILY COURT CHARGES FOR MURDER PENDING AGAINST YOU AT ONE POINT; IS THAT RIGHT?

A. YES, SIR.
Q. AND YOUR CASE WAS WAIVED UP TO GENERAL SESSIONS COURT. IS THAT RIGHT?
A. YES, SIR.
Q. AND THE STATE AGREED TO DISMISS THOSE CHARGES IF YOU TESTIFIED TRUTHFULLY; IS THAT CORRECT?
A. YES, SIR.
Q. ARE YOU TESTIFYING TRUTHFULLY HERE TODAY?
A. YES, SIR.
Q. DID YOU HEAR TIMOTHY ROGERS SAY ANYTHING ABOUT THE TIME EITHER THE FIRST SHOT OR THE SECOND SHOT WAS FIRED?
A. I WASN'T PAYING ATTENTION, SIR.
MR. BAILEY: BEAR WITH ME ONE SECOND. [Assault Victim], THAT'S ALL I HAVE. THANK YOU VERY MUCH.

CROSS-EXAMINATION

BY MR. RUNYON:
Q. [Assault Victim], THESE TWO GENTLEMEN -- THESE TWO PEOPLE IN THE PICKUP TRUCK, THEY DIDN'T THREATENED YOU, DID THEY?
A. NO, SIR.
Q. OKAY. BUT CERTAINLY THERE WAS AN ARGUMENT GOING ON BETWEEN DAX AND THESE TWO MEN, WEREN'T THERE?
A. YES, SIR.
Q. AND BOTH SIDES WERE HOLLERING AND GETTING

REAL MAD WITH EACH OTHER?

A. I COULDN'T TELL YOU, SIR.

Q. YOU COULDN'T TELL ME?

A. THEY WAS JUST ARGUING.

Q. OKAY. WELL, LET ME ASK YOU THIS. WAS DAXTON PATTERSON RAISING HIS VOICE TO THEM?

A. YES, SIR.

Q. AND DID THEY RAISE THEIR VOICE TO HIM?

A. YES, SIR.

Q. AND AFTER DAXTON SPIT ON ONE OF THE MEN, DID THEIR VOICES GET LOUDER?

A. YES, SIR.

Q. OKAY. AND DO YOU REMEMBER ANY TALK ABOUT WEAPONS OR ANYTHING OF THAT SORT?

A. NO, SIR.

Q. YOU DON'T RECALL WHAT ANYBODY SAID.

A. NO, SIR.

Q. YOU GOT OUT OF THE WAY OF DAX. YOU SAID YOU WERE STANDING BETWEEN DAX AND THE MEN?

A. YES, SIR.

Q. OKAY. WHY DID YOU GET OUT FROM BETWEEN THEM?

A. BECAUSE I MOVED BY TIM ON THE PHONE.

Q. I BEG YOUR PARDON?

A. I MOVED BY TIM.

Q. WHY DID YOU MOVE BY TIM?

A. I DON'T HAVE NO ANSWER FOR THAT, SIR.
Q. WELL, WERE YOU FRIGHTENED AT THE TIME?
A. A LITTLE.
Q. AND WHY WERE YOU FRIGHTENED?
A. BECAUSE THEY WAS ARGUING.
Q. OKAY.
A. SIR.
Q. DAX AND THE TWO GENTLEMEN.
A. YES, SIR.
Q. AND THE TWO MEN WERE OUT OF THE TRUCK AT THE TIME.
A. YES, SIR.
Q. AND TIM WAS ON THE PHONE.
A. YES, SIR.
Q. ALL RIGHT. SO, YOU WENT OVER BY TIM.
A. YES, SIR.
Q. AND DID YOU SAY ANYTHING TO HIM?
A. NO, SIR.
Q. OKAY. DID YOU POINT OUT THAT THERE WAS AN ARGUMENT OR DID HE SEEM TO HEAR IT OR, I MEAN, JUST HOW DID HE COME TO GO OVER THERE?
A. HE TURNED AROUND.
Q. OKAY.
A. AND HE SAW THEM ARGUING.
Q. ALL RIGHT. AND SO TIM WENT OVER THERE AND

GOT BETWEEN DAX AND THE TWO MEN?

A. HE DIDN'T GET BETWEEN. HE WAS ON THE SIDE OF THEM.

Q. HE WAS ON THE SIDE OF WHO?

A. HE WAS ON THE SIDE OF DAX AND THE TWO GUYS.

Q. OKAY. HOW CLOSE WERE THE TWO GUYS AND DAX AT THAT POINT IN TIME?

A. ABOUT FROM WHERE I AM TO WHERE SHE IS, SIR.

Q. ALL RIGHT. OKAY. WOULD YOU SAY -- YOU'RE MAKING REFERENCE TO THE COURT REPORTER HERE.

A. YES, SIR.

Q. SHE'S ABOUT, WHAT, FIVE OR SIX FEET FROM YOU?

A. YES, SIR.

Q. DID THE TWO MEN -- THE TWO MEN WERE HOLLERING AT DAX?

A. THEY WERE YELLING BACK AND FORTH, SIR.

Q. OKAY. SO, EVERYBODY WAS YELLING BACK AND FORTH.

A. YES, SIR.

Q. AND SEEMS TO BE A LOT OF ANGER AMONGST EVERYBODY AT THAT POINT IN TIME; RIGHT?

A. YES, SIR.

Q. AND DID ANYBODY -- YOU DON'T REMEMBER WHAT ANYBODY SAID, DO YOU?

A. NO, SIR.

Q. AND AT THE POINT TIM GOT INTO THE -- GOT INTO THE ARGUMENT -- HOW WOULD YOU DESCRIBE WHAT WAS HAPPENING? WAS IT AN ARGUMENT? WAS IT -- WHAT WAS IT?

A. AN ARGUMENT, SIR.

Q. BETWEEN THREE PEOPLE.

A. UH-HUH.

Q. NOW -- AND AT THE TIME DID TIM GO OVER THERE AND DID HE GET IN AN ARGUMENT AND START HOLLERING AND SCREAMING, TOO?

A. NO, SIR.

Q. OKAY. DO YOU RECALL WHAT HE SAID OR DID, IF YOU CAN?

A. HE TURNED AROUND AND HE WALKED OVER THERE, SIR, AND SOMEHOW HE GOT INTO THE ARGUMENT WITH THEM, SIR.

Q. AND THEN WHAT HAPPENED NEXT?

A. I DON'T KNOW. I WAS ON THE PHONE.

Q. OKAY. SO, YOU PICKED UP THE PHONE AND YOU STARTED TALKING TO WHOEVER WAS ON THE PHONE.

A. YES, SIR.

Q. AND YOU TURNED YOUR BACK.

A. YES, SIR.

Q. AND IS THAT WHEN YOU HEARD A SHOT?

A. YES, SIR.

Q. AND DID YOU TURN AROUND AT THAT TIME?

A. YES, SIR.
Q. ALL RIGHT. AND WHERE WERE PEOPLE AT THAT TIME?
A. DAX WAS WHERE HE WAS AT. THE TWO -- I DON'T REALLY KNOW WHERE THE TWO GUYS WAS AT DURING THAT TIME.
Q. WELL, YOU DIDN'T SEE THEM AT THAT POINT IN TIME?
A. I WASN'T PAYING ATTENTION TO WHERE THEY WAS AT, SIR.
Q. OKAY. WHERE WAS TIM?
A. STANDING ABOUT SIX FEET FROM DAX.
Q. OKAY. AND WHERE WAS THE TRUCK AT THIS POINT IN TIME WHEN THE FIRST SHOT WAS FIRED?
A. I WASN'T PAYING ATTENTION, SIR.
Q. AND WHEN THE SECOND SHOT WAS FIRED, DID YOU SEE WHAT LED UP TO THE SECOND SHOT?
A. NO, SIR.
Q. AND DID YOU TURN BACK AROUND OR WHAT?
A. I TURNED BACK AROUND WHEN I HEARD THE SECOND SHOT.
Q. ONE MOMENT, YOUR HONOR. (PAUSE) WERE THE TWO MEN FROM THE TRUCK WHEN YOU SAW THEM OUTSIDE THE TRUCK? WERE THEY ON THE SAME SIDE OF THE TRUCK OR ON DIFFERENT SIDES OF THE TRUCK?
A. DIFFERENT SIDES.

Q. OKAY. AND YOU DON'T RECALL ANYTHING ANYONE SAID.

A. NO, SIR.

Q. EXCEPT THAT EVERYBODY WAS ARGUING.

A. YES, SIR.

Q. EVERYBODY WAS MAD.

A. YES, SIR.

Q. AND EVERYBODY WAS REAL HOT AND BOTHERED.

A. YES, SIR.

Q. AND AFTER THE SECOND SHOT WAS FIRED, YOU DIDN'T SEE TIM AND DAX LEAVE?

A. NO, SIR.

Q. OKAY. AND THEN YOU LEFT.

A. YES, SIR.

Q. EXCUSE ME ONE MINUTE. (PAUSE) AT THE TIME YOU HEARD -- STRIKE THAT. DID YOU HEAR SOMEONE SAY THAT SOMEONE HAD BEEN SHOT?

A. NO, SIR.

Q. OKAY. AFTER THE SECOND SHOT, DID YOU SEE TIM OR DAX OR HEAR THEM SAY ANYTHING?

A. NO, SIR?

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN BE EXCUSED

NOW IF YOU'D LIKE. THANK YOU.

MR. BAILEY: I CALL ISAIAH JENNINGS.

ISAIAH JENNINGS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. JENNINGS, WHERE DO YOU LIVE?

A. 921 SIMMONS AVENUE, SUMMERVILLE.

Q. AND THAT'S IN SUMMERVILLE?

A. YES, SIR.

Q. AND HAVE YOU LIVED IN SUMMERVILLE ALL YOUR LIFE?

A. YES, SIR.

Q. WHAT KIND OF WORK DO YOU DO?

A. BRICK MASON.

Q. OKAY. AND DO YOU KNOW WHERE SPELL'S STORE IS?

A. YES, SIR.

Q. DO YOU GO THERE PRETTY OFTEN?

A. YES, SIR.

Q. IS THAT WHERE YOU SHOP FOR GROCERIES AND STUFF?

A. NO, SIR.

Q. ON NOVEMBER 25TH, 1992, DID YOU GO TO SPELL'S STORE?

A. YES, SIR.

Q. AND DO YOU RECALL ABOUT WHAT TIME YOU GOT THERE?

A. I DON'T KNOW EXACTLY WHAT TIME IT WAS.

Q. OKAY. WELL, WAS IT GETTING TOWARDS CLOSING TIME OR EARLIER?

A. YES, SIR, IT WAS GETTING TOWARDS CLOSING TIME.

Q. OKAY. NOW, DID ANYTHING UNUSUAL HAPPEN THAT EVENING WHEN YOU WENT TO SPELL'S STORE?

A. YES, SIR. I PULL UP TO THE STORE AND I GOT UP TO THE STORE AND I SEEN A WHITE -- A LITTLE WHITE BOY. AND WHEN I SEEN THE WHITE BOY, WHAT HE DID, HE COME TOWARDS ME, WAS PICKING. SO, THE ONLY THING I DID, I JUST KEPT MY EYES ON HIM AND WALK ON IN THE STORE.

Q. OKAY.

A. THEN WHEN I GOT IN---

Q. DO YOU RECALL WHO ELSE MIGHT HAVE BEEN OUTSIDE?

A. THAT'S THE ONLY ONE THAT I SEEN.

Q. OKAY. THIS WHITE FELLOW WAS PICKING AT YOU?

A. YES, SIR.

Q. OKAY. AFTER YOU GOT INSIDE THE STORE, WHAT HAPPENED?

A. I SEEN MY COUSIN IN THERE.
Q. WHO IS THAT?
A. HERTHENIA LINCOLN.
Q. ALL RIGHT.
A. SO, I SAID, "THERE'S SOMETHING WRONG WITH THAT FELLOW OUT THERE." I SAID, "HE WAS PICKING AT PEOPLE FOR NOTHING." AND SHE SAID LIKE THIS. SHE SAID, WELL---
Q. DON'T TELL WHAT ANYBODY ELSE SAID. BUT AFTER YOU GOT INSIDE, WHAT HAPPENED THEN?
A. AFTER I GOT INSIDE?
Q. INSIDE THE STORE.
A. I WAS WAITING TO BE SERVED.
Q. OKAY.
A. AND DO YOU WANT ME TO TELL WHAT HAPPENED AFTER I SEEN HERTHENIA?
Q. YEAH.
A. I WAS TELLING HER THAT THE FELLOW WAS OUT THERE TRYING TO PICK AT ME. SO, SHE SAY THAT THE FELLOW---
MR. RUNYON: OBJECTION, YOUR HONOR.
THE COURT: YES, SIR. YOU CAN'T TELL WHAT SOMEBODY ELSE SAID TO YOU. JUST TELL THEM. . .
THE WITNESS: OH, WELL, WHAT I SAY TO HER -- I SAID, "THAT FELLOW WAS TRYING TO PICK AT ME OUT THERE

AND I DIDN'T PAY HIM NO ATTENTION. I JUST TAKE AND KEPT MY EYES ON HIM AND WALK ON INSIDE."

BY MR. BAILEY:

Q. ALL RIGHT. NOW, AFTER YOU GOT INSIDE THE STORE, DID YOU HEAR ANYTHING?

A. YES, SIR. I HEARD SOME SHOTS.

Q. OKAY. HOW MANY SHOTS DID YOU HEAR?

A. AT LEAST ABOUT TWO.

Q. TWO SHOTS?

A. YES, SIR.

Q. OKAY. AND AFTER YOU HEARD THE SECOND SHOT, WHAT TOOK PLACE THEN?

A. THERE WAS A MAN RUN INSIDE AND HE ASKED MR. SPELL TO CALL THE COPS BECAUSE A FELLOW HAD SHOT HIS DAUGHTER IN THE HEAD.

MR. BAILEY: THAT'S ALL I HAVE. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE.

<u>CROSS-EXAMINATION</u>

BY MR. RUNYON:

Q. MR. JENNINGS, HOW ARE YOU RELATED TO MR. JENNINGS OF WILLIS AND JENNINGS MASONRY?

A. WHAT DID YOU SAY?

Q. HOW ARE YOU RELATED TO THE JENNINGS OF WILLIS AND JENNINGS MASONRY OR ARE YOU?

A. THAT'S MY COUSIN.

Q. OKAY. NOW -- AND YOU'VE BEEN A BRICK MASON ALL YOUR LIFE HERE IN SUMMERVILLE.

A. YES, SIR.

Q. AND AS PRACTICAL MATTER YOU WERE JUST UP AT SPELL'S GROCERY STORE TO GET A FEW THINGS, TEND TO YOUR BUSINESS, AND THEN GO ON.

A. YES, SIR.

Q. AND YOU WERE INSIDE THE STORE AND YOU HEARD TWO SHOTS.

A. YES, SIR.

Q. NOW, HOW WERE THOSE SHOTS FIRED? WERE THEY BANG, BANG OR WERE THEY. . .

A. THERE WAS A LITTLE SPACE LIKE BAM, BAM.

Q. OKAY. SHORT SPACE, HOWEVER; RIGHT?

A. YES, SIR.

Q. AND THAT'S ABOUT HOW THEY WENT - BANG, BANG; CORRECT?

A. YOU KNOW, I WASN'T COUNTING THE SPACING, YOU KNOW.

Q. WELL, THERE WASN'T A WHOLE LOT OF TIME BETWEEN THE TWO OF THEM.

A. NO, SIR.

Q. AND DID YOU HEAR ANYTHING OUTSIDE, ANY KIND OF ARGUMENT OR ANYTHING LIKE THAT?

A. NO, SIR.

Q. AND ALL YOU KNOW IS IS YOU HEARD THESE TWO SHOTS AND SOMEONE CAME IN AND SAID, "MY DAUGHTER HAS BEEN SHOT."

A. YES, SIR.

Q. OKAY. AND HOW QUICKLY AFTER YOU -- STRIKE THAT. HOW LONG HAD YOU BEEN IN THE STORE BEFORE YOU HEARD THESE SHOTS?

A. I'D SAY ABOUT FIVE MINUTES OR SOMETHING LIKE THAT.

Q. SO, IN THE COURSE OF FIVE MINUTES YOU WERE IN THE STORE AND THEN YOU HEARD THESE TWO SHOTS - BANG, BANG.

A. YES, SIR.

Q. AND THEN A SHORT TIME LATER SOMEONE WALKED OR CAME RUNNING IN SAYING, "MY DAUGHTER HAS BEEN SHOT."

A. YES, SIR.

Q. AND THAT'S ALL YOU KNOW ABOUT THIS CASE.

A. YES, SIR.

Q. AND YOU DIDN'T SEE MR. ROGERS OUT THERE, DID YOU, SIR?

A. NO, SIR?

MR. RUNYON: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU CAN COME DOWN AND BE EXCUSED

IF YOU'D LIKE OR STAY IN THE COURTROOM, WHICHEVER YOU'D PREFER.

MR. BAILEY: I CALL MS. LINCOLN.

HERTHENIA LINCOLN, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. LINCOLN, YOU'RE HERE UNDER SUBPOENA; IS THAT CORRECT?

A. YES.

Q. OKAY. AND WHERE DO YOU LIVE?

A. , SUMMERVILLE.

Q. OKAY. ALL RIGHT. THAT'S PIGEON BAY ROAD.

A. YES, SIR.

Q. OKAY. ARE YOU RELATED TO ISAIAH JENNINGS WHO---

A. YES.

Q. ---TESTIFIED A LITTLE EARLIER?

A. YES.

Q. HOW ARE Y'ALL RELATED?

A. HE'S MY COUSIN.

Q. OKAY. DID YOU HAVE ANY REASON TO GO TO SPELL'S STORE ON THE EVENING OF NOVEMBER 25TH, 1992?

A. YES, I WENT TO MAKE A PURCHASE.

Q. OKAY. AND ABOUT WHAT TIME DID YOU GET TO THE

STORE?

A. I GOT TO THE STORE ABOUT 6:27.

Q. ALL RIGHT. AND WHEN YOU WENT TO THE STORE, DID YOU NOTICE ANYTHING UNUSUAL IN THE PARKING LOT BEFORE YOU WENT IN?

A. NO, NOTHING UNUSUAL.

Q. OKAY. AFTER YOU WENT INSIDE THE STORE, DID ANYTHING HAPPEN?

A. WHILE WE WERE IN THE STORE, THEY HAD SOME KIND OF RUCKUS OUTSIDE.

Q. ALL RIGHT. DID YOU HEAR ANYTHING THAT OCCURRED OUTSIDE?

A. JUST SOME GUNSHOTS.

Q. DID YOU HEAR ONE SHOT OR TWO SHOTS?

A. TWO SHOTS.

MR. BAILEY: THAT'S ALL I HAVE. THANK YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MS. LINCOLN, THESE TWO SHOTS THAT YOU HEARD, WERE THEY -- HOW CLOSE TOGETHER WERE THEY? DO YOU RECALL?

A. THEY HAPPENED RIGHT AFTER EACH OTHER.

Q. OKAY. SO, LIKE BANG, BANG?

A. BANG, BANG.

MR. RUNYON: OKAY. NO FURTHER QUESTIONS,

YOUR HONOR.

THE COURT: YOU CAN BE EXCUSED OR STAY, WHICHEVER YOU'D PREFER.

MR. BAILEY: JAMES ROBINSON.

JAMES ROBINSON, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. ROBINSON, WHERE DO YOU LIVE?

A. SUMMERVILLE.

Q. OKAY. AND HOW LONG HAVE YOU LIVED IN SUMMERVILLE?

A. PRACTICALLY ALL MY LIFE.

Q. HOW OLD ARE YOU?

A. RIGHT NOW FIFTY.

Q. WHERE DO YOU WORK?

A. SPELL'S GROCERY.

Q. AND HOW LONG HAVE YOU WORKED AT SPELL'S?

A. APPROXIMATELY THIRTY-FOUR YEARS.

Q. THIRTY-FOUR YEARS? SAME PLACE?

A. SAME PLACE.

Q. OKAY. AND BACK IN NOVEMBER '92 WHAT TIME DID SPELL'S CLOSE?

A. 6:30.

Q. OKAY. DO YOU KNOW THE B FAMILY, MIKE

B AND HIS DAUGHTER STEPHANIE?

A. I'VE SEEN HIM, THE FATHER, CAME IN THE STORE MANY TIMES.

Q. AND DID YOU KNOW HIS DAUGHTER, STEPHANIE?

A. NOT REALLY, BUT I HAVE SEEN HER COME IN THE STORE.

Q. ALL RIGHT. CALLING YOUR ATTENTION TO NOVEMBER 25TH OF 1992, WERE YOU AT WORK THAT EVENING?

A. YES, I WAS.

Q. OKAY. NOW, DID YOU SEE STEPHANIE B THAT EVENING?

A. YES, I DID.

Q. OKAY. WHERE WAS THAT?

A. THAT WAS IN THE STORE. SHE CAME IN THE STORI TO GET HERSELF A FEW KNICKKNACKS BECAUSE SHE SAID SHE WAS GOING TO -- HER FATHER WAS GOING TO TAKE HER ON A TRIP, ON A CAMPING TRIP.

Q. ALL RIGHT. AND DO YOU RECALL ABOUT WHAT TIM IT WAS WHEN SHE CAME IN THE STORE?

A. ABOUT 6:15, 6:20, ALMOST CLOSING UP TIME.

Q. DID YOU SELL HER ANYTHING?

A. MY BOSS DID; I DIDN'T. I SAW HER. BUT OTHE THAN THAT TIME, THE BOSS LADY DID.

Q. ALL RIGHT. NOW, DID ANYTHING OCCUR AFTER STEPHANIE LEFT THE STORE?

A. WELL, I WAS GETTING READY TO CLOSE UP AND ALL OF A SUDDEN THE FATHER CAME BACK IN THE STORE AND SAID SOMEONE HAD SHOT HIS DAUGHTER AND HE TOLD MY BOSS LADY TO CALL THE AMBULANCE.

Q. ALL RIGHT. MR. ROBINSON, WOULD YOU STATE WHETHER OR NOT YOU HEARD ANY SHOTS?

A. YES, I HEARD -- I THINK THERE WAS APPROXIMATELY TWO OF THEM BECAUSE THE FIRST ONE I HEARI IT SOUND LIKE SOMETHING HIT THE AWNING OF THE STORE. THEN LATER ON I HEARD ANOTHER ONE AND IT WAS POINTBLANK.

Q. OKAY. DO YOU KNOW ABOUT HOW MUCH TIME WENT BY BETWEEN THE FIRST SHOT AND THE SECOND SHOT?

A. I CAN'T REALLY TELL YOU THAT, NO.

Q. OKAY. BUT YOU KNOW IT WAS MORE THAN ONE SHOT; RIGHT?

A. YES, IT WAS MORE THAN ONE.

Q. THE MAN THAT CAME IN THE STORE AFTER YOU HEARD THE SECOND SHOT, DO YOU KNOW WHO HE WAS?

A. HE WAS THE GIRL'S FATHER BECAUSE HE WAS ALL BLOODIED UP.

Q. HE WAS ALL WHAT?

A. ALL BLOODIED UP. BLOOD WAS ALL OVER HIS CHEST AREA.

Q. OKAY. NOW, AFTER THE MAN CAME IN WITH BLOOD

ON HIM AND SAID HIS DAUGHTER HAD BEEN SHOT, WHAT DID YOU DO?

A. I KIND OF WENT TO THE DOOR TO SEE, BUT I DIDN'T SEE ANYTHING. SO, I STAYED IN THE STORE UNTIL THE POLICE CAME TO ROPE OFF THE -- YOU KNOW, TO ROPE OFF THE AREA WHERE THE INCIDENT HAPPENED.

MR. BAILEY: THANK YOU. THAT'S ALL I HAVE. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. THESE TWO SHOTS THAT OCCURRED, MR. ROBINSON, YOU CAN'T -- YOU CAN'T TELL US HOW LONG IT WAS BETWEEN THE SHOTS, CAN YOU, SIR?

A. NOT DIRECTLY, NO.

Q. DO YOU HAVE ANY RECOLLECTION OF HOW TO SPACE THESE SHOTS?

A. NO, NOT REALLY.

Q. WELL, WAS IT A LONG TIME TO THE SECOND ONE OR A SHORT TIME?

A. IN THAT CASE I WOULD SAY IT WAS A SHORT TIME.

Q. OKAY. SO, THE TWO SHOTS WERE RELATIVELY IN SHORT ORDER.

A. YEAH.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN LEAVE OR STAY, WHICHEVER YOU PREFER.

THE WITNESS: I PREFER TO GO.

MR. BAILEY: GEORGE SCHARF.

GEORGE SCHARF, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. SCHARF, WHERE ARE YOU EMPLOYED AT THIS TIME?

A. AT THIS TIME I'M EMPLOYED WITH CHARLESTON COUNTY E.M.S.

Q. OKAY. BACK IN NOVEMBER '92 WHERE WERE YOU WORKING?

A. I WAS WORKING WITH SUMMERVILLE AMBULANCE SERVICE UNDER CONTRACT WITH DORCHESTER COUNTY E.M.S. SERVICES.

Q. AND WHAT WAS YOUR POSITION WITH SUMMERVILLE AMBULANCE SERVICES?

A. I WAS CREW CHIEF ON MEDIC ONE AT THAT NIGHT.

Q. OKAY. HAVE YOU HAD ANY KIND OF PARAMEDICAL TRAINING?

A. I AM A PARAMEDIC, YES, SIR.

Q. OKAY. AND ARE YOU CERTIFIED AS A PARAMEDIC

OR LICENSED IN ANY WAY?

A. YES, SIR, I'M A CERTIFIED PARAMEDIC IN THE STATE OF SOUTH CAROLINA.

MR. RUNYON: WE'LL STIPULATE HE'S A PARAMEDIC, YOUR HONOR.

MR. BAILEY: ALL RIGHT, SIR. THANK YOU.

BY MR. BAILEY:

Q. DID YOU HAVE OCCASION TO RESPOND TO A CALL AT SPELL'S STORE ON THE EVENING OF NOVEMBER 25TH, 1992?

A. YES, SIR, WE DID.

Q. OKAY. AND WHEN YOU GOT TO THE STORE, WHAT DID YOU OBSERVE?

A. WHEN WE ARRIVED, THERE WAS A PICKUP TRUCK WITH DRIVER AND PASSENGER DOOR OPEN WITH A SMALL GIRL IN THE FRONT SEAT. THE FIRST RESPONDER WAS ATTENDING TO HER ON THE PASSENGER SIDE OF THE VEHICLE.

Q. OKAY. WHAT WAS YOUR INVOLVEMENT AS FAR AS ANY TREATMENT OR ASSISTANCE THAT YOU RENDERED?

A. WELL, THE FIRST THING WE -- INITIALLY ON THE WAY TO THE SCENE WE HAD CALLED FOR THE MED U. HELICOPTER WHICH IS STANDARD PROCEDURES ON MAJOR TRAUMA CALLS. THAT WAS NOT AVAILABLE. SO, INITIALLY WE DECIDED TO LOAD AND GO WHICH IS A QUICK-RESPONSE-TYPE THING WHERE WE TAKE THE PATIENT AND GET HER IN THE AMBULANCE, GET MOVING TO THE HOSPITAL AS RAPIDLY AS

POSSIBLE.

Q. WHAT WERE YOUR OBSERVATIONS OF THE CHILD WHEN YOU GOT THERE?

A. A LOT OF BLOOD AROUND THE HEAD AND THE SHOULDER AREAS. ONE OF THE FIRST RESPONDERS THAT WAS THERE GAVE ME A RUN-DOWN AS TO WHAT HE HAD OBSERVED AT THE TIME, HEAD INJURY DUE TO GUNSHOT THROUGH THE BACK WINDOW AND BACK PART OF THE HEAD. HER FACIAL -- SHE HAD A LARGE SWELLING ABOVE THE LEFT EYE. THE LEFT EYE WAS SWOLLEN SHUT. IN KIND OF A SEIZURE-LIKE STATE AT THAT TIME. TEETH GRITTED. AT TIMES BODY WOULD GO RIGID.

SO, WE IMMEDIATELY PLACED HER ON A BACKBOARD AND GOT HER IN THE BACK OF OUR AMBULANCE AND GOT A FIRE DEPARTMENT PERSONNEL TO DRIVE US AND TRIED TO INTUBATE HER, PUT A TUBE DOWN HER THROAT INTO HER LUNGS TO BREATHE HER BETTER, BUT DUE TO THE FACT THAT HER TEETH WERE CLAMPED SHUT WE COULDN'T DO THAT. SO, WE JUST PASSED A -- WHAT WE CALL A NASAL TRUMPET, A SOFT RUBBER TUBE DOWN THROUGH THE NOSE TO HELP US PROVIDE HER MORE OXYGEN. I ATTEMPTED TO GET AN I.V. LINE STARTED, DID GET ONE STARTED BUT SHE MOVED AWAY AND PULLED HER HAND AWAY AND JERKED THE NEEDLE OUT ON US, AND AFTER THAT WE NEVER WORRIED WE'LL GET ANOTHER ONE STARTED.

Q. DID YOU TURN HER OVER TO OTHER MEDICAL

PERSONNEL?

A. AT TRIDENT HOSPITAL---

Q. TRIDENT.

A. ---YES, SIR.

MR. BAILEY: THAT'S ALL I HAVE. THANK YOU VERY MUCH.

MR. RUNYON: I HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN GO OR STAY. THANK YOU.

THE WITNESS: OKAY.

MR. BAILEY: WE CALL JEFFREY ROGERS.

JEFFREY A. ROGERS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. ROGERS, YOU'RE THE CORONER FOR DORCHESTER COUNTY; IS THAT CORRECT?

A. YES, SIR.

Q. HOW LONG HAVE YOU BEEN CORONER?

A. SIX YEARS.

Q. OKAY. YOU WERE ACTIVELY ENGAGED AS THE CORONER IN NOVEMBER OF 1992?

A. YES, SIR.

Q. DO YOU HAVE ANY KNOWLEDGE OF THE DEATH OF STEPHANIE B IN NOVEMBER OF 1992?

MR. RUNYON: OBJECTION. OBJECT TO THE FORM OF QUESTION, YOUR HONOR. OBVIOUSLY HE CAN HAVE PLENTY OF HEARSAY KNOWLEDGE, BUT THAT MIGHT NOT NECESSARILY BE ADMISSIBLE.

THE COURT: WELL, I DON'T KNOW. BOTH OF THEM ARE FAMILIAR WITH HEARSAY. GO AHEAD.

BY MR. BAILEY:

Q. ARE YOU FAMILIAR WITH THE AREA OF SPELL'S STORE?

A. YES, I AM.

Q. PARKING LOT?

A. YES, SIR.

Q. DO YOU KNOW WHETHER OR NOT THAT LOCATION IS IN DORCHESTER COUNTY?

A. IT IS.

Q. IT IS IN DORCHESTER COUNTY; IS THAT RIGHT?

A. YES, SIR.

Q. DID YOU HAVE ANY PERSONAL INVOLVEMENT WITH A SHOOTING THAT TOOK PLACE ON NOVEMBER 25TH, 1992?

A. YES, SIR, I DID.

Q. OKAY. WHAT WAS YOUR INVOLVEMENT WITH IT?

A. I WAS NOTIFIED BY MEDICAL UNIVERSITY HOSPITAL, A DOCTOR THERE, THAT A YOUNG FEMALE HAD EXPIRED AT MEDICAL UNIVERSITY ON THE -- NOVEMBER 26TH OF 1992 AT 7:45 P.M. AND THAT'S WHEN I BECAME INVOLVED

IN THE CASE.

Q. ALL RIGHT, SIR. DID YOU CONTACT THE PATHOLOGIST'S OFFICE AT THE MEDICAL UNIVERSITY---

A. I DID.

Q. ---WHO DID THE AUTOPSY?

A. YES.

Q. IS THAT PART OF YOUR JOB AS CORONER?

A. I ORDERED THE AUTOPSY TO BE DONE ON MISS STEPHANIE B .

Q. OKAY. AND WITH RESPECT TO THE CAUSE OF DEATH, DID YOU CERTIFY THE CAUSE OF DEATH IN THE DEATH CERTIFICATE?

A. I DID.

Q. AND WHAT DID YOU CERTIFY THE CAUSE OF DEATH TO BE?

A. READING FROM THE DEATH CERTIFICATE, THE FIRST LINE WOULD BE CARDIOPULMONARY ARREST DUE TO CEREBRAL LACERATION DUE TO A 380 CALIBER GUNSHOT WOUND TO THE HEAD.

MR. BAILEY: THANK YOU, SIR. THAT'S ALL I HAVE.

MR. RUNYON: NO QUESTIONS, YOUR HONOR.

THE COURT: HAVE A GOOD DAY.

MR. BAILEY: EARL ASBELL.

EARL V. ASBELL, AFTER BEING DULY SWORN,

TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. ASBELL, HOW ARE YOU EMPLOYED?

A. I'M A DETECTIVE WITH THE DORCHESTER COUNTY SHERIFF'S DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN A DETECTIVE WITH DORCHESTER COUNTY?

A. FIVE AND A HALF YEARS.

Q. DO YOU HAVE ANY SPECIAL TRAINING IN LAW ENFORCEMENT?

A. YES, SIR.

Q. WHAT IS THAT?

A. CRIME SCENE TECHNICIAN. I ALSO DO LATENT FINGERPRINT WORK ALONG WITH PHOTOGRAPHY AND CRIME SCENE SKETCHES AND STUFF.

Q. AND WHAT DOES A CRIME SCENE TECHNICIAN DO?

A. BASICALLY JUST LAYS OUT WHAT THE CRIME SCENE ENCOMPASSES, THE AREA, COLLECTS THE EVIDENCE, PHOTOGRAPHS THE SCENE, AND THEN TRANSPORTS ANY EVIDENCE BACK AND FORTH TO THE STATE LAW ENFORCEMENT DIVISION.

Q. DID YOU HAVE OCCASION TO DO ANY WORK OUT AT THE PARKING LOT OF SPELL'S STORE IN NOVEMBER OF 1992?

A. YES, SIR, I DID.

Q. DO YOU RECALL ABOUT WHAT TIME YOU ARRIVED AT

SPELL'S STORE NOVEMBER 25TH, '92?

A. IT WAS PROBABLY AROUND 7:00 OR SHORTLY THEREAFTER, RIGHT IN THE AREA OF 7:00 THAT EVENING.

Q. WHEN YOU GOT THERE, DID YOU CARRY A CAMERA WITH YOU?

A. YES, SIR, I DID.

Q. ALL RIGHT, SIR. DID YOU TAKE SOME PHOTOGRAPHS?

A. YES, SIR, I DID.

Q. LET ME -- I TELL YOU WHAT. IF YOU COULD JUST MAYBE STEP UP TO THE FOREMAN OF THE JURY HERE AND I'M GOING TO HAND YOU THREE PICTURES THAT HAVE ALREADY BEEN MARKED STATE'S EXHIBITS 1, 2, AND 3. I'M GOING TO HAND YOU STATE'S EXHIBIT NUMBER 1 AND ASK WHETHER OR NOT YOU TOOK THAT PHOTOGRAPH.

A. YES, SIR, I DID.

Q. OKAY. AND WHAT DOES THAT PICTURE SHOW?

A. THIS PICTURE HERE IS A PHOTOGRAPH OF MR. B 'S TRUCK FROM THE FRONT. I WAS GETTING A PICTURE OF THE BULLET HOLE DOWN HERE IN THE BOTTOM RIGHT-HAND CORNER OR BOTTOM LEFT-HAND CORNER OF THE FRONT GLASS.

Q. ALL RIGHT, SIR. WHAT'S -- FOR THE RECORD, WHAT'S THE APPROXIMATE LOCATION OF THE BULLET HOLE IN THE WINDSHIELD?

A. IT APPEARS TO BE ABOUT TWO INCHES ABOVE THE HOOD OF THE CAR AND APPROXIMATELY MAYBE A FOOT TO THE RIGHT.

Q. OKAY. I'LL HAND THAT TO THE FOREMAN AND ASK HIM IF HE WOULD PASS THAT AROUND. NOW, NUMBER 3, EXCUSE ME, PICTURE NUMBER 2, DID YOU ALSO TAKE THAT?

A. YES, SIR, I DID.

Q. WHAT DOES THAT SHOW?

A. THIS SHOWS THE ENTRANCE OF THE BULLET HOLE IN THE BACK OF THE GLASS OF THE PICKUP TRUCK THERE. THIS IS MR. B 'S TRUCK TAKEN FROM THE LEFT REAR SIDE.

Q. OKAY. AND FOR THE RECORD, WHAT'S THE APPROXIMATE LOCATION OF THE ENTRANCE HOLE IN THE BACK WINDOW OF THE PICKUP TRUCK?

A. IT WAS JUST A LITTLE BIT TO THE RIGHT OF CENTER OF THE GLASS AND APPROXIMATELY SIX TO TEN INCHES, YOU KNOW, FROM THE BOTTOM OF THE GLASS.

Q. OKAY. HOW CLOSE TO THE MIDDLE OF THE BACK WINDOW IS THAT HOLE?

A. WHEN YOU LOOK INTO THE BACK WINDOW, THE DRIVER'S SEAT HAS A CENTER LINE THAT COMES UP THE MIDDLE OF THE BACK OF THE SEAT. THAT BULLET HOLE WAS JUST A COUPLE OF INCHES TO THE RIGHT OF THAT.

Q. OKAY. NOW, WHAT IS THE RELATIONSHIP IN TERMS OF HEIGHT BETWEEN THE BULLET HOLE THAT'S SHOWN IN THE

FRONT WINDSHIELD IN EXHIBIT 1 AND THE BULLET HOLE IN THE BACK WINDOW IN EXHIBIT 2?

A. WELL, WHERE THE BULLET WENT IN AND WHERE IT CAME OUT THERE'S A -- IT'S TO THE RIGHT A LITTLE BIT AND ALSO DOWN A LITTLE BIT, A LITTLE LOWER.

Q. OKAY. NOW, NUMBER 3, DID YOU ALSO TAKE THAT PICTURE?

A. YES, SIR. THIS WAS JUST A PHOTOGRAPH OF THE FRONT OF THE STORE HERE. I WAS STANDING ON RICHARDSON AVENUE WHEN I TOOK THIS PICTURE HERE FROM THE RIGHT. YOU'RE FACING THE STORE FROM THE RIGHT-HAND SIDE JUST SHOWING THE WHOLE AREA OF THE STORE THERE.

Q. THAT YELLOW TAPE IS THE CRIME SCENE JUST TO KEEP THE PEOPLE OFF THERE?

A. YES, SIR.

Q. EXCUSE ME JUST ONE SECOND.

THE COURT: YOU CAN HAVE A SEAT. HAVE YOU GOT SOME MORE PICTURES?

MR. BAILEY: YES, SIR.

THE COURT: GO AHEAD.

MR. BAILEY: I HAVEN'T PUT THESE IN EVIDENCE YET, YOUR HONOR.

BY MR. BAILEY:

Q. I SHOW YOU ANOTHER PHOTOGRAPH AND ASK IF YOU CAN IDENTIFY THAT.

A. YES, SIR. THAT'S THE---
Q. DID YOU TAKE THAT PICTURE AT THE SCENE?
A. YES, SIR, I DID.
Q. LET ME PUT THAT. . .
MR. RUNYON: NO OBJECTION, YOUR HONOR.
MR. BAILEY: I OFFER---
MR. RUNYON: THAT WOULD BE STATE'S EXHIBIT NUMBER---
MR. BAILEY: STATE'S 5, I BELIEVE.
(STATE'S EXHIBIT 5 WAS RECEIVED IN EVIDENCE.)
BY MR. BAILEY:
Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER 5 AND ASK IF YOU CAN IDENTIFY THAT.
A. THIS WAS TAKEN OF THE REAR OF THE GLASS. THIS SHOWS THE ENTRANCE OF WHAT APPEARS TO BE THE BULLET HOLE THROUGH THE BACK OF THE GLASS THERE. AND AS YOU CAN SEE, THIS IS THE CENTER OF THE BACK OF THE SEAT INSIDE THE TRUCK.
Q. OKAY. THERE'S A LITTLE -- IF I COULD GET THAT BACK FROM THE FOREMAN JUST A SECOND. THIS TAPE HERE, THIS WHITE THING, WHAT IS THAT?
A. THAT'S JUST A SCALE TAPE WE PUT IN THE PHOTOGRAPHS IN CASE WE NEEDED TO BRING THAT PICTURE UP TO ACTUAL SIZE. THAT'S WHAT THE SCALE TAPES ARE USED FOR.

Q. ALL RIGHT.

A. IT IDENTIFIES THE CASE NUMBER I'M WORKING ON AND THE DAY IT WAS SHOT AND MY INITIALS ARE SAYING THAT I TOOK THE PICTURE.

Q. THIS PHOTOGRAPH HERE, DID YOU TAKE THAT ON NOVEMBER THE 25TH ALSO?

A. YES, SIR, I DID.

MR. RUNYON: NO OBJECTION, YOUR HONOR.

MR. BAILEY: I OFFER THIS AS EXHIBIT 6.

(STATE'S EXHIBIT 6 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. WHAT DOES THAT PICTURE SHOW? THAT'S STATE'S EXHIBIT NUMBER 6.

A. YEAH. THIS WAS TAKEN FROM THE PASSENGER'S SIDE OF THE VEHICLE AND IT SHOWS UP HERE TO BE THE EXIT OF THE BULLET THROUGH THE FRONT WINDSHIELD. THAT ALSO INCLUDES THE SCALE TAPE.

MR. RUNYON: NO OBJECTION TO -- FOR IDENTIFICATION AT THIS TIME STATE'S EXHIBIT NUMBER 7, YOUR HONOR.

THE COURT: WELL, YOU WOULDN'T HAVE ANY OBJECTION FOR IDENTIFICATION ANYWAY. DO YOU WANT TO USE IT AS AN EXHIBIT?

MR. BAILEY: YES, SIR. I THOUGHT I WAS PUTTING THIS IN AS AN EXHIBIT.

MR. RUNYON: I HAVE NO OBJECTION. HE JUST HASN'T OFFERED IT YET, SO I USED THAT REFERENCE.

THE COURT: ALL RIGHT.

MR. BAILEY: I'D OFFER THIS AT THIS TIME AS NUMBER 7.

THE COURT: WITHOUT OBJECTION.

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

BY MR. BAILEY:

Q. MR. ASBELL, WHAT DOES THAT SHOW?

A. THIS IS A PHOTOGRAPH FROM THE OUTSIDE OF THE TRUCK TAKEN INTO THE PASSENGER DOOR. IT SHOWS THE INSIDE OF THE FRONT WINDSHIELD FOR THE EXIT OF THE PROJECTILE AND IT'S ALSO GOT THE SCALE TAPE IN THERE WITH MY INITIALS AND DATE AND STUFF.

Q. OKAY. BILL?

MR. RUNYON: NO OBJECTION, YOUR HONOR. THAT WOULD BE NUMBER 8.

(STATE'S EXHIBIT 8 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. I SHOW YOU STATE'S EXHIBIT NUMBER 8 AND ASK IF YOU CAN IDENTIFY THAT.

A. YES, SIR. UNDERNEATH THE FRONT OF THE TRUCK - IT WAS UP UNDERNEATH THE TRUCK - THERE WAS A SPENT CARTRIDGE UNDER THERE.

THE COURT: I LITTLE LOUDER. I COULDN'T HEAR

YOU.

THE WITNESS: THERE WAS A SPENT CARTRIDGE ON THE GROUND UNDERNEATH THE FRONT OF THE TRUCK. IT WAS A 380 CALIBER CARTRIDGE. I PHOTOGRAPHED IT WITH THE SCALE TAPE IN THERE AND PLACED IT INTO EVIDENCE.

MR. BAILEY: I JUST OFFER THIS AS---

MR. RUNYON: THAT WOULD BE NUMBER 9?

MR. BAILEY: NUMBER 9.

MR. RUNYON: NO OBJECTION TO NUMBER 9, YOUR HONOR.

THE COURT: THANK YOU.

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

BY MR. BAILEY:

Q. I HAND YOU STATE'S EXHIBIT NUMBER 9 AND ASK YOU TO IDENTIFY THAT.

A. THIS WAS ANOTHER SPENT CARTRIDGE. THIS WAS FOUND ON THE GROUND TO THE LEFT OF THE TRUCK. THIS WAS A CLOSE-UP PHOTOGRAPH. I'M NOT SURE IF THIS WAS THE ONE UNDERNEATH THE FRONT OF THE TRUCK OR TO THE SIDE. I CAN'T TELL IN THIS PHOTOGRAPH HERE.

Q. OKAY.

A. I CAN SEE THE EDGE OF THE TRUCK IN THE BACKGROUND, BUT I'M NOT SURE. I BELIEVE IT WAS THE ONE ON THE SIDE OF THE TRUCK. IT WAS ABOUT FIVE FEET OUT FROM THE PASSENGER'S DOOR.

Q. HOW MANY SPENT CARTRIDGE CASES DID YOU FIND ON---

A. TWO.

Q. ---THE PARKING LOT?

A. TWO.

Q. OKAY. I'M GOING TO SHOW YOU---

MR. RUNYON: NO OBJECTION TO STATE'S EXHIBIT NUMBER 10, YOUR HONOR.

MR. BAILEY: ---NUMBER 10.

(STATE'S EXHIBIT 10 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. DID YOU TAKE THIS ALSO, STATE'S NUMBER 10?

A. YES, SIR, I DID.

Q. WHAT IS THAT?

A. THIS IS THE BACK LEFT TIRE ON THE DRIVER'S SIDE OF THE VEHICLE. ON THIS PARTICULAR TIRE HERE THERE WAS A LOT OF, YOU KNOW, RUST AND PAINT ON THE TIRE. I NOTICED ONE AREA WHERE THE PAINT HAD BEEN KNOCKED OFF AND I PHOTOGRAPHED THAT.

MR. RUNYON: NO OBJECTION TO STATE'S EXHIBIT NUMBER -- PROPOSED STATE'S EXHIBIT NUMBER 11 AND 12, YOUR HONOR, PHOTOS OF SPELL'S GROCERY.

THE COURT: THANK YOU.

(STATE'S EXHIBITS 11 AND 12 WERE RECEIVED IN

EVIDENCE.)

BY MR. BAILEY:

Q. I SHOW YOU STATE'S NUMBER 11 AND ASK YOU IF YOU TOOK THAT AND, IF SO, TO TELL THE JURY WHAT THAT SHOWS.

A. THIS IS JUST ANOTHER PHOTOGRAPH OF THE FRONT OF THE STORE, SHOWING THE INSIDE OF THE CRIME SCENE AREA WHERE THE TAPE IS AT. THAT WAS TAKEN FROM THE RICHARDSON AVENUE SIDE OF THE STORE.

Q. OKAY. THEN NUMBER 12?

A. THIS IS ANOTHER PHOTOGRAPH OF THE BACK OF THE MR. B 'S TRUCK TAKEN FROM THE DRIVER'S LEFT REAR SIDE JUST SHOWING THE WHOLE TRUCK IN THE PICTURE.

Q. ALL RIGHT, SIR. NOW, YOU TESTIFIED THAT YOU RECOVERED TWO SHELL CASINGS. DO YOU HAVE THOSE WITH YOU?

A. YES, SIR, I DO.

Q. OKAY. LET'S JUST TAKE THEM ONE AT A TIME HERE.

A. OKAY.

Q. EITHER ONE. AND OPEN IT UP AND I ASK YOU TO IDENTIFY WHAT'S IN THERE.

A. THIS IS THE 380 SPENT CARTRIDGE THAT I RECOVERED THAT NIGHT. THIS WAS FOUND UNDERNEATH THE FRONT OF THE TRUCK.

Q. ALL RIGHT, SIR. AND DO YOUR INITIALS APPEAR ON THAT?

A. YES, SIR. I PLACED IT IN THIS CAN AND DATED IT AND INITIALED IT.

Q. OKAY.

THE COURT: WHY DON'T YOU GO AHEAD AND IDENTIFY THE TWO OF THEM, SOLICITOR, AND YOU CAN PUT THEM BACK IN THAT BAG AND MARK THEM AS ONE EXHIBIT?

MR. BAILEY: ALL RIGHT, SIR.

THE WITNESS: THIS OTHER ONE RIGHT HERE -- THIS IS ANOTHER 380 SPENT CARTRIDGE. THIS WAS FOUND ON THE OUTSIDE OF THE PASSENGER'S DOOR ON THE GROUND APPROXIMATELY FIVE FEET FROM THE TRUCK.

THE COURT: YOU CAN PUT THEM BACK IN THERE AND IF YOU WANT TO MARK THEM AS EXHIBITS. . .

MR. BAILEY: ALL RIGHT.

THE COURT: ANY OBJECTION, COUNSELOR?

MR. RUNYON: NONE WHATSOEVER, YOUR HONOR.

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

BY MR. BAILEY:

Q. OKAY. NOW, DID YOU RECOVER ANYTHING ELSE AT THE SCENE BESIDES THE TWO SHELL CASINGS?

A. A COUPLE OF FRAGMENTS.

Q. OKAY. DO YOU HAVE THOSE WITH YOU?

A. YES, SIR.

Q. THIS IS A VERY SMALL PIECE OF LEAD. THIS WOULD HAVE BEEN RECOVERED ON THE WINDOW AS YOU'RE FACING THE FRONT OF THE BUILDING THE VERY LEFT WINDOW TO THE LEFT OF THE FRONT DOOR. THIS PIECE OF LEAD WAS SITTING ON THE WINDOW SILL UP THERE A FOOT, TEN INCHES FROM THE LEFT SIDE OF THE WINDOW.

Q. OKAY. WHAT ABOUT THE OTHER ONE?

A. THIS WAS A PIECE OF A COPPER JACKET. THIS WAS FOUND ON THE SIDEWALK BEHIND THE GARBAGE CAN. THERE WAS A GARBAGE CAN ON THE LEFT END OF THE SIDEWALK AS YOU'RE FACING THE BUILDING AND THIS PIECE OF COPPER JACKET WAS ON THE GROUND RIGHT BEHIND THAT TRASH CAN. IT WAS LOCATED A FOOT AND ELEVEN INCHES FROM THE END OF THE SIDEWALK.

MR. BAILEY: OKAY. I'D OFFER THESE AS ONE.

MR. RUNYON: NO OBJECTION, YOUR HONOR.

THE COURT: THANK YOU.

(STATE'S EXHIBITS 14-A AND 14-B WERE RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. MR. ASBELL, AT MY REQUEST DID YOU PREPARE A CHART WHICH WOULD SHOW THE LOCATION OF WHERE YOU FOUND THE SHELL CASINGS?

A. YES, SIR, I DID.

Q. COULD YOU COME ON UP HERE AND HELP ME FIND THE CORRECT ONE THAT YOU'D LIKE TO USE? OKAY. IF YOU WOULD, JUST KIND OF STEP TO THE SIDE AND EXPLAIN TO THE JURY WHERE YOU LOCATED THE SHELL CASINGS.

A. OKAY. THIS IS A LAYOUT OF THE FRONT OF THE BUILDING HERE AND THIS IS MR. B 'S TRUCK WHERE IT WAS PARKED. RIGHT UP UNDER THE FRONT OF THE---

Q. WHERE IS THE FRONT OF THE TRUCK?

A. THE TRUCK WAS POINTED TOWARDS THE BUILDING AT THE TIME I HAD COME. WHEN I ARRIVED, THIS IS THE WAY THE TRUCK WAS SITTING. THIS IS THE FRONT OF IT RIGHT HERE, FACING THE FRONT DOOR. THE SHELL CASING WAS RIGHT UP UNDERNEATH THE FRONT OF THE BUMPER THERE, JUST A COUPLE OF FEET UP UNDER THE FRONT OF THE TRUCK. THE OTHER ONE WAS OUT HERE IN THE PARKING LOT OUTSIDE OF THE PASSENGER'S DOOR.

Q. AND WHAT ABOUT THE BULLET FRAGMENTS THAT YOU TESTIFIED ABOUT?

A. THE LITTLE PIECE OF LEAD WAS SITTING UP HERE IN THIS WINDOW SILL AND THE COPPER JACKET WAS RIGHT BEHIND THIS TRASH CAN HERE ON THE CORNER.

Q. OKAY. NOW, GO AHEAD AND HAVE A SEAT IF YOU WOULD. THE PARKING LOT AT SPELL'S STORE, IS THAT A PAVED PARKING LOT, ASPHALT PARKING LOT?

A. YES, SIR.

Q. OKAY. AND WHEN YOU ARRIVED AT THE SCENE, HAD THERE BEEN OTHER PEOPLE THERE AHEAD OF YOU?

A. YES, SIR, QUITE A FEW PEOPLE.

Q. WHAT IS THE GENERAL CONFIGURATION OF THE PARKING LOT AT SPELL'S STORE?

A. IT'S A SMALL PARKING LOT. IT'S KIND OF -- KIND OF A TRIANGULAR SHAPE. IT'S KIND OF BOXED OFF A LITTLE BIT ON -- YOU KNOW, ON THE---

Q. MAYBE I ASKED -- I THINK I ASKED THE WRONG QUESTION. WHAT'S THE ELEVATION OF THE PARKING LOT?

A. I DON'T. . .

Q. IS IT PERFECTLY FLAT OR DOES IT SLOPE UP OR DOWN?

A. OH, IT'S -- WELL, WHEN YOU'RE LOOKING AT IT FROM THE FRONT OF THE STORE, WHEN YOU GET OVER TO THE RIGHT-HAND SIDE OF THE PARKING LOT IT KIND OF SLOPES DOWN AND DIPS A LITTLE BIT AND THEN RISES A LITTLE BIT TO RICHARDSON AVENUE.

Q. DO YOU HAVE A SKETCH SHOWING THE PARKING LOT, THE DIMENSIONS OF THE PARKING LOT?

A. YES, SIR.

Q. OKAY.

THE COURT: DID YOU MARK THAT OTHER ONE AS AN EXHIBIT?

MR. BAILEY: NO, SIR, I DIDN'T. I MEANT TO,

YOUR HONOR, AND I---

THE COURT: ANY OBJECTION TO THAT ONE?

MR. RUNYON: NO, YOUR HONOR.

THE COURT: LET'S GET IT MARKED.

(STATE'S EXHIBIT 15 WAS RECEIVED IN EVIDENCE.)

MR. BAILEY: 15. LET'S GO AHEAD AND GET THIS MARKED ALSO.

THE COURT: ANY OBJECTION TO THAT ONE, COUNSELOR?

MR. RUNYON: NONE. THAT WOULD BE STATE'S EXHIBIT NUMBER 16, YOUR HONOR. NO OBJECTION.

MR. BAILEY: NUMBER 16.

(STATE'S EXHIBIT 16 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. IF YOU WOULD, JUST BRIEFLY EXPLAIN TO THE JURY WHAT YOU DID HERE.

A. OKAY. THIS RIGHT HERE AGAIN IS THE STORE AND THIS REPRESENTS THE FRONT OF THE STORE AND THE SIDEWALK. THIS IS THE PARKING LOT AREA. THE STREET ON THIS SIDE IS RICHARDSON AVENUE. AS YOU GET DOWN HERE TOWARDS THE END OF THE PARKING LOT, YOU HAVE PIGEON BAY WHICH COMES IN AND PARSON ROAD WHICH COMES IN FROM THE LEFT.

THIS WAS A REAL GRAY AREA RIGHT IN HERE. THE WAY I COME UP WITH THESE DIMENSIONS HERE, ON PIGEON BAY ROAD RIGHT HERE IS WHERE IT ENDS. THE STATE STOPPED BLACK-TOPPING IT RIGHT THERE. SO, THERE WAS A BLACK ROAD AND THEN ALL OF A SUDDEN IT JUST STOPPED. WHAT I DONE WAS I TOOK THESE MEASUREMENTS FROM THE CORNER OF THE SIDEWALK, LEFT-HAND CORNER, DOWN TO THE END OF PIGEON BAY ROAD. RIGHT WHERE THIS ROAD WAS CUT OFF WITH THE BLACK TAR, THERE WAS A NAIL IN THE ROAD HERE THAT WAS SUNK RIGHT ON THE CORNER WHERE THE BLACK TOP HAD STOPPED. I MEASURED IT FROM THERE ACROSS TO RICHARDSON AVENUE. THIS WAS 44 FEET ACROSS HERE.

FROM THE CORNER OF THAT SIDEWALK DOWN TO WHERE THIS IMAGINARY LINE CROSSES THIS 44 FEET, IF YOU GO TO PIGEON BAY ROAD HERE AND JUST DRAW AN ANGLE OUT TO RICHARDSON AVENUE YOU'LL NOTICE IT CUTS IN REAL SHARPLY. IT'S ONLY 23 FEET FROM HERE TO HERE. WHEN THESE CARS COME ALONG, THEY USUALLY MAKE THIS TURN RIGHT IN HERE. SO, THAT'S WHY I CUT THE PARKING LOT OFF RIGHT AT THIS POINT HERE. BUT FROM THE SIDEWALK TO THIS POINT HERE WHERE THIS PIGEON BAY INTERSECTS IS 66 FEET. LIKE I SAID, THIS AREA HERE IS MORE OR LESS LIKE A TURNING AREA FOR THEM GOING INTO THE OTHER STREETS.

Q. MR. ASBELL, AS FAR AS THE -- HOW LONG THE STORE IS FROM ONE SIDE OF SPELL'S STORE TO THE OTHER

SIDE, HOW FAR IS THAT?

A. THE STORE ITSELF IS 47 FEET.

Q. OKAY.

A. THE SIDEWALK IS 46 FEET, 8 INCHES AND IT'S 8 INCHES DEEP.

Q. DID YOU TAKE A MEASUREMENT FROM THE TELEPHONE BOOTH OUT TO RICHARDSON AVENUE?

A. WHAT I DONE IS I CAME TO THE SIDEWALK, THE EDGE OF THE SIDEWALK RIGHT IN FRONT OF THE TELEPHONE BOOTH, AND I TOOK ONE MEASUREMENT STRAIGHT FROM THE SIDEWALK TO WHERE IT INTERSECTED WITH RICHARDSON AVENUE.

Q. OKAY.

A. THAT WAS 47 FEET, 3 INCHES.

Q. ALL RIGHT, SIR. NOW, TO GIVE THE JURY SOMETHING FOR COMPARISON PURPOSES, DID YOU MAKE ANY MEASUREMENTS INSIDE THE COURTROOM?

A. YES, SIR. I TOOK TWO MEASUREMENTS IN THE COURTROOM. I TOOK A MEASUREMENT FROM THIS WALL STRAIGHT DOWN THE AISLE. FORTY-SEVEN FEET IS THE SIXTH PEW BACK.

Q. OKAY. SO, THAT WOULD BE ROUGHLY THE DISTANCE BETWEEN THE SIDEWALK COMING STRAIGHT OUT ONTO RICHARDSON AVENUE?

A. YES, SIR.

Q. OKAY. AND WHAT ABOUT THE DISTANCE FROM THIS WALL OVER HERE TO THIS WALL BEHIND THE JURY?

A. THE WIDTH OF THIS COURTROOM WAS 47 FEET, 6 INCHES.

Q. ALL RIGHT, SIR. COULD YOU PRETTY WELL PUT THAT PARKING LOT INSIDE THIS COURTROOM?

A. YES, SIR, YOU COULD.

Q. DID YOU ALSO PREPARE THIS SKETCH HERE?

A. YES, SIR. THIS WAS IDENTICAL TO THE ONE I JUST SHOWED YOU. ALL I DID WAS TAKE THE MEASUREMENTS OUT?

MR. BAILEY: OKAY. I'D LIKE TO HAVE THIS MARKED FOR IDENTIFICATION.

MR. RUNYON: I THINK HE WANTS TO ADMIT IT.

MR. BAILEY: ADMIT IT.

MR. RUNYON: I'VE GOT NO OBJECTION.

THE COURT: THAT'S CORRECT. YOU MARK IT FOR IDENTIFICATION ANYWAY.

(STATE'S EXHIBIT 17 WAS RECEIVED IN EVIDENCE.)

THE COURT: HOW MUCH LONGER DO YOU THINK THIS WITNESS IS GOING TO BE?

MR. BAILEY: JUDGE, I THINK ABOUT TEN MINUTES.

THE COURT: WHY DON'T WE TAKE JUST A FEW

MINUTES, MR. FOREMAN? YOU LET ME KNOW WHEN YOU'RE READY.

FOREMAN: I'LL BE GLAD TO TAKE ONE RIGHT NOW.

THE COURT: WE'RE GOING TO TAKE IT RIGHT NOW, BUT WHEN YOU'RE---

FOREMAN: READY TO COME BACK IN?

THE COURT: WHEN YOU'RE READY TO COME BACK IN, LET THE BAILIFF KNOW FOR ME. JUST FOLLOW THE BAILIFF IF YOU WILL.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: ALL RIGHT. COURT'S IN RECESS. ALL RIGHT. NOW, DON'T FORGET WHAT I TOLD YOU, PLEASE, GENTLEMEN. LET'S MOVE THE DEFENDANT OUT.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

MR. BAILEY: YOUR HONOR, DO YOU NEED HER IN HERE?

THE COURT: IT'S NOT NECESSARY. YOU CAN PUT IT ON THE RECORD.

MR. BAILEY: YOUR HONOR, [Assault Victim] WHO TESTIFIED EARLIER TESTIFIED UNDER A PLEA AGREEMENT WITH THE STATE WHEREBY---

THE COURT: WHAT WAS HER FULL NAME?

MR. BAILEY: [Assault Victim] .

THE COURT: ALL RIGHT. GO AHEAD.

MR. BAILEY: WHEREBY IF SHE TESTIFIED TRUTHFULLY FOR THE STATE WE WOULD DROP THE CHARGES AGAINST HER.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: AND SHE WAS NOT REALLY INVOLVED IN WHAT HAPPENED ANYWAY ASIDE FROM BEING THERE. SO, UNDER THE THRIFT BROTHERS DECISION WE NEED TO PUT THIS ON THE RECORD.

THE COURT: GO AHEAD.

MR. BAILEY: I AM AT THIS POINT FORMALLY DROPPING THE CHARGES AGAINST HER.

THE COURT: ALL RIGHT, SIR. THANK YOU VERY MUCH.

MR. BAILEY: THANK YOU, YOUR HONOR. WITH PREJUDICE.

THE COURT: WITH PREJUDICE.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: THANK YOU SO MUCH. BE SEATED, PLEASE. ALL RIGHT. BRING THE JURY IN FOR ME, HERE.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. DON'T FORGET THESE BAILIFFS WOULD LOVE TO GET YOU ANYTHING YOU NEED. SO, IF YOU NEED ANYTHING TO MAKE YOU COMFORTABLE LET US KNOW, MR. FOREMAN. ALL RIGHT,

SOLICITOR.

DIRECT EXAMINATION CONTINUED

BY MR. BAILEY:

Q. MR. ASBELL, I WONDER IF YOU'D STEP BACK UP HERE TO THE PODIUM OR THE EASEL OR WHATEVER. MR. ASBELL, USING THE MEASUREMENTS THAT YOU'VE GOT ON STATE'S EXHIBIT NUMBER 16 OVER HERE AND APPLYING THAT TO NUMBER 17 WHICH IS A CHART THAT YOU ALSO DID, I WANT YOU TO ASSUME THAT THIS BLUE MARK HERE IN THE MIDDLE OF THE PARKING LOT SORT OF IS THE POSITION OF THE TRUCK AT THE TIME THE SHOT WAS FIRED INTO THE BACK WINDOW. COULD YOU GIVE THE APPROXIMATE MEASUREMENT BETWEEN THE AREA RIGHT OFF THE SIDEWALK IN FRONT OF THE TELEPHONE AND THE LOCATION OF THAT TRUCK?

A. OKAY. THE MEASUREMENT COMING STRAIGHT OFF THE FRONT WAS 47 FEET, 3 INCHES AND I WOULD STAND THERE, TURN TO THE LEFT A LITTLE BIT, TOOK ANOTHER MEASUREMENT OUT. THIS MEASUREMENT WAS 42 FEET, 5 INCHES AND THIS LOOKS LIKE IT WOULD BE APPROXIMATELY HALF OF IT. SO, IT WOULD BE APPROXIMATELY 18, 21 FEET IN THERE I WOULD IMAGINE.

Q. OKAY. AND, AGAIN, CORRELATE THAT TO THE COURTROOM. YOU'VE DONE SOME MEASUREMENTS IN HERE. IF YOU START ON THIS BACK WALL, HOW FAR ARE YOU TALKING ABOUT COMING OUT?

A. WELL, THE WIDTH OF THIS WAS 47 FEET, SO IT WOULD BE APPROXIMATELY TO THE EDGE OF THOSE SWINGING DOORS RIGHT HERE.

Q. OKAY. THESE DOORS RIGHT HERE?

A. YES, SIR, THAT WOULD. . .

Q. THE DISTANCE---

A. THAT WOULD BE ABOUT HALFWAY.

Q. ---BETWEEN THE SIDEWALK AND THE FRONT OF THE PHONE BOOTH AND WHERE THE TRUCK WOULD HAVE BEEN, ASSUMING THAT'S THE CORRECT POSITION?

A. YES, SIR.

Q. ALL RIGHT. YOU CAN HAVE A SEAT. NOW, THE BULLET FRAGMENTS AND THE SHELL CASINGS THAT YOU TESTIFIED TO AS STATE'S EXHIBITS NUMBER 13 AND 14, WHAT DID YOU DO WITH THOSE?

A. ON DECEMBER THE 1ST -- WE WERE COMING UP ON A HOLIDAY WEEKEND THERE. ON DECEMBER THE 1ST I TRANSPORTED THE EVIDENCE TO S.L.E.D.

Q. OKAY.

A. AND IT REMAINED THERE UNTIL JANUARY THE 24TH, I BELIEVE IT IS, OF THIS YEAR. I PICKED IT UP AT S.L.E.D.

Q. ALL RIGHT, SIR. DID YOU TURN THOSE OVER TO THE EVIDENCE CUSTODIAN?

A. YES, SIR, I DID.

Q. DID YOU PICK THEM UP FROM THE EVIDENCE CUSTODIAN?

A. YES, SIR, I DID.

Q. HAVE THEY BEEN IN YOUR POSSESSION EVER SINCE?

A. YES, SIR?

MR. BAILEY: MR. ASBELL, ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. ASBELL, MAKING REFERENCE TO YOUR CHART, STATE'S EXHIBIT NUMBER 16 AND 17, AS A PRACTICAL MATTER, DEPENDING UPON WHERE SOMEONE WAS STANDING -- STRIKE THAT. WITH REFERENCE TO STATE'S EXHIBIT NUMBER 16 AND 17, THE PARKING LOT AT SPELL'S GROCERY STORE IS AN EXTREMELY CONFINED AREA AS YOU HAVE ALREADY OUTLINED.

A. YES, SIR.

Q. ALL RIGHT. SO THAT NO MATTER WHERE YOU WERE STANDING IN THAT PARKING LOT YOU'RE APPROXIMATELY 15 TO 20 FEET AWAY FROM THE TRUCK DEPENDING UPON WHERE YOU PLACED THE TRUCK; ISN'T THAT CORRECT?

A. YES, SIR.

Q. SO THAT IF YOU STAND ON ONE SIDE AND YOU'RE LOOKING AT THE TRUCK IT'S GOING TO BE ABOUT 20 FEET AWAY FROM YOU. STAND ON THE OTHER SIDE, IT'S GOING TO

BE ABOUT 20 FEET AWAY FROM YOU. STAND IN FRONT OF THE GROCERY STORE, IT'S GOING TO BE ABOUT 20 FEET AWAY FROM YOU.

A. YES, SIR.

Q. YEAH. RIGHT. AND AS IT RELATES TO THE -- AS IT RELATES TO THE CRIME SCENE, THERE IS NO WAY TO ASCERTAIN -- STRIKE THAT. IT'S MY UNDERSTANDING FROM YOUR TESTIMONY, HOWEVER, THAT YOU'RE NOT SUGGESTING THAT THE TRUCK WAS IN ANY PARTICULAR LOCATION AT THE TIME THE SHOTS WERE FIRED, ARE YOU, SIR?

A. NO, SIR.

Q. AND YOU'RE NOT SUGGESTING WHERE MR. ROGERS MAY HAVE BEEN OR ANYONE ELSE MAY HAVE BEEN AT THE TIME THESE SHOTS WERE FIRED.

A. NO, SIR.

Q. AND THAT WHAT YOU HAVE GIVEN US IS A VERY DETAILED EXPLANATION OF THE CRIME SCENE AND THOSE THINGS THAT WERE FOUND IN THOSE AREAS.

A. YES, SIR.

MR. RUNYON: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN COME DOWN. THANK YOU.

MR. BAILEY: DAVID COLLINS.

DAVID J. COLLINS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. COLLINS, WHERE DO YOU WORK NOW?

A. I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION COMMONLY KNOWN AS S.L.E.D.

Q. WHAT DO YOU DO FOR S.L.E.D.?

A. I'M A FIREARMS EXAMINER IN THE FORENSIC SERVICES LABORATORY.

Q. ALL RIGHT, SIR. HOW LONG HAVE YOU WORKED AT S.L.E.D. IN FIREARMS EXAMINATION?

A. APPROXIMATELY FOUR YEARS.

Q. WHAT FORMAL EDUCATION DO YOU HAVE?

A. I HAVE A BACHELOR'S DEGREE FROM THE CITADEL IN 1984.

Q. HAVE YOU ATTENDED ANY SEMINARS OR TRAINING COURSES WITH S.L.E.D. IN BALLISTICS?

A. UPON BECOMING EMPLOYED AT S.L.E.D., I COMPLETED A TWO-YEAR ON-THE-JOB TRAINING PROGRAM IN FIREARMS AND TOOL MARKS IDENTIFICATION. I ALSO COMPLETED OTHER COURSES IN WEAPONS REPAIR GIVEN BY WEAPONS MANUFACTURERS. I'M A MEMBER OF MY PROFESSIONAL ASSOCIATION WHICH IS THE ASSOCIATION OF FIREARMS AND TOOL MARKS EXAMINERS. FROM THEM I RECEIVED ADDITIONAL

TRAINING IN THE FORM OF AN INTERNATIONAL ANNUAL TRAINING SEMINAR AND OTHER COURSES.

MR. RUNYON: YOUR HONOR, I DON'T MEAN TO INTERRUPT MR. COLLINS OR THE SOLICITOR, BUT WE WOULD OFFER TO STIPULATE AS TO MR. COLLINS' QUALIFICATIONS AS A BALLISTICS EXPERT AND I BELIEVE HE'S TESTIFIED -- HIS TESTIMONY HAS BEEN ACCEPTED BY COURTS IN THIS STATE AS A BALLISTICS EXPERT IN IDENTIFYING -- IN IDENTIFYING BALLISTICS MATERIALS.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: THANK YOU.

MR. BAILEY: THANK YOU.

BY MR. BAILEY:

Q. NOW, MR. COLLINS, I'M GOING TO SHOW YOU FIRST OF ALL STATE'S EXHIBIT NUMBER -- THESE WERE. . . I SHOW YOU WHAT'S BEEN MARKED 14-A AND B. AND ASK WHETHER OR NOT YOUR INITIALS APPEAR ON THOSE.

A. THEY DO.

Q. ON THE ENVELOPES?

A. ON THE ENVELOPES.

Q. WOULD YOU OPEN THEM UP, FIRST OF ALL, 14-A AND SEE IF YOU CAN IDENTIFY THAT.

A. YES. THIS BEARS MARKINGS I PLACED UPON IT FOR IDENTIFICATION. I HAVE EXAMINED THIS EVIDENCE.

Q. WHAT IS THAT THAT YOU'RE HOLDING?

A. IT'S A SMALL PIECE OF LEAD. IT ORIGINALLY WAS ONE PIECE OF LEAD. IN THE LABORATORY DURING EXAMINATION IT BROKE INTO TWO PIECES.

Q. OKAY. WOULD YOU STATE WHETHER OR NOT THAT'S CONSISTENT WITH MATERIAL FROM BULLETS?

A. IT IS CONSISTENT WITH MATERIAL I WOULD EXPECT TO FIND IN BULLETS, YES.

Q. HOW ABOUT 14-B?

A. YES. THIS ALSO BEARS MY MARKINGS I PLACED UPON IT FOR IDENTIFICATION. I HAVE EXAMINED THIS EVIDENCE AS WELL.

Q. WHAT IS THAT?

A. THIS IS A PIECE OF COPPER BULLET JACKET MATERIAL. THIS IS ACTUALLY A PORTION OF A BULLET.

Q. OKAY. AND CAN YOU TELL ON EITHER ONE OF THESE WHAT CALIBER OR BRAND OR ANYTHING THOSE FRAGMENTS AND THE BULLET JACKET CAME FROM?

A. DURING THE COURSE OF OUR EXAMINATION, WE WERE UNABLE TO DETERMINE WHAT CALIBER OR BRAND AMMUNITION THESE ORIGINALLY WERE PART OF. WE WERE ALSO UNABLE TO -- WELL, THE PIECE OF LEAD THAT WAS SUBMITTED WAS NOT SUITABLE FOR ANY FURTHER IDENTIFICATION OR EXAMINATION.

Q. ALL RIGHT, SIR. DID YOU GET BOTH OF THESE FROM THE EVIDENCE CUSTODIAN?

A. I DID.

Q. FROM S.L.E.D.? IS THAT THE NORMAL PROCEDURE?

A. THAT IS THE STANDARD PROCEDURE.

Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 13 WHICH IS TWO CONTAINERS AND ASK WHETHER YOU CAN IDENTIFY THOSE.

A. THESE CONTAINERS BOTH EXHIBIT MY INITIALS AND ITEM NUMBERS I PLACED UPON THEM IN THE LABORATORY. THE EVIDENCE CONTAINED IN THESE CONTAINERS ALSO BEARS MY ITEM NUMBERS AND INITIALS.

Q. AND WHAT IS IN THOSE TWO CONTAINERS?

A. THESE CONTAINERS EACH CONTAIN ONE FIRED 380 AUTO-CALIBER CARTRIDGE CASE.

Q. WHAT IS A 380 AUTO-CALIBER?

A. 380 AUTO IS THE DESIGNATION PLACED UPON THE CARTRIDGE CASE OR THE CALIBER DESIGNATION THAT'S PLACED UPON THE AMMUNITION BY THE MANUFACTURERS. IT'S AN INDUSTRY STANDARD SUCH AS A -- A SIMILAR NOMENCLATURE WOULD BE LIKE 38 SPECIAL 357 MAGNUM. THIS IS THE TYPE OF AMMUNITION THAT IT WAS ORIGINALLY PART OF.

Q. OKAY. NOW, 380 CALIBER, WHAT TYPE GUN WOULD NORMALLY FIRE THAT TYPE BULLET?

A. THIS IS NORMALLY FIRED FROM A SEMIAUTOMATIC PISTOL.

Q. OKAY. AND IS THERE A BRAND ON THOSE?

A. BOTH OF THESE CARTRIDGE CASES WERE MANUFACTURED BY THE FEDERAL CARTRIDGE COMPANY.

Q. OKAY. DID YOU PERFORM ANY TESTS TO DETERMINE WHETHER OR NOT BOTH OF THOSE CARTRIDGE CASES WERE FIRED BY THE SAME PISTOL?

A. WE DID.

Q. AND WHAT DID YOU -- HOW DID YOU GO ABOUT DOING THAT?

A. WHEN WE FIRST RECEIVE EVIDENCE IN THE LABORATORY, THE FIRST THING WE DO IS MAKE NOTES AS TO ITS CONDITION AS IT'S RECEIVED. IF WE HAVE A WEAPON TO COMPARE THE EVIDENCE WITH, WE WILL FIRE TEST STANDARDS FROM THE WEAPON AND USE THOSE STANDARDS FOR COMPARISON PURPOSES. IN THIS CASE NO WEAPON WAS SUBMITTED. WE PERFORMED A MICROSCOPIC ANALYSIS OF BOTH CARTRIDGE CASES TO DETERMINE IF THEY WERE FIRED BY THE SAME WEAPON.

THE WAY WE CAN -- HOW WE CAN DO THIS IS THAT WHEN A WEAPON IS MANUFACTURED THE MACHINE PROCESSES INVOLVE THE MICROSCOPIC IMPERFECTIONS ON THE METAL SURFACES OF THE WEAPON INSIDE THE BARREL AND ALL THE OTHER METAL PARTS. THESE MARKINGS, DUE TO THE DULLING OF THE INSTRUMENTS USED AND VARIOUS OTHER FACTORS, ARE INDIVIDUAL TO THAT WEAPON AS A FINGERPRINT IS TO A PERSON. WHEN A CARTRIDGE IS FIRED IN A WEAPON, THE

BULLET AND THE CARTRIDGE CASE ARE BOTH MARKED BY THESE IMPERFECTIONS, SCRATCHED, IF YOU WILL, IN A UNIQUE FASHION. BY COMPARING THE SCRATCH MARKS ON EVIDENCE CARTRIDGE CASES TO EACH OTHER, WE CAN MAKE THE DETERMINATION AS TO WHETHER OR NOT THEY WERE FIRED BY THE SAME WEAPON. IN THIS CASE WE WERE ABLE TO CONCLUDE THAT BOTH OF THESE CARTRIDGE CASES WERE FIRED BY THE SAME WEAPON.

Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S NUMBER 10 WHICH IS A PHOTOGRAPH OF A WHEEL AND ASK IF YOU CAN -- DO YOU SEE THE AREA WHERE THERE'S SOME RAW METAL THERE?

A. I SEE THE AREA THAT YOU'RE DISCUSSING.

Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT THAT AREA IS CONSISTENT WITH BEING STRUCK BY A BULLET?

A. JUDGING FROM THE PHOTOGRAPH, THE AREA APPEARS TO BE CONSISTENT WITH WHAT I WOULD EXPECT TO SEE FROM A BULLET IMPACT.

Q. THANK YOU. AND AFTER YOU PERFORMED THE TESTS ON THESE TWO SHELL CASINGS, DID YOU TURN THEM BACK OVER TO THE EVIDENCE CUSTODIAN?

A. I DID.

MR. BAILEY: THAT'S ALL I HAVE. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. COLLINS, A SEMIAUTOMATIC PISTOL IS SOMETIMES REFERRED TO AS AUTOMATICS, BUT THEY'RE BASICALLY -- SEMIAUTOMATIC PISTOLS ARE THE KIND OF PISTOLS THAT DON'T HAVE A CYLINDER; RIGHT?

A. THAT IS CORRECT.

Q. AND THEY ORDINARILY OPERATE BY EJECTING THE SHELL, THE SPENT SHELL, ONE WAY OR THE OTHER DEPENDING UPON WHETHER THEY'RE RIGHT OR LEFT-SIDE EJECT; ISN'T THAT CORRECT?

A. CORRECT.

Q. MOST OF THE WEAPONS THAT ARE MANUFACTURED IN THAT TYPE OF PISTOL WOULD BE A RIGHT-HANDED EJECT, WOULDN'T IT?

A. THE -- MOST OF THE WEAPONS I HAVE SEEN OF THAT NATURE EITHER EJECT UP OR TO THE RIGHT.

Q. OKAY. AND AS A PRACTICAL MATTER, IF YOU FIND A SHELL CASING ON THE FLOOR YOU CAN KIND OF GUESSTIMATE WHERE THE GUN MAY HAVE BEEN WHEN IT WAS FIRED, BUT THAT DOESN'T NECESSARILY MEAN -- THE LOCATION OF THE SHELL CASING DOESN'T NECESSARILY PINPOINT WHERE THE GUN WAS LOCATED WHEN IT WAS FIRED, DOES IT, SIR?

A. IT'S DIFFICULT TO DO THAT UNDER SOME CIRCUMSTANCES DEPENDING UPON THE SURFACE UPON WHICH THE

EJECTED SHELL CASINGS IMPACTED. IF THEY EXACT ON A HARD SURFACE SUCH AS A PARKING LOT OR A HARD FLOOR, THEY MAY BOUNCE OR SKIP FOR SOME DISTANCE BEFORE THEY FINALLY COME TO REST. IF THEY ARE FIRED, HOWEVER, FROM A -- INTO A GRASSY OR HEAVY, DEEP PILE OF CARPET AREA THEY MAY TEND TO STAY CLOSER TO WHERE THEY FIRST HIT. ALSO OTHER FACTORS COME INTO PLAY AS TO ACTUALLY HOW THE WEAPON WAS BEING HELD, TYPE OF AMMUNITION INVOLVED, AND IT'S DIFFICULT TO ACTUALLY PLACE SOMEONE AS IN RELATIONSHIP TO AN EJECTED CARTRIDGE CASING.

Q. AND THE TYPE OF WEAPON EACH -- EACH OF THESE AUTOMATICS OPERATE WITH A DIFFERENT POUND-PER-SQUARE-INCH PRESSURE IN THE MAGAZINE; ISN'T THAT CORRECT, SIR?

A. I'M NOT SURE IF I FOLLOW THE QUESTION.

Q. WELL, WEAPONS -- AUTOMATIC WEAPONS OR SEMIAUTOMATIC WEAPONS OPERATE BY OPENING -- THE GAS PRESSURE OPENS THE CHAMBER AND THROWS THE SHELL OUT; ISN'T THAT CORRECT?

A. CORRECT.

Q. AND SO DEPENDING UPON THAT FACTOR PLUS, AS YOU SAY, WHETHER IT'S A HARD SURFACE, SMOOTH CONCRETE, GRASS, ROCKS OR WHAT HAVE YOU, THAT SHELL CAN LAND ANY NUMBER OF PLACES.

A. THAT IS CORRECT. ANOTHER PROBLEM THAT YOU HAVE IN PLACING PEOPLE IN RELATIONSHIP TO FIRED

CARTRIDGE CASES IS THAT OTHER PEOPLE THAT COME INTO THE SCENE BEFORE THE CARTRIDGE CASES ARE COLLECTED MAY INADVERTENTLY STEP ON OR KICK OR MOVE THESE CARTRIDGE CASES AS THEY'RE MOVING ABOUT.

Q. AND, LIKEWISE, IF A -- IF THE PROJECTILE FROM A WEAPON STRIKES A HARD SURFACE SUCH AS THE METAL RIM OR A PARKING LOT SURFACE AND FRAGMENTS, THOSE FRAGMENTS CAN GO IN ALL SORTS OF DIRECTIONS; ISN'T THAT CORRECT?

A. ONCE A BULLET STRIKES A HARD OBJECT OR ANY KIND OF SURFACE, ITS FLIGHT PATH BEYOND THAT POINT BECOMES UNPREDICTABLE.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NOTHING FURTHER, YOUR HONOR, OF THIS WITNESS.

THE COURT: ALL RIGHT. YOU CAN COME DOWN AND BE EXCUSED IF YOU LIKE.

MR. BAILEY: WE CALL DAVID SHANKLE.

DAVID SHANKLE, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. SHANKLE, IN NOVEMBER OF 1992 WHERE WERE YOU EMPLOYED?

A. DORCHESTER COUNTY SHERIFF'S DEPARTMENT.

Q. ALL RIGHT. WERE YOU A DETECTIVE WITH THE SHERIFF'S DEPARTMENT AT THAT TIME?

A. YES, SIR, I WAS.

Q. ALL RIGHT, SIR. DID YOU HAVE AN OCCASION TO BE WORKING ON THE CASE INVOLVING THE DEATH OF STEPHANIE B ON NOVEMBER 25TH, 1992?

A. YES, SIR, I DID.

Q. WAS THAT YOUR CASE AT THAT TIME?

A. YES, SIR.

Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT YOU OBTAINED AN ARREST WARRANT FOR TIMOTHY ROGERS?

A. YES, SIR, I DID.

Q. AND DID YOU FAX THAT ARREST WARRANT TO ALABAMA?

A. YES, I DID.

Q. TUSKEGEE, ALABAMA?

A. YES, SIR.

Q. DO YOU RECALL WHO YOU FAXED IT TO?

A. DETECTIVE RODNEY DOUGLAS.

Q. AND SEVERAL DAYS LATER I THINK IN MAYBE EARLY DECEMBER OF 1992 DID YOU GO TO TUSKEGEE, ALABAMA AND TRANSPORT TIMOTHY ROGERS BACK TO SOUTH CAROLINA?

A. YES, SIR, I DID?

MR. BAILEY: NO FURTHER QUESTIONS. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

MR. RUNYON: I HAVE NO QUESTIONS OF DETECTIVE SHANKLE.

THE COURT: THANK YOU. YOU---

MR. BAILEY: CAN HE BE EXCUSED, YOUR HONOR?

MR. RUNYON: NO OBJECTION FROM THE DEFENSE, YOUR HONOR.

THE COURT: YOU CAN BE EXCUSED IF YOU LIKE. HAVE A GOOD DAY.

MR. BAILEY: STEPHANIE SIMMONS.

STEPHANIE D. SIMMONS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. SIMMONS, YOU'RE ALSO HERE UNDER SUBPOENA; IS THAT CORRECT?

A. YES, I AM.

Q. OKAY. WHERE DO YOU LIVE, MS. SIMMONS?

A. [redacted], SUMMERVILLE, SOUTH CAROLINA.

Q. ALL RIGHT. ARE YOU ACQUAINTED WITH TIMOTHY ROGERS?

A. YES, I AM.

Q. OKAY. HOW ARE YOU ACQUAINTED WITH HIM?

A. EXCUSE ME?

Q. HOW DO YOU KNOW MR. ROGERS?

A. HE'S BEEN A FRIEND FOR SEVERAL YEARS.

Q. ALL RIGHT. NOW, BACK IN NOVEMBER OF 1992 WHERE WERE YOU LIVING?

A. [redacted] IN TUSKEGEE, ALABAMA.

Q. WERE YOU A STUDENT AT TUSKEGEE---

A. YES.

Q. ---AT THAT TIME?

A. UH-HUH.

Q. ALL RIGHT. I WANT TO CALL YOUR ATTENTION TO SUNDAY WHICH WOULD HAVE BEEN NOVEMBER 29TH, 1992.

A. UH-HUH.

Q. WHERE WERE YOU AT THAT TIME?

A. AT HOME IN TUSKEGEE IN MY APARTMENT.

Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT YOU HAD OCCASION TO SEE TIMOTHY ROGERS?

A. YES, I DID. HE HAD ARRIVED IN ALABAMA AND CAME BY MY HOME.

Q. ALL RIGHT. NOW, DID YOU ENGAGE IN ANY CONVERSATION WITH HIM OR ASK HIM WHAT HE WAS DOING IN ALABAMA AT THAT TIME?

A. I DIDN'T ASK HIM WHAT HE WAS DOING. HE NEEDED A PLACE TO STAY, BUT HE USED MY PHONE.

Q. HE USED YOUR TELEPHONE?

A. UH-HUH.

Q. DO YOU KNOW WHO HE CALLED?

A. NO, I DON'T REMEMBER.

Q. DID HE TELL YOU WHY HE LEFT SOUTH CAROLINA AND COME TO ALABAMA ON NOVEMBER 29TH, 1992?

A. NO, HE DIDN'T.

Q. DID MR. ROGERS LOOK THE WAY HE LOOKS NOW WHE YOU SAW HIM?

A. NO, HE DOESN'T.

Q. HOW DID HE LOOK BACK THEN?

A. TIMOTHY HAD HIS HAIR BRAIDED AND THAT'S THE ONLY THING DIFFERENT ABOUT HIM IS HIS HAIR.

Q. OKAY. HOW MUCH TIME DID YOU SPEND WITH HIM ON SUNDAY, NOVEMBER 29TH?

A. WHEN HE GOT THERE, I WAS ON MY WAY OUT THE DOOR BECAUSE ME AND SOME GIRLFRIENDS WERE GOING TO MONTGOMERY, AND WHAT I DID WAS I ALLOWED HIM TO USE MY PHONE AND I TOLD HIM THAT I WAS LEAVING AND WHEN I GOT BACK HE SHOULD HAVE EVERYTHING SITUATED. SO, WE DIDN'T TALK AT ALL.

Q. HE NEVER TOLD YOU WHY HE WAS IN ALABAMA?

A. NO, HE DID NOT.

Q. DID YOU SEE HIM AFTER NOVEMBER 29TH IN ALABAMA?

A. YEAH, I SAW HIM ONE MORNING. I WAS ON MY WAY TO CLASS AND HE WAS JUST SITTING DOWN ON OUR APARTMENT STEPS, BUT THAT WAS IT. WE DIDN'T CONVERSE OR

ANYTHING.

Q. THAT WAS AFTER SUNDAY, NOVEMBER 29TH?

A. UH-HUH.

MR. BAILEY: THAT'S ALL I HAVE. THANK YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. SO BASICALLY, MS. SIMMONS, YOU'RE SAYING THAT MR. ROGERS WHO'S BEEN A FRIEND FOR SOME PERIOD OF TIME---

A. UH-HUH.

Q. ---SHOWED UP IN TUSKEGEE AND ASKED YOU TO USE YOUR TELEPHONE.

A. NO. HE DIDN'T ASK ME TO USE MY TELEPHONE. HE WAS NEEDING A PLACE TO STAY.

Q. OH, HE WAS NEEDING A PLACE TO STAY.

A. YES.

Q. AND ULTIMATELY HE USED YOUR TELEPHONE?

A. UH-HUH.

Q. OKAY. AND YOU LET HIM STAY THERE.

A. UH-HUH.

Q. OKAY. WHAT DID YOU LET HIM DO THERE, IF ANYTHING?

A. LIKE I SAID, HE USED THE PHONE.

Q. OKAY. AND YOU SAW HIM THEREAFTER SITTING ON THE STEPS.

A. UH-HUH.

Q. AND EXCEPT FOR HIS HAIR NOT BEING IN BRAIDS, HE'S ESSENTIALLY THE SAME PERSON THAT YOU SAW BACK THEN.

A. UH-HUH.

MR. RUNYON: OKAY. NO FURTHER ESSENTIAL QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY BE EXCUSED IF YOU LIKE.

THE WITNESS: THANK YOU.

MR. BAILEY: YOUR HONOR, WE'VE GOT A JACKSON V. DENNO MATTER PRIOR TO THE NEXT WITNESS.

THE COURT: OH, ALL RIGHT, SIR. GO TO YOUR ROOM FOR ABOUT TEN MINUTES MAYBE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: ALL RIGHT. CALL YOUR WITNESS.

MR. BAILEY: RODNEY DOUGLAS.

THE COURT: RODNEY DOUGLAS.

RODNEY P. DOUGLAS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS OUT OF THE PRESENCE OF THE JURY:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. DOUGLAS, WHERE ARE YOU FROM? WHERE ARE

YOU FROM?

A. FORMERLY FROM TUSKEGEE, ALABAMA, BUT I AM NOW IN BIRMINGHAM.

Q. OKAY. WHERE ARE YOU EMPLOYED IN BIRMINGHAM?

A. STATE OF ALABAMA DEPARTMENT OF YOUTH SERVICES.

Q. OKAY. IN NOVEMBER 1992 WHERE WERE YOU EMPLOYED?

A. TUSKEGEE POLICE DEPARTMENT.

Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT YOU WERE FAXED AN ARREST WARRANT BY DETECTIVE SHANKLE FROM DORCHESTER COUNTY?

A. YES, SIR, I WAS.

Q. OKAY. AND WAS THAT AN ARREST WARRANT INVOLVING TIMOTHY ROGERS?

A. YES, SIR.

Q. OKAY. DID YOU EXECUTE THAT ARREST WARRANT IN ALABAMA---

A. YES, SIR, I DID.

Q. ---AND SERVE THAT?

A. YES, SIR.

Q. PRIOR TO THAT, DID YOU OBTAIN A FUGITIVE WARRANT?

A. YES, SIR.

Q. WERE YOU PRESENT WHEN MR. ROGERS WAS

ARRESTED?

A. YES, SIR.

Q. WHERE DID THAT ARREST TAKE PLACE?

A. AT THE MARRIED STUDENT APARTMENTS ON THE CAMPUS OF TUSKEGEE UNIVERSITY.

Q. ALL RIGHT, SIR. AND AT THE TIME MR. ROGERS WAS ARRESTED, WOULD YOU STATE WHETHER OR NOT ANY MIRANDA RIGHTS WERE GIVEN TO HIM?

A. YES, SIR.

Q. OKAY. WHO ADMINISTERED THOSE RIGHTS?

A. LIEUTENANT PATRICK.

Q. AND WERE YOU PRESENT AT THAT TIME?

A. YES, SIR, I WAS.

Q. WHERE WERE THEY GIVEN?

A. THEY WERE GIVEN BOTH AT THE SCENE AND AT THE POLICE DEPARTMENT.

Q. OKAY. NOW, WAS THERE ANY INTERROGATION AT THE SCENE OF THE ARREST FOLLOWING THE VERBAL MIRANDA RIGHTS?

A. NO, SIR.

Q. OKAY. WHERE WAS MR. ROGERS TAKEN AFTER HE WAS ARRESTED?

A. TUSKEGEE POLICE DEPARTMENT.

Q. AND WHO PARTICIPATED IN THE ARREST?

A. MYSELF, LIEUTENANT LESTER PATRICK, MR.

MCLAUGHLIN. I DON'T REMEMBER THE CHIEF OF THE UNIVERSITY'S FIRST NAME, BUT HIS LAST NAME IS MCLAUGHLIN AND AN A.B.I. AGENT BY THE NAME OF NAT, I WANT TO SAY, TURNER. I THINK HIS LAST NAME IS TURNER.

Q. ONE SECOND. MR. DOUGLAS, LET ME HAND YOU A PIECE OF PAPER AND ASK IF YOU CAN IDENTIFY IT.

A. YES, SIR.

Q. THAT'S A COPY AND I'LL SUBSTITUTE AN ORIGINAL AT A LATER DATE. DOES YOUR SIGNATURE APPEAR ON THE BOTTOM AS WITNESS NUMBER ONE?

A. YES, SIR, IT DOES.

Q. OKAY. WERE YOU PRESENT WHEN THAT PAPER WAS READ TO MR. ROGERS?

A. YES, SIR.

Q. WHO READ IT TO HIM?

A. I DID.

Q. OKAY. AND DID YOU READ EVERYTHING VERBATIM THE SAME WAY IT APPEARS ON THAT?

A. YES, SIR, I DID.

Q. OKAY. AND AFTER YOU READ THAT TO HIM, DID MR. ROGERS SIGN THAT?

A. YES, SIR, HE DID.

Q. OKAY. AND AT THE TIME OF THE ADMINISTRATION OF THOSE MIRANDA WARNINGS, WHAT TIME OF THE DAY WAS IT ROUGHLY?

A. 8:15 P.M.

Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT MR. ROGERS APPEARED TO BE UNDER THE INFLUENCE OF ANY INTOXICANTS OR WAS HE OTHERWISE INCAPACITATED IN ANY WAY?

A. NO, SIR, HE WASN'T.

Q. WERE ANY THREATS MADE TO HIM?

A. NO, SIR.

Q. WERE ANY PROMISES MADE TO HIM?

A. NO, SIR.

Q. OKAY. WHERE DID THE ADMINISTRATION OF THOSE RIGHTS TAKE PLACE? WHAT TYPE OF ROOM?

A. BACK IN OUR DETECTIVES DIVISION IN OUR OFFICE.

Q. OKAY. ALL RIGHT. AND SUBSEQUENT TO THOSE MIRANDA RIGHTS BEING GIVEN AND HIM SIGNING THE MIRANDA -- THE WAIVER OF MIRANDA RIGHTS, DID HE MAKE A FORMAL WRITTEN STATEMENT?

A. YES, SIR, HE DID.

Q. DID YOU WITNESS THAT STATEMENT?

A. YES, SIR, BUT HE DID NOT WRITE THE STATEMENT. IT WAS WRITTEN FOR HIM.

Q. OKAY. BEAR WITH ME ONE SECOND. I SEEM TO HAVE. . . LET ME HAND YOU A SECOND PIECE OF PAPER WHICH IS A THREE-PAGE DOCUMENT AND ASK IF YOU CAN

IDENTIFY THAT.

A. YES, SIR. THIS IS THE STATEMENT GIVEN BY TIMOTHY ROGERS.

Q. OKAY. AND TURN TO THE LAST PAGE. DOES YOUR NAME APPEAR THERE AS A WITNESS?

A. YES, SIR, IT DOES.

Q. OKAY. AND HOW DID THAT STATEMENT COME ABOUT? YOU SAID IT WAS WRITTEN FOR HIM?

A. YEAH, HE---

Q. WAIT TILL THAT TRAIN GOES BY FOR A SECOND. (PAUSE) OKAY.

A. YES, SIR. HE TOLD US WHAT TOOK PLACE AND WE JUST, YOU KNOW, WROTE IT DOWN.

Q. OKAY. WHO WROTE IT DOWN FOR HIM?

A. DETECTIVE COOK WROTE THE STATEMENT TECHNICALLY.

Q. OKAY. AND YOU WERE PRESENT WHEN THAT TOOK PLACE?

A. YES, SIR.

Q. AND THEN DID YOU WITNESS MR. ROGERS' SIGNATURE?

A. YES, SIR, I DID.

Q. AND AT THE TIME THAT HE SIGNED THAT STATEMENT, WAS THAT AFTER THE MIRANDA RIGHTS WERE GIVEN TO HIM AND HE HAD SIGNED THE WAIVER?

A. YES, SIR.

Q. AND WERE ANY THREATS OR PROMISES MADE TO HIM BETWEEN THE TIME THE MIRANDA RIGHTS WERE GIVEN AND THE TIME HE SIGNED THE STATEMENT?

A. NO, SIR, THERE WASN'T.

Q. MR. DOUGLAS, THERE'S A DATE DOWN ON THE BOTTOM, DECEMBER 3RD, 1992, AFTER TIMOTHY D. ROGERS' SIGNATURE IS ON THERE. UP AT THE TOP IT HAS DECEMBER 2ND. WHAT WAS THE CORRECT DATE THAT WAS DONE? I'LL ASK YOU TO REFER TO THE WAIVER FORM IF YOU NEED TO.

A. IT WAS DONE ON DECEMBER THE 2ND.

Q. OKAY. SO THEN MR. ROGERS, WHEN HE SIGNED THAT, HE JUST PUT THE NEXT DAY THERE.

A. YEAH.

Q. YOUR TESTIMONY, IT WAS DECEMBER 2ND.

A. YES, SIR.

Q. IS THAT CORRECT?

A. YES, SIR. SEE, THE DATE IS ON THIS, DECEMBER THE 3RD ALSO. DECEMBER 2ND.

MR. BAILEY: OKAY. YOUR HONOR, I WOULD OFFER BOTH OF THESE AT THIS TIME.

THE COURT: DO YOU WANT TO EXAMINE HIM?

MR. RUNYON: NO, SIR.

THE COURT: ANY OBJECTION TO THE STATEMENTS BEING OFFERED?

MR. RUNYON: NEVER HAD ANY, JUDGE.

THE COURT: ALL RIGHT. ALL RIGHT. FOR THE RECORD, THOUGH, I FIND BY THE PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT'S MIRANDA RIGHTS WERE GIVEN HIM, THAT HE UNDERSTOOD THEM, THAT HE GAVE A STATEMENT, THAT NO PROMISES, THREATS, OR REWARDS WERE EXTENDED HIM TO OBTAIN THAT STATEMENT, THAT THE STATEMENT IS FREE AND VOLUNTARY AND I'LL, OF COURSE, SUBMIT INSTRUCTIONS TO THE JURY---

MR. BAILEY: THANK YOU, YOUR HONOR.

THE COURT: ---AND ALLOW IT. ALL RIGHT. ANYTHING ELSE?

MR. BAILEY: NOT AS FAR AS JACKSON V. DENNO. I'VE GOT TWO OTHER WITNESSES, BUT SINCE THE COURT HAS ALREADY FOUND SUFFICIENT SHOWING HERE I WON'T CALL THEM---

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: ---TILL THE JURY COMES OUT.

THE COURT: THANK YOU VERY MUCH. YOU CAN BRING THE JURY IN FOR ME. WHY DON'T YOU JUST HAVE A SEAT RIGHT OVER THERE IN THAT CHAIR? I'M GOING TO SWEAR YOU AGAIN---

THE WITNESS: OKAY.

THE COURT: ---IN FRONT OF THE JURY.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN

COURT.)

THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

MR. BAILEY: RODNEY DOUGLAS.

RODNEY P. DOUGLAS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. DOUGLAS, WHERE ARE YOU FROM?

A. BIRMINGHAM, ALABAMA AT THE PRESENT.

Q. WHERE ARE YOU EMPLOYED NOW?

A. WITH THE STATE OF ALABAMA, DEPARTMENT OF YOUTH SERVICES.

Q. OKAY. AND IN DECEMBER OF 1992 WHERE DID YOU WORK?

A. TUSKEGEE. TUSKEGEE POLICE DEPARTMENT.

Q. OKAY. WHAT WAS YOUR POSITION WITH THE POLICE DEPARTMENT IN DECEMBER OF '92?

A. I WAS A DETECTIVE.

Q. OKAY. NOW, WOULD YOU STATE WHETHER OR NOT YOU RECEIVED A FAX FROM DAVID SHANKLE WITH THE DORCHESTER COUNTY SHERIFF'S OFFICE?

A. YES, SIR, I DID.

Q. OKAY. AND WAS THAT -- WOULD YOU STATE WHETHER OR NOT THAT WAS AN ARREST WARRANT FOR MURDER

FOR TIMOTHY ROGERS?

A. YES, SIR, IT WAS.

Q. AND BASED ON THAT FAXED ARREST WARRANT, WOULD YOU STATE WHETHER OR NOT YOUR OFFICE OBTAINED A FUGITIVE WARRANT FOR MR. ROGERS?

A. YES, SIR, WE DID.

Q. OKAY. AND DID YOU HAVE OCCASION TO GO TO THE CAMPUS OF TUSKEGEE UNIVERSITY ON DECEMBER 2ND, 1992?

A. YES, SIR.

Q. WHAT WAS THE REASON THAT YOU WENT THERE?

A. WE HAD GOTTEN WORD THAT MR. ROGERS MAY BE ON CAMPUS.

Q. OKAY. AND WAS THIS AFTER YOU HAD RECEIVED THE FAXED SOUTH CAROLINA MURDER WARRANT?

A. YES, SIR.

Q. AND HAD OBTAINED THE FUGITIVE WARRANT IN ALABAMA?

A. YES, SIR.

Q. OKAY. WHO WAS WITH YOU WHEN YOU WENT TO THE CAMPUS?

A. AN A.B.I. AGENT BY THE NAME OF NAT TURNER.

Q. WHAT IS A.B.I.?

A. ALABAMA BUREAU OF INVESTIGATIONS.

Q. AND WHO ELSE?

A. AT THAT TIME IT WAS JUST HE AND I.

Q. OKAY. NOW, CALLING YOUR ATTENTION TO ABOUT 4:10 P.M. ON DECEMBER 2ND, DID YOU GO TO THE APARTMENT OF SOMEONE NAMED ELGIN GREEN?

A. YES, SIR, WE DID GO TO THE APARTMENT.

Q. OKAY. WHO WENT WITH YOU AT THAT TIME?

A. OKAY. CHIEF MCLAUGHLIN WHO WAS THE CHIEF OF POLICE FOR TUSKEGEE UNIVERSITY, LIEUTENANT LESTER PATRICK WHO WORKS AT TUSKEGEE POLICE DEPARTMENT, AND NAT, THE A.B.I. AGENT FROM THE ALABAMA BUREAU OF INVESTIGATIONS AND MYSELF.

Q. AND WHY DID YOU GO TO THAT PARTICULAR APARTMENT?

A. WE'D GOTTEN WORD THAT HE WAS IN THE APARTMENT, THAT HE COULD POSSIBLY BE IN THE APARTMENT.

Q. WHEN YOU ARRIVED AT THE APARTMENT, WHAT DID YOU DO?

A. WELL, WHEN WE ARRIVED THERE WE KNOCKED ON THE DOOR. WE RUNG THE DOORBELL. NOBODY ANSWERED. WE STATIONED OURSELVES AROUND THE APARTMENT. THE CHIEF WENT BACK AND GOT A MASTER KEY AND ONCE WE GOT THE MASTER KEY WE ENTERED THE APARTMENT.

Q. ALL RIGHT. WHEN YOU GOT INSIDE THE APARTMENT, WHAT TOOK PLACE?

A. WE FOUND MR. ROGERS INSIDE THE APARTMENT.

Q. OKAY. AND DID YOU PLACE HIM UNDER ARREST?

A. YES, SIR, WE DID.
Q. OKAY. WOULD YOU STATE WHETHER OR NOT ANY MIRANDA RIGHTS WERE GIVEN TO MR. ROGERS AT THAT TIME?
A. ORALLY AT THE SCENE, YES, SIR.
Q. WHO GAVE THOSE ORAL MIRANDA RIGHTS TO HIM?
A. LIEUTENANT LESTER PATRICK.
Q. OKAY. WERE YOU PRESENT WHEN THAT OCCURRED?
A. YES, SIR, I WAS.
Q. NOW, AFTER THAT, WHERE WAS MR. ROGERS TAKEN?
A. HE WAS TAKEN TO THE TUSKEGEE POLICE DEPARTMENT.
Q. ALL RIGHT. WHAT HAPPENED AFTER HE GOT THERE?
A. HE WAS PROCESSED AND PLACED IN THE MACON COUNTY JAIL.
Q. I'M GOING TO SHOW YOU A FORM THAT'S BEEN MARKED STATE'S EXHIBIT NUMBER 19 AND ASK IF YOU CAN IDENTIFY THAT.
A. YES, SIR. THIS IS A COPY OF THE MIRANDA WARNING.
Q. OKAY. WERE YOU PRESENT WHEN THOSE MIRANDA WARNINGS WERE ADMINISTERED?
A. YES, SIR. I ADMINISTERED THEM.
Q. OKAY. HOW DID YOU GO ABOUT ADMINISTERING THOSE WARNINGS TO MR. ROGERS?
A. I READ THEM TO HIM.

Q. OKAY. AND AFTER YOU READ THOSE WARNINGS TO HIM, DID HE RESPOND TO YOU IN ANY WAY?

A. HE UNDERSTOOD HIS RIGHTS.

Q. OKAY. AND THERE'S A WAIVER DOWN THERE. DID HE SIGN THE WAIVER?

A. YES, SIR, HE DID.

Q. DID YOU WITNESS HIS SIGNATURE ALONG WITH DETECTIVE COOK?

A. YES, SIR, I DID.

Q. OKAY. AND AFTER -- THAT TOOK PLACE WHAT DATE AND WHAT TIME?

A. DECEMBER THE 2ND, 1992, AT 8:15.

Q. DID YOU MAKE ANY PROMISES OR THREATS TO HIM BEFORE HE SIGNED THAT?

A. NO, SIR, I DIDN'T.

Q. DID ANYBODY ELSE IN YOUR PRESENCE?

A. NO, SIR.

Q. AND WHERE DID THAT TAKE PLACE? WHAT SIZE ROOM WAS HE IN?

A. OH, IT WAS A FAIR SIZE ROOM. I'D SAY FROM WHERE THE CAMERA IS BACK TO THE WALL AND MAYBE OVER TO THE BLEACHERS. IT WAS A PRETTY BIG ROOM.

Q. OKAY. AND AFTER HE SIGNED THAT WAIVER, DID HE MAKE A -- WAS THERE A WRITTEN STATEMENT PREPARED FOR HIM?

A. YES, SIR, IT WAS.

Q. I'LL HAND YOU STATE'S EXHIBIT NUMBER 18 AND ASK WHETHER OR NOT THAT STATEMENT WAS PREPARED FOR MR. ROGERS AFTER HE SIGNED THE MIRANDA WAIVER.

A. YES, SIR, IT WAS.

Q. OKAY. DID YOU WITNESS THAT?

A. YES, SIR.

Q. WHO ACTUALLY WROTE IT OUT?

A. DETECTIVE COOK WROTE THE STATEMENT.

Q. OKAY. AND DOWN IN THE BOTTOM RIGHT-HAND CORNER OF THAT FIRST PAGE, WHOSE SIGNATURE IS THERE?

A. MR. ROGERS'.

Q. OKAY. ON THE SECOND PAGE, BOTTOM RIGHT-HAND CORNER, WHOSE SIGNATURE IS THERE?

A. MR. ROGERS'.

Q. AND THE THIRD PAGE?

A. MR. ROGERS'.

Q. OKAY. DID YOU WITNESS THAT ALONG WITH DETECTIVE COOK AND LIEUTENANT LESTER PATRICK?

A. YES, SIR, I DID.

Q. OKAY. AND WERE ANY THREATS OR PROMISES MADE TO HIM TO INDUCE HIM TO SIGN THAT WRITTEN STATEMENT?

A. NO, SIR, THERE WASN'T.

MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE OF THIS WITNESS. I WOULD OFFER THESE INTO EVIDENCE AT

THIS TIME.

THE COURT: ANY OBJECTION?

MR. RUNYON: NO OBJECTION, YOUR HONOR.

(STATE'S EXHIBITS 18 AND 19 WERE RECEIVED IN EVIDENCE.)

THE COURT: ALL RIGHT. NOW, MR. FOREMAN, MEMBERS OF THE JURY, THIS STATEMENT - I'LL BE TALKING TO YOU ABOUT IT A LITTLE LATER AS FAR AS THE LAW IS CONCERNED. I WILL TELL YOU THAT THE DEFENDANT MUST HAVE UNDERSTOOD HIS MIRANDA RIGHTS, THOSE CONSTITUTIONAL RIGHTS, AND YOU'LL BE ABLE TO ACCEPT THE LAW AS I GIVE YOU AND GIVE THIS STATEMENT WHATEVER WEIGHT YOU FEEL IT DESERVES UNDER THE FACTS AND CIRCUMSTANCES IN THIS CASE. THE DEFENDANT AND THE ATTORNEYS DON'T OBJECT TO IT. ALL RIGHT. COUNSELOR, WOULD YOU LIKE TO EXAMINE HIM?

MR. RUNYON: YES, SIR.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. DETECTIVE DOUGLAS, AFTER HE WAS ADVISED OF HIS MIRANDA RIGHTS AND WAIVED SAME, MR. ROGERS SPOKE FREELY WITH YOU AND THE OTHER DETECTIVE?

A. YES, SIR, HE DID.

Q. AND ESSENTIALLY HE RELATED WHAT HE RELATED IN THE STATEMENT PLUS OTHER SURROUNDING FACTS CONCERNING

THE INCIDENT THAT HE WAS CHARGED IN.

A. HE RELATED WHAT WE HAVE IN THE STATEMENT, YES, SIR.

Q. OKAY. AND DID YOU DO THE PRIMARY INTERVIEW WITH HIM? I WON'T CALL IT AN INTERROGATION. YOU INTERVIEWED HIM.

A. YES, SIR, WE TALKED TO HIM.

Q. OKAY. AND MR. ROGERS HAD INDICATED TO YOU THAT ANYONE'S DEATH WAS ACCIDENTAL ON HIS PART?

A. YES, SIR, HE DID SAY IT WAS ACCIDENTAL.

Q. ALL RIGHT. AND HE TOLD YOU HE WAS IN SOME SORT OF ALTERCATION AND NEVER INTENDED TO SHOOT ANYBODY. ISN'T THAT CORRECT?

A. YES, SIR.

MR. RUNYON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

MR. BAILEY: WE CALL LESTER PATRICK.

THE COURT: YOU CAN COME DOWN AND BE EXCUSED IF YOU LIKE OR STAY.

LESTER C. PATRICK, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. PATRICK, WHERE ARE YOU FROM?

A. TUSKEGEE, ALABAMA.

Q. AND WHERE ARE YOU EMPLOYED?

A. TUSKEGEE POLICE DEPARTMENT.

Q. OKAY. WERE YOU EMPLOYED AS A POLICE OFFICER ON DECEMBER THE 2ND, 1992?

A. I WAS.

Q. AND WHAT WAS YOUR RANK AT THAT TIME?

A. I'M THE CHIEF OF DETECTIVES.

Q. OKAY. DID YOU HAVE OCCASION TO GO TO THE CAMPUS OF TUSKEGEE UNIVERSITY ON DECEMBER 2ND?

A. YES, I DID.

Q. WHAT WAS THE REASON FOR THAT?

A. THE REASON WAS THAT I HAD BEEN NOTIFIED BY ONE OF MY INVESTIGATORS, RODNEY DOUGLAS, THAT WE HAVE FUGITIVE WARRANTS ON A SUBJECT WHO HAD BEEN REPORTED TO BE ON THE CAMPUS OF TUSKEGEE UNIVERSITY.

Q. ALL RIGHT, SIR. WHERE DID YOU GO LOOKING FOR MR. ROGERS?

A. WE FIRST WENT TO THE SECURITY OFFICE AND CONFERRED WITH THE CHIEF OF SECURITY, AND WE THEN WENT TO THE STUDENT COMPLEX CENTER WHICH IS CALLED THE MARRIED STUDENTS APARTMENTS LOCATED ON FRANKLIN ROAD

RIGHT OUTSIDE THE CAMPUS.

Q. DID YOU GO TO AN APARTMENT OCCUPIED BY A FELLOW NAMED ELGIN GREEN?

A. YES, WE DID.

Q. OKAY. WHAT HAPPENED WHEN Y'ALL GOT THERE?

A. WE WENT TO THE APARTMENT AND WE KNOCKED ON THE DOOR SEVERAL TIMES. WHEN WE SEEN NO RESPONSE, WE THEN OBTAINED A PASSKEY FROM ONE OF THE VICE PRESIDENTS OF THE UNIVERSITY AND WE THEN PROCEEDED TO ENTER THE APARTMENT.

Q. OKAY. AND WHAT DID Y'ALL FIND WHEN YOU GOT INSIDE THE APARTMENT?

A. WE FOUND A BLACK MALE SUBJECT.

Q. OKAY. AND DID YOU IDENTIFY HIM AS TIMOTHY ROGERS?

A. YES.

Q. WHEREABOUTS IN THE APARTMENT WAS HE?

A. WE FOUND MR. ROGERS HIDING UNDER THE SOFA.

Q. HIDING UNDER THE SOFA?

A. YES, SIR.

Q. OKAY. AND DID YOU THEN PLACE HIM UNDER ARREST?

A. I DID.

Q. WAS THAT BASED ON A SOUTH CAROLINA MURDER WARRANT?

A. YES, IT WAS.

Q. AS WELL AS AN ALABAMA FUGITIVE WARRANT OBTAINED---

A. YES, IT WAS.

Q. ---AT THAT TIME?

A. YES, SIR.

Q. ALL RIGHT, SIR. I WANT TO SHOW YOU STATE'S EXHIBIT NUMBER 19 WHICH IS A MIRANDA WAIVER FORM AND ASK WHETHER OR NOT YOU'RE FAMILIAR WITH THAT.

A. YES, SIR, I AM.

Q. OKAY. AND THAT CONTAINS THE NAME -- HAS THE NAMES OF RODNEY DOUGLAS AND DETECTIVE COOK AS WITNESSES?

A. YES, SIR.

Q. WERE YOU PRESENT WHEN THAT WAS SIGNED?

A. YES, SIR, I WAS.

Q. AND WERE YOU PRESENT WHEN THOSE RIGHTS WERE READ BY OFFICER DOUGLAS---

A. YES, SIR, I WAS.

Q. ---TO MR. ROGERS?

A. YES, SIR.

Q. OKAY. WERE ANY THREATS OR PROMISES MADE TO HIM?

A. NONE WHATSOEVER.

Q. OKAY. AND I'LL HAND YOU STATE'S EXHIBIT

NUMBER 18 WHICH IS A THREE-PAGE HANDWRITTEN STATEMENT AND ASK IF YOUR SIGNATURE APPEARS ON THE LAST PAGE AS A WITNESS.

A. YES, SIR.

Q. DID YOU WITNESS MR. ROGERS SIGNING ALL THREE PAGES?

A. YES, SIR, I DID.

Q. WERE ANY THREATS OR PROMISES MADE TO HIM PRIOR TO HIM SIGNING THAT?

A. NO, SIR.

MR. BAILEY: ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. DETECTIVE PATRICK, YOU SAY WHEN YOU WENT IN THE APARTMENT WHERE WAS MR. ROGERS?

A. TO THE BEST OF MY RECOLLECTION, HE WAS UNDER THE SOFA.

Q. UNDER THE SOFA?

A. IN THE LIVING ROOM AREA, YES, SIR.

Q. HE WAS UNDER THE SOFA?

A. TO THE BEST OF MY RECOLLECTION, YES. WE FOUND HIM HIDING. IF I RECALL CORRECTLY, IT WAS UNDER THE SOFA.

Q. NOW, HOW HIGH DOES THAT SOFA SIT OFF THE

FLOOR, DETECTIVE?

A. OH, IT'S PRETTY HIGH, FAIRLY HIGH. I WOULD GUESS IT TO BE -- A ROUGH GUESS HERE, FIVE OR SIX INCHES OFF THE FLOOR.

Q. SO, HE WOULDN'T BE UNDER THE SOFA IN A FIVE OR SIX-INCH AREA, WOULD HE, SIR?

A. THE BEST OF MY RECOLLECTION, THAT'S WHERE WE LOCATED HIM.

Q. OKAY. DETECTIVE PATRICK, YOU PARTICIPATED IN MR. ROGERS' INTERVIEW.

A. YES, SIR.

Q. AND THIS WASN'T AN INTERROGATION. YOU READ HIM HIS RIGHTS AND HE WAS INTERVIEWED, WASN'T HE?

A. THAT'S CORRECT.

Q. AND HE -- AFTER FULLY WAIVING HIS RIGHTS, HE ADVISED YOU OF HIS RECOLLECTIONS OF THAT EVENING.

A. THAT'S CORRECT.

Q. AND NOBODY PROMISED HIM ANYTHING.

A. NO, SIR.

Q. AND HE TOLD YOU THAT THE SHOOTING OF THE YOUNG CHILD WAS ACCIDENTAL ON HIS PART?

A. YES.

Q. AND THAT HE WAS ACTING IN SELF-DEFENSE ESSENTIALLY.

A. NO, THAT'S NOT WHAT HE SAID.

Q. OKAY. WHAT DID HE SAY?

A. HE STATED THAT HE PERCEIVED THE GENTLEMAN IN THE PICKUP TRUCK TO BE REACHING BEHIND HIS SEAT FOR A WEAPON.

Q. ALL RIGHT, SIR. AND THAT HE FIRED A WARNING SHOT, SOMETHING TO THAT EFFECT?

A. HE STATED HE FIRED A SHOT INTO THE AIR.

Q. OKAY. AND AFTER FULLY COOPERATING AND GIVING YOU A STATEMENT, YOU, OF COURSE, NOTIFIED SOUTH CAROLINA AUTHORITIES THAT HE WAS IN YOUR CUSTODY.

A. YES, SIR.

Q. AND THEN DETECTIVE SHANKLE SHOWED UP WITH THE APPROPRIATE PAPERS AND MR. ROGERS ACCOMPANIED HIM BACK TO SOUTH CAROLINA.

A. YES, SIR.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU.

MR. BAILEY: A COUPLE OF QUESTIONS ON REDIRECT, YOUR HONOR, IF I MIGHT.

REDIRECT EXAMINATION

Q. LIEUTENANT PATRICK, WHEN Y'ALL KNOCKED ON THE DOOR, DID YOU IDENTIFY YOURSELVES AS POLICE OFFICERS?

A. YES, SIR, WE DID.

Q. DID YOU SAY IT IN A LOUD VOICE?

A. VERY LOUD. I IDENTIFIED MYSELF. WE ALSO HAD AN AGENT OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY WITH US WHO ALSO IDENTIFIED HIMSELF, AND THEN IN TURN THE CHIEF OF THE UNIVERSITY'S POLICE DEPARTMENT IDENTIFIED HIMSELF.

Q. ALL RIGHT, SIR. AND AS A POLICE OFFICER, DO YOU HAVE SOME FAMILIARITY WITH FIREARMS?

A. YES, SIR.

Q. ALL RIGHT, SIR. LET ME ASK YOU A SILLY QUESTION. IF YOU FIRE A SHOT INTO THE AIR, DOES IT GO UP?

A. YES, SIR.

MR. BAILEY: THANK YOU, SIR.

THE COURT: ALL RIGHT.

MR. BAILEY: NOTHING FURTHER.

THE COURT: YOU CAN COME DOWN. THANK YOU SO MUCH FOR COMING.

THE WITNESS: YES, SIR.

THE COURT: YOU CAN BE EXCUSED ANY TIME YOU'D LIKE OR STAY IN THE COURTROOM IF YOU'D LIKE. ALL RIGHT. CALL YOUR NEXT WITNESS.

MR. BAILEY: MS. COOK.

RACELL COOK-JONES, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. JONES, WHERE ARE YOU FROM?

A. TUSKEGEE, ALABAMA.

Q. AND WHERE ARE YOU EMPLOYED OUT THERE?

A. THE CITY OF TUSKEGEE POLICE DEPARTMENT.

Q. WERE YOU A POLICE OFFICER, DETECTIVE, IN DECEMBER OF 1992?

A. THAT IS CORRECT.

Q. DID YOU HAVE OCCASION TO GO TO TUSKEGEE UNIVERSITY TO THE MARRIED STUDENTS HOUSING?

A. AT ONE POINT I DID, YES, SIR.

Q. OKAY. WHO DID YOU GO WITH?

A. I BELIEVE THE FIRST CONTACT I WENT WITH ANOTHER INVESTIGATOR WHO'S NOT HERE, BUT I DIDN'T GO ON THE INITIAL CONTACT.

Q. OKAY. DID YOU GO TO ELGIN GREEN'S APARTMENT WHEN MR. ROGERS---

A. NO, SIR.

Q. ---WAS ARRESTED?

A. NO, SIR.

Q. OKAY. WERE YOU PRESENT AT THE POLICE STATION WHEN MR. ROGERS WAS APPREHENDED AND BROUGHT TO THE POLICE STATION?

A. YES, SIR.

Q. OKAY. AND I'LL HAND YOU STATE'S EXHIBIT NUMBER 18 WHICH IS A THREE-PAGE HANDWRITTEN STATEMENT SIGNED BY TIMOTHY ROGERS AND ASK WHETHER OR NOT YOUR NAME APPEARS AS A WITNESS ON THE BOTTOM OF THAT STATEMENT.

A. YES, IT DOES.

Q. OKAY. YOU WERE PRESENT WHEN THAT STATEMENT WAS WRITTEN AND SIGNED BY TIMOTHY ROGERS?

A. IT WAS WRITTEN BY MYSELF FOR DETECTIVE DOUGLAS ON BEHALF OF MR. ROGERS WITH HIS PERMISSION.

Q. OKAY. SO, THAT STATEMENT IS IN YOUR HANDWRITING.

A. THAT IS CORRECT.

Q. AND WHERE DID THE INFORMATION COME FROM THAT YOU USED TO WRITE THAT OUT?

A. FROM MR. ROGERS.

Q. OKAY. AND DID YOU TAKE DOWN -- SUMMARIZE WHAT HE SAID OR WAS THAT EXACTLY WHAT HE TOLD YOU? HOW DID IT WORK?

A. IT WAS -- EVERYTHING HE TOLD ME, I WROTE IT DOWN AS HE SAID IT. I DIDN'T ADD ANYTHING. I DIDN'T TAKE ANYTHING AWAY.

Q. OKAY. AND DID HE THEN READ IT AFTER YOU WROTE IT OUT?

A. YES, SIR, HE DID.

Q. AND DID HE SIGN ALL THREE PAGES?
A. THAT IS CORRECT.
Q. AND DID YOU WITNESS HIS SIGNATURE?
A. YES, SIR.
Q. ALONG WITH DETECTIVE DOUGLAS AND LIEUTENANT PATRICK?
A. THAT IS CORRECT.
Q. OKAY. IN YOUR PRESENCE WERE ANY THREATS OR PROMISES MADE TO MR. ROGERS?
A. NO, SIR.
MR. BAILEY: THANK YOU. THAT'S ALL I HAVE.

CROSS-EXAMINATION

BY MR. RUNYON:
Q. DETECTIVE COOK, PRIOR TO THE WRITTEN STATEMENT BEING TRANSCRIBED OR WRITTEN DOWN BY YOURSELF, WAS MR. ROGERS INTERVIEWED? WERE YOU PRESENT DURING ANY INTERVIEWS OTHER THAN THE TIME THAT YOU WROTE THE STATEMENT FOR HIM?
A. I BELIEVE I WAS IN THE OFFICE.
Q. OKAY. WELL, YOUR DETECTIVE OFFICE IS RATHER A LARGE ROOM WITH LOTS OF DESKS; RIGHT?
A. YES, SIR.
Q. AND BECAUSE TUSKEGEE HAS A FINE POLICE DEPARTMENT AND WORKS HARD DOESN'T MEAN THAT YOU'RE NOT REAL BUSY; ISN'T THAT CORRECT? I MEAN, YOU HAVE LOTS

OF PEOPLE CALLING AND WHAT HAVE YOU?

A. WOULD YOU REPHRASE THE QUESTION, PLEASE?

Q. WELL, YOU -- THE FACT THAT YOU WERE IN THE OFFICE -- THE SAME ROOM, THE SAME LARGE ROOM, WERE YOU, IN FACT, LISTENING TO HIM OR TAKING PART IN THE INTERVIEW OR WERE YOU JUST IN THE SAME ROOM?

A. I WAS IN THE ROOM.

Q. OKAY.

A. AT THIS TIME.

Q. OKAY. AND AT SOME POINT IN TIME YOU WENT OVER AND YOU PARTICIPATED IN THE INTERVIEW OF MR. ROGERS?

A. YES, SIR, WHEN I WAS ASKED BY DETECTIVE DOUGLAS.

Q. OKAY. AND SO PRIOR TO THERE BEING A REQUEST TO COME OVER BY DETECTIVE DOUGLAS, YOU DIDN'T TAKE PART IN INTERVIEWING MR. ROGERS.

A. I DON'T RECALL.

Q. OKAY. AND OTHER THAN WHAT YOU WROTE DOWN FOR HIM, THAT'S ALL YOU RECALL ABOUT THE INTERVIEW WITH MR. ROGERS?

A. THAT'S CORRECT.

MR. RUNYON: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU SO MUCH. YOU CAN BE EXCUSED OR STAY, WHICHEVER YOU PREFER.

THE WITNESS: THANK YOU.

MR. BAILEY: YOUR HONOR, I'VE GOT ONE MORE WITNESS THAT WILL BE FAIRLY LENGTHY.

THE COURT: ALL RIGHT, SIR. IT'S A GOOD TI TO TAKE A BREAK, I THINK. MR. FOREMAN, MEMBERS OF THE JURY, I'M GOING TO EXCUSE YOU AND SEND YOU ABOUT YOUR BUSINESS. WHEN I SAY BUSINESS, I'M NOT TURNING YOU LOOSE. I'M JUST GOING TO SEND YOU TO YOUR ROOM AND I' GOING TO ASK THAT THEY BRING YOU BACK HERE TOMORROW MORNING AT 9:30. THAT'S A LITTLE LATE START BECAUSE I KNOW Y'ALL WILL BE UP AND READY TO GO, BUT WE HAVE SOME OTHER MATTERS TO TAKE CARE OF. SO, WE'RE GOING TO START AT 9:30. HOPE YOU HAVE A GOOD NIGHT. HOPE YOU ENJOY YOUR MEAL.

FOREMAN: JUDGE, WE HAVE SEVERAL JURORS THAT ARE SMOKERS AND WE WERE WONDERING IF TOMORROW THERE WOULD BE SOME WAY THAT THEY COULD---

THE COURT: LET ME TELL YOU HOW -- I HAD TOLD SOMEBODY TO TELL YOU ALL THIS. WHEN YOU BEGIN YOUR DELIBERATIONS, I DON'T ALLOW ANY SMOKING IN THE ROOM, BUT EVERY HOUR ON THE HOUR FOR FIVE MINUTES, I SUPPOSE -- I USED TO BE A SMOKER. I LET THE SMOKERS GO TO ANOTHER ROOM. YOU CAN'T DISCUSS THE CASE WHILE THE

SMOKERS ARE IN THAT OTHER ROOM. IN THE RECREATION ROOM WHERE THEY'RE GOING TO HAVE YOU WHERE YOU'LL BE ABLE TO GO IN THERE, THERE CAN'T BE ANY SMOKING IN THERE. THEY'RE GOING TO HAVE TO HAVE SOMEBODY ELSE TO TAKE YOU WHERE YOU CAN SMOKE. IF YOU HAVE A BREAK BACK THERE AND YOU'VE GOT SMOKERS -- HOW MANY SMOKERS DO YOU HAVE?

FOREMAN: THREE, I THINK.

THE COURT: THREE. OKAY. JUST TELL THE BAILIFFS TO LET THE SMOKERS GO OVER AND SMOKE. YOU KNOW, I USED TO ENJOY IT. DON'T ANYMORE. SO, WORK IT OUT WITH THE BAILIFFS AND THAT'S QUITE ALL RIGHT.

FOREMAN: THANK YOU.

THE COURT: ALL RIGHT. IS THAT SATISFACTORY TO YOU ALL, TO THE REST OF YOU?

(THE JURORS NODDED IN AFFIRMATION).

THE COURT: YOU MIGHT BE LIKE ME. I DON'T LIKE SMOKERS ANYMORE, JUST THE SMOKING, NOT THE PEOPLE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE DAY AT 5:38 P.M.)

THE COURT: GO AHEAD. ALL RIGHT. EVERYONE REMAIN SEATED. YOU CAN MOVE HIM OUT, PLEASE. THANK YOU.

(THE DEFENDANT LEAVES THE COURTROOM.)

THE COURT: IF YOU CAN THINK OF ANYTHING I CAN DO TO HELP YOU SHORTEN THINGS OR ANY QUESTIONS OR ANYTHING. . . ANYTHING YOU NEED TO TAKE UP? YOU CAN GIVE IT SOME THOUGHT. I'LL TAKE IT UP IN THE MORNING HAVE A GOOD NIGHT. SEE YOU TOMORROW MORNING AT 9:30.

MR. RUNYON: JUDGE, WE'VE DONE THIS IN JUST ABOUT A DAY. I DON'T THINK WE CAN MAKE IT ANY SHORTER

THE COURT: ALL RIGHT. HAVE A GOOD NIGHT.

MR. RUNYON: GIVE US SOME CREDIT, JUDGE, PLEASE.

(WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AND RESUMED THE NEXT DAY, MARCH 3, 1994.)

THE COURT: THANK YOU SO MUCH. PLEASE BE SEATED. I'M DELIGHTED TO SEE MY STUDENTS BACK IN COURT AND I ALWAYS LIKE TO, IF I CAN, GIVE THE STUDENTS THE OPPORTUNITY TO ASK QUESTIONS. SO, YOU MIGHT BE THINKING ABOUT IT. I DON'T KNOW WHETHER I CAN CROWD ALL OF YOU INTO A ROOM BACK THERE, BUT MAYBE I'LL TAKE TIME ENOUGH TO ACCEPT QUESTIONS FROM YOU IN THE COURTROOM IF I DON'T HAVE ENOUGH ROOM BACK THERE TO TALK TO YOU DURING THE FIRST BREAK. ALL RIGHT, SIR. READY TO GO FORWARD, SOLICITOR?

MR. BAILEY: STATE'S READY, YOUR HONOR.

MR. RUNYON: WE'RE ALWAYS READY, JUDGE.

THE COURT: OH, ALL RIGHT, SIR. BRING THE

JURY IN WHEN THEY'RE READY.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:31 A.M.)

THE COURT: ALL RIGHT. MR. FOREMAN, MEMBERS OF THE JURY, I WISH YOU A GOOD MORNING. HOPE YOU HAD A GOOD NIGHT. WE'LL GO FORWARD WITH THE CASE. ALL RIGHT. CALL YOUR NEXT WITNESS, SOLICITOR.

MR. BAILEY: JAMES CARVER.

JAMES CARVER, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. CARVER, HOW OLD ARE YOU?

A. THIRTY-FIVE.

Q. ALL RIGHT, SIR. AND WHERE DO YOU LIVE?

A. I LIVE IN SUMMERVILLE.

Q. OKAY. HAVE YOU LIVED IN SUMMERVILLE ALL YOUR LIFE?

A. NO, SIR.

Q. HOW LONG HAVE YOU LIVED IN SUMMERVILLE?

A. ABOUT TWENTY-TWO YEARS.

Q. ALL RIGHT, SIR. WHERE DO YOU WORK NOW?

A. I WORK FOR F.P.M. LEASING.

Q. OKAY. BACK IN NOVEMBER OF 1992, WHO DID YOU WORK FOR?

A. F.P.M. LEASING.
Q. OKAY. WHAT TYPE BUSINESS IS THAT?
A. IT'S A LOGGING OUTFIT.
Q. ALL RIGHT. AND WHERE DID YOU LIVE IN NOVEMBER OF 1992?
A. AT 1893 CENTRAL AVENUE, F.P.M. LEASING.
Q. OKAY. SO, YOU HAD A TRAILER AT THE PLACE WHERE YOU WORKED?
A. YES, SIR.
Q. ALL RIGHT, SIR. DO YOU KNOW MIKE B AND HIS FAMILY?
A. YES, SIR.
Q. MR. B , OF COURSE, IS SEATED DOWN HERE AT THE END OF THAT TABLE.
A. YES, SIR.
Q. HOW LONG HAVE YOU KNOWN MIKE AND HIS FAMILY?
A. ABOUT THIRTEEN OR FOURTEEN YEARS.
Q. OKAY. ARE YOU FRIENDS WITH HIM?
A. YES, SIR.
Q. OKAY. NOW, WHAT ABOUT ANTHONY RILEY? DO YOU KNOW HIM?
A. YES, SIR.
Q. HOW LONG HAVE YOU KNOWN ANTHONY RILEY?
A. PROBABLY ABOUT SIX YEARS, SEVEN YEARS.
Q. ARE YOU AND MR. RILEY FRIENDS?

A. YES, SIR.

Q. NOW, CALLING YOUR ATTENTION TO NOVEMBER 25TH, 1992, DO YOU RECALL WHAT YOU DID DURING THE DAYTIME THAT DAY?

A. YES, SIR, WE WORKED---

Q. IT WAS A WEDNESDAY.

A. WE WORKED TILL ABOUT 3:00 AND THEN AFTER WE KNOCKED OFF I HAD A COUPLE OF TIRES ON MY LOG TRUCK TO CHANGE AND I WAS CHANGING. I CHANGED LOG TIRES UP TILL ABOUT 5:00.

Q. ALL RIGHT. NOW, WHAT WERE YOUR PLANS FOR THAT WEEKEND? THIS WAS A WEDNESDAY AFTERNOON AND YOU HAD THANKSGIVING WEEKEND COMING UP. WHAT WERE YOU PLANNING ON DOING?

A. WE HAD PLANS TO GO TO SANTEE AND SPEND THE WEEKEND ON THE BOAT WITH---

Q. OKAY. WHO WERE YOU GOING WITH?

A. WITH MIKE B AND HIS FAMILY.

Q. ALL RIGHT. AND WHEN Y'ALL GOT TO SANTEE TO SPEND THE WEEKEND ON THE BOAT, WHAT WERE YOU PLANNING ON DOING ONCE YOU GOT THERE?

A. WE PLANNED TO DO SOME FISHING AND SQUIRREL -- SQUIRREL HUNTING.

Q. OKAY. AND HAVE YOU SQUIRREL HUNTED BEFORE?

A. YES, SIR.

Q. DO YOU DO ANY OTHER KIND OF HUNTING?
A. DEER HUNTING.
Q. OKAY. NOW, WHEN YOU GO SQUIRREL HUNTING, WHAT KIND OF A GUN DO YOU USE?
A. I USE A 410 SHOTGUN.
Q. AND DO YOU OWN A 410 SHOTGUN?
A. YES, SIR.
Q. OKAY. NOW, DID YOU MEET UP WITH MIKE B AND STEPHANIE B THAT AFTERNOON, NOVEMBER 25TH?
A. YES, SIR. THEY COME TO MY PLACE OF WORK.
Q. OKAY. AND DO YOU RECALL ABOUT WHAT TIME OF THE DAY IT WAS WHEN THEY ARRIVED AT YOUR PLACE OF WORK?
A. IT WAS PROBABLY AROUND 3:00, 3:30.
Q. OKAY. AND WHAT WERE YOU DOING WHEN THEY GOT THERE?
A. CHANGING TIRES ON THE LOG TRUCK.
Q. ALL RIGHT. AND WHILE YOU WERE CHANGING THE TIRES AND WORKING ON THE TRUCK, WHAT WAS MIKE DOING?
A. MIKE WAS STANDING AROUND WATCHING ME AND. . . JUST STANDING AROUND WATCHING ME.
Q. ALL RIGHT. AND WHAT ABOUT STEPHANIE? WHAT WAS SHE DOING?
A. SHE WAS RIDING THE GOLF CART.
Q. OKAY. NOW, DID YOU HAVE ANYTHING TO DRINK THAT AFTERNOON?

A. NO, SIR.
Q. IN YOUR PRESENCE DID MIKE HAVE ANYTHING TO DRINK?
A. NOT THAT I SEEN.
Q. OKAY. DID HE HAVE ANY BEER WITH HIM IN THE TRUCK THAT YOU WERE AWARE OF?
A. I WASN'T AWARE IF HE HAD ANY IN THERE OR NOT.
Q. OKAY. SO, WHETHER OR NOT HE HAD ANY BEER YOU DIDN'T SEE HIM DRINKING IT---
A. NO, SIR.
Q. ---THAT AFTERNOON?
A. NO, SIR.
Q. OKAY. HOW LONG DID Y'ALL STAY AT YOUR PLACE OF BUSINESS AND WHERE YOU LIVED WORKING ON THAT TRUCK?
A. TILL PROBABLY ABOUT 5:30. I KNOCKED OFF AT 5:00 AND IT TOOK ME ABOUT THIRTY MINUTES TO GET MY THINGS TOGETHER.
Q. ALL RIGHT. YOU MENTIONED THAT YOU HAD A 410 SHOTGUN THAT YOU USED TO SHOOT SQUIRRELS?
A. YES, SIR.
Q. DID Y'ALL PUT THAT GUN IN THE TRUCK?
A. YES, SIR.
Q. AND WHERE DID YOU PUT IT?
A. IN THE BACK BEHIND THE SEAT IN THE FRONT OF THE PICKUP.

Q. WHO ACTUALLY PUT THE GUN IN THE TRUCK?
A. STEPHANIE CARRIED IT.
Q. ALL RIGHT. AND WAS THE GUN UNLOADED---
A. YES, SIR.
Q. ---AT THAT TIME?
A. YES, SIR.
Q. DID YOU HAVE ANOTHER GUN WITH YOU THAT YOU CARRIED ON THIS TRIP?
A. YES, SIR.
Q. WHAT KIND OF GUN WAS THAT?
A. IT WAS A BERETTA NINE MILLIMETER PISTOL.
Q. OKAY. WHERE WAS THAT GUN KEPT?
A. IT WAS IN A CLOTHES BASKET WITH CLOTHES ON TOP OF IT.
Q. OKAY. AND WHERE DID YOU PUT THE CLOTHES BASKET?
A. IN THE BACK OF THE TRUCK.
Q. OKAY. AND WHY DID YOU TAKE THE PISTOL WITH YOU?
A. JUST IN CASE I RAN UP ON A DEER I COULD -- MIGHT GET A SHOT AT HIM.
Q. HAVE YOU EVER SHOT A DEER WITH A PISTOL BEFORE?
A. YES, SIR.
Q. HOW MANY TIMES?

A. I'VE KILLED ABOUT FOUR.
Q. OKAY. AND THIS WAS, OF COURSE, NOVEMBER DURING DEER SEASON; IS THAT RIGHT?
A. YES, SIR.
Q. AND DID YOU HAVE A HUNTING LICENSE WITH YOU?
A. YES, SIR.
Q. ALL RIGHT. NOW, WHEN Y'ALL LEFT THE LOGGING COMPANY WHERE YOU WORKED, WHAT WAS THE FIRST STOP GOING TO BE?
A. THE FIRST STOP WAS AT SPELL'S GROCERY.
Q. OKAY. WHO DROVE THE TRUCK?
A. MIKE B .
Q. OKAY. AND WHERE WERE YOU SITTING?
A. I WAS SITTING ON THE PASSENGER'S SIDE ALL THE WAY TO THE---
Q. WHERE WAS STEPHANIE SITTING?
A. SHE WAS SITTING IN THE MIDDLE BETWEEN US, MIDDLE OF THE SEAT OF THE PICKUP BETWEEN US IN THE CAB.
Q. OKAY. MR. CARVER, HOW TALL WAS STEPHANIE? IF YOU COULD JUST STAND UP AND SHOW THE JURY WHERE SHE WOULD COME ON YOU.
A. OKAY. I'M FIVE-THREE AND SHE PROBABLY COMES UP TO MY SHOULDER.
Q. ABOUT TO YOUR SHOULDER?
A. YES, SIR.

Q. OKAY. NOW, WHEN SHE SAT IN THE TRUCK, HOW HIGH UP DID HER HEAD COME IN RELATION TO THE BACK WINDOW?

A. AT LEAST FIVE TO SIX INCHES.

Q. OKAY. ALL RIGHT. SHE WAS SITTING BETWEEN YOU AND MIKE?

A. YES, SIR.

Q. ALL RIGHT. WHAT WAS THE REASON Y'ALL WENT T SPELL'S STORE AGAIN?

A. STEPHANIE WAS HUNGRY AND SHE WANTED A SANDWICH. SHE LIKED THE SANDWICHES FROM SPELL'S GROCERY.

Q. OKAY. AND YOU RECALL ABOUT WHAT TIME IT WAS WHEN Y'ALL ARRIVED AT SPELL'S STORE?

A. IT WAS PROBABLY -- PROBABLY ABOUT TEN MINUTES AFTER 6:00 OR NO LATER THAN 6:30.

Q. OKAY. AND WHEN YOU GOT TO THE STORE, WHERE DID MIKE PARK THE TRUCK?

A. HE PARKED IT PARALLEL TO THE FRONT OF THE STORE. THE DRIVER'S SIDE OF THE TRUCK WAS FACING THE FRONT DOOR OF THE STORE.

Q. OKAY. STEP AROUND HERE, IF YOU WOULD, TO THIS CHART. LET ME GET THIS ONE OUT OF THE WAY. OKAY. THIS IS ALREADY IN EVIDENCE WHICH IS STATE'S EXHIBIT NUMBER 17 THAT ANOTHER WITNESS HAS PREPARED,

AND TAKE A LOOK AT IT AND SEE IF YOU ARE FAMILIAR WITH WHAT IT SHOWS THERE.

A. YES, SIR.

Q. ALL RIGHT. THIS IS RICHARDSON AVENUE AND PIGEON BAY ROAD---

A. YES, SIR.

Q. ---AND THE FRONT OF SPELL'S STORE?

A. UH-HUH.

Q. OKAY. COULD YOU TELL THE JURY, TO THE BEST OF YOUR RECOLLECTION, WHERE THE TRUCK WAS PARKED?

A. THE TRUCK WAS PARKED RIGHT AROUND IN HERE.

Q. YOU'RE INDICATING---

A. WELL, YEAH, RIGHT AROUND IN HERE.

Q. OKAY. RIGHT -- SORT OF RIGHT IN THE MIDDLE OF THE STORE?

A. YES, SIR.

Q. AND WHERE WAS THE FRONT OF THE TRUCK POINTING?

A. TOWARDS -- OUT TOWARDS -- FACING 78.

Q. OKAY. ALL RIGHT. YOU CAN GO AHEAD AND HAVE A SEAT. ABOUT HOW FAR AWAY FROM THE STORE WAS IT PARKED?

A. NO FARTHER THAN EIGHT FOOT.

Q. EIGHT FEET?

A. YES, SIR.

Q. ALL RIGHT, SIR. NOW, WHEN Y'ALL PARKED THE TRUCK IN FRONT OF THE STORE, WHAT HAPPENED NEXT?

A. MIKE AND STEPHANIE GOT OUT THE TRUCK. MIKE RECOGNIZED ANTHONY ON THE PHONE, A FRIEND OF OURS.

Q. ALL RIGHT. THIS IS ANTHONY RILEY?

A. YES, SIR.

Q. OKAY.

A. AND MIKE AND STEPHANIE WENT INTO THE STORE AND MIKE COME OUT FIRST. STEPHANIE WAS IN THERE WAITING ON A SANDWICH TO BE MADE OR SOMETHING, AND HE COME OUT AND BY THE TIME HE COME OUT ANTHONY WAS ALREADY OFF THE PHONE WAITING ON HIM. THEY WALKED---

Q. LET ME ASK YOU THIS BEFORE YOU GET ANY FURTHER---

THE COURT: SLIDE YOUR CHAIR UP JUST A LITTLE BIT FOR ME. THAT'S GOOD. THANK YOU.

BY MR. BAILEY:

Q. MR. CARVER, WHEN Y'ALL PULLED UP, YOU SAID YOU SAW ANTHONY RILEY ON THE PAY PHONE OUTSIDE?

A. YES, SIR.

Q. WAS ANYBODY ELSE OUTSIDE THE STORE THAT YOU COULD SEE---

A. NOT THAT I SEEN, NO, SIR.

Q. ALL RIGHT, SIR. GO AHEAD. YOU WERE SAYING THAT THEY WENT IN THE STORE AND MIKE CAME OUT FIRST?

A. MIKE CAME OUT AND HIM AND ANTHONY STOOD IN FRONT OF THE STORE FOR A LITTLE BIT AND THEN THEY WALKED TO THE END OF THE STORE CLOSEST TO PIGEON BAY ROAD.

Q. ALL RIGHT. GO AHEAD UP THERE AGAIN, IF YOU WOULD, MR. CARVER, AND SHOW THE JURY WHERE MIKE B AND ANTHONY WENT.

A. THEY STOOD IN FRONT OF THE DOOR FOR A FEW MINUTES.

Q. SPEAK UP BECAUSE YOU HAVEN'T GOT A MIKE HERE AND THIS LADY DOWN ON THE END HAS GOT TO HEAR YOU.

A. THEY STOOD IN FRONT OF THE DOOR FOR NO LONGER THAN ONE OR TWO MINUTES AND THEN THEY WALKED DOWN TO THE END OF THE STORE BY PIGEON BAY ROAD AND THEY STOOD THERE AND TALKED FOR ABOUT. . .

Q. YOU'RE POINTING TO A SPOT THAT'S GOT A RED X.?

A. YES, SIR.

Q. IS THAT ABOUT WHERE THEY WERE AT?

A. YES, SIR.

Q. OKAY. YOU CAN GO AHEAD AND HAVE A SEAT. NOW, WHEN YOU SAW THIS, WHEN YOU SAW MIKE B COME OUT OF THE STORE AND HE AND ANTHONY RILEY WENT OVER TO THE CORNER OF THE STORE THERE, WHERE WERE YOU?

A. I WAS SITTING IN THE FRONT SEAT OF THE

PICKUP.

Q. WAS THE DOOR OPEN OR CLOSED?

A. THE DRIVER'S SIDE DOOR WAS OPEN.

Q. OKAY. HOW ABOUT YOUR DOOR?

A. IT WAS CLOSED.

Q. OKAY. ALL RIGHT. NOW, WHAT ABOUT STEPHANIE? DID YOU SEE HER AGAIN?

A. SHE WAS STILL IN THE STORE AND THEN IT WAS ABOUT TWO MINUTES LATER SHE COME OUT THE STORE AND GOT IN THE FRONT OF THE PICKUP WITH ME.

Q. ALL RIGHT. WHEN SHE GOT IN THE TRUCK, DID SHE HAVE ANYTHING WITH HER?

A. SHE HAD A SANDWICH AND A YAHOO CHOCOLATE DRINK.

Q. OKAY. AND WHAT PART OF THE SEAT DID SHE SIT IN?

A. SHE SAT RIGHT IN THE MIDDLE.

Q. AND WHAT DID SHE DO?

A. SHE WENT TO DRINKING HER DRINK AND EATING HER SANDWICH.

Q. ALL RIGHT. NOW, WHAT'S THE NEXT THING THAT YOU OBSERVED?

A. WELL, I TURNED AROUND TO SEE WHAT MIKE WAS DOING AND THERE WAS A WHITE MALE, A BLACK MALE, AND A BLACK FEMALE COME AROUND THE CURVE, COME AROUND THE

CORNER OF THE BUILDING. THE BLACK MALE AND THE WHITE -- I MEAN, THE BLACK MALE AND THE BLACK FEMALE KEPT WALKING TOWARDS THE PAY PHONE. THE WHITE MALE WAS WALKING HIM. HE TURNED AROUND AND WENT BACK TO ANTHONY AND MIKE AND WAS SAYING SOMETHING. I COULDN'T HEAR HIM.

Q. ALL RIGHT. NOW, THE BLACK MALE, DO YOU RECOGNIZE HIM IN COURT?

A. YES, I DO.

Q. WOULD YOU POINT HIM OUT?

A. RIGHT THERE.

Q. LET THE RECORD SHOW HE'S POINTING TO TIMOTHY ROGERS. ALL RIGHT. NOW, YOU COULD NOT HEAR WHAT WAS BEING SAID IN THE CORNER OF THE STORE; IS THAT RIGHT?

A. NO, SIR.

Q. OKAY. WHAT DID YOU SEE?

A. I SEEN THE WHITE MALE HAD TURNED AROUND AND SAID SOMETHING TO 'EM AND KEPT THROWING HIS HANDS UP AND SHRUGGING HIS SHOULDERS, TURNED BACK AROUND AND WALKED BACK TOWARDS THE PAY PHONE. AND I HEARD TIMOTHY ROGERS SAY SOMETHING ABOUT, "GIVE ME A QUARTER."

Q. WHO WAS HE TALKING TO WHEN HE SAID "GIVE ME A QUARTER"?

A. THE WHITE MALE.

Q. OKAY.

A. AND HE GOT THE QUARTER AND THE WHITE MALE TURNED AROUND AND WENT BACK TOWARDS MIKE AND ANTHONY.

Q. ALL RIGHT. DID YOU NOTICE -- WHAT WAS YOUR OBSERVATIONS ABOUT HOW THE WHITE MALE WAS WALKING AND ACTING?

A. HE WAS STAGGERING. HE ACTED LIKE HE WAS -- HAD BEEN DRINKING.

Q. ALL RIGHT. NOW, WHAT ABOUT TIMOTHY ROGERS? DID YOU OBSERVE HIM?

A. I DIDN'T PAY TOO MUCH HOW HE WAS WALKING.

Q. ALL RIGHT.

A. I JUST NOTICED HIM WALKING TOWARDS THE PAY PHONE.

Q. OKAY. NOW, AFTER THE WHITE MALE WENT BACK TOWARDS THE PHONE OF THE STORE, WHAT HAPPENED?

A. I SEEN HIM FLIP A CIGARETTE DOWN AT ANTHONY'S SHOE.

Q. WHEN YOU SAY "HIM", GO AHEAD AND USE THE NAME.

A. DEXTER PATTERSON.

Q. OKAY. HE FLICKED A CIGARETTE ON ANTHONY RILEY'S SHOE?

A. YES, SIR.

Q. AND DID YOU SEE -- BEFORE THAT HAPPENED, DID YOU SEE ANTHONY RILEY OR MIKE B DO ANYTHING TO

DAXTON PATTERSON?

A. NO, SIR.

Q. OKAY. AND AFTER THE CIGARETTE WAS FLICKED, WHAT'S THE NEXT THING YOU SAW?

A. ANTHONY HAD SAID SOMETHING TO MIKE AND HE TURNED AROUND AND LEFT AND THEN MIKE WALKED BACK TOWARDS THE PICKUP.

Q. WHEN YOU SAY -- WHEN YOU SAY "HE", I NEED TO GET YOU TO USE---

A. DEXTER PATTERSON.

Q. OKAY.

A. FLIPPED THE CIGARETTE AND THEN ANTHONY HAD SAID SOMETHING TO MICHAEL B AND TURNED AROUND AND HE WALKED LIKE HE WAS GOING BACK HOME DOWN PIGEON BAY ROAD.

Q. WHEN YOU SAY "HE", YOU'RE REFERRING AGAIN TO---

A. ANTHONY RILEY.

Q. ---ANTHONY RILEY.

A. YES, SIR.

Q. WALKED DOWN PIGEON BAY ROAD?

A. YES, SIR.

Q. OKAY.

A. AND MIKE COME BACK TOWARDS THE TRUCK AND WHEN HE GOT TO THE DRIVER'S SIDE OF THE TRUCK TO GET INTO

THE PICKUP, DEXTER PATTERSON KEPT PUSHING AND PULLING ON THE DRIVER'S SIDE DOOR. MIKE TOLD HIM THAT HE DIDN'T WANT NO TROUBLE, THAT ALL WE WANTED TO DO WAS LEAVE FOR THE HOLIDAYS.

Q. OKAY.

A. BUT DEXTER PATTERSON STEPPED BACK AND ACTED LIKE HE WAS GOING TO GET INTO A KARATE STANCE AND MIKE WENT TO GET IN THE TRUCK. I GOT OUT THE TRUCK AND WALKED DOWN THE PASSENGER SIDE OF THE BED OF THE TRUCK TO THE END OF THE BED, THE BACK OF THE TRUCK.

Q. WHY DID YOU GET OUT OF THE TRUCK, MR. CARVER?

A. TO KEEP ANYTHING FROM HAPPENING. I FIGURED THERE WAS A FIGHT GOING TO START AND I WAS GOING TO GET BETWEEN THEM TO KEEP IT FROM HAPPENING.

Q. ALL RIGHT. NOW, DID YOU HEAR MIKE B SAY ANYTHING TO DAXTON PATTERSON TO PROVOKE HIM?

A. NO, SIR.

Q. DID YOU HEAR DAXTON PATTERSON SAY ANYTHING TO MIKE B TO PROVOKE HIM?

A. HE WAS PUSHING AND PULLING ON THE TRUCK, BUT I NEVER DID HEAR HIM SAY NOTHING.

Q. OKAY. ALL RIGHT. NOW, WHEN THIS WAS GOING ON, WHEN DAXTON PATTERSON WAS AT THE DOOR OF THE TRUCK AND MIKE WAS TRYING TO GET IN THE TRUCK, WHAT WAS TIMOTHY ROGERS DOING?

A. HE WAS ON THE PAY PHONE TALKING TO SOMEBODY.

Q. ALL RIGHT. AND WHAT'S THE NEXT THING THAT YOU SAW HAPPEN?

A. I WENT BACK TO THE -- MY SIDE OF THE TRUCK, GOT INTO THE CAB, AND I HEARD TIMOTHY ROGERS HOLLER OUT SOMETHING TO THE OTHER PERSON ON THE OTHER LINE, THE OTHER END OF THE PHONE, SAYING SOMETHING LIKE, "HOLD ON. LET ME GET THIS FELLOW."

Q. "HOLD ON. LET ME GET THIS FELLOW"?

A. YES, SIR.

Q. OKAY. ONE SECOND. THEN WHAT HAPPENED?

A. HE DROPPED THE PHONE AND COME OVER TO THE TRUCK AND PUT -- HE REACHED IN HIS JACKET POCKET AND PULLED OUT A PISTOL AND STUCK IT TO MIKE B 'S FOREHEAD.

Q. WHO DID THAT?

A. TIMOTHY ROGERS.

Q. OKAY. AND WHEN HE STUCK THE PISTOL TO MIKE'S HEAD, WHERE WAS MIKE AT?

A. HE WAS SITTING---

Q. WAS HE IN THE TRUCK OR OUT OF THE TRUCK?

A. HE WAS SITTING DOWN ON THE SEAT OF THE TRUCK.

Q. OKAY. AND THEN DID YOU SEE THIS -- YOU SAW TIMOTHY ROGERS---

A. YES, I DID.

Q. ---PUT THE GUN TO HIS HEAD?
A. YES, I DID.
Q. WAS ANYTHING SAID?
A. TIMOTHY ROGERS LOOKED AT MIKE AND TOLD HIM, "I'LL KILL YOU."
Q. ALL RIGHT. NOW, WHERE WAS STEPHANIE AT THIS TIME?
A. SHE WAS SITTING IN BETWEEN ME AND MIKE IN THE FRONT OF THE PICKUP.
Q. WHAT WAS SHE DOING?
A. SHE WAS CRYING AND SCREAMING AND---
Q. WAS SHE CRYING LIKE WHIMPERING OR CRYING OUT LOUD OR WHAT?
A. NO, SHE WAS CRYING LOUD.
Q. OKAY.
A. AND SHE WAS LOOKING STRAIGHT AT TIMOTHY ROGERS WITH THE PISTOL TO HER FATHER'S HEAD AND TIMOTHY MADE EYE CONTACT WITH HER. AT THAT TIME HE BACKED UP, DROPPED THE PISTOL FROM MIKE'S FOREHEAD AND SHOT ONE TIME AT THE BACK LEFT TIRE OF THE PICKUP.
Q. OKAY. WHAT HAPPENED THEN?
A. FINALLY MIKE FINALLY GOT INTO -- GOT THE DOOR OF THE TRUCK CLOSED.
Q. LET ME BACK UP A SECOND. WHEN THE GUN WAS AGAINST MIKE'S HEAD---

A. YES, SIR.
Q. ---WAS ANYTHING SAID THAT YOU CAN---
A. JUST TIMOTHY ROGERS SAYING, "I'LL KILL YOU."
Q. OKAY. THEN THE SHOT WAS FIRED TOWARDS THE GROUND?
A. YES, SIR.
Q. THEN WHAT HAPPENED?
A. MIKE FINALLY GOT THE DOOR CLOSED. HE PUT THE TRUCK INTO GEAR AND WE PULLED AROUND OUT TOWARDS RICHARDSON AVENUE. WE WAS GOING TO MAKE A RIGHT-HAND TURN TO GO BACK INTO SUMMERVILLE.
Q. WHAT HAPPENED WHEN THAT HAPPENED, WHEN HE STARTED TO PULL HIS TRUCK AWAY FROM THERE?
A. WHEN HE WENT TO PULL THE TRUCK AWAY, HE STOPPED FOR TRAFFIC. I TURNED AROUND TO SEE WHAT WAS GOING ON BEHIND US. I SEEN TIMOTHY ROGERS RAISE THE PISTOL THAT HE HAD IN HIS HAND AT THAT TIME AND I SEEN HIM FIRE ONE SHOT.
Q. ALL RIGHT. NOW, DID YOU SEE THE DIRECTION THE PISTOL WAS POINTED IN?
A. IT WAS STRAIGHT AT THE BACK WINDOW OF THE PICKUP.
Q. WAS IT UP IN THE AIR?
A. YES, SIR.
Q. WAS THE GUN UP IN THE AIR OR TOWARDS THE

TRUCK?

A. IT WAS TOWARDS THE TRUCK.

Q. OKAY. WHAT HAPPENED AFTER YOU SAW THE PISTOL POINTED TOWARDS THE TRUCK?

A. I SEEN THE FLASH FROM THE END OF THE BARREL AND I SEEN WHEN THE BULLET HIT THE BACK WINDOW. STEPHANIE SLUMPED OVER ON HER FATHER AND I TURNED TO MIKE AND I TOLD HIM -- I SAID, "STEPHANIE HAS BEEN HIT."

Q. ALL RIGHT. MR. CARVER, CAN YOU ESTIMATE THE DISTANCE THAT THE TRUCK WAS FROM WHERE TIMOTHY ROGERS WAS STANDING WHEN THAT SECOND SHOT WAS FIRED? LET ME DO THIS. I'LL COME UP TO YOU AND I'LL WALK BACK AND YOU TELL ME TO STOP WHEN I GET THAT RIGHT DISTANCE. OKAY?

A. ARE YOU TALKING FROM THE -- THE DISTANCE FROM THE BACK OF THE CAB TO WHERE HE WAS STANDING?

Q. YEAH. OKAY. I'LL WALK DOWN THIS WAY AND YOU TELL ME WHEN TO STOP.

A. OKAY. RIGHT THERE.

Q. OKAY. RIGHT ABOUT WHERE THIS DOUBLE DOOR IS?

A. YES, SIR.

Q. AFTER THE SECOND SHOT WAS FIRED, WHAT HAPPENED THEN?

A. I TOLD -- MIKE STOPPED AND HE PICKED HIS

DAUGHTER UP OFF OF HIM AND LOOKED AT HER AND I TOOK HER FROM HIM AND HE GOT OUT THE TRUCK AND HOLLERED TO DEXTER PATTERSON AND TIMOTHY ROGERS THAT, "WE TOLD YOU WE DIDN'T WANT NO TROUBLE. YOU JUST SHOT MY DAUGHTER."

Q. THEN WHAT HAPPENED?

A. TIMOTHY ROGERS AND DEXTER PATTERSON STARTED LAUGHING. MIKE RAN INTO SPELL'S STORE GROCERY AND ASKED THEM TO CALL THE SHERIFF'S DEPARTMENT AND AN AMBULANCE.

Q. OKAY. NOW, MR. CARVER, HOW DID YOU KNOW STEPHANIE HAD BEEN HIT?

A. I SEEN THE BLOOD COMING FROM HER FOREHEAD.

Q. WHAT DID YOU DO WHEN MIKE RAN INTO THE STORE?

A. I TOOK MY SHIRT OFF AND WRAPPED IT AROUND HER HEAD, AND THEN WHEN MIKE COME BACK OUT THE STORE HE TOOK STEPHANIE FROM ME. I GOT OUT THE TRUCK AND WALKED -- WENT TO THE PAY PHONE AND DIALED 9-1-1 WHICH AT THAT TIME WE DIDN'T HAVE IT. SO, I DIALED ZERO AND GOT THE OPERATOR AND SHE CONNECTED ME WITH THE SHERIFF'S DEPARTMENT.

Q. OKAY. NOW, AT THE TIME THAT SECOND SHOT WAS FIRED, WAS MIKE B DOING ANYTHING OTHER THAN TRYING TO LEAVE?

A. NO, SIR.

Q. THE TIME THE FIRST SHOT WAS FIRED, WAS

ANYBODY BEING THREATENED---

A. NO, SIR.

Q. ---BY MIKE B OR BY YOU?

A. NO, SIR.

Q. DID YOU AT ANY TIME MAKE ANY KIND OF AGGRESSIVE MOVE TOWARDS ANY ONE OF THESE THREE PEOPLE?

A. NO, SIR.

Q. DID MIKE B , TO YOUR KNOWLEDGE, DO---

A. NO.

Q. ---ANYTHING AGGRESSIVE TOWARDS THEM?

A. NOT TO MY KNOWLEDGE.

Q. AT ANY POINT IN TIME DID EITHER YOU OR MIKE B TRY TO GET THE SHOTGUN FROM BEHIND THE SEAT OR THE GUN OUT OF THAT LAUNDRY BASKET?

A. NO, SIR.

Q. DID Y'ALL SAY ANYTHING ABOUT A GUN TO ANYBODY?

A. NO, SIR.

Q. DID EITHER ONE OF Y'ALL DO ANYTHING TO CAUSE TIMOTHY ROGERS TO SHOOT INTO THAT TRUCK?

A. NO, SIR.

MR. BAILEY: ANSWER ANY QUESTIONS THEY MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. CARVER, THERE WASN'T A TWELVE-PACK OF BEER IN THAT TRUCK THAT NIGHT, WAS THERE?

A. NOT THAT I KNOW OF. I DID NOT SEE NO. . .

Q. YOU DIDN'T SEE ANY TWELVE-PACK OF BEER IN THAT TRUCK.

A. I DIDN'T SEE NO BEER.

Q. AND THERE'S NOT A WHOLE LOT OF PLACES TO KEEP BEER IN THE TRUCK, IS THERE?

A. NO, SIR.

Q. SO, IF THERE WAS A TWELVE-PACK OF BEER THERE, YOU WOULD HAVE SEEN IT; RIGHT?

A. YES, SIR, IF THERE WAS.

Q. OKAY. NOW, AS A PRACTICAL MATTER TO JUMP AHEAD FOR A MOMENT, DAXTER PATTERSON SPIT IN MIKE B 'S FACE, DIDN'T HE?

A. NO, SIR.

Q. MIKE -- DAXTER PATTERSON DIDN'T SPIT IN HIS FACE?

A. NO, SIR. TIMOTHY ROGERS SPIT IN MIKE B 'S FACE.

Q. AND YOU SAY THAT THESE FOLKS LAUGHED AND THEN THEY JUST LEFT.

A. YES, SIR.

Q. OKAY. I WANT TO SHOW YOU WHAT PURPORTS TO BE YOUR STATEMENT OF NOVEMBER 25, 1992. I'D LIKE YOU TO READ THAT, SIR.

A. THE WHOLE THING?

Q. I'D LIKE YOU TO FAMILIARIZE YOURSELF WITH THAT STATEMENT SO THAT-- YOU HAVEN'T SEEN THAT RECENTLY, HAVE YOU, SIR?

A. NO, SIR.

Q. OKAY.

A. (WITNESS READS STATEMENT.)

Q. SIR, YOU READ YOUR -- IS THAT YOUR STATEMENT?

A. YES, SIR.

Q. THAT'S THE STATEMENT YOU MADE AT THAT POINT IN TIME?

A. YES, SIR.

Q. AND THAT'S AN ACCURATE REFLECTION OF WHAT YOU SAID THAT PARTICULAR EVENING; CORRECT?

A. AFTER THAT HAPPENED. THAT STATEMENT WAS WROTE RIGHT AFTER THE INCIDENT HAPPENED.

Q. RIGHT. AND YOU CLEARLY SAY IN THAT STATEMENT ON THE FIRST PAGE THERE TOWARDS THE BOTTOM THAT THE WHITE MALE SPIT IN MIKE'S FACE, DIDN'T YOU?

A. WELL, I WAS MISTAKEN.

Q. YOU WERE MISTAKEN?

A. YES, BECAUSE I REMEMBER -- AFTER I WENT HOME

AND THOUGHT ABOUT IT, I REMEMBERED TIMOTHY ROGERS SPITTING IN IT BECAUSE SOME OF THE SPIT HIT ME IN THE FACE.

Q. OKAY. AND SO -- AND AS A PRACTICAL MATTER, THAT STATEMENT DOESN'T MENTION ANYTHING ABOUT ANYBODY LAUGHING OR ANYTHING OF THAT SORT, DOES IT?

A. NO, SIR.

Q. OKAY. HAVE YOU TALKED TO MR. B ABOUT YOUR STATEMENT PRIOR TO TESTIFYING HERE TODAY?

A. NO, SIR.

Q. YOU HAVEN'T TALKED TO HIM ABOUT THIS CASE AT ALL?

A. NO, SIR.

Q. IN THE LAST EIGHTEEN MONTHS YOU HAVEN'T HAD ANY DISCUSSIONS WITH HIM.

A. NO, SIR.

Q. YOU'RE FRIENDS, AREN'T YOU?

A. YES, SIR.

Q. AND YOU SEE EACH OTHER REGULARLY?

A. NO, SIR, NOT SINCE THE INCIDENT.

Q. NOT SINCE THE INCIDENT?

A. YES, SIR.

Q. AND SO YOU NOW REMEMBER THAT SOMEBODY IS SUPPOSED TO HAVE LAUGHED AFTER MR. B HOLLERED OUT THAT, "MY DAUGHTER HAS BEEN SHOT."

A. YES.
Q. BUT YOU DIDN'T REMEMBER IT THE NIGHT OF NOVEMBER 25TH.
A. NO, SIR.
Q. AND YOU DIDN'T CALL ANYBODY TO TELL THEM ABOUT IT THE LAST EIGHTEEN MONTHS, HAVE YOU, SIR?
A. NO, SIR.
Q. AND INSOFAR AS SOMEONE SPITTING IN MR. B 'S FACE, YOU REMEMBER THAT TO BE -- NOW YOU REMEMBER THAT TO BE MR. ROGERS VERSUS MR. PATTERSON.
A. YES, SIR.
Q. ALL RIGHT. MR. ROGERS AND MR. PATTERSON ARE DIFFERENT RACES.
A. YES, SIR.
Q. AND DIFFERENT SIZES.
A. YES, SIR.
Q. BUT THERE WAS JUST A MISTAKE YOU MADE.
A. YES, SIR.
Q. OKAY. NOW, DURING THIS WHATEVER IT WAS BETWEEN MR. PATTERSON AND MR. B , MR. B DIDN'T GET EXCITED.
A. NO, SIR.
Q. AND DID YOU FIND THAT STRANGE?
A. NO, NOT REALLY.
Q. HOW LONG HAVE YOU KNOWN MR. B ?

A. ABOUT THIRTEEN YEARS.
Q. ABOUT HOW LONG, SIR?
A. THIRTEEN YEARS.
Q. I'M SORRY. YOU'VE GOT---
A. I KNOW IT.
Q. ---A REAL SOFT VOICE.
A. YES, SIR.
Q. IF YOU KIND OF LEAN BACK FROM THAT MICROPHONE I CAN'T HEAR YOU. ABOUT THIRTEEN YEARS AND Y'ALL SOCIALIZE?
A. YES, SIR.
Q. AND HAVE GONE HUNTING AND FISHING TOGETHER?
A. YES, SIR.
Q. AND JUST GENERALLY HAVE BEEN REAL CLOSE FRIENDS FOR THIRTEEN YEARS.
A. YES, SIR.
Q. AND DURING THOSE THIRTEEN YEARS HE'S BEEN AN EXTREMELY CALM, COOL PERSON; ISN'T THAT RIGHT?
A. NOT THE WHOLE THIRTEEN YEARS. WHILE WE WAS IN SCHOOL, WE USED TO. . .
Q. SO, WHEN HE WAS IN SCHOOL MAYBE, BUT DURING THE ADULT PERIOD OF HIS LIFE HE DOESN'T HAVE A TEMPER OR ANYTHING LIKE THAT, DOES HE, SIR?
A. NO, SIR.
Q. NEVER BEEN KNOWN TO YOU TO GET EXCITED AND

ARGUE AND FUSS AND FIGHT WITH ANYBODY WHO APPROACHED HIM.

A. NO, SIR.

Q. OKAY. NOW, THERE'S NO QUESTION ABOUT THE FACT THAT WHATEVER THIS GUY DAXTON PATTERSON WAS DOING, HE WAS -- HE WAS INTRUDING UPON MR. B 'S BUSINESS, HIS COURSE OF TRAVEL AND ALL THAT SORT OF STUFF. ISN'T THAT RIGHT?

A. YES, SIR.

Q. AND AT THE POINT IN TIME THAT TIMOTHY ROGERS CAME OVER THERE, MR. PATTERSON AND MR. B WERE IN SOMEWHAT OF A STRUGGLE OVER THE DOOR AND GETTING IN AND OUT?

A. YES, SIR.

Q. I MEAN, IT WAS NO LONGER JUST TALK, WAS IT?

A. WELL, THERE WASN'T NO FISTS FLYING OR NOTHING. IT JUST -- THEY WAS TRYING -- MIKE WAS TRYING TO GET THE DOOR CLOSE CLOSED AND DEXTER PATTERSON WOULDN'T LET HIM.

Q. OKAY. AND SO TIMOTHY ROGERS CAME OVER THERE AND INTERVENED BETWEEN THE TWO OF THEM, DIDN'T HE?

A. YES, SIR.

Q. AND GOT DAXTER PATTERSON AWAY FROM HIM; CORRECT?

A. HE GOT IN BETWEEN THE TWO OF THEM AND THAT'S

WHEN HE PULLED THE PISTOL OUT OF HIS---

Q. RIGHT.

A. ---JACKET POCKET.

Q. AND AT THAT POINT IN TIME NOBODY DID ANYTHING EXCEPT MR. ROGERS FIRED AT THE GROUND AND THEN MR. B DROVE OFF.

A. NO, SIR. HE POINTED THE PISTOL AT MR. B 'S HEAD -- FOREHEAD AND SHOUTED, "I'LL KILL YOU."

Q. SAID NOTHING ELSE.

A. THAT'S ALL.

Q. DIDN'T SAY "BREAK IT UP" OR ANYTHING LIKE THAT.

A. NO, SIR.

Q. AND WHERE WAS HE STANDING WHEN MR. B TOOK OFF IN THE TRUCK?

A. HE WAS STANDING BESIDE -- A LITTLE WAYS OFF THE DRIVER'S SIDE OF THE TRUCK.

Q. OKAY. WELL, WAS HE STANDING TOWARDS THE FRONT OF THE TRUCK?

A. ABOUT HALFWAY.

Q. ABOUT HALFWAY TOWARDS THE FRONT OF THE TRUCK.

A. RIGHT BESIDE -- A LITTLE WAYS OFF FROM THE DRIVER'S SIDE OF THE DOOR.

Q. ALL RIGHT. AND MR. B GUNNED OUT FROM THE ALTERCATION.

A. NO, HE DIDN'T GUN OUT. HE PULLED OFF EASY.

Q. HE PULLED OFF REAL EASY.

A. YES, SIR.

Q. JUST LIKE NOTHING WAS WRONG.

A. YES, SIR.

Q. OKAY. AND MR. ROGERS THEN WAS STANDING IN THE PARKING LOT AND YOU SAY HE FIRED AT THE TRUCK.

A. YES, SIR.

Q. OKAY. FOR NO REASON.

A. NO REASON THAT I SEEN.

Q. OKAY. AND THE ONLY TIME YOU EVER GOT OUT OF THE TRUCK WAS ONE TIME WHEN YOU WALKED -- YOU GOT OUT AND WALKED TO THE BACK BECAUSE YOU, QUITE FRANKLY, THOUGHT THERE WAS GOING TO BE A HORRIBLE FISTFIGHT, DIDN'T YOU?

A. RIGHT.

Q. AND YOU WANTED TO HELP STOP THIS---

A. I WAS---

Q. ---FISTFIGHT, DIDN'T YOU?

A. YES, SIR, I WAS GOING TO GET IN BETWEEN THE TWO AND STOP.

Q. OKAY. AND SO BUT YOU DIDN'T HAVE TO BECAUSE ULTIMATELY TIM ROGERS CAME OVER AND GOT IN BETWEEN THE

TWO.

A. AFTER I GOT BACK INTO THE TRUCK.

Q. OKAY. WHY DID YOU GET BACK IN THE TRUCK? HAD MR. B MADE IT IN HIS TRUCK?

A. YES, SIR. HE WAS -- HE HAD GOTTEN BACK INTO THE TRUCK AND WAS SEATED IN THE SEAT ON THE DRIVER'S SIDE.

Q. BUT PATTERSON WOULDN'T LET HIM CLOSE THE DOOR, WOULD HE?

A. WOULDN'T LET HIM CLOSE THE DOOR.

Q. OKAY. AS A MATTER OF FACT, PATTERSON WAS BETWEEN THE -- BETWEEN THE DOOR AND THE FRAME OF THE TRUCK, WASN'T HE?

A. YES, SIR.

Q. AND MR. B COULDN'T PHYSICALLY CLOSE THE DOOR, COULD HE?

A. NO, SIR.

Q. AND FOR WHATEVER CRAZY REASON MR. PATTERSON HAD, HE WAS BEING RIGHT OBNOXIOUS AND RIGHT THREATENING, WASN'T HE?

A. YES, SIR.

Q. AND THIS WAS UPSETTING TO STEPHANIE.

A. YES, SIR.

Q. IT WAS UPSETTING TO YOU.

A. YES, IT WAS.

Q. AND IT WAS UPSETTING TO MR. B .
A. YES, IT WAS.
Q. OKAY. SO YOU HAD A LOT OF HEAT AND PASSION AND FEELINGS RUNNING HIGH AT THAT POINT IN TIME.
A. NOT THAT MUCH. WE JUST WANTED TO GET OUT OF THERE AND WE WAS MINDING OUR OWN BUSINESS.
Q. WELL, NOT THAT MUCH, BUT OBVIOUSLY DAXTER PATTERSON---
A. NOT ENOUGH TO -- NOT ENOUGH TO JUMP ON DAXTER PATTERSON, NO. NOT ENOUGH TO START AN INCIDENT.
Q. OKAY. DID ANYBODY EVER STOP AND SAY, "WELL, LET'S GO BACK INTO SPELL'S AND CALL THE POLICE, HAVE THEM COME ARREST THIS CRAZY GUY"?
A. NO.
Q. EXCUSE ME ONE MOMENT, YOUR HONOR. ALL RIGHT. NOW, WHEN MR. ROGERS CAME OVER TO THE TRUCK, HE KIND OF -- HE KIND OF RAN OVER THERE, DIDN'T HE?
A. YES, SIR.
Q. I MEAN, THIS WAS NOT JUST SOMETHING WHERE SOMEBODY AMBLES OVER.
A. NO.
Q. OKAY. AND DAXTER PATTERSON AT THAT TIME WAS STANDING BETWEEN THE DOOR AND THE FRAME OF THE TRUCK?
A. YES, SIR.
Q. ALL RIGHT. AND ESSENTIALLY ROGERS PUSHED HIM

OUT?

A. NO, HE STUCK HIS ARM THROUGH THE WINDOW OF THE TRUCK. THE WINDOW WAS DOWN ON THE TRUCK.

Q. OKAY. AND PATTERSON WAS STILL BETWEEN THE DOOR AND THE FRAME OF THE TRUCK?

A. YES, SIR.

Q. AND HE STUCK THE GUN AND IT WAS POINTED AT MR. B .

A. YES, SIR.

Q. BUT HE STUCK THE GUN ESSENTIALLY INTO THE FRACAS, SO TO SPEAK.

A. YES, SIR.

Q. AND SO HE ACTUALLY HAD HIS -- HE ACTUALLY HAD HIS HAND KIND OF THROUGH THE WINDOW OF THE OPEN DOOR.

A. YES, SIR.

Q. AND THAT'S WHEN -- AND WHEN HE PULLED IT AWAY AND AIMED AT THE GROUND, THAT'S WHEN MR. B TOOK OFF.

A. THAT'S AFTER HE FIRED THE SHOT.

Q. OKAY. MR. B JUST TOOK OFF.

A. HE TOLD PATTERSON -- DEXTER PATTERSON MOVED OUT OF THE WAY AND MIKE GOT THE DOOR SHUT.

Q. OKAY. AND TOOK OFF.

A. YES, HE PULLED AWAY.

MR. RUNYON: OKAY. NO FURTHER QUESTIONS,

YOUR HONOR.

MR. BAILEY: MAY IT PLEASE THE COURT?

REDIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. CARVER, WHEN YOU GAVE THIS PAGE-AND-A-HALF WRITTEN STATEMENT TO THE DEPUTIES, THAT WAS ON NOVEMBER 25TH, THE SAME DAY THIS HAPPENED.

A. YES, SIR.

Q. IS THAT RIGHT?

A. YES, SIR.

Q. AND DO YOU RECALL ABOUT WHAT TIME OF THE DAY IT WAS?

A. IT WAS--

Q. OR NIGHT?

A. IT WAS PROBABLY ABOUT 7:30.

Q. OKAY. AFTER ALL THIS HAD HAPPENED?

A. YES, SIR, THEY. . .

Q. AND WHAT WAS YOUR EMOTIONAL STATE AT THAT TIME?

A. I WAS SHOOK UP AND FRIGHTENED.

Q. OKAY. AND DID YOU TRY TO GET EACH AND EVERY DETAIL OF WHAT HAPPENED IN THIS PAGE-AND-A-HALF STATEMENT?

A. NO, SIR.

MR. BAILEY: THAT'S ALL I HAVE.

THE COURT: YOU CAN COME DOWN. CALL YOUR NEXT WITNESS.

MR. BAILEY: YOUR HONOR, I BELIEVE THAT I HAVE PUT EVERYTHING INTO EVIDENCE THAT HAS A STICKER ON IT, BUT IN CASE I HAVEN'T, I WOULD MOVE AT THIS POINT TO PUT EVERYTHING INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. RUNYON: IT'S MY UNDERSTANDING THAT -- IT'S MY UNDERSTANDING THAT STATE'S EXHIBITS 1 THROUGH 18 ARE, IN FACT, IN EVIDENCE OR SHOULD HAVE BEEN ADMITTED INTO EVIDENCE. NINETEEN.

MR. BAILEY: NINETEEN.

MR. RUNYON: TWENTY?

MR. BAILEY: WHAT DO YOU HAVE?

COURT REPORTER: I HAVE NINETEEN.

THE COURT: CHECK THEM TO SEE IF THERE'S ANYTHING LAYING AROUND. ALL OF THOSE THAT HAD BEEN IDENTIFIED AND DISCUSSED, DO YOU HAVE ANY OBJECTION TO THOSE?

MR. RUNYON: NO, YOUR HONOR, AND I THINK I---

THE COURT: ALL RIGHT.

MR. RUNYON: ---SO STATED ON THE RECORD---

THE COURT: ALL RIGHT.

MR. RUNYON: ---AT THE TIME THEY WERE OFFERED.