VOLUME FOUR OF FOURTEEN

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

BAYAN ALEKSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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APPLICANT'S EXHIBIT 26-D, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-E, PHOTOGRAPH
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APPLICANT'S EXHIBIT 78, PHOTOGRAPH

A YES, SIR. IT IS A PIECE OF EQUIPMENT WHICH ALLOWS US TO BE ABLE TO TAKE A SAMPLE, A LIQUID SAMPLE. IT BRINGS THAT SAMPLE INTO THE INSTRUMENT, INTRODUCES IT TO SUCH EXTREME ENERGY THAT IT BREAKS DOWN EVERYTHING TO ITS ELEMENTAL MATERIAL AND THEN TAKES AND COUNTS THOSE ELEMENTS.

SO IT CAN GIVE US EVERYTHING THAT EXISTS WITHIN SECONDS. WE CAN TAKE A SAMPLE AND KNOW EXACTLY WHAT IT IS MADE OF BASED UPON THE ELEMENTS WITHIN SECONDS.

Q IT'S AN EXTREMELY EFFECTIVE AND ACCURATE MACHINE, IS IT NOT?

A THAT IS CORRECT. IT IS ONE OF THE MOST -- IT HAS A HUGE WORKING RANGE AS FAR AS SENSITIVITY. I RIGHT NOW HAVE A LOT OF TROUBLE SEEING A LOT OF SEA SALT FROM THE AIR COMING UP FROM THE ATLANTIC OCEAN, BUT I CAN STILL PICK IT UP IN THE ATMOSPHERE IN OUR LABORATORY.

Q AND THIS MACHINE IS USED IN S.L.E.D. WHICH I AM ASSUMING IS THE MOST ADVANCED LAB WE HAVE IN SOUTH CAROLINA?

A I BELIEVE THAT IS CORRECT. I KNOW THAT NATIONWIDE MANY LABORATORIES HAVE COME INTO OUR LAB AND HAVE COMMENTED ON OUR INSTRUMENTATION, AND I AM HOPING WITHIN THE YEAR TO IMPRESS THEM EVEN MORE.

Q THANK YOU.

MR. STONE: I DON'T HAVE ANYTHING ELSE.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. THANK YOU.

SOLICITOR BAILEY: YOUR HONOR, THE STATE WOULD NEXT CALL GEORGE DARNELL.

COURT REPORTER: JUDGE, I NEED TO CHANGE MY PAPER.

SOLICITOR BAILEY: WHILE SHE IS DOING THAT, MAY WE APPROACH BRIEFLY, JUDGE?

THE COURT: YES, SIR.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

GEORGE DARNELL, HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. DARNELL, YOU PREVIOUSLY TESTIFIED THAT YOU WERE ONE OF THE TWO S.L.E.D. AGENTS ASSIGNED TO THIS CASE, ALONG WITH AGENT KENNY MEARS HERE; IS THAT CORRECT?

A YES, SIR.

Q I WANT TO CALL YOUR ATTENTION TO JANUARY 2ND,

1998, AND ASK WHETHER OR NOT YOU AND MR. MEARS HAD OCCASION TO BE AT THE ORANGEBURG COUNTY SHERIFF'S OFFICE WORKING ON THIS CASE.

A YES, SIR, WE DID.

Q AND TELL THE JURY, PLEASE, WHERE THE SHERIFF'S OFFICE IS LOCATED IN RELATION TO THE ORANGEBURG/CALHOUN DETENTION CENTER, THE JAIL.

A RIGHT IN FRONT OF IT.

Q AND DID YOU HAVE OCCASION TO SPEAK TO WANDA FITZGERALD WHO IS THE SECRETARY AT THE SHERIFF'S OFFICE?

A YES, SIR, I DID.

Q WHAT DID MRS. FITZGERALD TELL YOU?

A SHE BOUGHT US A MESSAGE FROM THE ASSISTANT ADMINISTRATOR FROM THE JAIL, MRS. DOZIER, THAT BAYAN ALEKSEY WAS REQUESTING TO TALK TO A S.L.E.D. AGENT.

Q WHEN YOU HEARD THAT, WHAT DID YOU DO?

A AT THAT TIME WE WERE FINISHING UP A REINTERVIEW WITH MRS. BLACKWELL, AND WE CALLED THE JAIL AND TOLD HIM TO BRING HIM UP FRONT AND WE CARRIED HER BACK.

Q WHEN YOU SAY HIM, YOU ARE TALKING ABOUT ALEKSEY OVER HERE?

A YES, SIR. AT THAT TIME WE CARRIED HER BACK TO THE DETENTION CENTER AND GOT HIM.

Q AND JUST FOR THE RECORD GO AHEAD AND POINT OUT

THE PERSON YOU BOUGHT OVER FROM THE JAIL TO THE SHERIFF'S OFFICE.

A THE BLACK-HAIRED GENTLEMAN IN THE WHITE SHIRT AND TIE ON SITTING NEXT TO MR. SIMS, BETWEEN HIM AND MR. SIMS' INVESTIGATOR.

Q WHEN THEY BOUGHT MR. ALEKSEY OVER TO THE SHERIFF'S OFFICE FROM THE JAIL, WHAT PART OF THE SHERIFF'S OFFICE DID Y'ALL GO TO?

A CAPTAIN LARRY WILLIAMS' OFFICE.

Q CAN YOU JUST BRIEFLY DESCRIBE THAT OFFICE TO THE JURY, HOW IT'S LAID OUT AND THE FURNITURE IN IT AND SO FORTH.

A IT'S PROBABLY TEN BY TEN. THE ONLY WINDOWS IN IT ARE UP TOP. THEYE ARE PROBABLY SIX INCHES TALL, MAYBE TWO FOOT LONG, THREE FEET LONG, UP AT THE VERY TOP OF THE ROOM. THERE'S NO WINDOW IN THE DOOR.

Q WHAT IS YOUR RECOLLECTION OF MR. ALEKSEY'S APPEARANCE AND DEMEANOR WHEN HE WAS BROUGHT OVER FROM THE JAIL?

A HE APPEARED A LITTLE NERVOUS BUT OTHER THAN THAT HE WAS OKAY.

Q I WANT TO CALL YOUR ATTENTION TO APPROXIMATELY 4:40 P.M. AND ASK WHETHER OR NOT YOU GAVE MIRANDA RIGHTS TO MR. ALEKSEY.

A YES, SIR, I DID.

Q DID YOU USE A PREPARED STATEMENT FOR THAT?
A YES, SIR, I DID. I USED A FORM PROVIDED TO US BY S.L.E.D.
Q LET ME HAND YOU THIS PIECE OF PAPER AND ASK IF THAT IS THE FORM THAT YOU USED.
A YES, SIR, IT IS.
(ATTORNEYS CONFER.)
MR. STONE: NO OBJECTION.
SOLICITOR BAILEY: WE OFFER IT INTO EVIDENCE.
(STATE'S EXHIBIT NUMBER 73, RIGHTS FORM, IS RECEIVED INTO EVIDENCE.)
Q CAN YOU SEE THE T.V. SCREEN FROM WHERE YOU ARE SITTING?
A YES, SIR, I CAN.
Q STARTING AT THE TOP THERE, IT STARTS OFF, "S.C. LAW ENFORCEMENT, YOUR RIGHTS." THE DATE THERE, JANUARY 2ND, 1998, WOULD HAVE BEEN THE DATE THAT YOU FILLED THAT IN; IS THAT CORRECT?
A YES, SIR.
Q AND THE TIME THERE IS 4:40 P.M. DID YOU FILL THAT TIME IN?
A YES, SIR, I DID.
Q IS THAT THE TIME THAT YOU STARTED GOING OVER THESE MIRANDA RIGHTS WITH MR. ALEKSEY?

A YES, SIR, IT IS.
Q AND GO AHEAD AND USING THAT FORM UP THERE, GO AHEAD AND TELL THE JURY EXACTLY HOW YOU ADMINISTERED THOSE RIGHTS TO MR. ALEKSEY, WHAT YOU SAID TO HIM.
A I PROVIDED MR. ALEKSEY WITH THIS PARTICULAR FORM. THEN I TOOK ANOTHER FORM AND READ OVER EACH OF THE RIGHTS WITH HIM, HAD HIM TO READ IT OFF THIS FORM AS I READ ALONG WITH HIM FROM ANOTHER FORM IDENTICAL TO THIS ONE.
Q JUST FOR THE RECORD GO AHEAD AND READ THOSE RIGHTS THE WAY YOU READ THEM TO HIM.
A "BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN COURT OR COURTS OF LAW.

"YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU AND TO HAVE HIM PRESENT -- HIM OR HER PRESENT WITH YOU DURING QUESTIONING. IF YOU HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST TO YOU IF YOU WISH.

"IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOPPING ANSWERING QUESTIONS AT ANY TIME

UNTIL YOU TALK WITH A LAWYER."

THE VERY BOTTOM ONE SAYS, "I HAVE READ THIS STATEMENT OF MY RIGHTS AND UNDERSTAND WHAT MY RIGHTS ARE."

Q AFTER YOU READ THAT TO HIM, DID MR. ALEKSEY SIGN THAT ACKNOWLEDGING HE HAD HIS RIGHTS READ TO HIM?

A YES, SIR, HE DID.

Q THAT'S THE SIGNATURE WE ARE LOOKING AT NOW?

A YES, SIR. HE STARTED TO SIGN IT MICHAEL AND THEN HE DREW A LINE THROUGH THAT AND SIGNED IT BAYAN ALEKSEY.

Q BENEATH HIS SIGNATURE THERE IS A FURTHER PART OF THAT FORM; IS THAT CORRECT?

A RIGHT, THE WAIVER OF RIGHTS. "I AM WILLING TO MAKE --

Q DID YOU READ THAT OUT LOUD TO HIM ALSO?

A YES, SIR.

Q ALL RIGHT.

A "I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME." HE ACKNOWLEDGED THAT BY SIGNING.

Q DID YOU SEE HIM SIGN THAT?

A YES, SIR, I DID.
Q DOES YOUR SIGNATURE APPEAR UNDERNEATH THAT AS A WITNESS ON THE TOP LINE?
A YES, SIR, IT IS.
Q ON THE NEXT LINE UNDERNEATH YOUR SIGNATURE, THERE IS ANOTHER SIGNATURE; IS THAT CORRECT?
A THAT IS AGENT KENNY MEARS.
Q MR. MEARS IS SEATED HERE?
A YES, SIR.
Q WERE YOU PRESENT WHEN MR. MEARS SIGNED THAT IN THE PRESENCE OF BOTH YOU AND MR. ALEKSEY?
A YES, SIR.
Q THE DATE (SIC) DOWN AT THE BOTTOM IS THAT 4:45 P.M.?
A YES, SIR, IT IS.
Q DID YOU WRITE THAT IN THERE?
A YES, SIR, I DID.
Q IS THAT THE TIME THAT YOU COMPLETED GOING OVER THE MIRANDA FORM WITH HIM AND HAVING HIM ACKNOWLEDGE HIS MIRANDA RIGHTS AND SIGNING THE WAIVER?
A YES, SIR.
Q AT ANY TIME DURING THIS PROCESS, FROM THE TIME MR. ALEKSEY WAS BROUGHT OVER TO THE SHERIFF'S OFFICE TO CAPTAIN WILLIAMS' OFFICE, GOING THROUGH THIS FORM WITH HIM AND ACKNOWLEDGING THE RIGHTS AND THE WAIVER,

DID YOU MAKE ANY PROMISES OR MAKE ANY THREATS AGAINST HIM OR ANYTHING OF THAT NATURE TO TRY TO INDUCE HIM TO TALK TO YOU?

A NO, SIR, WE DID NOT.

Q WAS HE THERE ON YOUR INITIATIVE OR HIS INITIATIVE?

A HE REQUESTED TO SEE US.

Q DID HE EVER ASK Y'ALL FOR ANYTHING WHEN HE GOT OVER THERE BEFORE HE GAVE ANY KIND OF A STATEMENT, LIKE WANTING SOME FOOD OR CIGARETTES OR WATER OR BATHROOM PRIVILEGES OR ANYTHING OF THAT NATURE?

A WE GOT HIM SOFT DRINKS WHILE HE WAS THERE. I'M NOT SURE IT WAS PRIOR TO THAT OR NOT BUT ANYTHING OTHER THAT THAT, NO, SIR.

Q AND WHAT HAPPENED? WAS THERE A STATEMENT THAT WAS TAKEN FROM HIM THAT WAS TAPED?

A YES, SIR, IT WAS.

Q DID THAT TAPE START AT APPROXIMATELY 4:50 P.M.?

A YES, SIR, IT DID.

Q WHAT OCCURRED BETWEEN 4:45 WHEN YOU FINISHED THAT RIGHTS FORM AND 4:50 WHEN YOU TURNED THE TAPE PLAYER ON?

A WE ASKED MR. ALEKSEY THE REASON FOR WANTING TO TO TALK WITH US. HE SAID HE WANTED TO KNOW WHAT WAS GOING ON WITH HIM AND SO FORTH. HE WANTED TO TALK

WITH US ABOUT HIS SITUATION.

AFTER ADVISING HIM OF HIS RIGHTS, WE TALKED WITH HIM AND TOLD HIM THAT WE WOULD TALK WITH HIM BUT WE WERE GOING TO DO IT ON TAPE, PROVIDING HE WAS WILLING TO DO SO. HE AGREED TO IT. SO DURING THAT TIME WE WERE GETTING THE TAPE SET UP AND ADVISING HIM IT WAS GOING TO BE TAPED.

Q AND ABOUT THREE MINUTES INTO THAT TAPE, ONCE IT WAS TURNED ON AT APPROXIMATELY 4:50 P.M. ON JANUARY 2ND, 1998, DID THE TELEPHONE RING?

A YES, SIR, IT DID.

Q AND WHAT HAPPENED WHEN THE PHONE RANG?

A THE TAPE WAS CUT OFF.

Q APPROXIMATELY HOW LONG WAS THE TAPE CUT OFF?

A APPROXIMATELY FOUR TO FIVE MINUTES.

Q DURING THAT FOUR- TO FIVE-MINUTE PERIOD, DID EITHER YOU OR MR. MEARS IN YOUR PRESENCE MAKE ANY PROMISES OR THREATS OR ANYTHING OF THAT NATURE TO INDUCE HIM TO SAY ANYTHING TO YOU?

A NO, SIR, WE DIDN'T.

Q WHAT HAPPENED DURING THAT FIVE MINUTES OR SO?

A I TOOK THE TELEPHONE CALL AND MR. MEARS AND ALEKSEY WERE JUST SITTING THERE. AS SOON AS I GOT OFF THE PHONE, WE WENT BACK ON THE TAPE.

Q AND WAS THE TAPE ON FOR ROUGHLY 11 AND A HALF

MINUTES OR SO AFTER THAT?
A YES, SIR.
Q AND SO WAS THE TAPE CUT OFF SHORTLY AFTER 6 P.M.?
A IT WOULD HAVE BEEN AFTER 5 P.M.
Q AFTER FIVE, EXCUSE ME. NOW, DURING THAT FIRST TAPE, WHICH WE WILL INTRODUCE IN A FEW MINUTES HERE, WOULD IT BE FAIR TO CHARACTERIZE THAT FIRST TAPE AS MR. ALEKSEY BLAMING THE SHOOTING ON GLORYVEE PEREZ?
A YES, SIR.
Q AND AFTER THAT WAS OVER, AFTER ROUGHLY TEN OR ELEVEN MINUTES, WAS THE TAPE CUT OFF?
A YES, SIR, IT WAS.
Q WAS THE TAPE OFF FOR APPROXIMATELY TWO HOURS?
A YES, SIR, IT WAS.
Q AND WOULD YOU TELL THE JURY, PLEASE, WHAT OCCURRED DURING THAT TWO-HOUR PERIOD OF TIME.
A RIGHT AFTER THE TAPE WAS CUT OFF, I HAD TO RETURN SOME PHONE CALLS. MY BEEPER WAS STEADY GOING OFF. ALSO DURING THIS TIME MR. ALEKSEY ASKED US IF HE WAS TRUTHFUL WITH US, WHAT WE COULD DO FOR HIS FRIEND OR GIRLFRIEND, YELENA BATKILINA, WHO HE STATED WAS IN TROUBLE DOWN IN FLORIDA; AND IF HE WAS TRUTHFUL WITH US, WHAT WE COULD DO TO HELP HER OUT.
Q IS MS. BATKILINA THE YOUNG WOMAN WHO TESTIFIED

AS THE FIRST WITNESS IN THIS TRIAL?
A YES, SIR.
MR. STONE: AGAIN, YOUR HONOR, I NEED TO PROBABLY PUT THIS ON THE RECORD; BUT I OBJECT TO ANYTHING THAT TOOK PLACE AFTER THAT TAPE WENT OFF THE FIRST TIME AND RIGHT BEFORE THE TWO-HOUR GAP THAT HE IS ATTEMPTING TO EXPLAIN AT THIS POINT.
THE COURT: WHAT IS THE BASIS FOR IT?
MR. STONE: THE STATEMENT IS NOT VOLUNTARILY, THE SAME THINGS WE TALKED ABOUT AT A PRIOR HEARING, PRIMARILY BECAUSE IT IS THE DEFENSE POSITION THAT THERE IS NOTHING VOLUNTARILY ABOUT ANYTHING --
SOLICITOR BAILEY: JUDGE, HE IS MAKING A CLOSING ARGUMENT NOW.
THE COURT: I UNDERSTAND. I WILL THE CHARGE THE JURY APPROPRIATELY WITH THE LAW FOR THEIR CONSIDERATION.
MR. STONE: THANK YOU.
THE COURT: GO AHEAD.
Q GO AHEAD AND CONTINUE, PLEASE.
A WE ADVISED HIM THAT THERE WAS NOTHING THAT WE COULD DO TO HELP HER, THAT WE HAD NO JURISDICTION IN FLORIDA AND NOTHING WE COULD DO. THEN HE WANTED TO KNOW ABOUT GLORYVEE BLACKWELL, WHAT HER SITUATION

WAS, WHERE SHE WAS, THE KIDS.

HE ADVISED HIM THAT SHE HAD BEEN ARRESTED THE SAME AS HE HAD AND WAS IN THE DETENTION CENTER, AND THE CHILDREN HAD BEEN PLACED IN FOSTER CARE. THEN HE ASKED US IF HE WAS TRUTHFUL WITH US, COULD WE GET HIM OUT INTO THE GENERAL POPULATION, THAT HE WAS IN THE INFIRMARY CELL BY HIMSELF AND HE DID NOT WANT TO GO BACK OVER THERE IN A CELL BY HIMSELF.

SO AT THAT TIME WE CONTACTED OUR CAPTAIN, L. C. KNIGHT. I DON'T REMEMBER AT THIS POINT WHETHER WE CALLED HIM DIRECTLY AT THE OFFICE OR WE BEEPED HIM, BUT ANYHOW WE MADE CONTACT WITH HIM AFTER A PERIOD OF TIME AND TOLD HIM WHAT WE WERE DOING AND SO FORTH AT THE REQUEST OF MR. ALEKSEY.

HE SAID HE HAD NO PROBLEM WITH MR. ALEKSEY BEING IN GENERAL POPULATION, BUT THAT WAS NOT UNDER OUR CONTROL, THAT WAS UNDER THE DETENTION CENTER'S CONTROL. IF THEY AGREED WITH IT, WE HAD NO PROBLEM.

SO WE CALLED BACK TO THE DETENTION CENTER. THE ADMINISTRATOR, MR. BAMBERG, AS WELL AS THE ASSISTANT ADMINISTRATOR, MRS. DOZIER, WAS NOT IN. WE ATTEMPTED AND STARTED TRYING TO MAKE CONTACT WITH THEM BY BEEPER AND CALLING THE RESIDENCES AND SO FORTH. IT TOOK A LITTLE WHILE TO GET THAT ACCOMPLISHED.

FINALLY WE MADE CONTACT WITH MRS. DOZIER, AND

SHE SAID SHE HAD NO PROBLEM WITH THAT. SHE COULD PUT HIM BACK IN GENERAL POPULATION. NO SOONER DID WE HANG UP THE PHONE GOOD WITH HER, THEN WE HEARD BACK FROM MR. BAMBERG AND HE SAID THE SAME THING.

SO WE ADVISED MR. ALEKSEY THAT WE COULD DO, THAT WE COULD PUT HIM BACK IN GENERAL POPULATION. THE JAIL AGREED TO IT. DURING THIS TIME HE STARTED CRYING AND SO FORTH AND SAID HE WANTED TO BE TRUTHFUL AND HE WAS SORRY FOR WHAT HE DID, THIS, THAT AND THE OTHER, AND WANTED US TO RELAY TO THE FAMILY THAT HE WAS SORRY FOR WHAT HE HAD DONE. THEN WE ADVISED HIM WE WERE GOING BACK ON TAPE, AND WE WENT BACK ON TAPE AT SOMEWHERE AROUND FIVE TO SEVEN MINUTES AFTER SEVEN.

Q OTHER THAN TELLING MR. ALEKSEY THAT Y'ALL WOULD TRY TO GET HIM OUT OF THE INFIRMARY CELL BACK IN GENERAL POPULATION, DID YOU OFFER HIM ANYTHING ELSE, ANY PROMISES TO GIVE YOU A STATEMENT?

A NO, SIR, WE DIDN'T. DURING THIS TIME WE ALSO GOT HIM SOME COFFEE ON ONE OCCASION, GOT HIM A SOFT DRINK. HE WAS COMPLAINING OF BEING COLD IN THERE. SO WE CALLED BACK TO THE JAIL TO GET HIM A SHIRT OR SOMETHING OR ANOTHER TO PUT OVER HIS ARMS, AND THEY SENT US A JACKET UP THERE FOR HIM.

Q SO OTHER THAN GIVING HIM THE JACKET TO WEAR

BECAUSE HE WAS COLD AND SAYING YOU WOULD TRY TO GET HIM IN THE GENERAL POPULATION IN THE JAIL, DID YOU OFFER HIM ANYTHING ELSE?

A NO, SIR, WE DID NOT.

Q DID EITHER YOU OR MR. MEARS THREATEN HIM IN ANY WAY?

A NO, SIR, WE DIDN'T.

Q DID YOU PHYSICALLY OR MENTALLY ABUSE HIM IN ANY FASHION WHATSOEVER?

A NO, SIR, WE DID NOT.

Q WHY DIDN'T YOU LEAVE THE TAPE ON DURING THIS ROUGHLY TWO-HOUR PERIOD OF TIME AFTER THE FIRST TAPE?

A AFTER THE FIRST TAPE, HE SAID THAT WAS ALL HE HAD TO SAY AS FAR AS THAT WAS HIS STORY. I SHUT IT OFF AND MY BEEPER WENT OFF ABOUT THE SAME TIME. I NEGLECTED TO GO BACK ON THE TAPE AND PUT THE TIME ON IT.

Q DID YOU TURN THE TAPE BACK ON ABOUT 7:07 P.M.?

A YES, SIR.

Q WHEN MR. ALEKSEY AGREED TO TELL YOU WHAT REALLY HAPPENED?

A YES, SIR, WE DID.

Q AT THE TIME THE TAPE WENT BACK ON, SHORTLY AFTER 7 P.M. ON JANUARY 2ND, 1998, WHAT WAS MR. ALEKSEY'S DEMEANOR AT THAT TIME?

A HE WAS STILL CRYING A LITTLE BIT, SOMEWHAT NERVOUS BUT HE KNEW WHAT HE WAS DOING.
Q WAS HE CRYING BECAUSE OF ANYTHING Y'ALL SAID OR DID TO HIM?
A NO, SIR.
Q NOW, WHEN THE TAPE WENT BACK ON SHORTLY AFTER 7 P.M., WERE Y'ALL STILL IN LARRY WILLIAMS' OFFICE?
A YES, SIR, WE WERE.
Q WHO WAS PRESENT?
A MYSELF, MR. ALEKSEY AND SPECIAL AGENT MEARS.
Q AND AFTER THE TAPE WAS TRANSCRIBED -- WHEN THE TAPE WENT BACK ON, DID HE PROCEED TO GIVE YOU ANOTHER STATEMENT?
A YES, SIR, HE DID.
Q AND WAS THAT TAPE GIVEN TO A SECRETARY TO TRANSCRIBE?
A YES, SIR, IT WAS.
Q HAVE YOU REVIEWED THE TRANSCRIPT?
A YES, SIR, WE HAVE.
Q I WILL HAND YOU THIS TRANSCRIPT AND ASK IF YOU HAVE HAD AN OPPORTUNITY TO LISTEN TO THE TAPE AND READ THE TRANSCRIPT AND WHETHER THAT IS AN ACCURATE TRANSCRIPTION OF WHAT APPEARS ON THE TAPE?
A YES, SIR, IT IS.
THE COURT: HAVE YOU SEEN THIS? HAVE YOU

GOT A COPY OF THIS TRANSCRIPT?

MR. STONE: IF I MAY.

THE COURT: DO YOU HAVE ANOTHER COPY?

SOLICITOR BAILEY: YES, SIR.

THE COURT: DO YOU HAVE ONE FOR ME, PLEASE?

SOLICITOR BAILEY: YES, SIR.

(HANDS TO COURT.)

THE COURT: DOES THIS ELIMINATE THE AGREED UPON REDACTIONS?

SOLICITOR BAILEY: YES, SIR.

THE COURT: BOTH OF YOU GENTLEMEN APPROACH.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER THE TRANSCRIPT OF THE TAPE INTO EVIDENCE.

THE COURT: ALL RIGHT, SIR. DEFENSE COUNSEL CERTIFIES THAT HE HAS SEEN A COPY OF THIS TRANSCRIPT?

MR. STONE: I HAVE SEEN THAT AND I WILL TAKE THE SOLICITOR'S WORD FOR THAT.

THE COURT: IT'S ADMITTED.

(STATE'S EXHIBIT NUMBER 74, TRANSCRIPT OF TAPED STATEMENT OF ALEKSEY, IS RECEIVED INTO EVIDENCE.)

Q MR. DARNELL, IS THIS A COPY OF THE TAPE YOU PREVIOUSLY LISTENED TO?

A YES, SIR, IT IS.

SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER THE TAPE.

MR. STONE: SUBSEQUENT TO MY PREVIOUS OBJECTION.

THE COURT: DO YOU PROPOSE TO PLAY IT AT THIS TIME?

SOLICITOR BAILEY: YES SIR.

THE COURT: AS I UNDERSTAND IT, BY AGREEMENT OF COUNSEL FOR THE STATE AND THE DEFENDANT, THERE WILL BE CERTAIN GAPS IN THIS TAPE AS A RESULT OF REDACTION AND DELETION OF MATTERS THAT ARE EXTRANEOUS AND NOT NECESSARY TO THESE PROCEEDINGS. DO WE UNDERSTAND THAT?

SOLICITOR BAILEY: THAT IS CORRECT, YOUR HONOR.

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT.

(STATE'S EXHIBIT NUMBER 75, TAPED STATEMENT OF ALEKSEY, IS RECEIVED INTO EVIDENCE.)

THE COURT: AS I UNDERSTAND IT, AS THE TAPE IS BEING PLAYED, YOU ARE GOING TO PROVIDE EACH JUROR WITH A COPY OF THIS TRANSCRIPTION?

SOLICITOR BAILEY: YES, SIR. YOUR HONOR, AT SOME POINTS THE TAPE IS LESS LEGIBLE THAN AT POINTS. I THINK IN ORDER TO AID THE JURY IF THEY EACH HAD A COPY, THEY COULD FOLLOW ALONG WITH IT.

THE COURT: LET ME BE CLEAR. WHILE THIS TAPE IS BEING PLAYED, THE JURY MAY HAVE A COPY OF IT, EACH ONE OF THEM, TO FOLLOW TO HELP THEM AS AN AID IN LISTENING. AT THE COMPLETION OF THIS TAPE, I WANT EACH OF THESE COPIES TAKEN BACK UP.

SOLICITOR BAILEY: YES, SIR.

THE COURT: YOU MAY DELIVER THEM AT THIS TIME.

(PAUSE.)

THE COURT: MR. FOREMAN, AND LADIES AND GENTLEMEN, THERE IS AT THIS TIME BEING ADMITTED INTO THE RECORD IN THIS CASE ALLEGED STATEMENTS TO HAVE BEEN MADE BY THIS DEFENDANT.

BEFORE YOU MAY CONSIDER THIS STATEMENT OR ALLEGED STATEMENT AS ANY EVIDENCE FOR ANY PURPOSE, YOU MUST FIRST DETERMINE FOUR THINGS. I WILL CHARGE YOU THAT NOW AND WILL HEREAFTER GIVE YOU THE APPLICABLE LAW AGAIN AT THE CONCLUSION OF ALL THE TESTIMONY.

THESE FOUR THINGS THAT YOU MUST DETERMINE ARE AS FOLLOWS, AND THEY MUST BE MADE BY YOU BEYOND A

REASONABLE DOUBT. FIRST, DID THE DEFENDANT MAKE THE STATEMENT? SECONDLY, WAS THE DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS?

THIRD, YOU MUST DETERMINE THAT THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL RIGHTS AND LASTLY YOU MUST DETERMINE BEYOND A REASONABLE DOUBT WAS THE STATEMENT GIVEN VOLUNTARILY.

THE FACT THAT I HAVE ADMITTED A STATEMENT OR ALLEGED STATEMENT INTO EVIDENCE MUST NOT BE CONSIDERED BY YOU AS ANY EVIDENCE WHATSOEVER THAT THE DEFENDANT MADE SUCH A STATEMENT OR THAT THE REQUIRED CONSTITUTIONAL SAFEGUARDS WERE, IN FACT, PROVIDED AND WAIVED BY THE DEFENDANT OR THAT THE STATEMENT WAS GIVEN VOLUNTARILY BECAUSE THESE ISSUES ARE FOR YOU TO DETERMINE FROM THE TESTIMONY AND EVIDENCE IN THE CASE.

THE STATE OF SOUTH CAROLINA MUST PROVE BEYOND A REASONABLE DOUBT EACH OF THE FOUR REQUIREMENTS THAT I HAVE JUST STATED TO YOU BEFORE YOU MAY CONSIDER THE STATEMENT AS EVIDENCE FOR ANY PURPOSE WHATSOEVER.

NOW, AS TO THE FIRST REQUIREMENT, DID THE DEFENDANT MAKE THE STATEMENT, IF YOU CONCLUDE THAT HE DID NOT MAKE THE STATEMENT, YOU MUST THEN COMPLETELY

AND TOTALLY DISREGARD THAT STATEMENT.

IF YOU CONCLUDE THAT THE DEFENDANT DID NOT MAKE THE STATEMENT, YOU CANNOT AND YOU MUST NOT CONSIDER THAT STATEMENT AS EVIDENCE IN ANY MANNER WHATSOEVER, AND YOU SHOULD COMPLETELY DISREGARD THE STATEMENT IN ITS ENTIRETY AND EVERY PART OF IT.

IF YOU FIND THAT THE DEFENDANT DID MAKE THAT STATEMENT BEYOND A REASONABLE DOUBT, YOU MUST THEN CONSIDER THE SECOND REQUIREMENT: WAS THE DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS?

WHEN AN INDIVIDUAL IS TAKEN INTO CUSTODY AND OTHERWISE DEPRIVED OF HIS FREEDOM OF ACTION IN ANY SIGNIFICANT WAY BY A POLICE OFFICER OR A LAW ENFORCEMENT OFFICER, HE MUST BE WARNED OF HIS CONSTITUTIONAL RIGHTS PRIOR TO AND BEFORE ANY CUSTODIAL INTERROGATION OR CUSTODIAL QUESTIONING.

THESE RIGHTS ARE AS FOLLOWS: THAT HE HAS THE RIGHT TO REMAIN SILENT; TWO, THAT ANY STATEMENT THAT HE DOES MAKE CAN AND WILL BE USED AGAINST HIM IN A COURT OF LAW. THREE, THAT HE HAS A RIGHT TO SELECT A LAWYER OF HIS CHOICE; BUT IF HE DOES NOT HAVE THE MONEY OR RESOURCES TO EMPLOY A LAWYER, THE COURT WILL APPOINT AND PROVIDE A LAWYER TO REPRESENT HIM WITHOUT COST AND EXPENSE IF HE SO DESIRES.

FOUR, THAT HE HAS THE RIGHT TO CONSULT A

LAWYER BEFORE ANSWERING ANY QUESTIONS OR MAKING ANY STATEMENTS. LASTLY, HE HAS THE RIGHT TO HAVE HIS LAWYER PRESENT WITH HIM AT ALL TIMES DURING ALL INTERVIEWS AND ALL INTERROGATIONS.

IF YOU DETERMINE THAT THESE CONSTITUTIONAL WARNINGS WERE NOT GIVEN TO THE DEFENDANT PRIOR TO INTERROGATION AND THE TAKING OF THE STATEMENT OR THAT THE DEFENDANT WAS NOT AFFORDED THE OPPORTUNITY TO EXERCISE THESE RIGHTS, YOU MUST COMPLETELY DISREGARD THE STATEMENT; AND IN THAT EVENT YOU CANNOT CONSIDER THE STATEMENT AS EVIDENCE IN ANY MANNER WHATSOEVER.

IF YOU FIND THAT THE DEFENDANT DID MAKE THE STATEMENT AND IF YOU CONCLUDE THAT THESE CONSTITUTIONAL WARNINGS WERE, IN FACT, GIVEN TO THE DEFENDANT AND THAT THE DEFENDANT WAS AFFORDED AN OPPORTUNITY TO EXERCISE THESE CONSTITUTIONAL RIGHTS, YOU MUST THEN NEXT CONSIDER THE THIRD REQUIREMENT THAT I MENTIONED: DID THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS?

LASTLY YOU MUST CONSIDER: WAS THE STATEMENT GIVEN VOLUNTARILY? THE WORD VOLUNTARILY MEANS THAT THE STATEMENT WAS THE EXPRESSION OF THE DEFENDANT'S OWN FREE WILL AND WAS NOT INDUCED BY PRESSURE, FORCE OR FEAR OR THE INFLUENCE OF HOPE OR PROMISE OF SOME BENEFIT OR REWARD OR EXTRACTED BY

THREATS, COERCION OR INTIMIDATION.

A STATEMENT, LADIES AND GENTLEMEN, IS NOT VOLUNTARY AND MAY NOT BE USED AGAINST A DEFENDANT UNLESS IT IS THE PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY ITS MAKER.

IF THE STATEMENT IS VOLUNTARY, IF THE DEFENDANT HAS WILLED TO MAKE A STATEMENT, IT MAY BE USED AGAINST HIM. IF THE STATEMENT IS NOT VOLUNTARY, IT CANNOT BE USED AGAINST HIM.

THE TRUE TEST TO BE APPLIED IS WHETHER A STATEMENT IS FREELY, VOLUNTARILY, UNDERSTANDINGLY MADE WITHOUT COMPULSION OR INDUCEMENT. NOW, THE STATE MUST PROVE THESE FOUR ELEMENTS TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

ABSENT ANY ONE OF THE REQUIREMENTS ABOUT WHICH I HAVE INSTRUCTED YOU, THE ALLEGED STATEMENT MUST BE DISREGARDED COMPLETELY. AND IN THAT EVENT, YOU WILL ACCORD NO EVIDENTIARY WEIGHT WHATSOEVER TO IT OR TO ANY PART OF IT.

ON THE OTHER HAND, IF YOU FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT MADE THE STATEMENT, THAT THE DEFENDANT WAS GIVEN THE REQUIRED CONSTITUTIONAL WARNINGS BEFORE INTERROGATION, THAT THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL RIGHTS AND THAT THEREAFTER HE GAVE A

VOLUNTARY STATEMENT, THE STATEMENT THEN MAY BE CONSIDERED BY YOU, TOGETHER WITH ALL THE OTHER EVIDENCE IN THIS CASE AND GIVEN SUCH WEIGHT AND SUCH VALUE AND SUCH EFFECT AS YOU DETERMINE IT SHOULD RECEIVE. YOU MAY NOW PROCEED.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

(STATE'S EXHIBIT NUMBER 75, TAPED STATEMENT OF ALEKSEY, IS PLAYED FOR THE JURY.)

THE COURT: YOU MAY CONTINUE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

Q MR. DARNELL, WHEN THAT TAPE ENDED AT 7:32 P.M. ON JANUARY 2ND, WHAT WAS DONE WITH MR. ALEKSEY?

A WE CARRIED HIM BACK TO THE DETENTION CENTER.

Q THANK YOU, SIR. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

THE COURT: AT THIS TIME LET'S TAKE A SHORT BREAK AND LET ME SEE WHERE WE ARE WITH REFERENCE TO OUR LUNCH. WE WILL TAKE A SHORT BREAK.

MR. STONE: THANK YOU.

(THE JURY RETIRES TO THE JURY ROOM.)

(WHEREUPON THERE WAS A RECESS.)

THE COURT: READY FOR CROSS EXAMINATION?

MR. STONE: YES, SIR.

THE COURT: HAVE THE WITNESS RESUME THE WITNESS STAND, PLEASE.

GEORGE DARNELL, HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND AND TESTIFIED AS FOLLOWS:

THE COURT: BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, YOUR LUNCH WILL BE HERE SHORTLY. SO WHILE WE ARE WAITING, WE THOUGHT WE WOULD PROCEED. YOU MAY HAVE YOUR CROSS EXAMINATION.

MR. STONE: THANK YOU.

CROSS EXAMINATION

BY MR. STONE:

Q AGENT, WHEN MR. ALEKSEY FIRST CAME TO YOU, HE ASKED TO SEE YOU; IS THAT CORRECT? NOT YOU PERSONALLY BUT A S.L.E.D. AGENT; IS THAT RIGHT?

A YES, SIR, HE DID.

Q AND WHEN HE CAME OVER THERE, HE WASN'T FORCED OVER THERE, HE WAS PRETTY MUCH GOING ON HIS OWN; IS THAT RIGHT?

A YES, SIR, HE WAS.

Q AND WHEN HE GOT OVER THERE, YOU GUYS GOT TOGETHER AND Y'ALL WERE IN A ROOM ABOUT TEN FEET BY TEN FEET, SOMETHING LIKE THAT?

A ABOUT TEN BY TEN.

Q ABOUT THE SIZE OF THAT JURY BOX, I GUESS, A

LITTLE BIT SMALLER?
A MAYBE A LITTLE BIT SMALLER.
Q AND NO WINDOWS. THERE IS A LITTLE BIT OF WINDOW UP AT THE VERY TOP, BUT NO WINDOW DOWN BELOW; IS THAT RIGHT?
A THAT'S THE WAY THE WHOLE COMPLEX IS BUILT.
Q ALL RIGHT, SIR. YOU HAD A DESK AND A COUPLE OF CHAIRS, VARIOUS THING LIKE THAT?
A YES, SIR.
Q AND ALL OF Y'ALL WERE IN THAT ROOM, RIGHT?
A YES, SIR.
Q WHEN HE GOT THERE, HE GAVE YOU HIS RIGHT NAME; DIDN'T HE? HE GAVE YOU BAYAN ALEKSEY. I THINK YOU SAID EARLIER THAT HE STARTED TO WRITE MICHAEL AND SCRATCHED IT OUT, AND HE PUT HIS REAL NAME DOWN THERE; DIDN'T HE?
A YES, SIR. THEY HAD HIM AS MICHAEL DIANGELO BACK AT THE JAIL.
Q SO EVERYBODY AT THAT POINT -- YOU WOULDN'T HAVE BEEN SURPRISED IF HE HAD COME IN AND GIVEN YOU MICHAEL DIANGELO, WOULD YOU?
A NOT REALLY.
Q SO FAR EVERYBODY ELSE HAD BEEN FOOLED, HADN'T THEY?
A YES, SIR.

Q BUT WHEN HE CAME TO TALK TO YOU, HE GAVE YOU HIS REAL NAME; DIDN'T HE?
A YES, SIR. AT THAT POINT WE KNEW HIS REAL NAME.
Q DID YOU TELL HIM YOU KNEW IT OR DID HE JUST WRITE IT DOWN AFTER HE ALMOST STARTED WRITING MICHAEL?
A I LET HIM SIGN IT TO SEE WHAT HE WAS GOING TO SIGN.
Q AND HE SIGNED HIS RIGHT NAME?
A YES, SIR.
Q AND THIS WAS AT I BELIEVE YOU TESTIFIED 4:50 P.M., ABOUT 4:50 P.M.?
A YES, SIR.
Q SO AT 4:50 YOU BEGAN THIS STATEMENT FROM HIM; IS THAT CORRECT? AND THAT'S P.M.?
A YES, SIR, APPROXIMATELY.
Q AND THEN THE PHONE RANG AND YOU SAID YOU HAD A FOUR-MINUTE, FIVE-MINUTE PHONE CALL CONVERSATION IN WHICH YOU STOPPED THE TAPE AND YOU PUT THE TAPE BACK ON IMMEDIATELY AFTER THAT; IS THAT CORRECT?
A YES, SIR.
Q SO THE TAPE RAN FOR APPROXIMATELY 16 TO 17 MINUTES, THE WHOLE CONVERSATION, INCLUDING THE PHONE CALL, RAN FOR ABOUT 15 OR 16 MINUTES; IS THAT RIGHT?
A NO, SIR, THE ACTUAL TAPE TIME WAS ABOUT 11 AND A

HALF MINUTES.

Q SO THEN IT WOULD HAVE ENDED AT WHAT TIME, FIVE -- I DON'T MEAN TAPE TIME. HOW LONG DID YOU TALK TO HIM IN HIS FIRST STATEMENT? YOU STOPPED TALKING TO HIM ABOUT FIVE AFTER SEVEN -- I MEAN, EXCUSE ME -- SEVEN AFTER FIVE?

A RIGHT.

Q ALL RIGHT, SIR. SO AT 5:07 THAT CONVERSATION ENDED AND THAT'S P.M., RIGHT?

A RIGHT.

Q AND AT THE END OF THE STATEMENT AT 5:07, DIDN'T HE MAKE THE COMMENT, "THAT'S ALL I HAVE GOT TO SAY"? YOU CAN REFER TO YOUR NOTES IF YOU NEED TO.

A YES, SIR, I THINK THAT IS WHAT HE DID SAY.

Q HE HAS BEEN COOPERATIVE WITH YOU EVER SINCE, HASN'T HE?

A YES, SIR.

Q HE GAVE YOU HIS REAL NAME, DID HE NOT?

A YES, SIR, HE DID.

Q EVERYBODY WAS PRETTY PLEASANT. HE WAS NOT CRYING OR ANYTHING LIKE THAT, WAS HE?

A NOT AT THAT POINT.

Q NOW, THE STATEMENT THAT YOU READ EARLIER, I BELIEVE YOU SAID, "YOU ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME;" IS THAT RIGHT? DID

YOU READ THAT TO HIM?
A YES, SIR.
Q AND THAT'S HIS SIGNATURE RIGHT THERE (INDICATING); IS THAT NOT RIGHT?
A THAT'S CORRECT.
Q THAT'S YOUR SIGNATURE DOWN HERE (INDICATING)?
A YES, SIR, IT IS.
Q ALL RIGHT, SIR. SO YOU TOLD HIM HE COULD STOP ANSWERING QUESTIONS AT ANY TIME; IS THAT RIGHT?
A RIGHT.
Q AT 5:07 HE SAID, "THAT'S ALL I'VE GOT TO SAY;" IS THAT CORRECT?
A "THAT'S ALL I'VE GOT TO SAY." THAT'S WHAT HE SAID.
Q NOW, THE TAPE COMES BACK ON AND LET ME TALK NOW ABOUT THE TAPE AND NOT WHAT GOES ON IN THIS TIME PERIOD. BUT THE TAPE GOES BACK ON AT WHAT TIME? YOU CAN REFER TO YOUR NOTES IF YOU NEED TO.
A I THINK IT WAS 7:07.
Q 7:07. ROUGHLY TWO HOURS AFTER THE TAPE WENT OFF AND ROUGHLY TWO HOURS AFTER HE TOLD YOU THE STORY THAT HE CAME TO TELL YOU AND THE STORY THAT ENDED IN "THAT'S ALL I HAVE GOT TO SAY;" IS THAT RIGHT?
A RIGHT.
Q YOU HAD ROUGHLY A TWO-HOUR GAP THERE?

A RIGHT.
Q DO YOU HAVE ANY NOTES TO TELL US WHAT HAPPENED IN THAT TWO-HOUR GAP?
A NO, SIR, I DON'T.
Q DID YOU HAVE A NOTE PAD OR PENCIL OR PAPER OR ANYTHING AVAILABLE TO YOU?
A YES, SIR, I'M SURE I DID.
Q BUT YET YOU DIDN'T WRITE ANY NOTES DOWN OR MAKE ANY NOTES THAT YOU COULD SHOW US IN THE COURTROOM TO TELL US WHAT HAPPENED AND WHAT TOOK PLACE BETWEEN THE TIME OF 5:07 AND 7:07?
A MY NOTES ARE TRANSFERRED INTO THIS REPORT THAT I HAVE HERE.
Q AND THERE IS NOTHING IN THAT REPORT THAT YOU HAVE THERE THAT TELLS US WHAT HAPPENED BETWEEN THE HOURS OF 5:07 AND 7:07?
A NO, SIR.
Q NOW, DURING THAT TIME YOU SAID YOU HAD A BEEPER ON; IS THAT CORRECT?
A YES, SIR.
Q AND THAT'S A DIGITAL PAGER?
A YES, IT IS.
Q AND AT 6:55, 15 MINUTES APPROXIMATELY OR 15 MINUTES BEFORE THE CLOCK WENT BACK ON OR THE TAPE WENT BACK ON, YOU GOT A CALL ON YOUR PAGER CONCERNING

THE DEATH OF A HIGHWAY PATROL TROOPER; DIDN'T YOU?
A I COULDN'T TELL YOU. I GOT QUITE A FEW BEEPS THAT DAY.
Q AND ONE AT 6:55 CONCERNING THE DEATH OF A HIGHWAY PATROL TROOPER?
A I COULDN'T TELL YOU. I DON'T KEEP A RECORD OF THEM.
Q WHEN THE TAPE WENT BACK ON AT 7:07, MR. ALEKSEY WAS CRYING; WASN'T HE?
A YES, SIR, HE WAS.
Q AND HE WASN'T CRYING BEFORE THAT SECOND STATEMENT, WAS HE?
A PARDON ME?
Q HE WAS NOT CRYING WHEN HE GAVE YOU THAT FIRST STATEMENT, WAS HE?
A NO, SIR, HE WASN'T.
MR. STONE: EXCUSE ME JUST A MOMENT.
(PAUSE.)
Q YOU SAID YOU ARE THE CASE OFFICER ON THIS, ARE YOU NOT?
A YES, SIR, I AM.
Q YOU ALONG WITH AGENT MEARS HERE?
A YES, SIR.
Q AND YOU HAVE LISTENED TO ALL THE TESTIMONY AND YOU HAVE INVESTIGATED THIS CASE; IS THAT CORRECT?

A MYSELF AND AGENT MEARS, YES, SIR.
Q DID YOU LEARN ANYTHING THROUGH YOUR INVESTIGATION ABOUT MR. ALEKSEY THROWING UP IN THE CAR?
A HE MENTIONED THAT --
Q IN HIS STATEMENT.
A -- ABOUT THROWING UP.
Q IN HIS SECOND STATEMENT HE MENTIONED THAT; IS THAT RIGHT? NOT IN HIS FIRST STATEMENT --
A I'M NOT SURE. I WOULD HAVE TO RELOOK BUT IN ONE OF THEM HE MENTIONED THROWING UP.
Q BUT THAT DIDN'T HAPPEN, DID IT, TO YOUR KNOWLEDGE, TO YOUR INVESTIGATION?
A THAT HE THREW UP IN THE CAR?
Q YES.
A NOT TO MY KNOWLEDGE.
Q HE ALSO SAID GLORYVEE PEREZ WAS ASLEEP IN HIS SECOND STATEMENT?
A YES, SIR.
Q AND, IN FACT, THAT'S INCONSISTENT FROM WHAT YOU HAVE LEARNED AS WELL; IS THAT RIGHT?
A SHE HAD BEEN ASLEEP.
Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?
A APPROXIMATELY 20 YEARS.
Q YOU ARE A TRAINED INVESTIGATOR?

A YES, SIR, I AM.
Q ARE YOU ARE TRAINED AT TAKING STATEMENTS?
A YES, I AM.
Q YOU ARE TRAINED AT TAKING INTERVIEWS?
A YES, SIR, I AM.
Q AND YOU ARE TRAINED AT GETTING CONFESSIONS, AREN'T YOU?
A I AM TRAINED IN CONDUCTING INTERVIEWS.

MR. STONE: NOTHING ELSE, YOUR HONOR.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. WE HAVE LUNCH HERE NOW. WE WILL TALK A BREAK AT THIS TIME. MR. FOREMAN, YOU LET LIEUTENANT WILLIAMS KNOW WHEN YOU ARE READY TO PROCEED. WE WOULD LIKE TO START BACK NO LATER THAN TWO O'CLOCK.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: WE ARE IN RECESS. THANK YOU.

(WHEREUPON THERE WAS A LUNCHEON RECESS.)

THE COURT: SOLICITOR, READY FOR YOUR NEXT WITNESS?

SOLICITOR BAILEY: YES, SIR.

THE COURT: DEFENSE READY TO GO?

MR. STONE: YES, SIR.

THE COURT: LET THE RECORD REFLECT THE DEFENDANT IS PRESENT IN THE COURTROOM. BRING THE

JURY.

(THE JURY RETURNS TO THE COURTROOM AT 2:05 P.M.)

THE COURT: THE JURY IS PRESENT.

SOLICITOR BAILEY: THE STATE RECALLS KENNY MEARS.

THE COURT: RESWEAR MR. MEARS, PLEASE.

KENNY MEARS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. MEARS, YOU TESTIFIED PREVIOUSLY ABOUT YOUR INVOLVEMENT IN THIS CASE?

A YES, SIR.

Q AND I WANT TO CALL YOUR ATTENTION AT THIS POINT TO JANUARY 2ND, 1998. WERE YOU AT THE SHERIFF'S OFFICE WITH MR. DARNELL?

A YES, SIR, I WAS.

Q SINCE MR. DARNELL HAS ALREADY TESTIFIED, I WILL KIND OF CUT THIS SHORT. DID YOU PARTICIPATE IN THE INTERVIEW THAT HE HAD THAT WAS TAPED THAT THIS JURY HEARD BEFORE THE LUNCH BREAK?

A YES, SIR, I DID.

Q WERE YOU PRESENT WHEN MR. DARNELL WENT OVER THE MIRANDA RIGHTS WITH MR. ALEKSEY?

A YES, I WAS.
Q WHAT IS YOUR RECOLLECTION OF MR. ALEKSEY'S DEMEANOR AT THE TIME HE WAS BROUGHT FROM THE JAIL OVER TO THE SHERIFF'S OFFICE?
A HE WAS A LITTLE NERVOUS BUT HE WAS IN PRETTY FAIR CONDITION.
Q AND WAS HE OVER THERE AT YOUR INSTIGATION OR HIS INSTIGATION?
A WE RECEIVED INFORMATION THAT ALEKSEY WANTED TO TALK WITH A S.L.E.D. AGENT.
Q MR. MEARS, I WANT TO CALL YOUR ATTENTION TO STATE'S 73. IS THAT YOUR SIGNATURE UNDERNEATH MR. DARNELL'S SIGNATURE?
A YES, SIR, IT IS.
Q YOU SAW MR. ALEKSEY SIGN THAT AFTER MR. DARNELL READ HIS RIGHTS TO HIM?
A THAT'S CORRECT.
Q DID HE APPEAR TO UNDERSTAND IT?
A YES, SIR, HE INDICATED THAT HE DID.
Q ALL RIGHT, SIR. NOW, IN REGARD TO THE TAPED STATEMENT THE JURY HAS HEARD, WERE YOU PRESENT DURING THE ENTIRE PERIOD OF TIME THAT BOTH THE FIRST AND SECOND TAPE WAS MADE?
A YES, SIR, THE ENTIRE TIME, BOTH STATEMENTS.
Q AT ANY POINT IN TIME PRIOR TO THE TAPE COMING

ON, WERE ANY THREATS MADE AGAINST MR. ALEKSEY, ANY PROMISES MADE TO HIM BEFORE THE TAPE WAS TURNED ON?

A NO THREATS AND NO PROMISES WERE MADE.

Q DURING THAT FIVE MINUTE OR SO BREAK WHEN THE TELEPHONE RANG, DID ANYTHING OCCUR DURING THAT PERIOD OF TIME OTHER THAN MR. DARNELL HANDLING THE TELEPHONE CALL?

A NO, SIR, NOTHING OCCURRED.

Q AFTER THE TAPE WAS PLAYED FOR ROUGHLY 11 MINUTES OR SO AND IT WENT OFF, HOW DID THE SITUATION GO WITH REGARD TO YOU AND MR. DARNELL AND MR. ALEKSEY? WHAT HAPPENED IMMEDIATELY AFTER THE TAPE WAS TURNED OFF AFTER THE 11 AND A HALF MINUTES OR SO?

A ARE YOU REFERRING TO AFTER THE FIRST STATEMENT?

Q YES, SIR.

A AFTER THE FIRST STATEMENT MR. ALEKSEY SAID, "I HAVE NOTHING ELSE TO SAY." THE TAPE WAS TURNED OFF AND THEN HE IMMEDIATELY STARTED TO MAKING A DEAL. HE WANTED TO MAKE A DEAL. HE WAS CONCERNED --

Q WAS IT YOU OR MR. DARNELL OR MR. ALEKSEY WHO STARTED TALKING AGAIN ABOUT WHAT HAD OCCURRED ON NEW YEAR'S EVE?

A ALEKSEY STATED THAT HE WANTED TO COME CLEAN AND TELL US THE REAL TRUTH, BUT HE WAS CONCERNED ABOUT A GIRLFRIEND, YELENA BATKILINA, WHO MAY HAVE CHARGES IN

FLORIDA.

HE ASKED IF WE COULD DO ANYTHING WITH THOSE CHARGES IN FLORIDA. HE WAS TOLD AT THAT TIME THAT WE HAD NO JURISDICTION IN FLORIDA. HE ALSO WAS CONCERNED ABOUT GLORYVEE PEREZ AND HIS CONCERN ABOUT GOING BACK INTO GENERAL POPULATION IN THE PRISON.

Q AND DURING THAT ENTIRE ROUGHLY TWO HOURS OR SO WHEN THE TAPE WAS OFF, DID YOU OR DID MR. DARNELL IN YOUR PRESENCE OR ANYBODY ELSE THREATEN MR. ALEKSEY IN ANY WAY?

A NO, SIR, NO THREATS.

Q ANYBODY PHYSICALLY ABUSE HIM?

A NO, SIR.

Q WERE ANY PROMISES MADE, OTHER THAN TRYING TO GET HIM OUT OF THE ISOLATED CELL, INFIRMARY CELL, INTO GENERAL POPULATION?

A NONE WHATSOEVER.

Q DID HE VOLUNTARILY AGREE TO GO AHEAD AND HAVE THE TAPE TURNED BACK ON SO HE COULD TELL Y'ALL WHAT HAPPENED?

A HE DID. HE VOLUNTEERED TO TELL US WHAT HE DID.

Q IN LISTENING TO THAT TAPE, MR. ALEKSEY FROM TIME TO TIME IS SORT OF SOBBING; IS THAT CORRECT?

A YES, SIR, THAT'S CORRECT.

Q DID EITHER YOU OR MR. DARNELL DO ANYTHING TO

MAKE MR. ALEKSEY SOB OR CRY OR WHATEVER ON THAT TAPE?
A NO, SIR, NOTHING WAS DONE.
Q WAS THERE ANY TYPE OF COERCION, UNDUE INFLUENCE, ANYTHING OF THAT NATURE DURING THAT TWO-HOUR PERIOD THAT WOULD AFFECT THE VOLUNTARINESS OF THAT STATEMENT THIS JURY HAS HEARD A FEW MOMENTS AGO?
A NO, SIR.
Q MR. MEARS, PLEASE ANSWER ANY QUESTION THE DEFENSE MAY HAVE.
CROSS EXAMINATION
BY MR. SIMS:
Q MR. MEARS, I JUST HAVE A FEW QUESTION FOR YOU. IT'S MY UNDERSTANDING THAT YOU HAVE A B.S. DEGREE AND A MASTER'S DEGREE?
A THAT'S CORRECT.
Q YOUR B.S. IS IN WHAT?
A BUSINESS ADMINISTRATION.
Q AND YOUR MASTER'S IS IN WHAT?
A BUSINESS MANAGEMENT.
Q AND HOW MANY YEARS HAVE YOU BEEN A POLICE OFFICER ALTOGETHER?
A APPROXIMATELY 17.
Q SEVENTEEN YEARS?
A YES, SIR.
Q AND PRIOR TO GOING WITH S.L.E.D., YOU WERE A

POLICE OFFICER WHERE?

A AT WALTERBORO CITY POLICE DEPARTMENT.

Q FROM WALTERBORO YOU WENT TO S.L.E.D. HOW MANY YEARS HAVE YOU BEEN AT S.L.E.D.?

A ALMOST FIVE.

Q I BELIEVE YOUR LAST 15 CASES, OF THAT LAST 15, I BELIEVE ALMOST ONE-THIRD OF THEM HAVE ENDED IN CONFESSIONS?

A I DON'T HAVE ANY IDEA.

Q AND ON THE NIGHT WHEN YOU FIRST GOT INVOLVED IN THIS SITUATION, YOU IMMEDIATELY WENT TO SUMMERVILLE AND THEN DOWN TO CHARLESTON; IS THAT CORRECT?

A THAT'S WHERE I WAS INSTRUCTED TO RESPOND.

Q AND THEN AFTER YOU WENT TO CHARLESTON, HE WAS IN THE HOSPITAL; IS THAT CORRECT?

A YES, SIR.

Q AND HE WAS HANDCUFFED TO A BED IS MY UNDERSTANDING; IS THAT CORRECT?

A YES, SIR.

Q HE HAD A NECK COLLAR ON BY THE TIME YOU GOT DOWN THERE?

A I DON'T RECALL THE NECK COLLAR.

Q YOU DON'T RECALL THE NECK COLLAR, BUT HE HAD BEEN IN SOME DIFFICULTY. BECAUSE OF THE ACCIDENT, HE HAD HIT HIS HEAD AND HE WAS SOMEWHAT INCAPACITATED AT

THAT TIME; IS THAT RIGHT?
A HE WAS IN THE HOSPITAL.
Q AND YOU IMMEDIATELY AT THAT POINT TRIED TO TALK TO HIM AND READ HIM SOME RIGHTS AND TRIED TO GET A STATEMENT; ISN'T THAT RIGHT?
A NO, SIR, THAT IS NOT CORRECT.
Q YOU DID TRY TO GET A STATEMENT THAT NIGHT THOUGH, RIGHT?
A NO, SIR, I READ HIM HIS RIGHTS THAT NIGHT.
Q YOU READ HIM THE RIGHTS WITH THE INTENTION OF TRYING TO GET A STATEMENT; IS THAT NOT RIGHT?
A I'D READ HIM HIS RIGHTS FIRST AND THEN I ASKED HIM HIS NAME AND HE DIDN'T WANT TO RESPOND AT THAT TIME.
Q WHEN YOU READ A PERSON THEIR RIGHTS AND YOU READ THEM THE MIRANDA RIGHTS, THOSE SAME RIGHTS THAT ARE ON THAT MONITOR, ON THE MONITOR OVER THERE, YOUR INTENTION IS TO TRY TO GET A STATEMENT FROM HIM; ISN'T THAT RIGHT?
A IF HE WOULD HAVE RESPONDED TO SOME QUESTIONS I WOULD HAVE ASKED HIM, YES, SIR, I WOULD HAVE TAKEN A STATEMENT.
Q NOW, THE NEXT DAY, I BELIEVE THIS IS WHAT, THE 2ND OF JANUARY ABOUT FOUR O'CLOCK IN THE AFTERNOON OR A LITTLE BEFORE FOUR, WHEN YOU GOT THE MESSAGE THAT

HE WANTED TO TALK WITH YOU?
A IT WAS IN THE AFTERNOON, YES, SIR. IT WAS LATE IN THE AFTERNOON, ABOUT FOUR.
Q LATE IN THE AFTERNOON?
A YES, SIR.
Q NOW, WHEN HE CAME OVER, I BELIEVE YOU INITIALLY SAID THAT HE WAS SOMEWHAT NERVOUS BUT HE WAS DOING OKAY?
A HE APPEARED TO BE A LITTLE NERVOUS, YES, SIR.
Q HE HAD A NECK COLLAR ON?
A ARE YOU TALKING THAT DAY OUT AT THE JAIL?
Q YES, SIR.
A NO, SIR.
Q HE DIDN'T HAVE A NECK COLLAR ON?
A NO, SIR.
Q SO WHEN HE CAME OVER THERE TO TALK WITH YOU ALL, HE HAD TAKEN THE NECK COLLAR OFF OR SOMEBODY AT THE JAIL HAD TAKEN THE NECK COLLAR OFF HIM?
A I DON'T KNOW IF HE HAD ONE ON WHEN HE ENTERED THE JAIL OR NOT.
Q HE CAME IN AND YOU INITIALLY BEGAN TO TALK TO HIM AFTER HAVING READ HIM THOSE MIRANDA WARNINGS. YOU BEGAN TO TALK WITH HIM AND THE TAPE WENT OFF, THE TAPE CAME BACK ON AND THEN IT STOPPED FOR TWO HOURS; IS THAT CORRECT?

A IT WAS TURNED OFF IN BETWEEN FOR TWO HOURS, YES, SIR.

Q DID YOU HAVE OR DID YOU TAKE ANY NOTES AS TO WHAT, IF ANYTHING, TRANSPIRED WITHIN THE TWO-HOUR PERIOD?

A NO, SIR, I DID NOT.

Q DID YOU MAKE AN EFFORT AT THAT POINT BECAUSE THE TAPE WAS OFF TO TAKE HIM BACK OVER TO THE COMPLEX WHERE HE HAD BEEN HOUSED?

A NO, SIR.

Q DID YOU OFFER TO TAKE HIM BACK OVER TO THE COMPLEX WHERE HE HAD BEEN HOUSED?

A NO, SIR. THE REASON WAS THAT HE BEGAN TO TALK AGAIN, EXPLAINING TO US WHAT HE WOULD LIKE TO HAVE DONE.

Q THIS IS RIGHT AFTER WHEN THE TAPE WAS CUT OFF THE FIRST TIME WHEN HE SAID, "THAT'S ALL I HAVE TO SAY"?

A THAT'S RIGHT AND THEN HE INITIATED ANOTHER CONVERSATION.

Q ISN'T IT PART OF THE MIRANDA WARNINGS WHICH ARE READ THAT TELLS THAT DEFENDANT THAT HE HAS THE RIGHT TO STOP THE INTERVIEW AT ANY TIME?

A THAT'S CORRECT.

Q AND WHEN HE SAID TO YOU, "THAT'S ALL I HAVE TO

SAY," THAT WAS AN INDICATION THAT HE WAS STOPPING THE INTERVIEW; ISN'T THAT RIGHT?

A THAT'S WHAT HE STATED.

Q BUT AT NO TIME DID NEITHER YOU NOR AGENT DARNELL OFFER TO TAKE HIM BACK TO THE PLACE WHERE HE HAD BEEN HOUSED, OVER TO THE COMPLEX?

A HE INITIATED ANOTHER CONVERSATION AND STARTED TALKING AGAIN.

Q ABOUT YELENA, THE SAME WOMAN WHO CAME IN HERE AND TESTIFIED AGAINST HIM?

A THAT'S CORRECT.

Q YOU TOOK NO NOTES AT ALL. SO THERE IS NOTHING THAT YOU HAVE THAT WE CAN LISTEN TO, LIKE THE TAPE, OR READ, LIKE THE MIRANDA WARNINGS, WHICH WOULD HAVE GIVEN US, THE COURT AND THE JURY THE OPPORTUNITY TO SEE WHAT TRANSPIRED WITHIN THOSE TWO HOURS THAT HE WAS THERE ALONE IN THE ROOM WITH YOU AND AGENT DARNELL?

A NO, SIR, I DON'T HAVE --

Q IN A ROOM -- I'M SORRY.

A I DON'T HAVE ANY NOTES.

Q IN A ROOM LESS THAN THE SIZE OF THE JURY BOX AND YOU HAVE NOTHING TO SAY AS TO WHAT HAD TRANSPIRED FOR TWO WHOLE HOURS?

A NO, SIR.

Q AND AT NO TIME FOR TWO WHOLE HOURS DID YOU OR AGENT DARNELL FEEL THE NEED TO TURN THE TAPE RECORDER, WHICH WAS RIGHT THERE IN YOUR REACH, WITHIN YOUR GRASP, TO TURN IT BACK ON?

A I DIDN'T TURN IT ON, NO, SIR.

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

SOLICITOR BAILEY: A COUPLE ON REDIRECT, YOUR HONOR.

THE COURT: YES, SIR.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q WITH REGARD TO THE QUESTIONS MR. SIMS ASKED YOU, WHEN YOU ARE QUESTIONING SOMEBODY AND THEY FINISH A STORY OR THEY STOP OR FOR WHATEVER REASON THEY DON'T SAY ANYTHING ELSE, IS THERE ANYTHING IN YOUR TRAINING, YOUR EXPERIENCE THAT PREVENTS YOU FROM CONTINUING TO TALK TO SOMEBODY AFTER THAT WHEN THEY INITIATE THE NEW CONVERSATION?

A NO, SIR. THAT'S PART OF THE INTERVIEW PROCESS. IF ANYONE INITIATE A CONVERSATION, THEN YOU ARE ENTITLED TO LISTEN.

Q IS THAT WHAT OCCURRED HERE?

A THAT'S WHAT OCCURRED.

Q THE TAPE WENT OFF, HE TALKED, YOU LISTENED AND IT STARTED UP AGAIN?

A YES, SIR.
Q AT THE TIME HE GOT READY TO TELL Y'ALL THE TRUTH, Y'ALL CUT THE TAPE ON; IS THAT CORRECT?
A THAT'S CORRECT.
SOLICITOR BAILEY: THAT'S ALL I HAVE OF THIS WITNESS.
THE COURT: YOU MAY COME DOWN, OFFICER. THANK YOU SO MUCH.
SOLICITOR BAILEY: THE STATE CALLS SARAH PIVERO.
CLERK: STATE YOUR NAME FOR THE RECORD.
THE WITNESS: SARAH PIVERO.
SARAH PIVERO, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER.
THE WITNESS: IT'S P-I-V-E-R-O.
DIRECT EXAMINATION
BY SOLICITOR BAILEY:
Q MS. PIVERO, WHERE ARE YOU FROM?
A OAKFORD, PENNSYLVANIA.
Q HOW OLD ARE YOU?
A I'M 21 RIGHT NOW.
Q AND ARE YOU EMPLOYED IN PENNSYLVANIA?
A YES.

Q WHAT TYPE WORK DO YOU DO?
A I'M A HAIRDRESSER.
Q WHAT IS THE NAME OF THE PLACE YOU WORK AT?
A SENSATIONAL SCISSORS.
Q HOW LONG HAVE YOU BEEN A HAIRDRESSER?
A A LITTLE OVER FOUR YEARS.
Q AND DO YOU KNOW THE DEFENDANT OVER HERE, BAYAN ALEKSEY, SEATED BESIDE MR. SIMS?
A YES, I DO.
Q CAN YOU POINT HIM OUT, PLEASE.
A OVER THERE WITH THE WHITE SHIRT.
Q WHITE SHIRT AND THE TIE?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q WHEN DID YOU MEET MR. ALEKSEY ROUGHLY? HOW LONG AGO WAS IT?
A MAY OF '96.
Q AND WHEN YOU MET HIM, WHAT NAME DID YOU KNOW HIM BY?
A MICHAEL DIANGELO.
Q MICHAEL DIANGELO. DID YOU DEVELOP A RELATIONSHIP WITH HIM?
A YES.
Q WHAT RELATIONSHIP DEVELOPED BETWEEN YOU AND MR. ALEKSEY?

A WE LIVED TOGETHER FOR A FEW MONTHS UP UNTIL ROUGHLY ABOUT NOVEMBER OF '96. WE WERE BOYFRIEND AND GIRLFRIEND TYPE THING I THOUGHT.

Q DURING THE PERIOD OF TIME YOU WERE DATING HIM AND LIVED WITH HIM, DID YOU KNOW HIM BY ANY OTHER NAMES BESIDES MICHAEL DIANGELO?

A I SAW HIM USE OTHER LAST NAMES, YES.

Q WHAT OTHER LAST NAMES?

A HE USED MY LAST NAME FOR A LITTLE WHILE, AND I HAVE ALSO SEEN HIM USE BATKILINA.

Q OKAY.

A I CAN'T THINK RIGHT NOW BUT THERE WAS A COUPLE DIFFERENT NAMES.

Q WHAT ABOUT MICHAEL ANGELO?

A HE DID. HE USED MICHAEL ANGELO AND MICHAEL DIANGELO.

Q HOLD ON ONE SECOND, PLEASE. (WRITING ON BOARD.) MS. PIVERO, IN JANUARY OF THIS YEAR, DID YOU HAVE A CELL PHONE?

A YES, I DID.

Q AND DO YOU STILL HAVE THAT CELL PHONE?

A YES.

Q AND IS YOUR CELL PHONE NUMBER THAT YOU HAVE NOW THE SAME AS THE CELL PHONE NUMBER YOU HAD IN JANUARY OF THIS YEAR?

A YES, IT IS.
Q AND WHAT IS YOUR CELL PHONE NUMBER?
A 215-852-4360.
Q AND WHEN YOU WERE SEEING MR. ALEKSEY, DID HE HAVE YOUR CELL PHONE NUMBER?
A I DIDN'T HAVE THAT PHONE WHEN WE WERE DATING, NO. LATER ON THOUGH I DID GIVE IT TO HIM WHEN I TALKED TO HIM AGAIN, THE FALL OF LAST YEAR I GUESS IT WAS.
Q THE FALL OF LAST YEAR YOU GIVE HIM YOUR CELL PHONE NUMBER?
A YES.
Q THAT WAS 215-852-4360?
A YES.
Q AND LIVING WITH HIM AND DATING HIM AND ALL THAT, DO YOU KNOW HIM WELL ENOUGH TO IDENTIFY HIS VOICE OVER THE TELEPHONE?
A YES, I DO.
Q I WANT TO CALL YOUR ATTENTION TO FRIDAY EVENING, JANUARY 2ND, 1998, AND ASK WHETHER OR NOT YOU RECALL RECEIVING A CALL ON YOUR CELL PHONE.
A YES, I DO.
Q AND HOW DO YOU KNOW IT WAS THAT DAY, FRIDAY EVENING, JANUARY 2ND?
A WELL, WEDNESDAY WAS NEW YEAR'S EVE AND I WENT TO

NEW YORK. I CAME HOME EARLY THURSDAY MORNING AND I WAS HOME ALL DAY THURSDAY. THEN FRIDAY I WENT TO WORK AND THE SHOP CLOSES ROUGHLY ABOUT SEVEN O'CLOCK. I GOT HOME ABOUT QUARTER TO EIGHT, I GUESS, MAYBE AROUND THERE, 7:30, QUARTER TO EIGHT, AND CHECKED MY MESSAGES ON --

THE COURT: TALK INTO THAT MICROPHONE IF YOU WOULD. THE AIR CONDITIONER JUST CAME ON AND I'M AFRAID THEY CAN'T HEAR YOU.

A I CHECKED MY VOICE MAIL ON MY CELL PHONE, AND THE FIRST MESSAGE AFTER IT WENT THROUGH MY MESSAGE AND IT BEEPED, I CAUGHT THE TAIL END OF THE OPERATOR SAYING, "YOU HAVE A CALL FROM A CORRECTIONAL FACILITY."

AND WHERE IT LEFT THE SPOT FOR THEM TO SAY THEIR NAME, IT WAS MICHAEL'S VOICE AND HE SAID TO CALL HIS MOM REAL QUICK. AND ABOUT TEN OR FIFTEEN MINUTES LATER OR SHORTLY AFTERWARDS, I RECEIVED ANOTHER PHONE CALL. AGAIN IT SAID IT WAS THE OPERATOR, "YOU HAVE A COLLECT CALL FROM AN INMATE IN A CORRECTIONAL FACILITY."

Q ROUGHLY WHAT TIME WAS THIS?

A IT WAS AFTER EIGHT.

Q AFTER 8 P.M. JANUARY 2ND?

A YEAH.

Q AND WHO WAS ON THE PHONE?
A IT WAS MICHAEL.
Q DID YOU RECOGNIZE HIS VOICE?
A YES.
Q ANY QUESTION IN YOUR MIND THAT IT WAS HIS VOICE ON THE PHONE?
A NONE AT ALL.
Q DID HE IDENTIFY HIMSELF?
A YEAH.
Q WHAT IS YOUR BEST RECOLLECTION OF THE TELEPHONE CONVERSATION YOU HAD WITH BAYAN ALEKSEY ON THE EVENING OF JANUARY 2ND?
A I ASKED HIM WHERE HE WAS AND HE SAID HE WAS IN JAIL IN SOUTH CAROLINA. I ASKED HIM WHAT HE DID AND HE SAID THAT HE SHOT A STATE TROOPER. I ASKED HIM, I SAID, "SHOT AS IN HURT?" AND HE SAID HE DON'T KNOW.

I JUST SAID, "WELL, DO YOU HAVE ANY IDEA HOW MANY TROUBLE YOU ARE IN RIGHT NOW?" AND HE SAID HE KNOWS AND HE SAID MAYBE IT WAS FOR THE BETTER BECAUSE HE WAS TIRED OF RUNNING.

Q AND DO YOU RECALL WHETHER OR NOT YOU HAD ANY OTHER CALLS FROM HIM LATER ON THAT NIGHT?
A I DID. I GOT ANOTHER PHONE CALL FROM HIM LATER ON THAT EVENING, BUT IT WAS JUST TO CALL HIS MOTHER AND LET HER KNOW WHAT WAS GOING ON.

Q THE FOLLOWING DAY, JANUARY 3RD, WHICH I THINK THE CALENDER WOULD SHOW WOULD BE A SATURDAY, DID YOU RECEIVE ANY CALLS FROM HIM THEN?
A YES, I DID.
Q TELL US ABOUT THAT.
A IT WAS AFTER I HAD GOTTEN HOME FROM WORK. HE CALLED ME AGAIN AND THIS TIME HE WAS JUST KIND OF FRANTIC SAYING THAT IT WASN'T HIM, IT WAS PEREZ THAT PULLED THE TRIGGER.
Q WHEN HE SAID THAT, DID YOU KNOW ANYBODY NAMED PEREZ?
A DID NOT, NO.
Q DID YOU KNOW WHO HE WAS TALKING ABOUT?
A NO. HE NEVER TOLD ME THAT THERE WAS ANYBODY ELSE IN THE CAR OR ANYTHING. EVEN AT THAT POINT I STILL DIDN'T WHO PEREZ WAS AND WHETHER IT WAS MALE OR FEMALE OR WHAT.
Q MS. PIVERO, PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.
CROSS EXAMINATION
BY MR. SIMS:
Q MS. PIVERO, HOW ARE YOU DOING? I'M THOMAS SIMS. WHEN YOU RECEIVED THAT FIRST CALL AND YOU ASKED HIM WHAT HE WAS IN FOR, ISN'T IT POSSIBLE HE SAID, "THEY SAID I SHOT A TROOPER"?

A I DON'T REALLY THINK SO. I MEAN, IF HE WOULD HAVE SAID THAT THEY SAID HE HAD, THEN I PROBABLY WOULDN'T HAVE BEEN IN SUCH SHOCK. I MEAN, MY JAW KIND OF FELL OPEN WHEN HE ANSWERED THE PHONE. IT WASN'T A SURPRISE TO ME THAT HE WAS CALLING ME FROM A PRISON; BUT WHEN HE SAID WHAT HE DID, IT WAS A SHOCK TO ME.

Q SO THERE IS A POSSIBILITY THAT WHEN YOU ASKED HIM WHAT HE WAS IN THERE FOR, THAT HE SAID, "THEY SAID I SHOT A TROOPER"?

A NO. HE SAID, "I SHOT A TROOPER."

Q AND THE NEXT DAY HE CALLED YOU AND HE SAID FRANTICALLY TO YOU, "I DIDN'T DO IT. IT WAS PEREZ"?

A HE DIDN'T SAY THAT HE DIDN'T DO IT. HE JUST SAID, "PEREZ PULLED THE TRIGGER."

Q "PEREZ PULLED THE TRIGGER." AND LET'S GO BACK. WHEN DID YOU FIRST MEET HIM?

A MAY OF '96.

Q AND HOW DID YOU MEET HIM?

A I WAS ON MY WAY TO ATLANTIC CITY WITH MY GIRLFRIEND, AND HE WAS DRIVING IN THE CAR NEXT TO US.

Q HE WAS DRIVING IN THE CAR NEXT TO YOU ON THE TURNPIKE; IS THAT CORRECT?

A IT WAS ON THE WHITE HORSE PIKE.

Q THE WHITE HORSE PIKE?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q YOU WERE GOING TO ATLANTIC CITY TO THE CASINO; IS THAT CORRECT?
A WELL, WE WERE JUST GOING DOWN THERE, NOT NECESSARILY TO GO TO THE CASINO.
Q YOU WERE GOING DOWN TO --
A THAT'S PRETTY MUCH WHAT THEY HAVE.
Q AND HE PULLED UP BESIDE YOU?
A I PULLED UP BESIDE HIM.
Q YOU PULLED UP BESIDE HIM. IN ANY EVENT ONE OF Y'ALL PULLED UP BESIDE EACH OTHER, AND HE LOOKED OVER AND WHAT HAPPENED?
A HE AND MY GIRLFRIEND WERE TALKING. HE ASKED US TO FOLLOW HIM. HE FOLLOWED HIM DOWN THE ROAD INTO ATLANTIC CITY IN FRONT OF ONE OF THE CASINOS AND STARTED TALKING.
Q SO YOU SEE HIM ON THE PIKE, AS YOU SAID, AND YOU FOLLOW HIM DOWN INTO ATLANTIC CITY AND YOU BEGAN A RELATIONSHIP WITH HIM AT THAT POINT; IS THAT CORRECT?
A WELL, IT WASN'T NECESSARILY AT THAT POINT. IT WASN'T IMMEDIATE BUT WE STARTED TALKING AND THEN OVER THE NEXT COUPLE OF WEEKS, YOU KNOW, PHONE CALLS AND THEN HE EVENTUALLY MOVED IN WITH ME.
Q SO HE MOVED IN WITH YOU AT THAT POINT; IS THAT CORRECT? YOU ALL MOVED IN TOGETHER AND YOU ALL LIVED

TOGETHER?
A YEAH. I ALREADY HAD THE PLACE. HE MOVED IN WITH ME.
Q WELL, YOU LIVED TOGETHER?
A YES.
Q DURING THAT COURSE OF TIME, HE SPENT A LOT OF MONEY AND YOU SPENT A LOT OF MONEY; IS THAT CORRECT?
A HE MORE OR LESS SPENT MOST OF THE MONEY, I WOULD SAY.
Q HE MORE OR LESS SPENT MOST OF THE MONEY. I BELIEVE YOU ARE TALKING ABOUT A SITUATION WHERE IT MAY HAVE BEEN LIKE $50,000 THAT WAS SPENT?
A NO, NOT THAT MUCH WAS SPENT.
Q NOT THAT MUCH WAS SPENT. WELL, HOW MUCH WAS SPENT?
A I DON'T KNOW. HE ASKED TO BORROW SOME MONEY OFF OF ME. HE SAID HE WAS IN TROUBLE. SO I LENT HIM SOME MONEY, WHICH HE PROMISED TO PAY BACK, WHICH HE NEVER DID PAY BACK. INSTEAD HE TOLD ME HE SET UP INVESTMENTS IN MY NAME, WHICH NEVER EXISTED.
AND THEN ONE DAY I GET A STATEMENT FROM MY INVESTMENT COMPANY AND MY ACCOUNT BALANCE IS ZERO. EVERYTHING WAS REDEEMED BY TELEPHONE, WHICH I DID NOT DO.
Q AND HOW MUCH WAS THAT?

A IN DIFFERENT ACCOUNTS THERE WERE DIFFERENT AMOUNTS, TEN THOUSAND HERE, TEN THOUSAND THERE; BUT I WOULD SAY EVERYTHING TOTALED TOGETHER, IT PROBABLY CAME TO $50,000 WITH EVERYTHING. I MEAN, THE MONEY THAT HE DIDN'T PAY BACK AND EVERYTHING ELSE.

Q AND DID YOU BUY HIM A CAR?

A HE WENT UP TO DEALERSHIPS AND PICKED OUT WHICH CAR HE WANTED, AND I PUT THEM IN MY NAME FOR HIM. HE TOLD ME THAT HE HAD HAD SOME CREDIT PROBLEMS AND HE NEEDED SOME HELP, AND AT THE TIME I HAD GOOD CREDIT SO I WAS TRYING TO HELP HIM OUT.

Q DID YOU BUY HIM A '97 MUSTANG?

A IT WAS, I THINK, A '96.

Q A '96 MUSTANG?

A I THINK.

Q YOU WROTE OUT A CHECK FOR ABOUT $12,000 TO THE DEALERSHIP?

A WHICH MUSTANG IS THIS? I'M SORRY BUT THERE WAS A COUPLE OF THEM. SOME CHECKS HE STOLE AND WROTE OUT THE MONEY FOR.

Q BUT YOU WENT AND YOU PUT THE CARS IN YOUR NAME. THERE WAS A MUSTANG? WE BOTH WILL AGREE WITH THAT, THERE WAS A MUSTANG?

A THERE WERE THREE MUSTANGS THAT HE DROVE AT VARIOUS POINTS IN TIME. I NEED TO KNOW WHICH ONE SO

I KNOW WHICH CHECK YOU ARE TALKING ABOUT.

Q LET'S PUT IT THIS WAY. HOW MANY OF THE MUSTANGS DID YOU BUY?

A I PERSONALLY WROTE OUT A CHECK FOR ONE MUSTANG.

Q AND HOW MUCH DID YOU PAY FOR THAT ONE MUSTANG?

A I DON'T REMEMBER HOW MUCH IT COST.

Q DID YOU ALSO PURCHASE AN ELDORADO CADILLAC FOR HIM?

A HE DID THAT WHILE I WAS AT WORK. HE CALLED -- HE HAD BORROWED MY CAR. I HAD A '96 JETTA THAT WAS A COUPLE OF WEEKS OLD. HE BORROWED IT AND HE CALLED ME FROM WORK AND ASKED ME WHAT COLOR I LIKED, RED OR WHITE.

I DIDN'T KNOW WHAT HE WAS TALKING ABOUT. HE TOLD ME HE WAS TRADING IN MY CAR AND GETTING A NEW CAR. WHILE I WAS AT WORK, HE TRADED IN MY BLACK JETTA.

HE GOT A RED PASSAT AND WHILE HE WAS AT IT, GOT HIMSELF A '94 CADILLAC ELDORADO. HE SAID NOT TO WORRY ABOUT IT, THE PAYMENTS WERE TAKEN CARE OF AND EVERYTHING. SO I TRUSTED HIM AND I SIGNED MY NAME TO THE LEASE PAPERS.

Q AFTER THE ELDORADO WAS THERE A '96 4-RUNNER, FORD 4-RUNNER?

A YES.

Q AND I WOULD ASSUME IT WAS IN THE SAME MODUS OPERANDI? HE TOLD YOU WHAT HE WANTED AND YOU SIGNED YOUR NAME?

A HE WENT UP -- HE HAD PICKED OUT THE CAR. EVERYTHING WAS DONE. I MEAN, THE PAPERWORK AND EVERYTHING WAS DONE. ALL HE DID WAS HAND ME SOME CASH AND I WENT UP TO THE DEALERSHIP, SIGNED MY NAME TO THE PAPERS THAT WERE ALREADY FILLED OUT AND HANDED THEM CASH AND HE DROVE OFF IN HIS NEW CAR.

Q AFTER THE 4-RUNNER, THERE WAS A '97 CHEROKEE, JEEP CHEROKEE; IS THAT CORRECT?

A YES.

Q AND HOW DID THAT COME ABOUT?

A I HAD GOTTEN INTO AN ACCIDENT, A CAR ACCIDENT WITH MY CAR AND SMASHED UP THE FRONT END PRETTY BAD. I WAS DRIVING A RENTAL FOR A WHILE AND HE WANTED TO GET ME ANOTHER CAR. I HAVE ALWAYS LIKED THE JEEPS AND WHAT NOT. HE SAID, "WE CAN DO IT. I WILL TAKE CARE OF IT."

I TOLD HIM I COULDN'T MAKE THE PAYMENTS ON IT, THAT THEY WERE TOO HIGH. I WAS 19 YEARS OLD AND I WAS TRYING TO PAY A MORTGAGE AND A BRAND NEW CAR PAYMENT WORKING AS A HAIRDRESSER. IT WASN'T EASY.

AND I TOLD HIM THE PAYMENTS WERE TOO HIGH. HE SAID NOT TO WORRY ABOUT IT, HE WOULD HELP. SO I WENT

AHEAD AND GOT THE CHEROKEE WITH HIM. WELL, HE HELPED, USING WHATEVER MEANS NECESSARY.

Q AND WASN'T THERE ALSO A '76 CORVETTE STINGRAY?

A YES, THERE WAS.

Q TELL US ABOUT THAT.

A WHEN HE HAD ASKED ME TO BORROW THE MONEY, THE MONEY THAT HE SAID HE NEEDED BECAUSE HE HAD GOTTEN INTO SOME TROUBLE, APPARENTLY THAT MONEY WENT TO GO BUY THAT CAR. HE PAID CASH FOR THE CAR AND THEN HE SOLD IT A COUPLE OF WEEKS LATER, AND I NEVER SAW ANY OF THE MONEY FOR IT.

Q AND ALSO I BELIEVE THERE WAS AN INCIDENT WITH A LEXUS; IS THAT CORRECT?

A YES.

Q AND THE LEXUS IS -- YOU WENT TO THOMPSON'S LEXUS UP IN PENNSYLVANIA SOMEWHERE; IS THAT CORRECT?

A I MET MICHAEL UP THERE LATER. HE WAS UP THERE FIRST.

Q AND THEN YOU WENT AND MET HIM UP THERE?

A HE CALLED ME UP THERE TO COME SEE THE CAR AND FILL OUT THE CREDIT AP.

Q AND YOU FILLED OUT THE CREDIT AP AND SIGNED YOUR NAME AND WROTE A CHECK?

A RELUCTANTLY, YES.

Q BUT YOU WROTE THE CHECK?

A I DID. HE SAID THE MONEY WOULD BE THERE IN THE ACCOUNT. HE HAD DEPOSITED BAD CHECKS INTO THE ACCOUNT. SO WHEN THE CHECKS WENT TO THE BANK, THEY BOUNCED. I BOUNCED A LITTLE OVER $8,000 IN CHECKS TO THE LEXUS DEALERSHIP, WHICH I AM NOW PAYING BACK TO THEM MONTHLY.

Q NOW, THIS WAS DURING THIS PERIOD OF TIME WHEN YOU ALL WERE TOGETHER, UP UNTIL ABOUT NOVEMBER OF '97; IS THAT CORRECT? OR '96, WHICHEVER.

A YEAH, TECHNICALLY I GUESS WE WERE STILL TOGETHER. I MEAN, OUR BELONGINGS WERE STILL IN THE SAME HOUSEHOLD. IT HAD BEEN PRETTY ROCKY THOUGH.

Q AND HE LEFT YOU AT THAT POINT AND WENT TO LIVE WITH YELENA; IS THAT RIGHT?

A HE WAS STAYING WITH HER AND VARIOUS OTHER PEOPLE ON AND OFF.

Q AT SOME POINT HE JUST PACKED UP AND LEFT AND WENT BACK TO YELENA, DIDN'T HE?

A I GUESS. I DON'T KNOW. ACTUALLY, NO, I'M SORRY. HE WAS INCARCERATED UP THERE AND WHEN HE DID GET OUT, HE NEEDED A PLACE TO STAY AND I TOOK HIM IN; AND ME AND HIM STAYED WITH A GIRLFRIEND OF MINE FOR, I DON'T KNOW, A MONTH AND A HALF MAYBE.

Q SO YOU ARE OUT OF A GREAT DEAL OF MONEY; IS THAT RIGHT?

A I GUESS YOU COULD SAY THAT. I DIDN'T HAVE IT FOR VERY LONG.

Q BUT YOU HAD IT AT ONE POINT AND IT'S GONE NOW?

A THAT'S TRUE.

Q AND I BELIEVE THAT YOU INDICATED SOMETHING ABOUT YOU HAD SOME INVESTMENTS, MONEY MARKET ACCOUNTS AND OTHER THINGS, AND THAT THEY, TOO, WERE MISSING ALSO OR NO LONGER IN EXISTENCE?

A CORRECT.

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MS. PIVERO, THE $50,000 OR SO THAT YOU HAD PRIOR TO KNOWING MR. ALEKSEY, WHERE DID THAT MONEY COME FROM?

A I WAS IN A SEVERE CAR ACCIDENT IN '95 AND I LOST SOMEBODY VERY CLOSE TO ME, AND IT CAME FROM HIS INSURANCE COMPANY.

Q SO HOW WAS THAT MONEY INVESTED WHEN YOU MET MR. ALEKSEY?

A HOW WAS IT INVESTED?

Q YES, MA'AM.

A I HAD MUTUAL FUNDS WITHIN THE UNITED STATES AND OVERSEES IN SOME ASIAN COMPANIES. I HAD A MONEY MARKET ACCOUNT AND I HAD TWO I.R.A.S SET UP FOR

MYSELF.
Q HOW LONG DID IT TAKE MR. ALEKSEY TO GO THROUGH THE $50,000?
A IT WAS GONE IN, I WOULD SAY, PROBABLY ABOUT TWO MONTHS, IF NOT LESS THAN THAT.
Q NOW, OBVIOUSLY YOU BECAME UPSET OR HURT OVER --
A I WAS UPSET BUT I NEVER LEFT HIS SIDE. I STUCK BY HIM.
Q DID YOU BECOME UPSET ENOUGH TO COME INTO COURT TO SAY SOMETHING THAT ISN'T TRUE ABOUT THAT TELEPHONE CALL?
A NO. I HAVE NEVER DENIED TALKING TO HIM. I HAVE NEVER TURNED HIM DOWN WHEN HE HAS COME TO VISIT ME. THERE IS NO REASON WHY. I HAVE NO REASON TO HURT HIM. YES, HE TOOK A LOT OF MONEY FROM ME, BUT IT WASN'T THAT IMPORTANT.
Q THE CALL THAT YOU RECEIVED ON JANUARY THE 2ND, SOMETIME AROUND EIGHT, 8:30 P.M., IS WHAT YOU TOLD THE JURY THE ABSOLUTE TRUTH?
A YES, IT IS.
Q BAYAN ALEKSEY TOLD YOU HE MURDERED A POLICE OFFICER?
A HE DID.
Q THANK YOU.
SOLICITOR BAILEY: THAT'S ALL I HAVE.

THE COURT: DOES THAT CONCLUDE THE EXAMINATION OF THIS WITNESS?

MR. SIMS: ONE MOMENT, YOUR HONOR.

(PAUSE.)

RECROSS EXAMINATION

BY MR. SIMS:

Q THIS CALL THAT YOU RECEIVED FROM HIM WAS ON A CELL PHONE; IS THAT CORRECT?

A YES.

Q IT WASN'T ON A REGULAR HOUSE PHONE WHERE THERE WOULD BE DIFFICULTY, NO INTERFERENCES OR ANYTHING?

A NO.

MR. SIMS: THAT'S ALL I HAVE.

SOLICITOR BAILEY: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. MAY THIS WITNESS BE EXCUSED?

SOLICITOR BAILEY: YES, SIR.

THE COURT: YOU ARE EXCUSED. THANK YOU.

SOLICITOR BAILEY: YOUR HONOR, PRIOR TO CALLING MY NEXT WITNESS, I WOULD LIKE TO PUBLISH AN EXHIBIT THAT IS ALREADY IN EVIDENCE IF I MAY. GIVE ME A SECOND TO RETRIEVE IT.

(PAUSE.)

THE COURT: YOU DESIRE TO PUBLISH A

DOCUMENT IN EVIDENCE?

SOLICITOR BAILEY: YES, SIR, STATE'S 70, YOUR HONOR. THOSE ARE SOME PHONE RECORDS THAT MR. WEINER INTRODUCED YESTERDAY.

THE COURT: THEY ARE IN THE RECORD. YOU MAY PUBLISH THEM, YES, SIR.

SOLICITOR BAILEY: I'M NOT SURE IF WE CAN ZOOM IN.

THE COURT: IF YOU CAN'T ZOOM IN, YOU ARE PERMITTED TO GO FORWARD AND VERIFY THE LINE YOU ARE READING FROM.

SOLICITOR BAILEY: YOUR HONOR, LET ME DO IT THIS WAY IF I MIGHT, JUST HAND THIS TO THE FOREMAN SINCE IT'S NOT SHOWING UP TOO WELL ON HERE AND DIRECT HIS ATTENTION TO SPECIFIC PARTS OF IT.

THE COURT: ALL RIGHT, SIR.

MR. SIMS: YOUR HONOR, WE NEED TO KNOW WHICH ONES.

SOLICITOR BAILEY: THIS IS EXHIBIT 70. I AM REFERRING TO PAGE 3.

THE COURT: MY NOTES REFLECT THAT IT IS ALREADY IN EVIDENCE.

MR. SIMS: YES, SIR, I JUST NEED TO BE ABLE TO FOLLOW IT.

SOLICITOR BAILEY: THE THIRD LINE DOWN HAS

THE NUMBER CALLED, AREA CODE 215 -- WAIT ONE SECOND -- 215-852-4360. THE DATE IS JANUARY 2ND, 1998. THE TIME IN MILITARY TIME IS 20:26, WHICH IS 8:26 P.M. AND THE CALL ENDING AT 8:30 P.M.

AND THEN THE FIFTH LINE, THE SAME NUMBER CALLED, AREA CODE 215-852-4360, JANUARY 2ND, 1998. MILITARY TIME 21:42 OR 9:42 P.M., ENDING AT 9:44, BOTH CALLS BEING MADE TO MS. PIVERO'S NUMBER.

THE COURT: YES, SIR.

SOLICITOR BAILEY: I NEXT CALL IRA PARNELL.

IRA BYRD PARNELL, JR., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: WOULD YOU SPELL YOUR LAST NAME FOR THE COURT REPORTER.

THE WITNESS: MY NAME IS IRA BYRD PARNELL, P-A-R-N-E-L-L, JR.

SOLICITOR BAILEY: GIVE ME A SECOND TO PULL SOME OF THESE OUT IF I MIGHT.

(PAUSE.)

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. PARNELL, YOU ARE EMPLOYED BY S.L.E.D.?

A YES, SIR, I AM.

Q WHAT DO YOU DO FOR S.L.E.D.?

A I AM SUPERVISOR OF THE FIREARM AND TOOL MARK

IDENTIFICATION LABORATORY AT S.L.E.D. HEADQUARTERS IN COLUMBIA.

Q HOW LONG HAVE YOU WORKED IN FIREARMS AT S.L.E.D.?

A TWENTY-FIVE YEARS.

Q AND VERY BRIEFLY WHAT TRAINING HAVE YOU HAD IN FIREARMS?

A I HAVE A DEGREE FROM THE UNIVERSITY OF SOUTH CAROLINA. I UNDERWENT A TWO-YEAR INTERNSHIP PROGRAM AT S.L.E.D UNDER THE TUTELAGE OF THREE COURT QUALIFIED FIREARMS EXAMINERS.

I HAVE ATTENDED COUNTLESS SEMINARS, SCHOOLS, SPECIALIZED COURSES. I TOURED FIREARMS MANUFACTURING FACILITIES. I HAVE WATCHED GUNS BEING MADE. I HAVE DONE MANY HUNDREDS OF THOUSANDS OF INDIVIDUAL COMPARISONS AND TESTIFIED APPROXIMATELY 490 TIMES IN COURT.

SOLICITOR BAILEY: YOUR HONOR, I WOULD TENDER MR. PARNELL AS AN EXPERT IN THE FIELD OF FIREARMS.

MR. STONE: HE IS ABSOLUTELY AN EXPERT. NO PROBLEM.

THE COURT: I FIND HIM SO QUALIFIED.

Q MR. PARNELL, I WANT TO CALL YOUR ATTENTION TO THE ITEMS THAT ARE IN FRONT OF YOU. THAT WOULD BE A

NINE MILLIMETER BRYCO PISTOL, WHICH I THINK IS STATE'S 5, AND FIVE SHELL CASINGS THAT ARE IN FRONT OF YOU IN THOSE TINS THAT AGENT BAKER TESTIFIED HE RECOVERED FROM I-95, THE SCENE OF THE HOMICIDE, AND FOUR BULLETS REMOVED FROM THE AUTOPSY OF SERGEANT LINGARD, A BOX, NINE MILLIMETER AMMUNITION BOX, SITTING IN FRONT OF YOU THERE, AND A BAG OF BULLETS PREVIOUSLY TESTIFIED AS COMING OUT OF THE BOX THERE. WOULD YOU STATE WHETHER OR NOT IN THE COURSE OF YOUR DUTIES AT S.L.E.D YOU HAVE EXAMINED ALL THOSE ITEMS.

A (PAUSE.) YOU SEALED THESE UP PRETTY GOOD. BEAR WITH ME JUST A MOMENT. YES, SIR, I HAVE EXAMINED THE CONTENTS OF STATE'S EXHIBITS 37, 38, 39, 40 AND 41, WHICH ARE FIVE FIRED NINE MILLIMETER LUGER CALIBER CARTRIDGE CASES.

I HAVE ALSO EXAMINED THE FOUR FIRED NINE MILLIMETER BULLETS CONTAINED IN STATE'S EXHIBIT 16, 17, 18 AND 19. I HAVE EXAMINED AND TEST FIRED STATE'S EXHIBIT NUMBER 5. THE CONTENTS OF STATE'S EXHIBIT 59 AND THE BOX, STATE'S EXHIBIT 53, I HAVE NOT EXAMINED.

Q WHEN YOU RECEIVED THE PISTOL, THE BRYCO NINE MILLIMETER PISTOL, DID YOU RECEIVE ANY LIVE ROUNDS WITH THAT?

A YES, SIR, I DID. IF I MIGHT REFER TO MY NOTES. I RECEIVED EIGHT UNFIRED NINE MILLIMETER CALIBER CARTRIDGES WITH IT.

Q WOULD YOU STATE WHETHER OR NOT THE EIGHT UNFIRED NINE MILLIMETER BULLETS THAT YOU RECEIVED ALONG WITH THE PISTOL ARE CONSISTENT IN CALIBER WITH THE BAG OF BULLETS THAT HAVE BEEN PREVIOUSLY TESTIFIED AS COMING OUT OF THAT BOX FROM THE BACK SEAT OF THE MUSTANG.

A YES, SIR. THESE ARE THE SAME CALIBER, THEY ARE THE SAME BRAND AND THE SAME CONSTRUCTION AS THE EIGHT UNFIRED CARTRIDGES RECEIVED WITH STATE'S EXHIBIT 5.

Q AND WITH RESPECT TO A SPENT SHELL CASING, IS THERE A WAY THAT YOU CAN DETERMINE WHETHER OR NOT A PARTICULAR SHELL CASING WAS FIRED BY A PARTICULAR WEAPON?

A YES, SIR. THERE ARE A NUMBER OF DIFFERENT AREAS IN WHICH A FIRED SHELL CASING IS MARKED BY THE WEAPON IN WHICH IT'S FIRED. IN THIS PARTICULAR CASE WHEN EXAMINING STATE'S EXHIBITS 37, 38, 39, 40 AND 41, I WAS ONLY REQUIRED TO USE ONE AREA OF COMPARISON, WHICH WAS THE FIRING PIN IMPRESSION. WE USUALLY GO THROUGH THESE PARTICULAR DIFFERENT AREAS IN ORDER. THAT WAS THE FIRST ONE I CAME TO AND THEY ALL MATCHED.

Q WHEN YOU COMPARED THE SPENT SHELL CASINGS FOUND

AT THE SCENE OF SERGEANT LINGARD'S MURDER WITH THE SHELL CASINGS WHEN YOU TEST FIRED THAT GUN, CAN YOU TESTIFY WHETHER OR NOT THOSE FIRED SHELL CASING FROM THE MURDER SCENE WERE FIRED BY THE BRYCO PISTOL, STATE'S 5?

A YES, SIR, THEY WERE.

Q TO THE EXCLUSION OF ANY OTHER GUN?

A THAT'S CORRECT.

Q THE IMPRINT OF THE FIRING PIN, IS THAT UNIQUE TO THAT WEAPON?

A YES, SIR. THE FIRING PIN IMPRESSION OF A FIREARM IS VERY MUCH LIKE A FINGERPRINT IS TO AN INDIVIDUAL PERSON. THE INDIVIDUAL SIGNATURE OF EACH INDIVIDUAL FIREARM IS UNIQUE TO THAT PARTICULAR GUN.

I TEST FIRED STATE'S EXHIBIT 5 USING AMMUNITION SIMILAR TO THOSE RECEIVED AS EVIDENCE, THE SAME CALIBER BRAND, ET CETERA. I THEN MICROSCOPICALLY COMPARED MY TESTS WITH EACH OTHER TO BE SURE THAT THEY WERE MARKED JUST ALIKE.

I THEN MICROSCOPICALLY COMPARED MY TESTS WHICH I KNEW CAME FROM STATE'S EXHIBIT 5 TO THE EVIDENCE RECEIVED HERE, STATE'S EXHIBIT 37 THROUGH 41. AND IN EACH CASE AND INDIVIDUALLY, I WAS ABLE TO CONCLUDE THAT THESE FIVE SHELL CASINGS WERE FIRED BY STATE'S EXHIBIT 5, THIS PISTOL, AND BY NO OTHER FIREARM.

Q I WANT TO CALL YOUR ATTENTION NEXT TO THE FOUR FIRED BULLETS REMOVED FROM THE BODY OF SERGEANT LINGARD FROM DR. JOEL SEXTON FROM THE AUTOPSY IN NEWBERRY. DO YOU HAVE THOSE IN FRONT OF YOU?

A YES, SIR, I DO.

Q IS THERE A WAY THAT YOU CAN TELL WHETHER OR NOT A FIRED BULLET, A RECOVERED FIRED BULLET, COMES FROM A PARTICULAR WEAPON?

A YES, SIR, WE CAN.

Q HOW DO YOU DO THAT?

A THERE IS A VERY, VERY LENGTHY EXPLANATION THAT I CAN GO INTO.

Q GIVE US THE SHORT VERSION.

A SUFFICE IT TO SAY THAT DURING MANUFACTURE, A GUN BARREL HAS METAL REMOVED IN A PATTERN THAT IS NOT NECESSARILY CHARACTERISTIC OR UNIQUE TO A PARTICULAR GUN, BUT IT IS A SERIES OF WHAT WE CALL LANDS AND GROOVES.

Q LET ME INTERRUPT YOU FOR JUST A SECOND. THIS IS STATE'S 20 PREVIOUSLY IN EVIDENCE, A PHOTOGRAPH OF ONE OF THOSE FOUR FIRED BULLETS THERE.

A YES, SIR.

Q DOES THAT ILLUSTRATE WHAT YOU ARE TRYING TO DESCRIBE TO THE JURY AS FAR AS GROOVES?

THE WITNESS: MAY I APPROACH, YOUR HONOR,

THE SET OVER HERE?

THE COURT: YES, SIR.

(WITNESS LEAVES THE WITNESS STAND.)

A WHEN I SPEAK OF LANDS AND GROOVES, THIS AREA RIGHT HERE (INDICATING) LOOKS TO BE LIKE A LITTLE SQUARE BOTTOM TROUGH. THAT'S WHAT HE CALL A LAND IMPRESSION.

IT IS ACTUALLY IMPRESSED INTO THE SIDE OF THE BULLET BY A FORMATION INSIDE THE GUN BARREL. THE AREA BETWEEN THE LAND IMPRESSIONS, BETWEEN ONE LAND IMPRESSION AND ANOTHER LAND IMPRESSION, THE AREA IN BETWEEN HERE, IS WHAT WE CALL A GROOVE.

IT'S SIMPLY AN AREA WHERE METAL IS REMOVED FROM THE INSIDE OF THE BARREL. THE LANDS ARE RAISED PLACES IN THE BARREL. THE GROOVES ARE AREAS BETWEEN THE LANDS. THE COMBINATION OF LANDS AND GROOVES IS WHAT WE CALL RIFLING.

ONE MORE THING, IF YOU WILL NOTE THE ANGLE OF THE LAND IMPRESSIONS IS SLIGHTLY TO THE RIGHT, DOWN FROM WHERE YOU LOOKING AT IT; BUT IF YOU STOOD THAT BULLET ON ITS BASE AND LOOKED AT THE LAND AND GROOVE IMPRESSIONS, THEY WOULD BE ANGLED TO THE RIGHT. THIS IS WHAT WE CALL THE DIRECTION OF TWIST.

ALL THESE ARE TECHNICAL TERMS BUT WHAT HAPPENS IS WHEN A CARTRIDGE IS INTRODUCED INTO THE BARREL OF

THE GUN, THE TRIGGER IS PULLED WITH THE SAFETY BEING OFF, ALL THE THINGS YOU HEARD ABOUT FROM OUR TRACE EXAMINERS HAPPENS.

THE PRIMER IS EXPLODED, THE POWDER GOES OFF, GASSES EXPEL THE BULLET OUT OF THE BARREL. THE FIRED SHELL CASING IS EXTRACTED AND EJECTED FROM THE GUN, AND THE BULLET IS SENT OUT OF THE BARREL WHICH HAS BEEN GRIPPED BY THIS RIFLING.

THE RIFLING IMPARTS INDIVIDUAL MARKS THAT ARE UNIQUE TO EACH AND EVERY RIFLED FIREARM. THESE MARKS ARE LEFT INSIDE THE GUN BARREL BY VARIOUS PROCESSES OF MANUFACTURE. THEY ARE RANDOM, THEY ARE UNINTENTIONAL AND THEY ARE UNIQUE TO EACH FIREARM.

I TEST FIRED STATE'S EXHIBIT 5, THIS PISTOL, INTO OUR WATER TANK. THE WATER TAKES AWAY NOR ADDS ANY MARKS OFF THE BULLETS THAT ARE FIRED INTO IT. IT JUST SLOWS IT DOWN.

I MICROSCOPICALLY COMPARED ALL MY TESTS TO EACH OTHER. I CONCLUDED THAT ALL THE BULLETS THAT I FIRED OUT OF STATE'S EXHIBIT 5 WERE MARKED INDIVIDUALLY AND UNIQUELY THE SAME WAY.

I THEN COMPARED STATE'S EXHIBITS 16, 17, 18 AND 19, FOUR BULLETS REMOVED FROM TROOPER LINGARD'S BODY, TO THOSE TESTS WHICH I FIRED OUT OF THIS PISTOL. IN EACH CASE I FOUND THE INDIVIDUAL UNIQUE AND MATCHING

CHARACTERISTICS SUFFICIENT FOR ME TO SAY THAT THESE FOUR BULLETS, STATE'S EXHIBITS 16, 17,18 AND 19, WERE ALL FIRED OUT OF STATE'S EXHIBIT 5, THIS PISTOL, AND FROM NO OTHER FIREARM.

Q THANK YOU, SIR.

SOLICITOR BAILEY: THAT'S ALL I HAVE.

CROSS EXAMINATION

BY MR. STONE:

Q LET ME JUST ASK YOU ONE BRIEF QUESTION. THAT GUN IF IT JAMS, HOW DO YOU CLEAR IT?

A DEPENDING ON THE TYPE OF JAM, NORMALLY YOU JUST RACK THE SLIDE BACK.

Q AND IT POPS IT OUT AND THEN AUTOMATICALLY LOADS ANOTHER SHELL IN?

A IF THAT IS THE SIMPLE KIND OF JAM THAT YOU HAVE, YES, THAT CAN HAPPEN.

MR. STONE: NOTHING ELSE.

THE COURT: ANYTHING FURTHER?

SOLICITOR BAILEY: NO, SIR. MAY HE BE EXCUSED?

THE COURT: YES, SIR. THANK YOU SO MUCH. YOU ARE EXCUSED.

THE WITNESS: THANK YOU, YOUR HONOR.

SOLICITOR BAILEY: YOUR HONOR, I WILL RECALL BRETT BAKER. HE WILL BE MY FINAL WITNESS.

THE COURT: ALL RIGHT, SIR.

DONALD BRETT BAKER, HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. BAKER, LET ME ASK YOU A COUPLE OF THINGS I MAY HAVE ASKED YOU PREVIOUSLY, BUT IN ALL HONESTY I DON'T KNOW WHETHER I DID OR NOT. DID YOU EVER IN THE COURSE OF YOUR WORK ON THIS CASE USING YOUR VEHICLE MEASURE THE DISTANCE FROM THE INTERSECTION OF HIGHWAY 301 AND I-95 WHERE SERGEANT LINGARD WAS KILLED TO THE K-MART PARKING LOT IN SUMMERVILLE?

A NO, SIR, I NEVER MEASURED THAT DISTANCE.

Q AND WITH RESPECT TO THE CONDITION OF THE MUSTANG WHEN YOU SAW IT AT THE PARKING LOT, SPECIFICALLY THE DRIVER'S WINDOWS, WHERE WAS THAT AS FAR AS BEING UP OR DOWN WHEN YOU SAW THE CAR?

A THE DRIVER'S WINDOW WAS APPROXIMATELY HALFWAY DOWN, MAYBE EIGHT TO TWELVE INCHES. SO THERE WAS STILL A GOOD PORTION OF THE WINDOW STILL RAISED.

Q AND YOU HAVE BEEN PREVIOUSLY QUALIFIED AS AN EXPERT IN FINGERPRINTS, SO I WON'T GO THROUGH THAT AGAIN WITH YOU.

A YES, SIR.

Q I WILL ASK YOU. WHAT IS A MAJOR -- WHAT ARE MAJOR CASE PRINTS? WHAT DO YOU MEAN BY THAT?
A MAJOR INKED CASE PRINTS ARE FINGER AND PALM PRINTS. WE DISCUSSED THE FINGERS CONSIST OF RAISED AND RECESSED PORTIONS. AGAIN, THE RAISED PORTIONS FOR SIMPLISTIC PURPOSES ARE THE PORTIONS WE ARE CONCERNED WITH.

YOU TAKE BLACK PRINTER'S INK, ROLL IT ACROSS THE RAISED RIDGES IN A CONTROLLED MANNER. WE TRANSFER THOSE RIDGES TO A PIECE OF PAPER OR A FINGERPRINT CARD AND USE THOSE LATER AS A STANDARD.

IN OTHER WORDS, WE USE THOSE AS KNOWN INKED FINGERPRINTS OF SUCH AND SUCH SO WE WILL KNOW WHEN COMPARING THEM TO UNKNOWN FINGERPRINTS THAT WE FIND ON ITEMS OF EVIDENCE AT A CRIME, WE ARE COMPARING THEM BACK TO IT.

Q DID YOU TAKE MAJOR CASE PRINTS, INCLUDING PALM PRINTS, FROM BAYAN ALEKSEY AND GLORYVEE BLACKWELL?
A YES, SIR, I SURE DID.
Q LET ME HAND YOU THESE AND SEE IF YOU CAN IDENTIFY THEM.
A YES, SIR, THESE ARE PHOTOGRAPHS OF THE ACTUAL -- OF THE MAJOR CASE PRINTS I HAD TAKEN.

SOLICITOR BAILEY: WE OFFER THESE.

MR. STONE: CAN WE APPROACH JUST BRIEFLY?

THE COURT: YES, SIR.

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

MR. STONE: I OBJECT TO THESE ON THE BASIS OF MY FORMER SEARCH ISSUE.

THE COURT: SUBJECT TO THAT I WILL ADMIT IT.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

(THE BENCH CONFERENCE WAS CONCLUDED.)

(STATE'S EXHIBITS NUMBER 76, MAJOR CASE PRINTS OF PEREZ; AND NUMBER 77, MAJOR CASE PRINTS OF ALEKSEY, ARE RECEIVED INTO EVIDENCE.)

Q MR. BAKER, I WILL HAND YOU STATE'S 76, WHICH IS THE MAJOR CASE PRINTS YOU TOOK FROM GLORYVEE BLACKWELL, AND STATE'S 77, MAJOR CASE PRINTS OF THE DEFENDANT, BAYAN ALEKSEY.

A YES, SIR.

Q NOW, YOU TESTIFIED PREVIOUSLY ABOUT CERTAIN FINGERPRINTS OR LATENT LIFTS THAT YOU GOT OUT OF THE MUSTANG THE LAST TIME YOU TESTIFIED?

A YES, SIR.

Q LET ME HAND YOU THOSE. I HAND YOU STATE'S 49, 50 AND 51 AND ASK YOU TO TAKE ANOTHER LOOK AT THOSE AND SEE IF THOSE ARE THE PRINTS YOU TESTIFIED PREVIOUSLY YOU LIFTED FROM THE PASSENGER SIDE OF THE

MUSTANG.

A YES, SIR, THOSE ARE PRINTS I HAD LIFTED.

Q I WANT TO CALL YOUR ATTENTION TO STATE'S 5, WHICH I THINK MAY BE IN FRONT OF YOU, THE PISTOL. WOULD YOU STATE WHETHER OR NOT YOU ATTEMPTED TO LIFT ANY PRINTS OFF THAT PISTOL?

A YES, SIR, I DID ATTEMPT TO LIFT PRINTS OR DEVELOP PRINTS. I DID DEVELOP PRINTS ON THAT PISTOL.

Q DID YOU PHOTOGRAPH THOSE PRINTS?

A YES, SIR. PRIOR TO TRYING TO LIFT THEM ACTUALLY WITH TAPE, IT'S A PROCEDURE TO TRY TO PHOTOGRAPH THEM FIRST BECAUSE THERE IS A POTENTIAL FOR THEM BEING DESTROYED AND NOT BEING ABLE TO BE LIFTED. SO I DID PHOTOGRAPH THAT, YES, SIR.

Q I WILL HAND YOU FIVE PHOTOGRAPHS AND ASK IF THESE ARE PHOTOGRAPHS THAT YOU TOOK.

A YES, SIR, THESE ARE PHOTOGRAPHS OF LATENT PRINTS I HAD DEVELOPED.

Q ARE ANY OF THOSE PHOTOGRAPHS OF LATENT PRINTS OF THE EXTERIOR OF THAT PISTOL, STATE'S 5?

A YES, SIR, THAT WOULD BE DESIGNATED AS ITEM 34.1, WHICH BEARS CASE NUMBER L.9811 AND ALSO MY INITIALS.

Q IS THAT THE ONLY ONE OFF THE EXTERIOR OF THE GUN?

A NO, SIR. I BELIEVE THERE WAS ONE OTHER PRINT

DEVELOPED ON THE EXTERIOR OF THE GUN; HOWEVER, IT WAS INSUFFICIENT FOR IDENTIFICATION.

Q THE OTHER FOUR THAT YOU HAVE THERE ARE NOT FROM THE EXTERIOR OF THE GUN. THIS IS THE ONLY ONE OUT OF THE FIVE?

A THAT IS FROM THE OUTSIDE, YES, SIR.

Q IS THIS AN ACCURATE DEPICTION OF WHAT YOU OBSERVED WHEN YOU TOOK THE PHOTOGRAPH OF THE LATENT IMPRESSION OFF THIS GUN?

A YES, SIR, THAT IS DEFINITELY AN ACCURATE DEPICTION.

SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 78, PHOTOGRAPH OF FINGERPRINT ON GUN, IS RECEIVED INTO EVIDENCE.)

Q I HAND YOU STATE'S 78. WOULD YOU STATE WHETHER OR NOT, REFERRING TO STATE'S 78, THE PRINT THAT YOU LIFTED OFF THE OUTSIDE OF THAT GUN, DID YOU COMPARE THAT TO THE KNOWN PRINTS OF GLORYVEE BLACKWELL?

A YES, SIR, I DID.

Q FOR A MATCH?

A NO, SIR, IT WAS NOT A MATCH TO GLORYVEE BLACKWELL.

Q DID YOU COMPARE THAT PRINT OFF THE GUN TO THE

KNOWN PRINTS THAT YOU TOOK FROM THE DEFENDANT BAYAN ALEKSEY?

A YES, SIR, I SURE DID AND IT WAS A MATCH.

Q AND WHEN YOU SAY IT'S A MATCH, DO YOU HAVE AN EXHIBIT THAT YOU CAN SHOW THE JURY HOW YOU DECLARE A MATCH WHEN YOU DO FINGERPRINTS?

A YES, SIR, I CAN. I CAN GIVE SOME FOUNDATION. WHEN CONDUCTING COMPARISONS AND TRYING TO EFFECT AN IDENTIFICATION, THERE ARE SEVERAL THINGS WE LOOK FOR. AGAIN, I STATED THAT WE HAVE RAISED PORTIONS OF SKIN ON OUR FINGERS AND PALMS.

THEY DON'T JUST RUN FROM ONE SIDE OF THE HAND TO THE OTHER CONTINUOUSLY. THEY ARE OFTENTIMES BROKEN, FRAGMENTED. THESE BREAKS IN THE RIDGES ARE THE THINGS THAT WE LOOK FOR IN IDENTIFYING CHARACTERISTICS.

THESE IDENTIFYING CHARACTERISTICS ARE UNIQUE TO EACH AND EVERY ONE OF US. THEY OCCUR IN DIFFERENT PLACES ON EACH ONE OF US. THESE ARE THE THINGS THAT MAKE THEM UNIQUE AND THOSE ARE THE THINGS WE LOOK FOR IN THE LATENT OR UNKNOWN THINGS OR PRINTS WHICH ARE DEVELOPED ON A GUN OR ANOTHER ITEM OF EVIDENCE. WE COMPARE IT TO THE KNOWN INKED PRINTS. IF WE ARE ABLE TO FIND THAT SAME PRINT, WE HAVE WHAT WE CALL AN IDENTIFICATION.

Q BEFORE WE GET TO THE ENLARGEMENT YOU PREPARED, LET ME PUT THIS UP ON THE SCENE HERE, STATE'S 78. CAN YOU ORIENT THE JURY TO WHAT THEY ARE LOOKING AT.
A YES, SIR. POINTING STRAIGHT UP WILL BE THE GUN IN THIS POSITION HERE (INDICATING)
Q LOOKING DOWN FROM THE TOP?
A LOOKING DOWN FROM THE TOP, THIS (INDICATING) WOULD BE THE SITE PORTION THAT YOU SEE UP TOP WITH THE SCALE JUST BELOW THIS PORTION HERE (INDICATING).
Q WHERE IS THE PRINT ON THAT PICTURE?
A THE PRINT IS THE DARKENED COLOR AREA RIGHT ABOVE THE SCALE.
Q WHAT IS THAT A -- YOU SAID YOU IDENTIFIED THAT AS BAYAN ALEKSEY'S PRINT?
A I IDENTIFIED THAT.
Q WHAT PART OF HIS HAND IS THAT PRINT FROM?
A YES, SIR, I IDENTIFIED THAT PORTION OF THE PRINT AS BEING THE INTERDIGITAL AREA ON PART OF THE PALM DIRECTLY UNDER THE RIGHT INDEX FINGER, THE NUMBER TWO FINGER.
Q AND I WAS ASKING PREVIOUSLY ABOUT AN EXHIBIT THAT YOU PREPARED TO SHOW THE POINTS OF COMPARISON?
A YES, SIR.
Q DO YOU HAVE THAT WITH YOU?
A YES, SIR, I SURE DO.

Q LET ME ASK THIS FIRST. IS THAT TAKEN FROM THIS PRINT HERE?
A YES, SIR. THE LABEL LATENT PRINT IS THE TERM AGAIN TO DESCRIBE THOSE PRINTS THAT ARE DEVELOPED ON ITEMS OF EVIDENCE. WE DON'T KNOW WHO THEY BELONG TO WHEN WE START DEVELOPING THEM. THIS ONE LATENT IS AN ENLARGEMENT OF THAT ACTUAL PHOTOGRAPH THERE, OF THE PRINT THAT WAS DEVELOPED ON THE OUTSIDE PORTION OF THAT GUN JUST BELOW THE SITE.
Q ON THE RIGHT WHERE IT SAYS INKED PRINT, WHAT IS THAT?
A THAT IS THE KNOWN INKED PRINT OF BAYAN ALEKSEY, THIS (INDICATING) BEING THE INDEX FINGER. IT WOULD BE LIKE THIS HERE (INDICATING). IT WAS AN ENLARGEMENT OF THAT PARTICULAR AREA THAT WAS FOUND TO BE IDENTIFIED TO THE PRINT ON THE GUN.
SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER THIS INTO EVIDENCE AT THIS TIME.
MR. STONE: NO OBJECTION.
THE COURT: WITHOUT OBJECTION.
(STATE'S EXHIBIT NUMBER 79, FINGERPRINT CHART COMPARISON, IS RECEIVED INTO EVIDENCE.)
Q MR. BAKER, IF YOU WOULD, PLEASE STEP ON UP HERE.
A (WITNESS LEAVES THE WITNESS STAND.)
Q INDICATE TO THE JURY HOW YOU DECLARED THAT A

MATCH.

A AGAIN, I DISCUSSED WE LOOK FOR CERTAIN POINTS OF COMPARISON. WE LOOK FOR THINGS SUCH AS ENDING RIDGES. THAT'S WHERE A RIDGE STARTS AND THEN ABRUPTLY ENDS.

NUMBER ONE HERE ON THE LATENT WAS POINTING TO AN ENDING RIDGE. ONE ON THE INKED PRINT IS POINTING TO THAT SAME ENDING RIDGE LOCATED ON THE PALM OF BAYAN ALEKSEY.

IF WE FOLLOW THAT ONE DOWN SEVEN RIDGES, WE COME TO ANOTHER ENDING RIDGE, WHICH IS LABELED NUMBER TWO. ON THE INKED IMPRESSION, YOU FOLLOW IT DOWN SEVEN RIDGES AND YOU COME TO AN ENDING RIDGE, NUMBER TWO.

WE FOLLOW THAT ONE BACK UP ONE RIDGE, DOWN TO THE RIGHT, YOU HAVE NUMBER THREE, WHICH IS AN ENDING RIDGE. AGAIN OVER HERE, GO UP ONE RIDGE TO NUMBER TWO. FOLLOW IT DOWN, WE HAVE THE ENDING RIDGE.

THIS IS DONE CONTINUOUSLY. SO WHATEVER PRINT WE DEVELOP, WE LOOK TO SEE HOW MANY POINTS OF IDENTIFICATION, THE CLARITY OF THAT UNIQUE CHARACTERISTIC OR PRINT. SO WE ARE LOOKING FOR THE CLARITY OF THAT CHARACTERISTIC.

IF WE CAN FIND THOSE SAME CHARACTERISTICS THAT ARE PRESENT IN THE LATENT PRINT OR THE UNKNOWN AND THE INKED PRINT AND THEY ARE IN THE SAME UNIT

RELATIONSHIP OCCURRING WITH THE SAME FREQUENCY, WE HAVE WHAT WE CALL AN IDENTIFICATION.

THAT IS SAYING THAT THAT PRINT THAT WAS LEFT HERE IS BAYAN ALEKSEY'S, EXCLUSIVE OF ALL OTHER PERSONS IN THE WORLD. HIS PRINT WAS HERE (INDICATING).

Q SO YOU PLOTTED 12 POINTS OF COMPARISON. WERE THERE MORE POINTS OF COMPARISON THAN THE 12?

A YES, SIR, THERE WAS IN EXCESS OF 12 CHARACTERISTICS PRESENT.

Q YOU PLOTTED 12 FOR ILLUSTRATION PURPOSES?

A JUST FOR ILLUSTRATION PURPOSES. THE ENLARGEMENTS HERE ARE FOR ILLUSTRATION PURPOSES TO HELP DEMONSTRATE WHAT WAS USED TO EFFECT AN IDENTIFICATION AND HOW COMPARISONS ARE DONE.

Q IF YOU WOULD PLEASE TAKE THE PISTOL, STATE'S 5, AND AGAIN HOLDING THE GUN IN YOUR LEFT HAND USING YOUR RIGHT HAND, SHOW THE JURY WHERE THAT PRINT WOULD HAVE BEEN.

A IT WOULD BE PLACED IN A POSITION LIKE THIS (INDICATING).

Q IF YOU ARE HOLDING THE GUN WITH YOUR LEFT HAND AND YOU WANT TO COCK THE GUN, PULL THE SLIDE BACK AND PUT A ROUND IN THE CHAMBER, HOW WOULD PLACE YOUR HAND?

A YOU COULD PLACE IT JUST LIKE THIS (INDICATING).
Q GO AHEAD AND DO IT.
A (WITNESS COMPLIES.)
Q HAVE A SEAT PLEASE.
A (WITNESS RESUMES THE WITNESS STAND.)
Q COULD YOU GO AHEAD AND PULL THE MAGAZINE OUT OF THAT, PLEASE.
A IF I CAN GET IT OUT OF HERE. (WITNESS COMPLIES.)
Q DID YOU LIFT ANY PRINTS OFF THE MAGAZINE?
A YES, SIR, I SURE DID.
Q DID YOU PHOTOGRAPH THOSE?
A YES, SIR, THEY ARE PHOTOGRAPHED.
Q DO YOU HAVE, OF THOSE FOUR PICTURES THAT I GAVE, DO ANY OF THEM SHOW THE PHOTOGRAPHS OF THE LATENT LIFTS OFF THE CLIP?
A YES, SIR. AGAIN THE LIFT ON TOP WAS 34.1. I HAVE SOME OTHERS THAT ARE LISTED AS 34.3, AS BEING 34.3 HERE (INDICATING).
Q THAT'S OFF THE?
A THAT'S OFF THE MAGAZINE.
SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER THIS INTO EVIDENCE.
MR. STONE: NO OBJECTION.
THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBIT NUMBER 80, PHOTOGRAPH OF FINGERPRINT OF MAGAZINE, IS RECEIVED INTO EVIDENCE.)

Q ON NUMBER 80 WOULD YOU STATE WHETHER OR NOT YOU COMPARED THE LATENT PRINT OFF THE MAGAZINE OR CLIP WITH THE KNOWN PRINTS OF GLORYVEE BLACKWELL.

A YES, SIR, I DID.

Q WAS IT A MATCH?

A NO, SIR, IT WAS NOT.

Q DID YOU COMPARE THAT WITH THE KNOWN PRINTS OF BAYAN ALEKSEY?

A YES, SIR, I DID.

Q WAS IT A MATCH?

A YES, SIR.

Q TO WHICH?

A I WOULD HAVE TO REFER TO MY REPORT. I DON'T REMEMBER THAT RIGHT OFFHAND EXACTLY. THIS WAS IDENTIFIED WITH THE NUMBER 7 FINGER. THAT IS THE LEFT INDEX OF BAYAN ALEKSEY.

Q SO THE INDEX FINGER OF THE LEFT HAND?

A YES, SIR.

Q NOW, I WANT TO CALL YOUR ATTENTION NEXT TO STATE'S 53 AND 54 WHICH YOU PREVIOUSLY TESTIFIED AS BEING A BOX OF NINE MILLIMETER AMMUNITION THAT YOU RETRIEVED OUT OF THE BACK SEAT OF THE FORD MUSTANG.

A THAT'S CORRECT.

Q WHEN YOU RETRIEVED THAT, WAS THIS PLASTIC INSERT INSIDE OF THE BOX?
A YES, SIR. THAT PLASTIC INSERT WAS IN THERE AND 49 OF THE 50 CARTRIDGES WERE CONTAINED ALSO INSIDE THE PLASTIC INSERT.
Q DID YOU ATTEMPT TO LIFT ANY LATENT PRINTS OFF EITHER THE BOX OR THE PLASTIC INSERT?
A YES, SIR, I DID.
Q WERE YOU ABLE TO GET ANY LATENT LIFTS OFF EITHER ONE OF THEM?
A YES, SIR.
Q OFF OF WHICH ONE?
A OFF OF THE PLASTIC INSERT.
Q DID YOU PHOTOGRAPH THAT?
A YES, SIR, I DID PHOTOGRAPH THOSE.
Q CAN YOU PULL THAT FOR ME, PLEASE, SIR.
A THOSE ARE IDENTIFIED AS 36.1, 36.4 AND 36.5.
Q THESE ARE ALL LATENT LIFTS OFF THE PLASTIC INSERT?
A YES, SIR, OFF THE PLASTIC INSERT. AS A MATTER OF FACT, ONE OF THE SCALE STICKERS WHICH WAS SHOWING THE ORIENTATION STILL EXISTS ON THE PLASTIC INSERT.

SOLICITOR BAILEY: YOUR HONOR, WE OFFER THESE.

MR. STONE: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBITS NUMBER 81 THROUGH 83, PHOTOGRAPHS OF THE FINGERPRINT ON PLASTIC INSERT, ARE RECEIVED INTO EVIDENCE.)

Q I WILL HAND YOU THESE BACK, MR. BAKER. DID YOU COMPARE THOSE LATENT LIFTS ON THE PLASTIC INSERT IN THE AMMUNITION BOX AGAINST THE KNOWN PRINTS OF GLORYVEE BLACKWELL?

A YES, SIR, I DID COMPARE THOSE AGAINST GLORYVEE BLACKWELL'S.

Q WAS IT A MATCH TO HER PRINTS?

A HER PRINTS WERE NOT FOUND TO BE LOCATED ANYWHERE ON THE PLASTIC INSERT.

Q DID YOU COMPARE THE LIFTS ON THE PLASTIC INSERT OF THE AMMUNITION BOX TO THE KNOWN PRINTS OF BAYAN ALEKSEY?

A YES, SIR, I DID.

Q WHAT WERE THE RESULTS?

A I IDENTIFIED THE NUMBER THREE FINGER, WHICH IS THE RIGHT MIDDLE FINGER, OF BAYAN ALEKSEY ON THAT ITEM, AS WELL AS THE NUMBER TWO FINGER, WHICH IS THE RIGHT INDEX, THIS FINGER HERE (INDICATING).

I IDENTIFIED THE NUMBER SEVEN FINGER, WHICH IS THE LEFT INDEX, AS WELL AS THE NUMBER EIGHT FINGER, WHICH IS THE LEFT MIDDLE, ALL BEING CONTAINED ON THIS

PLASTIC INSERT.

Q NEXT, I WANT TO CALL YOUR ATTENTION TO THE LATENT LIFTS THAT YOU TESTIFIED YOU GOT FROM THE PASSENGER SIDE OF THE MUSTANG.

A YES, SIR.

Q THAT WOULD BE STATE'S 49, 50 AND 51. TELL THE JURY AGAIN WHERE YOU LIFTED THOSE PRINTS FROM.

A I WILL READ FROM MY REPORT. WHAT IS LISTED AS ITEM 39 TO ME AND EXHIBIT NUMBER 51 WAS LIFTED FROM THE WHITE FORD MUSTANG, PASSENGER SIDE DOOR WINDOW, OUTSIDE.

ITEM 40 BY MY NOTES AND EXHIBIT 50 WAS LISTED AS BEING FROM THE WHITE FORD MUSTANG, PASSENGER SIDE DOOR WINDOW, INSIDE. ITEM 41 FOR MYSELF AND EXHIBIT 49 WAS LISTED AS BEING FROM THE WHITE FORD MUSTANG, PASSENGER SIDE DOOR WINDOW, INSIDE.

Q ALL RIGHT, SIR.

A THESE WERE ALL OFF THE PASSENGER SIDE DOOR, INSIDE AND OUTSIDE THE WINDOW.

Q DID YOU COMPARE THOSE TO THE KNOWN PRINTS OF GLORYVEE BLACKWELL?

A YES, SIR, I DID.

Q AND WERE THEY A MATCH TO HER PRINTS?

A YES, SIR, THEY WERE.

Q MR. BAKER, WAS THERE ANY PART OF THE EXTERIOR OR

THE INTERIOR OF THAT MUSTANG THAT YOU FELT WAS SUITABLE FOR SOMEONE LEAVING A LATENT LIFT THAT YOU DIDN'T ATTEMPT TO GET A LIFT FROM?

A NO, SIR. AS I PREVIOUSLY STATED, WHEN I PROCESS A VEHICLE, I PROCESS THE INSIDE, THE OUTSIDE, COMPLETELY AND THOROUGHLY. THAT MEANS THE ENTIRE INSIDE OF THAT VEHICLE IS FUMED. AGAIN, THAT IS HEATING SUPERGLUE WHICH ADHERES TO THE MOISTURE IN THE PRINTS.

THEN BLACK POWDER IS APPLIED TO TRY TO MAKE THOSE PRINTS THAT WOULD BE PRESENT VISIBLE. THOSE WOULD BE EXAMINED AND ANYTHING THAT WAS SUITABLE FOR IDENTIFICATION WOULD BE LIFTED OR ANYTHING THAT WAS QUESTIONABLE FOR IDENTIFICATION WOULD BE LIFTED.

Q DID YOU FIND GLORYVEE BLACKWELL'S PRINTS ANYWHERE EXCEPT ON THE PASSENGER SIDE OF THAT FORD MUSTANG?

A NO, SIR, THERE IS NO IDENTIFIABLE PRINTS THAT WERE MADE TO GLORYVEE BLACKWELL OTHER THAN THESE ON THE PASSENGER SIDE.

Q DID YOU IDENTIFY ANY LATENT PRINTS FROM THE EXTERIOR OF THE NINE MILLIMETER PISTOL OTHER THAN BAYAN ALEKSEY'S PRINTS ON THE EXTERIOR OF THAT PISTOL?

A NO, SIR, I DID NOT.

Q DID YOU IDENTIFY ANYBODY'S PRINTS FROM THE MAGAZINE OR CLIP WITHIN THE HANDLE OF THAT PISTOL TO ANYBODY BESIDE BAYAN ALEKSEY?

A NO, SIR, HE WAS THE ONLY PERSON IDENTIFIED ON THAT PISTOL.

Q AND DID YOU FIND ANYBODY'S PRINTS ON THE AMMUNITION BOX OR THE INSERT IN THE AMMUNITION BOX OTHER THAN BAYAN ALEKSEY'S PRINTS?

A NO, SIR, I DID NOT.

Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

CROSS EXAMINATION

BY MR. STONE:

Q ANOTHER WAY OF PUTTING WHAT THE SOLICITOR JUST ASKED YOU IS YOU DIDN'T BRING US ANY LATENT PRINT LIFTS FROM THE DRIVER'S SIDE OF THE CAR; IS THAT RIGHT?

A SIR, I DIDN'T FEEL THERE WAS ANY SUITABLE FOR IDENTIFICATION. SO, NO, SIR, THERE WAS NONE LIFTED.

Q WOULD YOU HAND ME THE GUN. THERE WAS A PRINT --

A DO YOU WANT THE MAGAZINE ALSO?

Q NO, SIR, JUST THE GUN. THERE WAS A PRINT LIFTED FROM THE TRIGGER GUARD OF THIS GUN; IS THAT CORRECT?

A THERE WAS A PRINT PHOTOGRAPHED FROM THE TRIGGER GUARD OF THAT GUN, YES, SIR.

Q BUT YOU CAN'T TELL US IF THAT IS BAYAN ALEKSEY'S PRINT OR GLORYVEE PEREZ BLACKWELL'S PRINT, CAN YOU?
A NO, SIR. IT'S NOT SUITABLE FOR IDENTIFICATION, WHICH MEANS I CAN NEITHER EXCLUDE OR INCLUDE ANY PERSON AS HAVING LEFT THAT PRINT.
Q AND YOU DON'T HAVE ANY FIBER TESTING, ANY HAIRS, ANYTHING LIKE THAT, TAKEN FROM THE DRIVER'S SIDE OF THE CAR EITHER; DO YOU?
A NO, SIR. WITH BOTH OCCUPANTS BEING LOCATED IN THE CAR, HAIR IS ONE OF THOSE ITEMS THAT WOULD FREELY FLOAT AROUND. I DID NOT FEEL IT WAS PROBATIVE TO TAKE HAIR OR FIBERS FROM INSIDE THE VEHICLE.
Q SO HAD YOU PULLED HAIR AND FIBERS, THERE IS A POSSIBILITY THERE WOULD HAVE BEEN A HAIR FIBER FROM GLORYVEE PEREZ IN THE DRIVER'S SEAT?
A IT'S FEASIBLE TO FIND HAIR AND FIBER OF BOTH INDIVIDUALS THROUGHOUT THE CAR, AS WELL AS ANY OTHER PERSONS WHO HAVE EVER BEEN IN THE CAR.
Q SO YOU DIDN'T THINK -- THEREFORE IT WASN'T A GOOD IDEA TO BRING ANY OF THAT EVIDENCE IN HERE?
A SIR, IT WASN'T PROBATIVE, MEANING IT WOULD NOT HAVE SHED ANY LIGHT ON ANY PART OF THE INVESTIGATION THAT I WAS CONDUCTING.
Q IN YOUR INVESTIGATION AND IN YOUR ASSUMPTION?
A SIR, IN THE WAY I HAVE BEEN TRAINED, THAT IS

CORRECT, IT WAS NOT PROBATIVE.

Q NOW, THE FINGERPRINT THAT YOU SHOWED US, WHERE IS THAT CARD? DO YOU KNOW WHAT I'M TALKING ABOUT, THE THING THAT YOU PREPARED?

A THE FINGERPRINT CHART?

Q YES, SIR.

A IT'S AN ENLARGEMENT.

Q THESE ARE JUST ENLARGEMENTS FROM THE PRINT ITSELF?

A YES, SIR.

Q WOULD YOU COME DOWN HERE BECAUSE I DON'T WANT TO TALK BEHIND YOUR BACK.

A (WITNESS LEAVES THE WITNESS STAND.)

Q IS THIS -- PUT MY RIGHT HAND IN COMPARISON TO THAT, PLEASE, IF YOU DON'T MIND.

A (WITNESS COMPLIES.) THIS (INDICATING) WOULD BE YOUR RIGHT INDEX FINGER. THIS (INDICATING) IS THE PORTION JUST BELOW IT. AGAIN, THIS IS ENLARGED.

Q YES, SIR, I UNDERSTAND.

A IT WOULD BE APPROXIMATELY LIKE THIS (INDICATING).

Q THE CREASE THAT IS HERE (INDICATING), IS THAT THIS CREASE (INDICATING) OR THIS CREASE (INDICATING)?

A IT WOULD BE THIS CREASE RIGHT HERE (INDICATING), JUST PRIOR TO THE PALM AT THE END OF THE DIGIT.

Q SO THIS IS THE HAND AS YOU PHOTOGRAPHED IT THERE?
A YES, SIR. THIS IS A PHOTOGRAPH OF THE ACTUAL INKED IMPRESSION. SO THIS WOULD BE THE IMPRESSION PHOTOGRAPH.
Q AND IN THE FORMATION THAT I HAVE MY HAND AT THIS TIME?
A YES, SIR.
Q AND THE GUN IS IN THIS DIRECTION; IS THAT RIGHT? I WANT TO MAKE SURE AND I AM NOT TRYING TO PUT WORDS IN YOUR MOUTH.
A THIS (INDICATING) IS THE SITE.
Q THE SITE IN THAT SHAPE RIGHT THERE (INDICATING)?
A THAT'S CORRECT.
Q THIS CREASE IS SOMEWHERE ON THIS IN THIS FASHION (INDICATING)?
A IT WOULD BE -- THAT CREASE WOULD NOT BE PRESENT, NO, SIR. THE CREASE WOULD BE LOCATED SOMEWHERE IN THIS DIRECTION OVER HERE (INDICATING).
Q I AM TALKING ABOUT -- WELL, THIS IS THE PHOTOGRAPH.
A YES, SIR. THAT CREASE WOULD NOT BE --
Q I SEE. I SEE.
A THE SURFACE HERE IS APPROXIMATELY, YOU KNOW, A QUARTER OF A INCH WIDE. THE PRINT WAS LIFTED IN THIS

FASHION HERE (INDICATING) BELOW THE FLEXION CREASE.

Q BY THE RIGHT HAND?

A IT'S ON THE RIGHT HAND, YES, SIR.

Q BY THE RIGHT HAND PUTTING IT IN THIS DIRECTION (INDICATING)?

A IN THAT DIRECTION SIGHTLY TOWARD THE MIDDLE OF THE RIGHT PALM.

Q IN THIS DIRECTION (INDICATING). I DON'T HAVE ANYTHING ELSE. THANK YOU.

SOLICITOR BAILEY: NO REDIRECT.

THE COURT: THIS OFFICER MAY NOW BE EXCUSED.

SOLICITOR BAILEY: YOUR HONOR, PRIOR TO THE STATE RESTING, I WOULD LIKE TO CHECK WITH THE COURT REPORTER AND MAKE SURE I HAVE GOT EVERYTHING THAT HAS BEEN MARKED FOR IDENTIFICATION IN EVIDENCE.

THE COURT: YOU MAY DO SO. WHILE YOU ARE DOING THAT, I WILL LET THE JURY GO TO THE JURY ROOM. YOU MAY BE EXCUSED FOR A MOMENT.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: GENTLEMEN FOR THE DEFENSE, SOLICITOR BAILEY INDICATES THAT HE HAS CONCLUDED THE TESTIMONY ON BEHALF OF THE STATE AND AS SOON AS THE JURY RETURNS WILL REST AT THAT MOMENT. TO KEEP THE JURY FROM HAVING TO COME OUT AND GO RIGHT BACK IN,

CAN WE HEAR ANY MOTIONS AT THIS TIME?

MR. STONE: YOUR HONOR, WE MOVE FOR A DIRECTED VERDICT ON THE BASIS OF OUR PREVIOUS MOTIONS AND OBJECTIONS, AS WELL AS THE FACT THAT AT THIS POINT THERE IS NO EVIDENCE IN THE RECORD THAT IS CREDIBLE CONCERNING THE ACTUAL SHOOTING OF TROOPER LINGARD.

THERE HAS BEEN NUMEROUS OBJECTIONS MADE AT EVEN PRIOR HEARINGS OTHER THAN THIS CONCERNING THE CONFESSION WHICH WE STILL THINK IS INVOLUNTARY AND SHOULD BE EXCLUDED. FOR THOSE REASONS WE ASK THE COURT TO GRANT A DIRECTED VERDICT AT THIS TIME. IF I MAY HAVE JUST A MOMENT, YOUR HONOR, TO CONFER WITH COUNSEL.

THE COURT: FIRST, LET ME ANSWER THAT RIGHT QUICK LIKE FOR YOU. THAT MOTION IS RESPECTFULLY DENIED. THERE IS AMPLE EVIDENCE, IF BELIEVED BY THE JURY, TO CONSIDER THE GUILT OF THIS DEFENDANT.

FIRST, THERE IS A CONFESSION. SECONDLY, THERE IS AN ADMISSION TO A THIRD PARTY, IF BELIEVED. LASTLY, THERE IS TESTIMONY, IF BELIEVED, THAT HE WAS THE DRIVER. IT'S UNCONTROVERTED THAT THE FATAL SHOT CAME FROM THE DRIVER'S SIDE.

ALL OF THESE MATTERS, OF COURSE, ARE FOR THE JURY TO DETERMINE AS FINDERS OF THE FACTS. THE

CASE WILL BE SUBMITTED TO THE JURY ON THE ISSUE OF MURDER.

MR. STONE: OF COURSE, WE REITERATE ANY OF OUR PREVIOUS MOTIONS THAT WE HAD MADE AND OBJECTIONS AS WELL.

THE COURT: MY RULING IN THOSE REGARDS ARE A MATTER OF THE RECORD.

MR. STONE: YES, SIR.

THE COURT: ANY OTHER MOTIONS?

MR. STONE: NO, SIR, NO MOTIONS AT THIS TIME.

THE COURT: DOES THE DEFENSE DESIRE TO PRESENT A DEFENSE?

MR. STONE: WE WILL PUT WITNESSES UP, YES, SIR.

THE COURT: CAN YOU TELL ME AT THIS TIME WHETHER OR NOT THE DEFENDANT DESIRES TO TESTIFY? I WANT TO GET ON THE RECORD HIS RIGHT TO TESTIFY AND NOT TO TESTIFY.

MR. STONE: I WOULD FIRST ASK YOU, YOUR HONOR, TO INSTRUCT THE DEFENDANT AND EXPLAIN TO HIM ON THE RECORD HIS RIGHT TO TESTIFY. AND, OF COURSE, THE FACT YOU WILL INSTRUCT THE JURY IF HE CHOOSES NOT TO TESTIFY NOT TO TAKE THAT INTO CONSIDERATION. IF WE CAN CONFER WITH HIM BRIEFLY, WE WILL GIVE YOU AN

ANSWER.

THE COURT: I WILL MAKE THE INQUIRY NOW AND YOU CAN DECIDE LATER IF YOU CARE TO, FOR REASONS OF STRATEGY, WHETHER HE DECIDES TO TESTIFY OR NOT. HAVE THE DEFENDANT STAND.

MR. DEFENDANT, I AM GOING TO ASK OF YOU SEVERAL QUESTION. AND IF THERE IS ANYTHING THAT YOU DON'T UNDERSTAND ABOUT WHAT I TELL YOU, PLEASE LET ME KNOW. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: WE ARE AT THAT STAGE IN THE TRIAL OF THIS CASE WHEREIN YOU ARE ON TRIAL FOR MURDER, WHEREIN THE STATE HAS NOW PRODUCED ITS EVIDENCE.

WE TURN TO THE DEFENSE FOR SUCH EVIDENCE AS YOU AND YOUR ATTORNEYS CARE TO PRESENT. IN SUCH A DEFENSE, YOU HAVE THE ABSOLUTE RIGHT TO TESTIFY UNDER OATH ON THIS STAND. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: YOU HAVE THE ABSOLUTE RIGHT NOT TO TESTIFY IF THAT BE YOUR DECISION. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: IN THE EVENT THAT YOU ELECT NOT TO TESTIFY, THE JURY WOULD BE CHARGED BY ME THAT THEY

CANNOT AND MUST NOT PERMIT THE FACT THAT YOU FAILED TO TESTIFY TO ENTER INTO THEIR DELIBERATIONS IN ANY WAY WHATSOEVER. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: THERE IS ABSOLUTELY NO ADVERSE INFERENCE TO BE DRAWN FROM YOUR FAILURE TO TESTIFY. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: NOW, THE RIGHT TO TESTIFY AND THE RIGHT NOT TO TESTIFY BELONGS EXCLUSIVELY TO YOU. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: OBVIOUSLY YOU WOULD CONFER WITH YOUR ESTEEMED COUNSEL IN THAT REGARD, BUT THE DECISION ULTIMATELY IS YOURS. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: DO YOU THEN UNDERSTAND YOUR ABSOLUTE RIGHT TO TESTIFY UNDER OATH?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: DO YOU UNDERSTAND YOUR ABSOLUTE RIGHT NOT TO TESTIFY?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: AT AN APPROPRIATE MOMENT, YOU TELL ME WHAT HIS DECISION IS WITH REGARDS TO HIS

DESIRE TO TESTIFY OR NOT TESTIFY.

MR. STONE: YES, SIR.

THE COURT: IS THERE ANYTHING ABOUT THESE INSTRUCTIONS THAT I HAVE GIVEN YOU THAT YOU DO NOT UNDERSTAND?

DEFENDANT ALEKSEY: NO, YOUR HONOR.

THE COURT: LET BE IT KNOWN NOW THAT OBVIOUSLY YOU WOULD DISCUSS WITH COUNSEL THIS IMPORTANT DECISION, BUT ULTIMATELY THE DECISION IS YOURS.

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: NOW, ANY FURTHER INSTRUCTIONS THAT YOU DESIRE THAT I GIVE THIS DEFENDANT ON THIS ISSUE?

MR. STONE: NO, SIR, YOUR HONOR. I THINK YOU HAVE COVERED IT. I DO THINK IT WOULD PROBABLY BE BEST IF WE DISCUSS THAT WITH HIM AT THIS TIME AND GAVE YOU AN ANSWER AT THIS TIME.

THE COURT: YOU MAY DO SO.

MR. STONE: CAN WE HAVE A FEW MINUTES?

THE COURT: YES, SIR.

MR. STONE: MAY WE STEP BACK HERE?

THE COURT: YES, SIR. I WANT COUNSEL AND I WANT SECURITY.

MR. SIMS: YES, SIR.

MR. STONE: YES, SIR, THAT'S FINE.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: LET'S GET BACK ON THE RECORD. YES, SIR.

MR. STONE: THE DEFENSE IS READY TO PROCEED, YOUR HONOR. AT THIS POINT THE DEFENDANT DOES NOT INTEND TO TESTIFY.

THE COURT: IS THAT YOUR DECISION?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: AND THAT IS YOUR OWN DECISION?

DEFENDANT ALEKSEY: YES, SIR.

THE COURT: NOT TO TESTIFY. THE COURT CERTAINLY WILL ACCEPT IT. YOU MAY BE SEATED. AT THE CONCLUSION OF THE TESTIMONY, THE STATE WILL HAVE THE FIRST ARGUMENT, THE DEFENSE WILL HAVE THE LAST ARGUMENT AND THE DEFENDANT HIMSELF MAY MAKE AN ARGUMENT IN THE FIRST PHASE IF HE CHOOSES TO. WE WILL EXPLORE HIS DECISION ON THAT AT THE APPROPRIATE TIME UPON THE RECORD.

MR. STONE: YES, SIR.

THE COURT: I TELL YOU AT THE OUTSET, THEY WILL GO FIRST, YOU WILL CONCLUDE AND HE HAS THE ABSOLUTE RIGHT TO MAKE AN ARGUMENT TO THE JURY IF HE DESIRES.

MR. STONE: AND HE MAY DO THAT BEFORE OR

AFTER OUR FINAL CLOSING?

THE COURT: SIR?

MR. STONE: WILL HE BE ALLOWED TO DO THAT BEFORE OR AFTER OUR CLOSING?

THE COURT: I WILL LET YOU DECIDE, YOU AND HIM DECIDE.

MR. STONE: THAT'S ALL.

THE COURT: AS LONG AS HE KNOWS IT WILL BE HIS DECISION AS TO WHETHER -- I WILL LET IT BE HIS DECISION AS TO WHETHER HE DOES IT OR NOT.

MR. STONE: THANK YOU.

THE COURT: YOU HAVE AGREED THAT HE WILL REST IN THE PRESENCE OF THE JURY AND THEN WE WILL PROCEED?

MR. STONE: YES, SIR. I JUST WANT TO MAKE SURE THAT THE DIRECTED VERDICT MOTION IS PRESERVED AFTER HE ACTUALLY PHYSICALLY CLOSES HIS CASE.

THE COURT: THE CASE IS PHYSICALLY CLOSED AS WE SPEAK, EXCEPT HE JUST WANTS TO DO IT IN FRONT OF THE JURY.

SOLICITOR BAILEY: YES, SIR.

THE COURT: THE COURT RECOGNIZES THAT THE DIRECTED VERDICT MOTION HAS BEEN MADE AT THE CONCLUSION OF ALL THE TESTIMONY. DO YOU AGREE WITH THAT?

SOLICITOR BAILEY: YES, SIR.

THE COURT: BRING THE JURY IN.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT, AS IS THE DEFENDANT. ANY FURTHER WITNESSES FOR THE STATE?

SOLICITOR BAILEY: THE STATE HAS NO FURTHER WITNESSES, YOUR HONOR. THE STATE RESTS AT THIS POINT.

THE COURT: THE STATE WILL REST AT THIS TIME. NOW WE WILL PROCEED WITH THE DEFENSE. YOU MAY PROCEED GENTLEMEN.

MR. SIMS: YOUR HONOR, AT THIS TIME THE DEFENSE WOULD CALL DR. BACHMAN.

CLERK: STATE YOUR FULL NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: DR. DAVID BACHMAN, B-A-C-H-M-A-N.

DAVID BACHMAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SIMS:

Q DR. BACHMAN, WHERE ARE YOU PRESENTLY EMPLOYED?

A I'M A PROFESSOR OF NEUROLOGY AND PSYCHIATRY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON.

Q LET ME ASK YOU A QUESTION. WHERE DID YOU GET YOUR UNDERGRADUATE DEGREE AND IN WHAT AREA?

A MY UNDERGRADUATE DEGREE WAS FROM CORNELL UNIVERSITY IN ITHACA, NEW YORK. IT WAS IN BIOLOGY. MY MEDICAL DEGREE WAS FROM EMORY UNIVERSITY IN ATLANTA. I HAVE A RESIDENCY TRAINING IN NEUROLOGY AT EMORY IN ATLANTA AND THEN FELLOWSHIP TRAINING IN BEHAVIORAL NEUROLOGY AT BOSTON UNIVERSITY SCHOOL OF MEDICINE IN BOSTON.

Q WERE YOU ON ANY FACULTIES ALSO DURING THIS PERIOD OF TIME?

A I HAVE BEEN ON THE FACULTY OF THE BOSTON UNIVERSITY SCHOOL OF MEDICINE BEFORE COMING TO CHARLESTON IN 1989.

Q AND YOUR SPECIALTY OR YOUR DEGREE IS IN WHAT AREA?

A I HAVE A MEDICAL DEGREE WITH A RESIDENCY, BOARD CERTIFIED RESIDENCY, IN NEUROLOGY AND THEN FELLOWSHIP TRAINING IN BEHAVIORAL NEUROLOGY.

Q IN SOUTH CAROLINA -- HAVE YOU BEEN BOARD CERTIFIED IN SOUTH CAROLINA AND IF SO IN WHAT AREA?

A I AM LICENSED TO PRACTICE MEDICINE IN SOUTH CAROLINA, AND I AM PRACTICING AS -- I HAVE A DUAL APPOINTMENT TO THE DEPARTMENT OF NEUROLOGY AND ALSO THE DEPARTMENT OF PSYCHIATRY AT THE MEDICAL

UNIVERSITY.

MR. SIMS: YOUR HONOR, AT THIS TIME WE MOVE TO HAVE HIM QUALIFIED AS A BOARD CERTIFIED PSYCHIATRIST AND WITH HIS SUBSPECIALTY IN NEUROLOGY.

THE COURT: DO YOU CARE TO EXAMINE ON THE ISSUE OF QUALIFICATION AT THIS TIME?

SOLICITOR BAILEY: NOT ON THE ISSUE OF QUALIFICATIONS, YOUR HONOR.

THE COURT: I FIND HIM THUSLY QUALIFIED.

Q DR. BACHMAN, DID YOU HAVE AN OPPORTUNITY TO REVIEW THE TRAUMA RECORDS OF BAYAN ALEKSEY FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A YES, SIR, I DID.

Q I BELIEVE THEY WERE LISTED AS JUSTIN MATEEKI?

A THAT'S CORRECT.

Q IN REVIEWING THOSE RECORDS, WOULD YOU GIVE US OR TELL US WHAT, IF ANYTHING, THAT YOU FOUND AT THAT TIME.

A SURE, I WOULD BE HAPPY TO. THOSE RECORDS INCLUDED RECORDS FROM THE EMERGENCY MEDICAL TECHNICIANS WHO HAD ARRIVED ON THE SCENE OF THE ACCIDENT WHEN MR. ALEKSEY HAD BEEN ARRESTED. ALSO THERE WERE RECORDS FROM THE NURSES WHO HAD TAKEN THE INITIAL INTAKE WHEN MR. ALEKSEY ARRIVED IN THE EMERGENCY ROOM.

THERE WERE ALSO RECORDS FROM THE PHYSICIANS WHO HAD EXAMINED MR. ALEKSEY, AND THERE WERE A VARIETY OF X-RAYS AND C.A.T. SCANS THAT WERE DONE ON MR. ALEKSEY WHEN HE WAS TREATED AT THE MEDICAL UNIVERSITY. WOULD YOU LIKE ME TO SUMMARIZE THOSE FINDINGS?

Q YES, SIR, IF YOU WOULD PLEASE.

A THE EMERGENCY MEDICAL TECHNICIANS REPORTED THAT MR. ALEKSEY WAS UNCONSCIOUS AT THE SCENE OF THE ACCIDENT, BUT SHORTLY AFTER ARRIVING HE BEGAN TO REGAIN CONSCIOUSNESS. HE WAS A LITTLE BIT CONFUSED BUT GRADUALLY CLEARED.

AT THE TIME THEY SAW HIM, THEY WERE CONCERNED ABOUT THE NECK FRACTURE. THEY PUT HIM IN A NECK GUARD. THEY VERY CAREFULLY REMOVED HIM BECAUSE THEY WERE UNCERTAIN ABOUT ANY SORT OF INTERNAL INJURIES HE MAY HAVE.

AN I.V. WAS STARTED AND HE WAS TRANSPORTED TO THE TRAUMA UNIT AT THE MEDICAL UNIVERSITY. AT THE MEDICAL UNIVERSITY THEY CONTINUED TO PROTECT HIS NECK. THEY PUT A TUBE DOWN HIS NOSE INTO HIS STOMACH BECAUSE THEY WERE CONCERNED TO MAKE SURE HE DIDN'T HAVE ANY INTERNAL BLEEDING.

THEY ALSO TOOK A TUBE AND PUT IT IN HIS PENIS UP INTO HIS BLADDER, AGAIN TO CHECK TO MAKE SURE HE DIDN'T HAVE ANY INTERNAL BLEEDING. THEY TOOK SOME

EMERGENCY X-RAYS OF HIS NECK WHILE HE WAS LAYING THERE TO MAKE SURE THERE WERE NO ACUTE NECK FRACTURES.

WHEN THEY FOUND THAT THERE WERE NO ACUTE NECK FRACTURES, THEY SENT HIM FOR SEVERAL EXAMINATIONS, INCLUDING A C.A.T. SCAN OF THE BRAIN, C.A.T. SCAN OF THE ABDOMEN AND A C.A.T. SCAN OF THE PELVIS.

HE WAS ALSO SEEN BY THE TRAUMA DOCTOR AT THE MEDICAL UNIVERSITY, AND HE WAS ALSO SEEN BY THE NEUROSURGEON IN CONSULTATION AT THE MEDICAL UNIVERSITY.

Q AND BASED UPON THE REVIEW OF THOSE RECORDS, YOU DETERMINED THAT HIS DIAGNOSIS WAS WHAT?

A WELL, HE HAD SUFFERED A CONCUSSION AND HE ALSO HAD SUFFERED A CERVICAL STRAIN INJURY. THERE WAS NO EVIDENCE OF A FRACTURE, AND THE OTHER SCANS OF HIS INTERNAL ORGANS WERE NEGATIVE. HE WAS DISCHARGED FROM THE MEDICAL UNIVERSITY WEARING A CERVICAL COLLAR.

Q WHY WOULD, IN LIGHT OF THE KINDS OF EXAMINATIONS THAT HE WAS SUBJECTED TO, FOR WHAT REASON OR WHAT PURPOSE WOULD THEY DO THOSE KINDS OF EXAMINATIONS?

A WELL, IN SOMEBODY WHO IS AT THE SCENE OF A MAJOR ACCIDENT WHERE THEY HAVE LOST CONSCIOUSNESS -- AND HE ALSO HAD, I FAILED TO MENTION, A LACERATION, A CUT BY

HIS EYEBROW -- THAT THEY WOULD BE CONCERNED THAT HE WOULD HAVE SIGNIFICANT INJURY OR TRAUMA.

HE ALSO, IN NOTES, THAT ONCE HE REGAINED CONSCIOUSNESS HAD COMPLAINED OF SOME NECK PAIN AND ALSO COMPLAINED OF SOME NUMBNESS IN HIS HANDS TO THE NURSING STAFF WHEN HE WAS IN THE TRAUMA UNIT.

SO THEY WERE CONCERNED THAT HE MAY HAVE SUSTAINED A SPINAL CORD INJURY OR IN THE ACCIDENT SUSTAINED SOME OTHER SORT OF ORGAN INJURY OR FRACTURE.

Q THE EFFECT OF THAT KIND OF INJURY ON A PERSON'S ABILITY TO DEAL WITH STRESS, DO YOU HAVE AN OPINION ABOUT THAT?

A SURE. THAT'S OBVIOUSLY A SIGNIFICANT ORDEAL TO GO THROUGH, TO HAVE A CONCUSSION, ALTHOUGH TO RECOVER IN A PERIOD OF TIME, TO HAVE THAT KIND OF CERVICAL INJURY WOULD LEAVE SOMEBODY OFTENTIMES WITH A VARIETY OF SYMPTOMS FOR A PERIOD OF TIME AFTERWARD.

SOLICITOR BAILEY: YOUR HONOR, I THINK I WILL OBJECT TO HIM TESTIFYING UNLESS HE IS GETTING TO THE REASONABLE DEGREE OF MEDICAL CERTAINTY STANDARD. THERE IS NO INDICATION HE EXAMINED THIS MAN OR ANYTHING, AND I DON'T THINK HE IS TESTIFYING TO THE PROPER STANDARD.

THE COURT: JUST CLARIFY THAT.

MR. SIMS: YOUR HONOR, I CAN ASK HIM.

Q TO A REASONABLE DEGREE OF MEDICAL CERTAINTY WHAT WOULD THE --

THE COURT: AND YOU MAY INQUIRE AS TO YOUR CONCERNS ON CROSS EXAMINATION.

SOLICITOR BAILEY: YES, SIR.

Q WHAT WOULD BE THE EFFECT OF A PERSON WITH AN INJURY LIKE THAT?

A I THINK WITHIN A DEGREE OF MEDICAL CERTAINTY SOMEONE WHO HAS A CONCUSSION, HAS A VARIETY OF OTHER SYMPTOMS THAT PERSIST AFTER THE CONCUSSION, THOSE SYMPTOMS INCLUDE SUCH THINGS AS DECREASED ATTENTION, HEADACHE, OFTENTIMES A SENSE OF DIZZINESS, FATIGUE.

THOSE SYMPTOMS WOULD VERY LIKELY WITHIN A DEGREE OF MEDICAL CERTAINTY BE PRESENT AFTER SOMEONE HAS HAD THE SORT OF SIGNIFICANT TRAUMA THAT WAS DESCRIBED IN THE RECORDS THAT I REVIEWED ON MR. ALEKSEY.

Q WHEN YOU SAY FATIGUE, WHAT ARE YOU TALKING ABOUT? WHAT KIND OF FATIGUE?

A PATIENTS OFTEN HAVE DIMINISHED PHYSICAL ENDURANCE. PATIENTS FREQUENTLY HAVE INCREASED NEED TO SLEEP AND FEEL SLEEPY FOR A PERIOD OF TIME, MAYBE DAYS. SOMETIMES THESE SYMPTOMS MAY PERSIST FOR WEEKS FOLLOWING A SIGNIFICANT ACCIDENT OF THIS NATURE.

Q AND THAT FATIGUE THAT YOU TALKED ABOUT, WOULD

THAT ALSO TO A REASONABLE DEGREE OF MEDICAL CERTAINTY HAVE AN EFFECT UPON A PERSON TO HANDLE OR DEAL WITH STRESS?

A YES.

Q AND A STRESSFUL SITUATION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY WOULD HAVE WHAT EFFECT?

A THEIR TOLERANCE FOR PHYSICAL STRESS AND MENTAL STRESS WOULD BE DIMINISHED. THIS IS A VERY COMMON EXPERIENCE OF ANYONE WHO HAS SUSTAINED CONCUSSIVE INJURY, ESPECIALLY CONCUSSIVE INJURY COMBINED WITH A CERVICAL INJURY SUCH AS MR. ALEKSEY HAD.

MR. SIMS: ONE MOMENT, YOUR HONOR.

(PAUSE.)

Q IF YOU CAN, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, CAN YOU GIVE US AN OPINION AS TO HOW THIS WOULD BE AFFECTED IF A PERSON IS SUBJECTED TO INTERROGATION?

SOLICITOR BAILEY: JUDGE, I OBJECT, LACK OF FOUNDATION ON WHEN THE INTERROGATION TOOK PLACE, WHAT CIRCUMSTANCES. THIS IS NOT A TREATING PHYSICIAN. THIS IS PURE SPECULATION.

THE COURT: WELL, YOU WILL HAVE TO LAY SOME FOUNDATION AND THEN I WILL CONSIDER IT.

Q NOW, DO YOU DO KNOW THE DATE THAT HE WAS ADMITTED TO THE HOSPITAL, WHICH I BELIEVE IS

JANUARY 1ST; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND A PERSON OR -- FIRST, LET ME ASK YOU. I BELIEVE YOU DID TESTIFY A FEW MOMENTS AGO AS IT RELATED TO HOW LONG THESE SYMPTOMS MAY PERSIST?

A YES, SIR. THESE SYMPTOMS TYPICALLY WOULD PERSIST FOR A MINIMUM OF SEVERAL DAYS AND MAY PERSIST FOR WEEKS AND IN SOME CASES MONTHS, BUT CERTAINLY DAYS AT A MINIMUM.

Q AND IF A PERSON IS SUBJECTED TO ONE DAY AFTER THAT, JANUARY 2ND, ONE DAY AFTER HAVING BEEN IN THE HOSPITAL BEING SUBJECTED TO THAT KIND OF TRAUMA AND IS SUBJECTED TO AT THAT POINT AN INTERROGATION WHICH LASED OVER TWO HOURS, WHAT, IF ANY, EFFECT WOULD THAT HAVE ON THE PARTICULAR PERSON?

SOLICITOR BAILEY: YOUR HONOR, I OBJECT. HE JUST ISN'T QUALIFIED TO SAY. HE HAS NOT EXAMINED THIS PERSON. IT'S PURE SPECULATION.

MR. SIMS: YOUR HONOR, HE IS A NEUROLOGIST. HE STATED THAT HIS SUBSPECIALTY IS IN NEUROLOGY. HE HAS LAID A FOUNDATION THAT THESE KINDS OF SYMPTOMS CAN EXIST FOR AS MUCH AS TWO WEEKS AFTER THE EVENT. HE IS DEFINITELY QUALIFIED --

THE COURT: I WILL PERMIT YOU TO EXPRESS YOUR CONCERNS BY WAY OF CROSS EXAMINATION.

SOLICITOR BAILEY: YOUR HONOR, CAN HE PROFFER THIS BEFORE A DEFINITE RULING IS MADE ON THIS?

THE COURT: HAVE THE JURY STEP OUT A MOMENT, PLEASE.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: MR. BAILEY, AS YOU ARE WELL AWARE NOW, OUR COURTS HAVE GONE A LONG, LONG WAY IN PERMITTING EXPERT TESTIMONY NOW ON EVERY CONCEIVABLE SUBJECT.

I FRANKLY DISAGREE WITH SOME OF THE OPINIONS THAT HAVE COME WITH REGARDS TO EXPERT TESTIMONY, BUT THEY HAVE PERMITTED WIDE LATITUDE. YOU HAVE GOT TO TELL ME WHY WE CAN PERMIT THIS. IT'S FOR THE JURY --

SOLICITOR BAILEY: YES, SIR.

THE COURT: -- TO DETERMINE THE BELIEVABILITY OF IT.

SOLICITOR BAILEY: YOUR HONOR, I DON'T KNOW HOW FAR HE IS GOING. IF HE GOES TOO FAR WITH IT -- I AGREE WITH YOU THE COURT IS LIBERAL IN THIS REGARD -- BUT IF HE GOES TOO FAR, THE JURY IS GOING TO BE TAINTED BY IT. I JUST WANT TO SEE HOW FAR HE IS GOING SO YOUR HONOR CAN RULE ON WHETHER OR NOT --

THE COURT: WHAT YOU NEED TO ASK HIM

THOUGH, AND IT HAS NOT COME OUT YET, HAS HE EVER EXAMINED THIS DEFENDANT. HE IS GENERALIZING ABOUT PEOPLE WITH THIS SITUATION, BUT DOES IT AFFECT A PARTICULAR INDIVIDUAL THAT HE HAS EXAMINED.

MR. SIMS: YOUR HONOR, I DON'T -- HE HAS NEVER PHYSICALLY EXAMINED THIS DEFENDANT. HE HAS GONE THROUGH THE MEDICAL RECORDS AND HE ALSO HAS READ THE TRANSCRIPT OF THE INTERVIEW WHICH WAS HELD.

THE COURT: LET'S LET YOU GO ON WITH HIM AND I WILL SEE HOW FAR YOU CAN GO.

SOLICITOR BAILEY: CAN I ASK SOMETHING, JUDGE? IS HE GOING TO ASK THIS WITNESS TO GIVE AN OPINION ON WHETHER OR NOT THIS MAN WAS CAPABLE OF GIVING A VOLUNTARILY CONFESSION? IF IT IS, I STRENUOUSLY OBJECT.

THE COURT: NO, SIR, I WILL NOT LET THAT HAPPEN.

MR. SIMS: I WAS GOING TO ASK HIM TO A REASONABLE DEGREE OF MEDICAL CERTAINTY WHAT, IF ANY, EFFECT WOULD A TWO-HOUR INTERROGATION HAVE UPON SOMEONE WHO HAS HAD THIS KIND OF TRAUMA.

THE COURT: NOT THIS INDIVIDUAL, BUT SOMEONE?

MR. SIMS: YES, SIR.

THE COURT: HE CAN GIVE HIS OPINION, I

THINK, BUT NOT AS TO THIS SPECIFIC INDIVIDUAL BECAUSE HE NEVER EXAMINED HIM. LET'S SEE WHERE YOU ARE GOING WITH IT.

MR. SIMS: THAT'S MY QUESTION.

THE COURT: AS LONG AS YOU DO IT ON A GENERALIZED BASIS. I WILL PERMIT IT, MR. BAILEY.

MR. SIMS: THAT WOULD HAVE BEEN MY LAST AREA.

THE COURT: ALL RIGHT, SIR. BRING THE JURY BACK IN.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT. YOU MAY RESUME YOUR EXAMINATION, COUNSEL.

DIRECT EXAMINATION CONTINUED

BY MR. SIMS:

Q DR. BACHMAN, I JUST HAVE ONE OR TWO MORE QUESTION FOR YOU.

A YES, SIR.

Q TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, WHAT EFFECT, IF ANY, WOULD A TWO-HOUR INTERROGATION HAVE UPON A PERSON WITH CERTAIN KINDS -- WITH THOSE KIND OF INJURIES?

A TYPICALLY A TYPICAL INDIVIDUAL WHO HAS SUSTAINED THE SORTS OF INJURIES THAT THE DEFENDANT HAD SUSTAINED WOULD, AS I MENTIONED, HAVE SYMPTOMS OF

DECREASED ATTENTION, COMPLAINTS OF DIMINISHED MEMORY, FATIGUE, MAY HAVE SOME DIZZINESS, MAY HAVE SOME INCREASED NEED TO SLEEP --

SOLICITOR BAILEY: YOUR HONOR, I WILL OBJECT TO "MAY HAVE" BECAUSE THE STANDARD IS TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, AND MAY HAVE AIN'T THE SAME AS MEDICAL CERTAINTY.

THE COURT: I AM GOING TO LET HIM TESTIFY. I WILL LET THE JURY MAKE THAT DETERMINATION.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

A I WOULD BE HAPPY TO REPHRASE THAT IN THAT WITHIN A DEGREE OF MEDICAL CERTAINTY, AN INDIVIDUAL WHO HAD SUSTAINED AN INJURY AS DESCRIBED IN THE RECORDS OF MR. ALEKSEY WOULD TYPICALLY HAVE COMPLAINTS OF HEADACHES, NECK PAIN, DIMINISHED ATTENTION, FATIGUE, MAY HAVE OTHER SYMPTOMS, SUCH AS DIZZINESS. AND THAT CERTAINLY THEIR ABILITY TO PARTICIPATE IN ANY SORT OF PHYSICALLY OR MENTALLY STRENUOUS ACTIVITY WOULD BE LIMITED.

Q LET ME JUST GET YOU TO DO ONE THING. WOULD YOU TELL US WHAT THE FIELD OF NEUROLOGY INVOLVES.

A SURE. NEUROLOGY IS THAT BRANCH OF MEDICINE THAT HAS TO DO WITH INJURIES OR DISEASES OF THE BRAIN, CRANIAL NERVES, SPINAL NERVES, SPINAL CORD OR MUSCLES.

BEHAVIORAL NEUROLOGY, WHICH IS A PARTICULAR SUBSPECIALTY I AM INTERESTED IN, IS THAT FIELD OF NEUROLOGY THAT HAS TO DO WITH INJURY OR DISEASES OF THE BRAIN THAT AFFECT THINKING, INTELLECTUAL FUNCTIONING OR BEHAVIOR.

Q THANK YOU, DOCTOR. ANSWER ANY QUESTION THE STATE MAY HAVE.

A YES, SIR.

CROSS EXAMINATION

BY SOLICITOR BAILEY:

Q DOCTOR, JUST TO KIND OF CLARIFY A FEW THINGS HERE, YOU HAVE NEVER EXAMINED THIS MAN HERE, HAVE YOU, BAYAN ALEKSEY?

A NO, SIR, I HAVE NOT.

Q HAVE YOU BEEN ASKED BY THE DEFENSE TO EXAMINE HIM?

A I HAVE NOT.

Q HAVE YOU TALKED TO DR. CHANDLER WHO WAS ONE OF THE ATTENDING PHYSICIANS IN THE E.R. ABOUT THIS CASE?

A I DID NOT.

Q YOU DID NOT?

A NO, SIR.

Q HAVE YOU TALKED TO THE S.L.E.D AGENTS THAT INTERVIEWED MR. ALEKSEY, MR. KENNY MEARS AND GEORGE DARNELL WHO DID THE INTERVIEW, TO ASK THEM WHAT HIS

STATUS OR STATE OF ALERTNESS WAS?
A NO, SIR.
Q HAVE YOU TALKED TO THE DOCTOR IN THE JAIL AT ORANGEBURG?
A NO, SIR.
Q WHO HAVE YOU SPOKEN TO BESIDE MR. ALEKSEY'S LAWYERS?
A MY OPINIONS ARE REALLY BASED ON A REVIEW OF HIS MEDICAL RECORDS.
Q SO THE ANSWER TO MY QUESTION WOULD BE YOU HAVEN'T TALKED TO ANYBODY?
A CORRECT.
Q YOU HAVE READ THE MEDICAL RECORDS FROM M.U.S.C.; IS THAT CORRECT?
A CORRECT.
Q DO YOU HAVE THOSE WITH YOU?
A THEY ARE IN THE SEAT OVER THERE.
Q WOULD YOU MIND GETTING THOSE FOR ME?
A SOMEONE WILL GET THEM FOR ME.
Q ALL RIGHT, SIR. TO MAKE REAL CLEAR NOW, YOU HAVE BEEN GIVEN COPIES OF THE MEDICAL RECORDS, THE NURSE'S REPORTS, DR. CHANDLER'S RECORDS, THE OTHER DOCTORS' RECORDS, THE DIFFERENT PEOPLE THAT ATTENDED TO MR. ALEKSEY?
A RIGHT.

Q IS THAT CORRECT?
A YES, SIR.
Q YOU HAVE READ OVER THOSE REPORTS?
A YES, SIR.
Q HAVE YOU LISTENED TO THE TAPE OF THE CONFESSION MR. ALEKSEY MADE HERE IN COURT?
A I HAVE NOT.
Q YOU HAVE NOT?
A NO.
Q YOU HAVEN'T TALKED TO ANYBODY, EITHER MEDICAL DOCTOR OR NURSE OR ANYONE OF THAT NATURE; HAVE YOU?
A ARE YOU TALKING ABOUT THE MEDICAL DOCTORS AT THE EMERGENCY ROOM?
Q YES, SIR.
A I HAVE NOT.
Q HAVE YOU TALKED TO ANY OF THE PATROLMEN THAT WERE WITH MR. ALEKSEY AND HAVE FIRSTHAND KNOWLEDGE OF HIS CONDITION IN THE HOSPITAL?
A NO, I HAVE NOT.
Q HAVE YOU TALKED TO NURSE BILLIE ALTHOUSE ABOUT HER FIRSTHAND OBSERVATIONS OF HIS CONDITION?
A I HAVE NOT.
Q YOU HAVE NOT. MAY I ASK YOU THIS, DOCTOR. WHAT ARE YOU BEING COMPENSATED FOR YOUR TESTIMONY TODAY?
A I AM BEING COMPENSATED FOR MY TIME. IT WOULD BE

APPROXIMATELY 1500 TO $2,000.

Q IS THAT FOR YOUR TESTIMONY OR IS THAT FOR READING THE REPORT HERE?

A THAT IS COMPENSATION FOR MY TIME.

Q HOW MANY PAGES ARE IN THAT REPORT THERE?

A I AM GUESSING PROBABLY 50 PAGES.

Q AND HOW LONG DID IT TAKE YOU TO READ THOSE 50 PAGES?

A I HAVE READ THE PAPER SEVERAL TIMES, PROBABLY ABOUT TWO HOURS OR SO OF TIME.

Q IT TOOK YOU TWO HOURS TO READ 50 PAGES?

A I HAVE GONE THROUGH THE RECORD SEVERAL TIMES ALSO LOOKING SPECIFICALLY FOR SPECIFIC ITEMS. YES, SIR, I SPENT ABOUT TWO HOURS ON THIS PARTICULAR RECORD.

Q AND HOW MUCH OTHER TIME DID YOU SPEND DRIVING UP HERE AND DRIVING BACK?

A IT'S ABOUT AN HOUR AND A HALF DRIVE FROM CHARLESTON. I HAVE BEEN HERE SINCE NOON.

Q AND FOR THIS $2,000, WAS A PART OF YOUR TASK TO PREPARE A WRITTEN REPORT SHOWING WHAT YOUR FINDINGS WERE?

A NO, SIR.

Q YOU WEREN'T ASKED TO DO THAT?

A NO, SIR.

Q DO YOU THINK IT WOULD HAVE BEEN APPROPRIATE FOR YOU TO DO THAT ON YOUR OWN, SINCE YOU WERE GOING TO TESTIFY, TO DO A REPORT WITH YOUR FINDINGS?
A NO, SIR, I WAS NOT ASKED TO DO A REPORT.
Q HAVE YOU TESTIFIED IN THE PAST IN THESE KINDS OF CASES?
A YES, SIR.
Q HOW MANY TIMES HAVE YOU TESTIFIED AS A WITNESS?
A ARE YOU TALKING ABOUT CRIMINAL TRIALS SPECIFICALLY?
Q YES, SIR.
A CRIMINAL TRIALS SPECIFICALLY, 15 OR SO, I GUESS.
Q HAVE YOU EVER TESTIFIED FOR THE PROSECUTION?
A YES, SIR.
Q HOW MANY TIMES OUT OF THAT?
A ONCE.
Q AND HOW MANY TIMES FOR THE DEFENSE?
A THE OTHER 14 OR SO.
Q YOU WERE A PAID WITNESS FOR THE DEFENSE IN THOSE 14 CASES?
A YES, SIR.
Q DOCTOR, TAKE A LOOK AT THE -- DO YOU HAVE THE COMPLETE FILE THERE IN FRONT OF YOU?
A YES, SIR, I DO.
Q WHERE DOES IT SAY THAT MR. ALEKSEY HAD A

CONCUSSION? CAN YOU PULL THAT OUT.

A I'M SORRY?

Q WHERE DOES IT SAY IN THERE THAT MR. ALEKSEY HAD A CONCUSSION?

A I WOULD BE HAPPY TO. IN THE E.M.S. NOTES IT SAYS, "UPON ARRIVAL FOUND UNCONSCIOUS BUT RESPONSIVE TO PAINFUL STIMULI. A 31-YEAR-OLD WHITE MALE, SUPINE ON GROUND IN HANDCUFFS, SMALL LACERATION TO RIGHT SIDE OF TEMPLE AREA, BLEEDING CONTROLLED AND BANDAGE APPLIED. NO OTHER TRAUMATIC NOTED.

"PATIENT INVOLVED IN CAR CHASE WITH HIGHWAY PATROL WHO RAN INTO THE FRONT OF THE PATIENT'S VEHICLE, CAUSING MODERATE DAMAGE TO PATIENT'S FRONT VEHICLE WITH AIR BAG DEPLOYMENT. UNKNOWN IF PATIENT WAS -- LOOKS LIKE -- WEARING A SEAT BELT.

"O.T. SATURATION 100 PERCENT. PATIENT PLACED ON OXYGEN, LABS DRAWN. I.V. OF NORMAL SALINE, LEFT FOREARM, RIGHT K.V.O. RATE -- I'M NOT SURE WHAT SOME OF THIS -- IT'S HANDWRITTEN.

Q I UNDERSTAND.

A SO I AM DOING MY BEST INTERPRETATION.

Q LET ME ASK THE QUESTION AGAIN, DOCTOR.

A SURE.

Q I WAS NOT ASKING YOU TO READ THE FILE.

A I'M SORRY.

Q I WAS ASKING YOU WHERE THE WORD CONCUSSION APPEARS IN THERE. THAT'S YOUR DIAGNOSIS FROM READING THE REPORT.

A "PATIENT WAS FOUND UNCONSCIOUS," SIR. BY DEFINITION THAT IS A CONCUSSION.

Q SO WHAT YOU ARE TESTIFYING TO, TO MAKE SURE WE ARE REAL CLEAR, SOMEBODY THAT IS KNOCKED UNCONSCIOUS A COUPLE OF DAYS LATER IS GOING TO HAVE SOME EFFECTS FROM BEING UNCONSCIOUS; IS THAT CORRECT?

A THIS IS MORE THAN JUST BEING UNCONSCIOUS. THIS GENTLEMAN WAS UNCONSCIOUS FOR SOME PERIOD OF TIME AND STILL UNCONSCIOUS AT THE TIME E.M.S. GOT THERE AND ONLY REGAINING CONSCIOUS AS E.M.S. CAME. HE ALSO SUSTAINED A NECK INJURY. THIS IS A FELLOW WHO WAS -- THERE WAS A RATHER SUBSTANTIAL CONCERN THAT HE HAD MAJOR INJURIES.

Q BUT HE DIDN'T, DID HE?

A HE HAD NO FRACTURES AND NO INTERNAL ORGAN DAMAGE. THAT CERTAINLY IS TRUE.

Q LET ME ASK YOU ABOUT THAT, DOCTOR. I GOT A QUOTE HERE FROM WHEN YOU TESTIFIED. YOU SAID THERE WERE CONCERNS ABOUT THE NECK FRACTURE. THERE WASN'T ANY NECK FRACTURE, WAS THERE?

A NO, I DID NOT SAY THAT, SIR. I'M SORRY. I SAID THEY WERE CONCERNED HE MIGHT HAVE A NECK FRACTURE.

Q BUT HE DIDN'T, DID HE?
A HE DID NOT.
Q IN FACT, THEY DID A C.A.T. SCAN ON HIM; DIDN'T THEY?
A THEY DID NOT DO A C.A.T. SCAN OF HIS NECK. THEY DID A C.A.T. SCAN OF HIS HEAD.
Q THAT WAS NEGATIVE, WASN'T IT?
A THAT'S CORRECT.
Q AND THEY DID CERVICAL X-RAYS OF THE NECK?
A YES, SIR, THAT IS CORRECT.
Q ALL THE X-RAYS WERE NEGATIVE, WEREN'T THEY?
A YES, SIR, THAT IS CORRECT.
Q DO YOU HAVE ANY PROBLEM WITH THE TYPE OF TREATMENT MR. ALEKSEY GOT AT THE MEDICAL UNIVERSITY?
A NO, SIR.
Q ALL RIGHT, SIR. DO YOU HAVE ANY PROBLEM WITH THE TREATMENT HE GOT ON THE SCENE WITH THE E.M.S. PEOPLE?
A NO, SIR.
Q ANY PROBLEM WITH THAT REPORT?
A I DO NOT.
Q SO HE WAS TREATED APPROPRIATELY FOR THE INJURIES HE SUSTAINED IN THAT WRECK?
A YES, SIR.
Q PART OF WHAT YOU LOOKED AT WAS THE HOSPITAL

DISCHARGE SUMMARY; IS THAT CORRECT?

A YES.

Q WOULD YOU SEE IF THERE IS A COPY OF THAT IN YOUR FILE.

A YES.

Q WOULD YOU READ THAT OUT LOUD, PLEASE, TO THE JURY.

A FROM TOP TO BOTTOM?

Q YES, SIR.

A "PATIENT IS A 29-YEAR-OLD MALE POST MOTOR VEHICLE ACCIDENT. PATIENT'S CAR --

COURT REPORTER: YOU'RE GOING TO HAVE TO READ A LITTLE SLOWER, PLEASE.

A "PATIENT'S CAR WAS RAMMED IN FRONT OF THE LEFT QUARTER PANEL, QUESTIONABLE LOSS OF CONSCIOUSNESS, QUESTIONABLE RESTRAINTS, NO KNOWN DRUG ALLERGIES, AS ABOVE.

"UNREMARKABLE EXCEPT FOR SMALL RIGHT BROW LACERATION, APPROXIMATELY TWO CENTIMETERS IN LENGTH. HEAD AND ABDOMEN C.T.S WERE NEGATIVE. CERVICAL SPINE SERIES WAS NEGATIVE.

"THE PATIENT REMAINED TENDER OF THE FLOOR ALONG HIS CERVICAL SPINE. NEUROSURGERY WAS CONSULTED AND EVALUATED THE PATIENT. THEY REVIEWED THE FILMS AND HIS PHYSICAL EXAM. THEY FELT THE TENDERNESS WAS

PROBABLY SECONDARY TO CERVICAL STRAIN.

"THERE WERE NO FRACTURES. NEUROSURGERY FELT THAT THE PATIENT WAS STABLE FOR DISCHARGE TO JAIL. AS TOLERATED, NONE. PATIENT WAS TO WEAR A SOFT PHILADELPHIA COLLAR. THE PATIENT IS TO RETURN TO THE TRAUMA CLINIC IN ONE WEEK FOR FOLLOW UP."

Q SO HE GOT A BUMP ON THE HEAD AND CERVICAL STRAIN; IS THAT CORRECT?

A NO, SIR, THAT IS NO CORRECT.

Q WHAT ELSE? WHAT OTHER INJURIES ARE IN THAT DISCHARGE SUMMARY BESIDES A BUMP ON THE HEAD AND CERVICAL STRAIN?

A THIS DISCHARGE SUMMARY IS INCOMPLETE. THE DISCHARGE SUMMARY CLEARLY DOES NOT REFLECT THE E.M.S. DESCRIPTION OF THE PATIENT AT THE TIME OF THE INJURY. IT ALSO CLEARLY DOES NOT REFLECT THE NURSE'S REPORT AT THE INTAKE OF THE PATIENT.

YOU WILL ALSO SEE THE RECORDS IN HERE WHERE HE WAS PUT ON NEUROCHECKS BY THE NURSE WHEN HE FIRST CAME IN BECAUSE THERE WAS CONCERN ABOUT HIS NEUROLOGICAL STATUS. IT'S ALSO NOT REFLECTED IN THIS NOTE. SO ALTHOUGH THIS REPORT IS ACCURATE TO SOME DEGREE, IT IS INCOMPLETE.

Q DOCTOR, I AM NOT ASKING ABOUT THE THINGS THEY CHECKED FOR AND DIDN'T FIND.

A RIGHT.
Q I AM ASKING YOU ABOUT THE FINAL DISCHARGE SUMMARY, THE THINGS THEY FOUND WRONG WITH HIM AFTER DOING THESE TESTS AND X-RAYS THAT TURNED UP NEGATIVE. NOT WHAT THEY WERE LOOKING FOR, WHAT THEY FOUND. WOULDN'T THAT BE INDICATED ON THE DISCHARGE SUMMARY ANY MAJOR CONDITIONS THAT HE HAD?
A THIS DISCHARGE SUMMARY, SIR, WITH ALL DUE RESPECT, IS INCOMPLETE. THE PATIENT SUSTAINED A CONCUSSION. THAT SHOULD BE REFLECTED IN THIS DISCHARGE SUMMARY. IT WAS NOT.

THE FACT THE C.A.T. SCAN WAS NEGATIVE DOES NOT MEAN THE PATIENT DIDN'T HAVE A CONCUSSION. MOST PATIENTS WITH CONCUSSIONS, IN FACT, HAVE A NEGATIVE C.A.T. SCAN.

SO WITH ALL DUE RESPECT, I DO THINK THAT HE DID SUSTAIN SIGNIFICANT CONCUSSIVE INJURY, ALTHOUGH UNFORTUNATELY IT'S NOT REFLECTED IN THE DISCHARGE SUMMARY.
Q BY SIGNIFICANT CONCUSSIVE INJURY, YOU MEAN HE WAS KNOCKED UNCONSCIOUS?
A HE WAS KNOCKED UNCONSCIOUS FOR A PERIOD OF TIME, SO THAT HE WAS STILL UNCONSCIOUS AT THE TIME E.M.S. ARRIVED. YES, SIR, THAT IS CORRECT.
Q BASED ON YOUR REVIEW OF THE MEDICAL EVIDENCE

HERE, HOW LONG ARE YOU TELLING THIS JURY THAT HE WAS UNCONSCIOUS?

A SINCE I WASN'T AT THE SCENE OF ACCIDENT, I CAN ONLY ESTIMATE. IF HE WAS UNCONSCIOUS IMMEDIATELY AT THE TIME OF THE ACCIDENT, E.M.S. IS CALLED, E.M.S. ARRIVES, I WOULD SAY A MINIMUM OF FIVE MINUTES, PERHAPS AS LONG AS 15 OR 20 MINUTES.

Q AND HAVE YOU TALKED TO MR. ALEKSEY ABOUT HOW HE WAS FEELING ON THE EVENING OF JANUARY 2ND WHEN HE ASKED TO SEE THE S.L.E.D AGENTS?

A I'VE NEVER SPOKEN WITH MR. ALEKSEY.

Q THAT'S ALL I HAVE.

A THANK YOU.

MR. SIMS: YOUR HONOR, I HAVE NOTHING FURTHER. I WOULD ASK THAT THIS WITNESS BE EXCUSED.

THE COURT: YES, SIR, I WILL PERMIT THAT. THANK YOU SO MUCH.

THE WITNESS: THANK YOU, YOUR HONOR.

MR. STONE: THE DEFENSE CALLS JEFF HOLLIFIELD TO THE STAND.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: MY NAME IS JEFFREY MORRIS HOLLIFIELD.

JEFFREY MORRIS HOLLIFIELD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: HAVE A SEAT AND SPELL YOUR NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: HOLLIFIELD IS SPELLED H-O-L-L-I-F-I-E-L-D.

DIRECT EXAMINATION

BY MR. STONE:

Q MR. HOLLIFIELD, WHAT DO YOU DO, SIR?

A I HAVE A PRIVATE FORENSICS LAB IN GREENVILLE, SOUTH CAROLINA. I DO SMALL PARTICLE IDENTIFICATION FOR A VARIETY OF INDUSTRIES. IT USUALLY INVOLVES IDENTIFYING CONTAMINANTS IN PRODUCTS SO THAT THEY CAN BE TRACED AND ELIMINATED.

I DO FORENSICS EXAMS IN BOTH CRIMINAL AND CIVIL INVESTIGATIONS. I DO CONTRACT WORK FOR THE GREENVILLE COUNTY LAW ENFORCEMENT CENTER IN THE AREA OF TRACE ANALYSIS. I ALSO TEACH CHEMISTRY PART-TIME AT GREENVILLE TECH.

Q WHEN YOU SAY FORENSICS, WHAT ARE YOU TALKING ABOUT? WHAT ARE FORENSICS?

A FORENSICS INVOLVES PHYSICAL PIECES OF EVIDENCE THAT ARE ANALYZED OR TESTED AND THEN PRESENTED FOR ARGUMENT, USUALLY IN COURTS OF LAW, WHETHER IT BE CRIMINAL OR CIVIL.

Q YOU SAID EARLIER THAT YOU DID SOME WORK WITH THE GREENVILLE LAW ENFORCEMENT. WHAT DO YOU MEAN?

A YES, SIR. I PROVIDED SOME TRAINING FOR THEM LAST FALL FOR ABOUT THREE MONTHS. BEGINNING AUGUST 1ST OF THIS YEAR, I AM UNDER CONTRACT WITH THE COUNTY TO DO TRACE EVIDENCE ANALYSIS FOR THE COUNTY ON A CASE-BY-CASE BASIS.

Q SO YOU ARE ACTUALLY WORKING FOR LAW ENFORCEMENT UP IN THE UPSTATE?

A YES, SIR.

Q WHEN YOU SAY TRACE EVIDENCE, WHAT DO YOU MEAN WHEN YOU SAY TRACE EVIDENCE?

A TRACE EVIDENCE INCLUDES VERY SMALL OR TRACE PIECES OF PHYSICAL EVIDENCE, WHICH INCLUDE THINGS SUCH AS HAIRS -- THESE CAN BE HUMAN HAIRS, ANIMAL HAIRS -- TEXTILE FIBERS, PAINTS, GLASS, INSULATION, GUNSHOT RESIDUE, EXPLOSIVE RESIDUES, ANY TYPE OF PHYSICAL EVIDENCE THAT CAN BE EXAMINED MICROSCOPICALLY.

Q WHAT KIND OF BACKGROUND DO YOU HAVE EDUCATIONALLY IN ORDER TO ALLOW YOU TO DO THIS?

A I RECEIVED A BACHELOR'S DEGREE IN CHEMISTRY FROM FURMAN UNIVERSITY, ALSO A MASTER'S IN CHEMISTRY FROM FURMAN UNIVERSITY. I COMPLETED MY WORK ABOUT A YEAR AGO FOR A MASTER'S IN FORENSIC MICROSCOPY AT MCCRONE INSTITUTE IN CHICAGO, ILLINOIS --

Q EXCUSE ME. I DON'T MEAN TO INTERRUPT YOU.

MICRO -- WHAT DID YOU SAY?
A MICROSCOPY, WHICH IS THE STUDY OF SAMPLES WITH MICROSCOPES, VARIOUS TYPES OF MICROSCOPES.
Q YOU FINISHED YOUR STUDIES FOR THE MASTER'S IN THAT AS WELL?
A YES, SIR, A YEAR AGO.
Q GO AHEAD. I'M SORRY.
A I COMPLETED MY LAW ENFORCEMENT TRAINING AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY IN COLUMBIA.
Q WHERE HAVE YOU WORKED? WHERE HAVE YOU WORKED WITH THIS KIND OF BACKGROUND?
A AFTER I COMPLETED SCHOOL AT FURMAN, I DID A BRIEF INTERNSHIP WITH THE GREENVILLE COUNTY LAB; AND I WORKED AT THE S.L.E.D. LABORATORY, SOUTH CAROLINA LAW ENFORCEMENT DIVISION, FOR A LITTLE OVER TEN YEARS. THREE OF THOSE WEARS I DID DRUG I.D. IN THE DRUG EVIDENCE LAB AND THEN FOR SEVEN OF THOSE YEARS, I WORKED IN THE TRACE EVIDENCE DEPARTMENT.
Q THAT WAS THE SAME DEPARTMENT THAT DOTTIE FULLER WORKS IN NOW?
A YES, SIR.
Q DID SHE WORK THERE BEFORE OR AFTER YOU OR DURING THE TIME?
A SHE PARTICIPATED IN TWO INTERNSHIPS. BOTH HER INTERNSHIPS WAS WHILE I WAS STILL A CRIMINALIST AT

S.L.E.D. AND, IN FACT, WAS HIRED TO REPLACE THE POSITION THAT WAS OPEN WHEN I LEFT S.L.E.D.

Q AND JOE POWELL, I THINK, SPOKE ABOUT YOU EARLIER. DO YOU KNOW JOE AS WELL?

A YES, SIR, I KNOW JOE.

Q HOW DO YOU KNOW JOE?

A I WORKED WITH JOE FOR OVER TEN YEARS. I HAVE A TREMENDOUS AMOUNT OF RESPECT FOR LIEUTENANT POWELL, BOTH AS A PERSON AND AS A PROFESSIONAL.

MR. STONE: AT THIS TIME, YOUR HONOR, I OFFER HIM AS AN EXPERT IN FORENSICS AND IN PARTICULAR GUNSHOT RESIDUE AND OTHER TRACE EVIDENCE.

SOLICITOR BAILEY: NO OBJECTION, YOUR HONOR.

THE COURT: WITHOUT OBJECTION.

Q WHEN DID YOU BEGIN WORKING ON THIS CASE?

A YOUR OFFICE MAILED A COPY OF A S.L.E.D. REPORT TO ME IN MAY OF THIS YEAR.

Q AND YOU HAVE BEEN WORKING ON THIS SINCE THEN WITH ME?

A SINCE MAY, YES, SIR.

Q AND YOU DID THAT ON MY INSTRUCTION; IS THAT CORRECT?

A YES, SIR.

Q NOW, I THINK WE HAVE THIS ADMITTED INTO EVIDENCE

AS DEFENSE EXHIBIT 9. LET ME ASK IF YOU CAN REVIEW THAT JUST REAL BRIEFLY AND TELL ME IF YOU CAN RECOGNIZE THAT.

A (PAUSE.) YES, SIR, THIS APPEARS TO BE THE ORIGINAL COPIES OF THE INFORMATION THAT MR. STONE'S OFFICE MAILED TO ME. LIKE I SAY, I HAVE A COPY OF EVERYTHING IN THIS FILE WITH THE EXCEPTION OF THE PAPER THAT HAS THE GUN POWDER PATTERNS ON IT BECAUSE THAT COULD NOT BE PHOTOCOPIED.

Q I UNDERSTAND. AND YOU HAVE REVIEWED THAT FILE?

A YES, SIR, I HAVE.

Q IN FACT, YOU HAVE A COPY, A FULL COPY, OF THAT FILE?

A YES, SIR, I DO.

Q YOU HAVE BEEN ATTENDING THIS TRIAL FOR THE LAST SEVERAL DAYS, HAVE YOU NOT?

A YES, I HAVE.

Q YOU HAVE HEARD THE TESTIMONY OF THE POLICE OFFICERS AT THE SCENE AND THE GUNSHOT RESIDUE EXPERT AND VARIOUS OTHER PEOPLE ALONG THE WAY, HAVE YOU NOT?

A YES, SIR.

Q NOW, HAVE YOU ALSO REVIEWED AND HAVE YOU ALSO HEARD THE TESTIMONY OF DOROTHY FULLER?

A YES, I DID.

Q LET ME SHOW YOU WHAT -- DO YOU HAVE A COPY OF

THIS FILE WITH YOU?
A WITH THE EXCEPTION OF THE COLLECTION -- DATA COLLECTION SHEET ON JUSTIN MATEEKI, I THINK, THAT WAS ENTERED INTO EVIDENCE.
Q THAT'S CORRECT. LET ME FIRST SHOW YOU WHAT HAS BEEN MARKED AS A STATE'S EXHIBIT. LET ME ASK YOU TO COME DOWN HERE IF YOU WOULD, PLEASE.
A (WITNESS LEAVES THE WITNESS STAND.)
Q THIS HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 71. DO YOU RECOGNIZE THAT?
A YES, SIR, I DO. THIS IS PAGE 1 OF THE S.L.E.D. REPORT THAT WAS ISSUED AND SIGNED BY SPECIAL AGENT FULLER AND LIEUTENANT POWELL.
Q THAT, OF COURSE, INCLUDES STATE'S EXHIBIT 72; IS THAT CORRECT?
A THE SECOND PAGE OF THAT SAME REPORT, YES, SIR.
Q AND ARE YOU FAMILIAR WITH THESE COPIES?
A YES.
Q IN FACT, YOU MADE THESE COPIES; DIDN'T YOU?
A YES, SIR.
Q NOW, AS FAR AS THIS REPORT IS CONCERNED, WHAT IS THE RESULT OF THAT EXAMINATION?
A ANY PARTICULAR ITEMS?
Q YES, SIR, CONCERNING THE GUNSHOT RESIDUE FROM THE HANDS OF MR. ALEKSEY. IN THAT CASE I GUESS THE

SUBJECT IS JUSTIN MATEEKI.

A ITEM NUMBER 46, WHICH IS LISTED AS THE GUNSHOT RESIDUE KIT FROM THE PACKAGE LABELED JUSTIN MATEEKI, MR. ALEKSEY, THE RESULT CORRESPONDING TO THAT ITEM STATES THAT IN THE SAMPLE SUBMITTED FROM JUSTIN MATEEKI, QUANTITIES OF METALS DETECTED ON THE HAND REGIONS DO NOT INDICATE THE PRESENCE OF GUNSHOT RESIDUE.

Q DO YOU AGREE OR DISAGREE WITH THE FINDINGS ON THAT REPORT?

A I AGREE.

Q HAVE YOU REVIEWED THE INFORMATION THAT HAS BEEN SUPPLIED AS THE FULL REPORT FROM DOROTHY FULLER ON THAT?

A YES, SIR, I HAVE.

Q ARE AFTER REVIEWING THAT, YOU STILL AGREE WITH THAT RESULT?

A YES, SIR, I DO.

Q YOU CAN HAVE A SEAT RIGHT NOW.

A (WITNESS RESUMES THE WITNESS STAND.)

MR. STONE: YOUR HONOR, I THINK WE CAN JUST USE THESE AS ENLARGEMENTS OF THE REPORT THAT HE ALREADY HAS AND MS. FULLER REFERRED TO EARLIER.

Q THERE HAS BEEN A GOOD BIT OF DISCUSSION CONCERNING THE CONCENTRATION AMOUNTS, AND I AM NOT

SURE I AM GETTING THE LANGUAGE EXACTLY RIGHT, SO PLEASE CORRECT ME.

LET'S FIRST TALK ABOUT THE LEVELS I BELIEVE MRS. FULLER DISCUSSED THAT THIS WAS RIGHT UNDER THE CUTOFF LEVEL OR SOMETHING LIKE THAT OF WHAT SHOULD SHOW AS GUNSHOT RESIDUE. COULD YOU EXPLAIN THAT TO ME.

A YES, SIR. AS HAS BEEN EXPLAINED EARLIER, THERE ARE THREE PRIMARY METALS THAT ARE VERY PREVALENT IN GUN PRIMER RESIDUE, THOSE BEING LEAD, ANTIMONY AND BARIUM.

THE SIMPLE PRESENCE OF ANY SINGLE ONE OF THOSE ELEMENTS IS NOT INDICATIVE OF GUNSHOT RESIDUE BECAUSE THESE ELEMENTS ALSO OCCUR IN THE ENVIRONMENT. THERE ARE OTHER SOURCES FOR THESE ELEMENTS.

FOR INSTANCE, BARIUM CAN BE PRESENT IN PAINTS, COSMETICS. LEAD CAN BE PRESENT IN LEAD CELL BATTERIES, LIKE CAR BATTERIES. ANTIMONY IS PRESENT ALSO IN CAR BATTERIES AS A HARDENER FOR THE LEAD.

BUT ALL THREE OF THESE, WHEN FOUND SIMULTANEOUSLY FROM SINGLE PARTICLES, ARE INDICATIVE OF GUN PRIMER RESIDUE IF THEY ARE PRESENT IN SUFFICIENT LEVELS.

Q LET ME INTERRUPT YOU THERE. IS THAT WHY ON THE TOP OF THE QUANTITATIVE ANALYSIS REPORTS, THE FIRST

THREE ELEMENTS YOU SEE ARE BARIUM, ANTIMONY AND LEAD?
A YES, SIR. THOSE THREE ARE LISTED FIRST BECAUSE THOSE THREE ARE THE ONES THAT ARE KEYED IN IN MAKING A DETERMINATION CONCERNING WHETHER A TEST IS POSITIVE OR NEGATIVE.
Q ALL RIGHT, SIR. LET ME ASK YOU IF YOU CAN TURN TO THE SECTION OF THE QUANTITATIVE ANALYSIS THAT DISCUSSES JUSTIN MATEEKI. I THINK WE ALL KNOW THAT MR. MATEEKI IS ACTUALLY BAYAN ALEKSEY.
A YES, SIR.
Q NOW, COULD YOU STEP DOWN HERE AND SHOW US WHAT THESE LEVELS MEAN.
A (WITNESS LEAVES THE WITNESS STAND.)
Q YOU CAN DO IT IN WHATEVER ORDER YOU LIKE.
A THESE FIRST THREE ELEMENTS ARE ANTIMONY, LEAD AND BARIUM. AS I SAY, THESE ARE THE ONES THAT ARE THE MOST PREVALENT IN GUN PRIMER RESIDUE. SO THOSE ARE THE ONES THAT ARE FOCUSED ON WHEN WE ARE TRYING TO DETERMINE WHETHER SOMEONE HAS INDEED FIRED A WEAPON OR NOT.
NOT ONLY DO ALL THREE OF THOSE METALS NEED TO BE PRESENT TO INDICATE THAT IT CAME MOSTLY LIKELY FROM GUNSHOT RESIDUE, BUT THE AMOUNTS OF THOSE METALS MUST BE PRESENT IN SUFFICIENT LEVELS.
WHAT ARE THE LEVELS? IT'S BASED ON STUDIES THAT

HAVE BEEN DONE AND TEN OF THOUSANDS OF CASE HISTORIES NATIONWIDE. EACH INDIVIDUAL LAB SETS UP THEIR OWN CRITERIA BECAUSE EVERY LAB HAS DIFFERENT INSTRUMENTATION.

THERE ARE MULTIPLE INSTRUMENTAL METHODS FOR DETECTING GUNSHOT RESIDUE. EVEN FOR A PARTICULAR INSTRUMENT, THE SENSITIVITY OF THE VARIOUS INSTRUMENTS MAY DIFFER. ONE INSTRUMENT IN ONE SETTING MAY BE MORE SENSITIVE OR CAN PICK UP SMALLER AMOUNTS THAN THAT SAME INSTRUMENT IN ANOTHER LAB.

Q LET ME INTERRUPT YOU THERE. ARE YOU FAMILIAR WITH THE INSTRUMENT -- I THINK IT'S AN I.C.P. TEST; IS THAT CORRECT?

A YES, SIR. THE I.C.P. TEST IS STATE-OF-THE-ART, IS PROBABLY THE MOST SENSITIVE TEST OF THE SEVERAL THAT EXIST.

Q THAT IS THE TEST USED BY S.L.E.D.?

A IT'S ONE OF THE TESTS THAT IS USED BY S.L.E.D. TO DETECT PRIMER RESIDUE.

Q AND WAS THAT THE TEST THAT WAS USED IN THIS PARTICULAR CASE?

A FOR THESE PARTICULAR SAMPLES, YES, IT WAS.

Q GO AHEAD. I'M SORRY, I DIDN'T BEAN TO INTERRUPT YOU.

A IF THE LAB CONSIDERS THE INSTRUMENT THAT THEY

ARE USING, THE METHOD THEY ARE USING, THE SENSITIVITY OF THAT METHOD, THE DILUTIONS OF THE SAMPLE WHEN THEY ARE PREPPED FOR ANALYSIS AND ALSO THE TIME FRAME IN WHICH THE SAMPLES ARE COLLECTED, THEN THAT PARTICULAR LABORATORY WILL SET THRESHOLDS AT WHICH IT WILL DETERMINE THAT THE TEST IS EITHER POSITIVE OR NEGATIVE. THESE THRESHOLDS, AS WERE STATED EARLIER, MAY DIFFERENT FROM LAB TO LAB.

Q THESE THRESHOLDS THAT YOU ARE TALKING ABOUT, THESE ARE ELEMENTS THAT ARE ACTUALLY ON THE SKIN THAT ARE MORE PREVALENT THAN, SAY, THE CONTROL THAT WAS TAKEN? HOW DOES THAT WORK?

A THE ELEMENTS HAVE TO BE PRESENT IN SUFFICIENT LEVELS OR LEVELS THAT ARE SIGNIFICANTLY HIGHER THAN ENVIRONMENTAL LEVELS.

Q WHAT YOU DO MEAN ENVIRONMENTAL LEVELS?

A LEVELS OF THESE METALS THAT COULD COME FROM EVERYDAY LIFE, SUCH AS COSMETICS, PHARMACEUTICAL PRODUCTS, PAINTS, CARS AND SO FORTH.

Q SO IF YOU TOOK A TEST OF MY HANDS AT THIS POINT OR ANYBODY ELSE'S, THERE WOULD BE SOME ELEMENTS ON THERE NOW?

A YES, SIR.

Q UNLESS, OF COURSE, THEY HAD BEEN WASHED?

A EXACTLY.

Q LET ME INTERRUPT YOU JUST ENOUGH TO TELL ME. CAN YOU TELL AT THE LEVELS THAT WERE FOUND ON MR. MATEEKI'S HANDS IF THOSE HANDS WERE WASHED?
A MY OPINION IS THAT THEY WERE NOT WASHED. IF THEY HAD BEEN WASHED BEFORE THE SAMPLES WERE COLLECTED, THE NUMBERS FOR NOT ONLY THESE THREE METALS BUT OTHER METALS PRESENT WOULD BE SIGNIFICANTLY LOWER. THERE WOULD BE A LOT OF ZEROES.
Q THE ZEROES, YOU ARE TALKING ABOUT THE CONCENTRATION, THIS COLUMN HERE (INDICATING)?
A THE CONCENTRATION, YES, SIR.
Q AND CAN YOU TELL FROM THESE CONCENTRATION LEVELS WHETHER OR NOT THE LEVELS WERE ACTUALLY BORDERLINE, HIGH, LOW OR WHAT CAN YOU TELL US?
A IF I AM NOT MISTAKEN, THE THRESHOLD OR WHAT WE CALL ELEVATED LEVELS THAT S.L.E.D. USES AT THIS TIME ARE 20 PARTS PER BILLION FOR ANTIMONY, 200 PARTES PER BILLION FOR LEAD AND 200 PARTS PER BILLION FOR BARIUM.
Q LET ME ASK YOU SOMETHING REAL QUICK. IF YOU WOULD, FIRST OF ALL, PUT DOWN -- IT DOESN'T MATTER, WHEREVER YOU CAN FIND SPACE -- THE LEVELS AS TO THE ELEMENTS THEMSELVES.
A THE THRESHOLD LEVELS?
Q YES, THE THRESHOLD LEVELS.

A (WITNESS COMPLIES.)
Q FIRST OF ALL, YOU ARE LOOKING AT S.B. WHAT IS S.B.?
A S.B. IS THE CHEMICAL SYMBOL FOR ANTIMONY.
Q HOW ABOUT WRITE ANTIMONY DOWN THERE SO WE CAN INTERPRET S.B.
A (WITNESS COMPLIES.)
Q THE P.P.B. IS PARTS PER BILLION?
A P.P.B. STANDS FOR PARTS PER BILLION.
Q CORRESPONDING TO THIS SAMPLE YOU WOULD USE; IS THAT CORRECT?
A YES, SIR.
Q THE THRESHOLD LEVEL ON ANTIMONY IS 20 AND ON THIS IT IS WRITTEN THE NUMBER 6; IS THAT RIGHT?
A THESE HANDWRITTEN NUMBERS WHICH SPECIAL AGENT FULLER WROTE ARE THE VALUES SHE OBTAINED AFTER SUBTRACTING THE CONTROL VALUES. THESE ARE THE NUMBERS THAT SHE USES TO -- SHE WOULD USE TO DETERMINE WHETHER THE TEST IS POSITIVE OR NEGATIVE AND WRITE A REPORT.
Q IN OTHER WORDS, IN ORDER FOR THIS TO BE POSITIVE, THIS 6 WOULD HAVE TO BE AT LEAST 20 OR ABOVE?
A FOR THAT PARTICULAR ELEMENT.
Q GO TO THE SECOND ELEMENT IF YOU WOULD.

A P.B. IS THE CHEMICAL SYMBOL FOR LEAD, THE THRESHOLD VALUE BEING 200 PARTS PER BILLION. THE B.A. IS THE CHEMICAL SYMBOL FOR BARIUM, 200 PARTS PER BILLION BEING THE THRESHOLD FOR BARIUM.

Q ALL RIGHT, SIR. NOW THE THRESHOLD ON LEAD IS 200 AND THE NUMBER HERE IS 152. THIS AGAIN, THE 152, WOULD HAVE TO BE 200 OR ABOVE FOR THAT TO BE A POSITIVE REACTION; IS THAT CORRECT?

A IT'S LESS THAN THE THRESHOLD, YES, SIR.

Q THE BARIUM HERE IS HIGHER. THE 442 IS OBVIOUSLY HIRE THAN THE 200. DOES THAT TELL US ANYTHING?

A SIMPLY THAT BARIUM ITSELF IS PRESENT IN CONCENTRATIONS HIGHER THAN THE THRESHOLD LIMIT. HOWEVER, AS I MENTIONED EARLIER, ALL THREE METALS MUST BE PRESENT IN ELEVATED AMOUNTS TO BE INDICATIVE OF ORIGINATING FROM GUNSHOT RESIDUE. OTHERWISE THERE IS THE POTENTIAL OF IT HAVING COME FROM SOME OTHER SOURCE.

Q WHAT OTHER SOURCES COULD BARIUM COME FROM?

A BARIUM IS PRESENT IN COSMETICS. IT'S PRESENT IN PAINTS. IT'S PRESENT IN SURGICAL GLOVES.

Q SURGICAL GLOVES?

A YES, SIR.

Q LET ME ASK YOU TO LOOK -- AND THAT IS THE RIGHT PALM OF JUSTIN MATEEKI; IS THAT CORRECT?

A YES, IT IS.
Q YOU CAN TELL THAT FROM?
A THE R.P.
Q LET'S LOOK AT THE LEFT PALM OF JUSTIN MATEEKI. USING THE SAME THRESHOLD LEVELS, WHAT CAN YOU TELL ME ABOUT THE THRESHOLD LEVELS NOW?
A ON THE LEFT PALM FOR MATEEKI, ANTIMONY, THE VALUE FOR ANTIMONY IS 4, WHICH IS WELL BELOW THE VALUE OF 20, THE THRESHOLD VALUE. THE VALUE FOR LEAD IS 56, CONSIDERABLY BELOW THE THRESHOLD OR ELEVATED LEVEL OF 200 AND BARIUM IS JUST SLIGHTLY GREATER THAN 200. SO IT WOULD BE PRESENT, ONCE AGAIN, ABOVE THRESHOLD LEVELS; HOWEVER, THE THREE ELEMENTS TOGETHER ARE NOT.
Q WHY DO THEY HAVE TO BE TAKEN TOGETHER? WHY CAN'T YOU JUST LOOK AT THIS AND SAY, "WELL, LOOK ONE OF THESE THREE ELEMENTS IS PREVALENT, SO THEREFORE HE MUST HAVE GUNSHOT RESIDUE ON HIS HANDS"?
A BECAUSE EACH INDIVIDUAL METAL BY ITSELF CAN COME FROM OTHER SOURCES. ALL THREE, GUNSHOT RESIDUE, EXPLOSIVE RESIDE, THESE ARE SUBSTANCES -- THESE ARE SOME OF THE FEW SUBSTANCES IN THE WORLD WHERE ALL THREE OF THESE ELEMENTS ARE PRESENT TOGETHER IN SINGLE PARTICLES.
Q THEY ALL COME TOGETHER. THEY EITHER ALL COME

TOGETHER OR THEY DON'T COME TOGETHER?
A CORRECT.
Q LET'S GO TO -- SLIDE THAT OVER -- THE RIGHT BACK OF MR. MATEEKI'S HAND.
A FOR THE RIGHT BACK, ANTIMONY IS PRESENT. AS YOU CAN SEE THE VALUE IS 2, WELL BELOW 20. LEAD, THE VALUE IS 45. BARIUM, THE VALUE IS 94. ALL THREE IN THIS CASE ARE WELL BELOW THE THRESHOLD LEVELS.
Q THE FINAL ONE WOULD BE THE LEFT BACK OF MR. MATEEKI'S HANDS. SLIDE IT OVER WHERE YOU HAVE THE LEVELS HERE.
A YES, SIR. ANTIMONY HERE HAS A VALUE OF 1, MUCH LESS THAN 20. THE LEAD VALUE IS 39. BARIUM HAS AN ELEVATED LEVEL OF 431.
Q LET ME ASK YOU ONE OTHER THING. THIS SYMBOL HERE (INDICATING), WHAT DOES THAT INDICATE?
A THAT'S A NEGATIVE SIGN INDICATING THAT THE THREE ELEMENTS WHEN CONSIDERED AS A WHOLE YIELD A NEGATIVE RESULT.
Q THAT IS ON NUMBER -- NUMBER 16, NUMBER 19, 17 AND 18; IS IT'S NOT?
A IT'S NOT ON 18.
Q IT'S ON THE OTHER ONES, NOT ON 18?
A RIGHT.
Q IN LOOKING AT 18, CAN YOU TELL ME IF THAT IS A

POSITIVE OR NEGATIVE RESULT?
A THIS WOULD ALSO BE NEGATIVE. THE BARIUM LEVELS ARE SLIGHTLY HIGHER THAN THE THRESHOLD LEVELS, BUT THE OTHER TWO METALS AS YOU CAN SEE ARE SIGNIFICANTLY BELOW THRESHOLD LEVELS. SO THAT WOULD BE NEGATIVE.
Q YOU HAVE ALSO HEARD TESTIMONY CONCERN TROOPER LINGARD AND THE FACT HE DID NOT SHOOT HIS WEAPON; IS THAT CORRECT?
A YES, SIR, I HAVE.
Q I DON'T KNOW IF YOU HAVE SEEN THE PHOTO FROM THE STATE THAT SHOWED THE HANDGUN STILL IN THE HOLSTER?
A I DID.
Q HAVE YOU ALSO STUDIED THE QUANTITATIVE ANALYSIS ON TROOPER LINGARD?
A YES, SIR, I HAVE.
Q AGAIN, LET ME SHOW YOU PAGE 41 OF THE REPORT. CAN YOU TELL US WHAT THAT TELLS US?
A THIS IS THE DATA SHEET FROM THE LEFT PALM OF TROOPER LINGARD. THE ANTIMONY LEVELS ARE 17, LEAD LEVELS ARE 104, BARIUM LEVELS ARE 416. THE BARIUM LEVELS ARE ABOVE THRESHOLD LEVELS. ANTIMONY AND LEAD ARE BELOW. OVERALL IT WOULD BE A NEGATIVE TEST RESULT.
Q AND AGAIN THE BARIUM IS HIGH BUT THE OTHER TWO ARE WELL BELOW THE LEVEL; IS THAT CORRECT?

A YES, SIR.
Q THAT WAS THE LEFT PALM OF TROOPER LINGARD. LET'S GO TO THE LEFT BACK OF TROOPER LINGARD. TELL US ABOUT THOSE RESULTS.
A FOR THE BACK OF THE LEFT HAND, ANTIMONY IS PRESENT WITH A VALUE OF 10. LEAD PRESENT IS AT A VALUE OF 39. BOTH ARE WELL BELOW THRESHOLD VALUES. BARIUM IS PRESENT WITH A VALUE OF 813, FOUR TIMES THE THRESHOLD LEVEL.
Q TAKING THAT INTO CONSIDERATION, WHAT WAS THE RESULT AS FAR AS THE GUNSHOT RESIDUE TEST ON TROOPER LINGARD'S HANDS?
A WHEN CONSIDERED AS A WHOLE, THIS TEST WOULD BE NEGATIVE.
Q COMPARING THAT WITH THE RESULTS RECEIVED FROM JUSTIN MATEEKI, CAN YOU TELL US IS THERE ANY COMPARISON TO BE MADE BETWEEN THE TWO?
A FOR ALL THREE METALS ON ALL -- WELL, THE THREE AREAS OF THE HANDS, THE BACK LEFT, THE PALM OF THE LEFT AND THE BACK OF THE RIGHT HAND, ALL THE ELEMENTS WERE PRESENT IN LEVELS LESS THAN -- THE LEVELS ON MATEEKI'S HANDS ARE PRESENT IN LESS AMOUNTS, SMALLER AMOUNTS, THEN THEY PRESENT ON THOSE THREE AREAS FOR TROOPER LINGARD.
ON THE RIGHT PALM, THE ANTIMONY, THE LEVELS ON

MATEEKI'S RIGHT PALM ARE LESS THAN THE ANTIMONY LEVELS ON TROOPER LINGARD'S RIGHT PALM. HOWEVER, THE LEAD AND BARIUM LEVELS ON MATEEKI'S RIGHT PALM ARE HIGHER THAN THOSE SAME LEVELS ON TROOPER LINGARD'S RIGHT PALM.

Q NOW, WHILE WE KNOW THAT TROOPER LINGARD DID NOT FIRE HIS WEAPON, THERE HAS BEEN SOME TESTIMONY CONCERNING THE FACT THAT TROOPER LINGARD'S -- WHEN HE WAS TESTED, OBVIOUSLY AT THAT POINT HE WAS DECEASED. WHAT EFFECT DOES THAT HAVE ON THE TESTING PROCESS?

A THE METALS PRESENT, GUNSHOT RESIDUE, WILL REMAIN INDEFINITELY ON A DECEASED INDIVIDUAL, JUST AS IT WOULD ON AN INANIMATE OBJECT, LIKE A TABLE. THERE IS NO PERSPIRATION, NO ABSORPTION. THE CONCERN THERE IS SIMPLY WIPING OFF OR WASHING OFF THE DEBRIS. THAT'S WHERE THE HANDS ARE BAGGED.

Q THAT'S FOR A DECEASED. AS FAR AS THE ABSORPTION ITSELF, MR. MATEEKI OBVIOUSLY HIS HANDS WOULD BE ABSORBING; IS THAT CORRECT?

A ABSORPTION DOES OCCUR; HOWEVER, IT'S DEPENDENT ON THE METAL. DIFFERENT METALS ABSORB AT DIFFERENT RATES AND THEY HAVE DIFFERENT PROPERTIES CONCERNING BEING ABLE TO DISSOLVE AND GO INTO SOLUTION. BARIUM IS THE MOST SOLUBLE OF THE THREE METALS.

Q WAIT A MINUTE. WHAT DO YOU MEAN BY MOST

SOLUBLE?
A IT WOULD BE THE MOST SOLUBLE OR THE MOST EASILY DISSOLVED IN WATER, WHICH WOULD INCLUDE BODY FLUIDS, SWEAT OR ABSORPTION THROUGH THE SKIN.
Q SO WHAT YOU ARE TELLING ME IS A LIVING TISSUE THAT HAS BARIUM ON IT IS GOING TO ABSORB QUICKER THAN ANY OF THE REST OF THEM OR ANY OF THE REST OF THE THREE ELEMENTS?
A YES, SIR.
Q AND THE BARIUM ACTUALLY WAS THE HIGHEST OF THE THREE LEVELS, WASN'T IT?
A YES, IT WAS, BUT IT IS ALSO THE MOST PREVALENT IN THE ENVIRONMENT.
Q NOW, CAN YOU TELL US ANYTHING WITH YOUR EXPERTISE AND WHAT YOU HAVE HEARD CONCERNING THE ABSORPTION AS IT RELATES TO THESE REPORTS FROM JUSTIN MATEEKI?
A BARIUM WOULD BE THE MOST SOLUBLE OR THE MOST LIKELY TO BE ABSORBED THROUGH THE SKIN. ANTIMONY WOULD BE A LOT LESS LIKELY TO BE ABSORBED. ITS SOLUBILITY RATE IS A LOT LESS THAN BARIUM.

LEAD IS EXTREMELY INSOLUBLE. IN FACT, THE ONLY WAY TO GET MORE THAN JUST VERY TRACE AMOUNTS OR NEGLIGIBLE AMOUNTS TO GO INTO SOLUTION, IF YOU TREAT IT WITH ACID, UNDER ACIDIC CONDITIONS, LEAD CAN BE

MADE TO DISSOLVE, WHICH WOULD INITIATE ABSORPTION INTO THE SKIN.

THIS IS THE REASON NITRIC ACID, THE ACID THAT IS USED ON THE Q-TIP SWABS WHEN THE SAMPLES ARE COLLECTED, IS TO DISSOLVE THOSE METALS SO THEY CAN BE ABSORBED BY THE Q-TIP.

Q THE ABSORPTION LEVEL -- AND THERE HAS BEEN SOME TESTIMONY AS WELL ABOUT THE SIX-HOUR-TIME PERIOD. YOU HEARD THAT AS WELL, DID YOU NOT?

A YES, SIR.

Q AND YOU STUDIED THE REPORT INDICATING WHEN THE SAMPLES WERE TAKEN AND YOU HEARD TESTIMONY CONCERNING WHEN THE SAMPLES WERE TAKEN; IS THAT CORRECT?

A YES, SIR, I HAVE.

Q DO YOU HAVE ANY OPINION AS TO THE TIME FRAME AND IF THAT APPRECIABLY AFFECTED THESE RESULTS?

A THE TIME FRAMES ARE ONCE AGAIN BASED ON CASE HISTORIES AND STUDIES THAT HAVE BEEN DONE. DIFFERENT LABS IN DIFFERENT STATES HAVE DIFFERENT TIME FRAMES AS A CUTOFF.

THE ACCEPTED STANDARD NATIONWIDE IS SIX HOURS. THAT'S THE AMOUNT OF TIME THAT IS STATED IN MR. SAPERSTEIN'S BOOK WHICH IS A VERY COMMON TEXTBOOK USED IN CRIMINAL JUSTICE SCHOOLS AROUND THE COUNTRY.

S.L.E.D. ESTABLISHED THAT TIME FRAME FOR A

REASON AND THAT IS THAT GUNSHOT RESIDUE IS EXPECTED TO BE PRESENT, NOT SIMPLY PRESENT, BUT PRESENT IN ELEVATED LEVELS ABOVE THOSE THRESHOLDS UP UNTIL SIX HOURS.

Q IN ELEVATED LEVELS, THIS IS WHAT YOU ARE TALKING ABOUT HERE; IS THAT CORRECT?

A WHEN I SAY ELEVATED LEVELS, I AM TALKING ABOUT THESE THRESHOLD LEVELS.

Q SO SIX HOURS, THESE (INDICATING) HAVE TO BE FAIRLY ELEVATED COMPARED TO THESE (INDICATING); IS THAT RIGHT?

A YES, SIR. THE TIME FRAMES ARE ESTABLISHED BASED ON THESE THRESHOLD LEVELS. SO YOU WOULD EXPECT IN A SIX-HOUR TIME FRAME FOR THESE LEVELS TO BE ABOVE OR EQUAL TO THE THRESHOLD LEVELS UP UNTIL SIX HOURS.

BEYOND SIX HOURS -- IT DOESN'T JUST AT SIX HOURS MAGICALLY DISAPPEAR OR GO AWAY. IT'S A GRADUAL PROCESS. AT SEVEN HOURS YOU MAY BE SLIGHTLY BELOW THRESHOLD LEVELS. AT EIGHT OR TEN HOURS, YOU WOULD HAVE LESS AND LESS, BUT YOU SHOULD HAVE OR I WOULD EXPECT TO SEE THRESHOLD LEVELS, THESE LEVELS, UP UNTIL ABOUT THE SIX-HOUR CUTOFF.

Q FROM THOSE THRESHOLD LEVELS, CAN YOU TELL US IF THE SIX HOURS HAD ANY EFFECT ON IT OR WHAT CAN YOU TELL US FROM THOSE THRESHOLDS LEVEL?

A THE SAMPLES, I BELIEVE, WERE TAKEN AFTER FIVE HOURS AND 40 MINUTES ROUGHLY, WHICH IS WITHIN THE SIX-HOUR CUTOFF. THAT IS A SUFFICIENT AMOUNT OF TIME FOR SOME OF THE PARTICLES EITHER TO BE ABSORBED, PERSPIRED AWAY OR TRANSFERRED ONTO OTHER OBJECTS.

HOWEVER, SINCE IT WAS COLLECTED WITHIN THAT SIX-HOUR TIME FRAME, I WOULD EXPECT TO SEE AT LEAST CLOSE TO, IF NOT ABOVE, THRESHOLD LEVELS FOR ALL THREE ELEMENTS PRESENT.

Q AND DO YOU SEE CLOSE TO THRESHOLD LEVELS ON THESE?

A WITH THE EXCEPTION OF BARIUM, THEY ARE WELL BELOW, SIGNIFICANTLY BELOW, THRESHOLD LEVELS ON THREE AREAS OF THE HAND; AND ANTIMONY IS SIGNIFICANTLY LOW ON THE FOURTH AREA OF THE HANDS.

Q WITH THESE THRESHOLD LEVELS AS THEY APPEAR AT THIS POINT, LET'S ASSUME THE TEST WAS TAKEN SIX HOURS AFTERWARD AND NOT FIVE HOURS AND 40 MINUTES. DOES THAT CHANGE YOUR OPINION ANY?

A I WOULD STILL EXPECT TO SEE, IF NOT ABOVE, VERY CLOSE TO THRESHOLD LEVELS.

Q AGAIN, THESE ARE NOT VERY CLOSE TO THRESHOLD LEVELS?

A THEY ARE WELL BELOW THRESHOLD LEVELS.

Q CAN YOU TELL FROM THIS WHETHER OR NOT

MR. MATEEKI'S HANDS WERE BLEEDING OR ANYTHING ELSE THAT YOU STUDIED?

A A LOT OF BLOOD, FLOWING BLOOD, WOULD BE SIMILAR TO A WASHING OF THE HANDS. BLOOD IS MOSTLY WATER. SO IF THERE WAS A LOT OF BLOOD ON THE HANDS, I WOULD EXPECT TO SEE LEVELS COMPARABLE TO WASHING THE HANDS, NEAR ZEROES. I DO NOT SEE THAT. A FEW DROPS OF BLOOD ON THE HANDS WOULD BE -- HAVE A NEGLIGIBLE EFFECT.

Q NEGLIGIBLE MEANING?

A VERY SMALL, VERY LITTLE EFFECT.

Q GO AHEAD AND TAKE THE STAND.

A (WITNESS RESUMES THE WITNESS STAND.)

Q AFTER REVIEWING THE FULL REPORT BY MRS. FULLER AND HEARING THE TESTIMONY THAT YOU HAVE HEARD THROUGH THESE LAST FEW DAYS, CAN YOU GIVE US YOUR OPINION AS TO THE COLLECTION OF THIS EVIDENCE, THE COLLECTION OF THE GUNSHOT RESIDUE OFF OF MR. ALEKSEY'S HANDS?

A I DON'T HAVE ANY QUESTION THAT THE SAMPLES WERE TAKEN PROPERLY. THERE IS NO INDICATION ON THE PAPERWORK OR IN THE COURT TESTIMONY THAT I HAVE HEARD THAT ANYTHING INCORRECT WAS DONE. THE SAMPLES I BELIEVE WERE COLLECTED PROPERLY, SECURED PROPERLY, ANALYZED PROPERLY BY A CALIBRATED INSTRUMENT.

Q ANY PROBLEMS WITH THE INSTRUMENT?

A NO, SIR.
Q AND YOU AGAIN KNOW THIS INSTRUMENT?
A I AM SOMEWHAT FAMILIAR WITH THE I.C.P. MOST OF THE GUNSHOT RESIDUE EXAMS THAT I PERFORMED WHILE AT S.L.E.D. WERE WITH THE OLDER INSTRUMENT, WHICH IS CALLED A.A.
Q SO THIS ACTUALLY IS MORE STATE-OF-THE-ART THAN THAT?
A YES, SIR. IT'S A MORE SENSITIVE INSTRUMENT. IT CAN DETECT SMALLER AMOUNTS. IT CAN ALSO DETECT MULTIPLE ELEMENTS SIMULTANEOUSLY. IT'S A LOT FASTER.
Q CAN YOU GIVE US YOUR OPINION, YOUR EXPERT OPINION, AS TO THE GUNSHOT RESIDUE ON JUSTIN MATEEKI'S HANDS?
A IN MY OPINION THE LEVELS THAT I SEE FROM THE DATA SHEETS ON MR. MATEEKI'S HANDS ARE MOST CONSISTENT WITH SOMEONE WHO HAS NOT FIRED A WEAPON WITHIN THE LAST SEVERAL HOURS.
Q SEVERAL HOURS MEANING WHAT?
A THE LAST SIX HOURS.
MR. STONE: NO FURTHER QUESTIONS, YOUR HONOR.
CROSS EXAMINATION
BY SOLICITOR BAILEY:
Q MR. HOLLIFIELD, YOU ARE NOT SAYING HERE UNDER

OATH THAT THESE NEGATIVE TEST RESULTS CONCLUSIVELY SHOW THAT HE DID NOT FIRE THE GUN ROUGHLY SIX HOURS BEFORE THE TEST WAS DONE; ARE YOU?

A NOTING THAT THE SAMPLES IN MY OPINION WERE TAKEN CORRECTLY, COLLECTED CORRECTLY WITHIN THE APPROPRIATE S.L.E.D. DESIGNATED TIME FRAME, THAT BEING WITHIN SIX HOURS, THAT THEY WERE IMMEDIATELY SECURED, HELD IN EVIDENCE, SUBSEQUENTLY ANALYZED AND PRESENTED WITH THESE LEVELS AS A RESULT, I THINK ONCE AGAIN THAT THAT IS MOST CONSISTENT WITH DATA THAT I WOULD EXPECT TO SEE FROM SOMEONE WHO HAS NOT FIRED A WEAPON WITHIN THE LAST SIX HOURS, JUST AS WE HAVE SEEN FOR THE DATA COLLECTED FROM TROOPER LINGARD.

Q LET ME SEE IF I FOLLOW YOU HERE ABOUT THESE NUMBERS HERE. I AM NOT SURE I DO. THIS STUFF IS IN THE ATMOSPHERE, RIGHT, THE BARIUM, THE ANTIMONY, WHATEVER IT IS, AND THE LEAD, IS IN THE ATMOSPHERE IF SOME THINGS WERE TOUCHED BESIDES GUNSHOT RESIDUE?

A YES, SIR, IT'S PRESENT IN THE ENVIRONMENT AND IN EVERYDAY LIFE.

Q SO YOU HAVE TO HAVE A CONTROL? WHAT YOU ARE LOOKING AT IS THE DIFFERENCE IN THE CONTROL AND WHAT YOU FIND ON THESE SWABS WITH THE GUNSHOT RESIDUE KITS?

A THAT'S CORRECT.

Q IS THAT WHAT YOU ARE MEASURING?
A THAT'S CORRECT.
Q SO YOU GET THE CONTROL OFF OF SOME PART OF SOMEBODY'S BODY THAT PROBABLY WOULDN'T COME INTO CONTACT WITH GUNSHOT RESIDUE; IS THAT CORRECT?
A RIGHT. AND IT ALSO MAY BE MORE ISOLATED FROM THE ENVIRONMENT.
Q SO WHAT PART OF THE BODY WOULD YOU GET A CONTROL FROM, FOR EXAMPLE?
A I WOULD PROBABLY TAKE IT FROM THE ELBOW OR THE FOREHEAD OR KNEE.
Q SO WHAT YOU DO, YOU GET THAT CONTROL AND YOU GET SOME ANTIMONY, SOME LEAD AND SOME BARIUM TRACES FROM THAT; IS THAT CORRECT?
A FROM THE CONTROL, YES, SIR.
Q THEN YOU DO THE PALMS AND THE BACK OF THE HANDS AND THEN YOU SUBTRACT OFF THE AMOUNT THAT YOU GOT FOR THE CONTROL AREA AND YOU SEE THE ADDITIONAL AMOUNT OF THOSE SUBSTANCES ON THE HANDS; IS THAT CORRECT?
A THAT'S CORRECT.
Q AND TWO THINGS CAUSE THAT GUNSHOT RESIDUE TO DIMINISH; IS THAT CORRECT? THAT'S THE PASSAGE OF TIME, WHERE THOSE ELEMENTS ARE ABSORBED BY THE BODY?
A YES, SIR.
Q AND THAT'S COMING INTO CONTACT WITH DIFFERENT

ITEMS; IS THAT CORRECT?
A YES, SIR, THOSE ARE.
Q THE MORE TIME THAT PASSES FROM THE TIME SOMEBODY FIRES A GUN, EVERYTHING ELSE BEING EQUAL, THE MORE TIME THAT PASSES, THE MORE THAT STUFF IS GOING TO BE ABSORBED BY THE BODY. AND AS YOU GET AWAY FROM STARTING AT ONE MINUTE, UP TO SIX OR SEVEN HOURS, THE MORE TIME THAT GOES BY, THE LESS OF THIS STUFF YOU ARE GOING TO FIND; RIGHT?
A ESPECIALLY WITH THE BARIUM. THE LEAD ONCE AGAIN IS VERY INSOLUBLE AND WILL ONLY DISSOLVE OR BE ABSORBED UNDER ACIDIC CONDITIONS.
Q AT LEASE TWO OF THESE THINGS, THE ANTIMONY AND THE BARIUM, WOULD BE ABSORBED? SO JUST THE PASSAGE OF TIME IS GOING TO CAUSE THAT STUFF TO DIMINISH; IS THAT CORRECT?
A ALL THREE OF THEM WOULD DIMINISH SOME, YES, SIR, BUT THE LEAD AND THE ANTIMONY ARE BOTH RELATIVELY INSOLUBLE COMPARED TO BARIUM. SO THEY WOULD BE ABSORBED A LOT LESS.
Q BUT ALL THREE OF THEM ABSORB. SO THE MORE TIME -- IF I PICK THIS GUN UP, WHEREVER IT IS, IF I TAKE THIS PISTOL HERE AND I FIRE IT AND EVERYBODY HERE SEES ME FIRE IT, AND I HOLD MY HAND UP HERE FOR AN HOUR, THERE WILL BE SOME OF THESE ELEMENTS THERE;

RIGHT?
A SURE, YES, SIR.
Q TWO HOURS THERE WILL BE LESS; IS THAT CORRECT?
A THERE WILL BE LESS.
Q THREE HOURS THERE WILL BE LESS?
A YES.
Q AND WE GO ON AD INFINITUM. THE LONGER MY HAND IS HERE, THE MORE MY BODY ABSORBS AND AT A CERTAIN POINT THERE WOULD BE NOTHING THERE; IS THAT CORRECT?
A OR VERY SMALL AMOUNTS, YES, SIR.
Q AND S.L.E.D. HAS DETERMINED THAT SIX HOURS IS THE OPTIMUM TIME PERIOD? AFTER THAT YOU DON'T EVEN DO A TEST?
A THAT IS BECAUSE THE LEVEL AFTER SIX HOURS WOULD BE BELOW THRESHOLD, NOT ZERO.
Q RIGHT. BUT THEY WERE NOT ZERO HERE, WERE THEY?
A NO, SIR. THEY WOULD BE BELOW THRESHOLD VALUES.
Q AND EVENTUALLY IT'S ALL GOING TO DISAPPEAR, EXCEPT FOR WHAT IS IN THE SURROUNDING ATMOSPHERE AND WOULD EQUAL THE CONTROL; IS THAT CORRECT?
A I DON'T KNOW FOR A FACT THAT THE LEAD WOULD COMPLETELY DISAPPEAR. IT'S VERY INSOLUBLE.
Q WE HAVE GOT ANOTHER FACTOR TO CONSIDER, DON'T WE? WE HAVE GOT THE HANDS COMING INTO CONTACT WITH THINGS IN THE ENVIRONMENT.

A SURE.
Q THE MORE OF THAT THAT HAPPENS, THE MORE OF IT THAT COMES OFF; IS THAT RIGHT? THAT'S WHY YOU BAG THE HANDS ON A CORPSE.
A THAT'S AN EQUAL OPPORTUNITY -- WHEN THE HANDS COME IN CONTACT WITH OTHER THINGS IN THE ENVIRONMENT, THAT'S AN EQUAL OPPORTUNITY FOR CONTAMINATION.
Q OKAY.
A TRANSFER OCCURS IN BOTH DIRECTIONS, BOTH OFF OF THE HANDS AND ONTO THE HANDS.
Q BUT, MR. HOLLIFIELD, YOU WOULD EXPECT WHEN YOU FIRE A GUN AND HAVE THESE HIGH CONCENTRATIONS OF GUNSHOT RESIDUE THAT THE AVERAGE THING IN THE ENVIRONMENT WOULD HAVE LESS THAN THESE ELEMENTS? I MEAN, ISN'T THAT THE BASIS OF THIS WHOLE TEST, THAT YOU CAN GET CONCENTRATED AMOUNTS OF ANTIMONY AND BARIUM AND LEAD FOR GUNSHOT RESIDE?
A BUT THE ELEMENTS ARE NOT GOING TO GO FROM HIGH CONCENTRATION TO LOW CONCENTRATION THROUGH THE AIR.
Q RIGHT.
A IF THEY ARE IN SOLUTION, THEY WOULDN'T GO FROM HIGH CONCENTRATION AREAS TO LOW CONCENTRATION AREAS. IF WE TALKING ABOUT AIR AS THE MEDIUM, THEN YOU WOULD HAVE TO ACTUALLY TOUCH OR RUB AGAINST ANOTHER SURFACE FOR TRANSFER TO OCCUR.

Q I AM NOT TRYING TO OVER COMPLICATE THIS THING. I'M SAYING THERE ARE TWO THINGS THAT WOULD AFFECT HOW LONG THIS STUFF STAYS ON YOUR HANDS?

A RIGHT.

Q THE PASSAGE OF TIME AND COMING IN CONTACT WITH OTHER ITEMS?

A YES, SIR.

Q ANOTHER PERSON'S HAND THAT HAD NOT FIRED A GUN, A GLOVE, SOME CLOTHING, A SPINE BOARD, SHEETS ON THE BED --

A WHICH CAN ALWAYS BE --

Q -- DIFFERENT THINGS LIKE THAT.

A IT COULD ALSO BE OPPORTUNITY FOR TRANSFER ONTO THE HANDS FROM HANDCUFFS THAT HAVE BEEN ON PRIOR SUSPECTS, FROM RUBBER GLOVES, SURGICAL GLOVES THAT CONTAIN BARIUM. TRANSFER OCCURS BOTH WAYS.

Q I UNDERSTAND THAT. AND I AM NOT TRYING TO BEAT THIS THING TO DEATH, BUT WOULDN'T YOU THINK THAT THE AVERAGE THING A PERSON WOULD COME INTO CONTACT WITH WOULD HAVE LESS OF THESE ELEMENTS THAN FIRING A GUN?

A ABSOLUTELY, YES, SIR.

Q SO OVERALL THE MORE MY HAND COMES INTO CONTACT WITH THIS BOOK OR THIS BOX HERE OR THIS CUP OR WHATEVER, THE MORE THIS STUFF COMES OFF?

A THAT'S RIGHT, YES, SIR.

Q ALL RIGHT. NOW, YOU ARE FAMILIAR WITH THE F.B.I.'S TIME FRAME; ARE YOU NOT?

A YES, SIR.

Q AFTER FOUR HOURS THEY WOULDN'T DO A TEST UNDER THEIR PROTOCOL, WOULD THEY?

A AND THEIR THRESHOLD VALUES ARE SIGNIFICANTLY HIGHER. SO FOR THOSE LEVELS TO FALL BELOW THEIR THRESHOLD LEVELS, IT WOULD HAPPEN IN A SHORTER TIME FRAME.

IF THEY HAVE, FOR INSTANCE, A 400 OR 500 PARTS PER BILLION THRESHOLD, YOU WOULD EXPECT TO SEE LEVELS BELOW THAT, SAY, AFTER THREE OR FOUR OR FIVE HOURS. IT ALSO DEPENDS ON THE SENSITIVITY OF THEIR INSTRUMENT, WHICH I THINK IS COMPARABLE TO S.L.E.D.'S.

Q AND YOU HAVE BEEN PRESENT THROUGHOUT THE ENTIRE TRIAL?

A WITH THE EXCEPTION OF THE FIRST TWO OR THREE WITNESSES, YES, SIR, I HAVE.

Q AND WOULD YOU AGREE WITH ME THAT IF SOMEBODY IS IN AN AGITATED STATE, THEIR METABOLISM IS INCREASED, THEY ARE EXCITED, THEY'RE SCARED, THEY WILL ABSORB THESE ELEMENTS AT A GREATER RATE THAN IF THEY ARE SITTING THERE CALM, LIKE ONE OF US IN THE COURTROOM HERE?

A I WOULD AGREE WITH THAT.
Q WOULD YOU AGREE WITH ME THAT MR. ALEKSEY, DURING THIS HIGH SPEED CHASE AND BEING WRECKED AND HANDCUFFED AND ALL THAT, WOULD HAVE BEEN IN AN AGITATED STATE AND HIS METABOLISM WAS AT A VERY HIGH RATE?
A I AM SURE HE WOULD HAVE BEEN, YES, SIR.
Q AND YOU WERE PRESENT WHEN THE DOCTOR TESTIFIED THAT HE ESTIMATED ABOUT EIGHT TO TWELVE TIMES WHEN HE WAS HANDCUFFED AND UNHANDCUFFED?
A YES, SIR.
Q HIS HANDS CAME INTO CONTACT WITH THE STEERING WHEEL OF THE CAR FOR ONE THING OVER ABOUT A 40-MILE CHASE?
A YES, SIR.
Q AND CAME INTO CONTACT WITH THE SPINE BOARD?
A RIGHT.
Q THE BACK OF HIS CLOTHING?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q AND WHEN THEY HAD HIM DO THESE DIFFERENT X-RAYS AND ALL, IT WOULD COME IN CONTACT WITH OTHER THINGS AROUND HIM; IS THAT CORRECT?
A YES, SIR.
Q AND WHEN THEY WERE BAGGING HIS HANDS, IT WOULD

COME INTO CONTACT WITH THE BAG; WOULDN'T IT?

A THAT'S CORRECT.

SOLICITOR BAILEY: BEAR WITH ME ONE SECOND, PLEASE.

(PAUSE.)

SOLICITOR BAILEY: THAT'S ALL I HAVE, MR. HOLLIFIELD.

MR. STONE: REAL BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. STONE:

Q AND IN THE AGITATED STATE, THE THINGS THAT ARE WASHING AWAY WOULD BE THOSE THREE ELEMENTS, IS THAT RIGHT, ANTIMONY, LEAD AND BARIUM; IS THAT CORRECT? OR ABSORBED?

A AS WELL AS THE OTHER ELEMENTS, TOO.

Q ALL ELEMENTS?

A YES, SIR.

Q BUT WHAT YOU TESTIFIED EARLIER IS THE TWO THAT STICK AROUND WOULD BE THE ANTIMONY AND THE LEAD. THE BARIUM WOULD WASH AWAY OR ABSORB QUICKER, WOULDN'T IT?

A YES, SIR.

Q IN FACT, IN THIS TEST THE BARIUM IS THE HIGHEST LEVEL; IS THAT CORRECT?

A IT'S USUALLY THE HIGHEST LEVEL. IT'S PREVALENT

IN THE ENVIRONMENT.
Q BUT IT HAS NOT WASHED AWAY NEAR AS MUCH AS THE OTHER ONES. LET ME ASK YOU THIS. WHEN SOMEBODY FIRES A GUN, THE GUNSHOT RESIDUE LEAVES THE GUN AND ENVELOPES THE HAND; IS THAT CORRECT? IS THAT HOW THIS WORKS?
A YES, SIR.
Q IT LEAVES FROM ALL THE ORIFICES OF THE GUN?
A A GOOD BIT OF IT, PROBABLY THE MAJORITY OF IT, COMES OUT THE END OF THE BARREL; BUT SIGNIFICANT AMOUNTS DO COME OUT ANY OTHER OPENING, WHETHER IT'S AROUND THE TRIGGER OR THE HAMMER OR WHEREVER.
Q AND DO MULTIPLE SHOTS AFFECT IT AT ALL, AFFECT GUNSHOT RESIDUE TESTING AT ALL?
A MULTIPLE SHOTS WILL HAVE AN ADDITIVE EFFECT ON THE PRESENCE OF THE GUN PRIMER RESIDUE. THE MORE SHOTS THAT ARE FIRED, OBVIOUSLY THE MORE PRIMER RESIDUE WILL BE DEPOSITED ONTO THE HANDS.
MR. STONE: NOTHING FURTHER.
SOLICITOR BAILEY: I HAVE ONE FURTHER QUESTION VERY BRIEFLY.
THE COURT: YES, SIR.
RECROSS EXAMINATION
BY SOLICITOR BAILEY:
Q DO YOU AGREES WITH MRS. FULLER ABOUT THE

CONSISTENCY AND THE CHARACTERISTICS OF GUNSHOT RESIDUE THAT IT IS LIKE FLOUR OR POWDER THAT COMES OFF VERY EASILY?

A MECHANICALLY, YES, SIR, MECHANICALLY.

Q THANK YOU, SIR.

SOLICITOR BAILEY: THAT'S ALL I HAVE.

REDIRECT EXAMINATION

BY MR. STONE:

Q I DON'T UNDERSTAND. WHAT DO YOU MEAN MECHANICALLY?

A AS OPPOSED TO CHEMICALLY. WE ARE NOT TALKING ABOUT ABSORPTION SOLUBILITY, ABSORPTION INTO SKIN; BUT WE ARE TALKING ABOUT MECHANICAL TRANSFER BY TOUCHING OBJECTS THAT WOULD HAVE A SIMILAR CONSISTENCY.

Q BUT DO YOU AGREE WITH MRS. FULLER THAT AT THE SIX-HOUR MARK, IT ALL JUST GOES AWAY?

A NO, IT DOES NOT. IT'S A GRADUAL PROCESS THAT OCCURS OVER A PERIOD OF HOURS.

Q NOTHING ELSE. THANK YOU.

THE COURT: YOU MAY COME DOWN. MAY THIS WITNESS NOW BE EXCUSED?

SOLICITOR BAILEY: YES, SIR.

MR. STONE: EXCUSE ME JUST A MOMENT, YOUR HONOR.

(PAUSE.)

MR. STONE: THE DEFENSE RESTS, YOUR HONOR.

THE COURT: ANYTHING IN REPLY?

SOLICITOR BAILEY: BEAR WITH ME. I DON'T BELIEVE SO, YOUR HONOR, BUT GIVE ME ABOUT ONE MINUTE.

THE COURT: ALL RIGHT, SIR.

(PAUSE.)

SOLICITOR BAILEY: YOUR HONOR, I HAVE NO REPLY.

THE COURT: SIR?

SOLICITOR BAILEY: NOTHING IN REPLY.

THE COURT: COME FORWARD.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE HAVE NOW COMPLETED THE TESTIMONY OF THE DEFENSE; AND THE STATE HAS NO REPLY. SO THAT WILL CONCLUDE THE TAKING OF THE TESTIMONY.

NOW, IN THAT REGARD I CALL YOUR ATTENTION TO THE FOLLOWING CHARGE. I CHARGE YOU THAT THE FACT THAT THIS DEFENDANT DID NOT AND DOES NOT TESTIFY IN HIS OWN BEHALF CANNOT AND MUST NOT BE CONSIDERED AGAINST HIM UNDER ANY CIRCUMSTANCES OR IN ANY WAY MANNER WHATSOEVER.

THE FAILURE OF ANY DEFENDANT TO TAKE THE WITNESS STAND AND TO TESTIFY IN HIS OWN BEHALF DOES NOT CREATE ANY PRESUMPTION AGAINST HIM. I TELL YOU NOW THAT YOU MUST NOT PERMIT THAT FACT TO WEIGH IN THE SLIGHTEST DEGREE AGAINST THIS DEFENDANT.

MR. FOREMAN, YOU MUST NOT PERMIT THIS FACT OF HIS FAILURE TO TESTIFY TO EVEN ENTER INTO YOUR DISCUSSIONS IN THE JURY ROOM. I AM GOING TO LET YOU GO TO THE JURY ROOM AND REST A FEW MINUTES, AND WE WILL COME BACK WITH FINAL SUMMATIONS AND ARGUMENT IN THE FIRST PHASE.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: THE INSTRUCTION WITH REGARD TO FAILURE TO TESTIFY WAS GIVEN INITIALLY AT THE REQUEST OF THE DEFENDANT AND WILL BE AGAIN GIVEN IN THE FINAL CHARGE.

MR. STONE: THANK YOU.

THE COURT: OBVIOUSLY OUR STATUTE PROVIDES THAT YOU SHALL HAVE THE LAST ARGUMENT.

MR. STONE: YES, SIR.

THE COURT: YOU UNDERSTAND THAT?

MR. STONE: YES, SIR.

THE COURT: HAVE THE DEFENDANT STAND. MR. DEFENDANT, WE ARE IN THE FIRST STAGE. UNDER THE STATUTORY LAWS OF SOUTH CAROLINA, YOU, TOO, ARE

PERMITTED TO MAKE A FINAL ARGUMENT IN THIS PHASE, AS YOU ARE IN THE SECOND PHASE SHOULD WE GET TO THAT.

IN THIS FIRST PHASE, AGAIN IT IS YOUR DECISION AND YOURS ALONE TO AS TO WHETHER TO MAKE A FINAL ARGUMENT. OBVIOUSLY YOU WOULD CONSIDER DISCUSSING IT WITH YOUR ATTORNEYS, BUT THE DECISION IS YOURS. WOULD YOU LIKE TO DISCUSS IT NOW WITH THE ATTORNEYS BEFORE MAKING THAT DECISION OR ARE YOU PREPARED TO MAKE THAT DECISION AT THIS TIME?

DEFENDANT ALEKSEY: I WANT TO SPEAK TO MY ATTORNEYS ABOUT IT.

THE COURT: WILL YOU THEN ADVISE ME AT THE APPROPRIATE TIME AS TO HIS DECISION?

MR. STONE: YES, SIR.

THE COURT: I WANT THIS RECORD TO REFLECT NOW THAT I HAVE MADE INQUIRY OF HIM, AND I DON'T WANT THIS FIRST PHASE CONCLUDED WITHOUT ME BEING SPECIFICALLY ON THE RECORD WITH HIM.

MR. STONE: YES, SIR.

THE COURT: AS TO HIS RIGHTS TO MAKE THE FINAL ARGUMENT AND AS TO HIS DECISION.

MR. STONE: YES, SIR.

THE COURT: ANYTHING FURTHER AT THIS TIME?

SOLICITOR BAILEY: NO, SIR.

THE COURT: LET'S TAKE A SHORT REST AND WE

WILL GO AHEAD AND CONCLUDE THE FIRST PHASE THIS EVENING.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: BRING THE JURY IN, PLEASE.

(THE JURY RETURNS TO THE COURTROOM.)

(WHEREUPON THE COURT CHARGED THE JURY AS FOLLOWS.)

THE COURT: WE HAVE NOW CONCLUDED THE TAKING OF ALL TESTIMONY IN THE TRIAL OF THIS CASE. WE ARE AT THAT STAGE WHERE WE SHALL HAVE FINAL SUMMATION OF COUNSEL WITH THE STATE OF SOUTH CAROLINA REPRESENTED BY SOLICITOR BAILEY GOING FIRST AND THEN THE DEFENDANT'S ATTORNEY AND THE DEFENDANT HIMSELF IF HE CARES TO IN MAKING THE CLOSING ARGUMENTS.

GENERALLY WE INSTRUCT THE JURY WITH REGARD TO THE LAW ON THE ISSUES PRESENTED AFTER SUMMATION. JURORS IN THE LAST SEVEN OR EIGHT YEARS HAVE YOU TOLD ME, "JUDGE COTTINGHAM, I WISH YOU WOULD HAVE TOLD ME WHAT THE LAW WAS EVEN BEFORE I HEARD THEM ARGUE BECAUSE I BELIEVE I COULD HAVE FOLLOWED THEIR POSITIONS BETTER."

SO IT IS BY AND WITH THE CONSENT OF COUNSEL FOR THE STATE AND THE DEFENDANT, I AM GOING TO NOW INSTRUCT YOU ON THE PROPOSITIONS OF LAW RELATIVE TO THE ISSUES INVOLVED IN THIS CASE.

FOLLOWING THAT WE WILL TAKE A SHORT BREAK SO THAT WE CAN MAKE THE NECESSARY ARRANGEMENTS FOR YOUR DINNER. THEN I WILL CALL YOU BACK OUT AND WE WILL HAVE FINAL ARGUMENTS. AT THE CONCLUSION OF THE ARGUMENTS, I WILL GIVE YOU SOME CONCLUDING REMARKS WITH REGARD TO THE LAW OF THIS CASE.

NOW, AT THE OUTSET, LET ME SAY TO YOU AS STRONLY AS I CAN THAT YOU 12 ARE THE SOLE AND ONLY FINDERS OF THE FACTS IN THIS CASE. IF ANY WORD, RULING OR MANNERISM OF MINE MIGHT TEND TO INDICATE TO ANY OF YOU HOW I FEEL ABOUT ANY FACTUAL SITUATION, PLEASE DISREGARD THAT. I AM NOT ENTITLED TO A FACTUAL OPINION AND I ABSOLUTELY HAVE NONE.

YOU 12 JURORS ARE MY FINDERS OF THE FACTS IN THIS CASE. THE FACTS WILL BE DERIVED BY YOU FROM THE TESTIMONY AND EVIDENCE PRESENTED IN THIS COURTROOM AND NOT FROM ANY OTHER OUTSIDE SOURCE WHATSOEVER.

NOW, MR. FOREMAN, AND MEMBERS OF THE JURY, AS YOU ARE WELL AWARE, THE STATE OF SOUTH CAROLINA CHARGES THIS DEFENDANT WITH THE OFFENSE OF MURDER UPON THIS INDICTMENT, WHICH AS YOU KNOW IS IN NO SENSE ANY EVIDENCE WHATSOEVER.

THIS INDICTMENT HAS BEEN READ TO YOU. SO I WILL NOT NOW REPEAT THE ALLEGATIONS CONTAINED IN IT.

YOU WILL HAVE THIS INDICTMENT IN THE JURY ROOM DURING YOUR DELIBERATIONS.

TO THIS INDICTMENT THIS DEFENDANT HAS PLED NOT GUILTY, WHICH PLACES UPON THE STATE THE BURDEN OF PROVING THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER, EVER REQUIRED TO PROVE HIMSELF INNOCENT. THE STATE MUST PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.

I CHARGE YOU THEREFORE THAT IT IS A VITAL AND IMPORTANT RULE OF THE LAW OF EVIDENCE THAT A DEFENDANT IN A CRIMINAL CASE, NO MATTER HOW GREAT OR SERIOUS MAY BE THE OFFENSE WITH WHICH HE IS CHARGED, MUST ALWAYS BE PRESUMED INNOCENT UNTIL HIS GUILT HAS BEEN PROVEN TO YOU BEYOND A REASONABLE DOUBT.

THIS PRESUMPTION OF INNOCENCE REMAINS WITH THE DEFENDANT AT ALL TIMES, FROM THE MOMENT OF HIS ARRAIGNMENT, THROUGHOUT THE TRIAL AND UNTIL YOU THE JURY HAVE, UPON THE TESTIMONY AND EVIDENCE PRESENTED, REACHED A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT.

FOR IT IS THE SOLEMN DUTY OF THE JURY, IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND EVERY REASONABLE DOUBT TO THE CONTRARY, TO ACQUIT THE DEFENDANT.

SO IT IS, LADIES AND GENTLEMEN, THE BURDEN OF PROOF IS UPON THE STATE TO ESTABLISH BY EVIDENCE TO YOUR SATISFACTION THE GUILT BEYOND A REASONABLE DOUBT OF THIS DEFENDANT HERE ON TRIAL FOR MURDER.

I HAVE USED THE WORD REASONABLE DOUBT. A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. REASONABLE DOUBT MAY ARISE FROM EVIDENCE THAT IS IN THIS CASE OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE. YOU 12 ALONE MUST MAKE THE DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THIS DEFENDANT.

NOW, LADIES AND GENTLEMEN OF THE JURY, UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, AS I HAVE INDICATED BEFORE AS STRONGLY AS I CAN, YOU AND YOU ALONE ARE THE FINDERS OF THE FACTS IN THIS CASE.

I EMPHASIZE TO YOU AGAIN I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN TO EXPRESS ANY OPINION I MIGHT HAVE AS TO THEM, NOR MAY I INTIMATE IN ANY WAY WHAT I MAY THINK AS TO THE GUILT OR INNOCENCE OF THIS DEFENDANT.

I AM PERMITTED TO TELL YOU, TOO, THAT YOU AND YOU ALONE ARE THE SOLE AND ONLY JUDGES OF THE CREDIBILITY, MEANING THE BELIEVABILITY, OF ALL OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE.

IN PASSING UPON THEIR CREDIBILITY, YOU MAY, IF YOU CHOOSE, TAKE INTO CONSIDERATION MANY THINGS, SUCH AS THE APPEARANCE AND MANNER OF THE WITNESS, SOMETIMES REFERRED TO AS THE DEMEANOR OF A WITNESS.

YOU MAY CONSIDER WHETHER A WITNESS WAS FORTHRIGHT OR CONSISTENT. DID A WITNESS'S TESTIMONY CONTAIN DISCREPANCIES? THAT IS FOR YOU TO DECIDE AS FINDERS OF THE FACTS.

YOU MAY CONSIDER, IF YOU CHOOSE, THE ABILITY OF A PARTICULAR WITNESS TO KNOW ABOUT THE FACTS WHICH HE OR SHE HAS TESTIFIED TO. OBVIOUSLY YOU WILL CONSIDER WHETHER OR NOT A PARTICULAR WITNESS HAD A CAUSE OR REASON TO BE BIASED AND PREJUDICED WITH REGARD TO THE TESTIMONY THAT HE OR SHE MAY HAVE GIVEN.

YOU WILL, IF YOU CHOOSE, CONSIDER THE TESTIMONY OF THE WITNESSES AS TO WHETHER OR NOT IT WAS CORROBORATED OR MADE STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS SUCH TESTIMONY IMPEACHED OR MADE WEAKER BY SUCH OTHER TESTIMONY?

LADIES AND GENTLEMEN, AS JURORS YOU HAVE A RIGHT TO BELIEVE A SMALL PORTION OF A WITNESS'S TESTIMONY AND TO DISREGARD THE LARGER OR VICE-VERSA. YOU MAY BELIEVE ALL OF A WITNESS'S TESTIMONY OR NONE. YOU ARE ENTITLED TO BELIEVE THE TESTIMONY OF ONE

WITNESS AGAINST THAT OF MANY OR THE OTHER WAY AROUND.

OBVIOUSLY YOU DO NOT DETERMINE THE TRUTH OR FALSITY OF A MATTER BY COUNTING UP THE NUMBER OF WITNESSES WHO MAY HAVE TESTIFIED ON ONE SIDE OR THE OTHER.

LADIES AND GENTLEMEN, THROUGHOUT THIS ENTIRE PROCESS, YOU HAVE BUT ONE SINGLE OBJECTIVE; AND THAT IS TO SEEK THE TRUTH, TO SEEK THE TRUTH REGARDLESS OF FROM WHAT SOURCE THAT TRUTH MAY BE DERIVED.

NOW, ALL OF THESE THINGS, LADIES AND GENTLEMEN, YOU WILL CONSIDER, BEARING IN MIND THAT YOU MUST GIVE THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT.

NOW, WITH EQUAL EMPHASIS I CHARGE YOU THAT BY THE SAME CONSTITUTION AND LAWS WHICH MAKES UNTO YOU THE FINDERS OF THE FACTS AND OF THE EVIDENCE, AS I HAVE DISCUSSED WITH YOU, I AM THE JUDGE, MADE THE SOLE AND ONLY INSTRUCTOR IN THE LAW.

UNDER YOUR OATH, LADIES AND GENTLEMEN, YOU MUST ACCEPT AS CORRECT THE LAW WHICH I CHARGE YOU AND APPLY THAT LAW TO THE EVIDENCE AS YOU FIND IT AND REACH YOUR VERDICT.

IF I SHOULD MAKE AN ERROR IN THE LAW AS I INSTRUCT YOU, THERE IS ANOTHER TIME AND PLACE THAT

THAT MAY BE CORRECTED; BUT FOR THE PURPOSES OF THIS CASE TODAY, PLEASE ACCEPT THE LAW AS I CHARGE IT TO YOU AS BEING THE CORRECT LAW.

FINALLY, I CHARGE YOU IN THIS REGARD THAT YOU MAY NOT, NOR FOR THAT MATTER I SHOULD NOT AND MUST NOT, BE CONCERNED ABOUT WHAT THE LAW IS OR OUGHT TO BE; BUT RATHER YOU ACCEPT THE LAW AS I CHARGE IT TO YOU, REMEMBERING AT ALL TIMES THAT AS FINDERS OF THE FACTS, YOU TAKE THE FACTS AS YOU HAVE FOUND THEM TO BE AND APPLY THOSE FACTS TO THE LAW IN THIS CASE.

NOW, AS YOU ARE WELL AWARE, THE STATE OF SOUTH CAROLINA HAS CHARGED IN THIS INDICTMENT THAT THIS DEFENDANT IS GUILTY OF THE CRIME OF MURDER. SO IT IS THAT IT BECOMES NECESSARY FOR ME TO INSTRUCT YOU AS TO THE LAW OF THAT CRIME IN SOUTH CAROLINA.

WHAT IS MURDER BY DEFINITION? MURDER MAY BE DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT.

THUS IN ORDER TO CONVICT OF MURDER, THE STATE MUST NOT ONLY PROVE THE KILLING OF THE DECEASED BY THIS DEFENDANT BUT MUST PROVE THAT IT WAS DONE WITH MALICE AFORETHOUGHT, AND SUCH PROOF MUST BE BEYOND A REASONABLE DOUBT.

LET ME DEFINE MALICE FOR YOU. MALICE IS A

WORD SUGGESTING WICKEDNESS, HATRED, A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG WITHOUT JUST CAUSE, EXCUSE OR LEGAL PROVOCATION.

MALICE NEED NOT BE IN THE MIND OF THE ONE DOING THE KILLING ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT OF THE KILLING TO RENDER THAT KILLING MURDER.

IF IT IS PRESENT IN THE MIND OF THE ONE DOING THE KILLING ANY LENGTH OF TIME BEFORE THE ACT, THEN ITS PRESENCE WOULD BE SUFFICIENT TO RENDER THE KILLING MURDER.

MALICE IS SAID TO BE EXPRESSED WHEN THERE IS MANIFESTED A VIOLENT, DELIBERATE INTENTION UNLAWFULLY TO TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING.

MALICE MAY BE IMPLIED WHERE ONE INTENTIONALLY AND DELIBERATELY DOES AN UNLAWFUL ACT WHICH HE OR SHE THEN KNOWS TO BE WRONG AND IN VIOLATION OF HIS OR HER DUTY TO ANOTHER.

MALICE MAY BE IMPLIED WHERE NO EXCUSE OR LEGAL PROVOCATION FOR THE KILLING APPEARS AND WHEN THE CIRCUMSTANCES ATTENDING A KILLING SHOW AN ABANDONED HEART, A MALIGNANT HEART FATALLY BENT UPON MISCHIEF.

SUCH IMPLICATIONS OR INFERENCES ARE NOT

CONCLUSIVE AND THE JURY, DEPENDING UPON THEIR VIEW OF EVIDENCE, MAY ACCEPT OR REJECT THE SAME. THE LAW SAYS THAT IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON, THE IMPLICATION OF MALICE MAY ARISE.

IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU THE JURY ALONG WITH THE OTHER EVIDENCE IN THE CASE; AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

IN OTHER WORDS, THE INFERENCE OF MALICE FROM THE USE OF A DEADLY WEAPON IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU THE JURY ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AND TO BE GIVEN SUCH WEIGH AS THE JURY DETERMINES IT SHOULD RECEIVE.

THE INFERENCE OF MALICE MAY BE DRAWN FROM PROOF OF THE USE OF A DEADLY WEAPON IF THE JURY CONCLUDES SUCH IS PROPER AFTER CONSIDERING ALL OF THE FACTS AND THE CIRCUMSTANCES IN EVIDENCE.

NOW, WHILE THE COURT GENERALLY DETERMINES THE ADMISSIBILITY OF EVIDENCE, I INSTRUCT YOU THAT AS REGARDS ANY ALLEGED STATEMENTS MADE BY THIS DEFENDANT, AS I DID IN THE TRIAL OF THE CASE, YOU THE

MEMBERS OF THE JURY MUST MAKE THE ULTIMATE DETERMINATION OF WHETHER OR NOT THE DEFENDANT MADE THAT STATEMENT.

AND IF HE DID MAKE THE STATEMENT, WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL AND ACCORD; AND FINALLY, JUST WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO ANY ALLEGED STATEMENT.

I CHARGE YOU, LADIES AND GENTLEMEN, THAT YOU MUST DETERMINE IF THIS STATEMENT WAS THE PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY THE MAKER.

IF YOU DETERMINE IT WAS, AND THE BURDEN IS UPON THE STATE TO PROVE THIS FACT AS ALL OTHER FACTS BEYOND A REASONABLE DOUBT, THEN YOU MAY GIVE THAT STATEMENT SUCH FURTHER CONSIDERATION AS YOU THE JURY DEEM PROPER.

IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY WILLED EXPRESSION OF THE DEFENDANT, THEN YOU SHOULD NOT CONSIDER THAT STATEMENT AT ALL.

IN DETERMINING WHETHER A DEFENDANT'S WILL WAS OVERCOME IN OBTAINING A STATEMENT, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE ACCUSED, THE DETAILS OF THE INTERROGATION, WHICH IS REFERRED TO IN

THE LAW AS THE TOTALITY OF THE CIRCUMSTANCES.

SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE THE AGE OF THE ACCUSED, HIS EDUCATION OR LACK THEREOF, HIS MENTAL ABILITY OR CAPACITY, HIS I.Q. OR INTELLIGENCE, HIS BACKGROUND AND ENVIRONMENT, THE ADVICE OR LACK THEREOF TO THE ACCUSED OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT NOT LIMITED TO THE PROCEDURAL SAFEGUARDS KNOWN AS THE MIRANDA WARNINGS, CONCERNING THE RIGHT TO REMAIN SILENT, THAT A STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW, THE RIGHT TO HAVE A LAWYER PRESENT; IF INDIGENT AND HE COULD NOT AFFORD A LAWYER, THEN A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COSTS; AND THAT HE COULD STOP BEFORE MAKING A STATEMENT AT ANY TIME. OTHER FACTORS TO BE CONSIDERED ARE THE PLACE AND LENGTH OF DETENTION AND THE NATURE OF THE QUESTIONS.

MR. FOREMAN, YOU AND THE JURY MUST CAREFULLY SCRUTINIZE ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE ACCUSED UNINFLUENCED BY PROMISE OR REWARD, THREAT OF INJURY OR DIMINUTION OF HIS RIGHTS.

AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF THE DEFENDANT. THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROVING THE IDENTITY BEYOND A REASONABLE DOUBT.

IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR IMPRESSION BY A WITNESS. YOU MAY CONSIDER THE OPPORTUNITY A WITNESS HAD TO OBSERVE THE ALLEGED OFFENDER AT THE TIME OF THE OFFENSE AND TO THEREAFTER MAKE AN IDENTIFICATION.

IT IS FOR YOU THE JURY TO DETERMINE THE ACCURACY OF ANY IDENTIFICATION OF THE DEFENDANT. YOU MUST CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION WITNESS IN THE SAME WAY AS ANY OTHER WITNESS.

YOU MAY CONSIDER HIS TRUTHFULNESS, AS WELL AS THE CAPACITY, OPPORTUNITY AND CIRCUMSTANCES OF THE OBSERVATION OF THE MATTERS ABOUT WHICH HE OR SHE MAY HAVE TESTIFIED.

NOW, LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS KNOWLEDGE OF A FACT OR CIRCUMSTANCE, SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND

CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

THE LAW MAKES NO ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN THAT OF DIRECT EVIDENCE.

YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

DURING THE COURSE OF THIS TRIAL, I HAVE QUALIFIED VARIOUS WITNESSES AS EXPERT WITNESSES. LET ME NOW DISCUSS THAT WITH YOU. WITNESSES WHO BY TRAINING, EDUCATION OR EXPERIENCE ARE CONSIDERED AS EXPERTS IN A PARTICULAR FIELD MAY GIVE OPINIONS IN THAT FIELD BASED UPON THE FACTS OF A MATTER.

THEIR CONCLUSIONS AND OPINIONS CONSTITUTE EVIDENCE TO BE CONSIDERED BY YOU THE JURY IN CONNECTION WITH ALL THE OTHER TESTIMONY AND EVIDENCE IN THE CASE. YOU THE JURY MAY GIVE IT SUCH WEIGHT AS YOU IN YOUR EXPERIENCE AND DISCRETION MAY DETERMINE PROBATIVE.

DURING THE COURSE OF THIS TRIAL, I CHARGED YOU WITH REFERENCE TO THE FAILURE OF THE DEFENDANT TO

TAKE THE STAND. I DO SO AGAIN AT THIS TIME, MR. FOREMAN, AND MEMBERS OF THE JURY.

THE FACT THAT THIS DEFENDANT DID NOT TESTIFY IN HIS OWN BEHALF CANNOT AND MUST NOT BE CONSIDERED AGAINST HIM UNDER ANY CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER.

THE FAILURE OF ANY DEFENDANT TO TAKE THE WITNESS STAND AND TO TESTIFY IN HIS OR HER BEHALF DOES NOT CREATE ANY PRESUMPTION AGAINST HIM. I TELL YOU NOW THAT YOU MUST NOT PERMIT THAT FACT TO WEIGH IN THE SLIGHTEST DEGREE AGAINST THIS DEFENDANT. YOU MUST NOT PERMIT THAT FACT TO ENTER INTO YOUR DISCUSSIONS OR DELIBERATIONS ON ANY ISSUE IN THE JURY ROOM.

MR. FOREMAN, LADIES AND GENTLEMEN, YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE. WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT; AND YOU WOULD HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

YOU MUST NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU HAVE HEARD ON THE OUTSIDE; BUT YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES, ALONG WITH OTHER

EVIDENCE THAT HAS BEEN INTRODUCED.

THERE ARE TWO VERDICTS WHICH YOU MUST FIND IN THIS CASE. ONE IS NOT GUILTY. ONE IS GUILTY. THERE IS ABSOLUTELY NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE THESE TWO POSSIBLE VERDICTS. IT'S SIMPLY THAT ONE MUST BE STATED BEFORE THE OTHER.

NOW, AFTER SUMMATION OF COUNSEL, I WILL BE BACK WITH YOU WITH SOME CONCLUDING REMARKS. EVEN AT THAT TIME UNDER OUR PROCEDURE, I WILL ASK THAT YOU GO TO THE JURY ROOM SO THAT I MAY CONSULT WITH THE ATTORNEYS FOR THE STATE AND DEFENDANT AS TO ANY OTHER CHARGES APPROPRIATE.

DURING YOUR DELIBERATIONS THERE WILL BE PENCIL AND PAPER PROVIDED. IF AT ANY TIME YOU NEED TO KNOW WHAT THE LAW IS, ALL YOU HAVE TO DO IS WRITE THAT QUESTION DOWN ON A PIECE OF PAPER, KNOCK ON THE DOOR; AND I WILL BE GLAD TO EXPLAIN THE LAW ON ANY ISSUE. REMEMBER, NOBODY CAN TELL YOU 12 WHAT THE FACTS ARE.

NOW, PROCEDURALLY WE ARE GOING TO MOVE INTO THE FOLLOWING DIRECTION. I AM GOING TO TAKE A SHORT BREAK SO THAT YOU MAY ORDER YOUR DINNER. AS SOON AS YOU HAVE DONE THAT, PLEASE LET ME KNOW, MR. FOREMAN.

WE WILL COME OUT WITH THE FINAL ARGUMENTS, FIRST OF THE STATE AND THEN OF THE DEFENSE. I WILL

HAVE SOME CONCLUDING REMARKS AND I WILL ASK YOU AT THAT TIME TO BEGIN YOUR DELIBERATIONS.

REMEMBER, DO NOT DISCUSS THIS CASE AT ALL. DO NOT DISCUSS IT EVEN AMONG YOURSELVES UNTIL WE HAVE HEARD ARGUMENTS OF THE STATE AND OF THE DEFENSE, AND I HAVE BEEN BACK WITH YOU WITH CONCLUDING REMARKS.

WHEN I SAY TO YOU, MR. FOREMAN, LADIES AND GENTLEMEN, YOU MAY NOW BEGIN YOUR DELIBERATIONS, THAT IS THEN THE ONLY AND APPROPRIATE TIME TO HAVE YOUR DISCUSSIONS WITH YOUR FELLOW JURORS.

I AM GOING TO LET YOU GO AND ORDER YOUR DINNER. AS SOON AS YOU GET READY, AS SOON AS THAT IS DONE, LET ME KNOW SO WE CAN START AGAIN.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: FOR THE STATE, ANY EXCEPTIONS OR ADDITIONS TO CHARGE AT THIS TIME?

SOLICITOR BAILEY: NO, YOUR HONOR.

THE COURT: FOR THE DEFENSE?

MR. STONE: YES, SIR, TWO THINGS. ONE IS I WOULD ASK THAT YOU CONSIDER CHARGING THE CIRCUMSTANTIAL CHARGE THAT IS OUTLINED IN STATE VERSUS GRIPPON.

THE COURT: THAT'S WHAT I DID.

MR. STONE: DID YOU INCLUDE -- I DID NOT HEAR IT. IF YOU DID THAT'S FINE -- I DID NOT HEAR

THE LANGUAGE CONCERNING THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS.

THE COURT: THAT'S NOT NOW CONTAINED IN THAT. THIS IS THE CHARGE. IT'S NOT NOW CONTAINED IN THAT CHARGE. THIS IS THE PREVAILING CHARGE. YOU TAKE A LOOK AT IT.

MR. STONE: I WILL TAKE A LOOK AT IT LATER.

THE COURT: IF I AM WRONG, I WILL TAKE IT AT THE END WHEN I CHARGE AGAIN.

MR. STONE: I REALIZE YOU WILL CHARGE AGAIN. THE SECOND THING IS I DON'T KNOW THAT YOU NECESSARILY NEED TO COVER IT AT THIS POINT, BUT IN THE SECOND CHARGE I WOULD ASK THAT YOU SPECIFICALLY NOT TELL THE JURY THAT THEY HAVE ONE JOB TO DO, WHICH IS TO FIND THE TRUTH.

I THINK THAT LESSENS THE BURDEN THAT IS ON THE STATE TO PROVE THEIR CASE. I THINK YOU COVERED THE REASONABLE DOUBT VERY WELL, BUT I THINK BY TELLING THEM THAT THEY HAVE ONE JOB TO FIND THE TRUTH REDUCES THAT BURDEN. I OBJECT TO THAT AT THIS STAGE AND AS WELL --

THE COURT: YOU MEAN YOU OBJECT TO ME DOING IT AGAIN?

MR. STONE: PLEASE DON'T DO IT AGAIN AND I OBJECT TO IT AT THIS TIME.

THE COURT: I TRULY HOPE OUR PROCEDURES HERE IN THE LAST WEEK IS TO FIND THE TRUTH.

MR. STONE: I UNDERSTAND. I UNDERSTAND.

THE COURT: BEYOND THAT, YOU CHECK THAT CIRCUMSTANTIAL EVIDENCE CHARGE.

MR. STONE: I WILL, SIR.

THE COURT: THAT'S VERBATIM FROM THAT RECENT CASE; BUT IF I AM IN ERROR, I WOULD BE GLAD TO CONSIDER IT.

MR. STONE: I WOULD AT THIS TIME RENEW ALL PREVIOUS OBJECTIONS AND MOTIONS.

THE COURT: OTHER THAN THAT, THERE IS NO PROBLEM WITH THE CHARGE?

MR. STONE: YES, SIR.

THE COURT: AT THE END OF YOUR SUMMATION, I WILL JUST RECAPITULATE WITHOUT DETAIL OF THE VARIOUS THINGS.

MR. STONE: YES, SIR.

THE COURT: LET'S BE IN RECESS UNTIL WE HEAR FROM THE JURY.

MR. STONE: I NEED TO MAKE SURE THAT I MAKE THE DIRECTED VERDICT MOTION AT THE END OF ALL THE EVIDENCE BEFORE WE DO THE CHARGE. I NEED THAT ON THE RECORD.

THE COURT: YES.

MR. STONE: I DON'T THINK I DID IT. IN OTHER WORDS, I COVERED IT AFTER THEIR CASE BUT I DID NOT COVER IT AGAIN.

THE COURT: WE WILL DO THAT. DO NOTE THAT AT THE MOMENT HE SAID HE RESTED, HE AGAIN MOVED FOR A DIRECTED VERDICT, WHICH WAS DENIED ON GROUNDS PREVIOUSLY STATED AS THE MOTION AT THE END OF THE STATE'S CASE.

MR. STONE: YES, SIR.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: IS THE STATE READY TO PROCEED?

SOLICITOR BAILEY: THE STATE IS READY, YOUR HONOR.

THE COURT: IS THE DEFENDANT READY?

MR. STONE: YES, SIR.

THE COURT: THE DEFENDANT IS IN THE COURTROOM. BRING THE JURY PLEASE.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: MR. BAILEY, YOU MAY HAVE THE OPENING.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR. LADIES AND GENTLEMEN, I WANT TO THANK YOU, FIRST OF ALL, FOR YOUR ATTENTION THROUGHOUT THIS TRIAL. IT HAS LASTED LONGER THAN I ANTICIPATED. WE ARE INTO OUR THIRD DAY. I APPRECIATE YOUR PATIENCE THROUGHOUT

THE TRIAL.

I ASK YOU TO BEAR WITH ME FOR ROUGHLY ANOTHER HALF AN HOUR WHILE I MAKE MY CLOSING REMARKS TO YOU. JUDGE COTTINGHAM HAS PARTIALLY INSTRUCTED Y'ALL ON THE LAW. ONCE CLOSING STATEMENTS ARE FINISHED, HE WILL COMPLETE HIS INSTRUCTIONS TO YOU.

Y'ALL KNOW BY NOW THAT IT'S YOUR SWORN DUTY TO TAKE THE LAW AS HE GIVES IT TO YOU AND FOLLOW THE JUDGE ON THE LAW. YOU FOLLOW YOUR MEMORIES ON THE FACTS, YOUR MEMORIES OF THE SWORN TESTIMONY FROM THE WITNESS STAND.

I WILL GO THROUGH SOME OF THAT WITH YOU. I WILL GO BY MY NOTES AND MY MEMORY. BUT IF Y'ALL REMEMBER ANYTHING DIFFERENT THAN WHAT I SAY AND FOR THAT MATTER WHAT THE OTHER ATTORNEYS MAY SAY, GO BY YOUR OWN MEMORIES.

NOBODY WILL INTENTIONALLY TRY TO MISSTATE SOMETHING. THIS HAS BEEN A LONG TRIAL. A LOT HAS BEEN SAID. IF THERE IS ANY DOUBT IN YOUR MIND ABOUT SOMETHING THAT Y'ALL THINK IS IMPORTANT THAT CAME OUT THROUGH THE TESTIMONY AND YOU ARE NOT SURE ABOUT, THE COURT REPORTER CAN PLAY THAT BACK TO YOU.

SO IF THERE IS ANY DOUBT THERE, THAT CAN BE HANDLED. YOU CAN REHEAR TESTIMONY. YOU WILL ALSO HAVE ALL THIS EVIDENCE THAT HAS BEEN MARKED BY THE

COURT REPORTER BACK IN THE JURY ROOM TO DELIBERATE IF Y'ALL NEED IT.

NOW, WHAT I AM GOING TO DO AT THIS POINT IS TO REVIEW SOME OF THE EVIDENCE WITH YOU, NOT ALL OF IT BECAUSE YOU HAVE HEARD IT AND YOU HAVE BEEN ATTENTIVE; BUT I WILL GO OVER SOME IT. I WILL TALK ABOUT THE EVIDENCE AND THE REASONABLE INFERENCES THAT Y'ALL AS JURORS CAN DRAW FROM THE EVIDENCE THAT HAS COME OUT IN THE COURTROOM.

THE JUDGE HAS TOLD YOU THAT I HAVE THE BURDEN OF PROOF IN THIS CASE ON BEHALF OF THE STATE OF SOUTH CAROLINA AND I DO. I HAVE THE BURDEN TO PROVE BEYOND A REASONABLE DOUBT.

AS I SAID IN MY OPENING STATEMENT, WHAT WE ARE TALKING ABOUT AS FAR AS ME PROVING THE CASE TO Y'ALL'S SATISFACTION BEYOND A REASONABLE DOUBT IS A COMMON SENSE THING.

YOU DON'T LEAVE YOUR COMMON SENSE AT HOME. YOU BRING IT WITH YOU. YOU CARRY IT WITH YOU THROUGHOUT THE TRIAL. YOU TAKE IT INTO THE JURY ROOM WHEN YOU DELIBERATE AND DISCUSS THIS EVIDENCE.

YOUR DUTY IS TO BASE YOUR DECISION ON THE CREDIBLE EVIDENCE YOU HEARD FROM THAT WITNESS STAND, NOT FROM SPECULATION AND NOT FROM COMMENTS OR STATEMENTS FROM THE LAWYERS BUT FROM THE WITNESS

STAND. THE JUDGE HAS TOLD YOU THAT.

A GOOD EXAMPLE OF WHY YOU CAN'T BASE YOUR DECISION ON WHAT THE LAWYERS ARE TELLING YOU THAT I CAN THINK OF IS IN THE OPENING STATEMENT, ONE OF THE DEFENSE ATTORNEYS SAID SOMETHING TO THE EFFECT THAT GLORYVEE BLACKWELL WILL BE THE ONLY PERSON THAT WILL TELL Y'ALL THAT BAYAN ALEKSEY COMMITTED THIS MURDER.

THE FACTS DIDN'T BEAR THAT OUT, THE FACTS THAT Y'ALL SAW HERE. GLORYVEE BLACKWELL TOLD YOU THAT UNDER OATH, BUT IN ADDITION TO THAT Y'ALL HEARD IT FROM HER DAUGHTER GLORIA. YOU HEARD IT FROM GEORGE DARNELL WHEN THE TAPE WAS PLAYED. YOU HEARD IT FROM KENNY MEARS WHEN HE SAID HE WAS THERE WHEN THAT TAPE WAS PLAYED. AND YOU HAVE HEARD IT FROM BAYAN ALEKSEY'S OWN VOICE ON THAT TAPE THAT HE COMMITTED THAT SHOOTING.

THEY ALSO SAID I MADE A DEAL WITH THE DEVIL. I ASSUME THEY ARE TALKING ABOUT GLORYVEE BLACKWELL. THERE IS NO EVIDENCE OF ANY DEAL WITH THE DEVIL. THERE IS NO EVIDENCE OF ANY DEAL WITH MRS. BLACKWELL.

SHE WAS CHARGED WITH MURDER. THOSE CHARGES WERE DROPPED. SHE WAS SUBPOENAED. SHE TESTIFIED HERE UNDER OATH. SHE TOLD Y'ALL WHAT SHE REMEMBERED

AS A WITNESS IN A HORRIBLE MURDER. HER CRIME IS BAD JUDGMENT SELECTING HER TRAVELING COMPANION. THAT'S HER OFFENSE.

NOW, GETTING BACK TO THE BURDEN OF PROOF. AS I SAID, I ACCEPT THAT BURDEN. I HAVE THAT IN EVERY CRIMINAL CASE I PROSECUTE. EVERY PROSECUTOR IN THIS COUNTRY HAS THAT BURDEN. WE ALL ACCEPT THAT. IT'S MY JOB TO PROVE THESE FACTS TO YOU BEYOND A REASONABLE DOUBT.

IF I DO THAT, IT'S YOUR SWORN DUTY TO BRING BACK A VERDICT OF GUILTY. A REASONABLE DOUBT IS JUST WHAT THE NAME IMPLIES. IT'S NOT A FANCIFUL OR IMAGINARY DOUBT. IT'S NOT PROVING THE CASE BEYOND ALL DOUBT BECAUSE THAT BURDEN CAN NEVER BE MET.

YOU CAN HAVE SOME IMAGINARY OR FANCIFUL DOUBT ABOUT ANYTHING. NOTHING CAN BE PROVED BEYOND ANY POSSIBLE DOUBT. I DON'T HAVE TO DO THAT. THAT'S NOT MY BURDEN. THE BURDEN IS A REASONABLE DOUBT. IT ISN'T BEYOND A SHADOW OF A DOUBT. YOU HAVE SEEN THAT ON TELEVISION.

IT'S A REASONABLE DOUBT. IT'S A COMMON SENSE THING. IT'S NOT BASED ON SPECULATION. IT'S NOT BASED ON LETTING YOUR IMAGINATION RUN WILD. IT'S BASED ON THE EVIDENCE OR LACK OF EVIDENCE IN THE TRIAL.

IT'S NOT PLAYING A WHAT IF GAME WHERE YOU SIT BACK THERE AND DELIBERATE AND SAY WHAT IF THIS AND WHAT IF THAT. IF REASONABLE DOUBT EXISTS, IT HAS TO COME FROM THE EVIDENCE OR LACK OF EVIDENCE.

IN CONSIDERING ALL THE EVIDENCE YOU HAVE HEARD, IF YOU HAVE A REASONABLE DOUBT AS TO GUILT, IT'S YOUR DUTY TO ACQUIT BAYAN ALEKSEY. BUT ON THE OTHER HAND, IN CONSIDERING ALL THAT EVIDENCE YOU HAVE NO REASONABLE DOUBT, IT'S YOUR SWORN DUTY TO CONVICT.

WHEN WE TALK ABOUT REASONABLE DOUBT, WE ARE TALKING ABOUT A REASONABLE DOUBT AS TO GUILT OF THE CHARGE OF MURDER. Y'ALL MAY HAVE REASONABLE DOUBTS ABOUT DIFFERENT ASPECTS OF THE CASE, DIFFERENT PIECES OF TESTIMONY.

Y'ALL MIGHT HAVE A REASONABLE DOUBT ABOUT WHETHER THEY SHOULD HAVE DONE A GUNSHOT RESIDUE TEST ON MRS. BLACKWELL. Y'ALL MIGHT HAVE A REASONABLE DOUBT ON WHETHER OR NOT IT WOULD HAVE BEEN A GOOD IDEA TO TRY TO GET THAT GUNSHOT RESIDUE TEST ON ALEKSEY A LITTLE EARLIER.

BUT EVEN IF Y'ALL HAVE THOSE REASONABLE DOUBTS ABOUT PIECES OF EVIDENCE OR THINGS THAT Y'ALL THINK MIGHT HAVE BEEN DIFFERENT IN HINDSIGHT, IF YOU HAVE NO REASONABLE DOUBT AS TO GUILT TAKING ALL THE

EVIDENCE AS A WHOLE, THEN YOU WOULD HAVE A DUTY TO CONVICT.

NOW, ONE FINAL THING ON REASONABLE DOUBT. WHEN Y'ALL GO BACK AND DELIBERATE, YOU ARE SUPPOSED TO DISCUSS THE CASE AND SUPPOSED TO THOROUGHLY GO OVER IT AND EXCHANGE VIEWS. THAT IS NOT REASONABLE DOUBT. THAT IS DELIBERATION. THAT'S WHAT Y'ALL ARE SUPPOSED TO DO.

JUDGE COTTINGHAM DEFINED MURDER TO YOU. HE DEFINED MURDER AS THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT. LADIES AND GENTLEMEN, THERE IS NO QUESTION OF MALICE IN THIS CASE.

MALICE IS ALL OVER THIS CASE. THIS CASE IS EATEN UP WITH MALICE. FRANKIE LINGARD DID NOTHING WHATSOEVER TO DESERVE GETTING GUNNED DOWN ON NEW YEAR'S EVE, TO BE SHOT FOUR TIMES WHEN HE WAS DOING HIS JOB.

IT'S A ROUTINE TRAFFIC STOP FOR SPEEDING ON I-95. Y'ALL HEARD THE TAPE. YOU HEARD HIS LAST VOICES ON THAT TAPE. YOU SAW HIS HOLSTERED GUN WHEN HE APPROACHED THE CAR. HE DIDN'T APPROACH THAT CAR IN A THREATENING MANNER. HE APPROACHED IT WITH THE GUN IN THE HOLSTER.

THE TESTIMONY FROM MRS. BLACKWELL IS HE

WALKED UP TO THE CAR AND SAID SOMETHING TO THE EFFECT, "HOW ARE YOU FOLKS DOING?" AND HE WAS GUNNING DOWN BY THE PERSON BEHIND THAT WHEEL. HE NEVER HAD A CHANCE.

AS I SAID, I WILL NOT GO OVER EVERY BIT OF THE TESTIMONY. Y'ALL HAVE SAT HERE LIKE I HAVE. YOU HAVE HEARD IT. BASICALLY WHAT Y'ALL HEARD WERE TWO TYPES OF EVIDENCE.

YOU HEARD EYEWITNESS ACCOUNTS OF WHAT HAPPENED. YOU HAVE ALSO GOT PHYSICAL EVIDENCE, THESE EXHIBITS. WHAT THAT PHYSICAL EVIDENCE DOES, IT CORROBORATES OR SUPPORTS, BEARS OUT THAT EYEWITNESS TESTIMONY AND SHOWS THIS ISN'T SOMETHING THESE WITNESSES CAME AND MADE UP OUT OF THIN AIR.

THERE IS AN EVIDENTIARY BASIS FOR IT. YOU CAN LOOK AT THE PAPERWORK. YOU CAN LOOK AT SOME OF THE SCIENTIFIC TESTS TO HELP Y'ALL MAKE YOUR DECISION.

NOW, THE DEFENSE WANTS Y'ALL TO BELIEVE THAT GLORYVEE BLACKWELL SHOT FRANKIE LINGARD ON NEW YEAR'S EVE. LADIES AND GENTLEMEN, THAT IS RIDICULOUS. IT'S AN INSULT TO YOUR INTELLIGENCE AS JURORS.

WHAT I WILL DO IS POINT OUT EIGHT FACTS THAT Y'ALL HAVE HEARD HERE UNDER OATH, AND THE

INFERENCES AND THE EVIDENCE THAT SUPPORTS THOSE FACTS.

TAKEN TOGETHER, MAYBE NOT INDIVIDUALLY, BUT WHEN YOU TAKE ALL EIGHT OF THEM TOGETHER, THEY PROVE THAT BAYAN ALEKSEY AND ONLY BAYAN ALEKSEY MURDERED FRANKIE LINGARD ON NEW YEAR'S EVE.

THE FIRST FACT IS GLORYVEE BLACKWELL HAD NO MOTIVE TO KILL FRANKIE LINGARD. THERE IS NO MOTIVE WHATSOEVER. BAYAN ALEKSEY HAD A MOTIVE. NUMBER ONE, WE KNOW THAT MUSTANG THAT HE WAS DRIVING HAD BEEN REPORTED STOLEN BY LISA WATSON.

YOU HEARD HER TESTIMONY ABOUT THE CAR, THE DEAL THEY HAD WHEN SHE BOUGHT THE CAR -- EXCUSE ME -- LEASED THE CAR, ALLOWED HIM TO USE IT. HE WAS SUPPOSED TO PAY FOR IT. HE DIDN'T MAKE THE FIRST PAYMENT AND SHE REPORTED THE CAR STOLEN.

THE DELAWARE TAG. YOU WILL RECALL MRS. CROWL PARKED HER CAR AT THE AIRPORT. THIS IS BACK BEFORE ALEKSEY EVEN MET MRS. BLACKWELL. SHE HAD THIS TAG ON HER CAR. SHE COMES BACK FROM THE AIRPORT AND THE TAG IS GONE. THE NEXT TIME SHE SEE IT, IT'S HERE IN COURT TODAY.

SO YOU'VE GOT A STOLEN CAR, A STOLEN TAG. Y'ALL HEARD IN RESPONSE TO QUESTIONS FROM THE DEFENSE TO S.L.E.D. AGENT KENNY MEARS SEATED RIGHT WHO WENT

OVER THAT RAP SHEET. HE TOLD Y'ALL ABOUT HIS RECORD, ARREST AFTER ARREST AFTER ARREST THAT THIS MAN HAD.

GEORGE DARNELL TOLD Y'ALL THAT HE VERIFIED THE RAP SHEET. HE CONDUCTED FURTHER INVESTIGATION. THEY ARE INTELLIGENT PEOPLE AT S.L.E.D. THEY DON'T LOOK AT THE RAP SHEET AT FACE VALUE. THEY GO INTO IT. HE TOLD Y'ALL ABOUT OUTSTANDING WARRANTS FOR BAYAN ALEKSEY'S ARREST.

Y'ALL HAVE SEEN THE FAKE I.D.S, THE ALIASES UP HERE ON THIS BOARD. I WROTE EACH ALIAS DOWN AS IT CAME UP. GLORYVEE BLACKWELL IS NO ANGEL. SHE HAS A RECORD. I BROUGHT THAT RECORD OUT. SHE HAS A CONVICTION FOR COCAINE AND A CONVICTION FOR SHOPLIFTING BACK SEVERAL YEARS AGO.

THE THING, THE IMPORTANT THING, IS THAT OTHER THAN A COUPLE OF SPEEDING TICKETS, SHE HAS NOT GOT ANYBODY LOOKING FOR HER. THERE'S NO WARRANTS OUT ON HER.

THERE IS NO EVIDENCE SHE IS WANTED BY ANYBODY. SHE HAS GOT NO MOTIVE TO RUN FROM ANYBODY. THE ONLY MOTIVE OF ANYBODY IN THAT CAR TO AVOID APPREHENSION IS BAYAN ALEKSEY.

NOW, THE DEFENSE WANTS Y'ALL TO THINK THAT THIS MAN'S STYLE, ALEKSEY'S STYLE, IS HE GETS IN TROUBLE AND CHANGES HIS NAME. HE DOES A NONVIOLENT

CRIME, GETS IN TROUBLE AGAIN, SWITCHES NAMES. HE WRITES BAD CHECKS AND CONS PEOPLE. HE'S NOT A VIOLENT MAN. SHOOTING THIS POLICE OFFICER DOWN ISN'T HIS STYLE.

I SUBMIT TO YOU THE KIND OF LIFESTYLE Y'ALL HEARD ABOUT THAT THIS MAN HAS LED THROUGHOUT HIS ADULT LIFE, WITH ALL THESE ARRESTS, ALL THESE ALIASES, SOONER OR LATER IT'S GOING TO CATCH UP WITH YOU.

YOU CAN'T DO THIS STUFF FOREVER. YOU CAN'T HAVE ALL THESE NAMES, THOSE DIFFERENT I.D. CARDS, GOING OUT AND COMMITTING THESE OFFENSES AND GETTING ARRESTED AND GETTING BONDED OUT AND CHANGING YOUR MIND. IT'S GOING TO CATCH UP WITH YOU, AND IT CAUGHT UP WITH BAYAN ALEKSEY ON NEW YEAR'S EVE AND FRANKIE LINGARD PAID THE PRICE.

FACT NUMBER TWO, AND THERE IS REALLY NO DISPUTE ABOUT THIS, WE KNOW THIS, THE SHOTS THAT KILLED FRANKIE LINGARD WERE FIRED FROM THE DRIVER'S SIDE OF THAT MUSTANG. AND HOW DO WE KNOW THAT? WHAT IS THE EVIDENCE THAT SUPPORTS THAT?

FIRST OF ALL, LIN SHIRER, THE DEPUTY, HE COULDN'T SEE INTO THE CAR BECAUSE OF TINTED WINDOWS. SO HE COULDN'T SEE WHO ACTUALLY DID THE FIRING. HE COULD SEE THE MUZZLE FLASH. HIS TESTIMONY, IT'S

UNCONTRADICTED, THAT MUZZLE FLASH CAME FROM THE DRIVER'S SIDE OF THAT CAR.

NUMBER TWO, GUNSHOT RESIDUE IS ON THE DRIVER'S WINDOW. YOU WILL RECALL MR. BAKER SAID THE WINDOW WAS NOT ALL THE WAY DOWN. IT WAS PARTIALLY UP AND PARTIALLY DOWN. HE GOT GUNSHOT RESIDUE ON BOTH SIDES OF THE DRIVER'S WINDOW. THE SHOOTING TOOK PLACE FROM THE DRIVER'S SIDE.

THE NEXT THING AND ONE FINAL THING ON THAT, THE SHELL CASINGS, THE FIVE SHELL CASINGS THAT BALLISTICALLY MATCHED UP WITH THAT MURDER WEAPON, WERE EJECTED TO THE RIGHT.

THE EJECTION PORT ON THIS GUN IS TO THE RIGHT. SO IF YOU ARE SITTING BEHIND THE WHEEL AND YOU ARE FIRING BACKWARDS, IT WILL KICK THOSE SPENT SPELL CASINGS OUT ON THE PAVEMENT, WHICH IS EXACTLY WHERE THEY WERE FOUND.

FACT NUMBER THREE, BAYAN ALEKSEY WAS BEHIND THE WHEEL OF THAT MUSTANG. LET'S LOOK AT THAT A LITTLE BIT. LET'S LOOK AT THE EVIDENCE THAT SUPPORTS THAT.

FIRST OF ALL, YOU'VE GOT GLORYVEE BLACKWELL'S TESTIMONY. SHE GOT UP HERE AND TESTIFIED UNDER OATH THAT SHE WAS A PASSENGER IN THE CAR. SHE HAD JUST MET THIS GUY A FEW WEEKS EARLIER.

SHE HAD POOR JUDGMENT. SHE TOOK UP WITH THIS GUY SHE HAD NOT KNOWN FOR TOO LONG. THEY ARE GOING DOWN TO DISNEY WORLD. SHE DOESN'T KNOW ANYTHING ABOUT HIS PAST.

SHE DOESN'T EVEN KNOW HIS REAL NAME. SHE THINKS HE IS, I THINK, MICHAEL TOSCANI OR PIVERO OR SOMETHING. SHE KNOWS HIM AS MICHAEL. SHE DOESN'T KNOW WHO HE IS.

SHE GETS IN THE CAR. SHE IS ASLEEP. SHE WAKES UP AND THIS CHARACTER IS SHOOTING A POLICE OFFICER AND SHE'S HYSTERICAL. SHE TESTIFIED UNDER OATH HE IS BEHIND THE WHEEL.

FOLLOWING HER Y'ALL HAD THAT LITTLE GIRL, THAT EIGHT-YEAR-OLD GIRL GLORIA. Y'ALL SAW HER UP HERE. YOU LOOKED AT HER. YOU CAN JUDGE HER CREDIBILITY. I SUBMIT TO YOU WHAT THAT LITTLE GIRL SAID HAD THE RING OF TRUTH.

IF HER MOTHER OR SOMEBODY ELSE WAS COACHING HER, PUMPING HER UP, TRYING TO GET HER TO TELL SOME KIND OF STORY TO GET HER MOTHER OFF THE HOOK AND HANG THIS THING ON ALEKSEY IF HE DIDN'T DO, TRYING TO GET HER TO LIE, WOULDN'T SHE HAVE HAD MORE DETAIL?

WOULDN'T THEY HAVE SAID, "HONEY, WHEN YOU GET UP THERE, TELL THEM THAT YOU WERE WIDE AWAKE AND YOU SAW MICHAEL SHOOT OUT THERE FOUR OR FIVE TIMES,

AND YOU WERE POSITIVE."

SHE DIDN'T SAY THAT. SHE SAID SHE WAS ASLEEP AND SHE HEARD A NOISE THAT WOKE HER UP, AND THE CAR TOOK OFF AND MICHAEL WAS BEHIND THE WHEEL. I SUBMIT TO YOU THAT LITTLE GIRL'S TESTIMONY IS CREDIBLE, IT'S BELIEVABLE THAT MICHAEL OR BAYAN ALEKSEY WAS BEHIND THE WHEEL WHEN THAT SHOT RANG OUT AND THEY TOOK OFF.

NEXT YOU HAD OFFICER ANDREW MYERS. HE WAS THE HOLLY HILL POLICE OFFICER THAT WITHIN A MATTER OF MINUTES, SOME EIGHT OR NINE MINUTES AFTER THE MURDER AND THAT CAR COMES INTO THE TOWN OF HOLLY HILL, OFFICER MYERS SEES BAYAN ALEKSEY BEHIND THE WHEEL HOLDING THAT GUN TO HIS HEAD.

YOU ALSO HAD AFTER THAT OFFICER TONY WATFORD, WHO WAS THE OTHER POLICE OFFICER. HE WAS THE ONE THAT PICKED THE CAR UP FROM HIGHWAY 310 AND 176 AND FOLLOWED IT IN. HE WAS TAKING CARE OF MRS. BLACKWELL WHEN SHE GOT OUT OF THE PASSENGER SIDE. SO OBVIOUSLY IF SHE IS GETTING OUT OF THE PASSENGER'S SIDE, ALEKSEY IS ON THE DRIVER'S SIDE.

THE NEXT THING YOU HAVE YOU GOT IS YOU HEARD MR. BAKER TESTIFY ABOUT THE FINGERPRINTS. HE PRINTED OR TRIED TO LIFT PRINTS EVERYWHERE INSIDE AND OUTSIDE THAT CAR THAT HE COULD FIND A LATENT LIFT.

GLORYVEE BLACKWELL'S FINGERPRINTS WERE FOUND ONLY ON THE PASSENGER SIDE OF THAT MUSTANG. I SUBMIT THAT IS THE POSITION SHE WAS AT THE ENTIRE NIGHT.

THE NEXT THING WE HAVE GOT -- BEFORE WE GET INTO THAT. WE SHOWED YOU THESE PICTURES OF THE PERSONAL PROPERTY. ALL OF MRS. BLACKWELL'S STUFF IS SITTING ON THE PASSENGER SIDE OF THAT CAR, NOT THE DRIVER'S SIDE.

FINALLY, WHEN WE ARE TALKING ABOUT ALEKSEY BEING BEHIND THE WHEEL, MR. MYERS TESTIFIED ROUGHLY IT'S 15 MILES FROM THE 310 EXIT -- EXCUSE ME -- FROM THE 301 EXIT WHERE THE MURDER TOOK PLACE TO THE TOWN OF HOLLY HILL.

I SUBMIT TO YOU THERE WASN'T ENOUGH TIME TO PULL OVER AND COME TO A COMPLETE STOP, SWITCH DRIVERS AND REACCELERATE AND STILL GET TO HOLLY HILL IN THE TIME THEY DID. YOU RECALL THEY WERE NOT SPEEDING THE ENTIRE WAY.

OFFICER WATFORD TESTIFIED WHEN THE CAR APPROACHED HOLLY HILL, IT WAS DOING LIKE 60, 65 MILES AN HOUR. SO IT JUST FLAT OUT WASN'T TIME. WE KNOW WHO WAS BEHIND THE WHEEL IN HOLLY HILL.

THERE IS PLENTY OF TESTIMONY WHO WAS BEHIND THE WHEEL WHEN THE MURDER TOOK PLACE. IT JUST FLAT OUT, USING YOUR COMMON SENSE, IT'S NOT TIME TO PULL

OVER AND SWITCH DRIVERS IN THAT TIME FRAME.

FACT NUMBER FOUR IS ALEKSEY LED LAW ENFORCEMENT OFFICERS ON A HIGH-SPEED CHASE, AT TIMES WITH HIS LIGHTS OFF THROUGH FOUR COUNTIES. THE ONLY WAY THEY COULD GET HIM TO STOP THAT CAR IN SUMMERVILLE AFTER THE 40-MILE CHASE OR SO WAS TO WRECK HIS CAR, INJURING THAT ANOTHER TROOPER.

IN SUPPORT OF THAT, YOU HAVE HAD THE TESTIMONY OF ALL THOSE LAW ENFORCEMENT OFFICERS INVOLVED IN THE HIGH-SPEED CHASE. I SUBMIT TO YOU, LADIES AND GENTLEMEN, AN INNOCENT MAN DOES NOT RUN FROM THE POLICE. YOU HAVE NO REASON TO RUN IF YOU ARE INNOCENT.

THINK OF WHAT HAPPENED IN HOLLY HILL. WHEN THE POLICE PULLED THAT CAR OVER IN HOLLY HILL, GLORYVEE BLACKWELL IS THE ONE THAT GETS OUT THERE HYSTERICALLY, GRABBING HER KIDS AND TURNING HERSELF OVER TO THE POLICE.

ALEKSEY IS THE ONE BEHIND THE WHEEL AND TAKES OFF AGAIN AND KEEPS THE CHASE GOING. HE PUTS THE GUN TO HIS HEAD AND THEN HE KEEPS ON RUNNING. AN INNOCENT MAN DOES NOT RUN FROM THE POLICE.

LET'S THINK ABOUT IT. IF ALL YOU ARE IS A WITNESS TO A MURDER, YOU ARE A WITNESS TO A MURDER THAT YOU DIDN'T KNOW WAS GOING TO HAPPEN, WOULDN'T

THE FIRST THING YOU DO IS WHEN YOU SAW A LAW ENFORCEMENT OFFICER IS TO JUMP OUT OF THAT CAR -- HE WAS BEHIND THE WHEEL, NO DOUBT ABOUT IT IN HOLLY HILL -- GET OUT AND SAY, "OFFICER, OFFICER, SOMETHING HORRIBLE HAPPENED. THIS WOMAN JUST SHOT A POLICE OFFICER BACK HERE."

THAT IS NOT WHAT HAPPENED. MRS. BLACKWELL GOT OUT OF THE CAR AND HE TOOK OFF. THAT CHASE CONTINUED OUT OF ORANGEBURG COUNTY, INTO BERKELEY COUNTY, INTO CHARLESTON COUNTY AND ENDED UP IN THAT WRECK IN DORCHESTER COUNTY.

FACT NUMBER FIVE, WE HAVE GOT THE SUICIDE ATTEMPT. IN SUPPORT OF THAT, YOU'VE GOT ALEKSEY'S TAPED STATEMENT WHERE HE ADMITS THAT HE TRIED TO KILL HIMSELF WHEN THE GUN JAMMED. IS AN INNOCENT MAN GOING TO COMMIT SUICIDE OR ATTEMPT SUICIDE BECAUSE HE WAS AN EYEWITNESS TO A MURDER? I SUBMIT TO YOU HE WOULDN'T.

IN SUPPORT OF THAT, YOU HAVE GOT MRS. BLACKWELL'S TESTIMONY THAT HE HAD THE GUN TO HIS HEAD AND GLORIA, THE EIGHT-YEAR-OLD GIRL, YOU RECALL SHE WAS TERRIFIED. SHE SAW THE GUN TO HIS HEAD AND SHE WAS CRYING. SHE THOUGHT THAT HE WAS GOING TO HURT THEM.

YOU HAVE ALSO GOT SERGEANT MYERS' TESTIMONY

THAT THE GUN IS TO HIS HEAD. YOU HAVE GOT THE PHOTOGRAPH OF THE GUN IN EVIDENCE SHOWING THE GUN IS JAMMED WHERE IT COULDN'T FIRE.

SO AT SOME POINT IN TIME HE PULLED THAT TRIGGER AND IT DIDN'T GO OFF BECAUSE THAT LIVE ROUND JAMMED IN THERE. YOU HEARD BRETT BAKER TESTIFY THAT HE CLEARED THAT JAM BEFORE HE TURNED THAT GUN OVER.

AGAIN, DOES A MERE WITNESS TO A MURDER, DOES THAT SHAKE A GROWN 29-YEAR-OLD MAN IF ALL HE DID WAS WITNESS A MURDER, IS HE GOING TO TRY TO SHOOT HIMSELF IN THE HEAD OVER IT? I SUBMIT TO YOU HE DIDN'T. THE DEFENSE INFERRED, YOU KNOW, THAT HE DON'T TRY TO SHOOT OFFICER MYERS. THE GUN WAS JAMMED. HE COULDN'T SHOOT HIM.

HERE IS A PHOTOGRAPH OF THE GUN THAT Y'ALL HAVE IN EVIDENCE. YOU CAN SEE THERE IS A LIVE ROUND JAMMED IN THERE ON THE FLOOR OF THE DRIVER'S SIDE RIGHT WHERE THEY PULLED ALEKSEY OUT OF THE CAR. THIS IS A CLOSER-UP VIEW WHERE YOU CAN SEE THE LIVE ROUND IN THERE JAMMED.

THE NEXT FACT, NUMBER SIX, WE CAN TRACE THIS MURDER WEAPON TO BAYAN ALEKSEY. YOU HEARD THE EVIDENCE OF YELENA BATKILINA, THE YOUNG WOMAN, THE FIRST WITNESS WHO TESTIFIED. SHE INTRODUCED THE

PAPERWORK WITH HER SIGNATURE ON IT.

FOLLOWING HER TESTIMONY, WE HAD TOM FRENCH WHO OWNS A GUN STORE. HE SPECIFICALLY RECALLED ALEKSEY BEING AT THE STORE ON TWO OCCASIONS IN OCTOBER.

I THINK IT WAS -- I FORGET THE EXACT DATE IN OCTOBER -- BUT THEN AGAIN ON NOVEMBER THE 2ND WHEN THEY WERE IN THERE TOGETHER BOTH OCCASIONS AND PURCHASED THAT GUN.

WE LOOKED AT THE PAPERWORK. THE SERIAL NUMBER ON THIS GUN HERE WHICH WE KNOW IS THE MURDER WEAPON IS THE MURDER WEAPON PURCHASED BY MS. BATKILINA IN THE PRESENCE OF ALEKSEY UP IN PENNSYLVANIA.

THE DEFENSE IMPLIED THROUGH SOME OF THEIR QUESTIONS, THIS IS A LITTLE TINY GUN, IT'S A GIRL'S GUN OR SOMETHING, I GUESS TRYING TO MAKE Y'ALL ASSUME THAT THIS IS SOME GIRL'S AND THEREFORE IT MUST BELONG TO MRS. BLACKWELL.

THE PROBLEM WITH THAT IS MRS. BLACKWELL WASN'T IN THE PICTURE BACK THEN. THEY DIDN'T KNOW HER. MS. BATKILINA DON'T KNOW HER AND ALEKSEY HAD NOT EVEN MET HER THEN. SO THIS GUN WAS NOT PURCHASED FOR MRS. BLACKWELL. IT WAS PURCHASED BY YELENA BATKILINA AND BAYAN ALEKSEY WAS WITH HER. THERE IS

NO QUESTION ABOUT THAT.

THERE IS ALSO NO QUESTION THAT THIS IS THE MURDER WEAPON BECAUSE THE BALLISTICS MATCH. YOU HEARD MR. PARNELL TESTIFY THAT THE BULLETS REMOVED FROM FRANKIE LINGARD'S BODY AT THE AUTOPSY WERE FIRED BY THIS GUN TO THE EXCLUSION OF EVERY OTHER GUN.

IN ADDITION TO THAT, THERE IS AN EXACT BALLISTICS MATCH TO SHELL CASINGS THAT WERE EJECTED AND FOUND ON I-95, FIRED BY THIS GUN TO THE EXCLUSION OF EVERY OTHER GUN. SO THIS GUN FIRED THE BULLETS THAT KILLED FRANKIE LINGARD. IT WAS PURCHASED BY MS. BATKILINA AT TOM'S SPORTING GOODS, ALEKSEY WITH HER; AND MRS. BLACKWELL WAS NOWHERE IN THE PICTURE WHEN THIS GUN WAS BOUGHT.

YOU RECALL FROM MS. BATKILINA'S TESTIMONY THAT SHE HAD A RELATIONSHIP WITH ALEKSEY, WHO SHE KNEW BY A DIFFERENT NAME. SHE CARRIED THE GUN HOME. THE GUN DISAPPEARS, HE DISAPPEARS AND SHE SEES IT AGAIN HERE IN COURT THE NEXT TIME, JUST LIKE MRS. CROWL SAW THAT LICENSE TAG HERE IN COURT AFTER IT GOT MISSING FROM HER CAR. THE GUN AGAIN IS FOUND IN THE DRIVER'S SIDE OF THE MUSTANG WHERE ALEKSEY WAS PULLED OUT OF THAT CAR BY ALL THOSE TROOPERS.

FACT NUMBER SEVEN IS THE FINGERPRINTS. GLORYVEE BLACKWELL'S PRINTS WERE NOT FOUND ANYWHERE

ON THIS GUN, NO WHERE ON IT. THE ONLY PRINTS FOUND ON THIS GUN ARE BAYAN ALEKSEY'S PRINTS, NOT ONLY FOUND ON THE GUN BUT ALSO FOUND ON THE CLIP INSIDE THE HANDLE THAT HOLDS THE BULLETS; AND IT'S FOUND ON THIS PLASTIC INSERT IN THE AMMUNITION BOX FOUND IN THE BACK OF THAT MUSTANG.

WHAT IS REALLY SIGNIFICANT IS NOT JUST THE FACT THAT HIS PRINTS WERE ON THIS GUN, IT'S WHERE THE PRINTS ARE ON THE GUN. I WANT Y'ALL TO THINK BACK A MINUTE TO OFFICER MYERS' TESTIMONY, OFFICER ANDY MYERS, WHO YOU WILL RECALL IS THE OFFICER THAT APPROACHED THE DRIVER'S SIDE.

HE SAW ALEKSEY OVER HERE BEHIND THE WHEEL OF THE MUSTANG. AND WHAT DID HE TESTIFY TO? HE SAID HE HAD THE GUN TO THE LEFT OF HIS HEAD. SO ALEKSEY HOLDS THE GUN IN HIS LEFT HAND.

SOME OF THESE PEOPLE SHOWED Y'ALL HOW A SEMIAUTOMATIC PISTOL WORKS. IF YOU WANT TO COCK THIS THING TO FIRE IT, WHAT DO YOU HAVE TO DO? YOU HAVE GOT TO PULL THE SLIDE BACK.

YOU ARE HOLDING THE GUN WITH YOUR LEFT HAND, SO YOU WOULD PUT YOUR RIGHT HAND UP HERE TO SLIDE IT BACK. THAT'S EXACTLY WHERE HIS PRINTS WERE, RIGHT HAND PALM PRINT ON THE TOP OF THIS GUN.

AGAIN, AS FAR AS FINGERPRINTS, THE ONLY

PLACE THAT GLORYVEE BLACKWELL'S PRINTS WERE FOUND WAS ON THE PASSENGER SIDE OF THE CAR. MR. BAKER LOOKED ALL OVER THAT CAR. THE ONLY PLACE HE FOUND HER PRINTS WERE ON THE PASSENGER SIDE OF THE CAR.

I WILL TALK TO YOU NEXT ABOUT FACT NUMBER EIGHT. THAT'S THE CONFESSION. Y'ALL HAVE IN THIS CASE PROBABLY THE STRONGEST KIND OF EVIDENCE YOU HAVE IN ANY CASE.

YOU HEARD THE DEFENDANT IN HIS OWN VOICE TESTIFY TO Y'ALL BASICALLY, AFTER HAVING MIRANDA RIGHTS READ TWICE, ONCE AT THE HOSPITAL AND ONE ON JANUARY THE 2ND.

HE TOLD Y'ALL WHAT HAPPENED. THE MIRANDA FORM IS IN EVIDENCE. HE SIGNED IT. IT WAS WITNESSED BY THE S.L.E.D. AGENTS. BEFORE THAT IN THE HOSPITAL HE HAD BEEN GIVEN MIRANDA RIGHTS BY AGENT MEARS.

HE LATER RECANTED THAT CONFESSION. HE BACKED OFF ON IT BUT I SUBMIT TO YOU THAT RECANTATION IS INCREDIBLE. IT DOESN'T MAKE ANY SENSE. I WANT TO TALK TO Y'ALL NEXT ABOUT -- HERE IS HIS SIGNATURE ON THE BOTTOM OF THE MIRANDA FORM.

I WANT TO TALK TO YOU ABOUT SARAH PIVERO. MS. PIVERO TESTIFIED SHE WAS UP IN PENNSYLVANIA SEVERAL HUNDRED MILES AWAY FROM HERE, AND SHE TESTIFIED THAT ON JANUARY THE 2ND, THE EVENING OF

JANUARY 2ND, SOMEWHERE AFTER EIGHT O'CLOCK, SHE GOT A CALL ON HER CELL PHONE.

SHE USED TO DATE ALEKSEY. SHE HAD A RELATIONSHIP WITH HIM. SHE LIVED WITH HIM. HE CALLED HER FROM THE JAIL. WHAT DID HE TELL HER? HE SAID, "I SHOT A STATE TROOPER."

NOW, I WANT Y'ALL TO THINK -- THIS IS VERY, VERY IMPORTANT -- I WANT YOU TO THINK ABOUT THE TIMING OF THAT. HIS WHOLE DEAL IS THAT -- AND I ASSUME THAT THEY WANT TO INFER DURING THIS TWO-HOUR PERIOD THAT THE S.L.E.D. AGENTS DID SOMETHING OR SAID SOMETHING. THEY MADE HIM CRY. THEY OVERREACHED HIM, WHATEVER THEY DID, TO MAKE HIM CHANGE HIS STORY AND ADMIT THAT HE WAS THE MURDERER.

I WANT Y'ALL TO RECALL THAT TESTIMONY. WHEN DID THAT SECOND TAPE THAT Y'ALL HEARD END? IT ENDED AT 7:32 P.M. ON JANUARY THE 2ND. YOU HEARD MR. DARNELL SAY AFTER THEY FINISHED WITH THE TAPE, AFTER HE CONFESSED ON THE TAPE THAT Y'ALL HEARD, THEY SENT HIM BACK OVER TO THE JAIL.

SO AT 7:32 HE GOES BACK OVER TO THE JAIL AND HE CALLS SARAH PIVERO AND TELLS HER, "YEAH, I KILLED THIS TROOPER." IT WASN'T UNTIL THE NEXT DAY, JANUARY 3RD, THAT HE CALLED UP AND TOLD HER PEREZ DID IT.

I SUBMIT TO YOU, LADIES AND GENTLEMEN, IF THERE IS ANY QUESTION, ANY DOUBT IN YOUR MIND, ABOUT THE VALIDITY OR THE VOLUNTARINESS OF THAT TAPED CONFESSION, THINK ABOUT IT, THINK ABOUT AFTER THESE S.L.E.D. AGENTS SAID WHATEVER THEY SAID TO HIM AND DID WHATEVER THEY DID WITH HIM, HE GOES BACK OVER TO THE JAIL AND CALLS HIS OLD GIRLFRIEND AND ADMITS TO HER THAT HE DID IT.

HE COULDN'T HAVE HAD ANY FEAR FROM HER. HE COULDN'T HAVE ANY REASON TO LIE TO HER. YOU WILL RECALL THE TESTIMONY UNDER OATH. SHE WAS CROSS EXAMINED AND SHE WAS FIRM. SHE WAS SURE. YOU LOOKED IN HER EYES. YOU CAN JUDGE THE CREDIBILITY AND BELIEVABILITY AND DECIDE WHETHER IT HAS THE RING OF TRUTH.

SURE, SHE WAS HURT BY THIS GUY. HE TOOK HER. SHE SAID SHE WOULDN'T LIE. WE DON'T JUST HAVE HER WORD FOR IT. Y'ALL HAVE IN EVIDENCE STATE'S EXHIBIT NUMBER 70. YOU LOOK ON THE THIRD PAGE OF THAT. IT ITEMIZES ALL THE CALLS MADE FROM THE JAIL, FROM CELL BLOCK C., WHICH MRS. DOZIER SAID HE WAS IN CELL BLOCK C.

YOU HAVE GOT A CALL MADE FROM CELL BLOCK C. TO HER CELL PHONE NUMBER AT 8:26 AND ANOTHER CALL MADE ABOUT AN HOUR LATER. IT SHOWS A CALL WAS MADE

FROM THAT JAIL TO SARAH PIVERO EXACTLY WHEN SHE SAID IT WAS MADE. WHO ELSE IN THAT JAIL DO Y'ALL THINK, USING YOUR COMMON SENSE, BESIDE ALEKSEY IS GOING TO CALL SARAH PIVERO UP?

USING YOUR COMMON SENSE WOULD ANYBODY, NO MATTER HOW MUCH PRESSURE THEY ARE PUT UNDER, CONFESS TO THE MURDER OF A LAW ENFORCEMENT OFFICER IF THEY DIDN'T DO IT?

ALEKSEY -- AND Y'ALL HEARD ABOUT HIS RECORD, WHAT HE HAS BEEN UP TO, WHAT HE HAS DONE, HOW HE HIS LIVED HIS ADULT LIFE. HE IS STREET SMART. HE IS NOT GOING TO DO THAT.

WHAT IS REALLY, I THINK, SIGNIFICANT IS EVEN IN THE FIRST TAPE THAT Y'ALL HEARD, THAT FIRST 11 AND A HALF MINUTE TAPE WHEN HE WAS TRYING TO HANG THIS THING ON MRS. BLACKWELL, HE SLIPS THREE TIMES AND ADMITS THERE, FREUDIAN SLIP OR WHATEVER YOU WANT TO CALL IT, THAT HE IS DRIVING.

THIS IS A PORTION. Y'ALL HAVE THIS WHOLE TRANSCRIPT IN EVIDENCE. THIS IS A PORTION OF IT. BEAR IN MIND THIS ISN'T THE TAPE AFTER THE TWO-HOUR BREAK. THIS IS BEFORE THE TWO-HOUR BREAK. THIS IS HIS FIRST STATEMENT. IN HIS OWN WORDS UP HERE TALKING ABOUT WHAT HE SAYS HAPPENED (PLAYING TAPE).

"SO I DROVE -- I MEAN, SHE DROVE." LATER

DOWN HERE, (PLAYING TAPE), "SO THEN I PULLED OVER -- I MEAN, SHE PULLED OVER. WE GOT PULLED OVER. I STOPPED -- WE STOPPED." SO TRUTH IS COMING OUT EVEN WHEN HE IS TRYING TO LIE.

AGAINST ALL THIS EVIDENCE, WHAT THE DEFENSE HAS GOT IS THIS GUNSHOT RESIDUE BUSINESS. ALEKSEY'S GUNSHOT RESIDUE WAS NEGATIVE. SO WHAT? Y'ALL HAVE HEARD ALL THIS EVIDENCE. YOU HAVE HEARD THE EXPERT TESTIMONY FROM DOROTHY FULLER AND JOE POWELL OF S.L.E.D.

Y'ALL HAVE HEARD EXTENSIVE TESTIMONY ABOUT WHAT ALEKSEY WENT THROUGH: THE HIGH-SPEED CHASE, HIS HANDS ON THE WHEEL THROUGH FOUR COUNTIES. HE WRECKED. THEY STOPPED HIM. HE WAS HANDCUFFED BEHIND HIS BACK, PUT ON A SPINE BOARD WITH THE HANDS STILL CUFFED BEHIND HIS BACK.

E.M.S. TOUCHED HIS HANDS TO PUT THAT OXYGEN MONITOR ON IT. HE WAS PLACED IN THE AMBULANCE ON A SPINE BOARD. HE COMES TO. HE SQUIRMS AROUND, MOVES AROUND ON THAT SPINE BOARD. ONE PART OF HIS HANDS IS AGAINST HIS BODY WITH HIS CLOTHING AND THE OTHER PART AGAINST THE SPINE BOARD.

AT THE TRAUMA UNIT, MR. BERES AND MR. WELCH, THE TROOPERS, TESTIFIED ABOUT PUTTING THE HANDCUFFS ON, TAKING THEM OFF NUMEROUS TIMES. THEY

DEMONSTRATED HOW THEY HAD TO TOUCH HIS HANDS.

DR. CHANDLER, NOT A TROOPER, NOT A LAW ENFORCEMENT OFFICER, HE WAS THE ATTENDING, TREATING PHYSICIAN AT THE MEDICAL UNIVERSITY. HE ESTIMATED THOSE HANDCUFFS WERE TAKEN ON AND OFF EIGHT TO TWELVE TIMES.

ALEKSEY'S HANDS WERE NOT BAGGED UNTIL ABOUT 2:30 IN THE MORNING. THEY WERE NOT BAGGED ANY EARLIER. THEY COULDN'T HAVE BEEN BECAUSE HE WAS UNDERGOING MEDICAL TREATMENT THE ENTIRE TIME.

BOTH JOE POWELL, WHO IS THE HEAD OF THE TRACE DEPARTMENT AT S.L.E.D., AND DOROTHY FULLER, WHO ACTUALLY DID MOST OF THE WORK ON THIS THING, TOLD Y'ALL THAT UNDER THOSE CIRCUMSTANCES YOU SHOULDN'T EXPECT, YOU WOULDN'T EXPECT, AFTER ALMOST A SIX-HOUR PERIOD OF TIME TO FIND ANY GUNSHOT RESIDUE ON THERE. SHE DESCRIBED WHAT THIS STUFF WAS LIKE. IT'S LIKE A POWDER. IT'S A POWDERY SUBSTANCE. IT'S NOT WET, IT'S DRY.

YOU ALSO HEARD THEIR EXPERT, DEFENSE EXPERT, WHO GIVE HIS OPINION ON THIS; BUT YOU'VE GOT TO TAKE INTO CONSIDERATION WHO ACTUALLY DID THE TEST, WHO ARE THE PEOPLE THAT WORK AT S.L.E.D. AND DO THAT KIND OF WORK. WHO TRAINED MR. HOLLIFIELD? JOE POWELL, WHO TESTIFIED ON BEHALF OF THE STATE.

NOW, THINK ABOUT THIS. WE ARE NOT FAMILIAR WITH GUNSHOT RESIDUE BUT BOTH MS. FULLER AND MR. HOLLIFIELD SAID THAT STUFF IS LIKE FLOUR. THINK OF SOMEBODY WITH FLOUR ON THEIR HANDS.

YOU GET GUNSHOT RESIDUE, FLOUR, GOING THROUGH FOR SIX HOURS WHAT ALEKSEY WENT THROUGH. WOULD YOU EXPECT TO FIND ANY FLOUR ON THEIR HANDS AT THE END OF THAT SIX-HOUR PERIOD? IT JUST DOESN'T MAKE ANY SENSE.

THE DEFENSE IS GOING TO TELL Y'ALL, WELL, THERE IS NO GUN POWDER OR GUNSHOT RESIDUE ON THE CLOTHING. SO WHAT? THERE WAS NONE ON MRS. BLACKWELL'S CLOTHING EITHER. FRANKIE LINGARD DIDN'T COMMIT SUICIDE. HE WAS SHOT FROM THAT CAR.

THEY TOLD Y'ALL THEY DIDN'T EVEN ROUTINELY LOOK FOR GUNSHOT RESIDUE ON CLOTHING. DOROTHY FULLER SAID SHE HAD NEVER IN HER YEARS AT S.L.E.D. EVER FOUND ANY GUNSHOT RESIDUE ON A SHOOTER'S CLOTHING. JOE POWELL SAID HE FOUND IT ON A COUPLE OF RARE, UNUSUAL CASES THAT DON'T APPLY IN THIS SITUATION HERE.

THIS GUNSHOT RESIDUE BUSINESS IS SOMETHING TO TRY AND DISTRACT Y'ALL FROM THE TRUTH HERE, JUST LIKE THIS BOGUS STATEMENT THAT HE GAVE THAT GLORYVEE BLACKWELL DID THE SHOOTING.

I SUBMIT TO YOU, LADIES AND GENTLEMEN, THE EVIDENCE Y'ALL HAVE HEARD HERE TODAY AND YESTERDAY AND THE DAY BEFORE IS OVERWHELMING AND BEYOND ANY REASONABLE DOUBT THAT BAYAN ALEKSEY AND ONLY BAYAN ALEKSEY MURDERED FRANKIE LINGARD WITH MALICE AFORETHOUGHT.

AS JUDGE COTTINGHAM TOLD YOU, YOU CAN INFER MALICE BY THE INTENTIONAL USE OF A DEADLY WEAPON. THERE IS NO QUESTION OF THE MALICE IN THIS CASE. I SUBMIT TO YOU THAT THE ENORMOUS AMOUNT OF EVIDENCE Y'ALL HAVE HEARD IN THIS CASE IS PROOF THAT BAYAN ALEKSEY IS GUILTY BEYOND ANY REASONABLE DOUBT.

I AM GOING TO SIT DOWN IN A MINUTE. I APPRECIATE YOUR PATIENCE. I MIGHT HAVE TALKED A LITTLE LONGER THAN I THOUGHT. I WANTED TO COVER EVERYTHING.

WHEN I SIT DOWN, NO MATTER WHAT THE DEFENSE SAYS, I CAN'T GET BACK UP HERE AND TRY TO REFUTE IT. OBVIOUSLY SOMEBODY HAS GOT TO GO FIRST AND SOMEBODY HAS GOT TO GO LAST.

I HAVE GOT TO GET OUT WHAT I WILL SAY RIGHT NOW AND GET IT OVER WITH. THE DEFENSE ATTORNEYS ARE GOING TO TAKE ISSUE WITH WHAT I'M SAYING. THEY ARE THE LAST THING Y'ALL HEAR BEFORE THE JUDGE CHARGES YOU.

A FEW YEARS AGO I TOOK MY CHILDREN TO A MAGIC SHOW AND THERE WAS A MAGICIAN THERE WHO DID THIS MAGIC TRICK WITH THE ELEPHANT. HE BROUGHT THE ELEPHANT OUT ON STAGE AND YOU COULD SEE THE ELEPHANT STANDING THERE. HE DID SOMETHING WITH SMOKE AND MIRRORS AND ALL THAT, AND IT SEEMED LIKE THE ELEPHANT DISAPPEARED.

THEN HE TRIED TO CONVINCE THAT AUDIENCE VERY SUCCESSFULLY THAT THEY HAD NEVER SEEN THE ELEPHANT. THAT'S WHAT THE DEFENSE IS GOING TO DO IN THIS CASE. Y'ALL HAVE SEEN THE ELEPHANT. YOU HAVE SEEN PROOF OF GUILT BEYOND A REASONABLE DOUBT.

THE DEFENSE IS GOING TO GET UP HERE AND SAY Y'ALL DIDN'T SEE THAT ELEPHANT. IT WASN'T THERE. YOU HAVE SEEN THE ELEPHANT. YOU HAVE SEEN PROOF OF GUILT IN THIS CASE BEYOND ANY REASONABLE DOUBT.

THE 12 OF Y'ALL, THE 14 COUNTING THE ALTERNATES, WERE PICKED MONDAY, TUESDAY AND WEDNESDAY OUT OF OVER 350 PEOPLE INITIALLY SUMMONED FOR JURY DUTY BECAUSE BOTH SIDES FELT THAT Y'ALL WERE 12 INTELLIGENT, DECISIVE PEOPLE THAT COULD BASE YOUR DECISIONS ON THE EVIDENCE THAT YOU WOULD HEAR HERE UNDER OATH IN AN INTELLIGENT, NONBIASED FASHION AND REACH A JUST RESULT.

NOBODY DESERVES WHAT HAPPENED TO FRANKIE

LINGARD NEW YEAR'S EVE. ON BEHALF OF THE STATE OF SOUTH CAROLINA, I AM ASKING Y'ALL UNANIMOUSLY TO BRING BACK A VERDICT OF GUILTY TO MURDER, NOT BECAUSE I SAY HE IS GUILTY BUT BECAUSE THE EVIDENCE Y'ALL HAVE HEARD OVER THE LAST THREE DAYS PROVES BEYOND ANY REASONABLE DOUBT THAT HE IS GUILTY. THANK YOU VERY MUCH.

MR. SIMS: GOOD AFTERNOON, MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY. BY NOW YOU KNOW THAT I'M THOMAS SIMS AND I REPRESENT BAYAN AS HE SITS THERE.

THERE IS A BASIC TENANT IN OUR LAW THAT BAYAN ALEKSEY, AS HE SITS THERE, IS INNOCENT. THE BURDEN OF PROOF LIES RIGHT HERE AT THIS TABLE. THE STATE OF SOUTH CAROLINA MUST PROVE TO YOU BEYOND ALL REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE CRIME THAT HE HAS BEEN CHARGED WITH.

IN THIS CASE YOU HAVE BEEN SUBJECTED TO A LOT OF EMOTION. BUT, MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, BY YOUR OATH YOU HAVE STATED TO THIS COURT, TO US, TO THIS JUDGE THAT YOU WILL LISTEN TO THE EVIDENCE AND MAKE YOUR DECISION BASED UPON THE EVIDENCE THAT CAME FROM THAT CHAIR.

IN OUR SYSTEM OF JURISPRUDENCE, YOU HAVE NOBODY TO REWARD OR NO ONE TO PUNISH. EMOTION SHOULD

NOT ENTER INTO THIS DELIBERATION. YOU MUST MAKE YOUR DECISION BASED UPON THE EVIDENCE.

MR. FOREMAN, AND LADIES AND GENTLEMEN, ONE THING THAT YOU WILL NOT HEAR FROM ME IS ANYTHING THAT IS NEGATIVE TOWARDS TROOPER LINGARD. HE WAS AN HONORABLE MAN. HE WAS A GOOD TROOPER AND HE WAS DOING HIS JOB. BUT WHAT YOU WILL HEAR FROM ME IS THE QUESTION OF WHO DID IT.

WE SUBMIT TO YOU THAT THE DEFENDANT, BAYAN ALEKSEY, DID NOT DO IT. WHAT WE HAVE HERE IS WHAT WE HAVE TYPICALLY TALKED ABOUT IN THE LEGAL SERVICES AS A RUSH TO JUDGMENT. LET'S TALK ABOUT SOME OF THE WITNESSES IN THIS CASE.

WE CAN START OUT WITH DETECTIVE LIN SHIRER. HE WAS OUT THERE ON THE SCENE THAT NIGHT. HE WAS STANDING AT THE FRONT OF TROOPER LINGARD'S PATROL VEHICLE. HE DIDN'T HEAR ANYTHING. HE DIDN'T HEAR WHAT GLORYVEE SAID IN CONVERSATION BETWEEN TROOPER LINGARD. HE WAS STANDING RIGHT THERE. HE DIDN'T HEAR THAT.

NOBODY AT THAT POINT HAD EVER SEEN WHO SHOT TROOPER LINGARD. NO ONE. WHEN THE VEHICLE LEFT THE SCENE, THERE WAS NO DESCRIPTION OF WHO DID THE SHOOTING.

THE ONLY DESCRIPTION THAT WAS PUT OVER THE

AIR AND ALL THE WITNESSES WHO HAVE COME IN HERE AND WHO TESTIFIED TO YOU TODAY, THE ONLY THING THEY TOLD YOU WAS THAT A WHITE MUSTANG WAS HEADED SOUTH ON I-95. NOBODY AT THAT POINT HAD EVER SAID WHO WAS DRIVING.

NOW, THERE ARE SOME 12 TO 15 MILES BETWEEN MILE MARKER 97 AND HOLLY HILL; BUT THE STATE WOULD HAVE YOU TO BELIEVE THAT THAT IS NOT ENOUGH TIME FOR A CAR SPEEDING AWAY -- AND WE ALL KNOW ONE THING. THIS WAS A HIGH PERFORMANCE CAR BECAUSE, YES, IT WENT ALL OVER FOUR COUNTIES BEFORE THEY COULD GET THE CAR STOPPED.

THEY WOULD HAVE YOU TO BELIEVE THAT 12 TO 15 MILES IS NOT ENOUGH TIME TO CHANGE DRIVERS. I SUBMIT TO YOU THAT FROM MILE MARKER 97, 12 TO 15 MILES WITH NO ONE FROM ORANGEBURG COUNTY, BERKELEY COUNTY, CHARLESTON, SUMMERVILLE, DORCHESTER COUNTY, NO ONE SEEING IN THAT VEHICLE, THERE WAS SUFFICIENT TIME, PLENTY OF TIME, TO CHANGE DRIVERS.

ANDY MYERS -- WATFORD WAS THE FIRST ONE TO SEE THE VEHICLE TRAVELING AT ABOUT 60 MILES AN HOUR AS IT PASSED BY ANOTHER CAR. HE GOT BEHIND THE CAR. ANDY MYERS MADE A U-TURN AND GOT ON THE SIDE OF THE CAR ALSO. THE CAR PULLS OVER. WHAT HAPPENS?

GLORYVEE JUMPS OUT WITH A BABY IN HER ARMS.

NOW, THIS IS A BABY, THE SAME BABY THAT WAS IN A CAR SEAT WHEN THEY LEFT PHILLY. HOW DOES SHE GET HER BABY OUT OF THE BACK UNLESS SHE PULLED OVER TO THE SIDE OF THE ROAD, GOT OUT, GOT HER BABY, PUT HER BABY IN HER ARMS?

YOU CAN LISTEN TO ANY PART OF THE TRANSCRIPT THAT YOU WANT TO. LISTEN AT WHAT LITTLE GLORIA MAI SAID ABOUT WHAT SHE HEARD WHEN SHE WOKE UP, SOMETHING LIKE A BANG OR A KNOCK AT THE DOOR AND THEN THEY TOOK OFF. THEN THEY TOOK OFF. NOT A SHOT -- AND YOU CAN LISTEN TO THAT -- BUT IT WAS SOMETHING LIKE A BANG OR A KNOCK AT THE DOOR.

I WOULD SUBMIT TO YOU THAT WHEN THEY CAME OFF THE INTERSTATE AND SHE GOT OUT OF THE CAR, THE BANG THAT SHE HEARD WAS THE DOOR SLAMMING, FOR HER MOTHER TO GET BACK IN. SHE'S GOT HER BABY IN HER ARMS NOW.

WHAT POLICE OFFICER IS GOING TO SHOOT A WOMAN GETTING OUT OF A CAR WITH A BABY IN HER ARMS? THIS WOMAN IS NO CHOIR GIRL. THEY TOLD YOU WHAT HER RECORD WAS. SHE IS STREET WISE. SHE KNOWS WHAT SHE HAS TO DO.

BUT THEN WE GET INTO SOME SIGNIFICANT POINTS HERE THAT YOU NEED TO THINK ABOUT. ANDY MYERS GOT OUT WITH THE SHOTGUN. HE TOLD YOU WHEN HE GOT

OUT, HE HAD HIS SERVICE SHOTGUN WITH HIM. WATFORD IS STANDING OVER THERE.

DOES BAYAN SAY, "I AM GOING TO SHOOT YOU, ANDY MYERS?" DOES HE POINT THE GUN AT ANDY MYERS TO SHOOT HIM? DOES HE MAKE ANY AGGRESSIVE MOVE TOWARDS ANDY MYERS OR ANY OTHER POLICE OFFICERS OUT THERE?

THIS IS THE MAN THAT THEY WANT YOU TO BELIEVE IS THE MURDERER. NOW, IF YOU SHOT ONE TROOPER OR ONE POLICE OFFICER AND YOU'VE GOT ANOTHER ONE STANDING THERE, HE IS NOT EVEN POINTING THE GUN AT YOU. YOU GOT THE DROP ON HIM BECAUSE YOU GOT THE GUN IN YOUR HAND. YOU GOT THE DROP ON HIM, BUT HE DOES NOT TURN THE WEAPON TO TRY TO FIRE AT THE OFFICER. HE TAKES OFF.

THEY CHASE HIM. ANDY MYERS GETS IN HIS CAR. THEY CHASE HIM. THEY CHASE HIM ALL AROUND AND FINALLY GET HIM DOWN IN SUMMERVILLE. THE OFFICERS SAID THAT HE WASN'T TRYING TO HIT THEM, BUT THEY MADE A DECISION TO STOP HIM.

TROOPER WOODS MISSED HIM. THE OTHER TROOPER CAME ALONG AND HIT HIM. SO EVEN AT THAT, HE WAS NOT EVEN BEING AGGRESSIVE WITH THE CAR THAT HE WAS IN. THEY HIT HIM. IT KNOCKED HIM OUT. HE IS UNCONSCIOUS.

THIS IS THE FIRST TIME -- THE SECOND TIME.

THE FIRST TIME WAS ANDY MYERS. THAT'S THE FIRST TIME ANYBODY SAW A PERSON DRIVING THE CAR SOME 12 TO 15 MILES AWAY FROM THE SCENE OF THE CRIME.

YOU GOT A MAN DRIVING 12 TO 15 MILES AWAY FROM THE SCENE OF THE CRIME. WHAT DO THEY SAY? THEY SAY, "WE GOT THE MURDERER." THEY DON'T DO ANY INVESTIGATION OF GLORYVEE PEREZ.

THEY DON'T TAKE HER TO DO ANYTHING WITH HER. THEY DON'T TAKE HER HANDS AND BAG THEM. THEY DIDN'T EVEN HAVE TO BAG HER HANDS. SHE IS RIGHT THERE. ALL THEY HAD TO DO WAS SWAB THEM. THERE WOULD BE NO QUESTION ABOUT THE TIME ELEMENT WITH HER. SHE IS RIGHT THERE.

SHE GETS OUT OF THE CAR. THEY PUT HER IN THE CAR. THEY LET HER SIT IN THE BACK SEAT OF THE CAR ALONG WITH HER CHILD, AN EIGHT YEAR OLD. NOBODY SAYS, "I WILL SIT HERE AND BE SURE SHE DOESN'T SAY ANYTHING TO THE EIGHT YEAR OLD." NOBODY SAYS, "I AM GOING TO SIT HER AND WATCH HER," BUT SHE HAS CARTE BLANCHE TO DO WHATEVER SHE WANTED TO DO.

I DON'T KNOW ABOUT YOU BUT EIGHT YEAR OLDS DON'T USUALLY TALK ABOUT PASSENGER SIDES OF CARS. THEY TALK ABOUT GETTING OUT OF THE CAR. THEY DON'T TALK ABOUT PASSENGER SIDE.

WHEN THEY TALK TO YOU ABOUT SOMEBODY

COACHING A CHILD, FROM JANUARY UP UNTIL THE OTHER DAY WHEN THAT POOR LITTLE CHILD TOOK THE STAND, WHO TALKED TO HER? DO YOU THINK THE MOTHER DID NOT TALK TO HER CHILD? DO YOU THINK THE MOTHER DID NOT SAY ANYTHING TO HER CHILD ABOUT WHAT HAD HAPPENED, WHAT SHE NEEDED TO SAY?

MR. BAILEY AND I AGREE WITH ONE THING, THAT IN THIS SITUATION THERE IS NO REASON FOR YOU TO HAVE LEFT YOUR COMMON SENSE AT HOME. WHEN YOU CAME IN THIS COURTROOM, YOU DIDN'T LEAVE YOUR COMMON SENSE AT HOME. SITTING IN THAT JURY BOX, YOU HAVE NOT LOST YOUR COMMON SENSE. DO YOU THINK THAT A MOTHER IS NOT GOING TO TALK TO HER CHILD AND TELL HER?

LET'S MOVE ON. BAYAN WAS KNOCKED OUT AT THE SCENE. THEY SNATCHED HIM OUT OF THE CAR, PUT HIM ON THE GROUND, HANDCUFFED HIM BEHIND HIS BACK. THEY SHOWED YOU A PICTURE. MR. BAILEY SHOWED YOU A PICTURE A FEW MOMENTS, TOO, OF THE GUN ON THE FLOORBOARD OF THE CAR.

WELL, NOBODY SAID ANYTHING ABOUT THAT RED OR PINK BRUSH THAT WAS ON THAT FLOORBOARD ON THE DRIVER'S SIDE. I WOULD SUBMIT TO YOU IT'S A WOMAN'S HAIR BRUSH. THEY HAD MADE A DECISION THAT A MAN HAD DONE THIS KILLING.

DON'T WORRY ABOUT LOOKING AT ANYTHING FOR A

WOMAN. DON'T WORRY ABOUT THAT. FORGET ABOUT THE HAIR BRUSH. FORGET ABOUT TAKING HAIR SAMPLES OUT OF THE HAIR BRUSH TO SEE WHOSE BRUSH IT IS. FORGET ABOUT THAT.

A MAN WAS DRIVING, SO THEREFORE A MAN DID IT. BUT NO ONE HAS TAKEN INTO CONSIDERATION THE 12 MILES FROM THE POINT OF THE CRIME TO WHERE THEY WERE SEEN THE NEXT TIME.

WHAT DID THE E.M.S. WORKER SAY? WHAT DID SHE SAY? WHEN SHE GOT THERE, HE WAS UNCONSCIOUS. SHE CHECKED HIM FOR THE CUT OVER HIS EYE. SHE DIDN'T KNOW -- WE PUT INTO THE RECORD HER TRIP REPORT. SHE DIDN'T NOTE ANYTHING ABOUT BLOOD BEING ALL OVER HIS HANDS.

SHE SAID SHE PUT THE LITTLE DIODE ON HIS FINGER. IF THERE WAS BLOOD OR INJURY TO HIS HAND, SHE WOULD HAVE HAD TO DOCUMENT IT. SHE WOULD HAVE TO HAVE HAD RENDERED A SERVICE TO HIM AT THAT TIME.

THEY PUT HIM ON THE BOARD. THEY ROLLED HIM OVER, PUT HIS HANDS BEHIND HIM. THERE WAS A LOT TO DO ABOUT HANDCUFFING AND GRABBING HANDS. I WILL SUBMIT TO YOU THAT THERE IS A BIG DIFFERENCE IN HANDCUFFING A LIVE PERSON STANDING UP THAN A LIVE PERSON WHO IS ON THE GROUND ON HIS FACE AND ALL YOU HAVE GOT TO DO IS GRAB HIS ARMS AND PUT THEM BEHIND

HIM AND PUT THE HANDCUFFS ON HIM.

HE IS NOT OFFERING ANY RESISTANCE. YOU ARE DOING WHAT YOU WANT TO TO HIM. BUT IT'S INTERESTING. SEE HOW IT BEGINS TO ESCALATE AS TROOPERS BEGAN TO TALK ONE AFTER THE OTHER, ABOUT HOW THE BLOOD BEGAN TO GET MORE AND MORE AND MORE UNTIL THE LAST OFFICER SAID HE WAS BLEEDING PROFUSELY. THAT IS INCONSISTENT WITH WHAT THE E.M.T. SAID AT THE SCENE. THAT IS INCONSISTENT TO WHAT THE NURSES SAID. THAT JUST WAS NOT THERE.

LET'S GO TO THE HOSPITAL. HE IS UNCONSCIOUS AND DR. BACHMAN SAID HE WAS PROBABLY UNCONSCIOUS BETWEEN FIVE AND FIFTEEN MINUTES, DEPENDING ON WHEN E.M.S. GOT THERE. THEY TREATED HIM AS A MAJOR TRAUMA PERSON. THIS WAS NOT SOMEONE THEY TREATED IN THE HOSPITAL AS A FENDER BENDER. THEY DIDN'T DO THAT.

SO HE HAD TO HAVE A C.A.T. SCAN. HE HAD TO HAVE A COLLAR. HE HAD TO HAVE ALL OF THE MEDICAL TREATMENT, BUT NOWHERE IN THE RECORDS DO THEY INDICATE THAT BLOOD WAS ALL OVER HIS HANDS OR BLOOD WHICH WOULD HAVE CREATED A PROBLEM FOR THE SWAB.

AT 3:59 KENNY MEARS COMES IN, BUT PRIOR TO THAT A CALL HAD BEEN MADE TO THE HOSPITAL TO BAG HIS HANDS. WHY? TO PROTECT ANY EVIDENCE ON HIS HANDS.

BUT BECAUSE THE RESULTS WERE NOT AS SUSPECTED BY THE STATE, THEY HAD TO JUSTIFY TO YOU WHY THERE WAS NO HARD, PHYSICAL EVIDENCE.

THAT'S WHY YOU HEARD TESTIMONY ABOUT BLOOD ON THE HANDS. THAT'S WHY YOU BEGAN TO HEAR TESTIMONY ABOUT BLEEDING PROFUSELY. BECAUSE THE PHYSICAL EVIDENCE WAS AND IS NOT THERE. LET'S TALK ABOUT THAT.

THEY PROCESSED THE CAR BUT THEY DIDN'T TAKE ANY HAIR SAMPLES FROM THE DRIVER'S SIDE OF THE CAR. HAIR SAMPLES MAY HAVE SAID A WOMAN WAS OVER THERE. THEY DIDN'T CHECK OUT THE BRUSH. THE BRUSH MAY HAVE SAID A WOMAN WAS THERE. THEY DIDN'T DO THAT.

BECAUSE THEY HAD ALREADY MADE UP IN THEIR MIND AS TO WHO HAD DONE THE SHOOTING, NOT BECAUSE THEY SAW HIM, NOT BECAUSE ANY POLICE OFFICER SAW BAYAN ALEKSEY DO ANYTHING. THEY ONLY MADE THE DECISION BECAUSE HE WAS SEEN DRIVING THE VEHICLE.

JEFF HOLLIFIELD CAME IN AND TESTIFIED TO YOU. THEIR REPORT -- LET'S TALK ABOUT THAT. I WILL HAVE A BRIEF MOMENT ON THAT. THEY MADE THE ARREST IN JANUARY, THEY CLOSED THEIR INVESTIGATION IN FEBRUARY AND THE REPORT WASN'T IN UNTIL APRIL.

THE REPORT ON GUNSHOT RESIDUE WAS NOT THERE UNTIL APRIL, BUT AGAIN A RUSH TO JUDGMENT SOLELY

BECAUSE HE WAS DRIVING THE VEHICLE 12 TO 15 MILES DOWN THE ROAD.

THEY SAY THAT HIS FINGERPRINTS WERE ON THE GUN. HE HAD THE GUN TO HIS HEAD. HE HANDLED THE GUN. THEY SAY THAT THE RIGHT HAND -- GAVE A DEMONSTRATION ABOUT THE RIGHT HAND. WELL, THIS GUN EJECTS FROM THE RIGHT. IF YOU PULL IT BACK WITH YOUR RIGHT HAND IN THAT POSITION, YOU BLOCK IT.

MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, GLORYVEE IS STREET WISE. WE DID NOT COME IN HERE AND TELL YOU THAT WE HAD A CHOIR BOY FOR A CLIENT. WE TOLD YOU ABOUT HIS RECORD. WE TOLD YOU ABOUT HIS ARRESTS.

BUT WE ALSO -- AND IT WAS POINTED OUT. HE HAD SIX I.D.S ON HIM, WHICH HAS BEEN HIS MODUS OPERANDI. YELENA SAID SHE PUT UP MONEY AND HE JUST DIDN'T SHOW UP FOR COURT.

FRAUD, CREDIT CARD FRAUD, TAKING MONEY, GETTING GOODS, THOSE ARE THE KINDS OF CRIMES WE TOLD YOU ABOUT. GLORYVEE HAS A DRUG CONVICTION. THERE IS A SIGNIFICANT DIFFERENCE IN THE QUANTITY OR THE QUALITY OF THE CRIME.

YOU MAY NOT LIKE HIM BECAUSE THOSE WOMEN GOT UP HERE AND THEY TALKED ABOUT HIM. LISA WATSON GOT UP AND TALKED ABOUT HIM. SHE BOUGHT THE CAR FOR

HIM AND THAT HE NEVER MADE A PAYMENT ON THE CAR, BUT SHE ALSO SAID SHE NEVER TOLD HIM THAT SHE HAD REPORTED THE CAR STOLEN. SO HE DIDN'T KNOW THE CAR WAS STOLEN OR HAD BEEN REPORTED STOLEN. HE IS DRIVING A CAR THAT HE GOT FROM ONE OF HIS LADY FRIENDS.

SARAH PIVERO COMES IN AND SHE SAYS HE CALLED HER AND TOLD HER THAT HE SHOT THE TROOPER. WELL, I ASKED HER, "ARE YOU SURE HE DIDN'T SAY THEY TOLD ME THEY SAID I SHOT THE TROOPER?" SHE BEGIN TO HEDGE A LITTLE BIT AND THEN SHE GOT MORE AND MORE CONFIDENT IN HER STATEMENT.

THERE IS NO QUESTION HE CALLED HER BACK THE NEXT DAY AND SAID, "PEREZ DID IT. PEREZ DID IT." THIS IS THE SAME WOMAN WHO WHEN THEY WERE TOGETHER BOUGHT HIM CADILLACS, STINGRAYS, MUSTANGS, 4-RUNNERS, ALL THESE CARS BECAUSE THIS WAS HER MAN.

THIS IS THE SAME WOMAN WHO ALLOWED HIM AND GAVE HIM MONEY, LAVISHED HIM WITH GIFTS, CARS, GOOD TIMES AND THEN HE GOES BACK TO YELENA. SHE TALKED ABOUT $50,000. HELL HAS NO FURY GREATER THAN A WOMAN SCORNED. BUT SHE WANTS YOU TO BELIEVE SHE WOULD NOT COME IN HERE AND TRY TO GET HIM.

LET'S MOVE ON. HE IS AT THE COMPLEX. HE DOES NOT WAIT FOR THEM TO CALL HIM. HE SAYS, "I WANT

TO TALK TO THEM." DOES THAT SOUND LIKE SOMEONE WHO IS GOING TO JUST SAY, "I WANT TO TALK TO THEM. I WANT TO TALK TO THEM. I WANT TO TELL THEM WHAT HAPPENED"?

REMEMBER NOW, KENNY MEARS, THE FIRST THING HE DID WHEN HE WENT DOWN TO CHARLESTON WAS READ HIM MIRANDA RIGHTS TRYING TO GET A STATEMENT. KENNY MYERS GOT A SECOND CHANCE AT IT. HE COMES IN TO THE ROOM. HE ASKS TO TALK. BAYAN INITIATES THE CONVERSATION.

"I WANT TO TELL YOU WHAT HAPPENED." AND HOW LONG DOES THE FIRST TAPED INTERVIEW LAST? ELEVEN OR TWELVE MINUTES? HE SAID, "THAT'S ALL I'VE GOT TO SAY."

THEY HAVE JUST READ HIM THOSE RIGHTS THAT WERE FLASHED UP ON THESE MONITORS TO YOU WHEN THEY TOLD HIM, "AT ANY TIME YOU WANT TO STOP THE CONVERSATION OR THE INTERVIEW, YOU ARE ABLE TO DO THAT."

WHEN THEY TELL YOU YOU CAN STOP THE CONVERSATION AND YOU SAY TO THEM, "THAT'S ALL I'VE GOT TO SAY," BUT THEY DON'T TAKE YOU BACK OVER TO THE COMPLEX FOR ANOTHER TWO HOURS.

YOU ARE IN A ROOM, AS DARNELL SAID, NOT BIGGER THAN THE JURY BOX. YOU HAVE BEEN CHARGED WITH

KILLING A SOUTH CAROLINA STATE TROOPER. YOU ARE IN A HIGHLY-CHARGED SITUATION. POLICE OFFICERS WANT TO KNOW WHAT WENT ON. POLICE OFFICERS ARE HIGHLY AGITATED, YOU AND THEM IN A SMALL ROOM.

IT DOESN'T TAKE A WHOLE LOT TO FIGURE OUT, DOES IT? YOU HAVE TO BELIEVE BEYOND A DOUBT THAT THAT CONFESSION WAS FREELY AND VOLUNTARILY GIVEN. YOU HAVE TO BELIEVE THAT NO ONE FORCED, COERCED OR THREATENED HIM FOR TWO AND A HALF HOURS.

NOW, THESE ARE NOT ROOKIE POLICE OFFICERS. THESE ARE NOT -- THIS IS NOT SOMEONE WHO HAS JUST GOTTEN ON THE FORCE. THESE ARE VETERAN S.L.E.D. AGENTS. THEY TURN THE TAPE ON AND THEY TURN IT OFF. NOBODY HAS ANY NOTES ABOUT WHAT TRANSPIRED WITHIN THAT TWO-HOUR PERIOD OF TIME.

NOBODY HAS ANY NOTES. WHY NOT JUST SIMPLY TURN THE TAPE BACK ON FOR THE TIME THAT YOU HAVE GOT HIM THERE? WHY NOT JUST SIMPLY SAY, "OKAY, BAYAN. YOU SAID THAT IS ALL YOU HAVE GOT. TAKE HIM BACK OVER TO HIS JAIL CELL." BUT THAT DOES NOT HAPPEN HERE.

NOW, WE HAVE BROUGHT IN DR. BACHMAN WHO READ THE MEDICAL RECORDS, AND IT DOESN'T TAKE A LOT OF UNDERSTANDING TO UNDERSTAND THAT YOU HAVE BEEN IN AN ACCIDENT, YOU'VE GOT A CONCUSSION, THEY PUT YOU IN

A PHILADELPHIA COLLAR. YOUR NECK HURTS, YOUR BACK HURTS, YOUR HEAD HURTS; AND THEY KEEP YOU IN A SMALL ENCLOSED ROOM FOR TWO HOURS.

THE FIRST CONVERSATION THAT YOU HEARD, HE IS TALKING AND TRYING TO TELL THEM WHAT HAPPENED. THE NEXT TIME YOU HEAR BAYAN, HE IS IN TEARS. AND IF YOU HAVE BEEN IN AN ACCIDENT, GOT A CONCUSSION, BACK HURTS, NECK HURTS, SMALL ENCLOSED ROOM, NOBODY THERE BUT TWO POLICE OFFICERS, NO WAY TO JUSTIFY WHAT IS GOING ON.

THERE IS A TAPE RECORDER RIGHT THERE ON THE DESK. IT'S NOT ON. I AM QUITE SURE THAT THEY HAVE PENCIL AND PAPER. THEY DON'T EVEN WRITE A NOTE ABOUT WHAT HAPPENED.

ONE OF THE THINGS THAT WE HAVE WHEN YOU GET TO THIS CASE THAT YOU LOOK AT IS SOMETHING THAT THEY HAVE TRIED TO KIND OF GLOSS OVER. IT'S THAT GUNSHOT RESIDUE. HOW DO YOU GET PAST THAT?

HOW DO YOU GET PAST THE FACT THAT THE TEST THAT THEY USED, THAT THEY AUTHORIZED, THEY REQUESTED, HAS BEEN USED IN THE STATE OF SOUTH CAROLINA TO CONVICT PEOPLE?

THIS IS THEIR TEST AND WHEN IT DOESN'T GIVE THEM THE RESULT THAT THEY WANT, THEN THERE IS SOMETHING WRONG. THERE IS SOMETHING WRONG WITH IT

NOW.

THERE IS SOMETHING WRONG WITH THE TEST. WE HAVE TO COME UP WITH A REASON TO JUSTIFY WHY THE TEST IS NOT SHOWING GUNSHOT RESIDUE. THEY BRING IN DOTTIE, THEY BRING IN JOE POWELL; AND THEY GIVE YOU ALL KINDS OF SCENARIOS AS TO WHY IT DID NOT WORK.

JEFF HOLLIFIELD COMES IN AND SAYS BASED UPON HIS OPINION AS AN EXPERT, HE DIDN'T FIRE A GUN. HE EXPLAINS TO YOU ABOUT ENVIRONMENTAL ELEMENTS. HE TALKS TO YOU ABOUT THE SCIENTIFIC PART OF THE TEST. HE GIVES YOU AN EXPLANATION.

THEY TRY AND SAY THE F.B.I. WON'T EVEN TAKE A TEST UNLESS IT'S WITHIN FOUR HOURS. WELL, JEFF SAID THE F.B.I. USES A DIFFERENT STANDARD. SO IF IT HAS NOT BEEN DONE WITHIN THAT FOUR-HOUR PERIOD, THAT'S WHY THEIRS IS FOUR AND SOUTH CAROLINA IS SIX, BECAUSE OF A DIFFERENT STANDARD.

MR. FOREMAN, AND LADIES AND GENTLEMEN ON THE JURY, I COULD TAKE ALL OF THIS EVIDENCE, MOVE IT AND PUT IT RIGHT BACK HERE ON THE TABLE OF THE PROSECUTION BECAUSE NOWHERE IN THIS EVIDENCE HAS ANYONE IDENTIFIED BAYAN ALEKSEY AS DOING ANYTHING OTHER THAN DRIVING THAT WHITE MUSTANG.

BUT THEY PUT ALL OF THAT UP TO INVOKE YOUR EMOTION, TO GET YOU TO THINK ABOUT THINGS THAT HAVE

NO RELEVANCE TO THIS CASE. AND THAT'S WHY IT'S IN HERE. BUT YOU MUST, ON YOUR OATH, MOVE ASIDE THE EMOTION, MOVE ASIDE ALL THE WINDOW DRESSING AND LOOK AT WHAT WE'VE GOT.

WE'VE GOT BAYAN ALEKSEY CHARGED ON THE WORD OF GLORYVEE PEREZ. WE'VE GOT CLEAR SCIENTIFIC EVIDENCE THAT SAYS HE NEVER FIRED A WEAPON. YOU'VE GOT 12 TO 15 MILES FROM MILE MARKER 97 TO HOLLY HILL, SOUTH CAROLINA AND NOBODY CAN SAY WHO WAS DRIVING OTHER THAN THE TWO PEOPLE IN THE CAR.

WHAT DO YOU EXPECT GLORYVEE TO SAY? HOW DOES SHE GET THE BABY OUT OF THE BACK OF THE CAR WITHOUT STOPPING AND PUTTING THAT BABY IN HER ARMS? I WOULD SUBMIT TO YOU THAT IF WANT TO LISTEN TO GLORIA MAI'S TESTIMONY, YOU CAN AND YOU WILL HEAR EXACTLY WHAT SHE SAID.

MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, ON BEHALF OF BAYAN ALEKSEY, ON BEHALF OF THE STATE OF SOUTH CAROLINA, ON BEHALF OF THE PEOPLE OF THIS COUNTRY, I WANT TO THANK YOU FOR BEING HERE.

BECAUSE YOU 14 PEOPLE, CITIZENS OF THIS STATE, HAVE NOW BEEN ELEVATED TO THE POSITION OF A JUDGE. IF I HAD A BLACK ROBE, I WOULD GIVE EACH AND EVERY ONE OF YOU A ROBE TO WEAR BECAUSE YOU ARE TRULY THE JUDGES OF THE FACTS.

THE JUDGE, AS HE SITS THERE, IS THE JUDGE OF THE LAW. NO ONE CAN DISTURB YOUR JUDGMENT ON THE FACTS. YOU WILL DETERMINE THE FACTS OF THIS CASE. I WOULD SUBMIT TO YOU THAT BAYAN ALEKSEY IS NOT GUILTY. THE STATE OF SOUTH CAROLINA HAS NOT PROVEN TO YOU BEYOND A REASONABLE DOUBT THAT HE IS GUILTY OF THE CRIME OF MURDER.

IT DOESN'T MATTER THAT YOU DON'T LIKE HIM, BUT BY YOUR OATH YOU HAVE TO GIVE HIM A FAIR TRIAL. I SUBMIT TO YOU THAT THE STATE HAS NOT PROVEN ITS CASE AND THAT THE DEFENDANT IS INNOCENT.

I RESPECTFULLY REQUEST THAT YOU GO TO YOUR JURY ROOM. LEAVE THE EMOTIONS OUT HERE. LISTEN TO ALL THE EVIDENCE. USE YOUR COMMON SENSE AND COME BACK WITH A VERDICT OF NOT GUILTY. THANK YOU.

THE COURT: GENTLEMEN FOR THE DEFENSE, AS I UNDERSTAND IT, THE DEFENDANT HAS INDICATED THAT HE DESIRES TO MAKE A CLOSING ARGUMENT?

MR. STONE: NO, SIR.

THE COURT: HE DOES NOT DESIRE IT?

MR. STONE: NO, SIR.

MR. SIMS: NO, SIR.

(WHEREUPON THE COURT CHARGED THE JURY AS FOLLOWS.)

THE COURT: LADIES AND GENTLEMEN OF THE

JURY, YOU HAVE NOW HEARD THE TESTIMONY IN THE TRIAL OF THIS CASE. YOU HAVE HEARD THE CLOSING ARGUMENTS OF THE STATE AND OF THE DEFENSE. I HAVE GIVEN YOU THE APPROPRIATE INSTRUCTIONS IN THE LAW AND WE WILL NOW REVIEW THAT WITH YOU.

REMEMBERING NOW, THAT WHATEVER YOUR VERDICT IS IN THIS CASE, IT MUST BE THE UNANIMOUS VERDICT OF ALL 12 OF YOU. IT CANNOT BE A VERDICT OF THE MAJORITY. OBVIOUSLY IT WOULD NOT BE ONE OF THE MINORITY.

DURING YOUR DELIBERATIONS, I WILL SEND IN FOR YOUR PERUSAL SUCH MATTERS AS I HAVE INTRODUCED INTO THE EVIDENCE OF THE CASE. THEY WILL BE WITH YOU IN THE JURY ROOM.

IN ADDITION TO THAT, IF AT ANY TIME YOU DESIRE TO HEAR OR HAVE READ BACK TO YOU ANY OF TESTIMONY, ALL YOU HAVE TO DO LET ME KNOW AND THAT WILL BE DONE.

IN ADDITION TO THAT, PENCIL AND PAPER WILL BE PROVIDED. IF AT ANY TIME YOU NEED DIFFERENT OR FURTHER EXPLANATION AS TO WHAT THE LAW IS, ALL YOU HAVE TO DO IS WRITE THAT QUESTION DOWN AND LET ME KNOW. THAT WILL BE GIVEN TO YOU.

NOW, AS YOU ARE WELL AWARE, IN A PROCEEDING OF THIS KIND, FIRST A TRIAL IS HELD BEFORE THE JURY

TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT. THAT IS THE PHASE OF THE TRIAL THAT WE ARE PRESENTLY HOLDING.

PLEASE DEPRIVE NO INFERENCE WHATSOEVER FROM WHAT I HAVE JUST TOLD YOU AS TO WHAT YOUR VERDICT SHOULD BE. THE PURPOSE OF MY TELLING YOU THIS IS TO EMPHASIZE THAT YOU ARE NOT TO CONSIDER PUNISHMENT OR SENTENCE AT THIS TIME.

YOU ARE ONLY TO DETERMINE THE INNOCENCE OR GUILT OF THIS DEFENDANT BASED UPON THE EVIDENCE THAT HAS BEEN INTRODUCED IN THE TRIAL OF THIS CASE IN THIS COURTROOM.

TO THE INDICTMENT OF MURDER, THIS DEFENDANT HAS PLED NOT GUILTY. AS I INDICATED BEFORE, HE AND ALL DEFENDANTS ARE PRESUMED INNOCENT. THEY DON'T HAVE TO PROVE A THING. THE STATE HAS GOT TO PROVE HIM GUILTY TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

I HAVE PREVIOUSLY DEFINED FOR YOU REASONABLE DOUBT. YOU ARE WELL AWARE NOW THAT YOU ARE THE SOLE AND ONLY FINDER OF THE FACTS AND THE SOLE JUDGES OF THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES.

WITH EQUAL IMPORTANCE I HAVE INSTRUCTED YOU AND DO SO AGAIN THAT I AM THE INSTRUCTOR OF THE LAW.

UNDER YOUR OATH YOU MUST ACCEPT THE LAW AS I GIVE IT TO YOU, REMEMBERING THAT YOU TAKE THE FACTS AS YOU FIND THEM TO BE AND APPLY THOSE FACTS TO THE LAW OF THIS CASE.

THE DEFENDANT IS INDICTED FOR MURDER. I HAVE DEFINED MURDER FOR YOU, WHICH IS THE KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT. I HAVE HERETOFORE DEFINED FOR YOU MALICE.

INTRODUCED INTO THE TRIAL OF THIS CASE WAS AN ALLEGED STATEMENT MADE BY THIS DEFENDANT. I CHARGE YOU AGAIN, AS I DID DURING THE COURSE OF THIS TRIAL AND AT THE CONCLUSION OF THE TESTIMONY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT MADE THE STATEMENT.

THEY MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS WARNED OF HIS CONSTITUTIONAL RIGHTS, AND THE STATE MUST PROVE THAT THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL RIGHTS, AND THE STATE MUST PROVE THAT THIS STATEMENT WAS GIVEN VOLUNTARILY, ALL OF WHICH MUST BE PROVED TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

THE STATEMENT THEN MAY BE CONSIDERED BY YOU, TOGETHER WITH ALL EVIDENCE IN THE CASE, AND GIVEN SUCH WEIGHT AND SUCH VALUE AND SUCH EFFECT AS

YOU DETERMINE THAT IT SHOULD RECEIVE. I HAVE DEFINED FOR YOU THE LAW OF IDENTIFICATION, AND I HAVE EXPLAINED TO YOU THE LAW WITH REGARDS TO MY QUALIFICATION OF EXPERT WITNESSES.

THIS DEFENDANT DID NOT TAKE THE STAND, AND I TELL YOU AGAIN, AS I HAVE BEFORE, THAT THAT FACT MUST NOT AND CANNOT BE USED AGAINST HIM IN ANY WAY. YOU ARE WELL AWARE NOW THERE ARE TWO TYPES OF EVIDENCE, DIRECT AND CIRCUMSTANTIAL; AND I HAVE HERETOFORE EXPLAINED THAT TO YOU.

PLEASE KEEP IN MIND THESE PROPOSITIONS OF LAW THAT I GAVE YOU AT THE BEGINNING OF THE TRIAL WITH THIS UNDERSTANDING THAT IF THERE IS ANY FURTHER EXPLANATION NEEDED BY YOU, PLEASE LET ME KNOW. I WILL GIVE YOU THE LAW.

NOW, AT THIS TIME I AM GOING TO SEND YOU TO THE JURY ROOM SO THAT I MIGHT DISCUSS WITH COUNSEL FOR THE STATE AND THE DEFENDANT ANY OTHER PROPOSITIONS OF LAW THAT WE DEEM APPROPRIATE FOR YOUR CONSIDERATION.

DO NOT BEGIN YOUR DELIBERATIONS UNTIL I HAVE SENT THIS VERDICT, THIS INDICTMENT IN WITH YOU. WITH REFERENCE TO THIS INDICTMENT, I AGAIN TELL YOU THAT THIS INDICTMENT IS SIMPLY THE CHARGE, THE ALLEGATIONS OF THIS CASE. THE INDICTMENT IS NOT

EVIDENCE IN ANY WAY.

UPON THIS INDICTMENT IS THE WORD VERDICT. ONCE YOU HAVE REACHED A UNANIMOUS VERDICT, YOU WOULD TURN THIS INDICTMENT OVER AND UNDER VERDICT EVEN WRITE NOT GUILTY OR GUILTY AND SIGN YOUR NAME THERETO.

THERE IS NO SUGGESTION TO YOU AS TO THE FORM OF THE VERDICT WHATSOEVER. IT'S JUST SIMPLY I HAVE TO SAY ONE BEFORE THE OTHER. I COULD TURN IT AROUND AND SAY THE OTHER WAY.

I WILL LET YOU GO TO THE JURY ROOM. DO NOT BEGIN YOUR DELIBERATIONS UNTIL I SEND WORD TO YOU. NOW, LET THE ALTERNATES STAY HERE, PLEASE.

MADAME CLERK, WILL YOU TAKE THE TWO ALTERNATES TO ANOTHER ROOM.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: LET ME TALK TO THE ALTERNATES FIRST. UNDER OUR RULES ONLY 12 MAY DELIBERATE. YOU WERE CHOSEN AS ALTERNATES IN THE EVENT SOMEBODY CAN'T SERVE OR GETS SICK. I AM GOING TO NEED YOU TO STAY WITH US THROUGHOUT THESE PROCEEDINGS IN CASE YOUR SERVICES ARE REQUIRED.

SO I AM GOING TO ASK THAT YOU TAKE THESE TWO ALTERNATES TO AN APPROPRIATE ROOM. MAKE THEM COMFORTABLE AND SATISFIED. MAKE SURE THEY GET THEIR

SUPPER. HAVE YOU GOT A PLACE YOU CAN SEND THEM AT THIS TIME?

CLERK: YES, SIR.

THE COURT: MAKE SURE THEY ARE NOT IN THE JURY ROOM.

CLERK: YES, SIR.

(THE TWO ALTERNATES ARE EXCUSED FROM THE COURTROOM.)

THE COURT: AS TO THE STATE, ANY CHANGES OR ADDITIONS OR EXCEPTION TO THE CHARGE?

SOLICITOR BAILEY: NO, SIR.

THE COURT: HOW ABOUT IT FOR THE DEFENSE?

MR. STONE: I APOLOGIZE IF I MISSED THIS. IT'S CERTAINLY POSSIBLE. I DID NOT HEAR ANOTHER CHARGE ON REASONABLE DOUBT.

THE COURT: YES, SIR, I GAVE THE MANNING CHARGE.

MR. STONE: AND CIRCUMSTANTIAL EVIDENCE?

THE COURT: YES, SIR. LET ME SAY THIS TO YOU. WITH REGARD TO THE CIRCUMSTANTIAL EVIDENCE CHARGE, IT WAS EXACTLY VERBATIM OUT OF THE RECENT CASE WITH WHICH YOU ARE FAMILIAR.

MR. STONE: YES, SIR.

THE COURT: STATE V. GRIPPON. LET ME CITE IT, 489 S.E.2D 462.

MR. STONE: YES, SIR.

THE COURT: THE MANNING CHARGE AS I GAVE WAS AS FOLLOWS: A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE WHICH IS IN THE CASE OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE. YOU ALONE MUST MAKE THE DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT.

MR. STONE: I KNOW YOU CHARGED THAT THE FIRST TIME. I DON'T HAVE ANY QUESTION ABOUT THAT. MY QUESTION WAS WHETHER OR NOT IT WAS CHARGED THE SECOND TIME.

THE COURT: YES, SIR. I TOLD THEM: I HAVE DEFINED FOR YOU REASONABLE DOUBT. THE RECORD WILL REFLECT THAT I WENT OVER THE INDICTMENT, THE PRESUMPTION OF INNOCENCE, THE FACT THAT I HAVE DEFINED REASONABLE DOUBT. I DISCUSSED WITH THEM THAT THEY WERE FINDERS OF FACTS. I WENT DOWN THE LIST.

MR. STONE: THE ONLY THING I WOULD ADD BECAUSE OF THE OBJECTION THAT I ENTERED LAST TIME CONCERNING INSTRUCTING THE JURY THAT THEIR ONLY JOB WAS TO GO BACK AND FIND THE TRUTH, I WOULD ASK FOR THE RECORD THAT YOU RECHARGE ON REASONABLE DOUBT IN

THE SAME WAY YOU DID THE FIRST TIME, LEAVING THAT OUT.

THE COURT: NO, SIR, I DIDN'T DO THAT. I DIDN'T CHARGE FINDING OF THE TRUTH IN THE CONTEXT OF REASONABLE DOUBT.

MR. STONE: I UNDERSTAND.

THE COURT: I USED THAT LANGUAGE AS TO THE CREDIBILITY OF THE WITNESSES. I HAVE SUFFICIENTLY DEFINED REASONABLE DOUBT FOR THEM. I HAVE DEFINED IT EXACTLY AS MANDATED IN STATE V. MANNING. YES, SIR, DO YOU HAVE ANYTHING?

SOLICITOR BAILEY: THIS HAS GOT NOTHING TO DO WITH THE CHARGE. JUST TO PROTECT THE RECORD, I AM NOT SURE IF THERE IS A PERSONAL WAIVER OF THE RIGHT TO MAKE A CLOSING AGENT BY THE DEFENDANT, AND I THINK THERE IS SOME CASE --

MR. STONE: THERE WAS NOT. THAT'S TRUE. THAT DOES NEED TO BE TAKEN CARE OF.

THE COURT: I HAD HIM STAND UP AND HE INDICATED TO ME AND I TOLD HIM AND YOU SAID HE WANTED IT. I NEED THAT ON THE RECORD AGAIN?

MR. STONE: THE ONLY QUESTION IS WE HAD INDICATED TO YOU AND TO THE SOLICITOR THAT HE WAS GOING TO MAKE A CLOSING STATEMENT, WHICH HE ELECTED DURING THE CLOSING NOT TO MAKE.

THE COURT: MR. DEFENDANT, PRIOR TO THE BEGINNING OF FINAL ARGUMENTS, I HAD YOU STAND IN OPEN COURT AND INDICATED TO YOU THAT YOU HAD THE RIGHT TO MAKE A CLOSING ARGUMENT AND THE RIGHT NOT TO. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: AT THAT TIME COUNSEL FOR YOU INDICATED THAT YOU MIGHT DESIRE TO MAKE A CLOSING ARGUMENT, AND AT THAT POINT IN TIME WHEN I OFFERED YOU THAT OPPORTUNITY, I WAS ADVISED THAT YOU DESIRED NOT TO MAKE A CLOSING ARGUMENT; IS THAT CORRECT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: THAT WAS AND STILL IS YOUR DECISION?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: YOU FULLY UNDERSTAND THAT YOU HAD THE RIGHT TO DO IT AND STILL HAVE THE RIGHT TO DO IT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: I WOULD GLADLY CALL THE JURY BACK OUT IF THERE IS ANY QUESTION IN YOUR MIND ABOUT IT. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: THAT DECISION WAS OBVIOUSLY IN CONSULTATION WITH THE ATTORNEYS BUT THE DECISION WAS

YOURS?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: I THINK WE ARE PROTECTED.

MR. STONE: THANK YOU. I APPRECIATE THAT.

THE COURT: AS I RECALL, I DID THAT EVEN EARLY ON.

MR. STONE: YOU DID FINE. I JUST MISLED YOU BY ACCIDENT.

THE COURT: ARE YOU COMFORTABLE WITH THAT?

MR. STONE: YES, I AM NOW.

SOLICITOR BAILEY: YES, SIR.

THE COURT: I AM COMFORTABLE WITH THE REASONABLE DOUBT. IS THERE ANYTHING FURTHER?

MR. STONE: NOTHING FROM THE DEFENSE.

THE COURT: LET'S COME FORWARD AND AGREE AS TO THESE MATTERS THAT ARE IN EVIDENCE. AS I RECALL, ONE MATTER WAS MADE A COURT EXHIBIT.

MR. SIMS: YES, SIR.

THE COURT: MAKE SURE THEY DON'T GO IN.

(THE JURY COMMENCES IT'S DELIBERATION AT 7:55 P.M.)

(THE FOLLOWING OCCURRED AT 9:15 P.M.)

THE COURT: I HAVE RECEIVED THE FOLLOWING COMMUNICATION FROM ONE OF THE JURORS, QUOTE: I WOULD LIKE THE COMPLETE TESTIMONY OF GLORIA BLACKWELL.

I HAVE SHOWN THIS REQUEST TO COUNSEL FOR THE STATE AND THE DEFENDANT. IT IS HEREWITH MADE A PART OF THE RECORD. MADAME COURT REPORTER, HAVE YOU NOW GOT THAT PORTION OF MRS. BLACKWELL'S TESTIMONY?

COURT REPORTER: YES, SIR.

THE COURT: I UNDERSTAND THERE WERE TWO INTERRUPTIONS FOR IN CAMERA HEARINGS. ARE WE IN A POSITION WHERE WHEN WE GET TO THAT, WE CAN MOVE ON TO THE TESTIMONY ITSELF?

COURT REPORTER: YES, SIR.

THE COURT: I WANT TO MAKE SURE THAT NONE OF THE IN CAMERA TESTIMONY IS PRESENTED. BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 9:17 P.M.)

THE COURT: MR. FOREMAN, AND LADIES AND GENTLEMEN, I TRUST THAT THE DINNER PROVIDED FOR YOU WAS SATISFACTORY. I HAVE RECEIVED THE FOLLOWING COMMUNICATION. "I WOULD LIKE THE COMPLETE TESTIMONY OF GLORIA BLACKWELL."

WE WILL NOW REPLAY THAT TESTIMONY IN ITS ENTIRETY. NOW, DURING THE PLAYING IF AT ANY TIME THAT INDIVIDUAL WHO REQUESTED IT IS SATISFIED WITH WHAT THEY HEAR, WE WILL STOP IT; BUT UNTIL SOMEBODY TELLS ME THEY HAVE SEEN OR HEARD THAT PORTION THAT

THEY WANTED, WE WILL PLAY THE ENTIRE PART. EVERYBODY UNDERSTANDS THAT?

BUT IF THERE IS SOME PARTICULAR PART THAT ARE YOU INTERESTED IN AND HAVE HEARD THAT, JUST PLEASE LET ME KNOW AND WE WILL STOP AT THAT TIME. DOES EVERYBODY UNDERSTAND THAT?

(THE TESTIMONY OF GLORYVEE PEREZ BLACKWELL WAS PLAYED FOR THE JURY.)

THE COURT: YOU MAY NOW RESUME YOUR DELIBERATION. THANK YOU SO MUCH.

(THE JURY RETIRES TO CONTINUE ITS DELIBERATION AT 9:55 P.M.)

(COURT'S EXHIBIT NUMBER 3, NOTE FROM JURY, IS MARKED FOR PURPOSES OF THE RECORD.)

THE COURT: WE ARE IN RECESS.

MR. STONE: THANK YOU, YOUR HONOR.

(WHEREUPON THERE WAS A RECESS.)

(THE FOLLOWING OCCURRED AT 10:35 P.M.)

THE COURT: I TELL YOU NOW THAT I WILL PERMIT NO OUTBREAK, NO REMARK OF ANY KIND UPON THE RENDITION OF THE VERDICT. IF ANYBODY WITHIN THE SOUND OF MY VOICE FEELS THAT THEY CANNOT ADHERE TO THIS ADMONITION, I RESPECTFULLY ASK THAT YOU LEAVE THE COURTROOM NOW BECAUSE UNDER NO CIRCUMSTANCES WILL I TOLERATE ANY KIND OF OUTBURST. BRING THE JURY

IN.

BAILIFF: AND THE TWO ALTERNATES?

THE COURT: BRING THE ALTERNATES BACK. THEY MAY SIT WITH THE JURY. ANY OBJECTION TO THAT?

SOLICITOR BAILEY: NOT FROM THE STATE, YOUR HONOR.

MR. STONE: NO, SIR.

THE COURT: LET THE ALTERNATES SIT WITH THE JURY. THE RECORD WILL REFLECT THAT AT NO TIME HAVE THE ALTERNATES BEEN IN THE JURY ROOM DURING THE DELIBERATIONS.

(THE JURY RETURNS TO THE COURTROOM.)

CLERK: MR. FOREMAN, HAVE YOU REACHED A VERDICT?

FOREMAN: YES, MA'AM, WE HAVE.

THE COURT: PLEASE ACCEPT THE VERDICT.

CLERK: DO NOT PUBLISH IT BUT PLEASE PASS IT BY THE BAILIFF ALONG WITH ANY EXHIBITS.

THE COURT: WE WON'T NEED THE EXHIBITS AT THIS TIME.

(HANDS TO COURT)

THE COURT: PLEASE PUBLISH THE VERDICT.

(WHEREUPON THE VERDICT OF THE JURY WAS PUBLISHED AS FOLLOWS.)

CLERK: CALL THE COURT'S ATTENTION TO

INDICTMENT NUMBER 98-GS-38-244, THE STATE OF SOUTH CAROLINA VERSUS BAYAN ALEKSEY, CHARGED WITH MURDER. THE VERDICT OF THE JURY IS GUILTY, SIGNED BY THE FOREPERSON AND TODAY'S DATE. IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

FOREMAN: YES, MA'AM.

THE COURT: DO YOU DESIRE THE JURY BE POLLED?

MR. STONE: YES, SIR.

THE COURT: POLL THE JURY PLEASE. THE INQUIRY WILL BE AS YOUR NAME IS CALLED AND RESPOND IN THE FOLLOWING MANNER IF THIS BE YOUR RESPONSE: IS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

CLERK: NARONE FRANKLIN.

THE COURT: PLEASE STAND.

CLERK: IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: JASON COTE, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: SANDRA MCWATERS, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: DUANE GREEN, WAS THIS YOUR VERDICT

AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: TYRONE GILLARD, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: ELAINE WHETSTONE, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: NORRIS GIBSON, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, MA'AM.

MR. STONE: DEBRA SANFORD, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: BONNIE ZEIGLER, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT WAS.

CLERK: GIGI HAYES, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: KEDRAIN PELZER, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: BARBARA HANTON, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

THE COURT: THE JURY HAS BEEN POLLED UNANIMOUSLY IN THE AFFIRMATIVE. ANYTHING ELSE?

SOLICITOR BAILEY: NOT AT THIS TIME, YOUR HONOR.

THE COURT: ANYTHING ELSE AT THIS TIME FROM THE JURY?

MR. STONE: NOT FROM THE JURY, YOUR HONOR.

THE COURT: MR. FOREMAN, AND LADIES AND GENTLEMEN, YOU HAVE REACHED A UNANIMOUS VERDICT OF GUILTY IN THIS THE FIRST PHASE. UNDER THE STATUTORY LAWS OF THIS STATE, IT IS MANDATED THAT THERE BE A 24-HOUR WAITING PERIOD PRIOR TO THE BEGINNING OF THE SECOND STAGE.

TWENTY-FOUR HOURS FROM NOW WOULD BE 11 O'CLOCK APPROXIMATELY TOMORROW NIGHT, WHICH WOULD BE IMPOSSIBLE TO BEGIN THE TRIAL. SO IN ORDER TO ADHERE TO THE STATUTORY CONCEPTS, WE MUST PERMIT THE 24 HOURS TO ELAPSE.

THUS WE WILL START THE SECOND PHASE OF THIS CASE AT 10 A.M. ON MONDAY MORNING. YOU, OF COURSE, WILL BE SEQUESTERED AND THE ALTERNATES NOW WILL REJOIN THE JURY IN THE EVENT SOMEBODY IS DISABLED OR UNABLE TO SERVE.

LET ME SAY THIS TO YOU. I UNDERSTAND AND

APPRECIATE THE FACT THAT THIS IS A CONSIDERABLE INCONVENIENCE TO ALL OF YOU, BUT WE ARE ATTEMPTING AS BEST WE CAN TO MAKE YOUR STAY AS PLEASANT AS POSSIBLE UNDER THE CIRCUMSTANCES.

I KNOW BY NOW YOU ALL KNOW MY S.L.E.D. AGENT WHO I REGARD SO HIGHLY, LIEUTENANT EDWARDS. TOMORROW HE WILL MAKE APPROPRIATE ARRANGEMENTS FOR YOU. HE WILL TAKE YOU TO COLUMBIA AND LET YOU GO SHOPPING AT THE MALL OR TAKE YOU PERHAPS TO THE ZOO OR DO SOMETHING. WE ARE NOT GOING TO KEEP YOU LOCKED UP IN THE MOTEL.

LIEUTENANT EDWARDS, I WOULD RELY ON YOU TO MAKE THE APPROPRIATE ARRANGEMENTS. MAKE THEM AS COMFORTABLE AS POSSIBLE UNDER THE CIRCUMSTANCES. WE WILL BEGIN PHASE TWO PROMPTLY AT 10 A.M. MONDAY. WE WILL THEREAFTER START AT 9:30.

SO THAT YOU WILL UNDERSTAND, I FULLY ANTICIPATE THAT WE WILL CONCLUDE PHASE TWO SOMETIME TUESDAY. WE WILL WORK DILIGENTLY TOWARD THAT END. I WANT YOU TO KNOW THAT THE LAW REQUIRES ME TO OBSERVE THE 24-HOUR WAITING PERIOD.

IN THE MEANTIME NOW, AS I UNDERSTAND, YOU ARE MAKING ARRANGEMENTS IN THE MORNING TO LET THEM VISIT WITH THEIR FAMILIES.

AGENT: YES, SIR, WE ARE.

THE COURT: YOU ARE MAKING ARRANGEMENTS FOR TELEPHONE CONTACT. IF YOU NEED ANYTHING, YOU LET THE LIEUTENANT KNOW. HE WILL BE GLAD TO ACCOMMODATE YOU CONSISTENT WITH OUR COURT SCHEDULE. SO I NEED TO CHAT WITH YOU BEFORE YOU LEAVE, AGENT.

AGENT: ALL RIGHT, SIR.

THE COURT: I WILL EXCUSE YOU NOW AND I WILL SEE YOU MONDAY MORNING AT 10 A.M. SHARP. BEFORE YOU LEAVE DO NOT DISCUSS THIS CASE WITH ANYONE NOW. DO NOT FURTHER DISCUSS IT WITH REGARDS TO THE SECOND PHASE. LET NO ONE TALK TO YOU ABOUT IT. DON'T LISTEN TO IT ON THE TELEVISION.

WHEN WE START MONDAY MORNING, THERE WILL BE ADDITIONAL TESTIMONY IN AGGRAVATION, ADDITIONAL TESTIMONY IN MITIGATION. I WILL FULLY EXPLAIN TO YOU YOUR DUTIES, THESE TERMS AS WE HAVE DONE BEFORE. SO YOU WILL BE FULLY ADVISED.

(THE JURY IS EXCUSED FOR THE DAY AT 10:45 P.M.)

THE COURT: ANYTHING ELSE FOR THIS EVENING?

SOLICITOR BAILEY: NOT FROM THE STATE, YOUR HONOR.

THE COURT: HOW ABOUT FOR THE DEFENSE?

MR. STONE: YOUR HONOR, AT THIS TIME WE RENEW OUR PREVIOUS MOTIONS FOR DIRECTED VERDICT, AS

WELL AS ASK FOR A NEW TRIAL BASED ON OUR PREVIOUS OBJECTIONS AND MOTIONS.

THE COURT: THAT IS RESPECTFULLY OVERRULED. THE ISSUES WERE PRESENTED TO THE JURY. THEY HAVE MADE A UNANIMOUS FINDING. IN MY VIEW THE LAW AND EVIDENCE IN THE CASE CERTAINLY JUSTIFIES THE FINDING THEY MADE SINCE THEY WERE FINDERS OF FACTS ON ALL THE ISSUES. THAT IS RESPECTFULLY OVERRULED. THE VERDICT STANDS.

MR. STONE: THANK YOU, YOUR HONOR.

THE COURT: WE WILL BEGIN ANEW AT 10 A.M. MONDAY AND THEREAFTER START AT 9:30 EVERY MORNING UNTIL THIS CASE IS CONCLUDED. THANK YOU SO MUCH.

(WHEREUPON THE PROCEEDINGS WERE CONCLUDED FOR AUGUST 29, 1998, AT 10:45 P.M.)

* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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REPETATIVE TRANSCRIPT COVER PAGE AND
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AND NOT REPRINTED

(THE FOLLOWING PROCEEDINGS WERE REPORTED ON AUGUST 31, 1998.)

THE COURT: LET THE RECORD REFLECT THAT ALL PARTIES ARE PRESENT, INCLUDING THE DEFENDANT. MADAME COURT REPORTER, PLEASE STATE FOR THE RECORD THE TIME AND DATE OF THE CONCLUSION OF THE FIRST TRIAL.

COURT REPORTER: SEPTEMBER (SIC) 29TH AT 10:35 P.M.

THE COURT: THAT WAS ON A SATURDAY EVENING?

COURT REPORTER: YES, SIR.

SOLICITOR BAILEY: YOUR HONOR, THAT WAS AUGUST.

THE COURT: I THOUGHT IT WAS AUGUST, TOO.

COURT REPORTER: I'M SORRY, JUDGE. IT WAS AUGUST 29TH.

THE COURT: LET THE RECORD NOW REFLECT THAT THE DATE IS AUGUST 31ST AND THAT MORE THAN 24 HOURS HAS ELAPSED SINCE THE RENDITION OF THE VERDICT. YOU AGREE WITH THAT, GENTLEMEN?

MR. STONE: YES, SIR.

THE COURT: FOR THE RECORD WHAT AGGRAVATING CIRCUMSTANCES IS IT THAT THE STATE RELIES ON?

SOLICITOR BAILEY: YOUR HONOR, THE STATE RELIES ON AGGRAVATING CIRCUMSTANCE NUMBER SEVEN, THE

MURDER OF A STATE OR LOCAL LAW ENFORCEMENT OFFICER DURING AND BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES.

THE COURT: AND YOU AGREE THAT YOU HAVE PREVIOUSLY BEEN ADVISED OF THAT AGGRAVATING CIRCUMSTANCE?

MR. STONE: YES, SIR.

THE COURT: WHAT MITIGATING CIRCUMSTANCES IS IT THAT THE DEFENSE DESIRES THAT I SUBMIT TO THE JURY?

MR. STONE: YOUR HONOR, MITIGATING CIRCUMSTANCES ONE, TWO, SIX AND SEVEN AND TEN, SPECIFICALLY THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER PERSON.

THE MURDER WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE. THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OR LAW WAS SUBSTANTIALLY IMPAIRED.

THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME OF THE CRIME. THE DEFENDANT HAD MENTAL RETARDATION AT THE TIME OF THE CRIME, AND THIS MENTAL RETARDATION AND SIGNIFICANTLY SUBAVERAGE GENERAL

INTELLECTUAL FUNCTIONING EXISTING CONCURRENTLY WITH DEFICITS AND ADAPTIVE BEHAVIOR AND MANIFESTED DURING THE DEVELOPMENTAL PERIOD.

THE COURT: MAY I HAVE THOSE BACK, PLEASE. I SEE YOU HAVE GOT MY COPY.

MR. STONE: YES, SIR.

THE COURT: OF COURSE, THE JURY WILL BE CHARGED THAT MAY CONSIDER ANY OTHER MITIGATING CIRCUMSTANCES.

MR. STONE: YES, SIR.

THE COURT: YOU AGREE, SOLICITOR, THAT THOSE ARE MITIGATING CIRCUMSTANCES?

SOLICITOR BAILEY: YOUR HONOR, OF COURSE, NOT ALL THAT IS IN THE RECORD. I ANTICIPATE THAT EVERYTHING WITH THE POSSIBLE EXCEPTION OF NUMBER TEN WILL COME IN, BUT ASSUMING THERE IS AN EVIDENTIARY BASIS FOR IT, I HAVE NO OBJECTION. I WOULD LIKE TO RESERVE MY RIGHT TO OBJECT AFTER THE EVIDENCE IS IN.

THE COURT: YES, SIR, WE WILL RECONSIDER THAT ISSUE AT THE TIME OF THE FINAL CHARGE.

MR. STONE: I WOULD AGREE, YES, SIR.

THE COURT: ARE THERE ANY STIPULATIONS THAT WE NEED TO CONSIDER AT THIS TIME?

SOLICITOR BAILEY: YOUR HONOR, I DON'T

BELIEVE SO.

THE COURT: FOR THE DEFENSE?

MR. STONE: NO, SIR, I DON'T SO. WE BROUGHT UP THE FACT BEFORE CONCERNING THE HIGHWAY PATROL JACKET WHICH IS AGAIN POSITIONED IN THE COURTROOM AS IT WAS AT VARIOUS STAGES OF THE GUILT PHASE. YOU HAD ISSUED A PRIOR RULING CONCERNING THAT, AND I WOULD ASK AT THIS TIME FOR THAT TO BE REMOVED.

SOLICITOR BAILEY: YOUR HONOR, IF I MAY, AT THIS STAGE OF THE CASE, THE PROBATIVE VALUE OF THAT JACKET IS ENHANCED DUE TO THE NATURE OF THE SECOND PHASE.

THE COURT: YES, SIR. I DECLINED TO LET IT STAY IN THE COURTROOM DURING THE FIRST PHASE, BUT I THINK IT IS APPROPRIATE NOW IN THE SECOND STAGE BECAUSE IT HAS SOME PROBATIVE VALUE; TO WIT, THE BULLET HOLES AND THE FACT THEY WERE IN VERY CLOSE RANGE. I THINK HE IS ENTITLED TO KEEP IT IN AT THIS TIME.

MR. STONE: ALL RIGHT, SIR.

SOLICITOR BAILEY: YOUR HONOR, JUST AS A HOUSEKEEPING MATTER, I NEGLECTED EARLIER TO FILE THIS WITH THE CLERK OF COURT. IT'S A COPY OF THE STATE'S TRANSMITTAL LETTER TO THE DEFENSE IN REGARD TO

DISCOVERY. I JUST WANT TO MAKE THAT PART OF THE RECORD. I WILL HAND THAT TO THE CLERK.

THE COURT: YES, SIR. HAVE THE DEFENDANT STAND, PLEASE. MR. DEFENDANT, WE ARE UPON THE RECORD. I WISH AGAIN TO ADVISE YOU, AS I DID IN THE FIRST PHASE, THAT YOU HAVE THE ABSOLUTE RIGHT TO TESTIFY AND TO ARGUE TO THE JURY REGARDING SENTENCE AND PUNISHMENT HERE.

YOU HAVE THE ABSOLUTE RIGHT NOT TO TESTIFY. OBVIOUSLY THIS WILL BE A MATTER THAT YOU WOULD CONSULT WITH YOUR ATTORNEYS IF YOU DESIRE, BUT THE RIGHT TO TESTIFY OR NOT TO TESTIFY RESTS FINALLY AND ABSOLUTELY WITH YOU. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: CAN YOU ADVISE ME AT THIS TIME AS TO WHETHER OR NOT YOU DESIRE TO TESTIFY?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: IT IS YOUR DETERMINATION TO TESTIFY?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: THE COURT WILL CERTAINLY HONOR THAT. IF ANY TIME YOU DESIRE TO CHANGE YOUR MIND, YOU MAY DO THAT. YES, SIR.

MR. SIMS: YOUR HONOR, THERE MAY BE SOME QUESTION OF WHETHER WE ARE TALKING ABOUT TESTIFYING

OR WHETHER --

THE COURT: NOT TESTIFYING BUT HE HAS A RIGHT TO TESTIFY AND HE ALSO HAS A RIGHT TO MAKE THE FINAL ARGUMENT. THERE'S TWO DIFFERENT ISSUES. LET ME INITIALLY TALK ABOUT THAT. YOU UNDERSTAND THAT YOU HAVE THE ABSOLUTE RIGHT TO TESTIFY UNDER OATH ON THE STAND?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: YOU HAVE THE ABSOLUTE RIGHT NOT TO TESTIFY. LET'S ADDRESS THAT FIRST. CAN YOU TELL ME AT THIS STAGE WHETHER HE IS GOING TO TESTIFY OR NOT?

MR. STONE: I CANNOT. WE HAVE DISCUSSED IT AT LENGTH, BUT I CANNOT TELL YOU AT THIS TIME WHETHER OR NOT HE WILL DO THAT.

THE COURT: AT THE CONCLUSION OF THE STATE'S TESTIMONY IN THIS PHASE, I WANT THAT ISSUE ADDRESSED AGAIN.

MR. STONE: YES, SIR.

THE COURT: NOW, THERE IS A SECOND PRONG HERE. EVEN THOUGH -- IF YOU ELECT TO TESTIFY OR IF YOU ELECT NOT TO TESTIFY, AGAIN YOU STILL HAVE ANOTHER POSITION; AND THAT IS REGARDLESS OF WHETHER YOU TESTIFY OR NOT, YOU HAVE THE ABSOLUTE RIGHT TO MAKE A FINAL ARGUMENT TO THE JURY IN THIS PHASE OF

THE CASE. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: YOU ALSO HAVE THE ABSOLUTE RIGHT NOT TO DO THAT. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: AT THE CONCLUSION OF THE STATE'S CASE, I WANT HIM TO STAND AND ADDRESS ME ON BOTH ISSUES.

MR. STONE: YES, SIR.

THE COURT: ONE, HIS RIGHT TO TESTIFY OR NOT TESTIFY. TWO, HIS RIGHT TO ADDRESS THE JURY AS TO WHETHER HE TESTIFIES OR NOT.

MR. STONE: YES, SIR.

THE COURT: DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I HAVE TOLD YOU?

DEFENDANT ALEKSEY: NO, YOUR HONOR.

THE COURT: YOU MAY BE SEATED. WE HAD A PRELIMINARY DISCUSSION WITH REGARD TO REQUESTS TO CHARGE. AT THIS TIME THERE ARE NO FURTHER REQUESTS TO CHARGE FROM THE STATE?

SOLICITOR BAILEY: NO, SIR, NOT AT THIS TIME.

THE COURT: THE ONLY REQUEST TO CHARGE HERE

FROM THE DEFENSE IS THE STATUTORY LAW WITH REGARDS TO DEATH AND LIFE IMPRISONMENT.

MR. STONE: YES, SIR, THAT'S CORRECT.

THE COURT: I WILL GRANT THAT. PURSUANT TO YOUR REQUEST, THAT WILL BE CHARGED HERE INITIALLY. NOW, IF AT THE CONCLUSION OF THE ENTIRE CASE IN THE SECOND PHASE AND BEFORE MY FINAL INSTRUCTION TO THE JURY, WHICH WILL BE GIVEN AFTER FINAL ARGUMENTS, IF THERE BE ANY ADDITIONAL CHARGES, WE WILL CONSIDER THEM AT THAT TIME.

MR. STONE: THANK YOU.

THE COURT: LET THE RECORD REFLECT I AM NOT PRECLUDING YOU FROM REQUESTING ADDITIONAL CHARGES AT THE CONCLUSION OF THE TAKING OF THE TESTIMONY NOR DO I PRECLUDE THE STATE.

SOLICITOR BAILEY: YES, SIR.

THE COURT: ANYTHING FURTHER BEFORE WE BEGIN WITH THE JURY?

SOLICITOR BAILEY: NOT FROM THE STATE, YOUR HONOR.

THE COURT: HAVE THE JURY COME IN.

(THE JURY RETURNS TO THE COURTROOM AT 11:10 A.M.)

THE COURT: GOOD MORNING, MR. FOREMAN, AND LADIES AND GENTLEMEN. I HAD ASKED THAT YOU BE BACK

IN THE COURTROOM PROMPTLY AT TEN O'CLOCK AND YOU WERE CERTAINLY HERE.

I DO WANT YOU TO KNOW, TOO, THAT WE WERE HERE READY TO GO, TOO. WE ARE STARTING A LITTLE LATER THAN I INTENDED BUT IT WAS NECESSARY AS WE BEGAN THE PREPARATIONS FOR THIS, THE SECOND PHASE OF THE CASE.

YOU WILL RECALL THAT DURING THIS TRIAL I HAVE CONTINUED TO GIVE YOU ADMONITIONS WITH REGARDS TO ANY EXTRANEOUS MATTERS THAT YOU MAY HAVE READ OR HEARD ABOUT.

HAS ANYBODY ATTEMPTED TO TALK TO ANY OF YOU OUTSIDE THE PRESENCE OF THE JURY IN THIS CASE OR HAVE YOU READ OR HEARD ANYTHING ABOUT IT THAT WOULD PREVENT YOU FROM BASING YOUR VERDICT ON THE LAW AND THE EVIDENCE IN THIS CASE? IF SO, PLEASE SIGNIFY BY STANDING AT THIS TIME.

(THERE WAS NO RESPONSE.)

THE COURT: LET ME AGAIN THANK LIEUTENANT EDWARDS FOR HIS HELP. I KNOW BY NOW THAT YOU UNDERSTAND THAT HE HAS BUT ONE CONCERN AND THAT'S THE JURY'S WELFARE.

HE INDICATED TO ME THAT HE TOOK CARE OF YOU YESTERDAY. I THINK YOU WENT TO COLUMBIA AND PERHAPS HAD AN OPPORTUNITY TO WALK AROUND IN THE MALL.

LIEUTENANT EDWARDS, I AGAIN THANK YOU FOR YOUR CONSIDERED EFFORTS ON BEHALF OF THIS JURY.

AGENT: YES, SIR.

THE COURT: YOU AND S.L.E.D. ALWAYS TO DO A GOOD JOB. I PERSONALLY AS PRESIDING JUDGE WANT TO PUBLICLY THANK YOU.

AGENT: THANK YOU, SIR.

THE COURT: NOW, LADIES AND GENTLEMEN OF THE JURY, THIS DEFENDANT WAS CONVICTED OF THE CRIME OF MURDER ON LAST SATURDAY BY THE UNANIMOUS VERDICT YOU THE JURY.

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

SECTION 16-3-20 OF THE SOUTH CAROLINA CODE OF LAWS AS AMENDED PROVIDES IN PART AS FOLLOWS: A PERSON WHO IS CONVICTED OR PLEADS GUILTY TO MURDER MUST BE PUNISHED BY DEATH OR IMPRISONMENT FOR LIFE.

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

SO OUR PURPOSE IN CONDUCTING THE PROCEEDING IN WHICH WE ARE NOW ENGAGED IS TO DETERMINE WHETHER THIS DEFENDANT SHOULD BE SENTENCED BY THE COURT TO DEATH OR TO LIFE IMPRISONMENT.

WITH RESPECT TO YOUR PARTICULAR ROLE IN THIS PROCEEDING, YOU WILL BE ASKED TO RECOMMEND TO ME WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR TO LIFE IMPRISONMENT.

DURING THIS SENTENCING PROCEEDING, THE STATE AND THE DEFENDANT WILL HAVE AN OPPORTUNITY TO INTRODUCE ADDITIONAL EVIDENCE IN EXTENUATION, MITIGATION OR AGGRAVATION.

BOTH SIDES WILL HAVE AN OPPORTUNITY TO PRESENT ARGUMENTS FOR AND AGAINST THE DEATH PENALTY. SHOULD YOU RECOMMEND A SENTENCE OF LIFE IMPRISONMENT OR SHOULD YOU RECOMMEND A SENTENCE OF DEATH, THAT IS THE ONLY ISSUE IN THIS TRIAL.

AFTER THE LAST ARGUMENT HAS BEEN MADE TO YOU CONCERNING THE PUNISHMENT THAT SHOULD BE IMPOSED UPON THE DEFENDANT, I WILL GIVE YOU DETAILED INSTRUCTIONS AND DETAILED FORMS FOR YOUR CONSIDERATION; AND YOU THEN WILL RETIRE TO DETERMINE WHETHER A DEATH SENTENCE OR A LIFE SENTENCE SHOULD BE IMPOSED.

I HAVE USED THE WORD RECOMMEND. I TELL YOU

IN THIS CONNECTION THAT I WILL IMPOSE THE SENTENCE IN THIS CASE THAT YOU RECOMMEND. IF YOU RECOMMEND LIFE IMPRISONMENT, THAT IS WHAT THE SENTENCE OF THIS COURT WILL BE. IF YOU RECOMMEND THE SENTENCE OF DEATH, THAT IS THE SENTENCE THAT THIS COURT WILL IMPOSE.

NOW, SECTION 16-3-20 PROVIDES AS FOLLOWS: A PERSON WHO IS CONVICTED OR WHO PLEADS GUILTY TO MURDER MUST BE PUNISHED BY DEATH OR IMPRISONMENT FOR LIFE OR A MANDATORY TERM OF IMPRISONMENT FOR 30 YEARS.

IF THE STATE SEEKS THE DEATH PENALTY AND A STATUTORY AGGRAVATING CIRCUMSTANCE IS FOUND BEYOND A REASONABLE DOUBT PURSUANT TO SUBSECTION (B) AND A RECOMMENDATION OF DEATH IS NOT MADE, THE TRIAL JUDGE MUST IMPOSE A SENTENCE OF LIFE IMPRISONMENT. FOR PURPOSES OF THIS SECTION, LIFE IMPRISONMENT MEANS UNTIL THE DEATH OF THE OFFENDER.

NO PERSON SENTENCED TO LIFE IMPRISONMENT PURSUANT TO THIS SECTION IS ELIGIBLE FOR PAROLE, COMMUNITY SUPERVISION OR ANY OTHER EARLY RELEASE PROGRAM, NOR IS A PERSON ELIGIBLE TO RECEIVE ANY WORK CREDITS, EDUCATIONAL CREDITS, GOOD CONDUCT CREDITS OR ANY OTHER CREDITS THAT WOULD REDUCE LIFE IMPRISONMENT REQUIRED BY THIS SECTION.

IF NO STATUTORY AGGRAVATING CIRCUMSTANCE IS

FOUND, THE DEFENDANT MUST BE SENTENCED TO EITHER LIFE IMPRISONMENT OR A MANDATORY MINIMUM TERM OF IMPRISONMENT FOR 30 YEARS.

NO PERSON SENTENCED TO A MANDATORY MINIMUM TERM OF IMPRISONMENT FOR 30 YEARS PURSUANT TO THIS SECTION IS ELIGIBLE FOR PAROLE OR ANY EARLY RELEASE PROGRAM, NOR IS A PERSON ELIGIBLE TO RECEIVE ANY WORK CREDIT, EDUCATION CREDIT, GOOD CONDUCT CREDIT OR ANY OTHER CREDITS THAT WOULD REDUCE THE MANDATORY MINIMUM TERM OF IMPRISONMENT FOR 30 YEARS REQUIRED BY THIS SECTION.

AGAIN, I HAVE USED THE WORD TO YOU RECOMMEND. I USE THAT TERM BECAUSE THE STATUTE SAYS RECOMMEND, BUT I TELL YOU THIS COURT WILL IMPOSE THE SENTENCE RECOMMENDED BY YOU. AGAIN, IF YOU RECOMMEND THE DEATH PENALTY, THAT IS EXACTLY WHAT I WILL DO. IF YOU RECOMMEND LIFE IMPRISONMENT, THAT IS EXACTLY THE SENTENCE THAT WILL BE IMPOSED BY ME.

WE WILL BEGIN AGAIN WITH THE STATE OF SOUTH CAROLINA, REPRESENTED BY SOLICITOR WALTER BAILEY, MAKING TO YOU AN OPENING STATEMENT. THAT WILL BE FOLLOWED BY AN OPENING STATEMENT OF THE DEFENSE, AFTER WHICH WE WILL TAKE TESTIMONY FROM THE STATE AND THE DEFENSE WITH REGARD TO THE ISSUES IN THE TRIAL OF THIS, THE SECOND PHASE. MR. BAILEY.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR. LADIES AND GENTLEMEN, LAST WEEK WHEN WE STARTED THIS TRIAL, THE DEFENDANT IN THIS CASE, BAYAN ALEKSEY, CAME INTO THIS COURT LIKE ANY OTHER CRIMINAL DEFENDANT, PRESUMED INNOCENT. HE WAS CLOTHED WITH THAT PRESUMPTION OF INNOCENCE. THE JUDGE INSTRUCTED YOU ON THAT.

BY YOUR VERDICT SATURDAY NIGHT, YOU REMOVED THAT PRESUMPTION OF INNOCENCE FROM HIM. HE SITS BEFORE YOU A CONVICTED MURDERER. EACH AND EVERY ONE OF YOU UNANIMOUSLY FOUND HIM GUILTY OF THE MURDER OF TROOPER FIRST SERGEANT FRANKIE LINGARD WITH MALICE AFORETHOUGHT.

SO WE DON'T NEED TO USE THE WORD ALLEGED MURDERER OR WE DON'T NEED TO USE THE WORD DEFENDANT. HE IS A MURDERER BY YOUR VERDICT. AS YOU KNOW, THE SOLE PURPOSE OF THIS PART OF THE TRIAL IS TO DETERMINE THE APPROPRIATE PUNISHMENT. YOU HAVE TWO CHOICES, LIFE IMPRISONMENT OR THE DEATH PENALTY.

IN ORDER TO ARRIVE AT THAT CHOICE THAT YOU HAVE WILL TO MAKE LATER ON ARE, YOU ARE GOING TO BE CONSIDERING THE STATUTORY AGGRAVATING CIRCUMSTANCE THAT THE STATE HAS ALLEGED IN THE CASE AND ANY MITIGATING CIRCUMSTANCES THAT MAY ARISE FROM THE EVIDENCE OR THAT YOU MAY FIND ON YOUR OWN.

THE STATE IN THIS CASE HAS ALLEGED ONE STATUTORY AGGRAVATING CIRCUMSTANCE AND ONLY ONE, AND THAT IS THAT THE MURDER OF FRANKIE LINGARD, A LAW ENFORCEMENT OFFICER, WAS DURING OR BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES AS A LAW ENFORCEMENT OFFICER.

THAT MURDER OF FRANKIE LINGARD, OF COURSE, WAS PROVEN IN THE FIRST STAGE OF THE TRIAL. THE EVIDENCE THAT Y'ALL HEARD CLEARLY INDICATED BEYOND ANY REASONABLE DOUBT THAT HE WAS NOT ONLY MURDERED BECAUSE HE WAS A LAW ENFORCEMENT OFFICER, HE WAS MURDERED DURING HIS DUTY AS A LAW ENFORCEMENT OFFICER.

SO THAT CIRCUMSTANCE HAS ALREADY BEEN PROVEN IN THE FIRST STAGE OF THE TRIAL, BUT THAT ISN'T THE END OF IT. Y'ALL ARE PERMITTED TO GO BEYOND THE STATUTORY AGGRAVATING CIRCUMSTANCE TO CONSIDER THE APPROPRIATE PUNISHMENT.

I WILL BE INTRODUCING EVIDENCE IN THIS PART OF THE TRIAL NOT ONLY ABOUT THE AGGRAVATING CIRCUMSTANCES, BUT ABOUT THE CIRCUMSTANCES OF THE CRIME, BEING THE MURDER OF FIRST SERGEANT FRANKIE LINGARD.

IN THAT REGARD THERE WILL BE SOME PHOTOGRAPHS THAT DID NOT COME IN IN THE FIRST PART OF

THIS TRIAL THAT WE WILL BE INTRODUCING IN THIS PART OF THE TRIAL.

WE WILL BE TALKING ABOUT THE CHARACTERISTICS OF BAYAN ALEKSEY, THE KIND OF PERSON HE IS, TO HELP Y'ALL DECIDE WHETHER TO IMPOSE LIFE WITHOUT PAROLE OR THE DEATH PENALTY.

YOU HAVE HEARD A LITTLE BIT ABOUT THAT IN THE FIRST PART OF THE TRIAL. THAT TESTIMONY IS GOING TO SHOW THAT THIS IS A CON MAN. MR. ALEKSEY, IN ADDITION TO BEING A MURDERER, IS A CON MAN. YOU WILL HEAR FROM NUMEROUS PEOPLE THAT ENCOUNTERED HIM OR HAD THE MISFORTUNE TO ENCOUNTER HIM IN THEIR LIVES.

FINALLY YOU WILL HEAR VICTIM IMPACT EVIDENCE. Y'ALL NEED TO GET TO KNOW FRANKIE LINGARD TO THE EXTENT THAT YOU CAN KNOW SOMEBODY WHO IS DEAD. WE WILL DO THAT THROUGH PHOTOGRAPHS, THROUGH TESTIMONY OF FAMILY MEMBERS THAT CARED ABOUT FRANKIE LINGARD, THAT LOVED HIM.

THEY WILL TELL YOU ABOUT WHAT HIS LOSS MEANT TO THEM. YOU WILL HEAR FROM A COUPLE OF TROOPERS THAT WORKED WITH HIM ABOUT THE KIND OF MAN HE WAS AND WHAT HE MEANT TO THE CITIZENS OF ORANGEBURG COUNTY.

THE FIRST THING I WILL DO WHEN I START THIS

PHASE OF THE TRIAL IS I WILL MOVE TO INCORPORATE ALL OF THE EVIDENCE THAT WAS INTRODUCED IN THE GUILT PHASE AND ALL THE TESTIMONY THAT WAS INTRODUCED SO THAT Y'ALL CAN THEN LEGALLY CONSIDER EVERYTHING IN REGARD TO PUNISHMENT.

YOU CONSIDER WHAT COMES OUT IN THIS PART OF THE TRIAL, BUT YOU CAN ALSO CONSIDER WHAT CAME OUT IN THE FIRST PART. OBVIOUSLY IT WOULDN'T MAKE ANY SENSE TO GO THROUGH THE SAME THING NOW THAT Y'ALL HAVE ALREADY HEARD IT AND HAVE SAT THROUGH IT. THERE IS NO POINT IN DRAWING THIS THING OUT.

SO FOR THAT REASON, THIS PART OF THE TRIAL IS GOING TO BE MUCH, MUCH SHORTER. IT'S SHORTER BUT MORE IMPORTANT. I FULLY EXPECT TO GET ALL OF THE STATE'S TESTIMONY IN TODAY, HOPEFULLY BEFORE SUPPER TIME TONIGHT, WELL BEFORE THAT.

AFTER Y'ALL HAVE HEARD ALL OF THE TESTIMONY THAT IS GOING TO BE INTRODUCED IN THIS PART OF THE TRIAL, AS THE JUDGE SAID, THE LAWYERS GET A FINAL OPPORTUNITY TO SPEAK TO YOU.

AT THAT TIME I WILL ASK Y'ALL ON BEHALF OF THE STATE OF SOUTH CAROLINA BASED ON THE EVIDENCE THAT YOU HAVE ALREADY HEARD AND THAT YOU WILL HEAR TO BRING BACK THE DEATH PENALTY IN THIS CASE. THE JUDGE WILL THEN CHARGE YOU ON THE LAW AND YOU WILL GO BACK

TO DELIBERATE.

AS IN THE FIRST STAGE, IT IS YOUR SWORN DUTY TO FOLLOW THE LAW AS HE GIVES IT TO YOU AND APPLY IT TO THE TRUE FACTS AS YOU FIND THOSE FACTS TO BE AND TO BRING BACK A VERDICT THAT SPEAKS JUSTICE. TRUTH AND JUSTICE IS WHAT WE ARE ALL ABOUT HERE.

IN LISTENING TO THE EVIDENCE IN THIS PART OF THE TRIAL THROUGHOUT THE DAY, HOWEVER LONG IT TAKES, I CAN ONLY ASK YOU CONTINUE TO USE YOUR GOOD COMMON SENSE AND SHOW THE ATTENTION THAT YOU HAVE THROUGHOUT THE FIRST PART OF THIS TRIAL. THANK YOU.

THE COURT: FOR THE DEFENSE.

MR. STONE: YES, SIR. LADIES AND GENTLEMEN, BY DEFINITION MURDER IS MALICIOUS. BY DEFINITION IT'S CRUEL, IT'S INTENTIONAL AND IN EVERY MURDER -- EVERY MURDER -- PEOPLE ARE HURT, PEOPLE ARE LEFT BEHIND. PEOPLE ARE DESTROYED IN EVERY MURDER.

EVERY MURDER IN SOUTH CAROLINA IS NOT A DEATH PENALTY CASE. EVERY MURDER IN SOUTH CAROLINA MAY NOT EVEN GET INTO A COURTROOM AS A DEATH PENALTY CASE. WHAT THE SOLICITOR HAS TO PROVE TO YOU IN ORDER EVEN TO ASK FOR THE DEATH PENALTY IS WHAT IS CALLED AGGRAVATING CIRCUMSTANCES.

NOW, IF SOMEBODY WALKS DOWN THE STREET AND JUST KILLS SOMEBODY, IT'S MURDER; BUT WITHOUT AN

AGGRAVATING CIRCUMSTANCE THE SOLICITOR CAN'T EVEN SIT HERE AND ASK YOU TO SENTENCE HIM TO DEATH. IT'S NOT AVAILABLE. IN SOUTH CAROLINA IT'S NOT RECOGNIZED.

THERE ARE A NUMBER OF AGGRAVATING CIRCUMSTANCES THE SOLICITOR CAN USE TO BRING IT IN HERE: THE TORTURE OF THE VICTIM, TWO OR MORE PEOPLE MURDERED, MURDER ASSOCIATED WITH A RAPE OR ARMED ROBBERY.

BUT IN THIS CASE THE SOLICITOR WILL OFFER YOU ONE BECAUSE FRANKIE LINGARD WAS WEARING THIS JACKET THAT NIGHT AS A HIGHWAY PATROLMAN IN SOUTH CAROLINA. THAT'S AN AGGRAVATING CIRCUMSTANCE WHICH ALLOWS YOU TO CONSIDER DEATH. DEATH IS A SENTENCE AND THAT'S THE LAW.

I WILL TELL YOU NOW THAT WHEN YOU GO BACK IN YOUR JURY ROOM, YOU WILL NOT SPEND ONE MOMENT WORRYING ABOUT WHETHER OR NOT THE SOLICITOR HAS SHOWN TO YOU BEYOND A REASONABLE DOUBT THAT FRANKIE LINGARD WAS A HIGHWAY PATROL TROOPER.

THE AGGRAVATING CIRCUMSTANCE EXISTS. THAT ALLOWS THE SOLICITOR TO COME IN HERE AND ASK FOR THE DEATH PENALTY. I WILL NOT SIT HERE AND TELL YOU THAT WE ARE ARGUING WITH THAT IN ANY WAY.

FRANKIE LINGARD WAS A HIGHWAY PATROL TROOPER AND HE WAS ACTING IN THAT CAPACITY THAT

NIGHT. THAT'S WHY WE ARE EVEN IN THIS SENTENCING PHASE.

LADIES AND GENTLEMEN, THE FACTS OF THIS CASE, YOU HAVE DETERMINED THAT BAYAN ALEKSEY IS A MURDERER. WHILE I DON'T KNOW IF WE WILL EVER KNOW EXACTLY WHAT ALL HAPPENED THAT NIGHT, WE DO KNOW THAT BAYAN ALEKSEY MURDERED FRANKIE LINGARD. IF ANYBODY ELSE WAS INVOLVED, WE WILL NEVER KNOW; BUT WE DO KNOW THAT BECAUSE THAT'S YOUR VERDICT AND I ACCEPT THAT.

THE LAW IN THIS STATE -- AND THE JUDGE HAS TALKED TO YOU BRIEFLY ABOUT THAT. HE WILL TALK TO YOU AGAIN -- ACTUALLY GIVES YOU THREE OPTIONS. ONE IS TO FIND THAT BAYAN ALEKSEY MURDERED FRANKIE LINGARD WITHOUT AN AGGRAVATING CIRCUMSTANCE. AT THAT POINT THE JUDGE WILL SENTENCE HIM TO 30 YEARS.

THAT WILL NOT BE YOUR VERDICT. THAT WILL NOT BE YOUR VERDICT. THAT WILL NOT BE BAYAN ALEKSEY'S SENTENCE BECAUSE YOU HAVE TWO REAL OPTIONS HERE.

IF YOU FIND AN AGGRAVATING CIRCUMSTANCE AND YOU WILL, THAT FRANKIE LINGARD WAS A HIGHWAY PATROL TROOPER, THE LAW HAS NOW CHANGED. THE LAW IS CLEAR. EITHER HE DIES OR HE SPENDS THE REST OF HIS LIFE IN PRISON, NO PAROLE, NO GETTING OUT EARLY, NOTHING. HE SPENDS THE REST OF HIS LIFE IN PRISON. THAT'S YOUR

REAL DETERMINATION.

LADIES AND GENTLEMEN, YOU HAVE PAID VERY CLOSE ATTENTION TO WHAT IS GOING ON. YOU HAVE PAID VERY CLOSE ATTENTION THROUGHOUT THIS WEEK. I KNOW WE ARE ALL TIRED AND WE ALL WANT TO GO HOME.

BUT YOUR CONCLUSION, YOUR VERDICT, WILL NOT CHANGE THE FACT THAT FRANKIE LINGARD IS DEAD. AS I TOLD YOU IN THE VERY BEGINNING, YOU WON'T HEAR ME OR MR. SIMS SAY ANYTHING NEGATIVE ABOUT HIS FAMILY.

WHAT YOU WILL EXPERIENCE FOR THE NEXT DAY IS A FUNERAL. YOU WILL HEAR PEOPLE TALK ABOUT HOW GREAT HE WAS AND THEY WERE RIGHT. YOU WILL HEAR THEM TALK ABOUT HOW MUCH THEY MISS HIM AND THEY DO, JUST LIKE EVERY MURDER THERE IS. BUT IN SOUTH CAROLINA AND IN THIS CASE, EVERY MURDER IS NOT PUNISHABLE BY DEATH.

THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

SOLICITOR BAILEY: YOUR HONOR, PRIOR TO CALLING MY FIRST WITNESS, I WOULD FORMALLY MOVE AT THIS TIME TO INCORPORATE ALL THE GUILT PHASE TESTIMONY AND EVIDENCE IN THE PENALTY PHASE.

THE COURT: YES, SIR, THAT MOTION IS GRANTED. IT IS MADE A PART OF THE RECORD.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

THE STATE CALLS THERESA MCCANN.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: THERESA MCCANN.

THERESA MCCANN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: M-C-C-A-N-N.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. MCCANN, JUST TRY TO RELAX. TELL THE JURY, PLEASE, WHERE YOU LIVE.

A NEW ROCHELLE, NEW YORK.

Q WHERE IS NEW ROCHELLE LOCATED IN RELATION TO NEW YORK CITY?

A IT'S ABOUT HALF AN HOUR NORTH OF THE CITY IN WESTCHESTER COUNTY.

Q ARE YOU EMPLOYED THERE?

A YES, I AM.

Q WHAT TYPE WORK DO YOU DO?

A I'M A BOOKKEEPER.

Q WHAT IS YOUR MARITAL STATUS?

A I'M SINGLE.

Q WERE YOU FORMERLY MARRIED?

A YES, I WAS.

Q IS YOUR HUSBAND DECEASED?
A YES, HE IS.
Q WHEN DID YOUR HUSBAND DIE?
A OCTOBER 1ST, '94.
Q WHAT WAS YOUR FINANCIAL STATUS AFTER THE DEATH OF YOUR HUSBAND?
A IT WAS TOUGH BUT I WORKED VERY HARD TO MAINTAIN MY STERLING CREDIT RECORD.
Q AND I WANT TO ASK YOU WHETHER OR NOT BACK IN JANUARY OF 1996, WERE YOU EMPLOYED THEN?
A YES, I WAS.
Q WHAT TYPE WORK WERE YOU DOING?
A I WAS A BOOKKEEPER.
Q THE SAME KIND OF WORK YOU ARE DOING NOW?
A YES.
Q DO YOU KNOW THE DEFENDANT IN THIS CASE, BAYAN ALEKSEY?
A YES.
Q COULD YOU POINT HIM OUT, PLEASE.
A THAT GUY RIGHT OVER THERE (INDICATING).
Q YOU HAVE POINTED TO THE DEFENDANT IN THE WHITE SHIRT SEATED BY MR. SIMS; IS THAT CORRECT?
A YES.
Q WOULD YOU PLEASE TELL THE JURY APPROXIMATELY WHEN YOU MET MR. ALEKSEY.

A I WAS DRIVING ON THE HIGHWAY ON A THURSDAY AFTERNOON, AND HE PULLED UP IN A BLACK TOYOTA SUPRA TURBO WITH FLORIDA PLATES AND ROLLED DOWN HIS WINDOW AND SMILED AT ME AND STARTED FOLLOWING ME ON THE HIGHWAY.

WHEN I GOT OFF MY EXIT, HE GOT OFF THE EXIT AND I GOT SCARED. SO I PULLED OVER AND I GOT OUT OF THE CAR. HE ASKED ME MY NAME AND HE SAID HE WANTED TO TAKE ME OUT TO LUNCH.

I TOLD HIM THAT I WASN'T INTERESTED BECAUSE IT WAS A THURSDAY AFTERNOON, HE WASN'T WORKING, HE WAS DRIVING A $50,000 CAR AND I TOLD HIM HE LOOKED LIKE A PLAYER AND I WASN'T INTERESTED.

Q AND DID YOU CONTINUE YOUR CONVERSATION WITH HIM?

A YEAH. HE TOLD ME NOT TO JUDGE THE BOOK BY THE COVER, THAT I WAS REALLY A NICE -- THAT HE WAS REALLY A NICE GUY AND TOLD ME THAT HE WOULD REALLY LIKE TO GET TO KNOW ME, MAYBE IF I WOULD CALL HIM ON THE PHONE, WE COULD DEVELOP A RELATIONSHIP.

Q DID HE INTRODUCE HIMSELF TO YOU?

A YES, HE DID.

Q WHAT NAME DID HE INTRODUCE HIMSELF AS?

A MICHAEL DIAZ.

Q D-I-A-Z?

A D-I-A-Z.

Q BEAR WITH ME ONE SECOND, PLEASE. (WRITING ON BOARD.) MRS. MCCANN, DID YOU DEVELOP A RELATIONSHIP WITH MR. ALEKSEY?
A YEAH, WE SPOKE ON THE PHONE A FEW TIMES.
Q AND DID THAT RELATIONSHIP DEVELOP ANY FURTHER?
A IT DID.
Q DID YOU BEGIN TO DATE HIM?
A YEAH. HE WANTED TO TAKE ME TO ATLANTIC CITY FOR THE WEEKEND AND I WENT.
Q I ASKED YOU EARLIER ABOUT YOUR FINANCIAL STATUS FOLLOWING THE DEATH OF YOUR HUSBAND, AND YOU SAID YOU HAD GOOD CREDIT. DID YOU HAVE CREDIT CARDS?
A I DID. I HAD CREDIT CARDS.
Q DID YOU HAVE BANK ACCOUNTS?
A I HAD BANK ACCOUNTS.
Q WHAT, IF ANYTHING -- AFTER YOU BECAME ACQUAINTED WITH MR. ALEKSEY, WHAT OCCURRED WITH REGARD TO YOUR CREDIT CARDS?
A WELL, THE FIRST THING HAPPENED WAS THE TRIP TO ATLANTIC CITY, HE WANTED TO RENT A CADILLAC. SO HE PERSUADED ME TO CHARGE THE RENT-A-CAR ON MY VISA CARD, WHICH I DID UNFORTUNATELY. THEN ONCE WE GOT TO ATLANTIC CITY, HE TOLD ME TO TAKE A CASH ADVANCE AGAINST MY VISA CARD, THAT HE WOULD PAY THE BILL WHEN THE BILL CAME IN.

Q DID YOU DO THAT?
A I DID.
Q DID YOU DO THAT ON MORE THAN ONE OCCASION?
A YEAH.
Q CASH ADVANCES ON --
A YEAH. HE CAME ACROSS AS A RICH KID WITH LOTS OF MONEY WHO SAID HE FELL IN LOVE WITH ME, THAT HE NEVER WANTED TO LEAVE ME, YOU KNOW, THAT WHEN WE CAME HOME FROM ATLANTIC CITY, I WAS A LITTLE BEHIND WITH MY RENT AND HE PAID MY RENT FOR ME. YOU KNOW, SO I THOUGHT I HAD A REAL NICE GUY.
Q YOU HAD ALSO, I THINK, SOME CHECKING ACCOUNTS THEN?
A YES, I DID.
Q WHAT BANK DID YOU HAVE YOUR ACCOUNTS WITH?
A MY ACCOUNTS WERE WITH THE BANK OF NEW YORK.
Q I WILL HAND YOU TWO CHECKS AND ASK IF THESE ARE YOUR CHECKS.
A YES, THESE ARE MY CHECKS THAT WERE STOLEN FROM MY HOUSE.

MR. STONE: NO OBJECTION.

SOLICITOR BAILEY: I OFFER THESE, YOUR HONOR.

(STATE'S EXHIBIT NUMBERS 84 AND 85, CHECKS, ARE RECEIVED INTO EVIDENCE.)

Q I HAND YOU THESE CHECKS BACK, 84 AND 85, AND ASK, FIRST OF ALL, DURING THE PERIOD OF TIME YOU BECAME ACQUAINTED WITH MR. ALEKSEY, DID YOU OBSERVE HIS HANDWRITING?

A YES, I DID OBSERVE HIS HANDWRITING.

Q CAN YOU IDENTIFY HIS HANDWRITING?

A YES, I CAN. I HAVE SOME OTHER CANCELED CHECKS. HE CONTROLLED MY CHECKBOOK. I HAVE CANCELED CHECKS WHERE HE PAID SOME BILLS.

Q WHEN YOU SAY HE CONTROLLED YOUR CHECKBOOK, WHAT DO YOU MEAN BY THAT?

A WELL, HE TOOK THE KEYS. HE TOOK MY HUSBAND'S KEYS THAT WERE HANGING ON MY WALL.

Q YOUR FORMER HUSBAND?

A YEAH, MY DECEASED HUSBAND'S KEYS OFF THE WALL. HE WAS IN AND OUT OF MY APARTMENT WHILE I WAS WORKING. HE INTERCEDED MY MAIL AND STUFF LIKE THAT. WHEN I ASKED HIM WHERE, YOU KNOW, A CERTAIN BILL WAS, HE SAID HE PAID IT. SO I HAVE SOME CANCELED CHECKS AT HOME THAT DUPLICATE THIS SIGNATURE.

Q DID IT TURN OUT THAT HE DID PAY THESE BILLS?

A YEAH, SOME. I HAD MONEY IN MY ACCOUNT AT THE TIME.

Q NOW, DID YOU KNOW A JAIME FARRELL AT THE TIME THAT CHECK WAS WRITTEN?

A NO, I HAD NO IDEA WHO JAIME FARRELL WAS AT THIS TIME.

Q LET ME PUT THE FIRST ONE UP HERE, STATE'S 84. CAN YOU SEE THAT FROM WHERE YOU ARE SITTING?

A YES, I CAN.

Q THAT'S DATED MAY THE 10TH, 1996. IS THAT YOUR CHECK?

A YES.

Q DID YOU WRITE THAT CHECK OUT?

A I DID NOT WRITE THAT CHECK.

Q AND YOU TESTIFIED YOU DIDN'T KNOW JAIME FARRELL?

A I DID NOT KNOW JAIME FARRELL.

Q WHAT IS THE AMOUNT OF THAT CHECK?

A FIVE THOUSAND DOLLARS.

Q DID YOU HAVE $5,000 IN YOUR ACCOUNT?

A THAT ACCOUNT WAS CLOSED.

Q AND DOWN AT THE BOTTOM IT HAS GOT THERESA MCCANN WRITTEN IN. DID YOU SIGN THAT?

A NO, I DID NOT.

Q DO YOU RECOGNIZE THE HANDWRITING?

A I DO RECOGNIZE IT.

Q THE OTHER CHECK, STATE'S 85, THAT IS THE SAME DATE MAY OF 1996; IS THAT CORRECT?

A YES, IT IS.

Q FOR $4,892?

A YES.
Q PAYABLE TO JAIME FARRELL?
A RIGHT.
Q IS THAT YOUR SIGNATURE ON THAT CHECK?
A NO, IT IS NOT.
Q DO YOU RECOGNIZE THE SIGNATURE?
A I DO RECOGNIZE THE SIGNATURE.
Q NOW, WHEN DID YOU BECOME AWARE THAT BAYAN ALEKSEY HAD SIGNED YOUR NAME TO THOSE TWO CHECKS TOTALLING ALMOST $10,000 TO SOMEONE YOU NEVER KNEW?
A THE BANK MANAGER FROM THE BANK OF NEW YORK CALLED ME AT HOME --
Q DON'T GO INTO WHAT HE SAID. THAT'S WHEN YOU FOUND OUT?
A YES, THE BANK MANAGER CALLED.
Q DID YOU CONFRONT MR. ALEKSEY ABOUT THIS?
A I TRIED TO CONFRONT HIM VIA HIS BEEPER. WHEN HE DECIDED TO CALL ME BACK, I HAD A MOUTHFUL FOR HIM.
Q WERE YOU ABLE TO GET IN TOUCH WITH HIM AT THAT POINT IN TIME?
A YES. AT SOME TIMES HE DID CALL BACK AND I WAS TRACING HIS CALLS FOR THE NEW ROCHELLE DETECTIVES.
Q YOU WERE TRYING TO TRACE HIS CALLS. YOU TESTIFIED WHEN YOU MET MR. ALEKSEY HE WAS DRIVING A BLACK TOYOTA SUPRA WITH FLORIDA TAGS?

A YES.

Q HOW LONG DID HE KEEP THAT VEHICLE?

A HE TOOK IT OUT ON THE ROAD ONCE AND THE OTHER TIMES IT WAS GARAGED IN A PARKING LOT IN QUEENS.

Q DID HE ACQUIRE ANOTHER VEHICLE WHILE YOU KNEW HIM?

A YES. HE FELL IN LOVE WITH A BLACK FORD EXPLORER AND ASKED ME TO SIGN THE PAPERWORK, AND HE PROMISED TO MAKE THE PAYMENTS.

Q AND WAS THAT LEASED FOR HIM?

A YES, IT WAS LEASED.

Q DID YOU LEASE IT IN YOUR NAME?

A YES, I DID.

Q THAT WAS FOR HIS USE?

A YES.

Q DID HE EVER MAKE ANY PAYMENTS ON IT?

A HE DID NOT MAKE A SINGLE PAYMENT ON THIS VEHICLE.

Q HOW LONG DID HE KEEP THE FORD EXPLORER?

A HE DID NOT KEEP THE FORD EXPLORER VERY LONG. HE DECIDED TO TRADE IT IN FOR A CONVERSION VAN.

Q HOW DID THAT COME ABOUT? HOW WAS THAT PAID FOR?

A I WAS AT WORK AND HE PICKED ME UP AFTER WORK ONE DAY AND JUST TOOK ME TO THE DEALERSHIP IN THE BRONX AND TOLD ME HE WANTED THIS CONVERSION VAN. I THOUGHT

IT WAS UGLY AND HE JUST -- THEY JUST TOLD ME TO SIGN THE PAPERS.

Q DID YOU SIGN IT?

A I DID UNFORTUNATELY.

Q WHY DID YOU SIGN THE PAPERS FOR A CONVERSION VAN?

A IT ALL JUST HAPPENED SO FAST. I JUST -- MY HEAD WAS SPINNING.

Q DID YOU PURCHASE OR LEASE A MOTORCYCLE IN YOUR NAME WHILE YOU KNEW MR. ALEKSEY?

A THAT HAPPENED ALSO WHILE I WAS AT WORK. HE WANTED A MOTORCYCLE AND HE SAID WE WERE GOING TO HAVE A GOOD SUMMER, YOU KNOW, WE WOULD TRAVEL. SO HE PURCHASED A MOTORCYCLE ALSO. I THINK I FAXED MY DRIVER'S LICENSE TO THE PLACE.

Q WHAT KIND OF MOTORCYCLE WAS IT?

A A HONDA C.V.R. 600.

Q WAS THAT LEASED OR PURCHASED IN YOUR NAME?

A YES.

Q HOW MUCH WERE YOU MAKING AT THIS TIME ROUGHLY AS A BOOKKEEPER?

A TWENTY-FIVE THOUSAND MAYBE.

Q WHAT ABOUT A JET SKI?

A THE JET SKI WAS FORGED. I HAVE A COPY OF THAT LEASE AT HOME AND THAT IS NOT MY SIGNATURE. IT

MATCHES THE SIGNATURE ON THESE CHECKS.
Q BUT WAS THERE A JET SKI?
A THERE WAS ALSO A JET SKI, A SEA-DO.
Q AND YOU DID NOT SIGN FOR THAT?
A I DID NOT SIGN FOR THAT.
Q WAS YOUR NAME SIGNED?
A MY NAME WAS SIGNED.
Q BY WHO?
A BAYAN ALEKSEY, MICHAEL DIAZ, WHATEVER HIS NAME WAS.
Q WITH THE INCOME THAT YOU TESTIFIED YOU HAD AS A BOOKKEEPER, HOW DID THESE PEOPLE THAT LEASED YOU THE VAN AND THE MOTORCYCLE AND THE JET SKI AND EXPLORER, HOW DID THEY EXTEND CREDIT TO YOU WITH YOUR INCOME?
A MY W-4 WAS FORGED.
Q W-2?
A W-2. EXCUSE ME.
Q WHO DID THAT?
A BAYAN.
Q NOW, DID MR. ALEKSEY LIVE IN YOUR APARTMENT FOR A PERIOD OF TIME?
A HE MOVED HIMSELF RIGHT IN. WHEN HE STAYED OVER, THERE WERE A LOT OF NIGHTS HE TOLD ME HE WAS GOING TO WORK.
Q WHATEVER HAPPENED TO THE VAN?

A THE VAN WAS RECOVERED. NONE OF THIS WAS PAID FOR. HE DID NOT MAKE A SINGLE PAYMENT ON ANY ONE OF THESE VEHICLES.

Q YOU ARE TALKING ABOUT THE VAN, THE MOTORCYCLE --

A THE VAN, THE SEA-DO, THE MOTORCYCLE. HE BOUGHT ME A CADILLAC. THE CONVERSION VAN, THE CADILLAC, THE BLACK FORD EXPLORER, THE HONDA C.V.R. AND THE SEA-DO, FIVE VEHICLES WERE NOT PAID A DIME.

Q WHOSE IDEA WAS IT TO BUY THESE FIVE VEHICLES?

A IT WAS HIS. HE TOLD ME HE WAS PUTTING DOWN CASH. WHEN I FINALLY RECOVERED MY CREDIT CARD BILLS, HE PAID IT WITH MY MONEY. HE PUT THE DOWN PAYMENTS WITH MY MONEY.

Q DID YOU HAVE THAT KIND OF MONEY?

A NO, I DID NOT HAVE THIS KIND OF MONEY.

Q WHERE DID THE VAN END UP?

A THE VAN ENDED UP IN LACKLAND STORAGE IN THE ATLANTIC CITY AREA OF NEW JERSEY. THEY RECOVERED THE CONVERSION VAN AND A TRAILER THAT WAS PULLING THE JET SKI.

Q HOW ABOUT THE MOTORCYCLE? WHERE DID THAT END UP?

A THE MOTORCYCLE WAS DUMPED IN PROSPECT PARK CREEK, PENNSYLVANIA.

Q WHAT HAPPENED TO YOUR VISA ACCOUNT? WHAT

HAPPENED TO YOUR CREDIT?

A I CLAIMED BANKRUPTCY FOR $70,000.

Q AND WAS THIS ALL ATTRIBUTABLE TO YOUR RELATIONSHIP WITH MR. ALEKSEY?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.) MY HUSBAND'S CREDIT CARD, HE HAD A BUSINESS BEFORE HE PASSED AWAY AND IT WAS IN MY NAME. MY HUSBAND CHARGED $5,000 FROM HIS BUSINESS ON MY CREDIT CARD, WHICH I ALLOWED HIM TO. THAT CREDIT CARD I PAID OFF. I HAD THAT CREDIT CARD BALANCE DOWN TO $2,000 AT THE TIME I MET ALEKSEY. BY THE TIME HE FINISHED WITH THAT ONE CARD, THAT WAS UP TO $10,000.

Q THE TOTAL WAS 70,000?

A THE TOTAL CASH DAMAGE.

Q OVER HOW LONG A PERIOD OF TIME?

A TWO MONTHS, WITHIN TWO MONTHS.

Q DID YOU GET A TAX REFUND FROM THE STATE OF NEW YORK DURING THAT PERIOD OF TIME?

A I WAS EXPECTING A THREE DOLLAR REFUND FROM THE GOVERNMENT.

Q IS THIS A TAX REFUND CHECK FROM THE STATE OF NEW YORK PAYABLE TO YOU?

A YES, IT IS.

Q DO YOU RECOGNIZE THAT?

A YES.

SOLICITOR BAILEY: IF THEY HAVE AN OBJECTION, WE WILL MARK IT FOR IDENTIFICATION AND ASK HER A COUPLE MORE QUESTIONS, YOUR HONOR.

MR. SIMS: YES, SIR, WE DO HAVE AN OBJECTION.

SOLICITOR BAILEY: WE WILL JUST MARK IT FOR IDENTIFICATION AT THIS TIME. I THINK I CAN CLEAR IT UP.

(STATE'S EXHIBIT NUMBER 86, TAX CHECK, IS MARKED FOR IDENTIFICATION.)

Q MRS. MCCANN, I WILL SHOW YOU WHAT HAS BEEN MARKED AS STATE'S FOR I.D. ONLY. WHAT IS THE ENDORSEMENT ON THE BACK? WHAT DOES THAT SAY?

A STOP PAYMENT.

Q NO, ABOVE THAT.

A IT'S SUPPOSED TO BE MY SIGNATURE.

Q IS THAT YOUR SIGNATURE?

A THAT IS NOT MY SIGNATURE.

Q DO YOU RECOGNIZE THAT SIGNATURE?

A I RECOGNIZE THE SAME SIGNATURE THAT IS ON THAT CHECK.

Q THAT YOU PREVIOUSLY TESTIFIED IS BAYAN ALEKSEY'S SIGNATURE?

A THIS IS BAYAN ALEKSEY'S SIGNATURE.

SOLICITOR BAILEY: YOUR HONOR, I WOULD

OFFER THIS AT THIS POINT.

MR. SIMS: FOR WHAT PURPOSE, YOUR HONOR? IT DOESN'T SAY ANYTHING BUT IT'S A CHECK. THEY HAVE NOT ALLEGED ANY SUFFICIENT ALTERATION OR ANYTHING TO THE CHECK.

SOLICITOR BAILEY: THAT'S MY NEXT QUESTION, JUDGE.

THE COURT: I WILL PERMIT IT. GO AHEAD.

SOLICITOR BAILEY: I WILL OFFER THIS INTO EVIDENCE.

THE COURT: ALL RIGHT, SIR. NOW, IF YOU HAVE ANY FURTHER OBJECTION, STATE THEM BUT THAT'S JUST AS TO THIS STAGE OF ITS ADMISSION.

MR. SIMS: YES, SIR.

(STATE'S EXHIBIT NUMBER 86, TAX CHECK, IS RECEIVED INTO EVIDENCE.)

Q I WILL HAND YOU STATE'S 86 OR I WILL PUT IT ON THE SCREEN HERE AND ASK IF THAT IS THE CHECK, TAX REFUND CHECK, THAT YOU RECEIVED THAT YOU TESTIFIED HAD BAYAN ALEKSEY'S ENDORSEMENT ON IT?

A YES.

Q YOU EXPECTED HOW MUCH OF A REFUND?

A THREE DOLLARS.

Q AND IS THAT ALTERED TO $5,000?

A YES, IT IS.

Q DID YOU HAVE ANY KNOWLEDGE OF THAT AT THE TIME?
A I HAD NO KNOWLEDGE. HE TOLD ME IT WAS A CHECK FROM HIS MOTHER'S BUSINESS THAT HE WAS DEPOSITING INTO MY ACCOUNT BECAUSE I KICKED HIM OUT.
Q YOU TESTIFIED THAT ALEKSEY USED THE NAME MICHAEL DIAZ WHEN YOU KNEW HIM. DID HE USE ANY OTHER NAMES?
A MICHAEL ANGELO AND I THINK HE CHANGED THAT TO MICHAEL FARRELL.
Q FARRELL? HOW DO YOU SPELL THAT?
A F-A-R-R-E-L-L.
Q (WRITING ON BOARD.) CALLING YOUR ATTENTION TO MARCH 1996, DO YOU RECALL AN INCIDENT INVOLVING YOUR CREDIT CARD STATEMENT THAT YOU FOUND IN THE FORD EXPLORER?
A YES.
Q TELL US WHAT OCCURRED THEN.
A I DIDN'T SEE ANY OF MY BILLS COME IN THE MAIL. I WOULD QUESTION, "WHERE IS MY VISA BILL? I WOULD LIKE TO SEE MY BILLS." HE JUST KEPT SAYING, "OH, DON'T WORRY ABOUT IT. I PAID IT. I PAID IT. I PAID IT." SO ONE AFTERNOON I SAW MY VISA BILL IN THE SUN VISOR --

MR. SIMS: YOUR HONOR?

THE COURT: SIR?

MR. SIMS: THERE IS A MATTER WE NEED TO TAKE UP AT THIS POINT.

THE COURT: OUTSIDE THE PRESENCE OF THE JURY?

MR. SIMS: YES, SIR.

THE COURT: I WILL LET YOU GO TO THE JURY ROOM JUST FOR A MOMENT. I WILL BE CALLING YOU BACK.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: YES, SIR.

MR. SIMS: YOUR HONOR, WE HAVE SOME INFORMATION AND I BELIEVE WE HAVE BEEN PROVIDED WITH PART OF HER STATEMENT WHICH TALKS ABOUT, "HE CUT MY NECK WITH HIS KEYS."

ALSO THERE IS SOME TALK IN HERE ABOUT AN ARMED ROBBERY. WE HAVE NO ARMED ROBBERY CONVICTION OR ARREST ON HIS RECORD ANYWHERE. WE FEEL THAT IT WOULD BE HIGHLY PREJUDICIAL.

SOLICITOR BAILEY: YOUR HONOR, I WON'T GET INTO THE ARMED ROBBERY. I DID INTEND TO GET INTO THE PHYSICAL ALTERCATION.

THE COURT: YOU ARE ENTITLED TO THAT BUT LEAVE THE ARMED ROBBERY OUT. WAS THAT YOUR CONCERN?

MR. SIMS: THAT WAS MY CONCERN BUT I ALSO WANTED TO KNOW WHAT THE NATURE OF THIS PHYSICAL ALTERCATION WAS, YOUR HONOR, WHETHER IT WAS A FIGHT

BETWEEN THE TWO OF THEM OR WHETHER IT WAS AN ACCIDENTAL SITUATION.

THE COURT: YOU WILL HEAR THAT IN THE TESTIMONY. DO YOU WANT IN CAMERA TESTIMONY AS TO THAT ISSUE FIRST?

MR. SIMS: YES, SIR.

THE COURT: GO AHEAD. LET'S HEAR IT.

SOLICITOR BAILEY: YES, SIR.

THE COURT: LEAVE THE ARMED ROBBERY OUT OF IT.

(THE FOLLOWING TESTIMONY WAS REPORTED IN CAMERA.)

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q YOU WERE GOING TO TESTIFY IN FRONT OF THE JURY AS TO WHAT OCCURRED WHEN YOU CONFRONTED MR. ALEKSEY ABOUT THIS PAPERWORK YOU FOUND IN THE EXPLORER. WHAT OCCURRED?

A WHAT HAPPENED WAS WHEN I NOTICED MY VISA BILL IN THE SUN VISOR, I REACHED UP TO GET MY VISA BILL. HE GRABBED MY ARM VIOLENTLY SO I WOULD NOT GET MY HANDS ON THIS VISA BILL, AND I PUT UP A FIGHT BECAUSE IT BELONGS TO ME. THOSE ARE MY BILLS.

WHY HE DIDN'T WANT ME TO SEE IT RAISED SOME CURIOSITY. SO I FOUGHT HIM TO GET MY VISA BILL OUT

OF THE SUN VISOR. HE HAS KEYS IN HIS HAND AND IT CUT MY NECK, AND HE DUG HIS NAILS INTO MY ARM AND I WAS CUT.

THE COURT: YES, SIR, I WILL PERMIT THAT TESTIMONY.

MR. SIMS: YES, SIR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

THE COURT: BE SURE AND ADMONISH THE WITNESS NOW TO LEAVE THE QUESTION OF THE ARMED ROBBERY OUT.

SOLICITOR BAILEY: DO YOU UNDERSTAND THAT?

THE WITNESS: YES, I DO.

THE COURT: DO YOU UNDERSTAND THAT, MA'AM?

THE WITNESS: YES.

THE COURT: BRING THE JURY BACK IN WHEN THEY ARE READY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR BAILEY:

Q MRS. MCCANN, I THINK BEFORE WE BROKE, YOU WERE GETTING READY TO TESTIFY ABOUT AN INCIDENT THAT OCCURRED IN THE FORD EXPLORER. WHAT OCCURRED THEN?

A AS I WAS SAYING, I NOTICED MY VISA BILL STICKING OUT OF THE SUN VISOR. AND, OF COURSE, I WAS CURIOUS

TO SEE MY VISA BILL SINCE HE STATED, YOU KNOW, EVERYTHING WAS BEING TAKEN CARE OF AND EVERYTHING WAS BEING PAID FOR. I WANTED EVIDENCE.

WHEN I REACHED UP TO THE SUN VISOR TO GRAB THE VISA BILL, TO GET THE VISA BILL, HE GRABBED ME AND STOPPED ME FROM GETTING THE VISA BILL, WHICH RAISED EVEN MORE CURIOSITY WHY HE DIDN'T WANT ME TO SEE THIS VISA BILL.

SO I PUT UP A FIGHT. OF COURSE, I WON. I GOT THE VISA BILL FROM THE SUN VISOR, BUT IN THE INTERIM I WAS SCRATCHED ALL OVER MY NECK AND ALL OVER MY ARMS.

Q WHO SCRATCHED YOU?

A BAYAN ALEKSEY.

Q WITH WHAT?

A HE HAD KEYS IN HIS HAND AND THEN HE DUG HIS NAILS INTO MY ARM TO TRY TO STOP ME FROM GETTING THE VISA BILL.

Q ON APRIL 22, 1996, DID YOU THROW HIM OUT?

A YEAH. I HAD MY DAD COME UPSTAIRS AND CHANGE THE LOCKS. I DIDN'T KNOW WHAT I WAS DEALING WITH.

Q DID YOU HAVE ANY CONTACT WITH HIM AFTER THAT BY TELEPHONE?

A YEAH. I WAS TRACING THE PHONE CALLS FOR MY DETECTIVES --

Q YES OR NO, DID YOU HAVE CONTACT WITH HIM BY TELEPHONE?
A YES.
Q DID YOU BEEP HIM? DID HE HAVE A BEEPER?
A YES.
Q WERE YOU ABLE TO GET IN TOUCH WITH HIM?
A HE CALLED BACK EVENTUALLY.
Q WHY WERE YOU BEEPING HIM AT THAT POINT IN TIME?
A I SAW THE DAMAGE THAT HE HAD DONE. HE WAS DISPUTING THE CHARGES ON MY VISA BILL. HE WAS NOT PAYING FOR MY VISA. HE WAS DISPUTING THE CHARGES. AFTER I KICKED HIM OUT, I FOUND SEVERAL ITEMS STOLEN OUT OF MY HOUSE. I WANTED MY STUFF BACK, ESPECIALLY MY HUSBAND'S NECKLACE.
Q DID YOU TALK TO MR. ALEKSEY OVER THE TELEPHONE --
A YES, I DID.
Q -- ABOUT THE NECKLACE. WHAT, IF ANYTHING, DID HE TELL YOU?
A HE TOLD ME HE WOULD MAIL IT TO ME. AT ONE TIME HE TOLD ME HE WOULD IT MAIL TO ME. ANOTHER TIME HE TOLD ME HE WOULD MEET ME IN TO CITY ISLAND. I WAS THERE AND HE NEVER SHOWED UP.
Q WERE THERE ANY FURTHER CALLS? DID YOU FOLLOW UP ON THAT TO TRY TO RUN HIM DOWN?

A OH, I CONSTANTLY BEEPED HIM 24 HOURS A DAY.
Q WHEN HE GOT BACK WITH YOU, WHAT, IF ANYTHING, DID HE TELL YOU?
A WELL, I THREATENED HIM THAT I WOULD GO TO THE POLICE, YOU KNOW.
Q DID HE RESPOND TO THAT?
A YEAH. HE TOLD ME IF I WOULD GO TO THE POLICE, HE WOULD ROLL UP ON ME.
Q HE WOULD ROLL UP ON YOU?
A YEAH, HE THREATENED ME. HE THREATENED ME. HE THREATENED MY LIFE. HE SAID HE WOULD KILL ME.
Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

CROSS EXAMINATION

BY MR. SIMS:

Q MRS. MCCANN, LET'S START FROM THAT LAST STATEMENT THAT YOU MADE. HE THREATENED YOUR LIFE?
A YES, HE DID.
Q OVER THE PHONE SOMEWHERE WHERE YOU HAD BEEPED HIM?
A YES.
Q AND AT NO TIME PRIOR TO THAT, HAD HE EVER THREATENED YOU OR DONE ANYTHING OR SAID ANYTHING TO YOU ABOUT ROLLING UP ON YOU; IS THAT CORRECT?
A NO.

Q AND EVEN WHEN YOU WERE FIGHTING WITH HIM, ALLEGEDLY FIGHTING WITH HIM, HE NEVER HIT YOU, HE NEVER KICKED YOU, HE NEVER PUNCHED YOU. HE NEVER DID ANYTHING WITH YOU. THE ONLY THING HE DID WAS GRAB YOUR HAND AND HELD YOUR HAND, AND YOU WERE FIGHTING AND PUSHING. HE HAD THE KEYS IN HIS HAND AND THAT'S HOW YOU GOT SCRATCHED ON THE NECK. HE DIDN'T REACH OVER AND GRAB YOU BY THE NECK AND TRY TO SCRATCH YOU, DID HE?

A NO, I THINK I OUTFOUGHT HIM.

Q YOU OUTFOUGHT HIM BECAUSE HE HAD ONE HAND -- HE WAS HOLDING YOUR HAND WITH ONE HAND AND YOU OUTFOUGHT HIM AND GOT THE KEYS -- YOU GOT SCRATCHED ON THE NECK WITH THE KEYS BECAUSE HE HAD THEM IN HIS HAND?

A RIGHT.

Q SO HE DIDN'T TRY TO BEAT YOU OR DO ANYTHING TO YOU AT THAT TIME?

A NO.

Q ISN'T IT TRUE THAT WHAT HE ACTUALLY TOLD YOU IS THAT HE WOULD ROLL UP ON YOU BECAUSE OF WHAT YOU HAD SAID TO HIM ABOUT THE W-2 FORMS AND HOW YOU HAD FORGED THE W-2 FORMS ON YOUR JOB?

A I DON'T KNOW WHAT YOU ARE TALKING ABOUT.

Q YOU ARE A BOOKKEEPER?

A YES, I AM.

Q YOU KEEP THE BOOKS FOR YOUR COMPANY?
A YES.
Q HE KNEW THAT YOU WERE A BOOKKEEPER AND YOU ALL HAD DISCUSSED YOUR JOB; ISN'T THAT RIGHT?
A RIGHT.
Q YOU HAD ALSO TOLD HIM DURING THAT PERIOD OF TIME ABOUT THE THINGS THAT YOU WERE DOING AT YOUR JOB WITH THOSE W-2 FORMS?
A WHAT WAS I DOING AT MY JOB WITH W-2 FORMS?
Q FALSIFYING THEM. AT LEAST THAT'S WHAT YOU TOLD HIM.
A I DON'T THINK SO. I THINK THAT'S A BAYAN LIE.
Q OKAY. WELL, LET'S GO BACK TO THE BEGINNING OF THIS WHOLE SCENARIO HERE. A MAN FOLLOWS YOU ON THE EXPRESSWAY. HE FOLLOWED YOU. YOU STOPPED AND YOU TALKED WITH HIM. YOU TELL HIM, "LOOK, I DON'T WANT TO BE BOTHERED WITH YOU. YOU ARE A PLAYER. YOU ARE DRIVING A $50,000 CAR." AND HE'S A PLAYER.
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q YOU KNOW THAT FROM THE BEGINNING.
A THAT'S RIGHT.
Q YOU KNOW THAT, HAVE NO DOUBT ABOUT THAT. YOU DIAGNOSED THAT FROM THE BEGINNING.
A RIGHT FROM THE GET GO.
Q BUT YOU GAVE HIM YOUR TELEPHONE NUMBER.

A BECAUSE HE'S SLICK.

Q YOU GAVE HIM YOUR TELEPHONE NUMBER BECAUSE YOU LIKED THE PACKAGE THAT YOU SAW.

A HE GAVE ME HIS TELEPHONE NUMBER.

Q YOU CALLED HIM?

A ABOUT A WEEK LATER WHEN I WAS HOME, LONELY, THINKING WELL MAYBE HE WAS A NICE GUY. I SECOND-GUESSED MYSELF, WHICH I SHOULDN'T HAVE.

Q SO WHAT WE ARE TALKING ABOUT THEN IS YOU WOULD HAVE NEVER HAD A RELATIONSHIP WITH BAYAN ALEKSEY IF YOU HAD NOT INSTITUTED ONE WITH HIM.

A AS A MATTER OF FACT, I DID GIVE HIM MY PHONE NUMBER. I CONTEMPLATED GIVING HIM THE WRONG PHONE NUMBER, COME TO THINK OF IT, AND I SHOULD HAVE.

Q WAIT A MINUTE. A FEW MOMENTS AGO YOU SAID YOU DIDN'T GIVE HIM YOUR PHONE NUMBER, HE GAVE YOU HIS AND YOU CALLED HIM. AND NOW YOU GAVE HIM THE PHONE NUMBER --

A DOES IT REALLY MATTER?

Q YES, MA'AM, IT DOES.

A I DON'T REMEMBER WHO CALLED WHO FIRST TO BE HONEST WITH YOU.

Q NOW, THIS IS A MAN WHOM YOU HAVE DIAGNOSED AS BEING A PLAYER. YOU LIKE WHAT YOU SEE. YOU LIKE THE PACKAGE THAT YOU SEE. HE OFFERS YOU SOMETHING, A

GOOD TIME, HAVING A GOOD TIME. YOU GET INVOLVED WITH HIM AND EVERYTHING IS GOING ALONG FINE AS LONG AS YOU ARE HAVING A GOOD TIME; ISN'T THAT RIGHT?

A I DON'T UNDERSTAND THE QUESTION.

Q OKAY. YOUR FIRST OUTING TO ATLANTIC CITY, HE TELLS YOU TO USE YOUR VISA CARD AND GET A CASH ADVANCE?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q THIS SAME MAN WHOM YOU HAVE DIAGNOSED AS A PLAYER?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU DECIDE, "OKAY. I WILL GO AND GET SOME MONEY ON MY VISA CARD." HE TELLS YOU TO CHARGE SOMETHING AND YOU DO THAT?

A YEAH.

Q INSTEAD OF, AS IN A USUAL RELATIONSHIP WITH MAN AND A WOMAN AND THE MAN IS GOING TO TAKE A WOMAN SOMEWHERE, "USE YOUR OWN MONEY, BAYAN," OR WHATEVER YOU WERE SAYING HIS NAME WAS. "USE YOUR OWN MONEY. IF YOU ARE GOING TO TAKE ME TO ATLANTIC CITY, USE YOUR OWN MONEY." YOU NEVER THOUGHT ABOUT THAT?

A HE SAID HE WAS GOING TO PAY MY VISA BILL.

Q AND YOU WERE --

A HE SAID HE HAD A SAFE WITH MONEY IN IT THAT HE DIDN'T HAVE ACCESS TO AT THE TIME, THAT WHEN HE WAS

ABLE TO GET TO THE SAFE THAT HAD ALL THIS MONEY IN IT, HE WOULD PAY MY VISA BILL WHEN THE VISA BILL CAME IN. SO I DIDN'T TWICE ABOUT TAKING A CASH ADVANCE. I DIDN'T THINK TWICE ABOUT IT.

Q YOU DIDN'T THINK ABOUT STAYING AT HOME UNTIL HE GOT TO HIS SAFE?

A NO. EVERYTHING HAPPENED SO QUICK. EVERYTHING HAPPENED SO QUICK.

Q IT WOULD HAVE BEEN VERY EASY JUST TO STAY AT HOME --

A YEAH, I WISH I DID STAY AT HOME.

Q MAY I ASK THE QUESTION, PLEASE. IT WOULD HAVE BEEN VERY EASY FOR YOU TO JUST STAY AT HOME AND WAIT FOR HIM TO GET TO HIS MONEY, WOULDN'T IT?

A I WISH I DID STAY HOME AND NEVER WENT TO ATLANTIC CITY WITH HIM. I WISH I NEVER MET HIM IN MY LIFE.

Q BUT YOU DIDN'T?

A YEAH, I DIDN'T. I WAS VULNERABLE AND STUPID. IT HAPPENS TO THE BEST OF US.

Q YOU WERE INVOLVED WITH A MAN WHO WAS OFFERING YOU AN OPPORTUNITY TO HAVE A GOOD TIME AND YOU TOOK IT, DIDN'T YOU?

A I WAS INVOLVED WITH A MAN WHO LIKED TO PUT MY BRA AND PANTIES ON AND DANCE ON MY BED, A SICKO.

MR. SIMS: YOUR HONOR, I WOULD OBJECT. IF SHE WOULD ANSWER MY QUESTIONS.

THE WITNESS: HE PISSED ME OFF.

THE COURT: PLEASE ANSWER THE QUESTION HE IS ASKING.

MR. SIMS: ONE MOMENT, YOUR HONOR.

THE COURT: MA'AM, I WOULD INSTRUCT YOU TO PLEASE HAVE NO SIDE COMMENTS. JUST ANSWER THE QUESTIONS.

THE WITNESS: I'M SORRY, YOUR HONOR.

THE COURT: I UNDERSTAND. JUST PLEASE FOLLOW OUR RULES.

BY MR. SIMS:

Q AND YOU LET HIM WEAR THEM?

A EXCUSE ME?

Q THIS WAS A PART OF YOUR SEX LIFE. YOU LET HIM WEAR THEM; ISN'T THAT RIGHT?

A WHATEVER TURNS YOU ON.

Q IT MUST HAVE TURNED YOU ON. YOU LET HIM WEAR THEM, DIDN'T YOU?

A I THOUGHT IT WAS PRETTY FUNNY.

Q YOU CALLED HIM A SICKO. YOU DIDN'T SAY, "SICKO, GET OUT OF THE HOUSE. I DON'T WANT A MAN WHO PUTS ON MY BRA AND PANTIES." YOU DIDN'T PUT HIM OUT, DID YOU?

A NO, IT WAS PRETTY COMICAL.
Q AND YOU STAYED WITH HIM CONTINUOUSLY. YOU LET HIM MOVE INTO YOUR HOUSE. YOU GAVE HIM ACCESS TO YOUR HOUSE.
A NO, HE TOOK MY HUSBAND'S KEYS OFF THE WALL AND WAS IN AND OUT OF MY APARTMENT WHILE I WAS AT WORK. I HAD NO KNOWLEDGE THAT HE WAS IN AND OUT OF MY HOUSE WHILE I WAS WORKING, PUTTING HIS NAME ON ALL MY CREDIT CARDS AND RETRIEVING THE PIN NUMBER FROM THE MAILBOX, WHICH FOLLOWED AFTER THE CREDIT CARD ACTUALLY CAME. I HAD NO KNOWLEDGE OF THIS.
Q AND YOU KNEW THAT HE HAD TOLD YOU THAT HE WAS GOING TO PAY YOUR VISA BILL?
A THAT'S RIGHT.
Q AND YOU NEVER TRIED TO GET YOUR VISA BILL BEFORE ANY OF THIS?
A I WOULD BE AT WORK AND HE WOULD BE RETRIEVING MY MAIL FROM THE MAILBOX. HOW DO YOU THINK HE GOT MY GOVERNMENT CHECK?
Q WELL, THAT'S YOUR MAILBOX --
A THAT'S MY PRIVATE MAILBOX THAT HE HAD A KEY TO WITHOUT MY KNOWLEDGE AND WAS TAKING MY STUFF.
Q NOW, LET ME ASK YOU THIS. HE CALLED YOU UP AND TOLD YOU THAT HE HAD A CAR OR THAT HE WANTED TO PURCHASE A CAR. YOU SAID JUST OKAY. YOU WENT THERE.

THE FORD EXPLORER, YOU BOUGHT THAT FOR HIM OR YOU LEASED THAT FOR HIM; IS THAT CORRECT?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q HE DIDN'T LIKE THAT. YOU WERE AT WORK. HE CALLED YOU AGAIN. HE WANTED A CONVERSION VAN, CAME AND GOT YOU, TOOK YOU DOWN THERE. YOU DIDN'T LIKE IT BUT YOU STILL GOT THAT FOR HIM?

A WHAT'S YOUR POINT?

Q YOU STILL GOT IT FOR HIM.

A WHAT'S YOUR POINT?

Q DID YOU GET IT FOR HIM, MA'AM?

A YEAH.

Q FROM THAT POINT ON, EVERYTHING THAT HE WANTED, YOU GOT IT FOR HIM; ISN'T THAT CORRECT?

A YEAH.

Q BECAUSE YOU ALL WERE HAVING A GOOD TIME?

A YES, WE WERE HAVING A GOOD TIME.

Q THANK YOU.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY COME DOWN.

SOLICITOR BAILEY: MAY SHE BE EXCUSED, YOUR HONOR?

THE COURT: YES. MA'AM, I WILL EXCUSE YOU FROM FURTHER PARTICIPATION. THANK YOU.

SOLICITOR BAILEY: THE STATE WOULD CALL

JAIME FARRELL.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: JAIME FARRELL.

JAIME FARRELL, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: F-A-R-R-E-L-L.

COURT REPORTER: SPELL YOUR FIRST NAME, TOO, PLEASE.

THE WITNESS: J-A-I-M-E.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MS. FARRELL, TELL THE JURY PLEASE WHERE YOU LIVE.

A NEW YORK.

Q DO YOU LIVE IN NEW YORK CITY?

A NO, WESTCHESTER COUNTY.

Q THAT'S ABOVE NEW YORK CITY?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q I WILL GET YOU TO SPEAK UP JUST A LITTLE BIT. YOU MIGHT WANT TO LEAN INTO THAT MIKE SO THEY CAN HEAR YOU. ARE YOU WORKING NOW?

A YES.

Q WHAT KIND OF WORK DO YOU?

A I'M A CUSTOMER SERVICE REPRESENTATIVE.
Q ARE YOU MARRIED OR SINGLE?
A SINGLE.
Q BACK IN EARLY 1996 WERE YOU WORKING?
A YES.
Q WHAT TYPE WORK WERE YOU DOING BACK THEN?
A I WAS A MANAGER OF A CONVENIENCE STORE.
Q AND IN FEBRUARY 1996 DID YOU MEET THE DEFENDANT IN THIS CASE, BAYAN ALEKSEY?
A YES.
Q COULD YOU POINT HIM OUT, PLEASE?
A RIGHT THERE (INDICATING).
Q YOU ARE INDICATING THE DEFENDANT IN THIS CASE WITH THE WHITE SHIRT SEATED BESIDE MR. SIMS; IS THAT CORRECT?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q WHEN YOU MET MR. ALEKSEY BACK IN FEBRUARY 1996, DID HE INTRODUCE HIMSELF TO YOU BY NAME?
A NOT HIS REAL NAME.
Q WHAT NAME DID HE GIVE YOU?
A MICHAEL ANGELO.
Q MICHAEL ANGELO. WOULD YOU STATE WHETHER OR NOT YOU DEVELOPED A RELATIONSHIP WITH MR. ALEKSEY AFTER FEBRUARY 1996.
A YES.

Q CAN YOU BRIEFLY DESCRIBE TO THE JURY WHAT THAT RELATIONSHIP WAS.

A MEANING? WE WENT AWAY TOGETHER AND WE HAD AN INTIMATE RELATIONSHIP.

Q WHERE DID Y'ALL GO TOGETHER?

A ATLANTIC CITY.

Q THAT'S IN NEW JERSEY?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q WHAT WAS THE PURPOSE OF YOU AND MR. ALEKSEY GOING TO ATLANTIC CITY?

A HE JUST WANTED TO GO AWAY.

Q ATLANTIC CITY, IS THAT A RESORT AREA?

A SOMEWHAT.

Q IT'S ON THE OCEAN?

A YEAH.

Q NOW, WHEN YOU GOT TO NEW JERSEY, WENT FROM NEW YORK WITH HIM TO NEW JERSEY, DID YOU OPEN A BANK ACCOUNT IN NEW JERSEY?

A YES.

Q DO YOU RECALL THE BANK THAT YOU OPENED THE ACCOUNT IN?

A COMMERCE BANK.

Q COMMERCE BANK IN NEW JERSEY?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q DID YOU PUT ANY MONEY IN THE ACCOUNT?
A TWENTY DOLLARS.
Q TWENTY DOLLARS. THAT'S HOW YOU OPENED IT?
A YES.
Q WHOSE IDEA WAS IT TO OPEN THAT ACCOUNT IN NEW JERSEY?
A HIS.
Q WHEN YOU SAY HIS, YOU ARE REFERRING TO BAYAN ALEKSEY?
A BAYAN ALEKSEY, YES.
Q DID HE TELL YOU WHY HE WANTED YOU TO OPEN A BANK ACCOUNT IN NEW JERSEY?
A SO WE WOULD HAVE MONEY DOWN THERE. HE HAD CLAIMED BANKRUPTCY SO HE COULDN'T OPEN IT IN HIS NAME.
Q HE TOLD YOU HE COULDN'T OPEN AN ACCOUNT, SO HE ASKED YOU TO OPEN IT FOR HIM?
A YES.
Q BACK AT THAT TIME, WAS THIS -- YOU MET HIM IN FEBRUARY 1996. WHEN WAS IT YOU MOVED TO NEW JERSEY?
A WE WENT IN THE END OF APRIL.
Q IN EARLY MAY OF 1996, DID YOU KNOW A WOMAN NAMED THERESA MCCANN?
A NO.
Q DO YOU KNOW HER NOW?

A YES.
Q I WILL SHOW YOU TWO CHECKS THAT ARE MARKED STATE'S 84 AND 85 AND ASK IF YOU RECOGNIZE THOSE CHECKS.
A YES.
Q LOOK ON THE BACK AND TELL ME WHETHER OR NOT THOSE CHECKS WERE DEPOSITED INTO THE ACCOUNT THAT YOU OPENED IN NEW JERSEY.
A YES. IT SAYS COMMERCE BANK.
Q MS. FARRELL, THOSE CHECKS TOTAL ALMOST $10,000. DID YOU HAVE ANY KNOWLEDGE THEY WERE DEPOSITED INTO YOUR BANK THAT YOU OPENED WITH THE TWENTY DOLLARS IN IT?
A NO.
Q AND WERE YOU WITH MR. ALEKSEY ON MAY 10, 1996, IN NEW JERSEY WHEN THOSE CHECKS WERE DEPOSITED?
A NO.
Q DID YOU AND MR. ALEKSEY HAVE ANY DISCUSSION ABOUT MONEY COMING INTO YOUR ACCOUNT?
A YES.
Q BUT YOU DID NOT KNOW THOSE CHECKS HAD BEEN DEPOSITED IN YOUR ACCOUNT?
A NO.
Q WHAT DID MR. ALEKSEY TELL YOU ABOUT THE STATUS OF YOUR ACCOUNT?

A HE SAID HE WAS GETTING A WIRE TRANSFER --

COURT REPORTER: I DIDN'T GET ALL OF THAT. PLEASE SPEAK UP.

A HE SAID HE WAS GETTING A WIRE TRANSFER FOR $10,000 AND HE GOT A ROUTING NUMBER FROM THE BANK CLERK.

Q HOW DO YOU KNOW HE GOT A ROUTING NUMBER FROM THE BANK CLERK?

A I HAD THE ROUTING NUMBER IN MY HAND.

Q SO HE GAVE THAT TO YOU?

A YES.

Q SO YOU WERE UNDER THE IMPRESSION THAT HE WAS WIRING $10,000 INTO YOUR ACCOUNT?

A YES, SIR.

Q WITH TWENTY DOLLARS IN IT; IS THAT CORRECT?

A YES.

Q AND IT TURNED OUT THAT THESE TWO CHECKS HERE TOTALING ALMOST $10,000 ON THERESA MCCANN'S ACCOUNT WERE DEPOSITED IN YOUR ACCOUNT?

A YES.

Q NOW, AFTER HE TOLD YOU THAT HE HAD ROUGHLY $10,000 WIRED INTO YOUR ACCOUNT, DID YOU AND MR. ALEKSEY THEN PROCEED TO START SPENDING THAT MONEY?

A I NEVER SPENT ANY OF THAT MONEY, NO.

Q WAS THE MONEY WITHDRAWN FROM YOUR ACCOUNT?
A YES.
Q WHO WITHDREW IT?
A MR. ALEKSEY.
Q HOW MUCH DID HE WITHDRAW?
A ABOUT 10,000.
Q AND DID YOU KNOW HE WAS WITHDRAWING IT?
A YES.
Q DID HE TELL YOU WHY HE WAS WITHDRAWING IT?
A NO.
Q BUT YOU THOUGHT THAT WAS HIS MONEY?
A YES.
Q THAT HE HAD WIRED INTO YOUR ACCOUNT BECAUSE HE COULDN'T OPEN AN ACCOUNT?
A YES.
Q NOW, WHAT HAPPENED? DID IT TURN OUT THESE WERE FORGED CHECKS?
A YES.
Q AND WHAT HAPPENED TO YOU AS A RESULT OF THESE FORGED CHECKS BEING DEPOSITED IN YOUR ACCOUNT AND THAT MONEY BEING WITHDRAWN BY MR. ALEKSEY?
A I GOT ARRESTED BY THE STATE OF NEW JERSEY.
Q DURING THE PERIOD OF TIME THAT YOU KNEW MR. ALEKSEY, DID YOUR MOTHER OWN AN AUTOMOBILE?
A YES.

Q WHAT KIND OF CAR DID SHE HAVE?
A A CAMERO.
Q WHAT YEAR?
A ABOUT AN '86 OR '87.
Q ROUGHLY HOW MUCH WAS THAT CAR WORTH?
A ABOUT 5,000.
Q WHAT HAPPENED TO THE CAR?
A HE SOLD IT.
Q WHO DID?
A BAYAN ALEKSEY.
Q HOW DID THAT COME ABOUT?
A HE TOLD MY MOTHER THAT HE COULD SELL IT FOR HER AND BOUGHT IT TO THE CAR DEALERSHIP AND KEPT TELLING US THAT THEY NEVER SOLD IT, WHEN MEANWHILE THEY DID AND HE POCKETED THE MONEY.
Q SO YOU NEVER SAW THE CAR AGAIN AND NEVER SAW THE MONEY?
A NO.
Q HOW LONG WERE Y'ALL TOGETHER?
A PHYSICALLY ABOUT FOUR MONTHS AND THEN HE KEPT ME ON THE PHONE FOR ABOUT TWO MONTHS AFTER THAT SAYING HE WAS GOING TO COME GET ME.
Q BY COME GET YOU, COME PICK YOU UP?
A COME BACK TO NEW YORK AND...
Q AND TAKE UP THE RELATIONSHIP?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.) YES.
Q HOW MUCH MONEY DID THAT RELATIONSHIP COST YOU AS FAR AS HAVING TO PAY BACK THE MONEY OUT OF YOUR ACCOUNT?
A WITH THE MONEY OUT OF THE ACCOUNT, I HAVE TO PAY BACK THE 10,000 FOR THAT.
Q ARE YOU STILL PAYING THAT MONEY BACK?
A YES.
SOLICITOR BAILEY: BEAR WITH ME ONE SECOND, PLEASE.
Q SO IT COST YOU THE $10,000 AND YOU ARE PAYING THAT BACK?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q DID YOUR RELATIONSHIP COST YOU ANY ADDITIONAL MONEY DUE TO YOUR TRANSACTIONS WITH MR. ALEKSEY?
A ONE TIME HE WAS DRIVING MY CAR AND THERE WAS SOMETHING WRONG WITH IT. IT TURNED OUT THAT THE TRANSMISSION BLEW. HE TOLD ME TO GET IT TOWED, GET IT FIXED AND HE WOULD PAY FOR IT. THAT WAS ABOUT $2,000 WORTH OF WORK.
Q MS. FARRELL, THAT'S ALL I HAVE. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.
CROSS EXAMINATION
BY MR. SIMS:
Q MS. FARRELL, YOU WERE A MANAGER IN A STORE WHEN

YOU MET HIM?

A YES.

Q HOW LONG AFTER YOU MET HIM, DID YOU MOVE TO NEW JERSEY WITH HIM, I BELIEVE?

A ABOUT TWO OR THREE MONTHS.

Q SO LET ME GET THIS STRAIGHT HERE. YOU MOVED TO NEW JERSEY WITH HIM AFTER YOU HAD KNOWN HIM FOR TWO OR THREE MONTHS?

A WE WEREN'T MOVING.

Q OKAY.

A WE WERE JUST GOING AWAY.

Q YOU WERE GOING TO GO AWAY FOR A WEEKEND AND ENDED UP SEVERAL MONTHS DOWN THERE?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU LEFT YOUR JOB?

A NO. I LEFT MY JOB SHORTLY AFTER I MET HIM FOR PERSONAL REASONS.

Q AND YOU MOVED DOWN THERE AND HE WAS GOING TO TAKE CARE OF YOU?

A YEAH, ME AND MY DAUGHTER.

Q SO HE WAS GOING TO PROVIDE FOR YOU AND YOUR DAUGHTER WHILE YOU ALL WERE STAYING DOWN THERE?

A YES.

Q LET ME JUST ASK YOU. HE GAVE YOU THE NAME OF MICHAEL ANGELO?

A YES.

Q THE SAME MICHELANGELO WHO DID THE SISTINE CHAPEL?

A YES.

Q AND THAT NEVER STRUCK A NERVE WITH YOU?

A HE SHOWED ME A LICENSE WITH THE NAME ON IT. I DIDN'T THINK ANYTHING.

MR. SIMS: THAT'S ALL I HAVE.

SOLICITOR BAILEY: NO REDIRECT. MAY SHE BE EXCUSED?

THE COURT: YES, YOU ARE EXCUSED. THANK YOU.

SOLICITOR BAILEY: RECALL SARAH PIVERO.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: SARAH PIVERO.

CLERK: SPELL YOUR LAST NAME.

THE WITNESS: IT'S P-I-V-E-R-O.

SARAH PIVERO, HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MS. PIVERO, YOU TESTIFIED IN THE FIRST PHASE OF THIS TRIAL; IS THAT CORRECT?

A YES.

Q YOU TESTIFIED IN THAT PART OF THE TRIAL THAT YOU DEVELOPED A RELATIONSHIP WITH MR. ALEKSEY?
A YES.
Q IS THAT CORRECT?
A YES.
Q AND I WILL GO BACK ON A LITTLE BIT OF BACKGROUND BUT ROUGHLY WHEN WAS IT THAT YOU MET MR. ALEKSEY?
A IT WAS MAY OF '96.
Q AND YOU TESTIFIED BEFORE THAT YOU WERE INVOLVED IN A SERIOUS WRECK AND HAD APPROXIMATELY $75,000 IN PROCEEDS THAT YOU HAD INVESTED?
A YES.
Q WHAT KIND OF CAR WAS MR. ALEKSEY DRIVING WHEN YOU MET HIM?
A IT WAS A TOYOTA SUPRA.
Q DO YOU RECALL WHAT COLOR IT WAS?
A BLACK.
Q AND I BELIEVE YOU TESTIFIED PREVIOUSLY THAT AFTER YOU MET HIM THAT YOU LEASED A CADILLAC; IS THAT CORRECT?
A YES.
Q AT HIS INSTIGATION?
A YES.
Q AND WHOSE NAME WAS THAT CADILLAC LEASED IN?
A MINE.

Q AND WHOSE IDEA WAS THAT TO LEASE THE CADILLAC?
A IT WAS MICHAEL'S OR BAYAN.
Q YOU SAID MICHAEL. YOU ARE REFERRING TO BAYAN ALEKSEY? YOU KNEW HIM AS MICHAEL?
A YES.
Q WAS THAT CADILLAC TRADED IN FOR ANOTHER VEHICLE?
A YES, IT WAS.
Q WHAT WAS IT TRADED FOR?
A IT WAS TRADED FOR A TOYOTA 4-RUNNER.
Q WHOSE IDEA WAS THAT?
A HIS.
Q AND WHOSE NAME DID THE LEASE PAPERS GO IN?
A MINE.
Q AND AFTER THAT WAS THERE A MUSTANG THAT WAS PURCHASED?
A YES.
Q WHAT KIND OF MUSTANG WAS IT? WHAT COLOR WAS IT?
A IT WAS A WHITE SALINE.
Q A WHITE WHAT?
A SALINE.
Q SALINE. WHAT YEAR MUSTANG WAS IT?
A NINETY-SIX, I THINK.
Q HOW LONG DID HE KEEP THAT '96 MUSTANG?
A MAYBE A MONTH, MONTH AND A HALF.
Q AND WAS THERE ANOTHER VEHICLE THAT HE HAD YOU

LEASE FOR HIM AFTER THAT?
A YES. WELL, THE 4-RUNNER AND THE MUSTANG WERE AT THE SAME TIME. THEN HE TRADED IN THE 4-RUNNER FOR A LEXUS L.X.450.
Q I WANT TO ASK YOU ABOUT THE LEXUS. I WANT TO CALL YOUR ATTENTION TO SEPTEMBER 1996. DID YOU LEASE A LEXUS?
A YES.
Q AND HOW DID THAT COME ABOUT? WHO WANTED THE LEXUS?
A HE DID.
Q YOU WERE WORKING IN WHAT CAPACITY THEN?
A I WAS A STYLIST AT A HAIR SALON.
Q HOW MUCH MONEY DID YOU MAKE?
A ABOUT $15,000 A YEAR.
Q AND HOW MUCH DID THE LEXUS THAT HE WANTED COST IF YOU RECALL, ROUGHLY?
A IT WAS UP AROUND 60 GRAND, IF NOT MORE. I'M NOT REALLY POSITIVE.
Q NOW, DID YOU HAVE A BANK ACCOUNT IN YOUR NAME BACK IN SEPTEMBER?
A YES.
Q 1996?
A YES.
Q I WILL HAND YOU A CHECK AND A COPY OF A CHECK

AND ASK IF THESE ARE CHECKS DRAWN ON YOUR ACCOUNT TO THOMPSON LEXUS?
A YES, THEY ARE.
Q AND DID YOU MAKE THOSE CHECKS OUT?
A YES.
(ATTORNEYS CONFER.)
MR. SIMS: NO OBJECTION.
SOLICITOR BAILEY: OFFERED WITHOUT OBJECTION.
(STATE'S EXHIBIT NUMBER 87, COPY OF CHECK; AND NUMBER 88, CHECK, ARE RECEIVED INTO EVIDENCE.)
Q I WILL STICK STATE'S 87 UP HERE. THAT'S A CHECK FOR 2,060 AND CHANGE; IS THAT CORRECT?
A YES.
Q THAT YOU DREW ON YOUR ACCOUNT?
A YES.
Q TO THOMPSON LEXUS. WAS THAT PART OF THE LEASE TRANSACTION FOR THE LEXUS HE WANTED?
A YES, THAT WAS THE START-UP FEES AND I THINK THE FIRST MONTH'S PAYMENT.
Q AND YOU SIGNED THAT?
A YES.
Q AND THAT WENT TO THE LEXUS DEALERSHIP; IS THAT CORRECT?
A YES.

Q AND THE SECOND CHECK IS FOR $6,393 AND CHANGE. YOU SIGNED THAT CHECK?
A YES.
Q WHAT WAS THAT FOR?
A THAT WAS THE DIFFERENCE. IT WAS TO PAY OFF FOR THE 4-RUNNER. IT WAS THE DIFFERENCE BETWEEN WHAT THE CAR COST AND WHAT THE DEALERSHIP GAVE US.
Q YOU HAD TO PAY THE 4-RUNNER OFF AND THERE WAS NEGATIVE EQUITY IN THAT IN ORDER TO GET THE LEXUS?
A YES.
Q WHO WANTED THE LEXUS, YOU OR ALEKSEY?
A ALEKSEY.
Q WHY WERE YOU WRITING THE CHECKS OUT OF YOUR ACCOUNT?
A WELL, HE HAD BEEN DEPOSITING CHECKS INTO MY ACCOUNT. HE TOLD ME THAT THE MONEY WAS THERE, THAT HE WAS ACTUALLY TAKING THE MONEY BACK OUT OF THE ACCOUNT. THE CHECKS THAT HE WAS DEPOSITING INTO THE ACCOUNT WERE BAD CHECKS, AND MY ACCOUNT ACTUALLY WENT UP NEGATIVE A FEW THOUSAND DOLLARS.
Q AND YOU TESTIFIED YOU MADE AROUND 15,000 AT THAT TIME?
A YES.
Q I WILL HAND YOU A COPY OF A W-2 AND ASK IF YOU CAN IDENTIFY THAT.

A TO IDENTIFY IT?
Q YES.
A IT'S THE W-2 FORM THAT WAS FAXED TO THE LEXUS DEALERSHIP.
Q WHAT DOES THAT INDICATE YOUR INCOME AS BEING?
A A LITTLE IN EXCESS OF $78,000.
Q AND HOW DID THAT COME ABOUT?
A I DON'T KNOW. IT WAS FAXED TO THE DEALERSHIP. I WASN'T THERE. I DIDN'T HAND IT TO THEM.
Q DID YOU KNOW IT WAS GOING TO THE DEALERSHIP?
A I KNOW THAT THEY ASKED FOR PROOF OF INCOME. I DIDN'T DEAL WITH THEM AT ALL THOUGH. I ONLY WENT THERE TO SIGN THE PAPERS. I WENT THERE ONCE TO FILL OUT THE CREDIT AP AND ONCE TO SIGN THE PAPERS.
Q YOU DID NOT FILL OUT A FORM THAT INDICATING YOUR INCOME WAS $79,000; IS THAT CORRECT?
A I DIDN'T FILL OUT A W-2 FORM.
Q YOU SAID THAT YOU WENT TO THE DEALERSHIP FOR WHAT PURPOSE?
A THE FIRST TIME I WENT UP TO FILL OUT THE CREDIT APPLICATION; AND THE SECOND TIME THAT I WENT UP THERE, I WENT TO GO SIGN THE LEASE AGREEMENT.
Q DID YOU LOOK AT THE PAPERWORK OR JUST SIGN ON THE DOTTED LINE?
A NO, I JUST SIGNED.

Q THOSE TWO CHECKS THAT YOU GAVE TO THOMPSON LEXUS, THERE IS ONE ON THE SCREEN NOW, THE ONE FOR TWO THOUSAND AND SOME-ODD DOLLARS, WERE THEY GOOD CHECKS OR BAD?

A NO, THEY WOUND UP BOUNCING.

Q DID YOU KNOW AT THE TIME YOU WROTE THOSE CHECKS THEY WOULDN'T CLEAR?

A NO.

Q WHY DID YOU THINK THEY WOULD CLEAR?

A LIKE I SAID, HE WAS DEPOSITING MONEY INTO THE ACCOUNT, DEPOSITING CHECKS INTO THE ACCOUNT. IT TURNED OUT THAT THE CHECKS WERE BAD THAT HE WAS DEPOSITING.

Q AT ONE POINT DID YOU HAVE AN ACCOUNT AT FIRST BANK TRUST COMPANY?

A FIRST NATIONAL BANK, YES.

Q THAT'S A DIFFERENT ACCOUNT THAN THESE CHECKS HERE; IS THAT RIGHT?

A YES.

Q WAS YOUR ACCOUNT NUMBER 40060569272?

A YES.

Q AND WHAT WAS THE STATUS OF THAT ACCOUNT IN AUGUST OF 1997?

A AUGUST OF '97 THE ACCOUNT WAS CLOSED FOR A LITTLE MORE THAN A YEAR.

Q I WILL ASK YOU WHETHER OR NOT YOU RECOGNIZE THAT CHECK AS BEING A CHECK FROM YOUR ACCOUNT THAT HAD BEEN CLOSED FOR A YEAR?

A YES.

MR. SIMS: NO OBJECTION.

SOLICITOR BAILEY: WE OFFER IT, YOUR HONOR.

(STATE'S EXHIBIT NUMBER 89, CHECK, IS RECEIVED INTO EVIDENCE.)

Q MS. PIVERO, TAKE A LOOK AT STATE'S 89. IT'S A CHECK PAYABLE TO COUNTY LINE AUTO SALES DATED AUGUST 1997 IN THE AMOUNT OF $18,014. WHEN DID THAT CHECK -- YOU SAID THAT CHECK WAS WRITTEN ON A CLOSED ACCOUNT. IT HAD BEEN CLOSED APPROXIMATELY A YEAR PRIOR TO THAT DATE?

A YES.

Q WHAT HAPPENED TO THAT CHECK, DO YOU KNOW?

A THEY WERE TAKEN FROM THE BOX WHERE THE CHECKS WERE KEPT. I AM TRYING TO THINK OF WHERE IT WAS. IT WAS IN MY CLOSET, I BELIEVE, ON THE TOP SHELF.

Q WHEN WAS IT YOU REALIZED SOME OF YOUR CHECKS HAD BEEN MISSING?

A I DIDN'T KNOW.

Q ARE YOU FAMILIAR WITH BAYAN ALEKSEY'S HANDWRITING?

A YES.

Q CAN YOU IDENTIFY HIS HANDWRITING?
A YES, I HAVE SEEN IT.
Q IT'S SIGNED SARAH PIVERO DOWN THERE AT THE BOTTOM. IS THAT YOUR SIGNATURE?
A NO.
Q DO YOU RECOGNIZE WHOSE SIGNATURE THAT IS?
A YES.
Q WHOSE IS IT?
A IT'S BAYAN, MICHAEL, WHATEVER HIS NAME IS.
Q THE DEFENDANT IN THIS CASE?
A YES.
Q THAT SIGNATURE IS A FORGERY. IS THAT YOUR TESTIMONY?
A YES.
Q DID YOU KNOW AT THAT TIME THAT HE WAS WRITING A CHECK ON YOUR ACCOUNT IN EXCESS OF $18,000 TO COUNTY LINE AUTO SALES?
A NO. AT THAT POINT I HAD NOT TALKED TO HIM FOR A COUPLE OF MONTHS.
Q WHAT IS YOUR MOTHER'S NAME?
A CAROL PIVERO.
Q AND AT THE TIME THAT YOU WERE SEEING BAYAN ALEKSEY, DID YOUR MOTHER CAROL PIVERO HAVE ANY CREDIT CARDS?
A YES, SHE DID.

Q WHAT HAPPENED TO THEM?
A SOMEHOW HE GOT A HOLD OF SOME OF THE NUMBERS AND CHARGED UP A COUPLE OF HER CREDIT CARDS.
Q HOW MUCH?
A ONE WE ACTUALLY WERE ABLE TO STOP BEFORE IT WENT THROUGH, AND THE OTHER ONE I BELIEVE IT WAS A COUPLE THOUSAND DOLLARS. I'M NOT SURE.
Q YOU SAID HE, YOU ARE TALKING ABOUT BAYAN ALEKSEY?
A YES.
Q WHEN YOU KNEW MR. ALEKSEY, DID HE HAVE A MOTORCYCLE?
A YES, HE DID.
Q WHAT KIND OF MOTORCYCLE WAS IT?
A HE HAD -- IT WAS A HONDA C.V.R.600.
Q DO YOU KNOW ANYTHING ABOUT WHEN OR WHERE HE GOT THE MOTORCYCLE FROM?
A I KNOW HE GOT IT IN NEW YORK. HE HAD TOLD ME THAT HIS EX-GIRLFRIEND THERESA HAD PURCHASED IT FOR HIM.
Q AND DO YOU KNOW WHAT HAPPENED TO THE MOTORCYCLE THAT HE SAID THERESA HAD PURCHASED FOR HIM?
A I FOLLOWED HIM ONE DAY AS HE DUMPED IT INTO A LAKE.
Q DID HE TELL YOU WHY HE WAS DUMPING A PERFECTLY

GOOD MOTORCYCLE IN A LAKE?

A SO IT WOULDN'T BE TRACED BACK TO HIM.

Q I HAND YOU STATE'S 5. HAVE YOU EVER SEEN THAT?

A YES.

Q WHERE HAVE YOU SEEN IT?

A IN MY HOME.

Q AND WHERE IN YOUR HOME DID YOU SEE IT?

A HE USED TO KEEP IT IN --

Q YOU HAVE GOT TO USE NAMES FOR THE RECORD.

A BAYAN. HE USED IT KEEP IT IN -- IT WAS A BLACK LEATHER FIRST AID KIT WITH THE LEXUS SYMBOL ON THE TOP.

Q CALLING YOUR ATTENTION TO FEBRUARY 1997, DID YOU SEE THAT GUN?

A YES, VERY CLOSELY.

Q TELL THE JURY WHAT CIRCUMSTANCES CAUSED YOU TO SEE THAT GUN ON THAT OCCASION.

A IT WAS LATE AT NIGHT AND WE HAD GOTTEN INTO AN ARGUMENT.

Q YOU HAVE GOT TO USE NAMES NOW.

A MYSELF AND BAYAN GOT INTO AN ARGUMENT AND ONE THING LED TO ANOTHER, AND HE WOUND UP THROWING ME ON THE GROUND AND HE HELD THE GUN TO MY FOREHEAD AND TOLD ME HE WAS GOING TO KILL ME.

I TOLD HIM TO GO AHEAD AND PULL THE TRIGGER

BECAUSE HE COULDN'T MAKE MY LIFE ANY WORSE THAN HE ALREADY HAD. HE GOT UPSET AND HE SAID, "HOW COULD YOU DO THIS TO ME? I LOVED YOU."

I TOLD HIM, I SAID, "I DIDN'T DO ANYTHING TO YOU." HE HELD THE GUN UP TO HIS OWN HEAD AND SAID HE WAS GOING TO SHOOT HIMSELF. HE TOLD ME JUST TO TURN MY BACK AND WALK OUT OF THE ROOM. I SAID I WOULDN'T DO THAT. I WAS GOING TO STAY IN THERE WITH HIM. HE WOUND UP JUST CURLING UP ON THE FLOOR AND GOING TO SLEEP.

Q I HAND YOU STATE'S 56. IT HAS BEEN IDENTIFIED AS COMING OUT OF THE MUSTANG IN SUMMERVILLE. HAVE YOU EVER SEEN THAT BEFORE?

A YES.

Q WHERE?

A THAT ALSO WAS IN MY HOME.

Q WHO OWNED IT?

A BAYAN.

Q DID YOU EVER LOOK INSIDE OF IT?

A TWICE.

Q WHAT DID YOU SEE IN THERE?

A THE FIRST TIME I SAW IT, IT HAD CREDIT CARDS AND I.D.S AND CHECKS FROM HIS EX-GIRLFRIEND THERESA. THERE WERE SOME PHOTOGRAPHS IN THERE OF PEOPLE I DIDN'T KNOW.

THE SECOND TIME I LOOKED THROUGH IT, I WAS WITH TWO OTHER PEOPLE THAT HE KNEW; AND THEY WERE LOOKING FOR SOMETHING BUT I WAS THERE IN THE ROOM WHEN THEY WERE LOOKING FOR IT, AND WE FOUND MY CHECKS IN THERE ALSO.

Q YOU FOUND WHAT NOW IN THE NAME OF THERESA? DO YOU RECALL THE LAST NAME?

A THERE WERE TWO LAST NAMES USED. THERE WAS I.D.S AND CREDIT CARDS, DRIVER'S LICENSE, REGISTRATIONS, THINGS LIKE THAT, CHECKS, WITH THERESA FOGLE AND THERESA MCCANN WRITTEN ON THEM.

Q CALLING YOUR ATTENTION TO MAY OF 1996, DID YOU HAVE A CONVERSATION WITH MR. ALEKSEY?

A I'M SORRY WHEN?

Q WERE THERE ANY THREATS INVOLVED IN YOUR RELATIONSHIP WITH HIM?

A WHEN WAS THIS?

Q MAY OF 1996.

A WHEN HE WAS TALKING ABOUT HIS EX-GIRLFRIEND THERESA, HE WAS TELLING ME THAT SHE HAD DONE ALL THIS STUFF TO HIM, TAKEN MONEY FROM HIM AND ASSORTED OTHER THINGS.

HE SAID THAT HE WAS GOING TO GET HER ONE DAY WHEN SHE WASN'T EXPECTING IT. I REMEMBER HIM TELLING ME ONE TIME THAT HE WAS SAYING SOMETHING ABOUT HE WAS

GOING TO BLOW UP HER CAR OR SOMETHING LIKE THAT, JUST LITTLE THREATS, I GUESS. I DON'T KNOW.

Q THIS WAS IN REFERENCE TO THERESA MCCANN?

A YEAH.

SOLICITOR BAILEY: BEAR WITH ME A SECOND, PLEASE.

(PAUSE.)

Q THANK YOU VERY MUCH. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

CROSS EXAMINATION

BY MR. SIMS:

Q YOU JUST INDICATED OR MENTIONED A SITUATION IN WHICH HE HAD A GUN IN HIS HAND AND THAT HE PUT IT ON YOU, HE DIDN'T PULL THE TRIGGER AND THEN HE PUT IT ON HIS HEAD, ON HIMSELF; IS THAT CORRECT?

A YES.

Q AND WHEN HE PUT THE GUN ON HIMSELF, HE THEN ASKED YOU TO LEAVE THE ROOM BECAUSE HE WAS GOING TO KILL HIMSELF?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q I'M SORRY. YOU CAN'T SHAKE YOUR HEAD.

A YES.

Q AND THEN I BELIEVE YOU SAID HE JUST CURLED UP AND WENT TO BED. I BELIEVE HE CURLED UP, ACCORDING

TO YOU, IN LIKE A FETAL POSITION AND BALLED UP AND WENT TO BED?

A HE LAID DOWN ON THE FLOOR AND WENT TO SLEEP. HE SAID HE WAS AFRAID TO LAY NEXT TO ME BECAUSE HE THOUGHT I WOULD HIT HIM.

Q HE THOUGHT YOU WOULD HIT HIM. SO HE WASN'T LIKE A BIG BULLY, THAT YOU COULD HAVE BEAT HIM UP YOURSELF. IS THAT WHAT YOU ARE SAYING?

A NO, I'M NOT SAYING I COULD TAKE HIM ON.

Q BUT YOU TOOK HIM ON THAT NIGHT?

A HE DIDN'T WANT TO PULL THE TRIGGER ON HIMSELF OR ANYONE -- NOT MYSELF, I'M SURE. BUT IT WAS SCARY. I WAS SHAKING. HE WAS SHAKING. IT WASN'T THE FIRST CONFRONTATION THAT WE HAD GOTTEN INTO WHERE I WAS AFRAID OF HIM.

Q AND YOU WERE ABOUT TO SAY -- AND YOU CAN CORRECT ME IF I AM WRONG -- YOU KNEW HE WASN'T GOING TO PULL THE TRIGGER OR WASN'T GOING TO SHOOT YOU OR ANYBODY ELSE; ISN'T THAT RIGHT?

A I DIDN'T THINK THAT HE WOULD HAVE SHOT HIMSELF. I MEAN, WE WERE IN A HOUSE WITH FOUR SMALL CHILDREN NEXT TO US IN A BEDROOM, AGES ELEVEN TO SEVEN. WE HAD TWO PEOPLE DOWNSTAIRS.

WE WERE IN SOMEBODY ELSE'S HOME AND HE WAS THREATENING TO SPLATTER HIS BRAINS ALL OVER THE WALL.

HE DID TELL ME TO GO OUTSIDE. HE WANTED ME TO GO FOR A WALK ALONE AND I WOULDN'T DO IT.

Q NOW, LET ME ASK YOU ABOUT THIS MOTORCYCLE. YOU SAID YOU FOLLOWED HIM FOR HIM TO DITCH IT?

A YES, HE DITCHED THE MOTORCYCLE. I GUESS APPARENTLY THERESA OR SOMEBODY, HE WAS AFRAID MAYBE THAT IT WOULD GET BACK TO WHERE HE WAS. SO HE GOT RID OF IT.

Q SO HE GOT RID OF THE MOTORCYCLE AND YOU GAVE HIM A RIDE BACK?

A YES.

Q SO YOU KNEW HE WAS GOING OUT TO DITCH THE MOTORCYCLE AND YOU FOLLOWED HIM AND LET HIM DITCH THE MOTORCYCLE AND GAVE HIM A RIDE BACK TO WHEREVER, BACK TO WHERE YOU ALL WERE?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q NOW, IN YOUR TESTIMONY YESTERDAY AND AGAIN TODAY YOU TALKED ABOUT A NUMBER OF AUTOMOBILES THAT YOU HAD PURCHASED FOR HIM OVER THE COURSE OF YOUR RELATIONSHIP. YOU BOUGHT THOSE BECAUSE HE ASKED YOU TO BUY THEM?

A I DIDN'T REALLY HAVE A CHOICE. HE DIDN'T ASK. HE WENT UP TO THE DEALERSHIPS AND FILLED OUT THE PAPERS AND EVERYTHING. I TRUSTED HIM SO I SIGNED.

Q YOU DIDN'T HAVE TO SIGN?
A NO, I DIDN'T HAVE TO; BUT WE WERE LIVING TOGETHER. WE HAD BEEN DATING FOR A WHILE. I TRUSTED HIM.
Q DOESN'T IT SEEM STRANGE THAT EVERY COUPLE OF MONTHS, SOMEONE WOULD COME IN TO YOU AND SAY, "HERE, SIGN FOR ANOTHER CAR"?
A IT WAS ODD HOW QUICKLY HE SWITCHED CARS BUT HE SEEMED TO LOVE THEM. I DIDN'T ASK QUESTIONS. AS LONG AS THE BILLS WERE GETTING PAID, IT DIDN'T MATTER TO ME.

UNFORTUNATELY THE BILLS WERE GETTING PAID WITH HIS STOLEN CREDIT CARD RECEIPTS AND EVERYTHING WAS KICKING BACK AND I WAS GETTING THESE LUMP SUM BILLS FOR THOUSANDS AND THOUSANDS OF DOLLARS, NOT TO MENTION RAP SHEETS I HAVE GOT NOW, PROBATION I'M ON SO I CAN PAY BACK HIS CARS.

Q LET ME ASK YOU THIS. YOU SAID THE BILLS WERE COMING INTO YOU WITH THESE ASTRONOMICAL AMOUNTS ON THEM; IS THAT CORRECT?
A AFTER HE TOOK OFF, YEAH. I GOT A CELL PHONE BILL FOR $4500.
Q BUT AT ANY TIME DURING THIS RELATIONSHIP, AT NO TIME DID YOU SAY TO HIM, "I AM NOT GOING TO SIGN FOR THAT CAR"?

A NO, I DIDN'T.
Q THE CADILLAC, THE 4-RUNNER?
A HE HAD THE MONEY UP FRONT, THE CASH RIGHT THERE FOR THE START-UP FEES AND EVERYTHING.
Q THERE WAS A CADILLAC, THE 4-RUNNER, THE STINGRAY, THE MUSTANG. WHAT ELSE?
A THE TRANS AM, THE JETTA -- NOT THE JETTA. THE JETTA I DID ALL ON MY OWN. I GOT THAT BEFORE I MET HIM. THE PASSAT, YES.
Q AND YOU WOULD BE AT WORK OR SOME PLACE AND HE WOULD COME AND SAY, "I GOT ANOTHER CAR. I NEED YOU TO SIGN." THAT'S ABOUT FIVE OR SIX DIFFERENT CARS AND AT NO TIME DID HE SIGN HIS OWN NAME AND AT NO TIME DID HE HAVE THE START-UP MONEY, AND AT NO TIME --
A HE DID HAVE THE START-UP MONEY. HE GAVE ME THE CASH TO GO.
Q HE GAVE YOU THE DOWN PAYMENTS OR WHATEVER THEY WERE, BUT HE NEVER SIGNED ANY OF THE DOCUMENTATION AT ANY OF THE DEALERSHIPS?
A NO. HE TOLD ME HE HAD BAD CREDIT, THAT HE HAD FILED FOR BANKRUPTCY AND HE COULDN'T PUT HIS NAME ON IT. HE SAID HE NEEDED A CAR. I WAS TRYING TO HELP HIM OUT. THAT'S ALL IT WAS.
Q A CAR?

A I WAS HELPING HIM.

Q HE NEEDED A CAR, NOT SIX OR SEVEN OF THEM.

A HE DIDN'T HAVE THEM ALL AT THE SAME TIME.

Q THAT'S ALL I HAVE.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR. MAY SHE BE EXCUSED?

THE COURT: DOES THIS WITNESS NEED TO BE EXCUSED?

SOLICITOR BAILEY: I HAVE NOTHING FURTHER.

THE COURT: YOU MAY BE EXCUSED. LET'S TAKE A SHORT BREAK. I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT. WE WILL CALL YOU BACK OUT SHORTLY. WE WILL TAKE A SHORT BREAK, GENTLEMEN.

(THE JURY RETIRES TO THE JURY ROOM AT 12:45 P.M.)

(WHEREUPON THERE WAS A LUNCHEON RECESS.)

THE COURT: PRIOR TO PROCEEDING WITH THE TESTIMONY, I UNDERSTAND THAT YOU MADE A MOTION FOR AN IDENTIFICATION IN CAMERA HEARING?

MR. SIMS: THAT IS CORRECT, YOUR HONOR.

THE COURT: WE WILL DO THAT AT THIS TIME. LET THE RECORD REFLECT THAT ALL PARTIES ARE PRESENT, INCLUDING THE DEFENDANT. BRING THE WITNESS IN.

SOLICITOR BAILEY: LUIS CRUZ.

THE COURT: LET THE RECORD FURTHER REFLECT

THAT THIS IS AN IN CAMERA HEARING MADE PURSUANT TO MOTION OF THE DEFENSE; AND THE JURY IS NOT PRESENT.

LUIS CRUZ, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: HAVE A SEAT AND SPELL YOUR NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: L-U-I-S, C-R-U-Z.

(THE FOLLOWING TESTIMONY WAS REPORTED IN CAMERA.)

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. CRUZ, WHERE DO YOU LIVE?

A TRENTON, NEW JERSEY.

Q AND HOW OLD ARE YOU?

A TWENTY.

Q AND DO YOU OWN A CAR?

A YES.

Q WHAT KIND OF CAR DO YOU HAVE?

A EIGHTY-NINE TOYOTA TERCEL.

Q AND DID YOU OWN THAT CAR BACK IN SEPTEMBER OF 1997?

A YES.

Q MR. CRUZ, I WANT TO CALL YOUR ATTENTION TO SEPTEMBER 28, 1997. WERE YOU DRIVING THE CAR THAT DAY?

A YES.
Q WHO WAS WITH YOU?
A MY GIRLFRIEND AND MY COUSIN.
Q WHERE WAS YOUR GIRLFRIEND SEATED?
A SHE WAS IN THE PASSENGER SIDE, THE FRONT.
Q WHERE WAS YOUR COUSIN?
A SHE WAS RIGHT BEHIND THE PASSENGER.
Q IS YOUR COUSIN AN ADULT?
A YES.
Q WHERE WERE Y'ALL GOING THAT DAY?
A WE WERE ON OUR WAY HOME TO TRENTON.
Q WHERE HAD YOU COME FROM?
A FROM PHILADELPHIA.
Q WHAT HIGHWAY DID YOU GET ON?
A IT WAS 95.
Q AND WHAT TIME OF THE DAY WAS IT WHEN YOU MADE THE TRIP?
A ABOUT BETWEEN FOUR AND FIVE.
Q IN SEPTEMBER WAS IT LIGHT AT FOUR OR FIVE O'CLOCK? WAS IT DAYLIGHT?
A YES.
Q SO YOU WERE DRIVING DOWN I-95 ON THE WAY HOME, IS THAT CORRECT, TO TRENTON?
A YES.
Q WHAT HAPPENED AT AROUND 5 P.M. AS YOU WERE

DRIVING DOWN HIGHWAY I-95?

A AROUND 5 P.M. I WAS ON THE LEFT LANE DOING ABOUT 65 MILES AN HOUR WHEN A WHITE MUSTANG CAME UP BEHIND ME AND HE WANTED TO GET AROUND ME.

I DIDN'T MOVE FOR HIM BUT HE GOT ON THE RIGHT LANE AND PULLED UP NEXT TO MY CAR. HE LOOKED OVER AT ME, HE STAYED THERE FOR A FEW MINUTES DRIVING BY ME, AND HE CAME AND HE CUT IN FRONT OF MY CAR.

SO I SLOWED DOWN AND HE JUMPED ON THE RIGHT LANE, AND HE CAME AND CUT ME OFF A SECOND TIME. HE GOT BACK ON THE RIGHT LANE AND HE CUT ME OFF A THIRD TIME. SO HE GOT BACK ON THE RIGHT LANE AND THEN HE DROPPED BACK.

Q AND WHAT KIND OF CAR WAS THIS NOW?

A IT WAS A WHITE MUSTANG.

Q HOLD ON A SECOND. OTHER THAN THE CAR BEING IN A WRECKED CONDITION, DOES THAT APPEAR TO LOOK LIKE THE CAR YOU SAW?

A YES, THAT'S THE CAR.

Q FOR THE RECORD THAT IS STATE'S 8. NOW, YOU SAY IT CUT YOU OFF THREE TIMES AND DROPPED BACK. WHAT HAPPENED AFTER THAT?

A AFTER THAT HE DROPPED BACK ABOUT A QUARTER OF A MILE. THEN I PROCEEDED TO GO. THEN HE CAME SPEEDING UP ONTO MY BUMPER AGAIN. THAT'S WHEN MY COUSIN TOLD

ME SHE SEEN SOMEBODY WAVING A GUN IN THE WINDSHIELD. FROM THERE I JUST STARTED TO SPEED DOWN I-95 AND HE GAVE CHASE.

Q HOW FAST DO YOU THINK YOU GOT GOING TRYING TO GET AWAY FROM HIM?

A I WAS PROBABLY GOING BETWEEN 90 AND 100 TO GET AWAY.

Q WHAT HAPPENED THEN?

A SO I SEEN MY EXIT COME FOR ROUTE 1. SO I TOOK THE EXIT. I LOOKED IN THE MIRROR AND I SEEN THAT HE TOOK THE EXIT ALSO BEHIND ME. SO WE WERE SPEEDING DOWN ROUTE 1. HE KEPT TRYING TO GET TO THE SIDE OF MY CAR, BUT I KEPT SWERVING SO HE WOULDN'T GET NEXT TO ME.

I GOT UP TO A PICK-UP TRUCK. THE PICK-UP TRUCK WAS ON THE LEFT AND I WAS ON THE RIGHT LANE. IT ACTUALLY CAME UP. IT WAS FROM ABOUT A QUARTER OF A MILE LONG. THAT'S WHEN HE GOT HIS CHANCE TO PULL UP NEXT TO ME. THAT'S WHEN I SEEN HIM PULL THE GUN OUT THE WINDOW.

Q WHEN HE PULLED UP NEXT TO YOU, WAS THE WINDOW UP OR DOWN?

A IT WAS DOWN.

Q HOW CLOSE WAS HE TO YOU AS HE PULLED UP BESIDE YOU?

A ABOUT FIVE FEET AWAY.
Q WAS THERE ANYTHING TO OBSTRUCT YOU FROM SEEING HIM?
A NO.
Q AND WHEN YOU LOOKED AT HIM, WHAT DIRECTION WAS HE LOOKING AT?
A HE WAS LOOKING AT ME.
Q DID YOU HAVE AN OPPORTUNITY TO GET A GOOD ENOUGH LOOK AT HIM TO SEE WHAT HE WAS WEARING?
A YEAH, HE HAD A BLACK JACKET ON AND A WHITE TURTLENECK.
Q WHAT DID YOU OBSERVE WHEN YOU SAW HIM?
A WHEN I SEEN HIM?
Q YES.
A HE WAS LOOKING AT ME AND HE WAS SMILING.
Q WAS ANYBODY ELSE IN THE CAR WITH HIM?
A YES, IT WAS A BLOND GIRL.
Q A BLOND GIRL?
A YEAH.
Q WHAT HAPPENED WHEN HE LOOKED AT YOU AND SMILED?
A THAT'S WHEN HE STUCK THE GUN OUT THE WINDOW. THEN I SWERVED MY CAR AT HIM BECAUSE HE WAS LIKE -- HE HAD THE GUN THERE FOR A GOOD FEW SECONDS LIKE HE WAS AIMING.
I SERVED MY CAR AT HIM AND I GUESS HE MUST HAVE

THOUGHT I WAS GOING TO HIT HIM. SO HE SWERVED AT THE SAME EXACT TIME AND FIRED THE GUN, AND THEN HE WENT TAKING OFF UP THE EXIT.

Q DID YOU SEE THE GUN?

A YES, I SEEN IT.

Q WHAT DID THE GUN LOOK LIKE?

A IT WAS A CHROME GUN.

Q DO YOU KNOW THE DIFFERENCE BETWEEN A REVOLVER AND A SEMIAUTOMATIC?

A YEAH.

Q WHICH KIND WAS IT?

A IT WAS THIS ONE RIGHT HERE.

Q YOU ARE INDICATING STATE'S EXHIBIT 5 IN FRONT OF YOU?

A YES.

Q IT LOOKED LIKE THAT GUN?

A YES.

Q DO YOU SEE THE PERSON -- WELL, LET ME ASK YOU THIS. DID THE SHOT HIT YOUR CAR?

A YES.

Q YOU HAVE A PHOTOGRAPH OF THAT. I WON'T GET INTO THAT AS FAR AS THE IDENTIFICATION HEARING. THERE IS A BULLET HOLE IN YOUR CAR?

A YES.

Q DO YOU SEE THE MAN THAT YOU SAW SHOOT AT YOUR

CAR OFF I-95 IN COURT?
A YES.
Q WOULD YOU POINT HIM OUT, PLEASE.
A RIGHT THERE IN THE WHITE SHIRT.
Q ANY DOUBT IN YOUR MIND THAT'S THE PERSON YOU SAW?
A NO, THERE'S NO DOUBT.
Q NOW, AT SOME POINT SOME S.L.E.D. AGENTS FROM SOUTH CAROLINA CAME UP AND SHOWED YOU A COUPLE OF PICTURES; IS THAT CORRECT?
A YES.
Q ARE THESE THE PICTURES THEY SHOWED YOU? THIS IS STATE'S FOR IDENTIFICATION 1 AND 2.
A THAT'S THE PICTURE.
Q ARE YOU IDENTIFYING BAYAN ALEKSEY AS THE MAN WHO SHOT YOUR CAR --
A YES.
Q -- BACK IN SEPTEMBER FROM YOUR RECOLLECTION OF SEEING HIM OUT ON I-95 OR ARE YOU IDENTIFYING HIM FROM THESE PICTURES?
A FROM WHEN I WAS GOING UP THE HIGHWAY.
Q IF YOU HAD NEVER SEEN THESE PICTURES, WOULD YOU STILL BE ABLE TO IDENTIFY HIM?
A YES, I STILL COULD.
Q DID YOU REPORT THIS SHOOTING TO THE POLICE?

A YES.
Q MR. CRUZ, ANSWER ANY QUESTIONS MR. SIMS HAS FOR YOU, PLEASE.
CROSS EXAMINATION
BY MR. SIMS:
Q MR. CRUZ, LET ME ASK YOU A FEW QUESTIONS. DID YOU ALL THROW ANYTHING OUT OF THE CAR AT HIM?
A NO.
Q NO BOTTLES, NOTHING OUT OF THE CAR?
A NO.
Q NOW, WHERE WAS YOUR CAR HIT?
A UNDER THE RIGHT DOOR.
Q UNDER THE RIGHT DOOR. HOW FAST WERE YOU ALL GOING?
A WHEN HE SHOT AT ME?
Q YES.
A I WAS DOING ABOUT 65 BECAUSE THERE WAS A PICK-UP TRUCK NEXT TO ME.
Q HOW MANY LANES OF TRAFFIC WERE GOING IN YOUR DIRECTION?
A THERE WAS ONLY TWO LANES.
Q SO TWO LANES OF TRAFFIC GOING IN YOUR DIRECTION -- I'M TRYING TO GET AN IDEA IN TERMS OF THE HIGHWAY. WAS IT A NORTH/SOUTH LANE OR EAST/WEST LANE OR JUST FOUR LANES?

A IT WAS JUST TWO LANES GOING MY WAY AND TWO ON THE OTHER.

Q TWO LANES GOING YOUR WAY AND TWO LANES GOING THE OTHER WAY. WHO WAS SITTING BESIDE YOU?

A MY GIRLFRIEND.

Q SO YOU ONLY IDENTIFIED TO THE POLICE THAT AN ITALIAN-LOOKING MAN WAS THE ONE DRIVING THE CAR?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU NEVER GAVE ANY DESCRIPTION OTHER THAN AN ITALIAN-LOOKING MAN. YOU DIDN'T SAY WHAT HE WAS WEARING TO THE POLICE AT THAT TIME?

A YEAH, I SAID WHAT HE WAS WEARING.

Q WHAT HE WAS WEARING, BUT NO IDENTIFYING MARKERS OTHER THAN THE FACT HE WAS AN ITALIAN MAN?

A WITH BLACK HAIR.

Q WITH BLACK HAIR. AND THE ONLY TIME THAT YOU HAD EVER SEEN A PICTURE OF ANYONE WHO WAS ALLEGED TO HAVE SHOT AT YOU WAS WHEN YOU GOT THAT PICTURE FROM THE S.L.E.D. AGENTS HERE IN SOUTH CAROLINA; ISN'T THAT CORRECT?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q FROM SEPTEMBER UP THROUGH JANUARY, YOU HAD NEVER SEEN A PICTURE OF ANYONE WHO YOU HAD BELIEVED TO HAVE SHOT AT YOU?

A NO.

Q AND THE ONLY TIME YOU KNEW THAT THIS WAS THE PERSON WHO WAS ALLEGED TO HAVE SHOT AT YOU WAS WHEN THE S.L.E.D. AGENTS BROUGHT A PICTURE AND SAID, "THIS MAN SHOT A GUN. THIS IS -- DOES THIS LOOK LIKE THE MAN"?

A YES.

Q SO, FIRST OF ALL, YOU WERE TOLD THAT THIS MAN SHOT A GUN AND HAD SHOT A GUN AT SOMEBODY, AND THEN THEY ASKED YOU WHETHER THIS WAS THE MAN?

A NO, HE DIDN'T TELL ME --

Q AND THAT'S THE ONLY PICTURE THEY SHOWED YOU --

THE COURT: FINISH YOUR ANSWER, PLEASE.

THE WITNESS: CAN YOU REPEAT THAT?

Q MY QUESTION TO YOU WAS THEY BOUGHT A PICTURE TO YOU, THEY CALLED YOU AND SAID, "HEY LOOK, SOMEBODY SHOT AT YOUR CAR"?

A YEAH.

Q AND THEY SAID, "WE MAY HAVE A PICTURE FOR YOU TO LOOK AT"?

A YES.

Q AND WHEN YOU GOT THERE, THEY SHOWED YOU THE PICTURE OF BAYAN ALEKSEY?

A YES.

Q THAT WAS THE ONLY PICTURE THAT THEY HAD SHOWED YOU?

A YES.
Q THAT YOU WERE SHOWN RATHER?
A YES.
Q SO PRIOR TO THAT TIME, YOU HAD NO IDEA, NO SPECIFIC I.D. OF THE PERSON WHO HAD SHOT AT YOU?
A YEAH, I KNEW HIS FACE.
Q WELL, YOU DIDN'T SAY ANY OF THAT TO THE POLICE OFFICERS BACK IN SEPTEMBER.
A I JUST DESCRIBED HIM AS A WHITE MAN WITH BLACK HAIR. THE ONLY OTHER WAY I COULD DESCRIBE HIM WAS HIS CLOTHES.
Q YOU DESCRIBED HIM AS AN ITALIAN MAN WITH BLACK HAIR?
A ITALIAN-LOOKING MAN.
Q AND THERE ARE A LOT OF ITALIAN-LOOKING MEN UP IN THE NEW JERSEY, NEW YORK AND PHILADELPHIA AREA. SO THERE WAS NOTHING TO DISTINGUISH HIM FROM ANYONE ELSE?
A NO.
Q UNTIL YOU GOT A PICTURE FROM SOUTH CAROLINA?
A WELL, I COULD IDENTIFY HIM.
Q BUT YOU DIDN'T HAVE THAT OPPORTUNITY?
A NO, I NEVER HAD THE OPPORTUNITY, NO.
Q AND YOU WEREN'T GIVEN A PHOTO I.D. LINEUP?
A NEVER, NO.

Q AND THE ONLY THING YOU HAD WAS ONE PICTURE OF ONE MAN WHOM YOU HAD BEEN PREDISPOSED TO SAY, "THIS MAN SHOT A GUN AT A CAR. WE WANT YOU TO COME LOOK AT IT"?

A YES.

Q NOW, YOU WERE TRAVELING 65 MILES AN HOUR. THERE WAS A PERSON ON YOUR RIGHT SIDE?

A ON MY LEFT SIDE.

Q ON YOUR LEFT SIDE?

A I WAS IN THE RIGHT LANE.

Q WHO WAS DRIVING THE CAR?

A THE OTHER PERSON?

Q NO, WHO WAS DRIVING YOUR CAR?

A MY CAR, I WAS DRIVING.

Q SO WHAT I MEAN IS YOU WERE IN THE DRIVER'S SEAT. THERE WAS A PASSENGER TO YOUR RIGHT. THIS CAR ALLEGEDLY WAS OVER ON THE OTHER SIDE OF THAT PASSENGER --

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q -- DRIVING BESIDE YOU. SO AT 65 MILES AN HOUR, YOU ARE LOOKING ACROSS ANOTHER PERSON INTO ANOTHER CAR?

A NO, MY GIRLFRIEND --

Q AND YOU CAN IDENTIFY SOMEBODY?

A MY GIRLFRIEND WAS DUCKING. EVERYBODY DUCKED IN

THE CAR BUT ME, SO I HAD A CLEAR LOOK.
Q YOU WERE LOOKING THIS WAY (INDICATING) DOING 65 MILES AN HOUR GOING THAT WAY (INDICATING)?
A YEAH, I WAS TRYING TO KEEP AN EYE ON HIM. HE WAS ON MY RIGHT SIDE.
Q AND THEN YOU SWERVED INTO HIM?
A YES.
Q AND THAT'S WHEN THE GUN ACCIDENTALLY WENT OFF?
A WHEN HE PULLED THE GUN OUT, HE WAS AIMING FOR A WHILE. SO I WAS LOOKING AT HIM. SO BEFORE I KNEW IT, I JUST SWERVED MY CAR BECAUSE I DIDN'T WANT HIM TO GET A CLEAR SHOT. SO WHEN I SERVED, AT THE EXACT SAME TIME HE PULLED THE TRIGGER AND HE SWERVED AND THE GUN WENT DOWN.
Q SO HE SWERVED AT THE TIME THAT YOU SWERVED AT HIM. HE HAD BEEN DRIVING BESIDE YOU FOR A PERIOD OF TIME, NEVER FIRED THE GUN, JUST HAD THE GUN OUT THE WINDOW POINTED AT YOU. YOU SWERVED AT HIM AND THE GUN WENT OFF?
A FOR A FEW SECONDS HE HAD GOT BESIDE ME. THAT WAS HIS FIRST CHANCE.
Q WHERE SPECIFICALLY ON YOUR CAR WAS HIT?
A THE BULLET HOLE?
Q YES.
A IT WAS -- WELL, IT WAS LINED UP WITH MY HEAD;

AND IT WAS UNDER THE RIGHT PASSENGER DOOR.

Q UNDER THE RIGHT PASSENGER DOOR, ALMOST ON THE GROUND. A LITTLE LOWER AND IT WOULD HAVE MISSED YOUR CAR?

A ABOUT A HALF INCH MORE, IT WOULD HAVE MISSED THE CAR.

MR. SIMS: THAT'S ALL.

SOLICITOR BAILEY: NO REDIRECT.

THE COURT: WHAT IS YOUR POSITION HERE? STATE IT FOR THE RECORD.

MR. SIMS: YOUR HONOR, WE TAKE THE POSITION THAT THIS WITNESS ABSOLUTELY HAD NO PRIOR IDENTIFICATION AT ALL. HE RECEIVED A CALL FROM THE POLICE AND WAS TOLD BY THEM THAT -- FIRST HE PROBABLY WAS ASKED IN TERMS OF -- WHEN I ASKED HIM THIS QUESTION, HE WAS ASKED WHETHER OR NOT SOMEBODY SHOT AT HIS CAR.

"WE HAVE A PICTURE OF A MAN WHO MAY HAVE SHOT AT YOUR CAR. COME DOWN." HE HAD ONE PHOTO. THE ONLY PHOTO HE HAD IS A PICTURE OF MY CLIENT, BAYAN ALEKSEY. HE HAS BEEN PREDISPOSED TO SAY THAT THIS IS THE PERSON WHO SHOT AT HIS CAR.

WE WOULD SUBMIT TO THE COURT THERE WAS NO LINEUP, NO PHOTOGRAPHIC LINEUP. THE ONLY PICTURE THAT HE SAW WAS MY CLIENT, AFTER HAVING BEEN GIVEN

AND PLACED IN HIS MIND THAT THIS WAS THE MAN WHO HAD SHOT AT HIS CAR.

THE COURT: MY EXPERIENCE HAS BEEN THAT WHEN SOMEONE POINTS A PISTOL AT YOU, THE IMAGE OF THAT INDIVIDUAL IS FROZEN IN TIME. BE THAT AS IT MAY, AS I LOOK AT THE DEFENDANT, I SEE A YOUNG WHITE MALE, BLACK HAIR, FITTING THE DESCRIPTION OF AN ITALIAN OR SPANISH ANCESTRY.

THAT'S EXACTLY WHAT THIS WITNESS HAS SAID. HE HAD THE OPPORTUNITY TO OBSERVE HIM. HE HAD THE TIME TO OBSERVE HIM. UNDER THE CIRCUMSTANCES HE WOULD HAVE OBVIOUSLY OBSERVED HIM.

I CONCLUDE THAT THERE IS NO SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION. I AM GOING TO SUBMIT THIS TESTIMONY TO THE JURY AS FINDERS OF THE FACTS.

YOU, OF COURSE, MAY CROSS EXAMINE HIM ON THE ISSUES THAT GIVE YOU SOME CONCERN. I MAKE NO STATEMENT THAT HE IS OR IS NOT IDENTIFIED. I JUST TELL YOU THAT THERE IS SUFFICIENT EVIDENCE IN THIS RECORD FOR THE JURY TO MAKE THAT DETERMINATION.

MR. SIMS: YES, SIR. IF YOU WILL KINDLY NOTE MY OBJECTION TO YOUR RULING, YOUR HONOR.

THE COURT: I HAVE NOTED IT. THANK YOU. YOU DO NOT DESIRE TO CALL THIS WITNESS AT THIS TIME?

SOLICITOR BAILEY: YOUR HONOR, I THINK ON SECOND THOUGHT SINCE HE IS HERE AND THIS IS ALL KIND OF FRESH, I WILL GO AHEAD AND CALL HIM.

THE COURT: LET'S HIM GO BACK. I WANT HIM CALLED IN THE PRESENCE OF THE JURY. PLEASE STEP OUT. WE WILL BE CALLING YOU BACK IN JUST A MOMENT. I WANT HIM SWORN IN THE PRESENCE OF THE JURY. ARE WE READY TO PROCEED?

SOLICITOR BAILEY: THE STATE IS READY, YOUR HONOR.

THE COURT: GENTLEMEN FOR THE DEFENSE, ARE YOU READY?

MR. STONE: YES, SIR.

MR. SIMS: YES, SIR.

THE COURT: LET THE RECORD REFLECT THE DEFENDANT IS IN THE COURTROOM. BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM AT 2:20 P.M.)

THE COURT: CALL YOUR NEXT WITNESS.

SOLICITOR BAILEY: THE STATE CALLS LUIS CRUZ.

LUIS CRUZ, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: HAVE A SEAT AND GIVE US YOUR NAME FOR THE RECORD, PLEASE.

THE WITNESS: LUIS CRUZ.
DIRECT EXAMINATION.
BY SOLICITOR BAILEY:
Q LUIS, I WILL ASK YOU A FEW QUESTIONS HERE. FIRST OF ALL, TELL THE JURY WHERE YOU ARE FROM.
A I'M FROM TRENTON, NEW JERSEY.
Q AND HOW OLD ARE YOU, SIR?
A TWENTY YEARS OLD.
Q DO YOU HAVE A CAR?
A YES.
Q WHAT KIND OF CAR DO YOU HAVE?
A IT'S AN '89 TOYOTA TERCEL.
Q DID YOU HAVE THAT CAR BACK IN SEPTEMBER OF LAST YEAR?
A YES.
Q LET ME SHOW YOU A PICTURE AND ASK IF THAT IS YOUR CAR THAT YOU HAD BACK IN SEPTEMBER OF '97?
A YES, THAT'S IT.
SOLICITOR BAILEY: OFFERED WITHOUT OBJECTION, YOUR HONOR.
THE COURT: ALL RIGHT, SIR.
(STATE'S EXHIBIT NUMBER 90, PHOTOGRAPH OF CAR, IS RECEIVED INTO EVIDENCE.)
Q LUIS, THAT IS OBVIOUSLY A CAR THAT HAS GOT A FRONT SEAT AND BACK SEAT; IS THAT CORRECT?

A YES.
Q I WANT TO CALL YOUR ATTENTION TO SEPTEMBER THE 28TH, 1997, AND ASK WHETHER OR NOT YOU WENT ANYWHERE IN THAT CAR.
A YES, I DID.
Q AND WERE YOU BY YOURSELF OR DID YOU HAVE SOMEBODY WITH YOU?
A I HAD MY GIRLFRIEND WITH ME AND MY COUSIN IN THE BACK.
Q WERE YOU DRIVING?
A YES.
Q WHERE WERE YOU GOING THAT AFTERNOON?
A I WAS ON MY WAY HOME TO TRENTON.
Q WHERE WERE YOU COMING FROM?
A I WAS COMING FROM PHILADELPHIA.
Q SO YOU WERE DRIVING FROM PHILADELPHIA TO TRENTON --
A YES.
Q -- ON THE AFTERNOON OF SEPTEMBER 28TH; IS THAT CORRECT?
A YES.
Q YOU WERE DRIVING?
A YES.
Q YOUR GIRLFRIEND IS IN THE FRONT SEAT AND YOUR COUSIN IS IN THE BACK SEAT?

A YES.
Q WHAT HIGHWAY DID YOU HAVE TO GET ON TO GET FROM PHILADELPHIA TO TRENTON?
A I WAS IN PENNSYLVANIA. I WAS ON 95.
Q SO YOU WERE ON 95. CALLING YOUR ATTENTION TO ABOUT 5 P.M. WERE YOU STILL ON I-95?
A YES.
Q WHAT OCCURRED AT ABOUT 5 P.M.?
A I WAS ON THE LEFT LANE OF THE HIGHWAY. I WAS DOING ABOUT 65 MILES AN HOUR, BETWEEN 50 AND 65.
Q WHAT IS THE SPEED LIMIT ALONG IN THERE?
A I THINK IT'S 65.
Q SO YOU WERE DRIVING RIGHT AT THE SPEED LIMIT?
A YEAH.
Q OKAY.
A I WAS ON THE LEFT LANE WHEN A WHITE MUSTANG PULLED UP BEHIND ME PRETTY CLOSE. THE WHITE MUSTANG GOT ONTO THE RIGHT LANE AND HE GOT NEXT TO MY CAR. HE DROVE NEXT TO ME FOR ABOUT A MINUTE, AND THEN HE CAME AND HE CUT IN FRONT OF MY CAR.
Q LET ME SLOW YOU DOWN A SECOND, LUIS. LET ME SHOW YOU STATE'S 8 AND SEE IF YOU CAN IDENTIFY THAT.
A YES, THAT'S THE CAR.
Q WAS THE CAR WRECKED LIKE IT IS NOW?
A NO.

Q SO THIS WHITE MUSTANG PULLED UP ALONGSIDE OF YOU ON I-95 ON SEPTEMBER 28TH, 1997, AT ABOUT 5 P.M.?
A YES.
Q GO AHEAD AND TELL JURY WHAT HAPPENED THEN.
A SO HE PULLED IN FRONT OF ME AND HE CUT MY CAR OFF.
Q WHAT DO YOU MEAN HE CUT YOUR CAR OFF? WHAT DID HE DO?
A HE CUT INTO THE LEFT LANE PRETTY CLOSE IN FRONT OF MY CAR.
Q OKAY.
A THEN HE GOT BACK ONTO THE RIGHT LANE, AND HE CAME BACK AND CUT INTO THE LEFT LANE AGAIN, CUTTING IT PRETTY CLOSE AGAIN.
Q OKAY.
A SO THEN A THIRD TIME HE JUMPED BACK INTO THE RIGHT LANE, AND HE CUT ME OFF THE THIRD TIME PRETTY CLOSE.
Q LUIS, WERE YOU DOING ANYTHING TO AGGRAVATE HIM, OTHER THAN DRIVING DOWN THERE AT THE SPEED LIMIT?
A NO.
Q HOW MANY PEOPLE WERE IN THE MUSTANG, COULD YOU TELL?
A IT WAS A GUY AND A GIRL.
Q GO AHEAD AND CONTINUE AND TELL THE JURY WHAT

HAPPENED THEN.

A SO AFTER THE THIRD TIME, MY GIRLFRIEND FELT IT WAS A LITTLE FUNNY AND SHE WROTE DOWN HIS LICENSE PLATE NUMBER. SO I KEPT ON DRIVING. AFTER HE GOT BACK ONTO THE RIGHT LANE, HE DROPPED BACK PRETTY FAR, ABOUT A QUARTER OF A MILE.

I THOUGHT IT WAS ALL OVER. I KEPT DRIVING. HE CAME SPEEDING UP ON MY BUMPER AGAIN. THEN MY COUSIN LOOKED BACK AND SHE HAD TOLD ME THAT HE WAS WAVING A GUN INTO THE WINDSHIELD. FROM THERE I JUST TRIED TO GET AWAY FROM HIM.

I TOOK OFF SPEEDING AND WE WERE CUTTING THROUGH CARS AND WEAVING. I SEEN THE EXIT FOR ROUTE 1 TO GO TO TRENTON. SO I JUMPED ON THAT EXIT AND I NOTICED THE MUSTANG WAS STILL BEHIND ME.

SO WE WERE GOING DOWN ROUTE 1 AND I KEPT SWERVING SO HE WOULDN'T GET BY ME. HE KEPT TRYING TO GET ON MY RIGHT OR MY LEFT. I KEPT SWERVING. I PULLED UP TO A PICK-UP TRUCK THAT WAS ON THE LEFT LANE AND LIKE ADJUSTED MY SPEED WITH HIS SO HE COULDN'T GET BY ME.

BUT THEN AN EXIT CAME UP. IT WAS A REAL LONG EXIT, ABOUT A QUARTER OF A MILE LONG. SO HE JUMPED ONTO THE EXIT AND HE PULLED HIS CAR UP NEXT TO MINE. THAT'S WHEN I SEEN THE GUN.

Q WHEN HE PULLED HIS CAR UP NEXT TO YOURS, YOU SAID YOUR FIANCEE WAS SITTING IN THE FRONT PASSENGER SEAT. WHAT WAS SHE DOING?

A WHEN THE GUN CAME OUT THE WINDOW, EVERYBODY -- SHE DUCKED. SHE WENT DOWN.

Q DID YOU SEE THE GUN?

A YES.

Q AS THE CAR PULLED UP BESIDE YOU?

A YES.

Q YOU WERE LOOKING ACROSS THE SIDE OF YOUR CAR TO YOUR RIGHT; IS THAT CORRECT?

A OUT OF MY WINDOW, YEAH.

Q WAS THE WINDOW ON THE MUSTANG, THE DRIVER'S WINDOW, UP OR DOWN?

A IT WENT DOWN.

Q DO YOU SEE CLEARLY INTO THAT MUSTANG?

A YES.

Q TELL THE JURY WHAT YOU SAW.

A I SEEN A ITALIAN-LOOKING MAN WITH BLACK HAIR. HE HAD A BLACK JACKET AND A WHITE TURTLENECK.

Q DID YOU SEE HIS FACE?

A YES.

Q WHAT DIRECTION WAS HIS FACE LOOKING AT?

A HE WAS LOOKING AT ME SMILING.

Q SMILING?

A YES.
Q WHAT HAPPENED THEN, LUIS?
A THEN WHEN HE STUCK THE GUN OUT THE WINDOW, HE AIMED IT FOR A FEW SECONDS. SO I DIDN'T WANT HIM TO GET A CLEAR SHOT. SO I SWERVED MY CAR TOWARDS HIM SO I WOULDN'T HIT HIM. HE SWERVED AND AT THE SAME TIME HE PULLED THE TRIGGER.
Q LET ME ASK YOU THIS, LUIS. DID YOU SEE THE GUN?
A YES.
Q WHAT COLOR WAS IT?
A IT WAS A CHROME GUN.
Q DO YOU KNOW THE DIFFERENCE BETWEEN A REVOLVER AND A SEMIAUTOMATIC?
A YES.
Q WAS THIS A REVOLVER OR A SEMIAUTOMATIC?
A AUTOMATIC.
Q LOOKING DOWN IN FRONT OF YOU AT STATE'S EXHIBIT NUMBER 5, DOES THAT APPEAR TO BE GUN THAT YOU SAW?
A YES, THAT LOOKS LIKE IT.
Q DO YOU RECALL HOW THIS PERSON DRIVING BEHIND THE WHEEL WAS DRESSED, WHAT HE LOOKED LIKE?
A YEAH, HE HAD A BLACK JACKET AND A WHITE TURTLENECK.
Q WHAT ABOUT HIS RACE AND THE COLOR OF HIS HAIR,

THAT TYPE OF THING?

A HE HAD BLACK HAIR AND I THOUGHT HE WAS ITALIAN.

Q YOU THOUGHT HE WAS ITALIAN LOOKING?

A YES.

Q DID YOU GET A GOOD ENOUGH LOOK AT HIM?

A YES.

Q I ASSUME YOUR ATTENTION WAS PRETTY WELL FOCUSED AS THE GUNSHOT WENT OFF. CAN YOU IDENTIFY THAT PERSON? DO YOU SEE HIM IN COURT TODAY?

A YES, I DO.

Q WOULD YOU POINT HIM OUT.

A THAT'S HIM RIGHT THERE IN THE WHITE SHIRT.

Q YOU ARE INDICATING THE DEFENDANT, BAYAN ALEKSEY?

A YES.

Q IS THERE ANY DOUBT IN YOUR MIND THAT BAYAN ALEKSEY IS THE PERSON THAT SHOT AT YOUR CAR?

A NO DOUBT.

Q DID HE HIT YOUR CAR?

A YES.

Q WHERE DID HE HIT IT?

A HE SHOT RIGHT UNDER THE PASSENGER DOOR. IT WAS LINED UP LIKE WITH OUR HEADS.

Q LUIS, UNDER OATH HERE DID YOU DO ANYTHING TO AGGRAVATE HIM OR ANTAGONIZE HIM OR DO ANYTHING TO CAUSE HIM TO SHOOT AT YOUR CAR?

A NO, I THINK I WAS JUST DRIVING TOO SLOW FOR HIM AND HE WAS TRYING TO GET BY ME.
Q LET ME SHOW YOU THIS AND ASK YOU IF THIS IS A PICTURE OF YOUR CAR WITH A BULLET HOLE IN THE DOOR.
A YES, THAT'S IT.
Q IS THAT THE BULLET HOLE THAT ENDED UP IN YOUR CAR AFTER MR. ALEKSEY SHOT AT YOU?
A YES.
SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER THIS.
(STATE'S EXHIBIT NUMBER 91, PHOTOGRAPH OF CAR WITH BULLET HOLE, IS RECEIVED INTO EVIDENCE.)
Q LUIS, HOW ABOUT TAKE A LOOK UP HERE. I REALIZE THAT IS KIND OF GRAINY, BUT WILL YOU GET UP THERE AND SHOW THE JURY WHERE THE BULLET HIT YOUR CAR.
A (WITNESS LEAVES THE WITNESS STAND.) RIGHT HERE (INDICATING).
Q SAY IT OUT LOUD.
A THE HOLE IS RIGHT HERE (INDICATING) IN THE DOOR.
Q LUIS, HAVE A SEAT, PLEASE.
A (WITNESS RESUMES THE WITNESS STAND.)
Q LUIS, DID YOU REPORT THIS INCIDENT TO THE POLICE?
A YES.
Q DID YOU GIVE THE POLICE A DESCRIPTION OF THE

PERSON YOU SAW SHOOT AT YOUR CAR?
A YES.
Q LATER ON DID SOUTH CAROLINA POLICE OFFICERS SHOW YOU SOME PICTURES OF BAYAN ALEKSEY?
A YES.
Q DID YOU RECOGNIZE HIM AS THE MAN WHO SHOT YOUR CAR?
A YES.
Q ARE YOU IDENTIFYING MR. ALEKSEY HERE IN COURT BASED STRICTLY AND SOLELY UPON YOUR RECOLLECTION OF SEPTEMBER 28, 1997?
A YES.
Q IF YOU HADN'T EVEN SEEN THESE PICTURES, COULD YOU STILL TESTIFY UNDER OATH THAT'S HIM?
A YES.
Q ANY DOUBT IN YOUR MIND THAT IS THE MAN WHO SHOT YOUR CAR?
A NO DOUBT.
Q AND YOU REPORTED THIS TO THE POLICE?
A YES.
Q WHEN?
A THE SAME NIGHT.
Q THE SAME NIGHT?
A YES.
Q LUIS, THAT'S ALL I HAVE. PLEASE ANSWER ANY

QUESTIONS MR. SIMS MAY HAVE FOR YOU.

CROSS EXAMINATION

BY MR. SIMS:

Q MR. CRUZ, LET ME ASK YOU A FEW QUESTIONS HERE. YOU SAID YOU REPORTED THIS INCIDENT ON THAT NIGHT; IS THAT CORRECT?

A YES.

Q BUT NO ONE OR ANYBODY -- NO ONE CONTACTED YOU UNTIL SOMETIME IN JANUARY; IS THAT CORRECT?

A YES.

Q AND WHEN THEY CALLED YOU, THEY TOLD YOU THAT THEY MAY HAVE A PICTURE OF SOMEBODY WHO SHOT AT YOUR CAR?

A YES.

Q AND THEY ONLY SHOWED YOU ONE PICTURE WHEN YOU WENT TO SEE IT; IS THAT CORRECT?

A THEY SHOWED ME A LOT OF PICTURES.

Q A LOT OF PICTURES OF THE SAME PERSON?

A YES.

Q SO IT WAS A LOT OF PICTURES OF BAYAN ALEKSEY?

A YES.

Q NOT A LOT OF PICTURES OR FOUR, FIVE, SIX, SEVEN DIFFERENT MEN, JUST ONE PICTURE?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE)

Q NOW, LET ME ASK YOU. WHEN YOU WERE GOING DOWN THE HIGHWAY AND HE GOT BEHIND YOU AND YOU ALL WERE SWERVING -- YOU SWERVED TO KEEP HIM FROM PASSING YOU AFTER YOU SAY HE HAD CUT YOU OFF ABOUT THREE TIMES?

A WHEN HE STARTED CHASING ME, I STARTED SWERVING. I KNEW HE HAD A GUN AND I KNEW IF HE GOT NEXT TO ME, HE WAS GOING TO SHOOT IT. SO I WOULDN'T LET HIM PASS ME.

Q YOU KNEW HE HAD A GUN. HE DIDN'T FIRE AT YOU FROM BEHIND WHEN HE WAS BEHIND YOU?

A HE WAS WAVING IT IN THE WINDSHIELD. MY COUSIN TOLD ME THAT.

Q WAVING IT IN THE WINDSHIELD, THE DARK WINDSHIELD OF THAT MUSTANG THAT YOU IDENTIFIED?

A FROM THE WINDSHIELD, YES.

Q THAT WINDSHIELD IS RELATIVELY DARK AND THOSE WINDOWS ARE VERY TINTED, AREN'T THEY?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND THAT MUSTANG HAS A LOT MORE POWER THAN YOUR LITTLE CAR?

A I COULDN'T GET AWAY.

Q HE DIDN'T FIRE AT YOU WHILE HE WAS BEHIND YOU?

A NO.

Q HE DIDN'T FIRE AT YOU THE THREE TIMES THAT HE CUT YOU OFF?

A NO.
Q SO HE NEVER FIRED AT YOU WHILE YOU WERE GOING UP AND DOWN THE ROAD. YOU SAID HE PULLED UP BESIDE YOU AND HE HAD THE GUN IN HIS HAND?
A YEAH.
Q AND YOU SAID, I BELIEVE YOU SAID A FEW SECONDS THAT HE HAD THE GUN IN HIS HAND, AND HE NEVER FIRED A SHOT AT THAT TIME?
A NO.
Q WHEN YOU SWERVED INTO HIM, HE SWERVED AWAY FROM YOU AND THE GUN WENT OFF. THAT'S WHEN THE GUN WENT OFF, WHEN HE SWERVED AWAY FROM YOU?
A YES.
Q IT WAS -- I BELIEVE YOU SAID, "THIS IS IT"?
A YES.
Q A FEW INCHES MORE IT WOULD HAVE MISSED YOUR CAR ALTOGETHER?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q THERE WERE NO OTHER BULLETS IN YOUR CAR?
A NO.
Q NO WINDOWS?
A JUST THAT ONE SHOT.
Q NO WINDOWS WERE SHOT OUT?
A NO.
Q NO OTHER DOORS WITH BULLET HOLES IN THEM?

A NO, THAT'S THE ONLY ONE.
Q THERE WAS ONLY ONE SHOT THAT WAS FIRED AND THAT'S WHEN YOU SWERVED INTO HIM AND HE SWERVED AWAY FROM YOU?
A YES.
MR. SIMS: THAT'S ALL I HAVE.
SOLICITOR BAILEY: NO REDIRECT. THANK YOU. THAT'S ALL I HAVE. MAY HE BE EXCUSED, YOUR HONOR?
THE COURT: YES, SIR.
SOLICITOR BAILEY: MARIE MORAN.
CLERK: STATE YOUR NAME FOR THE RECORD.
THE WITNESS: MARIE MORAN.
MARIE MORAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
CLERK: SPELL YOUR NAME FOR THE COURT REPORTER, PLEASE.
THE WITNESS: IT'S MARIE MORAN, M-O-R-A-N.
DIRECT EXAMINATION
BY SOLICITOR BAILEY:
Q MRS. MORAN, PLEASE TELL THE JURY WHERE YOU ARE FROM.
A RIGHT OUTSIDE OF PHILADELPHIA, PENNSYLVANIA, A TOWN CALL SAINT DAVID.
Q HOW ARE YOU EMPLOYED THERE?
A I WORK AS A CAR SALESMAN.

Q DID YOU WORK AS A CAR SALESMAN IN AUGUST OF 1997?
A YES, I DID.
Q WHAT DEALERSHIP DID YOU WORK AT?
A COUNTY LINE AUTO SALES IN HATBORO.
Q IS THAT A NEW CAR DEALERSHIP OR USED CARS?
A ALL USED CARS.
Q AND YOU WERE A SALESMAN THERE?
A YES, I WAS.
Q AND DO YOU RECOGNIZE THE DEFENDANT IN THIS CASE, BAYAN ALEKSEY?
A YES.
Q POINT HIM OUT, PLEASE.
A RIGHT THERE (INDICATING).
Q CALLING YOUR ATTENTION TO AUGUST 1997, DID YOU SEE MR. ALEKSEY?
A YES, I DID.
Q WHERE DID YOU SEE HIM?
A AT THE CAR DEALERSHIP, AT COUNTY LINE.
Q DID HE COME TO THE DEALERSHIP?
A YES, HE DID.
Q DID HE INTRODUCE HIMSELF?
A YES, HE DID.
Q HOW DID HE INTRODUCE HIMSELF?
A HE USED THE NAME OF MICHAEL VICARI.

Q MICHAEL VICARI. HOLD ON ONE SECOND, PLEASE. (WRITING ON BOARD.) WHAT TRANSPIRED WHEN MR. ALEKSEY CAME TO THE DEALERSHIP AND INTRODUCED HIMSELF AS MICHAEL VICARI?

A HE HAD BEEN TOLD THAT WE HAD A BRIGHT YELLOW MUSTANG ON THE LOT, WHICH WE DID NOT.

Q OKAY.

A I SHOWED HIM THE ONE THAT WE DID HAVE, WHICH WAS A DEEP GREEN MUSTANG.

Q WHAT YEAR MUSTANG?

A NINETY-FIVE.

Q AND DID Y'ALL HAVE A CONVERSATION ABOUT THAT MUSTANG?

A YES.

Q OKAY.

A HE WANTED TO DRIVE IT. WE LET HIM TEST DRIVE IT. HE BROUGHT IT RIGHT BACK.

Q WAS HE BY HIMSELF OR DID HE HAVE SOMEBODY WITH HIM?

A THE FIRST TIME HE CAME ON THE LOT, YES, HE WAS BY HIMSELF.

Q THEN HE TOOK THE CAR FOR A DRIVE?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q DID HE BRING THE CAR BACK?

A HE BROUGHT IT BACK AND TOLD US HE WAS INTERESTED

AND SAID THAT HE WOULD BE BACK THAT AFTERNOON OR EVENING, BUT HE WOULD CALL AND LET US KNOW IF HE WAS SERIOUSLY INTERESTED IN THE CAR OR NOT. THAT AFTERNOON HE DID COME BACK WITH A WOMAN.

Q ALL RIGHT.

A WHO HE DID NOT INTRODUCE AND SHE DID NOT INTRODUCE HERSELF. OBVIOUSLY IT WAS A FRIEND OF HIS. HE WANTED TO TAKE HER FOR A TEST DRIVE AS WELL. WE LET HIM TAKE THE CAR AGAIN AND THEY BROUGHT IT BACK, AND IT WAS DEFINITE. WE WERE TO HAVE THE CAR PREPARED, DETAILED AND ALL READY TO GO FOR THAT EVENING.

Q WAS THERE A DISCUSSION ON THE PRICE?

A VERY SHORT DISCUSSION, VERY SHORT DISCUSSION ON THE PRICE. WE AGREED UPON A PRICE. WE AGREED TO HAVE THE CAR READY THAT EVENING BY AROUND SIX, AND HE SAID HE WOULD BE BACK WITH EITHER CASH OR A BANK CHECK DRAWN ON HIS SISTER'S ACCOUNT.

Q WHAT TIME DID Y'ALL CLOSE THAT DAY?

A NINE O'CLOCK, 9 P.M.

Q DID HE RETURN?

A ABOUT FIVE OF NINE.

Q ABOUT WHAT?

A FIVE OF NINE.

Q FIVE TILL NINE?

A YES.
Q WHAT, IF ANYTHING, DID HE HAVE WITH HIM?
A HE BROUGHT, INSTEAD OF CASH OR A BANK CHECK, HE BROUGHT A CASHIER'S CLERK. THE CAR WAS READY TO GO. WE HAD THE PLATES READY. ALL THE CONTRACTS WERE DRAWN UP.

HE HAD TO SIGN EVERYTHING BUT I DIDN'T FEEL AS THOUGH I COULD JUST TAKE A CASHIER'S CHECK SINCE THE DEAL WAS EITHER FOR CASH OR A BANK CHECK. THE OWNER OF THE DEALERSHIP WAS THERE. I TOOK THE CASHIER'S CHECK TO HIM AND HE AGREED TO ACCEPT IT.

Q LET ME HAND YOU STATE'S 89 AND ASK IF YOU CAN IDENTIFY THIS.
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q IS THAT THE CHECK HE GAVE YOU?
A YES.
Q THAT CHECK IS FOR $18,014; IS THAT CORRECT?
A CORRECT.
Q WAS THAT THE PURCHASE PRICE?
A WITH SALES TAX AND TAGS.
Q FOR THE 1995 GREEN MUSTANG?
A YES.
Q AND IT'S SIGNED BY SARAH PIVERO?
A CORRECT.

Q DID YOU SEE ANYBODY NAMED SARAH PIVERO?
A NO.
Q DID YOU INQUIRE WHO SARAH PIVERO WAS?
A YES.
Q DID YOU ASK MR. ALEKSEY OR MR. VICARI WHO SARAH PIVERO WAS?
A HE SAID IT WAS HIS SISTER.
Q HIS SISTER. AFTER DISCUSSING THIS WITH THE MANAGER/OWNER OF THE CAR LOT, DID Y'ALL GO AHEAD AND MAKE THE SALE?
A YES, WE DID.
Q IS THIS THE PAPERWORK HERE THAT WAS FILLED OUT, THE ODOMETER DISCLOSURE STATEMENT AND THE PURCHASE AGREEMENT?
A YES, IT IS.
Q THAT'S SIGNED IN THE NAME MICHAEL VICARI?
A YES.
Q THAT'S THIS MAN OVER HERE, BAYAN ALEKSEY?
A YES.
Q HE GAVE YOU THIS CHECK AND SIGNED THIS PAPER HERE?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
SOLICITOR BAILEY: WE OFFER THIS AS ONE EXHIBIT, YOUR HONOR.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 92, ODOMETER DISCLOSURE AND PURCHASE AGREEMENT, IS RECEIVED INTO EVIDENCE.)

Q MRS. MORAN, TO MAKE SURE WE ARE CLEAR, YOU ASKED FOR A CERTIFIED CHECK OR A CASHIER'S CHECK OR CASH?

A WE ASKED FOR A BANK CHECK OR CASH.

Q AND THIS IS NEITHER ONE; IS THAT CORRECT?

A CORRECT.

Q THE CHECK YOU GOT?

A IT WAS A CERTIFIED CHECK.

Q THERE IS A STAMP ON HERE. IT APPEARS TO BE STAMPED CERTIFIED BY A BANK; IS THAT CORRECT?

A YES.

Q AND BASED ON THAT SEEING THAT CERTIFICATION, Y'ALL ACCEPTED THAT CHECK?

A YES.

Q DID THE CHECK CLEAR?

A NO, IT DID NOT.

Q DID IT TURN OUT THAT THE BANK HAD NEVER CERTIFIED THAT CHECK AND THAT STAMP WAS A FORGED CERTIFICATION?

A CORRECT. IT WAS NOT A GOOD CHECK.

Q SO THE CHECK BOUNCED; IS THAT CORRECT?

A YES.

Q DID MR. ALEKSEY DRIVE OFF THE CAR LOT WITH THAT 1985 GREEN MUSTANG?
A YES, HE DID.
Q THANK YOU. NOTHING FURTHER. PLEASE ANSWER ANY QUESTIONS MR. SIMS HAS.
CROSS EXAMINATION
BY MR. SIMS:
Q MA'AM, I JUST HAVE MAYBE ONE OR TWO QUESTIONS FOR YOU. DID YOU CALL ANYBODY THAT EVENING TO VERIFY WHETHER THAT WAS THEIR CHECK?
A NO, WE DID NOT. BY THE TIME WE ACTUALLY RECEIVED THE CHECK FROM MICHAEL, IT WAS WAY AFTER NINE AND AFTER HE EXAMINED THE CAR AND ACCEPTED THE CAR, SO THERE WERE NO BANKS OPEN.
Q DID YOU CALL THE OWNER OF THE CHECK OR THE PERSON WHOSE NAME WAS LISTED ON THE CHECK?
A NO, WE DID NOT.
Q YOU DIDN'T CALL ANYONE?
A NO, WE DID NOT.
THE COURT: ANYTHING FURTHER?
SOLICITOR BAILEY: NO, SIR.
THE COURT: YOU MAY COME DOWN. YOU ARE EXCUSED. THANK YOU.
SOLICITOR BAILEY: CALL LISA WATSON.
CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: LISA A. WATSON.

LISA A. WATSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. WATSON, YOU TESTIFIED IN AN EARLIER PART OF THIS TRIAL. I WON'T GO BACK THROUGH THAT. YOU TESTIFIED THAT YOU HAD DEVELOPED SOME TYPE OF RELATIONSHIP WITH MR. ALEKSEY; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND YOU KNEW HIM UNDER THE NAME OF JOEY BARKLEY AND JOEY GAMBINO; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND I BELIEVE YOU TESTIFIED WHEN YOU MET HIM, HE WAS DRIVING A GREEN MUSTANG?

A YES.

Q AND I BELIEVE YOU FURTHER TESTIFIED THAT THE MUSTANG INVOLVED IN THE SHOOTING OF THE STATE TROOPER DOWN HERE, THE WHITE MUSTANG, WAS A CAR YOU LEASED AND REPORTED STOLEN; IS THAT CORRECT?

A CORRECT.

Q BECAUSE MR. ALEKSEY NEVER MADE ANY PAYMENTS ON IT?

A NEVER.

Q NOW, CALLING YOUR ATTENTION TO SEPTEMBER 25,

1997, WHICH WAS THE DATE OF THE LEASE, HOW DID IT COME ABOUT THAT YOU AGREED TO LEASE AN EXPENSIVE CAR LIKE THIS IN YOUR NAME FOR SOMEBODY ELSE? WHY DID YOU DO IT?

A HE TOLD ME HE HAD BAD CREDIT AND WE HAD BUILT A RELATIONSHIP. I TRUSTED HIM AND HE SAID HE WAS GOING TO MAKE FULL PAYMENTS ON THE CAR. HE WASN'T EVEN GOING TO MAKE PAYMENTS. HE WAS GOING TO PAY THE CAR OFF COMPLETELY AND HE NEVER DID.

Q WAS THERE ANY FURTHER DISCUSSION? DID YOU IMMEDIATELY AGREE TO GO AHEAD AND SIGN THESE PAPERS?

A NO, I DIDN'T AT FIRST. I WAS SCARED. I DIDN'T THINK EVERYTHING WAS ON THE UP AND UP.

Q DID YOUR NEGOTIATIONS WITH HIM CONTINUE IN AN ATTEMPT FOR HIM TO GET YOU TO SIGN THE LEASE PAPERS?

A YES.

Q TELL THE JURY HOW THAT HAPPENED, WHAT HE SAID TO YOU TO INDUCE YOU TO GO AHEAD AND SIGN THOSE LEASE PAPERS..

A THAT I SHOULD DO IT OR HE WAS GOING TO KILL ME.

Q NOW, WHEN HE SAID HE WAS GOING TO KILL YOU IF YOU DIDN'T SIGN THE LEASE PAPERS, DID HE HAVE ANY KIND OF A WEAPON ON HIM OR ANYTHING OF THAT NATURE?

A THE GUN.

Q A GUN?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q DID YOU EVER DRIVE THIS MUSTANG?

A I CAN'T DRIVE A STICK SHIFT.

Q AND WHEN HE THREATENED TO KILL YOU AND HAD A GUN WITH HIM, WERE YOU AFRAID?

A NO, I THOUGHT IT WAS A JOKE.

Q YOU THOUGHT HE WAS JOKING WITH YOU?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q BUT AT ANY RATE YOU WENT AHEAD AND SIGNED THESE LEASE PAPERS?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND NO QUESTION THAT IF YOU DIDN'T, REGARDLESS OF HOW YOU TOOK IT, HE THREATENED TO KILL YOU AND HAD A GUN WITH HIM?

A NO, BECAUSE HE WAS LAUGHING, TOO.

Q HE WAS LAUGHING. I CALL YOUR ATTENTION TO LATE SEPTEMBER, ABOUT SEPTEMBER 29TH, DO YOU RECALL HAVING A CONVERSATION WITH MR. ALEKSEY ABOUT AN INCIDENT HE HAD OUT ON THE HIGHWAY WITH SOMEBODY?

A YEAH, HE SAID SOME -- EXCUSE MY LANGUAGE -- SOME ASSHOLE GOT IN HIS WAY, SO HE SHOT HIM.

Q SOME ASSHOLE GOT IN HIS WAY SO HE SHOT HIM?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q NOW, AT SOME POINT AFTER YOU LEASED THIS MUSTANG FOR MR. ALEKSEY, WERE YOU CONTACTED BY THE FORD MOTOR CREDIT OR SOMEBODY TO SAY, "THIS LEASE IS IN YOUR NAME. WHERE IS MY MONEY"?

A WELL, I KEPT CALLING EVERYDAY TO SEE IF A PAYMENT WAS BEING MADE ON IT BECAUSE AT THIS TIME HE WASN'T EVEN TALKING TO ME. HE WAS GOING THROUGH MY HUSBAND BECAUSE HE HAD TOLD MY HUSBAND WHAT HAPPENED.

Q DID YOU EVER CONTACT MR. ALEKSEY DIRECTLY, EITHER IN PERSON OR BY TELEPHONE AFTER --

A NO, HE COULD CALL ME. I NEVER CALLED HIM.

Q DID YOU HAVE CONVERSATIONS WITH HIM AFTER YOU REALIZED THE PAYMENTS WERE NOT BEING MADE ON THIS MUSTANG?

A YES.

Q WOULD YOU TELL US ABOUT THAT. WHAT WAS SAID?

A AT ONE TIME HE ASKED ME IF I KNEW WHO HE WAS TALKING TO ON THE OTHER LINE. I THOUGHT IT WAS A THREE-WAY CONVERSATION WHERE IT WAS, AND HE SAID, "I'M TALKING TO A DEAD PERSON AND HUNG UP THE PHONE," MEANING I WAS GOING TO DIE.

Q WERE YOU FRIGHTENED AT THAT TIME?

A YES. AND THEN THE NEXT CONVERSATION HE SAID HE WAS A GAMBINO.

Q SAID HE WAS A GAMBINO?

A CORRECT.
Q WHAT DID GAMBINO MEAN TO YOU?
A A NEW YORK CRIME FAMILY.
Q AND I MAY HAVE ASKED YOU THIS EARLIER WHEN YOU TESTIFIED, MRS. WATSON, BUT HOW MUCH DID THIS RELATIONSHIP YOU HAD WITH MR. ALEKSEY END UP COSTING YOU?
A FORTY-TWO THOUSAND DOLLARS.
Q AND HOW DO YOU BREAK THAT DOWN? HOW DID YOU LOSE $42,000 BECAUSE OF HIM?
A THE CAR, MY HUSBAND'S CREDIT CARDS, MY CREDIT CARDS.
Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU.
CROSS EXAMINATION
BY MR. SIMS:
Q MRS. WATSON, YOU SAID HE WAS LAUGHING AT THE TIME HE TOLD YOU ABOUT KILLING YOU; RIGHT?
A CORRECT.
Q YOU THOUGHT HE WAS PLAYING?
A AFTER THE FACT, YEAH. I DIDN'T THINK HE COULD KILL ANYONE.
Q YOU DIDN'T THINK HE COULD AND HE WAS PLAYING. SO YOU WERE NOT AFRAID OF HIM?
A NO.

Q AND IF YOU HAD BEEN AFRAID OF HIM, THIS WAS SOMETIME PRIOR TO THE PURCHASE OF THE AUTOMOBILE. YOU COULD HAVE GONE TO THE POLICE, CALLED THE POLICE AT ANY TIME; ISN'T THAT RIGHT?

A RIGHT AFTER I FOUND OUT WHAT HE WAS DOING TO ME, I DID GO TO THE POLICE.

Q BUT YOU DIDN'T GO TO THE POLICE BECAUSE HE TOLD YOU HE WOULD KILL YOU OR HAD A GUN?

A NO, HE WAS SUPPOSED TO MAKE THE PAYMENTS. HE'S A GOOD CON ARTIST.

Q SO WHAT YOU ARE SAYING IS WHEN HE SAID THAT, IT WAS A JOKING MANNER, HE WAS LAUGHING AT THE TIME AND YOU DID NOT EVEN GIVE IT ANOTHER THOUGHT?

A NO.

Q NOW, YOU TALKED TO THE POLICE DOWN HERE IN SOUTH CAROLINA, AND IN YOUR STATEMENT TO THEM YOU NEVER SAID ANYTHING ABOUT THE GAMBINO FAMILY OR ANYTHING LIKE THAT; DID YOU?

A YEAH, IN MY STATEMENT, YEAH. I TOLD THEM THE NAMES THAT HE USED.

Q THAT HE WAS WITH THE GAMBINO FAMILY?

A I SAID THAT WAS ONE OF THE NAMES HE USED.

Q OH, THAT WAS ONE OF THE NAMES HE USED?

A YEAH. I PROBABLY DIDN'T THINK HE WAS WITH THE GAMBINO FAMILY.

Q YOU DIDN'T THINK ANYTHING ABOUT THAT. THAT WAS JUST BRAVADO. HE WAS JOEY BARKLEY --

A JOEY BARKLEY, AND I THOUGHT HE WAS TRYING TO SCARE ME WITH THE GAMBINO. I FIGURE IF THE COPS DIDN'T GET HIM, THE GAMBINOS WOULD.

Q SO YOU WEREN'T EVEN CONCERNED ABOUT HIM?

A HIM?

Q THERE IS NO QUESTION THAT YOU WERE THE ONE WHO WENT DOWN AND LEASED THE VEHICLE, THE WHITE MUSTANG?

A NO. I HAD MY TWO KIDS WITH ME ALSO.

Q YES, MA'AM, BUT YOU WERE THE ONE WHO SIGNED ON THE DOTTED LINE?

A YES.

Q YOUR KIDS DIDN'T SIGN?

A OH, OF COURSE NOT.

MR. SIMS: THAT'S ALL I HAVE.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. MAY THIS WITNESS NOW BE EXCUSED?

SOLICITOR BAILEY: YES, SIR.

THE WITNESS: MAURICE KEITT.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: MAURICE KEITT.

MAURICE KEITT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: K-E-I-T-T.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. KEITT, WHERE ARE YOU EMPLOYED AT THIS TIME?

A AT FOOD LION.

Q PRIOR TO WORKING AT FOOD LION, WHAT KIND OF WORK DID YOU DO?

A CORRECTIONAL OFFICER.

Q WERE YOU A CORRECTIONAL OFFICER AT THE ORANGEBURG DETENTION CENTER?

A YES, SIR.

Q HOW LONG DID YOU DO THAT KIND OF WORK?

A THREE YEARS.

Q WOULD YOU STATE WHETHER OR NOT YOU WERE AT WORK ON JANUARY 27, 1998?

A YES, SIR, I WAS.

Q AND ON THAT DAY WAS BAYAN ALEKSEY, WHO IS SEATED OVER HERE BESIDE MR. SIMS, AN INMATE AT THE DETENTION CENTER HERE?

A YES, HE WAS.

Q AND DO YOU RECALL WHAT CELL HE WAS IN?

A THREE-TWELVE, 313, ON THE LOWER LEVEL.

Q THAT JAIL HAS MORE THAN ONE FLOOR?

A YES, SIR.
Q WHERE ARE 312 AND 313, THE FIRST FLOOR?
A RIGHT.
Q DOES EACH CELL HAVE A SMALL WINDOW IT?
A RIGHT.
Q THOSE PARTICULAR TWO CELLS -- HE WAS IN ONE OR THE OTHER CELL, YOU DON'T RECALL AT THIS TIME WHICH ONE IT WAS?
A NO, NOT EXACTLY.
Q ARE THOSE WINDOWS, ARE THEY TO THE OUTSIDE?
A RIGHT, TO THE OUTSIDE.
Q AND THESE ARE RATHER SMALL WINDOWS; IS THAT CORRECT?
A RIGHT.
Q WOULD YOU TELL THE JURY HOW THOSE JAIL CELLS ARE FURNISHED AT THE DETENTION CENTER?
A EVERYTHING IS PRETTY MUCH METAL, TWO STOOLS, A TABLE, METAL, BOLTED DOWN TO THE FLOOR. TWO BUNKS, METAL, BOLTED TO THE WALL, TOILET AND SINK.
Q ON THIS PARTICULAR OCCASION THAT WE HAVE ESTABLISHED WAS JANUARY 27, WAS MR. ALEKSEY IN A CELL BY HIMSELF OR DID HE HAVE A CELL MATE IN THERE WITH HIM?
A HE WAS BY HIS SELF.
Q AND CALLING YOUR ATTENTION TO ABOUT SEVEN TO

7:30 P.M. THAT AFTERNOON, DID YOU GO BY MR. ALEKSEY'S CELL?

A YES, I DID.

Q DID YOU HAVE A CONVERSATION WITH HIM?

A YES.

Q WHAT DID HE TELL YOU?

A HE TOLD ME HE JUST KNOCKED THE WINDOW OUT.

Q DID YOU LOOK INSIDE THE CELL TO SEE IF HE HAD KNOCKED THE WINDOW OUT?

A YES, SIR, I DID.

Q I WILL SHOW YOU A POLAROID PHOTOGRAPH AND ASK IF THAT APPEARS TO BE A PICTURE OF THE WINDOW HE BROKE OUT?

THE COURT: HAVE YOU SEEN THESE PICTURES, GENTLEMEN FOR THE DEFENSE?

MR. STONE: PROBABLY. IF I CAN TAKE A LOOK AT THEM.

SOLICITOR BAILEY: I OFFER THIS.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 93, A PHOTOGRAPH OF JAIL WINDOW, IS RECEIVED INTO EVIDENCE.)

Q MR. KEITT, THAT IS A PICTURE OF THE WINDOW FROM THE INSIDE; IS THAT CORRECT?

A YES, IT IS.

Q THIS PICTURE HERE, WOULD THAT BE A PICTURE OF

THE WINDOW FROM THE OUTSIDE?

A RIGHT.

SOLICITOR BAILEY: WE WOULD OFFER THIS, YOUR HONOR.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 94, PHOTOGRAPH OF JAIL WINDOW, IS RECEIVED INTO EVIDENCE.)

Q IS THIS A PICTURE OF OUTSIDE OF THE JAIL SHOWING THE LOCATION OF THE WINDOWS ON THE FIRST FLOOR?

A YES, SIR.

(STATE'S EXHIBIT NUMBER 95, PHOTOGRAPH OF OUTSIDE OF JAIL, IS RECEIVED INTO EVIDENCE.)

Q MR. KEITT, WHEN MR. ALEKSEY TOLD YOU HE HAD BUSTED THE WINDOW OUT, DID YOU LOOK INSIDE THE CELL TO SEE IF THE WINDOW REALLY WAS BUSTED?

A YES, SIR, I DID.

Q WAS IT BUSTED OUT?

A YES, SIR.

Q AND WHAT WAS THE SITUATION REGARDING THE FURNITURE IN THERE THAT YOU DESCRIBED? ANYTHING UNUSUAL?

A HE HAD BROKE THE STOOL AWAY FROM THE STAND, THE METAL.

Q DOES THIS APPEAR TO BE THE STOOL HE BROKE OFF?

A YES, SIR.

Q THIS IS ATTACHED TO THE FLOOR?
A THIS IS ATTACHED TO A SWIVEL, ANOTHER SWIVEL PLATE THAT RUNS INTO THE FLOOR.
Q IS THAT WELDED DOWN THERE?
A YES, SIR.
Q THE REASON IT'S WELDED THERE IS SO IT WILL STAY IN PLACE?
A RIGHT.
Q AND TO THE BEST OF YOUR KNOWLEDGE THIS APPEARS TO BE WHAT HE TORE OFF AND BUSTED THAT WINDOW OUT WITH?
A YES, SIR.

SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 96, STOOL, IS RECEIVED INTO EVIDENCE.)

Q MR. KEITT, DID YOU HAVE ANY FURTHER CONVERSATION WITH MR. ALEKSEY ABOUT THIS INCIDENT, TEARING THAT PIECE OF FURNITURE OFF AND BUSTING THE WINDOW OUT OF THE JAIL?
A WELL, I KIND OF ASKED HIM WHY. HE SAID HE WAS FRUSTRATED.
Q HE WAS FRUSTRATED?
A YES.

Q SHORTLY AFTER THAT WAS WE SENT TO SAFEKEEPING?
A YEAH, A WHILE LATER, A WEEK OR SO. I DON'T REMEMBER, MAYBE TWO WEEKS.
Q WHAT IS SAFEKEEPING?
A THAT'S SUPPOSED TO BE WHEN HE IS LIKE IN SOLITARY CONFINEMENT.
Q IN YOUR EXPERIENCE AS A CORRECTIONAL OFFICER, WHEN DO Y'ALL SEND PEOPLE TO SAFEKEEPING?
A WELL, WHEN THEY MAYBE GOING TO HURT THEIR SELF OR ESCAPE OR HIGH RISK.
Q SHORTLY AFTER THIS INCIDENT, MR. ALEKSEY WAS SENT UP TO SAFEKEEPING?
A YES, SIR.
Q THANK YOU, MR. KEITT. PLEASE ANY QUESTIONS MR. STONE MAY HAVE FOR YOU.

MR. STONE: EXCUSE ME JUST A MOMENT. LET ME GET THESE MARKED.

SOLICITOR BAILEY: NO OBJECTION TO ANY OF THEM, YOUR HONOR.

(DEFENDANT'S EXHIBITS NUMBER 10 THROUGH 14, PHOTOGRAPHS FROM THE JAIL, ARE RECEIVED INTO EVIDENCE.)

CROSS EXAMINATION

BY MR. STONE:

Q OFFICER, FIRST OF ALL, LET ME MAKE SURE I

UNDERSTAND THIS. MR. ALEKSEY CALLED YOU TO TELL YOU OR CALLED SOMEBODY TO TELL THEM HE HAD BROKEN THE WINDOW OUT?

A YES, SIR.

Q HE TOLD YOU THAT BECAUSE HE SAID HE WAS FRUSTRATED?

A YES.

Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S (SIC) EXHIBIT 10 AND ASK IF YOU CAN IDENTIFY THAT.

A THAT SEEM LIKE THE OUTSIDE, LOOKING OUT FROM THE WINDOW.

Q AND STATE'S (SIC) EXHIBIT 11?

A THAT'S A PICTURE OF THE OUTSIDE.

Q LET ME HAND ALL THREE OF THESE TO YOU. STATE'S (SIC) 14, 13 AND 12 AND ASK YOU IF THOSE ARE FAIR AND ACCURATE DEPICTIONS OF THE JAIL.

A YES.

Q LET ME SHOW YOU ON THE MONITOR THEN, STATE'S (SIC) EXHIBIT 10. THIS IS OUTSIDE THE WINDOW OF MR. ALEKSEY'S CELL; IS THAT CORRECT?

A LOOKS TO BE.

Q AND THIS (INDICATING) IS THE SIDE WALL. THESE WINDOWS ALONG HERE (INDICATING), THOSE ARE THE WINDOWS THAT -- ONE OF THOSE WINDOWS IS THE WINDOW HE BROKE OUT; IS THAT RIGHT?

A RIGHT.
Q THIS IS A CLOSE-UP OF THAT SAME WINDOW; IS THAT CORRECT?
A YES.
Q IT APPEARS TO BE WHAT, SIX FEET OFF THE GROUND OR CAN YOU TELL? DO YOU KNOW HOW MANY FEET THAT IS OFF THE GROUND?
A NOT MUCH, FIVE OR SIX FEET.
Q THIS IS A CLOSEUP OF THAT WINDOW; IS THAT CORRECT?
A YES, SIR.
Q AND THAT IS THE ONLY WINDOW IN THAT CELL; IS THAT RIGHT?
A RIGHT.
Q AND THIS IS DEFENDANT'S EXHIBIT NUMBER 14. THAT'S THE JAIL CELL ITSELF?
A YES.
Q THAT'S THE INSIDE OF THE JAIL CELL?
A RIGHT.
Q IS THAT A FAIR AND ACCURATE DEPICTION OF THE JAIL CELL?
A PRETTY MUCH.
Q THAT'S A TYPICAL CELL AT THE DETENTION CENTER?
A RIGHT.
Q I AM NOT LEAVING ANYTHING OUT WITH THAT PICTURE,

AM I? THAT PRETTY MUCH ENCOMPASSES THE WHOLE CELL?
A YEAH, EXCEPT FOR THE STOOL THAT IS MISSING FROM THE TABLE.
Q RIGHT.
MR. STONE: NOTHING ELSE.
SOLICITOR BAILEY: NO REDIRECT.
THE COURT: YOU MAY COME DOWN. THIS WITNESS MAY BE EXCUSED?
SOLICITOR BAILEY: YES, SIR. YOUR HONOR, MS. GARRICK IS GOING TO CHECK ON OUR NEXT WITNESS IF I HAVE COULD HAVE A SECOND.
(PAUSE.)
SOLICITOR BAILEY: LET ME GO CHECK ON THE WITNESS.
THE COURT: LET'S TAKE A SHORT BREAK WHILE HE IS CHECKING ON THE WITNESS. WE WILL RETURN VERY SHORTLY.
(THE JURY RETIRES TO THE JURY ROOM.)
(WHEREUPON THERE WAS A RECESS.)
THE COURT: I AM HEARING A LITTLE BIT TO MUCH CONVERSATION TOWARDS THE BACK OF THE COURTROOM AND VARIOUS AREAS. PLEASE DURING THE TAKING OF THE TESTIMONY, DO NOT SPEAK TO YOUR NEIGHBORS. DO NOT HAVE ANY CONVERSATION WHATSOEVER WITH ANYBODY. THANK YOU SO MUCH. BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT. CALL YOUR NEXT WITNESS.

SOLICITOR BAILEY: MRS. DOZIER.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: VERNETIA DOZIER.

VERNETIA DOZIER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

THE WITNESS: MY LAST NAME IS DOZIER, D-O-Z-I-E-R.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. DOZIER, YOU TESTIFIED IN THE FIRST PART OF THIS TRIAL THAT YOU WERE DEPUTY DIRECTOR AT THE DETENTION CENTER; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND AS DEPUTY DIRECTOR, YOU HAVE SOME INVOLVEMENT WITH THE PLACEMENT OF PRISONERS WITHIN THE JAIL SYSTEM; IS THAT CORRECT?

A THAT IS CORRECT.

Q NOW, I WANT TO CALL YOUR ATTENTION TO JANUARY 27, 1998, OR SHORTLY AFTER THAT. DID YOU BECOME AWARE OF AN INCIDENT IN WHICH IT WAS REPORTED

TO YOU THAT MR. ALEKSEY HAD TAKEN A STOOL AND RIPPED THE STOOL OFF OF THE WALL HERE (INDICATING) AND BROKEN THE WINDOW OUT OF HIS CELL?

A YES, I RECEIVED A REPORT ON MY DESK THE FOLLOWING DAY.

Q AND BASED ON MR. ALEKSEY'S CONDUCT, NOT ONLY BREAKING THE WINDOW AND DESTROYING THAT FURNITURE, DID THE ADMINISTRATION OF THE JAIL ELECT TO FILL OUT THE PAPERWORK TO SEND HIM TO SAFEKEEPING?

A YES. WHAT WE INITIALLY DID WAS SIGN A WARRANT FOR THE DAMAGE DONE TO THE JAIL AND ATTEMPTED ESCAPE.

Q AND WOULD YOU STATE WHETHER OR NOT YOU DID SEND HIM TO SAFEKEEPING?

A YES, HE WAS SENT TO SAFEKEEPING.

Q WHAT IS SAFEKEEPING?

A SAFEKEEPING IS WHERE WE SEND INMATES THAT ARE HARD TO HANDLE OR WE CONSIDER ESCAPE RISKS.

Q THAT WAS DONE WITH MR. ALEKSEY?

A THAT WAS DONE WITH MR. ALEKSEY.

Q THANK YOU. THAT'S ALL I HAVE.

MR. STONE: JUST BRIEFLY.

CROSS EXAMINATION

BY MS. STONE:

Q LET ME PUT THIS UP THERE. SO THIS, THAT IS NOT SAFEKEEPING? THAT'S JUST YOUR NORMAL CELLS?

A THAT IS OUR NORMAL CELLS.
Q AND HE WAS MOVED TO A HIGHER SECURITY THAN THAT CELL ITSELF THEN, RIGHT?
A YES, HE WAS. HE WAS PLACED ON AN UPSTAIRS ROOM.
Q IT IS THE DETENTION CENTER POLICY -- I'M SORRY. FOR THE RECORD THAT IS DEFENDANT'S EXHIBIT 14. IT IS THE DETENTION CENTER POLICY TO CHARGE ANYONE WHO BREAKS A WINDOW, CRACKS A WINDOW WITH ESCAPE; IS THAT CORRECT?
A IF IT'S AN EXTERIOR WINDOW, THAT IS CORRECT.
Q HOW BIG IS THIS EXTERIOR WINDOW? IS THIS A FAIR AND ACCURATE DEPICTION OF HOW BIG THAT WINDOW IS?
A YES, IT IS.
Q IS THIS THE WINDOW WE ARE TALKING ABOUT HERE, DEFENDANT'S EXHIBIT 14?
A IT APPEARS TO BE THE WINDOW.
Q IN ORDER TO GET THROUGH THAT WINDOW, YOU HAVE GOT TO GET THROUGH THAT YARD (INDICATING)?
A THAT LOOKS LIKE THE AREA.
Q AND THEN OVER THAT FENCE (INDICATING)?
A YES, SIR.
Q IS THIS RAZOR WIRE OUTSIDE THAT WINDOW?
A ON THE TOP OF FENCE IT IS RAZOR WIRE.
Q A HUMAN CAN'T GET THROUGH THAT WINDOW, CAN THEY?
A ONLY IF THEY HAVE SOMEONE OUTSIDE TO CUT IT.

Q CUT THE WINDOW?
A CUT THE WIRE.
Q OKAY.
A THE WINDOW, WE HAVE HAD SOME PROBLEMS WITH THE FRAMES AND SQUEEZING OUT THE FRAMES. WE ARE WORKING ON IT BUT SOMETIMES THE FRAMES ARE LOSE.

MR. STONE: NOTHING ELSE.

SOLICITOR BAILEY: REDIRECT, VERY BRIEFLY.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. DOZIER, HAVE Y'ALL EVER HAD AN ESCAPE FROM THE JAIL HERE IN ORANGEBURG?

MR. STONE: OBJECTION. HE DIDN'T ESCAPE FROM THE JAIL. HE DIDN'T ESCAPE OUT OF THAT WINDOW.

THE COURT: NO, SIR. BASED ON YOUR EXAMINATION, I WILL PERMIT THE REDIRECT.

A YES, WE HAVE HAD SOME ESCAPES FROM THE JAIL.
Q HOW LONG HAVE YOU BEEN DEPUTY DIRECTOR?
A APPROXIMATELY A YEAR.
Q AND HOW MANY ESCAPES HAVE Y'ALL HAD DURING THE LAST YEAR?
A NONE IN THE LAST YEAR.
Q BUT YOU HAVE KNOWLEDGE OF ESCAPEES PRIOR TO THAT?
A YES.

Q HAS ANYBODY EVER GOTTEN OUT FROM ONE OF THESE LITTLE WINDOWS TO YOUR KNOWLEDGE?
A NOT THOSE WINDOWS.
Q OTHER WINDOWS IN THE JAIL?
A OTHER WINDOWS IN THE JAIL.
Q HAVE THEY GOTTEN OVER THE RAZOR WIRE?
A THEY HAVE GONE OVER THE RAZOR WIRE AND CUT THROUGH THE RAZOR WIRE.

RECROSS EXAMINATION

BY MR. STONE:

Q BAYAN ALEKSEY DIDN'T ESCAPE FROM THE JAIL CELL, DID HE?
A NO, HE DIDN'T.
Q HE DIDN'T EVEN MAKE AN EFFORT TO GET OUT OF THAT WINDOW, DID HE?
A I CAN'T ANSWER THAT QUESTION.
Q BUT HE CALLED FOR HELP FROM THE PEOPLE IN THE DETENTION CENTER AFTER HE BROKE THE WINDOW, DIDN'T HE?
A I WAS INFORMED OF THAT.
Q RIGHT. YOU HAVE NEVER HAD ANYBODY SQUEEZE THROUGH THAT LITTLE WINDOW THAT WAS JUST UP THERE, HAVE YOU?
A NOT YET.

MR. STONE: NOTHING ELSE.

THE COURT: YOU MAY COME DOWN. MAY THIS WITNESS NOW BE EXCUSED?

SOLICITOR BAILEY: YES, YOUR HONOR.

THE COURT: THANK YOU SO MUCH.

SOLICITOR BAILEY: THE STATE RECALLS DR. JOEL SEXTON.

JOEL STEVEN SEXTON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

MR. STONE: IF HE IS GOING TO ATTEMPT TO INTRODUCE COLOR AUTOPSY PICTURES, THERE IS ABSOLUTELY NO RELEVANCE WHATSOEVER TO THE PROCEEDING. WE ALREADY KNOW WHICH WAY THE BULLETS TRAVELED. WE KNOW WHERE THE BODY WAS FOUND.

SOLICITOR BAILEY: I WOULD LIKE TO BE HEARD.

THE COURT: I WILL LET THE JURY GO OUT.

(WHEREUPON THE BENCH CONFERENCE WAS CONCLUDED).

THE COURT: I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT, PLEASE.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: AS A THRESHOLD MATTER, BRING THESE PICTURES UP HERE AND LET ME TAKE A LOOK AT

THEM.

SOLICITOR BAILEY: IT'S JUST ONE PICTURE, JUDGE.

(HANDS TO COURT)

SOLICITOR BAILEY: JUDGE, I WOULD LIKE TO BE HEARD ON THAT AFTER YOU HAVE HAD A CHANCE TO LOOK AT IT.

THE COURT: LET ME SAY THIS FIRST OUTSIDE THE PRESENCE OF THE JURY. THIS IS SOMEWHAT EXTREMELY GRUESOME TESTIMONY. I WOULD AFFORD THE VICTIM'S FAMILY AN OPPORTUNITY TO STEP OUT IF THEY CARE TO.

SOLICITOR BAILEY: THEY HAVE LEFT. I HAVE ADVISED THEM THE NATURE OF THE PICTURE AND THEY HAVE LEFT.

THE COURT: ALL RIGHT. LET ME HEAR WHAT YOU SAY. THIS IS MARKED FOR IDENTIFICATION AT THIS MOMENT.

COURT REPORTER: I HAVEN'T MARKED IT YET, JUDGE.

THE COURT: LET ME HEAR WHAT YOU HAVE GOT TO SAY.

SOLICITOR BAILEY: YOUR HONOR, WHAT THAT SHOWS IS A PHOTOGRAPH OF SERGEANT LINGARD TAKEN -- IT DIFFERS FROM THE CRIME SCENE PHOTOGRAPHS IN THAT HIS JACKET AND SHIRT HAVE BEEN REMOVED TO SHOW THE ACTUAL

WOUNDS THEMSELVES. THEY SHOW NOTHING MORE OR LESS THAN THE WOUNDS INFLICTED BY THE DEFENDANT IN THIS CASE.

YOUR HONOR, I WOULD LIKE TO CITE THREE CASES THAT I THINK ARE DIRECTLY ON POINT ON THIS. THE FIRST IS STATE VERSUS LUKE WILLIAMS, A 1996 CASE, IN WHICH OUR SUPREME COURT HELD THE TRIAL JUDGE DID NOT ERR IN ALLOWING FIVE CLOSE-UPS -- THAT'S A QUOTE FROM THE CASE -- AUTOPSY PHOTOS OF VICTIMS SHOWING WOUNDS TO THE NECK, FACE, FOREARM AND SHOULDER.

THE COURT: I AM FAMILIAR WITH THAT.

SOLICITOR BAILEY: THEY DEPICTED THE MANNER IN WHICH THE HOMICIDES WERE COMMITTED TO CORROBORATE THE PENALTY PHASE TESTIMONY.

YOUR HONOR, THE ONLY CASES I CAN FIND IN WHICH AUTOPSY PICTURES WERE NOT ALLOWED WOULD BE LIKE FRANK MIDDLETON WHERE THEY SHOW A SURGICALLY OPEN VAGINAL CAVITY SHOWING SEMEN IN IT.

THE COURT: LET ME ASK YOU THIS THOUGH. I AM FAMILIAR WITH WILLIAMS. WHY CAN'T THIS EMINENT DOCTOR WHO HAS TESTIFIED IN MY COURT A HUNDRED TIMES, BEEN QUALIFIED ALL OVER THE UNITED STATES, WHY CAN'T HE DESCRIBE UPON THAT EXHIBIT STANDING IN FRONT OF ME EXACTLY WHERE EACH ONE OF THESE BULLETS HOLES WERE?

WHY CAN'T HE TAKE THE PICTURE AND DEPICT ON THAT UNIFORM EXACTLY WHAT YOU ARE TRYING TO DEPICT BY THIS PICTURE?

SOLICITOR BAILEY: YOUR HONOR, HE COULD BUT THIS, OF COURSE, IS THE PENALTY PHASE IN A DEATH PENALTY TRIAL WHERE THE PROBATIVE VALUE OF THESE TYPE PICTURES --

THE COURT: WHAT IS THE PROBATIVE VALUE THAT HE CAN'T DEPICT FOR THIS JURY? FRANKLY I AM JUST CONCERNED WHAT THE COURTS WOULD DO ON THIS THING AND I DON'T KNOW THAT YOU NEED IT.

SOLICITOR BAILEY: YOUR HONOR, IF I COULD BY WAY OF COMPARISON, I THINK PROBABLY THE MOST RECENT CASE THAT OUR SUPREME COURT HAS ADDRESSED CRIME SCENE AND AUTOPSY PHOTOGRAPHS IS STATE VERSUS FRANKLIN. I HAVE THOSE PHOTOGRAPHS. IF I COULD PASS THEM UP TO THE COURT JUST FOR COMPARISON PURPOSES.

THE COURT: LET ME SEE WHAT FRANKLIN SAID. I AM FAMILIAR WITH WILLIAMS. THIS ISSUE CONCERNS ME FROM THE STANDPOINT OF A POSSIBLE REVERSAL. I AM JUST NOT SURE THAT YOU NEED IT.

THE DOCTOR HERE IS FULLY COMPETENT. I HAVE SEEN THE PICTURES. THEY ALL SHOW THAT THE IMPACT WAS ON THE BREAST BONE, ALL OF WHICH IS IN AN AREA OF APPROXIMATELY WHAT, 18 INCHES OR MORE?

SOLICITOR BAILEY: YOUR HONOR, THE PARTICULAR PHOTOGRAPH SHOWS THREE OF THE FOUR ENTRY WOUNDS. THE JACKET DOES NOT SHOW THAT BECAUSE THE POINT OF IMPACT --

THE COURT: LET ME SEE THE PHOTOGRAPH AGAIN.

SOLICITOR BAILEY: LET ME GET IT MARKED, YOUR HONOR.

THE COURT: MARK IT AS A COURT'S EXHIBIT, PLEASE.

(COURT'S EXHIBIT NUMBER 4, PHOTOGRAPH FROM AUTOPSY, IS MARKED FOR PURPOSES OF THE RECORD.)

THE COURT: DIDN'T HE TESTIFY EXTENSIVELY IN THE FIRST PHASE AS TO THE ENTRY WOUNDS ON THE UNFORTUNATE VICTIM?

SOLICITOR BAILEY: YOUR HONOR, HE DID BUT I THINK I AM ENTITLED IN THE PENALTY PHASE OF THIS TRIAL TO SHOW --

THE COURT: LET ME SEE THE FRANKLIN CASE.

SOLICITOR BAILEY: I AM TRYING TO FIND THOSE NOW IF YOU WILL BEAR WITH ME A SECOND.

MR. STONE: IT'S 318 S.C. 47.

SOLICITOR BAILEY: I THOUGHT I HAD THE ACTUAL PHOTOGRAPHS, JUDGE.

THE COURT: I DON'T NEED THE PHOTOGRAPHS.

I JUST WANT TO SEE WHAT THE COURT SAID. I UNDERSTAND IN MIDDLETON THERE WAS AN OPEN AUTOPSY WOUND, WHICH OBVIOUSLY IS NOT ADMISSIBLE.

SOLICITOR BAILEY: YOUR HONOR, I HAVE THAT CASE. IF YOU WILL GIVE ME A SECOND, I WILL PULL IT.

THE COURT: IN WILLIAMS THAT WAS ADMITTED TO SHOW THE CHARACTER OF THE DEFENDANT. THIS DOESN'T ADDRESS THAT ISSUE. VERY RECENTLY IN STATE VERSUS MCCLURE, I ADMITTED PHOTOGRAPHS WHERE THE DEFENDANT HAD LEFT A KNIFE IN THE VICTIM'S THROAT. THAT SHOWED THE CHARACTER OF THE DEFENDANT. HERE I JUST DON'T SEE THAT. LET ME SEE YOUR CASE. I DON'T THINK WILLIAMS IS PROBATIVE HERE.

(PAUSE.)

THE COURT: LET ME ASK THE DOCTOR. DOCTOR, CAN YOU, USING THIS JACKET AS AN EXHIBIT, CAN YOU DEPICT FOR THE JURY WITH REASONABLE ACCURACY THE SAME THING THAT THESE PHOTOS WOULD DEPICT?

THE WITNESS: WITH THE DIAGRAMS AND THE JACKET, I CAN COME VERY CLOSE TO SHOWING WHAT IS THERE ON THE BODY.

THE COURT: I AM GOING TO DENY THAT.

MR. STONE: THANK YOU, YOUR HONOR.

SOLICITOR BAILEY: YOUR HONOR, WHILE THE JURY IS OUT --

THE COURT: AND I DO THAT JUST SIMPLY IN AN ABUNDANCE OF PRECAUTION, SOLICITOR.

SOLICITOR BAILEY: AS YOU KNOW, OUR NOT ADDRESSING THIS ISSUE --

THE COURT: LET ME FINISH ADDRESSING THIS ISSUE.

SOLICITOR BAILEY: YES, SIR.

THE COURT: I AM GOING TO LET THIS EXPERT TESTIFY JUST AS EXHAUSTIVELY AS HE DESIRES USING THAT DIAGRAM AND THIS DEMONSTRATIVE EVIDENCE. DO YOU UNDERSTAND THAT?

SOLICITOR BAILEY: YES, SIR.

THE COURT: GO AHEAD.

SOLICITOR BAILEY: YOUR HONOR, I THINK THE STATE, MOVING PAST THAT TO THE CRIME SCENE PHOTOGRAPHS, BRETT BAKER TOOK THE CRIME SCENE PHOTOGRAPHS. I AM PREPARED TO INTRODUCE TWO OF THOSE PHOTOGRAPHS.

THE COURT: MAY I SEE THEM.

SOLICITOR BAILEY: IF I COULD, YOUR HONOR, I THINK THAT OUR COURTS HAS BEEN MUCH MORE LENIENT IN THE PENALTY PHASE IN ALLOWING CRIME SCENE PHOTOGRAPHS THAT ARE NOT ALTERED BY DECOMPOSITION OR ANY OUTSIDE FACTORS. THESE TWO PHOTOGRAPHS SHOW THE DECEDENT'S BODY AT THE SCENE --

THE COURT: LET ME SEE THEM.

SOLICITOR BAILEY: -- IN EXACTLY THE CONDITION THE DEFENDANT LEFT HIM. I THINK I HAVE GOT AMPLE AUTHORITY ON THAT. YOUR HONOR, I KNOW OF NO CASE IN WHICH OUR SUPREME COURT HAS EVER REVERSED A DEATH PENALTY CASE BASED ON CRIME SCENE PHOTOGRAPHS THAT WERE NOT ALTERED BY DECOMPOSITION OR ANY OUTSIDE INFLUENCE.

THE COURT: THE NUMEROUS CASES ON THIS ISSUE HAVE SAID IN THE SECOND PHASE, WHICH IS THE PUNISHMENT PHASE, THAT PHOTOGRAPHS ARE ADMISSIBLE TO SHOW THE POSITION AND STATE OF FACTS IN WHICH THE DEFENDANT LEFT THE BODY OF THE VICTIM. I AM GOING TO PERMANENT THESE.

MR. STONE: MAY I BE HEARD ON THAT?

THE COURT: YES, SIR.

MR. STONE: I TOTALLY AGREE WITH YOUR HONOR AS FAR AS THE COURT'S CASES. HOWEVER IN THIS CASE THAT IS NOT HOW THE BODY WAS LEFT. THE TESTIMONY THAT YOU HEARD WAS THAT THE BODY WAS OUT IN THE MIDDLE OF THE ROAD AND SOMEBODY ELSE MOVED HIM. HE WAS SUPPOSEDLY -- AND IF I MAY SEE THOSE PICTURES.

THE COURT: I UNDERSTAND THAT. THE DEPUTY QUICKLY GOT THE UNFORTUNATE VICTIM RIGHT OUT OF THE ROAD AND PULLED HIM TO THE SIDE. BEYOND THAT, IT WAS

EXACTLY LIKE THE DEFENDANT LEFT THAT UNFORTUNATE INDIVIDUAL.

MR. STONE: UNFORTUNATELY, YOUR HONOR, TWO PROBLEMS. ONE IS THIS APPEARS TO HAVE THE BODY ON A BODY BAG. I DON'T BELIEVE THERE IS ANY TESTIMONY THAT THE DEFENDANT LEFT HIM IN THAT CONDITION.

SECONDLY, HE IS FACE UP. HE WAS NOT LEFT FACE UP. ALL THE TESTIMONY IS THAT HE WAS FACE DOWN IN THE ROAD, AND HE WAS MOVED OUT OF THE ROAD. THESE PICTURES WERE TAKEN NOT ONLY AFTER HE WAS MOVED BUT RELOCATED.

THE COURT: FOR WHAT PURPOSE DO YOU NEED THESE? THERE IS AMPLE TESTIMONY --

SOLICITOR BAILEY: YOUR HONOR, THE PURPOSE IS TO SHOW THE JURY NO MORE AND NO LESS THAN WHAT THIS DEFENDANT DID TO THAT POLICE OFFICER. THESE ARE PICTURES TAKEN AT THE SCENE. IN STATE VERSUS KORNAHRENS, YOUR HONOR, THE BODY WAS DUG UP.

THE COURT: I AM GOING TO LET THESE PICTURES IN.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

THE COURT: THIS IS THE SECOND PHASE. THE FIRST PICTURE THERE DURING THE AUTOPSY, I DECLINE TO LET IN. THIS IS BASICALLY THE WAY THAT THE VICTIM WAS FOUND.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

THE COURT: YOU ARE PROTECTED ON THE RECORD.

MR. STONE: YES, SIR. I THINK I STILL HAVE TO OBJECT IN FRONT OF THE JURY.

THE COURT: YES, SIR, YOU DO.

SOLICITOR BAILEY: YOUR HONOR, IN REGARD TO DR. SEXTON'S TESTIMONY, I DON'T KNOW WHAT I CAN ASK HIM AT THIS POINT THAT I HAVEN'T ASKED HIM IN THE GUILT PHASE OF THE TRIAL. I INTENTIONALLY HELD BACK ON THIS PHOTOGRAPH WITH DR. SEXTON TO INTRODUCE IT AT THIS POINT.

THE COURT: I WILL PERMIT YOU TO GO INTO GREAT DETAIL AS TO WHAT THAT PHOTOGRAPH DEPICTS. MY RULING IS BASED ON THE FACT THAT WE CAN GET THIS TESTIMONY BEFORE THE JURY WITHOUT SHOWING THIS AUTOPSY PHOTOGRAPH.

SOLICITOR BAILEY: YES, SIR, I UNDERSTAND THAT. MY DILEMMA IS THAT I THINK MR. SEXTON HAS ALREADY TESTIFIED FULLY, AS FULLY AS HE CAN WITHOUT REFERRING TO THE PHOTOGRAPH.

THE COURT: HE CAN REFER TO IT HIMSELF. I AM JUST NOT GOING TO PUT IT IN EVIDENCE AND PUBLISH IT TO THIS JURY.

SOLICITOR BAILEY: YES, SIR, I UNDERSTAND

THAT. IF YOU WILL JUST GIVE ME A MINUTE SO I CAN THINK OF WHAT TO ASK DR. SEXTON THAT I HAVE NOT ASKED HIM BEFORE.

THE COURT: I AM CONFIDENT YOU CAN THINK OF SOMETHING, BUT I WILL GIVE YOU A MINUTE.

(PAUSE.)

SOLICITOR BAILEY: MAY IT PLEASE THE COURT. I DON'T SEE ANY POINT IN MAKING DR. SEXTON GO THROUGH THE SAME THING HE HAS GONE THROUGH BEFORE. I HAVE NOTHING IN ADDITION TO ASK HIM. I APPRECIATE HIM BEING HERE. I WILL, IF THE COURT PLEASES, JUST EXCUSE HIM AND THANK HIM FOR COMING.

THE COURT: ALL RIGHT, SIR.

MR. STONE: THANK YOU, YOUR HONOR.

THE COURT: I AM GOING TO PERMIT YOU TO PUT IN THOSE PHOTOGRAPHS AT THE SCENE ITSELF.

SOLICITOR BAILEY: YES, SIR. THAT'S MY NEXT WITNESS.

THE COURT: I WANT THIS RECORD ABUNDANTLY CLEAR. I WILL PERMIT YOU TO HAVE -- YOU MAY GO OVER THE SAME TESTIMONY AGAIN IF YOU DESIRE.

SOLICITOR BAILEY: THANK YOU, DOCTOR, APPRECIATE IT.

THE COURT: I WOULD CONCLUDE THOUGH THAT IN THAT ONE AUTOPSY SCENE, THE PREJUDICIAL EFFECT MIGHT

OUTWEIGH THE PROBATIVE VALUE.

SOLICITOR BAILEY: I UNDERSTAND, YOUR HONOR.

THE COURT: PARTICULARLY CONSIDERING THE FACT THAT THAT TESTIMONY CAN BE HAD IN ANOTHER WAY.

SOLICITOR BAILEY: YES, SIR.

THE COURT: ARE WE NOW READY TO PROCEED?

SOLICITOR BAILEY: YES, SIR.

THE COURT: ARE YOU READY?

MR. STONE: YES, SIR.

THE COURT: BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: CALL YOUR NEXT WITNESS.

SOLICITOR BAILEY: BRETT BAKER.

DONALD BRETT BAKER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. BAKER, WHEN YOU TESTIFIED PREVIOUSLY IN THE FIRST PART OF THIS TRIAL, YOU INTRODUCED OR WE INTRODUCED THROUGH YOUR TESTIMONY NUMEROUS PHOTOGRAPHS THAT YOU TOOK AT THE CRIME SCENE; IS THAT CORRECT?

A THAT'S CORRECT.

Q CALLING YOUR ATTENTION TO PHOTOGRAPHS THAT YOU

TOOK AT THE MURDER SCENE ON I-95 AND 301, DID YOU TAKE SEVERAL PHOTOGRAPHS OF SERGEANT LINGARD BEFORE HIS BODY WAS REMOVED FROM THE SCENE?

A YES, SIR. IT'S COMMON PRACTICE AFTER DOCUMENTING THE SCENE COMPLETELY TO THEN ROLL THE VICTIM TO PHOTOGRAPH ANY POSSIBLE VISIBLE WOUNDS, JUST TRYING TO DEPICT WHAT THE CONDITION OF THE BODY WOULD HAVE BEEN IN AT THE TIME.

Q I AM GOING TO SHOW YOU TWO PHOTOGRAPHS THAT YOU HAVE VIEWED PREVIOUSLY. DO THESE TWO PHOTOGRAPHS THAT I WILL SHOW YOU SHOW SERGEANT LINGARD'S BODY AS YOU ACTUALLY OBSERVED IT THROUGH YOUR CAMERA LENSE WHEN YOU TOOK THAT PICTURE?

A I WILL HAVE TO SEE THE PHOTOGRAPHS.

THE COURT: FOR THE DEFENSE?

MR. STONE: YOUR HONOR, I OBJECT TO BOTH OF THESE PHOTOGRAPHS. THEY DON'T SHOW HOW THE BODY WAS AT THE SCENE. THE ONLY PURPOSE IS TO INFLAME THIS JURY. I WILL LET AGENT BAKER TESTIFY AS TO WHAT HE SAW, BUT MY UNDERSTANDING IS THAT IS NOT HOW THE BODY WAS FOUND.

THE COURT: I WILL PERMIT THE INTRODUCTION OF THESE PHOTOGRAPHS SUBJECT TO WHATEVER EXPLANATION HE DESIRES TO MAKE TO THE JURY AS TO THE POSITION OF HIM, WHEN AND WHERE.

SOLICITOR BAILEY: BEAR WITH ME ONE SECOND.

(PAUSE)

Q MR. BAKER, WHEN YOU WENT TO THE SCENE OF THE WRECK, WE HAVE ESTABLISHED YOU TOOK SEVERAL PHOTOGRAPHS OF SERGEANT LINGARD'S BODY. DO YOU HAVE TWO OF THOSE PHOTOGRAPHS IN FRONT OF YOU THERE?

A YES, SIR.

Q DO THOSE PHOTOGRAPHS ACCURATELY DEPICT WHAT YOU OBSERVED WHEN YOU ARRIVED AT THE SCENE OF THE WRECK, THE SCENE OF THE MURDER?

A YES, SIR, THIS WOULD BE ACTUAL ENLARGEMENTS OF PHOTOGRAPHS I TOOK MYSELF.

Q OTHER THAN THE FACT THAT SERGEANT LINGARD'S BODY HAD BEEN PLACED ON A SHEET OF PLASTIC OF SOME TYPE, WAS THERE ANYTHING DONE TO ALTER THE APPEARANCE OF HIS BODY OR THE CONDITION OF THE WOUNDS OR ANYTHING OF THAT NATURE?

A NO, SIR. AGAIN AS I STATED, IT'S COMMON PRACTICE AFTER PHOTOGRAPHING THE SCENE EXTENSIVELY AND THE EVIDENCE THAT WE FIND TO ROLL THE VICTIM AND THEN PHOTOGRAPH THE VICTIM.

Q WHEN YOU SAY ROLL, YOU MEAN ROLL THEM OVER?

A IF THE VICTIM IS FACE DOWN WHEN WE ARRIVE, IT IS COMMON PRACTICE THAT WE WILL ROLL THEM OVER, PHOTOGRAPH THEM. LIKEWISE IF THE VICTIM IS LAYING

FACE UP, WE WOULD ROLL THEM AND PHOTOGRAPH WHERE THEY WERE POSITIONED ON THE GROUND FOR POSSIBLE EVIDENCE SHOWING THAT THERE WAS NO EVIDENCE UNDER THE VICTIM OR ON TOP OF THE VICTIM.

Q OTHER THAN ROLLING THE BODY OVER TO TAKE THOSE PICTURES AND PLACING THE BODY ON TOP OF THAT PLASTIC SURFACE, WAS ANYTHING DONE TO ALTER THE CONDITION OF THE BODY?

A NO, SIR, THEY WERE ROLLED OVER AND PLACED ON THIS PLASTIC. THAT WOULD BE IT.

SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER BOTH THESE PICTURES AT THIS POINT.

THE COURT: DO YOU PROPOSE TO PUBLISH THEM?

SOLICITOR BAILEY: YES, SIR.

THE COURT: I WILL PERMIT YOU TO OFFER THEM. DO NOT PUT THOSE PICTURES ON THIS MONITOR. I WILL LET YOU PUBLISH THEM INDIVIDUALLY TO THE JURY.

SOLICITOR BAILEY: YES, SIR.

THE COURT: THERE IS NO NEED IN DISPLAYING IT UNLESS YOU INSIST.

SOLICITOR BAILEY: NO, SIR.

THE COURT: YOU MAY PUBLISH THEM INDIVIDUALLY TO THE JURY, BUT I DON'T WANT THESE PICTURES PUT UP IN FAIRNESS TO THE FAMILY.

SOLICITOR BAILEY: YES, SIR, I UNDERSTAND.

MR. STONE: YOUR HONOR, JUST TO BE CLEAR, AGENT BAKER HAS TESTIFIED THAT THERE MAY BE SOME PROBATIVE EVIDENCE. AT THIS POINT WE HAVE COVERED ALL OF THE PROBATIVE EVIDENCE AS TO THE CRIME SCENE, AND ANY PROBATIVE EVIDENCE THIS HAS IS NOTHING MORE THAN PREJUDICIAL AGAINST THIS JURY.

THE COURT: I WILL LET THE JURY MAKE THE DETERMINATION --

MR. STONE: YES, SIR, I UNDERSTAND.

THE COURT: -- WITH REGARD TO THE PHOTOGRAPHS AND GIVE IT SUCH CREDENCE AS THEY DETERMINE THEY SHOULD GIVE TO IT. I HAVE NO COMMENT FURTHER BASED UPON THAT. I WILL ADMIT THEM AND YOU MAY PUBLISH THEM TO THE JURY PRIVATELY. BEYOND THAT I HAVE NO COMMENT. THE JURY IS THE FINDERS OF FACTS ON ALL ISSUES.

MR. STONE: YES, SIR.

(STATE'S EXHIBITS NUMBER 97 AND 98, PHOTOGRAPHS OF THE VICTIM, ARE RECEIVED INTO EVIDENCE.)

SOLICITOR BAILEY: YOUR HONOR, I PROPOSE TO PUBLISH THESE TO THE JURY BY PASSING THEM TO THE FOREMAN AND LET HIM PASS THEM AROUND TO THE MEMBERS OF THE JURY.

THE COURT: THAT WILL BE FINE. YOU MAY DO

THAT.

(PAUSE.)

SOLICITOR BAILEY: THAT'S ALL I HAVE OF MR. BAKER AT THIS TIME.

MR. STONE: NO QUESTIONS.

THE COURT: YOU MAY COME DOWN. IS THIS OFFICER NOW EXCUSED?

SOLICITOR BAILEY: YES, SIR.

THE COURT: THANK YOU.

SOLICITOR BAILEY: YOUR HONOR, MAY WE APPROACH BRIEFLY?

THE COURT: YES, SIR.

COURT REPORTER: DO YOU NEED THIS ON THE RECORD?

SOLICITOR BAILEY: NO.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: YES, SIR.

SOLICITOR BAILEY: YOUR HONOR, I CALL KENNY MEARS AT THIS TIME FOR THE PURPOSE OF INTRODUCING THE INITIAL TAPE OF THE STATEMENT MR. ALEKSEY GAVE.

THE COURT: HAVE HIM COME AROUND.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: KENNETH M. MEARS.

KENNETH M. MEARS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. MEARS, YOU TESTIFIED PREVIOUSLY, ALONG WITH MR. DARNELL, ABOUT THE TAPED STATEMENT THAT Y'ALL TOOK FROM MR. ALEKSEY ON JANUARY 2ND, 1998; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND FOR REASONS THE JUDGE WILL EXPLAIN TO THE JURY, WAS THE INITIAL TAPE PLAYED IN THE GUILT PHASE OF THIS TRIAL, DID THAT INCLUDE SOME DELETIONS?

A YES, SIR.

Q I WILL HAND YOU THIS AND ASK IF THIS IS THE ORIGINAL TAPE WITHOUT THE DELETIONS IN IT?

A YES, SIR, IT APPEARS TO BE THE ORIGINAL.

Q YOU HAVE TESTIFIED PREVIOUSLY THAT YOU REVIEWED A TRANSCRIPT OF THAT TAPE?

A I HAVE.

Q PREPARED BY A S.L.E.D. SECRETARY?

A YES, SIR.

Q DOES THIS APPEAR TO BE A COPY OF THAT TRANSCRIPT THAT THE S.L.E.D. SECRETARY PREPARED?

THE COURT: YOU HAVE HEARD THIS TAPE AND BEEN PROVIDED A COPY OF THE UNREDACTED TRANSCRIPT?

MR. STONE: I HAVE, YOUR HONOR.

THE COURT: THE SOLICITOR IS CERTIFYING TO THE COURT THAT THIS IS THE CORRECT TRANSCRIPTION.

MR. STONE: YES, SIR.

THE WITNESS: YES, SIR, IT APPEARS TO BE.

SOLICITOR BAILEY: YOUR HONOR, I WOULD MOVE AT THIS TIME TO INTRODUCE THE UNREDACTED TAPE AND TRANSCRIPT OF THAT AT THIS TIME.

THE COURT: YOU MAY DO SO. AS I UNDERSTAND IT, YOU PROPOSE TO HAND A COPY TO EACH OF THE JURORS.

SOLICITOR BAILEY: I DO, YOUR HONOR. SINCE THE FIRST PART OF THE TAPE IS THE SAME AS THEY HEARD IN THE GUILT PHASE, I WASN'T GOING TO PLAY THAT AGAIN. THEY HAVE ALREADY HEARD IT. THIS WOULD BE THE SECOND TAPE.

MR. STONE: THAT'S FINE.

(STATE'S EXHIBIT NUMBER 99, TAPE; AND NUMBER 100, TRANSCRIPT OF TAPED STATEMENT, ARE RECEIVED INTO EVIDENCE.)

THE COURT: LADIES AND GENTLEMEN OF THE JURY, LET ME EXPLAIN TO YOU WITH REGARDS TO THIS ALLEGED STATEMENT OR CONFESSION -- AND THAT IS FOR YOU TO DETERMINE BASED ON MY PREVIOUS INSTRUCTIONS AND THE ONES I WILL GIVE YOU NOW.

THERE WAS FIRST PLAYED FOR YOUR

CONSIDERATION A REDACTED STATEMENT, MEANING CERTAIN THINGS WERE DELETED. THOSE THINGS THAT WERE DELETED WERE NOT FOR YOUR CONSIDERATION IN THE FIRST PHASE OF THE TRIAL.

WE ARE NOW GIVING TO YOU THE TOTAL UNREDACTED STATEMENT FOR YOUR CONSIDERATION. AS WITH ALL OTHER EVIDENCE, YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE THIS SHOULD RECEIVE. THE TAPE NOW BEING PLAYED IS THE UNALTERED, UNCHANGED, ORIGINAL STATEMENT; IS THAT CORRECT?

SOLICITOR BAILEY: THAT IS CORRECT, YOUR HONOR, THE SECOND STATEMENT.

THE COURT: LET ME NOW EXPLAIN TO THE JURY AS I DID IN THE FIRST CASE, THERE IS BEING ADMITTED INTO THE RECORD IN THIS CASE A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT.

BEFORE YOU MAY CONSIDER THE STATEMENT AS EVIDENCE FOR ANY PURPOSE, YOU MUST FIRST DETERMINE FOUR THINGS. ONE, DID THE DEFENDANT MAKE THE STATEMENT? YOU MUST CONCLUDE THAT HE DID BY EVIDENCE BEYOND A REASONABLE DOUBT. IF YOU DO NOT CONCLUDE THAT, YOU NEED TO GO NO FURTHER.

SECONDLY, WAS THE DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS, INCLUDING THE MIRANDA RIGHTS? YOU MUST FIND BEYOND A REASONABLE DOUBT THAT HE WAS.

THIRD, THE QUESTION YOU MUST ASK YOURSELF IS: DID THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS? YOU MUST FIND THAT HE DID BEYOND A REASONABLE DOUBT.

LASTLY, WAS THE STATEMENT GIVEN VOLUNTARILY? UNLESS IT WAS A VOLUNTARY STATEMENT, FREE OF ANY COERCION OF DURESS, YOU CANNOT ACCEPT IT. IF YOU FIND THAT THE STATEMENT WAS FREELY AND VOLUNTARILY MADE BEYOND A REASONABLE DOUBT, THEN YOU MAY GIVE IT SUCH WEIGHT AS YOU CONCLUDE IT IS ENTITLED TO. YOU MAY PROCEED.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

THE COURT: MAY I HAVE A COPY OF THE UNREDACTED STATEMENT?

SOLICITOR BAILEY: YES, SIR, I HAVE GOT AN EXTRA COPY HERE, JUDGE.

(HANDS TO COURT.)

THE COURT: THANK YOU SO MUCH. ANY FURTHER INSTRUCTION DESIRED BY THE DEFENDANT AT THIS TIME?

MR. STONE: NO, SIR. THANK YOU.

SOLICITOR BAILEY: YOUR HONOR, IF I MIGHT, I WILL PASS THIS OUT TO THE JURY. THIS INCLUDES -- THE TRANSCRIPT IS BOTH TAPES. THE PART WE ARE GOING TO HEAR IS THE SECOND TAPE STARTING AT THE BOTTOM OF THE THIRD PAGE HERE.

(STATE'S EXHIBIT NUMBER 99, TAPE, IS PLAYED FOR THE JURY)

SOLICITOR BAILEY: YOUR HONOR, THAT'S ALL I HAVE FOR MR. MEARS.

THE COURT: YOU MAY COME DOWN, MR. MEARS.

MR. STONE: NO QUESTIONS, YOUR HONOR.

(ATTORNEYS CONFER.)

SOLICITOR BAILEY: YOUR HONOR, CAN WE HAVE ABOUT FIVE MINUTES PRIOR TO CALLING THE NEXT WITNESS?

THE COURT: YOU MAY DO THAT. I WILL CALL YOU BACK VERY SHORTLY. IT WILL GIVE YOU A CHANCE TO REST A FEW MINUTES.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: WE WILL BE IN RECESS FOR TEN MINUTES.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: ARE WE READY?

SOLICITOR BAILEY: YES, SIR.

THE COURT: THE DEFENDANT IS IN THE COURTROOM. BRING THE JURY PLEASE.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: CALL YOUR NEXT WITNESS.

SOLICITOR BAILEY: THE STATE CALLS LIEUTENANT LEON ROBINSON.

CLERK: STATE YOUR NAME FOR THE RECORD

THE WITNESS: LEON ROBINSON.

LEON ROBINSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER.

THE WITNESS: R-O-B-I-N-S-O-N.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. ROBINSON, DO YOU LIVE HERE IN ORANGEBURG?

A BOMAN.

Q IS BOWMAN IN ORANGEBURG COUNTY?

A RIGHT.

Q HOW LONG HAVE YOU LIVED IN ORANGEBURG COUNTY?

A TWENTY-THREE YEARS, 11 MONTHS.

Q AND YOU ARE OBVIOUSLY IN THE HIGHWAY PATROL?

A YES, SIR.

Q HOW MUCH TIME DO YOU HAVE IN THE PATROL?

A TWENTY-FOUR YEARS.

Q ARE YOU A LIEUTENANT NOW?

A YES, SIR.

Q HOW LONG HAVE YOU BEEN ASSIGNED TO ORANGEBURG COUNTY?

A EVER SINCE 1974, MY WHOLE CAREER NEARLY.

Q AS A LIEUTENANT IN THE HIGHWAY PATROL, WHAT ARE YOUR DUTIES AND RESPONSIBILITIES?

A I AM A DISTRICT LIEUTENANT, A SUPERVISOR OF THE COUNTIES IN THE DISTRICT. MY DUTIES GENERALLY IS THE P.T. COORDINATOR. I'M IN CHARGE OF THE TELECOMMUNICATION SYSTEM, IN CHARGE OF THE WRECKER ROTATION SYSTEM AND SUPERVISE THE ENFORCEMENT OF THE SERGEANTS IN THE DIFEERENT COUNTIES.

Q WHO WOULD BE THE PERSON NEXT UNDER YOU, RANK WISE?

A WOULD BE FIRST SERGEANTS, SERGEANTS, DOWN THE LINE LIKE THAT.

Q SO DID YOU KNOW FIRST SERGEANT FRANKIE LINGARD?

A YES, SIR, I DO -- I DID.

Q WERE YOU HIS IMMEDIATE SUPERVISOR?

A YES, SIR.

Q FOR HOW LONG?

A HE CAME TO ORANGEBURG IN '93. I WAS THE FIRST SERGEANT IN '93. HE CAME AS A SERGEANT UNDER ME. SHORTLY AFTER THAT I WENT TO LIEUTENANT AND HE MADE FIRST SERGEANT. SO I SUPERVISED HIM FOR ABOUT FIVE YEARS.

Q AND SO HE HAS BEEN UNDER YOUR DIRECT SUPERVISION FOR APPROXIMATELY FIVE YEARS UP UNTIL HIS DEATH --

A YES, SIR.

Q -- AT THE END OF DECEMBER. DID YOU HAVE ANYTHING TO DO WITH HIS EVALUATIONS AS A TROOPER?

A YES, SIR, I WAS RESPONSIBLE FOR RATING HIM WHEN HIS RATING PERIOD CAME UP.
Q ARE TROOPERS PERIODICALLY EVALUATED BY THEIR IMMEDIATE SUPERVISORS AND BY THEIR LIEUTENANTS?
A YES, SIR. IN THIS CASE I WAS BECAUSE HE WAS FIRST SERGEANT AND I WAS LIEUTENANT.
Q I WILL HAND YOU TWO DOCUMENTS AND ASK IF YOU CAN IDENTIFY THESE AS BEING THE RATINGS YOU GAVE FIRST SERGEANT FRANKIE LINGARD.
A YES, SIR, I GAVE HIM THOSE.
SOLICITOR BAILEY: I WOULD OFFER THESE, YOUR HONOR.
MR. STONE: I HAVE SEEN THEM. THERE IS NO OBJECTION, YOUR HONOR.
THE COURT: WITHOUT OBJECTION.
(STATE'S EXHIBITS NUMBER 101 AND 102, EMPLOYEE PERFORMANCE RATINGS, ARE RECEIVED INTO EVIDENCE.)
Q LIEUTENANT, I WILL HAND THESE BACK TO YOU. IF YOU WOULD PLEASE TELL THE JURY WHAT TIME FRAMES THEY ENCOMPASS. WHAT I WOULD LIKE FOR YOU TO DO IS JUST GENERALLY IN LAYMAN'S TERMS -- I KNOW THERE ARE A LOT OF NUMBERS AND FIGURES THERE -- BUT TELL THE JURY HOW YOU RATED FIRST SERGEANT LINGARD ON THOSE TWO EVALUATION PERIODS AS A FIRST SERGEANT IN THE HIGHWAY

PATROL.

A WE RATE OUR EMPLOYEES FOR A ONE-YEAR PERIOD, FROM THE PERIOD HE WAS JUST PROMOTED UNTIL, SAY, THIS PARTICULAR CASE WAS MARCH 29, 1996, UNTIL MARCH 29, 1997.

WE EVALUATE ALL THE THINGS HE DOES THROUGH THE COURSE OF THE YEAR. IF THERE IS DISCREPANCIES AND SO FORTH, WE LET HIM KNOW THOSE THINGS NEED TO BE CORRECTED AS TIME GOES ON.

MOST PEOPLE DON'T KNOW WHAT THIS BASICALLY IS, BUT THERE'S SEVERAL CATEGORIES THAT A PERSON CAN RECEIVE. THERE IS BELOW, MEETS, EXCEED AND SUPER EXCEED.

FRANKIE, THAT'S WHAT WE CALL HIM, FIRST SERGEANT, HE WAS IN THE EXCEED CATEGORY. HE WAS A GOOD OFFICER. HE PERFORMED HIS JOB VERY WELL.

Q ALL RIGHT, SIR. WHAT ABOUT THE OTHER PAY PERIOD THAT YOU EVALUATED HIM?

A THIS ONE WAS MARCH 14, 1995, TO MARCH 29, '96. IN THIS CATEGORY HE ALSO RECEIVED A GOOD RATING, EXCEEDS IN THE CATEGORY ALSO. SO THE TIME THAT I RATED HIM, HE EXCELLED EACH YEAR AT HIS JOB PERFORMANCE.

Q LET ME HAND YOU THIS DOCUMENT AND ASK IF YOU CAN IDENTIFY THIS.

A THIS IS A CERTIFICATE THAT IS GIVEN BY THE CAPTAIN THROUGH THE COLONEL'S OFFICE. WHEN AN EMPLOYEE DOES A GOOD JOB, HE RECEIVES A DOCUMENT FOR EMPLOYEE OF THE MONTH. THIS IS WHAT HE ACHIEVED.

Q THAT'S ON FIRST SERGEANT FRANKIE LINGARD?

A YES, SIR.

MR. STONE: I HAVE SEEN THIS, YOUR HONOR. I HAVE NO OBJECTION.

(STATE'S EXHIBIT NUMBER 103, EMPLOYEE OF THE MONTH CERTIFICATE, IS RECEIVED INTO EVIDENCE.)

Q LIEUTENANT, WOULD YOU READ THAT TO THE JURY, PLEASE.

A YES, SIR. "STATE OF SOUTH CAROLINA, DEPARTMENT OF PUBLIC SAFETY, SOUTH CAROLINA HIGHWAY PATROL, DISTRICT 7, SUPERVISING EMPLOYEE OF THE MONTH FOR JUNE PRESENTED TO FIRST SERGEANT FRANKIE L. LINGARD.

"WE HEREBY EXPRESS SINCERE APPRECIATION FOR YOUR EXCEPTIONAL PERFORMANCE AND DEDICATED COMMITMENT," AWARDED THE 10TH DAY OF JULY, 1997, SIGNED BY JAMES CALDWELL, COLONEL AT THE TIME, THE DEPUTY DIRECTOR AND MR. GUNN SIGNED ALSO.

Q I WILL HAND YOU THIS DOCUMENT AND ASK IF THIS IS THE OATH THAT FIRST SERGEANT FRANKIE LINGARD SIGNED WHEN HE BECAME A TROOPER BACK IN 1982.

A YES, SIR, THIS IS HIS SIGNATURE.

MR. STONE: NO OBJECTION, YOUR HONOR.

(STATE'S EXHIBIT NUMBER 104, OATH FOR PEACE OFFICERS, IS RECEIVED INTO EVIDENCE.)

Q IF YOU WOULD PLEASE, I WOULD LIKE TO ASK YOU TO JUST TELL THE JURY IN YOUR OWN WORDS, NOT THE TECHNICAL LANGUAGE OF THOSE REPORTS AND ALL, BUT BASED ON YOUR KNOWLEDGE OF FIRST SERGEANT FRANKIE LINGARD, CAN YOU DESCRIBE HIS DEDICATION TO THE HIGHWAY PATROL.

A THE HIGHWAY PATROL WAS FRANKIE'S LIFE. HE LOVED THE PATROL WITH ALL HE HAD. WITH FRANKIE HE GAVE 100 PERCENT AND MORE. HE EXPECTED THE SAME THING OUT OF HIS EMPLOYEES. HE WOULD SETTLE FOR NOTHING LESS THAN 100 PERCENT AT ALL TIMES. HE WAS VERY DEDICATED AND HE WAS A CAREER MAN. THAT'S ALL HE EVER TALKED ABOUT WAS THE PATROL.

Q WHAT ABOUT HIS DEDICATION TO THE COMMUNITY, OUTSIDE OF HIS PATROL ACTIVITIES?

A HE HAD A -- HE WAS A MENTOR TO PROBLEM KIDS THAT DIDN'T HAVE A DADDY IN THE HOME. HE WOULD GET THEM AND TAKE THEM OUT. IT WAS SOMETHING LIKE A BOOT CAMP WHERE HE WOULD TRAIN THEM HOW TO BE DISCIPLINED SO THEY WOULDN'T CREATE PROBLEMS IN THE HOME AND SO FORTH.

A LOT OF PARENTS LOOKED UP TO HIM TO CONTINUE

THAT TRAINING. HE HAD SEVERAL SCHEDULED ON HAND TO DO THOSE THINGS, BUT UNFORTUNATELY SOME OF THOSE THINGS DIDN'T GET DONE.

Q DID HE DO THAT ON A VOLUNTARY BASIS?

A ON A VOLUNTARY BASIS. HE DID IT WHEN HE GET HIS TIME OFF. HE DID IT ON SUNDAYS. HE WOULD GO TO CHURCH ON SUNDAY MORNINGS. HE GOES AND HE MENTORS THE CHILDREN DURING CHURCH SERVICE AT THE VARIOUS CHURCHES. HE GOES TO A DIFFERENT CHURCH EVERY SUNDAY AND BASICALLY THAT'S WHAT HE DOES.

HE HAD FORMED A BASEBALL GROUP IN THE COMMUNITY. THE PROBLEM AREA WE HAD IN THE COUNTY, HE HAD WENT AND GOT SOME FELLOWS TOGETHER. THEY HAD A BASEBALL GAME WITH THE PATROL AND ALL THE OTHER AGENCIES IN THE COUNTY.

THAT'S WHAT HE WOULD DO TO TRY TO BRING THE COMMUNITY TOGETHER AS A WHOLE SO THAT OUR FELLOWS, WHEN WE HAVE PROBLEMS IN CERTAIN AREAS, IT WON'T BE SO BAD TO GO INTO THE AREA TO ENFORCE THE LAW.

Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

MR. STONE: I DON'T, LIEUTENANT. THANK YOU FOR BEING HERE.

THE COURT: YOU MAY COME DOWN, LIEUTENANT. THANK YOU SO MUCH.

SOLICITOR BAILEY: THE STATE WOULD CALL CAPTAIN DAVID DEERING.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: DAVID DEERING.

CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER.

THE WITNESS: DEERING, D-E-E-R-I-N-G.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q CAPTAIN, YOU ARE A CAPTAIN WITH THE HIGHWAY PATROL; IS THAT CORRECT?

A YES, SIR.

Q AND HOW LONG HAVE YOU BEEN IN THE PATROL?

A TWENTY-FIVE YEARS.

Q AND WHAT IS YOUR -- YOU ARE A CAPTAIN NOW. HOW LONG HAVE YOU BEEN A CAPTAIN?

A FOUR YEARS.

Q AND DOES THAT MAKE YOU THE SENIOR HIGHWAY PATROLMAN IN ORANGEBURG COUNTY?

A IT MAKES ME THE RANKING OFFICER IN ORANGEBURG COUNTY.

Q THE RANKING OFFICER?

A YES, SIR.

Q HOW LONG HAVE YOU BEEN ASSIGNED TO ORANGEBURG COUNTY?

A SINCE 1988.
Q HOW MANY TROOPERS DO YOU SUPERVISOR AT THIS TIME?
A EIGHTY-ONE AT THIS TIME.
Q WOULD YOU TELL THE JURY WHETHER OR NOT YOU KNEW FIRST SERGEANT FRANKIE LINGARD.
A I HAVE KNOWN HIM SINCE 1982.
Q HOW DID YOU KNOW HIM?
A WHEN FRANKIE JOINED THE PATROL IN 1982, OF COURSE, HE WENT TO THE PATROL SCHOOL. I WAS AN ASSIGNED INSTRUCTOR TO THE PATROL SCHOOL AND I TAUGHT A CLASS THERE. THAT'S WHERE I FIRST MET SERGEANT LINGARD, FRANKIE.
THEN IN 1985 HE TRANSFERRED TO BARNWELL COUNTY WHERE I WAS THEN SERGEANT. HE WORKED UNDER MY COMMAND FROM 1985 -- WELL, REALLY I HAVE BEEN A SUPERVISOR OF HIS SINCE THEN, SINCE 1985.
Q PRETTY MUCH EVER SINCE HE BECAME A TROOPER IN '82?
A JUST ABOUT HIS WHOLE CAREER.
Q HE KIND OF FOLLOWED YOU OR YOU FOLLOWED HIM FROM ONE PLACE TO OTHER?
A AS I PROGRESSED, HE PROGRESSED THROUGH THE RANKS.
Q AND AS FAR AS HIS VARIOUS PROMOTIONS, DID YOU

HAVE ANY INVOLVEMENT IN RECOMMENDING HIM FOR THOSE PROMOTIONS?

A I WAS ACTIVELY INVOLVED IN TWO PROMOTIONS, TWO OF THE THREE PROMOTIONS THAT HE GOT.

Q AND AT THE TIME OF HIS DEATH, HE WAS FIRST SERGEANT FOR ORANGEBURG COUNTY; IS THAT CORRECT?

A YES, SIR.

Q WOULD YOU TELL THE JURY SPECIFICALLY WHAT HIS DUTIES AND RESPONSIBILITIES WERE AS FIRST SERGEANT.

A FIRST SERGEANT LINGARD WAS THE HIGHEST RANKING OFFICER IN ORANGEBURG COUNTY. HE WAS RESPONSIBLE FOR THE DAY-TO-DAY OPERATION FOR ALL THE TROOPERS IN ORANGEBURG COUNTY; AND AT THE TIME OF HIS DEATH WE HAD 21 OFFICERS THAT HE WAS RESPONSIBLE FOR.

Q AND AS FIRST SERGEANT, HOW MUCH OF HIS TIME WOULD BE OUT ON THE ROAD AS COMPARED WITH DOING ADMINISTRATIVE DUTIES?

A APPROXIMATELY 25 PERCENT OF HIS TIME WAS ENFORCEMENT.

Q OF THE 21 TROOPERS THAT HE SUPERVISED IN THE ORANGEBURG COUNTY AREA, WHAT IS THEIR AVERAGE LEVEL OF EXPERIENCE OR WHAT WAS IT BACK LAST YEAR WHEN THIS OCCURRED?

A LAST YEAR I WOULD SAY AT LEAST A THIRD, MAYBE A LITTLE BIT MORE, WERE TROOPERS JUST RECENTLY OUT OF

THE ACADEMY, VERY YOUNG, TWO YEARS OR LESS.
Q WAS A PART OF YOUR JOB TO BE AWARE OF FIRST SERGEANT LINGARD'S LEADERSHIP ABILITIES, THE WAY HE WAS ABLE TO RELATE TO THOSE YOUNG TROOPERS AND ASSIST THEM IN THEIR DAY-TO-DAY DUTIES?
A OF COURSE.
Q WOULD YOU TELL THE JURY WHAT YOUR OBSERVATIONS WERE OF FIRST SERGEANT FRANKIE LINGARD'S PERFORMANCE AS A FIRST SERGEANT IN THE PATROL.
A FRANKIE'S PERFORMANCE AS A SUPERVISOR OVER THESE YOUNG TROOPS WAS MUCH THE SAME AS IT WAS LIKE LIEUTENANT ROBINSON SAID EARLIER. THEY LOOKED UP TO HIM. HE WAS THEIR LEADER SO TO SPEAK. HE WAS THEIR LEADER.

HE TOOK A GENUINE INTEREST IN THEIR PROBLEMS AND AS THEY PROGRESSED AND GAINED KNOWLEDGE AND A LITTLE MORE EXPERIENCE ON THE ROAD, HE KEPT TRACK OF THEM. IF HE THOUGHT SOMEONE WAS DOING GOOD, HE LET THEM KNOW. IF HE THOUGHT SOMEONE WAS GOING SLACK IN A PARTICULAR AREA, HE WOULD ALSO LET THEM KNOW.
Q WAS HE INTERESTED JUST IN THEIR PERFORMANCE ON DUTY OR DID HE TAKE AN INTEREST IN THEIR PERSONAL PROBLEMS OFF DUTY?
A ON AND OFF DUTY. WE ARE 24 HOURS.
Q WHEN HE WAS NOT ON DUTY, ARE YOU AWARE OF WHAT

ACTIVITIES HE ENGAGED IN ON THE WEEKENDS AND NIGHTS WHEN HE WASN'T ON CALL OR WASN'T ON DUTY?

A WHEN FRANKIE WAS NOT WORKING, HE LOVED TO FISH. HE DID THINGS LIKE THAT WHEN HE FOUND TIME, BUT A LOT OF TIMES HE VOLUNTEERED HIS TIME TO DO THINGS FOR THE COMMUNITY.

Q CAN YOU GIVE US AN EXAMPLE OF YOUR OWN PERSONAL KNOWLEDGE OF WHAT HE DID AS A VOLUNTEER.

A MY OWN PERSONAL KNOWLEDGE, FOR AN EXAMPLE HERE IN ORANGEBURG NOT TOO HOW LONG AGO, HE LEARNED OF A LITTLE GIRL THAT GOT BURNED IN A FIRE. THEIR HOUSE BURNT UP. I DON'T THINK THEY HAD MUCH RESOURCES AS FAR AS MONEY FOR CLOTHING AND SO FORTH.

SO HE LEARNED OF THIS. HE LEARNED OF THE NEED. SO HE HELPED ORGANIZE A CHARITY BASKETBALL TOURNAMENT, WHICH WE PLAYED IN. WE STOOD OTHER POLICE AGENCIES, LIKE THE SHERIFF'S DEPARTMENT AND THE CITY OF COLUMBIA. WE RAISED FUNDS FOR THIS LITTLE GIRL.

THAT'S JUST ONE. THINGS COME TO MIND, LIKE BEFORE CHRISTMAS, HIM BEING THE LEAD SUPERVISOR FOR ORANGEBURG COUNTY, HE FELT THAT THE PATROL SHOULD TAKE AN ACTIVE PART IN IDENTIFYING NEEDY FAMILIES IN THE COMMUNITY.

HE DID SO AND THEY TOOK UP MONEY AND BOUGHT FOOD

AND JUST DID THINGS LIKE THAT. HE WAS VERY ACTIVE IN BUCK-A-CUP SALES FOR THE CRIPPLED CHILDREN. I COULD GO ON AND ON, BUT THAT WAS SOME OF THE THINGS HE WAS INVOLVED WITH.

Q WHAT ABOUT YOUNGER PEOPLE IN ORANGEBURG COUNTY THAT MIGHT BE ON THE WRONG TRACKS, BAD NEIGHBORHOODS AND ALL THAT, DID HE TAKE AN INTEREST IN THAT?

A HE DID. THERE IS ONE AREA THAT COMES IMMEDIATELY TO MIND. THIS WAS ONE OF THE LAST PROJECTS THAT HE WAS KIND OF WORKING ON. THERE IS AN AREA JUST OFF OF SPRINKLE AVENUE IN ORANGEBURG. SOME OF YOU MAY KNOW WHERE IT IS, PARTICULARLY ON PINE WOOD STREET.

THIS IS AN AREA THAT, FOR LACK OF BETTER WORDS, I WOULD SAY THAT THE PEOPLE IN THIS COMMUNITY FEEL THAT MAYBE OTHER PEOPLE THAT DON'T LIVE THERE JUST DON'T CARE ABOUT THEM, HAVE JUST KIND OF FORGOTTEN ABOUT THEM.

WHAT FRANKIE WAS DOING WAS GOING INTO THIS COMMUNITY, STOPPING AND TALKING TO THE PEOPLE ON THE STREET, GETTING TO KNOW THEM, LETTING THEM KNOW HIM AND KIND OF INTRODUCING THEM TO LAW ENFORCEMENT ON A ONE-ON-ONE BASIS AND NOT BEHIND THE BLUE LIGHT SO TO SPEAK.

Q ALL RIGHT. WOULD YOU TELL THE JURY, PLEASE, HOW

SERGEANT LINGARD'S DEATH AFFECTED THOSE 21 TROOPERS THAT WORKED UNDER HIS IMMEDIATE SUPERVISION.

A OKAY. WELL, THE NIGHT THAT THIS HAPPENED WAS NEW YEAR'S EVE. OF COURSE, ALL OF US WERE WORKING. EVERYBODY HAD TO WORK THAT DAY. AS I STATED EARLIER, THERE WERE A LOT OF YOUNG TROOPERS IN ORANGEBURG COUNTY.

THAT PARTICULAR NIGHT EVERY ONE OF THEM ENDED UP IN SANTEE WHERE THIS HAPPENED. THE LOOK ON THEIR FACES -- INITIALLY IT WAS HARD TO DEAL WITH FOR EVERYBODY. IT WAS JUST THEY SAW THEIR LEADER, SO TO SPEAK, AS GONE. THEY WERE LOST. IT'S JUST BEEN VERY HARD FOR THEM TO DEAL WITH.

Q WHAT ABOUT YOU PERSONALLY?

A PERSONALLY I FEEL THAT A PART OF ME DIED THAT NIGHT ALSO. I KNEW FRANKIE. I CONSIDERED HIM A FRIEND, A SUBORDINATE, A FELLOW TROOPER. HE WAS ONE THAT I FISHED WITH, I PLAYED BASKETBALL WITH, WORKED WITH. WE LAUGHED TOGETHER. WE FOUGHT AT TIMES. IT WAS PROFESSIONAL DISAGREEMENTS, AS ONE WOULD HAVE SUPERVISING SOMEONE; BUT I HAVEN'T BEEN THE SAME.

Q LET ME HAND YOU THIS AND TELL ME WHAT THAT IS.

A THIS MAGAZINE IS CALLED THE SOUTH CAROLINA TROOPER. IT'S A MAGAZINE THAT THE HIGHWAY PATROL HAS. WE HAVE ARTICLES IN HERE, SUCH AS UPDATES WITH

THE LAW AND THINGS THAT ARE GOING ON WITH THE PATROL THROUGHOUT THE STATE. WE GET IT FOUR TIMES A YEAR. THIS HAPPENS TO BE SPRING OF '98. IT HAS A PICTURE OF FIRST SERGEANT LINGARD ON THE FRONT.

SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER THIS INTO EVIDENCE. I HAVE SHOWN THIS TO DEFENSE PREVIOUSLY.

MR. STONE: NO OBJECTION, YOUR HONOR.

THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBIT NUMBER 105, MAGAZINE, IS RECEIVED INTO EVIDENCE.)

Q DOES THE MAGAZINE CONTAIN AN ARTICLE IN REGARD TO FRANKIE LINGARD?

A YES, SIR.

Q ARE YOU FAMILIAR WITH THE ARTICLE?

A YES, SIR, I HAVE READ IT SEVERAL TIMES.

Q I WANT TO SHOW YOU THIS LAST PAGE 23 AND ASK WHETHER OR NOT THE WORDS THERE REFLECT YOUR VIEW OF FIRST SERGEANT LINGARD.

A YES, SIR. THIS WAS AN ARTICLE THAT WAS SHORTLY AFTER THE FIRST SERGEANT'S DEATH. OF COURSE, IT WAS WELL PUBLICIZED ACROSS THE STATE. IT'S TITLED, "A TRIBUTE TO F. L. LINGARD." IT WAS WRITTEN BY RANDY VAUGHN. RIGHT NOW HE IS THE ASSISTANT SUPERINTENDENT OF HUMAN RESOURCES AT THE GREENWOOD SCHOOL DISTRICT

NUMBER 50.

Q COULD YOU READ THAT TO THE JURY, PLEASE.

A YES, SIR. "A SMALL PART OF EVERY SOUTH CAROLIAN DIED BESIDE INTERSTATE 95 ON DECEMBER 31, 1997. STATE TROOPER FRANKIE LINGARD DIED SERVING HIS STATE AND HIS FELLOW MAN WITH PASSION AND CONVICTION.

"HIS DEATH WAS SO UNTIMELY ACCORDING TO THE WORLD'S STANDARD, BUT NOT ACCORDING TO THE PLAN GOD HAD FOR FRANKIE'S LIFE. BY ALL ACCOUNTS FRANKIE HAD THAT UNIQUE ABILITY TO TOUCH LIVES IN A VERY POSITIVE WAY.

"I KNOW BECAUSE OF THE WAY HE TOUCHED MY LIFE AS A FORMER STUDENT. I WAS ONE OF THE LUCKY ONES WHO HAD THE PRIVILEGE OF KNOWING HIM PERSONALLY WHILE ON THE FACULTY OF WADE HAMPTON HIGH SCHOOL IN HAMPTON.

"HIS DESIRE TO BECOME A TROOPER WAS A LIFELONG DREAM. HE ENTERED LAW ENFORCEMENT AS A POLICEMAN FOR THE TOWN OF VARNVILLE. FRANKIE WAS VERY PEOPLE ORIENTED AND POSSESSED GREAT COMMUNICATION SKILLS THAT EARNED HIM RESPECT IN A PROFESSION THAT IS SO OFTEN MALIGNED.

"FROM MY EARLIEST MEMORIES OF FRANKIE, I RECALL SOMETHING UNIQUE ABOUT HIM. AS A STUDENT, HIS SOFT AND GENTLE APPROACH TO SITUATIONS, ALONG WITH HIS POLITE MANNERS, WAS RARE.

"PEOPLE WERE PEOPLE AND EVERYONE LOOKED THE SAME THROUGH FRANKIE'S EYES. I WAS ONE OF THE FIRST PEOPLE TO SHARE IN HIS JOY OF BEING SELECTED AS A STATE TROOPER.

"HE CAME TO THANK ME FOR RECOMMENDING HIM FOR THE JOB, AND WE TALKED ABOUT HOW IMPORTANT THIS WAS TO HIM. THIS WAS FRANKIE'S WORLD SERIES VICTORY. NO EVENT COULD HAVE MADE HIM HAPPIER.

"HIS TREMENDOUS FAITH AND BELIEF IN PEOPLE MAY HAVE BEEN A CONTRIBUTING FACTOR IN HIS DEATH. THAT PARADOX IS THE SADDEST PART OF OUR LOSS TODAY. HE DIED TRUSTING HIS FELLOW MAN.

"FRANKIE'S DEATH SHOULD NOT BE IN VAIN. OUR RESPECT AND ENCOURAGEMENT FOR LAW ENFORCEMENT OFFICERS SHOULD BE STRENGTHENED THROUGH THIS LOSS. FRANKIE SERVED THE STATE OF SOUTH CAROLINA WITH PRIDE AND DIGNITY.

"HE DIED DOING WHAT HE FELT HE WAS DESTINED TO DO, SERVING OTHERS. AS A TRIBUTE TO A FINE MAN, WE SHOULD PRAISE OUR LAW ENFORCEMENT OFFICERS IN HIS MEMORY. HIS EXAMPLE SHOULD ENCOURAGE EACH OF US DAILY."

Q THANK YOU. THAT'S ALL I HAVE.

MR. STONE: NO QUESTIONS, CAPTAIN. THANK YOU.

THE COURT: YOU MAY COME DOWN.

SOLICITOR BAILEY: MAY WE APPROACH, YOUR HONOR?

THE COURT: YES, SIR.

COURT REPORTER: IS THIS ON THE RECORD?

SOLICITOR BAILEY: NO.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, IT'S APPROXIMATELY FIVE O'CLOCK NOW. THE SOLICITOR TELLS ME THAT THE ONLY REMAINING WITNESSES WILL BE MEMBERS OF THE IMMEDIATE FAMILY OF THE DECEASED.

WE WILL START THAT TESTIMONY PROMPTLY AT 9:30 IN THE MORNING. FOLLOWING THAT WE WILL HAVE SUCH TESTIMONY AS THE DEFENSE DEEMS PERTINENT FOR YOUR INQUIRY.

I AM RELATIVELY CONVINCED THAT WE WILL GIVE YOU THIS CASE FOR YOUR DELIBERATION SOMETIME TOMORROW AFTERNOON. I TELL YOU I WILL MAKE EVERY EFFORT TO SEE THAT IS DONE.

SO IT'S BEEN A LONG DAY FOR YOU. I RECOGNIZE THAT. YOU WILL BE BACK READY TO GO AT 9:30 IN THE MORNING. WE CAN, I THINK, CONCLUDE THESE

PROCEEDINGS SOMETIME TOMORROW AFTERNOON.

PLEASE REMEMBER AGAIN MY CONTINUING ADMONITIONS. DO NOT DISCUSS THE CASE WITH ANYONE. PERMIT NO ONE TO DISCUSS IT WITH YOU. DO NOT EVEN DISCUSS THIS ISSUE AMONG YOURSELVES UNTIL YOU HAVE HEARD THE TESTIMONY FROM EVERYONE AND UNTIL I HAVE GIVEN YOU THE APPROPRIATE INSTRUCTIONS IN THIS THE SECOND PHASE THAT I CALL THE SENTENCING PHASE.

YOU WILL BE FULLY ADVISED OF YOUR DUTIES. I WILL FULLY INSTRUCT YOU AT THE APPROPRIATE TIME. WE WILL RECESS FOR THE EVENING AND START BACK AT 9:30 IN THE MORNING. THANK YOU SO MUCH.

(THE JURY IS EXCUSED FOR THE DAY AT 5:05 P.M.)

THE COURT: ANYTHING FURTHER AT THIS TIME?

SOLICITOR BAILEY: NO, SIR.

THE COURT: HOW ABOUT IT FOR THE DEFENSE?

MR. STONE: NO, SIR.

THE COURT: IS THERE ANY IN CAMERA MATTERS WE NEED TO DISCUSS NOW? I WANT TO START PROMPTLY AT 9:30 AND LET'S CONCLUDE THIS CASE.

MR. STONE: I DON'T BELIEVE SO.

SOLICITOR BAILEY: NO, SIR, YOUR HONOR.

THE COURT: AS YOU HAD SEEMED TO INDICATE, THERE IS ALL EXPECTATIONS THAT THE JURY CAN GET THIS

CASE SOMETIME TOMORROW AFTERNOON?

MR. STONE: YES, SIR.

THE COURT: LET'S WORK TOWARD THAT. I PROPOSE TO END THIS CASE SOMETIME TOMORROW.

MR. STONE: YES, SIR.

THE COURT: WE ARE IN RECESS UNTIL 9:30 IN THE MORNING. THANK YOU SO MUCH. I WOULD ASK YOU THIS. WAIT ABOUT FIVE MINUTES BEFORE YOU LEAVE. MR. BAILIFF, I WANT THE JURY TO LEAVE THE COURTHOUSE GROUNDS FIRST. THANK YOU SO MUCH.

(WHEREUPON THE PROCEEDINGS WERE CONCLUDED FOR AUGUST 31, 1998).

(THE FOLLOWING PROCEEDINGS WERE REPORTED ON SEPTEMBER 1, 1998.)

THE COURT: IS THE STATE NOW READY TO PROCEED?

SOLICITOR BAILEY: YOUR HONOR, PRIOR TO THE JURY COMING IN, THERE IS ONE MATTER I WOULD LIKE TO BRING TO THE COURT'S ATTENTION.

THE COURT: ALL RIGHT, SIR.

SOLICITOR BAILEY: YESTERDAY WHEN I CALLED MRS. DOZIER, THE DEPUTY DIRECTOR OF THE JAIL, I WAS ASKING HER SOME QUESTIONS LEADING UP TO THE SEQUENCE OF EVENTS THAT LED TO MR. ALEKSEY BEING PUT IN SAFEKEEPING.

SHE MADE A NONRESPONSIVE ANSWER IN REGARD TO THE BROKEN WINDOW AND SO FORTH THAT THERE WAS A WARRANT TAKEN OUT FOR ESCAPE. THERE IS CASE LAW TO THE EFFECT THAT YOU DON'T GET INTO WARRANTS.

WE HAD OTHER TESTIMONY EARLIER OF WARRANTS OUT OF STATE. THE PROBATIVE VALUE OF THOSE WARRANTS WAS TO SHOW MOTIVE TO COMMIT THIS MURDER. THIS PARTICULAR WARRANT DOESN'T FALL IN THAT CATEGORY.

SO I THINK TO KEEP THE RECORD CLEAN, I WOULD REQUEST THE COURT, IF THE DEFENSE WISHES, TO GIVE A CURATIVE INSTRUCTION AT THE APPROPRIATE TIME TO DISREGARD THAT COMMENT.

THE COURT: WHAT IS YOUR POSITION? THAT WAS PARTIALLY ELICITED AS A RESULT OF YOUR EXAMINATION.

MR. STONE: NO, SIR. I THOUGHT ABOUT IT AGAIN LAST THE NIGHT. THE SOLICITOR ASKED THE QUESTION. IT WAS A FAIRLY VAGUE QUESTION BUT THE RESPONSE ON THE SOLICITOR'S QUESTION WAS, "WE CHARGED HIM WITH DAMAGING THE WINDOW AND WE CHARGED HIM WITH ATTEMPTED ESCAPE."

I WOULD ASK YOU TO GIVE A CURATIVE INSTRUCTION AS TO THE FACT THAT THE ESCAPE HAS NOTHING TO DO WITH THIS CASE, NOT JUST FROM THE WARRANT STANDPOINT; BUT I WOULD ASK YOU TO TELL THEM

TO DISREGARD ANY OF THOSE QUESTIONS CONCERNING ESCAPE.

I OBJECTED YESTERDAY BECAUSE OF THAT AND I REVIEWED IT AGAIN LAST NIGHT. THAT CAME ACROSS ON THE SOLICITOR'S SIDE. IT DID NOT COME ACROSS ON MY SIDE.

SOLICITOR BAILEY: JUDGE, OF COURSE, THE DEFENSE DID NOT OBJECT AT THAT TIME, SO THEY WAIVED IT.

THE COURT: IN FAIRNESS THEY DID NOT. I UNDERSTAND THAT. IN FAIRNESS TO THEM THOUGH, I WILL CHARGE THE JURY THAT THEY MUST DISREGARD THAT IN ITS ENTIRETY. I WILL TELL THEM THERE IS NO WARRANT OUT THERE FOR ESCAPE.

SOLICITOR BAILEY: YES, SIR.

THE COURT: I WILL TELL THEM THAT, TOO.

MR. STONE: ALL RIGHT, SIR.

THE COURT: OF COURSE, THEY WILL BE CHARGED DURING THE FINAL CHARGE THAT THERE HAS BEEN EVIDENCE OF HIS PRIOR CONDUCT AND THEY CANNOT AND MUST NOT USE THAT IN ANY WAY AS AN AGGRAVATING CIRCUMSTANCE. THEY WILL BE CHARGED THAT, NOT ONLY AS TO ESCAPE BUT AS TO ALL OF THEM.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

THE COURT: BRING THE JURY IN.

MR. STONE: BEFORE WE BRING THE JURY IN, YOUR HONOR, THE SOLICITOR INTENDS TO INTRODUCE, I BELIEVE -- IT'S HARD TO COUNT THEM UP -- ABOUT TEN PHOTOGRAPHS OF THE DECEDENT IN VARIOUS STAGES OF HIS LIFE.

I THINK THE CASE LAW IS CLEAR. THE QUESTION AS FAR AS VICTIM IMPACT IS WHETHER OR NOT IT'S EXCESSIVE. IF IT IS, IN FACT, EXCESSIVE, IT PREJUDICES THE RIGHT FOR A FAIR TRIAL.

I UNDERSTAND A CURRENT PHOTOGRAPH TO SHOW THE IMPACT THE VICTIM HAD OR THE DECEASED HAD ON THE VICTIM'S FAMILY, BUT AN ENTIRE SERIES OF PHOTOGRAPHS STARTING, I THINK, WHEN HE WAS 14, I BELIEVE IS EXCESSIVE AND UNDULY PREJUDICIAL.

THE COURT: NO, SIR.

SOLICITOR BAILEY: YOUR HONOR, THERE ARE APPROXIMATELY TEN PHOTOGRAPHS AND I HAVE FOUR DIFFERENT FAMILY MEMBERS. I HAVE INTENTIONALLY LIMITED THE AMOUNT OF THE FAMILY MEMBERS.

THE COURT: I WILL PERMIT THAT. THE JURY IS ENTITLED TO UNDERSTAND THE VICTIM'S LIFE IF THIS DEPICTS IT APPROPRIATELY. I THINK IT'S PROBATIVE FOR THE ISSUES IN THIS CASE AND OF THE IMPACT THAT HIS UNTIMELY DEATH WILL HAVE ON THE VICTIMS. I WILL

PERMIT THAT. I NOTE YOUR OBJECTION FOR THE RECORD.

MR. STONE: YES, SIR.

THE COURT: ANYTHING FURTHER?

SOLICITOR BAILEY: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: AS I UNDERSTAND IT, THERE WAS SOME INDICATION THAT SOME FILM MIGHT BE SHOWN?

SOLICITOR BAILEY: YOUR HONOR, IT'S ABOUT A THREE MINUTE -- THERE WERE TWO OF THEM. I AGREED TO PULL ONE OF THEM.

THE COURT: YOU HAVE HAD THE OPPORTUNITY TO REVIEW IT?

MR. STONE: YES, SIR. MY UNDERSTANDING IS HE IS JUST GOING TO SHOW THE VERY LAST, WHICH IS THE SPEAKING PART OF IT. THAT BEING THE CASE, WE HAVE DISCUSSED THAT.

THE COURT: BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM AT 9:42 A.M.)

THE COURT: GOOD MORNING, MR. FOREMAN, AND LADIES AND GENTLEMEN. I WANT THE RECORD TO AGAIN REFLECT THAT I HAVE DISCUSSED WITH YOU THE ADMONITIONS THAT I GIVE TO YOU EVERY DAY.

I WANT TO MAKE SURE THAT THERE HAS BEEN NO IMPROPER CONTACT WITH YOU WITH REGARD TO ANY ISSUES

IN THE CASE AND THAT YOU HAVE HAD NO CONTACT WITH ANY OUTSIDE PEOPLE WITH REGARD TO THE ISSUES IN THE CASE.

IF THAT BE THE CASE, IF ANYBODY HAS TRIED TO TALK TO YOU ABOUT THE CASE OR IF YOU HAD ANY CONVERSATION WITH ANYONE, PLEASE STAND AND SO SIGNIFY.

(THERE WAS NO RESPONSE.)

THE COURT: THE RECORD WILL REFLECT THAT MY ADMONITIONS REMAIN IN EFFECT. ONE FURTHER THING BEFORE WE PROCEED. ON YESTERDAY WHILE THE WARDEN OF THE DETENTION CENTER WAS TESTIFYING, THERE WAS SOME REFERENCE TO ESCAPE.

I TELL YOU THAT THIS DEFENDANT IS NOT CHARGED WITH ESCAPE. THERE IS NO ESCAPE WARRANT OUTSTANDING. YOU MUST DISREGARD THAT TESTIMONY IN ITS ENTIRETY. IT HAS NOTHING TO DO -- THE ISSUE OF ESCAPE HAS NOTHING TO DO WITH THE TRIAL OF THIS CASE. CALL YOUR NEXT WITNESS.

SOLICITOR BAILEY: THE STATES CALL DORA LINGARD.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: DORA LINGARD.

DORA LINGARD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR LAST NAME FOR THE COURT

REPORT, PLEASE.

THE WITNESS: L-I-N-G-A-R-D.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. LINGARD, WOULD YOU TELL THE JURY PLEASE WHERE YOU LIVE.

A I LIVE IN VARNVILLE, SOUTH CAROLINA.

Q AND HOW LONG HAVE YOU LIVED IN VARNVILLE, ALL YOUR LIFE?

A ALL MY LIFE.

Q AND DO YOU WORK?

A YES.

Q TELL THE JURY PLEASE WHERE YOU WORK AND WHAT TYPE WORK YOU DO.

A I WORK AT HAMPTON, SOUTH CAROLINA ABOUT THREE MILES FROM MY HOME TOWN AT INTERNATIONAL PAPER AND I'M AN INSPECTOR.

Q AND HOW LONG HAVE YOU WORKED AT INTERNATIONAL PAPER?

A ALMOST 29 YEARS.

Q AND WHO IS YOUR HUSBAND, MRS. LINGARD?

A FRANK LINGARD.

Q AND HOW LONG HAVE YOU AND MR. LINGARD BEEN MARRIED?

A ABOUT 45 YEARS.

Q AND HOW MANY CHILDREN DID YOU AND MR. LINGARD HAVE DURING THAT MARRIAGE?
A WE HAD SIX. TWO WERE DECEASED AT BIRTH.
Q WAS FRANKIE LINGARD YOUR SON?
A YES.
Q WHERE DID FRANKIE GO TO HIGH SCHOOL?
A HE WENT TO HIGH SCHOOL AT WADE HAMPTON HIGH IN HAMPTON.
Q WHEN HE WAS IN HIGH SCHOOL, WHAT KIND OF THINGS DID HE DO, OTHER THAN GO TO SCHOOL?
A OTHER THAN GO TO SCHOOL, HE LIKED TO PLAY BALL. MOST OF THE TIME HE WORKED AFTER SCHOOL. HE WORKED DURING LITTLE ODD JOBS FOR DIFFERENT PEOPLE AFTER SCHOOL.
Q DID HE DRIVE --
A AFTER HE WAS 14 YEARS OLD.
Q DID HE DRIVE A SCHOOL BUS?
A AFTER HE CAME HOME FROM DRIVING THE SCHOOL BUS. YES, HE DID DRIVE THE SCHOOL BUS.
Q I WILL HAND YOU THIS PICTURE AND ASK IF THAT IS A PICTURE OF FRANKIE WHEN HE WAS 14 YEARS OLD.
A YES, SIR, HE WAS 14 YEARS OLD.

SOLICITOR BAILEY: I WOULD OFFER THIS, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

(STATE'S EXHIBIT NUMBER 106, PHOTOGRAPH OF VICTIM AT 14, IS RECEIVED INTO EVIDENCE.)

Q MRS. LINGARD, WHEN DID FRANKIE GRADUATE FROM HIGH SCHOOL?

A IN '76.

Q AFTER HE GOT OUT OF HIGH SCHOOL, WHAT DID HE DO?

A HE STAYED HOME FOR ABOUT TWO WEEKS AND WENT DIRECTLY INTO THE ARMY.

Q AND HOW LONG WAS HE IN THE ARMY?

A I WOULD SAY ABOUT FOUR YEARS.

Q DID HE GET AN HONORABLE DISCHARGE WHEN HE GOT OUT OF THE ARMY?

A YES.

Q AFTER HE GOT OUT OF THE ARMY, WHAT DID HE DO THEN? DID HE COME BACK TO VARNVILLE?

A HE CAME BACK TO VARNVILLE AND IMMEDIATELY WENT RIGHT TO THE POLICE DEPARTMENT IN VARNVILLE, SOUTH CAROLINA.

Q HE GOT A JOB AS A CITY POLICE OFFICER?

A YES.

Q IN VARNVILLE?

A YES.

Q AND HOW LONG DID HE WORK IN VARNVILLE AS A POLICE OFFICER?

A ABOUT THREE YEARS.

Q SO THAT WOULD BRING US TO ABOUT WHAT, 1982?
A EIGHTY-TWO, YES.
Q IN 1982 WHAT DID FRANKIE DO?
A WELL, HE WENT TO THE ACADEMY AND THEN HE GOT -- YOU KNOW, HE WAS A HIGHWAY PATROLMAN.
Q AND DO YOU RECALL HOW HE FELT ABOUT BECOMING A HIGHWAY PATROLMAN?
A HE WAS HAPPY. HE WAS VERY HAPPY.
Q DID HE TALK WITH YOU ABOUT THAT?
A YES, HE DID.
Q AND WAS THAT A DREAM OF HIS TO BE A HIGHWAY PATROLMAN?
A YES, YES.
Q FROM 1982 UNTIL FRANKIE'S MURDER ON NEW YEAR'S EVE, HOW FREQUENT WAS YOUR CONTACT WITH HIM? HOW OFTEN DID YOU SEE YOUR SON?
A WELL, I SAW HIM VERY OFTEN, YOU KNOW. HE LIVED, YOU KNOW, A GOOD WAYS. HE WOULD BE WORKING ALL THE TIME, BUT THEN HE WOULD TAKE TIME TO COME BY AND CHECK ON US.
Q SO HE WOULD NORMALLY COME TO VISIT WITH YOU AND YOUR HUSBAND IN VARNVILLE?
A YES.
Q WHAT TYPE THINGS DID Y'ALL DO WHEN HE CAME TO VISIT WITH YOU?

A WELL, HE REALLY JUST, YOU KNOW, SIT DOWN AND TALK, TALK ABOUT WHAT HE, YOU KNOW, WOULD LIKE TO DO AND TALK ABOUT THE FUTURE. SOMETIMES I ASKED HIM FOR HIS ADVICE AND SOMETIMES HE ASKED MINE.

Q WERE YOU CLOSE TO HIM?

A YES, WE WERE VERY CLOSE.

Q WHAT SORT OF THINGS DID HE LIKE TO DO IN HIS SPARE TIME WHEN HE WAS NOT WORKING AS A TROOPER?

A MOSTLY FISHING WAS HIS HOBBY.

Q DID HE DO ANYTHING ELSE, PLAY BASKETBALL?

A YES, BASKETBALL AND CHURCH, WHATEVER.

Q DID HE SING IN THE CHOIR AT CHURCH?

A YES.

Q AND CAN YOU TELL US HOW FRANKIE FELT ABOUT HIS FAMILY, HIS CHILDREN AND HIS PARENTS?

A YES, HE LOVED HIS FAMILY. HE STRESSED TO ME MANY TIMES HOW MUCH HE LOVED US.

Q LET ME SHOW YOU THIS PICTURE AND ASK IF THIS IS A PICTURE OF YOUR SON TAKEN IN 1987?

A YES, IT IS.

SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.

THE COURT: YES, SIR.

(STATE'S EXHIBIT NUMBER 107, PHOTOGRAPH OF VICTIM AND CHILD, IS RECEIVED INTO EVIDENCE.)

Q MRS. LINGARD, WHO IS THE LITTLE GIRL IN THE PICTURE WITH YOUR SON?
A THAT'S MY GRANDDAUGHTER.
Q THAT WOULD HAVE BEEN FRANKIE'S NIECE?
A THAT'S FRANKIE NIECE.
Q WAS HE CLOSE TO HIS NIECES?
A HE WAS VERY CLOSE TO HIS NIECES. THEY LOVED THEM AND HE LOVED THEM.
Q MRS. LINGARD, WHEN WAS THE LAST TIME THAT YOU SPENT ANY LENGTH OF TIME WITH YOUR SON?
A I SPENT -- THE LAST TIME HE WAS TO MY HOUSE WAS ON NEW YEAR'S EVE. ABOUT 4:30 HE CAME BY.
Q WHAT ABOUT CHRISTMAS PRIOR TO THAT?
A YES, CHRISTMAS DAY HE SPENT WITH US. WHEN HE GOT OFF FROM WORK, HE CAME DIRECTLY TO MY -- I DON'T KNOW WHETHER HE CAME DIRECTLY TO MY HOUSE BUT HE CAME.
Q WERE THERE OTHER MEMBERS OF THE FAMILY THERE FOR CHRISTMAS TO CELEBRATE THE HOLIDAY WITH Y'ALL?
A YES, ALL MY CHILDREN BE THERE.
Q WAS THAT THE GATHERING PLACE FOR YOUR CHILDREN ON THE HOLIDAYS?
A YES.
Q FRANKIE AND THE OTHER CHILDREN WOULD COME HOME ON CHRISTMAS AND THOSE KIND OF HOLIDAYS?

A YES.
Q LET ME SHOW YOU THIS PICTURE AND ASK IF THAT WAS TAKEN AT CHRISTMAS?
A YES, THAT WAS TAKEN ON CHRISTMAS DAY.
Q CHRISTMAS DAY OF 1997?
A 1997.
Q IS THIS THE LAST PICTURE OF YOUR SON?
A THE LAST PICTURE. THE LAST PICTURE, YES.
SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.
THE COURT: ALL RIGHT, SIR.
(STATE'S EXHIBIT NUMBER 108, FAMILY PHOTOGRAPH, IS RECEIVED INTO EVIDENCE.)
Q MRS. LINGARD, WOULD YOU POINT OUT WHICH ONE OF THOSE TWO MEN THERE IS YOUR SON?
A THE ONE ON THE LEFT.
Q THAT WAS TAKEN ABOUT ONE WEEK BEFORE HIS MURDER?
A YES.
Q WHO IS THAT ON THE RIGHT?
A THAT'S MY SON-IN-LAW AND HIS BABY.
Q WHEN IS THE LAST TIME THAT YOU SAW YOUR SON ALIVE, MRS. LINGARD?
A ABOUT 4:30, ABOUT 4:30 NEW YEAR'S EVE.
Q AND WHERE WAS THAT?

A AT MY HOUSE.
Q WAS FRANKIE WORKING THEN? WAS HE IN UNIFORM?
A HE WAS IN UNIFORM, YES.
Q DO YOU NEED SOME WATER?
A NO, I DON'T NEED THAT.
Q DID Y'ALL HAVE PLANS FOR NEW YEAR'S DAY?
A YES, WE DID.
Q WHAT WERE THOSE PLANS?
A WE PLANNED TO JUST SIT AROUND AT HOME AND HAVE DINNER.
Q WHO WAS GOING TO HAVE DINNER WITH Y'ALL?
A THE WHOLE FAMILY.
Q THAT WOULD HAVE INCLUDED BESIDE YOU AND YOUR HUSBAND WHO ELSE?
A ALL THE CHILDREN, YES.
Q HAD YOU STARTED COOKING NEW YEAR'S DINNER THAT EVENING?
A YES.
Q MRS. LINGARD, WHEN WAS IT THAT YOU FOUND OUT YOUR SON HAD BEEN SHOT?
A IT WAS AFTER 12 O'CLOCK. IT WAS AFTER 12 O'CLOCK ON NEW YEAR'S EVE. I CAN'T RECALL EXACTLY WHAT TIME IT WAS BUT IT WAS AFTER 12.
Q HOW DID YOU FIND OUT WHAT HAPPENED?
A REALLY HOW I FOUND OUT, SOMEBODY CALLED AT MY

HOUSE. MY HUSBAND ANSWERED THE PHONE AND SOMEONE TOLD HIM THAT THEY HEARD IT ON A SCANNER. HE WAS TALKING TO THEM AND I WAS IN THE NEXT ROOM WITH MY GRANDSON. I HEARD HIM TALKING AND I GOT UP.

I WASN'T, YOU KNOW, TOO NERVOUS OR NOTHING BECAUSE ONE OF HIS COUSINS HAD JUST DIED; AND I THOUGHT SOMEBODY HAD CALLED AND TOLD HIM ABOUT THAT. THEN WHEN HE GOT OFF THE PHONE, I SAID, "FRANKIE, WHO ARE YOU TALKING TO?"

HE SAID, "DORA, I DON'T WANT TO TELL YOU." HE SAID, "SOMEBODY SAID FRANKIE GOT SHOT." AND I SAID, "WELL, I DON'T BELIEVE THAT." SO I RUN ON TO THE PHONE AND TRIED TO CALL HIS NUMBER.

I WAS SO NERVOUS AND I COULDN'T GET NOTHING DONE, SO HE TOOK THE PHONE FOR ME. AT THAT TIME I LOOKED OUT THE WINDOW AND I SAW HEADLIGHTS COMING INTO THE HOUSE, AND I JUST KNEW THEN SOMETHING WAS THE MATTER.

Q AND WHO WAS IN THE CAR? YOU SAW THE HEADLIGHTS. WHO WAS THERE?

A TWO PATROLMEN, TWO PATROLMAN CARS.

Q DID THEY TELL YOU WHAT HAPPENED?

A YES, THEY DID.

Q AND HOW DID THAT MAKE YOU FEEL WHEN YOU FOUND OUT?

A IT'S AN EXPERIENCE I WILL NEVER FORGET. I DIDN'T WANT TO BELIEVE IT. I MET THEM TO THE DOOR AND OPENED THE DOOR. I TOLD THEM, "PLEASE DON'T COME AND TOLD ME MY SON IS DEAD. PLEASE DON'T TELL ME HE IS DEAD."

HE SAID, "I'M SORRY BUT HE DIDN'T MAKE IT." THEY WERE NICE. THEY WANTED TO KNOW WHO I COULD CALL OR ANYTHING LIKE THAT AND I JUST COULDN'T THINK. AT THAT TIME I JUST COULDN'T THINK.

Q MRS. LINGARD, HOW HAS YOUR SON'S DEATH AFFECTED YOUR LIFE?

A IT AFFECTED MY LIFE BOTH MENTALLY AND PHYSICALLY. RIGHT NOW I AM TRYING TO GET SOME HELP TO OVERCOME IT, BUT I DON'T KNOW. IT DON'T GET NO EASIER.

Q WHAT KIND OF HELP ARE YOU TRYING TO GET?

A COUNSELING.

Q WHAT IS THE HARDEST PART ABOUT HIS DEATH AND THE WAY HE DIED?

A THE HARDEST PART IS JUST THE WAY HE WAS TAKEN FROM ME.

Q AS TIME GOES ON, IS IT GETTING ANY BETTER, ANY EASIER TO DEAL WITH?

A NOT AT THE MOMENT.

Q CAN YOU TELL THE JURY WHAT YOUR SON'S

RELATIONSHIP WAS WITH HIS CHILDREN.

A HE HAD A REAL CLOSE RELATIONSHIP WITH HIS CHILDREN. THAT'S ALL HE MOSTLY TALK ABOUT, YOU KNOW, WHAT HE WANT THEM TO -- YOU KNOW, HE ALWAYS... HE JUST WAS A GOOD PERSON. HE JUST WANTED EVERYBODY TO BE HAPPY.

Q AND HOW HAS YOUR SON'S DEATH AFFECTED YOUR HUSBAND?

A WELL, IT AFFECTED HIM I GUESS IN THE SAME WAY, YOU KNOW, IT DID ME. HE TALKS ABOUT IT ALL THE TIME. SOMETIMES WE SIT DOWN AND BOTH OF US BE CRYING TOGETHER.

Q MRS. LINGARD, THAT'S ALL I HAVE. THANK YOU.

MR. STONE: NO QUESTIONS.

THE COURT: YOU MAY COME DOWN.

SOLICITOR BAILEY: THE STATE CALLS NICHOLE RILEY.

CLERK: STATE YOUR NAME FOR THE RECORD, PLEASE.

THE WITNESS: KEVA NICOLE RILEY.

KEVA NICOLE RILEY, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

COURT REPORTER: WILL YOU SPELL YOUR FIRST NAME FOR ME, PLEASE.

THE WITNESS: K-E-V-A.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MS. RILEY, YOU GO BY NICKI?

A NICHOLE.

Q NICHOLE?

A YES, SIR.

Q HOW OLD ARE YOU?

A SIXTEEN.

Q WHERE DO YOU LIVE?

A IN VARNVILLE, SOUTH CAROLINA.

Q HAVE YOU LIVED THERE ALL YOUR LIFE?

A YES, SIR.

Q ARE YOU IN HIGH SCHOOL?

A YES, SIR.

Q WHAT GRADE ARE YOU IN?

A ELEVENTH.

Q AND YOU ARE AT WADE HAMPTON HIGH SCHOOL?

A YES, SIR.

Q WHAT KIND OF CLASSES ARE YOU TAKING THERE?

A I TAKE ENGLISH AND ALGEBRA TWO. I TAKE MARKETING CLASSES -- OH, GOSH.

Q JUST CALM DOWN.

A U.S. HISTORY CLASSES.

Q DO YOU HAVE ANY PLANS FOR AFTER HIGH SCHOOL?

A YES, I PLAN TO GO TO COLLEGE.

Q WHO WAS YOUR FATHER?
A FRANKIE LINGARD.
Q DID YOU DISCUSS YOUR COLLEGE PLANS WITH YOUR FATHER?
A WELL, NOT REALLY BUT HE KNEW THAT I WAS GOING TO COLLEGE. THAT'S WHAT HE WANTED ME TO DO.
Q NICHOLE, WOULD YOU TELL THE JURY JUST IN YOUR OWN WORDS WHAT YOUR RELATIONSHIP WITH YOUR FATHER WAS.
A I THINK THAT ME AND MY DAD HAD A CLOSE RELATIONSHIP. HE ALWAYS COME SEE ME AND ALWAYS TALK TO ME. WE JUST DID ALL KIND OF THINGS TOGETHER, YOU KNOW, JUST -- OH, GOSH.
Q WHAT DID Y'ALL DO TOGETHER?
A WE WENT TO CHURCH, SOMETIMES WENT FISHING, WENT TO BASEBALL AND BASKETBALL GAMES AND BOWLING. YOU KNOW, JUST ALL KIND OF FUN STUFF.
Q WHEN WAS THE LAST TIME YOU SAW YOUR FATHER?
A IT WAS ON CHRISTMAS DAY.
Q THAT WAS AT YOUR GRANDMOTHER'S HOUSE?
A YES.
Q DO YOU RECALL WHAT YOUR FATHER -- DID HE GIVE YOU A PRESENT AT CHRISTMAS?
A YES, HE BROUGHT ME THIS STEREO THAT I REALLY WANTED.

Q AND DID YOU HAVE PLANS FOR NEW YEAR'S DAY?
A YES. I WAS GOING TO MY GRANDMOTHER HOUSE WHERE WE ALWAYS GET TOGETHER AND HAVE DINNER AND STUFF ON HOLIDAYS. THAT'S WHERE WE ALWAYS GO AND MEET UP.
Q WAS YOUR FATHER GOING TO BE THERE?
A YES, HE WAS.
Q NICOLE, LET ME SHOW YOU A PICTURE AND SEE IF THIS PICTURE HAS GOT YOU AND YOUR FATHER IN IT.
A YES.
SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.
MR. STONE: NO OBJECTION.
(STATE'S EXHIBIT NUMBER 109, FAMILY PHOTOGRAPH, IS RECEIVED INTO EVIDENCE.)
Q NICHOLE, IS THIS A PICTURE TAKEN AT YOUR GRANDPARENT'S 40TH ANNIVERSARY?
A YES.
Q TELL THE JURY WHERE THAT PICTURE WAS TAKEN AT.
A IT WAS TAKEN OUTSIDE IN MY GRANDMOTHER'S GAZEBO.
Q ARE YOU IN THAT PICTURE?
A YES, I AM.
Q CAN YOU POINT OUT TO THE JURY WHERE YOU ARE.
A RIGHT THERE (INDICATING) IN THE BLACK SHIRT.
Q RIGHT BESIDE YOUR FATHER?
A RIGHT BESIDE MY FATHER.

Q THAT IS YOUR FATHER IN THE MIDDLE WITH THE STRIPED SHIRT AND SUNGLASSES?
A YES.
Q NICHOLE, HOW DID YOU FIND OUT THAT YOUR FATHER HAD BEEN SHOT?
A I WAS HOME AFTER 12 AND I WAS WATCHING T.V. THE PHONE RANG. SO MY UNCLE ANSWERED THE PHONE AND HE DIDN'T EVER PUT IT DOWN. HE TOLD MY MOTHER THE PHONE WAS FOR HER. THEN ALL OF A SUDDEN I HEARD MY MOMMA DOWN THE HALL CRYING. I DIDN'T KNOW. MY UNCLE SAY SOMEBODY HAD SHOT MY DADDY.
Q TELL THE JURY HOW YOUR FATHER'S LOSS HAS AFFECTED YOUR LIFE, HOW THINGS ARE DIFFERENT NOW THAN THEY WERE BACK THEN.
A WELL, NOW IT'S JUST TURN ME ALL AROUND. IT JUST FELL LIKE SOMETHING JUST OUT OF ME. I FEEL LONELY ALL THE TIME, NEEDY, JUST HURT ME. I CAN'T TAKE IT. OH, GOD...
Q THAT'S ALL I HAVE.
MR. STONE: NO QUESTIONS.
THE COURT: YOU MAY COME DOWN. THANK YOU. LET'S TAKE A SHORT BREAK AND THEN WE WILL START AGAIN.
(THE JURY RETIRES TO THE JURY ROOM.)
THE COURT: LET'S TAKE A VERY SHORT BREAK.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: ANYTHING FURTHER BEFORE WE PROCEED?

SOLICITOR BAILEY: NO, SIR.

THE COURT: FROM THE DEFENSE?

MR. STONE: NO, SIR.

THE COURT: BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT. CALL YOUR NEXT WITNESS.

SOLICITOR BAILEY: THE STATE CALLS FRANK LINGARD.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: FRANK LINGARD.

FRANK LINGARD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q YOU ARE FRANK LINGARD?

A YES, SIR.

Q MR. LINGARD, WOULD YOU PLEASE TELL THE JURY HOW OLD YOU ARE.

A I'M 64.

Q AND ARE YOU RETIRED NOW?

A YEAH, I HAD TO RETIRE ON ACCOUNT OF DISABILITY.

Q WHAT KIND OF WORK DID YOU DO BEFORE YOU RETIRED?
A MY LAST JOB WAS WORKING DOWN IN BEAUFORT FOR THE PALLET FACTORY.
Q PALLET FACTORY?
A RIGHT.
Q IN BEAUFORT?
A I MEAN, YEMASSEE. I'M SORRY.
Q YEMASSEE?
A YES.
Q YOU ARE FROM VARNVILLE?
A RIGHT.
Q YOU HAVE LIVED THERE ALL YOUR LIFE?
A THAT'S RIGHT.
Q AND YOU ARE MARRIED TO DORA LINGARD?
A YES, SIR.
Q MRS. LINGARD SAID Y'ALL HAVE BEEN MARRIED 45 YEARS.
A FORTY-FIVE YEARS.
Q AND YOU ARE FRANKIE LINGARD'S FATHER; IS THAT CORRECT?
A THAT'S CORRECT.
Q NOW, I WILL ASK YOU ABOUT YOUR RECOLLECTIONS OF YOUR SON WHEN HE WAS IN HIGH SCHOOL. WHAT DID FRANKIE DO IN HIGH SCHOOL?
A MOSTLY HE PLAYED BASEBALL, I THINK, FOR A WHILE.

I KNOW HE DID.
Q DID HE DRIVE A SCHOOL BUS?
A HE DRIVE A SCHOOL BUS.
Q DID HE FINISH HIGH SCHOOL ABOUT 1976?
A 1976.
Q AND THEN DID HE GO IN THE ARMY AFTER HIGH SCHOOL?
A THAT'S RIGHT.
Q DID HE DISCUSS THAT WITH YOU, HIS PLANS ON GOING INTO THE ARMY?
A WELL, YEAH, WE HAD TALKED ABOUT IT. HE ASKED ME IF THAT WOULD BE THE BEST THING FOR HIM TO DO. I TOLD HIM, WELL, IF HE THINK ABOUT DOING IT, IF HE THINK ABOUT HE WANTS TO DO IT, IT WAS UP TO HIM. HE DECIDED TO.
Q SO YOU AGREED WITH HIM ENLISTING IN THE ARMY; IS THAT CORRECT?
A RIGHT.
Q LET ME SHOW YOU THIS PICTURE AND ASK IF IT IS A PICTURE OF YOUR SON WHEN HE FINISHED BOOT CAMP.
A YES, SIR.
SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.
MR. STONE: NO OBJECTION.
THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBIT NUMBER 110, PHOTOGRAPH OF VICTIM, IS RECEIVED INTO EVIDENCE.)

Q NOW, WHEN FRANKIE FINISHED BOOT CAMP, DID HE GET SOME ADDITIONAL TRAINING AS AN M.P., MILITARY POLICEMAN?

A YES, HE WAS AN M.P. IN THE SERVICE.

Q WAS HE STATIONED IN KENTUCKY WITH THE 101ST AIRBORNE?

A RIGHT.

Q LET ME SHOW YOU THIS. I WILL SHOW YOU TWO PICTURES AND ASK IF THESE ARE PICTURES OF YOUR SON WHEN HE WAS AN M.P. IN THE 101ST AIRBORNE.

A RIGHT.

MR. STONE: NO OBJECTION, YOUR HONOR.

(STATE'S EXHIBITS NUMBER 111 AND 112, PHOTOGRAPHS OF THE VICTIM, ARE RECEIVED INTO EVIDENCE.)

Q THIS IS A PICTURE OF YOUR SON FILLING OUT SOME PAPERWORK, I BELIEVE, MR. LINGARD; IS THAT CORRECT?

A YES, SIR.

Q YOU CAN SEE IT UP HERE ON THE SCREEN.

A YES.

Q THIS IS ANOTHER PICTURE OF HIM ON DUTY AS AN M.P.?

A YEAH.

Q MR. LINGARD, AFTER FRANKIE GOT OUT OF THE ARMY, YOUR WIFE SAID HE CAME BACK TO VARNVILLE. DO YOU REMEMBER THAT?

A YES, SIR.

Q HE WENT TO WORK FOR THE POLICE DEPARTMENT IN VARNVILLE?

A RIGHT.

Q HE WORKED THERE FOR A COUPLE OF YEARS, IS THAT RIGHT, AS A POLICEMAN IN VARNVILLE?

A THAT'S RIGHT.

Q DID HE LIVE AT HOME WITH Y'ALL OR WHERE DID HE LIVE THEN?

A I THINK HE -- SPEAK THAT AGAIN.

Q AFTER FRANKIE GOT OUT OF THE ARMY AND CAME HOME TO VARNVILLE AND WENT TO WORK FOR THE POLICE DEPARTMENT, DID HE LIVE WITH YOU AND YOUR WIFE?

A YES, HE LIVED WITH US FOR A WHILE.

Q AFTER A COUPLE OF YEARS HE JOINED THE HIGHWAY PATROL; IS THAT CORRECT?

A THAT'S CORRECT.

Q HOW DID HE FEEL ABOUT JOINING THE HIGHWAY PATROL?

A HE WAS VERY EXCITED. HE REALLY LIKED TO BE A PATROLMAN ALL RIGHT. HE REALLY DID.

Q DO YOU REMEMBER BACK WHEN HE GOT SWORN IN AS A

TROOPER?

A YES, SIR.

Q MR. LINGARD, I WILL SHOW YOU A PICTURE HERE AND ASK IF THAT IS A PICTURE OF THE CEREMONY WHEN YOUR SON GOT SWORN IN AS A HIGHWAY PATROLMAN.

A YES, SIR.

MR. STONE: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBIT NUMBER 113, FAMILY PHOTOGRAPH, IS RECEIVED INTO EVIDENCE.)

Q MR. LINGARD, THAT WAS BACK IN 1982; IS THAT RIGHT?

A THAT'S RIGHT.

Q AND THE LADY ON THE LEFT, WHO IS THAT? IS THAT YOUR WIFE THERE?

A YES. YES, SIR, MY WIFE OVER THERE.

Q ON THE OTHER SIDE, WHO IS THAT WITH FRANKIE?

A THAT'S MY DAUGHTER.

Q THAT'S YOUR DAUGHTER LEATHA?

A YES, SIR.

Q FROM 1982 ON UP THROUGH THE END OF LAST YEAR, YOU LIVED IN VARNVILLE AND FRANKIE LIVED IN ORANGEBURG BECAUSE HE WAS ASSIGNED HERE; IS THAT RIGHT?

A THAT'S RIGHT.

Q DID YOU SEE HIM OFTEN?
A I SEE HIM VERY OFTEN, MAYBE ABOUT ONCE OR TWICE A WEEK. ANY CHANCE HE COULD GET OFF, HE WOULD DROP BY TO SEE HOW WE WAS DOING.
Q WHEN HE CAME BY TO SEE AND YOUR WIFE, WHAT KIND OF THINGS DID Y'ALL DO TOGETHER?
A WELL, WE MOSTLY SAT DOWN AND TALK. SOMETIMES ME AND HIM WOULD GET OUT AND WALK AROUND, LOOK AROUND, TALK, WHEN HE COME AROUND.
Q DID FRANKIE LIKE TO FISH?
A YES, SIR, SURE DID.
Q DID YOU EVER GO FISHING WITH HIM?
A YES, SIR.
Q WHAT KIND OF FISHING DID Y'ALL DO TOGETHER?
A HE LIKED FOR ME TO GO DOWN WITH HIM DOWN THERE TO BEAUFORT WITH SALT WATER FISHING. I REALLY DIDN'T LIKE THE WATER TOO MUCH BUT HE WAS EXCITED. HE WANTED ME TO GO, SO I TRY TO GET OUT THERE WITH HIM. WE GO FISHING A LOT.
Q AND WHAT ELSE DID FRANKIE DO IN HIS SPARE TIME BESIDES FISHING?
A WE JUST BE TOGETHER, YOU KNOW, TALKING.
Q WERE YOU VERY CLOSE TO FRANKIE?
A VERY CLOSE.
Q WHEN WAS THE LAST TIME THAT YOU SAW FRANKIE

ALIVE?

A ON NEW YEAR'S EVE EVENING.

Q DO YOU RECALL ABOUT WHAT TIME IT WAS ON NEW YEAR'S EVE WHEN YOU SAW HIM?

A PROBABLY AROUND 5:30 OR SIX O'CLOCK.

Q WAS HE IN UNIFORM GETTING READY TO GO TO WORK AS A TROOPER THAT EVENING?

A THAT'S RIGHT.

Q DID Y'ALL HAVE PLANS TO GET TOGETHER THE NEXT DAY?

A YES SIR.

Q MRS. LINGARD SAID Y'ALL WERE GOING TO HAVE DINNER AT YOUR HOUSE, THE WHOLE FAMILY.

A THAT'S RIGHT.

Q MR. LINGARD, DO YOU RECALL GETTING THAT TELEPHONE CALL THAT YOUR WIFE TALKED ABOUT?

A YES, SIR.

Q WHO WAS THAT CALL FROM?

A FROM A FRIEND OF MINE NAMED ISIAH MOORE.

Q WERE YOU ASLEEP WHEN THE PHONE RANG?

A YES, SIR.

Q AND AFTER YOU TALKED TO MR. MOORE, HE TOLD YOU SOMETHING THAT UPSET YOU; DIDN'T HE?

A YES, SIR. HE TOLD ME HE DIDN'T WANT TO TELL ME, BUT I FINALLY CAME OUT AND ASKED HIM. I ASKED HIM

WAS IT ANYTHING ABOUT FRANKIE. HE TOLD ME HE WAS SORRY, BUT HE HEARD -- HE DIDN'T KNOW EXACTLY WHETHER IT WAS TRUE OR NOT.

ABOUT THE TIME I WAS GETTING OFF THE PHONE, MY WIFE COME TO THE DOOR AND SHE ASKED ME WHO I WAS ON THE PHONE WITH. I TOLD HER I WAS ON THE PHONE WITH A FRIEND OF MINE AND HE TOLD ME THAT FRANKIE LEE HAD GOT SHOT.

I HATED TO TELL HER. I TELL HER, "I HATE TO TELL YOU THAT SOME FELLOW TOLD ME FRANKIE LEE GOT SHOT." BY THE TIME WE LEAVE THE ROOM AND WALK IN THE LIVING ROOM, WE SEEN THE PATROL COMING IN.

Q THE FELLOW YOU TALKED TO ON THE PHONE, DID HE SAY WHAT CONDITION YOUR SON WAS IN? DID HE SAY HE WAS DEAD AT THAT TIME?

A NO, HE REALLY DIDN'T SAY. HE HEARD ON THE SCANNER AND SAY HE WAS SHOT.

Q YOU SAW SOME CARS COME INTO YOUR DRIVEWAY?

A YEAH, TROOPERS COMING IN.

Q WHAT DID THEY TELL YOU, MR. LINGARD?

A MY WIFE RUN OUT AND SHE TOLD THEM DON'T TELL HER NOTHING HAPPENED TO FRANKIE LEE, AND SHE JUST WENT INTO A SPASM. I HAD TO WALK BACK IN AND SIT DOWN BEFORE I FELL.

Q MR. LINGARD, DID Y'ALL GO SOMEWHERE THEN?

A SIR?
Q DID Y'ALL LEAVE THE HOUSE WHEN YOU FOUND OUT WHAT HAPPENED?
A NO, SIR, WE DIDN'T LEAVE.
Q WHEN WAS IT YOU REALIZED THAT YOUR SON WAS DEAD, NOT ONLY THAT HE HAD BEEN SHOT ON DUTY BUT HE WAS DEAD?
A WHEN THE TROOPERS COME.
Q MR. LINGARD, COULD YOU TELL THE JURY PLEASE HOW YOUR SON'S LOSS HAS AFFECTED YOUR LIFE.
A IT AFFECTED MY LIFE REAL BAD. IT DON'T BE A DAY PASS THAT I DON'T THINK ABOUT IT. IT REALLY HURTS. IT DON'T BE A DAY I DON'T THINK ABOUT MY SON.
Q YOU THINK OF HIM EVERY DAY?
A EVERY DAY.
Q WHAT'S THE HARDEST PART ABOUT HIS DEATH AND THE WAY HE DIED?
A SIR?
Q WHAT IS THE HARDEST PART ABOUT IT, MR. LINGARD?
A IT'S JUST REAL HARD. I CAN'T HARDLY DESCRIBE IT. IT CHANGE --
Q DID IT -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU. HAS IT CHANGED YOUR WIFE ANY? IS SHE A DIFFERENT PERSON NOW THAN SHE WAS THEN?

A YES, IT'S CHANGED HER A LOT. HER HEALTH AIN'T TOO BAD. SHE HAVE DEPRESSION. IT DESTROYED HER LIFE TERRIBLY.

Q MRS. LINGARD SAID SHE WAS SEEING A COUNSELOR. ARE YOU SEEING SOMEBODY OR ARE YOU TRYING TO HANDLE IT ON YOUR OWN?

A NO, SIR, TRYING TO HANDLE IT ON MY OWN.

Q IS IT GETTING ANY BETTER, ANY EASIER?

A A LITTLE BIT, NOT TOO MUCH.

Q MR. LINGARD, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

MR. STONE: NO QUESTIONS.

THE COURT: YOU MAY COME DOWN.

SOLICITOR BAILEY: MRS. RAYSOR, LEATHA L. RAYSOR.

CLERK: STATE YOUR NAME FOR THE RECORD, PLEASE.

THE WITNESS: LEATHA L. RAYSOR.

LEATHA L. RAYSOR, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: SPELL YOUR LAST NAME, PLEASE.

THE WITNESS: R-A-Y-S-O-R.

COURT REPORTER: AND YOUR FIRST NAME, PLEASE.

THE WITNESS: LEATHA, L-E-A-T-H-A.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. RAYSOR, ARE YOU MARRIED?

A YES, I AM.

Q WHO IS YOUR HUSBAND?

A RANDY RAYSOR.

Q IS HE IN COURT WITH YOU TODAY?

A YES, HE IS.

Q AND HOW LONG HAVE YOU AND MR. RAYSOR BEEN MARRIED?

A SINCE NOVEMBER OF '91.

Q AND Y'ALL HAVE SOME CHILDREN?

A YES, WE HAVE ONE SON.

Q WHAT IS HIS NAME AND HOW OLD IS HE?

A HE NAME IS RANDALL RAYSOR AND HE IS ALMOST FOUR. HE WILL BE FOUR THE END OF NEXT MONTH.

Q YOU ARE EXPECTING ANOTHER CHILD NOW; IS THAT RIGHT?

A YES, I AM.

Q WHEN ARE YOU DUE?

A ONE WEEK FROM TODAY.

Q NOW, FRANKIE LINGARD WAS YOUR BROTHER; IS THAT CORRECT?

A YES.

Q WHAT IS THE AGE DIFFERENCE BETWEEN YOU AND

FRANKIE?
A HE WAS TWO YEARS OLDER.
Q WOULD YOU TELL THE JURY WHAT YOUR RELATIONSHIP GROWING UP WAS WITH YOUR OLDER BROTHER.
A WE HAD A REAL GOOD RELATIONSHIP. IN OUR FAMILY JUST OUR IMMEDIATE CHILDREN, HIS NAME WAS BUBBA. HE WAS JUST BUBBA TO US. THAT WAS THE NAME HE WENT BY IN THE HOME. WE WERE JUST REAL CLOSE.
Q DID HE KIND OF WATCH OUT FOR YOU?
A YES, HE DID.
Q AS AN OLDER BROTHER?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q NOW, AFTER YOUR BROTHER GREW UP AND GOT OUT OF HIGH SCHOOL AND WENT IN THE SERVICE AND CAME BACK AND GOT INTO LAW ENFORCEMENT, DID YOU CONTINUE TO STAY CLOSE WITH HIM?
A YES, WE DID.
Q HOW FAR -- YOU LIVE IN VARNVILLE I THINK?
A NO, I LIVE IN COLUMBIA.
Q COLUMBIA. YOUR PARENTS LIVE IN VARNVILLE. FRANKIE LIVED IN ORANGEBURG --
A YES.
Q -- THE LAST SEVERAL YEARS; IS THAT RIGHT?
A YES.
Q DESPITE THAT DISTANCE DID Y'ALL GET TOGETHER

OFTEN?
A YES, WE DID. I NORMALLY GO DOWN TO MY MOM'S HOUSE AT LEASE TWICE A MONTH, AND AT LEAST ONE OF THOSE TIMES HE WOULD BE THERE.
Q AND CAN YOU JUST DESCRIBE WHAT YOUR RELATIONSHIP WITH YOUR BROTHER WAS LIKE DURING HIS ADULT YEARS, SAY THE LAST TEN YEARS.
A IT STILL HAVE BEEN REAL CLOSE. WE GOT ALONG REAL WELL. HE WAS STILL BUBBA. EVEN THOUGH WE GREW UP WITH THAT LITTLE NAME TOGETHER, WE STILL WANTED US TO CALL HIM BUBBA. WE WERE JUST REAL CLOSE.
Q WHEN WAS THE LAST TIME YOU SAW FRANKIE ALIVE?
A IT WAS ON CHRISTMAS DAY.
Q WHO ELSE WAS THERE?
A OUR WHOLE FAMILY.
Q I WANT TO SHOW YOU A COUPLE OF PHOTOGRAPHS HERE. I WILL SHOW YOU THESE TWO, FIRST OF ALL, AND SEE IF YOU CAN IDENTIFY THIS.
A YES, SIR.
Q IS THAT A PICTURE OF YOU AT YOUR WEDDING?
A YES, IT IS.
Q AND YOUR BROTHER FRANKIE?
A YES.
Q (HAND TO WITNESS.)
A THIS IS THE SAME DAY, WEDDING DAY.

SOLICITOR BAILEY: WE OFFER THESE, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

(STATE'S EXHIBITS NUMBER 114 AND 115, WEDDING PHOTOGRAPHS, ARE RECEIVED INTO EVIDENCE.)

Q MRS. RAYSOR, THIS IS STATE'S 114. IS THAT YOU AND YOUR BROTHER AT YOUR WEDDING?

A YES, IT IS.

Q WHAT DATE WAS THAT?

A NOVEMBER 30, 1991.

Q AND THIS PICTURE HERE? THIS IS STATE'S 115.

A YES, THAT SAME DAY.

Q WHO ELSE IS IN THAT PICTURE? THAT'S YOU AND YOUR HUSBAND I GUESS IN THE TUXEDO?

A RIGHT. ON THE FAR LEFT IS MY SISTER-IN-LAW, RANDY'S SISTER, SHEILA, AND BUBBA'S WIFE, BARBARA, AND MY BROTHER ON THE END.

Q WAS FRANKIE IN THE WEDDING PARTY?

A NO, HE WASN'T.

Q HE WAS JUST PRESENT AT THE WEDDING?

A YES, HE WAS ON DUTY BUT HE STILL CAME.

Q MRS. RAYSOR, WHERE WERE YOU WHEN YOU FOUND OUT THAT SOMETHING HAD HAPPENED TO YOUR BROTHER?

A I WAS AT HOME IN COLUMBIA, JUST NOT TOO HOW LONG HAD GOT HOME FROM WATCH NIGHT SERVICES. I THINK ME

AND MY HUSBAND WAS UP TALKING FOR A WHILE...

Q JUST TAKE YOUR TIME.

A WE WAS UP KIND OF LATE. WE WERE TALKING ABOUT THE CHANGES THAT WE HAD GONE THROUGH DURING THE NEW YEAR BECAUSE I HAD JUST FOUND OUT THE DAY BEFORE THAT I WAS PREGNANT.

WE HAD JUST PUT OUR HOUSE ON THE MARKET AND WAS IN THE PROCESS OF BUILDING A NEW HOME. WE WERE JUST REAL HAPPY TALKING ABOUT ALL THAT AND WHAT WAS COMING UP IN THE NEW YEAR. I THINK IT WAS AROUND MAYBE BETWEEN ONE AND 1:30 I HAD GOTTEN A PHONE CALL. I WAS JUST GETTING READY TO GO TO BED.

Q WHERE WAS YOUR SON THAT NIGHT?

A HE WAS AT MY PARENT'S HOME. HE WAS THERE SINCE CHRISTMAS. I HAD LEFT SHORTLY BEFORE THEN, RIGHT AFTER CHRISTMAS AND CAME BACK.

Q SO JUST YOU AND YOUR HUSBAND WERE AT HOME?

A YES. THE PHONE RANG AND HE SAID HIS NAME WAS TROOPER -- I DON'T REMEMBER THE NAME HE GAVE ME -- BUT THAT I NEED TO COME DOWN TO MY PARENT'S HOME. I WAS ASKING HIM WHAT WAS WRONG, WHY DID I HAVE TO COME. HE JUST SAID, "COME ON DOWN TO YOUR PARENT'S HOUSE."

I ASKED TO SPEAK TO MY MOM BUT HE SAID SHE COULDN'T COME TO THE PHONE. SHE COULDN'T COME TO THE

PHONE AT THE MOMENT. SO AT FIRST I JUST THOUGHT SOMETHING HAPPENED TO MY SON AND THEY DIDN'T WANT TO TELL ME.

I JUST KEPT ASKING HIM WHAT WAS WRONG AND WHY DID I NEED TO GO DOWN THERE. HE NEVER WOULD SAY. HE JUST SAY, "COME DOWN TO YOUR MOM'S HOUSE." THEN HE FINALLY ASKED ME IF MY HUSBAND WAS HOME. I GAVE MY HUSBAND THE PHONE AND HE TOOK THE PHONE CALL.

I THINK THEY DID TELL HIM WHAT WAS GOING ON, BUT HE STILL DIDN'T TELL ME. HE JUST TOLD ME MY BROTHER WAS SHOT AND WE HAD TO GO DOWN THERE. HE STILL DIDN'T TELL ME AT FIRST WHAT WAS GOING ON.

HE SAID, "LET'S GET DRESSED AND GO ON DOWN." I ASKED HIM TO PLEASE TELL ME WHAT WAS GOING ON, WAS SOMETHING WRONG WITH MY SON OR MY MOTHER. WHEN HE SAID IT WASN'T MY SON, I ASKED HIM DID SOMETHING HAPPEN TO MY MOM. HE SAID, "NO, LET'S GO ON DOWN THERE." I FINALLY GOT HIM TO TELL ME THAT MY BROTHER WAS SHOT.

Q DID YOU KNOW WHAT CONDITION HE WAS IN?

A NO, I DIDN'T. I ASKED HIM WAS HE IN THE HOSPITAL AND HE SAID YES. SO I ASKED HIM WHY DO WE HAVE TO GO TO MY MOM'S HOUSE, WHY CAN'T WE GO TO THE HOSPITAL TO SEE HIM. HE SAID HE DIDN'T KNOW, WE JUST GOT TO GO DOWN THERE. SO WE HAD TO TAKE THAT LONG

ALMOST TWO-HOUR TRIP DOWN THERE.

Q AND WHEN YOU GOT TO YOUR PARENT'S HOUSE, YOU FOUND OUT THAT YOUR BROTHER WAS DEAD?

A YES.

Q YOUR SON WAS STAYING WITH YOUR MOTHER. HOW OLD WAS HE AT THAT TIME?

A HE WAS THREE AT THE TIME, A LITTLE OVER THREE.

Q WHAT WAS HIS RELATIONSHIP WITH FRANKIE, YOUR SON'S RELATIONSHIP?

A THEY HAD A GREAT RELATIONSHIP. HE REALLY LOVED HIM. THEY KID AROUND WITH EACH OTHER ALL THE TIME.

Q I SHOW YOU A PICTURE AND ASK IF YOU CAN IDENTIFY THAT PICTURE.

A YES, I CAN.

SOLICITOR BAILEY: WE OFFER THIS.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 116, FAMILY PHOTOGRAPH, IS RECEIVED INTO EVIDENCE.)

Q MRS. RAYSOR, I WILL ASK YOU TO LOOK AT STATE'S 116 AND TELL THE JURY, PLEASE, WHO IS IN THAT PICTURE.

A THAT'S MY BROTHER AND MY SON AND MY NIECE.

Q WHAT OCCASION WAS THAT PICTURE TAKEN ON?

A I DON'T KNOW, POSSIBLY JUST A WEEKEND AT MY MOM'S HOUSE, NO SPECIAL OCCASION.

Q DO YOU RECALL YOUR PARENT'S 40TH WEDDING ANNIVERSARY?
A YES.
Q WAS THAT BACK IN 1995?
A YES, IT WAS.
Q DOES THAT LOOK LIKE ABOUT THAT SAME TIME FRAME?
A YES, I THINK SO.
Q LET ME SHOW YOU ANOTHER PICTURE AND SEE IF YOU CAN IDENTIFY THIS.
A YES.
Q WAS THAT ON THAT OCCASION, YOUR PARENT'S 40TH ANNIVERSARY?
A YES.

SOLICITOR BAILEY: WE OFFER THIS, YOUR HONOR.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 117, FAMILY PHOTOGRAPH, IS RECEIVED INTO EVIDENCE.)

Q IT'S GOT THE DATE THERE. IT LOOKS LIKE OCTOBER '95?
A YES.
Q IS THAT THE DATE OF THE ANNIVERSARY AND EVERYBODY WENT TO YOUR PARENT'S HOUSE?
A YES, IT WAS.
Q WHO IS IN THAT PICTURE? IS THAT YOU UP FRONT

THERE?

A YES, IT IS.

Q THAT'S YOUR BROTHER FRANKIE WITH THE WHITE STRIPED SHIRT?

A YES.

Q MRS. RAYSOR, WOULD YOU PLEASE TELL THE JURY JUST IN YOUR OWN WORDS HOW YOUR BROTHER'S MURDER HAS AFFECTED YOUR LIFE.

A IT AFFECTED ME VERY DEEPLY. LIKE I SAY, I JUST FOUND OUT THAT DAY BEFORE THAT I WAS PREGNANT. JUST KNOWING HE WOULD NEVER HAVE THAT BOND WITH THIS CHILD AS HE HAD WITH MY OTHER SON THAT THEY GET ALONG SO WELL. I JUST MISS HIM SO MUCH AND IT'S JUST SO HARD.

Q MRS. RAYSOR, WAS THERE A VIDEOTAPE TAKEN AT THAT 40TH ANNIVERSARY PARTY?

A YES, IT WAS.

SOLICITOR BAILEY: YOUR HONOR, I WOULD AT THIS TIME LIKE TO OFFER A BRIEF EXCERPT FROM THAT VIDEOTAPE.

THE COURT: YOU HAVE REVIEWED THAT?

MR. STONE: YES, SIR.

(STATE'S EXHIBIT NUMBER 118, VIDEOTAPE, IS RECEIVED INTO EVIDENCE.)

(STATE'S EXHIBIT NUMBER 118 IS PLAYED FOR THE JURY.)

Q MRS. RAYSOR, THAT'S ALL I HAVE. THANK YOU.

MR. STONE: +NO QUESTIONS.

SOLICITOR BAILEY: THE STATE RESTS, YOUR HONOR.

THE COURT: WOULD YOU LIKE A SHORT BREAK BEFORE WE BEGIN TESTIMONY?

MR. STONE: PLEASE.

THE COURT: I WILL LET YOU GO TO THE JURY ROOM. WE WILL START BACK SHORTLY. WE ARE IN RECESS SUBJECT TO THE CALL OF THE COURT.

(THE JURY RETIRES TO THE JURY ROOM.)

(WHEREUPON THERE WAS A RECESS.)

THE COURT: GENTLEMEN OF THE DEFENSE, CAN YOU TELL ME WHETHER OR NOT THE DEFENDANT DESIRES TO TESTIFY IN THIS PROCEEDING?

MR. STONE: HE DOES NOT.

THE COURT: HAVE YOU FULLY ADVISED HIM OF HIS RIGHT TO TESTIFY?

MR. STONE: YES, SIR.

THE COURT: AND HE HAS BEEN FULLY ADVISED OF HIS CONSTITUTIONAL RIGHT NOT TO TESTIFY?

MR. STONE: YES, SIR.

THE COURT: YOU ARE CERTIFYING TO ME AS HIS ATTORNEYS THAT YOU HAVE DISCUSSED THAT AND HIS DECISION NOT TO TESTIFY IS KNOWINGLY AND

INTELLIGENTLY MADE?

MR. STONE: I BELIEVE SO, YES, SIR.

THE COURT: HAVE THE DEFENDANT STAND. MR. DEFENDANT, WE ARE NOW IN THE SECOND PHASE OF THIS TRIAL, THE JURY HAVING PREVIOUSLY FOUND YOU GUILTY OF MURDER IN THE FIRST PHASE.

IN THIS PHASE, AS YOU ARE WELL AWARE, THE JURY IS CONSIDERING TESTIMONY WITH REGARDS TO PUNISHMENT. THAT PUNISHMENT WILL EITHER BE LIFE IMPRISONMENT OR DEATH BY ELECTROCUTION OR LETHAL INJECTION.

OUR STATUTORY PROVISIONS PROVIDE THAT IN THIS STAGE, AS WAS IN THE FIRST STAGE, THAT YOU HAVE THE ABSOLUTE RIGHT TO TESTIFY UNDER OATH. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: EQUALLY IMPORTANT, YOU HAVE THE ABSOLUTE RIGHT NOT TO TESTIFY. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: IF YOU ELECT NOT TO TESTIFY, AND IT IS YOUR DECISION ALONE, I WILL CHARGE THE JURY THAT YOUR FAILURE TO TESTIFY CANNOT, MUST NOT BE USED AGAINST YOU IN ANY WAY, THAT YOUR FAILURE TO TESTIFY CANNOT EVEN COME UP IN THE JURY'S DELIBERATION. DO

YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: OBVIOUSLY IN MAKING THIS IMPORTANT DECISION, YOU WOULD CONSULT WITH YOUR ATTORNEYS; BUT I TELL YOU THAT ULTIMATELY THE DECISION TO TESTIFY OR NOT TO TESTIFY RESTS WITH YOU. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: IS THERE ANY QUESTIONS ABOUT WHAT I HAVE SAID TO YOU? I WOULD BE GLAD TO ANSWER THEM FOR YOU.

DEFENDANT ALEKSEY: NO, YOUR HONOR.

THE COURT: WHAT IS YOUR DECISION, TO TESTIFY OR NOT TO TESTIFY?

DEFENDANT ALEKSEY: NOT TO TESTIFY.

THE COURT: ALL RIGHT, SIR. NOW, I WILL GO OVER THIS AGAIN WITH YOU AT THE APPROPRIATE TIME. AT THE CONCLUSION OF THE TESTIMONY, THE STATE OF SOUTH CAROLINA WILL HAVE THE FIRST ARGUMENT. YOUR COUNSEL AND YOU, IF YOU DESIRE, WILL HAVE THE OPPORTUNITY TO MAKE A CLOSING ARGUMENT TO THIS JURY. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: I WILL NOT ASK THAT YOU MAKE THIS DECISION AT THIS TIME, BUT YOU MAY HAVE

OPPORTUNITY TO CONSIDER IT. I TELL YOU THOUGH UPON THE RECORD THAT YOU HAVE THE ABSOLUTE RIGHT TO MAKE A FINAL ARGUMENT AND THE ABSOLUTE RIGHT NOT TO.

THAT DECISION, TOO, RESTS WITH YOU. OBVIOUSLY YOU WOULD CONSULT WITH YOUR ATTORNEYS BUT THE DECISION IS YOURS. PLEASE ADVISE ME OF HIS DECISION AT THE CONCLUSION OF THE TESTIMONY AND PRIOR TO ARGUMENT.

MR. STONE: YES, SIR.

THE COURT: MR. DEFENDANT, IS THERE ANY QUESTION ABOUT WHAT I HAVE SAID TO YOU?

DEFENDANT ALEKSEY: NO, YOUR HONOR.

THE COURT: YOU HAVE NO QUESTION?

DEFENDANT ALEKSEY: NO.

THE COURT: YOU FULLY UNDERSTAND?

DEFENDANT ALEKSEY: YES.

THE COURT: AGAIN, I ASK YOU, IS IT YOUR DECISION TO TESTIFY OR NOT TO TESTIFY?

DEFENDANT ALEKSEY: NOT TO TESTIFY, YOUR HONOR.

THE COURT: I WILL HONOR THAT DECISION. YOU MAY BE SEATED. BRING THE JURY IN. ONE MINUTE. HOLD THEM UP JUST A SECOND, PLEASE.

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

MR. SIMS: WE HAVEN'T MADE ANY MOTIONS. FOR THE RECORD WE NEED TO PUT ON THE MOTION THAT THERE WAS NO AGGRAVATING CIRCUMSTANCE, JUST TO PROTECT US FOR THE RECORD. WE HAVEN'T DONE IT BEFORE.

THE COURT: IN THIS CASE THE AGGRAVATING CIRCUMSTANCE HAS TO BE THE BASIS ON WHICH THE MURDER CONVICTION WAS FOUND. YOU MAKE IT FOR THE RECORD. I UNDERSTAND THAT. THEY ARE GOING TO HOLD THE JURY. GO AHEAD AND STATE IT FULLY FOR THE RECORD.

(WHEREUPON THE BENCH CONFERENCE WAS CONCLUDED).

MR. SIMS: YOUR HONOR, ON BEHALF OF THE DEFENSE WE WOULD AT THIS POINT MOVE THAT THERE WAS NO AGGRAVATING CIRCUMSTANCE FOUND. WE UNDERSTAND WHAT THE COURT'S POSITION IS, BUT AT THIS POINT WE FEEL THIS IS AN ISSUE THAT WE HAVE TO RAISE AND PUT ON THE RECORD.

THE COURT: WELL, IT'S NOT ONLY THE COURT'S POSITION, IT THE TESTIMONY'S POSITION. I REFER YOU TO SECTION 16-3-20, SECTION (A), STATUTORY AGGRAVATING CIRCUMSTANCES, PART SEVEN, QUOTE:

THE MURDER OF A FEDERAL, STATE OR LOCAL LAW ENFORCEMENT OFFICER, PEACE OFFICER OR FORMER PEACE OFFICER IS AN AGGRAVATING CIRCUMSTANCE. THE JURY HAS

PREVIOUSLY FOUND HIM GUILTY OF THE MURDER OF A HIGHWAY PATROLMAN, WHICH OBVIOUSLY IS A PEACE OFFICER.

MR. SIMS: YES, SIR.

THE COURT: THEY WILL AGAIN BE FULLY INSTRUCTED AND REQUIRED TO FIND AN AGGRAVATING CIRCUMSTANCE. OBVIOUSLY THERE IS SUFFICIENT EVIDENCE FOR THE JURY TO DETERMINE THE AGGRAVATING CIRCUMSTANCE. ANY OTHER MOTIONS?

MR. SIMS: NONE.

THE COURT: THAT IS DENIED.

MR. SIMS: YES, SIR.

THE COURT: BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT. YOU MAY PROCEED, GENTLEMEN.

MR. SIMS: THANK YOU, YOUR HONOR. THE DEFENSE AT THIS TIME WOULD CALL MRS. VERA ALEKSEY.

CLERK: STATE YOUR NAME FOR THE RECORD.

THE WITNESS: VERA ALEKSEY.

VERY ALEKSEY, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SIMS:

Q MRS. ALEKSEY, DO YOU MIND IF I CALL YOU VERA?

A YOU CAN GO AHEAD.
Q I WANT YOU TO SPEAK UP BECAUSE EVERYBODY IN THAT JURY BOX HAS TO HEAR YOU AND THIS LADY DOWN HERE IS GOING TO BE TAKING DOWN EVERYTHING THAT YOU SAY.
A WHICH ONE I SPEAK IN, THIS ONE (INDICATING) OR THIS ONE (INDICATING)?
Q EITHER ONE. MRS. ALEKSEY, YOU LIVE IN NEW YORK NOW?
A YES, I DO.
Q AND YOU HAVE BEEN DOWN HERE THROUGH THIS ENTIRE PROCESS; IS THAT CORRECT?
A YES, I DO.
Q WOULD YOU TELL US HOW YOU FEEL ABOUT THIS PROCESS RIGHT NOW.
A WELL, IT'S AN EXPERIENCE I WILL NEVER FORGET. IT'S VERY OVERWHELMING FOR ME. IT'S VERY EMOTIONAL FOR ME. I DON'T KNOW WHICH WAY TO GO IN A SITUATION LIKE THIS.
MY HEART GOES OUT FOR THE LINGARD FAMILY AND I MUST SAY PLEASE ACCEPT MY DEEPEST REGRETS. I AM SO SORRY. I LOST MY HUSBAND AND I KNOW HOW MRS. LINGARD FEELS AND HER CHILDREN FEELS. I HAVE ONE CHILD. AND YOU WANT ME TO EXPLAIN?
Q LET ME GO FROM HERE. YOU ARE ORIGINALLY FROM WHERE?

A I WAS BORN IN TRINIDAD IN THE CARRIBEAN.
Q HOW MANY BROTHERS OR SISTERS DID YOU HAVE?
A THERE WERE TWO MARRIAGES. THERE WERE EIGHT BROTHERS AND SISTERS, EIGHT CHILDREN BY TWO MARRIAGES. I LOST MY MOTHER WHEN I WAS VERY YOUNG.
Q AND YOUR FATHER REMARRIED AGAIN?
A HE REMARRIED.
Q AND THE KIND OF HOUSEHOLD THAT YOU ALL GREW UP IN, WHAT KIND OF HOUSEHOLD WAS THAT?
A WE WERE A VERY CLOSE-KNIT FAMILY. MY FATHER WAS IN THE TEACHING PROFESSION. HE BECAME A PRINCIPAL. I WAS ALWAYS AROUND CHILDREN. HE ALWAYS HAD US AROUND KIDS. I WAS BROUGHT UP IN A VERY CLOSE-KNIT FAMILY ENVIRONMENT.
Q NOW, YOU CAME TO NEW YORK WHEN?
A 1966.
Q WHEN YOU CAME TO NEW YORK, WHO DID YOU STAY WITH?
A I STAYED WITH SOME PEOPLE THAT I KNEW FROM BACK HOME, AND THEN I WENT ON MY OWN AND THEN I GOT MARRIED.
Q YOUR HUSBAND'S NAME WAS?
A RONALD ALEKSEY.
Q AND HOW LONG AFTER YOU AND MR. ALEKSEY GOT MARRIED WAS BAYAN BORN OR CONCEIVED?

A BAYAN WAS BORN IN 1968, A YEAR AFTER WE WERE MARRIED.

Q WHAT KIND OF PREGNANCY DID YOU HAVE?

A I HAVE A DIFFICULT PREGNANCY AND THERE WERE COMPLICATIONS. I STAYED IN THE HOSPITAL FOR ALMOST THREE WEEKS BEFORE THEY RELEASED ME.

Q AND HOW LONG WERE YOU IN LABOR?

A FOR OVER 30 HOURS.

Q AND WAS BAYAN BORN BY FORCEP DELIVERY?

A HE WAS BORN BY FORCEP DELIVERY, BORN WITH A HEART MURMUR ALSO.

Q I'M SORRY?

A WITH A HEART MURMUR. HE HAS A HEART MURMUR.

Q LET ME ASK YOU THIS. WHERE WAS YOUR HUSBAND AT THIS TIME WHEN YOU WERE GOING THROUGH THE LABOR? WHERE WAS HE?

A AT THAT TIME HE WAS IN THE HOSPITAL, YOU KNOW, WAITING FOR THE DELIVERY, IN THE WAITING ROOM AND SO ON.

Q DID YOUR HUSBAND HAVE A PROBLEM?

A YES, MY HUSBAND HAD A PROBLEM.

Q WHAT KIND OF PROBLEM WAS THAT?

A A DRINKING PROBLEM.

Q A SEVERE DRINKING PROBLEM?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE

RESPONSE)

Q YOU CAN'T SHAKE YOUR HEAD. I'M SORRY.

A YES, I'M SORRY.

Q AND DID THAT DRINKING PROBLEM AFFECT YOU IN YOUR LIFE WITH YOUR CHILD?

A IT DID.

Q AND SHORTLY AFTER BAYAN WAS BORN, DID THE DRINKING PROBLEM INCREASE?

A YES, IT DID.

Q AND WHEN HE WAS DRINKING, WHAT KIND OF MAN WAS HE?

A VERY ANGRY, VERY DISRUPTIVE.

Q WAS HE ABUSIVE TO YOU ALSO?

A YES. A COUPLE OF TIMES HE STRIKED ME AND I TRIED TO GET AWAY FROM HIM.

Q AND WHEN BAYAN WAS ABOUT THREE YEARS OLD, IS THAT WHEN YOU MOVED AWAY FINALLY?

A YES. WHEN BAYAN WAS THREE YEARS OLD, I TOOK HIM AND WENT TO MY BROTHER'S HOUSE.

Q AND YOUR BROTHER WAS WINSTON?

A WINSTON.

Q AND WHEN YOU MOVED IN WITH WINSTON, WHAT KIND OF RELATIONSHIP DID YOUR HUSBAND HAVE WITH BAYAN?

A WELL, HE DID NOT SEE BAYAN MUCH BECAUSE BEING THAT I LEFT HIM, I -- HE TRIED TO SEE BAYAN ONCE IN A

WHILE. I TOOK HIM DOWN TO MEET HIM. I DID NOT WANT HIM TO KNOW WHERE I WAS. THE THREE OF US WOULD TALK. WE WOULD GO MAYBE TO A MOVIE OR SOMETHING LIKE THAT. BUT HE SAW BAYAN, HE TALKED TO BAYAN; AND THEN WE LEFT AND I LEFT HIM LIKE THAT.

Q SO HE WAS NOT A CONSTANT FIGURE IN BAYON'S LIFE?

A HE WAS NOT. HE WAS NOT A CONSTANT FIGURE. THERE WERE MONTHS HE NEVER SAW HIM.

Q AND WHEN HE DID SEE HIM, THERE WERE INSTANCES IN WHICH HE WAS ABUSIVE OR DRUNK OR DRINKING; IS THAT CORRECT?

A YES. WHEN I MOVED OUT, I GOT MY OWN PLACE. HE USED TO COME BANG ON THE DOORS AND SOMETIMES WHEN HE COMES, HE WAS REALLY, REALLY DRINKING. BAYAN SAW WHERE HE FOUGHT WITH ME.

Q TAKE YOUR TIME.

A I TRIED TO KEEP BAYAN AWAY FROM HIM, KEEP HIM AWAY FROM THE HOUSE. HE NEVER WANTED HIM TO COME TO VISIT US OR COME TO THE HOUSE. HE CALLED ME CONSTANTLY ON THE PHONE, ALWAYS WANTING TO GET BACK TOGETHER; BUT I COULDN'T DO IT, NOT UNDER THE CIRCUMSTANCES.

Q NOW, PRIOR TO BAYAN ENTERING SCHOOL, DID HE HAVE PROBLEMS?

A BAYAN HAD PROBLEMS. WHEN I STARTED TO TAKE HIM

TO DAY CARE CENTERS LEKE A NURSERY, HE USED TO SCREAM. HE JUST DIDN'T WANTED ME TO LEAVE HIM, BUT I FORCED HIM TO STAY UNTIL HE WAS SIX. HE WENT TO THE FIRST GRADE AND THEY THOUGHT HE HAD A PROBLEM THERE.

HE WAS A LATE TALKER. HE DID NOT REALLY TALK. EVEN WHEN HE WAS THREE YEARS OLD, HE TALKED BUT YOU DIDN'T UNDERSTAND HIM. I FIRST DISCOVERED HE HAD A PROBLEM THAT WAS, YOU KNOW, BROUGHT TO MY ATTENTION WHEN HE WAS IN FIRST GRADE.

THEY CALLED ME DOWN AND SAID FOR A COUPLE OF MONTHS HE DOESN'T TALK. HE DOESN'T TALK TO ANYBODY. I WANTED TO KNOW IF SOMETHING WAS WRONG WITH HIM. THEN THEY SAID HE NEEDS TO HAVE SOME COUNSELING, THERE WAS SOMETHING WRONG WITH HIM. THAT WAS MY FIRST, YOU KNOW, APPROACH ABOUT BAYAN AND HIS EVALUATION AND HE HAD EMOTIONAL PROBLEMS.

Q NOW, HE WAS IN A PAROCHIAL SCHOOL AT THAT TIME?

A YES. AFTER THE SECOND GRADE, I FEEL THAT MAYBE HE NEEDS A PAROCHIAL SCHOOL WHICH WOULD BE BETTER FOR HIM. HE COULDN'T COPE WITH THE PUBLIC SCHOOL KIDS. HE WAS VERY TIMID, VERY AFRAID WHEN HE HEAR THE NOISES WITH ALL THE KIDS.

I REMEMBER HIM TELLING ME, "I WANT TO GO HOME." THE SCHOOL WAS NOT FAR FROM ME IN HIS SECOND GRADE. HE USED TO COME HOME WHEN THEY HAD INTERMISSION. HE

USED TO RUN HOME AND I HAD TO TAKE HIM BACK.

I PUT HIM IN PAROCHIAL SCHOOL FOR THREE YEARS. THE PRINCIPAL OF THE PAROCHIAL SCHOOL TOLD ME, "HE NEEDS COUNSELING. HE NEEDS THERAPY. SOMETHING IS NOT WELL WITH HIM." I HAD A LOT OF PROBLEM WITH HIS SCHOOL WORK.

Q AND WHEN YOU SAY YOU HAD A LOT OF PROBLEMS WITH SCHOOL WORK, WHAT DO YOU MEAN?

A WELL, HE COULDN'T COPE WITH THE DISCIPLINE IN THE PAROCHIAL SCHOOL AND HIS WORK FAILED. HE HAD FAILURE IN HIS HOMEWORK.

Q WHILE YOU WERE GOING THROUGH ALL THIS, I BELIEVE YOU WERE WORKING AT THE SAME TIME?

A I WAS WORKING. I HAVE BEEN WORKING ALL THIS TIME.

Q YOU WERE WORKING ALL THIS TIME. HIS FATHER WAS NOT PROVIDING ANY HELP FOR YOU IN TRYING TO DO ALL THIS?

A NO, NO.

Q SO IN EFFECT WHAT YOU ARE SAYING IS THAT IT WAS JUST YOU AND BAYAN?

A AND BAYAN.

Q AND YOU WERE BOTH THE MOTHER AND THE FATHER TRYING TO WORK THROUGH THESE PROBLEMS; IS THAT CORRECT?

A YES, CORRECT.
Q AND YOU WERE THE ONE WHO HAD TO -- OR THE PERSON RATHER WHO HAD TO LEAVE WORK AND TAKE HIM BACK TO SCHOOL?
A YES, I TOOK HIM TO SCHOOL. BEFORE I REACH WORK, THEY CALL ME. HE WAS NOT IN SCHOOL. HE USED TO COME BACK HOME, NEVER STAYED ON THE STREET. HE CAME BACK HOME.
Q AND YOU WOULD HAVE TO LEAVE WORK AND GO BACK AND GET HIM?
A YES.
Q YOUR BROTHER DIDN'T HELP YOU OR NO ELSE HELPED YOU? YOU WERE THE ONE WHO HAD TO DO ALL THIS?
A YES. AFTER MY BROTHER I WAS THE ONE TO TAKE FULL RESPONSIBILITY OF WHATEVER HAPPENED TO HIM, HIS SCHOOLING, HIS UPBRINGING, PROVIDING FOR HIM.
Q SO YOU HAD TO WORK. WHERE WERE YOU WORKING?
A I WAS WORKING IN NEW YORK, MANHATTAN.
Q YOU WERE WORKING IN MANHATTAN. WHAT KIND OF JOB WERE YOU DOING?
A I'M A HAIRDRESSER.
Q YOU ARE A HAIRDRESSER?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q IS THAT THE KIND OF EMPLOYMENT YOU HAVE ALWAYS HAD SINCE YOU HAVE BEEN HERE?

A YES.
Q AND HOW FAR WAS YOUR JOB FROM WHERE HE WENT TO SCHOOL?
A IT WASN'T CLOSE BECAUSE I WAS IN MANHATTAN AND I LIVED IN QUEENS. SO I HAD TO TRAVEL BACK TO QUEENS.
Q AND THERE WAS NO OTHER -- DID YOU HAVE A BABY-SITTER OR ANYONE ELSE TO TAKE CARE OF THIS?
A I HAD BABY-SITTERS AND I HAD TO CHANGE BECAUSE I HAD PROBLEMS WITH THE BABY-SITTERS. THEY DID NOT UNDERSTAND THE WAY HE WAS AND GOT ANGRY WITH HIM AND DIDN'T WANT TO BABY-SIT WITH HIM, BABY-SIT FOR HIM. I KEPT CHANGING BABY-SITTERS UNTIL HE WAS OLD ENOUGH TO BE ABLE TO COME TO THE HOUSE AFTER SCHOOL.
Q NOW, WHAT KIND OF GRADES DID HE GET IN THE FIRST GRADE AND IN THE SECOND GRADE?
A HIS MARKS WERE NOT GREAT. IT WAS REALLY, REALLY NOT GREAT. HE HAD A PROBLEM IN SCHOOL, I THINK A LEARNING DISABILITY.
Q IN THE THIRD GRADE IS THAT WHEN YOU PUT HIM IN ANOTHER SCHOOL?
A PAROCHIAL SCHOOL, HE STARTED THIRD GRADE TO FIFTH GRADE.
Q IN THIRD GRADE WHAT WERE HIS GRADES?
A AVERAGE, NOTHING REALLY UP.
Q AND DID YOU ENCOUNTER ADDITIONAL PROBLEMS AT

THAT TIME?

A YES, HE -- CONCERNING SCHOOL YOU ARE ASKING ME?

Q YES.

A YES. I KEPT BAYAN IN PAROCHIAL SCHOOL UNTIL FIFTH GRADE, STILL A LOT OF PROBLEMS WITH HIS SCHOOL WORK. THAT'S WHEN HE HAD TO REPEAT FIFTH GRADE. THAT'S WHEN THE PRINCIPAL TOLD ME THAT HE NEEDS SOME HELP. HE NEEDS SOME PROFESSIONAL HELP. HE WAS EMOTIONAL AND THAT IS WHEN I REALLY WENT INTO GETTING HELP FOR HIM.

Q WHEN YOU SAY YOU WENT INTO GETTING HELP FOR HIM, WHOM DID YOU GO TO?

A I WENT TO A DIAGNOSTIC CENTER FOR HIM TO GET EVALUATED. THAT'S WHEN I WAS TOLD THAT PAROCHIAL SCHOOL WAS NOT FOR HIM, IT IS TOO MUCH DISCIPLINE THAT HE CANNOT HANDLE; AND HE HAD TO BE IN A SPECIAL ED CLASS.

Q AND WAS HE PLACED ULTIMATELY IN A SPECIAL ED CLASS?

A YES, HE WAS.

Q WHEN HE WOULD GO TO SCHOOL, DID HE GO TO SCHOOL WITH HIS FRIENDS?

A NO. HE DID NOT HAVE FRIENDS. HE DID NOT KNOW HOW TO MAKE FRIENDS.

Q HE NEVER HAD ANY FRIENDS?

A HUH-UH. (INDICATING NEGATIVE RESPONSE.)
Q DID HE WALK TO SCHOOL WITH ANY CHILDREN AT ANY TIME?
A HE HAD ONE OR TWO FRIENDS BUT HE NEVER KEPT IT. IT WAS NEVER DEVELOPED WITH FRIENDS.
Q AND DO YOU HAVE AN INSTANCE IN TERMS OF WHERE HE TOLD YOU THAT THE CHILDREN WOULD PICK AT HIM BECAUSE OF WHERE HE WAS PLACED IN SCHOOL?
A YES.
Q AND TELL US ABOUT THAT.
A WHILE HE WAS GOING TO -- WELL, HE GRADUATED JUNIOR HIGH. HE STARTED GOING -- WHEN HE WENT TO HIGH SCHOOL, HE WAS STILL PLACED INTO A SPECIAL ED CLASS.

HE DEVELOPED FRIENDS IN THE AREA THAT WAS GOING TO GO TO THE SAME HIGH SCHOOL. THEN SUDDENLY HE DID NOT WANT THE FRIENDS AROUND. THEY WOULD COME TO GET HIM TO GO SCHOOL AND HE WOULD SAY, "I WILL MEET YOU AT SCHOOL."

I DIDN'T KNOW WHY. I SAID, "WHY DON'T YOU GO WITH THEM?" AND THEN AFTER A WHILE HE TOLD ME THAT HE WAS IN SPECIAL ED AND THESE KIDS IN REGULAR CLASS USED TO PICK ON ALL SPECIAL ED CLASS KIDS, AND HE WAS VERY SENSITIVE ABOUT IT.

Q NOW, WHEN YOU WENT TO COUNSELING, WHERE DID YOU

SAY YOU WENT TO?

A I WENT TO QUEENS CHILD GUIDANCE CENTER WHERE HE STARTED THERAPY.

Q AND HOW LONG WAS HE THERE?

A ABOUT THREE YEARS.

Q ABOUT THREE YEARS?

A YES, THREE YEARS, IF NOT THREE AND A HALF.

Q ALL THIS TIME HIS FATHER WAS NOT PROVIDING ANY SUPPORT FOR YOU?

A NO.

Q YOU WERE DOING ALL OF THESE THINGS BY YOURSELF; IS THAT CORRECT?

A YES.

Q AND AT THE END OF THAT THREE-YEAR PERIOD, WERE YOU -- DID YOU HAVE ANOTHER DIAGNOSTIC DONE?

A YES. HE WAS SENT AFTER THREE YEARS -- IT WAS RECOMMENDED HE GOES INTO A HOSPITAL. HIS COUNSELOR GOT HIM INTO ADOLESCENT PAVILION IN THE HOSPITAL WHERE HE STAYED A YEAR. IT WAS ANOTHER PART OF THE HOSPITAL HE STAYED IN.

Q SO HE WAS PLACED -- IS THAT LIKE A RESIDENTIAL TREATMENT CENTER OR JUST ANOTHER PART OF THE HOSPITAL?

A IT WAS A HOSPITAL WHERE HE STAYED IN, GOT THERAPY, TREATED AND EVERYTHING LIKE THAT.

Q AND HE STAYED THERE FOR A YEAR?
A HE STAYED LIKE BETWEEN THREE TO FOUR MONTHS INDOORS, NEVER LEFT. THEY HAD A CLOSED IN UNIT. THEN AFTER THEY BROUGHT HIM AND LET HIM STAY ON WEEKENDS AT HOME, BUT HE HAD TO BE BACK THERE FOR THE WEEK. THAT HAPPENED FOR A WHILE AND THEN HE WENT TO SCHOOL ON THE GROUNDS AT THE HOSPITAL. HE WAS ATTENDING SCHOOL THERE.
Q DID THAT COST YOU ANY MONEY?
A I COULDN'T AFFORD IT.
Q YOU COULDN'T AFFORD IT?
A NO.
Q BECAUSE OF YOUR INABILITY TO AFFORD THAT, DID HE HAVE TO COME OUT?
A YEAH, THEY DID NOT KEEP HIM AGAIN.
Q SO HE HAD TO COME BACK OUT BECAUSE YOU COULDN'T AFFORD IT?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q I BELIEVE WHEN HE WAS IN THAT OTHER ONE, HE WAS IN THAT OTHER THERAPY FOR THE THREE YEARS, IT WAS LIKE EIGHT DOLLARS A WEEK?
A YES. THEY CHARGED ME AT THAT TIME EIGHT DOLLARS A WEEK. I WENT WITH HIM EVERY WEEK TO THERAPY, EVERY WEEK.
Q AND AGAIN YOUR SITUATION WAS NOBODY BUT YOU AND

BAYAN, AND YOU ARE TRYING TO HELP HIM WORK THROUGH ALL HIS PROBLEMS?

A I WAS WITH HIM CONSTANTLY.

Q AND AFTER THE YEAR THAT HE SPENT AT THE PAVILION, DID ANYTHING SIGNIFICANT HAPPEN AT THAT POINT?

A WELL, THEY RECOMMENDED A RESIDENTIAL FOR HIM AFTER THAT.

Q A RESIDENTIAL TREATMENT CENTER?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q WHERE WAS HE PROPOSED TO GO?

A SOMEWHERE IN THE WESTCHESTER AREA IN A RESIDENTIAL PLACE.

Q DID HE GO?

A NO.

Q WHY NOT?

A I DID NOT SEND HIM THERE BECAUSE THEY TOLD ME I HAD TO GO THOUGH THE COURTS AND SEND HIM. I TOLD THEM I WAS NOT GOING TO GO TO COURT TO SEND HIM THERE, YOU KNOW. ALSO I HAD PARENTS THAT I SPOKE WITH AND THEY WERE NOT VERY PLEASED WITH IT.

I WAS VERY SCARED SENDING HIM THERE BECAUSE I KNEW ONE PARENT THAT I TALKED WITH, THE DAUGHTER WAS UP THERE; AND SHE CAME BACK AND COMMITTED SUICIDE. HE HAD ANOTHER FRIEND, THE MOTHER SAID SHE WILL NOT

SEND HER SON. SHE WILL NOT SEND HIM THERE ANYMORE. THAT I GOT SCARED OF AND I KEPT BAYAN BACK. HE WENT BACK AGAIN A LITTLE WHILE FOR THERAPY AT THE QUEENS CHILD GUIDANCE.

Q HE WENT BACK INTO THERAPY?

A FOR A SHORT TIME AT THE ORIGINAL PLACE HE STARTED THERAPY.

Q AND THEY REACHED A POINT THAT THEY COULD NOT PROVIDE ANYMORE SERVICES FOR HIM; IS THAT CORRECT?

A CORRECT.

Q BECAUSE HE HAD REACHED THAT POINT FOR WHAT THAT LIMITED SERVICE WAS?

A YES, LIMITED.

Q AND I BELIEVE HE HAD WHAT, GROUP COUNSELING?

A YES, HE HAD GROUP COUNSELING. HE WENT TWICE A WEEK. WHEN HE WAS GOING TO THE COUNSELING, IT WAS TWICE A WEEK. ONE DAY IT WAS HIM AND I. I WENT WITH HIM. THE OTHER ONE WAS THE GROUP WITH THE KIDS.

Q SO HE HAD GROUP AND FAMILY?

A YEAH, FAMILY AND THEN THE GROUP HE WENT TO.

Q AND AFTER HE LEFT AT THAT POINT, WHEN THEY COULDN'T PROVIDE HIM ANYMORE SERVICES, DID HE GO BACK TO SCHOOL?

A HE WENT BACK, YES. HE GO BACK TO SCHOOL BECAUSE HE WENT IN JUNIOR HIGH.

Q HE WENT TO JUNIOR HIGH?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q WHEN HE WENT TO JUNIOR HIGH, WHAT KIND OF GRADES WAS HE GETTING?
A THE GRADES WERE NOT GOOD. IT WAS NOT. IT WAS DEEPLY AFFECTED.
Q WHEN YOU SAY DEEPLY AFFECTED, WHAT DO YOU MEAN?
A I DON'T KNOW. HE HAD EMOTIONAL PROBLEMS WHERE HE COULDN'T COPE WITH SCHOOL WORK. HE COULDN'T.
Q WAS HE FLUNKING?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q YOU HAVE GOT TO ANSWER.
A YES.
Q DID YOU TRY TO GET HIM ANY OTHER HELP AT THAT POINT?
A YES. I TRY TO -- WELL, HE WENT BACK TO SOME COUNSELING AFTER. THEN AFTER THE JUNIOR HIGH SCHOOL GRADUATION, THE HIGH SCHOOL CAME UP. HE DID NOT HAVE ANYMORE COUNSELING.
Q NO MORE COUNSELING?
A NO MORE COUNSELING AFTER THAT.
Q AND DID HE FINISH HIGH SCHOOL?
A NO, HE DID NOT.
Q WHAT HAPPENED? DID HE DROP OUT?

A HE DROPPED OUT OF HIGH SCHOOL BECAUSE THE PROBLEMS HE WAS HAVING HE DIDN'T REALLY WANT TO GO TO SCHOOL. I HAD PROBLEMS WITH HIM STAYING IN SCHOOL.

Q THE PROBLEMS THAT YOU HAVE INDICATED OR THE PROBLEMS YOU HAVE TALKED ABOUT WERE HIS INABILITY TO UNDERSTAND WHAT WAS GOING ON AND TO DEAL WITH THAT; IS THAT CORRECT?

A YES.

Q NOW, WHEN HE WAS -- AFTER HIS INITIAL -- OR ABOUT 14 YEARS OLD, DID ANYTHING HAPPEN EVENTUALLY IN HIS LIFE AT THAT POINT?

A AFTER THE HIGH SCHOOL, HE WANTED TO -- WELL, IF I MAY GO BACK.

Q YES.

A THERE ARE SO MANY THINGS. WHEN HE WAS ABOUT 14 YEARS OLD AND HE WAS IN THERAPY AT THE QUEENS CHILD GUIDANCE CENTER, BAYAN TRIED TO KILL HIMSELF. HE WAS ON MEDICATION AND TOOK AN OVERDOSE. I HAD TO TAKE HIM TO THE HOSPITAL.

A SECOND TIME I CALLED THE COUNSELOR BECAUSE HE HAD ALL THE PILLS AND HE SAID, "I JUST TOOK A LOT." HE HAD TO GO BACK TO THE HOSPITAL. THEN WHEN HE STARTED HIGH SCHOOL AND DROPPED OUT OF HIGH SCHOOL, HE WANTED TO KILL HIMSELF AGAIN. I HAD TO TAKE HIM TO A MENTAL HOSPITAL AT THE CREEDMORE.

Q CREEDMORE?
A CREEDMORE MENTAL HOSPITAL.
Q NOW, DID --
A HE WAS ALSO ON MEDICATION. HE HAD THORAZINE AND MELLARIL.
Q THE FIRST TIME WHEN YOU TALKED ABOUT THE SUICIDE ATTEMPT, HOW OLD WAS HE?
A HE WAS ABOUT, I THINK 14. HE WAS 13, 14 YEARS OLD.
Q AND WAS HE ON MEDICATION AT THAT TIME?
A HE WAS ON MEDICATION.
Q DO YOU RECALL WHAT THOSE MEDICATIONS WERE?
A THERE WAS A FEW AND I THINK IT WAS MELLARIL AT THAT TIME.
Q AND IS THIS WHEN HE TOOK AN OVERDOSE OF MELLARIL?
A YES, I TOOK HIM TO ROOSEVELT HOSPITAL.
Q ROOSEVELT HOSPITAL IN NEW YORK?
A IN NEW YORK.
Q AND WHEN YOU SAID HE WAS 19, HE TRIED AGAIN?
A HE WANTED TO KILL HIMSELF. HE STARTED TO TALK ABOUT IT. I TOOK HIM TO THE CREEDMORE HOSPITAL. I TOOK HIM TO ONE HOSPITAL WHERE THEY SAID, "NO, YOU HAVE TO TAKE HIM TO CREEDMORE." AND THAT'S WHERE I TOOK HIM.

Q NOW, WHEN HE WAS 19 WAS HE ON MEDICATION AT THAT POINT?

A YES, BECAUSE WHEN HE WAS AT CREEDMORE, THEY GAVE HIM MEDICATION THERE.

Q AND AFTER HE LEFT CREEDMORE, DID HE CONTINUE THAT MEDICATION?

A YES, HE HAD TO GO TO LIKE AN OUTPATIENT CLINIC RELATED TO THE CREEDMORE HOSPITAL. THERE HE WAS GIVEN MEDICATION THAT HAD HIM SLEEPING FOR ALMOST 24 HOURS A DAY. THAT'S WHEN I TOLD THE DOCTOR, "HE CAN'T NOT EVEN EAT. HE GETS UP AND GOES RIGHT BACK TO SLEEP."

Q AFTER THAT -- ALL DURING THIS TIME, HIS FATHER WAS NOT IN THE PICTURE; IS THAT CORRECT?

A (WITNESS SHAKES HEAD). (INDICATING NEGATIVE RESPONSE)

Q YOU HAVE GOT TO ANSWER.

A NO, I'M SORRY.

Q HIS FATHER WAS COMING AND GOING IN HIS LIFE; IS THAT CORRECT?

A YES, HE WAS IN AND OUT OF HIS LIFE.

Q WHEN HE WAS 19, DID HE AND HIS FATHER HAVE PROBLEMS?

A YES. NOW BAYAN WAS OLDER. DURING HIS THERAPY HE NEVER TALKED. HE NEVER TALKED WHAT WAS INSIDE OF

HIM, I MUST SAY. HE NEVER TALKED. THEY TIED TO GET IT OUT OF HIM.

HIS COUNSELOR, THE PSYCHOLOGIST AT LONG ISLAND, THEY TOLD ME, THEY SAID, "WE DON'T KNOW WHAT IS INSIDE OF HIM. HE DOES NOT TALK." THEY HAVE TO SORT OF FIGURE OUT, YOU KNOW, SEEING HIM, HIS BEHAVIOR. WHEN HE BECAME 19 YEARS TO 20 YEARS, HE WAS ABLE TO SHOW HIS ANGER AND HIS RESENTMENT TOWARDS THE FATHER.

Q AND HE WAS THERE ON A NUMBER OF OCCASIONS WHEN HIS FATHER CAME IN DRUNK; IS THAT CORRECT?

A YES.

Q AND HE WAS THERE ON A NUMBER OF THOSE OCCASIONS WHILE HE WAS GROWING UP WHEN HIS FATHER STRUCK YOU?

A YES.

Q OR PHYSICALLY ABUSED YOU?

A YES.

Q AND THIS WAS AN ONGOING THING FROM THE TIME THAT HE WAS A SMALL CHILD?

A YES.

Q UP UNTIL HE REACHED THE AGE OF 19?

A YES, IT WAS.

Q AND DURING THAT PERIOD OF TIME WHEN THE FATHER WAS AWAY, IS IT AGAIN YOUR TESTIMONY THAT YOU WERE BOTH THE MOTHER AND THE FATHER?

A YES, I WAS. I HAVE.
Q YOU TRIED TO DO EVERYTHING THAT YOU COULD TO HELP HIM WITH HIS PROBLEMS?
A YES.
Q AND BECAUSE OF YOUR ECONOMIC SITUATION AND THE PROBLEMS THAT YOU HAD, IT WAS VERY DIFFICULT TO GET ALL OF THE TREATMENT THAT HE NEEDED; ISN'T THAT RIGHT?
A YES, FINANCIALLY IT WAS TOUGH ON ME. THERE WERE TIMES I COULDN'T AFFORD IT. I KNEW THERE WERE TIMES THAT MY SON SHOULD HAVE BEEN IN A HOSPITAL, HE SHOULD HAVE BEEN ON MEDICATION; AND I COULDN'T DO IT.
BAYAN AND MYSELF WERE VERY CLOSE KNIT, VERY CLOSE. I ALWAYS HAD HIM WITH ME. AT NO TIME I LEFT BAYAN ALONE IN A HOME AND GO OUT BECAUSE I DIDN'T HAVE TIME FOR THAT. I WORKED, COME HOME AND TAKE CARE OF BAYAN.
Q WHEN YOU AND YOUR HUSBAND SEPARATED, DID YOU DEVELOP ANY OTHER RELATIONSHIPS WITH ANYONE ELSE?
A NOT STRONG RELATIONSHIPS, JUST FRIENDS.
Q WHY WAS THAT?
A I DIDN'T HAVE TIME FOR SOCIAL LIFE. I HAD TO GO TO WORK. I HAD TO COME HOME AND GAVE BAYAN MY ATTENTION. MY DAYS OFF I HAD TO GO TO THERAPY WITH HIM, TAKE CARE OF HIS PROBLEMS.

THERE WERE TIMES WHEN HE WAS ABLE TO COME TO THE HOUSE. I WAS NOT -- HE CALLED ME CONSTANTLY AT WORK. HE WAS CALLING ME CONSTANTLY AT WORK. IF I WAS HALF AN HOUR LATER THAN THE TIME, I CALLED AND SAID, "I WILL BE HOME AT SO AND SO TIME."

I WOULD OPEN THE DOOR AND HE WAS ALREADY TO COLLAPSE. HE WAS HEAVING. I WAS GOING TO CALL THE POLICE BECAUSE I DIDN'T KNOW WHAT HAPPENED TO HIM. HE WAS WORRIED ABOUT ME AND I TOLD HIM HE DIDN'T HAVE TO, I WAS ALL RIGHT. THEN HE FELT BETTER WHEN HE WAS WITH ME WHEN I WAS AT HOME.

Q NOW, WHEN HE GOT 19, DID HE CONTINUOUSLY STAY AT YOUR HOUSE?

A AT 19, YES, HE WAS IN MY HOUSE.

Q AND WHEN DID HE PHYSICALLY LEAVE YOUR HOME?

A BAYAN LEFT MY HOME FOR THE PAST FIVE YEARS. HE CAME FOR A COUPLE OF TYPES, BUT THEN HE LEFT AGAIN, BUT HE MORE OR LESS WAS AWAY FROM ME FOR ALMOST FOUR TO FIVE YEARS.

Q DID HE CALL YOU AND ASK YOU TO COME BACK HOME?

A YES, HE USED TO CALL ME AND ASKED ME IF HE CAN COME BACK HOME.

Q AND THERE WERE PROBLEMS; IS THAT CORRECT?

A YES, I HAD PROBLEMS WITH HIM WHEN HE CAME BACK HOME.

Q AND THOSE PROBLEMS WERE?
A WELL, WE ARGUED. WE HAD A LOT OF ARGUMENTS. I HAD LOTS OF RULES. I HAD RULES AND REGULATIONS THAT I THINK HE HAD TO FOLLOW; AND IF HE COULDN'T FOLLOW THEM, HE COULDN'T STAY BECAUSE I COULDN'T TAKE IT.
Q LET ME ASK YOU THIS. DURING THIS TIME DID YOUR HUSBAND GET SICK OR GET SICK FROM HIS ALCOHOLISM?
A YEAH, MY HUSBAND BECAME VERY SICK.
Q AND WHEN HE GOT SICK -- HE IS NO LONGER ALIVE; IS THAT CORRECT?
A NO, MY HUSBAND DIED.
Q SO YOUR HUSBAND DIED; IS THAT CORRECT?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q YOU HAD A CLOSE RELATIONSHIP WITH YOUR BROTHER WINSTON; IS THAT CORRECT?
A YES. BAYAN HAD A RELATIONSHIP WITH MY BROTHER. HE LIKED HIM VERY MUCH. MY BROTHER TOOK HIM A LOT OF TIMES WITH HIM. HE TOOK HIM ONE TIME TO FLORIDA AND HE STAYED THERE A FEW MONTHS AND HE CAME BACK.
Q HE CAME BACK TO BE WITH YOU?
A YES.
Q IS YOUR BROTHER ALIVE NOW?
A THAT BROTHER IS ALIVE. I HAVE ANOTHER BROTHER THAT PASSED AWAY.
Q BUT THAT BROTHER DOESN'T LIVE IN NEW YORK; IS