

1 THOSE MEN WRONG. MS. SPEARS TOLD YOU THERE'S GOING TO
2 BE EXPLANATIONS. EXPLANATIONS, EXCUSES. WHEN OFFICER
3 JOHNSON, THE CRIME SCENE INVESTIGATOR, COMES AND
4 PHOTOGRAPHS THE CRIME SCENE AND SHE KNOWS IT'S ALLEGED
5 THAT MR. BOSEMAN SHOT INTO THAT ROOM, THERE'S NO BULLET
6 HOLE, THERE'S NO BULLET, THERE'S NO BULLET HOLE.

7 PHYSICAL EVIDENCE IS NOT TIED TO A PERSON. SHE
8 SWABS VINCENT'S HANDS BACKWARDS, FRONTWARDS OF HIS HANDS
9 FOR THE CHEMICAL RESIDUE THE GUNPOWDER LEAVES WHEN A
10 PERSON FIRES A GUN. THAT'S HOW THEY TELL WHEN A PERSON'S
11 FIRED A GUN. THEY CAN DO THAT TEST UP TO SIX HOURS LATER
12 AND THEY CAN STILL FIND THE RESIDUE. BUT THEY DIDN'T
13 FIND IT AN HOUR AND FIFTEEN MINUTES LATER. THE CRIME
14 SCENE INVESTIGATION REPORT SAYS HE DIDN'T FIRE A GUN.

15 YOU CAN'T BE GUILTY OF SHOOTING SOMEBODY OR ROBBING
16 SOMEBODY IF THERE IS NO EVIDENCE.

17 SO, WHY WERE THESE ALLEGATIONS MADE? BECAUSE IN
18 THIS ROOM, JUST LIKE IT SHOULD BE EVERYWHERE, THE PARTY
19 THAT'S MAKING THE ALLEGATIONS, AND THEY'RE SAYING BAD
20 THINGS ABOUT A PERSON, THEY HAVE TO PROVE IT.

21 I WASN'T THERE AT THE TOWN AND TOURIST. NOBODY WAS
22 THERE ON THE VICTIM'S BEHALF. THE CITY OF COLUMBIA
23 POLICE DEPARTMENT WAS THERE. THEY HAVE THE RESOURCES
24 AND THE MANPOWER. THEY ARE THE GOVERNMENT. THEY MAKE
25 THE ALLEGATIONS IN THIS COUNTRY. THEY HAVE TO PROVE IT.

1 TWELVE OF THEM, BEYOND A REASONABLE DOUBT. FOUR
2 YEARS AGO THIS HAPPENED TO MR. BOSEMAN. FOUR YEARS AGO,
3 THE STATE HAD A STATEMENT FROM THESE THREE MEN. THEY
4 ATTEMPTED TO CORROBORATE THE PHYSICAL EVIDENCE AND IT
5 FAILED. ALL THEY'RE LEFT WITH IS THAT STORY.

6 TODAY, FOUR YEARS LATER, I'M GOING TO ASK YOU TO
7 FIND VINCENT BOSEMAN NOT GUILTY.

8 THE COURT: ALL RIGHT. YOU MAY CALL YOUR FIRST
9 WITNESS.

10 MS. SPEARS-WALSH: THANK YOU, YOUR HONOR. THE
11 STATE CALLS CARL HOLMES.

12 CARL HOLMES, DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 THE BAILIFF: STATE YOUR NAME, PLEASE.

15 A CARL HOLMES.

16 DIRECT EXAMINATION BY MS. SPEARS-WALSH:

17 Q CARL, SPEAK UP GOOD AND LOUD.

18 A YES MA'AM.

19 Q YOU HAVE A PRIOR CRIMINAL RECORD. IS THAT TRUE?

20 A YES MA'AM.

21 Q IN 1991 YOU WERE CONVICTED OF FORGERY AND YOU WERE
22 GIVEN A THREE YEAR PROBATIONARY SENTENCE. IS THAT
23 CORRECT?

24 A YES MA'AM.

25 Q IN 1993, TWO BREACH OF TRUST UNDER TWO HUNDRED

1 DOLLARS, AND YOU WERE GIVEN FIVE DAYS IN JAIL FOR THAT.

2 IS THAT TRUE?

3 A YES MA'AM.

4 Q IN 1994, YOU WERE CONVICTED OF DISTRIBUTION OF
5 COCAINE AND YOU WERE GIVEN A FIVE YEAR PROBATIONARY
6 SENTENCE. IS THAT CORRECT?

7 A YES MA'AM.

8 Q AND IN 1999 YOU WERE CONVICTED OF BURGLARY SECOND
9 DEGREE AND PETTY LARCENY, AND THAT'S THE REASON YOU ARE
10 IN PRISON RIGHT NOW?

11 A YES MA'AM.

12 Q HOW LONG HAVE YOU GOT TO SERVE?

13 A I'VE GOT TWO YEARS LEFT ON MY SENTENCE.

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THE
15 TESTIMONY YOU'VE JUST HEARD ABOUT THIS WITNESS' CRIMINAL
16 RECORD IS WHAT WE CALL LIMITED PURPOSE EVIDENCE. IT'S
17 ADMITTED FOR ONE PURPOSE AND ONE PURPOSE ONLY. AND YOU
18 CAN CONSIDER IT FOR THAT PURPOSE AND NOTHING ELSE.
19 YOU MAY GIVE IT WHATEVER EFFECT YOU THINK IT MIGHT HAVE
20 ON THIS WITNESS' CREDIBILITY.

21 IF YOU BELIEVE WHAT HE SAYS AS FAR AS HIS PRIOR
22 RECORD YOU CAN ONLY CONSIDER THAT FOR WHATEVER EFFECT
23 YOU THINK IT MIGHT HAVE ON HIS CREDIBILITY OR HIS
24 BELIEVABILITY, OR NONE WHATSOEVER.

25 SHOULD WE HAVE ANY OTHER WITNESSES WHO HAVE PAST

- 1 RECORD THAT LIMITATION APPLIES ALSO.
- 2 ALL RIGHT, MS. SPEARS.
- 3 MS. SPEARS-WALSH: THANK YOU, YOUR HONOR.
- 4 Q CARL, IS IT FAIR TO SAY YOU HAD A DRUG PROBLEM?
- 5 A YES MA'AM.
- 6 Q ON THE NIGHT OF FEBRUARY 14, 1997, WHERE WERE YOU?
- 7 A TOWN AND TOURIST MOTEL.
- 8 Q WERE YOU VISITING ANY PARTICULAR PERSON THERE?
- 9 A HOWARD SMITH.
- 10 Q KEEP YOUR VOICE UP GOOD AND LOUD.
- 11 A YES MA'AM.
- 12 Q HOWARD SMITH WAS IN ROOM THIRTY-FIVE AT THE TOWN
- 13 AND TOURIST?
- 14 A YES MA'AM.
- 15 Q WHAT HAPPENED-- WHO ELSE WAS IN THAT ROOM, IF YOU
- 16 REMEMBER? ABOUT HOW MANY PEOPLE WERE IN THAT ROOM?
- 17 A ABOUT FIVE MORE BESIDES MYSELF.
- 18 Q WHAT HAPPENED THAT NIGHT?
- 19 A THAT NIGHT ON THE FOURTEENTH I LEFT THE ROOM RIGHT
- 20 AFTER A LITTLE AFTER DARK TO MAKE AN ERRAND.
- 21 Q TO MAKE AN ERRAND?
- 22 A YES MA'AM.
- 23 Q OKAY.
- 24 A AND ON MY WAY TO RETURN BACK TO THE ROOM A YOUNG
- 25 MAN WAS STANDING BESIDE THE GABLE TOWER AND ASKED ME DID

1 I WANT TO PURCHASE A PHONE. I TOLD HIM I DIDN'T WANT TO
2 PURCHASE NO PHONE.

3 HE ASKED ME DID I KNOW ANYONE WHO WANTED TO PURCHASE
4 A PHONE. AND I ASSUMED THAT I DID. AND I PROCEEDED ON
5 TO THE ROOM.

6 Q AND TOOK HIM WITH YOU?

7 A YES MA'AM.

8 Q NOW, WAS THIS SOMEBODY THAT YOU KNEW, THIS PERSON
9 THAT YOU TOOK TO ROOM THIRTY-FIVE?

10 A I SEEN THE GENTLEMAN EARLIER THAT DAY.

11 Q HAD YOU SPENT A LITTLE BIT OF TIME WITH HIM EARLIER
12 THAT DAY?

13 A YES MA'AM.

14 Q AND SO YOU TOOK HIM TO ROOM THIRTY-FIVE TO SEE IF
15 HE COULD SELL THIS PHONE?

16 A YES MA'AM.

17 Q AND WHAT HAPPENED WHEN YOU GOT THERE?

18 A WE ENTERED THE ROOM.

19 Q TALK REAL LOUD.

20 A WE ENTERED THE ROOM AND SIT ON THE CORNER OF THE
21 BED AND WATCH TV. ANOTHER GENTLEMAN CAME IN BY THE NAME
22 OF T. C. A FEW MINUTES AFTER WE GOT THERE. HIM AND THE
23 YOUNG LADY WERE IN A CONVERSATION CONCERNING SOME SHIRTS.
24 AFTER HIM AND THE YOUNG LADY FINISHED THE

1 CONVERSATION CONCERNING THE SHIRTS, THE GENTLEMAN ASKED
2 HIM DO YOU WANT TO PURCHASE A PHONE. THEN T. C. TOLD
3 THE GENTLEMAN NO AND THE GENTLEMAN TURNED TO LEAVE. HE
4 TURNED BACK AROUND AND SAID, HOW ABOUT THIS ONE. AND HE
5 PRESENTED A GUN.

6 Q SO, THE MAN WHO CAME INTO THE ROOM WITH YOU PULLED
7 A GUN AND SAID, HOW ABOUT THIS?

8 A YES MA'AM.

9 Q I'M GOING TO MOVE THE MICROPHONE A LITTLE BIT CLOSER
10 TO YOU. WHAT HAPPENED AFTER HE SAID, HOW ABOUT THIS AND
11 POINTED THE GUN?

12 A HE STARTED DEMANDING MONEY.

13 Q DID HE POINT THE GUN AT YOU?

14 A HE POINTED THE GUN IN OUR DIRECTION.

15 Q DID HE ROB YOU?

16 A I GAVE HIM A FIVE DOLLAR BILL.

17 Q DID YOU HAVE ANY MORE THAN THAT?

18 A NO MA'AM.

19 Q SO, YOU GAVE HIM EVERYTHING YOU HAD?

20 A YES MA'AM.

21 Q WHAT ELSE HAPPENED? DID HE ROB ANYONE ELSE?

22 A HE ROBBED THE OTHER GENTLEMAN, T. C. AND THEN HE
23 TOLD US TO REMOVE OUR CLOTHES AND STEP INTO THE RESTROOM.

24 Q BEFORE WE GET TO THAT, WHAT DID YOU SEE T. C. GIVE
25 HIM?

- 1 A HIS MONEY.
- 2 Q OKAY. ANYTHING ELSE THAT YOU REMEMBER?
- 3 A I JUST SEEN THE MONEY.
- 4 Q AND THEN HE TOLD YOU TO REMOVE YOUR CLOTHING?
- 5 A YES MA'AM.
- 6 Q DID HE TELL JUST YOU OR EVERYBODY?
- 7 A EVERYBODY.
- 8 Q AND DID EVERYBODY START REMOVING CLOTHING?
- 9 A YES MA'AM.
- 10 Q AND WHAT ELSE DID HE TELL YOU DO?
- 11 A HE TOLD US TO GO IN THE BATHROOM AND SHUT THE DOOR.
- 12 Q DID YOU GO INTO THE BATHROOM?
- 13 A YES MA'AM.
- 14 Q ONCE EVERYONE WAS IN THE BATHROOM WHAT HAPPENED?
- 15 A ONCE WE WERE IN THE BATHROOM AND SHUT THE DOOR, I
- 16 HEARD A SHOT AND THE DOOR SHUT AND THEN WE CAME OUT OF
- 17 THE BATHROOM AND GOT OUR CLOTHES AND THEN WE EXIT THE
- 18 DOOR TO THE ROOM AND HEARD THE POLICE CAR SQUEALING,
- 19 GOING TO THE BACK OF THE MOTEL.
- 20 Q DID IT TAKE YOU A MINUTE OR TWO TO GET YOUR CLOTHES
- 21 SO YOU COULD GET OUT THE DOOR?
- 22 A YES MA'AM.
- 23 Q YOU DIDN'T GO OUT NAKED, DID YOU?
- 24 A NO MA'AM.
- 25 Q NOW, LET ME GET THIS CLEAR ABOUT THE GUNSHOT. HOW

1 LOUD WAS THE GUNSHOT THAT YOU HEARD? WAS IT SO LOUD THAT
2 YOU KNOW HE WAS IN THE ROOM WHEN HE FIRED THE GUN? OR
3 COULD HE HAVE BEEN OUTSIDE THE ROOM WHEN HE FIRED THE
4 GUN?

5 A IT WAS LOUD ENOUGH IT WAS INSIDE THE ROOM.

6 Q IT WAS LOUD?

7 A YES MA'AM.

8 Q WHEN HE FIRED THAT GUN, DID Y'ALL RUSH OUT AT HIM?

9 A NO MA'AM.

10 Q WHY NOT?

11 A WELL, ME BEING SHOT BEFORE, I WASN'T TAKING NO
12 CHANCE WITH THE YOUNG MAN BEHIND ME.

13 Q SO, YOU'RE PUTTING ON YOUR CLOTHES AND THAT TAKES A
14 MINUTE AND YOU WENT OUTSIDE THE DOOR TO ROOM THIRTY-
15 FIVE, CORRECT?

16 A YES MA'AM.

17 Q SO, YOU CAME OUT OF THE BATHROOM AND THEN YOU CAME
18 OUT OF THE ROOM?

19 A YES MA'AM.

20 Q AND YOU SAW POLICE CARS SQUEALING?

21 A YES MA'AM.

22 Q WHERE DID YOU GO NEXT AND WHAT DID YOU SEE?

23 A WE WENT THROUGH THE RIGHT SIDE OF THE HALLWAY TO THE
24 END AND WE SEEN THE OFFICERS STANDING AT THE TOP OF THE
25 STAIRS TALKING DOWN THERE, AND WE HEARD RUMBLING.

1 Q TALKING TO SOMEBODY DOWN AT THE BOTTOM?

2 A YES MA'AM.

3 Q YOU HEARD RUMBLING?

4 A YES MA'AM.

5 Q WHAT'S RUMBLING?

6 A LIKE A LITTLE NOISE, A LOUD NOISE.

7 Q WHAT HAPPENED NEXT? WHAT DID YOU SEE?

8 A THE OFFICERS WENT DOWN AND BRUNG THE GENTLEMAN UP.

9 HE TOLD US TO STEP BACK AND THAT'S WHEN THEY PUT HIM IN

10 THE PADDY WAGON.

11 Q SO, THE OFFICERS BROUGHT THE GENTLEMAN UP OUT OF THE

12 STAIRWELL?

13 A YES MA'AM.

14 Q AND THEY KEPT TELLING THE CROWD TO GET BACK?

15 A YES MA'AM.

16 Q WERE Y'ALL PRETTY CLOSE TRYING TO LOOK?

17 A YES MA'AM. WE WERE THE DISTANCE FROM HERE TO YOU.

18 Q FROM HERE TO ME?

19 A FROM HERE TO YOU.

20 Q DID YOU RECOGNIZE THE MAN COMING OUT OF THE

21 STAIRWELL, THAT THE POLICE WERE BRINGING OUT OF THE

22 STAIRWELL?

23 A YES MA'AM.

24 Q WAS THAT THE SAME MAN THAT YOU HAD TALKED TO EARLIER

25 IN THE DAY?

- 1 A YES MA'AM.
- 2 Q WAS THAT THE SAME MAN THAT ASKED YOU IF YOU KNEW
3 ANYBODY WHO WANTED TO BUY A PHONE?
- 4 A YES MA'AM.
- 5 Q WAS THAT THE SAME MAN YOU TOOK TO ROOM THIRTY-FIVE
6 OF THE TOWN AND TOURIST?
- 7 A YES MA'AM.
- 8 Q WAS THAT THE SAME MAN THAT PULLED A GUN AND POINTED
9 IT AT YOU?
- 10 A YES MA'AM.
- 11 Q WAS THAT THE SAME MAN YOU GAVE FIVE DOLLARS TO?
- 12 A YES MA'AM.
- 13 Q WAS THAT THE SAME MAN YOU SAW ROB T. C.?
- 14 A YES MA'AM.
- 15 Q THAT HAPPENED VALENTINE'S NIGHT OF 1997. THAT'S
16 BEEN A LONG TIME, HASN'T IT?
- 17 A YES MA'AM.
- 18 Q DO YOU SEE THAT MAN? DO YOU RECOGNIZE THAT MAN IN
19 THIS COURTROOM TODAY?
- 20 A YES MA'AM.
- 21 Q WHERE IS THAT MAN SITTING TODAY?
- 22 A SITTING TO MY LEFT.
- 23 Q CAN YOU POINT TO HIM?
- 24 A THE MAN SITTING THERE.
- 25 Q WHAT DOES HE HAVE ON?

1 A A BROWN SWEATER AND A BLUE SHIRT.

2 MS. SPEARS-WALSH: YOUR HONOR, LET THE RECORD
3 REFLECT THAT THE WITNESS IDENTIFIED THE DEFENDANT,
4 VINCENT BOSEMAN.

5 THE COURT: THE RECORD SO REFLECTS.

6 MR. BUTLER: I WILL NOTE MY OBJECTION PREVIOUSLY
7 MADE.

8 THE COURT: YES SIR.

9 Q AT SOME POINT DID THE POLICE ASK YOU TO COME DOWN TO
10 HEADQUARTERS?

11 A AFTER THEY APPREHENDED HIM.

12 Q AFTER WHAT?

13 A AFTER THE ARREST THEY DID. THEY COME OVER AND ASKED
14 US TO COME DOWN AND IDENTIFY AND ASKED US TO COME SIGN A
15 STATEMENT.

16 Q AND DID YOU SIGN A STATEMENT?

17 A YES MA'AM..

18 Q DID YOU HEAR ANYTHING THAT THE DEFENDANT SAID ONCE
19 THE POLICE HAD HIM IN THEIR CUSTODY?

20 A HE WAS SAYING THAT HE COULDN'T BREATHE.

21 Q AND DID YOU SEE ANYTHING ARRIVE? DID YOU SEE AN
22 AMBULANCE COME?

23 A YES.

24 Q AND WHAT DID THE AMBULANCE DO?

25 A THE AMBULANCE PUT HIM ON A STRETCHER AND PUT HIM

1 IN THE BACK AND TOOK HIM OFF.

2 MS. SPEARS-WALSH: BEGGING THE COURT'S INDULGENCE.

3 THE COURT: YES MA'AM.

4 (PAUSE)

5 Q DID THE POLICE AT ANY POINT TAKE YOU OVER TO WHERE
6 VINCENT BOSEMAN WAS ON THE STRETCHER?

7 A NO, THEY TOOK US TO THE PADDY WAGON.

8 Q THEY TOOK ALL OF YOU TO THE PADDY WAGON?

9 A NO, ONE AT A TIME.

10 Q ONE AT A TIME?

11 A YES.

12 Q AND WHO DID YOU SEE INSIDE THE PADDY WAGON?

13 A THE YOUNG MAN SITTING TO MY LEFT.

14 Q AND DID YOU TELL THE POLICE THAT WAS THE MAN?

15 A YES.

16 Q THE MAN THAT HAD WHAT?

17 A HAD ROBBED US.

18 Q THANK YOU.

19 MS. SPEARS-WALSH: NO FURTHER QUESTIONS.

20 THE COURT: CROSS EXAMINATION.

21 CROSS EXAMINATION BY MR. BUTLER:

22 Q GOOD MORNING, CARL.

23 A GOOD MORNING.

24 Q DO YOU REMEMBER TALKING TO INVESTIGATOR BENSON THE
25 NIGHT THIS HAPPENED? YOU MIGHT NOT REMEMBER HIM AS

1 INVESTIGATOR BENSON, BUT DO YOU REMEMBER TALKING TO
2 SOMEONE FROM THE CITY OF COLUMBIA POLICE DEPARTMENT?

3 A YES.

4 Q AND DO YOU REMEMBER WRITING DOWN STATEMENTS?

5 A YES.

6 Q AND HE WANTED YOU TO WRITE DOWN EVERYTHING ABOUT
7 THE INCIDENT AND EVERYTHING THAT WAS IMPORTANT?

8 A YES SIR.

9 Q AND HE ASKED YOU WHEN YOU WERE FINISHED TO REVIEW
10 THE STATEMENT?

11 A YES SIR.

12 Q AND LOOK OVER IT CAREFULLY?

13 A YES SIR.

14 Q WHILE ALL THIS WAS FRESH IN YOUR MIND?

15 A YES SIR.

16 Q AND HE WANTED YOU TO MAKE ANY CORRECTIONS IF YOU
17 NEEDED TO MAKE ANY CORRECTIONS?

18 A YES SIR.

19 MS. SPEARS-WALSH: OBJECTION. IF HE'S GOING TO
20 QUESTION THE WITNESS ABOUT THE STATEMENT, HE'S GOING TO
21 HAVE TO ADMIT THE STATEMENT INTO EVIDENCE.

22 THE COURT: HE DOESN'T HAVE TO. WHAT WAS THE
23 QUESTION YOU ASKED HIM?

24 MR. BUTLER: IF HE WAS ALLOWED TO MAKE ANY
25 CORRECTIONS OR DELETIONS AFTER READING THE STATEMENT.

1 THE COURT: HE DOESN'T HAVE TO. YOUR OBJECTION IS
2 OVERRULED.

3 Q AND THEN INVESTIGATOR BENSON ASKED YOU TO SIGN
4 THE STATEMENT?

5 A YES SIR.

6 Q AND YOU TOLD INVESTIGATOR BENSON THAT A CRIME HAD
7 BEEN COMMITTED?

8 A YES SIR.

9 Q SO, YOU WANTED TO TELL HIM EVERYTHING THAT WAS
10 IMPORTANT?

11 A YES SIR.

12 Q AND YOU WANTED TO WRITE DOWN EVERYTHING THAT WAS
13 IMPORTANT?

14 A YES SIR.

15 Q I WANT YOU TO LOOK OVER THIS AND I WANT YOU TO TELL
16 ME, IS IT IN FACT A COPY OF THE STATEMENT THAT YOU GAVE
17 TO INVESTIGATOR BENSON THAT EVENING?

18 A YES SIR.

19 Q THAT'S YOUR STATEMENT?

20 A YES SIR.

21 Q AND THAT'S THE STATEMENT YOU SIGNED?

22 A YES.

23 Q AND MS. SPEARS ASKED YOU ABOUT THE PEOPLE WHO WERE
24 IN THE ROOM. THERE WAS A GIRL ALSO IN THE ROOM, RIGHT?

25 A YES SIR.



1 Q AND IN YOUR STATEMENT TO INVESTIGATOR BENSON YOU
2 DIDN'T MENTION THE STATEMENT, DID YOU?

3 A THE GIRL AND THE TEE SHIRTS, NO SIR.

4 Q YOU LEFT THAT PART OUT.

5 A YES SIR.

6 Q LET ME ASK YOU SOMETHING ELSE. THERE WAS DRUG
7 ACTIVITY IN THAT ROOM THAT NIGHT, WASN'T THERE?

8 A NO SIR.

9 Q THERE WAS NOT?

10 A NO SIR.

11 Q PEOPLE WEREN'T USING DRUGS?

12 A NO SIR.

13 Q NOBODY IN THAT ROOM HAD BEEN USING DRUGS THAT NIGHT?

14 A NOT IN THAT ROOM, SIR.

15 Q PEOPLE IN THAT ROOM WEREN'T UNDER THE INFLUENCE OF
16 DRUGS?

17 A NO SIR, NO SIR.

18 Q NOBODY IN THAT ROOM WAS UNDER THE INFLUENCE OF
19 DRUGS?

20 A NO SIR.

21 Q DO YOU REMEMBER MEETING WITH A WOMAN NAMED DEB
22 FLEMING, A WOMAN YOU MET WITH ME AT THE DEPARTMENT OF
23 CORRECTIONS WHEN YOU HELPED ONE OTHER TIME BEFORE?

24 A I MET Y'ALL FRIDAY THAT I RECALL.

25 Q DO YOU REMEMBER MEETING WITH ME AND DEB FLEMING

- 1 ONE TIME BEFORE THAT, THE SAME WOMAN THAT WAS WITH ME?
- 2 A (WITNESS SHAKES HEAD INDICATING NEGATIVE RESPONSE)
- 3 Q YOU DON'T REMEMBER. SO, I DON'T GUESS YOU REMEMBER
- 4 TELLING HER THAT THERE WAS A LOT OF DRUG ACTIVITY IN
- 5 THAT ROOM THAT NIGHT?
- 6 A I DON'T RECALL.
- 7 Q YOU NEVER TOLD HER THAT?
- 8 A NO.
- 9 Q AND NOBODY IN THAT ROOM WAS UNDER THE INFLUENCE OF
- 10 DRUGS ON THAT NIGHT?
- 11 A NO.
- 12 Q AND YOU SURE WOULD HAVE PUT THAT IN YOUR STATEMENT.
- 13 WELL, YOU WOULDN'T HAVE PUT IT IN YOUR STATEMENT BECAUSE
- 14 IT DIDN'T HAPPEN?
- 15 A YES SIR.
- 16 Q AND YOU SAY THAT THE ONLY THING YOU SAW TAKEN
- 17 FROM THE GUY YOU CALL T. C.-- Y'ALL ARE FRIENDS?
- 18 A YES SIR.
- 19 Q THE ONLY THING YOU SAW TAKEN FROM HIM WAS MONEY?
- 20 A YEAH, THAT'S WHAT I SEEN.
- 21 Q AND MOST OF THOSE PEOPLE THAT WERE IN THAT ROOM WERE
- 22 ACQUAINTANCES OF YOU OR ONE ANOTHER?
- 23 A YES SIR.
- 24 Q BUT THE PERSON THAT YOU'VE IDENTIFIED, VINCENT, HE'S
- 25 NOT A FRIEND, PART OF THAT CIRCLE OF FRIENDS, RIGHT?

- 1 A NO SIR.
- 2 Q AND YOU SAY THE SHOT WAS FIRED IN THE ROOM?
- 3 A THE SOUND CAME FROM INSIDE THE ROOM.
- 4 Q DO YOU REMEMBER TESTIFYING YESTERDAY IN A
- 5 PRELIMINARY HEARING THE SHOT TOOK PLACE INSIDE THE ROOM?
- 6 A I REMEMBER SAYING THAT THE SOUND SOUNDED LIKE IT
- 7 WAS FIRED INSIDE THE ROOM. IT SOUNDED LIKE IT WAS FIRED
- 8 INSIDE THE ROOM.
- 9 Q WAS EVERYONE IN THE BATHROOM WHEN THE SHOT WAS
- 10 FIRED?
- 11 A EVERYONE THAT I CAN RECALL.
- 12 Q AND YOU'RE DOING TIME NOW FOR BURGLARY, RIGHT?
- 13 A YES SIR, I AM.
- 14 Q AND THAT'S BURGLARY SECOND, SECOND DEGREE, VIOLENT?
- 15 A YES SIR.
- 16 Q AND NOT YOUR FIRST TIME IN TROUBLE WITH THE LAW,
- 17 RIGHT?
- 18 A YES SIR.
- 19 Q 1991, FORGERY?
- 20 A YES SIR.
- 21 Q 1992, BREACH OF TRUST?
- 22 A YES SIR.
- 23 Q AND '94, DISTRIBUTING COCAINE?
- 24 A YES SIR.
- 25 Q AND YOU'RE DOING TIME FOR PETTY LARCENY NOW. IS

- 1 THIS THE FIRST TIME YOU'VE DONE TIME?
- 2 A NO SIR.
- 3 Q YOU'VE DONE TIME BEFORE?
- 4 A YES SIR.
- 5 Q ON ONE OF THOSE OFFENSES?
- 6 A YES SIR.
- 7 Q AND IS IT SAFE TO SAY PRISON'S NO FUN?
- 8 A NO SIR.
- 9 Q YOU HAVE TO WEAR CLOTHES LIKE THAT. YOU CAN'T WEAR
- 10 THE CLOTHES YOU WANT TO.
- 11 A NO SIR.
- 12 Q YOU HAVE TO WEAR WHAT THEY GIVE YOU?
- 13 A YES SIR.
- 14 Q YOU OBVIOUSLY CAN'T LEAVE?
- 15 A NO SIR.
- 16 Q HOW LONG DID THE ENTIRE ROBBERY TAKE?
- 17 A BETWEEN FIFTEEN TO TWENTY MINUTES.
- 18 Q DO YOU REMEMBER SAYING TEN TO FIFTEEN MINUTES?
- 19 A YES SIR.
- 20 Q WAS IT TEN TO FIFTEEN OR FIFTEEN TO TWENTY?
- 21 A IN THAT RANGE, BETWEEN TEN TO FIFTEEN TO TWENTY.
- 22 I'M NOT SURE.
- 23 Q AND BY THAT, I MEAN THE TIME THAT THE GUN IS
- 24 ACTUALLY PULLED UNTIL THE ROBBER LEAVES, BETWEEN FIFTEEN
- 25 AND TWENTY MINUTES.

1 A (NO RESPONSE)

2 MR. BUTLER: BEGGING THE COURT'S INDULGENCE.

3 THE COURT: YES SIR.

4 (PAUSE)

5 Q CARL, WHEN DID YOU COME UP FOR PAROLE?

6 A AUGUST 15, 2001.

7 Q AND YOU GO IN FRONT OF THE PAROLE BOARD?

8 A YES SIR.

9 MS. SPEARS-WALSH: MAY WE APPROACH THE BENCH, YOUR
10 HONOR?

11 THE COURT: YES MA'AM.

12 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

13 OBJECTION IS OVERRULED.

14 Q SO, YOUR PAROLE HEARING DATE IS AUGUST 15, 2001?

15 A YES SIR.

16 Q AND IF YOU CAN CONVINCe THE PEOPLE THERE ON THE
17 PAROLE BOARD THAT YOU HAVE DONE GOOD THINGS THEY WILL
18 LET YOU OUT EARLY?

19 A YES SIR.

20 Q IF YOU DON'T MAKE PAROLE WHEN DO YOU HAVE TO GET
21 OUT?

22 A JULY 15, 2002.

23 Q ABOUT ANOTHER YEAR?

24 A YES SIR.

25 Q AND YOU WANT TO BE ABLE TO TELL THE PAROLE BOARD

1 THE GOOD THINGS YOU'VE DONE?

2 A YES SIR.

3 Q I'M NO LONGER ON DRUGS?

4 A YES SIR.

5 Q PRISON TIME HAS BEEN GOOD FOR ME.

6 A YES SIR.

7 Q I'VE LEARNED A LOT ABOUT MYSELF.

8 A YES SIR.

9 Q AND I HELPED PUT A PERSON IN PRISON. YOU COULD
10 TELL THEM THAT. YOU COULD TELL THE PAROLE BOARD THAT,
11 COULDN'T YOU?

12 A IF THEY ASK.

13 MR. BUTLER: THAT'S ALL I HAVE.

14 THE COURT: ANY RE-DIRECT?

15 MS. SPEARS-WALSH: NONE, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS.

17 MR. McMAHAN: THE STATE CALLS FREDDIE JOHNSON.

18 FREDDIE JOHNSON, DULY SWORN,

19 TESTIFIED AS FOLLOWS:

20 CLERK OF COURT: PLEASE STATE YOUR FULL NAME FOR
21 THE RECORD.

22 A FREDDIE CALVIN JOHNSON.

23 DIRECT EXAMINATION BY MR. McMAHAN:

24 Q MR. JOHNSON, HOW OLD ARE YOU?

25 A FORTY-SIX.

RECEIVED

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S.C. SUPREME COURT

1 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
2 CONGRATULATIONS YOU'VE BEEN SELECTED TO BE THE JURY IN THIS
3 PARTICULAR CASE.

4 WE ARE GOING TO -- PERIODICALLY WE WILL BE TAKING
5 BREAKS. THERE WILL BE MATTERS THAT WILL COME UP THAT I'LL
6 HAVE TO ASK YOU TO LEAVE THE ROOM AND I HAVE TO DISCUSS THEM
7 WITH THE ATTORNEYS. THERE WILL BE TIMES PROBABLY -- THIS
8 TRIAL WILL PROBABLY RUN INTO AT LEAST TOMORROW, SO THEY'LL
9 ALSO BE AN OPPORTUNITY FOR YOU TO HAVE A BREAK THIS EVENING
10 AND GO BACK HOME TO YOUR NORMAL ROUTINE.

11 I WILL DIRECT YOU NOW THAT YOU ARE NOT TO BEGIN
12 DISCUSSING AND ENGAGING IN ANYTHING THAT WILL -- ANY
13 DELIBERATIONS WHATSOEVER ABOUT THINGS THAT TAKE PLACE IN THIS
14 COURTROOM OR THINGS THAT TAKE PLACE WITH THIS PARTICULAR
15 CASE.

16 YOU WILL ONLY BEGIN YOUR DELIBERATIONS -- THAT'S YOUR
17 DISCUSSIONS AMONG EACH OTHER ABOUT WHAT GOES ON IN THIS
18 COURTROOM AND WHAT IS GOING TO HAPPEN, YOU KNOW, AS FAR AS
19 YOUR OUTCOME. YOU'LL ONLY DO THAT AFTER THE CLOSE OF ALL THE
20 EVIDENCE AND I HAVE INSTRUCTED YOU TO BEGIN YOUR
21 DELIBERATIONS.

22 I DON'T WANT YOU TO DISCUSS IT BETWEEN YOURSELVES ON
23 BREAKS. I DON'T WANT YOU TO DISCUSS IT WHEN YOU GO HOME AND
24 YOU SEE YOUR SPOUSE OR SOMEBODY SAYS, HEY, WHAT DID YOU DO IN
25 COURT TODAY. VERY POLITELY TELL THEM THAT THE JUDGE HAS

1 INSTRUCTED ME THAT I CANNOT TALK ABOUT THIS CASE. I CAN --
2 YOU'RE MORE THAN FREE TO TALK ABOUT IT AFTER THE CASE IS OVER
3 BUT UNTIL YOU -- THE CASE HAS BEEN GIVEN TO YOU, YOU CANNOT
4 ENGAGE IN ANY DISCUSSIONS WITH ANYBODY AMONG YOURSELVES OR
5 ANYONE ELSE ABOUT THIS CASE. I WILL INSTRUCT THAT TO YOU
6 NOW.

7 WE ARE GOING TO TAKE A BREAK NOW FOR LUNCH. IT'S A
8 LITTLE BIT EARLY FOR THE COURT'S SCHEDULE. USUALLY WE BREAK
9 -- TRY TO BREAK AROUND 1. BUT I'M GOING TO ASK THAT YOU BE
10 BACK IN THE JURY DELIBERATION ROOM, AND THE BAILIFF WILL SHOW
11 YOU WHERE THAT IS, ABOUT 2:00. BUT UNTIL THEN, I'M GOING TO
12 ASK THAT YOU AGAIN NOT DISCUSS IT AMONG YOURSELVES OR WITH
13 ANYONE ELSE. AND IF IN THE EVENT THAT ANYONE APPROACHES YOU
14 ABOUT WANTING TO DISCUSS THIS CASE, I WANT YOU TO IMMEDIATELY
15 REPORT IT TO ONE OF THE BAILIFFS ONCE YOU COME BACK FROM
16 LUNCH.

17 YOU'LL ALSO -- WE LIVE IN A SOCIETY NOW TO WHERE WE'RE
18 VERY TECHNOLOGICALLY ADVANCED AND IF YOU HEAR THINGS THAT
19 HAPPEN IN THIS TRIAL, I DON'T WANT YOU TO GO OUT AND DO ANY
20 REAL, YOU KNOW, YOUR OWN INDEPENDENT RESEARCH. YOUR DECISION
21 THAT YOU'RE GOING TO MAKE IN THIS CASE HAS TO BE BASED UPON
22 THE EVIDENCE AND TESTIMONY THAT'S PRESENTED IN THIS
23 COURTROOM.

24 SO IF YOU HAVE THE INTERNET, DON'T TRY TO DO ANY
25 RESEARCH ON IT. IF YOU HAPPEN TO BE FAMILIAR WITH THE

1 ACCIDENT -- WITH THE SCENE THAT WE'RE GOING TO TALK ABOUT IN
2 HERE, DON'T PURPOSELY GO OUT TONIGHT ON THE WAY HOME AND SAY,
3 WE'LL, I'M GOING TO DRIVE BY THIS PLACE AND TAKE A LOOK AT
4 IT. DON'T DO THINGS LIKE THAT BECAUSE YOU'RE ONLY SUPPOSED
5 TO MAKE THE -- YOUR DECISION BASED ON WHAT HAPPENS IN THIS
6 COURTROOM.

7 I'LL ASK THAT YOU BE BACK AT 2:00. I WILL ALSO ASK
8 THAT ONCE YOU RETURN IN THE JURY ROOM, I'LL ASK THAT YOU
9 AMONGST YOURSELVES TO ELECT A FOREPERSON. NOW THAT
10 FOREPERSON THAT YOU WILL SELECT DOESN'T HAVE ANY MORE
11 PRIVILEGES OR POWERS. BUT THAT FOREPERSON IS A WAY THAT IF
12 YOU, THE JURY, NEED TO COMMUNICATE WITH ME, YOU CAN USE THAT
13 FOREPERSON TO ACT AS YOUR GO-BETWEEN.

14 AND SO I'LL ASK THAT YOU SELECT A FOREPERSON, WRITE IT
15 DOWN ON A PIECE OF PAPER AND GIVE IT TO THE BAILIFF AND HE'LL
16 LET ME KNOW.

17 MADAM ALTERNATE, THE LAST LADY SELECTED, I WILL ASK
18 THAT YOU SIT IN THAT SEAT THROUGHOUT THE ENTIRE PART OF THIS
19 TRIAL. WHOEVER IS THE FOREPERSON, I'LL ASK THAT THEY SIT IN
20 THIS FIRST SEAT UP HERE. AND EVERYBODY ELSE IS FREE TO SIT
21 IN ANY OF THOSE FIRST TWELVE SEATS OTHER THAN THE FOREPERSON
22 AND THE ALTERNATE.

23 BUT I WILL ASK THAT YOU HAVE A GOOD LUNCH AND BE BACK
24 BY 2.

25 MR. MEADORS: YOUR HONOR, MAY I BEFORE -- I HAVE AN

1 ADMINISTRATIVE MATTER. I APOLOGIZE.

2 (WHEREUPON, A BENCH CONFERENCE IS NOW HAD IN THE
3 PRESENCE OF THE JURY AND THE COURT REPORTER, BUT OUT OF THE
4 HEARING OF THE JURY AND THE COURT REPORTER.)

5 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I'VE BEEN
6 REMINDED THAT I HAD -- I DO HAVE SOMETHING ON MY CALENDAR
7 THAT I'M GOING TO TRY TO DO AT 2, SO MAKE IT 2:15 TO BE BACK
8 IN THE JURY ROOM AND WE'LL TRY TO GET STARTED AS SOON AS WE
9 CAN.

10 (JURY OUT AT 12:30 P.M.)

11 THE COURT: ALL RIGHT. IF YOU COULD SPEAK TO YOUR --
12 TO THE ASSISTANT SOLICITOR AND SEE IF SHE CAN HAVE THEM HERE
13 AT 2:00. BUT SHE WAS NOT GOING TO HAVE THOSE OTHER PEOPLE
14 HERE UNTIL 2:15, WAS SHE?

15 MR. MEADORS: I DON'T THINK SO, JUDGE.

16 THE COURT: ALL RIGHT. ALL RIGHT, WELL, WE'LL -- I'LL
17 TRY TO BE HERE AROUND 2. IF SHE'S GOT EVERYBODY HERE, WE'LL
18 DO THEM. IF NOT, I'LL GO AHEAD AND DO HERS AT 2:15 AND I'LL
19 EXPLAIN TO THEM WHY WE'RE GETTING STARTED LATE.

20 MR. MEADORS: WE'LL INFORM HER RIGHT NOW TO PLEASE TRY
21 TO -- WE'LL HAVE HER TRY TO GET THEM EARLY IF SHE CAN.

22 THE COURT: OKAY. ANYTHING FURTHER BEFORE WE ADJOURN?

23 MS. SPEARS-WALSH: NOTHING FROM THE STATE, YOUR HONOR,
24 UNLESS WE WANT TO DO ANY OF THE MOTIONS NOW.

25 MR. STRICKLER: I VOTE TO TAKE A BREAK FOR LUNCH

1 MYSELF, SAY I GET A VOTE IN THE MATTER.

2 MR. MEADORS: THAT'S FINE WITH THE STATE. I THINK ---

3 THE COURT: ALL RIGHT. I'LL BE IN AROUND AT 2, SO IF
4 WE WANT TO DO THE MOTIONS THEN PRIOR TO DOING THAT LITTLE
5 BOND HEARING, WE CAN TAKE CARE OF THAT THEN AS WELL.

6 MR. MEADORS: THANK YOU, JUDGE.

7 MR. STRICKLER: THANK YOU, SIR.

8 (COURT IS IN RECESS.)

9 MR. MEADORS: JUDGE, I WOULD SAY -- I'M SORRY, MAY IT
10 PLEASE THE COURT.

11 THE COURT: YES, SIR.

12 MR. MEADORS: WE'VE REVIEWED, I WOULD GUESS, 95% OF
13 WHAT WE PLAN TO PUT IN. I DON'T BELIEVE THERE'S AN OBJECTION
14 AS LONG AS WE CALL THE WITNESS TO SAY THEY'RE FAMILIAR WITH
15 IT. SO WITH THE COURT'S PERMISSION, WE MIGHT GO AHEAD AND
16 PRE-MARK THESE.

17 THE COURT: YES, PLEASE.

18 (STATE'S EXHIBIT NUMBERS ONE THROUGH FIFTEEN, ARE NOW
19 PRE-MARKED FOR IDENTIFICATION.)

20 COURT REPORTER: THESE ARE ALL FOR IDENTIFICATION?

21 MR. MEADORS: WELL, THEY'RE GOING TO BE -- GO AHEAD
22 AND PUT THEM IN, I THINK.

23 MR. STRICKLER: ASSUMING THEY CALL A WITNESS TO LAY
24 THE FOUNDATION ---

25 THE COURT: PROVIDED THE PROPER FOUNDATION IS LAID,

PRETRIAL MOTIONS:

1 YES. AN OBJECTION WILL BE FINE.

2 (PAUSE.)

3 MR. MEADORS: YOUR HONOR, THANK YOU FOR YOUR PATIENCE.

4 I THINK WE ARE READY ---

5 THE COURT: EVERYTHING BEEN MARKED?

6 MR. MEADORS: --- TO PROCEED.

7 THE COURT: ALL RIGHT. WHAT ABOUT THE PRETRIAL
8 MOTIONS THAT WANT TO BE HEARD?

9 MR. MEADORS: I GUESS WE COULD START OFF WITH THE TIME
10 FRAME ON THE PRIOR CONVICTIONS OF OUR WITNESSES AND/OR
11 POTENTIALLY THE DEFENDANT, MR. BOSEMAN.

12 I'VE HANDED UP A CASE THE STATE VERSUS LEON SCOTT, 484
13 S.E.2d 110, WHICH BASICALLY STATES FOR THE PROPOSITION THAT
14 THINK YOU CAN GO BACK TEN YEARS BUT THAT INCLUDES THE TIME
15 PERIOD THAT THEY WERE INCARCERATED PLUS WHEN PAROLE WAS
16 ENDED. IN THAT CASE I THINK THEY WENT BACK TEN YEARS AND THE
17 TEN YEARS BEGAN WHEN THAT PERSON WENT OFF PAROLE.

18 SO IT WOULD BE OUR POSITION -- OUR POSITION IN THIS
19 CASE THAT THE ARMED ROBBERY, PREVIOUS ARMED ROBBERY THAT MR.
20 BOSEMAN HAD, WOULD BE ADMISSIBLE TODAY, IF WE'RE GOING ON
21 TODAY'S DATE FOR THE TRIAL, BECAUSE HE WAS RELEASED FROM
22 PAROLE, I BELIEVE, ON AUGUST THE 2ND OF 1995.

23 HE WAS PAROLED ON -- COMMITTED IN 1987, PAROLED ON 1989
24 AND HIS PAROLE EXPIRED IN 1995. I KNOW -- I DON'T KNOW IF
25 THAT'S ONE THING WE REALLY -- HAS TO BE DECIDED AT THIS POINT

PRETRIAL MOTIONS:

36

1 BUT I WANTED TO BRING THAT TO THE COURT'S ATTENTION AND I
2 ASSUME WE'RE ALL -- OR I DON'T KNOW IF WE'RE ALL IN
3 AGREEMENT, THAT THE TEN YEARS GOING BACK WOULD BE FROM JULY
4 28TH, 2003 BACK.

5 MR. STRICKLER: WELL ...

6 THE COURT: ALL RIGHT. YOU'RE SAYING THAT -- THAT
7 SINCE HE WAS PAROLED ON AUGUST 2, 1995, THAT BRINGS IT WITHIN
8 THE TEN YEARS?

9 MR. MEADORS: YES, SIR.

10 THE COURT: OKAY. I CAN HEAR YOU MR. STRICKLAND (SIC)
11 EVEN THOUGH I PROBABLY WILL NOT MAKE A DECISION RIGHT NOW.

12 MR. STRICKLER: YES, SIR. WELL, SPECIFICALLY AS TO MY
13 CLIENT, I'D ASK THAT YOU RESERVE ANY DECISION IN THAT REGARD.

14 WE'RE DEALING HERE WITH RULE 609, SPECIFICALLY 609(B),
15 OF THE SOUTH CAROLINA RULES OF EVIDENCE WHICH STATE -- LET'S
16 SEE, THE EVIDENCE OF A CONVICTION UNDER THIS RULE IS NOT
17 ADMISSIBLE IF A PERIOD OF TIME MORE THAN TEN YEARS HAS
18 ELAPSED SINCE THE DATE OF THE CONVICTION OR THE RELEASE OF
19 THE WITNESS FROM THE CONFINEMENT IMPOSED FOR THE CONVICTION,
20 WHICHEVER IS THE LATER.

21 THE QUESTION IS, WHAT CONSTITUTES A RELEASE FROM
22 CONFINEMENT FOR THE CONVICTION. IT WAS WELL SETTLED PRIOR TO
23 ADOPTION OF THE RULES OF EVIDENCE THAT PAROLE -- TIME ON
24 PAROLE WAS CALCULATED A CONTINUATION OF THE CONVICTION.

25 I WOULD SUBMIT TO YOU THAT UNDER 609, THAT'S NOT THE

PRETRIAL MOTIONS:

37

1 CASE. THAT'S IN CONTRADICTION TO THE HOLDING OF THE CASE
2 THE STATE HAS HANDED ME, STATE V. SCOTT, 326 S.C. 448, 484
3 S.E.2d 110, WHICH STATES IN PART THAT -- EXCUSE ME. I'M
4 SORRY, I APOLOGIZE. IT'S NOT A CONTRADICTION BECAUSE IT
5 DEALT WITH A CASE THAT WAS DECIDED PRIOR TO THE ADOPTION OF
6 THE RULES OF EVIDENCE. SO IT DEALT WITH A CASE THAT WAS
7 DECIDED UNDER THE COMMON LAW.

8 AND THE RULES OF EVIDENCE SAY THE DATE OF SENTENCE OR
9 DATE OF RELEASE FROM CONFINEMENT. IT DOESN'T SAY ANYTHING
10 ABOUT PAROLE.

11 NOW IN DICTA, THE COURT OF APPEALS INDICATES THAT IN
12 THEIR OPINION RELEASE FROM PAROLE WOULD STILL APPLY UNDER THE
13 RULES OF EVIDENCE THAT WE OPERATE UNDER NOW. BUT I READ THAT
14 AS DICTA IN THIS CASE AND FURTHERMORE DICTA FROM THE COURT OF
15 APPEALS AS OPPOSED TO THE SUPREME COURT.

16 SO I TAKE IT IN PLAIN MEANING, READING THAT THE RULE --
17 THE LANGUAGE OF THE RULE WHICH SAYS, DATE OF SENTENCE OR DATE
18 OF CONVICTION OR DATE OF RELEASE FROM CONFINEMENT. RELEASE
19 FROM CONFINEMENT WOULD TAKE IT -- WOULD CALCULATE IT FROM
20 TODAY'S DATE, WOULD TAKE IT OUT FROM UNDERNEATH TEN YEARS.

21 THE COURT: ALL RIGHT. LET ME BE SURE I HAVE THE DATE
22 OF PAROLE, AUGUST THE 2ND, 1995, IS THAT CORRECT?

23 MR. MEADORS: THAT'S CORRECT, SIR. HE WAS ACTUALLY --
24 THE CRIME WAS COMMITTED IN 1987, WAS PAROLED IN -- THAT'S NOT
25 CORRECT.

PRETRIAL MOTIONS:

38

1 (PAUSE.)

2 MR. MEADORS: HE WAS PAROLED IN 1989. HE WENT OFF
3 PAROLE 1995.

4 THE COURT: CONVICTED 1987, PAROLED 1989 AND WENT OFF
5 PAROLE 1995, DO I HAVE THAT CORRECT?

6 MS. SPEARS-WALSH: YOUR HONOR, BEG THE COURT'S
7 INDULGENCE.

8 YOUR HONOR, HE COMMITTED THE CRIME IN '85, WAS
9 CONVICTED IN '87.

10 THE COURT: OKAY, 1985, COMMITTED -- OKAY, COMMITTED
11 -- CONVICTED '87, PAROLED '89, OFF PAROLE '95?

12 MS. SPEARS-WALSH: YES, SIR.

13 THE COURT: ALL RIGHT. I WILL RESERVE RULING ON THAT
14 AS TO THIS DEFENDANT. I'LL TAKE A LOOK AT IT.

15 MR. STRICKLER: YES, SIR. AND AS TO THAT SPECIFIC --
16 AS TO MR. BOSEMAN IN PARTICULAR, I HAD SOME ADDITIONAL
17 ARGUMENTS BEYOND THOSE DEALING WITH THE TIME LIMIT IN THIS
18 PARTICULAR CASE THAT I NEED TO ADDRESS WITH THE COURT, IF --
19 IF WE HAVE TO, IF THE ISSUE ARISES.

20 THE COURT: OKAY. ALL RIGHT. I'LL TAKE A LOOK -- IF
21 -- ONCE WE GET CLOSER TO WHEN THE ISSUE WOULD ARISE, YOU CAN
22 GO AHEAD AND INFORM THE COURT AS TO THOSE OTHER ARGUMENTS ---

23 MR. STRICKLER: YES, SIR.

24 THE COURT: --- THAT DEAL WITH THIS DEFENDANT.

25 MR. STRICKLER: THEY JUST DEAL WITH SOME ADDITIONAL

PRETRIAL MOTIONS:

39

1 PROBLEMS WITH THE ANALYSIS WHEN YOU'RE IN HIS PARTICULAR
2 SITUATION AS OPPOSED TO ANYONE ELSE'S.

3 THE COURT: CERTAINLY.

4 MR. MEADORS: AND I DON'T THINK THERE'S ANY DISPUTE --
5 SOMEBODY WILL CORRECT ME IF I'M WRONG, THAT HE HAS ALSO PLED,
6 AFTER THIS INCIDENT, TO AN ACCESSORY BEFORE STRONG ARMED
7 ROBBERY IN LEXINGTON COUNTY. AND MS. SPEARS HAS HANDED ME A
8 DOCUMENT THAT SAYS 1999. SO WE CLEARLY -- WE'D TAKE THE
9 POSITION THAT WOULD COME IN.

10 THE COURT: ACCESSORY AFTER THE FACT OF STRONG ARMED?

11 MR. MEADORS: ACCESSORY BEFORE STRONG ARMED ROBBERY,
12 I'M SORRY. HE GOT FIFTEEN YEARS SUSPENDED, FIVE YEARS
13 PROBATION IN 1999.

14 THE COURT: ALL RIGHT.

15 MR. MEADORS: THAT'S ALL AS TO THE DEFENDANT THAT I'M
16 AWARE OF AT THIS TIME.

17 THE COURT: ALL RIGHT.

18 MR. STRICKLER: WE DO HAVE SEVERAL STATE'S WITNESSES
19 WHO ARE GOING TO TESTIFY WHO HAVE IMPEACHABLE OFFENSES. AND,
20 YOU KNOW, WE CAN TAKE THEM UP NOW OR WE CAN TAKE THEM UP
21 INDIVIDUALLY AT THE TIME THEY'RE CALLED.

22 THE COURT: LET ME ASK Y'ALL THIS, ARE WE GOING TO BE
23 HAVING TO DO THE HEARINGS ON THE SEARCH AND IDENTIFICATION?

24 MR. MEADORS: YOUR HONOR, UNDER CRIMINAL RULE 4, THE
25 STATE WOULD -- 4(B), IF ANY MOTION BE MADE TO ANY JUDGE AND

PRETRIAL MOTIONS:

40

1 BE DENIED, IN WHOLE OR IN PART, OR BE GRANTED CONDITIONALLY,
2 NO SUBSEQUENT MOTION UPON THE SAME SET OF FACTS SHALL BE MADE
3 TO ANY OTHER JUDGE IN THAT ACTION. IF UPON SUCH SUBSEQUENT
4 MOTION, ANY ORDER BE MADE, IT SHALL BE VOID.

5 WE WOULD CITE THAT, YOUR HONOR, AS A CONSIDERATION AS
6 TO -- AS FAR AS THE PRIOR HEARINGS OF -- FOR THE SHOW-UP AND
7 THE SEARCH INCIDENT TO ARREST. WE DO HAVE ONE ADDITIONAL
8 WITNESS THAT DIDN'T TESTIFY LAST TIME. I WAS GOING TO CALL
9 HIM FIRST. I THINK I TOLD MR. STRICKLER. HIS TESTIMONY, I
10 BELIEVE, IF I CAN GO AHEAD AND PROFFER IT BRIEFLY WOULD BE
11 JUST ---

12 THE COURT: WELL, LET ME ASK MY QUESTION FIRST. THE
13 REASON I ASK IS THAT WE ARE APPROACHING 3:00 AND THE JURY HAS
14 NOT EVEN BEEN SWORN YET. AND I WAS WONDERING IF MAYBE -- I
15 DEFER TO Y'ALL BECAUSE I'M TRYING TO WORK WITH Y'ALL AS WELL
16 AS THE JURY. LET'S LET THEM STAR -- LET THEM COME BACK IN
17 THE MORNING AND BEGIN THE ACTUAL TRIAL OF THIS CASE.

18 MR. MEADORS: UNLESS YOU WANTED TO DO OPENINGS TODAY
19 FIRST. WHATEVER YOU -- WHATEVER Y'ALL WANT TO DO. I ...

20 YOUR HONOR, THAT'S FINE WITH THE STATE. WE CAN START
21 IN THE MORNING FIRST THING:

22 THE COURT: IS THAT A PROBLEM WITH THE DEFENSE?

23 MR. STRICKLER: NO, THAT'S NOT A PROBLEM JUDGE.

24 THE COURT: ALL RIGHT. LET'S BRING THE JURY BACK IN.
25 I'M GOING TO SEND THEM HOME. DO Y'ALL WANT TO HAVE THEM TO

PRETRIAL MOTIONS:

1 COME BACK AT 9:00 -- I MEAN, I DON'T KNOW WHETHER -- DOES
2 THAT TROUBLE Y'ALL WITH Y'ALL'S SCHEDULING WITH YOUR
3 WITNESSES AND THINGS.

4 MR. MEADORS: JUST ONE BUT HE'S JUST SAID IT WAS OKAY.

5 THE COURT: ALL RIGHT.

6 MS. SPEARS-WALSH: I'M SORRY, YOUR HONOR, I DIDN'T
7 HEAR WHAT TIME.

8 THE COURT: I WAS GOING TO ASK, 9:30. ALL RIGHT.
9 BRING THE JURY BACK, IF YOU WOULD. AND WE WILL NOT SWEAR THE
10 JURY UNTIL IN THE MORNING.

11 (JURY IN AT 2:53 P.M.)

12 THE BAILIFF: THE JURY'S ALL PRESENT, YOUR HONOR.

13 THE COURT: THANK YOU, SIR. MR. -- IS IT ?

14 MR. : YES, SIR.

15 THE COURT: CONGRATULATIONS ON BEING SELECTED
16 FOREPERSON OF THE JURY. I APOLOGIZE FOR JUST NOW HAVING
17 Y'ALL BROUGHT INTO THE COURTROOM. AS I MIGHT HAVE MENTIONED
18 IN THE BEGINNING, THERE ARE FREQUENTLY TIMES WHEN I AM HAVING
19 TO ADDRESS MATTERS OF LAW WITH THE VARIOUS ATTORNEYS IN THE
20 CASE AND WE HAVE GOTTEN INTO ONE OF THOSE SITUATIONS WHERE WE
21 HAVE BEEN DEBATING BACK AND FORTH QUESTIONS OF LAW THAT APPLY
22 TO THE TRIAL OF THIS CASE.

23 AS OPPOSED TO KEEPING Y'ALL LOCKED UP IN THE JURY
24 DELIBERATION ROOM, WE HAVE ALL AGREED THAT WHAT WE -- THAT WE
25 ARE WILLING TO HAVE Y'ALL GO HOME TODAY, TO CALL IT A DAY AS

PRETRIAL MOTIONS:

42

1 FAR AS YOUR SERVICE TO RICHLAND COUNTY, AND THAT WE WILL
2 START BACK AND TRY TO HAVE THE CASE IN SUCH A FASHION THAT WE
3 WILL ACTUALLY BEGIN THE ACTUAL PRESENTATION OF THE CASE AT
4 9:30 IN THE MORNING OR THEREABOUTS.

5 SO IF YOU WOULD, BE IN -- BACK IN THE JURY DELIBERATION
6 ROOM AT 9:30 AND WE WILL DO WHAT WE CAN ABOUT GETTING IT
7 STARTED PROMPTLY AT 9:30.

8 AGAIN, I WILL CAUTION YOU AND WARN YOU THAT YOU ARE NOT
9 TO HAVE ANY DISCUSSIONS YOURSELVES OR WITH ANYONE INSIDE THE
10 COURT SYSTEM OR OUTSIDE THE COURT SYSTEM ABOUT ANY -- ABOUT
11 THIS CASE OR ANYTHING THAT INVOLVES THE COURTROOM.

12 I ALSO WANT TO LET YOU KNOW THAT I KNOW I PASSED ONE OF
13 THE JURORS IN THE HALL AND DID NOT SPEAK TO THAT JUROR.
14 DON'T TAKE THAT AS IF YOU SEE ME OR YOU SEE ANY OF THE
15 LAWYERS OR ANY OF THE WITNESSES IN THE CASE, IF WE'RE NOT
16 FRIENDLY TOWARDS YOU. WE ARE SIMPLY TRYING TO JUST BE SURE
17 THAT WE HAVE NO CONTACT WITH Y'ALL THAT SOMEHOW COULD BE
18 MISINTERPRETED EITHER BY YOU OR BY SOMEONE THAT MIGHT SEE US
19 AND YOU COME IN CLOSE PROXIMITY TO EACH OTHER.

20 SO THE FACT THAT WE'RE NOT REAL FRIENDLY AND WE DON'T
21 SPEAK TO YOU, PLEASE DON'T HOLD THAT AGAINST ANYBODY.

22 BUT I WILL ASK THAT YOU NOW -- YOU MAY RETIRE FOR THE
23 DAY AND I'LL SEE YOU BACK HERE IN THE MORNING. THANK YOU.

24 (JURY OUT AT 2:55 P.M.)

25 THE COURT: OKAY, NOW WE CAN PROCEED. ALL RIGHT. DID

1 Y'ALL WANT TO ADDRESS THE RULE, YOU SAID IT WAS RULE 4?

2 MR. MEADORS: YES, SIR.

3 THE COURT: ALL RIGHT.

4 MR. STRICKLER: YES, SIR, IF I COULD, PLEASE.

5 THE COURT: YES, SIR.

6 MR. STRICKLER: ACTUALLY, NOW THAT WE -- WE DON'T HAVE
7 THE JURY BREATHING DOWN OUR NECK, YOU WERE ANXIOUS TO GET
8 THEM OUT OF HERE, I COULD JUST LAY OUT THE ADDITIONAL
9 CONCERNS I HAVE AS FAR AS MR. BOSEMAN'S CONVICTIONS GO, FOR
10 YOUR CONSIDERATION ULTIMATELY, JUDGE.

11 THE COURT: ALL RIGHT. LET'S ADDRESS HIS RULE 4
12 FIRST.

13 MR. STRICKLER: YES, SIR. I'VE ADDRESSED THE TIME
14 FACTOR. I HAVE NOTHING TO SAY REGARDING TIMING ON THE SECOND
15 CONVICTION MR. MEADOR -- MEADORS ---

16 THE COURT: I WOULD LIKE TO -- I -- I'VE GOT DOWN -- I
17 MOVE TO THE ISSUE OF WHETHER OR NOT WE WILL BE -- IF I
18 UNDERSTAND THE STATE'S POSITION CORRECT, THAT THERE HAS BEEN
19 A PRIOR RULING ---

20 MR. STRICKLER: OKAY.

21 THE COURT: --- BEFORE JUDGE WILLIAMS ---

22 MR. STRICKLER: YES, SIR.

23 THE COURT: --- BACK IN DECEMBER OF 2000 CONCERNING
24 THE IDENTIFICATION AND AS WELL AS THE SEARCH ISSUE.

25 MR. STRICKLER: YES, SIR.

1 THE COURT: AND THAT THE STATE'S POSITION IS THAT
2 THOSE MATTERS, ACCORDING TO RULE 4, YOU ARE BARRED FROM RE-
3 PRESENTING THOSE ISSUES TO ME.

4 MR. STRICKLER: YES, SIR, AND I'LL ADDRESS THAT, THANK
5 YOU. AND I CERTAINLY DON'T WANT TO VIOLATE ANY RULE OF THE
6 COURT, YOUR HONOR.

7 THIS CASE, SUBSEQUENT TO JUDGE WILLIAMS' RULINGS, WHICH
8 I TAKE NOTICE WITH THE FACT THAT THOSE RULINGS WERE MADE --
9 SUBSEQUENT TO THE RULINGS BEING MADE, IT WAS APPEALED. THE
10 CASE WAS REVERSED, SENT BACK DOWN FOR A NEW TRIAL. THE
11 SUPREME COURT HAD NOTHING TO SAY, IN MY READING OF THE
12 OPINION IN THE CASE, ONE WAY OR THE OTHER REGARDING THE
13 RULINGS MADE BY JUDGE WILLIAMS ON THE SEARCH AND ON THE --
14 ON THE -- NEIL V. BIGGERS IDENTIFICATION HEARINGS.

15 SO MY POSITION IS THAT I'M NOT ASKING YOU TO OVERRULE
16 ANOTHER JUDGE. I KNOW THE RULE ON THAT. I WOULDN'T DO THAT.
17 I -- MY SUBMISSION TO YOU IS THAT WE'RE BACK TO SQUARE ONE.
18 THERE IS NO LAW OF THE CASE AT THIS PARTICULAR POINT IN TIME
19 AND THE STATE NEEDS TO PROVE WHAT THEY HAVE TO PROVE. THEY
20 NEED TO SATISFY YOU AS THE GATEKEEPER AS FAR AS ADMISSIBILITY
21 OF EVIDENCE OF THE PROPRIETY OF PERMITTING IN COURT
22 IDENTIFICATION IN THIS CASE BASED UPON THE FACTS AND
23 CIRCUMSTANCES SURROUNDING THE OUT OF COURT SHOW-UP I.D. THAT
24 WAS CONDUCTED IN THIS CASE.

25 THE COURT: YES, SIR, MR. MEADORS.

PRETRIAL MOTIONS:

45

1 MR. MEADORS: THANK YOU. MAY IT PLEASE THE COURT,
2 JUDGE. I GUESS I WOULD EQUATE THIS, THE ONLY TIME I'VE
3 EXPERIENCED THIS IS WHEN I WAS IN THE STATE GRAND JURY AND WE
4 HAD A MISTRIAL AND WE HAD TWO DIFFERENT JUDGES. I THINK IT
5 WAS HIS HONOR -- I THINK THIS IS SOMEWHAT RELEVANT. I
6 BELIEVE IT WAS JUDGE MCGINNIS, I'M NOT SURE, HAD MADE SOME
7 RULINGS. JUDGE SHULER GOT THE CASE AND I JUST REMEMBER
8 BRIEFING IT AND ARGUING IT. THAT WAS A MISTRIAL.

9 SO IT'S THE PROCEDURAL DIFFERENCE. THOUGH WE CAME BACK
10 IN THAT CASE AND ALL THE SUPPRESSION HEARINGS AND THERE WERE
11 ABOUT SIX SEARCH WARRANTS, HAD ALL BEEN RULED UPON AND WE
12 ARGUED THAT THAT WAS THE LAW OF THE CASE THAT -- PARTLY NOT
13 TO HAVE TO SPEND ANOTHER TWO OR THREE DAYS REHEARING
14 TESTIMONY AND GOING OVER IT AGAIN.

15 BUT I -- NOT THAT WE WOULDN'T WANT YOUR HONOR TO RULE.
16 AND I HOPE YOUR HONOR DOESN'T THINK THAT AT ALL. BUT JUST
17 FOLLOWING THE CRIMINAL RULE, WE THINK THOSE MATTERS HAVE BEEN
18 RULED UPON. THEY WERE NOT ADDRESSED AT ALL BY THE APPELLATE
19 COURT AND I DON'T -- I HAVE NOT SEEN THE BRIEF. BUT I DON'T
20 BELIEVE THEY WERE BROUGHT UP AS ANY QUESTION OF THAT AT ALL
21 ABOUT THE SHOW-UP I.D. OR THE SEARCH INCIDENT TO ARREST.

22 SO WE JUST ASK THAT THE LAW OF THE CASE BE AS JUDGE
23 WILLIAMS HELD IN DECEMBER OF 2000. THE ONLY ADDITION WE
24 HAVE, AND I THINK I STATED IT EARLIER, WAS WE NOW HAVE MR.
25 HOWARD SMITH WHO'S HERE WHO WAS IN THE MOTEL ROOM. SHORTLY

PRETRIAL MOTIONS:

1 AFTER THEY WERE ROBBED HE WENT AND DID IDENTIFY SOMEONE AS
2 THE PERSON WHO HAD JUST ROBBED THEM. I DON'T BELIEVE THE
3 CONVERSATIONS WITH MR. SMITH -- WELL, I WON'T GO THAT FAR.
4 I'M NOT SURE HE'D BE ABLE TO DO AN IN COURT I.D. ANYWAY. IF
5 WE WERE TO ATTEMPT THAT, I THINK -- SURELY WE'D HAVE TO GO
6 FORWARD WITH THAT IN-CAMERA WITH MR. SMITH.

7 BUT AS TO THE OTHER WITNESSES WHO'VE ALREADY TESTIFIED,
8 WE'D ASK YOUR HONOR TO CONSIDER THAT DECISION ALREADY MADE
9 AND THAT WE BE ALLOWED TO GO STRAIGHT FORWARD IN FRONT OF THE
10 JURY WITH THOSE WITNESSES.

11 AND THAT WOULD BE MR. WILLIE MCCALVIN AND CARL VAN
12 HOLMES WHO WOULD HAVE PREVIOUSLY TESTIFIED IN-CAMERA TO THE
13 IDENTIFICATION, NOT ONLY THE SHOW-UP BUT IN COURT
14 IDENTIFICATION, MR. WILLIE MCCALVIN AND CARL VAN HOLMES.

15 AND MR. STRICKLER HAS THE PREVIOUS TRANSCRIPT OF THE
16 IN-CAMERA AND COURT TESTIMONY, YOUR HONOR.

17 THE COURT: ANYTHING FURTHER, MR. STRICKLER?

18 MR. STRICKLER: NO, SIR, JUST -- JUST TO POINT OUT TO
19 THE COURT THAT I DID TAKE ADVANTAGE OF THE BREAK AND SEARCHED
20 AS DILIGENTLY AS I COULD ON MY COMPUTER FOR A CASE THAT
21 SPECIFICALLY SAID YES OR NO AS TO THIS SITUATION, AS OPPOSED
22 TO GENERALIZED STATEMENTS. I COULDN'T FIND ONE AS TO THIS
23 PARTICULAR SITUATION. I DON'T HAVE ANYTHING I CAN BRING TO
24 YOUR HONOR'S ATTENTION.

25 THE COURT: AND I APPRECIATE YOUR DILIGENCE IN YOUR

PRETRIAL MOTIONS:

47

1 SEARCH BECAUSE COURT ADMINISTRATION IS STILL TRYING TO GET MY
2 COMPUTER TO WORK.

3 ALL RIGHT. I DID HAVE THE OPPORTUNITY TO BE ABLE TO
4 REVIEW THE SECTIONS OF THE TRANSCRIPT FROM THE PREVIOUS
5 PROCEEDINGS. AND I WAS STRUCK WITH THE THOROUGHNESS OF WHICH
6 BOTH THE STATE AND THE DEFENSE PURSUED THEIR LINE OF
7 QUESTIONING AND ALSO THE -- THE DEPTH OF THEIR ARGUMENT WHEN
8 IT CAME TO APPLICABLE LAW AS WELL AS HOW THAT LAW APPLIED TO
9 THE FACTS.

10 AND I WILL -- IF WE HAVE A CLEAN COPY OF THE TRANSCRIPT
11 SOMEWHERE, I WOULD LIKE TO HAVE THAT TRANSCRIPT INCORPORATED
12 INTO THE RECORD INTO THIS PROCEEDING.

13 BUT I WILL ACCEPT JUDGE WILLIAMS'S RULINGS THAT WERE
14 MADE AS BEING BOUND UPON THIS COURT AS FAR AS WHAT THOSE
15 WITNESSES WOULD TESTIFY TO, AND ALSO THE DECISIONS AND
16 CONCLUSIONS REACHED BY JUDGE WILLIAMS IN THE PRIOR
17 PROCEEDING.

18 MR. STRICKLER: THANK YOU, YOUR HONOR. AND YOU
19 ANTICIPATE THE REQUEST I WAS GOING TO MAKE, YOU KNOW, JUST ON
20 THE OFF CHANCE THAT YOU WERE GOING TO RULE AGAINST ME, WOULD
21 BE PRECISELY WHAT YOUR HONOR HAS ASKED TO BE DONE. THAT WE
22 INCORPORATE THAT.

23 I DON'T KNOW WHAT WAS DEALT WITH ON APPEAL AND I
24 CERTAINLY DON'T WANT THE FACT THAT WE DON'T HAVE A HEARING
25 TODAY TO PRECLUDE THE COURT -- A HIGHER COURT FROM ADDRESSING